UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS
SECOND SESSION

VOLUME 136—PART 24

OCTOBER 26, 1990
(PAGES 34485 TO 36006)

GENERAL SERVICES ADMINISTRATION
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UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1990

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PROCEEDINGS AND DEBATES OF THE *101st* CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Friday, October 26, 1990*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Remind us, O God, that we brought nothing into this world and surely we will bring nothing away. Let us so live our lives and see our tasks knowing that we do not own the wealth of the world, but rather are but caretakers of the riches of the land. Encourage us, O God, to be honest stewards of the resources of our Nation so we will preserve with integrity the abundance of the gifts You have given for all the generations to come. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Georgia [Mr. JONES] please come forward and lead the House in the Pledge of Allegiance?

Mr. JONES of Georgia led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On August 3, 1990:

H.J. Res. 577. Joint resolution designating the month of November 1990 as "National American Indian Heritage Month."

On August 6, 1990:

H.R. 2843. An act to establish the Tumacacori National Historical Park in the State of Arizona.

On August 7, 1990:

H.J. Res. 625. Joint resolution designating August 6, 1990, as "Voting Rights Celebration Day."

On August 9, 1990:

H.J. Res. 548. Joint resolution designating the week of August 19 through 25, 1990 as "National Agricultural Research Week";

H.R. 5350. An act to provide for a temporary increase in the public debt limit; and

H.R. 5432. An act to extend the expiration date of the Defense Production Act of 1950.

On August 10, 1990:

H.J. Res. 467. Joint resolution designating September 21, 1990, as "National POW/MIA Recognition Day", and recognizing the National League of Families POW/MIA flag;

H.R. 293. An act to direct the completion of the research recommended by the Technical Study Group on Cigarette and Little Cigar Fire Safety and to provide for an assessment of the practicality of a cigarette fire safety performance standard;

H.R. 3048. An act to designate the Agricultural Research Service, United States Department of Agriculture, animal health research building in Clay Center, Nebraska, as the "Virginia D. Smith Animal Health Research Laboratory"; and

H.R. 4790. An act to amend the Public Health Service Act to establish a program of grants for the detection and control of breast and cervical cancer.

On August 14, 1990:

H.R. 4872. An act to establish the National Advisory Council on the Public Service.

On August 15, 1990:

H.J. Res. 515. Joint resolution designating the week beginning September 16, 1990, as "National Give Kids a Fighting Chance Week";

H.J. Res. 554. Joint resolution designating January 6, 1991 through January 12, 1991 as "National Law Enforcement Training Week";

H.J. Res. 627. Joint resolution designating Labor Day weekend, September 1 through September 3, 1990, as "National Drive for Life Weekend";

H.R. 76. An act to amend the Wild and Scenic Rivers Act to study the eligibility of the St. Marys River in the States of Florida and Georgia for potential addition to the wild and scenic rivers system;

H.R. 1159. An act to amend the National Trails System Act by designating the Juan Bautista de Anza National Historic Trail, and other purposes;

H.R. 1199. An act to amend title 38, United States Code, to establish a system of competitive pay for nurses employed by the Department of Veterans Affairs, to authorize the Secretary of Veterans Affairs to make such system applicable to certain other health-care personnel, to make certain improvements in veterans' health and education programs, and for other purposes;

H.R. 4035. An act to designate the Federal building located at 777 Sonoma Avenue in Santa Rosa, California, as the "John F. Shea Federal Building";

H.R. 4273. An act to amend the Public Health Service act to extend the program of grants for preventive health services with respect to tuberculosis, and for other purposes;

H.R. 4314. An act to implement the Inter-American Convention on International Commercial Arbitration; and

H.R. 5131. An act to amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program, and for other purposes.

On August 17, 1990:

H.R. 3086. An act to amend title 5, United States Code, to grant appeal rights to members of the excepted service affected by adverse personnel actions, and for other purposes; and

H.R. 3248. An act to revise the boundary of Gettysburg National Military Park in the Commonwealth of Pennsylvania, and for other purposes.

On August 18, 1990:

H.R. 498. An act to clarify and strengthen the authority for certain Department of the Interior law enforcement services, activities, and officers in Indian country, and for other purposes; and

H.R. 1465. An act to establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

On August 20, 1990:

H.R. 1594. An act to make miscellaneous and technical changes to various trade laws.

On September 20, 1990:

H.J. Res. 568. Joint resolution designating the week beginning September 16, 1990, as "Emergency Medical Services Week."

On September 25, 1990:

H.R. 7. An act to amend the Carl D. Perkins Vocational Education Act to improve the provision of services under such Act and to extend the authorities contained in such Act through the fiscal year 1995, and for other purposes; and

H.R. 94. An act to amend the Federal Fire Prevention and Control Act of 1974 to allow for the development and issuance of guidelines concerning the use and installation of automatic sprinkler systems and smoke detectors in places of public accommodation affecting commerce, and for other purposes.

On September 28, 1990:

H.R. 1101. An act to extend the authorization of appropriations for the Water Resources Research Act of 1984 through the end of fiscal year 1994;

H.R. 2174. An act to provide for the establishment of the Mississippi River Corridor Study Commission, and for other purposes;

H.R. 3265. An act to amend the Communications Act of 1934 to provide authorization of appropriations for the Federal Communications Commission, and for other purposes; and

H.R. 4501. An act to provide for the acquisition of the William Johnson House and its addition to the Natchez National Historical Park, and for other purposes.

On October 1, 1990:

H.J. Res. 655. Joint resolution making continuing appropriations for the fiscal year 1991, supplemental appropriations for "Operation Desert Shield" for the fiscal year 1990, and for other purposes; and

H.R. 5747. An act to provide for the temporary extension of certain programs relating to housing and community development, and for other purposes.

On October 2, 1990:

H.R. 2761. An act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United Services Organization; and

H.R. 5755. An act to extend the temporary increase in the public debt limit.

On October 3, 1990:

H.R. 4962. An act to authorize the minting of commemorative coins to support the training of American athletes participating in the 1992 Olympic Games.

On October 4, 1990:

H.R. 5725. An act to extend the expiration date of the Defense Production Act of 1950.

On October 5, 1990:

H.R. 4773. An act to authorize the President to call and conduct a National White House Conference on Small Business.

On October 9, 1990:

H.J. Res. 666. Joint resolution making further continuing appropriations for the fiscal year 1991, and for other purposes.

On October 11, 1990:

H.J. Res. 469. Joint resolution to designate October 6, 1990, as "German-American Day"; and

H.J. Res. 603. Joint resolution to designate the month of October 1990 as "Country Music Month."

On October 12, 1990:

H.J. Res. 398. Joint resolution to commemorate the centennial of the creation by Congress of Yosemite National Park;

H.J. Res. 482. Joint resolution designating March 1991 as "Irish-American Heritage Month";

H.J. Res. 3007. An act to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to provide additional authorizations for appropriations;

H.J. Res. 3897. An act to authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, and 1994, and for other purposes; and

H.J. Res. 5643. An act to grant a temporary extension on the authority under which the Government may accept the voluntary services of private-sector executives; to clarify the status of Federal employees assigned to private-sector positions while participating in an executive exchange program; and for other purposes.

On October 15, 1990:

H.R. 1243. An act to require the Secretary of Energy to establish Centers for Metal Casting Competitiveness Research;

H.R. 2372. An act to provide jurisdiction and procedures for claims for compassionate payments for injuries due to exposure to radiation from nuclear testing; and

H.R. 5641. An act to amend title 5, United States Code, with respect to retirement of members of the Capitol Police.

On October 16, 1990:

H.R. 3657. An act to amend the Securities Exchange Act of 1934 to strengthen regulatory oversight of the United States securities markets, improve supervision of financial market participants, and improve the safety and efficiency of market mechanisms, and for other purposes.

On October 17, 1990:

H.R. 435. An act to amend the Appalachian Regional Development Act of 1965 to include Columbiana County, Ohio, as part of the Appalachian region;

H.R. 971. An act to require the Federal Communications Commission to prescribe rules to protect consumers from unfair practices in the provision of operator services, and for other purposes; and

H.R. 2809. An act to provide for the conveyance of certain lands to the State of California, and for other purposes.

On October 18, 1990:

H.J. Res. 602. Joint resolution designating October 1990 as "National Domestic Violence Awareness Month"; and

H.R. 4758. An act to provide for the construction, operation, and maintenance of an extension of the American Canal at El Paso, Texas.

On October 19, 1990:

H.J. Res. 677. Joint resolution making further continuing appropriations for the fiscal year 1991, and for other purposes; and

H.R. 3468. An act to amend the act entitled "An Act to extend the Wetlands Loan Act" to provide for the expansion of the Steward B. McKinney National Wildlife Refuge.

On October 22, 1990:

H.R. 1608. An act to strengthen national nutrition monitoring by requiring the Secretary of Agriculture and the Secretary of Health and Human Services to prepare and implement a ten-year plan to assess the dietary and nutritional status of the United States population, to support research on, and development of, nutrition monitoring, to foster national nutrition education, to establish dietary guidelines, and for other purposes;

H.R. 4522. An act to improve the information available to emergency response personnel in the field, and for other purposes;

H.R. 4593. An act to transfer to the Secretary of the Interior the administration of the surface rights in certain lands presently within the boundaries of the San Carlos Indian Reservation, Arizona, and managed by the Forest Service as part of the Coronado National Forest, and for other purposes;

H.R. 4985. An act to designate the Federal building located at 51 Southwest 1st Avenue in Miami, Florida, as the "Claude Pepper Federal Building"; and

H.R. 5070. An act to amend the John F. Kennedy Center Act to authorize appropriations for maintenance, repair, alteration and other services necessary for the John F. Kennedy Center for the Performing Arts, and for other purposes.

On October 24, 1990:

H.R. 3787. An act to authorize a joint Federal, State, and Tribal study for the restoration of the fishery resources of the Chehalis River Basin, Washington, and for other purposes; and

H.R. 4279. An act to amend title 31, United States Code, to improve cash management of funds transferred between the Federal Government and the States, and for other purposes.

On October 25, 1990:

H.J. Res. 214. Joint resolution designating the week of October 22 through October 28, 1990, as "Eating Disorders Awareness Week";

H.J. Res. 518. Joint resolution designating October 13 through 20, 1990, as "American Textile Industry Bicentennial Week";

H.J. Res. 681. Joint resolution making further continuing appropriations for the fiscal year 1991, and for other purposes;

H.R. 2961. An act for the relief of Sonanong Poonpipat (Latch); and

H.R. 4757. An act to provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1463. An act to amend the National Capital Transportation Act of 1969 relating to the Washington Metrorail System; and

H.R. 2497. An act to authorize and encourage Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5158) "An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1991, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5257) "An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1991, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate numbered 10, 16, 21, 24, 26, 27, 34, 36, 37, 38, 39, 40, 43, 44, 45, 50, 60, 62, 63, 65, 68, 69, 71, 77, 78, 79, 80, 81, 83, 84, 87, 95, 96, 110, 113, 117, 122, 138, 139, 147, 152, 155, 162, 164, 189, and 190, to the above.

The message also announced that the Senate had passed a bill, joint resolutions, and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 2476. An act to amend title 18 of the United States Code to clarify and expand legal prohibitions against computer abuse;

S.J. Res. 375. Joint resolution to designate October 30, 1990, as "Refugee Day";

S.J. Res. 384. Joint resolution to designate May 17, 1991, as "High School Reserve Officer Training Corps Recognition Day"; and

S. Con. Res. 156. Concurrent resolution making corrections in the enrollment of S. 2834, to authorize appropriations for fiscal year 1991 for intelligence and intelligence-related activities for the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.

ATLANTA CELEBRATES EVANDER HOLYFIELD KNOCKOUT

(Mr. JONES of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES of Georgia. Mr. Speaker, we are celebrating in Atlanta again today. The site of the 1994 Superbowl and the 1996 Olympics is also the home of the new undisputed heavyweight champion of the world. Last night in Las Vegas, with a short right hand that was as clean and crisp as you will ever see, our hometown hero Evander Holyfield knocked out James "Buster" Douglas at 1:10 of the third round.

Mr. Speaker, in Atlanta, Evander Holyfield has long been known as a champion, because of his unselfish involvement in charitable causes, particularly for needy young people, and his gracious humility regarding his success.

Evander Holyfield will be a champion that all America will respect. He is a workhorse, not a showhorse. He lets his boxing skills do the talking. And Evander became the champ by applying some old-fashioned American virtues to this task. He symbolizes the spirit that built our country: dedication, preserverance, patience, and above all, ceaseless hard work.

Last night he proved the truth of the saying, "It's not the size of the man in the fight, but the size of the fight in the man."

Way to go, Champ. Wear that belt proudly. You earned it the hard way.

CONGRESS GO HOME

(Mr. BUECHNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BUECHNER. Mr. Speaker, last night on television America was treated to another bad look at Congress.

There is an old saying in the New York Supreme Court, "While the legislature is in session, no man's life, liberty or property, are safe."

It is time for us to go home, Mr. Speaker, America is tired of looking at us. Let us put the speeches aside and let us try to do the right thing in these last few hours.

The one thing that America will be watching, Mr. Speaker, is what is in the final package. It is not going to be enough that everyone is given an outline. What America is going to be watching is, "Are a lot of Members of Congress going to give little pieces of pork stuck into the final package? Will there be special tax bills for the rich or special interests?"

I think that at no time in the history of this Nation are the chairmen of the various committees under such scrutiny to make sure that what comes out in the final package is good for the Nation, not good for somebody's pocketbook, not good for some lobbyist, not good for a special interest, not good for the majority or the minority, but good for America.

It is time to stop giving speeches and to resolve the situation and go home and be with our families.

A WORTHLESS BUDGET

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, here we go again, another last-minute budget; more taxes, this time by shotgun.

America is going bankrupt and this budget will increase foreign aid and continue spending record amounts of money to protect Japan and Germany.

I want to say to the Democrats in this body, this budget is worthless. This budget is un-American. It should be unacceptable to this body.

Let me say one other thing. This budget does not even replace the money that was taken from Social Security alone last year. This is not a budget for America that was drafted in America. I want to know if Japan and Germany had anything to do with drafting this budget.

THE TAX AND SPEND ADDICTION

(Mr. LIGHTFOOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LIGHTFOOT. Mr. Speaker, to the Democratic leadership hellbent on raising taxes and Republicans playing go along to get along: Get out of town.

For once, go home. Leave this beltway insanity and go listen to the people on the farms, in the stores, and factories of this great country.

Then seek treatment for your addiction to constantly give away Cadillac programs where a good Chevy would do nicely.

Tax and spend is an addiction, not unlike a cocaine user who enjoys his high, then awakes the next morning with the realization he must steal again and again to support his habit.

Like the junky, without treatment you will surely die. The real tragedy is the millions of innocent American paychecks you steal from and take down with you in the process.

If you cannot reform, take comfort, for on your tombstone will be carved the trademark words of your legacy, "It's not a good deal, but it's the best we can get."

God, please save America.

□ 1010

1990: MINORITIES AND WOMEN STILL WITHOUT CIVIL RIGHTS IN AMERICA

(Mr. STOKES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STOKES. Mr. Speaker, I wonder what revered men like the late Presidents John F. Kennedy and Lyndon Johnson and Vice President Hubert Humphrey would think if we told them that in 1990 minorities and women still do not have their civil rights in America.

I wonder what they would think of Nazi sympathizer, David Duke, winning 60 percent of the white vote in Louisiana; President Bush vetoing the civil rights bill; and the Ku Klux Klan marching in Washington, DC, on Sunday.

I think men like Kennedy, Johnson, and Humphrey would be angry about what is happening to their country under men like Reagan and Bush. I think minorities, women, and decent people in this country are angry, too. That is why I cannot vote for the tax bill, declare victory, and go home. The people I go home to do not celebrate not taxing millionaires and they do not celebrate not having their civil rights.

A SENSIBLE VARIETY OF ALTERNATIVE FUELS

(Mr. HEFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HEFLEY. Mr. Speaker, the ongoing conflict in the Persian Gulf has made us all painfully aware of this Nation's dependence on foreign oil. Hopefully, this awareness will outlast the gulf crisis and we'll see some progress toward a national energy policy.

I do not know whether we need to legislatively prescribe every facet of

that policy but it seems its essential elements are within reach and we should do what we can to urge these along.

For example, a few months ago, a representative for the United Parcel Service stopped by my office and talked about the voluntary steps UPS was taking to convert parts of its fleet to compressed natural gas. These are the kinds of efforts we should be encouraging. Instead of prescribing recipes for one type or another of alternative fuel, we should encourage efforts that will bring about a variety of alternative fuels.

As another example, the gasoline conservation measures the President has been pushing—proper tire pressure, carpooling, and fuel efficiency—makes sense whether we are in an energy crisis or not.

There are a host of other things happening in alternative energy. In Golden, CO, the Solar Energy Research Institute is conducting exciting research into developing fuels from tree trunks and plant matter. That is in addition to its work in solar cells and other forms of renewable energy. Some of these, SERI says, are within a few years of being commercially viable.

There is no doubt that, these days, a number of crises are resting on our doorstep. But crises offer opportunities as well as problems. I hope we will not miss this opportunity to develop a national energy mix fit for the next century.

A GOOD TAX PACKAGE INCLUDES A GOOD CIVIL RIGHTS BILL

(Mr. DYMALLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DYMALLY. Mr. Speaker, yesterday the minority whip came here and called upon the Democratic leadership to pass a weak civil rights bill submitted by the President. Considering the fact that the minority whip has complained that the Democratic leadership has brought legislation here without thorough review, I find it rather strange that this very articulate person would try to suggest that at this last minute we pass a watered down civil rights bill.

Mr. Speaker, after the President was inaugurated in the White House, he sent out all the right signals; he said glowing things about Dr. King, he invited the civil rights leadership, he even invited the Congressional Black Caucus to the White House, something Reagan never did.

He spoke in praiseworthy manner about affirmative action, about small and minority business, and then when his rating went up in the African-American community, he began lowering the boom.

He vetoed the Minimum Wage Act, the Family Leave; he vetoed the Civil Rights Act. He watered down the Child Care Act, and now in his further bipartisanship the President is asking us to vote for a tax measure that brings nothing to the poor.

The President never thought about giving us a bipartisan civil rights bill. The votes were there in the Senate if he really wanted a civil rights bill.

So I am saying to my colleagues what are we to take home when there is no civil rights measure? Can we go to our constituents in good conscience and ask them to support a tax package that increases premiums on Medicare, that does not provide adequate taxes for programs to support child care, that avoids taxing the rich?

I say, Mr. President, and Members of the House, if you want a good tax package, you need to have a good civil rights bill.

BALANCED-BUDGET CONSTITUTIONAL AMENDMENT NOT DEAD

(Mr. JAMES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JAMES. Mr. Speaker, it looks like there really is an end to this Congress. At least we can say that we made the history books. Not since World War II has a Congress stayed in session this long during an election year. You would think that a Congress that has stayed in session this long would have some solid accomplishments behind it. While we can say that some good work has been done, the vast majority of our time here has been wasted.

The worst example of our failure, of course, is the upcoming budget deal, which now seems to be a reality. There have been a lot of tears shed over this budget, and a lot of time spent fighting each other. Yet the product that has been given to us, a package of tremendous tax increases, does not come near to addressing the problem. Let us be honest first. The real total budget deficit of this country this year is probably near $300 billion. We could eliminate the Defense budget completely and still just break even. This package does not even reduce the budget deficit by one-sixth. If we look at the measage in all of this, it is clear that the spending habits of this congress must be curtailed. It is the only real solution to the problem. And we need real budget reform, starting with a constitutional amendment to balance the budget. If you thought that this issue was behind you, trust me when I say that this is only just the beginning.

"NO" ON CIVIL RIGHTS BILL? "NO" ON BUDGET RECONCILIATION PACKAGE

(Mrs. COLLINS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. COLLINS. Mr. Speaker, today or tomorrow we are going to be asked to vote on the budget reconciliation. I think it is ridiculous that some Members of this House are going to be asked to vote on that at a time when we have not overridden the civil rights bill, so that justice and fairness in the workplace can prevail for everybody.

The thing that galls me the most, is that when women and minorities today go into the work force, they go there knowing that they are not going to have a fair opportunity for advancement, that they are going to reach a glass ceiling beyond which they cannot penetrate. Mr. Speaker, it seems to me that all of us have a right to expect, in this American country of ours, to have fair opportunities for advancement, and not to have politics played with the potential that we hope we have to reach our rightful destinies. Unfortunately, failure by the President to sign the civil rights bill destroys that hope.

Until such time as we find ourselves a strong country for civil rights, it seems to me that we who believe in fairness, should not vote for this reconciliation, and I will not do it.

DEMOCRATIC BUDGET RECONCILIATION

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, last week I stood here and attempted to warn my colleagues about the historical patterns of tax increases and spending increases. In case some Members of the House missed it the first time, I'll repeat myself: Tax increases only lead to spending increases, and we cannot reduce the Federal budget deficit by increasing spending.

But I'm not the only one repeating myself this week. Under the pending reconciliation bill, history will repeat too. A look at the past shows that for every $1 in tax increases since World War II, spending has increased by $1.50. A look at the reconciliation blueprint for the future, shows that for every $1 in tax increases over the next 5 years, spending will increase by $1.90!

Not only is this tax and spend ratio much higher than the past years' average, but the tax part of the equation—at least $150 billion—is the largest tax increase in our Nation's history. What's worse, the equation would have to largely be balanced on the

backs of elderly Americans through increased Medicare premiums and through increased income taxes on taxpayers from every income level.

LET YOUR FINGERS DO THE TALKING

(Mr. WASHINGTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WASHINGTON. Mr. Speaker, we need a new march on Washington. We do not have to leave home this time to march on Washington, but we do have to leave our houses on November 6, when we go to the polls and do the most basic and fundamental thing that all Americans can do, and that is to vote.

All people who believe in one America should vote on November 6. They should march to the polls and vote.

Do not believe in the 30-second sound bites, because these politicians can tell you what they think you want to hear.

Read the paper and see how they voted on the issues that are important to you. And if the issue of civil rights is important to you because you believe in one America, or if you do not know how your Congressman or Senator voted, call my phone number. I am in Washington, area code 202-225-3816. Operators are standing by. I will tell you how they voted. If you believe in one America, then send us three more Senators from Kentucky and North Carolina and Wyoming and South Dakota. If you believe in one America, then send us some new House Members, send some of these Democrats home, from Texas and Mississippi and Georgia and Louisiana, who ought to be ashamed of themselves, because they represent minorities.

Vote against these Democrats, send them a message: Let your fingers do the talking.

□ 1020

WHY CONGRESS IS HELD IN LOW ESTEEM

(Mrs. MARTIN of Illinois asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MARTIN of Illinois. Mr. Speaker, the budget reconciliation package is indeed a tax bill, and we all know it. But for a moment let us see why this Congress is regrettably in low esteem.

That bill will increase costs to senior citizens. That bill will increase costs to farmers as they try to bring in the harvest. There is no way that that bill will do anything but lead to something like a stamp cost increase that affects working men and women, and average Americans, and yet at the same time we will impose these taxes, what are we doing in foreign aid? We are increasing it. More than that, we are now suggesting that debt be forgiven for one entire nation. Our young men and women in the gulf do not get their debt forgiven. How can we increase taxes and increase foreign aid within the same 2-day period and expect the American public to believe at all that we are willing to limit spending?

WHERE IS MY VICTORY?

(Mr. RANGEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RANGEL. Mr. Speaker, I have been advised that I should vote for the tax package, declare victory, and go home. Well, the President is not going home; he is going around the country campaigning against the very same congressional people that he wants to come up with a bipartisan tax package.

Mr. Speaker, where is my victory? How can I tell the families of the black and Hispanic men and women who are serving us in the Persian Gulf that, when they come home, some seeking private sector employment, that they do it without the protection of a civil rights bill? How can I tell them that a President that is looking for bipartisan support on the budget, cannot find bipartisan support to protect their rights? And what is he protecting? He is protecting the wealthy against damages that may be sought when racist employers discriminate, the same way he is protecting the millionaires from the 33-percent tax rate and a surtax. He would rather tax the beer drinkers than his champagne drinkers. He is more concerned with providing tax incentives for those who have gas shelters than those who will pay the gasoline tax.

I ask, "Isn't it time America said let us stay in Washington, and work, and do what we're paid for, and bring the President back home, too?"

NOT WITH MY VOTE

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, Members, if we do nothing with raising taxes, which our Democrat friends yearn to do, the increased revenue from the existing tax system, 1991 over 1990, is $79 billion. If we had the discipline to restrain the growth in spending by 4 percent over what was spent in 1990, that growth would total about 49. That would leave $30 billion to apply against reducing the deficit. That is the sensible thing to do.

But no, the appropriation bills we passed so far through this body total some $30 billion more than we spent last year. The spending ethic is so ingrained in the souls of people who control this institution that they cannot even bring themselves to be restrained to the rate of inflation.

I say, "You've got to spend, spend, spend. I realize it's tax, tax, tax; elect, elect, elect. You redefine, you Democrats, rich people in America. Americans that have a job, you are, by definition, rich."

Watch out. We are about to get it because we are going to do it to the American people today, but not with my vote.

PROTECTING BIG BUSINESS IS TOP PRIORITY OF PRESIDENT'S PARTY

(Mr. PAYNE of New Jersey asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PAYNE of New Jersey. Mr. Speaker, the failure of the other body to override the President's veto of the Civil Rights Act of 1990 is one more sign that our system is tilted in favor of the wealthy. Prior to the vote, an intense lobbying campaign was waged by business interests who feared that protecting workers from discrimination may threaten the corporate profit margin.

Every Democrat in the other body supported the veto override, but Members of the President's party made it clear that their top priority is protecting big business, not ordinary working men and women looking for fair treatment in the workplace. How can we now take up the budget and proceed with business as usual? We are, in effect, telling a large segment of our citizens that they will have to do their fair share to reduce the deficit, but they should not expect basic protections against discrimination in return. Mr. Speaker, that is un-American.

TOMORROW IS TAX ACTION DAY

(Mr. DOUGLAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOUGLAS. Mr. Speaker, tomorrow is Tax Action Day. Across America the Citizens Against Government Waste and other antitax groups are going to be calling on the voters to throw the taxers out of office. I want to commend them in their effort because the bill that we will be passing in the next 48 hours will not have a line item veto, will not cut spending, will not have a balanced budget amendment. It will just be more of the same.

I will not be able to get up to New Hampshire tomorrow for Tax Action Day, but I want to reaffirm my pledge

against taxes, and that is why in front of everybody in the United States I am re-signing my pledge not to raise your taxes in New Hampshire. I kept my word, and I will keep my word.

WHY I CANNOT SUPPORT THIS BUDGET

(Mr. HAYES of Illinois asked and was given permission to address the House for 1 minute.)

Mr. HAYES of Illinois. Mr. Speaker, David Duke is on TV this morning on a program taped yesterday talking about civil rights. It is an insult what he said to us who know what discrimination means, to see the press give that kind of credence to his appearance before the Senate to speak against the civil rights bill and uphold the President's veto, yet 12 of us from the Congressional Black Caucus appeared over there along with some of our supporters in the coalition to try to get them to override the veto, got very little, or no press for our position. We were there to uphold democracy at a time that the President, who vetoed this bill, is quiet, trying to distance himself and make the public believe a person like David Duke.

Mr. Speaker, we know better. He is still on the Hill. If not today, he will be back, because he announced his intention, his desire, to run for the Governor of Louisiana. God forbid that will happen.

It is more than just civil rights. It is the right for people to have a job, to live in human decency.

That is the reason I cannot support a budget that is more concerned about helping rich people remain rich while poor people suffer and languish in poverty. I am going to vote against the budget.

JOBS GROWTH AND COMPETITIVENESS ACT ENCOURAGES CAPITAL FORMATION

(Mr. McEWEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McEWEN. Mr. Speaker, in 1981 we had the most favorable capital investment climate in the world. We attracted capital from around the globe creating 23 million jobs in just 8 years. We know that it takes nearly $130,000 for the formation of just one job. But now in the last 8 years, every other year we have increased taxes on capital formation, reversed the course to the point that we are now significantly behind our competitors: Japan, West Germany, Korea, Singapore, and the others.

Mr. Speaker, today I am joining seven of my colleagues and introducing the Jobs Growth and Competitiveness Act in order to encourage capital formation for job growth in the 1990's. I encourage my colleagues to join us and reverse the trend since 1982 of having nearly doubled the cost of investment in America.

□ 1030

BUDGET HEIGHT OF IRRESPONSIBILITY

(Mr. OWENS of New York asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of New York. Mr. Speaker, instead of a kinder and gentler administration, we have been confronted with a meaner and greedier administration from the very beginning of this session. We have had to fight nickel by nickel to get a minimum wage increase, and the final compromise was woefully inadequate.

Greedy millionaires and big corporations have blocked every attempt to improve life for the average American. We have had to fight behind the scenes against the big corporations to get the ADA bill passed. The savings and loan corps have stolen the peace dividends.

Before this Congress adjourns, another $57 billion will be sneaked into the budget, without any debate.

One of the most devastating actions of meanness was the President's veto of the Civil Rights Act of 1990. That veto spat upon the majority of Americans. It spat among minorities, people with disabilities, and it spat upon women.

Within this context of meanness and deceit, no true Democrat can vote for a 5-year mean and greedy budget. This budget does not have a surtax on millionaires any more. It is a rotten budget now.

This budget, without a surtax on millionaires, is a 5-year plan for more greed and more meanness. It is the height of irresponsibility.

I will act responsibly. I will not be a part of it. I will not vote for this budget, and I urge Members to vote "no" on this mean and greedy budget.

TAXPAYERS SUBSIDIZING DENIGRATION OF RELIGION

(Mr. ROHRABACHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROHRABACHER. Mr. Speaker, yesterday, right before this time, this time of 1-minute speeches, something happened in this Chamber that was very extraordinary. There was a motion to send our representatives to a conference committee with Senate Members who were supposed to meet with us to talk about the Interior appropriations bill.

The night before Senator HELMS had passed an amendment on voice vote that would have prohibited the use of Federal funds to subsidize artists who are denigrating anybody's religion.

Well, through skulduggery of some kind and some kind of manipulation of the schedule, I was not permitted to offer a motion that would have put this House on record as opposing the subsidy of artists who denigrate religion.

I personally resent this, and I hope that when the American people get their tax bill, that they will realize that their taxes are going up, and this body will not even permit a Member to make a motion that would prevent their tax dollars from subsidizing the denigration of their own religion.

ELECTED OFFICIALS MUST STAND AND FIGHT ON CIVIL RIGHTS

(Mr. DELLUMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELLUMS. Mr. Speaker, there are few moments when each of us seek to be heard. This is such a moment. For several members on the Congressional Black Caucus today seek to be heard.

There are moments when one draws a line and says beyond this point we shall not retreat; that as elected officials you take the stand and say from this position, we will fight.

In that spirit, and against that backdrop, it is with pride and resolve that I stand with all of my colleagues who have spoken in the well from the Congressional Black Causus saying that we will oppose the budget that would be presented today or tomorrow. And we do so because we believe that it is ironic in the extreme that we are being asked to be responsible when the President of the United States and the other body acted with irresponsibility in vetoing the civil rights bill.

I would say, Mr. Speaker, all of my colleagues, we are all prepared to accept the consequences of our act, because 51 percent of this Nation who are women, millions of people who are black, brown, red and yellow, must accept the consequences of this racist and bigoted act.

We will stay here as long as necessary until we undo this madness.

WAR CLOUDS IN THE PERSIAN GULF

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, as we move to adjournment, the President appears to be seeding war clouds in the Persian Gulf by changing our troops from a defensive to a potentially offensive posture.

American service men and women in the U.S. military must not become offensive mercenaries for Mideast monarchs while the Congress is in recess.

Mr. Speaker, the President's very own Bicentennial Commission on the Constitution is running full page ads in magazines across America, celebrating the checks and balances of the Constitution, and pointing out in the headlines that the power to declare war is not found in the Oval Office. The Constitution does not go in recess. I must say that changing our troops from a defensive to offensive mode in a foreign land must be a declaration of war.

We cannot sneak around it. If we are in recess, the President must call us back, if that is his intention, I think, according to his very own Commission celebrating the checks and balances.

This is very serious, and I hope we all ponder it, because I do not want to come back and find out we are in a full-fledged war.

RIGHTS OF HOUSE MUST BE PROTECTED WITH REGARD TO COIN BILL

(Mr. BARNARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARNARD. Mr. Speaker, how many Members remember voting to change all of the coins of our Government? How many Members remember doing that?

Well, your memory has not failed you. You have not done it, yet. You were just about ready to do it when you voted for the housing conference, but the judicious decision of the chairman of the House Committee on Banking, Finance and Urban Affairs was to take that bill back to conference and remove a bill which would have changed every coin of this Government, of our Government.

Mr. Speaker, we need to protect the rights of the Committee on Banking, Finance and Urban Affairs of this House.

Germaneness rules should apply. We should not be forced to accept a bill that has been forced down our back. We tracked this bill. It was taken off the housing conference. We were able to track it off of the military appropriations, the House appropriations, and now it appears in reconciliation.

Mr. Speaker, I appeal to the chairman, to the Speaker, to the majority leader, to those on the minority side who are on this conference. Do not let this dastardly deed come about. Protect the rights of the House. Let us take this coin bill in the way it should be taken.

TRIBUTE TO THE HONORABLE BILL NELSON

(Mr. BENNETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENNETT. Mr. Speaker, with all the serious and troubling things that are before Congress today, there are some things that, though troubling in a way, as the departure of our friends from this body, nevertheless inspire me. I am thinking about BILL NELSON, a member of the Florida delegation, who will be returning to private life at the end of this Congress.

At the end of today I will have a special order. Those Members who want to participate either by sending in statements or by participating will be appreciated.

BILL is an outstanding young man who in the State legislature made a great career for himself, here in Congress he made a great career, and was the first Member of the House to go into outer space.

He has touched our lives in a very important way. Mr. Speaker, he is a man who has real spiritual content to his life. It is a great thing to have known a man like BILL NELSON. He will go far in the future. We all wish him well.

RECONCILIATION BILL MUST BE CAREFULLY EXAMINED

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, within the next few hours we are going to be asked for a reconciliation bill. Most Members have no idea what is in there, but my guess is that we are going to awaken a few hours before the election next Tuesday and begin to find out from the newspapers some of the things that were buried down in here.

Here is a list of targeted relief provisions that we believe may be in the bill. Unun Insurance Corp., thanks to Senator MITCHELL, may get as much as $1 billion.

Small wineries, thanks to Senator PACKWOOD, may get hundreds of millions of dollars.

Large cigars may get $100 million; foreign and domestic insurance companies, private foundations, title-holding companies, tax-exempt bond underwriters, rental tuxedo stores, crop dusters, aviation fuel distributors, partnerships, mutual funds, real estate transactions, estate tax treatment of short-term debt obligations of nonresident aliens, general aviation aircraft. Archer Daniel Midland, $500 million, and some others.

Now, that is one reason why we ought to see the bill before we vote on it. We have no idea what all is down in this bill. There may be hundreds of millions, if not billions, of tax relief in this bill that have been prevailed upon this Congress by lobbyists hanging out in the halls outside the various committee rooms where the conference has been meeting.

I would suggest to Members, you probably do not want to wake up some morning and find out you voted for a bill with these kinds of provisions in it.

STOP PRICE GOUGING

(Mr. ENGEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ENGEL. Mr. Speaker, this week, the price of crude oil fell to $28 a barrel from a post-Kuwait invasion high of more than $40 a barrel. How was this price drop reflected at the gas pumps? Not at all. The big oil companies have taken advantage of the post-invasion concern and jacked up gas prices as much as 50 cents a gallon, and they have given no indication that they will ever lower gas prices.

We have seen other oil-producing nations increase their production. The President has released some of our oil reserves. The public has cut back on consumption. Yet, the oil companies continue to gouge the American public. With no justification, they raced to raise prices at the pumps as soon as Iraq invaded Kuwait, before it could possibly have had an effect on oil prices. Yet they slow to a crawl when the market calls for lower prices. We have young men and women poised for battle in the Middle East in part to protect our oil-based economy for all Americans, yet big business chooses to protect only its own interests.

The next scam will involve the price of home heating oil, which could create an unbelievable hardship for areas accustomed to harsh winters. It is imperative that the Justice Department stop this national scandal before it goes any further. If we do not see some relief, I believe Congress must look at taking the excess profits of oil companies. The public understands the tenuous situation in the Middle East, but they also recognize a ripoff when they see one. They expect their Government to recognize it too, and take action.

□ 1040

PERSONAL EXPLANATION

Mr. HENRY. Mr. Speaker, due to the death of a close family relative, I was granted emergency medical leave for the time period October 5, 1990 through October 11, 1990. If I had been present I would have voted as follows on the votes I missed:

Rollcall No. 431, House Joint Resolution 660, fiscal year 1991 continuing appropriations passage, vote "nay."

Rollcall No. 432, procedural motion, approve House Journal, vote "nay."

Rollcall No. 433, House Joint Resolution 660, veto override, vote "nay."

Rollcall No. 434, House Concurrent Resolution 310, fiscal year budget resolution rule, vote "nay."

Rollcall No. 436, House Concurrent Resolution 310, budget resolution conference report, vote "nay."

Rollcall No. 437, House Joint Resolution 666, fiscal year 1991 continuing appropriations sequester, Michel amendment, vote "yea."

Rollcall No. 438, House Joint Resolution 666, fiscal year 1991 continuing appropriations passage, vote "nay."

Rollcall No. 439, House Joint Resolution 666, fiscal year 1991 continuing appropriations, motion to concur, Whitten, vote "yea."

Rollcall No. 440, H.R. 4328, Textile Act, veto override, vote "yea."

Rollcall No. 441, H.R. 5053, Korean War Coin, vote "yea."

Rollcall No. 442, S. 1413, Aroostook settlement, suspension, vote "nay."

Rollcall No. 443, H.R. 5311, fiscal year 1991 DC appropriation, order previous question, vote "nay."

VOTERS MUST DECIDE WHAT KIND OF GOVERNMENT THEY WANT

(Mr. McCRERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCRERY. Mr. Speaker, the American people must learn that they cannot have their cake and eat it too. They cannot continue to elect a Republican to the White House to keep their taxes low and to do the right thing for the country, and then send Democrats to Congress to fatten all of the Federal programs they think are important, and even to create new ones.

The result of such schizophrenia is a divided government with no clear direction. The result is the budget package that is being put on our plate. It stinks.

But because it is better than the alternatives available under our divided government, I will hold my nose and eat skunk for dinner today or tomorrow. I will vote for this compromise budget, but Americans need to make up their minds; low taxes and hard-nosed leadership by Republicans, or more and more taxes and spending and more and more Federal programs by Democrats.

BUSH'S VETO OF CIVIL RIGHTS ACT

(Mr. ESPY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ESPY. Mr. Speaker, David Duke's friends of the Ku Klux Klan will be in Washington this Sunday to say thank you, thank you to President Bush, thank you to Republican Members in the other body, and thank you to the Members of this body who dared to vote against a civil rights bill.

Today, Mr. Speaker, and on November 6, we can say no thank you, no thank you to wrong-headed logic, and no thank you to those who would promote it. Our national rhetoric is that discrimination is wrong, but Mr. Speaker, the national reality is something quite different. Ours is not a color-blind society, Mr. President, at least not yet.

The problem we face is discrimination and not quotas. By vetoing the civil rights bill the President sent a message to the world that our country has lost its way. And by upholding that veto the Senate confirmed that our Nation is on a path that many thought we had put behind us.

The President and several Members of the other body had a chance to choose between the vision of David Duke or the vision of Dr. Martin Luther King. Mr. Speaker, our vision is clear. We should tell them today and on November 6 that nothing is more important to this Nation than civil rights, and our human rights. Nothing is more important, not even a budget.

NO NEW COIN DESIGNS FOR U.S. MINT

(Mr. PARRIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PARRIS. Mr. Speaker, I would like to add to the precautionary words uttered a moment ago by my friend, the gentleman from Georgia [Mr. BARNARD] in regard to the coin redesign situation.

The House may recall that we passed a Korean War Memorial bill about a week or so ago, and I should add that that bill authorized the minting of a million silver dollars, a one-time mint for the completion of the construction of the Korean War Memorial. But when it reached the other body, lo and behold, an amendment was attached to it to redesign all of the coins in circulation in the United States, at tremendous cost, and over the objections of the administration, in order to improve the art.

I suggest, Mr. Speaker, the representation of Monticello on the back of the nickel is an architectural art accomplished by a great hero of American politics, Mr. Thomas Jefferson of Charlottesville, VA, and to improve on that would be very hard to do.

In these times of critical fiscal problems, it is certainly not the thing for this country to do, and I would urge my colleagues to continue to oppose it.

UNITED STATES OFFENSIVE POSTURE IN SAUDI ARABIA

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, we are on the verge of a great national crisis, both constitutional and catastrophic from a human life lost point of view.

The Secretary of State is on his way at this moment, apparently, to Saudi Arabia to try to get a blank check for offensive military action in the gulf.

I am one of those who support the President in his efforts, multilateral, multinational, to stand up against the brutal aggression unleashed by Saddam Hussein. But a defensive action is one thing. To have 220,000-plus Americans built up by an additional 100,000 preparing for an offensive act is something else.

The Constitution of the United States has not been repealed. Congress has the power to declare war, not the President.

I urge the President to exhaust every nonmilitary, diplomatic means before he thinks about offensive military action, and when he thinks of it, come back to Congress and ask for the people's approval of offensive military action.

STAND FIRM ON HOUSE POSITION ON NATIONAL ENDOWMENT IN INTERIOR APPROPRIATIONS BILL

(Mr. HENRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker, amidst the many issues coming before us during the waning hours of this session will be the conference report on the Interior appropriations bill.

I do want to call the Member's attention to the fact that once again the very difficult issue as to the language which will be associated with the 1-year authorization for the National Endowment of the Arts is contained in that bill, and to call Members' attention to the fact that as matters presently stand the Senate has not yet seen fit to agree to the overwhelming action of this House in placing in the procedural reforms which were implicit and a fundamental part of the Coleman-Williams substitute. For those who in good faith struggle to address the problems that some of us have felt with the National Endowment of the Arts through this bill, I hope we will stand firm in regard to this matter,

since so much contructive effort was made in trying to resolve this issue positively and constructively, and so we do not face once again the kind of extremist polarization which plagued us throughout most of this year.

So I would ask Members to stay very firm and be very watchful as this bill comes back to the attention of the House.

[Mr. FORD of Tennessee addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MAZZOLI). Once again, the Chair would advise Members that remarks should be made to the Chair.

FIFTIETH ANNIVERSARY OF THE P-51

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, the reason I asked for two 30-second speeches is that I had intended to get up here and do two speeches. One was to be a tribute to American aerospace, particularly to the great cities of Hawthorne, now represented by GLENN ANDERSON who was also the city's youngest ever mayor, and Englewood, which is in the district of the gentleman from California [Mr. DIXON]. The reason for the tribute is that 50 years ago today the world's greatest fighter aircraft flew for the first time, the P-51 Mustang. It took only 117 days to take the plane from pen to drawing board to production. It was designed for the British; not for us. And it turned out to be the world's greatest airplane in World War II.

I have to end my remarks there but will put the rest in the RECORD. Below is the story of the P-51 Mustang:

P-51D MUSTANG

Rockwell International and its predecessor company, North American Aviation, Inc., have manufactured more military aircraft than any other company in the world. This year Rockwell is celebrating the first flight of two of these aircraft.

A total of 15,485 P-51 Mustang fighters were manufactured. First flight occurred on October 26, 1940.

Aviation experts agree that the Mustang was one of the best fighters of all time.

LET THE SCUM KNOW RACISM IS NOT AMERICAN WAY OF LIFE

Mr. Speaker, I have just found out that our Speaker says that if we are not through with our work on Saturday, we are going to adjourn Sunday, and come back Monday. This means we would be out of town when the Ku Klux Klan is here.

Mr. Speaker, when the boneheads, the meatheads, the skinheads, the haters of this country come to town we ought to be here finishing our business, take an hour break and go out on the street and tell this scum what we think of them.

I say to the gentleman from California [Mr. DELLUMS], you are a marine, you have never run from a fight. Why don't the whole Congress in a bipartisan way go out there and tell these haters that they are not welcome in this beautiful Federal Capital? I do not want to be told to go home, and I will have to go home if we take a break, because I have got about three fundraisers out there. I would rather be here doing my business and take an hour break to let the scum of this country know that racism is not the American way of life. Let us stay in town.

THE DEMOCRATS MADE ME DO IT

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Speaker, remember the comedian Flip Wilson, remember his favorite character, Geraldine? She was fond of explaining her behavior by exclaiming, "The Devil made me do it. The Devil made me do it."

George Bush has indicated he cannot wait to take his show on the road and tell the American people, "The Democrats made me do it, the Democrats made me do it."

Mr. President, when you take your excuses to the American people, do not forget to tell them what the Democrats made you do. We made you reduce the hit on Medicare recipients by almost $20 billion. We made you drop the capital gains tax proposal which would have benefited the very wealthy and not have promoted economic growth, and yes, the Democrats made you raise taxes on the very wealthy so that they pay their fair share rather than piling on middle-income taxpayers.

The reconciliation package we will vote on is a better and fairer package than the President wanted.

Mr. President, the Democrats made you do it.

INTRODUCTION OF LEGISLATION TO IMPOSE WINDFALL-PROFITS TAX ON BIG OIL

(Mr. LEVINE of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVINE of California. Mr. Speaker, the oil companies are getting even richer off of the crisis in the Persian Gulf.

Yesterday, Phillips, Texaco, ARCO, and Hess all reported dramatically higher profits for the most recent quarter.

These profits are a clear statement why we need a windfall profits tax. At a time when our economy is teetering on the brink of a recession, when senior citizens and the poor are being asked to make sacrifices to reduce the deficit, oil companies should not be allowed to line their pockets with huge profits courtesy of Saddam Hussein.

When the world price of oil shot up prices at the pump shot up too. Yet now that the price of oil has fallen by more than 25 percent gas prices have not fallen by a penny.

Yesterday, I introduced legislation to impose a windfall profits tax on big oil. I urge my colleagues to support my bill, and move it quickly in the next session of Congress.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate has passed without amendment bills and a concurrent resolution of the House of the following titles:

H.R. 3791. An act for the relief of Beulah C. Shifflet;

H.R. 4721. An act to designate the Federal building located at 340 North Pleasant Valley Road in Winchester, Virginia, as the "J. Kenneth Robinson Postal Building";

H.R. 5409. An act to designate the post office building at 222 West Center Street, in Orem, Utah, as the "Arthur V. Watkins Post Office Building"; and

H. Con. Res. 172. Concurrent resolution expressing the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2006. An act to expand the powers of the Indian Arts and Crafts Board, and for other purposes, and

H.R. 3702. An act to authorize the Rumsey Indian Rancheria to convey a certain parcel of land.

The message also announced that the Senate agrees to the Report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 1396) "An act to amend the Federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcment."

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2946. An act to amend the Public Health Service Act to revise and extend the program establishing the National Bone Marrow Donor Registry, and for other purposes.

VACATING PROCEEDING ON H.R. 2065, TROPICAL FORESTRY INITIATIVE ACT

Mr. VENTO. Mr. Speaker, I ask unanimous consent to vacate the proceedings whereby the bill (H.R. 2065) to provide for studies and planning activities for improvement of tropical forest management, including forest management of insular areas and jurisdictions and public lands of the United States, and for other purposes was amended and passed on yesterday.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, and I shall not object, I do so to yield to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I appreciate the gentleman's cooperation.

Mr. Speaker, I introduced H.R. 2065, the Tropical Forestry Initiative Act, to address the global tropical deforestation crisis. This is a bipartisan bill with Mr. LAGOMARSINO, Mr. MARLENEE, and Mr. VOLKMER as cosponsors. I appreciated their willingness to lend their support to this initiative.

I particularly want to thank Chairman DE LA GARZA of the Agriculture Committee for taking the lead in bringing this bill to the floor of the House today. I also appreciate the support Chairmen FASCELL and GEJDENSON of the Foreign Affairs Committee have given this proposal. Without their support we would not be prepared to act today. It has taken good cooperation between three House committees to bring this measure to the floor.

Mr. Speaker, we have a global crisis. Each year 27 million acres of tropical forests, an area the size of Pennsylvania, are logged, burned and converted to nonforest uses. Not only do tropical forests contain an estimated 50 percent of the world's plant and animal species, but scientists predict that 2.5 million species in these forests have not even been discovered and may never be discovered if the rapid rate of tropical deforestation continues. It is quite likely that this tremendous loss of rain forests and dependent species is lessening the world's biological diversity, is contributing to global climate change and is preventing new medicines, foods, and other forest products from benefiting the peoples of the world. The National Forest Service [NFS], as the world's largest forestry organization, needs to play a leading role in helping to find the means and knowledge to save tropical forests. With this outstanding research branch, the Forest Service has an important capacity to respond and can make a significant difference.

To learn more about what the National Forest Service's role could be, in January 1989, I led a field inspection to Puerto Rico to visit the Forest Service's Institute of Tropical Forestry and the Caribbean National Forest, our Nation's only tropical rain forest. H.R. 2065 is a product of this visit. It would increase the Forest Service's role by strengthening its Tropical Forestry Research Program in the following ways.

First. It would give the Forest Service a congressional mandate to conduct research that focuses on methods to slow or reverse tropical deforestation. No such mandate exists today.

Second. It would give the Forest Service's Institute of Tropical Forestry in Puerto Rico and its Institute of Pacific Islands Forestry in Hawaii a congressional mandate to expand their current programs to include research on recreation and tourism, alternative economic uses of tropical forests that sustain them as forests including the development of new products, and the affects of tropical deforestation on biological diversity and global climate change.

Third. The bill would direct the institutes to share their knowledge and findings with other countries and very importantly to assist researchers and natural resource managers throughout the rain forest nations on a global basis.

Fourth. It would direct the Forest Service to manage the Caribbean National Forest as a model of tropical forest management with a special international outreach program.

Fifth. It gives the Forest Service authority to provide technical assistance to tropical countries.

In this session of Congress, many bills have been introduced that address different aspects of the global tropical deforestation crisis. H.R. 2065, However, if unique, in that it is the only bill that deals directly with a hands on means of addressing the urgent need for more research and training of land managers worldwide to solve the criris. We don't have all the answers we need, and only research can fill this vaccum, but better information and knowledge, however, is only one important part of the answer. Equally important is the application, the implementation and the dissemination of such know how to the countries that must, in the final analysis, shape the land use policy and practices that will decide the future of tropical rain forests.

The National Forest Service has done extraordinary work in tropical forestry. Dr. Frank Wadsworth has worked for the National Forest Service for over 50 years, much of that time in Puerto Rico's Caribbean National Forest at the Institute of Tropical Forestry. He is a living American treasure in my judgment. Also to be commended is Dr. Ariel Lugo, the director of the institute, who is expanding the institute's role in solving the tropical deforestation crisis. The National Forest Service with Dr. Wadsworth and Dr. Lugo's leadership has established a core of knowledge and professionals who are leaders in the study of tropical rain forests. In fact, the library of tropical forestry at the institute is the most complete in the Western Hemisphere.

Mr. Speaker, they well desereve the new tasks and recognition that this measure and this new policy would garner to these distinguished scientists and the National Forest Service. Congress could do no better than to enlarge the success of the institutes of tropical forestry that we have by unleashing them and elevating them in status so that they can work on one of the most significant, emerging environmental problems of our time. Congratulations to my fellow Members today and to the National Forest Service.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, tropical forestry acreage worldwide is decreasing at an alarming rate. The loss of millions of acres of vegetation will adversely impact the health of our planet and the quality of life of mankind. The degree of change in the environment due to deforestation is most difficult to assess. However, it is all but certain that should the Earth continue to lose its tropical forest protective shield, a cataclysmic change would occur.

The United States should take the lead in an international effort to protect and manage tropical forestry acreage. Part of such an effort should be.

An increased focus by the United States on conserving our own tropical forestry. We are fortunate to have significant and beautiful stands of tropical forestry in Hawaii, Puerto Rico, and American Samoa. These areas abound with unique botanical species and are the habitat for various birds and animals including several on the endangered species list.

I am an original cosponsor of the Tropical Forestry Initiative Act, H.R. 2065, and introduced the International and South Pacific Tropical Forestry Act, H.R. 3420, to improve and expand the conservation of our domestic tropical forestry and to provide for international outreach.

I am pleased to see the incorporation of several provisions of my international bill in the Tropical Forestry Initiative Act. We should share the products of our tropical forestry research with other countries. By opening our domestic tropical forestry research and education institutes to profession-

als from other regions, we may, in fact, be able to slow, stop or even reverse the deforestation of the world's tropical forestry acreage.

I urge my colleagues to support the Tropical Forestry Initiative Act. It takes the right steps of first protecting and preserving U.S. tropical forestry lands, and then extending our expertise and knowledge through international outreach efforts. This measure should demonstrate the United States concern for the environment and help maintain our planet's health.

Mr. DE LA GARZA. Mr. Speaker, I rise in strong support of H.R. 2065, as amended, and recommend its passage by the House.

Tropical deforestation is a matter of concern to many around the world. Its effects, both locally and globally, are poorly understood. What is known, however, is that the conversion of tropical forests to nonforest uses is rapidly reducing the quantity of these once vast forests to a small percentage of their former range.

The U.S. Forest Service in the Department of Agriculture is recognized, worldwide, as the leading source of professional expertise on matters related to forest management, research, and protection. H.R. 2065 would simply permit the Forest Service to share their vast knowledge and expertise with others who need it to help to understand and better protect the vanishing forests of the tropical regions of the world.

The Institute of Tropical Forestry in Puerto Rico and the Institute of Pacific Islands Forestry have demonstrated expertise in matters related to tropical forestry. For the past several decades, these institutions have served as a source of training, demonstration, and outreach for those interested in protecting and better managing tropical forests. H.R. 2065 would formally recognize these institutions and authorize a specific mission and direction for their activities.

In addition, H.R. 2065 would direct the Secretary of Agriculture to mansage the Caribbean National Forest as a model for the proper management and conservation of tropical forests. In order to enhance the Forest's ability to fulfill this mission—particularly as it relates to providing opportunities for international outreach, study, and training—the bill would provide for the construction of additional facilities.

Finally, H.R. 2065, as amended, provides the Forest Service with general authority to provide international assistance to promote better understanding and management of tropical forests and related resources.

Mr. Speaker, the Committee on Agriculture, which has jurisdiction over matters related to forest management, and the Committee on Interior and Insular Affairs, with its jurisdiction over insular areas, have teamed up to put together a bill that can help to stem the tide of tropical deforestation. This is a good package which can begin immediately to help avert the destruction of our important tropical forest resources.

Title II of the bill includes a provision to direct the Secretary of Agriculture, through the Extension Service, to develop a program to promote better understanding of the legal requirements and proper methods for disposing of unwanted agricultural chemicals and agricultural chemical containers. This program is an important element in our efforts to promote safer and more environmentally sound farming practices throughout rural America.

Mr. Speaker, I urge support for H.R. 2065, as amended.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The text of the bill is as follows:

H.R. 2065

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tropical Forestry Initiative Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Approximately 27,000,000 acres of the world's old growth tropical forests are lost each year and that this deforestation has become a global crisis adversely affecting the peoples of all nations.

(2) This loss of tropical forests is reducing the world's biodiversity, hindering the development of foods, medicines, and other products that would benefit humankind and contributing to atmosphere pollution and global climate change.

(3) The Institute of Tropical Forestry in Puerto Rico has a 50 year history of research on tropical forests that has been of benefit to those involved in managing tropical forests.

(4) The Caribbean National Forest in Puerto Rico is the Nation's only tropical national forest, has been designated a Biosphere Reserve by the UNESCO Man and Biosphere Program, and has great potential to serve as a model for quality tropical forest management.

(5) If redirected and expanded, Forest Service programs could form the basis for increasing the United States' knowledge and assistance capability to improve tropical forest protection and management globally.

(b) PURPOSE.—The purpose of this Act is to enhance the Nation's program to assist in better management of the world's tropical forests.

SEC. 3. TROPICAL FORESTRY RESEARCH.

(a) FOCUS.—The Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") in cooperation with the Secretary of the Interior shall conduct a program that focuses on methods to slow or reverse torpical deforestation through a research program directed toward those objectives set forth in subsection (d).

(b) MEMORANDUM OF UNDERSTANDING.—The Secretary and the Secretary of the Interior shall enter into a memorandum of understanding setting forth the methods and procedures by which the Secretary of the Interior will assist and supplement the resources of the Secretary to accomplish the purposes of this Act. Such memorandum shall include specific agreements related to management of tropical forests on insular possessions and public lands of the United States.

(c) BUDGET.—The President's proposed budget to Congress for the first fiscal year beginning after the date of enactment of this Act and for each subsequent fiscal year shall specifically identify funds to be spent on Forest Service tropical forestry research to implement the provisions of this Act.

(d) INSTITUTE OF TROPICAL FORESTRY.—The Secretary is authorized and directed to administer an Institute of Tropical Forestry in Puerto Rico. This Institute shall—

(1) conduct long-term research that includes, but is not limited to, the designation and management of wilderness areas, national parks, recreation areas, and other suitable units that protect tropical forests; the relationship between the atmosphere and tropical forests; threatened and endangered species; recreation and tourism; economic uses of tropical forests that sustain them as forests including the development of new products; techniques that monitor the health and productivity of tropical forests; tropical forest regeneration and restoration; the effects of tropical deforestation on biodiversity, global climate, wildlife, soils, water, and the prosperity to developing countries; and

(2) provide assistance as appropriate that includes, but is not limited to, technology transfer from the products and findings of the research described in paragraph (1) of this subsection, training foreign researchers and natural resource managers, cooperating with other forestry research institutions in the tropics, promoting research and investigations by others at the Institute of Tropical Forestry and the Caribbean National Forest and, in cooperation with the Caribbean National Forest, sharing research, technical, managerial, and administrative expertise with others.

(e) CARIBBEAN NATIONAL FOREST.—(1) The Secretary is authorized and directed to manage the Caribbean National Forest (also known as the Luquillo Experimental Forest) as a model of quality tropical forest management (in accordance with subsection (d)) for use in international outreach, study, training, and research.

(2) The Secretary shall construct, within 5 years after the date of enactment of this Act, the necessary facilities in the Caribbean National Forest for training and education to accomplish the purposes of this Act.

SEC. 4. APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. VENTO

Mr. VENTO. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. VENTO: Strike out all after the enacting clause and insert the following:

TITLE I—TROPICAL FOREST ASSISTANCE

SECTION 101. SHORT TITLE.

This title may be cited as the "Tropical Forestry Initiative Act".

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Approximately 27,000,000 acres of the world's tropical forests are lost each year and this deforestation has beome a global crisis adversely affecting the peoples of all nations.

(2) This loss of tropical forests is reducing the world's biological diversity, hindering the development of foods, medicines, and

other products that could benefit humankind and contributing to atmpsheric pollution and global climate change.

(3) The Forest Service's Institute of Tropical Forestry in Puerto Rico has a 50 year history of research on tropical forests that has been of benefit to those involved in managing tropical forests.

(4) The Caribbean National Forest in Puerto Rico is the Nation's only tropical national forest, has been designated a Biosphere Reserve by the United Nations Educational, Scientific, and Cultural Organization Man and Biosphere Program, and has great potential to serve as a model for quality tropical forest management.

(5) The Forest Service's Institute of Pacific Islands Forestry in Hawaii has a 30 year history of research on tropical forestry that has benefited all American-affiliated islands of the Pacific Ocean.

(6) Forest Service programs could aid in improving tropical forest protection and management globally.

(b) PURPOSE.—The purpose of this title is to enhance Forest Service activities to promote better management of the world's tropical forests.

SEC. 103. TROPICAL FORESTRY PROGRAMS.

(a) IN GENERAL.—The Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary"), in consultation with the Secretary of the Interior, shall conduct a program to slow or reverse tropical deforestation.

(b) MEMORANDUM OF UNDERSTANDING.—The Secretary and the Secretary of the Interior shall enter into a memorandum of understanding setting forth the specific methods and procedures by which the Secretary of the Interior will assist and supplement the resources of the Secretary to accomplish the purposes of this title.

(c) INSTITUTE OF TROPICAL FORESTRY.—The Secretary is authorized and directed to administer an Institute of Tropical Forestry in Puerto Rico. The Institute shall—

(1) conduct long-term studies that include, but are not limited to, studies of the designation and management of wilderness areas, national parks, recreation areas, and other suitable units that protect tropical forests; the relationship between the atmosphere and tropical forests; threatened and endangered species; recreation and tourism relating to tropical forests; economic uses of tropical forests that sustain them as forests, including the development of new products; techniques that monitor the health and productivity of tropical forests; tropical forest regeneration and restoration; the effects of tropical deforestation on biological diversity, global climate, wildlife, soils, water, and the prosperity of developing countries; and agroforestry; and

(2) provide assistance, as appropriate, that includes, but is not limited to, technology transfer from the products and findings of the studies described in paragraph (1) of this subsection, training foreign researchers, students, and natural resource managers, cooperating with other forestry research institutions in the tropics, promoting research and investigations by others at the Institute of Tropical Forestry and the Caribbean National Forest, sharing research, technical, managerial, and administrative expertise with other countries.

(d) CARIBBEAN NATIONAL FOREST.—MANAGEMENT.—The Secretary is authorized and directed to manage the Caribbean National Forest (also known as the Luqillo Experimental Forest) as a model for proper tropical forest management for use in international outreach, study, training, and research.

(2) FACILITIES.—The Secretary shall construct, within 5 years after the date of enactment of this title, the necessary facilities in the Caribbean National Forest for training and education to accomplish the purposes of this title.

(e) INSTITUTE OF PACIFIC ISLANDS FORESTRY.—The Secretary is authorized and directed to administer an Institute of Pacific Islands Forestry in Hawaii. The Institute shall—

(1) conduct long-term studies that include, but are not limited to, studies of methods for slowing or reversing tropical deforestation on the islands of the Pacific Ocean; global atmospheric and climatic change, including the installation of a monitoring system on Pacific islands to monitor such change; the maintenance and protection of native wildlife populations on Pacific islands; and economic uses of forests on Pacific islands that sustain them as forests; and

(2) conduct an international outreach program that includes, but is not limited to, sharing the products and findings of the research described in paragraph (1) of this subsection with others throughout the tropics.

(f) ASSISTANCE.—In furtherance of this title, the Secretary may provide international assistance without reimbursement including, but not limited to, technology, training, information, equipment and facilities. Such assistance shall not be provided to any country ineligible for assistance under part I of the Foreign Assistance Act of 1961, as amended.

SEC. 104. CONSULTATION.

In order to assure a consistent and coordinated foreign policy and foreign assistance activities, as implemented by the Secretary of State, the Secretary shall consult and collaborate with the Secretary of State and the Administrator of the Agency for International Development in carrying out activities in other countries under this title.

SEC. 105. APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE II—EXTENSION SERVICE PROGRAM

SEC. 201. AGRICULTURAL CHEMICAL DISPOSAL INFORMATION AND EDUCATION PROGRAM.

The Secretary of Agriculture shall direct the Extension Service to operate a program in each State to catalogue the Federal, State, and local laws and regulations that govern the disposal of unused or unwanted agricultural chemicals and agricultural chemical containers in such State. The program established under this section shall also make available to producers of agricultural commodities and the general public, upon request, educational materials developed or collected by the program.

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Minnesota [Mr. VENTO].

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, and was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2065, the bill just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

NATIONAL CAPITAL TRANSPORTATION AMENDMENTS OF 1990

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1436) to amend the National Capital Transportation Act of 1969 relating to the Washington Metrorail System, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Capital Transportation Amendments of 1990".

SEC. 2. AMENDMENT TO NATIONAL CAPITAL TRANSPORTATION ACT OF 1969.

Effective upon enactment, the National Capital Transportation Act of 1969 (Public Law 91-143; 83 Stat. 320) is amended by adding at the end thereof the following new section:

"AUTHORIZATION OF ADDITIONAL FEDERAL CONTRIBUTIONS FOR CONSTRUCTION

"SEC. 17. (a) The Secretary of Transportation is authorized to make grants to the Transit Authority, in addition to the contributions authorized by sections 3 and 14, for the purpose of financing in part the cost of construction of the Adopted Regional System.

"(b) Federal grants under subsection (a) for the Adopted Regional System shall be subject to the following limitations and conditions:

"(1) The work for which such grants are authorized shall be subject to the provisions of the Compact and shall be for projects included in the Adopted Regional System.

"(2) The aggregate amount of such Federal grants made during any fiscal year shall be matched by the local participating governments by payment of capital contributions of not less than 60 percent of the amount of such Federal grants and shall be provided in cash from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistrib-

uted cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital.

"(3) Such grants shall be subject to terms and conditions that the Secretary may deem appropriate for constructing the Adopted Regional System in a cost-effective manner which maximizes the rate at which appropriated funds can be utilized to complete all segments for which funds have been authorized.

"(c) In addition to funds authorized under section 14, there is authorized to be appropriated to the Secretary of Transportation for the purpose of making grants to complete the Adopted Regional System as provided in subsection (a) an aggregate amount not to exceed $1,300,000,000 to be available in increments over 8 fiscal years beginning in fiscal year 1992, or until expended.

"(d) Amounts appropriated pursuant to authorization under subsection (c)—

"(1) shall remain available until expended; and

"(2) shall be in addition to, and not in lieu of, amounts available to the Transit Authority under the Urban Mass Transportation Act of 1964, as amended, and section 103(e)(4) of title 23, United States Code.".

SEC. 3. COMPLETION OF THE ADOPTED REGIONAL SYSTEM.

The Congress recognizes the importance of a mass transportation system to serve the capital of the United States and reaffirms its commitment to the construction of the full 103-mile Adopted Regional Metrorail System in a continuing partnership of the Federal, State, and local governments in the metropolitan Washington region. It is the intent of Congress to ensure continued Federal funding to complete the full Metrorail system. Those portions of the full system remaining to be completed include in the District of Columbia and the State of Maryland, the Green Line between the Anacostia and Branch Avenue Stations; in the District of Columbia, the Green Line between the U Street-Cardozo and Fort Totten Stations; in the State of Maryland, the Red Line between the Wheaton and Glenmont Stations; and in the Commonwealth of Virginia, the Yellow Line between the Van Dorn Street and Franconia-Springfield Stations.

SEC. 4. PROHIBITION ON USE OF HIGHWAY TRUST FUND.

Notwithstanding this Act, any amendment made by this Act, or any other law, no moneys shall be appropriated from the Highway Trust Fund for the purpose of making grants pursuant to section 17(a) of the National Capital Transportation Act of 1969.

SEC. 5. BUY AMERICAN PROVISION.

(a) REPORT TO CONGRESS.—The Washington Metropolitan Area Transit Authority shall report to Congress (1) on contracts which the Transit Authority enters into with foreign entities with respect to its rail system in fiscal years 1991 and 1992 and which are subject to the Buy American provisions of the Surface Transportation and Assistance Act of 1982 or the Surface Transportation and Uniform Relocation Assistance Act of 1987, and (2) on the number of such contracts which meet the requirements of such provisions but which are determined by the United States Trade Representative to be in violation of the General Agreement on Tariffs and Trade or any other international agreement to which the United States is a party.

(b) PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—If the Secretary of Transportation determines that any person intentionally affixes a label bearing a "made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall declare that person ineligible to receive a Federal contract with the Washington Metropolitan Area Transit Authority for its rail system for a period of not less than 3 years and not more than 5 years. The Secretary may bring action against such person to enforce this subsection in any United States district court.

SEC. 6. RESTRICTIONS ON CONTRACT AWARDS.

No foreign government shall be eligible to receive a contract with the Washington Metropolitan Area Transit Authority for its rail system if that government unfairly maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which result in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979.

Mr. DELLUMS (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

Mr. PARRIS. Mr. Speaker, reserving the right to object, I do so in order to yield to the gentleman from California to explain his request.

Mr. DELLUMS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the bill, H.R. 1463, with the Senate amendment, authorizes an additional Federal contribution in order to continue completion of construction toward the total 103-mile regional Metrorail System as originally planned.

The Metrorail System is an essential part of the National Capital transportation system. The ways in which this Metro system serves this region and the Federal facilities in the region are too numerous to outline at this time.

Our committee hearing record is replete with examples of how vital Metro is to the functioning of our Nation's Capital. Included in the final 13.5 miles to be completed is the final portion of the inter Green Line which serves the most transit-dependent population of the region.

As I have said repeatedly on the floor, and I am sure the Speaker recalls, it is unfortunate that the neediest will be the last to have access to mass transit.

I commend the work of my colleagues in the House and in the other body who worked so diligently to craft a reasonable compromise with the administration which allows reauthorization and continued construction toward completion of the total 103-mile system.

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At this point, Mr. Speaker, I would like to personally thank my colleague, the gentleman from Maryland [Mr. HOYER] who is not a member of the District of Columbia Committee, but who has done such an extraordinary yeoman's job to see this legislation through to its final passage.

I also want to extend my thanks to Mrs. Turner, general manager of the Metro Rail System, for her superb management of the system over these past 7½ years.

It is with a great deal of pleasure that I have worked with my distinguished colleague, the gentleman from Virginia [Mr. PARRIS] in order to arrive at this moment. I would also like to commend a number of the staff, on both sides of the aisle, who did an extraordinary and extremely competent and dedicated job in again bringing us to this moment.

Mr. Speaker, the bill changes the Federal-local match from 75-25 to 60-40 respectively.

It also authorizes $1.3 billion in Federal funds to be appropriated over the next 8 years.

The local match increases from $540 million to $780 million. These changes and this bipartisan compromise represents a greater financial contribution on the part of the local government, the Federal commitment to a total 103-mile system and the Federal Government's commitment to a separate authorization for this very special unique transit system, which in every sense, is America's subway, as this is America's national capital.

Mr. Speaker, I urge my colleagues to support passage of this bill, and I would like to thank my distinguished colleague, the gentleman from Virginia [Mr. PARRIS] for yielding this time to me.

Mr. PARRIS. Mr. Speaker, further reserving the right to object, I yield to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I would like to note for the House that when this bill came before the House earlier this year, I strongly opposed it. H.R. 1463 was a $2 billion budget buster which took tax dollars from all parts of the country to help one of the richest areas of the country solve its local transportation problems.

With the Senate amendment, this bill is now only a $1.3 billion budget buster that takes 700 million fewer tax dollars from other parts of the country to help one of the richest areas of the country solve its local transportation problems.

Instead of having the Federal Government pay 80 percent of the local subway expansion costs, as the bill did

when it passed our committee, or 75 percent, as it did when it passed the House—with veto sustaining strength in opposition—the Senate amendment provides that the Federal share of this project will be 62.5 percent—still higher than most mass transit projects in this country have gotten, and certainly higher than the Washington, D.C. Metro ever would have gotten if it had to compete fairly with everyone else. But at least the Federal share is much lower than what this bill started with.

Mr. Speaker, the gentleman from Virginia, the vice chairman of the full committee, Mr. PARRIS, has proven to be an extremely formidable adversary. Just when I thought I had this bill beat, with a veto threat and the votes to back it up, he manages to negotiate an agreement with the administration that is very favorable for Northern Virginia and the entire Washington region. While I would like to object at this point, I now realize that objecting would only delay the inevitable. Now that the administration supports this bill, it will pass one way or the other. Metrorail will now be completed with a tremendous amount of Federal assistance, and I will have to be satisfied with having saved the Federal taxpayers $700 million. I congratulate the gentleman from Virginia [Mr. PARRIS], on his victory over my objections.

Mr. DELLUMS. Mr. Speaker, will my distinguished colleague yield further?

Mr. PARRIS. I yield to the gentleman from California.

Mr. DELLUMS. Mr. Speaker, I would just like briefly to point out to my distinguished colleague, the gentleman from California [Mr. ROHRABACHER], while he characterizes this authorization as serving the wealthiest segment of this country, number one, American only has one national capital; but more pointedly, I would like to say to my colleague that in the final 13.5 miles, I would point out in very clear and graphic terms that it serves the neediest people who have been served in this entire system. For the most part it has served suburban Washington, but this last part serves the residents of the District of Columbia who are most transient dependent than any other group in this entire area. It is indeed serving the neediest people who desperately need a cheap and economic way to get from their homes to employment and back again.

Mr. PARRIS. Further reserving the right to object, Mr. Speaker, I extend my appreciation to the chairman of the full committee for his cooperation in this matter.

It is a good agreement for the metropolitan area. It is in the best interests of the Federal Government. It is the result, we believe, of a good strategy of hard work and bipartisan cooperation among many, including and I must add the name of my friend, the gentleman from Maryland [Mr. HOYER], who was critical of the outcome of the adoption of this legislation.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. PARRIS. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I rise in strong support of this measure.

I thank the chairman of the committee, the gentleman from California [Mr. DELLUMS] for his leadership and commitment. Without him, this would not have been accomplished.

I thank the ranking member, the gentleman from Virginia [Mr. PARRIS], with whom I have worked very, very closely on this effort. His effort was critical to the accomplishment of this objective.

I thank all my colleagues, and even the gentleman from California [Mr. ROHRABACHER] at this final hour, notwithstanding his reluctance not to object. We appreciate the fact he is not objecting.

Mr. MINETA. Mr. Speaker, I rise in strong support of H.R. 1463, the National Capital Transportation Amendments of 1990, which provides an additional $1.3 billion in Federal dollars to nearly complete the 103-mile Washington area rapid transit system. Few public investments made by this body have provided a better return on the dollar than the construction of this world-class and award-winning Metro system.

As chairman of the Surface Transportation Subcommittee of the Commitee on Public Works and Transportation, which has jurisdiction over transit issues, I have worked with the authors of this bill to bring the non-Federal matching share for the construction of this system more closely in line with the non-Federal share paid by most similar systems across the country.

Therefore, I am very pleased that the non-Federal—share for further Metro construction has been almost doubled from 20 percent to 37.5 percent—in this bill. The Federal Government is now assured of an even better return on its investment in Metro.

As an aside, Mr. Speaker, Metro General Manager Carmen Turner is leaving in December to take a position with the Smithsonian Institution. I would like to take this opportunity to express my gratitude for the tremendous professionalism and leadership that Carmen brought to Metro.

I strongly urge an "aye" vote on the bill.

Mr. MCMILLEN of Maryland. Mr. Speaker, I rise to express my strong support for the reauthorization legislation before us today that will bring the Washington Metrorail System closer to final completion.

The Washington Metro System has been called America's subway. Serving 3.5 million residents, a large Federal work force, and approximately 17 million annual visitors to the Nation's Capitol, the Washington Metrorail System is second only to New York in total passenger usage. In addition, Metrorail is widely recognized as one of the most efficient, convenient, reliable and safe transit systems

Metrorail is an example of mass transit that works.

Part of this example, is what can be accomplished through cooperation. The Metro System, since its conception, has been a unique partnership of Federal, State, and local efforts. I am especially pleased that through this legislation the Federal Government will continue its active participation in this partnership by maintaining a commitment made by Congress over 20 years ago.

This legislation authorizes $1.3 billion in Federal moneys over the next 8 years which will complete 11 of the remaining 13.5 miles. This funding will assist in constructing of the long-awaited green line, that will provide Metro access to southern Prince Georges County. This is especially important because the green line will serve some of the regions most transit dependent passengers.

It is true that this legislation will also decrease the total Federal financial contribution from 80 to 62.5 percent. This means that States and local governments will have to increase their contributions. No one should over look the fact that this will be a very difficult task. However, I feel that this agreement can still be considered an overall success for Metrorail. Metrorail will continue to be funded separately from other competing transit systems across the country. Congress has again acknowledged Metro's unique status and the special service it provides in moving the Federal work force and the many visitors to the Nation's Capitol.

We are on the brink of enacting an agreement that was not easy to achieve. It is only because of the clear merits of the Metro System that enough bipartisan support could be gained to bring this bill before us today.

I commend the many people involved in reaching this agreement and I urge my colleagues to support this most important legislation.

Mrs. MORELLA. Mr. Speaker, I urge my colleagues to support the bill to continue the Federal Government's commitment to complete the Washington Metrorail system. I speak in strong support of this bill, which authorizes $1.3 billion over 8 years to continue construction of the Metrorail. Demand for Metrorail continues to grow in Montgomery County, MD. Completion of the red line will provide badily needed transportation to the upper Gerogia Avenue corridor, which is experiencing rapid growth in housing and office development. Without this portion of the red line, there will be enormous traffic problems.

Extension of the Metrorail will improve traffic conditions and, therefore, air quality in the Washington metropolitan region. Six hundred thousands fewer cars are on Washington roads each weekday, and annually there are 7 million fewer tons of pollutants in Washington's air.

Let us continue to work towards completion of the 103-mile Metrorail system, which serves the 400,000 civilians and military Federal employees in the region and the 19 million tourists who visit the Nation's Capital annually.

Mr. HOYER. Mr. Speaker, I rise today in support of this legislation which authorizes construction of most of the remaining portions of Metrorail. I am pleased that after the House acts, the bill will be sent to the President for his signature. The legislation endorses a formula for funding that is livable for all jurisdictions concerned.

This agreement ensures that the much-delayed southern green line into Prince Georges' County will be begun, and will continue past Anacostia into Prince Georges' County. Final completion of the originally planned 103 miles of the Metrorail system is perhaps the top priority of all Washington-area jurisdictions, and this agreement will go a long way in ensuring that goal.

As you may know, residents along the green line in the District and southern Prince Georges' County are the most dependent on public transit in the entire Washington region. In addition, the area to be served by the southern branch is a rapidly growing area, with more residents, Federal and private offices every day, and the green line will serve them and the many commuters from throughout southern Maryland who work in the Washington area.

Construction of this branch of the Metro system is critical for all those reasons.

Of course, Carmen Turner, Metro's general manager, is always the strong advocate and friend that Metro needed to ensure that the construction continued. And finally, Transportation Secretary Samuel K. Skinner and UMTA Administrator Brian Clymer are hard bargainers, but longtime friends of mass transit who are committed to ensuring that America's subway continues to grow and expand.

This agreement, which was worked out in negotiations I conducted with House and Senate Members and the administration, will ensure that the Federal Government funds 62.5 percent—a total of $1.3 billion—of construction costs over the next eight years.

The authorization will ensure that the northern and southern branches of the green line will be connected through downtown Washington, and the southern branch will be built out to Prince Georges County. The agreement will also cover completion of the red line in Montgomery County to Wheaton, and the yellow/blue line in Farfax County, VA, to Franconia-Springfield.

This project has come a long way. After the overwhelming 260–150 House passage of the reauthorization bill in March, we had a tough road in the Senate and through administration. In a time of very serious fiscal restraint, the Washington area can be proud that both the Congress and the administration recognize that the Washington Metrorail system is the premier showpiece of mass transit in the United States—is, indeed, America's subway—and both ends of Pennsylvania Avenue recognize and support that premise.

Mr. PARRIS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the Senate amendment to H.R. 1463 just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Califoria?

There was no objection.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1991

Mr. NATCHER. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 5257) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1991, and for other purposes, with the remaining Senate amendments in disagreement numbered 14, 31, and 163-164.

The SPEAKER pro tempore. The Clerk will report the first motion.

The Clerk read as follows:

Mr. NATCHER moves to concur in the Senate amendment to the House amendment to the Senate amendment numbered 14.

Mr. CONTE. Mr. Speaker, when we considered H.R. 5257 last Monday, I raised a point of order on one of the items—amendment No. 163–164 in the conference report. That amendment was subject to a point of order because one of the activities proposed in it was not included in either amendment No. 163 or amendment No. 164 in the Senate's bill. It was however, originally included in amendment No. 119. The point of order set off a fire-fight over the National Council on Education goals.

In the appropriations conference I opposed the Goals Council because it undermines the President's work with the Nation's Governors to improve education. He developed the summit idea, and I think we should stand by the President's plan to followup on the summit. The Goals Council idea only gums up the works for the Governors and the President.

My opposition to the Goals Council and the point-of-order aside, I think that given the strong feelings about the Council, it would be wrong for us to provide any funds unless the House and Senate authorizing committees concur. This is an important point, because the way the language in the report concerning the National Council on Educational Goals was worded, it implies the Council might not need an authorization.

By including language saying an authorization would be required "if necessary," the Goals Council could create problems for both the authorizers and appropriators. I strongly oppose any appropriation for the Goals Council unless there is a specific authorization for the activity. The Council is too sensitive to let it just slip through on a "if necessary" technicality.

It is my view that the Goals Council needs a specific authorization and could not be funded under sections 405 and 406 of the General Education Provisions Act.

My understanding is the Senate's proposal has added funding for the panel and the Council to amendment No. 14, which also provides for unemployment services. Funding for each activity is contingent on an authorization, thus leaving the decision up to the authorizing committee. All "if necessary" language has been deleted.

Mr. Speaker, it looks like, unless we want this bill to be a yo-yo going back and forth over this issue, we will have to live with the Senate's proposal. While I would have preferred that the Senate accept our position, I don't think we should hold a $182 billion bill captive over this item. I suggest we accept amendment No. 14.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. NATCHER].

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next motion.

The Clerk read as follows:

Mr. NATCHER moves to disagree to the Senate amendment to the House amendment to the Senate amendment numbered 31.

Mr. CONTE. I rise in support of this motion.

The Senate is trying to railroad this item through the conference report, after the conference report was agreed to by the managers.

The integrity of this process is at stake. We have already seen the Senate add in amendments after the bill passed that body. Now we see them adding in spending programs after the conference report was agreed to. They keep adding in items that they forgot to put in the first place. This is legislating by amnesia!

The Senate side had every opportunity to bring this up in conference. Not once during the 2 days we spent there did they ever mention this item. Not once.

In conference, they delayed all the out-of-scope items until the very end. Well, when we finally got to those out-of-scope items, this particular item was not there. Apparently they didn't feel it deserved to be discussed at that time.

Now, they want to add an entire new line item, which will cost $1.1 million in outlays, to this conference report. They want to do this with no debate, no consultation, no regard for the process.

This program was not in the administration's request. And there was no mention of this in either the House or Senate reports.

I urge my colleagues to insist on the House position. Vote against legislating by amnesia.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. NATCHER].

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the next motion.

The Clerk read as follows:

Mr. NATCHER moves to disagree to the Senate amendments to the House amendments to the Senate amendments numbered 163-164.

Mr. CONTE. Mr. Speaker, last night in a surprise move the Senate attached a 175-page amendment concerning the Job Training Partnership Act to H.R. 5257. The amendment is basically the Senate's version of the JTPA which the authorizing committees have been unable to agree on. The House version of this bill—H.R. 2039 passed with an overwhelming majority earlier this year. I voted for that bill. The House version has many differences from the Senate version that was attached to this bill.

JTPA is caught in the twilight zone where bills that can't be settled in conference go, until disagreements can be resolved. While I would like to see the JTPA amendments enacted, I believe that it would be irresponsible for us to pass such legislation on this appropriations bill. The feelings run deep over this issue. Some of the authorizers are trying to shortcut the system by attaching it to this bill, rather than dealing with it in their committees.

Mr. Speaker, as much as I'd like to see the JTPA situation resolved, I request that we not agree with this amendment, and that it be sent back to the Senate.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. NATCHER].

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the several motions was laid on the table.

GENERAL LEAVE

Mr. NATCHER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on the several motions on the bill, H.R. 5257, just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

DEPARTMENTS OF VETERANS' AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 1991

Mr. TRAXLER. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 5158) making appropriations for the Departments of Veterans' Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1991, and for other purposes, with the remaining Senate amendments numbered 18 and 120 in disagreement, and concur in the Senate amendment to the House amendment to the Senate amendment numbered 18.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The Clerk will report the Senate amendment to the House amendment to the Senate amendment numbered 18.

The Clerk read as follows:

Resolved, That the Senate agree to the amendment of the House of Representatives to the amendment of the Senate numbered 18 with an amendment as follows: Strike out *"Provided further, That, notwithstanding any other provision of law, not to exceed 750 units of public housing may be sold or transferred during fiscal year 1991:*

MOTION OFFERED BY MR. TRAXLER

Mr. TRAXLER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. TRAXLER moves to concur in the Senate amendment to the House amendment to the Senate amendment numbered 18.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan [Mr. TRAXLER].

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will report the Senate amendment to the House amendment to the Senate amendment numbered 120.

The Clerk read as follows:

Resolved, That the Senate agree to the amendment of the House of Representatives to the amendment of the Senate numbered 120 with an amendment as follows: At the end of the bill insert:

SEC. 519. (a) The Resolution Trust Corporation ("Corporation") shall report to the Congress at least once a month on the status of the review required by section 21A(b)(11)(B) of the Federal Home Loan Bank Act and the actions taken with respect to the agreements described in such section. The report shall describe, for each such agreement, the review that has been conducted and the action that has been taken, if any, to rescind or to restructure, modify, or renegotiate the agreement. In describing the action taken, the Corporation is not required to provide detailed information regarding an ongoing investigation or negotiation. The Corporation shall exercise any and all legal rights to restructure, modify, renegotiate or rescind such agreement, notwithstanding any other provision of law, where the savings would be realized.

(b) To expend any appropriated funds for the purpose of restructuring, modifying, or renegotiating the agreements described in subsection (a), the Corporation shall certify to the Congress, for each such agreement, the following:

1. The Corporation has completed its review of the agreement, as required by section 21A(b)(11)(B) of the Federal Home Loan Bank Act;

2. (A) At the time of certification, in the opinion of the Corporation and based upon the information available to it, there is insufficient evidence or other indication of fraud, misrepresentation, failure to disclose a material fact, failure to perform under the terms of the agreement, improprieties in the bidding process, failure to comply with any law, rule or regulation regarding the validity of the agreement, or any other legal basis sufficient for the rescission of the agreement; or

(B) At the time of certification, the Corporation finds that there may be sufficient evidence to provide a legal basis for the rescission of the assistance agreement, but the Corporation determines that it may be in the best interest of the Government to restructure, modify or renegotiate the assistance agreement; and

3. The Corporation has or will promptly exercise any and all legal rights to modify, renegotiate, or restructure the agreement where savings would be realized by such actions.

The SPEAKER pro tempore (during the reading). Without objection, the amendment is considered as read and printed in the RECORD.

There was no objection.

MOTION OFFERED BY MR. TRAXLER

Mr. TRAXLER. Mr. Speaker. I offer a motion.

The Clerk read as follows:

Mr. TRAXLER moves that the House concur in the Senate amendment to the House amendment to the Senate amendment numbered 120.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. COUGHLIN] is recognized.

Mr. COUGHLIN. Mr. Speaker, I take time only to state that the minority concurs with the recommendations of the chairman of the subcommittee.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan [Mr. TRAXLER].

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the several motions was laid on the table.

□ 1110

GENERAL LEAVE

Mr. TRAXLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments to the House amendments to Senate amendments numbered 18 and 116 to the bill, H.R. 5158, which have just been concurred in.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Michigan?

There was no objection.

AUTHORIZING THE SPEAKER TO ENTERTAIN MOTIONS TO SUSPEND THE RULES

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 534 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 534

Resolved, That it shall be in order for the Speaker to entertain motions to suspend the rules on the legislative days of Friday, October 26, 1990, and Saturday, October 27, 1990, subject to the requirement of an announcement on the floor of the House by the Speaker or his designee at least one

hour before the consideration of any such motion to suspend the rules.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN] for the purpose of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 534 permits the Speaker to entertain motions to suspend the rules for the consideration of bills on the legislative days of Friday, October 26, and Saturday, October 27, 1990.

The rule further provides that a motion to suspend the rules must be announced on the House floor at least 1 hour before consideration of the motion by the Speaker or his designee.

There are numerous bills awaiting consideration before the close of the session. House Resolution 534 merely facilitates the work of the House by permitting the Speaker to bring forward noncontroversial legislation that might not otherwise be considered as we approach our adjournment date.

I want to emphasize that House Resolution 534 does not waive the requirement for a two-thirds vote in order to suspend the rules and pass legislation.

Mr. Speaker, House Resolution 534 permits the House to complete its business quickly, and fairly. I urge adoption of the resolution.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the chairman of the Committee on Rules, the gentleman from Massachusetts [Mr. MOAKLEY]. He has ably explained the provisions of the rule.

As we move into the closing days of the session, there will be a great deal of legislation moving through the process. Some of it will be carefully considered and well thought out and some will not. The problem is to distinguish which is which.

I would have preferred to stick with the system of calling up legislation by unanimous consent. That way, if one Member is aware of a problem, he can force the managers of the bill to make a serious effort to work out the problem.

This is especially important if we do not know in advance all the legislation which is proposed to be moved under suspension of the rules procedure.

However, the majority of the Rules Committee voted out this resolution providing for suspensions to be in order on Friday and Saturday.

I will not object to this resolution, but it would not be my preferred way to proceed.

Mr. Speaker, I will not object to the rule.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I have no requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING SECRETARY OF THE SENATE TO MAKE CORRECTIONS IN ENROLLMENT OF S. 2834, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1991

Mr. BEILENSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 156) authorizing the Secretary of the Senate to make corrections in the enrollment of the Senate bill (S. 2834) to authorize appropriations for fiscal year 1991 for the intelligence and intelligence-related activities of the U.S. Government, for the intelligence community staff, for the Central Intelligence Agency retirement and disability system, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 156

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 2834) to authorize appropriations for fiscal year 1991 for intelligence and intelligence-related activities for the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 17(b) of the National Security Agency Act of 1959, as proposed to be added by section 503, strike out "Appropriations Committees" and insert in lieu thereof "Committees on Appropriations".

(2) In section 504(a), strike out "(1) by inserting" and all that follows through "SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES" and insert in lieu thereof the following:

(1) by inserting after the chapter heading the following:

"Subchapter	Sec.
"I. General Matters	421
"II. Intelligence Commercial Activities	431

"SUBCHAPTER I—GENERAL MATTERS";

and

(2) by adding at the end the following:

"SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES"

(3) In subchapter II of chapter 21 of title 10, United States Code, as proposed to be added by section 504(a)—

(A) in the table of sections before section 431—

(i) in the item relating to section 436, strike out ", internal oversight, and legal review"; and

(ii) strike out the item relating to section 438;

(B) insert a section designation known as "twist" at the beginning of the heading of each of sections 431 through 437;

(C) strike out the period at the end of the heading of each of those sections;

(D) in section 431(c)—

(i) strike out "As used in this" and insert in lieu thereof "In this"; and

(ii) capitalize the first word of each of paragraphs (1) and (2);

(E) in section 432(b)(2), strike out "of this subchapter" and insert in lieu thereof "of this title";

(F) in section 433(b)(1), insert "of this title" after "section 431";

(G) in section 436(3), strike out "subsection 433(b)" and insert in lieu thereof "section 433(b) of this title"; and

(H) in section 437—

(i) revise the second word of the section heading to make the initial letter lower case;

(ii) strike out "of this subchapter" in subsections (a) and (c)(3) and insert in lieu thereof "of this title";

(iii) strike out "subsection 433(b) of this subchapter" in subsection (c)(1) and insert in lieu thereof "section 433(b) of this title"; and

(iv) strike out "As used in this" in subsection (d) and insert in lieu thereof "In this".

(4) Insert closing quotation marks and a period at the end of section 437(d) of title 10, United States Code, as proposed to be added by section 504(a).

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

WAIVING REQUIREMENT OF CLAUSE 4(b), RULE XI, AGAINST CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 533 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 533

Resolved, That the requirement of clause 4(b), rule XI for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is hereby waived with respect to any resolution reported from that committee to provide for the consideration or disposition of the conference report on the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

The SPEAKER pro tempore. The gentleman from California [Mr. BEILENSON] is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield the customary 30 minutes, for purposes of debate only, to the gentleman from Tennessee [Mr. QUILLEN], and pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 533 permits the House, by majority vote, to consider a rule on the same day it is reported, notwithstanding clause 4(b) of rule XI. This resolution is necessary to permit the House to act on the conference report on the Clean Air Act expeditiously.

Mr. Speaker, finally, after so many years of trying to enact much-needed legislation to improve our air quality, we are within sight of final passage. The conference report that will soon be before us will impose tough new requirements on the pollutants that subject Americans to untold health hazards. It will provide for a vast improvement in the quality of life for all Americans, and especially for those who live in large, smoggy cities, such as Los Angeles, where my district is located.

Mr. Speaker, passage of House Resolution 533 will enable the House to vote on this very important and very urgently needed legislation as soon as possible. I urge adoption of the resolution.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the able gentleman from California [Mr. BEILENSON] has explained the provisions of the rule, and it would be redundant for me to do likewise.

Since we are nearing the end of this session, I think it is important that the Clean Air Act be heard and heard expeditiously.

So, therefore, Mr. Speaker, I urge adoption of this rule.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. BEILENSON. Mr. Speaker, I yield back the balance of my time, and I move to the previous question.

The previous question was ordered on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ANNUAL REPORT ON HAZARDOUS MATERIALS TRANSPORTATION FOR CALENDAR YEAR 1989—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message of the United States; which was read and, together with the accompanying papers, referred to the Committee on Energy and Commerce and the Committee on Public Works and Transportation:

(For message, see proceedings of the Senate of today Friday, October 26, 1990.)

EDUCATIONAL EQUITY AND EXCELLENCE ACT OF 1990

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor be discharged from further consideration of the bill (H.R. 5932) to promote excellence in American education by recognizing and rewarding schools, teachers, and students for their outstanding achievements, enhancing parental choice, encouraging the study of science, mathematics, and engineering, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. GOODLING. Mr. Speaker, reserving the right to object, and I shall not object, I wholeheartedly support this bill. It is an outstanding bill.

I yield to the gentleman from California.

Mr. HAWKINS. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the Educational Equity and Excellence Act of 1990.

The final product of two strong bipartisan measures, the Equity and Excellence Act is a comprehensive package of programs which will focus national resources on preparing America's young people for the rigors of the 21st century. I thank the gentleman from Pennsylvania [Mr. GOODLING], for his outstanding leadership in helping us to craft this broadly supported measure, and for his determined efforts to improve the quality of education for the children of our country.

As this agreement demonstrates, educational equity and excellence is not a partisan issue. It is absolutely crucial to our economic stability and our national security. Our rapidly changing technological society demands an educated and skilled work force. Our need to strengthen this Nation's international competitive positive requires immediate and coordinated action.

Once enacted, this measure will help improve the academic achievement of every American child. It will help to provide employers with workers capable of handling higher order, complex tasks. The Equity and Excellence Act gives us the necessary programs and resources to begin to make the national education goals set forth by the President and the Governors a practical reality.

It sets out a specific, programmatic plan of action for readiness for school, school completion, student achievement in critical skills, mathematics and science, literacy, teacher recruitment and retention, and postsecondary achievement.

First and foremost, this agreement states that it is the policy of the Federal Government to fully fund existing Federal cost effective programs, like Head Start and chapter 1 compensatory education so that all eligible children will be served.

Second, new initiatives proposed by the President to award schools which show educational improvement, and encourage students to pursue study and careers in math and science are incorporated.

Literacy efforts, championed by the gentleman from Ohio [Mr. SAWYER] are included to better coordinate State and local efforts to eliminate illiteracy, as well as to help adults who typically do not have the equivalent of a high school education.

Programs will also focus on the recruitment, retention, and development of a strong teaching force.

Efforts will be made to cut back on student loan defaults at postsecondary institutions in order to shore up our financial aid system.

And, proposals by Mr, SMITH of Vermont and Mr. BARTLETT of Texas, are also included to experiment with restructuring Federal aid in schools and to give parents a greater role in school selection.

The bill will authorize an additional $800 million investment in education, and will target Federal assistance to those areas in which it can best serve as a catalyst for further attainment and educational equity and excellence.

A broad consensus of support exists for full resource commitment, and a coordinated and comprehensive approach for investments in our schools. The time for talk is over. We must decide to be among the first or last; to act now, or lose forever the opportunity. We must be committed to doing whatever must be done, to making whatever sacrifices are needed and investing whatever it may cost, to ensure that our children's future is second best to none.

Today let us demonstrate the courage to make that needed investment, and vote in favor of the Educational Equity and Excellence Act of 1990.

EDUCATIONAL EQUITY AND EXCELLENCE IN EDUCATION ACT

TITLE I—NATIONAL GOALS

The bill contains statements of policy setting out Federal action to be undertaken to implement the national goals for education that were developed by the President and the governors. The legislation also contains two additional goals regarding teacher recruitment and retention and equal opportunity for postsecondary education.

TITLE II—THE PRESIDENT'S EDUCATION PROGRAMS

This title of the bill contains four programs that were proposed by the President to reward excellence in education. Title VII of the legislation contains an additional proposal from the President regarding scholarships for students pursuing postsecondary study in the area of science or math. The President's proposals contained in this title are as follows.

Schools of Distinction: The program will recognize and reward schools providing Chapter 1 services that have made substantial progress in raising student educational achievement, creating a safe and drug free environment and reducing the dropout rate.

Nontraditional Routes to Teacher Certification and Licensure: The program provides funds to States to assist qualified professionals with expertise in areas outside the teaching profession to become certified and licensed classroom teachers.

Awards for Excellence: The program provides financial awards to teachers who have demonstrated success in educating at-risk students and in other areas of the teaching profession.

Historically Black Colleges and Universities: The bill authorizes funds for endowment building grants to historically black colleges and universities.

TITLE III—THE NATIONAL LITERACY ACT OF 1990

This title authorizes a series of literacy and basic skills programs for adults who typically do not have the equivalent of a high school education. The provisions are listed below.

An Interagency Task Force on Literacy is established to coordinate and review programs, and make recommendations for legislation required to improve Federal literacy programs, and also to enhance the literacy skills of all Americans.

A National Institute for Literacy is established to enhance the national effort in eliminating illiteracy by improving research and development, and information dissemination.

State or Regional Resource Centers will assist State and local public and private nonprofit efforts in eliminating illiteracy by stimulating the coordination of literacy services; and serving as a link for sharing information, data, research, expertise, and literacy resources.

A National Workforce Literacy Assistance Collaborative in the Department of Labor will improve the basic skills of individuals by assisting small and medium-sized businesses and labor organizations in developing and implementing literacy programs tailored to the needs of the workforce.

The Adult Education Act is amended to include additional provisions for State Advisory Councils; and increase in the setaside for teacher training from 10% to 15%; and for States to provide literacy programs for public housing residents.

The current Workplace Literacy Program is amended by authorizing grants to establish large-scale national strategies in workforce literacy once the current workplace literacy program reaches appropriations of $25 million.

The Even Start Program is amended to be called the "Even Start Family Literacy Program" and also to expand eligibility to community-based organizations and other nonprofit organizations.

A Family Literacy Public Broadcasting Program is authorized for production and dissemination of family literacy programming, which will help parents in improving family literacy skills and language development.

An education program for commercial drivers is authorized to assist commercial drivers who were licensed prior to the requirements of the Commercial Motor Vehicle Safety Act of 1986. This program will help these drivers increase their literacy skills in order to be able to successfully complete the knowledge test requirements under that Act.

Literacy challenge grants are authorized in the Domestic Volunteer Services Act for the purpose of establishing, operating, or expanding community or employee literacy programs that include the use of full and part time volunteers.

A mandatory literacy program for incarcerated adults is included in the Adult Eduation Act.

TITLE IV—TEACHING TRAINING

This title provides for a variety of programs intended to enhance teacher training, recruitment and retention. The following are the major provisions.

The Paul Douglas Congressional Teacher Scholarship Program's authorization of appropriations is raised from $13.5 to $20 million and such sums for each of the four succeeding fiscal years.

Financial assistance is provided for Teacher Corps and for other recruitment programs to encourage individuals to enter the teaching force.

A five-year program is provided for expansion of foreign langauge programs in elementary schools, secondary schools, and institutions of higher education. Also authorized is funding for training and instructional materials.

A "National Foundation for Excellence" is included to provide scholarships for those who meet the eligibility requirements for the Paul Douglas and Teacher Corps programs.

A National Writing Project with a five-year authority is included.

Professional Development Academies are authorized to provide financial assistance to consortia of local education agneices, institutions of higher education, and other eligible entities in order to develop and provide the highest quality professional training, as well as supporting local school officials in restructuing and improving our Nation's schools.

Demonstration Programs are directed at: class size research; new careers for teachers; restructuring of schools/schools-based management; middle school teaching; a National Teacher Job Bank; and a study to extend the school year.

The "National Board for Professional Teaching Standards" is authorized to receive funds for two years to enable the Board to conduct independent research and development related to establishment of national, voluntary professional standards and assessment methods for the teaching profession.

TITLE V—EQUAL OPPORTUNITY FOR POSTSECONDARY EDUCATION

Pell Grants: The legislation clarifies the length of time during which a student will be eligible to receive a Pell Grant and clarifies how to compute number of family members attending college for student aid eligibility purposes. A final subsequent year's appropriations to cover Pell Grant funding shortfalls.

Student Aid: The legislation makes a number of student aid needs analysis changes to make necessary updating revisions in the delivery system and to bring additional accountability, consumer information and integrity to that system. It also makes several student loan changes to enhance default prevention efforts.

Other Provisions: The bill establishes a new student mentor pilot program within the existing College Work-Study program. In addition, the legislation suspends from student aid eligibility individuals convicted of drug-related offenses. Finally, the bill makes a number of clerical and technical amendments to the Higher Education Act.

TITLE VI—MISCELLANEOUS PROVISIONS

"We the People * * *The Citizen and the Constitution": The bill authorizes a program to educate students about the history and principles of the Constitution of the United States. The bill also contains some technical and clarifying amendments to the Law-Related Education Program.

National Summit Conference on Education: The bill amends the National Summit Conference on Education to reconstitute the executive committee of the Conference such that it consists of members appointed by the Speaker and the Majority Leader to the Senate and to authorize the Conference to conduct regional meetings and require the conference to develop an agenda that examines education goals and other recommendations that have been made in national reports.

Assessment: The bill authorizes demonstration projects for the development of exemplary and innovative diagnostic and assessment systems and policies.

Confidentiality of Data: The bill clarifies the circumstances under which individuals may be found criminally liable for breaching confidentiality requirements regrading certain postsecondary education studies.

GEPA Reporting Requirements: The bill amends the General Education Provisions Act requirements regarding data on use and distribution of federal funds that States must report. The amendments are intended to reduce the reporting burden and to improve the quality of data that is reported.

Administrative Law Judges: The bill makes a number of clarifying and technical amendments to the enforcement provisions including clarification of the subpoena power of the administrative law judges.

Bilingual Education: The bill amends the Bilingual Education Act to allow the Secretary to conduct developmental bilingual education projects and special alternative instructional projects in middle grades.

Program for Underachievers: The bill amends the Secretary's Fund for Innovation in Education by authorizing the Secretary to conduct programs for improving the educational performance of and employment opportunities available for students not performing to his or her educational potential.

DARE Program: The bill amends the Drug Free Schools and Communities Act to require that 10 percent of the funds reserved for each State's governor be used to fund D.A.R.E. programs.

Treatment of Territories: The bill continues participation of the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau in various education programs authorized under the Elementary and Secondary Education Act, the Adult Education Act, and Education of the Handicapped Act and the Library Services and Construction Act.

Planning Grants for Innovation: The bill authorizes a program of planning grants for innovation in education. The Secretary may make grants to State and local educational agencies for the purpose of planning for one of four innovative areas: open enrollment; parental involvement; business involvement; and State reform of public education finance.

Educational Performance Agreements: The bill authorizes a demonstration program which allows participating schools to

waive federal, State and local laws regarding uses of funds for certain education programs. In exchange, the participating schools must demonstrate increased student achievement by the students that are covered by the performance agreement. The bill also authorizes the Secretary to conduct a study of Federal, State and local laws and regulations enacted or promulgated since 1980, in order to determine which laws or regulations are burdensome for schools to administer.

TITLE VII—SCIENCE SCHOLARSHIPS

National Science Scholars: The bill contains a proposal by the President to authorize a four-year undergraduate scholarship programs for high school students who have demonstrated outstanding achievement in science and mathematics. The bill also authorizes to two-year scholarship program for undergraduate mathematics and science students who desire to pursue teaching as a profession.

Mr. FORD of Michigan. Mr. Speaker, I rise in support of H.R. 5932, the Educational Equity and Excellence Act of 1990. This legislation outlines the role the Federal Government must play if we are to achieve the national education goals.

I would like to take this opportunity to commend the chairman of the Education and Labor Committee, GUS HAWKINS, for his leadership in bringing this legislation before us. GUS led us through hard work and many compromises to ensure that this legislation was bipartisan. We needed even further negotiations to secure administration support for the legislation.

In this bill, Congress adopts the national goals set forth by the President and the Governors over a year ago. We also add two additional goals: There should be a well-qualified teacher in every classroom and no qualified student should be denied postsecondary education because of financial or other barriers.

Besides adopting these goals, we commit the President and the Congress to a decade-long strategy to assist States and localities in improving our Nation's education system.

First, we will work to ensure that all eligible children and their mothers can receive the services of WIC and Head Start—programs proven effective in allowing children to enter school ready to learn;

Second, we will expand Federal efforts in dropout prevention in an effort to increase graduation rates from 75 percent to 90 percent in order to fully use our greatest natural resource—our youth;

Third, we will increase our commitment to chapter 1 and education for the handicapped so that all students will be able to demonstrate basic skill levels in the core subjects in all grades;

Fourth, we will update the skills of our elementary and secondary mathematics and science teachers under the Eisenhower Act, so that our teachers have the skills to train our students to be first in the world in math and science;

Fifth, we will increase our commitment to adult education to wipe out illiteracy in our Nation;

Sixth, we will ensure that all children receive drug abuse prevention and education services. Our students must learn in a drug-free environment;

Seventh, we will increase teacher recruitment and retention programs to guarantee quality teachers for our students; and

Eighth, we will renew our commitment to student financial assistance to enable qualified students to achieve their potential through postsecondary education.

Besides enacting the national goals, we are also enacting the President's Education Program, which he presented at the beginning of this Congress. These programs include awards to outstanding schools and teachers, assistance to professionals who wish to enter the teaching profession through an alternative route, scholarships for students to study science and aid to historically black colleges and universities. A program to allow parents greater role in choosing schools, as well as other school improvements is part of this legislation.

Along with the President's education programs and the President's and Governors' education goals, this legislation addresses two of our most critical education problems—literacy and teacher recruitment and retention.

By establishing State, regional and national coordinating networks, this legislation hopes to maximize the Federal literacy efforts. We have also increased the current Federal support for literacy training in the workplace. Since illiteracy is frequently a family problem, we have strengthened the Even Start Program. I commend my friend and colleague, TOM SAWYER, for his leadership in this effort and for his commitment to addressing our Nation's literacy problems.

In an effort to educate, recruit and retain qualified teachers, this bill contains several provisions authored by GUS HAWKINS. His commitment to the teaching profession is highlighted in this bill. His professional development academies will provide teachers with the opportunity to update and improve their skills by linking local school districts with institutions of higher education and other community organizations to provide education services to teachers. The Hawkins provisions also include recruitment and retention strategies for minority teachers.

I am also pleased to see included in this legislation further reforms in the Department of Education's audit system. By clarifying the responsibility of the administrative law judges, we are ensuring that recipient agencies have fair appeal rights when being audited by the Department of Education. I would like to commend my good friend from Pennsylvania, the ranking minority member on the Education and Labor Committee, BILL GOODLING, for his work on this provision and his efforts on the entire bill, especially the even start and teacher provision.

I would urge my colleagues to support this bill. Our President wants to be known as the "Education President." Signing this legislation will be the first step in achieving that goal.

Mrs. UNSOELD. Mr. Speaker, in the waning hours of the 101st Congress, this is our last chance to ensure funding for DARE—the successful Drug Abuse Resistance Education Program. Once again, my legislation to reserve Federal funding for DARE is before us. It targets $10 million of the Governor's anti-drug funds to DARE.

I urge colleagues in the House and Senate to get on with the important, unfinished education business of this Congress. We cannot go home having failed to pass DARE in this landmark education bill.

Mr. Speaker, if we do not pass this bill, we will have some serious explaining to do at home. Explaining why the Federal Government did not do its part. Explaining—to communities who are working hard to keep drugs from ruining our way of life. Explaining—to police officers who are battling the never ending chain drug traffickers and dealers. Explaining—to schools who are trying to become drug-free, students we did not equip to say no, abusers who could not get help, or parents who lost a child to overdose. Explaining—to the ruined lives why we did not do more to prevent this insidious problem when we knew how.

Now is the time for DARE. Lets pass this effective, successful antidrug education strategy and do our part. When sheriffs, police chiefs, prosecutors, parents, teachers and students all say DARE is a program that works, we should take action. Lets do it today.

Mr. GOODLING. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5932

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Educational Equity and Excellence Act of 1990".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title.
Sec. 2. Findings and purpose.
Sec. 3. Findings with respect to responsibilities of State and local governments.

TITLE I—NATIONAL GOALS

Sec. 101. Purpose.
Sec. 102. Readiness.
Sec. 103. School completion.
Sec. 104. Student achievement.
Sec. 105. Mathematics and science.
Sec. 106. Family literacy and lifelong learning.
Sec. 107. Safe, disciplined, and drug-free schools.
Sec. 108. Teacher recruitment and retention.
Sec. 109. Equal opportunity for postsecondary education.

TITLE II—THE PRESIDENT'S EDUCATION PROGRAMS

PART A—PRESIDENTIAL SCHOOLS OF DISTINCTION

Sec. 211. Presidential Schools of Distinction

"PART F—PRESIDENTIAL SCHOOLS OF DISTINCTION

"Sec. 1411. Short title.
"Sec. 1412. Findings and purpose.
"Sec. 1413. Authorization of appropriations.
"Sec. 1414. Allocation of appropriations.
"Sec. 1415. State applications.
"Sec. 1416. State use of funds.
"Sec. 1417. State activities and responsibilities.
"Sec. 1418. Selection of Presidential Schools of Distinction.

"Sec. 1419. Presidential Certificates of Distinction and awards ceremony.
"Sec. 1420. Use of funds by Presidential Schools of Distinction.
"Sec. 1421. Prohibition on State or local reduction of other assistance.
"Sec. 1422. Evaluation.
"Sec. 1423. Definition.".

PART B—NONTRADITIONAL ROUTES TO TEACHER CERTIFICATION AND LICENSURE

Sec. 221. Nontraditional routes to teacher certification and licensure.

"PART F—ALTERNATIVE ROUTES TO TEACHER CERTIFICATION AND LICENSURE

"Sec. 581. Short title.
"Sec. 582. Findings.
"Sec. 583. Purpose.
"Sec. 584. Authorization of appropriations.
"Sec. 585. Allotments.
"Sec. 586. State applications.
"Sec. 587. Use of funds.
"Sec. 588. Definition.".

PART C—PRESIDENTIAL AWARDS FOR EXCELLENCE IN EDUCATION

Sec. 231. Presidential Awards for Excellence in Education program.

"PART D—PRESIDENTIAL AWARDS FOR EXCELLENCE IN EDUCATION PROGRAM

"Sec. 2301. Findings and purpose.
"Sec. 2302. Allocation to States.
"Sec. 2303. State applications.
"Sec. 2304. Selection of award recipients.
"Sec. 2305. Amount and use of awards.
"Sec. 2306. Authorization of appropriations.".

PART D—HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

Sec. 241. Historically Black colleges and universities.

TITLE III—LITERACY

Sec. 301. Short title.
Sec. 302. Findings.
Sec. 303. Definition.

PART A—LITERACY: STRATEGIC PLANNING, RESEARCH, AND COORDINATION

Sec. 311. Interagency Task Force on Literacy.
Sec. 312. Literacy related programs in the Department of Education.
Sec. 313. National Institute for Literacy.
Sec. 314. State literacy resource centers.

PART B—WORKFORCE LITERACY

Sec. 321. National Workforce Literacy Assistance Collaborative.
Sec. 322. Grants for national workforce literacy strategies.

PART C—INVESTMENT IN LITERACY

Sec. 331. Amendments to the Adult Education Act.
Sec. 332. Targeted assistance.
Sec. 333. Amendments to the Even Start program.
Sec. 334. Family literacy public broadcasting program.

PART D—BUSINESS LEADERSHIP FOR EMPLOYMENT SKILLS

Sec. 341. Education programs for commercial drivers.

PART E—BOOKS FOR FAMILIES

Sec. 351. Inexpensive book distribution program.
Sec. 352. Library literacy programs.

PART F—STUDENTS FOR LITERACY

Sec. 361. Student Literacy Corps

PART G—VOLUNTEERS FOR LITERACY

Sec. 371. Literacy challenge grants.

PART H—LITERACY FOR INCARCERATED INDIVIDUALS

Sec. 387. Mandatory education for incarcerated adults.

TITLE IV—TEACHER TRAINING

Sec. 401. Short title.
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PART A—PERKINS LOANS AND DOUGLAS TEACHER SCHOLARSHIPS

Sec. 411. Perkins loan cancellation.
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Sec. 421. Purpose.
Sec. 422. General authority.
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Sec. 426. Teacher Corps; scholarship conditions.
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Sec. 431. Findings and statement of purpose.
Sec. 432. Star schools program application.
Sec. 433. Demonstration grants for critical language and area studies.

SUBPART 2—TRAINING AND INSTRUCTIONAL MATERIALS

Sec. 436. Training of elementary and secondary school teachers.
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PART D—NATIONAL FOUNDATION FOR EXCELLENCE

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Sec. 442. Foundation authorized.
Sec. 443. National Foundation for Excellence Trust Fund.
Sec. 444. National Foundation for Excellence Board.
Sec. 445. Scholarships.
Sec. 446. Duration and relation to other assistance.
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PART E—NATIONAL WRITING PROJECT

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Sec. 502. Pell Grants.
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Sec. 508. Disclosure obligation for SLS and PLUS loans; repayment period.
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SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) historically equity and excellence have been the twin goals of American education;

(2) belief in the ability of every child to succeed, if competently guided, and in the capability of every school to implant basic and higher order skills, if given the necessary resources, constitutes the foundation of the educational systems of the Nation;

(3) the Elementary and Secondary Education Act of 1965 was enacted to give meaning to these objectives;

(4) successively, throughout the education continuum, new elements have been added to the process;

(5) in the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the various elements were combined into a framework that includes early childhood development programs, school readiness and completion programs, accountability for results, parental involvement, acquisition of critical skills, the concept of effective schools, and preparation for life after the age of compulsory school attendance;

(6) the Congress concurs with the recent findings of the Commission on Excellence in Education that—

(A) the educational foundations of the Nation are being eroded;

(B) education is in crisis;

(C) the United States is a nation at risk; and

(D) education must be made a priority;

(7) the United States, therefore, is challenged to—

(A) fully implement proven, cost-effective programs;

(B) vigorously enforce accountability requirements;

(C) adequately fund school improvement; and

(D) work cooperatively in a total, all-out mobilization;

(8) the President and the Governors recently announced goals for education in the United States; and

(9) the next step must be to agree upon a plan of specific action to achieve national goals in education.

(b) PURPOSE.—It is the purpose of this Act to coordinate the first steps that now must be taken by the Federal Government, in conjunction with others, and within the decade of the 1990s, to assure the achievement of national goals in education and to once again give the Nation preeminence in commerce, industry, and social and technological innovation.

SEC. 3. FINDINGS WITH RESPECT TO RESPONSIBILITIES OF STATE AND LOCAL GOVERNMENTS.

The Congress further finds that—

(1) State and local governments bear the primary responsibility for educating children under their jurisdictions;

(2) this Act identifies areas of national importance that traditionally have been assisted by the Federal Government;

(3) there are other areas of education that are in need of assistance and that should receive attention from State and local governments; and

(4) the Congress expects State and local governments to dedicate extra resources and attention to achieving the national goals in education described in section 2(a)(8).

TITLE I—NATIONAL GOALS

SEC. 101. PURPOSE.

It is the purpose of this title to establish a plan of action for the initial steps that the Federal Government must take in order to assist State and local governments, organizations, and institutions in the joint effort of achieving the national education goals as outlined in this title.

SEC. 102. READINESS.

(a) FINDINGS.—The Congress finds that the Federal Government has a long-standing commitment to ensuring that all physically and economically disadvantaged children are ready and able to begin school by providing them with the same opportunities to develop physically and mentally as their more advantaged peers.

(b) POLICY.—It is the goal of the United States that, by the year 2000, all children in America will start school ready to learn. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps—

(1) to provide, by 1994, Head Start services to every eligible child who needs such services;

(2) to provide, by 1995, sufficient funding for the special supplemental food program for women, infants, and children so that all potentially eligible women, infants, and children have access to the services provided by the program; and

(3) to expand, by 1995, funding for Even Start to allow programs to reach all parts of the United States and to allow each State to fund a sufficient number of programs throughout the State so that approaches are available for local educational agencies, the State educational agency, and other organizations to adopt and implement.

SEC. 103. SCHOOL COMPLETION.

(a) FINDINGS.—The Congress finds that in order for the Nation to regain its economic competitiveness, each individual in the United States must be educated to his or her greatest potential and must be encouraged to finish secondary school.

(b) POLICY.—It is the goal of the United States that, by the year 2000, the high school graduation rate will increase to at least 90 percent. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps—

(1) to expand, by 1995, funding for secondary school dropout prevention and reentry programs and basic skills programs to allow programs to reach all parts of the United States and to allow each State to fund a sufficient number of programs throughout the State so that approaches are available for local educational agencies, the State educational agency, and other organizations to adopt and implement; and

(2) to collect uniform, reliable data from the States with respect to school completion rates.

SEC. 104. STUDENT ACHIEVEMENT.

(a) FINDINGS.—The Congress finds that—

(1) American students are falling behind students in other industrialized nations on tests measuring abilities in all academic subject areas; and

(2) the United States, in seeking to increase student ability and achievement, has traditionally served special populations, such as disadvantaged individuals and individuals with disabilities.

(b) POLICY.—It is the goal of the United States that, by the year 2000, American students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps—

(1) to provide remedial assistance for all disadvantaged children in the United States by increasing the participation of eligible children in programs under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 from approximately 50 percent of such children in the fiscal year 1990 to 100 percent of such children by the fiscal year 1993;

(2) to fulfill, by the year 2000, the commitment made by the United States in 1975 to provide 40 percent of the costs of educating children with disabilities;

(3) to reward successful programs in schools with concentrations of disadvantaged children; and

(4) to promote efforts that encourage all students to be involved in activities that promote and demonstrate good citizenship, community service, and personal responsibility.

SEC. 105. MATHEMATICS AND SCIENCE.

(a) FINDINGS.—The Congress finds that—

(1) students in the United States are falling behind students from other industrial-

ized nations on tests measuring achievement in mathematics and science;

(2) the Federal Government has a significant role in promoting the study of mathematics and science in elementary and secondary schools by providing financial assistance to local educational agencies to improve the general quality of programs for the study of mathematics and science; and

(3) the Federal Government has indirectly assisted in the postsecondary study of mathematics and science by providing future scientists, mathematicians, and engineers with financial assistance to attend postsecondary institutions, but more incentives are needed to attract high-achieving students into these areas of study.

(b) POLICY.—It is the goal of the United States that, by the year 2000, United States students will be first in the world in mathematics and science achievement. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps—

(1) to, by the year 2000, expand funding for the Dwight D. Eisenhower Mathematics and Science Education Act so that all elementary teachers and all secondary teachers of mathematics and science will have an opportunity for updating and improving their mathematics and science education skills;

(2) to, by 1995, expand funding for such Act so that all elementary school teachers have an opportunity for skill improvement; and

(3) to award scholarships to high-achieving students to pursue the study of mathematics, science, and related subjects at postsecondary institutions.

SEC. 106. FAMILY LITERACY AND LIFELONG LEARNING.

(a) FINDINGS.—The Congress finds that—

(1) nearly 30,000,000 adults in the United States are lacking literacy skills which limits their ability to read, write, or speak in English or to compute or solve problems effectively; and

(2) the Federal Government has a responsibility to assist State and local governments in providing literacy services to those individuals in need of such services so that they may be full participants in society.

(b) POLICY.—It is the goal of the United States that, by the year 2000, every American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps—

(1) to provide increased funding for the Adult Education Act so that by the year 2000, all eligible individuals who seek such services under such Act will receive such services; and

(2) to, by the year 2000, expand Federal assistance for literacy programs in order to assist State and local governments, public libraries, organizations and volunteers in providing all individuals lacking literacy skills the opportunity to acquire skills needed to function in society.

SEC. 107. SAFE, DISCIPLINED, AND DRUG-FREE SCHOOLS.

(a) FINDINGS.—The Congress finds that—

(1) use of illicit drugs and alcohol by the youths of the Nation continues to be a major problem that threatens the safety of the children of the Nation and impedes their ability to succeed in school and in their lives; and

(2) more Federal efforts are urgently needed in the areas of drug and alcohol abuse education and prevention.

(b) POLICY.—It is the goal of the United States that, by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps to, by 1995, expand funding for the Drug Free Schools and Communities Act of 1986 in order to ensure that all students receive drug abuse prevention education and counseling services.

SEC. 108. TEACHER RECRUITMENT AND RETENTION.

(a) FINDINGS.—The Congress finds that—

(1) the success of America's schools depends most heavily on the Nation's teachers;

(2) when teachers have the necessary skills to be highly motivated and committed to excellence, they succeed in not only imparting subject matter knowledge, but also in instilling in their students an appreciation of the value and importance of education;

(3) teachers are significant role models for our Nation's diverse student population; and

(4) teachers, and a diverse teaching faculty, are instrumental in the education of the children of the United States and are key to achieving the national education goals described in section 2(a)(8).

(b) POLICY.—It is the goal of the United States, that by the year 2000, there will be a well qualified and diverse teaching faculty in every school in the Nation. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps—

(1) to, by the year 2000, eliminate nationally identified areas of teacher shortages by assuring access to high quality education and training to individuals desiring to pursue a career in the teaching profession; and

(2) to expand Federal assistance for teacher training and other professional development programs in order to improve the skills of the teaching force and enhance the retention of well-qualified professionals in the classroom.

SEC. 109. EQUAL OPPORTUNITY FOR POSTSECONDARY EDUCATION.

(a) FINDINGS.—The Congress finds that—

(1) it is essential to the economic well-being of the United States that all Americans be educated to their fullest potential;

(2) to bring this about, it is necessary to increase college participation by all Americans, especially minorities, and to reduce the imbalance between grants and loans in financing a college education, so that all Americans with the desire and the ability have an equal opportunity to participate in postsecondary education and training, from the undergraduate to the postgraduate level, by the year 2000.

(b) POLICY.—It is the goal of the United States that, by the year 2000, no qualified student shall be denied the opportunity for postsecondary education because of financial or other barriers. As part of the joint effort of Federal, State, and local governments, organizations, and institutions in achieving this goal, it is the policy of the Federal Government to take consistent steps—

(1) to increase the participation of low-income, first-generation-in-college, and minority students in postsecondary education;

(2) to expand college assistance to middle income families;

(3) to reduce the reliance on loans as the principal means of financing postsecondary education for students and their parents by increasing the annual appropriations for the Pell Grant program under title IV of the Higher Education Act of 1965 by at least 10 percent above the school year 1991-1992 maximum award of $3,100 through the year 2000; and

(4) to enhance the capacity of postsecondary institutions to recruit and retain low-income, first-generation-in-college, and minority students, including graduate students, and to provide those students with a quality education, by increasing the annual appropriations for the TRIO programs under title IV of the Higher Education Act of 1965 by at least 25 percent per year until the year 2000 to expand the percentage of eligible students served and to more effectively serve the students receiving services from these programs.

TITLE II—THE PRESIDENT'S EDUCATION PROGRAMS

PART A—PRESIDENTIAL SCHOOLS OF DISTINCTION

SEC. 211. PRESIDENTIAL SCHOOLS OF DISTINCTION.

Chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) is amended—

(1) by redesignating part F as part G; and

(2) by inserting after part E the following:

"PART F—PRESIDENTIAL SCHOOLS OF DISTINCTION

"SEC. 1411. SHORT TITLE.

"This part may be cited as the 'Presidential Schools of Distinction Act'.

"SEC. 1412. FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds that—

"(1) the basic goal of all schools is to develop the skills and abilities of students to their maximum potential;

"(2) achievable standards of excellence can and should be set for all students and for all schools;

"(3) financial incentives can spur schools to rise to the challenge of meeting these standards; and

"(4) improvement in the quality of our educational system is vital to the Nation's future, and demonstrated schoolwide progress in achieving excellence deserves public recognition.

"(b) PURPOSE.—The purpose of this part is to recognize and reward public and private elementary and secondary schools that have made substantial progress in—

"(1) raising student educational achievement;

"(2) creating a safe and drug-free school environment; and

"(3) reducing the dropout rate.

"SEC. 1413. AUTHORIZATION OF APPROPRIATIONS.

"(a) GENERAL AUTHORITY.—Except as provided in subsection (b), there are authorized to be appropriated for the purpose of carrying out this part $175,000,000 for the fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

"(b) MINIMUM APPROPRIATIONS FOR CHAPTER 1 PROGRAMS.—Subsection (a) shall not apply with respect to any fiscal year unless amounts appropriated in such fiscal year for the purpose of carrying out parts A, B, D, E,

and F of chapter 1 of title I exceed $5,600,000,000.

"SEC. 1414. ALLOCATION OF APPROPRIATIONS.

"(a) RESERVATIONS.—(1) the Secretary may reserve up to ¼ of 1 percent of the amount appropriated under section 1413 for any fiscal year for grants to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658), and the Secretary of the Interior for activities under this part.

"(2)(A) Subject to subparagraph (B), from the amount appropriated under section 1413, the Secretary may reserve up to ¼ of 1 percent for evaluations, studies, reports, and other activities the Secretary considers appropriate.

"(B) The amount reserved under subparagraph (A) may not exceed $500,000.

"(b) ALLOCATION AMONG STATES.—(1) The amount remaining after any reservation of funds under subsection (a) shall be allocated among the States on the same basis as funds are allocated among the States under section 1005 for the same fiscal year.

"(2) For purposes of this subsection, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SEC. 1415. STATE APPLICATIONS.

"(a) 3-YEAR APPLICATION.—Each State that wishes to receive a grant under this part shall submit to the Secretary, through its State educational agency, an application for a 3-year period, at such time and in such manner as the Secretary may prescribe.

"(b) APPLICATION CONTENTS.—Each State application shall contain—

"(1) the criteria the State educational agency will use to select Presidential Schools of Distinction under section 1418;

"(2) the criteria it will use to determine the amount of awards;

"(3) an assurance that it will carry out this part in accordance with the requirements of this part and other applicable legal requirements; and

"(4) such other information as the Secretary may require.

"(c) GEPA PROVISIONS INAPPLICABLE.—Sections 435 and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to this part.

"SEC. 1416. STATE USE OF FUNDS.

"(a) ADMINISTRATION.—Each State educational agency may use up to 4 percent of its grant for the administrative costs of carrying out this part.

"(b) PRESIDENTIAL SCHOOL OF EXCELLENCE AWARDS.—Each State educational agency shall use at least 96 percent of its grant for Presidential School of Distinction Awards made in accordance with section 1418.

"(c) INSULAR AREAS.—The provisions of Public Law 95-134, permitting the consolidation of grants to the Insular Areas, shall not apply to funds received by such Areas under this part.

"SEC. 1417. STATE ACTIVITIES AND RESPONSIBILITIES.

"(a) STATE REVIEW PANEL.—(1) Each State educational agency shall establish a State review panel to assist in the selection of Presidential Schools of Distinction.

"(2) The State review panel shall be broadly representative of—

"(A) elementary and secondary school teachers and administrators, including teachers who provide services under programs receiving assistance under this chapter;

"(B) college and university faculty and administrators;

"(C) parents, including parents of children being served by programs receiving assistance under this chapter;

"(D) State and local boards of education;

"(E) State and local governments;

"(F) labor;

"(G) business; and

"(H) the general public.

"(b) ANNUAL REPORTS TO THE SECRETARY.—(1) Within 60 days of making Presidential School of Distinction Awards under this part for any fiscal year, each State educational agency shall submit a report to the Secretary that—

"(A) identifies the schools chosen as Presidential Schools of Distinction;

"(B) states the reasons for their selection; and

"(C) states the amount of their awards.

"(2) Beginning with the second year for which any State educational agency receives funds under this part, its annual report shall also include a brief description of how schools selected in the previous year used their awards.

"SEC. 1418. SELECTION OF PRESIDENTIAL SCHOOLS OF DISTINCTION.

"(a) ELIGIBLE SCHOOLS.—A State educational agency may designate as a Presidential School of Distinction any public or private elementary or secondary school in the State—

"(1) whose students are receiving services under chapter 1 of title I; and

"(2) that has been nominated through procedures established by such agency.

"(b) CRITERIA ESTABLISHED BY SECRETARY.—(1) The Secretary shall establish minimum criteria to be used by every State educational agency in selecting Presidential Schools of Distinction.

"(2) The criteria established by the Secretary shall address—

"(A) with respect to children being served under chapter 1 of title I, aggregate performance as assessed by objective measures and standards of program improvement evaluation and review under sections 1019 and 1021;

"(B) with respect to all children being served by a school, progress in improving educational performance, with particular emphasis on mastery of reading, writing, and mathematics skills;

"(C) the degree to which the school demonstrates progress in achieving and maintaining a safe environment, including reduction or elimination of problems related to drug and alcohol use; and

"(D) with respect to secondary schools, progress in reducing the number of students who drop out of school or in encouraging students who have dropped out to reenter school and complete their schooling.

"(c) STATE CRITERIA.—(1) Based on the selection criteria established by the Secretary under subsection (b), each State educational agency shall establish additional selection criteria that measure progress in such areas as—

"(A) student achievement, as measured by such factors as—

"(i) year-to-year improvement in test scores; and

"(ii) with respect to secondary schools—

"(I) college entrance rates; and

"(II) employment of graduates in jobs with significant potential for career development; and

"(B) other indicators of a school's success, such as improvements in—

"(i) school leadership;

"(ii) the teaching and learning environment; and

"(iii) parental and community support and involvement.

"(2) In setting criteria for Presidential Schools of Distinction, the State educational agency shall establish standards that recognize the composition of the student body and other relevant factors, and that give special consideration to schools with substantial numbers of proportions of children from low-income families. The State educational agency may also set different criteria for different grade levels.

"(3) In applying the criteria to a school in which a program is conducted under part A of chapter 1 of title I of this Act, the State educational agency shall consider the desired outcomes identified for children in the application submitted under section 1012(b) of this Act by the local educational agency operating the school. No school that a local educational agency has identified under section 1021(b) of this Act shall be eligible for a Presidential School of Distinction Award until such time as the school has demonstrated progress in complying with the provisions of the State or local improvement plan set forth under section 1020 or 1021 of this Act.

"(4) In selecting Presidential Schools of Distinction and in setting the amount of their awards, the State educational agency may not consider a school's planned use of a Presidential School of Distinction award.

"(5) To the extent consistent with other provisions of this part, each State educational agency shall apply uniform selection criteria in selecting Presidential Schools of Distinction.

"(6) Any local educational agency that has jurisdiction over a school designated as a Presidential School of Distinction under subsection (a) shall implement the provisions of section 1013(c)(2) with respect to children attending such school if the provisions of such section are otherwise applicable.

"(d) AMOUNT OF AWARD.—Each State educational agency shall establish criteria, subject to subsection (c)(4), including criteria relating to the size of the school and the economic circumstances of the student body, for determining the amount of Presidential School of Distinction Awards.

"(e) BYPASS.—If a State educational agency is either prohibited by State law from providing funds made available under this part to private schools, or is unwilling to do so, it shall notify the Secretary of such prohibition or unwillingness, as well as the private schools it has designated as Presidential Schools of Distinction and the amount of their awards. The Secretary shall then provide those funds, from the State's allocation under this part, to the designated private schools, through such arrangements as the Secretary finds suitable. The Secretary shall also withhold from the State's allocation under this part the administrative costs of making such arrangements.

"SEC. 1419. PRESIDENTIAL CERTIFICATES OF DISTINCTION AND AWARDS CEREMONY.

"(a) PRESIDENTIAL CERTIFICATES OF DISTINCTION.—Each Presidential School of Distinction shall be awarded a Presidential Certificate of Distinction.

"(b) AWARDS CEREMONY.—The Secretary is authorized to accept gifts to pay the costs of conducting awards ceremonies for Presidential Schools of Distinction.

"SEC. 1420. USE OF FUNDS BY PRESIDENTIAL SCHOOLS OF DISTINCTION.

"(a) GENERAL AUTHORITY.—(1) A Presidential School of Distinction other than a private school shall use its Presidential School of Distinction Award for activities that further the educational program of the school in order to further student achievement. Such activities may only include—

"(A) development, implementation, or expansion of special programs, such as those focused on: dropout prevention or reentry, student transition to college or employment, preschool children, remedial services, or gifted and talented students;

"(B) the purchase or lease of computers, telecommunications equipment, scientific instruments, instructional materials, library books, and other equipment and materials, except that a public agency shall have title to, and exercise administrative control of, all such equipment and materials;

"(C) bonus payments for teachers and teacher aides;

"(D) school based management/shared decision making;

"(E) parental involvement activities;

"(F) community outreach activities; or

"(G) professional development for teachers and teacher aides.

"(2) A Presidential School of Distinction Award may not be used for construction costs, general expenses, salaries, bonuses, or other administrative expenses.

"(b) PRIVATE SCHOOL PARTICIPATION.—In the case of a private school that is designated as a Presidential School of Distinction, the monetary award shall be allotted to the local educational agency that provides services under chapter 1 of title I to the children from the private school that qualify for such services. The local educational agency, after consultation with private school officials, shall use the award to improve services provided under chapter 1 of title I to such children or for capital expenses as set forth in section 1017(d) of the Elementary and Secondary Education Act of 1965.

"SEC. 1421. PROHIBITION ON STATE OR LOCAL REDUCTION OF OTHER ASSISTANCE.

"No Federal, State, or local agency may, in any year, take a Presidential School of Distinction award into account in determining whether to award any other assistance from Federal, State, or local resources, or in determining the amount of such assistance, to either the Presidential School of Distinction or the local educational agency that has jurisdiction over such school.

"SEC. 1422. EVALUATION.

"(a) IN GENERAL.—The Secretary shall conduct a biennial evaluation of Presidential Schools of Distinction.

"(b) NATIONAL DIFFUSION NETWORK.—The Secretary shall submit information on successful Presidential Schools of Distinction programs to the National Diffusion Network for possible dissemination.

"SEC. 1423. DEFINITION.

"(a) IN GENERAL.—As used in this part the term 'school based management/shared decision making' means a process by which a team of individuals is formed at a school site to make decisions regarding the management of the school. Such a team may include teachers, the school principal, other school administrators, parents, and community representatives.

"(b) RESPONSIBILITIES.—The school based management/shared decision making team is responsible for decisions which affect the school and classroom environment. Such decisions may include decisions regarding—

"(1) curriculum and instruction priorities which meet priorities and goals of the local educational agency, including materials and activities, organization, and evaluation and assessment, while taking into account the special needs of students;

"(2) student grouping, promotion, and tracking;

"(3) school rules and discipline policies;

"(4) the scheduling and structure of the school day;

"(5) the school environment;

"(6) the physical structure of school facilities;

"(7) the administrative structure of the school;

"(8) the use of funds available to the school;

"(9) hiring and evaluation of teachers and administrators;

"(10) professional development programs which will meet faculty needs; and

"(11) relationships with parents and community.".

PART B—NONTRADITIONAL ROUTES TO TEACHER CERTIFICATION AND LICENSURE

SEC. 221. NONTRADITIONAL ROUTES TO TEACHER CERTIFICATION AND LICENSURE.

(a) IN GENERAL.—Title V of the Higher Education Act of 1965 is amended by adding at the end the following new part:

"PART F—ALTERNATIVE ROUTES TO TEACHER CERTIFICATION AND LICENSURE

"SEC. 581. SHORT TITLE.

"This part may be cited as the 'Alternative Routes to Teacher Certification and Licensure Act of 1990'.

"SEC. 582. FINDINGS.

"The Congress finds that—

"(1) effective elementary and secondary schools require competent teachers and strong leadership;

"(2) school systems would benefit greatly by increasing the pool of qualified individuals from which to recruit teachers;

"(3) many talented professionals who have demonstrated a high level of subject area competence outside the education profession may wish to pursue careers in education, but have not fulfilled the requirements to be certified or licensed as teachers;

"(4) alternative routes can enable qualified individuals to fulfill State certification or licensure requirements and would allow school systems to utilize the expertise of such professionals and improve the pool of qualified individuals available to local educational agencies as teachers; and

"(5) alternative routes to certification or licensure requirements that do not exclude qualified individuals from teaching solely because such individuals do not meet traditional certification or licensure requirements would allow school systems to take advantage of these professionals and improve the supply of well-qualified teachers.

"SEC. 583. PURPOSE.

"It is the purpose of this part to improve the supply of well-qualified elementary and secondary school teachers by encouraging and assisting States to develop and implement programs for alternative routes to teacher certification or licensure requirements. Such programs shall place special emphasis on the participation of individuals who are members of minority groups.

"SEC. 584. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for the purpose of carrying out this part $15,000,000 for the fiscal year 1991.

"SEC. 585. ALLOTMENTS.

"(a) IN GENERAL.—(1) From the amount appropriated to carry out this part, the Secretary shall allot to each State the lesser of either the amount the State applies for under section 4907 or an amount that is proportional to the State's share of the total population of children ages five through seventeen in all the States (based on the most recent data available that is satisfactory to the Secretary).

"(2) If a State does not apply for its allotment, or the full amount of its allotment, under the preceding paragraph, the Secretary may reallocate the excess funds to one or more other States that demonstrate, to the satisfaction of the Secretary, a current need for the funds.

"(b) SPECIAL RULE.—Notwithstanding section 412(b) of the General Education Provisions Act, funds awarded under this part shall remain available for obligation by a recipient for a period of two calendar years from the date of the grant.

"SEC. 586. STATE APPLICATIONS.

"(a) IN GENERAL.—Any State desiring to receive a grant under this part shall, through the State educational agency, submit an application at such time, in such manner, and containing such information, as the Secretary may reasonably require.

"(b) REQUIREMENTS.—Each application shall—

"(1) describe the programs, projects, and activities to be undertaken; and

"(2) contain such assurances as the Secretary considers necessary, including assurances that—

"(A) assistance provided to the State educational agency under this part will be used to supplement, and not to supplant, any State or local funds available for the development and implementation of programs to provide alternative routes to fulfilling teacher certification or licensure requirements;

"(B) the State educational agency has, in developing and designing the application, consulted with—

"(i) representatives of local educational agencies, including superintendents and school board members, including representatives of their professional organizations where applicable;

"(ii) elementary and secondary school teachers, including representatives of their professional organizations;

"(iii) parents; and

"(iv) other interested organizations and individuals; and

"(C) the State educational agency will submit to the Secretary, at such time as the Secretary may specify, a final report describing the activities carried out with assistance provided under this part and the results achieved.

"(c) GEPA PROVISIONS INAPPLICABLE.—Sections 435 and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to this part.

"SEC. 587. USE OF FUNDS.

"(a) IN GENERAL.—(1) A State educational agency shall use assistance provided under this part to support programs, projects, or activities that develop and implement new, or expand and improve existing, programs that provide teacher training to individuals who are moving to a career in education from another occupation through an alternative route to teacher certification or licensure.

"(2) A State educational agency may carry out such programs, projects, or activities directly, through contracts, or through grants

to local educational agencies, intermediate educational agencies, institutions of higher education, or consortia of such agencies.

"(b) USES OF FUNDS.—Funds received under this part may be used for—

"(1) the design, development, implementation, and evaluation of programs that enable qualified professionals who have demonstrated a high level of subject area competence outside the education profession and are interested in entering the education profession to fulfill State certification or licensure requirements;

"(2) the establishment of administrative structures necessary for the development and implementation of programs to provide alternative routes to fulfilling State requirements for certification or licensure;

"(3) training of staff, including the development of appropriate support programs, such as mentor programs, for teachers entering the school system through alternative routes to teacher certification or licensure;

"(4) the development of recruitment strategies;

"(5) the development of reciprocity agreements between or among States for the certification or licensure of teachers; and

"(6) other appropriate programs, projects, and activities designed to meet the objectives of this part.

"SEC. 588. DEFINITION.

"For purposes of this part, the term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658).".

(b) EXPIRATION DATE.—Effective July 1, 1993, the Alternative Routes to Teacher Certification and Licensure Act of 1990 (as contained in part F of title V of the Higher Education Act of 1965) is repealed.

PART C—PRESIDENTIAL AWARDS FOR EXCELLENCE IN EDUCATION

SEC. 231. PRESIDENTIAL AWARDS FOR EXCELLENCE IN EDUCATION PROGRAM.

(a) TECHNICAL AMENDMENT.—The heading for title II of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

"TITLE II—CRITICAL SKILLS IMPROVEMENT AND PRESIDENTIAL TEACHER AWARDS".

(b) PRESIDENTIAL TEACHER AWARDS FOR EXCELLENCE IN EDUCATION.—Title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2982 et seq.) is further amended by adding at the end the following:

"PART D—PRESIDENTIAL AWARDS FOR EXCELLENCE IN EDUCATION PROGRAM

"SEC. 2301. FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds that—

"(1) the success of America's elementary and secondary schools depends most heavily upon the Nation's teachers;

"(2) when teachers are highly motivated and committed to excellence, they succeed not only in imparting subject matter knowledge, but also in instilling in their students an appreciation of the value and importance of education;

"(3) elementary and secondary school systems should have in place standards of teacher excellence and fair and effective procedures for measuring teacher success; and

"(4) in return for their efforts, excellent elementary and secondary school teachers deserve public recognition, respect, and appropriate financial awards.

"(b) PURPOSE.—It is the purpose of this part to reward teachers in every State who meet the highest standards of excellence.

"SEC. 2302. ALLOCATION TO STATES.

"(a) ALLOCATION FORMULA.—From the funds appropriated under section 2306, the Secretary shall—

"(1) first allot to the Secretary of the Interior an appropriate amount for purposes of making awards under this part to teachers in elementary and secondary schools for Indian children operated with Federal assistance or operated by the Department of the Interior; and

"(2) from the remaining amount—

"(A) allocate 50 percent among the States in an amount which bears the same ratio to such amount as the number of children aged 5 to 17, inclusive, in the State bears to the number of such children in all such States, according to the most recent available data that are satisfactory to the Secretary; and

"(B) allocate 50 percent among the States on the same basis as funds are allocated among such States under section 1005 for the same fiscal year.

"(b) ADMINISTRATIVE EXPENSES.—Each State may reserve up to 4 percent of its allocation under subsection (b) for administrative expenses, including the cost of convening the panel described in section 2304(c).

"(c) STATE DEFINED.—For the purposes of this part, the term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658).

"(d) INSULAR AREAS.—The provisions of Public Law 93-134, permitting the consolidation of grants to the Insular Areas, shall not apply to funds allocated under this part.

"SEC. 2303. STATE APPLICATIONS.

"(a) SUBMISSION OF STATE APPLICATIONS.—The Secretary is authorized to make grants to States in accordance with the provisions of this part. In order to receive a grant under this part, the State educational agency shall submit an application to the Secretary. Such application shall be filed at such time, in such manner, and containing such information as the Secretary may reasonably require.

"(b) DESCRIPTION OF STATE CRITERIA AND PROCEDURES.—The application shall contain a description of the criteria and procedures the State educational agency will use to select recipients of Presidential Awards for Excellence in Education. Such criteria and procedures shall be subject to the approval of the Secretary.

"(c) ASSURANCES.—The application shall contain assurances that—

"(1) Presidential Awards for Excellence in Education will be made in accordance with the provisions of this part;

"(2) the State educational agency will provide such fiscal control and fund accounting procedures as the Secretary may require;

"(3) the State educational agency will apply the selection criteria uniformly to nominations for recipients of Presidential Awards for Excellence in Education that are received from public and private schools, teachers, associations of teachers, parents, associations of parents and teachers, businesses, business groups, or student groups, as well as those received from local educational agencies; and

"(4) to the extent practicable, the State educational agency will use existing procedures for programs of recognition and awards to teachers.

"SEC. 2304. SELECTION OF AWARD RECIPIENTS.

"(a) ELIGIBLE RECIPIENTS.—Any full-time public or private elementary or secondary school teacher that teaches any subject other than religion (other than religion as an academic discipline), shall be eligible to receive an award under this part.

"(b) NOMINATIONS.—(1) Local educational agencies, public and private schools, teachers, parents, associations of teachers, associations of parents and teachers, businesses, business groups, and student groups may nominate teachers for awards under this part.

"(2) Annually, the State educational agency shall notify local educational agencies, public and private schools, associations of teachers, associations of parents and teachers, business groups, and the general public of the deadlines and procedures for making nominations, and inform them of the selection criteria that will be used in selecting award recipients.

"(c) SELECTION BY STATE PANEL.—Selection of award recipients in each State shall be made from among the teachers nominated in accordance with subsection (b). Award recipients shall be selected by a panel that is chosen by the State educational agency and is composed of members representing parents, school administrators, teachers, school board members, and the business community.

"(d) SELECTION CRITERIA.—The State panel shall select award recipients in accordance with the criteria approved by the Secretary in the State's application. Such selection criteria may include an educator's success in—

"(1) educating at-risk students, such as educationally or economically disadvantaged, handicapped, limited English proficient, homeless children, or the children of migrant agricultural workers to their fullest potential;

"(2) educating gifted and talented students to their fullest potential;

"(3) encouraging students to enroll, and succeed, in advanced classes in subjects such as mathematics, science, and foreign languages;

"(4) teaching in schools educating large numbers of 'at-risk' students, including schools in low-income inner-city or rural areas;

"(5) introducing a new curriculum area into a school or strengthening an established curriculum;

"(6) acting as a 'master teacher' by helping new teachers make the transition into a teaching career;

"(7) encouraging potential dropouts to remain in school or encouraging individuals who have dropped out to reenter and complete their schooling;

"(8) improving daily attendance;

"(9) leadership qualities; and

"(10) success in employing other innovative educational techniques.

"SEC. 2305. AMOUNT AND USE OF AWARDS.

"(a) AMOUNT OF AWARDS.—The amount of a Presidential Award for Excellence in Education shall be $5,000. The Secretary may issue award certificates.

"(b) USE OF AWARDS.—An award to an individual recipient under this part shall be available for the recipient's use for profes-

sional development and other educational experiences.

"(c) AWARDS CEREMONY.—The Secretary is authorized to accept gifts to pay for the costs of conducting awards ceremonies to recognize recipients of Presidential Awards for Excellence in Education.

"(d) USE OF EXCESS FUNDS.—If a State has excess funds remaining after it has made the maximum number of awards possible in accordance with section 2305(a) and reserved a portion of its allotment for administrative expenses in accordance with subsection (c), the State may use the remainder of its allotment for appropriate recognition of teachers in the State who do not receive a Presidential Award for Excellence in Education.

"SEC. 2306. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for the purpose of carrying out this part $5,000,000 for each of the fiscal years 1991, 1992, and 1993.".

PART D—HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

SEC. 241. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES.

Section 360(a) of the Higher Education Act of 1965 is amended by—

(1) redesignating paragraph (4) as paragraph (5); and

(2) inserting the following new paragraph after paragraph (3):

"(4)(A) There are authorized to be appropriated $20,000,000 for fiscal year 1991 for awards under section 332 of the Act to historically Black colleges and universities that qualify as part B institutions.

"(B) A part B institution that receives an award from funds appropriated for any fiscal year under subparagraph (A) shall not be eligible to receive an award from funds appropriated for that fiscal year under paragraph (3), but a part B institution that does not receive an award from funds appropriated for any fiscal year under subparagraph (A) shall be eligible to receive an award from funds appropriated for that fiscal year under paragraph (3).".

TITLE III—LITERACY

SEC. 301. SHORT TITLE.

This title may be cited as the "National Literacy Act of 1990".

SEC. 302. FINDINGS.

The Congress finds that—

(1) nearly 30,000,000 adults in the United States have serious problems with literacy (the ability to read, write, speak English, compute, and solve problems effectively);

(2) literacy problems are intergenerational and closely associated with poverty and pose a major threat to the economic well-being of the United States;

(3) present public and private literacy programs reach only a small portion of the population in need and often result in only minimal learning gains;

(4) the prevention of illiteracy is essential to stem further growth in national illiteracy rates;

(5) literacy programs generally lack adequate funding, adequate coordination with other literacy programs, and an adequate investment in teacher training and technology;

(6) access to better information about the best practices in the literacy field and more research in order to provide better diagnostic and instructional tools are essential for the improvement of literacy and employability in the United States;

(7) as many as 50,000,000 workers may have to be trained or retrained before the year 2000 while the supply of unskilled workers is increasing and the demand for unskilled labor is decreasing; and

(8) the Adult Education Act is the largest Federal program to provide direct literacy services in the United States and serves only 10 percent of eligible participants, while all public and private literacy programs serve only about 19 percent of those who need help.

SEC. 303. DEFINITION.

For purposes of this title the term "literacy" means the ability to use printed and written information to function in society, to achieve one's goals, and to develop one's knowledge and potential.

PART A—LITERACY: STRATEGIC PLANNING, RESEARCH, AND COORDINATION

SEC. 311. INTERAGENCY TASK FORCE ON LITERACY.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Literacy (in this section referred to as the "Task Force").

(b) COMPOSITION.—(1) The Task Force shall consist of—

(A) the Secretary of Education;

(B) the Secretary of Labor;

(C) the Secretary of Health and Human Services;

(D) the Director of the ACTION Agency; and

(E) any other head of an agency that the President considers appropriate.

(2) Each member shall be appointed for as long as such member serves as the head of the appropriate department or agency.

(3) The President is requested to appoint the Chairperson of the Task Force from among its members to serve as Chairperson at the President's discretion.

(c) QUORUM.—One more than ½ of the members of the Task Force shall constitute a quorum for the purpose of transmitting recommendations and proposals to the President, but a lesser number may meet for other purposes.

(d) ABSENCES.—Any member of the Task Force who is unable to attend a meeting of the Task Force shall appoint an appropriate Assistant Secretary from the department of which the member is the Secretary, or in the case of an agency, the second-ranking official of such agency, to represent the member for that meeting.

(e) DUTIES OF THE TASK FORCE.—The Task Force shall—

(1) devise, coordinate, and monitor existing and other government initiatives to—

(A) facilitate the elimination of illiteracy, and

(B) integrate the resources of literacy programs across various departments or agencies of the Federal Government;

(2) solicit information and advice from representatives and experts with experience in literacy-related programs, including members of State and local governments, individuals from education, labor, and business, national literacy organizations, State and local literacy organizations, volunteer organizations, service providers, and community-based organizations;

(3) ensure that appropriate Federal agencies set specific objectives and strategies for meeting the goals of this title and measure the progress of such agencies in meeting such goals;

(4) review and make recommendations regarding ways to achieve uniformity among reporting requirements, the development of performance measures, and the development of standards for program effectiveness for literacy-related Federal programs;

(5) advise the Director of the National Institute for Literacy established pursuant to section 313 on the activities of the Task Force; and

(6) issue a biennial report to Congress on the progress made by the Federal Government and the Nation toward enhancing the literacy skills of its people, including recommendations for legislation required to improve and expand Federal literacy programs.

(f) AVAILABILITY OF FUNDS.—Each department and agency that participates in the Task Force shall contribute to the support of the Task Force.

SEC. 312. LITERACY RELATED PROGRAMS IN THE DEPARTMENT OF EDUCATION.

Section 202 of the Department of Education Organization Act (20 U.S.C. 3412) is amended by adding the following new subsection at the end thereof:

"(h) The Assistant Secretary for Vocational and Adult Education, in addition to performing such functions as the Secretary may prescribe, shall have responsibility for coordination of all literacy related programs and policy initiatives in the Department. The Assistant Secretary for Vocational and Adult Education shall—

"(1) coordinate the staff resources and the assistance provided to the Task Force;

"(2) assist in coordinating the related activities and programs of other Federal departments and agencies; and

"(3) assist the Secretary in carrying out the Secretary's responsibilities as a member of the Task Force.".

SEC. 313. NATIONAL INSTITUTE FOR LITERACY.

(a) PURPOSE.—It is the purpose of this section to enhance the national effort to eliminate the current problem of illiteracy by the year 2000 by improving research, development and information dissemination through a national research center.

(b) FINDINGS.—The Congress finds that—

(1) far too little is known about how to improve access to, and enhance the effectiveness of, adult literacy programs, assessment tools, and evaluation efforts;

(2) there is no reliable nor central source of information about the existing knowledge base in the area of literacy;

(3) a National Institute for Literacy would provide a national focal point for research, technical assistance and research dissemination, policy analysis, and program evaluation in the area of literacy; and

(4) such an Institute would facilitate a pooling of ideas and expertise across fragmented programs and research efforts.

(c) ESTABLISHMENT.—(1) There is established the National Institute for Literacy (in this section referred to as the "Institute"). The Institute shall be administered under the terms of an interagency agreement entered into by the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services (in this section referred to as the "Interagency Group"). The head of any other agency designated by the President may be involved in the operation of the Institute as fits the involvement of such agency in accomplishing the purposes of the Institute. The Secretary may include in the Institute any research and development center supported under section 405(d)(4)(A)(ii) of the General Education Provisions Act and any other center, institute, or clearinghouse established within the Department of Education and the purpose of which is determined by the Secretary of Education to be related to the purpose of the Institute.

(2) The Institute shall have offices separate from the offices of any agency or department involved in the operation of the Institute.

(3) The Institute shall be administered by the Interagency Group, which shall seriously consider the recommendations of the Board described in subsection (f) in planning the goals of the Institute and in the implementation of any programs to achieve such goals. The daily operations of the Institute shall be carried out by the Director. If the recommendations of the Board are not followed, the Interagency Group shall provide a written explanation to the Board concerning actions the Interagency Group has taken that includes the Interagency Group's reasons for not following the recommendations of the Board with respect to such actions.

(d) DUTIES.—(1) The Institute is authorized, in order to improve and expand the system for delivery of literacy services, to—

(A) conduct basic and applied research and demonstrations on literacy, including—

(i) how adults learn to read and write and acquire other skills;

(ii) how the literacy skills of parents affect the ability of children to learn literacy skills;

(iii) the assessment of literacy skills and the development of instructional techniques;

(iv) the best methods for assisting adults and families to acquire literacy skills, including the use of technology;

(v) the special literacy needs of individuals with learning disabilities and individuals with limited English proficiency;

(vi) how to effectively reach and teach the most educationally disadvantaged individuals;

(vii) the use of technology and other studies which will advance the literacy knowledge base, use and not duplicate the work of other research services, and build on such research efforts; and

(viii) how to attract, train, and retrain professional and volunteer teachers of literacy;

(B) assist Federal, State, and local agencies in the development, implementation, and evaluation of policy with respect to literacy by—

(i) establishing a national data base with respect to—

(I) literacy and basic skills programs including programs in Federal departments, State agencies, and local agencies and programs that are privately supported through nonprofit entities and for profit entities;

(II) assessment tools and outcome measures;

(III) the amount and quality of basic education provided in the workplace by businesses and industries; and

(IV) progress made toward the national literacy goals described in section 2(a)(8); and

(ii) providing technical and policy assistance to government entities for the improvement of policy and programs relating to literacy and developing model systems for implementing and coordinating Federal literacy programs which can be replicated at the State and local level;

(C) provide program assistance, training, and technical assistance for literacy programs throughout the United States in order to improve the effectiveness of such programs and to increase the number of such programs, which assistance and training shall—

(i) be based on the best available research and knowledge; and

(ii) be coordinated with activities conducted by—

(I) regional educational laboratories supported under section 405(d)(4)(A)(i) of the General Education Provisions Act;

(II) curriculum centers assisted under section 251(a)(8) of the Carl D. Perkins Vocational and Applied Technology Education Act; and

(III) other educational and training entities that provide relevant technical assistance;

(D) collect and disseminate information to Federal, State, and local entities with respect to literacy methods that show great promise (including effective methods of assessment, effective literacy programs, and other information obtained through research or practice relating to adult and family learning that would increase the capacity and quality of literacy programs in the United States), using a variety of methods to ensure that the best information is received by State and local providers of literacy services;

(E) review and make recommendations regarding—

(i) ways to achieve uniformity among reporting requirements;

(ii) the development of performance measures; and

(iii) the development of standards for program effectiveness for literacy-related Federal programs; and

(F) provide a toll-free long-distance telephone line for literacy providers and volunteers.

(2) The Institute may enter into contracts or cooperative agreements with, or make grants to, individuals, public or private nonprofit institutions, agencies, organizations, or consortia of such institutions, agencies, or organizations to carry out the activities of the Institute. Such grants, contracts, or agreements shall be subject to the laws and regulations that generally apply to grants, contracts, or agreements entered into by Federal agencies.

(e) LITERACY LEADERSHIP.—(1) The Institute is, in consultation with the Board, authorized to award fellowships, with such stipends and allowances that the Director considers necessary, to outstanding individuals pursuing careers in adult education or literacy instruction, management, research, or innovation in adult education or literacy.

(2) Fellowships awarded under this subsection shall be used, under the auspices of the Institute, to engage in research, education, training, technical assistance, or other activities to advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level.

(3) Individuals receiving fellowships pursuant to this subsection shall be known as "Literacy Leader Fellows".

(f) NATIONAL INSTITUTE BOARD.—(1) There is established the National Institute Board (in this section referred to as the "Board") which shall consist of 10 individuals appointed by the President with the advice and consent of the Senate from individuals who are not otherwise officers or employees of the Federal Government and who are chosen from recommendations made to the President by representatives of—

(A) literacy organizations and providers of literacy services, including—

(i) providers of literacy services receiving assistance under the Adult Education Act; and

(ii) nonprofit providers of literacy services;

(B) businesses that have demonstrated interest in literacy programs;

(C) literacy students;

(D) experts in the area of literacy research;

(E) State and local governments; and

(F) organized labor.

(2) The Board shall—

(A) make recommendations concerning the appointment of the Director and staff of the Institute;

(B) provide independent advice on the operation of the Institute; and

(C) receive reports from the Interagency Group and the Director.

(3) The Interagency Group may carry out the duties of the Board until the expiration of the 180-day period beginning on the date of the enactment of this Act.

(4) Except as otherwise provided, the Board established by this subsection shall be subject to the provisions of the Federal Advisory Committee Act.

(5)(A) Each member of the Board shall be appointed for a term of 3 years. Any such member may be appointed for not more than 2 consecutive terms.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that members' term until a successor has taken office. A vacancy in the Board shall be filled in the manner in which the original appointment was made. A vacancy in the Board shall not affect the powers of the Board.

(6) A majority of the members of the Board shall constitute a quorum but a lesser number may hold hearings. Any recommendation may be passed only by a majority of its members present.

(7) The Chairperson and Vice Chairperson of the Board shall be elected by the members. The term of office of the Chairperson and Vice Chairperson shall be 2 years.

(8) The Board shall meet at the call of the Chairperson or a majority of its members.

(g) GIFTS, BEQUESTS, AND DEVISES.—The Institute and the Board may accept (but not solicit), use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Institute or the Board, respectively. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Institute or the Board, respectively.

(h) MAILS.—The Board and the Institute may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(i) STAFF.—The Interagency Group, after considering recommendations made by the Board, shall appoint and fix the pay of a Director.

(j) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Institute may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(k) EXPERTS AND CONSULTANTS.—The Board and the Institute may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(l) REPORT.—In the first 2 years in which the Institute receives assistance under this section, the Institute shall submit an annual report to Congress. In succeeding years, the Institute shall submit biennial reports to the Congress. Each report submitted under this subsection shall include—

(1) a comprehensive and detailed description of the Institute's operations, activities, financial condition, and accomplishments in the field of literacy for such fiscal year;

(2) a description of how plans for the operation of the Institute for the succeeding fiscal year will facilitate achievement of the goals of the Institute and the goals of the literacy programs within the Department of Education, the Department of Labor, and the Department of Health and Human Services; and

(3) any additional, minority, or dissenting views submitted by members of the Board.

(m) NONDUPLICATION.—The Institute shall not duplicate any functions carried out by the Secretary of Education pursuant to section 384(a) of the Adult Education Act. This subsection shall not be construed to prohibit the Secretary of Education from delegating such functions to the Institute.

(n) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to carry out the provisions of this section $15,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995.

(2) Any amounts appropriated to the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, or any other department that participates in the Institute for purposes that the Institute is authorized to perform under this section may be provided to the Institute for such purposes.

SEC. 314. STATE LITERACY RESOURCE CENTERS.

(a) GRANTS FOR STATE LITERACY RESOURCE CENTERS.—Subpart 6 of part B of the Adult Education Act (20 U.S.C. 1208 et seq.) is amended by inserting at the end thereof the following new section 354:

"SEC. 354. STATE LITERACY RESOURCE CENTERS.

"(a) PURPOSE.—It is the purpose of this section to assist State and local public and private nonprofit efforts to eliminate illiteracy through a new program of State literacy resource center grants to—

"(1) stimulate the coordination of literacy services,

"(2) enhance the capacity of State and local organizations to provide literacy services, and

"(3) serve as a reciprocal link between the National Institute for Literacy and service providers for the purpose of sharing information, data, research, and expertise and literacy resources.

"(b) ESTABLISHMENT.—From amounts appropriated pursuant to subsection (k), the Secretary is authorized to make grants for purposes of establishing a network of State or regional adult literacy resource centers.

"(c) ALLOTMENT.—(1) From sums available for purposes of making grants under this section for any fiscal year, the Secretary shall allot to each State having an approved application under subsection (k) an amount which bears the same ratio to such sums as the amount allotted to such State under section 313(b) for the purpose of making grants under section 321 bears to the aggregate amount allotted to all States under such section for such purpose.

"(2) Each State shall contract on a competitive basis with the State or local educational agencies, a State office on literacy, a volunteer organization, a community-based organization, institution of higher education, or another nonprofit entity to operate a State literacy resource center. If the State educational agency does not operate the center, the State educational agency shall be provided the opportunity to comment on the selection of the entity selected to operate the center.

"(d) USE OF FUNDS.—Funds provided under subsection (c)(1) to carry out this section shall be used to carry out activities to—

"(1) upgrade and promote the diffusion and adoption of state-of-the-art teaching methods, technologies and program evaluations;

"(2) develop innovative approaches to the coordination of literacy services within and among States and with the Federal Government and assist in coordinating the delivery of such services by public and private agencies;

"(3) encourage government and industry partnerships, including partnerships among small business, private nonprofit organizations, and community-based organizations;

"(4) encourage innovation and experimentation in literacy activities that will enhance the delivery of literacy services and address emerging problems;

"(5) provide technical and policy assistance to State and local governments and service providers to improve literacy policy and programs and access to such programs;

"(6) provide training and technical assistance to literacy instructors in reading instruction and in—

"(A) selecting and making the most effective use of state-of-the-art methodologies, instructional materials, and technologies such as—

"(i) computer assisted instruction;

"(ii) video tapes;

"(iii) interactive systems; and

"(iv) data link systems; or

"(B) assessing learning style and screening for learning disabilities, and providing individualized remedial reading instruction; or

"(7) encourage and facilitate the training of full-time professional adult educators.

"(e) ALTERNATIVE USES OF EQUIPMENT.—Equipment purchases pursuant to this section, when not being used to carry out the provisions of this section, may be used for other instructional purposes if—

"(1) the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under this section;

"(2) the equipment is used after regular program hours or on weekends; and

"(3) such other use is—

"(A) incidental to the use of that equipment under this section;

"(B) does not interfere with the use of that equipment under this section; and

"(C) does not add to the cost of using that equipment under this section.

"(f) LIMITATION.—Not more than 10 percent of any grant received under this section shall be used to purchase computer hardware or software.

"(g) SPECIAL RULE.—(1) Each State receiving funds pursuant to this section may use not more than 5 percent of such funds to establish a State advisory council on adult education and literacy (in this section referred to as the 'State council') pursuant to the provisions of section 332.

"(2) Each State receiving funds pursuant to this section may use such funds to support an established State council to the extent that such State council meets the requirements of section 332.

"(3) Each State receiving funds pursuant to this paragraph to establish or support a State council pursuant to the provisions of section 332 shall provide matching funds on a dollar-for-dollar basis.

"(h) APPLICATIONS.—Each State or group of States, as appropriate, that desires to receive a grant under this section on a regional level, a State level, or both shall submit to the Secretary an application that has been reviewed and commented on by the State council, where appropriate, and that describes how the State or group of States will—

"(1) develop a literacy resource center or expand an existing literacy resource center;

"(2) provide services and activities with the assistance provided under this section;

"(3) assure access to services of the center for the maximum participation of all public and private programs and organizations providing or seeking to provide basic skills instruction, including local educational agencies, agencies responsible for corrections education, service delivery areas under the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations;

"(4) address the measurable goals for improving literacy levels as set forth in the plan submitted pursuant to section 342; and

"(5) develop procedures for the coordination of literacy activities for statewide and local literacy efforts conducted by public and private organizations, and for enhancing the systems of service delivery.

"(i) PAYMENTS; FEDERAL SHARE.—(1) The Secretary shall pay to each State having an application approved pursuant to subsection (h) the Federal share of the cost of the activities described in the application.

"(2) The Federal share—

"(A) for each of the first 2 fiscal years in which the State receives funds under this section shall not exceed 80 percent;

"(B) for each of the third and fourth fiscal years in which the State receives funds under this section shall not exceed 70 percent; and

"(C) for the fifth and each succeeding fiscal year in which the State receives funds under this section shall not exceed 60 percent.

"(3) The non-Federal share of payments under this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

"(j) REGIONAL CENTERS.—(1) A group of States may enter into an interstate agreement to develop and operate a regional adult literacy resource center if the States determine that a regional approach is more appropriate for their situation.

"(2) Any State that receives assistance under this section as part of a regional center shall only be required to provide under subsection (i) 50 percent of the funds such State would otherwise be required to provide under such subsection.

"(3) In any fiscal year in which the amount a State will receive under this section is less than $100,000, the Secretary may designate that State to receive assistance under this section as part of a regional center.

"(4) The provisions of paragraph (3) shall not apply to any State which can demonstrate to the Secretary that the total amount of Federal, State, local and private

funds expended to carry out the purposes of this section equals or exceeds $100,000.

"(5) In any fiscal year in which paragraph (2) applies, the Secretary may allow certain States that receive assistance as part of a regional center to reserve a portion of such assistance for State literacy services pursuant to this section.

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section $25,000,000 for each of the fiscal years 1991, 1992, and 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.".

PART B—WORKFORCE LITERACY

SEC. 321. NATIONAL WORKFORCE LITERACY ASSISTANCE COLLABORATIVE.

(a) ESTABLISHMENT.—There is established in the Department of Labor a National Workforce Literacy Assistance Collaborative (in this subsection referred to as the "Collaborative") to improve the basic skills of individuals, especially those individuals who are marginally employed or unemployed with low basic skills and limited opportunity for long-term employment and advancement, by assisting small and medium-sized businesses, business associations that represent small and medium-sized businesses, and labor organizations to develop and implement literacy programs tailored to the needs of the workforce.

(b) FUNCTIONS.—The Collaborative shall—

(1) develop and implement a plan for providing small and medium-sized businesses with the technical assistance required to address the literacy needs of their workforce;

(2) monitor the development of workforce literacy training programs and identify best practices and successful small and medium-sized business program models;

(3) inform businesses and unions of research findings and best practices regarding exemplary curricula, instructional techniques, training models, and the use of technology as a training tool in the workplace;

(4) provide technical assistance to help businesses assess individual worker literacy skill needs, implement workforce literacy training programs, and evaluate training program effectiveness;

(5) promote cooperation and coordination among State and local agencies and the private sector to obtain maximum uses of existing literacy and basic skills training resources;

(6) conduct regional and State small business workforce literacy meetings to increase program effectiveness and accountability;

(7) establish cooperative arrangements with the National Institute for Literacy and other centers involved in literacy and basic skills research and development activities; and

(8) prepare and produce written and video materials necessary to support technical assistance and information dissemination efforts.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for purposes of carrying out this section $5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995.

SEC. 322. GRANTS FOR NATIONAL WORKFORCE LITERACY STRATEGIES.

Section 371 of the Adult Education Act (20 U.S.C. 1211) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by inserting ", in consultation with the Secretary of Labor and the Administrator of the Small Business Administration," after "Secretary";

(B) in subparagraph (B) of paragraph (2)—

(i) by striking "and" and inserting a comma; and

(ii) by inserting after "agencies" the second place such term appears the following: "and any other entity described in paragraph (1) that receives a grant under this subsection"; and

(C) by inserting the following new paragraphs at the end:

"(5) In awarding grants under this section, the Secretary shall give priority to applications from partnerships which include small businesses.

"(6) The Secretary is authorized to award grants under this section for a period not to exceed 3 years.";

(2) in subsection (b)—

(A) in paragraph (1) by striking "subsection (c)" and inserting "subsection (e)";

(B) in subparagraph (B) of paragraph (2)—

(i) by striking "and" and inserting a comma; and

(ii) by inserting after "agencies" the second place such term appears the following: "and any other entity described in paragraph (1) that receives a grant under this subsection";

(3) by redesignating subsection (c) as subsection (e);

(4) by inserting after subsection (b) the following:

"(c) GRANTS FOR NATIONAL WORKFORCE LITERACY STRATEGIES.—(1) Whenever in any fiscal year, appropriations under subsection (e) are equal to or exceed $25,000,000, the Secretary shall reserve not more than $5,000,000 to establish a program of grants to facilitate the design and implementation of national strategies to assist small and medium-sized businesses and unions to effectively provide literacy and basic skills training to workers.

"(2) Grants awarded under this subsection shall provide funds to establish large-scale national strategies in workforce literacy, which may include the following activities:

"(A) Basic skills training that is cost-effective and needed by employees and required by their employers to establish a trainable workforce which can take advantage of further job specific training and advance the productivity of the labor force on an individual, industry, or national level.

"(B) Specific program offerings, which may include—

"(i) English as a second language instruction;

"(ii) communications skill building;

"(iii) reading and writing skill building; and

"(iv) computation and problem solving.

"(C) Appropriate assessments of individual worker's literacy and basic skills needs and appropriate assessments of the skill levels required by business.

"(D) Cooperative arrangements with other organizations involved in providing literacy and basic skills training, including adult education, vocational education, community and junior colleges, community-based organizations, State level agencies, and private industry councils.

"(E) The establishment as appropriate of technology-based learning environments, such as computer-based learning centers.

"(3) To receive a grant under this subsection, a proposal shall be submitted to the Secretary by partnerships described in subsection (a)(1), containing a plan specifying a strategy for designing and implementing workforce literacy and basic skills training for workers, and justifying the national, statewide, or industry-wide importance of this strategy. The proposal shall include—

"(A) a demonstration of need for literacy and basic skills training;

"(B) a description of the business or industry for which the strategy is to be established;

"(C) a statement of specific, measurable goals and participant outcomes;

"(D) a strategy for achieving the goals, including a description of the process to identify literacy and basic skills required by employers and the skills of individual workers, and a description of the specific services to be provided; and

"(E) a description of the costs of the activities to be undertaken.

"(4) The Secretary shall develop a formal process for the submission of proposals and publish an announcement with respect to that process and the availability of funds in the Federal Register.

"(5) Grants under this subsection may be used to fund 70 percent of the cost of programs which meet the requirements of this subsection.

"(6) The Secretary shall give priority to grant proposals described in paragraph (2)(D).

"(7) The Secretary may take into account geographic considerations (such as rural and urban) and national distribution, when awarding grants under paragraph (3) of this subsection.

"(8) The Secretary shall award annually, from amounts available under paragraph (1), no more than 10 grants of not less than $500,000 each.

"(d) EVALUATION.—The Secretary shall reserve not more than 2 percent of any amount appropriated under this section for the purpose of carrying out an independent evaluation of the effectiveness of programs assisted under this section in improving the literacy and basic skills of workers and the productivity of employees, including potential for the replicability or adaption of such programs."; and

(5) in subsection (e) (as redesignated by paragraph (3)) by striking paragraph (1) and inserting the following:

"(1) There are authorized to be appropriated $60,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992, 1993, 1994 and 1995 to carry out the provisions of this section.".

PART C—INVESTMENT IN LITERACY

SEC. 331. AMENDMENTS TO THE ADULT EDUCATION ACT.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 313 of the Adult Education Act (20 U.S.C. 1201b) is amended in subsection (a) by striking "and such sums" and all that follows through "1993" and inserting the following: ", such sums as may be necessary for fiscal year 1990, $260,000,000 for the fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, 1994, and 1995".

(b) USE OF FUNDS.—Subsection (a) of section 322 of the Adult Education Act (20 U.S.C. 1203b(b)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Grants to States under this subpart shall be used in accordance with State plans (and amendments thereto) approved under sections 341 and 351, to pay the Federal share of the cost of the establishment or expansion of adult education programs to be carried out by local educational agencies, agencies responsible for corrections educa-

tion, community-based organizations, public or private nonprofit agencies, postsecondary educational institutions, and other institutions that have the ability to provide literacy services to adults and families. Each State educational agency receiving financial assistance under this subpart shall assure direct and equitable access to Federal funds to local educational agencies, public or private nonprofit agencies, community-based organizations, agencies responsible for corrections education, postsecondary educational institutions, and institutions which serve educationally disadvantaged adults. In determining which programs shall receive assistance under this paragraph, the State shall consider—

"(A) the past effectiveness of applicants in providing effective services (especially with respect to recruitment and retention of educationally disadvantaged adults and the learning gains demonstrated by such adults);

"(B) the degree to which the applicant will coordinate and utilize other literacy and social services available in the community; and

"(C) the commitment of the applicant to serve individuals in the community that are most in need of literacy services.";

(2) in paragraph (3)—

(A) by striking the first sentence; and

(B) by inserting after "sources;" the following: "the projected goals of the applicant with respect to participant recruitment, retention, and successful completion of the literacy program";

(3) in paragraph (4)—

(A) by striking "(A)";

(B) by inserting after "adults" the following: ", particularly in areas with a high proportion of adults who do not have a certificate of graduation from a school providing secondary education or its equivalent."; and

(C) by striking subparagraph (B);

(4) by redesignating paragraphs (3) and (4) (as amended by paragraphs (2) and (3) of this subsection) as paragraphs (4) and (5), respectively; and

(5) by inserting after paragraph (2) the following:

"(3)(A) Grants to States provided under this section shall also be used for competitive 2-year grants to public housing authorities for literacy programs and related activities. Any grant provided under the preceding sentence shall be referred to as a 'Gateway Grant'.

"(B) The Secretary shall, not less often than every 2 years, evaluate any grants made under this paragraph and report the results of such evaluation to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.".

(c) STATE ADVISORY COUNCIL.—(1) The heading to section 332 of the Adult Education Act is amended by inserting "and literacy" before the period.

(2) Section 332 of the Adult Education Act (20 U.S.C. 1205a) is amended—

(A) in the first sentence of subsection (a)(1) by striking "adult education, appointed by the Governor" and inserting "adult education and literacy, appointed by, and responsible to, the Governor";

(B) in the second sentence of subsection (a)(1) by striking all beginning with "consist" through the end period and inserting "consists of—

"(i) representatives of public education;

"(ii) representatives of public and private sector employment;

"(iii) representatives of recognized State labor organizations;

"(iv) representatives of private, voluntary, and community-based literacy organizations;

"(v) the chief administrative officer of a State, or the designee of such individual; and

"(vi) representatives of each of the following State agencies:

"(I) the State educational agency;

"(II) the State job training agency;

"(III) the State human services agency;

"(IV) the State public assistance agency;

"(V) the State library program; and

"(VI) the State economic development agency.

The council shall also include officers of the State government whose agencies provide funding for literacy services or who may be designated by the Governor or the Chairperson of the council to serve whenever matters within the jurisdiction of the agency headed by such an officer are to be considered by the council. The council shall also include classroom teachers who have demonstrated outstanding results in teaching children or adults to read.";

(C) by striking the first sentence of subsection (d) and inserting "One member more than one-half of the members on the council shall constitute a quorum for the purpose of transmitting recommendations and proposals to the Governor, but a lesser number of members may constitute a quorum for the other purposes.";

(D) in subsection (d) by inserting the following new sentence after the first sentence: "The State advisory council shall meet at least 4 times each year."; and

(E) in subsection (f)—

(i) by amending paragraph (1) to read as follows:

"(1) meet with the State agencies responsible for literacy training to advise on the development of a State plan for literacy and for adult education that fulfills the literacy and adult education needs of the State, especially with respect to the needs of the labor market, economic development goals, and the needs of the individuals in the State;";

(ii) by amending paragraph (2) to read as follows:

"(2) advise the Governor, the State educational agency, and other State agencies concerning—

"(A) the development and implementation of measurable State literacy and adult education goals consistent with section 342, especially with respect to—

"(i) improving levels of literacy in the State so that all appropriate State agencies have specific objectives and strategies for such goals in a comprehensive approach;

"(ii) improving literacy programs in the State; and

"(iii) fulfilling the long-term literacy goals of the State;

"(B) the coordination and monitoring of State literacy training programs in order to progress toward the long-term literacy goals of the State;

"(C) the improvement of the quality of literacy programs in the State by supporting integration of services, staff training, and technology-based learning along with the integration of resources of literacy programs across various agencies of State government; and

"(D) private sector initiatives that would improve adult education programs and literacy programs, especially through public-private partnerships;";

(iii) by redesignating paragraph (3) as paragraph (7); and

(iv) by inserting after paragraph (2) the following new paragraphs:

"(3) review and comment on the plan submitted pursuant to section 354(h) and submit such comments to the Secretary;

"(4) track progress on meeting the goals and objectives set forth in paragraph (2);

"(5) recommend model systems for implementing and coordinating State literacy programs for replication at the local level; and

"(6) developing reporting requirements, standards for outcomes, performance measures, and program effectiveness in State programs, that are consistent with those proposed by the Interagency Task Force on Literacy established by section 311 of the National Literacy Act of 1990.".

(d) STATE PLAN.—Subsection (c) of section 342 of the Adult Education Act (20 U.S.C. 1206a) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) describe and provide for the fulfillment of the literacy needs of individuals in the State;";

(2) by striking paragraph (9);

(3) by redesignating paragraphs (2) through (8) as paragraphs (3) through (9), respectively;

(4) by inserting after paragraph (1) the following:

"(2) set forth measurable goals for improving literacy levels, retention in literacy programs, and long-term learning gains of individuals in the State and describe a comprehensive approach for achieving such goals, including the expected outcomes of programs, services, and activities during the 4-year period;";

(5) in paragraph (4) (as redesignated by paragraph (3) of this section)—

(A) by striking "the use of" and inserting "coordination by";

(B) by striking "other than" and inserting "including"; and

(C) by striking "such as";

(6) in paragraph (9) (as redesignated by paragraph (3) of this section), by inserting before the semicolon the following: "and the progress the State has made toward achieving the goals set forth in each State plan subsequent to the initial State plan";

(7) by striking "and" at the end of paragraph (12);

(8) by striking the period at the end of paragraph (13) and inserting a semicolon; and

(9) by adding at the end the following new paragraphs:

"(14) report the amount of administrative funds spent on program improvements; and

"(15) contain assurances that financial assistance provided pursuant to this title shall be used to assist and expand existing programs, and to develop new programs for adults whose lack of basic skills—

"(A) renders such adults unemployable;

"(B) keeps employed or unemployed adults from functioning independently in society; and

"(C) severely reduces the ability of such adults to positively affect the literacy of their children.".

(e) EVALUATION.—Section 352 of the Adult Education Act (20 U.S.C. 1207a) is amended—

(1) in paragraph (1), by inserting before the semicolon the following: ", including—

"(A) the number and percentage of local educational agencies, community-based or-

ganizations, volunteer groups, and other organizations that are grant recipients; and

"(B) the amount each such grant recipient receives under this Act";

(2) in paragraph (2)—

(A) by striking "before the end" and all that follows through "shall consider" and inserting the following: "evaluate 15 percent of the grant recipients each year so that at the end of such period 60 percent of grant recipients shall have been evaluated once and such evaluations shall consider, at a minimum—";

(B) by redesignating subparagraphs (A) through (D) as subparagraphs (B) through (E), respectively;

(C) by inserting before subparagraph (B) (as redesignated by subparagraph (B) of this paragraph) the following:

"(A) the projected goals of the grant recipient as described in its application under section 322(a)(3);";

(D) by amending subparagraph (D) (as redesignated by subparagraph (B) of this paragraph) to read as follows:

"(D) the success of the grant recipient in recruiting, retaining, and assisting participants in reaching desired literacy goals and obtaining subsequent work experience; and"; and

(E) by striking "and" at the end;

(3) by striking the period at the end of paragraph (3) and inserting "; and"; and

(4) by adding at the end the following:

"(4) biennially submit a report to the Interagency Task Force on Literacy established by section 311 of the National Literacy Act of 1990 describing—

"(A) how the State will or has met the literacy goals established in its State plan; and

"(B) progress being made in reaching its literacy goals, coordination of workplace literacy services, and building a high quality delivery system for adult literacy programs.".

(f) TEACHER TRAINING.—(1) Section 353 of the Adult Education Act (20 U.S.C. 1208) is amended by—

(A) striking "and" at the end of subsection (a)(1)(B);

(B) striking the period at the end of subsection (a)(2) and inserting a semicolon and "and"; and

(C) inserting at the end of subsection (a) the following:

"(3) training professional teachers, volunteers, and administrators, with particular emphasis on training—

"(A) full-time professional adult educators;

"(B) minority adult educators;

"(C) educators of adults with limited English proficiency; and

"(D) teachers to recognize and more effectively serve illiterate individuals with learning disabilities, and with a reading ability below the fifth grade level.".

(2) Section 353 of the Adult Education Act (20 U.S.C. 1208), as amended by paragraph (1) of this subsection, is further amended—

(A) in subsection (a) by striking "10" and inserting "15"; and

(B) by amending subsection (b) to read as follows:

"(b) SPECIAL RULE.—At least ⅔ of the 15 percent reserved pursuant to subsection (a) shall be used to carry out the provisions of paragraphs (2) and (3) of subsection (a).".

SEC. 332. TARGETED ASSISTANCE.

Section 1531(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2941) is amended by—

(1) redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(2) inserting the following new paragraph (5) after paragraph (4):

"(5) programs of training to enhance the ability of teachers and school counselors to identify, particularly in the early grades, students with reading and related problems which place such students at risk for illiteracy in their adult years;".

SEC. 333. AMENDMENTS TO THE EVEN START PROGRAM.

(a) AMENDMENT TO PART HEADING.—The heading for part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.) is amended to read as follows:

"PART B—EVEN START FAMILY LITERACY PROGRAM".

(b) STATE GRANT PROGRAM.—Section 1052 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2742) is amended—

(1) in subsection (a), by striking "local educational agencies or consortia of such agencies" and inserting "eligible entities";

(2) in subsection (b)—

(A) by inserting "(1)" before "In"; and

(B) by adding at the end the following:

"(2) In any fiscal year in which this subsection applies, no State shall award a grant under this part for an amount less than $75,000.

"(3) In any year in which this subsection applies, each State that receives a grant under this part may use not more than 5 percent of assistance provided under the grant for costs of—

"(A) administration; and

"(B) the provision of technical assistance for program improvement and replication to eligible entities that receive grants under this part, which assistance may be provided through grant or contract.";

(3) by redesignating subsection (c) as subsection (d);

(4) by inserting immediately after subsection (b) the following new subsection:

"(c) RESERVATION.—From amounts appropriated for purposes of carrying out this part, the Secretary may reserve an amount equal to not more than 2 percent of such amounts or the amount reserved for such purposes in the fiscal year 1990, whichever is greater, for purposes of—

"(1) carrying out the evaluation required by section 1058; and

"(2) providing technical assistance for program improvement and replication to eligible entities that receive grants under this part, which may be provided through grant or contract."; and

(5) by amending subsection (d) (as redesignated by paragraph (3)) to read as follows:

"(c) DEFINITIONS.—For the purpose of this part:

"(1) The term 'eligible entity' means—

"(A) a local educational agency applying in collaboration with a community-based organization, public agency, institution of higher education, or other nonprofit organization; or

"(B) a community-based organization, or other nonprofit organization of demonstrated quality applying in collaboration with a local educational agency.

"(2) The terms 'Indian tribe' and 'tribal organization' have the respective meanings given such terms in section 4 of the Indian Self-Determination and Education Assistance Act.

"(3) The term 'State' includes each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.".

(c) ALLOCATION.—Section 1053 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2743) is amended by amending subsection (a) to read as follows:

"(a) RESERVATION FOR MIGRANT PROGRAMS AND TERRITORIES.—(1) In each fiscal year in which section 1052(a) applies, the Secretary shall first reserve for programs consistent with the purpose of this part—

"(A) for migrant children, an amount equal to 3 percent of the amount appropriated for purposes of carrying out this part, which programs shall be conducted through the Office of Migrant Education; and

"(B) for allocations to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658), and to Indian tribes and tribal organizations, an amount comparable to their relative need.

"(2) In each fiscal year in which section 1052(b) applies, the Secretary shall first reserve for programs consistent with the purpose of this part, an amount equal to 5 percent of the amount appropriated for purposes of carrying out this part, of which—

"(A) amounts shall be allocated for programs for migrant children, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658), and Indian tribes and tribal organizations, according to their relative need; and

"(B) in no case shall the amount reserved for programs for migrant children be less than the amount reserved for such programs in the preceding fiscal year.".

(d) FEDERAL SHARE LIMITATION.—Section 1054 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2744) is amended—

(1) in subsection (a), by striking "local educational agencies" and all that follows through "nonprofit organizations," and inserting "an eligible entity";

(2) in paragraph (2) of subsection (b), by inserting after "counseling," the following: "other developmental and support services,"; and

(3) in subsection (c)—

(A) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and by moving such subparagraphs 2 ems to the right so that they are indented 6 ems from the left margin;

(B) by striking "(c) FEDERAL SHARE LIMITATION.—" and all that follows through "may be—" and inserting the following:

"(c) FEDERAL SHARE.—

"(1) LIMITATION.—The Federal share under this part may be—";

(C) in subparagraph (A) (as redesignated by subparagraph (A) of this paragraph), by striking "local educational agency" and inserting "eligible entity";

(D) by moving the matter following subparagraph (D) (as redesignated by paragraph (1) of this subsection) 2 ems to the right, so that it is indented 4 ems from the left margin;

(E) by striking the last sentence and inserting the following: "The remaining cost may be provided in cash or in kind, fairly evaluated, and may be obtained from any source other than funds made available for programs under this chapter."; and

(F) by adding at the end the following:

"(2) SPECIAL RULE.—The Secretary may waive, in whole or in part, the requirement that all or part of the remaining cost described in paragraph (1) be obtained from

sources other than funds made available under this chapter if an eligible entity—

"(A) demonstrates that it otherwise would not be able to participate in the program under this part; and

"(B) negotiates an agreement with the Secretary with respect to the amount of the remaining cost to which the waiver would be applicable.".

(e) ELIGIBLE PARTICIPANTS.—Section 1055 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2745) is amended—

(1) by striking "Eligible" and inserting the following: "(a) IN GENERAL.—Except as provided in subsection (b), eligible";

(2) in paragraph (2) of subsection (a) (as designated by paragraph (1)), by striking "(aged 1 to 7," and inserting "(from birth to age 7,"; and

(3) by adding at the end the following:

"(b) CONTINUATION OF ELIGIBILITY FOR CERTAIN PARTICIPANTS.—Any family participating in the program under this part that becomes ineligible for such participation as a result of 1 or more members of the family becoming ineligible for such participation, may continue to participate in the program until all members of the family become ineligible for participation, which—

"(1) in the case of a family in which ineligibility was due to the child or children of such family attaining the age of 8, shall be when the parent or parents become ineligible due to educational advancement; and

"(2) in the case of a family in which ineligibility was due to the educational advancement of the parent or parents of such family, shall be when all children in the family attain the age of 8.".

(f) APPLICATIONS.—Section 1056 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2746) is amended—

(1) in subsection (a), by striking "a local educational agency" and inserting "an eligible entity"; and

(2) in subsection (b), by striking "the local educational agency" and inserting "the eligible entity".

(g) SELECTION PROCESS.—Section 1057 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2747) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1) through (7) as subparagraphs (A) through (F), respectively;

(B) by inserting "(1)" before "The";

(C) in paragraph (1) (as designated by subparagraph (B) of this paragraph)—

(i) by amending subparagraph (B) (as redesignated by subparagraph (A) of this paragraph) to read as follows:

"(B) demonstrate that the area to be served by such program has a high percentage or a large number of children and adults who are in need of such services as indicated by high levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators.";

(ii) in subparagraph (E) (as redesignated by subparagraph (A) of this paragraph), by striking "the local educational agency's" and inserting "the eligible entity's"; and

(iii) by adding at the end the following:

"(2) The review panel shall give priority for grants under this subsection to proposals which—

"(A) make the demonstration described in paragraph (1)(B); and

"(B) demonstrate an ability to operate an effective program.";

(2) by amending subsection (c) to read as follows:

"(c) DISTRIBUTION OF ASSISTANCE.—(1) In approving grants under this part pursuant to section 1052(a), the Secretary shall ensure a representative distribution of assistance among the States and among urban and rural areas of the United States.

"(2) In approving grants under this part pursuant to section 1052(b), the review panel shall ensure a representative distribution of assistance between urban and rural areas of the State."; and

(3) in paragraph (1) of subsection (d), by striking "local educational agency" each place it appears and inserting "eligible entity".

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 1059 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2749) is amended to read as follows:

"There are authorized to be appropriated $60,000,000 for the fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993 to carry out the provisions of this part.".

SEC. 334. FAMILY LITERACY PUBLIC BROADCASTING PROGRAM.

(a) PROGRAM AUTHORIZED.—(1) The Secretary is authorized, subject to the availability of appropriations, to enter into a contract with the Corporation for Public Broadcasting to arrange for the production and dissemination of family literacy programming and accompanying materials which would assist parents in improving family literacy skills and language development. In producing and developing such programming, the Corporation for Public Broadcasting shall work in cooperation with local public broadcasting stations to avoid duplication of efforts.

(2) After the program described in paragraph (1) is produced, the Corporation for Public Broadcasting shall arrange to have audio and video instructional media materials for distribution at sites chosen from among—

(A) State and local libraries operating literacy programs, and

(B) nonprofit entities serving hard-to-serve populations as defined in section 304(b)(2), including community-based organizations, volunteer organizations and other nongovernmental entities.

(3) The audio and video instructional media materials described in paragraph (2) shall be used at sites described in paragraph (2), and on a loan basis, distributed to families.

(4) One year after distribution of the audio and video instructional media materials, the Corporation for Public Broadcasting shall report to the Congress on the distribution and use of the audio and video instructional media materials produced pursuant to this subsection and such audio and video instructional media materials' contribution in promoting literacy.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for fiscal year 1991 to carry out the provisions of subsection (i), of which $100,000 shall be reserved for reproducing and distributing programming or audio and video instructional media materials.

PART D—BUSINESS LEADERSHIP FOR EMPLOYMENT SKILLS

SEC. 341. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

Part C of the Adult Education Act (20 U.S.C. 1211 et seq.) is amended by inserting at the end thereof the following new section 373:

"SEC. 373. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

"(a) PROGRAM AUTHORIZED.—The Secretary is authorized to make grants on a competitive basis to pay the Federal share of the costs of establishing and operating adult education programs which increase the literacy skills of eligible commercial drivers so that such drivers may successfully complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986.

"(b) FEDERAL SHARE.—The Federal share of the costs of the adult education programs authorized under subsection (a) shall be 50 percent. Nothing in this subsection shall be construed to require States to meet the non-Federal share from State funds.

"(c) ELIGIBLE ENTITIES.—Entities eligible to receive a grant under this section include—

"(1) private employers employing commercial drivers in partnership with agencies, colleges, or universities described in paragraph (2);

"(2) local educational agencies, State educational agencies, colleges, universities, or community colleges;

"(3) approved apprentice training programs; and

"(4) labor organizations, the memberships of which includes commercial drivers.

"(d) REFERRAL PROGRAM.—Grantees shall refer individuals who are identified as having literacy skill problems to appropriate adult education programs as authorized under this Act.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'approved apprentice training programs' has the meaning given such term in the National Apprenticeship Act of 1937.

"(2) The term 'eligible commercial driver' means a driver licensed prior to the requirements of the Commercial Motor Vehicle Safety Act of 1986.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 for each of fiscal years 1991 and 1992.".

PART E—BOOKS FOR FAMILIES

SEC. 351. INEXPENSIVE BOOK DISTRIBUTION PROGRAM.

(a) PRIORITY.—Section 1563(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2963) is amended by—

(1) striking "and" at the end of paragraph (2);

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by adding the following new paragraph after paragraph (2):

"(3) beginning in fiscal year 1991 and each fiscal year thereafter, the contractor will give priority in the selection of additional local programs to programs and projects which serve children and students with special needs including, but not limited to—

"(A) low-income children (particularly such children in high poverty areas);

"(B) children at-risk for school failure;

"(C) disabled children;

"(D) emotionally disturbed children;

"(E) foster children;

"(F) homeless children;

"(G) migrant children;

"(H) children without access to libraries;

"(I) institutionalized or incarcerated children; and

"(J) children whose parents are institutionalized or incarcerated; and".

(b) STUDY.—Reading is Fundamental will report to the Secretary of Education annually regarding the number and description of the additional programs funded under

subsection 1563(a)(3) of the Elementary and Secondary Education Act of 1965.

SEC. 352. LIBRARY LITERACY PROGRAMS.

Section 601 of the Library Services and Construction Act (20 U.S.C. 375) is amended by inserting at the end thereof the following new subsection:

"(f) In awarding grants under this section the Secretary shall give priority to programs and services which—

"(1) will be delivered in areas of greatest need which have highest concentrations of adults who do not have a secondary education or its equivalent, and which—

"(A) have few community or financial resources to establish the program described under this section without Federal assistance, or

"(B) have low per capita income, unemployment or underemployment; and

"(2) coordinate with literacy organizations and community based organizations providing literacy services.".

PART F—STUDENTS FOR LITERACY

SEC. 361. STUDENT LITERACY CORPS.

(a) GENERAL AUTHORITY.—Section 146 of the Higher Education Act of 1965 (20 U.S.C. 1018e) is amended to read as follows:

"SEC. 146. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out the provisions of this part $11,000,000 for fiscal year 1991.".

(b) TECHNICAL AMENDMENT.—Section 144(b)(2)(B) of the Higher Education Act of 1965 (20 U.S.C. 1018c) is amended by—

(1) by striking "6" and inserting "60"; and

(2) by striking "each week of" and inserting "during".

PART G—VOLUNTEERS FOR LITERACY

SEC. 371. LITERACY CHALLENGE GRANTS.

(a) GENERAL AUTHORITY.—Part C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4991 et seq.) is amended by adding at the end thereof the following new section:

"LITERACY CHALLENGE GRANTS

"SEC. 125. (a) The Director is authorized to award challenge grants to eligible public agencies and private organizations to pay the Federal share of the costs of establishing, operating or expanding community or employee literacy programs or projects that include the use of full-time or part-time volunteers as one method of addressing illiteracy.

"(b) Each eligible organization desiring a grant under this section shall submit to the ACTION Agency an application in such form and accompanied by such information as the Director may reasonably require. Each such application shall—

"(1) describe the activities for which assistance is sought,

"(2) contain assurances that the eligible organization will provide from non-Federal sources the non-Federal share of the cost of the program or project,

"(3) provide assurances, satisfactory to the Director, that the literacy project will be operated in cooperation with other public and private agencies and organizations interested in, and qualified to, combat illiteracy in the community where the project is to be conducted, and

"(4) contain such other information and assurances as the Director may reasonably require.

"(c)(1)(A) The Federal share of the cost of a program or project authorized by this section administered by a public agency, a nonprofit organization other than an organization described in paragraph (2), or a private, for-profit organization shall not exceed—

"(i) 80 percent in the first fiscal year;

"(ii) 70 percent in the second fiscal year; and

"(iii) 60 percent in the third fiscal year.

"(B) The non-Federal share paid by a private, for-profit organization shall be in cash.

"(2) The Federal share of the cost of a program or project administered by a nonprofit or community-based organization shall not exceed—

"(A) 90 percent in the first fiscal year;

"(B) 80 percent in the second fiscal year; and

"(C) 70 percent in the third fiscal year.

"(3) The non-Federal share provided by a public agency or a nonprofit or community-based organization may be provided in cash, or in kind, fairly evaluated, and may include the use of plant, equipment, and services.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 501(c) of the Domestic Volunteer Service Act of 1973) Act (42 U.S.C. 5081) is amended by—

(1) inserting "(1)" after the subsection designation; and

(2) inserting at the end thereof the following new paragraphs:

"(2) Except as provided in paragraph (3) and in addition to the amounts authorized to be appropriated pursuant to paragraph (1) there is authorized to be appropriated $2,500,000 for the fiscal year 1991 and such sums as may be necessary for each of the 1992 and 1993 for Literacy Challenge Grants under section 125.

"(3) No funds shall be appropriated pursuant to paragraph (2) in any fiscal year unless—

"(A) the funds available in such fiscal year for the VISTA Program under part A of title I are sufficient to provide the years of volunteer service specified for such fiscal year under section 501(d)(1) for the VISTA Program; and

"(B) the funds available in such fiscal year for the VISTA Literacy Corps under part A of title I are sufficient to provide at least the same years of volunteer service as were provided in the fiscal year preceding such fiscal year.".

PART H—LITERACY FOR INCARCERATED INDIVIDUALS

SEC. 387. MANDATORY EDUCATION FOR INCARCERATED ADULTS.

Section 321 of the Adult Education Act (20 U.S.C. 1203) is amended—

(1) by striking "From" and inserting the following:

"(a) PROGRAM AUTHORIZED.—Subject to subsection (b), from"; and

(2) by adding at the end the following:

"(b) MANDATORY LITERACY PROGRAM.—(1) Before the expiration of the 2-year period beginning on the date of the enactment of the Equity and Excellence in Education Act of 1990, each State correctional system and each local jail or detention center with an inmate population shall have in effect a mandatory functional literacy program in at least 1 major correctional facility.

"(2) Provided that adequate funds are available before the expiration of the 5-year period beginning on the date of the enactment of the Equity and Excellence in Education Act of 1990, each State correctional system and each local jail or detention center with an over 150 inmate population shall have in effect a functional literacy program in each correctional facility.

"(3) Each mandatory functional literacy program required by paragraphs (1) and (2) shall include—

"(A) a requirement that each individual incarcerated in a State corrections system, or in a local jail or detention center with an over 150 inmate population, who is serving a sentence of at least 1 year, and who is not functionally literate participate in such program until such individual—

"(i) achieves functional literacy;

"(ii) is granted parole;

"(iii) completes his or her sentence; or

"(iv) is released pursuant to a court order;

"(B) a prohibition on granting parole to any individual described in subparagraph (A) who refuses to participate in such program;

"(C) adequate opportunities for appropriate educational services and testing of all inmates for functional literacy upon reception; and

"(D) an inmate participation incentive program which may include—

"(i) better housing opportunities;

"(ii) monetary incentives for achievement; and

"(iii) positive reports from the education department to the parole authorities for inmates who participate and progress in the literacy program.

"(4) For purposes of this subsection, the term 'functional literacy' means either—

"(A) an eighth grade equivalence in reading on a nationally recognized standardized test;

"(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

"(C) a combination of subparagraphs (A) and (B).

"(5) Any individual serving a life sentence without parole, or who is terminally ill, or under a sentence of death shall not be required to participate in a mandatory functional literacy program.

"(6) The Secretary shall waive the application of paragraph (3)(B) in any case in which a court order requires early release of an individual due to a constitutional consideration.

"(7) Each State facility and jail required to participate in this program shall make an annual report to the Secretary on the results of its mandatory literacy program. Such report shall include the—

"(A) number of individuals tested for eligibility;

"(B) number of individuals eligible for the program;

"(C) number of individuals participating in the program;

"(D) numbers of hours of instruction per week; and

"(E) sample data on achievement of students.

"(8) Parole agencies are encouraged to make educational recommendations for those being released who do not have a marketable job skill or a high school diploma.

"(9) Jails with less than a 150 inmate population are encouraged to develop mandatory functional literacy programs as described in paragraph (3).".

TITLE IV—TEACHER TRAINING

SEC. 401. SHORT TITLE.

This title may be cited as the "Teachers Act".

SEC. 402. FINDINGS.

The Congress finds that—

(1) the quality of the Nation's schools depends primarily on the men and women who teach in such schools;

(2) the United States will need 2,500,000 new teachers between 1990 and 2000, yet only 100,000 teachers per year are prepared for licensure;

(3) talented individuals interested in teaching need to be encouraged to maintain their interest, and will need support in entering and paying for college;

(4) the status of the teaching profession must be raised through increased recognition and professional opportunities for teachers so that the best teachers remain in the classroom and talented individuals are attracted to teaching;

(5) efforts must be made to direct the supply of teachers to areas of need;

(6) there are shortages of teachers with specialized kinds of training, including early childhood education, bilingual education, and special education and related services;

(7) there are severe shortages of minority teachers, as demonstrated by—

(A) only 10 percent of the Nation's teaching force are Black, Hispanic, Native American or Asian American, while more than 30 percent of the Nation's school children are Black, Hispanic, Native American or Asian American;

(B) in urban areas, minorities comprise 70 percent of the students, but only 32 percent of the teachers; and

(C) under current trends, by the year 2000, minority students will comprise more than one-third of elementary and secondary school enrollments nationally, but only 5 percent of teachers;

(8) the lack of role models for minority children and children with disabilities hampers the academic progress of all children;

(9) traditional routes to the teaching profession have not encouraged enough minorities and individuals with disabilities to enter the teaching profession;

(10) significant efforts must be made to increase the number of minority teachers, and to overcome additional barriers to such goals;

(11) the United States is falling far behind other industrial nations in educational achievements, as demonstrated by students in the United States scoring lower on math and science tests than such student's counterparts in other industrial countries, and students in the United States ranking last in biology, next to last in chemistry, and close to the bottom in physics;

(12) young people complete school with little or no understanding of history and the rights and responsibilities of citizenship, yet the preservation of our Nation's freedom depends on a knowledgeable and reasoned commitment to basic democratic values by students, and informed and responsible participation in government by the public;

(13) the quality of education provided in our Nation's schools has a direct impact upon the prosperity, productivity, and well-being of the Nation as a whole; and

(14) the Federal Government has a leadership role in leading the charge for renewed public commitment to the support of teachers and teacher training.

PART A—PERKINS LOANS AND DOUGLAS TEACHER SCHOLARSHIPS

SEC. 411. PERKINS LOAN CANCELLATION.

Section 465 of the Act is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULES.—(1) If the list of schools in which a teacher may perform service pursuant to subparagraph (A) of paragraph (2) of subsection (a) is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make such service determination.

"(2) Any teacher who performs service in a school which—

"(A) meets the requirements of subparagraph (A) of paragraph (2) of subsection (a) in any year; and

"(B) in a subsequent year fails to meet the requirements of such subparagraph,

may continue to teach in such school and shall be eligible for loan cancellation pursuant to paragraph (1) of subsection (a) in such subsequent years.".

SEC. 412. DOUGLAS TEACHER SCHOLARSHIP AUTHORIZATION OF APPROPRIATIONS.

Section 502(d)(1) of the Higher Education Act of 1965 is amended to read as follows:

"(1) For subpart 1 of part D, there are authorized to be appropriated $20,000,000 for fiscal year 1991.".

PART B—FINANCIAL ASSISTANCE FOR TEACHER CORPS AND FOR OTHER INSTITUTIONAL RECRUITMENT AND RETENTION OF INDIVIDUALS PREPARING TO ENTER THE TEACHING FORCE

SEC. 421. PURPOSE.

It is the purpose of this part to authorize a grant program to provide financial assistance to institutions of higher education for the establishment of a Teacher Corps and for new and innovative programs to recruit and retain students, especially minority and language minority students, preparing to enter the teaching profession.

SEC. 422. GENERAL AUTHORITY.

The Secretary shall allocate funds under this part to State agencies for the establishment of a Teacher Corps and for grants for new and innovative programs, in accordance with the requirements of this part, to institutions of higher education submitting applications that meet the requirements of section 424(a) and plans that meet the requirements of section 424(b).

SEC. 423. ALLOCATION OF FUNDS.

(a) ALLOCATION OF FUNDS TO STATE AGENCIES.—

(1) ALLOCATION FORMULA.—The Secretary shall allocate funds appropriated under section 430 for any fiscal year among States entering into agreements with the Secretary that meet the requirements of paragraph (2). Such allocation shall be made in accordance with an allocation formula which the Secretary shall prescribe by regulation. Such formula shall provide for an equitable distribution of such funds among the States and shall—

(A) take into account the number of institutions in the States that are eligible for grant priority under subsection (b)(2) and the number of students enrolled in such institutions;

(B) take into account evidence of teacher shortages; and

(C) provide a minimum amount for each State that is sufficient to fund grants of sufficient size to operate at least one effective grantee program.

(2) STATE AGREEMENTS.—Any State desiring to obtain an allocation under paragraph (1) shall enter into an agreement with the Secretary in such form and containing such information and assurances as the Secretary may reasonably require by regulation for the effective administration by the State of the grant program under this part. Such agreement shall, at a minimum—

(A) designate either the State educational agency or the State higher educational agency to administer the grant program under subsection (b);

(B) provide for the close coordination of the program between the State educational agency and State higher educational agency;

(C) provide for the selection of grant recipients in accordance with subsection (b) and (c); and

(D) provide (i) for such fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement and accounting for grant funds, and (ii) for the making of such reports, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform the functions required by this part.

(b) INSTITUTIONAL AWARD.—With 80 percent of the amount allocated under subsection (a), the State agency shall award grants to institutions of higher education located in such State. In making such awards, the State agency shall—

(1) evaluate the applications and plans submitted by such institutions in accordance with such competitive criteria as the Secretary shall prescribe by regulation;

(2) give priority to the applications and plans submitted by—

(A) 2-year and baccalaureate degree granting institutions, with significant minority populations, which are eligible institutions under title III of the Higher Education Act of 1965;

(B) institutions of higher education which have prepared and are preparing substantial numbers of teachers for service in rural schools, geographically isolated areas, or inner city areas;

(C) institutions which have large numbers of Pell Grant recipients; and

(D) baccalaureate degree granting institutions of higher education that will provide Teacher Corps members transferring from community and junior colleges with Teacher Corps scholarships.

(c) LOCAL EDUCATIONAL AGENCY AWARD.—With 20 percent of the amount allocated under subsection (a), the State educational agency shall award grants to local educational agencies located in such State to establish or expand induction and mentor programs in accordance with this part. In making such awards, the State educational agency shall give priority in awarding grants to local educational agencies with the greatest proportion of disadvantaged students.

(d) SPECIAL RULE.—The State educational agency, in cooperation with local educational agencies, shall inform Teacher Corps members of areas with teacher shortages which have induction programs for new teachers.

SEC. 424. INSTITUTION OF HIGHER EDUCATION USE OF FUNDS; APPLICATIONS AND PLANS.

(a) APPLICATION.—Any institution of higher education desiring to obtain a grant under this part shall submit an application to the State agency designated under section 423(a)(2)(A) at such time, in such form and containing or accompanied by such information or assurances as the Secretary may require by regulation.

(b) PLANS.—Each institution of higher education desiring to obtain a grant under this part shall—

(1) prepare, develop, update, and submit to such State agency a plan which will enhance the recruitment and retention of students seeking careers in teaching, with a priority to—

(A) individuals from disadvantaged backgrounds, including racial, ethnic and language minorities and individuals with disabilities, who are underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach;

(B) individuals who qualify and have need for financial assistance and who demonstrate high academic achievement and potential for success in the teaching profession;

(2) include in such plan—

(A) specific recruitment strategies for reaching individuals in secondary schools, community colleges, other careers, or other agencies and institutions from which candidates are to be drawn;

(B) specific retention strategies and activities, such as preinduction, summer sessions, awareness in instructional technology, field trips, academic support services, including internships and mentoring programs and similar activities;

(C) specific recruitment and retention strategies developed by the institution of higher education with one or more local educational agencies, community colleges, or other agencies or institutions from which candidates are to be drawn;

(D) one or more adopted agreements, or a description of progress toward adoption of such agreements, between the institution of higher education and community colleges which (i) assure that transfer students will receive course credit and not be burdened with additional course requirements which impede or alter the normal sequence and graduation process, and (ii) describe the available financial assistance for which transfer students may be eligible;

(E) specific methods by which the institution of higher education will be working with local educational agencies to assist prospective graduates with job placement upon meeting all graduation requirements;

(F) the goals and objectives which are to be used to indicate the degree of success being obtained by the grant recipient in its program under this part, including specific timelines; and

(G) the special plans, if any, which will assure that students are being prepared for careers in rural or geographically isolated communities or inner city areas;

(H) a description of coordination between the activities of the Teacher Corps and other teacher recruitment or retention activities;

(3) develop and implement such plan after consultation and in coordination with local nonprofit agencies that the institution determines have the capability to assist the institution in recruitment and retention activities under this part;

(4) describe how the institution of higher education will develop, implement, and administer a Teacher Corps scholarship program in accordance with this part.

(c) USE OF FUNDS.—An institution of higher education may use funds provided under this part only for the conduct of activities that are specifically described in the plan submitted in accordance with subsection (b) of this section. Not less than 35 percent of funds received by any institution of higher education under section 423(b) shall be used for the purposes described in subsection (b)(4) of this section.

SEC. 425. TEACHER CORPS; SCHOLARSHIP PROGRAM.

(a) DESIGNATION.—(1) A scholarship awarded under this part shall be referred to as a "Teacher Corps scholarship".

(2) A recipient of a scholarship under this part shall be referred to as a "Teacher Corps member".

(b) LIMITATIONS ON AMOUNT AND DURATION.—Subject to subsection (h), each Teacher Corps member shall receive a $5,000 scholarship for each academic year of postsecondary education, except that no individual shall receive scholarship assistance for more than 3 years of postsecondary education (including post-baccalaureate), as determined by the institution of higher education in accordance with subsection (h) of this section.

(c) ELIGIBILITY.—(1) An individual is eligible to receive Teacher Corps scholarships for a maximum of 3 years during enrollment in any of the following programs of study, or a combination thereof:

(A) a program of study leading to a baccalaureate or associate's degree;

(B) a 1- or 2-year post-baccalaureate program of study leading to a masters or specialist degree or a teaching certificate; or

(C) a 2-year program of study leading to an associate's degree in early childhood education or early childhood development, or a 1-year program of study leading to a child development associate credential.

(2) An individual pursuing a program of study described in paragraph (1)(B) is eligible to receive a Teacher Corps scholarship during any of the first 3 years that such individual is employed as a teacher to defray the costs of pursuing such post-baccalaureate instruction.

(d) ADDITIONAL ELIGIBILITY.—Teacher Corps scholarships may also be provided to individuals studying or intending to study to become school psychologists, school social workers, school counselors, and school library media specialists.

(e) SPECIAL CONSIDERATION.—The institution of higher education shall give special consideration in the selection of Teacher Corps members to individuals who—

(1) intend to teach or provide related services to students with disabilities;

(2) intend to teach limited English proficient students; or

(3) intend to teach preschool age children.

(f) CRITERIA.—The institution of higher education shall establish criteria for the selection of Teacher Corps members that will assist in attracting highly qualified individuals to teaching, and in meeting the needs of States in addressing teacher shortages, including—

(1) in the case of students or recent graduates, strong academic promise, or in other cases contributions which can be made by individuals working in other careers; and

(2) a demonstrated interest in teaching, or skill or professional experience in substantive fields of expertise in which the State is experiencing teacher shortages.

(g) CONSIDERATION OF AWARD IN OTHER PROGRAMS.—Each Teacher Corps scholarship awarded pursuant to this part shall be considered in determining eligibility for student assistance under title IV of the Higher Education Act of 1965.

(h) ASSISTANCE NOT TO EXCEED NEED.—Each Teacher Corps scholarship, when added to assistance received under title IV of the Higher Education Act of 1965, if any, shall not exceed the cost of attendance, as defined in section 472 of such Act, at the institution the individual is attending. If the amount of the Teacher Corps scholarship and assistance received under title IV of such Act, exceeds the cost of attendance, loans received under parts B, D, or E of such title shall be reduced by an amount equal to the amount by which the combined awards exceed the cost of attendance.

SEC. 426. TEACHER CORPS; SCHOLARSHIP CONDITIONS.

(a) SCHOLARSHIP AGREEMENT.—(1) Each individual receiving a scholarship under this part shall enter into a written agreement with the institution of higher education which shall provide assurances that each such individual—

(A) will pursue a course of study which meets State requirements for teacher preparation;

(B) will maintain satisfactory academic progress and participate in teaching-related activities while in undergraduate or post-baccalaureate programs;

(C) will work as a teacher or other eligible school professional upon completion of such individual's education for 5 years in a school which qualifies under section 465(a)(2)(A) of the Higher Education Act of 1965 for loan cancellation for Perkins loan recipients who teach in such schools, except that Teacher Corps members may transfer to another such school in a local educational agency with a induction program upon approval of the sending and receiving local educational agency;

(D) will repay all or part of a Teacher Corps scholarship received under section 425(b), plus interest and, if applicable, reasonable collection fees, in compliance with procedures defined by the institution of higher education under subsection (c), in the event that the conditions of subparagraph (C) are not complied with, except as provided for in subsections (c)(2) or (d);

(E) at least during the first year of employment, will participate in an induction program which includes working with a mentor teacher selected by the local educational agency in which the Teacher Corps member is employed and who, to the extent practicable, has the same substantive field of expertise as the Teacher Corps member;

(F) who is not enrolled in a program of study as set forth in section 425(c)(1)(C) will obtain full State teacher certification within 3 years of employment as a teacher or as soon as possible thereafter as State law requires;

(G) will, subject to approval of the local educational agency, participate in an induction program for new teachers during the fifth year of employment, by serving as a mentor to new Teacher Corps members, or to other new teachers, or by making some other contribution to the induction program; and

(H) understands such individual's obligation to repay such scholarships upon failure to comply with the conditions of the scholarship.

(2) For the purpose of paragraph (1)(C) of this subsection and subsection (b), section 465(a)(2)(A) of the Higher Education Act of 1965 shall be applied by substituting "25 percent" for "50 percent".

(b) SPECIAL RULES.—(1) If the list of schools in which a teacher may perform service pursuant to section 465(a)(2)(A) of the Higher Education Act of 1965 is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make such service determination.

(2) Any teacher who performs service pursuant to the provisions of subsection (a)(1)(C) in a school which—

(A) meets the requirements of section 465(a)(2)(A) of the Higher Education Act of 1965 in any year; and

(B) in a subsequent year fails to meet the requirements of such subparagraph,

may continue to teach in such school and shall continue to be eligible for a scholarship under this part.

(c) SCHOLARSHIP REPAYMENT.—(1) Individuals found by the institution of higher edu-

cation to be in noncompliance with the agreement entered into under subsection (a) shall be required to repay to the institution of higher education a pro rata amount of the scholarship awards received, plus interest at the highest rate applicable to loans under part B of title IV of the Higher Education Act of 1965 and, where applicable, reasonable collection fees.

(2) An individual shall not be considered to be in violation of the agreement entered into pursuant to subsection (a) during any period in which such individual meets the exception to repayment provisions set forth in section 558(a)(1), 558(a)(2), 558(a)(3) or 558(b) of the Higher Education Act of 1965, or if the individual dies.

(3) If a portion of scholarship is repaid under this subsection in any year, the entire amount of interest on such portion of such scholarship which accrues for such year shall be repaid.

(4) Any repayments of scholarships made to the institution of higher education pursuant to the provisions of this section shall be used by the institution of higher education to award additional scholarships in accordance with the provisions of this part.

(d) WAIVER.—The institution of higher education may provide for the partial or total waiver or suspension of any service obligation or repayment by an individual who received a Teacher Corps scholarship whenever compliance by such individual is impossible or would involve extreme hardship to such individual, or if enforcement of such obligation with respect to such individual would be unconscionable.

SEC. 427. TEACHER CORPS INDUCTION PROGRAM: APPLICATION AND USE OF FUNDS.

(a) APPLICATION.—Each local educational agency desiring a grant under this part shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require. Each such application shall describe the induction program for new Teacher Corps members and other new teachers which will be established, expanded, or both, with funds made available under this part.

(b) USE OF FUNDS.—Each local educational agency receiving a grant under this part may use such funds to—

(1) establish, operate, expand and evaluate induction programs for new Teacher Corps members and other new teachers, including—

(A) orientation;

(B) using mentor teachers to work closely with new teachers;

(C) curriculum guidance; and

(D) increasing the preparedness of all classroom teachers for the participation in the classrooms of such teachers, of particular populations of students, such as disadvantaged students, students with disabilities, students who are limited English proficient, and students from diverse cultural backgrounds; and

(2) ensure that Teacher Corps members participate in an induction program for a minimum of one year, including working with a mentor teacher designated by the local educational agency.

(c) INDUCTION PROGRAMS.—The induction programs described in subsection (b)(1) may be developed in cooperation with institutions of higher education.

SEC. 428. SECRETARY'S RESPONSIBILITIES.

The Secretary shall pursuant to this part—

(1) disseminate information nationally about the availability of scholarships under this part to individuals leaving the armed services; and

(2) conduct activities, with the cooperation of the State educational agency, which foster communication among, and bring together, members of the Teacher Corps including activities such as written communications, meetings, or training sessions.

SEC. 429. REPORTS AND EVALUATION.

(a) REPORTS.—(1) Any institution of higher education receiving a grant under this part shall submit to the Secretary an annual report and a final report containing such information as the Secretary may reasonably require—

(A) to determine whether the institution has attained the goals and objectives (including timelines) set forth in its plan under section 424(b)(2)(F); and

(B) to evaluate the success of the programs under this part in achieving the purposes of this part.

(2) Any local educational agency receiving a grant under this part shall submit to the Secretary a biennial report containing such information as the Secretary may reasonably require—

(A) to determine whether the institution has attained the objectives (including timelines) set forth in its plan under section 424(b)(2); and

(B) to evaluate the success of the programs under this part in achieving the purposes of this part.

(3) Any local educational agency receiving a grant under this part shall, before the end of the grant period, conduct an independent evaluation of programs conducted with funds provided under this part to determine the impact of induction and mentor programs on teacher retention.

(b) EVALUATION.—The Secretary shall prepare and submit to the Congress, not later than the 3rd and 5th years after the date of enactment of this Act, an evaluation of the effectiveness of the program authorized by this part in attaining the purpose of this part. Such report shall contain any recommendations the Secretary considers appropriate for changes in such program.

SEC. 430. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part $70,000,000 for fiscal year 1991 and such sums as may be necessary for each of the 4 succeeding fiscal years.

PART C—ACADEMIC AREAS OF NATIONAL IMPORTANCE

Subpart 1—Foreign Languages

SEC. 431. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) students in the United States have demonstrated deficiencies in knowledge of foreign languages;

(2) the Federal Government has a vested interest in ensuring that all students learn about the diverse cultural heritage of the Nation and the world community so that the Nation's ability to compete in the global marketplace is preserved; and

(3) the future economic welfare and national security of the United States will substantially depend upon our ability to educate our citizens to communicate in other languages, yet only 17 percent of public elementary schools offer any form of language instruction.

(b) STATEMENT OF RESPONSIBILITY.—It is the responsibility of the Federal Government to—

(1) expand foreign language programs in elementary schools, secondary schools, and institutions of higher education; and

(2) equip students with the necessary language skills for productive employment in the global marketplace.

SEC. 432. STAR SCHOOLS PROGRAM APPLICATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 903(b) of the Star Schools Program Assistance Act is amended by inserting at the end thereof the following new paragraph:

"(4) There are authorized to be appropriated for fiscal year 1993 such sums as may be necessary to carry out the provisions of this Act.".

(b) APPLICATION.—Section 905(b)(2) of the Star Schools Program Assistance Act is amended to read as follows:

"(2) describe, in the case of an application for assistance for instructional programming, the types of programming which will be developed to enhance instruction and training, and provide assurances that such programming will be designed in consultation with teachers of the applicable subject matter and grade level;".

(c) COORDINATION.—Any Federal agency operating a star schools program shall coordinate such program with the Department of Education.

SEC. 433. DEMONSTRATION GRANTS FOR CRITICAL LANGUAGE AND AREA STUDIES.

(a) PROGRAM AUTHORITY.—The Secretary is authorized to make demonstration grants to eligible consortia to operate critical languages and area studies programs, develop and acquire educational equipment and materials, and develop teacher training programs, texts, curriculum, and other activities designed to improve and expand the instruction of foreign languages at elementary and secondary schools across the Nation.

(b) GRANT LIMITATION.—No grant under this section shall exceed $2,000,000 to any consortium in any fiscal year, but shall be of sufficient size, scope and quality for a program of comprehensive instruction of foreign languages.

(c) SPECIAL RULES.—(1) In awarding grants under this section, the Secretary shall give priority to consortia with demonstrated, proven effectiveness in the field of critical language and area studies and which have been in existence for 1 year prior to applying for a grant under this section.

(2) In awarding grants under this section, the Secretary, in accordance with the provisions of paragraph (1), shall take into consideration providing an equitable geographic distribution of such grants among the regions of the United States.

(3) Each eligible consortium receiving a grant under this section shall include in the activities assisted pursuant to such grant, a study abroad or cultural exchange program.

(d) ELIGIBLE CONSORTIA.—(1) For the purposes of this section, the term "eligible consortium" means a cooperative effort between entities in one or more States that must include at least 4 schools of which—

(A) one shall be an institution of higher education;

(B) one shall be a secondary school with experience in teaching critical foreign languages;

(C) one shall be a secondary school with experience in teaching critical foreign languages and in which at least 25 percent of the students are eligible to be counted under chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and

(D) one shall be a secondary school in which at least 25 percent of the students are eligible to be counted under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(2) Each eligible consortia described in paragraph (1) may include a not-for-profit organization to provide services not otherwise available from the entities described in paragraph (1).

(e) ADMINISTRATION.—No more than 10 percent of each grant shall be used for administrative expenses.

(f) APPLICATION.—(1) Except as provided in paragraph (2), each eligible consortia desiring a grant under this section shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may reasonably require.

(2) The State educational agency or State higher education agency responsible for the supervision of any one school participating in an eligible consortium may submit the application described in paragraph (1) on behalf of such eligible consortium.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1992 and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995 to carry out the provisions of this section.

Subpart 2—Training and Instructional Materials

SEC. 436. TRAINING OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) GRANTS AUTHORIZED.—The Secretary is authorized to provide grants to institutions of higher education or nonprofit organizations of demonstrated effectiveness to develop innovative and model programs that integrate foreign language and culture, democracy and civic education, geography, and international studies into practicing and preservice elementary school teacher education and, after the needs of elementary school teachers have been met, into practicing and preservice secondary school teacher education.

(b) PROPOSALS.—To receive a grant under this section, an institution of higher education, on behalf of its school or department of education, and in cooperation with a liberal arts department, shall—

(1) submit a proposal to the Secretary at such time and containing such information as the Secretary shall require; and

(2) submit a copy of the proposal for review to the appropriate State educational agency or agencies that administer elementary, secondary, and postsecondary programs.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $8,000,000 for each of the fiscal years 1991, 1992, and 1993.

SEC. 437. DEVELOPMENT OF FOREIGN LANGUAGE AND CULTURE INSTRUCTIONAL MATERIALS.

(a) GRANTS AUTHORIZED.—The Secretary of Education is authorized to provide grants on a competitive basis to qualified State and local educational agencies, institutions of higher education, private nonprofit foreign language organizations, nonprofit education associations, or a consortium thereof, to enable such entity or entities to act as a resource center for—

(1) coordinating the development of, and disseminate, foreign language and culture instructional material, including children's literature in foreign languages, videotapes, computer software, and teacher's instructional kits relating to international study; and

(2) encouraging the expanded use of technology in teaching foreign languages and culture at the elementary school level and, when the needs of elementary schools have been met, at the secondary school level, with a particular emphasis on expanding the use of technology in teaching foreign languages and culture at elementary and secondary schools that have proportionally fewer resources available for teaching foreign languages and cultures, including urban and rural areas.

(b) COORDINATION.—In developing materials and technologies under this section, the Secretary shall, where appropriate, make use of materials and technologies developed under the Star Schools Assistance Program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $4,000,000 for each of the fiscal years 1991, 1992, and 1993.

PART D—NATIONAL FOUNDATION FOR EXCELLENCE

SEC. 441. SHORT TITLE.

This part may be cited as the "National Foundation for Excellence Act".

SEC. 442. FOUNDATION AUTHORIZED.

There is established a National Foundation for Excellence (hereafter in this part referred to as the "Foundation").

SEC. 443. NATIONAL FOUNDATION FOR EXCELLENCE TRUST FUND.

(a) ESTABLISHMENT.—There is hereby established within the Treasury of the United States a Trust Fund to be known as the National Foundation for Excellence Trust Fund (hereafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be appropriated to the Trust Fund pursuant to the authority of section 450.

(b) TRUSTEE AND REPORT.—(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Ways and Means and Education and Labor of the House of Representatives—

(A) on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted; and

(B) on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted.

Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(c) USE OF TRUST FUNDS.—(1)(A) Amounts in the Trust Fund shall be available to the Foundation to enable the Foundation to award scholarships in accordance with the provisions of this part.

(B) Amounts in the Trust Fund shall only be available to the Foundation after the Foundation has obtained the non-Federal share of the scholarships to be awarded.

(2) In fiscal year 1993 and succeeding fiscal years, amounts in the Trust Fund shall be available to the Secretary, in equal amounts, to carry out the provisions of subpart 1 of part D of title V of the Higher Education Act of 1965, and section 425 of this Act, respectively.

SEC. 444. NATIONAL FOUNDATION FOR EXCELLENCE BOARD.

(a) IN GENERAL.—There is established a National Foundation for Excellence Board (hereafter in this part referred to as the "Board").

(b) COMPOSITION.—The Board shall be composed of 20 members as follows:

(1) 11 members appointed by the President, of which—

(A) at least 4 such members shall have 10 years of experience in education; and

(B) at least 2 of the members described in subparagraph (A) shall be classroom teachers;

(2) 1 member of the Senate appointed by the Majority Leader of the Senate;

(3) 1 member of the Senate appointed by the Minority Leader of the Senate;

(4) 1 member of the House of Representatives appointed by the Speaker of the House of Representatives;

(5) 1 member of the House of Representatives appointed by the Minority Leader of the House of Representatives;

(6) 1 individual appointed by the Majority Leader of the Senate;

(7) 1 individual appointed by the Minority Leader of the Senate;

(8) 1 individual appointed by the Speaker of the House of Representatives;

(9) 1 individual appointed by the Minority Leader of the House of Representatives; and

(10) the Executive Director of the Foundation, who shall serve as an ex officio, nonvoting member of the Board.

(c) FUNCTIONS.—The Board shall establish general policies with respect to the functions of the Foundation under this part including—

(1) guidelines for awarding scholarships to eligible individuals; and

(2) procedures for the approval of applications submitted pursuant to section 445.

(d) EXECUTIVE DIRECTOR.—(1) The Executive Director of the Foundation shall be selected by the Board and shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board.

(2) The Executive Director of the Foundation shall be compensated at the rate specified for employees in grade 18 of the General Schedule set forth in section 5332 of title 5 of the United States Code.

(e) EXPENSES AND TRAVEL.—(1) Members of the Board shall be reimbursed for expenses incurred while engaged in the business of the Board.

(2) Members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed in Government service.

(f) AUTHORITY TO APPOINT COMMITTEES.—The Foundation may appoint committees to carry out the provisions of this part.

SEC. 445. SCHOLARSHIPS.

(a) IN GENERAL.—From amounts available pursuant to section 443(c), the Foundation shall pay the Federal share of awarding scholarships to eligible individuals to enable

such eligible individuals to pursue careers in teaching.

(b) FEDERAL SHARE.—The Federal share shall be 50 percent.

(c) ELIGIBLE INDIVIDUALS.—For the purpose of this part the term "eligible individual" means an individual who—

(1) has received, or is a finalist for, a Paul Douglas Scholarship or Teacher Corps Scholarship; or

(2) shows exceptional talent in a particular field or as an overall student and who meets the eligibility requirements for either a Paul Douglas Scholarship or Teacher Corps Scholarship, as determined by the Foundation.

(d) ELIGIBILITY.—(1) Except as provided in paragraph (2), the Foundation shall award scholarships under this part only to eligible individuals who are eligible to receive a Stafford loan.

(2) If in any fiscal year the Foundation has awarded scholarships to all applicants who are described in paragraph (1), then the Foundation may award scholarships to eligible individuals in such fiscal year on the basis of criteria established by the Foundation.

(e) PRIORITY.—In awarding scholarships under this part among equally qualified eligible individuals, as determined by the Board, the Foundation shall give priority to eligible individuals from disadvantaged backgrounds, including racial and ethnic minorities, and individuals with disabilities, who are underrepresented in the teaching professions or in the curricula areas in which such eligible individual is preparing to teach.

(f) GEOGRAPHIC DISTRIBUTION.—In awarding scholarships under this part the Foundation shall ensure an equitable geographic distribution of such scholarships.

(g) DONATIONS; SPECIAL RULE.—(1) The Foundation is authorized to accept donations. Any donation received by the Foundation shall be used by the Foundation to award scholarships in accordance with the provisions of this part.

(2) The Foundation may use not more than one-third of any donation received by the Foundation pursuant to paragraph (1) to award scholarships to students in a State or locality specified by the donor.

(h) APPLICATIONS.—Each eligible individual desiring a scholarship under this part shall submit an application to the Foundation at such time, in such manner and containing or accompanied by such information as the Foundation may reasonably require.

SEC. 446. DURATION AND RELATION TO OTHER ASSISTANCE.

(a) DURATION.—Scholarships awarded under this part shall be awarded for a maximum of 4 years of undergraduate study and 2 years of graduate study.

(b) CONSIDERATION OF AWARD IN OTHER PROGRAMS.—Notwithstanding the provisions of title IV of the Higher Education Act of 1965, scholarship funds awarded pursuant to this part shall be considered in determining eligibility for student assistance under title IV of such Act.

(c) ASSISTANCE NOT TO EXCEED COST OF ATTENDANCE.—Scholarship assistance awarded under this part to any eligible individual in any fiscal year, when added to scholarship assistance received under subpart 1 of part D of the Higher Education Act of 1965 and section 425 of this Act shall not exceed the cost of attendance, as defined in section 472 of the Higher Education Act of 1965, at the institution of higher education such individual is attending. If the amount of the scholarship assistance awarded under this part and scholarship assistance received under title IV of the Higher Education Act of 1965 and under of what Act exceeds such cost of attendance, the assistance received under title IV and section 425 of this Act shall be reduced by an amount equal to the amount by which the combined awards exceed such cost of attendance.

SEC. 447. SCHOLARSHIP CONDITIONS.

Each eligible individual receiving scholarship assistance under this part shall continue to receive such scholarship payments only during such period that the eligible individual is—

(1) enrolled as a full-time student in an institution of higher education;

(2) pursuing a course of study leading to teacher certification; and

(3) maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

SEC. 448. TEACHING COMMITMENT.

(a) IN GENERAL.—Each eligible individual receiving a scholarship under this part who has entered into an agreement to teach pursuant to the provisions of section 533(b)(4) of the Higher Education Act of 1965 or section 426(a)(1)(C) shall incur no additional teaching commitment pursuant to a scholarship award received under this part.

(b) SPECIAL RULE.—Each eligible individual who receives a scholarship under this part and who has not entered into an agreement to teach pursuant to the provisions of section 553(b)(4) of the Higher Education Act of 1965 or section 426(a)(1)(C) of this Act shall enter into an agreement with the Foundation. Each such agreement shall require that the eligible individual teach in an elementary or secondary school described in section 426(a)(1)(C) in accordance with the provisions of section 426(a)(2) for a period of at least 2 years and not more than 6 years, as determined by the Foundation.

SEC. 449. SCHOLARSHIP REPAYMENT PROVISIONS.

(a) REPAYMENT REQUIRED.—An eligible individual found by the Foundation to be in noncompliance with the agreement entered into under section 448(b) shall be required to repay to the Foundation a pro rata amount of the scholarship awards received, plus interest (but in no event at an interest rate higher than the rate applicable to loans in the applicable period under title IV of the Higher Education Act of 1965) and, where applicable, reasonable collection fees, on a schedule and at a rate of interest to be prescribed by the Foundation.

(b) EXCEPTIONS TO REPAYMENT PROVISIONS.—An eligible individual shall not be considered to be in violation of the agreement entered into pursuant to section 448(b) during any period in which such individual meets the exception to repayment provisions set forth in section 558(a)(1), 558(a)(2), 558(a)(3), or 558(b) of the Higher Education Act of 1965, or if the individual dies.

(c) USE OF REPAYMENTS.—Any repayments made to the Foundation pursuant to the provisions of this section shall be used by the Foundation to award additional scholarships in accordance with the provisions of this part.

(d) WAIVER.—The Secretary may provide for the partial or total waiver or suspension of any service obligation or repayment by an individual who received a scholarship under this part whenever compliance by such individual is impossible or would involve extreme hardship to such individual, or if enforcement of such obligation with respect to such individual would be unconscionable.

SEC. 450. AUTHORIZATION OF APPROPRIATION.

(a) IN GENERAL.—There are authorized to be appropriated $500,000 for fiscal year 1992 to carry out the provisions of this part.

(b) SPECIAL RULE.—Section 414 of the General Education Provisions Act shall not apply to the provisions of this part.

PART E—NATIONAL WRITING PROJECT

SEC. 451. NATIONAL WRITING PROJECT.

(a) AUTHORIZATION.—The Secretary is authorized to make a grant to the National Writing Project (hereafter in this section referred to as the "grantee"), a nonprofit educational organization which has as its primary purpose the improvement of the quality of student writing and learning, and the teaching of writing as a learning process in the Nation's classrooms—

(1) to support and promote the establishment of teacher training programs, including the dissemination of effective practices and research findings regarding the teaching of writing and administrative activities;

(2) to support classroom research on effective teaching practice and to document student performance; and

(3) to pay the Federal share of the cost of such programs.

(b) REQUIREMENTS OF GRANT.—The grant shall provide that—

(1) the grantee will enter into contracts with institutions of higher education or other nonprofit educational providers (hereinafter referred to as "contractors") under which the contractors will agree to establish, operate, and provide the non-Federal share of the cost of teacher training programs in effective approaches and processes for the teaching of writing;

(2) funds made available by the Secretary to the grantee pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating teacher training programs as provided in paragraph (1);

(3) the grantee will meet such other conditions and standards as the Secretary determines to be necessary to assure compliance with the provisions of this part and will provide such technical assistance as may be necessary to carry out the provisions of this part; and

(4) the grantee shall coordinate the activities assisted under this section with the activities of National Professional Development Academies assisted under section 466(a) of this title.

(c) TEACHER TRAINING PROGRAMS.—The teacher training programs authorized in subsection (a) shall—

(1) be conducted during the school year and during the summer months;

(2) train teachers who teach grades kindergarten through college;

(3) select teachers to become members of a National Writing Project teacher network whose members will conduct writing workshops for other teachers in the area served by each National Writing Project site; and

(4) encourage teachers from all disciplines to participate in such teacher training programs.

(d) FEDERAL SHARE.—(1) Except as provided in paragraph (2) or (3) and for purposes of subsection (a), the term "Federal share" means, with respect to the costs of teacher training programs authorized in subsection (a), 50 percent of such costs to the contractor.

(2) The Secretary may waive the provisions of paragraph (1) on a case-by-case

basis if the National Advisory Board described in subsection (f) determines, on the basis of financial need, that such waiver is necessary.

(3) The Federal share of the costs of teacher training programs conducted pursuant to subsection (a) may not exceed $40,000 for any one contractor, or $200,000 for a statewide program administered by any one contractor in at least 5 sites throughout the State.

(4) For the purposes of paragraph (1), the costs of teacher programs do not include the administrative costs, publication cost, or the cost of providing technical assistance to the grantee.

(e) CLASSROOM TEACHER GRANTS.—(1) The National Writing Project may reserve an amount not to exceed 5 percent of the amount appropriated pursuant to the authority of this section to make grants, on a competitive basis, to elementary and secondary school teachers to enable such teachers to—

(A) conduct classroom research;

(B) publish models of student writing;

(C) conduct research regarding effective practices to improve the teaching of writing; and

(D) conduct other activities to improve the teaching and uses of writing.

(2) Grants awarded pursuant to paragraph (1) shall be used to supplement and not supplant State and local funds available for the purposes set forth in paragraph (1).

(3) Each grant awarded pursuant to this subsection shall not exceed $2,000.

(f) NATIONAL ADVISORY BOARD.—(1) The National Writing Project shall establish and operate a National Advisory Board.

(2) The National Advisory Board established pursuant to subsection (a) shall consist of—

(A) national educational leaders;

(B) leaders in the field of writing; and

(C) such other individuals as the National Writing Project deems necessary.

(3) The National Advisory Board established pursuant to subsection (a) shall—

(A) advise the National Writing Project on national issues related to student writing and the teaching of writing;

(B) review the activities and programs of the National Writing Project; and

(C) support the continued development of the National Writing Project.

(g) EVALUATION.—The National Writing Project may reserve up to $100,000 from the amount authorized to be appropriated pursuant to the authority of this section to evaluate the teacher training programs conducted pursuant to this Act. The results of such evaluation shall be made available to the appropriate committees of the Congress.

(h) RESEARCH AND DEVELOPMENT ACTIVITIES.—(1) From amounts available to carry out the provisions of this section, the Secretary, through the Office of Educational Research and Improvement, shall make grants to individuals and institutions of higher education to conduct research activities involving the teaching of writing.

(2)(A) In awarding grants pursuant to paragraph (1), the Secretary shall give priority to junior researchers.

(B) The Secretary shall award not less than 25 percent of the funds received pursuant to subsection (i)(2) to junior researchers.

(C) The Secretary shall make available to the National Writing Project and other national information dissemination networks the findings of the research conducted pursuant to the authority of paragraph (1).

(i) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated for the grant to the National Writing Project, $8,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992, 1993, 1994 and 1995 to carry out the provisions of this section.

(2) There are authorized to be appropriated $500,000 for each of the fiscal years 1991, 1992, 1993, 1994 and 1995 to carry out the provisions of subsection (h).

(j) DEFINITION.—As used in this section the term "junior researcher" means a researcher at the assistant professor rank or the equivalent who has not previously received a Federal research grant.

PART F—PROFESSIONAL DEVELOPMENT ACADEMIES

SEC. 461. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) professional development academies can serve as forums for the coordination and provision of a variety of activities to meet the needs of school districts;

(2) in-service training for experienced teachers enables such teachers to keep current in their substantive fields of expertise and in the practice of teaching;

(3) in-service training enables teachers to learn new substantive fields of expertise in order to alleviate teacher shortages;

(4) in-service training provides teachers an opportunity to enhance skills in classroom management;

(5) in-service training in school districts operating new school based management and shared decisionmaking programs assists teachers, principals, and administrators to assume new responsibilities;

(6) providing experienced teachers with sabbaticals allows such teachers the opportunity to participate in professional programs and activities, and allows such teachers the opportunity to return to the classroom renewed; and

(7) professional development academies can support local school officials in restructuring and improving our Nation's schools.

(b) PURPOSE.—It is the purpose of this part to authorize a grant program to provide financial assistance to consortia of local educational agencies, institutions of higher education and other eligible entities in order to develop and provide the highest quality professional training for our existing and future workforce for our Nation's schools.

SEC. 462. DEFINITION.

(a) The program established under this part shall be referred to as the "Augustus F. Hawkins Professional Development Academies". Professional Development Academies under this part shall be known as "Augustus F. Hawkins Professional Development Academies".

(b) As used in this part the term "professional development academy" means an entity that—

(1) is an eligible applicant described in section 463(a)(3),

(2) provides in-service training and other activities described in this subpart to teachers and administrators and may include preservice training, and

(3) serves teachers, and may serve teacher aides, school administrators, school counselors, school psychologists, school social workers, and school library media specialists.

SEC. 463. ALLOCATION OF FUNDS.

(a) FORMULA GRANTS.—(1) Except as provided in subsection (d), the Secretary shall allocate an amount equal to 85 percent of the amount appropriated under section 469 for any fiscal year among State educational agencies that have entered into agreements with the Secretary that meet the requirements of section 464(a). The Secretary shall allocate such amount among such State educational agencies as follows:

(A) 65 percent of such 85 percent on the basis of each State's share of allocations under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(B) 35 percent of such 85 percent on the basis of the school-age population of the State served by such State educational agency compared to the school-age population of all States, except that no such State educational agency shall receive less than one-half of 1 percent of such 35 percent.

(2) Each State educational agency receiving an allocation under paragraph (1) shall establish one or more local professional development academies within the State. In establishing such academies, the State educational agency shall make an award to a consortium described in paragraph (3) on the basis of ranking the consortia on the following criteria:

(A) the ability of the consortia to serve areas with high densities of populations or geographically isolated areas with sparse population;

(B) the ability of the consortia to serve a region of the State;

(C) equitable geographic distribution within the State; and

(D) whether the program is of sufficient size and scope to be effective.

Upon making the award, the State educational agency shall distribute amounts to the eligible consortia on the same basis and using the same data as was used by the Secretary in making the allocation under paragraph (1).

(3) Grants under this subsection shall only be made to applicants that are consortia composed of one or more local educational agencies and (A) one or more institutions of higher education that offer teacher training programs or (B) one or more nonprofit organizations of demonstrated effectiveness in teacher training or retraining. The consortia may also include business, industry, and community colleges.

(4) The State educational agency may grant a waiver from the requirement described in paragraph (3) that the consortia include an institution of higher education to local educational agencies that are geographically isolated from such institutions if such agencies demonstrate that the inclusion of such an institution in the consortia is not feasible and that those agencies and other appropriate entities can provide the services and expertise required to conduct programs under this subpart.

(b) FEDERAL SHARE.—(1) Not more than 75 percent of the cost of any program conducted under this part shall be paid from funds made available under this part.

(2) The non-Federal portion of any such program may be provided by a local educational agency in cash or in kind.

(3) The Secretary may waive the requirement of paragraph (1) and pay not less than 75 percent nor more than 100 percent of the cost of any program conducted under this part if such requirement would impose a hardship on the local educational agency concerned.

(4) Local educational agencies are encouraged to comply with the non-Federal share requirements of paragraph (2) by providing sabbaticals to teachers in accordance with section 465(b).

(c) DURATION OF GRANT.—Each grant provided pursuant to this part to establish and operate a professional development academy shall be for a period of 5 years, and is renewable.

(d) STATE ADMINISTRATION.—Not more than 5 percent of the amount of funds allotted to each State educational agency pursuant to subsection (a) shall be available for—

(1) conducting the grant award competition;

(2) program evaluation;

(3) technical assistance; and

(4) other administrative costs.

SEC. 464. AGREEMENTS AND APPLICATIONS.

(a) STATE AGREEMENTS.—Any State educational agency desiring to obtain an allocation under section 463(a)(1) shall enter into an agreement with the Secretary in such form and containing such information and assurances as the Secretary may reasonably require by regulation for the effective administration by the State educational agency of the grant program under this part. Such agreement shall, at a minimum—

(1) provide for the allocation of funds in accordance with section 463(a)(2); and

(2) provide (A) for such fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement and accounting for grant funds, and (B) for the making of such reports, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform the functions required by this subpart.

(b) LOCAL APPLICATION.—(1) Each eligible recipient wishing to receive a grant under section 463(a)(2) shall submit an application to the appropriate State educational agency at such time, in such manner, and containing such information and assurances as the State educational agency shall reasonably require in accordance with guidelines prescribed by the Secretary.

(2) Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities, services, and programs for which assistance is sought;

(B) describe strategies for involving business and industry;

(C) provide assurances that public and private elementary and secondary school teachers in the area served by the professional development academies will be eligible to participate in the training programs;

(D) provide assurances that professional development programs will be conducted by educational professionals including teachers of demonstrated excellence;

(E) provide assurances that professional development academies will be developed and conducted with the participation of faculty from institutions of higher education or private nonprofit organizations of demonstrated effectiveness, and will be conducted in both academic course content and methods of instruction and with the participation of the schools' teachers and administrators;

(F) contain a description of how the professional development academy's activities will be coordinated with other current inservice training activities in the State;

(G) describe the provisions which will be made to allow individuals release time from their teaching or administrative responsibilities to participate in professional development academy activities;

(H) contain a description of how the professional development academy's activities will help teachers teach all students in mixed-ability classrooms;

(I) where applicable, describe how teachers and administrators from the professional development academy will be involved in the teacher training programs at institutions of higher education;

(J) provide assurances that each professional development academy will designate a leadership team composed of school administrators and elementary and secondary school classroom teachers (with no less than 50 percent of the membership being teachers) to participate in the design, development, implementation, and administration of the academy;

(K) provide for such fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement and accounting for grant funds; and

(L) provide for the making of such reports, in such form and containing such information (including information on effective models and programs), as may be reasonably necessary to enable the Secretary to perform the functions required by this part.

SEC. 465. USE OF FUNDS.

(a) LOCAL USE OF FUNDS.—Grants awarded to eligible recipients pursuant to this part may be used in a school or schools best able to provide services to teachers and administrators of at risk students to—

(1) provide professional development programs for teachers which—

(A) upgrade and strengthen knowledge of academic course content, particularly in specified subject areas and emerging technology;

(B) provide support and in-service training for local educational agencies based upon most recent research findings, successful teaching practices, and the needs articulated by the local educational agencies;

(C) coordinate research and practice, especially between professional preparation programs and current and future demands of workplace;

(D) establish interstate and intrastate networks for the purposes of this part;

(E) improve methods of instruction in content areas to—

(i) increase the preparedness of all classroom teachers for the participation of particular populations of students, such as disadvantaged students, students with disabilities, students of preschool age, students who are limited English proficient, and students from diverse cultural backgrounds, in the classrooms of such teachers;

(ii) improve teaching and classroom management skills;

(iii) provide training in new instructional techniques, methods, and practices supported by educational research findings, including instructional techniques, methods and practices supported by federally supported laboratories, centers, and other Federal agencies; and

(iv) improve teacher training in courses of study which combine one or more related subject areas;

(F) where appropriate, provide professional development programs for participants in school-based management programs, decisionmaking, and practices;

(G) strengthen bilingual educational instruction by—

(i) teaming classroom teachers with teachers trained to teach limited English proficient students for the development and implementation of instructional programs; and

(ii) operating professional development programs for bilingual teachers which include summer sessions, follow-up sessions during the school year, classroom observation and peer coaching;

(H) encourage teacher collaboration, especially among teachers of different subjects, including vocational education, physical education, and other specialties;

(I) provide guidance in the establishment of priorities for, and assistance in the coordination of, inservice and professional renewal for teachers across the full spectrum of Federal and State programs, as reflected in the consortia agreement;

(J) involve experienced teachers in the training and assessment of novice teachers including mentoring programs, teaching hospital models, and clinical supervision models;

(K) encourage participation in activities of a network of professional development academies;

(L) provide outreach to parents and greater involvement of parents in the education of their children;

(M) coordinate with other programs designed to assist in the professional development of school administrators, such as the technical assistance centers established under subpart 2 of part C of title V of the Higher Education Act of 1965; and

(N) prepare teachers for teacher examinations, including examinations of the National Board for Professional Teaching Standards, the National Teacher Examination, and other examinations.

(2) pay the costs of release time, stipends, college or university credit, curricular materials, and other necessary expenditures; and

(3) provide sabbaticals for experienced teachers in accordance with subsection (b) of this section.

(b) CAREER TEACHER CORPS.—(1) Each local educational agency may use funds under this part to select experienced classroom teachers to become members of the Career Teacher Corps. Selection of members may be made on the basis of evaluations and activities planned during the sabbatical period.

(2) Members shall be given a sabbatical from their regular duties as teachers, with salary and benefits paid by the local educational agency at the member's current rate of compensation, for up to one year. Sabbaticals may be used for study, research or academic improvement, through the professional development academy or another entity, to—

(A)(i) improve such member's knowledge base in his or her areas of expertise; or

(ii) learn a new area of expertise; and

(B) increase skills and professional ability.

(3) Special consideration in the selection of members shall be given to individuals who intend to use the sabbatical to improve or acquire skills in order to teach or provide related services to students with disabilities, limited English proficient students, or preschool-age students, and in other areas of shortage as determined by the local educational agency.

(4) Upon completion of the sabbatical and return to the classroom, such members shall be encouraged to participate in induction programs for new teachers, including Teacher Corps members, and to assist in the development of inservice training programs through the professional development academy.

SEC. 466. NATIONAL PROFESSIONAL DEVELOPMENT ACADEMIES.

(a) IN GENERAL.—The Secretary shall reserve 5 percent of the amount appropriated pursuant to the authority of section 469 in each fiscal year to make grants in accordance with the provisions of this section to

eligible recipients for the establishment and operation of National Professional Development Academies.

(b) SUBJECT AREAS AND STAFF.—(1) The Secretary shall use the funds reserved under subsection (a) to establish not more than 4 National Professional Development Academies in the following subject areas (but no more than one in any such area):

(A) basic skills and literacy instruction,

(B) civics and government,

(C) mathematics and science,

(D) foreign languages,

(E) history and geography,

(F) economics, and

(G) the arts, including art, music, and the performing arts.

(2) Academy staff shall be selected from the most accomplished and prominent scholars in the relevant fields of study and in the methodologies which prepare persons to teach in such fields of study.

(c) DURATION OF GRANT.—Each grant to establish and operate a National Professional Development Academy shall be for a period of 5 years, and is renewable.

(d) COMPETITIVE GRANT AWARDS.—The Secretary shall award grants on the basis of a competitive bidding process.

(e) SPECIAL CONSIDERATION.—In awarding grants under this part the Secretary shall give special consideration to eligible recipients that have demonstrated effectiveness in establishing and administering a national network of individuals who assist in teacher training and in-service programs at the State and local levels in the subject areas listed in subsection (b).

(f) ELIGIBLE RECIPIENTS.—(1) For the purposes of this section, the term "eligible recipient" means—

(A) an institution of higher education;

(B) a private nonprofit educational organization of demonstrated effectiveness; or

(C) a combination of the institutions or organizations set forth in subparagraphs (A) and (B) of this paragraph.

(2) The Secretary shall only award grants to eligible applicants which have demonstrated expertise in the—

(A) subject area of the National Professional Development Academy to be established and operated; and

(B) in-service training of teachers.

(g) USE OF FUNDS.—(1) Funds provided pursuant to this section shall be used to provide support services to local professional development academies including—

(A) the establishment of a national network of individuals to assist in teacher education programs in professional development academies;

(B) consulting assistance in the design and implementation of teacher education; and

(C) monthly newsletters or other methods of communicating useful information.

(2) Not more than 10 percent of the amount of funds received under this section may be used by grant recipients for administrative costs.

(h) APPLICATION.—(1) Each eligible recipient desiring a grant under this section shall submit an application to the Secretary at such time and in such manner, as the Secretary may reasonably require.

(2) Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities, services, and programs for which assistance is sought;

(B) describe how the National Professional Development Academy's time will be devoted to basic course content relevant to the particular subject field and necessary to assist local professional development academies in improving the quality of teaching in public and private elementary and secondary schools; and

(C) provide such additional assurances or information as the Secretary may reasonably require.

SEC. 467. DEMONSTRATION PROGRAMS.

(a) IN GENERAL.—The Secretary shall reserve 10 percent of the amount appropriated pursuant to the authority of section 469 in each fiscal year to carry out any one or more of the demonstration programs in this section, except that not more than $1,000,000 of such funds shall be available for the program described in subsection (g).

(b) CLASS SIZE RESEARCH AND DEMONSTRATION PROJECT.—

(1) PURPOSE.—It is the purpose of this subsection to make demonstration grants to local educational agencies having elementary and secondary schools with large classes in order to demonstrate the advantages of reducing the size of classes in such schools.

(2) FEDERAL SHARE.—The Federal share of programs under this subsection shall not exceed 50 percent, and the non-Federal share of each grant awarded under this subsection may be in cash or in kind fairly evaluated, including planned equipment or services.

(3) SELECTION CRITERIA.—The Secretary shall make grants under this subsection to local educational agencies on the basis of—

(A) the need and the ability to reduce class size in elementary or secondary schools of the local educational agency making an application under this subsection;

(B) the ability of the local educational agency to furnish the non-Federal share of the costs of the project for which assistance is sought;

(C) the ability of the local educational agency to continue the project for which assistance is sought after the termination of Federal financial assistance under this subsection; and

(D) the degree to which each application demonstrates consultation in program implementation and design with parents, teachers, school administrators, and local teacher organizations, where applicable.

(4) PRIORITY.—The Secretary shall give priority in awarding grants to applicants having applications that describe projects which involve—

(A) young students, and

(B) at-risk students.

(5) SUFFICIENT SIZE AND SCOPE REQUIRED.—The Secretary shall make grants only to applicants having applications which describe projects of sufficient size and scope to contribute to carrying out the purposes of this subsection.

(6) APPLICATION.—(A) A grant under this subsection may be made only to a local educational agency which submits an application to the Secretary at such time, in such manner and containing or accompanied by such information as the Secretary may reasonably require.

(B) The Secretary shall encourage applicants to make applications for a 3-year period.

(C) Each application submitted pursuant to this paragraph shall include—

(i) a description of the objectives to be attained with the financial assistance made available under this subsection and the manner in which funds so made available will be used to reduce class size;

(ii) a description of the steps to be taken to achieve target class sizes, including, where applicable, the acquisition of additional teaching personnel and classroom space;

(iii) a statement of the methods for the collection of data necessary for the evaluation of the impact of class size reduction programs on student achievement;

(iv) an assurance that the local educational agency will pay from non-Federal sources the non-Federal share of the costs of the project for which assistance is sought; and

(v) such additional assurances as the Secretary may reasonably require.

(7) ADMINISTRATIVE COSTS.—Not more than 10 percent of any grant under this subsection may be used for administrative expenses.

(c) NEW CAREERS FOR TEACHERS DEMONSTRATION.—

(1) STATEMENT OF PURPOSE.—It is the purpose of this subsection to establish and operate new career demonstration programs to attract minority candidates, who are in school support or paraprofessional positions or in occupations other than teaching, to careers teaching in elementary and secondary schools.

(2) PROGRAM AUTHORIZED.—

(A)(i) The Secretary is authorized to pay the Federal share of making grants to eligible recipients to enable such eligible recipients to pay the costs of establishing and operating programs to attract minority candidates to teaching careers.

(ii) The Federal share shall not exceed 50 percent.

(iii) The non-Federal share of each grant awarded under this subsection may be in cash or in kind fairly evaluated, including planned equipment or services.

(B) Each grant awarded under this subsection shall be for a period of 2 years and may be renewed for periods not to exceed 3 years.

(C) The Secretary shall award grants under this subsection on a competitive basis.

(D) In awarding grants under this subsection, the Secretary shall give priority to programs that focus on recruitment of minorities.

(E) In awarding grants under this subsection, the Secretary shall give special consideration to programs designed to identify, recruit, and certify—

(i) speakers of non-English languages who have been trained as teachers in their home country; or

(ii) individuals already employed in a local educational agency.

(3) ELIGIBLE RECIPIENT.—As used in this subsection the term 'eligible recipient' means a consortia of—

(A) one or more institutions of higher education, and

(B) one or more local educational agencies,

working in conjunction with the State educational agency, and the appropriate State or local teacher credentialing body.

(4) APPLICATION.—

(A) A grant under this subsection may be made only to an eligible recipient which submits an application to the Secretary containing or accompanied by such information as the Secretary may reasonably require.

(B) Each such application shall—

(i) describe the activities and services for which assistance is sought;

(ii) set forth the number of expected participants in each program assisted under this subsection;

(iii) demonstrate steps on a career ladder leading to the position of fully credentialed teacher, ranging from nonskilled entry posi-

tions, extending through intermediate subprofessional functions, and terminating in full professional status as a certified teacher duly recognized by the appropriate State agency;

(iv) contain assurances that advancement within such career ladders would be based on merit, but that the opportunity for attainment of higher station is available to all;

(v) demonstrate a plan for employing permanently individuals who have participated in the program at their new level of training, including individuals who terminate the program at a level below that of fully credentialed teacher;

(vi) demonstrate a plan for bringing a sizable portion of the educational program and coursework to the place of the participant's employment;

(vii) demonstrate a plan for providing academic credit for in-service training and other relevant experience as well as formal academic coursework;

(viii) provide for participation of individuals who have attained various levels of education including individuals who have not completed high school, with special consideration for such participation given to individuals already serving within the school system;

(ix) provide assurances that the program assisted under this subsection will be available to the disabled; and

(x) contain such other assurances as the Secretary may reasonably require.

(5) USE OF FUNDS.—

(A) Funds provided pursuant to this subsection may be used to—

(i) pay tuition for participants in programs established under this subsection;

(ii) pay for the release time of participants in programs assisted under this subsection;

(iii) provide stipends for child care to participants whose academic coursework takes place outside the normal workday; and

(iv) to conduct the evaluation described in section 468(b) for the program assisted under this subsection.

(B) Not more than 10 percent of any grant provided pursuant to this subsection may be used for administrative expenses.

(d) RESTRUCTURING OF SCHOOLS/SCHOOL-BASED MANAGEMENT DEMONSTRATION PROGRAM.—

(1) STATEMENT OF PURPOSE.—It is the purpose of this subsection to provide financial assistance to eligible entities to enable such eligible entities to plan or implement the restructuring of school organization, school-based management or instructional programs in elementary and secondary schools.

(2) GRANTS.—

(A) The Secretary is authorized to pay the Federal share of awarding grants to eligible entities to plan and implement the restructuring of school organization, school-based management, or instructional programs in elementary and secondary schools.

(B) The Secretary shall award grants under this subsection on a competitive basis.

(C) The Secretary shall award grants under this subsection for a period of 3 years.

(3) APPLICATION.—

(A) Each eligible entity desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(B) Each application submitted pursuant to subparagraph (A) shall—

(i) describe the activities and services for which assistance is sought; and

(ii) include a plan for widespread consultation with parents, community members, teachers, other local educational agency personnel, and the private sector in planning and implementing the restructuring of a school.

(4) RESTRUCTURING PLAN.—

(A) Each eligible entity desiring grant payments pursuant to this subsection in the second and third year of a grant period, shall prior to the second year of such grant period, submit to the Secretary for approval a plan which describes the implementation of the restructuring of the school.

(B) The plan submitted pursuant to subparagraph (A) shall—

(i) describe the activities and services for which assistance is sought;

(ii) demonstrate that in developing the restructuring plan the applicant has consulted with teachers and parents who will be affected by such plan;

(iii) demonstrate broad support for the restructuring plan in the community, including private sector involvement;

(iv) demonstrate that the restructuring plan is designed to improve the eligible entity's delivery of educational services as measured by student achievement or retention, or teacher performance or retention;

(v) demonstrate that the eligible entity will be able to continue the restructuring of the school after the termination of financial assistance;

(vi) describe the independent evaluation to be conducted in accordance with section 468 of this Act; and

(vii) demonstrate that the eligible entity is committed to and not legally prevented from undertaking the changes proposed in the plan.

(C) In awarding grants under this subsection the Secretary shall give special consideration to applications from eligible entities which describe school restructuring plans which—

(i) benefit students or a school with below average academic performance; and

(ii) benefit an eligible entity serving a large number of minority or disadvantaged students.

(D) In awarding grants under this subsection, the Secretary shall ensure that a broad geographic cross-section, including rural, urban, and suburban schools and local educational agencies, are served.

(5) USE OF FUNDS.—Funds awarded under this subsection may be used for the planning, implementation, expansion, or replication of—

(A) school-based management/shared decision making programs;

(B) programs which increase the professional status and professional satisfaction of teachers;

(C) differential staffing patterns (such as career ladders and job-sharing);

(D) incentive pay to teachers;

(E) employment of experienced teachers as mentor or master teachers;

(F) research on effective techniques to recruit, train, and reward teachers;

(G) curriculum reforms;

(H) programs of cooperative learning;

(I) models of alternative student assignment within schools;

(J) programs which increase parent and community involvement in the schools;

(K) coordinated efforts and partnerships with business, institutions of higher education, and other entities;

(L) programs of interactive learning through technology; and

(M) programs to train teachers, principals, school board members, and other individuals involved in the restructuring program.

(6) PAYMENTS.—

(A) The Secretary shall pay to each eligible entity having an application or restructuring plan approved under this subsection the Federal share of the cost of the activities described in such application or plan.

(B)(i) In the first fiscal year in which an eligible entity receives a grant payment under this subsection, such payment shall not exceed $150,000 and shall be used for planning the restructuring of a school.

(ii) In the second and third fiscal years in which an eligible entity receives a grant payment under this subsection, each such payment shall not exceed $2,000,000 and shall be used for implementing the restructuring of a school.

(iii)(I) Notwithstanding the provisions of this subsection, the Secretary may make payments for the implementation of a restructuring plan in the first fiscal year in which an eligible entity receives a grant payment under this subsection, if such eligible entity submits a restructuring plan pursuant to paragraph (4) in the first fiscal year for which a grant is sought.

(II) Each eligible entity receiving a grant payment pursuant to the provisions of subclause (I) of this clause shall not receive a grant payment which exceeds $2,000,000 in each fiscal year for which the grant is awarded.

(7) FEDERAL SHARE; NON-FEDERAL SHARE.—

(A)(i) The Federal share of each grant awarded under this subsection shall not exceed 50 percent.

(ii) The Secretary may waive the requirement of clause (i) and may pay not more than 100 percent of any payment made pursuant to paragraph (6)(B)(i) which does not exceed $5,000, if the grant applicant demonstrates a particular hardship or need.

(B)(i) The non-Federal share of each grant awarded under this subpart may be in cash or in kind fairly evaluated, including plant equipment or services.

(ii) Each eligible entity receiving a grant under this subsection shall supply at least 50 percent of the non-Federal share of each grant awarded under this subsection from nongovernmental sources.

(8) DEFINITIONS.—For the purposes of this subsection—

(A) The term "eligible entity" means—

(i) a local educational agency or consortium thereof;

(ii) an elementary or secondary school, or consortium thereof; or

(iii) a nonprofit organization, in consortium with a local education agency or school, if the Secretary determines that such nonprofit organization has a particular expertise to carry out the purpose of this subsection.

(B) The term "school-based management/shared decisionmaking" means a process by which a team of individuals is formed at a school site to make decisions regarding the management of the school. Such a team may include teachers (including representatives of professional teachers associations or organizations, where applicable), the school principal, school administrators, parents, community representatives, school employees, and students. The school-based management/shared decisionmaking team is responsible for decisions, determined by the team, which affect the school and classroom environment. Such decisions may include decisions such as—

(i) curriculum and instruction priorities which meet priorities and goals of the local educational agency, including materials and activities, organization, evaluation and assessment, while taking into account the special needs of students;

(ii) student grouping, promotion, and tracking;

(iii) school rules and discipline policies;

(iv) the scheduling and structure of the school day;

(v) the school environment;

(vi) the physical structure of school facilities;

(vii) the administrative structure of the school;

(viii) establishing standards for the hiring and evaluation of teachers and administrators;

(ix) professional development programs which will meet faculty needs;

(x) the use of non-Federal general operating funds; and

(xi) relationships with parents and community.

(e) MIDDLE SCHOOL TEACHING DEMONSTRATION PROGRAMS.—

(1) STATEMENT OF PURPOSE.—It is the purpose of this subsection to provide financial assistance to institutions of higher education which offer teacher training or retraining programs to develop model programs with a specialized focus on teaching grades 6 through 9.

(2) DEFINITIONS.—As used in this subsection—

(A) The term "developmentally appropriate" means a program that is appropriate for a child's age and all areas of an individual child's development, including educational, physical, emotional, social, cognitive, and communication.

(B) The term "middle school" means a school which enrolls students in at least two of the grades 6, 7, 8, and 9.

(3) PROGRAM AUTHORIZED.—

(A) The Secretary is authorized to make grants, on a competitive basis, to institutions of higher education to develop model programs with a specialized focus on teaching grades 6 through 9.

(B)(i) The Secretary shall ensure an equitable geographic distribution of grants awarded under this subsection.

(ii) The Secretary shall take into consideration equitable levels of funding for urban and rural areas in awarding grants under this subsection.

(C) Grants under this subsection may be awarded for a period not to exceed 3 years.

(D) Grants awarded under this subsection may not exceed $250,000 in the first year of funding.

(4) APPLICATION.—

(A) Each institution of higher education desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(B) Each application submitted pursuant to subparagraph (A) shall demonstrate that—

(i) the applicant will establish and maintain a program of teacher training or retraining designed to offer specialized preparation for individuals teaching grades 6 through 9;

(ii) the applicant has designed a program of teacher training or retraining which includes—

(I) a study of adolescent development (including cognitive, social, and emotional) with particular emphasis on early adolescent development;

(II) a study of the influence of institutions such as schools, families, and peer groups in the socialization of adolescents;

(III) information concerning the organization of schools for students in grades 6 through 9, with particular emphasis on developmentally appropriate school and classroom organization and practices;

(IV) training in at least 2 subject areas and related instructional strategies;

(V) direct experience through internships in middle grade schools under the guidance of teachers who demonstrate exemplary classroom practices;

(VI) strategies for the prevention and detection of high risk behavior, particularly drug and alcohol abuse, and for the enhancement of self esteem among adolescents;

(VII) a study of effective methods and models of presenting substance abuse information and education to adolescent students; and

(VIII) methods of encouraging parental and community involvement with middle schools; and

(iii) the program will be designed and operated with the active participation of classroom teachers and will include an in-service training component.

(5) REPORTS AND DISSEMINATION.—Each institution of higher education receiving a grant under this subsection shall submit to the Secretary such reports and other information regarding programs conducted under this subsection as the Secretary deems necessary. The Secretary shall disseminate such information to other institutions of higher education, State educational agencies, and local educational agencies.

(f) NATIONAL TEACHER JOB BANK DEMONSTRATION.—

(1) PROGRAM AUTHORIZED.—(A) The Secretary, through the Office of Educational Research and Improvement, shall contract with one or more State entities, nonprofit organizations, or institutions of higher education to pay the Federal share of the costs of establishing a Teacher Job Bank Clearinghouse which shall—

(i) assist public and private education agencies in locating qualified applicants for teaching-related positions; and

(ii) help individuals in locating teaching-related jobs or the training necessary to enter the teaching profession.

(B)(i) Each entity desiring to enter into a contract with the Secretary for the establishment of a Teacher Job Bank Clearinghouse shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may reasonably require. Each such application shall include—

(I) a demonstration of the capacity to efficiently and effectively handle a large volume of inquiries from employers and potential employees; and

(II) a demonstration of support from public and private education agencies that are likely to use the services provided by the Teacher Job Bank Clearinghouse.

(ii) The Secretary shall give priority to applications submitted pursuant to clause (i) which—

(I) are representative of a region of the United States and involve the cooperation of several State educational agencies; or

(II) demonstrate an ability to address shortages of teachers, such as underrepresented minorities, special education teachers, bilingual teachers, or individuals planning to teach in subject areas, geographical areas, or types of schools with shortages.

(2) AUTHORIZED ACTIVITIES.—Each entity, organization or institution receiving funds under this subsection may use such funds to—

(A) develop, in consultation with local education agencies and other appropriate entities, standardized initial application forms for teaching jobs and related positions, and standardized forms and procedures for announcing available teaching positions;

(B) coordinate and assist State and local teacher recruitment efforts;

(C) publish and disseminate information about opportunities for teacher employment and teacher training;

(D) maintain a system for matching the supply of teachers with the demand for teachers among the States;

(E) promote the development of programs to recruit and train minorities and individuals with disabilities to become teachers;

(F) publicize the availability of scholarships, loans, and other programs that assist individuals wishing to pursue a teaching career;

(G) assist employers in the development of effective teacher recruitment programs;

(H) assist in developing reciprocal agreements on teacher certification among States;

(I) conduct such other activities and services necessary to carrying out the purposes of this subsection in accordance with the provisions of this subsection; and

(J) coordinate demonstration projects with the Department of Labor, the National Occupational Information Coordinating Committee, and appropriate professional organizations.

(g) SCHOOL YEAR EXTENSION STUDY COMMISSION.—

(1) SHORT TITLE.—This subsection may be cited as the "School Year Study Commission Act".

(2) ESTABLISHMENT.—There is hereby established a School Year Study Commission (hereafter in this part referred to as the "Commission").

(3) MEMBERSHIP OF THE COMMISSION.—

(A) The Commission shall consist of 9 members, of whom—

(i) 3 members shall be appointed by the President from among the Secretaries of the executive departments as set forth in section 101 of title 5, United States Code;

(ii) 3 members shall be appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives; and

(iii) 3 members shall be appointed by the President pro tempore the Senate upon the recommendation of the Majority Leader and Minority Leader of the Senate.

(B)(i) Members of the Commission shall be appointed on the basis of exceptional education, training, or experience from—

(I) individuals who are representatives of nonprofit organizations or foundations committed to the improvement of American education;

(II) individuals who are engaged in the professions of teaching;

(III) individuals engaged in school administration, members of school boards, parents or representatives of parents or parent organizations; and

(IV) individuals who are State officials directly responsible for education.

(ii) The first 9 members of the Commission shall be appointed no later than 60 days after the date of enactment of this Act.

(C) A vacancy in the Commission shall not affect its powers, but shall be filled in the

same manner as the original appointment was made.

(D) Members of the Commission shall be appointed to serve for the life of the Commission.

(E) Each member of the Commission shall serve without compensation, but shall be allowed travel expenses including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, when engaged in the performance of Commission duties.

(F) The Commission may begin to carry out its duties under this subsection when at least 5 members of the Commission have been appointed.

(4) FUNCTIONS OF THE COMMISSION.—(A) The Commission shall study and make recommendations regarding the advisability of lengthening the school day to a predetermined minimum number of hours and lengthening the academic year in all United States public elementary and secondary schools. Such recommendations shall include—

(i) a comparative analysis of the length of academic days and academic years in schools throughout the United States and in schools of other nations;

(ii) a recommendation of the appropriate number of hours per day and days per year of instruction for United States public elementary and secondary schools;

(iii) an examination as to whether an increase in the length of school days and school years should be accompanied by an appropriate increase in teacher compensation;

(iv) a model plan for adopting a longer academic day and academic year in all United States public elementary and secondary schools by the end of this decade, including recommendations regarding mechanisms to assist States, school districts, schools, and parents in transitioning from current academic day and year to an academic day and year of a longer duration;

(v) suggestions for such changes in laws and regulations as may be required to facilitate States, school districts, and schools in adopting longer academic days and years;

(vi) an analysis and estimate of the additional costs, including the cost of increased teacher compensation, to States and local school districts if longer academic days and years are adopted; and

(vii) a plan to assist States and local districts in meeting all such additional costs.

(B) The Commission shall submit a final report and plan pursuant to paragraph (5).

(5) COMMISSION REPORT.—(A) Not later than September 1, 1991, or one year after the Commission concludes its first meeting of members, whichever is longer, the Commission shall submit a report to the President and the Congress on the study and recommendations required pursuant to the provisions of this subsection.

(B) The report described in subparagraph (A) shall consider current educational policies and practices regarding the length of the school year and school day throughout the United States and the world.

(6) POWERS OF THE COMMISSION.—(A) The Commission may, for the purpose of carrying out this subsection, conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(B) In carrying out this paragraph, the Commission shall—

(i) conduct public hearings in different geographic areas of the country, both urban and rural, to receive the reports, views, and analyses of a broad spectrum of experts and the public regarding the advisability of lengthened academic day and year; and

(ii) receive testimony from—

(I) individuals such as educators, business persons, elected and appointed public officials; and

(II) representatives of public and private organizations and institutions with an expertise or interest in improving the quality of the Nation's educational system.

(B) The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out this subsection. Upon request of the Chairman of the Commission, the head of the agency shall furnish such information to the Commission.

(C) The Commission may accept, use, and dispose of gifts or donations of services or property.

(D) The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(E) The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative and support services as the Commission may request.

(7) ADMINISTRATIVE PROVISIONS.—(A) The Commission shall meet on a regular basis, as necessary, at the call of the Chairman or a majority of its members.

(B) A majority of the appointed members of the Commission shall constitute a quorum for the transaction of business.

(C)(i) The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission for the life of the Commission.

(ii) The Chairman of the Commission, in consultation with the Vice Chairman, shall appoint and fix the compensation of a staff administrator and such support personnel as may be reasonable and necessary to enable the Commission to carry out its functions without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates.

(D) Upon request of the Chairman of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any personnel of such agency to the Commission to assist the Commission in carrying out its duties under the subsection. Such detail shall be without interruption or loss of civil service status or privilege.

(8) TERMINATION OF THE COMMISSION.—The Commission shall terminate 90 days after submitting the final report required by paragraph (5).

SEC. 468. EVALUATION AND STUDIES.

(a) REPORT BY SECRETARY.—The Secretary of Education shall submit biennial reports on the program authorized by this part to the appropriate authorizing committees of Congress and shall, using existing dissemination programs, disseminate information developed or operated under this part.

(b) DEMONSTRATION PROGRAM EVALUATIONS.—(1) The Secretary shall, through grant or contract, conduct a continuing evaluation of programs assisted under subsections (b) and (c) of section 467. Such evaluation shall commence prior to the awarding of grants pursuant to the provisions of such subsections, and shall take place before, during, and after the program cycle.

(2) In selecting an entity or organization to conduct the evaluation required for section 467(c), the Secretary shall give priority to entities or organizations with experience in new career programs.

(3) The Secretary shall report to the Congress on the results of the evaluations conducted pursuant to this subsection 2 years after the end of the first fiscal year for which funds are available for section 467 (b) and (c).

(c) RESTRUCTURING OF SCHOOLS DEMONSTRATION PROGRAM EVALUATION.—(1) Each eligible recipient of a grant under section 467(d) shall use not less than 5 percent of the grant received under such section 467(d) to conduct an independent evaluation of restructuring activities assisted under such section on the delivery of educational services, the stability and quality of school staff, student achievement and retention, the relationship of the school with the community, and in the case of school-based management/shared decisionmaking initiatives, what decisions were transferred to the school-based management/shared decisionmaking teams.

(2) Such evaluations shall be forwarded to the Secretary at such time and in such manner as the Secretary may require.

(3) The Secretary shall report to the Congress on the results of the evaluations conducted pursuant to this subsection within 2 years after the end of the first fiscal year for which funds are available under section 467(d).

(d) GAO REPORT.—The Comptroller General shall submit an evaluation on the program authorized by this part due to the appropriate committees by January 1, 1994.

SEC. 469. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part $225,000,000 for fiscal year 1991 and such sums as may be necessary for each of the 4 succeeding fiscal years.

PART G—NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS

SEC. 471. SHORT TITLE.

This part may be cited as the "National Board for Professional Teaching Standards Act of 1990".

SEC. 472. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the economic well-being and national security of the United States depends on efforts to strengthen the public educational system to provide all public school children with an education which will ensure a well-educated workforce;

(2) improved teaching is central to the goal of ensuring a well-educated workforce;

(3) incentives to enhance the professionalism and status of teaching can be provided through the development and promulgation of voluntary standards of professional certification that are rigorous and unbiased, that complement and support State licensing practices and recognize the diversity of American society;

(4) the National Board for Professional Teaching Standards, a private nonprofit organization has been created to establish such voluntary standards and a significant initial investment in research and development from non-Federal sources will be required to create such a system of professional certification;

(5) the Federal Government has played an active role in funding vital educational re-

search and can continue to support this national effort by providing limited but essential support for critical research activities; and

(6) the Federal Government has a vested interest in ensuring a balance in the allocation of fiscal resources to programs yielding the highest quality of professional development and training for current and future teachers and to research and development of professional standards and methods to assess the Nation's teachers.

(b) PURPOSE.—It is the purpose of this part to provide financial assistance to the National Board for Professional Teaching Standards to enable the board to conduct independent research and development related to the establishment of national, voluntary professional standards and assessment methods for the public school teaching profession.

SEC. 473. DEFINITIONS.

For the purpose of this part—

(1) the term "Board" means the National Board for Professional Teaching Standards; and

(2) the term "Committee" means the Fund for Improvement and Reform of Schools and Teaching Board established in section 3231 of the Fund for the Improvement and Reform of Schools and Teaching Act.

SEC. 474. PROGRAM AUTHORIZATION.

(a) PROGRAM AUTHORIZED.—From sums appropriated under subsection (b) in any fiscal year, the Secretary is authorized and directed, in accordance with the provisions of this part, to provide financial assistance to the National Board for Professional Teaching Standards, in order to pay the Federal share of the costs of the activities described in section 476.

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $5,000,000 for fiscal year 1991 to carry out the provisions of this part.

(2) There are authorized to be appropriated $5,000,000 for fiscal year 1992 to carry out the provisions of this part.

(c) TERMS AND CONDITIONS.—(1) No financial assistance may be made available under this part except upon an application as required by section 477.

(2) No financial assistance may be made available under this part unless the Secretary determines that—

(A) the Board will comply with the provisions of this part;

(B) the Board will use the Federal funds only for research and development activities in accordance with section 476 and such teacher assessment and certification procedures will be free from racial, cultural, gender or regional bias;

(C) the Board—

(i) will widely disseminate for review and comment announcements of specific research projects to be conducted with Federal funds, including a description of the goals and focus of the specific project involved and the specific merit review procedures and evaluation criteria to be used in the competitive award process, and

(ii) will send such announcements to the Secretary of Education, the Director of the National Science Foundation, the National Research Council, and the educational research community;

(D) the Secretary, pursuant to an arrangement with the Board, will publish the announcements described in subparagraph (C) in the Federal Register (or such other publication deemed appropriate by the Secretary) and in publications of general circulation designed to disseminate such announcements widely to the educational research community;

(E) the Board will, after offering any interested party an opportunity to make comment upon, and take exception to, the projects contained in the announcements described in subparagraph (C) for a 30-day period following publication, and after reconsidering any project which comment is made or to which exception is taken, through the Secretary issue a request for proposals in the Federal Register (or such other publication deemed appropriate by the Secretary) containing any revised project information;

(F) the Board will make awards of Federal funds competitively on the basis of merit, and, in the award process, the Board will select, to the extent practicable consistent with standards of excellence—

(i) a broad range of institutions associated with educational research and development; and

(ii) individuals who are broadly representative of the educational research and teaching communities with expertise in the specific area of research and development in question;

(G) the Board will adopt audit practices customarily applied to nonprofit private organizations and will comply with section 479(c);

(H) the Board will not use Federal funds to meet the administrative and operating expenses of the Board;

(I) the Board will submit an annual report to Congress in accordance with the provisions of section 479(a); and

(J) the Board will, upon request, disseminate to States, local educational agencies, or other public educational entities the results of any research or research project produced with funds authorized by this part, upon the payment of the cost of reproducing the appropriate material.

(d) AVAILABILITY OF FUNDS.—(1) Notwithstanding any other provision of law, funds appropriated to carry out this part shall remain available for obligation and expenditure until the end of the second fiscal year succeeding the fiscal year for which the funds were appropriated.

(2) No funds shall be made available to the Board after September 30, 1992, except as authorized by paragraph (1) of this subsection.

SEC. 475. CONSULTATION.

The Board shall consult at least twice annually with the Committee on the design and execution of its overall research and development strategy, including procedures to assure compliance with the requirements of this part. The procedures shall include—

(1) an outline of specific research and development agenda and activities to be conducted with the Federal funds; and

(2) provisions to ensure compliance with the open competition and merit review requirements of this part for proposals and projects assisted under this part.

SEC. 476. AUTHORIZED ACTIVITIES.

(a) IN GENERAL.—Federal funds received under this part may be used only for research and development activities directly related to the development of teacher assessment and certification procedures for public elementary and secondary school teachers.

(b) PRIORITIES.—(1) The Board shall give priority to research and development activities in—

(A) mathematics;

(B) the sciences;

(C) foreign languages; and

(D) literacy, including the ability to read, write and analyze.

(2) The Board shall give priority to research and development activities for the certification of public elementary and secondary school teachers and the need and ability of such teachers to teach special educational populations, including—

(A) limited English proficient children;

(B) gifted and talented children;

(C) handicapped children; and

(D) economically and educationally disadvantaged children.

SEC. 477. APPLICATION.

(a) IN GENERAL.—The Board shall submit applications to the Secretary at such time and in such manner as the Secretary may reasonably require. Each such application shall—

(1) describe the activities for which assistance is sought; and

(2) provide assurances that the non-Federal share of the cost of activities of the Board is paid from non-Federal sources, together with a description of the manner in which the Board will comply with the requirements of this paragraph.

(b) APPROVAL.—The Secretary shall approve an application unless such application fails to comply with the provisions of this part.

SEC. 478. FEDERAL SHARE.

(a) IN GENERAL.—The Secretary shall pay to the Board the Federal share of the costs of the activities of the Board for the period for which the application is approved under section 477.

(b) AMOUNT OF FEDERAL SHARE.—The Federal share shall be 50 percent of the costs of the activities described in section 476.

SEC. 479. REPORTS AND AUDITING PROVISION.

(a) NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS REPORT.—(1) The Board shall submit an annual report to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives not later than December 31 of 1991, and each succeeding year thereafter for any fiscal year in which Federal funds are expended pursuant to this part. The Board shall disseminate the report for review and comment to the Department of Education, the National Science Foundation, the National Research Council, and the education research community. The report shall—

(A) include a detailed financial statement and a report of the audit practices described in section 474(c)(2)(G);

(B) include a description of the general procedure to assure compliance with the requirements of this part as required in section 476; and

(C) provide a comprehensive and detailed description of the Board's agenda, activities, and planned activities for the preceding and succeeding fiscal years, including—

(i) the Board's overall research and development program and activities;

(ii) the specific research and development projects and activities conducted with Federal funds during the preceding fiscal year, including—

(I) a description of the goals and methodology of the project;

(II) a description and assessment of the findings (or status and preliminary findings if project is not yet completed);

(III) a description of the competitive bidding process, the merit review procedures, and the evaluation criteria used to award project funds; and

(IV) a description of the Board's plans for dissemination of the findings described in clause (ii);

(iii) the specific research and development projects and activities planned to be conducted with Federal funds during the succeeding fiscal year, including the goals and methodologies to be used; and

(iv) a listing of available publications of the Board, including publications related to policies, standards and general information, research reports, and commissioned papers of the Board.

(2) The first annual report required by this subsection shall include a description of the Board's research and development agenda for the succeeding 5-year period. Such first report shall include to the maximum extent practicable, a description of specific research and development projects and activities, and the goals and methodologies of such projects and activities.

(b) ADDITIONAL REPORTS.—The Department of Education, the National Science Foundation, and the National Research Council shall report to the appropriate committees of the Congress on the compliance of the Board with the requirements of this part not later than 30 days after the Board submits its annual report pursuant to subsection (a).

(c) AUDITING PROVISION.—The Comptroller General of the United States, and any of his authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the Board, and to any recipient of funds from the Board, that are pertinent to the sums received and disbursed under this part.

SEC. 480. EVALUATION.

(a) IN GENERAL.—The Secretary shall reserve not more than 2 percent of the amount appropriated pursuant to the authority of section 474(b) to provide for an independent, ongoing evaluation of the research program of teacher assessments carried out by the Board and the fairness and the accuracy of the data such evaluations produce. The evaluation shall include an analysis of the impact of teacher assessments on minority teachers. The findings of the evaluation shall be submitted to the Labor and Human Resources Committee of the Senate and the Education and Labor Committee of the House of Representatives.

(b) SPECIAL RULE.—The Secretary shall enter into a contract for the performance of the evaluation described in subsection (a) with a nationally recognized organization (such as the National Academy of Sciences or the National Academy of Education).

SEC. 481. AMENDMENT TO THE GENERAL EDUCATION PROVISIONS ACT.

Section 405(d) of the General Education Provisions Act is amended by inserting at the end thereof the following new paragraph:

"(7) The Secretary is authorized to conduct research on the professional preservice and inservice development of teachers. The purpose of such research shall be to develop models for the successful attainment of professional licensure and certification, to be used by the States or for national voluntary examinations.

SEC. 482. CONSTRUCTION.

Nothing in this part shall be construed to—

(1) establish a preferred national curriculum or preferred teaching methodology for elementary and secondary school instruction;

(2) infringe upon the rights and responsibilities of the States to license elementary and secondary school teachers;

(3) provide an individual certified by the Board with a right of action against a State, local educational agency, or other public educational entity for any decisions related to hiring, promotion, retention or dismissal;

(4) authorize the Secretary to exercise supervision or control over the research program, standards, assessment practices, administration, or staffing policies of the Board; and

(5) authorize the Board to—

(A) study, create, or promulgate separate standards applicable to home school or private school teachers;

(B) take any action to require home school, private school, or public school teachers to participate in any program offered by the Board; or

(C) take any action that infringes in any way on the right of parents to direct the education of their children.

SEC. 483. VOLUNTARY PARTICIPATION.

Notwithstanding any other provision of this part, voluntary participation in certification assessments by the Board should be open to home school, private school, and public school teachers.

PART H—MISCELLANEOUS PROVISIONS

SEC. 491. MAGNET SCHOOLS.

Paragraph (3) of section 3006 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3026(3)) is amended by inserting "teacher aides," before "who".

SEC. 492. EDUCATIONAL PROGRESS.

Section 406(i) of the General Education Provisions Act (20 U.S.C. 1221e-1(i)) is amended—

(1) in paragraph (2)(C)—

(A) by redesignating clauses (iii), (iv), and (v) as clauses (iv), (v), and (vi), respectively; and

(B) by inserting after clause (ii) the following:

"(iii) During the fiscal year 1991, the National Assessment may carry out planning activities in preparation for conducting an assessment described in clause (ii) in the fiscal year 1994, subject to the enactment of legislation authorizing such an assessment."; and

(2) in paragraph (7)(A), by striking "Not" and all that follows through "used for" and inserting the following: "There are authorized to be appropriated for each of the fiscal years 1991, 1992, and 1993 not more than $1,000,000 for purposes of".

SEC. 493. AMENDMENT OF JAMES MADISON MEMORIAL FELLOWSHIP ACT.

Section 813(a)(4) of the James Madison Memorial Fellowship Act is amended by striking the second sentence thereof.

TITLE V—POSTSECONDARY EDUCATION PROVISIONS

SEC. 501. PELL GRANT PROGRAM AMENDMENT.

Section 411(c)(1)(A) of the Act (20 U.S.C. 1070a(c)(1)(A)) is amended by striking clauses (i) and (ii) and inserting the following:

"(i) the number of academic years (or portion of an academic year) that the undergraduate degree or certificate program normally requires, plus one academic year; or

"(ii) 6 academic years in the case of a undergraduate degree or certificate program normally requiring more than 4 academic years;".

SEC. 502. PELL GRANTS.

Section 411(g) of the Act (20 U.S.C. 1070a(g)) is amended—

(1) in paragraph (1) by striking "If" and inserting "Except as provided in paragraph (3), if"; and

(2) by inserting at the end thereof the following new paragraph:

"(3) If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient to satisfy fully all entitlements, as calculated under subsection (b) (but at the maximum grant level specified in such appropriation), the Secretary may, from the next succeeding fiscal year's appropriation for this subpart, expend such sums as may be necessary to meet any such insufficiencies for the preceding fiscal year.".

SEC. 503. MODIFICATION TO COMPUTATION OF CONTRIBUTIONS.

(a) PELL GRANT NEEDS ANALYSIS.—(1) Section 411B(b)(3) of the Act (20 U.S.C. 1070a-2(b)(3)) is amended by striking out "a program of postsecondary education" and inserting in lieu thereof "a program of postsecondary education which meets the requirements of section 484(a)(1)".

(2) Section 411C(a)(3) of the Act (20 U.S.C. 1070a-3(a)(3)) is amended by striking out "a program of postsecondary education" and inserting in lieu thereof "a program of postsecondary education which meet the requirements of section 484(a)(1)".

(3) Section 411D(a)(3) of the Act (20 U.S.C. 1070a-4(a)(3)) is amended by striking out "a program of postsecondary education" and inserting in lieu thereof "a program of postsecondary education which meet the requirements of section 484(a)(1)".

(b) GENERAL NEEDS ANALYSIS.—(1) Section 475(b)(3) of the Act (20 U.S.C. 1087oo(b)(3)) is amended by striking out "a program of postsecondary education" and inserting in lieu thereof "a program of postsecondary education which meets the requirements of section 484(a)(1)".

(2) Section 477(a)(3) of the Act (20 U.S.C. 1087qq(a)(3)) is amended by striking out "a program of postsecondary education" and inserting in lieu thereof "a program of postsecondary education which meet the requirements of section 484(a)(1)".

SEC. 504. DEFINITION OF INDEPENDENT STUDENT.

(a) SECTION 411F.—Section 411F(12) of the Act (20 U.S.C. 1070a-6(12)) is amended to read as follows:

"(12) The term 'independent', when used with respect to a student, means any individual who—

"(A) is 24 years of age or older by December 31 of the first calendar year of the award year;

"(B) is an orphan or is or has been a ward of the court;

"(C) is a veteran of the Armed Forces of the United States;

"(D) is a graduate or professional student;

"(E) is married or has legal dependents;

"(F) is an undergraduate student who was not claimed by his or her parents (or guardian) for income tax purposes for the 2 calendar years preceding the first calendar year of the award year, and who either was awarded assistance under this title as an independent student in the prior year, or demonstrates to the student financial aid administrator total self-sufficiency during the 2 calendar years preceding the first calendar year of the award year by demonstrating annual total resources (including all sources other than parents and student aid) of $4,000; or

"(G) is a student for whom a financial aid administrator makes a documented determi-

nation of independence by reason of other unusual circumstances.".

(b) SECTION 480(d).—Section 480(d) of the Act (20 U.S.C. 1087vv(d)) is amended to read as follows:

"(d) INDEPENDENT.—The term 'independent', when used with respect to a student, means any individuals who—

"(1) is 24 years of age or older by December 31 of the first calendar year of the award year;

"(2) is an orphan or is or has been a ward of the court;

"(3) is a veteran of the Armed Forces of the United States;

"(4) is a graduate or professional student;

"(5) is married or has legal dependents;

"(6) is an undergraduate student who was not claimed by his or her parents (or guardian) for income tax purposes for the 2 calendar years preceding the first calendar year of the award year, and who either was awarded assistance under this title as an independent student in the prior year, or demonstrates to the student financial aid administrator total self-sufficiency during the 2 calendar years preceding the first calendar year of the award year by demonstrating annual total resources (including all sources other than parents and student aid) of $4,000; or

"(7) is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.".

SEC. 505. GUARANTY AGENCY PROHIBITION ON THE SALE OF CERTAIN STAFFORD STUDENT LOAN LISTS.

Section 428(b)(3) of the Higher Education Act of 1965 (20 U.S.C. 1708(b)(3)) (hereafter in this title referred to as the "Act") is amended—

(1) by striking out "or" at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon and "or"; and

(3) by adding at the end thereof the following:

"(D) sell lists of student borrowers who have loans made, insured, or guaranteed under this part.".

SEC. 506. GUARANTY AGENCY USE OF STATE LICENSING BOARD INFORMATION.

Section 428(b) of the Act (20 U.S.C. 1078(b)) is amended by adding at the end thereof the following new paragraph:

"(7) STATE GUARANTY AGENCY INFORMATION REQUEST OF STATE LICENSING BOARDS.—Each guaranty agency is authorized to enter into agreements with each appropriate State licensing board under which the State licensing board, upon request, will furnish the guaranty agency with the address of a student borrower in any case in which the location of the student borrower is unknown or unavailable to the guaranty agency.".

SEC. 507. CREDIT BUREAU REPORTING.

(a) REPORTS TO CREDIT BUREAUS AND INSTITUTIONS OF HIGHER EDUCATION.—Paragraph (2) of section 430A(f) of the Act is amended to read as follows:

"(2) seven years from the date the Secretary, guaranty agency, eligible lender, or subsequent holder first reported the account to the consumer reporting agency.".

(b) LIMITATION ON REPORTING.—Section 463(c)(3)(B) of the Act (20 U.S.C. 1087cc(c)(3)(B)) is amended by striking ", if that account has not been previously reported by any other holder of the notes".

SEC. 508. DISCLOSURE OBLIGATION FOR SLS AND PLUS LOANS; REPAYMENT PERIOD.

(a) AMENDMENT.—Section 433 of the Act (20 U.S.C. 1083) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL DISCLOSURE RULES ON SLS AND PLUS LOANS.—

"(1) DISCLOSURE OF SAMPLE PROJECTIONS.—Loans made under sections 428A and 428B shall not be subject to the disclosure of projected monthly payment amounts required under subsection (a)(8), provided that the lender, in lieu of such disclosure, provides the borrower with sample projections of monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower is in school.

"(2) DISCLOSURE DATE.—Disclosure pursuant to subsection (b) of this section on loans made under sections 428A and 428B shall be made not later than 30 days prior to the due date established by the lender for the first payment from the borrower.".

(b) COMPUTATION OF REPAYMENT PERIODS.—(1) Section 428A(c) of the Act (20 U.S.C. 1781-1(c)) is amended by adding at the end thereof the following new paragraph:

"(6) REPAYMENT PERIOD.—For purposes of calculating the 10-year repayment period under section 428(b)(1)(D), such period shall be considered to commence at the time the first payment is due from the borrower.".

(2) Section 428B(c) of the Act (20 U.S.C. 1078-2(c)) is amended by adding at the end thereof the following new paragraph:

"(6) REPAYMENT PERIOD.—For purposes of calculating the 10-year repayment period under section 428(b)(1)(D), such period shall be considered to commence at the time the first payment is due from the borrower.".

SEC. 509. STUDENT MENTOR PILOT PROGRAM.

Part C of title IV of the Act (42 U.S.C. 2751 et seq.) is amended by adding at the end thereof the following new section:

"STUDENT MENTOR PILOT PROGRAM

"SEC. 448. (a) PURPOSE.—The purpose of this section is to establish a pilot program to test the feasibility of using work-study funds to provide incentives to eligible students at institutions of higher education to encourage those students to engage in mentor activities for the benefit of disadvantaged youths who are at risk of dropping out of elementary or secondary school.

"(b) PROGRAM AUTHORIZED; AGREEMENTS.—The Secretary is authorized to designate not less than 10 or more than 100 institutions of higher education that may use a portion of their allocations under this part to establish a program under this section. Each such institution shall enter into an agreement with the Secretary for purposes of this section. Such agreement shall—

"(1) contain or be accompanied by such information and assurances as the Secretary may require by regulation;

"(2) specify the methods and rates of compensation of the mentors, which may include incentive bonuses based on the satisfactory academic progress of the eligible youth;

"(3) describe the methods—

"(A) to be used by the institution of higher education to identify and select suitable students to serve as mentors;

"(B) to be used by elementary and secondary schools to identify and select eligible youth;

"(4) provide that the eligible youth, his or her teacher, and the mentor shall enter into an agreement—

"(A) which provides attainable goals for the eligible youth to pursue with the advice and assistance of the mentor; and

"(B) which identifies the stages at which progress toward such goals will be evaluated.

"(c) USE OF FUNDS.—An institution with which the Secretary has an agreement under subsection (b) may use funds provided under this part to pay students to engage in activities as a mentor for an eligible youth for the purpose of—

"(1) tutoring the youth in subjects in which the youth is experiencing difficulty;

"(2) supporting the youth in educational and recreational activities;

"(3) counseling the youth on career and educational choices;

"(4) otherwise encouraging the youth to stay in school, to develop his or her aptitudes, and to follow the mentor student into a successful college and adult career; and

"(5) developing in the student a better self-awareness and a self-motivated desire to excel academically.

"(d) APPLICABILITY OF GENERAL PROVISIONS.—Funds provided under this section to a mentor student shall be subject to all the conditions and requirements of this part, except that funds provided under this section may, notwithstanding part F of this title, be counted as part of a student's expected family contribution and not be counted as student assistance in the computation of need for other student assistance under this title.

"(e) EVALUATION AND REPORTS.—Not later than 3 years after the enactment of this section, the Secretary shall submit to the Congress a report evaluating the program under this section. Such report shall include such recommendations as the Secretary considers appropriate concerning such program, and may include proposals for legislative changes.

"(f) DEFINITIONS.—The term 'eligible youth' means an individual who is—

"(1) aged 5 to 18, inclusive;

"(2) enrolled but failing to maintain satisfactory progress in an elementary or secondary school, as determined under the standards of that school; and

"(3) determined by a teacher or other qualified staff of that school to be likely to benefit from participation in the program under this section.".

SEC. 510. FORMS AND REGULATIONS.

Section 483 of the Act (20 U.S.C. 1090) is amended by adding at the end thereof the following new subsection:

"(g) DISCLOSURE OF PREPARER IDENTITY.—Any financial aid application required to be made under subpart 1 of part A of this title or part B of this title shall include the name, signature, address, social security number, and organizational affiliation of the preparer of such financial aid application.".

SEC. 511. ADDITIONAL BORROWER INFORMATION REQUIRED.

Section 484(b) of the Act (20 U.S.C. 1091(b)) is amended by adding at the end thereof the following new paragraph:

"(5) In order to be eligible to receive any loan under this title, a student shall provide to the lender at the time of applying for the loan the driver's license number of the student borrower, if applicable, and the name and address of the next of kin of the student borrower.".

SEC. 512. ELIGIBILITY FOR EDUCATION PROGRAMS.

(a) HIGHER EDUCATION.—Section 484 of the Act (20 U.S.C. 1091) is amended by adding at the end thereof the following new subsection:

"(k) STUDENTS ATTENDING INSTITUTIONS IN THE FREELY ASSOCIATED STATES AND ELIGIBILITY FOR TRIO PROGRAMS.—Notwithstanding any other provision of law, a student who meets the requirements of paragraph (a)(5) of this section or who is a resident of the freely associated states, and who attends a public or nonprofit institution of higher education located in any of the freely associated states rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 1, 2, or 4 of part A or part C of this title.".

(b) TERRITORIAL TEACHER TRAINING ASSISTANCE PROGRAM.—Section 4502 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3142) is amended by striking "the Northern Mariana Islands, and the Trust Territory of the Pacific Islands" each place it appears and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands, Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.".

(c) TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE.—Section 1204 of the Act (20 U.S.C. 1144a) is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding any other provision of law, an institution of higher education that is located in any of the freely associated states, rather than a State, shall be eligible, if otherwise qualified, for assistance under subpart 4 of part A of title IV of this Act.".

SEC. 513. SUSPENSION OF ELIGIBILITY FOR DRUG-RELATED OFFENSES.

(a) AMENDMENT.—Section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) is amended by adding at the end thereof the following new subsection:

"(l) SUSPENSION OF ELIGIBILITY FOR DRUG-RELATED OFFENSES.—(1) An individual student who has been convicted of any offense under any Federal law or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table:

"If convicted of an offense involving:

	Ineligibility period is:
The possession of a controlled substance:	
1st offense	1 year
2nd offense	2 years
3rd offense	Indefinite
The sale of a controlled substance:	
1st offense	2 years
2nd offense	Indefinite

"(2) A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the period determined under such paragraph if the student satisfactorily completes a drug rehabilitation program that complies with such criteria as the Secretary shall prescribe for purposes of this paragraph.

"(3) As used in this subsection, the term 'controlled substance' has the meaning given in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to financial assistance to cover the costs of attendance for periods of enrollment beginning on or after July 1, 1992.

SEC. 514. TOLL-FREE CONSUMER HOTLINE.

Section 485 of the Act (20 U.S.C. 1092) is amended by adding at the end thereof the following new subsection:

"(e) TOLL-FREE CONSUMER HOTLINE.—(1) In addition to the toll-free telephone information provided for in section 483, the Secretary shall maintain and publicize a toll-free telephone number for use by the public, in order to permit students who allege fraud or unfair practices by eligible institutions to inform the Department of such fraud or unfair practices.

"(2) The Secretary shall, directly or by way of contract or other arrangement, make the toll-free telephone number, and the availability of the consumer hotline established by this subsection, generally available to students receiving financial assistance under this title.".

SEC. 515. TUITION REFUNDS.

(a) REFUND RULE.—Section 487(c)(2)(B)(i) of the Act (20 U.S.C. 1094(c)(2)(B)(i)) is amended by adding at the end thereof the following new sentence: "In addition, the Secretary may require such eligible institutions to make refunds in accordance with division (iii).".

(b) REFUND PROCEDURES.—Section 487(c)(2)(B) of the Act is amended by adding at the end thereof the following new division:

"(iii) When the Secretary determines there has been a violation, failure, or misrepresentation pursuant to division (i), the Secretary may require the institution to refund the student's tuition and fees. The Secretary shall establish procedures for refunding the tuition and fees. Such procedures shall—

"(I) first require the payment by the institution to the United States Government of any portion of the tuition and fees paid with Federal funds received under this title (other than funds under subpart 3 of part A and part B of this title); and

"(II) then require payment by the institution to the lender of that portion of the tuition and fees attributable to a loan made, issued, or guaranteed under part B of this title.".

SEC. 516. CLERICAL AND TECHNICAL AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965.

The Higher Education Act of 1965 is further amended—

(1) in section 312(c)(2) (20 U.S.C. 1058(c)(2)), by striking "second" the second place it appears and inserting "the second such";

(2) in section 332(b)(5) (20 U.S.C. 1065(b)(5)), by striking out "year" the first place it appears;

(3) in section 411B(g)(5)(B) (20 U.S.C. 1070a-2(g)(5)(B))—

(A) by striking out "effective family income" each place it appears and inserting "discretionary income"; and

(B) by striking out "subsection (d)" and inserting "subsection (f)";

(4) in section 411C(f)(5)(B) (20 U.S.C. 1070a-3(f)(5)(B)), by striking out "effective family income" and inserting "discretionary income";

(5) in section 411D(f) (20 U.S.C. 1070a-4(f))—

(A) by striking out "effective family income" in paragraph (1) and inserting "discretionary income"; and

(B) by striking out "subsection (c)" each place it appears in paragraphs (1) and (2) and inserting "subsection (e)";

(6) in section 411F(2) (20 U.S.C. 1070a-6(2)), by striking out "including amount" and inserting "including amounts";

(7) in section 411F(9)(B) (20 U.S.C. 1070a-6(9)(B)), by striking out "Student" and inserting "student";

(8) in section 413D(d)(3)(C) (20 U.S.C. 1070b-2(d)(3)(C)), by striking out "three-fourths in" and inserting "three-fourths of";

(9) in section 427(a)(2)(G)(i) (20 U.S.C. 1077(a)(2)(G)(i)); by striking out "system," and inserting "system";

(10) in section 428C(c)(3)(A) (20 U.S.C. 1078-3(c)(3)(A)), by inserting "be" before "equal to";

(11) in section 428E(a)(1) (20 U.S.C. 1078-5(1))—

(A) by inserting "(A)" after "except that" the first place it appears; and

(B) by striking out "except that" the second place it appears and inserting ", and (B)";

(12) in section 435(c)(1) (20 U.S.C. 1085(c)(1)), by striking out "section 481(d)" and inserting "section 484(d)";

(13) in section 435(d)(2) (20 U.S.C. 1085(d)(2))—

(A) by striking out "institutions" in subparagraph (C) and inserting "institution"; and

(B) by indenting the matter following subparagraph (D) two spaces;

(14) in section 435(d)(3) (20 U.S.C. 1085(d)(3)), by striking out "section 435(o)" and inserting "subsection (l) of this section";

(15) in the last sentence of section 442(e)(2) by striking "section 447(c)" and inserting "section 442(c)";

(16) in section 454(a)(3)(C) (20 U.S.C. 1087d(a)(3)(C)), by striking out "fourth and fifth" and inserting "fourth or fifth";

(17) in sections 462(a)(1) and 462(a)(2)(D) (20 U.S.C. 1087bb(a)(1), (a)(2)(D)), by striking out "institution which" and inserting "institution";

(18) in section 464(c)(2)(A)(iv) (20 U.S.C. 1087dd(c)(2)(A)(iv)), by inserting "Service" after "Volunteer";

(19) in section 465(a)(2)(D) (20 U.S.C. 1087ee(a)(2)(D)), by striking out "services" and inserting "service";

(20) in the table contained in section 475(c)(2) (20 U.S.C. 1087oo(c)(2))—

(A) by striking out "less than $15,000 or" and inserting "less than $15,000"; and

(B) by striking out "$15,000 more" and inserting "$15,000 or more";

(21) in the table contained in section 475(c)(4) (20 U.S.C. 1087oo(c)(4))—

(A) by striking out "substract" and inserting "subtract"; and

(B) by striking out "1,430" and inserting "$1,430";

(22) in section 475(e) (20 U.S.C. 1087oo(e)), by striking out "section 479" and inserting "section 478";

(23) in the table contained in section 477(b)(4) (20 U.S.C. 1087qq(b)(4)), by striking out "1,430" and inserting "$1,430";

(24) in the last sentence of section 481(b) (20 U.S.C. 1088(b)), by striking out "section 413(e)" and inserting "section 435(b)";

(25) in the last sentence of section 483(a)(1) (20 U.S.C. 1090(a)(1)), by striking out "that is" and inserting "that are";

(26) in section 491(h)(1) (20 U.S.C. 1098(h)(1)), by striking out "subtitle III" and inserting "subchapter III";

(27) in section 525(g) (20 U.S.C. 1105d(g)), by striking out "subpart" and inserting "part";

(28) in section 557 (20 U.S.C. 1111f), by striking out "part B of this title" and inserting "part B of title IV of this Act";

(29) in section 558(a)(6) (20 U.S.C. 1111g(a)(6)), by striking out the comma after "preschool";

(30) in section 571(g) (20 U.S.C. 1115(g)), by striking out "subpart" each place it appears and inserting "part";

(31) in section 622(a)(6) (20 U.S.C. 1132(a)(6)), by striking out "language an area studies" and inserting "language and area studies";

(32) in section 762(a) (20 U.S.C. 1132g-2(a)), by striking out "Secretary notwithstanding" and inserting "Secretary, notwithstanding";

(33) in section 762(h) (20 U.S.C. 1132g-2(h)), by striking out "subcontractors or any project" and inserting "subcontractors on any project";

(34) in section 764(b)(3)(B) (20 U.S.C. 1132g-3(b)(3)(B)), by striking out "anyone" and inserting "any one";

(35) in section 764(e) (20 U.S.C. 1132g-3(e)), by striking out "member" and inserting "members";

(36) in section 802(d)(1)(B) (20 U.S.C. 1133a(d)(1)(B)), by striking out "has demonstrated" and inserting a comma and "as demonstrated";

(37) in section 942(b)(2) (20 U.S.C. 1134m(b)(2)), by inserting a period at the end thereof;

(38) in section 1045(a) (20 U.S.C. 1135d-4(a)), by striking out "sexual, geographic," and inserting "gender, geography,"; and

(39) in section 1204(a) (20 U.S.C. 1144a(a)), by striking out "Trust Territories of the Pacific Islands, and the Northern Mariana Islands" and inserting "Commonwealth of the Northern Mariana Islands, Palau, and, subject to the provisions of Public Law 99-239, the Federated States of Micronesia, and the Republic of the Marshall Islands.".

SEC. 517. REGULATIONS FOR INSTITUTIONAL DISCLOSURE OF BORROWER RECORDS.

The Secretary shall, in advance of the 1991-1992 academic year, provide to institutions information specifying the legal restrictions and the requirements of eligible institutions relating to loan counseling and reporting requirements, including (but not limited to) disclosure of borrower records to third parties, the Fair Debt Collection Practices Act, and any other applicable Federal law.

SEC. 518. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this title are effective upon enactment of this Act.

(b) SECTIONS 501 and 503.—The amendment made by sections 501 and 503 shall be effective for academic year 1991-1992 and succeeding academic years.

(c) SECTIONS 504, 510, AND 511.—The amendments made by sections 504, 510, and 511 shall be effective for academic year 1992-1993 and succeeding academic years.

TITLE VI—MISCELLANEOUS

PART A—LAW-RELATED EDUCATION

SEC. 611. INSTRUCTION ON THE HISTORY AND PRINCIPLES OF DEMOCRACY IN THE UNITED STATES.

Part F of title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3151 et seq.) is amended—

(1) by redesignating section 4608 the second place it appears as section 4610; and

(2) by inserting before section 4610 (as redesignated by paragraph (1) of this section) the following:

"SEC. 4609. INSTRUCTION ON THE HISTORY AND PRINCIPLES OF DEMOCRACY IN THE UNITED STATES.

"(a) GENERAL AUTHORITY.—

"(1) The Secretary shall carry out a program to educate students about the history and principles of the Constitution of the United States, including the Bill of Rights, and to foster civic competence and civil responsibility. Such program shall be known as 'We the People . . . The Citizen and the Constitution'.

"(2) The program required by paragraph (1) shall continue and expand the educational activities of the National Bicentennial Competition of the Constitution and Bill of Rights administered by the Center for Civic Education.

"(3) The Secretary is authorized to enter into a contract with the Center for Civic Education to carry out the program required by paragraph (1).

"(b) PROGRAM CONTENT.—The education program authorized by this section shall provide—

"(1) a course of instruction on the basic principles of our constitutional democracy and the history of the Constitution and Bill of Rights;

"(2) school and community simulated congressional hearings following the course of study at the request of participating schools; and

"(3) an annual competition of simulated congressional hearings at the congressional district, State, and national levels for secondary students who wish to participate in such program.

"(c) PROGRAM PARTICIPANTS.—The education program authorized by this section shall be made available to public and private elementary schools in the 435 congressional districts, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

"(d) SPECIAL RULE.—Funds provided under this section may be used for the advanced training of teachers about the Constitution and Bill of Rights after the provisions of subsection (b) have been implemented.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for the fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993.".

SEC. 612. AMENDMENT TO LAW-RELATED EDUCATION PROGRAM.

Section 1565 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2965) is amended—

(1) in subsection (a)—

(A) by inserting "(1)" before "(a)"; and

(B) by adding at the end the following:

"(2) The Secretary shall give priority for grants and contracts under this section to agencies, organizations, and institutions described in paragraph (1) that plan to operate statewide programs.

"(3)(A) Except as provided in subparagraph (B), the Secretary shall award grants and enter into contracts under this section for periods of 2 or 3 years.

"(B) The Secretary may award a grant or enter into a contract under this section for a period of less than 2 years in any case in which the Secretary determines that special circumstances exist."; and

(2) by adding at the end the following:

"(d) APPLICATIONS.—

"(1) Any agency, organization, or institution described in subsection (a)(1) that desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(2) The Secretary shall convene a panel of experts for purposes of reviewing applications submitted under paragraph (1). Such experts shall be individuals who have experience in and are familiar with law-related education.".

PART B—ASSESSMENT

SEC. 621. NATIONAL SUMMIT CONFERENCE ON EDUCATION.

(a) FINDINGS.—Section 5(b)(1) of the National Summit Conference on Education Act of 1984 (Public Law 98-524; 98 Stat. 2489) is amended to read as follows:

"(b)(1) The Congress finds that—

"(A) the United States economic well-being requires a better trained and educated workforce;

"(B) a strong educational system is essential to achieve such a workforce;

"(C) agreement has been reached among many citizens that the Nation's schools must be improved in order to strengthen economic competitiveness and achieve economic prosperity;

"(D) reforms and goals to improve our educational system, including the preparation and retraining of classroom teachers, have been proposed by various groups concerned about education;

"(E) there should be a national forum authorized by law to review these reforms and goals and to suggest and recommend ways to implement and achieve them.".

(b) EXECUTIVE COMMITTEE MEMBERSHIP.—Section 5(f)(1) of the National Summit Conference on Education Act of 1984 is amended to read as follows:

"(f)(1) There shall be an executive committee on the Conference consisting of—

"(A) 6 individuals appointed by the Speaker of the House of Representatives, of whom—

"(i) 2 shall be members of the House, one from each political party;

"(ii) one shall be a local school board member;

"(iii) one shall be a local elected official; and

"(iv) 2 shall be representatives of local educational agencies; and

"(B) 6 individuals appointed by the Senate majority leader, of whom—

"(i) 2 shall be Senators, one from each political party;

"(ii) 2 shall be State Governors, one from each political party;

"(iii) one shall be a State legislator; and

"(iv) one shall be the head of a State educational agency; and

"(C) the Secretary of Education, ex officio.".

(c) REGIONAL MEETINGS.—Section 5(h)(2)(A) of the National Summit Conference on Education Act of 1984 is amended by striking the last sentence and inserting "The executive committee is authorized to conduct regional meetings to carry out the purposes of this Act.".

(d) AGENDA.—Section 5(i)(1) of the National Summit Conference on Education Act of 1984 is amended to read as follows:

"(i)(1) The executive committee shall develop an agenda for the conference prior to the conference. The purpose of this agenda shall be to review the goals and recommendations made by recent reports on education in this country, by organizations such as the National Governors Association, and by the President of the United States, and to make recommendations as to how these goals

might be implemented and the roles of different levels of government in that implementation.".

(e) TECHNICAL AND CLARIFYING AMENDMENTS.—Section 5 of the National Summit Conference on Education Act of 1984 is further amended—

(1) in subsection (d), by inserting "postsecondary education," after "school board members,";

(2) in subsection (e), by striking "section 605" and inserting "subsection (f)"; and

(3) in subsection (f)(2)—

(A) by striking "section 604" and inserting "subsection (d)"; and

(B) by striking "sections 603 and 604" and inserting "subsections (c) and (d)".

SEC. 622. DEMONSTRATION PROJECTS FOR THE DEVELOPMENT OF EXEMPLARY AND INNOVATIVE DIAGNOSTIC AND ASSESSMENT SYSTEMS AND POLICIES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Comprehensive assessment systems provide data to address—

(A) the need for information instrumental to improving student learning, teacher performance, and program design, which derives from diagnostic sets of assessment information that are curriculum-referenced; and

(B) the need for information describing existing levels of student, teacher, or program performance, which derives from evaluative sets of test information that usually are standardized and norm-referenced.

(2) Results from standardized and norm-referenced tests are used to compare individuals, groups of individuals, or institutions with other similar individuals, groups of individuals, or institutions. Such results provide accurate normative information that, over a period of several years, can be used to identify major trends in the educational achievement of students within a district, a State, or the Nation.

(3) Results from curriculum-referenced assessments are used to analyze and assess the strengths and weaknesses of students and programs and to prescribe corrective measures. Such assessments provide one of the best methods of measuring student growth and development.

(4) Diagnostic assessment is used to improve curriculum, instruction, and achievement for all students at all ability levels by assessing needs and abilities of students, developing a curriculum based on such needs and abilities, and matching the assessments with the taught curriculum.

(b) PURPOSE.—It is the purpose of this section to develop diagnostic assessment systems that are curriculum-referenced to improve student learning, program design, and teacher performance at the local level, and to train teachers in such assessment. If new assessment instruments are developed, they shall adhere to psychometric properties relative to standards in the field.

(c) PROGRAM AUTHORIZED.—The Secretary, through the Office of Educational Research and Improvement, is authorized to make grants, for purposes of establishing demonstration projects to develop exemplary and innovative diagnostic assessment systems, policies, and practices, to local educational agencies and consortia of local and State educational agencies, which may include institutions of higher education and nonprofit or for-profit agencies with expertise in curriculum and assessment.

(d) ELIGIBLE AGENCIES.—Any local educational agency described in subsection (c) that desires to receive a grant under this section shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information and assurances as the Secretary may reasonably require. Each such application shall demonstrate to the Secretary that the agency, institution, or consortium, in developing diagnostic assessment systems and policies with assistance under the grant—

(1) will collaborate with curriculum and assessment experts from institutions of higher education and other scholars; and

(2) will conduct a comprehensive, district-wide needs assessment to gather data concerning the strengths and weaknesses of students served by the agency, institution, or consortium, which assessment will incorporate the assessment required by section 1014 of the Elementary and Secondary Education Act of 1965.

(c) PRIORITY FOR GRANTS.—The Secretary shall give priority for grants under this section to State educational agencies, local educational agencies, institutions of higher education, or consortia described in subsection (c) that submit applications that—

(1) describe how the scope of work will focus on local school improvement and will include professional expertise;

(2) demonstrate how data gathered through comprehensive, district-wide needs assessments as required by subsection (d)(2) will be analyzed to reveal strengths and weaknesses of students served by the agency, institution, or consortium;

(3) demonstrate how data gathered from such assessments will be used to improve student performance, program design, and instructional content at the local level, particularly with respect to students who are members of minorities and students of varying socioeconomic statuses;

(4) provide for programs for teacher training in diagnostic assessment skills, with special emphasis on minorities; and

(5) demonstrate how data will be disaggregated and presented in nontechnical language to appropriate members of the school community.

(f) LIMITATION ON ELIGIBILITY.—An agency or consortium may receive a grant under this section in each of not more than 5 fiscal years.

(g) REPORTS.—Not later than the end of the 2-year period beginning on the date of the enactment of this Act, and every 2 years thereafter, the Secretary shall report to the Congress on the grant program established under this section. Each such report shall describe how diagnostic assessment systems developed with assistance under this section relates to research conducted by the Office of Educational Research and Improvement, including research on other Federal and State programs of standardized testing.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section $10,000,000 for the fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992, 1993, 1994, and 1995.

SEC. 623. NATIONAL CENTER FOR EDUCATION STATISTICS.

(a) IN GENERAL.— Paragraph (4) of section 406(d) of the General Education Provisions Act (20 U.S.C. 1221e-1(d)) is amended by adding at the end the following:

"(G)(i) This paragraph shall not apply to—

"(I) the survey required by section 1303(c) of the Higher Education Amendments of 1986; or

"(II) to any longitudinal study concerning access, choice, persistence progress, or attainment in postsecondary education.

"(ii) Any person, except those sworn to observe the limitation of this subsection, who uses any data as described in clause (i) provided by the Center, in conjunction with any other information or technique (including de-encryption), to identify any individual student, teacher, administrator, or other person and who discloses, publishes, or uses for a purpose other than that for which it was collected, or who otherwise violates clause (i) or (ii) of subparagraph (A), shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

"(iii) No employee or staff member of the Center or of an institution of higher education may be found criminally liable under subparagraph (C), based on a violation of subparagraph (A) or clause (i), if such employee or staff member has taken reasonable precautions, consistent with the purpose of this section, to ensure the confidentiality of data made available to the public.

"(H) Nothing in this paragraph shall restrict the right of the Comptroller General of the United States to gain access to any reports or other records, including information identifying individuals, in the center's possession; except that the same restrictions on disclosure that apply to the Center under subparagraphs (B) and (G) shall apply to the General Accounting Office.".

(b) NATIONALLY COMPARABLE AND UNIFORM DATA REQUIRED.—Subparagraph (c) of section 406(g)(4) of the General Education Provisions Act (20 U.S.C. 1221e-1(g)(4)) is amended by adding at the end thereof the following: "The Center shall ensure that such report contains nationally comparable and uniform data by State.".

PART C—AMENDMENTS TO THE GENERAL EDUCATION PROVISIONS ACT

SEC. 631. RESPONSIBILITY OF STATES TO FURNISH INFORMATION CONCERNING USES OF FEDERAL FUNDS.

Section 406A of the General Education Provisions Act (20 U.S.C. 1232f) is amended to read as follows:

"RESPONSIBILITY OF STATES TO FURNISH INFORMATION

"SEC. 406A. (a) Each State educational agency shall submit to the Secretary a report on or before March 15 of every second year. Each such report shall include—

"(1) information with respect to the uses of Federal funds in that State in the 2 preceding fiscal years under any applicable program under the jurisdiction of the State educational agency; and

"(2) to the extent practicable, information with respect to the uses of Federal funds in that State in the 2 preceding fiscal years under any Federal program administered by the State that provided grants or contracts to a local educational agency in the State.

"(b) Each report submitted as required by subsection (a) shall—

"(1) list, with respect to each program for which information is provided, all grants made to and contracts entered into with local educational agencies and other public and private agencies and institutions within the State during each fiscal year concerned;

"(2) analyze the information included in the report by local educational agency and by program;

"(3) include the total amount of funds available to the State under each such program for each fiscal year concerned and specify which appropriation Act or Acts made such funds available;

"(4) separately account for any funds carried over from a preceding fiscal year by any State or local educational agency; and

"(5) be made readily available by the State to local educational agencies and institutions within the State and to the public.

"(c) On or before August 15th of any year in which reports are submitted under subsection (a), the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. Such report shall include—

"(1) an analysis of the content and data quality of such reports;

"(2) a compilation of statistical data derived from such reports; and

"(3) information obtained by the Secretary with respect to—

"(A) direct grants made to local educational agencies by the Federal Government; and

"(B) contracts entered into between such agencies and the Federal Government.".

SEC. 632. ENFORCEMENT.

(a) OFFICE OF ADMINISTRATIVE LAW JUDGES.—Section 451 of the General Education Provisions Act (20 U.S.C. 1234) is amended—

(1) in the first sentence of subsection (c), by striking "the Department" and inserting "the United States";

(2) in subsection (e), by striking "determination" and inserting "decision"; and

(3) in paragraph (2) of subsection (g)—

(A) in the first sentence, by striking "subsections (f)(1) and (g)(1)" and inserting "subsection (f)(1) and paragraph (1)";

(B) by inserting after the first sentence the following: "Such application for enforcement may be made in the judge's name or through the judge's attorneys. Such application may be reviewed by the chief judge appointed pursuant to subsection (c).''; and

(C) by adding at the end the following: "The judge is authorized to institute and maintain litigation to carry out such provisions without the approval or assistance of the Department of Justice.".

(b) RECOVERY OF FUNDS.—Paragraph (1) of section 452(f) of the General Education Provisions Act (20 U.S.C. 1234a(f)) is amended by striking "Department" and inserting "departmental".

(c) MEASURE OF RECOVERY.—Subsection (b) of section 453 of the General Education Provisions Act (20 U.S.C. 1234b) is amended—

(1) in paragraph (3), by striking "paragraph (2)" and inserting "paragraph (2)(B)(i)"; and

(2) in paragraph (5)—

(A) in subparagraph (B), by striking "was permissible" and inserting "might have been permissible"; and

(B) in subparagraph (C), by striking "was permissible" and inserting "might have been permissible".

(d) USE OF RECOVERED FUNDS.—Subsection (c) of section 459 of the General Education Provisions Act (20 U.S.C. 1234h) is amended by striking "following" and all that follows and inserting the following: "following the later of—

"(1) the fiscal year in which final agency action under section 452(e) is taken; and

"(2) the fiscal year in which judicial review of such action is completed.".

PART D—AMENDMENTS TO EXISTING PROGRAMS

SEC. 641. AMENDMENTS TO THE BILINGUAL EDUCATION ACT.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subsection (b) of section 7002 of the Bilingual Education Act (20 U.S.C. 3282) is amended by adding at the end the following:

"(8) From the sums appropriated under paragraph (1) for part A for any fiscal year, the Secretary is authorized to reserve not more than $1,000,000 for developmental bilingual education projects and special alternative instructional projects in middle school grades carried out under section 7021(a)(7).".

(b) BILINGUAL EDUCATION PROGRAMS.—Subsection (a) of section 7021 of the Bilingual Education Act (20 U.S.C. 3291) is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following:

"(7) programs for developmental bilingual education or special alternative instructional projects, to be carried out in middle school grades, that feature developmental bilingual approaches for fostering academic achievement and retention by emphasizing the arts and humanities and placing special emphasis on site-based decisionmaking, magnet schools community involvement, and collaboration with local colleges.".

SEC. 642. PROGRAMS FOR IMPROVING EDUCATIONAL PERFORMANCE.

(a) GENERAL AUTHORITY.—Section 4601(a)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3151(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following:

"(E) establish programs for improving the educational performance of and employment opportunities available for elementary and secondary students who are not performing to their educational potential in accordance with section 4606.".

(b) PROGRAM AUTHORIZED.—Part F of title IV of the Elementary and Secondary Education Act of 1965 (as amended by section 611 of this Act) (20 U.S.C. 3151 et seq.) is amended—

(1) by redesignating sections 4606 through 4610 as sections 4607 through 4611, respectively; and

(2) by inserting after section 4605 the following:

"SEC. 4606. PROGRAMS FOR IMPROVING EDUCATIONAL PERFORMANCE.

"(a) GENERAL AUTHORITY.—The Secretary is authorized to make grants and enter into contracts with local educational agencies, as authorized by section 4601, for the purpose of improving the educational performance of and employment opportunities available for elementary and secondary students who are not performing to their educational potential.

"(b) PRIORITY.—The Secretary shall give priority for grants under this section to local educational agencies that propose to demonstrate effective approaches to improving the performance of elementary and secondary students who are not performing to their educational potential.".

SEC. 643. DRUG ABUSE RESISTANCE EDUCATION PROGRAMS.

(a) IN GENERAL.—Section 5122 of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3192) is amended—

(1) in subsection (a), by striking "50 percent" and inserting "45 percent";

(2) in paragraph (1) of subsection (b), by striking "50 percent" and inserting "45 percent";

(3) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(4) by inserting after subsection (b) the following:

"(c) DRUG ABUSE RESISTANCE EDUCATION PROGRAMS.—(1) Not less than 10 percent of the funds available for each fiscal year under section 5121(a) to the chief executive officer of a State shall be used for grants to local educational agencies in consortium with entities which have experience in assisting school districts to provide instruction to students grades kindergarten through 6 to recognize and resist pressures that influence such students to use controlled substances, as defined in schedules I and II of section 202 of the Controlled Substances Act the possession or distribution of which is unlawful under such Act, or beverage alcohol, such as Project Drug Abuse Resistance Education, that meet the requirements of paragraph (2).

"(2) A local educational agency in consortium with an entity shall not be eligible for a grant under paragraph (1) unless such local educational agency in consortium with an entity will use assistance provided under such grant to provide or arrange for the provisions of services that shall include—

"(A) drug abuse resistance education instruction for students grades kindergarten through 6 that is designed to teach such students to recognize and resist pressures to experiment that influence such children to use controlled substances, as defined under paragraph (1), or beverage alcohol, including instruction in the following areas—

"(i) drug use and misuse;

"(ii) understanding the consequences of drug abuse;

"(iii) resistance techniques;

"(iv) assertive response styles;

"(v) managing stress without taking drugs;

"(vi) decisionmaking and risk taking;

"(vii) media influences on drug use;

"(viii) positive alternatives to drug abuse behavior;

"(ix) interpersonal and communication skills;

"(x) self-esteem building activities; and

"(xi) resistance to peer pressure and gang pressure;

"(B) provisions for parental involvement;

"(C) classroom instruction by uniformed law enforcement officials;

"(D) the use of positive student leaders to influence younger students not to use drugs;

"(E) an emphasis on activity-oriented techniques designed to encourage student-generated responses to problem-solving situations; and

"(F) the awarding of a certificate of achievement to each student who participates in a drug abuse resistance education program.

"(3) Amounts received under paragraph (1) by any local educational agency or entity shall be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the support of projects of the type described in paragraph (2).".

(b) NONDUPLICATION PROVISION.—The amendment made by subsection (a) shall not take effect if legislation that similarly amends section 5122 of the Drug-Free Schools and Communities Act of 1986 is enacted before the enactment of this Act.

SEC. 644. TREATMENT OF TERRITORIES AND FREELY ASSOCIATED STATES.

(a) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Subsection (a) of section 1005 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2711) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) COMPETITIVE GRANTS.—(A) From amounts appropriated for purposes of carrying out this section, the Secretary shall reserve an amount equal to the amount described in subparagraph (B) for purposes of making competitive grants to local educational agencies in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. The Secretary shall make such grants according to the recommendations of the Pacific Regional Laboratory in Honolulu, Hawaii, which shall conduct a competition for such grants.

"(B) The amount described in this subparagraph is the portion of the aggregate amount reserved in the fiscal year 1989 under sections 1005(a), 1291, 1404, 1405(a)(2)(A), and 1405(a)(2)(B) for the Trust Territory of the Pacific Islands that was attributable to the Republic of the Marshall Islands and the Federated States of Micronesia.

"(C) Subject to subparagraph (D), grants awarded under this paragraph may only be used for—

"(i) activities consistent with the purposes of—

"(I) title I;

"(II) the Adult Education Act;

"(III) the Education of the Handicapped Act;

"(IV) the Library Services and Construction Act; or

"(V) the Dwight D. Eisenhower Mathematics and Science Education Act;

"(ii) teacher training;

"(iii) curriculum development;

"(iv) instructional materials; or

"(v) general school improvement and reform.

"(D) Grants awarded under this paragraph may only be used to provide direct educational services.

"(E) The Secretary shall provide 5 percent of amounts made available for grants under this paragraph to pay the administrative costs of the Pacific Regional Laboratory with respect to the program under this paragraph.".

(b) ADULT EDUCATION ACT.—The Adult Education Act is amended—

(1) in sections 312(7) and 371(b)(7)(B)(i) (20 U.S.C. 1201a(7) and 1211(b)(7)(B)(i)) by striking "the Trust Territory of the Pacific Islands" and inserting "Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)"; and

(2) in sections 313(b) and 361(a) (20 U.S.C. 1201b(b) and 1209a(a)) by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau".

(c) STAR SCHOOLS PROGRAM.—Section 907(8) of the Star Schools Program Assistance Act (20 U.S.C. 4086(7)) is amended by striking "the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau".

(d) EDUCATION OF THE HANDICAPPED.—The Education of the Handicapped Act is amended in—

(1) section 602(a)(6) (20 U.S.C. 1401(a)(6)) by striking "or the Trust Territory of the Pacific Islands" and inserting "or Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)";

(2) section 611(a)(2) (20 U.S.C. 1411(a)(2)) by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau"; and

(3) section 611(e)(1) (20 U.S.C. 1411(e)(1)) by striking "and the Trust Territory of the Pacific Islands" and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)".

(e) LIBRARY SERVICES AND CONSTRUCTION ACT.—The Library Services and Construction Act is amended in—

(1) section 3(g) (20 U.S.C. 351a(g)) by striking "or the Trust Territory of the Pacific Islands" and inserting "Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)";

(2) section 5(a)(3) (20 U.S.C. 351c(a)(3)) by striking "and the Trust Territory of the Pacific Islands" each place such term appears and inserting "Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)";

(3) section 7(a) (20 U.S.C. 351e(a)) by striking "the Trust Territory of the Pacific Islands" and inserting "Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)"; and

(4) section 7(b) (20 U.S.C. 351e(b)) by striking "and the Trust Territory of the Pacific Islands" each place such term appears and inserting "the Commonwealth of the Northern Mariana Islands and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658)".

PART E—PLANNING GRANTS FOR INNOVATIVE DEMONSTRATION PROJECTS AND RESEARCH

SEC. 651. GRANTS TO STATE AND LOCAL EDUCATIONAL AGENCIES.

(a) STATEMENT OF PURPOSE.—The Secretary is authorized to make grants to State educational agencies, local educational agencies, and consortia of such agencies to plan for the development and expansion of policies, programs, and projects that—

(1) increase opportunities of parents, particularly parents of disadvantaged children, parents of minority children, and parents of children who live in rural areas, to select the school or program attended by their children;

(2) advance equity in the methods used by States and local educational agencies to support systems of public elementary and secondary education;

(3) further the involvement of parents in the education of their children, especially parents who are economically disadvantaged; and

(4) further the involvement of businesses and communities in public education.

(b) STATEMENT OF POLICY.—In implementing the purpose described in subsection (a), it is the policy of this program to—

(1) improve the educational options of disadvantaged students, minority students, or students who live in rural areas;

(2) assure equal educational opportunities for all children; and

(3) promote the development of curricula to attain excellent, distinct, and diverse schools and programs.

(c) USES OF FUNDS.—Funds provided under grants under this section may be used to plan for—

(1) the development of State or local policies and procedures for open enrollment among public schools or programs;

(2) the development of State or local policies and procedures to assist parents, particularly parents of disadvantaged children and parents of minority children, to become more involved in the education of their children;

(3) the development of improved methods for States to advance equity in the systems used by States and local educational agencies to finance public elementary and secondary education; and

(4) the development of improved methods to involve businesses and communities in public education.

(d) APPLICATIONS.—(1) Any agency or consortium that desires to receive a grant under this section shall submit to the Secretary an application in such form, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Each such application shall—

(A) assure that the funds provided under the grant will be used for the purposes described in subsection (c);

(B) describe the need for the grant;

(C) describe the objectives of the project and how those objectives will be fulfilled;

(D) assure that any project assisted with funds under this section will not—

(i) result in segregation in schools within the State based upon race, religion, color, national origin, sex, or handicap, or impede the progress of desegregation among the schools within the State; or

(ii) in the case of a grant to a local educational agency or to a consortium that includes a local educational agency, result in such segregation or impede the progress of desegregation among the schools of the local educational agency;

(E) in the case of a grant to a State educational agency, assure that the State educational agency will provide assistance to the project, in cash or in kind, in an amount at least equal to the amount of funds awarded under the grant;

(F) assure that outreach and dissemination activities will be conducted with assistance under the grant to inform parents of their rights, choices, and obligations with respect to activities funded under the grant as such activities relate to the education of their children; and

(G) assure that funds will be used to develop mechanisms to foster access to schools in the open enrollment system on a nondiscriminatory basis and without regard to educational or economic disadvantage.

(2) Each local educational agency or consortium consisting entirely of local educational agencies that submits an application to the Secretary under this subsection shall also provide a copy of such application to the appropriate State educational agency. The State educational agency may review

such application and provide comments to the Secretary with respect to such application not later than the expiration of the 30-day period beginning on the date that the application is submitted to the Secretary and to the State educational agency.

(3) An agency or consortium that receives assistance under this section for 1 year may not receive such assistance under this subsection for any later year unless—

(A) such agency or consortium includes in its application for continuation of such assistance, in addition to the information and assurances required by paragraph (1), a description of the methods employed by such agency to fulfill the assurance described in paragraph (1)(D); and

(B) the Secretary determines that the program for which funds were provided is making satisfactory progress in meeting the objectives of its approved application and achieving the purposes of this section.

(d) PRIORITY.—(1) The Secretary shall give priority for grants under this section other than planning grants for open enrollment systems to agencies and consortia that propose projects that have the greatest potential for improving the education of disadvantaged students, and minority students.

(2) In making planning grants for open enrollment systems under this section, the Secretary shall give equal priority to students described in paragraph (1) and students who live in rural areas.

(e) DURATION OF AWARDS.—Grants under this section may be awarded for a period not to exceed 3 years.

(f) COOPERATION.—Any agency or consortium that receives a grant under this section shall, to the extent practicable, cooperate with research activities carried out under section 652.

(g) DISSEMINATION OF EVALUATION RESULTS.—Each agency and consortium that receives a grant under this section shall provide a copy of results of evaluations of programs assisted under such grants to the Educational Resources Information Center.

SEC. 652. RESEARCH AND DISSEMINATION.

(a) GENERAL AUTHORITY.—The Secretary, through the Office of Educational Research and Improvement, is authorized to conduct research on open enrollment systems, parental involvement, school finance equalization, and business involvement in public education and to disseminate the results of such research. The Office of Educational Research and Improvement may conduct such research and dissemination directly or through grants, contracts, or cooperative agreements with institutions of higher education, State educational agencies, public or private nonprofit organizations, or individual researchers. Such research shall, where available, feasible, and appropriate, use objective measures of individual student achievement in basic and more advanced skills, and shall include an assessment of the impact of the program on the academic achievement of educationally disadvantaged children.

(b) PROGRAM REQUIREMENTS.—Each recipient of funds under this section for purposes of conducting research shall submit a copy of its final research results to the Educational Resources Information Center.

(c) FEDERAL DISSEMINATION.—To the extent possible, the Secretary shall provide information to State and local educational agencies regarding opportunities for dissemination of exemplary programs under this subsection through the National Diffusion Network established under section 1562 of the Elementary and Secondary Education Act of 1965. The Secretary shall coordinate the identification of exemplary projects with the National Diffusion Network.

SEC. 653. DEFINITION.

For purposes of this part, the term "open enrollment system" means a system adopted by a State educational agency or local educational agency under which parents may select the school or educational program in which their child will be enrolled.

SEC. 654. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—For purposes of carrying out this part, there are authorized to be appropriated $30,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993.

(b) AMOUNTS FOR RESEARCH AND DISSEMINATION.—From the amounts appropriated under subsection (a) in any fiscal year, the Secretary may reserve not more than $1,000,000 for purposes of carrying out section 652.

PART F—EDUCATIONAL PERFORMANCE AGREEMENTS FOR SCHOOL RESTRUCTURING

SEC. 661. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) the ability of the United States to deliver more effective educational services to its citizens, especially disadvantaged citizens and traditionally underserved citizens, is of primary importance to the national security and to the continued role of the United States as a world leader;

(2) local educational agencies should have more discretion in the uses of Federal and State funds than currently provided, if they can demonstrate the ability to educate children and adults to perform at higher levels;

(3) local educational agencies and the Governors of several States have requested greater flexibility in designing innovative programs for training, special needs education, and drug education, in exchange for an agreement to achieve higher, clearly stated performance levels in a reasonable period of time; and

(4) public education in this country may benefit from school improvement models developed under such agreements.

(b) PURPOSE.—It is the purpose of this part to establish a national demonstration program of educational performance agreements under which—

(1) local working groups develop proposals which enable students, including special needs students, to achieve higher performance;

(2) with such proposals, selected schools are allowed to combine funds for the education of special needs students, drug education, and training programs;

(3) Federal, State and local protections with respect to civil rights, discrimination and safety will be upheld;

(4) States under the agreement will make available such funds as may be necessary to plan, develop, monitor and evaluate local performance agreements; and

(5) the Secretary of Education, through the Office of Educational Research and Improvement, shall reserve funds to conduct an independent evaluation of the demonstrations authorized under this part.

SEC. 662. ESTABLISHMENT OF PROGRAM FOR EDUCATIONAL PERFORMANCE AGREEMENTS FOR SCHOOL RESTRUCTURING.

(a) GENERAL AUTHORITY.—For the purposes of granting authority to combine Federal and State special needs education, drug education, and training programs, and waiving Federal laws and regulations relating to the use of funds under certain Acts, the Secretary of Education shall—

(1) receive assurances from and enter into educational performance agreements with the States concerned for not more than a total of 35 local schools nationwide fulfilling the requirements of section 664, each of which shall also enter into a local performance agreement in accordance with section 663; and

(2) develop procedures by which the agreements in paragraph (1) will be reached.

(b) FEDERAL PROGRAMS PERMITTED TO BE COMBINED.—The educational performance agreement and the local performance agreements may provide for the combination (and contain waivers from restrictions regarding uses of funds applicable to) Federal, State, and local funds available for programs relating to the following special needs education, drug education, and training programs:

(1) In the case of training programs at the secondary level for children participating in vocational education courses, funds provided under—

(A) the Carl D. Perkins Vocational and Applied Technology Education Act; and

(B)(i) the Job Training Partnership Act;

(ii) the Drug-Free Schools and Communities Act of 1986;

(iii) subtitles A, B, and C of title VII of the Stewart B. McKinney Homeless Assistance Act; or

(iv) the School Dropout Demonstration Assistance Act of 1988.

(2) In the case of special needs programs at the elementary school level for children receiving services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, funds provided under—

(A) such chapter; and

(B)(i) subtitles A, B, and C of title VII of the Stewart B. McKinney Homeless Assistance Act;

(ii) the Drug-Free Schools and Communities Act of 1986;

(iii) chapter 2 of title I of the Elementary and Secondary Education Act of 1965;

(iv) the Jacob K. Javits Gifted and Talented Students Education Act of 1988;

(v) the Emergency Immigrant Education Act of 1984; or

(vi) title XI of the Education Amendments of 1978.

(c) AUTHORITY OF OTHER AGENCIES.—For the purposes of implementing an educational performance agreement that proposes to include programs not under the jurisdiction of the Secretary of Education, the Secretary of Education shall provide copies of such proposed agreement to each Secretary concerned. Each such Secretary shall, with respect to the programs under the jurisdiction of such Secretary, have the same power as the Secretary of Education has under subsection (a) to grant authority to combine such programs, and to waive Federal laws and regulations relating to the use of funds in accordance with an educational performance agreement and its component local performance agreements that meet the requirements of this part.

(d) LIMITATIONS.—Nothing in this part may be construed—

(1) to authorize any changes in, substitutions for, or lessening of the mandates and protections of Federal laws and regulations regarding civil rights, discrimination, and safety, and the procedural safeguards contained therein;

(2) to affect regulations and prohibitions concerning the diversion of Federal funds for private use;

(3) to absolve any State or local agency of—

(A) any maintenance of effort or comparability of services requirements under any program described in subsection (b);

(B) any comparable purposes, goals, or objectives for students targeted by the programs described in subsection (b); or

(C) any requirement to provide for the equitable participation of private school students according to the requirements of the programs combined under subsection (b);

(4) to alter the distribution of funds to schools within the local educational agency, or to change the way funds are utilized within schools for programs not included under the local performance agreement; or

(5) to permit funds made available for services and activities to be used for the construction, renovation, or repair of facilities.

(e) TERMINATION OF COMBINATION AUTHORITY.—The authority to combine programs (and receive exemptions) under this section shall expire at the conclusion of the sixth year of the educational performance agreement. Each applicant shall sign a form acknowledging that—

(1) the applicant's participation in the agreement is for experimental purposes;

(2) the applicant understands that the rules and regulations waived under the agreement will no longer be waived at the end of the 6 years, absent subsequent legislation to the contrary; and

(3) the applicant will not use any public funds to influence the passage of legislation to extend the agreements under this section.

(f) AUDITS.—Expenditures made in accordance with the provisions of this part, the applicable educational performance agreement, and local performance agreement shall not be subject to exception or recovery, pursuant to audit, for failure to comply with the provisions of any law governing a program or funds combined under the agreement, other than a provision referred to in subsection (d).

SEC. 663. STATE ASSURANCES AND EDUCATIONAL PERFORMANCE AGREEMENTS.

(a) STATE ASSURANCES.—Within 2 years after the date of the enactment of the Educational Equity and Excellence Act of 1990, the Secretary of Education shall select, from those States that provide appropriate assurances, not more than 35 schools to combine Federal special needs education, drug education, and training program funds under an educational performance agreement that complies with subsection (b). Such assurances shall contain such information as the Secretary of Education may determine to be necessary, including—

(1) assurances that sufficient State funds will be available for technical assistance, planning and development, implementation, assessment, and evaluation;

(2) commitments from the State that local educational performance agreement working groups will be formed to develop and implement the local performance agreements;

(3) assurances from the State that participating in an educational performance agreement will not lessen its commitment to enforce Federal laws and regulations with respect to civil rights, discrimination, and safety;

(4) commitments from the State that it will exempt schools from regulations for State programs, as specified in the local performance agreements relating to the use of funds under certain Acts, and will permit comparable combination of the funds provided under State programs included under such agreements;

(5) assurances that the State will—

(A) only approve local performance agreements for schools where at least 60 percent of the students are receiving services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965;

(B) give appropriate consideration to the geographical distribution of local performance agreements, and the distribution between urban and rural areas;

(C) consider the prior record of compliance regarding Federal laws and regulations with respect to civil rights, discrimination, and safety; and

(6) assurances that, other than the local performance agreements, the State will not require new or additional paperwork or promulgate new regulations as a result of participation in the agreement;

(7) assurances from the State that appropriate indices and goals for higher educational performance will be described in the local performance agreements;

(8) commitments from the State that the local performance agreements will be developed with the assistance of full-time local educational personnel (including paid release time for teachers), parents and other representatives of relevant groups;

(9) assurances from all appropriate State agencies that an approved local performance agreement will serve as any required local application or plan for programs that are included in the agreement;

(10) commitment from the State that a collaborative process will occur which involves, at a minimum, participation from the chief elected official and the chief State school officer;

(11) assurances from all appropriate State agencies that approved local performance agreements will serve as modifications or amendments to the relevant State plans; and

(12) assurances from the State that authority to waive State laws and regulations specified under the local performance agreements regarding uses of funds under certain Acts will be retained by the appropriate State agency.

(b) EDUCATIONAL PERFORMANCE AGREEMENTS.—Each educational performance agreement under this part shall, subject to section 666(d), be entered into by each Secretary concerned and the States selected under subsection (a) within 2 years of the date of the enactment of the Educational Equity and Excellence Act of 1990 and shall be effective for 6 fiscal years. Such agreement shall—

(1) identify the responsibilities of the respective parties to the agreement;

(2) describe the methods and activities by which the commitments and assurances provided under section 663(a) will be implemented;

(3) require that the first such fiscal year be devoted to the development of local performance agreements (in accordance with section 664) for the implementation of the agreement;

(4) not permit the combination of Federal funds during such first fiscal year;

(5) require that the second through sixth such fiscal years be years in which the educational performance agreement is implemented in accordance with the local performance agreements;

(6) once the local performance agreements are adopted, include a specific description of—

(A) the Federal and State special needs education, drug education, and training programs and funds which will be affected and the manner in which the funds will be combined; and

(B) the waivers which will be provided from restrictions applicable to Federal, State, and local funds available for such programs; and

(7) contain such additional information and assurances as each Secretary concerned may require consistent with the purposes of this title.

(c) INITIAL PLANNING YEAR.—During the initial planning year, the State shall provide, for the purposes of the local performance agreement—

(1) such technical assistance or funding for technical assistance as may be necessary; and

(2) funds sufficient to meet the costs of developing comprehensive and detailed plans for the implementation of the local performance agreements, including the costs of the working group.

(d) IMPLEMENTATION YEARS.—For the second through sixth fiscal years in which an educational performance agreement under this part is in effect, the State shall make such funds available to select a school or schools through the local school authorities as are necessary for continuing technical assistance and local administration, monitoring, and annual evaluation. Such funds shall also be available to other program providers participating in the agreement.

SEC. 664. LOCAL PERFORMANCE AGREEMENTS.

During the second through sixth year of an educational performance agreement, such agreement shall be in effect only if it contains, as component elements, local performance agreements that—

(1) are developed and coordinated by a local educational performance agreement working group comprised of individuals representative of program providers, business, local school authorities and personnel, parents, and other representative individuals with direct involvement with the local performance agreement as appropriate, and who reflect local needs and interests;

(2) are entered into by the selected schools, the local educational agency, the State, and each Secretary concerned;

(3) are amendable through negotiation during the term of the educational performance agreement;

(4) include any relevant provisions of the State assurances and educational performance agreement under section 663;

(5) specify the funds to be combined and the waivers required from State and Federal laws and regulations regarding uses of funds under certain Acts to carry out the educational performance agreement;

(6) contain goals for children targeted by programs combined under the performance agreement which are comparable to, or exceed, goals under such programs;

(7) include a set of intermediate performance goals;

(8) include higher outcomes, including achievement levels, than previously demonstrated over the preceding 3 years for the children described in paragraph (6);

(9) identify the entities which will be responsible for the achievement of the stated goals at the end of each year of the agreement;

(10) include—

(A) a description of the indices to be measured in order to ascertain the amount of

progress made toward the stated goals of the agreement, which indices may include measurement instruments developed before or after the date of the enactment of the Educational Equity and Excellence Act of 1990 which—

(i) shall include measures of achievement; and

(ii) may include—

(I) the dropout rate, retention rate, or graduation rate;

(II) teacher and student absenteeism rates;

(III) skill levels of students in reading, mathematics, analytical reasoning, and higher order thinking; and

(IV) other indicators considered to be appropriate by the local educational agency, including open-ended problem solving exercises to measure analytical and mathematical skills, portfolios of student's work in subject areas, and performance tests (including vocational skills assessments);

(B) a description of the methods to be used in measuring such indices; and

(C) an average measurement of such indices over the preceding 3 years as of the date the local performance agreement is entered into;

(11) provide for the termination of the local performance agreement, and withdrawal of authority to combine programs, if any Secretary concerned, in consultation with the State, determines that the agency has substantially failed to comply with any requirement of this part, the educational performance agreement, or the local performance agreement;

(12) include a plan for coordinated services and service delivery;

(13) describe rewards and incentives that will be provided to students and successful service providers, particularly incentives for service providers that meet goals for students who are members of special populations and dropouts; and

(14) include a commitment that—

(A) the local performance agreement will be adopted at a regular meeting of the local educational agency, with adequate public notice, and the agreement will include comments received at such meeting with a written description of the response to the concerns expressed in such comments;

(B) the local performance agreement will be reviewed by the local educational agency not less often than once annually during the term of the agreement in accordance with section 665(a); and

(C) the State will submit the results of the assessments conducted under section 665(b) to each Secretary concerned.

SEC. 665. LOCAL REVIEW AND ASSESSMENT.

(a) ANNUAL REVIEW.—(1)(A) Each local educational agency that enters into a local performance agreement under this part shall conduct an annual review of the operation of such agreement to ascertain whether improved performance is being achieved and whether such performance is being sustained. Such review—

(i) shall at least include measures of the performance of students targeted under each of the programs combined under the local performance agreement; and

(ii) shall be conducted in consultation with the local performance agreement working group.

(B) The results of each annual review required by paragraph (1) shall be made available to parents, the public, and the State educational agency involved, and shall be included as part of the 3-year assessment required under subsection (b).

(2) If the annual review required by paragraph (1) reveals any decline in performance, the local educational agency concerned shall, in cooperation with the local educational performance agreement working group, develop alternative strategies and modify the program as appropriate, including making available additional sources of technical assistance and inservice training.

(b) ASSESSMENT.—(1) Each local educational agency shall assess the effectiveness of programs operated under the provisions of the local performance agreement at the end of the third year of program implementation. At a minimum, such assessment shall include measurement of the performance of students eligible for services under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 and students enrolled in vocational and applied technology education programs and a description of the degree to which the local performance agreement has met the goals and objectives of the programs combined under such agreement. Such assessment results shall be submitted to the State educational agency. The State educational agency shall make public the results reported, and shall transmit the results of these assessments to the Secretary of Education.

(2) If the local educational agency assessment results do not achieve the stated goals and outcomes in the local performance agreement, or if the performance of the students participating in the programs does not exceed the average performance of such children for the preceding 3 years or exceed the performance of similar target populations district wide, the local educational agency and the State educational agency shall develop a local implementation and improvement strategy that may include agreement modification, technical assistance from the State, and revised assessment criteria and timetables. The local performance agreement may be terminated, and authority to combine programs withdrawn, if the Secretary of Education determines that—

(A) the local educational agency cannot achieve the goals or sufficient improvement in educational performance even with assistance; or

(B) the local educational agency refuses to negotiate or implement an improvement strategy.

SEC. 666. EVALUATION AND REPORT TO CONGRESS.

(a) ONGOING EVALUATION.—(1) The Secretary of Education, through the Office of Educational Research and Improvement and in consultation with each other Secretary concerned, shall enter into a contract for an ongoing evaluation of each educational performance agreement under this part, and the operation of the local performance agreements thereunder. Such evaluation shall include—

(A) an interim report to the Secretary at the end of the third year of operation; and

(B) a final report at the completion of the demonstration authorized under this part.

(2) Such reports shall contain—

(A) an evaluation and description of the results achieved; and

(B) a description of the degree to which the implementation of this part met the special needs of students targeted under the Federal programs described in sections 662 (a) and (b).

(3) Each report required by paragraph (1) shall be submitted not later than 1 year after the third year, in the case of subparagraph (A)(1), and at the termination or completion of the educational performance agreement, in the case of subparagraph (B)(1).

(b) INTERIM REPORTS.—The Secretary of Education shall provide interim progress reports to the Congress with respect to each educational performance agreement under this title, based on an analysis of the yearly evaluations conducted pursuant to each agreement.

(c) FUNDING.—From amounts available to the Office of Educational Research and Improvement, the Secretary shall make available at least $1,000,000 for the purposes of carrying out this section. Such funds shall be made available over a 3-year period.

(d) SPECIAL RULE.—The Secretary shall not be authorized to carry out the provisions of this part until the requirements of subsection (c) have been met.

SEC. 667. ASSESSMENT TO ASSIST CONGRESS, STATES, AND SCHOOLS IN IMPROVING STUDENT PERFORMANCE.

(a) REPORT ON THE PUBLIC SCHOOLS.—In order to assist State and local educational agencies and teachers in focusing more time and resources on improving student performance, the Secretary of Education shall, not later than January 1, 1992, prepare a report on the public schools of each State.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall—

(1) describe the administration of public education within each State and identify any legal, regulatory, and organizational requirements promulgated since 1980 that affect educational practices;

(2) identify which governmental entity promulgated each requirement described in paragraph (1);

(3) analyze the impact of the requirements described in paragraph (1) on the time and resources local educational agencies have available for educating students, including fiscal resources, staff time, facilities, instructional equipment, and services;

(4) determine the extent to which the number of requirements described in paragraph (1) has increased or decreased since 1980 and the reasons for any such increase or decrease; and

(5) include recommendations on how best to simplify Federal or State regulations so that more resources can be used to improve student performance.

(c) SPECIFIC ISSUES FOR ANALYSIS.—In preparing the report on new requirements imposed since 1980, the Secretary of Education shall analyze for each State—

(1) the amount of resources, if any, that local educational agencies must direct to complying with new mandates and other new legal and regulatory requirements directly related to the education of students, including mandated curricula and student-teacher ratios;

(2) the amount of resources, if any, that local educational agencies must expend to meet new mandates and other new legal and regulatory requirements that are not directly related to the education of students;

(3) the amount of time, if any, that school personnel must spend responding to new requests for data and completing new reports to fulfill Federal or State requirements;

(4) the amount of time, if any, that administrators must spend responding to the paperwork requirements that result from new legal, regulatory, and organizational requirements;

(5) the effect of any new legal and regulatory requirements on the ability of local educational practices, including the impact of such requirements on local flexibility and

control over the classroom and school building management; and

(6) the degree to which any Federal or State requirements have been reduced since 1980 and how such a reduction was achieved.

(d) DISTRIBUTION OF REPORT.—The appropriate State report shall be submitted to the chief executive officer, chief State school officer, legislative leaders of each State, and major State education organizations by January 1, 1992.

(e) SUMMARY REPORT TO THE CONGRESS.—A summary report on all States shall be submitted by the Secretary of Education to the Congress not later than January 1, 1992. Such summary report shall include a chart comparing the findings in each of the States and shall rank the States according to the degree of regulatory burden within each State.

(f) UPDATE OF REPORT.—By January 1 of each year, the Secretary of Education shall update each State report and the summary report to the Congress, illustrating where Federal or State requirements have increased or decreased during the previous year.

(g) CONSULTATION WITH THE CONGRESS.—The Secretary of Education shall consult with the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate by June 1, 1991, concerning the report's design.

SEC. 668. DEFINITIONS.

For the purposes of this part:

(1) Except as otherwise provided, each term has the meaning provided under section 1471 of the Elementary and Secondary Education Act of 1965.

(2) The term "Secretary concerned" means the head of the Federal agency responsible for the program which the State and local entities propose to be made part of the local performance agreement. In the case of a local performance agreement involving programs under the jurisdiction of more than 1 Federal agency, the agreement on the part of the Federal Government may only be entered into, modified, or terminated by the mutual consent of all involved heads of Federal agencies, except that failure to comply with the terms of the exemption from a provision of law or regulation of 1 agency may be grounds for that agency's withdrawal of that exemption or the involvement of that program, without termination of the entire agreement.

(3) The term "State" includes each of the 50 States and the District of Columbia.

PART G—DEFINITIONS

SEC. 671. DEFINITIONS.

As used in this Act—

(1) the term "Director" means the Director of the National Science Foundation;

(2) the term "local educational agency" has the meaning provided by section 1471(12) of the Elementary and Secondary Education Act of 1965;

(3) the term "preschool age" means children below mandatory school attendance age, as determined by State law;

(4) the term "related services" has the meaning provided by section 602(a)(17) of the Education of the Handicapped Act;

(5) the term "Secretary", unless otherwise specified, means the Secretary of Education;

(6) the term "school-age population" means the population of individuals aged 5 to 17, as determined by the Bureau of the Census in the most recent decennial census;

(7) the term "State" has the meaning provided by section 1471(22) of the Elementary and Secondary Education Act of 1965;

(8) the term "State educational agency" has the meaning provided by section 1471(23) of the Elementary and Secondary Education Act of 1965;

(9) the term "State higher education agency" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designation by the Governor or by State law; and

(10) the term "student with a disability" has the same meaning given the term "handicapped children" in section 602 of the Education of the Handicapped Act.

TITLE VII—SCIENCE SCHOLARSHIPS

PART A—NATIONAL SCIENCE SCHOLARS PROGRAM

SEC. 711. PURPOSE; APPROPRIATIONS AUTHORIZED.

(a) PURPOSE.—It is the purpose of this part—

(1) to establish a National Science Scholars Program to recognize student excellence and achievement in the physical, life, and computer sciences, mathematics, and engineering;

(2) to provide financial assistance to students under paragraph (1) to continue their postsecondary education in such fields of study at sustained high levels of performance;

(3) to contribute to strengthening the leadership of the United States in such fields;

(4) to strengthen the United States mathematics, science, and engineering base by offering opportunities to pursue postsecondary education in life, physical, and computer sciences, mathematics, and engineering;

(5) to encourage role models in mathematics, scientific, and engineering fields for young people;

(6) to strengthen the United States mathematics, scientific, and engineering potential by encouraging equal participation of women with men in scientific, mathematics, and engineering fields; and

(7) to attract talented students to teaching careers in mathematics and science in elementary and secondary schools.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) SCHOLARSHIPS.—There are authorized to be appropriated to the Department of Education $4,500,000 for fiscal year 1991 for awards to National Science Scholars.

(2) CONTINUATION AWARDS.—There are authorized to be appropriated to the Department of Education such sums as may be necessary for each of the fiscal years 1992, 1993, 1994, and 1995 to make continuation awards pursuant to section 712(b)(2).

SEC. 712. SCHOLARSHIPS AUTHORIZED.

(a) PROGRAM AUTHORITY.—The Secretary is authorized, in accordance with the provisions of this part, to carry out a program of awarding scholarships to students for the study of the physical, life, or computer sciences, mathematics, or engineering, who—

(1) are selected by the President;

(2) have demonstrated outstanding academic achievement in the physical, life, or computer sciences, mathematics, or engineering; and

(3) show promise of continued outstanding academic performance in such field of study.

(b) PERIOD OF AWARDS.—

(1) PERIOD OF INITIAL AWARD.—A student who satisfies the requirements of section 714(a) may receive a scholarship, for a period of 1 academic year, for the first year of undergraduate study at an institution of higher education.

(2) CONTINUATION AWARDS.—A student who satisfies the requirements of section 714(b) may receive additional scholarships, each awarded for a period of 1 academic year, in order to complete his or her undergraduate course of study. A student may receive additional scholarships for not more than 3 academic years of undergraduate study, except that, in the case of a student who is enrolled in an undergraduate course of study that requires attendance for 5 academic years, the student may receive additional scholarships for not more than 4 academic years of undergraduate study.

(c) USE AT ANY INSTITUTION PERMITTED.—A student awarded a scholarship under this part may attend any institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965.

(d) NATIONAL SCIENCE SCHOLARS.—Students awarded scholarships under this part shall be known as "National Science Scholars".

SEC. 713. SELECTION OF SCHOLARS.

(a) SELECTION CRITERIA FOR INITIAL AWARDS.—

(1) SELECTION CRITERIA.—The Director of the National Science Foundation shall develop and submit to the Secretary proposed criteria to be used in the selection of National Science Scholars for initial year awards under section 712(b)(1). Such criteria shall provide for the selection of such scholars on the basis of potential to successfully complete a postsecondary program in the physical, life, or computer sciences, mathematics, or engineering, and on the basis of motivation to pursue a career in such fields. In addition, consideration may be given to the financial need of the individual, and to promoting participation by minorities and individuals with disabilities. The Director shall determine the proposed criteria for measuring the potential and motivation of nominees.

(2) PUBLICATION.—The Secretary and the Director shall agree to, and jointly publish in the Federal Register, appropriate selection criteria.

(b) SELECTION PROCESS FOR INITIAL AWARDS.—

(1) NOMINATING COMMITTEE.—Each State desiring to qualify its students for selection as a National Science Scholar shall establish a nominating committee. Such committee shall be appointed by the chief State school officer or by an existing grant agency or panel designated by such officer, and shall be approved by the Secretary. The nominating committee shall be a broad-based committee composed of educators, scientists, mathematicians, and engineers, who shall serve as volunteers without compensation.

(2) NOMINATIONS.—The nominating committee in each State shall submit to the President the nominations of at least four individuals from each congressional district in the State, at least half of whom are female. Such selections shall be ranked in order of priority.

(3) SELECTION.—The President, after consultation with the Secretary and the Director of the National Science Foundation, shall select two National Science Scholars for each academic year from each congressional district, at least one of whom shall be female.

(4) ANNOUNCEMENT AND AWARD OF SCHOLARSHIPS.—The selection process shall be completed, and the announcement of the selection of National Science Scholars shall be

made by the President prior to January 1st of each fiscal year. The Secretary shall notify each Member of Congress of selections made from such Member's district and State before the public announcement by the President. Presentation of scholarships may be made in a public ceremony.

(5) CONGRESSIONAL DISTRICT.—For purposes of this subsection, the term "congressional district" includes the part or all of a State (within the meaning of section 1201(b) of the Higher Education Act of 1965) represented by a Member or Delegate of the House of Representatives, and includes the Commonwealth of the Northern Mariana Islands.

(c) CONTINUATION AWARDS.—The Secretary shall award additional scholarships under section 712(b)(2) to recipients of initial awards under section 712(b)(1) who the Secretary determines meet the requirements of section 714(b).

(d) DISBURSAL OF SCHOLARSHIP PROCEEDS.—Scholarship proceeds shall be disbursed on behalf of students who receive scholarships under this part to the institutions of higher education at which the students are enrolled. No scholarship proceeds shall be disbursed on behalf of a student until the student is enrolled at an institution of higher education.

(e) SPECIAL RULE.—The Director and the Secretary shall encourage the support and assistance of civic groups, the business community, professional associations, institutions of higher education, and others in providing scholarship assistance to National Science Scholarship finalists.

SEC. 714. ELIGIBILITY OF SCHOLARS.

(a) REQUIREMENTS FOR INITIAL AWARD.—To be eligible to receive a scholarship under section 712(b)(1), a student shall—

(1) be scheduled to graduate from a public or private secondary school, or to obtain the equivalent of a certificate of graduation (as recognized by the State in which the student resides), during the school year in which the award is made;

(2) be a citizen or national of the United States or the entities set forth in section 303(b)(5), or be an alien lawfully admitted to the United States for permanent residence;

(3) have demonstrated outstanding academic achievement in secondary school in physical, life, or computer sciences, mathematics, or engineering;

(4) have been accepted for enrollment at an institution of higher education as a full-time undergraduate student (as determined by the institution); and

(5) have declared a major in one of the physical, life, or computer sciences, mathematics, or engineering, or provided a written statement to the State of his or her intent to major in one of these fields of study, if it is the policy of the institution at which the student has been accepted for enrollment that students not declare a major until a later point in their course of study.

(b) REQUIREMENTS FOR CONTINUATION AWARDS.—A student who has received a scholarship under section 712(b)(1) may receive a scholarship for a subsequent academic year of undergraduate education under section 712(b)(2) if the student—

(1) maintains a high level of academic achievement, as determined in accordance with the regulations of the Secretary;

(2) continues to major in, or provides a statement to the State as described in subsection (a)(5) of his or her continuing intent to major in, one of the physical, life, or computer sciences, mathematics, or engineering; and

(3) continues to be enrolled at an institution of higher education as a full-time undergraduate student (as determined by the institution).

(c) WAIVER OF FULL-TIME ATTENDANCE REQUIREMENT.—The Secretary may waive the full-time attendance requirements in this section in unusual circumstances.

(d) FAILURE TO MEET ELIGIBILITY REQUIREMENTS.—In the event that the student fails to meet the requirements of this section, the student's eligibility to receive further scholarships (or scholarship proceeds) under this part shall be suspended in accordance with the regulations of the Secretary.

(e) REINSTATEMENT OF ELIGIBILITY.—The Secretary shall determine circumstances under which eligibility of a scholarship recipient under this part may be reinstated if the recipient seeks to reenter school after an interruption of schooling for personal reasons, including, but not limited to, pregnancy, child-rearing, and other family responsibilities.

(f) NOTIFICATION OF SECONDARY SCHOOLS.—The Secretary shall notify all public and private secondary schools and all institutions of higher education in each State annually of the availability of scholarships under this part.

SEC. 715. SCHOLARSHIP AMOUNT.

(a) AMOUNT OF AWARD.—Except as provided in subsections (b) and (c), the amount of a scholarship awarded under this part for any academic year shall be $5,000.

(b) RELATION TO COST OF ATTENDANCE.—Notwithstanding subsection (a), the amount of a scholarship awarded under this part shall be reduced by the amount that the scholarship exceeds the student's cost of attendance, as defined in section 472 of the Higher Education Act of 1965. A scholarship awarded under this part shall not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but shall be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(c) ADJUSTMENTS FOR INSUFFICIENT APPROPRIATIONS.—In the event that funds available in a fiscal year are insufficient to fully fund all awards under this part, the amount paid to each student shall be reduced proportionately.

SEC. 716. SUMMER EMPLOYMENT OPPORTUNITIES FOR SCHOLARS.

(a) PRIORITY FOR SUMMER EMPLOYMENT.—To the extent that they are otherwise qualified, students receiving scholarships under this part shall be given priority consideration for federally financed summer employment in federally funded research and development centers, that, to the maximum extent practicable, complements and reinforces the educational program of these students.

(b) FEDERAL AGENCY COOPERATION.—Federal agencies shall cooperate fully with the Secretary and participate actively in providing appropriate summer employment opportunities for such students.

PART B—ROBERT NOYCE SCHOLARSHIPS

SEC. 721. ROBERT NOYCE SCHOLARSHIPS.

(a) PROGRAM AUTHORIZED.—There is established a scholarship program for students in a baccalaureate degree program in physical, life, or computer sciences, mathematics, or engineering who are willing to commit themselves to teaching elementary or secondary school science or mathematics.

(b) PERIOD OF AWARDS.—

(1) PERIOD OF INITIAL AWARD.—A student who satisfies the requirements of subsection (g)(1) may receive a scholarship, for a period of 1 academic year of undergraduate study at an institution of higher education.

(2) CONTINUATION AWARDS.—

(A) FIRST CONTINUATION AWARD.—A student who satisfies the requirements of subsection (g)(2) may receive an additional scholarship, awarded for a period of 1 academic year, in order to complete his or her undergraduate course of study.

(B) SECOND CONTINUATION AWARD.—An additional period of scholarship support, not to exceed 1 year, shall be available to recipients of scholarships under subsection (a) who have completed requirements for the baccalaureate degree but require additional education courses in order to obtain certification to teach.

(c) USE AT ANY INSTITUTION PERMITTED.—A student awarded a scholarship under this section may attend any institution of higher education.

(d) DESIGNATION.—The individuals awarded scholarships under subsection (a) shall be referred to as the "Robert Noyce Mathematics and Science Teacher Corps".

(e) SELECTION.—

(1) SELECTION PROCESS FOR INITIAL AWARDS.—

(A) SELECTION CRITERIA.—The Director shall develop and submit to the Secretary proposed application procedures and criteria to be used in the selection of nominees under this section. Such criteria shall provide for the selection of such nominees on the basis of academic merit and demonstrated accomplishment in physical, life, or computer science, mathematics, or engineering, and on the basis of motivation to pursue a career in science, mathematics, or engineering. In addition, consideration may be given to the financial need of the individual, and to promoting participation by minorities and individuals with disabilities.

(B) PUBLICATION.—The Secretary and the Director shall agree to, and jointly publish in the Federal Register, appropriate selection criteria.

(C) MERIT REVIEW PANEL.—Award recipients shall be nominated from among applicants by a merit review panel composed of 8 individuals, 4 of whom shall be appointed by the Director and 4 of whom shall be appointed by the Secretary. Members of the panel shall not be employees of the United States and shall serve as volunteers without compensation. Nominees shall be selected on the basis of selection criteria, which shall be developed and published in accordance with subparagraphs (A) and (B). The panel shall rank the nominees in order of priority.

(D) AWARDING OF SCHOLARSHIPS.—The panel shall submit its nominees to the President, who shall, after consultation with the Director and the Secretary, award not more than 500 scholarships under subsection (a).

(2) CONTINUATION AWARDS.—The Secretary shall award additional scholarships to recipients of initial awards under this section who the Secretary determines meet the requirements of subsection (g)(2) or (b)(2)(B).

(f) DISBURSAL OF SCHOLARSHIP PROCEEDS.—Scholarship proceeds shall be disbursed on behalf of students who receive scholarships under this section to the institutions of higher education at which the students are enrolled. No scholarship proceeds shall be disbursed on behalf of a student unless the

student is enrolled at an institution of higher education.

(g) ELIGIBILITY.—

(1) INITIAL ELIGIBILITY.—Only individuals who are—

(A) citizens or nationals of the United States, or who are aliens lawfully admitted to the United States for permanent residence;

(B) majoring in the physical, life, or computer sciences, mathematics, or engineering;

(C) in the last 2 years of a baccalaureate degree program; and

(D) enrolled in an institution of higher education as a full-time undergraduate student (as determined by the institution of higher education),

shall be eligible for awards under this section.

(2) REQUIREMENTS FOR FIRST CONTINUATION AWARDS.—A student who has received a scholarship under this section may receive a first continuation award under subsection (b)(2)(A) for a subsequent academic year of undergraduate education if the student—

(A) maintains a high level of academic achievement, as determined in accordance with the regulations of the Secretary;

(B) continues to major in one of the physical, life, or computer sciences, mathematics, or engineering; and

(C) continues to be enrolled at an institution of higher education as a full-time undergraduate student (as determined by the institution).

(h) WAIVER OF FULL-TIME ATTENDANCE REQUIREMENT.—The Secretary may waive the full-time attendance requirements in this section in unusual circumstances.

(i) FAILURE TO MEET ELIGIBILITY REQUIREMENTS.—In the event that the student fails to meet the requirements of this section, the student's eligibility to receive further scholarships (or scholarship proceeds) under this section shall be suspended in accordance with the regulations of the Secretary.

(j) REINSTATEMENT OF ELIGIBILITY.—The Secretary shall determine circumstances under which eligibility of a scholarship recipient under this section could be reinstated if the recipient seeks to reenter school after an interruption of schooling for personal reasons, including, but not limited to, pregnancy, child-rearing, and other family responsibilities.

(k) NOTIFICATION OF SCHOOLS.—The Secretary shall notify all institutions of higher education in the United States annually of the availability of scholarships under this section.

(l) SCHOLARSHIP AMOUNT.—

(1) AMOUNT OF AWARD.—Except as provided in paragraph (2), the amount of a scholarship awarded under this section for any academic year shall be $5,000.

(2) RELATION TO COST OF ATTENDANCE.—Notwithstanding paragraph (1), the amount of a scholarship awarded under this section shall be reduced by the amount that the scholarship exceeds the student's cost of attendance, as defined in section 472 of the Higher Education Act of 1965. A scholarship awarded under this section shall not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but shall be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(m) SERVICE REQUIREMENT.—

(1) TEACHING OBLIGATION.—Each recipient of an award under this section shall, as a condition of the receipt of such award, agree to complete, within 6 years after graduation from the baccalaureate degree program for which the award was made or within 6 years after completion of the additional period of scholarship support, if applicable, at least 2 years of service as an elementary or secondary mathematics or science teacher for each year of scholarship support under this section, except that such requirement shall not exceed a total of 4 years. Service required under this paragraph shall be performed at a school receiving assistance under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.).

(2) REPAYMENT ALTERNATIVE.—As part of the agreement required under paragraph (1), each recipient shall agree, in the event of failure to complete the service obligation described in paragraph (1), to repay an amount equal to—

(A) the total amount of awards received by such individual under this section; plus

(B) the interest on such amounts which would be payable if at the time the amounts were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

except that such payment shall be reduced, for each year of service that the individual has successfully completed, by a fraction equal to 1 divided by the number of years of service the student is obligated to perform. Such repayment shall be made within 1 year after the recipient has ceased to perform the service obligation described in paragraph (1).

(3) EXCEPTIONS.—The Secretary may provide for the partial or total waiver or suspension of any service obligation or payment by an individual under this section in the same manner as is permitted under section 558 of the Higher Education Act of 1965 with respect to scholarships under subpart 1 of part D of title V of the Higher Education Act of 1965, except that pregnancy, child-rearing, or comparable family responsibilities shall also be grounds for deferral.

(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Science Foundation, for transfer to the Department of Education $2,500,000 for fiscal year 1991, $5,000,000 for fiscal year 1992, and $7,500,000 for fiscal year 1993, to carry out the provisions of this part.

PART C—ADDITIONAL PROVISIONS

SEC. 731. EFFECT OF CERTAIN CONTROLLED SUBSTANCE AND FELONY CONVICTIONS.

(a) GENERAL RULE.—Except as provided in subsection (b), or by a court under the authority of section 5301 of the Anti-Drug Abuse Act of 1988 (102 Stat. 4310), if any person is convicted under Federal or State law of the illegal use, possession, or distribution of a controlled substance (as such term is defined in the Controlled Substances Act), or of any crime which is a felony under Federal law or for an act which, if committed in a Federal jurisdiction, would be a felony under Federal law, and such crime was committed during a period in which such person received an award under this title, such person shall not be eligible to receive any further such awards, and shall be liable to the United States for the repayment, within 1 year after such conviction, of all amounts received pursuant to such awards, plus the interest on such amounts which would be payable if at the time the amounts were received they were loans bearing interest at the maximum legal prevailing rate, as of the time of such conviction, as determined by the Treasurer of the United States.

(b) EXEMPTION.—A person subject to the provisions of subsection (a) may be exempted from those provisions in whole or in part if—

(1) that person, within 90 days of a conviction described in subsection (a), petitions the Secretary of Education for a good cause exemption from subsection (a); and

(2) the Secretary of Education approves the petition.

SEC. 732. REPORT.

The National Science Foundation shall prepare and submit to the Congress no later than 1 year after the date of enactment of this Act a report examining current efforts to improve the quality of elementary and secondary mathematics and science education and career potential for the underprivileged through joint efforts of business, school districts, and institutions of higher education, and recommending ways the Federal Government may encourage such efforts. The report shall include, to the extent possible, a comprehensive list of existing efforts, an assessment of what factors have made some such efforts more successful than others, and a review of the extent to which such efforts have drawn on Federal programs.

□ 1120

GENERAL LEAVE

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5932, the bill under consideration.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from California?

There was no objection.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SINE DIE ADJOURNMENT

[Clarification of sine die adjournment time for the CONGRESSIONAL RECORD of October 27, 1990]

Mr. GEPHARDT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER. In accordance with the provisions of House Concurrent Resolution 399, the Chair declares the 2d session of the 101st Congress adjourned sine die.

Thereupon (at 2 o'clock and 2 minutes a.m. daylight saving time) (at 1 o'clock and 2 minutes a.m. eastern standard time), pursuant to House Concurrent Resolution 399, the House adjourned.

CONFERENCE REPORT ON H.R. 5835, OMNIBUS BUDGET RECONCILIATION ACT OF 1990

Mr. PANETTA submitted the following conference report and statement

on the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1991:

CONFERENCE REPORT (H. REPT. 101-964)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. Res. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1990".

SEC. 2. TABLE OF TITLES.

Title I. Agriculture and related programs.
Title II. Banking, housing, and related programs.
Title III. Student loans and labor provisions.
Title IV. Medicare, medicaid, and other health-related programs.
Title V. Income security, human resources, and related programs.
Title VI. Energy and environmental programs.
Title VII. Civil service and postal service programs.
Title VIII. Veterans' programs.
Title IX. Transportation.
Title X. Miscellaneous user fees and other provisions.
Title XI. Revenue provisions.
Title XII. Pensions.
Title XIII. Budget enforcement.

TITLE I—AGRICULTURE AND RELATED PROGRAMS

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 1001. Short title; table of contents.

Subtitle A—Commodity Programs

Sec. 1101. Triple base for deficiency payments.
Sec. 1102. Calculation of deficiency payments based on 12-month average.
Sec. 1103. Acreage reduction program for 1991 crop.
Sec. 1104. Acreage reduction programs for 1992 through 1995 crops.
Sec. 1105. Loan origination fees and other savings.

Subtitle B—Other Agricultural Programs

Sec. 1201. Authorization levels for rural electric and telephone loans.
Sec. 1202. Authorization levels for FmHA loans.
Sec. 1203. APHIS inspection user fee on international passengers.
Sec. 1204. Additional savings and other provisions.

Subtitle C—Effective Date

Sec. 1301. Effective date.
Sec. 1302. Readjustment of support levels.

Subtitle A—Commodity Programs

SEC. 1101. TRIPLE BASE FOR DEFICIENCY PAYMENTS.

(a) WHEAT.—Section 107B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

(b) FEED GRAINS.—Section 105B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

(c) UPLAND COTTON.—Section 103B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 501 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

(d) RICE.—Section 101B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

SEC. 1102. CALCULATION OF DEFICIENCY PAYMENTS BASED ON 12-MONTH AVERAGE.

(a) WHEAT.—Clause (ii) of section 107B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of wheat shall be the amount by which the established price for the crop of wheat exceeds the higher of—

"(I) the lesser of—

"(aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

"(bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 10 cents per bushel; or

"(II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the crop of wheat.".

(b) FEED GRAINS.—Clause (ii) of section 105B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of corn, grain sorghums, oats, and barley shall be the amount by which the established price for the respective crop of feed grains exceeds the higher of—

"(I) the lesser of—

"(aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

"(bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 7 cents per bushel; or

"(II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the respective crop of feed grains.".

(c) RICE.—Clause (ii) of section 101B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of rice shall be the amount by which the established price for the crop of rice exceeds the higher of—

"(I) the lesser of—

"(aa) the national average market price received by producers during the calendar year that contains the first 5 months of the marketing year for the crop, as determined by the Secretary; or

"(bb) the national average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus an appropriate amount that is fair and equitable in relation to wheat and feed grains (as determined by the Secretary); or

"(II) the loan level determined for the crop.".

(d) CONFORMING AMENDMENT.—Section 114(c) of the Agricultural Act of 1949 (as amended by section 1121(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 and redesignated by section 1161(a)(1) of such Act) by striking "wheat, feed grains, and rice which payments are calculated on the basis of the national weighted average market price (or, in the case of rice, the national average market price) for the marketing year for the crop" and inserting "wheat and feed grains which payments are calculated as provided in sections 107B(c)(1)(B)(ii), 107B(p), or 105B(c)(1)(B)(ii)".

SEC. 1103. ACREAGE REDUCTION PROGRAM FOR 1991 CROP.

(a) WHEAT.—In the case of the 1991 crop of wheat, the Secretary of Agriculture shall provide for an acreage limitation program as described in section 107B(e)(1)(F) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990).

(b) FEED GRAINS.—Subparagraph (F) of section 105B(e)(1) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(F) ACREAGE LIMITATION PROGRAM FOR 1991 CROP.—In the case of the 1991 crop of corn, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not less than 7.5 percent.".

SEC. 1104. ACREAGE REDUCTION PROGRAMS FOR 1992 THROUGH 1995 CROPS.

(a) IN GENERAL.—Notwithstanding any other provision of law, except as provided in subsections (b) and (c), the Secretary of Agriculture shall announce an acreage limitation program for each of the 1992 through 1995 crops of—

(1) wheat under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by—

(A) in the case of the 1992 crop of wheat, not less than 6 percent;

(B) in the case of the 1993 crop of wheat, not less than 5 percent;

(C) in the case of the 1994 crop of wheat, not less than 7 percent; and

(D) in the case of the 1995 crop of wheat, not less than 5 percent; and

(2) corn, grain sorghum, and barley under which the acreage planted to the respective feed grain for harvest on a farm would be limited to the respective feed grain crop acreage base for the farm for the crop reduced by not less than 7½ percent.

(b) STOCKS-TO-USE RATIO.—Subsection (a) shall not apply to a crop if the Secretary estimates for such crop that the stocks-to-use ratio will be less than—

(1) in the case of wheat, 34 percent; and

(2) in the case of corn, grain sorghum, and barley, 20 percent.

(c) TERMINATION.—If the Secretary determines that the quantity of soybeans on hand in the United States on the first day of the marketing year for the 1991 crop of soybeans (not including any quantity of soybeans of the 1991 crop) will be less than 325,000,000 bushels, subsection (a) shall not apply to any of the 1992 through 1995 crops of wheat and feed grains.

SEC. 1105. LOAN ORIGINATION FEES AND OTHER SAVINGS.

(a) OILSEEDS.—Section 205 of the Agricultural Act of 1949 (as added by section 701(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (l) the following new subsection:

"(m) LOAN ORIGINATION FEE.—

"(1) LOANS.—The Secretary shall charge a producer a loan origination fee for a crop of oilseeds, in connection with making a loan, equal to the product obtained by multiplying—

"(A) the loan level determined for the crop under subsection (c); by

"(B) 2 percent; by

"(C) the quantity of oilseeds for which the producer obtains the loan.

"(2) LOAN DEFICIENCY PAYMENTS.—The Secretary shall deduct, from the amount of any loan deficiency payment made under subsection (e), an amount equal to the amount of the loan origination fee that would otherwise be paid under paragraph (1) if the producer obtained a loan rather a loan deficiency payment.".

(b) PEANUTS.—

(1) IN GENERAL.—Section 108B of the Agricultural Act of 1949 (as added by section 806 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(A) by redesignating subsection (g) as subsection (h); and

(B) by inserting after subsection (f) the following new subsection:

"(g) MARKETING ASSESSMENT.—

"(1) IN GENERAL.—The Secretary shall provide, by regulation, for a nonrefundable marketing assessment applicable to each of the 1991 through 1995 crops of peanuts. The assessment shall be made in accordance with this subsection and shall be on a per pound basis in an amount equal to 1 percent of the national average quota or additional peanut support rate per pound, as applicable, for the applicable crop. No peanuts shall be assessed more than 1 percent of the applicable support rate under this subsection.

"(2) FIRST PURCHASERS.—

"(A) IN GENERAL.—Except as provided under paragraphs (3) and (4), the first purchaser of peanuts shall—

"(i) collect from the producer a marketing assessment equal to ½ percent of the applicable national average support rate times the quantity of peanuts acquired;

"(ii) pay, in addition to the amount collected under clause (i), a marketing assessment in an amount equal to ½ percent of the applicable national average support rate times the quantity of peanuts acquired; and

"(iii) remit the amounts required under clauses (i) and (ii) to the Commodity Credit Corporation in a manner specified by the Secretary.

"(B) DEFINITION.—For purposes of this subsection, the term 'first purchaser' means a person acquiring peanuts from a producer except that in the case of peanuts forfeited by a producer to the Commodity Credit Corporation, such term means the person acquiring the peanuts from the Commodity Credit Corporation.

"(3) OTHER PRIVATE MARKETINGS.—In the case of a private marketing by a producer directly to a consumer through a retail or wholesale outlet or in the case of a marketing by the producer outside of the continental United States, the producer shall be responsible for the full amount of the assessment and shall remit the assessment by such time as is specified by the Secretary.

"(4) LOAN PEANUTS.—In the case of peanuts that are pledged as collateral for a price support loan made under this section, ½ of the assessment shall be deducted from the proceeds of the loan. The remainder of the assessment shall be paid by the first purchaser of the peanuts. For purposes of computing net gains on peanuts under this section, the reduction in loan proceeds shall be treated as having been paid to the producer.

"(5) PENALTIES.—If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of peanuts involved in the violation; by

"(B) the national average quota peanut price support level for the applicable crop year.

"(6) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.".

(2) CONFORMING AMENDMENT.—Section 108B(a)(2) of the Agricultural Act of 1949 (as added by section 806(3) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by inserting after "cost of land" the following: "and the cost of any assessments required under subsection (g)".

(c) SUGAR.—Section 206 of the Agricultural Act of 1949 (as added by section 901(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

"(i) MARKETING ASSESSMENT.—

"(1) SUGARCANE.—Effective only for each of the 1991 through 1995 crops of sugarcane, the first processor of sugarcane shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .18 cents per pound of raw cane sugar processed by the processor from domestically produced sugarcane.

"(2) SUGAR BEETS.—Effective only for each of the 1991 through 1995 crops of sugar beets, the first processor of sugar beets shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .193 cents per pound of beet sugar processed by the processor from domestically produced sugar beets.

"(3) COLLECTION.—Marketing assessments required under this subsection shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary and shall be nonrefundable.

"(4) PENALTIES.—If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of cane sugar or beet sugar involved in the violation; by

"(B) the support level for the applicable crop of sugarcane or sugar beets.

"(5) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.".

(d) HONEY.—Section 207 of the Agricultural Act of 1949 (as added by section 1001 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

"(i) MARKETING ASSESSMENT.—

"(1) IN GENERAL.—Effective only for each of the 1991 through 1995 crops of honey, producers and producer-packers of honey (as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602)) shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment on a per pound basis in an amount equal to 1 percent of the national price support level for each such crop as otherwise provided in this section.

"(2) COLLECTION.—The assessment shall be collected and remitted by the first handler of honey in the manner prescribed by the Secretary which, to the extent practicable, shall be as provided for in the Honey Research, Promotion, and Consumer Information Act.

"(3) EXEMPTIONS.—All persons who are exempt from the payment of the assessment authorized by such Act, and all imported honey, shall be exempt from the payment of the assessment required by this subsection.

"(4) PENALTIES.—If any person fails to collect or remit the reduction required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out this subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of honey involved in the violation; by

"(B) the support level for the applicable crop of honey.

"(5) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.".

(e) WOOL AND MOHAIR.—Section 704 of the National Wool Act of 1954 (7 U.S.C. 1783) (as amended by section 201(b) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by adding at the following new subsection:

"(c) MARKETING ASSESSMENTS.—Effective only for each of the 1991 through 1995 marketing years for wool and mohair, the Secretary shall deduct an amount from the payment to be made available to producers of wool and mohair under subsection (a) equal to 1 percent of the payment.".

(f) TOBACCO.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following new subsection:

"(g)(1) Effective only for each of the 1991 through 1995 crops of tobacco for which price support is made available under this Act, producers and purchasers of such tobacco shall each remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each

such crop as otherwise provided for in this section.

"(2) Such producer assessments and purchaser assessments shall be—

"(A) collected in the same manner as provided for in section 106A(d)(2) or 106B(d)(3), as applicable; and

"(B) enforced in the same manner as provided in section 106A(h) or 106B(j), as applicable.

"(3) The Secretary may enforce this subsection in the courts of the United States.".

(g) OTHER SAVINGS.—Section 204 of the Agricultural Act of 1949 (as added by section 101 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) in subsection (g)—

(A) in paragraph (1), by striking "1991 through 1994" and inserting "1992 through 1995";

(B) in the matter preceding subparagraph (A) of paragraph (2)—

(i) by inserting after "purchases" the following: "in the following calendar year"; and

(ii) by inserting after "producers" the following: "in such following calendar year"; and

(C) in paragraph (2)(B), by striking "that calendar year" and inserting "such following calendar year";

(2) by redesignating subsections (h) and (i) as subsections (j) and (k), respectively; and

(3) by inserting after subsection (g) the following new subsections:

"(h) REDUCTION IN PRICE RECEIVED.—

"(1) IN GENERAL.—Beginning January 1, 1991, the Secretary shall provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use, in addition to any reduction in price required under subsection (g).

"(2) AMOUNT.—The amount of the reduction under paragraph (1) in the price received by producers shall be—

"(A) during calendar year 1991, 5 cents per hundredweight of milk marketed; and

"(B) during each of the calendar years 1992 through 1995, 11.25 cents per hundredweight of milk marketed, which rate shall be adjusted on or before May 1 of each of the calendar years 1992 through 1995 by an amount per hundredweight that is necessary to compensate for refunds made under paragraph (3) on the basis of marketings in the previous calendar year.

"(3) REFUND.—The Secretary shall provide a refund of the entire reduction under paragraph (2) in the price of milk received by a producer during a calendar year, if the producer provides evidence that the producer did not increase marketings in the calendar year that such reduction was in effect when compared to the immediately preceding calendar year.

"(i) ENFORCEMENT.—

"(1) COLLECTION.—Reductions in price required under subsection (g) or (h) shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary.

"(2) PENALTIES.—If any person fails to collect or remit the reduction required by subsection (g) or (h) or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary to carry out such subsection, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

"(A) the quantity of milk involved in the violation; by

"(B) the support rate for the applicable calendar year for milk.

"(3) ENFORCEMENT.—The Secretary may enforce subsection (g) or (h) in the courts of the United States.".

Subtitle B—Other Agricultural Programs

SEC. 1201. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.

Title III of the Rural Electrification Act of 1936 (7 U.S.C. 931 et seq.) is amended by adding at the end the following new section:

"SEC. 314. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.

"(a) IN GENERAL.—Subject to the other provisions of this section and notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, insured loans may be made in accordance with this title from the Rural Electrification and Telephone Revolving Fund established under section 301 in amounts equal to the following levels:

"(1) For fiscal year 1991, $896,000,000.

"(2) For fiscal year 1992, $932,000,000.

"(3) For fiscal year 1993, $969,000,000.

"(4) For fiscal year 1994, $1,008,000,000.

"(5) For fiscal year 1995, $1,048,000,000.

"(b) REDUCTION.—Notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, the Administrator shall—

"(1) reduce the amounts otherwise made available for insured loans made from the Rural Electrification and Telephone Revolving Fund by—

"(A) $224,000,000 for fiscal year 1991;

"(B) $234,000,000 for fiscal year 1992;

"(C) $244,000,000 for fiscal year 1993;

"(D) $256,000,000 for fiscal year 1994; and

"(E) $267,000,000 for fiscal year 1995; and

"(2) use the funds made available from such reductions in each fiscal year to guarantee loans under subsection (d).

"(c) MANDATORY LEVELS.—Notwithstanding any other provision of law, the Administrator shall make insured loans at the levels authorized by this section for each of fiscal years 1991 through 1995 taking into account any reductions under subsection (b).

"(d) GUARANTEED LOANS—

"(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (e) and notwithstanding any other provision of law, in carrying out this Act, the Administrator shall guarantee loans made by legally organized lending agencies to the extent of the reduction in insured loans as provided in subsection (b).

"(2) AMOUNT OF GUARANTEE.—The guarantees authorized under paragraph (1) shall be 90 percent of the principal of and interest on the loan and shall be made only upon the request of the borrower.

"(3) NO FEDERAL INSTRUMENTALITY.—The Administrator may not provide any such guarantee for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States other than banks for cooperatives.

"(4) AUTHORITY.—The Administrator is authorized to approve such guarantees subject to full use being made during each fiscal year of insured loan amounts made available during the fiscal year.

"(5) CONSTRUCTION.—Nothing in this subsection shall be construed as modifying the authority provided in section 306.

"(e) IMPLEMENTATION.—

"(1) IN GENERAL.—The Administrator shall implement the reduction in insured loans provided by subsection (b) in a manner that will lessen its adverse effect.

"(2) ALLOCATION BETWEEN ELECTRIC AND TELEPHONE PROGRAMS.—The reductions required by subsection (b) shall be allocated between the electric and telephone programs for each fiscal year in proportion to the amount of insured funds made available for each such program during the fiscal year in annual appropriations Acts.

"(3) ELECTRIC BORROWER'S OPTION.—If the amount of an insured electric loan is reduced as a result of the requirements of subsection (b), the electric borrower may, at the option of such borrower, obtain capital to replace the amount of the reduction—

"(A) with the assistance of a loan guarantee (as provided by subsection (d));

"(B) from internally generated funds of the electric borrower;

"(C) from private credit sources with a lien accommodation provided by the Administrator; or

"(D) from other private sources.".

SEC. 1202. AUTHORIZATION LEVELS FOR FmHA LOANS.

(a) IN GENERAL.—Subsection (b) of section 346 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1994(b)) is amended to read as follows:

"(b)(1) For each of the fiscal years 1991 through 1995, real estate and operating loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitles A and B, respectively, from the Agricultural Credit Insurance Fund established under section 309 in amounts equal to the following levels:

"(A) For fiscal year 1991, $4,175,000,000, of which not less than $827,000,000 shall be for farm ownership loans under subtitle A.

"(B) For fiscal year 1992, $4,343,000,000, of which not less than $861,000,000 shall be for farm ownership loans under subtitle A.

"(C) For fiscal year 1993, $4,516,000,000, of which not less than $895,000,000 shall be for farm ownership loans under subtitle A.

"(D) For fiscal year 1994, $4,697,000,000, of which not less than $931,000,000 shall be for farm ownership loans under subtitle A.

"(E) For fiscal year 1995, $4,885,000,000, of which not less than $968,000,000 shall be for farm ownership loans under subtitle A.

"(2) Subject to paragraph (3), such amounts set forth in paragraph (1) shall be apportioned as follows:

"(A) For fiscal year 1991—

"(i) $1,019,000,000 for insured loans, of which not less than $83,000,000 shall be for farm ownership loans; and

"(ii) $3,156,000,000 for guaranteed loans, of which not less than $744,000,000 shall be for guarantees of farm ownership loans.

"(B) For fiscal year 1992—

"(i) $1,060,000,000 for insured loans, of which not less than $87,000,000 shall be for farm ownership loans; and

"(ii) $3,283,000,000 for guaranteed loans, of which not less than $774,000,000 shall be for guarantees of farm ownership loans.

"(C) For fiscal year 1993—

"(i) $1,102,000,000 for insured loans, of which not less than $90,000,000 shall be for farm ownership loans; and

"(ii) $3,414,000,000 for guaranteed loans, of which not less than $805,000,000 shall be for guarantees of farm ownership loans.

"(D) For fiscal year 1994—

"(i) $1,147,000,000 for insured loans, of which not less than $94,000,000 shall be for farm ownership loans; and

"(ii) $3,550,000,000 for guaranteed loans, of which not less than $837,000,000 shall be for guarantees of farm ownership loans.

"(E) For fiscal year 1995—

"(i) $1,192,000,000 for insured loans, of which not less than $97,000,000 shall be for farm ownership loans; and

"(ii) $3,693,000,000 for guaranteed loans, of which not less than $871,000,000 shall be for guarantees of farm ownership loans.

"(3) Notwithstanding any other provision of law:

"(A) The Secretary shall—

"(i) reduce the amounts otherwise made available for insured loans by—

"(I) $482,000,000, for fiscal year 1991;

"(II) $614,000,000, for fiscal year 1992;

"(III) $760,000,000, for fiscal year 1993;

"(IV) $859,000,000, for fiscal year 1994; and

"(V) $907,000,000, for fiscal year 1995; and

"(ii) use the funds made available from such reductions in each fiscal year to guarantee loans under section 351.

"(B) The total amount of insured loans shall bear the same ratio to the amount of insured farm ownership loans as the dollar amount specified in paragraph (2)(A)(i) for insured loans bears to the dollar amount specified therein for insured farm ownership loans.

"(C) If more than 70 percent of the number of loans guaranteed under section 351 in a fiscal year have been guaranteed to persons to whom the Secretary had not previously made an insured loan under this Act, in lieu of the dollar amounts specified in subparagraph (A) for the immediately succeeding fiscal year, the dollar amounts which shall apply shall each be the product obtained by multiplying—

"(i) such dollar amount; by

"(ii) the quotient of—

"(I) the number of persons provided with guaranteed loans under section 351 in the fiscal year to whom the Secretary had not previously made an insured or a guaranteed loan under this Act; divided by

"(II) the total number of persons provided with guaranteed loans under section 351 in the fiscal year.

"(4) Notwithstanding subsection (a), the Secretary shall, as soon as practicable after the date of enactment of this subsection, make, insure, or guarantee loans at the levels authorized by this subsection for each of the fiscal years 1991 through 1995.".

(b) INTEREST RATE REDUCTION PROGRAM.—

(1) IN GENERAL.—Section 351 of such Act (7 U.S.C. 1999) is amended—

(A) in subsection (c)—

(i) by striking "50 percent" and inserting "100 percent"; and

(ii) by striking "2 percent" and inserting "4 percent"; and

(B) in subsection (d), by striking ", or 3 years, whichever is less".

(2) EXTENSION OF PROGRAM FOR 2 YEARS.—Section 1320 of the Food Security Act of 1985 (7 U.S.C. 1999 note) is amended by striking "1993" and inserting "1995".

(c) DEMONSTRATION PROJECT FOR PURCHASE OF SYSTEM LAND.—Section 351(h)(1) of such Act (7 U.S.C. 1999(h)(1)) is amended by striking "3-year" and inserting "4-year".

SEC. 1203. APHIS INSPECTION USER FEE ON INTERNATIONAL PASSENGERS.

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended—

(1) in paragraph (1), by striking "a commercial vessel, commercial aircraft, commercial truck, or railroad car," and inserting "an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car."; and

(2) in paragraph (3)(B)—

(A) by adding at the end of clause (ii) the following: "Any such reimbursement shall be subject to appropriations under clause (v).";

and

(B) by adding at the end the following new clause:

"(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated each fiscal year amounts in the Fund for use for quarantine or inspection services.".

SEC. 1204. ADDITIONAL SAVINGS AND OTHER PROVISIONS.

(a) INTEGRATED FARM MANAGEMENT PROGRAM.—Section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended—

(1) in subsection (d), by striking "enroll not more than" and inserting "enroll not less than"; and

(2) in subsection (h)(7)(A), by striking "shall not be eligible" and inserting "shall be eligible".

(b) FOOD AID ASSISTANCE.—The Agricultural Trade, Development, and Assistance Act of 1954 (as amended by section 1512 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) in section 202(e)(1), by striking "private" and all that follows through "Administrator" and inserting "the Administrator, not less than $10,000,000, and not more than $13,500,000, shall be made available in each fiscal year to private voluntary organizations and cooperatives";

(2) in section 406, by adding at the end the following new subsection:

"(d) AVAILABILITY OF FUNDS.—Funds shall be available under this Act only to the extent provided in advance in appropriation Acts."; and

(3) in section 407(c)(4), by striking "providing ocean" and inserting "providing ocean transportation or".

(c) TOBACCO PROGRAM ADJUSTMENT.—Section 213 of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is amended—

(1) in subsection (d), by inserting before the period the following: ", subsection (e), and subsection (f)"; and

(2) in subsection (f), by adding at the end the following new paragraph:

"(4) Subsection (d) shall apply with respect to fees and charges imposed to cover the costs of such end user identification, certification, and reporting activities.".

(d) EMERGENCY LOANS.—Section 2269 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended by—

(1) striking "(7 U.S.C. 1981(b))" and inserting "(7 U.S.C. 1961(b))"; and

(2) striking "1988" and inserting "1990".

(e) FIFRA USER FEES.—Notwithstanding any provision of the Omnibus Budget Reconciliation Act of 1990, nothing in this title or the other provisions of this Act shall be construed to require or authorize the Administrator of the Environmental Protection Agency to assess or collect any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

Subtitle C—Effective Date

SEC. 1301. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective 1 day after the date of enactment of the Food, Agriculture, Conservation, and Trade Act of 1990, or December 1, 1990, whichever is earlier.

SEC. 1302. READJUSTMENT OF SUPPORT LEVELS.

(a) FAILURE TO ENTER INTO AGREEMENT.—If by June 30, 1992, the United States does not enter into (within the context of section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902)) an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), agricultural acreage limitation and price support and production adjustment programs and export promotion levels shall be reconsidered and adjusted by the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") in accordance with subsection (b), as appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(b) REQUIRED MEASURES.—Pursuant to subsection (a), in order to protect the interests of American agricultural producers and ensure the competitive position of United States agriculture, the Secretary—

(1) is authorized to waive any minimum level for any acreage limitation program required or authorized for any of the 1993 through 1995 crops of wheat, feed grains, upland cotton, or rice established under section 107B(e), 105B(e), 103B(e), or 101B(e) of the Agricultural Act of 1949 (as amended by sections 301, 401, 501, and 601 of the Food, Agriculture, Conservation, and Trade Act of 1990), respectively;

(2) shall increase by $1,000,000,000 for the period beginning October 1, 1993, and ending September 30, 1995, the level of export promotion programs authorized under the Agricultural Trade Act of 1978 (as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990), in addition to any amounts otherwise required or made available under such programs; and

(3) shall permit producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(c) FAILURE OF AGREEMENT TO ENTER INTO FORCE.—If by June 30, 1993, an agricultural trade agreement under the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade has not entered into force for the United States, agricultural price support and other programs and export promotion levels shall be reconsidered and adjusted by the Secretary in accordance with subsection (d), if the Secretary determines such action is appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(d) SPECIFIC MEASURES.—

(1) MEASURES TO BE CONSIDERED.—Pursuant to subsection (c), the Secretary shall consider—

(A) waiving all or part of the requirements of this title, and the amendments made by this title, requiring reductions in agricultural spending;

(B) increasing the level of funds made available for the programs authorized under the Agricultural Trade Act of 1978; and

(C) permitting producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(2) AUTHORITY.—The Secretary is authorized to implement the measures specified in subparagraphs (A), (B), and (C) of paragraph (1). This authority shall be in addition to, and not in place of, any other authority under any other provision of law.

(3) IMPLEMENTATION.—If the Secretary determines the action is appropriate pursuant to subsection (c), the Secretary shall implement measures specified in subparagraph (A) of paragraph (1) and either or both of the measures specified in subparagraph (B) or (C) of paragraph (1).

(e) LIMITATION.—This section shall not be construed to authorize the Secretary to reduce the level of income support provided to agricultural producers in the United States.

(f) TERMINATION.—The provisions of subsections (a) and (b) shall cease to be effective if the President certifies to Congress that the failure referred to in subsection (a) to enter into an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the GATT is a result in whole or in part of the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191), or essentially similar provisions, not applying or in effect not applying during the period ending May 31, 1991 (or during the period June 1, 1991, through May 31, 1993, if the condition of section 1103(b)(1)(B)(i) is satisfied) to implementing bills submitted with respect to such an agreement entered into during the applicable period under section 1102(b) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(b)).

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

Subtitle A—Federal Deposit Insurance Assessments

Sec. 2001. Short title.
Sec. 2002. FDIC authorized to increase assessment rates as necessary to protect insurance funds.
Sec. 2003. FDIC authorized to make mid-year adjustments in assessment rates.
Sec. 2004. FDIC authorized to set designated reserve ratio as necessary in face of significant risk of substantial losses to insurance fund.
Sec. 2005. FDIC authorized to borrow from Federal Financing Bank.

Subtitle B—FHA Mortgage Insurance

Sec. 2101. Increase in mortgage limit.
Sec. 2102. Mortgagor equity.
Sec. 2103. Mortgage insurance premiums.
Sec. 2104. Mutual mortgage insurance fund distributions.
Sec. 2105. Actuarial soundness of mutual mortgage insurance fund.
Sec. 2106. Home equity conversion mortgage insurance demonstration.

Subtitle C—Auction of Federally Insured Mortgages

Sec. 2201. Auction of multifamily mortgages.

Subtitle D—Crime and Flood Insurance Programs

Sec. 2301. Crime insurance program.
Sec. 2302. Flood insurance program.

Subtitle E—Effective Date

Sec. 2401. Effective date.

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

Subtitle A—Federal Deposit Insurance Assessments

SEC. 2001. SHORT TITLE.

This Act may be cited as the "FDIC Assessment Rate Act of 1990".

SEC. 2002. FDIC AUTHORIZED TO INCREASE ASSESSMENT RATES AS NECESSARY TO PROTECT INSURANCE FUNDS.

(a) BANK INSURANCE FUND.—Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)) is amended to read as follows:

"(C) ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—The assessment rate for Bank Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

"(I) to maintain the reserve ratio at the designated reserve ratio; or

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

"(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Bank Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.".

(b) SAVINGS ASSOCIATION INSURANCE FUND.—Section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)) is amended to read as follows:

"(D) ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—The assessment rate for Savings Association Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

"(I) to maintain the reserve ratio at the designated reserve ratio; or

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

"(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Savings Association Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.

"(iv) TRANSITION RULE.—Until December 31, 1997, the assessment rate for Savings Association Insurance Fund members shall not be less than the following:

"(I) From January 1, 1990, through December 31, 1990, 0.208 percent.

"(II) From January 1, 1991, through December 31, 1993, 0.23 percent.

"(III) From January 1, 1994, through December 31, 1997, 0.18 percent.".

(c) CLERICAL AMENDMENTS REFLECTING $1,000 MINIMUM ASSESSMENT PROVISIONS OF CURRENT LAW.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended—

(1) by inserting "or subparagraph (C)(iii) or (D)(iii) of subsection (b)(1)" after "subsection (c)(2)"; and

(2) in clauses (i) and (ii), by inserting "the greater of $500 or an amount" before "equal to the product of".

SEC. 2003. FDIC AUTHORIZED TO MAKE MID-YEAR ADJUSTMENTS IN ASSESSMENT RATES.

(a) ASSESSMENT RATES.—Section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) is amended to read as follows:

"(A) ASSESSMENT RATES PRESCRIBED.—

"(i) AUTHORITY TO SET RATES.—Subject to clause (iii), the Corporation shall set assessment rates for insured depository institutions at such times as the Corporation, in its sole discretion, determines to be appropriate.

"(ii) RATE FOR EACH FUND TO BE SET INDEPENDENTLY.—The Corporation shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members.

"(iii) DEADLINE FOR ANNOUNCING RATE CHANGES.—The Corporation shall announce any change in assessment rates.—

"(I) for the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

"(II) for the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.".

(b) ASSESSMENT PROCEDURES.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)), as amended by section 2(c) of this Act, is amended—

(1) by striking "annual" each time it appears;

(2) in clause (i)(I), by inserting "during that semiannual period" after "member"; and

(3) in clause (ii)(I), by inserting "during that semiannual period" after "member".

(c) CONFORMING AMENDMENT ON TIMING OF ASSESSMENT CREDITS.—Section 7(d)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)(A)) is amended to read as follows:

"(A) The Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions—

"(i) in the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

"(ii) in the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.".

SEC. 2004. FDIC AUTHORIZED TO SET DESIGNATED RESERVE RATIO AS NECESSARY IN FACE OF SIGNIFICANT RISK OF SUBSTANTIAL LOSSES TO INSURANCE FUND.

Section 7(b)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(B)) is amended—

(1) by striking ", not exceeding 1.50 percent," each time it appears;

(2) in clause (iii)—

(A) by inserting "and" at the end of subclause (I);

(B) by striking subclauses (II) and (III); and

(C) by redesignating subclause (IV) as subclause (II); and

(3) in clause (iv)—

(A) by inserting "and" at the end of subclause (I);

(B) by striking subclauses (II) and (III); and

(C) by redesignating subclause (IV) as subclause (II).

SEC. 2005. FDIC AUTHORIZED TO BORROW FROM FEDERAL FINANCING BANK.

Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended—

(1) in the heading, by striking "SEC. 14." and inserting:

"SEC. 14. BORROWING AUTHORITY.

"(a) BORROWING FROM TREASURY.—";

(2) in subsection (a), as designated by paragraph (1)—

(A) by striking "this section" each time it appears and inserting "this subsection", and

(B) by striking "The Corporation may employ such funds" and inserting "The Corporation may employ any funds obtained under this section"; and

(3) by adding after subsection (a), as amended by paragraph (2), the following new subsection:

"(b) BORROWING FROM FEDERAL FINANCING BANK.—The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Bank Insurance Fund or Savings Association Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 15(c) of this Act. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.".

Subtitle B—FHA Mortgage Insurance

SEC. 2101. INCREASE IN MORTGAGE LIMIT.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by striking "150 percent (185 percent until October 31, 1990) of the dollar amount specified" and inserting the following: "185 percent of the dollar amount specified".

SEC. 2102. MORTGAGOR EQUITY.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by adding at the end the following new undesignated paragraph:

"Notwithstanding any other provision of this paragraph, a mortgage may not involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured. For purposes of the preceding sentence, the term 'appraised value' means the amount set forth in the written statement required under section 226, or a similar amount determined by the Secretary if section 226 does not apply.".

SEC. 2103. MORTGAGE INSURANCE PREMIUMS.

(a) PREMIUMS.—Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by striking the last sentence; and

(3) by adding at the end the following new paragraph:

"(2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling and executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, shall be subject to the following requirements:

"(A) The Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount equal to 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage, the Secretary shall refund all of the unearned premium charges paid on the mortgage pursuant to this subparagraph.

"(B) In addition to the premium under subparagraph (A), the Secretary shall establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments) for the following periods:

"(i) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

"(ii) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than or equal to 90 percent of such value, for the first 30 years of the mortgage term; except that notwithstanding the matter preceding clause (i), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than 95 percent of such value, the annual premium collected during the 30-year period under this clause shall be in an amount equal to 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).".

(b) TRANSITION PROVISIONS.—Notwithstanding section 203(c) of the National Housing Act (as amended by subsection (a)), mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 and that are obligations of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) 1991 AND 1992.—For mortgages executed during fiscal years 1991 and 1992 (but after the date of the effectiveness of regulations issued under subsection (c)), the Secretary shall establish and collect the following premiums:

(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) 1993 AND 1994.—For mortgages executed during fiscal years 1993 and 1994, the Secretary shall establish and collect the following premiums:

(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 30 years of the mortgage term.

(3) REFUNDS.—With respect to any mortgage subject to premiums under this subsection, the Secretary shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraph (1)(A) or (2)(A) upon payment in full of the principal obligation of the mortgage prior to the maturity date.

(c) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

SEC. 2104. MUTUAL MORTGAGE INSURANCE FUND DISTRIBUTIONS.

Section 205 of the National Housing Act (12 U.S.C. 1711) is amended by adding at the end the following new subsection:

"(e) In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.".

SEC. 2105. ACTUARIAL SOUNDNESS OF MUTUAL MORTGAGE INSURANCE FUND.

Section 205 of the National Housing Act (12 U.S.C. 1711), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsections:

"(f)(1) The Secretary shall ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent within 24 months after the date of the enactment of this subsection and maintains such ratio thereafter, subject to paragraph (2).

"(2) The Secretary shall endeavor to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0 percent within 10 years after the date of the enactment of this subsection, and shall ensure that the Fund maintains at least such capital ratio at all times thereafter.

"(3) Upon the expiration of the 24-month period beginning on the date of the enactment of this subsection, the Secretary shall submit to the Congress a report describing the actions the Secretary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required under paragraph (2).

"(4) For purposes of this subsection:

"(A) The term 'capital' means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit required under section 538.

"(B) The term 'capital ratio' means the ratio of capital to unamortized insurance-in-force.

"(C) The term 'economic net worth' means the current cash available to the Fund, plus the net present value of all future cash in-

flows and outflows expected to result from the outstanding mortgages in the Fund.

"(D) The term 'unamortized insurance-in-force' means the remaining obligation on outstanding mortgages which are obligations of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

"(g) The Secretary shall provide for an independent actuarial study of the Mutual Mortgage Insurance Fund to be conducted annually and shall report annually to the Congress regarding the financial status of the Fund.

"(h)(1) If, pursuant to the independent annual actuarial study of the Mutual Mortgage Insurance Fund required under subsection (g), the Secretary determines that the Mutual Mortgage Insurance Fund is not meeting the operational goals under paragraph (2), the Secretary may not issue distributions, and may, by regulaiion, propose and implement any adjustments to the insurance premiums under section 203(c) or section 2103(b) of the Omnibus Budget Reconciliation Act of 1990. Upon determining that a premium change is appropriate under the preceding sentence, the Secretary shall immediately notify Congress of the proposed change and the reasons for the change. Any such premium change shall not take effect before the expiration of the 90-day period beginning upon such notification.

"(2) The operational goals referred to in paragraph (1) shall be—

"(A) maintaining an adequate capital ratio;

"(B) meeting the needs of homebuyers with low downpayments and first-time homebuyers by providing access to mortgage credit;

"(C) minimizing the risk to the Fund and to homeowners from homeowner default; and

"(D) avoiding adverse selection.".

SEC. 2106. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.

(a) TERMINATION DATE.—The first sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(b) NUMBER OF MORTGAGES INSURED.—Section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking the second sentence and inserting the following: "The total number of mortgages insured under this section may not exceed 25,000.".

Subtitle C—Auction of Federally Insured Mortgages

SEC. 2201. AUCTION OF MULTIFAMILY MORTGAGES.

Section 221(g)(4) of the National Housing Act (12 U.S.C. 1715l(g)(4)) is amended by adding after subparagraph (B) the following new subparagraph:

"(C)(i) In lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument under subparagraph (A) in exchange for receipt of debentures, the Secretary shall arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale of the (I) mortgage loans, or (II) participation certificates, or other mortgage-backed obligations in a form acceptable to the Secretary (in this subparagraph referred to as 'participation certificates'). The Secretary shall arrange the auction and sale at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. The sale price shall also include the right to a subsidy payment described in clause (iii).

"(ii)(I) The Secretary shall conduct a public auction to determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and mortgage securing the credit instrument.

"(II) A mortgagee who elects to assign a mortgage shall provide the Secretary and persons bidding at the auction a description of the characteristics of the original credit instrument and mortgage securing the original credit instrument, which shall include the principal mortgage balance, original stated interest rate, service fees, real estate and tenant characteristics, the level and duration of applicable Federal subsidies, and any other information determined by the Secretary to be appropriate. The Secretary shall also provide information regarding the status of the property with respect to the provisions of the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act with respect to eligibility to prepay the mortgage, a statement of whether the owner has filed a notice of intent to prepay or a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, and the details with respect to incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act in lieu of exercising prepayment rights.

"(III) The Secretary shall, upon receipt of the information in subclause (II), promptly advertise for an auction and publish such mortgage descriptions in advance of the auction. The Secretary may conduct the auction at any time during the 6-month period beginning upon receipt of the information in subclause (II) but under no circumstances may the Secretary conduct an auction before 2 months after receiving the mortgagee's written notice of intent to assign its mortgage to the Secretary.

"(IV) In any auction under this subparagraph, the Secretary shall accept the lowest interest rate bid for purchase that the Secretary determines to be acceptable. The Secretary shall cause the accepted bid to be published in the Federal Register. Settlement for the sale of the credit instrument and the mortgage securing the credit instrument shall occur not later than 30 business days after the date winning bidders are selected in the auction, unless the Secretary determines that extraordinary circumstances require an extension (not to exceed 60 days) of the period.

"(V) If no bids are received, the bids that are received are not acceptable to the Secretary, or settlement does not occur within the period under subclause (IV), the mortgagee shall retain all rights (including the right to interest, at a rate to be determined by the Secretary, for the period covering any actions taken under this subparagraph) under this section to assign the mortgage loan to the Secretary.

"(iii) As part of the auction process, the Secretary shall agree to provide a monthly interest subsidy payment from the General Insurance Fund to the purchaser under the auction of the original credit instrument or the mortgage securing the credit instrument (and any subsequent holders or assigns who are approved mortgagees). The subsidy payment shall be paid on the first day of each month in an amount equal to the difference between the stated interest due on the mortgage loan and the lowest interest rate necessary to accomplish a sale of the mortgage loan or participation certificates (less the servicing fee, if appropriate) for the then unpaid principal balance plus accrued interest at a rate determined by the Secretary. Each interest subsidy payment shall be treated by the holder of the mortgage as interest paid on the mortgage. The interest subsidy payment shall be provided until the earlier of—

"(I) the maturity date of the loan;

"(II) prepayment of the mortgage loan in accordance with the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, where applicable; or

"(III) default and full payment of insurance benefits on the mortgage loan by the Federal Housing Administration.

"(iv) The Secretary shall require that the mortgage loans or participation certificates presented for assignment are auctioned as whole loans with servicing rights released and also are auctioned with servicing rights retained by the current servicer.

"(v) To the extent practicable, the Secretary shall encourage State housing finance agencies, nonprofit organizations, and organizations representing the tenants of the property securing the mortgage, or a qualified mortgagee participating in a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act to participate in the auction.

"(vi) The Secretary shall implement the requirements imposed by this subparagraph within 30 days from the date of enactment of this subparagraph and not be subject to the requirement of prior issuance of regulations in the Federal Register. The Secretary shall issue regulations implementing this section within 6 months of the enactment of this subparagraph.

"(vii) Nothing in this subparagraph shall diminish or impair the low income use restrictions applicable to the project under the original regulatory agreement or the revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, if any, or other agreements for the provision of Federal assistance to the housing or its tenants.

"(viii) This subparagraph shall not apply after September 30, 1995. Not later than January 31 of each year (beginning in 1992), the Secretary shall submit to the Congress a report including statements of the number of mortgages auctioned and sold and their value, the amount of subsidies committed to the program under this subparagraph, the ability of the Secretary to coordinate the program with the incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, and the costs and benefits derived from the program for the Federal Government.".

Subtitle D—Crime and Flood Insurance Programs

SEC. 2301. CRIME INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY.—Section 1201(b) of the National Housing Act (12 U.S.C. 1749bbb(b)) is amended by striking "September 30, 1991" in the matter preceding paragraph (1) and inserting "September 30, 1995".

(b) CONTINUATION OF EXISTING CONTRACTS.—Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb(b)(1)) is amended by striking "September 30, 1992" and inserting "September 30, 1996".

(c) EXTENSION OF LIMITATION ON PREMIUMS.—Section 542(c) of the Housing and Community Development Act of 1987 (12 U.S.C. 1749bbb-10c note) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

SEC. 2302. FLOOD INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(b) EXTENSION OF EMERGENCY PROGRAM.—Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(c) EXTENSION OF LIMITATION ON PREMIUMS.—Section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(d) EXTENSION OF EROSION PROVISIONS.—Section 1306(c)(7) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(7)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(e) INCLUSION OF COSTS IN PREMIUMS.—

(1) ESTIMATES OF PREMIUM RATES.—Section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)) is amended—

(A) in paragraph (1)(B)(i), by striking "and" at the end;

(B) in paragraph (1)(B)(ii), by inserting "and" after the comma at the end;

(C) in paragraph (1)(B), by inserting at the end the following new clause:

"(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes,"; and

(D) in paragraph (2), by inserting after "title" the following: ", and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360)".

(2) ESTABLISHMENT OF CHARGEABLE PREMIUM RATES.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended—

(A) in subsection (b)—

(i) by striking "and" at the end of paragraph (2);

(ii) by redesignating paragraph (3) as paragraph (4); and

(iii) by inserting after paragraph (2), the following new paragraph:

"(3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a), to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360), and"; and

(B) by striking subsection (d) and inserting the following new subsection:

"(d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section 1310.".

(3) NATIONAL FLOOD INSURANCE FUND.—Section 1310(a)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)(4)) is amended to read as follows:

"(4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360); and".

(4) ADMINISTRATIVE EXPENSES.—Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended by striking "program" and all that follows and inserting the following: "and floodplain management programs authorized under this title may be paid with amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4)), subject to approval in appropriations Acts.".

(5) EXCEPTION TO LIMITATION ON PREMIUM INCREASES.—Notwithstanding section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) (as amended by this section), the premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may be increased by more than 10 percent during fiscal year 1991, except that any increase in such rates not resulting from the inclusion in chargeable premium rates of administrative expenses of the flood insurance and floodplain management programs (pursuant to the amendments made by this subsection) may not exceed 10 percent.

Subtitle E—Effective Date

SEC. 2401. EFFECTIVE DATE.

If the Cranston-Gonzalez National Affordable Housing Act is enacted before the enactment of this Act, the provisions of subtitles B and C (of this title) and the amendments made by such subtitles shall not take effect. This section shall apply notwithstanding any provision relating to effective date or applicability contained in subtitle B or C.

TITLE III—STUDENT LOANS AND LABOR PROVISIONS

Subtitle A—Student Loan Program Savings

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "Student Loan Default Prevention Initiative Act of 1990".

SEC. 3002. SUPPLEMENTAL PRECLAIMS ASSISTANCE PAYMENTS.

(a) ELIMINATION OF SUPPLEMENTAL PRECLAIMS ASSISTANCE REIMBURSEMENTS.—Section 428(c) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)) is amended—

(1) in the first sentence of paragraph (1)(A), by striking ", including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C)";

(2) in paragraph (6)(C)(i), by striking "this paragraph" and inserting "subsection (l)";

(3) in paragraph (6)(C)(i)(I), by striking "required or permitted under paragraph (2)(A) of this subsection and subsection (f)" and inserting "generally comparable in intensiveness to the level of preclaims assistance performed, prior to the 120th day of delinquency, by the guaranty agency as of October 16, 1990";

(4) in paragraph (6)(C)(ii)—

(A) by striking "reimbursement" and inserting "payment under subsection (l)"; and

(B) by striking "which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f)" and inserting "described in division (i)(I) of this subparagraph"; and

(5) by striking the first sentence of paragraph (6)(C)(iv).

(b) FIXED PAYMENTS FOR PRECLAIMS ASSISTANCE.—Section 428 of such Act is further amended by adding at the end thereof the following new subsection:

"(l) PRECLAIMS ASSISTANCE AND SUPPLEMENTAL PRECLAIMS ASSISTANCE.—

"(1) ASSISTANCE REQUIRED.—Upon receipt of a proper request from the lender, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in preclaims assistance activities (as described in subsection (c)(6)(C)(i)(I)) and supplemental preclaims assistance activities (as described in subsection (c)(6)(C)) with respect to each loan covered by such agreement.

"(2) PAYMENTS FOR SUPPLEMENTAL PRECLAIMS ASSISTANCE.—The Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency that engages in supplemental preclaims assistance (as defined in subsection (c)(6)(C)) on a loan guaranteed under this part. Such payments shall be equal to $50.00 for each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent.".

SEC. 3003. INITIAL DISBURSEMENT AND ENDORSEMENT REQUIREMENTS.

(a) AMENDMENT.—Section 428G(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-7(b)(1)) is amended to read as follows:

"(1) FIRST YEAR STUDENTS.—The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of a program of undergraduate education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period.".

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for loans made on or after the date of enactment of this Act to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3004. INELIGIBILITY BASED ON HIGH DEFAULT RATES.

(a) IN GENERAL.—Section 435(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by adding at the end thereof the following new paragraph:

"(3) INELIGIBILITY BASED ON HIGH DEFAULT RATES.—(A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if—

"(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any

of the three fiscal years below the threshold percentage specified in subparagraph (B); or

"(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During such appeal, the Secretary may permit the institution to continue to participate in a program under this part.

"(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

"(i) 35 percent for fiscal year 1991 and 1992; and

"(ii) 30 percent for any succeeding fiscal year.

"(C) Until July 1, 1994, this paragraph shall not apply to any institution that is—

"(i) a part B institution within the meaning of section 322(2) of this Act;

"(ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

"(iii) a Navajo Community College under the Navajo Community College Act.".

(b) REFUSAL TO PROVIDE STATEMENT TO LENDER.—Section 428(a)(2)(F) of such Act (20 U.S.C. 1078(a)(2)(F)) is amended by inserting before the period at the end thereof the following: ", except that, in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement".

(c) Extension of Default Rate Limitations on SLS Loans.—Section 2003(a)(3) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(1) by inserting "paragraph (1) of" after "amendments made by"; and

(2) by striking out "October 1, 1991" and inserting "October 1, 1996".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective July 1, 1991, except that the amendment made by subsection (b) shall be effective upon enactment.

SEC. 3005. ABILITY TO BENEFIT.

(a) IN GENERAL.—Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended to read as follows:

"(d) ABILITY TO BENEFIT.—In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.".

(b) CONFORMING AMENDMENT.—Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended in the fourth sentence by inserting ", except in accordance with section 484(d) of this Act," after "shall not".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3006. MAXIMUM SLS LOAN AMOUNTS.

(a) EFFECTIVE DATE EXTENSION.—Section 2003(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "1991" and inserting "1996".

(b) PERIOD FOR DETERMINATION OF MAXIMUM LOAN AMOUNTS.—Section 428A(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-1(b)) is amended by striking "9 consecutive" and inserting "7 consecutive".

SEC. 3007. AMENDMENTS TO BANKRUPTCY LAWS.

(a) AUTOMATIC STAY AND PROPERTY OF THE ESTATE.—(1) Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (12), by striking "or" at the end thereof;

(B) in paragraph (13), by striking the period at the end thereof and inserting a semicolon; and

(C) by inserting immediately following paragraph (13) the following new paragraphs:

"(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

"(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution; or

"(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act.".

(2) Section 541(b) of title 11, United States Code, is amended—

(A) in paragraph (1), by striking "or" at the end thereof;

(B) in paragraph (2), by striking the period at the end thereof and inserting a semicolon and "or"; and

(C) by adding at the end thereof the following new paragraph:

"(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution.".

(3) The amendments made by this subsection shall be effective upon date of enactment of this Act.

(b) TREATMENT OF CERTAIN EDUCATION LOANS IN BANKRUPTCY PROCEEDINGS.—(1) Section 1328(a)(2) of title 11, United States Code, is amended by striking "section 523(a)(5)" and inserting "paragraph (5) or (8) of section 523(a)".

(2) The amendment made by paragraph (1) shall not apply to any case under the provisions of title 11, United States Code, commenced before the date of the enactment of this Act.

SEC. 3008. SUNSET PROVISION.

The amendments made by this subtitle shall cease be effective on October 1, 1996.

Subtitle B—Labor Related Penalties

SEC. 3101. OCCUPATIONAL SAFETY AND HEALTH.

Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended—

(1) in subsection (a), by striking "$10,000 for each violation" and inserting "$70,000 for each violation, but not less than $5,000 for each willful violation; and

(2) in subsections (b), (c), (d), and (i), by striking "$1,000" and inserting "$7,000".

SEC. 3102. MINE SAFETY AND HEALTH.

Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820) is amended—

(1) in subsection (a), by striking "$10,000" and inserting "$50,000"; and

(2) in subsection (b), by striking "1,000" and inserting "$5,000", and

SEC. 3103. FAIR LABOR STANDARDS.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended—

(1) in the first sentence—

(A) by striking "or any person who repeatedly or willfully violates section 6 or 7"; and

(B) by striking "not to exceed $1,000 for each such violation" and inserting "not to exceed $10,000 for each employee who was the subject of such a violation";

(2) by inserting after the first sentence the following: "Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.",

(3) by striking "such penalty" each place the term appears except after "appropriateness of" and inserting "any penalty under this subsection", and

(4) in the last sentence, by striking "Sums" and inserting "Except for civil penalties collected for violations of section 12, sums"; and

(5) by inserting at the end the following new sentence: "Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.".

TITLE IV—MEDICARE, MEDICAID, AND OTHER HEALTH-RELATED PROGRAMS

Subtitle A—Medicare

SEC. 4000. REFERENCES IN SUBTITLE; TABLE OF CONTENTS.

(a) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(b) TABLE OF CONTENTS.—The table of contents of this subtitle is as follows:

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PART 2—PROVISIONS RELATING TO PART B

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Sec. 4101. Certain overvalued procedures.
Sec. 4102. Radiology services.
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Sec. 4114. Utilization screens for physician visits in rehabilitation hospitals.
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Sec. 4152. Durable medical equipment.
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Sec. 4156. Coverage of injectable drugs for treatment of osteoporosis.
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Sec. 4202. Staff-assisted home dialysis demonstration project.
Sec. 4203. Extension of secondary payor provisions.
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Sec. 4206. Medicare provider agreements assuring the implementation of a patient's right to participate in and direct health care decisions affecting the patient.
Sec. 4207. Miscellaneous and technical provisions relating to parts A and B.
PART 4—PROVISIONS RELATING TO PART B PREMIUM AND DEDUCTIBLE
Sec. 4301. Part B premium.
Sec. 4302. Part B deductible.
PART 5—MEDICARE SUPPLEMENTAL INSURANCE POLICIES
Sec. 4351. Simplification of medicare supplemental policies.
Sec. 4352. Guaranteed renewability.
Sec. 4353. Enforcement of standards.
Sec. 4354. Preventing duplication.
Sec. 4355. Loss ratios and refund of premiums.
Sec. 4356. Clarification of treatment of plans offered by health maintenance organizations.
Sec. 4357. Pre-existing condition limitations and limitation on medical underwriting.
Sec. 4358. Medicare select policies.
Sec. 4359. Health insurance advisory services for medicare beneficiaries.
Sec. 4360. Health insurance information, counseling, and assistance grants.
Sec. 4361. Medicare and medigap information by telephone.

PART 1—PROVISIONS RELATING TO PART A

SEC. 4001. PAYMENTS FOR CAPITAL-RELATED COSTS OF INPATIENT HOSPITAL SERVICES.

(a) REDUCTION IN PAYMENTS FOR FISCAL YEAR 1991.—Section 1886(g)(3)(A)(v) (42 U.S.C. 1395ww(g)(3)(A)(v)) is amended by striking "September 30, 1990" and inserting "September 30, 1991".

(b) IMPLEMENTATION OF PROSPECTIVE PAYMENT FOR CAPITAL-RELATED COSTS.—Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)) is amended by adding at the end the following: "Aggregate payments made under subsection (d) and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1861(v)).".

(c) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS.—Section 1886(g)(3)(B) is amended by striking "subsection (d)(5)(D)(iii))." and inserting "subsection (d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1))."

SEC. 4002. PROSPECTIVE PAYMENT HOSPITALS.

(a) CHANGES IN UPDATE FACTORS.—

(1) IN GENERAL.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

(A) by striking "and" at the end of subclause (V);

(B) in subclause (VI)—

(i) by striking "1991" and inserting "1994", and

(ii) by redesignating such subclause as subclause (IX); and

(C) by inserting after subclause (V) the following new subclauses:

"(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in all areas,

"(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in all areas,

"(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage point for hospitals in all areas, and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to payments for discharges occurring on or after January 1, 1991.

(b) CHANGES IN DISPROPORTIONATE SHARE PAYMENTS.—

(1) INCREASE FOR URBAN HOSPITALS WITH MORE THAN 100 BEDS.—Section 1886(d)(5)(F)(vii) (42 U.S.C. 1395ww(d)(5)(F)(vii)) is amended—

(A) in subclause (I), by striking "greater than 20.2," and all that follows and inserting the following: "greater than 20.2—

"(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P-20.2)(.65) + 5.62,

"(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P-20.2)(.7) + 5.62,

"(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, (P-20.2)(.8) + 5.88, and

"(d) for discharges occurring on or after October 1, 1994, (P-20.2)(.825) + 5.88; or"; and

(B) in subclause (II), by striking "hospital, (P-15)(.6) + 2.5," and inserting the following: "hospital—

"(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P-15)(.6) + 2.5,

"(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P-15)(.6) + 2.5,

"(c) for discharges occurring on or after October 1, 1993, (P-15)(.65) + 2.5,".

(2) INCREASE FOR HOSPITALS WITH DISPROPORTIONATE INDIGENT CARE REVENUES.—Section 1886(d)(5)(F)(iii) (42 U.S.C. 1395ww(d)(5)(F)(iii)) is amended by striking "30 percent" and inserting "35 percent".

(3) REPEAL OF SUNSET.—

(A) IN GENERAL.—Section 1886(d) (42 U.S.C. 1395ww(d)) is amended by striking "and before October 1, 1995," each place it appears in paragraph (2)(C)(iv) and paragraph (5)(F)(i).

(B) CONFORMING AMENDMENTS.—(A) Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)) is amended to read as follows:

"(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring on or after May 1, 1986, is equal to 1.89 × (((1 + r) to the nth power) − 1), where 'r' is the ratio of the hospital's fulltime equivalent interns and residents to beds and 'n' equals .405.".

(B) Section 1886(d)(3)(C)(ii) (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended by striking "occurring—" and all that follows and inserting the following: "occurring on or after October 1, 1986, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) (determined without regard to amendments made by the Omnibus Budget Reconciliation Act of 1990) were applied for discharges occurring on or after such date instead of the factor described in clause (ii) of that paragraph.".

(4) NO RESTANDARDIZING FOR RECENT ADJUSTMENTS.—

(A) ADJUSTMENTS UNDER OBRA 1989.—Section 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)) is amended by striking the period at the end and inserting the following: ", except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989.".

(B) ADJUSTMENTS UNDER OBRA 1990.—Section 1886(d)(2)(C)(iv), as amended by subparagraph (A), is further amended by striking "1989." and inserting "1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.".

(5) EFFECTIVE DATE.—The amendments made by paragraphs (1), (3), and (4)(B) shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(c) PAYMENTS TO RURAL HOSPITALS.—

(1) PHASE-OUT OF SEPARATE AVERAGE STANDARDIZED AMOUNTS.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)), as amended by subsection (a)(1), is further amended—

(A) in subclause (VI), by striking "in all areas," and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area ,";

(B) in subclause (VII), by striking "in all areas," and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area,";

(C) in subclause (VIII), by striking "in all areas, and" and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.55 for hospitals located in a rural area,";

(D) in subclause (IX)—

(i) by striking "1994" and inserting "1996", and

(ii) by redesignating such subclause as subclause (XI); and

(E) by inserting after subclause (VIII) the following new subclauses:

"(IX) for fiscal year 1994, the market basket percentage increase for hospitals located in a large urban or other urban area, and the market basket percentage increase plus 1.5 percentage points for hospitals located in a rural area,

"(X) for fiscal year 1995, the market basket percentage increase for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(3)(A) for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area), and".

(2) CONFORMING AMENDMENTS.—(A) Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)) is amended—

(i) in clause (ii), by striking "(A) and (E)," and inserting "(A), (C), (D), and (E),";

(ii) in subparagraphs (C)(ii) and (D)(ii), by striking "(B)(i)" each place it appears and inserting "(B)(ii)".

(B) Section 1886(d) (42 U.S.C. 1395ww(d)) is amended—

(i) in paragraph (1)(A)(iii), by striking "rural, large urban, or other urban area" and inserting "large urban or other area";

(ii) in paragraph (3)(A)—

(I) in clause (ii), by striking "the Secretary" and inserting "and ending on or before September 30, 1994, the Secretary",

(II) by redesignating clause (iii) as clause (v), and

(III) by inserting after clause (ii) the following new clauses:

"(iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a rural area shall be equal to the average standardized amount for hospitals located in an other urban area.

"(iv) For discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) with respect to hospitals located in the respective areas for the fiscal year involved.";

(iii) in paragraph (3)(B), by striking "for hospitals located in an urban area" and all that follows and inserting the following: "by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).";

(iv) in paragraph (3)(D)(i)—

(I) in the matter preceding subclause (I), by striking "an urban area (or," and all that follows through "area)," and inserting "a large urban area", and

(II) in subclause (I), by striking "an urban area" and inserting "a large urban area";

(v) in paragraph (3)(D)(ii), by striking "a rural area" each place it appears and inserting "other areas"; and

(vi) in paragraph (8)(D)—

(I) in the first sentence, by striking "for hospitals located in an urban area", and

(II) by striking the second sentence.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) and paragraph (2)(A) shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) shall take effect October 1, 1994.

(d) AREA WAGE INDEX.—

(1) DETERMINATION OF AREA WAGE INDEX.—(A) For purposes of section 1886(d)(3)(E) of the Social Security Act for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.

(2) STUDY OF AREA WAGE INDEX ADJUSTMENTS BASED ON PROFESSIONAL OCCUPATIONAL COMPONENT.—

(A) STUDY.—The Prospective Payment Assessment Commission shall examine available data from States and other sources measuring earnings and paid hours of employment of hospital workers by occupational category, and shall include in such examination an analysis of the impact of variation in occupational mix on the computation of the area wage index determined under section 1886(d)(3)(E) of the Social Security Act.

(B) REPORT TO CONGRESS.—In its March 1991 report, the Commission shall include recommendations regarding the feasibility and desirability of modifying such area wage index to take into account occupational mix, including variations in occupational mix resulting from differences in State codes and requirements.

(e) EXTENSION OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS.—

(1) IN GENERAL.—Section 1886(d)(1)(A)(iii) (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended by striking "beginning on or after" and all that follows through "1990" and inserting "beginning on or after April 1, 1988, and ending on September 30, 1993,".

(2) STUDY.—(A) The Secretary of Health and Human Services shall collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under section 1886(d)(3) of the Social Security Act to identify the extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices.

(B) Not later than June 1, 1993, the Secretary shall submit a report to Congress analyzing such data, and shall include in such report recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

(C) The provisions of chapter 35 of title 44, United States Code, shall not apply to data collected by the Secretary under subparagraph (A).

(4) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 1990.

(f) ELIMINATION OF HOSPITAL OFF-SET FOR SERVICES OF PHYSICIAN ASSISTANTS.—

(1) IN GENERAL.—Section 9338 of the Omnibus Budget Reconciliation Act of 1986 is amended by striking subsection (d).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(g) RESPONSIBILITIES AND REPORTING REQUIREMENTS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.—

(1) EXPANSION OF RESPONSIBILITIES.—Section 1886(e)(2) (42 U.S.C. 1395ww(e)(2)) is amended—

(A) by striking "(2)" and inserting "(2)(A)"; and

(B) by adding at the end the following new subparagraphs:

"(B) In order to promote the efficient and effective delivery of high-quality health care services, the Commission shall, in addition to carrying out its functions under subparagraph (A), study and make recommendations for each fiscal year regarding changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates and the development of new institutional reimbursement policies under this title, including recommendations relating to payments during such fiscal year under the prospective payment system established under this section for determining payments for the operating costs of inpatient hospital services, including changes in the number of diagnosis-related groups used to classify inpatient hospital discharges under subsection (d), adjustments to such groups to reflect severity of illness, and changes in the methods by which hospitals are reimbursed for capital-related costs, together with general recommendations on the effectiveness and quality of health care delivery systems in the United States and the effects on such systems of institutional reimbursements under this title.

"(C) By not later than June 1 of each year, the Commission shall submit a report to Congress containing an examination of issues affecting health care delivery in the United States, including issues relating to—

"(i) trends in health care costs;

"(ii) the financial condition of hospitals and the effect of the level of payments made to hospitals under this title on such condition;

"(iii) trends in the use of health care services; and

"(iv) new methods used by employers, insurers, and others to constrain growth in health care costs.".

(2) REPORTING REQUIREMENTS FOR COMMISSION AND SECRETARY; ELIMINATION OF OTA REPORTING REQUIREMENTS.—Section 1886 (42 U.S.C. 1395ww) is amended—

(A) by striking subparagraph (D) of subsection (d)(4);

(B) in the second sentence of subsection (e)(2)(A), as amended by paragraph (1)(A), by striking "In addition" and all that follows through "the Commission" and inserting "The Commission";

(C) in subsection (e)(3)(A)—

(i) by striking "the Secretary" and inserting "Congress", and

(ii) by striking the period at the end and inserting the following: ", together with its general recommendations under paragraph

(2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.";

(D) in subsection (e)(4)—

(i) by striking "(4)" and inserting "(4)(A)", and

(ii) by adding at the end the following new subparagraph:

"(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates.";

(E) in subsection (e)(5)—

(i) by striking "recommendation" each place it appears and inserting "recommendations", and

(ii) by adding at the end the following new sentence: "To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations."; and

(F) in subsection (e)(6)(G)—

(i) by striking clause (i), and

(ii) by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(3) CONFORMING AMENDMENT.—Section 1845(c)(1)(D) (42 U.S.C. 1395w-1(c)(1)(D)) is amended by striking "reports and".

(4) PROPAC STUDY OF MEDICAID PAYMENTS TO HOSPITALS.—

(A) STUDY.—The Prospective Payment Assessment Commission shall conduct a study of hospital payment rates under State plans for medical assistance under title XIX of the Social Security Act, and shall specifically examine in such study the relationship between payments under such plans and payments made to hospitals under title XVIII of such Act, and the financial condition of hospitals receiving payments under such plans, with particular attention to hospitals in urban areas which treat large numbers of individuals eligible for medical assistance under title XIX of such Act and other low-income individuals.

(B) REPORT.—By not later than October 1, 1991, the Commission shall submit a report to Congress on the study conducted under subparagraph (A) and shall include in such report such recommendations relating to requirements for payments to hospitals under title XIX of such Act as the Commission deems appropriate.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(h) PROVISIONS RELATING TO GEOGRAPHIC CLASSIFICATION OF HOSPITALS.—

(1) PAYMENTS TO RECLASSIFIED HOSPITALS.—

(A) IN GENERAL.—Section 1886(d)(8)(C) (42 U.S.C. 1395ww(d)(8)(C)) is amended—

(i) in clause (i), in the matter preceding subclause (I), by striking "area—" and inserting "area, or by treating hospitals located in one urban area as being located in another urban area—";

(ii) by amending clause (i)(II) to read as follows:

"(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).";

(iii) by striking clause (ii); and

(iv) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii).

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply to discharges occurring on or after January 1, 1991.

(2) GEOGRAPHIC CLASSIFICATION REVIEW BOARD.—

(A) DEADLINE FOR SUBMISSION OF APPLICATIONS.—For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.

(B) TECHNICAL CORRECTIONS.—Section 1886(d)(10) (42 U.S.C. 1395ww(d)(10)) is amended—

(i) in subparagraph (A), by striking "Geographical" and inserting "Geographic";

(ii) in subparagraph (B)(i)—

(I) by striking "representatives" and inserting "representative", and

(II) by striking "1 member shall be a member of the Prospective Payment Assessment Commission, and at least";

(iii) in subparagraph (B)(ii), by striking "all" and inserting "initial"; and

(iv) in subparagraph (10)(C)(iii)(II)—

(I) by striking the first 2 sentences and inserting the following: "Appeal of decisions of the Board shall be subject to the provisions of section 557b of title 5, United States Code.", and

(II) by striking "after" and inserting "after the date on which".

SEC. 4003. EXPANSION OF DRG PAYMENT WINDOW.

(a) IN GENERAL.—The first sentence of section 1886(a)(4) (42 U.S.C. 1395ww(a)(4)) is amended by striking the period and inserting the following: ", and includes the costs of all services for which payment may be made under this title that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act and before October 1, 1991;

(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

(3) in the case of any other services, to services furnished on or after October 1, 1991.

(c) ISSUANCE OF INTERIM FINAL REGULATION.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section.

SEC. 4004. PAYMENTS FOR MEDICAL EDUCATION COSTS.

(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted pay-

ments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

SEC. 4005. PPS-EXEMPT HOSPITALS.

(a) ADJUSTMENT TO PAYMENT AMOUNTS.—

(1) IN GENERAL.—Section 1886(b)(1)(B) (42 U.S.C. 1395ww(b)(1)(B)) is amended by striking "(ii) in the case of" and all that follows through the semicolon and inserting the following: "(ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period;".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1991.

(b) DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) receive payment for the operating and capital-related costs of inpatient hospital services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) APPEALS OF TARGET AMOUNTS.—

(1) DEADLINES FOR REVIEW AND DECISION.—(A) Section 1816(f) (42 U.S.C. 1395h(f)) is amended—

(i) by striking "(1)" and "(2)" and inserting "(A)" and "(B)";

(ii) by striking "(f)" and inserting "(f)(1)"; and

(iii) by striking "Such standards and criteria" and all that follows and inserting the following:

"(2) The standards and criteria established under paragraph (1) shall include—

"(A) with respect to claims for services furnished under this part by any provider of services other than a hospital—

"(i) whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days, and

"(ii) the extent to which such agency or organization's determinations are reversed on appeal; and

"(B) with respect to applications for an exemption from or exception or adjustment to the target amount applicable under section 1886(b) to a hospital that is not a subsection (d) hospital (as defined in section 1886(d)(1)(B))—

(i) if such agency or organization receives a completed application, whether such agency or organization is able to process such application not later than 75 days after the application is filed, and

"(ii) if such agency or organization receives an incomplete application, whether such agency or organization is able to return the application with instructions on how to complete the application not later than 60 days after the application is filed.".

(B) Section 1886(b)(4)(A) (42 U.S.C. 1395ww(b)(4)(A)) is amended by adding at the end the following new sentence: "The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.".

(2) STANDARDS FOR ASSIGNMENT OF NEW BASE PERIOD.—Section 1886(b)(4) (42 U.S.C. 1395ww(b)(4)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration—

"(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

"(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

"(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.".

(3) GUIDANCE TO INTERMEDIARIES AND HOSPITALS.—The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.

(4) EFFECTIVE DATES.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act, and the amendments made by paragraph (2) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4006. HOSPICE BENEFIT EXTENSION.

(a) IN GENERAL.—Section 1812 (42 U.S.C. 1395d) is amended—

(1) in subsection (a)(4), by striking "90 days each" and all that follows through "with respect to" and inserting the following: "90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to"; and

(2) in subsection (d)—

(A) in paragraph (1), by striking "90 days each" and all that follows through "lifetime" and inserting the following: "90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime", and

(B) in paragraph (2)(B), by striking "a 90- or 30-day period," and inserting "a 90- or 30-day period or a subsequent extension period,".

(b) CONFORMING AMENDMENT.—Section 1814(a)(7)(A) (42 U.S.C. 1395f(a)(7)(A)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the semicolon at the end and inserting ", and"; and

(3) by adding at the end the following new clause:

"(iii) in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to care and services furnished on or after January 1, 1990.

SEC. 4007. FREEZE IN PAYMENTS UNDER PART A THROUGH DECEMBER 31.

(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act (including payments under section 1886 of such Act attributable

to or allocated under such part) during the period described in subsection (b):

(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act shall be deemed to be 0.

(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

(b) DESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.

SEC. 4008. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART A.

(a) WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES AND HOSPICES.—

(1) SKILLED NURSING FACILITIES.—The second sentence of section 9126(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "October 31, 1990" and inserting "December 31, 1995".

(2) HOSPICES.—Section 9305(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "November 1, 1990" and inserting "December 31, 1995".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect on the date of the enactment of this Act.

(b) HOSPITAL OBLIGATIONS WITH RESPECT TO TREATMENT OF EMERGENCY MEDICAL CONDITIONS.—

(1) CIVIL MONETARY PENALTIES.—Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by striking "knowingly" and inserting "negligently".

(2) APPLICATION OF PENALTIES TO SMALL HOSPITALS.—Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by inserting "(or not more than $25,000 in the case of a hospital with less than 100 beds)" after "$50,000".

(3) TERMINATION OF HOSPITAL PROVIDER AGREEMENTS.—

(A) Section 1867 (42 U.S.C. 1395dd) is further amended—

(i) by striking paragraph (1) of subsection (d),

(ii) by redesignating paragraphs (2) and (3) of subsection (d) as paragraph (1) and (2), respectively, and

(iii) in subsection (c)(2)(C), by striking "(d)(2)(C)" and inserting "(d)(1)(C)".

(B) Section 1866(a)(1)(I)(i) (42 U.S.C. 1395cc(a)(1)(I)(i)) is amended by inserting "and to meet the requirements of such section" before the comma at the end.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(c) INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS.—

(1) STUDY.—The Secretary of Health and Human Services (acting through the Inspector General of the Department of Health and Human Services) shall conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and shall include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act relating to the examination and treatment of individuals with an emergency medical condition and women in labor.

(2) REPORT.—By not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1).

(d) DESIGNATION OF RURAL PRIMARY CARE HOSPITALS.—

(1) PRIORITY DESIGNATIONS OF BORDER STATE HOSPITALS.—Section 1820(i)(2)(C) (42 U.S.C. 1395i-4(i)(2)(C)) is amended by adding at the end the following new sentence: "In designating facilities as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) with a rural health network located in a State receiving a grant under subsection (a)(1).".

(2) ELIGIBILITY OF CERTAIN CLOSED HOSPITALS.—Section 1820(f)(1)(B) (42 U.S.C. 1395i-4(f)(1)(B)) is amended by striking "is a hospital," and inserting the following: "is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),".

(3) ELIGIBILITY OF URBAN HOSPITALS.—Section 1820(f)(1)(A) (42 U.S.C. 1395i-4(f)(1)(A)) is amended by striking the semicolon and inserting the following: ", or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas;".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) shall take effect on the date of the enactment of this Act.

(e) SKILLED NURSING FACILITY ROUTINE COST LIMITS.—

(1) IN GENERAL.—Section 6024 of the Omnibus Budget Reconciliation Act of 1989 is amended by adding at the end the following new sentence: "The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.".

(2) 2-YEAR UPDATES REQUIRED.—Section 1888(a) (42 U.S.C. 1395yy(a)) is amended in the matter following paragraph (4) by striking the period and inserting the following: ", and shall, for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(f) CLARIFICATION OF EXTENSION OF WAIVER FOR FINGER LAKES AREA HOSPITAL CORPORATION.—

(1) IN GENERAL.—The second sentence of section 1886(c)(4) (42 U.S.C. 1395ww(c)(4)) is amended by striking "rate of increase from" and inserting "payments under the State system as compared to aggregate payments which would have been made under the national system since".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(g) ENROLLMENT IN PART A FOR HMO MEMBERS.—

(1) IN GENERAL.—Section 1818(c) (42 U.S.C. 1395i-2(c)) is amended—

(A) by striking "and" at the end of paragraph (5),

(B) by striking the period at the end of paragraph (6) and inserting a semicolon, and

(C) by adding at the end the following new paragraphs:

"(7) an individual who meets the conditions of subsection (a) may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1876 with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;

"(8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)—

"(A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1876 with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

"(B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls; and

"(9) in applying the provisions of section 1839(b), there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled under section 1876 with an eligible organization.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on February 1, 1991.

(h) NURSING HOME REFORM.—

(1) NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

(A) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(B) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING.—Section 1819(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended—

(i) by striking "A skilled nursing facility" and inserting "(i) Except as provided in clause (ii), a skilled nursing facility";

(ii) by striking "(on a full-time, temporary, per diem, or other basis) and inserting "on a full-time basis";

(iii) by striking "(i)" and "(ii)" and inserting "(I)" and "(II)"; and

(iv) by adding at the end the following:

"(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).".

(C) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY.—Section 1819(b)(5)(C) (42 U.S.C. 1395i-3(b)(5)(C)) is amended by striking "the State registry established under subsection (e)(2)(A) as to information in the registry" and inserting "any State registry established under subsection (e)(2)(A) that the facility believes will include information".

(D) RETRAINING OF NURSE AIDES.—Section 1819(b)(5)(D) (42 U.S.C. 1395i-3(b)(5)(D)) is amended by striking the period at the end and inserting ", or a new competency evaluation program.".

(E) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES.—Section 1819(f)(2)(A)(iv) (42 U.S.C. 1395i-3(f)(2)(A)(iv)) is amended—

(i) in subclause (I), by striking "and" at the end;

(ii) in subclause (II), by inserting after "nurse aide" the following: "who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program";

(iii) in subclause (II), by striking the period at the end and inserting ", and"; and

(iv) by adding at the end the following new subclause:

"(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.".

(F) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS.—

(i) IN GENERAL.—Section 1819(f)(2)(B)(iii)(I) (42 U.S.C. 1395i-3(f)(2)(B)(iii)(I)) is amended to read as follows:

"(I) offered by or in a skilled nursing facility which, within the previous 2 years—

"(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II);

"(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) or section 1919(g)(2)(B)(i); or

"(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) or section 1919(h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in clauses (i) or (iii) of subsection (h)(2)(B), subsection (h)(4), section 1919(h)(1)(B)(i), or in clauses (i), (iii), or (iv) of section 1919(h)(2)(A), or".

(ii) EFFECTIVE DATE.—The amendments made by clause (i) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(I) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(II) was subject to a denial of payment under either such title;

(III) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(IV) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(V) pursuant to State action, was closed or had its residents transferred.

(G) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY.—Section 1819(f)(2)(B) (42 U.S.C. 1395i-3(f)(2)(B)) is amended in the second sentence by inserting "(through subcontract or otherwise)" after "may not delegate".

(H) EFFECTIVE DATE.—Except as provided in subparagraph (F), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(2) OTHER AMENDMENTS.—

(A) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS.—(i) Section 1861(v)(1)(E) (42 U.S.C. 1395x(v)(1)(E)) is amended in the second sentence by striking "the costs of such facilities" and inserting "the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) of such facilities".

(ii) Section 1888(d)(1) (42 U.S.C. 1395xx(d)(1)) is amended in the first sentence by striking "(and capital-related costs)" and inserting "(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) and capital-related costs".

(B) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES.—Section 1819(b)(1)(B) (42 U.S.C. 1395i-3(b)(1)(B)) is amended by adding at the end the following new sentence: "A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.".

(C) PERIOD FOR RESIDENT ASSESSMENT.—Section 1819(b)(3)(C)(i)(I) (42 U.S.C. 1395i-3(b)(3)(C)(i)(I)) is amended by striking "4 days" and inserting "not later than 14 days".

(D) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS.—Section 1819(b)(4)(A) (42 U.S.C. 1395i-3(b)(4)(A)) is amended—

(i) by striking "and" at the end of clause (v),

(ii) by striking the period at the end of clause (vi) and inserting "; and", and

(iii) by inserting after clause (vi) the following new clause:

"(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.".

(E) NOTIFICATION OF SECRETARIAL WAIVER.—Section 1819(b)(4)(C)(ii) (42 U.S.C. 1395i-3(b)(4)(C)(ii)) is amended—

(i) by striking "and" at the end of subclause (II);

(ii) by striking the period at the end of subclause (III) and inserting a comma; and

(iii) by adding at the end the following new subclauses:

"(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

"(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.".

(F) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1819(b)(5)(F)(i) (42 U.S.C. 1395i-3(b)(5)(F)(i)) is amended by striking "(G))," and inserting "(G)) or a registered dietician,".

(G) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS FOR NON-MEDICAL REASONS.—Section 1819(c)(1)(A) (42 U.S.C. 1395i-3(c)(1)(A)) is amended—

(i) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

"(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this title) to a portion of the facility that is not such a skilled nursing facility."; and

(B) by adding at the end the following: "A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this title or to medical assistance under title XIX of this Act.".

(H) RESIDENT ACCESS TO CLINICAL RECORDS.—Section 1819(c)(1)(A)(iv) (42 U.S.C. 1395i-3(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: "and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request".

(I) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS.—Section 1819(c)(1)(B)(ii) (42 U.S.C. 1395i-3(c)(1)(B)(ii)) is amended by inserting "including the notice (if any) of the State developed under section 1919(e)(6)" after "in such rights)".

(J) SPECIFICATION OF REQUIRED PROGRAMS.—Section 1819(e)(1)(A) (42 U.S.C. 1395i-3(e)(1)(A)) is amended by striking "clause (i) or (ii) of subsection (f)(2)(A)" and inserting "subsection (f)(2)".

(K) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS.—Section 1819(e)(2) (42 U.S.C. 1395i-3(e)(2)) is amended—

(i) in subparagraph (A), by striking the period and inserting the following: ", or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989."; and

(ii) by adding at the end the following new subparagraph:

"(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).".

(L) CLARIFICATION ON FINDINGS OF NEGLECT.—Section 1819(g)(1)(C) (42 U.S.C. 1395i-3(g)(1)(C)) is amended by adding at the end the following: "A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.".

(M) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS.—Section 1819(g)(5)(A)(i) (42 U.S.C. 1395i-3(g)(5)(A)(i)) is amended by striking "deficiencies and plans" and inserting "deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans".

(N) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY AND CERTIFICATION AGENCIES.—Section 1819(g)(5)(B) (42 U.S.C. 1395i-3(g)(5)(B)) is amended by striking "with respect" and inserting "or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h), with respect".

(O) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(P) EFFECTIVE DATES.—The amendments made by this paragraph shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(i) CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY.—

(1) RURAL HOSPITAL DEMONSTRATION.—The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989.

(2) NURSING HOME DEMONSTRATIONS.—Section 6901(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(A) by striking "Wisconsin" and inserting "Wisconsin and nursing home case-mix demonstration projects in other States"; and

(B) by striking the second sentence.

(3) STATE WAIVER AUTHORITY.—Section 1814(b) (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3)(B), by striking "October 1, 1983" and inserting "January 1, 1981";

(B) in the second sentence, by striking "seventh month" and inserting "37th month"; and

(C) by adding at the end the following: "If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B) of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (i) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative savings under the State system based on the difference in the rate of increase in costs per hospital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary's initial notice), and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system.".

(4) EFFECTIVE DATE.—The amendment made by paragraphs (1) and (2) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(j) DETERMINATION OF REASONABLE COSTS RELATING TO SWING BEDS.—

(1) IN GENERAL.—Section 1883(a)(2)(B)(ii)(II) (42 U.S.C. 1395tt(a)(2)(B)(ii)(II)) is amended by striking "the previous calendar year" and all that follows through the period and inserting "the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1888 for subsequent cost reporting periods and up to and including such calendar year) under this title to freestanding skilled nursing facilities in the region (as defined in section 1886(d)(2)(D)) in which the facility is located.".

(2) HOLD HARMLESS.—If, as a result of the amendment made by paragraph (1), the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.

(3) SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987.—Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.

(4) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after October 1, 1990.

(k) PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(l) REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

(2) REPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).

(m) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) APPLICATION OF PREENTITLEMENT PSYCHIATRIC HOSPITAL SERVICES TO LIMIT ON INPATIENT HOSPITAL SERVICES.—Effective as if included in the enactment of the Medicare Catastrophic Coverage Repeal Act of 1989, section 101(b)(1)(B) is amended by inserting "(other than the limitation under section 1812(c) of such Act)" after "limitation".

(2) PROVISIONS RELATING TO HOSPITALS.—

(A) Section 1886(d)(5)(D)(iii) (42 U.S.C. 1395ww(d)(5)(D)(iii)), as amended by section 6003(e)(1)(A)(iv) of Omnibus Budget Reconciliation Act of 1989 (in this subsection referred to as "OBRA-1989"), is amended by striking "The term" and inserting "For purposes of this title, the term".

(B) Section 1820 of such Act (42 U.S.C. 1395i-4), as added by section 6003(g)(1)(A) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(i) in subsection (d)(1), by striking "demonstration";

(ii) in subsection (g)(1)(A)(ii), by striking "rural referral center" and inserting "regional referral center"; and

(iii) in subsection (j), by inserting "and part C" after "this part".

(C) Section 6003(g)(3)(C)(vii)(I) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "each place it appears".

(D) Section 1835(c) of the Social Security Act (42 U.S.C. 1395n(c)) is amended—

(i) in the first sentence, by striking "a hospital" and inserting "a hospital or a rural primary care hospital";

(ii) in the second sentence, by striking "1833(a)(2)" and inserting "1833(a)(2) (or, in the case of a rural primary care hospital, in accordance with section 1833(a)(6))"; and

(iii) by striking the third sentence.

(3) TECHNICAL CORRECTIONS RELATING TO OTHER PROVIDERS OF SERVICES.—

(A) Section 1814(i)(1)(C)(i) (42 U.S.C. 1395f(i)(1)(C)(i)), as amended by section 6005(a)(2) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking "during fiscal year 1990" and inserting "on or after January 1, 1990, and on or before September 30, 1990,".

(B) Section 6005(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "subsection (a)" and inserting "subsections (a) and (b)".

(C) Section 1818A(d)(1) (42 U.S.C. 1395i-2a(d)(1)), as inserted by section 6012(a)(2) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(i) in subparagraph (A), by inserting "for enrollment under this section" after "Premiums", and

(ii) by striking subparagraph (C).

(D) Section 1818(g)(2)(B) (42 U.S.C. 1395i-2(g)(2)(B)), as added by section 6013(a) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking "subsection (c)" and inserting "subsection (c)(6)".

(F) Section 1819(f)(2)(A)(ii) (42 U.S.C. 1395i-3(f)(2)(A)(ii)) is amended by striking "and" at the end.

(G) Section 1866(a)(1)(F) (42 U.S.C. 1395cc(a)(1)(F) is amended—

(i) in clause (i), by striking the comma at the end and inserting ",", and

(ii) in clause (ii), by striking "(4)(A)" and inserting "(3)(A)" and by striking the semicolon at the end and inserting a comma.

PART 2—PROVISIONS RELATING TO PART B

Subpart A—Payment for Physicians' Services

SEC. 4101. CERTAIN OVERVALUED PROCEDURES.

(a) PREVIOUSLY IDENTIFIED PROCEDURES.—Section 1842(b)(14) (42 U.S.C. 1395u(b)(14)) is amended—

(1) by inserting "(i)" after "(14)(A)"; and

(2) by adding at the end of subparagraph (A) the following new clause:

"(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by the same amount as the amount of the reduction effected under this paragraph (as amended by the Omnibus Budget Reconciliation Act of 1990) for such service during such period.".

(b) UNSURVEYED SURGICAL AND TECHNICAL PROCEDURES.—(1) Section 1842(b) (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(16)(A) In determining the reasonable charge for all physicians' services other than physicians' services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall be 6.5 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

"(B) For purposes of subparagraph (A), the physicians' services specified in this subparagraph are as follows:

"(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in paragraph (17) and physicians' services specified in paragraph (14)(C)(i).

"(ii) Primary care services specified in subsection (i)(4), hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

"(iii) Partial, simple and subcutaneous mastectomy; tendon sheath injections; small joint arthrocentesis; femoral fracture treatments; trochanteric fracture treatments; endotracheal intubation; thoracentesis; thoracostomy; lobectomy; aneurysm repair; enterectomy; colectomy; cholecystectomy; cystourethroscopy; transurethral fulguration; transurerethral resection; sacral laminectomy; tympanoplasty with mastoidectomy; and ophthalmoscopy.".

(2) In applying section 1842(b)(16) of the Social Security Act:

(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

(B) The codes for the procedures specified in clause (iii) are as follows: Partial, simple and subcutaneous mastectomy (HCPCS codes 19160 and 19162); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 32035, and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code 69645); and ophthalmoscopy (HCPCS codes 92250, and 92260).".

SEC. 4102. RADIOLOGY SERVICES.

(a) REDUCTION IN FEE SCHEDULE.—Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended—

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) 1991 FEE SCHEDULES.—For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall be determined as follows:

"(i) NATIONAL WEIGHTED AVERAGE CONVERSION FACTOR.—The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

"(ii) REDUCED NATIONAL WEIGHTED AVERAGE.—The national weighted average estimated under clause (i) shall be reduced by 13 percent.

"(iii) COMPUTATION OF 1990 LOCALITY INDEX RELATIVE TO NATIONAL AVERAGE.—The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

"(iv) LOCAL ADJUSTMENT.—Subject to clause (vii), the conversion factor to be applied to the professional or technical component of a service in a locality is the sum of ½ of the locally-adjusted amount determined under clause (v) and ½ of the GPCI-adjusted amount determined under clauses (vi).

"(v) LOCALLY-ADJUSTED AMOUNT.—For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

"(vi) GPCI-ADJUSTED AMOUNT.—For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of—

"(I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243)); and

"(II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

"(vii) LIMITS ON CONVERSION FACTOR.—The conversion factor to be applied to a locality under this subparagraph to the professional or technical component of a service shall not be more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (i)).".

(b) SPECIAL RULE FOR TRANSITION FOR RADIOLOGY SERVICES.—Section 1848(a)(2)(C) (42 U.S.C. 1395w-4(a)(2)(C)) is amended—

(1) by inserting "AND RADIOLOGY" after "SPECIAL RULE FOR ANESTHESIA", and

(2) by adding at the end the following: "With respect to radiology services, '109 percent' and '9 percent' shall be substituted for '115 percent' and '15 percent', respectively, in subparagraph (A)(ii).

(c) REDUCTION IN PREVAILING CHARGE LEVEL FOR OTHER RADIOLOGY SERVICES.—

(1) IN GENERAL.—In applying part B of title XVIII of the Social Security Act, the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act with respect to such services.

(2) EXCEPTION.—Paragraph (1) shall not apply to radiology services which are subject to section 6105(b) of the Omnibus budget Reconciliation Act of 1989.

(d) REDUCTION IN PAYMENTS FOR TECHNICAL COMPONENTS OF CERTAIN SCANNING SERVICES.—Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended by inserting after subparagraph (D) the following new paragraph:

"(E) In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.".

(e) LIMITATION ON ADJUSTMENTS.—For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act—

(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act, in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

(3) section 1842(b)(9) of such Act shall not apply.

(f) USE OF LOCALITIES.—Section 1834(b)(1)(B) (42 U.S.C. 1395m(b)(1)(B)) is amended by inserting "locality," after "statewide,".

(g) TREATMENT OF NUCLEAR MEDICINE PHYSICIANS.—

(1) CONTINUATION OF SPECIAL RULE.—Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking all that follows "Social Security Act" the second place it appears and inserting the following: "beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services.".

(2) ADJUSTED HISTORICAL PAYMENT BASIS.—Section 1848(a)(2)(D) (42 U.S.C. 1395w-4(a)(2)(D)) is amended—

(A) in clause (ii) by inserting ", but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" after "section 1834(b)(6))", and

(B) by adding at the end the following:

"(iii) NUCLEAR MEDICINE SERVICES.—In applying clause (i) in the case of physicians' services which are nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted average prevailing charge the amount provided under such section.".

(h) EXTENSION OF SPLIT BILLING RULE FOR INTERVENTIONAL RADIOLOGISTS.—Section 6105(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting "or 1991" after "1990" each place it appears.

(i) EFFECTIVE DATES.—

(1) Except as otherwise provided, the amendments made by this section shall apply to services furnished on or after January 1, 1991.

(2) The amendment made by subsection (f) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

SEC. 4103. ANESTHESIA SERVICES.

(a) REDUCTION IN FEE SCHEDULE.—Section 1842(q)(1) (42 U.S.C. 1395u(q)(1)) is amended—

(1) by inserting "(A)" after "(q)(1)", and

(2) by adding at the end the following new subparagraph:

"(B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall be determined as follows:

"(i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

"(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

"(iii) Subject to clause (iv), the prevailing charge conversion factor to be applied in a locality is the sum of—

"(I) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243)); and

"(II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

"(iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (i)).".

(b) EXTENSION OF REDUCTION FOR SUPERVISION OF CONCURRENT SERVICES.—Section 1842(b)(13) (42 U.S.C. 1395u(b)(13)) is amended by striking "1991" each place it appears and inserting "1996".

SEC. 4104. PHYSICIAN PATHOLOGY SERVICES.

(a) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES.—Subsection (f) of section 1834 (42 U.S.C. 1395m) is amended to read as follows:

"(f) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES DURING FISCAL YEAR 1991.—

"(1) IN GENERAL.—For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

"(2) LIMITATION.—The prevailing charge for the technical and professional components of an physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians' office.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1833(a)(1)(J) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking "or physician pathology services" and by striking "or section 1834(f), respectively".

(2) Section 1848(a)(1) of such Act (42 U.S.C. 1395w-4(a)(1)) is amended by striking "or 1834(f)".

(3) Section 4050 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(c) ANCILLARY POLICY.—The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act, shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4105. UPDATE FOR PHYSICIANS' SERVICES.

(a) PERCENTAGE INCREASE IN MEI FOR 1991.—

(1) IN GENERAL.—Section 1842(b)(4)(E) (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end the following new clause:

"(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is—

"(I) 0 percent for services (other than primary care services), and

"(II) 2 percent for primary care services (as defined in subsection (i)(4)).".

(2) CUSTOMARY CHARGES FOR 1991.—Section 1842(b)(4)(B) (42 U.S.C. 1395u(b)(4)(B)) is amended by adding at the end the following new clause:

"(iv) In determining the reasonable charge under paragraph (3) for physicians' services (other than primary care services, as defined in subsection (i)(4)) furnished during 1991, the customary charges shall be the same customary charges as were recognized under this section for the 9-month period beginning April 1, 1990. In a case in which subparagraph (F) applies (relating to new physicians) so as to limit the customary charges of a physician during 1990 to a percent of prevailing charges, the previous sentence shall not prevent such limit on customary charges under such subparagraph from increasing in 1991 to a higher percent of such prevailing charges.".

(3) CHANGE IN PAYMENT FOR YEARS AFTER 1991.—Section 1848 of such Act (42 U.S.C. 1395w-4) is amended in subsection (d)(3)(A)—

(A) in clause (i), by inserting "except as provided in clause (iii)," after "subparagraph (B),", and

(B) by adding at the end the following new clause:

"(iii) ADJUSTMENT IN PERCENTAGE INCREASE.—In applying clause (i) for services furnished in 1992 for which the appropriate update index is the index described in clause (ii)(I), the percentage increase in the appropriate update index shall be reduced by 0.4 percentage points.".

(b) INCREASE IN PREVAILING CHARGE FLOOR FOR PRIMARY CARE SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A)(vi) of such Act (42 U.S.C. 1395u(b)(4)(A)(vi)) is amended by striking "50 percent" and inserting "60 percent".

(2) BUDGET NEUTRAL IMPLEMENTATION.—In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act for physicians' serv-

ices in 1991 assuming that the amendments made by this subsection did not apply.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to services furnished on or after January 1, 1991.

(c) VOLUME PERFORMANCE STANDARD FOR FISCAL YEAR 1991.—Section 1848(f) (42 U.S.C. 1395w-4(f)) is amended—

(1) in paragraph (1)(C), by striking "1990" the first place it appears and inserting "1991", and

(2) by adding at the end of paragraph (2) the following:

"(C) Notwithstanding subparagraph (A), the performance standard rate of increase for a category of physicians' services for fiscal year 1991 shall be the sum of—

"(i) the Secretary's estimate of the percentage by which actual expenditures for the category of physicians' services under this part for fiscal year 1991 exceed actual expenditures for such category of services in fiscal year 1990 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990), and

"(ii) the Secretary's estimate of the percentage increase or decrease in expenditures for the category of services in fiscal year 1991 (compared with fiscal year 1990) that will result from changes in law and regulations (including the Omnibus Budget Reconciliation Act of 1990), reduced by 2 percentage points.".

(d) Not later than 45 days after the date of the enactment of this Act, the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act for fiscal year 1991.

SEC. 4106. NEW PHYSICIANS AND OTHER NEW HEALTH CARE PRACTITIONERS.

(a) EXTENSION OF CUSTOMARY CHARGE LIMIT AND INCLUSION OF HEALTH CARE PRACTITIONERS.—

(1) IN GENERAL.—Subparagraph (F) of section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended to read as follows:

"(F)(i) In the case of physicians' services and professional services of a health care practitioner (other than primary care services and other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area) furnished during the physician's or practitioner's first through fourth years of practice (if payment for those services is made separately under this part and on other than a cost-related basis), the prevailing charge or fee schedule amount to be applied under this part shall be 80 percent for the first year of practice, 85 percent for the second year of practice, 90 percent for the third year of practice, and 95 percent for the fourth year of practice, of the prevailing charge or fee schedule amount for that service under the other provisions of this part.

"(ii) For purposes of clause (i):

"(I) The term 'health care practitioner' means a physician assistant, certified nurse-midwife, qualified psychologist, nurse practitioner, clinical social worker, physical therapist, occupational therapist, respiratory therapist, certified registered nurse anesthetist, or any other practitioner as may be specified by the Secretary.

"(II) The term 'first year of practice' means, with respect to a physician or practitioner, the first calendar year during the first 6 months of which the physician or practitioner furnishes professional services for which payment is made under this part, and includes any period before such year.

"(III) The terms 'second year of practice', 'third year of practice', and 'fourth year of practice' mean the second, third, and fourth calendar years, respectively, following the first year of practice.".

(2) CONFORMING AMENDMENTS.—Section 6108(a)(2)(A) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(A) by inserting "or 1991" after "1990", and

(B) by inserting "or 1990" after "1989".

(b) APPLICATION UNDER FEE SCHEDULE.—

(1) IN GENERAL.—Section 1848(a) (42 U.S.C. 1395w-4(a)) is amended by adding at the end the following new paragraph:

"(4) TREATMENT OF NEW PHYSICIANS.—In the case of physicians' services furnished by a physician before the end of the physician's first full calendar year of furnishing services for which payment may be made under this part, and during each of the 3 succeeding years, the fee schedule amount to be applied shall be 80 percent, 85 percent, 90 percent, and 95 percent, respectively, of the fee schedule amount applicable to physicians who are not subject to this paragraph. The preceding sentence shall not apply to primary care services or services furnished in a rural area (as defined in section 1886(d)(2)) that is designated under section 322(a)(1)(A) of the Public Health Service Act as a health manpower shortage area.".

(2) CONFORMING AMENDMENTS.—Section 1842(b)(4)(F), as amended by subsection (a), is amended—

(A) in clause (i), by striking "physicians' services and",

(B) in clause (i), by striking "physician's or", and

(C) in clause (ii)(II), by striking "physician or" each place it appears.

(c) CONFORMING ADJUSTMENT IN CONVERSION FACTOR COMPUTATION.—In computing the conversion factor under section 1848(d)(1)(B) for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B for physicians' services in 1991 assuming that the amendments made by this section (notwithstanding subsection (d)) applied to all services furnished during such year.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) apply to services furnished after 1990, except that—

(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

(2) The amendments made by subsection (b) shall apply to services furnished after 1991.

SEC. 4107. ASSISTANTS AT SURGERY.

(a) PHYSICIANS AS ASSISTANTS-AT-SURGERY.—

(1) IN GENERAL.—Section 1848(i) (42 U.S.C. 1395w-4(i)) is amended by adding at the end the following:

"(2) ASSISTANTS-AT-SURGERY.—

"(A) IN GENERAL.—Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

"(B) DENIAL OF PAYMENT IN CERTAIN CASES.—If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.".

(2) APPLICATION IN 1991.—Section 1848(i)(2) of the Social Security Act, as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount.

(b) CONFORMING AMENDMENT.—Section 1862(a)(15) of such Act (42 U.S.C. 1395y(a)(15)) is amended—

(1) by inserting "(A)" after "(15)",

(2) by striking "; or" at the end and inserting ", or", and

(3) by adding at the end the following new subparagraph:

"(B) which are for services of an assistant at surgery to which section 1848(i)(2)(B) applies; or".

(c) EFFECTIVE DATE.—The amendment made by subsection shall apply with respect to services furnished on or after January 1, 1992.

SEC. 4108. TECHNICAL COMPONENTS OF CERTAIN DIAGNOSTIC TESTS.

(a) IN GENERAL.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)), as amended by section 4101, is further amended by adding at the end the following new paragraph:

"(18) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to tests and services furnished on or after January 1, 1991.

SEC. 4109. INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) IN GENERAL.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by adding at the end the following new paragraph:

"(3) TREATMENT OF INTERPRETATION OF ELECTROCARDIOGRAMS.—If payment is made under this part for a visit to a physician or consultation with a physician and, as part of or in conjunction with the visit or consultation there is an electrocardiogram performed or ordered to be performed, no payment may be made under this part with respect to the interpretation of the electrocardiogram and no physician may bill an individual enrolled under this part separately for such an interpretation. If a physician knowingly and willfully bills one or more individuals in violation of the previous sentence, the Secretary may apply sanctions against the

physician or entity in accordance with section 1842(j)(2).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1992. In applying section 1848(d)(1)(B) of the Social Security Act (in computing the initial budget-neutral conversion factor for 1991), the Secretary shall compute such factor assuming that section 1848(b)(3) of such Act (as added by the amendment made by subsection (a)) had applied to physicians' services furnished during 1991.

SEC. 4110. RECIPROCAL BILLING ARRANGEMENTS.

(a) IN GENERAL.—The first sentence of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking "and" before "(C)", and

(2) by inserting before the period at the end the following: ", and (D) payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim is for such a 'covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 4111. STUDY OF PREPAYMENT MEDICAL REVIEW SCREENS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of the effect of the release of medicare prepayment medical review screen parameters on physician billings for the services to which the parameters apply.

(b) LIMITATIONS.—The study shall be based upon the release of the screen parameters at a minimum of six carriers.

(c) REPORT.—The Secretary shall report the results of the study to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than October 1, 1992.

SEC. 4112. PRACTICING PHYSICIANS ADVISORY COUNCIL.

Title XVIII of the Social Security Act is amended by inserting after section 1867 the following new section:

"PRACTICING PHYSICIANS ADVISORY COUNCIL

"SEC. 1868. (a) The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this section referred to as the 'Council') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this title in the previous year. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

"(b) The Council shall meet once during each calendar quarter to discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

"(c) Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this title.".

SEC. 4113. STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES.

The Secretary of Health and Human Services shall carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). Such study shall be conducted in at least four carrier areas. The Secretary shall report on the results of such study and any recommendations to the Committee on Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

SEC. 4114. UTILIZATION SCREENS FOR PHYSICIAN VISITS IN REHABILITATION HOSPITALS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit patients after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 has been exceeded.

SEC. 4115. STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indices);

(3) the impact of the transition to a national, resource-based fee schedule for physicians' services under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

(b) REPORT.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).

SEC. 4116. LIMITATION ON BENEFICIARY LIABILITY.

Section 1848(g)(2)(A) (42 U.S.C. 1395w-4(g)(2)(A)) is amended by adding at the end thereof the following:

"In the case of evaluation and management services (as specified in section 1842(b)(16)(B)(ii)), the preceding sentence shall be applied by substituting '40 percent' for '25 percent'.".

SEC. 4117. STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES.

(a) IN GENERAL.—Notwithstanding section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w-4(j)(2)), in the case of the States of Nebraska and Oklahoma, if the respective State meets the requirements specified in subsection (b) on or before April 1, 1991, the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining—

(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w-4(a)(2)(D))), and

(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w-4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w-4(j)(3))) furnished on or after January 1, 1992.

(b) REQUIREMENTS.—The requirements specified in this subsection are that (on or before April 1, 1991) there are written expressions of support for treatment of the State as a single fee schedule area (on a budget-neutral basis) from—

(1) each member of the congressional delegation from the State, and

(2) organizations representing urban and rural physicians in the State.

(c) BUDGET NEUTRALITY.—Notwithstanding section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)), the Secretary shall provide for treatment of a State as a single fee schedule area (as described in subsection (a)) in a manner that ensures that total payments for physicians' services (as so defined) furnished by physicians in the State during 1992 are not greater or less than total payments for such services would have been but for such treatment.

(d) CONSTRUCTION.—Nothing in this section shall be construed as limiting the availability (to the Secretary, the appropriate agency or organization with a contract under section 1842, or physicians in a State) of otherwise applicable administrative procedures for modifying the fee schedule area or areas in the State after implementation of subsection (a) with respect to the State.

SEC. 4118. TECHNICAL CORRECTIONS.

(a) OVERVALUED PROCEDURES.—

(1) Section 1842(b)(14) of the Social Security Act (42 U.S.C. 1395u(b)(14)) is amended—

(A) in subparagraph (B)(iii)(I), by striking "practice expense ratio for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))" and inserting "practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101-M, 101st Congress, 1st Session) for the service";

(B) in subparagraph (B)(iii)(II), by striking "practice expense ratio" and inserting "practice expense component (percent), divided by 100";

(C) in subparagraph (C)(i), by striking "physicians' services specified in Table #2 in the Joint Explanatory Statement of the

Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress," and inserting "procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission";

(D) in subparagraph (C)(iii), by striking "The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement" and inserting "The 'percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list"; and

(E) in subparagraph (C)(iv), by striking "such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)" and inserting "the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)".

(2) Section 1842(b)(4)(E)(iv)(I) of such Act (42 U.S.C. 1395u(b)(4)(E)(iv)(I)) is amended by striking "Table #2" and all that follows through "101st Congress" and inserting "the list referred to in paragraph (14)(C)(i)".

(3) The amendments made by paragraphs (1) and (2) apply to services furnished after March 1990.

(b) MVPS AS MULTIPLICATIVE, NOT ADDITIVE.—Section 1848(f)(2)(A) (42 U.S.C. 1395w-4(f)(2)(A)) is amended—

(1) in the matter preceding clause (i) by striking "sum" and inserting "product";

(2) in clauses (i) through (iv), by inserting "1 plus" before "the Secretary's" each place it appears,

(3) in clause (i), by inserting "(divided by 100)" after "percentage increase",

(4) in clauses (ii) and (iv), by inserting "(divided by 100)" after "decrease",

(5) in clause (iii), by inserting "(divided by 100)" after "percentage growth", and

(6) in the matter following clause (iv), by striking "reduced" and inserting "minus 1, multiplied by 100, and reduced".

(c) PERIODIC REVIEW OF GEOGRAPHIC ADJUSTMENT FACTORS.—Section 1848(e)(1) of such Act is amended—

(1) in subparagraph (A), by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)", and

(2) by adding at the end the following new subparagraph:

"(C) PERIODIC REVIEW AND ADJUSTMENTS IN GEOGRAPHIC ADJUSTMENT FACTORS.—The Secretary, not less often than every 3 years, shall review the indices established under subparagraph (A) and the geographic index values applied under this subsection for all fee schedule areas. Based on such review, the Secretary may revise such index and adjust such index values, except that, if more than 1 year has elasped since the last previous adjustment, the adjustment to be applied in the first year of the next adjustment shall be 1/2 of the adjustment that otherwise would be made.".

(d) ELIMINATION OF RESTRICTION ON INCORPORATION OF TIME IN VISIT CODES.—Section 1848(c)(4) (42 U.S.C. 1395w-4(c)(4)) is amended by striking "only for services furnished on or after January 1, 1993".

(e) TREATMENT OF PRICE INCREASE IN DETERMINING PERFORMANCE STANDARD RATES OF INCREASE.—Section 1848(f)(2)(A)(iv) (42 U.S.C. 1395w-4(f)(2)(A)(iv)) is amended by inserting "including changes in law and regulations affecting the percentage increase described in clause (i)" after "law or regulations".

(f) MISCELLANEOUS FEE SCHEDULE CORRECTIONS.—

(1) CHANGES IN SECTION 1848.—Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(A) in subsection (c)(1)(B), by striking the last sentence;

(B) in subsections (c)(3)(C)(ii)(II) and (c)(3)(C)(iii)(II), by striking "by" the first place it appears in each respective subsection,

(C) in subsection (c), by redesignating the second paragraph (3), and paragraphs (4) and (5), as paragraphs (4) through (6), respectively;

(D) in subsection (c)(4), as redesignated by subparagraph (C),is amended by striking "subsection" and inserting "section";

(E) in subsection (d)(1)(A), by striking "subparagraph (C)" and inserting "paragraph (3)";

(F) in subsection (d)(1)—

(i) in subparagraph (A)—

(I) by inserting "(or factors)" after "conversion factor" each place it appears,

(II) by inserting "or updates" after "update", and

(III) by striking "subparagraph (C)" and inserting "paragraph (3)"; and

(ii) in subparagraph (C)—

(I) in clause (i), by striking "(or factors)", and

(II) in clause (ii), by inserting "the conversion factor (or factors) which will apply to physicians' services for the following year and" before "the update (or updates)", and by striking "the following" and inserting "such";

(G) in subsection (d)(2)(A), in the matter preceding clause (i), by striking "services" the first place it appears and inserting "services (as defined in subsection (f)(5)(A))";

(H) in subsection (d)(2)(A)(ii)—

(i) by striking "(as defined in subsection (f)(5)(A))" and inserting "and for the services involved", and

(ii) by striking "all such physicians'" and inserting "such"; and

(I) in the last sentence of subsection (d)(2)(A), by striking "proportion of HMO enrollees" and inserting "proportion of individuals who are enrolled under this part who are HMO enrollees";

(J) in subsection (d)(2)(E)(i), by inserting "the" after "as set forth in";

(K) in subsection (d)(2)(E)(ii)(I), by inserting "payments for" after "under this part for";

(L) in subsection (d)(3)(B)—

(i) in clause (i)—

(I) by striking "update for" and inserting "update for a category of physicians' services for"; and

(II) by striking "physicians' services (as defined in subsection (f)(5)(A))" and inserting "services in such category";

(ii) in clause (ii)—

(I) by inserting "more than" after "decrease of"; and

(II) in subclause (I), by striking "more than";

(M) in paragraphs (1)(D)(i) and (2)(A)(i) of subsection (f), by striking "calendar years" and inserting "portions of calendar years";

(N) in subsection (f)(2)(A)—

(i) by striking "each performance standard rate of increase" and inserting "the performance standard rate of increase, for all physicians' services and for each category of physicians' services,",

(ii) in clause (i), by striking "physicians' services (as defined in subsection (f)(5)(A)" and inserting "all physicians' services or for the category of physicians' services, respectively,",

(iii) in clause (iii), by striking "physicians' services" and inserting "all physicians' services or of the category of physicians' services, respectively,", and

(iv) in clause (iv), by striking "physicians' services (as defined in subsection (f)(5)(A))" and inserting "all physicians' services or of the category of physicians' services, respectively,";

(O) in subsection (f)(4)(A), by striking "paragraph (B)" and inserting "subparagraph (B)";

(P) in subsection (f)(4)(B), by striking "Congress specifically approves the plan" and inserting "specifically approved by law";

(Q) in subparagraphs (A) and (B) of subsection (g)(2), by inserting "other than radiologist services subject to section 1834(b)," after "during 1991," and after "during 1992,", respectively;

(R) in subsection (i)(1)(A), by striking "historical payment basis (as defined in subsection (a)(2)(C)(i))" and inserting "adjusted historical payment basis (as defined in subsection (a)(2)(D)(i))"; and

(S) in subsection (j)(1), by striking ", and such other" and all that follows through the period and inserting "(as defined by the Secretary) and all other physicians' services.".

(2) MISCELLANEOUS.—

(A) Effective as if included in the Omnibus Budget Reconciliation Act of 1989, section 6102(e)(4) of such Act is amended by inserting "determined" after "prevailing charge rate".

(B) Effective January 1, 1991, section 1842(b)(3)(G) of the Social Security Act, as amended by section 6102(e)(2) of Omnibus Budget Reconciliation Act of 1989, is amended by striking "subsection (j)(1)(C)" and inserting "section 1848(g)(2)".

(C) Section 1842(b)(12)(A)(ii)(III) of the Social Security Act, as amended by section 6102(e)(4) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking ", as the case may be".

(D) Section 1833(a)(1)(H) of the Social Security Act, as amended by section 6102(e)(5) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking ", as the case may be".

(E) Section 6102(e)(11) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting "of Health and Human Services" after "Secretary".

(F) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 922(d)(1) of the Public Health Service Act (42 U.S.C. 299c-1(d)(1)) is amended—

(i) by inserting "(other than of dissemination activities)" after "evaluations", and

(ii) by inserting "research, demonstration projects, or evaluations of" after "applications with respect to".

(g) REPEAL OF REPORTS NO LONGER REQUIRED.—

(1) Subsection (b) of section 4043 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(2) Subsection (c) of section 4048 of such Act is repealed.

(3) Section 4049(b)(1) of such Act is amended by striking ", and shall report"

and all that follows up to the period at the end.

(4) Section 4056(a)(1) of such Act, as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking the last sentence.

(5) Section 4056(b)(2) of such Act is amended by striking the second sentence.

(h) ADJUSTMENT OF EFFECTIVE DATES.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987—

(1) section 4048(b) of such Act is amended by striking "January 1, 1989" and inserting "March 1, 1989", and

(2) section 4049(b)(2) of such Act is amended by striking "January 1, 1989" and inserting "April 1, 1989".

(i) TRANSFER OF PROVISION INTO TITLE XVIII.—

(1) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

"(r) The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this title.".

(2) Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking subsection (g).

(j) PPRC.—(1) Section 1845 of such Act (42 U.S.C. 1395w-1) is amended—

(A) in subsection (a)(3), by striking "include physicians" and inserting "include (but need not be limited to) physicians";

(B) by striking subsection (b)(3);

(C) in subsection (b)(2)—

(i) by striking "and" at the end of subparagraph (H),

(ii) by striking the period at the end of subparagraph (I) and inserting a semicolon,

(iii) by striking subparagraphs (A), (B), (C), and (F),

(iv) by redesignating subparagraphs (D), (E), (G), (H), and (I) as subparagraphs (A), (B), (C), (D), and (E), and

(v) by adding at the end the following new subparagraphs:

"(F) make recommendations regarding major issues in the implementation of the resource-based relative value scale established under section 1848(c);

"(G) make recommendations regarding further development of the volume performance standards established under section 1848(f), including the development of State-based programs;

"(H) consider policies to provide payment incentives to increase patient access to primary care and other physician services in large urban and rural areas, including policies regarding payments to physicians pursuant to title XIX;

"(I) review and consider the number and practice specialties of physicians in training and payments under this title for graduate medical education costs;

"(J) make recommendations regarding issues relating to utilization review and quality of care, including the effectiveness of peer review procedures and other quality assurance programs applicable to physicians and providers under this title and physician certification and licensing standards and procedures;

"(K) make recommendations regarding options to help constrain the costs of health insurance to employers, including incentives under this title;

"(L) comment on the recommendations affecting physician payment under the medicare program that are included in the budget submitted by the President pursuant to section 1105 of title 31, United States Code; and

"(M) make recommendations regarding medical malpractice liability reform and physician certification and licensing standards and procedures."; and

(D) by striking subsection (e) and redesignating subsection (f) as subsection (e).

(2) In Section 1842(b)(2)(A) is amended by striking "section 1845(f)(2)" and inserting "section 1845(e)(2)".

(k) PROHIBITION OF CERTAIN ADJUSTMENTS.—Section 1848(i) is amended by adding at the end the following new paragraph:

"(3) NO COMPARABILITY ADJUSTMENT.—For physicians' services for which payment under this part is determined under this section—

"(A) a carrier may not make any adjustment in the payment amount under section 1842(b)(3)(B) on the basis that the payment amount is higher than the charge applicable, for a comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,

"(B) no payment adjustment may be made under section 1842(b)(8), and

"(C) section 1842(b)(9) shall not apply .".

Subpart B—Provisions Relating to Other Items and Services

SEC. 4151. PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES.

(a) REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS.—

(1) IN GENERAL.—Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by inserting before the period at the end the following: ", by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1992, 1993, 1994, or 1995".

(2) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS.—Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking "1886(d)(5)(D)(iii))." and inserting "1886(d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1))."

(b) REDUCTION IN REASONABLE COSTS OF HOSPITAL OUTPATIENT SERVICES.—

(1) IN GENERAL.—Section 1861(v)(1)(S)(ii) (42 U.S.C. 1395x(v)(1)(S)(ii)) is amended—

(A) in subclause (II)—

(i) by striking "Subclause (I)" and inserting "Subclauses (I) and (II)", and

(ii) by striking "capital-related costs of any hospital" and inserting "costs of hospital outpatient services provided by any hospital";

(B) in subclause (III)—

(i) by striking "subclause (I)" and inserting "subclauses (I) and (II)", and

(ii) by striking "capital-related" and inserting "the";

(C) by redesignating subclauses (II) and (III) as subclauses (III) and (IV); and

(D) by inserting after subclause (I) the following new subclause:

"(II) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1833(a)(2)(B)(i)(I) by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991, 1992, 1993, 1994, or 1995.".

(2) PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES.—

(A) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to replace the current system under which payment is made for hospital outpatient services under title XVIII of the Social Security Act with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph, the Secretary shall consider—

(i) the need to provide for appropriate limits on increases in expenditures under the medicare program;

(ii) the need to adjust prospectively determined rates to account for changes in a hospital's outpatient case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(iii) providing hospitals with incentives to control the costs of providing outpatient services;

(iv) the feasibility and appropriateness of including payment for outpatient services not currently paid on a cost-related basis under the medicare program (including clinical diagnostic laboratory tests and dialysis services) in the system;

(v) the need to increase payments under the system to hospitals that treat a disproportionate share of low-income patients, teaching hospitals, and hospitals located in geographic areas with high wages and wage-related costs;

(vi) the feasibility and appropriateness of bundling services into larger units, such as episodes or visits, in establishing the basic unit for making payments under the system; and

(vii) the feasibility and appropriateness of varying payments under the system on the basis of whether services are provided in a free-standing or hospital-based facility.

(B) REPORTS.—(i) By not later than January 1, 1991, the Administrator of the Health Care Financing Administration shall submit research findings relating to prospective payments for hospital outpatient services to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives.

(ii) By not later than September 1, 1991, the Secretary shall submit the proposal developed under subparagraph (A) to such Committees.

(iii) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under subparagraph (A) to such Committees.

(c) PAYMENTS FOR AMBULATORY SURGICAL PROCEDURES AND RADIOLOGY SERVICES.—

(1) MODIFICATION OF COST AND ASC PROPORTIONS OF ASC BLEND AMOUNTS.—

(A) IN GENERAL.—Section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended—

(i) in subclause (I), by striking "and 50 percent for other cost reporting periods." and inserting "50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991."; and

(ii) in subclause (II), by striking "and 50 percent for other cost reporting periods." and inserting "50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.".

(B) EXTENSION OF ASC BLEND AMOUNTS FOR EYE AND EYE AND EAR SPECIALTY HOSPITALS.—The last sentence of section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended by

striking "in fiscal year 1989 or fiscal year 1990" and inserting "on or after October 1, 1988, and before January 1, 1995".

(2) MODIFICATION OF COST AND CHARGE PROPORTIONS FOR RADIOLOGY SERVICES.—Section 1833(n)(1)(B)(ii)(I) (42 U.S.C. 1395l(n)(1)(B)(ii)(I)) is amended by striking the period at the end and inserting ", and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.".

(3) 2-YEAR FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES.—Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act, the amount of payment determined under such section for the insertion of an intraocular lens during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act and on or before December 31, 1992, shall be equal to $200.

SEC. 4152. DURABLE MEDICAL EQUIPMENT.

(a) PAYMENTS FOR SEAT-LIFT AND TENS.—

(1) 15 PERCENT REDUCTION IN PAYMENTS FOR TRANSCUTANEOUS ELECTRICAL NERVE STIMULATORS.—Section 1834(a)(1)(D) of the Social Security Act (42 U.S.C. 1395m(a)(1)(D)) is amended by inserting before the period at the end the following: ", and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent".

(2) SEAT-LIFTS.—Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)) is amended by adding at the end the following: "With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.".

(3) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after January 1, 1991.

(b) DEVELOPMENT AND APPLICATION OF NATIONAL LIMITS ON FEES.—

(1) INEXPENSIVE AND ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT AND ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—Paragraphs (2) and (3) of section 1834(a) of such Act (42 U.S.C. 1395m(a)) are each amended—

(A) in subparagraph (B)(i), by striking "or" at the end;

(B) by striking clause (ii) of subparagraph (B) and inserting the following:

"(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

"(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

"(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year."; and

(C) by adding at the end the following new subparagraph:

"(C) COMPUTATION OF LOCAL PAYMENT AMOUNT AND NATIONAL LIMITED PAYMENT AMOUNT.—For purposes of subparagraph (B)—

"(i) the local payment amount for an item or device for a year is equal to—

"(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

"(II) for 1992, the amount determined under this clause for the preceding year increased by the covered item update for 1992; and

"(ii) the national limited payment amount for an item or device for a year is equal to—

"(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item, and

"(II) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.".

(2) MISCELLANEOUS ITEMS AND OTHER COVERED ITEMS.—Section 1834(a)(8) (42 U.S.C. 1395m(a)(8)) is amended—

(A) in subparagraph (A)(ii)—

(i) by striking "or" at the end of subclause (I);

(ii) in subclause (II)—

(I) by striking "1991 or", and

(II) by striking "the percentage increase" and all that follows through the period and inserting "the covered item update for the year.";

(iii) by redesignating subclause (II) as subclause (III); and

(iv) by inserting after subclause (I) the following new subclause:

"(II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988; or";

(B) by amending subparagraph (B) to read as follows:

"(B) COMPUTATION OF NATIONAL LIMITED PURCHASE PRICE.—With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price—

"(i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year; and

"(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.";

(C) in subparagraph (C)—

(i) by striking "regional purchase price" each place it appears and inserting "national limited purchase price",

(ii) by striking "and subject to subparagraph (D)",

(iii) in clause (ii)—

(I) by striking "75" and inserting "67"; and

(II) by striking "25" and inserting "33", and

(iv) in clause (iii)—

(I) in subclause (I), by striking "50" and inserting "33" and by striking "(A)(ii)(II)" and inserting "(A)(ii)(III)"; and

(II) in subclause (II), by striking "50" and inserting "67"; and

(D) by striking subparagraph (D).

(3) OXYGEN AND OXYGEN EQUIPMENT.—Section 1834(a)(9) of such Act (42 U.S.C. 1395m(a)(9)) is amended—

(A) in subparagraph (A)(ii)(II), by striking "the percentage increase" and all that follows through the period and inserting "the covered item increase for the year.";

(B) by amending subparagraph (B) to read as follows:

"(B) COMPUTATION OF NATIONAL LIMITED MONTHLY PAYMENT RATE.—With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to—

"(i) for 1991, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year; and

"(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.";

(C) in subparagraph (C)—

(i) by striking "regional monthly payment rate" each place it appears and inserting "national limited monthly payment rate",

(ii) in clause (ii)—

(I) by striking "75" and inserting "67"; and

(II) by striking "25" and inserting "33", and

(iii) in clause (iii)—

(I) in subclause (I), by striking "50" and inserting "33"; and

(II) in subclause (II), by striking "50" and inserting "67" and by striking "(B)(i)" and inserting "(B)(ii)"; and

(D) by striking subparagraph (D).

(4) DEFINITION.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(14) COVERED ITEM UPDATE.—In this subsection, the term 'covered item update' means, with respect to a year—

"(A) for 1991 and 1992, a reduction of 1 percentage point; and

"(B) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.".

(5) CONFORMING AMENDMENT.—Section 1834(a)(12) (42 U.S.C. 1395m(a)(12)) is amended by striking "defined for purposes of paragraphs (8)(B) and (9)(B)".

(c) TREATMENT OF "RENTAL CAP" ITEMS.—

(1) LIMITATION ON MONTHLY RECOGNIZED RENTAL AMOUNTS FOR MISCELLANEOUS ITEMS.—Section 1834(a)(7)(A)(i) (42 U.S.C. 1395m(a)(7)(A)(i)) is amended—

(A) by striking "for each such month" and inserting "for each of the first 3 months of such period"; and

(B) by striking the semicolon at the end and inserting the following: ", and for each of the remaining months of such period is 7.5 percent of such purchase price;".

(2) OFFER OF OPTION TO PURCHASE FOR MISCELLANEOUS ITEMS; ESTABLISHMENT OF REASONABLE LIFETIME.—Section 1834(a)(7) of such Act (42 U.S.C. 1395m(a)(7)(A)) is amended—

(A) in subparagraph (A)(i), by striking "15 months" and inserting "15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months";

(B) in subparagraph (A)(ii)—

(i) by striking "(ii) during the succeeding 6-month period of medical need," and inserting "(iv) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),", and

(ii) by striking "and" at the end;

(C) in subparagraph (A)(iii)—

(i) by striking "(iii)" and inserting "(v) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii),", and

(ii) by striking the period at the end and inserting "; and";

(D) by inserting after clause (i) of subparagraph (A) the following new clauses:

"(ii) in the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual patient the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the patient exercises such option;

"(iii) during the 10th continuous month during which payment is made for the rental of an item under clause (i), the supplier of such item shall offer the individual patient the option to enter into a purchase agreement under which, if the patient notifies the supplier not later than 1 month after the supplier makes such offer that the patient agrees to accept such offer and exercise such option—

"(I) the supplier shall transfer title to the item to the individual patient on the first day that begins after the 13th continuous month during which payment is made for the rental of the item under clause (i),

"(II) after the supplier transfers title to the item under subclause (I), maintenance and servicing payments shall be made in accordance with clause (v);";

(E) by inserting after clause (v) of subparagraph (A) (as amended by subparagraph (C)) the following new clause:

"(vi) in the case of an item for which a purchase agreement has been entered into under clause (ii) or clause (iii), maintenance and servicing payments may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount established by the Secretary on the basis of reasonable charges in the locality for maintenance and servicing."; and

(F) by adding at the end the following new subparagraph:

"(C) REPLACEMENT OF ITEMS.—

"(i) ESTABLISHMENT OF REASONABLE USEFUL LIFETIME.—In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph or paragraph (3).

"(ii) PAYMENT FOR REPLACEMENT ITEMS.—If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have payment for an item serving as a replacement for such item made—

"(I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

"(II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A)(ii) or (A)(iii), in a lump-sum amount for the purchase of the item.

"(iii) LENGTH OF REASONABLE USEFUL LIFETIME.—The reasonable useful lifetime of an item of durable medical equipment under this subparagraph shall be equal to 5 years, except that, if the Secretary determines that, on the basis of prior experience in making payments for such an item under this title, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.".

(3) APPLICATION OF REASONABLE USEFUL LIFETIME FOR ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—Section 1834(a)(3) (42 U.S.C. 1395m(a)(3)), as amended by subsection (b)(1), is further amended by adding at the end the following new subparagraph:

"(D) REPLACEMENT OF ITEMS.—If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).".

(4) TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS MISCELLANEOUS ITEMS OF DURABLE MEDICAL EQUIPMENT.—

(A) IN GENERAL.—Section 1834(a)(2)(A) (42 U.S.C. 1395m(a)(2)(A)) is amended—

(i) in clause (i), by inserting "or" at the end;

(ii) in clause (ii), by striking "or" at the end; and

(iii) by striking clause (iii).

(B) CRITERIA FOR TREATMENT OF WHEELCHAIR AS CUSTOMIZED ITEM.—(i) Section 1834(a)(4) (42 U.S.C. 1395m(a)(4)) is amended by adding at the end the following: "In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.".

(ii) The amendment made by clause (i) shall apply to items furnished on or after January 1, 1992, unless the Secretary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act (in which case the amendment made by such clause shall not become effective).

(d) FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1991.—In determining the amount of payment under part B of title XVIII of the Social Security Act for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.

(e) REQUIRING PRIOR APPROVAL FOR POTENTIALLY OVERUSED ITEMS.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(15) CARRIER DETERMINATIONS OF POTENTIALLY OVERUSED ITEMS IN ADVANCE.—

"(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

"(B) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1862(a)(1).".

(f) PROHIBITION AGAINST DISTRIBUTION OF MEDICAL NECESSITY FORMS BY SUPPLIERS.—

(1) IN GENERAL.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsections (e) and (f), is further amended by adding at the end the following new paragraph:

"(16) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF FORMS DOCUMENTING MEDICAL NECESSITY.—

"(A) IN GENERAL.—A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

"(B) PENALTY.—Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to forms and documents distributed on or after January 1, 1991.

(g) RECERTIFICATION FOR CERTAIN PATIENTS RECEIVING HOME OXYGEN THERAPY SERVICES.—

(1) IN GENERAL.—Section 1834(a)(5) (42 U.S.C. 1395m(a)(5)) is amended—

(A) in subparagraph (A), by striking "(B) and (C)" and inserting "(B), (C), and (E)"; and

(B) by adding at the end the following new subparagraph:

"(E) RECERTIFICATION FOR PATIENTS RECEIVING HOME OXYGEN THERAPY.—In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 55 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such

services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.

(h) TECHNICAL CORRECTIONS.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 4062(e) of such Act is amended—

(1) by inserting "(other than oxygen and oxygen equipment)" after "covered items", and

(2) by inserting before the period at the end the following: "and to oxygen and oxygen equipment furnished on or after June 1, 1989".

(i) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to items furnished on or after January 1, 1991.

SEC. 4153. PROVISIONS RELATING TO ORTHOTICS AND PROSTHETICS.

(a) PAYMENTS FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS.—

(1) MAINTAINING CURRENT PAYMENT METHODOLOGY.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(h) PAYMENT FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS.—

"(1) GENERAL RULE FOR PAYMENT.—

"(A) IN GENERAL.—Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).

"(B) PAYMENT BASIS.—Except as provided in subparagraph (C), the payment basis described in this subparagraph is the lesser of—

"(i) the actual charge for the item; or

"(ii) the amount recognized under paragraph (2) as the purchase price for the item.

"(C) EXCEPTION FOR CERTAIN PUBLIC HOME HEALTH AGENCIES.—Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

"(D) EXCLUSIVE PAYMENT RULE.—This subsection shall constitute the exclusive provision of this title for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A to a home health agency.

"(2) PURCHASE PRICE RECOGNIZED.—For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:

"(A) COMPUTATION OF LOCAL PURCHASE PRICE.—Each carrier under section 1842 shall compute a base local purchase price for the item as follows:

"(i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.

"(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

"(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 6-month period ending with December 1987, or

"(II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

"(B) COMPUTATION OF REGIONAL PURCHASE PRICE.—With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

"(i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

"(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the applicable percentage increase for the year.

"(C) PURCHASE PRICE RECOGNIZED.—For purposes of paragraph (1) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

"(i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(ii);

"(ii) in 1992, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1992;

"(iii) in 1993, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1993, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1993; and

"(iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

"(D) RANGE ON AMOUNT RECOGNIZED.—The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

"(i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

"(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

"(3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO DURABLE MEDICAL EQUIPMENT.—Paragraph (12) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such subsection.

"(4) DEFINITIONS.—In this subsection—

"(A) the term 'applicable percentage increase' means—

"(i) for 1991, 0 percent, and

"(ii) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

"(B) the term 'prosthetic devices' has the meaning given such term in section 1861(s)(8), except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment; and

"(C) the term 'orthotics and prosthetics' has the meaning given such term in section 1861(s)(9), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1861(m)(5).".

(2) CONFORMING AMENDMENTS.—(A) Section 1832(a)(2) (42 U.S.C. 1395k(a)(2)) is amended—

(i) in subparagraphs (A) and (B), by striking "subparagraph (G)" each place it appears and inserting "subparagraph (G) or subparagraph (I)";

(ii) by striking "and" at the end of subparagraph (G);

(iii) by striking the period at the end of subparagraph (H) and inserting "; and"; and

(iv) by adding at the end the following new subparagraph:

"(I) prosthetic devices and orthotics and prosthetics (described in section 1834(h)(4)) furnished by a provider of services or by others under arrangements with them made by a provider of services.".

(B) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(i) by striking ", and (L)" and inserting ", (L)"; and

(ii) by striking "subparagraph and (N)" and inserting the following: "subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetics (as defined in section 1834(h)(4)), the amounts paid shall be the amounts described in section 1834(h)(1), and (N)".

(C) Section 1833(a) (42 U.S.C. 1395l(a)) is amended—

(i) in paragraph (2), in the matter before subparagraph (A), by striking "and (H)" and inserting "(H), and (I)";

(ii) by striking "and" at the end of paragraph (5);

(iii) by striking the period at the end of paragraph (6) and inserting "; and"; and

(iv) by adding at the end the following new paragraph:

"(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1834(h)(4)), the amounts described in section 1834(h).".

(D) Section 1834(a) (42 U.S.C. 1395m(a)), is amended—

(i) in the heading, by striking ", PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS";

(ii) in paragraph (2)(A), by striking "(13)(A)" and inserting "(13)"; and

(iii) in paragraph (13), by striking "means—" and all that follows and inserting the following: "means durable medical equipment (as defined in section 1861(n)), including such equipment described in section 1861(m)(5)).

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to items furnished on or after January 1, 1991.

(b) PROVISIONS RELATING TO EYEGLASSES.—

(1) PROHIBITION ON REGULATIONS.—(A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the "Secretary") may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Se-

curity Act) following cataract surgery with insertion of an intraocular lens.

(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).

(2) CLARIFYING COVERAGE OF POST-CATARACT EYEGLASSES.—(A) Section 1861(s)(8) (42 U.S.C. 1395x(s)(8)) is amended by inserting after "such devices" the following ", and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens".

(B) Section 1862(a)(7) (42 U.S.C. 1395y(a)(7)) is amended by inserting after "eyeglasses" the first place it appears the following: "(other than eyewear described in section 1861(s)(8))".

(C) The amendments made by subparagraphs (A) and (B) shall apply to items furnished on or after January 1, 1991.

(c) GAO STUDY OF MEDICARE PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—

(1) STUDY.—The Comptroller General shall conduct a study of the feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under section 1834(c) of the Social Security Act with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the study conducted under subparagraph (A) to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and shall include in such report any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program that the Comptroller General considers appropriate.

(d) CLARIFICATION OF COVERAGE OF OSTOMY SUPPLIES.—

(1) IN GENERAL.—Section 1866(a)(1)(P) (42 U.S.C. 1395cc(a)(1)(P)) is amended by striking "ostomy supplies" and inserting "catheters, catheter supplies, ostomy bags, and supplies related to ostomy care".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4154. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) LIMIT ON ANNUAL FEE SCHEDULE INCREASES.—Section 1833(h)(2)(A)(ii) (42 U.S.C. 13951(h)(2)(A)(ii)) is amended—

(1) by striking "any other provision of this subsection" and inserting "clause (i)";

(2) by striking "and" at the end of subclause (I);

(3) by striking the period at the end of subclause (II) and inserting ", and"; and

(4) by adding at the end the following new subclause:

"(III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent.".

(b) REDUCTION IN NATIONAL CAP ON FEE SCHEDULES.—

(1) IN GENERAL.—Section 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amended—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii)—

(i) by inserting "and before January 1, 1991," after "1989,", and

(ii) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new clause:

"(iv) after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to tests furnished on or after January 1, 1991.

(c) CLARIFICATION OF MANDATORY ASSIGNMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS PERFORMED BY PHYSICIANS.—

(1) IN GENERAL.—(A) Section 1833(h)(5)(C) of such Act (42 U.S.C. 1395l(h)(5)(C)) is amended by striking "test performed by a laboratory other than a rural health clinic" and inserting "test, including a test performed in a physician's office but excluding a test performed by a rural health clinic".

(B) Section 1833(h)(5)(D) of such Act (42 U.S.C. 1395l(i)(5)(D)) is amended by striking "test performed by a laboratory, other than a rural health clinic" and inserting "test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, and the amendment made by paragraph (1)(B) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(d) AGREEMENTS WITH STATES TO DETERMINE COMPLIANCE OF CLINICAL LABORATORIES WITH PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—Section 1864(a) (42 U.S.C. 1395aa(a)) is amended in the first sentence by striking "1861(s)," and inserting "1861(s) or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 353 of the Public Health Service Act,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988.

(e) TECHNICAL CORRECTIONS.—

(1) Section 1833(h)(5)(A)(ii) of such Act (42 U.S.C. 1395l(h)(5)(A)(ii)) is amended—

(A) in subclause (II), by striking "a wholly-owned subsidiary of" and inserting "wholly owned by";

(B) in subclause (III), by striking "laboratory" and inserting "laboratory (but not including a laboratory described in subclause (II)),"; and

(C) in subclause (III), by striking "submits bills or requests for payment in any year" and inserting "receives requests for testing during the year in which the test is performed".

(2) The heading of section 1846 of such Act is amended by striking "OF" and inserting "OR SUPPLIERS OF".

(3) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 9339(b) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking paragraph (3).

(4) Section 6111(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "January 1, 1990" and inserting "May 1, 1990".

(5) The amendments made by paragraphs (1)(A) (1)(B), (2), and (4) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, and the amendment made by paragraph (1)(C) shall take effect January 1, 1991.

SEC. 4155. COVERAGE OF NURSE PRACTITIONERS IN RURAL AREAS.

(a) IN GENERAL.—Section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is amended—

(1) in clause (ii), by striking "and" at the end;

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following new clause:

"(iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(3)) working in collaboration (as defined in subsection (aa)(4)) with a physician (as defined in subsection (r)(1)) in a rural area (as defined in section 1886(d)(2)(D)) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service, and".

(b) PAYMENT.—

(1) DIRECT PAYMENT.—Section 1832(a)(2)(B) (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii), by striking the semicolon and inserting a comma; and

(C) by adding at the end the following new clause:

"(iv) services of a nurse practitioner or clinical nurse specialist provided in a rural area (as defined in section 1886(d)(2)(D)); and".

(2) AMOUNT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (K); and

(B) by inserting after subparagraph (L) the following new subparagraph: "(M) with respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2)), and".

(3) CAP ON PREVAILING CHARGE; BILLING ONLY ON ASSIGNMENT-RELATED BASIS.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(r)(1) With respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, rural primary care hospital, skilled nursing facility or nursing facility (as defined in section 1919(a)), physician, group practice, ambulatory surgical center, with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, ambulatory surgical center.

"(2)(A) For purposes of subsection (a)(1)(M), the prevailing charge for services described in section 1861(s)(2)(K)(iii) may

not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) determined for such services performed by physicians who are not specialists.

"(B) In subparagraph (A), the term 'applicable percentage' means—

"(i) 75 percent in the case of services performed in a hospital, and

"(ii) 85 percent in the case of other services.

"(3)(A) Payment under this part for services described in section 1861(s)(2)(K)(iii) may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

"(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1861(s)(2)(K)(iii) in violation of subparagraph (A) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(4) No hospital or rural primary care hospital that presents a claim or request for payment under this part for services described in section 1861(s)(2)(K)(iii) may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this title.".

(c) CONFORMING AMENDMENT.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by striking "section 1861(s)(2)(K)" each place it appears in paragraphs (6) and (12) and inserting "clauses (i), (ii), or (iv) of section 1861(s)(2)(K)".

(d) DEFINITION.—Section 1861(aa)(3) (42 U.S.C. 1395x(aa)(3)) is amended by striking "The term" and all that follows through "who performs" and inserting the following: "The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this Act, a physician assistant, nurse practitioner, or clinical nurse specialist who performs".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4156. COVERAGE OF INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking "and" at the end of subparagraph (M),

(B) by inserting "and" at the end of subparagraph (N), and

(C) by inserting after subparagraph (N) the following new subparagraph:

"(O) a covered osteoporosis drug and its administration (as defined in subsection (jj)) furnished on or after January 1, 1991, and on or before December 31, 1995; and"; and

(2) by inserting after subsection (ii) the following new subsection:

Covered Osteoporosis Drug

"(jj) The term 'covered osteoporosis drug' means an injectable drug approved for the treatment of a bone fracture related to postmenopausal osteoporosis provided to an individual if, in accordance with regulations promulgated by the Secretary—

"(1) the individual's attending physician certifies that the patient is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

"(2) the individual is confined to the individual's home (except when receiving items and services referred to in subsection (m)(7)).".

(b) STUDY OF EFFECTS OF COVERAGE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study analyzing the effects of coverage of osteoporosis drugs under part B of title XVIII of the Social Security Act (as amended by subsection (a)) on the health of individuals enrolled under such part and the utilization of inpatient hospital and extended care services by such individuals.

(2) REPORT.—By not later than October 1, 1994, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in such report such recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considers appropriate.

SEC. 4157. SEPARATE PAYMENT UNDER PART B FOR SERVICES OF CERTAIN HEALTH PRACTITIONERS.

(a) SERVICES OF CERTAIN HEALTH PRACTITIONERS NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES.—Section 1861(b) (42 U.S.C. 1395x(b)) is amended—

(1) in paragraph (3), by striking "(including clinical psychologist (as defined by the Secretary))", and

(2) in paragraph (4), by striking everything after "intern" and inserting ", services described by subsection (s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and".

(b) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING.—Section 1832(a)(2)(B)(iii) (42 U.S.C. 1395k(a)(2)(B)(iii)) is amended to read as follows:

"(iii) services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist;".

(c) CONFORMING AMENDMENTS.—

(1) Section 1862(a)(14) (42 U.S.C. 1395y) is amended—

(A) by striking "or are services of a certified registered nurse anesthetist", and

(B) by inserting after "this paragraph)" a comma and the following: "services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,".

(2) The matter in section 1866(a)(1)(H) (42 U.S.C. 1395x(a)(1)(H)) preceding clause (i) is amended by inserting after "and other than" the following: "services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and".

(d) EFFECTIVE DATE.—The amendments made by the preceding subsections apply to services furnished on or after January 1, 1991.

SEC. 4158. REDUCTION IN PAYMENTS UNDER PART B DURING FINAL 2 MONTHS OF 1990.

(a) IN GENERAL.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

(b) SPECIAL RULES FOR APPLICATION OF REDUCTION.—

(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

(3) TREATMENT OF PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act or under similar contracts under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972.

SEC. 4159. PAYMENTS FOR MEDICAL EDUCATION COSTS.

(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital

during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

SEC. 4160. CERTIFIED REGISTERED NURSE ANESTHETISTS.

Section 1833(l) (42 U.S.C. 1395l) is amended—

(1) in paragraph (1)—

(A) by inserting "(A)" after "(1)"; and

(B) by adding at the end the following:

"(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

"(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.";

(2) by striking the second sentence of paragraph (2); and

(3) by striking paragraph (4) and inserting the following:

"(4)(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is not medically directed—

"(i) the conversion factor shall be—

"(I) for services furnished in 1991, $15.50,

"(II) for services furnished in 1992, $15.75,

"(III) for services furnished in 1993, $16.00,

"(IV) for services furnished in 1994, $16.25,

"(V) for services furnished in 1995, $16.50,

"(VI) for services furnished in 1996, $16.75, and

"(VII) for services furnished in calendar years after 1996, the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year;

"(ii) the payment areas to be used shall be the fee schedule areas used under section 1848 (or, in the case of services furnished during 1991, the localities used under section 1842(b)) for purposes of computing payments for physicians' services that are anesthesia services;

"(iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is—

"(I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value specified in section 1842(q)(1)(B) for physicians' services that are anesthesia services furnished in the area or locality, and

"(II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians' services that are anesthesia services under section 1848,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1848).

"(B)(i) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

"(ii) The conversion factor used under clause (i) shall be—

"(I) for services furnished in 1991, $10.50,

"(II) for services furnished in 1992, $10.75,

"(III) for services furnished in 1993, $11.00,

"(IV) for services furnished in 1994, $11.25,

"(V) for services furnished in 1995, $11.50,

"(VI) for services furnished in 1996, $11.70, and

"(VII) for services furnished in calendar years after 1997, the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year.

"(C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)—

"(i) in the case of a 1990 conversion factor that is greater than $16.50, the conversion factor for a calendar year after 1990 and before 1996 shall be the 1990 conversion factor reduced by the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds $16.50; and

"(ii) in the case of a 1990 conversion factor that is greater than $15.49 but less than $16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of—

"(I) the 1990 conversion factor, or

"(II) the conversion factor specified in subparagraph (A)(i) for the year involved.

"(D) Notwithstanding subparagraph (C), in no case may the conversion factor used to determine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs (A)(iii), exceed the conversion factor used to determine the amount paid for physicians' services that are anesthesia services in the area or locality.".

SEC. 4161. COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS.

(a) COMMUNITY HEALTH CENTERS.—

(1) COVERAGE.—Section 1861(s)(2)(E) of the Social Security Act (42 U.S.C. 1395x(s)(2)(E)) is amended by inserting "and Federally qualified health center services" after "rural health clinic services".

(2) SERVICES DEFINED.—Section 1861(aa) of such Act is amended—

(A) in the heading, by adding at the end the following: "and Federally Qualified Health Center Services",

(B) in paragraph (3), by striking "paragraphs (1) and (2)" and inserting "the previous provisions of this subsection" and by redesignating such paragraph and paragraph (4) as paragraph (5) and (6), respectively, and

(C) by inserting after paragraph (2) the following new paragraphs:

"(3) The term 'Federally qualified health center services' means—

"(A) services of the type described in subparagraphs (A) through (C) of paragraph (1), and

"(B) preventive primary health services that a center is required to provide under sections 329, 330, and 340 of the Public Health Service Act,

when furnished to an individual as an outpatient of a Federally qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

"(4) The term 'Federally qualified health center' means an entity which—

"(A)(i) is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or

"(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;

"(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant; or

"(C) was treated by the Secretary, for purposes of part B, as a comprehensive Federally funded health center as of January 1, 1990.".

(3) PAYMENTS.—

(A) IN GENERAL.—Section 1832(a)(2)(D) of such Act (42 U.S.C. 1395k(a)(2)(D)) is

amended by inserting "(i)" after "(D)" and by inserting "and (ii) Federally qualified health center services" after "rural health clinic services".

(B) DEDUCTIBLE DOES NOT APPLY.—The first sentence of section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended—

(i) by striking "and" before "(4)",

(ii) by inserting before the period at the end the following: ", and (5) such deductible shall not apply to Federally qualified health center services".

(C) EXCLUSION FROM PAYMENT REMOVED.—Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

(i) in paragraph (2), by inserting ", except in the case of Federally qualified health center services" before the semicolon at the end, and

(ii) in paragraph (3), by inserting ", in the case of Federally qualified health center services, as defined in section 1861(aa)(3)," after "1861(aa)(1),", and

(iii) by adding at the end the following new sentence:

"Paragraph (7) shall not apply to Federally qualified health center services described in section 1861(aa)(3)(B).".

(4) WAIVER OF ANTI-KICKBACK REQUIREMENT.—Section 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by redesignating subparagraph (D) as subparagraph (E), and

(C) by inserting after subparagraph (C) the following new subparagraph:

"(D) a waiver of any coinsurance under part B of title XVIII by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act; and".

(5) CONFORMING AMENDMENTS.—Section 1861 of such Act (42 U.S.C. 1395x) is further amended—

(A) in subsections (s)(2)(H)(i) and (s)(2)(K), by striking "subsection (aa)(3)" and "subsection (aa)(4)" each place either appears inserting "subsection (aa)(5)" and "subsection (aa)(6)", respectively, and

(B) in subsection (aa)(1)(B), by striking "paragraph (3)" and inserting "paragraph (5)".

(6) PRRB REVIEW OF COST REPORTS FOR FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1878 of the Social Security Act (42 U.S.C. 1395oo) is amended by adding at the end the following new subsection:

"(j) In this section, the term 'provider of services' includes a Federally qualified health center.".

(7) GAO STUDY OF HOSPITAL STAFF PRIVILEGES FOR PHYSICIANS PRACTICING IN COMMUNITY HEALTH CENTERS.—

(A) STUDY.—The Comptroller General shall conduct a study of whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hospitals. The study shall review—

(i) how many physicians practicing in such centers are without hospital admitting privileges or have been denied admitting privileges at a local hospital, and

(i)(I) the criteria hospitals use in deciding whether to grant admitting privileges and (II) whether such criteria act as significant barriers to health center physicians obtaining hospital privileges.

(B) REPORT.—By not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and shall include in such report such recommendations as the Comptroller General deems appropriate.

(8) EFFECTIVE DATE.—(A) Subject to subparagraphs (B) and (C), the amendments made by this section shall apply to services furnished on or after October 1, 1991.

(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act, to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

(C) The amendment made by paragraph (6) shall apply to cost reports for periods beginning on or after October 1, 1991.

(b) RURAL HEALTH CLINIC SERVICES.—

(1) EXPEDITED CERTIFICATION.—Section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)) is amended by adding at the end the following: "If a State agency has determined under section 1864(a) that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later).".

(2) TEMPORARY WAIVER OF STAFFING REQUIREMENTS.—Section 1861(aa) of such Act, as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

"(B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility.

"(C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.".

(3) PRODUCTIVITY SCREENS.—In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner).

(4) PRRB REVIEW OF COST REPORTS FOR RURAL HEALTH CENTERS.—Section 1878(j) of the Social Security Act (42 U.S.C. 1395oo(j)), as added by subsection (a)(6), is amended by inserting "a rural health clinic and" after "includes".

(5) EFFECTIVE DATE.—This subsection shall take effect on October 1, 1991, except that the amendment made by paragraph (4) shall apply to cost reports for periods beginning on or after October 1, 1991.

SEC. 4162. PARTIAL HOSPITALIZATION IN COMMUNITY MENTAL HEALTH CENTERS.

(a) IN GENERAL.—Section 1861(ff)(3) of the Social Security Act (42 U.S.C. 1395x(ff)(3)) is amended—

(1) by striking "(3)" and inserting "(3)(A)";

(2) by striking "outpatients" and inserting "outpatients or by a community mental health center (as defined in subparagraph (B))."; and

(3) by adding at the end the following new subparagraph:

"(B) For purposes of subparagraph (A), the term 'community mental health center' means an entity—

"(i) providing the services described in section 1916(c)(4) of the Public Health Service Act; and

"(ii) meeting applicable licensing or certification requirements for community mental health centers in the State in which it is located.".

(b) CONFORMING AMENDMENTS.—(1) Section 1832(a)(2) of such Act (42 U.S.C. 1395k(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (H);

(B) by striking the period at the end of subparagraph (I) and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(J) partial hospitalization services provided by a community mental health center (as described in section 1861(ff)(2)(B))."

(2) Section 1866(e) of such Act (42 U.S.C. 1395cc(e))) is amended by striking "include a clinic" and all that follows through the period and inserting the following: "include—

"(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A) (or meets the requirements of such section through the operation of section 1861(g)), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B) (or meets the requirements of such section through the operation of section 1861(g)), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services; and

"(2) a community mental health center (as defined in section 1861(ff)(3)(B)), but only with respect to the furnishing of partial hospitalization services (as described in section 1861(ff)(1)).".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to partial hospitalization services provided on or after October 1, 1991.

SEC. 4163. COVERAGE OF SCREENING MAMMOGRAPHY.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)—

(A) in paragraph (11), by striking all that follows "(bb))" and inserting a semicolon,

(B) in paragraph (12)(C), by striking all that follows "area)" and inserting "; and", and

(C) by inserting after paragraph (12) the following new paragraph:

"(13) screening mammography (as defined in subsection (jj));"; and

(2) by inserting after subsection (ii) the following new subsection:

"Screening Mammography

"(jj) The term 'screening mammography' means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.".

(b) PAYMENT AND COVERAGE.—Section 1834 of such Act (42 U.S.C. 1395m) is amended—

(1) in subsection (b)(1)(B), by inserting "and subject to subsection (c)(1)(A)" after "conversion factors", and

(2) by inserting after subsection (b) the following new subsection:

"(c) PAYMENTS AND STANDARDS FOR SCREENING MAMMOGRAPHY.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part, with respect to expenses incurred for screening mammography (as defined in section 1861(jj))—

"(A) payment may be made only for screening mammography conducted consistent with the frequency permitted under paragraph (2);

"(B) payment may be made only if the screening mammography meets the quality standards established under paragraph (3); and

"(C) the amount of the payment under this part shall, subject to the deductible established under section 1833(b), be equal to 80 percent of the least of—

"(i) the actual charge for the screening,

"(ii) the fee schedule established under subsection (b) or the fee schedule established under section 1848, whichever is applicable, with respect to both the professional and technical components of the screening mammography, or

"(iii) the limit established under paragraph (4) for the screening mammography.

"(2) FREQUENCY COVERED.—

"(A) IN GENERAL.—Subject to revision by the Secretary under subparagraph (B)—

"(i) No payment may be made under this part for screening mammography performed on a woman under 35 years of age.

"(ii) Payment may be made under this part for only 1 screening mammography performed on a woman over 34 years of age, but under 40 years of age.

"(iii) In the case of a woman over 39 years of age, but under 50 years of age, who—

"(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening mammography was performed, or

"(II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed.

"(iv) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

"(v) In the case of a woman over 64 years of age, payment may not be made for screening mammography performed within 23 months following the month in which a previous screening mammography was performed.

"(B) REVISION OF FREQUENCY.—

"(i) REVIEW.—The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

"(ii) REVISION OF FREQUENCY.—The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection, but no such revision shall apply to screening mammography performed before January 1, 1992.

"(3) QUALITY STANDARDS.—The Secretary shall establish standards to assure the safety and accuracy of screening mammography performed under this part. Such standards shall include the requirements that—

"(A) the equipment used to perform the mammography must be specifically designed for mammography and must meet radiologic standards established by the Secretary for mammography;

"(B) the mammography must be performed by an individual who—

"(i) is licensed by a State to perform radiological procedures, or

"(ii) is certified as qualified to perform radiological procedures by such an appropriate organization as the Secretary specifies in regulations;

"(C) the results of the mammography must be interpreted by a physician—

"(i) who is certified as qualified to interpret radiological procedures by such an appropriate board as the Secretary specifies in regulations, or

"(ii) who is certified as qualified to interpret screening mammography procedures by such a program as the Secretary recognizes in regulation as assuring the qualifications of the individual with respect to such interpretation; and

"(D) with respect to the first screening mammography performed on a woman for which payment is made under this part, there are satisfactory assurances that the results of the mammography will be placed in permanent medical records maintained with respect to the woman.

"(4) LIMIT.—

"(A) $55, INDEXED.—Except as provided by the Secretary under subparagraph (B), the limit established under this paragraph—

"(i) for screening mammography performed in 1991, is $55, and

"(ii) for screening mammography performed in a subsequent year is the limit established under this paragraph for the preceding year increased by the percentage increase in the MEI for that subsequent year.

"(B) REDUCTION OF LIMIT.—The Secretary shall review from time to time the appropriateness of the amount of the limit established under this paragraph. The Secretary may, with respect to screening mammography performed in a year after 1992, reduce the amount of such limit as it applies nationally or in any area to the amount that the Secretary estimates is required to assure that screening mammography of an appropriate quality is readily and conveniently available during the year.

"(C) APPLICATION OF LIMIT IN HOSPITAL OUTPATIENT SETTING.—The Secretary shall provide for an appropriate allocation of the limit established under this paragraph between professional and technical components in the case of hospital outpatient screening mammography (and comparable situations) where there is a claim for professional services separate from the claim for the radiologic procedure.

"(5) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS.—

"(A) IN GENERAL.—In the case of mammography screening performed on or after January 1, 1991, for which payment is made under this subsection, if a nonparticipating physician or supplier provides the screening to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B), or if less, as defined in subsection (b)(5)(B) or as defined in section 1848(g)(2)).

"(B) LIMITING CHARGE DEFINED.—In subparagraph (A), the term 'limiting charge' means, with respect to screening mammography performed—

"(i) in 1991, 125 percent of the limit established under paragraph (4),

"(ii) in 1992, 120 percent of the limit established under paragraph (4), or

"(iii) after 1992, 115 percent of the limit established under paragraph (4).

"(C) ENFORCEMENT.—If a physician or supplier knowing and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).".

(c) CERTIFICATION OF SCREENING MAMMOGRAPHY QUALITY STANDARDS.—

(1) Section 1863 of such Act (42 U.S.C. 1395z) is amended by inserting "or whether screening mammography meets the standards established under section 1834(c)(3)," after "1832(a)(2)(F)(i),".

(2) The first sentence of section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting before the period the following: ", or whether screening mammography meets the standards established under section 1834(c)(3)".

(3) Section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended by inserting "1834(c)(3)," after "1832(a)(2)(F)(i),".

(d) CONFORMING AMENDMENTS.—

(1) Section 1833(a)(2)(E) of such Act (42 U.S.C. 1395l(a)(2)(E)) is amended by inserting ", but excluding screening mammography" after "imaging services".

(2) Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "subparagraph (B), (C), (D), or (E)" and inserting "a succeeding subparagraph",

(ii) in subparagraph (D), by striking "and" at the end,

(iii) in subparagraph (E), by striking the semicolon at the end and inserting ", and", and

(iv) by adding at the end the following new subparagraph:

"(F) in the case of screening mammography, which is performed more frequently than is covered under section 1834(c)(2) or which does not meet the standards established under section 1834(c)(3), and, in the case of screening pap smear, which is performed more frequently than is provided under section 1861(nn);"; and

(B) in paragraph (7), by inserting "or under paragraph (1)(F)" after "(1)(B)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to screening mammography performed on or after January 1, 1991.

SEC. 4164. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART B.

(a) EXTENSION OF DEMONSTRATIONS.—

(1) PREVENTION DEMONSTRATIONS.—Section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9344 of the Omnibus Budget Reconciliation Act of 1986, is amended—

(A) in subsection (a), by striking "4-year" and inserting "5-year";

(B) in subsection (e)(2), by striking "Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report" and inserting "Not later than April 1, 1993, the Secretary shall submit an interim report";

(C) in subsection (e), by adding at the end the following new paragraph:

"(3) Not later than April 1, 1995, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report a comprehensive evaluation of the long-term effects of the program.";

(D) in subsection (f), by striking "$5,900,000" and inserting "$7,500,000"; and

(E) in subsection (f), by inserting before the period at the end the following: "and shall not exceed $3,000,000 for the comprehensive evaluation referred to in subsection (e)(3)".

(2) ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.—Section 9342 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) in subsection (c)(1), by striking "3 years" and inserting "4 years";

(B) in subsection (d)(1), by striking "third year" and inserting "fourth year";

(C) in subsection (f)—

(i) by striking "$40,000,000" and inserting "$55,000,000", and

(ii) by striking "$2,000,000" and inserting "$3,000,000".

(b) DISCLOSURE OF OWNERSHIP.—

(1) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1124 the following new section:

"DISCLOSURE REQUIREMENTS FOR OTHER PROVIDERS UNDER PART B OF MEDICARE

"SEC. 1124A. (a) DISCLOSURE REQUIRED TO RECEIVE PAYMENT.—No payment may be made under part B of title XVIII for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

"(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest; and

"(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

"(A) on the identity of any other entities providing items or services for which payment may be made under title XVIII of the Social Security Act with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

"(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1128, 1128A, or 1128B.

"(b) UPDATES TO INFORMATION SUPPLIED.—A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) not later than 180 days after such changes or updates take effect.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'disclosing part B provider' means any entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under part B of title XVIII, except that such term does not include an entity described in section 1124(a)(2);

"(2) the term 'managing employee' means, with respect to a provider, a person described in section 1126(b); and

"(3) the term 'person with an ownership or control interest' means, with respect to a provider—

"(A) a person described in section 1124(a)(3), or

"(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.".

(2) CRIMINAL PENALTY FOR PROVIDING FALSE INFORMATION.—Section 1128B(c) of such Act (42 U.S.C. 1320a-7b(c)) is amended by striking "health care program" and inserting "health care program, or with respect to information required to be provided under section 1124A,".

(3) FAILURE TO PROVIDE INFORMATION AS GROUNDS FOR PERMISSIVE EXCLUSION FROM PROGRAM.—Section 1128(b)(9) of such Act (42 U.S.C. 1320a-7(b)(9)) is amended by striking "1124" and inserting "1124, section 1124A,".

(4) EFFECTIVE DATE.—The amendments made by paragraph (1), (2), and (3) shall apply with respect to items or services furnished on or after—

(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act, has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act; or

(B) January 1, 1992, in the case of items or services furnished by any other provider.

(c) DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS.—Not later than March 31, 1991, the Secretary of Health and Human Services shall publish a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act, and shall include in such directory the names, provider numbers, and billing addressess of all listed physicians.

PART 3—PROVISIONS RELATING TO PARTS A AND B

SEC. 4201. PROVISIONS RELATING TO END STAGE RENAL DISEASE.

(a) INCREASE IN COMPOSITE RATES.—Section 9335(a)(1) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6203(a)(1) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(1) by striking "October 1, 1990," and inserting "December 31, 1990,"; and

(2) by inserting after the first sentence the following: "With respect to services furnished on or after January 1, 1991, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (determined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989), increased by $1.00.".

(b) PROPAC STUDY ON ESRD COMPOSITE RATES.—

(1) IN GENERAL.—

(A) STUDY.—The Prospective Payment Assessment Commission (in this subsection referred to as the "Commission") shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act.

(B) RECOMMENDATIONS.—Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider—

(i) hemodialysis and other modalities of treatment,

(ii) the appropriate services to be included in such payments,

(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus free-standing facilities, urban versus rural, size and mix of services,

(iv) adjustments for labor and nonlabor costs,

(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

(2) REPORT.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

(3) ANNUAL REPORT.—The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.

(c) PAYMENT RATES FOR ERYTHROPOIETIN.—

(1) IN GENERAL.—Section 1881(b)(11) of the Social Security Act (42 U.S.C. 1395rr(b)) is amended—

(A) by striking "(11)" and inserting "(11)(A)"; and

(B) by adding at the end the following new subparagraph:

"(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as a dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section, and payment for such item shall be made separately—

"(i) in the case of erythropoietin provided by a physician, in accordance with section 1833; and

"(ii) in the case of erythropoietin provided by a provider of services, renal dialysis facility, or other supplier of home dialysis supplies and equipment—

"(I) for erythropoietin provided during 1991, in an amount equal to $11 per thousand units (rounded to the nearest 100 units), and

"(II) for erythropoietin provided during a subsequent year, in an amount determined to be appropriate by the Secretary, except

that such amount may not exceed the amount determined under this clause for the previous year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to erythropoietin furnished on or after January 1, 1991.

(d) SELF-ADMINISTERED ERYTHROPOIETIN.—

(1) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)), is amended—

(A) by striking "and" at the end of subparagraph (O);

(B) by adding "and" at the end of subparagraph (P); and

(C) by adding at the end the following new subparagraph:

"(Q) erythropoietin for home dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug;".

(2) COVERAGE FOR METHOD II PATIENTS.—Section 1881(b) (42 U.S.C. 1395rr(b)) is further amended—

(A) in paragraph (1)—

(B) by striking "and (B)" and inserting "(B), and

(C) by striking "equipment." and inserting "equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section 1861(s)(2)(Q) if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section).";

and

(3) by adding at the end of paragraph (11), as amended by subsection (c), the following new subparagraph:

"(C) The amount payable to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for erythropoietin shall be determined in the same manner as the amount payable to a renal dialysis facility for such item.".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to items and services furnished on or after July 1, 1991.

SEC. 4202. STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients recciving services under the demonstration project established under paragraph (1) may not exceed 800.

(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a home hemodialysis staff assistant provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term "services of a home hemodialysis staff assistant" means—

(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

(2) AMOUNT OF PAYMENT.—

(A) IN GENERAL.—Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

(B) DETERMINATION OF PAYMENT AMOUNT.—(i) The amount of payment made under subparagraph (A) shall be the product of—

(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act is adjusted for differences in area wage levels.

(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between—

(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility (as adjusted to reflect differences in area wage levels), and

(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

(iii) For purposes of clause (ii)(II)—

(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.—The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.—

(1) IN GENERAL.—An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if—

(A) the individual is not a resident of a skilled nursing facility;

(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act;

(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves from a bed to a chair;

(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transpo tation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(4); and

(F) no family member or other individual is available to provide such assistance to the individual.

(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.—Any individual who, on the date of the enactment of this Act, is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act shall be deemed to be an eligible individual for purposes of this subsection.

(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.—Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.—For purposes of subsection (b), a home dialysis aide is qualified if the aide—

(1) meets minimum qualifications as specified by the Secretary; and

(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

(e) REPORTS.—

(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

(1) For fiscal year 1991, $4,000,000.

(2) For fiscal year 1992, $4,000,000.
(3) For fiscal year 1993, $3,000,000.
(4) For fiscal year 1994, $2,000,000.
(5) For fiscal year 1995, $1,000,000.

SEC. 4203. EXTENSION OF SECONDARY PAYOR PROVISIONS.

(a) EXTENSION OF TRANSFER OF DATA.—

(1) Section 1862(b)(5)(C)(iii) (42 U.S.C. 1395y(b)(5)(C)(iii)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(2) Section 6103(l)(12)(F) of the Internal Revenue Code of 1986 is amended—

(A) in clause (i), by striking "September 30, 1991" and inserting "September 30, 1995";

(B) in clause (ii)(I), by striking "1990" and inserting "1994"; and

(C) in clause (ii)(II), by striking "1991" and inserting "1995".

(b) EXTENSION OF APPLICATION TO DISABLED BENEFICIARIES.—Section 1862(b)(1)(B)(iii) (42 U.S.C. 1395y(b)(1)(B)(iii)) is amended by striking "January 1, 1992" and inserting "October 1, 1995".

(c) INDIVIDUALS WITH END STAGE RENAL DISEASE.—

(1) IN GENERAL.—Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended—

(A) in clause (i), by striking "during the 12-month period" and all that follows and inserting "during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A under the provisions of section 226A, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 226A if the individual had filed an application for such benefits; and"

(B) in the matter following clause (ii), by adding at the end the following: "Effective for items and services furnished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990), clauses (i) and (ii) shall be applied by substituting '18-month' for '12-month' each place it appears.".

(2) GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD.—(A) The Comptroller General shall conduct a study of the impact of the application of clause (iii) of section 1862(b)(1)(C) of the Social Security Act on individuals entitled to benefits under title XVIII of such Act by reason of section 226A of such Act, and shall include in such report information relating to—

(i) the number (and geographic distribution) of such individuals for whom medicare is secondary;

(ii) the amount of savings to the medicare program achieved annually by reason of the application of such clause;

(iii) the effect on access to employment, and employment-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of cost-sharing requirements under medicare after such employment-based insurance becomes secondary);

(iv) the effect on the amount paid for each dialysis treatment under employment-based health insurance;

(v) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which medicare is secondary;

(vi) the appropriateness of applying the provisions of section 1862(b)(1)(C) to all group health plans.

(B) The Comptroller General shall submit a preliminary report on the study conducted under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993, and a final report on such study not later than January 1, 1995.

(d) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and the amendment made by subsection (a)(2)(B) shall apply to requests made on or after such date.

SEC. 4204. HEALTH MAINTENANCE ORGANIZATIONS.

(a) REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS.—

(1) IN GENERAL.—Section 1876(i) (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

"(8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

"(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

"(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

"(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

"(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

"(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

"(B) In this paragraph, the term 'physician incentive plan' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.".

(2) PENALTIES.—Section 1876(i)(6)(A)(vi) (42 U.S.C. 1395mm(i)(6)(A)(vi)) is amended by striking "(g)(6)(A);" and inserting "(g)(6)(A) or paragraph (8);".

(3) REPEAL OF PROHIBITION.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended—

(A) by striking ", an eligible organization" and all that follows through "section 1876,",

(B) by adding "and" at the end of subparagraph (A),

(C) by striking subparagraph (B),

(D) by redesignating subparagraph (C) as subparagraph (B), and

(E) by striking "or organization".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by paragraph (3) shall take effect on the date of the enactment of this Act.

(b) REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC.—(1) Not later than January 1, 1992, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall submit a proposal to Congress that provides for a modified payment method for organizations with a risk contract under section 1876(g) of the Social Security Act that is more accurate than the current payment methodology in predicting the actual service utilization and annual medical expenditures of the beneficiary population enrolled in a specific organization.

(2) The proposal shall include—

(A)(i) recommendations on modifying the current adjusted average per capita cost formula, by adding predictors of medical utilization such as health status adjustors or prior utilization measures; or

(ii) recommendations for a new payment methodology as an alternative to the adjusted average per capita cost;

(B) data to support any recommended changes in payment methodology for organizations with risk contracts under section 1876(g) of the Social Security Act; and

(C) analysis demonstrating that any proposed or revised payment methodology under this section is effective in explaining at least 15 percent of the variation in health care utilization and costs (as determined in consultation with the American Academy of Actuaries) among individuals enrolled in such organizations.

(3) Not later than March 1, 1992, the Secretary shall cause to have published in the Federal Register a proposed rule providing for the implementation of the payment methodology specified in the proposal submitted pursuant to paragraph (1).

(4) Not later than May 1, 1992, the Comptroller General shall review the proposal and recommendations made pursuant to paragraphs (1) and (2), and shall report to Congress on appropriate modifications in such payment methodology.

(5) Taking into account the recommendations made pursuant to paragraph (4), on or after August 1, 1992, the Secretary shall issue a final rule implementing a payment methodology that meets the requirements of paragraph (1), effective for contract years beginning on or after January 1, 1993.

(c) APPLICATION OF NATIONAL COVERAGE DECISIONS.—

(1) IN GENERAL.—Section 1876(c)(2) (42 U.S.C. 1395mm(c)(2)) is amended—

(A) by redesignating clauses (i) and (ii) and subparagraphs (A) and (B) as subclauses (I) and (II) and clauses (i) and (ii), respectively;

(B) by inserting "(A)" after "(2)"; and

(C) by adding at the end the following new subparagraph:

"(B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) and ending on the date of the next announcement under such subsection that the Secretary projects will result in a significant change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period—

"(i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

"(ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.".

(2) CONFORMING AMENDMENT.—Section 1876(a)(6) of such Act is amended by striking "subsection (c)(7)" and inserting "subsections (c)(2)(B)(ii) and (c)(7)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to national coverage determinations that are not incorporated in the determination of the per capita rate of payment for individuals enrolled for 1991 with an eligible organization which has entered into a risk-sharing contract under section 1876 of the Social Security Act.

(d) PAYMENTS FOR SERVICES FURNISHED BY NON-CONTRACT PROVIDERS.—

(1) IN GENERAL.—Section 1876(j) (42 U.S.C. 1395mm(j)) is amended—

(A) in paragraph (1)(A)—

(i) by striking "physician" each place it appears and inserting "physician or provider of services or renal dialysis facility",

(ii) by striking "physicians' services" and inserting "physicians' services or renal dialysis services", and

(iii) by striking "participation agreement under section 1842(h)(1)" and inserting "applicable participation agreement",

(B) in paragraph (2)—

(i) by striking "physicians' services" each place it appears and inserting "physicians' services or renal dialysis services", and

(ii) by striking "which—" and all that follows and inserting "which are furnished to an enrollee of an eligible organization under this section by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after January 1, 1991.

(e) RETROACTIVE ENROLLMENT.—

(1) IN GENERAL.—Section 1876(a)(1)(E) (42 U.S.C. 1395mm(a)(1)(E)) is amended—

(A) by striking "(E)" and inserting "(E)(i)"; and

(B) by adding at the end the following new clause:

"(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

"(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) at the time the individual enrolled with the organization.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to individuals enrolling with an eligible organization (which has a risk-sharing contract under section 1876 of the Social Security Act) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) on or after January 1, 1991.

(f) STUDY OF CHIROPRACTIC SERVICES.—

(1) The Secretary shall conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act make available to enrollees entitled to benefits under title XVIII of such Act chiropractic services that are covered under such title.

(2) The study shall examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees.

(3) The study shall be based on contracts entered into or renewed on or after January 1, 1991, and before January 1, 1993.

(4) The Secretary shall issue a final report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the results of the study not later than January 1, 1993. The report shall include recommendations with respect to any legislative and regulatory changes that the Secretary determines are necessary to ensure access to such services.

(g) PROHIBITING CERTAIN EMPLOYER MARKETING ACTIVITIES.—

(1) IN GENERAL.—Section 1862(b)(3) (42 U.S.C. 1395y(b)(3)) is amended by adding at the end the following new subparagraph:

"(C) PROHIBITION OF FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN.—It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this title not to enroll (or to terminate enrollment) under a group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)), unless such incentive is also offered to all individuals who are eligible for coverage under the plan. Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to incentives offered on or after the date of the enactment of this Act.

SEC. 4205. PEER REVIEW ORGANIZATIONS.

(a) USE OF CORRECTIVE ACTION PLANS.—

(1) IN GENERAL.—Section 1156(b)(1) (42 U.S.C. 1320c-5(b)(1)) is amended—

(A) by inserting "and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan," after "concerned,"; and

(B) by inserting after the second sentence the following: "In determining whehter a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to initial determinations made by organizations on or after the date of the enactment of this Act.

(b) TREATMENT OF OPTOMETRISTS AND PODIATRISTS.—

(1) IN GENERAL.—Section 1154 (42 U.S.C. 1320c-3) is amended—

(A) in subsection (a)(7)(A)(i), by inserting ", optometry, and podiatry" after "dentistry"; and

(B) in subsection (c), by striking "or dentistry" each place it appears and inserting "dentistry, optometry, or podiatry".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

(c) COORDINATION OF PROs AND CARRIERS.—

(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

(A) the development of common utilization and medical review criteria;

(B) criteria for the targetting of reviews by peer review organizations and carriers; and

(C) improved methods for exchange of information among peer review organizations and carriers.

(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.

(d) Peer Review Notice.—

(1) NOTICE OF PROPOSED SANCTIONS.—

(A) REQUIREMENT.—Section 1154(a)(9) (42 U.S.C. 1320c-3(a)(9)) is amended—

(i) by inserting "(A)" after "(9)"; and

(ii) by adding at the end the following:

"(B) If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.".

(B) DISCLOSURE.—Section 1160(b)(1) (42 U.S.C. 1320c-9(b)(1)) is amended—

(i) by striking "and" at the end of subparagraph (B),

(ii) by adding "and" at the end of subparagraph (C), and

(iii) by adding at the end the following new subparagraph:

"(D) to provide notice to the State medical board in accordance with section 1154(a)(9)(B) when the organization submits a report and recommendations to the Secretary under section 1156(b)(1) with respect to a physician whom the board is responsible for licensing;".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act.

(2) NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN BY SECRETARY.—

(A) IN GENERAL.—Section 1156(b) (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

"(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board re-

sponsible for the licensing of the physician of the exclusion.".

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

(e) CONFIDENTIALITY OF PEER REVIEW DELIBERATIONS.—

(1) IN GENERAL.—Section 1160(d) (42 U.S.C. 1320c-9(d)) is amended by adding at the end the following: "No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1154(a)(1)(B) or 1156(a)(2) shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to all proceedings as of the date of the enactment of this Act.

(f) CLARIFICATION OF LIMITATION ON LIABILITY.—Section 1157(b) (42 U.S.C. 1320c-6(b)) is amended—

(1) by inserting "organization having a contract with the Secretary under this part and no" after "No",

(2) by striking "by him", and

(3) by striking "he has exercised due care" and inserting "due care was exercised in the performance of such duty, function, or activity".

(g) MISCELLANEOUS AND TECHNICAL AMENDMENTS RELATING TO PEER REVIEW ORGANIZATIONS.—

(1) CLARIFICATION OF PATIENT NOTIFICATION REQUIREMENTS FOR DENIAL OF PAYMENT BY PRO.—

(A) IN GENERAL.—Section 1154(a)(3)(E) (42 U.S.C. 1320c-3(a)(3)(E)) is amended—

(i) by striking "(E)" and inserting "(E)(i)";

(ii) by inserting after "items" the following: "provided by a physician that were";

(iii) by striking "physician and hospital." and inserting "physician."; and

(iv) by adding at the end the following new clause:

"(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term 'physician' in the notice described in clause (i).".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(2) CLARIFICATION OF APPLICATION OF CRITERIA FOR DENIAL OF PAYMENT.—

(A) IN GENERAL.—Section 1154(a)(2) (42 U.S.C. 1320c-3(a)(2)) is amended by striking the third sentence and inserting the following: "The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4206. MEDICARE PROVIDER AGREEMENTS ASSURING THE IMPLEMENTATION OF A PATIENT'S RIGHT TO PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT.

(a) IN GENERAL.—Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subsection (a)(1)—

(A) by striking "and" at the end of subparagraph (O),

(B) by striking the period at the end of subparagraph (P) and inserting ", and", and

(C) by inserting after subparagraph (P) the following new subparagraph:

"(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) (relating to maintaining written policies and procedures respecting advance directives).''; and

(2) by inserting after subsection (e) the following new subsection:

"(f)(1) For purposes of subsection (a)(1)(Q) and sections 1819(c)(2)(E), 1833(r), 1876(c)(8), and 1891(a)(6), the requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

"(A) to provide written information to each such individual concerning—

"(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

"(ii) the written policies of the provider or organization respecting the implementation of such rights;

"(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

"(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

"(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and

"(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

"(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

"(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

"(B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,

"(C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

"(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

"(E) in the case of an eligible organization (as defined in section 1876(b)) or an organization provided payments under section 1833(a)(1)(A), at the time of enrollment of the individual with the organization.

"(3) In this subsection, the term 'advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.".

(b) APPLICATION TO PREPAID ORGANIZATIONS.—

(1) ELIGIBLE ORGANIZATIONS.—Section 1876(c) of such Act (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

"(8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(2) OTHER PREPAID ORGANIZATIONS.—Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(r) The Secretary may not provide for payment under subsection (a)(1)(A) with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(c) EFFECT ON STATE LAW.—Nothing in subsections (a) and (b) shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.

(d) CONFORMING AMENDMENTS.—

(1) Section 1819(c)(1) of such Act (42 U.S.C. 1395i-3(c)(1)) is amended by adding at the end the following new subparagraph:

"(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A skilled nursing facility must comply with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(2) Section 1891(a) of such Act (42 U.S.C. 1395bbb(a)) is amended by adding at the end the following:

"(6) The agency complies with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(e) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (d) shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to contracts under section 1876 of the Social Security Act and payments under section 1833(a)(1)(A) of such Act as of first day of the first month beginning more than 1 year after the date of the enactment of this Act.

SEC. 4027. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PARTS A AND B.

(a) HOSPITAL AND PHYSICIAN OBLIGATIONS WITH RESPECT TO EMERGENCY MEDICAL CONDITIONS.—

(1) PEER REVIEW.—(A) Section 1867(d) (42 U.S.C. 1395dd(d)), as amended by section 4008(b)(3), is amended by adding at the end the following new paragraph:

"(3) CONSULTATION WITH PEER REVIEW ORGANIZATIONS.—In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1), the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of title XI) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary

shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review.

(B) Section 1154(a) (42 U.S.C. 1320c-4(a)) is amended by adding at the end the following new paragraph:

"(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1867(d)(3). The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.".

(C) The amendment made by subparagraph (A) shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act. The amendment made by subparagraph (B) shall apply to contracts under part B of title XI of the Social Security Act as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

(2) CIVIL MONETARY PENALTIES.—Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking "knowingly" and inserting "negligently".

(3) EXCLUSION.—Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking "knowing and willful or negligent" and inserting "is gross and flagrant or is repeated".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(b) EXTENSIONS OF EXPIRING PROVISIONS.—

(1) PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 3(7) of the Congressional Budget and Impoundment Control Act of 1974) of more than $50,000,000, except as follows:

(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.

(2) PROHIBITION OF PAYMENT CYCLE CHANGES.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

(3) WAIVER OF LIABILITY FOR HOME HEALTH AGENCIES.—Section 9305(g)(3) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 426(d) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "November 1, 1990" and inserting "December 31, 1995".

(4) EXTENSION AND EXPANSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(A) EXTENSION OF CURRENT WAIVERS.—Section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 is amended—

(i) in paragraph (1), by striking "September 30, 1992" and inserting "December 31, 1995"; and

(ii) in paragraph (4)—

(I) by striking "final" and inserting "second interim", and

(II) by striking the period at the end and inserting the following: ", and shall submit a final report on the demonstration projects conducted under section 2355 of the Deficit Reduction Act of 1984 not later than March 31, 1996.".

(B) EXPANSION OF DEMONSTRATIONS.—Section 2355 of the Deficit Reduction Act of 1984 is amended—

(i) in subsection (a), by adding at the end the following: "Not later than 12 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990, the Secretary shall approve such applications or protocols for not more than 4 additional projects described in subsection (b).";

(ii) by amending paragraph (1) of subsection (b) to read as follows:

"(1) to demonstrate—

"(A) the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1-04 of the University Health Policy Consortium of Brandeis University, or

"(B) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, the effectiveness and feasibilitly of innovative approaches to refining targeting and financing methodologies and benefit design, including the effectiveness of feasibility of—

"(i) the benefits of expanded post-acute and community care case management through links between chronic care case management services and acute care providers;

"(ii) refining targeting or reimbursement methodologies;

"(iii) the establishment and operation of a rural services delivery system; or

"(iv) the effectiveness of second-generation sites in reducing the costs of the commencement and management of health care service delivery;";

(iii) in subsection (b)—

(I) by inserting "and" at the end of paragraph (3),

(II) by striking the semicolon at the end of paragraph (4) and inserting a period, and

(III) by striking paragraphs (5), (6), and (7).

(iv) in subsection (c)—

(I) by striking "and" at the end of paragraph (1),

(II) by striking the period at the end of paragraph (2) and inserting "; and", and

(III) by adding at the end the following new paragraph:

"(3) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, any requirements of titles XVIII or XIX of the Social Security Act that, if imposed, would prohibit such project from being conducted."; and

(v) by adding at the end the following new subsection:

"(e) There are authorized to be appropriated $3,500,000 for the costs of technical assistance and evaluation related to projects conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990.".

(c) DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which payment is made for home health services under title XVIII of the Social Security Act or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of treatment or costs of treatment greatly exceed the length or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as differences in wages and wage-related costs among agencies located in various geographic areas and other factors the Secretary considers appropriate; and

(E) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

(2) REPORTS.—(A) By not later than April 1, 1993, the Secretary of Health and Human Services shall submit the research findings upon which the proposal described in paragraph (1) shall be based to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1993, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1994, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(d) HOME HEALTH WAGE INDEX.—

(1) IN GENERAL.—Section 1861(v)(1)(L)(iii) of (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended to read as follows:

"(iii) Not later than July 1, 1991, and annually thereafter, the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index appli-

cable under section 1886(d)(3)(E) as of such date to hospitals located in the geographic area in which the home health agency is located (determined without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B), a decision of the Medicare Geographic Classification Review Board under section 1886(d)(10), or a decision of the Secretary).".

(2) APPLICATION ON BUDGET-NEUTRAL BASIS.—In updating the wage index for establishing limits under section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act will be no greater or lesser than such payments would have been without regard to such update.

(3) TRANSITION PROVISION.—Notwithstanding section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of such Act with respect to services furnished by a home health agency, utilize a wage index equal to—

(A) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of—

(i) 67 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 33 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section; and

(B) for cost reporting periods beginning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of—

(i) 33 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 67 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991.

(e) CLARIFICATION OF DEFINITIONS AND REPORTING REQUIREMENTS RELATING TO PHYSICIAN OWNERSHIP AND REFERRAL.—

(1) CLARIFYING DEFINITIONS.—Section 1877(h) of the Social Security Act (42 U.S.C. 1395nn(h)) is amended—

(A) in paragraph (6)(A), by striking "in the case of" and all that follows through "the service," and inserting "in the case of an item or service for which payment may be made under part B, the request by a physician for the item or service,";

(B) in paragraph (6)(B), by striking "in the case of another clinical laboratory service,", and

(C) by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) INVESTOR.—The term 'investor' means, with respect to an entity, a person with a financial relationship specified in subsection (a)(2) with the entity.".

(2) EXEMPTION FOR FINANCIAL RELATIONSHIPS WITH HOSPITAL UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES.—Section 1877(b) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) HOSPITAL FINANCIAL RELATIONSHIP UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES.—In the case of a financial relationship with a hospital if the financial relationship does not relate to the provision of clinical laboratory services.".

(3) REVISION OF REPORTING REQUIREMENTS.—Section 1877(f) (42 U.S.C. 1395nn(f)) is amended—

(A) by amending paragraph (2) to read as follows:

"(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A)) in the entity, or whose immediate relatives have such an ownership or investment.";

(B) in the third sentence, by striking "1 year after the date of the enactment of this section" and inserting "October 1, 1991"; and

(C) by adding at the end the following new sentences: "The requirement of this subsection shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this title very infrequently. The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44, United States Code, with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing clinical laboratory services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.".

(4) DATE OF ISSUANCE OF REPORTS AND REGULATIONS.—(A) Section 6204 of the Omnibus Budget Reconciliation Act of 1989 is amended by striking subsection (f) and inserting the following:

"(f) STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION.—Not later than June 30, 1992, the Secretary of Health and Human Services shall submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the States and entities specified in section 1877(f) of the Social Security Act (other than entities providing clinical laboratory services).".

(B) Section 6204(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "October 1, 1990" and inserting "October 1, 1991".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989.

(g) CASE MANAGEMENT DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 (in this subsection referred to as "MCCA").

(2) PROJECT DESCRIPTIONS.—The demonstration projects referred to in paragraph (1) are—

(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18-P-99379/5-01;

(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P-99399/4-01; and

(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18-P-99396/5.

(3) TERMS AND CONDITIONS.—Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

(4) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.

(h) PROHIBITION OF USER FEES FOR SURVEY AND CERTIFICATION.—Section 1864 (42 U.S.C. 1395aa) is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a), or any renal dialysis facility subject to the requirements of section 1881(b)(1), for any such determination or any survey relating to determining the compliance of such facility or entity with any requirement of this title.".

(i) DELEGATION OF AUTHORITY TO INSPECTOR GENERAL.—Section 1128A(j) (42 U.S.C. 1320a-7a(j)) is amended—

(i) by striking "(j)" and inserting "(j)(1)"; and

(ii) by adding at the end the following new paragraph:

"(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.".

(j) MODIFICATION OF HOME HEALTH AGENCY DEFICIENCY STANDARDS.—

(1) IN GENERAL.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 1891(a)(3)(D)(iii) of the Social Security Act (42 U.S.C. 1395bbb(a)(3)(D)(iii)) is amended by striking "which has been determined"

and all that follows and inserting the following: "which, within the previous 2 years—

"(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

"(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D);

"(III) has been assessed a civil money penalty described in subsection (f)(2)(A)(i) of not less than $5,000; or

"(IV) has been subject to the remedies described in subsection (e)(1) or in clauses (ii) or (iii) of subsection (f)(2)(A).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act;

(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title.

(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

(v) pursuant to State action, was closed or had its residents transferred.

(k) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this title and the amendments made by this title.

(m) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) The third sentence of subsections (a) and (b)(1) of section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 203(a)(1)(A) of the Medicare Catastrophic Coverage Repeal Act, is amended by striking "(k)(4),".

(2) Se tion 1877(g)(5) of the Social Security Act, as added by section 6204(a) of OBRA-1989, is amended by adding at the end the following new sentence: "The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(3) Subsection (i) of section 1867 of the Social Security Act, as added by section 6211(f) of the Omnibus Budget Reconciliation Act of 1989, is amended to read as follows:

"(i) WHISTLEBLOWER PROTECTIONS.—A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.".

(4) Section 6213(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "take effect" and inserting "apply to services furnished on or after".

(5) Section 6217(a) of the Omnibus Budget Reconciliation Act of 1989 is amended in the matter preceding paragraph (1) by inserting after "payments" the following: "out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year)".

(6) Section 1139(d) of the Social Security Act, as amended by section 6221 of Omnibus Budget Reconciliation Act of 1989, is amended by striking "interim report" and all that follows through "setting forth" and inserting the following: "interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth".

PART 4—PROVISIONS RELATING TO MEDICARE PART B PREMIUM AND DEDUCTIBLE

SEC. 4301. PART B PREMIUM.

Section 1839(e)(1) (42 U.S.C. 1395r(e)(1)) is amended—

(1) by inserting "(A)" after "(e)(1)", and

(2) by adding at the end the following new subparagraph:

"(B) Notwithstanding the provisions of subsection (a), the monthly premium for each individual enrolled under this part for each month in—

"(i) 1991 shall be $29.90,

"(ii) 1992 shall be $31.80,

"(iii) 1993 shall be $36.60,

"(iv) 1994 shall be $41.10, and

"(v) 1995 shall be $46.10.".

SEC. 4302. PART B DEDUCTIBLE.

Section 1833(b) (42 U.S.C. 1395l) is amended by inserting after "$75" the following: "for calendar years before 1991 and $100 for 1991 and subsequent years".

PART 5—MEDICARE SUPPLEMENTAL INSURANCE POLICIES

SEC. 4351. SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subsection (b)(1)(B), by striking "through (4)" and inserting "through (5)";

(2) in subsection (c)—

(A) by striking "and" at the end of paragraph (3),

(B) by striking the period at the end of paragraph (4) and inserting "; and", and

(C) by inserting after paragraph (4) the following new paragraph:

"(5) meets the applicable requirements of subsections (o) through (t).''; and

(3) by adding at the end the following new subsections:

"(o) The requirements of this subsection are as follows:

"(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsection (p).

"(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B), the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

"(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

"(p)(1)(A) If, within 9 months after the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection referred to as the 'Association') promulgates—

"(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

"(ii) uniform language and definitions to be used with respect to such benefits, and

"(iii) uniform format to be used in the policy with respect to such benefits, and

"(iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards'), subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the NAIC standards.

"(B) If the Association does not promulgate NAIC standards within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards') and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the Federal standards.

"(C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the NAIC standards or the Federal standards or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

"(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the NAIC or Federal standards, but

"(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(E) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

"(F) If benefits (including deductibles and coinsurance) under this title are changed and the Secretary determines, in consultation with the Association, that changes in the NAIC or Federal standards are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to

the original establishment of such standards.

"(2) The benefits under the NAIC or Federal standards shall provide—

"(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

"(B) for identification of a core group of basic benefits common to all policies, and

"(C) that, subject to paragraph (5)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10.

"(3) The benefits under paragraph (2) shall, to the extent possible—

"(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of the date of the enactment of this subsection; and

"(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

"(4)(A)(i) Except as provided in subparagraph (B), no State with a regulatory program approved under subsection (b)(1) may provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable standards.

"(ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable standards.

"(B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits provided in a policy that otherwise complies with the applicable standards. Any such new or innovative benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

"(5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

"(B) A State with a regulatory program approved under subsection (b)(1) may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2)(B).

"(6) The Secretary may waive the application of standards in regard to the limitation of benefits described in paragraph (4) in those States that on the date of enactment of this subsection had in place an alternative simplification program.

"(7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholder or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

"(8) Any person who sells or issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not an issuer of a policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

"(B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the NAIC or Federal standards under this subsection.

"(C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with this subsection.".

SEC. 4352. GUARANTEED RENEWABILITY.

Section 1882 is amended by adding at the end the following new subsection:

"(q) The requirements of this subsection are as follows:

"(1) Each medicare supplemental policy shall be guaranteed renewable and—

"(A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

"(B) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

"(2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (2), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)—

"(A) provides for continuation of the benefits contained in the group policy, or

"(B) provides for such benefits as otherwise meets the requirements of this section.

"(3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall—

"(A) offer the certificateholder the conversion opportunity described in subparagraph (B), or

"(B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

"(4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.".

SEC. 4353. ENFORCEMENT OF STANDARDS.

(a) REQUIRING CONFORMITY WITH STANDARDS.—Section 1882 is amended—

(1) in the heading, by striking "voluntary"; and

(2) in subsection (a)—

(A) by inserting "(1)" after "(a)",

(B) by adding at the end the following new paragraph:

"(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(c) unless—

"(A) the State's regulatory program under subsection (b)(1) provides for the application and enforcement of the standards and requirements set forth in such subsection (including the NAIC standards or the Federal standards (as the case may be)) by the date specified in subsection (p)(1)(c); or

"(B) if the State's program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under paragraph (1) as meeting the standards and requirements set forth in subsection (c) (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the policy, in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(b) PERIODIC REVIEW OF STATE REGULATORY PROGRAMS.—Section 1882(b) is amended—

(1) in paragraph (1), by striking "Supplemental Health Insurance Panel (established under paragraph (2))" and inserting "the Secretary",

(2) in paragraph (1), by striking "the Panel" and inserting "the Secretary",

(3) in subparagraphs (A) and (D) of paragraph (1), by inserting "and enforcement" after "application", and

(4) by amending paragraph (2) to read as follows:

"(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.".

(c) ENFORCEMENT BY STATES.—Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by inserting "and" at the end of subparagraph (E);

(3) by inserting after subparagraph (E) the following:

"(F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,"; and

(5) by adding at the end the following new sentence: "The report required under subsection (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards of this paragraph, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners, may specify.".

(d) REQUIRING APPROVAL OF STATE FOR SALE IN THE STATE.—

(1) IN GENERAL.—Section 1882(d)(4)(B) (42 U.S.C. 1395ss(d)(4)(B)) is amended by striking the second sentence.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.

SEC. 4354. PREVENTING DUPLICATION.

(a) IN GENERAL.—Subsection (d)(3) of section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subparagraph (A)—

(A) by striking "Whoever knowingly sells" and inserting "It is unlawful for a person to sell or issue",

(B) by striking "substantially",

(C) by striking ", shall be fined" and inserting ". Whoever violates the previous sentence shall be fined",

(D) in subparagraph (A), by inserting "or title XIX" after "other than this title",

(E) in subparagraph (A), by striking "$5,000" and inserting "$25,000 (or $15,000 in the case of a person other than the issuer of the policy)", and

(F) by adding at the end the following: "A seller (who is not the issuer of a health insurance policy) shall not be considered to violate the previous sentence if the policy is sold in compliance with subparagraph (B) and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled. This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p).";

(2) by amending subparagraph (B) to read as follows:

"(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A or enrolled under part B, whether directly, through the mail, or otherwise, unless—

"(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in subclause (II), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies the individual has, from what source, and whether the individual is entitled to any medical assistance under title XIX, whether as a qualified medicare beneficiary or otherwise, and

"(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

"(ii) The statement required by clause (i) shall be made on a form that—

"(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy,

"(II) states in substance that individuals 65 years of age or older may be eligible for benefits under the State medicaid program under title XIX and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such title and may be reinstituted upon loss of such entitlement, and

"(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the telephone number for such services.

"(iii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has another medicare supplemental policy or indicates that the individual is entitled to any medical assistance under title XIX, the sale of such a policy shall be considered to be a violation of subparagraph (A).

"(II) Subclause (I) shall not apply in the case of an individual who has another policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer or seller's knowledge, duplicate coverage (taking into account any such replacement).

"(III) Subclause (I) also shall not apply if a State medicaid plan under title XIX pays the premiums for the policy, or pays less than an individual's (who is described in section 1905(p)(1)) full liability for medicare cost sharing as defined in section 1905(p)(3)(A).

"(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of a policy) for each such violation.".

(b) SUSPENSION OF POLICY DURING MEDICAID ENTITLEMENT.—Section 1882(q), as added by section 4352, is amended by adding at the end the following new paragraph:

"(2)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder for the period (not to exceed 24 months) in which the policyholder has applied for and is determined to be entitled to medical assistance under title XIX of the Social Security Act, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy shall be automatically reinstituted (effective as of the date of termination of such entitlement) under terms described in subsection (n)(6)(A)(ii) as of the termination of such entitlement if the policyholder provides notice of loss of such entitlement within 90 days after the date of such loss.

"(B) Nothing in this section shall be construed as affecting the authority of a State, under title XIX of the Social Security Act, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such title.

"(C) Any person who issues a medicare supplemental policy and fails to comply with the requirements of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act.

SEC. 4355. LOSS RATIOS AND REFUND OF PREMIUMS.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is further amended—

(1) in subsection (c), by amending paragraph (2) to read as follows:

"(2) meets the requirements of subsection (r);";

(2) by striking the sentence following subsection (c)(4); and

(3) by adding at the end the following new subsection:

"(r)(1) A medicare supplemental policy may not be issued or sold in any State unless—

"(A) the policy can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners, to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

"(B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A).

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

"(2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by policy number. Paragraph (1)(B) shall not apply to a policy with respect to the first 2 years in which it is in effect. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing rec-

ommendations on adjustments in the percentages under paragraph (1)(A) that may be appropriate in order to apply paragraph (1)(B) to the first 2 years in which policies are effective.

"(B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insured under the applicable policy as of the last day of the year involved.

"(C) Such a refund or credit shall include interest from the end of the policy year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

"(D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a policy year, not later than the third quarter of the succeeding policy year.

"(3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

"(4) The Secretary shall submit in February of each year (beginning with 1993) a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on loss-ratios under medicare supplemental policies and the use of sanctions, such as a required rebate or credit or the disllowance of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss-ratios). Such report shall include a list of the policies that failed to comply with such loss-ratio requirements or other requirements of this section.

"(5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved and to the Secretary.

"(B) The Secretary may independently perform such compliance audits.

"(6)(A) A person who issues a policy in violation of the loss ratio requirements of this subsection is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to policyholders for credits required under such paragraph.".

(b) ASSURING ACCESS TO LOSS RATIO INFORMATION.—Section 1882(b)(1)(C) (42 U.S.C. 1395ss(b)(1)(C)) is amended by striking the semicolon at the end and inserting a comma and the following:

"and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;".

(c) IMPLEMENTATION OF PROCESS TO APPROVE PREMIUM INCREASES.—Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is further amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by adding "and" at the end of subparagraph (F);

(3) by adding at the end thereof the following new subparagraph:

"(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase,".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to policies sold or issued more than 1 year after the date of the enactment of this Act.

SEC. 4356. CLARIFICATION OF TREATMENT OF PLANS OFFERED BY HEALTH MAINTENANCE ORGANIZATIONS.

(a) IN GENERAL.—The first sentence of section 1882(g)(1) is amended by inserting before the period at the end the following: "and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this title, including such services under a contract under under section 1876 or an agreement under section 1833".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4357. PRE-EXISTING CONDITION LIMITATIONS AND LIMITATION ON MEDICAL UNDERWRITING.

(a) IN GENERAL.—Section 1882 is amended—

(1) in subsection (c), in the matter before paragraph (1), by inserting "or the requirement described in subsection (s)" after "paragraph (3)", and

(2) by adding at the end the following new subsection:

"(s)(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

"(2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition for which an application is submitted during the 6 month period beginning with the first month in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B.

"(B) Subject to subparagraph (C), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

"(C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

"(3) Any issuer of a medicare supplemental policy that fails to meet the requirements of paragraphs (1) and (2) is subject to a civil money penalty of not to exceed $5,000 for each such failure. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

SEC. 4358. MEDICARE SELECT POLICIES.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is further amended by adding at the end the following:

"(t)(1) If a policy meets the NAIC Model Standards and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if—

"(A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts with the issuer of the policy;

"(B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network;

"(C) the network offers sufficient access;

"(D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

"(E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy's coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the NAIC standards without reference to this subsection and the premium charged for such policy, and

"(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

"(F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the NAIC standards and other requirements of this section without reference to this subsection.

"(2) If the Secretary determines that an issuer of a policy approved under paragraph (1)—

"(A) fails substantially to provide medically necessary items and services to enrollees seeking such items and services through the issuer's network, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual,

"(B) imposes premiums on enrollees in excess of the premiums approved by the State,

"(C) acts to expel an enrollee for reasons other than nonpayment of premiums, or

"(D) does not provide the explanation required under paragraph (1)(E)(i) or does not obtain the acknowledgment required under paragraph (1)(E)(ii),

is subject to a civil money penalty in an amount not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as

such provisions apply to a penalty or proceeding under section 1128A(a).

"(3) The Secretary may enter into a contract with an entity whose policy has been certified under paragraph (1) or has been approved by a State under subsection (b)(1)(H) to determine whether items and services (furnished to individuals entitled to benefits under this title and under that policy) are not allowable under section 1862(a)(1). Payments to the entity shall be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors that the Secretary finds appropriate. Paragraph (1), the first sentence of paragraph (2)(A), paragraph (2)(B), paragraph (3)(C), paragraph (3)(D), and paragraph (3)(E) of section 1842(b) shall apply to the entity.".

(b) CONFORMING AMENDMENTS.—(1) Section 1882(c)(1) (42 U.S.C. 1395ss(c)(1)) is amended by inserting "(except as otherwise provided by subsection (t))" before the semicolon.

(2) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)), as previously amended, is amended—

(A) in subparagraph (A), by inserting ", except as otherwise provided by subparagraph (H)" before the semicolon;

(B) by striking "and" at the end of subparagraph (F);

(C) by inserting "and" at the end of subparagraph (G); and

(D) by adding after subparagraph (G) the following:

"(H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), provides for the application of requirements equal to or more stringent than the requirements under subsection (t),".

(3) The first sentence of section 1154(a)(4)(B) (42 U.S.C. 1320c-3(a)(4)(B)) is amended by inserting "(or subject to review under section 1882(t))" after "section 1876".

(c) EFFECTIVE DATE.—The amendments made by this section shall only apply in 15 States (as determined by the Secretary of Health and Human Services) and only during the 3-year period beginning with 1992.

(d) EVALUATION.—The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section and shall report to Congress on such evaluation by not later than January 1, 1995.

SEC. 4359. HEALTH INSURANCE ADVISORY SERVICE FOR MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the "beneficiary assistance program") to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) OUTREACH ELEMENTS.—The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) ASSISTANCE PROVIDED.—The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—

(A) the program under section 1882 of the Social Security Act and standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) EDUCATIONAL MATERIAL.—The Secretary, through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) NOTICE TO BENEFICIARIES.—The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) REPORT.—The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

SEC. 4360. HEALTH INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE GRANTS.

(a) GRANTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall make grants to States, with approved State regulatory programs under section 1882 of the Social Security Act, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under title XVIII of the Social Security Act (in this section referred to as "eligible individuals"). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) GRANT APPLICATIONS.—

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—

(i) information that may assist individuals in obtaining benefits and filing claims under titles XVIII and XIX of the Social Security Act;

(ii) policy comparison information for medicare supplemental policies (as described in section 1882(g)(1) of the Social Security Act and information that may assist individuals in filing claims under such medicare supplemental policies;

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the services described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the assistance described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) SPECIAL GRANTS.—

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2)

shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section and that such activities will continue to be maintained at such level.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2), the Secretary may waive some or all of the requirements described in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) CRITERIA FOR ISSUING GRANTS.—In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2), including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for—

(i) administering funds under title XIX of the Social Security Act, and

(ii) administering funds appropriated under the Older Americans Act;

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance to the rural areas of such State.

(e) ANNUAL STATE REPORT.—A State that receives a grant under subsection (c) or (d) shall, not later than 180 days after receiving such grant, and annually thereafter, issue an annual report to the Secretary that includes information concerning—

(1) the number of individuals served by the State-wide health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this section, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) summarizes the scope and content of training conferences convened under this section;

(3) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(4) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3); and

(5) in the case of the report issued 2 years after the date of enactment of this section, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(f) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992, and 1993, to fund the grant programs described in this section.

SEC. 4361. MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE.

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1888 the following:

"MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE

"SEC. 1889. The Secretary shall provide information via a toll-free telephone number on the programs under this title and on medicare supplemental policies as defined in section 1882(g)(1) (including the relationship of State programs under title XIX to such policies).".

(b) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program.

Subtitle B—Medicaid

PART 1—REDUCTION IN SPENDING

Sec. 4401. Reimbursement for prescribed drugs.
Sec. 4402. Requiring medicaid payment of premiums and cost-sharing for enrollment under group health plans where cost-effective.

PART 2—PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES

Sec. 4501. Phased-in extension of medicaid payments for medicare premiums for certain individuals with income below 120 percent of the official poverty line.

PART 3—IMPROVEMENTS IN CHILD HEALTH

Sec. 4601. Medicaid child health provisions.
Sec. 4602. Mandatory use of outreach locations other than welfare offices.
Sec. 4603. Mandatory continuation of benefits throughout pregnancy or first year of life
Sec. 4604. Adjustment in payment for hospital services furnished to low-income children under the age of 6 years.
Sec. 4605. Presumptive eligibility.
Sec. 4606. Role in paternity determinations.
Sec. 4607. Report and transition on errors in eligibility determinations.

PART 4—MISCELLANEOUS

SUBPART A—PAYMENTS

Sec. 4701. State medicaid matching payments through voluntary contributions and State taxes.
Sec. 4702. Disproportionate share hospitals: counting of inpatient days.
Sec. 4703. Disproportionate share hospitals: alternative State payment adjustments and systems.
Sec. 4704. Federally-qualified health centers.
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Sec. 4706. Limitation on disallowances or deferral of Federal financial participation for certain inpatient psychiatric hospital services for individuals under age 21.
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SUBPART B—ELIGIBILITY AND COVERAGE

Sec. 4711. Home and community-based care as optional service.
Sec. 4712. Community supported living arrangements services.
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Sec. 4714. Provisions relating to spousal impoverishment.
Sec. 4715. Disregarding German reparation payments from post-eligibility treatment of income under the medicaid program.
Sec. 4716. Amendments relating to medicaid transition provision.
Sec. 4717. Clarifying effect of hospice election.
Sec. 4718. Medically needy income levels for certain 1-member families.
Sec. 4719. Codification of coverage of rehabilitation services.
Sec. 4720. Personal care services for Minnesota.
Sec. 4721. Medicaid coverage of personal care services outside the home.
Sec. 4722. Medicaid coverage of alcoholism and drug dependency treatment services.
Sec. 4723. Medicaid spenddown option.
Sec. 4424. Optional State medicaid disability determinations independent of the Social Security Administration.

SUBPART C—HEALTH MAINTENANCE ORGANIZATIONS

Sec. 4731. Regulation of incentive payments to physicians.
Sec. 4732. Special rules.
Sec. 4733. Extension and expansion of Minnesota prepaid medicaid demonstration project.
Sec. 4734. Treatment of certain county-operated health insuring organizations.

SUBPART D—DEMONSTRATION PROJECTS AND HOME AND COMMUNITY-BASED WAIVERS

Sec. 4741. Home and community-based waivers.
Sec. 4742. Timely payment under waivers of freedom of choice of hospital services.
Sec. 4744. Provisions relating to frail elderly demonstration project waivers.

Sec. 4745. Demonstration projects to study the effect of allowing States to extend medicaid coverage to certain low-income families not otherwise qualified to receive medicaid benefits.
Sec. 4746. Medicaid respite demonstration project extended.
Sec. 4747. Demonstration project to provide medicaid coverage for HIV-positive individuals.

SUBPART E—MISCELLANEOUS

Sec. 4751. Requirements for advanced directives under State plans for medical assistance.
Sec. 4752. Improvement in quality of physician services.
Sec. 4753. Clarification of authority of Inspector General.
Sec. 4754. Notice to State medical boards when adverse actions taken.
Sec. 4755. Miscellaneous provisions.

PART 5—PROVISIONS RELATING TO NURSING HOME REFORM

Sec. 4801. Technical corrections relating to nursing home reform.

PART 1—REDUCTIONS IN SPENDING

SEC. 4401. REIMBURSEMENT FOR PRESCRIBED DRUGS.

(a) IN GENERAL.—

(1) DENIAL OF FEDERAL FINANCIAL PARTICIPATION UNLESS REBATE AGREEMENTS AND DRUG USE REVIEW IN EFFECT.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(A) by striking the period at the end of paragraph (9) and inserting "; or", and

(B) by inserting after paragraph (9) the following new paragraph:

"(10) with respect to covered outpatient drugs of a manufacturer dispensed in any State unless, (A) except as provided in section 1927(a)(3), the manufacturer complies with the rebate requirements of section 1927(a) with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1927(g).".

(2) PROHIBITING STATE PLAN DRUG ACCESS LIMITATIONS FOR DRUGS COVERED UNDER A REBATE AGREEMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) by striking "and" at the end of paragraph (52),

(B) by striking the period at the end of paragraph (53) and inserting "; and", and

(C) by inserting after paragraph (53) the following new paragraph:

"(54)(A) provide that, any formulary or similar restriction (except as provided in section 1927(d)) on the coverage of covered outpatient drugs under the plan shall permit the coverage of covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under section 1927(a), which are prescribed for a medically accepted indication (as defined in subsection 1927(k)(6)), and

"(B) comply with the reporting requirements of section 1927(b)(2)(A) and the requirements of subsections (d) and (g) of section 1927.".

(3) REBATE AGREEMENTS FOR COVERED OUTPATIENT DRUGS, DRUG USE REVIEW, AND RELATED PROVISIONS.—Title XIX of the Social Security Act is amended by redesignating section 1927 as section 1928 and by inserting after section 1926 the following new section:

"PAYMENT FOR COVERED OUTPATIENT DRUGS

"SEC. 1927. (a) REQUIREMENT FOR REBATE AGREEMENT.—

"(1) IN GENERAL.—In order for payment to be available under section 1903(a) for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be deemed to have been entered into on January 1, 1991, and payment to such manufacturer shall be retroactively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement before March 1, 1991, such an agreement, subsequently entered into, shall not be effective until the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

"(2) EFFECTIVE DATE.—Paragraph (1) shall first apply to drugs dispensed under this title on or after January 1, 1991.

"(3) AUTHORIZING PAYMENT FOR DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Paragraph (1), and section 1903(i)(10)(A), shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1-A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d), or (II) the Secretary has reviewed and approved the State's determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

"(4) EFFECT ON EXISTING AGREEMENTS.—In the case of a rebate agreement in effect between a State and a manufacturer on the date of the enactment of this section, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement and such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this title. If, after the initial agreement period, the State establishes to the satisfaction of the Secretary that an agreement in effect on the date of the enactment of this section provides for rebates that are at least as large as the rebates otherwise required under this section, and the State agrees to report any rebates under the agreement to the Secretary, the agreement shall be considered to be a rebate agreement in compliance with the section for the renewal periods of such agreement.

"(b) TERMS OF REBATE AGREEMENT.—

"(1) PERIODIC REBATES.—

"(A) IN GENERAL.—A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this title, a rebate each calendar quarter (or periodically in accordance with a schedule specified by the Secretary) in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed under the plan during the quarter (or such other period as the Secretary may specify). Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

"(B) OFFSET AGAINST MEDICAL ASSISTANCE.—Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) or an agreement described in subsection (a)(4)) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1903(a)(1).

"(2) STATE PROVISION OF INFORMATION.—

"(A) STATE RESPONSIBILITY.—Each State agency under this title shall report to each manufacturer not later than 60 days after the end of each calendar quarter and in a form consistent with a standard reporting format established by the Secretary, information on the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter, and shall promptly transmit a copy of such report to the Secretary.

"(B) AUDITS.—A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

"(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

"(A) IN GENERAL.—Each manufacturer with an agreement in effect under this section shall report to the Secretary—

"(i) not later than 30 days after the last day of each quarter (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1)) and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B)) for covered outpatient drugs for the quarter, and

"(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1)) as of October 1, 1990 for each of the manufacturer's covered outpatient drugs.

"(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE.—The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(C) PENALTIES.—

"(i) FAILURE TO PROVIDE TIMELY INFORMATION.—In the case of a manufacturer with an agreement under this section that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be

suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

"(ii) FALSE INFORMATION.—Any manufacturer with an agreement under this section that knowingly provides false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph is confidential and shall not be disclosed by the Secretary or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.

"(4) LENGTH OF AGREEMENT.—

"(A) IN GENERAL.—A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

"(B) TERMINATION.—

"(i) BY THE SECRETARY.—The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

"(ii) BY A MANUFACTURER.—A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until such period after the date of the notice as the Secretary may provide (but not beyond the term of the agreement).

"(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

"(C) DELAY BEFORE REENTRY.—In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

"(c) AMOUNT OF REBATE.—

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—With respect to single source drugs and innovator multiple source drugs, each manufacturer shall remit a basic rebate to the State medical assistance plan. Except as otherwise provided in this subsection, the amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to each dosage form and strength of single source drugs and innovator multiple source drugs shall be equal to the product of—

"(A) the total number of units of each dosage form and strength dispensed under the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2); and

"(B)(i) for quarters (or periods) beginning after December 31, 1990, and before January 1, 1993, the greater of—

"(I) the difference between the average manufacturer price (after deducting customary prompt payment discounts) and 87.5 percent of such price for the quarter (or other period), or

"(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug (except that for calendar quarters beginning after December 31, 1990, and ending before January 1, 1992, the rebate shall not exceed 25 percent of the average manufacturer price, and for calendar quarters beginning after December 31, 1991, and ending before January 1, 1993, the rebate shall not exceed 50 percent of the average manufacturer price); and

"(ii) for quarters (or other periods) beginning after December 31, 1992, the greater of—

"(I) the difference between the average manufacturer price for a drug and 85 percent of such price, or

"(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug.

"(C) For the purposes of this paragraph, the term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer to any wholesaler, retailer, nonprofit entity, or governmental entity within the United States (excluding depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government). The best price shall be inclusive of cash discounts, free goods, volume discounts, and rebates (other than rebates under this section) and shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and shall not take into account prices that are merely nominal in amount;

"(D) In the case of a covered outpatient drug approved for marketing after October 1, 1990, any reference in this paragraph to 'October 1, 1990' shall be a reference to the first day of the first month during which the drug was marketed.

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—(A) EACH MANUFACTURER SHALL REMIT AN ADDITIONAL REBATE TO THE STATE MEDICAL ASSISTANCE PLAN IN AN AMOUNT EQUAL TO:

"(i) For calendar quarters (or other periods) beginning after December 31, 1990 and ending before January 1, 1994—

"(I) the total number of each dosage form and strength of a single source or innovator multiple source drug dispensed during the calendar quarter (or other period); multiplied by

"(II)(aa) the average manufacturer price for each dosage form and strength, minus

"(bb) the average manufacturer price for each such dosage form and strength in effect on October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved;

"(ii) For calendar quarters (or other periods) beginning after December 31, 1993—

"(I) the total number of each dosage form and strength of a single source or innovative multiple source drug dispensed during the calendar quarter (or other period); multiplied by

"(II) the amount, if any, by which the weighted average manufacturer price for single source and innovator multiple source drugs of a manufacturer exceeds the weighted average manufacturer price for the manufacturer as of October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved.

"(B)(i) For the purposes of subparagraph (A)(ii), the term 'weighted average manufacturer price' means (with respect to a calendar quarter or other period) the ratio of—

"(I) the sum of the products (for all covered drugs of the manufacturer purchased under a State program under this title) of—

"(aa) the average manufacturer price for each such covered drug; and

"(bb) the number of units of the covered drug sold to any State program under this title during such period, to

"(II) the total number of units of all such covered drugs sold under a State program under this title in such period,

except that the Secretary may exclude certain new drugs from the calculation of the weighted average if the inclusion of any such drug in such calculation has the effect of—

"(aa) reducing the rebate otherwise calculated pursuant to subparagraph (A)(ii); or

"(bb) increasing the rebate otherwise calculated pursuant to subparagraph (A)(ii) (in cases where such calculation under the conditions outlined in clause (ii).

"(ii)(I) The Secretary may exclude drugs approved by the Food and Drug Administration on or after October 1, 1990, from the calculation of weighted average manufacturer price if inclus manufacturer demonstrates through a petition, in a form and manner prescribed by the Secretary, undue hardship on such manufacturer as a result of the inclusion of such drug in such calculation).

"(II) The Secretary may promulgate guidelines to restrict the conditions under which the Secretary may consider such petitions.

"(C) For each of 8 calendar quarters beginning after December 31, 1991, the Secretary shall compare the aggregate amount of the rebates under subparagraph (A)(i) to the aggregate amount of rebates under subparagraph (A)(ii). Based on any such comparison, the Secretary may propose and utilize an alternative formula for the purpose of calculating an aggregate rebate.

"(3) REBATE FOR OTHER DRUGS.—The amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

"(A) the applicable percentage (as described in paragraph (4) of the average manufacturer price for each dosage form and strength of such drugs (after deducting customary prompt payment discounts) for the quarter (or other period), and

"(B) the number of units of such form and dosage dispensed under the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2).

"(4) For the purposes of paragraph (3), the applicable percentage is—

"(A) with respect to calendar quarters beginning after December 31, 1990, and ending before January 1, 1994, 10 percent; and

"(B) with respect to calendar quarters beginning on or after December 31, 1993, 11 percent.

"(d) LIMITATIONS ON COVERAGE OF DRUGS.—

"(1) PERMISSIBLE RESTRICTIONS.—(A) Except as provided in paragraph (6), a State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

"(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

"(i) the prescribed use is not for a medically accepted indication (as defined in (k)(6));

"(ii) the drug is contained in the list referred to in paragraph (2); or

"(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4).

"(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

"(A) Agents when used for anorexia or weight gain.

"(B) Agents when used to promote fertility.

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

"(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

"(I) Drugs described in section 107(c)(3) of the Drug Amendments of 1962 and identical, similar, or related drugs (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations ('DESI' drugs)).

"(J) Barbiturates.

"(K) Benzodiazepines.

"(3) UPDATE OF DRUG LISTINGS.—The Secretary shall (except with respect to new drugs approved by the FDA for the first 6 months following the date of approval of such drugs shall not be subject to being listed in paragraph (2) under the provisions of this paragraph), by regulation, periodically update the list of drugs described in paragraph (2) or classes of drugs, or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

"(4) INNOVATOR MULTIPLE-SOURCE DRUGS.—Innovator multiple-source drugs shall be treated under applicable State and Federal law and regulation.

"(5) PRIOR AUTHORIZATION PROGRAMS.—A State plan under this title may not require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) unless the system providing for such approval—

"(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

"(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least a 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) TREATMENT OF NEW DRUGS.—A State may not exclude for coverage, subject to prior authorization, or otherwise restrict any new biological or drug approved by the Food and Drug Administration after the date of enactment of this section, for a period of 6 months after such approval.

"(7) OTHER PERMISSIBLE RESTRICTIONS.—A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, provided such limitations are necessary to discourage waste.

Nothing in this section shall restrict the ability of a State to address individual instances of fraud or abuse in any manner authorized under the Social Security Act.

"(8) DELAYED EFFECTIVE DATE.—The provisions of paragraph (5) shall become effective with respect to drugs dispensed under this title on or after July 1, 1991.

"(e) DENIAL OF FEDERAL FINANCIAL PARTICIPATION IN CERTAIN CASES.—The Secretary shall provide that no payment shall be made to a State under section 1903(a) for an innovator multiple-source drug dispensed on or after July 1, 1991, if, under applicable State law, a less expensive noninnovator multiple source drug (other than the innovator multiple-source drug) could have been dispensed.

"(f) PHARMACY REIMBURSEMENT.—

"(1) NO REDUCTIONS IN REIMBURSEMENT LIMITS.—(A) During the period of time beginning on January 1, 1991, and ending on December 31, 1994, the Secretary may not modify by regulation the formula used to determine reimbursement limits described in the regulations under 42 CFR 447.331 through 42 CFR 447.334 (as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990) to reduce such limits for covered outpatient drugs.

(B) During the period of time described in subparagraph (A), any State that was in compliance with the regulations described in subparagraph (A) may not reduce the limits for covered outpatient drugs described in subparagraph (A) or dispensing fees for such drugs.

"(2) ESTABLISHMENT OF UPPER PAYMENT LIMITS.—HCFA shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

"(g) DRUG USE REVIEW.—

"(1) IN GENERAL.—

"(A) In order to meet the requirement of section 1903(i)(10)(B), a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

"(B) The program shall assess data on drug use against predetermined standards, consistent with the following:

"(i) compendia which shall consist of the following:

"(I) American Hospital Formulary Service Drug Information;

"(II) United States Pharmacopeia-Drug Information; and

"(III) American Medical Association Drug Evaluations; and

"(ii) the peer-reviewed medical literature.

"(C) The Secretary, under the procedures established in section 1903, shall pay to each State an amount equal to 75 per centum of so much of the sums expended by the State plan during calendar years 1991 through 1993 as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of this subsection.

"(D) States shall not be required to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities which are in compliance with the drug regimen review procedures prescribed by the Secretary for such facilities in regulations implementing section 1919, currently at section 483.60 of title 42, Code of Federal Regulations.

"(2) DESCRIPTION OF PROGRAM.—Each drug use review program shall meet the following requirements for covered outpatient drugs:

"(A) PROSPECTIVE DRUG REVIEW.—(i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this title, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.

"(ii) As part of the State's prospective drug use review program under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this title by pharmacists which includes at least the following:

"(I) The pharmacist must offer to discuss with each individual receiving benefits under this title or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:

"(aa) The name and description of the medication.

"(bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.

"(cc) Special directions and precautions for preparation, administration and use by the patient.

"(dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

"(ee) Techniques for self-monitoring drug therapy.

"(ff) Proper storage.

"(gg) Prescription refill information.

"(hh) Action to be taken in the event of a missed dose.

"(II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this title:

"(aa) Name, address, telephone number, date of birth (or age) and gender.

"(bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

"(cc) Pharmacist comments relevant to the individuals drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this title or caregiver of such individual refuses such consultation.

"(B) RETROSPECTIVE DRUG USE REVIEW.—The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this title, or associated with specific drugs or groups of drugs.

"(C) APPLICATION OF STANDARDS.—The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

"(D) EDUCATIONAL PROGRAM.—The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

"(3) STATE DRUG USE REVIEW BOARD.—

"(A) ESTABLISHMENT.—Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the 'DUR Board') either directly or through a contract with a private organization.

"(B) MEMBERSHIP.—The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

"(i) The clinically appropriate prescribing of covered outpatient drugs.

"(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

"(iii) Drug use review, evaluation, and intervention.

"(iv) Medical quality assurance.

The membership of the DUR Board shall be made up at least ⅓ but no more than 51 percent licensed and actively practicing physicians and at least ⅓ * * * licensed and actively practicing pharmacists.

"(C) ACTIVITIES.—The activities of the DUR Board shall include but not be limited to the following:

"(i) Retrospective DUR as defined in section (2)(B).

"(ii) Application of standards as defined in section (2)(C).

"(iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:

"(I) information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;

"(II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;

"(III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

"(IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

"(D) ANNUAL REPORT.—Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program.

"(h) ELECTRONIC CLAIMS MANAGEMENT.—

"(1) IN GENERAL.—In accordance with chapter 35 of title 44, United States Code (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system, for the purpose of performing online, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

"(2) ENCOURAGEMENT.—In order to carry out paragraph (1)—

"(A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1903(a)(3)(A)(i) (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network and automatic data processing services and equipment; and

"(B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

"(i) ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than May 1 of each year the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives a report on the the operation of this section in the preceding fiscal year.

"(2) DETAILS.—Each report shall include information on—

"(A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

"(B) the total value of rebates received and number of manufacturers providing such rebates;

"(C) how the size of such rebates compare with the size or rebates offered to other purchasers of covered outpatient drugs;

"(D) the effect of inflation on the value of rebates required under this section;

"(E) trends in prices paid under this title for covered outpatient drugs; and

"(F) Federal and State administrative costs associated with compliance with the provisions of this title.

"(j) EXEMPTION OF ORGANIZED HEALTH CARE SETTINGS.—(1) Covered outpatient drugs dispensed by * * * Health Maintenance Organizations, including those organizations that contract under section 1903(m), are not subject to the requirements of this section.

"(2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

"(3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c).

"(k) DEFINITIONS.—In this section—

"(1) AVERAGE MANUFACTURER PRICE.—The term 'average manufacturer price' means,

with respect to a covered outpatient drug of a manufacturer for a calendar quarter, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade.

"(2) COVERED OUTPATIENT DRUG.—Subject to the exceptions in paragraph (3), the term 'covered outpatient drug' means—

"(A) of those drugs which are treated as prescribed drugs for purposes of section 1905(a)(12), a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and—

"(i) which is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act or which is approved under section 505(j) of such Act;

"(ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a 'new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

"(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling; and

"(B) a biological product, other than a vaccine which—

"(i) may only be dispensed upon prescription,

"(ii) is licensed under section 351 of the Public Health Service Act, and

"(iii) is produced at an establishment licensed under such section to produce such product; and

"(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.

"(3) LIMITING DEFINITION.—The term 'covered outpatient drug' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this title as part of payment for the following and not as direct reimbursement for the drug):

"(A) Inpatient hospital services.

"(B) Hospice services.

"(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

"(D) Physicians' services.

"(E) Outpatient hospital services * * * emergency room visits.

"(F) Nursing facility sevices.

"(G) Other laboratory and x-ray services.

"(H) Renal dialysis.

Such term also does not include any such drug or product which is used for a medical indication which is not a medically accepted indication.

"(4) NONPRESCRIPTION DRUGS.—If a State plan for medical assistance under this title includes coverage of prescribed drugs as described in section 1905(a)(12) and permits coverage of drugs which may be sold without a prescription (commonly referred to as 'over-the-counter' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

"(5) MANUFACTURER.—The term 'manufacturer' means any entity which is engaged in—

"(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

"(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

"(6) MEDICALLY ACCEPTED INDICATION.—The term 'medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act, which appears in peer-reviewed medical literature or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.

"(7) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

"(A) DEFINED.—

"(i) MULTIPLE SOURCE DRUG.—The term 'multiple source drug' means, with respect to a calendar quarter, a covered outpatient drug (not including any drug described in paragraph (5)) for which there are 2 or more drug products which—

"(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations'),

"(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

"(III) are sold or marketed in the State during the period.

"(ii) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

"(iii) NONINNOVATOR MULTIPLE SOURCE DRUG.—The term 'noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

"(iv) SINGLE SOURCE DRUG.—The term 'single source drug' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributers operating under the new drug application.

"(B) EXCEPTION.—Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

"(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

"(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

"(8) STATE AGENCY.—The term 'State agency' means the agency designated under section 1902(a)(5) to administer or supervise the administration of the State plan for medical assistance.".

(b) FUNDING.—

(1) DRUG USE REVIEW PROGRAMS.—Section 1903(a)(3) (42 U.S.C. 1936b(a)(3)) is amended—

(A) by striking "plus" at the end of subparagraph (C) and inserting "and", and

(B) by adding at the end the following new subparagraph:

"(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1927(g); plus".

(2) TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS.—The per centum to be applied under section 1903(a)(7) of the Social Security Act for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.

(c) DEMONSTRATION PROJECTS.—

(1) PROSPECTIVE DRUG UTILIZATION REVIEW.—

(A) The Secretary of Health and Human Services shall provide, through competitive procurement by not later than January 1, 1992, for the establishment of at least 10 statewide demonstration projects to evaluate the efficiency and cost-effectiveness of prospective drug utilization review (as a component of on-line, real-time electronic point-of-sales claims management) in fulfilling patient counseling and in reducing costs for prescription drugs.

(B) Each of such projects shall establish a central electronic repository for capturing, storing, and updating prospective drug utilization review data and for providing access to such data by participating pharmacists (and other authorized participants).

(C) Under each project, the pharmacist or other authorized participant shall assess the active drug regimens of recipients in terms of duplicate drug therapy, therapeutic overlap, allergy and cross-sensitivity reactions, drug interactions, age precautions, drug

regiment compliance, prescribing limits, and other appropriate elements.

(D) Not later than January 1, 1994, the Secretary shall submit to Congress a report on the demonstration projects conducted under this paragraph.

(2) DEMONSTRATION PROJECT ON COST-EFFECTIVENESS OF REIMBURSEMENT FOR PHARMACISTS' COGNITIVE SERVICES.—

(A) The Secretary of Health and Human Services shall conduct a demonstration project to evaluate the impact on quality of care and cost-effectiveness of paying pharmacists under title XIX of the Social Security Act, whether or not a drug is dispensed, for drug use review services. For this purpose, the Secretary shall provide for no fewer than 5 demonstration sites in different States and the participation of a significant number of pharmacists.

(B) Not later than January 1, 1995, the Secretary shall submit a report to the Congress on the results of the demonstration project conducted under subparagraph (A).

(d) STUDIES.—

(1) STUDY OF DRUG PURCHASING AND BILLING ACTIVITIES OF VARIOUS HEALTH CARE SYSTEMS.—

(A) The Comptroller General shall conduct a study of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the medicaid program. The study shall compare the ingredient costs of drugs for medicaid prescriptions to these facilities and plans and the charges billed to medical assistance programs by these facilities and plans compared to retail pharmacies.

(B) The study conducted under this subsection shall include an assessment of—

(i) the prices paid by these institutions for covered outpatient drugs compared to prices that would be paid under this section,

(ii) the quality of outpatient drug use review provided by these institutions as compared to drug use review required under this section, and

(iii) the efficiency of mechanisms used by these institutions for billing and receiving payment for covered outpatient drugs dispensed under this title.

(C) By not later than May 1, 1991, the Comptroller General shall report to the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the study conducted under subparagraph (A).

(2) REPORT ON DRUG PRICING.—By not later than May 1 of each year, the Comptroller General shall submit to the Secretary, the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and House of Representatives an annual report on changes in prices charged by manufacturers for prescription drugs to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

(3) STUDY ON PRIOR APPROVAL PROCEDURES.—

(A) The Secretary, acting in consultation with the Comptroller General, shall study prior approval procedures utilized by State medical assistance programs conducted under title XIX of the Social Security Act, including—

(i) the appeals provisions under such programs; and

(ii) the effects of such procedures on beneficiary and provider access to medications covered under such programs.

(B) By not later than December 31, 1991, the Secretary and the Comptroller General shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A) and shall make recommendations with respect to which procedures are appropriate or inappropriate to be utilized by State plans for medical assistance.

(4) STUDY ON REIMBURSEMENT RATES TO PHARMACISTS.—

(A) The Secretary shall conduct a study on (i) the adequacy of current reimbursement rates to pharmacists under each State medical assistance programs conducted under title XIX of the Social Security Act; and (ii) the extent to which reimbursement rates under such programs have an effect on beneficiary access to medications covered and pharmacy services under such programs.

(B) By not later than December 31, 1991, the Secretary shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A).

(5) STUDY OF PAYMENTS FOR VACCINES.—The Secretary of Health and Human Services shall undertake a study of the relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and the accessibility of vaccinations and immunization to children provided under this title. The Secretary shall report to the Congress on the Study not later than one year after the date of the enactment of this Act.

(6) STUDY ON APPLICATION OF DISCOUNTING OF DRUGS UNDER MEDICARE.—The Comptroller General shall conduct a study examining methods to encourage providers of items and services under title XVIII of the Social Security Act to negotiate discounts with suppliers of prescription drugs to such providers. The Comptroller General shall submit to Congress a report on such study no later than 1 year after the date of enactment of this subsection.

SEC. 4402. REQUIRING MEDICAID PAYMENT OF PREMIUMS AND COST-SHARING FOR ENROLLMENT UNDER GROUP HEALTH PLANS WHERE COST-EFFECTIVE.

(a) IN GENERAL.—Title XIX (42 U.S.C. 1396 et seq.) is amended—

(1) in section 1902(a)(25) (42 U.S.C. 1396a(a)(25))—

(A) by striking "and" at the end of subparagraph (E),

(B) by adding "and" at the end of subparagraph (F), and

(C) by adding at the end the following new subparagraph:

"(G) that the State plan shall meet the requirements of section 1906 (relating to enrollment of individuals under group health plans in certain cases);"; and

(2) by inserting after section 1905 the following new section:

"ENROLLMENT OF INDIVIDUALS UNDER GROUP HEALTH PLANS

"SEC. 1906. (a) For purposes of section 1902(a)(25)(G) and subject to subsection (d), each State plan—

"(1) shall implement guidelines established by the Secretary, consistent with subsection (b), to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this title in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2));

"(2) shall require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this title and subject to subsection (b)(2), notwithstanding any other provision of this title, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

"(3) in the case of such enrollment (except as provided in subsection (c)(1)(B)), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this title (exceeding the amount otherwise permitted under section 1916), and shall treat coverage under the group health plan as a third party liability (under section 1902(a)(25)).

"(b)(1) In establishing guidelines under subsection (a)(1), the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

"(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2), such failure shall not affect the child's eligibility for benefits under this title.

"(c)(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1903(a), to be payments for medical assistance.

"(B) If all members of a family are not eligible for medical assistance under this title and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible—

"(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

"(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

"(2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1902(a)(25) provides that payment for such benefits shall first be made by such plan.

"(d)(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(2) This section, and section 1902(a)(25)(G), shall only apply to a State that is one of the 50 States or the District of Columbia.

"(e) In this section:

"(1) The term 'group health plan' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of

1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

"(2) The term 'cost-effective' means, as established by the Secretary, that the reduction in expenditures under this title with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.".

(b) TREATMENT OF ERRONEOUS EXCESS PAYMENTS FOR MEDICAL ASSISTANCE.—Section 1903(u)(1)(C)(iv) (42 U.S.C. 1396b(u)(1)(C)(iv)) is amended by inserting before the period at the end the following: "or with respect to payments made in violation of section 1906".

(c) OPTIONAL MINIMUM 6-MONTH ELIGIBILITY.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraph:

"(11)(A) In the case of an individual who is enrolled with a group health plan under section 1906 and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

"(B) For purposes of subparagraph (A), the term 'minimum enrollment period' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (E)—

(A) by striking "and" at the end of subdivision (IX);

(B) by inserting "and" at the end of subdivision (X); and

(C) by adding at the end the following new subdivision:

"(XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as described in section 1906 shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of the same amount, duration, and scope of such private coverage to any other individuals;".

(2) Section 1905(a) (42 U.S.C. 1396d(a)) is amended by adding at the end the following: "The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of title XVIII for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under title XVIII who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof.".

(3) Section 1903(a)(1) (42 U.S.C. 1396b(a)(1)) is amended by striking "(including expenditures for" and all that follows through "or the cost thereof)".

(e) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

PART 2—PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES

SEC. 4501. PHASED-IN EXTENSION OF MEDICAID PAYMENTS FOR MEDICARE PREMIUMS FOR CERTAIN INDIVIDUALS WITH INCOME BELOW 120 PERCENT OF THE OFFICIAL POVERTY LINE.

(a) 1-YEAR ACCELERATION OF BUY-IN OF PREMIUMS AND COST SHARING FOR QUALIFIED MEDICARE BENEFICIARIES UP TO 100 PERCENT OF POVERTY LINE.—Section 1905(p)(2) (42 U.S.C. 1396d(p)(2)) is further amended—

(1) in subparagraph (B)—

(A) by adding "and" at the end of clause (ii);

(B) in clause (iii), by striking "95 percent, and" and inserting "100 percent."; and

(C) by striking clause (iv); and

(2) in subparagraph (C)—

(A) in clause (iii), by striking "90" and inserting "95";

(B) by adding "and" at the end of clause (iii);

(C) in clause (iv), by striking "95 percent, and" and inserting "100 percent."; and

(D) by striking clause (v).

(b) ENTITLEMENT.—Section 1902(a)(10)(E) (42 U.S.C. 1395b(a)(10)(E)(ii)) is amended—

(1) by striking ", and" at the end of clause (i) and inserting a semicolon;

(2) by adding "and" at the end of clause (ii); and

(3) by adding at the end the following new clause:

"(iii) for making medical assistance available for medicare cost sharing described in section 1905(p)(3)(A)(ii) subject to section 1905(p)(4), for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved;".

(c) APPLICATION IN CERTAIN STATES AND TERRITORIES.—Section 1905(p)(4) (42 U.S.C. 1396d(p)(4)) is amended—

(1) in subparagraph (B), by inserting "or 1902(a)(10)(E)(iii)" after "subparagraph (B)", and

(2) by adding at the end the following:

"In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirement of section 1902(a)(10)(E) in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title."

(d) CONFORMING AMENDMENT.—Section 1843(h) (42 U.S.C. 1395v(h)) is amended by adding at the end the following new paragraph:

"(3) In this subsection, the term 'qualified medicare beneficiary' also includes an individual described in section 1902(a)(10)(E)(iii).".

(e) DELAY IN COUNTING SOCIAL SECURITY COLA INCREASES UNTIL NEW POVERTY GUIDELINES PUBLISHED.—

(1) IN GENERAL.—Section 1905(p) is amended—

(A) in paragraph (1)(B), by inserting ", except as provided in paragraph (2)(D)" after "supplementary social security income program", and

(B) by adding at the end of paragraph (2) the following new subparagraph:

"(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under title II for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such title which have occurred pursuant to section 215(i) for benefits payable for months beginning with December of the previous year.

"(ii) For purposes of clause (i), the term 'transition month' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.".

(2) CONFORMING AMENDMENTS.—Section 1902(m) (42 U.S.C. 1396a(m)) is amended—

(A) in paragraph (1)(B), by inserting ", except as provided in paragraph (2)(C)" after "supplemental security income program", and

(B) by adding at the end of paragraph (2) the following new subparagraph:

"(C) The provisions of section 1905(p)(2)(D) shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1905(p).".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) shall apply to determinations of income for months beginning with January 1991.

PART 3—IMPROVEMENTS IN CHILD HEALTH

SEC. 4601. MEDICAID CHILD HEALTH PROVISIONS.

(a) PHASED-IN MANDATORY COVERAGE OF CHILDREN UP TO 100 PERCENT OF POVERTY LEVEL.—

(1) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10)(A)(i)—

(i) by striking "or" at the end of subclause (V),

(ii) by striking the semicolon at the end of subclause (VI) and inserting ", or", and

(iii) by adding at the end the following new subclause:

"(VII) who are described in subparagraph (D) of subsection (l)(1) and whose family income does not exceed the income level the State is required to establish under subsection (l)(2)(C) for such a family;";

(B) in subsection (a)(10)(A)(ii)(IX), by striking "or clause (i)(VI)" and inserting ", clause (i)(VI), or clause (i)(VII)";

(C) in subsection (l)—

(i) in subparagraph (C) of paragraph (1) by inserting "children" after "(C)";

(ii) by striking subparagraph (D) of paragraph (1) and inserting the following:

"(D) children born after September 30, 1983, who have attained 6 years of age but have not attained 19 years of age,";

(iii) by striking subparagraph (C) of paragraph (2) and inserting the following:

"(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.";

(iv) in paragraph (3) by inserting ", (a)(10)(A)(i)(VII)," after "(a)(10)(A)(i)(VI)";

(v) in paragraph (4)(A), by inserting "or subsection (a)(10)(A)(i)(VII)" after "(a)(10)(A)(i)(VI)"; and

(vi) in paragraph (4)(B), by striking "or (a)(10)(A)(i)(VI)" ", and inserting "(a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)"; and

(D) in subsection (r)(2)(A), by inserting "(a)(10)(A)(i)(VII)," after "(a)(10)(A)(i)(VI),".

(2) CONFORMING AMENDMENT TO QUALIFIED CHILDREN.—Section 1905(n)(2) (42 U.S.C. 1396d(n)(2)) is amended by striking "age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)" and inserting "age of 19".

(3) ADDITIONAL CONFORMING AMENDMENTS.—

(A) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended—

(i) by striking "1902(a)(10)(A)(i)(IV)," and inserting "1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V),", and

(ii) by inserting "1902(a)(10)(A)(i)(VII)," after "1902(a)(10)(A)(i)(VI),".

(B) Subsections (a)(3)(C) and (b)(3)(C)(i) of section 1925 of such Act (42 U.S.C. 1396r-6), as amended by section 6411(i)(3) of the Omnibus Budget Reconciliation Act of 1989, are each amended by inserting "(i)(VII)," after "(i)(VI)".

(b) EFFECTIVE DATE.—(1) The amendments made by this subsection apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 4602. MANDATORY USE OF OUTREACH LOCATIONS OTHER THAN WELFARE OFFICES.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2) of this title, is amended—

(1) by striking "and" at the end of paragraph (53),

(2) by striking the period at the end of paragraph (54) and inserting "; and", and

(3) by inserting after paragraph (54) the following new paragraph:

"(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)—

"(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of title IV and which include facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(1)(2)(B), and

"(B) using applications which are other than those used for applications for aid under such part.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calenar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4603. MANDATORY CONTINUATION OF BENEFITS THROUGHOUT PREGNANCY OR FIRST YEAR OF LIFE.

(a) IN GENERAL.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended—

(1) in the first sentence of paragraph (4), by inserting "(or would remain if pregnant)" after "remains"; and

(2) in paragraph (6)—

(A) by striking "At the option of a State, in" and inserting "In";

(B) by striking "the State plan may nonetheless treat the woman as being" and inserting "the woman shall be deemed to continue to be"; and

(C) by adding at the end the following new sentence: "The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1920 during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.".

(b) EFFECTIVE DATE.—

(1) INFANTS.—The amendment made by subsection (a)(1) shall apply to individuals born on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) PREGNANT WOMEN.—The amendments made by subsection (a)(2) shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4604. ADJUSTMENT IN PAYMENT FOR HOSPITAL SERVICES FURNISHED TO LOW-INCOME CHILDREN UNDER THE AGE OF 6 YEARS.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(s) In order to meet the requirements of subsection (a)(55), the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1923(b)(1), shall—

"(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

"(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

"(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).".

(b) CONFORMING AMENDMENT.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2), is further amended—

(1) by striking "and" at the end of paragraph (53);

(2) by striking the period at the end of paragraph (54) and by inserting "; and"; and

(3) by inserting after paragraph (54) and before the end matter the following new paragraph:

"(55) provide, in accordance with subsection (s), for adjusted payments for certain inpatient hospital services.".

(c) PROHIBITION ON WAIVER.—Section 1915(b) (42 U.S.C. 1396n(b)) is amended in the matter preceding paragraph (1) by inserting "(other than subsection (s))" after "Section 1902".

(d) EFFECTIVE DATE.—(1) The amendments made by this subsection shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its

failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 4605. PRESUMPTIVE ELIGIBILITY.

(a) EXTENSION OF PRESUMPTIVE ELIGIBILITY PERIOD.—Section 1920 (42 U.S.C. 1396r-1) is amended—

(1) in subsection (b)(1)(B)—

(A) by adding "or" at the end of clause (i),

(B) by striking clause (ii), and

(C) by amending clause (iii) to read as follows:

"(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and"; and

(2) in subsections (c)(2)(B) and (c)(3), by striking "within 14 calendar days after the date on which" and inserting "by not later than the last day of the month following the month during which".

(b) FLEXIBILITY IN APPLICATION.—Section 1920(c)(3) (42 U.S.C. 1396r-1(c)(3)) is amended by inserting before the period at the end the following: ", which application may be the application used for the receipt of medical assistance by individuals described in section 1902(l)(1)(A)".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The amendment made by subsection (b) shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4606. ROLE IN PATERNITY DETERMINATIONS.

(a) IN GENERAL.—Section 1912(a)(1)(B) (42 U.S.C. 1396k(a)(1)(B)) is amended by inserting "the individual is described in section 1902(l)(1)(A) or" after "unless (in either case)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4607. REPORT AND TRANSITION ON ERRORS IN ELIGIBILITY DETERMINATIONS.

(a) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1902(l)(1) of the Social Security Act for medical assistance under plans approved under title XIX of such Act. Such report may include data for medical assistance provided before July 1, 1989.

(b) ERROR RATE TRANSITION.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which—

(1) are attributable to medical assistance for individuals described in subparagraph (A) or (B) of section 1902(l)(1) of such Act, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under subsection (a).

PART 4—MISCELLANEOUS

Subpart A—Payments

SEC. 4701. STATE MEDICAID MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS AND STATE TAXES.

(a) EXTENSION OF PROVISION ON VOLUNTARY CONTRIBUTIONS AND PROVIDER-SPECIFIC TAXES.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "December 31, 1990" and inserting "December 31, 1991".

(b) STATE TAX CONTRIBUTIONS.—(1) Section 1902 (42 U.S.C. 1396a) as amended by section 4604, is further amended by adding at the end the following new subsection:

"(t) Except as provided in section 1903(i), nothing in this title (including sections 1903(a) and 1905(a)) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes (whether or not of general applicability) imposed with respect to the provision of such items or services.".

(2) Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(A) by striking the period at the end of paragraph (9) and inserting "; or"; and

(B) by adding at the end the following new paragraph:

"(10) with respect to any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State solely with respect to hospitals or facilities.".

(c) EFFECTIVE DATES.—The amendment made by subsection (b) shall take effect on January 1, 1991.

SEC. 4702. DISPROPORTIONATE SHARE HOSPITALS: COUNTING OF INPATIENT DAYS.

(a) CLARIFICATION OF MEDICAID DISPROPORTIONATE SHARE ADJUSTMENT CALCULATION.—Section 1923(b)(2) (42 U.S.C. 1396r-4(b)(2)) is amended by adding at the end the following new sentence: "In this paragraph, the term 'inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1990.

SEC. 4703. DISPROPORTIONATE SHARE HOSPITALS: ALTERNATIVE STATE PAYMENT ADJUSTMENTS AND SYSTEMS.

(a) ALTERNATIVE STATE PAYMENT ADJUSTMENTS.—Section 1923(c) (42 U.S.C. 1396r-4(c)) is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by adding "or" at the end of paragraph (2); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that—

"(A) applies equally to all hospitals of each type; and

"(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this title or to low-income patients.".

(b) CLARIFICATION OF SPECIAL RULE FOR STATE USING HEALTH INSURING ORGANIZATION.—Section 1923(e)(2) (42 U.S.C. 1396r-4(e)(2)) is amended by striking "during the 3-year period".

(c) CONFORMING AMENDMENT.—Section 1923(c)(2) (42 U.S.C. 1396r-4(c)(2)) is amended by inserting after "State" "or the hospital's low-income utilization rate (as defined in paragraph (b)(3))".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 412(a)(2) of the Omnibus Budget Reconciliation Act of 1987.

SEC. 4704. FEDERALLY QUALIFIED HEALTH CENTERS.

(a) CLARIFICATION OF USE OF MEDICARE PAYMENT METHODOLOGY.—Section 1902(a)(13)(E) (42 U.S.C. 1396a(a)(13)(E)) is amended—

(1) by striking "may prescribe" the first place it appears and inserting "prescribes", and

(2) by striking "on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph" and inserting "on the same methodology used under section 1833(a)(3)".

(b) MINIMUM PAYMENT RATES BY HEALTH MAINTENANCE ORGANIZATIONS.—(1) Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) is amended—

(A) by striking "and" at the end of clause (vii),

(B) by striking the period at the end of clause (viii) and inserting ", and", and

(C) by adding at the end the following new clause:

"(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services of such center with a federally qualified health center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1902(a)(13)(E), and (II) at the election of such center payments made by the entity to such a center for services described in 1905(a)(2)(C) are made at the rates of payment specified in section 1902(a)(13)(E).".

(2) Section 1903(m)(2)(B) (42 U.S.C. 1396b(m)(2)(A)) is amended by striking "(A)" and inserting "(A) except with respect to clause (ix) of subparagraph (A),".

(3) Section 1915(b) (42 U.S.C. 1396n(b)) is amended by inserting after "section 1902" "(other than sections 1902(a)(13)(E) and 1902(a)(10)(A) insofar as it requires provision of the care and services described in section 1905(a)(2)(C))".

(c) CLARIFICATION IN TREATMENT OF OUTPATIENTS.—Section 1905(l)(2) (42 U.S.C. 1396d(l)(2)) is amended—

(1) in subparagraph (A), by striking "outpatient" and inserting "patient",

(2) in subparagraph (B), by striking "facility" and inserting "entity", and

(3) by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

"(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

"(II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;".

(d) TREATMENT OF INDIAN TRIBES.—The first sentence of section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended—

(1) by striking the period at the end and inserting a comma, and

(2) by adding, after and below clause (ii), the following:

"and includes an outpatient health program or facility operated by a tribe or tribal orga-

nization under the Indian Self-Determination Act (Public Law 93-638).".

(e) TECHNICAL CORRECTION.—Section 6402 of the Omnibus Budget Reconciliation Act of 1989 is amended—

(1) by striking subsection (c), and

(2) by amending subsection (d) to read as follows:

"(c) EFFECTIVE DATE.—The amendments made by this section (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act.".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4705. HOSPICE PAYMENTS.

(a) IN GENERAL.—Section 1905(o)(3) (42 U.S.C. 1396d(o)(3)) is amended—

(1) by striking "a State which elects" and all that follows through "with respect to" the first place it appears,

(2) by striking "skilled nursing or intermediate care facility" in subparagraphs (A) and (C) and inserting "nursing facility or intermediate care facility for the mentally retarded";

(3) by striking "the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13)," and inserting "the additional amount described in section 1902(a)(13)(D)", and

(4) by striking the last sentence.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4706. LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21.

(a) IN GENERAL.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act, and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act relating to the failure of a psychiatric facility to comply with certification of need requirements—

(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act.

SEC. 4707. TREATMENT OF INTEREST ON INDIANA DISALLOWANCE.

With respect to any disallowance of Federal financial participation under section 1903(a) of the Social Security Act for intermediate care facility services, intermediate care facility services for the mentally retarded, or skilled nursing facility services on the ground that the facilities in the State of Indiana were not certified in accordance with law during the period beginning June 1, 1982, and ending September 30, 1984, payment of such disallowance may be deferred without interest that would otherwise accrue without regard to this subsection, until every opportunity to appeal has been exhausted.

SEC. 4708. BILLING FOR SERVICES OF SUBSTITUTE PHYSICIAN.

(a) UNDER MEDICAID.—Section 1902(a)(32) (42 U.S.C. 1396a(a)(32))—

(1) by striking "and" before "(B)",

(2) by inserting "and" at the end of subparagraph (B), and

(3) by adding at the end the following:

"(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

Subpart B—Eligibility and Coverage

SEC. 4711. HOME AND COMMUNITY-BASED CARE AS OPTIONAL SERVICE.

(a) PROVISION AS OPTIONAL SERVICE.—Section 1905(a) (42 U.S.C. 1396d(a)), as amended by section 6201, is further amended—

(1) by striking "and" at the end of paragraph (22);

(2) by redesignating paragraph (23) as paragraph (24); and

(3) by inserting after paragraph (22) the following new paragraph:

"(23) home and community care (to the extent allowed and as defined in section 1929) for functionally disabled elderly individuals; and".

(b) HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS.—Title XIX (42 U.S.C. 1396 et seq.) as amended by section 4402 is further amended—

(1) by redesignating section 1929 as section 1930; and

(2) by inserting after section 1928 the following new section:

"HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS

"SEC. 1929. (a) HOME AND COMMUNITY CARE DEFINED.—In this title, the term 'home and community care' means one or more of the following services furnished to an individual who has been determined, after an assessment under subsection (c), to be a functionally disabled elderly individual, furnished in accordance with an individual community care plan (established and periodically reviewed and revised by a qualified community care case manager under subsection (d)):

"(1) Homemaker/home health aide services.

"(2) Chore services.

"(3) Personal care services.

"(4) Nursing care services provided by, or under the supervision of, a registered nurse.

"(5) Respite care.

"(6) Training for family members in managing the individual.

"(7) Adult day care.

"(8) In the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility).

"(9) Such other home and community-based services (other than room and board) as the Secretary may approve.

"(b) FUNCTIONALLY DISABLED ELDERLY INDIVIDUAL DEFINED.—

"(1) IN GENERAL.—In this title, the term 'functionally disabled elderly individual' means an individual who—

"(A) is 65 years of age or older,

"(B) is determined to be a functionally disabled individual under subsection (c), and

"(C) subject to section 1902(f) (as applied consistent with section 1902(r)(2)), is receiving supplemental security income benefits under title XVI (or under a State plan approved under title XVI) or, at the option of the State, is described in section 1902(a)(10)(C).

"(2) TREATMENT OF CERTAIN INDIVIDUALS PREVIOUSLY COVERED UNDER A WAIVER.—(A) In the case of a State which—

"(i) at the time of its election to provide coverage for home and community care under this section has a waiver approved under section 1915(c) or 1915(d) with respect to individuals 65 years of age or older, and

"(ii) subsequently discontinues such waiver, individuals who were eligible for benefits under the waiver as of the date of its discontinuance and who would, but for income or resources, be eligible for medical assistance for home and community care under the plan shall, notwithstanding any other provision of this title, be deemed a functionally disabled elderly individual for so long as the individual would have remained eligible for medical assistance under such waiver.

"(B) In the case of a State which used a health insuring organization before January 1, 1986, and which, as of December 31, 1990, had in effect a waiver under section 1115 that provides under the State plan under this title for personal care services for functionally disabled individuals, the term 'functionally disabled elderly individual' may include, at the option of the State, an individual who—

"(i) is 65 years of age or older or is disabled (as determined under the supplemental security income program under title XVI);

"(ii) is determined to meet the test of functional disability applied under the waiver as of such date; and

"(iii) meets the resource requirement and income standard that apply in the State to individuals described in section 1902(a)(10)(A)(ii)(V).

"(3) USE OF PROJECTED INCOME.—In applying section 1903(f)(1) in determining the eligibility of an individual (described in section 1902(a)(10)(C)) for medical assistance for home and community care, a State may, at its option, provide for the determination of the individual's anticipated medical ex-

penses (to be deducted from income) over a period of up to 6 months.

"(c) DETERMINATIONS OF FUNCTIONAL DISABILITY.—

"(1) IN GENERAL.—In this section, an individual is 'functionally disabled' if the individual—

"(A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

"(B) has a primary or secondary diagnosis of Alzheimer's disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

"(2) ASSESSMENTS OF FUNCTIONAL DISABILITY.—

"(A) REQUESTS FOR ASSESSMENTS.—If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) (or another person on such individual's behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which—

"(i) is used to determine whether or not the individual is functionally disabled,

"(ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

"(iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.

"(B) SPECIFICATION OF ASSESSMENT INSTRUMENT.—The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be—

"(i) one of the instruments designated under subparagraph (C)(ii); or

"(ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

"(C) SPECIFICATION OF ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

"(i) not later than July 1, 1991—

"(I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and

"(II) establish guidelines for use of the data set; and

"(ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

"(D) PERIODIC REVIEW.—Each individual who qualifies as a functionally disabled elderly individual shall have the individual's assessment periodically reviewed and revised not less often than once every 12 months.

"(E) CONDUCT OF ASSESSMENT BY INTERDISCIPLINARY TEAMS.—An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts—

"(i) with public organizations; or

"(ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

"(F) CONTENTS OF ASSESSMENT.—The interdisciplinary team must—

"(i) identify in each such assessment or review each individual's functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system; and

"(ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual's ICCP under subsection (d)(1).

"(G) APPEAL PROCEDURES.—Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

"(d) INDIVIDUAL COMMUNITY CARE PLAN (ICCP).—

"(1) INDIVIDUAL COMMUNITY CARE PLAN DEFINED.—In this section, the terms 'individual community care plan' and 'ICCP' mean, with respect to a functionally disabled elderly individual, a written plan which—

"(A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2);

"(B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual's preferences for the types and providers of services; and

"(C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and community care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

"(2) QUALIFIED COMMUNITY CARE CASE MANAGER DEFINED.—In this section, the term 'qualified community care case manager' means a nonprofit or public agency or organization which—

"(A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;

"(B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;

"(C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services;

"(D) has procedures for assuring the quality of case management services that includes a peer review process;

"(E) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and

"(F) meets such other standards, established by the Secretary, as to assure that—

"(i) such a manager is competent to perform case management functions;

"(ii) individuals whose home and community care they manage are not at risk of financial exploitation due to such a manager; and

"(iii) meets such other standards as the State may establish.

The Secretary may waive the requirement of subparagraph (C) in the case of a nonprofit agency located in a rural area.

"(3) APPEALS PROCESS.—Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals who disagree with the ICCP established.

"(e) CEILING ON PAYMENT AMOUNTS AND MAINTENANCE OF EFFORT.—

"(1) CEILING ON PAYMENT AMOUNTS.—Payments may not be made under section 1903(a) to a State for home and community care provided under this section in a quarter to the extent that the medical assistance for such care in the quarter exceeds 50 percent of the product of—

"(A) the average number of individuals in the quarter receiving such care under this section;

"(B) the average per diem rate of payment which the Secretary has determined (before the beginning of the quarter) will be payable under title XVIII (without regard to coinsurance) for extended care services to be provided in the State during such quarter; and

"(C) the number of days in such quarter.

"(2) MAINTENANCE OF EFFORT.—

"(A) ANNUAL REPORTS.—As a condition for the receipt of payment under section 1903(a) with respect to medical assistance provided by a State for home and community care (other than a waiver under section 1915(c) and other than home health care services described in section 1905(a)(7) and personal care services specified under regulations under section 1905(a)(23)), the State shall report to the Secretary, with respect to each Federal fiscal year (beginning with fiscal year 1990) and in a format developed or approved by the Secretary, the amount of funds obligated by the State with respect to the provision of home and community care to the functionally disabled elderly in that fiscal year.

"(B) REDUCTION IN PAYMENT IF FAILURE TO MAINTAIN EFFORT.—If the amount reported under subparagraph (A) by a State with respect to a fiscal year is less than the amount reported under subparagraph (A) with respect to fiscal year 1989, the Secretary shall

provide for a reduction in payments to the State under section 1903(a) in an amount equal to the difference between the amounts so reported.

"(f) MINIMUM REQUIREMENTS FOR HOME AND COMMUNITY CARE.—

"(1) REQUIREMENTS.—Home and Community care provided under this section must meet such requirements for individuals' rights and quality as are published or developed by the Secretary under subsection (k). Such requirements shall include—

"(A) the requirement that individuals providing care are competent to provide such care; and

"(B) the rights specified in paragraph (2).

"(2) SPECIFIED RIGHTS.—The rights specified in this paragraph are as follows:

"(A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual determined incompetent) to participate in planning care or changes in care.

"(B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

"(C) The right to confidentiality of personal and clinical records.

"(D) The right to privacy and to have one's property treated with respect.

"(E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

"(F) The right to education or training for oneself and for members of one's family or household on the management of care.

"(G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP.

"(H) The right to be fully informed orally and in writing of the individual's rights.

"(I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

"(J) Any other rights established by the Secretary.

"(g) MINIMUM REQUIREMENTS FOR SMALL COMMUNITY CARE SETTINGS.—

"(1) SMALL COMMUNITY CARE SETTINGS DEFINED.—In this section, the term 'small community care setting' means—

"(A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

"(B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

"(2) MINIMUM REQUIREMENTS.—A small community care setting in which community care is provided under this section must—

"(A) meet such requirements as are published or developed by the Secretary under subsection (k);

"(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;

"(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting;

"(D) meet any applicable State or local requirements regarding certification or licensure;

"(E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and

"(F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

"(h) MINIMUM REQUIREMENTS FOR LARGE COMMUNITY CARE SETTINGS.—

"(1) LARGE COMMUNITY CARE SETTING DEFINED.—In this section, the term 'large community care setting' means—

"(A) a nonresidential setting in which more than 8 individuals are served; or

"(B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.

"(2) MINIMUM REQUIREMENTS.—A large community care setting in which community care is provided under this section must—

"(A) meet such requirements as are published or developed by the Secretary under subsection (k);

"(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;

"(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting; and

"(D) meet the requirements of paragraphs (2) and (3) of section 1919(d) (relating to administration and other matters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1919(d)(2) (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.

"(3) DISCLOSURE OF OWNERSHIP AND CONTROL INTERESTS AND EXCLUSION OF REPEATED VIOLATORS.—A community care setting—

"(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1124(a)(3)) in the setting; and

"(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this title or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

"(i) SURVEY AND CERTIFICATION PROCESS.—

"(1) CERTIFICATIONS.—

"(A) RESPONSIBILITIES OF THE STATE.—Under each State plan under this title, the State shall be responsible for certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h). The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

"(B) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h).

"(C) FREQUENCY OF CERTIFICATIONS.—Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

"(2) REVIEWS OF PROVIDERS.—

"(A) IN GENERAL.—The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider's performance in providing the care required under ICCP's in accordance with the requirements of subsection (f).

"(B) SPECIAL REVIEWS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a provider of home or community care with any of the requirements of subsection (f), the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

"(3) SURVEYS OF COMMUNITY CARE SETTINGS.—

"(A) IN GENERAL.—The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a community care setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall review each State's procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(B) SURVEY PROTOCOL.—Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k).

"(C) PROHIBITION OF CONFLICT OF INTEREST IN SURVEY TEAM MEMBERSHIP.—A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) or who has a personal or familial financial interest in the setting being surveyed.

"(D) VALIDATION SURVEYS OF COMMUNITY CARE SETTINGS.—The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g), but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's noncompliance with such requirements is

binding and supersedes that of the State survey.

"(E) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h), the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING OF PROVIDERS AND SETTINGS.—Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h).

"(5) INVESTIGATION OF ALLEGATIONS OF INDIVIDUAL NEGLECT AND ABUSE AND MISAPPROPRIATION OF INDIVIDUAL PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual's property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

"(6) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

"(ii) copies of cost reports (if any) of such providers and settings filed under this title,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICES OF SUBSTANDARD CARE.—If a State finds that—

"(i) a provider of home or community care has provided care of substandard quality with respect to an individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of each such individual and (II) individuals receiving home or community care from that provider under this title, or

"(ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate family members of such individuals.

"(C) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

"(j) ENFORCEMENT PROCESS FOR PROVIDERS OF COMMUNITY CARE.—

"(1) STATE AUTHORITY.—

"(A) IN GENERAL.—If a State finds, on the basis of a review under subsection (i)(2) or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies available to a State to remedy a provider's deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

"(B) CIVIL MONEY PENALTY.—

"(i) IN GENERAL.—Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A)) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

"(ii) DEADLINE AND GUIDANCE.—Each State which elects to provide home and community care under this section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

"(2) SECRETARIAL AUTHORITY.—

"(A) FOR STATE PROVIDERS.—With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money remedy described in paragraph (1)(B)(i).

"(B) OTHER PROVIDERS.—With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

"(C) CIVIL MONEY PENALTY.—If the Secretary finds on the basis of a review under subsection (i)(2) or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

"(k) SECRETARIAL RESPONSIBILITIES.—

"(1) PUBLICATION OF INTERIM REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including—

"(i) the requirements of subsection (c)(2) (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) (relating to qualifications for qualified case managers), of subsection (f) (relating to minimum requirements for home and community care), of subsection (g) (relating to minimum requirements for small community care settings), and of subsection (h) (relating to minimum requirements for large community care settings, and

"(ii) survey protocols (for use under subsection (i)(3)(A)) which relate to such requirements.

"(B) MINIMUM PROTECTIONS.—Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

"(2) DEVELOPMENT OF FINAL REQUIREMENTS.—The Secretary shall develop, by not later than October 1, 1992—

"(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

"(B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

"(3) NO DELEGATION TO STATES.—The Secretary's authority under this subsection shall not be delegated to States.

"(4) NO PREVENTION OF MORE STRINGENT REQUIREMENTS BY STATES.—Nothing in this section shall be construed as preventing States

from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

"(l) WAIVER OF STATEWIDENESS.—States may waive the requirement of section 1902(a)(1) (related to State wideness) for a program of home and community care under this section.

"(m) LIMITATION ON AMOUNT OF EXPENDITURES AS MEDICAL ASSISTANCE.—

"(1) LIMITATION ON AMOUNT.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $40,000,000, for fiscal year 1992, $70,000,000, for fiscal year 1993, $130,000,000, for fiscal year 1994, $160,000,000, and for fiscal year 1995, $180,000,000.

"(2) ASSURANCE OF ENTITLEMENT TO SERVICE.—A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) to individuals described in subsection (b) for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by the State, and approved by the Secretary, for the provision of home and community care under this section.

"(3) LIMITATION ON ELIGIBILITY.—The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

"(4) ALLOCATION OF MEDICAL ASSISTANCE.—The Secretary shall establish a limitation on the amount of Federal medical assistance available to any State during the State's election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.".

(c) PAYMENT FOR HOME AND COMMUNITY CARE.—

(1) REASONABLE AND ADEQUATE PAYMENT RATES.—Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(13)—

(i) by striking "and" at the end of subparagraph (D),

(ii) by inserting "and" at the end of subparagraph (E), and

(iii) by adding at the end the following new subparagraph:

"(F) for payment for home and community care (as defined in section 1929(a) and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards;"; and

(B) in subsection (h), by adding before the period at the end the following: "or to limit the amount of payment that may be made under a plan under this title for home and community care".

(2) DENIAL OF PAYMENT FOR CIVIL MONEY PENALTIES, ETC.—Section 1903(i)(8) of such Act (42 U.S.C. 1396b(i)(8)) is amended by inserting "(A)" after "medical assistance" and by inserting before the semicolon at the end the following: "or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this title or title XI or for legal expenses in defense of an exclusion or civil money penalty under this title or title XI if there is no reasonable legal ground for the provider's case".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902(j) (42 U.S.C. 1396a(j)) is amended by striking "(21)" and inserting "(22)".

(2) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking "through (20)" and inserting "through (21)".

(e) EFFECTIVE DATES.—

(1) Except as provided in this subsection, the amendments made by this section shall apply to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2)(A) The amendments made by subsection (c)(1) shall apply to home and community care furnished on or after July 1, 1991, or, if later, 30 days after the date of publication of interim regulations under section 1929(k)(1).

(B) The amendment made by subsection (c)(2) shall apply to civil money penalties imposed after the date of the enactment of this Act.

(f) WAIVER OF PAPERWORK REDUCTION, ETC.—Chapter 35 of title 44, United States Code, and Executive Order 12291 shall not apply to information and regulations required for purposes of carrying out this Act and implementing the amendments made by this Act.

SEC. 4712. COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.

(a) PROVISION AS OPTIONAL SERVICE.—Section 1905(a) (42 U.S.C. 1396d(a)) as amended by section 4711 is further amended—

(1) by striking "and" at the end of paragraph (23);

(2) by redesignating paragraph (24) as paragraph (25); and

(3) by inserting after paragraph (23) the following new paragraph:

"(24) community supported living arrangements services (to the extent allowed and as defined in section 1930).".

(b) COMMUNITY SUPPORTED LIVING ARRANGEMENTS.—Title XIX (42 U.S.C. 1396 et seq.) as amended by sections 4402 and 4711 is further amended—

(1) by redesignating section 1930 as section 1931; and

(2) by inserting after section 1929 the following new section:

"COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES

"SEC. 1930. (a) COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.—In this title, the term 'community supported living arrangements services' means one or more of the following services meeting the requirements of subsection (h) provided in a State eligible to provide services under this section (as defined in subsection (d)) to assist a developmentally disabled individual (as defined in subsection (b)) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:

"(1) Personal assistance.

"(2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).

"(3) 24-hour emergency assistance (as defined by the Secretary).

"(4) Assistive technology.

"(5) Adaptive equipment.

"(6) Other services (as approved by the Secretary, except those services described in subsection (g)).

"(7) Support services necessary to aid an individual to participate in community activities.

"(b) DEVELOPMENTALLY DISABLED INDIVIDUAL DEFINED.—In this title the term, 'developmentally disabled individual' means an individual who as defined by the Secretary is described within the term 'mental retardation and related conditions' as defined in regulations as in effect on July 1, 1990, and who is residing with the individual's family or legal guardian in such individual's own home in which no more than 3 other recipients of services under this section are residing and without regard to whether or not such individual is at risk of institutionalization (as defined by the Secretary).

"(c) CRITERIA FOR SELECTION OF PARTICIPATING STATES.—The Secretary shall develop criteria to review the applications of States submitted under this section to provide community supported living arrangement services. The Secretary shall provide in such criteria that during the first 5 years of the provision of services under this section that no less than 2 and no more than 8 States shall be allowed to receive Federal financial participation for providing the services described in this section.

"(d) QUALITY ASSURANCE.—A State selected by the Secretary to provide services under this section shall in order to continue to receive Federal financial participation for providing services under this section be required to establish and maintain a quality assurance program, that provides that—

"(1) the State will certify and survey providers of services under this section (such surveys to be unannounced and average at least 1 a year);

"(2) the State will adopt standards for survey and certification that include—

"(A) minimum qualifications and training requirements for provider staff;

"(B) financial operating standards; and

"(C) a consumer grievance process;

"(3) the State will provide a system that allows for monitoring boards consisting of providers, family members, consumers, and neighbors;

"(4) the State will establish reporting procedures to make available information to the public;

"(5) the State will provide ongoing monitoring of the health and well-being of each recipient;

"(6) the State will provide the services defined in subsection (a) in accordance with an individual support plan (as defined by the Secretary in regulations); and

"(7) the State plan amendment under this section shall be reviewed by the State Planning Council established under section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the Protection and Advocacy System established under section 142 of such Act.".

The Secretary shall not approve a quality assurance plan under this subsection and allow a State to continue to receive Federal financial participation under this section unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this subsection.

"(e) MAINTENANCE OF EFFORT.—States selected by the Secretary to receive Federal financial participation to provide services under this section shall maintain current levels of spending for such services in order to be eligible to continue to receive Federal financial participation for the provision of such services under this section.

"(f) EXCLUDED SERVICES.—No Federal financial participation shall be allowed for the provision of the following services under this section:

"(1) Room and board.

"(2) Cost of prevocational, vocational and supported employment.

"(g) WAIVER OF REQUIREMENTS.—The Secretary may waive such provisions of this title as necessary to carry out the provisions of this section including the following requirements of this title—

"(1) comparability of amount, duration, and scope of services; and

"(2) statewideness.

"(h) MINIMUM PROTECTIONS.—

"(1) PUBLICATION OF INTERIM AND FINAL REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

"(B) MINIMUM PROTECTIONS.—Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d), that—

"(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

"(ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

"(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

"(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

"(2) SPECIFIED REMEDIES.—If the Secretary finds that a provider has not met an applicable requirement under subsection (h), the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1123A(a).

"(i) TREATMENT OF FUNDS.—Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

"(j) LIMITATION ON AMOUNTS OF EXPENDITURES AS MEDICAL ASSISTANCE.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $5,000,000, for fiscal year 1992, $10,000,000, for fiscal year 1993, $20,000,000, for fiscal year 1994, $30,000,000, for fiscal year 1995, $35,000,000, and for fiscal years thereafter such sums as provided by Congress.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) APPLICATION PROCESS.—The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).

SEC. 4713. PROVIDING FEDERAL MEDICAL ASSISTANCE FOR PAYMENTS FOR PREMIUMS FOR "COBRA" CONTINUATION COVERAGE WHERE COST EFFECTIVE.

(a) OPTIONAL PAYMENT OF COBRA PREMIUMS FOR QUALIFIED COBRA CONTINUATION BENEFICIARIES.—Section 1902 (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)—

(A) by striking "and" at the end of subparagraph (D),

(B) by adding "and" at the end of subparagraph (E),

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2)) for qualified COBRA continuation beneficiaries described in section 1902(u)(1);", and

(D) in the matter following subparagraph (E), by striking "and" before "(X)" and by inserting before the semicolon at the end the following: ", and (XI) the medical assistance made available to an individual described in subsection (u)(1) who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2))"; and

(2) by adding after the subsections added by section 4604 and 4701(b) the following new subsection:

"(u)(1) Individuals described in this paragraph are individuals—

"(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved,

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

"(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this title resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

"(2) For purposes of subsection (a)(10)(F) and this subsection, the term 'COBRA premiums' means the applicable premium imposed with respect to COBRA continuation coverage.

"(3) In this subsection, the term 'COBRA continuation coverage' means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

"(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17), require or permit such treatment for other individuals.".

(b) CONFORMING AMENDMENT.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(1) by striking "or" at the end of clause (viii),

(2) by adding "or" at the end of clause (ix), and

(3) by inserting after clause (ix) the following new clause:

"(x) individuals described in section 1902(u)(1),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1991.

SEC. 4714. PROVISIONS RELATING TO SPOUSAL IMPOVERISHMENT.

(a) CLARIFICATION OF NON-APPLICATION OF STATE COMMUNITY PROPERTY LAWS.—Section 1924(b)(2) (42 U.S.C. 1396r-1(b)(2)) as amended by subsection (a), is further amended by striking ", after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance" and inserting "for purposes of the post-eligibility income determination described in subsection (d)".

(b) CLARIFICATION OF TRANSFER OF RESOURCES TO COMMUNITY SPOUSE.—Section 1924(f)(1) (42 U.S.C. 1396r-5(f)(1)) is amended by striking "section 1917" and inserting "section 1917(c)(1)".

(c) CLARIFICATION OF PERIOD OF CONTINUOUS ELIGIBILITY.—Section 1924(c)(1) (42 U.S.C. 1396r-1(c)(1)) is amended by striking "the beginning of a continuous period of institutionalization of the institutionalized spouse" each place it appears and inserting "the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse".

(d) EFFECTIVE DATE.—The amendments made this section shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988.

SEC. 4715. DISREGARDING GERMAN REPARATION PAYMENTS FROM POST-ELIGIBILITY TREATMENT OF INCOME UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL.—Section 1902(r)(1) (42 U.S.C. 1396a(r)(1)) is amended by inserting "there shall be disregarded reparation payments made by the Federal Republic of Germany and" after "under such a waiver".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act.

SEC. 4716. AMENDMENTS RELATING TO MEDICAID TRANSITION PROVISION.

(a) AMENDMENTS.—Subsection (f) of section 1925 (42 U.S.C. 1396s) is amended—

(1) in subsection (b)(2)(B)(i), by inserting at the end the following: "A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.";

(2) in subsection (b)(2)(B), by adding at the end the following new clause:

"(iii) CLARIFICATION ON FREQUENCY OF REPORTING.—A State may not require that a family receiving extended assistance under this subsection or subsection (a) report more frequently than as required under clause (i) or (ii).."; and

(3) in subsection (b)(3)(B), by adding at the end the following: "No such termination shall be effective earlier than 10 days after the date of mailing of such notice.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of the Family Support Act of 1988.

SEC. 4717. CLARIFYING EFFECT OF HOSPICE ELECTION.

Section 1905(o)(1)(A) (42 U.S.C. 1396d(o)(1)(A)) is amended by inserting "and for which payment may otherwise be made under title XVIII" after "described in section 1812(d)(2)(A)".

SEC. 4718. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES.

(a) IN GENERAL.—For purposes of section 1903(f)(1)(B), for payments made before, on, or after the date of the enactment of this Act, a State described in subparagraph (B) may use, in determining the "highest amount which would ordinarily be paid to a family of the same size" (under the State's plan approved under part A of title IV of such Act) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

(b) STATES COVERED.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987).

SEC. 4719. CODIFICATION OF COVERAGE OF REHABILITATION SERVICES.

(a) IN GENERAL.—Section 1905(a)(13) (42 U.S.C. 1396d(a)(13)) is amended by inserting before the semicolon at the end the following: ", including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4720. PERSONAL CARE SERVICES FOR MINNESOTA.

(a) CLARIFICATION OF COVERAGE.—In applying section 1905 of the Social Security Act with respect to Minnesota, medical assistance shall include payment for personal care services described in subsection (b).

(b) PERSONAL CARE SERVICES DEFINED.—For purposes of this section, the term "personal care services" means services—

(1) prescribed by a physician for an individual in accordance with a plan of treatment,

(2) provided by a person who is qualified to provide such services who is not a member of the individual's family,

(3) supervised by a registered nurse, and

(4) furnished in a home or other location; but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act and shall apply with respect to—

(1) personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989; and

(2) such services furnished before October 1, 1994.

(2) such services furnished before October 1, 1994.

SEC. 4721. MEDICAID COVERAGE OF PERSONAL CARE SERVICES OUTSIDE THE HOME.

(a) IN GENERAL.—Section 1905(a)(7) (42 U.S.C. 1396d(a)(7)) is amended by striking "services" and inserting "services including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective with respect to personal care services provided on or after October 1, 1994.

SEC. 4722. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY TREATMENT SERVICES.

Section 1905(a) of the Social Security Act is amended by adding at the end the following new sentence: "No service (including counseling) shall be excluded from the definition of 'medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency.".

SEC. 4723. MEDICAID SPENDDOWN OPTION.

(a) IN GENERAL.—Section 1903(f)(2) (42 U.S.C. 1396b(f)(2)) is amended by—

(1) inserting "(A)" after "(2)"; and

(2) by adding before the period at the end the following: "or, (B) notwithstanding section 1916 at State option, an amount paid by such family, at the family's option, to the State, provided that the amount, when combined with costs incurred in prior months, is sufficient when excluded from the family's income to reduce such family's income below the applicable income limitation described in paragraph (1). The amount of State expenditures for which medical assistance is available under subsection (a)(1) will be reduced by amounts paid to the State pursuant to this subparagraph."

(b) CONFORMING AMENDMENT.—Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by inserting after "insurance premiums" ", payments made to the State under section 1903(f)(2)(B),".

SEC. 4724. OPTIONAL STATE MEDICAID DISABILITY DETERMINATIONS INDEPENDENT OF THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) as amended by this title, is further amended by adding at the end the following new subsection:

"(v)(1) A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1614(a) of the Social Security Act.".

Subpart C—Health Maintenance Organizations

SEC. 4731. REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS.

(a) PHYSICIAN PAYMENT PLAN.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) as amended by this title is further amended—

(1) by striking ", and" at the end of clause (viii) and inserting a semicolon;

(2) by striking the period at the end of clause (ix) and inserting "; and"; and

(3) by adding at the end the following new clause:

"(x) any physician incentive plan that it operates meets the requirements described in section 1876(i)(8).".

(b) REPEAL OF PROHIBITION AGAINST PHYSICIAN INCENTIVE PAYMENTS.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is—

(1) REPEAL OF PROHIBITION.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended by striking "or an entity with a contract under section 1903(m)".

(2) PENALTIES.—Section 1903(m)(5)(A) (42 U.S.C. 1396b(m)(5)(A)) is amended—

(A) by striking "or" at the end of clause (iii);

(B) by adding "or" at the end of clause (iv); and

(C) by adding at the end the following new clause:

"(v) fails to comply with the requirements of section 1876(i)(8),".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b)(2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by subsection (b)(1) shall take effect on the date of the enactment of this Act.

SEC. 4732. SPECIAL RULES.

(a) WAIVER OF 75 PERCENT RULE FOR PUBLIC ENTITIES.—Section 1903(m)(2)(D) (42 U.S.C. 1396b(m)(2)(D)) is amended by striking "(i) special circumstances warrant such modification or waiver, and (ii)".

(b) EXTENDING SPECIAL TREATMENT TO MEDICARE COMPETITIVE MEDICAL PLANS.—

(1) 6-MONTH MINIMUM ENROLLMENT PERIOD OPTION.—Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by inserting "or with an eligible organization with a contract under section 1876" after "1903(m)(2)(A)".

(2) ENROLLMENT LOCK-IN.—Section 1903(m)(2)(F)(i) (42 U.S.C. 1396b(m)(2)(F)(i)) is amended—

(A) by striking "(G) or" and inserting "(G),", and

(B) adding at the end the following: "or with an eligible organization with a contract under section 1876 which meets the requirement of subparagraph (A)(ii), or".

(c) AUTOMATIC 1-MONTH REENROLLMENT FOR SHORT PERIODS OF INELIGIBILITY.—Section 1903(m)(2) is amended by adding at the end the following new subparagraph:

"(H) In the case of an individual who—

"(i) in a month is eligible for benefits under this title and enrolled with a health maintenance organization with a contract under this paragraph,

"(ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

"(iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the health maintenance organization described in clause (i) if the organization continues to have a contract under this paragraph with the State.".

(d) ELIMINATION OF PROVISIONAL QUALIFICATION FOR HMOs.—Section 1903(m) is amended—

(1) in paragraph (2)(A)(i), by striking "(or the State as authorized by paragraph (3))", and

(2) by striking paragraph (3).

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4733. EXTENSION AND EXPANSION OF MINNESOTA PREPAID MEDICAID DEMONSTRATION PROJECT.

Section 507 of the Family Support Act of 1988 is amended—

(1) by striking "1991" and inserting "1996"; and

(2) by striking the period at the end and inserting the following: ", and shall amend such waiver to permit the State to expand such demonstration project to other counties if the amount of medical assistance provided under title XIX of such Act after such expansion will not exceed the amount of medical assistance provided under such title had the project not been expanded to other counties.".

SEC. 4734. TREATMENT OF CERTAIN COUNTY-OPERATED HEALTH INSURING ORGANIZATIONS.

Section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in paragraph (2)(A), by inserting "and in paragraph (3)" after "subparagraph (B)", and

(2) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

"(B) A health insuring organization described in this subparagraph is one that—

"(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

"(ii) enrolls all medicaid beneficiaries residing in the county in which it operates;

"(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

"(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

"(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act) in a manner consistent with the requirements of such section; and

"(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act, and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

"(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 10 percent of the number of such beneficiaries in the State of California.

"(D) In this paragraph, the term 'medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act, other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title.".

Subpart D—Demonstration Projects and Home and Community-Based Waivers

SEC. 4741. HOME AND COMMUNITY-BASED WAIVERS.

(a) TREATMENT OF ROOM AND BOARD.—(1) Subsections (c)(1) and (d)(1) of section 1915 (42 U.S.C. 1396n) are each amended by adding at the end the following: "For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.".

(b) ADJUSTMENT TO 1915(d) CEILING TO TAKE INTO ACCOUNT THE ADDED COSTS OF OBRA 87.—Section 1915(d)(5)(B)(iv) (42 U.S.C. 1396n(d)(5)(B)(iv)) is amended by striking "this title" the first place it appears and inserting "this title whose provisions become effective on or after such date".

SEC. 4742. TIMELY PAYMENT UNDER WAIVERS OF FREEDOM OF CHOICE OF HOSPITAL SERVICES.

(a) IN GENERAL.—Section 1915(b)(4) (42 U.S.C. 1396n(b)(4)) is amended by inserting before the period at the end the following: "and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1902(a)(37)(A)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act.

(c) TREATMENT OF PERSONS WITH MENTAL RETARDATION OR A RELATED CONDITION IN A DECERTIFIED FACILITY.—

(1) IN GENERAL.—Section 1915(c)(7) (42 U.S.C. 1396n(c)(7)) is amended by adding at the end the following new subparagraph:

"(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981, but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act is terminated on or after the date of the enactment of this Act.

(d) SCOPE OF RESPITE CARE.—

(1) IN GENERAL.—Section 1915(c)(4) is amended by adding at the end the following: "Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981.

(e) PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT.—In the case of a waiver under section 1915(c) of the Social Security Act for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act.

SEC. 4744. PROVISIONS RELATING TO FRAIL ELDERLY DEMONSTRATION PROJECT-WAIVERS.

(a) EXPANSION OF WAIVERS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) in paragraph (1), by striking "10" and inserting "15"; and

(2) by adding at the end the following new paragraph:

"(3) In the case of an organization receiving an initial waiver under this subsection on or after October 1, 1990, the Secretary (at the request of the organization) shall not require the organization to provide services under title XVIII of the Social Security Act on a capitated or other risk basis during the first 2 years of the waiver.".

(b) APPLICATION OF SPOUSAL IMPOVERISHMENT RULES.—(1) Section 1924(a) (42 U.S.C. 1396r-5(a)) is amended by adding at the end the following new paragraph:

"(5) APPLICATION TO INDIVIDUALS RECEIVING SERVICES FROM ORGANIZATIONS RECEIVING CERTAIN WAIVERS.—This section applies to individuals receiving institutional or noninstitutional services from any organization re-

ceiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986.".

(2) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(4) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.".

SEC. 4745. DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

(a) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—(A) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

(B) In entering into agreements with States under this section the Secretary shall provide that at least 1 and no more than 2 of the projects are conducted on a substate basis.

(2) REQUIREMENTS.—(A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that—

(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act, for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of section 1902(l) of such Act (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

(v) the project provides for coverage of benefits consistent with subsection (b); and

(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

(B) The Secretary may waive the requirements of clause (ii) of this paragraph with respect to those projects described in subparagraph (B) of paragraph (1).

(3) PERMISSIBLE RESTRICTIONS.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

(4) EXTENSION OF ELIGIBILITY.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

(5) WAIVER OF REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act) as may be required to provide for additional coverage of individuals under projects under this section.

(B) NONWAIVABLE PROVISIONS.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act or the Federal medical assistance percentage specified in section 1905(b) of such Act.

(b) BENEFITS.—

(1) IN GENERAL.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act.

(2) LIMITS ON BENEFITS.—

(A) REQUIRED.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

(B) PERMISSIBLE.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

(3) USE OF UTILIZATION CONTROLS.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

(c) PREMIUMS AND COST-SHARING.—

(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

(3) INCOME DETERMINATION.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act for individuals entitled to benefits under part A of title IV of such Act.

(d) DURATION.—Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

(e) LIMITS ON EXPENDITURES AND FUNDING.—

(1) IN GENERAL.—(A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to no more than $12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than $4,000,000 in fiscal year 1994.

(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

(2) NO FUNDING OF CURRENT BENEFICIARIES.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act) of such expenditures.

(f) EVALUATION AND REPORT.—

(1) EVALUATIONS.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to—

(A) access to, and costs of, health care,

(B) private health care insurance coverage, and

(C) premiums and cost-sharing.

(2) REPORTS.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1995.

(g) DEFINITIONS.—In this section:

(1) The term "income official poverty line" means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(2) The term "project" refers to a demonstration project under subsection (a).

SEC. 4746. MEDICAID RESPITE DEMONSTRATION PROJECT EXTENDED.

Section 9414 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) by amending subsection (e) to read as follows:

"(e) DURATION.—The project under this section may continue until September 30, 1992."; and

(2) in subsection (d), by striking the last sentence and inserting in lieu thereof the following new sentence: "For the period beginning October 1, 1990, and ending September 30, 1992, Federal payments for the project shall not exceed amounts expended under the project in the preceding fiscal year.".

SEC. 4747. DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS.

(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act, and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS).

(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act shall be made available to individuals described in subsection (a) who receive services under a demonstration project under such paragraph.

(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

(A) general and preventative medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

(B) prescription drugs, including drugs for the purposes of preventative health care services;

(C) counseling and social services;

(D) substance abuse treatment services (including services for multiple substances abusers);

(E) home care services (including assistance in carrying out activities of daily living);

(F) case management;

(G) health education services;

(H) respite care for caregivers;

(I) dental services; and

(J) diagnostic and laboratory services.

(c) AGREEMENTS WITH STATES.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act and shall terminate on the date that is 3 years after the date of commencement.

(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act.

(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act as the Secretary determines to be necessary to carry out the purposes of this section.

(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.

Subpart E—Miscellaneous

SEC. 4751. REQUIREMENTS FOR ADVANCED DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a(a)), as amended by sections 4401(a)(2), 4601(d), 4701(a), 4711(a), and 4722 of this title, is amended—

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (55),

(B) by striking the period at the end of paragraph (56) and inserting "; and", and

(C) by inserting after paragraph (56) the following new paragraphs:

"(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization (as defined in section 1903(m)(1)(A)) receiving funds under the plan shall comply with the requirements of subsection (w);

"(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w).''; and

(2) by adding at the end the following new subsection:

"(w)(1) For purposes of subsection (a)(57) and sections 1903(m)(1)(A) and 1919(c)(2)(E), the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

"(A) to provide written information to each such individual concerning—

"(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

"(ii) the provider's or organization's written policies respecting the implementation of such rights;

"(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

"(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

"(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

"(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

"(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

"(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

"(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

"(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

"(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

"(E) in the case of a health maintenance organization, at the time of enrollment of the individual with the organization.

"(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.".

"(4) In this subsection, the term 'advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(b) CONFORMING AMENDMENTS.—

(1) Section 1903(m)(1)(A)(42 U.S.C. 1396b(m)(1)(A)) is amended—

(A) by inserting "meets the requirement of section 1902(w)" after "which" the first place it appears, and

(B) by inserting "meets the requirement of section 1902(a) and" after "which" the second place it appears.

(2) Section 1919(c)(2) of such Act (42 U.S.C. 1396r(c)(2)) is amended by adding at the end the following new subparagraph:

"(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A nursing facility must comply with the requirement of section 1902(w) (relating to maintaining written policies and procedures respecting advance directives).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(d) PUBLIC EDUCATION CAMPAIGN.—

(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section, shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section, to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, add a page to the medicare handbook with respect to the provisions of this section.

SEC. 4752. IMPROVEMENT IN QUALITY OF PHYSICIAN SERVICES.

(a) USE OF UNIQUE PHYSICIAN IDENTIFIERS.—

(1) ESTABLISHMENT OF SYSTEM.—

(A) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) as amended by sections 4601(d), 4701(a), 4711(a), 4722(a), and 4751(a) is further amended by adding at the end the following new subsection:

"(x) The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this title.".

(B) DEADLINE AND CONSIDERATIONS.—The system established under the amendment made by subparagraph (A) may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) REQUIRING INCLUSION WITH CLAIMS.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title, is amended—

(A) by striking the period at the end of paragraph (11) and inserting "; or", and

(B) by inserting after paragraph (11) the following new paragraph:

"(12) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x), unless the claim for the services includes the unique physician identifier provided under such system.".

(b) MAINTENANCE OF ENCOUNTER DATA BY HEALTH MAINTENANCE ORGANIZATIONS.—

(1) IN GENERAL.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)), as amended by this title, is amended—

(A) by striking "and" at the end of clause (ix),

(B) by striking the period at the end of clause (x) and inserting "; and", and

(C) by adding at the end the following new clause:

"(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contract years beginning after the date of the establishment of the system described in section 1902(x) of the Social Security Act.

(c) MAINTENANCE OF LIST OF PHYSICIANS BY STATES.—

(1) IN GENERAL.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by this title, is further amended—

(A) by striking "and" at the end of paragraph (56),

(B) by striking the period at the end of paragraph (57) and inserting "; and", and

(C) by inserting after paragraph (57) the following new paragraph:

"(58) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (v)) of all physicians who are certified to participate under the State plan.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x) of the Social Security Act.

(d) FOREIGN MEDICAL GRADUATE CERTIFICATION.—

(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER.—The Secretary of Health and Human Service shall provide, in the identifier system established under section 1902(x) of the Social Security Act, that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act) shall be issued an identifier under such system unless the individual—

(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

(C) has held a license from 1 or more States continuously since 1958.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.

(e) MINIMUM QUALIFICATIONS FOR BILLING FOR PHYSICIANS' SERVICES TO CHILDREN AND PREGNANT WOMEN.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title and subsection (a)(2) of this section, is further amended—

(1) by striking the period at the end of paragraph (13) and inserting "; or"; and

(2) by inserting after paragraph (13) the following new paragraph:

"(14) with respect to any amount expended for physicians' services furnished by a physician on or after January 1, 1992, to—

"(A) a child under 21 years of age, unless the physician—

"(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics,

"(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

"(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

"(iv) is a member of the National Health Service Corps,

"(v) documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

"(vi) has been certified by the Secretary as qualified to provide physicians' services to a child under 21 years of age; or

"(B) to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician—

"(i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics,

"(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

"(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

"(iv) is a member of the National Health Service Corps,

"(v) documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

"(vi) has been certified by the Secretary as qualified to provide physicians' services to pregnant women.".

(f) REPORTING OF MISCONDUCT OR SUBSTANDARD CARE.—

(1) IN GENERAL.—Section 1921(a) (42 U.S.C. 1396r-2(a)) is amended—

(A) in paragraph (1), in the matter before subparagraph (A), by inserting "(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)" after "health care practitioners"; and

(B) in paragraph (1), by adding at the end the following new subparagraph:

"(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.

SEC. 4753. CLARIFICATION OF AUTHORITY OF INSPECTOR GENERAL.

Section 1128A(j) (42 U.S.C. 1320a-7a(j)) is amended—

(1) by striking "(j)" and inserting "(j)(1)"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.".

SEC. 4754. NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN.

(a) IN GENERAL.—Section 1902(a)(41) (42 U.S.C. 1396a(a)(41)) is amended by inserting "and, in the case of a physician and not-

withstanding paragraph (7), the State medical licensing board" after "shall promptly notify the Secretary".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

SEC. 4755. MISCELLANEOUS PROVISIONS.

(a) PSYCHIATRIC HOSPITALS.—

(1) CLARIFICATION OF COVERAGE OF INPATIENT PSYCHIATRIC HOSPITAL SERVICES.—

(A) IN GENERAL.—Section 1905(h)(1)(A) (42 U.S.C. 1396d(h)(1)(A)), as amended by section 2340(b) of the Deficit Reduction Act of 1984, is amended by inserting "or in another inpatient setting that the Secretary has specified in regulations" after "1861(f)".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the enactment of the Deficit Reduction Act of 1984.

(2) INTERMEDIATE SANCTIONS FOR PSYCHIATRIC HOSPITALS.—Section 1902 (42 U.S.C. 1396a) as amended by this title is further amended by adding at the end the following new subsection:

"(y)(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1905(h)) and further finds that the hospital's deficiencies—

"(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

"(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

"(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this title—

"(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

"(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1903(a) with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this title.

"(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

"(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

"(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.".

(b) STATE UTILIZATION REVIEW SYSTEMS.—Section 9432 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after "IN GENERAL.—",

(B) by striking ", during the period" and all that follows through "Congress,", and

(C) by adding at the end the following new paragraph:

"(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program for ambulatory surgery, preadmission testing, or same-day surgery.";

(2) in subsection (b)(4), by inserting "and subsection (d)" after "In this subsection"; and

(3) by adding at the end the following new subsection:

"(d) REPORT.—The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States—

"(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

"(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.".

(c) ADDITIONAL MISCELLANEOUS PROVISIONS.—

(1) Effective July 1, 1990—

(A) section 1902(a)(10)(C)(iv) of the Social Security Act is amended by striking "through (20)" and inserting "through (21)", and

(B) section 1902(j) of such Act is amended by striking "through (21)" and inserting "through (22)".

(2) Effective as if included in subtitle D of title VI of the Omnibus Budget Reconciliation Act of 1989, section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)) is amended by adding at the end the following: "This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.".

(3) Section 505(b) (42 U.S.C. 705(b)) is amended in the matter preceding paragraph (1) by striking "requirement" and inserting "requirements".

PART 5—PROVISIONS RELATING TO NURSING HOME REFORM

SEC. 4801. TECHNICAL CORRECTIONS RELATING TO NURSING HOME REFORM.

(a) NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING.—Section 1919(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended—

(i) by striking "A nursing facility" and inserting "(i) Except as provided in clause (ii), a nursing facility";

(ii) by striking "(on a full-time, temporary, per diem, or other basis) and inserting "on a full-time basis";

(iii) by striking "(i)" and "(ii)" and inserting "(I)" and "(II)"; and

(iv) by adding at the end the following:

"(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).".

(3) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY.—Section 1919(b)(5)(C) (42 U.S.C. 1396r(b)(5)(C)) is amended by striking "the State registry established under subsection (e)(2)(A) as to information in the registry" and inserting "any State registry established under subsection (e)(2)(A) that the facility believes will include information".

(4) RETRAINING OF NURSE AIDES.—Section 1919(b)(5)(D) (42 U.S.C. 1396r(b)(5)(D)) is amended by striking the period at the end and inserting ", or a new competency evaluation program.".

(5) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES.—Section 1919(f)(2)(A)(iv) (42 U.S.C. 1396r(f)(2)(A)(iv)) is amended—

(A) in subclause (I), by striking "and" at the end;

(B) in subclause (II), by inserting after "nurse aide" the following: "who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program";

(C) in subclause (II), by striking the period at the end and inserting ", and"; and

(D) by adding at the end the following new subclause:

"(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.".

(6) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS.—

(A) IN GENERAL.—Section 1919(f)(2)(B)(iii)(I) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended to read as follows:

"(I) offered by or in a nursing facility which, within the previous 2 years—

"(a) has operated under a waiver under subsection (b)(4)(C)(ii) that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) for a period in excess of 48 hours during a week;

"(b) has been subject to an extended (or partial extended) survey under section 1819(g)(2)(B)(i) or subsection (g)(2)(B)(i); or

"(c) has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or subsection (h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i), clauses (i), (iii), or (iv) of subsection (h)(2)(A), clauses (i) or (iii) of section 1819(h)(2)(B), or section 1819(h)(4), or".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(ii) was subject to a denial of payment under either such title;

(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(v) pursuant to State action, was closed or had its residents transferred.

(7) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY.—Section 1919(f)(2)(B) (42 U.S.C. 1396r(f)(2)(B)) is amended in the second sentence by inserting "(through subcontract or otherwise)" after "may not delegate".

(8) EXTENSION OF ENHANCED MATCH RATE UNTIL OCTOBER 1, 1990.—Section 1903(a)(2)(B) (42 U.S.C. 1396b(a)(2)(B)) is amended by striking "July 1, 1990" and inserting "October 1, 1990".

(9) EFFECTIVE DATE.—Except as provided in paragraph (6), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(b) PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW.—

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) CLARIFICATION WITH RESPECT TO ADMISSIONS AND READMISSION FROM A HOSPITAL.—Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended—

(A) in subsection (b)(3)(F), by striking "A nursing facility" and by inserting "Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility"; and

(B) in subsection (e)(7)(A)—

(i) by redesignating the first 2 sentences as clause (i) with the following heading (and appropriate indentation):

"(i) IN GENERAL.—", and

(ii) by adding at the end the following:

"(ii) CLARIFICATION WITH RESPECT TO CERTAIN READMISSIONS.—The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

"(iii) EXCEPTION FOR CERTAIN HOSPITAL DISCHARGES.—The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

"(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

"(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

"(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.".

(3) DENIAL OF PAYMENTS FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES.—Section 1919(e)(7) (42 U.S.C. 1395r(e)(7)) is amended—

(A) in subparagraph (D)—

(i) in the heading, by striking "WHERE FAILURE TO CONDUCT PREADMISSION SCREENING",

(ii) by designating the first sentence as clause (i) with the following heading (and appropriate indentation):

"(i) FOR FAILURE TO CONDUCT PREADMISSION SCREENING OR ANNUAL REVIEW.—", and

(iii) by adding at the end the following new clause:

"(ii) FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY LEVEL OF SERVICES.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility."; and

(B) in subparagraph (E), by striking "the requirement of this paragraph" and inserting "the requirements of subparagraphs (A) through (C) of this paragraph".

(4) NO DELEGATION OF AUTHORITY TO CONDUCT SCREENING AND REVIEWS.—Section 1919 is further amended—

(A) in subsection (b)(3)(F), by adding at the end the following:

"A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).."; and

(B) in subsection (e)(7)(B), by adding at the end the following new clause:

"(iv) PROHIBITION OF DELEGATION.—A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).".

(5) ANNUAL REPORTS.—

(A) STATE REPORTS.—Section 1919(e)(7)(C) (42 U.S.C. 1396r(e)(7)(C)) is amended by adding at the end the following new clause:

"(iv) ANNUAL REPORT.—Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).".

(B) SECRETARIAL REPORT.—Section 4215 of the Omnibus Budget Reconciliation Act of 1987 is amended by adding at the end the following new sentence: "Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.".

(6) REVISION OF ALTERNATIVE DISPOSITION PLANS.—Section 1919(e)(7)(E) (42 U.S.C. 1396r(e)(7)(E)) is amended by adding at the end the following: "The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.".

(7) DEFINITION OF MENTALLY ILL.—Section 1919(e)(7)(G)(i) (42 U.S.C. 1396r(e)(7)(G)(i)) is amended—

(A) by striking "primary or secondary" and all that follows through "3rd edition)" and inserting "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)",

(B) by inserting before the period "or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness".

(8) SUBSTITUTION OF "SPECIALIZED SERVICES" FOR "ACTIVE TREATMENT".—Sections 1919(b)(3)(F) and 1919(e)(7) (42 U.S.C. 1396r(b)(3)(F), 1396r(e)(7)) are each amended by striking "active treatment" and "ACTIVE TREATMENT" each place either appears and inserting "specialized services" and "SPECIALIZED SERVICES", respectively.

(9) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) EXCEPTION.—The amendments made by paragraphs (4), (6), and (8) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(c) ENFORCEMENT PROCESS.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.

(d) SUPERVISION OF HEALTH CARE OF RESIDENTS OF NURSING FACILITIES BY NURSE PRACTITIONERS, CLINICAL NURSE SPECIALISTS, AND PHYSICIAN ASSISTANTS ACTING IN COLLABORATION WITH PHYSICIANS.—

(1) IN GENERAL.—Section 1919(b)(6)(A) (42 U.S.C. 1396r(b)(6)(A)) is amended by inserting "(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)" after "physician".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(e) OTHER AMENDMENTS.—

(1) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS.—

(A) IN GENERAL.—Section 1902(a)(13)(A) (42 U.S.C. 1396a(a)(13)(A)) is amended by inserting "(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title)" after "take into account the costs".

(B) DETAILS IN PLAN AMENDMENT.—Section 4211(b)(2) of the Omnibus Budget Reconciliation Act of 1987 is amended by inserting after the first sentence the following: "Each such amendment shall include a detailed de-

scription of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.".

(2) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES.—Section 1919(b)(1)(B) (42 U.S.C. 1396r(b)(1)(B)) is amended by adding at the end the following new sentence: "A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.".

(3) PERIOD FOR RESIDENT ASSESSMENT.—Section 1919(b)(3)(C)(i)(I) (42 U.S.C. 1396r(b)(3)(C)(i)(I)) is amended by striking "4 days" and inserting "not to exceed 14 days".

(4) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS.—Section 1919(b)(4)(A) (42 U.S.C. 1396r(b)(4)(A)) is amended—

(A) by striking "and" at the end of clause (v),

(B) by striking the period at the end of clause (vi) and inserting "; and", and

(C) by inserting after clause (vi) the following new clause:

"(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.".

(5) CLARIFICATION OF EXTENT OF STATE WAIVER AUTHORITY; NOTIFICATION OF WAIVERS.—Section 1919(b)(4)(C)(ii) (42 U.S.C. 1396r(b)(4)(C)(ii)) is amended—

(A) by striking "A State" and all that follows through "a facility if" and inserting "To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if";

(B) by striking "and" at the end of subclause (II);

(C) by striking the period at the end of subclause (III) and inserting a comma; and

(D) by adding at the end the following new subclauses:

"(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

"(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.".

(6) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1919(b)(5)(F)(i) (42 U.S.C. 1396r(b)(5)(F)(i)) is amended by striking "(G))," and inserting "(G)) or a registered dietician,".

(7) CHARGES APPLICABLE IN CASES OF CERTAIN MEDICAID-ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—Section 1919(c) (42 U.S.C. 1396r(c)) is amended—

(i) by redesignating paragraph (7) as paragraph (8); and

(ii) by inserting after paragraph (6) the following new paragraph:

"(7) LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS.—

"(A) IN GENERAL.—A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this title, that exceed the payment amounts established by the State for such services under this title.

"(B) CERTAIN MEDICAID INDIVIDUALS DEFINED.—In subparagraph (A), the term 'certain medicaid-eligible individual' means an individual who is entitled to medical assistance for nursing facility services in the facility under this title but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this title.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(8) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS TO MOVE THE RESIDENT TO A MEDICARE-QUALIFIED PORTION.—Section 1919(c)(1)(A) (42 U.S.C. 1396r(c)(1)(A)) is amended—

(A) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

"(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of title XVIII) to a portion of the facility that is such a skilled nursing facility."; and

(B) by adding at the end the following: "A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this title or a State's entitlement to Federal medical assistance under this title with respect to services furnished to such a resident.".

(9) RESIDENT ACCESS TO CLINICAL RECORDS.—Section 1919(c)(1)(A)(iv) (42 U.S.C. 1396r(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: "and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request".

(10) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS.—Section 1919(c)(1)(B)(ii) (42 U.S.C. 1396r(c)(1)(B)(ii)) is amended by inserting "including the notice (if any) of the State developed under subsection (e)(6)" after "in such rights)".

(11) REMOVAL OF DUPLICATIVE REQUIREMENT FOR QUALIFICATIONS OF NURSING HOME ADMINISTRATORS.—Effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1919(f)(4) of the Social Security Act—

(A) paragraph (29) of section 1902(a) of such Act (42 U.S.C. 1396a(a)) is repealed; and

(B) section 1908 of such Act (42 U.S.C. 1396g) is repealed.

(12) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS.—Section 1919(e)(2) (42 U.S.C. 1396r(e)(2)) is amended—

(A) in subparagraph (A), by striking the period and inserting the following: ", or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989."; and

(B) by adding at the end the following new subparagraph:

"(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).".

(13) CLARIFICATION ON FINDINGS OF NEGLECT.—Section 1919(g)(1)(C) (42 U.S.C. 1396r(g)(1)(C)) is amended by adding at the end the following: "A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.".

(14) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS.—Section 1919(g)(5)(A)(i) (42 U.S.C. 1396r(g)(5)(A)(i)) is amended by striking "deficiencies and plans" and inserting "deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans".

(15) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY AND CERTIFICATION AGENCIES.—Section 1919(g)(5)(B) (42 U.S.C. 1396r(g)(5)(B)) is amended by striking "with respect" and inserting "or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), with respect".

(16) DENIAL OF PAYMENT OF LEGAL FEES FOR FRIVOLOUS LITIGATION.—

(A) IN GENERAL.—Section 1903(i) (42 U.S.C. 1396b(i)), [[as amended by section X???(a)(1)(B) of this Act]], is amended—

(i) by striking "or" at the end of paragraph (9);

(ii) by striking the period at the end of paragraph (10) and inserting "; or"; and

(iii) by inserting after paragraph (10) the following new paragraph:

"(11) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action."

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply with respect to actions initiated on or after the date of the enactment of this Act.

(17) PROVISIONS RELATING TO STAFFING REQUIREMENTS.—

(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act, and shall include in such study recommendations regarding appropriate minimum ratios.

(18) STATE REQUIREMENTS RELATING TO PROGRAMS.—Amend 1919(e)(1)(A) to strike "under clause (i) or (ii) of subsection (f)(2)(A)" and insert "under subsection (f)(2)".

(19) EFFECTIVE DATES.—Except as provided in paragraphs (7), (1), and (1), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

TITLE V—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

Subtitle A—Human Resource and Family Policy Amendments

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SEC. 502. AMENDMENT OF SOCIAL SECURITY ACT.

Except as otherwise expressly provided, wherever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

CHAPTER 1—CHILD SUPPORT ENFORCEMENT

SEC. 5011. EXTENSION OF IRS INTERCEPT FOR NON-AFDC FAMILIES.

(a) AUTHORITY OF STATES TO REQUEST WITHHOLDING OF FEDERAL TAX REFUNDS FROM PERSONS OWING PAST DUE CHILD SUPPORT.—Section 464(a)(2)(B) (42 U.S.C. 664(a)(2)(B)) is amended by striking ", and before January 1, 1991".

(b) WITHHOLDING OF FEDERAL TAX REFUNDS AND COLLECTION OF PAST DUE CHILD SUPPORT ON BEHALF OF DISABLED CHILD OF ANY AGE, AND OF SPOUSAL SUPPORT INCLUDED IN ANY CHILD SUPPORT ORDER.—Section 464(c) (42 U.S.C. 664(c)) is amended—

(1) in paragraph (2), by striking "minor child." and inserting "qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)."; and

(2) by adding at the end the following:

"(3) For purposes of paragraph (2), the term 'qualified child' means a child—

"(A) who is a minor; or

"(B)(i) who, while a minor, was determined to be disabled under title II or XVI; and

"(ii) for whom an order of support is in force.".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect on January 1, 1991.

SEC. 5012. EXTENSION OF COMMISSION ON INTERSTATE CHILD SUPPORT.

(a) REAUTHORIZATION.—Section 126 of the Family Support Act of 1988 (42 U.S.C. 666 note; Public Law 100-485) is amended—

(1) in subsection (d)—

(A) in paragraph (1), by striking "1990" and inserting "1991"; and

(B) in paragraph (2), by striking "1991" and inserting "1992";

(2) in subsection (e), by adding at the end the following:

"(5)(A) Individuals may be appointed to serve the Commission without regard to the provisions of title 5 that govern appointments in the competitive service, without regard to the competitive service, and without regard to the classification system in chapter 53 of title 5, United States Code. The chairman of the Commission may fix the compensation of the Executive Director at a rate that shall not exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

"(B) The Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(C) On the request of the chairman, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section without regard to section 3341 of title 5, United States Code."; and

(3) in subsection (f)(1), by striking "1991" and inserting "1992".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5013. CHILD SUPPORT ENFORCEMENT WAIVER.

(a) IN GENERAL.— The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of Texas waiving (with respect to cases where a court has issued an order for child support) the following requirements under the State plan for child and spousal support that are described in subparagraphs (A) and (B) of section 454(6) of the Social Security Act, with respect to a project, based in the county of Bexar, of delinquency monitoring for child support enforcement:

(1) The submission of a written application by an individual requesting child support collection services.

(2) The payment of an application fee with respect to an application for such services.

(b) CONTENTS OF WAIVER AGREEMENT.—In the agreement between the Secretary and the State of Texas described in subsection (a), the waiver granted under such agreement shall provide the following:

(1) The waiver shall apply only with respect to the provision of child support collection services.

(2) Before the provision of any child support collection services, the organizational unit designated under section 454(3) of the Social Security Act (in this section referred to as the "State agency") shall provide written notification to each custodial parent of the right of such parent to refuse such services.

(3) The State shall ensure that, to the extent possible, each parent of the child on behalf of whom such services are provided (regardless of whether such parent is a custodial parent) is to receive written notice at the time such services are provided, explaining—

(A) the legal rights of parents with respect to the child support collection services provided; and

(B) the responsibilities of the State agency in providing such child support collection services (including the monitoring of delinquent child support payments).

(4) A case record shall be deemed to have been established by the State agency upon notification of a custodial parent of the option to receive the child support enforcement services described in this subsection.

(5) Any period of enforcement by the State agency under this section with respect to the collection of delinquent child support payments shall be deemed to begin on the first day of any such delinquency.

(d) STUDY AND REPORT.—

(1) STUDY REQUIRED.—As a condition precedent to granting the waiver described in subsection (a), the State agency shall agree to conduct a study of the cost-effectiveness to the Federal Government and to the State of Texas of the monitoring of delinquent child support payments under the State plan under section 454 of the Social Security Act.

(2) CONDUCT OF STUDY.—

(A) IN GENERAL.—The study required by paragraph (1) shall be conducted in accordance with the criteria established by the Secretary in accordance with subparagraph (B).

(B) CRITERIA.—Not later than February 1, 1991, the Secretary shall establish the criteria required by subparagraph (A), in consultation with—

(i) 1 or more representatives of organizations representing child support administrators;

(ii) 1 or more representatives of the General Accounting Office;

(iii) 1 or more representatives of the State of Texas; and

(iv) such other individuals or organizations with experience in the evaluation of child support programs, as the Secretary may designate.

(3) REPORT.—Not later than 3 months after the expiration of the waiver described in subsection (a), the State agency shall submit to the Secretary and to the Congress a report that includes the findings of the study required by this subsection.

(e) DURATION OF WAIVER.—The waiver described in subsection (a) shall be effective for not more than 2 years.

(f) MATCHING PAYMENTS.—

(1) GENERAL EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out child support enforcement programs with respect to which the waiver described in subsection (a) applies, the Secretary shall pay the State an amount equal to the lesser of—

(A) 66 percent of such expenditures; or

(B) $500,000.

(2) STUDY EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out the study required by subsection (d), the Secretary shall pay the State an amount equal to 66 percent of such expenditures.

CHAPTER 2—UNEMPLOYMENT COMPENSATION

SEC. 5021. AMOUNTS TRANSFERRED TO STATE UNEMPLOYMENT COMPENSATION PROGRAM ACCOUNTS.

(a) ALLOCATION OF AMOUNTS.—Paragraph (2) of section 903(a) (42 U.S.C. 1103(a)(2)) is amended to read as follows:

"(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

"(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

"(B) shall bear the same ratio to the total amount to be so transferred as—

"(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

"(ii) the total amount of wages subject to such tax during such year."

(b) USE OF TRANSFERRED AMOUNTS.—Paragraph (2) of section 903(c) (42 U.S.C. 1103(c)(2)) is amended—

(1) by striking "and" at the end of subparagraph (C), and

(2) by striking so much of such paragraph as follows subparagraph (C) and inserting the following:

"(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

"(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

"(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

"(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

"(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

CHAPTER 3—SUPPLEMENTAL SECURITY INCOME

SEC. 5031. EXCLUSION FROM INCOME AND RESOURCES OF VICTIMS' COMPENSATION PAYMENTS.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting "; and"; and

(3) by adding at the end the following:

"(17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime.".

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382b(a)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.".

(c) VICTIMS COMPENSATION AWARD NOT REQUIRED TO BE ACCEPTED AS CONDITION OF RECEIVING BENEFITS.—Section 1631(a) (42 U.S.C. 1383(a)) is amended by adding at the end the following:

"(9) Benefits under this title shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5032. ATTAINMENT OF AGE 65 NOT TO SERVE AS BASIS FOR TERMINATION OF ELIGIBILITY UNDER SECTION 1619(b).

(a) IN GENERAL.—Section 1619(b)(1) (42 U.S.C. 1392h(b)(1)) is amended by striking "under age 65".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5033. EXCLUSION FROM INCOME OF IMPAIRMENT-RELATED WORK EXPENSES.

(a) IN GENERAL.—Section 1612(b)(4)(B)(ii) (42 U.S.C. 1382a(b)(4)(B)(ii)) is amended by striking "(for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to benefits payable for calendar months beginning after the date of the enactment of this Act.

SEC. 5034. TREATMENT OF ROYALTIES AND HONORARIA AS EARNED INCOME.

(a) IN GENERAL.—Section 1612(a) (42 U.S.C. 1382a(a)) is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (C); and

(B) by adding at the end the following:

"(E) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered; and"; and

(2) in paragraph (2)(F), by inserting "not described in paragraph (1)(E)" before the period.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 13th calendar month following the month in which this Act is enacted.

SEC. 5035. CERTAIN STATE RELOCATION ASSISTANCE EXCLUDED FROM SSI INCOME AND RESOURCES.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)), as amended by section 5031(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting a semicolon; and

(3) by inserting after paragraph (17) the following:

"(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.".

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382b(a)), as amended by section 5031(b) of this Act, is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by inserting after paragraph (9) the following:

"(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for calendar months beginning in the 3-year period that begins on the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5036. EVALUATION OF CHILD'S DISABILITY BY PEDIATRICIAN OR OTHER QUALIFIED SPECIALIST.

(a) IN GENERAL.—Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(H) In making any determination under this title with respect to the disability of a child who has not attained the age of 18 years and to whom section 221(h) does not apply, the Secretary shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the child (as determined by the Secretary) evaluates the case of such child.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to determinations made 6 or more months after the date of the enactment of this Act.

SEC. 5037. REIMBURSEMENT FOR VOCATIONAL REHABILITATION SERVICES FURNISHED DURING CERTAIN MONTHS OF NONPAYMENT OF SSI BENEFITS.

(a) IN GENERAL.—Section 1615 (42 U.S.C. 1382d) is amended by adding at the end the following:

"(e) The Secretary may reimburse the State agency described in subsection (d) for the costs described therein incurred in the provision of rehabilitation services—

"(1) for any month for which an individual received—

"(A) benefits under section 1611 or 1619(a);

"(B) assistance under section 1619(b); or

"(C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66; and

"(2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for—

"(A) benefits under section 1611 or 1619(a);

"(B) assistance under section 1619(b); or

"(C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to claims for reimbursement pending on or after such date.

SEC. 5038. EXTENSION OF PERIOD OF PRESUMPTIVE ELIGIBILITY FOR BENEFITS.

(a) IN GENERAL.—Section 1631(a)(4)(B) (42 U.S.C. 1383(a)(4)(B)) is amended by striking "3" and inserting "6".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5039. CONTINUING DISABILITY OR BLINDNESS REVIEWS NOT REQUIRED MORE THAN ONCE ANNUALLY.

(a) IN GENERAL.—Section 1619 (42 U.S.C. 1382h) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) Subsection (a)(2) and section 1631(j)(2)(A) shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.".

(b) CONFORMING AMENDMENT.—Section 1631(j)(2)(A) (42 U.S.C. 1383(j)(2)(A)) is amended by inserting "(other than subsection (c) thereof)" after "1619" the 1st place such term appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5040. CONCURRENT SSI AND FOOD STAMP APPLICATIONS BY INSTITUTIONALIZED INDIVIDUALS.

Section 1631 (42 U.S.C. 1383) is amended—

(1) in subsection (m), by striking the second sentence; and

(2) by adding at the end the following:

"Concurrent SSI and Food Stamp Applications by Institutionalized Individuals

"(n) The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subsection shall also be permitted to apply at the same time for participation in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).".

SEC. 5041. NOTIFICATION OF CERTAIN INDIVIDUALS ELIGIBLE TO RECEIVE RETROACTIVE BENEFITS.

In notifying individuals of their eligibility to receive retroactive supplemental security income benefits as a result of Sullivan v. Zebley, 110 S. Ct. 2658 (1990), the Secretary shall include written notice, in language that is easily understandable, explaining—

(1) the 6-month limitation on the exclusion from resources under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7));

(2) the potential effects under title XVI of the Social Security Act, attributable to the receipt of such payment, including—

(A) potential discontinuation of eligibility; and

(B) potential reductions in the amount of benefits;

(3) the possibility of establishing a trust account that would not be considered as income or resources for the purposes of such title if the trust met certain conditions; and

(4) that legal assistance in establishing such a trust may be available through legal referral services offered by a State or local bar association, or through the Legal Services Corporation.

CHAPTER 4—AID TO FAMILIES WITH DEPENDENT CHILDREN

SEC. 5051. OPTIONAL MONTHLY REPORTING AND RETROSPECTIVE BUDGETING.

(a) OPTIONAL MONTHLY REPORTING.—Section 402(a)(14) (42 U.S.C. 602(a)(14)) is amended—

(1) by striking "with respect to" and all that follows through "(A) provide" and insert "provide, at the option of the State and with respect to such category or categories as the State may select and identify in its State plan (A)";

(2) by striking "(with the prior approval of the Secretary in recent work history and earned income cases)"; and

(3) by striking "upon a determination" and all that follows through "paragraph".

(b) OPTIONAL RETROSPECTIVE BUDGETING.—Section 402(a)(13) (42 U.S.C. 602(a)(13)) is amended by striking all that precedes subparagraph (A) and inserting the following:

"(13) at the option of the State, but only with respect to any one or more categories of families required to report monthly to the State agency pursuant to paragraph (14), provide that—".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to reports pertaining to, or aid payable for, months beginning in or after October 1990.

SEC. 5052. CHILDREN RECEIVING FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE PAYMENTS NOT TREATED AS MEMBER OF FAMILY UNIT FOR PURPOSES OF DETERMINING ELIGIBILITY FOR, OR AMOUNT OF, AFDC BENEFIT.

(a) IN GENERAL.—Part A of title IV (42 U.S.C. 601 et seq.) is amended by inserting after section 408 the following:

"EXCLUSION FROM AFDC UNIT OF CHILD FOR WHOM FEDERAL, STATE, OR LOCAL FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE PAYMENTS ARE MADE

"SEC. 409. (a) Notwithstanding any other provision of this title (other than subsection (b))—

"(1) a child with respect to whom foster care maintenance payments or adoption assistance payments are made under part E or under State or local law shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of benefits of the family under this part; and

"(2) the income and resources of such child shall be excluded from the income and resources of a family under this part.

"(b) Subsection (a) shall not apply in the case of a child with respect to whom adoption assistance payments are made under part E or under State or local law, if application of such subsection would reduce the benefits under this part of the family of which the child would otherwise be regarded as a member.".

(b) CONFORMING REPEAL.—Section 478 (42 U.S.C. 678) is hereby repealed.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and the repeal made by subsection (b) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5053. ELIMINATION OF TERM "LEGAL GUARDIAN".

(a) IN GENERAL.—Section 402(a)(39) (42 U.S.C. 602(a)(39)) is amended—

(1) by striking "or legal guardian"; and

(2) by striking "or legal guardians".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5054. REPORTING OF CHILD ABUSE AND NEGLECT.

(a) CONCERNING AFDC APPLICANTS AND RECIPIENTS.—

(1) IN GENERAL.—Section 402(a)(16) (42 U.S.C. 602(a)(16)) is amended to read as follows:

"(16) provide that the State agency will—

"(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

"(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;".

(2) CONFORMING AMENDMENTS.—Section 402(a)(9) (42 U.S.C. 602(a)(9)) is amended—

(A) in subparagraph (C), by striking "and"; and

(B) by inserting ", and (E) reporting and providing information pursuant to paragraph (16) to appropriate authorities with respect to known or suspected child abuse or neglect" before the 1st semicolon.

(b) CONCERNING RECIPIENTS OF FOSTER CARE OR ADOPTION ASSISTANCE.—

(1) IN GENERAL.—Section 471(a)(9) (42 U.S.C. 671(a)(9)) is amended to read as follows:

"(9) provides that the State agency will—

"(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

"(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;".

(2) CONFORMING AMENDMENTS.—Section 471(a)(8) (42 U.S.C. 671(a)(8)) is amended—

(A) in subparagraph (C), by striking "and"; and

(B) by inserting ", and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect" before the 1st semicolon.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5055. DISCLOSURE OF INFORMATION ABOUT AFDC APPLICANTS AND RECIPIENTS AUTHORIZED FOR PURPOSES DIRECTLY CONNECTED TO STATE FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Section 402(a)(9)(A) (42 U.S.C. 602(a)(9)(A)) is amended by striking "or D" and inserting ", D, or E".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5056. REPATRIATION.

(a) IN GENERAL.—Section 1113 (42 U.S.C. 1313) is amended—

(1) in subsection (d), by striking "on or after October 1, 1989" and inserting "after September 30, 1991"; and

(2) by adding at the end the following:

"(e)(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

"(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective for fiscal years beginning after September 30, 1989.

SEC. 5057. TECHNICAL AMENDMENT TO NATIONAL COMMISSION ON CHILDREN.

Section 1139(d) (42 U.S.C. 1320b-9(d)) is amended in the matter preceding paragraph (1), by striking "an interim report no later than March 31, 1991, and a final report no later than September 30, 1990" and inserting "an interim report no later than September 30, 1990, and a final report no later than March 31, 1991".

SEC. 5058. EXTENSION OF PROHIBITION AGAINST IMPLEMENTATION OF PROPOSED REGULATIONS ON EMERGENCY ASSISTANCE AND AFDC SPECIAL NEEDS.

Section 8005 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 606 note) is amended in each of subsections (a)(2) and (c) by striking "1990" and inserting "1991".

SEC. 5059. AMENDMENTS TO MINNESOTA FAMILY INVESTMENT PLAN DEMONSTRATION.

Section 8015 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 602 note) is amended—

(1) in subsection (a), by striking "part A" and inserting "parts A and F";

(2) in subsection (b)(3), by striking "(e)" and inserting "(d)";

(3) in subsection (b)(6), by inserting "or that is assigned to and found eligible for the project" after "in the project";

(4) in subsection (b)(8)(B)(ii), by inserting "(except that the age of the youngest child may be age 1 under the project even if the State plan specifies age 3)" after "such compliance";

(5) in subsection (b)(8)(B)(ii)(I), by inserting "and" after the semicolon;

(6) in subsection (b)(8)(B)(ii), by striking "; and" after "age of 1 year" and all that follows through the end of subclause (III) and inserting "(except that, in a 2-parent family, this clause applies only to 1 parent).";

(7) by amending subsection (b)(9) to read as follows:

"(9) AVAILABILITY OF EDUCATION, EMPLOYMENT, AND TRAINING SERVICES.—The State will make available education, employment, and training services equivalent to those services available under the State plan approved under part F of title IV of the Social Security Act to families required to enter into and comply with a contract with a county agency under the 1989 Minnesota Laws, section 10 of article 5 of chapter 282.";

(8) in subsection (b)(10)(A)—

(A) by inserting ", except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282," after "ensure that"; and

(B) by striking "cash";

(9) in subsection (b), by adding at the end the following:

"(12) LIABILITY FOR COSTS.—For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the project in excess of those that the Secretary would have been liable for had the project not been implemented, except for costs for evaluating the project.";

(10) in subsection (c)(1)(B), by striking "50" and inserting "25";

(11) in subsection (c)(2), by striking "part A" and inserting "parts A and F";

(12) in subsection (d)(1)(B)(ii)—

(A) by inserting "except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282," before "permit"; and

(B) by striking "cash";

(13) in subsection (d)(1)(B)(iii), by striking "section 402(a)(19)(C) of such Act" and inserting "subparagraph (C), (D), or (E) of section 402(a)(19) of such Act (except that the exemption for a parent with a child under 1 year of age need not be specified in the State plan)"; and

(14) by adding at the end the following:

"(i) CONSTRUCTION.—For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act, the Food Stamp Act of 1977, or this section—

"(1) families participating in the project shall be considered to be recipients of aid under such part; and

"(2) cash assistance provided under the project to any such family and not designated by the State as food assistance shall be treated as if such assistance were aid received under such part.".

SEC. 5060. GOOD CAUSE EXCEPTION TO REQUIRED COOPERATION FOR TRANSITIONAL CHILD CARE BENEFITS.

(a) IN GENERAL.—Section 402(g)(1)(A)(vi)(II) (42 U.S.C. 602(g)(1)(A)(vi)(II)) is amended to read as follows:

"(II) refused to cooperate with the State in establishing and enforcing his or her child support obligations, without good cause as determined by the State agency in accordance with standards prescribed by the Secretary which shall take into consideration the best interests of the child for whom child care is to be provided.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5061. TECHNICAL CORRECTIONS REGARDING PENALTY FOR FAILURE TO PARTICIPATE IN JOBS PROGRAM.

(a) IN GENERAL.—Section 407(b)(1)(B) (42 U.S.C. 607(b)(1)(B)) is amended—

(1) in clause (iii)—

(A) by striking "—" and all that follows through "(II)"; and

(B) by striking "and " at the end;

(2) in clause (iv), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(v) that, if and for so long as the child's parent described in subparagraph (A)(i), unless meeting a condition of section 402(a)(19)(C), is, without good cause, not participating (or available for participation) in a program under part F, or if exempt under such section by reason of clause (vii) thereof or because there has not been established or provided under part F a program in which such parent can effectively participate, is not registered with the public employment offices in the State, the needs of such parent shall not be taken into account in determining the need of such parent's family under section 402(a)(7), and the needs of such parent's spouse shall not be so taken into account unless such spouse is participating in such a program, or if not participating solely by reason of section 402(a)(19)(C)(vii) or because there has not been established or provided under part F a program in which such spouse can effectively participate, is registered with the public employment offices of the State; and if neither parents' needs are so taken into account, the payment provisions of section 402(a)(19)(G)(i)(I) shall apply.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect at the same time and in the same manner as the amendments made by title II of the Family Support Act of 1988 take effect.

SEC. 5062. TECHNICAL CORRECTIONS REGARDING AFDC-UP ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Section 407(d)(1) (42 U.S.C. 607(d)(1)) is amended—

(1) by striking "a calendar quarter (A)" and inserting "(A) a calendar quarter";

(2) by striking "or" at the end of subparagraph (A); and

(3) by inserting ", and (C) a calendar quarter ending before October 1990 in which such individual participated in a community work experience program under section 409 (as in effect for a State immediately before the effective date for that State of the amendments made by title II of the Family Support Act of 1988) or the work incentive program established under part C (as in effect for a State immediately before such effective date)" before the semicolon.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5063. FAMILY SUPPORT ACT DEMONSTRATION PROJECTS.

Section 505 of the Family Support Act of 1988 (42 U.S.C. 1315; P.L. 100-385) is amended—

(1) in subsection (a), by inserting "in each of the fiscal years 1990, 1991, and 1992," before "shall"; and

(2) in subsection (e), by striking "September 30, 1989" and inserting "September 30 of the fiscal year specified in the agreement described in subsection (a)".

SEC. 5064. STUDY OF JOBS PROGRAMS OPERATED BY INDIAN TRIBES AND ALASKA NATIVE ORGANIZATIONS.

(a) IN GENERAL.—Within 180 days after the date of the enactment of this Act, the Comptroller General of the United States (in this section referred to as the "Comptroller") shall conduct a study of the implementation of section 482(i) of the Social Security Act (42 U.S.C. 682(i)) relating to job opportunities and basic skills training programs (in this section referred to as "JOBS programs") operated by Indian tribes and Alaska Native organizations (as defined in paragraph (5) of such section 482(i)).

(b) REQUIREMENTS FOR STUDY.—In conducting the study described in subsection (a), the Comptroller shall—

(1) identify any problems associated with the implementation of section 482(i) of the Social Security Act; and

(2) assess (to the extent practicable) the effectiveness of the JOBS programs operated by Indian tribes and Alaska Native organizations.

(c) REPORT.—Upon completion of the study described in subsection (a), the Comptroller shall submit a report to the appropriate committees of the Congress that includes—

(1) a summary of the findings of the study; and

(2) recommendations with respect to proposed legislation or changes in administrative policy to improve the effectiveness of JOBS programs conducted pursuant to section 482(i) of the Social Security Act.

CHAPTER 5—CHILD WELFARE AND FOSTER CARE

SEC. 5071. ACCOUNTING FOR ADMINISTRATIVE COSTS.

(a) RECLASSIFICATION.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended by inserting "provision of child placement services and for the" before "proper and efficient".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5072. SECTION 427 TRIENNIAL REVIEWS.

(a) AMENDMENTS TO SECTION 10406 OF OBRA 1989.—Section 10406 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 627 note) is amended—

(1) by striking "1991" and inserting "1992";

(2) by striking "1990" and inserting "1991"; and

(3) in the section heading, by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENT.—The item relating to section 10406 in the table of contents appearing immediately after section 10000 of such Act is amended by striking "1990" and inserting "1991".

SEC. 5073. INDEPENDENT LIVING INITIATIVES.

(a) IN GENERAL.—Section 477(a)(2)(C) (42 U.S.C. 677(a)(2)(C)) is amended—

(1) by inserting "who has not attained age 21" after "may at the option of the State also include any child"; and

(2) by striking ", but such child" and all that follows through "care".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments made under part E of title IV of the Social Security Act for fiscal years beginning in or after fiscal year 1991.

CHAPTER 6—CHILD CARE

SEC. 5081. GRANTS TO STATES FOR CHILD CARE.

(a) RULES GOVERNING PROVISION OF CHILD CARE TO ELIGIBLE FAMILIES.—Section 402 (42 U.S.C. 602) is amended by adding at the end the following:

"(i)(1) Each State agency may, to the extent that it determines that resources are available, provide child care in accordance with paragraph (2) to any low income family that the State determines—

"(A) is not receiving aid under the State plan approved under this part;

"(B) needs such care in order to work; and

"(C) would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided.

"(2) The State agency may provide child care pursuant to paragraph (1) by—

"(A) providing such care directly;

"(B) arranging such care through providers by use of purchase of service contracts or vouchers;

"(C) providing cash or vouchers in advance to the family;

"(D) reimbursing the family; or

"(E) adopting such other arrangements as the agency deems appropriate.

"(3)(A) A family provided with child care under paragraph (1) shall contribute to such care in accordance with a sliding scale formula established by the State agency based on the family's ability to pay.

"(B) The State agency shall make payment for the cost of child care provided under paragraph (1) with respect to a family in an amount that is the lesser of—

"(i) the actual cost of such care; and

"(ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary).

"(4) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) under this subsection—

"(A) shall not be treated as income or as a deductible expense for purposes of any other Federal or federally assisted program that bases eligibility for or amount of benefits upon need; and

"(B) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986.

"(5) Amounts expended by the State agency for child care under paragraph (1) shall be treated as amounts for which payment may be made to a State under section 403(n) only to the extent that—

"(A) such amounts are paid in accordance with paragraph (3)(B);

"(B) the care involved meets applicable standards of State and local law;

"(C) the provider of the care—

"(i) in the case of a provider who is not an individual that provides such care solely to members of the family of the individual, is licensed, regulated, or registered by the State or locality in which the care is provided; and

"(ii) allows parental access; and

"(D) such amounts are not used to supplant any other Federal or State funds used for child care services.

"(6)(A)(i) Each State shall prepare reports annually, beginning with fiscal year 1993, on the activities of the State carried out with funds made available under section 403(n).

"(ii) The State shall make available for public inspection within the State copies of each report required by this paragraph, shall transmit a copy of each such report to the Secretary, and shall provide a copy of each such report, on request, to any interested public agency.

"(iii) The Secretary shall annually compile, and submit to the Congress, the State reports transmitted to the Secretary pursuant to clause (ii).

"(B) Each report prepared and transmitted by a State under subparagraph (A) shall set forth with respect to child care services provided under this subsection—

"(i) showing separately for center-based child care services, group home child care services, family child care services, and relative care services, the number of children who received such services and the average cost of such services;

"(ii) the criteria applied in determining eligibility or priority for receiving services, and sliding fee schedules;

"(iii) the child care licensing and regulatory (including registration) requirements in effect in the State with respect to each type of service specified in clause (i); and

"(iv) the enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register).

"(C) Within 12 months after the date of the enactment of this subsection, the Secretary shall establish uniform reporting requirements for use by the States in preparing the information required by this paragraph, and make such other provision as may be necessary or appropriate to ensure that compliance with this subsection will not be unduly burdensome on the States.

"(D) Not later than July 1, 1992, the Secretary shall issue a report on the implementation of this subsection, based on such information as has been made available to the Secretary by the States.".

(b) PAYMENTS TO STATES.—Section 403 (42 U.S.C. 603) is amended by adding at the end the following:

"(n)(1) In addition to any payment under subsection (a) or (l), each State shall be entitled to payment from the Secretary of an amount equal to the lesser of—

"(A) the Federal medical assistance percentage (as defined in section 1905(b)) of the expenditures by the State in providing child care services pursuant to section 402(i), and in administering the provision of such child care services, for any fiscal year; and

"(B) the limitation determined under paragraph (2) with respect to the State for the fiscal year.

"(2)(A) The limitation determined under this paragraph with respect to a State for any fiscal year is the amount that bears the same ratio to the amount specified in subparagraph (B) for such fiscal year as the number of children residing in the State in the second preceding fiscal year bears to the number of children residing in the United States in the second preceding fiscal year.

"(B) The amount specified in this subparagraph is—

"(i) $300,000,000 for fiscal year 1991;

"(ii) $300,000,000 for fiscal year 1992;

"(iii) $300,000,000 for fiscal year 1993;

"(iv) $300,000,000 for fiscal year 1994; and

"(v) $300,000,000 for fiscal year 1995, and for each fiscal year thereafter.

"(C) If the limitation determined under subparagraph (A) with respect to a State for a fiscal year exceeds the amount paid to the State under this subsection for the fiscal year, the limitation determined under this paragraph with respect to the State for the immediately succeeding fiscal year shall be increased by the amount of such excess.

"(3) Amounts appropriated for a fiscal year to carry out this part shall be made available for payments under this subsection for such fiscal year.".

(c) AMENDMENTS TO GRANTS TO STATES TO IMPROVE CHILD CARE LICENSING AND REGISTRATION REQUIREMENTS, AND TO MONITOR CHILD CARE PROVIDED TO CHILDREN RECEIVING AFDC.—

(1) GRANTS INCREASED AND EXTENDED.—Section 402(g)(6)(D) (42 U.S.C. 602(g)(6)(D)) is amended by inserting ", and $50,000,000 for each of fiscal years 1992, 1993, and 1994" before the period.

(2) NEW PURPOSES FOR GRANTS.—Section 402(g)(6)(A) (42 U.S.C. 602(g)(6)(A)) is amended by striking "and to monitor child care provided to children receiving aid under the State plan approved under subsection (a)" and inserting "to enforce standards with respect to child care provided to children under this part, and to provide for the training of child care providers".

(3) HALF OF GRANT REQUIRED TO BE EXPENDED FOR TRAINING OF CHILD CARE PROVIDERS.—Section 402(g)(6) (42 U.S.C. 602(g)(6)) is amended by adding at the end the following:

"(E) Each State to which the Secretary makes a grant under this paragraph shall expend not less than 50 percent of the amount of the grant to provide for the training of child care providers.".

(d) COORDINATION WITH OTHER PROGRAMS FOR CHILDREN.—Section 402(g)(7) (42 U.S.C. 602(g)(7)) is amended by inserting "and subsection (i)" after "this subsection".

(e) EFFECTIVE DATE.—Except as otherwise expressly provided, the amendments made by this section shall take effect on October 1, 1990.

SEC. 5082. CHILD CARE AND DEVELOPMENT BLOCK GRANT.

Chapter 8 of subtitle A of title IV of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) is amended—

(1) by redesignating subchapters C, D, and E, as subchapters D, E, and F, respectively; and

(2) by inserting after subchapter B the following new subchapter:

"Subchapter C—Child Care and Development Block Grant

"SEC. 658A. SHORT TITLE.

"This subchapter may be cited as the 'Child Care and Development Block Grant Act of 1990'.

"SEC. 658B. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subchapter, $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

"SEC. 658C. ESTABLISHMENT OF BLOCK GRANT PROGRAM.

"The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

"SEC. 658D. LEAD AGENCY.

"(a) DESIGNATION.—The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an application submitted to the Secretary under section 658E, an appropriate State agency that complies with the requirements of subsection (b) to act as the lead agency.

"(b) DUTIES.—

"(1) IN GENERAL.—The lead agency shall—

"(A) administer, directly or through other State agencies, the financial assistance received under this subchapter by the State;

"(B) develop the State plan to be submitted to the Secretary under section 658E(a);

"(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

"(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

"(2) DEVELOPMENT OF PLAN.—In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government. Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.

"SEC. 658E. APPLICATION AND PLAN.

"(a) APPLICATION.—To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

"(1) an assurance that the State will comply with the requirements of this subchapter; and

"(2) a State plan that meets the requirements of subsection (c).

"(b) PERIOD COVERED BY PLAN.—The State plan contained in the application under subsection (a) shall be designed to be implemented—

"(1) during a 3-year period for the initial State plan; and

"(2) during a 2-year period for subsequent State plans.

"(c) REQUIREMENTS OF A PLAN.—

"(1) LEAD AGENCY.—The State plan shall identify the lead agency designated under section 658D.

"(2) POLICIES AND PROCEDURES.—The State plan shall:

"(A) PARENTAL CHOICE OF PROVIDERS.—Provide assurances that—

"(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter, other than through assistance provided under paragraph (3)(C), are given the option either—

"(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

"(II) to receive a child care certificate as defined in section 658P(2);

"(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

"(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.

"(B) UNLIMITED PARENTAL ACCESS.—Provide assurances that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers.

"(C) PARENTAL COMPLAINTS.—Provide assurances that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request.

"(D) CONSUMER EDUCATION.—Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.

"(E) COMPLIANCE WITH STATE AND LOCAL REGULATORY REQUIREMENTS.—Provide assurances that—

"(i) all providers of child care services within the State for which assistance is provided under this subchapter comply with all licensing or regulatory requirements (including registration requirements) applicable under State and local law; and

"(ii) providers within the State that are not required to be licensed or regulated under State or local law are required to be registered with the State prior to payment being made under this subchapter, in accordance with procedures designed to facilitate appropriate payment to such providers, and to permit the State to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to regulatory requirements in the State, and that such providers shall be permitted to register with the State after selection by the parents of eligible children and before such payment is made.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers within the State that provide services for which assistance is provided under this subchapter than the standards or requirements imposed on other child care providers in the State.

"(F) ESTABLISHMENT OF HEALTH AND SAFETY REQUIREMENTS.—Provide assurances that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is

made available under this subchapter. Such requirements shall include—

"(i) the prevention and control of infectious diseases (including immunization);

"(ii) building and physical premises safety; and

"(iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on the date of enactment of this subchapter under State or local law.

"(G) COMPLIANCE WITH STATE AND LOCAL HEALTH AND SAFETY REQUIREMENTS.—Provide assurances that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

"(H) REDUCTION IN STANDARDS.—Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on the date of enactment of this subchapter, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 658K.

"(I) REVIEW OF STATE LICENSING AND REGULATORY REQUIREMENTS.—Provide assurances that not later than 18 months after the date of the submission of the application under section 658E, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on the date of the enactment of this subchapter.

"(J) SUPPLEMENTATION.—Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.

"(3) USE OF BLOCK GRANT FUNDS.—

"(A) GENERAL REQUIREMENT.—The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) and (C).

"(B) CHILD CARE SERVICES.—Subject to the reservation contained in subparagraph (C), the State shall use amounts provided to the State for each fiscal year under this subchapter for—

"(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in section 658E(c)(2)(A), with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs; and

"(ii) activities designed to improve the availability and quality of child care.

"(C) ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE AND TO INCREASE THE AVAILABILITY OF EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL CARE SERVICES.—The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 658G) and to provide before- and after-school and early childhood development services (as described in section 658H).

"(4) PAYMENT RATES.—

"(A) IN GENERAL.—The State plan shall provide assurances that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs. Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.

"(B) CONSTRUCTION.—Nothing in this paragraph shall be construed to create a private right of action.

"(5) SLIDING FEE SCALE.—The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

"(d) APPROVAL OF APPLICATION.—The Secretary shall approve an application that satisfies the requirements of this section.

SEC. 658F. LIMITATIONS ON STATE ALLOTMENTS.

"(a) NO ENTITLEMENT TO CONTRACT OR GRANT.—Nothing in this subchapter shall be construed—

"(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

"(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

"(b) CONSTRUCTION OF FACILITIES.—

"(1) IN GENERAL.—No funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

"(2) SECTARIAN AGENCY OR ORGANIZATION.—In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 658E(c)(2)(F).

"SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.

"A State that receives financial assistance under this subchapter shall use not less than 20 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year for one or more of the following:

"(1) RESOURCE AND REFERRAL PROGRAMS.—Operating directly or providing financial assistance to private nonprofit organizations or public organizations (including units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

"(2) GRANTS OR LOANS TO ASSIST IN MEETING STATE AND LOCAL STANDARDS.—Making grants or providing loans to child care providers to assist such providers in meeting applicable State and local child care standards.

"(3) MONITORING OF COMPLIANCE WITH LICENSING AND REGULATORY REQUIREMENTS.—Improving the monitoring of compliance with, and enforcement of, State and local licensing and regulatory requirements (including registration requirements).

"(4) TRAINING.—Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the care of children with special needs.

"(5) COMPENSATION.—Improving salaries and other compensation paid to full- and part-time staff who provide child care services for which assistance is provided under this subchapter.

"SEC. 658H. EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL SERVICES.

"(a) IN GENERAL.—A State that receives financial assistance under this subchapter shall use not less than 75 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year to establish or expand and conduct, through the provision of grants or contracts, early childhood development or before- and after-school child care programs, or both.

"(b) PROGRAM DESCRIPTION.—Programs that receive assistance under this section shall—

"(1) in the case of early childhood development programs, consist of services that are not intended to serve as a substitute for a compulsory academic programs but that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

"(2) in the case of before- and after-school child care programs—

"(A) be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that regular instructional services are not in session; and

"(B) not be intended to extend or replace the regular academic program.

"(c) PRIORITY FOR ASSISTANCE.—In awarding grants and contracts under this section, the State shall give the highest priority to geographic areas within the State that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act of 1965, and shall then give priority to—

"(1) any other areas with concentrations of poverty; and

"(2) any areas with very high or very low population densities.

"SEC. 658I. ADMINISTRATION AND ENFORCEMENT.

"(a) ADMINISTRATION.—The Secretary shall—

"(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

"(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

"(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

"(b) ENFORCEMENT.—

"(1) REVIEW OF COMPLIANCE WITH STATE PLAN.—The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 658E(c) for the State, and shall have the power to terminate payments to the State in accordance with paragraph (2).

"(2) NONCOMPLIANCE.—

"(A) IN GENERAL.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

"(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 658E(c) for the State; or

"(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

"(B) ADDITIONAL SANCTIONS.—In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

"(C) NOTICE.—The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

"(3) ISSUANCE OF RULES.—The Secretary shall establish by rule procedures for—

"(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

"(B) imposing sanctions under this section.

"SEC. 658J. PAYMENTS.

"(a) IN GENERAL.—Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 658E(d) shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 658O for such fiscal year.

"(b) METHOD OF PAYMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

"(2) LIMITATION.—The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 658E(c)(3).

"(c) SPENDING OF FUNDS BY STATE.—Payments to a State from the allotment under section 658O for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

"SEC. 658K. ANNUAL REPORT AND AUDITS.

"(a) ANNUAL REPORT.—Not later than December 31, 1992, and annually thereafter, a State that receives assistance under this subchapter shall prepare and submit to the Secretary a report—

"(1) specifying the uses for which the State expended funds specified under paragraph (3) of section 658E(c) and the amount of funds expended for such uses;

"(2) containing available data on the manner in which the child care needs of families in the State are being fulfilled, including information concerning—

"(A) the number of children being assisted with funds provided under this subchapter, and under other Federal child care and preschool programs;

"(B) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

"(C) salaries and other compensation paid to full- and part-time staff who provide child care services; and

"(D) activities in the State to encourage public-private partnerships that promote business involvement in meeting child care needs;

"(3) describing the extent to which the affordability and availability of child care services has increased;

"(4) if applicable, describing, in either the first or second such report, the findings of the review of State licensing and regulatory requirements and policies described in section 658E(c), including a description of actions taken by the State in response to such reviews;

"(5) containing an explanation of any State action, in accordance with section 658E, to reduce the level of child care standards in the State, if applicable; and

"(6) describing the standards and health and safety requirements applicable to child care providers in the State, including a description of State efforts to improve the quality of child care;

during the period for which such report is required to be submitted.

"(b) AUDITS.—

"(1) REQUIREMENT.—A State shall, after the close of each program period covered by an application approved under section 658E(d) audit its expenditures during such program period from amounts received under this subchapter.

"(2) INDEPENDENT AUDITOR.—Audits under this subsection shall be conducted by an entity that is independent of any agency administering activities that receive assistance under this subchapter and be in accordance with generally accepted auditing principles.

"(3) SUBMISSION.—Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

"(4) REPAYMENT OF AMOUNTS.—Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitles under this subchapter.

"SEC. 658L. REPORT BY SECRETARY.

"Not later than July 31, 1993, and annually thereafter, the Secretary shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

"SEC. 658M. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.

"(a) SECTARIAN PURPOSES AND ACTIVITIES.—No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 658E(c)(2)(A)(i)(I) or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

"(b) TUITION.—With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

"(1) any services provided to such students during the regular school day;

"(2) any services for which such students receive academic credit toward graduation; or

"(3) any instructional services which supplant or duplicate the academic program of any public or private school.

"SEC. 658N. NONDISCRIMINATION.

"(a) RELIGIOUS NONDISCRIMINATION.—

"(1) CONSTRUCTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

"(B) EXCEPTION.—A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

"(2) DISCRIMINATION AGAINST CHILD.—

"(A) IN GENERAL.—A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

"(B) NON-FUNDED CHILD CARE SLOTS.—Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

"(3) EMPLOYMENT IN GENERAL.—

"(A) PROHIBITION.—A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

"(B) QUALIFIED APPLICANTS.—If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

"(C) PRESENT EMPLOYEES.—This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed

with the provider on the date of enactment of this subchapter.

"(4) EMPLOYMENT AND ADMISSION PRACTICES.—Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

"(b) EFFECT ON STATE LAW.—Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

"SEC. 658O. AMOUNTS RESERVED; ALLOTMENTS.

"(a) AMOUNTS RESERVED.—

"(1) TERRITORIES AND POSSESSIONS.—The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be allotted in accordance with their respective needs.

"(2) INDIANS TRIBES.—The Secretary shall reserve not more than 3 percent of the amount appropriated under section 658B in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c).

"(b) STATE ALLOTMENT.—

"(1) GENERAL RULE.—From the amounts appropriated under section 658B for each fiscal year remaining after reservations under subsection (a), the Secretary shall allot to each State an amount equal to the sum of—

"(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

"(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

"(2) YOUNG CHILD FACTOR.—The term 'young child factor' means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

"(3) SCHOOL LUNCH FACTOR.—The term 'school lunch factor' means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

"(4) ALLOTMENT PERCENTAGE.—

"(A) IN GENERAL.—The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

"(B) LIMITATIONS.—If an allotment percentage determined under subparagraph (A)—

"(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

"(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

"(C) PER CAPITA INCOME.—For purposes of subparagraph (A), per capita income shall be—

"(i) determined at 2-year intervals;

"(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

"(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

"(c) PAYMENTS FOR THE BENEFIT OF INDIAN CHILDREN.—

"(1) GENERAL AUTHORITY.—From amounts reserved under subsection (a)(2), the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

"(2) APPLICATIONS AND REQUIREMENTS.—An application for a grant or contract under this section shall provide that:

"(A) COORDINATION.—The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

"(B) SERVICES ON RESERVATIONS.—In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

"(C) REPORTS AND AUDITS.—The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

"(3) CONSIDERATION OF SECRETARIAL APPROVAL.—In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

"(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

"(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

"(4) THREE-YEAR LIMIT.—Grants or contracts under this section shall be for periods not to exceed 3 years.

"(5) DUAL ELIGIBILITY OF INDIAN CHILDREN.—The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

"(d) DATA AND INFORMATION.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

"(e) REALLOTMENTS.—

"(1) IN GENERAL.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 658E(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

"(2) LIMITATIONS.—

"(A) REDUCTION.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 658E(d).

"(B) REALLOTMENTS.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

"(3) AMOUNTS REALLOTTED.—For purposes of any other section of this subchapter, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

"(f) DEFINITION.—For the purposes of this section, the term 'State' includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SEC. 658P. DEFINITIONS.

"As used in this subchapter:

"(1) CAREGIVER.—The term 'caregiver' means an individual who provides a service directly to an eligible child on a person-to-person basis.

"(2) CHILD CARE CERTIFICATE.—The term 'child care certificate' means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

"(3) ELEMENTARY SCHOOL.—The term 'elementary school' means a day or residential school that provides elementary education, as determined under State law.

"(4) ELIGIBLE CHILD.—The term 'eligible child' means an individual—

"(A) who is less than 13 years of age;

"(B) whose family income does not exceed 75 percent of the State median income for a family of the same size; and

"(C) who—

"(i) resides with a parent or parents who are working or attending a job training or educational program; or

"(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

"(5) ELIGIBLE CHILD CARE PROVIDER.—The term 'eligible child care provider' means—

"(A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

"(i) is licensed, regulated, or registered under State law as described in section 658E(c)(2)(E); and

"(ii) satisfies the State and local requirements, including those referred to in section 658E(c)(2)(F);

applicable to the child care services it provides; or

"(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, niece, or nephew of such provider, if such provider is registered and complies with any State requirements that govern child care provided by the relative involved.

"(6) FAMILY CHILD CARE PROVIDER.—The term 'family child care provider' means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

"(7) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

"(8) LEAD AGENCY.—The term 'lead agency' means the agency designated under section 658B(a).

"(9) PARENT.—The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(10) SECONDARY SCHOOL.—The term 'secondary school' means a day or residential school which provides secondary education, as determined under State law.

"(11) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services unless the context specifies otherwise.

"(12) SLIDING FEE SCALE.—The term 'sliding fee scale' means a system of cost sharing by a family based on income and size of the family.

"(13) STATE.—The term 'State' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(14) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

"SEC. 638Q. PARENTAL RIGHTS AND RESPONSIBILITIES.

"Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

"SEC. 658R. SEVERABILITY.

"If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.".

SUBTITLE B—OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

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SEC. 5101. AMENDMENT OF THE SOCIAL SECURITY ACT.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 5102. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1), in the matter following subparagraph (C), by inserting "or" after "hearing,", and by striking "pending, or (iii) June 1991." and inserting "pending."; and

(2) by striking paragraph (3).

SEC. 5103. REPEAL OF SPECIAL DISABILITY STANDARD FOR WIDOWS AND WIDOWERS.

(a) IN GENERAL.—Section 223(d)(2) (42 U.S.C. 423(d)(2)) is amended—

(1) in subparagraph (A), by striking "(except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) or (f))";

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 216(i)(1) (42 U.S.C. 416(i)(1)) is amended by striking "(2)(C)" and inserting "(2)(B)".

(2) Section 223(f)(1)(B) (42 U.S.C. 423(f)(1)(B)) is amended to read as follows:

"(B) the individual is now able to engage in substantial gainful activity; or".

(3) Section 223(f)(2)(A)(ii) (42 U.S.C. 423(f)(2)(A)(ii)) is amended to read as follows:

"(ii) the individual is now able to engage in substantial gainful activity, or".

(4) Section 223(f)(3) (42 U.S.C. 423(f)(3)) is amended by striking "therefore—" and all that follows and inserting "therefore the individual is able to engage in substantial gainful activity; or".

(5) Section 223(f) is further amended, in the matter following paragraph (4), by striking "(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband)" each place it appears.

(c) TRANSITIONAL RULES RELATING TO MEDICAID AND MEDICARE ELIGIBILITY.—

(1) DETERMINATION OF MEDICAID ELIGIBILITY.—Section 1634(d) (42 U.S.C. 1383c(d)) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by striking "(d) If any person—" and inserting "(d)(1) This subsection applies with respect to any person who—";

(C) in subparagraph (A) (as redesignated), by striking "as required" and all that follows through "but not entitled" and inserting "being then not entitled";

(D) in subparagraph (B) (as redesignated), by striking "section 1616(a)," and inserting "section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66)."; and

(E) by striking "such person shall" and all that follows and inserting the following new paragraph:

"(2) For purposes of title XIX, each person with respect to whom this subsection applies—

"(A) shall be deemed to be a recipient of supplemental security income benefits under this title if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

"(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) if such person received such a payment for the month before the month in which such person began to receive a benefit described in paragraph (1)(A),

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93-66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of title XVIII.".

(2) INCLUSION OF MONTHS OF SSI ELIGIBILITY WITHIN 5-MONTH DISABILITY WAITING PERIOD AND 24-MONTH MEDICARE WAITING PERIOD.—

(A) WIDOW'S BENEFITS BASED ON DISABILITY.—Section 202(e)(5) (42 U.S.C. 402(e)(5)) is amended—

(i) in subparagraph (B), by striking "(i)" and "(ii)" and inserting "(I)" and "(II)", respectively;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting "(A)" after "(5)"; and

(iv) by adding at the end the following new subparagraph:

"(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.".

(B) WIDOWER'S BENEFITS BASED ON DISABILITY.—Section 202(f)(6) (42 U.S.C. 402(f)(6)) is amended—

(i) in subparagraph (B), by striking "(i)" and "(ii)" and inserting "(I)" and "(II)", respectively;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting "(A)" after "(6)"; and

(iv) by adding at the end the following new subparagraph:

"(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.".

(C) MEDICARE BENEFITS.—Section 226(e)(1) (42 U.S.C. 426(e)(1)) is amended—

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(ii) by inserting "(A)" after "(e)(1)"; and

(iii) by adding at the end the following new subparagraph:

"(B) For purposes of subsection (b)(2)(A)(iii), each month in the period commencing with the first month for which an individual is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the 24 months for which such individual must have been entitled to widow's or widower's insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.".

(d) DEEMED DISABILITY FOR PURPOSES OF ENTITLEMENT TO WIDOW'S AND WIDOWER'S INSURANCE BENEFITS FOR WIDOWS AND WIDOWERS ON SSI ROLLS.—

(1) WIDOW'S INSURANCE BENEFITS.—Section 202(e) (42 U.S.C. 402(e)) is amended by adding at the end the following new paragraph:

"(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.".

(2) WIDOWER'S INSURANCE BENEFITS.—Section 202(f) (42 U.S.C. 402(f)) is amended by adding at the end the following new paragraph:

"(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section (other than paragraphs (1) and (2)(C) of subsection (c)) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) shall apply with respect to items and services furnished after December 1990.

(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

(A) is entitled to disability insurance benefits under section 223 of the Social Security Act for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act, or State supplementary payments of the type referred to in section 1616(a) of such Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for January 1991,

(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990, and

(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.

SEC. 5104. DEPENDENCY REQUIREMENTS APPLICABLE TO A CHILD ADOPTED BY A SURVIVING SPOUSE.

(a) IN GENERAL.—Section 216(e) (42 U.S.C. 416(e)) is amended in the second sentence—

(1) by striking "at the time of such individual's death living in such individual's household" and inserting "either living with or receiving at least one-half of his support from such individual at the time of such individual's death"; and

(2) by striking "; except" and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.

SEC. 5105. REPRESENTATIVE PAYEE REFORMS.

(a) IMPROVEMENTS IN THE REPRESENTATIVE PAYEE SELECTION AND RECRUITMENT PROCESS.—

(1) AUTHORITY FOR CERTIFICATION OF PAYMENTS TO REPRESENTATIVE PAYEES.—

(A) TITLE II.—Section 205(j)(1) (42 U.S.C. 405(j)) is amended to read as follows:

"REPRESENTATIVE PAYEES

"(j)(1) If the Secretary determines that the interest of any individual under this title would be served thereby, certification of payment of such individual's benefit under this title may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's 'representative payee'). If the Secretary or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1631(a)(2), the Secretary shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or to the individual.".

(B) TITLE XVI.—

(i) IN GENERAL.—Section 1631(a)(2)(A) (42 U.S.C. 1383(a)(2)(A)) is amended to read as follows:

"(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

"(ii) Upon a determination by the Secretary that the interest of such individual would be served thereby, or in the case of

any individual or eligible spouse referred to in section 1611(e)(3)(A), such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's 'representative payee') for the use and benefit of the individual or eligible spouse.

"(iii) If the Secretary or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 205(j)(1), the Secretary shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse.".

(ii) CONFORMING AMENDMENTS.—Section 1631(a)(2)(C) (42 U.S.C. 1383(a)(2)(C)) is amended—

(I) in clause (i), by striking "a person other than the individual or spouse entitled to such payment" and inserting "representative payee of an individual or spouse";

(II) in clauses (ii), (iii), and (iv), by striking "other person to whom such payment is made" each place it appears and inserting "representative payee"; and

(III) in clause (v)—

(aa) by striking "person receiving payments on behalf of another" and inserting "representative payee"; and

(bb) by striking "person receiving such payments" and inserting "representative payee".

(2) PROCEDURE FOR SELECTING REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—

(i) TITLE II.—Section 205(j)(2) (42 U.S.C. 405(j)(2)) is amended to read as follows:

"(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

"(i) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

"(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Secretary in regulations).

"(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Secretary shall—

"(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this title or title XVI,

"(II) verify such person's social security account number (or employer identification number),

"(III) determine whether such person has been convicted of a violation of section 208 or 1632, and

"(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection or payment of benefits to such person has been terminated pursuant to section 1631(a)(2)(A)(iii) by reason of misuse of funds paid as benefits under this title or title XVI.

"(ii) The Secretary shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

"(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1631(a)(2)(A)(iii), by reason of misuse of funds paid as benefits under this title or title XVI, and

"(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 208 or 1632.

"(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

"(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

"(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), or payment of benefits to such person pursuant to section 1631(a)(2)(A)(ii) has previously been terminated as described in section 1631(a)(2)(B)(ii)(IV), or

"(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

"(ii) The Secretary shall prescribe regulations under which the Secretary may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

"(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

"(I) a relative of such individual if such relative resides in the same household as such individual,

"(II) a legal guardian or legal representative of such individual,

"(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

"(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

"(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

"(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

"(I) such individual poses no risk to the beneficiary,

"(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

"(III) no other more suitable representative payee can be found.

"(D)(i) Subject to clause (ii), if the Secretary makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

"(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

"(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Secretary's determination, legally incompetent or under the age of 15.

"(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Secretary determines is in the best interest of the individual entitled to such benefits.

"(E)(i) Any individual who is dissatisfied with a determination by the Secretary to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Secretary to the same extent as is provided in subsection (b), and to judicial review of the Secretary's final decision as is provided in subsection (g).

"(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Secretary shall provide written notice of the Secretary's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

"(I) is under the age of 15,

"(II) is an unemancipated minor under the age of 18, or

"(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

"(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

"(I) to appeal a determination that a representative payee is necessary for such individual,

"(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

"(III) to review the evidence upon which such designation is based and submit additional evidence.".

(ii) TITLE XVI.—Section 1631(a)(2)(B) (42 U.S.C. 1383(a)(2)(B)) is amended to read as follows:

"(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

"(I) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practica-

ble, include a face-to-face interview with such person; and

"(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Secretary in regulations).

"(ii) As part of the investigation referred to in clause (i)(I), the Secretary shall—

"(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under title II or this title;

"(II) verify the social security account number (or employer identification number) of such person;

"(III) determine whether such person has been convicted of a violation of section 208 or 1632; and

"(IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), and whether certification of payment of benefits to such person has been revoked pursuant to section 205(j), by reason of misuse of funds paid as benefits under title II or this title.

"(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

"(I) such person has previously been convicted as described in clause (ii)(III);

"(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(IV), or certification of payment of benefits to such person under section 205(j) has previously been revoked as described in section 205(j)(2)(B)(i)(IV); or

"(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

"(iv) The Secretary shall prescribe regulations under which the Secretary may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this title would be paid to such person pursuant to subparagraph (A)(ii).

"(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

"(I) a relative of such individual if such relative resides in the same household as such individual;

"(II) a legal guardian or legal representative of such individual;

"(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

"(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this title to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

"(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

"(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

"(I) such individual poses no risk to the beneficiary;

"(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

"(III) no other more suitable representative payee can be found.

"(vii) Subject to clause (viii), if the Secretary makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

"(viii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (vii) shall be for a period of not more than 1 month.

"(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Secretary's determination, legally incompetent, under the age 15 years, or a drug addict or alcoholic referred to in section 1611(e)(3)(A).

"(ix) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Secretary determines is in the best interests of the individual entitled to such benefits.

"(x) Any individual who is dissatisfied with a determination by the Secretary to pay such individual's benefits to a representative payee under this title, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Secretary, and to judicial review of the Secretary's final decision, to the same extent as is provided in subsection (c).

"(xi) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Secretary shall provide written notice of the Secretary's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

"(I) is under the age of 15,

"(II) is an unemancipated minor under the age of 18, or

"(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

"(xii) Any notice described in clause (xi) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (x) of such individual or of such individual's legal guardian or legal representative—

"(I) to appeal a determination that a representative payee is necessary for such individual,

"(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

"(III) to review the evidence upon which such designation is based and submit additional evidence.".

(B) REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasibility of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act, of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(3) PROVISION FOR COMPENSATION OF QUALIFIED ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—

(i) TITLE II.—Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4)(A) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

"(i) 10 percent of the monthly benefit involved, or

"(ii) $25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

"(B) For purposes of this paragraph, the term 'qualified organization' means any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee and which, in accordance with any applicable regulations of the Secretary—

"(i) regularly provides services as the representative payee, pursuant to this subsection or section 1631(a)(2), concurrently to 5 or more individuals,

"(ii) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual, and

"(iii) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

"(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

"(D) This paragraph shall cease to be effective on July 1, 1994.".

(ii) TITLE XVI.—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended—

(I) by redesignating subparagraph (D) as subparagraph (E);

(II) by inserting after subparagraph (C) the following:

"(D)(i) A qualified organization may collect from an individual a monthly fee for ex-

penses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

"(I) 10 percent of the monthly benefit involved, or

"(II) $25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

"(ii) For purposes of this subparagraph, the term 'qualified organization' means any community-based nonprofit social service agency which—

"(I) is bonded or licensed in each State in which the agency serves as a representative payee;

"(II) in accordance with any applicable regulations of the Secretary—

"(aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 205(j)(4) concurrently to 5 or more individuals;

"(bb) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual; and

"(cc) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

"(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

"(iv) This subparagraph shall cease to be effective on July 1, 1994.".

(B) STUDIES AND REPORTS.—

(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A).

(ii) REPORT BY COMPTROLLER GENERAL.—Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.

(4) STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1992.

(5) EFFECTIVE DATES.—

(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) shall take effect July 1, 1991, and shall apply only with respect to—

(i) certifications of payment of benefits under title II of the Social Security Act to representative payees made on or after such date; and

(ii) provisions for payment of benefits under title XVI of such Act to representative payees made on or after such date.

(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.

(b) IMPROVEMENTS IN RECORDKEEPING AND AUDITING REQUIREMENTS.—

(1) IMPROVED ACCESS TO CERTAIN INFORMATION.—

(A) IN GENERAL.—Section 205(j)(3) (42 U.S.C. 605(j)(3)) is amended—

(i) by striking subparagraph (B);

(ii) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively;

(iii) in subparagraph (D) (as so redesignated), by striking "(A), (B), (C), and (D)" and inserting "(A), (B), and (C)"; and

(iv) by adding at the end the following new subparagraphs:

"(E) The Secretary shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

"(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection or section 1631(a)(2), and

"(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection or section 1631(a)(2).

"(F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1631(a)(2) and which are located in the area served by such servicing office.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect October 1, 1992, and the Secretary of Health and Human Services shall take such actions as are necessary to ensure that the requirements of section 205(j)(3)(E) of the Social Security Act (as amended by subparagraph (A) of this paragraph) are satisfied as of such date.

(2) STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act, which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

(B) SPECIAL PROCEDURES.—In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for—

(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

(ii) periodic, random audits of records which would be kept under such a system,

in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

(C) HIGH-RISK REPRESENTATIVE PAYEE.—For purposes of this paragraph, the term "high-risk representative payee" means a representative payee under section 205(j) or 1631(a)(2) of the Social Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who—

(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

(iii) is a creditor of such individual, or

(iv) is in such other category of payees as the Secretary may determine appropriate.

(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).

(3) DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES.—

(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

(B) LISTING OF ADDRESSES OF MULTIPLE BENEFIT RECIPIENTS.—The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II, benefits under title XVI, or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving benefits on the basis of the wages and self-employment income of the same individual shall be counted as 1 individual.

(C) APPROPRIATE STATE AGENCY.—The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult protective services in such State.

(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

(E) STATE.—For purposes of this paragraph, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(c) RESTITUTION.—

(1) TITLE II.—Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (5) (as so redesignated by subsection (a)(3)(A)(i) of this section) as paragraph (6) and by inserting after paragraph (4) (as added by subsection (a)(3)(A)(i)) the following new paragraph:

"(5) In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.".

(2) TITLE XVI.—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended by redesignating subparagraph (E) (as so redesignated by subsection (a)(3)(A)(ii)(I) of this section) as subparagraph (F) and by inserting after subparagraph (D) (as added by subsection (a)(3)(A)(i)(III)) the following new subparagraph:

"(E) RESTITUTION.—In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.".

(d) REPORTS TO THE CONGRESS.—

(1) IN GENERAL.—

(A) TITLE II.—Section 205(j)(5) (as so redesignated by subsection (c)(1) of this section) is amended to read as follows:

"(5) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(B) TITLE XVI.—Section 1631(a)(2)(E) (42 U.S.C. 1383(a)(2)(E)), as so redesignated by subsection (c)(2) of this section, is amended to read as follows:

"(E) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this paragraph, including—

"(i) the number of cases in which the representative payee was changed;

"(ii) the number of cases discovered where there has been a misuse of funds;

"(iii) how any such cases were dealt with by the Secretary;

"(iv) the final disposition of such cases (including any criminal penalties imposed); and

"(v) such other information as the Secretary determines to be appropriate.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to annual reports issued for years after 1991.

(3) FEASIBILITY STUDY REGARDING INVOLVEMENT OF DEPARTMENT OF VETERANS AFFAIRS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in cooperation with the Secretary of Veterans Affairs, shall conduct a study of the feasibility of designating the Department of Veterans Affairs as the lead agency for purposes of selecting, appointing, and monitoring representative payees for those individuals who receive benefits paid under title II or XVI of the Social Security Act and benefits paid by the Department of Veterans Affairs. Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the results of such study, together with any recommendations.

SEC. 5106. FEES FOR REPRESENTATION OF CLAIMANTS IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL.—

(1) TITLE II.—Subsection (a) of section 206 (42 U.S.C. 406(a)) is amended—

(A) by inserting "(1)" after "(a)";

(B) in the fifth sentence, by striking "Whenever" and inserting "Except as provided in paragraph (2)(A), whenever"; and

(C) by striking the sixth sentence and all that follows through "Any person who" in the seventh sentence and inserting the following:

"(2)(A) In the case of a claim of entitlement to past-due benefits under this title, if—

"(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Secretary prior to the time of the Secretary's determination regarding the claim,

"(ii) the fee specified in the agreement does not exceed the lesser of—

"(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1127(a)), or

"(II) $4,000, and

"(iii) the determination is favorable to the claimant,

then the Secretary shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Secretary may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 215(i) since such date. The Secretary shall publish any such increased amount in the Federal Register.

"(B) For purposes of this subsection, the term 'past-due benefits' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223.

"(C) In the case of a claim with respect to which the Secretary has approved an agreement pursuant to subparagraph (A), the Secretary shall provide the claimant and the person representing the claimant a written notice of—

"(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1127(a)) and the dollar amount of the past-due benefits payable to the claimant,

"(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

"(iii) a description of the procedures for review under paragraph (3).

"(3)(A) The Secretary shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(C)—

"(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Secretary to reduce the maximum fee, or

"(ii) the person representing the claimant submits a written request to the Secretary to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Secretary to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

"(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Secretary determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Secretary for such purpose.

"(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Secretary or by an administrative law judge or other person (other than such adjudicator) who is designated by the Secretary.

"(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

"(4)(A) Subject to subparagraph (B), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Secretary shall, notwithstanding

section 205(i), certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1127(a)) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1127(a)).

"(B) The Secretary shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.

"(5) Any person who".

(2) TITLE XVI.—Paragraph (2)(A) of section 1631(d) (42 U.S.C. 1383(d)(2)(A)) is amended to read as follows:

"(2)(A) The provisions of section 206(a) (other than paragraph (4) thereof) shall apply to this part to the same extent as they apply in the case of title II, except that paragraph (2) thereof shall be applied—

"(i) by substituting 'section 1127(a) or 1631(g)' for 'section 1127(a)'; and

"(ii) by substituting 'section 1631(a)(7)(A) or the requirements of due process of law' for 'subsection (g) or (h) of section 223'.".

(b) PROTECTION OF ATTORNEY'S FEES FROM OFFSETTING SSI BENEFITS.—Subsection (a) of section 1127 (42 U.S.C. 1320a-6(a)) is amended by adding at the end the following new sentence: "A benefit under title II shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 206(a)(4).".

(c) LIMITATATION OF TRAVEL EXPENSES FOR REPRESENTATION OF CLAIMANTS AT ADMINISTRATIVE PROCEEDINGS.—Section 201(j) (42 U.S.C. 401(j)), section 1631(h) (42 U.S.C. 1383(h)), and section 1817(i) (42 U.S.C. 1395i(i)) are each amended by adding at the end the following new sentence: "The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after April 1, 1991.

SEC. 5107. APPLICABILITY OF ADMINISTRATIVE RES JUDICATA; RELATED NOTICE REQUIREMENTS.

(a) IN GENERAL.—

(1) TITLE II.—Section 205(b) (42 U.S.C. 405(b)) is amended by adding at the end the following new paragraph:

"(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

"(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary shall describe in clear and specific language the effect on possible entitlement to benefits under this title of choosing to reapply in lieu of requesting review of the determination.".

(2) TITLE XVI.—Section 1631(c)(1) (42 U.S.C. 1383(c)(1)) is amended—

(A) by inserting "(A)" after "(c)(1)"; and

(B) by adding at the end the following:

"(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

"(ii) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary shall describe in clear and specific language the effect on possible eligibility to receive payments under this title of choosing to reapply in lieu of requesting review of the determination.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to adverse determinations made on or after July 1, 1991.

SEC. 5108. DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall develop and carry out demonstration projects designed to implement the accountability procedures described in subsection (b) in each of not fewer than 3 telephone service centers operated by the Social Security Administration. Telephone service centers shall be selected for implementation of the accountability procedures so as to permit a thorough evaluation of such procedures as they would operate in conjunction with the service technology most recently employed by the Social Security Administration. Each such demonstration project shall commence not later than 180 days after the date of the enactment of this Act and shall remain in operation for not less than 1 year and not more than 3 years.

(b) ACCOUNTABILITY PROCEDURES.—

(1) IN GENERAL.—During the period of each demonstration project developed and carried out by the Secretary of Health and Human Services with respect to a telephone service center pursuant to subsection (a), the Secretary shall provide for the application at such telephone service center of accountability procedures consisting of the following:

(A) In any case in which a person communicates with the Social Security Administration by telephone at such telephone service center and provides in such communication his or her name, address, and such other identifying information as the Secretary determines necessary and appropriate for purposes of this subparagraph, the Secretary must thereafter promptly provide such person a written receipt which sets forth—

(i) the name of any individual representing the Social Security Administration with whom such person has spoken in such communication,

(ii) the date of the communication;

(iii) a description of the nature of the communication,

(iv) any action that an individual representing the Social Security Administration has indicated in the communication will be taken in response to the communication, and

(v) a description of the information or advice offered in the communication by an individual representing the Social Security Administration.

(B) Such person must be notified during the communication by an individual representing the Social Security Administration that, if adequate identifying information is provided to the Administration, a receipt described in subparagraph (A) will be provided to such person.

(C) A copy of any receipt required to be provided to any person under subparagraph (A) must be—

(i) included in the file maintained by the Social Security Administration relating to such person, or

(ii) if there is no such file, otherwise retained by the Social Security Administration in retrievable form until the end of the 5-year period following the termination of the project.

(2) EXCLUSION OF CERTAIN ROUTINE TELEPHONE COMMUNICATIONS.—The Secretary may exclude from demonstration projects carried out pursuant to this section routine telephone communications which do not relate to potential or current eligibility or entitlement to benefits.

(c) REPORT.—

(1) IN GENERAL—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report on the progress of the demonstration projects conducted pursuant to this section, together with any related data and materials which the Secretary may consider appropriate. The report shall be submitted not later than 90 days after the termination of the project.

(2) SPECIFIC MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall—

(A) assess the costs and benefits of the accountability procedures,

(B) identify any major difficulties encountered in implementing the demonstration project, and

(C) assess the feasibility of implementing the accountability procedures on a national basis.

SEC. 5109. NOTICE REQUIREMENTS.

(a) REQUIREMENTS.—

(1) TITLE II.—Section 205 (42 U.S.C. 405) is amended by inserting after subsection (r) the following new subsection:

"NOTICE REQUIREMENTS

"(s) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency—

"(1) is written in simple and clear language, and

"(2) includes the address and telephone number of the local office of the Social Secu-

rity Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.".

(2) TITLE XVI.—Section 1631 (42 U.S.C. 1383) is amended by adding at the end the following:

"NOTICE REQUIREMENTS

"(n) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency—

"(1) is written in simple and clear language, and

"(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to notices issued on or after July 1, 1991.

SEC. 5110. TELEPHONE ACCESS TO THE SOCIAL SECURITY ADMINISTRATION.

(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

(b) TELEPHONE LISTINGS.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later 180 days after such date.

SEC. 5111. AMENDMENTS RELATING TO SOCIAL SECURITY ACCOUNT STATEMENTS.

(a) IN GENERAL.—Section 1142 (42 U.S.C. 1320b-13), as added by section 10308 of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2485), is amended—

(1) by striking "SEC. 1142." and inserting "SEC. 1143."; and

(2) in subsection (c)(2), by striking " a biennial" and inserting "an annual".

(b) DISCLOSURE OF ADDRESS INFORMATION BY INTERNAL REVENUE SERVICE TO SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 6103(m) of the Internal Revenue Code of 1986 (relating to disclosure of taxpayer identity information) is amended by adding at the end the following new paragraph:

"(7) SOCIAL SECURITY ACCOUNT STATEMENT FURNISHED BY SOCIAL SECURITY ADMINISTRATION.—Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.".

(2) SAFEGUARDS.—Section 6103(p)(4) of such Code (relating to safeguards) is amended, in the matter following subparagraph (f)(iii), by striking "subsection (m)(2), (4), or (6)" and inserting "paragraph (2), (4), (6), or (7) of subsection (m)".

(3) UNAUTHORIZED DISCLOSURE PENALTIES.—Paragraph (2) of section 7213(a) of such Code (relating to unauthorized disclosure of returns and return information) is amended by striking "(m)(2), (4), or (6)" and inserting "(m)(2), (4), (6), or (7)".

SEC. 5112. TRIAL WORK PERIOD DURING ROLLING FIVE-YEAR PERIOD FOR ALL DISABLED BENEFICIARIES.

(a) IN GENERAL.—Section 222(c) (42 U.S.C. 422(c)) is amended—

(1) in paragraph (4)(A), by striking ", beginning on or after the first day of such period," and inserting ", in any period of 60 consecutive months,"; and

(2) by striking paragraph (5).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1992.

SEC. 5113. CONTINUATION OF BENEFITS ON ACCOUNT OF PARTICIPATION IN A NON-STATE VOCATIONAL REHABILITATION PROGRAM.

(a) IN GENERAL.—Section 225(b) (42 U.S.C. 425(b)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and"; and

(2) in paragraph (2), by striking "Commissioner of Social Security" and inserting "Secretary".

(b) PAYMENTS AND PROCEDURES.—Section 1631(a)(6) (42 U.S.C. 1383(a)(6)) is amended—

(1) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and"; and

(2) in subparagraph (B), by striking "Commissioner of Social Security" and inserting "Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month.

SEC. 5114. LIMITATION ON NEW ENTITLEMENT TO SPECIAL AGE-72 PAYMENTS.

(a) IN GENERAL.—Section 228(a)(2) (42 U.S.C. 428(a)(2)) is amended by striking "(B)" and inserting "(B)(i) attained such age after 1967 and before 1972, and (ii)".

(b) EFFECTIVE DATE— The amendment made by subsection (a) shall apply with respect benefits payable on the basis of applications filed after the date of the enactment of this Act.

SEC. 5115. ELIMINATION OF ADVANCED CREDITING TO THE TRUST FUNDS OF SOCIAL SECURITY PAYROLL TAXES.

(a) IN GENERAL.—Section 201(a) (42 U.S.C. 401(a)) is amended—

(1) in the first sentence following clause (4)—

(A) by striking "monthly on the first day of each calendar month" both places it appears and inserting "from time to time";

(B) by striking "to be paid to or deposited into the Treasury during such month" and inserting "paid to or deposited into the Treasury"; and

(2) in the last sentence, by striking "Fund;" and inserting "Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the first day of the month following the month in which this Act is enacted.

SEC. 5116. ELIMINATION OF ELIGIBILITY FOR RETROACTIVE BENEFITS FOR CERTAIN INDIVIDUALS ELIGIBLE FOR REDUCED BENEFITS.

(a) IN GENERAL.—Section 202(j)(4) (42 U.S.C. 402(j)(4)) is amended—

(1) in subparagraph (A), by striking "if the effect" and all that follows and inserting "if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q).''; and

(2) in subparagraph (B), by striking clauses (i) and (iv) and by redesignating clauses (ii), (iii), and (v) as clauses (i), (ii), and (iii), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for benefits filed on or after January 1, 1991.

SEC. 5117. CONSOLIDATION OF OLD METHODS OF COMPUTING PRIMARY INSURANCE AMOUNTS.

(a) CONSOLIDATION OF COMPUTATION METHODS.—

(1) IN GENERAL.—Section 215(a)(5) (42 U.S.C. 415(a)(5)) is amended—

(A) by striking "For purposes of" and inserting "(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of";

(B) by striking the last sentence; and

(C) by adding at the end the following new subparagraphs:

"(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of section 215 as in effect in December 1978, without regard to subsection (b)(4) and (c) of such section as so in effect.

"(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under section 215(b)).

"(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of section 215(a) (as in effect in December 1978) shall be increased to $11.50.

"(iv) In the case of an individual to whom section 215(d) applies, the primary insurance amount of such individual shall be the greater of—

"(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

"(II) the primary insurance amount computed under section 215(d).

"(C) An individual is described in this subparagraph if—

"(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

"(ii) such individual's primary insurance amount computed under this section as in effect immediately before the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 would have been computed under the provisions described in subparagraph (D).

"(D) The provisions described in this subparagraph are—

"(i) the provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

"(ii) the provisions of section 209 as in effect prior to the enactment of the Social Security Act Amendments of 1950, and

"(iii) the provisions of section 215(d) as in effect prior to the enactment of the Social Security Amendments of 1977.

"(E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) for each year after 1978.".

(2) COMPUTATION OF PRIMARY INSURANCE BENEFIT UNDER 1939 ACT.—

(A) DIVISION OF WAGES BY ELAPSED YEARS.—Section 215(d)(1) (42 U.S.C. 415(d)(1)) is amended—

(i) in subparagraph (A), by inserting "and subject to section 104(j)(2) of the Social Security Amendments of 1972" after "thereof"; and

(ii) by striking "(B) For purposes" in subparagraph (B) and all that follows through clause (ii) of such subparagraph and inserting the following:

"(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) (as so in effect)—

"(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual—

"(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

"(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

"(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after 1949 and prior to 1951.".

(B) CREDITING OF WAGES TO YEARS.—Clause (iii) of section 215(d)(1)(B) (42 U.S.C. 415(d)(1)(B)(iii)) is amended to read as follows:

"(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than $3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full $3,000 increment was credited; and".

(C) APPLICABILITY.—Section 215(d) is further amended—

(i) in paragraph (2)(B), by striking "except as provided in paragraph (3),";

(ii) by striking paragraph (2)(C) and inserting the following:

"(C)(i) who becomes entitled to benefits under section 202(a) or 223 or who dies, or

"(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) or under section 231."; and

(iii) by striking paragraphs (3) and (4).

(3) CONFORMING AMENDMENTS.—

(A) Section 215(i)(4) (42 U.S.C. 415(i)(4)) is amended in the first sentence by inserting "and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990" after "as then in effect".

(B) Section 203(a)(8) (42 U.S.C. 403(a)(8)) is amended in the first sentence by inserting "and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990," after "December 1978" the second place it appears.

(C) Section 215(c) (42 U.S.C. 415(c)) is amended by striking "This" and inserting "Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this".

(D) Section 215(f)(7) (42 U.S.C. 415(f)(7)) is amended by striking the period at the end of the first sentence and inserting ", including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990".

(E)(i) Section 215(d) (42 U.S.C. 415(d)) is further amended by redesignating paragraph (5) as paragraph (3).

(ii) Subsections (a)(7)(A), (a)(7)(C)(ii), and (f)(9)(A) of section 215 (42 U.S.C. 415) are each amended by striking "subsection (d)(5)" each place it appears and inserting "subsection (d)(3)".

"(iii) Section 215(f)(9)(B) (42 U.S.C. 415(f)(9)(B)) is amended by striking "subsection (a)(7) or (d)(5)" each place it appears and inserting "subsection (a)(7) or (d)(3)".

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted, except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

(B) RECOMPUTATIONS.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.

(b) BENEFITS IN CASE OF VETERANS.—Section 217(b) (42 U.S.C. 417(b)) is amended—

(1) in the first sentence of paragraph (1), by striking "Any" and inserting "Subject to paragraph (3), any"; and

(2) by adding at the end the following new paragraph:

"(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 202, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after the month in which the Omnibus Budget Reconciliation Act of 1990 was enacted.

"(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 202 based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.".

(c) APPLICABILITY OF ALTERNATIVE METHOD FOR DETERMINING QUARTERS OF COVERAGE WITH RESPECT TO WAGES IN THE PERIOD FROM 1937 TO 1950.—

(1) APPLICABILITY WITHOUT REGARD TO NUMBER OF ELAPSED YEARS.—Section 213(c) (42 U.S.C. 413(c)) is amended—

(A) by inserting "and 215(d)" after "214(a)"; and

(B) by striking "except where—" and all that follows and inserting the following: "except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.".

(2) APPLICABILITY WITHOUT REGARD TO DATE OF DEATH.—Section 155(b)(2) of the Social Security Amendments of 1967 is amended by striking "after such date".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply only with respect to individuals who—

(A) make application for benefits under section 202 of the Social Security Act after the 18-month period following the month in which this Act is enacted, and

(B) are not entitled to benefits under section 227 or 228 of such Act for the month in which such application is made.

SEC. 5118. SUSPENSION OF DEPENDENT'S BENEFITS WHEN THE WORKER IS IN AN EXTENDED PERIOD OF ELIGIBILITY.

(a) IN GENERAL.—Section 223(e) (42 U.S.C. 623(e)) is amended by—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following new paragraph:

"(2) No benefit shall be payable under section 202 on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) is not payable under paragraph (1).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits for months after the date of the enactment of this Act.

SEC. 5119. ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE.

(a) CONTINUED ENTITLEMENT OF DEEMED SPOUSE DESPITE ENTITLEMENT OF LEGAL SPOUSE.—Section 216(h)(1) (42 U.S.C. 416(h)(1)) is amended—

(1) in subparagraph (A)—

(A) by inserting "(i)" after "(h)(1)(A)"; and

(B) by striking "If such courts" in the second sentence and inserting the following:

"(ii) If such courts"; and

(2) in subparagraph (B)—

(A) by inserting "(i)" after "(B)";

(B) by striking "The provisions of the preceding sentence" in the second sentence and inserting the following:

"(ii) The provisions of clause (i)";

(C) by striking "(i) if another" in the second sentence and all that follows through "or (ii)";

(D) by striking "The entitlement" in the third sentence and inserting the following:

"(iii) The entitlement";

(E) by striking "subsection (b), (c), (e), (f), or (g)" the first place it appears in the third sentence and inserting "subsection (b) or (c)",

(F) by striking "wife, widow, husband, or widower" the first place it appears in the third sentence and inserting "wife or husband";

(G) by striking "(i) in which" in the third sentence and all that follows through "in which such applicant entered" and inserting "in which such person enters";

(H) by striking "For purposes" in the fourth sentence and inserting the following:

"(iv) For purposes";

and

(I) by striking "(i)" and "(ii)" in the fourth sentence and inserting "(I)" and "(II)", respectively.

(b) TREATMENT OF DIVORCE IN THE CONTEXT OF INVALID MARRIAGE.—Section 216(h)(1)(B)(i) (as amended by subsection (a)) is further amended—

(1) by striking "where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual" and inserting "where under subsection (b), (c), (d), (f), or (g) such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual";

(2) by striking "and such applicant" and all that follows through "files the application,";

(3) by striking "subsections (b), (c), (f), and (g)" and inserting "subsections (b), (c), (d), (f), and (g)"; and

(4) by adding at the end the following new sentences: "Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.".

(c) TREATMENT OF MULTIPLE ENTITLEMENTS UNDER THE FAMILY MAXIMUM.—Section 203(a)(3) (42 U.S.C. 403(a)(3)) is amended by adding after subparagraph (C) the following new subparagraph:

"(D) In any case in which—

"(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 202, or as a surviving spouse under subsection (e), (f), or (g) of section 202,

"(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 216(h)(1), and

"(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 216(h)(1)) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 202 based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.".

(d) CONFORMING AMENDMENT.—Section 203(a)(6) (42 U.S.C. 403(a)(6)) is amended by inserting "(3)(D)," after "(3)(C),".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

(2) APPLICATION REQUIREMENT.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

(B) EXCEPTION FROM APPLICATION REQUIREMENT.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).

SEC. 5120. VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Pursuant to section 505 of the Social Security Disability Amendments of 1980, the Secretary of Health and Human Services shall develop and carry out under this section demonstration projects in each of not fewer than three States. Each such demonstration project shall be designed to assess the advantages and disadvantages of permitting disabled beneficiaries (as defined in paragraph (3)) to select, from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activity. Each such demonstration project shall commence as soon as practicable after the date of the enactment of this Act and shall remain in operation until the end of fiscal year 1993.

(2) SCOPE AND PARTICIPATION.—Each demonstration project shall be of sufficient scope and open to sufficient participation by disabled beneficiaries so as to permit meaningful determinations under subsection (b).

(3) DISABLED BENEFICIARY.—For purposes of this section, the term "disabled beneficiary" means an individual who is entitled to disability insurance benefits under section 223 of the Social Security Act or benefits under section 202 of such Act based on such individual's own disability.

(b) MATTERS TO BE DETERMINED.—In the course of each demonstration project conducted under this section, the Secretary shall determine the following:

(1) the extent to which disabled beneficiaries participate in the process of selecting providers of rehabilitation services, and their reasons for participating or not participating;

(2) notable characteristics of participating disabled beneficiaries (including their impairments), classified by the type of provider selected;

(3) the various needs for rehabilitation demonstrated by participating disabled beneficiaries, classified by the type of provider selected;

(4) the extent to which providers of rehabilitation services which are not agencies or instrumentalities of States accept referrals of disabled beneficiaries under procedures in effect under section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for such services and the most effective way of reimbursing such providers in accordance with such provisions;

(5) the extent to which providers participating in the demonstration projects enter into contracts with third parties for services and the types of such services;

(6) whether, and if so the extent to which, disabled beneficiaries who select their own providers of rehabilitation services are more likely to engage in substantial gainful activity and thereby terminate their entitlement

under section 202 or 223 of the Social Security Act than those who do not;

(7) the cost effectiveness of permitting disabled beneficiaries to select their providers of vocational rehabilitation services, and the comparative cost effectiveness of different types of providers; and

(8) the feasibility of establishing a permanent national program for allowing disabled beneficiaries to choose their own qualified vocational rehabilitation provider and any additional safeguards which would be necessary to assure the effectiveness of such a program.

(c) PROCEDURAL REQUIREMENTS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select for participation in each demonstration project under this section disabled beneficiaries for whom there is a reasonable likelihood that rehabilitation services provided to them will result in performance by them of substantial gainful activity for a continuous period of nine months prior to termination of the project.

(2) SELECTION OF PROVIDERS OF REHABILITATION SERVICES.—The Secretary shall select qualified rehabilitation agencies to serve as providers of rehabilitation services in the geographic area covered by each demonstration project conducted under this section. The Secretary shall make such selection after consultation with disabled individuals and organizations representing such individuals. With respect to each demonstration project, the Secretary may approve on a case-by-case basis additional qualified rehabilitation agencies from outside the geographic area covered by the project to serve particular disabled beneficiaries.

(3) REIMBURSEMENT OF PROVIDERS.—

(A) Except as provided in subparagraph (B), providers of rehabilitation services under each demonstration project under this section shall be reimbursed in accordance with the procedures in effect under the provisions of section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for services provided under such section.

(B) The Secretary may contract with providers of rehabilitation services under each demonstration project under this section on a fee-for-service basis in order to—

(i) conduct vocational evaluations directed at identifying those disabled beneficiaries who have reasonable potential for engaging in substantial gainful activity and thereby terminating their entitlement to benefits under section 202 or 223 of the Social Security Act if provided with vocational rehabilitation services as participants in the project, and

(ii) develop jointly with each disabled beneficiary so identified an individualized, written rehabilitation program.

(C) Each written rehabilitation program developed pursuant to subparagraph (B)(ii) for any participant shall include among its provisions—

(i) a statement of the participant's rehabilitation goal,

(ii) a statement of the specific rehabilitation services to be provided and of the identity of the provider to furnish such services,

(iii) the projected date for the initiation of such services and their anticipated duration, and

(iv) objective criteria and an evaluation procedure and schedule for determining whether the stated rehabilitation goal is being achieved.

(d) REPORTS.—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an interim written report on the progress of the demonstration projects conducted under this section not later than April 1, 1992, together with any related data and materials which the Secretary considers appropriate. The Secretary shall submit a final written report to such Committees addressing the matters to be determined under subsection (b) not later than April 1, 1994.

(e) STATE.—For purposes of this section, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(f) CONTINUATION OF DEMONSTRATION AUTHORITY.—Section 505(c) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1310 note) is amended to read as follows:

"(c) The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under this section (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990) no later than October 1, 1993.".

SEC. 5121. EXEMPTION FOR CERTAIN ALIENS, RECEIVING AMNESTY UNDER THE IMMIGRATION AND NATIONALITY ACT, FROM PROSECUTION FOR MISREPORTING OF EARNINGS OR MISUSE OF SOCIAL SECURITY ACCOUNT NUMBERS OR SOCIAL SECURITY CARDS.

(a) IN GENERAL.—Section 208 (42 U.S.C. 408) is amended by adding at the end the following:

"(d)(1) Except as provided in paragraph (2), an alien—

"(A) whose status is adjusted to that of lawful temporary resident under section 210 or 245A of the Immigration and Nationality Act or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

"(B) whose status is adjusted to that of permanent resident—

"(i) under section 202 of the Immigration Reform and Control Act of 1986, or

"(ii) pursuant to section 249 of the Immigration and Nationality Act, or

"(C) who is granted special immigrant status under section 101(a)(27)(I) of the Immigration and Nationality Act,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) if such conduct is alleged to have occurred prior to 60 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990.

"(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C)) consisting of—

"(A) selling a card that is, or purports to be, a social security card issued by the Secretary,

"(B) possessing a social security card with intent to sell it, or

"(C) counterfeiting a social security card with intent to sell it.

"(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) were not committed.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—So much of section 208 as precedes subsection (d) (as added by subsection (a) of this section) is amended—

(1) in subsection (a), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; (2) in subsection (g), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; (3) by redesignating subsections (a) through (h) as paragraphs (1) through (8), respectively; (4) by inserting "(a)" before "Whoever"; (5) by inserting "(b)" at the beginning of the next-to-last undesignated paragraph; and (6) by inserting "(c)" at the beginning of the last undesignated paragraph.

SEC. 5122. REDUCTION OF AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE APPLICABLE IN DETERMINING SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT.

(a) IN GENERAL.—Section 215(a)(1)(C)(ii) (42 U.S.C. 415(a)(1)(C)(ii)) is amended by striking "of not less than 25 percent" the first place it appears and all that follows through "1977) if" and inserting "of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e)) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e)) could be counted for such year if".

(b) RETENTION OF CURRENT AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE FOR PURPOSES OF WINDFALL ELIMINATION PROVISION.—Section 215(a)(7)(D) (42 U.S.C. 415(a)(7)(D)) is amended—

(1) in the first sentence, by striking "(as defined in paragraph (1)(C)(ii))"; and

(2) by adding at the end (after the table) the following new flush sentence:

"For purposes of this subparagraph, the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.".

SEC. 5123. CHARGING OF EARNINGS OF CORPORATE DIRECTORS.

(a) IN GENERAL.—

(1) Title II is amended by moving the last undesignated paragraph of section 211(a) of such title (as added by section 9022(a) of the Omnibus Budget Reconciliation Act of 1987) to the end of section 203(f)(5) of such title.

(2) The undesignated paragraph moved to section 203(f)(5) of the Social Security Act by paragraph (1) is amended—

(A) by striking "Any income of an individual which results from or is attributable to" and inserting "(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to",

(B) by striking "the income is actually paid" and inserting "the income, on which the computation of such net earnings from self-employment is based, is actually paid"; and

(C) by striking "unless it was" and inserting "unless such income was".

(3) The last undesignated paragraph of section 1402(a) of the Internal Revenue Code of 1986 (as added by section 9022(b) of the Omnibus Budget Reconciliation Act of 1987) is repealed.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990.

SEC. 5124. COLLECTION OF EMPLOYEE SOCIAL SECURITY AND RAILROAD RETIREMENT TAXES ON TAXABLE GROUP-TERM LIFE INSURANCE PROVIDED TO RETIREES.

(a) SOCIAL SECURITY TAXES.—Section 3102 of the Internal Revenue Code of 1986 (relating to deduction of tax from wages) is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS.—

"(1) IN GENERAL.—In the case of any payment for group-term life insurance to which this subsection applies—

"(A) subsection (a) shall not apply,

"(B) the employer shall separately include on the statement required under section 6051—

"(i) the portion of the wages which consists of payments for group-term life insurance to which this subsection applies, and

"(ii) the amount of the tax imposed by section 3101 on such payments, and

"(C) the tax imposed by section 3101 on such payments shall be paid by the employee.

"(2) BENEFITS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any payment for group-term life insurance to the extent—

"(A) such payment constitutes wages, and

"(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer."

(b) RAILROAD RETIREMENT TAXES.—Section 3202 of such Code (relating to deduction of tax from compensation) is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS.—

"(1) IN GENERAL.—In the case of any payment for group-term life insurance to which this subsection applies—

"(A) subsection (a) shall not apply,

"(B) the employer shall separately include on the statement required under section 6051—

"(i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

"(ii) the amount of the tax imposed by section 3201 on such payments, and

"(C) the tax imposed by section 3201 on such payments shall be paid by the employee.

"(2) BENEFITS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any payment for group-term life insurance to the extent—

"(A) such payment constitutes compensation, and

"(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to coverage provided after December 31, 1990.

SEC. 5125. TIER 1 RAILROAD RETIREMENT TAX RATES EXPLICITLY DETERMINED BY REFERENCE TO SOCIAL SECURITY TAXES.

(a) TAX ON EMPLOYEES.—Subsection (a) of section 3201 of the Internal Revenue Code of 1986 (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "employee:" and all that follows and inserting "employee. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year."

(b) TAX ON EMPLOYEE REPRESENTATIVES.—Paragraph (1) of section 3211(a) of such Code (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "representative:" and all that follows and inserting "representative. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year."

(c) TAX ON EMPLOYERS.—Subsection (a) of section 3221 of such Code (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "employer:" and all that follows and inserting "employer. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3111 for the calendar year."

SEC. 5126. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking "1990" and inserting "1992".

SEC. 5127. WAIVER OF 2-YEAR WAITING PERIOD FOR INDEPENDENT ENTITLEMENT TO DIVORCED SPOUSE'S BENEFITS.

(a) WAIVER FOR PURPOSES OF DEDUCTIONS ON ACCOUNT OF WORK.—Section 203(b)(2) (42 U.S.C. 403(b)(2)) is amended—

(1) by striking "(2) When" and all that follows through "2 years, the benefit" and inserting the following:

"(2)(A) Except as provided in subparagraph (B), in any case in which—

"(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 202(b) or (c) for any month, and

"(ii) such person has been divorced for not less than 2 years,

the benefit"; and

(2) by adding at the end the following new subparagraph:

"(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 202(a) before the date of the divorce.".

(b) WAIVER IN CASE OF NONCOVERED WORK OUTSIDE THE UNITED STATES.—Section 203(d)(1)(B) (42 U.S.C. 403(d)(1)(B)) is amended—

(1) by striking "(B) When" and all that follows through "2 years, the benefit" and inserting the following:

"(B)(i) Except as provided in clause (ii), in any case in which—

"(I) a divorced spouse is entitled to monthly benefits under section 202(b) or (c) for any month, and

"(II) such divorced spouse has been divorced for not less than 2 years,

the benefit"; and

(2) by adding at the end the following new clause:

"(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

SEC. 5128. MODIFICATION OF THE PREEFFECTUATION REVIEW REQUIREMENT APPLICABLE TO DISABILITY INSURANCE CASES.

(a) IN GENERAL.—Section 221(c)(3) (42 U.S.C. 421(c)(3)) is amended to read as follows:

"(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 216(i) or 223(d)), the Secretary shall review—

"(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this title, and

"(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

"(B) In conducting reviews pursuant to subparagraph (A), the Secretary shall, to the extent feasible, select for review those determinations which the Secretary identifies as being the most likely to be incorrect.

"(C) Not later than April 1, 1992, and annually thereafter, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Secretary based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990.

SEC. 5129. RECOVERY OF OASDI OVERPAYMENTS BY MEANS OF REDUCTION IN TAX REFUNDS.

(a) ADDITIONAL METHOD OF RECOVERY.—Section 204(a)(1)(A) (42 U.S.C. 404(a)(1)(A)) is amended by inserting after "payments to such overpaid person," the following: "or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, United States Code,".

(b) RECOVERY BY MEANS OF REDUCTION IN TAX REFUNDS.—Section 3720A of title 31, United States Code (relating to collection of debts owed to Federal agencies) is amended—

(1) in subsection (a), by striking "OASDI overpayment and";

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting the following new subsection after subsection (e):

"(f)(1) Subsection (a) shall apply with respect to an OASDI overpayment made to any individual only if such individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act.

"(2)(A) The requirements of subsection (b) shall not be treated as met in the case of the recovery of an OASDI overpayment from any individual under this section unless the notification under subsection (b)(1) describes the conditions under which the Secretary of Health and Human Services is required to waive recovery of an overpayment, as provided under section 204(b) of the Social Security Act.

"(B) In any case in which an individual files for a waiver under section 204(b) of the

Social Security Act within the 60-day period referred to in subsection (b)(2), the Secretary of Health and Human Services shall not certify to the Secretary of the Treasury that the debt is valid under subsection (b)(4) before rendering a decision on the waiver request under such section 204(b). In lieu of payment, pursuant to subsection (c), to the Secretary of Health and Human Services of the amount of any reduction under this subsection based on an OASDI overpayment, the Secretary of the Treasury shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary of the Treasury as appropriate by the Secretary of Health and Human Services.".

(c) INTERNAL REVENUE CODE PROVISIONS.—

(1) IN GENERAL.—Subsection (d) of section 6402 of the Internal Revenue Code of 1986 (relating to collection of debts owed to Federal agencies) is amended—

(A) in paragraph (1), by striking "any OASDI overpayment and"; and

(B) by striking paragraph (3) and inserting the following new paragraph:

"(3) TREATMENT OF OASDI OVERPAYMENTS.—

"(A) REQUIREMENTS.—Paragraph (1) shall apply with respect to an OASDI overpayment only if the requirements of paragraphs (1) and (2) of section 3720A(f) of title 31, United States Code, are met with respect to such overpayment.

"(B) NOTICE; PROTECTION OF OTHER PERSONS FILING JOINT RETURN.—

"(i) NOTICE.—In the case of a debt consisting of an OASDI overpayment, if the Secretary determines upon receipt of the notice referred to in paragraph (1) that the refund from which the reduction described in paragraph (1)(A) would be made is based upon a joint return, the Secretary shall—

"(I) notify each taxpayer filing such joint return that the reduction is being made from a refund based upon such return, and

"(II) include in such notification a description of the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

"(ii) ADJUSTMENTS BASED ON PROTECTIONS GIVEN TO OTHER TAXPAYERS ON JOINT RETURN.—If the other person filing a joint return with the person owing the OASDI overpayment takes appropriate action to secure his or her proper share of the refund subject 'o reduction under this subsection, the Secretary shall pay such share to such other person. The Secretary shall deduct the amount of such payment from amounts which are derived from subsequent reductions in refunds under this subsection and are payable to a trust fund referred to in subparagraph (C).

"(C) DEPOSIT OF AMOUNT OF REDUCTION INTO APPROPRIATE TRUST FUND.—In lieu of payment, pursuant to paragraph (1)(B), of the amount of any reduction under this subsection to the Secretary of Health and Human Services, the Secretary shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary as appropriate by the Secretary of Health and Human Services.

"(D) OASDI OVERPAYMENT.—For purposes of this paragraph, the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act.".

(2) PRESERVATION OF REMEDIES.—Subsection (e) of section 6402 of such Code (relating to review of reductions) is amended in the last sentence by inserting before the period the following: "or any such action against the Secretary of Health and Human Services which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act".

(d) EFFECTIVE DATE.—The amendments made by this section—

(1) shall take effect January 1, 1991, and

(2) shall not apply to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984 (98 Stat. 1153) do not apply.

SEC. 5130. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) IN GENERAL.—

(1) AMENDMENT RELATING TO SECTION 7088 OF PUBLIC LAW 100-690.—Section 208 (42 U.S.C. 408) is amended, in the last undesignated paragraph, by striking "section 405(c)(2) of this title" and inserting "section 205(c)(2)".

(2) AMENDMENTS RELATING TO SECTION 322 OF PUBLIC LAW 98-21.—Paragraphs (1) and (2) of section 322(b) of the Social Security Amendments of 1983 (Public Law 98-21, 97 Stat. 121) are each amended by inserting "the first place it appears" before "the following".

(3) AMENDMENT RELATING TO SECTION 1011B(B)(4) OF PUBLIC LAW 100-647.—Section 211(a) (42 U.S.C. 411(a)) is amended by redesignating the second paragraph (14) as paragraph (15).

(4) AMENDMENT RELATING TO SECTION 2003(D) OF PUBLIC LAW 100-647.—Paragraph (3) of section 3509(d) of the Internal Revenue Code of 1986 (as amended by section 2003(d) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647; 102 Stat. 3598)) is further amended by striking "subsection (d)(4)" and inserting "subsection (d)(3)".

(5) AMENDMENT RELATING TO SECTION 10208 OF PUBLIC LAW 101-239.—Section 209(a)(7)(B) (42 U.S.C. 409(a)(7)(B)) is amended by striking "subparagraph (B)" in the matter following clause (ii) and inserting "clause (ii)".

(b) EFFECTIVE DATES.—The amendments made by subsection (a) shall be effective as if included in the enactment of the provision to which it relates.

TITLE VI—ENERGY AND ENVIRONMENTAL PROGRAMS

Subtitle A—Abandoned Mine Reclamation

SEC. 6001. SHORT TITLE.

This subtitle may be cited as the "Abandoned Mine Reclamation Act of 1990".

SEC. 6002. ABANDONED MINE RECLAMATION FUND.

(a) SOURCES OF DEPOSITS.—Section 401(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(b)) is amended as follows:

(1) Amend paragraph (1) to read as follows:

"(1) the reclamation fees levied under section 402;".

(2) Strike "and" at the end of paragraph (3); strike the period at the end of paragraph (4) and insert "; and"; and add the following new paragraph at the end:

"(5) interest credited to the fund under subsection (e).".

(b) USE OF MONEY.—Section 401(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(c)) is amended as follows:

(1) In paragraph (1), strike "402(g)(2)" and insert "402(g)(1)".

(2) Amend paragraph (2) to read as follows:

"(2) for transfer on an annual basis to the Secretary of Agriculture for use under section 406.".

(3) In paragraph (6), strike "by contract" and insert "conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986" after "projects".

(4) Strike "and" at the end of paragraph (9).

(5) Strike paragraph (10) and insert the following:

"(10) for use under section 411;

"(11) for the purpose of section 507(c), except that not more than $10,000,000 shall annually be available for such purpose; and

"(12) all other necessary expenses to accomplish the purposes of this title.".

(c) INTEREST.—Section 401 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 231) is amended by adding the following new subsection at the end:

"(e) INTEREST.—The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the fund in public debt securities with maturities suitable for the needs of such fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketplace obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund.".

SEC. 6003. RECLAMATION FEES.

(a) DUE DATE.—Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking "fifteen years after the date of enactment of this Act unless extended by an Act of Congress" and inserting "September 30, 1995".

(b) STATEMENT.—Section 402(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(c)) is amended by adding the following at the end thereof: "Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, ripple, or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 506 and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.".

(c) AUDITS.—Section 402(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(d)) is amended by inserting "(1)" after "(d)" and by adding the following at the end thereof:

"(2) The Secretary shall conduct such audits of coal production and the payment of fees under this title as may be necessary to ensure full compliance with the provisions of this title. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representaive of the Secretary) shall, at the reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisons of this title. The Secretary may at any time conduct audits of any surface coal mining and reclamation operation, including without limitation, tipples and preparation plants, as amy be necessary in the judgment

of the Secretary to ensure full and complete payment of the fees under this notice.".

(d) NOTICE.—Section 402(f) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(f)) is amended by adding the following at the end thereof: "Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of the Internal Revenue Code of 1986.".

SEC. 6004. ALLOCATION OF FUNDS.

Section 402(g) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)) is amended to read as follows:

"(g) ALLOCATION OF FUNDS.—(1) Moneys deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this title as follows:

"(A) 50 percent of the reclamation fees collected annually in any State (other than fees collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following:

"(i) An approved abandoned mine reclamation program pursuant to section 405.

"(ii) Lands and waters which are eligible pursuant to section 404 (in the case of a State not certified under section 411(a)) of pursuant to section 411(b) (in the case of a State certified under section 411(a)).

"(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following:

"(i) an approved abandoned mine reclamation program pursuant to section 405.

"(ii) Lands and waters which are eligible prusuant to section 404 (in the case of an Indian tribe not certified under section 411(a)) or pursuant to section 411(b) (in the case of a tribe certified under section 411(a)).

"(C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

"(D) To the extent not expended within 3 years after the date of any grant award under this paragraph, such grant shall be available for expenditure by the Secretary in any area under paragraph (2), (3), (4), or (5).

"(2) 20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 401(e) and including funds available for reallocation pursuant to paragraph (1)(D)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 401(c)(2).

"(3) Amounts available in the fund which are not allocted to States and Indian tribes under paragraph (1) or allocated under paragraphs (2) and (5) are authorized to be expended by the Secretary for any of the following:

"(A) For the purpose of section 507(c), either directly or through grants to the States, subject to the limitation contained in section 401(c)(11).

"(B) For the purpose of section 410 (relating to emergencies).

"(C) For the purpose of meeting the objectives of the fund set forth in section 403(a) for eligible lands and waters pursuant to section 404 in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405.

"(D) For the administration of this title by the Secretary.

"(4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unreclaimed sites which are mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and left in an inadequate reclamation status.

"(B) Funds made available under this paragraph may be used for reclamation or drainage abatement at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

"(i) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 503 for a State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

"(ii) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date of enactment of this paragraph, and that the surety of such mining operator became insolvent during such period, and as of the date of enactment of this paragraph, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

"(C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 403(a). The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

"(D) Amounts collected from the assessment of civil penalties under section 518 are authorized to be appropriated to carry out this paragraph.

"(E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 404 under the priorities stated in paragraphs (1) and (2) of section 403(a).

"(F) For the purposes of the certification referred to in section 411(a), sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities as those stated in section 403(a) for eligible lands and waters pursuant to section 404. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 411(a).

"(5) The Secretary shall allocate 40 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 411(a) to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds allocated or expended by the Secretary under paragraph (2), (3), or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

"(6) Any State may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 10 percent of the total of the grants made annually to such State under paragraphs (1) and (5) if such amounts are deposited into either—

"(A) a special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in section 403(a) after September 30, 1995, or

"(B) an acid mine drainage abatement and treatment fund established under State law as provided in paragraph (7).

"(7)(A) Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Secretary. Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices.

"(B) The plan shall include, but shall not be limited to, each of the following:

"(i) An identification of the qualified hydrologic unit.

"(ii) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

"(iii) An identification of the sources of acid mine drainage within the hydrologic unit.

"(iv) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydologic unit.

"(v) The cost of undertaking the proposed abatement and treatment measures.

"(vi) An identification of existing and proposed sources of funding for such measures.

"(vii) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

"(C) The Secretary may approve any plan under this paragraph only after determining that such plan meets the requirements of this paragraph. In conducting an analysis of the items referred to in clauses (iv), (v), and (vii) the Director of the Office of Surface Mining shall obtain the comments of the Director of the Bureau of Mines. In approving plans under this paragraph, the Secretary shall give a priority to those plans which will be implemented in coordination

with measures undertaken by the Secretary of Agriculture under section 406.

"(D) For purposes of this paragraph, the term 'qualified hydrologic unit' means a hydrologic unit—

"(i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

"(ii) which contains lands and waters which are—

"(I) eligible pursuant to section 404 and include any of the priorities stated in paragraph (1), (2), or (3) of section 403(a); and

"(II) proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of bonds required under section 509 or from other State sources) to mitigate acid mine drainage.

"(8) Of the funds available for expenditure under this subsection in any fiscal year, the Secretary shall allocate annually not less than $2,000,000 for expenditure in each State, and for each Indian tribe, having an approved abandoned mine reclamation program pursuant to section 405 and eligible lands and waters pursuant to section 404 so long as an allocation of funds to such State or such tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a).".

SEC. 6005. FUND OBJECTIVES.

Section 403 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233) is amended as follows:

(1) Insert "(a) PRIORITIES.—" after "SEC. 403.".

(2) Insert ", except as provided for under section 411," after "title".

(3) Add at the end the following new subsections:

"(b) UTILITIES AND OTHER FACILITIES.—(1) Any State or Indian tribe not certified under section 411(a) may expend up to 30 percent of the funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 402(g) for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

"(2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, section 404 shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977.

"(c) INVENTORY.—For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 405, and assisting in making the certification referred to in section 411(a), the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 404 which meet the priorities stated in paragraphs (1) and (2) of subsection (a). Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 405 may offer amendments to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405. On a regular basis, but not less than annually, the projects completed under this title shall be so noted on the inventory under standardized procedures established by the Secretary.".

SEC. 6006. ELIGIBLE LANDS AND WATERS.

Section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1234) is amended by inserting ", except as provided for under section 411" after "processes", and by adding the following at the end thereof: "For other provisions relating to lands and waters eligible for such expenditures, see section 402(g)(4), section 403(b)(1), and section 409.".

SEC. 6007. STATE RECLAMATION PROGRAMS.

Section 405 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1235) is amended by adding the following at the end thereof:

"(1) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.".

SEC. 6008. CLARIFICATION.

Section 406(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(d)) is amended by striking "experimental".

SEC. 6009. VOIDS AND TUNNELS.

Section 409 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239) is amended—

(1) in subsection (a) by striking "chairman of any tribe" and inserting in lieu thereof "the governing body of an Indian tribe";

(2) in subsection (b), by striking "or Indian reservations under the provisions of subsection 402(g)" and inserting "or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g)"; and

(3) by amending subsection (c) to read as follows:

"(c)(1) The Secretary may make expenditures and carry out the purposes of this section in such States where requests are made by the Governor or governing body of an Indian tribe for those reclamation projects which meet the priorities stated in section 403(a)(1), except that for the purposes of this section the reference to coal in section 403(a)(1) shall not apply.

"(2) The provisions of section 404 shall apply to this section, with the exception that such mined lands need not have been mined for coal.

"(3) The Secretary shall not make any expenditures for the purposes of this section in those States which have made the certification referred to in section 411(a).".

SEC. 6010. CERTIFICATION.

Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.) is amended as follows:

(1) Redesignate sections 411, 412, and 413 as sections 412, 413, and 414, respectively.

(2) Insert after section 410 the following new section:

"SEC. 411. CERTIFICATION.

"(a) CERTIFICATION OF COMPLETION OF COAL RECLAMATION.—The Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 405 may certify to the Secretary that all of the priorities stated in section 403(a) for eligible lands and waters pursuant to section 404 have been achieved. The Secretary, after notice in the Federal Register and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

"(b) ELIGIBLE LANDS, WATERS, AND FACILITIES.—If the Secretary has concurred in a State or tribal certification under subsection (a), for purposes of determining the eligibility of lands and waters for annual grants under section 402(g)(1), section 404 shall not apply, and eligible lands, waters, and facilities shall be those—

"(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

"(2) for which there is no continuing reclamation responsibility under State or other Federal laws. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

"(c) PRIORITIES.—Expenditures of moneys for lands, waters, and facilities referred to in subsection (b) shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 403):

"(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

"(2) The protection of public health, safety, general welfare from adverse effects of mineral mining and processing practices.

"(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

"(d) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

"(e) UTILITIES AND OTHER FACILITIES.—Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c).

"(f) Notwithstanding subsection (e), where the Secretary has concurred in the certification referenced in subsection (a) and where the Governor of a State or the head of a governing body of an Indian tribe determines there is a need for activities or construction

of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development and the Secretary concurs in such need, then the State or Indian tribe, as the case may be, may use annual grants made available under section 402(g)(1) to carry out such activities or construction.

"(g) APPLICATION OF OTHER PROVISIONS.—The provisions of sections 407 and 408 shall apply to subsections (a) through (e) of this section, except that for purposes of this section the references to coal in sections 407 and 408 shall not apply.".

SEC. 6011. SMALL OPERATOR ASSISTANCE.

Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1257(c)) is amended by striking "100,000" and inserting "300,000".

SEC. 6012. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in the first section of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) is amended as follows:

(1) Redesignate the items relating to sections 411, 412, and 413 as items 412, 413, and 414, respectively.

(2) Insert after the item relating to section 410 the following:

"Sec. 411. Certification.".

(b) REFERENCE.—Section 712(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1302(b)) is amended to read as follows:

"(b) For the implementation funding of section 507(c), see the provisions of section 401(c)(11).".

(c) REPEAL.—Section 406(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(i)) is repealed.

(d) TECHNICAL CORRECTIONS.—The following provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) are amended as follows:

(1) Section 405(a) is amended by striking out "perparation" and inserting "preparation".

(2) Section 405(h) is amended by striking out "Upon approved" and inserting "Upon approval".

(3) Section 406(a) is amended by striking out "including owners" and inserting "(including owners".

(4) Section 407(a)(4) is amended by striking out the period and inserting a semicolon.

(5) Section 407(a) is amended by striking out "Then" and inserting "then".

(6) Section 407(e) is amended by striking out "paragraph (1), of this subsection" and inserting "paragraph (1) of subsection (c)".

(7) Section 407(g)(2) is amended by striking out "the use of" and inserting "the use or".

SEC. 6013. SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to affect the certifications made by the State of Wyoming, the State of Montana, and the State of Louisiana to the Secretary of the Interior prior to the date of enactment of this subtitle that such State has completed the reclamation of eligible abandoned coal mine lands.

SEC. 6014. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the beginning of the first fiscal year immediately following the fiscal year in which this subtitle is enacted.

Subtitle B—NRC User Fees and Annual Charges

SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) ANNUAL ASSESSMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Nuclear Regulatory Commission (in this section referred to as the "Commission") shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

(2) FIRST ASSESSMENT.—The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.

(3) LAST ASSESSMENT OF ANNUAL CHARGES.—The last assessment of annual charges under subsection (c) shall be made not later than September 30, 1995.

(b) FEES FOR SERVICE OR THING OF VALUE.—Pursuant to section 9701 of title 31, United States Code, any person who receives a service of thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

(c) ANNUAL CHARGES.—

(1) PERSONS SUBJECT TO CHARGE.—Any licensee of the Commission may be required to pay, in addition to the fees set forth in subsection (b), an annual charge.

(2) AGGREGATE AMOUNT OF CHARGES.—The aggregate amount of the annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Commission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) in such fiscal year.

(3) AMOUNT PER LICENSEE.—The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.

(d) DEFINITION.—As used in this section, the term "Nuclear Waste Fund" means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

(e) CONFORMING AMENDMENT TO COBRA.—Paragraph (1)(A) of section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking "except that for fiscal year 1990 such maximum amount shall be estimated to be equal to 45 percent of the costs incurred by the Commission for fiscal year 1990" and inserting "except as otherwise provided by law".

Subtitle C—Amendments to Coastal Zone Management Act of 1972

SEC. 6201. SHORT TITLE.

This subtitle may be cited as the "Coastal Zone Act Reauthorization Amendments of 1990".

SEC. 6202. FINDINGS AND PURPOSE OF THIS SUBTITLE.

(a) FINDINGS.—Congress finds and declares the following:

(1) Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

(2) Almost one-half of our total population now lives in coastal areas. By 2010, the coastal population will have grown from 80,000,000 in 1960 to 127,000,000 people, an increase of approximately 60 percent, and population density in coastal counties will be among the highest in the Nation.

(3) Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of $12,000,000,000 a year.

(4) Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated $5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

(5) Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, run-off from agricultural activities may add to coastal pollution.

(6) Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect our coastal resources.

(7) Global warming results from the accumulation of man-made gases, released into the atmosphere from such activities as the burning of fossil fuels, deforestation, and the production of chlorofluorocarbons, which trap solar heat in the atmosphere and raise temperatures worldwide. Global warming could result in significant global sea level rise by 2050 resulting from ocean expansion, the melting of snow and ice, and the gradual melting of the polar ice cap. Sea level rise will result in the loss of natural resources such as beaches, dunes, estuaries, and wetlands, and will contribute to the salinization of drinking water supplies. Sea level rise will also result in damage to properties, infrastructures, and public works. There is a growing need to plan for sea level rise.

(8) There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality.

(9) All coastal States should have coastal zone management programs in place that conform to the Coastal Zone Management Act of 1972, as amended by this Act.

(b) PURPOSE.—It is the purpose of Congress in this subtitle to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems.

SEC. 6203. FINDINGS AND POLICY OF COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) FINDINGS.—(1) Section 302(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451(d)) is amended by inserting "habitat areas of the" immediately before "coastal zone".

(2) Section 302(f) of the Coastal Zone Management Act of 1972 (26 U.S.C. 1451(f)) is amended by inserting "exclusive economic zone," immediately after "territorial sea,".

(3) Section 302 of the Coastal Zone Management Act of 1972 & 16 U.S.C. 1451) is amended by adding at the end the following new subsections:

"(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

"(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

"(m) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.".

(b) POLICY.—(1) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)) is amended by striking "as well as the need for" and inserting in lieu thereof "as well as the needs for compatible".

(2) Section 303(2)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)(B)) is amended by striking "of subsidence" and inserting in lieu thereof the following: "likely to be affected by or vulnerable to sea level rise, land subsidence,".

(3) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by paragraph (1), is amended—

(A) by redesignating subparagraphs (C) through (I) as subparagraphs (D) through (J), respectively; and

(B) by inserting immediately after subparagraph (B) the following new subparagraph:

"(C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,".

(4) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 14522)), as amended by paragraphs (1) AND (3), is further amended—

(A) by striking "and" at the end of subparagraph (I), as so redesignated by paragraph (3);

(B) by striking the semicolon in subparagraph (J), as so redesignated by paragraph (3), and inserting in lieu thereof a comma; and

(C) by adding at the end the following new subparagraph:

"(K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and".

(5) Section 303(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(3)) is amended by inserting "including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes," immediately after "hazardous areas,".

(6) Section 303 of the Coastal Zone Management Act of 1972 (26 U.S.C. 1452) is amended by striking "and" at the end of paragraph (3); by striking the period at the end of paragraph (4) and inserting in lieu thereof a semicolon; and by adding at the end the following new paragraphs:

"(5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

"(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.".

SEC. 6204. DEFINITIONS.

(a) COASTAL ZONE.—The third sentence of section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)) is amended—

(1) by inserting ", and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise" immediately before the period at the end; and

(2) by striking "the United States territorial sea." and inserting in lieu thereof "the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705, as applicable.".

(b) ENFORCEABLE POLICY.—Section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) is amended by inserting after paragraph (6) the following

"(6a) The term 'enforceable policy' means State policies which are legally binding through constitutional provisions, law, regulations land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.".

(c) WATER USE.—Section 304(18) of the Coastal Zone Management Act of 1971 (16 U.S.C. 1453(18)) is amended by striking all after "means" and inserting in lieu thereof "a use, activity, or project conducted in or on waters within the coastal zone.".

SEC. 6205. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

Section 305 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454) is amended to read as follows:

"MANAGEMENT PROGRAM DEVELOPMENT GRANTS

"SEC. 305. (a) In fiscal years 1991, 1992, and 1993, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than two grants pursuant to this subsection.

"(b) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306.".

SEC. 6206. ADMINISTRATIVE GRANTS.

(a) IN GENERAL.—Section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) is amended to read as follows:

"ADMINISTRATIVE GRANTS

"SEC. 306. (a) The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

"(1) For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

"(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

"(b) The Secretary may make a grant to a coastal state under subsection (a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection (d);

"(c) Grants under this section shall be allocated to coastal states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

"(d) Before approving a management program submitted by a coastal state, the Secretary shall find the following:

"(1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303.

"(2) The management program includes each of the following required program elements:

"(A) An identification of the boundaries of the coastal zone subject to the management program.

"(B) A definition of what shall constitute permissible land uses and water users within the coastal zone which have a direct and significant impact on the coastal waters.

"(C) An inventory and designation of areas of particular concern within the coastal zone.

"(D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.

"(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

"(F) A description of the organizational structure proposed to implement such management program, including the responsibil-

ities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

"(G) A definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

"(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

"(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

"(3) The State has—

"(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

"(i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and

"(ii) which have been developed by a local government, and areawide agency, a regional agency, or an interstate agency; and

"(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraaph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that—

"(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

"(ii) within the 30-day period commencing on the date of receipt of that notice, the local government any submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

"(iii) the management agency, if any comments are submitted to it within the 30-day period by any local government—

"(I) shall consider the comments;

"(II) may, in its discretion, hold a public hearing on the comments; and

"(III) may not take any action within the 30-day period to implement the management program decision.

"(4) The State has held public hearings in the development of the management program.

"(5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.

"(6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.

"(7) The State is organized to implement the management program.

"(8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.

"(9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational ecological, historical, or esthetic values.

"(10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in acccordance with the management program. Such authority shall include power—

"(A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

"(B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

"(11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

"(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

"(B) Direct State land and water use planning and regulation.

"(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

"(12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

"(13) The management program provides for—

"(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

"(B) specific and enforceable standards to protect such resources.

"(14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

"(15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.

"(16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

"(e) A coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:

"(1) The State shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this section pending State submission of the proposed amendments, modification, or other program change.

"(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the State whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period of not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

"(3)(A) Except as provided in subparagraph (B), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

"(B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expand funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 307.".

(b) ADDITIONAL PROGRAM REQUIREMENTS.—Each State which submits a management program for approval under section 306 of the Coastal Zone Management Act of 1972, as amended by this subtitle (including a State which submitted a program before the date of enactment of this Act), shall demonstrate to the Secretary—

(1) that the program complies with section 306(d)(14) and (15) of that Act, by not later than 3 years after the date of the enactment of this Act; and

(2) that the program complies with section 306(d)(16) of that Act, by not later than 30 months after the date of publication of final guidance under section 6217(g) of this Act.

SEC. 6207. RESOURCE MANAGEMENT IMPROVEMENT GRANTS.

Section 306A(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a(b)(1)) is amended by adding before the period at the end the following: ", or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts".

SEC. 6208. COASTAL ZONE MANAGEMENT CONSISTENCY.

(a) FEDERAL AGENCY ACTIVITIES.—Section 307(c)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(1)) is amended to read as follows:

"(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

"(B) After any final judgment, decree, or order of any Federal court that is appealable

under section 1291 or 1292 of title 28, United States Code, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

"(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 306(d)6) at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.".

(b) TECHNICAL AND CONFORMING CHANGES.—(1) Section 307(c)(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(2)) is amended by inserting "the enforceable policies of" before "approved State management programs".

(2) Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) is amended in the first sentence—

(A) by inserting ", in or outside of the coastal zone," after "to conduct an activity";

(B) by striking "land or water uses in" and inserting "any land or water use or natural resource of"; and

(C) by inserting "the enforceable policies of" after the words "the proposed activity complies with".

(3) Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)) is amended in the first sentence—

(A) by striking "land use or water use in" and inserting "land or water use or natural resource of"; and

(B) by inserting "the enforceable policies of" after "such plan complies".

(4) Section 307(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(d)) is amended—

(A) by striking "affecting" and inserting ", in or outside of the coastal zone, affecting any land or water use of natural resource of"; and

(B) by inserting "the enforceable policies of" after "that are inconsistent with".

(c) FEDERAL FEE.—Section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended by adding at the end the following:

"(i) With respect to appeals under subsections (c)(3) and (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, the Secretary shall collect an application fee of not less than $200 for minor appeals and not less than $500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee. The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).".

SEC. 6209. COASTAL ZONE MANAGEMENT FUND.

Section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended to read as follows:

"COASTAL ZONE MANAGEMENT FUND

"SEC. 308. (a)(1) The obligations of any coastal state or unit of general purpose local government to repay loans made pursuant to this section as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, and any repayment schedule established pursuant to this Act as in effect before that date of enactment, are not altered by any provision of this title. Such loans shall be repaid under authority of this subsection and the Secretary may issue regulations governing such repayment. If the Secretary finds that any coastal state or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such State or unit, take any of the following actions:

"(A) Modify the terms and conditions of such loan.

"(B) Refinance the loan.

"(C) Recommend to the Congress that legislation be enacted to forgive the loan.

"(2) Loan repayments made pursuant to this subsection shall be retained by the Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under subsection (b).

"(b)(1) The Secretary shall establish and maintain a fund, to be known as the 'Coastal Zone Management Fund' (hereinafter in this section referred to as the 'Fund'), which shall consist of amounts retained and deposited into the Fund under subsection (a).

"(2) Subject to amounts provided in appropriation Acts, amounts in the Fund shall be available to the Secretary for use for the following:

"(A) Expenses incident to the adminsitration of this title, in an amount not to exceed—

"(i) $5,000,000 for fiscal year 1991;

"(ii) $5,225,000 for fiscal year 1992;

"(iii) $5,460,000 for fiscal year 1993;

"(iv) $5,705,830 for fiscal year 1994; and

"(v) $5,962,593 for fiscal year 1995.

"(B) After use under subparagraph (A)—

"(i) projects to address management issues which are regional in scope, including interstate projects;

"(ii) demonstration projects which have high potential for improving coastal zone management, especially at the local level;

"(iii) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;

"(iv) appropriate awards recognizing excellence in coastal zone management as provided in section 314;

"(v) program development grants as authorized by section 305; and

"(vi) to provide financial support to coastal States for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306.

"(3) On December 1, of each year, the Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund in the preceding fiscal year.".

SEC. 6210. COASTAL ZONE ENHANCEMENT GRANTS.

Section 309 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452b) is amended to read as follows:

"COASTAL ZONE ENHANCEMENT GRANTS

"SEC. 309. (a) For purposes of this section, the term 'coastal zone enhancement objective' means any of the following objectives:

"(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

"(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lake level rise.

"(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

"(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

"(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

"(6) Preparing and implementing special area management plans for important coastal areas.

"(7) Planning for the use of ocean resources.

"(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

"(b) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

"(c) The Secretary shall evaluate and rank State proposals for funding under this section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (d). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each propsoal in terms of benefits to the public.

"(d) Within 12 months following the date of enactment of this section, and consistent with the notice and participation requirements established in section 317, the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish—

"(1) specific and detailed criteria that must be addressed by a coastal State (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives.

"(2) administrative or procedural rules or requirements as necessary to facilitate the

development and implementation of such objectives by coastal States; and

"(3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

"(e) A State shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

"(f) Beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of this title shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

"(g) If the Secretary finds that the State is not undertaking the actions committed to under the terms of the grant, the Secretary shall suspend the State's eligibility for further funding under this section for at least one year.".

SEC. 6211. TECHNICAL ASSISTANCE.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by inserting immediately after section 309 the following new section:

"TECHNICAL ASSISTANCE

"SEC. 310. (A) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

"(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

"(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

"(3) The Secretary shall consult with coastal states on a regular basis regarding the development and implementation of the program established by this section.".

SEC. 6212. COASTAL ZONE MANAGEMENT REVIEW.

"(a) PUBLIC PARTICIPATION.—Subsection (b) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is amended to read as follows:

"(b) In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.".

"(b) INTERIM SANCTIONS.—Subsection (c) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(c)) is amended to read as follows:

"(c)(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal state under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 315 of this title, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

"(2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with—

"(A) written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

"(B) written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

"(3) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.".

"(c) FINAL SANCTIONS.—Section 312(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(d)) is amended to read as follows:

"(d) The Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection (c)(2)(A).".

"(d) REPEAL.—Subsection (f) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is repealed.

SEC. 6213. COASTAL ZONE MANAGEMENT AWARDS.

The Coastal Zone Management Act of 1972 is amended by inserting after section 313 the following:

"WALTER B. JONES EXCELLENCE IN COASTAL ZONE MANAGEMENT AWARDS

"SEC. 313. (a) The Secretary shall, using sums in the Coastal Zone Management Fund established under section 308, implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

"(b) The Secretary shall elect annually—

"(1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

"(2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles emobied in this title; and

"(3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

"(c) In making selections under subsection (b)(2) the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local government planning and land use.

"(d) In making selections under subsection (b)(3) the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

"(e) Using sums in the Coastal Zone Management Fund established under section 308, the Secretary shall establish and execute appropriate awards, to be known as the 'Walter B. Jones Awards', including—

"(1) cash awards in an amount not to exceed $5,000 each;

"(2) research grants; and

"(3) public ceremonies to acknowledge such awards.".

SEC. 6214. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.

(a) AMENDMENT TO SECTION HEADING.—The heading for section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) is amended by striking "RESERVE RESEARCH" and inserting in lieu thereof "RESEARCH RESERVE".

(b) GRANTS FOR ACQUISTION OF LANDS AND WATERS.—Section 315(e)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(3)(A)) is amended by striking "per centum" and inserting in lieu thereof "percent", and by striking "$4,000,000" and inserting in lieu thereof "$5,000,000".

(c) GRANTS FOR OPERATIONS AND EDUCATION.—Section 315(e)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(B)) is amended—

"(1) by striking "50 per centum" and inserting in lieu thereof "70 percent"; and

"(2) by inserting immediately before the period at the end the following: "; except that the amount of the financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System".

(d) CLERICAL AMENDMENT.—Section 315(e)(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)) is amended by striking "of subsection (e)" each place it appears.

SEC. 6215. AUTHORIZATION OF APPROPRIATIONS.

Section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C 1464) is amended by striking all after "Secretary—" and inserting in lieu thereof the following:

"(1) such sums, not to exceed $750,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1993, as may be necessary for grants under section 305, to remain available until expended;

"(2) such sums, not to exceed $42,000,000 for the fiscal year ending September 30, 1991, $48,890,000 for the fiscal year ending September 30, 1992, $58,870,000 for the fiscal year ending September 30, 1993, $67,930,000 for the fiscal year ending September 30, 1994, and $90,090,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under sections 306, 306A, and 309, to remain available until expended;

"(3) such sums, not to exceed $6,000,000 for the fiscal year ending September 30, 1991, $6,270,000 for the fiscal year ending September 30, 1992, $6,552,000 for the fiscal year ending September 30, 1993, $6,847,000 for the fiscal year ending September 30, 1994, and $7,155,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under section 315, to remain available until expended; and

"(4) such sums, not to exceed $10,000,000 for each the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1995, as may be necessary for activities under section 310 and for administrative expenses incident to the administration of this title; except that expenditures for such administrative expenses shall not exceed $5,000,000 in any such fiscal year.".

SEC. 6216. CONFORMING AMENDMENTS.

(a) Section 306a(b)(1) of the Coastal Zone Management of 1972 (16 U.S.C. 1455a(b)(1)) is amended by striking "306(c)(9)" and inserting in lieu thereof "306(d)(9)".

(b) Section 312(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(a)) is amended by striking "through (I)" and inserting in lieu thereof "through (K)".

SEC. 6217. PROTECTING COASTAL WATERS.

(a) IN GENERAL.—

(1) PROGRAM DEVELOPMENT.—Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) PROGRAM COORDINATION.—A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972, as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act, as the program under that section relates to land and water uses affecting coastal waters.

(b) PROGRAM CONTENTS.—Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g), to protect coastal waters generally, and shall also contain the following:

(1) IDENTIFYING LAND USES.—The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) IDENTIFYING CRITICAL COASTAL AREAS.—The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

(3) MANAGEMENT MEASURES.—The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

(4) TECHNICAL ASSISTANCE.—The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) PUBLIC PARTICIPATION.—Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

(6) ADMINISTRATIVE COORDINATION.—The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) STATE COASTAL ZONE BOUNDARY MODIFICATION.—A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) PROGRAM SUBMISSION, APPROVAL, AND IMPLEMETATION.—

(1) REVIEW AND APPROVAL.—Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if—

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) IMPLEMENTATION OF APPROVED PROGRAM.—If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through—

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972, as amended by this Act.

(3) WITHHOLDING COASTAL MANAGEMENT ASSISTANCE.—If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972, as follows:

(A) 10 percent for fiscal year 1996.

(B) 15 percent for fiscal year 1997.

(C) 20 percent for fiscal year 1998.

(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) WITHHOLDING WATER POLLUTION CONTROL ASSISTANCE.—If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act, for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.

(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.

(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.

(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) TECHNICAL ASSISTANCE.—The Secretary and the Administrator shall provide technical assistance to coastal State and local governments in developing and implementing programs nder this section. Such assistance shall include—

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal State and local governments in identifying, developing, and implementing pollution control measures; and

(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) INLAND COASTAL ZONE BOUNDARIES.—

(1) REVIEW.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972, and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) RECOMMENDATION.—If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972, the Secretary, in consultation with the Administrator, may provide grnats to the State for use for developing a State program under this section.

(2) AMOUNT.—The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) STATE SHARE.—The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) ALLOCATION.—Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972, except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States within the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

(g) GUIDANCE FOR COASTAL NONPOINT SOURCE POLLUTION CONTROL.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) CONTENT.—Guidance under this subsection shall include, at a minimum—

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

(D) quantitative estimates of the pollution reduction effects and costs of the measures;

(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) PUBLICATION.—The Administrator, in consultation with the Secretary, shall publish—

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act; and

(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

(4) NOTICE AND COMMENT.—The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) MANAGEMENT MEASURES.—For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) ADMINISTRATOR.—There is authorized to be appropriated to the Administrator for use for carrying out this section not more than $1,000,000 for each of fisal years 1992, 1993, and 1994.

(2) SECRETARY.—(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972, as amended by this Act, not more than $1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than—

(i) $6,000,000 for fiscal year 1992;

(ii) $12,000,000 for fiscal year 1993;

(iii) $12,000,000 for fiscal year 1994; and

(iv) $12,000,000 for fiscal year 1995.

(i) DEFINITIONS.—In this section—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "coastal State" has the meaning given the term "coastal state" under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

(3) each of the terms "coastal waters", and "coastal zone" has the meaning that term has in the Coastal Management Act of 1972;

(4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972;

(5) the term "land use" includes a use of waters adjacent to coastal waters; and

(6) the term "Secretary" means the Secretary of Commerce.

Subtitle D—Extension of Superfund for 3 years

SEC. 6301. 3-YEAR EXTENSION OF COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended—

(1) by inserting after "Reauthorization Act of 1986," in subsection (a) the following: "and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994,";

(2) by striking "5-fiscal-year period" in subsection (c)(11) and inserting "8-fiscal year period";

(3) by striking "and 1991" in subsection (c)(12) and inserting "1991, 1992, 1993, and 1994";

(4) by striking "1990 and 1991" in subsection (m) and inserting "1990, 1991, 1992, 1993, and 1994";

(5) by striking "and 1991" in subsection (n)(1) and inserting "1991, 1992, 1993, and 1994";

(6) by striking subsection (n)(2)(E) and inserting the following new subparagraph:

"(E) for each of the fiscal years 1991, 1992, 1993, and 1994, $35,000,000.";

(7) by striking "and 1991" in subsection (n)(3) and inserting "1991, 1992, 1993, and 1994"; and

(8) by inserting after subparagraph (E) of subsection (p)(1) the following new subparagraphs:

(F) For fiscal year 1992, $212,500,000.

(G) For fiscal year 1993, $212,500,000.

(H) For fiscal year 1994, $212,500,000.".

Subtitle E—Shale Oil Contract Modification

SEC. 6401. SHALE OIL CONTRACT MODIFICATION.

Section 7404(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by adding at the end the following sentence: "The Secretary of the Treasury shall have the authority to negotiate and excecute agreements modifying an existing contract relating to the production of synthetic crude oil from oil shale, entered into under the Defense Production Act Amendments of 1980 and subsequently transferred to the Secretary of the Treasury for administration, provided the terms and conditions of any modification(s) are revenue neutral or result in a fiscal savings to the United States Government, and in no event would increase the financial exposure of the United States Government under the contract: Provided, however, That the Secretary of the Treasury shall have no authority to increase the total amount of funds originally authorized for the existing contract: And provided further, That the Secretary shall have no authority to negotiate and execute any agreement modifying the existing contract if such modification(s) would increase or accelerate the financial support per unit for the synthetic fuel to be produced under the contract.".

Subtitle F—Environmental Protection Agency Fees

SEC. 6501. ENVIRONMENTAL PROTECTION AGENCY FEES.

(a) ASSESSMENT AND COLLECTION.—The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environment Protection Agency.

(b) AMOUNT OF FEES AND CHARGES.—Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law—

(1) in fiscal year 1991, is not less than $28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than $38,000,000.

(c) LIMITATION ON FEES AND CHARGES.—(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant to the Federal Water Pollution Control Act is $10,000,000; and

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and administered by the Environment Protection Agency through the Administrator, shall be limited to such sums collected as of the date of enactment of this Act pursuant to sec-

tions 26(b) and 305(e)(2) of the Toxic Substances Control Act, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environment Protection Agency other than those specified subparagraphs (A0 and (B) of paragraph (1).

(d) RULE OF CONSTRUCTION.—Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to the Independent Office Appropriations Act (31 U.S.C. 9701).

(e) USES OF FEES.—Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environment Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

SEC. 6601. SHORT TITLE.

This subtitle may be cited as the "Pollution Prevention Act of 1990".

SEC. 6602. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are signifcant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasie multimedia management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this subtitle.

(b) POLICY.—The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and shoud be conducted in an environmentally safe manner.

SEC. 6603. DEFINITIONS.

For purposes of this subtitle—

(1) The term "Administrator" means the Administrator of the Envirnmental Protection Agency.

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "toxic chemical" means any substance on the list described in section 313(c) of the Superfund Amendments and Reauthorization Act of 1986.

(4) The term "release" has the same meaning as provided by section 329(8) of the Superfund Amendments and Reauthorization Act of 1986.

(5)(A) The term "source reduction" means any practice which—

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) The term "multi-media" means water, air, and land.

(7) The term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

SEC. 6604. EPA ACTIVITIES.

(a) AUTHORITIES.—The Administrator shall establish in the Agency an office to carry out the functions of the Administrator under this subtitle. The office shall be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multi-media approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) FUNCTIONS.—The Administrator shall develop and implement a strategy to promote source reduction. As part of the strategy, the Administrator shall—

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved, methods of coordinating, streamlining and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this subtitle to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to businesses. The strategy shall also consider the capabilities of various businesses to make use of source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this subtitle, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

* * * * *

(8) establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(9) establish a training program on source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.

(10) identify and make recommendations to Congress to eliminate barriers to source reduction including the use of incentives and disincentives;

(11) identify opportunities to use Federal procurement to encourage source reduction;

(12) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(13) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

SEC. 6605. GRANTS TO STATES FOR STATE TECHNICAL ASSISTANCE PROGRAMS.

(a) GENERAL AUTHORITY.—The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) CRITERIA.—When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) MATCHING FUNDS.—Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) EFFECTIVENESS.—The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) INFORMATION.—States receiving grants under this section shall make information

generated under the grants available to the Administrator.

SEC. 6606. SOURCE REDUCTION CLEARINGHOUSE.

(a) AUTHORITY.—The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to—

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 6605 on the operation and success of State source reduction programs.

(b) PUBLIC AVAILABILITY.—The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this subtitle and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall permit entry and retrieval of information to any person.

SEC. 6607. SOURCE REDUCTION AND RECYCLING DATA COLLECTION.

(a) REPORTING REQUIREMENTS.—Each owner or operator of a facility required to file an annual toxic chemical release form under section 313 of the Superfund Amendments and Reauthorization Act of 1986 ("SARA") for any toxic chemical source reduction and recycling report for the preceeding calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 313(c) of that Act. This section shall take effect with the annual report filed under section 313 for the first full calendar year beginning after the enactment of this subtitle.

(b) ITEMS INCLUDED IN REPORT.—The toxic chemical source reduction and recycling report required under subsection (a) shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate.

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraphs (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amout shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the production year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some varable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA PROVISIONS.—The provisions of sections 322, 325(c), and 326 of the Superfund Amendments and Reauthorization Act of 1986 shall apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of that Act. The Administrator may modify the form required for purposes of reporting information under section 313 of that Act to the extent he deems necessary to include the additional information required under this section.

(d) ADDITIONAL OPTIONAL INFORMATION.—Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) AVAILABILITY OF DATA.—Subject to section 322 of the Super Fund Amendments and Reauthorization Act of 1986, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 313 of the Super Fund Amendments and Reauthorization Act of 1986.

SEC. 6608. EPA REPORT.

(a) BIENNIAL REPORTS.—The Administrator shall provide Congress with a report within eighteen months after enactment of this subtitle and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 4(b) and the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant program established under this subtitle in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statutes.

(b) SUBSEQUENT REPORTS.—Each biennial report submitted under subsection (a) after the first report shall contain each of the following:

(1) An analysis of the data collected under section 6607 on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC codes or other categories which were not covered in a prior report until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 6607 for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and non-regulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multi-media source reduction.

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

SEC. 6609. SAVINGS PROVISIONS.

(a) Nothing in this subtitle shall be construed to modify or interfere with the implementation of title III of the Super Fund Amendments and Reauthorization Act of 1986.

(b) Nothing contained in this subtitle shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

SEC. 6610. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Administrator $8,000,000 for each of the fiscal years 1991, 1992 and 1993 for functions carried out under this subtitle (other than State grants), and $8,000,000 for each of the fiscal years 1991, 1992 and 1993, for grant programs to States issued pursuant to section 6605.

TITLE VII—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

Subtitle A—Civil Service

SEC. 7001. ELIMINATION OF LUMP-SUM RETIREMENT BENEFIT.

(a) LUMP-SUM BENEFIT.—(1) Sections 8343a and 8420a of title 5, United States Code, are each amended by adding at the end the following:

"(f)(1) Notwithstanding any other provision of this section, and except as provided in paragraph (2), an alternative form of annuity under this section may not be elected if the commencement date of the annuity would be later than December 1, 1990.

"(2) Nothing in this subsection shall prevent an election from being made by any individual—

"(A) who is separated from Government service involuntarily (other than for cause on charges of misconduct or delinquency), excluding—

"(i) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

"(ii) the Vice President;

"(iii) any individual holding a position placed in the Executive Schedule under sections 5312 through 5317;

"(iv) any individual appointed to a position by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule;

"(v) any noncareer appointee in the Senior Executive Service or noncareer member of the Senior Foreign Service; and

"(vi) any individual holding a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

"(B) as to whom the application of paragraph (1) would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

"(3) This subsection shall cease to be effective as of October 1, 1995.".

(2) Section 4005 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2135) is amended—

(A) in subsection (a), by striking "October 1, 1990." and inserting "December 2, 1990."; and

(B) by adding at the end the following:

"(f) CONTINUED APPLICABILITY.—The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section's applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for—

"(1) paragraph (2)(A) thereof; or

"(2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990.".

(C)(i) Section 6001(b)(2) of the Omnibus Budget Reconciliation Act of 1987 (5 U.S.C. 8343a note) and section 4005(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2135) are each amended by striking "described in paragraph (1)." and inserting "on which the payment described in paragraph (1) is paid.".

(ii) The amendments made by clause (i) shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act.

(D) Section 2 of Public Law 101-227 (103 Stat. 1943) is repealed.

(3) Section 8348(a)(1)(B) of title 5, United States Code, is amended by inserting "in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law)," before "and in withholding".

(4)(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to "December 1, 1990" shall be deemed to read "December 1, 1991".

(B) This paragraph applies with respect to any individual who—

(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672, 673, 673b, 674, 675, or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph.

(b) PRIOR REFUNDS.—(1) Section 8334(d) of title 5, United States Code, is amended—

(A) by striking "(d)" and inserting "(d)(1)"; and

(B) by adding at the end the following:

"(2)(A) This paragraph applies with respect to any employee or Member who—

"(i) separates before October 1, 1990, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before October 1, 1990;

"(ii) is entitled to an annuity under this subchapter (other than a disability annuity) which is based on service of such employee or Member, and which commences on or after December 2, 1990; and

"(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

"(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

"(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.".

(2)(A) Section 8334 of title 5, United States Code, is amended in paragraphs (1) and (2) of subsection (e), and in subsection (h), by striking "(d)," and inserting "(d)(1),".

(B) Section 8334(f) and section 8339(i)(1) of title 5, United States Code, are amended by striking "(d)" and inserting "(d)(1)".

(C) Section 8339(e) of title 5, United States Code, is amended by striking "8334(d)" and inserting "8334(d)(1)".

(D) The second sentence of section 8342(a) of title 5, United States Code, is amended by inserting "or 8334(d)(2)" after "8343a".

(3) The amendments made by this subsection shall be effective with respect to any annuity having a commencement date later than December 1, 1990.

SEC. 7002. REFORMS IN THE HEALTH BENEFITS PROGRAM.

(a) HOSPITALIZATION-COST-CONTAINMENT MEASURES.—Section 8902 of title 5, United States Code, is amended by adding at the end the following:

"(n) A contract for a plan described by section 8903(1), (2), or (3), or section 8903a, shall require the carrier—

"(1) to implement hospitalization-cost-containment measures, such as measures—

"(A) for verifying the medical necessity of any proposed treatment or surgery;

"(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

"(C) for determining the appropriate length of stay (through concurrent review or otherwise) in cases involving inpatient care; and

"(D) involving case management, if the circumstances so warrant; and

"(2) to establish incentives to encourage compliance with measures under paragraph (1).".

(b) IMPROVED CASH MANAGEMENT.—Section 8909(a) of title 5, United States Code, is amended by adding at the end (as a flush left sentence) the following:

"Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).".

(c) EXEMPTION FROM STATE PREMIUM TAXES.—Section 8909 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

"(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.".

(d) IMPROVED COORDINATION WITH MEDICARE.—Section 8910 of title 5, United States Code, is amended by adding at the end the following:

"(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.".

(e) AMENDMENTS TO PUBLIC LAW 101-76.—Public Law 101-76 (103 Stat. 556) is amended—

(1) in subsection (a)(1), by striking "contract year 1990 or 1991," and inserting "each of contract years 1990 through 1993 (inclusive),"; and

(2) in subsection (c), by striking "contract year 1991," and inserting "a contract year (or any period thereafter),".

(f) APPLICATION OF CERTAIN MEDICARE LIMITS TO FEDERAL EMPLOYEE HEALTH BENEFITS ENROLLEES AGE 65 OR OLDER.—(1) Section 8904 of title 5, United States Code, is amended by inserting "(a)" before the first sentence and by adding at the end of the section the following new subsection:

"(b)(1) A plan, other than a prepayment plan described in section 8903(4) of this title, may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not covered to receive Medicare hospital and insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), to pay a charge imposed by any health care provider, for inpatient hospital services which are covered for purposes of benefit payments under this chapter and part A of title XVIII of the Social Security Act, to the extent that such charge exceeds applicable limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sections 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), whereby the participating provider accepts Medicare benefits as full payment for covered items and services after applicable patient copayments under section 1813 of such Act (42 U.S.C. 1395e) have been satisfied, shall accept equivalent benefit payments and enrollee copayments under this chapter as full payment for services described in the preceding sentence. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a hospital is found to knowingly and willfully violate this subsection on a repeated basis and the Secretary may invoke appropriate sanctions in accordance with section 1866(b)(2) of the Social Security Act (42 U.S.C. 1395cc(b)(2)) and applicable regulations.

"(2) Notwithstanding any other provision of law, the Secretary of Health and Human Services and the Director of the Office of Personnel Management, and their agents, shall exchange any information necessary to implement this subsection.

"(3)(A) Not later than December 1, 1991, and periodically thereafter, the Secretary of Health and Human Services (in consultation with the Director of the Office of Personnel Management) shall supply to carriers of plans described in paragraphs (1) through (3) of section 8903 the Medicare program information necessary for them to comply with paragraph (1).

"(B) For purposes of this paragraph, the term 'Medicare program information' includes the limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww) and the identity of hospitals which have in force agreements with the Secretary of Health and Human Services consistent with section 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc).".

(2) The amendments made by this subsection shall apply with respect to contract years beginning on or after January 1, 1992.

(g) EFFECTIVE DATE.—Except as provided in subsection (f), the amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1991.

Subtitle B—Postal Service

SEC. 7101. FUNDING OF COLAS FOR POSTAL SERVICE ANNUITANTS AND SURVIVOR ANNUITANTS.

(a) EXPANDED SCOPE OF COVERAGE; CHANGE IN PRORATION RULE.—Section 8348(m)(1) of title 5, United States Code, is amended by striking "October 1, 1986," each place it appears and inserting "July 1, 1971,".

(b) REPEAL OF PROVISION RELATING TO CERTAIN EARLIER COLAS.—Section 4002(b) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2134) is repealed.

(c) PROVISION RELATING TO PRE-1991 COLAS.—(1) For the purpose of this subsection—

(A) the term "pre-1991 COLA" means a cost-of-living adjustment which took effect in any of the fiscal years specified in subparagraphs (A)-(N) of paragraph (3);

(B) the term "post-1990 fiscal year" means a fiscal year after fiscal year 1990; and

(C) the term "pre-1991 fiscal year" means a fiscal year before fiscal year 1991.

(2) Notwithstanding any other provision of law, an installment (equal to an amount determined by reference to paragraph (3)) shall be payable by the United States Postal Service in a post-1990 fiscal year, with respect to a pre-1991 COLA, if such fiscal year occurs within the 15-fiscal-year period which begins with the first fiscal year in which that COLA took effect, subject to section 7104.

(3) Notwithstanding any provision of section 8348(m) of title 5, United States Code, or any determination thereunder (including any made under such provision, as in effect before October 1, 1990), the estimated increase in the unfunded liability referred to in paragraph (1) of such section 8348(m) shall be payable, in accordance with this subsection, based on annual installments equal to—

(A) $6,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1977;

(B) $7,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1978;

(C) $10,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1979;

(D) $20,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1980;

(E) $26,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1981;

(F) $28,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1982;

(G) $30,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1983;

(H) $5,700,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1984;

(I) $19,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1985;

(J) $7,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1986;

(K) $8,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1987;

(L) $36,800,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1988;

(M) $51,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1989; and

(N) $63,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1990.

(4) Any installment payable under this subsection shall be paid by the Postal Service at the same time as when it pays any installments due in that same fiscal year under section 8348(m) of title 5, United States Code.

(5) An installment payable under this subsection in a fiscal year, with respect to a pre-1991 COLA, shall be in lieu of any other installment for which the Postal Service might otherwise be liable in such fiscal year, with respect to such COLA, under section 8348(m) of title 5, United States Code.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 1990.

SEC. 7102. FUNDING OF HEALTH BENEFITS FOR POSTAL SERVICE RETIREES AND SURVIVORS OF POSTAL SERVICE EMPLOYEES OR RETIREES.

(a) EXPANDED SCOPE OF COVERAGE.—Section 8906(g)(2) of title 5, United States Code, is amended by striking "October 1, 1986," each place it appears and inserting "July 1, 1971,".

(b) CONTRIBUTIONS TO BE PRORATED.—Section 8906(g)(2) of title 5, United States Code, as amended by subsection (a), is further amended—

(1) by striking "(2)" and inserting "(2)(A)"; and

(2) by adding at the end the following:

"(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date.

SEC. 7103. PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987.

(a) DEFINITION.—For the purpose of this section, the term "pre-1987 fiscal year" means a fiscal year before fiscal year 1987.

(b) FOR PAST RETIREMENT COLAS.—As payment for any amounts which would have been due in any pre-1987 fiscal year under the provisions of section 8348(m) of title 5, United States Code (as amended by section 7101) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund—

(1) $216,000,000, not later than September 30, 1991;
(2) $266,000,000, not later than September 30, 1992;
(3) $316,000,000, not later than September 30, 1993;
(4) $416,000,000, not later than September 30, 1994; and
(5) $471,000,000, not later than September 30, 1995.

"(c) FOR PAST HEALTH BENEFITS.—As payment for any amounts which would, for any period ending before the start of fiscal year 1987, have been payable under the provisions of section 8906(g)(2) of title 5, United States Code (as amended by section 7102) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Employees Health Benefits Fund—
(1) $56,000,000, not later than September 30, 1991;
(2) $47,000,000, not later than September 30, 1992;
(3) $62,000,000, not later than September 30, 1993;
(4) $56,000,000, not later than September 30, 1994; and
(5) $234,000,000, not later than September 30, 1995.

Subtitle C—Miscellaneous

SEC. 7201. COMPUTER MATCHING OF FEDERAL BENEFITS INFORMATION AND PRIVACY PROTECTION.

(a) SHORT TITLE.—This section may be cited as the "Computer Matching and Privacy Protection Amendments of 1990".

(b) VERIFICATION REQUIREMENTS AMENDMENT.—(1) Subsection (p) of section 552a of title 5, United States Code, is amended to read as follows:

"(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

"(A)(i) the agency has independently verified the information; or

"(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

"(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

"(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

"(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

"(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

"(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

"(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

"(A) the amount of any asset or income involved;

"(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

"(C) the period or periods when the individual actually had such asset or income.

"(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.".

(2) Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act.

(c) LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT.—Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2, shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of—

(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

(2) 30 days after the date of publication of guidance under section 2(b).

SEC. 7202. PORTABILITY OF BENEFITS FOR EMPLOYEES CONVERTING TO THE CIVIL SERVICE SYSTEM.

(a) SHORT TITLE.—This section may be cited as the "Portability of Benefits for Nonappropriated Fund Employees Act of 1990".

(b) DEFINITIONAL AMENDMENT.—Section 2105(c) of title 5, United States Code, is amended—

(1) by amending paragraph (1) to read as follows:

"(1) laws administered by the Office of Personnel Management, except—

"(A) section 7204;

"(B) as otherwise specifically provided in this title;

"(C) the Fair Labor Standards Act of 1938; or

"(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or"; and

(2) in paragraph (2), by striking "chapter 84" and inserting "chapter 84 (except to the extent specifically provided therein)".

(c) AMENDMENT RELATING TO ORDER OF RETENTION.—Section 3502(a)(C) of title 5, United States Code, is amended to read as follows:

"(C) is entitled to credit for—

"(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

"(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1987, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).".

(d) AMENDMENT RELATING TO PAY ON A CHANGE OF POSITION.—Section 5334 of title 5, United States Code, is amended by adding at the end the following:

"(g) An employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) who moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, may have such employee's initial rate of basic pay fixed at the minimum rate of the appropriate grade or at any step of such grade that does not exceed the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c). In the case of a nonappropriated fund employee who is moved involuntarily from such nonappropriated fund instrumentality without a break in service of more than 3 days and without substantial change in duties to a position that is subject to this subchapter, the employee's pay shall be set at a rate (not above the maximum for the grade, except as may be provided for under section 5365) that is not less than the employee's rate of basic pay under the nonappropriated fund instrumentality immediately prior to so moving.".

(e) AMENDMENT RELATING TO PERIODIC STEP INCREASES.—Section 5335 of title 5, United States Code, is amended by adding at the end the following:

"(g) In computing periods of service under subsection (a) in the case of an employee who moves without a break in service of more than 3 days from a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) to a position under the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, service under such instrumentality shall, under regulations prescribed by the Office, be deemed service in a position subject to this subchapter.".

(f) AMENDMENT RELATING TO GRADE AND PAY RETENTION.—Section 5365(b) of title 5, United States Code, is amended by adding at the end, as a flush left sentence, the following:

"Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).".

(g) AMENDMENT RELATING TO PAY FOR ACCUMULATED AND ACCRUED LEAVE.—Section 5551(a) of title 5, United States Code, is amended by adding at the end the following new sentence: "For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).".

(h) AMENDMENTS RELATING TO TRANSFERS BETWEEN POSITIONS UNDER DIFFERENT LEAVE SYSTEMS.—Section 6308 of title 5, United States Code, is amended—

(1) by inserting "(a)" before "The annual"; and

(2) by adding at the end the following:

"(b) The annual leave, sick leave, and home leave to the credit of a nonappropriated fund employee of the Department of Defense or the Coast Guard described in section 2105(c) who moves without a break in service of more than 3 days to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter shall be transferred to the employee's credit. The annual leave, sick leave, and home leave to the credit of an employee of the Department of Defense or the Coast Guard who is subject to this subchapter and who moves without a break in service of more than 3 days to a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c), shall be transferred to the employee's credit under the nonappropriated fund instrumentality. The Secretary of Defense or the Secretary of Transportation, as appropriate, may provide for a transfer of funds in an amount equal to the value of the transferred annual leave to compensate the gaining entity for the cost of a transfer of annual leave under this subsection.".

(i) AMENDMENTS TO INCLUDE ADDITIONAL SERVICE FOR LEAVE ACCRUAL PURPOSES.—(1) Section 6312 is amended to read as follows:

"§ 6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees

"(a) Credit shall be given in determining years of service for the purpose of section 6303(a) for—

"(1) service as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or an association of producers described in section 10(b) of the Agricultural Adjustment Act; and

"(2) service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) by an employee who has moved without a break in service of more than 3 days to a position subject to this subchapter in the Department of Defense or the Coast Guard, respectively.

"(b) The provisions of subsections (a) and (b) of section 6308 for transfer of leave between leave systems shall apply to the leave systems established for such county office employees and employees of such Department of Defense and Coast Guard nonappropriated fund instrumentalities, respectively.".

(2) The item relating to section 6312 in the table of sections for chapter 63 of title 5, United States Code, is amended to read as follows:

"6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees.".

(j) AMENDMENTS RELATING TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1) Section 8331 of title 5, United States Code, is amended—

(A) by striking "and" at the end of paragraph (1)(J);

(B) by inserting "and" after the semicolon at the end of paragraph (1)(K);

(C) by inserting after paragraph (1)(K) the following:

"(L) an employee described in section 2105(c) who has made an election under section 8347(p)(1) to remain covered under this subchapter;";

(D) in paragraph (1)(ii), by striking the matter following "Government employees" through the semicolon and inserting "(besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(p)(2) to remain covered by a retirement system established for employees described in section 2105(c));"; and

(E) in paragraph (7), by striking "and Gallaudet College;" and inserting "Gallaudet College, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);".

(2) Section 8347 of title 5, United States Code, is amended by adding at the end the following:

"(p)(1) Under regulations prescribed by the Office of Personnel Management, an employee of the Department of Defense or the Coast Guard who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) has 5 or more years of civilian service creditable under this subchapter; and

"(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

"(2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term 'vested participant' is defined by such system;

"(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c); and

"(D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.".

(k) AMENDMENTS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—(1) Section 8401 of title 5, United States Code, is amended—

(A) in paragraph (11)—

(i) by striking "and" at the end of subparagraph (A);

(ii) by inserting "and" after the semicolon at the end of subparagraph (B);

(iii) by inserting after subparagraph (B) the following:

"(C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;";

(iv) by striking "or" at the end of clause (ii);

(v) by inserting "or" after the semicolon at the end of clause (iii); and

(vi) by inserting after clause (iii) the following:

"(iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);"; and

(B) in paragraph (15), by striking "and Gallaudet College;" and inserting ", Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);".

(2) Section 8461 of title 5, United States Code, is amended by adding at the end the following:

"(n)(1) Under regulations prescribed by the Office, an employee of the Department of Defense or the Coast Guard who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) has 5 or more years of civilian service creditable under this chapter; and

"(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this chapter during any employment described in section 2105(c) after such move.

"(2) Under regulations prescribed by the Office, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term 'vested participant' is defined by such system;

"(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described by section 2105(c); and

"(D) is not eligible to make an election under section 8347(p),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined by section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described by section 2105(c) rather than be subject to this chapter.".

(l) AMENDMENTS RELATING TO HEALTH BENEFITS.—Section 8901(3)(A) of title 5, United States Code, is amended—

(1) by striking "or" at the end of clause (ii);

(2) by inserting "or" after the semicolon at the end of clause (iii); and

(3) by inserting after clause (iii) the following:

"(iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(p)(2) or 8461(n)(2) to remain subject to such a system;".

(m) APPLICABILITY.—(1) The amendments made by this section shall apply with respect to any individual who, on or after January 1, 1987—

(A) moves without a break in service of more than 3 days from employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that is described in section 2105(c) of title 5, United States Code, to employment in the Department of Defense or the Coast Guard, respectively, that is not described in such section 2105(c); or

(B) moves without a break in service from employment in the Department of Defense or the Coast Guard that is not described in such section 2105(c) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(c).

(2) The Secretary of Defense, the Secretary of Transportation, the Director of the Office of Personnel Management, and the Executive Director of the Federal Retirement Thrift Investment Board, as applicable, shall take such actions as may be practicable to ensure that each individual who has moved as described under paragraph (1) on or after January 1, 1987, and before the date of enactment of this Act, receives the benefit of the amendments made by this section as if such amendments had been in effect at the time such individual so moved. Each such individual who wishes to make an election of retirement coverage under the amendments made by subsection (j) or (k) of this section shall complete such election within 180 days after the date of enactment of this Act.

(n) CLARIFYING PROVISIONS RELATING TO TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM.—(1) For the purpose of this section, the term "nonappropriated fund instrumentality" means a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c) of title 5, United States Code.

(2)(A) If an individual makes an election under section 8347(p)(1) of title 5, United States Code, to remain covered by subchapter III of chapter 83 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and contribute to the Thrift Savings Fund such sums as are required for such individual in accordance with section 8351 of such title.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8347(p)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(3)(A) If an individual makes an election under section 8461(n)(1) of title 5, United States Code, to remain covered by chapter 84 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and shall contribute to the Thrift Savings Fund the funds deducted, together with such other sums as are required for such individual under subchapter III of such chapter.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8461(n)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(4) If an individual makes an election under section 8347(p)(2) or 8461(n)(2) of title 5, United States Code, to remain covered by a retirement system established for employees described in section 2105(c) of such title, any Government agency thereafter employing such individual shall, in lieu of any deductions or contributions for which it would otherwise be responsible with respect to such individual under chapter 83 or 84 of such title, make such deductions from pay and such contributions as would be required (under the retirement system for nonappropriated fund employees involved) if it were a nonappropriated fund instrumentality. Any such deductions and contributions shall be remitted to the Department of Defense or the Coast Guard, as applicable, for transmission to the appropriate retirement system.

Subtitle D—Coordination

SEC. 7301. COORDINATION.

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, this title and the amendments made by this title shall be considered an exception under subsection (b) of such section.

TITLE VIII—VETERANS' PROGRAMS

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Sec. 8053. Requirement for claimants to report social security numbers; use of death information by the Department of Veterans Affairs.

Subtitle A—Compensation, DIC, and Pension

SEC. 8001. LIMITATION ON COMPENSATION BENEFITS FOR CERTAIN INCOMPETENT VETERANS.

(a) IN GENERAL.—(1) Chapter 55 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3205. Limitation on compensation payments for certain incompetent veterans

"(a) In any case in which a veteran having neither spouse, child, nor dependent parent is rated by the Secretary in accordance with regulations as being incompetent and the value of the veteran's estate (excluding the value of the veteran's home) exceeds $25,000, further payment of compensation to which the veteran would otherwise be entitled may not be made until the value of such estate is reduced to less than $10,000.

"(b)(1) Subject to paragraph (2) of this subsection, if a veteran denied payment of compensation pursuant to subsection (a) is subsequently rated as being competent, the Secretary shall pay to the veteran a lump sum equal to the total of the compensation which was denied the veteran pursuant to such paragraph. The Secretary shall make the lump-sum payment as soon as practicable after the end of the 90-day period beginning on the date of the competency rating.

"(2) A lump-sum payment may not be made under paragraph (1) to a veteran who, within such 90-day period, dies or is again rated by the Secretary as being incompetent.

"(3) The costs of administering this subsection shall be paid from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

"(c) This section expires on September 30, 1992.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3205. Limitation on compensation payments for certain incompetent veterans."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to payment of compensation for months after October 1990.

SEC. 8002. ELIMINATION OF PRESUMPTION OF TOTAL DISABILITY IN DETERMINATION OF PENSION FOR CERTAIN VETERANS.

(a) ELIMINATION OF PRESUMPTION.—That portion of subsection (a) of section 502 of title 38, United States Code, preceding paragraph (1) is amended to read as follows:

"(a) For the purposes of this chapter, a person shall be considered to be permanently and totally disabled if such a person is unemployable as a result of disability reasonably certain to continue throughout the life of the disabled person, or is suffering from—".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to claims filed after October 31, 1990.

SEC. 8003. REDUCTION IN PENSION FOR CERTAIN VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE.

(a) IN GENERAL.—Section 3203 of title 38, United States Code, is amended by adding at the end the following:

"(f)(1) For the purposes of this subsection—

"(A) the term 'Medicaid plan' means a State plan for medical assistance referred to in section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)); and

"(B) the term 'nursing facility' means a nursing facility described in section 1919 of such Act (42 U.S.C. 1396r).

"(2) If a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such veteran by a nursing facility, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the month of admission to such nursing facility.

"(3) Notwithstanding any provision of title XIX of the Social Security Act, the amount of the payment paid a nursing facility pursuant to a Medicaid plan for services furnished a veteran may not be reduced by any amount of pension permitted to be paid such veteran under paragraph (2) of this subsection.

"(4) A veteran is not liable to the United States for any payment of pension in excess of the amount permitted under this subsection that is paid to or for the veteran by reason of the inability or failure of the Secretary to reduce the veteran's pension under this subsection unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make a reduction in pension under this subsection.

"(5) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

"(6) This subsection expires on September 30, 1992.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 1, 1990, or the date of the enactment of this Act, whichever is later.

SEC. 8004. INELIGIBILITY OF REMARRIED SURVIVING SPOUSES OR MARRIED CHILDREN FOR REINSTATEMENT OF BENEFITS ELIGIBILITY UPON BECOMING SINGLE.

(a) IN GENERAL.—Section 103 of title 38, United States Code, is amended—

(1) in subsection (d)—

(A) by striking out "(1)"; and

(B) by striking out paragraphs (2) and (3); and

(2) in subsection (e)—

(A) by striking out "(1)"; and

(B) by striking out paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to claims filed after October 31, 1990, and shall not operate to reduce or terminate benefits to any individual whose benefits were predicated on section 103(d)(2), 103(d)(3), or 103(e)(2) before the effective date of those amendments.

SEC. 8005. COST-OF-LIVING INCREASES IN COMPENSATION RATES.

(a) POLICY REGARDING FISCAL YEAR 1991.—The fiscal year 1991 cost-of-living adjustments in the rates of compensation payable under chapter 11 of title 38, United States Code, and of the dependency and indemnity compensation payable under chapter 13 of such title will be no more than a 5.4 percent increase, with all increased monthly rates rounded down to the next lower dollar. The effective date for such adjustments will not be earlier than January 1, 1991.

(b) INCREASE PAYABLE AS OF JANUARY 1992.—The amount of compensation or dependency and indemnity compensation payable to any individual for the month of January 1992 who is entitled to such benefits as of January 1, 1992, shall be increased for such month by the amount equal to the amount of the monthly increase provided for that individual's benefit level as of January 1, 1991, pursuant to the adjustments described in subsection (a).

Subtitle B—Health-Care Benefits

SEC. 8011. MEDICAL-CARE COST RECOVERY.

(a) APPLICABILITY.—Section 629(a)(2) of title 38, United States Code, is amended—

(1) by striking out "or" at the end of clause (C);

(2) by striking out the period at the end of clause (D) and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new clause:

"(E) for which care and services are furnished before October 1, 1993, under this chapter to a veteran who—

"(i) has a service-connected disability; and

"(ii) is entitled to care (or payment of the expenses of care) under a health-plan contract.".

(b) MAXIMUM AMOUNT RECOVERABLE.—Clause (B) of section 629(c)(2) of such title is amended by striking out "in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with" and inserting in lieu thereof "if provided by".

(c) ESTABLISHMENT OF MEDICAL-CARE COST RECOVERY FUND.—Section 629(g) of such title is amended to read as follows:

"(g)(1) There is established in the Treasury a fund to be known as the Department of Veterans Affairs Medical-Care Cost Recovery Fund (hereafter referred to in this section as the 'Fund').

"(2) Amounts recovered or collected under this section shall be deposited in the Fund.

"(3) Sums in the Fund shall be available to the Secretary for the following:

"(A) Payment of necessary expenses for the identification, billing, and collection of the cost of care and services furnished under this chapter, and for the administration and collection of payments required under section 610(f) of this title for hospital care or nursing home care, under section 612(f) of this title for medical services, and under section 622A of this title for medications, including—

"(i) the costs of computer hardware and software, word processing and telecommunications equipment, other equipment, supplies, and furniture;

"(ii) personnel training and travel costs;

"(iii) personnel and administrative costs for attorneys in the Office of General Counsel of the Department and for support personnel of such office;

"(iv) other personnel and administrative costs; and

"(v) the costs of any contract for identification, billing, or collection services.

"(B) Payment of the Secretary for reasonable charges, as determined by the Secretary, imposed for (i) services and utilities (including light, water, and heat) furnished by the Secretary, (ii) recovery and collection activities under this section, and (iii) administration of the Fund.

"(4) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of the unobligated balance remaining in the Fund at the close of business on September 30 of the preceding year minus any part of such balance that the Secretary determines is necessary in order to enable the Secretary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs described in paragraph (3).".

(d) TRANSFER TO FUND.—

(1) AMOUNT TO BE TRANSFERRED.—The Secretary of the Treasury shall transfer $25,000,000 from the Department of Veterans Affairs Loan Guaranty Revolving Fund to the Department of Veterans Affairs Medical-Care Cost Recovery Fund established by section 629(g) of title 38, United States Code (as amended by subsection (c)). The amount so transferred shall be available until the end of September 30, 1991, for the support of the equivalent of 800 full-time employees and other expenses described in paragraph (3) of such section.

(2) REIMBURSEMENT OF LOAN GUARANTY REVOLVING FUND.—Notwithstanding section 629(g) of title 38, United States Code (as amended by subsection (c)), the first $25,000,000 recovered or collected by the Department of Veterans Affairs during fiscal year 1991 as a result of third-party medical recovery activities shall be credited to the Department of Veterans Affairs Loan Guaranty Revolving Fund.

(3) THIRD-PARTY MEDICAL RECOVERY ACTIVITIES DEFINED.—For the purposes of this subsection, the term "third-party medical recovery activities" means recovery and collection activities carried out under section 629 of title 38, United States Code.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as of October 1, 1990.

SEC. 8012. COPAYMENT FOR MEDICATIONS.

(a) COPAYMENT REQUIRED.—(1) Subchapter III of chapter 17 of title 38, United States Code, is amended by inserting after section 622 the following new section:

"§ 622A. Copayment for medications

"(a)(1) Subject to paragraph (2), the Secretary shall require a veteran (other than a veteran with a service-connected disability rated 50 percent or more) to pay the United States $2 for each 30-day supply of medication furnished such veteran under this chapter on an outpatient basis for the treatment of a non-service-connected disability or condition. If the amount supplied is less than a 30-day supply, the amount of the charge may not be reduced.

"(2) The Secretary may not require a veteran to pay an amount in excess of the cost to the Secretary for medication described in paragraph (1).

"(b) Amounts collected under this section shall be deposited in the Department of Veterans Affairs Medical-Care Cost Recovery Fund.

"(c) The provisions of subsection (a) expire on September 30, 1991.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 622 the following new item:

"622A. Copayment for medications.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to medication furnished to a veteran after October 31, 1990, or the date of the enactment of this Act, whichever is later.

SEC. 8013. MODIFICATION OF HEALTH-CARE CATEGORIES AND COPAYMENTS.

(a) INPATIENT CARE.—(1) Subsection (a) of section 610 of title 38, United States Code, is amended—

(A) in paragraph (1)(I), by striking out "622(a)(1)" and inserting in lieu thereof "622(a)"; and

(B) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) In the case of a veteran who is not described in paragraph (1) of this subsection, the Secretary may, to the extent resources and facilities are available, furnish hospital care and nursing home care to a veteran which the Secretary determines is needed for a nonservice-connected disability, subject to

the provisions of subsection (f) of this section.".

(2) Subsection (f) of such section is amended—

(A) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(f)(1) The Secretary may not furnish hospital care or nursing home care under this section to a veteran who is eligible for such care under subsection (a)(2) of this section unless the veteran agrees to pay to the United States the applicable amount determined under paragraph (2) of this subsection.

"(2) A veteran who is furnished hospital care or nursing home care under this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such care shall be liable to the United States for an amount equal to—

"(A) the lesser of—

"(i) the cost of furnishing such care, as determined by the Secretary; or

"(ii) the amount determined under paragraph (3) of this subsection; and

"(B) an amount equal to $10 for every day the veteran receives hospital care and $5 for every day the veteran receives nursing home care."; and

(B) in subparagraphs (A) and (B) of paragraph (3), by striking out "(2)(B)" each place it appears and inserting in lieu thereof "(2)(A)(ii)".

(b) OUTPATIENT CARE.—Subsection (f) of section 612 of such title is amended—

(1) in paragraph (1), by striking out "610(a)(2)(B)" and inserting in lieu thereof "610(a)(2)";

(2) by redesignating paragraphs (5) and (7) as (3) and (4), respectively; and

(3) by striking paragraphs (3), (4), and (6).

(c) INCOME THRESHOLDS.—(1) Subsection (a) of section 622 of such title is amended—

(A) in paragraph (1)—

(i) by striking out "(1)" at the beginning of the subsection;

(ii) by redesignating clauses (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(iii) by striking out "Category A threshold" in paragraph (3), as so redesignated, and inserting in lieu thereof "amount set forth in subsection (b)";

(B) by striking out paragraph (2).

(2) Subsection (b) of such section is amended to read as follows:

"(b)(1) For purposes of subsection (a)(3), the income threshold for the calendar year beginning on January 1, 1990, is—

"(A) $17,240 in the case of a veteran with no dependents; and

"(B) $20,688 in the case of a veteran with one dependent, plus $1,150 for each additional dependent.

"(2) For a calendar year beginning after December 31, 1990, the amounts in effect for purposes of this subsection shall be the amounts in effect for the preceding calendar year as adjusted under subsection (c) of this section.".

(3) Subsection (c) of such section is amended by striking out "paragraphs (1) and (2) of".

(4) Paragraph (2) of subsection (d) of such section is amended to read as follows:

"(2) A determination described in this paragraph is a determination that for purposes of subsection (a)(3) of this section a veteran's attributable income is not greater than the amount determined under subsection (b) of this section.".

(5) Subsection (e) of such section is amended—

(A) in paragraph (1), by striking out "the Category A threshold or the Category B threshold, as appropriate" and inserting in lieu thereof "the amount determined under subsection (b) of this section"; and

(B) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) A veteran is described in this paragraph for the purposes of subsection (a) of this section if—

"(A) the veteran has an attributable income greater than the amount determined under subsection (b) of this section; and

"(B) the current projections of such veteran's income for the current year are that the veteran's income for such year will be substantially below the amount determined under subsection (b).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to hospital care and medical services received after October 31, 1990, or the date of the enactment of this Act, whichever is later.

(e) SUNSET.—The amendments made by this section expire on September 30, 1991.

Subtitle C—Education and Employment

SEC. 8021. LIMITATION OF REHABILITATION PROGRAM ENTITLEMENT TO SERVICE-DISABLED VETERANS RATED AT 20 PERCENT OR MORE.

(a) IN GENERAL.—Section 1502(1) of title 38, United States Code, is amended by inserting "at a rate of 20 percent or more" after "compensable" both places it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to veterans and other persons originally applying for assistance under chapter 31 of title 38, United States Code, on or after November 1, 1990.

Subtitle D—Housing and Loan Guaranty Assistance

SEC. 8031. ELECTION OF CLAIM UNDER GUARANTY OF MANUFACTURED HOME LOANS.

(a) IN GENERAL.—Paragraph (3) of section 1812(c) of title 38, United States Code, is amended to read as follows:

"(3)(A) The Secretary's guaranty may not exceed the lesser of (i) the lesser of $20,000 or 40 percent of the loan, or (ii) the maximum amount of the guaranty entitlement available to the veteran as specified in paragraph (4) of this subsection.

"(B) A claim under the Secretary's guaranty shall, at the election of the holder of a loan, be made by the filing of an accounting with the Secretary—

"(i) within a reasonable time after the receipt by such holder of an appraisal by the Secretary of the value of the security for the loan; or

"(ii) after liquidation of the security for the loan.

"(C) If the holder of a loan applies for payment of a claim under clause (i) of subparagraph (B) of this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

"(i) the amount equal to the excess, if any, of the total indebtedness over the amount of the appraisal referred to in such clause; or

"(ii) the amount equal to the guaranty under this section.

"(D) If the holder of a loan files for payment of a claim under clause (ii) of subparagraph (B) this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

"(i) the amount equal to the excess, if any, of the total indebtedness over the greater of the value of the property securing the loan, as determined by the Secretary, or the amount of the liquidation or resale proceeds; or

"(ii) the amount equal to the guaranty under this section.

"(E) In any accounting filed pursuant to subparagraph (B)(ii) of this subsection, the Secretary shall permit to be included therein accrued unpaid interest from the date of the first uncured default to such cutoff date as the Secretary may establish, and the Secretary shall allow the holder of the loan to charge against the liquidation or resale proceeds accrued interest from the cutoff date established to such further date as the Secretary may determine and such costs and expenses as the Secretary determines to be reasonable and proper.

"(F) The liability of the United States under the guaranty provided for by this paragraph shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to claims filed with the Secretary of Veterans Affairs on or after the date of the enactment of this Act.

SEC. 8032. LOAN FEE.

Section 1829(a) of title 38, United States Code, is amended—

(1) in paragraph (2), by striking out "The amount" and inserting in lieu thereof "Except as provided in paragraph (6) of this subsection, the amount"; and

(2) by adding at the end the following:

"(6) With respect to each loan closed during the period beginning on November 1, 1990, and ending on September 30, 1991, each amount specified in paragraph (2) of this subsection shall be increased by 0.625 percent of the total loan amount.".

Subtitle E—Burial and Grave Marker Benefits

SEC. 8041. HEADSTONE OR MARKER ALLOWANCE.

(a) IN GENERAL.—Section 906 of title 38, United States Code, is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

(b) EFFECTIVE DATE.—This section shall apply to deaths occurring on or after November 1, 1990.

SEC. 8042. PLOT ALLOWANCE ELIGIBILITY.

(a) In General.—Section 903(b)(2) of title 38, United States Code, is amended by inserting "(other than a veteran whose eligibility for benefits under this subsection is based on being a veteran of any war)" after "(2) if such veteran".

(b) Effective Date.—This section shall apply to deaths occurring on or after November 1, 1990.

Subtitle F—Miscellaneous

SEC. 8051. USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

(a) DISCLOSURE OF TAX INFORMATION.—(1) Subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code of 1986 (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended—

(A) by striking out "and" at the end of clause (vi);

(B) by striking out the period at the end of clause (vii) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following:

"(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

"(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

"(III) health-care services furnished under section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B) of such title; and

"(IV) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule. Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV). Clause (viii) shall not apply after September 30, 1992."

(2) The heading of paragraph (7) of section 6103(l) of such Code is amended by striking out "OR THE FOOD STAMP ACT OF 1977" and inserting in lieu thereof ", THE FOOD STAMP ACT OF 1977, OR TITLE 38, UNITED STATES CODE".

(b) USE OF INCOME INFORMATION FOR NEEDS-BASED PROGRAMS.—(1) Chapter 53 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3117. Use of income information from other agencies: notice and verification

"(a) The Secretary shall notify each applicant for a benefit or service described in subsection (c) of this section that income information furnished by the applicant to the Secretary may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. The Secretary shall periodically transmit to recipients of such benefits and services additional notifications of such matters.

"(b) The Secretary may not, by reason of information obtained from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, terminate, deny, suspend, or reduce any benefit or service described in subsection (c) of this section until the Secretary takes appropriate steps to verify independently information relating to the following:

"(1) The amount of the asset or income involved.

"(2) Whether such individual actually has (or had) access to such asset or income for the individual's own use.

"(3) The period or periods when the individual actually had such asset or income.

"(c) The benefits and services described in this subsection are the following:

"(1) Needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Secretary.

"(2) Parents' dependency and indemnity compensation provided under section 415 of this title.

"(3) Health-care services furnished under sections 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B) of this title.

"(4) Compensation paid under chapter 11 of this title at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

"(d) In the case of compensation described in subsection (c)(4) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment information referred to in subsection (b) of this section only if the Secretary finds that the amount and duration of the earnings reported in that information clearly indicate that the individual may no longer be qualified for a rating of total disability.

"(e) The Secretary shall inform the individual of the findings made by the Secretary on the basis of verified information under subsection (b) of this section, and shall give the individual an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

"(f) The Secretary shall pay the expenses of carrying out this section from amounts available to the Department for the payment of compensation and pension.

"(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Secretary of Health and Human Services under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on September 30, 1992.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3117. Use of income information from other agencies: notice and verification.".

(c) NOTICE TO CURRENT BENEFICIARIES.—(1) The Secretary of Veterans Affairs shall notify individuals who (as of the date of the enactment of this Act) are applicants for or recipients of the benefits described in subsection (c) (other than paragraph (3)) of section 3117 of title 38, United States Code (as added by subsection (b)), that income information furnished to the Secretary by such applicants and recipients may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(l)(7)(D) of the Internal Revenue Code of 1986 (as added by subsection (a)).

(2) Notification under paragraph (1) shall be made not later than 90 days after the date of the enactment of this Act.

(3) The Secretary of Veterans Affairs may not obtain information from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (as added by subsection (a)) until notification under paragraph (1) is made.

(d) GAO STUDY.—The Comptroller General of the United States shall conduct a study of the effectiveness of the amendments made by this section and shall submit a report on such study to the Committees on Veterans' Affairs and Ways and Means of the House of Representatives and the Committees on Veterans' Affairs and Finance of the Senate not later than January 1, 1992.

SEC. 8052. LINE OF DUTY.

(a) ELIMINATION OF COMPENSATION IN CERTAIN CASES.—Title 38, United States Code, is amended—

(1) in section 105(a), by striking out "the result of the person's own willful misconduct" in the first sentence and inserting in lieu thereof "a result of the person's own willful misconduct or abuse of alcohol or drugs";

(2) in section 310, by striking out "the result of the veteran's own willful misconduct" and inserting in lieu thereof "a result of the veteran's own willful misconduct or abuse of alcohol or drugs"; and

(3) in section 331, by striking out "the result of the veteran's own willful misconduct" and inserting in lieu thereof "a result of the veteran's own willful misconduct or abuse of alcohol or drugs".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to claims filed after October 31, 1990.

SEC. 8053. REQUIREMENT FOR CLAIMANTS TO REPORT SOCIAL SECURITY NUMBERS; USES OF DEATH INFORMATION BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) MANDATORY REPORTING OF SOCIAL SECURITY NUMBERS.—Section 3001 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(c)(1) Any person who applies for or is in receipt of any compensation or pension benefit under laws administered by the Secretary shall, if requested by the Secretary, furnish the Secretary with the social security number of such person and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of such benefit. A person is not required to furnish the Secretary with a social security number for any person to whom a social security number has not been assigned.

"(2) The Secretary shall deny the application of or terminate the payment of compensation or pension to a person who fails to furnish the Secretary with a social security number required to be furnished pursuant to paragraph (1) of this subsection. The Secretary may thereafter reconsider the application or reinstate payment of compensation or pension, as the case may be, if such person furnishes the Secretary with such social security number.

"(3) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.".

(b) REVIEW OF DEPARTMENT OF HEALTH AND HUMAN SERVICES DEATH INFORMATION TO IDENTIFY DECEASED RECIPIENTS OF COMPENSATION AND PENSION BENEFITS.—(1) Chapter 53 of title 38, United States Code, as amended by section 8051(b), is further amended by adding at the end the following new section:

"§ 3118. Review of Department of Health and Human Services death information

"(a) The Secretary shall periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Department of Health and Human Services relating to persons who have died for the purposes of—

"(1) determining whether any such persons to whom compensation and pension is being paid are deceased;

"(2) ensuring that such payments to or for any such persons who are deceased are terminated in a timely manner; and

"(3) ensuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.

"(b) The Department of Health and Human Services death information referred to in subsection (a) of this section is death information available to the Secretary from or through the Secretary of Health and Human Services, including death information available to the Secretary of Health and Human Services from a State, pursuant to a memorandum of understanding entered into by such Secretaries. Any such memorandum of understanding shall include safeguards to assure that information made available under it is not used for unauthorized purposes or improperly disclosed.".

(2) The table of sections at the beginning of such chapter, as amended by section

8051(b), is further amended by adding at the end the following:

"3118. Review of Department of Health and Human Services death information.".

TITLE IX—TRANSPORTATION

Subtitle A—Surface Transportation

SEC. 9001. SENSE OF CONGRESS THAT HIGHWAY USER TAXES SHOULD BE DEDICATED TO THE HIGHWAY TRUST FUND.

(a) FINDINGS.—Congress finds that—

(1) highway motor fuel taxes have in the past been dedicated to the Highway Trust Fund and used for the development of the surface transportation system;

(2) extraordinary budget pressures have led to consideration of the need for a temporary, 5-year highway motor fuels tax for deficit reduction;

(3) any portion of the new taxes deposited into the Highway Trust Fund shall be available to accommodate our country's vital transportation needs;

(4) adequate funding of transportation is a key component of a national strategy for economic growth; and

(5) use of the highway motor fuels taxes for deficit reduction should be temporary so that we can return as soon as possible to the dedicated user fee principle in order to ensure fairness to highway users and to ensure that needed transportation infrastructure improvements are made.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) any increase in motor fuel excise taxes that are deposited in the Highway Trust Fund shall be available for surface transportation purposes;

(2) the Budget Resolutions for fiscal years 1991 through 1995 should accommodate the Nation's transportation needs and the section 302(a) allocations should provide budget authority and outlays attributable to the increase in deposits into the Highway Trust Fund as a result of any increases in motor fuels taxes through implementation of this Act;

(3) Congress reaffirms the principle that highway motor fuel taxes should be deposited in the Highway Trust Fund; and

(4) to the extent the highway motor fuel taxes are used for deficit reduction during the 5-year period beginning with fiscal year 1991, the Congress should return to the dedicated user fee principle as soon as possible but no later than the end of fiscal year 1995.

Subtitle B—Aviation Safety and Capacity Expansion

SEC. 9101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This subtitle may be cited as the "Aviation Safety and Capacity Expansion Act of 1990".

(b) TABLE OF CONTENTS.—

Sec. 9101. Short title; table of contents.
Sec. 9102. Construction of firefighting training facilities.
Sec. 9103. Declaration of policy.
Sec. 9104. Airport improvement program.
Sec. 9105. Airway improvement program.
Sec. 9106. FAA operations.
Sec. 9107. Operation and maintenance of aviation system.
Sec. 9108. Weather service.
Sec. 9109. Military airport program.
Sec. 9110. Passenger facility charges.
Sec. 9111. Reduction in airport improvement program apportionments for large and medium hub airports imposing passenger facility charges.
Sec. 9112. Use of PFC reduced apportionment funds.
Sec. 9113. Small community air service program.
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Sec. 9118. Procurement authority.
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Sec. 9122. Reports.
Sec. 9123. Atlantic City airport.
Sec. 9124. Natural disaster regulations.
Sec. 9125. Flight takeoff or landing requirement for State taxation.
Sec. 9126. Allocation of existing capacity at certain airports.
Sec. 9127. Certificate transfers.
Sec. 9128. Severability.
Sec. 9129. Buy American.
Sec. 9130. Prohibition against fraudulent use of "made in America" labels.
Sec. 9131. Restrictions on contract awards.

SEC. 9102. CONSTRUCTION OF FIREFIGHTING TRAINING FACILITIES.

Section 503(a)(2) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2202(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) any acquisition of land for, or work involved to construct, a burn area training structure on or off the airport for the purpose of providing live fire drill training for aircraft rescue and firefighting personnel required to receive such training by a regulation of the Department of Transportation, including basic equipment and minimum structures to support such training in accordance with standards of the Federal Aviation Administration.".

SEC. 9103. DECLARATION OF POLICY.

Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is amended—

(1) in paragraph (5) by inserting ", including as they may be applied between category and class of aircraft" after "discriminatory practices"; and

(2) in paragraph (13) by inserting "and should not unjustly discriminate between categories and classes of aircraft" after "attempted".

SEC. 9104. AIRPORT IMPROVEMENT PROGRAM.

Section 505 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2204) is amended—

(1) in subsection (a) by striking "'13,816,700,000" and inserting '$13,916,700,000"; and

(2) in subsection (b) by striking "September 30, 1987" and inserting "September 30, 1992".

SEC. 9105. AIRWAY IMPROVEMENT PROGRAM.

(a) RENAMING OF AIRWAY PLAN.—Section 504(b)(1) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2203(b)(1)) is amended by inserting after the second sentence the following new sentence: "For fiscal year 1991 and thereafter, the revised plan shall be known as the 'Airway Capital Investment Plan'.".

(b) AIRWAY FACILITIES AND EQUIPMENT.—The first sentence of section 506(a)(1) of such Act (49 U.S.C. App. 2205(a)(1)) is amended by striking "September 30, 1981," and all that follows through the period and inserting the following: "September 30, 1990, aggregate amounts not to exceed $2,500,000,000 for fiscal year 1991 and $5,500,000,000 for the fiscal years ending before October 1, 1992.".

SEC. 9106. FAA OPERATIONS.

Section 106 of title 49, United States Code, is amended by adding at the end the following new subsection:

"(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—There is authorized to be appropriated for operations of the Administration $4,088,000,000 for fiscal year 1991 and $4,412,600,000 for fiscal year 1992.".

SEC. 9107. OPERATION AND MAINTENANCE OF AVIATION SYSTEM.

(a) ELIMINATION OF PENALTY.—Section 506(c)(3)(B)(i) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(c)(3)(B)(i)) is amended—

(1) by inserting "and" after "1989"; and

(2) by striking "$3,770,000,000" and all that follows through "1992,".

(b) FUNDING.—Section 506(c) of such Act (49 U.S.C. App. 2205(c)) is amended by adding at the end the following new paragraph:

"(4) FISCAL YEARS 1991–1992.—The amount appropriated from the Trust Fund for the purposes of clauses (A) and (B) of paragraph (1) of this subsection for each of fiscal years 1991 and 1992 may not exceed—

"(A) 75 percent of the amount of funds made available under section 505, subsections (a) and (b) of this section, and section 106(k) of title 49, United States Code, for such fiscal year; less

"(B) the amount of funds made available under section 505 and subsections (a) and (b) of this section for such fiscal year.".

SEC. 9108. WEATHER SERVICE.

The second sentence of section 506(d) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(d)) is amended—

(1) by striking "and" the first place it appears and inserting a comma; and

(2) by inserting before the period the following: ", $34,521,000 for fiscal year 1991, and $35,389,000 for fiscal year 1992".

SEC. 9109. MILITARY AIRPORT PROGRAM.

(a) DECLARATION OF POLICY.—Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is further amended—

(1) by striking "and" at the end of paragraph (12);

(2) by striking the period at the end of paragraph (13) and inserting "; and"; and

(3) by adding at the end the following:

"(14) special emphasis should be placed on the conversion of appropriate former military air bases to civil use and on the identification and improvement of additional joint-use facilities.".

(b) SET-ASIDE.—Section 508(d) of such Act (49 U.S.C. App. 2204(d)) is amended by striking paragraph (5) and inserting the following:

"(5) MILITARY AIRPORT SET-ASIDE.—Not less than 1.5 percent of the funds made available under section 505 in each of fiscal years 1991 and 1992 shall be distributed during such fiscal year to sponsors of current or former military airports designated by the Secretary under subsection (f) for the purpose of developing current and former military airports to improve the capacity of the national air transportation system.

"(6) REALLOCATION.—If the Secretary determines that he will not be able to distribute the amount of funds required to be distributed under paragraph (1), (2), (3), (4), or (5) of

this subsection for any fiscal year because the number of qualified applications submitted in compliance with this title is insufficient to meet such amount, the portion of such amount the Secretary determines will not be distributed shall be available for obligation during such fiscal year for other airports and for other purposes authorized by section 505 of this title.".

(c) DESIGNATION OF FORMER MILITARY AIRPORTS.—Section 508 of such Act is further amended by adding at the end the following new subsection:

"(f) DESIGNATION OF CURRENT OR FORMER MILITARY AIRPORTS.—

"(1) DESIGNATION.—The Secretary shall designate not more than 8 current or former military airports for participation in the grant program established under subsection (d)(5) and this subsection. At least 2 such airports shall be designated within 6 months after the date of the enactment of this subsection and the remaining airports shall be designated for participation no later than September 30, 1992.

"(2) SURVEY.—The Secretary shall conduct a survey of current and former military airports to identify which ones have the greatest potential to improve the capacity of the national air transportation system. The survey shall also identify the capital development needs of such airports in order to make them part of the national air transportation system and shall identify which capital development needs are eligible for grants under section 505. The survey shall be completed by September 30, 1991.

"(3) LIMITATION.—In selecting airports for participation in the program established under subsection (d)(5) and this subsection and in conducting the survey under paragraph (2), the Secretary shall consider only those current or former military airports whose conversion in whole or in part to civilian commercial or reliever airport as part of the national air transportation system would enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

"(4) PERIOD OF ELIGIBILITY.—An airport designated by the Secretary under this subsection shall remain eligible to participate in the program under subsection (d)(5) and this subsection for the 5 fiscal years following such designation. An airport that does not attain a level of enplaned passengers during such 5 fiscal year period which qualifies it as a small hub airport as defined as of January 1, 1990, or reliever airport may be redesignated by the Secretary for participation in the program for such additional fiscal years as may be determined by the Secretary.

"(5) ADDITIONAL FUNDING.—Notwithstanding the provisions of section 513(b), not to exceed $5,000,000 per airport of the sums to be distributed at the discretion of the Secretary under section 507(c) for any fiscal year may be used by the sponsor of a current or former military airport designated by the Secretary under this subsection for construction, improvement, or repair of terminal building facilities, including terminal gates used by aircraft for enplaning and deplaning revenue passengers. Under no circumstances shall any gates constructed, improved, or repaired with Federal funding under this paragraph be subject to long-term leases for periods exceeding 10 years or majority in interest clauses.".

SEC. 9110. PASSENGER FACILITY CHARGES.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513) is amended—

(1) in subsection (a) by inserting "except as provided in subsection (e) and" before "except that"; and

(2) by adding at the end the following new subsection:

"(e) AUTHORITY FOR IMPOSITION OF PASSENGER FACILITY CHARGES.—

"(1) IN GENERAL.—Subject to the provisions of this subsection, the Secretary may grant a public agency which controls a commercial service airport authority to impose a fee of $1.00, $2.00, or $3.00 for each paying passenger of an air carrier enplaned at such airport to finance eligible airport-related projects to be carried out in connection with such airport or any other airport which such agency controls. For purposes of this subsection, financing an eligible airport-related project includes making payments for debt service on bonds and other indebtedness incurred to carry out such project.

"(2) USE OF REVENUES AND RELATIONSHIP BETWEEN FEES AND REVENUES.—The Secretary may grant a public agency which controls a commercial service airport authority to impose a fee under this subsection to finance specific projects only if the Secretary finds, on the basis of an application submitted for such authority—

"(A) that the amount and duration of the proposed fee will result in revenues (including interest and other returns on such revenues) which do not exceed amounts necessary to finance the specific projects; and

"(B) that each of the specific projects is an eligible airport-related project which will—

"(i) preserve or enhance capacity, safety, or security of the national air transportation system,

"(ii) reduce noise resulting from an airport which is part of such system, or

"(iii) furnish opportunities for enhanced competition between or among air carriers.

"(3) LIMITATION REGARDING PASSENGERS OF AIR CARRIERS RECEIVING ESSENTIAL AIR SERVICE COMPENSATION.—If a passenger of an air carrier is being provided air service to an eligible point under section 419 for which compensation is being paid under such section, a public agency which controls any other airport may not impose a fee pursuant to this subsection for enplanement of such passenger with respect to such air service.

"(4) LIMITATION REGARDING OBLIGATIONS.—No fee may be imposed pursuant to this subsection for a project which is not approved by the Secretary under this subsection on or before September 30, 1992—

"(A) if, during fiscal years 1991 and 1992, the amount available for obligation, in the aggregate, under section 505 of Airport and Airway Improvement Act of 1982 is less than $3,700,000,000; or

"(B)(i) if, during fiscal year 1991, the amount available for obligation, in the aggregate, under section 419 is less than $26,600,000; or

"(ii) if, during fiscal year 1992, the amount available for obligation, in the aggregate, under section 419 is less than $38,600,000.

"(5) LINKAGE.—The Secretary may not grant a public agency authority to impose a fee pursuant to this subsection unless the Secretary has—

"(A) issued a final rule establishing a program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft pursuant to section 9304(a) of the Airport Noise and Capacity Act of 1990; and

"(B) issued a notice of proposed rulemaking to consider more efficient allocation of existing capacity at high density airports under section 9126 of the Aviation Safety and Capacity Expansion Act of 1990.

"(6) TWO ENPLANEMENTS PER TRIP LIMITATION.—Enplaned passengers on whom a fee may be imposed by a public agency pursuant to this subsection include passengers of air carriers originating or connecting at the commercial service airport which the agency controls. A fee may not be collected pursuant to this subsection from a passenger with respect to any enplanement of such passenger, on a one-way trip and on a trip in each direction of a round trip, after the second enplanement for which a fee has been collected pursuant to this subsection from such passenger.

"(7) AIR CARRIER RATES, FEES, AND CHARGES.—

"(A) TREATMENT OF FEE REVENUES.—Revenues derived from fees collected pursuant to this subsection shall not be treated as airport revenues for the purpose of establishing a rate, fee, or charge pursuant to a contract between a public agency which controls a commercial service airport and an air carrier.

"(B) CAPITAL COSTS.—Except as provided by subparagraph (C), a public agency which controls a commercial service airport shall not include in its rate base by means of depreciation, amortization, or any other method that portion of the capital costs of a project paid for using revenues derived from fees collected pursuant to this subsection for the purpose of establishing a rate, fee, or charge pursuant to a contract between such agency and an air carrier.

"(C) FACILITIES FINANCED WITH FEE REVENUES.—With respect to a project for terminal development, gates and related areas, or a facility which is occupied or utilized by 1 or more air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by air carriers which use such facilities shall be no less than the rates, fees, and charges paid by carriers using similar facilities at the airport which were not financed using revenues derived from collection of a fee imposed pursuant to this subsection.

"(8) EXCLUSIVITY OF AUTHORITY.—No State or political subdivision or agency thereof which is not a public agency controlling a commercial service airport shall prohibit, limit, or regulate the imposition of fees by the public agency pursuant to this subsection, collection of such fees, or use of revenues derived therefrom. No contract between an air carrier and a public agency which controls a commercial service airport entered into before, on, or after the date of the enactment of this subsection shall impair the authority of the public agency to impose fees pursuant to this subsection and to use the revenues derived from such fees in accordance with this subsection.

"(9) NONEXCLUSIVITY OF CONTRACTUAL AGREEMENTS.—No project carried out through the use of a fee collected pursuant to this subsection may be subject to an exclusive long-term lease or use agreement of an air carrier, as defined by the Secretary by regulation. No lease or use agreement of an air carrier with respect to a project constructed or expanded through the use of such fee may restrict the public agency which controls the airport from funding, developing, or assigning new capacity at the airport with revenues derived from fees imposed pursuant to this subsection.

"(10) COLLECTION AND HANDLING OF FEES BY AIR CARRIERS.—The regulations issued by the Secretary to carry out this subsection shall—

"(A) require air carriers and their agents to collect fees imposed by public agencies pursuant to this subsection;

"(B) establish procedures regarding handling and remittance of the amounts so collected;

"(C) ensure that such amounts are promptly paid to the public agency for which they are collected less a uniform amount determined by the Secretary as reflecting average necessary and reasonable expenses (net of interest accruing to the air carrier and agent after collection and prior to remittance) incurred in the collection and handling of such fees; and

"(D) require that the amount of fees collected pursuant to this subsection with respect to any air transportation be noted on the ticket for such air transportation.

"(11) APPLICATION PROCESS.—

"(A) SUBMISSION.—A public agency which controls a commercial service airport and is interested in imposing a fee pursuant to this subsection shall submit to the Secretary an application for authority to impose such fee.

"(B) CONTENT.—An application submitted under this paragraph shall contain such information and be in such form as the Secretary may require by regulation.

"(C) OPPORTUNITY FOR CONSULTATION.—Before submission of an application under this paragraph, a public agency shall provide reasonable notice to, and an opportunity for consultation with, air carriers operating at the airport. The Secretary shall issue regulations which define reasonable notice and contain the following requirements at a minimum:

"(i) A public agency must provide written notice—

"(I) of individual projects being considered for funding through imposition of a fee pursuant to this subsection; and

"(II) of the date and location of a meeting to present such projects to air carriers operating at the airport.

"(ii) Not later than 30 days after the issuance of a written notice under clause (i), each air carrier operating at the airport must provide to the public agency written notice of receipt of such notice. Failure of an air carrier to provide such notice may be deemed as certification of agreement with the project by such air carrier under clause (iv).

"(iii) Not later than 45 days after the issuance of written notice under clause (i), the public agency must conduct a meeting to provide air carriers—

"(I) descriptions of projects;

"(II) justifications for projects; and

"(III) a detailed financial plan for projects.

"(iv) Not later than 30 days after the date of such meeting, each air carrier must provide the public agency with certification of agreement or disagreement with projects (or total plan for such projects). The failure of an air carrier to submit such certification shall be deemed as certification of agreement with the project by such air carrier. Any certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons will void the certification of disagreement.

"(D) NOTICE AND OPPORTUNITY FOR COMMENT.—After receiving an application under this paragraph, the Secretary shall provide notice and an opportunity for comment by air carriers and other interested persons concerning such application.

"(E) APPROVAL.—A fee may only be imposed pursuant to this subsection if the Secretary approves an application granting authority for the imposition of such fee. Not later than 120 days after the date of receipt of such an application, the Secretary shall make a final decision regarding approval of such application.

"(12) RECORDKEEPING AND AUDITS.—

"(A) WITH RESPECT TO COLLECTION OF FEES.—The Secretary shall issue regulations requiring such recordkeeping and auditing of accounts maintained by an air carrier and any agency thereof which is collecting a fee imposed pursuant to this subsection and by the public agency which is imposing such fee as may be necessary to ensure compliance with this subsection.

"(B) WITH RESPECT TO USE OF REVENUES.—The Secretary shall periodically audit and review the use by a public agency which controls an airport of revenues derived from a fee imposed pursuant to this subsection. Upon such review and after a public hearing, the Secretary may terminate the authority of such agency to impose such fee, in whole or in part, to the extent the Secretary determines that revenues derived therefrom are not being used in accordance with this subsection.

"(C) SET-OFF.—If the Secretary determines that a fee imposed pursuant to this subsection is excessive or that the revenues derived from such fee are not being used in accordance with this subsection, the Secretary may set off such amounts as may be necessary to ensure compliance with this subsection against amounts otherwise payable to the public agency under the Airport and Airway Improvement Act of 1982.

"(13) TERMS AND CONDITIONS.—Authority granted to impose a fee pursuant to this subsection shall be subject to such terms and conditions as the Secretary may establish to carry out the objectives of this subsection.

"(14) ISSUANCE OF REGULATIONS.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall issue such regulations as may be necessary to carry out this subsection. Such regulations may prescribe the time and form by which a fee imposed pursuant to this subsection shall take effect.

"(15) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) AIR CARRIER.—The term 'air carrier' includes a foreign air carrier.

"(B) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms 'airport', 'commercial service airport', and 'public agency' have the meaning such terms have under section 503 of the Airport and Airway Improvement Act of 1982.

"(C) ELIGIBLE AIRPORT-RELATED PROJECT.—The term 'eligible airport-related project' means—

"(i) a project for airport development under the Airport and Airway Improvement Act of 1982;

"(ii) a project for airport planning under such Act;

"(iii) a project for terminal development described in section 513(b) of such Act;

"(iv) a project for airport noise capability planning under section 103(b) of the Aviation Safety and Noise Abatement Act of 1979;

"(v) a project to carry out noise compatibility measures which are eligible for assistance under section 104 of the Aviation Safety and Noise Abatement Act of 1979 without regard to whether or not a program has been approved for such measures under such section; and

"(vi) a project for construction of gates and related areas at which passengers are enplaned or deplaned.

"(D) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.".

SEC. 9111. REDUCTION IN AIRPORT IMPROVEMENT PROGRAM APPORTIONMENTS FOR LARGE AND MEDIUM HUB AIRPORTS IMPOSING PASSENGER FACILITY CHARGES.

Section 507(b) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2206(b)) is amended by adding at the end the following new paragraph:

"(7) REDUCTION IN APPORTIONMENTS TO CERTAIN LARGE AND MEDIUM HUBS.—

"(A) GENERAL RULE.—The amount which, but for this paragraph, would be apportioned under this section (other than subsection (a)(2)) for a fiscal year to a sponsor of an airport that annually has 0.25 percent or more of the total annual enplanements in the United States and for which a fee is imposed in such fiscal year pursuant to section 1113(e) of the Federal Aviation Act of 1958 shall be reduced by an amount equal to 50 percent of the projected revenues derived from such fee in such fiscal year.

"(B) LIMITATIONS.—The maximum reduction in an apportionment to a sponsor of an airport as a result of this paragraph in a fiscal year shall be 50 percent of the amount which, but for this paragraph, would be apportioned to such airport under this section.".

SEC. 9112. USE OF PFC REDUCED APPORTIONMENT FUNDS.

(a) ADDITION OF FUNDS TO EXISTING DISCRETIONARY FUND.—Section 507(c)(1) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2206(c)(1)) is amended by inserting after the first sentence the following new sentences: "Twenty-five percent of the amounts which are not apportioned under this section as a result of subsection (b)(7) shall be added to such discretionary fund. Fifty percent of amounts added to such discretionary fund pursuant to the preceding sentence shall be used for making grants for projects at small hub airports (as such term is defined in section 419(k) of the Federal Aviation Act of 1958).".

(b) SMALL AIRPORT FUND.—Section 507 of such Act is amended by redesignating subsections (d) and (e), and any references thereto, as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) SMALL AIRPORT FUND.—

"(1) ESTABLISHMENT.—Seventy-five percent of the amounts which are not apportioned under this section as a result of subsection (b)(7) shall constitute a small airport fund to be distributed at the discretion of the Secretary.

"(2) SET-ASIDE FOR GENERAL AVIATION AIRPORTS.—One-third of the amounts in the small airport fund established by this subsection and distributed by the Secretary under this subsection in a fiscal year shall be used for making grants to sponsors of public-use airports (other than commercial service airports) for any purpose for which funds are made available under section 505.

"(3) SET-ASIDE FOR NONHUB AIRPORTS.—Two-thirds of the amounts in the small airport fund established by this subsection and distributed by the Secretary under this subsection in a fiscal year shall be used for making grants to sponsors of commercial service airports each of which annually has less than 0.05 percent of the total annual enplanements in the United States for any purpose for which funds are made available under section 505.

"(4) TREATMENT OF AIRPORTS PARTICIPATING IN STATE BLOCK PROGRAM.—An airport in a

State which is participating in the State block grant program under section 534 shall be eligible to receive grants pursuant to this subsection to the same extent that the airport would be eligible to receive such grants if the State was not participating in such program.".

(c) PROHIBITION ON REDUCED FUNDING.—It is the sense of Congress that the Secretary should not reduce funding under the discretionary fund established under section 507(c) of the Airport and Airway Improvement Act of 1982 for small commercial service and general aviation airports as a result of additional funds made available to such airports under this section, including amendments made by this section.

SEC. 9113. SMALL COMMUNITY AIR SERVICE PROGRAM.

(a) DEFINITION OF ELIGIBLE POINT.—Section 419(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1389(a)) is amended to read as follows:

"(a) ELIGIBLE POINT DEFINED.—

"(1) GENERAL RULE.—For purposes of this section, the term 'eligible point' means any point in the United States—

"(A) which was defined as an eligible point under this section as in effect before October 1, 1988;

"(B) which received scheduled air transportation at any time after January 1, 1990; and

"(C) which is not listed in the Department of Transportation Orders 89-9-37 and 89-12-52 as being a point no longer eligible for compensation under this section.

"(2) LIMITATION ON USE OF PER PASSENGER SUBSIDY.—The Secretary may not determine that a point described in paragraph (1) is not an eligible point on the basis of the per passenger subsidy at the point or on any other basis not specifically set forth in this section.".

(b) FUNDING.—

(1) IN GENERAL.—Section 419 of such Act is amended by redesignating subsection (1), and any reference thereto, as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) FUNDING.—

"(1) CONTRACT AUTHORITY.—The Secretary is authorized to enter into agreements and to incur obligations from the Airport and Airway Trust Fund for the payment of compensation under this section. Approval by the Secretary of such an agreement shall be deemed a contractual obligation of the United States for payment of the Federal share of such compensation.

"(2) AMOUNTS AVAILABLE.—There shall be available to the Secretary from the Airport and Airway Trust Fund to incur obligations under this section $38,600,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, 1996, 1997, and 1998. Such amounts shall remain available until expended.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect October 1, 1991.

(c) CONFORMING AMENDMENTS.—Section 333 of Public Law 100-457 and section 325(a) of Public Law 101-164 are repealed.

SEC. 9114. STATE BLOCK GRANT PILOT PROGRAM.

Section 534 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2227) is amended—

(1) in subsection (a) by striking "1991" and inserting "1992"; and

(2) in subsection (d) by striking "not later than 90 days before its scheduled termination" and inserting "not later than January 31, 1992".

SEC. 9115. AUXILIARY FLIGHT SERVICE STATION PROGRAM.

(a) GENERAL RULE.—The Secretary of Transportation shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall report to Congress with the plan and schedule for implementation of this section.

SEC. 9116. AIRPORT AND AIRWAY IMPROVEMENTS FOR THE VIRGIN ISLANDS.

(a) AIR SPACE STUDY.—The Administrator of the Federal Aviation Administration shall conduct an air space study of the Caribbean and Miami air traffic control regions for the purpose of determining methods of improving air safety and report to Congress the results of such study.

(b) OPERATIONS OF AIRPORT TOWERS FOR ST. THOMAS AND ST. CROIX.—The Administrator may not enter into contracts with private persons for operation of the airport control towers for St. Thomas and St. Croix, Virgin Islands, before the 30th day following the date on which a report is submitted to Congress under subsection (a).

(c) REPLACEMENT OF RADAR FACILITIES FOR ST. THOMAS.—The Administrator shall take such action as may be necessary to ensure that the radar facilities for the airport on St. Thomas, Virgin Islands, which were destroyed by Hurricane Hugo are replaced and operational by the 120th day following the date of the enactment of this Act.

SEC. 9117. ENGINE CONDITION MONITORING SYSTEMS.

(a) STUDY.—The Administrator of the Federal Aviation Administration shall conduct a study of the potential use of engine condition monitoring systems on aircraft. In conducting such study, the Administrator shall evaluate—

(1) the availability of technology for such systems;

(2) the capabilities of such systems in terms of enhancing safety and reducing maintenance costs associated with civil and military aircraft;

(3) the commercial viability of developing computer software to enable maintenance workers to efficiently use data gathered by such systems;

(4) the costs and benefits of using such systems as compared to engine fault detection methods which rely on the use of data relating to historical performance and statistical failure;

(5) the types of aircraft engine failures which may be prevented by using such systems; and

(6) the operational reliability of such systems.

(b) REPORT TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study conducted pursuant to this section together with such legislative and administrative recommendations as the Administrator considers appropriate.

SEC. 9118. PROCUREMENT AUTHORITY.

(a) IN GENERAL.—Section 303 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1344) is amended to read as follows:

"SEC. 303. PROCUREMENT AUTHORITY.

"(a) ACQUISITION AND DISPOSAL OF PROPERTY.—Subject to subsection (b), the Administrator, on behalf of the United States, is authorized, where appropriate—

"(1) within the limits of available appropriations made by the Congress therefor, to acquire by purchase, condemnation, lease for a term not to exceed 20 years, or otherwise, personal property or services and real property or interests therein, including, in the case of air navigation facilities (including airports) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and needed in connection therewith;

"(2) for adequate compensation, by sale, lease, or otherwise, to dispose of any real or personal property or interest therein; except that, other than for airport and airway property and technical equipment used for the special purposes of the Federal Aviation Administration, such disposition shall be made in accordance with the Federal Property and Administrative Services Act of 1949; and

"(3) to construct, improve, or renovate laboratories and other test facilities and to purchase or otherwise acquire real property required therefor.

"(b) SPECIAL RULES FOR CERTAIN ACQUISITIONS.—

"(1) ACQUISITIONS BY CONDEMNATION.—Any acquisition by condemnation under subsection (a) may be made in accordance with the provision of the Act of August 1, 1888 (40 U.S.C. 257; 25 Stat. 357), the Act of February 26, 1931 (40 U.S.C. 258a-258e-1; 46 Stat. 1421), or any other applicable Act; except that, in the case of condemnations of easements through or other interests in airspace, in fixing condemnation awards, consideration may be given to the reasonable probable future use of the underlying land.

"(2) ACQUISITIONS OF PUBLIC BUILDINGS.—The Administrator may, under subsection (a) construct or acquire by purchase, condemnation, or lease a public building, or interest in a public building (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)) only under a delegation of authority from the Administrator of General Services.

"(c) PROCUREMENT PROCEDURES.—In procuring personal property or services and real property and interests therein under subsection (a), the Administrator may use procedures other than competitive procedures in circumstances which are set forth in section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)).

"(d) SOLE SOURCE APPROVAL BY ADMINISTRATOR.—For procurements by the Federal Aviation Administration, the Administrator shall be the senior procurement executive referred to in paragraph (3) of section 16 of Office of Federal Procurement Policy Act (41 U.S.C. 414) for the purposes of approving the justification for the use of noncompetitive procedures required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)).

"(e) MULTIYEAR SERVICE CONTRACTS.—

"(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, the Administrator may enter into contracts for periods of not more than 5 years for the following types of services (and items of supply related to such services) for which funds would otherwise be available for obli-

gation only within the fiscal year for which appropriated—

"(A) operation, maintenance, and support of facilities and installations;

"(B) operation, maintenance, or modification of aircraft, vehicles, and other highly complex equipment;

"(C) specialized training necessitating high quality instructor skills (for example, pilot and aircrew members; foreign language training); and

"(D) base services (for example, ground maintenance, in-plane refueling; bus transportation; refuse collection and disposal).

"(2) FINDINGS.—The Administrator may enter into a contract described in paragraph (1) only if the Administrator finds that—

"(A) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

"(B) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized workforce; and

"(C) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

"(3) GUIDANCE PRINCIPLES.—In entering into contracts described in paragraph (1), the Administrator shall be guided by the following principles:

"(A) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, the due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

"(B) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed 3 years, at prices not to include charges for plant, equipment, and other nonrecurring costs, already amortized.

"(C) Consideration shall be given to the desirability of reserving in the Federal Aviation Administration the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

"(4) TERMINATION.—In the event funds are not made available for the continuation of a contract described in paragraph (1) into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

"(A) appropriations originally available for the performance of the contract concerned;

"(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

"(C) funds appropriated for those payments.

"(f) MULTIYEAR PROPERTY ACQUISITION CONTRACTS.—

"(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, to the extent that funds are otherwise available for obligation, the Administrator may make multiyear contracts (other than contracts described in paragraph (6)) for the purchase of property, whenever the Administrator finds—

"(A) that the use of such a contract will promote the safety or efficiency of the National Airspace System and will result in reduced total costs under the contract;

"(B) that the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

"(C) that there is a reasonable expectation that throughout the contemplated contract period the Administrator will request funding for the contract at the level required to avoid contract cancellation;

"(D) that there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive; and

"(E) that the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

"(2) REGULATIONS.—

"(A) GENERAL RULE.—The Administrator shall issue regulations for acquisition of property under this subsection to promote the use of multiyear contracting as authorized by paragraph (1) in a manner that will allow the most efficient use of multiyear contracting.

"(B) CANCELLATION PROVISIONS.—The regulations issued under this paragraph may provide for cancellation provisions in multiyear contracts described in paragraph (1) to the extent that such provisions are necessary and in the best interests of the United States. Such cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

"(C) BROADENING INDUSTRIAL BASE.—In order to broaden the aviation industrial base, the regulations issued under this paragraph shall provide that, to the extent practicable—

"(i) multiyear contracting under paragraph (1) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

"(ii) upon accrual of any payment or other benefit under such a multiyear contract to any subcontract, vendor, or supplier company participating in such contractor, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

"(D) PROTECTION OF FEDERAL INTERESTS.—The regulations issued under this paragraph shall also provide that, to the extent practicable, the administration of this subsection, and of the regulations issued under this subsection, shall not be carried out in a manner to preclude or curtail the existing ability of the Federal Aviation Administration to—

"(i) provide for competition in the production of items to be delivered under such a contract; or

"(ii) provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

"(3) SPECIAL RULE FOR CONTRACTS WITH HIGH CANCELLATION CEILING.—Before any contract described in paragraph (1) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the Administrator shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

"(4) ADVANCE PROCUREMENT.—Contracts made under this subsection may be used for the advance procurement of components, parts, and materials necessary to the manufacture of equipment to be used in the National Airspace System, and contracts may be made under this subsection for such advance procurement, if feasible and practicable, in order to achieve economic-lot purchases and more efficient production rates.

"(5) TERMINATION.—In the event funds are not made available for the continuation of a contract made under this subsection into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

"(A) appropriations originally available for the performance of the contract concerned;

"(B) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

"(C) funds appropriated for those payments.

"(6) LIMITATION ON APPLICABILITY.—This subsection does not apply to contracts for the construction, alteration, or major repair or improvements to real property or contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

"(7) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subsection, a multiyear contract is a contract for the purchase of property or services for more than 1, but not more than 5, fiscal years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

"(8) PRICE OPTIONS.—The Administrator may incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.".

(b) CONFORMING AMENDMENT.—The portion of the table of contents contained in the first section of such Act relating to section 303 is amended to read as follows:

"Sec. 303. Procurement authority.
"(a) Acquisition and disposal of property.
"(b) Special rules for acquisitions.
"(c) Procurement procedures.
"(d) Sole source approval by Administrator.
"(e) Multiyear service contracts.
"(f) Multiyear property acquisition contracts.".

SEC. 9119. EXPANDED EAST COAST PLAN.

(a) ENVIRONMENTAL IMPACT STATEMENT.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall issue an environmental impact statement pursuant to the National Environmental Policy Act of 1969 on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan.

(b) AIR SAFETY INVESTIGATION.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall conduct an investigation to determine the effects on air safety of changes in aircraft flight patterns over the State of New Jersey

caused by implementation of the Expanded East Coast Plan.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the environmental impact statement and investigation conducted pursuant to this section. Such report shall also contain such recommendations for modification of the Expanded East Coast Plan as the Administrator considers appropriate or an explanation of why modification of such plan is not appropriate.

(d) IMPLEMENTATION OF MODIFICATIONS.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall implement modifications to the Expanded East Coast Plan recommended under subsection (c).

SEC. 9120. TRANSFER OF FORMAT OF GEODETIC NAVIGATION INFORMATION.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration and the Administrator of the National Oceanic and Atmospheric Administration shall complete the transfer of geodetic coordinate navigation information from NAD-27 format to NAD-83 format.

SEC. 9121. SENSITIVE SECURITY INFORMATION.

Section 316(d)(2) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1357(d)(2)) is amended—

(1) by inserting "security or" before "research and development activities"; and

(2) by striking "subsection" and inserting "title".

SEC. 9122. REPORTS.

Section 107 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1307) is amended in subsections (b) and (c) by striking "each April 1 thereafter" each place it appears and inserting "through April 1, 1990".

SEC. 9123. ATLANTIC CITY AIRPORT.

Section 312 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (101 Stat. 1528) is repealed.

SEC. 9124. NATURAL DISASTER REGULATION.

Title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421-1432) is amended by inserting after section 612 the following new section:

"SEC. 613. SAFETY REGULATION.

"(a) NATIONAL DISASTER AREAS.—Before the 180th day following the date of the enactment of this section, the Administrator, for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii.

"(b) EXCEPTIONS.—Regulations issued pursuant to subsection (a) shall not be applicable in the case of aircraft overflights involving an emergency or a ligitimate scientific purpose.

"(c) STATUS OF STUDIES.—Not later than the 90th day following the date of the enactment of this section, the Administrator shall report to Congress on the status of the studies and reports required by the Act entitled 'An Act to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national airport system units', approved August 18, 1987 (101 Stat. 674-678; 16 U.S.C. 1a-1 note).".

SEC. 9125. FLIGHT TAKEOFF OR LANDING REQUIREMENT FOR STATE TAXATION.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513) is amended by adding at the end the following new subsection:

"(f) FLIGHT TAKEOFF OR LANDING REQUIREMENT FOR STATE TAXATION.—No State (as such term is defined under subsection (d)(2)(E)) or political subdivision thereof shall levy or collect any tax on or with respect to any flight of a commercial aircraft or any activity or service on board such aircraft unless such aircraft takes off or lands in such State or political subdivision as part of such flight.".

SEC. 9126. ALLOCATION OF EXISTING CAPACITY AT CERTAIN AIRPORTS.

(a) RULEMAKING.—The Secretary of Transportation shall, by July 1, 1991, initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at high density traffic airports in order to provide improved opportunities for operations by new entrant air carriers.

(b) DEFINITION.—In this section, the term "new entrant air carrier", as used with respect to a high density traffic airport, means an air carrier having less than 12 operating rights at such airport.

SEC. 9127. CERTIFICATE TRANSFERS.

Section 401(h) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraphs:

"(2) CERTIFICATION.—The Secretary of Transportation shall, upon any transfer of a certificate, certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest.

"(3) ACCOMPANYING REPORT.—A certification under this subsection shall be accompanied by a report analyzing the effects of the transfer on—

"(A) the viability of each of the carriers involved in the transfer;

"(B) competition in the domestic airline industry, and

"(C) the trade position of the United States in the international air transportation market.".

SEC. 9128. SEVERABILITY.

If any provision of this subtitle (including an amendment made by this subtitle), or the application thereof to any person or circumstance, is held invalid, the remainder of this subtitle and the application of such provision to other persons of circumstances shall not be affected thereby.

SEC. 9129. BUY AMERICAN.

(a) GENERAL RULE.—Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this subtitle, section 106(k) of title 49, United States Code, or the Airport and Airway Improvement Act of 1982 (other than section 506(b)) for any project unless steel and manufactured products used in such project are produced in the United States.

(b) LIMITATIONS ON APPLICABILITY.—The provisions of subsection (a) of this section shall not apply where the Secretary finds—

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982 that (A) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment described in this paragraph, and (B) final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(c) CALCULATION OF COMPONENTS COSTS.—For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

SEC. 9130. PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.

If the Secretary of Transportation determines that any person intentionally affixes a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall declare that person ineligible to receive a Federal contract or grant in conjunction with the issuance of any contract made under this subtitle for a period of not less than 3 years and not more than 5 years. The Secretary may bring action against such person to enforce this subsection in any United States district court.

SEC. 9131. RESTRICTIONS ON CONTRACT AWARDS.

No person or enterprise domiciled or operating under the laws of a foreign government may enter into a contract or subcontract made pursuant to this subtitle if that government unfairly maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979.

Subtitle C—Federal Aviation Administration Research, Engineering, and Development

SEC. 9201. SHORT TITLE.

This subtitle may be cited as the "Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990".

SEC. 9202. AVIATION RESEARCH AUTHORIZATION OF APPROPRIATIONS.

Paragraph (2) of section 506(b) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(b)(2)) is amended by striking subparagraph (A) and all that follows through the period at the end of such paragraph and inserting the following:

"(A) for fiscal year 1991—

"(i) $135,800,000 solely for air traffic control projects and activities;

"(ii) $19,100,000 solely for air traffic control advanced computer projects and activities;

"(iii) $3,400,000 solely for navigation projects and activities;

"(iv) $9,700,000 solely for aviation weather projects and activities;

"(v) $16,500,000 solely for aviation medicine projects and activities;

"(vi) $70,100,000 solely for aircraft safety projects and activities; and

"(vii) $5,400,000 solely for environmental projects and activities; and

"(B) for fiscal year 1992—

"(i) $135,800,000 solely for air traffic control projects and activities;

"(ii) $19,100,000 solely for air traffic control advanced computer projects and activities;

"(iii) $3,400,000 solely for navigation projects and activities;

"(iv) $9,700,000 solely for aviation weather projects and activities;

"(v) $16,500,000 solely for aviation medicine projects and activities;

"(vi) $70,100,000 solely for aircraft safety projects and activities; and

"(vii) $5,400,000 solely for environmental projects and activities.

Not less than 3 percent of the funds made available under this paragraph for a fiscal year shall be available to the Administrator for making grants under section 312(g) of the Federal Aviation Act of 1958.".

SEC. 9203. ENHANCED AIRPORT CAPACITY.

Section 506(b)(4) of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2205(b)(4)) is amended—

(1) in subparagraph (A) by striking "and 1990" and inserting "1990, 1991, and 1992"; and

(2) in subparagraph (B) by striking "and 1990" and inserting "1990, 1991, and 1992".

SEC. 9204. WEATHER SERVICES.

Section 506(d) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(d)) is amended by striking the second sentence and inserting the following: "Expenditures for the purposes of carrying out this subsection shall be limited to $34,521,000 for fiscal year 1991 and $35,389,000 for fiscal year 1992.".

SEC. 9205. AVIATION RESEARCH GRANT PROGRAM.

(a) IN GENERAL.—Section 312 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353) is amended by adding the following new subsection:

"(g) RESEARCH GRANT PROGRAM.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations to conduct aviation research into areas deemed by the Administrator to be required for the long-term growth of civil aviation.

"(2) APPLICATIONS.—A university, college, or nonprofit organization interested in receiving a grant under this subsection may submit to the Administrator an application for such grant. Such application shall be in such form and contain such information as the Administrator may require.

"(3) SELECTION.—The Administrator shall establish a solicitation, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit and relevancy to the mission of the Federal Aviation Administration, (B) an equitable geographical distribution of grant funds under this subsection, and (C) the inclusion of historically black colleges and universities and other minority institutions for funding consideration under this subsection.

"(4) RECORDS.—Each person awarded a grant under this subsection shall maintain such records as the Administrator may require as being necessary to facilitate an effective audit and evaluation of the use of grant funds.

"(5) REPORTS.—The Administrator shall make an annual report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the research grant program conducted under this subsection.".

(b) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of such Act which appears under the heading:

"Sec. 312. Development planning."

is amended by adding at the end the following:

"(g) Research grant program.".

SEC. 9206. STUDY BY THE GENERAL ACCOUNTING OFFICE OF MULTIYEAR CONTRACTING AUTHORITY.

The Comptroller General of the United States shall conduct a study of the advisability of granting to the Administrator of the Federal Aviation Administration specific statutory authority—

(1) to lease real property or interests therein for terms not to exceed 20 years, including, in the case of air navigation facilities and airports (as such terms are defined in section 101 (8) and (9) of the Federal Aviation Act of 1958) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and in connection therewith;

(2) to procure personal property or services and real property and interests therein with procedures other than competitive procedures under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c));

(3) to serve as the senior procurement executive under section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) for the purpose of approving the justification for the use of noncompetitive procedures required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii));

(4) to let multiyear contracts for services, including the operation, maintenance, and support of facilities and installations; the operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment; specialized training necessitating high quality instructor skills; and base services; and

(5) to let multiyear contracts for the purchase of property.

The study also shall examine the implementation of section 2306 (g) and (h) of title 10, United States Code, by the Department of Defense, and shall assess the usefulness of granting similar authority to the Federal Aviation Administration. The Comptroller General shall submit a report on the results of the study, along with any comments of the Administrator of the Federal Aviation Administration, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate within 6 months after the date of enactment of this Act.

SEC. 9207. BUY-AMERICAN REQUIREMENT.

(a) DETERMINATION BY ADMINISTRATOR.—If the Administrator, with the concurrence of the Secretary of Commerce and the United States Trade Representative, determines that the public interest so requires, the Administrator is authorized to award to a domestic firm a contract made pursuant to the issuance of any grant made under this subtitle that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 51 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

In determining under this subsection whether the public interest so requires, the Administrator shall take into account United States international obligations and trade relations.

(b) LIMITED APPLICATION.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security considerations require otherwise; or

(3) the United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(c) LIMITATION.—This section shall apply only to contracts made related to the issuance of any grant made under this subtitle for which—

(1) amounts are authorized by this subtitle (including the amendments made by this subtitle) to be made available; and

(2) solicitations for bids are issued after the date of the enactment of this Act.

(d) REPORT TO CONGRESS.—The Administrator shall report to the Congress on contracts covered under this section and entered into with foreign entities in fiscal years 1991 and 1992 and shall report to the Congress on the number of contracts that meet the requirements of subsection (a) but which are determined by the United States Trade Representative to be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. The Administrator shall also report to the Congress on the number of contracts covered under this subtitle (including the amendments made by this subtitle) and awarded based upon the parameters of this section.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "Administrator" means the Administrator of the Federal Aviation Administration;

(2) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(3) the term "foreign firm" means a business entity not described in paragraph (2).

SEC. 9208. CATASTROPHIC FAILURE PREVENTION RESEARCH PROGRAM.

(a) GENERAL AUTHORITY.—Section 312(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353(b)) is amended by inserting after "inflight aircraft fires," the following: "to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft,".

(b) GRANT PROGRAM.—Section 312 of such Act is amended by adding at the end the following new subsection:

"(h) CATASTROPHIC FAILURE PREVENTION RESEARCH GRANT PROGRAM.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations (A) to conduct aviation research relating to development of technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft, and (B) to establish centers of excellence for continuing such research.

"(2) SELECTION AND EVALUATION PROCESSES.—The Administrator shall establish a so-

licitation, application, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit and relevancy to the research described in paragraph (1).".

(c) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of such Act which appears under the heading:

"Sec. 312. Development planning."

is amended by adding at the end the following:

"(h) Catastrophic failure prevention research grant program.".

SEC. 9209. AVIATION RESEARCH AND CENTERS OF EXCELLENCE.

(a) IN GENERAL.—Section 312 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353) is amended by adding at the end the following new subsection:

"(i) AVIATION RESEARCH AND CENTERS OF EXCELLENCE.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to one or more colleges or universities to establish and operate several regional centers of air transportation excellence, whose locations shall be geographically equitable.

"(2) RESPONSIBILITIES.—The responsibilities of each regional center of air transportation excellence established under this subsection shall include, but not be limited to, the conduct of research concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system, and the interpretation, publication, and dissemination of the results of such research. In conducting such research, each center may contract with nonprofit research organizations and other appropriate persons.

"(3) APPLICATION.—Any college or university interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

"(B) The demonstrated research and extension resources available to the applicant for carrying out this subsection.

"(C) The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

"(D) The extent to which the applicant has an established air transportation program.

"(E) The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

"(F) The projects which the applicant proposes to carry out under the grant.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional center of air transportation excellence and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall be 50 percent of the costs of establishing and operating the regional center of air transportation excellence and related research activities carried out by the grant recipient.

"(7) ALLOCATION OF FUNDS.—Funds made available to carry out this subsection shall be allocated by the Administrator in a geographically equitable manner.".

(b) RESEARCH ADVISORY COMMITTEE.—

(1) Section 312(f)(2) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(2)) is amended by adding at the end the following new sentence: "In addition, the committee shall review the research and training to be carried out by the regional centers of air transportation excellence established under subsection (h).".

(2) Section 312(f)(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(3)) is amended—

(A) by striking "20" and inserting "30"; and

(B) by striking the last sentence and inserting the following: "The Administrator in appointing the members of the committee shall ensure that the research centers of air transportation excellence, universities, corporations, associations, consumers, and other Government agencies are represented.".

(c) RESEARCH AUTHORITY OF ADMINISTRATOR.—Section 312(c) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(c)) is amended by inserting after the third sentence the following: "The Administrator shall undertake or supervise research programs concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system.".

(d) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 relating to section 312 of that Act is amended by adding at the end the following:

"(i) Aviation research and centers of excellence.".

Subtitle D—Aviation Noise Policy

SEC. 9301. SHORT TITLE.

This subtitle may be cited as the "Airport Noise and Capacity Act of 1990".

SEC. 9302. FINDINGS.

The Congress finds that—

(1) aviation noise management is crucial to the continued increase in airport capacity;

(2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation system;

(3) a noise policy must be implemented at the national level;

(4) local interest in aviation noise management shall be considered in determining the national interest;

(5) community concerns can be alleviated through the use of new technology aircraft, combined with the use of revenues, including those available from passenger facility charges, for noise management;

(6) federally controlled revenues can help resolve noise problems and carry with them a responsibility to the national airport system;

(7) revenues derived from a passenger facility charge may be applied to noise management and increased airport capacity; and

(8) a precondition to the establishment and collection of passenger facility charges is the issuance by the Secretary of Transportation of a final rule establishing procedures for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft.

SEC. 9303. NATIONAL AVIATION NOISE POLICY.

(a) DEVELOPMENT.—Not later than July 1, 1991, the Secretary of Transportation (hereinafter in this subtitle referred to as the "Secretary") shall issue regulations establishing a national aviation noise policy which takes into account the findings, determinations, and provisions of this subtitle, including the phaseout and nonaddition of Stage 2 aircraft as provided in this subtitle and implementation dates and reporting requirements consistent with this subtitle and existing law.

(b) BASIS.—The national aviation noise policy shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry, the impact of competition within the airline and aircargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry.

(c) RECOMMENDATIONS.—Not later than July 1, 1991, the Secretary shall transmit to Congress recommendations on—

(1) the need for changes in the standards and procedures which govern the rights of State and local governments (including airport authorities) to restrict aircraft operations for the purpose of limiting aircraft noise;

(2) the need for changes in the standards and procedures which govern law suits by persons adversely affected by aircraft noise;

(3) the need for changes in standards and procedures for Federal regulation of airspace (including the pattern of operations for the air traffic control system) in order to take better account of environmental effects;

(4) the need for changes in the Federal program providing assistance for noise abatement planning and programs, including the need for greater incentives or mandatory requirements for local restrictions on the use of land impacted by aircraft noise;

(5) whether any changes in policy recommended in paragraphs (1) through (4) should be accomplished through regulatory, administrative, or legislative action; and

(6) specific legislative proposals necessary for implementing the national aviation noise policy.

SEC. 9304. NOISE AND ACCESS RESTRICTION REVIEWS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The national aviation noise policy to be established under this subtitle shall require the establishment, by regulation, in accordance with the provisions of this section of a na-

tional program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Such program shall provide for adequate public notice and comment opportunities on such restrictions.

(2) LIMITATIONS ON APPLICABILITY.—

(A) APPLICABILITY DATE FOR STAGE 2 AIRCRAFT.—With respect to Stage 2 aircraft, the requirements set forth in subsection (c) shall apply only to restrictions proposed after October 1, 1990.

(B) APPLICABILITY DATE FOR STAGE 3 AIRCRAFT.—With respect to Stage 3 aircraft, the requirements set forth in subsections (b) and (d) shall apply only to restrictions that first become effective after October 1, 1990.

(C) SPECIFIC EXEMPTIONS.—Subsections (b), (c), and (d) shall not apply to—

(i) a local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on the date of the enactment of this Act;

(ii) a local action to enforce a negotiated or executed airport aircraft noise or access restriction the airport operator and the aircraft operators agreed to before the date of the enactment of this Act;

(iii) an intergovernmental agreement including airport aircraft noise or access restriction in effect on the date of the enactment of this Act;

(iv) a subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on the date of the enactment of this Act that does not reduce or limit aircraft operations or affect aircraft safety;

(v)(I) a restriction which was adopted by an airport operator on or before October 1, 1990, and which was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction or a part thereof is subsequently allowed by a court to take effect; and

(II) in any case in which a restriction described in subclause (I) is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction if such new restriction would not prohibit aircraft operations in effect as of the date of the enactment of this Act; and

(vi) a local action which represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction where the initial portion of such program was adopted during calendar year 1988 and was in effect on the date of the enactment of this Act.

(C) ADDITIONAL WORKING GROUP EXEMPTIONS.—Subsections (b) and (d) shall not apply where the Federal Aviation Administration has prior to the date of the enactment of this Act formed a working group (outside the process established by part 150 of title 14 of the Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is entered into between the airport proprietor and an air carrier or air carrier constituting a majority of the air carrier users of such airport, subsections (b) and (d) shall apply only to local actions to enforce such agreement.

(b) LIMITATION ON STAGE 3 AIRCRAFT RESTRICTIONS.—No airport noise or access restriction on the operation of a Stage 3 aircraft, including but not limited to—

(1) a restriction as to noise levels generated on either a single event or cumulative basis;

(2) a limit, direct or indirect, on the total number of Stage 3 aircraft operations;

(3) a noise budget or noise allocation program which would include Stage 3 aircraft;

(4) a restriction imposing limits on hours of operations; and

(5) any other limit on Stage 3 aircraft;

shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary pursuant to an airport or aircraft operator's request for approval in accordance with the program established pursuant to this section.

(c) LIMITATION ON STAGE 2 AIRCRAFT RESTRICTIONS.—No airport noise or access restriction shall include a restriction on operations of Stage 2 aircraft, unless the airport operator publishes the proposed noise or access restriction and prepares and makes available for public comment at least 180 days before the effective date of the restriction—

(1) an analysis of the anticipated or actual costs and benefits of the existing or proposed noise or access restriction;

(2) a description of alternative restrictions; and

(3) a description of the alternative measures considered which do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction.

(d) APPROVAL OF STAGE 3 AIRCRAFT RESTRICTIONS.—

(1) IN GENERAL.—Not later than the 180th day after the date on which the Secretary receives an airport or aircraft operator's request for approval of a noise or access restriction on the operation of a Stage 3 aircraft, the Secretary shall approve or disapprove such request.

(2) REQUIRED FINDINGS.—The Secretary shall not approve a noise or access restriction applying to Stage 3 aircraft operations unless the Secretary finds the following conditions to be supported by substantial evidence:

(A) The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory.

(B) The proposed restriction does not create an undue burden on interstate or foreign commerce.

(C) The proposed restriction is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace.

(D) The proposed restriction does not conflict with any existing Federal statute or regulation.

(E) There has been an adequate opportunity for public comment with respect to the restriction.

(F) The proposed restriction does not create an undue burden on the national aviation system.

(e) INELIGIBILITY FOR PFC'S AND AIP FUNDS.—Sponsors of facilities operating under airport aircraft noise or access restrictions on Stage 3 aircraft operations that first became effective after October 1, 1990, shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under section (a) of this Act, unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

(f) REEVALUATION.—The Secretary may reevaluate any noise restrictions previously agreed to or approved under subsection (d) upon the request of any aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria established under subsection (d) of the previously approved or agreed to noise restriction is therefore justified.

(g) PROCEDURES FOR REEVALUATION.—The Secretary shall establish by regulation procedures under which reevaluations under subsection (f) are to be accomplished. A reevaluation under subsection (f) of a restriction shall not occur less than 2 years after a determination under subsection (d) has been made with respect to such restriction.

(h) EFFECT ON EXISTING LAW.—Except to the extent required by the application of the provisions of this section, nothing in this subtitle shall be deemed to eliminate, invalidate, or supersede—

(1) existing law with respect to airport noise or access restrictions by local authorities;

(2) any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) the authority of the Secretary to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

SEC. 9305. DETERMINATION REGARDING NOISE RESTRICTIONS ON CERTAIN STAGE 2 AIRCRAFT.

The Secretary shall determine by a study the applicability of subsections (a), (b), (c), and (d) of section 9304 to noise restrictions on the operations of Stage 2 aircraft weighing less than 75,000 pounds. In making such determination, the Secretary shall consider—

(1) noise levels produced by such aircraft relative to other aircraft;

(2) the benefits to general aviation and the need for efficiency in the national air transportation system;

(3) the differences in the nature of operations at airports and the areas immediately surrounding such airports;

(4) international standards and accords with respect to aircraft noise; and

(5) such other factors which the Secretary deems necessary.

SEC. 9306. FEDERAL LIABILITY FOR NOISE DAMAGES.

In the event that a proposed airport aircraft noise or access restriction is disapproved, the Federal Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of such disapproval. Action for the resolution of such a case shall be brought solely in the United States Claims Court.

SEC. 9307. LIMITATION ON AIRPORT IMPROVEMENT PROGRAM REVENUE.

Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restriction not in compliance with this subtitle.

SEC. 9308. PROHIBITION ON OPERATION OF CERTAIN AIRCRAFT NOT COMPLYING WITH STAGE 3 NOISE LEVELS.

(a) GENERAL RULE.—After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels, as determined by the Secretary.

(b) WAIVER.—

(1) APPLICATION.—If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the Stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

(2) GRANTING OF WAIVER.—The Secretary may grant a waiver under this subsection if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall consider the effect of granting such waiver on competition in air carrier industry and on small community air service.

(3) LIMITATION.—A waiver granted under this subsection may not permit the operation of Stage 2 aircraft in the United States after December 31, 2003.

(c) COMPLIANCE SCHEDULE.—The Secretary shall, by regulation, establish a schedule for phased-in compliance with the prohibition set forth in subsection (a). The period of such phase-in shall begin on the date of the enactment of this Act and end before December 31, 1999. Such regulations shall establish interim compliance dates. Such schedule for phased-in compliance shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rates of growth for the airline industry, the impact of competition within the airline and air cargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry, and on an analysis of the impact of aircraft noise on persons residing near airports.

(d) EXEMPTION FOR NONCONTIGUOUS AIR SERVICE.—This section and section 9309 shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States. Any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into a noncontiguous State or a territory or possession of the United States on or after the date of the enactment of this Act may not be used to provide air transportation in the 48 contiguous States unless such aircraft complies with the Stage 3 noise levels.

(e) VIOLATIONS.—Violations of this section and section 9309 and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title VI.

(f) JUDICIAL REVIEW.—Actions taken by the Secretary under this section and section 9309 shall be subject to judicial review in accordance with section 1006 of the Federal Aviation Act of 1958.

(g) REPORTS.—Beginning with calendar year 1992, each air carrier shall submit to the Secretary an annual report on the progress such carrier is making toward complying with the requirements of this section (including the regulations issued to carry out this section), and the Secretary shall transmit to Congress an annual report on the progress being made toward such compliance.

(h) DEFINITIONS.—As used in this section, the following definitions apply:

(1) AIR CARRIER; AIR TRANSPORTATION; UNITED STATES.—The terms "air carrier", "air transportation", and "United States" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958.

(2) STAGE 3 NOISE LEVELS.—The term "Stage 3 noise levels" means the Stage 3 noise levels set forth in part 36 of title 14, Code of Federal Regulations, as in effect on the date of the enactment of this Act.

SEC. 9309. NONADDITION RULE.

(a) GENERAL RULE.—Except as provided in subsection (b) of this section, no person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into the United States on or after the date of the enactment of this Act unless—

(1) it complies with the Stage 3 noise levels, or

(2) it was purchased by the person who imports the aircraft into the United States under a written contract executed before such date of enactment.

(b) EXEMPTION FOR COMPLYING MODIFICATIONS.—The Secretary may provide an exemption from the requirements of subsection (a) to permit a person to obtain modifications to an aircraft to meet the Stage 3 noise levels.

(c) LIMITATION ON STATUTORY CONSTRUCTION.—For the purposes of this section, an aircraft shall not be considered to have been imported into the United States if such aircraft—

(1) on the date of the enactment of this Act, is owned—

(A) by a corporation, trust, or partnership which is organized under the laws of the United States or any State (including the District of Columbia);

(B) by an individual who is a citizen of the United States; or

(C) by any entity which is owned or controlled by a corporation, trust, partnership, or individual described in this paragraph; and

(2) enters into the United States not later than 6 months after the date of the expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (1) and a foreign air carrier.

TITLE X—MISCELLANEOUS USER FEES AND OTHER PROVISIONS

Subtitle A—Customs User Fees and Other Trade Provisions

PART I—CUSTOMS USER FEES

SEC. 10001. CUSTOMS USER FEES.

(a) EXTENSION OF EFFECTIVE PERIOD FOR FEES.—Paragraph (3) of section 13031(j) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking out "1991" and inserting "1995".

(b) ADJUSTMENT OF FEES FOR FORMALLY-ENTERED MERCHANDISE.—Paragraph (9) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(9)) is amended to read as follows:

"(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.17 percent ad valorem, unless adjusted under subparagraph (B).

"(B)(i) The Secretary of the Treasury may adjust the ad valorem rate specified in subparagraph (A) to an ad valorem rate (but not to a rate of more than 0.19 percent nor less than 0.15 percent) that would, if charged, offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

"(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under section 613A of the Tariff Act of 1930 with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

"(iii) An adjustment may not be made under clause (i) with respect to the fee charged during any fiscal year unless the Secretary of the Treasury—

"(I) not later than 45 days after the date of the enactment of the Act providing full-year appropriations for the Customs Service for that fiscal year, publishes in the Federal Register a notice of intent to adjust the fee under this paragraph and the amount of such adjustment;

"(II) provides a period of not less than 30 days following publication of the notice described in subclause (I) for public comment and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the proposed adjustment and the methodology used to determine such adjustment;

"(III) upon the expiration of the period provided under subclause (II), notifies such committees in writing regarding the final determination to adjust the fee, the amount of such adjustment, and the methodology used to determine such adjustment; and

"(IV) upon the expiration of the 15-day period following the written notification described in subclause (III), submits for publication in the Federal Register notice of the final determination regarding the adjustment of the fee.

"(iv) The 15-day period referred to in clause (iii)(IV) shall be computed by excluding—

"(I) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

"(II) any Saturday and Sunday, not excluded under subclause (I), when either House is not in session.

"(v) An adjustment made under this subparagraph shall become effective with respect to formal entries and releases made on or after the 15th calendar day after the date of publication of the notice described in clause (iii)(IV) and shall remain in effect until adjusted under this subparagraph.

"(C) If for any fiscal year, the Secretary of the Treasury determines not to make an adjustment under subparagraph (B), the Secretary shall, within the time prescribed under subparagraph (B)(iii)(I), submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives detailing the reasons for maintaining the current fee and the methodology used for computing such fee.

"(D) Any fee charged under this paragraph, whether or not adjusted under sub-

paragraph (B), is subject to the limitations in subsection (b)(8)(A).".

(c) AGGREGATION OF MERCHANDISE PROCESSING FEES.—Section 111(f)(1)(B) of the Customs and Trade Act of 1990 (Public Law 101-382) is amended by striking out "determined in" and inserting "currently in effect under".

(d) CUSTOMS SERVICE ADMINISTRATION.—Section 113 of the Customs and Trade Act of 1990 is amended—

(1) by inserting "and" after the semicolon at the end of subsection (a)(1);

(2) by striking out the semicolon at the end of subsection (a)(2) and inserting a period;

(3) by striking out paragraphs (3), (4), and (5) of subsection (a); and

(4) by striking out "Committees referred to in subsection (a)(5)" in subsection (b) and inserting "Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate".

(e) MERCHANDISE PROCESSING FEES FOR CERTAIN SMALL AIRPORTS.—

(1) Section 13031(a)(10)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(10)(C)) is amended by striking "applies," and inserting "applies, if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such entry or release,".

(2) Section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) is amended by inserting ", if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year" in subparagraph (B)(ii) before the end period.

(f) MANUAL ENTRIES AND RELEASES.—Clause (ii) of section 13031(b)(8)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(C)(ii)) is amended to read as follows:

"(ii) any reference to a manual formal or informal entry or release includes any entry or release filed by a broker or importer that requires the inputting of cargo selectivity data into the Automated Commercial System by customs personnel, except when—

"(I) the broker or importer is certified as an ABI cargo release filer under the Automated Commercial System at any port within the United States, or

"(II) the entry or release is filed at ports prior to the full implementation of the cargo selectivity data system by the Customs Service at such ports.".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (b), (c), and (d) shall take effect on the date of the enactment of the Act providing full-year appropriations for the Customs Service for fiscal year 1992, and shall apply to fiscal years beginning on and after October 1, 1991.

(2) MERCHANDISE PROCESSING FEES FOR SMALL AIRPORTS.—The amendments made by subsection (e) shall take effect as if included in section 111 of the Customs and Trade Act of 1990.

(3) MANUAL ENTRIES AND RELEASES.—The amendment made by subsection (f) shall take effect on the date of the enactment of this Act.

PART II—TECHNICAL CORRECTIONS

SEC. 10011. TECHNICAL AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE.

(a) REDESIGNATIONS.—

(1) IN GENERAL.—Each subheading of the Harmonized Tariff Schedule of the United States that is listed in column A is redesignated as the subheading listed in column B opposite such column A subheading:

Column A	Column B
5111.20.60	5111.20.90
5111.30.60	5111.30.90
5111.90.70	5111.90.90
5112.19.10	5112.19.20
5112.19.60	5112.19.90
5112.90.60	5112.90.90
6116.10.10	6116.10.08
6116.10.15	6116.10.18
6116.10.25	6116.10.45
6116.10.35	6116.10.70
6116.10.60	6116.10.90
6116.92.10	6116.92.08
6116.92.20	6116.92.60
6116.92.30	6116.92.90
6116.93.10	6116.93.08
6116.93.15	6116.93.60
6116.93.20	6116.93.90
6116.99.30	6116.99.35
6116.99.60	6116.99.50
6116.99.90	6116.99.80
6216.00.10	6216.00.08
6216.00.15	6216.00.12
6216.00.20	6216.00.18
6216.00.27	6216.00.28
6216.00.31	6216.00.32
6216.00.34	6216.00.35
6216.00.38	6216.00.39
6216.00.44	6216.00.46
6216.00.49	6216.00.52
6216.00.50	6216.00.80
6216.00.60	6216.00.90
6702.90.40	6702.90.35
6702.90.60	6702.90.65
8712.00.10	8712.00.15
8712.00.20	8712.00.25
8712.00.30	8712.00.35
8714.94.20	8714.94.15
8714.94.50	8714.94.60
9022.90.80	9022.90.90
9603.10.20	9603.10.25
9603.10.70	9603.10.90

(2) STAGED RATE REDUCTION.—Any staged reductions of a special rate of duty set forth in a subheading of the Harmonized Tariff Schedule of the United States listed in column A in paragraph (1) that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, shall also apply to the corresponding special rates of duty set forth in the corresponding subheading listed in column B opposite such column A subheading.

(b) MISCELLANEOUS AMENDMENTS.—The Harmonized Tariff Schedule of the United States is further amended as follows:

(1) Chapter 61 is amended by striking out subheading 6116.10.50.

(2) Chapter 62 is amended by striking out subheadings 6216.00.23, 6216.00.29, and 6216.00.47.

(3) Subheading 6116.10.90, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by striking out the article description and inserting "With fourchettes", with the new article description having the same degree of indentation as the superior heading for subheading 6116.10.70, as redesignated by subsection (a).

(4) Subheading 6216.00.28, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by inserting the article description for such subheading at the same degree of indentation as the superior heading for subheading 6216.00.18, as redesignated by subsection (a).

(5) Subheading 6216.00.32, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by striking out the article description and inserting "With fourchettes", with the new article description having the same degree of indentation as the article description for subheading 6216.00.35, as redesignated by subsection (a).

(6) Subheading 6216.00.52, as redesignated by subsection (a), is amended by inserting the article description for such subheading at the same degree of indentation as subheading 6216.00.46, as redesignated by subsection (a).

(7) The article descriptions for subheadings 6116.10.08, 6116.92.08, 6116.93.08, 6116.99.35, 6216.00.08, 6216.00.35, and 6216.00.46, as redesignated by subsection (a), are each amended to read as follows: "Other gloves, mittens, and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens, and mitts".

(8) The superior heading for subheadings 8712.00.25 and 8712.00.35, as redesignated by subsection (a), is amended by striking out "65" and inserting "63.5".

(9) Heading 9902.30.07 is amended by striking out "2929.90.10" and inserting "2929.10.40".

(10) Heading 9902.30.08 is amended by striking out "2907.29.30" and inserting "2907.19.50".

(11) Heading 9902.30.42 is amended by striking out "19532-03-07" and inserting "19532-03-7".

(12) The article description for heading 9902.30.56 is amended by striking out "hydroxethyl" and inserting "hydroxyethyl".

(13) Heading 9902.30.83 (as enacted by section 388 of the Customs and Trade Act of 1990) is redesignated as heading 9902.31.11 and, as so redesignated, is amended by striking out "piperadinyl" and inserting "piperidinyl".

(14) Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.70.20	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter or 10 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds (provided for in subheading 7019.20.10, 7019.20.20, or 7019.20.50)..	Free	No change	No change	On or before 12/31/92	".

(15) Heading 9902.84.83 is amended by striking out "(A,C,E,IL)" and inserting "(A,C,CA,E,IL)".

(16) Heading 9902.87.14 is amended by striking out "brakes," the first place it appears.

(17) The article description for heading 9902.94.01 is amended by striking out "Furniture seats" and inserting "Furniture, seats,".

(c) EFFECTIVE DATE.—

(1) Subject to paragraphs (2) and (3), the amendments made by subsections (a) and (b) apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

(2) Any amendment made by subsection (a) or (b) to a provision of the Harmonized Tariff Schedule of the United States that was the subject of an amendment made by title III of the Customs and Trade Act of 1990 shall—

(A) be treated as applying to that provision as established or amended by such title III; and

(B) if the amendment made by such title III has retroactive application under section 485(b) of such Act, be treated as applying with respect to entries made after the relevant applicable date (as defined in paragraph (2)(A) of such section 485(b)).

(3) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer before April 1, 1991, any entry—

(A) which was made after December 31, 1988, and before October 1, 1990; and

(B) with respect to which there would have been a lesser duty if any amendment made by subsection (b) (1) through (7) applied to such entry;

shall be liquidated or reliquidated as though such amendment applied to such entry.

SEC. 10012. TECHNICAL AMENDMENTS TO CERTAIN CUSTOMS LAWS.

(a) CUSTOMS FORFEITURE FUND.—

(1) Paragraph (5) of section 121 of the Customs and Trade Act of 1990 is repealed and subsection (f) of section 613A of the Tariff Act of 1930 shall be applied as if the amendment made by such paragraph (5) had not been enacted.

(2) Paragraph (2) of such section 613A(f) of the Tariff Act of 1930 (as in effect after the application of paragraph (1)) is amended to read as follows:

"(2)(A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) for such fiscal year.

"(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3):

"(i) $14,855,000 for fiscal year 1991.

"(ii) $15,598,000 for fiscal year 1992.".

(b) CERTAIN ENTRIES.—Section 484 of the Customs and Trade Act of 1990 (Public Law 101-382) is amended by striking out "1801-000027" and inserting "1801-7-000027".

(c) EFFECTIVE DATE.—The provisions of this section take effect August 21, 1990.

SEC. 10013. STAGED RATE REDUCTION FOR ETBE.

(a) IN GENERAL.—Section 484G(b) of the Customs and Trade Act of 1990 is amended to read as follows:

"(b) STAGED RATE REDUCTION.—The President may proclaim such modifications to the rates of duty set forth in subheading 9901.00.52 with respect to goods originating in the territory of Canada as will result in reduction of such rates in equal annual stages and will make such products free of duty effective January 1, 1998.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 484G of the Customs and Trade Act of 1990.

Subtitle B—Patent and Trademark Office User Fees

SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.

(a) SURCHARGES.—There shall be a surcharge, during fiscal years 1991 through 1995, of 69 percent, rounded by standard arithmetic rules, on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code.

(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, beginning in fiscal year 1991, all surcharges collected by the Patent and Trademark Office—

(1) in fiscal year 1991—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) $91,000,000 shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, and the additional surcharge receipts, totalling $18,807,000, shall be available only to the Patent and Trademark Office without appropriation, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office,

(2) in fiscal years 1992 through 1995—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office, and

(3) shall remain available until expended.

(c) REVISIONS.—In fiscal years 1991 through 1995, surcharges established under subsection (a) may be revised periodically by the Commissioner of Patents and Trademarks, subject to the provisions of section 553 of title 5, United States Code, in order to ensure that the following amounts, but not more than the following amounts, of patent and trademark user fees are collected:

(1) $109,807,000 in fiscal year 1991.

(2) $95,000,000 in fiscal year 1992.

(3) $99,000,000 in fiscal year 1993.

(4) $103,000,000 in fiscal year 1994.

(5) $107,000,000 in fiscal year 1995.

(d) REPEAL.—Section 105(a) of Public Law 100-703 (102 Stat. 4675) is repealed.

(e) REPORT ON FEES.—The Commissioner of Patents and Trademarks shall study the structure of all fees collected by the Patent and Trademark Office and, not later than May 1, 1991, shall submit to the Congress a report on all fees to be collected by the office in fiscal years 1992 through 1995. The report shall include a proposed schedule of fees that would distribute the surcharges provided by subsection (a) among all fees collected by the office, and recommendations for any statutory changes that may be necessary to implement the proposals contained in the report.

SEC. 10102. FEDERAL AGENCY STATUS.

For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 and the Office of Federal Procurement Policy Act.

SEC. 10103. EFFECT ON OTHER LAW.

Except for section 10101(d), nothing in this subtitle affects the provisions of Public Law 100-703 (102 Stat. 4674 and following).

Subtitle C—Science and Technology User Fees

SEC. 10201. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION USER FEES.

(a) AMENDMENTS.—Section 409 of the Act of November 17, 1988 (15 U.S.C. 1534) is amended—

(1) in subsection (a), by striking "archived" and all that follows and inserting in lieu thereof "and information and products derived therefrom collected and/or archived by the National Oceanic and Atmospheric Administration.";

(2) in subsection (b)(1)—

(A) by inserting ", information, and products" immediately after "data" the first place it appears; and

(B) by striking "data is" and inserting in lieu thereof "data, information, and products are";

(3) in subsection (b)(2)—

(A) by inserting ", information, or products" immediately after "data" the first place it appears; and

(B) by striking "data exchange basis" and inserting in lieu thereof "basis of exchanging such data, information, and products";

(4) in subsection (b), by inserting at the end the following new paragraph:

"(3) The Secretary shall waive the assessment of fees authorized by subsection (a) as necessary to continue to provide weather warnings, watches, and similar products and services essential to the mission of the National Oceanic Atmospheric Administration.";

(5) by amending paragraph (1) of subsection (d) to read as follows:

"(1) The initial schedule of fees established by the National Environmental Satellite, Data, and Information Service for archived data shall remain in effect for the 3-year period beginning on the date that the fees under that schedule take effect.";

(6) in subsections (d), (e), and (f)(1), by inserting "by the National Environmental Satellite, Data, and Information Service for archived data" immediately after "under this section" each place it appears; and

(7) in subsection (g), by striking the period at the end and inserting in lieu thereof the following: ", including the authority of the Secretary pursuant to section 1307 of title 44, United States Code. Nothing in this section shall be construed to authorize the Secretary to assess fees for nautical and aeronautical products of the National Oceanic and Atmospheric Administration in addition to those fees authorized under section 1307 of title 44, United States Code.".

(b) EFFECT OF AMENDMENTS.—(1) The increase in revenues to the United States attributable to the amendments made by subsection (a) shall not exceed—

(A) $2,000,000 for each of the fiscal years 1991, 1992, and 1993; and

(B) $3,000,000 for each of the fiscal years 1994 and 1995.

(2) Increases in revenues to the United States described in paragraph (1) shall be achieved by the Secretary of Commerce through fair and equitable increases in fees

for services offered by the various programs of the National Oceanic and Atmospheric Administration.

(3) The Secretary of Commerce shall notify the Congress of any changes in fee schedules under section 409 of the Act of November 17, 1988 (15 U.S.C. 1534), before such changes take effect.

SEC. 10202. RADON MEASUREMENT PROFICIENCY.

Section 305(e) of the Toxic Substances Control Act is amended by adding at the end the following new paragraphs:

"(5) RESEARCH.—The Administrator shall, in conjunction with other Federal agencies, conduct research to develop, test, and evaluate radon and radon progeny measurement methods and protocols. The purpose of such research shall be to assess the ability of those methods and protocols to accurately assess exposure to radon progeny. Such research shall include—

"(A) conducting comparisons among radon and radon progeny measurement techniques;

"(B) developing measurement protocols for different building types under varying operating conditions; and

"(C) comparing the exposures estimated by stationary monitors and protocols to those measured by personal monitors, and issue guidance documents that—

"(i) provide information on the results of research conducted under this paragraph; and

"(ii) describe model State radon measurement and mitigation programs.

"(6) MANDATORY PROFICIENCY TESTING PROGRAM STUDY.—(A) The Administrator shall conduct a study to determine the feasibility of establishing a mandatory proficiency testing program that would require that—

"(i) any product offered for sale, or device used in connection with a service offered to the public, for the measurement of radon meets minimum performance criteria; and

"(ii) any operator of a device, or person employing a technique, used in connection with a service offered to the public for the measurement of radon meets a minimum level of proficiency.

"(B) The study shall also address procedures for—

"(i) ordering the recall of any product sold for the measurement of radon which does not meet minimum performance criteria;

"(ii) ordering the discontinuance of any service offered to the public for the measurement of radon which does not meet minimum performance criteria; and

"(iii) establishing adequate quality assurance requirements for each company offering radon measurement services to the public to follow.

The study shall identify enforcement mechanisms necessary to the success of the program. The Administrator shall report the findings of the study with recommendations to Congress by March 1, 1991.

"(7) USER FEE.—In addition to any charge imposed pursuant to paragraph (2), the Administrator shall collect user fees from persons seeking certification under the radon proficiency program in an amount equal to $1,500,000 to cover the Environmental Protection Agency's cost of conducting research pursuant to paragraph (5) for each of the fiscal years 1991, 1992, 1993, 1994, and 1995. Such funds shall be deposited in the account established pursuant to paragraph (3).".

SEC. 10203. DEPARTMENT OF ENERGY USER FEE STUDY.

The Secretary of Energy shall undertake a study of the Department of Energy's user fee assessment and collection practices, and shall make recommendations on ways to—

(1) reasonably increase revenues to the United States through user fees, consistent with the mission of the Department; and

(2) improve user fee collection practices.

The Secretary of Energy shall submit a report containing such findings and recommendations to the Congress within 6 months after the date of enactment of this Act. There are authorized to be appropriated to the Secretary of Energy for carrying out this section not to exceed $500,000 for fiscal year 1991, from funds otherwise available to the Department of Energy.

SEC. 10204. DEPARTMENT OF TRANSPORTATION COMMERCIAL SPACE LAUNCH STUDY.

(a) The Secretary of Transportation shall report on actions by the Department of Transportation for the assessment and collection of licensing fees under the Commercial Space Launch Act (49 U.S.C. App. 2601 et seq.).

(b) The Secretary shall submit a report containing such findings to the Congress within 6 months after the date of enactment of this Act.

SEC. 10205. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY COST RECOVERY STUDY.

(a) The Secretary of Commerce shall undertake a study of current practices at, and any suggested improvements consistent with the mission of, the National Institute of Standards and Technology for recovering the costs of services and materials provided to private and nonprofit organizations, including services provided on a proprietary basis to users of Institute facilities.

(b) The Secretary shall submit a report containing such findings to the Congress within 6 months after the date of enactment of this Act.

Subtitle D—Travel and Tourism Facilitation Fee

SEC. 10301. UNITED STATES TRAVEL AND TOURISM FACILITATION FEE.

(a) UNITED STATES TRAVEL AND TOURISM ADMINISTRATION FACILITATION FEE.—The International Travel Act of 1961 (22 U.S.C. 2121 et seq.) is amended by adding at the end the following:

"SEC. 306. (a) To the extent not inconsistent with treaties or international agreements entered into by the United States, the Secretary, on a calendar quarterly basis beginning January 1, 1991, shall charge and collect from each commercial airline and passenger cruise ship line transporting passengers to the United States, a United States Travel and Tourism Administration Facilitation Fee, in an amount determined under subsection (b).

"(b)(1) During the period from January 1, 1991, through December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

"(2) Commencing in 1991, the Secretary shall each year determine and publish the amount of the fee described in subsection (a) for the 12-month period commencing on January 1 of the succeeding calendar year, as follows:

"(A) The Secretary (in consultation with the Attorney General and the Secretary of State) shall estimate the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) expected to enter the United States during such succeeding calendar year, based upon the number of such aliens who entered the United States during the previous calendar year (as reported or estimated by the Attorney General) and such other available information as the Secretary deems reliable.

"(B) The Secretary shall divide the amount appropriated to the United States Travel and Tourism Administration for the fiscal year during which such determination is made by the number of aliens described in subparagraph (A) expected by the Secretary to enter the United States during the calendar year described in such subparagraph, as estimated by the Secretary under such subparagraph, and shall round the result up to the nearest quarter-dollar.

"(C) The Secretary shall publish in the Federal Register the estimate required by subparagraph (A), together with a description of the information supporting such estimate, and the amount of the fee determined under subparagraph (B) which shall be applicable during the 12-month period commencing on January 1 of the succeeding calendar year.

"(D) For each calendar quarter beginning after December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to the fee amount determined under subparagraph (B) and applicable under subparagraph (C) multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

"(3) Neither the estimate of the Secretary under paragraph (2)(A) nor the amount determined by the Secretary under paragraph (2)(B) shall be subject to judicial review.

"(c) Each commercial airline and passenger cruise ship line shall remit the fee charged by the Secretary under subsection (b), in United States dollars, no later than 31 days after the close of the calendar quarter of the arrival of the aliens on which the calculation of the fee is based.

"(d) The Secretary shall deposit the fees received pursuant to subsection (c) in the general fund of the Treasury as offsetting receipts and ascribed to the travel and tourism activities of the Secretary.

"(e) Beginning on October 1, 1992, the aggregate amounts collected for the fee charged under this section shall at least equal the appropriations made for the travel and tourism activities of the Secretary under this Act, but at no time shall the aggregate of amounts collected for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

"(f) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.".

(b) CIVIL PENALTIES AND ENFORCEMENT.—The International Travel Act of 1961, as amended by subsection (a), is amended by adding at the end the following:

"SEC. 307. (a) Any commercial airline or commercial cruise ship line which is found by the Secretary or the Secretary's designee, after notice and an opportunity for a hearing, to have failed to pay to the Secretary, by the due date, the fee charged by the Secretary under section 306(a), may be ordered by the Secretary or the Secretary's designee to pay any fee amount outstanding plus interest on any late payment and, in addition, to pay a

civil penalty not to exceed $5,000 for each day payment to the Secretary is not made or was made late. The amount of such civil penalty shall be assessed by the Secretary or the Secretary's designee by written notice. In determining the amount of such penalty, the Secretary or the Secretary's designee shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require. Each day a payment to the Secretary required by this Act is late shall constitute a separate violation of this Act.

"(b) If any commercial airline or cruise ship line fails to pay as ordered by the Secretary or the Secretary's designee, the Attorney General may, upon request of the Secretary, bring a civil action in any appropriate United States district court for the recovery of the amount ordered to be paid.

"(c) Before requesting the Attorney General to bring a civil action, the Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under subsection (a).

"(d) For the purpose of conducting any hearing under subsection (a), the Secretary or the Secretary's designee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the United States district court for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or the Secretary's designee or to appear and produce papers, books, and documents before the Secretary or the Secretary's designee, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.".

Subtitle E—Coast Guard User Fees

SEC. 10401. ESTABLISHMENT AND COLLECTION OF FEES FOR COAST GUARD SERVICES.

(a) IN GENERAL.—Section 2110 of title 46, United States Code, is amended to read as follows:

"§ 2110. Fees

"(a)(1) Except as otherwise provided in this title, the Secretary shall establish a fee or charge for a service or thing of value provided by the Secretary under this subtitle, in accordance with section 9701 of title 31.

"(2) The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a non-self-propelled tank vessel under part B of this title that is more than $500 annually.

"(3) The Secretary may, by regulation, adjust a fee or charge collected under this subsection to accommodate changes in the cost of providing a specific service or thing of value, but the adjusted fee or charge may not exceed the total cost of providing the service or thing of value for which the fee or charge is collected, including the cost of collecting the fee or charge.

"(4) The Secretary may not collect a fee or charge under this subsection that is in conflict with the international obligations of the United States.

"(5) The Secretary may not collect a fee or charge under this subsection for any search or rescue service.

"(b)(1) The Secretary shall establish a fee or charge as provided in paragraph (2) of this subsection, and collect it annually in fiscal years 1991, 1992, 1993, 1994, and 1995, from the owner or operator of each recreational vessel that is greater than 16 feet in length.

"(2) The fee or charge established under paragraph (1) of this subsection is as follows:

"(A) for vessels greater than 16 feet in length but less than 20 feet, not more than $25;

"(B) for vessels of at least 20 feet in length but less than 27 feet, not more than $35;

"(C) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

"(D) for vessels of at least 40 feet in length, not more than $100.

"(3) The fee or charge established under this subsection applies only to vessels operated on the navigable waters of the United States where the Coast Guard has a presence.

"(4) The fee or charge established under this subsection does not apply to a—

"(A) public vessel; or

"(B) vessel deemed to be a public vessel under section 827 of title 14.

"(c) In addition to the collection of fees and charges established under subsections (a) and (b), the Secretary may recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges.

"(d)(1) The Secretary may employ any Federal, State, or local agency or instrumentality, or any private enterprise or business, to collect a fee or charge established under this section. A private enterprise or business selected by the Secretary to collect fees or charges—

"(A) shall be subject to reasonable terms and conditions agreed to by the Secretary and the enterprise or business;

"(B) shall provide appropriate accounting to the Secretary; and

"(C) may not institute litigation as part of that collection.

"(2) A Federal agency shall account for the agency's costs of collecting the fee or charge under this subsection as a reimbursable expense, and the costs shall be credited to the account from which expended.

"(e) A person that violates this section by failing to pay a fee or charge established under this section is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

"(f) When requested by the Secretary, the Secretary of the Treasury shall deny the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) to a vessel for which a fee or charge established under this section has not been paid until the fee or charge is paid or until a bond is posted for the payment.

"(g) The Secretary may exempt a person from paying a fee or charge established under this section if the Secretary determines that it is in the public interest to do so.

"(h) Fees and charges collected by the Secretary under this section shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

"(i) The collection of a fee or charge under this section does not alter or expand the functions, powers, responsibilities, or liability of the United States under any law for the performance of services or the provision of a thing of value for which a fee or charge is collected under this section.".

(b) CLERICAL AMENDMENT.—The analysis of chapter 21 of title 46, United States Code, is amended by striking the item relating to section 2110 and inserting the following:

"2110. Fees.".

SEC. 10402. TONNAGE DUTIES.

(a) VESSELS ENTERING FROM FOREIGN PORT OR PLACE.—Section 36 of the Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes", approved August 5, 1909 (36 Stat. 111; 46 App. U.S.C. 121) is amended in the second paragraph—

(1) by striking "two cents per ton, not to exceed in the aggregate ten cents per ton in any one year," and inserting "9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter";

(2) by inserting after "Newfoundland," the following: "and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46, United States Code) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or place,"; and

(3) by striking "six cents per ton, not to exceed thirty cents per ton per annum," and inserting "27 cents per ton, not to exceed $1.35 per ton per annum, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter".

(b) CONFORMING AMENDMENT.—The Act entitled "An Act concerning tonnage duties on vessels entering otherwise than by sea", approved March 8, 1910 (36 Stat. 234; 46 App. U.S.C. 132), is amended by striking "two cents per ton, not to exceed in the aggregate ten cents per ton in any one year" and inserting "9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter".

(c) OFFSETTING RECEIPTS.—Increased tonnage charges collected as a result of the amendments made by subsection (a) shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

Subtitle F—Railroad User Fees

SEC. 10501. AMENDMENTS TO FEDERAL RAILROAD SAFETY ACT OF 1970.

(a) USER FEES.—The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

"SEC. 216. USER FEES.

"(a)(1) The Secretary shall establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but shall not be based on the proportion of industry revenues attributable to a railroad or class of railroads.

"(2) The Secretary shall establish procedures for the collection of such fees. The Secretary may use the services of any Federal,

State, or local agency or instrumentality to collect such fees, and may reimburse such agency or instrumentality a reasonable amount for such services.

"(3) Fees established under this section shall be assessed to railroads subject to this Act and shall cover the costs of administering this Act, other than activities described in section 202(a)(2).

"(b) The Secretary shall assess and collect fees described in subsection (a) with respect to each fiscal year before the end of such fiscal year.

"(c) All fees collected under subsection (b) shall be deposited into the general fund of the United States Treasury as offsetting receipts and shall be used, to the extent provided in advance in appropriations Acts, only to carry out activities under this Act.

"(d) Fees established under subsection (a) shall be assessed in an amount sufficient to cover activities described in subsection (c) beginning on March 1, 1991, but at no time shall the aggregate of fees received for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

"(e)(1) Within 90 days after the end of each fiscal year in which fees are collected pursuant to this section, the Secretary shall report to the Congress—

"(A) the amount of fees collected during that fiscal year;

"(B) the impact of such fee collections on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and

"(C) the total cost of Federal safety activities for each such other mode of transportation, including the portion of that total cost, if any, defrayed by Federal user fees.

"(2) With respect to any fiscal year for which the Secretary's report submitted under paragraph (1) finds—

"(A) any impact of fees collected under this section either on the financial health of the railroad industry, or on its competitive position relative to competing modes of transportation; or

"(B) any significant difference in the burden of Federal user fees borne by the railroad industry and those applicable to competing modes of transportation,

the Secretary shall, within 90 days after submission of such report, prepare and submit to the Congress specific recommendations for legislation to correct any such impact or difference.

"(f) This section shall expire on September 30, 1995.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 214(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444(a)) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out this Act not to exceed $46,884,000 for fiscal year 1991.".

TITLE XI—REVENUE PROVISIONS

SEC. 11001. SHORT TITLE; ETC.

(a) SHORT TITLE.—This title may be cited as the "Revenue Reconciliation Act of 1990".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) SECTION 15 NOT TO APPLY.—Except as otherwise expressly provided in this title, no amendment made by this title shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

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Subtitle A—Individual Income Tax Provisions

PART I—PROVISIONS AFFECTING HIGH-INCOME INDIVIDUALS

SEC. 11101. ELIMINATION OF PROVISION REDUCING MARGINAL TAX RATE FOR HIGH-INCOME TAXPAYERS.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $32,450	15% of taxable income.
Over $32,450 but not over $78,400	$4,867.50, plus 28% of excess over $32,450.
Over $78,400	$17,733.50, plus 31% of the excess over $78,400.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $26,050	15% of taxable income.
Over $26,050 but not over $67,200.	$3,907.50, plus 28% of the excess over $26,500.
Over $67,200	$15,429.50, plus 31% of the excess over $67,200.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $19,450	15% of taxable income.
Over $19,450 but not over $47,050.	$2,917.50, plus 28% of the excess over $19,450.
Over $47,050	$10,645.50, plus 31% of the excess over $47,050.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $16,225	15% of taxable income.
Over $16,225 but not over $39,200.	$2,433.75, plus 28% of the excess over $16,225.
Over $39,200	$8,866.75, plus 31% of the excess over $39,200.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $3,300	15% of taxable income.
Over $3,300 but not over $9,900.	$495, plus 28% of the excess over $3,300.
Over $9,900	$2,343, plus 31% of the excess over $9,900."

(b) REPEAL OF PHASEOUT.—

(1) IN GENERAL.—Section 1 is amended by striking subsection (g) (relating to phaseout of 15-percent rate and personal exemptions).

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 1(f)(6) (relating to adjustments for inflation) is amended by striking "subsection (g)(4),".

(c) 28 PERCENT MAXIMUM CAPITAL GAINS RATE.—Subsection (j) of section 1 (relating to maximum capital gains rate) is amended to read as follows:

"(j) MAXIMUM CAPITAL GAINS RATE.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(A) taxable income reduced by the amount of the net capital gain, or

"(B) the amount of taxable income taxed at a rate below 28 percent, plus

"(2) a tax of 28 percent of the amount of taxable income in excess of the amount determined under paragraph (1)."

(d) TECHNICAL AMENDMENTS.—

(1)(A) Subsection (f) of section 1 is amended—

(i) by striking "1988" in paragraph (1) and inserting "1990", and

(ii) by striking "1987" in paragraph (3)(B) and inserting "1989".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1987" and inserting "1989".

(C) Subparagraph (C) of section 41(e)(5) is amended—

(i) by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end of clause (i),

(ii) by striking "1987" in clause (ii) and inserting "1989", and

(iii) by adding at the end of clause (ii) the following new sentence: "Such substitution shall be in lieu of the substitution under clause (i).".

(D) Subparagraph (B) of section 63(c)(4) is amended by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end.

(E) Clause (ii) of section 135(b)(2)(B) is amended by striking ", determined by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof".

(F) Subparagraph (B) of section 151(d)(3) is amended by striking "1987" and inserting "1989".

(G) Clause (ii) of section 513(h)(2)(C) is amended by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end.

(2) Section 1 is amended by striking subsection (h) and redesignating subsections (i) and (j) as subsections (g) and (h), respectively.

(3) Subsection (j) of section 59 is amended—

(A) by striking "section 1(i)" each place it appears and inserting "section 1(g)", and

(B) by striking "section 1(i)(3)(B)" in paragraph (2)(C) and inserting "section 1(g)(3)(B)".

(4) Paragraph (4) of section 691(c) is amended by striking "1(j)" and inserting "1(h)".

(5)(A) Clause (i) of section 904(b)(3)(D) is amended by striking "subsection (j)" and inserting "subsection (h)".

(B) Subclause (I) of section 904(b)(3)(E)(iii) is amended by striking "section 1(j)" and inserting "section 1(h)".

(6) Clause (iv) of section 6103(e)(1)(A) is amended by striking "section 1(j)" and inserting "section 1(g)".

(7)(A) Subparagraph (A) of section 7518(g)(6) is amended by striking "1(j)" and inserting "1(h)".

(B) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act, 1936 is amended by striking "1(j)" and inserting "1(h)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11102. INCREASE IN RATE OF INDIVIDUAL ALTERNATIVE MINIMUM TAX.

(a) GENERAL RULE.—Subparagraph (A) of section 55(b)(1) (relating to tentative minimum tax) is amended by striking "21 percent" and inserting "24 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1990.

SEC. 11103. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.

(a) IN GENERAL.—Part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 68. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.

"(a) GENERAL RULE.—In the case of an individual whose adjusted gross income exceeds the applicable amount, the amount of the itemized deductions otherwise allowable for the taxable year shall be reduced by the lesser of—

"(1) 3 percent of the excess of adjusted gross income over the applicable amount, or

"(2) 80 percent of the amount of the itemized deductions otherwise allowable for such taxable year.

"(b) APPLICABLE AMOUNT.—

"(1) IN GENERAL.—For purposes of this section, the term 'applicable amount' means $100,000 ($50,000 in the case of a separate return by a married individual within the meaning of section 7703).

"(2) INFLATION ADJUSTMENTS.—In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1989' in subparagraph (B) thereof."

"(c) EXCEPTION FOR CERTAIN ITEMIZED DEDUCTIONS.—For purposes of this section, the term 'itemized deductions' does not include—

"(1) the deduction under section 213 (relating to medical, etc. expenses),

"(2) any deduction for investment interest (as defined in section 163(d)), and

"(3) the deduction under section 165(a) for losses described in subsection (c)(3) or (d) of section 165.

"(d) COORDINATION WITH OTHER LIMITATIONS.—This section shall be applied after the application of any other limitation on the allowance of any itemized deduction.

"(e) EXCEPTION FOR ESTATES AND TRUSTS.—This section shall not apply to any estate or trust.

"(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 1995."

(b) COORDINATION WITH MINIMUM TAX.—Paragraph (1) of section 56(b) is amended by adding at the end thereof the following new subparagraph:

"(F) SECTION 68 NOT APPLICABLE.—Section 68 shall not apply."

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 1(f)(6) is amended by inserting "section 68(b)(2)" after "section 63(c)(4),".

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 68. Overall limitation on itemized deductions."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11104. PHASEOUT OF PERSONAL EXEMPTIONS.

(a) GENERAL RULE.—Subsection (d) of section 151 is amended to read as follows:

"(d) EXEMPTION AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'exemption amount' means $2,000.

"(2) EXEMPTION AMOUNT DISALLOWED IN CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

"(3) PHASEOUT.—

"(A) IN GENERAL.—In the case of any taxpayer whose adjusted gross income for the taxable year exceeds the threshold amount, the exemption amount shall be reduced by the applicable percentage.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means 2 percentage points for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$1,250' for '$2,500'. In no event shall the applicable percentage exceed 100 percent.

"(C) THRESHOLD AMOUNT.—For purposes of this paragraph, the term 'threshold amount' means—

"(i) $150,000 in the case of a joint return of a surviving spouse (as defined in section 2(a)),

"(ii) $125,000 in the case of a head of a household (as defined in section 2(b),

"(iii) $100,000 in the case of an individual who is not married and who is not a surviving spouse or head of a household, and

"(iv) $75,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(D) COORDINATION WITH OTHER PROVISIONS.—The provisions of this paragraph shall not apply for purposes of determining whether a deduction under this section with respect to any individual is allowable to another taxpayer for any taxable year.

"(E) TERMINATION.—This paragraph shall not apply to any taxable year beginning after December 31, 1995.

"(4) INFLATION ADJUSTMENTS.—

"(A) ADJUSTMENT TO BASIC AMOUNT OF EXEMPTION.—In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1988' for 'calendar year 1989' in subparagraph (B) thereof.

"(B) ADJUSTMENT TO THRESHOLD AMOUNTS FOR YEARS AFTER 1991.—In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (3)(C) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1989' in subparagraph (B) thereof."

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 1(f) is amended—

(1) by striking "section 151(d)(3)" in subparagraph (A) and inserting "section 151(d)(4)", and

(2) by striking "section 151(d)(3)" in subparagraph (B) and inserting "section 151(d)(4)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

PART II—MODIFICATIONS OF EARNED INCOME CREDIT

SEC. 11111. MODIFICATIONS OF EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—So much of section 32 (relating to earned income credit) as precedes subsection (d) thereof is amended to read as follows:

"SEC. 32. EARNED INCOME.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

"(1) the basic earned income credit, and

"(2) the health insurance credit.

"(b) COMPUTATION OF CREDIT.—For purposes of this section—

"(1) BASIC EARNED INCOME CREDIT.—

"(A) IN GENERAL.—The term 'basic earned income credit' means an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed $5,714.

"(B) LIMITATION.—The amount of the basic earned income credit allowable to a taxpayer for any taxable year shall not exceed the excess (if any) of—

"(i) the credit percentage of $5,714, over

"(ii) the phaseout percentage of so much of the adjusted gross income (or, if greater the earned income) of the taxpayer for the taxable year as exceeds $9,000.

"(C) PERCENTAGES.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the percentages shall be determined as follows:

"In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child.....	23	16.43

"In the case of en eligible individual with:	The credit percentage is:	The phaseout percentage is:
2 or more qualifying children.....	25	17.86

"(ii) TRANSITION PERCENTAGES.—
"(I) For taxable years beginning in 1991, the percentages are:

"In the case of en eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child.....	16.7	11.93
2 or more qualifying children.....	17.3	12.36

"(II) For taxable years beginning in 1992, the percentages are:

"In the case of en eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child.....	17.6	12.57
2 or more qualifying children.....	18.4	13.14

"(III) For taxable years beginning in 1993, the percentages are:

"In the case of en eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child.....	18.5	13.21
2 or more qualifying children.....	19.5	13.93

"(D) SUPPLEMENTAL YOUNG CHILD CREDIT.—In the case of a taxpayer with a qualifying child who has not attained age 1 as of the close of the calendar year in which or with which the taxable year of the taxpayer ends—
"(i) the credit percentage shall be increased by 5 percentage points, and
"(ii) the phaseout percentage shall be increased by 3.57 percentage points.
If the taxpayer elects to take a child into account under this subparagraph, such child shall not be treated as a qualifying individual under section 21.
"(2) HEALTH INSURANCE CREDIT.—
"(A) IN GENERAL.—The term 'health insurance credit' means an amount determined in the same manner as the basic earned income credit except that—
"(i) the credit percentage shall be equal to 6 percent, and
"(ii) the phaseout percentage shall be equal to 4.285 percent.
"(B) LIMITATION BASED ON HEALTH INSURANCE COSTS.—The amount of the health insurance credit determined under subparagraph (A) for any taxable year shall not exceed the amounts paid by the taxpayer during the taxable year for insurance coverage—
"(i) which constitutes medical care (within the meaning of section 213(d)(1)(C)), and
"(ii) which includes at least 1 qualifying child.
For purposes of this subparagraph, the rules of section 213(d)(6) shall apply.
"(C) SUBSIDIZED EXPENSES.—A taxpayer may not take into account under subparagraph (B) any amount to the extent that—
"(i) such amount is paid, reimbursed, or subsidized by the Federal Government, a State or local government, or any agency or instrumentality thereof; and
"(ii) the payment, reimbursement, or subsidy of such amount is not includible in the gross income of the recipient.
"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—
"(1) ELIGIBLE INDIVIDUAL.—
"(A) IN GENERAL.—The term 'eligible individual' means any individual who has a qualifying child for the taxable year.
"(B) QUALIFYING CHILD INELIGIBLE.—If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.
"(C) 2 OR MORE ELIGIBLE INDIVIDUALS.—If 2 or more individuals would (but for this subparagraph and after application of subparagraph (B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest adjusted gross income for such taxable years shall be treated as an eligible individual with respect to such qualifying child.
"(D) EXCEPTION FOR INDIVIDUAL CLAIMING BENEFITS UNDER SECTION 911.—The term 'eligible individual' does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.
"(2) EARNED INCOME.—
"(A) The term 'earned income' means—
"(i) wages, salaries, tips, and other employee compensation, plus
"(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).
"(B) For purposes of subparagraph (A)—
"(i) the earned income of an individual shall be computed without regard to any community property laws,
"(ii) no amount received as a pension or annuity shall be taken into account, and
"(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.
"(3) QUALIFYING CHILD.—
"(A) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—
"(i) who bears a relationship to the taxpayer described in subparagraph (B),
"(ii) except as provided in subparagraph (B)(iii), who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,
"(iii) who meets the age requirements of subparagraph (C), and
"(iv) with respect to whom the taxpayer meets the identification requirements of subparagraph (D).
"(B) RELATIONSHIP TEST.—
"(i) IN GENERAL.—An individual bears a relationship to the taxpayer described in this subparagraph if such individual is—
"(I) a son or daughter of the taxpayer, or a descendant of either,
"(II) a stepson or stepdaughter of the taxpayer, or
"(III) an eligible foster child of the taxpayer.
"(ii) MARRIED CHILDREN.—Clause (i) shall not apply to any individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for paragraph (2) or (4) of section 152(e)).
"(iii) ELIGIBLE FOSTER CHILD.—For purposes of clause (i)(III), the term 'eligible foster child' means an individual not described in clause (i) (I) or (II) who—
"(I) the taxpayer cares for as the taxpayer's own child, and
"(II) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.
"(iv) ADOPTION.—For purposes of this subparagraph, a child who is legally adopted, or who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer, shall be treated as a child by blood.
"(C) AGE REQUIREMENTS.—An individual meets the requirements of this subparagraph if such individual—
"(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins,
"(ii) is a student (as defined in section 151(c)(4)) who has not attained the age of 24 as of the close of such calendar year, or
"(iii) is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year.
"(D) IDENTIFICATION REQUIREMENTS.—
"(i) IN GENERAL.—The requirements of this subparagraph are met if—
"(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and
"(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year.
"(ii) INSURANCE POLICY NUMBER.—In the case of any taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy number or other adequate evidence of insurance in addition to any information required to be included in clause (i).
"(iii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i) or (ii).
"(E) ABODE MUST BE IN THE UNITED STATES.—The requirements of subparagraphs (A)(ii) and (B)(iii)(II) shall be met only if the principal place of abode is in the United States."
(b) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—Section 32 is amended by adding at the end thereof the following new subsection:
"(j) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—For purposes of—
"(1) the United States Housing Act of 1937,
"(2) title V of the Housing Act of 1949,
"(3) section 101 of the Housing and Urban Development Act of 1965,
"(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and
"(5) the Food Stamp Act of 1977,
any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month)."

(c) ADVANCE PAYMENT OF CREDIT.—Subparagraphs (B) and (C) of section 3507(c)(2) are amended to read as follows:

"(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than the credit percentage under section 32(b)(1) (without regard to subparagraph (D) thereof) for an eligible individual with 1 qualifying child and with earned income not in excess of the amount of earned income taken into account under section 32(a)(1), which

"(ii) phases out between the amount of earned income at which the phaseout begins under section 32(b)(1)(B)(ii) and the amount of income at which the credit under section 32(a)(1) phases out for an eligible individual with 1 qualifying child, or

"(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit as if it were a credit determined under subparagraph (B) by substituting ½ of the amounts of earned income described in such subparagraph for such amounts."

(d) COORDINATION WITH DEDUCTIONS.—

(1) MEDICAL DEDUCTION.—Section 213 is amended by adding at the end thereof the following new subsection:

"(f) COORDINATION WITH HEALTH INSURANCE CREDIT UNDER SECTION 32.—The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

(2) SELF-EMPLOYED INDIVIDUALS.—Paragraph (3) of section 162(l) is amended to read as follows:

"(3) COORDINATION WITH MEDICAL DEDUCTION, ETC.—

"(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

"(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

(e) CONFORMING AMENDMENTS.—Paragraph (2) of section 32(i) is amended—

(1) by striking "or (ii)" in subparagraph (A)(i) thereof,

(2) by striking "clause (iii)" in subparagraph (A)(ii) and inserting "clause (ii)", and

(3) by amending subparagraph (B) to read as follows:

"(B) DOLLAR AMOUNTS.—The dollar amounts referred to in this subparagraph are—

"(i) the $5,714 dollar amounts contained in subsection (b)(1), and

"(ii) the $9,000 amount contained in subsection (b)(1)(B)(ii)."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11112. REQUIREMENT OF IDENTIFYING NUMBER FOR CERTAIN DEPENDENTS.

(a) GENERAL RULE.—Paragraph (2) of section 6109(e) (relating to furnishing number for certain dependents) is amended by striking "2 years" and inserting "1 year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns for taxable years beginning after December 31, 1990.

SEC. 11113. STUDY OF ADVANCE PAYMENTS.

(a) IN GENERAL.—The Comptroller General of the United States shall, in consultation with the Secretary of the Treasury, conduct a study of advance payments required by section 3507 of the Internal Revenue Code of 1986 to determine—

(1) the effectiveness of the advance payment system (including an analysis of why so few employees take advantage of such system), and

(2) the manner in which such system can be implemented to alleviate administrative complexity, if any, for small business, and

(3) if there are any other problems in the administration of such system.

(b) REPORT.—Not later than 1 year after the date of the enactment of this title, the Comptroller shall report the results of the study conducted under subsection (a), together with any recommendations, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 11114. PROGRAM TO INCREASE PUBLIC AWARENESS.

Not later than the first calendar year following the date of the enactment of this subtitle, the Secretary of the Treasury, or the Secretary's delegate, shall establish a taxpayer awareness program to inform the taxpaying public of the availability of the credit for dependent care allowed under section 21 of the Internal Revenue Code of 1986 and the earned income credit and child health insurance under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures. The Secretary shall use appropriate means of communication to carry out the provisions of this section.

SEC. 11115. EXCLUSION FROM INCOME AND RESOURCES OF EARNED INCOME TAX CREDIT UNDER TITLES IV, XVI, AND XIX OF THE SOCIAL SECURITY ACT.

(a) EXCLUSIONS UNDER TITLE IV.—

(1) EXCLUSIONS FROM RESOURCES.—Section 402(a)(7)(B) of the Social Security Act (42 U.S.C. 602(a)(7)(B)) is amended—

(A) by striking "or" before "(iii)"; and

(B) by inserting ", or (iv) for the month of receipt and the following month, any refund of Federal income taxes made to such family by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit), and any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit)" before the semicolon.

(2) EXCLUSIONS FROM INCOME.—Section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)) is amended by inserting "or 8(A)(viii)" after "other than paragraph 8(A)(v)".

(b) EXCLUSIONS UNDER TITLE XVI.—

(1) EXCLUSIONS FROM INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)), as amended by sections 5031(a) and 5035(a) of this Act, is amended—

(A) by striking "and" at the end of paragraph (17);

(B) by striking the period at the end of paragraph (18) and inserting ";and"; and

(C) by adding at the end the following:

"(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit).".

(2) EXCLUSIONS FROM RESOURCES.—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)), as amended by sections 5031(b) and 5035(b) of this Act, is amended—

(A) by striking "and" at the end of paragraph (8);

(B) by striking the period at the end of paragraph (9) and inserting ";and"; and

(C) by adding at the end the following new paragraph:

"(10) for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit).".

(c) EXCLUSIONS UNDER TITLE XIX.—Pursuant to section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)), the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act any refund of Federal income taxes made to an individual by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to an individual by an employer under section 3507 of such Code (relating to advance payment of earned income credit).

(d) AFDC WAIVER OF OVERPAYMENT.—For the purposes of section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)), a State agency designated under a State plan under section 402(a)(3) of such Act may waive any overpayment of aid that resulted from the receipt by a family of a refund of Federal income taxes by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) or any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit) during the period beginning on January 1, 1990, and ending on December 31, 1990.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) though (c) shall apply to determinations of income or resources made for any period after December 31, 1990.

SEC. 11116. COORDINATION WITH REFUND PROVISION.

For purposes of section 1324(b)(2) of title 31 of the United States Code, section 32 of the Internal Revenue Code of 1986 (as amended by this Act) shall be considered to be a credit provision of the Internal Revenue Code of 1954 enacted before January 1, 1978.

Subtitle B—Excise Taxes

PART I—TAXES RELATED TO HEALTH AND THE ENVIRONMENT

SEC. 11201. INCREASE IN EXCISE TAXES ON DISTILLED SPIRITS, WINE, AND BEER.

(a) DISTILLED SPIRITS.—

(1) IN GENERAL.—Paragraphs (1) and (3) of section 5001(a) (relating to rate of tax on distilled spirits) are each amended by striking "$12.50" and inserting "$13.50".

(2) TECHNICAL AMENDMENT.—Paragraphs (1) and (2) of section 5010(a) (relating to credit for wine content and for flavors content) are each amended by striking "$12.50" and inserting "$13.50".

(b) WINE.—

(1) TAX INCREASES.—

(A) WINES CONTAINING NOT MORE THAN 14 PERCENT ALCOHOL.—Paragraph (1) of section 5041(b) (relating to rates of tax on wines) is amended by striking "17 cents" and inserting "$1.07".

(B) WINES CONTAINING MORE THAN 14 (BUT NOT MORE THAN 21) PERCENT ALCOHOL.—Paragraph (2) of section 5041(b) is amended by striking "67 cents" and inserting "$1.57".

(C) WINES CONTAINING MORE THAN 21 (BUT NOT MORE THAN 24) PERCENT ALCOHOL.—Paragraph (3) of section 5041(b) is amended by striking "$2.25" and inserting "$3.15".

(D) ARTIFICIALLY CARBONATED WINES.—Paragraph (5) of section 5041(b) is amended by striking "$2.40" and inserting "$3.30".

(2) CREDIT FOR SMALL DOMESTIC PRODUCERS.—Section 5041 is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) CREDIT FOR SMALL DOMESTIC PRODUCERS.—

"(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (2), in the case of a person who produces not more than 250,000 wine gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) of 90 cents per wine gallon on the 1st 100,000 wine gallons of wine (other than wine described in subsection (b)(4)) which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States.

"(2) REDUCTION IN CREDIT.—The credit allowable by paragraph (1) shall be reduced (but not below zero) by 1 percent for each 1,000 wine gallons of wine produced in excess of 150,000 wine gallons of wine during the calendar year.

"(3) TIME FOR DETERMINING AND ALLOWING CREDIT.—The credit allowable by paragraph (1)—

"(A) shall be determined at the same time the tax is determined under subsection (a) of this section, and

"(B) shall be allowable at the time any tax described in paragraph (1) is payable as if the credit allowable by this subsection constituted a reduction in the rate of such tax.

"(4) CONTROLLED GROUPS.—Rules similar to rules of section 5051(a)(2)(B) shall apply for purposes of this subsection.

"(5) DENIAL OF DEDUCTION.—Any deduction under subtitle A with respect to any tax against which a credit is allowed under this subsection shall only be for the amount of such tax as reduced by such credit.

"(6) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year and to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year."

(3) CONFORMING AMENDMENT.—Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(e),".

(c) BEER.—

(1) IN GENERAL.—Paragraph (1) of section 5051(a) (relating to imposition and rate of tax on beer) is amended by striking "$9" and inserting "$18".

(2) REGULATIONS.—Paragraph (2) of section 5051(a) is amended by adding at the end thereof the following new subparagraph:

"(C) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1991.

(e) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—

(A) IN GENERAL.—In the case of any tax-increased article—

(i) on which tax was determined under part I of subchapter A of chapter 51 of the Internal Revenue Code of 1986 or section 7652 of such Code before January 1, 1991, and

(ii) which is held on such date for sale by any person,

there shall be imposed a tax at the applicable rate on each such article.

(B) APPLICABLE RATE.—For purposes of subparagraph (A), the applicable rate is—

(i) $1 per proof gallon in the case of distilled spirits,

(ii) $0.90 per wine gallon in the case of wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and

(iii) $9 per barrel in the case of beer.

In the case of a fraction of a gallon or barrel, the tax imposed by subparagraph (A) shall be the same fraction as the amount of such tax imposed on a whole gallon or barrel.

(C) TAX-INCREASED ARTICLE.—For purposes of this subsection, the term "tax-increased article" means distilled spirits, wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and beer.

(2) EXCEPTION FOR SMALL DOMESTIC PRODUCERS.—

(A) In the case of wine held by the producer thereof on January 1, 1991, if a credit would have been allowable under section 5041(c) of such Code (as added by this section) on such wine had the amendments made by subsection (b) applied to all wine removed during 1990 and had the wine so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such wine shall be reduced by the credit which would have been so allowable.

(B) In the case of beer held by the producer thereof on January 1, 1991, if the rate of the tax imposed by section 5051 of such Code would have been determined under subsection (a)(2) thereof had the beer so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such beer shall not apply.

(C) For purposes of this paragraph, an article shall not be treated as held by the producer if title thereto had at any time been transferred to any other person.

(3) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph (1) on tax- increased articles held on January 1, 1991, by any dealer if—

(A) the aggregate liquid volume of tax-increased articles held by such dealer on such date does not exceed 500 wine gallons, and

(B) such dealer submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(4) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to—

(A) $240 to the extent such taxes are attributable to distilled spirits,

(B) $270 to the extent such taxes are attributable to wine, and

(C) $87 to the extent such taxes are attributable to beer.

Such credit shall not exceed the amount of taxes imposed by paragraph (1) with respect to distilled spirits, wine, or beer, as the case may be, for which the dealer is liable.

(5) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding any tax-increased article on January 1, 1991, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1991.

(6) CONTROLLED GROUPS.—

(A) CORPORATIONS.—In the case of a controlled group—

(i) the 500 wine gallon amount specified in paragraph (3), and

(ii) the $240, $270, and $87 amounts specified in paragraph (4),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

(7) OTHER LAWS APPLICABLE.—

(A) IN GENERAL.—All provisions of law, including penalties, applicable to the comparable excise tax with respect to any tax-increased article shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by the comparable excise tax.

(B) COMPARABLE EXCISE TAX.—For purposes of subparagraph (A), the term "comparable excise tax" means—

(i) the tax imposed by section 5001 of such Code in the case of distilled spirits,

(ii) the tax imposed by section 5041 of such Code in the case of wine, and

(iii) the tax imposed by section 5051 of such Code in the case of beer.

(8) DEFINITIONS.—For purposes of this subsection—

(A) IN GENERAL.—Terms used in this subsection which are also used in subchapter A of chapter 51 of such Code shall have the respective meanings such terms have in such part.

(B) PERSON.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(9) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—For purposes of this subsection, any article described in section 5001(a)(3) of such Code shall be treated

as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided by regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on January 1, 1991, on the premises of a retail establishment.

SEC. 11202. INCREASE IN EXCISE TAXES ON TOBACCO PRODUCTS.

(a) CIGARS.—Subsection (a) of section 5701 is amended—

(1) by striking "75 cents per thousand" in paragraph (1) and inserting "$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)", and

(2) by striking "equal to" and all that follows in paragraph (2) and inserting "equal to—

"(A) 10.625 percent of the price for which sold but not more than $25 per thousand on cigars removed during 1991 or 1992, and

"(B) 12.75 percent of the price for which sold but not more than $30 per thousand on cigars removed after 1992."

(b) CIGARETTES.—Subsection (b) of section 5701 is amended—

(1) by striking "$8 per thousand" in paragraph (1) and inserting "$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992)", and

(2) by striking "$16.80 per thousand" in paragraph (2) and inserting "$25.20 per thousand ($21 per thousand on cigarettes removed during 1991 or 1992)".

(c) CIGARETTE PAPERS.—Subsection (c) of section 5701 is amended by striking "1/2 cent" and inserting "0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)".

(d) CIGARETTE TUBES.—Subsection (d) of section 5701 is amended by striking "1 cent" and inserting "1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)".

(e) SMOKELESS TOBACCO.—Subsection (e) of section 5701 is amended—

(1) by striking "24 cents" in paragraph (1) and inserting "36 cents (30 cents on snuff removed during 1991 or 1992)", and

(2) by striking "8 cents" in paragraph (2) and inserting "12 cents (10 cents on chewing tobacco removed during 1991 or 1992)".

(f) PIPE TOBACCO.—Subsection (f) of section 5701 is amended by striking "45 cents" and inserting "67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)".

(g) DETERMINATION OF PRICE.—Subsection (m) of section 5702 is amended to read as follows:

"(m) DETERMINATION OF PRICE ON CIGARS.—In determining price for purposes of section 5701(a)(2)—

"(1) there shall be included any charge incident to placing the article in condition ready for use,

"(2) there shall be excluded—

"(A) the amount of the tax imposed by this chapter or section 7652, and

"(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(3) rules similar to the rules of section 4216(b) shall apply."

(h) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to articles removed after December 31, 1990.

(i) FLOOR STOCKS TAXES ON CIGARETTES.—

(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before any tax-increase date and held on such date for sale by any person, there shall be imposed the following taxes:

(A) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, $2 per thousand.

(B) LARGE CIGARETTES.—On cigarettes weighing more than 3 pounds per thousand, $4.20 per thousand; except that, if more than 6 1/2 inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(2) EXCEPTION FOR CERTAIN AMOUNTS OF CIGARETTES.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on cigarettes held on any tax-increase date by any person if—

(i) the aggregate number of cigarettes held by such person on such date does not exceed 30,000, and

(ii) such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this subparagraph.

For purposes of this subparagraph, in the case of cigarettes measuring more than 6½ inches in length, each 2¾ inches (or fraction thereof) of the length of each shall be counted as one cigarette.

(B) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on any tax-increase date by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the 30,000 amount in subparagraph (A) and the $60 amount in paragraph (3) with respect to such person.

(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $60. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which such person is liable.

(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax-increase date to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the 1st June 30 following the tax-increase date.

(5) DEFINITIONS.—For purposes of this subsection—

(A) TAX-INCREASE DATE.—The term "tax-increase date" means January 1, 1991, and January 1, 1993.

(B) OTHER DEFINITIONS.—Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(6) CONTROLLED GROUPS.—Rules similar to the rules of section 11201(e)(6) shall apply for purposes of this subsection.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701.

SEC. 11203. ADDITIONAL CHEMICALS SUBJECT TO TAX ON OZONE-DEPLETING CHEMICALS.

(a) GENERAL RULE.—

(1) The table set forth in section 4682(a)(2) (defining ozone-depleting chemical) is amended by striking the period after the last item and by adding at the end thereof the following new items:

"Carbon tetrachloride.... Tetrachloromethane
Methyl chloroform..... 1,1,1-trichloroethane
CFC-13.....CF3Cl
CFC-111.....C2FCl5
CFC-112.....C2F2Cl4
CFC-211.....C3FCl7
CFC-212.....C3F2Cl6
CFC-213.....C3F3Cl5
CFC-214.....C3F4Cl4
CFC-215.....C3F5Cl3
CFC-216.....C3F6Cl2
CFC-217.....C3F7Cl."

(2) The table set forth in section 4682(b) is amended by striking the period after the last item and by adding at the end thereof the following new items:

"Carbon tetrachloride	1.1
Methyl chloroform	0.1
CFC-13	1.0
CFC-111	1.0
CFC-112	1.0
CFC-211	1.0
CFC-212	1.0
CFC-213	1.0
CFC-214	1.0
CFC-215	1.0
CFC-216	1.0
CFC-217	1.0."

(b) SEPARATE APPLICATION OF EXPORT CREDIT LIMIT FOR NEWLY LISTED CHEMICALS.—Paragraph (3) of section 4682(d) is amended by adding at the end thereof the following new subparagraph:

"(C) SEPARATE APPLICATION OF LIMIT FOR NEWLY LISTED CHEMICALS.—

"(i) IN GENERAL.—Subparagraph (B) shall be applied separately with respect to newly listed chemicals and other chemicals.

"(ii) APPLICATION TO NEWLY LISTED CHEMICALS.—In applying subparagraph (B) to newly listed chemicals—

"(I) subparagraph (B) shall be applied by substituting '1989' for '1986' each place it appears, and

"(II) clause (i)(II) thereof shall be applied by substituting for the regulations referred to therein any regulations (whether or not prescribed by the Secretary) which the Secretary determines are comparable to the regulations referred to in such clause with respect to newly listed chemicals.

"(iii) NEWLY LISTED CHEMICAL.—For purposes of this subparagraph, the term 'newly listed chemical' means any substance which appears in the table contained in subsection (a)(2) below Halon-2402."

(c) SEPARATE BASE TAX AMOUNT FOR NEWLY LISTED CHEMICALS.—Subparagraphs (B) and (C) of section 4681(b)(1) are amended to read as follows:

"(B) BASE TAX AMOUNT.—

"(i) INITIALLY LISTED CHEMICALS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1995 with respect to any ozone-depleting chemical other than a newly listed chemical (as defined in section 4682(d)(3)(C)) is the amount determined under the following table for such calendar year:

"Calendar Year — Base Tax Amount
1990 or 1991 — $1.37
1992 — 1.67
1993 or 1994 — 2.65.

"(ii) NEWLY LISTED CHEMICALS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1996 with respect to any ozone-depleting chemical which is a newly listed chemical (as so defined) is the amount determined under the following table for such calendar year:

"Calendar Year — Base Tax Amount
1991 or 1992 — $1.37
1993 — 1.67
1994 — 3.00
1995 — 3.10.

"(C) BASE TAX AMOUNT FOR LATER YEARS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use of an ozone-depleting chemical during a calendar year after the last year specified in the table under subparagraph (B) applicable to such chemical shall be the base tax amount for such last year increased by 45 cents for each year after such last year."

(d) OTHER AMENDMENTS.—

(1) The last sentence of section 4682(c)(2) is amended by inserting "(other than methyl chloroform)" after "ozone-depleting chemical".

(2) Paragraph (3) of section 4682(h) is amended by striking "April 1" and inserting "June 30".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1991.

(f) DEPOSITS FOR 1ST QUARTER OF 1991.—No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986 on any substance treated as an ozone-depleting chemical by reason of the amendment made by subsection (a)(1) shall be required to be made before April 1, 1991.

PART II—USER-RELATED TAXES

SEC. 11211. INCREASE AND EXTENSION OF HIGHWAY-RELATED TAXES AND TRUST FUND.

(a) INCREASE IN TAX ON GASOLINE.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) (relating to rate of tax) is amended—

(A) by striking "and" at the end of clause (i),

(B) by striking the period at the end of clause (ii) and inserting ", and", and

(C) by adding at the end thereof the following new clause:

"(iii) the deficit reduction rate."

(2) RATES OF TAX.—Subparagraph (B) of section 4081(a)(2) is amended—

(A) by striking "9 cents a gallon, and" and inserting "11.5 cents a gallon,",

(B) by striking the period at the end of clause (ii) and inserting ", and", and

(C) by adding at the end thereof the following new clause:

"(iii) the deficit reduction rate is 2.5 cents a gallon."

(3) TERMINATION OF DEFICIT REDUCTION RATE.—Subsection (d) of section 4081 is amended by adding at the end thereof the following new paragraph:

"(3) DEFICIT REDUCTION RATE—On and after October 1, 1995, the deficit reduction rate under subsection (a)(2) shall not apply."

(4) 15-CENT TAX ON GASOLINE USED IN NONCOMMERCIAL AVIATION.—Paragraph (3) of section 4041(c) is amended—

(A) by striking "12 cents" and inserting "15 cents", and

(B) by striking "the Highway Trust Fund financing rate" and inserting "the sum of the Highway Trust Fund financing rate plus the deficit reduction rate".

(5) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4081(c) is amended—

(i) by striking "applied by" and all that follows through "in the case" and inserting "applied by substituting rates which are 10/9th of the otherwise applicable rates in the case", and

(ii) by adding at the end thereof the following: "For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon."

(B) Paragraph (2) of section 4081(c) is amended by striking "at a rate equivalent to 3 cents" and inserting "at a Highway Trust Fund financing rate equivalent to 6.1 cents".

(C) Subsection (c) of section 4081 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) LOWER RATE ON GASOHOL MADE OTHER THAN FROM ETHANOL.—In the case of gasohol none of the alcohol in which consists of ethanol, paragraphs (1) and (2) shall be applied by substituting '5.5 cents' for '6.1 cents'.

(D) Subparagraph (B) of section 9503(b)(4) is amended by striking "4081" and inserting "4041, 4081,".

(E) Subparagraph (A) of section 9503(c)(2) is amended by adding at the end thereof the following new sentence:

"The amounts payable from the Highway Trust Fund under this subparagraph or paragraph (3) shall be determined by taking into account only the Highway Trust Fund financing rate applicable to any fuel."

(F) Subsection (b) of section 9503 is amended by adding at the end thereof the following new paragraph:

"(5) GENERAL REVENUE DEPOSITS OF CERTAIN TAXES ON ALCOHOL MIXTURES.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under subparagraphs (A), (E), and (F) of paragraph (1) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of gasoline or diesel fuel used in producing a mixture described in subparagraph (A)."

(6) EFFECTIVE DATE.—Except as otherwise provided in this subsection, the amendments made by this subsection shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986) after November 30, 1990.

(b) INCREASE IN OTHER TAXES.—

(1) DEFICIT REDUCTION RATE.—

(A) Clause (i) of section 4091(b)(1)(A) is amended by inserting "and the diesel fuel deficit reduction rate" after "financing rate".

(B) Subsection (b) of section 4091 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) DIESEL FUEL DEFICIT REDUCTION RATE.—For purposes of paragraph (1), except as provided in subsection (c), the diesel fuel deficit reduction rate is 2.5 cents per gallon."

(C) Paragraph (6) of section 4091(b), as redesignated by subparagraph (A), is amended by adding at the end thereof the following new subparagraph:

"(D) The diesel fuel deficit reduction rate shall not apply on and after October 1, 1995."

(2) INCREASE IN HIGHWAY TRUST FUND FINANCING RATE.—Paragraph (2) of section 4091(b) is amended by striking "15 cents" and inserting "17.5 cents".

(3) INCREASE IN TAX ON SPECIAL MOTOR FUELS.—Paragraph (2) of section 4041(a) is amended by striking "of 9 cents a gallon" and by inserting at the end thereof the following new sentence:

"The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use."

(4) DEFICIT REDUCTION TAX TO APPLY TO FUEL USED IN TRAINS.—

(A) Paragraph (2) of section 4093(c) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) DEFICIT PEDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel sold for use in a diesel-powered train, paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the diesel fuel deficit reduction rate imposed by such section."

(B)(i) Subsection (l) of section 6427 is amended by adding at the end thereof the following new paragraph:

"(4) NO REFUND OF DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the diesel fuel deficit reduction rate imposed by such section."

(ii) Paragraph (1) of section 6427(l) is amended by striking "paragraph (3)" and inserting "paragraphs (3) and (4)".

(5) INCREASES IN TAXES NOT TO APPLY TO CERTAIN BUSES.—Subparagraph (A) of section 6427(b)(2) is amended by striking "shall not exceed 12 cents" and inserting "shall be 3.1 cents per gallon less than the aggregate rate at which tax was imposed on such fuel by section 4041(a) or 4091, as the case may be".

(6) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4091(c) is amended—

(i) by striking "9 cents" and inserting "12.1 cents" and by striking "10 cents" and inserting "13.44 cents", and

(ii) by striking "shall be 1/9 cent per gallon" and inserting "and the diesel fuel deficit reduction rate shall be 10/9th of the otherwise applicable such rates".

(B) Paragraph (2) of section 4091(c) is amended by striking "9 cents" and inserting "12.1 cents".

(C)(i) Paragraph (1) of section 4041(a) is amended by striking "of 15 cents a gallon" and by inserting before the last sentence the following new sentence:

"The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use."

(ii) Subsection (a) of section 4041 is amended by striking paragraph (3).

(D) Clause (i) of section 4041(b)(2)(A) is amended to read as follows:

"(i) the Highway Trust Fund financing rate applicable under subsection (a)(2) shall be 5.4 cents per gallon less than the otherwise applicable rate (6 cents per gallon in the case of a mixture none of the alcohol in which consists of ethanol), and".

(E)(i) Paragraph (1) of section 4041(k) is amended by striking subparagraphs (A), (B), and (C) and inserting the following new subparagraphs:

"(A) the Highway Trust Fund financing rates under paragraphs (1) and (2) of subsection (a) shall be the comparable rates under sections 4081(c) and 4091(c), as the case may be,

"(B) no tax shall be imposed by subsection (c)(1), and

"(C) no tax shall be imposed by subsection (c)(2)."

(ii) Subsection (q) of section 6427 is amended to read as follows:

"(q) GASOHOL USED IN NONCOMMERCIAL AVIATION.—Except as provided in subsection (k), if—

"(1) any tax is imposed by section 4081 at a rate determined under subsection (c) thereof on gasohol (as defined in such subsection), and

"(2) such gasohol is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(4)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasohol an amount equal to 1.4 cents (2 cents in the case of a mixture none of the alcohol in which consists of ethanol) multiplied by the number of gallons of gasohol so used."

(F) Subparagraph (A) of section 4041(m)(1) is amended to read as follows:

"(A) under subsection (a)(2) the Highway Trust Fund financing rate shall be 5.75 cents per gallon and the deficit reduction rate shall be 1.25 cents per gallon, and".

(G) Subsection (d) of section 9502 is amended by adding at the end thereof the following new paragraph:

"(4) TRANSFERS FOR REFUNDS AND CREDITS NOT TO EXCEED TRUST FUND REVENUES ATTRIBUTABLE TO FUEL USED.—The amounts payable from the Airport and Airway Trust Fund under paragraph (2) or (3) shall not exceed the amounts required to be appropriated to such Trust Fund with respect to fuel so used."

(H) Subparagraph (D) of section 9503(c)(4) is amended by striking "(to the extent attributable to the Highway Trust Fund financing rate)" and by inserting before the period ", but only to the extent such taxes are attributable to the Highway Trust Fund financing rates under such sections".

(7) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

(c) EXTENSION OF TAXES.—The following provisions are each amended by striking "1993" each place it appears and inserting "1995":

(1) Section 4051(c) (relating to tax on heavy trucks and trailers sold at retail).

(2) Section 4071(d) (relating to tax on tires and tread rubber).

(3) Section 4081(d)(1) (relating to gasoline tax).

(4) Section 4091(b)(6)(A) (relating to diesel fuel tax), as redesignated by subsection (b).

(5) Sections 4481(e), 4482(c)(4), and 4482(d) (relating to highway use tax).

(d) EXTENSION OF EXEMPTIONS.—The following provisions are each amended by striking "1993" each place it appears and inserting "1995":

(1) Section 4041(f)(3) (relating to exemptions for farm use).

(2) Section 4041(g) (relating to other exemptions).

(3) Section 4221(a) (relating to certain tax-free sales).

(4) Section 4483(g) (relating to termination of exemptions for highway use tax).

(5) Section 6420(h) (relating to gasoline used on farms).

(6) Section 6421(i) (relating to gasoline used for certain nonhighway purposes, etc.).

(7) Section 6427(g)(5) (relating to advance repayment of increased diesel fuel tax).

(8) Section 6427(o) (relating to fuels not used for taxable purposes).

(e) EXTENSION OF REDUCED RATES OF TAX ON FUELS CONTAINING ALCOHOL.—The following provisions are each amended by striking "1993" each place it appears and inserting "2000":

(1) Section 4041(b)(2)(C) (relating to qualified methanol and ethanol fuel).

(2) Section 4041(k)(3) (relating to fuels containing alcohol).

(3) Section 4081(c)(5) (relating to gasoline mixed with alcohol), as redesignated by subsection (a).

(4) Subsections (c)(3) and (d)(3) of section 4091 (relating to diesel fuel and aviation fuel mixed with alcohol and aviation fuel used to produce certain alcohol fuels).

(f) OTHER PROVISIONS.—

(1) FLOOR STOCKS REFUNDS.—Section 6412(a)(1) (relating to floor stocks refunds) is amended—

(A) by striking "1993" each place it appears and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(2) INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.—Section 6156(e)(2) (relating to installment payments of tax on use of highway motor vehicles) is amended by striking "1993" and inserting "1995".

(g) EXTENSION OF DEPOSITS INTO TRUST FUND.—

(1) IN GENERAL.—Subsection (b), and paragraphs (2), (3), and (4) of subsection (c), of section 9503 (relating to the Highway Trust Fund) are each amended—

(A) by striking "1993" each place it appears and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(2) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Section 201(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-11) is amended—

(A) by striking "1993" and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(h) INCREASE IN TRANSFERS TO MASS TRANSIT ACCOUNT.—

(1) IN GENERAL.—Paragraph (2) of section 9503(e) is amended by striking "1 cent" and inserting "1.5 cents".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to amounts attributable to taxes imposed on or after December 1, 1990.

(i) TRANSFERS OF SMALL-ENGINE FUEL TAXES INTO SPORT FISH RESTORATION ACCOUNT.—

(1) IN GENERAL.—Section 9503(c) (relating to expenditures from highway trust fund) is amended by adding at the end thereof the following new paragraph:

"(5) TRANSFERS FROM THE TRUST FUND FOR SMALL-ENGINE FUEL TAXES.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund amounts (as determined by him) equivalent to the small-engine fuel taxes received on or after December 1, 1990, and before October 1, 1995.

"(B) SMALL-ENGINE FUEL TAXES.—For purposes of this paragraph, the term 'small-engine fuel taxes' means the taxes under section 4081 with respect to gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment, but only to the extent such taxes are attributable to the Highway Trust Fund financing rate under such section."

(2) CONFORMING AMENDMENT.—Section 9504(a)(2) (relating to accounts in aquatic resources trust fund) is amended by inserting "section 9503(c)(5)," after "section 9503(c)(4),".

(3) EXPENDITURES FOR COASTAL WETLANDS RESTORATION.—Section 9504(b)(2) (relating to expenditures from sport fish restoration account) is amended to read as follows:

"(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, for making expenditures—

"(A) to carry out the purposes of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950 (as in effect on October 1, 1988), and

"(B) to carry out the purposes of any law which is substantially identical to S. 3252 of the 101st Congress, as introduced.

Amounts transferred to such account under section 9503(c)(5) may be used only for making expenditures described in subparagraph (B) of this paragraph."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

(j) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—In the case of—

(A) gasoline and diesel fuel on which tax was imposed under section 4081 or 4091 of such Code before December 1, 1990, and which is held on such date by any person, or

(B) diesel fuel on which no tax was imposed under section 4091 of such Code at the Highway Trust Fund financing rate before December 1, 1990, and which is held on such date by any person for use as a fuel in a train,

there is hereby imposed a floor stocks tax on such gasoline and diesel fuel.

(2) RATE OF TAX.—The rate of the tax imposed by paragraph (1) shall be—

(A) 5 cents per gallon in the case of fuel described in paragraph (1)(A), and

(B) 2.5 cents per gallon in the case of fuel described in paragraph (1)(B).

In the case of any fuel held for use in producing a mixture described in section 4081(c)(1) or section 4091(c)(1)(A) of such Code, subparagraph (A) shall be applied by substituting "6.22 cents" for "5 cents". If no alcohol in such mixture is ethanol, the preceding sentence shall be applied by substituting "5.56 cents" for "6.22 cents".

(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding gasoline or diesel fuel on December 1, 1990, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before May 31, 1991.

(4) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Gasoline and diesel fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) GASOLINE.—The term "gasoline" has the meaning given such term by section 4082 of such Code.

(C) DIESEL FUEL.—The term "diesel fuel" has the meaning given such term by section 4092 of such Code.

(D) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(5) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline or diesel fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

(6) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

(7) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1)—

(i) on gasoline held on December 1, 1990, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and

(ii) on diesel fuel held on December 1, 1990, by any person if the aggregate amount of diesel fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (5) or (6).

(C) CONTROLLED GROUPS.—For purposes of this paragraph, rules similar to the rules of paragraph (6) of section 11201(e) of this Act shall apply.

(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091.

(9) TRANSFER OF PORTION OF FLOOR STOCKS REVENUE TO HIGHWAY TRUST FUND.—For purposes of determining the amount transferred to the Highway Trust Fund, the tax imposed by paragraph (1) on fuel described in subparagraph (A) thereof shall be treated as imposed at a Highway Trust Fund financing rate to the extent of 2.5 cents per gallon.

SEC. 11212. IMPROVEMENTS IN ADMINISTRATION OF GASOLINE EXCISE TAX.

(a) IN GENERAL.—Paragraph (1) of section 4081(a) is amended to read as follows:

"(1) TAX ON REMOVAL, ENTRY, OR SALE.—

"(A) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on—

"(i) the removal of gasoline from any refinery,

"(ii) the removal of gasoline from any terminal,

"(iii) the entry into the United States of gasoline for consumption, use, or warehousing, and

"(iv) the sale of gasoline to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such gasoline under clause (i), (ii), or (iii).

"(B) EXCEPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS.—The tax imposed by this paragraph shall not apply to any removal or entry of gasoline transferred in bulk to a terminal if the person removing or entering the gasoline and the operator of such terminal are registered under section 4101."

(b) CHANGES IN REGISTRATION RULES.—

(1) IN GENERAL.—Section 4101 is amended to read as follows:

"SEC. 4101. REGISTRATION AND BOND.

"(a) REGISTRATION.—Every person required by the Secretary to register under this section with respect to the tax imposed by section 4081 or 4091 shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

"(b) BONDS AND LIENS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the Secretary may require, as a condition of permitting any person to be registered under subsection (a), that such person—

"(A) give a bond in such sum as the Secretary determines appropriate, and

"(B) agree to the imposition of a lien—

"(i) on such property (or rights to property) of such person used in the trade or business for which the registration is sought, or

"(ii) with the consent of such person, on any other property (or rights to property) of such person as the Secretary determines appropriate.

Rules similar to the rules of section 6323 shall apply to the lien imposed pursuant to this paragraph.

"(2) RELEASE OR DISCHARGE OF LIEN.—If a lien is imposed pursuant to paragraph (1), the Secretary shall issue a certificate of discharge or a release of such lien in connection with a transfer of the property if there is furnished to the Secretary (and accepted by him) a bond in such sum as the Secretary determines appropriate or the transferor agrees to the imposition of a substitute lien under paragraph (1)(B) in such sum as the Secretary determines appropriate. The Secretary shall respond to any request to discharge or release a lien imposed pursuant to paragraph (1) in connection with a transfer of property not later than 90 days after the date the request for such a discharge or release is made.

"(c) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION.—Rules similar to the rules of section 4222(c) shall apply to registration under this section.

"(d) INFORMATION REPORTING.—The Secretary may require—

"(1) information reporting by any person registered under this section, and

"(2) information reporting by such other persons as the Secretary deems necessary to carry out this part."

(2) CLARIFICATION OF GENERAL REGISTRATION RULES.—Subsection (c) of section 4222 is amended—

(A) by striking "revoked or suspended" in the material preceding paragraph (1) and inserting "denied, revoked, or suspended",

(B) by striking "revocation or suspension" each place it appears and inserting "denial, revocation, or suspension", and

(C) by striking in the heading "REVOCATION OR SUSPENSION" and inserting "DENIAL, REVOCATION, OR SUSPENSION".

(3) DISCLOSURE PERMITTED OF REGISTRATION INFORMATION.—Subsection (k) of section 6103 is amended by adding at the end thereof the following new paragraph:

"(7) DISCLOSURE OF EXCISE TAX REGISTRATION INFORMATION.—To the extent the Secretary determines that disclosure is necessary to permit the effective administration of subtitle D, the Secretary may disclose—

"(A) the name, address, and registration number of each person who is registered under any provision of subtitle D (and, in the case of a registered terminal operator, the address of each terminal operated by such operator), and

"(B) the registration status of any person."

(4) CONFORMING AMENDMENT.—Section 4093 is amended by striking subsection (e) (relating to special administrative rules) and by redesignating subsection (f) as subsection (e).

(c) CERTAIN ADDITIONAL PERSONS LIABLE FOR TAX WHERE WILLFUL FAILURE TO PAY.—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end thereof the following new section:

"SEC. 4103. CERTAIN ADDITIONAL PERSONS LIABLE FOR TAX WHERE WILLFUL FAILURE TO PAY.

"In any case in which there is a willful failure to pay the tax imposed by section 4081 or 4091, each person—

"(1) who is an officer, employee, or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty, or

"(2) who willfully causes the taxpayer to fail to pay such tax,

shall be jointly and severally liable with the taxpayer for the tax to which such failure relates."

(d) REFUNDS IN CERTAIN CASES.—

(1) IN GENERAL.—Section 4081 is amended by adding at the end thereof the following new subsection:

"(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any gasoline establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such gasoline, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(2) DENIAL OF CREDITS.—Subsection (d) of section 6416 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e)."

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6724(d) is amended by striking "or" at the end of clause (x), by striking ", or subsection (e)," in clause (xi), by striking the period at the end of clause (xi) and inserting ", or", and by inserting after clause (xi) the following new clause:

"(xii) section 4101(d) (relating to information reporting with respect to fuels taxes)."

(2) Subsection (a) of section 4081 is amended by striking paragraph (3).

(3) The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end thereof the following new item:

"Sec. 4103. Certain additional persons liable for tax where willful failure to pay."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on July 1, 1991.

(2) REGISTRATION, ETC.—The amendments made by subsections (b), (c), and (e) (other than paragraph (2) thereof) shall take effect on December 1, 1990.

SEC. 11213. INCREASE AND EXTENSION OF AVIATION-RELATED TAXES AND TRUST FUND; REPEAL OF REDUCTION IN RATES.

(a) INCREASE IN RATES ON TRANSPORTATION.—

(1) TRANSPORTATION OF PERSONS.—Subsections (a) and (b) of section 4261 are each amended by striking "8 percent" and inserting "10 percent".

(2) TRANSPORTATION OF PROPERTY.—Subsection (a) of section 4271 is amended by striking "5 percent" and inserting "6.25 percent".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transportation beginning after November 30, 1990, but shall not apply to amounts paid on or before such date.

(b) INCREASE IN RATES ON FUEL.—

(1) IN GENERAL.—Paragraph (3) of section 4091(b) is amended—

(A) by striking "14 cents" and inserting "17.5 cents", and

(B) by inserting "except as provided in subsection (d)," after "paragraph (1),".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4041(c) is amended by striking "14 cents" and inserting "17.5 cents".

(B)(i) Subparagraph (B) of section 4041(k)(1), as amended by section 11211, is amended to read as follows:

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d), and".

(ii) Subparagraph (B) of section 4041(m)(1) is amended to read as follows:

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d)(1)."

(C)(i) Paragraphs (1) and (2) of section 4091(d) are amended to read as follows:

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall be—

"(A) 4.1 cents per gallon in the case of the sale of any mixture of aviation fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the aviation fuel in such mixture was not taxed under subparagraph (B), and

"(B) 4.56 cents per gallon in the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

In the case of a sale described in subparagraph (B), the Leaking Underground Storage Tank Trust Fund financing rate shall be 1/9 cent per gallon.

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at the Airport and Airway Trust Fund financing rate equivalent to 4.1 cents per gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel."

(ii) The heading for subsection (d) of section 4091 is amended by striking "EXEMPTION FROM" and inserting "REDUCED RATE OF".

(D) Section 4091 is amended by adding at the end thereof the following new subsection:

"(e) LOWER RATES OF TAX ON ALCOHOL MIXTURES NOT MADE FROM ETHANOL.—In the case of a mixture described in subsection (c)(1)(A)(i) or (d)(1)(A)(i) none of the alcohol in which is ethanol—

"(1) subsections (c)(1)(A) and (c)(2), and subsections (d)(1)(A) and (d)(2), shall each be applied by substituting rates which are 0.6 cents less than the rates contained therein, and

"(2) subsections (c)(1)(B) and (d)(1)(B) shall be applied by substituting rates which are 10/9 of the rates determined under paragraph (1)."

(3) Subsection (f) of section 6427 is amended to read as follows:

"(f) GASOLINE, DIESEL FUEL, AND AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any gasoline, diesel fuel, or aviation fuel on which tax was imposed by section 4081 or 4091 at the regular tax rate is used by any person in producing a mixture described in section 4081(c), 4091(c)(1)(A), or 4091(d)(1)(A) (as the case may be) which is sold or used in such person's trade or business the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (d) thereof.

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (d)(1)(B) thereof.

"(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any gasoline, diesel fuel, or aviation fuel with respect to which an amount is payable under subsection (d), (e), or (l) of this section or under section 6420 or 6421.

"(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 1995."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

(5) FLOOR STOCKS TAXES.—

(A) IMPOSITION OF TAX.—In the case of aviation fuel on which tax was imposed under section 4041(c)(1) or 4091 of the Internal Revenue Code of 1986 before December 1, 1990, and which is held on such date by any person, there is hereby imposed a floor stocks tax on such fuel.

(B) RATE OF TAX.—The rate of the tax imposed by subparagraph (A) shall be 3.5 cents per gallon.

(C) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(i) LIABILITY FOR TAX.—A person holding fuel on December 1, 1990, to which the tax imposed by this paragraph applies shall be liable for such tax.

(ii) METHOD OF PAYMENT.—The tax imposed by this paragraph shall be paid in such manner as the Secretary shall prescribe.

(iii) TIME FOR PAYMENT.—The tax imposed by this paragraph shall be paid on or before May 31, 1991.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) HELD BY A PERSON.—Fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(ii) AVIATION FUEL.—The term "aviation fuel" has the meaning given such term by section 4092(a) of such Code.

(iii) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(E) EXCEPTION FOR EXEMPT USES.—The tax imposed by this paragraph shall not apply to fuel held by any person exclusively for any use which is a nontaxable use (as defined in section 6427(l) of such Code).

(F) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this paragraph, apply with respect to the floor stock taxes imposed by this paragraph to the same extent as if such taxes were imposed by such section 4091.

(c) SPECIAL RULES FOR DEPOSITS OF TAX REVENUES.—

(1) Section 9502 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULES FOR TRANSFERS INTO TRUST FUND.—

"(1) INCREASES IN TAX REVENUES BEFORE 1993 TO REMAIN IN GENERAL FUND.—In the case of taxes imposed before January 1, 1993, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be 3 cents per gallon less (3.5 cents per gallon less in the case of taxes imposed by section 4041(c)(1) and 4091) than the amounts which would (but for this sentence) be appropriated under such paragraphs.

"(2) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of fuel used in producing a mixture described in subparagraph (A)."

(2) Paragraph (2) of section 9502(b) is amended by inserting "and the deficit reduction rate" after "financing rate".

(d) EXTENSION OF TAXES AND TRUST FUND.—

(1) TRANSPORTATION TAXES.—Sections 4261(g) and 4271(d) are each amended by striking "January 1, 1991" and inserting "January 1, 1996".

(2) FUEL TAXES.—

(A) Subparagraph (B) of section 4091(b)(6), as redesignated by section 11211, is amended by striking "January 1, 1991" and inserting "January 1, 1996".

(B) Paragraph (5) of section 4041(c) is amended by striking "December 31, 1990" and inserting "December 31, 1995".

(3) DEPOSITS INTO TRUST FUND.—Subsection (b) of section 9502 (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended by striking "January 1, 1991" each place it appears and inserting "January 1, 1996".

(4) EXPENDITURE PURPOSES TO INCLUDE THE FEDERAL AVIATION ADMINISTRATION RESEARCH, ENGINEERING, AND DEVELOPMENT AUTHORIZATION ACT OF 1990 AND THE AVIATION SAFETY AND CAPACITY EXPANSION ACT OF 1990.—Subparagraph (A) of section 9502(d)(1) is amended by striking "(as such Acts were in effect on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987)" and inserting "or the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 or the Aviation Safety and Capacity Expansion Act of 1990 (as such Acts were in effect on the date of the enactment of the Aviation Safety and Capacity Expansion Act of 1990)".

(e) REPEAL OF REDUCTION IN RATES.—

(1) Section 4283 (relating to reduction in aviation related taxes in certain cases) is hereby repealed.

(2) The table of sections for part III of subchapter C of chapter 33 is amended by striking the item relating to section 4283.

(3) Subsection (c) of section 4041 is amended by striking paragraph (6).

SEC. 11214. INCREASE IN HARBOR MAINTENANCE TAX.

(a) IN GENERAL.—Subsection (b) of section 4461 is amended by striking "0.04 percent" and inserting "0.125 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1991.

SEC. 11215. EXTENSION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES.

(a) IN GENERAL.—Paragraph (2) of section 4081(d) is amended to read as follows:

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on December 1, 1990.

SEC. 11216. AMENDMENTS TO GAS GUZZLER TAX.

(a) INCREASE IN RATE OF TAX.—Subsection (a) of section 4064 (relating to gas guzzler tax) is amended to read as follows:

"(a) IMPOSITION OF TAX.—There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following table:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 22.5	$0
At least 21.5 but less than 22.5	1,000
At least 20.5 but less than 21.5	1,300
At least 19.5 but less than 20.5	1,700
At least 18.5 but less than 19.5	2,100
At least 17.5 but less than 18.5	2,600
At least 16.5 but less than 17.5	3,000
At least 15.5 but less than 16.5	3,700
At least 14.5 but less than 15.5	4,500
At least 13.5 but less than 14.5	5,400
At least 12.5 but less than 13.5	6,400
Less than 12.5	7,700."

(b) LIMOUSINES INCLUDED WITHOUT REGARD TO WEIGHT.—Subparagaph (A) of section 4064(b)(1) is amended by adding at the end thereof the following new sentence:

"In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii)."

(c) REPEAL OF EXCEPTION FOR LENGTHENING EXISTING AUTOMOBILES.—Subparagraph (B) of section 4064(b)(5) (defining manufacturer) is amended to read as follows:

"(B) LENGTHENING TREATED AS MANUFACTURE.—For purposes of this section, subchapter G of this chapter, and section 6416(b)(3), the lengthening of an automobile by any person shall be treated as the manufacture of an automobile by such person."

(d) REPEAL OF SPECIAL RULES FOR SMALL MANUFACTURERS.—Section 4064 is amended by striking subsection (d).

(e) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to sales after December 31, 1990.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on January 1, 1991.

(3) SUBSECTION (d).—The amendment made by subsection (d) shall take effect on the date of the enactment of this section.

SEC. 11217. TELEPHONE EXCISE TAX MODIFIED AND MADE PERMANENT.

(a) TAX MADE PERMANENT.—Paragraph (2) of section 4251(b) is amended by striking "percent;" and all that follows and inserting "percent."

(b) ACCELERATION OF DEPOSIT REQUIREMENTS.—

(1) IN GENERAL.—Subsection (e) of section 6302 (relating to time for deposit of taxes of airline tickets) is amended—

(A) by inserting "COMMUNICATIONS SERVICES AND" before "AIRLINE", and

(B) by inserting "section 4251 or" before "subsection (a) or (b)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payments of taxes considered collected during semimonthly periods beginning after December 31, 1990.

(c) ONE-TIME FILING OF TELEPHONE EXCISE TAX EXEMPTION CERTIFICATES.—

(1) IN GENERAL.—Section 4253 is amended by adding at the end thereof the following new subsection:

"(k) FILING OF EXEMPTION CERTIFICATES.—

"(1) IN GENERAL.—In order to claim an exemption under subsection (c), (h), (i), or (j), a person shall provide to the provider of communications services a statement (in such form and manner as the Secretary may provide) certifying that such person is entitled to such exemption.

"(2) DURATION OF CERTIFICATE.—Any statement provided under paragraph (1) shall remain in effect until—

"(A) the provider of communications services has actual knowledge that the information provided in such statement is false, or

"(B) such provider is notified by the Secretary that the provider of the statement is no longer entitled to an exemption described in paragraph (1).

If any information provided in such statement is no longer accurate, the person providing such statement shall inform the provider of communications services within 30 days of any change of information."

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to any claim for exemption made after the date of the enactment of this Act.

(B) DURATION OF EXISTING CERTIFICATES.—Any annual certificate of exemption effective on the date of the enactment of this Act shall remain effective until the end of the annual period.

SEC. 11218. FLOOR STOCKS TAX TREATMENT OF ARTICLES IN FOREIGN TRADE ZONES.

Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, any article which is located in a foreign trade zone on the effective date of any increase in tax under the amendments made by this part or part I shall be subject to floor stocks taxes imposed by such parts if—

(1) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(2) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

PART III—TAXES ON LUXURY ITEMS

SEC. 11221. TAXES ON LUXURY ITEMS.

(a) IN GENERAL.—Chapter 31 (relating to retail excise taxes) is amended by redesignating subchapters A and B as subchapters B and C, respectively, and by inserting before subchapter B (as so redesignated) the following new subchapter:

"SUBCHAPTER A—CERTAIN LUXURY ITEMS

"Part I. Imposition of taxes.

"Part II. Rules of general applicability.

"PART I. IMPOSITION OF TAXES

"Subpart A. Passenger vehicles, boats, and aircraft.

"Subpart B. Jewelry and furs.

"Subpart A—Passenger Vehicles, Boats, and Aircraft

"Sec. 4001. Passenger vehicles.

"Sec. 4002. Boats.

"Sec. 4003. Aircraft.

"Sec. 4004. Rules applicable to subpart A.

"SEC. 4001. PASSENGER VEHICLES.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.

"(b) PASSENGER VEHICLE.—

"(1) IN GENERAL.—For purposes of subsection (a), the term 'passenger vehicle' means any 4-wheeled vehicle—

"(A) which is manufactured primarily for use on public streets, roads, and highways, and

"(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

"(2) SPECIAL RULES.—

"(A) TRUCKS AND VANS.—In the case of a truck or van, paragraph (1)(B) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.

"(B) LIMOUSINES.—In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

"(c) EXCEPTIONS FOR TAXICABS, ETC.—The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

"SEC. 4002. BOATS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any boat a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $100,000.

"(b) EXCEPTIONS.—The tax imposed by this section shall not apply to the sale of any boat for use by the purchaser exclusively in the active conduct of—

"(1) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(2) any other trade or business unless the boat is to be used predominantly in any activity which is of a type generally consid-

ered to constitute entertainment, amusement, or recreation.

"SEC. 4003. AIRCRAFT.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any aircraft a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $250,000.

"(b) AIRCRAFT.—For purposes of this section, the term 'aircraft' means any aircraft—

"(1) which is propelled by a motor, and

"(2) which is capable of carrying 1 or more individuals.

"(c) 80 PERCENT GENERAL BUSINESS USE.—

"(1) IN GENERAL.—The tax imposed by this section shall not apply to the sale of any aircraft if 80 percent of the use by the purchaser is in any trade or business.

"(2) PROOF OF BUSINESS USE.—On the income tax return for each of the 1st 2 taxable years ending after the date an aircraft on which no tax was imposed by this section by reason of paragraph (1) was placed in service, the taxpayer filing such return shall demonstrate to the satisfaction of the Secretary that the use of such aircraft during each such year met the requirement of paragraph (1).

"(3) IMPOSITION OF LUXURY TAX WHERE FAILURE OF PROOF.—If the requirement of paragraph (2) is not met for either of the taxable years referred to therein, the taxpayer filing such returns shall pay the tax which would (but for paragraph (1)) have been imposed on such aircraft plus interest determined under subchapter C of chapter 67 during the period beginning on the date such tax would otherwise have been imposed. If such taxpayer fails to pay the tax imposed pursuant to the preceding sentence, no deduction shall be allowed under section 168 for any taxable year with respect to the aircraft involved.

"(d) OTHER EXCEPTIONS.—The tax imposed by this section shall not apply to the sale of any aircraft for use by the purchaser exclusively—

"(1) in the aerial application of fertilizers or other substances,

"(2) in the case of a helicopter, in a use described in paragraph (1) or (2) of section 4261(e),

"(3) in a trade or business of providing flight training, or

"(4) in a trade or business of transporting persons or property for compensation or hire.

"SEC. 4004. RULES APPLICABLE TO SUBPART A.

"(a) EXEMPTION FOR LAW ENFORCEMENT USES, ETC.—No tax shall be imposed under this subpart on the sale of any article—

"(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

"(2) to any person for use exclusively in providing emergency medical services.

"(b) SEPARATE PURCHASE OF ARTICLE AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—Except as provided in paragraph (2), if—

"(A) the owner, lessee, or operator of any article taxable under this subpart (determined without regard to price) installs (or causes to be installed) any part or accessory on such article, and

"(B) such installation is not later than the date 6 months after the date the article was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

"(2) LIMITATION.—The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

"(A) the sum of—

"(i) the price of such part or accessory and its installation,

"(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

"(iii) the price for which the passenger vehicle, boat, or aircraft was sold, over

"(B) $30,000 in the case of a passenger vehicle, $100,000 in the case of a boat, and $250,000 in the case of an aircraft.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply if—

"(A) the part or accessory installed is a replacement part or accessory, or

"(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the taxable article does not exceed $200 (or such other amount or amounts as the Secretary may by regulation prescribe).

"(4) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

"(c) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF ARTICLES PURCHASED TAX-FREE.—

"(1) IN GENERAL.—If—

"(A) no tax was imposed under this subchapter on the 1st retail sale of any article by reason of its exempt use, and

"(B) within 2 years after the date of such 1st retail sale, such article is resold by the purchaser or such purchaser makes a substantial non-exempt use of such article,

then such sale or use of such article by such purchaser shall be treated as the 1st retail sale of such article for a price equal to its fair market value at the time of such sale or use.

"(2) EXEMPT USE.—For purposes of this subsection, the term 'exempt use' means any use of an article if the 1st retail sale of such article is not taxable under this subchapter by reason of such use.

"Subpart B—Jewelry and Furs

"Sec. 4006. Jewelry.

"Sec. 4007. Furs.

"SEC. 4006. JEWELRY.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any jewelry a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $10,000.

"(b) JEWELRY.—For purposes of subsection (a), the term 'jewelry' means all articles commonly or commercially known as jewelry, whether real or imitation, including watches.

"(c) MANUFACTURE FROM CUSTOMER'S MATERIAL.—If—

"(1) a person, in the course of a trade or business, produces jewelry from material furnished directly or indirectly by a customer, and

"(2) the jewelry is for the use of, and not for resale by, such customer,

the delivery of such jewelry to such customer shall be treated as the 1st retail sale of such jewelry for a price equal to its fair market value at the time of such delivery.

"SEC. 4007. FURS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of the following articles a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $10,000:

"(1) Articles made of fur on the hide or pelt.

"(2) Articles of which such fur is a major component.

"(b) MANUFACTURE FROM CUSTOMER'S MATERIAL.—If—

"(1) a person, in the course of a trade or business, produces an article of the kind described in subsection (a) from fur on the hide or pelt furnished, directly or indirectly, by a customer, and

"(2) the article is for the use of, and not for resale by, such customer,

the delivery of such article to such customer shall be treated as the 1st retail sale of such article for a price equal to its fair market value at the time of such delivery.

"PART II—RULES OF GENERAL APPLICABILITY

"Sec. 4011. Definitions and special rules.

"Sec. 4012. Termination.

"SEC. 4011. DEFINITIONS AND SPECIAL RULES.

"(a) 1ST RETAIL SALE.—For purposes of this subchapter, the term '1st retail sale' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

"(b) USE TREATED AS SALE.—

"(1) IN GENERAL.—If any person uses an article taxable under this subchapter (including any use after importation) before the 1st retail sale of such article, then such person shall be liable for tax under this subchapter in the same manner as if such article were sold at retail by him.

"(2) EXEMPTION FOR FURTHER MANUFACTURE.—Paragraph (1) shall not apply to use of an article as material in the manufacture or production of, or as a component part of, another article taxable under this subchapter to be manufactured or produced by him.

"(3) EXEMPTION FOR DEMONSTRATION USE OF PASSENGER VEHICLES.—Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator for a potential customer while the potential customer is in the vehicle.

"(4) EXCEPTION FOR USE AFTER IMPORTATION OF CERTAIN ARTICLES.—Paragraph (1) shall not apply to the use of an article after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the article occurred before January 1, 1991, outside the United States.

"(5) COMPUTATION OF TAX.—In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

"(c) LEASES CONSIDERED AS SALES.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by any person shall be considered a sale of such article at retail.

"(2) SPECIAL RULES FOR CERTAIN LEASES OF PASSENGER VEHICLES, BOATS, AND AIRCRAFT.—

"(A) TAX NOT IMPOSED ON SALE FOR LEASING IN A QUALIFIED LEASE.—The sale of a passenger vehicle, boat, or aircraft to a person engaged in a leasing or rental trade or business of the article involved for leasing by such person in a qualified lease shall not be treated as the 1st retail sale of such article.

"(B) QUALIFIED LEASE.—For purposes of subparagraph (A), the term 'qualified lease' means—

"(i) any lease in the case of a boat or an aircraft, and

"(ii) any long-term lease (as defined in section 4052) in the case of any passenger vehicle.

"(C) SPECIAL RULES.—In the case of a qualified lease of an article which is treated as the 1st retail sale of such article—

"(i) DETERMINATION OF PRICE.—The tax under this subchapter shall be computed on the lowest price for which the article is sold by retailers in the ordinary course of trade.

"(ii) PAYMENT OF TAX.—Rules similar to the rules of section 4217(e)(2) shall apply.

"(iii) NO TAX WHERE EXEMPT USE BY LESSEE.—No tax shall be imposed on any lease payment under a qualified lease if the lessee's use of the article under such lease is an exempt use (as defined in section 4004(c)) of such article.

"(d) DETERMINATION OF PRICE.—

"(1) IN GENERAL.—In determining price for purposes of this subchapter—

"(A) there shall be included any charge incident to placing the article in condition ready for use,

"(B) there shall be excluded—

"(i) the amount of the tax imposed by this subchapter,

"(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(iii) the value of any component of such article if—

"(I) such component is furnished by the 1st user of such article, and

"(II) such component has been used before such furnishing, and

"(C) the price shall be determined without regard to any trade-in.

Subparagraph (B)(iii) shall not apply for purposes of the taxes imposed by sections 4006 and 4007.

"(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

"(e) PARTS AND ACCESSORIES SOLD WITH TAXABLE ARTICLE.—Parts and accessories sold on, in connection with, or with the sale of any article taxable under this subchapter shall be treated as part of the article.

"(f) PARTIAL PAYMENTS, ETC.—In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter.

"SEC. 4012. TERMINATION.

"The taxes imposed by this subchapter shall not apply to any sale or use after December 31, 1999."

(b) EXEMPTION FOR EXPORTS.—

(1) The material preceding paragraph (1) of section 4221(a) is amended by striking "section 4051" and inserting "subchapter A or C of chapter 31".

(2) Subsection (a) of section 4221 is amended by adding at the end thereof the following new sentence: "In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply."

(c) EXEMPTION FOR SALES TO THE UNITED STATES.—Section 4293 is amended by inserting "subchapter A of chapter 31," before "section 4041".

(d) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 4221 is amended by striking "section 4053(a)(6)" and inserting "section 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)".

(2) Paragraph (1) of section 4221(d) is amended by striking "the tax imposed by section 4051" and inserting "taxes imposed by subchapter A or C of chapter 31".

(3) Subsection (d) of section 4222 is amended by striking "sections 4053(a)(6)" and inserting "sections 4001(c), 4002(b), 4003(c), 4004(a), 4053(a)(6)".

(e) CLERICAL AMENDMENT.—The table of subchapters for chapter 31 is amended to read as follows:

"Subchapter A. Certain luxury items.

"Subchapter B. Special fuels.

"Subchapter C. Heavy trucks and trailers."

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1991.

(2) EXCEPTION FOR BINDING CONTRACTS.—In determining whether any tax imposed by subchapter A of chapter 31 of the Internal Revenue Code of 1986, as added by this section, applies to any sale after December 31, 1990, there shall not be taken into account the amount paid for any article (or any part or accessory therefor) if the purchaser held on September 30, 1990, a contract (which was binding on such date and at all times thereafter before the purchase) for the purchase of such article (or such part or accessory).

PART IV—4-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND

SEC. 11231. 4-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXTENSION OF TAXES.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "January 1, 1992" and inserting "January 1, 1996":

(A) Section 59A(e)(1) (relating to application of environmental tax).

(B) Paragraphs (1) and (3) of section 4611(e) (relating to application of Hazardous Substance Superfund financing rate).

(2) Paragraph (2) of section 4611(e) of such Code is amended—

(A) by striking "1989" and inserting "1993",

(B) by striking "1990" each place it appears and inserting "1994", and

(C) by striking "1991" each place it appears and inserting "1995".

(b) INCREASE IN AGGREGATE TAX WHICH MAY BE COLLECTED.—Paragraph (3) of section 4611(e) of such Code is amended by striking "$6,650,000,000" each place it appears and inserting "$11,970,000,000" and by striking "December 31, 1991" and inserting "December 31, 1995".

(c) EXTENSION OF REPAYMENT DEADLINE FOR SUPERFUND BORROWING.—Subparagraph (B) of section 9507(d)(3) is amended by striking "December 31, 1991" and inserting "December 31, 1995".

(d) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS TO TRUST FUND.—Subsection (b) of section 517 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507 note) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end thereof the following new paragraphs:

"(6) 1992, $250,000,000,

"(7) 1993, $250,000,000,

"(8) 1994, $250,000,000, and

"(9) 1995, $250,000,000."

Subtitle C—Other Revenue Increases

PART I—INSURANCE PROVISIONS

Subpart A—Provisions Related to Policy Acquisition Costs

SEC. 11301. CAPITALIZATION OF POLICY ACQUISITION EXPENSES.

(a) GENERAL RULE.—Part III of subchapter L of chapter 1 (relating to provisions of general application) is amended by adding at the end thereof the following new section:

"SEC. 848. CAPITALIZATION OF CERTAIN POLICY ACQUISITION EXPENSES.

"(a) GENERAL RULE.—In the case of an insurance company—

"(1) specified policy acquisition expenses for any taxable year shall be capitalized, and

"(2) such expenses shall be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

"(b) 5-YEAR AMORTIZATION FOR FIRST $5,000,000 OF SPECIFIED POLICY ACQUISITION EXPENSES.—

"(1) IN GENERAL.—Paragraph (2) of subsection (a) shall be applied with respect to so much of the specified policy acquisition expenses of an insurance company for any taxable year as does not exceed $5,000,000 by substituting '60-month' for '120-month'.

"(2) PHASE-OUT.—If the specified policy acquisition expenses of an insurance company exceed $10,000,000 for any taxable year, the $5,000,000 amount under paragraph (1) shall be reduced (but not below zero) by the amount of such excess.

"(3) SPECIAL RULE FOR MEMBERS OF CONTROLLED GROUP.—In the case of any controlled group—

"(A) all insurance companies which are members of such group shall be treated as 1 company for purposes of this subsection, and

"(B) the amount to which paragraph (1) applies shall be allocated among such companies in such manner as the Secretary may prescribe.

For purposes of the preceding sentence, the term 'controlled group' means any controlled group of corporations as defined in section 1563(a); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply, and subsection (b)(2)(C) of section 1563 shall not apply to the extent it excludes a foreign corporation to which section 842 applies.

"(4) EXCEPTION FOR ACQUISITION EXPENSES ATTRIBUTABLE TO CERTAIN REINSURANCE CONTRACTS.—Paragraph (1) shall not apply to any specified policy acquisition expenses for any taxable year which are attributable to premiums or other consideration under any reinsurance contract.

"(c) SPECIFIED POLICY ACQUISITION EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'specified policy acquisition expenses' means, with respect to any taxable year, so much of the general deductions for such taxable year as does not exceed the sum of—

"(A) 1.75 percent of the net premiums for such taxable year on specified insurance contracts which are annuity contracts,

"(B) 2.05 percent of the net premiums for such taxable year on specified insurance contracts which are group life insurance contracts, and

"(C) 7.7 percent of the net premiums for such taxable year on specified insurance contracts not described in subparagraph (A) or (B).

"(2) GENERAL DEDUCTIONS.—The term 'general deductions' means the deductions pro-

vided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions) and in part I of subchapter D (sec. 401 and following, relating to pension, profit sharing, stock bonus plans, etc.).

"(d) NET PREMIUMS.—For purposes of this section—

"(1) IN GENERAL.—The term 'net premiums' means, with respect to any category of specified insurance contracts set forth in subsection (c)(1), the excess (if any) of—

"(A) the gross amount of premiums and other consideration on such contracts, over

"(B) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

The rules of section 803(b) shall apply for purposes of the preceding sentence.

"(2) AMOUNTS DETERMINED ON ACCRUAL BASIS.—In the case of an insurance company subject to tax under part II of this subchapter, all computations entering into determinations of net premiums for any taxable year shall be made in the manner required under section 811(a) for life insurance companies.

"(3) TREATMENT OF CERTAIN POLICYHOLDER DIVIDENDS AND SIMILAR AMOUNTS.—Net premiums shall be determined without regard to section 808(e) and without regard to other similar amounts treated as paid to, and returned by, the policyholder.

"(4) SPECIAL RULES FOR REINSURANCE.—

"(A) Premiums and other consideration incurred for reinsurance shall be taken into account under paragraph (1)(B) only to the extent such premiums and other consideration are includible in the gross income of an insurance company taxable under this subchapter or are subject to tax under this chapter by reason of subpart F of part III of subchapter N.

"(B) The Secretary shall prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and the reinsurer.

"(e) CLASSIFICATION OF CONTRACTS.—For purposes of this section—

"(1) SPECIFIED INSURANCE CONTRACT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'specified insurance contract' means any life insurance, annuity, or noncancellable accident and health insurance contract (or any combination thereof).

"(B) EXCEPTIONS.—The term 'specified insurance contract' shall not include—

"(i) any pension plan contract (as defined in section 818(a)),

"(ii) any flight insurance or similar contract, and

"(iii) any qualified foreign contract (as defined in section 807(e)(4) without regard to paragraph (5) of this subsection).

"(2) GROUP LIFE INSURANCE CONTRACT.—The term 'group life insurance contract' means any life insurance contract—

"(A) which covers a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor,

"(B) the premiums for which are determined on a group basis, and

"(C) the proceeds of which are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person.

"(3) TREATMENT OF ANNUITY CONTRACTS COMBINED WITH NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE.—Any annuity contract combined with noncancellable accident and health insurance shall be treated as a noncancellable accident and health insurance contract and not as an annuity contract.

"(4) TREATMENT OF GUARANTEED RENEWABLE CONTRACTS.—The rules of section 816(e) shall apply for purposes of this section.

"(5) TREATMENT OF REINSURANCE CONTRACT.—A contract which reinsures another contract shall be treated in the same manner as the reinsured contract.

"(f) SPECIAL RULE WHERE NEGATIVE NET PREMIUMS.—

"(1) IN GENERAL.—If for any taxable year there is a negative capitalization amount with respect to any category of specified insurance contracts set forth in subsection (c)(1)—

"(A) the amount otherwise required to be capitalized under this section for such taxable year with respect to any other category of specified insurance contracts shall be reduced (but not below zero) by such negative capitalization amount, and

"(B) such negative capitalization amount (to the extent not taken into account under subparagraph (A))—

"(i) shall reduce (but not below zero) the unamortized balance (as of the beginning of such taxable year) of the amounts previously capitalized under subsection (a) (beginning with the amount capitalized for the most recent taxable year), and

"(ii) to the extent taken into account as such a reduction, shall be allowed as a deduction for such taxable year.

"(2) NEGATIVE CAPITALIZATION AMOUNT.—For purposes of paragraph (1), the term 'negative capitalization amount' means, with respect to any category of specified insurance contracts, the percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

"(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

"(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

"(g) TREATMENT OF CERTAIN CEDING COMMISSIONS.—Nothing in any provision of law (other than this section) shall require the capitalization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

"(h) SECRETARIAL AUTHORITY TO ADJUST CAPITALIZATION AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

"(2) ADJUSTMENT TO OTHER CONTRACTS.—If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

"(i) TREATMENT OF QUALIFIED FOREIGN CONTRACTS UNDER ADJUSTED CURRENT EARNINGS PREFERENCE.—For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.

"(j) TRANSITIONAL RULE.—In the case of any taxable year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year."

(b) REPEAL OF SPECIAL TREATMENT OF ACQUISITION EXPENSES UNDER MINIMUM TAX.—Paragraph (4) of section 56(g) is amended by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter L of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 848. Capitalization of certain policy acquisition expenses."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986.

(2) SUBSECTION (b).—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years beginning on or after September 30, 1990, except that, in the case of a small insurance company, such amendment shall apply to taxable years beginning after December 31, 1989. For purposes of this paragraph, the term "small insurance company" means any insurance company which meets the requirements of section 806(a)(3) of the Internal Revenue Code of 1986; except that paragraph (2) of section 806(c) of such Code shall not apply.

(B) SPECIAL RULES FOR YEAR WHICH INCLUDES SEPTEMBER 30, 1990.—In the case of any taxable year which includes September 30, 1990, the amount of acquisition expenses which is required to be capitalized under section 56(g)(4)(F) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (b)) by a company which is not a small insurance company shall be the amount which bears the same ratio to the amount which (but for this subparagraph) would be so required to be capitalized as the number of days in such taxable year before September 30, 1990, bears to the total number of days in such taxable year. A similar reduction shall be made in the amount amortized for such taxable year under such section 56(g)(4)(F).

SEC. 11302. TREATMENT OF CERTAIN NONLIFE RESERVES OF LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—Subsection (e) of section 807 (relating to special rules for computing reserves) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TREATMENT OF CERTAIN NONLIFE RESERVES.—

"(A) IN GENERAL.—The amount taken into account for purposes of subsections (a) and (b) as—

"(i) the opening balance of the items referred to in subparagraph (C), and

"(ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

"(B) TRANSITIONAL RULE.—

"(i) IN GENERAL.—In the case of any taxable year beginning on or after September 30, 1990, and before September 30, 1996, there shall be included in the gross income of any life insurance company an amount equal to 3 1/3 percent of such company's closing balance of the items referred to in subparagraph (C) for its most recent taxable year beginning before September 30, 1990.

"(ii) TERMINATION AS LIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22), if, for any taxable year beginning on or before September 30, 1996, the taxpayer ceases to be a life insurance company, the aggregate inclusions which would have been made under clause (i) for such taxable year and subsequent taxable years but for such cessation shall be taken into account for the taxable year preceding such cessation year.

"(C) DESCRIPTION OF ITEMS.—For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning on or after September 30, 1990.

SEC. 11303. TREATMENT OF LIFE INSURANCE RESERVES OF INSURANCE COMPANIES WHICH ARE NOT LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—Paragraph (4) of section 832(b) (defining premiums earned) is amended by striking "section 807, pertaining" and all that follows down through the period at the end of the first sentence which follows subparagraph (C) and inserting "section 807.".

(b) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(7) is amended—

(1) by striking "amounts included in unearned premiums under the 2nd sentence of such subparagraph" and inserting "insurance contracts described in section 816(b)(1)(B)", and

(2) by striking "such amounts into account" and inserting "such contracts into account".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after September 30, 1990.

(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing reserves—

(A) such change shall be treated as a change in a method of accounting,

(B) such change shall be treated as initiated by the taxpayer,

(C) such change shall be treated as having been made with the consent of the Secretary, and

(D) the net adjustments which are required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's first taxable year beginning on or after September 30, 1990.

(3) COORDINATION WITH SECTION 832(b)(4)(C).—The amendments made by this section shall not affect the application of section 832(b)(4)(C) of the Internal Revenue Code of 1986.

Subpart B—Treatment of Salvage Recoverable

SEC. 11305. TREATMENT OF SALVAGE RECOVERABLE.

(a) GENERAL RULE.—Subparagraph (A) of section 832(b)(5) (defining losses incurred) is amended to read as follows:

"(A) IN GENERAL.—The term 'losses incurred' means losses incurred during the taxable year on insurance contracts computed as follows:

"(i) To losses paid during the taxable year, deduct salvage and reinsurance recovered during the taxable year.

"(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.

"(iii) To the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

The amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Secretary."

(b) CONFORMING AMENDMENT.—Subsection (g) of section 846 is amended by adding "and" at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—

(A) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing losses incurred—

(i) such change shall be treated as a change in a method of accounting,

(ii) such change shall be treated as initiated by the taxpayer, and

(iii) such change shall be treated as having been made with the consent of the Secretary.

(B) ADJUSTMENTS.—In applying section 481 of the Internal Revenue Code of 1986 with respect to the change referred to in subparagraph (A)—

(i) only 13 percent of the net amount of adjustments (otherwise required by such section 481 to be taken into account by the taxpayer) shall be taken into account, and

(ii) the portion of such net adjustments which is required to be taken into account by the taxpayer (after the application of clause (i)) shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's 1st taxable year beginning after December 31, 1989.

(3) TREATMENT OF COMPANIES WHICH TOOK INTO ACCOUNT SALVAGE RECOVERABLE.—In the case of any insurance company which took into account salvage recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of such last taxable year shall be allowed as a deduction ratably over its 1st 4 taxable years beginning after December 31, 1989.

(4) SPECIAL RULE FOR OVERESTIMATES.—If for any taxable year beginning after December 31, 1989—

(A) the amount of the section 481 adjustment which would have been required without regard to paragraph (2) and any discounting, exceeds

(B) the sum of the amount of salvage recovered taken into account under section 832(b)(5)(A)(i) for the taxable year and any preceding taxable year beginning after December 31, 1989, attributable to losses incurred with respect to any accident year beginning before 1990 and the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such losses,

87 percent of such excess (adjusted for discounting used in determining the amount of salvage recoverable as of the close of the last taxable year of the taxpayer beginning before January 1, 1990) shall be included in gross income for such taxable year.

(5) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1989, shall be increased by the amount of the section 481 adjustment which would have been required but for paragraph (2). For purposes of applying sections 56, 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, earnings and profits of a corporation shall be determined by applying the principles of paragraph (2)(B).

Subpart C—Waiver of Estimated Tax Penalties

SEC. 11307. WAIVER OF ESTIMATED TAX PENALTIES.

No addition to tax shall be made under section 6655 of the Internal Revenue Code of 1986 for any period before March 16, 1991, with respect to any underpayment to the extent such underpayment was created or increased by any provision of this part.

PART II—COMPLIANCE PROVISIONS

SEC. 11311. SUSPENSION OF STATUTE OF LIMITATIONS DURING PROCEEDINGS TO ENFORCE CERTAIN SUMMONSES.

(a) GENERAL RULE.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) EXTENSION IN CASE OF CERTAIN SUMMONSES.—

"(1) IN GENERAL.—If any designated summons is issued by the Secretary with respect to any return of tax by a corporation, the running of any period of limitations provided in section 6501 on the assessment of such tax shall be suspended—

"(A) during any judicial enforcement period—

"(i) with respect to such summons, or

"(ii) with respect to any other summons which is issued during the 30-day period which begins on the date on which such designated summons is issued and which relates to the same return as such designated summons, and

"(B) if the court in any proceeding referred to in paragraph (3) requires any compliance with a summons referred to in subparagraph (A), during the 120-day period beginning with the 1st day after the close of the suspension under subparagraph (A).

If subparagraph (B) does not apply, such period shall in no event expire before the 60th day after the close of the suspension under subparagraph (A).

"(2) DESIGNATED SUMMONS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'designated summons' means any summons issued for purposes of determining the amount of any tax imposed by this title if—

"(i) such summons is issued at least 60 days before the day on which the period prescribed in section 6501 for the assessment of such tax expires (determined with regard to extensions), and

"(ii) such summons clearly states that it is a designated summons for purposes of this subsection.

"(B) LIMITATION.—A summons which relates to any return shall not be treated as a designated summons if a prior summons which relates to such return was treated as a designated summons for purposes of this subsection.

"(3) JUDICIAL ENFORCEMENT PERIOD.—For purposes of this subsection, the term 'judicial enforcement period' means, with respect to any summons, the period—

"(A) which begins on the day on which a court proceeding with respect to such summons is brought, and

"(B) which ends on the day on which there is a final resolution as to the summoned person's response to such summons."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any tax (whether imposed before, on, or after the date of the enactment of this Act) if the period prescribed by section 6501 of the Internal Revenue Code of 1986 for the assessment of such tax (determined with regard to extensions) has not expired on such date of the enactment.

SEC. 11312. ACCURACY-RELATED PENALTY TO APPLY TO SECTION 482 ADJUSTMENTS.

(a) GENERAL RULE.—Subsection (e) of section 6662 (defining substantial valuation overstatement under chapter 1) is amended to read as follows:

"(e) SUBSTANTIAL VALUATION MISSTATEMENT UNDER CHAPTER 1.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial valuation misstatement under chapter 1 if—

"(A) the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or

"(B)(i) the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or

"(ii) the net section 482 transfer price adjustment for the taxable year exceeds $10,000,000.

"(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation misstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

"(3) NET SECTION 482 TRANSFER PRICE ADJUSTMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'net section 482 transfer price adjustment' means, with respect to any taxable year, the net increase in taxable income for the taxable year (determined without regard to any amount carried to such taxable year from another taxable year) resulting from adjustments under section 482 in the price for any property or services (or for the use of property).

"(B) CERTAIN ADJUSTMENTS EXCLUDED IN DETERMINING THRESHOLD.—For purposes of determining whether the $10,000,000 threshold requirement of paragraph (1)(B)(ii) is met, there shall be excluded—

"(i) any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if it is shown that there was a reasonable cause for the taxpayer's determination of such price and that the taxpayer acted in good faith with respect to such price, and

"(ii) any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any of such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

"(C) SPECIAL RULE.—If the regular tax (as defined in section 55(c)) imposed by chapter 1 on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of this paragraph."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 6662(b) is amended to read as follows:

"(3) Any substantial valuation misstatement under chapter 1."

(2) Subparagraph (A) of section 6662(h)(2) is amended to read as follows:

"(A) any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting—

"(i) '400 percent' for '200 percent' each place it appears,

"(ii) '25 percent' for '50 percent', and

"(iii) '$20,000,000' for '$10,000,000',".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 11313. TREATMENT OF PERSONS PROVIDING SERVICES.

(a) GENERAL RULE.—Subsection (n) of section 6103 (relating to certain other persons) is amended—

(1) by striking "and the programming" and inserting "the programming", and

(2) by inserting after "of equipment," the following "and the providing of other services,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 11314. APPLICATION OF AMENDMENTS MADE BY SECTION 7403 OF REVENUE RECONCILIATION ACT OF 1989 TO TAXABLE YEARS BEGINNING ON OR BEFORE JULY 10, 1989.

(a) GENERAL RULE.—The amendments made by section 7403 of the Revenue Reconciliation Act of 1989 shall apply to—

(1) any requirement to furnish information under section 6038A(a) of the Internal Revenue Code of 1986 (as amended by such section 7403) if the time for furnishing such information under such section is after the date of the enactment of this Act,

(2) any requirement under such section 6038A(a) to maintain records which were in existence on or after March 20, 1990,

(3) any requirement to authorize a corporation to act as a limited agent under section 6038A(e)(1) of such Code (as so amended) if the time for authorizing such action is after the date of the enactment of this Act, and

(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began. Such amendments shall also apply in any case to which they would apply without regard to this section.

(b) CONTINUATION OF OLD FAILURES.—In the case of any failure with respect to a taxable year beginning on or before July 10, 1989, which first occurs on or before the date of the enactment of this Act but which continues after such date of enactment, section 6038A(d)(2) of the Internal Revenue Code of 1986 (as amended by subsection (c) of such section 7403) shall apply for purposes of determining the amount of the penalty imposed for 30-day periods referred to in such section 6038A(d)(2) which begin after the date of the enactment of this Act.

SEC. 11315. OTHER REPORTING REQUIREMENTS.

(a) GENERAL RULE.—Subpart A of part III of subchapter A of chapter 61 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6038B the following new section:

"SEC. 6038C. INFORMATION WITH RESPECT TO FOREIGN CORPORATIONS ENGAGED IN U.S. BUSINESS.

"(a) REQUIREMENT.—If a foreign corporation (hereinafter in this section referred to as the 'reporting corporation') is engaged in a trade or business within the United States at any time during a taxable year—

"(1) such corporation shall furnish (at such time and in such manner as the Secretary shall by regulations prescribe) the information described in subsection (b), and

"(2) such corporation shall maintain (at the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the liability of such corporation for tax under this title as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

"(b) REQUIRED INFORMATION.—For purposes of subsection (a), the information described in this subsection is—

"(1) the information described in section 6038A(b), and

"(2) such other information as the Secretary may prescribe by regulations relating to any item not directly connected with a transaction for which information is required under paragraph (1).

"(c) PENALTY FOR FAILURE TO FURNISH INFORMATION OR MAINTAIN RECORDS.—The provisions of subsection (d) of section 6038A shall apply to—

"(1) any failure to furnish (within the time prescribed by regulations) any information described in subsection (b), and

"(2) any failure to maintain (or cause another to maintain) records as required by subsection (a),

in the same manner as if such failure were a failure to comply with the provisions of section 6038A.

"(d) ENFORCEMENT OF REQUESTS FOR CERTAIN RECORDS.—

"(1) AGREEMENT TO TREAT CORPORATION AS AGENT.—The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who

is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with respect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

"(2) RULES WHERE INFORMATION NOT FURNISHED.—If—

"(A) for purposes of determining the amount of the reporting corporation's liability for tax under this title, the Secretary issues a summons to such corporation to produce (either directly or as an agent for a related party who is a foreign person) any records or testimony,

"(B) such summons is not quashed in a proceeding begun under paragraph (4) of section 6038A(e) (as made applicable by paragraph (4) of this subsection) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

"(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which such summons relates (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which the records relate.

"(3) APPLICABLE RULES.—If the rules of this paragraph apply to any transaction or item, the treatment of such transaction (or the amount and treatment of any such item) shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

"(4) JUDICIAL PROCEEDINGS.—The provisions of section 6038A(e)(4) shall apply with respect to any summons referred to in paragraph (2)(A); except that subparagraph (D) of such section shall be applied by substituting 'transaction or item' for 'transaction'.

"(e) DEFINITIONS.—For purposes of this section, the terms 'related party', 'foreign person', and 'records' have the respective meanings given to such terms by section 6038A(c)."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6038A(a) is amended by striking "or is a foreign corporation engaged in trade or business within the United States".

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038B the following new item:

"Sec. 6038C. Information with respect to foreign corporations engaged in U.S. business."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any requirement to furnish information under section 6038C(a) of the Internal Revenue Code of 1986 (as added by this section) if the time for furnishing such information under such section is after the date of the enactment of this Act,

(2) any requirement under such section 6038C(a) to maintain records which were in existence on or after March 20, 1990,

(3) any requirement to authorize a corporation to act as a limited agent under section 6038C(d)(1) of such Code (as so added) if the time for authorizing such action is after the date of the enactment of this Act, and

(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began.

SEC. 11316. STUDY OF SECTION 482.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall conduct a study of the application and administration of section 482 of the Internal Revenue Code of 1986. Such study shall include examination of—

(1) the effectiveness of the amendments made by this part in increasing levels of compliance with such section 482,

(2) use of advanced determination agreements with respect to issues under such section 482,

(3) possible legislative or administrative changes to assist the Internal Revenue Service in increasing compliance with such section 482, and

(4) coordination of the administration of such section 482 with similar provisions of foreign tax laws and with domestic nontax laws.

(b) REPORT.—Not later than March 1, 1992, the Secretary of the Treasury or his delegate shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 11317. 10-YEAR PERIOD OF LIMITATION ON COLLECTION AFTER ASSESSMENT.

(a) IN GENERAL.—Subsection (a) of section 6502 (relating to collection after assessment) is amended—

(1) by striking "6 years" in paragraph (1) and inserting "10 years", and

(2) by striking "6-year period" each place it appears in paragraph (2) and inserting "10-year period".

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 6323(g) is amended by striking "6 years" each place it appears and inserting "10 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) taxes assessed after the date of the enactment of this Act, and

(2) taxes assessed on or before such date if the period specified in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by subsection (a)) for collection of such taxes has not expired as of such date.

SEC. 11318. RETURN REQUIREMENT WHERE CASH RECEIVED IN TRADE OR BUSINESS.

(a) CERTAIN MONETARY INSTRUMENTS TREATED AS CASH.—Subsection (d) of section 6050I (relating to returns relating to cash received in trade or business) is amended to read as follows:

"(d) CASH INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—For purposes of this section, the term 'cash' includes—

"(1) foreign currency, and

"(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B)."

(b) INCREASE IN PENALTY FOR INTENTIONAL DISREGARD OF REPORTING REQUIREMENT.—Paragraph (2) of section 6721(e) (relating to penalty for intentional disregard) is amended—

(1) by inserting "6050I," after "6050H," in subparagraph (A),

(2) by striking "or" at the end of subparagraph (A),

(3) by striking "and" at the end of subparagraph (B) and inserting "or", and

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of a return required to be filed under section 6050I(a) with respect to any transaction (or related transactions), the greater of—

"(i) $25,000, or

"(ii) the amount of cash (within the meaning of section 6050I(d)) received in such transaction (or related transactions) to the extent the amount of such cash does not exceed $100,000, and".

(c) CLARIFICATION OF APPLICATION OF PROVISION PROHIBITING EVASION TECHNIQUES.—The heading of subsection (f) of section 6050I is amended to read as follows:

"(f) STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.—".

(d) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the operation of section 6050I of the Internal Revenue Code of 1986. Such study shall include an examination of—

(1) the extent of compliance with the provisions of such section,

(2) the effectiveness of the penalties in ensuring compliance with the provisions of such section,

(3) methods to increase compliance with the provisions of such section and ways Form 8300 could be simplified, and

(4) appropriate methods to increase the usefulness and availability of information submitted under the provisions of such section.

Not later than March 31, 1991, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this subsection, together with such recommendations as he may deem advisable.

(e) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b) shall apply to amounts received after the date of the enactment of this Act.

(2) The amendment made by subsection (c) shall take effect on the date of the enactment of this Act.

(3) Not later than June 1, 1991, the Secretary of the Treasury or his delegate shall prescribe regulations under section 6050I(d)(2) of the Internal Revenue Code of 1986 (as amended by this section).

SEC. 11319. 5-YEAR EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) GENERAL RULE.—Subsection (c) of section 10511 of the Revenue Act of 1987 (relating to fees for requests for ruling, determination, and similar letters) is amended by adding at the end thereof the following new sentence: "Subsection (a) shall also apply with respect to requests made after September 30, 1990, and before October 1, 1995."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on September 29, 1990, except that no advance payment shall be required for any fee for any requests filed after September 29, 1990, and before the 30th day after the date of the enactment of this Act.

PART III—CORPORATE PROVISIONS

SEC. 11321. RECOGNITION OF GAIN BY DISTRIBUTING CORPORATION IN CERTAIN SECTION 355 TRANSACTIONS.

(a) GENERAL RULE.—Section 355 (relating to distribution of stock and securities of a controlled corporation) is amended by striking subsection (c) and inserting the following new subsections:

"(c) TAXABILITY OF CORPORATION ON DISTRIBUTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

"(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

"(A) IN GENERAL.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) QUALIFIED PROPERTY.—For purposes of subparagraph (A), the term 'qualified property' means any stock or securities in the controlled corporation.

"(C) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

"(d) RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONTROLLED CORPORATION.—

"(1) IN GENERAL.—In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

"(2) DISQUALIFIED DISTRIBUTION.—For purposes of this subsection, the term 'disqualified distribution' means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution—

"(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

"(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

"(3) DISQUALIFIED STOCK.—For purposes of this subsection, the term 'disqualified stock' means—

"(A) any stock in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, and

"(B) any stock in any controlled corporation—

"(i) acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, or

"(ii) received in the distribution to the extent attributable to distributions on—

"(I) stock described in subparagraph (A), or

"(II) any securities in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution.

"(4) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection, the term '50-percent or greater interest' means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

"(5) PURCHASE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'purchase' means any acquisition but only if—

"(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

"(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

"(B) CERTAIN SECTION 351 EXCHANGES TREATED AS PURCHASES.—The term 'purchase' includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for—

"(i) any cash or cash item,

"(ii) any marketable stock or security, or

"(iii) any debt of the transferor.

"(C) CARRYOVER BASIS TRANSACTIONS.—If—

"(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

"(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,

such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such other person.

"(6) SPECIAL RULE WHERE SUBSTANTIAL DIMINUTION OF RISK.—

"(A) IN GENERAL.—If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in subparagraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

"(B) PROPERTY TO WHICH SUSPENSION APPLIES.—This paragraph applies to any stock or securities for any period during which the holder's risk of loss with respect to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by—

"(i) an option,

"(ii) a short sale,

"(iii) any special class of stock, or

"(iv) any other device or transaction.

"(7) AGGREGATION RULES.—

"(A) IN GENERAL.—For purposes of this subsection, a person and all persons related to such person (within the meaning of 267(b) or 707(b)(1)) shall be treated as one person.

"(B) PERSONS ACTING PURSUANT TO PLANS OR ARRANGEMENTS.—If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this subsection.

"(8) ATTRIBUTION FROM ENTITIES.—

"(A) IN GENERAL.—Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any corporation (determined by substituting '10 percent' for '50 percent' in subparagraph (C) of such paragraph (2) and by treating any reference to stock as including a reference to securities).

"(B) DEEMED PURCHASE RULE.—If—

"(i) any person acquires by purchase an interest in any entity, and

"(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

"(B) regulations modifying the definition of the term 'purchase'."

(b) TECHNICAL AMENDMENT.—Subsection (c) of section 361 is amended by adding at the end thereof the following new paragraph:

"(5) CROSS REFERENCE.—

"For provision providing for recognition of gain in certain distributions, see section 355(d)."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to distributions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any distribution pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such distribution.

(3) TRANSITIONAL RULES.—For purposes of subparagraphs (A) and (B) of section 355(d)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), an acquisition shall be treated as occurring on or before October 9, 1990, if—

(A) such acquisition is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition,

(B) such acquisition is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

(C) such acquisition is pursuant to a transaction—

(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

SEC. 11322. MODIFICATIONS TO REGULATIONS ISSUED UNDER SECTION 305(c).

(a) GENERAL RULE.—Subsection (c) of section 305 (relating to certain transactions treated as distributions) is amended by adding at the end thereof the following new sentence: "Regulations prescribed under the preceding sentence shall provide that—

"(1) where the issuer of stock is required to redeem the stock at a specified time or the holder of stock has the option to require the issuer to redeem the stock, a redemption premium resulting from such requirement or option shall be treated as reasonable only if the amount of such premium does not exceed the amount determined under the principles of section 1273(a)(3),

"(2) a redemption premium shall not fail to be treated as a distribution (or series of distributions) merely because the stock is callable, and

"(3) in any case in which a redemption premium is treated as a distribution (or series of distributions), such premium shall be taken into account under principles similar to the principles of section 1272(a)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to stock issued after October 9, 1990.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any stock issued after October 9, 1990, if—

(A) such stock is issued pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance,

(B) such stock is issued pursuant to a registration or offering statement filed on or before October 9, 1990, with a Federal or State agency regulating the offering or sale of securities and such stock is issued before the date 90 days after the date of such filing, or

(C) such stock is issued pursuant to a plan filed on or before October 9, 1990, in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986).

SEC. 11323. MODIFICATIONS TO SECTION 1060.

(a) EFFECT OF ALLOCATION AGREEMENTS.—Subsection (a) of section 1060 (relating to special allocation rules for certain asset allocations) is amended by adding at the end thereof the following new sentence: "If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate."

(b) INFORMATION REQUIRED IN CASE OF CERTAIN TRANSFERS OF INTEREST IN ENTITIES.—

(1) IN GENERAL.—Section 1060 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) INFORMATION REQUIRED IN CASE OF CERTAIN TRANSFERS OF INTERESTS IN ENTITIES.—

"(1) IN GENERAL.—If—

"(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

"(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

"(2) 10-PERCENT OWNER.—For purposes of this subsection—

"(A) IN GENERAL.—The term '10-percent owner' means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

"(B) CONSTRUCTIVE OWNERSHIP.—Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

"(3) RELATED PERSON.—For purposes of this subsection, the term 'related person' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner."

(2) TECHNICAL AMENDMENT.—Clause (x) of section 6724(d)(1)(B) is amended by striking "section 1060(b)", and inserting "subsection (b) or (e) of section 1060".

(c) INFORMATION REQUIRED IN SECTION 338(h)(10) TRANSACTIONS.—

(1) IN GENERAL.—Paragraph (10) of section 338(h) is amended by adding at the end thereof the following new subparagraph:

"(C) INFORMATION REQUIRED TO BE FURNISHED TO THE SECRETARY.—Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

"(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

"(ii) Any modification of the amount described in clause (i).

"(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph."

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 6724(d)(1) is amended by striking "or" at the end of clause (x), by striking the period at the end of clause (xi) and inserting ", or", and by inserting after clause (xi) the following new clause:

"(xii) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss)."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to acquisitions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.

SEC. 11324. MODIFICATION TO CORPORATION EQUITY REDUCTION LIMITATIONS ON NET OPERATING LOSS CARRYBACKS.

(a) REPEAL OF EXCEPTION FOR ACQUISITIONS OF SUBSIDIARIES.—Clause (ii) of section 172(m)(3)(B) (relating to exceptions) is amended to read as follows:

"(ii) EXCEPTION.—The term 'major stock acquisition' does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to acquisitions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.

SEC. 11325. ISSUANCE OF DEBT OR STOCK IN SATISFACTION OF INDEBTEDNESS.

(a) ISSUANCE OF DEBT INSTRUMENT.—

(1) Subsection (e) of section 108 (relating to general rules for discharge of indebtedness) is amended by adding at the end thereof the following new paragraph:

"(11) INDEBTEDNESS SATISFIED BY ISSUANCE OF DEBT INSTRUMENT.—

(A) IN GENERAL.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) ISSUE PRICE.—For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter."

(2) Subsection (a) of section 1275 is amended by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) LIMITATION ON STOCK FOR DEBT EXCEPTION.—

(1) IN GENERAL.—Subparagraph (B) of section 108(e)(10) is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN STOCK IN TITLE 11 CASES AND INSOLVENT DEBTORS.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any transfer of stock of the debtor (other than disqualified stock)—

"(I) by a debtor in a title 11 case, or

"(II) by any other debtor but only to the extent such debtor is insolvent.

"(ii) DISQUALIFIED STOCK.—For purposes of clause (i), the term 'disqualified stock' means any stock with a stated redemption price if—

"(I) such stock has a fixed redemption date,

"(II) the issuer of such stock has the right to redeem such stock at one or more times, or

"(III) the holder of such stock has the right to require its redemption at one or more times."

(2) CONFORMING AMENDMENT.—Paragraph (8) of section 108(e) is amended by adding at the end thereof the following new sentence:

"Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to debt instruments

issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

(D) is pursuant to a transaction—

(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

PART IV—EMPLOYMENT TAX PROVISIONS

SEC. 11331. INCREASE IN DOLLAR LIMITATION ON AMOUNT OF WAGES SUBJECT TO HOSPITAL INSURANCE TAX.

(a) HOSPITAL INSURANCE TAX.—

(1) IN GENERAL.—Paragraph (1) of section 3121(a) is amended—

(A) by striking "contribution and benefit base (as determined under section 230 of the Social Security Act)" each place it appears and inserting "applicable contribution base (as determined under subsection (x))", and

(B) by striking "such contribution and benefit base" and inserting "such applicable contribution base".

(2) APPLICABLE CONTRIBUTION BASE.—Section 3121 is amended by adding at the end thereof the following new subsection:

"(x) APPLICABLE CONTRIBUTION BASE.—For purposes of this chapter—

"(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—For purposes of the taxes imposed by sections 3101(a) and 3111(a), the applicable contribution base for any calendar year is the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(2) HOSPITAL INSURANCE.—For purposes of the taxes imposed by section 3101(b) and 3111(b), the applicable contribution base is—

"(A) $125,000 for calendar year 1991, and

"(B) for any calendar year after 1991, the applicable contribution base for the preceding year adjusted in the same manner as is used in adjusting the contribution and benefit base under section 230(b) of the Social Security Act."

(b) SELF-EMPLOYMENT TAX.—

(1) IN GENERAL.—Subsection (b) of section 1402 is amended by striking "the contribution and benefit base (as determined under section 230 of the Social Security Act)" and inserting "the applicable contribution base (as determined under subsection (k))".

(2) APPLICABLE CONTRIBUTION BASE.—Section 1402 is amended by adding at the end thereof the following new subsection:

"(k) APPLICABLE CONTRIBUTION BASE.—For purposes of this chapter—

"(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—For purposes of the tax imposed by section 1401(a), the applicable contribution base for any calendar year is the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(2) HOSPITAL INSURANCE.—For purposes of the tax imposed by section 1401(b), the applicable contribution base for any calendar year is the applicable contribution base determined under section 3121(x)(2) for such calendar year."

(c) RAILROAD RETIREMENT TAX.—Clause (i) of section 3231(e)(2)(B) is amended to read as follows:

"(i) TIER 1 TAXES.—

"(I) IN GENERAL.—Except as provided in subclause (II) of this clause and in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(II) HOSPITAL INSURANCE TAXES.—For purposes of applying so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and for purposes of applying so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b), the term 'applicable base' means for any calendar year the applicable contribution base determined under section 3121(x)(2) for such calendar year."

(d) TECHNICAL AMENDMENT.—

(1) Paragraph (3) of section 6413(c) is amended to read as follows:

"(3) SEPARATE APPLICATION FOR HOSPITAL INSURANCE TAXES.—In applying this subsection with respect to—

"(A) the tax imposed by section 3101(b) (or any amount equivalent to such tax), and

"(B) so much of the tax imposed by section 3201 as is determined at a rate not greater than the rate in effect under section 3101(b), the applicable contribution base determined under section 3121(x)(2) for any calendar year shall be substituted for 'contribution and benefit base (as determined under section 230 of the Social Security Act)' each place it appears."

(2) Sections 3122 and 3125 are each amended by striking "contribution and benefit base limitation" each place it appears and inserting "applicable contribution base limitation".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to 1991 and later calendar years.

SEC. 11332. COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES UNDER SOCIAL SECURITY.

(a) EMPLOYMENT UNDER OASDI.—Paragraph (7) of section 210(a) of the Social Security Act (42 U.S.C. 410(a)(7)) is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the semicolon at the end of subparagraph (E) and inserting ", or"; and

(3) by adding at the end the following new subparagraph:

"(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

"(i) by an individual who is employed to relieve such individual from unemployment;

"(ii) in a hospital, home, or other institution by a patient or inmate thereof;

"(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

"(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

"(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 211(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term 'retirement system' has the meaning given such term by section 218(b)(4);".

(b) EMPLOYMENT UNDER FICA.—Paragraph (7) of section 3121(b) of the Internal Revenue Code of 1986 is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the semicolon at the end of subparagraph (E) and inserting ", or"; and

(3) by adding at the end the following new subparagraph:

"(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

"(i) by an individual who is employed to relieve such individual from unemployment;

"(ii) in a hospital, home, or other institution by a patient or inmate thereof;

"(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

"(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

"(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 1402(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary, the term 'retirement system' has the meaning given such term by section 218(b)(4) of the Social Security Act;".

(c) MANDATORY EXCLUSION OF CERTAIN EMPLOYEES FROM STATE AGREEMENTS.—Section 218(c)(6) of the Social Security Act (42 U.S.C. 418(c)(6)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting in lieu thereof ", and"; and

(3) by adding at the end the following new subparagraph:

"(F) service described in section 210(a)(7)(F) which is included as 'employment' under section 210(a).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to service performed after July 1, 1991.

SEC. 11333. EXTENSION OF FUTA SURTAX.

(a) IN GENERAL.—Section 3301 (relating to rate of FUTA tax) is amended—

(1) by striking "1988, 1989, and 1990" in paragraph (1) and inserting "1988 through 1995", and

(2) by striking "1991" in paragraph (2) and inserting "1996".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 1990.

SEC. 11334. DEPOSITS OF PAYROLL TAXES.

(a) IN GENERAL—Subsection (g) of section 6302 is amended to read as follows:

"(g) DEPOSITS OF SOCIAL SECURITY TAXES AND WITHHELD INCOME TAXES.—If, under regulations prescribed by the Secretary, a person is required to make deposits of taxes imposed by chapters 21 and 24 on the basis of eighth-month periods, such person shall make deposits of such taxes on the 1st banking day after any day on which such person has $100,000 or more of such taxes for deposit."

(b) TECHNICAL AMENDMENT.—Paragraph (2) of section 7632(b) of the Revenue Reconciliation Act of 1989 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts required to be deposited after December 31, 1990.

PART V—MISCELLANEOUS PROVISIONS

SEC. 11341. INCREASE IN RATE OF INTEREST PAYABLE ON LARGE CORPORATE UNDERPAYMENTS.

(a) GENERAL RULE.—Section 6621 (relating to determination of rate of interest) is amended by adding at the end thereof the following new subsection:

"(c) INCREASE IN UNDERPAYMENT RATE FOR LARGE CORPORATE UNDERPAYMENTS.—

"(1) IN GENERAL.—For purposes of determining the amount of interest payable under section 6601 on any large corporate underpayment for periods after the applicable date, paragraph (2) of subsection (a) shall be applied by substituting '5 percentage points' for '3 percentage points'.

"(2) APPLICABLE DATE.—For purposes of this subsection—

"(A) IN GENERAL.—The applicable date is the 30th day after the earlier of—

"(i) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

"(ii) the date on which the deficiency notice under section 6212 is sent.

"(B) SPECIAL RULES.—

"(i) NONDEFICIENCY PROCEDURES.—In the case of any underpayment of any tax imposed by this subtitle to which the deficiency procedures do not apply, subparagraph (A) shall be applied by taking into account any letter or notice provided by the Secretary which notifies the taxpayer of the assessment or proposed assessment of the tax.

"(ii) EXCEPTION WHERE AMOUNTS PAID IN FULL.—For purposes of subparagraph (A), a letter or notice shall be disregarded if, during the 30-day period beginning on the day on which it was sent, the taxpayer makes a payment equal to the amount shown as due in such letter or notice, as the case may be.

"(3) LARGE CORPORATE UNDERPAYMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'large corporate underpayment' means any underpayment of a tax by a C corporation for any taxable period if the amount of such underpayment for such period exceeds $100,000.

"(B) TAXABLE PERIOD.—For purposes of subparagraph (A), the term 'taxable period' means—

"(i) in the case of any tax imposed by subtitle A, the taxable year, or

"(ii) in the case of any other tax, the period to which the underpayment relates."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1990.

SEC. 11342. DENIAL OF DEDUCTION FOR UNNECESSARY COSMETIC SURGERY.

(a) IN GENERAL.—Section 213(d) (defining medical care) is attended by adding at the end thereof the following new paragraph:

"(9) COSMETIC SURGERY.—

"(A) IN GENERAL.—The term 'medical care' does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

"(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term 'cosmetic surgery' means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11343. SPECIAL RULES WHERE GRANTOR OF TRUST IS A FOREIGN PERSON.

(a) IN GENERAL.—Section 672 (relating to definitions and rules) is amended by adding at the end thereof the following new subsection:

"(f) SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

"(1) IN GENERAL.—If—

"(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

"(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any trust created after the date of the enactment of this Act, and

(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date.

SEC. 11344. TREATMENT OF CONTRIBUTIONS OF APPRECIATED PROPERTY UNDER MINIMUM TAX.

Subparagraph (B) of section 57(a)(6) (relating to appreciated property charitable deduction) is amended by adding at the end thereof the following new sentence: "In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property."

Subtitle D—1-Year Extension of Certain Expiring Tax Provisions

SEC. 11401. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) EXTENSION.—Paragraph (5) of section 864(f) (relating to allocation of research and experimental expenditures) is amended to read as follows:

"(5) YEARS TO WHICH RULE APPLIES.—This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after August 1, 1989.

SEC. 11402. RESEARCH CREDIT.

(a) EXTENSION.—Subsection (h) of section 41 (relating to credit for increasing research activities) is amended—

(1) by striking "December 31, 1990" each place it appears and inserting "December 31, 1991", and

(2) by striking "January 1, 1991" each place it appears and inserting "January 1, 1992".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 7110 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(2) Subparagraph (D) of section 28(b)(1) is amended by striking "December 31, 1990" and inserting "December 31, 1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 11403. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) REPEAL OF LIMITATION ON GRADUATE LEVEL ASSISTANCE.—Section 127(c)(1) is amended by striking the last sentence.

(c) CONFORMING AMENDMENT.—Subsection (a) of section 7101 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1990.

SEC. 11404. GROUP LEGAL SERVICES PLANS.

(a) IN GENERAL.—Subsection (e) of section 120 (relating to amounts received under qualified group legal services plans) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7102 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 11405. TARGETED JOBS CREDIT.

(a) IN GENERAL.—Paragraph (4) of section 51(c) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Act of 1981 is amended by striking "fiscal year 1982" and all that follows through "necessary" and inserting "each fiscal year such sums as may be necessary".

(c) EFFECTIVE DATES.—

(1) CREDIT.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after September 30, 1990.

(2) AUTHORIZATION.—The amendment made by subsection (b) shall apply to fiscal years beginning after 1990.

SEC. 11406. ENERGY INVESTMENT CREDIT FOR SOLAR AND GEOTHERMAL PROPERTY.

The table contained in section 46(b)(2)(A) (relating to energy percentage) is amended by striking "Sept. 30, 1990" in clauses (viii) and (ix) and inserting "Dec. 31, 1991".

SEC. 11407. LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (o) of section 42 (relating to low-income housing credit) is amended—

(A) by striking "1990" each place it appears in paragraph (1) and inserting "1991", and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) EXCEPTION FOR BOND-FINANCED BUILDINGS IN PROGRESS.—For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1992 if—

"(A) the bonds with respect to such building are issued before 1992,

"(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1991, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1993, and

"(C) such building is placed in service before January 1, 1994."

(2) CONFORMING AMENDMENT.—Subsection (a) of section 7108 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to calendar years after 1989.

(b) ADDITIONAL AMENDMENTS.—

(1) CLARIFICATION OF TENANT RIGHTS OF 1ST REFUSAL.—Paragraph (7) of section 42(i), as redesignated by subtitle G of this title, is amended by striking "the tenants of such building" and inserting "the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency".

(2) MONITORING NONCOMPLIANCE.—Clause (iv) of section 42(m)(1)(B) is amended to read as follows:

"(iv) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of."

(3) TREATMENT OF SECTION 515 RENTS.—Subparagraph (B) of section 42(g)(2) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by inserting after clause (iii) the following new clause:

"(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949."

(4) QUALIFIED CENSUS TRACT DETERMINATIONS WHERE DATA NOT AVAILABLE.—Subclause (I) of section 42(d)(5)(C)(ii) is amended by adding at the end thereof the following new sentence: "If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts."

(5) EXCEPTION TO CREDIT DENIAL FOR MODERATE REHABILITATION ASSISTANCE.—

(A) IN GENERAL.—The last sentence of paragraph (2) of section 42(c), as added by subtitle G of this title, is amended by inserting before the period "(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))".

(6) AFDC RECIPIENT STUDENTS NOT TO DISQUALIFY UNIT.—Subparagraph (D) of section 42(i)(3) is amended to read as follows:

"(D) CERTAIN STUDENTS NOT TO DISQUALIFY UNIT.—A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is—

"(i) a student and receiving assistance under title IV of the Social Security Act, or

"(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws."

(7) INTERMEDIARY COSTS CONSIDERED AT EVALUATION STAGE.—

(A) IN GENERAL.—Subparagraph (B) of section 42(m)(2) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end thereof the following:

"(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas."

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 42(m)(1) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(8) 10-YEAR RULE NOT TO APPLY TO ACQUISITION OF CERTAIN SINGLE-FAMILY RESIDENCES.—Clause (ii) of section 42(d)(2)(D) is amended by striking "or" at the end of subclause (III), by striking the period at the end of subclause (IV) and inserting ", or", and by adding at the end thereof the following:

"(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence."

(9) APPLICATION OF NONPROFIT SET-ASIDE.—Section 42(h)(5) is amended—

(A) by inserting "own an interest in the project (directly or through a partnership) and" after "nonprofit organization is to" in subparagraph (B),

(B) by striking "and" at the end of clause (i) of subparagraph (C), by redesignating clause (ii) of such subparagraph as clause (iii), and by inserting after clause (i) of such subparagraph the following new clause:

"(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and", and

(C) by inserting "ownership and" before "material participation" in subparagraph (D).

(10) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to—

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) TENANT RIGHTS, ETC.—The amendments made by paragraphs (1), (6), (8), and (9) shall take effect on the date of the enactment of this Act.

(C) MONITORING.—The amendment made by paragraph (2) shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

(D) STUDY.—The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(c) ELECTION TO ACCELERATE CREDIT INTO 1990.—

(1) IN GENERAL.—At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.—The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year.

(3) ELECTION.—The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.

SEC. 11408. QUALIFIED MORTGAGE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 143(a)(1) (defining qualified mortgage bond) is amended by striking "September 30, 1990" each place it appears and inserting "December 31, 1991".

(b) MORTGAGE CREDIT CERTIFICATES.—Subsection (h) of section 25 (relating to interest on certain home mortgages) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(c) MODIFICATION AND SIMPLIFICATION OF RECAPTURE RULES.—

(1) MODIFICATION OF HOLDING PERIOD PERCENTAGE.—

(A) Clause (i) of section 143(m)(4)(C) is amended to read as follows:

"(i) IN GENERAL.—The term 'holding period percentage' means the percentage determined in accordance with the following table:

"If the disposition occurs during a year after the testing date which is:	The holding period percentage is:
The 1st such year	20
The 2d such year	40
The 3d such year	60
The 4th such year	80
The 5th such year	100
The 6th such year	80
The 7th such year	60
The 8th such year	40
The 9th such year	20."

(B) Subparagraph (C) of section 143(m)(4) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(C) Subparagraph (B) of section 143(m)(2) is amended by striking "10 years" and inserting "9 years".

(2) MODIFICATION OF RECAPTURE AMOUNT BASED ON TAXPAYER'S INCOME.—

(A) Subparagraph (A) of section 143(m)(4) is amended by striking "and" at the end of clause (i), by striking the period at the end

of clause (ii) and inserting ", and", and by adding at the end thereof the following new clause:

"(iii) the income percentage."

(B) Paragraph (4) of section 143(m) is amended by adding at the end thereof the following new subparagraph:

"(E) INCOME PERCENTAGE.—The term 'income percentage' means the percentage (but not greater than 100 percent) which—

"(i) the excess of—

"(I) the modified adjusted gross income of the taxpayer for the taxable year in which the disposition occurs, over

"(II) the adjusted qualifying income for such taxable year, bears to

"(ii) $5,000.

The percentage determined under the preceding sentence shall be rounded to the nearest whole percentage point (or, if it includes a half of a percentage point, shall be increased to the nearest whole percentage point)."

(C)(i) Paragraph (5) of section 143(m) is amended by striking all that precedes subparagraph (C) and inserting the following:

"(5) ADJUSTED QUALIFYING INCOME; MODIFIED ADJUSTED GROSS INCOME.—

"(A) ADJUSTED QUALIFYING INCOME.—For purposes of paragraph (4), the term 'adjusted qualifying income' means the product of—

"(i) the highest family income which (as of the date the financing was provided) would have met the requirements of subsection (f) with respect to the residents, and

"(ii) 1.05 to the nth power where 'n' equals the number of full years during the period beginning on the date the financing was provided and ending on the date of the disposition.

For purposes of clause (i), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition."

(ii) Subparagraph (C) of section 143(m)(5) is redesignated as subparagraph (B) and is amended by striking "this paragraph" and inserting "paragraph (4)".

(3) OTHER CHANGES.—

(A) Paragraph (1) of section 143(m) is amended by striking "increased by" and all that follows and inserting "increased by the lesser of—

"(A) the recapture amount with respect to such indebtedness, or

"(B) 50 percent of the gain (if any) on the disposition of such interest."

(B) Paragraph (6) of section 143(m) is amended—

(i) by striking "LIMITATION" in the heading and inserting "SPECIAL RULES RELATING TO LIMITATION",

(ii) by striking the first sentence of subparagraph (A), and

(iii) by striking "the preceding sentence" in subparagraph (A) and inserting "paragraph (1)".

(C) Clause (ii) of section 143(m)(7)(B) is amended to read as follows:

"(ii) the adjusted qualifying income (as defined in paragraph (5)) for each category of family size for each year of the 9-year period beginning on the date the financing was provided."

(d) EFFECTIVE DATES.—

(1) BONDS.—The amendment made by subsection (a) shall apply to bonds issued after September 30, 1990.

(2) CERTIFICATES.—The amendment made by subsection (b) shall apply to elections for periods after September 30, 1990.

(3) SIMPLIFICATION.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 4005 of the Technical and Miscellaneous Revenue Act of 1988.

SEC. 11409. QUALIFIED SMALL ISSUE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 144(a)(12) (relating to termination dates) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after September 30, 1990.

SEC. 11410. HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (6) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7107 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 11411. EXPENSES FOR DRUGS FOR RARE CONDITIONS.

Subsection (e) of section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking "December 31, 1990" and inserting "December 31, 1991".

Subtitle E—Energy Incentives

PART I—MODIFICATIONS OF EXISTING CREDITS

SEC. 11501. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.

(a) EXTENSION.—Section 29(f)(1) of the Internal Revenue Code of 1986 (relating to application of section) is amended—

(1) by striking "1991" in clauses (i) and (ii) of subparagraph (A) and inserting "1993", and

(2) by striking "2001" in subparagraph (B) and inserting "2003".

(b) MODIFICATION WITH RESPECT TO GAS FROM TIGHT FORMATIONS.—

(1) IN GENERAL.—Subparagraph (B) of section 29(c)(2) of such Code is amended to read as follows:

"(B) SPECIAL RULES FOR GAS FROM TIGHT FORMATIONS.—The term 'gas produced from a tight formation' shall only include gas from a tight formation—

"(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

"(ii) which is produced from a well drilled after such date of enactment."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to gas produced after December 31, 1990.

(c) COORDINATION WITH ENHANCED OIL RECOVERY CREDIT.—

(1) IN GENERAL.—Section 29(b) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) CREDIT REDUCED FOR ENHANCED OIL RECOVERY CREDIT.—The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of—

"(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

"(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1990.

SEC. 11502. CREDIT FOR SMALL PRODUCERS OF ETHANOL; MODIFICATION OF ALCOHOL FUELS CREDIT.

(a) ALLOWANCE OF CREDIT.—Section 40(a) (relating to alcohol used as fuel) is amended—

(1) by striking the period at the end of paragraph (2) and inserting ", plus", and

(2) by adding at the end thereof the following new paragraph:

"(3) in the case of an eligible small ethanol producer, the small ethanol producer credit."

(b) SMALL ETHANOL PRODUCER CREDIT.—Subsection (b) of section 40 is amended—

(1) by redesignating paragraph (4) as paragraph (5),

(2) by inserting after paragraph (3) the following new paragraph:

"(4) SMALL ETHANOL PRODUCER CREDIT.—

"(A) IN GENERAL.—The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

"(B) QUALIFIED ETHANOL FUEL PRODUCTION.—For purposes of this paragraph, the term 'qualified ethanol fuel production' means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

"(i) is sold by such producer to another person—

"(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

"(II) for use by such other person as a fuel in a trade or business, or

"(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

"(ii) is used or sold by such producer for any purpose described in clause (i).

"(C) LIMITATION.—The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

"(D) ADDITIONAL DISTILLATION EXCLUDED.—The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation."; and

(3) by striking "AND ALCOHOL CREDIT" in the heading for such subsection and inserting ", ALCOHOL CREDIT, AND SMALL ETHANOL PRODUCER CREDIT".

(c) DEFINITIONS AND SPECIAL RULES FOR ELIGIBLE SMALL ETHANOL PRODUCER CREDIT.—Section 40 is amended by adding at the end thereof the following new subsection:

"(g) DEFINITIONS AND SPECIAL RULES FOR ELIGIBLE SMALL ETHANOL PRODUCER CREDIT.—For purposes of this section—

"(1) ELIGIBLE SMALL ETHANOL PRODUCER.—The term 'eligible small ethanol producer' means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to clauses (i) and (ii)) not in excess of 30,000,000 gallons.

"(2) AGGREGRATION RULE.—For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 30,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations

(within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

"(3) PARTNERSHIP, S CORPORATIONS, AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

"(4) ALLOCATION.—For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

"(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary—

"(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 30,000,000 gallons of alcohol during the taxable year, or

"(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year."

(d) ALCOHOL NOT USED AS FUEL.—

(1) IN GENERAL.—Section 40(d)(3) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) PRODUCER CREDIT.—If—

"(i) any credit was determined under subsection (a)(3), and

"(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B), then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol."

(2) CONFORMING AMENDMENT.—Section 40(d)(3)(D), as redesignated by paragraph (1), is amended by striking "subparagraph (A) or (B)" and inserting "subparagraph (A), (B), or (C)".

(e) REDUCED CREDIT FOR ETHANOL BLENDERS.—

(1) IN GENERAL.—Section 40, as amended by subsection (c), is amended by adding at the end thereof the following new subsection:

"(h) REDUCED CREDIT FOR ETHANOL BLENDERS.—In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol—

"(1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting '54 cents' for '60 cents';

"(2) subsection (b)(3) shall be applied by substituting '40 cents' for '45 cents' and '54 cents' for '60 cents'; and

"(3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting '54 cents' for '60 cents' and '40 cents' for '45 cents'."

(2) CONFORMING AMENDMENT.—Section 40(b) is amended by inserting ", and except as provided in subsection (h)" in the matter preceding paragraph (1) thereof.

(f) TERMINATION.—Subsection (e) of section 40 is amended to read as follows:

"(e) TERMINATION.—

"(1) IN GENERAL.—This section shall not apply to any sale or use—

"(A) for any period after December 31, 2000, or

"(B) for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect.

"(2) NO CARRYOVERS TO CERTAIN YEARS AFTER EXPIRATION.—If this section ceases to apply for any period by reason of paragraph (1), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs."

(g) CONFORMING AMENDMENTS TO TARIFF SCHEDULE.—

(1) Heading 9901.00.50 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) is amended—

(A) by striking "15.85¢" each place it appears and inserting "14.27¢",

(B) by striking "12.6¢" and inserting "11.34¢", and

(C) by striking the date in the effective period column and inserting "Before 10/1/2000, except that the rate for articles described in this heading shall not apply during any period before 10/1/2000 during which the Highway Trust Fund financing rate under section 4081(a)(2) of the Internal Revenue Code of 1986 is not in effect."

(2) Heading 9901.00.52 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "6.66¢" each place it appears and inserting "5.99¢",

(B) by striking "5.29¢" and inserting "4.76¢", and

(C) by striking "The earlier of 12/31/92, or the date on which Treasury regulation § 1.40-1 is withdrawn or declared invalid." in the effective period column and inserting: "Before the earlier of 10/1/2000, or the date on which Treas. Reg. § 1.40-1 is withdrawn or declared invalid, except that the rate for articles described in this heading shall not apply during any period before 10/1/2000 during which the Highway Trust Fund financing rate under section 4081(a)(2) of the Internal Revenue Code of 1986 is not in effect."

(h) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to alcohol produced, and sold or used, in taxable years beginning after December 31, 1990.

(2) The amendments made by subsection (g) shall apply to articles entered or withdrawn from warehouse on or after January 1, 1991.

PART II—ENHANCED OIL RECOVERY CREDIT

SEC. 11511. TAX CREDIT FOR ENHANCED OIL RECOVERY.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. ENHANCED OIL RECOVERY CREDIT.

"(a) GENERAL RULE.—For purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

"(b) PHASE-OUT OF CREDIT AS CRUDE OIL PRICES INCREASE.—

"(1) IN GENERAL.—The amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as—

"(A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds $28, bears to

"(B) $6.

"(2) REFERENCE PRICE.—For purposes of this subsection, the term 'reference price' means, with respect to any calendar year, the reference price determined for such calendar year under section 29(d)(2)(C).

"(3) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1991, there shall be substituted for the $28 amount under paragraph (1)(A) an amount equal to the product of—

"(i) $28, multiplied by

"(ii) the inflation adjustment factor for such calendar year.

"(B) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of the preceding sentence, the term 'GNP implicit price deflator' means the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

"(c) QUALIFIED ENHANCED OIL RECOVERY COSTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified enhanced oil recovery costs' means any of the following:

"(A) Any amount paid or incurred during the taxable year for tangible property—

"(i) which is an integral part of a qualified enhanced oil recovery project, and

"(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable under this chapter.

"(B) Any intangible drilling and development costs—

"(i) which are paid or incurred in connection with a qualified enhanced oil recovery project, and

"(ii) with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

"(C) Any qualified tertiary injectant expenses which are paid or incurred in connection with a qualified enhanced oil recovery project and for which a deduction is allowable under section 193 for the taxable year.

"(2) QUALIFIED ENHANCED OIL RECOVERY PROJECT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified enhanced oil recovery project' means any project—

"(i) which involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

"(ii) which is located within the United States (within the meaning of section 638(1)), and

"(iii) with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

"(B) CERTIFICATION.—A project shall not be treated as a qualified enhanced oil recovery project unless the operator submits to the Secretary (at such times and in such manner as the Secretary provides) a certification from a petroleum engineer that the project meets (and continues to meet) the requirements of subparagraph (A).

"(3) AT-RISK LIMITATION.—For purposes of determining qualified enhanced oil recovery

costs, rules similar to the rules of section 49(a)(1), section 49(a)(2), and section 49(b) shall apply.

"(4) SPECIAL RULE FOR CERTAIN GAS DISPLACEMENT PROJECTS.—For purposes of this section, immiscible non-hydrocarbon gas displacement shall be treated as a tertiary recovery method under section 193(b)(3).

"(d) OTHER RULES.—

"(1) DISALLOWANCE OF DEDUCTION.—Any deduction allowable under this chapter for any costs taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such costs.

"(2) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) ELECTION TO HAVE CREDIT NOT APPLY.—

"(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

"(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

"(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe."

(b) ADDITION TO GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Section 38(b) (defining current year business credit) is amended by striking "plus" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", plus", and by adding at the end thereof the following new paragraph:

"(6) the enhanced oil recovery credit under section 43(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF ENHANCED OIL RECOVERY CREDIT BEFORE 1991.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 43(a) (relating to enhanced oil recovery credit) may be carried to a taxable year beginning before January 1, 1991."

(3) DEDUCTION FOR UNUSED CREDIT.—Section 196(c) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(5) the enhanced oil recovery credit determined under section 43(a)."

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 43. Enhanced oil recovery credit."

(2) Subsection (m) of section 6501 is amended by striking "44B" each place it appears and inserting "43 or 44B".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 1990.

(2) SPECIAL RULE FOR SIGNIFICANT EXPANSION OF PROJECTS.—For purposes of section 43(c)(2)(A)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), any significant expansion after December 31, 1990, of a project begun before January 1, 1991, shall be treated as a project with respect to which the first injection commences after December 31, 1990.

PART III—MODIFICATIONS OF PERCENTAGE DEPLETION

SEC. 11521. PERCENTAGE DEPLETION PERMITTED AFTER TRANSFER OF PROVEN PROPERTY.

(a) IN GENERAL.—Subsection (c) of section 613A (relating to limitations on percentage depletion in the case of oil and gas wells) is amended by striking paragraphs (9) and (10) and by redesignating paragraphs (11), (12), and (13) as paragraphs (9), (10), and (11), respectively.

(b) TECHNICAL AMENDMENT.—Paragraph (11) of section 613A(c), as redesignated by subsection (a), is amended by striking subparagraphs (C) and (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after October 11, 1990.

SEC. 11522. NET INCOME LIMITATION ON PERCENTAGE DEPLETION INCREASED FROM 50 PERCENT TO 100 PERCENT OF PROPERTY NET INCOME FOR OIL AND GAS PROPERTIES.

(a) IN GENERAL.—The second sentence of subsection (a) of section 613 (relating to percentage depletion) is amended by inserting "(100 percent in the case of oil and gas properties)" after "50 percent".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 613A(c)(7) is amended by striking "50-percent" and inserting "taxable income".

(2) Section 614(d) is amended by striking "50 percent" and inserting "taxable income".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11523. INCREASE IN PERCENTAGE DEPLETION ALLOWANCE FOR MARGINAL PRODUCTION.

(a) IN GENERAL.—Paragraph (6) of section 613A(c) is amended to read as follows:

"(6) OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.—

"(A) IN GENERAL.—Except as provided in subsection (d) and subparagraph (B), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

"(i) so much of the taxpayer's average daily marginal production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and

"(ii) so much of the taxpayer's average daily marginal production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)),

and the applicable percentage shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

"(B) ELECTION TO HAVE PARAGRAPH APPLY TO PRO RATA PORTION OF MARGINAL PRODUCTION.—If the taxpayer elects to have this subparagraph apply for any taxable year, the rules of subparagraph (A) shall apply to the average daily marginal production of domestic crude oil or domestic natural gas of the taxpayer to which paragraph (1) would have applied without regard to this paragraph.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means the percentage (not greater than 25 percent) equal to the sum of—

"(i) 15 percent, plus

"(ii) 1 percentage point for each whole dollar by which $20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year, the reference price determined for such calendar year under section 29(d)(2)(C).

"(D) MARGINAL PRODUCTION.—The term 'marginal production' means domestic crude oil or domestic natural gas which is produced during any taxable year from a property which—

"(i) is a stripper well property for the calendar year in which the taxable year begins, or

"(ii) is a property substantially all of the production of which during such calendar year is heavy oil.

"(E) STRIPPER WELL PROPERTY.—For purposes of this paragraph, the term 'stripper well property' means, with respect to any calendar year, any property with respect to which the amount determined by dividing—

"(i) the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

"(ii) the number of such wells,

is 15 barrel equivalents or less.

"(F) HEAVY OIL.—For purposes of this paragraph, the term 'heavy oil' means domestic crude oil produced from any property if such crude oil had a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

"(G) AVERAGE DAILY MARGINAL PRODUCTION.—For purposes of this subsection—

"(i) the taxpayer's average daily marginal production of domestic crude oil or natural gas for any taxable year shall be determined by dividing the taxpayer's aggregate marginal production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

"(ii) in the case of a taxpayer holding a partial interest in the production from any property (including any interest held in any partnership), such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property."

(b) CONFORMING AMENDMENTS.—Section 613A(c)(3)(A) is amended—

(1) by striking clause (ii) and inserting:

"(ii) except in the case of a taxpayer making an election under paragraph (6)(B), the taxpayer's average daily marginal production for the taxable year.", and

(2) by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

PART IV—MINIMUM TAX TREATMENT

SEC. 11531. SPECIAL ENERGY DEDUCTION FOR MINIMUM TAX.

(a) IN GENERAL.—Section 56 (relating to adjustments in computing alternative minimum taxable income) is amended by adding at the end thereof the following new subsection:

"(h) ADJUSTMENT BASED ON ENERGY PREFERENCES.—

"(1) IN GENERAL.—In computing the alternative minimum taxable income of any taxpayer other than an integrated oil company for any taxable year beginning after 1990, there shall be allowed as a deduction an amount equal to the lesser of—

"(A) the alternative tax energy preference deduction, or

"(B) 40 percent of alternative minimum taxable income.

"(2) PHASE-OUT OF DEDUCTION AS OIL PRICES INCREASE.—The amount of the deduction under paragraph (1) (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such amount as—

"(A) the excess of the reference price of crude oil for the calendar year preceding the calendar year in which the taxable year begins over $28, bears to

"(B) $6.

For purposes of this paragraph, the reference price for any calendar year shall be determined under section 29(d)(2)(C) and the $28 amount under subparagraph (A) shall be adjusted at the same time and in the same manner as under section 43(b)(3).

"(3) ALTERNATIVE TAX ENERGY PREFERENCE DEDUCTION.—For purposes of paragraph (1), the term 'alternative tax energy preference deduction' means an amount equal to the sum of—

"(A) in the case of the intangible drilling cost preference, an amount equal to the sum of—

"(i) 75 percent of the portion of the intangible drilling cost preference attributable to qualified exploratory costs, plus

"(ii) 15 percent of the excess (if any) of—

"(I) the intangible drilling cost preference, over

"(II) the portion of the intangible drilling cost preference attributable to qualified exploratory costs, plus

"(B) 50 percent of the marginal production depletion preference.

"(4) INTANGIBLE DRILLING COST PREFERENCE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'intangible drilling cost preference' means the amount by which alternative minimum taxable income would be reduced if it were computed without regard to section 57(a)(2) and subsection (g)(4)(D)(i).

"(B) PORTION ATTRIBUTABLE TO QUALIFIED EXPLORATORY COSTS.—For purposes of subparagraph (A), the portion of the intangible drilling cost preference attributable to qualified exploratory costs is an amount which bears the same ratio to the intangible drilling cost preference as—

"(i) the qualified exploratory costs of the taxpayer for the taxable year, bear to

"(ii) the total intangible drilling and development costs with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

"(5) MARGINAL PRODUCTION DEPLETION PREFERENCE.—For purposes of this subsection, the term 'marginal production depletion preference' means the amount by which alternative minimum taxable income would be reduced if it were computed as if section 57(a)(1) and subsection (g)(4)(G) did not apply to any allowance for depletion determined under section 613A(c)(6).

"(6) QUALIFIED EXPLORATORY COSTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified exploratory costs' means intangible drilling and development costs of a taxpayer other than an integrated oil company which—

"(i) the taxpayer may elect to deduct as expenses under section 263(c), and

"(ii) are paid or incurred in connection with the drilling of an exploratory well located in the United States (within the meaning of section 638(1)).

"(B) EXPLORATORY WELL.—The term 'exploratory well' means any of the following oil or gas wells:

"(i) An oil or gas well which is completed (or if not completed, with respect to which drilling operations cease) before the completion of any other well which—

"(I) is located within 1.25 miles from the well, and

"(II) is capable of production in commercial quantities.

"(ii) An oil or gas well which is not described in clause (i) but which has a total depth which is at least 800 feet below the deepest completion depth of any well within 1.25 miles which is capable of production in commercial quantities.

"(iii) An oil or gas well capable of production in commercial quantities which is not described in clause (i) or (ii) but which is completed into a new reservoir, except that this clause shall not apply to a gas well if the gas is produced (or to be produced) from Devonian shale, coal seams, or a tight formation (determined in a manner similar to the manner under section 29(c)(2)).

A well shall not be treated as an exploratory well unless the operator submits to the Secretary (at such time and in such manner as the Secretary may provide) a certification from a petroleum engineer that the well is described in one of the preceding clauses.

"(C) CERTAIN COSTS NOT INCLUDED.—The term 'qualified exploratory costs' shall not include any cost paid or incurred—

"(i) in constructing, acquiring, transporting, erecting, or installing an offshore platform, or

"(ii) with respect to the drilling of a well from an offshore platform unless it is the first well which penetrates a reservoir.

"(D) INTEGRATED OIL COMPANY.—For purposes of this paragraph, the term 'integrated oil company' means, with respect to any taxable year, any producer of crude oil to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d).

"(7) SPECIAL RULES.—

"(A) ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of paragraphs (1)(B), (4)(A), and (5), alternative minimum taxable income shall be determined without regard to the deduction allowable under this subsection and the alternative tax net operating loss deduction under subsection (a)(4).

"(B) GEOTHERMAL DEPOSITS.—For purposes of this subsection, intangible drilling and development costs shall not include costs with respect to wells drilled for any geothermal deposits (as defined in section 613(e)(3)).

"(8) REGULATIONS.—The Secretary may by regulation provide for appropriate adjustments in computing alternative minimum taxable income or adjusted current earnings for any taxable year following a taxable year for which a deduction was allowed under this subsection to ensure that no double benefit is allowed by reason of such deduction."

(b) CONFORMING AMENDMENTS.—

(1) Section 56(d)(1)(A) is amended to read as follows:

"(A) the amount of such deduction shall not exceed the excess (if any) of—

"(i) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under subsection (h), over

"(ii) the deduction under subsection (h), and".

(2) Section 59(a)(2)(A)(ii) is amended by inserting "and the alternative tax energy preference deduction under section 56(h)" after "deduction".

(3) Section 59A(b)(1) is amended by inserting "or the alternative tax energy preference deduction under section 56(h)" before ", and".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

Subtitle F—Small Business Incentives

PART I—TREATMENT OF ESTATE TAX FREEZES

SEC. 11601. REPEAL OF SECTION 2036(c).

(a) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(b) CONFORMING AMENDMENTS.—

(1) Section 2207B is amended—

(A) by striking subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively,

(B) by striking "subsections (a) and (b)" in subsection (c) (as so redesignated) and inserting "subsection (a)", and

(C) by striking "subsections (a), (b), and (c)" in subsection (c) (as so redesignated) and inserting "subsections (a) and (b)".

(2) Section 2501(d) is amended by striking paragraph (3).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of property transferred after December 17, 1987.

SEC. 11602. SPECIAL VALUATION RULES.

(a) IN GENERAL.—Subtitle B is amended by adding at the end thereof the following new chapter:

"CHAPTER 14—SPECIAL VALUATION RULES

"Sec. 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships.

"Sec. 2702. Special valuation rules in case of transfers of interests in trusts.

"Sec. 2703. Certain rights and restrictions disregarded.

"Sec. 2704. Treatment of certain lapsing rights and restrictions.

"SEC. 2701. SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF CERTAIN INTERESTS IN CORPORATIONS OR PARTNERSHIPS.

"(a) VALUATION RULES.—

"(1) IN GENERAL.—Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right—

"(A) which is described in subparagraph (A) or (B) of subsection (b)(1), and

"(B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

shall be determined under paragraph (3). This paragraph shall not apply to the transfer of any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

"(2) EXCEPTIONS FOR MARKETABLE RETAINED INTERESTS, ETC.—Paragraph (1) shall not apply to any right with respect to an applicable retained interest if—

"(A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,

"(B) such interest is of the same class as the transferred interest, or

"(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a nonlapsing difference for purposes of such subparagraph.

"(3) VALUATION OF RIGHTS TO WHICH PARAGRAPH (1) APPLIES.—

"(A) IN GENERAL.—The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

"(B) VALUATION OF QUALIFIED PAYMENTS.—If—

"(i) any applicable retained interest confers a distribution right which consists of the right to a qualified payment, and

"(ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest,

the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

"(4) MINIMUM VALUATION OF JUNIOR EQUITY.—

"(A) IN GENERAL.—In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of—

"(i) the total value of all of the equity interests in such entity, plus

"(ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) JUNIOR EQUITY INTEREST.—The term 'junior equity interest' means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital are junior to the rights of all other classes of equity interests.

"(ii) EQUITY INTEREST.—The term 'equity interest' means stock or any interest as a partner, as the case may be.

"(b) APPLICABLE RETAINED INTERESTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable retained interest' means any interest in an entity with respect to which there is—

"(A) a distribution right, but only if, immediately before the transfer described in subsection (a)(1), the transferor and applicable family members hold (after application of subsection (e)(3)) control of the entity, or

"(B) a liquidation, put, call, or conversion right.

"(2) CONTROL.—For purposes of paragraph (1)—

"(A) CORPORATIONS.—In the case of a corporation, the term 'control' means the holding of at least 50 percent (by vote or value) of the stock of the corporation.

"(B) PARTNERSHIPS.—In the case of a partnership, the term 'control' means—

"(i) the holding of at least 50 percent of the capital or profits interests in the partnership, or

"(ii) in the case of a limited partnership, the holding of any interest as a general partner.

"(c) DISTRIBUTION AND OTHER RIGHTS; QUALIFIED PAYMENTS.—For purposes of this section—

"(1) DISTRIBUTION RIGHT.—

"(A) IN GENERAL.—The term 'distribution right' means—

"(i) a right to distributions from a corporation with respect to its stock, and

"(ii) a right to distributions from a partnership with respect to a partner's interest in the partnership.

"(B) EXCEPTIONS.—The term 'distribution right' does not include—

"(i) a right to distributions with respect to any junior equity interest (as defined in subsection (a)(4)(B)(i)),

"(ii) any liquidation, put, call, or conversion right, or

"(iii) any right to receive any guaranteed payment described in section 707(c) of a fixed amount.

"(2) LIQUIDATION, ETC. RIGHTS.—

"(A) IN GENERAL.—The term 'liquidation, put, call, or conversion right' means any liquidation, put, call, or conversion right, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest.

"(B) EXCEPTION FOR FIXED RIGHTS.—

"(i) IN GENERAL.—The term 'liquidation, put, call, or conversion right' does not include any right which must be exercised at a specific time and at a specific amount.

"(ii) TREATMENT OF CERTAIN RIGHTS.—If a right is assumed to be exercised in a particular manner under subsection (a)(3)(B), such right shall be treated as so exercised for purposes of clause (i).

"(C) EXCEPTION FOR CERTAIN RIGHTS TO CONVERT.—The term 'liquidation, put, call, or conversion right' does not include any right which—

"(i) is a right to convert into a fixed number (or a fixed percentage) of shares of the same class of stock in a corporation as the transferred stock in such corporation under subsection (a)(1) (or stock which would be of the same class but for nonlapsing differences in voting power),

"(ii) is nonlapsing,

"(iii) is subject to proportionate adjustments for splits, combinations, reclassifications, and similar changes in the capital stock, and

"(iv) is subject to adjustments similar to the adjustments under subsection (d) for accumulated but unpaid distributions.

A rule similar to the rule of the preceding sentence shall apply for partnerships.

"(3) QUALIFIED PAYMENT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualified payment' means any dividend payable on a periodic basis under any cumulative preferred stock (or a comparable payment under any partnership interest) to the extent that such dividend (or comparable payment) is determined at a fixed rate.

"(B) TREATMENT OF VARIABLE RATE PAYMENTS.—For purposes of subparagraph (A), a payment shall be treated as fixed as to rate if such payment is determined at a rate which bears a fixed relationship to a specified market interest rate.

"(C) ELECTIONS.—

"(i) WAIVER OF QUALIFIED PAYMENT TREATMENT.—A transferor or applicable family member may elect with respect to payments under any interest specified in such election to treat such payments as payments which are not qualified payments.

"(ii) ELECTION TO HAVE INTEREST TREATED AS QUALIFIED PAYMENT.—A transferor or any applicable family member may elect to treat any distribution right as a qualified payment, to be paid in the amounts and at the times specified in such election. The preceding sentence shall apply only to the extent that the amounts and times so specified are not inconsistent with the underlying legal instrument giving rise to such right.

"(iii) ELECTIONS IRREVOCABLE.—Any election under this subparagraph with respect to an interest shall, once made, be irrevocable.

"(d) TRANSFER TAX TREATMENT OF CUMULATIVE BUT UNPAID DISTRIBUTIONS.—

"(1) IN GENERAL.—If a taxable event occurs with respect to any distribution right to which subsection (a)(3)(B) applied, the following shall be increased by the amount determined under paragraph (2):

"(A) The taxable estate of the transferor in the case of a taxable event described in paragraph (3)(A)(i).

"(B) The taxable gifts of the transferor for the calendar year in which the taxable event occurs in the case of a taxable event described in paragraph (3)(A) (ii) or (iii).

"(2) AMOUNT OF INCREASE.—

"(A) IN GENERAL.—The amount of the increase determined under this paragraph shall be the excess (if any) of—

"(i) the value of the qualified payments payable during the period beginning on the date of the transfer under subsection (a)(1) and ending on the date of the taxable event determined as if—

"(I) all such payments were paid on the date payment was due, and

"(II) all such payments were reinvested by the transferor as of the date of payment at a yield equal to the discount rate used in determining the value of the applicable retained interest described in subsection (a)(1), over

"(ii) the value of such payments paid during such period computed under clause (i) on the basis of the time when such payments were actually paid.

"(B) LIMITATION ON AMOUNT OF INCREASE.—

"(i) IN GENERAL.—The amount of the increase under subparagraph (A) shall not exceed the applicable percentage of the excess (if any) of—

"(I) the value (determined as of the date of the taxable event) of all equity interests in the entity which are junior to the applicable retained interest, over

"(II) the value of such interests (determined as of the date of the transfer to which subsection (a)(1) applied).

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the percentage determined by dividing—

"(I) the number of shares in the corporation held (as of the date of the taxable event) by the transferor which are applicable retained interests of the same class, by

"(II) the total number of shares in such corporation (as of such date) which are of the same class as the class described in subclause (I).

A similar percentage shall be determined in the case of interests in a partnership.

"(iii) DEFINITION.—For purposes of this subparagraph, the term 'equity interest' has the meaning given such term by subsection (a)(4)(B).

"(C) GRACE PERIOD.—For purposes of subparagraph (A), any payment of any distribu-

tion during the 4-year period beginning on its due date shall be treated as having been made on such due date.

"(3) TAXABLE EVENTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'taxable event' means any of the following:

"(i) The death of the transferor if the applicable retained interest conferring the distribution right is includible in the estate of the transferor.

"(ii) The transfer of such applicable retained interest.

"(iii) At the election of the taxpayer, the payment of any qualified payment after the period described in paragraph (2)(C), but only with respect to the period ending on the date of such payment.

"(B) EXCEPTION WHERE SPOUSE IS TRANSFEREE.—

"(i) DEATHTIME TRANSFERS.—Subparagraph (A)(i) shall not apply to any interest includible in the gross estate of the transferor if a deduction with respect to such interest is allowable under section 2056 or 2106(a)(3).

"(ii) LIFETIME TRANSFERS.—A transfer to the spouse of the transferor shall not be treated as a taxable event under subparagraph (A)(ii) if such transfer does not result in a taxable gift by reason of—

"(I) any deduction allowed under section 2523, or

"(II) consideration for the transfer provided by the spouse.

"(iii) SPOUSE SUCCEEDS TO TREATMENT OF TRANSFEROR.—If an event is not treated as a taxable event by reason of this subparagraph, the transferee spouse or surviving spouse (as the case may be) shall be treated in the same manner as the transferor in applying this subsection with respect to the interest involved.

"(4) SPECIAL RULES FOR APPLICABLE FAMILY MEMBERS.—

"(A) FAMILY MEMBER TREATED IN SAME MANNER AS TRANSFEROR.—For purposes of this subsection, an applicable family member shall be treated in the same manner as the transferor with respect to any distribution right retained by such family member to which subsection (a)(3)(B) applied.

"(B) TRANSFER TO APPLICABLE FAMILY MEMBER.—In the case of a taxable event described in paragraph (3)(A)(ii) involving the transfer of an applicable retained interest to an applicable family member (other than the spouse of the transferor), the applicable family member shall be treated in the same manner as the transferor in applying this subsection to distributions accumulating with respect to such interest after such taxable event.

"(5) TRANSFER TO INCLUDE TERMINATION.—For purposes of this subsection, any termination of an interest shall be treated as a transfer.

"(e) OTHER DEFINITIONS AND RULES.—For purposes of this section—

"(1) MEMBER OF THE FAMILY.—The term 'member of the family' means, with respect to any transferor—

"(A) the transferor's spouse,

"(B) a lineal descendant of the transferor or the transferor's spouse, and

"(C) the spouse of any such descendant.

"(2) APPLICABLE FAMILY MEMBER.—The term 'applicable family member' means, with respect to any transferor—

"(A) the transferor's spouse,

"(B) an ancestor of the transferor or the transferor's spouse, and

"(C) the spouse of any such ancestor.

"(3) ATTRIBUTION RULES.—

"(A) INDIRECT HOLDINGS AND TRANSFERS.—An individual shall be treated as holding any interest to the extent such interest is held indirectly by such individual through a corporation, partnership, trust, or other entity. If any individual is treated as holding any interest by reason of the preceding sentence, any transfer which results in such interest being treated as no longer held by such individual shall be treated as a transfer of such interest.

"(B) CONTROL.—For purposes of subsections (b)(1), an individual shall be treated as holding any interest held by the individual's brothers, sisters, or lineal descendants.

"(4) EFFECT OF ADOPTION.—A relationship by legal adoption shall be treated as a relationship by blood.

"(5) CERTAIN CHANGES TREATED AS TRANSFERS.—Except as provided in regulations, a contribution to capital or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership shall be treated as a transfer of an interest in such entity to which this section applies if the taxpayer or an applicable family member—

"(A) receives an applicable retained interest in such entity pursuant to such contribution to capital or such redemption, recapitalization, or other change, or

"(B) under regulations, otherwise holds, immediately after the transfer, an applicable retained interest in such entity.

This paragraph shall not apply to any transaction (other than a contribution to capital) if the interests in the entity held by the transferor, applicable family members, and members of the transferor's family before and after the transaction are substantially identical.

"(6) ADJUSTMENTS.—Under regulations prescribed by the Secretary, if there is any subsequent transfer, or inclusion in the gross estate, of any applicable retained interest which was valued under the rules of subsection (a), appropriate adjustments shall be made for purposes of chapter 11, 12, or 13 to reflect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation.

"(7) TREATMENT AS SEPARATE INTERESTS.—The Secretary may by regulation provide that any applicable retained interest shall be treated as 2 or more separate interests for purposes of this section.

"SEC. 2702. SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF INTERESTS IN TRUSTS.

"(a) VALUATION RULES.—

"(1) IN GENERAL.—Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

"(2) VALUATION OF RETAINED INTERESTS.—

"(A) IN GENERAL.—The value of any retained interest which is not a qualified interest shall be treated as being zero.

"(B) VALUATION OF QUALIFIED INTEREST.—The value of any retained interest which is a qualified interest shall be determined under section 7520.

"(3) EXCEPTIONS.—

"(A) IN GENERAL.—This subsection shall not apply to any transfer—

"(i) to the extent such transfer is an incomplete transfer, or

"(ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust.

"(B) INCOMPLETE TRANSFER.—For purposes of subparagraph (A), the term 'incomplete transfer' means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

"(b) QUALIFIED INTEREST.—For purposes of this section, the term 'qualified interest' means—

"(1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,

"(2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and

"(3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

"(c) CERTAIN PROPERTY TREATED AS HELD IN TRUST.—For purposes of this section—

"(1) IN GENERAL.—The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

"(2) JOINT PURCHASES.—If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a series of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

"(3) TERM INTEREST.—The term 'term interest' means—

"(A) a life interest in property, or

"(B) an interest in property for a term of years.

"(4) VALUATION RULE FOR CERTAIN TERM INTERESTS.—If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property—

"(A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and

"(B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

"(d) TREATMENT OF TRANSFERS OF INTERESTS IN PORTION OF TRUST.—In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

"(e) MEMBER OF THE FAMILY.—For purposes of this section, the term 'member of the family' shall have the meaning given such term by section 2704(c)(2).

"SEC. 2703. CERTAIN RIGHTS AND RESTRICTIONS DISREGARDED.

"(a) GENERAL RULE.—For purposes of this subtitle, the value of any property shall be determined without regard to—

"(1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or

"(2) any restriction on the right to sell or use such property.

"(b) EXCEPTIONS.—Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

"(1) It is a bona fide business arrangement.

"(2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.

"(3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

"SEC. 2704. TREATMENT OF CERTAIN LAPSING RIGHTS AND RESTRICTIONS.

"(a) TREATMENT OF LAPSED VOTING OR LIQUIDATION RIGHTS.—

"(1) IN GENERAL.—For purposes of this subtitle, if—

"(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and

"(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

"(2) AMOUNT OF TRANSFER.—For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

"(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

"(B) the value of such interests immediately after the lapse.

"(3) SIMILAR RIGHTS.—The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

"(b) CERTAIN RESTRICTIONS ON LIQUIDATION DISREGARDED.—

"(1) IN GENERAL.—For purposes of this subtitle, if—

"(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

"(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

"(2) APPLICABLE RESTRICTION.—For purposes of this subsection, the term 'applicable restriction' means any restriction—

"(A) which effectively limits the ability of the corporation or partnership to liquidate, and

"(B) with respect to which either of the following applies:

"(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

"(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

"(3) EXCEPTIONS.—The term 'applicable restriction' shall not include—

"(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

"(B) any restriction imposed, or required to be imposed, by any Federal or State law.

"(4) OTHER RESTRICTIONS.—The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CONTROL.—The term 'control' has the meaning given such term by section 2701(b)(2).

"(2) MEMBER OF THE FAMILY.—The term 'member of the family' means, with respect to any individual—

"(A) such individual's spouse,

"(B) any ancestor or lineal descendant of such individual or such individual's spouse,

"(C) any brother or sister of the individual, and

"(D) any spouse of any individual described in subparagraph (B) or (C).

"(3) ATTRIBUTION.—The rule of section 2701(e)(3)(A) shall apply for purposes of determining the interests held by any individual."

(b) EXTENSION OF STATUTE OF LIMITATIONS.—Subsection (c) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new paragraph:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

(c) CONFORMING AMENDMENT.—The table of chapters for subtitle B is amended by adding at the end thereof the following item:

"CHAPTER 14. Special Valuation Rules."

(d) STUDY.—The Secretary of the Treasury shall conduct a study of—

(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(e) EFFECTIVE DATES.—

(1) SUBSECTION (a).—

(A) IN GENERAL.—The amendments made by subsection (a)—

(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

(B) EXCEPTION.—For purposes of subparagraph (A)(i), with respect to property transferred before October 9, 1990—

(i) any failure to exercise a right of conversion,

(ii) any failure to pay dividends, and

(iii) any failure to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to gifts after October 8, 1990.

PART II—DISABLED ACCESS CREDIT

SEC. 11611. CREDIT FOR COST OF PROVIDING ACCESS FOR DISABLED INDIVIDUALS.

(a) GENERAL RULE.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by subtitle E, is amended by adding at the end thereof the following new section:

"SEC. 44. EXPENDITURES TO PROVIDE ACCESS TO DISABLED INDIVIDUALS.

"(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

"(b) ELIGIBLE SMALL BUSINESS.—For purposes of this section, the term 'eligible small business' means any person if—

"(1) either—

"(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

"(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

"(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

"(c) ELIGIBLE ACCESS EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible access expenditures' means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CERTAIN EXPENDITURES INCLUDED.—The term 'eligible access expenditures' includes amounts paid or incurred—

"(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

"(B) to provide qualified interpreters or other effective methods of making aurally

delivered materials available to individuals with hearing impairments,

"(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

"(D) to acquire or modify equipment or devices for individuals with disabilities, or

"(E) to provide other similar services, modifications, materials, or equipment.

"(3) EXPENDITURES MUST BE REASONABLE.—Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

"(4) EXPENSES IN CONNECTION WITH NEW CONSTRUCTION ARE NOT ELIGIBLE.—The term 'eligible access expenditures' shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

"(5) EXPENDITURES MUST MEET STANDARDS.—The term 'eligible access expenditures' shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

"(d) DEFINITION OF DISABILITY; SPECIAL RULES.—For purposes of this section—

"(1) DISABILITY.—The term 'disability' has the same meaning as when used in the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

"(B) DOLLAR LIMITATION.—The Secretary shall apportion the dollar limitation under subsection (a) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

"(3) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(4) SHORT YEARS.—The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

"(5) GROSS RECEIPTS.—Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

"(6) TREATMENT OF PREDECESSORS.—The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

"(7) DENIAL OF DOUBLE BENEFIT.—In the case of the amount of the credit determined under this section—

"(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

"(B) no increase in the adjusted basis of any property shall result from such amount.

"(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out the purposes of this section."

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38, as amended by subtitle E, is amended by striking "plus" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", plus" and by adding at the end thereof the following new paragraph:

"(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF SECTION 44 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the disabled access credit determined under section 44 may be carried to a taxable year ending before the date of the enactment of section 44."

(c) DEDUCTION REDUCED FOR ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL EXPENSES.—Section 190(c) (relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly) is amended by striking "$35,000" and inserting "$15,000".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by subtitle E, is amended by adding at the end thereof the following new item:

"Sec. 44. Expenditures to provide access to disabled individuals."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to taxable years beginning after the date of the enactment of this Act.

PART III—OTHER PROVISIONS

SEC. 11621. REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.

(a) GENERAL RULE.—Subsection (f) of section 7805 (relating to review of impact of regulations on small business) is amended to read as follows:

"(f) REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.—

"(1) SUBMISSIONS TO SMALL BUSINESS ADMINISTRATION.—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

"(2) CONSIDERATION OF COMMENTS.—In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

"(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

"(3) SUBMISSION OF CERTAIN FINAL REGULATIONS.—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

"(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

"(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act.

SEC. 11622. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7523. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

"(a) GENERAL RULE.—In the case of any booklet of instructions for Form 1040, 1040A, or 1040EZ prepared by the Secretary for filing individual income tax returns for taxable years beginning in any calendar year, the Secretary shall include in a prominent place—

"(1) a pie-shaped graph showing the relative sizes of the major outlay categories, and

"(2) a pie-shaped graph showing the relative sizes of the major income categories.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of subsection (a)—

"(1) MAJOR OUTLAY CATEGORIES.—The term 'major outlay categories' means the following:

"(A) Defense, veterans, and foreign affairs.

"(B) Social security, medicare, and other retirement.

"(C) Physical, human, and community development.

"(D) Social programs.

"(E) Law enforcement and general government.

"(F) Interest on the debt.

"(2) MAJOR INCOME CATEGORIES.—The term 'major income categories' means the following:

"(A) Social security, medicare, and unemployment and other retirement taxes.

"(B) Personal income taxes.

"(C) Corporate income taxes.

"(D) Borrowing to cover the deficit.

"(E) Excise, customs, estate, gift, and miscellaneous taxes.

"(3) REQUIRED FOOTNOTES.—The pie-shaped graph showing the major outlay categories shall include the following footnotes:

"(A) A footnote to the category referred to in paragraph (1)(A) showing the percentage of the total outlays which is for defense, the percentage of total outlays which is for veterans, and the percentage of total outlays which is for foreign affairs.

"(B) A footnote to the category referred to in paragraph (1)(C) showing that such category consists of agriculture, natural resources, environment, transportation, education, job training, economic development, space, energy, and general science.

"(C) A footnote to the category referred to in paragraph (1)(D) showing the percentage of the total outlays which is for medicaid, food stamps, and aid to families with dependent children and the percentage of total outlays which is for public health, unemployment, assisted housing, and social services.

"(4) DATA ON WHICH GRAPHS ARE BASED.—The graphs required under subsection (a)

shall be based on data for the most recent fiscal year for which complete data is available as of the completion of the preparation of the instructions by the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7523. Graphic presentation of major categories of Federal outlays and income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to instructions prepared for taxable years beginning after 1990.

Subtitle G—Tax Technical Corrections

SEC. 11700. COORDINATION WITH OTHER SUBTITLES.

For purposes of applying the amendments made by any subtitle of this title other than this subtitle, the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.

SEC. 11701. AMENDMENTS RELATED TO REVENUE RECONCILIATION ACT OF 1989.

(a) AMENDMENTS RELATED TO SECTION 7108.—

(1)(A) Paragraph (2) of section 42(c) is amended by adding at the end thereof the following new sentence: "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937."

(B) Paragraph (1) of section 42(b) is amended by striking the last sentence.

(2) Subclause (I) of section 42(d)(5)(C)(ii) is amended—

(A) by inserting "which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract," after "census tract", and

(B) by inserting before the period "for such year".

(3)(A) Clause (i) of section 42(g)(2)(D) is amended by inserting before the period "and such unit continues to be rent-restricted".

(B) In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) does not apply, such amendment shall apply to—

(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act, and

(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.

(4) Clause (ii) of section 42(g)(2)(D) is amended by adding at the end thereof the following new sentence: "In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'."

(5)(A) Subparagraph (A) of section 42(g)(3) is amended by striking "the 12-month period beginning on the date the building is placed in service" and inserting "the 1st year of the credit period for such building".

(B) In the case of a building to which the amendment made by subparagraph (A) does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.

(6)(A) The second sentence of section 42(h)(3)(C) is amended by striking "the amount described in clause (i)" and inserting "the sum of the amounts described in clauses (i) and (iii)".

(B) Subclause (II) of section 42(h)(3)(D)(ii) is amended by striking "the amount described in clause (i)" and inserting "the sum of the amounts described in clauses (i) and (iii)".

(7)(A) Clause (i) of section 42(h)(6)(B) is amended by inserting before the comma "and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)".

(B) Clause (ii) of section 42(h)(6)(B) is amended by striking "requirement" and inserting "requirement and prohibitions".

(8)(A) Subparagraph (B) of section 42(h)(6) is amended by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively, and by inserting after clause (ii) the following new clause:

"(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,".

(B) Paragraph (6) of section 42(h) is amended by striking subparagraph (J) and by redesignating subparagraphs (K) and (L) as subparagraphs (J) and (K), respectively.

(C) Subclause (II) of section 42(h)(6)(E)(ii) is amended by inserting before the period "not otherwise permitted under this section".

(D) Subparagraph (F) of section 42(h)(6) is amended by inserting "the nonlow-income portion of the building for fair market value and" before "the low-income portion".

(9) Subclause (I) of section 42(h)(6)(E)(i) is amended by inserting before the comma "unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period".

(10) Paragraph (8) of section 42(i) is redesignated as paragraph (7).

(11) Paragraph (2) of section 7108(r) of the Revenue Reconciliation Act of 1989 is amended by inserting before the period "but only with respect to bonds issued after such date".

(12) Paragraph (6) of section 7108(r) of the Revenue Reconciliation Act of 1989 is amended by inserting "after" after "issued".

(b) AMENDMENTS RELATED TO SECTION 7202.—

(1) Subparagraph (A) of section 163(e)(5) is amended by striking the last sentence and inserting the following: "For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid."

(2) Paragraph (3) of section 163(i) is amended—

(A) by striking "(or stock)" each place it appears in subparagraph (B), and

(B) by adding at the end thereof the following new sentence: "Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock."

(c) AMENDMENTS RELATED TO SECTION 7210.—

(1) Subparagraph (C) of section 163(j)(2) is amended by striking "less such" and inserting "reduced (but not below zero) by such".

(2) Clause (ii) of section 163(j)(2)(A) is amended by striking "and on such other days" and inserting "or on any other day".

(d) AMENDMENTS RELATED TO SECTION 7211.—Clause (iii) of section 172(b)(1)(M) is amended—

(1) by striking "a C corporation" in the material preceding subclause (I),

(2) by striking "which acquires" in subclause (I) and inserting "a C corporation which acquires",

(3) by striking "a corporation" in subclause (II) and inserting "a C corporation", and

(4) by striking "any successor corporation" in subclause (III) and inserting "any C corporation which is a successor".

(e) AMENDMENTS RELATED TO SECTION 7301.—

(1) Paragraph (2) of section 4978B(e) is amended to read as follows:

"(2) SECTION 133 SECURITIES.—The term 'section 133 securities' means employer securities acquired by an employee stock ownership plan in a transaction to which section 133 applied."

(2) Subsection (d) of section 4978B is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH OTHER TAXES.—This section shall not apply to any disposition which is subject to tax under section 4978 or section 4978A (as in effect on the day before the date of enactment of this section)."

(f) AMENDMENT RELATED TO SECTION 7401.—Paragraph (2) of section 6038(e) is amended by adding at the end thereof the following new sentence: "In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period."

(g) AMENDMENTS RELATED TO SECTION 7506.—

(1) The material preceding subclause (I) in section 4682(d)(3)(B)(i) is amended by striking "or produced" and inserting ", produced, or imported".

(2) Subclause (I) of section 4682(d)(3)(B)(i) is amended to read as follows:

"(I) the amount equal to the 1986 export percentage of the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to the maximum quantity of ozone-depleting chemicals permitted to be manufactured or produced by such person during such calendar year under regulations prescribed by the Environmental Protection Agency (other than chemicals with respect to which subclause (II) applies),".

(3) Subclause (II) of section 4682(d)(3)(B)(i) is amended by striking "tax imposed" and inserting "tax which would (but for this subsection and subsection (g)) be imposed".

(4) Clause (i) of section 4682(d)(3)(B) is amended by striking the period at the end of subclause (II) and inserting ", and" and by adding at the end thereof the following new subclause:

"(III) the aggregate tax which was imposed by this subchapter with respect to ozone-depleting chemicals imported by such person during the calendar year.".

(5) The last sentence of clause (ii) of section 4682(d)(3)(B) is amended to read as fol-

lows: "The percentage determined under the preceding sentence shall be computed by taking into account the sum of such person's direct 1986 exports (as determined by the Environmental Protection Agency) and such person's indirect 1986 exports (as allocated to such person by such Agency in determining such person's consumption and production rights for ozone-depleting chemicals).".

(h) AMENDMENT RELATED TO SECTION 7601.—Effective with respect to transfers after August 3, 1990, paragraph (3) of section 1031(f) is amended by striking "section 267(b)" and inserting "section 267(b) or 707(b)(1)".

(i) AMENDMENT RELATED TO SECTION 7622.—Paragraph (4) of section 1253(d) is amended by striking "or any period of amortization under this section" and inserting "under this section or any period of amortization under this subtitle for any payment described in this section".

(j) AMENDMENTS RELATED TO SECTION 7652.—

(1) Subclause (II) of section 148(f)(4)(B)(i) is amended to read as follows:

"(II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund)."

(2) The last sentence of clause (i) of section 148(f)(4)(B) is amended by striking "replacement fund" and all that follows and inserting "replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only."

(3) Paragraph (4) of section 148(f) is amended—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C) EXCEPTION FROM REBATE FOR CERTAIN PROCEEDS TO BE USED TO FINANCE CONSTRUCTION EXPENDITURES.—

"(i) IN GENERAL.—In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

"(ii) SPENDING REQUIREMENTS.—The spending requirements of this clause are met if at least—

"(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

"(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

"(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

"(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

"(iii) EXCEPTION FOR REASONABLE RETAINAGE.—The spending requirement of clause (ii)(IV) shall be treated as met if—

"(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

"(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

"(iv) CONSTRUCTION ISSUE.—For purposes of this subparagraph, the term 'construction issue' means any issue if—

"(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

"(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term 'construction' includes reconstruction and rehabilitation, and rules similar to the rules of section 142(b)(1)(B) shall apply.

"(v) PORTIONS OF ISSUES USED FOR CONSTRUCTION.—If—

"(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

"(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

"(vi) AVAILABLE CONSTRUCTION PROCEEDS.—For purposes of this subparagraph—

"(I) IN GENERAL.—The term 'available construction proceeds' means the amount equal to the issue price (within the meaning of sections 1273 and 1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

"(II) EARNINGS ON RESERVE INCLUDED ONLY FOR CERTAIN PERIODS.—The term 'available construction proceeds' shall not include amounts earned on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

"(III) PAYMENTS ON ACQUIRED PURPOSE OBLIGATIONS EXCLUDED.—The term 'available construction proceeds' shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

"(IV) ELECTION TO REBATE ON EARNINGS ON RESERVE.—At the election of the issuer, the term 'available construction proceeds' shall not include earnings on any reasonably required reserve or replacement fund.

"(vii) ELECTION TO PAY PENALTY IN LIEU OF REBATE.—

"(I) IN GENERAL.—At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 1½ percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

"(II) TERMINATION.—The penalty imposed by this clause shall cease to apply only as provided in clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

"(viii) ELECTION TO TERMINATE 1½ PERCENT PENALTY.—At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

"(I) 3 PERCENT PENALTY.—The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

"(II) YIELD RESTRICTION AT CLOSE OF TEMPORARY PERIOD.—The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax—exempt bond which is not investment property.

"(III) REDEMPTION OF BONDS AT EARLIEST CALL DATE.—The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

"(ix) ELECTION TO TERMINATE 1½ PERCENT PENALTY BEFORE END OF TEMPORARY PERIOD.—If—

"(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

"(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

"(III) the issuer has made the election under clause (viii), and

"(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so identified as if the initial temporary period ended as of the date the election is made.

"(x) FAILURE TO PAY PENALTIES.—In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

"(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

"(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

"(xi) ELECTION FOR POOLED FINANCING BONDS.—At the election of the issuer of an issue the proceeds of which are to be used to

make or finance loans (other than nonpurpose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

"(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

"(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

"(xii) PAYMENTS OF PRINCIPAL NOT TO AFFECT REQUIREMENTS.—For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

"(xiii) REFUNDING BONDS.—

"(I) IN GENERAL.—Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

"(II) DETERMINATION OF CONSTRUCTION PORTION OF ISSUE.—For purposes of clause (v), any portion of an issue which is used to refund any issue (or portion thereof) shall be treated as a separate issue.

"(III) COORDINATION WITH REBATE REQUIREMENT ON REFUNDING BONDS.—The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

"(xiv) DETERMINATION OF INITIAL TEMPORARY PERIOD.—For purposes of this subpargraph, the end of the initial temporary period shall be determined without regard to section 149(d)(3)(A)(iv).

"(xv) ELECTIONS.—Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

"(xvi) TIME FOR PAYMENT OF PENALTIES.—Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates."

(4) Clause (iv) of section 148(f)(4)(B) is amended to read as follows:

"(iv) PAYMENTS OF PRINCIPAL NOT TO AFFECT REQUIREMENTS.—For purposes of this subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue."

(5) Subparagraph (D) of section 148(c)(2) is amended—

(A) by striking "subsection (f)(4)(B)(iv)(IV)" and inserting "subsection (f)(4)(C)(iv)", and

(B) by striking "subsection (f)(4)(B)(iv)(VIII)" and inserting "subsection (f)(4)(C)(v)".

(6) Subsection (c) of section 7652 of the 1989 Act is amended by striking "Subparagraph (A) of section 148(c)(2)" and inserting "Section 148(c)(2)".

(7) In the case of a bond issued before the date of the enactment of this Act, the period for making the election under section 148(f)(4)(C)(viii) of the Internal Revenue Code of 1986 (as added by this subsection) shall not expire before the date which is 180 days after such date of enactment.

(8) Section 148(f)(4)(C)(xiii)(II) of such Code (as added by this subsection) shall apply only to refunding bonds issued after August 3, 1990.

(k) AMENDMENT RELATED TO SECTION 7811.—The second sentence of section 403(b)(12)(A) is amended by inserting "involving a one-time irrevocable election" after "similar arrangement".

(l) AMENDMENTS RELATED TO SECTION 7815.—

(1) Subsection (d) of section 2056 is amended by redesignating the paragraph relating to reformations permitted as paragraph (5).

(2) The period during which a proceeding may be commenced under section 2056(d)(5)(A)(ii) of the Internal Revenue Code of 1986 (as redesignated by paragraph (1)) shall not expire before the date 6 months after the date of the enactment of this Act.

(3) Paragraph (16) of section 7815(d) of the Revenue Reconciliation Act of 1989 is amended by inserting "(or would have been so treated if the donor were a citizen of the United States)" after "of such Code".

(m) AMENDMENT RELATED TO SECTION 7881.—Paragraph (13) of section 4975(d) is amended by inserting before the semicolon at the end thereof the following: "or which is exempt from section 406 of such Act by reason of section 408(b) of such Act".

(n) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 to which such amendment relates.

SEC. 11702. AMENDMENTS RELATED TO TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988.

(a) AMENDMENTS RELATED TO SECTION 1006.—

(1) Paragraph (5) of section 367(a) is amended by striking "section 361" and inserting "subsection (a) or (b) of section 361".

(2) Subsection (d) of section 453B is amended to read as follows:

"(d) EXCEPTION FOR DISTRIBUTIONS TO WHICH SECTION 337(a) APPLIES.—Subsection (a) shall not apply to any distribution to which section 337(a) applies."

(b) AMENDMENTS RELATED TO SECTION 1008.—

(1) Subparagraph (B) of section 447(g)(4) is amended to read as follows:

"(B) QUALIFIED FARMING TRADE OR BUSINESS.—

"(i) IN GENERAL.—The term 'qualified farming trade or business' means the trade or business of farming—

"(I) sugar cane,

"(II) any plant with a preproductive period (as defined in section 263A(e)(3)) of 2 years or less, and

"(III) any other plant (other than any citrus or almond tree) if an election by the corporation under this subparagraph is in effect.

In the case of a partnership and for purposes of paragraph (3)(A), subclauses (II) and (III) shall not apply.

"(ii) EFFECT OF ELECTION.—For purposes of paragraphs (1) and (2) of section 263A(e), any election under this subparagraph shall be treated as if it were an election under subsection (d)(3) of section 263A.

"(iii) ELECTION.—Unless the Secretary otherwise consents, an election under this subparagraph may be made only for the corporation's 1st taxable year which begins after December 31, 1986, and during which the corporation engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary."

(2) Subparagraph (A) of section 447(g)(1) is amended by striking "qualified farming trade or business" and inserting "trade or business of farming".

(c) AMENDMENT RELATED TO SECTION 1012.—Subsection (b) of section 6114 is amended by striking "by regulations".

(d) AMENDMENTS RELATED TO SECTION 1014.—

(1) Subparagraph (B) of section 59(j)(1) is amended by inserting "(or, if greater, the child's share of the unused parental minimum tax exemption)" before the period at the end thereof.

(2) Subsection (j) of section 59 is amended by adding at the end thereof the following new paragraph:

"(3) UNUSED PARENTAL MINIMUM TAX EXEMPTION.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'unused parental minimum tax exemption' means the excess (if any) of—

"(i) the exemption amount applicable to the parent under section 55(d), over

"(ii) the parent's alternative minimum taxable income.

"(B) CERTAIN RULES MADE APPLICABLE.—A child's share of any unused parental minimum tax exemption shall be determined under rules similar to the rules of section 1(i)(3)(B), and rules similar to the rules of paragraphs (3)(D) and (5) of section 1(i) shall apply for purposes of this paragraph."

(3) Subparagraph (D) of section 59(j)(2), is amended by striking "paragraphs (5) and (6)" and inserting "paragraphs (3)(D), (5), and (6)".

(e) AMENDMENTS RELATED TO SECTION 1018.—

(1) Subsection (e) of section 468B is amended by striking "This section" and inserting "This section (other than subsection (g))".

(2) Subsection (c) of section 355 is amended to read as follows:

"(c) TAXABILITY OF CORPORATION ON DISTRIBUTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

"(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

"(A) IN GENERAL.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than stock or securities in the controlled corporation, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1)."

(f) AMENDMENT RELATED TO SECTION 3011.—Paragraph (1) of section 4980B(d) is amended to read as follows:

"(1) any failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary if the qualifying event with respect to such beneficiary occurred during the calendar year immediately following a calendar year during which all employers maintaining such plan normally employed fewer than 20 employees on a typical business day,".

(g) AMENDMENTS RELATED TO SECTION 5033.—

(1) Subsection (i) of section 2523 is amended by adding at the end thereof the following new sentence: "This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6)."

(2)(A) Paragraph (1) of section 2056A(a) is amended to read as follows:

"(1) the trust instrument—

"(A) requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

"(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,".

(B) Subsection (b) of section 2056A is amended by adding at the end thereof the following new paragraphs:

"(14) COORDINATION WITH TERMINABLE INTEREST RULES.—Any interest in a qualified domestic trust shall not be treated as failing to meet the requirements of paragraph (5) or (7) of section 2056(b) merely by reason of any provision of the trust instrument permitting the withholding from any distribution of an amount to pay the tax imposed by paragraph (1) on such distribution.

"(15) NO TAX ON CERTAIN DISTRIBUTIONS.—No tax shall be imposed by paragraph (1) on any distribution to the surviving spouse to the extent such distribution is to reimburse such surviving spouse for any tax imposed by subtitle A on any item of income of the trust to which such surviving spouse is not entitled under the terms of the trust."

(3)(A) Subsection (d) of section 2056A is amended by adding at the end thereof the following new sentence: "No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return."

(B) The amendment made by subparagraph (A) shall not apply to any election made before the date 6 months after the date of the enactment of this Act.

(4) Subparagraph (A) of section 2056A(b)(10) is amended by striking "section 2032" and inserting "section 2011, 2014, 2032".

(5) Paragraph (3) of section 2056(d) is amended by striking "section 2056A(b)(6)" and inserting "section 2056A(b)(7)".

(h) AMENDMENTS RELATED TO SECTION 6009.—

(1) Subparagraph (B) of section 135(b)(2) is amended by striking "each dollar amount" and inserting "the $40,000 and $60,000 amounts".

(2) Subparagraph (C) of section 135(b)(2) is amended by striking "(A) or".

(i) AMENDMENTS RELATED TO SECTION 6282.—Subsection (e) of section 216 is amended—

(1) by striking "ASSOCIATIONS" in the subsection heading and inserting "CORPORATIONS", and

(2) by striking "association" and inserting "corporation".

(j) EFFECTIVE DATE.—Any amendment made by this section shall take effect as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 to which such amendment relates.

SEC. 11703. MISCELLANEOUS AMENDMENTS.

(a) SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.—

(1) IN GENERAL.—Subsection (a) of section 1043 is amended by striking "reduced by any basis adjustment under subsection (c) attributable to a prior sale" and inserting "to the extent not previously taken into account under this subsection".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales after November 30, 1989.

(b) CONFORMING AMENDMENT TO REPEAL OF SECTION 89.—

(1) IN GENERAL.—Subparagraph (B) of section 414(n)(2) is amended by striking "(6 months in the case of core health benefits)".

(2) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986.

(c) AMENDMENTS TO GENERATION-SKIPPING TRANSFER TAX.—

(1) Subparagraph (B) of section 2642(c)(2) is amended by striking "such individual dies before the trust is terminated" and inserting "the trust does not terminate before the individual dies".

(2) Paragraph (2) of section 2642(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A)."

(3) Subparagraph (C) of section 1433(b)(2) of the Tax Reform Act of 1986 shall not exempt any generation-skipping transfer from the amendments made by subtitle D of title XVI of such Act to the extent such transfer is attributable to property transferred by gift or by reason of the death of another person to the decedent (or trust) referred to in such subparagraph after August 3, 1990.

(4) The amendments made by paragraphs (1) and (2) shall apply to transfers after March 31, 1988.

(d) TREATMENT OF CERTAIN PARTNERSHIP INTEREST UNDER SECTION 1031.—

(1) IN GENERAL.—Paragraph (2) of section 1031(a) is amended by adding at the end thereof the following new sentence: "For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers after July 18, 1984.

(e) TREATMENT OF CERTAIN SEPARATED EMPLOYEES.—

(1) IN GENERAL.—Paragraph (6) of section 79(d) is amended by striking "any retired employee" and inserting "any former employee".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to employees separating from service after the date of the enactment of this Act.

(f) TREATMENT OF CERTAIN MEDICAL CARE REIMBURSEMENTS UNDER WAGE WITHHOLDING.—

(1) IN GENERAL.—Subsection (a) of section 3401 is amended by striking "or" at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6))."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 but shall not apply to any amount paid before the date of the enactment of this Act which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid.

(g) TREATMENT OF CERTAIN INTERESTS UNDER WINDFALL PROFIT TAX.—

(1) IN GENERAL.—Paragraph (1) of section 1879(o) of the Tax Reform Act of 1986 is amended by striking "held by" and inserting "held by the Protestant Episcopal Church Foundation of the Diocese of Oklahoma or held by".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in section 1879(o) of the Tax Reform Act of 1986.

SEC. 11704. MISCELLANEOUS CLERICAL CHANGES.

(a) GENERAL RULE.—

(1) Clause (ii) of section 56(g)(4)(D) is amended by striking "year" and inserting "years".

(2) The heading of subparagraph (B) of section 172(m)(4) is amended by striking "SUBSECTION (B)(2)" and inserting "SUBSECTION (b)(2)".

(3) Paragraph (2) of section 351(e) is amended by striking "are used" and inserting "is used".

(4) The heading of subparagraph (B) of section 413(c)(7) is amended by striking "ASSET" and inserting "ASSETS".

(5) Subparagraph (C) of section 461(i)(3) is amended to read as follows:

"(C) any tax shelter (as defined in section 6662(d)(2)(C)(ii))."

(6) Subparagraph (A) of section 469(m)(3) is amended by striking "preenactment" and inserting "pre-enactment".

(7) Subsection (c) of section 597 is amended by striking "The purposes of" and inserting "For purposes of".

(8) The last sentence of subsection (a) of section 860D is amended by inserting a closing parenthesis before the period at the end thereof.

(9) Subparagraph (A) of section 860G(a)(3) is amended by striking the comma after "secured".

(10) Subparagraph (B) of section 927(g)(2) is amended by striking "prescribed" and inserting "prescribe".

(11) Paragraph (1) of section 936(e) is amended by striking "subsection (a)(1)" each place it appears and inserting "subsection (a)(2)".

(12) Subparagraph (C) of section 1017(b)(4) is amended by striking "subparagraph" and inserting "subparagraphs".

(13) The material preceding subparagraph (A) of section 1245(a)(3) is amended by striking "or (3)" and inserting "or (3))".

(14) Paragraph (2) of section 1441(b) is amended by inserting "section" before "170(b)(1)(A)(ii)".

(15) Clause (ii) of section 2056A(b)(2)(B) is amended by striking "therefore" and inserting "therefor".

(16) The item relating to section 2056A in the table of sections for part IV of subchapter A of chapter 11 is amended by striking "trusts" and inserting "trust".

(17) Subclause (I) of section 2642(d)(2)(B)(i) is amended by striking "state" and inserting "State".

(18) The heading of chapter 23A is amended by striking "CHAPTER 23A. RAILROAD" and inserting "CHAPTER 23A—RAILROAD".

(19) Paragraphs (9) and (10) of section 3231(e) are redesignated as paragraphs (8) and (9), respectively.

(20) Subparagraph (D) of section 4093(c)(4) is amended by striking "reduced tax sale" and inserting "reduced-tax sale".

(21) Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(e),".

(22) Paragraph (3) of section 6013(e) is amended by striking "section 6661(b)(2)(A)" and inserting "section 6662(d)(2)(A)".

(23) Subsection (c) of section 6038A is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(24) Paragraph (3) of section 6039D(d) is amended by striking all that follows "plan (and not" and inserting "the employer)."

(25) Paragraph (4) of section 6045(e) is amended by striking "broker" and inserting "reporting person".

(26) The heading for subsection (a) of section 6323 is amended by striking "PURCHASES" and inserting "PURCHASERS".

(27) Subsection (a) of section 6332 is amended by striking "subsections (b) and (c)" and inserting "this section".

(28) The last sentence of section 6655(g)(3) is amended by striking all that follows: "'11 months'" and inserting "in clause (i)(IV)."

(29) Paragraph (3) of section 7519(c) is amended by striking "payable on later of " and inserting "payable on the later of".

(30) The section 7521 added by section 6233 of the Technical and Miscellaneous Revenue Act of 1988 is redesignated as section 7522.

(31) The table of sections for chapter 77 is amended by striking the item added by such section 6233 and inserting the following:

"Sec. 7522. Content of tax due, deficiency, and other notices."

(32) Subparagraph (B) of section 7608(c)(1) is amended by striking the comma after "operations".

(33) Subparagraph (C) of section 7608(c)(5) is amended—

(A) by striking "interested" in clause (i)(I) and inserting "interest", and

(B) by striking "title 3" in clause (ii) and inserting "title 31".

(34) Subparagraph (C) of section 7701(j)(1) is amended by striking so much of such subparagraph as precedes "contributions to the Thrift" and inserting the following:

"(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(a)(8),".

(35) Paragraph (1) of section 1012(t) of the Technical and Miscellaneous Revenue Act of 1988 is amended by inserting "(as amended by paragraph (2))" after "clause (ii)".

(36) Subparagraph (F) of section 1014(g)(4) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "subparagraph" in clause (ii) and inserting "paragraph".

(37) Paragraph (28) of section 1018(u) of the Technical and Miscellaneous Revenue Act of 1988 is amended by inserting "net" before "capital loss" each place it appears.

(38) Subparagraph (C) of section 2001(d)(6) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "a gallon" and inserting "per gallon".

(39) Paragraph (3) of section 5033(a) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "chapter 1" and inserting "chapter 11".

(40) Paragraph (2) of section 232(a) of the Railroad Retirement Revenue Act of 1983 is amended by striking "section 516(b)" each place it appears and inserting "section 7106(b)".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Repeal of Expired or Obsolete Provisions

PART I—REPEAL OF EXPIRED OR OBSOLETE PROVISIONS

SUBPART A—GENERAL PROVISIONS

SEC. 11801. REPEAL OF EXPIRED OR OBSOLETE PROVISIONS.

(a) REPEALS.—The following provisions are hereby repealed:

(1) Section 23 (relating to residential energy credit).

(2) Paragraph (1), (2), (3), and (4) of section 39(d) (relating to transitional rules).

(3) Subsection (f) of section 56 (relating to adjustments for book income of corporations).

(4) Subsection (h) of section 63 (relating to transitional rule for taxable years beginning in 1987).

(5) Subsection (i) of section 83 (relating to transitional rules).

(6) Section 110 (relating to income tax paid by lessee corporation).

(7) Section 113 (relating to mustering-out payments for members of the Armed Forces).

(8) Section 114 (relating to sports programs conducted for the American National Red Cross).

(9) Section 124 (relating to qualified transportation provided by employers).

(10) Section 128 (relating to interest on certain savings certificates).

(11) Subsection (i) of section 170 (relating to rule for nonitemization of deductions).

(12) Section 184 (relating to amortization of certain railroad rolling stock).

(13) Section 188 (relating to amortization of certain expenditures for child care facilities).

(14) Subsection (d) of section 190 (relating to application of section).

(15) Section 250 (relating to certain payments to the National Railroad Passenger Corporation).

(16) Subsection (b) of section 263 (relating to expenditures for advertising and good will).

(17) Subsection (e) of section 305 (relating to dividend reinvestment in stock of public utilities).

(18) Subsection (h) of section 306 (relating to stock received in transactions to which 1939 Code applies).

(19) Part IV of subchapter C of chapter 1 (relating to insolvency reorganizations).

(20) Section 422 (relating to qualified stock options).

(21) Section 424 (relating to restricted stock options).

(22) Subsection (d) of section 503 (relating to special rule for loans).

(23) Paragraph (14) of section 512(b) (relating to modifications applicable in computing unrelated business taxable income).

(24) Subsection (c) of section 545 (relating to special adjustment to taxable income).

(25) Paragraphs (2), (3), and (4) of section 582(c) (relating to bond, etc., losses and gains of financial institutions).

(26) Paragraph (2) of section 585(b) (relating to percentage method).

(27) Subsection (i) of section 617 (relating to certain pre-1970 exploration expenditures).

(28) Part II of subchapter I of chapter 1 (relating to payments to encourage exploration, etc., for defense purposes).

(29) Subparagraphs (C) and (D) of section 861(a)(1) (relating to source rule for interest).

(30) Subsection (k) of section 897 (relating to foreign corporations acquired before enactment).

(31) Subsection (e) of section 904 (relating to transitional rules for carrybacks and carryovers on the per-country limitation).

(32) Subsections (e) and (f)(3)(C) of section 907 (relating to transitional rules).

(33) Section 1039 (relating to certain sales of low-income housing projects).

(34) Part VIII of subchapter O of chapter 1 (relating to distributions pursuant to Bank Holding Company Act).

(35) Section 1238 (relating to amortization in excess of depreciation).

(36) Subsection (c) of section 1401 (relating to credit against self-employment taxes).

(37) Chapter 4 (relating to rules applicable to recovery of excessive profits on Government contracts).

(38) Section 1564 (relating to transitional rules in the case of certain controlled corporations).

(39) Subsection (b) of section 2010 (relating to phase-in of credit).

(40) Subsection (b) of section 2505 (relating to phase-in of credit).

(41) Paragraph (3) of section 3402(a) (relating to changes made by section 101 of the Economic Recovery Tax Act of 1981).

(42) Section 3510 (relating to credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984).

(43) Paragraph (3) of section 6018(a) (relating to phase-in of filing requirement amount).

(44) Section 6158 (relating to installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970).

(45) Subchapter E of chapter 64 (relating to collection of State individual income taxes).

(46) Subsection (e) of section 6427 (relating to use in certain taxicabs).

(47) Section 6428 (relating to 1981 rate reduction tax credit).

(48) Chapter 37 (relating to excise tax on sugar).

(b) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 23.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the items relating to sections 110, 113, 114, 124, and 128.

(3) The table of sections for part VI of subchapter B of chapter 1 is amended by striking the items relating to sections 184 and 188.

(4) The table of sections for part VIII of subchapter B of chapter 1 is amended by striking the item relating to section 250.

(5) The table of parts for subchapter C of chapter 1 is amended by striking the item relating to part IV.

(6) The table of sections for part II of subchapter D of chapter 1 is amended by striking the items relating to sections 422 and 424.

(7) The table of parts for subchapter I of chapter 1 is amended by striking the item relating to part II.

(8) The table of sections for part III of subchapter O of chapter 1 is amended by striking the item relating to section 1039.

(9) The table of parts for subchapter O of chapter 1 is amended by striking the item relating to part VIII.

(10) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the item relating to section 1238.

(11) The table of chapters for subtitle A is amended by striking the item relating to chapter 4.

(12) The table of sections for part II of subchapter B of chapter 6 is amended by striking the item relating to section 1564.

(13) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6158.

(14) The table of subchapters for chapter 64 is amended by striking the item relating to subchapter E.

(15) The table of sections for subchapter B of chapter 65 is amended by striking the item relating to section 6428.

(16) The table of sections for chapter 25 is amended by striking the item relating to section 3510.

(17) The table of chapters for subtitle D is amended by striking the item relating to chapter 37.

(c) CONFORMING AMENDMENTS.—

(1) AMENDMENT RELATING TO REPEAL OF SECTION 23.—Subsection (a) of section 1016 is amended by striking paragraph (20) and by redesignating the following paragraphs accordingly.

(2) AMENDMENTS RELATING TO REPEAL OF SECTION 56(f).—

(A) Paragraph (1) of section 56(c) is amended to read as follows:

"(1) ADJUSTMENT FOR ADJUSTED CURRENT EARNINGS.—Alternative minimum taxable income shall be adjusted as provided in subsection (g)."

(B) Paragraphs (1) and (2) of section 59(g) are each amended by striking "beginning after 1989".

(C) Clause (iii) of section 56(g)(4)(C) is amended to read as follows:

"(iii) TREATMENT OF TAXES ON DIVIDENDS FROM 936 CORPORATIONS.—

"(I) IN GENERAL.—For purposes of determining the alternative minimum foreign tax credit, 75 percent of any withholding or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

"(II) LIMITATION.—If the aggregate amount of the dividends referred to in subclause (I) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as tax paid to a foreign country under subclause (I) shall not exceed the amount which would be so treated without regard to this subclause multiplied by a fraction the numerator of which is the excess referred to in paragraph (1) and the denominator of which is the aggregate amount of such dividends.

"(III) TREATMENT OF TAXES IMPOSED ON 936 CORPORATION.—For purposes of this clause, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount of any such dividend shall be increased by the amount so treated)."

(D) Paragraph (1) of section 59(a) is amended by inserting "and" at the end of subparagraph (B), by striking subparagraph (C), and by redesignating subparagraph (D) as subparagraph (C).

(E) Paragraph (2) of section 59A(b) is amended by striking "(and the last sentence of section 56(f)(2)(B))".

(3) AMENDMENT RELATING TO REPEAL OF SECTION 124.—Subsection (f) of section 125 is amended by striking "section 117, 124," and inserting "section 117,".

(4) AMENDMENT RELATING TO REPEAL OF SECTION 128.—Paragraph (2) of section 265(a) is amended by striking "subtitle" and all that follows down through the period at the end thereof and inserting "subtitle."

(5) AMENDMENT RELATING TO REPEAL OF SECTION 170(i).—Section 170 is amended by redesignating subsections (j), (k), (l), (m), and (n) as subsections (i), (j), (k), (l), and (m), respectively.

(6) AMENDMENTS RELATING TO REPEAL OF AMORTIZATION PROVISIONS.—

(A) Subsection (a) of section 48 is amended by striking paragraph (8).

(B) Subsection (f) of section 642 is amended by striking "sections 169, 184, 187, and 188" and inserting "section 169".

(C) Paragraph (2) of section 861(e) is amended by striking "referred to in subparagraph (B) of section 184(d)(1)" and inserting "all of whose stock is owned by one or more domestic common carriers by railroad".

(D) Subparagraph (B) of section 1082(a)(2) is amended by striking "169, 184, or 188" and inserting "169".

(E) Subparagraph (C) of section 1245(a)(3) is amended by striking "188," and inserting "188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),".

(F) Paragraph (3) of section 1250(b) is amended by striking "188," and inserting "188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),".

(7) AMENDMENTS RELATING TO REPEAL OF SECTION 305(e).—

(A) Paragraph (1) of section 305(d) is amended by striking "(other than subsection (e))".

(B) Subsection (f) of section 305 is redesignated as subsection (e).

(8) AMENDMENTS RELATED TO REPEAL OF SPECIAL TREATMENT OF INSOLVENCY REORGANIZATIONS.—

(A) Subsection (b) of section 47 is amended by inserting "or" at the end of paragraph (1), by striking out ", or" at the end of paragraph (2), and inserting a period, and by striking paragraph (3).

(B) Subparagraph (B) of section 168(i)(7) is amended by striking "371(a), 374(a),".

(C) Subparagraph (D) of section 247(b)(2) is amended by striking ", a transaction to which section 371 (relating to insolvency reorganization) applies,".

(D) Subsection (d) of section 354 is hereby repealed.

(E) Clause (i) of section 356(d)(2)(B) is amended by striking "or (d)".

(F)(i) Section 357 is amended by striking "351, 361, 371, or 374" each place it appears and inserting "351 or 361".

(ii) Paragraph (2) of section 357(c) is amended by inserting "or" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(G) Section 358 is amended—

(i) in subsection (a), by striking "361, 371(b), or 374" and inserting "or 361", and

(ii) by striking subsection (b)(3).

(H) Paragraph (3) of section 1245(b) is amended by striking "371(a), 374(a),".

(I) Paragraph (3) of section 1250(d) is amended by striking "371(a), 374(a),".

(9) AMENDMENTS RELATING TO REPEAL OF SECTIONS 422 AND 424.—

(A)(i) Section 422A is redesignated as section 422 and section 425 is redesignated as section 424.

(ii) The table of sections for part II of subchapter D of chapter 1 is amended by redesignating the items relating to sections 422A and 425 as items relating to sections 422 and 424, respectively.

(B) Section 421 is amended—

(i) in subsection (a)—

(I) by striking "422(a), 422A(a), 423(a), or 424(a)" and inserting "422(a) or 423(a)",

(II) by striking "except as provided in section 422(c)(1)," in paragraph (1), and

(III) by striking "425(a)" in paragraph (2) and inserting "424(a)";

(ii) in subsection (b)—

(I) by striking "422(a), 422A(a), 423(a), or 424(a)" and inserting "422(a) or 423(a)", and

(II) by striking "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)," and inserting "422(a)(1) or 423(a)(1),";

(iii) in subsection (c)—

(I) by striking "422(a), 422A(a), 423(a), and 424(a)" in paragraph (1)(A) and inserting "422(a) and 423(a)",

(II) by striking "sections 423(c) and 424(c)(1)" in paragraph (1)(B) and inserting "section 423(c)",

(III) by striking "422(c)(1), 423(c), or 424(c)(1)" each place it appears in paragraphs (2) and (3)(A) and inserting "423(c)",

(IV) by striking "sections 422(c)(1), 423(c), and 424(c)(1)" in paragraph (3)(B) and inserting "section 423(c)", and

(V) by striking "such sections" in paragraph (3)(B) and inserting "such section".

(C) Section 422 (as redesignated by subparagraph (A)) is amended—

(i) by striking "425(a)" in subsection (a)(2) and inserting "424(a)", and

(ii) by striking paragraph (5) of subsection (c) and by redesignating paragraphs (6), (7), and (8), of subsection (c) as paragraphs (5), (6), and (7), respectively.

(D) Subsection (a) of section 423 is amended—

(i) by striking "(other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B))", and

(ii) by striking "425(a)" and inserting "424(a)".

(E) Subsection (b) of section 423 is amended by striking "425(d)" in paragraph (3) and inserting "424(d)".

(F) Section 424 (as redesignated by subparagraph (A)) is amended—

(i) by striking "425(a)" in subsection (a) and inserting "424(a)",

(ii) by striking "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)" in subsection (c)(3)(A)(ii) and inserting "422(a)(1) or 423(a)(1)",

(iii) by striking "422(b)(7), 422A(b)(6), 423(b)(3), and 424(b)(3)" in subsection (d) and inserting "422(b)(6) and 423(b)(3)",

(iv) in subsection (g)—

(I) by striking "422(a)(2), 422A(a)(2), 423(a)(2), and 424(a)(2)" and inserting "422(a)(2) and 423(a)(2)", and

(II) by striking "425(a)" and inserting "424(a)", and

(v) in subsection (h)—

(I) by striking paragraph (2) and inserting the following:

"(2) SPECIAL RULE FOR SECTION 423 OPTIONS.—In the case of the transfer of stock pursuant to the exercise of an option to which section 423 applies and which has been so modified, extended, or renewed, the fair market value of such stock at the time of the granting of the option shall be considered as whichever of the following is the highest—

"(A) the fair market value of such stock on the date of the original granting of the option,

"(B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

"(C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal."

(II) by striking "sections 422(b)(6), 423(b)(9), and 424(b)(2)" in paragraph (3)(B) and inserting "section 423(b)(9)", and

(III) by striking the sentence following paragraph (3)(C).

(G) Paragraph (3) of section 56(b) is amended—

(i) by striking "section 422A" and inserting "section 422", and

(ii) by striking "section 422A(c)(2)" and inserting "section 422(c)(2)".

(H) Clause (ii) of section 1042(c)(2)(B) is amended by striking "section 83, 422, 422A, 423, or 424 applies" and inserting "section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)".

(I)(i) Subparagraph (B) of section 402(a)(3) is amended by striking "section 425" and inserting "section 424".

(ii) Clause (i) of section 402(a)(6)(B) is amended by striking "section 425(f)" and inserting "section 424(f)".

(J) Section 6039 is amended—

(i) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

"(1) which in any calendar year transfers a share of stock pursuant to such person's exercise of an incentive stock option, or

"(2) which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock),",

(ii) by striking "a qualified stock option, incentive stock option, a restricted stock option, or an" in subsection (b)(1) and inserting "an incentive stock option or an", and

(iii) by amending subsection (c) to read as follows:

"(c) CROSS REFERENCES.—

"For definition of—

"(1) the term 'incentive stock option', see section 422(b), and

"(2) the term 'employee stock purchase plan' see section 423(b)."

(10) AMENDMENTS RELATING TO REPEAL OF SECTION 545(c).—

(A) Paragraph (15) of section 381(c) is hereby repealed.

(B) Section 545 is amended by redesignating subsection (d) as subsection (c).

(11) AMENDMENTS RELATING TO REPEAL OF PARAGRAPHS (2), (3), AND (4) OF SECTION 582(c).—Subsection (c) of section 582 is amended—

(A) by striking "paragraph (5)" in paragraph (1) and inserting "paragraph (2)", and

(B) by redesignating paragraph (5) as paragraph (2).

(12) AMENDMENTS RELATING TO REPEAL OF SECTION 585(b)(2).—

(A) Paragraph (4) of section 57(a) is amended by striking "585 or".

(B) Subparagraph (A) of section 291(e)(1) is hereby repealed.

(C) Paragraph (1) of section 585(b) is amended by striking "shall not exceed" and all that follows down through the period at the end thereof and inserting "shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2)."

(D) Subsection (b) of section 585 is amended by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(E) Paragraph (3) of section 585(b) (as redesignated by subparagraph (A)) is amended to read as follows:

"(3) REGULATIONS; DEFINITION OF LOAN.—The Secretary shall define the term loan and prescribe such regulations as may be necessary to carry out the purposes of this section."

(F) Paragraphs (1) (A) and (E) of section 593(b) are each amended by striking "section 585(b)(3)" and inserting "section 585(b)(2)".

(13) AMENDMENT RELATING TO REPEAL OF SECTION 617(i).—Section 617 is amended by redesignating subsection (j) as subsection (i).

(14) AMENDMENTS RELATING TO REPEAL OF SECTION 861 (a)(1) (C) AND (D).—Paragraph (1) of section 861(a) is amended by inserting "and" at the end of subparagraph (A) and by striking the comma at the end of subparagraph (B) and inserting a period.

(15) AMENDMENTS RELATING TO REPEAL OF SECTION 1039.—

(A) Paragraphs (1)(A)(i) and (2)(B)(ii) of section 1250(a) are each amended by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 1039(b)(1)(B)".

(B) Subsection (d) of section 1250 is amended by striking paragraph (8).

(C) Section 1250 is amended by striking subsection (g) and by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

(16) AMENDMENT RELATING TO REPEAL OF SECTION 1401(c).—Section 1401 is amended by redesignating subsection (d) as subsection (c).

(17) AMENDMENTS RELATING TO RENEGOTIATION PROVISIONS.—

(A) Section 6422 is amended by striking paragraph (6) and redesignating the succeeding paragraphs accordingly.

(B) Subparagraph (A) of section 6511(d)(2) is amended by striking "; except that" and all that follows down through the period at the end of the first sentence and inserting a period.

(C) Section 6515 is amended by striking paragraph (2) and redesignating the succeeding paragraphs accordingly.

(18) AMENDMENT RELATING TO REPEAL OF SECTION 1564.—Paragraph (5) of section 535(c) is amended by striking "sections 1561 and 1564" and inserting "section 1561".

(19) AMENDMENTS RELATED TO REPEAL OF UNIFIED CREDIT PHASE-IN PROVISIONS.—

(A) Section 2010 is amended by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(B) Section 2505 is amended by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(C) Subsection (a) of section 6018 is amended by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(20) AMENDMENTS RELATED TO REPEAL OF SECTION 6158.—

(A) Section 6503 is amended by striking subsection (h) and redesignating subsections (i), (j), and (k) as subsections (h), (i), and (j), respectively.

(B) Paragraph (2) of section 6601(b) is amended—

(i) by striking "or 6158(a)" in the material preceding subparagraph (A),

(ii) by striking "or 6158(a), as the case may be" in subparagraph (A), and

(iii) by striking the last sentence.

(21) AMENDMENTS RELATING TO REPEAL OF SUBCHAPTER E OF CHAPTER 64.—

(A) Section 6405 is amended by striking subsection (d).

(B) Section 7463 is amended by striking subsection (f).

(22) AMENDMENTS RELATING TO REPEAL OF CHAPTER 37.—

(A) Subsection (b) of section 6302 is amended by striking "chapter 21" and all that follows down through "chapter 37," and inserting "chapter 21, 31, 32, or 33, or by section 4481".

(B)(i) Section 6418 is hereby repealed.

(ii) The table of sections for subchapter B of chapter 65 is amended by striking the item relating to section 6418.

(C) Subsection (e) of section 6511 is hereby repealed.

(D)(i) Section 7240 is hereby repealed.

(ii) The table of sections for part II of subchapter A of chapter 75 is amended by striking the item relating to section 7240.

(E)(i) Subsection (a) of section 7655 is amended by striking the semicolon at the end of paragraph (2) and inserting a period and by striking paragraph (3).

(ii) Subsection (b) of section 7655 is amended by striking the semicolon at the end of paragraph (2) and inserting a period and by striking paragraph (3).

(23) AMENDMENTS RELATED TO REPEAL OF SECTION 6427(e).—

(A) Paragraph (1) of section 6427(i) is amended by striking "(e),".

(B) Subparagraph (A) of section 6427(i)(2) is amended to read as follows:

"(A) IN GENERAL.—If $1,000 or more is payable under subsections (a), (b), (d), (g), (h), and (q) to any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any of the first 3 quarters of his taxable year, a claim may be filed under this section with respect to fuel used (or a qualified diesel powered highway vehicle purchased), during such quarter."

(C) Paragraph (2) of section 6427(i) is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

SEC. 11802. MISCELLANEOUS PROVISIONS.

(a) REPEAL OF SECTION 72(t)(2)(C).—Subsection (t) of section 72 is amended—

(1) by striking subparagraph (C) of paragraph (2),

(2) by redesignating subparagraph (D) of paragraph (2) as subparagraph (C), and

(3) by striking "(C), and (D)" in paragraph (3)(A) and inserting "and (C)".

(b) REPEAL OF OBSOLETE PROVISIONS IN SECTION 274.—

(1) Paragraph (2) of section 274(l) is amended to read as follows:

"(2) SKYBOXES, ETC.—In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sen-

tence, 2 or more related leases shall be treated as 1 lease."

(2) Subsection (n) of section 274 is amended—

(A) in paragraph (2)—

(i) by striking subparagraph (D) and redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively,

(ii) by striking "described in subparagraph (E)" and inserting "described in subparagraph (D)", and

(iii) by striking "of subparagraph (F)" and inserting "of subparagraph (E)", and

(B) by striking paragraph (3).

(c) REPEAL OF SECTION 468(a)(2)(B)(ii).—Subparagraph (B) of section 468(a)(2) is amended to read as follows:

"(B) INCREASE FOR INTEREST.—A reserve shall be increased each taxable year by an amount equal to the amount of interest which would have been earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

"(i) at the Federal short-term rate or rates (determined under section 1274) in effect, and

"(ii) by compounding semiannually."

(d) REPEAL OF OBSOLETE PROVISIONS IN SECTION 556(b)(1).—

(1) Paragraph (1) of section 556(b) is amended by striking the last 2 sentences.

(2) The amendment made by paragraph (1) shall not apply to any corporation with respect to which an election under the second sentence of section 556(b)(1) of the Internal Revenue Code of 1986 (as in effect before the amendment made by paragraph (1)) is in effect unless such corporation elects to have such amendment apply and agrees to such adjustments as the Secretary of the Treasury or his delegate may require.

(e) ELIMINATION OF UNNECESSARY SECTION RELATING TO JURY DUTY PAY REMITTED TO EMPLOYER.—

(1) Paragraph (13) of section 62(a) is amended to read as follows:

"(13) JURY DUTY PAY REMITTED TO EMPLOYER.—Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term 'jury pay' means any payment received by the individual for the discharge of jury duty."

(2) Part VII of subchapter B of chapter 1 is amended by striking out section 220 and redesignating section 221 as section 220.

(3) The table of sections for part VII of subchapter B of chapter 1 is amended by striking the items relating to sections 220 and 221 and inserting in lieu thereof the following:

"Sec. 220. Cross reference."

(f) OTHER PROVISIONS.—

(1) Section 541 is amended by striking "(38.5 percent in the case of taxable years beginning in 1987)".

(2) Subsection (e) of section 665 is amended to read as follows:

"(e) PRECEDING TAXABLE YEAR.—For purposes of this subpart—

"(1) In the case of a foreign trust created by a United States person, the term 'preceding taxable year' does not include any taxable year of the trust to which this part does not apply.

"(2) In the case of a preceding taxable year with respect to which a trust qualified, without regard to this subpart, under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies."

(3) Subsection (c) of section 668 is amended to read as follows:

"(c) INTEREST CHARGE NOT DEDUCTIBLE.—The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title."

(4) Paragraph (1) of section 1503(c) is amended by striking the last 2 sentences thereof.

(5) Paragraph (2) of section 2032A(a) is amended to read as follows:

"(2) LIMITATION ON AGGREGATE REDUCTION IN FAIR MARKET VALUE.—The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $750,000."

Subpart B—Modifications to Specific Provisions

SEC. 11811. ELIMINATION OF EXPIRED PROVISIONS IN SECTION 172.

(a) GENERAL RULE.—Subsection (b) of section 172 is amended to read as follows:

"(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

"(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

"(i) shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss, and

"(ii) shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss.

"(B) SPECIAL RULES FOR REIT'S.—

"(i) IN GENERAL.—A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

"(ii) SPECIAL RULE.—In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.

"(iii) REIT YEAR.—For purposes of this subparagraph, the term 'REIT year' means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

"(C) SPECIFIED LIABILITY LOSSES.—In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

"(D) BAD DEBT LOSSES OF COMMERCIAL BANKS.—In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

"(E) EXCESS INTEREST LOSS.—

"(i) IN GENERAL.—If—

"(I) there is a corporate equity reduction transaction, and

"(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

"(ii) LOSS LIMITATION YEAR.—For purposes of clause (i) and subsection (m), the term 'loss limitation year' means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

"(iii) APPLICABLE CORPORATION.—For purposes of clause (i), the term 'applicable corporation' means—

"(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

"(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

"(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

"(iv) OTHER DEFINITIONS.—

"For definitions of terms used in this subparagraph, see subsection (h).

"(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the 'loss year') shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

"(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

"(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

"(3) ELECTION TO WAIVE CARRYBACK.—Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year."

(b) CONFORMING AMENDMENTS.—

(1) Section 172 is amended by striking subsections (g), (h), (i), and (k), and by redesignating subsections (j), (l), (m), and (n) as subsections (f), (g), (h), and (i), respectively.

(2)(A) Subsection (f) of section 172 (as redesignated by paragraph (1)) is amended to read as follows:

"(f) RULES RELATING TO SPECIFIED LIABILITY LOSS.—For purposes of this section—

"(1) IN GENERAL.—The term 'specified liability loss' means the sum of the following

amounts to the extent taken into account in computing the net operating loss for the taxable year:

"(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

"(i) product liability, or

"(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

"(B) Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

"(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

"(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.

"(2) LIMITATION.—The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

"(3) SPECIAL RULE FOR NUCLEAR POWERPLANTS.—Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

"(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

"(B) ending with the taxable year preceding the loss year.

"(4) PRODUCT LIABILITY.—The term 'product liability' means—

"(A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

"(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

"(5) COORDINATION WITH SUBSECTION (b)(2).—For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

"(6) ELECTION.—Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year."

(B) The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A).

(3) Paragraph (2) of section 172(g) (as redesignated by paragraph (1)) is amended to read as follows:

"(2) COORDINATION WITH SUBSECTION (b)(2).—For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated."

(4) Subparagraph (B) of section 172(h)(4) (as redesignated by paragraph (1)) is amended to read as follows:

"(B) COORDINATION WITH SUBSECTION (b)(2).—For purposes of subsection (b)(2)—

"(i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and

"(ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to net operating losses for taxable years beginning after December 31, 1990.

SEC. 11812. ELIMINATION OF OBSOLETE PROVISIONS IN SECTION 167.

(a) GENERAL RULE.—Section 167 is amended—

(1) by striking subsections (b), (c), (d), (e), (f), (j), (k), (l), (m), (p), and (q) and by redesignating subsections (g), (h), (r), and (s) as subsections (c), (d), (e), and (f), respectively, and

(2) by inserting after subsection (a) the following new subsection:

"(b) CROSS REFERENCE.—

"For determination of depreciation deduction in case of property to which section 168 applies, see section 168."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 167 (as redesignated by subsection (a)) is amended by striking "(h)" each place it appears in paragraphs (3)(B) and (4)(B) and inserting "(d)".

(2)(A) Subparagraph (A) of section 168(e)(2) is amended to read as follows:

"(A) RESIDENTIAL RENTAL PROPERTY.—

"(i) RESIDENTIAL RENTAL PROPERTY.—The term 'residential rental property' means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

"(ii) DEFINITIONS.—For purposes of clause (i)—

"(I) the term 'dwelling unit' means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

"(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied."

(B) Paragraph (10) of section 168(i) is amended to read as follows:

"(10) PUBLIC UTILITY PROPERTY.—The term 'public utility property' means property used predominantly in the trade or business of the furnishing or sale of—

"(A) electrical energy, water, or sewage disposal services,

"(B) gas or steam through a local distribution system,

"(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

"(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof."

(C) Paragraph (2) of section 168(f) is amended by striking "section 167(l)(3)(A)" and inserting "subsection (i)(10)".

(D) Paragraph (1) of section 168(i) is amended by adding at the end thereof the following new sentence: "The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Reconciliation Revenue Act of 1990."

(E) Clause (ii) of section 168(i)(9)(A) is amended by striking "(determined without regard to section 167(l))".

(3) Sections 42(d)(2)(D)(i)(I) and 42(d)(5)(B) are each amended by striking "section 167(k)" and inserting "section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(4) Subparagraph (D) of section 56(a)(1) is amended by striking "section 167(l)(3)(A)" and inserting "section 168(i)(10)".

(5) Paragraph (2) of section 312(k) is amended to read as follows:

"(2) EXCEPTION.—If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the straight line method)."

(6)(A) Paragraph (6) of section 381(c) is amended by striking "subsections (b), (j), and (k) of section 167" and inserting "sections 167 and 168".

(B) Subsection (c) of section 381 is amended by striking paragraph (24) and redesignating paragraphs (25) and (26) as paragraphs (24) and (25), respectively.

(7) Subparagraph (C) of section 404(a)(1) is amended by striking "section 167(l)(3)(A)(iii)" and inserting "section 168(i)(10)(C)".

(8) Clause (i) of section 460(e)(6)(A) is amended by striking "section 167(k)" and inserting "section 168(e)(2)(A)(ii)".

(9) Subsection (e) of section 642 is amended by striking "167(h)" and inserting "167(d)".

(10) Paragraph (2) of section 1016(a) is amended by striking "under section 167(b)(1)" and inserting "under the straight line method".

(11) Subsection (a) of section 1250 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULE.—For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990."

(12) Paragraph (4) of section 1250(b) is amended by striking "167(k)" each place it appears and inserting "167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(13) Subparagraph (B) of section 7701(e)(5) is amended by inserting before the period at the end thereof the following: "(as in effect on the day before the date of the enactment of the Revenue Reconcilation Act of 1990)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

(3) EXCEPTION FOR PREVIOUSLY GRANDFATHER EXPENDITURES.—The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 (as added by section 1002(l)(31) of the Technical and Miscellaneous Revenue Act of 1988).

SEC. 11813. ELIMINATION OF EXPIRED OR OBSOLETE INVESTMENT TAX CREDIT PROVISIONS.

(a) GENERAL RULE.—Subpart E of part IV of subchapter A of chapter 1 is amended to read as follows:

"Subpart E—Rules for Computing Investment Credit

"Sec. 46. Amount of credit.

"Sec. 47. Rehabilitation credit.

"Sec. 48. Energy credit; reforestation credit.

"Sec. 49. At-risk rules.

"Sec. 50. Other special rules.

"SEC. 46. AMOUNT OF CREDIT.

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

"(1) the rehabilitation credit,

"(2) the energy credit, and

"(3) the reforestation credit.

"SEC. 47. REHABILITATION CREDIT.

"(a) GENERAL RULE.—For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

"(1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and

"(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

"(b) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—

"(1) IN GENERAL.—Qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

"(2) COORDINATION WITH SUBSECTION (d).—The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED REHABILITATED BUILDING.—

"(A) IN GENERAL.—The term 'qualified rehabilitated building' means any building (and its structural components) if—

"(i) such building has been substantially rehabilitated,

"(ii) such building was placed in service before the beginning of the rehabilitation,

"(iii) in the case of any building other than a certified historic structure, in the rehabilitation process—

"(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

"(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

"(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

"(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

"(B) BUILDING MUST BE FIRST PLACED IN SERVICE BEFORE 1936.—In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

"(C) SUBSTANTIALLY REHABILITATED DEFINED.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year exceed the greater of—

"(I) the adjusted basis of such building (and its structural components), or

"(II) $5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

"(ii) SPECIAL RULE FOR PHASED REHABILITATION.—In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting '60-month period' for '24-month period'.

"(iii) LESSEES.—The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

"(D) RECONSTRUCTION.—Rehabilitation includes reconstruction.

"(2) QUALIFIED REHABILITATION EXPENDITURE DEFINED.—

"(A) IN GENERAL.—The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account—

"(i) for property for which depreciation is allowable under section 168 and which is—

"(I) nonresidential real property,

"(II) residential rental property,

"(III) real property which has a class life of more than 12.5 years, or

"(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

"(ii) in connection with the rehabilitation of a qualified rehabilitated building.

"(B) CERTAIN EXPENDITURES NOT INCLUDED.—The term 'qualified rehabilitation expenditure' does not include—

"(i) STRAIGHT LINE DEPRECIATION MUST BE USED.—Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

"(ii) COST OF ACQUISITION.—The cost of acquiring any building or interest therein.

"(iii) ENLARGEMENTS.—Any expenditure attributable to the enlargement of an existing building.

"(iv) CERTIFIED HISTORIC STRUCTURE, ETC.—Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

"(I) such building was not a certified historic structure,

"(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

"(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

"(v) TAX-EXEMPT USE PROPERTY.—

"(I) IN GENERAL.—Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h)).

"(II) CLAUSE NOT TO APPLY FOR PURPOSES OF PARAGRAPH (1)(C).—This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

"(vi) EXPENDITURES OF LESSEE.—Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

"(C) CERTIFIED REHABILITATION.—For purposes of subparagraph (B), the term 'certified rehabilitation' means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

"(D) NONRESIDENTIAL REAL PROPERTY; RESIDENTIAL RENTAL PROPERTY; CLASS LIFE.—For purposes of subparagraph (A), the terms 'nonresidential real property,' 'residential rental property,' and 'class life' have the respective meanings given such terms by section 168.

"(3) CERTIFIED HISTORIC STRUCTURE DEFINED.—

"(A) IN GENERAL.—The term 'certified historic structure' means any building (and its structural components) which—

"(i) is listed in the National Register, or

"(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"(B) REGISTERED HISTORIC DISTRICT.—The term 'registered historic district' means—

"(i) any district listed in the National Register, and

"(ii) any district—

"(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

"(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

"(d) PROGRESS EXPENDITURES.—

"(1) IN GENERAL.—In the case of any building to which this subsection applies, except as provided in paragraph (3)—

"(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

"(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

"(2) PROPERTY TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

"(i) the normal rehabilitation period for such building is 2 years or more, and

"(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

"(B) NORMAL REHABILITATION PERIOD.—For purposes of subparagraph (A), the term 'normal rehabilitation period' means the period reasonably expected to be required for the rehabilitation of the building—

"(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

"(ii) ending on the date on which it is expected that the property will be available for placing in service.

"(3) SPECIAL RULES FOR APPLYING PARAGRAPH (1).—For purposes of paragraph (1)—

"(A) COMPONENT PARTS, ETC.—Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account—

"(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

"(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such building.

"(B) CERTAIN BORROWING DISREGARDED.—Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

"(C) LIMITATION FOR BUILDINGS WHICH ARE NOT SELF-REHABILITATED.—

"(i) IN GENERAL.—In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

"(ii) CARRYOVER OF CERTAIN AMOUNTS.—In the case of a building which is not a self-rehabilitated building, if for the taxable year—

"(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

"(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

"(D) DETERMINATION OF PERCENTAGE OF COMPLETION.—The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation completed during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

"(E) NO PROGRESS EXPENDITURES FOR CERTAIN PRIOR PERIODS.—No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

"(F) NO PROGRESS EXPENDITURES FOR PROPERTY FOR YEAR IT IS PLACED IN SERVICE, ETC.—In the case of any building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

"(i) the taxable year in which the building is placed in service, or

"(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property,

or for any taxable year thereafter.

"(4) SELF-REHABILITATED BUILDING.—For purposes of this subsection, the term 'self-rehabilitated building' means any building if it is reasonable to believe that more than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

"(5) ELECTION.—This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

"SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT.

"(a) ENERGY CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

"(2) ENERGY PERCENTAGE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the energy percentage is 10 percent.

"(B) TERMINATION.—Effective with respect to periods after December 31, 1991, the energy percentage is zero. For purposes of the preceding sentence, rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply.

"(C) COORDINATION WITH REHABILITATION CREDIT.—The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

"(3) ENERGY PROPERTY.—For purposes of this subpart, the term 'energy property' means any property—

"(A) which is—

"(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, or

"(ii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

"(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

"(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

"(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

"(ii) are in effect at the time of the acquisition of the property.

The term 'energy property' shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

"(4) SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.—

"(A) REDUCTION OF BASIS.—For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

"(i) subsidized energy financing, or

"(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

"(B) DETERMINATION OF FRACTION.—For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

"(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

"(ii) the denominator of which is the basis of the property.

"(C) SUBSIDIZED ENERGY FINANCING.—For purposes of subparagraph (A), the term 'subsidized energy financing' means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

"(5) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

"(b) REFORESTATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 194 (after the application of section 194(b)(1)).

"(2) DEFINITIONS.—For purposes of this subpart, the terms 'amortizable basis' and 'qualified timber property' have the respective meanings given to such terms by section 194.

"SEC. 49. AT-RISK RULES.

"(a) GENERAL RULE.—

"(1) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.—

"(A) LIMITATION.—The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

"(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any property which—

"(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

"(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

"(C) CREDIT BASE DEFINED.—For purposes of this paragraph, the term 'credit base' means—

"(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

"(ii) the basis of any energy property, and

"(iii) the amortizable basis of any qualified timber property.

"(D) NONQUALIFIED NONRECOURSE FINANCING.—

"(i) IN GENERAL.—For purposes of this paragraph and paragraph (2), the term 'nonqualified nonrecourse financing' means any nonrecourse financing which is not qualified commercial financing.

"(ii) QUALIFIED COMMERCIAL FINANCING.—For purposes of this paragraph, the term 'qualified commercial financing' means any financing with respect to any property if—

"(I) such property is acquired by the taxpayer from a person who is not a related person,

"(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

"(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government. Such term shall not include any convertible debt.

"(iii) NONRECOURSE FINANCING.—For purposes of this subparagraph, the term 'nonrecourse financing' includes—

"(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

"(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.

"(iv) QUALIFIED PERSON.—For purposes of this paragraph, the term 'qualified person' means any person which is actively and regularly engaged in the business of lending money and which is not—

"(I) a related person with respect to the taxpayer,

"(II) a person from which the taxpayer acquired the property (or a related person to such person), or

"(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

"(v) RELATED PERSON.—For purposes of this subparagraph, the term 'related person' has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

"(E) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of this paragraph and paragraph (2)—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

"(ii) SPECIAL RULE FOR CERTAIN RECOURSE FINANCING OF S CORPORATION.—A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

"(I) such financing is recourse financing (determined at the corporate level), and

"(II) such financing is provided with respect to qualified business property of such corporation.

"(iii) QUALIFIED BUSINESS PROPERTY.—For purposes of clause (ii), the term 'qualified business property' means any property if—

"(I) such property is used by the corporation in the active conduct of a trade or business,

"(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

"(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

"(iv) DETERMINATION OF ALLOCABLE SHARE.—The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

"(F) SPECIAL RULES FOR ENERGY PROPERTY.—Rules similar to the rules of subparagraph (F) of section 46(c)(8) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this paragraph.

"(2) SUBSEQUENT DECREASES IN NONQUALIFIED NONRECOURSE FINANCING WITH RESPECT TO THE PROPERTY.—

"(A) IN GENERAL.—If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as an increase in the credit base for such property in accordance with subparagraph (C).

"(B) CERTAIN TRANSACTIONS NOT TAKEN INTO ACCOUNT.—For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

"(C) MANNER IN WHICH TAKEN INTO ACCOUNT.—

"(i) CREDIT DETERMINED BY REFERENCE TO TAXABLE YEAR PROPERTY PLACED IN SERVICE.—For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 50(a), any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service.

"(ii) CREDIT ALLOWED FOR YEAR OF DECREASE IN NONQUALIFIED NONRECOURSE FINANCING.—Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

"(b) INCREASES IN NONQUALIFIED NONRECOURSE FINANCING.—

"(1) IN GENERAL.—If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)) with respect to any property to which subsection (a)(1) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the credit base (as defined in subsection (a)(1)(C)) taken into account with respect to such property by the amount of such net increase. For purposes of determining the amount of credit subject to the early disposition or cessation rules of section 50(a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base in the year in which the property was first placed in service.

"(2) TRANSFERS OF DEBT MORE THAN 1 YEAR AFTER INITIAL BORROWING NOT TREATED AS INCREASING NONQUALIFIED NONRECOURSE FINANCING.—For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of subsection

(a)(1)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of any indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

"(3) SPECIAL RULES FOR CERTAIN ENERGY PROPERTY.—Rules similar to the rules of section 47(d)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A, B, D, or G.

"SEC. 50. OTHER SPECIAL RULES.

"(a) RECAPTURE IN CASE OF DISPOSITIONS, ETC.—Under regulations prescribed by the Secretary—

"(1) EARLY DISPOSITION, ETC.—

"(A) GENERAL RULE.—If, during any taxable year, investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

"(B) RECAPTURE PERCENTAGE.—For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

"If the property ceases to be investment credit property within—	The recapture percentage is:
(i) One full year after placed in service.	100
(ii) One full year after the close of the period described in clause (i).	80
(iii) One full year after the close of the period described in clause (ii).	60
(iv) One full year after the close of the period described in clause (iii).	40
(v) One full year after the close of the period described in clause (iv).	20

"(2) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—

"(A) IN GENERAL.—If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.

"(B) CERTAIN EXCESS CREDIT RECAPTURED.—Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.

"(C) CERTAIN SALES AND LEASEBACKS.—Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (c)(4) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into account by the lessee under section 47(d) with respect to such property.

"(D) COORDINATION WITH PARAGRAPH (1).—If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

"(E) SPECIAL RULES.—Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(a)(5)(A).

"(3) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any cessation described in paragraph (1) or (2), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation.

"(4) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—Paragraphs (1) and (2) shall not apply to—

"(A) a transfer by reason of death, or

"(B) a transaction to which section 381(a) applies

For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.

"(5) DEFINITIONS AND SPECIAL RULES.—

"(A) INVESTMENT CREDIT PROPERTY.—For purposes of this subsection, the term 'investment credit property' means any property eligible for a credit determined under this subpart.

"(B) TRANSFER BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in subsection (a) of section 1041—

"(i) the foregoing provisions of this subsection shall not apply, and

"(ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

"(C) SPECIAL RULE.—Any increase in tax under paragraph (1) or (2) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A, B, D, or G.

"(b) CERTAIN PROPERTY NOT ELIGIBLE.—No credit shall be determined under this subpart with respect to—

"(1) PROPERTY USED OUTSIDE UNITED STATES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no credit shall be determined under this subpart with respect to any property which is used predominantly outside the United States.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to any property described in section 168(g)(4).

"(2) PROPERTY USED FOR LODGING.—No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

"(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities.

"(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;

"(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

"(D) any energy property.

"(3) PROPERTY USED BY CERTAIN TAX-EXEMPT ORGANIZATION.—No credit shall be determined under this subpart with respect to any property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

"(4) PROPERTY USED BY GOVERNMENTAL UNITS OR FOREIGN PERSONS OR ENTITIES.—

"(A) IN GENERAL.—No credit shall be determined under this subpart with respect to any property used—

"(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

"(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section 168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

"(B) EXCEPTION FOR SHORT-TERM LEASES.—This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

"(C) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO GOVERNMENTS, ETC.—If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

"(D) SPECIAL RULES FOR PARTNERSHIPS, ETC.—For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

"(E) CROSS REFERENCE.—

"For special rules for the application of this paragraph and paragraph (3), see section 168(h)."

"(c) BASIS ADJUSTMENT TO INVESTMENT CREDIT PROPERTY.—

"(1) IN GENERAL.—For purposes of this subtitle, if a credit is determined under this subpart with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

"(2) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (a).

"(3) SPECIAL RULE.—In the case of any energy credit or reforestation credit—

"(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

"(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2).

"(4) RECAPTURE OF REDUCTIONS.—

"(A) IN GENERAL.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

"(B) SPECIAL RULE FOR SECTION 1250.—For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

"(5) ADJUSTMENT IN BASIS OF INTEREST IN PARTNERSHIP OR S CORPORATION.—The adjusted basis of—

"(A) a partner's interest in a partnership, and

"(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

"(d) CERTAIN RULES MADE APPLICABLE.—For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply:

"(1) Section 46(e) (relating to limitations with respect to certain persons).

"(2) Section 46(f) (relating to limitation in case of certain regulated companies).

"(3) Section 46(h) (relating to special rules for cooperatives).

"(4) Paragraphs (2) and (3) of section 48(b) (relating to special rule for sale-leasebacks).

"(5) Section 48(d) (relating to certain leased property).

"(6) Section 48(f) (relating to estates and trusts).

"(7) Section 48(r) (relating to certain 501(d) organizations)."

(b) CONFORMING AMENDMENTS.—

(1)(A) Subclause (III) of section 29(b)(3)(A)(i) is amended by striking "section 48(l)(11)(C)" and inserting "section 48(a)(4)(C)".

(B) Paragraph (4) of section 29(b) is amended by striking "section 47" each place it appears and inserting "section 49(b) or 50(a)".

(C) Paragraph (3) of section 29(c) is amended to read as follows:

"(3) BIOMASS.—The term 'biomass' means any organic material other than—

"(A) oil and natural gas (or any product thereof), and

"(B) coal (including lignite) or any product thereof."

(2)(A) Paragraph (1) of section 38(b) is amended by striking "section 46(a)" and inserting "section 46".

(B) Subsection (c) of section 38 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(C) Subparagraph (C) of section 38(c)(2) (as redesignated by subparagraph (B)) is amended—

(i) by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "46(e)(1)", and

(ii) by inserting "(as so in effect)" after "46(e)(2)".

(D) Subsection (d) of section 38 is amended—

(i) by striking "sections 46(f), 47(a), 196(a), and any other provision" and inserting "any provision",

(ii) by amending paragraph (2) to read as follows:

"(2) COMPONENTS OF INVESTMENT CREDIT.—The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.", and

(iii) by amending subparagraph (B) of paragraph (3) to read as follows:

"(B) the credit determined under section 46—

"(i) to the extent attributable to the employee plan percentage (as defined in section 46(a)(2)(E) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as a credit listed after paragraph (1) of section 46, and

"(ii) to the extent attributable to the regular percentage (as defined in section 46(b)(1) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall be treated as the first credit listed in section 46."

(3) Subsection (k) of section 42 is amended—

(A) in paragraph (1)—

(i) by striking "46(c)(8)" and inserting "49(a)(1)",

(ii) by striking "46(c)(9)" and inserting "49(a)(2)", and

(iii) by striking "47(d)(1)" and inserting "49(b)(1)", and

(B) by striking "46(c)(8)(D)(iv)(II)" in paragraphs (2)(A)(ii) and (2)(D) and inserting "49(a)(1)(D)(iv)(II)".

(4) Subsection (e) of section 52 is amended by striking "section 46" and inserting "section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(5) Paragraph (1) of section 55(c) is amended by striking "section 47" and inserting "section 49(b) or 50(a)".

(6) Subparagraph (B) of section 108(g)(1) is amended by striking "section 46(c)(8)(D)(iv)" and inserting "section 49(a)(1)(D)(iv)".

(7) Paragraph (4) of section 145(d) is amended—

(A) by striking "section 48(g)(1)(C)" each place it appears and inserting "section 47(c)(1)(C)", and

(B) by striking "section 48(g)(1)(C)(i)" and inserting "section 47(c)(1)(C)(i)".

(8) Subparagraph (B) of section 147(d)(3) is amended by striking "section 48(g)(2)(B)" and inserting "section 47(c)(2)(B)".

(9)(A) Clause (vi) of section 168(e)(3)(B) is amended—

(i) by striking "paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(l)" in subclause (I) and inserting "subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)", and

(ii) by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "48(l)" in subclause (II).

(B)(i) Subparagraph (D)(i) of section 168(e)(3) is amended by striking "section 48(p)" and inserting "subsection (i)(13)".

(ii) Subsection (i) of section 168 is amended by adding at the end thereof the following new paragraph:

"(13) SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURE.—

"(A) IN GENERAL.—The term 'single purpose agricultural or horticultural structure' means—

"(i) a single purpose livestock structure, and

"(ii) a single purpose horticultural structure.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) SINGLE PURPOSE LIVESTOCK STRUCTURE.—The term 'single purpose livestock structure' means any enclosure or structure specifically designed, constructed, and used—

"(I) for housing, raising, and feeding a particular type of livestock and their produce, and

"(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

"(ii) SINGLE PURPOSE HORTICULTURAL STRUCTURE.—The term 'single purpose horticultural structure' means—

"(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

"(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

"(iii) STRUCTURES WHICH INCLUDE WORK SPACE.—An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

"(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

"(II) the maintenance of the enclosure or structure, and

"(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

"(iv) LIVESTOCK.—The term 'livestock' includes poultry."

(C) Paragraph (4) of section 168(g) is amended to read as follows:

"(4) EXCEPTION FOR CERTAIN PROPERTY USED OUTSIDE UNITED STATES.—Subparagraph (A) of paragraph (1) shall not apply to—

"(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

"(B) rolling stock which is used within and without the United States and which is—

"(i) of a domestic railroad corporation providing transportation subject to subchapter I of chapter 105 of title 49, or

"(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

"(C) any vessel documented under the laws of the United States which is operated

in the foreign or domestic commerce of the United States;

"(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

"(E) any container of a United States person which is used in the transportation of property to and from the United States;

"(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

"(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

"(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

"(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

"(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

"(K) any property described in section 48(a)(3)(A)(iii) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

"(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States. For purposes of subparagraph (J), the term 'northern portion of the Western Hemisphere' means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America."

(10) Subparagraph (B) of section 170(h)(4) is amended by striking "section 48(g)(3)(B)" and inserting "section 47(c)(3)(B)".

(11)(A) Paragraph (1) of section 179(d) is amended by striking "section 38 property" and inserting "section 1245 property (as defined in section 1245(a)(3))".

(B) Paragraph (5) of section 179(d) is amended to read as follows:

"(5) SECTION NOT TO APPLY TO CERTAIN NONCORPORATE LESSORS.—This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

"(A) the property subject to the lease has been manufactured or produced by the lessor, or

"(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property."

(12)(A) Paragraph (1) of section 196(c) is amended—

(i) by striking "section 46(a)" and inserting "section 46", and

(ii) by striking "section 48(q)" and inserting "section 50(c)".

(B) Paragraph (1) of section 196(d) is amended—

(i) by striking "section 46(a)" and inserting "section 46", and

(ii) by striking "other than a credit to which section 48(q)(3) applies" and inserting "other than the rehabilitation credit".

(13)(A) Subsection (a) of section 280F is amended—

(i) by striking paragraphs (1) and (4) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively, and

(ii) by striking "the credit determined under section 46(a) or" in paragraph (2)(B) (as redesignated by clause (i)).

(B) Subsection (b) of section 280F is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

(C) The paragraph heading for paragraph (1) of section 280F(c) is amended by striking "credits and".

(D) Subparagraph (A) of section 280F(d)(3) is amended by striking "the amount of any credit allowable under section 38 to the employee or".

(E) The section heading of section 280F is amended by striking "INVESTMENT TAX CREDIT AND".

(F) The table of sections for part IX of subchapter B of chapter 1 is amended by striking "investment credit and" in the item relating to section 280F.

(14) Paragraph (5) of section 312(k) is amended by striking "section 48(q)" and inserting "section 50(c)".

(15) Subparagraph (D) of section 465(b)(6) is amended by striking "46(c)(8)(D)(iv)" each place it appears and inserting "49(a)(1)(D)(iv)".

(16)(A) Paragraphs (3)(B) and (6)(B)(ii) of section 469(i) are each amended by striking "rehabilitation investment credit (within the meaning of section 48(o))" and inserting "rehabilitation credit determined under section 47".

(B) Paragraph (1) of section 469(k) is amended by striking "rehabilitation investment credit (within the meaning of section 48(o))" and inserting "rehabilitation credit determined under section 47".

(17) Subparagraph (A) of section 861(e)(1) is amended by striking "which is section 38 property (or would be section 38 property but for section 48(a)(5)" and inserting "which is section 1245 property (as defined in section 1245(a)(3))".

(18) Subparagraph (B) of section 865(c)(3) is amended by striking "section 48(a)(2)(B)" and inserting "section 168(g)(4)".

(19) Paragraph (21) of section 1016(a) is amended by striking "section 48(q) and inserting "section 50(c)".

(20) Subparagraph (A) of section 1033(g)(3) is amended by striking "with respect to which the investment credit determined under section 46(a) is or has been claimed or".

(21) Subparagraph (D) of section 1245(a)(3) is amended by striking "section 48(p)" and inserting "section 168(i)(13)".

(22) Subsection (b) of section 1274A is amended by inserting ", as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990" after "section 48(b)".

(23) Subsection (d) of section 1371 is amended—

(A) by striking "section 47(b)" in paragraph (1) and inserting "section 50(a)(4)", and

(B) by striking "section 47" in paragraphs (2) and (3) and inserting "section 49(b) or 50(a)".

(24) Section 1388 is amended by striking subsection (k).

(25) Subparagraph (B) of section 1503(e)(3) is amended by striking "section 48(q)" and inserting "section 50(c)".

(26) The table of subparts for part IV of subchapter A of chapter 1 is amended by striking the item relating to subpart E and inserting the following:

"Subpart E. Rules for computing investment credit."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1990.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to—

(A) any transition property (as defined in section 49(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act),

(B) any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of such Code (as so in effect), and

(C) any property described in section 46(b)(2)(C) of such Code (as so in effect).

SEC. 11814. ELIMINATION OF OBSOLETE PROVISIONS IN SECTION 243(b).

(a) IN GENERAL.—Subsection (b) of section 243 is amended to read as follows:

"(b) QUALIFYING DIVIDENDS.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualifying dividend' means any dividend received by a corporation—

"(A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and

"(B) if—

"(i) such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, for which an election under section 1562 was not in effect, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group, or

"(ii) such dividend is paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividend is paid.

"(2) AFFILIATED GROUP.—For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

"(3) SPECIAL RULE FOR GROUPS WHICH INCLUDE LIFE INSURANCE COMPANIES.—

"(A) IN GENERAL.—In the case an affiliated group which includes 1 or more insurance companies under section 801, no dividend by any member of such group shall be treated as a qualifying dividend unless an election under this paragraph is in effect for the taxable year in which the dividend is received. The preceding sentence shall not apply in the case of a dividend described in paragraph (1)(B)(ii).

"(B) EFFECT OF ELECTION.—If an election under this paragraph is in effect with respect to any affiliated group—

"(i) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied with respect to the members of such group without regard to sections 1563(a)(4) and 1563(b)(2)(D), and

"(ii) for purposes of this subsection, a distribution by any member of such group which is subject to tax under section 801 shall not be treated as a qualifying dividend if such distribution is out of earnings and profits for a taxable year for which an election under this paragraph is not effective and for which such distributing corporation was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D).

"(C) ELECTION.—An election under this paragraph shall be made by the common parent of the affiliated group and at such time and in such manner as the Secretary shall by regulations prescribe. Any such election shall be binding on all members of such group and may be revoked only with the consent of the Secretary."

(b) CONFORMING AMENDMENT.—Clause (i) of section 1504(c)(2)(B) is amended—

(1) by striking "section 243(b)(6)" and inserting "section 243(b)(3)", and

(2) by striking "section 243(b)(5)" and inserting "243(b)(2)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

(2) TREATMENT OF OLD ELECTIONS.—For purposes of section 243(b)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any reference to an election under such section shall be treated as including a reference to an election under section 243(b) of such Code (as in effect on the day before the date of the enactment of this Act).

SEC. 11815. ELIMINATION OF EXPIRED PROVISIONS IN PERCENTAGE DEPLETION.

(a) SECTION 613A.—

(1) GENERAL RULE.—Subsection (c) of section 613A is amended—

(A) by striking "the applicable percentage (determined in accordance with the table contained in paragraph (5))" in paragraph (1) and inserting "15 percent",

(B) by amending subparagraph (B) of paragraph (3) to read as follows:

"(3) DEPLETABLE OIL QUANTITY.—

"(B) TENTATIVE QUANTITY.—For purposes of subparagraph (A), the tentative quantity is 1,000 barrels.", and

(C) by striking paragraphs (5), and (7)(E).

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (A) and (B) of section 613A(c)(7) are each amended by striking "specified in paragraph (5)" and inserting "specified in paragraph (1)".

(B) Paragraphs (8)(B), (8)(C), and (9) are each amended by striking "determined under the table contained in paragraph (3)(B)" each place it appears and inserting "determined under paragraph (3)(B)".

(b) SECTION 613(e).—

(1) Subsection (e) of section 613 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Subparagraph (B) of section 613(e)(1) is amended to read as follows:

"(B) 15 percent shall be deemed to be the percentage specified in subsection (b),".

(3) Sections 57(a)(2)(D)(ii), 263(c), and 465(c)(1)(E) are each amended by striking "section 612 (e)(3)" and inserting "section 613(e)(2)".

SEC. 11816. ELIMINATION OF EXPIRED PROVISIONS IN SECTION 29.

(a) GENERAL RULE.—Paragraph (1) of section 29(c) is amended by inserting "and" at the end of subparagraph (B), by striking the comma at the end of subparagraph (C) and inserting a period, and by striking subparagraphs (D) and (E).

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 29 is amended by striking paragraphs (4) and (5).

(2) Paragraph (4) of section 29(d) is amended to read as follows:

"(4) GAS FROM GEOPRESSURED BRINE, DEVONIAN SHALE, COAL SEAMS, OR A TIGHT FORMATION.—The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980."

(3) Subsection (d) of section 29 is amended by striking paragraph (5) and redesignating the following paragraphs accordingly.

(4) Paragraph (5) of section 29(d) (as redesignated by paragraph (3)) is amended by striking "subparagraph (C), (D), or (E)" and inserting "subparagraph (C)".

(5) Subsection (f) of section 29 is amended to read as follows:

"(f) APPLICATION OF SECTION.—This section shall apply with respect to qualified fuels—

"(1) which are—

"(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

"(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

"(2) which are sold before January 1, 2003."

Subpart C—Effective Date

SEC. 11821. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided in this part, the amendments made by this part shall take effect on the date of the enactment of this Act.

(b) SAVINGS PROVISION.—If—

(1) any provision amended or repealed by this part applied to—

(A) any transaction occurring before the date of the enactment of this Act,

(B) any property acquired before such date of enactment, or

(C) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect liability for tax for periods ending after such date of enactment, nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

PART II—PROVISIONS RELATING TO STUDIES

SEC. 11831. EXTENSION OF DATE FOR FILING REPORTS ON CERTAIN STUDIES.

(a) GENERAL RULE.—The date for the submission of the report on any study listed in subsection (b) is hereby extended to the due date for such study determined under subsection (b).

(b) LIST OF STUDIES AND DUE DATES.—

In the case of the study required under:	The due date is:
Section 1211(d) of the Tax Reform Act of 1986 (relating to source rule on sales of personal property)	January 1, 1992
Section 407 of the Compact of Free Association Act of 1985 (relating to tax provisions on Micronesia Compact of Free Association)	January 1, 1991
Section 634 of the Tax Reform Act of 1986 (relating to reform of subchapter C)	January 1, 1992
Section 9301(c)(3) of the Omnibus Budget Reconciliation Act of 1987 (relating to full funding limitation)	April 15, 1991
Section 6056 of the Technical and Miscellaneous Revenue Act of 1988 (relating to minimum participation rules)	February 15, 1991
Section 6072 of the Technical and Miscellaneous Revenue Act of 1988 (relating to treatment of certain technical personnel)	February 15, 1991
Section 6305(e) of the Technical and Miscellaneous Revenue Act of 1988 (relating to treatment of certain family services providers)	January 1, 1992
Section 6064(d)(4) of the Technical and Miscellaneous Revenue Act of 1988 (relating to deferred compensation plans of State and local governments and tax-exempt organizations)	January 1, 1992
Section 6067(b) of the Technical and Miscellaneous Revenue Act of 1988 (relating to spinoff of defined benefit plan assets to bridge banks)	January 1, 1992
Section 7612(f) of the Revenue Reconciliation Act of 1989 (relating to depreciation treatment of certain vehicles)	April 15, 1991
Section 1012(c)(2) of the Tax Reform Act of 1986 (relating to fraternal beneficiary associations)	July 1, 1992
Section 1025 of the Tax Reform Act of 1986 (relating to property and casualty insurance companies)	January 1, 1992

SEC. 11832. REPEAL OF CERTAIN STUDIES.

The following provisions are hereby repealed:

(1) Section 5041(f) of the Technical and Miscellaneous Revenue Act of 1988 (relating to long-term contracts).

(2) Section 560 of the Deficit Reduction Act of 1984 (relating to employee welfare benefit plans).

(3) Section 621(d) of the Tax Reform Act of 1986 (relating to depreciation, built-in deductions, and informal bankruptcy workouts).

(4) Section 702 of the Tax Reform Act of 1986 (relating to book earnings and profits adjustments).

(5) Section 675(d) of the Tax Reform Act of 1986, as amended by section 1006(w) of the Technical and Miscellaneous Revenue Act of 1988 (relating to impact of REMIC provisions on thrift industry).

SEC. 11833. MODIFICATIONS TO STUDY OF AMERICANS WORKING ABROAD.

(a) DUE DATE FOR REPORTS.—Subsection (a) of section 208 of the Foreign Earned Income Act of 1978 (as amended by section 114 of the Economic Recovery Tax Act of 1981) is amended by striking so much of such subsection as precedes "the Secretary of the Treasury" and inserting the following:

"(a) GENERAL RULE.—As soon as practicable after December 31, 1993, and as soon as practicable after the close of each fifth calendar year thereafter,".

(b) INFORMATION FROM FEDERAL AGENCIES.—Subsection (b) of such section 208 (as so amended) is amended by striking "shall furnish" and inserting "shall keep such records and furnish".

SEC. 11834. INCREASE IN THRESHOLD FOR JOINT COMMITTEE REPORTS ON REFUNDS AND CREDITS.

(a) GENERAL RULE.—Subsections (a) and (b) of section 6405 are each amended by striking "$200,000" and inserting "$1,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, except that such amendment shall not apply with respect to any refund or credit with respect to a report has been made before such date of enactment under section 6405 of the Internal Revenue Code of 1986.

Subtitle I—Public Debt Limit

SEC. 11901. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$4,145,000,000,000".

(b) RESTORATION OF TRUST FUNDS FOR 1990.—

(1) IN GENERAL.—

(A) OBLIGATIONS ISSUED.—Except as provided in paragraph (2), within 30 days after the expiration of any debt issuance suspension period to which this subsection applies, the Secretary of the Treasury shall issue to each Federal fund obligations under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(i) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(ii) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(B) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this subsection applies, the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to subparagraph (A), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(2) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this subsection applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(3) DEBT ISSUANCE SUSPENSION PERIODS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to debt issuance suspension periods beginning on or after October 15, 1990, and ending before January 1, 1991.

(4) CREDITED AMOUNTS TREATED AS INTEREST.—All amounts credited under this subsection shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(5) DEFINITIONS.—For purposes of this subsection—

(A) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(B) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

TITLE XII—PENSIONS

Subtitle A—Treatment of Reversions of Qualified Plan Assets to Employers

SEC. 12001. INCREASE IN REVERSION TAX.

Section 4980(a) (relating to tax on reversion of qualified plan assets to employer) is amended by striking "15 percent" and inserting "20 percent".

SEC. 12002. ADDITIONAL TAX IF NO REPLACEMENT PLAN.

(a) IN GENERAL.—Section 4980 is amended by adding at the end thereof the following new subsection:

"(d) INCREASE IN TAX FOR FAILURE TO ESTABLISH REPLACEMENT PLAN OR INCREASE BENEFITS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '50 percent' for '20 percent' with respect to any employer reversion from a qualified plan unless—

"(A) the employer establishes or maintains a qualified replacement plan, or

"(B) the plan provides benefit increases meeting the requirements of paragraph (3).

"(2) QUALIFIED REPLACEMENT PLAN.—For purposes of this subsection, the term 'qualified replacement plan' means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the 'replacement plan') with respect to which the following requirements are met:

"(A) PARTICIPATION REQUIREMENT.—At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

"(B) ASSET TRANSFER REQUIREMENT.—

"(i) 25 PERCENT CUSHION.—A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

"(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

"(II) the amount determined under clause (ii).

"(ii) REDUCTION FOR INCREASE IN BENEFITS.—The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

"(I) is adopted during the 60-day period ending on the date of termination of the qualified plan, and

"(II) takes effect immediately on the termination date.

"(iii) TREATMENT OF AMOUNT TRANSFERRED.—In the case of the transfer of any amount under clause (i)—

"(I) such amount shall not be includible in the gross income of the employer,

"(II) no deduction shall be allowable with respect to such transfer, and

"(III) such transfer shall not be treated as an employer reversion for purposes of this section.

"(C) ALLOCATION REQUIREMENTS.—

"(i) IN GENERAL.—In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

"(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

"(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

"(ii) COORDINATION WITH SECTION 415 LIMITATION.—If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

"(I) such amount shall be allocated to the accounts of other participants, and

"(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

"(iii) TREATMENT OF INCOME.—Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

"(iv) UNALLOCATED AMOUNTS AT TERMINATION.—If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

"(I) such amount shall be allocated to the accounts of participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

"(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

"(3) PRO RATA BENEFIT INCREASES.—

"(A) IN GENERAL.—The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

"(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, and

"(ii) take effect immediately on the termination date.

"(B) PRO RATA INCREASE.—For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the aggregate amount determined under subparagraph (A)(i) as—

"(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

"(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting 'equal to' for 'not less than'.

"(4) COORDINATION WITH OTHER PROVISIONS.—

"(A) LIMITATIONS.—A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

"(B) TREATMENT AS EMPLOYER CONTRIBUTIONS.—Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

"(C) 10-YEAR PARTICIPATION REQUIREMENT.—Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) QUALIFIED PARTICIPANT.—The term 'qualified participant' means an individual who—

"(i) is an active participant,

"(ii) is a participant or beneficiary in pay status as of the termination date,

"(iii) is a participant not described in clause (i) or (ii)—

"(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

"(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

"(iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date.

"(B) PRESENT VALUE.—Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

"(C) REALLOCATION OF INCREASE.—Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

"(D) PLANS TAKEN INTO ACCOUNT.—For purposes of determining whether there is a qualified replacement plan under paragraph (2), the Secretary may provide that—

"(i) 2 or more plans may be treated as 1 plan, or

"(ii) a plan of a successor employer may be taken into account.

"(E) SPECIAL RULE FOR PARTICIPATION REQUIREMENT.—For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414 (b), (c), (m), or (o) shall be treated as 1 employer.

"(6) SUBSECTION NOT TO APPLY TO EMPLOYER IN BANKRUPTCY.—This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law."

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT.—

(1) FIDUCIARY RESPONSIBILITY.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end thereof the following new subsection:

"(d)(1) If, in connection with the termination of a pension plan which is a single-employer plan, there is an election to establish or maintain a qualified replacement plan, or to increase benefits, as provided under section 4980(d) of the Internal Revenue Code of 1986, a fiduciary shall discharge the fiduciary's duties under this title and title IV in accordance with the following requirements:

"(A) In the case of a fiduciary of the terminated plan, any requirement—

"(i) under section 4980(d)(2)(B) of such Code with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and

"(ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of such Code with respect to any increase in benefits under the terminated plan.

"(B) In the case of a fiduciary of a qualified replacement plan, any requirement—

"(i) under section 4980(d)(2)(A) of such Code with respect to participation in the qualified replacement plan of active participants in the terminated plan,

"(ii) under section 4980(d)(2)(B) of such Code with respect to the receipt of assets from the terminated plan, and

"(iii) under section 4980(d)(2)(C) of such Code with respect to the allocation of assets to participants of the qualified replacement plan.

"(2) For purposes of this subsection—

"(A) any term used in this subsection which is also used in section 4980(d) of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section, and

"(B) any reference in this subsection to the Internal Revenue Code of 1986 shall be a reference to such Code as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990."

(2) CONFORMING AMENDMENTS.—

(A) Section 404(a)(1)(D) of such Act (29 U.S.C. 1104(a)(1)(D)) is amended by striking "or title IV" and inserting "and title IV".

(B) Section 4044(d) of such Act (29 U.S.C. 1344(d)) is amended by adding at the end thereof the following new paragraph:

"(4) Nothing in this subsection shall be construed to limit the requirements of section 4980(d) of the Internal Revenue Code of 1986 (as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990) or section 404(d) of this Act with respect to any distribution of residual assets of a single-employer plan to the employer."

(C) Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end thereof the following new paragraph:

"(41) The term 'single-employer plan' means a plan which is not a multiemployer plan."

SEC. 12003. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle shall apply to reversions occurring after September 30, 1990.

(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

(2) in the case of plans subject to title I (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act was provided to participants in connection with the termination before October 1, 1990,

(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990.

Subtitle B—Transfers to Retiree Health Accounts

SEC. 12011. TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) IN GENERAL.—Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, and stock bonus plans) is amended by adding at the end thereof the following new subpart:

"Subpart E—Treatment of Transfers to Retiree Health Accounts

"Sec. 420. Transfers of excess pension assets to retiree health accounts.

"SEC. 420. TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

"(a) GENERAL RULE.—If there is a qualified transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to a health benefits account which is part of such plan—

"(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of subsection (a) or (h) of section 401 solely by reason of such transfer (or any other action authorized under this section),

"(2) no amount shall be includible in the gross income of the employer maintaining the plan solely by reason of such transfer,

"(3) such transfer shall not be treated—

"(A) as an employer reversion for purposes of section 4980, or

"(B) as a prohibited transaction for purposes of section 4975, and

"(4) the limitations of subsection (d) shall apply to such employer.

"(b) QUALIFIED TRANSFER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified transfer' means a transfer—

"(A) of excess pension assets of a defined benefit plan to a health benefits account which is part of such plan in a taxable year beginning after December 31, 1990,

"(B) which does not contravene any other provision of law, and

"(C) with respect to which the following requirements are met in connection with the plan—

"(i) the use requirements of subsection (c)(1),

"(ii) the vesting requirements of subsection (c)(2), and

"(iii) the minimum cost requirements of subsection (c)(3).

"(2) ONLY 1 TRANSFER PER YEAR.—

"(A) IN GENERAL.—No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section.

"(B) EXCEPTION.—A transfer described in paragraph (4) shall not be taken into account for purposes of subparagraph (A).

"(3) LIMITATION ON AMOUNT TRANSFERRED.—The amount of excess pension assets which may be transferred in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree health liabilities.

"(4) SPECIAL RULE FOR 1990.—

"(A) IN GENERAL.—Subject to the provisions of subsection (c), a transfer shall be treated as a qualified transfer if such transfer—

"(i) is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of—

"(I) the due date (including extensions) for the filing of the return of tax for such preceding taxable year, or

"(II) the date such return is filed, and

"(ii) does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

"(B) DEDUCTION REDUCED.—The amount of the deductions otherwise allowable under this chapter to an employer for the taxable year preceding the employer's first taxable year beginning after December 31, 1990, shall be reduced by the amount of any qualified transfer to which this paragraph applies.

"(C) COORDINATION WITH REDUCTION RULE.—Subsection (e)(1)(B) shall not apply to a transfer described in subparagraph (A).

"(5) EXPIRATION.—No transfer in any taxable year beginning after December 31, 1995, shall be treated as a qualified transfer.

"(c) REQUIREMENTS OF PLANS TRANSFERRING ASSETS.—

"(1) USE OF TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) for the taxable year of the transfer (whether directly or through reimbursement).

"(B) AMOUNTS NOT USED TO PAY FOR HEALTH BENEFITS.—

"(i) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) shall be transferred out of the account to the transferor plan.

"(ii) TAX TREATMENT OF AMOUNTS.—Any amount transferred out of an account under clause (i)—

"(I) shall not be includible in the gross income of the employer for such taxable year, but

"(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

"(C) ORDERING RULE.—For purposes of this section, any amount paid out of a health benefits account shall be treated as paid first out of the assets and income described in subparagraph (A).

"(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

"(B) SPECIAL RULE FOR 1990.—In the case of a qualified transfer described in subsection (b)(4), the requirements of this paragraph are met with respect to any participant who separated from service during the taxable year to which such transfer relates by recomputing such participant's benefits as if subparagraph (A) had applied immediately before such separation.

"(3) MINIMUM COST REQUIREMENTS.—

"(A) IN GENERAL.—The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer.

"(B) APPLICABLE EMPLOYER COST.—For purposes of this paragraph, the term 'applicable employer cost' means, with respect to any taxable year, the amount determined by dividing—

"(i) the qualified current retiree health liabilities of the employer for such taxable year determined—

"(I) without regard to any reduction under subsection (e)(1)(B), and

"(II) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

"(ii) the number of individuals to whom coverage for applicable health benefits was provided during such taxable year.

"(C) ELECTION TO COMPUTE COST SEPARATELY.—An employer may elect to have this paragraph applied separately with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

"(D) COST MAINTENANCE PERIOD.—For purposes of this paragraph, the term 'cost maintenance period' means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in 2 or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

"(d) LIMITATIONS ON EMPLOYER.—For purposes of this title—

"(1) DEDUCTION LIMITATIONS.—No deduction shall be allowed—

"(A) for the transfer of any amount to a health benefits account in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(B)),

"(B) for qualified current retiree health liabilities paid out of the assets (and income) described in subsection (c)(1), or

"(C) for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree health liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

"(i) the amount determined under subparagraph (A) (and income allocable thereto), over

"(ii) the amount determined under subparagraph (B).

"(2) NO CONTRIBUTIONS ALLOWED.—An employer may not contribute after December 31, 1990, any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree health liabilities for which transferred assets are required to be used under subsection (c)(1).

"(e) DEFINITION AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED CURRENT RETIREE HEALTH LIABILITIES.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified current retiree health liabilities' means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits provided during such taxable year if—

"(i) such benefits were provided directly by the employer, and

"(ii) the employer used the cash receipts and disbursements method of accounting.

For purposes of the preceding sentence, the rule of section 419(c)(3)(B) shall apply.

"(B) REDUCTIONS FOR AMOUNTS PREVIOUSLY SET ASIDE.—The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities.

"(C) APPLICABLE HEALTH BENEFITS.—The term 'applicable health benefits' mean health benefits or coverage which are provided to—

"(i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and

"(ii) their spouses and dependents.

"(D) KEY EMPLOYEES EXCLUDED.—If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing qualified current retiree health liabilities for such taxable year or in calculating applicable employer cost under subsection (c)(3)(B).

"(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

"(A) the amount determined under section 412(c)(7)(A)(ii), over

"(B) the greater of—

"(i) the amount determined under section 412(c)(7)(A)(i), or

"(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.

"(3) HEALTH BENEFITS ACCOUNT.—The term "health benefits account" means an account established and maintained under section 401(h).

"(4) COORDINATION WITH SECTION 412.—In the case of a qualified transfer to a health benefits account—

"(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

"(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

(b) CONFORMING AMENDMENT.—Section 401(h) is amended by inserting ", and subject to the provisions of section 420" after "Secretary".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers in taxable years beginning after December 31, 1990.

(2) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or section 6655 of the Internal Revenue Code of 1986 for the taxable year preceding the taxpayer's 1st taxable year beginning after December 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of section 420(b)(4)(B) of such Code (as added by subsection (a)).

SEC. 12012. APPLICATION OF ERISA TO TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) EXCLUSIVE BENEFIT REQUIREMENT.—Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(c)(1)) is amended by inserting ", or under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)" after "insured plans)".

(b) EXEMPTIONS FROM PROHIBITED TRANSACTIONS.—Section 408(b) of such Act (29 U.S.C. 1108(b)) is amended by adding at the end thereof the following new paragraph:

"(13) Any transfer in a taxable year beginning before January 1, 1996, of excess pension assets from a defined benefit plan to a retiree health account in a qualified transfer permitted under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)."

(c) FUNDING LIMITATIONS.—Section 302 of such Act (29 U.S.C. 1082) is amended by redesignating subsection (g) as subsection (h) and by adding at the end thereof the following new subsection:

"(g) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—For purposes of this section, in the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986)—

"(1) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of subsection (c)(7), be treated as assets in the plan as of the valuation date for such year, and

"(2) the plan shall be treated as having a net experience loss under subsection (b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the plan under section 420(c)(1)(B) of such Code) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such subsection shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

(d) NOTICE REQUIREMENTS.—

(1) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) NOTICE OF TRANSFER OF EXCESS PENSION ASSETS TO HEALTH BENEFITS ACCOUNTS.—

"(1) NOTICE TO PARTICIPANTS.—Not later than 60 days before the date of a qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the administrator of the plan shall notify (in such manner as the Secretary may prescribe) each participant and beneficiary under the plan of such transfer. Such notice shall include information with respect to the amount of excess pension assets, the portion to be transferred, the amount of health benefits liabilities expected to be provided with the assets transferred, and the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer.

"(2) NOTICE TO SECRETARIES, ADMINISTRATOR, AND EMPLOYEE ORGANIZATIONS.—

"(A) IN GENERAL.—Not later than 60 days before the date of any qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the employer maintaining the plan from which the transfer is made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such transfer. A copy of any such notice shall be available for inspection in the principal office of the administrator.

"(B) INFORMATION RELATING TO TRANSFER.—Such notice shall identify the plan from which the transfer is made, the amount of the transfer, a detailed accounting of assets projected to be held by the plan immediately before and immediately after the transfer, and the current liabilities under the plan at the time of the transfer.

"(C) AUTHORITY FOR ADDITIONAL REPORTING REQUIREMENTS.—The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purposes of this section.

"(3) DEFINITIONS.—For purposes of paragraph (1), any term used in such paragraph which is also used in section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991) shall have the same meaning as when used in such section."

(2) PENALTIES.—

(A) Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by inserting "or section 101(e)(1)" after "section 606".

(B) Section 502(c)(3) of such Act (29 U.S.C. 1132(c)(3)) is amended—

(i) by inserting "or who fails to meet the requirements of section 101(e)(2) with respect to any person" after "beneficiary" the first place it appears, and

(ii) by inserting "or to such person" after "beneficiary" the second place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified transfers under section 420 of the Internal Revenue Code of 1986 made after the date of the enactment of this Act.

Subtitle C—Premium Rates

SEC. 12021. INCREASE IN PREMIUM RATES.

(a) INCREASE IN BASIC PREMIUM.—

(1) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by striking "for plan years beginning after December 31, 1987, an amount equal to the sum of $16" and inserting "for plan years beginning after December 31, 1990, an amount equal to the sum of $19".

(2) CONFORMING AMENDMENT.—Section 4006(c)(1)(A) of such Act (29 U.S.C. 1306(c)(1)(A)) is amended by adding at the end the following new clause:

"(iv) with respect to each plan year beginning after December 31, 1987, and before January 1, 1991, an amount equal to $16 for each individual who was a participant in such plan during the plan year, and".

(b) INCREASE IN ADDITIONAL PREMIUM.—Section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended—

(1) by striking "$6.00" in clause (ii) and inserting "$9.00", and

(2) by striking "$34" in clause (iv)(I) and inserting "$53".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1990.

TITLE XIII—BUDGET ENFORCEMENT

SEC. 13001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.— This title may be cited as the "Budget Enforcement Act of 1990".

(b) TABLE OF CONTENTS.—

TITLE XIII—BUDGET ENFORCEMENT

Subtitle A—Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985 and Related Amendments

Sec. 13001. Short title; Table of contents.

PART I—AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

Sec. 13101. Sequestration.

PART II—RELATED AMENDMENTS

Sec. 13111. Temporary Amendments to the Congressional Budget Act of 1974.

Sec. 13112. Conforming amendments.

Subtitle B—Permanent Amendments to the Congressional Budget and Impoundment Control Act of 1974

Sec. 13201. Credit Accounting.

Sec. 13202. Codification of Provision Regarding Revenue Estimates.

Sec. 13203. Debt Increase As Measure of Deficit; Display of Federal Retirement Trust Fund Balances.

Sec. 13204. Pay-as-you-go Procedures.

Sec. 13205. Amendments to Section 303.

Sec. 13206. Amendments to Section 308.

Sec. 13207. Standardization of Language Regarding Points of Order.

Sec. 13208. Standardization of Additional Deficit Control Provisions.

Sec. 13209. Codification of Precedent with regard to Conference Reports and Amendments between Houses.

Sec. 13210. Superseded Deadlines and Conforming Changes.

Sec. 13211. Definitions.

Sec. 13212. Savings Transfers between Fiscal Years.

Sec. 13213. Conforming Change to Title 31.

Sec. 13214. The Byrd Rule on Extraneous Matter in Reconciliation.

Subtitle C—Social Security

Sec. 13301. Off-budget Status of OASDI Trust Funds.

Sec. 13302. Protection of OASDI Trust Funds in the House of Representatives.

Sec. 13303. Social Security Firewall and Point of Order in the Senate.

Sec. 13304. Report to the Congress by the Board of Trustees of the OASDI Trust Funds Regarding the Actuarial Balance of the Trust Funds.

Sec. 13305. Exercise of Rulemaking Power.

Sec. 13306. Effective Date.

Subtitle D—Treatment of Fiscal Year 1991 Sequestration

Sec. 13401. Restoration of Funds Sequestered.

Subtitle E—Government-sponsored Enterprises

Sec. 13501. Financial Safety and Soundness of Government-Sponsored Enterprises.

Subtitle A—Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985 and Related Amendments

PART I—AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

SEC. 13101. SEQUESTRATION.

(a) SECTIONS 250 THROUGH 254.—Sections 251 (except for subsection (a)(6)(I)) through 254 of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) are amended to read as follows:

"SEC. 250. TABLE OF CONTENTS; STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION; DEFINITIONS.

"(a) TABLE OF CONTENTS.—

"Sec. 250. Table of contents; budget enforcement statement; definitions.
"Sec. 251. Enforcing discretionary spending limits.
"Sec. 252. Enforcing pay-as-you-go.
"Sec. 253. Enforcing deficit targets.
"Sec. 254. Reports and orders.
"Sec. 255. Exempt programs and activities.
"Sec. 256. Special rules.
"Sec. 257. The baseline.
"Sec. 258. Suspension in the event of war or low growth.
"Sec. 258A. Modification of presidential order.
"Sec. 258B. Alternative defense sequestration.
"Sec. 258C. Special reconciliation process.

"(b) GENERAL STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION.—This part provides for the enforcement of the deficit reduction assumed in House Concurrent Resolution 310 (101st Congress, second session) and the applicable deficit targets for fiscal years 1991 through 1995. Enforcement, as necessary, is to be implemented through sequestration—

"(1) to enforce discretionary spending levels assumed in that resolution (with adjustments as provided hereinafter);

"(2) to enforce the requirement that any legislation increasing direct spending or decreasing revenues be on a pay-as-you-go basis; and

"(3) to enforce the deficit targets specifically set forth in the Congressional Budget and Impoundment Control Act of 1974 (with adjustments as provided hereinafter);

applied in the order set forth above.

"(c) DEFINITIONS.—

"As used in this part:

"(1) The terms 'budget authority', 'new budget authority', 'outlays', and 'deficit' have the meanings given to such terms in section 3 of the Congressional Budget and Impoundment Control Act of 1974 (but including the treatment specified in section 257(b)(3) of the Hospital Insurance Trust Fund) and the terms 'maximum deficit amount' and 'discretionary spending limit' shall mean the amounts specified in section 601 of that Act as adjusted under sections 251 and 253 of this Act.

"(2) The terms 'sequester' and 'sequestration' refer to or mean the cancellation of budgetary resources provided by discretionary appropriations or direct spending law.

"(3) The term 'breach' means, for any fiscal year, the amount (if any) by which new budget authority or outlays for that year (within a category of discretionary appropriations) is above that category's discretionary spending limit for new budget authority or outlays for that year, as the case may be.

"(4) The term 'category' means:

"(A) For fiscal years 1991, 1992, and 1993, any of the following subsets of discretionary appropriations: defense, international, or domestic. Discretionary appropriations in each of the three categories shall be those so designated in the joint statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990. New accounts or activities shall be categorized in consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate.

"(B) For fiscal years 1994 and 1995, all discretionary appropriations.

Contributions to the United States to offset the cost of Operation Desert Shield shall not be counted within any category.

"(5) The term 'baseline' means the projection (described in section 257) of current-year levels of new budget authority, outlays, receipts, and the surplus or deficit into the budget year and the outyears.

"(6) The term 'budgetary resources' means—

"(A) with respect to budget year 1991, new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; direct spending authority; and obligation limitations; or

"(B) with respect to budget year 1992, 1993, 1994, or 1995, new budget authority; unobligated balances; direct spending authority; and obligation limitations.

"(7) The term 'discretionary appropriations' means budgetary resources (except to fund direct-spending programs) provided in appropriation Acts.

"(8) The term 'direct spending' means—

"(A) budget authority provided by law other than appropriation Acts;

"(B) entitlement authority; and

"(C) the food stamp program.

"(9) The term 'current' means, with respect to OMB estimates included with a budget submission under section 1105(a) of title 31, United States Code, the estimates consistent with the economic and technical assumptions underlying that budget and with respect to estimates made after submission of the fiscal year 1992 budget that are not included with a budget submission, estimates consistent with the economic and technical assumptions underlying the most recently submitted President's budget.

"(10) The term 'real economic growth', with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

"(11) The term 'account' means an item for which appropriations are made in any appropriation Act and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the President's budget.

"(12) The term 'budget year' means, with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.

"(13) The term 'current year' means, with respect to a budget year, the fiscal year that immediately precedes that budget year.

"(14) The term 'outyear' means, with respect to a budget year, any of the fiscal years that follow the budget year through fiscal year 1995.

"(15) The term 'OMB' means the Director of the Office of Management and Budget.

"(16) The term 'CBO' means the Director of the Congressional Budget Office.

"(17) For purposes of sections 252 and 253, legislation enacted during the second session of the One Hundred First Congress shall be deemed to have been enacted before the enactment of this Act.

"(18) As used in this part, all references to entitlement authority shall include the list of mandatory appropriations included in the joint explanatory statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990.

"(19) The term 'deposit insurance' refers to the expenses of the Federal Deposit Insurance Corporation and the funds it incorpo-

rates, the Resolution Trust Corporation, the National Credit Union Administration and the funds it incorporates, the Office of Thrift Supervision, the Comptroller of the Currency Assessment Fund, and the RTC Office of Inspector General.

"(20) The term 'composite outlay rate' means the percent of new budget authority that is converted to outlays in the fiscal year for which the budget authority is provided and subsequent fiscal years, as follows:

"(A) For the international category, 46 percent for the first year, 20 percent for the second year, 16 percent for the third year, and 8 percent for the fourth year.

"(B) For the domestic category, 53 percent for the first year, 31 percent for the second year, 12 percent for the third year, and 2 percent for the fourth year.

"SEC. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.

"(a) FISCAL YEARS 1991-1995 ENFORCEMENT.—

"(1) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session and on the same day as a sequestration (if any) under section 252 and section 253, there shall be a sequestration to eliminate a budget-year breach, if any, within any category.

"(2) ELIMINATING A BREACH.—Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the baseline level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to eliminate a breach within that category; except that the health programs set forth in section 256(e) shall not be reduced by more than 2 percent and the uniform percent applicable to all other programs under this paragraph shall be increased (if necessary) to a level sufficient to eliminate that breach. If, within a category, the discretionary spending limits for both new budget authority and outlays are breached, the uniform percentage shall be calculated by—

"(A) first, calculating the uniform percentage necessary to eliminate the breach in new budget authority, and

"(B) second, if any breach in outlays remains, increasing the uniform percentage to a level sufficient to eliminate that breach.

"(3) MILITARY PERSONNEL.—If the President uses the authority to exempt any military personnel from sequestration under section 255(h), each account within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(h) has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays are not reduced in military personnel accounts by reason of the use of such authority.

"(4) PART-YEAR APPROPRIATIONS.—If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar sequestration calculated for that account under paragraphs (2) and (3) shall be subtracted from—

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation.

"(5) LOOK-BACK.—If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach within a category for that year (after taking into account any sequestration of amounts within that category), the discretionary spending limits for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

"(6) WITHIN-SESSION SEQUESTRATION.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach within a category for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

"(7) OMB ESTIMATES.—As soon as practicable after Congress completes action on any discretionary appropriation, CBO, after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall provide OMB with an estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation. Within 5 calendar days after the enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation, and an explanation of any difference between the two estimates. For purposes of this paragraph, amounts provided by annual appropriations shall include any new budget authority and outlays for those years in accounts for which funding is provided in that legislation that result from previously enacted legislation. Those OMB estimates shall be made using current economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph for the purposes of this subsection. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.

"(b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.—(1) When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year 1992, 1993, 1994, or 1995 (except as otherwise indicated), OMB shall calculate (in the order set forth below), and the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear through 1995 to reflect the following:

"(A) CHANGES IN CONCEPTS AND DEFINITIONS.—The adjustments produced by the amendments made by title XIII of the Omnibus Budget Reconciliation Act of 1990 or by any other changes in concepts and definitions shall equal the baseline levels of new budget authority and outlays using up-to-date concepts and definitions minus those levels using the concepts and definitions in effect before such changes. Such other changes in concepts and definitions may only be made in consultation with the Committees on Appropriations, the Budget, Government Operations, and Governmental Affairs of the House of Representatives and Senate.

"(B) CHANGES IN INFLATION.—(i) For a budget submitted for budget year 1992, 1993, 1994, or 1995, the adjustments produced by changes in inflation shall equal the levels of discretionary new budget authority and outlays in the baseline (calculated using current estimates) subtracted from those levels in that baseline recalculated with the baseline inflators for the budget year only, multiplied by the inflation adjustment factor computed under clause (ii).

"(ii) For a budget year the inflation adjustment factor shall equal the ratio between the level of year-over-year inflation measured for the fiscal year most recently completed and the applicable estimated level for that year set forth below:

"For 1990, 1.041
"For 1991, 1.052
"For 1992, 1.041
"For 1993, 1.033

Inflation shall be measured by the average of the estimated gross national product implicit price deflator index for a fiscal year divided by the average index for the prior fiscal year.

"(C) CREDIT REESTIMATES.—For a budget submitted for fiscal year 1993 or 1994, the adjustments produced by reestimates to costs of Federal credit programs shall be, for any such program, a current estimate of new budget authority and outlays associated with a baseline projection of the prior year's gross loan level for that program minus the baseline projection of the prior year's new budget authority and associated outlays for that program.

(2) When OMB submits a sequestraiion report under section 254(g) or (h) for fiscal year 1991, 1992, 1993, 1994, or 1995 (except as otherwise indicated), OMB shall calculate (in the order set forth below), and the sequestration report, and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include, adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year through 1995, as follows:

"(A) IRS FUNDING.—To the extent that appropriations are enacted that provide additional new budget authority or result in additional outlays (as compared with the CBO baseline constructed in June 1990) for the Internal Revenue Service compliance initiative in any fiscal year, the adjustments for that year shall be those amounts, but shall not exceed the amounts set forth below—

"(i) for fiscal year 1991, $191,000,000 in new budget authority and $183,000,000 in outlays;

"(ii) for fiscal year 1992, $172,000,000 in new budget authority and $169,000,000 in outlays;

"(iii) for fiscal year 1993, $183,000,000 in new budget authority and $179,000,000 in outlays;

"(iv) for fiscal year 1994, $187,000,000 in new budget authority and $183,000,000 in outlays; and

"(v) for fiscal year 1995, $188,000,000 in new budget authority and $184,000,000 in outlays; and

the prior-year outlays resulting from these appropriations of budget authority.

"(B) DEBT FORGIVENESS.—If, in calendar year 1990 or 1991, an appropriation is enacted that forgives the Arab Republic of Egypt's foreign military sales indebtedness to the United States and any part of the Government of Poland's indebtedness to the United States, the adjustment shall be the es-

timated costs (in new budget authority and outlays, in all years) of that forgiveness.

"(C) IMF FUNDING.—If, in fiscal year 1991, 1992, 1993, 1994, or 1995 an appropriation is enacted to provide to the International Monetary Fund the dollar equivalent, in terms of Special Drawing Rights, of the increase in the United States quota as part of the International Monetary Fund Ninth General Review of Quotas, the adjustment shall be the amount provided by that appropriation.

"(D) EMERGENCY APPROPRIATIONS.—(i) If, for fiscal year 1991, 1992, 1993, 1994, or 1995, appropriations for discretionary accounts are enacted that the President designates as emergency requirements and that the Congress so designates in statute, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements and the outlays flowing in all years from such appropriations.

"(ii) The costs for operation Desert Shield are to be treated as emergency funding requirements not subject to the defense spending limits. Funding for Desert Shield will be provided through the normal legislative process. Desert Shield costs should be accommodated through Allied burden-sharing, subsequent appropriation Acts, and if the President so chooses, through offsets within other defense accounts. Emergency Desert Shield costs mean those incremental costs associated with the increase in operations in the Middle East and do not include costs that would be experienced by the Department of Defense as part of its normal operations absent Operation Desert Shield.

"(E) SPECIAL ALLOWANCE FOR DISCRETIONARY NEW BUDGET AUTHORITY.—(i) For each of fiscal years 1992 and 1993, the adjustment for the domestic category in each year shall be an amount equal to 0.1 percent of the sum of the adjusted discretionary spending limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays associated therewith (calculated at the composite outlay rate for the domestic category);

"(ii) for each of fiscal years 1992 and 1993, the adjustment for the international category in each year shall be an amount equal to 0.079 percent of the sum of the adjusted discretionary spending limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays associated therewith (calculated at the composite outlay rate for the international category); and

"(iii) if, for fiscal years 1992 and 1993, the amount of new budget authority provided in appropriation Acts exceeds the discretionary spending limit on new budget authority for any category due to technical estimates made by the Director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for 1992 and 1993 together) equal to 0.042 percent of the sum of the adjusted discretionary limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively).

"(F) SPECIAL OUTLAY ALLOWANCE.—If in any fiscal year outlays for a category exceed the discretionary spending limit for that category but new budget authority does not exceed its limit for that category (after application of the first step of a sequestration described in subsection (a)(2), if necessary), the adjustment in outlays is the amount of the excess, but not to exceed $2,500,000,000 in the defense category, $1,500,000,000 in the international category, or $2,500,000,000 in the domestic category (as applicable) in fiscal year 1991, 1992, or 1993, and not to exceed $6,500,000,000 in fiscal year 1994 or 1995 less any of the outlay adjustments made under subparagraph (E) for a category for a fiscal year.

"SEC. 252. ENFORCING PAY-AS-YOU-GO.

"(a) FISCAL YEARS 1992–1995 ENFORCEMENT.—The purpose of this section is to assure that any legislation (enacted after the date of enactment of this section) affecting direct spending or receipts that increases the deficit in any fiscal year covered by this Act will trigger an offsetting sequestration.

"(b) SEQUESTRATION; LOOK-BACK.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 253, there shall be a sequestration to offset the amount of any net deficit increase in that fiscal year and the prior fiscal year caused by all direct spending and receipts legislation enacted after the date of enactment of this section (after adjusting for any prior sequestration as provided by paragraph (2)). OMB shall calculate the amount of deficit increase, if any, in those fiscal years by adding—

"(1) all applicable estimates of direct spending and receipts legislation transmitted under subsection (d) applicable to those fiscal years, other than any amounts included in such estimates resulting from—

"(A) full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of this section, and

"(B) emergency provisions as designated under subsection (e); and

"(2) the estimated amount of savings in direct spending programs applicable to those fiscal years resulting from the prior year's sequestration under this section or section 253, if any (except for any amounts sequestered as a result of a net deficit increase in the fiscal year immediately preceding the prior fiscal year), as published in OMB's end-of-session sequestration report for that prior year.

"(c) ELIMINATING A DEFICIT INCREASE.—(1) The amount required to be sequestered in a fiscal year under subsection (b) shall be obtained from non-exempt direct spending accounts from actions taken in the following order:

"(A) FIRST.—All reductions in automatic spending increases specified in section 256(a) shall be made.

"(B) SECOND.—If additional reductions in direct spending accounts are required to be made, the maximum reductions permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

"(C) THIRD.—(i) If additional reductions in direct spending accounts are required to be made, each remaining non-exempt direct spending account shall be reduced by the uniform percentage necessary to make the reductions in direct spending required by paragraph (1); except that the medicare programs specified in section 256(d) shall not be reduced by more than 4 percent and the uniform percentage applicable to all other direct spending programs under this paragraph shall be increased (if necessary) to a level sufficient to achieve the required reduction in direct spending.

"(ii) For purposes of determining reductions under clause (i), outlay reductions (as a result of sequestration of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

"(2) For purposes of this subsection, accounts shall be assumed to be at the level in the baseline.

"(d) OMB ESTIMATES.—As soon as practicable after Congress completes action on any direct spending or receipts legislation enacted after the date of enactment of this section, after consultation with the Committees on the Budget of the House of Representatives and the Senate, CBO shall provide OMB with an estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation. Within 5 calendar days after the enactment of any direct spending or receipts legislation enacted after the date of enactment of this section, OMB shall transmit a report to the House of Representatives and to the Senate containing such CBO estimate of that legislation, an OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation, and an explanation of any difference between the two estimates. Those OMB estimates shall be made using current economic and technical assumptions. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.

"(e) EMERGENCY LEGISLATION.—If, for fiscal year 1991, 1992, 1993, 1994, or 1995, a provision of direct spending or receipts legislation is enacted that the President designates as an emergency requirement and that the Congress so designates in statute, the amounts of new budget authority, outlays, and receipts in all fiscal years through 1995 resulting from that provision shall be designated as an emergency requirement in the reports required under subsection (d).

"SEC. 253. ENFORCING DEFICIT TARGETS.

"(a) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 252, but after any sequestration required by section 251 (enforcing discretionary spending limits) or section 252 (enforcing pay-as-you-go), there shall be a sequestration to eliminate the excess deficit (if any remains) if it exceeds the margin.

"(b) EXCESS DEFICIT; MARGIN.—The excess deficit is, if greater than zero, the estimated deficit for the budget year, minus—

"(1) the maximum deficit amount for that year;

"(2) the amounts for that year designated as emergency direct spending or receipts legislation under section 252(e); and

"(3) for any fiscal year in which there is not a full adjustment for technical and economic reestimates, the deposit insurance reestimate for that year, if any, calculated under subsection (h).

The 'margin' for fiscal year 1992 or 1993 is zero and for fiscal year 1994 or 1995 is $15,000,000,000.

"(c) DIVIDING THE SEQUESTRATION.—To eliminate the excess deficit in a budget year, half of the required outlay reductions shall be obtained from non-exempt defense accounts (accounts designated as function 050 in the President's fiscal year 1991 budget submission) and half from non-exempt, non-

defense accounts (all other non-exempt accounts).

"(d) DEFENSE.—Each non-exempt defense account shall be reduced by a dollar amount calculated by multiplying the level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (c), except that, if any military personnel are exempt, adjustments shall be made under the procedure set forth in section 251(a)(3).

"(e) NON-DEFENSE.—Actions to reduce non-defense accounts shall be taken in the following order:

"(1) FIRST.—All reductions in automatic spending increases under section 256(a) shall be made.

"(2) SECOND.—If additional reductions in non-defense accounts are required to be made, the maximum reduction permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

"(3) THIRD.—(A) If additional reductions in non-defense accounts are required to be made, each remaining non-exempt, non-defense account shall be reduced by the uniform percentage necessary to make the reductions in non-defense outlays required by subsection (c), except that—

"(i) the medicare program specified in section 256(d) shall not be reduced by more than 2 percent in total including any reduction of less than 2 percent made under section 252 or, if it has been reduced by 2 percent or more under section 252, it may not be further reduced under this section; and

"(ii) the health programs set forth in section 256(e) shall not be reduced by more than 2 percent in total (including any reduction made under section 251),

and the uniform percent applicable to all other programs under this subsection shall be increased (if necessary) to a level sufficient to achieve the required reduction in non-defense outlays.

"(B) For purposes of determining reductions under subparagraph (A), outlay reduction (as a result of sequestration of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

"(f) BASELINE ASSUMPTIONS; PART-YEAR APPROPRIATIONS.—

"(1) BUDGET ASSUMPTIONS.—For purposes of subsections (b), (c), (d), and (e), accounts shall be assumed to be at the level in the baseline minus any reductions required to be made under sections 251 and 252.

"(2) PART-YEAR APPROPRIATIONS.—If, on the date specified in subsection (a), there is in effect an Act making or continuing appropriations for part of a fiscal year for any non-exempt budget account, then the dollar sequestration calculated for that account under subsection (d) or (e), as applicable, shall be subtracted from—

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation; except that the amount to be sequestered from that account shall be reduced (but not below zero) by the savings achieved by that appropriation when the enacted amount is less than the baseline for that account.

"(g) ADJUSTMENTS TO MAXIMUM DEFICIT AMOUNTS.—

"(1) ADJUSTMENTS.—

"(A) When the President submits the budget for fiscal year 1992, the maximum deficit amounts for fiscal years 1992, 1993, 1994, and 1995 shall be adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions. When the President submits the budget for fiscal year 1993, the maximum deficit amounts for fiscal years 1993, 1994, and 1995 shall be further adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions.

"(B) When submitting the budget for fiscal year 1994, the President may choose to adjust the maximum deficit amounts for fiscal years 1994 and 1995 to reflect up-to-date reestimates of economic and technical assumptions. If the President chooses to adjust the maximum deficit amount when submitting the fiscal year 1994 budget, the President may choose to invoke the same adjustment procedure when submitting the budget for fiscal year 1995. In each case, the President must choose between making no adjustment or the full adjustment described in paragraph (2). If the President chooses to make that full adjustment, then those procedures for adjusting discretionary spending limits described in sections 251(b)(1)(C) and 251(b)(2)(E), otherwise applicable through fiscal year 1993 or 1994 (as the case may be), shall be deemed to apply for fiscal year 1994 (and 1995 if applicable).

"(C) When the budget for fiscal year 1994 or 1995 is submitted and the sequestration reports for those years under section 254 are made (as applicable), if the President does not choose to make the adjustments set forth in subparagraph (B), the maximum deficit amount for that fiscal year shall be adjusted by the amount of the adjustment to discretionary spending limits first applicable for that year (if any) under section 251(b).

"(D) For each fiscal year the adjustments required to be made with the submission of the President's budget for that year shall also be made when OMB submits the sequestration update report and the final sequestration report for that year, but OMB shall continue to use the economic and technical assumptions in the President's budget for that year.

Each adjustment shall be made by increasing or decreasing the maximum deficit amounts set forth in section 601 of the Congressional Budget Act of 1974.

"(2) CALCULATIONS OF ADJUSTMENTS.—The required increase or decrease shall be calculated as follows:

"(A) The baseline deficit or surplus shall be calculated using up-to-date economic and technical assumptions, using up-to-date concepts and definitions, and, in lieu of the baseline levels of discretionary appropriations, using the discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974 as adjusted under section 251.

"(B) The net deficit increase or decrease caused by all direct spending and receipts legislation enacted after the date of enactment of this section (after adjusting for any sequestration of direct spending accounts) shall be calculated for each fiscal year by adding—

"(i) the estimates of direct spending and receipts legislation transmitted under section 252(d) applicable to each such fiscal year; and

"(ii) the estimated amount of savings in direct spending programs applicable to each such fiscal year resulting from the prior year's sequestration under this section or section 252 of direct spending, if any, as contained in OMB's final sequestration report for that year.

"(C) The amount calculated under subparagraph (B) shall be subtracted from the amount calculated under subparagraph (A).

"(D) The maximum deficit amount set forth in section 601 of the Congressional Budget Act of 1974 shall be subtracted from the amount calculated under subparagraph (C).

"(E) The amount calculated under subparagraph (D) shall be the amount of the adjustment required by paragraph (1).

"(h) TREATMENT OF DEPOSIT INSURANCE.—

"(1) INITIAL ESTIMATES.—The initial estimates of the net costs of federal deposit insurance for fiscal year 1994 and fiscal year 1995 (assuming full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of the submission of the budget for fiscal year 1993) shall be set forth in that budget.

"(2) REESTIMATES.—For fiscal year 1994 and fiscal year 1995, the amount of the reestimate of deposit insurance costs shall be calculated by subtracting the amount set forth under paragraph (1) for that year from the current estimate of deposit insurance costs (but assuming full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of submission of the budget for fiscal year 1993).

"SEC. 254. REPORTS AND ORDERS.

"(a) TIMETABLE.—The timetable with respect to this part for any budget year is as follows:

"Date:	Action to be completed:
January 21	Notification regarding optional adjustment of maximum deficit amount.
5 days before the President's budget submission.	CBO sequestration preview report.
The President's budget submission.	OMB sequestration preview report.
August 10	Notification regarding military personnel.
August 15	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session.	CBO final sequestration report.
15 days after end of session.	OMB final sequestration report; Presidential order.
30 days later	GAO compliance report.

"(b) SUBMISSION AND AVAILABILITY OF REPORTS.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the Federal Register.

"(c) OPTIONAL ADJUSTMENT OF MAXIMUM DEFICIT AMOUNTS.—With respect to budget year 1994 or 1995, on the date specified in subsection (a) the President shall notify the House of Representatives and the Senate of his decision regarding the optional adjustment of the maximum deficit amount (as allowed under section 253(g)(1)(B)).

"(d) SEQUESTRATION PREVIEW REPORTS.—

"(1) REPORTING REQUIREMENT.—On the dates specified in subsection (a), OMB and CBO shall issue a preview report regarding discretionary, pay-as-you-go, and deficit sequestration based on laws enacted through those dates.

"(2) DISCRETIONARY SEQUESTRATION REPORT.—The preview reports shall set forth estimates for the current year and each subsequent year through 1995 of the applicable discretionary spending limits for each category and an explanation of any adjustments in such limits under section 251.

"(3) PAY-AS-YOU-GO SEQUESTRATION REPORTS.—The preview reports shall set forth, for the current year and the budget year, estimates for each of the following:

"(A) The amount of net deficit increase or decrease, if any, calculated under subsection 252(b).

"(B) A list identifying each law enacted and sequestration implemented after the date of enactment of this section included in the calculation of the amount of deficit increase or decrease and specifying the budgetary effect of each such law.

"(C) The sequestration percentage or (if the required sequestration percentage is greater than the maximum allowable percentage for medicare) percentages necessary to eliminate a deficit increase under section 252(c).

"(4) DEFICIT SEQUESTRATION REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The maximum deficit amount, the estimated deficit calculated under section 253(b), the excess deficit, and the margin.

"(B) The amount of reductions required under section 252, the excess deficit remaining after those reductions have been made, and the amount of reductions required from defense accounts and the reductions required from non-defense accounts.

"(C) The sequestration percentage necessary to achieve the required reduction in defense accounts under section 253(d).

"(D) The reductions required under sections 253(e)(1) and 253(e)(2).

"(E) The sequestration percentage necessary to achieve the required reduction in non-defense accounts under section 253(e)(3).

The CBO report need not set forth the items other than the maximum deficit amount for fiscal year 1992, 1993, or any fiscal year for which the President notifies the House of Representatives and the Senate that he will adjust the maximum deficit amount under the option under section 253(g)(1)(B).

"(5) EXPLANATION OF DIFFERENCES.—The OMB reports shall explain the differences between OMB and CBO estimates for each item set forth in this subsection.

"(e) NOTIFICATION REGARDING MILITARY PERSONNEL.—On or before the date specified in subsection (a), the President shall notify the Congress of the manner in which he intends to exercise flexibility with respect to military personnel accounts under section 255(h).

"(f) SEQUESTRATION UPDATE REPORTS.—On the dates specified in subsection (a), OMB and CBO shall issue a sequestration update report, reflecting laws enacted through those dates, containing all of the information required in the sequestration preview reports.

"(g) FINAL SEQUESTRATION REPORTS.—

"(1) REPORTING REQUIREMENT.—On the dates specified in subsection (a), OMB and CBO shall issue a final sequestration report, updated to reflect laws enacted through those dates.

"(2) DISCRETIONARY SEQUESTRATION REPORTS.—The final reports shall set forth estimates for each of the following:

"(A) For the current year and each subsequent year through 1995 the applicable discretionary spending limits for each category and an explanation of any adjustments in such limits under section 251.

"(B) For the current year and the budget year the estimated new budget authority and outlays for each category and the breach, if any, in each category.

"(C) For each category for which a sequestration is required, the sequestration percentages necessary to achieve the required reduction.

"(D) For the budget year, for each account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and resulting outlays and the amount of budgetary resources to be sequestered and resulting outlay reductions.

"(3) PAY-AS-YOU-GO AND DEFICIT SEQUESTRATION REPORTS.—The final reports shall contain all the information required in the pay-as-you-go and deficit sequestration preview reports. In addition, these reports shall contain, for the budget year, for each account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and resulting outlays and the amount of budgetary resources to be sequestered and resulting outlay reductions. The reports shall also contain estimates of the effects on outlays of the sequestration in each outyear through 1995 for direct spending programs.

"(4) EXPLANATION OF DIFFERENCES.—The OMB report shall explain any differences between OMB and CBO estimates of the amount of any net deficit change calculated under subsection 252(b), any excess deficit, any breach, and any required sequestration percentage. The OMB report shall also explain differences in the amount of sequesterable resources for any budget account to be reduced if such difference is greater than $5,000,000.

"(5) PRESIDENTIAL ORDER.—On the date specified in subsection (a), if in its final sequestration report OMB estimates that any sequestration is required, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

"(h) WITHIN-SESSION SEQUESTRATION REPORTS AND ORDER.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach, 10 days later CBO shall issue a report containing the information required in paragraph (g)(2). Fifteen days after enactment, OMB shall issue a report containing the information required in paragraphs (g)(2) and (g)(4). On the same day as the OMB report, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

"(i) GAO COMPLIANCE REPORT.—On the date specified in subsection (a), the Comptroller General shall submit to the Congress and the President a report on—

"(1) the extent to which each order issued by the President under this section complies with all of the requirements contained in this part, either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not; and

"(2) the extent to which each report issued by OMB or CBO under this section complies with all of the requirements contained in this part, either certifying that the report fully and accurately complies with such requirements or indicating the respects in which it does not.

"(j) LOW-GROWTH REPORT.—At any time, CBO shall notify the Congress if—

"(1) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the 4 quarters following such notification, CBO or OMB has determined that real economic growth is projected or estimated to be less than zero with respect to each of any 2 consecutive quarters within such period; or

"(2) the most recent of the Department of Commerce's advance preliminary or final reports of actual real economic growth indicate that the rate of real economic growth for each of the most recently reported quarter and the immediately preceding quarter is less than one percent.

"(k) ECONOMIC AND TECHNICAL ASSUMPTIONS.—In all reports required by this section, OMB shall use the same economic and technical assumptions as used in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code.".

(b) SECTION 250: DEFINITIONS.—Paragraph (12) of section 257 of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as a new paragraph (21) of section 250(c).

(c) SECTION 255: EXEMPT PROGRAMS AND ACTIVITIES.—

(1) Section 255(a) of such Act is amended to read as follows:

"(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, and benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall be exempt from reduction under any order issued under this part.".

(2) Section 255(e) of such Act is amended to read as follows:

"(e) NON-DEFENSE UNOBLIGATED BALANCES.—Unobligated balances of budget authority carried over from prior fiscal years, except balances in the defense category, shall be exempt from reduction under any order issued under this part.".

(3) Section 255(g)(1)(B) of such Act is amended by inserting after the item relating to Railroad retirement tier II the following:

"Railroad supplemental annuity pension fund (60-8012-0-7-602);".

(4) Section 255 of such Act is amended by inserting at the end the following:

"(h) OPTIONAL EXEMPTION OF MILITARY PERSONNEL.—

"(1) The President may, with respect to any military personnel account, exempt that account from sequestration or provide for a lower uniform percentage reduction than would otherwise apply.

"(2) The President may not use the authority provided by paragraph (1) unless he notifies the Congress of the manner in which such authority will be exercised on or before the initial snapshot date for the budget year.".

(d) SECTION 256: EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.—

(1) Section 256(a) of such Act is amended to read as follows:

"(a) AUTOMATIC SPENDING INCREASES.—Automatic spending increases are increases in outlays due to changes in indexes in the following programs:

"(1) National Wool Act;

"(2) Special milk program; and

"(3) Vocational rehabilitation basic State grants.

In those programs all amounts other than the automatic spending increases shall be

exempt from reduction under any order issued under this part.".

(2) Section 256 of such Act is amended by redesignating subsection (b) as subsection (h), subsection (c) as subsection (b), subsection (e) as subsection (f), subsection (f) as subsection (c), subsection (h) as subsection (i), and subsection (k) as subsection (e), by repealing subsections (i) and (l), and by inserting at the end the following:

"(k) SPECIAL RULES FOR THE JOBS PORTION OF AFDC.—

"(1) FULL AMOUNT OF SEQUESTRATION REQUIRED.—Any order issued by the President under section 254 shall accomplish the full amount of any required sequestration of the job opportunities and basic skills training program under section 402(a)(19), and part F of title VI, of the Social Security Act, in the manner specified in this subsection. Such an order may not reduce any Federal matching rate pursuant to section 403(l) of the Social Security Act.

"(2) NEW ALLOTMENT FORMULA.—

"(A) GENERAL RULE.—Notwithstanding section 403(k) of the Social Security Act, each State's percentage share of the amount available after sequestration for direct spending pursuant to section 403(l) of such Act for the fiscal year to which the sequestration applies shall be equal to—

"(i) the lesser of—

"(I) that percentage of the total amount paid to the States pursuant to such section 403(l) for the prior fiscal year that is represented by the amount paid to such State pursuant to such section 403(l) for the prior fiscal year; or

"(II) the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

"(B) REALLOTMENT OF AMOUNTS REMAINING UNALLOTTED AFTER APPLICATION OF GENERAL RULE.—Any amount made available after sequestration for direct spending pursuant to section 403(l) of the Social Security Act for the fiscal year to which the sequestration applies that remains unallotted as a result of subparagraph (A) of this paragraph shall be allotted among the States in proportion to the absolute difference between the amount allotted, respectively, to each State as a result of such subparagraph and the amount that would have been allotted to such State pursuant to section 403(k) of such Act had the sequestration not been in effect, except that a State may not be allotted an amount under this subparagraph that results in a total allotment to the State under this paragraph of more than the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

"(l) EFFECTS OF SEQUESTRATION.—The effects of sequestration shall be as follows:

"(1) Budgetary resources sequestered from any account other than a trust or special fund account shall be permanently cancelled.

"(2) Except as otherwise provided, the same percentage sequestration shall apply to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

"(3) Administrative regulations or similar actions implementing a sequestration shall be made within 120 days of the sequestration order. To the extent that formula allocations differ at different levels of budgetary resources within an account, program, project, or activity, the sequestration shall be interpreted as producing a lower total appropriation, with the remaining amount of the appropriation being obligated in a manner consistent with program allocation formulas in substantive law.

"(4) Except as otherwise provided, obligations in sequestered accounts shall be reduced only in the fiscal year in which a sequester occurs.

"(5) If an automatic spending increase is sequestered, the increase (in the applicable index) that was disregarded as a result of that sequestration shall not be taken into account in any subsequent fiscal year.

"(6) Except as otherwise provided, sequestration in trust and special fund accounts for which obligations are indefinite shall be taken in a manner to ensure that obligations in the fiscal year of a sequestration are reduced, from the level that would actually have occurred, by the applicable sequestration percentage.".

(3) Section 256 of such Act is amended by striking "section 252" each place it appears and by inserting "section 254".

(4) Section 256(c) (as redesignated) of such Act is amended by inserting after the first sentence the following: "No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestration percentage.".

(5) Section 256(d)(1) of such Act is amended to read as follows:

"(1) CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by sections 252 and 253, and notwithstanding section 710 of the Social Security Act, OMB shall determine, and the applicable Presidential order under section 254 shall implement, the percentage reduction that shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished after the order is issued, such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.".

(6) Section 256(d)(2)(C) of such Act is repealed.

(e) THE BASELINE.—(1) Section 257 of such Act is amended to read as follows:

"SEC. 257. THE BASELINE.

"(a) IN GENERAL.—For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date.

"(b) DIRECT SPENDING AND RECEIPTS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions:

"(1) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those laws.

"(2) EXCEPTIONS.—(A) No program with estimated current-year outlays greater than $50 million shall be assumed to expire in the budget year or outyears.

"(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

"(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates.

"(3) HOSPITAL INSURANCE TRUST FUND.—Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

"(c) DISCRETIONARY APPROPRIATIONS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

"(1) INFLATION OF CURRENT-YEAR APPROPRIATIONS.—Budgetary resources other than unobligated balances shall be at the level provided for the budget year in full-year appropriation Acts. If for any account a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the level available in the current year, adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

"(2) EXPIRING HOUSING CONTRACTS.—New budget authority to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the current year, with the per-contract renewal cost equal to the average current-year cost of renewal contracts.

"(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES.—Budgetary resources for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.

"(4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION.—Current-year new budget authority for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

"(5) INFLATORS.—The inflator used in paragraph (1) to adjust budgetary resources relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year. The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross national product fixed-weight price index for that fiscal year differs from the average of such estimated index for the current year.

"(6) CURRENT-YEAR APPROPRIATIONS.—If, for any account, a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of budget authority among budget accounts in the current year, the current-year level for an account shall reflect transfers accomplished by the submission of,

or assumed for the current year in, the President's original budget for the budget year.

"(d) UP-TO-DATE CONCEPTS.—In deriving the baseline for any budget year or outyear, current-year amounts shall be calculated using the concepts and definitions that are required for that budget year.".

(2) Section 251(a)(6)(I) of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as section 257(e) of such Act. Section 257(e) is amended by striking "assuming, for purposes of this paragraph and subparagraph (A)(i) of paragraph (3), that the" and inserting "The".

(f) Such Act is amended by inserting after section 257 the following:

"SEC. 258. SUSPENSION IN THE EVENT OF WAR OR LOW GROWTH.

"(a) PROCEDURES IN THE EVENT OF A LOW GROWTH REPORT.—

"(1) TRIGGER.—Whenever CBO issues a low-growth report under section 254(j), the Majority Leader of the House of Representatives may, and the Majority Leader of the Senate shall, introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in section 254(j) are met and suspending the relevant provisions of this title, titles III and VI of the Congressional Budget Act of 1974, and section 1103 of title 31, United States Code.

"(2) FORM OF JOINT RESOLUTION.—

"(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: 'That the Congress declares that the conditions specified in section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met, and the implementation of the Congressional Budget and Impoundment Control Act of 1974, chapter 11 of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are modified as described in section 258(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

"(B) The title of the joint resolution shall be 'Joint resolution suspending certain provisions of law pursuant to section 258(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985.'; and the joint resolution shall not contain any preamble.

"(3) COMMITTEE ACTION.—Each joint resolution introduced pursuant to paragraph (1) shall be referred to the appropriate committees of the House of Representatives or the Committee on the Budget of the Senate, as the case may be; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

"(4) CONSIDERATION OF JOINT RESOLUTION.—

"(A) A vote on final passage of a joint resolution reported to the Senate or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session after the date on which the joint resolution is reported or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then—

"(i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

"(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

"(B)(i) In the Senate, a joint resolution under this paragraph shall be privileged. It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

"(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a joint resolution under this paragraph is not in order.

"(C) No amendment to a joint resolution considered under this paragraph shall be in order in the Senate.

"(b) SUSPENSION OF SEQUESTRATION PROCEDURES.—Upon the enactment of a declaration of war or a joint resolution described in subsection (a)—

"(1) the subsequent issuance of any sequestration report or any sequestration order is precluded;

"(2) sections 302(f), 310(d), 311(a), and title VI of the Congressional Budget Act of 1974 are suspended; and

"(3) section 1103 of title 31, United States Code, is suspended.

"(c) RESTORATION OF SEQUESTRATION PROCEDURES.—

"(1) In the event of a suspension of sequestration procedures due to a declaration of war, then, effective with the first fiscal year that begins in the session after the state of war is concluded by Senate ratification of the necessary treaties, the provisions of subsection (b) triggered by that declaration of war are no longer effective.

"(2) In the event of a suspension of sequestration procedures due to the enactment of a joint resolution described in subsection (a), then, effective with regard to the first fiscal year beginning at least 12 months after the enactment of that resolution, the provisions of subsection (b) triggered by that resolution are no longer effective.

"SEC. 258A. MODIFICATION OF PRESIDENTIAL ORDER.

"(a) INTRODUCTION OF JOINT RESOLUTION.—At any time after the Director of OMB issues a final sequestration report under section 254 for a fiscal year, but before the close of the twentieth calendar day of the session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under section 254 or provide an alternative to reduce the deficit for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

"(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

"(1) REFERRAL TO COMMITTEE.—A joint resolution introduced in the Senate under subsection (a) shall not be referred to a committee of the Senate and shall be placed on the calendar pending disposition of such joint resolution in accordance with this subsection.

"(2) CONSIDERATION IN THE SENATE.—On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is introduced under subsection (a), notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(3) DEBATE IN THE SENATE.—

"(A) In the Senate, debate on a joint resolution introduced under subsection (a), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

"(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order, and a motion to recommit the joint resolution is not in order.

"(C)(i) No amendment that is not germane to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

"(ii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on

the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

"(4) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a joint resolution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under paragraph (3), the vote on final passage of the joint resolution shall occur.

"(5) APPEALS.—Appeals from the decisions of the Chair shall be decided without debate.

"(6) CONFERENCE REPORTS.—In the Senate, points of order under titles III, IV, and VI of the Congressional Budget Act of 1974 are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

"(7) RESOLUTION FROM OTHER HOUSE.—If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

"(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.

"(B) With respect to a joint resolution introduced under subsection (a) in the Senate—

"(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

"(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

"(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

"(C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

"(8) SENATE ACTION ON HOUSE RESOLUTION.—If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.".

(g) Such Act is amended by inserting after section 258A the following:

"SEC. 258B. FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES.

"(a) Subject to subsections (b), (c), and (d), new budget authority and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account) may be further reduced beyond the amount specified in an order issued by the President under section 254 for such fiscal year. To the extent such additional reductions are made and result in additional outlay reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration into account). In making calculations under this subsection, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB under section 254.

"(b) No actions taken by the President under subsection (a) for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

"(c) The President may not exercise the authority provided by this paragraph for a fiscal year unless—

"(1) the President submits a single report to Congress specifying, for each account, the detailed changes proposed to be made for such fiscal year pursuant to this section;

"(2) that report is submitted within 5 calendar days of the start of the next session of Congress; and

"(3) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

"(d) Within 5 calendar days of session after the President submits a report to Congress under subsection (c)(1) for a fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

"(e)(1) The matter after the resolving clause in any joint resolution introduced pursuant to subsection (d) shall be as follows: 'That the report of the President as submitted on [Insert Date] under section 258B is hereby approved.'.

"(2) The title of the joint resolution shall be 'Joint resolution approving the report of the President submitted under section 258B of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

"(3) Such joint resolution shall not contain any preamble.

"(f)(1) A joint resolution introduced in the Senate under subsection (d) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection. In the Senate, no amendment proposed in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane or relevant to the provisions of the joint resolution or to the order issued under section 254. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense).

"(2) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the Senate calendar, notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is not debatable. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(g)(1) In the Senate, debate on a joint resolution introduced under subsection (d), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

"(2) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order.

"(h)(1) No amendment that is not germane or relevant to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense). In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

"(2) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended, so long as the amendment makes or maintains mathematical consistency. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

"(3) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under subsection (d) or any conference report thereon if such amendment or conference report would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

"(4) For purposes of the application of paragraph (3), the level of outlays and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

"(i) Immediately following the conclusion of the debate on a joint resolution introduced under subsection (d), a single quorum

call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under subsection (h), the vote on final passage of the joint resolution shall occur.

"(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (d) shall be decided without debate.

"(k) In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

"(l) If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (d), the Senate receives from the House of Representatives a joint resolution introduced under subsection (d), then the following procedures shall apply:

"(1) The joint resolution of the House of Representatives shall not be referred to a committee.

"(2) With respect to a joint resolution introduced under subsection (d) in the Senate—

"(A) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

"(B)(i) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

"(ii) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

"(3) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

"(m) If the Senate receives from the House of Representatives a joint resolution introduced under subsection (d) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

"SEC. 258C. SPECIAL RECONCILIATION PROCESS.

"(a) REPORTING OF RESOLUTIONS AND RECONCILIATION BILLS AND RESOLUTIONS, IN THE SENATE.—

"(1) COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER.—After the submission of an OMB sequestration update report under section 254 that envisions a sequestration under section 252 or 253, each standing committee of the Senate may, not later than October 10, submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.

"(2) INITIAL BUDGET COMMITTEE ACTION.—After the submission of such a report, the Committee on the Budget of the Senate may, not later than October 15, report to the Senate a resolution. The resolution may affirm the impact of the order envisioned by such report, in whole or in part. To the extent that any part is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at least the total level of deficit reduction contained in those sections which are not affirmed.

"(3) RESPONSE OF COMMITTEES.—Committees instructed pursuant to paragraph (2), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in paragraph (2) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under paragraph (2) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit at least equal to the total reduction directed by such instructions.

"(4) BUDGET COMMITTEE ACTION.—Upon receipt of the recommendations received in response to a resolution referred to in paragraph (2), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in paragraph (2) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of deficit reduction directed in such instructions.

"(5) POINT OF ORDER.—It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under paragraph (4) with respect to a fiscal year, any amendment thereto, or any conference report thereon if—

"(A) the enactment of such bill or resolution as reported;

"(B) the adoption and enactment of such amendment; or

"(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit for such fiscal year to exceed the maximum deficit amount for such fiscal year, unless the low-growth report submitted under section 254 projects negative real economic growth for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

"(6) TREATMENT OF CERTAIN AMENDMENTS.—In the Senate, an amendment which adds to a resolution reported under paragraph (2) an instruction of the type referred to in such paragraph shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be non-germane on the basis that the instruction constitutes new matter.

"(7) DEFINITION.—For purposes of paragraphs (1), (2), and (3), the term "day" shall mean any calendar day on which the Senate is in session.

"(b) PROCEDURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

"(2) LIMIT ON DEBATE.—Debate in the Senate on any resolution reported pursuant to subsection (a)(2), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

"(3) LIMITATION ON AMENDMENTS.—Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

"(4) BILLS AND RESOLUTIONS RECEIVED FROM THE HOUSE.—Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

"(5) DEFINITION.—For purposes of this subsection, the term 'resolution' means a simple, joint, or concurrent resolution.".

PART II—RELATED AMENDMENTS

SEC. 13111. TEMPORARY AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

Title VI of the Congressional Budget Act of 1974 is amended to read as follows:

"TITLE VI—BUDGET AGREEMENT ENFORCEMENT PROVISIONS

"SEC. 601. DEFINITIONS AND POINT OF ORDER.

"(a) DEFINITIONS.—As used in this title and for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985:

"(1) MAXIMUM DEFICIT AMOUNT.—The term 'maximum deficit amount' means—

"(A) with respect to fiscal year 1991, $327,000,000,000;

"(B) with respect to fiscal year 1992, $317,000,000,000;

"(C) with respect to fiscal year 1993, $236,000,000,000;

"(D) with respect to fiscal year 1994, $102,000,000,000; and

"(E) with respect to fiscal year 1995, $83,000,000,000;

as adjusted in strict conformance with sections 251, 252, and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(2) DISCRETIONARY SPENDING LIMIT.—The term 'discretionary spending limit' means—

"(A) with respect to fiscal year 1991—

"(i) for the defense category: $288,918,000,000 in new budget authority and $297,660,000,000 in outlays;

"(ii) for the international category: $20,100,000,000 in new budget authority and $18,600,000,000 in outlays; and

"(iii) for the domestic category: $182,700,000,000 in new budget authority and $198,100,000,000 in outlays;

"(B) with respect to fiscal year 1992—

"(i) for the defense category: $291,643,000,000 in new budget authority and $295,744,000,000 in outlays;

"(ii) for the international category: $20,500,000,000 in new budget authority and $19,100,000,000 in outlays; and

"(iii) for the domestic category: $191,300,000,000 in new budget authority and $210,100,000,000 in outlays;

"(C) with respect to fiscal year 1993—

"(i) for the defense category: $291,785,000,000 in new budget authority and $292,686,000,000 in outlays;

"(ii) for the international category: $21,400,000,000 in new budget authority and $19,600,000,000 in outlays; and

"(iii) for the domestic category: $198,300,000,000 in new budget authority and $221,700,000,000 in outlays;

"(D) with respect to fiscal year 1994, for the discretionary category: $510,800,000,000 in new budget authority and $534,800,000,000 in outlays; and

"(E) with respect to fiscal year 1995, for the discretionary category: $517,700,000,000 in new budget authority and $540,800,000,000 in outlays;

as adjusted in strict conformance with section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) POINT OF ORDER IN THE SENATE ON AGGREGATE ALLOCATIONS FOR DEFENSE, INTERNATIONAL, AND DOMESTIC DISCRETIONARY SPENDING.—

"(1) Except as provided in paragraph (3), it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995 (or amendment, motion, or conference report on such a resolution), or any appropriations bill or resolution (or amendment, motion, or conference report on such an appropriations bill or resolution) for fiscal year 1992 or 1993 that would exceed the allocations in this section or the suballocations made under section 602(b) based on these allocations.

"(3) For purposes of this subsection, the levels of new budget authority and outlays for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

"(4) This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

"SEC. 602. COMMITTEE ALLOCATIONS AND ENFORCEMENT.

" (a) COMMITTEE SPENDING ALLOCATIONS.—

"(1) HOUSE OF REPRESENTATIVES.—

"(A) ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include allocations, consistent with the resolution recommended in the conference report, of the appropriate levels (for each fiscal year covered by that resolution and a total for all such years) of—

"(i) total new budget authority,

"(ii) total entitlement authority, and

"(iii) total outlays;

among each committee of the House of Representatives that has jurisdiction over legislation providing or creating such amounts.

"(B) NO DOUBLE COUNTING.—Any item allocated to one committee of the House of Representatives may not be allocated to another such committee.

"(C) FURTHER DIVISION OF AMOUNTS.—The amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations for each fiscal year shall be further divided between discretionary and mandatory amounts or programs, as appropriate.

"(2) SENATE ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include an allocation, consistent with the resolution recommended in the conference report, of the appropriate levels of—

"(A) total new budget authority;

"(B) total outlays; and

"(C) social security outlays;

among each committee of the Senate that has jurisdiction over legislation providing or creating such amounts.

"(3) AMOUNTS NOT ALLOCATED.—(A) In the House of Representatives, if a committee receives no allocation of new budget authority, entitlement authority, or outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, entitlement authority, or outlays.

"(B) In the Senate, if a committee receives no allocation of new budget authority, outlays, or social security outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, outlays, or social security outlays.

"(b) SUBALLOCATIONS BY COMMITTEES.—

"(1) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES.—As soon as practicable after a budget resolution is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the other House) shall suballocate each amount allocated to it for the budget year under subsection (a)(1)(A) or (a)(2) among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under this paragraph.

"(2) SUBALLOCATIONS BY OTHER COMMITTEES OF THE SENATE.—Each other committee of the Senate to which an allocation under subsection (a)(2) is made in the joint explanatory statement may subdivide each amount allocated to it under subsection (a) among its subcommittees or among programs over which it has jurisdiction and shall promptly report any such suballocations to the Senate. Section 302(c) shall not apply in the Senate to committees other than the Committee on Appropriations.

"(c) APPLICATION OF SECTION 302(f) TO THIS SECTION.—In fiscal years through 1995, reference in section 302(f) to the appropriate allocation made pursuant to section 302(b) for a fiscal year shall, for purposes of this section, be deemed to be a reference to any allocation made under subsection (a) or any suballocation made under subsection (b), as applicable, for the fiscal year of the resolution or for the total of all fiscal years made by the joint explanatory statement accompanying the applicable concurrent resolution on the budget. In the House of Representatives, the preceding sentence shall not apply with respect to fiscal year 1991.

"(d) APPLICATION OF SUBSECTIONS (a) AND (b) TO FISCAL YEARS 1992 TO 1995.—In the case of concurrent resolutions on the budget for fiscal years 1992 through 1995, allocations shall be made under subsection (a) instead of section 302(a) and shall be made under subsection (b) instead of section 302(b). For those fiscal years, all references in sections 302(c), (d), (e), (f), and (g) to section 302(a) shall be deemed to be to subsection (a) (including revisions made under section 604) and all such references to section 302(b) shall be deemed to be to subsection (b) (including revisions made under section 604).".

"(e) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE.—Section 302(f)(1) and, after April 15 of any calendar year section 303(a), shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget—

"(1) the enactment of such bill or resolution as reported;

"(2) the adoption and enactment of such amendment; or

"(3) the enactment of such bill or resolution in the form recommended in such conference report,

would not increase the deficit for any such fiscal year, and, if the sum of any revenue increases provided in legislation already enacted during the current session (when added to revenue increases, if any, in excess of any outlay increase provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal revenues should be increased as set forth in that concurrent resolution and the amount, if any, by which revenues are to be increased pursuant to pay-as-you-go procedures under section 301(b)(8) if included in that concurrent resolution.

"(3) REVISED ALLOCATIONS.—

"(A) As soon as practicable after Congress agrees to a bill or joint resolution that would have been subject to a point of order under section 302(f)(1) but for the exception provided in paragraph (1), the chairman of the Committee on the Budget of the House of Representatives may file with the House appropriately revised allocations under section 302(a) and revised functional levels and budget aggregates to reflect that bill.

"(B) such revised allocations, functional levels, and budget aggregates shall be considered for the purposes of this Act as allocations, functional levels, and budget aggregates contained in the most recently agreed to concurrent resolution on the budget.

"SEC. 603. CONSIDERATION OF LEGISLATION BEFORE ADOPTION OF BUDGET RESOLUTION FOR THAT FISCAL YEAR.

"(a) ADJUSTING SECTION ALLOCATION OF DISCRETIONARY SPENDING.—If a concurrent resolution on the budget is not adopted by April 15, the chairman of the Committee on the Budget of the House of Representatives shall submit to the House, as soon as practicable, a section 602(a) allocation to the Committee on Appropriations consistent with the discretionary spending limits contained in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code. Such allocation shall include the full allowance specified under section 251(b)(2)(E)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) As soon as practicable after a section 602(a) allocation is submitted under this section, the Committee on Appropriations shall make suballocations and promptly report those suballocations to the House of Representatives.

"SEC. 604. RECONCILIATION DIRECTIVES REGARDING PAY-AS-YOU-GO REQUIREMENTS.

"(a) INSTRUCTIONS TO EFFECTUATE PAY-AS-YOU-GO IN THE HOUSE OF REPRESENTATIVES.—If legislation providing for a net reduction in revenues in any fiscal year (that, within the same measure, is not fully offset in that fiscal year by reductions in direct spending) is enacted, the Committee on the Budget of the House of Representatives may report, within 15 legislative days during a Congress, a pay-as-you-go reconciliation directive in the form of a concurrent resolution—

"(1) specifying the total amount by which revenues sufficient to eliminate the net defi-

cit increase resulting from that legislation in each fiscal year are to be changed; and

"(2) directing that the committees having jurisdiction determine and recommend changes in the revenue law, bills, and resolutions to accomplish a change of such total amount.

"(b) CONSIDERATION OF PAY-AS-YOU-GO RECONCILIATION LEGISLATION IN THE HOUSE OF REPRESENTATIVES.—In the House of Representatives, subsections (b) through (d) of section 310 shall apply in the same manner as if the reconciliation directive described in subsection (a) were a concurrent resolution on the budget.

"SEC. 605. APPLICATION OF SECTION 311; POINT OF ORDER.

"(a) APPLICATION OF SECTION 311(a).—(1) In the House of Representatives, in the application of section 311(a)(1) to any bill, resolution, amendment, or conference report, reference in section 311 to the appropriate level of total budget authority or total budget outlays or appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate level for that year and the 4 succeeding years.

"(2) In the Senate, in the application of section 311(a)(2) to any bill, resolution, motion, or conference report, reference in section 311 to the appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate levels for that year and the 4 succeeding years.

"(b) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE.—After Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would result in a deficit for the first fiscal year covered by that resolution that exceeds the maximum deficit amount specified for such fiscal year in section 601(a).

"SEC. 606. 5-YEAR BUDGET RESOLUTIONS; BUDGET RESOLUTIONS MUST CONFORM TO BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

"(a) 5-YEAR BUDGET RESOLUTIONS.—In the case of any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995, that resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of the calendar year in which it is reported and for each of the 4 succeeding fiscal years for the matters described in section 301(a).

"(b) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider any concurrent resolution on the budget for a fiscal year or conference report thereon under section 301 or 304 that exceeds the maximum deficit amount for each fiscal year covered by the concurrent resolution or conference report as determined under section 601(a), including possible revisions under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(c) POINT OF ORDER IN THE SENATE.—It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year under section 301, or to consider any amendment to such a concurrent resolution, or to consider a conference report on such a concurrent resolution, if the level of total budget outlays for the first fiscal year that is set forth in such concurrent resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 601(a), or if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount for such fiscal years as determined under section 601(a).

"(d) ADJUSTMENTS.—(1) Notwithstanding any other provision of law, concurrent resolutions on the budget for fiscal years 1992, 1993, 1994, and 1995 under section 301 or 304 may set forth levels consistent with allocations increased by—

"(A) amounts not to exceed the budget authority amounts in section 251(b)(2)(E)(i) and (ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 and the composite outlays per category consistent with them; and

"(B) the budget authority and outlay amounts in section 251(b)(1) of that Act.

"(2) For purposes of congressional consideration of provisions described in sections 251(b)(2)(A), 251(b)(2)(B), 251(b)(2)(C), 251(b)(2)(D), and 252(e), determinations under sections 302, 303, and 311 shall not take into account any new budget authority, new entitlement authority, outlays, receipts, or deficit effects in any fiscal year of those provisions.

"SEC. 607. EFFECTIVE DATE.

This title shall take effect upon its date of enactment and shall apply to fiscal years 1991 to 1995.".

SEC. 13112. CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.—

(1) TABLE OF CONTENTS.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended to reflect the new section numbers and headings resulting from amendments made by this title.

(2) SECTION 3.—Section 3 of such Act is amended—

(A) by striking paragraphs (6), (7), and (8) and inserting the following:

"(6) The term 'deficit' means, with respect to a fiscal year, the amount by which outlays exceeds receipts during that year.

"(7) The term 'surplus' means, with respect to a fiscal year, the amount by which receipts exceeds outlays during that year.

"(8) The term 'government-sponsored enterprise' means a corporate entity created by a law of the United States that—

"(A)(i) has a Federal charter authorized by law;

"(ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;

"(iii) is under the direction of a board of directors, a majority of which is elected by private owners;

"(iv) is a financial institution with power to—

"(I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and

"(II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and

"(B)(i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);

"(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

"(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5 of the United States Code.".

(3) SECTION 202.—Section 202(a)(1) and the second sentence of 202(f)(1) of such Act are amended by striking "budget authority" and inserting "new budget authority".

(4) SECTION 300.—Section 300 of such Act is amended by striking "First Monday after January 3" and by inserting "First Monday in February".

(5) SECTION 301(d).—Section 301(d) of such Act is amended by striking "On or before February 25 of each year" and inserting "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code".

(6) SECTION 302(a).—Section 302(a)(2) of such Act is amended by striking "the House of Representatives and".

(7) SECTION 302(f).—Section 302(f)(2) of such Act is amended—

(A) by inserting after "in excess of" the following: "(A)";

(B) by striking "under subsection (b)" and inserting "under subsection (a), or (B) the appropriate allocation (if any) of such outlays or authority reported under subsection (b)"; and

(C) by inserting at the end the following: "Subparagraph (A) shall not apply to any bill, resolution, amendment, motion, or conference report that is within the jurisdiction of the Committee on Appropriations.".

(8) SECTION 304.—Section 304 of such Act is amended by striking subsection (b) and by striking "(c)" and inserting "(b)".

(9) SECTION 310(g).—Section 310(g) of such Act is amended by striking "resolution pursuant" and inserting "joint resolution pursuant" and by striking "254(b)" and inserting "258C".

(10) SECTION 311(a).—Section 311(a) of such Act is amended by striking "or, in the Senate" and all that follows thereafter through "paragraph (2) of such subsection" and inserting "except in the case that a declaration of war by the Congress is in effect".

(11) SECTION 904(a).—Section 904(a) of such Act is amended by striking "and" after "III", by inserting ", V, and VI (except section 601(a))" after "IV", and by striking "606,".

(b) CONFORMING AMENDMENT TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—Subsection (b) of section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

"(b) EXPIRATION.—Part C of this title, section 271(b) of this Act, and sections 1105(f) and 1106(c) of title 31, United States Code, shall expire September 30, 1995.".

(c) CONFORMING AMENDMENTS TO SECTION 1105 OF TITLE 31, UNITED STATES CODE.—

(1) SECTION 1105(a).—Section 1105(a) of title 31, United States Code, is amended by striking "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" and by inserting "On or after the first Monday in January but not later than the first Monday in February of each year"

(2) SECTION 1105(f).—Section 1105(f) of title 31, United States Code, is amended to read as follows:

"(f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the re-

quirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.".

(d) CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE OF REPRESENTATIVES.—

(1) CROSS-REFERENCE.—Clause 1(e)(2) of rule X of the Rules of the House of Representatives is amended by striking "(a)(4)".

(2) CROSS-REFERENCE.—Clause 1(e)(2) of rule X of Rules of the House of Representatives is amended by striking "Act, and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985" and inserting "Act".

(3) JURISDICTION.—Clause 1(j) of rule X of the Rules of the House of Representatives is amended by inserting after paragraph (6) the following new paragraph:

"(7) Measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(4) ALLOCATIONS.—Clause 4(h) of rule X of the Rules of the House of Representatives is amended by inserting "or section 602 (in the case of fiscal years 1991 through 1995)" after "section 302".

(5) MULTIYEAR REVENUE ESTIMATES.—Clause 7(a)(1) of rule XIII of the Rules of the House of Representatives is amended by striking ", except that, in the case of measures affecting the revenues, such reports shall require only an estimate of the gain or loss in revenues for a one-year period".

(e) CONFORMING AMENDMENT TO THE FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978.—Section 103(a) of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 1022(a) is amended by striking "transmit to the Congress during the first twenty days of each regular session" and inserting "annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31, United States Code".

(f) FILING REQUIREMENT.—After the convening of the One Hundred Second Congress, the chairman of the Committee on the Budget of the Senate shall file with the Senate revised and outyear budget aggregates and allocations under section 602(a) consistent with this Act.

Subtitle B—Permanent Amendments to the Congressional Budget and Impoundment Control Act of 1974

SEC. 13201. CREDIT ACCOUNTING.

(a) CREDIT ACCOUNTING.—Title V of the Congressional Budget Act of 1974 is amended to read as follows:

"TITLE V—CREDIT REFORM

"SEC. 500. SHORT TITLE.

"This title may be cited as the 'Federal Credit Reform Act of 1990'.

"SEC. 501. PURPOSES.

"The purposes of this title are to—

"(1) measure more accurately the costs of Federal credit programs;

"(2) place the cost of credit programs on a budgetary basis equivalent to other Federal spending;

"(3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and

"(4) improve the allocation of resources among credit programs and between credit and other spending programs.

"SEC. 502. DEFINITIONS.

"For purposes of this title—

"(1) The term 'direct loan' means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

"(2) The term 'direct loan obligation' means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

"(3) The term 'loan guarantee' means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

"(4) The term 'loan guarantee commitment' means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

"(5)(A) The term 'cost' means the estimated long-term cost to the Government of a direct loan or loan guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

"(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following cash flows:

"(i) loan disbursements;

"(ii) repayments of principal; and

"(iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties and other recoveries.

"(C) The cost of a loan guarantee shall be the net present value when a guaranteed loan is disbursed of the cash flow from—

"(i) estimated payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments, and

"(ii) the estimated payments to the Government including origination and other fees, penalties and recoveries.

"(D) Any Government action that alters the estimated net present value of an outstanding direct loan or loan guarantee (except modifications within the terms of existing contracts or through other existing authorities) shall be counted as a change in the cost of that direct loan or loan guarantee. The calculation of such changes shall be based on the estimated present value of the direct loan or loan guarantee at the time of modification.

"(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the direct loan or loan guarantee for which the estimate is being made.

"(6) The term 'credit program account' means the budget account into which an appropriation to cover the cost of a direct loan or loan guarantee program is made and from which such cost is disbursed to the financing account.

"(7) The term 'financing account' means the non-budget account or accounts associated with each credit program account which holds balances, receives the cost payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.

"(8) The term 'liquidating account' means the budget account that includes all cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991. These accounts shall be shown in the budget on a cash basis.

"(9) The term 'Director' means the Director of the Office of Management and Budget.

"SEC. 503. OMB AND CBO ANALYSIS, COORDINATION, AND REVIEW.

"(a) IN GENERAL.—For the executive branch, the Director shall be responsible for coordinating the estimates required by this title. The Director shall consult with the agencies that administer direct loan or loan guarantee programs.

"(b) DELEGATION.—The Director may delegate to agencies authority to make estimates of costs. The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this title.

"(c) COORDINATION WITH THE CONGRESSIONAL BUDGET OFFICE.—In developing estimation guidelines, regulations, or criteria to be used by Federal agencies, the Director shall consult with the Director of the Congressional Budget Office.

"(d) IMPROVING COST ESTIMATES.—The Director and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance of direct loan and loan guarantee programs. They shall annually review the performance of outstanding direct loans and loan guarantees to improve estimates of costs. The Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate the development and improvement of estimates of costs.

"(e) HISTORICAL CREDIT PROGRAM COSTS.—The Director shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

"(f) ADMINISTRATIVE COSTS.—The Director and the Director of the Congressional Budget Office shall each analyze and report to Congress on differences in long-term administrative costs for credit programs versus grant programs by January 31, 1992. Their reports shall recommend to Congress any changes, if necessary, in the treatment of administrative costs under credit reform accounting.

"SEC. 504. BUDGETARY TREATMENT.

"(a) PRESIDENT'S BUDGET.—Beginning with fiscal year 1992, the President's budget shall reflect the costs of direct loan and loan guarantee programs. The budget shall also include the planned level of new direct loan obligations or loan guarantee commitments associated with each appropriations request.

"(b) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of law, new direct loan obligations may be incurred and new loan guarantee commitments may be made for fiscal year 1992 and thereafter only to the extent that—

"(1) appropriations of budget authority to cover their costs are made in advance;

"(2) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program is enacted; or

"(3) authority is otherwise provided in appropriation Acts.

"(c) EXEMPTION FOR MANDATORY PROGRAMS.—Subsection (b) shall not apply to a direct loan or loan guarantee program that—

"(1) constitutes an entitlement (such as the guaranteed student loan program or the veterans' home loan guaranty program); or

"(2) all existing credit programs of the Commodity Credit Corporation on the date of enactment of this title.

"(d) BUDGET ACCOUNTING.—

"(1) The authority to incur new direct loan obligations, make new loan guarantee commitments, or directly or indirectly alter the costs of outstanding direct loans and loan guarantees shall constitute new budget authority in an amount equal to the cost of the direct loan or loan guarantee in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority shall constitute an obligation of the credit program account to pay to the financing account.

"(2) The outlays resulting from new budget authority for the cost of direct loans or loan guarantees described in paragraph (1) shall be paid from the credit program account into the financing account and recorded in the fiscal year in which the direct loan or the guaranteed loan is disbursed or its costs altered.

"(3) All collections and payments of the financing accounts shall be a means of financing.

"(e) MODIFICATIONS.—A direct loan obligation or loan guarantee commitment shall not be modified in a manner that increases its cost unless budget authority for the additional cost is appropriated, or is available out of existing appropriations or from other budgetary resources.

"(f) REESTIMATES.—When the estimated cost for a group of direct loans or loan guarantees for a given credit program made in a single fiscal year is reestimated in a subsequent year, the difference between the reestimated cost and the previous cost estimate shall be displayed as a distinct and separately identified subaccount in the credit program account as a change in program costs and a change in net interest. There is hereby provided permanent indefinite authority for these reestimates.

"(g) ADMINISTRATIVE EXPENSES.—All funding for an agency's administration of a direct loan or loan guarantee program shall be displayed as distinct and separately identified subaccounts within the same budget account as the program's cost.

"SEC. 505. AUTHORIZATIONS.

"(a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.—There are authorized to be appropriated to each Federal agency authorized to make direct loan obligations or loan guarantee commitments, such sums as may be necessary to pay the cost associated with such direct loan obligations or loan guarantee commitments.

"(b) AUTHORIZATION FOR FINANCING ACCOUNTS.—In order to implement the accounting required by this title, the President is authorized to establish such non-budgetary accounts as may be appropriate.

"(c) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.—The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above. The authorities described above shall not be construed to supercede or override the authority of the head of a Federal agency to administer and operate a direct loan or loan guarantee program. All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code. Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

"(d) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.—If funds in liquidating accounts are insufficient to satisfy the obligations and commitments of said accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.

"(e) AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION EXPENSES.—There are authorized to be appropriated to existing accounts such sums as may be necessary for salaries and expenses to carry out the responsibilities under this title.

"(f) REINSURANCE.—Nothing in this title shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a direct loan or loan guarantee from private insurers. If any such reinsurance for a direct loan or loan guarantee is authorized, the cost of such insurance and any recoveries to the Government shall be included in the calculation of the cost.

"(g) ELIGIBILITY AND ASSISTANCE.—Nothing in this title shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by a direct loan or a loan guarantee.

"SEC. 506. TREATMENT OF DEPOSIT INSURANCE AND AGENCIES AND OTHER INSURANCE PROGRAMS.

"(a) IN GENERAL.—

"(1) This title shall not apply to the credit or insurance activities of the Federal Deposit Insurance Corporation, National Credit Union Administration, Resolution Trust Corporation, Pension Benefit Guaranty Corporation, National Flood Insurance, National Insurance Development Fund, Crop Insurance, or Tennessee Valley Authority.

"(2) The Director and the Director of the Congressional Budget Office shall each study whether the accounting for Federal deposit insurance programs should be on a cash basis on the same basis as loan guarantees, or on a different basis. Each Director shall report findings and recommendations to the President and the Congress on or before May 31, 1991.

"(3) For the purposes of paragraph (2), the Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate these studies.

"SEC. 507. EFFECT ON OTHER LAWS.

"(a) EFFECT ON OTHER LAWS.—This title shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this title to the extent such provision is inconsistent with this title. Nothing in this title shall be construed to establish a credit limitation on any Federal loan or loan guarantee program.

"(b) CREDITING OF COLLECTIONS.—Collections resulting from direct loans obligated or loan guarantees committed prior to October 1, 1991, shall be credited to the liquidating accounts of Federal agencies. Amounts so credited shall be available, to the same extent that they were available prior to the date of enactment of this title, to liquidate obligations arising from such direct loans obligated or loan guarantees committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of such accounts that are in excess of current needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.".

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 3(2) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The term includes the cost for direct loan and loan guarantee programs, as those terms are defined by title V".

(2) POINT OF ORDER FOR FISCAL YEAR 1991.—Effective January 1, 1991, for fiscal year 1991 only, section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting after "new budget authority" the following: "or new credit authority".

(3) SUNSET OF POINT OF ORDER IN FISCAL YEAR 1992.—Effective for fiscal years beginning after September 30, 1991, section 302 of the Congressional Budget Act is amended—

(A) in subsection (a)(1)—

(i) by striking "total entitlement authority, and total credit authority" and inserting "and total entitlement authority";

(ii) by striking "such entitlement authority, or such credit authority" and inserting "or such entitlement authority"; and

(iii) by striking "entitlement authority, and credit authority" and inserting "and entitlement authority";

(B) in subsection (a)(2), by striking "total budget outlays, total new budget authority and new credit authority" and inserting "total budget outlays and total new budget authority";

(C) in subsection (b)(1)(A), by striking "budget outlays, new budget authority, and new credit authority" and inserting "budget outlays and new budget authority";

(D) in subsection (c)—

(i) in paragraph (1), by inserting "or" at the end thereof; and

(ii) by striking "or (3) new credit authority for a fiscal year;"; and

(E) in subsection (f)(1)—

(i) by striking "year, new entitlement authority effective during such fiscal year, or new credit authority for such fiscal year," and inserting "year or new entitlement authority effective during such fiscal year,"; and

(ii) by striking "authority, new entitlement authority, or new credit authority" and inserting "authority or new entitlement authority".

SEC. 13202. CODIFICATION OF PROVISION REGARDING REVENUE ESTIMATES.

(a) REDESIGNATION.—Section 201 of the Congressional Budget Act of 1974 is amended by redesignating subsection (f) as subsection (g).

(b) TRANSFER.—The text of section 273 of the Balanced Budget and Emergency Deficit Control Act of 1985 is transferred to section 201 of the Congressional Budget Act of 1974 and is designated as subsection (g).

(c) CONFORMING CHANGES.—Section 201(g) of the Congressional Budget Act of 1974 (as redesignated by subsection (b)) is amended by—

(1) striking "this title and the Congressional Budget and Impoundment Control Act of 1974" and inserting "this Act"; and

(2) inserting "REVENUE ESTIMATES.—" before the first sentence.

SEC. 13203. DEBT INCREASE AS MEASURE OF DEFICIT; DISPLAY OF FEDERAL RETIREMENT TRUST FUND BALANCES.

Section 301(b) of the Congressional Budget Act of 1974 is amended by striking

"and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following new paragraphs:

"(5) include a heading entitled 'Debt Increase as Measure of Deficit' in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code) has increased or would increase in each of the relevant fiscal years; and

"(6) include a heading entitled 'Display of Federal Retirement Trust Fund Balances' in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds.".

SEC. 13204. PAY-AS-YOU-GO PROCEDURES.

Section 301(b) of the Congressional Budget Act of 1974 (as amended by section 13203) is further amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting a semicolon, and by adding at the end the following new paragraphs:

"(7) set forth pay-as-you-go procedures for the Senate whereby—

"(A) budget authority and outlays may be allocated to a committee for legislation that increases funding for entitlement and mandatory spending programs within its jurisdiction if that committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in the concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either deficit reduction in the bill or previously passed deficit reduction) in the resolution for the first fiscal year covered by the concurrent resolution on the budget, and will not increase the total deficit for the period of fiscal years covered by the concurrent resolution on the budget;

"(B) upon the reporting of legislation pursuant to subparagraph (A), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this paragraph;

"(C) such revised allocations, functional levels, and aggregates shall be considered for the purposes of this Act as allocations, functional levels, and aggregates contained in the concurrent resolution on the budget; and

"(D) the appropriate committee shall report appropriately revised allocations pursuant to section 302(b) to carry out this paragraph; and

"(8) set forth procedures to effectuate pay-as-you-go in the House of Representatives.".

SEC. 13205. AMENDMENTS TO SECTION 303.

(a) IN GENERAL.—Section 303(a) of the Congressional Budget Act of 1974 is amended—

(1) by repealing paragraph (5),

(2) by striking "or" at the end of paragraph (4),

(3) by inserting after paragraph (4) the following new paragraphs:

"(5) in the Senate only, new spending authority (as defined in section 401(c)(2)) for a fiscal year; or

"(6) in the Senate only, outlays,"; and

(4) by inserting after "the concurrent resolution on the budget for such fiscal year" the following: "(or, in the Senate, a concurrent resolution on the budget covering such fiscal year)".

(b) EXCEPTIONS.—Section 303(b) of such Act is amended—

(1) by striking "Subsection (a)" and inserting "(1) In the House of Representatives, subsection (a)" and by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(2) by inserting at the end the following new paragraph:

"(2) In the Senate, subsection (a) does not apply to any bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and the two succeeding fiscal years.".

SEC. 13206. AMENDMENTS TO SECTION 308.

(a) REPORTS AND SUMMARIES OF CONGRESSIONAL BUDGET ACTIONS.—(1) Section 308(a)(1) of that Act is amended—

(1) in the matter preceding subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)";

(2) in subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)"; and

(3) in subparagraph (C) by inserting after "such fiscal year" the following: "(or fiscal years)".

(b) CONFORMING AMENDMENT.—Section 308(a)(2) of that Act is amended by inserting after "fiscal year" the following: "(or fiscal years)".

(c) ADDITIONAL CONFORMING AMENDMENT.—Section 308(b)(1) of that Act is amended—

(1) by striking "for a fiscal year" in the first sentence and inserting "for each fiscal year covered by a concurrent resolution on the budget"; and

(2) by striking "such fiscal year" in the second sentence and inserting "the first fiscal year covered by the appropriate concurrent resolution".

SEC. 13207. STANDARDIZATION OF LANGUAGE REGARDING POINTS OF ORDER.

(a) IN GENERAL.—The Congressional Budget Act of 1974 is amended—

(1)(A) in section 302(c), by striking "bill or resolution, or amendment thereto" and inserting "bill, joint resolution, amendment, motion, or conference report";

(B) in section 302(f)(1), by inserting "joint" before "resolution" the second and third places it appears and in section 302(f)(2), by striking "bill or resolution (including a conference report thereon), or any amendment to a bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report";

(C) in section 303(a), by striking "bill or resolution (or amendment thereto)" and inserting "bill, joint resolution, amendment, motion, or conference report";

(D) in section 306, by striking "bill or resolution, and no amendment to any bill or resolution" and inserting "bill, resolution, amendment, motion, or conference report";

(E) in section 311(a), by—

(i) striking "bill, resolution, or amendment" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any conference report on any such bill or resolution";

(F) in section 401(a), by—

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "(or any amendment which provides such new spending authority)";

(G) in section 401(b)(1), by—

(i) striking "bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report, as reported to its House"; and

(ii) striking "(or any amendment which provides such new spending authority)"; and

(H) in section 402(a), by—

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any amendment"; and

(2) in section 302(f)(2), by striking "outlays or new budget authority" and inserting "outlays, new budget authority, or new spending authority (as defined in section 401(c)(2))".

(b) POINTS OF ORDER IN THE SENATE.—

(1) Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

"EFFECTS OF POINTS OF ORDER

"SEC. 312. POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES.—Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses, and the Presiding Officer sustains the point of order, the effect shall be the same as if the Senate had disagreed to the amendment.

"(b) EFFECT OF A POINT OF ORDER ON A BILL IN THE SENATE.—In the Senate, if the Chair sustains a point of order under this Act against a bill, the Chair shall then send the bill to the committee of appropriate jurisdiction for further consideration.".

(2) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 311 the following new item:

"Sec. 312. Effect of points of order.".

(c) ADJUSTMENT IN THE SENATE OF ALLOCATIONS AND AGGREGATES TO REFLECT CHANGES PURSUANT TO SECTION 310(c).—Section 310(c) of the Congressional Budget Act of 1974 is amended by—

(1) inserting "(1)" before "Any committee";

(2) redesignating subparagraphs (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively;

(3) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(4) inserting at the end the following new paragraph:

"(2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, func-

tional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.

"(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b) to carry out this subsection.".

(d) RECONCILIATION INSTRUCTIONS.—Section 310(a)(4) of the Congressional Budget Act of 1974 is amended by inserting after "(3)" the following: "(including a direction to achieve deficit reduction)".

SEC. 13208. STANDARDIZATION OF ADDITIONAL DEFICIT CONTROL PROVISIONS.

(a) Section 904 of the Congressional Budget Act of 1974 is amended—

(1) by amending subsection (c) to read as follows:

"(c) WAIVER.—Sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. Sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. "; and

(2) in subsection (d) by inserting at the end the following: "An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d). An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985".

(b) Section 275(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subparagraph (C), by striking the final word "and";

(2) in subparagraph (D), by striking the final period and inserting "; and"; and

(3) by inserting at the end the following new subparagraph:

"(E) the second sentence of section 904(c) of the Congressional Budget and Impoundment Control Act of 1974 and the final sentence of section 904(d) of that Act."

SEC. 13209. CODIFICATION OF PRECEDENT WITH REGARD TO CONFERENCE REPORTS AND AMENDMENTS BETWEEN HOUSES.

Section 305(c) of the Congressional Budget Act 1974 is amended—

(1) in paragraph (1)—

(A) by striking the first sentence; and

(B) by inserting after "consideration of the conference report" the following: "on any concurrent resolution on the budget (or a reconciliation bill or resolution)"; and

(2) in paragraph (2), by inserting "(or a message between Houses)" after "conference report" each place it appears.

SEC. 13210. SUPERSEDED DEADLINES AND CONFORMING CHANGES.

The Congressional Budget Act of 1974 is amended—

(1) in section 305, by striking subsection (d) and redesignating subsection (e) as subsection (d); and

(2) in section 310(f), by striking paragraph (1) and by striking "(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.—".

SEC. 13211. DEFINITIONS.

(a) BUDGET AUTHORITY.—Section 3(2) of the Congressional Budget and Impoundment Control Act of 1974 is amended to read as follows:

"(2) BUDGET AUTHORITY AND NEW BUDGET AUTHORITY.—

"(A) IN GENERAL.—The term 'budget authority' means the authority provided by Federal law to incur financial obligations, as follows:

"(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

"(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

"(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

"(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

"(B) LIMITATIONS ON BUDGET AUTHORITY.—With respect to the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account, any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

"(C) NEW BUDGET AUTHORITY.—The term 'new budget authority' means, with respect to a fiscal year—

"(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year as a result of a reappropriation; or

"(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective for fiscal year 1992 and subsequent fiscal years.

SEC. 13212. SAVINGS TRANSFERS BETWEEN FISCAL YEARS.

Section 202 of Public Law 100-119 is repealed.

SEC. 13213. CONFORMING CHANGE TO TITLE 31.

(a) LIMITATIONS ON EXPENDING AND OBLIGATING.—Section 1341(a)(1) of title 31, United States Code, is amended—

(1) in subparagraph (A), by striking the final word "or";

(2) in subparagraph (B), by striking the final period and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

"(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

"(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(b) LIMITATION ON VOLUNTARY SERVICES.—Section 1342 of title 31, United States Code, is amended by inserting at the end the following: "As used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.".

SEC. 13214. THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION.

(a) THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION.—Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subsection (a)—

(A) by inserting after "(a)" the following: "IN GENERAL.—";

(B) by inserting after "1974" the following: "(whether that bill or resolution originated in the Senate or the House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985";

(2) in subsection (d) by inserting after "(d)" the following: "EXTRANEOUS PROVISIONS.—";

(3) in subsection (d)(1)(A) by inserting before the semicolon "(but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph)";

(4) in subsection (d)(1)(D) by striking "and" after the semicolon;

(5) in subsection (d)(1)(E), by striking the period at the end and inserting "; and";

(6) in subsection (d)(1) by adding at the end the following new subparagraph:

"(F) a provision shall be considered extraneous if it violates section 310(g).";

(7) in subsection (d)(2), by inserting after "A" the first place it appears the following: "Senate-originated"; and

(8) by adding at the end the following new subsections:

"(e) EXTRANEOUS MATERIALS.—Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

"(f) GENERAL POINT OF ORDER.—Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a

point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

"(g) DETERMINATION OF LEVELS.—For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.".

(b) TRANSFER OF BYRD RULE.—(1) Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by subsection (a), is transferred to the end of title III of the Congressional Budget Act of 1974, and designated as section 313 of that Act.

(2) Section 313 of the Congressional Budget Act of 1974 is amended by—

(A) adding at the beginning the following center heading:

"EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION";

(B) striking subsection (b), subsection (c), and the last sentence of subsection (a); and

(C) redesignating subsections (d) (e), (f), and (g) as subsections (b), (c), (d) and (e), respectively.

(3) Subsection (a) of the first section of Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session) is enacted as subsection (c) of section 313 of the Congressional Budget Act of 1974.

(4) Section 313 of the Congressional Budget Act of 1974 is amended—

(A) in subsections (a), (b)(1)(A), and (c), by striking "of the Congressional Budget Act of 1974";

(B) in subsection (a), by striking "(d)" and inserting "(b)";

(C) in subsection (b)(2)(C), by adding "or" at the end thereof;

(D) in subsection (c), by striking "when" and inserting "When";

(E) in subsection (c)(1), by striking "(d)(1)(A) or (d)(1)(D) of section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985" and inserting "(b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F)"; and

(F) in subsection (c)(2), by striking "this resolution" and inserting "this subsection".

(5) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item for section 312 the following new item:

"Sec. 313. Extraneous matter in reconciliation legislation.".

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.".

SEC. 13302. PROTECTION OF OASDI TRUST FUNDS IN THE HOUSE OF REPRESENTATIVES.

(a) IN GENERAL.—It shall not be in order in the House of Representatives to consider any bill or joint resolution, as reported, or any amendment thereto or conference report thereon, if, upon enactment—

(1)(A) such legislation under consideration would provide for a net increase in OASDI benefits of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net increase, for such 75-year period, in OASDI taxes of the amount by which the net increase in such benefits exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period,

(2)(A) such legislation under consideration would provide for a net increase in OASDI benefits (for the 5-year estimating period for such legislation under consideration), (B) such net increase, together with the net increases in OASDI benefits resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net increase, for the 5-year estimating period for such legislation under consideration, in OASDI taxes which, together with net increases in OASDI taxes resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net increase derived under subparagraph (B) exceeds $250,000,000;

(3)(A) such legislation under consideration would provide for a net decrease in OASDI taxes of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net decrease, for such 75-year period, in OASDI benefits of the amount by which the net decrease in such taxes exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period, or

(4)(A) such legislation under consideration would provide for a net decrease in OASDI taxes (for the 5-year estimating period for such legislation under consideration), (B) such net decrease, together with the net decreases in OASDI taxes resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net decrease, for the 5-year estimating period for such legislation under consideration, in OASDI benefits which, together with net decreases in OASDI benefits resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net decrease derived under subparagraph (B) exceeds $250,000,000.

(b) APPLICATION.—In applying paragraph (3) or (4) of subsection (a), any provision of any bill or joint resolution, as reported, or any amendment thereto, or conference report thereon, the effect of which is to provide for a net decrease for any period in taxes described in subsection (c)(2)(A) shall be disregarded if such bill, joint resolution, amendment, or conference report also includes a provision the effect of which is to provide for a net increase of at least an equivalent amount for such period in medicare taxes.

(c) DEFINITIONS.—For purposes of this subsection:

(1) The term "OASDI benefits" means the benefits under the old-age, survivors, and disability insurance programs under title II of the Social Security Act.

(2) The term "OASDI taxes" means—

(A) the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, and

(B) the taxes imposed under chapter 1 of such Code (to the extent attributable to section 86 of such Code).

(3) The term "medicare taxes" means the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986.

(4) The term "previous legislation" shall not include legislation enacted before fiscal year 1991.

(5) The term "5-year estimating period" means, with respect to any legislation, the fiscal year in which such legislation becomes or would become effective and the next 4 fiscal years.

(6) No provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of OASDI taxes referred to in paragraph (2)(B) unless such provision changes the income tax treatment of OASDI benefits.

SEC. 13303. SOCIAL SECURITY FIREWALL AND POINT OF ORDER IN THE SENATE.

(a) CONCURRENT RESOLUTION ON THE BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting a semicolon; and by adding after paragraph (5) the following new paragraphs:

"(6) For purposes of Senate enforcement under this title, outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and

"(7) For purposes of Senate enforcement under this title, revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.".

(b) POINT OF ORDER.—Section 301(i) of the Congressional Budget Act of 1974 is amended to read as follows:

"(i) It shall not be in order in the Senate to consider any concurrent resolution on the budget as reported to the Senate that would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.".

(c) COMMITTEE ALLOCATIONS.—

(1) Section 302(a)(2) of the Congressional Budget Act of 1974 is amended by inserting after "appropriate levels of" the following: "social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years,".

(2) Section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting before the period the following: "or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years".

(3) Section 302(f)(2) of such Act is further amended by adding at the end the following: "In applying this paragraph—

"(A) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) over the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;

"(B) estimated social security outlays shall be deemed increased by the shortfall of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

"(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).".

(d) POINT OF ORDER UNDER SECTION 311.—(1) Subsection (a) of section 311(a) of the Congressional Budget Act of 1974 is redesignated as subsection (a)(1) and paragraphs (1), (2), and (3) are redesignated as subparagraphs (A), (B), and (C).

(2) Section 311(a) of such Act is amended by inserting at the end the following new paragraph:

"(2)(A) After the Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would cause the appropriate level of total new budget authority or total budget outlays or social security outlays set forth for the first fiscal year in the most recently agreed to concurrent resolution on the budget covering such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues (or social security revenues to be less than the appropriate level of social security revenues) set forth for the first fiscal year covered by the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such concurrent resolution.

"(B) In applying this paragraph—

"(i)(I) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including those provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) over the appropriate level of Social Security revenues specified in the most recently agreed to concurrent resolution on the budget;

"(II) estimated social security revenues shall be deemed to be increased to the extent that estimated social security outlays are less (taking into account the effect of the bill, resolution, amendment, or conference report to which this subsection is being applied) than the appropriate level of social security outlays in the most recently agreed to concurrent resolution on the budget; and

"(ii)(I) estimated Social Security outlays shall be deemed to be increased by the shortfall of estimated social security revenues (including Social Security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

"(II) estimated social security revenues shall be deemed to be reduced by the excess of estimated social security outlays (including social security outlays provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) above the appropriate level of social security outlays specified in the most recently adopted concurrent resolution on the budget; and

"(iii) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to section 302(b)."

SEC. 13304. REPORT TO THE CONGRESS BY THE BOARD OF TRUSTEES OF THE OASDI TRUST FUNDS REGARDING THE ACTUARIAL BALANCE OF THE TRUST FUNDS.

Section 201(c) of the Social Security Act (42 U.S.C. 401(c)) is amended by inserting after the first sentence following clause (5) the following new sentence: "Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).".

SEC. 13305. EXERCISE OF RULEMAKING POWER.

This title and the amendments made by it are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as a part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 13306. EFFECTIVE DATE.

Sections 13301, 13302, and 13303 and any amendments made by such sections shall apply with respect to fiscal years beginning on or after October 1, 1990. Section 13304 shall be effective for annual reports of the Board of Trustees issued in or after calendar year 1991.

Subtitle D—Treatment of Fiscal Year 1991 Sequestration

SEC. 13401. RESTORATION OF FUNDS SEQUESTERED.

(a) ORDER RESCINDED.—Upon the enactment of this Act, the orders issued by the President on August 25, 1990, and October 15, 1990, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby rescinded.

(b) AMOUNTS RESTORED.—Any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequestrable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

(c) FURLOUGHED EMPLOYEES.—(1) Federal employees furloughed as a result of the lapse in appropriations from midnight October 5, 1990, until the enactment of House Joint Resolution 666 shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

(2) All obligations incurred in anticipation of the appropriations made and authority granted by House Joint Resolution 666 for the purposes of maintaining the essential level of activity to protect life and property and bringing about orderly termination of government functions are hereby ratified and approved if otherwise in accord with the provisions of that Act.

Subtitle E—Government-sponsored Enterprises

SEC. 13501. FINANCIAL SAFETY AND SOUNDNESS OF GOVERNMENT-SPONSORED ENTERPRISES.

(a) DEFINITION.—For purposes of this section, the terms "Government-sponsored enterprise" and "GSE" mean the Farm Credit System (including the Farm Credit Banks, Banks for Cooperatives, and Federal Agricultural Mortgage Corporation), the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Student Loan Marketing Association.

(b) TREASURY DEPARTMENT STUDY AND PROPOSED LEGISLATION.—

(1) The Department of the Treasury shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs and recommended legislation.

(2) The study shall include an objective assessment of the financial soundness of GSEs, the adequacy of the existing regulatory structure for GSEs, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing.

(c) CONGRESSIONAL BUDGET OFFICE STUDY.—

(1) The Congressional Budget Office shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs.

(2) The study shall include an analysis of the financial risks each GSE assumes, how Congress may improve its understanding of those risks, the supervision and regulation of GSEs' risk management, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing. The study shall also include an analysis of alternative models for oversight of GSEs and of the costs and benefits of each alternative model to the Government and to the markets and beneficiaries served by GSEs.

(d) ACCESS TO RELEVANT INFORMATION.—

(1) For the studies required by this section, each GSE shall provide full and prompt access to the Secretary of the Treasury and the Director of the Congressional Budget Office to its books and records and other information requested by the Secretary of the Treasury or the Director of the Congressional Budget Office.

(2) In preparing the studies required by this section, the Secretary of the Treasury and the Director of the Congressional Budget Office may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of a GSE.

(e) CONFIDENTIALITY OF RELEVANT INFORMATION.—

(1) The Secretary of the Treasury and the Director of the Congressional Budget Office shall determine and maintain the confidentiality of any book, record, or information made available by a GSE under this section in a manner consistent with the level of confidentiality established for the material by the GSE involved.

(2) The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, for any book, record, or information made available under subsection (d) and determined by the Secretary of the Treasury to be confidential under this subsection.

(3) Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

(A) by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential under this section; and

(B) he or she discloses the material in any manner other than—

(i) to an officer or employee of the Department of the Treasury; or

(ii) pursuant to the exception set forth in such section 1906.

(4) The Congressional Budget Office shall be exempt from section 203 of the Congressional Budget Act of 1974 with respect to any book, record, or information made available under this subsection and determined by the Director to be confidential under paragraph (1).

(f) REQUIREMENT TO REPORT LEGISLATION.—(1) The committees of jurisdiction in the House shall prepare and report to the House no later than September 15, 1991, legislation to ensure the financial soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.

(2) It is the sense of the Senate that the committees of jurisdiction in the Senate shall prepare and report to the Senate no later than September 15, 1991, legislation to ensure the financial safety and soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.

(f) PRESIDENT'S BUDGET.—The President's annual budget submission shall include an analysis of the financial condition of the GSEs and the financial exposure of the Government, if any, posed by GSEs.

And the Senate agree to the same.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference, and as exclusive conferees with respect to any proposal to report in total disagreement:

LEON E. PANETTA,
RICHARD GEPHARDT,
BILL FRENZEL,

As additional conferees from the Committee on the Budget, for consideration of title XIV of the House bill, and all other provisions of the House bill and the Senate amendment on which conferees from more than one of the other standing committees of the House are appointed, and modifications committed to conference:

ED JENKINS,

From the Committee on Agriculture, for consideration of title I and subtitle B of title V of the House bill, and title I and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
JERRY HUCKABY,
TOM COLEMAN,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title II of the House bill, and title II of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,

From the Committee on Education and Labor, for consideration of title III and sections 12403 and 13323 of the House bill, and subtitle F of title VI, part 4 of subtitle D of title VII, title X, and section 6401 of the Senate amendment, and modifications committed to conference:

GUS HAWKINS,
WILLIAM D. FORD,

From the Committee on Energy and Commerce (health) for consideration of subtitles A and B of title IV and subtitles B, C, and D of title XII of the House bill, and part 2 of subtitle B and subtitle C of title VI of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
NORMAN F. LENT,

From the Committee on Energy and Commerce (transportation), for consideration of sections 4511, 4521, and 4522 of the House bill, and sections 3002 and 3003 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
THOMAS A. LUKEN,
NORMAN F. LENT,

From the Committee on Energy and Commerce (energy), for consideration of sections 4501, 4502, 5101, and 10002 of the House bill, and subtitle B of title IV and section 502 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
NORMAN F. LENT,

From the Committee on Government Operations, for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
HENRY A. WAXMAN,
BARNEY FRANK,
HOWARD C. NIELSON,

From the Committee on Interior and Insular Affairs, for consideration of title V and sections 4502 and 10002 of the House bill, and subtitles A and B of title IV and section 502 of the Senate amendment, and modifications committed to conference:

MORRIS K. UDALL,
GEORGE MILLER,

From the Committee on the Judiciary, for consideration of title VI of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
BOB KASTENMEIER,
CARLOS J. MOORHEAD,

From the Committee on Merchant Marine and Fisheries (tonnage duties, coast guard fees, and cargo preference), for consideration of sections 7101 and 7102 of the House bill, and section 3001 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
BILLY TAUZIN,

From the Committee on Merchant Marine and Fisheries (EPA fees), for consideration of section 7103 of the House bill, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
ROBERT W. DAVIS,

From the Committee on Merchant Marine and Fisheries (coastal zone management), for consideration of subtitle B of title VII of the House bill, and modifications committed to conference:

WALTER B. JONES,
DENNIS M. HERTEL,
ROBERT W. DAVIS,

From the Committee on Post Office and Civil Service, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,

From the Committee on Public Works and Transportation (aviation) for consideration of subtitles B and C of title IX of the House bill, and subtitle B of title III of the Senate

amendment, and modifications committed to conference:

GLENN M. ANDERSON,
JAMES L. OBERSTAR,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (transportation trust funds), for consideration of subtitle A of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (EPA fees), for consideration of subtitle D of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Rules, for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN MOAKLEY,
BUTLER DERRICK,
ANTHONY C. BEILENSON,
MARTIN FROST,
JAMES H. QUILLEN,
CHARLES PASHAYAN, Jr.,

From the Committee on Science, Space, and Technology, for consideration of title X of the House bill, and subtitle B of title IV and sections 3004 and 3024 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
MARILYN LLOYD,

From the Committee on Veterans' Affairs, for consideration of title XI (except section 11051) of the House bill, and title XI of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
DOUGLAS APPLEGATE,
BOB STUMP,

From the Committee on Ways and Means (revenues and debt ceiling), for consideration of title XIII, subtitles E and F of title XII, and sections 3102, 3121, 7101, and 11051(a) of the House bill, and title VII (except subtitle C), and subtitles D and E of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,

From the Committee on Ways and Means (medicare), for consideration of subtitles A through D of title XII and subtitle A of title IV of the House bill, and subtitle B of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,

From the Committee on Ways and Means (Social Security), for consideration of part 5 of subtitle A of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
ANDREW JACOBS, Jr.,

From the Committee on Ways and Means (child care and human resources), for consideration of parts 1 through 4 of subtitle A and subtitle F of title VI and subtitle C of title VII of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
THOMAS J. DOWNEY,

As an additional conferee for consideration of subtitle B of title V of the House bill, and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

R.J. MRAZEK,

As additional conferees for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

SILVIO O. CONTE,

As additional conferees for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

CARL D. PURSELL,
Manager on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK J. LEAHY,
DAVID PRYOR,
RICHARD G. LUGAR,
BOB DOLE,
THAD COCHRAN,

From the Committee on Banking, Housing, and Urban Affairs:

DON RIEGLE,
ALAN CRANSTON,
CHRISTOPHER J. DODD,

From the Committee on the Budget:

JIM SASSER,
PETE V. DOMENICI,

From the Committee on Commerce, Science, and Transportation:

DANIEL K. INOUYE,
WENDELL FORD,
JOHN BREAUX,
JOHN D. ROCKEFELLER IV,
JOHN C. DANFORTH,
BOB PACKWOOD,
TED STEVENS,

From the Committee on Energy and Natural Resources:

BENNETT J. JOHNSTON,
DALE BUMPERS,
WENDELL FORD,
JAMES A. MCCLURE,
PETE V. DOMENICI,

From the Committee on Environment and Public Works:

QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
BOB GRAHAM,
JOHN H. CHAFEE,

From the Committee on Finance:

LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
D.L. BOREN,
GEORGE MITCHELL,
DAVID PRYOR,
JOHN D. ROCKEFELLER IV,
BOB PACKWOOD,
BOB DOLE,
JOHN C. DANFORTH,
JOHN H. CHAFEE,

From the Committee on Governmental Affairs:

JOHN GLENN,
JIM SASSER,
DAVID PRYOR,

From the Committee on the Judiciary:

DENNIS DECONCINI,
PATRICK LEAHY,
ORRIN HATCH,

From the Committee on Labor and Human Resources for the Child Care and Development Block Grant Act:

EDWARD M. KENNEDY,
CHRISTOPHER J. DODD,
ORRIN G. HATCH,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
CHRISTOPHER J. DODD,

From the Committee on Labor and Human Resources for pension provisions (reversions and retiree health transfers):

EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

From the Committee on Veterans' Affairs:

ALAN CRANSTON,
DENNIS DECONCINI,
JOHN D. ROCKEFELLER IV,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—AGRICULTURE

SUBTITLE A—COMMODITY PROVISIONS

(1) Triple base. (H. 1101, S. 1101).

The House bill establishes a triple base program for wheat, feed grains, cotton and rice to reduce the acreage on which deficiency payments will be made. The House bill provides that the base reduction percentage be 15 percent in each of crop years 1992 and 1993, 20 percent in crop year 1994 and 25 percent in crop year 1995. The House bill also specifies the crops which may be grown on acreage on which producers receive no deficiency payments and provides that program crops grown on unpaid acres be eligible for loans under the Agricultural Act of 1949.

The Senate amendment has similar provisions, but provides for a base reduction of 15 percent in each of the 1992 through 1995 crop years.

The Conference substitute deleted both provisions and amends sections 301, 401, 501, and 601 of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 to reduce base acreage eligible for deficiency payments from 100 percent to 85 percent for each of crop years 1991 through 1995, effecting a 15 percent triple base program in each year. The Conference substitute does not alter the option of winter wheat producers participating in the 1991 crop wheat program under the FACT Act of 1990 to choose either the 15 percent triple base provisions or to receive payments on 100 percent of eli-

gible acreage but have the deficiency payment calculated on the basis of the 12-month season average price. (Sec. 1101)

(2) Calculation of deficiency payments. (H. 1102, S. 1102).

Section 1102 of the House bill requires that for purposes of calculating deficiency payments for each of the 1991 through 1995 crops of wheat, feed grains, and rice, the payment rate for a crop will be the amount by which the established price for the crop exceeds—

(1) in the case of wheat and feed grains, the higher of—

(A) the announced loan level for each crop; or

(B) the lower of—

(i) the season average price received by producers during the marketing year; or

(ii) the 5-month average market price received by producers, plus 10 cents per bushel.

(2) in the case of rice, the higher of the season average market price received by producers during the marketing year for the crop, as determined by the Secretary, or the announced loan rate.

The House provisions for wheat and feed grains are designed to ensure that the decrease in deficiency payments received by producers as a result of changing the calculation of deficiency payments from a 5-month to a 12-month basis does not result in more than a 10 cent decline in deficiency payments.

The Senate amendment has similar provisions but requires the rice deficiency payment be calculated as the difference between the established price and (1) the higher of—

(A) the announced loan rate; or

(B) the lower of—

(i) the season average price for the marketing year; or

(ii) the 5-month average market price plus 27 cents per hundredweight.

The Senate bill also provides that the Secretary shall exclude the portion of average malting barley prices received by producers that exceeds prices received by producers for feed barley by more than $0.50 per bushel.

The Conference substitute adopts the House provision with an amendment to require the 12-month calculation only for the 1994 and 1995 crop years and placing the season average price determination on a calendar year, rather than a marketing year basis, for rice. For wheat and feed grains, the same form of calculation as was included in the House bill applies, but the calculation for feed grain deficiency payments includes a 7 cent per bushel cap on the difference between deficiency payments calculated on a 12 month and 5 month basis. The substitute would also require the Secretary to provide a similar cap for rice equal to an appropriate amount that is fair and equitable in relation to wheat and feed grains. (Sec. 1102)

(3) Acreage reduction programs for 1991 crops of wheat and feed grains (H. 1103, S. 1103).

The House bill requires the Secretary to announce an acreage limitation program for the 1991 crop for wheat of 15 percent.

The Senate amendment has a similar provision requiring the Secretary to announce acreage limitation programs for the 1991 crops of wheat of not less than 15 percent and of feed grains of not less than 7½ percent.

The Conference substitute specifies the feed grain acreage limitation, and incorporates the wheat acreage limitation by reference to the FACT Act of 1990. (Sec. 1103)

(4) Acreage reduction programs for 1992 through 1995 crops of wheat and feed grains (H. 1104, S. 1103).

The House bill requires the Secretary to announce acreage limitation programs for—

(1) wheat of no less than 6 percent in crop year 1992, 5 percent in crop year 1993, 7 percent in crop year 1994, and 5 percent in crop year 1995;

(2) feed grains of no less than 7½ percent in each of crop years 1992 through 1995;

(3) upland cotton of no less than 15 percent in crop year 1992 and 20 percent in each of crop years 1993 through 1995; and

(4) rice of no less than 18.5 percent in crop year 1992, 15 percent in crop year 1993, 14 percent in 1994, and 10 percent in 1995;

unless the Secretary estimates the stocks-to-use ratio will be less than 34 percent in the case of wheat, 20 percent in the case of feed grains, 30 percent in the case of upland cotton, and 16 percent in the case of rice.

The Senate amendment provides that the Secretary may not vary the uniform percentage reduction, applied under acreage limitations programs during the 1992 through 1995 crops of wheat, feed grains, cotton and rice, by more than 3 percentage points from that established in the preceding year. The Senate bill also requires the Secretary to carry out an acreage limitation program for each of the 1991 through 1995 crops of upland cotton in a manner that will result in a ratio of carry-over stocks to total utilization of 30 percent.

The Conference substitute adopts the House provision with an amendment that the minimum levels of acreage limitation for wheat and feed grains for the 1992 through 1995 crop years will not apply if the 1991 carry-in stocks of soybeans will be less than 325 million bushels. The Conference substitute also deletes the acreage limitation provisions for cotton, rice, and oats. (Sec. 1104).

(5) Oilseed marketing loan (H. 1105, S. 1104).

The House bill requires the Secretary to support the price of soybeans through loans in each of the 1991 through 1995 marketing years at a level of not less than $5.25 per bushel. The Secretary is also required to charge the producer a loan origination fee in connection with making a loan equal to not more than 7 percent of the amount of the loan.

Further, if the Secretary charges a loan origination fee for loans made for a crop of soybeans and makes loan deficiency payments for the crop, he must reduce the amount of any such loan deficiency payment by an amount equal to the amount of the loan origination fee.

Notwithstanding any other provision of this section, the effective loan rate for a crop of soybeans (calculated as the loan level for the crop less any loan origination fees) under this section, may not be more than $4.87 per bushel.

The Senate amendment requires the loan rate for soybeans be no less than $5.50 per bushel for the 1991 through 1995 crop year and the loan rate for sunflower, canola, rapeseed, safflower and flaxseed may not be less than $0.097 per pound. If the projected soybean stocks-to-use ratio will exceed 7.5 percent, the Secretary may adjust the loan rate to $5.00 per bushel and may make a corresponding adjustment in the loan rate for other oilseeds.

The Conference substitute establishes a 2 percent loan origination fee for all supported oilseeds which shall be similarly applied to any loan deficiency payments (Sec. 1105)

(6) Loan origination and program service fees (H. 1105, 1109, S. 1106, 1109)

The House bill requires the Secretary to charge producers of each of the 1991 through 1995 crops of sugarcane, sugar beets, honey, peanuts and tobacco a loan origination fee for price support loans for such crops of up to 3 percent of the amount of the loan. The Secretary is also authorized to charge wool and mohair producers a program service fee of up to 1 percent of each of the 1991 through 1995 crop years. Section 1109(b) provides for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use. The amount of the reduction will be 5 cents per hundredweight during calendar year 1991 and 11.25 cents per hundredweight during calendar years 1992 through 1995.

The Senate amendment contains similar provisions for sugar, honey, peanuts, tobacco, and wool and mohair. It provides for a reduction of 10 cents per hundredweight in the price of milk received by producers from January 1, 1991 through August 31, 1995.

The Conference substitute requires that producers and purchasers of the 1991 through 1995 crops of peanuts and tobacco remit to the Commodity Credit Corporation (CCC) a marketing assessment of 1 percent of the level of price support, to be shared equally by producer and purchaser.

First processors of sugarcane and sugar beets are also required to remit to CCC a marketing assessment of .18 cents per pound of cane sugar and .193 cents per pound of beet sugar in each of the 1991 through 1995 crop years. The .193 cent per pound of refined beet sugar assessment was converted as the dry equivalency basis of the .18 cent per pound of raw cane sugar assessment. The Managers intend that the assessment be applied by the Secretary of Agriculture in a manner that is fair and equitable in light of the relationship between raw cane sugar and refined beet sugar and will not result in unfair distortions in the market. The Managers also intend that the assessment be shared equitably between processor and producers, based upon the historical or contractual division of returns.

Honey producers are required to remit marketing assessments to CCC of 1 percent of the level of price support on all marketings of honey, excluding imports, in each of crop years 1991 through 1995. The assessment must be collected and remitted by the first handler of honey, to the extent practicable in a manner as provided for in the Honey Research, Promotion, and Consumer Information Act.

Wool and mohair producers will have 1 percent of the amount of their price support payments deducted in each of marketing years 1991 through 1995.

The provisions of the milk marketing assessment under the House bill are amended to provide refunds to producers who prove their marketings of milk did not increase over the prior year, and to provide that the assessment for future years would be adjusted to reflect any refunds. (Sec. 1105)

(7) Proven yields (H. 1107).

The House bill prohibits the Secretary, effective for each of the 1991 through 1995 crops to feed grains, from calculating farm program payment yields on the basis of the actual yields of feed grains, as provided in section 505(a) of the Agricultural Act of 1949 (as amended by section 1131 of S. 2830

(as passed by the House of Representatives on August 3, 1990)).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(8) End rows (H. 1108).

Section 1108 of the House bill prohibits producers from being allowed to meet acreage limitation or set-aside requirements by idling end rows, as provided in section 1122 of S. 2830 (as passed by the House of Representatives on August 3, 1990).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(9) Surface reservoir encouragement (H. 1109).

Section 1109(a) of the House bill prohibits the Secretary from establishing a program to encourage surface reservoirs, as provided in subtitle C of title XI of S. 2830 (as passed by the House of Representatives on August 3, 1990).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(10) Producer reserve program for wheat and feed grains (S. 1107).

The Senate amendment establishes terms and conditions for providing producer grain reserve loans, repayment of loans, operation of the reserve and storage payments for grain in the reserve.

The House bill contains no comparable provision.

The Conference substitute deletes the House provision.

(11) Payment of interest on certificates (S. 1108).

The Senate amendment requires that interest be paid on cash redemption of a commodity certificate issued by the Secretary to producers who hold the certificate for at least 150 days.

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

SUBTITLE B—OTHER AGRICULTURAL PROGRAMS

(12) Authorization levels for REA loans. (H. 1201, S. 1201).

The House bill requires loans to be made and insured under section 301 of the Rural Electrification Act of 1936 at the following levels: $896 million in fiscal year 1991, $933 million in fiscal year 1992, $969 million in fiscal year 1993, $1008 million in fiscal year 1994, and $1048 in fiscal year 1995. Notwithstanding any other provision of such law, the level of insured loans must be reduced by $224 million, $234 million, $244 million, $256 million and $267 million for each of fiscal years 1991 through 1995, respectively. The Administrator of the Rural Electrification Administration (REA) must increase the amounts of guaranteed loans otherwise made available to borrowers by the amount insured loans are reduced in each fiscal year pursuant to this section. The loans must be guaranteed at 90 percent of the principal amount of the loan.

The Senate amendment contains similar provisions, except that they provide for 99 percent loan guarantees.

The Conference substitute adopts the House provision with an amendment requiring that the reductions be allocated between the electric and telephone programs in proportion to the amount of insured funds made available in annual appropriations Acts. The Managers intend that if such insured funds are not specifically earmarked between the two programs, then the reduction should be made in accordance with the historical relationship of funds between the programs (72.24 percent for electric, 27.76 percent for telephone). The Conference substitute further requires the Administrator to accommodate electric borrowers, whose application for an insured loan is reduced or rejected because of the reductions in this section, by permitting additional capital to be obtained from other private sources, through the use of a loan guaranteed under this section, from internally generated funds of the electric borrower, or from private credit sources with a lien accommodation provided by the Administrator. No reduction of the 100 percent loan guarantees made by the Federal Financing Bank under the Rural Electrification Act is intended.

The Managers intend that the provisions of section 1201 not be construed to authorize the Administrator—

(1) reduce the amount of any individual telephone loan application; or

(2) otherwise alter the operations of the electric or telephone loan programs beyond the specific provisions of the new section 314(e)

The Managers direct the Administrator to fully expend the funds appropriated for insured loans pursuant to subsection (c)

The provisions of this section are not intended to authorize the Administrator to divert insured loan funds to provide for future loan losses, or for any purpose other than those authorized under law. If the Administrator believes that potential loan losses under either the electric or telephone programs may require additional funding in the future, the Administrator shall request funding from the Congress for this specific purpose at the appropriate time.

The Managers further intend that the loan guarantees authorized under the new section 314(d) shall be made only upon the request of the borrower.

The Managers also emphasize that the new section 314(e)(3) applies only to electric program borrowers, and shall not be construed to in any way affect the operation of the telephone loan program or loans to telephone program borrowers.

(13) FmHA direct to guaranteed loans. (H. 1202, S. 1202).

The House bill requires the Secretary, for each of fiscal years 1991 through 1995, to—

(1) reduce the amounts otherwise made available for insured loans made from the Agricultural Credit Insurance Fund established under section 309 of the Consolidated Farm and Rural Development Act by—

(A) $432,000,000 for fiscal year 1991;

(B) $564,000,000 for fiscal year 1992;

(C) $710,000,000 for fiscal year 1993;

(D) $809,000,000 for fiscal year 1994; and

(E) $857,000,000 for fiscal year 1995; and

(2) use the funds made available in each of the fiscal years to guarantee loans made from the Fund.

The House provision further requires that, notwithstanding any other provision of law, the Secretary must make or insure loans at the levels authorized by section 1202 for each of the fiscal years 1991 through 1995.

The Senate amendment contains similar provisions but omits the requirement that, notwithstanding any other provision of law, the Secretary must make or insure loans at the levels authorized by section 1201 for each of the fiscal years 1991 through 1995.

The Conference substitute adopts the House provision with an amendment to increase the amount of loans reduced by $50 million in each fiscal year and to reduce the amount of insured farm operating loans and farm ownership loans in proportion to the levels authorized in the House bill. A provision is added requiring the Secretary to limit the reduction of insured loans if more than 70 percent of loans guaranteed under the interest rate reduction program authorized in section 351 of the Consolidated Farm and Rural Development Act have been received by persons who were not previously Farmers Home Administration borrowers. A provision extending for 2 years and modifying the interest rate reduction program is also added. Similarly, a provision extending for one year the demonstration program for the purchase of Farm Credit System land is included. (Sec. 1202)

The Conference substitute also adds the requirement that, notwithstanding any other provision of law, the Secretary must guarantee loans at the levels authorized by section 1202 for each of the fiscal years 1991 through 1995.

(14) APHIS inspection fees (H. 1203, S. 1203).

The House bill authorizes the Secretary to prescribe and collect fees to cover the cost of providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger.

Section 1203(b) requires any person who collects a fee under section 1203 to remit the fee to the Treasury of the United States prior to the date that is 31 days after the close of the calendar quarter in which the fee is collected.

Section 1203(c)(1) establishes an "Agricultural Quarantine Inspection User Fee Account" (Account), in the Treasury of the United States that will be a no-year fund for the use of the Secretary for quarantine or inspection services under this section.

Section 1203(c)(2)(A) requires that all fees collected under section 1203(c) be deposited in the Account.

Section 1203(c)(2)(B) authorizes to be appropriated amounts in the Fund for use by the Secretary of Agriculture for quarantine or inspection services.

Section 1203(d) requires the Secretary to adjust the amount of the fees to be assessed under section 1203 to reflect the cost to the Secretary in administering section 1203, carrying out the activities at ports in customs territory of the United States and preclearance and preinspection sites outside the customs territory of the United States in connection with the provision of agricultural quarantine inspection services, and maintaining a reasonable balance in the Account.

The Senate amendment contains a similar provision except that it also directs the Secretary of the Treasury to use the "Agricultural Quarantine Inspection User Fee Account" to provide reimbursements to any appropriations accounts that incur the costs associated with the services authorized in section 1203(a) if such amounts are provided in advance in appropriations acts. Such costs are to reimbursed on a quarterly basis, and on the basis of estimates made by the Secretary of Agriculture of such costs incurred in the 3 month period immediately preceding the reimbursements. Adjustments to such reimbursements must be made to

the extent necessary to correct prior estimates that were in excess of, or less than, the amount required to be reimbursed.

The Conference substitute deletes both provisions and adopts an amendment to Section 2509 of the FACT Act of 1990 to include international passengers and require appropriations be made to reimburse APHIS for the cost of quarantine and inspection services. The Managers intend that such fees collected under this program from trucks and trains should not exceed the following levels:

Fiscal year 1991—$6,747,000;
Fiscal year 1992—$7,159,000;
Fiscal year 1993—$7,595,000;
Fiscal year 1994—$8,059,000; and
Fiscal year 1995—$8,550,000.

The Managers also intend that the Secretary waive the collection of fees based on good-neighbor policies with bordering countries. (Sec. 1203)

(15) Additional savings and other provisions (1204).

Passage of the Food, Agriculture, Conservation, and Trade Act of 1990 requires a number of technical and other changes to conform that Act to the budget reduction goals of the Omnibus Budget Reconciliation Act of 1990. The Conference substitute provides for the necessary technical and conforming changes.

The Conference substitute also provides that nothing in the Omnibus Budget Reconciliation Act of 1990 authorizes or requires the Administrator of the Environmental Protection Agency to collect or assess any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act.

In Public Law 100-532, Congress established a program for the accelerated reregistration of pesticides at the Environmental Protection Agency (EPA). It was felt that the restoration of public confidence in the federal pesticide regulatory system was dependent upon bringing health and safety information on currently registered pesticides up to date as rapidly as possible. The additional program costs were to be offset by the imposition of fees upon registrants of pesticides and, at the time of enactment, it was estimated that these fees would total $152 million over the nine-year life of the reregistration program. Given this significant financial burden placed upon the registrants, P.L. 100-532 contained a prohibition against the imposition of any additional fees during the pendency of the reregistration program.

Recent reviews of the reregistration program by EPA indicate that the issue of user fees may need to be revisited during the 102nd Congress when this Committee has to reauthorize the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Until such a review is complete, it is necessary not to disturb the balance stuck in P.L. 100-532.

(16) Market promotion program (H. 1204).

The House bill prohibits the Commodity Credit Corporation from making assistance available to carry out the market promotion program established under section 202 of the Agricultural Trade Act of 1978 (as amended by section 1221(a) of S. 2830 (as passed by the House of Representatives on August 3, 1990)) at a level in excess of $200,000,000 for each of the fiscal years 1991 through 1995.

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(17) Integrated farm management program option (H. 1205).

The House bill directs the Secretary to make fair and equitable adjustments in acreage limitation or set-aside requirements applicable to producers participating in the integrated farm management program option established under section 1611 of S. 2830 (as passed by the House of Representatives on August 3, 1990).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(18) Amendments to the Food Stamp Act and related provisions (H. 1301, 1302, 1303, 1304, 1305).

The House bill amends and extends the Food Stamp Act of 1977, the Agricultural and Consumer Protection Act of 1973, the Temporary Emergency Food Assistance Act of 1983, and the Nutrition Education Program.

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(19) Other rural development programs.

The House bill prohibits the Secretary of Agriculture from expending any funds to implement the provision of title XXV of S. 2830 (as passed by the House of Representatives on August 3, 1990), and requires that titles XIX, XX, XXI, XXII, XXIII, XXIV, XXVI, XXVII, and XXVIII of S. 2830 (as passed by the House of Representatives on August 3, 1990) shall be carried out only as provided in advance in appropriations Acts.

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

SUBTITLE C—EFFECTIVE DATE

(20) Effective date; readjustment of support levels (H. 1501).

The House bill provides that title I and the amendments made by that title will cease to be effective on July 1, 1992, if legislation to implement an agreement of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) for international agricultural trade is not enacted on or before June 30, 1992.

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment providing that this title and the amendments made by this title shall become effective 1 day after the enactment of the FACT Act, or December 1, 1990, whichever is earlier.

The Conference substitute also provides that if the United States does not enter into within the context of section 1102 (A) of the Omnibus Trade and Competitiveness Act of 1988) an agriculture trade agreement under the General Agreement on Tariffs and Trade (GATT) by June 30, 1992, then the Secretary of Agriculture must increase program levels for export promotion programs by $1 billion and institute a marketing loan for wheat and feed grains, and may waive any minimum level for acreage reduction programs. If no GATT agreement enters into force for the United States by June 30, 1993, then the Secretary is required to consider (A) waiving all or part of the reductions in agricultural spending required by this title, (B) raising the level of funds made available for export programs, and (C) instituting a marketing loan program for wheat and feed grains. The Secretary is also authorized to take any of the actions listed in (A) through (C). If the Secretary uses this authority, the Secretary must take action under (A) and either or both (B) or (C).

Subsection (e) prohibits the Secretary from reducing income support, including target prices, under section 1302.

Subsection (f) provides that subsections (a) and (b) will no longer apply if Congressional "fast track" procedures become unavailable for a Uruguay Round agricultural trade agreement.

The Managers have provided in this section for aggressive action to expand agricultural exports in the event the current Uruguay Round of international trade negotiations is unsuccessful. The Managers are concerned by the reluctance of a few nations, chiefly the European Community (EC), to commit to meaningful agricultural policy reform. In the Managers' view, the Community's continued insistence on unacceptable terms (such as so-called "rebalancing" schemes to shut out U.S. oilseed and corn gluten exports) could jeopardize the entire Uruguay Round.

The mandatory marketing loan for wheat and feed grains will ensure that U.S. products compete against subsidized foreign commodities in the event that a GATT agreement is not reached. The Conference substitute also authorizes the Secretary to waive any minimum acreage reduction levels. The Secretary of Agriculture, at the Secretary's discretion, could increase the acres of U.S. land in production in order to ensure the availability of ample quantities of U.S. grain for export. Such action would further add to the cost of the European Community's Common Agricultural Policy and encourage the Community to reduce trade-distorting subsidies.

The Managers also understand that increasing plantings alone could lead to a reduction in producer prices. It is for this reason explicitly that the Managers have included a legislative mandate in subsection (e) that in no case may the Secretary reduce the level of income support provided to producers. This is a specific prohibition on reducing the target prices for program crops.

It is important to understand the consequences of failure to reach agreement. The Managers intend that U.S. programs to enhance export competitiveness be used more aggressively, not less, if other countries are unwilling to reform protectionist import barriers, high price supports and predatory export subsidies. To that end, the Managers have endeavored to provide the Department of Agriculture with a wide range of options to enhance U.S. agricultural competitiveness and exports in the event the Uruguay Round is not concluded successfully. (Sec. 1302)

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

EXPLANATION OF THE STATEMENT OF MANAGERS ON TITLE II

The House and Senate bills differed as to Federal deposit insurance assessment rate provisions. The Senate bill authorized the Federal Deposit Insurance Corporation to borrow from the Federal Financing Bank. The Senate bill contained a provision regarding priority of Federal Deposit Insurance Corporation claims.

The House and Senate bills contained different provisions concerning Federal Houseing Administration (FHA) mortgage insurance. The conferees adopted the FHA provisions contained in the conference

report accompanying S. 566, as described in the following section by section analysis.

The provisions of the House and Senate bills regarding the extension of the Federal Crime Insurance Program and the National Flood Insurance Program were identical.

The House receded to the Senate with an amendment that contains the flood and crime insurance provisions provided in both bills, the FHA provisions of the housing conference report, and resolves the issues regarding FDIC assessments as described in the following section by section analysis.

SECTION BY SECTION

SUBTITLE A—FEDERAL DEPOSIT INSURANCE ASSESSMENTS

Section 2001. Short Title

The "FDIC Assessment Rate Act of 1990"

Section 2002. FDIC authorized to increase assessment rates as necessary to protect insurance funds

Subsection (a) amends the Federal Deposit Insurance Act to permit the Board of Directors of the Federal Deposit Insurance Corporation to set premiums for Bank Insurance Fund (BIF) members at a rate determined by the Board to be appropriate to maintain the actual reserve ratio of the BIF to the designated reserve ratio. If a higher rate is not specified, the assessment rate will be 0.15 percent. Factors to be considered by the FDIC in setting the rate include the BIF's expected operating expenses, case resolution expenditures, and income, and the impact of the assessment rates on insured banks' earnings and capitalization.

Subsection (b) conforms the Savings Association Insurance Fund assessment rate provisions to those of the BIF. If a higher rate is not specified, the assessment rate will be not less than 0.23 percent from January 1, 1991 through December 31, 1993; 0.18 percent from January 1, 1994 through December 31, 1997; and 0.15 percent from January 1, 1998.

Section 2003. FDIC authorized to make mid-year adjustments in assessment rates

Section 2003 amends the Federal Deposit Insurance Act to allow the FDIC to set assessment rates at such times as the FDIC determines to be appropriate. Rate changes must be announced not later than November 1 for the following January 1 to June 30 semiannual period and not later than May 1 for the following July 1 to December 31 semiannual period.

Technical and conforming amendments are made to various subsections of section 7 of the Federal Deposit Insurance Act to reflect the fact that (a) rates may be changed on a semiannual basis and (b) that assessment credits can be announced on a semiannual basis.

Section 2004. FDIC authorized to set designated reserve ratio as necessary in face of significant risk of substantial losses to insurance fund

Section 2004 eliminates the 1.50 percent designated reserve ratio ceiling and the requirement that investment earnings on reserves in excess of 1.25 percent of insured deposits shall be distributed to fund members.

Section 2005. FDIC authorized to borrow from the Federal Financing Bank

Section 2005 permits the FDIC, on behalf of the Bank Insurance Fund or the Savings Association Insurance Fund, to borrow from the Federal Financing Bank. Such borrowings are subject to the same obligations limitation as borrowings from private lenders. No implications about the ability of other agencies to borrow from the Federal Financing Bank are intended.

SECTION-BY-SECTION OF THE HOUSE/SENATE CONFERENCE AGREEMENTS ON FHA PROVISIONS

SUBTITLE B—FHA MORTGAGE INSURANCE

Sec. 2101

Removes the termination date of FY 1990 from the $124,875 FHA Mortgage limit.

Sec. 2102

Limits the insured principal obligation (including initial service charges, appraisal, inspection, and other fees as the Secretary may approve) from exceeding 98.75 percent of the appraised value of the property (97.75 percent of the appraised value in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Sec. 2103

With respect to mortgages on 1- to 4-family dwellings that have been executed on or after October 1, 1994, authorizes the Secretary to establish and collect at the time of insurance a premium payment of 2.25 percent of the amount of the original insured principal mortgage. Requires the Secretary to refund all of the remaining unearned premium charges paid upon payment in full of the principal obligation prior to the maturity date of the mortgage.

In addition to the premium paid at the time of insurance, the Secretary is authorized to establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments) for any mortgage involving an original principal obligation that is (1) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance) for the first 11 years of the mortgage; (2) greater than or equal to 90 percent of such value for the first 30 years of the mortgage. For any mortgage involving an original principal obligation that is greater than 95 percent of the appraised value of the property, the Secretary is authorized to collect an annual premium during the 30 year period of the mortgage in an amount equal to 0.55 percent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments).

For mortgages executed during fiscal years 1991 and 1992, (after the effective date of regulations) the Secretary is authorized to establish and collect at the time of insurance, a single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage. In addition to this premium payment, the Secretary is authorized to establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation that is (1) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term; (2) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and (3) greater than 95 percent of such value, for the first 10 years of the mortgage term.

For mortgages executed during fiscal years 1993 and 1994, the Secretary is authorized to establish and collect at the time of insurance, a single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of the mortgage. In addition to this premium payment, the Secretary is authorized to establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation that is (1) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term; (2) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and (3) greater than 95 percent of such value, for the first 30 years of the mortgage term.

Requires the Secretary to refund all of the unearned premium charges paid during fiscal years 1991-1994 upon payment in full of the principal obligation of the mortgage prior to maturity date.

Requires the Secretary to issue regulations to carry out this section and the amendments made by this section not later than the expiration of the 90-day period beginning on the date of the enactment of the Act.

Sec. 2104

In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.

Sec. 2105

Requires the Secretary to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25% within 24 months after the date of the enactment of this subsection and maintains such ratio thereafter.

Requires the Secretary to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0% within 10 years after the date of the enactment of this subsection, and to ensure that the Fund maintains at least such capital ratio at all times thereafter.

Upon the expiration of the 24-month period beginning on the date of the enactment of this subsection, the Secretary must submit to the Congress a report describing the actions the Secretary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required above.

Provides definitions for this subsection:

(A) The term "capital" means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit below.

(B) The term "economic net worth" means the current cash available to the Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in the Fund.

(C) The term "capital ratio" means the ratio of capital to unamortized insurance-in-force.

(D) The term "unamortized insurance-in-force" means the remaining obligation on outstanding mortgages which are obliga-

tions of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

Requires the Secretary to annually conduct an independent actuarial study of the Mutual Mortgage Insurance Fund and to report annually to the Congress on the financial status of the Fund.

If, pursuant to the required independent annual actuarial study of the Mutual Mortgage Insurance Fund, the Secretary determines that the Mutual Mortgage Insurance Fund is not meeting the operational goals as outlined below, the Secretary is prohibited from issuing distributions, and may, by regulation, propose and implement any adjustments to the insurance premiums established above. Upon determining that a premium change is appropriate under the preceding sentence, the Secretary must immediately notify Congress of the proposed change and the reasons for the change. Such premium change will take effect not earlier than 90 days following such notification, unless the Congress acts during such time to increase, prevent, or modify the change.

Establishes the operational goals as—

(A) maintaining an adequate capital ratio;

(B) meeting the needs of homebuyers with low downpayments and first-time homebuyers by providing access to mortgage credit; and

(C) minimizing the risk to the Fund and to homeowners from homeowner default;

(D) avoiding adverse selection.

Sec. 2106

Amends the termination date of the Home Equity Conversion Program from September 30, 1991 to September 30, 1995.

Establishes that the total number of mortgages insured may not exceed 25,000.

SUBTITLE C—AUCTION OF FEDERALLY INSURED MORTGAGES

Section 207. Auction of multifamily mortgages

Amends Section 221(g)(4) of the National Housing Act to require the Department of Housing and Urban Development (HUD), in lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument in exchange for receipt of debentures, to arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale of the mortgage loan, participation certificates, or other mortgage-backed obligations in a form acceptable to HUD. Requires HUD to arrange the auction and sale at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. Provides that the sale price also include the right to a subsidy payment.

Requires HUD to conduct a public auction to determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and the mortgage securing this credit instrument.

Requires a mortgagee, who elects to assign a mortgage, to provide HUD and persons bidding at the auction a description of the characteristics of the original credit instrument and mortgage securing the original credit instrument, including the principal mortgage balance, original stated interest rate, service fees, real estate and tenant characteristics, the level and duration of applicable federal subsidies and any other information determined by HUD to be appropriate. Requires HUD to provide information regarding the status of the property relating to the Emergency Low Income Housing Preservation Act of 1989 with respect to various prepayment provisions.

Requires HUD, upon receipt of the mortgagee's written description of the credit instrument, to promptly advertise for auction and publish mortgage descriptions in advance of the auction. Authorizes HUD to wait up to 6 months to conduct the action but prohibits HUD from holding the auction before 2 months after receiving the mortgagee's written notice of intent to assign its mortgage to HUD.

Requires HUD in any auction to accept the interest rate bid for purchase that HUD determines to be acceptable and requires HUD to publish the accepted bid in the FEDERAL REGISTER.

Requires settlement to occur not later than 30 business days after the winning bidders are selected in the auction, unless HUD determines that extraordinary circumstances require an extension.

Authorizes mortgagees to retain all rights to assign the mortgage loan to HUD if there are no acceptable bids received or settlement does not occur within the required time period.

Requires HUD, as part of the auction process, to agree to provide a monthly interest subsidy payment from the General Insurance Fund to the purchaser of the original credit instrument of the mortgage securing the credit instrument. Sets forth the manner in which subsidy payments are to be made.

Authorizes HUD to require that mortgage loans or participation certificates presented for assignment are to be auctioned off with servicing rights as whole loans and retained by the current servicer.

Requires HUD, to the extent practicable, to encourage State housing finance agencies, nonprofit organizations, tenant organizations and mortgagees, participating under an Emergency Low Income Housing Preservation plan of action, to participate in the auction.

Requires HUD to implement the requirements under this Section within 30 days from the enactment date and not subject them to the requirement of prior issuance of regulations in the Federal Register. Requires HUD to issue implementing regulations within 6 months of the enactment date.

Prohibits any of these provisions from diminishing or impairing the low income use restrictions applicable to the project under the original regulatory agreement or the revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act or other agreements for the provision of federal assistance to the housing or its tenants.

Provides that these provisions do not apply after September 30, 1995, and requires HUD to report to the Congress on these provisions not later than January 31 of each year (beginning in 1992).

TITLE II—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SEC. 2301. EXTENSION OF THE FEDERAL CRIME INSURANCE PROGRAM

(a) General authority

Section 1201(b) of the National Housing Act (12 U.S.C. 1749bbb(b)) is amended by extending the Federal Crime Insurance Program for four years until September 30, 1995.

(b) Continuation of existing contracts

Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb(b)(1)) is amended to allow policyholders to retain their coverage until contracts expire on September 30, 1996, in the event the Federal Crime Insurance Program is terminated.

(c) Limitation of premiums

Section 542(c) of the Housing and Community Development Act of 1987 (12 U.S.C. 1749bbb-10c) is amended by extending the limitation on premiums to no more than 15 percent until September 30, 1995.

SEC. 2302. EXTENSION OF THE NATIONAL FLOOD INSURANCE PROGRAM

(a) General authority

Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026(a)) is amended by extending the National Flood Insurance Program for four years until September 30, 1995.

(b) Emergency implementation

Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)) is amended by extending the emergency phase of the National Flood Insurance Program until September 30, 1995. Under the emergency phase, the program offers limited coverage and reduced premium rates to communities until flood studies are performed to determine Flood Insurance Rate Maps (FIRMS) and floodplain management ordinances are developed and adopted by the communities.

(c) Extension of limitation on premiums

Section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015), is amended by extending the limitation on premiums to no more than 10 percent until September 30, 1995.

(d) Extension of erosion provisions

Section 1306(c)(7) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(7)) is amended by extending the relocation/demolition program for four years until September 30, 1995. The program enables homeowners with flood insurance coverage to file a claim for structures which are subject to imminent danger of collapse or subsidence due to water exceeding anticipated cyclical levels.

(e) Inclusion of costs in premiums

1. Estimates of premium income.—Section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)) is amended by including administrative expenses and mapping expenses incurred in carrying out the flood insurance program and the floodplain management programs in a policy service fee. This fee is not subject to any agents' commissions, company expense allowances or state or local premium taxes.

2. Establishment of chargeable premium rates.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by allowing the policy service fees of the estimated premium to actually be charged. These fees include the administrative costs of the flood insurance program and the floodplain management costs including mapping expenses.

3. National flood insurance fund.—Section 1310(a)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)(4)) is amended by allowing administrative expenses to be paid out of the National Flood Insurance Fund subject to appropriations.

4. Administrative expenses.—Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended to allow all administrative expenses received by policy service fees to be paid from the National Flood Insurance Fund subject to appropriations.

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5. Exception to limitation on premium increases.—Section 541(d) of the Housing and Community Development Act of 1987 (U.S.C. 4015 note) is amended to allow the total increase in fees and premiums to exceed the 10 percent cap for fiscal year 1991. Premium increases due to insurance losses, however, remain capped at 10%. After fiscal year 1991 all administrative expenses (subject to appropriations) and program costs will be paid out of the National Flood Insurance fund and future premium increases will be limited to 10 percent.

TITLE III—STUDENT LOANS AND LABOR PROVISIONS

PENSION PROVISIONS

A. USE OF EXCESS PENSION PLAN ASSETS

1. Employer reversions
2. Transfers of excess pension assets to retiree health accounts

B. INCREASE IN PREMIUM RATES PAYABLE TO THE PENSION BENEFIT GUARANTY CORPORATION

House bill

To effectuate the policy changes contained in the House bill, amendments to both the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA) are necessary. Thus in the House bill, amendments to ERISA were contained in Title III (Committee on Education and Labor) and amendments to the Internal Revenue Code were contained in Title XIII (Committee on Ways and Means). For a description of those provisions, see the relevent titles of H. Rept. 101-881 (101st Cong. 2d session).

Senate amendment

Unlike the House bill, the Senate amendment contained duplicate provisions amending both the Code and ERISA. For a description of those provisions, see Title X (provisions of the Senate Labor and Human Resources Committee) and Title VII (provisions of the Senate Finance Committee) of the Senate amendment.

Conference agreement

To avoid confusion, both the statutory language implementing the conference agreement and the statement of managers appear in neither the labor or revenue titles of the bill. Instead, the agreement and statement are contained in a separate pension title: Title XII. This title has been jointly agreed to by conferees from the House Committees on Education and Labor and Ways and Means and the Senate Committees on Labor and Human Resources and Finance.

RECONCILIATION CONFERENCE REPORT: LABOR CIVIL PENALTIES

HOUSE PROVISIONS

The House bill provided for:

(1) a seven-fold increase in the maximum allowable civil penalties for violations of the Occupational Safety and Health Act, plus mandatory minimum penalties of $7000 for each willful violation, $1,000 for each repeat violation, $700 for each serious violation, and $700 for each violation determined not to be serious;

(2) a five-fold increase in the maximum allowable civil penalties for violations of the Federal Mine Safety and Health Act, plus mandatory minimum penalties of $1000 for violations of mandatory health or safety standards, and $1000 for each day during which there is a failure to correct a violation;

(3) a ten-fold increase in the maximum allowable civil penalties for child labor violations under the Fair Labor Standards Act, plus mandatory minimum penalties of $1000 for each violation relating to child labor; and

(4) new civil penalties for certain unfair labor practices under the National Labor Relations Act: a $1000 minimum and $10,000 maximum per affected individual for violations of sections 8(a)(3) and 8(b)(2) of the NLRA, and the same minimum and maximum penalties for violations of sections 8(a)(5) and 8(b)(3) of the NLRA. (Sections 8(a)(3) and 8(b)(2) prohibit employers and unions from discriminating against individuals who engage in protected activity; sections 8(a)(5) and 8(b)(3) require employers and unions to engage in good faith collective bargaining.)

SENATE PROVISIONS

The Senate bill provided for (1) a five-fold increase in the maximum allowable civil penalties for violations of the Occupational Safety and Health Act; and (2) a three-fold increase in the maximum allowable civil penalties for violations of the Federal Mine Safety and Health Act.

CONFERENCE AGREEMENT

1. OSHA penalties

When the Occupational Safety and Health Act was enacted in 1970, it authorized a number of civil penalties: fines up to $10,000 for each willful or repeated violation of the Act; fines up to $1,000 for each serious or other-than-serious violation; fines up to $1,000 for each violation of the posting requirements; and fines up to $1,000 per day beyond a stated abatement date for failure to correct a violation. The maximum civil penalties under the OSH Act have never been increased. Simply to keep pace with inflation, the OSH Act maximum civil penalties must be increased more than threefold.

But returning OSH Act civil penalties to their original 1970-level will not be enough to deter violations and ensure adequate enforcement by the Occupational Safety and Health Administration (OSHA). In recent years, Congress has conducted oversight hearings on OSHA civil and criminal enforcement efforts. One major conclusion from those hearings is that OSHA has not lived up to its stated purpose: to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions."

In an effort to provide effective civil penalties, the conferees have increased the existing maximum penalty levels by seven times. Under the conference agreement, the maximum allowable penalties will be: $70,000 for each willful or repeated violations; $7,000 for each serious or other-than-serious violation; $7,000 for each violation of the posting requirements; and $7,000 per each day beyond a stated abatement date for failure to correct a violation.

These amounts are discretionary ceilings. In practice, most fines imposed are a fraction of the maximum penalty. In order to ensure that the most egregious violators are in fact fined at an effective level, the conferees also have adopted a mandatory minimum penalty of $5,000 for a willful violation of the OSH Act.

As enforced by OSHA and interpreted by the courts, a willful violation exists when there is an intentional and knowing violation of statutory requirements. For example, "willfulness" has been held to involve knowing, conscious and deliberate flouting of the Act and to include the element of obstinate refusal to comply. *See Frank Irey, Jr., Inc. v. Occupational Safety and Health Review Commission,* 519 F.2d 1200 (3d Cir.), *affirmed,* 430 U.S. 442 (1975). Other courts have held that a willful violation is one involving voluntary action, done either with an intentional disregard of, or plain indifference to, the statutory requirements. *See L.R. Willson & Sons v. Donovan,* 685 F.2d 664 (D.C. Cir. 1982); *Georgia Elec. Co. v. Marshall,* 595 F.2d 309 (5th Cir. 1979). Moreover, the conferees understand that under current OSHA practice, only employers that deliberately engage in a serious violation, or knowingly and intentionally violate the recordkeeping and reporting requirements, are subject to a willful citation. Thus the mandatory minimum penalty adopted by the conferees targets the most extreme violators.

The new mandatory OSH Act minimum penalty applies only to willful violations. No minimums are imposed for repeated, serious, non-serious or posting violations, or for failure to correct a violation. The mandatory minimum penalty for a willful violation is a penalty floor that is not intended to become a penalty ceiling. The conferees expect OSHA to issue fines well above this mandatory minimum level when the willful violation warrants such a penalty. At the same time, the conferees note that this mandatory minimum level applies to initial, assessed penalties. OSHA's existing authority to settle particular cases for amounts that are less than the penalties initially assessed remains unchanged, even in instances where the employer has been cited for a willful violation. The conferees do not intend to deprive the agency of the flexibility to settle cases involving willful violations, where appropriate, for amounts which are less than the mandatory minimums.

According to the Congressional Budget Office, the changes in OSH Act civil penalties will produce nearly $900 million in new federal revenues over five years. The conferees expect OSHA to assess significantly higher penalties across-the-board given the seven-fold increase in the maximum allowable penalty. All revenues collected under this provision will be deposited in the United States Treasury for purposes of federal deficit reduction.

2. MSHA penalties

The Federal Mine Safety and Health Act currently provides for a civil penalty of not more than $10,000 against an operator for each violation of a mandatory health or safety standard or other violation of the Act, and a civil penalty of not more than $1,000 against an operator for each day during which that operator fails to correct a cited violation of the Act. In the 21 years since the imposition of civil penalties for federal mine safety violations, these penalties have not been increased, while the cost of living has increased by nearly 360 per cent. In order simply to restore the civil penalty ceilings to their original level, the conferees must more than triple the ceilings. But a simple restoration will not achieve penalty levels high enough to serve as an effective deterrent to future violations of the Act. Thus the conferees have agreed to a five-fold increase in the maximum civil penalties. According to the Congressional Budget Office, this increase will produce nearly $250 million in additional Federal revenues over the next five years. The conferees expect MSHA to assess significantly higher penalties across the board given the five-fold increase in the maximum allowable penalty.

3. Child labor penalties

The conferees have agreed to amend the Fair Labor Standards act to create a civil penalty ceiling of $10,000 for each violation of the FLSA provisions relating to child labor. The conferees have agreed to drop the minimum $1,000 penalty that was included in the House provision. The increase in the maximum penalty for child labor violations responds to the documented need for enhanced enforcement in this area. Raising the maximum level will help deter violations and assist the Department of Labor in its enforcement of the law regulating child labor. According to the Congressional Budget Office, the changes in FLSA child labor civil penalties will produce $15 million in new Federal revenues over the next five years. The FLSA has been modified to specify that these revenues will go the U.S. Treasury and not to the Department of Labor.

4. National Labor Relations Act penalties

The conferees have agreed to drop the House provision relating to new NLRA civil penalties.

TITLE IV—MEDICARE/MEDICAID

1. Reductions in Payments for Capital-Related Costs of Inpatient Hospital Services for Fiscal Year 1991 (Section 12001 of the House Bill, section 6101 of the Senate amendment)

Present law

Capital-related costs (including depreciation, interest, and rent) are excluded from the prospective payment system (PPS) until September 30, 1991. Until that time, capital costs continue to be reimbursed on a cost basis.

The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) reduced payment amounts for capital-related costs by twelve percent for FY 1988 beginning January 1, 1988, and fifteen percent for FY 1989. The Omnibus Reconciliation Act of 1989 (OBRA 1989) reduced payment amounts by fifteen percent for FY 1990, beginning January 1, 1990. Sole community hospitals are exempted from capital-related payment reductions. Current law would pay hospitals 100 percent of their capital-related costs in FY 1991.

House bill

Extends the capital-related payment reduction of 15 percent through FY 1991. Rural primary care hospitals are exempted from the reductions. Extends the exemption of sole community hospitals and essential access community hospitals (EACH) from the payment reductions.

Effective date: Enactment.

Senate amendment

Similar provision, except provides for a 10 percent reduction for capital-related payments attributable to portions of cost reporting periods or discharges occurring from October 1, 1991, and ending September 30, 1995. Requires the Secretary to provide prospective payments for capital-related costs at rates determined in a way that assures that the aggregate payments for such capital-related costs are not greater or less than those that would have been made for portions of cost reporting periods occurring during FY 1992, under the 10 percent capital reduction.

Provides that the Secretary may continue payment for fixed capital-related costs on a reasonable cost basis, subject to the percentage reduction.

Effective date: Enactment.

Conference agreement

MEDICARE PART A

1. Capital Reimbursement

Conference agreement

The conference agreement includes the Senate amendment, with an amendment providing the Secretary with the flexibility to adjust either or both the operating or capital payments, so long as the net reduction is 10 percent of what would have been otherwise paid on a reasonable cost basis for capital costs in that fiscal year. The 10 percent reduction in capital-related costs under (b) is applicable only to subsection (d) hospitals. The reduction is equal to a 10-percent reduction of the amount of payments attributable to capital-related costs that would otherwise have been made to subsection (d) hospitals during such a fiscal year. Prior to the start of the fiscal year, the Secretary may estimate the 10-percent reduction based on the best available data.

The conferees anticipate that the Secretary may allow for a transition in folding capital into the prospective payment system. The conferees note that capital-related payments are excluded from PPS through September 30, 1991. The Secretary is required to develop a system for reimbursing capital on a prospective basis prior to that date. The conferees wish to reaffairm their intent to review the Secretary's proposal at such time as the Secretary issues a notice of proposed rule-making on capital reimbursement.

The conferees note that the Congressional Budget Office (CBO) currently projects that the total expenditures under Part A will increase from $52.7 billion to $58.3 billion, an increase of 10.6 percent, between FY 1991 and FY 1992, after implementation of the proposed reductions in payment incorporated in this report. Given this rate of increase, the conferees believe there is more than sufficient flexibility to assess, and to adjust as appropriate, capital payment policy prior to October 1, 1991.

2. Prospective Payment Hospitals (Section 12002 of the House Bill, Sections 6102, 6103, 6106(c), and 6106(j) of the Senate amendment)

Present Law

(a) Changes in Hospital Update Factors.—PPS payment rates are updated each year by the use of an "update factor." For FY 1988-1990, separate update factors have applied to hospitals according to location (large urban, other urban, or rural). Current law would end this distinction beginning in FY 1991. For FY 1991 and subsequent years, the Secretary is required to increase the PPS payment rates by the projected increase in the market basket index, an inflation index which measures changes in the costs of goods and services purchased by hospitals.

(b) Updates for Rural and Inner-City Hospitals.—For FY 1990, rural, other urban, and large urban hospitals received separate PPS update factors for discharges occurring on or after January 1, 1990. Under current law, the increase in PPS payment rates for FY 1991 is set equal to the projected increase in the hospital market basket index.

(2) Disproportionate Share Adjustment.—*(A) Increase for Large Urban Hospitals.*—Disproportionate share payments are paid to urban hospitals that have 100 or more beds and rural hospitals with 500 or more beds, and a low-income patient percentage of 15 percent or more. The adjustment is increased by 0.6 percentage points for each 1.0 percentage point increase in the proportion of low-income patients between 15 and 20.2, and by 0.65 for each 1.0 percentage point increase above 20.2 percent. Thus the adjustment is based upon the formula (P-15.6 + 2.5 or (P-20.2) .65 + 5.62, respectively, where "P" is the proportion of low-income patients.

(B) Increase for Hospitals with Disproportionate Indigent Care Revenues.—Certain other urban hospitals qualify for a disproportionate share adjustment if the hospital is located in an urban area, has more than 100 beds, and can demonstrate that its net inpatient care revenues from other than Medicare and Medicaid payable by State and local governments for indigent care exceed 30 percent of the hospital's net inpatient revenue. These hospitals receive a disproportionate share adjustment of 30 percent.

(C) Repeal of Sunset.—The disproportionate share adjustment expires at the end of FY 1995.

(D) No Restandardizing for Recent Adjustments.—The Secretary is required to adjust standardized amounts to ensure that additional payments to disproportionate share hospitals do not increase the aggregate payments made under PPS. OBRA 1989 increased the amount of disproportionate share hospital payments. Although this provision was intended to increase aggregate payments to PPS hospitals, the requirement for adjustments in standardized amounts was not modified. The Secretary made use of a general authority to make exceptions and adjustments in PPS rates to provide for the additional payments without restandardizing.

(c) Phase-in of Area Wage Index Update for FY 1991.—Under PPS, the labor-related portion of fixed payment amount for each discharge is adjusted by a wage index which reflects the relative level of hospital wages in the particular geographic area compared to national average hospital wages. The wage index is based on a 1984 survey of wages and wage-related costs, adjusted for inflation, conducted by the Health Care Financing Administration (HCFA).

OBRA 1987 directed the Secretary to propose a new wage index for FY 1991, reflecting, to the extent feasible, the earnings and paid hours of employment by occupational category. However, after evaluating the 1988 wage survey, it was determined that collecting earnings and paid hours by occupational category was not feasible, and the survey designed to collect this data was not used (Federal Register, Vol. 55, No. 90, May 9, 1990, p. 19444). The FY 1991 wage index proposed by the Secretary does not take occupational mix into account. Instead, the Secretary has proposed a new wage index, effective October 1, 1990, based on calendar year 1988 wage data.

The FY 1991 Continuing Appropriations, H.J. Res. 655, extends the area wage index applicable to hospitals during FY 1990 for discharges occurring on or after October 1, 1990, and before October 20, 1990.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—If the regional standardized amount for large urban, other urban, or rural hospitals in a census region is higher than the national standardized amount for such hospitals, payment to those hospitals in that region is based upon 85 percent of the national standardized amount and 15 percent of the regional standardized amount for fiscal years beginning with fiscal year 1988 and ending with fiscal year 1990. This provision is known as the regional floor.

The FY 1991 Continuing Appropriation, H.J. Res. 655, extends the current regional floor on standardized amounts through October 20, 1990.

(e) Reporting Requirements.—OBRA 1987 directed the Secretary to develop a uniform hospital reporting demonstration project in two States (the Secretary selected California and Colorado). In those States, hospitals are required to report statistical and cost information using a uniform reporting format developed by the Secretary.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities.—The Prospective Payment Assessment Commission (ProPAC) is a 17-member Commission appointed by the Director of the Office of Technology Assessment (OTA). The statutory responsibilities of ProPAC are to: (a) report recommendations to the Secretary of HHS on the appropriate annual increases in standardized amounts and target amounts for inpatient hospital services, and (b) make recommendations to the Secretary on changes in DRG classification or weighting factors and report to Congress its evaluation of any changes made by the Secretary.

(2) Reporting Requirements for Commission and Secretary.—

(A) By March 1 of each year, ProPAC is required to report to the Secretary its recommendations for the hospital update factor. In addition, the House Committee on Appropriations has directed ProPAC to submit an annual report to Congress on the impact of PPS on the American health care system; ProPAC currently publishes this report on June 1 of each year.

(B) The Secretary, by March 1 of each year, is required to report to the Congress an initial estimate of the update factor he will recommend for the coming year. By May 1 of each year, the Secretary is required to publish an updated recommendation on the update for public comment, taking ProPAC's recommendation into account; the publication is required to include ProPAC's March 1 report. By September 1, the Secretary is required to publish a final recommendation on the update factor.

(C) The OTA is required to report annually to Congress on the functioning and progress of the Commission.

(3) Composition of Commission.—In selecting the ProPAC Commissioners, the Director of the Office of Technology Assessment (OTA) is directed to include national experts, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives, including physicians and registered professional nurses, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and individuals having expertise in the research and development of technological and scientific advances in health care.

(g) Physician Assistant Hospital Payment Offset.—OBRA 1986 provided for direct Medicare payment for services of physician assistants and authorized the Secretary to reduce the amount of payments otherwise made to hospitals and skilled nursing facilities in order to avoid duplicate payments for the costs of those services.

(h) Determination of Reasonable Costs Relating to Swing Beds.—Reimbursement to hospitals for extended care services in swing beds is limited to the average of the Medicaid skilled nursing facility rates for the State. However, OBRA 87 eliminated in the Medicaid program the distinction between skilled nursing facilities and intermediate care facilities and established a new category of provider, nursing facility.

(i) Reduction in Indirect Medical Education Payments.—Medicare pays teaching hospitals an additional amount to reflect the indirect costs associated with graduate medical education programs. Payment for each discharge is increased by approximately 7.65 percent (on a curvilinear basis) for each 10 percent increase in the ratio of interns and residents to beds. The adjustment is scheduled to increase to 8.29 percent in FY 1996, when the disproportionate share adjustment is scheduled to expire.

House Bill

(a) Changes in Hospital Update Factors.—Provides the following hospital update factors for fiscal years 1991 through 1995: for FY 1991, the market basket minus 2.0 percentage points; for FY 1992, the market basket minus 3.55 percentage points; for FY 1993, the market basket minus 1.0 percentage point; and for FY 1994-1995, the full market basket increase.

(b) Updates for Rural and Inner-City Hospitals.—

(1) Phase-out of Separate Average Standardized Amounts.—Further amends update factors established in (a), above, adjusting the update for hospitals in rural areas each year by an equal annual factor beginning with FY 1991 and ending with FY 1995, such that the gap between the rural and other urban standardized amounts would be closed by the beginning of FY 1995.

Discharges occurring in a fiscal year beginning on or after October 1, 1995, require the Secretary to compute two average standardized amounts for hospitals located in large urban areas and for hospitals located in other areas. A single update factor, the market basket increase, will then be applied to hospitals located in both large urban areas and other areas, for discharges occurring in a fiscal year beginning on or after October 1, 1995.

(2) Disproportionate Share Adjustment.—(A) Increase for Large Urban Hospitals.—Increases the disproportionate share adjustment for urban hospitals with 100 or more beds by increasing the multiplier in the formulas, phased in over the following fiscal years: (i) hospitals where the disproportionate patient percentage ("P") is between 15 and 20.2 percent: for FY 1991, $(P^{-}15).65 + 2.5$; for FY 1992, $(P^{-}15).65 + 2.5$; for FY 1993, $(P^{-}15).7 + 2.5$; for FY 1994, $(P^{-}15).8 + 2.5$; for FY 1995, $(P^{-}15).85 + 2.5$. (ii) hospitals where the disproportionate patient percentage ("P") is over 20.2: for FY 1991 and FY 1992, $(P^{-}20.2).8 + 5.88$; for FY 1993, $(P^{-}20.2).9 + 6.14$; for FY 1994, $(P^{-}20.2).95 + 6.66$; for FY 1995, $(P^{-}20.2) + 6.92$.

(B) Increase for Hospitals With Disproportionate Indigent Care Revenues.—Increases the disproportionate share adjustment for hospitals that qualify on the basis of revenue for indigent care received from State and local governments to 35 percent.

(C) Repeal of the Sunset.—Makes the disproportionate share adjustment permanent.

(D) No Restandardizing for Recent Adjustments.—(i) Requires that the Secretary not include the additional disproportionate share payments made as a result of the enactment of OBRA 1989; (ii) Requires that the Secretary not include the additional disproportionate share payments made as a result of the enactment of OBRA 1990 when standardizing updated PPS payment amounts.

(c) Phase-in of Area Wage Index.—For fiscal year 1991, requires the Secretary to apply a blended wage index that consists of 75 percent of the area wage index based on the calendar year 1988 survey, and 25 percent of the area wage index as determined using the calendar year 1984 survey. For fiscal years 1992 and 1993, requires the Secretary to apply the new area wage index based solely on the 1988 data.

Requires the Secretary to collect data on compensation and paid hours of employment in each occupational category, including the compensation of contract employees, and provide the data to ProPAC. Using this data, requires the Secretary to analyze and make recommendations to Congress on adjusting the area wage index for occupational mix, by June 1, 1993.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—Makes the regional floor permanent. Requires the Secretary to extend the regional floor on a budget-neutral basis.

(e) Reporting Requirements.—Requires hospitals receiving disproportionate share adjustments, regional referral centers, sole community providers, Medicare-dependent small rural hospitals, and EACH facilities to report statistics and cost information using the uniform reporting format developed by the Secretary under the demonstration project.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities.—

(A) Requires ProPAC, in addition to its other functions, to make recommendations for each fiscal year to the Senate Finance Committee and House Ways and Means Committee on changes in any existing Medicare prospective payment systems for institutional services and on development of new institutional reimbursement policies. Reports are to include recommendations relating to: (a) payment to PPS hospitals, including DRG classification, adjustments for severity, and capital reimbursement, along with recommendations on the effectiveness and quality of U.S. health delivery systems and the effect of Medicare institutional reimbursement; (b) payment to large urban hospitals, including treatment of charity care and bad debt and the relation between Medicare and programs that pay for services to low-income individuals; (c) payments to rural hospitals, including appropriate responses to problems with low occupancy, quality of care, and access to health care services; and (d) changes in Medicare policies that will constrain the costs of health care to employers.

(B) Eliminates the current requirement for recommendations to the Secretary on DRG weighting factors and a report to Congress evaluating the Secretary's actions.

(2) Reporting Requirements for Commission and Secretary.—

(A) Requires ProPAC's March 1 report on the update factor to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means; the report is to include ProPAC's general recommendations on the effectiveness and quality of U.S. health delivery systems. Requires ProPAC to report to the Committees by June 1 preceding each fiscal year on its activities in the preceding fiscal year.

(B) Requires the Secretary, in addition to recommending an update factor, to recommend other changes in existing prospective payment policies, and to include these recommendations in the May 1 and September

1 reports. If the Secretary's recommendations differ from ProPAC's, the May 1 report is required to include an explanation of why ProPAC's recommendations were not followed.

(C) Eliminates the annual OTA report.

(3) Composition of Commission.—Provides that the Commissioners are to include a mix of different professions, rather than "professionals," and that the professions may include, but are not limited to, physicians and registered nurses.

(g) Physician Assistant Hospital Payment Offset.—Repeals the provision authorizing the Secretary to reduce payments to hospitals and skilled nursing facilities.

(h) Determination of Reasonable Costs Relating to Swing Beds.—Provides that payments to hospitals for the routine costs of extended care services in rural areas in a State would be limited to the payments for such costs under the Medicare program for freestanding skilled nursing facilities in such areas in the State. Provides that the limit would be based on costs in the most recent year for which cost reporting data are available trended forward in the same manner as the limits currently applicable to skilled nursing facilities. Further specifies that if this limit reduces payments to hospitals from those received in the previous year, the reasonable cost of the services would be equal to the reasonable cost for the previous year.

(i) Reduction in Indirect Medical Education Payments.—No provision.

Effective date: (a) Applies to discharges occurring on or after January 1, 1991. (b)(1) Applies to payments for discharges on or after January 1, 1991; provisions relating to a single standardized amount for rural and other urban areas are effective October 1, 1995. (b)(2) Applies to discharges on or after July 1, 1991, except that the provision relating to changes made by OBRA 1989 is effective as if included in the enactment of OBRA 1989. (c) Enactment. (d) Applies to discharges on or after October 1, 1990. (e) Applies to cost reporting periods beginning on or after October 1, 1990. (f) Enactment. (g) Effective as if included in the enactment of OBRA 1986. (h) Applies to services furnished on or after October 1, 1990.

Senate amendment

(a) Change in Hospital Update Factors.—Provides the following hospital update factors for FY 1991 through 1995: for FY 1991, update the PPS rates by the market basket minus 2 percent; for FY 1992, the market basket minus 1.5 percent; for FY 1993, the market basket minus 1.4 percent; and for FY 1994-1995, the full market basket increase.

(b) Updates for Rural and Inner-City Hospitals.—(1) Phase-out of Separate Average Standardized Amounts.—Similar provision, except that requires the Secretary to update rural standardized amounts by the full market basket increase during FY 1991-1993. For FY 1994, requires the Secretary to reduce by 1/2 the percentage difference between the average standardized amount for hospitals in large urban areas or other areas and the average standardized amount for hospitals in rural areas. For FY 1995, the Secretary is required to provide an equal average standardized amount for rural and other urban hospitals by reducing the remainder of the percentage difference between the rural and other urban hospital average standardized amounts.

(2) Disproportionate Share Adjustment.—(A) Increase for Large Urban Hospitals.—No provision. *(B) Increase for Hospitals With Disproportionate Indigent Care Revenues.*—No provision. *(C) Repeal of the Sunset.*—No provision. *(D) No Restandardizing for Recent Adjustments.*—Similar provision with respect to OBRA 1989 changes.

(c) Phase-in of Area Wage Index.—Similar provision. Requires ProPAC to examine State level and other available data measuring earnings and paid hours of employment by occupational category of hospital workers. Requires the analysis to include the impact of variation in occupational mix on the computation of the area wage index. Requires ProPAC to include the findings in its March 1991 report, and make recommendations regarding the feasibility and desirability of modifying the wage index computation to take into account occupational mix data.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—No provision.

(e) Reporting Requirements.—No provision.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities.—

(A) Similar provision, except specifies that reports are to include recommendations relating to: (a) payment to PPS hospitals, including DRG classification, adjustments for severity, and capital reimbursement; and (b) additional payments to hospitals under PPS, including payments to hospitals in large urban and rural areas, including regional referral centers and sole community hospitals, payments for indirect costs of medical education, disproportionate share adjustments, and outlier payments. Further requires that recommendations include recommendations on major revisions to PPS and hospital outpatient payments and recommendations on payments to PPS-exempt hospitals, skilled nursing facilities, and home health agencies.

(B) Eliminates the requirement for a report to Congress evaluating the Secretary's actions.

(2) Reporting Requirements for Commission and Secretary.—

(A) Requires that ProPAC's March 1 report include any additional recommendations developed under section (1), above, relating to institutional reimbursement for the next fiscal year. Requires ProPAC to submit to Congress by June 1 of each year, beginning with calendar 1991, a report examining the American health care system, including cost and utilization trends, the financial condition of hospitals, and new cost containment methods used by private employers and insurers.

(B) Similar provision.

(C) Similar provision.

(3) Composition of Commission.—No provision.

(g) Physician Assistant Hospital Payment Offset.—No provision.

(h) Determination of Reasonable Costs Relating to Swing Beds.—No provision.

(i) Reduction in Indirect Medical Education Payments.—Reduces the adjustment to 6.8 percent for FY 1991 through FY 1995, and to 7.4 percent for FY 1996 and later years.

Effective date. (a) Applies to discharges occurring on or after January 1, 1991. (b)(1) Applies to payments for discharges on or after January 1, 1991; provisions relating to a single standardized amount for rural and other urban areas are effective October 1, 1994. (c) Enactment. (i) Applies to payment for discharges occurring on or after January 1, 1991.

Conference agreement

2. PPS Hospitals

Conference agreement

(a) Update Factors.—The conference agreement includes the Senate amendment providing the following update factors for hospitals, applicable to payments for discharges occurring on or after January 1, 1991: for FY 1991, the market basket percentage increase minus 2.0 percentage points; for FY 1992, the market basket percentage increase minus 1.6 percentage points; for FY 1993, the market basket percentage increase minus 1.55 percentage points; and for FY 1994 and FY 1995, the full market basket percentage increase.

(b) Updates for Rural and Inner-City Hospitals.—

(1) Phase-out of Separate Average Amounts.—The conference agreement includes the House provision with the following amendments to rural hospital updates: for FY 1991, the market basket minus 0.7 percentage points; for FY 1992, the market basket percentage increase minus 0.6 percentage points; for FY 1993, the market basket percentage increase minus 0.55 percentage points; for FY 1994, the market basket percentage increase plus 1.5 percentage points; and for FY 1995, the market basket percentage increase plus such percentage increase as necessary to provide for the average standardized amount determined to equal the average standardized amount for hospitals located in an urban area (not located in a large urban area).

OBRA 1989 required the Secretary to report to Congress by October 1, 1990 on a legislative proposal to eliminate separate average standardized amounts. The conferees expect the Secretary to deliver a report making recommendations on further modifications needed to affect the elimination of separate average standardized amounts.

(2) Disproportionate Share Adjustment.—The conference agreement includes the House provision with amendments. For hospitals with more than 100 beds where the disproportionate patient percent is over 20.2: for discharges occurring on or after January 1, 1991, and before September 30, 1993, (P-20.2) (.7) + 5.88; for discharges occurring on or after October 1, 1993, (P-20.2) (.8) + 6.14. For such hospitals where the disproportionate patient percent is between 15 and 20.2 percentage points: for discharges occurring on or after January 1, 1991, and before September 30, 1993, (P-15) (.65) + 2.5; for discharges occurring on or after October 1, 1993, (P-15) (.7) + 2.5.

In eliminating the sunset on the disproportionate share adjustment, the conferees made a conforming amendment to delete the indirect medical education factor, 8.3 percent, that would have otherwise applied for discharges on or after October 1, 1995, if the disproportionate share adjustment sunset had not been eliminated.

(c) Phase-in of Area Wage Index.—The conference agreement includes the Senate amendment, with an amendment requiring the Secretary to pay hospitals using a wage index based solely on the 1988 wage data survey for discharges beginning on January 1, 1991.

The conferees note that the policy adopted through use of the 1984 wage survey data for three months and the use of the 1988 wage survey data for nine months achieves the goal of both bills by creating a 75/25 blend of such data in FY 1991.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—The con-

ference agreement includes the House provision, with amendments. The Secretary is required to extend the regional floor until September 30, 1993, and to make payments for discharges occurring during the period beginning October 1, 1990 through October 20, 1990, in a budget neutral manner.

The Secretary is required to collect data on the input prices associated with the non-wage-related portion of the adjusted average standardized amount. The conferees expect that the Secretary will collect the data necessary to create a non-labor cost index; create the index, and evaluate its application to hospital payments; and include the impact of that application on hospitals in the required report to the Congress.

(e) Reporting Requirements.—The conference agreement does not include the House provision.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities: The conference agreement include the House provision, with amendments, requiring ProPAC to report annually to Congress, by June 1, on trends in health care costs, payment of institutional providers, and new methods of health care cost containment.

(2) Reporting Requirements for Commission and Secretary: The conference agreement includes the House provision, with amendments. ProPAC is required to conduct a study of hospital payment rates under State Medicaid programs and report to Congress by not later than October 1, 1991.

(3) Composition of the Commission: The conference agreement does not include the House provision.

The conferees note that the purpose of ProPAC is modified to focus on the development of new reimbursement policies and modification of current reimbursement policies which promote the delivery of efficient, accessible, high-quality health care. The Commission would be directed to focus on payments to institutional providers, including hospitals, outpatient departments, skilled nursing facilities, ambulatory surgical centers, and other facilities which may be defined in the future.

In performing this function the conferees intend that ProPAC would include in its analysis and recommendations, proposals for changes in policies regarding: (1) payment of inner-city hospitals, including appropriate recognition of bad debt and charity care costs; (2) payment or rural hospitals including recommendations on appropriate responses to issues affecting access to health care services in rural areas; and (3) policies which help constrain the costs of health care to employers, including changes in Medicare and its payment policies which may affect other payers.

(g) Physician Assistant Hospital Payment Offset.—The conference agreement includes the House provision.

(h) Determination of Reasonable Costs Relating to Swing Beds.—The conference agreement includes the House bill.

(i) Reduction in Indirect Medical Education Payments.—The conference agreement does not include the Senate amendment.

3. Expansion of DRG Payment Window (Section 12003 of the House Bill)

Present law

In order to prevent unbundling of hospital services, all services provided to an inpatient of a hospital are paid through the DRG payment system, although the Secretary may waive this provision in certain isolated circumstances. Outpatient services may not be billed on behalf of an inpatient of a hospital. An inpatient stay is defined as beginning at midnight on the day of admission. The Medicare Intermediary Manual states further that services provided for up to 24 hours prior to the day of admission are considered to be part of the hospital stay and are not separately reimbursable under Part B of Medicare.

House bill

Expands the definition of inpatient operating costs to include services provided on the day of admission and for up to 72 hours prior to a patient's date of admission to a hospital. Such services provided on the day of admission and for up to 72 hours prior to the day of admission would not be separately reimbursable under Part B, if Part A is the primary payer for the admission. Medicare carriers would be responsible for assuring that payment was not made under Part B for these services.

Effective date.—Applies to services furnished on or after January 1, 1991.

Senate amendment

No provision.

Conference agreement

3. Expansion of DRG Payment Window

Conference agreement

The conference agreement includes the House provision, with an amendment requiring that the prospective payment system under section 1886(d) include the cost of all services provided during the 72-hour period ending on the date of the partient's admission are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary), for other services furnished on or after October 1, 1991, and for diagnostic services furnished on or after January 1, 1991.

Nothing in this provision requires the Secretary to take special action to adjust the DRG relative weights to reflect the additional services that would be covered by the DRG payment under this provision. The conferees expect that no adjustment will be made before FY 1993 when Part A billing data that would include the additional services would become available to recalibrate the relative weights.

The conferees note that paragraph (b)(1) is simply a statement of current policy as embodied in the intermediary manual. For this reason, the conferees do not expect that there is a need for any further administrative action by the Department to implement this paragraph.

4. PPS-Exempt Hospitals (WM-Section 12005)

Present law

(a) Reduction in Payment for Capital-Related Costs.—Certain hospitals are exempt from PPS, including children's hospitals, psychiatric hospitals, rehabilitation hospitals, long-term care hospitals, and cancer hospitals so designated by December 31, 1990 (1991 in Maryland). Reductions in capital-related Medicare payments do not apply to PPS-exempt hospitals.

(b) Development of National Prospective Payment Rates for Current non-PPS Hospitals.—Children's hospitals, psychiatric hospitals, rehabilitation hospitals, long-term care hospitals, and cancer hospitals so designated by December 31, 1990 (1991 in Maryland) are exempt from PPS. PPS-exempt hospitals are reimbursed on the basis of reasonable costs, subject to limits known as target amounts, which are defined as the hospital's base-year costs inflated by a rate of increase limit.

(c) Appeals of Target Amounts.—

(1) Deadlines for Review and Decision.—The Secretary is directed to provide an exemption from, or an exception and adjustment to, a hospital's target rate if events beyond the hospital's control, or extraordinary circumstances, including changes in case mix and volume, or the closure of another hospital, cause a distortion in the hospital's costs. There are no time limits associated with the Secretary's authority. OBRA 1989 required the Secretary to develop a process for hospitals to request exceptions and adjustments. Although the Secretary was required to develop such a process within six months of enactment, the Secretary has not yet developed the process.

(2) Standards for Assignment of New Base.—The Secretary may approve the use of a different base year for purposes of determining the appropriate target rate if the new base period is more representative of the reasonable and necessary cost of inpatient services.

(3) Guidance to Intermediaries and Hospitals.—No provision.

House bill

(a) Reduction in Payment for Capital-Related Costs.—Capital-related costs for PPS-exempt hospitals are reduced by fifteen percent in FY 1991 and 1992.

(b) Development of National Prospective Payment Rates for Current Non-PPS Hospitals.—Requires the Secretary to develop a proposal to modify the current system under which PPS-exempt hospitals are reimbursed for the operating costs of inpatient hospital services under Part A, or to replace the current system with a prospective payment system.

In developing a proposal for a prospective payment system, the Secretary is required to: consider the need to provide appropriate limits on increases in Medicare expenditures; provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice; consider the need to increase the payment otherwise made under the proposed system for patient cost or length-of-stay outliers; consider the need to increase payments to disproportionate share hospitals, teaching hospitals, and hospitals located in high-wage geographic areas; and, provide for the appropriate allocation of operating and capital-related costs of hospitals and distinct units of such hospitals that would be paid under the new system.

Requires the Secretary to submit the developed proposal to the Senate Committee on Finance and the House Ways and Means Committee by February 1, 1991. Requires the Prospective Payment Assessment Commission (ProPAC) to submit an analysis of and comments on the proposal, by May 1, 1991, to the same committees.

(c) Appeals of Target Amounts.—

(1) Deadlines for Review and Decision.—Requires that the performance standards and criteria for a fiscal intermediary (an agency or organization that contracts with HCFA to process Part A claims) include the ability to process a completed application of reconsideration of the target amount for a PPS-exempt hospital within 60 days after the application is filed, and, in cases where an incomplete application is received, the ability to return the application with in-

structions on how to complete the application no later than 60 days after the application is filed.

Requires the Secretary to announce a decision on any request for an exemption, exception, or adjustment not later than 120 days after receiving a completed application of such a request, and include a detailed explanation of the grounds on which the request was approved or denied.

(2) Standards for Assignment of New Base Period.—In making a determination about the assignment of a new base period, requires the Secretary to specifically consider: changes in applicable technologies, medical practices, or case mix severity that increase the hospital's costs; whether increases in wages and wage-related costs in the geographic area in which the hospital is located exceed the average increases in such costs by hospitals nationally; and other factors the Secretary considers appropriate.

(3) Guidance to Intermediaries and Hospitals.—Requires the administrator of HCFA to provide guidance to fiscal intermediaries reviewing applications for reconsideration of the target amount and to PPS-exempt hospitals to assist them in filing complete applications.

Effective date: (a) Effective for cost reporting periods beginning on or after October 1, 1990. (b), (c)(1) and (c)(3) effective upon enactment. (c)(2) Effective as if enacted in OBRA 1989.

Senate amendment

(a) Reduction in Payment for Capital-Related Costs.—No provision.

(b) Development of National Prospective Payment Rates for Current Non-PPS Hospitals.—No provision.

(c) Appeals of Target Amounts.—Similar provision, except requires the Secretary to announce a decision an any request for an exemption, exception, or adjustment by not later than 180 days after receiving a completed application, and requires that a detailed explanation of the reason for approval or denial of a request be included.

Effective date: (c) Effective as if included in the enactment of OBRA 1989.

Conference agreement

4. PPS-Exempt Hospitals

Conference agreement

(a) Reduction in Payments for Capital-Related Costs.—The conference agreement does not include the House provision.

(b) Development of National Prospective Payment Rates for Current non-PPS Hospitals.—The conference agreement includes the House provision, requiring the Secretary to develop a new prospective payment methodology for exempt hospitals, or to modify the target rate system for those hospitals currently exempted from the prospective payment system. In developing this methodology, the conferees expect that the Secretary will consider the special circumstances of some categories of exempt hospitals, such as cancer centers, with technical amendments.

(c) Appeals of Target Amount.—The conference agreement includes the Senate amendment, with an amendment, requiring the Secretary to announce a decision on any request for an exemption, exception or adjustment not later than 180 days after the fiscal intermediary receives a completed application.

(d) Adjustment to Payment Amounts.—PPS-exempt hospitals shall receive 50 percent of the amount by which their operating costs exceed the target amount. However, these additional payments are subject to a ceiling of 110 percent of the target amount.

The conference agreement includes the provision. The conferees note that the assignment of a new base period falls within the Secretary's discretionary authority to grant exemptions, exceptions, and adjustments to the TEFRA target amount. While the provision requires the Secretary to take into consideration certain factors in determining whether to assign a new base period, the Secretary may take into consideration other factors that might lead to a determination that a new base period is not warranted. In particular, the conferees would not expect that an increase in wage-related costs in the geographic area in which the hospitals are located would exceed the national average increase in such costs as a result of an automatic assignment of a new base period.

5. Freeze in Payments Under Part A through December 31, 1990 (WM-Section 12006)

Present law

Under current law, payments to hospitals are modified in several ways for FY 1991. Payments to hospitals increase by the market basket inflation index; new area wage indices become effective; the regional floor expires; and capital-related costs are reimbursed at 100 percent. Payments to hospices increase by the market basket inflation index. Payments to skilled nursing facilities and home health agencies do not change.

House bill

Freezes payments under Part A through December 31, 1990.

Effective date: November 1, 1990.

Senate amendment

No provision.

Conference agreement

5. Freezes payments under Part A through December 31, 1990.

Conference agreement

The conference agreement includes the House provision, effective from October 21, 1990 through December 31, 1990.

The conferees expect that the Secretary will implement this provision by reducing the standardized amounts published in the Federal Register on September 4, 1990 by the market basket percentage increase of 5.2 percent.

The freeze in the update of the per resident amounts under section 1886(h) will be applied for portions of cost reporting periods occuring during this period. Future updates of such per resident amounts, like the update factor will be made as though the freeze did not occur.

6. Expansion of Hospice Benefit (Section 3112 of House bill, Section 6105 of Senate amendment)

Present law

A Medicare beneficiary who is terminally ill may elect to receive hospice services for two 90-day periods and one subsequent 30-day period, for a total of 210 days during an individual's lifetime. Beneficiaries making this election receive these services in lieu of most other Medicare benefits.

House bill

No provision.

Senate amendment

Provides for a subsequent period of coverage for hospice care, beyond the 210-day limit, if the beneficiary is recertified as terminally ill by the medical director or the physician member of the interdisciplinary group of the hospice program.

Effective date: Applies to care and services furnished on or after January 1, 1990.

Conference agreement

6. Expansion of Hospice Benefit.—The conference agreement includes the Senate amendment.

7. Miscellaneous and Technical Provisions Relating to Part A (Section 6106 of Senate amendment)

Present law

(a) Waiver of Liability for Skilled Nursing Facilities and Hospices.—When a provider furnishes services that are not covered under Medicare, the provider is not normally entitled to Medicare payment for those services. In order for payment to be made to a provider of care, Medicare law requires, at a minimum, that services be medically reasonable and necessary for the diagnosis or treatment of an illness or injury. It also excludes from payment care that is considered to be custodial in nature.

The program, however, has recognized that circumstances may exist where providers of services or beneficiaries could not have reasonably known that services would not be covered. Medicare has paid for a limited number of services which are not medically necessary or are determined to be custodial in nature, so long as it is determined that the provider or beneficiary did not know and could not reasonably have been expected to know that services would be uncovered. The provider is presumed not to know that coverage for certain services would be denied—it qualifies for a "favorable presumption"—when its denial rate is below a certain level. With this favorable presumption, its liability for denied claims below the threshold is waived and it is paid for these claims. The provider receives waiver of liability protection for denied claims below the threshold.

Under the waiver of liability policy for SNFs, facilities with a denial rate of up to 5 percent qualify for favorable presumptive status and are paid for these denied services. If their denial rate exceeds 5 percent, facilities lose their favorable presumption, and are not automatically paid for their denied claims at or below the 5 percent threshold, and they must argue each claim on a case-by-case basis.

Under the waiver of liability policy for hospices, agencies with a denial rate of up to 2.5 percent qualify for favorable presumptive status and are paid for these denied services. If their denial rate exceeds 2.5 percent, agencies lose their favorable presumption, and are not automatically paid for their denied claims at or below the 2.5 percent threshold, and they must argue each claim on a case-by-case basis.

The skilled nursing facility provision is scheduled to expire October 31, 1990, and the hospice provision is scheduled to expire November 1, 1990.

(b) Designation of Certain Hospitals as Rural Primary Care Hospitals.—

(1) Priority in Discretionary Designations.—OBRA 89 established an Essential Access Community Hospital (EACH) program, under which grants may be made to States to develop rural health networks linking hospitals designated as EACHs with rural primary care hospitals (RPCHs). In order to qualify for Medicare reimbursement as an RPCH, a facility must be located in a State receiving a grant and must be designated by that State as an RPCH. The Sec-

retary is authorized to designate as RPCHs up to 15 additional facilities that do not meet these requirements.

(2) Eligibility of Certain Closed Hospitals.—A hospital must meet the conditions of participation for a hospital when it applies for designation as an RPCH.

(3) Alternative Criteria for RPCH Designation.—In order to be designated as an RPCH by a State, a facility must have no more than 6 inpatient beds, ordinarily providing inpatient care for periods of no more than 72 hours.

(c) Skilled Nursing Facility Routine Cost Limits.—The Secretary of HHS is authorized to set limits on skilled nursing facility (SNF) routine service costs that will be recognized as reasonable and reimbursed under the program. The Secretary is required to establish separate per diem limits for freestanding and hospital-based SNFs as follows: For freestanding SNFs in urban and rural areas, the limits are set at 112 percent of the mean routine service costs of urban and rural hospital-based facilities, respectively.

Limits for urban and rural hospital-based facilities are set at the appropriate freestanding limit, plus 50 percent of the difference between the freestanding limit and 112 percent of the mean routine service cost for hospital-based facilities. An amount is added to the hospital-based SNFs that is attributable to excess overhead allocations resulting from Medicare reimbursement principles.

The current schedule of Medicare cost limits for SNFs is based on cost reports submitted by SNFs for cost reporting periods ending between October 1, 1982 and September 30, 1983. The Omnibus Budget Reconciliation Act of 1989 included a provision that required the Secretary to use cost reports for cost reporting periods beginning not earlier than October 1, 1985. This provision was not implemented.

(d) Nursing Home Reform Technical Amendments.—

(1) Nurse Aide Training.—Effective October 1, 1990, skilled nursing facilities (SNFs) participating in Medicare must use on their staffs as nurse aides only those persons who have completed approved training and competency evaluation programs. Specifically, the law prohibits SNFs from using (on a full-time, temporary, per diem, or other basis) persons as nurse aides for more than 4 months, unless the aide (1) has completed a training and/or a competency evaluation program approved by the State; and (2) is competent to provide nursing or nursing-related services. The law also requires States to establish nurse aide registries of all persons who have satisfactorily completed training and competency evaluation programs and those persons who have been involved in resident neglect and abuse. Nursing homes are required to consult these registries before hiring a person as a nurse aide.

OBRA 87 required the Secretary to establish requirements for State approval of nurse aide training and competency evaluation programs by September 1, 1988, and to specify in these requirements areas to be covered in programs, content of curriculum, minimum hours of initial and ongoing training and retraining, qualification of instructors, and procedures for determining competency. The law prohibits the approval of training and competency evaluation programs offered by a SNF, if the facility has been determined to be out of compliance with requirements for provision of services, residents' rights, and administration. In addition, an amendment included in OBRA 89 prohibits the approval of programs that impose charges for training and competency evaluation.

In 1989, HCFA issued an interim guidance document, effective May 12, 1989, setting out approval criteria for the States. On March 23, 1990, HCFA published a proposed regulation on approval criteria for nurse aide training and competency evaluation programs.

(2) Period for Resident Assessment.—OBRA 87 requires that nursing facilities conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be performed promptly upon, but no later than 4 days after, admission to the facility.

(3) Resident Access to Clinical Records.—OBRA 87 requires nursing facilities to assure the confidentiality of a resident's personal and clinical records.

(4) Maintaining Regulatory Standards for Certain Nursing and Related Services.—OBRA 87 requires SNFs to provide, directly or under arrangements, various kinds of services, including medically-related social services, dietary services, and an on-going program of activities. Final regulations published by HCFA on February 2, 1989, and effective October 1, 1990, specify qualifications for the persons providing these services. These are often different from regulations in effect prior to October 1.

(5) Ombudsman Program Coordination with State Survey and Certification Agencies.—States are required to notify State long-term care ombudsman (established under the Older Americans Act) of survey findings of noncompliance with any of the requirements for participation.

(6) Additional Requirements with respect to Medicare Nurse Staffing Waivers.—Medicare requires that SNFs provide 24-hour licensed nursing care and use a registered professional nurse at least during the day tour of duty (of at least 8 hours a day) 7 days a week. The law authorizes the Secretary to provide waivers to certain rural SNFs for the registered nurse requirement for a 48-hour period.

(e) ProPAC Study of Medicaid Payments to Hospitals.—No provision.

(f) Clarification of Waiver Authority.—

(1) No provision.

(2) OBRA 1989 authorized the Secretary to waive nursing home survey and certification requirements for one year to test an approved alternative system in Wisconsin.

(g) Delay in Application to Geographic Classification Review Board.—OBRA 1989 required the appointment of a Geographic Classification Review Board, to consider appeals by hospitals for a change in classification from rural to urban or from one urban area to another. A hospital requesting such a change for a fiscal year must file its application by the first day of the preceding fiscal year. Guidelines to be used by the Board in evaluating applications were published by the Secretary on September 6, 1990, after the due date for FY 1992 applications.

(h) Review of Hospital Regulations with Respect to Rural Hospitals.—OBRA 87 required that the Secretary include a regulatory impact analysis in any notice of proposed rulemaking under Medicare if the rule is expected to have a significant impact on a substantial number of small rural hospitals, and make available a final impact analysis when the final version of such a rule is promulgated.

House bill

No provision.

Senate amendment

(a) Waiver of Liability for Skilled Nursing Facilities and Hospices.—Extends waiver of liability protection for skilled nursing facilities and hospices through December 31, 1995.

Effective date: Enactment.

(b) Designation of Certain Hospitals as Rural Primary Care Hospitals.—

(1) Priority in Discretionary Designations.—Requires the Secretary, in selecting the additional facilities for designation as RPCHs to give priority to hospitals that are not in a grantee State but that are participating in a rural health network in a grantee State.

(2) Eligibility of Certain Closed Hospitals.—Authorizes the Secretary to designate a closed hospital as an RPCH if the hospital closed within the last twelve months and the hospital met the conditions of participation at the time it closed.

(3) Alternative Criteria for RPCH Designation.—Allows a State to designate as an RPCH a facility that does not meet the 6 bed/72 hour rules but meets alternative limits on number of beds and duration of treatment established by the State.

Effective date: Enactment.

(c) Skilled Nursing Facility Routine Cost Limits.—Requires the Secretary to update SNF routine cost limits for cost reporting periods beginning on or after October 1, 1989, by using cost reports from cost reporting periods ending January 31, 1988 through December 31, 1988. Requires that limits be updated every 2 years beginning on or after October 1, 1992.

Effective date: Effective as if included in OBRA 89.

(d) Nursing Home Reform Technical Amendments.—

(1) Nurse Aide Training.—Includes a number of amendments to nurse aide training and competency evaluation requirements:

(A) No Compliance Actions Before Effective Date of Guidelines.—Prohibits the Secretary from taking (or continuing) any actions against a State for its failure to meet the law's requirements pertaining to competency evaluation through procedures other than passing a written examination before the effective date of regulations issued by the Secretary, if the State demonstrates it has made a good faith effort to meet the requirements before the effective date.

(B) Part-Time Nurse Aides Not Allowed Delay in Training.—Provides that SNFs may not use individuals as nurse aides on a temporary, per diem, or any other basis on or after October 1, 1990, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(C) Clarification of Permissible Charges for Training of Aides Not Yet Employed by a Facility.—Permits accredited nonfacility-based nurse aide training and competency evaluation programs to impose charges on individuals who are not presently employed by a nursing facility or who have not yet had an offer for future employment at a facility. Further requires, for individuals employed or under contract for employment as a nurse aide within 12 months after successful completion of a nonfacility-based, State-approved nurse aide training and competency evaluation program, that the State ensure that the costs they incurred for these programs are reimbursed to them.

(D) Nurse Aide Registry.—Requires SNFs, that have reason to believe that a nurse aide they are considering employing is from a State other than the State in which the facility is located, to consult the nurse aide registry of the State where the facility believes the aide resided. Further requires that aides deemed under OBRA 89 to have met the law's training and competency evaluation requirements and those aides for whom the State may waive the competency evaluation requirements under OBRA 89 be added to a State's nurse aide registry.

(E) Clarification of State Responsibility to Determine Competency.—Prohibits States from using subcontracts or other devices to determine that an aide is competent to provide nursing and nursing-related services.

(F) Qualification of Medicare Facilities to Provide Nurse Aide Training and Competency Evaluation.—Provides that a SNF would be ineligible to offer a training and competency evaluation program (1) if at any time on or after October 1, 1988, the facility has been terminated from participation in Medicare or Medicaid, until after the end of a period of at least 2 years during which no survey or investigation finds any deficiencies warranting termination and at least one standard survey has been conducted; or (2) the facility received a notice of termination at any time during the one year period ending September 30, 1990, until after the completion of a subsequent standard survey which finds no deficiencies warranting the notice; or (3) is found in a standard survey or investigation to have deficiencies resulting in a civil monetary penalty in excess of $5,000, denial of payment, or appointment of temporary management, until the completion of a subsequent standard survey which finds no deficiencies warranting these sanctions.

(G) Retraining Required.—Requires those nurse aides who have not provided services for 24 consecutive months to complete either a nurse aide training and competency evaluation program or a new competency evaluation program.

(2) Period for Resident Assessment.—Extends the time limit for a resident's assessment from 4 days to 14 days after admission.

(3) Resident Access to Clinical Records.—Adds to this requirement the right to have access to current clinical records, promptly upon the reasonable request (as defined by the Secretary) of the resident or the resident's legal representative.

(4) Maintaining Regulatory Standards for Certain Nursing and Related Services.—Requires that any regulations promulgated by the Secretary on medically-related social services, dietary services, and an on-going program of activities be comparable or more strict in their requirements for these services as were regulations for these services prior to the enactment of OBRA 87. Further requires the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dieticians, activities professionals, and medical records practitioners, and report to Congress by January 1, 1993, on whether facilities have on their staffs persons with significantly different credentials as a result of new regulations that became effective October 1, 1990, and the impact of staff composition on quality of care.

(5) Ombudsman Program Coordination with State Survey and Certification Agencies.—Requires that State survey agencies enter into a written agreement with the Office of the State Long-Term Care Ombudsman (as defined by the Older Americans Act) to provide for information exchange, case referral, and prompt notification of the office of any adverse action to be taken against a nursing facility.

(6) Additional Requirements with respect to Medicare Nurse Staffing Waivers.—Requires the Secretary to provide notice of the waiver to the appropriate State and substate long-term care ombudsman, to the protection and advocacy system and other appropriate State and private agencies, and ensure that a nursing facility that is granted a waiver make reasonable efforts to notify present and prospective residents of the facility (or a guardian or legal representative of residents) of the waiver.

Further requires the Secretary to conduct a study and report to Congress by January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for SNFs. Requires that if the Secretary determines that the establishment of minimum ratios is advisable, the report must specify appropriate ratios or standards.

Effective date. Effective as if included in OBRA 87.

(e) ProPAC Study of Medicaid Payments to Hospitals.—Requires the Prospective Payment Assessment Commission to conduct a study of Medicaid hospital payment rates. Requires the study to examine the level of reimbursement under State programs, the relationship between Medicaid and Medicare payments, and the financial condition of affected hospitals, particularly those in urban areas treating large Medicaid and low-income populations. Requires the Commission to report its findings and recommendations to Congress by October 1, 1991.

Effective date.—Enactment.

(f) Clarification of Waiver Authority.—

(1) Authorizes the Secretary to waive any provisions of Medicare law that are necessary to conduct a demonstration project for limited-service rural hospitals agreed to before the enactment of OBRA 1989.

(2) Removes the one-year time limit and extends the waiver to other States as part of a nursing home prospective case-mix payment demonstration project.

Effective date.—Effective as if included in the enactment of OBRA 1989.

(g) Delay in Application to Geographic Classification Review Board.—Provides that an application shall be considered to have been filed by the first day of the preceding fiscal year if submitted within 60 days of the publication of the guidelines.

Effective date. Enactment.

(h) Review of Hospital Regulations with Respect to Rural Hospitals.—Requires the Secretary, within 12 months after enactment, to review the impact of Medicare regulations affecting PPS hospitals and determine which could be made less burdensome for rural hospitals without diminishing quality of care; requires that the review include standards related to staffing requirements. Requires the Secretary to report the results to Congress by April 1, 1992, including conclusions on appropriate changes in regulations.

Effective date. Enactment.

Conference agreement

7. Miscellaneous and Technical Provisions Relating to Part A

Conference agreement

(a) Waiver of Liability for Skilled Nursing Facilities and Hospice.—The conference agreement includes the Senate amendment.

(b) Designation of Certain Hospitals as Rural Primary Care Hospitals.—The Conference agreement includes the House provision.

(c) Skilled Nursing Facility Routine Cost Limits.—The conference agreement includes the Senate amendment.

(d) Nursing Home Reform Technical Amendments.—The managers note that the amendments included below make minor and technical changes to the nursing home reform statute as originally enacted in 1987. The managers are aware that the Secretary will soon issue regulations implementing portions of the original law. The managers do not intend that the amendments below result in any further delay of forthcoming regulations.

(1) Nurse Aide Training.—

(A) No Compliance Actions Before Effective Date of Guidelines.—The conference agreement includes the Senate amendment, with an amendment prohibiting the Secretary from taking (or continuing) any actions against a State for its failure to meet the law's requirements for approving nurse aide training and competency evaluation programs before the effective date of guidelines issued by the Secretary, if the State demonstrates it has made a good faith effort to meet the requirements before the effective date.

(B) Part-Time Nurse Aides Not Allowed Delay in Training.—The conference agreement includes the Senate amendment, with a modification to provide that SNFs may not use individuals as nurse aides on a temporary, per diem, leased, or on any other basis other than as a permanent employee, on or after January 1, 1991, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(C) Clarification of Permissible Charges for Training of Aides Not Yet Employed by a Facility.—The conference agreement includes the Senate amendment, with an amendment specifying that the prohibition on charging aides would apply to aides who are employed by or who have received an offer of employment from a facility. The conference agreement also includes a modification requiring States to provide for reimbursement of the costs incurred by persons in completing nurse aide training and competency evaluation programs, if they are not employed by or have not received an offer of employment from a facility. These costs would be reimbursed for aides employed within 12 months after completing a program and would be prorated during the period the aide is employed by the facility.

(D) Nurse Aide Registry.—The conference agreement includes the Senate amendment, with amendments. The agreement requires SNFs to consult any State nurse aide registry that the facility believes will include information about an aide. The conference agreement also requires that nurse aides deemed to have met nurse aide training and competency evaluation requirements under OBRA 87 of OBRA 89 and those for whom the State may waive the competency evaluation requirements under OBRA 898 be added to a State's registry. The agreement further prohibits States from imposing any charges on aides for establishing and maintaining the registries.

(E) Clarification of State Responsibility to Determine Competency.—The conference agreement includes the Senate amendment.

(F) Qualification of Medicare Facilities to Provide Nurse Aide Training and Competency Evaluation.—The conference agreement

includes the Senate amendment, with an amendment. The agreement prohibits the approval of nurse aide training and competency evaluation programs offered by or in a skilled nursing facility which, within the previous 2 years—(a) has operated under a registered nurse waiver authorized under Medicare; (b) has been subject to an extended (or partial extended) survey under Medicare or Medicaid; or (c) has been subject to sanctions that may be imposed under current law, including a civil money penalty of not less than $5,000, denial of payment, appointment of temporary management, closing the facility or transferring residents, or termination. For the 2-year period beginning October 1, 1988, the conference agreement also prohibits the approval of nurse aide training and competency evaluation programs offered by or in a nursing facility which (a) has been terminated from participation in Medicaid or Medicare; or (b) has been subject to sanctions that may be imposed under Medicaid or Medicare or applicable State law, including denial of payment, a civil money penalty of not less than $5,000, appointment of temporary management, or closing the facility or transferring residents.

(G) Retraining Required.—The conference agreement includes the Senate amendment.

(2) Period for Resident Assessment.—The conference agreement includes the Senate amendment.

(3) Maintaining Regulatory Standards for Certain Nursing and Related Services.—The conference agreement includes the Senate amendment, with a modification to require that any regulations promulgated by the Secretary on medically-related social services, dietary services, and an on-going program of activities include requirements that are at least as strict as those applicable to providers of these services prior to the enactment of OBRA 87. The agreement also deletes the requirement for the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dieticians, activities professionals, and medical records practitioners.

(4) Ombudsman Program Coordination with State Survey and Certification Agencies.—The conference agreement includes the Senate amendment, with an amendment to require State survey agencies to notify the Office of the State Long-Term Care Ombudsman of any adverse action taken against a facility under the enforcement section of nursing home reform law.

(5) Additional Requirements with respect to Medicare Nurse Staffing Waivers.—The conference agreement includes the Senate amendment, with a modification requiring the Secretary to provide notice of the waiver to the State long-term care ombudsman and the protection and advocacy system in the State for the mentally ill and mentally retarded, and requiring the facility to notify residents (or, where appropriate, the guardians or legal representatives of residents) and members of their immediate families of the waiver.

(6) Other Amendments.—The conference agreement includes other amendments:

(A) Disclosure of Information of Quality Assessment and Assurance Committees.—The conference agreement provides that a State or the Secretary may not require disclosure of the records of the quality assessment and assurance committee, except for determining the facility's compliance with the requirement for maintaining the committee.

(B) Resident Access to Clinical Records.—The conference agreement requires that access to records be provided within 24 hours (excluding hours during a week-end or holiday) after a request. The conference agreement also requires that access be provided to the resident's legal representative.

(c) Clarification on Findings of Neglect.—The conference agreement provides that a State can not make a finding of neglect by an individual if the individual demonstrates that neglect was caused by factors beyond the control of the individual.

(D) Timing of Public Disclosure of Survey results.—The conference agreement requires that survey and certification information be made available to the public within 14 calendar days after this information is made available to the facilities.

(E) Assurance of Appropriate Payment Amounts.—The conference agreement requires the Secretary to take into account in payments to SNFs the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each Medicare eligible resident.

(F) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—The conference agreement requires that SNFs provide treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

(G) Clarification of Definition of Nurse Aide.—The conference agreement clarifies that nurse aides do not include registered dieticians.

(H) Resident's Rights to Refuse Intra-Facility Transfers.—The conference agreement provides residents the right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility to a portion that is not. The agreement further provides that a resident's refusal to be transferred will not affect the resident's eligibility for Medicare.

(I) Inclusion of State Notice of Rights in Facility Notice of Rights.—The conference agreement requires SNFs to include in the written statement of rights that they are currently required to provide residents, a copy of the State notice of Medicaid rights of residents and spouses of residents.

(e) Designation of Pediatric Liver Transplant Facilities.—The conference agreement does not include the House provision.

(f) ProPAC Study of Medicaid Payments to Hospitals.—The conference agreement does not include the House provision.

(g) Clarification of Extension of Waiver for Finger Lakes Area Hospitals Corporation (FLAHC).—The conference agreement includes the Senate Amendment with an amendment clarifying the FLAHC waiver in OBRA 1989. The conference agreement modifies the test for periodic renewal of the FLAHC waiver to provide that aggregate payments made by Medicare under the FLAHC system since October 1, 1984, are compared to the aggregate payments which would have been made since that date if the hospitals had been paid under the national DRG system.

(h) Clarification of Secretarial Waiver Authority.—The conference agreement includes the Senate amendment, with modifications.

(i) Delay in Application to Geographic Classification Review Board.—The conference agreement includes provisions from both bills, with a House amendment to clarify the treatment of individual hospitals that are reclassified by the Board. the amendment provides that if the combined impact of all the reclassifications to a given urban area that are effective for this fiscal year reduce the wage index of the urban area by more than one percentage point, the wage index applicable to the hospitals that have been reclassified to the urban area would be determined as if the reclassified hospitals were located in that urban area. The wage data for all the hospitals that have been reclassified to the same urban area would be combined to determine a single wage index value that would be applicable to those hospitals. In addition, the determination of whether wage data for hospitals that have been reclassified from a rural area to another geographic area should be included in the calculation of the wage index for the rural area based on the combined impact of all the reclassifications from the rural area.

The conference agreement includes a provision from both bills regarding the process for appealing a decision of the Board. The provision was included at the request of the Department of Justice due to concerns about the constitutionality of the relevant provisions of OBRA 1989. The conferees note that even though this provision, struck the first sentence of section 1886(d)(10)(C)(iii)(II), applicants that lose at the Board still must appeal the Board's decision to the Secretary no later than 15 days after the Board renders its decision. The conferees note that concern has been raised regarding the lack of judicial review for decisions of the Secretary concerning decisions of the board. The conferees intend to monitor closely the development of the board and to take appropriate action to provide for such judicial review as necessary. The conference agreement also provides an extension of the application submission deadline for hospitals requesting a change in their geographic classification for FY 1992.

With regard to the interim final rules for the geographic classification review board, the conferees are concerned that the recently promulgated rules do not include guidelines for joint application by hospitals in an urban area classified as other urban to seek reclassification to another urban area classified as large urban. As stated in subsection 6003(h) of OBRA 1989, the Secretary is to develop guidelines "for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statiscal Area." The statute does not distinguish between rural and urban counties and neither should the Secretary. The omission of guidelines for urban hospitals to seek reclassification as a group is contrary to the intent of Congress in establishing the board and should be rectified at the earliest possible date.

The conferees are also concerned that the thresholds for consideration of applications by the board may be set too high and would urge the Secretary to consider changing them. In particular, the Committee is concerned that the 85 percent criterion for average hourly wages is too high and that the Secretary should consider a threshold of 70 percent for this purpose.

(j) Review of Hospital Regulations with Respect to Rural Hospitals.—The conference agreement includes the Senate amendment.

OTHER PART A TECHNICALS

The conference agreement includes the Senate provision with the following amendments:

(a) Hospital Obligations with Respect to Treatment for Emergency Medical Conditions and Women in Active Labor.—The conference agreement amends the provisions of the Social Security Act relating to hospital obligations with respect to treatment for emergency medical conditions and women in active labor by:

(1) Clarifying standards for civil money penalties: The conference agreement changes the standard for a civil money penalty for participating hospitals from knowingly violates a requirement of the statute to negligently violates a requirement.

(2) Application of penalties to small hospitals: The conference agreement reduces the maximum civil monetary penalties which could be imposed on a hospital that violates a requirement of the statute with less than 100 beds to $25,000.

(3) Clarifying standards for terminations of a hospital provider agreement: The conference agreement clarifies standards for termination of a hospital by deleting the provision for hospital termination from section 1867 of the Social Security Act and by providing that hospitals that fail to meet the requirements of section 1867 would be terminated under the provisions of the Social Security Act relating to Medicare conditions of participation. The provisions are effective for actions occurring on or after the first day of the sixth month beginning after enactment.

(b) Inspector General Study of Prohibition on Hospital Employment of Physicians.—The conference agreement requires the Secretary of the Department of Health and Human Services, acting through the Inspector General, to conduct a study on the effect of state laws which prohibit the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services. It further provides that the study include an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act (relating to examination and treatment of individuals with an emergency medical condition and women in active labor), and to assess the impact of such prohibitions on the availability and accessibility of emergency medical care services for Medicare and Medicaid beneficiaries. Requires that the Secretary submit a report to Congress on the study no later than one year after enactment. The provision is effective upon enactment.

(c) Immediate Enrollment in Part A by Individuals Enrolled in an HOM or CMP.—The conference agreement includes the House provision with technical amendments.

(d) Swing Beds Certified Prior to May 1, 1987.—The conference agreement provides that hospitals that had entered into an agreement to provide extended care services in swing beds prior to May 1, 1987, and would continue to be eligible to do so regardless of whether the area in which the hospital is located is rural or urban.

(e) Prospective Payment System for Skilled Nursing Facility Services.—The conference agreement requires the Secretary of HHS to develop for SNF services a proposal to modify or replace the current reimbursement methodolgy with a prospective payment system.

In developing a prospective payment system, the Secretary is required to (1) take into consideration the need to provide for appropriate limits on increase in expenditures under the Medicare program without jeopardizing access to extended care services for individuals unable to care for themselves; (2) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice; (3) take into consideration the need to increase the payment otherwise made under the new reimbursement system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate; (4) take into consideration the need to adjust payments under the system to take into account factors such as disproportionate share of low-income patients, and differences in wages and wage-related costs in various geographic areas, and other factors the Secretary considers appropriate; and (5) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

The Secretary (acting through the Administrator of the Health Care Financing Administration) is further required to submit any research studies to be used in developing the proposal to the Senate Finance Committee and the House Ways and Means Committee by April 1, 1991. The Secretary then must submit the SNF prospective payment proposal to the Committee by September 1, 1991, and the Prospective Payment Assessment Commission must submit an analysis of and comments on the Secretary's proposal to the Committees by March 1, 1992.

PART A

8. New Provision—Formerly section 12004 of the House Bill: Payments for Direct Medical Education Costs

SECTION 4004 OF THE CONFERENCE AGREEMENT

Payments for medical education costs

Current law

(a) Determination of Full-Time-Equivalent Residents.—Medicare's payment for the direct costs of approved medical education programs (including the salaries of residents and teachers, and other overhead costs directly attributable to the medical education program for training residents, nurses, and allied health professionals) are excluded from PPS. The direct costs of training nurses and allied health professionals are paid on a reasonable costs basis. The Consolidated Omnibus Reconciliation Act of 1985 (COBRA) replaced reasonable cost reimbursement for graduate medical education (residency training programs for physicians) with formula payments based on each hospital's per resident costs. Medicare payments to each hospital are based on the product of: (1) the hospital's approved cost per full-time equivalent (FTE) resident; (2) the weighted average number of FTE residents; and (3) the percentage of inpatient days attributable to Medicare Part A beneficiaries.

Each hospital's per FTE resident amount is calculated using data from a base year, increased by 1 percent for hospital cost reporting periods beginning on or after July 1, 1985, and updated in subsequent cost reporting periods by the change in the CPI. The number of FTE residents will be calculated at 100 percent after July 1, 1986, only for residents in their initial residency period (defined as the minimum number of years of formal training necessary to satisfy specialty requirements for board eligibility plus 1 year, but not exceeding 5 years). For residents beyond the initial period of residency, the weighting factor is 0.05 FTE. Foreign medical school graduates are not counted as FTE residents unless they have passed certain designated examinations.

(b) Cap on Approved FTE Resident Amounts.—The approved FTE resident amount for a hospital is equal to the amount determined for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage in the CPI during the 12-month period ending at that midpoint, with adjustments to reflect previous under- or over-estimations in the projected percentage change in the CPI.

(c) Recognition of Costs of Hospital Supported Nursing and Allied Health Education Programs as Allowable Reasonable Costs.—Pursuant to a regulation issued by the Secretary on January 3, 1984, the costs incurred by a hospital for the clinical costs of university-affiliated nursing and allied health education programs are not reimbursable under Medicare.

House bill

(a) Determination of Full-Time-Equivalent Residents.—For residents in their initial residency period, a primary care resident will be counted as 1.1 FTE; a resident specializing in internal medicine or pediatrics will be counted as 1.0 FTE; and all other residents will be counted as 0.75 FTE. For residents beyond the initial period of residency, the weighting factor is increased to 0.80 FTE. Primary care specialties include, family practice medicine, general internal medicine, or general pediatrics.

(b) Cap on Approve FTE Resident Amounts.—The approved FTE resident amount for a hospital is limited to 200 percent of the median of all approved FTE amounts for hospitals for cost reporting periods beginning in FY 1992, adjusted by the area wage index applicable to the hospital; decreasing to 175 percent in FY 1993, and to 150 percent in FY 1994.

(c) Recognition of Costs of Hospital Support Nursing and Allied Health Education Programs as Allowable Reasonable Costs.—No provision.

Senate amendment

(a) Determination of Full-Time-Equivalent Residents.—No provision.

(b) Cap on Approved FTE resident Amounts.—No provision.

(c) Recognition of Costs of Hospital Supported Nursing and Allied Health Education Programs as Allowable Reasonable Costs.—Provides for the reimbursement for clinical costs of university-affiliated nursing programs related to clinical training on a hospital's premises for a hospital supported education program incurred by a hospital or educational institution related to the hospital by common ownership or common control occurring on or after October 1, 1990. Such incurred costs are considered to be for approved educational activities.

Prohibits the Secretary from recouping any alleged overpayments relating to costs which would be allowable under this provision, and to the extent such recoupments have already occurred, to refund the money to the hospitals involved. Directs the Secretary to audit the hospitals involved to assure that costs of nursing and allied health programs were appropriately reported.

Conference agenda

The conference agreement includes the Senate amendment with modifications. The

conferees note that this provision is a further modification of section 6205 of OBRA 89. Payments for hospital-supported programs would be limited to those programs for which a hospital claimed costs and was paid, at least on an interim basis, (as allowable nursing and allied health education costs payable on a reasonable cost basis under section 1861(v)(1)) on its most recent cost reporting period ending on or before October 1, 1989. The conferees note that in the case of hospital-operated nursing and allied health education programs, the Secretary does not recognize costs incurred by a related educational organization as allowable educational costs since such costs are a redistribution of costs from the educational institution to the hospital. Although the provision provides for recognition of the costs incurred by a related educational organization for clinical training on the hospital's premises in the case of a hospital-supported program, the conferees intend that nothing in the provision should be construed as requiring the Secretary to modify his current policy in regard to the determination of reasonable costs for a hospital-operated program.

The conferees note that the Secretary has recently begun to implement the graduate medical education policy enacted in COBRA 85. The conferees expect the Secretary to recoup overpayments identified as a result of implementing this policy over a four year period, after a one year delay. The Secretary may not recoup more than 25 percent of the total amount of such overpayments from a hospital during each of four fiscal years. Nothing in this provision should be construed to require the Secretary to continue to make such overpayments to such hospitals after the initial identification of such an overpayment.

PART B

1. Reduction in Payments for Specific Categories of Physicians Services (Sections 12101-12104 and 4001-4005 and 4013(a) of House bill; Sections 6111-6114 and 6121(c) of Senate amendment)

Present law

(a) Overvalued Procedures.—

(1) Payment Reductions.—OBRA '86 provided for a ten percent across the board reduction in the prevailing charges for cataract surgery. OBRA '87 provided for reductions in the prevailing charges for twelve procedures by two percent plus a sliding scale reduction ranging between zero and fifteen percent. The overvalued procedures were identified by the Physician Payment Review Commission (PPRC).

OBRA '89 provided for reductions in 244 overvalued procedures. Procedures were considered overvalued if the national average prevailing charge exceeded the amount that would be paid under the Resource Based Relative Value Scale (RBRVS) by more than 10 percent, based on the recommendations of the PPRC. The reductions were equal to one-third of the amount that each procedure was overvalued in each locality, but not more than 15 percent, effective April 1, 1990.

The services considered by the PPRC included 379 codes of the 1,400 procedures studied in the first phase of the Harvard RBRVS study, and did not include any services not in the first phase of that study.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—The calculation of the reduced prevailing charge is based on a comparison with the "locally adjusted reduced prevailing amount." The "locally-adjusted reduced prevailing amount" for a locality is defined as the product of the "reduced national weighted average prevailing charge" and the "adjustment factor for the locality". The "reduced national weighted average prevailing charge" is defined as the national weighted average prevailing charge for the service in 1989 (as determined by the Secretary using the best available data) reduced by the applicable 1990 reduction percentage for the service. The "adjustment factor" for a locality as the sum of:

The 1990 practice expense ratio for the service multiplied by the geographic practice cost index value specified for the locality for 1990; and

1 minus the practice expense ratio.

(3) Unsurveyed Procedures.—Reductions are only applied to surveyed procedures.

(b) Payments for Radiology Services.—

(1) Payment Rules.—OBRA '87 required the establishment of a fee schedule for radiology services based on a relative value scale. Payments for radiology services are based on the lesser of 1) actual charges and 2) a local conversion factor times the number of relative value units assigned to the professional and technical components of each procedure. The fee schedule applies to services provided by radiologists (board-certified or board-eligible radiologists, or to physicians for whom one-half of their Medicare charges are for radiology services). OBRA '87 set the radiology payments at 97 percent of the amount allowed under the fee schedule.

An additional reduction in the radiology payments of 4 percent, effective April 1, 1990 was included in OBRA '89. OBRA '89 also eliminated the January 1990 MEI update. Portable x-ray services were exempt from this reduction.

OBRA '89 also provided that most radiology services billed by other physicians could not exceed the payment that would be made under the radiology fee schedule.

When the radiology fee schedule was established, the fee schedule was to be established on the basis of carrier service areas. This has been used by the Secretary to mean carrier localities.

(2) Certain Screening Services.—The radiology fee schedule includes professional and technical components for services.

(3) "Split Billing".—Prior to 1989, interventional radiology services were reimbursed based on a method of "split billing" of multiple codes. OBRA '89 authorized a one year extension of this practice.

(4) Comparability Requirement.—All services reimbursed on a reasonable charge basis may be reduced by carriers if the carrier's usual payment in its private business is less than the amount that would otherwise be payable under Medicare.

(5) Nuclear Medicine Services.—OBRA 1989 provided a partial exemption from the radiology fee schedule to physicians for whom nuclear medicine services constitute at least 80 percent of their Medicare billings. In 1990, one-third of the payment for nuclear medicine services is based on the fee schedule, with the remaining two-thirds based on 101 percent of the 1988 prevailing charge for the service. In 1991, payment is based on two-thirds of the fee schedule, one-third on the 1988 prevailing charge.

(c) Payments for Anesthesia Services.—OBRA '87 provided for the development and establishment of an anesthesiology fee schedule based on a relative value scale for services rendered on or after January 1, 1989. OBRA '86 provided for direct reimbursement for the services of certified registered nurse anesthetists (CRNAs).

OBRA '89 specified that the time units used in computing the relative value units under the relative value schedule would be based on the actual time, rather than rounded up to fifteen or thirty minute time units.

Anesthesiologists are reimbursed for the time they spend supervising anesthesia provided by CRNAs. When supervising multiple concurrent procedures by CRNAs, the amount payable to the anesthesiologists for base units is reduced by 10 percent for two concurrent procedures, 25 percent for three concurrent procedures, and 40 percent for four concurrent procedures.

(d) Pathology Services.—OBRA '87 provided for the development of a pathology fee schedule based on a relative value scale that could be used to pay for pathology services. The Secretary was required to submit a report to Congress on the pathology fee schedule. OBRA '89 provided that pathology services provided on or after January 1, 1991 would be paid based on the relative value scale developed by the Secretary.

House bill

(a) Overvalued Procedures.—

(1) Payment Reductions.—

Section 12101. Provides that prevailing charges for procedures identified as overvalued in OBRA '89 are to be reduced in 1991 by the same amount as such procedures were reduced under OBRA '89. The reduction equals an additional 1/3, or 1/2 of the remaining overvalued amount.

Corrects drafting error in OBRA 1989.

Section 4001 and 4013(a). Provides that the prevailing charges for procedures identified as overvalued in OBRA 1989 are to be reduced in 1991 after April 1, by 15 percent, or if less, one-third of the difference between the 1990 prevailing charge and the locally adjusted reduced prevailing amount.

Corrects drafting errors in OBRA 1989.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—

Section 12101. No provision.

Section 4001. Modifies the calculation for 1991 by specifying that the adjustment factor for a locality is the sum of:

The practice component percent, divided by 100, specified in the 1989 committee report, for the service, multiplied by the geographic practice cost index for the locality as specified in Table 1 of the August 1990 Supplement to the Geographic Medicare Economic Index: Alternative Approaches; and

One minus the practice component percent multiplied by the geographic physician work adjustment index value which is the geographic 1/4 work index specified for the locality in such table 1.

Provides that for 1991, in computing the national weighted average, the prevailing charge in each locality must first be deflated by this adjustment factor.

(3) Unsurveyed Procedures.—

Section 12101. Provides for a 5 percent reduction in 1991 in prevailing charges for nonsurveyed physicians services except for the following:

Radiology, anesthesia and physician pathology services and services identified as overvalued in OBRA 1989;

Primary care services, hospital visits, consultations, second and third surgical opinions, preventive medicine visits, ophthalmology visits, psychiatric services, emergency care facility services, and critical care services;

Partial, simple and subcutaneous mastectomy, tendon sheath injections and small

joint arthrocentesis, femoral fracture and trochanteric fracture treatments, endotracheal intubation, thoracentesis, thoracostomy, lobectomy, aneurysm repair, enterectomy, colectomy, cholecystectomy, cystourethroscopy, transurethral fulguration and resection, sacral laminectomy, tympanoplasty with mastoidectomy, and ophthalmoscopy.

Section 4005. Provides for a 2 percent reduction in the prevailing charge otherwise recognized for all physicians services (and 4 percent for services paid on a global basis) except for the following:

Radiology, anesthesia, and physician pathology services, and services identified as overpriced in OBRA 1989;

Primary care services, hospital inpatient medical services, consultations, preventive medicine visits, emergency care facility services, and critical care services;

Procedure codes specified in the conference report for OBRA 1990 for tendon sheath injections and small joint arthrocentesis, femoral fracture and trochanteric fracture treatments, endotracheal intubation, thoracentesis, thoracostomy, and transurethral fulguration and resection.

(b) Payments for Radiology Services.—

(1) Payment Rules.—

Section 12102. Provides that the local conversion factors used for payments under the radiology fee schedule are reduced by up to fifteen percent in 1991. The amount of the reduction in each locality is calculated as follows:

The national weighted average conversion factor that applied after April 1, 1990 is reduced by six percent;

A local reduced conversion factor is calculated as the sum of: (i) the product of the reduced national weighted average conversion factor attributable to the physician work component and the geographic work index value for the locality; and (ii) the product of the remaining portion of the reduced national weighted average conversion factor and the geographic work index value. In the case of a professional fee (or the professional component of a global fee), 80 percent of the conversion factor is considered attributable to the physician work component. In the case of a technical fee, the percentage is 35 percent. The adjustments are the same as those that would apply under RBRVS.

Provides that the local conversion factor is reduced to the adjusted local amount, up to a maximum reduction of fifteen percent. If the local conversion factor is less than the adjusted local amount, the local conversion factor would not change.

Specifies that the prevailing charges of radiology services not reimbursed under the fee schedule would be reduced to the fee schedule amount.

Specifies that the fee schedule is established on the basis of localities.

Section 4002. Provides that the reduction may be up to 8 percent. The calculation of the 1991 conversion factor used in a locality is determined as follows:

The Secretary is required to estimate the national weighted average of the conversion factors used in 1990. In making this calculation, the conversion factor in each locality is first deflated by the sum of ¾ of the specific 1990 locality index and ¼ of the fee schedule geographic index for the locality. This amount is to be reduced by 11 percent.

The Secretary is required to establish a 1990 locality index which reflects for each locality the ratio of the local conversion factor to the national weighted average.

The Secretary is required to establish a fee schedule geographic index value for each locality equal to the geographic adjustment factor which would be used under the fee schedule if: (1) the work, overhead, and malpractice expense indices contained in the published model fee schedule were used, and (2) the proportions that each component represented of the total relative value were the same as that specified for radiology in such model schedule.

The Secretary is to apply a locality conversion factor based on the product of: (1) the reduced national weighted average conversion factor; and (2) the sum of ¾ of the specific 1990 locality index and ¼ of the fee schedule geographic index for the locality.

Specifies that the geographic adjustment is phased-in such that in 1992, the 1990 locality index represents ½ in the calculation with the amount otherwise calculated under the fee schedule representing the other half. In 1993, ¾ is based on the fee schedule calculation and ¼ on the 1990 locality index.

Specifies that the fee schedule may be developed on a locality basis.

(2) Certain Screening Services.—

Section 12102. Reduces by 10 percent, effective for services furnished after Dec. 31, 1990, the relative values established for magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services.

Section 4002. No provision.

(3) "Split Billing".—

Section 12102. No provision.

Section 4002. Extends the "split billing" provision for interventional radiology services for an additional year, until January 1, 1992.

(4) Comparability Requirement.—

Section 12102. No provision.

Section 4002. Prohibits carriers from applying the comparable fee rule to services under the radiology fee schedule.

(5) Nuclear Medicine Services.—

Section 12102. No provision.

Section 4002. Provides that the 1990 payment rules apply in 1991.

(c) Payments for Anesthesia Services.—

Section 12103. Reduces the local conversion factors used for payments for anesthesia services by up to fifteen percent in 1991. The amount of the reduction in each locality is calculated as follows:

The national weighted average conversion factor that applied after April 1, 1990 is reduced by six percent;

A local reduced conversion factor is calculated as the sum of: (i) the product of the reduced national weighted average conversion factor attributable to the physician work component and the geographic work index value for the locality; and (ii) the product of the remaining portion of the reduced national weighted average conversion factor and the geographic practice cost index value. Seventy percent of the conversion factor is considered attributable to the physician work component. The adjustments are the same as those that would apply under RBRVS.

Provides that the local conversion factor is reduced to the adjusted local amount, up to a maximum reduction of fifteen percent. If the local conversion factor is less than the adjusted local amount, the local conversion factor would not change.

Extends the reduction in payments to anesthesiologists for supervising multiple concurrent services by CRNAs through December 31, 1995.

Section 4003. Provides that the reduction may be up to 15 percent. The Secretary is required to calculate a 1991 conversion factor to be used in a locality as follows:

The Secretary is required to estimate the national weighted average of conversion factors used in 1990. This amount is first to be deflated by the sum of ½ of the specific 1990 locality index and ½ of the fee schedule geographic index for the locality. This amount is reduced by 7 percent.

The Secretary is required to establish a 1990 index which reflects for each locality the ratio of the local conversion factor to the national weighted average.

The Secretary is required to establish an index value for each locality equal to the geographic adjustment factor which would be used under the fee schedule if: (1) the work, overhead, and malpractice expense indices contained in the published model fee schedule were used, and (2) the proportion of the total relative value for the work component was 55.9 percent, for the practice expense component—33.4 percent, and for the malpractice component—10.7 percent.

The Secretary is to apply a locality conversion factor based on the product of: (1) the reduced national weighted average conversion factor; and (2) the sum of ½ of the 1990 index for the locality and ½ of the RVS index value.

Extends the provision providing for reduction for supervision of concurrent services through December 31, 1995.

Contains no provision relating to the comparable fee rule.

(d) Pathology Services.—

Section 12104. Repeals the requirement to implement the pathology fee schedule and the requirement for the Secretary to submit a report to Congress on the pathology fee schedule.

Specifies that the prevailing charge for anatomic pathology services furnished on or after January 1, 1991 is to be 94 percent of the amount otherwise determined for 1990 after April 1 (taking into account OBRA 1990 amendments).

Section 4004. Repeals requirement to implement a pathology fee schedule but not the one requiring the Secretary to submit a report on a pathology fee schedule.

Specifies that the prevailing charge for physician pathology services furnished during 1991, is 93 percent of the amount used in 1990.

Effective date:

Sections 12101-12104. (a) Apply to services furnished after December 1990, except for the OBRA 1989 technical correction which applies to services furnished after March 1990. (b) Effective January 1, 1991, except for the provision relating to payment localities which is effective as if included in OBRA 1987. (c) and (d) Enactment.

Sections 4001-4005 and 4013(a). (a) and (c) Enactment. (b) Except as otherwise provided, applies to services furnished on or after January 1, 1991; provision authorizing locality adjustments to fee schedules applies to services performed on or after April 1, 1989. (d) Applies to services furnished on or after January 1, 1991.

Senate Amendment

(a) Overvalued Procedures.—

(1) Payment Reductions.—Similar to Section 4001.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—Modifies the calculation for 1991 by specifying that the adjustment factor for a locality is the sum of:

The 1990 practice expense component percent (divided by 100) for the service multi-

plied by the geographic practice cost index value specified for the locality for 1990; and

1 minus the practice expense component percent (divided by 100) for the service multiplied by the geographic work index value specified in the published model fee schedule.

(3) Unsurveyed Procedures.—Similar to WM provision except provides for a 4 percent reduction. Does not include second and third surgical opinions, ophthalmology visits, or psychiatric services in the excluded list.

(b) Payments for Radiology Services.—

(1) Payment Rules.—

Similar to Section 12102 except (1) the Secretary is required to adjust the conversion factor for each locality by the adjustment factor for purposes of determining the national weighted average conversion factor; (2) the reduction in the national weighted average conversion factor is 12 percent; (3) the maximum reduction is 8 percent; and (4) in applying this calculation to global fees, the conversion factor to be applied is the sum of the conversion components for the professional and technical components computed separately.

Specifies that the prevailing charges of radiology services not reimbursed under the fee schedule are to be reduced to the fee schedule amount with the exception of nuclear medicine services and services subject to the OBRA 1989 provision limiting prevailing charges for services furnished by more than one specialty.

Provides that for the purposes of determining radiology payments in 1991 (and the adjusted historical payment basis), the Secretary is to establish a locality specific conversion factor floor that is equal to 80 percent of the national weighted average of the conversion factors used in 1990 (beginning in April) adjusted for the locality as specified above. The conversion factor applied in a locality in 1991 (and the adjusted historical payment basis) may not be less than this floor.

(2) Certain Screening Services.—No provision.

(3) "Split Billing".—Identical to Section 4002.

(4) Comparability Requirement.—Prohibits carriers from applying the comparable fee rule to services under the radiology fee schedule.

Prohibits inherent reasonableness adjustments under the radiology fee schedule.

(5) Nuclear Medicine Services.—Similar to Section 4002. Further, provides that the special payment amounts for 1990 (after Mar. 31) and 1991 are to be used instead of the weighted average prevailing charge amount in the calculations of the adjusted historical payment basis.

Provides that for purposes of determining the fee schedule amount for nuclear medicine services furnished on or after Jan. 1, 1992, the Secretary is to determine relative values in accordance with the methodology used for other physicians services; relative values developed under the radiology fee schedule may not be applied.

(c) Payments for Anesthesia Services.—Reduces the local conversion factors used for payments for anesthesia services by up to fifteen percent in 1991. The amount of the reduction in each locality is calculated as follows:

The national weighted average conversion factor that applied after April 1, 1990 is calculated. For this calculation, the Secretary is required to adjust the conversion factor for each locality by the adjustment factor;

The national weighted average conversion factor is reduced by four percent;

A local reduced conversion factor is calculated as the sum of: (i) the product of the portion of the reduced national average conversion factor attributable to the physician work and the geographic work index value for the locality published in the model fee schedule; and (ii) the product of the remaining portion of the reduced national weighted average conversion factor and the geographic practice cost index value specified for the locality. Seventy percent of the conversion factor is considered attributable to the physician work component.

Provides that for the purposes of determining physician anesthesia payments in 1991 (and the adjusted historical payment basis for 1992-1994), the Secretary is to establish a locality specific conversion factor floor that is equal to 75 percent of the national weighted average of the conversion factors used in 1990 (beginning in April) adjusted for the locality as specified above. The conversion factor applied in a locality in 1991 (and the adjusted historical payment basis) may not be less than this floor.

Extends the reduction in payments to anesthesiologists for supervising multiple concurrent services by CRNAs through December 31, 1995.

Contains no provision relating to the comparable fee rule.

(d) Pathology Services.—Similar to WM provision except the prevailing charge is equal to 96 percent of the 1990 prevailing charge.

Limits reductions in the prevailing charge for the technical and professional components of an anatomic pathology service furnished by a physician through an independent laboratory. The reduction cannot reduce the prevailing charge below 115 percent of the prevailing charge for the professional component of the service when provided by a hospital-based physician. For purposes of the limit, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians office.

Requires the Secretary to provide an appropriate payment adjustment to reflect the technical component of furnishing physician pathology services through an independent laboratory. The adjustment applies to services furnished on or after Jan. 1, 1992. For purposes of the adjustment, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians office.

Effective date: Enactment.

Conference agreement

B.1

(a) Overpriced Procedures.

(1) Payment Reductions.—The Conference agreement includes Section 12101 of the House provision.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—The Conference agreement does not include this provision.

(3) Unsurveyed Procedures.—The conference agreement includes Section 12101 of the House bill with an amendment deleted certain procedures from the excluded list. Technical procedures which are subject to the new limitation on the technical component for diagnostic tests are excluded from the reduction under this provision. Further, the reduction in prevailing charges for unsurveyed procedures is set at 6.5 percent.

(b) Payments for Radiology Services.—

(1) Payment Rules.—The conference agreement includes the Senate provision with an amendment. The agreement provides that the amount of the conversion factor in each locality is calculated as follows. The Secretary is to estimate the national weighted average conversion factor for services furnished in 1990 and reduce that amount by 13 percent. Prior to calculating the national weighted average, the conversion factor in each locality is first to be deflated by the sum of ½ of the locally adjusted amount and ½ of the GPCI adjusted amount.

The Secretary is required to establish a local index for each locality. For 1991, the conversion factor applied in a locality to the professional or technical component of a service is the sum of ½ of the locally adjusted amount and ½ of the GPIC-adjusted amount.

The locally-adjusted amount is defined as the product of the reduced national weight average conversion factor and the 1990 index established for the locality.

The GPCI-adjusted amount is defined as the sum of two items. The first represents the product of the portion of the reduced national weighted average conversion factor attributable to physician work and the geographic index value for the service as published in the model fee schedule. The second represents the product of the remaining portion of the reduced national average conversion factor and the geographic practice cost index value for the locality.

The agreement specifies that in applying these factors to the professional component of a service, 80 percent is attributable to physician work. With respect to the technical component, 0 percent is attributable to physician work.

The agreement provides that the maximum adjustment in the conversion factor is 9.5 percent.

The agreement further provides for a special transition rule to the fee schedule for radiology services.

(2) Certain Screening Services.—The conference agreement includes the House provision with an amendment specifying that the amount otherwise payable for specified services is reduced by ten percent.

(3) Spit billing.—The conference agreement includes the Senate amendment.

(4) Comparability Requirement.—The conference agreement includes the Senate amendment.

(5) Nuclear Medicine Services.—The conference agreement includes the Senate amendment with an amendment striking the language relating to determination of relative values for 1992 and thereafter.

(c) Payments for Anesthesiology Services.—The conference agreement includes the Senate amendment with an amendment specifying that the reduction in the national weighted average conversion factor is seven percent.

(d) Pathology Services.—The Conference agreement includes Section 4004 of the House provision with an amendment providing a limitation on reductions for services furnished by a physician through an independent laboratory to the extent the reduction would reduce the prevailing charge below 115 percent of the prevailing charge for the professional component of such physician when furnished by a hospital-based physician in the same locality. Require the Secretary to provide an appropriate adjustment to reflect the technical component for furnishing physician pathology service through an independent laboratory.

2. Payments for Physicians Services (Section 12105 and 4006 of House bill; Section 6115 of Senate amendment)

Present law

(a) Update.—Customary and prevailing charge screens, fee schedules and limits on actual charges are scheduled to be updated on January 1 of each year. In general, prevailing charges are updated by the percentage change in the Medicare Economic Index (MEI).

OBRA '89 delayed the annual update to April 1, 1990. Primary care services were updated by 4.2 percent, the full amount of the MEI. The update for other services was two percent, except for radiology, anesthesiology, and services identified in OBRA '89 as overvalued which were not updated.

(b) Physician Medicare Volume Performance Standards.—OBRA '89 established a system of Medicare Volume Performance Standards (MVPSs) which is used for calculating the annual update in fees (conversion factor) for physician and certain other Part B services on or after January 1, 1992. Under this system, Congress would enact a specific level of increase in expenditures for a subsequent calendar year. In the absence of Congressional action, the rate of increase in expenditures is determined by a formula specified in law. The formula sets the allowed increase in expenditures under the MVPS equal to the sum of: (1) the percentage increase in fees; (2) the increase in number of Part B enrollees, excluding HMO risk-contracting enrollees; (3) an estimate of the historical rate of increase in volume of services; (4) any change in expected payments due to legislation or regulations; and (5) reduced by an amount equal to 0.5 percent for the year 1991, 1 percent for 1992, 1.5 percent for 1993, and 2 percent thereafter.

The update or conversion factor for the second calendar year beginning after the close of the year for which a volume performance standard is set is equal the MEI, adjusted by the amount by which expenditures exceed or are under the standard, subject to certain limits specified in law.

Beginning in 1990, the MVPS provides for two separate standards to be established, one for surgical services, and one for all others.

(c) Revise Authority for PPRC.—The Physician Payment Review Commission (PPRC) was established in COBRA. Current law provides that the Commission's membership includes a variety of health professionals, researchers and representatives of consumers and the elderly.

Since it was established, the primary responsibility of the Commission has been the development of a physician payment reform proposal. Congress enacted payment reform in OBRA '89.

(d) Transition to the RBRVS for Primary Care Services.—The prevailing charges for primary care services are subject to a lower limit equal to 50 percent of the national average prevailing charge for participating physicians for such services. This lower limit is known as the "primary care floor."

For all physician services, the transition to the RBRVS beginning in 1992 is based on an amount known as the "adjusted historical payment basis." This is defined as the weighted average prevailing charge applied in the locality in 1991, adjusted to reflect payments for services at amounts below the prevailing charge. The historical payment basis is determined without regard to physician specialty.

House bill

(a) Update.—

Section 12105. Specifies that the MEI update that applies in 1991 is equal to the full MEI for primary care services, and 0 percent for all other services. For 1992, the MEI otherwise applicable is reduced by 0.4 percent.

Section 4006. Specifies that the MEI update for 1991 is equal to the full MEI for primary care services and 0 percent for all other services.

(b) Physician Medicare Volume Performance Standards.—

Section 12105. Specifies that the MVPS for surgical services, non-surgical services, and overall is set by a formula equal to the sum of the percentage growth in Part B enrolles (excluding HMO enrolles), the historical percentage growth in volume, and the percentage change in expected expenditures due to the provisions included in OBRA 1990 and any regulations issued by the Department which would effect the growth in expenditures for services covered by the MVPS system, minus an adjustment factor.

Provides that the same historical rates of growth in volume and growth in number of beneficiaries are used for surgical, nonsurgical, and overall categories of services. The adjustment factor is minus 1 percent in 1991, minus 1.5 percent in 1992, minus 2 percent in 1993, 1994, and 1995.

Specifies that the component reflecting changes in expenditures due to OBRA 1990 provisions varies between surgical and nonsurgical categories by the relative impact of the bill on expenditures for these two categories.

Section 4006. No provision.

(c) Revise Authority for PPRC.—

Section 12105. Revises PPRC responsibilities. Repeals requirements relating to development of a relative value scale and requirements for PPRC to consider various issues related to the reasonable charge payment system.

Amends current provision requiring PPRC to consider policies under Medicare to include: (1) major issues in the implementation of the RBRVS; (2) issues relating to further development of the volume performance standard system, including continuing development of State-based programs; (3) payment incentives to increase access to primary care and other services in innercity and rural areas, including Federal policies regarding the level of Medicaid payments to physicians; (4) the number and types of physicians being trained, including consideration of Medicare graduate medical education policy; (5) utilization review and quality of care, including revisions to the PRO and other Medicare quality assurance programs, and physician licensing and certification; and (6) options to help constrain the costs of health care to employers, including incentives under Medicare. In addition, requires PPRC to make recommendations regarding reforms in medical malpractice and physician licensing and certification.

Modifies PPRC membership provision to indicate that the professions listed for membership are illustrative.

Section 4006. No provision.

(d) Transition to the RBRVS for Primary Care Services.—

Section 12105. Increases the primary care floor to 75 percent for services rendered in 1991. Provides that for the purpose of determining the fees for primary care services increased under this provision after 1991, the historical payment basis will be determined without regard to the increase to 75 percent in the primary care floor. However, the fees for services whose payments are increased under this provision in 1991 may not be lower in 1992 than they were in 1991 after the increase in the floor.

Section 4006. Similar provision.

Effective date:

Section 12105. Effective for services provided on or after January 1, 1991, except (c) Enactment.

Section 4006. Applies to services furnished on or after January 1, 1991.

Senate amendment

(a) Update.—Specifies that the MEI update that applies April 1, 1991 is equal to the full MEI for primary care services and 0 percent for other services.

Specifies that in determining the customary charges for the period beginning April 1, 1991, the Secretary may not recognize any amounts of 1990 actual charges that exceed the customary charges for the nine month period beginning April 1, 1990. This limitation shall not prevent an increase in the percentage limit applicable to a new physician in a case where such new physician was subject to new physician limits in 1990.

(b) Physician Medicare Volume Performance Standards.—Provides that the adjustment factor is minus 1 percent in FY 1991, 1.5 percent in FY 1992, and 2.0 percent for each succeeding fiscal year. Specifies that the MVPS for 1991 is the sum of: (1) the Secretary's estimate of the rate of increase in expenditures for portions of the calendar year occurring in such fiscal year (determined without regard to OBRA 1990); and (2) the Secretary's estimate of the percentage increase or decrease in expenditures in the category of services involved that will result from changes in law or regulations. This sum is reduced by 2 percentage points.

(c) Revise Authority for PPRC.—No provision.

(d) Transition to the RBRVS for Primary Care Services.—No provision.

Effective date: (a) and (b) Enactment.

Conference agreement

(a) Update.—The Conference agreement includes the Senate amendment with an amendment which provides for a reduction of 4/10 of a percentages point in the update for 1992. The Conferees note that the freeze provision does not apply to ambulance services.

(b) Physician Medicare Volume Performance Standard.—The Conference agreement includes the Senate amendment with an amendment to assure this provision will not result in a lower or higher update for 1993 than would apply in the absence of this provision.

(c) Revise Authority for PPRC.—The Conference agreement includes the House provision with an amendment requiring the PPRC to comment on the President's budget recommendations for physician services.

(d) Transition to RBRVS for Primary Care Services.—The Conference agreement includes the House provision with an amendment which sets the prevailing charge for primary care services at 60 percent. The agreement does not include the hold harmless provision. The provision is implemented in a budget neutral manner.

3. Other Provisions Relating to Payment for Physician Services (Section 12106-12108 and 4007-4012 of House bill; Sections 6116-6120, 6122-6125 of Senate amendment)

Present law

(a) New Physicians.—OBRA '87 provided that the customary charge screens of new physicians are set at a level no higher than eighty percent of the prevailing charge, as limited by the MEI, for the first year the physician is practicing in an area. The provision is not applicable to primary care services or services furnished in a rural area designated as a health manpower shortage area.

OBRA '89 provided that in the second year of practice, a new physician's customary charge is limited to 85 percent of the prevailing amount. The limit does not apply to primary care services or to services furnished in a rural health manpower shortage area.

These limits expire on December 31, 1990.

(b) Payments for Assistants at Surgery.—Under certain circumstances, physicians are paid for serving as assistants at surgery. Typically, the prevailing charge for acting as an assistant is limited to 20 percent of the prevailing charge for the procedure that applies to the primary surgeon.

Payments for physician assistants serving as assistants at surgery cannot exceed 65 percent of the amount that would otherwise be recognized if performed by a physician serving as an assistant at surgery.

(c) Interpretation of EKGs.—Payments are not made for the interpretation of simple diagnostic tests. The payment for the interpretation is presumed to be included in the payment for the hospital or office visit. EKGs are the exception to this rule; separate payments are currently made for interpretation of these tests.

(d) Payment for Technical Component of Diagnostic Tests.—Payment for diagnostic tests may be made under Part B on the basis of reasonable charges.

(e) Reciprocal Billing Arrangements.—Some carriers have recognized billing arrangements in which a physician occasionally covers for another physician. However, HCFA has considered prohibiting recognition of such arrangements.

(f) Aggregation Rule.—Hearings on Part B claims are not available unless the amount in controversy exceeds $500 and judicial review is not available unless the aggregate amount in controversy exceeds $1,000.

(g) Practicing Physicians Advisory Council.—No provision.

(h) Medical Review Screens.—Medical review screens used by carriers are generally not publicized.

(i) Advance Determinations by Carriers.—Medicare carriers review Part B claims in order to determine whether the item or service is covered by Medicare and whether or not it is medically necessary. In most cases the review is retrospective.

(j) Limitation on Beneficiary Liability.—Current law establishes a limit on actual charges of nonparticipating physicians known as the maximum allowable actual charge. These limits vary from physician to physician based on how much a physicians actual charge for a particular service exceeded Medicare's allowed amount in a base period.

OBRA 1989 established a new physician payment methodology which will be phased in beginning in 1992. At the same time it established a new method for calculating the limit on actual charges for nonparticipating physicians, beginning in 1991. In 1991, the limit on actual charges for a physician is the same percentage (not to exceed 25 percent) above the 1991 recognized payment amount as his/her 1990 MAAC was above the 1990 recognized payment amount. Because of differing effective dates, total allowed charges for some services for which payments will increase under the new system—primarily evaluation and management services—will be lower in 1991 than in either 1990 or 1992.

(k) Statewide Fee Schedule Areas.—The day-to-day functions of reviewing Part B claims and paying benefits are performed by entities known as carriers.

Carriers are responsible for delineating prevailing charge localities. There are 238 prevailing charge localities nationwide; there is considerable variation in the size and configuration of these localities.

Under the physician payment reform provisions, current localities would be used. However, OBRA 1989 required PPRC to report to Congress by July 1, 1991 on the appropriateness of retaining current locality designations, changing to statewide designations, or adopting Metropolitan Statistical Areas or other payment areas for payment purposes.

(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—OBRA 1987 required the establishment of separate utilization review screens for physician visits in rehabilitation hospitals.

(m) Study of Payment Adjustment for Physicians Furnishing a High Volume of a Particular Procedure.—No provision.

House Bill

(a) New Physicians.—

Section 12106. Extends the current provision for 1991 to specify that the customary charge limits are 80/85/90/95 percent of the prevailing charge in the first through fourth years of practice. Provides that beginning on January 1, 1992, these percentage limits for new physicians in their first through fourth years of practice apply to the amounts recognized under the RBRVS.

Section 4007. Similar provision except continues under RBRVS the exception for primary care services and services furnished in a rural area defined as a health manpower shortage area. Extends application of the provision to professional services furnished by health care practitioners. A health care practitioner is a physician assistant, certified nurse-midwife, qualified psychologist, nurse practitioner, clinical social worker, physical therapist, occupational therapist, respiratory therapist, certified registered nurse anesthetist, or any other practitioner specified by the Secretary. The first year of practice is defined as the first year during which Medicare payments are made to the practitioner during the first six months.

Requires the Secretary in computing the conversion factor for 1992, to assume that these changes applied to all physicians services furnished during the year notwithstanding the effective dates.

(b) Payments for Assistant at Surgery Services.—

Section 12107. Requires the Secretary to determine, based on the most recent available data, for each class of surgical procedure, the national average percentage of such procedures performed under Part B which involve the use of an assistant at surgery. Maintains the current policy for a physician acting as an assistant at surgery for a procedure that involves the use of an assistant at least 50 percent of the time. Provides that when an assistant is used in 25 percent or more of such cases but less than 50 percent nationwide, the payment equals 75 percent of the payment basis that would otherwise apply. When an assistant is used in 5 percent or more of such cases but less than 25 percent nationwide, the payment equals 75 percent of the payment basis that would otherwise apply; however, such payments may only be made if the use of an assistant is approved in advance by the peer review organization. Payment may not be made for an assistant at surgery if an assistant is used in fewer than 5 percent of cases.

Section 4007. No provision

(c) Interpretation of EKGs.—

Section 12108. Provides that payments for the interpretation of EKGs are to be treated in the same manner as the payment for the interpretation of other simple diagnostic tests under RBRVS, effective Jan. 1, 1992. Separate payments would not be made for interpretation of these tests, except when the EKG is not performed in conjunction with an office or hospital visit. Payment would continue to be made for the technical component of EKGs performed on an outpatient basis.

Excludes payments for EKG interpretations performed in conjunction with an office visit, or for inpatients, from the expenditure base used in determining the initial budget neutral conversion factor for the RBRVS.

Section 4007. No provision.

(d) Payment for Technical Component of Diagnostic Tests.—

Section 12108. No provision.

Section 4008. Provides that when Part B payments are made for the technical, as distinct from the professional, component of diagnostic tests the reasonable charge (or other payment basis) may not exceed the national median of such charges (or payment basis) for such tests. The provision does not apply to clinical diagnostic laboratory tests and radiology services.

(e) Reciprocal Billing Arrangements.—

Section 12108. No provision.

Section 4009. Provides that payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided on an occasional, reciprocal basis by another physician in his or her absence. Such payments may only be made if: (1) the first physician is unavailable to provide the services; (2) the individual has arranged to receive the services from the first physician; (3) the claim form includes the first physician's identifier number and indicates that it is for a "covered visit service;" and (4) the visit services are not provided by the second physician over a continuous period of longer than 30 days.

(f) Aggregation Rule.—

Section 12108. No provision.

Section 4010. Permits aggregation of claims for services furnished in the same 12-month period. If the claims involve common issues of law and fact relating to physicians services furnished in the same fee schedule area to two or more patients by two or more physicians, the aggregate amount in controversy must exceed $1,000 for a hearing and $2,500 for judicial review.

(g) Practicing Physicians Advisory Council.—

Section 12108. No provision.

Section 4011. Establishes a 15-member Practicing Physicians Advisory Council appointed by the Secretary. Members must have submitted at least 250 physicians services claims in the preceding year. At least 11 members must be MDs or DOs. Members

are to include both participating and nonparticipating physicians and physicians practicing in rural and underserved areas. The Secretary is to consult with the Council concerning proposed changes in regulations and carrier manual instructions. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes. The Council is to meet at least once each calendar quarter; members are to be paid in the same manner as other advisory council members.

(h) Medical Review Screens.—

Section 12108. No provision.

Section 4012. Requires carriers to release medical review screens and associated screening parameters applicable for determinations of reasonable and necessary, prior to making payment denials for otherwise covered physicians services.

(i) Advance Determinations by Carriers.— No provision.

(j) Limitation on Beneficiary Liability.— No provision.

*(k) Statewide Fee Schedule Areas.—*No provision.

*(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—*No provision.

(m) Study of Payment Adjustment for Physicians Furnishing a High Volume of a Particular Procedure.—No provision.

Effective date.—

Sections 12106—12108, (a) Provisions concerning the third and fourth year of practice applies to services furnished in 1991 which were first subject to the limits in 1989 or thereafter; provisions relating to RBRVS apply to services furnished after 1991. (b) Applies to services furnished on or after January 1, 1991.(c) Effective January 1, 1992.

Sections 4007—4012. (a) Applies to services furnished after 1990, except that: (1) the provisions concerning the third and fourth year of practice apply only to physicians services furnished after 1991 and 1992; and (2) the provisions concerning the second, third, and fourth year of practice apply only to physicians services furnished after 1991, 1992, and 1993. (d) Applies to tests furnished on or after January 1, 1991. (e) and (f) Applies to services furnished on or after the first day of the first month beginning more than 60 days after enactment. (g) Enactment (h) Applies to denial notices sent on or after January 1, 1991.

Senate amendment

(a) New Physicians.—Extends the current provision to specify that the customary charge limits are 80/85/90/95 percent of the prevailing charge in the first through fourth years of practice. Applies similar treatment to new physicians under RBRVS.

(b) Payments for Assistant at Surgery Services.—Specifies that if payment is made separately for a physician serving as an assistant-at-surgery, such payment may not exceed 16 percent of the payment for the global surgical service involved.

(c) Interpretation of EKGs.—No provision.

(d) Payment for Technical Component of Diagnostic Tests.—No provision.

(e) Reciprocal Billing Arrangements.— Provides that payment may be made in the case of services furnished by a physician other than the one submitting the claim either: (1) during a period not exceeding 14 continuous days in the case of an informal reciprocal arrangement; or (b) 90 continuous days (or longer, as specified by the Secretary) in the case of per diem or other fee-for-time compensation. The claim must identify the physician furnishing the service.

(f) Aggregation Rule.—No provision.

(g) Practicing Physicians Advisory Council.—No provision.

(h) Medical Review Screens.—Requires the Secretary to conduct a study of the effect of the release of prepayment medical review screen parameters on physician billings. The study is to be based on release of the same parameter or parameters at a minimum of six carrier sites. The Secretary is to report to Congress on the study by Oct. 1, 1992.

(i) Advance Determinations by Carriers.— Requires the carriers to make advance medical necessity determinations for expensive items and services specified by the Secretary.

Authorizes the carriers to make advance medical necessity determinations if:

the item or service is furnished or ordered by a physician for whom a substantial number of items and services have been disallowed, or for whom a pattern of overutilization has been identified by the carrier and the physician has been so informed and given an opportunity to respond;

the carrier notifies the physician as to the kinds of items and services that will be subject to advance determinations, and

the carrier provides a general notice for entities likely to furnish the kinds of items or services described in such notice that are ordered by the physician.

Authorizes the carrier to make advance medical necessity determinations if:

the item or service is furnished by an entity for whom a substantial number of items or services have been disallowed, or a pattern of overutilization resulting from the business practices of the entity has been identified by the carrier and the entity has been so informed and given an opportunity to respond; and

the carrier notifies the entity of the kinds of items that will be subject to advance determinations.

Provides that these provisions do not apply to items and services under review by a PRO, to emergency cases or under such other circumstances as specified by the Secretary.

(j) Limitation on Beneficiary Liability.— Provides that the limit in 1991 for evaluation and management services provided by a nonparticipating physician is the same percentage (not to exceed 50 percent) above the 1991 recognized payment amount as the physician's 1990 MAAC was above the 1990 recognized payment amount.

(k) Statewide Fee Schedule Areas.—Requires the Secretary, under certain circumstances, to treat a State as a single fee schedule area for purposes of determining both the adjusted historical payment basis and the fee schedule amount for physicians services furnished on or after January 1, 1992. The State on or before April 1, 1991, must have written support for treatment of the State as a single fee schedule area from each member of its Congressional delegation and from organizations representing urban and rural physicians in the State. The Secretary may provide that its treatment of a State as a single fee schedule area will ensure that total payments for physicians services in 1992 are budget neutral compared to what they would otherwise have been.

Specifies that this provision may not be construed as limiting subsequent modifications to the locality structure through otherwise applicable administrative procedures.

(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—Requires the Secretary, within 180 days of enactment, to revise the screens to apply to all physician visits to an inpatient of a rehabilitation hospital or unit. The screen is to reflect a standard of physician care recognized for inpatients of acute care hospitals and units, particularly with respect to the frequency of visits by an attending physician. The Secretary is to provide that this provision be implemented in a budget neutral manner.

(m) Study of Payment Adjustment for Physicians Furnishing a High Volume of a Particular Procedure.—Requires PPRC to conduct a study of the feasibility and desirability of adjusting payments to individual physicians performing a high volume of a particular procedure in order to reflect economies of scale. Taking into account the potential impact on costs and access the Commission is to report on: (i) types of services or procedures for which such an adjustment would be appropriate; (ii) options for implementing such an adjustment; (iii) appropriate exceptions to such an adjustment; and (iv) appropriate safeguards to ensure access by beneficiaries to necessary services. The Commission is required to report by July 1, 1992 to the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance.

Effective date: (a) Applies to services furnished on or after Jan. 1, 1991. (b) Applies with respect to services furnished on or after January 1, 1991. (e) Applies to services furnished on or after the date of enactment. (i) Becomes effective with respect to items and services furnished on or after January 1, 1991. (j), (k), (l) and (m) Enactment.

Conference Agreement

B.3

(a) New Physicians.—The Conference agreement includes Section 4007 of the House provision.

(b) Assistants at Surgery.—The Conference agreement includes the Senate amendment with an amendment which precludes payments for assistants at surgery where such assistant is used in less than five percent of the cases.

(c) Interpretation of EKG's.—The Conference agreement includes the House provision with a clarification specifying that a routine electrocardiogram interpretation covered by this provision is one specified under one of the following HCPCS codes: 93000, 93010, 93040, 93041, and 93042 (and any changes in these codes that may result). The provision is effective in 1992.

(d) Payment for Technical Component of Diagnostic Tests.—The conference agreement includes the House provision. The Conferees note that if a procedure is subject to a limitation under the provision reducing payments for overvalued procedures, it is not subject to the limitations under this provision. Further, if a procedure is subject to a limitation under this provision, it cannot be subject to any limitation under the provision reducing payments for unsurveyed procedures.

(e) Reciprocal Billing Arrangements.—The Conference agreement includes the House provision with an amendment deleting the mandatory assignment requirement and a modification to change the continuous day limit to 60 days.

(f) Aggregation Rule.—The conference agreement includes the House provision with an amendment to provide for a study of the issue of the aggregation of appeals.

(g) Practicing Physicians Advisory Council.—The Conference agreement includes the House provision with an amendment to clarify the role of the advisory council.

(h) Medical Review Screens.—The conference agreement includes the Senate amendment.

(i) Advance Determinations by Carriers.—The conference agreement does not include the Senate amendment.

(j) Limitation on Beneficiary Liability.—The Conference agreement includes the Senate amendment with an amendment setting the maximum MAAC at 140 percent of the recognized charge for 1991 for evaluation and management services.

(k) Statewide Fee Schedule Areas.—The Conference agreement includes the Senate amendment with an amendment with an amendment specifying that the provision applies to Oklahoma and Nebraska only.

(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—The Conference agreement includes the Senate amendment with an amendment to require the Secretary to issue guidelines to assure that the level of review required when the new visit screen limit has been reached is to be uniform across localities.

(m) Study of Payment Adjustments for Physicians Furnishing a High Volume of a Particular Procedure.—The Conference agreement does not include the provision.

The Conference agreement further requires the Secretary to conduct a study of regional variations in impact of Medicare physician payment reform. The study is to examine factors contributing to variations in reasonable charges which are not attributable to variations in practice costs; the impact on access to services in areas that experience disproportionately large payment reductions under the fee schedule; and appropriate adjustments or modifications in the transition to or determining payments under the fee schedule.

4. Payments for Hospital Outpatient Services (Sections 12111 and 4021 of the House Bill and Section 6130 of the Senate amendment)

Present law

(a) Capital.—For hospital outpatient department services which are paid either on a reasonable cost basis or the lesser of reasonable costs and a blend of reasonable costs and charges, Medicare paid for hospital capital allocated to the outpatient department of the hospital at 100 percent of costs prior to fiscal year 1990.

OBRA '89 reduced payments for capital costs for outpatient services by 15 percent for portions of cost reporting periods beginning in fiscal year 1990. The reduction also applied to capital related to services that are reimbursed based on a blended amount; these services include radiology, diagnostic procedures, and outpatient surgery. In the case of such blends or limits based on blends, the reduction applied only to the cost portion of the blended amount.

Outpatient capital costs of sole community hospitals were exempt from the reduction in OBRA '89.

(b) Outpatient Services on a Cost Related Basis.—Services in hospital outpatient departments are reimbursed under a variety of payment methodologies. Laboratory services and durable medical equipment are paid based on fee schedules; outpatient dialysis services are paid based on a prospective rate; and ambulatory surgical services and radiology services are subject to aggregate cost limits. Most other services are paid on a cost related basis.

(c) Development of Prospective Payment Proposal.—No provision.

(d) Ambulatory Surgery in Eye, and Eye and Ear Specialty Hospitals.—Payments to an eye, or eye and ear specialty hospital for ambulatory surgery that makes application to the Secretary in which it demonstrates: (1) that it received more than 30 percent of its total revenue from outpatient services; and (2) was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987 are made on the basis of a blend that consists of 75 percent of the hospital's costs and 25 percent of the applicable free-standing ambulatory surgical center rate. This blend will change to the 50/50 blend that applies to ambulatory surgery in all other hospitals for cost reporting periods that begin after fiscal year 1990.

(e) Payments for Ambulatory Surgery and Radiology.—Reimbursement for ambulatory surgery services performed in outpatient hospital departments are reimbursed the lesser of: (1) reasonable costs or customary charges, less 20 percent of hospitals' reasonable charges, but not exceeding 80 percent of reasonable costs; or (2) the "blend" amount, which averages reasonable cost principles with free standing ambulatory surgery payment rates. The mix of the blend is 50 percent reasonable costs and 50 percent of the rate paid to free standing ambulatory surgery centers. Payments for outpatient radiology services are subject to an aggregate limit for each hospital. The limit applies to both capital and non-capital costs and is the lesser of the reasonable costs or charges or a blend of hospitals' cost for providing these services and the prevailing charges for providing the same services in physicians' offices. The blend is based on 50 percent costs and 50 percent charges. Payment for intraocular lenses inserted at an ambulatory surgery center during or subsequent to cataract surgery is made on the basis of reasonable costs for class of lens involved.

House bill

(a) Capital.—Section 12111. The 15 percent reduction applied to capital costs for outpatient hospital services and the cost portion of outpatient hospital services paid on the basis of a blended amount by OBRA '89 for cost reporting years during the period beginning on October 1, 1989 and ending December 31, 1993 with one modification. In addition to sole community hospitals, rural primary care hospitals would also be exempt from the reduction.

Section 4021. Reduces payments for capital costs paid on a cost basis by 10 percent for cost reporting periods occurring during fiscal years 1991 or 1992, by 7.5 percent for payments attributable to portions of cost-reporting periods occurring during fiscal year 1993 or 1994, and by 5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1995. Sole community hospitals are exempt from the reduction.

(b) Outpatient Services on a Cost Related Basis.—Section 12111. Payments for services that are made on a cost related basis would be reimbursed at 98 percent of the recognized costs for payments attributable to cost reporting periods during the period beginning October 1, 1990 and ending December 31, 1993. This reduction would also apply to the cost portions of blended payment limits for ambulatory surgery and radiology services. Sole community hospitals and rural primary care hospitals would be exempt from this reduction.

Section 4021. Payments for hospital outpatient services reimbursed on a cost basis, other than payment for capital-related costs, would be paid at 95 percent of reasonable costs for cost reporting periods beginning on or after October 1, 1990. Outpatient services performed in hospitals receiving Medicare disproportionate share payments would be exempt from the reduction.

(c) Development of Prospective Payment Proposal.—Section 12111. Directs the Secretary to develop a proposal for replace the current payment system for hospital outpatient services with a prospective payment system. In developing this proposal, the Secretary must consider: (1) policies which provide for appropriate limits on growth in expenditures; (2) adjustments to account for changes in types of patients treated, volume, technology, and standards of medical practice; (3) incentives for hospitals to control costs of outpatient services; (4) appropriate bundling of services, such as global fees or per episode units of payment; (5) whether services not currently paid on a cost related basis, such as outpatient dialysis and laboratory services, should be included in the new system; and (6) whether other adjustments would be necessary, including adjustments for teaching status, geographic areas with high wages, treatment of low-income patients, and capital.

The Administrator of the Health Care Financing Administration would be required to provide summaries of existing research findings on prospective payment for hospital outpatient services by January 1, 1991. This report would be submitted to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives. The Secretary would be required to submit a detailed proposal on prospective payment to the same committees by September 1, 1991. The Prospective Payment Assessment Commission would be required to submit an analysis and comments on the Secretary's proposal to the same committees by March 1, 1992.

Section 4021. No provision.

(d) Ambulatory Surgery in Eye, and Eye and Ear Specialty Hospitals.—Section 12111. The use of the special 75/25 blend would be extended to services provided in cost reporting periods beginning on or after October 1, 1988 and on or before January 1, 1995.

Section 4021. No provision.

(e) Payments for Ambulatory Surgery and Radiology.—Section 12111. Continues the use of the 50/50 blend for cost reporting periods beginning on or after October 1, 1988 and or or before December 31, 1990. For cost reporting periods beginning on or after January 1, 1991, payment for ambulatory surgery services and radiology services performed in outpatient hospital departments would be subject to aggregate cost limits based on a blend of 33 percent of the hospital's own costs and 67 percent of the amount that would be paid if provided in an ambulatory surgery center in the same area.

Reduces payment for insertion of an intraocular lens during or subsequent to cataract surgery in an ambulatory surgery center to $200 for services performed after the date of enactment and before December 31, 1992.

Section 4021. Reduces payment to hospitals for outpatient surgical procedures by reducing the standard overhead amount used in calculating the amount paid to am-

bulatory surgery centers for services from 100 percent of the standard overhead amount to 97.5 percent of the standard overhead amount. Exempts hospitals receiving Medicare disproportionate share payment adjustments from the reduction. Reduces payment for insertion of an intraocular lens during or subsequent to cataract surgery in an ambulatory surgery center to $200 for services performed on or after January 1, 1991 and before December 31, 1992.

Requires that a survey of actual audited costs incurred by ambulatory surgery centers, based on a representative sample of procedures, be taken not later than July 1, 1992 and every 5 years thereafter. Repeals provision permitting the Secretary to determine the appropriate time to adjust ambulatory surgery center rates and stipulates that, if the Secretary has not updated rates paid to ambulatory surgery centers in a year, the rates will be increased by the consumer price index for all urban consumers for the 12 month period ending with June of the preceding year. Requires the Secretary to consult with appropriate trade and professional organizations in determining the list of procedures that may be performed at ambulatory surgery centers.

Effective date: Section 12111. Enactment. Section 4021. Provision (a) is effective upon enactment. Provision (b) applies to hospital outpatient services provided on or after January 1, 1991. Provision (e) is effective July 1, 1991.

Senate amendment

(a) Section 6130.—Reduces payments for capital-related costs for cost reporting periods occurring during the period beginning on October 1, 1989 and ending on September 30, 1991 by 15 percent. Reduces payments for capital-related costs for cost reporting periods occurring during the period beginning on October 1, 1991 and ending September 30, 1995 by 10 percent. Exempts sole community hospitals from the reduction.

(b) Section 6131.—Payments for outpatient hospital services that are made on a cost related basis would be reimbursed at 95 percent of the recognized costs for payments attributable to portions of cost reporting periods during the period beginning on October 1, 1990 and ending on December 31, 1995. This reduction would also apply to the cost portions of blended payment limits for ambulatory surgery and radiology services. Sole community hospitals would be exempt from this reduction.

(c) Section 6130.—No provision.

(d) Section 6131.—Extends the use of the 75/25 blend to services provided in cost reporting periods beginning on or after October 1, 1988 and before September 30, 1993.

(e) Payments for Ambulatory Surgery and Radiology.—Section 6131. No provision.

Effective date: Enactment.

Conference agreement

OUTPATIENT SERVICES

(a) Capital.—The conference agreement includes the House bill with an amendment. Capital costs for outpatient hospital services and the cost portion of outpatient hospital services paid on the basis of a blended amount for payments attributable to portions of cost reporting periods occurring during FY 91 would be reduced by 15 percent. Such payments would be reduced by 10 percent for portions of cost reporting periods occurring during FY 92, 93, 94 and 95. Sole community hospitals and primary care hospitals would be exempt from these reductions.

(b) Outpatient Services on a Cost-Related Basis.—The conference agreement includes the Senate amendment with an amendment. Payments for outpatient hospital services made on a reasonable cost basis would be reduced by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, 1992, 1993, 1994, or 1995.

(c) Prospective Payment System for Hospital Outpatient Services.—The conference agreement includes the House bill.

(d) Ambulatory Surgery in Eye, and Eye and Ear Specialty Hospitals.—The conference agreement includes the House provision.

(e) Amubulatory Surgery and Radiology.—The conference agreement includes the House bill with an amendment. For portions of cost reporting periods beginning on or after January 1, 1991, payment for ambulatory surgery services and radiology services performed in outpatient hospital departments would be subject to aggregate cost limits based on a blend of 42 percent of the hospital's costs and 58 percent of the fees for the same services performed outside the hospital.

5. Durable Medical Equipment (Sections 12112 and 4022 of House bill and Sections 6132 and 6133 of Senate Amendment)

Present law

(a) Overvalued Equipment.—OBRA 1989 reduced the fee schedule amounts for seatlift chairs and transcutaneous electrical nerve stimulation (TENS) devices by fifteen percent, effective April 1, 1990.

(b) Limits on Variations in Fees.—Current law provides for transition to a system of regional fees for three categories of DME by 1993. The categories are orthotics and prosthetics, rental-cap items, and oxygen and oxygen equipment. The regional fees would be based on a weighted average of local and regional payment amounts within each region, subject to certain upper and lower limits. Payments in 1990 are based solely on the local amounts; payments in 1993 would be based solely on the regional amounts. 1991 and 1992 would be transition years between the two amounts.

(c) Rental Cap Items.—OBRA '87 defined six categories of DME and established fee schedules for each category. Payment for items in the category of "other items of DME," often referred to as the "rental cap" category, is only on a rental basis. Items in this category include wheel chairs and hospital beds. The rental payment amount in 1989 and 1990 is ten percent of the purchase price of the item based on average submitted charges during a twelve month base period ending June 30, 1987, and updated by the percent increase in the Consumer Price Index (CPI-U) for the six month period ending December, 1987. Rental payments are made for up to fifteen months, after which a payment, equal to one month's rental, is made every six months for servicing.

OBRA '89 removed motorized wheelchairs from the "rental cap" category into the "frequently purchased" category with a provision allowing for treatment of such wheelchairs as customized equipment, subject to guidelines to be established by the Secretary.

(d) Frequently Serviced Items.—Items in the category known as "frequently serviced" are reimbursed on a rental basis. These items are defined as equipment which requires frequent servicing to avoid danger to the patient and includes such items as ventilators, intermittent positive pressure breathing machines and vaporizers. Rental payments for these items are based on average allowed charges for the items during a base period, updated by the percentage change in the CPI-U. There is no limit on the number of months that rental payments are made for "frequently serviced" items.

(e) Useful Lifetime of Rental Equipment.—There is currently no provision for replacement and for a new cycle of rental payments for items provided under the rental cap category.

(f) Enteral and Parenteral Equipment and Supplies.—Nutritional supplies for enteral equipment are reimbursed on a reasonable charge basis. The payment amounts for these services are updated by the CPI-U.

(g) Administrative Procedures.—The Secretary may require medical equipment suppliers to have a written order for an item from a physician prior to delivery of certain items.

(h) Orthotics and Prosthetics.—Orthotics and prosthetics are included in the covered items other than durable medical equipment category of DME. Payment for this category of equipment is made on a lump sum basis for purchase. Two elements for the basis of the payment for purchase of the equipment. The first is the base local purchase price, which is defined as the average reasonable charge in the locality for the purchase of the item for the 12 month period ending with June, 1987, updated by the consumer price index for all urban consumers for the six month period ending with December, 1987.

The second component consists of the regional purchase price, which is equal to the weighted averages of purchase prices in the region. Payment is made solely on the basis of local purchase prices in 1990. In 1991, payment is the sum of 75 percent of the local purchase price and 25 percent of the regional purchase price. In 1992, payment is equal to 50 percent of the local purchase price and 50 percent of the regional purchase price. In 1993 and subsequent years, payment is made solely on the basis of regional purchase prices. In 1991, the range of the recognized payment may not exceed 125 percent, or be lower than 85 percent of the average of the purchase prices recognized for all the carrier service areas in the U.S. In subsequent years, the range of the recognized payment amount may not be 120 percent or be lower than 90 percent of the average of the purchase prices recognized for all carrier service areas in the country.

(i) Oxygen and Oxygen Equipment.—No provision.

House bill

(a) Overvalued Equipment.—Section 12112. The fee schedule amounts for seatlift chairs and TENS devices would be reduced by fifteen percent.

Section 4022. Similar provision.

(b) Limits on Variations in Fees.—

Section 12112. The requirements relating to regional fees would be repealed, except for orthotics and prosthetics as described below. National upper and lower fee limits would be established for the following categories of DME: (1) inexpensive and routinely purchased DME; (2) items requiring frequent and substantial servicing; (3) miscellaneous items and other covered items; and (4) oxygen and oxygen equipment. Local fees above or below these limits would be phased to the national limiting amount in 1993.

National fee upper limits for an item would be defined as the median of the fees

that apply in 1990. The upper limits would be updated annually. In 1991 and 1992, payments would be capped by a weighted average of the local fee schedule amount and the national limit. In 1991, the average would be based on 67 percent of the local fee and 33 percent of the national limit. In 1992, the average would be based on 33 percent of the local fee and 67 percent of the national limit. In 1993, the fee schedule amounts in areas that exceed the upper limit would be set at the national limit.

National fee "floors" for an item would be defined as 85 percent of the median of the fees that apply in 1990. The fee floors would be updated annually. In 1991 and 1992, payments would be subject to a lower limit equal to a weighted average of the local fee schedule amount and the national floors. In 1991, the average would be based on 67 percent of the local fee and 33 percent of the national floor. In 1992, the average would be based on 33 percent of the local fee and 67 percent of the national floor. In 1993, the fee schedule amounts in areas that are below the national floor would be set at the floor.

Fees in areas that are between the median and 85 percent of the median would not be affected by this provision.

Section 4022. Identical provision.

(c) Rental Cap Items.—Section 12112. The fee schedules for rental cap items would be based on average allowed charges, rather than average submitted charges.

Rental payments for "rental cap" items would be based on ten percent of the average allowed purchase price during the base period for the first three months of rental, and 7.5 percent of the average allowed purchase price during the fourth through fifteenth months of rental. Total rental payments would equal 120 percent of the average allowed purchase price. No rental payments would be made after the fifteenth month.

In the tenth month of continuous rental, patients would be given the option to purchase the item of equipment. If the patient elects this option, rental payments would continue through the thirteenth month of rental when ownership of the item would transfer to the patient. No additional rental payments would be made. For items owned by patients, payments for maintenance and servicing would be determined by the Secretary to be appropriate for the particular type of equipment and would be based on reasonable charges. If the patient declines the purchase option, payments for the equipment and servicing would be the same as provided under current law.

Non-customized motorized wheelchairs would be returned to the category of other covered items of DME (the rental cap category). The Secretary would be authorized to treat customized wheelchairs under the payment provisions for the customized items category of DME.

Section 4022. Similar provision, except that payment would continue to be made on the basis of average submitted charges.

(d) Frequently Serviced Items.—Section 12112. Rental payments for items in the category known as "frequently serviced" would be limited to fifteen months. After the succeeding six month period, the Secretary would make payments for servicing every six months. The servicing payment could not exceed 200 percent of a monthly rental fee and would include payment for parts and labor not covered by warranty. The Secretary would be authorized to make payments for necessary disposable supplies used in conjunction with the item. If the reasonable lifetime of the item is reached during a period of continuous use or if the Secretary determines, based on a carrier's investigation, that an item is lost or irretrievably damaged, monthly rental payments may be made for the replacement item on the same basis as the original item.

Section 4022. Identical provision.

(e) Useful Lifetime of Rental Equipment.—Section 12112. The Secretary would establish a reasonable useful lifetime for two categories of equipment: (1) miscellaneous items and devices; and (2) items requiring frequent and substantial servicing. The useful lifetime would be 5 years, unless the Secretary finds, based on program experience, that a longer or shorter period is appropriate for an item. After an item's useful lifetime is reached during a period of medical necessity, the Secretary would provide for a new cycle of rental payments.

Carriers would be permitted to make exceptions, and begin a new cycle of rental payments, for equipment that is lost or irrepairably damaged.

Section 4022. Similar provision, except that the useful lifetime is not deemed to be 5 years, unless the Secretary finds otherwise.

(f) Enteral and Parenteral Equipment and Supplies.—Section 12112. No update of fees for enteral and parenteral equipment and supplies would be authorized for 1991.

Section 4022. Identical provision.

(g) Administrative Procedures.—Section 12112. Suppliers would be prohibited from distributing completed or partially completed Medicare medical necessity forms to patients for commercial purposes. Suppliers who knowingly and willfully distribute such forms would be subject to civil monetary penalties of up to $1,000 per form distributed.

For customized equipment and for equipment designated by the Secretary as requiring a prior written physician's order, suppliers could request prior approval of the item from a carrier in a form determined by the Secretary.

The Secretary would establish standards for the timeliness of carrier responses to such requests, and would incorporate such standards into the evaluations of carriers' performance.

Claims for items of DME that are potentially overused would be subject to special carrier scrutiny. The Secretary would publish, and periodically update, a list of such items. The list would include: seatlift chairs, transcutaneous electrical nerve stimulators, power-driven scooters, and such other items of DME as determined appropriate by the Secretary. The Secretary would include items that are: (1) mass marketed directly to beneficiaries; (2) marketed with offers to waive the coinsurance, or marketed as "free" or "at no cost" to beneficiaries with Medigap coverage or other coverage; (3) subject to a consistent pattern of overutilization; and (4) frequently denied based on a lack of medical necessity.

Section 4022. Similar provision.

(h) Orthotics and Prosthetics.—Section 12112. Payments for orthotics and prosthetics would continue to be made on the same basis as in current law, but under a new section of law. The transition to payment based solely on regional purchase prices would be delayed by one year, to 1994 and the transition schedule to a regional basis would be revised. In 1991, payment would be made solely on the basis of local purchase prices. In 1992, payment would be based on the sum of 75 percent of the local purchase price and 25 percent of the regional purchase price. In 1990, payment would be the sum of 50 percent of the local purchase price and 50 percent of the regional purchase price.

No update for orthotic and prosthetic fees would be permitted in 1991. Directs the General Accounting Office to conduct a study of payments for prosthetic devices, orthotics and prosthetics under Medicare to examine the effect of the development and implementation of the Medicare fee schedules on payments for such items to orthotists and prosthetists. The report is due to the House Committees on Ways and Means and the Energy and Commerce and the Senate Finance Committee, including recommendations that the Comptroller General considers appropriate.

Section 4022. The Secretary would be required to conduct a study of the feasibility and desirability of establishing a separate fee schedule for suppliers of prosthetics, orthotics and prosthetic devices who provided professional medical services that would take into account the providers' costs in providing these services. The Secretary's report would be due to Congress one year after enactment.

(i) Oxygen and Oxygen Equipment.—Section 12112. Prohibits payment for home oxygen therapy services after the expiration of a three month period that begins on the date a patient first receives such services unless, in accordance with criteria developed by the Secretary in consultation with suppliers, the patient's attending physician certifies that, based on a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 15 days of the three month period, there is a continued medical need for the services. Directs the Secretary to permit home oxygen therapy suppliers to manage the follow-up testing process.

Section 4022. Stipulates that a patient receiving home oxygen therapy services, who at the time such services are initiated, have initial arterial blood gas values at or above a partial pressure of 50 or an arterial oxygen saturation at or above 85, will not receive services after a sixty days period has expired unless the patient's attending physician certifies a continuing medical need for the service. The physician's certification is to be based on a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 15 days of each 60 day period.

Effective date.—Section 12112. Effective for services provided on or after January 1, 1991, except for the following provisions: (1) the provision in item (g) requiring contracts with carriers to meet timeliness standards, which applies to contracts entered into on or after January 1, 1991. Provision (i) applies to patients who first receive home oxygen therapy services on or after January 1, 1991.

Section 4022 is effective for services provided on or after January 1, 1991, except as follow: (1) The provision prohibiting suppliers from distributing medical necessity forms applies to forms or documents distributed on or after January 1, 1991; (2) the provision regarding home oxygen services applies to items furnished on or after January 1, 1994, applies to patients who first receive home oxygen therapy services on or after January 1, 1991; and (3) a technical correction specifying that the provisions of OBRA '87 also applied to oxygen and

oxygen equipment takes effect as if included in OBRA '87.

Senate amendment

(a) Overvalued Equipment.—No provision.

(b) Limits on Variations in Fees.—Section 6132. The requirements relating to regional fees would be repealed, except for orthotics and prosthetics. National upper and lower fee limits would be established for the following categories of DME: (1) inexpensive and routinely purchased DME; (2) items requiring frequent and substantial servicing; (3) miscellaneous items and other covered items; and (4) oxygen and oxygen equipment. Local fees above or below these limits would be phased to the national limiting amount in 1992.

National fee upper limits for an item would be defined as the median of the fees that apply in 1990. The upper limits would be updated annually by the covered item increase for that year. In 1991, payments would be capped by a weighted average of the local fee schedule amount and the national limit. In 1992 and subsequent years, the limit would be equal to the previous year's limit updated by the covered item increase for that year.

National fee "floors" for an item would be defined as 85 percent of the median of the fees that apply in 1990. The fee floors would be updated annually. In 1991 and 1992, payments would be subject to a lower limit equal to a weighted average of the local fee schedule amount and the national floors. In 1991, the average would be based on 67 percent of the local fee and 33 percent of the national floor. In 1992, the average would be based on 33 percent of the local fee and 67 percent of the national floor. In 1993, the fee schedule amounts in areas that are below the national floor would be set at the floor.

Fees in areas that are between the median and 85 percent of the median would not be affected by this provision.

(c) Rental Cap Items.—Section 6132. The fee schedules for rental cap items would be based on 110 percent of average allowed charges, rather than average submitted charges. Rental payments for "rental cap" items would be based on ten percent of the average allowed purchase price during the base period for the first three months of rental, and 7.5 percent of the average allowed purchase price during the fourth through fifteenth months of rental.

Total rental payments would equal 120 percent of the average allowed purchase price.

(d) Frequently Serviced Items.—No provision.

(e) Useful Lifetime of Rental Equipment.—No provision.

(f) Enteral and Parenteral Equipment and Supplies.—Section 6132. Identical provision to Section 12112.

(g) Administrative Procedures.—No provision.

(h) Orthotics and Prosthetics.—Section 6133. Identical provision to Section 12112.

(i) Oxygen and Oxygen Equipment.—Section 6132. Stipulates that a patient receiving home oxygen therapy services, who at the time such services are initiated, have initial arterial blood gas values at or above a partial pressure of 55 or an arterial oxygen saturation at or above 89, or such other values or saturations as the Secretary may specify, will not receive services after a sixty day period has expired unless the patient's attending physician certifies a continuing medical need for the service. The physician's certification is to be based on a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 15 days of each 60 day period.

Effective date: Section 6132. Effective for items or services furnished on or after January 1, 1991, except for provision (1), which is effective for patients who first receive home oxygen therapy services on or after January 1, 1991.

Section 6133. Effective for prosthetic devices orthotics and prosthetics furnished on or after January 1, 1991.

B.5. Durable Medical Equipment

Conference agreement

(a) Overvalued Equipment.—The conference agreement includes the House provision with an amendment. Payment for seatlift chairs would be limited to payment for the seatlift mechanism only. The fee schedule payment amounts for transcutaneous electrical nerve stimulators would be reduced by 15 percent.

(b) Limits on Variations in Fees.—The conference agreement contains the House provision contained in Section 4022 with an amendment that reduce the update by 1 percent in 1991 and 1992.

(c) Rental Cap Items.—The conference agreement includes the House bill. Suppliers providing power driven wheelchairs would be required to offer individuals an option to purchase the item; payment would be made on a lump-sum basis if the individual elects to purchase the item.

(d) Frequently Serviced Items.—The conference agreement includes the House bill with an amendment that permits the Secretary to replace an item under specified conditions.

(e) Useful Lifetime of Rental Equipment.—The conference agreement includes the House bill contained in Section 4022.

(f) Enteral and Parenteral Equipment and Supplies.—The conference agreement includes the House bill.

(g) Administrative Procedures.—The conference agreement includes the House bill contained in Section 12112 with modifications.

(h) Orthotics and Prosthetics.—The conference agreement includes the House provision.

(i) Oxygen and Oxygen Equipment.—The conference agreement includes the House bill contained in Section 4022 with modifications.

6. Clinical Laboratory Services (Section 12113 and 4023 of House bill; Section 6131 of Senate amendment;)

Present Law

(a) Laboratory Fee Schedule Update.—The laboratory fee schedules are generally updated each January 1 by the annual percentage change in the CPI-U over the preceding year.

(b) National Cap on Laboratory Fee Schedules.—The local laboratory fee schedules are subject to national ceilings. These ceilings are based on the median of all carrier-wide fee schedules established for that test in that laboratory setting. OBRA '89 reduced the cap from 100 to 93 percent of the national median.

(c) Clarification of Assignment Rule for Laboratory Tests.—In general, clinical laboratory tests are only reimbursed on an assigned basis. Since 1988, physicians have been prohibited from billing patients for such tests on an unassigned basis. A recent decision in the U.S. 6th Circuit Court of Appeals indicated that there may be some ambiguity as to whether the assignment requirement applies to such tests performed in all physician offices.

House Bill

(a) Laboratory Fee Schedule Update.—Section 12113. Provides that the annual update in the laboratory fee schedule is reduced by 2 percent in 1991, 1992, and 1993.

Section 4023. No provision.

(b) National Cap on Laboratory Fee Schedules.—

Section 12113. Reduces the national cap to 88 percent of the median, effective January 1, 1991.

Section 4023. Similar provision except reduction is to 85 percent of the median.

Removes requirement for report on national fee schedule and makes other technical corrections.

(c) Clarification of Assignment Rule for Laboratory Tests.—

Section 12113. Clarifies current statutory language to provide that all clinical laboratory tests provided in all settings (except by a rural health clinic) may only be billed on an assigned basis. This includes tests provided in physicians' offices.

Section 4023. Similar provision. The definition of referring laboratory is clarified, effective May 1, 1990.

Effective date.

Section 12113. Enactment.

Section 4023. (b) Applies to tests furnished on or after January 1, 1991. (c) Applies as if included in the enactment of OBRA 1989.

Senate Amendment

(a) Laboratory Fee Schedule Update.—Provides that the annual update is 2 percent in 1991.

(b) National Cap on Laboratory Fee Schedules.—Reduces the national cap to 90 percent of the median, effective January 1, 1991.

(c) Clarification of Assignment Rule for Laboratory Tests.—No provision.

Effective date. Enactment.

Conference agreement

1B.6. Clinical Laboratory Services

(a) Laboratory Fee Schedule Update.—The Conference agreement includes the House provision with an amendment. The update is set at 2 percent for 1991, 1992, and 1993.

(b) National Cap on Laboratory Fee Schedules.—The Conference agreement includes Section 12113.

(c) Clarification of Assignment Rule for Laboratory Tests.—The Conference agreement includes Section 12113 of the House bill.

The Conference agreement includes Section 4023 of the House bill clarifying the definition of referring laboratory with a clarification. In calculating whether a laboratory bills for more than thirty percent of clinical diagnostic tests performed by another laboratory, referrals to wholly-owned subsidiaries are not counted.

7. Reduction of Payments under Part B Through December 31, 1990 (Section 12114 of the House Bill)

Present law

Under the Balanced Budget and Emergency Deficit Control Act of 1985, Medicare benefit payments may be reduced by a sequester of up to 2 percent pursuant to a sequester order by the President if deficit targets for the year are not met. The actual reduction applies to payments for services rendered on or after October 15 of a fiscal year. In order to obtain a 2 percent savings

from the entire fiscal year, the actual reduction is 2.034 percent to account for services provided between October 1 and October 15.

Such an order was issued by the President with respect to fiscal year 1990 on October 15, 1989. OBRA '89 directed this sequester order to remain in effect for services under Part B until April 1, 1990. In addition, OBRA '89 provided for a sequester of 1.4 percent that applies to services provided during the last six months of fiscal year 1990.

If payments are reduced under a sequester, patient liability for deductible and coinsurance amounts are unchanged. Patient liability for balance bills may rise under a sequester if a physician's actual charge for a service is not at the maximum allowable actual charge (MAAC).

House bill

Section 12114. Payments to physicians, providers and suppliers under Part B would be reduced by 2 percent for the two month period beginning November 1, 1990. Patient liability for deductibles and coinsurance amounts would remain unchanged for claims billed on an assigned basis. No changes would be made in the computation of the average adjusted per capita cost (AAPC) for health maintenance organization (HMO) contracts or competitive medical plan (CMP) contracts to reflect the reduction.

Section E+C. No provision.

Effective date.—Applies to services provided on or after October 15, 1990 and prior to January 1, 1991.

Senate amendment

No provision.

Effective date. No provision.

Conference agreement

MEDICARE PART B

7. Reduction of Payments under Part B

Conference agreement

The conference agreement includes the House bill with modifications. Payments would be reduced by 2 percent for payments made during the period beginning November 1, 1990 and ending December 31, 1990.

8. Miscellaneous and Technical Amendments (Sections 4024-4027, 4031 of House Bill, Sections 6133(c) 6140-6146 of Senate amendment)

Present law

(a) Extension of Alzheimer's Disease Demonstrations.—In OBRA '86, Congress authorized $40 million for the conduct of up to 10 Alzheimer's disease demonstration projects. Each project provides comprehensive services to Medicare beneficiaries who are enrolled in the Alzheimer's disease demonstrations. The demonstrations were authorized for 3 years.

(b) Cataract Surgery Demonstration Project.—The Health Care Financing Administration is developing a pilot demonstration project to test the feasibility of developing an alternate pricing strategy for cataract surgery.

(c) Coverage of Nurse Practitioners and Clinical Nurse Specialists.—Under current law, the services of nurse practitioners are covered in specified circumstances, as follows: (1) the services must be those which would be covered if they were performed by physicians; (2) nurse practitioners must be working in collaboration with a physician; (3) services are covered only if they are performed in a skilled nursing facility or nursing facility; and (4) on the nurse practitioner must practice within the scope of a State license where the services are performed. Reimbursement is made only on an assigned basis and may be made only to the employer of the nurse practitioner.

In the case of nurse practitioners serving as assistants at surgery, the payment amount is equal to 65 percent of the prevailing charge that would be recognized if performed by nonspecialist physicians. In the case of services performed in a hospital, the payment amount is equal to 75 percent of the prevailing charge that would be recognized for nonspecialist physicians. In the case of all other services, the payment amount is equal to 85 percent of the prevailing charge rate that would be recognized for nonspecialist physicians. Services of clinical nurse specialists are covered as incident to physicians' services if they would be covered if provided by a physician.

(d) Eyeglass Coverage Following Cataract Surgery.—Current law prohibits coverage of eyeglasses for refractive purposes. As a matter of policy, the Health Care Financing Administration considers intraocular lenses inserted during or after cataract surgery and eyeglasses prescribed following cataract surgery to be prosthetic devices. As such, Medicare reimbursement is made for both.

(e) Coverage of Injectable Drugs for Treating Osteoporosis.—No provision.

(f) Medicare Carrier Notice to State Medical Boards.—Current law requires that if a Medicare carrier makes determinations or payments with respect to physicians' services, that the carrier implement specified programs.

(g) Partial Hospitalization Services.—Partial hospitalization services include the following services: (1) individual and group therapy with physicians, psychologists or other mental health professionals practicing within the scope of their State licenses; (2) occupational therapy requiring the skills of a qualified occupational therapist; (3) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients; (4) drugs and biologicals furnished for therapeutic purposes (which cannot be self administered); (5) individualized activity therapies; (6) family counseling designed to treat the patient's condition; (7) patient training and education; (8) diagnostic services; and (9) other items provided by the Secretary. Partial hospitalization services are covered when they are reasonable and necessary for the diagnosis or active treatment of a patient; are reasonably expected to improve or maintain an individual's condition and functional level and prevent a relapse or hospitalization; and furnished under guidelines developed by the Secretary. Services are covered only if the program is hospital-based or hospital affiliated and must be a distinct and organized intensive ambulatory treatment services offering less than 24-hour daily care. The course of treatment must be prescribed, supervised and reviewed by a physician. Partial hospitalization services provided by community mental health centers or other free-standing institutions are not covered under Medicare.

(h) Certified Registered Nurse Anesthetists.—OBRA '86 provided for direct reimbursement for the services of certified registered nurse anesthetists (CRNAs) on an assigned basis for a two year period beginning January 1, 1989. Reimbursement is the lesser of the actual charge, the prevailing charge that would have been recognized if the service had been performed by an anesthesiologist, or a fee schedule developed by the Secretary. The fee schedule incorporates base, time, modifier units and conversion factors. Separate conversion factors are used, depending on whether the CRNA is medically directed by a supervising physician or employed by a hospital. The conversion factors also vary by geographic area. The current rules for payment were established under a notice of a proposed rule, published January 26, 1989 and are being implemented through carrier instruction.

Under current law, rural hospitals are permitted to excluded costs for CRNA services from the prospective payment system and be reimbursed for them on a cost basis if they meet specified conditions.

(i) Payments to Community Health Center and Rural Health Clinics

(1) Payments to Community Health Centers.—Under regulation, Medicare currently makes payment to Federally Qualified Health Centers (FQHC). In general, these centers are health care clinics receiving grants under sections 329, 330 or 340 of the Public Health Service (PHS) Act, which provides grants to Community Health and Migrant Health Centers, and centers providing health care to the homeless. Centers receiving grants to provide services to the homeless under section 340 of the PHS Act do not qualify as an FQHC unless they are also receiving grants under either section 329 or 330.

Centers receiving PHS grants under these sections are required to charge low-income patients for services on the basis of a sliding fee scale. Medicare currently pays for services on the basis of the lesser of costs or charges, even when the charges have been adjusted under required PHS sliding fee scales for low-income patients.

(2) GAO Study of Barriers to Hospital Admitting Privileges for Community Health Center Physicians.—No provision.

(3) Payments to Rural Health Clinics.—Rural health clinics applying for participation in Medicare are first certified by a State certifying agency which then forwards its approval to the Secretary for consideration. Services in clinics awaiting final action by the Secretary are covered, but the clinics must hold such claims until after the Secretary issues final approval.

In order to remain certified, rural health clinics must meet certain staffing requirements. Specifically, the clinic must have a nurse practitioner, physician assistant or certified registered nurse midwife available to furnish patient services at least 50 percent of the time the clinic operates.

The Secretary would have 60 days to approve or deny an applicant rural health clinic's certification as a rural health clinic, effective October 1, 1991. The 60 day period would begin on the date the State Agency that surveys the clinics approves the application.

Independent rural health clinics are reimbursed on the basis of an all-inclusive rate based on reasonable costs. In determining reasonable costs, the Secretary has developed productivity standards for staff working in the clinic. The current standards provide for different levels of productivity standards for physicians than for non-physician practitioners.

The Provider Reimbursement Review Board (PRRB) reviews and considers appeals of cost reports for entities defined as providers of services under the Medicare program.

(j) Coverage of Mental Health Professional Services.—No provision.

(k) Technical Corrections Relating To Physician Payment Provisions.—

(1) Comparability Adjustments.—Carriers may reduce payments for services paid on a reasonable charge basis if the carrier's usual payment in its private business is less than what is otherwise payable under Medicare. The Secretary is also permitted to make inherent reasonableness adjustments.

(2) Periodic Recalculation of GPCI.—The Secretary is required to review relative value units every five years and make appropriate adjustments. A similar requirement is not included for geographic indices.

(3) Volume Performance Standard.—Generally the Congress is expected to establish the volume performance standard. In the absence of Congressional action, a default standard is used. This standard is the sum of a number of factors.

(4) Elimination on the Restriction on the Incorporation of Time in Visit Codes.—Current law provides that the Secretary may include time in the coding of visits and consultations only for services furnished on or after January 1, 1993.

(5) Treatment of Price Increases in Determining Performance Standards Rates of Increase.—One factor that is included in the calculation of the default volume performance standard is the Secretary's estimate of the percentage change in physician expenditures in the fiscal year (not attributable to physicians' fees) which will result from changes in law or regulation.

(6) Miscellaneous Fee Schedule Corrections.—OBRA 1989 incorporated the physician payment reform requirements in a new section 1848. The requirements for a number of physician payment studies were retained, though some are no longer necessary.

(l) Minor and Technical Amendments—No provision.

House bill

(a) Extension of Alzheimer's Disease Demonstration.—Section 4124. Requires the Secretary to submit a final report on the Alzheimer's demonstration projects not later than one year after the demonstrations are completed.

Effective date: Enactment.

(b) Cataract Surgery Demonstration Project.—Section W+M. No provision.

Section 4026. Prohibits the Secretary from selecting providers to participate in any demonstration project to evaluate the effectiveness of alternative payments for cataract surgery based solely on the number of cataract surgeries performed. Required the Secretary to monitor the quality of services provided under the demonstration and to develop criteria for selecting providers to participate in the demonstration in consultation with physicians specializing in the care and treatment of eye conditions.

Effective date: Section 4026 Enactment.

(c) Coverage of Nurse Practitioners and Clinical Nurse Specialists.—Section W+M No provision.

Section 4024. The services of nurse practitioners would be expanded to cover those provided in a rural area, as determined by the Secretary of Health and Human Services for purposes of Medicare hospital reimbursement. The services of clinical nurse specialists would be covered under the following conditions: (1) the services would be covered if provided by a physician; (2) the clinical nurse specialist is practicing in collaboration with a physician; (3) the services are provided in a rural area, as determined by the Secretary for purposes of Medicare hospital reimbursement; and (4) the clinical nurse specialist is practicing within the scope of a state license. For both nurse practitioners and clinical nurse specialists practicing in rural areas, payments may be made only on an assignment related basis. Payment could be made directly to the practitioner or to a hospital, rural primary care hospital, physician, group practice, ambulatory surgery center, or rural health clinic with which the practitioner has an employment or contractual relationship. Hospitals or primary care rural hospitals billing on behalf of nurse practitioners or clinical nurse specialists would be prohibited from treating any uncollected coinsurance amounts for these services as a bad debt for purposes of Medicare reimbursement. Any person who knowingly or willfully presents an unassigned claim is subject to civil money penalties of up to $2,000. Proceedings to initiate the imposition of civil money penalties would be conducted in the same manner as those initiated against other providers. The payment amount for services rendered in hospitals would be equal to 75 percent of the prevailing charge recognized for nonspecialist physicians. For all other services, the payment amount would be equal to 85 percent of the prevailing charge recognized for nonspecialist physicians, or the fee paid under the RB RVS fee schedule.

Effective date: Section W+M. No provision. Section E+C. Effective for services furnished on or after January 1, 1990.

(d) Eyeglass Coverage Following Cataract Surgery.—Section W+M. No provision.

Section 4025. Includes corrective eyeglasses provided with intraocular lenses following cataract surgery, but not including replacement for such glasses.

Effective date: Section 4025. Effective for items and services furnished before, on or after the date of enactment.

(e) Coverage of Injectable Drugs for Treating Osteoporosis.—Section W+M. No provision.

Section 4027. Adds coverage of an injectable drug approved for the treatment of a bone fracture related to post-menopausal osteoporosis under the following specified conditions: (1) the patient's attending physician certifies that the patient is unable to learn the skills needed to self-administer the drug or is otherwise physically or mentally incapable of self-administering the drug; and (2) the patient meets the requirements for Medicare coverage of home health services. Coverage is added for the drug and its administration furnished on or after January 1, 1991 and on or before December 31, 1992.

Directs the Secretary to conduct a study analyzing the effect of covering osteoporosis drugs under Medicare on patient health and the use of inpatient hospital and extended care services. Directs the Secretary to submit a report to Congress and to include recommendations regarding expansion of Medicare coverage to women with post-menopausal osteoporosis.

Effective date: Section W+M. No provision. Section 4027. Enactment.

(f) Medicare Carrier Notice to State Medical Boards.—

WM Technicals: No provision.

Section 4031.—Requires Medicare carriers to refer cases of physician unethical or unprofessional conduct to the State medical board or boards responsible for the licensing of the physician involved.

Effective date:

WM Technicals: No provision.

Section 4031.—Applies to cases of unethical or unprofessional conduct that a carrier becomes aware of more than 60 days after enactment of this provision.

Requires the Secretary to provide for such modification of carrier contracts as may be necessary to incorporate the additional requirement imposed by this provision on a timely basis.

(g) Partial Hospitalization Services.—No provision.

(h) Certified Registered Nurse Anesthetists.—No provision.

(i) Payments to Community Health Center and Rural Health Clinics.—

(1) Payments to Community Health Centers.—No provision.

(2) GAO Study of Barriers to Hospital Admitting Privileges for Community Health Center Physicians.—No provision.

(3) Payments to Rural Health Clinics.—No provision.

(j) Coverage of Mental Health Professional Services.—No provision.

Effective date: No provision.

(k) Technical Corrections Relating To Physician Payment Provisions.—

(1) Comparability Adjustments.—No provision.

(2) Periodic Recalculation of GPCI.—No provision.

(3) Volume Performance Standard.—No provision.

(4) Elimination on the Restriction on the Incorporation of Time in Visit Codes.—No provision.

(5) Treatment of Price Increases in Determining Performance Standards Rates of Increase.—No provision.

(6) Miscellaneous Fee Schedule Corrections.—

WM: No provision.

Section 4013. Corrects certain technical and drafting errors in the Physician Payment Reform provisions of OBRA '89. In addition, the requirements for a number of reports are deleted.

Effective date: Enactment.

(l) Minor and Technical Amendments.—

Section 4032. Makes miscellaneous technical corrections.

Effective date: Section 4032. Enactment

Senate amendment

(a) Extension of Alzheimer's Disease Demonstration.—Section 6141. Extends authorization for the Alzheimer's disease demonstration projects for an additional two years.

Effective date: No provision.

(b) Cataract Surgery Demonstration Project.—No provision.

Effective date: No provision.

(c) Coverage of Nurse Practitioners and Clinical Nurse Specialists.—Section 6146. Provides for direct reimbursement for services of nurse practitioners and clinical nurse specialists in rural areas for the services that nurse practitioners and clinical nurse specialists are authorized to perform under State law or State regulatory mechanisms. Defines rural area as any area outside a metropolitan statistical area, as defined by the Office of Management and Budget. Defines nurse practitioner or clinical nurse specialist as an individual who: (1) is a registered nurse and is licensed to practice nursing in the State in which the services are performed; and (2) holds a Master's degree in nursing or a related field from an accredited institution; or (3) is certified as a nurse practitioner or clinical nurse specialist by a duly recognized professional nurses' association. Establishes payment for services at an amount equal to 75 percent of the prevailing charge (or Medicare fee schedule pay-

ment amount for participating physicians) in the area. Stipulates that payment may only be made on an assignment-related basis. 10/17/90

Effective date: Section 6146. Effective for services furnished on or after January 1, 1991.

(d) Eyeglass Coverage Following Cataract Surgery.—Section 6133. Excludes intraocular lenses from the definition of durable medical equipment. Prohibits the Secretary from issuing regulations which changes the coverage of conventional eye wear furnished to individuals who receive an intraocular implant during or following cataract surgery. Excludes routine regulations regarding prosthetic devices or exclusions from coverage from the prohibition. Specifies that one pair of eyeglasses following cataract surgery is a Medicare covered service.

Effective date: Section 6133. Effective for services furnished on or after January 1, 1991.

(e) Coverage of Injectable Drugs for Treating Osteoporosis.—No provision.

Effective date: No provision.

(f) Medicare Carrier Notice to State Medical Boards.—

No provision.

Effective date: No provision.

(g) Partial Hospitalization Services.—Section 6140. Covers partial hospitalization services provided in community mental health centers are covered. Such coverage is limited to community mental health centers that: (1) provide community mental health services required PHS Act; and (2) meet applicable State licensing or certification requirements for community mental health centers.

Effective date: Effective for services provided on or after April 1, 1991.

(h) Certified Registered Nurse Anesthetists.—Section 6142. Establishes the conversion factor for non-medically directed CRNAs at $15.50 for services furnished in 1991; $15.75 in 1992; $16.00 in 1993; $16.25 in 1994; $16.50 in 1995; and $16.75 in 1996. For services furnished in calendar years after 1995, the conversion factor will equal the previous year's conversion factor increased by the update determined under the RB RVS fee schedule for physician anesthesia services for that year. In 1991, the payment area to be used for calculating the conversion factor are the localities used for computing payments for physician anesthesia services. After 1991, the payment areas are to be the same as those used under the RB RVS fee schedule.

In 1991, the geographic adjustment factors applied to the conversion factors are the geographic work index value and the geographic practice cost index used for physicians' services for anesthesia services furnished in the locality, with 70 percent of the conversion factor attributable to work and 30 percent attributable to overhead for services. After 1991, the geographic adjustment factors applied to the conversion factors are the same as those used for physicians' services for anesthesia services under the RB RVS fee schedule, with the same percentages attributable to work, practice expenses and malpractice as under the RB RVS fee schedule. For medically-directed CRNAs, the conversion factor will be $10.50 for services furnished in 1991; $10.75 in 1992; $11.00 in 1993; $11.25 in 1994; and $11.50 in 1995, and $11.70 in 1996. For services furnished after calendar year 1995, the conversion factor will equal the previous year's conversion factor increased by the update determined for physician anesthesia services that year.

The following exceptions are provided: (1) in the case of a conversion factor that is greater than $16.50 in 1990, the conversion factor for a calendar year after 1990 and before 1996 is equal to the 1990 conversion factor minus the product of multiplying the last digit of the calendar year and 20 percent of the amount by which the 1990 conversion factor exceeds $16.50; and (2) in the case of a conversion factor that exceeds $15.49, but is less than $16.51, the conversion factor for years after 1990 but before 1996 is the greater of the 1990 conversion factor or the actual conversion factor for that year for non-medically directed CRNAs. Conversion factors used to determine CRNA payments can not exceed the conversion factor used to determine the amount paid for physician services for anesthesia service in the area or locality. CRNA services provided in rural hospitals meeting certain requirements and paid on a cost basis, rather than through the prospective payment system for hospitals would continue to be exempt from paying for such services through the prospective payment system. 10/17/90

Effective date: Section 6142. Enactment.

(i) Payments to Community Health Center and Rural Health Clinics.—

(1) Payments to Community Health Centers.—Includes federally qualified health center services in the list of medical and other health services covered under Medicare Part B. Federally qualified health centers would be defined as: 1) centers receiving grants under any of sections 329, 330 and 340 of the PHS Act; 2) centers receiving payments as an FQHC as of January 1, 1990; and 3) centers that meet all PHS requirements to be eligible to receive such grants, whether or not they actually are receiving funds under these sections. Defines federally qualified health center services as the same services provided by rural health centers eligible to participate in Medicare. Such services must be provided to an outpatient of a federally qualified health center. The Secretary would be required to establish procedures for qualifying non-funded centers as meeting all of the PHS requirements.

Payment for services provided in federally qualified health centers would be on the same basis as reimbursement for rural health center services. Centers paid on a reasonable charge basis on January 1, 1990 could elect to continue receiving payments on that basis. Medicare would pay eighty percent of the all-inclusive rate without regard to the actual charge for the service. Beneficiaries would be exempt from the requirement to pay a Medicare Part B deductible for services rendered in a federally qualified health center. Coinsurance amounts would be equal to the difference between the actual charge for the service and Medicare's payment, but not more than twenty percent of the all-inclusive rate. Federally qualified health centers would be given a safe harbor from criminal or civil violations under Medicare's anti-kickback rules where a center gave a low-income beneficiary, who qualifies for services subsidized under the PHS Act, a partial or full waiver of Medicare coinsurance amounts based on a PHS mandated sliding fee scale. Federally qualified health centers would have the same PRRB review and appeal rights as other providers under Medicare. for low-income patients.

(2) GAO Study of Barriers to Hospital Admitting Privileges for Community Health Center Physicians.—The General Accounting Office (GAO) would be required to conduct a study to determine whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hospitals. The study is to review: (1) how many physicians practicing in centers are without hospital admitting privileges or have been denied admitting privileges at a local hospital; or (2) the criteria hospitals use in deciding whether to grant admitting privileges and whether these criteria act as significant barriers to health center physicians obtaining hospital privileges. GAO would submit a report on the study to the House Committees on Ways and Means and Energy and Commerce within 18 months of enactment, and would include in the report such recommendation considered appropriate.

(3) Payments to Rural Health Clinics.—The Secretary would be required to notify a rural health clinic of approval or disapproval of their certification as a rural health clinic not later than 60 days after the date that the State agency has determined or applied for the facility to be certified as a rural health clinic (whichever is later), if a State agency has determined that the facility is in compliance with Medicare's conditions of participation. The Secretary would be required to waive for a 1-year period the requirements that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife, or that the clinic require such providers to furnish services at least 50 percent of the clinics operating time to any facility that request such a waiver. Facilities demonstrating an inability, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period could obtain a waiver. Prohibits the Secretary from granting a waiver to a facility requesting a waiver within 6 months after the date of expiration of any previous such waiver for the facility. Requires the Secretary to grant a requested waiver within 60 days after the request is received, and the waiver will be deemed granted unless the request is denied within 60 days after the request is received. The Secretary would be required to determine the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic by taking into account the combined services of such staff, and not merely the service within each class of practitioner. Rural health clinics would have the same PRRB review and appeal rights as other Medicare providers.

(j) Coverage of Mental Health Professional Services.—Section 6140. Adds coverage of qualified mental health professional services. Stipulates that reimbursement is to be 80 percent of the lesser of the actual charge for the services or an amount determined under a fee schedule established by the Secretary. Payment for services may only be made on an assignment-related basis. Qualified mental health professional services are defined as services and services and supplies furnished as incident to services furnished by a marriage and family therapist, a psychiatric nurse on-site at a community health care, and such services that are necessarily furnished on-site (other than at an off-site office of such therapists, nurse or counselor) as part of a treatment plan because of the inability of the individual furnished services to travel to the center because of physical or mental impairment, institutionalization, or similar circumstances. Requires the family therapist, psychiatric nurse or clinical mental health counselor to

be legally authorized to perform the services under State law or State regulations and the services would otherwise be covered if furnished by a physician or as incident to a physician's services.

Defines a marriage and family therapist as individual who: (1) possesses a minimum of a master's degree in a field related to marriage and family therapy; (2) after obtaining such degree has performed at least 2 years of supervised clinical experience in the field of marriage and family therapy; (3) is licensed or certified by the State in which such services are performed as a marriage and family therapist, married, family and child counselor, or is licensed under a similar professional title; or (4) in the case of an individual in a State in which does not provide for licensing or certification, is eligible for clinical membership in a national professional association that recognized credentials for clinical membership for marriage and family therapists, as determined by the Secretary.

Defines a psychiatric nurse as an individual who: (1) is licensed to practice professional nursing by the State in which the individual practices nursing; (2) performs such psychiatric nursing services as are authorized under the law of the State in which the individual practices psychiatric nursing; (3) possesses a minimum of a master's degree in nursing with a specialization in psychiatric and mental health nursing or a related field; or (4) possesses a minimum of a master's degree in a related field from an accredited educational institutionalization is certified as a psychiatric nurse by a duly recognized national professional nurse organization, as determined by the Secretary, or is eligible to receive such certification. 10/16/90

Effective date: Section S. Applies to services performed on or after January 1, 1991.

(k) Technical Corrections Relating To Physician Payment Provisions.—

(1) Comparability Adjustments.—Carriers are prohibited from adjusting fees under the RBRVS. The Secretary may not make inherent reasonableness adjustments under the RBRVS.

(2) Periodic Recalculation of GPCI.—Requires the Secretary to recompute periodically the geographic indices to reflect the most recent data.

(3) Volume Performance Standard.—Specifies that the default standard is the product of the specified factors.

(4) Elimination on the Restriction on the Incorporation of Time in Visit Codes.—Eliminates the restriction on the incorporation of time in visit costs.

(5) Treatment of Price Increases in Determining Performance Standards Rates of Increase.—Specifies that this calculation is to include an estimate of changes in law or regulations affecting the percentage increase in physicians fees.

(6) Miscellaneous Fee Schedule Corrections.—Similar to EC provision.

Effective date: Enactment

(l) Minor and Technical Amendments.—No provision.

Conference agreement

MEDICARE PART B

8. Miscellaneous and Technical Provisions

(a) Alzheimer's Disease Demonstrations.—The conference agreement includes the Senate amendment with an amendment.

(b) Prohibition of Competitive Bidding Demonstration for Cataract Surgery.—The conference agreement does not include this provision.

(c) Coverage of Nature Practitioners and Clinical Nurse Specialists.—The conference agreement includes the Senate amendment.

(d) Clarifying Coverage of Eyeglasses Provided with Intraocular Lenses Following Cataract Surgery.—The conference agreement includes the Senate amendment.

(e) Coverage of Injectable Drugs of Treatment of Osteoporosis.—The conference agreement includes the House bill.

(f) Medicare Carrier Notice to State Medical Boards.—The conference agreement includes the House bill.

(g) Partial Hospitalization Services.—The conference agreement includes the Senate amendment with modifications.

(h) Payments for Certified Registered Nurse Anesthetists.—The conference agreement includes the Senate amendment.

(i) Community Health Centers and Rural Health Clinics.—The conference agreement includes the House bill with amendments.

(j) Coverage of Mental Health Professional Services.—The conference agreement does not include this provision.

(k) Technical Amendments Relating to Physician Payment and Resource Based Relative Value Scale.—

(1) Prohibition of Comparability Adjustments.—The conference agreement includes the Senate amendment.

(2) Periodic Review of the Resource Based Relative Value Scale.—The conference agreement includes the Senate amendment.

(3) Volume Performance Standard.—The conference agreement includes the Senate amendment.

(4) Elimination of Restriction on Incorporation of Time in Visit Codes.—The conference agreement includes the Senate amendment.

(5) Treatment of Price in Determining Volume Performance Standard Rates of Increase.—The conference agreement includes the Senate amendment.

(6) Other Resource Based Relative Value Scale Technical Amendments.—The conference agreement includes a combination of the House provision and the Senate amendment.

(l) Minor and Technical Amendments.—The conference agreement includes the House provision with technical changes.

In addition, the conference report includes other provisions:

(1) Revise Information on Part B Claim Forms.—The conference agreement includes a provision modifying the ownership referral reporting requirement on Part B claims form to delete the requirement that the claim include information on whether the referring physician is an interested investor. The effective date for the reporting requirement is October 1, 1990;

(2) Disclosure of Ownership of Suppliers.—The conference agreement includes a disclosure of ownership provision limited to suppliers and mobile labs.

(3) Consultation for Social Workers.—Clinical social workers would be required to consult with a patient's attending physician in accordance with criteria developed by the Secretary;

(4) Clarification of Extension of Municipal Health Service Project Waivers.—The extension of the waiver granted to municipal health services demonstrations under OBRA '89 is revised to clarify that the waivers are extended under the same basis and under the same conditions as the waivers were conducted on January 1, 1990.

Coverage of Screening Mammography

Present law

(a) In General.—Medicare general does not cover preventive services; therefore, routine screening mammograms have not been covered.

Medicare covers radiologic mammograms as a diagnostic test if: 1) a patient has distinct signs and symptoms for which a mammogram is indicated; 2) a patient has a history of breast cancer; or 3) a patient is asymptomatic, but on the basis of the patient's history and other factors the physician considers significant, the physician's judgment is that it is appropriate.

The Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) included a provision to expand Medicare coverage to include mammography screening. The benefit was repealed with the repeal of the Act in 1989 (P.L. 100-234).

(b) Frequency Limits.—No provision.

(c) Screening Mammography Quality Standards.—No provision.

(d) Payment Rules.—No provision.

(e) Limiting Charges of Nonparticipating Physicians.—No provision.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

(a) In General.—The conference agreement provides for Medicare coverage of "screening mammography," defined as a radiologic procedure provided to a woman for the early detection of breast cancer, including a physician's interpretation of the results of the procedure. Coverage would be effective for screening mammography performed on or after January 1, 1991.

Medicare payment for screening mammography would be made: (1) only for screening mammography conducted consistent with frequency limits: (2) only if the screening mammography meets quality standards; (3) if the amount of the Medicare payment, subject to the Part B deductible, is equal to 80% of the lesser of the actual charge for the screening, the radiologic fee schedule amount, or the limit established for screening mammography, as described below.

The conference agreement requires the Secretary, in developing fee schedules for radiologists, to take into account the frequency limits applicable to screening mammography.

(b) Frequency Limits.—The conference agreement provides for frequency limits as follows. No payment would be made for screening mammography for women under age 35. Payment would be made for only 1 screening mammography for women over 34 but under 40. For women over 39 but under 50, payment would be made annually (provided 11 months elapse after the last screening) for those at high risk of developing breast cancer (determined using factors identified by the Secretary), or biennially (provided 23 months elapse after the last screening) for those not at high risk of developing breast cancer. For women over 49 but under 65, payment would be made annually (provided 11 months elapse after the last screening). For women over 64, payment would be made biennially (provided 23 months elapse after the last screening).

The Secretary, in consultation with the Director of the National Cancer Institute, is required to review periodically the appropriate frequency for performing screening mammography, based on age and other fac-

tors the Secretary determines are pertinent. The Secretary is authorized to revise from time to time the frequency with which screening mammography may be paid for, but prohibits such revision before January 1, 1992.

(c) Screening Mammography Quality Standards.—The conference agreement requires the Secretary to establish quality standards to ensure the safety and accuracy of covered screening mammographies. The standards would include the following requirements:

(1) The equipment used must be specifically designed for mammography and must meet radiological standards established by the Secretary for mammography;

(2) The mammography must be performed by an individual who is either licensed by the State to perform such procedures, or is certified as qualified to perform such procedures by an appropriate organization (as specified by the Secretary in regulations);

(3) The mammography results must be interpreted by a physician who is either certified as qualified to interpret radiological procedures by an appropriate board (as specified by the Secretary in regulations), or is certified as qualified by a program (recognized by the Secretary in regulation as assuring the physician's qualifications); and

(4) There are satisfactory assurances that the results of the first screening mammography for which Medicare makes payment will be placed in permanent medical records maintained for the woman.

The conference agreement also requires the Secretary, when consulting with appropriate State agencies and recognized national listing or accrediting bodies or local agencies to develop conditions of participation for providers of services, to consult about whether screening mammography meets the quality standards provided in this section. The Secretary is required to make agreements with able and willing States to use State (or local) agencies to determine whether screening mammography meet the quality standards provided in this section. If the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurances that any or all of the conditions of this section related to quality standards for screening mammography are met, the Secretary is authorized to treat such entity as meeting those conditions.

(d) Payment Rules.—The conference agreement provides for the following payment rules. The amount of the Medicare payment, subject to the Part B deductible, is equal to 80% of the lesser of: (1) the actual charge for the screening mammography, (2) the radiologic fee schedule amount, or (3) the limit established for screening mammography. The limit is $55 for screening mammographies performed in 1991; for those performed in subsequent years, the limit would be the prior year's limit, increased by the percentage increase in the MEI (Medical Economic Index).

The Secretary is required to review from time to time the appropriateness of the limit. For screening mammographies performed after 1992, the Secretary is authorized to reduce the limit, either nationally or in any area, to an amount that the Secretary estimates is necessary to ensure that screening mammographies of an appropriate quality are readily and conveniently available during the year.

The Secretary is required to provide for an appropriate allocation of the limit between professional and technical components in the case of hospital outpatient screening mammography (and comparable situations) where the claim for professional services is separate from that for the radiologic procedure.

(e) Limiting Charges of Nonparticipating Physicians.—The conference agreement provides that for covered screening mammographies performed on or after January 1, 1991, if a nonparticipating physician or supplier provides the screening to an individual covered by Part B, the physician or supplier may not charge the individual more than the limiting charge or, if less, as defined in Section 1834(b)(5)(B) or Section 1848(g)(2). The limiting charge would be 125% of the screening mammography limit in 1991, 120% in 1992, and 115% after 1992. The Secretary is authorized to apply sanctions in accordance with Section 1842(j)(2) against physicians or suppliers who knowingly and willfully impose charges in violation of these limits.

PARTS A AND B

1. End Stage Renal Disease (Sections 12201 and 4123 of House Bill and Sections 6150 and 6151 of Senate Amendment)

Present law

(a) Payments to Dialysis Facilities.—Hospital and free-standing facilities are reimbursed under a composite rate formula that is weighted to reflect the proportion of patients dialyzing at home and the proportion of patients dialyzing in a facility. Under the composite rate, the current average payment is estimated at $125 per dialysis treatment in free-standing facilities and $129 per dialysis treatment in hospital units.

The Omnibus Reconciliation Act of 1989 required the Secretary to maintain the current composite rates through October 1, 1990 and prohibited the Secretary from changing the rates in effect as of September 30, 1990 unless prescribed regulatory procedures are followed.

(b) Self-Administration of Erythropoietin (EPO).—Medicare currently provides coverage for erythropoietin for Medicare renal dialysis patients who meet specified medical criteria. Self-administration of the drug is not covered. For patients who dialyze in a facility, payment is made to the facility in the form of an add-on to the composite rate. In order to patients who dialyze at home to receive Medicare coverage, the drug must be administered by a physician.

(c) Payments for Erythropoietin.—Medicare currently provides coverage for erythropoietin for renal dialysis patients if the drug is not self-administered. For patients who dialyze in a facility, payment is made to the facility in the form of an add-on to the composite rate. The Health Care Financing Administration (HCFA) established an add-on rate of $40 per treatment for dosages under 10,000 units and $70 for dosages of 10,000 units and above.

HCFA's payment rate was based upon average dose levels of 5,000 units. More recent data indicate that average dose levels have dropped to 2,700 units per treatment. The Medicare program pays eighty percent of these amounts, while beneficiaries are responsible for the remaining 20 percent. Facilities and physicians are prohibited from billing the beneficiary for additional amounts.

Physicians who administer the drug to home dialysis patients are reimbursed for the cost of the drug, plus a $2 administrative fee per treatment for supplies. The methods of reimbursing physicians for drug costs vary by carrier.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—Staff assistants for home dialysis ESRD patients are not specifically reimbursed under law. Until February 1, 1990, Method II suppliers were paid on the basis of reasonable charges, and some suppliers provided staff assistants without additional compensation. OBRA '89 limited reimbursement to Method II suppliers to the same level paid to Method I providers, effective February 1, 1990. Some suppliers who had been providing staff assistants under reasonable charge reimbursement ceased doing so when Method II payments were capped. The Secretary subsequently decided, under experimental authority granted under Section 1881 (f) (2) to provide staff assistants to a limited number of patients who had such assistants prior to the time when Method II reimbursement was capped.

House bill

(a) Payments to Dialysis Facilities.—Section 12201. Requires the Secretary to maintain the composite rate for hospital-based and free-standing dialysis facilities at a rate equal to the rate in effect May 13, 1986, reduced by $2.00 and increased by the amount of the reduction imposed by the continuation of the sequestration order enacted for FY 90 in OBRA 89. 10/17/90

Section 4123. No provision.

(b) Self-Administration of Erythropoietin (EPO).—No provision.

(c) Payments for Erythropoietin.—Section 12201. The Secretary would be directed to revise payments for erythropoietin. Payments would be based upon 1,000 unit increments. The Secretary would make payments of no more than $11.00 per 1,000 units up to a maximum payment of $70 per dose. The Secretary would continue to make payments as an add-on to the composite rate. Beginning in FY 92, the payment level for erythropoietin would be indexed to the implicit price deflator for the gross national product. 10/17/90

Section 4123. No provision.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—Section 12201. No provision.

Section 4123. Directs the Secretary to establish a demonstration project to determine whether the services of a home dialysis aide can be covered under Medicare in a cost-effective manner that ensures patient safety. The demonstration is to be established within 6 months of enactment.

Under the demonstration, the Secretary is to make payments for 2 years to a Medicare provider (other than a skilled nursing facility) in an urban area and to a provider (other than a skilled nursing facility) in a rural area for services of a qualified home dialysis aide. Payments will be prospectively determined by the Secretary and made on a per treatment basis, except that the payment may not exceed the amount that would be paid by Medicare for ambulance service for transporting a patient to and from a dialysis facility.

An individual is eligible to participate in the demonstration if: (1) he or she is a Medicare ESRD beneficiary; (2) the attending physician certifies that the individual suffers from a permanent, serious medical condition (as specified by the Secretary) that precludes travel to and from a provider of services or a renal dialysis facility; and (3) no family member or other individual is available or able to provide assistance.

Home dialysis aides must meet the following requirements in order to be qualified to participate in the demonstration: (1) meets requirements established by the Secretary

for home dialysis aides providing medical assistance and (2) meets any applicable standards established by the State in which the aide is providing services.

Not later than 6 months after the expiration of the demonstration, the Secretary is to submit a report to Congress on the results of the project, and is to include recommendations regarding appropriate eligibility criteria and cost control mechanisms.

An authorization of $2 million is made to carry out the demonstration project.

Effective date: Section 12201. Provision (a) takes effect for services furnished on or after January 1, 1992. Provision (c) applies to services provided on or after January 1, 1991.

Section 4023. Enactment

Senate amendment

(a) Payments to Dialysis Facilities.—Section 6150. The Secretary would be required to establish a rate for hospital-based and free-standing dialysis facilities at not less than the rate in effect September 30, 1990 for the period beginning October 1, 1990 and before October 1, 1993.

The Prospective Payment Assessment Commission would be directed to study the cost, services and profits associated with various dialysis modalities provided to ESRD patients. The Commission would be required to make recommendations to Congress regarding the method or methods and the levels at which the payments made to dialysis facilities for the facility component of dialysis services should be established for FY 93, and the methods used to update payments for subsequent years. In making recommendations, the Commission is to consider: (1) hemodialysis and other modalities of treatment; (2) the appropriate services to be included in such payments; (3) the adjustment factors to be incorporated, including facility characteristics such as hospital versus free-standing facilities, urban versus rural, size and mix of services; (4) adjustments for labor and non-labor costs; (5) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities; (6) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services; (7) disproportionate share adjustment; (8) educational cost adjustment; and (9) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

The Commission's report is due to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce by June 1, 1992. Not later than March 1 before the beginning of each fiscal year, beginning with fiscal year 1993, the Commission is to report its recommendations on an appropriate change factor to be used in updating payments for services rendered that fiscal year. The Commission is to consider conclusions and recommendations from the Institute of Medicine study.

(b) Self-Administration of Erythropoietin (EPO).—Section 6151. Coverage for erythropoietin and items related to its administration would be allowed for home renal dialysis patients who are competent to use the drug without medical or other supervision, subject to methods and standards established by the Secretary through regulation for the safe and effective use of the drug.

Erythropoietin, including self-administered erythropoietin, would not be included as a dialysis service for payment purposes under a prospective payment amount or comprehensive fee established for dialysis services. Payment for erythropoietin provided by a physician would be made on a reasonable charge basis. Payment for erythropoietin provided by a provider of services or a renal dialysis facility would be made in an amount determined by the Secretary. Payments to Method II suppliers of home dialysis supplies and equipment for self-administration of erythropoietin may be made if the Secretary determines that a patient can safely and effectively administer the drug in accordance with standards established by the Secretary.

Payment to Method II suppliers for erythropoietin that is self-administered is to be determined in the same manner as payment to a renal dialysis facility for the drug.

(c) Payments for Erythropoietin.—Section 6150 and 6151. No provision.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—Section 6151. Authorizes the Secretary to make payments to approved ESRD providers and facilities for the cost of home dialysis support services furnished to home dialysis patients under the direct supervision of the provider or facility. The Secretary is to establish a prospective method for determining the amount of payment to be made for home hemodialysis staff assistance furnished by a provider of services for a dialysis episode. The payment amount is to be in addition to the composite rate paid to the provider or facility for dialysis services.

The payment amount is to be calculated as follows. The national median hourly wage for a home hemodialysis staff assistant is multiplied by the national median time expended in the provision of home hemodialysis staff assistant services. The national median hourly wage and the national median average time expended for home hemodialysis services is to be determined annually based on the most recent data available. The national median hourly wage is to be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

Two-thirds of the labor portion of the composite rate applicable to the provider or facility (as adjusted to reflect area differences in wages) is to be subtracted from the product of the national median time expended in staff assistant services and the national median average time expended. The result is multiplied by the factor by which the labor portion of the composite rate is adjusted for area differences in wages.

Home hemodialysis staff assistance means the following services: (1) technical assistance with the operation of a hemodialysis machine in the patient's home and with the patient's care during in-home hemodialysis; and (2) administration of medications in the patient's home to maintain the patency of the extra corporeal circuit. Home hemodialysis staff assistants are qualified to receive Medicare reimbursement if they: (1) have met the minimum qualifications specified by the Secretary; and (2) meet the minimum qualifications specified in State law in the State where the aide is providing services.

Eligible patients means individuals who: (1) a physician certifies as being confined to a bed or wheelchair and who can not transfer themselves from a bed to a chair; or (2) have serious medical conditions (as specified by the Secretary) which would be exacerbated by travelling to and from a dialysis facility; and (3) are eligible for Medicare ambulance transportation to receive routine maintenance dialysis services, and based on the patient's medical condition, there is reasonable expectation that the transportation will be used by the patient for a period of at least 6 consecutive months, such that the cost of ambulance transportation during this 6-month period can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance; and (4) have no spouse, relative or other caregiver who either lives with the individual or comes to the individual's house periodically and is willing and able to assist the individual with home hemodialysis; and (5) the Secretary certifies annually as meeting these requirements.

Coverage of home hemodialysis staff assistance takes effect (if at all) after the Secretary establishes a demonstration project to test the cost-effectiveness of furnishing home hemodialysis staff assistance. The demonstration is to begin January 1, 1991 and continue through December 31, 1993, or the date that occurs the same number of days after such date as elapsed between January 1, 1991 and the first day on which services were furnished under the project. As of the date of enactment, any individual receiving staff assistance under the Secretary's experimental authority is deemed to be eligible for the demonstration, and any individual participating in the demonstration as of December 31, 1993, or the end of the demonstration, will continue to be eligible for home hemodialysis staff assistance under the same terms and conditions as under the demonstration. If the Secretary determined that it is not cost-effective to furnish home dialysis staff assistance, the demonstration will terminate as of December 31, 1993.

The number of eligible patients participating in the demonstration may not exceed 550 during any month, except that one eligible patient must be admitted to the demonstration for each individual ceasing to participate in the demonstration. The Secretary may implement the demonstration on a nationwide basis or at specific sites.

The Secretary is directed to transmit a preliminary report to the House Committees on Ways and Means and Energy and Commerce and the Senate Finance Committee not later than January 15, 1993, and a final report by December 31, 1993.

Effective date: Sections 6150 and 6151. Provisions (a) and (b) apply for services provided on or after January 1, 1991. Provision (d) takes effect, if at all, after the demonstration project establishes the cost-effectiveness of home hemodialysis staff assistance.

Conference agreement

AB 1. End Stage Renal Disease

(a) Payments to Dialysis Facilities.—The conference agreement includes the House bill with an amendment. The Secretary would be required to maintain the composite rate in effect on September 30, 1990, without regard to reductions imposed in Section 11102 of OBRA '89, increased by $1.00, for services provided on or after January 1, 1991. The Prospective Payment Assessment Commission would be required to study the cost, services, and profits associated with various dialysis modalities provided to ESRD patients.

(b) Self-Administration of Erythropoietin.—The conference agreement includes the Senate amendment with a modification. The conference agreement does not preclude the Secretary from establishing guidelines that permit Method II suppliers to provide home dialysis patients with erythro-

poietin. Effective for services rendered on or after July 1, 1991.

(c) Payments to Erythropoietin.—The conference agreement includes the House bill with modifications. The $70 cap on payment would be eliminated. Payments would be based on 1,000 unit increments of erythropoietin rounded to the nearest 100 units.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—The conference agreement includes the Senate amendment with amendments. The demonstration is to begin within nine months of enactment and to continue for three years. The Secretary would conduct a study to determine whether staff assisted home hemodialysis services are cost effective and safe for qualified ESRD beneficiaries. The study would be designed with a treatment and comparison group; the treatment group would be limited to 800 individuals receiving staff assisted dialysis services during the demonstration. The Secretary would be required to submit an interim report to Congress by December 1, 1992 and a final report by December 31, 1995. The Secretary's final report is to include recommendations regarding appropriate eligibility criteria and cost control mechanisms. Expenditures for the demonstration are to be made from the Federal Supplementary Medical Insurance (SMI) Trust Fund. Expenditures from the SMI trust fund for the demonstration are expected to be $14 million from FY 91 to FY 95.

2. Extension of Secondary Payer Provisions (Sections 12202, 4121, and 4122(b) of the House bill; Section 6152 of the Senate amendment)

Present law

(a) Extension of Transfer of Data.—Medicare is a secondary payer under specified circumstances when Medicare beneficiaries are covered by other third party payers. Medicare is secondary payer to automobile, medical, no-fault and liability insurance. In addition, Medicare is secondary payer to certain employer group health plans for items and services provided to aged and disabled beneficiaries, and to end-stage renal disease (ESRD) beneficiaries during the first 12 months of a beneficiary's entitlement to Medicare on the basis of ESRD.

The Department of Health and Human Services (HHS) identifies Medicare secondary payer cases in the following ways: beneficiary questionnaires; provider identification of third party coverage when services are provided; Medicare contractor screening and data collection and exchange; and data transfers with other Federal and State agencies.

As a result of changes made in OBRA 1989 (P.L. 101-239), HHS is provided a 2-year period for matching Internal Revenue Service (IRS) tax records to records of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) to identify working beneficiaries and their spouses to improve the identification and collection of Medicare secondary payer cases. Medicare contractors are required to use this new information to contact employers to determine whether the employer provided health coverage, during what time period, and the nature of such coverage. Employers are required to respond to such inquiries within 30 days.

Current restrictions on the disclosure of information under the Internal Revenue Code and the Privacy Act also apply to the new information provided by SSA and IRS to HCFA.

The present law requirement that employers respond to inquiries from Medicare contractors about employer coverage of beneficiaries and their spouses expires for inquiries made after September 30, 1991. In addition, the present law requirement that 1) the Treasury Secretary respond to requests from SSA to disclose IRS taxpayer identification information about Medicare beneficiaries and their spouses, and 2) SSA respond to requests from HCFA to disclose such information expires for requests made after September 30, 1991. The Treasury Secretary is not required to respond to requests made before September 30, 1991, for information relating to 1990 or thereafter, and SSA is not required to respond to requests made before September 30, 1991, for information relating to 1991 or thereafter.

(b) Extension of Application to Disabled Beneficiaries.—OBRA 1986 (P.L. 99-509) required that Medicare be the secondary payer for disabled Medicare beneficiaries who are covered by a "large group health plan" for items and services furnished on or after January 1, 1987, and before January 1, 1992. "Large group health plan" is defined as an employer or employee organization plan of an employer that employs at least 100 employees. This provision expires January 1, 1992.

(c) Extension of Renal Disease Period.—Medicare is the secondary payer, for a 12-month period, for beneficiaries who are entitled to Medicare solely on the basis of end-stage renal disease and who are covered by an employer-based group health plan. The 12-month period begins with the earlier of 1) the month in which the individual initiates a regular course of renal dialysis, or 2) the month in which an individual who receives a kidney transplant could become entitled to Medicare.

A technical aspect of the law effectively limits Medicare's secondary status to the first 9 months of an individual's Medicare entitlement. This is because entitlement to Medicare as an ESRD beneficiary begins with the third month after the month in which a regular course of dialysis is initiated (except in the case of kidney transplant recipients), while the law requires employer plans to be primary for the 12-month period beginning with the month dialysis is initiated.

(d) Prohibiting Certain Employer Marketing Activities.—No provision.

House Bill

(a) Extension of Transfer of Data.—

Section 12202. Amends the Social Security Act to extend through September 30, 1995, the requirement that employers must respond to inquiries from Medicare contractors about employer coverage of beneficiaries and their spouses. Amends the Internal Revenue Code to extend through September 30, 1995, the requirement that the Treasury and SSA respond to requests concerning taxpayer information. For requests made before September 30, 1995, provides that the Treasury would not be required to respond to requests for information for 1994 and thereafter, and SSA would not be required to respond to requests for information relating to 1995 or thereafter.

Section 4121. Amends the Social Security Act to eliminate the September 30, 1991 sunset of the requirement that employers must respond to inquiries from Medicare contractors.

(b) Extension of Application to Disabled Beneficiaries.

Section 12202. Amends the Social Security Act to extend the application of this provision to items and services furnished before October 1, 1995.

Section 4121. Eliminates the January 1, 1992 sunset of this provision.

(c) Extension of Renal Disease Period.—

Section 12202. No provision.

Section 4121. Extends the period during which employer-based health coverage is the primary payer for ESRD beneficiaries from 12 to 18 months.

(d) Prohibiting Certain Employer Marketing Activities.—

Section 12202. No provision.

Section 4122(b). Provides that it would be unlawful for an employer or other entity to offer any financial or other incentive for an individual not to enroll (or to terminate enrollment) under a group health plan which would (in case of such enrollment) be a primary plan, unless such incentive is also offered to all individuals who are eligible for coverage under the plan.

Provides that entity that violates this requirement would be subject to a civil money penalty of not to exceed $5,000 for each such violation. Provides that certain provisions of Section 1128A of the Social Security Act would apply to the civil money penalty.

Effective date.—

Section 12202.—Enactment, except (a) related to requests made of the Treasury would apply to requests made on or after enactment.

Sections 4121 and 4122(b). Enactment, except (c) applies to group health plans for plan years beginning on or after January 1, 1991, and (d) applies to incentives offered on or after enactment.

Senate Amendment

(a) Extension of Transfer of Data.—Identical to Section 12202.

(b) Extension of Application to Disabled Beneficiaries.—Identical to Section 12202.

(c) Extension of Renal Disease Period.—Extends the period during which employer-based group health coverage is the primary payer from 12 months to 24 months. Provides that this provision would be effective for items and services furnished on or after February 1, 1991 and before January 1, 1996 (with respect to periods beginning on or after February 1, 1990).

Revises current law to provide that (1) employer-based group health plans would be primary to Medicare during the 24-month period that begins with the first month in which the individual becomes entitled to Medicare benefits on the basis of ESRD, and (2) such plans would not be prohibited from being secondary payer during a period occurring before or after this 24-month period.

Requires the Comptroller General to study and report to the Committees on Ways and Means, Energy and Commerce, and Finance on the impact of the extension to 24 months on individuals eligible for Medicare on the basis of ESRD. Requires the report to include information relating to:

(1) the number and geographic distribution of such individuals for whom Medicare is secondary;

(2) the amount of savings to Medicare achieved annually from this provision;

(3) the effect on access to employment, and employee-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of Medicare's cost-sharing requirements after employment-based insurance becomes secondary); and

(4) the effect on the amount paid for each dialysis treatment under employment-based health insurance; and

(5) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which Medicare is secondary.

Requires the Comptroller General to submit a preliminary report not later than January 1, 1993, and a final report not later than January 1, 1995.

(d) Prohibiting Certain Employer Marketing Activities.—No provision.

Effective date.—Enactment, except the provisions in (a) relating to requests made of the Treasury would apply to requests made on or after enactment; those in (c) extending the employer's primary period for ESRD beneficiaries from 12 to 24 months, and starting the period with the first month in which the individual becomes entitled to Medicare benefits on the basis of ESRD would apply to periods beginning on or after February 1, 1990; those in (c) making employer plans primary for ESRD beneficiaries would be effective January 1, 1992 for beneficiaries whose employers have 1,000 or more employees, January 1, 1993 for beneficiaries whose employers have 100 or more employees, and January 1, 1994 for all other beneficiaries.

Conference agreement

AB.2. Extension of Secondary Payer Provisions

Conference agreement

(a) Extension of Transfer of Data.—The conference agreement includes the House bill.

(b) Extension of Application to Disabled Beneficiaries.—The conference agreement includes the House bill.

(c) Extension of Renal Disease Period.—The conference agreement includes the Senate amendment, with an amendment that the period during which employer-based health coverage would be the primary payer for ESRD beneficiaries is 18 months.

(d) Prohibiting Certain Employer Marketing Activities.—The conference agreement includes the House bill.

3. Patient Self-determination (Section 4122 of the House bill; section 6157 of the Senate amendment)

Present law

Most States have enacted legislation defining a patient's rights to make decisions regarding medical care, including: (1) the right to accept or refuse medical or surgical treatment, and (2) the right to formulate advance directives, such as through the appointment of an agent or surrogate to make decisions on his or her behalf ("durable power of attorney") and written instructions about health care ("living will").

There are no current requirements relating to advance directives under Medicare. There are provisions in current law that establish the basic obligations of hospitals, physicians and other providers under the Medicare program, and that define certain terms. The Joint Commission on the Accreditation of Health Care Organizations (JCAHO) which provides "deemed status" to many hospitals under the Medicare program, does require hospitals to have protocols for decision-making on "do not resuscitate" orders. Also, current law requires hospitals, as a condition of participation in the Medicare program, to establish written protocols for the identification of potential donors.

House bill

(a) Condition of Participation for Home Health Agencies.—No provision.

(b) As a Contractual Condition for HMOs and CMPs.—Provides that Medicare contracts with HMOs/CMPs include a provision that the organization will comply with requirements relating to patient advance directives, including living wills and other instructions recognized under State law relating to care when an individual is incapacitated. Requires that organizations have written policies and procedures to (a) inform all adult enrollees at the time of enrollment of their right to accept or refuse treatment and to execute an advance directive and of the organization's policies on implementation of that right, (b) document in medical records whether or not an individual has executed an advance directive, (c) not condition treatment or otherwise discriminate on the basis of whether an individual has executed an advance directive, (d) comply with State laws on advance directives, and (e) provide education for staff and the community on advance directives. Requires other types of prepaid organizations, as a condition for Medicare payment, to provide assurances that they will comply with the same requirements.

(c) Requiring Provision of Information Regarding Patient's Rights.—No provision but see (b) above.

(d) Enforcement.—Compliance with these provisions is a Medicare contract requirement.

(e) Assistance in Development and Distribution of Patients' Rights Document.—No provision.

(f) Inclusion of Certain Information in Annual Medicare Beneficiary Mailing.—No provision.

(g) Study.—No provision.

(h) Public Education Project.—No provision.

Effective date.—Applies to Medicare HMO (risk and other) contracts as of the first day of the first month beginning more than one year after enactment.

Senate amendment

(a) Condition of Participation for Home Health Agencies.—Amends the Medicare conditions of participation for home health agencies to require that such agencies maintain written policies and procedures respecting advance directives.

(b) As a contractual condition for HMOs and CMPs.—Requires that as a condition for a Medicare contract that each risk-sharing HMO/CMP and other type of prepaid organization meet the requirements relating to maintaining written policies and procedures respecting advance directives.

(c) Requiring Provision of Information Regarding Patient's Rights.—Amends the provision of the Social Security Act relating to Medicare provider agreements. Requires that hospitals, skilled nursing facilities, home health agencies, hospice programs, HMOs/CMPs, other prepaid organizations, and comprehensive outpatient rehabilitation facilities comply with new provisions relating to maintaining written policies and procedures with respect to all adult individuals receiving medical care.

Requires that adult individuals be provided written information concerning: (1) An individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives, and (2) the policies of the provider or HMO/CMP respecting the implementation of such rights. Requires the provider or HMO/CMP to inquire of an individual (or a family member) whether the individual has executed an advanced directive and document in the individual's medical record the response to the inquiry. Requires the provider or HMO/CMP to ensure compliance with requirements of State law respecting advance directives or facilities of the provider or HMO/CMP, and to provide (individually or with others) for education for staff on issues concerning advance directives. Defines advanced directive to mean a written instruction, such as a living will or durable power of attorney for health care, recognized under State law and relating to the provision of such care when the individual is incapacitated.

Prohibits a provider or organization from conditioning the provision of care or otherwise discriminating against an individual based on whether or not the individual has executed an advanced directive. Provides that this is not to be construed as requiring the provision of care which conflicts with an advanced directive.

(d) Enforcement.—Compliance with these provisions is required as part of the Medicare provider agreements and Medicare contracts with HMOs/CMPs and other prepaid plans.

(e) Assistance in Development and Distribution of Patients' Rights Document.—Requires the Secretary to assist, in each State, an appropriate State agency, association, or private entity in developing a State-specific document that describes patients' rights in the State that could be distributed to providers and physicians for use in complying with the requirements that they provide patients' rights information to their patients. Requires the Secretary to assist such agency, association, or entity in the distribution of copies of the documents.

(f) Inclusion of Certain Information in Annual Medicare Beneficiary Mailing.—Requires the Secretary to mail information to Social Security recipients, add a page to the Medicare handbook with respect to the provisions of the Act, and provide for and install a nationwide, toll-free informational number to provide State agencies, private entities, and Medicare and Medicaid eligible individuals with information regarding the option to execute advance directives and the rights of individuals as provided for under this Act.

(g) Study.—Requires the Secretary to conduct a study or enter into an agreement with a private entity to conduct a study and submit a report to Congress with respect to the implementation of directed health care decisions. Requires that the study: (1) Evaluate the experience of practitioners, providers, and government regulators in complying with the provisions of this Act; (2) assess the awareness and utilization of advance directives as a result of this Act; (3) investigate methods of encouraging reciprocity among States in the enforcement of advance directives; (4) report on the manner in which treatment decisions are made in the absence of advance directives; and (5) make such recommendations for legislation as may be appropriate to carry out the purposes of this Act. Requires the study and report to be submitted to Congress no later than 4 years after enactment.

(h) Public Education Project.—Requires the Secretary to develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct

health care decisions. Requires the Secretary to develop or approve nationwide informational materials that would be distributed by providers under the requirements of this Act, to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

Effective date: Applies with respect to services furnished on or after the first day of the first month beginning more than one year after enactment, except the provisions affecting Medicare HMO contracts apply to contracts as of the first day of the first month beginning more than one year after enactment.

Conference Agreement

3. Patient Self-Determination/Living Wills.—The conference agreement includes the Senate bill with modifications. The agreement provides that the provider or organization provide written information to each individual which includes the written policies respecting the implementation of such rights. The provider or organization is required to document in the individual's medical record whether or not the individual has executed an advanced directive. The provider organization is required to ensure compliance with requirements of State law whether statutory or as recognized by the courts of the State respecting advance directives at facilities of the provider or organization. The conference agreement specifies the times at which the written information must be provided to an adult individual, and modifies the definition of advanced directive. It further provides that nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive. The conference agreement does not include the study of the implementation of directed health care decisions or the public education project.

4. Health Maintenance Organizations. (Section 4122 of the House bill; section 6153 of the Senate amendment.)

Present Law

(a) Restrictions on Incentive Payments to Physicians.—OBRA 1986 prohibited hospitals and health maintenance organizations (HMOs) or similar entities with a risk contract under Medicare or Medicaid from making payments to a physician, directly or indirectly, as an inducement to reduce or limit services provided to beneficiaries or enrollees. For HMOs, the effective date has been delayed until April 1, 1991.

(b) Revisions in Methodology Used to Determine AAPCC.—The Secretary is required to annually determine, and announce in a manner intended to provide notice to interested parties, a per capita rate of payment for each class of beneficiaries enrolled with an HMO/CMP on a risk basis. This notice is required to be promulgated by September 7 of each year, with an explanation of the methodology due 45 days earlier (beginning with the announcement for 1991). The per capita rate of payment must equal 95 percent of the adjusted average per capita cost (AAPCC), the projected average cost in the coming year of providing Medicare benefits to a comparable group of beneficiaries who are not enrolled in an HMO/CMP and receive care on a fee-for-service basis.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—HMOs/CMPs are required to provide the full scope of Medicare services to enrolled beneficiaries. From time to time the Secretary promulgates national coverage decisions, which determine whether specific procedures or items may be paid for under Medicare, and under what conditions.

(d) Permitting Continuous Enrollment of Certain Retirees.—No provision.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—

No more than 50 percent of enrollees in an HMO/CMP with a Medicare risk-sharing contract may be Medicare or Medicaid beneficiaries; the Secretary may waive this requirement for an HMO/CMP serving an area with a high Medicare and Medicaid population. The requirement may also be waived for the first 3 years of a contract with an HMO/CMP owned and operated by a governmental entity if the HMO/CMP is making reasonable efforts to enroll members who are not Medicare or Medicaid beneficiaries. (A separate limit of 75 percent Medicare and Medicaid enrollment applies to HMOs contracting with Medicaid.) In addition, an HMO/CMP must have at least 5,000 members to qualify for a risk-sharing contract, unless it primarily serves members residing outside urbanized areas.

(f) Prohibiting Certain Employer Marketing Activities.—No provision.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—No provision.

(h) Extension of Waivers for Social Health Maintenance Organizations.—No provision.

(i) Study of Chiropractic Services.—No provision.

House Bill

(a) Restrictions on Incentive Payments to Physicians.—No provision.

(b) Revisions in Methodology Used to Determine AAPCC.—No provision.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—No provision.

(d) Permitting Continuous Enrollment of Certain Retirees.—Provides that if an individual is enrolled in an HMO/CMP under a health plan sponsored by the individual's employer or a spouse's employer, and if the individual or spouse retires, the individual may be enrolled retroactively under a Medicare risk-sharing contract with that HMO/CMP. The enrollment may be effective as of the first month of retirement if it occurs no later than 3 months after the date of retirement.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—

(1) Waiver of 50/50 Rule.—No provision.

(2) Temporary Waiver for Related Entities.—No provision.

(3) Waiver of Certain HMO Requirements.—No provision.

(f) Prohibiting Certain Employer Marketing Activities.—See item 2, above, for provision relating to Medicare as a secondary payer.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—See item 3, above, for provisions relating to advance directives in HMOs.

(h) Extension of Waivers for Social Health Maintenance Organizations.—See item 7, below, for provisions relating to extension of the social health maintenance organization (SHMO) waivers.

(i) Study of Chiropractic Services.—No provision.

Effective date: Enactment.

Senate amendment

(a) Restrictions on Incentive Payments to Physicians.—Requires that Medicare risk-sharing contracts with HMOs or competitive medical plans (CMPs) prohibit the organization from operating a physician incentive plan unless the following requirements are met: (1) no specific payment may be made to physicians as an inducement to withhold or limit services to specific enrollees, and (2) if physicians or physician groups are placed at serious risk for services than their own, the HMO/CMP must provide adequate stop-loss protection (as determined by the Secretary taking into account the size of the group and the number of enrollees served) and must periodically survey enrollees to ensure that they have adequate access and are satisfied with the quality of services. Requires the HMO/CMP to provide the Secretary with sufficient information about the incentive plan to determine compliance. Provides that, if the Secretary determines that a violation of these requirements has occurred, the Secretary may impose a $25,000 civil monetary penalty for each such determination and/or suspend new enrollments or payment for new enrollees until satisfied that the violation will not recur. Repeals the OBRA 1986 prohibition of incentive payments by HMOs/CMPs with Medicare risk-sharing contracts.

(b) Revisions in Methodology Used to Determine AAPCC.—Requires the Secretary to submit a proposal for revisions in the HMO/CMP payment methodology to Congress by January 1, 1992, with the revisions to take effect for rate years beginning January 1, 1993. Requires that the proposed methodology improve the prediction of actual service use and expenditures for enrollees of each HMO/CMP, either through modification of the AAPCC formula to include such factors as health status adjusters or prior utilization measures or through use of a new alternative to the AAPCC. Requires that the proposal include data to support recommended changes and to show that the revised methodology can account for at least 15 percent of total variation in annual medical expenses for Medicare beneficiaries, as certified by the American Academy of Actuaries. Requires that the Secretary publish the proposal as a notice of proposed rulemaking by March 1, 1992, that the General Accounting Office review the Secretary's proposal and make a recommendation to Congress on appropriate modifications, and that the Secretary issue a final rule taking into account those recommendations by August 1, 1992.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—Provides that, if the Secretary issues a national coverage decision in the period between annual HMO/CMP rate announcements, and the Secretary determines that the decision will significantly affect HMO/CMP costs, the decision will not be binding on the HMO/CMP until the first year following the next rate announcement; in the interim, any additional benefits provided as a result of the decision will be paid directly by Medicare on a fee-for-service basis.

(d) Permitting Continuous Enrollment of Certain Retirees.—Similar provision, except requires that, on or before the intended effective date of enrollment, the beneficiary must sign the explanation of enrollees' rights ordinarily required to be furnished to Medicare HMO/CMP enrollees.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—

(1) Waiver of 50/50 Rule.—Permits a waiver of the 50 percent limit for an HMO/CMP meeting the following requirements: (i) the HMO/CMP has shown a profit for the last 3 years or, for a new HMO/CMP, the parent company assures its solvency; (ii) the HMO/CMP has had a Medicare risk contract for 3 years or, for a new HMO/CMP, the parent company has operated an HMO for 5 years and has had a Medicare risk contract for 2 years in 2 or more States; (iii) the HMO/CMP has a total of at least 100,000 enrollees; (iv) the HMO/CMP has no serious quality problems, as determined by the Secretary, has agreed to annual quality review by the Secretary; (v) the HMO funds an annual membership survey conducted and reported to the Secretary by an independent survey firm, including satisfaction measures for Medicare enrollees, for Medicare enrollees with a recent hospital discharge, and for Medicare beneficiaries who have disenrolled; (vi) the HMO/CMP provides its Medicare enrollees with special services targeted to the elderly, including a multi-disciplinary geriatric assessment and, for enrollees dependent in 3 or more activities of daily living for at least 3 months, specified home and community-based long-term care services. Provides that a waiver of the 50-percent rule shall be approved for a 3-year period and that the required additional benefits for Medicare enrollees must also be available for a 3-year period. Requires the Secretary to review the HMO/CMP's compliance with the waiver requirements annually and permits withdrawal of the waiver in the event of noncompliance. Requires the Secretary to evaluate the cost and impact of any waiver, including its impact on the financial viability of the HMO/CMP, and to report to Congress within 2 years after enactment on whether any changes should be made in the 50 percent rule.

(2) Temporary Waiver for Related Entities.—Provides that, for a period of 2 years, in determining whether an HMO/CMP that has a Medicare contract meets the 50 percent rule, there may be combined with the HMO/CMP's enrollees the enrollees of an organization related to the HMO/CMP by common ownership and control, if the organization provides services in the same area as the HMO/CMP through essentially the same providers, uses a functionally integrated quality assurance program, and shares specified administrative functions with the HMO/CMP.

(3) Waiver of Certain HMO Requirements.—Provides that, in determining whether Managed Care, Inc., an affiliate of CHP (the medical group affiliated with Long Island Jewish Medical Center) meets the 50 percent rule and the 5,000 enrollee minimum, Managed Care may count as enrollees and the members of a State-licensed HMO for whom CHP has agreed to assume full financial risk for hospital and physician services. The same enrollees may not be counted by any other organization for the purpose of applying the same tests. Provides that the waiver for Managed Care will expire two years after enactment.

(f) Prohibiting Certain Employer Marketing Activities.—No provision.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—No provision.

(h) Extension of Waivers for Social Health Maintenance Organizations.—No provision.

(i) Study of Chiropractic Services.—Requires the Secretary to study the availability of Medicare-covered chiropractic services to HMO enrollees and the arrangements and types of practitioners involved in furnishing such services. Requires that the study be based on contracts entered into or renewed on or after January 1, 1991, and before January 1, 1993. Requires an interim report to The House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance by January 1, 1992, and a final report, including recommendations on changes needed to assure access to such services, by January 1, 1993.

Effective date: (a) Effective January 1, 1992, except that the repeal of the OBRA 1986 prohibition of physician incentive payments is effective on enactment. (c) applies to coverage decisions made on or after September 7, 1990. (d) Applies to individuals enrolling on or after January 1, 1991. All other provisions effective on enactment.

Conference agreement

4. Health Maintenance Organizations

(a) Restrictions on Incentive Payments to Physicians.—The conference agreement requires that Medicare risk-sharing contracts with HMOs or competitive medical plans (CMPs) prohibit the organizations from operating a physician incentive plan unless the following requirements are met: (1) no specific payment may be made to physicians as an inducement to withhold or limit services to specific enrollees, and (2) if physicians or physician groups are placed at serious risk for services other than their own, the HMO/CMP must provide adequate stop-loss protection (as determined by the Secretary taking into account the size of the group and the number of enrollees served) and must periodically survey enrollees to ensure that they have adequate access and are satisfied with the quality of services. Requires the HMO/CMP to provide the Secretary with sufficient information about the incentive plan to determine compliance. Provides that, if the Secretary determines that a violation of these requirements has occurred, the Secretary may impose a $25,000 civil monetary penalty for each such determination and/or suspend new enrollments or payment for new enrollees until satisfied that the violation will not recur. Repeals the OBRA 1986 prohibition of incentive payments by HMOs/CMPs with Medicare risk-sharing contracts. The provisions relating to the regulation of incentive plans apply to contract years beginning on or after January 1, 1992. The provision relating to the repeal of the OBRA 1986 prohibition of incentive payments is effective upon enactment.

(b) Revisions in Methodology Used to Determine AAPCC.—The conference agreement includes the Senate amendment with modifications. Provides that the proposal include an analysis demonstrating that any proposed or revised payment methodology under this section is effective in explaining at least 15 percent of the variation in health care utilization and costs (as determined in consultation with the American Academy of Actuaries) among individuals enrolled in such organizations.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—The conference agreement includes the Senate amendment.

(d) Permitting Continuous Enrollment of Certain Retirees.—The conference agreement includes the Senate amendment.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—The conference agreement does not include the Senate amendment.

(f) Prohibiting Certain Employer Marketing Activities.—See section relating to Medicare as a secondary payer.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—See section relating to provisions relating to advance directives.

(h) Extensions of Waivers for Social Health Maintenance Organizations.—See section relating to extension of the social health maintenance organization (SHMO) waivers.

(i) Study of Chiropractic Services.—The conference agreement includes the Senate amendment.

In addition, the conference agreement extends the limit on charges for out-of-plan and emergency physicians and ESRD services to all out-of-plan and emergency services under Part B.

5. Changes in Medigap Standards (Sections 4301-4309 of the House bill; Section 6155 of the Senate amendment)

Present law

(a) Simplification of Policies.—Section 1882 of the Social Security Act requires that in order for a Medigap policy to be certified by the Secretary, it must meet minimum requirements, including benefit requirements, contained in model standards approved by the National Association of Insurance Commissioners (NAIC). In addition, for a State Medigap regulatory program to be approved by HHS, it must apply such minimum requirements.

In its model regulations, the NAIC has defined minimum benefit standards as follows: (1) coverage of coinsurance for Medicare-eligible hospital expenses for days 61 through 90 in a benefit period; (2) coverage of either all or none of Medicare's inpatient hospital deductible; (3) coverage of coinsurance for Medicare-eligible hospital expenses for Medicare's lifetime reserve days; (4) after exhausting Medicare's lifetime reserve days, coverage of 90 percent of all Medicare-eligible hospital expenses, subject to a lifetime maximum benefit of an additional 365 days; (5) coverage of the Part A blood deductible (3 pints); (6) coverage of Medicare's Part B coinsurance, subject to the Part B deductible; and (7) coverage of the Part B blood deductible (3 pints), subject to the Part B deductible.

The States of Massachusetts, Minnesota, and Wisconsin have implemented their own standardized benefit options.

(b) Uniform Policy Description.—Section 1882 of the Social Security Act contains no provision.

The NAIC standards require insurers issuing Medigap policies to provide an outline of coverage that describes the features of the policy, including Medicare's benefits and the policy's benefits, according to a uniform format.

(c) Prevention of Duplicate Medigap Coverage.—Section 1882 of the Social Security Act prohibits an individual from knowingly selling a Medigap policy with knowledge that such policy substantially duplicates other health benefits to which the individual is entitled (other than benefits the individual is entitled to under State or Federal law, excluding Medicare). If the Medigap policy pays benefits regardless of other health benefits coverage, such a policy is not considered duplicative. The penalty for non-compliance includes a fine under Title 18 or imprisonment for not more than 5 years, or both, and, in addition or in lieu of such a criminal penalty, a civil money penal-

ty of not to exceed $5,000 for each such prohibited act.

The NAIC standards require Medigap application forms to contain questions about prior and existing Medigap coverage and Medicaid coverage. Such standards require agents to list on the application form any other health insurance policies they have sold to the applicant. Agents are required to make reasonable efforts to determine the appropriateness of a recommended purchase or replacement. The sale of a Medigap policy to an individual already having such a policy is prohibited unless the combined coverage insures no more than 100 percent of actual medical expenses. The NAIC standards require insurers to report to the States annually by March 1 information on State residents whom the insurer has covered with more than 1 Medigap policy. If the sale involves a replacement, the insurer must give the applicant a notice regarding the replacement, in a format developed by the NAIC, which is to be signed by the applicant and the agent.

(d) Loss Ratio Requirements.—Section 1882 of the Social Security Act provides that approved Medigap policies must meet loss ratios (estimated for the period for which rates are computed) of at least 75 percent for group policies and 60 percent for individual policies. Direct response policies (those sold through the mail or by mass media advertising) are permitted to meet the 60 percent individual standard. The law provides that loss ratios are the ratios of incurred claims to earned premiums, estimated in accordance with accepted actuarial principles and practices. Information on actual loss ratios is required to be reported to States on forms conforming to those developed by NAIC, or such ratios will be monitored in an alternative manner approved by the Secretary.

The NAIC standards require that actual loss ratios must be at least 75 percent for group policies and 60/65 percent for individual policies. Direct response policies are required to meet the 75 percent group standard. Policies in force for less than 3 years are not required to meet the standards until their third year. Medigap insurers are required to file annually their rates, rating schedules, and supporting documentation including loss ratios to demonstrate that they comply with the standards. The standards require that premium adjustments be made as necessary to produce anticipated loss ratios, including when Medicare's benefits change.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—Section 1882 of the Social Security Act contains no provision.

The NAIC standards provide that an insurer may not cancel or nonrenew a Medigap policy for any reason other than nonpayment of premium or material misrepresentation. If a group Medigap policy is terminated by the group policyholder and is not replaced, the insurer must offer certificateholders an individual Medigap policy which either provides for continuation of the benefits contained in the group policy or provides only such benefits as are required to meet the minimum standards. If membership in a group is terminated, the insurer must offer the certificateholder conversion to an individual policy (as described in the preceding sentence) or, at the option of the group policyholder, continuation of coverage under the group policy. If a group Medigap policy is replaced by another group Medigap policy purchased by the same policyholder, the standards require the succeeding insurer to offer coverage to all persons covered under the old group policy on its termination date. Coverage under the new group policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

The NAIC standards prohibit Medigap policies from denying a claim for a preexisting condition for losses incurred more than 6 months from the coverage effective date. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the coverage effective date. The NAIC standards require that if a Medigap policy is replaced by another Medigap policy, the new policy must waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods for similar benefits to the extent such time was spent under the original policy.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—Section 1882 of the Social Security Act contains no loss ratio provisions for hospital indemnity and dread disease policies.

The NAIC Guidelines for Filing of Rates for Individual Health Insurance Forms (including individual hospital indemnity and dread disease policies) include minimum loss ratios of 60 percent for optionally renewable policies, 55 percent for conditionally and guaranteed renewable policies, and 50 percent for noncancellable policies. States vary in their requirements for loss ratios for hospital indemnity and dread disease policies.

(g) Enforcement of Standards.—Section 1882 of the Social Security Act includes provisions for the regulation of Medigap policies, including:

(1) a program of voluntary submission by States of their Medigap regulatory programs for approval by a Supplemental Health Insurance Panel;

(2) a voluntary certification program of Medigap policies by the Department of Health and Human Services (DHHS); and

(3) civil and criminal penalties for certain abusive sales practices.

Section 1882 contains certain requirements for Medigap policies; in addition, it incorporates by reference requirements provided in model standards (including law and regulations) approved by the National Association of Insurance Commissioners (NAIC).

The Federal/NAIC Medigap standards are implemented in two ways. States may submit their Medigap regulatory programs for approval to the Supplemental Health Insurance Panel, which consists of the Secretary and 4 State commissioners or superintendents of insurance appointed by the Secretary to the Panel. If such State programs meet or exceed the Federal/NAIC standards, then policies approved in those States are deemed to meet the Federal requirements. In States that do not have approved Medigap regulatory programs, individual insurers may voluntarily submit their policies to the Voluntary Certification Program at HHS to be certified.

Section 1882 also provides civil and criminal penalties for certain abusive sales practices, including making false statements and misrepresentations, falsely claiming to represent any Federal agency in order to sell insurance, selling health insurance policies that substantially duplicate other health benefits, and mailing into a State Medigap policies that have not been approved.

(h) Requiring Approval of State for Sale in the State.—Section 1882 of the Social Security Act provides that a Medigap policy sold through the mail can be considered to be approved in a State if (1) the policy has been certified by the Secretary or was issued in a State with an approved regulatory program; (2) the policy has been approved by the commissioners of insurance in States in which more than 30 percent of such policies are sold; or (3) the State has in effect a law which the State's commissioner of insurance has determined gives him or her the authority to review and approve, or effectively bar from sale, in the State such a policy. Such a policy would not be deemed to be approved by a State if the State notifies the Secretary that such policy was disapproved by the State after providing appropriate notice and opportunity for hearing according to the procedures (if any) of the State.

(i) Counseling and Education Programs.—Section 1882 of the Social Security Act requires the Secretary to provide to all Medicare beneficiaries (and, to the extent feasible, to prospective beneficiaries) such information as will permit them to evaluate the value of Medigap policies to them and the relationship of Medigap policies to Medicare benefits. The Secretary is required to (1) inform beneficiaries about marketing and sales abuses subject to sanctions under Section 1882 and the manner in which they may report any such action or practice to an appropriate official of HHS or a State, and (2) publish the toll-free telephone number for individuals to report suspected violations of the marketing and sales requirements. The Secretary must also provide Medicare beneficiaries with a listing of the addresses and telephone numbers of State and Federal agencies and offices that provide information and assistance to individuals about the selection of Medigap policies.

(j) GAO Reports and Studies.—No provision.

(k) Increase in Civil Money Penalties.—Section 1882 of the Social Security Act provides for civil money penalties of not to exceed $5,000 for violations of the marketing and sales practices provisions.

(l) Premium Increases.—No provision.

(m) Limitations on Certain Sales Commissions.—Section 1882 of the Social Security Act contains no provision.

The NAIC standards provide that first year commissions or other compensation for an agent may not exceed 200 percent of the commission or other compensation for selling or servicing the Medigap policy in the second year. The commission or total compensation in subsequent (renewal) years must be the same as that provided in the second year, and must be provided for a reasonable number of renewal years. Entities are prohibited from providing compensation to agents greater than the renewal compensation payable by the replacing insurer on renewal policies if an existing policy is replaced, unless benefits of the new policy are clearly and substantially greater than benefits under the replaced policy.

(n) Treatment of Plans Offered by Health Maintenance Organizations and Competitive Medical Plans.—No provision.

(o) Additional Enforcement Through Public Health Service Act.—No provision.

(p) Medicare Select Policies.—NAIC Medigap standards specify certain minimum benefit and policy provisions that must be met for a Medigap policy to be approved. These

requirements can make it difficult for preferred provider arrangements, which include benefit and cost-sharing variations as incentives for enrollees to seek care with lower-cost preferred providers, to offer Medigap policies.

House bill

(a) Simplification of Policies.—In order for a Medigap policy to be certified by the Secretary, requires that such policies meet new simplification standards approved by the NAIC (or, if NAIC does not approve such standards, by the Secretary). (See (g)(4) Promulgation of Regulations, below, for additional information about promulgation of standards.) Such standards must provide for a core group of basic benefits (not including payment of any deductibles), and a group of benefits including the core group and common additional benefits. Provides that the total number of different benefit packages (including the core group, the core plus common benefits, and each other combination of benefits that may be offered as a separate benefit package) cannot exceed 10.

Provides that, to the extent possible, the benefit requirements must include benefits that offer consumers the ability to purchase the benefits available in the market on the date of enactment, and that balance the objectives of simplifying the market to facilitate policy comparisons, avoiding adverse selection, providing consumer choice, providing market stability, and promoting competition.

Authorizes the Secretary, upon application by a State, to waive the simplification standards for a period of up to 3 years in order to demonstrate the offering of new or innovative benefits, including managed care features. Requires the Secretary to evaluate the new or innovative benefits to determine whether they should be added to the NAIC simplification standards. If so, requires the Secretary to request NAIC to modify the standards; if NAIC fails to do so in a timely manner, requires the Secretary to modify the standards. Provides that not more than 3 additional groups of benefits may be added.

Provides that States may restrict the groups of packages of benefits, except for the core group of basic benefits and the core plus common group of benefits.

Provides that Medigap issuers would not be prevented from providing, through arrangements with vendors, for vendor discounts to policyholders to purchase items or services not covered under the Medigap policy.

Requires anyone who sells a Medigap policy to an individual to make available to the individual both a Medigap policy with only the core group of benefits, and a Medigap policy with the core plus common benefits. Provides that violators would be subject to a civil money penalty of not to exceed $25,000 for each such violation.

(b) Uniform Policy Description.—Requires that policy issuers must provide, before the sale of a Medigap policy, a summary information sheet which describes the policy's benefits and premium, and the average loss ratio for the most recent 3-year period (or, for policies not in effect for 3 years, the average loss ratio expected during the third year). Requires that such information be on a standard form approved by the State (in consultation with the Secretary), consistent with the NAIC simplification standards. Provides that violators would be subject to a civil money penalty of not to exceed $25,000 for each such violation.

Requires that the simplification standards include uniform benefit language and definitions and uniform format to be used in the policy with respect to such benefits.

(c) Prevention of Duplicate Medigap Coverage.—

(1) Statement Regarding Other Health Benefits Coverage.—Provides that it would be unlawful for a person to issue or sell a Medigap policy to an individual entitled to Medicare benefits, whether directly, through the mail, or otherwise, unless the person obtains from the individual, as part of the application, a written statement signed by the individual stating what health insurance policies the individual has, from what source, and whether the individual is entitled to Medicaid. Provides that the written statement must be accompanied by a written acknowledgment, signed by the seller, of the request for and receipt of the statement. Provides that the statement must be on a form that includes specified language regarding duplicative benefits and that counseling services may be available in the State.

Provides that it would also be unlawful to sell or issue a Medigap policy to someone whose written statement indicates that they have another Medigap policy or are entitled to Medicaid.

Provides that it would not be unlawful to sell or issue a Medigap policy to an individual who has a Medigap policy but is not entitled to Medicaid, if the individual indicates in writing that the policy replaces the other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective.

Provides that the penalty for violations would be a fine under Title 18, or imprisonment for not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, a civil money penalty of not to exceed $25,000 for each such violation.

Amends current law to: (A) delete that the Medigap issuer must "knowingly" sell a duplicative policy to be in violation; (B) delete that the duplicative policy must "substantially" duplicate other benefits; (C) include Medicaid benefits as those which cannot be duplicated; (D) increase the penalty for violations from $5,000 to $25,000; and (E) authorize persons aggrieved by a violation to recover in a civil action threefold the damages sustained, any other appropriate relief (including punitive damages), and the costs of the suit (including reasonable attorney's fees).

(2) Suspension of Policies During Receipt of Medicaid Benefits.—Requires that Medigap policies suspend their benefits and premiums for any period in which the policyholder has applied for and is determined to be entitled to Medicaid, only if the policyholder notifies the Medigap issuer within 90 days after becoming entitled to Medicaid. Provides that if the policyholder loses entitlement to Medicaid, the policy would be automatically reinstated as of the termination of Medicaid entitlement, if the policyholder provides notice within 90 days after the loss of entitlement.

Provides that this provision would not affect the authority of a State to purchase Medigap policies for those entitled to Medicaid.

(d) Loss Ratio Requirements.—Amends current law to require that certified Medigap policies or health insurance policies that are indemnity or dread disease policies (as defined by the Secretary in consultation with the NAIC) may not be issued or sold in any State unless the policy has returned (for the most recent 3-year period, on the basis of incurred claims experience and earned premiums and in accordance with accepted actuarial principles and practices and standards developed by the NAIC) to policyholders in the form of aggregate benefits, loss ratios of a least 75 percent for group Medigap policies, at least 70 percent for individual Medigap policies, and at least 60 percent for group and individual indemnity and dread disease policies.

Requires that policy issuers must annually submit to the State information on actual loss ratios on forms conforming to those developed by the NAIC.

Requires policy issuers to annually provide a proportional credit of the amount of premiums received necessary to assure that the loss ratios (net of any credits) comply with the loss ratio requirements. Provides that such credits would be required for each type of policy by policy number, and would not apply for the first 2 years of a policy. Requests the NAIC to submit to Congress a report containing recommendations on adjustments in the loss ratio percentages that may be appropriate in order to apply the credit requirement to the first 2 years in which policies are in effect. Provides that the credit must include interest from the end of the policy year involved until the date of the credit, at a rate, specified by the Secretary from time to time, that is not less than the average rate of interest for 13-week Treasury notes. Requires that each issuer of a policy subject to the credit requirements would be liable to policyholders for such credits.

Provides that States may require higher loss ratio percentages.

Requires GAO to periodically, not less often than once every 3 years, to perform audits of the compliance of Medigap policies with loss ratio and premium increase requirements, and to report the results to the State involved and to the Secretary. Authorizes the Secretary to independently perform such compliance audits.

Provides that persons who issue policies in violation of the loss ratio and premium increase requirements would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain provisions of Section 1128A would apply to the civil money penalty.

Requires that approved State programs must require that a copy of each Medigap policy, its most recent premium, and its loss ratios for the most recent 3-year period be maintained and made available to interested persons.

Requires that policy issuers provide, before the sale of the policy, a summary information sheet which describes benefits, premiums, and loss ratios for the most recent 3-year period.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—Requires that Medigap policies be guaranteed renewable, and that the issuer may not cancel or nonrenew the policy 1) solely on the ground of the individual's health status, and 2) for any reason other than nonpayment of premium or material misrepresentation.

Requires that if the Medigap policy is terminated by the group policyholder and is not replaced, the issuer must offer certificateholders an individual Medigap policy which (at the option of the certificateholder) provides for continuation of the group policy's benefits, or for such benefits as otherwise meet the requirements of this

section. Provides that if an individual terminates membership in a group through which they have a group Medigap policy, the issuer must 1) offer an opportunity to convert to an individual policy that continues the group policy's benefits or benefits meeting this section's requirements, or 2) at the option of the group policyholder, offer continuation of coverage under the group policy. Provides that if a group Medigap policy is replaced by another group Medigap policy purchased by the same policyholder, the succeeding issuer must offer coverage to all persons covered under the old group policy on its termination date. Prohibits coverage under the new policy from resulting in any exclusion for preexisting conditions that would have been covered under the old group policy.

Requires an entity that issues Medigap policies in a State to offer any individual who is 65 or older and who resides in the State, upon request of the individual during the 6-month period beginning with the first month in which the individual has attained such age and is enrolled in Part B, the opportunity of enrolling in a Medigap policy that provides for a core group of basic benefits and a Medigap policy that provides for a core group and common additional benefits, without conditioning the issuance or effectiveness of such a policy on, and without discriminating in the price of such policy based on, the medical or health status or the receipt of health care by the individual.

Provides that policies may exclude benefits during the first 6 months based on a preexisting condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

Requires that if a Medigap policy replaces another such policy which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new policy for similar benefits.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—Requires that no health insurance policy that is an indemnity or dread disease policy (as defined by the Secretary in consultation with the NAIC) can be issued in any State unless the policy returns (for the most recent 3-year period) a loss ratio of at least 60 percent for both group and individual policies.

(g) Enforcement of Standards.—

(1) Mandatory Conformity with Standards.—Provides that no Medigap policy may be sold, issued, or renewed in any State unless the State's regulatory program provides for the application and enforcement of the Section 1882 standards (including the NAIC simplification standards) by the date specified below, or the Secretary has certified that the policy meets such standards. Provides that any person who issues or sells a Medigap policy, after the effective date of the NAIC simplification standards, in violation would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain provisions of Section 1128A would apply to the civil money penalties.

(2) Certification of State Programs by the Secretary.—Abolishes the Supplemental Health Insurance Panel and provides that the Secretary, rather than the Panel, would approve State regulatory programs. Requires the Secretary periodically to review State regulatory programs to determine if they continue to meet the standards. Provides that if the Secretary finds that a State program no longer meets the standards, before making a final determination the Secretary must provide the State an opportunity to adopt a plan of correction that would permit the State to continue to meet the standards. Provides that if the Secretary makes a final determination that the State program, after such an opportunity, fails to meet the standards, the program would no longer be approved.

(3) State Enforcement.—Requires that State programs enforce, as well as apply, the NAIC standards.

(4) Promulgation of Regulations.—Provides that if, within 9 months of enactment, the NAIC promulgates limits on groups of benefits that may be offered by a Medigap policy (consistent with this bill), uniform benefit language and definitions, uniform benefit format, and transitional requirements as described below (collectively known as the "NAIC simplification standards"), then these standards are to be applied in each State for policies to be approved. Provides that if NAIC does not promulgate such standards, then the Secretary must promulgate such standards, not later than 18 months from enactment.

Provides that approved State programs must apply these standards by the earlier of (A) the date the State adopts the NAIC standards, or (B) 1 year after the NAIC or the Secretary first adopts the standards.

Provides that for States the Secretary identifies, in consultation with the NAIC, as requiring State legislation (other than legislation appropriating funds) to revise the Medigap standards, but the State legislature is not scheduled to meet in 1992, the effective date would be the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For States that have a 2-year legislative session, provides that each year of such session would be deemed to be a separate regular session.

Provides that in promulgating the simplification standards, NAIC or the Secretary must consult with a working group composed of representatives of issuers of Medigap policies, consumer groups, Medicare beneficiaries, and other qualified individuals. Requires that such representatives be selected in a manner to assure balanced representation among the interested groups. Provides that if Medicare benefits (including deductibles and coinsurance) change and the Secretary determines, in consultation with the NAIC, that changes in the simplification standards are needed, then these provisions for modification of the standards would apply to subsequent changes.

Provides transitional requirements for Medigap policies issued before the effective date of the NAIC (or Federal) simplification standards and which do not meet such standards. Provides that any renewal of such policy would be in violation unless the issuer offers to the policyholder, not later than 60 days before the effective date of the renewal, 2 Medigap policies each of which (A) complies with the standards; (B) waives any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the policy for similar benefits to the extent such time was spent under the policy being replaced; and (C) provides for classification of premiums on terms that are at least as favorable to the policyholder as those applied to the policyholder on the effective date of the standards. Provides that one of the policies must include the core group of basic benefits and the other must include the core group and common additional benefits.

(5) Disclaimer for Unapproved Policies.—No provision.

(h) Requiring Approval of State for Sale in the State.—Strikes from current law language authorizing alternative methods for approval in a State of Medigap policies sold through the mail, and provides instead that it is illegal to sell Medigap policies that have not been approved by a State with an approved regulatory program or certified by the Secretary.

Provides that nothing in this section should be construed as affecting the right of any State to regulate Medigap policies which are considered to be issued in another State. Increases the maximum civil money penalty for violations from $5,000 to $25,000.

(i) Counseling and Education Programs.—Requires the Secretary to request the NAIC to establish an educational program to educate consumers on the Medigap simplification standards.

Requires the HHS Secretary to establish a health insurance advisory service program, known as the "beneficiary assistance program," to assist Medicare-eligible individuals with the receipt of services under Medicare, Medicaid, and other health insurance programs. Requires that the beneficiary assistance program must provide assistance 1) through operation using local Federal offices that provide information on the Medicare program, 2) using community outreach programs, and 3) using a toll-free telephone information service. Requires that the beneficiary assistance program provide for information, counseling, and assistance for Medicare-eligible individuals with respect to at least the following:

(1) For Medicare: eligibility; benefits (covered and not covered); process of payment for services; rights and process for appeals of determinations; other Medicare-related entities such as peer review organizations, fiscal intermediaries, and carriers; and recent legislative and administrative changes in the Medicare program.

(2) For Medicaid: eligibility, benefits, and the application process; linkages between the Medicaid and Medicare programs; referral to appropriate State and local agencies involved in the Medicaid program.

(3) For Medigap policies: the program under Section 1882 of the Social Security Act and its standards; how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies; appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies; and other issues deemed appropriate by the Secretary.

Also requires that the beneficiary assistance program provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the Medicare program and to improve the relationship between beneficiaries and the program.

Requires the Secretary, through the HCFA Administrator, to develop appropriate educational material and other appropriate techniques to assist employees in carrying out this section.

Requires the Secretary to take any necessary steps to assure that Medicare-eligible beneficiaries and the general public are

made aware of the beneficiary assistance program.

Requires the Secretary to include, in an annual report to Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to Medicare-eligible individuals. Requires the Secretary to include in the report recommendations for such changes as may be desirable to improve the relationship between the Medicare program and Medicare-eligible individuals.

(j) GAO Reports and Studies.—Requires the Comptroller General to examine the effectiveness of the Medigap simplification program established under this subsection and the impact of the program on consumer protection, health benefit innovation, consumer choice, and health care costs. Requires the Comptroller General, within 4 years of enactment, to report to Congress on this examination, including such recommendations on the appropriate roles of the NAIC, States, and the Secretary in carrying out such programs as he/she deems appropriate.

(k) Increase in Civil Money Penalties.—Increases civil money penalties from $5,000 to $25,000 for false statements of material fact with respect to the compliance of a Medigap policy with the standards, and for mailing a policy into a State for a prohibited purpose.

(l) Premium Increases.—Requires that a Medigap policy or a health insurance policy that is an indemnity policy or dread disease policy (as defined by the Secretary in consultation with the NAIC) may not be issued or sold in any State unless any premium increase or the initial establishment of the premium is made as follows. Requires the issuer to submit to the State (at such time as the State specified, but not earlier than 90 days before the proposed effective date), the proposed premium amounts, including information, certified as accurate by an actuary, that establishes that the premium amounts are reasonable in relation to the benefits and that the resulting loss ratio will meet the loss ratio requirements. Provides that these requirements do not preempt a State from requiring the review or approval of premiums not otherwise required by this section or providing additional requirements for the approval of premiums.

(m) Limitations on Certain Sales Commissions.—Provides that it is unlawful for a person who provides for a commission or other compensation to an agent or other representative for the sale of a Medigap policies to provide 1) a first year commission or other first year compensation that exceeds 200 percent of the commission or other compensation for selling or servicing of the policy in a second or subsequent year, or 2) for compensation with respect to replacement of such a policy that is greater than the compensation that would apply to the renewal of the policy. Defines "compensation" to include pecuniary and nonpecuniary compensation of any kind relating to the sale or renewal of a policy and specifically includes bonuses, gifts, prizes, awards, and finders' fees.

Provides that violators would be fined under Title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, would be subject to a civil money penalty of not to exceed $25,000 for each violation.

(n) Treatment of Plans Offered by Health Maintenance Organizations and Competitive Medical Plans.—Provides that the definition of a Medigap policy under Section 1882 of the Social Security Act would not include a policy or plan of an HMO or other direct service organization that offers benefits under Medicare, including services under a contract under Section 1833 or Section 1876.

(o) Additional Enforcement Through Public Health Service Act.—Provides that a person who fails to meet the requirements of Section 1882(o)(5) of the Social Security Act as added by this bill (relating to discriminatory practices in the sale of Medigap policies, such as preexisting condition limitations and limitations on medical underwriting) would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain sections of Section 1128A of the Social Security Act would apply to the civil money penalty.

Provides that a person who issues or sells a Medigap policy or a health insurance policy that is an indemnity or dread disease policy (as defined by the HHS Secretary) in violation of Section 1882(q)(1) as added by this bill (relating to loss ratios and premium increases) would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain sections of Section 1128A of the Social Security Act would apply to the civil money penalty.

Provides that whoever violates Section 1882(o)(5)(A) of the Social Security Act as added by this bill (relating to sales commissions) would be fined under Title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, would be subject to a civil money penalty of not to exceed $25,000 for each prohibited act.

(p) Medicare Select Policies.—No provision.

Effective date: Enactment, except (c), (d) (f) and (l) apply to policies issued or sold more than 1 year after enactment; portions of (e) related to preexisting conditions and medical underwriting apply 1 year after enactment; (h) applies to policies mailed, or caused to be mailed, on and after July 1, 1991; and (n) applies to compensation provided on or after 1 year after enactment.

Senate amendment

(a) Simplification of Policies.—In order for a Medigap policy to be certified by the Secretary, requires that such policies meet new simplification standards approved by the NAIC (or, if NAIC does not approve such standards, by the Secretary). (See (g)(4) Promulgation of Regulations, below, for additional information about promulgation of standards.) Provides that such standards must provide for 1) groups of basic benefits, or additional, optional benefits, as may be appropriate; 2) identification of a core group of basic benefits that includes only the minimum benefits required of Medigap policies on the date of enactment, not including payment of any deductible; and 3) if the simplification standards provide for Medigap benefits to be offered as A) a core group of basic benefits plus a defined list of optional additional benefits, or B) through defined benefit packages or policies, then the total number of defined optional additional benefits or different benefit packages (counting the core group) cannot exceed 10; if the simplification standards provide for Medigap benefits to be offered through defined benefits that the insurer packages as it deems appropriate, then the total number of packages offered by an insurer cannot exceed 4, and the total number of benefits to be packaged may not exceed 10.

Provides that, to the extent possible, the benefit requirements must include benefits that offer consumers the ability to purchase the benefits available in the market on the date of enactment, and that balance the objectives of simplifying the market to facilitate direct comparison of policy prices and benefits, avoiding adverse selection, providing consumer choice, and promoting market stability.

Prohibits a State with an approved regulatory program from permitting the grouping of benefits unless the grouping meets the simplification standards. Authorizes the State, upon application by an insurer, to waive the simplification standards to permit the issuance and sale of a Medigap policy in order to demonstrate the offering of new or innovative benefits. Provides that any such new or innovative benefits must be offered in a manner as approved by the State which is consistent and practically achievable under the simplification standards. Provides that new or innovative benefits may include benefits that are not otherwise available and are cost-effective.

Provides that States may restrict the groups of benefits that may be offered in Medigap policies in the State, but a State with an approved program may not restrict the offering of a Medigap policy consisting only of the core group of benefits.

Requires that if a Medigap policy provides for a group of benefits other than the core group of basic benefits, the policy issuer must make available to the individual a Medigap policy with only the core group of benefits.

(b) Uniform Policy Description.—Requires that policy issuers must provide, before the sale of a Medigap policy, a summary information sheet which describes the policy's benefits (including any optional benefits) and the average loss ratio for the most recent 3-year period (or, for policies not in effect for 3 years, the average loss ratio expected during the third year), and which allows a direct comparison of benefits and prices among policies.

Requires that the simplification standards include uniform benefit language and format to be used with respect to the benefits.

(c) Prevention of Duplicate Medigap Coverage.—

(1) Statement Regarding Other Health Benefits Coverage.—Provides that it would be unlawful for a person to issue or sell a Medigap policy to an individual entitled to Medicare benefits, whether directly, through the mail, or otherwise, unless the person obtains from the individual, as part of the application, a written statement signed by the individual stating what Medigap policies the individual has, from what source, and whether the individual has applied for and been determined to be entitled to Medicaid. Provides that the written statement must be accompanied by a written acknowledgment, signed by the seller, of the request for and receipt of the statement. Provides that the written acknowledgment does not constitute verification or affirmation by the seller of the truth of any information supplied by the individual in the written statement.

Provides that the written statement must be on a form that states that a Medicare beneficiary does not need more than 1 Medigap policy; states that individuals aged 65 or older may be eligible for benefits under the Medicaid program, that such individuals usually do not need a Medigap policy, and that benefits and premiums under any

Medigap policy would be suspended upon request of the policyholder when entitled to Medicaid; and includes the toll-free telephone number established by the Secretary under new Section 1889, the address and local telephone number of any counseling program offered by or with the assistance of the State under Medicaid, the State insurance department, or a State agency on aging for individuals considering purchase of a Medigap policy, and the address and local telephone number of the State Medicaid office.

Provides that it would also be unlawful to sell or issue a Medigap policy to someone whose written statement indicates that they have another Medigap policy or are entitled to Medicaid.

Provides that it would not be unlawful to sell or issue a Medigap policy to an individual who has another Medigap policy if (A) the individual indicates in writing that the policy replaces the other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective; (B) the seller certifies in writing that such policy will not, to the best of the seller's knowledge, duplicate coverage (taking into account any such replacement); and (C) a State Medicaid plan pays the premiums for the Medigap policy or pays less than an individual's full liability for Medicare cost sharing.

Provides that the penalty for violations would be a fine under Title 18, or imprisonment for not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, a civil money penalty of not to exceed $25,000 for each such violation.

Amends current law to: (A) delete that the Medigap issuer must "knowingly" sell a duplicative policy to be in violation; (B) delete that the duplicative policy must "substantially" duplicate other benefits; (C) include Medicaid benefits as those which cannot be duplicated; and (D) increase the penalty for violations from $5,000 to $25,000.

(2) Suspension of Policies During Receipt of Medicaid Benefits.—Requires that Medigap policies suspend their benefits and premiums at the request of the policyholder for any period in which the policyholder indicates that they have applied for and been determined to be entitled to Medicaid. Provides that if the policyholder loses entitlement to Medicaid, the policy would be automatically reinstated as of the termination of Medicaid entitlement, if the policyholder provides notice within 90 days after the loss of entitlement.

(d) Loss Ratio Requirements.—Amends current law to require that certified Medigap policies or health insurance policies may not be issued or sold in any State unless the policy can be expected to return (as estimated for the entire period for which rates are computed, on the basis of incurred claims experience and earned premiums and in accordance with accepted actuarial principles and practices and standards developed by the NAIC) to policyholders in the form of aggregate benefits, loss ratios of at least 75 percent for group policies and at least 65 percent for individual policies. Provides that policies issued as a result of solicitations of individuals through the mails or by mass media advertising are deemed to be individual policies.

Requires that policy issuers must annually submit to the State information on actual loss ratios on forms conforming to those developed by the NAIC.

Requires policy issuers to provide a proportional refund, or a credit against future premiums of a proportional amount, based on premiums paid, of the amount of premiums received necessary to assure that the loss ratio (net of any refunds or credits) complies with the loss ratio requirements. Provides that such refunds or credits would be applied to each type of policy by policy number, and would not apply for the first 2 years of a policy. Provides that the refund or credit must be made to each policyholder insured under the policy as of the last day of the year involved. Provides that the refund or credit must include interest from the end of the policy year involved until the date of the refund or credit at a rate, specified by the Secretary from time to time, that is not less than the average rate of interest for 13-week Treasury notes. Provides that refunds or credits against premiums due must be made not later than the third quarter of the succeeding policy year.

Provides that States may require higher loss ratio percentages.

Requires GAO to periodically, not less often than once every 3 years, perform audits of the compliance of Medigap policies with loss ratio requirements, and to report the results to the State involved and to the Secretary.

Requires that approved State programs must require that a copy of each Medigap policy, its most recent premium, and its loss ratios for the most recent 3-year period be maintained and made available to interested persons.

Requires that policy issuers provide, before the sale of the policy, a summary information sheet which describes its benefits and loss ratios for the most recent 3-year period, and must disclose to any potential buyer, in the case of a benefit for which the premium attributable to that benefit is at least 75 percent of the nominal value or maximum payout of such benefit, the premiums and maximum payout of the benefit.

Requests the Comptroller General, in consultation with the NAIC, to submit to Congress a report containing recommendations on adjustments in the loss ratio percentages that may be appropriate in order to apply the refund/credit requirement to the first 2 years in which policies are in effect.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—Requires that Medigap policies be guaranteed renewable.

Requires that if a Medigap policy is terminated by the group policyholder and is not replaced, the issuer must offer certificateholders an individual Medigap policy which (at the option of the certificateholder) provides for continuation of the group policy's benefits, or for such benefits as otherwise meet the requirements of this section. Provides that if an individual terminates membership in a group through which they have a group Medigap policy, the issuer must 1) offer an opportunity to convert to an individual policy that continues the group policy's benefits or benefits meeting this section's requirements, or 2) at the option of the group policyholder, offer continuation of coverage under the group policy. Provides that if a group Medigap policy is replaced by another group Medigap policy purchased by the same policyholder, the succeeding issuer must offer coverage to all persons covered under the old group policy on its termination date. Prohibits coverage under the new policy from resulting in any exclusion for preexisting conditions that would have been covered under the old group policy.

Prohibits a Medigap policy from denying a claim for losses incurred for a preexisting condition more than 6 months after the coverage effective date and from defining a preexisting condition as a condition for which medical advice was given or treatment was recommended by or received from a physician more than 6 months before the coverage effective date.

Provides that if a Medigap policy replaces another such policy, any period under the policy being replaced during which claims were denied by reason of a preexisting condition, exclusion period, rating period, elimination period, or probationary period must be credited toward any such period under the new policy.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—No provision.

(g) Enforcement of Standards.—

(1) Mandatory Conformity with Standards.—No provision.

(2) Certification of State Programs by the Secretary.—Provides that the Secretary, rather than the Supplemental Health Insurance Panel, would determine whether State regulatory programs continue to meet Medigap standards. Provides that if the Secretary finds that a State program no longer meets the standards, before making a final determination the Secretary must give the State an opportunity to adopt a plan of correction that would permit the State to continue to meet the standards.

(3) State Enforcement.—Requires that approved State regulatory programs report to the Secretary on the implementation and enforcement of Standards and requirements of this bill at intervals established by the Secretary. Requires that this report include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary, in consultation with the NAIC, may specify.

(4) Promulgation of Regulations.—Provides that if, within 9 months of enactment, the NAIC revises the NAIC Model Regulation to incorporate all the requirements and standards of this bill, then these standards are to be applied in each State for policies to be approved. Provides that if NAIC does not promulgate such standards, then the Secretary must promulgate such standards, not later than 18 months from enactment.

Provides that approved State programs must apply these standards by the earlier of A) the date the State adopts the NAIC or Federal simplification standards, or B) 1 year after the NAIC or the Secretary first adopts the standards.

Provides that for States the Secretary identifies, in consultation with the NAIC, as requiring State legislation (other than legislation appropriating funds) in order for Medigap policies to meet the simplification standards, but the State legislature is not scheduled to meet in 1991, the effective date would be the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1991. For States that have a 2-year legislative session, provides that each year of such session would be deemed to be a separate regular session.

Provides that in promulgating the simplification standards, the NAIC or the Secre-

tary must consult with a working group composed of representatives of issuers of Medigap policies, consumer groups, Medicare beneficiaries, and other qualified individuals. Requires that such representatives be selected in a manner to assure balanced representation among the interested groups.

Provides that every 3 years the Secretary, in consultation with the NAIC, must evaluate the appropriateness of new or innovative benefits and determine whether the incorporation of such benefits into the simplification standards would further the purposes of such standards. If within 90 days after a request from the Secretary the NAIC makes a determination that modification of the NAIC simplification standards is appropriate and modifies the standards to include the additional group of benefits (including accompanying language and format), provides that such modified standards would be applied in each State. If the NAIC does not make such a determination, authorizes the Secretary to make such a determination and modify the simplification standards.

Provides that approved State programs must apply these standards modified to include additional benefits by the earlier of A) the date the State adopts the modified NAIC or Federal simplification standards, or B) 1 year after the NAIC or the Secretary first adopts the modified standards. Provides that for States the Secretary identifies, in consultation with the NAIC, as requiring State legislation (other than legislation appropriating funds) in order for Medigap policies to meet the simplification standards, but the State legislature is not scheduled to meet within the 1-year period after the NAIC or the Secretary adopts the modified standards, the effective date would be the first day of the first calendar quarter after the close of the first legislative session of the State legislature that begins after the date the NAIC or the Secretary adopts the modified standards. For States having a 2-year legislative session, provides that each year of such session would be deemed to be a separate regular session.

Provides that if Medicare benefits are changed and the Secretary determines, in consultation with the NAIC, that changes in the simplification standards are needed, then these provisions for modification of the standards would apply.

Provides transitional requirements that the simplification standards would not apply to Medigap policies issued to a policyholder before the effective date of the NAIC (or Federal) simplification standards.

Authorizes the Secretary to waive the application of simplification standards in those States that on the date of enactment have in place an alternative simplification program.

Requires the Secretary, within 2 years of enactment, to report to Congress on the adoption of the Medigap standards and requirements in this bill, including the identification of States that do and do not have regulatory programs that meet the requirements of this bill, and the reasons for the failure of any States to adopt some or all of the standards.

(5) Disclaimer for Unapproved Policies.—Requires that if an insurer issues a Medigap policy in a State without an approved regulatory program and which the Secretary has determined does not provide consumer protection as great as would be offered under an approved program, and if the policy has not been certified by the Secretary, the insurer must A) prominently display in at least 12 point type on any advertisement for that policy, on each page of the outline of coverage, and on the first page of the policy the following statement: "This policy has not been certified by the Secretary of the United States Department of Health and Human Services as meeting Federal requirements for medicare supplemental policies;" and B) require the purchaser to sign the following statement: "I understand that this policy has not been certified by the Secretary of the United States Department of Health and Human Services as meeting Federal requirements for Medicare supplemental policies."

Provides that insurers violating these requirements would be subject to a civil monetary penalty not to exceed $25,000 for each violation.

(h) Requiring Approval of State for Sale in the State.—Strikes from current law language authorizing alternative methods for approval in a State of Medigap policies sold through the mail, providing that sale would be prohibited unless the policy has been approved by the State insurance commissioner.

(i) Counseling and Education Programs.—Requires the Secretary to make grants to qualified States to provide information, counseling and assistance relating to the procurement of adequate and appropriate health insurance coverage for Medicare beneficiaries. Authorizes the Secretary to prescribe regulations to establish a minimum level of funding for such grants. Requires States applying for a grant to submit a plan for the program that would (1) establish or improve on a program that includes information about obtaining benefits and filing claims under Medicare and Medicaid, Medigap policy comparison information and information for filing Medigap claims, information regarding long-term care insurance, and information on other types of health insurance benefits the Secretary determines is appropriate; (2) establish a system of referral to appropriate Federal or State agencies for assistance with health insurance coverage problems, including legal problems; (3) provide for sufficient staff (including volunteers); (4) provide assurances that staff have no conflict of interest; (5) provide for the collection and dissemination of timely health care information to staff and regular staff meetings and continuing education programs; (6) provide for training programs for staff; (7) provide for the coordination of the exchange of information between State government staffs and staff of the program; (8) make recommendations concerning consumer issues and complaints to State and Federal health insurance agencies; (9) establish an outreach program to provide health insurance information, counseling and assistance; and (10) demonstrate, to the satisfaction of the Secretary, an ability to provide the required counseling and assistance.

Provides that States with existing programs must, in order to receive a grant, demonstrate that they will maintain activities of the program at least at the level immediately prior to the issuance of the grant. Provides that if an existing program is substantially similar to that required in order to receive a grant, the Secretary may waive some or all of the requirements and issue a grant to increase the number of services offered by the program, experiment with new methods of outreach, or expand the program to geographic areas of the State not previously served.

Requires the Secretary to consider the following in issuing a grant: (1) the commitment of the State, including the level of cooperation demonstrated by the office of the chief insurance regulator, other officials who oversee insurance plans issued by nonprofit hospital and medical service associations, State agencies administering Medicaid funds and those appropriated under the Older Americans Act; (2) the population of eligible individuals in the State as a percentage of the State's population; and (3) the relative costs and special problems with providing health care information, counseling, and assistance to the rural areas of the State.

Requires States that receive grants to issue an annual report to the Secretary, within 180 days of receiving the grant and annually thereafter, concerning (1) the number of individuals served; (2) an estimate of the amount of funds saved by the State and by eligible individuals in the State; and (3) problems eligible individuals encounter in procuring health care coverage.

Within 180 days of enactment, and annually thereafter, requires the Secretary to issue a report to the Committees on Finance, Aging (House and Senate), Ways and Means, and Energy and Commerce that (1) summarizes the allocation and expenditure of the grant funds; (2) summarizes the scope and content of training conferences; (3) outlines problems that eligible individual encounter in procuring health care coverage; (4) makes recommendations to address problems of procuring coverage; (5) evaluates the effectiveness of the programs and makes recommendations regarding continued authorization of funds (for the report issued 2 years after enactment).

Authorizes appropriations of $10 million for each of fiscal years 1991 through 1993 in equal parts from the HI and SMI trust funds for such grants.

Adds a new Section 1889 to the Social Security Act requiring the Secretary to provide information via a toll-free telephone number on Medicare's programs and on Medigap policies, including the relationship of Medicaid programs to Medigap policies. Authorizes the Secretary to conduct demonstration projects in up to 5 States to establish statewide toll-free telephone numbers for providing information on Medicare benefits, Medigap policies available in the State, and Medicaid benefits.

(j) GAO Reports and Studies.—Requires the Comptroller General, within 4 years of enactment, to report to Congress describing the impact of the simplification program on consumer protection, health benefit innovation and value of innovative benefits, consumer choice, and health care costs, and including such recommendations on the appropriate roles of the NAIC, States, and the Secretary in carrying out such a program as he/she deems appropriate.

(k) Increase in Civil Money Penalties.—Increases civil money penalties from $5,000 to $25,000 for false statements of material fact with respect to the compliance of a Medigap policy with the standards, and for mailing a policy into a State for a prohibited purpose.

(l) Premium Increases.—Provides that approved State programs must provide for a process for approving or disapproving proposed Medigap premium increases and must establish a policy for the holding of public hearings prior to approval of a premium increase.

(m) Limitations on Certain Sales Commissions.—No provision.

(n) Treatment of Plans Offered by Health Maintenance Organizations.—Provides that

the definition of a Medigap policy under Section 1882 of the Social Security Act does not include any such policy or plan under a contract under Section 1876.

(o) Additional Enforcement Through Public Health Service Act.—No provision.

(p) Medicare Select Policies.—Provides that if a policy meets the NAIC Model Standards except that its benefits are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy would be treated as meeting the standards if:

(1) full benefits are provided for items and services furnished through a network of entities that have entered into contracts with the policy issuer;

(2) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition, and it is not reasonable given the circumstances to obtain the services through the network;

(3) the network offers sufficient access; and

(4) the issuer of the policy has an arrangement for an ongoing quality assurance program for items and services furnished through the network.

Requires that approved State Medigap regulatory programs must provide for the application of the above requirements in the case of policies that meet the NAIC standards except that the benefits are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities).

Authorizes the Secretary to enter into a contract with an entity whose policy has been certified under new subsection (r) or has been approved by a State under similar requirements to determine whether items and services (furnished to individuals entitled to Medicare benefits and benefits under that policy) are not allowable under Medicare's definitions of items and services considered reasonable and necessary. Provides that payments to the entity must be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors the Secretary finds appropriate. Certain Social Security Act requirements related to the use of carriers to administer Medicare benefits and review by peer review organizations would apply to the entity.

Effective date: Enactment, except (d) and (f) apply to policies sold or issued more than 1 year after enactment; and (h) applies to policies mailed, or caused to be mailed, on and after July 1, 1991.

Conference agreement

AB.5. Changes in Medigap Standards

Conference agreement

(a) Simplification of Policies.—The conference agreement includes the House bill, with amendments as follows:

(1) the simplification standards must provide for groups of benefits that include a core group of benefits plus up to 9 other groups of benefits packages;

(2) all insurers must offer the core group of benefits;

(3) new or innovative benefits could be offered in addition to the core group or other specified group of benefits if approved by the State (for a policy issued in a State with an approved program) or by the Secretary (for any other policy), if the policy otherwise complies with the simplification standards;

(4) there would a civil money penalty of not to exceed $25,000 for noncompliance with the simplification standards;

(5) the Secretary would waive the application of the simplification standards with regard to the limits on benefits in States with alternative simplification programs on the date of enactment;

(6) the simplification standards would apply to new policies issued after the State adopts the standards; insurers would not be required to offer new policies meeting the simplification standards to individuals renewing their Medigap policies;

(7) the Secretary would review the simplification standards after 3 years to determine if changes are necessary to accommodate new benefits.

(b) Uniform Policy Description.—The conference agreement includes the House bill, with an amendment that would require the outline of coverage's contents to be specified by the National Association of Insurance Commissioners.

(c) Prevention of Duplicate Medigap Coverage.—

(1) Statement Regarding Other Health Benefits Coverage.—The conference agreement includes the Senate amendment, with amendments as follows. Civil money penalties of $15,000 for sellers (i.e., agents) and $25,000 for issuers (i.e., companies) would be imposed for failing to obtain the written statement concerning duplication or selling a policy to an individual who indicates on the written statement that they have another Medigap policy or that they are entitled to Medicaid. Agents would not be held liable for noncompliance if the written statement is signed, answered completely, and reflects nonduplication. In addition to other requirements, the statement must also indicate that counseling services may be available in the State and may provide the telephone number for such services.

(2) Suspension of Policies During Receipt of Medicaid Benefits.—The conference agreement includes the Senate amendment, with an amendment that the period of suspension of the Medigap policy not exceed 24 months.

(d) Loss Ratio Requirements.—The conference agreement includes the Senate amendment, with amendments as follows. Noncompliant companies that fail to issue rebates/credits would be subject to civil money penalties under Title XVIII. Loss ratios must be calculated in accordance with a uniform methodology, including uniform reporting standards, specified by the NAIC. States would be required to report annually to the Secretary on Medigap loss ratios and the use of sanctions for policies that fail to meet the loss ratio standards. The Secretary would be required to submit in February of each year (beginning with 1993) a report to the Committees on Energy and Commerce, Ways and Means, and Finance on loss ratios of Medigap policies and the use of sanctions, including a list of the policies that failed to comply with the loss ratio requirements. Sale of a Medigap policy in violation of the loss ratio standards would be subject to a civil money penalty of not to exceed $25,000 for each violation.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—The conference agreement includes the House bill regarding the requirement that Medigap policies be guaranteed renewable. The conference agreement includes the House bill regarding the prohibition of medical underwriting for 6 months after an individual becomes entitled to Part B, and may not condition the issuance or effectiveness of the policy, or discriminate in the price of the policy, on the medical or health status or the receipt of health care by the individual.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—The conference agreement does not include the House bill.

(g) Enforcement of Standards.—

(1) Mandatory Conformity with Standards.—The conference agreement includes the House bill, providing that no Medigap policy may be sold or issued unless the policy either is sold or issued in a State with an approved regulatory program, or has been certified by the Secretary.

(2) Certification of State Programs by the Secretary.—The conference agreement includes the House bill, which provides for the period review of State regulatory programs by the Secretary.

(3) State Enforcement.—The conference agreement includes the Senate amendment.

(4) Promulgation of Regulations.—The conference agreement includes the House bill.

(5) Disclaimer for Unapproved Policies.—The conference agreement does not include the Senate amendment.

(h) Requiring Approval of State for Sale in the State.—The conference agreement includes the Senate amendment.

(i) Counseling and Education Programs.—The conference agreement includes the House bill and the Senate amendment regarding health insurance information, counseling, and assistance grants; a health insurance advisory service program; and the Medicare and Medigap toll-free telephone number, with an amendment that only States with approved Medigap regulatory programs would be eligible to receive health insurance information, counseling, and assistance grants.

The conferees direct the Secretary of Health and Human Services to build on existing health insurance advisory service programs for Medicare beneficiaries and require such programs to provide information, counseling and assistance regarding Medicare, Medicaid, and Medigap policies. The conferees intend that the Health Care Financing Administration be responsible for providing these advisory services, pending available resources.

(j) GAO Reports and Studies.—The conference agreement includes the House bill, with an amendment requiring the GAO to study and report on loss ratios, insurance products similar to Medigap, duplicate health coverage for Medicare beneficiaries with retiree health coverage, medical underwriting in Medigap policies, and the impact of higher loss ratios that States may establish.

(k) Increase in Civil Money Penalties.—The conference agreement includes the Senate amendment.

(l) Premium Increases.—The conference agreement includes the Senate amendment.

(m) Limitations on Certain Sales Commissions.—The conference agreement does not include the House bill. The conferees intend that the NAIC, in promulgating changes in the Model Medigap Regulations to reflect this act, shall delete all after the word "unless" in Section 12(C) of its Model Regulation adopted in December 1989, and in Section 12(D) shall broaden the definition of "open compensation" to include acquisi-

tion costs where appropriate and advances and deferred compensation.

(n) Treatment of Plans Offered by Health Maintenance Organizations and Competitive Medical Plans.—The conference agreement includes the House bill with an amendment to exempt Section 1876 risk and cost contracts. The amendment also includes a time-limited exemption for Section 1833 cost contracts. The conferees understand that in certain situations Medicare beneficiaries enrolled in Section 1833 contracts are provided comprehensive health benefits at a reasonable price. However, because of the possibility of differences between Section 1833 cost and Section 1876 risk and cost contracts, the conferees instruct the Secretary to review conditions under which Section 1833 cost contractors are required to provide or arrange for all Part B items and services, the extent to which beneficiaries are accorded access to a grievance procedure and Secretarial review of marketing materials, and circumstances under which beneficiaries may enroll in Section 1833 cost controls. The conferees also expect the Secretary to review Medicare Parts A and B costs of beneficiaries enrolled in Section 1833 cost contracts compared to beneficiaries not enrolled in such contracts. The conferees expect this report along with recommendations will be submitted to the Committees on Finance, Ways and Means, and Energy and Commerce by July 1, 1991. Upon submission of the Secretary's study and recommendations, the conferees expect Congress to consider modifying the time-limited exemption for Section 1833 contracts.

(o) Additional Enforcement Through Public Health Service Act.—The conference agreement does not include the House bill.

(p) Medicare Select Policies.—The conference agreement includes the Senate amendment, with an amendment that the Medicare select provisions would be applied in a 15-State demonstration, conducted for 3 years (1992-1995).

6. Peer Review Organization Amendments.—(Section 4101-4106 of the House bill, section 6154 of the Senate amendment)

Present Law

(a) Use of Corrective Action Plans.—Peer Review Organizations (PROs) review the appropriateness, reasonableness and medical necessity, and quality of care provided to Medicare patients. If, after reasonable notice, a PRO determines that a practitioner has either failed to comply with program obligations in a substantial number of cases, or has grossly and flagrantly violated these obligations, the PRO is required to refer the case to the Secretary. The Secretary may, in addition to other sanctions, exclude the practitioner from the Medicare program if the Secretary finds that the practitioner has demonstrated an unwillingness or lack of ability substantially to comply with program obligations.

(b) Optometrists and Podiatrists.—The Omnibus Budget Reconciliation Act (OBRA) of 1989 required PROs to establish procedures for involving non-physicians in the review of services within their own profession.

Existing law permits only physicians, osteopaths and, for dental surgery, dentists to be utilized in making final determinations of PRO payment denials.

PROs are required to utilize the services of practitioners of, or specialists in, the various types of medicine (including dentistry), or other types of health care in reviewing services provided by practitioners or specialists in the same profession.

(c) Exchange of Information with State Licensing Boards.—Current law requires each PRO to collect information relevant to its functions, to keep and maintain such records in such form as the Secretary may require, and to permit access to and use of any such information and records as the Secretary may require to carry out PRO responsibilities, subject to the provision of the law relating to prohibition on information disclosure. This provision limits the circumstances under which, and to whom, a PRO may disclose information obtained in the course of its activities relating to the review of Medicare services. The PRO is required, at the request of a State licensing board, to release information relating to a specific case, but only to the extent that such data and information are required by that board to carry out its responsibilities.

(d) Coordination of PROs and Carriers.—Current law requires that a PRO notify the Medicare carrier whenever it makes a determination that Medicare payment should be denied for services furnished to a patient. It also requires that each PRO coordinate activities, including information exchanges, which are consistent with the economical and efficient operation of programs among appropriate public and private agencies, including Medicare carriers. There is no requirement that the Secretary provide for a study of PRO coordination with Medicare carriers. Current law requires that if a Medicare carrier makes determinations or payments with respect to physicians' services, that the carrier implement specified programs.

(e) Confidentiality of Peer Review.—Current law provides that no patient record in possession of a PRO can be subject to subpena or discovery proceedings in a civil action.

(f) Role of PROs in Review of Hospital Transfers.—Section 1867 of the Social Security Act requires hospitals as a condition of Medicare participation,to comply to the extent applicable with requirements relating to the examination and treatment for emergency medical conditions and women in active labor. These provisions are sometimes referred to as the "hospital patient protection" or "anti-dumping" provisions.

Section 1154 of the Social Security Act specifies the functions of the Peer Review Organizations. It provides, in general, that any utilization and quality control peer review organization entering into a contract with the Secretary must review specified professional services to determine whether they are reasonable and medically necessary; whether the quality of such services meets professionally recognized standards of health care; and whether or not the services are provided in an appropriate setting. There is no current requirement that PROs review sanction recommendations under the patient protection provisions (section 1867) of the Social Security Act.

(g) Notice to State Medical Boards when Adverse Actions are Taken.—Peer Review Organizations (PROs) review the appropriateness, reasonableness and medical necessity, and quality of care provided to Medicare patients. If, after reasonable notice, a PRO determines that a practitioner has either failed to comply with program obligations in a substantial number of cases, or has grossly and flagrantly violated these obligations, the PRO is required to refer the case to the Secretary. The Secretary may, in addition to other sanctions, exclude the practitioner from the Medicare program if the Secretary finds that the practitioner has demonstrated an unwillingness or lack of ability substantially to comply with program obligations.

(h) Clarification of Limitation on Liability.—Current law extends immunity from criminal or civil liability to any person employed by, or who has a fiduciary relationship with, or who furnishes professional services to a PRO, provided that he or she has exercised due care in performing duties under the PRO law.

House Bill

(a) Use of Corrective Action Plans.—No provision.

(b) Optometrists and Podiatrists.—Amends the statute to provide that in addition to doctors of medicine, osteopathy and dentistry, PROs may use doctors of podiatry and optometry in making final payment denial determinations.

Requires that, to the extent necessary and appropriate, PROs utilize the services of practitioners of, or specialists in, the various types of medicine (including dentistry, optometrists and podiatrists) or other types of health care.

(c) Exchange of Information with State Licensing Boards.—Amends the Social Security Act relating to PRO functions to require that each PRO notify the State boards or boards responsible for the licensing or disciplining of any physician when the PRO submits a report and recommendations to the Secretary with respect to sanctioning a physician who has been determined by the PRO to have failed in a substantial number of cases to comply with his or her obligations or to have grossly and flagrantly violated any such obligation.

Amends the Social Security Act relating to the prohibition of disclosure of information by the PROs. Require that each PRO provide notice to the State medical board when the PRO submits a sanctions report and recommendations to the Secretary with respect to a physician for whom the board is responsible for licensing.

(d) Coordination of PROs and Carriers.—Amends the Medicare law to require that in carrying out coordinating activities with carriers and other entities, as may be appropriate, that each PRO provide in a manner specified by the Secretary for: (1) information exchange in accordance with specifications of the Secretary; (2) development of common utilization and quality review claim edits and specific medical review criteria used to identify individual claims for review; and (3) collaboration on the analysis of utilization trends and on the results of medical reviews and collaboration on the development of claim edit standards and review criteria. Amends the law relating to Medicare carriers to require that carriers coordinate their activities with those of PROs, in the manner specified by the Secretary, to carry out the coordination activities specified above. Requires the Secretary to report by January 1, 1992 to the House Committees on Ways and Means and Energy and Commerce and the Senate Finance Committee on the implementation of the amendments made by this section.

(e) Confidentiality of Peer Review.—Amends current law to provide that no document or other information produced by a PRO in connection with its deliberations in making quality determinations is subject to subpena or delivery in any administrative or civil proceeding except that a PRO is required to provide, upon request of a practi-

tioner or other person adversely affected by such PRO's quality determination, a summary of the PRO's findings and conclusions in making such a determination.

(f) Role of PROs in Review of Hospital Transfers.—Requires the consultation of the Secretary with PROs with respect to allegations of violations of the provisions of requirements of section 1867 of the Social Security Act relating to the examination and treatment of emergency medical conditions and women in labor.

(1) In General: Requires the Secretary to require the appropriate PRO to review the medical condition of the individual and provide a report concerning its findings and professional opinions with respect to certain concerns. Specifies these concerns to be: (1) whether the individual had an emergency medical condition which had not been stabilized, and (2) if the individual was transferred, whether, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweighed the increased risks to the individual (and, in the case of labor, to the unborn child) from effecting the transfer, and whether the transfer was an appropriate transfer (as defined under the law). Requires, except in the case in which a delay would immediately jeopardize the health or safety of individuals, that the Secretary request such a review before terminating or suspending the provider from Medicare or imposing civil monetary penalties and to provide for at least 60 days for the review. (2) Conforming Amendments: Amends the PRO provisions of the Social Security Act by requiring each PRO to provide for a review and report to the Secretary as stated under the patient protection provisions of the law. Requires the PRO to provide reasonable notice of the review to the physician and hospital involved. Requires that within the time period permitted by the Secretary, the PRO must provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary.

(g) Notice to State Medical Boards when Adverse Actions are Taken.—Amends the law relating to PRO sanctions to require the Secretary to notify the State board responsible for the licensing of the physician when the Secretary effects an exclusion of the physician from the Medicare program.

(h) Clarification of Limitation on Liability.—No provision.

Effective date: (a) no provision; (b) applies to contracts entered into or renewed on or after enactment; (c) applies to notices of proposed sanctions issued more than 60 days after enactment; (d) enactment; (e) applies to all proceedings as of enactment; (f) subsection (1) applies on the first day of the first month beginning more than 60 days after enactment; subsection (2) applies to contracts as of the first day of the first month beginning more than 60 days after enactment; (g) applies to sanctions effected more than 60 days after enactment; (h) no provision.

Senate amendment

(a) Use of Corrective Action Plans.—Provides that before a PRO submits its report and recommendations to the Secretary, the PRO may provide the practitioner or person with the opportunity to enter into and complete a corrective action plan (which may include remedial education) if appropriate. Provides that in determining whether a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with their obligations, the Secretary is required to consider the practitioner's or person's unwillingness or lack of ability, during the period before the PRO submits its recommendations, to enter into and successfully complete a corrective action plan.

(b) Optometrists and Podiatrists.—Similar to section 4106 but uses the term podiatric medicine instead of podiatry.

(c) Exchange of Information with State Licensing Boards.—No provision.

(d) Coordination of PROs and Carriers.—No provision.

(e) Confidentiality of Peer Review.—No provision.

(f) Role of PROs in Review of Hospital Transfers.—No provision.

(g) Notice to State Medical Boards when Adverse Actions are Taken.—No provision.

(h) Clarification of Limitation on Liability.—Clarifies that PROs are also included in the limitation on liability and provides that the limitation on liability is extended provided that due care was exercised in the performance of such duty, function, or activity (as provided under the law).

Effective date: (a) applies to initial determinations made by PROs on or after January 1, 1991; (b) applies to contracts entered into on or after enactment; (c) no provision; (d) no provision; (e) no provision; (f) no provision; (g) no provision; (h) enactment.

Conference agreement

6. Provisions Relating to Peer Review Organizations.—

(a) Use of Corrective Action Plans.—The conference agreement includes the Senate amendment. The provision applies to initial determinations made by PROs on or after the date of enactment.

(b) Optometrists and Podiatrists.—The conference agreement includes the Senate amendment.

(c) Exchange of Information with State Licensing Boards.—The conference agreement includes the House bill with a modification to provide that if the PRO finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the PRO is required to notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.

(d) Coordination of PROs and Carriers.—The conference agreement includes the House bill with modifications to require that the Secretary develop a plan to coordinate the physician review activities of PROs and carriers. The plan is required to include (A) the development of common utilization and medical review criteria; (B) criteria for the targetting of reviews by PROs and carriers; and (C) improved methods for exchange of information among PROs and carriers. The conference agreement requires the Secretary to submit to Congress a report on the development of the plan and to include in the report such recommendations for changes in legislation as may be appropriate.

(e) Confidentiality of Peer Review.—The conference agreement includes the House bill.

(f) Role of PROs in Review of Hospital Transfers.—See the provision amending Medicare Parts A and B related to Hospital Transfers.

(g) Notice to State Medical Boards when Adverse Actions are Taken.—The conference agreement includes the House bill.

(h) Clarification of Limitation on Liability.—The conference agreement includes the Senate amendment.

The conference agreement also includes miscellaneous technical amendments relating to patient notification requirements and clarification of applications of criteria for denial of payments.

7. Miscellaneous and Technical Provisions Relating to Parts A and B

Present law

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—Under OBRA of 1987 (P.L. 100-203), the Secretary is prohibited from issuing any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down Medicare claims processing or delaying the rate at which claims are paid. The provision expires September 30, 1990.

(2) Waiver of Liability for Home Health Agencies.—When a provider furnishes services that are not covered under Medicare, the provider is not normally entitled to Medicare payment for those services. In order for payment to be made to a provider of care, Medicare law requires, at a minimum, that services be medically reasonable and necessary for the diagnosis or treatment of an illness or injury. It also excludes from payment care that is considered to be custodial in nature.

The program, however, has recognized that circumstances may exist where providers of services or beneficiaries could not have reasonably known that services would not be covered. Medicare has paid for a limited number of services which are not medically necessary or are determined to be custodial in nature, so long as it is determined that the provider or beneficiary did not know and could not reasonably have been expected to know that services would be uncovered. The provider is presumed not to know that coverage for certain services would be denied—it qualifies for a "favorable presumption"—when its denial rate is below a certain level. With this favorable presumption, its liability for denied claims below the threshold is waived and it is paid for these claims. The provider receives waiver of liability protection for denied claims below the threshold.

For home health agencies, waiver of liability protection is available for two separate categories of denials. One waiver applies to medical denials, i.e. to claims that are denied because the care was not medically necessary or was determined to be custodial in nature. Since 1987, another waiver has applied to services determined to be noncovered because the beneficiary was not "homebound" or did not require "intermittent" skilled nursing care. These are referred to as technical denials.

For both categories, the principal criterion for meeting the favorable presumption test is a denial rate of 2.5 percent or less. Waiver of liability protection for both medical and technical denials expires November 1, 1990.

(3) Extension of Waivers for Social Health Maintenance Organizations.—The Deficit Reduction Act of 1984 (P.L. 98-369) required the Secretary to grant 3-year waivers for demonstrations of social health maintenance organizations, which provide integrated health and long-term care services on a prepaid capitated basis. The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) required the Secretary to extend the waivers through September 30, 1992.

(b) Home Health Wage Index.—Medicare pays home health agencies the reasonable cost of covered services subject to annual limits. The annual limits are set at 112 percent of the average labor and non-labor costs freestanding agencies incur in delivering services, with adjustments made in the labor-related portion of these average costs to reflect geographic variations in wage levels.

OBRA 87 required the Secretary to use a wage index for home health agency cost limits that is based upon audited wage data obtained from home health agencies, and to apply this index to cost reporting periods beginning on or after July 1, 1988. The Medicare Catastrophic Coverage Act of 1988 delayed the application of the home health wage index to cost reporting periods beginning on or after July 1, 1989. On June 30, 1989, HCFA published the new wage index.

OBRA 89 included a provision that required the Secretary to continue using the hospital-based wage index for home health agency cost limits until cost reporting period beginning on or after July 1, 1991.

(c) Clarification of Definitions Relating to Physician Ownership/Referral.—Effective January 1, 1992, a physician is prohibited from referring a patient to a provider of clinical laboratory services with which the physician has a financial relationship.

(d) Clarification of Payment to Hospital-Based Nursing Schools.—The direct costs of approved medical education programs operated by a hospital are excluded from PPS and paid on a reasonable cost basis. HCFA has ruled that the costs of education programs operated at a hospital but controlled by another institution are not payable on a reasonable cost basis, but are included in PPS rates.

The Technical and Miscellaneous Revenue Act (TAMRA) of 1988 provided an exception to this rule for a hospital paid under a demonstration waiver that expired on September 30, 1985. Known as the "TAMRA exception," the law provided that if during such a hospitals FY 1985 cost reporting period, the hospital incurred substantial costs due to educational activities of a nursing college with which it shared common directors, the educational activities are considered to be allowable as reasonable costs under Medicare.

OBRA '89 provided that the educational costs incurred by a hospital-based nursing school are considered allowable costs if, prior to June 15, 1989, and thereafter, the hospital incurred substantial costs in training students and operating the school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or in the immediate proximity of the hospital. OBRA '89 also allowed a hospital paid under the TAMRA exception to be reimbursed for reasonable costs of training nursing students retroactively for hospital cost reporting periods beginning in FY 1986.

(e) Case Management Demonstration Project.—Case management is not a covered service under Medicare and there are no requirements under current law for Medicare beneficiaries to receive case management services. The Medicare Catastrophic Coverage Act, P.L. 100-360, authorized the establishment of four demonstration projects under which an appropriate entity agrees to provide case management services to Medicare beneficiaries with selected catastrophic illnesses. The demonstration was subsequently repealed in the repeal of the Medicare Catastrophic Coverage Act.

(f) Payments for Graduate Medical Education.—The direct costs of approved medical education programs (including the salaries of residents and teachers, and other overhead costs directly attributable to the medical education program for training residents, nurses, and allied health professionals) are excluded from PPS. The direct costs of training nurses and allied health professionals are paid on a reasonable costs basis. The Consolidated Omnibus Reconciliation Act of 1985 (COBRA) replaced reasonable cost reimbursement for graduate medical education (residency training programs for physicians) with formula payments based on each hospital's per resident costs. Medicare payments to each hospital are based on the product of: (1) the hospital's approved cost per full-time equivalent (FTE) resident; (2) the weighted average number of FTE residents; and (3) the percentage of inpatient days attributable to Medicare Part A beneficiaries.

Each hospital's per FTE resident amount is calculated using data from a base year, increased by 1 percent for hospital cost reporting periods beginning on or after July 1, 1985, and updated in subsequent cost reporting periods by the change in the CPI. The number of FTE residents is calculated at 100 percent after July 1, 1986, only for residents in their initial residency period (defined as the minimum number of years of formal training necessary to satisfy specialty requirements for board eligibility plus 1 year, but not exceeding 5 years). For residents beyond the initial period of residency, the weighting factor is 0.50 FTE. Foreign medical school graduates are not counted as FTE residents unless they have passed certain designated examinations.

(g) HCFA Service Fellows Program.—No provision.

(h) New Technology Intraocular Lenses.—No provision.

(i) Miscellaneous Technical Corrections.—A home health aide training and competency evaluation program, or a competency evaluation program, may not be offered by or in a home health agency which, within the previous two years, has been determined to be out of compliance with the requirements specified in by Medicare. Deficient agencies are prohibited from training individuals who are responsible for providing much of patient care.

(j) Psychology and Nurse-Midwife Services for Inpatients.—OBRA '89 provided direct reimbursement for the services of clinical psychologists. In coverage instructions implementing this provision, the Health Care Financing Administration indicated that services rendered to inpatients of hospitals by clinical psychologists are directly reimbursable under Part B because they are "bundled" services for which hospitals are reimbursed.

House bill

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—No provision.

(3) Waiver of Liability for Home Health Agencies.—No provision.

(4) Extension of Waivers for Social Health Maintenance Organizations.—No provision.

(b) Home Health Wage Index.—No provision.

(c) Clarification of Definitions Relating to Physician Ownership/Referral.—

(d) Clarification of Payment to Hospital-Based Nursing Schools.—No provision.

(e) Case Management Demonstration Project.—No provision.

(f) Payments for Graduate Medical Education.—Provides that, for residents in their initial residency period, a primary care resident is to be counted as 1.1 FTE; a resident specializing in internal medicine or pediatrics other than primary care is to be counted as 1.0 FTE; and all other residents is to be counted as 0.90 FTE. For residents beyond the initial three years of period of residency, increases the weighting factor to 0.80 FTE. Defines primary care specialties as including family practice medicine, general internal medicine, or general pediatrics.

Limits the approved amount per FTE resident in each year to a set percent of the national median, adjusted for local costs, of the hospital specific approved FTE resident amounts. Provides that the approved FTE resident amount for a hospital is limited to 200 percent of the median of all approved FTE amounts for hospitals for cost reporting periods beginning in FY 1992, adjusted by the area wage index applicable to the hospital; lowers the cap to 175 percent in FY 1993, and to 150 percent in FY 1994.

Effective date: Enactment

(g) HCFA Service Fellows Program.—No provision.

Effective date: No provision.

(h) New Technology Intraocular Lenses.—No provision.

(i) Miscellaneous Technical Corrections.—Modifies the conditions under which a home health agency is precluded from offering a home health aide training and competency program, or a competency evaluation program.

Effective date: Enactment.

(j) Psychology and Nurse-Midwife Services for Inpatients.—No provision.

Senate amendment

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—Makes permanent the prohibition on the Secretary from issuing any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up Medicare claims processing or delaying or increasing the rate at which claims are paid.

(2) Waiver of Liability for Home Health Agencies.—Extends the waiver of liability as applied to medical and technical denials through December 31, 1995.

(3) Extension of Waivers for Social Health Maintenance Organizations.—Extends the waivers for the social health maintenance organization (SHMOs) demonstration through December 31, 1995.

(b) Home Health Wage Index.—Requires the Secretary to use for home health agency cost limits the hospital wage index applicable during the fiscal year to the hospital located in the geographic area in which the home health agency is located. Specifies a transition period for phasing in the use of the 1988 hospital wage index. For home health agency cost reporting periods that begin between July 1, 1991 and June 30, 1992, the wage index would be based on a combined area wage index consisting of two-thirds of the 1982 hospital wage index now in use and one-third of the 1988 index. For cost reporting periods beginning between July 1, 1992 and June 30 1993, the combined area wage index would consist of one-third of the 1982 index and two-thirds of the 1988 index. For cost reporting periods beginning on or after July 1, 1993, the 1988 wage index or any later version that may be in effect would be used. Requires the Secretary, in updating the wage index for the limits, to provide that payments to home

health agencies will be no greater or lesser than payments would have been without regard to the update of the wage index.

Effective date: Applies to home health agency cost reporting periods beginning on or after July 1, 1993.

(c) Clarification of Definitions Relating to Physician Ownership/Referral.—Adds an exception to the prohibition on financial or compensation arrangements. The prohibition does not apply in the case of a referral for clinical laboratory services furnished by a hospital pursuant to a referral by a physician who has a financial relationship with a hospital that does not involve the provision of such services.

Effective date: Applies as if included in the enactment of OBRA 1989.

(d) Clarification of Payment to Hospital-Based Nursing Schools.—Establishes a payment policy for reimbursing hospitals for the clinical costs of hospital supported education programs. Prohibits the Secretary from recoupment of alleged overpayments made prior to October 1, 1990, for hospital supported education programs on the grounds that the costs were not allowable costs under Medicare.

Effective date: Enactment.

(e) Case Management Demonstration Project.—Requires the Secretary to resume three case management demonstration projects: (1) the project proposed to be conducted by Providence Hospital for case management of elderly at risk for acute hospitalization; (2) the project to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients; and (3) the project to be conducted by Key Care Health Resources, Inc. to examine the effects of case management of 2,500 high cost Medicare beneficiaries. Requires that the projects be subject to the same terms and conditions established under the Medicare Catastrophic Coverage Act.

Effective date: Enactment.

(f) Payments for Graduate Medical Education.—Provides that, in the case of a hospital that had a graduate medical education program in FY 1984, and that made a commitment to expand its program that was not fully reflected in costs incurred during a cost reporting period beginning in that year, the hospital may request the use of an alternate base year for determining the approved amount per FTE resident. Requires the Secretary to assess the appropriateness of an alternate year based on per-resident amounts for comparable programs. Provides that, if the Secretary approves the request, payments based on the alternate base year will begin with the first cost reporting period for which the Secretary determines the expansion has been substantially implemented.

Effective Date: Enactment.

(g) HCFA Service Fellows Program.—Section S. Authorizes the Administrator of the Health Care Financing Administration to establish a HCFA Fellows Service Program under which up to 10 individuals from the private sector or academia who have demonstrated exceptional competence, highly specialized skills or knowledge may conduct health care related research, studies and investigations within HCFA.

Qualified individuals may be appointed by the Administrator without regard to civil service personnel rules to serve for a period not to exceed 2 years, except that extensions may be granted for up to two years in individual cases under exceptional circumstances. Individuals appointed as fellows are not to be included in determinations of full-time equivalent employees of the Department of Health and Human Services. Authorizes the Administrator to expend up to $750,000 annually on the fellows program, including salary costs.

Effective date: Enactment.

(h) New Technology Intraocular Lenses.—Section 6145. Requires the Secretary to develop and implement a process by which interested parties may request review by the Secretary of the appropriate reimbursement under (incorrect section reference) with respect to a class of new technology intraocular lenses. Such lenses may not be considered as a class of new technology lenses unless they have been approved by the Food and Drug Administration.

Directs the Secretary to take into account whether use of the less is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision or other comparable clinical advantages in determining whether to provide an adjustment of payment with respect to a particular lens.

Requires the Secretary to publish a notice in the Federal Register at least once a year of the requests that the Secretary has received for review of new technology IOLs. Requires the Secretary to provide a 60 day comment period on the notice and to publish a notice of his determination with respect to intraocular lenses listed in the notice within 120 days after the close of the comment period.

Effective Date: Enactment.

(i) Miscellaneous Technical Corrections.—No provision.

Effective date: No provision.

(j) Psychology and Nurse-Midwife Services for Inpatients.—Section 6144. Provides for coverage and direct reimbursement for the services of clinical psychologists and certified nurse midwives rendered to individuals who are inpatients in hospitals.

Effective date: Section 6144. Effective for services furnished on or after January 1, 1991.

Conference agreement

7 AB Technical

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—The conference agreement includes the Senate amendment with an amendment which makes permanent the prohibition on the Secretary from issuing any final regulation, instuction, or other policy change that is primarily intended to have the effect of slowing down or speeding up Medicare claims processing or delaying or increasing the rate at which claims are paid.

(2) Waiver of Liability for Home Health Agencies.—The conference agreement includes the Senate amendment.

(3) Extension of Waivers for Social Health Maintenance Organizations (SHMOs).—The conference agreement includes the Senate amendment, with an amendment to require the Secretary to add up to 4 additional SHMO demonstration projects not less than 1 year after the date of enactment of this act. The agreement requires that the new projects demonstrate the effectiveness and feasibility of innovative approaches to refining targeting and financing methodologies and benefit design, including the effectiveness and feasibility of (a) the benefits of expanded post-acute and community care case management through links between chronic care case management services and acute care providers; (b) refining targeting or reimbursement methodologies; (c) the establishment and operation of a rural services delivery system; or (d) the effectiveness of second-generation sites in reducing the costs of the commencement and management of health care service delivery. The agreement authorizes $3.5 million for the costs of technical assistance and evaluation related to these projects.

The conference agreement also includes a provision that extends and clarifies the OBRA 1989 prohibition on cost-saving policies worth more than $50 million issued in regulations prior to the end of the fiscal year. The conference agreement prohibits the Secretary from issuing any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to reduce the Medicare current services baseline by more than $50,000,000 with three exceptions: (a) the Secretary may issue proposed changes prior to May 15 preceding the fiscal year; (b) the Secretary may issue final regulation, instruction or other policy with respect to the fiscal year on or after October 15 of the fiscal year; (c) the Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the final year if required to implement specific provisions required by the law. Applies for the period FY 1991-FY 1993, or if later, the last fiscal year for which there is a maximum deficit amount (i.e. Gramm-Rudman deficit target) specified under the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344).

(b) Home Health Wage Index.—The conference agreement includes the Senate amendment with a modification to assure budget neutrality.

(c) Clarification of Definitions Relating to Physician Ownership/Referral.—The conference agreement includes the Senate amendment with a modification. The provision corrects technical drafting errors in the definition of referral by a referring physician. The term investor as having a specified financial relationship with an entity, including an ownership or investment interest, other than ownership in large, publicly traded corporations and certain other ownership or investment interests excepted under current law, or compensation arrangements other than those excepted under current law.

The modification excludes from reporting requirements certain entities which bill Medicare very infrequently, and claims from foreign providers. The Secretary is authorized to collect data from selected entities and selected states as opposed to all types of entities and all States. At a minimum, the Secretary is authorized to collect data in at least 10 states from parenteral and enteral suppliers, end stage renal disease facilities, ambulance services, hospitals, entities providing physical therapy services and entities providing diagnostic imaging services of all types (including but not limited to magnetic resonance imaging, computerized tomography, mammography, sonography, and cardiac imaging).

The agreement also delays the requirement for issuance of regulations pertaining to physician ownership of clinical laboratories to October 1, 1991.

(d) Clarification of Payment to Hospital Based Nursing Schools.—The Conference agreement includes the House provision.

(e) Case Management Demonstration Project.—The conference agreement includes the Senate amendment, with an amendment to authorize $2 million in each of the fiscal years 1991 and 1992 for administrative costs in carrying out the demonstrations.

(f) Payments for Graduate Medical Education.—See discussion of this issue in Part A and Part B.

(g) HCFA Service Fellows Program.—The Conference agreement does not include this provision.

(h) New Technology IOLs.—The Conference agreement does not include this provision.

(i) Miscellaneous Technical Corrections.—The Conference agreement includes the House provision.

(j) Psychology Services for Inpatients.—The Conference agreement includes the Senate amendment. The Conferees note that this section is not intended to change or overrise any other provision of Federal law or regulation or State law establishing the scope of practice for clinical psychologists or qualified psychologist services.

(l) Hospital and Physician Obligations with Respect to Emergency Medical Conditions.—The conference agreement changes the standard of liability for civil monetary penalties for physicians from "knowingly violates a requirement" to "negligently violates a requirement." It changes the standard for excluding a physician from Medicare from a "knowing and willfull or negligent" violation of the requirements to a violation of the requirements which "is gross and flagrant or is repeated." The provision applies to actions occurring on or after the first day of the six month after enactment.

The conference agreement also includes section 4103 of the House bill with an amendment to require the consultation of the Secretary with PROs with respect to allegations for violations of the provisions of requirements of section 1867 of the Social Security Act relating to the examination and treatment of emergency medical conditions. The provision requires the Secretary to require the appropriate PRO to review the medical condition of the individual and provide a report concerning its findings. Specifies that the PRO assess whether the individual had an emergency medical condition which had not been stabilized. The provision requires, except in the case in which a delay would jeopardize the health or safety of individuals, that the Secretary request such a review before terminating or suspending the provider from Medicare or imposing civil monetary penalties and to provide for at least 60 days for the review.

(2) Development of Prospective Payment System for Home Health Agencies.—The conference agreement requires the Secretary of HHS to develop for home health care a proposal to modify or replace the current reimbursement methodology with a prospective payment system.

In developing a prospective payment system, the Secretary is required to (1) take into consideration the need to provide for appropriate limits on increases in expenditures under the Medicare program; (2) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness, volume of cases, and the development of new technologies and standards of medical practice; (3) take into consideration the need to increase the payment otherwise made under the new reimbursement system in the case of services provided to patients whose length of treatment or costs of treatment greatly exceed the length or cost of treatment provided for under the applicable prospectively determined payment rate; (4) take into consideration the need to increase payments under the system to providers that treat a disproportionate share of low-income patients and providers located in geographic areas with high wages and wage-related costs; and (5) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

The Secretary is further required to submit the research findings upon which the home health prospective payment proposal will be based to the Senate Finance Committee and the House Ways and Means Committee by April 1, 1993. The Secretary would then submit the proposal to the Committee by September 1, 1993, and the Prospective Payment Assessment Commission would submit an analysis of and comments on the Secretary's proposal to the Committees by March 1, 1994.

3. Prohibition of User Fees for Survey and Certification.—The conference agreement provides that notwithstanding any other provision of law, the Secretary is prohibited from imposing, or requiring States to impose, on hospitals, nursing homes, hospices, dialysis facilities or other entities, a fee relating to offsetting the costs of surveys to certify compliance with the conditions of participation under Medicare Part A or Part B. The provision is effective upon enactment.

4. Anti-Fraud and Abuse.—The conference agreement provides that the Secretary is authorized to delegate to the Office of the Inspector General enforcement of the anti-fraud and abuse provisions and to impose civil money penalties under specified law.

1. Part B Premium (Sections 12301 and 4201 of House bill; Section 6161 of Senate amendment)

Present law

Part B is a voluntary program financed by premiums paid by aged, disabled and chronic renal disease enrollees and by general revenues of the Federal Government. The premium rate is derived annually based partly upon the projected costs of the program for the coming year. The revised premium rate takes effect on January 1 of each year which coincides with the date for the annual Social Security cash benefit cost-of-living adjustment (COLA).

Ordinarily, the premium rate is the lower of (1) an amount sufficient to cover one-half of the costs of the program for the aged; or (2) the current premium amount increased by the percentage by which cash benefits were increased under the COLA provisions of the Social Security program.

From 1984 through 1990, the premium was set at 25 percent of program costs for aged beneficiaries. The remaining 75 percent was covered by general revenues. In CY 1990, the basic Part B premium is 28.60. In CY 1991, the calculation of the Part B premium is slated to revert to the earlier calculation method.

A special provision applies to low-income persons who have their premiums deducted from their social security checks. If there is a social security COLA that is less than the premium increase, the premium increase otherwise applicable is reduced to prevent a reduction in the individual's social security check.

House bill

Section 12301. Establishes the monthly Part B premium as follows:

1991	$29.90
1992	$31.70
1993	$36.50
1994	$41.20
1995	$46.20

Section 4201. Retains, for 1991, the current law provision which provides for the calculation to return to the COLA calculation. An additional $1 is added to this calculation.

Provides that for 1992-1995, the 25 percent rule is reinstated.

Effective date:

Section 12301. Applies to premiums beginning January 1, 1991.

Section 4201. Enactment.

Senate amendment

Retains, for 1991 and 1992 the current law provision which provides for the calculation to return to the COLA calculation.

Provides that for 1993-1995, the 25 percent rule is reinstated.

Effective date: Enactment.

Conference agreement

D.1

The Conference agreement includes Section 12301 of the House bill with an amendment setting the Part B premium at $29.90 for 1991, $31.80 in 1992, $36.60 in 1993, $41.10 in 1994, and $46.10 in 1995.

2. Part B Deductible (Sections 12302 and 4201 of House bill; Section 6162 of Senate amendment)

Present law

Part B of Medicare pays 80 percent of the reasonable charges (or of reasonable cost) for covered services in excess of an annual deductible of $75. The part B deductible has been set at $75 since 1982.

House bill

Section 12302. Sets the annual Part B deductible at $100 for 1991-1995.

Section 4202. Increases the Part B deductible to $100 beginning in 1991.

Effective date:

Section 12302. January 1, 1991.

Section 4202. Enactment.

Senate amendment

Sets the annual Part B deductible at $150 for 1991-1995.

Effective date: Enactment

Conference agreement

D.2

The Conference agreement includes Section 4202 of the House bill.

3. Coinsurance for Clinical Lab Services (Section 6163 of Senate amendment)

Present law

Medicare payment for clinical diagnostic laboratory tests, other than tests performed by a hospital or other provider for its inpatients, is made according to fee schedules established by the Secretary. The laboratory or physician providing these tests must accept assignment. Payments are made at 100 percent of the fee schedule, and the deductible and coinsurance are waived.

House bill

No provision.

Effective date: No provision.

Senate amendment

Imposes the 20 percent coinsurance for clinical diagnostic laboratory tests. The beneficiary must first meet the Part B deducti-

ble before payment is made by the program for covered clinical laboratory test expenses.

Provides that payment is made at 100 percent of the fee schedule amount for tests required in connection with a mandatory second or third opinion.

Effective date: Applies to clinical diagnostic laboratory tests performed on or after January 1, 1991.

Conference agreement

The Conference agreement does not include the Senate amendment.

1. Reimbursement for Prescribed Drugs (Section 4401 OF THE HOUSE BILL, SECTION 6201 OF THE SENATE AMENDMENT)

Present Law

Coverage of prescription drugs is an optional Medicaid service that is provided by all States and the District of Columbia. Federal regulations require that States pay for drug ingredients subject to upper payment limits established by HHS, plus a reasonable professional dispensing fee established by the State. The Health Care Financing Administration of HHS has established upper payment limits for some multiple source drugs. For some drugs, States have established upper payment limits. States may control utilization of prescribed drugs through various means including prior authorization requirements and denial of coverage for certain drugs or groups of drug products.

House Bill

(a) In General.—Denies Federal matching funds for prescription drugs unless rebate agreements are in effect and States implement drug use review by January 1, 1993. Requires drug manufacturers to comply with rebate requirements in all States and the District of Columbia. Provides that, in the case of a manufacturer which has entered into and complies with an agreement, States will cover the manufacturer's covered outpatient drugs which are prescribed on or after April 1, 1991, for a medically accepted indication.

(b) Requirement of Rebate Agreement.—

(1) To ensure availability of payment for the covered drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement with the Secretary on behalf of all the States and the District of Columbia. Such agreement must be entered into by Feb. 1, 1991. If an agreement has not been entered into by that date, any agreement subsequently entered into is not effective until the first day of the first calendar quarter beginning more than 60 days after the agreement date.

(2) In the case of a rebate agreement in effect between a State and a manufacturer on October 1, 1990, such agreement may remain in effect and shall be considered to be in compliance if the State establishes to the satisfaction of the Secretary that the agreement can reasonably be expected to provide rebates at least as large as the rebates under this bill.

(3) Requirements for rebate agreements apply in the District of Columbia, and in the 50 States including any State that is providing medical assistance under a waiver granted under section 1115 of the Social Security Act. The requirements are not applicable in territories and commonwealths.

(4) No provision.

(c) Terms of Rebate Agreement.—(1) Quarterly Rebates. Under the rebate agreement, the manufacturer is required to provide each State Medicaid program with a rebate payment for the manufacturer's outpatient drugs in each calendar quarter. The rebate is to be paid within 30 days after receipt of the necessary information from the State, except that there is a special payment rule for the calendar quarter beginning July 1, 1991. With respect to that quarter, manufacturers' rebates are to be paid to each State by Sept. 30, 1991, based on the amount of the rebate payable for the previous quarter. The amount of the rebate payment for the quarter beginning Oct. 1, 1991, must be adjusted according to the extent that the rebate for the quarter beginning July 1, 1991 differed from the amount otherwise required to be made under the agreement. For purposes of Federal financial participation, the State's expenditures for medical assistance will be reduced by amounts received by a State as rebates.

(2) State Provision of Information.—Within 60 days of the end of each calendar quarter, each State Medicaid agency is required to report to the Secretary information on the total number of units of each dosage form and strength of each covered outpatient drug of a manufacturer dispensed. Such information must be transmitted promptly to the manufacturer. A manufacturer may audit such data as are necessary to verify information provided by the State. Adjustments to rebates shall be made to the extent that information indicates utilization was more or less than the amount specified. Each State Medicaid agency is required to notify the Secretary within 30 days after receipt of each rebate.

(3) Manufacturer Provision of Price Information.—

(A) In General.—Each manufacturer with a rebate agreement must report, to the Secretary, within 30 days of the close of each calendar quarter (beginning on or after April 1, 1991), the average manufacturer price for covered outpatient drugs. The manufacturer must also report the manufacturer's best price for the quarter for single source drugs and innovator multiple source drugs. The information is to be made available on request to each State agency. The manufacturer is required to report to the Secretary, within 30 days of entering a rebate agreement on the best price in effect September 1, 1990, for each of the manufacturer's covered outpatient drugs. The information is to be made available on request to each State agency.

(B) Verification surveys of average manufacturer price.—When necessary to verify the average manufacturer prices reported, the Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs. If a wholesaler, manufacturer, or direct seller refuses a written request to provide information about charges or prices in connection with a survey, or knowingly provides false information, the Secretary may impose a civil monetary penalty up to $10,000.

(C) Penalties.—Failure by a manufacturer to provide requested price information on a timely basis shall result in a 2 percent increase in the rebate next required to be paid for a calendar quarter. If the information is not provided within 90 days of the imposed deadline, a suspension of the rebate agreement of at least 30 days is imposed. A manufacturer who knowingly provides false information is subject to a civil money penalty of up to $100,000 for each item of false information.

(D) Confidentiality of information.—Information disclosed by manufacturers or wholesalers is confidential and may not be disclosed by the Secretary or a State agency in a form which discloses the specific manufacturer, wholesaler, or product, except as deemed necessary by the Secretary and to permit review by the Comptroller General and the Inspector General.

(4) Length of Agreement.—A rebate agreement is effective for an initial period of 1 year and is automatically renewable for an additional 1 year period unless terminated by either party. The Secretary may terminate an agreement for violation of the requirements, effective 60 days or more after the date of notice of termination. If requested, the Secretary will provide a manufacturer a hearing which will not delay the effective date of termination. A manufacturer may terminate an agreement for any reason; the time from date of notice to effective date is specified by the Secretary. Any termination does not affect rebates due before the effective date of termination. If an agreement has been terminated, a new agreement may not be entered into with the manufacturer (or successor manufacturer) until one year after the date of termination unless the Secretary finds good cause for earlier reinstatement.

(d) Amount of Rebate.—

(A) In General.—The rebate for single source drugs and innovator multiple source drugs (IMSDs) is the product of:

The amount by which the average manufacturer price during the quarter exceeds the manufacturer's best price for each dosage form and strength of a covered outpatient drug; and

The number of units dispensed to Medicaid beneficiaries in the State during the quarter.

For covered outpatient drugs other than single source drugs and IMSDs, the rebate is the product of:

10 percent of the average manufacturer price to wholesalers during the quarter (after deducting customary prompt payment discounts) for each dosage form and strength; and

The number of units dispensed to Medicaid beneficiaries in the State during the quarter.

(B) Minimum and Maximum Rebates for Single Source Drugs and Innovator Multiple Source Drugs (IMSDs).—Rebates for single source drugs and IMSDs are subject to minimum and maximum limits based on the product of the average manufacturer's price and the number of units dispensed. The minimum is 10 percent. For calendar quarters beginning before April 1, 1995 the maximum is 25 percent (for each quarter during the 8 calendar quarter period beginning April 1, 1991), or 50 percent (for each quarter during the 8 calendar quarter period beginning April 1, 1993).

(C) Best Price Defined.—Best price is the lowest price available for the drug during the calendar quarter (or, if lower, the lowest price in effect September 1, 1990, indexed to the CPI) from the manufacturer to any wholesaler, retailer, provider, non-profit entity, or governmental entity in the U.S. For new drugs, the "best price" is the lower of the lowest price on the market or the initial lowest price, indexed by the CPI.

The lowest price is inclusive of cash discounts, free goods, volume discounts, and rebates and is determined regardless of special packaging labelling or identifiers on the dosage form or product or package. The lowest price does not take into account nominal prices.

(D) Limitations on Coverage of Drugs.—States are required to cover a manufacturer's covered outpatient drugs prescribed for a medically accepted indication when the

manufacturer which has entered into and complies with a rebate agreement. States are not required to cover any drug for which the manufacturer or its designee has imposed certain conditions of sale.

(e) Drug Use Review.—(1) In General.—In accordance with guidelines developed by the Agency for Health Care Policy and Research, each State must have a drug use review program in effect by January 1, 1993, for covered outpatient drugs (other than psychopharmacologic drugs dispensed to residents of nursing facilities) in order to assure that prescriptions are appropriate and medically necessary. Each drug use review program is to comply with the requirements for prospective drug review, retrospective drug review, and education.

(2) Description of Program.—Prospective review involves review of drug therapy before a prescription is filled, typically at the point of sale or distribution. Pharmacists are required to use published compendia as the source of standards for review.

Retrospective review requires the periodic examination of claims data and other records to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care.

The State drug use review program must educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacies, and patients, or associated with specific drugs or groups of drugs. The program is also to identify potential and actual severe adverse reactions to drugs.

(f) Miscellaneous.—(1) States are not prevented from restricting the amount, duration, and scope of coverage of covered outpatient drugs consistent with the need to safeguard against unnecessary utilization.

(2) This bill does not affect or supersede provisions relating to maximum allowable cost limitation for covered outpatient drugs; rebates must be made without regard to whether payments by the State are subject to such limitations.

(3) States are not required to provide Medicaid coverage for covered outpatient drugs of a manufacturer which requires, as a condition for purchase, that the manufacturer be paid for associated services or tests provided only by the manufacturer or its designee.

(g) Definitions.—

Average Manufacturer Price Average manufacturer price is the average price paid to the manufacturer by retail pharmacies or by wholesalers for drugs distributed to the retail pharmacy class of trade.

Covered Outpatient Drug A covered outpatient drug is a prescribed drug which is approved under the Food, Drug and Cosmetic Act; which was commercially used or sold in the U.S. before enactment of the Federal Food, Drug and Cosmetic Act, and which has not been the subject of a final determination by the Secretary that it is a "new drug" under the Food, Drug and Cosmetic Act; for which the Secretary has not issued a notice for an opportunity for hearing because the drug is less than effective; and for which the Secretary has determined there is compelling justification for its medical need. Also included are identical, similar or related drugs.

The term includes a biological product which may only be dispensed by prescription, is licensed, and produced by a licensed establishment. Also included is insulin.

The term excludes any drug, biological product, or insulin provided with inpatient hospital services, hospice services, dental services (except where state plan authorizes direct reimbursement to dispensing dentist), physician office visits, outpatient hospital emergency room visits, and outpatient surgical procedures.

Non-prescription ("over-the-counter") drugs prescribed by a physician, or other authorized prescriber, may be regarded as covered outpatient drugs.

Manufacturer A manufacturer is the entity that both manufactures and distributes the drugs, or if no such entity exists, the entity that distributes the drug. The term does not include a wholesale distributor of drugs or a retail pharmacy.

Medically Accepted Indication A medically accepted indication means any use for a covered outpatient drug which is approved by the FDA or which is accepted by one of the following compendia: American Hospital Formulary Service—Drug Information, American Medical Association Drug Evaluations, and United States Pharmacopeia—Drug Information.

Multiple Source Drug; Innovator Multiple Source Drug; Noninnovator Multiple Source Drug; Single Source Drug.—(A) A multiple source drug is a covered outpatient drug for which there are 2 or more drug products sold or marketed in the State, which the Food and Drug Administration has rated as therapeutically equivalent and has determined are pharmaceutically equivalent and bioequivalent.

(B) Innovator multiple source drug means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

(C) Noninnovator multiple source drug means a multiple source drug that is not an innovator multiple source drug.

(D) Single source drug means a covered outpatient drug which is not multiple source drug.

Drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity.

Drug products are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence.

A drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

(h) Funding.—

Seventy-five percent Federal matching, over the 1991-1993 period, is available for the costs of the statewide adoption of a drug use review program meeting the requirements of the bill. Seventy-five percent Federal matching is available in FY 1991 for administrative activities related to meeting other requirements.

(i) Denial of Federal Financial Participation in Certain Cases.—No provision.

(j) Pharmacy Reimbursement.—No provision.

(k) Electronic Claims Management.—No provision.

(l) Annual Report.—No provision.

(m) Exemption of Organized Health Care Settings.—No provision.

(n) Demonstration Projects.—No provision.

(o) Studies.—No provision.

Senate amendment

(a) In General.—Similar, but does not include a date after which States must permit coverage of the drugs of a manufacturer which has entered into an agreement.

Prohibits the Secretary or a State from making any changes, prior to April 1, 1993, to the formula used to determine the reimbursement limits in effect as of Aug. 1, 1990, if those changes would result in reductions to the ingredient cost or dispensing fee for covered outpatient drugs.

Requires the Health Care Financing Administration to establish upper limits for all multiple source drugs for which the Food and Drug Administration has rated 3 or more therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such.

(b) Requirement of Rebate Agreement.—

(1) Similar provision, except permits the Secretary to authorize a State to enter directly in agreements with manufacturers, and requires that manufacturers enter into agreements by Jan. 1, 1991.

(2) For a rebate agreement in effect between a State and a manufacturer on the date of enactment of this bill, the agreement is considered to be in compliance for the initial agreement period if the State agrees to report to the Secretary any rebates paid under the agreement. The agreement is considered to be in compliance for renewal periods of the agreement if the State agrees to report any rebates to the Secretary, and the State establishes to the satisfaction of the Secretary that the agreement can reasonably be expected to provide rebates at least as large as the rebates otherwise required under this bill.

(3) No provision.

(4) Payment is authorized for single source drugs or innovator multiple source drugs not covered under rebate agreements if the State has made a determination that the availability of the drug is essential to the health of Medicaid beneficiaries; and the physician has received prior authorization for use of the drug, or the Secretary has approved the State's determination.

(c) Terms of Rebate Agreement.—(1) Quarterly rebates. Similar provision, but provides for periodicity other than quarterly, as specified by the Secretary. Does not include special payment rule.

(2) State Provision of Information.—States are required to report to each manufacturer within the same time period and copy each report to the Secretary. Places no limitations on audits by manufacturers. Otherwise similar provision.

(3) Manufacturer Provision of Price Information.—(A) In General.—Each manufacturer with a rebate agreement in effect is required to report to the Secretary the average manufacturer price within 30 days after each quarter beginning on or after January 1, 1991. The manufacturer's best price for single source drugs and innovator multiple source drugs is to be reported effective for quarters beginning on or after January 1, 1994. Within 30 days of entering into a rebate agreement, each manufacturer must report to the Secretary on the average manufacturer price for each of the manufacturer's drugs as of Oct. 1, 1990.

(B) Verification surveys of average manufacturer price.—Similar, but penalty applies whether request is written or not.

(C) Penalties.—Similar provision, except the rebate is increased by $10,000 for each day information is not provided.

(D) Confidentiality of information.—Similar provision.

(4) Length of Agreement.—Similar provision.

(d) Amount of Rebate.—

(A) In General.—The basic rebate for single source drugs and innovator multiple source drugs (IMSDs) is the product of:

For quarters beginning after Dec. 31, 1990 and before Jan. 1, 1994, 15 percent of the average manufacturer price for each dosage form and strength (after deducting customary prompt payment discounts);

For quarters beginning after Dec. 31, 1993, the greater of

The difference between the average manufacturer price for a drug and 85 percent of the price, or

The difference between the average manufacturer price for a drug and the best price; and

The number of units of such form and dosage dispensed to Medicaid beneficiaries.

The Secretary is required to establish a method for ensuring that a manufacturer's prices, determined on an aggregate weighted average basis, using the average manufacturer price for each drug, do not increase by a percentage greater than the increase in the Consumer Price Index for all urban consumers (CPI-U) from Oct. 1, 1990.

For covered outpatient drugs other than single source drugs and IMSDs, the rebate is the product of:

12 percent of the average manufacturer price for each dosage form and strength (after deducting customary prompt payment discounts) and

The number of units dispensed.

In 1994 and beyond, rebates on single source drugs and IMSDs would be the greater of a 12 percent discount from the average manufacturer's price on Sept. 1, 1990, or the "best price". Rebates on drugs other than single source drugs and IMSDs would be discounts of 12 percent from the current average manufacturer's price.

The 12 percent minimum discount would be indexed annually by the CPI-U. A maximum discount of 20 percent would apply only in fiscal years 1991-1995.

(B) Minimum and Maximum Rebates for Single Source Drugs and Innovator Multiple Source Drugs (IMSDs).—No provision.

(C) Best Price Defined.—Best price is the lowest price available from the manufacturer excluding depot prices of any agency of the Federal Government. There is no provision for the best price of new drugs. Otherwise similar provision.

(D) Limitations on Coverage of Drugs.—Except in the first year following approval of a new drug, States are permitted to subject any covered outpatient drug to prior authorization. States may limit quantities of drugs, provided the limitations are necessary to discourage waste. States may exclude or restrict coverage of a drug if the prescribed use is not for a medically accepted indication, the drug is subject to an agreement between the manufacturer and the State that is authorized by the Secretary, or the drug is in the list below.

The following drug products are subject to restriction:

Agents used for anorexia or weight gain that are not approved by the FDA;

Agents used to promote fertility;

Agents used for cosmetic purposes or hair growth;

Cough and cold relief agents;

Smoking cessation agents;

Prescription vitamins and minerals, except prenatal preparations;

Nonprescription drugs;

Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;

Drugs determined by the Secretary to be less than effective; and

Barbiturates.

By regulation, the Secretary is required to periodically update the list.

Innovator multiple source drugs are to be treated as under otherwise applicable law and regulation.

States are prohibited from imposing prior authorization requirements unless its approval system is available at least 10 hours each weekday and provides for obtaining approval during other times, provides for response within 24 hours of a request, and provides for dispensing at least a 72 hour supply of a covered drug in an emergency situation.

(e) Drug Use Review.—(1) In General.—Similar provision, but requires the assessment of data on drug use against explicit predetermined standards consistent with certain compendia.

(2) Description of Program.—Similar provision specifies that prospective review shall include screening for certain drug therapy problems. Requires that State programs include standards established under State law for counseling of Medicaid recipients or caregivers by pharmacists. Counseling is to include at least a reasonable effort by the pharmacist to provide face-to-face counseling to discuss matters concerning the medication. The pharmacist is required to make a reasonable effort to obtain, record, and maintain certain information about the recipient. The pharmacist is not required to provide consultation when a recipient or caregiver refuses.

Similar provision for retrospective review.

Requires each State to establish a drug use review board (DUR board), either directly or through contract with a private organization, to provide for education outreach programs to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices. Specifies the membership of the board and specifies activities including intervention programs which include the following, as appropriate: information dissemination, reminders containing specific information and suggested changes in practices, discussions between health care professionals and prescribers and pharmacists targeted for educational intervention, and intensified review of selected prescribers or dispensers. The board is required to evaluate interventions periodically.

Annually, each State is required to submit to the Secretary a report prepared by the DUR board. The report must include a description of the board's activities, a summary of the interventions, an assessment of their impact, and an estimate of the cost savings generated by the program.

(f) Miscellaneous.—Provisions similar to (1) and (3). No provision comparable to (2).

(g) Definitions.—Average Manufacturer Price Similar provision.

Covered Outpatient Drug Similar provision.

Manufacturer.—A manufacturer is any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products. The term does not include a wholesale distributor of drugs or a retail pharmacy.

Medically Accepted Indication.—Similar provision.

Multiple Source Drug; Innovator Multiple Source Drug; Noninnovator Multiple Source Drug; Single Source Drug.—Similar provision.

(h) Funding.—Similar provision.

(i) Denial of Federal Financial Participation in Certain Cases.—Denies Federal matching funds for an innovator multiple source drug dispensed on or after July 1, 1991, if a less expensive noninnovator multiple source drug could have been dispensed under State law.

(j) Pharmacy Reimbursement.—Within 60 days after the end of each fiscal year, beginning FY1991 and ending Sept. 30, 1993, each State Medicaid program is required to make a lump-sum payment, to pharmacies dispensing covered outpatient drugs under Medicaid during the fiscal year. The amount of payment is to bear the same ratio to 5 percent of the total rebates received by the State in the year, as the ratio of the number of prescriptions filled by a pharmacy bear to the total number of prescriptions filled by all pharmacies in the State in the fiscal year.

(k) Electronic Claims Management.—The Secretary must encourage each State to establish, as its principal means of processing claims for covered outpatient drugs under Medicaid, a point-of-sale electronic claims management system, for the purpose of performing eligibility verifications, capturing claims data, adjudicating claims, and assisting pharmacists to apply for and receive payment. During fiscal years 1991 and 1992, States may receive 90 percent Federal matching funds for the development of a system if the State acquires the most cost-effective services and equipment. The Secretary may permit States to substitute their requests for proposal for such systems in place of advance planning and implementation documents.

(l) Annual Report.—By May 1, of each year, the Secretary is required to submit a report to the appropriate committees of Congress. The report is to include information on ingredient costs paid under Medicaid, the total value of rebates received and the number of manufacturers providing such rebates; comparison of these rebates with rebates offered to other purchasers; effect of inflation on the value of rebates; and trends in prices paid for drugs by Medicaid.

(m) Exemption of Organized Health Care Settings.—Health maintenance organizations are exempt from these requirements. States are required to exempt hospitals from these requirements provided the hospitals bill Medicaid no more than the hospital's acquisition costs for covered outpatient drugs. Amounts that health maintenance organizations and hospitals pay for covered outpatient drugs may be taken into account to determine the "best price".

(n) Demonstration Projects.—The Secretary is required to establish 10 statewide demonstration projects by January 1, 1992, to evaluate the efficiency and cost-effectiveness of prospective drug utilization review as a component of on-line, real-time electronic point-of-sales claims management. A report is due to Congress by January 1, 1994.

The Secretary is to conduct a demonstration project at no fewer than five sites to evaluate the impact on quality of care and cost-effectiveness of paying pharmacists, whether or not a drug is dispensed, for drug use review services. The Secretary is to report the results of the projects to Congress by January 1, 1995.

(o) Studies.—The Comptroller General is required to conduct a study, and submit a report to the Secretary and to Congress by May 1, 1991, of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the Medicaid program.

The Comptroller General is required to submit an annual report to the Secretary and to Congress by May 1, of each year, on changes in prices charged by manufacturers for prescription drugs sold to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

In consultation with the Comptroller General, the Secretary is required to study prior approval procedures used in State Medicaid programs, including appeals provisions and the effects of the procedures on access to medications. By December 31, 1991, the Secretary and Comptroller General must report the results of the study to Congress and make recommendations as to which procedures are appropriate for Medicaid.

By December 31, 1991, the Secretary is required to report to Congress on the results of a study on the adequacy of current reimbursement rates to pharmacists under each State Medicaid programs, and the extent to which the reimbursement rates affect beneficiary access to covered medications and to pharmacy services.

The Secretary is required to study the relationship between State Medicaid programs and governmental acquisition and reimbursement policies for vaccines, and the accessibility of vaccinations to children. The Secretary is required to report to Congress on the study within one year after the date of enactment of this Act.

The Comptroller General is required to conduct a study examining methods to encourage Medicare providers to negotiate discounts with suppliers of prescription drugs. A report to Congress is due within one year after enactment of this section.

Conference agreement

1. Reimbursement for Prescribed Drugs.—

(a) In General.—The conference agreement includes the House bill with amendments to prohibit the Secretary and the States from reducing drug product reimbursement levels and dispensing fees for pharmacists from the levels in effect August 1, 1990, through March 30, 1995.

(b) Requirement of Rebate Agreement.—The conference agreement includes the House bill with the modification that rebate requirements would not apply to drugs of manufacturers with existing rebate contracts, through the minimum term of the contract, provided the amount of the rebate under the contract totals at least 10 percent of the manufacturer's sales to Medicaid in the State. States are permitted to impose prior authorization controls on all covered drugs, except new drugs within 6 months of FDA approval, and to exclude from coverage certain categories of drugs. States are permitted to cover non-rebated drugs with an FDA "A" rating if the State make a finding that the drug is essential to beneficiaries' health and the Secretary concurs, or if the State requires prior approval.

(c) Terms of Rebate Agreement.—The conference agreement includes the House bill.

(d) Amount of Rebate.—The conference agreement includes the House bill with the following amendments in calculation of the rebate amount for drugs prescribed on or after January 1, 1991. In the first year, the rebate amount is calculated on a drug-by-drug basis and is the greater of the difference between the average manufacturer price (AMP) and a specified percentage of the AMP, or the difference between the AMP and the best price, for sole source and innovator multiple source drugs. The rebate is subject to a maximum. In subsequent years, the rebate is to be calculated on an aggregate basis. The AMP is indexed according to the Consumers Price Index for all urban consumers. Rebates for multiple source (non-innovator) drugs are 10 percent of the AMP in years 1 through 3 and 11 percent in years 4 and 5 and thereafter with no adjustment for inflation. The rebate mechanism does not preclude imposition of current upper payment limits on multiple source drugs. The best price excludes depot prices of certain Federal agencies.

(e) Drug Use Review.—The conference agreement includes the House bill.

(f) Miscellaneous.—The conference agreement includes the House bill.

(g) Definitions.—The conference agreement includes the House bill.

(h) Funding.—The conference agreement includes the House bill with amendments that add 90 percent Federal matching funds in fiscal years 1991 and 1992 for electronic point of sale mechanisms.

(i) Denial of Federal Financial Participation in Certain Cases.—The Senate amendment is not included in the conference agreement.

(j) Pharmacy Reimbursement.—The Senate amendment is not included in the conference agreement.

(k) Electronic Claims Management.—The conference agreement includes the Senate amendment.

The conference agreement does not include provisions on annual report, exemption of organized health care settings, or demonstration projects.

2. Requiring Medicaid Payment of Premiums and Cost-Sharing for Enrollment under Group Health Plans Where Cost-Effective. (Section 4402 of the House Bill, section 6211 of the Senate amendment)

Present law

States may pay health insurance premiums on behalf of beneficiaries instead of providing Medicaid directly, so long as the beneficiaries are covered for the full scope of Medicaid services and retain freedom of choice of providers and the other rights of Medicaid beneficiaries. If a beneficiary is enrolled in a health insurance plan, regardless of whether premiums were paid by Medicaid, Medicaid is a secondary payer for any services covered under that plan.

House bill

Provides that a State (including a State operating a medical assistance program under a Federal demonstration waiver, but not including a commonwealth or territory) must: (a) establish guidelines for the identification of cases in which the enrollment of a beneficiary in a group health is cost-effective; (b) require such beneficiaries (or their parents) to enroll in the plan; and (c) pay any premiums, deductibles, coinsurance, and similar costs under that plan for services covered under Medicaid. Defines cost-effective as meaning that reductions in Medicaid payments are likely to be greater than the cost of paying premiums and cost-sharing.

Requires the State, in developing its guidelines for identifying cases, to take account of limited enrollment periods and cases in which a person not eligible for Medicaid would have to be enrolled to enroll the beneficiary. Provides that a child will not lose eligibility because of a parent's failure to enroll the child. Provides that State payments for premiums and cost-sharing are eligible for Federal matching payments. Permits a State to pay premiums on behalf of a person not eligible for Medicaid if this is necessary to enroll a beneficiary and if total premium payments would still be cost-effective, but prohibits Medicaid payment for cost-sharing for such a person.

Requires a provider treating beneficiaries enrolled under a plan to accept the greater of the plan's reimbursement rate or the Medicaid rate as payment in full, and prohibits a provider from charging the beneficiary or Medicaid an amount that would result in aggregate payment greater than the Medicaid rate. Provides that a beneficiary enrolled in a group health plan retains full eligibility for Medicaid benefits (subject to Medicaid's status as secondary payer), and permits the State to cover services included in the health plan that the State does not ordinarily cover under Medicaid. Provides that a State's failure to comply with requirements relating to group health plans will not be considered in computing erroneous payments for the purpose of the Medicaid quality control system. Permits a State to continue payments on behalf of a beneficiary enrolled in a group health plan for a State-defined period of up to 6 months after enrollment even if the enrollee ceases to be eligible for Medicaid during that period, but only for services covered under the group plan.

Effective date.—Applies to payments for quarters beginning on or after January 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay permitted where State legislation required to comply.

Senate amendment

Requires States to pay premiums, deductibles, and coinsurance for private health insurance policies when it is cost-effective to do so. Requires the Secretary to promulgate regulations on criteria for determining cost-effectiveness, taking into account the duration of the time period to be considered, whether States should consider individual circumstances and actuarial categories (including diagnostically based categories), and the circumstances under which States should pay premiums for non-Medicaid eligible family members of Medicaid beneficiaries. Requires the State to provide directly any service covered under the State Medicaid and not covered under the private insurance plan. Provides that State payments for premiums and cost-sharing are eligible for Federal matching payments. Permits the State to pay premiums and cost-sharing for services included in the health plan that the State does not ordinarily cover under Medicaid.

Effective date.—Applies to payments for quarters beginning on or after January 1, 1991. Delay permitted where State legislation required to comply.

Conference agreement

Requiring Medicaid Payment of Premiums and Cost-Sharing for Enrollment under

Group Health Plans Where Cost-Effective.—The conference agreement includes the House bill with two modifications: (1) the Secretary is required to pay all cost-sharing.

3. Computer Matching and Privacy Provisions. (Section 4403 of the House bill.)

Present law

A Federal or other agency participating in a program for computer matching of data about individuals may not deny, terminate, or reduce an individual's benefits under any Federal program on the basis of data obtained through that program (such as data about income and assets) unless the data have been independently verified and the individual has been notified and given an opportunity to contest the finding.

House bill

Provides that an adverse action may be taken on the basis of data that have not been independently verified when the data relate to payments made under a Federal benefits program and the agency's Data Integrity Board (or, in the case of a non-Federal agency, the Board of the Federal agency issuing the payment) determines that the information is limited to information about the Federal payments and there is a high degree of confidence that it is accurate. Requires that this determination be made in accordance with guidelines to be published by the Director of the Office of Management and Budget (OMB) within 90 days after enactment. Provides that data supplied by Federal agencies administering the AFDC, Medicaid, and Food Stamp programs is exempt from the requirement that the Board certify to a "high degree of confidence" until the earlier of the date the agency's Board determines that there is not a high degree of confidence or 30 days after the publication of the OMB guidelines.

Effective date: Enactment

Senate amendment

No provision.

Conference agreement

3. Computer Matching and Privacy Provision.—The conference agreement does not include the House bill.

4. Protection of Low-Income Medicare Beneficiaries. (Section 4411 of the House bill, section 6221 of the Senate amendment.)

Present law

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—The Medicare Catastrophic Coverage Act of 1988 required States to pay Medicare premiums, deductibles, and coinsurance for "qualified Medicare beneficiaries" (QMBs), those whose family incomes are below 100 percent of the Federal poverty level and whose resources are no more than twice the amount allowed under SSI. The requirement is being phased in on a timetable that ends January 1, 1992, or January 1, 1993 in section 209(b) States that use more restrictive income limits for Medicaid than for SSI. For calendar year 1991, States are required to cover individuals up to 95 percent of the poverty level, or 90 percent in the section 209(b) States. States have the option of accelerating coverage of individuals up to 100 percent of the poverty level. OBRA 1986 also gave States the option of providing full Medicaid coverage (not just Medicare cost-sharing) to elderly and disabled persons with incomes up to 100 percent of the poverty level. The Federal contribution to payments for QMBs is made at the standard matching rate, which ranges from 50 to 83 percent depending on the State's per capita income.

(b) Disregard of Cost-of-Living Adjustments.—Whether an individual is determined to be a QMB depends on whether his or her income is less than a specified percentage of the Federal poverty level. Cost-of-living adjustments (COLAs) for cash benefits under Title II of the Social Security Act become effective on January 1 of a calendar year. The Federal poverty levels for a year are not updated until the middle of February of that year. As a result of this lag, an individual with income near (but below) the maximum income level for QMBs for a year may lose eligibility in the following year until the new poverty levels are issued; new applicants with similar incomes may be denied coverage during the same interval.

House bill

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—Requires all States (including States operating a medical assistance program under a demonstration waiver) to extend QMB coverage to otherwise qualified Medicare beneficiaries with incomes up to 125 percent of the Federal poverty level. Provides for 100 percent Federal matching for additional expenditures resulting from this requirement.

(b) Disregard of Cost-of-Living Adjustments.—Provides that, until the month following the month in which revised poverty guidelines are issued, income attributable to the COLA adjustment is to be excluded in determining eligibility for a QMB, or for an elderly or disabled individual receiving full Medicaid coverage under the OBRA 1986 option.

Effective date: (a) Applies to calendar quarters beginning on or after January 1, 1991, regardless of whether implementing regulations have been promulgated by that date. (b) Applies to determinations of income for months beginning with January 1, 1991.

Senate amendment

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—Requires States to extend QMB coverage to Medicare beneficiaries with incomes up to 100 percent of the Federal poverty level by January 1, 1991. Requires section 209(b) States to extend coverage to individuals with incomes below 95 percent of the poverty level by January 1, 1991, and below 100 percent by January 1, 1992. Permits States to establish a higher income limit, up to 133 percent of the Federal poverty level.

(b) Disregard of Cost-of-Living Adjustments.—Similar provision, except applies to QMBs only.

Effective date: (a) Applies to calendar quarters beginning on or after January 1, 1991. Delay permitted where State legislation required. (b) Applies to determinations of income for months beginning with January 1, 1991.

Conference agreement

4. Protection of Low-Income Medicare Beneficaries.

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—The conference agreement includes the Senate amendments with an amendment to require all but 5 specified 209(b) States to accelerate current coverage for Medicare cost-sharing for beneficiaries with incomes up to 100 percent of the Federal poverty level by January 1, 1991. Requires States to pay premiums for qualified Medicare beneficiaries with incomes up to 110 percent of the Federal poverty level by January 1, 1993, and to 120 percent by January 1, 1995.

(b) Disregard of Cost-Living Adjustments.—The conference agreement follows the House bill with a modification which provides that income attributable to COLA adjustments is to be excluded in determining eligibility for QMBs during the first 3 months of a calendar year.

5. Improvements in Child Health (Sections 4421-4426 of the House bill, section 6231 of the Senate amendment.)

Present law

(a) Phased-in Mandatory Coverage of Children up to 100 Percent of Poverty Level.—States are required to cover children up to age 6 in families with incomes under 133 percent of the Federal poverty level. States are permitted to cover children born after September 30, 1983 up to 7 years old (or 8, at the State's option), in families with incomes below a State-established income level which may be as high as 100 percent of the Federal poverty level. In determining family income for these children, a State must use the same methodology used in its AFDC program, except that it may not deem as available to the applicant income of relatives other than a spouse or parent, and may not subtract from income costs for medical care.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—States are permitted to cover pregnant women and infants up to one year old in families with incomes below a State-established level which may be as high as 185 percent of the Federal poverty level.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—States have the option of continuing coverage for a pregnant woman through the end of the second full month beginning after the end of her pregnancy, even if the woman would otherwise become ineligible during that period. A child born to a woman eligible for and receiving Medicaid on the child's date of birth is deemed eligible for Medicaid and remains eligible so long as the child is a member of the woman's household and the woman remains eligible for Medicaid. During this period, the Medicaid eligibility identification number of the mother serves as the identification number for the child unless the State issues a separate identification number for the child before the end of the period.

(d) Mandatory use of Outreach Locations Other Than Welfare Offices.—States determine the sites at which applications for Medicaid will be accepted. For persons applying for Medicaid only, and not for cash assistance, a State may use the same application form used for the cash assistance programs or may develop a different form.

(e) Presumptive Eligibility.—

(1) Extension of Presumptive Eligibility Period.—States have the option of establishing "presumptive eligibility" for low-income pregnant women. Certain providers may make a preliminary determination that a pregnant woman seeking treatment is potentially eligible for Medicaid. The woman may then receive services related to the pregnancy for up to 45 days, or until the State completes an eligibility review, whichever is earlier. If a woman who has been determined by a provider to be presumptively eligible for Medicaid services fails to apply for Medicaid within 14 days after the determination is made, presumptive eligibility ceases.

(2) Flexibility in Application.—States design their own application forms for Medicaid benefits. In the case of pregnant women, some States may use different forms for the presumptive eligibility determination and the final eligibility determination, while others may use the same form for both. Current law has no provision on this subject.

(f) Role in Paternity Determinations.—Applicants of Medicaid are required, as a condition of eligibility, to cooperate in establishing the paternity of children born out of wedlock, and in obtaining child support unless there is good cause for non-cooperation.

(g) Report and Transition on Errors in Eligibility Determinations.—States are required to maintain a Medicaid quality control system, which identifies Medicaid payments made as a result of erroneous eligibility determinations. If a State's error rate (erroneous Medicaid payments as a percent of total Medicaid payments) exceeds 3 percent, it may be subject to a reduction in Federal matching funds.

(h) Adjustment in Payment for Hospital Services Furnished to Low-Income Children.—If a State pays for inpatient services on a prospective basis (under which payment rates are established in advance and may not reflect the hospital's actual costs for covered services), the State must provide additional payment to disproportionate share hospitals for patients under 1 year old who are "outliers", that is, who incur exceptionally high costs or have long hospital stays. States may establish reasonable durational limits on coverage of inpatient hospital services, but may not impose these limits on medically necessary services provided to children under 1 year old in hospitals serving a disproportionate number of low-income patients with special needs.

House bill

(a) Phased-in Mandatory Coverage of Children up to 100 Percent of Poverty Level.—Requires States to cover children born after September 30, 1983, who are over 6 years old but under 13 years old, with family incomes up to 100 percent of the Federal poverty level. Provides that in determining family income, States may use a methodology that is less restrictive than that used for AFDC.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—No provision.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—Requires all States to continue eligibility for pregnant women until the end of the second full month beginning after the end of the pregnancy, except in the case of a woman who has been provided ambulatory care during a presumptive eligibility period and then determined to be ineligible. Provides that an infant born to a woman who is eligible for Medicaid remains eligible until the first birthday, so long as the child remains in the mother's household and the mother remains eligible for Medicaid, or would be eligible if she were pregnant.

(d) Mandatory use of Outreach Locations Other Than Welfare Offices.—Requires States to accept and begin processing applications by pregnant women and children under 18 at locations other than those used for the receipt and processing of applications for AFDC, and using different application forms. Other locations include disproportionate share hospitals and federally qualified health centers.

(e) Presumptive Eligibility.—

(1) Extension of Presumptive Eligibility Period.—Extends the time limit for filing a Medicaid application to the last day of the month following the month in which the provider makes an initial determination of presumptive eligibility, and continues eligibility to that date in the case of a woman who fails to apply.

(2) Flexibility in Application.—Provides that the Medicaid application form to be filed by women who have been determined presumptively eligible may be the form used by the State for applications by women potentially eligible solely because of pregnancy.

(f) Role in Paternity Determinations.—Exempts women qualifying for Medicaid under the special eligibility standards for pregnant women from the requirement that they cooperate in establishing paternity and obtaining child support.

(g) Report and Transition on Errors in Eligibility Determinations.—Requires the Secretary of HHS to report to Congress by July 1, 1991, on error rates by States in determining eligibility of pregnant women and infants whose eligibility is based on income. Provides that the report may include data for medical assistance provided before July 1, 1989. Provides that the calculation of State error rates and financial penalties is to exclude Medicaid payments made on behalf of pregnant women and infants whose eligibility is based on income on or after July 1, 1989, and before the first calendar quarter beginning more than 12 months after the Secretary submits the required report.

(h) Adjustment in Payment for Hospital Services Furnished to Low-Income Children.—No provision.

Effective date.—(a) applies to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation is required to comply. Texas is not required to comply with the requirements of (a) until September 1, 1991. (c) applies to infants from on or after January 1, 1991, regardless of whether implementing regulations have been promulgated by that date, and to determinations made on or after January 1, 1991, to terminate the eligibility of women based on change of income, regardless of whether implementing regulations have been promulgated by that date. (d) and (e)(1) apply to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. (e)(2) is effective as if included in the enactment of section 9407(b) of OBRA 86. (f) is effective upon enactment.

Senate amendment

(a) Phased-in Mandatory Coverage of Children up to 100 Percent of Poverty Level.—Similar provision, but would require States to cover children up to age 19. Does not provide for changes in the methodology for determining family income.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—Permits States to phase in coverage of children up to age 19 with family incomes under 185 percent of the Federal poverty level.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—Similar provision also specifies that no new Medicaid application is required for a child if the State has issued a separate identification number before expiration of the deemed period.

(d) Mandatory Use of Outreach Locations Other Than Welfare Offices.—No provision.

(e) Presumptive Eligibility.—No provision.

(f) Role in Paternity Determinations.—No provision.

(g) Report and Transition on Errors in Eligibility Determinations.—No Provision.

(h) Adjustment in Payment for Hospital Services Furnished to Low-Income Children.—Requires States with prospective payment systems to provide for outlier payment adjustments for medically necessary inpatient services involving exceptionally high costs or exceptionally long lengths of stay when such services are provided (a) in disproportionate share hospitals to children over age 1 and under age 19, and (b) to infants under age 1 in any hospital. Prohibits States from imposing durational limits for medically necessary inpatient services provided in disproportionate share hospitals to children under age 19. Prohibits States from imposing durational limits or dollar limits on any inpatient hospital services to an individual who is under age 1 or, if an inpatient on his first birthday, until the individual is discharged. Prohibits the Secretary from waiving these requirements.

Effective Date: (a) and (b) apply to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation is required to comply. (c) applies to eligibility determinations made on or after July 1, 1991. (h) applies to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation is required to comply.

Conference agreement

5. Improvements in Child Health.—

(a) Phase-in Mandatory Coverage of Children up to 100 Percent of Proverty Level.—The conference agreement includes the Senate amendment.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—The conference agreement does not include the Senate amendment.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—The conference agreement includes the House bill.

(d) Mandatory of Outreach Locations Other than Welfare Offices.—The conference agreement includes the House bill.

(e) Presumptive Eligibility.—The conference agreement includes the House bill.

(f) Paternity determination.—The conference agreement includes the House bill.

(g) Report and Transition on Errors in Eligibility Determinations.—The conference agreement includes the House bill.

(h) Adjustment in Payment for Hospital Services Furnished to Law-Income Children.—The conference agreement includes the Senate amendment, with an amendment to limit the provisions to children under age 6.

6. Nursing Home Reform Provisions (Section 4431 of House bill; section 6251 of Senate amendment)

Present Law

(a) Nurse Aide Training.—Effective October 1, 1990, nursing facilities (NFs) participating in Medicaid must use on their staffs as nurse aides only those persons who have completed approved training and competency evaluation programs. Specifically, the

law prohibits NFs from using (on a full-time, temporary, per diem, or other basis) persons as nurse aides for more than 4 months, unless the aide (1) has completed a training and/or a competency evaluation program approved by the State; and (2) is competent to provide nursing or nursing-related services. The law also requires States to establish nurse aide registries of all persons who have satisfactorily completed training and competency evaluation programs and those persons who have been involved in resident neglect and abuse. Nursing homes are required to consult these registries before hiring a person as a nurse aide.

OBRA 87 required the Secretary to establish requirements for State approval of nurse aide training and competency evaluation programs by September 1, 1988, and to specify in these requirements areas to be covered in programs, content of curriculum, minimum hours of initial and ongoing training and retraining, qualification of instructors, and procedures for determining competency. The law prohibits the approval of training and competency evaluation programs offered by a NF, if the facility has been determined to be out of compliance with requirements for provision of services, residents' rights, and administration. In addition, an amendment included in OBRA 89 prohibits the approval of programs that impose charges for training and competency evaluation. In 1989, HCFA issued an interim guidance document, effective May 12, 1989, setting out approval criteria for the States. On March 23, 1990, HCFA published a proposed regulation on approval criteria for nurse aide training and competency evaluation programs.

OBRA 87 authorized enhanced Federal Medicaid matching payments for State activities required in connection with nurse aide training and competency evaluation programs. For the 8 calendar quarters beginning July 1, 1988, States have been authorized to receive for nurse aide training and competency evaluation activities their Federal matching rate, plus 25 percentage points, but not exceeding 90 percent. In subsequent years, the rate becomes 50 percent.

(b) Preadmission Screening and Annual Resident Review.—OBRA 87 requires States to establish preadmission screening and review programs to determine whether mentally ill or mentally retarded persons require the level of services provided by a nursing facility and whether they require active treatment. Effective January 1, 1989, NFs participating in Medicaid must not admit any new resident who is mentally ill or mentally retarded, unless the State has determined, prior to admission, that the prospective resident requires the level of services provided by the facility, and whether he or she requires active treatment. OBRA also requires States to review, on an annual basis, all residents who are mentally ill or mentally retarded to determine whether their continued placement is appropriate and whether they require active treatment.

The first of these annual reviews was to have been completed April 1, 1990. These preadmission screening and annual resident review requirements are often referred to as PASARR requirements.

The law requires that certain residents be discharged from facilities if their placement is found to be inappropriate. OBRA authorized the Secretary of HHS and States to enter into agreements, prior to April 1, 1989, that specify alternative disposition plans (ADPs) for persons who must be discharged from facilities. ADPs provide additional time for the States to arrange for the disposition of persons who must be discharged.

OBRA required the Secretary to issue by October 1, 1988, minimum criteria for States to use in making determinations as to whether a mentally ill or mentally retarded individual requires the level of services provided by a nursing facility. In May, 1989, HCFA issued interim guidelines (effective May 26) to the States for use in making determinations. On March 23, 1990, HCFA published proposed regulations on requirements for PASARR. HCFA's interpretation of the law has been that PASARR applies to all individuals with mental illness or mental retardation who apply to reside in a Medicaid-certified NF, regardless of the source of payment for the NF services.

(c) Enforcement Process.—OBRA 87 revises and expands the sanctions that States and the Secretary may impose against nursing facilities found to be out of compliance with the requirements for participation. OBRA required States to amend their Medicaid plans by October 1, 1989, to include certain sanctions that they could impose against noncompliant nursing facilities. OBRA also required the Secretary to provide guidance to the States on these sanctions by October 1, 1988, but specified that the failure of the Secretary to provide this guidance did not relieve a State of its responsibility for establishing the sanctions by the statutory deadline. The Secretary has not yet issued regulations or guidelines providing this guidance.

(d) Supervision by Nurse Practitioners and Clinical Nurse Specialists.—OBRA 87 requires that the health care of every resident be provided under the supervision of a physician. Current Medicaid law allows States to pay for care provided by licensed practitioners, including nurse practitioners and clinical nurse specialists, within the scope of their practice as defined by State law.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—OBRA 87 requires States to take into account in their payments to nursing facilities the costs of complying with new requirements relating to the provision of services, residents' rights, and administration. OBRA also requires that each State submit to the Secretary a State plan amendment to provide for an appropriate adjustment in payment amounts for nursing facility services.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—OBRA 87 requires that nursing facilities maintain a quality assessment and assurance committee which (1) meets at least quarterly to identify quality assessment and assurance issues, and (2) develops and implements appropriate plans of action to correct identified quality deficiencies.

(3) Period for Resident Assessment.—OBRA 87 requires that nursing facilities conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be performed promptly upon, but no later than 4 days after, admission to the facility.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—OBRA 87 requires nursing facilities to provide nursing and related services and specialized rehabilitative services, medically-related social services, pharmaceutical services, dietary services, an ongoing program of activities, and certain dental services.

(5) Clarification of Extent of State Waiver Authority.—Nursing facilities participating in Medicaid are required to provide 24-hour licensed nursing care sufficient to meet the nursing needs of residents and to use a registered professional nurse at least 8 consecutive hours a day 7 days a week. OBRA 87 authorized States to waive the licensed nurse or registered nurse requirements if (1) the facility demonstrated that it has been unable to recruit appropriate personnel, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities); (2) the State determines that a waiver will not endanger the health or safety of residents; and, (3) a registered nurse or physician is obligated to respond immediately to telephone calls from the facility. These waivers are subject to annual renewal and to review by the Secretary of HHS.

(6) Clarification of Definition of Nurse Aide.—Nurse aides are defined as persons providing nursing or nursing-related services to residents in a nursing facility, but does not include certain licensed health professionals or volunteers providing services without monetary compensation.

(7) Clarification of Requirements for Social Services.—Nursing facilities with more than 120 beds are required to have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—There are circumstances in which, under current law, a State may not actually be making payments to a nursing home on behalf of a resident who is eligible for Medicaid. For example, a nursing home resident may be receiving Veterans' Administration aid and attendance payments. These payments are not taken into account in determining initial eligibility for Medicaid, but are considered, post-eligibility, in determining the amount of an individual's monthly income that is available to be applied to the cost of care. In certain situations, the income of the individual may exceed Medicaid payment levels for nursing home care. Nursing facilities have charged these residents at higher "private pay" rates, even though these residents are Medicaid eligible.

(9) Residents' Rights to Refuse Transfers.—Medicare nursing home residents must occupy a Medicare-certified bed in order for a facility to receive Medicare payment. In order to occupy such a bed, a resident may have to be moved.

(10) Residents' Rights Regarding Advance Directives.—OBRA 87 established in Medicaid statute a wide range of residents' rights that nursing facilities must protect and promote.

(11) Resident Access to Clinical Records.—OBRA 87 requires nursing facilities to assure the confidentiality of a resident's personal and clinical records.

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—Among the residents' rights established under OBRA 87 is the requirement that nursing facilities make available to each resident, upon reasonable request, a written statement of rights of the resident in the facility.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—OBRA 87 requires the administrator of a nursing facility to meet standards established by the Secretary.

(14) Clarification of Nurse Aide Registry Requirements.—States are required to establish nurse aide registries of all persons who have satisfactorily completed training and competency evaluation programs and those persons who have been involved in resident neglect and abuse.

(15) Clarification on Findings of Neglect.—States (through their agencies responsible for surveys and certification of nursing facilities) are required to review, investigate, and make findings regarding allegations of resident neglect and abuse and misappropriation of resident property by a nurse aide or another individual used by the facility to provide services.

(16) Timing of Public Disclosure of Survey Results.—A 87 requires States and the Secretary to make available to the public information on all surveys and certifications of nursing facilities, including statements of deficiencies and plans of correction.

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—Medicaid law specifies conditions under which Federal matching payments will be made available to the States.

(18) Standards for Certain Professional Services.—OBRA 87 requires NFs to provide, directly or under arrangements, various kinds of services, including medically-related social services, dietary services, and an on-going program of activities. Final regulations published by HCFA on February 2, 1989, and effective October 1, 1990, specify qualifications for the persons providing these services. These are often different from regulations in effect prior to October 1.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—States are required to notify State long-term care ombudsman (established under the Older Americans Act) of survey findings of noncompliance with any of the requirements for participation.

House bill

(a) Nurse Aide Training.—Includes a number of amendments to the nurse aide training and competency evaluation requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Prohibits the Secretary from taking (and continuing) any actions against a State for its failure to meet the law's requirements for nurse aide training and competency evaluation programs before the effective date of HCFA guidelines for such programs, if the State demonstrates it has made a good faith effort to meet the requirements before the effective date.

(2) Clarification of Grace Period for Nurse Training of Individuals.—Specifies that training and competency evaluation requirements apply to all persons who have worked (on a full-time, temporary, or per diem basis) as nurse aides for 90 days or more in any nursing facility.

(3) Clarification of Nurse Aides Not Subject to Charges.—Clarifies that the prohibition on charging nurse aides for training and competency evaluation would apply to aides who are employed by (or who have entered into an employment agreement with) a facility.

(4) Modification of Nursing Facility Deficiency Standards.—Prohibits approval of training and competency evaluation programs offered by or in a NF which, within the previous 2 years, has had a waiver for the licensed nurse or registered nurse requirements or has been subject to an extended (or partial extended) survey.

(5) Clarification of State Responsibility to Determine Competency.—Prohibits States from using subcontracts or other devices to determine that an aide is competent to provide nursing and nursing-related services.

(6) Extension of Enhanced Match Rate Until October 1, 1990.—No provision.

(7) Nurse Aide Registry.—Requires that nurse aides deemed to have met nurse aide training and competency evaluation requirements under OBRA 87 or OBRA 89 be added to a State's nurse aide registry. Further prohibits States from imposing any charges on aides for establishing and maintaining the registries. (Also described below in Other Amendments, item (d)(14).)

(8) Retraining of Nurse Aides Not Employed.—No provision.

(b) Preadmission Screening and Annual Resident Review.—Includes a number of amendments to PASARR requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Prohibits the Secretary from taking (and continuing) any actions against a State for its failure to meet the law's requirements for preadmission screening before the effective date of HCFA guidelines, if the State demonstrates that it had made a good faith effort to meet the requirements.

(2) Clarification with respect to Admissions and Readmission from a Hospital.—Provides that preadmission screening requirements do not apply to nursing facility residents who are being readmitted to the nursing facility after a hospital stay. Also provides that preadmission screening requirements do not apply to persons (1) who are admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital; (2) who require nursing facility services for the condition for which the individual received care in the hospital; and (3) whose attending physician has certified, before admission to the facility, that the person is likely to require less than 30 days of nursing facility services.

(3) Delay in Application to Private Pay Residents.—Provides that preadmission screening and annual resident review requirements do not apply to mentally ill or mentally retarded persons who are not eligible for Medicaid until such time as they become entitled to benefits (with preadmission screening required to be done at the end of the day following the date the person becomes eligible). Specifies that this amendment shall not prohibit a State from imposing preadmission screening and annual resident review requirements on persons who are not Medicaid eligible at the time of admission to a nursing facility. Prohibits the Secretary from imposing any sanction on States which have failed to apply the preadmission screening requirements to persons who are not Medicaid eligible at the time of their admission.

(4) Denial of Payments for Certain Residents Not Requiring Nursing Facility Services.—Prohibits Federal matching payments for nursing facility services for persons who do not require the level of services provided by the nursing facility (other than for persons who have resided in the facility for at least 30 months and who are determined not to need such care).

(5) No Delegation of Authority to Conduct Screening and Reviews.—Prohibits State mental health authorities and State mental retardation or developmental disability authorities from delegating (by subcontract or otherwise) their PASARR responsibilities to nursing facilities (or entities that have a direct or indirect affiliation or relationship with these facilities).

(6) Annual Reports.—Requires States to report to the Secretary annually on the number and disposition of residents who are discharged from nursing facilities (1) because they do not require nursing facility care, have resided in the facility for less than 30 months and require active treatment, and (2) because they do not require nursing facility care and do not require active treatment. Also requires the Secretary's annual report on nursing facility compliance with new requirements and enforcement actions to include a summary of information reported by States on the disposition of residents discharged from nursing homes.

(7) Revision of Alternative Disposition Plans.—Authorizes States to revise their agreements for alternative disposition plans before October 1, 1991, subject to the approval of the Secretary, but only if under the revised agreement all residents who do not require nursing facility care are discharged from the facility by not later than April 1, 1994.

(8) Definition of Mentally Ill.—Modifies the definition of mental illness from "a primary or secondary diagnosis of mental disorder (as defined in DSM-III)" to a "serious mental illness as defined by the Secretary."

(9) Substitution of "Specialized Services" for "Active Treatment".—Substitutes the term "specialized services" for the term "active treatment."

(c) Enforcement Process.—Prohibits the Secretary from taking (and continuing) any action against a State for its failure to meet the law's requirements for establishing sanctions before the effective date of guidelines, if the State demonstrates that it has made a good faith effort to meet the requirements.

(d) Supervision by Nurse Practitioners and Clinical Nurse Specialists.—Permits nursing facilities to use nurse practitioners or clinical nurse specialists who are not employees of the facility but who are working in collaboration with a physician to supervise the care of residents.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—Requires that States also take into account in their payments to nursing facilities the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for Medicaid. Also requires that State plan amendments include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—Provides that a State or the Secretary may not require disclosure of the records of the quality assessment and assurance committee, except for determining the facility's compliance with the requirement for maintaining the committee.

(3) Period for Resident Assessment.—Extends the time limit for a resident's assessment from 4 days to 14 days after admission.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—Requires that facilities also provide treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

(5) Clarification of Extent of State Waiver Authority.—Clarifies that States may waive

the licensed nurse or registered nurse requirements under the conditions specified in law, only to the extent that a facility is unable to meet them.

(6) Clarification of Definition of Nurse Aide.—Clarifies that nurse aides do not include registered dietitians.

(7) Clarification of Requirements for Social Services.—Provides that nursing facilities with more than 120 beds would be required to have one individual employed full-time to provide or assure the provision of social services who (1) is a social worker with at least a bachelor's degree in social work or similar professional qualifications; or (2) is provided with on-going consultation and assistance by a social worker (with the above qualifications) employed by the facility.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—Prohibits nursing facilities from charging residents who are Medicaid eligible, but for whom Medicaid payments are not being made because their income exceeds State payments for this care, more than the Medicaid rate for their nursing facility care.

(9) Residents' Rights to Refuse Transfers.—Adds to residents' rights established under OBRA 87 a new right for residents to refuse a transfer to another room within a facility, if a purpose of the transfer is to relocate the resident from a non-Medicare certified portion of the facility to a Medicare-certified portion of the facility. Provides that a resident's refusal to be transferred will not affect the resident's eligibility for Medicaid or the State's entitlement to Federal matching payments for the resident's care.

(10) Residents' Rights Regarding Advance Directives.—Adds to residents' rights the right to compliance by the facility with the provisions of an advance directive. Defines "advance directive" as a written instruction, such as a living will or durable power of attorney for health care, recognized under State law and relating to the provision of care when the individual is incapacitated.

(11) Resident Access to Clinical Records.—Adds to this requirement the right of the resident to have access to current clinical records promptly upon request.

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—Requires facilities to include in the written statement of rights that they are currently required to provide residents, a copy of the State notice of the rights and obligations of residents (and spouses of residents) under Medicaid.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—Repeals other requirements in Medicaid law pertaining to State programs for the licensing of nursing home administrators.

(14) Clarification of Nurse Aide Registry Requirements.—Requires that nurse aides deemed to have met nurse aide training and competency evaluation requirements under OBRA 87 or OBRA 89 be added to a State's nurse aide registry. Also prohibits States from imposing any charges on aides for establishing and maintaining the registries.

(15) Clarification on Findings of Neglect.—Provides that a State can not make a finding of neglect by an individual, if the individual demonstrates that neglect was caused by factors beyond the control of the individual.

(16) Timing of Public Disclosure of Survey Results.—Requires that survey and certification information be made available to the public within 14 calendar days after this information is made available to the facilities.

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—Specifies that Federal matching payments will not be made for reimbursing (or otherwise compensating) a nursing facility for legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for such action.

(18) Standards for Certain Professional Services.—No provision.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—No provision.

Effective date: (a) effective as if included in OBRA 87; (b) effective as if included in OBRA 87, except that (c)(3), (5), (7), and (9) effective enactment, without regard to whether or not regulations to implement the amendments have been promulgated; (c) effective enactment; (d) effective with respect to services furnished on or after October 1, 1990, without regard to whether or not final regulations to implement the amendments have been promulgated; and (e) effective as if included in OBRA 87, except that (e)(8) effective enactment, without regard to whether or not regulations to implement the amendments have been promulgated, and (d)(13) effective October 1, 1990.

Senate Amendment

(a) Nurse Aide Training.—Includes a number of amendments to the nurse aide training and competency evaluation requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Identical provision, except prohibits actions against a State before the effective date of final regulations.

(2) Clarification of Grace Period for Nurse Training of Individuals.—Provides that NFs may not use individuals as nurse aides on a temporary, per diem, or any other basis on or after January 1, 1991, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(3) Clarification of Nurse Aides Not Subject to Charges.—Permits accredited nonfacility-based nurse aide training and competency evaluation programs to impose charges on individuals who are not presently employed by a nursing facility or who have not yet had an offer for future employment at a facility. Further requires, for individuals employed or under contract for employment as a nurse aide within 12 months after successful completion of a nonfacility-based, State-approved nurse aide training and competency evaluation program, that the State ensure that the costs they incurred for these programs are reimbursed to them.

(4) Modification of Nursing Facility Deficiency Standards.—Provides that a NF would be ineligible to offer a training and competency evaluation program (1) if at any time on or after October 1, 1988, the facility has been terminated from participation in Medicaid or Medicare, until after the end of a period of at least 2 years during which no survey or investigation finds any deficiencies warranting termination and at least one standard survey has been conducted; or (2) the facility received a notice of termination at any time during the one year period ending September 30, 1990, until after the completion of a subsequent standard survey which finds no deficiencies warranting the notice; or (3) is found in a standard survey or investigation to have deficiencies resulting in a civil monetary penalty in excess of $5,000, denial of payment, or appointment of temporary management, until after the completion of a subsequent standard survey which finds no deficiencies warranting these sanctions.

(5) Clarification of State Responsibility to Determine Competency.—Identical provision.

(6) Extension of Enhanced Match Rate Until October 1, 1990.—Extends enhanced Federal matching for nurse aide training and competency evaluation through September 30, 1990.

(7) Nurse Aide Registry.—Requires that aides deemed under OBRA 89 to have met the law's training and competency evaluation requirements and those aides for whom the State may waive the competency evaluation requirements under OBRA 89 be added to a State's nurse aide registry. Further requires NFs, that have reason to believe that a nurse aide they are considering employing is from a State other than the State in which the facility is located, to consult the nurse aide registry of the State where the facility believes the aide resided. (8) Retraining of Nurse Aides Not Employed.—Requires those nurse aides who have not provided services for 24 consecutive months to complete either a nurse aide training and competency evaluation program or a new competency evaluation program.

(b) Preadmission Screening and Annual Resident Review.—Includes a number of amendments to the PASARR requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Identical provision, except prohibits actions against the States before the effective date of final regulations.

(2) Clarification with Respect to Admissions and Readmission from a Hospital.—Identical provision.

(3) Delay in Application to Private Pay Residents.—No provision.

(4) Denial of Payments for Certain Residents Not Requiring Nursing Facility Services.—No provision.

(5) No Delegation of Authority to Conduct Screening and Reviews.—Identical provision.

(6) Annual Reports.—Identical provision.

(7) Revision of Alternative Disposition Plans.—Identical provision, except allows revision of alternative disposition plans before April 1, 1991.

(8) Definition of Mentally Ill.—Modifies the definition of mental illness to a "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)." Retains the existing exclusion from PASARR for persons with a primary diagnosis of dementia (including Alzheimer's disease or related disorder) and also excludes persons with a nonprimary diagnosis of dementia and a primary diagnosis that is not a serious mental illness.

(9) Substitution of "Specialized Services" for "Active Treatment".—Identical provision.

(c) Enforcement Process.—Delays until April 1, 1991, the requirement that States establish in their Medicaid plans certain sanctions to be imposed against noncompliant nursing facilities.

(d) Supervision by Nurse Practitioners and Clinical Nurse Specialists.—No provision.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—No provision.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—No provision.

(3) Period for Resident Assessment.—Identical provision.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—No provision.

(5) Clarification of Extent of State Waiver Authority.—Requires the State agency granting a waiver of nurse staffing requirements to provide notice of the waiver to the appropriate State and substate long-term care ombudsman, to the protection and advocacy system and other appropriate State and private agencies. Further requires a nursing facility that is granted a waiver make reasonable efforts to notify present and prospective residents of the facility (or a guardian or legal representative of residents) of the waiver.

Further requires the Secretary to conduct a study and report to Congress by January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for NFs. Requires that if the Secretary determines that the establishment of minimum ratios is advisable, the report must specify appropriate ratios or standards.

(6) Clarification of Definition of Nurse Aide.—No provision.

(7) Clarification of Requirements for Social Services.—No provision.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—No provision.

(9) Residents' Rights to Refuse Transfers.—No provision.

(10) Residents' Rights Regarding Advance Directives.—No provision.

(11) Resident Access to Clinical Records.—Similar provision, except provides access as well to the resident's legal representative and specifies promptly upon reasonable request (as defined by the Secretary).

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—No provision.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—No provision.

(14) Clarification of Nurse Aide Registry Requirements.—Requires that aides deemed under OBRA 89 to have met the law's training and competency evaluation requirements and those aides for whom the State may waive the competency evaluation requirements under OBRA 89 be added to a State's nurse aide registry. Further requires NFs, that have reason to believe that a nurse aide they are considering employing is from a State other than the State in which the facility is located, to consult the nurse aide registry of the State where the facility believes the aide resided. (Also described above under Nurse Aide Training, item (a)(7).)

(15) Clarification on Findings of Neglect.—No provision.

(16) Timing of Public Disclosure of Survey Results.—No provision.

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—No provision.

(18) Standards for Certain Professional Services.—Requires the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dietitians, activities professionals, and medical records practitioners, and report to Congress by January 1, 1993, on whether facilities have on their staffs persons with significantly different credentials as a result of new regulations that became effective October 1, 1990, and the impact of staff composition on quality of care.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—Requires that State survey agencies enter into a written agreement with the Office of the State Long-Term Care Ombudsman (as defined by the Older Americans Act) to provide for information exchange, case referral, and prompt notification of the office of any adverse action to be taken against a nursing facility.

Effective date: Effective April 1, 1991; except that (a)(1), (a)(4), (a)(6), (b)(1), (b)(2), (b)(7), (c), (d)(3), (d), (d)(18) effective as if included in OBRA 87.

Conference Agreement

6. Nursing Home Reform Provisions.—

The managers note that the amendments included below make minor and technical changes to the nursing home reform statute as originally enacted in 1987. The managers are aware that the Secretary will soon issue regulations implementing portions of the original law. The managers do not intend that the amendments below result in any further delay of forthcoming regulations.

(a) Nurse Aide Training.—

(1) No Compliance Actions Before Effective Date of Guidelines.—The conference agreement includes the House bill.

(2) Clarification of Grace Period for Nurse Training of Individuals.—The conference agreement includes the Senate amendment, with a modification to provide that NFs may not use individuals as nurse aides on a temporary, per diem, leased, or any other basis other than as a permanent employee, on or after January 1, 1991, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(3) Clarification of Nurse Aides Not Subject to Charges.—The conference agreement includes the House bill, with a modification to specify that the prohibition on charging aides would apply to aides who are employed by or who have received an offer of employment from a facility. The conference agreement also includes an amendment requiring States to provide for the reimbursement of the costs incurred by persons in completing nurse aide training and competency evaluation programs, if they are not employed by or have not received an offer of employment from a facility. These costs would be reimbursed for aides employed within 12 months after completing a program and would be prorated during the period the aide is employed by the facility.

(4) Modification of Nursing Facility Deficiency Standards.—The conference agreement includes the House bill, with an amendment. The agreement prohibits the approval of nurse aide training and competency evaluation programs offered by or in a nursing facility which, within the previous 2 years—(a) has had a waiver of the licensed nurse or registered nurse requirements for a period in excess of 48 hours during the week; (b) has been subject to an extended (or partial extended) survey under Medicare or Medicaid; or (c) has been subject to sanctions that may be imposed under Medicare or Medicaid law, including a civil money penalty of not less than $5,000, denial of payment, appointment of temporary management, closing the facility or transferring residents, or termination. For the 2-year period beginning October 1, 1988, the conference agreement also prohibits the approval of nurse aide training and competency evaluation programs offered by or in a nursing facility which (a) has been terminated from participation in Medicare or Medicaid; or (b) has been subject to sanctions that may be imposed under Medicaid or Medicare or applicable State law, including denial of payment, a civil money penalty of not less than $5,000, appointment of temporary management, or closing the facility or transferring residents.

(5) Clarification of State Responsibility to Determine Competency.—The conference agreement includes the Senate amendment.

(6) Extension of Enhanced Match Rate Until October 1, 1990.—The conference agreement includes the Senate amendment.

(7) Nurse Aide Registry.—The conference agreement includes the House bill, with an amendment to include on a State's nurse aide registry aides for whom the State may waive the competency evaluation requirements under OBRA 89. The conference agreement also includes an amendment requiring facilities to consult any State nurse aide registry that the facility believes will include information about an aide.

(8) Retraining of Nurse Aides Not Employed.—The conference agreement includes the Senate amendment.

(b) Preadmission Screening and Annual Resident Review.—

(1) No Compliance Actions Before Effective Date of Guidlines.—The conference agreement includes the House bill.

(2) Clarification with respect to Admissions and Readmission from a Hospital.—The conference agreement includes the Senate amendment.

(3) Delay in Application to Private Pay Residents.—The conference agreement does not include the House bill.

(4) Denial of Payments for Certain Residents Not Requiring Nursing Facility Servies.—The conference agreement includes the House bill.

(5) No Delegation of Authority to Conduct Screening and Reviews.—The conference includes the Senate amendment.

(6) Annual Reports.—The conference agreement includes the Senate amendment.

(7) Revision of Alternative Disposition Plans.—The conference agreement includes the House bill.

(8) Definition of Mentally Ill.—The conference agreement includes the Senate amendment.

(9) Substitution of "Specialized Services" for "Active Treatment".—The conference agreement includes the Senate amendment.

(c) Enforcement Process.—The conference agreement includes the House bill.

(d) Supervision of Health Care of Residents of Nursing Facilities by Nurse Practitioners and Clinical Nurse Specialists Acting in Collaboration with Physicians.—The conference agreement includes the House bill, with an amendment to include physician assistants, together with nurse practitioners and clinical nurse specialists, as health professionals permitted to supervise the medical care of residents.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—The conference agreement includes the House bill.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—The conference agreement includes the House bill.

(3) Period for Resident Assessment.—The conference agreement includes the Senate amendment.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—The conference agreement includes the House bill.

(5) Clarification of Extent of State Waiver Authority.—The conference agreement includes the House bill, with an amendment. The conference agreement requires the State agency granting a waiver to provide

notice of the waiver to the State long-term care ombudsman and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and further requires the facility to notify residents (or, where appropriate, the guardians or legal representatives of residents) and members of their immediate families of the waiver. The conference agreement also requires the Secretary to conduct a study and report to Congress by January 1, 1992, on the appropriateness of establishing minimium caregiver to resident ratios and minimum supervisor to caregiver ratios for SNFs and NFs, and to include recommendations for appropriate minimum ratios.

(6) Clarification of Definition of Nurse Aide.—The conference agreement includes the House bill.

(7) Clarification of Requirements for Social Services.—The conference agreement does not include the House bill.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—The conference includes the House bill.

(9) Residents' Rights to Refuse Transfers.—The conference agreement includes the House bill.

(10) Residents' Rights Regarding Advance Directives.—The conference agreement does not include the House bill.

(11) Resident Access to Clinical Records.—The conference agreement includes the House bill, with a modification requiring that access to records be provided within 24 hours (excluding hours during a week-end or holiday) after a request. The conference agreement also includes an amendment requiring that access be provided to the resident's legal representative.

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—The conference agreement includes the House bill.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—The conference agreement includes the House bill, with an amendment that current law requirements would not be repealed until the date upon which the Secretary issues standards specifying qualifications for nursing facility administrators.

(14) Clarification of Nurse Aide Registry Requirements.—The conference agreement includes the House bill, with an amendment to include on a State's nurse aide registry aides for whom the State may waive the competency evaluation requirements under OBRA 89. The conference agreement also includes an amendment requiring facilities to consult any State nurse aide registry that the facility believes will include information about an aide.

(15) Clarification of Findings of Neglect.—The conference agreement includes the House bill.

(16) Timing of Public Disclosure of Survey Results.—The conference agreement includes the House bill.

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—The conference agreement includes the House bill.

(18) Standards for Certain Professional Services.—The conference agreement includes the Senate amendment, with an amendment to require that any regulations promulgated by the Secretary on medically-related social services, dietary services, and an on-going program of activities include requirements that are at least as strict as those applicable to providers of these services prior to the enactment of OBRA 87. The agreement also deletes the requirement for the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dieticians, activities professionals, and medical records practitioners.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—The conference agreement includes the Senate amendment, with an amendment to require State survey agencies to notify the Office of the State Long-Term Care Ombudsman of any adverse action taken against a facility under the enforcement section of nursing home reform law.

7. Home and Community-Based Care Services (Section 6241 of Senate amendment)

Present law

Under special waiver authorities (sections 1915(c) and 1915(d) of Medicaid law), States may cover a variety of home and community-based long-term care services for elderly persons who would otherwise require institutional care whose cost could be reimbursed by Medicaid. States define the services they wish to cover for a targeted population from a broad range of medical and nonmedical social services that are specified in law. These include case management, homemaker/home health aide services, personal care, adult day health, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based setting. States may provide such services, however, only after they have demonstrated to the Secretary of HHS that coverage of these services would be budget neutral.

House bill

No provision.

Senate amendment

(a) Home and Community Care as an Optional, Statewide Service.—Establishes "home and community care for functionally disabled elderly individuals" as a new optional service that States may cover under their Medicaid plans without demonstrating budget neutrality.

(b) Home and Community Care Defined.—Defines "home and community care" as one or more of the following services furnished, according to an individual community care plan, to an individual who has been determined, after an assessment, to be a functionally disabled elderly individual: (1) homemaker/home health aide services; (2) chore services; (3) personal care services; (4) nursing care services provided by, or under the supervision of, a registered nurse; (5) respite care; (6) training for family members in managing the individual; (7) adult day health services; (8) in the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility); (9) such other home and community-based services (other than room and board) as the Secretary may approve.

(c) Functionally Disabled Elderly Individual Defined.—Defines an eligible "functionally disabled elderly individual" as a person who (1) is 65 years of age or older; (2) is determined to be functionally disabled; and (3) is eligible for Medicaid in the community because of low income and resources or, at the option of the State, because of large medical expenses (that result in a person "spending down" to qualify as "medically needy"). Provides that States may use a 6-month period for projecting medical expenses and income, in determining eligibility of medically needy persons for optional home and community care services.

In the event that a State discontinues a 1915(c) or 1915(d) waiver, specifies that States would be able to continue to cover under the optional home and community care benefit those elderly persons who received home and community-based services under these waivers, so long as they would be eligible for home and community care benefits, except for the income and resources standards used in the State for determining eligibility for persons living in the community. Allows Texas, which is providing personal care services to functionally disabled persons under a special demonstration project waiver authority (section 1115 of the Social Security Act), to extend home and community care services to aged and disabled persons who meet the waiver's test of functional disability and who meet the State's higher institutional income standard.

(d) Functional Disability Defined.—Defines as "functionally disabled" persons who (1) are unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living (ADLs): toileting, transferring, and eating; or (2) have a primary or secondary diagnosis of Alzheimer's disease and are (a) unable to perform without substantial human assistance (including verbal reminding or physical cuing) or supervision at least 2 of the following 5 ADLs: bathing, dressing, toileting, transferring, and eating; or (b) cognitively impaired so as to require substantial supervision from another individual because the individual engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

(e) Assessments of Functional Disability.—Requires States, upon the request of an elderly person eligible for Medicaid (or another person on the individual's behalf), to provide for a comprehensive functional assessment to determine whether or not an individual is functionally disabled. Requires that the assessment be based on a uniform minimum data set specified by the Secretary and be conducted using an instrument specified by the State and developed or approved by the Secretary. Provides that no fee may be charged for the assessment.

(1) Specification of Assessment Data Set and Instruments.—By July 1, 1991, requires the Secretary to specify a minimum data set of core elements and common definitions for use in conducting assessments and to establish guidelines for use of the data set. Also requires the Secretary, by July 1, 1991, to designate one or more instruments for use by a State in conducting comprehensive functional assessments. Requires that States use one of the instruments designated by the Secretary or an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines.

(2) Periodic Review.—Requires that individuals qualifying for home and community care services have their assessments periodically reviewed and revised not less often than once every 12 months.

(3) Conduct of Assessment by Interdisciplinary Teams.—Requires that assessments and reviews be conducted by an interdisciplinary team designated by the State. Requires that the Secretary permit a State to provide for assessments and reviews through teams under contracts with public organizations or with nonpublic organizations which do not provide home and community care or nursing facilities and do not

have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides community care or nursing services.

Requires that interdisciplinary teams (1) identify functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system, and (2) determine, on the basis of the assessment or review, whether the individual is (or continues to be) functionally disabled. Requires that the results of an assessment or review be used in establishing, reviewing, and revising the individual's community care plan.

(4) Appeals Procedures.—Requires that each State electing to cover home and community care services as an optional benefit have in effect an appeals process for individuals adversely affected by eligibility determinations of the interdisciplinary team.

(f) Individual Community Care Plan (ICCP).—Requires that home and community care be provided according to an individual community care plan (ICCP). Defines an "ICCP" as a written plan which (1) is established and periodically reviewed and revised by a qualified case manager after a face-to-face interview with the individual or primary caregiver and is based on the most recent comprehensive functional assessment of the individual; (2) specifies the home and community care to be provided, within any amount, duration, and scope limitations imposed on care covered under the State Medicaid plan, and indicates the individual's preferences for the types and providers of services; and (3) may specify other services required by the individual. Specifies that an ICCP may also designate the specific providers (qualified to provide home and community care) which will provide care described in the plan.

(1) Qualified Case Management Entity Defined.—Defines a "qualified case manager entity" as a nonprofit or public agency or organization which (a) has experience or has been trained in establishing, periodically reviewing, and revising ICCPs and in providing case management services to the elderly; (b) is responsible for assuring that home and community care covered under the State plan and specified in the ICCP is being provided, for visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and for informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to provide services properly or other similar problems occur; (c) in the case of a nonpublic agency, does not provide home and community care or nursing facility services, and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services; (d) has procedures for assuring the quality of case management services that includes a peer review process; (e) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and meets other standards established by the Secretary to assure that the case manager is competent to perform case management functions and that individuals whose care they manage are not at risk of financial exploitation due to the manager; and (f) meets other standards established by the State.

(2) Appeals Process.—Requires States to have in effect an appeals process for individuals who disagree with their ICCP.

(g) Ceiling on Payment Amounts and Maintenance of Effort.—

(1) Ceiling on Payment Amounts.—Specifies that Federal Medicaid matching payments to a State for home and community care provided in any calendar quarter could not exceed 50 percent of the product of the following: (1) the average number of individuals receiving care in the quarter, (2) the average per diem rate of payment for Medicare skilled nursing facility care in that State for the quarter, and (3) the number of days in the quarter.

(2) Maintenance of Effort.—Requires States covering home and community care to report to the Secretary, in a format developed or approved by the Secretary, the amount of funds obligated by the State (including its localities) for the provision of home and community care to functionally disabled elderly individuals in each Federal fiscal year (beginning with FY 1990). If the amount spent by a State in any future fiscal year is less than the amount spent in 1989 requires the Secretary to reduce Federal matching payments to the State by the difference between the amounts.

(h) Minimum Requirements for Home and Community Care.—Requires that home and community care meet requirements for individuals' rights and quality published or developed by the Secretary, including (1) a requirement that individuals providing community care are competent to provide care; (2) specification of individuals' rights. Rights include the following: (1) the right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except for an individual determined incompetent) to participate in planning care or changes in care; (2) the right to voice grievances about services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State or local authorities; (3) the right to confidentiality of personal and clinical records; (4) the right to privacy and to have one's property treated with respect; (5) the right to refuse all or part of any care and to be informed of the likely consequences of such refusal; (6) the right to education or training for oneself and for members of one's family or household on the management of care; (7) the right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP; (8) the right to be fully informed orally and in writing of the individual's rights; and (9) any other rights established by the Secretary.

(i) Minimum Requirements for Small Community Care Settings.—Requires that small community care settings in which home and community care is provided meet certain requirements.

(1) Small Community Care Settings Defined.—Defines "small community care setting" as (a) a nonresidential setting that serves more than 2 and less than 8 individuals, or (b) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided.

(2) Minimum Requirements.—Provides that a small community care setting in which home and community care is provided must meet certain requirements, including requirements (1) published or developed by the Secretary as provided below; (2) relating to individuals' rights as specified in Medicaid law for nursing facility residents, to the extent applicable to the setting; (3) for informing individuals, orally and in writing, of their legal rights; (4) for meeting any applicable State or local requirements regarding certification or licensure; (5) for meeting any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and (6) for being designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

(j) Minimum Requirements for Large Community Care Settings.—Requires that large community care settings in which home and community care is provided meet certain requirements.

(1) Large Community Care Setting Defined.—Defines "large community care setting" as (a) a nonresidential setting in which more than 8 individuals are served; (b) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided.

(2) Minimum Requirements.—Provides that a large community care setting in which home and community care is provided must meet certain requirements, including requirements (1) published or developed by the Secretary as provided below; (2) relating to individuals' rights as specified in Medicaid law for nursing facility residents, to the extent applicable to the setting; (3) for informing individuals, orally and in writing, of their legal rights; and (4) for meeting certain requirements in Medicaid law relating to administration and other matters for nursing facilities, except that the Secretary must provide for the application of life safety requirements (if any) that are appropriate to the setting.

(3) Disclosure of Ownership and Control Interests and Exclusion of Repeated Violators.—Requires that community care settings disclose persons with an ownership or control interest in the setting. Prohibits a community care setting from having as a person with an ownership or control interest anyone who has been excluded from participation in Medicaid or who has had an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the minimum requirements for settings specified in this section.

(k) Survey and Certification Process.—

(1) Certifications.—Requires that States be responsible for certifying the compliance of providers of home and community care and community care settings with the minimum requirements. Provides that the failure of the Secretary to issue regulations for States to carry out these certification requirements shall not relieve a State of its responsibility to do so. Requires the Secretary to be responsible for certifying the compliance of State providers of home and community care and State community care settings with these same requirements. Requires that certification of providers and settings occur no less frequently than once every 12 months.

(2) Reviews of Providers.—Requires that certification of a provider of home and community care be based on a periodic review of the provider's performance in providing care according to the requirements specified in law. Provides that if the Secretary has reason to question the compliance of a provider of home and community care with the requirements, the Secretary may conduct a

review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets the requirements.

(3) Surveys of Community Care Settings.—Requires that certification of community care settings be based on a survey conducted without prior notice. Authorizes a civil money penalty of up to $2,000 for persons who notify a community care setting of the time or date of the survey and requires the Secretary to review each State's procedures for avoiding giving notice of surveys. Requires that surveys be based on a protocol developed by the Secretary. Prohibits the use on survey teams of persons who are serving (or have served within the previous 2 years) as members of the staff of, or as consultants to, the community care setting being surveyed (or the persons responsible for the setting), or who have a personal or familial financial interest in the setting. Provides that if the Secretary has reason to question the compliance of a setting with the certification requirements, the Secretary may conduct a survey of the setting, and on the basis of the survey, make independent and binding determinations about the extent to which the setting meets the requirements.

(4) Investigation of Complaints and Monitoring of Providers and Settings.—Requires the States and the Secretary to maintain procedures and adequate staff to investigate complaints of violations of certification requirements for providers of community care and community care settings.

(5) Investigation of Allegations of Individual Neglect and Abuse and Misappropriation of Individual Property.—Requires States to provide for a process for receiving, reviewing, and investigating allegations of individual neglect and abuse (including injuries of unknown source) and misappropriation of individual property. Requires States to provide for documentation of findings relating to these allegations, for including any brief statement of the individual disputing the findings, and for including in any disclosure of findings the brief statement (or a clear and accurate summary thereof).

(6) Disclosure of Results of Inspections and Activities.—Requires the States and the Secretary to make available to the public information on all surveys, reviews, and certifications, including statements of deficiencies; copies of cost reports (if any) of providers and settings; copies of statements of ownership, and information about owners and other persons convicted of certain offenses. Requires the State make a reasonable effort to notify promptly an individual receiving care and an immediate family member of a finding of substandard care. Requires States to provide its Medicaid fraud and abuse control unit with access to information of the State agency responsible for surveys, reviews, and certifications.

(l) Enforcement Process for Providers of Community Care.—

(1) State Authority.—Provides that if a State finds that a provider of home or community care no longer meets the requirements of law, the State may terminate the provider's participation in Medicaid and may provide, in addition, for a civil money penalty. Provides that if the State finds that a provider meets the requirements but, as of a previous period, did not meet them, the State may provide for a civil money penalty for the period during which the provider was not in compliance. Specifies that these provisions shall not restrict the remedies available to a State to remedy a provider's deficiencies.

Requires States to establish by law (whether statute or regulation) at least a civil money penalty remedy, assessed and collected with interest for each day the provider is out of compliance with the requirements of law. Provides that the funds collected by a State as a result of imposition of the penalty may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements. Requires States to specify criteria as to when and how this remedy is to be applied and the amounts of any penalties. Requires that these criteria be designed to minimize the time between the identification of violations and final imposition of the penalties and provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies. Requires that States electing to provide home and community care establish the above civil money penalty remedy. Requires the Secretary to provide, through regulations or otherwise, by not later than July 1, 1990, guidance to the States for establishing this remedy, but the failure of the Secretary to provide this guidance would not relieve a State of its responsibility for establishing the remedy.

(2) Secretarial Authority.—Provides the Secretary with the authority and duties of a State with regard to a State provider of home or community care, except for different specifications for civil money penalties described below. For any other provider of home or community care in a State, provides that if the Secretary finds that a provider no longer meets a certification requirement, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty described below. Further provides that if the Secretary finds that a provider meets the requirements but, as of a previous period, did not meet them, the Secretary may provide for a civil money penalty for the period during which the provider was not in compliance.

Requires the Secretary to impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance with the requirements. Requires the Secretary to specify criteria as to when and how this remedy is to be applied and the amounts of any penalties. Requires that these criteria be designed to minimize the time between the identification of violations and final imposition of the penalties and provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(m) Secretarial Responsibilities.—Requires the Secretary to publish by December 1, 1991, a proposed regulation that sets forth requirements for home and community care and for community care settings, including regulations for functional assessments, qualifications for case managers, minimum requirements for home and community care, minimum requirements for small and large community care settings, and survey protocols. Requires the Secretary to develop final requirements, and survey protocols and methods for evaluating and assuring the quality of community care settings, by October 1, 1992. Provides that interim and final requirements assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings. Provides that the Secretary may, from time to time, revise the requirements, protocols, and methods. Requires that the Secretary's authority not be delegated to the States. Specifies that States could impose requirements that are more stringent than the requirements published or developed by the Secretary.

(n) Deeming and Waiver.—Provides that area agencies on aging as defined in the Older Americans Act (P.L. 100-175) are considered public agencies for purposes of these amendments. Authorizes States to waive the requirement that a nonpublic agency not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides community care or nursing facility services for nonprofit agencies located in areas that are not urbanized areas (as defined by the Bureau of the Census). Also authorizes States to waive the Medicaid statewideness requirement for a program of home and community care provided under this section.

(o) Limitation on Amount of Expenditures as Medical Assistance.—Limits funds that may be expended as medical assistance for home and community care as an optional service to $10 million for FY91, $20 million for FY92, $40 million for FY93, $70 million for FY94, and such sums as provided by Congress for fiscal years thereafter. Provides that these funds be allocated to each State in the proportion of the amount of Federal expenditures made available to the State for FY89 (as reported on line 6 of the four quarterly form HCFA-64 expenditure reports) to the sum of Federal expenditures for all States, excluding the territories.

(p) Payment for Home and Community Care.—Requires States to pay for home and community care at rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards. Amends Medicaid law (clarification of flexibility for State payments of inpatient hospital services) to specify that the Secretary could not limit the amount of payment that may be made for home and community care.

Prohibits Federal Medicaid matching payments from being used to pay for the costs of a civil money penalty or for the legal expenses in defense of a civil money penalty or for exclusion from the program, if there is no reasonable legal ground for the provider's case.

(q) Conforming Amendments.—Makes a number of conforming amendments in Medicaid law to accommodate the new home and community care optional benefit.

Effective date: Applies to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations have been promulgated by that date. Amendments pertaining to payments for home and community care apply to home and community care furnished on or after July 1, 1991, or 30 days after the date of publication of interim regulations of the Secretary setting forth minimum requirements for home and community care providers and for community care settings. Amendment prohibiting Federal matching payments for civil money penalties and legal expenses for these penalties, effective for penalties imposed after the date of enactment. Waives the application of the Paperwork Reduction Act and Executive order

12291 to regulations required for implementing home and community care as an optional service.

Conference agreement

7. Home and Community-Based Care Services.—The conference agreement includes the Senate amendment, with an amendment to increase the cap on expenditures to $580 million over 5 years ($40 in FY91, $70 in FY92, $130 in FY93, $160 in FY94, and $180 in FY95.

8. Community Supported Living Arrangements Services (Section 6242 of the Senate bill.)

Present law

(a) Provision as Optional Service.—Medicaid law provides only limited coverage for home and community-based care for persons with mental retardation or related conditions: (1) under the 1915(c) waiver, States may cover habilitation and other community-based services, on a budget neutral basis, to persons at risk of institutionalization; (2) under the case management option, States may target case management services in designated areas; (3) some States use certain optional services, such as "other rehabilitative services" and "personal care services" as a means of offering certain home and community-based services to this population.

(b) Community Supported Living Arrangements Services.—There is no current law definition comparable to "community supported living arrangements services." However, the Medicaid 1915(c) waiver defines "habilitation services" as services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings, and includes prevocational, educational, and supported employment services. The term "habilitation services" does not include special education and related services and vocational rehabilitation services otherwise available under other Federal programs.

(c) Developmentally Disabled Individual.—Persons with mental retardation qualify for Medicaid on the basis of being disabled under the Federal Supplemental Security Income program (except in certain States using more restrictive standards), and meeting Medicaid income and resource eligibility standards. Persons with conditions related to mental retardation are defined in regulation as individuals who have a severe, chronic disability that is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation. The condition must result in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and must require treatment or services similar to those needed by such persons. The condition must be manifest prior to age 22, be likely to continue indefinitely, and result in substantial functional limitations.

(d) Integrated Living Environment.—No provision.

(e) Participating States.—No provision.

(f) Quality Assurance.—Under their 1915(c) waivers, States must provide assurances that necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services. For other noninstitutional providers of Medicaid covered services, States generally follow their own procedures for certifying that providers deliver quality care. Ordinarily the State Medicaid agency relies on findings of the applicable licensing agency or board for the particular provider.

(g) Maintenance of Effort.—No provision.

(h) Waiver of Requirements.—A waiver granted under section 1915(c) may include a waiver of comparability of amount, duration, and scope of services; statewideness; and income and resource rules.

(i) Treatment of Funds.—No provision.

(j) Limitations on Expenditures.—No provision.

House bill

No provision.

Senate amendment

(a) Provision as Optional Service.—Establishes "community supported living arrangements services" as a new optional service that from 4 to 8 participating States may cover under their Medicaid plans on a limited basis for the first 5 years of the program. The service is limited to developmentally disabled individuals without regard to whether such individuals are at risk of institutionalization.

(b) Community Supported Living Arrangements Services.—Defines "community supported living arrangements services" to mean one or more of the following services designed to assist an individual in activities of daily living necessary to permit such individual to live in an integrated living environment. Services may include personal assistance; training and habilitation services (necessary to assist the individual in achieving increased integration, independence, and productivity); 24-hour emergency assistance; assistive technology; adaptive equipment; and other nonexcluded services as approved by the Secretary. Excluded services are room and board, and the cost of prevocational, vocational, and supported employment services.

(c) Developmentally Disabled Individual.—The term "developmentally disabled individual" means an individual defined by the Secretary within the term "mental retardation and related conditions" as defined in regulations in effect on July 1, 1990. In addition, the individual must be residing with the individual's family or legal guardian or in an integrated living environment in which no more than 3 other recipients of services under this section are residing, without regard to whether the individual is at risk of institutionalization.

(d) Integrated Living Environment.—Defines the term "integrated living environment" to mean an environment located in a neighborhood which is representative of residential neighborhoods in the community and is populated primarily by individuals other than developmentally disabled individuals.

(e) Participating States.—Requires the Secretary to develop criteria for the review of applications from States requesting funds to provide community supported living arrangements services. Requires that during the first 5 years of the provision of services, no less than 4 and no more than 8 States are allowed to participate in this program.

(f) Quality Assurance.—Requires participating States to establish and maintain a quality assurance program under which providers of service are certified and surveyed using standards that include minimum qualifications and training requirements for staff, financial operating standards, and a consumer grievance process. Requires States to establish monitoring boards consisting of providers, family members, consumers, and neighbors, and to establish reporting procedures to make information available to the public. Requires States to provide for public hearings on the quality assurance plan prior to its adoption and implementation.

(g) Maintenance of Effort.—Requires States providing community supported living arrangements services to maintain current levels of spending for such services to be eligible for participation.

(h) Waiver of Requirements.—Allows the Secretary to waive comparability of amount, duration, and scope of services; statewideness; freedom of choice of providers; and other Medicaid requirements as needed to carry out the provisions of this section.

(i) Treatment of Funds.—Requires that funds expended under this section be in addition to funds expended for any existing Medicaid service, including any waiver services, for which the individual receiving services under this program is already eligible.

(j) Limitations on Expenditures.—Limits the amount of funds that may be expended to carry out the purposes of this section to $5,000,000 for FY 1991; $10,000,000 for FY 1992; $20,000,000 for FY 1993; $35,000,000 for FY 1994; and such sums as provided by Congress for fiscal years thereafter.

Effective Date: July 1, 1991, regardless of whether final regulations have been promulgated by such date. Requires the Secretary to provide that the required applications are received from the States and approved prior to the effective date.

Conference agreement

8. Community Supported Living Arrangements Services.—The conference agreement includes the Senate amendment, with an amendment that caps expenditures at $100 million, provides that the applicable number of residents who are recipients of this service shall be 3 or fewer, requires that a State amendment must be reviewed by the State Planning Council and the Protection and Advocacy System established under section 124 and section 142, respectively, of the Developmental Disabilities Assistance and Bill of Rights Act, and specifies that payment for quality assurance functions shall be eligible for Federal matching funds. The agreement also provides for an Individual Support Plan that outlines individual needs and the activities necessary to assist the individual, and clarifies that the prohibition on payments for room and board excludes the portion of costs for rent and food attributable to an unrelated caregiver residing in the household.

9. Miscellaneous Provisions Relating to Payments. (Sections 4441-4448 of the House bill, sections 6122(b), 6268, 6274, and 6275 of the Senate amendment.)

Present law

(a) State Medicaid Matching Payments Through Voluntary Contributions and State Taxes.—States must contribute from 17 to 50 percent of the costs of providing Medicaid benefits; the State share rises in proportion to the State's per capita income. (A portion of this responsibility may be passed on to localities.) Some States finance part of the State share of Medicaid costs through voluntary donations of funds by hospitals participating in the program. Other States have used dedicated taxes imposed on hospital revenues. The Administration contested some of these State actions in administrative proceedings and indicated its intention to modify Medicaid regulations to change the treatment of voluntary contributions or provider-paid taxes used by States to claim Federal matching funds. The Technical and Miscellaneous Revenue Act of 1988 (P.L.

100-647) prohibited the Secretary from issuing final regulations in this matter before May 1, 1989. OBRA 89 (P.L. 101-239) extended the moratorium to December 31, 1990. In February, 1990, the Administration published proposed regulations that would restrict Federal matching funds for portions of the State share that result from provider donations or taxes applied uniquely to providers.

(b) Disproportionate Share Hospitals.—

(1) Clarification of Calculation of Adjustment for Disproportionate Share Hospitals.—States are required to make additional payments for inpatient services to hospitals serving a disproportionate number of low-income patients with special needs. A hospital may qualify for the payment adjustments if its Medicaid inpatient utilization rate is at least one standard deviation above the mean rate for all Medicaid-participating hospitals in the State; the rate is calculated as Medicaid inpatient days divided by total inpatient days. (A hospital may instead qualify on the basis of its "low-income utilization rate"; see item (3) below.)

(2) Federal Financial Participation for Medicaid Capital Payments.—The Secretary is prohibited from limiting the amount of payment adjustments made by States to disproportionate share hospitals.

(3) Disproportionate Share Formula.—The statute currently specifies two ways that a State can compute the amount of additional payment to be made to disproportionate share hospitals, one which follows the comparable calculation under Medicare, and one that increases payments proportionately to the amount by which a hospital's Medicaid utilization rate exceeds one standard deviation above the mean Medicaid utilization rate for participating hospitals in the State. In an initial instruction to States, the Secretary allowed States to use some other method (such as one that varied payment adjustments by type of hospital) if aggregate payment adjustments would be at least as much as would have been made under one of the statutory options. This third option would be eliminated under proposed regulations published by the Secretary on March 19, 1990.

(4) Clarification of Special Rule for State Using Health Insuring Organization.—OBRA 1987, as amended by MCCA, provided that, for the three years beginning July 1, 1988, a State using a health insuring organization (HIO) to administer part of its program on a statewide basis could use an alternate system for classifying hospitals as disproportionate share hospitals and computing payment adjustments, so long as the aggregate adjustments were at least equal to what would otherwise have been payable under Medicaid law, and provided that disproportionate share hospitals assured the availability of Medicaid-participating obstetricians at rural as well as urban hospitals.

(5) Minimum Payment Adjustment for Certain Hospitals.—No provision.

(6) Payment on the Basis of Low-Income Utilization Rate.—A hospital may qualify as a disproportionate share hospital if its low-income utilization rate exceeds 25 percent. (The calculation of the low-income utilization rate takes into account a hospital's dependence on Medicaid and State and local indigent care funding and the amount of charity care it furnishes.) The amount of payment adjustment for such a hospital is computed in the same way as the adjustment for a hospital qualifying on the basis of Medicaid utilization alone.

(c) Federally Qualified Health Centers.—OBRA 1989 requires States to include in their Medicaid benefit packages services furnished by federally qualified health centers, and to pay the centers 100 percent of their reasonable costs. "Federally qualified health center" means a facility which is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or is determined to meet the requirements for such a grant.

(d) Hospice Payments.—States may cover under their Medicaid programs hospice care as an optional benefit for terminally ill individuals who voluntarily elect to receive hospice care in lieu of certain other benefits. OBRA 89 required States to pay hospices for Medicaid eligible nursing home residents electing hospice an additional amount (to take into account the room and board furnished by the facility) equal to at least 95 percent of the rate that would have been paid by the State to that facility for the Medicaid beneficiary.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—In order for psychiatric inpatient care of individuals under age 21 to be covered under Medicaid, a team of physicians and other qualified personnel must certify that the patient requires inpatient care at the time of admission (or at the time the patient qualifies for Medicaid benefits, if this occurs after admission) and that the services can reasonably be expected to improve the patient's condition to the point at which inpatient care will no longer be necessary. The Secretary has the authority to disallow Federal matching payments to a State for cases in which these certification of need requirements are not met.

(f) Treatment of Interest on Indiana Disallowance.—When the Secretary issues a notice of disallowance of Federal Medicaid funds, the State may choose to pay the amount in dispute at once or wait until all appeals have been exhausted. If the State defers payment and the disallowance is affirmed, the State must pay interest on the amount owed to the Federal Government.

(g) Billing for Services of Substitute Physician.—States are generally prohibited from issuing Medicaid payment to anyone other than the provider of a service, the provider's employer, or the facility in which the provider furnished the service pursuant to a contractual agreement. There are exceptions for assignment to government agencies, court-ordered assignments, and assignments to collection agents not paid on a contingent or percentage basis.

House bill

(a) State Medicaid Matching Payments through Voluntary Contributions and State Taxes.—Permits States to use hospital donations to finance up to 10 percent of the State's share of Medicaid costs in a fiscal year, provided the funds are subject to the unrestricted control of the State and the funds donated by or on behalf of a particular hospital account for no more than 10 percent of the hospital's gross revenues in a year (not counting revenues from Medicare, Medicaid, or the Maternal and Child Health block grant). Provides that a transfer of funds from a hospital to a State may be regarded as a donation even if the hospital benefits from it, unless the benefit is directly related to the transfer in timing and amount. Prohibits the Secretary from limiting payments to a State on the grounds that State spending was financed by taxes on provider services.

Effective date: The provision relating to donated funds applies to funds donated on or after January 1, 1991; the provision relating to taxes takes effect on January 1, 1991.

(b) Disproportionate Share Hospitals.—

(1) Clarification of Calculation of Adjustment for Disproportionate Share Hospitals.—Provides that the computation of the Medicaid inpatient utilization rate shall include days spent by patients (including newborns) in specialized wards or while waiting for placement outside the hospital.

(2) Federal Financial Participation for Medicaid Capital Payments.—Provides that the prohibition against limitation by the Secretary of payment adjustments to disproportionate share hospitals also applies to pass-through payments for those hospitals' capital costs.

(3) Disproportionate Share Formula.—Provides that a State may use an alternative formula that takes into account the characteristics of patients in different categories of disproportionate share hospitals in the State.

(4) Clarification of Special Rule for State Using Health Insuring Organization.—Makes permanent the special rule for a State using an HIO.

(5) Minimum Payment Adjustment for Certain Hospitals.—Provides for a special minimum disproportionate share payment adjustment for a hospital with a Medicaid inpatient utilization rate of at least 45 percent and in which no more than 8 percent of inpatient days are covered by private insurance, if the hospital is in a health manpower shortage area in a State that has a freedom-of-choice waiver to permit selective contracting for inpatient hospital services. Requires that the additional payment for such a hospital be at least half of the amount paid under the State plan for inpatient operating costs, provided that aggregate Medicaid payments do not exceed the hospital's reasonable costs for providing inpatient and outpatient care to Medicaid beneficiaries.

(6) Payment on the Basis of Low-Income Utilization Rate.—No provision.

Effective date: (1) is effective July 1, 1990. (2) is effective as if included in the enactment of OBRA 1981. (3) and (4) are effective as if included in the enactment of OBRA 1987. (5) applies to calendar quarters beginning on or after January 1, 1991, and before October 1, 1993, without regard to whether implementing regulations have been promulgated.

(c) Federally Qualified Health Centers.—Requires States to use Medicare payment methodology to reimburse federally qualified health centers (FQHC). Requires State prepaid risk contracts with health maintenance organizations to provide that, if the contractor is or provides services through an FQHC, the State's prepayment rates will reflect the Medicare payment methodology, and the organization will pay an FQHC for services at the Medicare payment rates. Redefines FQHC to be an entity rather than a facility, and to include an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (P.L. 93-638) among entities that are FQHCs.

Effective date: Effective as if included in the enactment of OBRA 1989.

(d) Hospice Payments.—Clarifies that the additional amount be paid for dually eligible nursing facility residents electing hospice under Medicare. Makes conforming changes to reflect the elimination of the distinction in Medicaid law between SNFs and ICFs.

Effective date: Effective as if included in OBRA 1989.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—Applies restrictions to disallowances for failure to comply with certification of need requirements, in cases in which the DHHS Inspector General has initiated or completed review by October 11, 1990, and the disallowance or deferral action has not taken at the time of enactment or has not been the subject of a final judicial determination or administrative decision not subject to judicial review. Limits the time period of a disallowance for any patient to the period between admission and the date on which the facility has developed a plan of care or documented the need for inpatient care. Further limits the disallowance period to three years before the date of the audit that uncovers a violation, and limits the disallowance amount to 25 percent of the Federal payment made for the period of noncompliance.

Effective date: Enactment.

(f) Treatment of Interest on Indiana Disallowance.—Provides that, with respect to any disallowance of payments for skilled nursing or intermediate care facilities (ICFs) or ICFs for the mentally retarded on the grounds that the facilities were not properly certified during the period June 1, 1982, through September 30, 1984, Indiana may defer payment without interest penalty until all appeals have been exhausted.

Effective date: Enactment.

(g) Billing for Services of Substitute Physician.—No provision.

Senate amendment

(a) State Medicaid Matching Payments through Voluntary Contributions and State Taxes.—Continues the moratorium on regulations pertaining to voluntary contributions and provider-specific taxes until September 1, 1991.

Effective date: Enactment.

(b) Disproportionate Share Hospitals.—

(1) Clarification of Calculation of Adjustment for Disproportionate Share Hospitals.—No provision.

(2) Federal Financial Participation for Medicaid Capital Payments.—No provision.

(3) Disproportionate Share Formula.—Allows States to use criteria other than those set forth in the statute for determining whether a facility qualifies as a disproportionate share hospital, if the criteria were included in a State plan amendment approved by the Secretary before May 1, 1989. Permits States to continue using current methods for computing payment adjustments, provided the amount of each adjustment is reasonably related to services provided to Medicaid or low-income patients and either (A) the amount of each adjustment is at least as great as the amount specified in law or (B) in the case of a State plan approved before December 22, 1987, the aggregate payment adjustments are at least as much as would have been made under one of the statutory options.

(4) Clarification of Special Rule for State Using Health Insuring Organization.—No provision.

(5) Minimum Payment Adjustment for Certain Hospitals.—No provision.

(6) Payment on the Basis of Low-Income Utilization Rate.—Requires that the payment adjustment for a hospital qualifying on the basis of its low-income utilization rate increase in proportion to the amount by which that rate exceeds 25 percent.

Effective date: Enactment.

Federally Qualified Health Centers.—No provision.

(d) Hospice Payments.—No provision.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—Similar provision, except limits the disallowance period to three fiscal years before the fiscal year in which a determination by the Secretary of noncompliance is made.

Effective date: Applies to disallowance actions that are pending or for which there has not been a final judicial decision as of the date of enactment.

(f) Treatment of Interest on Indiana Disallowance.—No provision.

(g) Billing for Services of Substitute Physician.—Provides that, when one physician's patients are treated by a second physician under an informal reciprocal arrangement (lasting no more than 14 days) or under an arrangement involving per diem or fee-for-time compensation (for a period of up to 90 days, or longer if provided by the Secretary), payment may be made to the first physician, so long as the claim identifies the physician who actually furnished the service.

Effective date: Applies to services furnished on or after the date of enactment.

Conference agreement

9. Miscellaneous Provisions Relating to Payments.—

(a) State Medicaid Matching Payments through Voluntary Contributions and State Taxes.—The conference agreement on voluntary contributions includes the Senate amendment with an amendment to extend the moratorium on final regulations re voluntary contributions to December 31, 1991. The conference agreement on provider-specific taxes includes the House bill with an amendment to exclude taxes from a provider's cost base for purposes of Medicaid reimbursement.

(b) Disproportionate Share Hospitals.—The conference agreement includes item (1), (3), and (4) of the House bill, and item (6) of the Senate amendment, with amendments.

(c) Federally Qualified Health Centers.—The conference agreement includes the House bill with technical amendments.

(d) Hospice Payments.—The conference agreement includes the House bill.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—The conference agreement includes the Senate amendment.

(f) Treatment of Interest on Indiana Disallowance.—The conference agreement includes the House bill.

(g) Billing for Services of Substitute Physician.—The conference agreement includes the Senate amendment with an amendment to follow Medicare policy.

10. Miscellaneous Provisions Relating to Eligibility and Coverage. (Sections 4451-4458 of the House bill, sections 6243, 6265, 6266, 6267, and 6271 of the Senate amendment)

Present law

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272), provided that an employer with 20 or more employees that offered a group health plan must offer employees the opportunity to continue coverage under that plan after certain "qualifying events," such as termination of employment, that would ordinarily end the coverage. For most qualifying events, coverage can continue for 18 months, with the employee responsible for the premium (up to 102 percent of the premium otherwise applicable). OBRA 89 allowed an extension of coverage up to 29 months for persons with a disability at the time they terminated employment. For months after the 18th month, the employee's maximum premium is 150 percent of the premium otherwise applicable.

State Medicaid programs are permitted to pay health insurance premiums on behalf of beneficiaries, but only if the beneficiaries meet the financial and other standards for Medicaid eligibility.

(b) Provisions Relating to Spousal Impoverishment.—The Medicare Catastrophic Coverage Act included provisions that made major changes in Medicaid's treatment of income and resources of a couple when one member of the couple is in a nursing home and eligible for Medicaid. These provisions addressed "spousal impoverishment" issues and permit the spouse remaining in the community to retain more resources and income than previously had been allowed.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—No provision.

(d) Amendments Relating to Medicaid Transition Provision.—States are required to continue Medicaid for 6 months after a family loses AFDC benefits because of increased earnings or hours of employment, if the family received AFDC benefits in 3 of the 6 months preceding the termination. The State must offer an additional 6 months of coverage when the initial period ends, subject to an optional premium and other limitations. In order to retain eligibility, the family must report on earnings and child care costs by the 21st day of the 4th, 7th, and 10th months of the extended coverage. The transition coverage provisions, established by the Family Support Act of 1988, expire September 30, 1998.

(e) Clarifying Effect of Hospice Election.—Medicaid law requires terminally ill beneficiaries electing hospice to waive payment for services that are determined by the Secretary to be related to the treatment of the individual's terminally ill condition or that are duplicative of hospice care. Medicaid also specifies that election procedures must be consistent with those under Medicare. Medicare does not cover certain non-skilled services that States may cover under their Medicaid programs, e.g., personal care services.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—

(1) States may not provide Medicaid to persons with a countable family income greater than 133 1/3 percent of the State's maximum AFDC payment for a family of the same size. This restriction does not apply to target groups of pregnant women and children, qualified Medicare beneficiaries, persons receiving or eligible for cash assistance (or who would be eligible if they were not in an institution), and persons in an institution meeting an income standard no higher than 300 percent of the maximum SSI benefit. Although the 133 1/3 percent limit has been understood as applying only to the "medically needy", Congress has added a number of additional mandatory or optional Medicaid coverage groups without specifying whether the limit was intended to apply to them.

(2) In determining eligibility for the aged, blind, and disabled, section 209(b) States may use more restrictive income and resource standards than those used for SSI. MCCA (P.L. 100-360) provided that 209(b)

States may not use more restrictive methodologies in determining income and resources than those used under SSI, but did not modify a conflicting existing provision of law.

(3) The income limitation for a medically needy family is 133 1/3 percent of the highest amount which would ordinarily be paid under the State's AFDC plan to a family of the same size without any income or resources. In the case of a one person family, the "highest amount which would ordinarily be paid" is the amount determined by the State (on the basis of reasonable relationship to the amounts payable under AFDC to families of two or more persons) to be payable to a family consisting of one person, without any income or resources, if the State's plan provided for aid to such a family. OBRA 89 prohibits the Secretary from issuing, before December 31, 1990, a final regulation implementing the proposed regulation published on September 26, 1989 (54 Federal Register 39421) insofar as it changes in any way the methods for establishing the medically needy income level for single individuals currently used by any State.

(g) Codification of Coverage of Rehabilitation Services.—Rehabilitative services are among the optional Medicaid benefits States are permitted to offer. Medicaid regulations define these as medical or remedial services recommended by a physician or other licensed practitioner and designed to reduce physical or mental disability and restore an individual to the best possible functional level.

(h) Personal Care Services.—Some State Medicaid programs cover personal care services, such as assisting with administration of medications and basic personal hygiene, eating, grooming, and toileting, which can help persons who would otherwise require institutional care to remain at home. Although personal care services are not among the optional Medicaid services included in statute, the Secretary has authorized coverage of personal care services in a beneficiary's home under a general authority to approve the inclusion of additional medical or remedial services in a State Medicaid plan. The services are defined in Medicaid regulations as those provided in a recipient's home provided by a qualified person who is supervised by a registered nurse and who is not a member of the individual's family, pursuant to a plan of treatment prescribed by a physician.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—There is no explicit statutory provision for treatment of alcoholism or drug dependency under Medicaid, although some treatment such as detoxification or methadone maintenance may be provided under physician's, inpatient hospital, clinic, or other covered services. States are permitted to provide Medicaid coverage to individuals under age 21 in psychiatric hospitals, or to individuals over age 65 in institutions for mental diseases (IMDs). However, current law does not allow States to cover individuals who are over age 21 and under age 65 in IMDs.

(j) Medicaid Spenddown Option.—States are permitted to provide Medicaid coverage to "medically needy" individuals—persons who fall into one of the categories covered by the State, and whose income and resources are above categorically needy standards but below the medically needy standards established by the State. Many persons become medically needy only after they have incurred medical expenses sufficient to reduce their incomes and/or resources to medically needy levels. This process is known as spenddown. Individuals may incur regular expenses that make them newly eligible periodically.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—A State may choose to contract with the Social Security Administration (SSA) for determinations of eligibility for SSI disability benefits. (Such agreements are authorized by section 1634 of the Social Security Act, and States entering into them are known as section 1634 States.) The State agency may retain the responsibility for determining eligibility for persons who apply only for medical assistance on the basis of disability. A final rule published by the Secretary on December 11, 1989, provides that a section 1634 State cannot make its own determination of disability for Medicaid purposes for an individual whose SSI application is still in process at SSA (unless the period for determining Medicaid eligibility has expired or the individual cites different grounds for disability) or for an individual determined by SSA not to be disabled within the 12-month period before the Medicaid application.

House Bill

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—Allows a State Medicaid program the option of paying COBRA continuation premiums for individuals who are eligible for COBRA coverage, whose family income is no more than 100 percent of the Federal poverty level, and whose resources are no more than twice the limit applicable for SSI in the State, if the State determines that resulting savings in Medicaid costs are likely to exceed the cost of the premiums. Provides that income and resources are to be determined according to the State's methodology for SSI, except that incurred costs for medical or remedial are not to be taken into account.

Effective date: Applies to medical assistance furnished on or after January 1, 1991.

(b) Provisions Relating to Spousal Impoverishment.—Includes clarifying amendments to spousal impoverishment provisions of Medicaid law: Provides that the assessment and allocation of a couple's resources is to occur only at the beginning of the first continuous period of institutionalization beginning after September 30, 1989. Provides clarifications with regard to the non-application of State community property laws and transfer of resources to the community spouse.

Effective date: Effective as if included in the Medicare Catastrophic Coverage Act of 1988.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—Provides that reparation payments made by the Federal Republic of Germany shall be disregarded in determining the income of individuals who are already eligible for Medicaid and who are institutionalized or receiving services under a home and community-based services program.

Effective date: Applies to treatment of income for months beginning more than 30 days after enactment.

(d) Amendments Relating to Medicaid Transition Provision.—Makes the transition coverage provisions permanent. Prohibits a State from requiring reports other than at the specified intervals and allows a State to continue coverage for a family that fails to report if the family establishes to the State's satisfaction that there was good cause for the failure. Provides that a termination for failure to report may not take effect until 10 days after notice is mailed.

Effective date: Effective as if included in the enactment of the Family Support Act of 1988.

(e) Clarifying Effect of Hospice Election.—Adds to Medicaid law a clarification that, in electing hospice care, a Medicaid beneficiary waives payment for services for which payment may otherwise be made under Medicare.

Effective date: Enactment.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—

(1) Clarifies that the income limit applies only to the "medically needy" (and not to a variety of other optional or mandatory coverage groups not explicitly exempt from the limit under current law).

(2) Modifies the conflicting provision to clarify that methodologies used by section 209(b) States in determining income and resources for the aged, blind, and disabled may be less restrictive, but not more restrictive, that those used under SSI.

(3) Permits a State to base medically needy eligibility for single persons on an AFDC payment standard for a family of two, if the State plan provided for such policy as of June 1, 1989.

Effective date: (1) and (2) Effective as included in the enactment of OBRA 1986. (3) Enactment.

(g) Codification of Coverage of Rehabilitation Services.—Incorporates the regulatory definition in the statute, with minor changes.

Effective date:—Enactment.

(h) Personal Care Services.—Requires that Federal matching payments for Minnesota include payments for personal care, defined as services (1) prescribed by a physician for an individual in accordance with a plan of treatment, (2) provided by a person who is qualified to provide such services who is not a member of the individual's family, (3) supervised by a registered nurse, and (4) furnished in a home or other location; but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

Effective date:—Enactment and also applies to personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—No provision.

(j) Medicaid Spenddown Option.—No provision.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—No provision.

Senate Amendment

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—

(b) Provisions Relating to Spousal Impoverishment.—No provision.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—No provision.

(d) Amendments Relating to Medicaid Transition Provision.—No provision.

(e) Clarifying Effect of Hospice Election.—No provision.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—

(1) No provision.

(2) No provision.

(3) Similar provision.

Effective date:—Enactment.

(g) Codification of Coverage of Rehabilitation Services.—No provision.

(h) Personal Care Services.—Includes in Medicaid's definition of home health services personal care services (1) prescribed by a physician for an individual in accordance with a plan of treatment, (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (3) supervised by a registered nurse, and (4) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility, such as adult day care settings or congregate living arrangements.

Effective date: Effective for home health services provided January 1, 1991, through December 31, 1993.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—Clarifies current policy by amending section 1905(a) of the Social Security Act to prohibit exclusion of a service (including counseling) solely because it is provided as a treatment service for alcoholism or drug dependency.

Effective date: Enactment.

(j) Medicaid Spenddown Option.—Permits States to apply an alternative methodology for establishing medically needy eligibility. Medicaid applicants would have the option of establishing eligibility after paying the anticipated amount of regularly incurred expenses to the State, instead of becoming eligible only after incurring expenses. Federal financial participation would be available only for State expenditures in excess of the amount paid in.

Effective date: Enactment.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—Provides that a State may furnish Medicaid to an otherwise eligible person on the basis of the State's own determination of disability or blindness during the period before SSA makes a final determination of disability or blindness, provided that the State uses the criteria set forth in SSI law. Requires the General Accounting Office to study the appropriateness of using SSI disability and blindness criteria, including durational requirements, for Medicaid eligibility purposes. Requires that a report on the study and any recommendations be submitted to Congress and to the Secretary by January 1, 1992.

Effective date: Enactment.

Conference Agreement

10. Miscellaneous Provisions Relating to Eligibility and Coverage.—

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—The conference agreement includes the House bill, with an amendment limiting application of the provision to employers with 75 or more employees.

(b) Provisions Relating to Spousal Impoverishment.—The conference agreement includes the House bill.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—The conference agreement includes the House bill.

(d) Amendments Relating to Medicaid Transition Provision.—The conference agreement does not include the House bill.

(e) Clarifying Effect of Hospice Election.—The conference agreement includes the House bill.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—The conference agreement includes item (3) of the House bill.

(g) Codification of Coverage of Rehabilitation Services.—The conference agreement includes the House bill.

(h) Personal Care Services.—The conference agreement includes the House bill in fiscal years 1991 through 1994, and the Senate amendment in fiscal year 1995.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—The conference agreement includes the Senate amendment.

(j) Medicaid Spenddown Option.—The conference agreement includes the Senate amendment.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—The conference agreement includes the Senate amendment.

11. Miscellaneous Provisions Relating to Health Maintenance Organizations. (Section 4461 of the House bill, section 6273 of the Senate amendment.)

Present law

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—

(1) HMO Minimum Membership Requirements.—No provision.

(2) Application of Minimum Enrollment, Patient Mix, and Financial Solvency Requirements.—An HMO or similar organization with a risk-sharing contract must generally have an enrolled population of which no more than 75 percent are Medicare or Medicaid beneficiaries; there are exceptions for certain federally funded centers, pre-1970 contractors, and other specified organizations. Organizations that are not federally qualified HMOs (HMOs determined by the Secretary to meet standards set forth in Title XIII of the Public Health Service Act) must also provide adequate assurances against the risk of insolvency and must report to the State on transactions with related entities.

(3) Prohibition Against Physician Incentive Payments.—OBRA 1986 prohibited hospitals and health maintenance organizations (HMOs) or similar entities with a risk contract under Medicare or Medicaid from making payments to a physician, directly or indirectly, as an inducement to reduce or limit services provided to beneficiaries or enrollees. For HMOs, the effective date has been delayed until April 1, 1991.

(b) Special Rules and Medicaid Enrollment Waiver.—

(1) Waiver of 75 Percent Rule for Public Entities.—States may generally enter into Medicaid risk contracts only with HMOs or similar organizations no more than 75 percent of whose enrollment consists of Medicare or Medicaid beneficiaries. The requirement may be modified or waived for an HMO that is a public entity if the Secretary determines that special circumstances warrant the modification and the HMO is making reasonable efforts to enroll persons other than Medicare/Medicaid beneficiaries.

(2) Extending Special Treatment to Medicare Competitive Medical Plans.—Medicaid beneficiaries enrolling in federally qualified HMOs (those determined by the Secretary to meet the requirements of Title XIII of the Public Health Service Act) or certain organizations receiving Federal grant funds may be required to remain enrolled for a period of up to 6 months; the State may agree to continue payment to the HMO on behalf of an enrollee for up to 6 months even if the enrollee loses Medicaid eligibility (these provisions are known as "lock-in" and "guaranteed enrollment period," respectively).

(3) Automatic 1-month Reenrollment for Short Periods of Ineligibility.—A Medicaid beneficiary may lose eligibility for a short interval and then be determined eligible again. In some States, if such an individual was enrolled under a Medicaid HMO contract at the time eligibility was terminated, the State will automatically reenroll the individual in the same HMO when eligibility is reestablished. This practice is not explicitly authorized by law.

(4) Elimination of Provisional Qualification for HMOs.—Before 1981, States could contract with an HMO only if the HMO was federally qualified or "provisionally qualified," having applied for Federal qualification and awaiting final determination. OBRA 1981 permitted States to make their own determinations that an HMO was eligible for a contract, rendering the "provisionally qualified" category obsolete.

(5) Medicaid Enrollment Waiver.—No provision.

Effective date: Enactment.

(c) Extension and Expansion of Minnesota Prepaid Medicaid Demonstration Project.—

(1) Extends the waiver through June 30, 1996, and permits expansion of the project to other counties if the expansion will not result in greater Medicaid expenditures than would otherwise have been made.

(2) No provision.

Effective date: Enactment.

(d) Treatment of Dayton Area Health Plan.—Exempts the Dayton Area Health Plan from the 75 percent Medicare/Medicaid enrollment maximum for the 5-year period beginning on the date the Secretary granted the plan a Medicaid waiver under section 2175 of OBRA 1981.

Effective date: Enactment.

(e) Treatment of Certain County-Operated Health Insuring Organizations.—Exempts up to three county-operated HMOs that became operational on or after January 1, 1986, and that are designated by the State of California from statutory requirements for Medicaid HMO contracts. The HIOs must be subject to California's own regulatory system for prepaid plans, must enroll all the Medicaid beneficiaries in the county (except qualified Medicare beneficiaries), must assure a reasonable choice of providers, must comply with the requirements for payment adjustments for disproportionate share hospitals, and must pay for children's hospital services for children with special health care needs at rates established by the California Medical Assistance Commission. The exemption applies only if the HIOs enroll no more than 10 percent of all Medicaid beneficiaries in California (not counting qualified Medicare beneficiaries).

House Bill

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—

(1) HMO Minimum Membership Requirements.—Requires that an HMO or similar organization with a Medicaid risk-sharing contract have a minimum of 5,000 enrollees;

permits the Secretary to make payment for an organization with fewer members if it serves primarily members residing in a rural area.

(2) Application of Minimum Enrollment, Patient Mix, and Financial Solvency Requirements.—Provides that, if a Medicaid risk-sharing contractor enters into an arrangement under which another entity provides services on a prepaid or other risk basis, the subcontractor must meet the 75 percent requirement, the 5,000 enrollee requirement added by section (1), and the solvency and reporting requirements. Exceptions from all requirements are provided for federally funded health centers and pre-1970 contractors, and exceptions from the financial and reporting requirements are provided for federally qualified HMOs.

(3) Prohibition Against Physician Incentive Payments.—Postpones the effective date for Medicaid only to April 1, 1992.

Effective date: (1) and (2) apply to contract years beginning on or after January 1, 1991. (3) Enactment.

(b) Special Rules and Medicaid Enrollment Waiver.—

(1) Waiver of 75 Percent Rule for Public Entities.—Deletes the requirement that the Secretary determine that special circumstances warrant a modification before modifying the 75 percent rule for a public entity.

(2) Extending Special Treatment to Medicare Competitive Medical Plans.—Extends the lock-in and guaranteed enrollment period options to "competitive medical plans," organizations which are not federally qualified HMOs but which have entered into a risk-sharing contract with the Medicare program. Lock-in for such an organization is permissible if it complies with the 75 percent Medicare/Medicaid enrollment maximum.

(3) Automatic 1-month Reenrollment for Short Periods of Ineligibility.—Authorizes automatic HMO reenrollment for individuals whose period of ineligibility is no longer than 2 months, provided that the organization still has a contract.

(4) Elimination of Provisional Qualification for HMOs.—Eliminates provisions relating to provisionally qualified HMOs.

(5) Medicaid Enrollment Waiver.—No provision.

Effective date: Enactment.

(c) Extension and Expansion of Minnesota Prepaid Medicaid Demonstration Project.—

(1) Extends the waiver through June 30, 1996.

(2) Authorizes the Secretary to treat an undertaking by the Minnesota Medicaid agency in the same way as the New Jersey undertaking.

Effective date: Enactment.

(d) Treatment of Dayton Area Health Plan.—No provision.

(e) Treatment of Certain County-Operated Health Insuring Organizations.—No provision.

Effective date: Enactment.

Senate amendment

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—

(1) HMO Minimum Membership Requirements.—No provision.

(2) Application of Minimum Enrollment, Patient Mix, and Financial Solvency Requirements.—No provision.

(3) Prohibition Against Physician Incentive Payments.—(Section 6153 of the Senate amendment repeals the prohibition for both Medicare and Medicaid HMOs and substitutes a system of regulation of physician incentive plans in Medicare HMOs by the Secretary. See section xxxxxxxxxx.) Provides for a civil money penalty of $25,000 in cases in which an HMO with a Medicaid contract knowingly makes a direct and specific individual payment to a physician as an inducement to withhold or limit a specific medically necessary service to an identifiable patient. Subjects Medicaid HMOs to the new rules established for Medicare HMOs.

Effective date:

(b) Special Rules and Medicaid Enrollment Waiver.—

(1) Waiver of 75 Percent Rule for Public Entities.—No provision.

(2) Extending Special Treatment to Medicare Competitive Medical Plans.—No provision.

(3) Automatic 1-month Reenrollment for Short Periods of Ineligibility.—No provision.

(4) Elimination of Provisional Qualification for HMOs.—No provision.

(5) Medicaid Enrollment Waiver.—Requires the Secretary to approve waivers of the 75 percent Medicare/Medicaid enrollment maximum after: (a) conducting a study of situations in which the limit is impractical or other means of assuring quality and fiscal soundness could be used; (b) publishing by April 1, 1991, for review and comment a set of minimum standards for waiver eligibility; and (c) publishing a final notice of revised standards. Provides that waivers shall initially be approved for 3 years, with renewals as established by the Secretary.

Conference agreement

11. Miscellaneous Provisions Relating to Health Maintenance Organizations.—

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—The conference agreement does not include the House bill.

(b) Special Rules nd Medicaid Enrollment Waiver.—The conference agreement includes the House bill.

(c) Extension and Expansion of Minnesota Prepaid Medicaid Demonstration Project.—The conference agreement includes the House bill.

(d) Treatment of Dayton Area Health Plan.—The conference agreement does not include the House bill.

(e) Treatment of Certain County-Operated Health Insuring Organizations.—The conference agreement includes the House bill.

12. Miscellaneous Provisions Relating to Demonstration Projects and Home and Community-Based Waivers (Sections 4471-4474 of the House bill; sections 6261-6263, 6270, 6272, and 6276 of the Senate amendment)

Present law

(a) Medicaid Long-Term Care Insurance Demonstration Project.—In most States, Medicaid will cover the cost of long-term care for low-income elderly individuals who are entitled to benefits under the Supplemental Security Income (SSI) program. In order to qualify for SSI, a person must have resources and income below certain levels.

A state may also cover long-term care for elderly individuals with incomes exceeding SSI eligibility levels in several ways. First, a State may establish higher income standards for elderly individuals in nursing facilities. The income levels for these individuals may not exceed 300 percent of the SSI benefit level for an individual. Second, a State may elect to cover under its Medicaid program elderly persons with income below 100 percent of poverty. Third, a State may establish a "medically needy" program under which an individual with income exceeding Medicaid eligibility levels becomes eligible for long-term care by incurring expenses for medical care that reduce his or her income to a level specified by the State. This process is known as "spending down."

Once an individual with income exceeding SSI levels becomes eligible for Medicaid, this person is required to contribute to the cost of care all income in excess of amounts that are disregarded for personal needs and other purposes. This is known as the "post-eligibility treatment of income."

Medicaid law has other provisions requiring States to prohibit the transfer of assets for less than fair market value in order to gain Medicaid coverage for needed care. Medicaid also allows States to place liens on the property of certain Medicaid beneficiaries and permits States to defray the cost of Medicaid assistance paid on behalf of nursing home residents through estate recovery.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—

(1) Timely Payment.—Section 2175 of OBRA 81 permitted a State to obtain a waiver of certain Medicaid requirements, including the beneficiary's right to choose a provider of services, in order to establish a system of selective contracting with providers. Medicaid law includes requirements that States pay health care practitioners, such as physicians, on a timely basis, but makes no such provision for other types of providers, such as hospitals.

(2) Reasonable and Adequate Payment.—States must reimburse hospitals at rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities in providing quality care.

(c) Home and Community-Based Services Waivers.—

(1) Clarifying Definition of Room and Board.—Section 2176 of OBRA 81 permitted States to obtain waivers of certain Medicaid requirements in order to establish a home and community-based service program for a defined population (such as the aged or the mentally retarded) of persons who would otherwise require long-term institutional care. Costs for room and board are excluded from those which a State may include as Medicaid costs under a waiver.

(2) Treatment of Persons with Mental Retardation or a Related Condition in a Decertified Facility.—In order to obtain a section 2176 waiver, the State must demonstrate that average per capita Medicaid costs for waiver participants are no greater than would have been incurred in the absence of the waiver.

(3) Scope of Respite Care.—One of the services that may be furnished under a home and community-based services waiver is respite care, services that allow family or other voluntary caregivers to take time away from their responsibility for a patient's care.

(4) Permitting Adjustment in Estimates to Take into Account Preadmission Screening Requirement.—OBRA 1987 established requirements for screening of mentally retarded or mentally ill patients before admission to a nursing facility, to determine whether alternative treatment is more appropriate. The requirements apply to all persons admitted on or after January 1, 1989.

(5) Waiver Baseline Under Section 1915(d) Waiver.—OBRA 1987 established a "section 1915(d)" waiver option, under which a State could provide home and community-based services if it agreed to accept a cap on its total expenditures for long-term care for

the elderly, including those served under the waiver and those in nursing homes. The cap is updated annually to reflect increases in the State's elderly population and in a "market basket" index of the prices of long-term care related goods and services. There is no provision for adjustment of the cap to reflect changes in nursing home costs resulting from changes in Medicaid law, such as the nursing home reform provisions of OBRA 1987.

(6) Freedom of Choice of Case Managers.—Waivers to provide home and community-based services may not include a waiver of the requirement that beneficiaries must be permitted to obtain covered services from any qualified provider of their choice.

(d) Provisions Relating to Frail Elderly Demonstration Project Waivers.—OBRA 86 required the Secretary to grant waivers of certain Medicare and Medicaid requirements to not more than 10 public or non-profit private community-based organizations to provide health care on a capitated basis to the frail elderly at risk of institutionalization. The terms and conditions of the waivers were to be substantially the same as those for On Lok, a project in San Francisco that has provided services to frail elderly at risk of institutionalization.

(e) Demonstration Projects to Study the Effects of Allowing States to Extend Medicaid Coverage to Certain Low-Income Families not Otherwise Qualified to Receive Medicaid Benefits.—No provision.

(f) Demonstration: Respite Care.—Medicaid does not cover respite care services except where provided under a home and community-based services waiver approved by the Secretary under section 1915(c) of Medicaid law. OBRA 86 established a Medicaid respite care demonstration project in the State of New Jersey. This project is intended to determine the extent to which respite services will delay or avert the need for institutional care and how such services can enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization. The project was to be conducted for a maximum of 4 years (FY 1987 through FY 1990), plus an additional period of up to 6 months for final evaluation and reporting. Federal payments for the project were limited to $1 million for FY 1987 and $2 million for each of the following years. The start-up of the project was delayed for a number of reasons.

(g) Demonstration Project to Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined to Be at Risk of Contracting the HIV Virus.—No provision.

(h) Mental Health Facility Certification Demonstration Project.—A hospital may be deemed to meet Medicaid and Medicare participation standards if it is accredited by the Joint Commission on Accreditation of Healthcare Facilities (JCAHO). All other types of institutional providers are subject to direct review by State certification agencies.

House bill

(a) Medicaid Long-Term Care Insurance Demonstration Project.—Authorizes the Secretary of HHS to approve State demonstration projects under which persons who are 65 years of age or older and who have exhausted benefits under qualified private long-term care insurance policies to become eligible for Medicaid coverage of their long-term care costs under special eligibility rules pertaining to income and assets as described below.

(1) Special Eligibility Provisions.—Provides that in determining initial eligibility for Medicaid assistance for long-term care that (a) the income of the beneficiary who is 65 years of age or older and who has exhausted benefits under the qualified long-term care insurance policy be disregarded; and (b) the valuation of assets of the beneficiary be reduced by the amount of protection provided under the long-term care insurance policy or $75,000 (indexed from December 1991 for inflation, as measured by the Consumer Price Index for all urban consumers), whichever is less. For purposes of post-eligibility treatment of income and assets, provides that the amount the beneficiary would be required to contribute toward the cost of long-term care services would be the same as for other persons entitled to Medicaid assistance for these services under the State plan, except for the assets that can be protected as specified above. Provides that a State Medicaid plan may not discriminate in services covered or otherwise, against any individual based on whether or not the individual participates in a demonstration project.

(2) Definitions.—Defines the following terms:

"Covered long-term care beneficiary" means an individual who at any time purchases benefits under a qualified long-term care insurance policy, and who voluntarily elects, at the time of purchase of the policy, to participate in the project.

"Long-term care services" means medical assistance for the following items and services, to the extent the State Medicaid plan otherwise covers such services: (a) nursing facility services; (b) home health services (described in Medicaid law); (c) private duty nursing services; (d) case management services; (e) homemaker/home health aide services; (f) personal care services; (g) adult day health services; (h) respite care.

"State Medicaid plan" means the plan of medical assistance of a State approved under title XIX of the Social Security Act.

"Qualified long-term care insurance policy" means a long-term care insurance policy that meets the requirements specified below.

(3) Terms of Projects.—Establishes terms of the projects:

(A) General.—Prohibits the Secretary from approving any project unless it meets the following requirements: (1) The terms of the project are disclosed to each individual before the individual is enrolled; and (2) the qualified long-term care insurance made available in connection with the project cannot, or otherwise limit, payment under the policy in any manner because the insured is eligible for, or payment may be made, for services under any public program (including the Medicare or Medicaid programs).

(B) Limit on Number of Lives Insured under All Projects.—Requires that the Secretary approve projects in a manner that assures that there are never more than 25,000 covered long-term care beneficiaries under all the projects. Provides that the Secretary may require that a project of a State must permit enrollment of a minimum number of covered long-term care beneficiaries.

(C) Waiver of Certain Requirements.—Provides that the Secretary may waive the following requirements for covered long-term care beneficiaries to the extent required to carry out the project: sections 1901, 1902(a)(1), 1902(a)(10), 1902(a)(17), and 1903(f), relating to required eligibility and benefits; and sections 1902(a)(14) and 1916(b), relating to premiums and cost-sharing.

(4) Limitation on Payments.—Provides that Federal matching payments may not be made for long-term care services for persons 65 years of age or older during a year in which the project is in effect to the extent that expenditures exceed the projected amount (determined by the Secretary at the time of approval of the project) that the State would have spent for these services during the year, if the project had not been in effect.

(5) State Assurances.—Prohibits the Secretary from approving State applications for a project unless the State provides satisfactory assurance that—

(a) aggregate expenditures under the plan for long-term care services for individuals 65 years of age or older in any fiscal year under the project will not exceed the aggregate expenditures for such services for these individuals in the fiscal year in the absence of the project;

(b) there will be no reduction or limitation of benefits to any individual eligible for medical assistance under the State Medicaid plan as a result of operation of the project;

(c) the State will continue to make long-term care services available under its Medicaid plan, at least to the extent these services are made available under its plan before the date of approval and could continue to be provided consistent with law;

(d) the State will not permit the sale of any qualified long-term care insurance policy under the project unless the State has determined that the policy meets requirements specified below and meets standards at least as stringent as those set forth in the NAIC Long-Term Care Insurance Model Act, as of June 1989 (to the extent not inconsistent with the requirements specified below);

(e) in the sale of long-term care insurance policies not covered under the project, the State will require, at or before the time of sale of a policy, that there be a disclosure of the fact that purchase of the policy will not provide potential benefits under Medicaid;

(f) the State will guarantee the payment of benefits under qualified long-term care insurance policies sold under the project (Federal matching payments would not be available with respect to a State's performance of the guarantee);

(g) the State covers under its Medicaid plan pregnant women and children under the age of one with income up to 185 percent of poverty;

(h) the State is in compliance with various requirements for nursing facilities participating in Medicaid;

(i) nursing facilities participating in Medicaid establish and maintain identical policies and practices regarding admission for all individuals regardless of whether or not the individuals are participating in the project;

(j) the State has actuarial guidelines regarding, and actuaries capable of evaluating, actuarial submissions of companies seeking to offer qualified long-term care insurance policies under the project; and

(k) the State has provided for a program of counseling residents of the State on the purchase of long-term care insurance policies and alternative financial option for protection of assets.

(6) Requirements for Qualified Long-Term Care Insurance Policies.—Provides that qualified long-term care insurance policies meet the following requirements:

(a) Standard Format and Disclosure.—Each policy, and application for policy, must be written in simple, easily understood English in a standard format (established by the State) providing standardized terms and disclosure. Marketing materials must be written or otherwise state in simple, easily understood English. No policy may be sold (or offered for sale) unless there is disclosed in writing, no later than the time of sale of the policy, (1) the proportion of premiums collected (and interest and other revenues derived therefrom) which will be applied to payment of benefits, and (2) the potential Medicaid benefits associated with the demonstration project with purchase of a policy.

(b) Minimum Loss-Ratio.—The policy must guarantee over time, using generally accepted actuarial standards, that at least 70 percent of the amount of the premiums (and interest and other revenues derived therefrom) will be paid on benefits under the policy.

(c) Standard Minimum Benefits.—Each policy must cover at least nursing facility services and home and community-based care (personal care services including home health aide and homemaker services, home health services, and respite) up to the maximum dollar level of benefits provided under the plan. The policy may not impose any limits on the duration of the period of services under the policy, other than the maximum dollar level of benefits (which shall apply uniformly to all services). The payment levels established for services under the plan must be adjusted at least annually to reflect the percentage increase in the Consumer Price Index for All Urban Consumers.

(d) Specification of Maximum Dollar Level of Benefits.—Each policy must specify a maximum dollar level of benefits. This maximum must be increased, in each year after the year following the year of its issuance, by the percentage increase in the Consumer Price Index for All Urban Consumers.

(e) Determination of Benefit Eligibility.—Each policy must use a standard formula, set by the State and based on a uniform assessment instrument specified by the State, to determine the level of care appropriate for each case. The formula must be applied by the State or a case-management agency which is independent of the issuer of the policy. A policy may not condition or limit eligibility for noninstitutional benefits to the need for or receipt of institutional services; for home care services to the need for or receipt of nursing care; or for any benefits on the medical necessity for such benefits. Each policy must provide for and specify procedures (meeting reasonable standards specified by the State) for the appeal of determinations of level of care.

(f) Limitation Based on Pre-Existing Condition.—A policy may not limit or delay an individual's eligibility for benefits based on a pre-existing condition, except that it may deny payments during the first 6 months of coverage for treatment for any condition that existed during the 6 months before the date of the purchase of the policy.

(g) No Post-Claims Conditioning and Guaranteed Renewable.—After a policy has been issued, the issuer may not deny claims under the policy under any grounds other than fraud or a knowing misrepresentation in the application for the policy or deny renewal of coverage other than on such grounds or the failure to make timely payment of premiums.

(h) Medical Underwriting, Premiums, and Cost-Sharing.—

(1) No Medical Underwriting.—An individual may not be discriminated against in the offering, renewal, or benefits under a policy based on the individual's medical condition, except that the issuer of a policy may deny initial issuance to an individual receiving long-term care services at the time of the application for a policy. The prohibition on medical underwriting would not prevent the issuer of a policy from varying the premiums based on the age classification of persons at the time of the issuance of the policy.

(2) Level Premiums.—Each policy must have periodic premiums that are the same for all individuals in the same age group who purchased the policy when they were in the same age group. The premium rates must be guaranteed for the duration of the policy and must be suspended during any period in which benefits are payable under the policy.

(3) Nonduplication of Medicare Benefits.—Each policy must provide that, to the extent required under Medicare secondary payer provisions, benefits are not payable under the policy for services for which payment may be made under Medicare.

(4) Reduced Paid-Up Provision.—Each policy must have a provision under which, if the policy lapses after 5 or more years of coverage, the policy will provide, without payment of any additional premiums, benefits equal to at least 30 percent of the maximum dollar level of benefits available at term, and, after subsequent periods of coverage, the policy will provide, without payment of any additional premium, benefits equal to at least an increased percentage established by the Secretary) of the maximum dollar level of benefits available at term.

(5) Additional Consumer Protections.—Each policy must meet such standards relating to compensation arrangements, advertising, marketing, and appropriateness of purchase which the Secretary finds are equal to or more stringent than the requirements specified in sections 12, 15, 16, and 17 of Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Act, as adopted by the National Association of Insurance Commissioners as of December 7, 1989.

(i) Access to Information.—The issuer of the policy will make available to the State and the Secretary (upon request) information on the utilization of benefits and payments under the policy, the health status of individuals purchasing the policies, and such other information as the Secretary may require, including information on lapse rates, rescissions, application denials, payment denials, and complaints received.

(7) Prohibited Sales Practices.—Provides that each individual selling or offering for sale a long-term care insurance policy under the demonstration project has a duty of good faith and fair dealing to the purchaser or potential purchaser of a policy. Specifies that the individual selling or offering for sale a policy may not complete the medical history portion of an application; may not knowingly sell a policy to provide benefits to a person who is eligible for Medicaid; and may not sell a policy knowing that the policy provides coverage that duplicates coverage already provided and may not sell a policy unless the individual (or representative of the individual) provides a written statement to the effect that the coverage does not duplicate other coverage in effect. Provides that any person who sells a policy under the demonstration in violation of State requirements for qualified policies or who violates the above requirements will be subject to a civil money penalty of not to exceed $25,000 for each violation. Specifies that the provisions of sections 1128A of the Social Security Act (civil money penalties) will apply, with certain exceptions, to these penalties.

(8) Application, Duration, and Eligibility.—Provides that an application for approval of a demonstration project will be deemed granted unless the Secretary, within 90 days after the date of its submission, either denies the application in writing or informs the State in writing of any additional information which is needed in order to make a final determination on the application. Specifies that after the date the Secretary receives the additional information, the application will be deemed granted unless the Secretary, within 90 days, denies the application. Provides that any termination of a project shall not affect covered long-term care beneficiaries who purchased qualified long-term care insurance policies before the termination date.

(9) Annual State Reports.—Requires the States to report annually (during the project) to the Secretary on—

(a) the number of individuals enrolled in the demonstration project in the State;

(b) the number of enrollees actually receiving long-term care services under the demonstration (whether through long-term care insurance or Medicaid);

(c) the number of enrollees actually receiving long-term care in the form of medical assistance;

(d) the average income, age, and assets of each enrollee; and

(e) the number and characteristics of private insurers with policies approved by the State under the demonstration.

(10) Secretary's Reports.—Requires the Secretary to submit to Congress reports on the demonstration projects. Requires that the first report be submitted in 1997 and subsequent reports be submitted each 6th year thereafter until 2021. Requires that each report summarize and analyze information reported by the State (as specified above) and that it evaluate the cost effectiveness of the projects.

Effective date: Enactment.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—

(1) Timely Payment.—Extends prompt payment requirements to any type of provider participating under a selective contracting waiver.

(2) Reasonable and Adequate Payment.—No provision.

Effective date: (1) is effective as of the first calendar quarter beginning more than 30 days after enactment.

(c) Home and Community-Based Services Waivers.—

(1) Clarifying Definition of Room and Board.—Provides that the "room and board" exclusion does not apply to the share of rent and food costs attributable to an unrelated caregiver who is residing with a waiver participant and without whom the participant would require institutional care.

(2) Treatment of Persons with Mental Retardation or a Related Condition in a Decertified Facility.—Provides that, in estimating per capita costs in the absence of a waiver for persons with mental retardation or a related condition who are residents of an ICF-MR whose Medicaid participation has been terminated, the State may use the costs that would have been incurred if the facility had not been terminated.

(3) Scope of Respite Care.—Provides that, so long as a State meets the cost-effectiveness test for a waiver, the Secretary may not limit the hours or days of respite care that may be provided.

(4) Permitting Adjustment in Estimates to Take into Account Preadmission Screening Requirement.—Provides that, in the case of a waiver program for the mentally retarded, a State may revise its per capita cost estimates to take into account increases in ICF-MR or habilitation facility costs resulting from implementation of the pre-admission screening requirement.

(5) Waiver Baseline Under Section 1915(d) Waiver.—No provision.

(6) Freedom of Choice of Case Managers.—No provision.

Effective date: (1) applies to services furnished on or after the date of enactment. (2) applies as if included in the enactment of OBRA 1981, but applies only to facilities whose Medicaid participation is terminated after enactment. (3) applies as if included in the enactment of OBRA 1981. (4) Enactment.

(d) Provisions Relating to Frail Elderly Demonstration Project Waivers.—Expands the number of frail elderly demonstrations eligible for waivers from 10 to 15 and prohibits the Secretary from requiring an organization receiving an initial waiver on or after October 1, 1990, to provide services under Medicare on a capitated or other risk basis during the first 2 years of the waiver. Also applies spousal impoverishment protections to persons receiving services under the frail elderly demonstration.

Effective date: Enactment.

(e) Demonstration Projects to Study the Effects of Allowing States to Extend Medicaid Coverage to Certain Low-Income Families not Otherwise Qualified to Receive Medicaid Benefits.—No provision.

(f) Demonstration: Respite Care.—No provision.

(g) Demonstration Project to Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined to Be at Risk of Contracting the HIV Virus.—No provision.

(h) Mental Health Facility Certification Demonstration Project.—No provision.

Senate Amendment

(a) Medicaid Long-Term Care Insurance Demonstration Project.—Requires the Secretary of HHS to provide for a demonstration project in the States of Indiana, Illinois, Wisconsin, Oregon, California, Connecticut, Massachusetts, Missouri, New York, and New Jersey to cover under Medicaid the long-term care expenses of persons with income and resources above Medicaid eligibility levels, if the individual purchases a State approved long-term care insurance policy covering long-term care for a period preceding the individual's eligibility for Medicaid.

(1) Special Eligibility Provisions.—No provision.

(2) Definitions.—No provision.

(3) Terms of Projects.—

(A) General.—No provision.

(B) Limit on Number of Lives Insured under All Projects.—No provision.

(C) Waiver of Certain Requirements.—Provides that the Secretary may waive the following requirements for the project: sections 1901, 1902(a)(10) (A) and (C), 1903(a)(1), and 1903(f), relating to categorical and income eligibility limits; sections 1902(a)(10) (A) and (D), relating to amount, duration, and scope of services; and to diagnosis, type of illness, or condition; section 1902(a)(10)(E), relating to qualified Medicaid beneficiaries; section 1902(a)(23), relating to freedom of choice; section 1902(a)(1), relating to statewideness; sections 1902(a)(10), matter following (E) and 1902(a)(17), relating to comparability; section 1902(a)(14), relating to premiums; section 1902(a)(18), relating to liens and recovery of assets; sections 1902 (50) and (51), relating to personal needs allowance, protection of community spouse, and transfer of assets.

(4) Limitation on Payments.—No provision.

(5) State Assurances.—Requires that States conducting demonstration projects provide assurances to the Secretary that—

(a) the estimated average per capita and aggregate expenditures for long-term care services for individuals under the waiver will not exceed estimated average per capita and aggregate Medicaid expenditures for such services for these individuals in the absence of the waiver;

(b) it will continue to make long-term care services available under its Medicaid plan to any individual who would be entitled to long-term care services before the waiver (except to the extent that subsequent Federal legislation specifically requires changes in eligibility for these services);

(c) it will not approve a long-term care insurance policy unless it meets standards at least as stringent as those set forth in the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act as of June 1989; and

(d) expenditures for long-term care services provided to individuals participating in the projects after the expiration of the projects shall be shared by State and Federal Governments in accordance with Medicaid formulae in force at the time.

(6) Requirements for Qualified Long-Term Care Insurance Policies.—No provision.

(7) Prohibited Sales Practices.—No provision.

(8) Application, Duration, and Eligibility.—Requires the Secretary to enter into an agreement with the States for conducting the demonstration projects and to award the demonstrations in a budget neutral way. Requires the Secretary to either approve or disapprove the State's application within 90 days of receipt. If the Secretary disapproves an application, requires the Secretary within 30 days of disapproval to notify the State of the reasons for the disapproval and to allow the State to correct any deficiencies and allow the State to resubmit a corrected application which the Secretary must approve if it meets the requirements for the demonstration. Specifies that the demonstration would be for an initial period of 5 years and provides for renewal for an additional 5 years. Provides that an individual who participates in a demonstration will remain eligible for long-term care services under the State Medicaid plan after the expiration of the project.

(9) Annual State Reports.—Similar provisions for items (a) through (c), with a fourth item: the number and type (commercial, not for profit, and HMO) characteristics of private insurers with policies approved by the States under the demonstrations.

(10) Secretary's Reports.—Requires the Secretary to report to Congress on the demonstration not later than 4 years after the date of enactment. Requires that the report summarize and analyze information reported by the State (as specified above) and that it evaluate the cost effectiveness of the project and make recommendations on the desirability and appropriateness of authorizing any State to make long-term care services available on a similar basis.

Effective date. Enactment.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—

(1) Timely Payment.—No provision.

(2) Reasonable and Adequate Payment.—Prohibits the Secretary from waiving the statutory requirement relating to adequacy of hospital reimbursement rates as part of a section 2175 selective contracting waiver.

Effective date: (2) is effective for calendar quarters beginning on or after January 1, 1991.

(c) Home and Community-Based Services Waivers.—

(1) Clarifying Definition of Room and Board.—Similar provision.

(2) Treatment of Persons with Mental Retardation or a Related Condition in a Decertified Facility.—Similar provision.

(3) Scope of Respite Care.—No provision.

(4) Permitting Adjustment in Estimates to Take into Account Preadmission Screening Requirement.—No provision.

(5) Waiver Baseline Under Section 1915(d) Waiver.—Requires that the base for the expenditure cap under a section 1915(d) waiver be adjusted to reflect changes in cost resulting from legislation.

(6) Freedom of Choice of Case Managers.—Allows the State to restrict the choice of providers of case management services under a waiver program to those employed or trained by the State, provided that the State furnishes assurances to the Secretary that the restriction will not substantially limit beneficiaries' access to waiver services.

Effective date: Enactment.

(d) Provisions Relating to Frail Elderly Demonstration Project Waivers.—No provision.

Effective date: No provision.

(e) Demonstration Projects to Study the Effects of Allowing States to Extend Medicaid Coverage to Certain Low-Income Families not Otherwise Qualified to Receive Medicaid Benefits.—Requires the Secretary to enter into agreements with at least 3 and no more than 4 States to conduct demonstrations to study the effect on access to and costs of health care for uninsured individuals in families with incomes below 150 percent of the official poverty line. At least 1, but not more than 2, of the projects shall be conducted on a sub-State basis in an area that contains a high percentage of racial or ethnic minorities. The Secretary may not enter into an agreement with a State unless that State has elected to offer Medicaid coverage to all pregnant women, infants, and children at the highest income standards without application of a resource standard; this requirement, and some other Medicaid requirements, may be waived for projects conducted in sub-State areas. If the Secretary determines it is cost-effective to do so, a project may use employer coverage, requiring an employer contribution and using Medicaid benefits to the extent they are not available under the employer coverage. Permits application of an asset test consistent with the State's tests for AFDC. Does not provide for eligibility to begin before the month in which eligibility is established.

Except in the sub-State projects, prohibits projects from providing nursing facility, community-based long term care, or pregnancy-related services. Permits a State to limit eligibility, or services other that early and periodic screening, diagnosis and treatment for children under age 18.

No premiums or cost-sharing may be required of individuals with family incomes below the poverty line. For those with incomes above 100 percent of the poverty line, the monthly average amount of premiums, coinsurance, and other cost-sharing must not exceed 3 percent of the family's average gross monthly earnings. Income determinations must be according to the methodology used under Medicaid for AFDC beneficiaries.

Provides that demonstrations are to begin by July 1, 1991, and continue for 3 years unless the Secretary finds the State noncompliant with program requirements. Limits expenditures for the projects to $12,000,000 in each of fiscal years 1991-1993, and to $4,000,000 in fiscal year 1994. Requires the Secretary to submit an interim report to Congress by January 1, 1993, and a final report by January 1, 1995.

Effective date: Enactment.

(f) Demonstration: Respite Care.—Extends the demonstration until September 30, 1992, and requires that for the period October 1, 1990 through September 30, 1992, Federal payments for the project not exceed amounts expended under the project in the preceding fiscal year.

Effective date: Enactment.

(g) Demonstration Project to Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined to Be at Risk of Contracting the HIV Virus.—Requires the Secretary, within 3 months after enactment, to provide for 2 State Medicaid demonstration projects providing Medicaid coverage and specified additional services to: (a) persons testing positive for infection with the human immunodeficiency virus (HIV) who meet the State's maximum income and resource standards for disabled persons, or (b) pregnant women under age 19 who have multiple medical and psychosocial needs and who are determined to be at risk of HIV infection because of substance abuse. Services to be furnished include (to the extent not otherwise covered under the State plan) general and preventive medical care, prescription drugs, counseling and social services, substance abuse treatment, home care, case management, health education, respite care, and dental services. Requires demonstration States to enter into agreements with hospitals within 12 months under which the hospitals will be paid on a monthly per capita basis for services to project enrollees. Limits enrollment in each project to 200 persons. Provides that projects are to begin within 9 months after enactment and continue for 3 years. Provides for Federal matching at the applicable Federal medical assistance percentage, and authorizes the Secretary to waive requirements of the Social Security Act as necessary to carry out the projects.

Effective date: Enactment.

(h) Mental Health Facility Certification Demonstration Project.—Requires the Secretary to conduct a 5-State, 3-year demonstration program under which outpatient mental health and substance abuse facilities or residential or day treatment services for children may be deemed to meet Medicaid standards on the basis of approval by accrediting bodies. The demonstration is to be developed in consultation with JCAHO and other national accrediting bodies, the National Governors' Association and other associations of State officials, consumer organizations, and other parties. The Secretary must develop criteria for accrediting bodies' activities, assuring that inspections are unannounced, the public and the State have access to findings of inspections, deficiencies are documented and promptly reported to the State, complaints by recipients of service or advocates are investigated, and the State conducts periodic validation inspections to assess the accrediting bodies' work. Criteria, which must also address standards, reporting requirements, and duration of accreditation, are to be published in the Federal Register within 9 months after enactment; the Secretary must allow 90 days for public comment. Within 180 days after termination of the project, the Secretary is required to submit an evaluation to the Senate Committee on Finance, including the extent of accrediting bodies' participation, provider compliance, impact on access and quality, and ability of accrediting bodies and States to work together to resolve problems and complaints, along with such recommendations as the Secretary deems appropriate.

Effective date: Enactment.

Conference Agreement

12. Miscellaneous Provisions Relating to Demonstration Projects and Home and Community-Based Waivers.—

(a) Medicaid Long-Term Care Insurance Demonstration Project.—The conference agreement does not include the provision.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—The conference agreement includes item (1) of the House bill.

(c) Home and Community-Based Services Waivers—The conference agreement includes items (2), (3), and (4) of the House bill and items (1), (5), and (6) of the Senate amendment, with an amendment to item (6).

(d) Provision Relating to Frail Elderly Demonstration Project Waivers.—The conference agreement includes the House bill with an amendment which clarifies that, for these projects, application of spousal impoverishment protections is at the option of the State.

(e) Demonstration Projects to Study the Effects of Allowing States to Extend Medicaid Coverage to Certain Low-Income Families not Otherwise Qualified to Receive Medicaid Benefits.—The conference includes the Senate amendment with amendments to 1) delete references to racial/ethnic targetting, and 2) clarify the provision is applicable only to uninsured individuals who are not otherwise eligible to receive Medicaid benefits.

(f) Demonstration: Respite Care.—The conference agreement includes the Senate amendment.

(g) Demonstration Project to Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined to be at Risk of Contracting the HIV Virus.—The conference agreement includes the Senate amendment, with amendments to the specifications for patients, services, and grantees under the projects, and for the scope of the demonstrations projects. The agreement limits expenditures for the projects to $30 million.

(h) Mental Health Facility Certification Demonstration Project.—The conference agreement includes the Senate amendment, with an amendment.

13. Other Miscellaneous Provisions (Sections 4481 through 4485 of the House bill.)

Present law

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(1) In General.—No provision.

(2) Study to Assess Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—No provision.

(3) Public Education Demonstration Project.—No provision.

(b) Improvement in Quality of Physician Services.—

(1) Use of Unique Physician Identifiers.—COBRA required the Secretary to establish a system of unique identifiers for physicians providing services under Medicare. No such provision applies to physicians providing services under Medicaid. However, each Medicaid program must have a mechanized claims processing and information retrieval system approved by the Secretary (the requirement may be waived for commonwealths and territories and for certain States with a small population and low Medicaid expenditures in 1976.) One of the Secretary's criteria for approval of State systems is the use of unique identifiers for physicians and the inclusion of such identifiers on all paid claims.

(2) Foreign Medical Graduate Certification.—States must generally allow any licensed physician to participate in Medicaid.

(3) Minimum Qualifications for Billing for Physicians' Services to Children and Pregnant Women.—No provision.

(4) Reporting of Misconduct or Substandard Care.—The Health Care Quality Improvement Act of 1986 (P.L. 99-660) required the Secretary to establish a central clearinghouse for certain information on providers, including sanctions taken against them and malpractice actions. A State participating in Medicaid must have a system for reporting by State or local licensing authorities of cases in which a provider's license is revoked or suspended (or surrendered while a formal proceeding is pending) or other disciplinary action is taken.

(c) Clarification of Authority of Inspector General.—The Secretary has the authority to exclude individuals and entities from Medicare and Medicaid participation and to impose civil monetary penalties for specified infractions.

(d) Notice to State Medical Board When Adverse Actions Taken.—A State Medicaid agency must promptly notify the Secretary of HHS when a provider or other person is terminated, suspended, or otherwise sanctioned or prohibited from participating in Medicaid.

(e) Miscellaneous Provisions.—

(1) Psychiatric Hospitals.—

(A) States may cover inpatient psychiatric hospital services as an optional Medicaid benefit for beneficiaries under age 21. The Deficit Reduction Act of 1984 (DEFRA, P.L. 98-369) provided that a State may cover such services only if the facility (or part of a facility) meets the Medicare definition of a psychiatric hospital.

(B) Current law provides for intermediate sanctions to be imposed on nursing facilities and intermediate care facilities for the mentally retarded (ICFs-MR), but has no such provisions for inpatient psychiatric hospitals.

(2) State Utilization Review Systems.—OBRA 86 prohibited the Secretary from promulgating regulations requiring States to establish mandatory second surgical opinion programs or inpatient hospital preadmission review until 180 days after the Secretary submitted to the Congress a report on the extent to which such programs impede access to care and a variety of related issues concerning Medicaid beneficiaries'

access to high volume or high cost procedures. The report was submitted in June 1989. The Administration's FY 1990 budget proposal indicated that the Administration plans to proceed with requirements that States implement second opinion and preadmission review programs, and also plans to require that States implement two additional utilization control approaches. The first would require substitution of ambulatory and same-day surgery for inpatient surgery. The second would require that medical tests ordinarily performed at the start of an inpatient hospital admission be performed on an outpatient basis before the admission.

(3) Additional Miscellaneous Provisions.—

(A) If a State covers under Medicaid services in institutions for medical diseases and/or intermediate care facilities for the mentally retarded, it must also cover a specified minimum set of basic health services.

(B) The Federal Food, Drug, and Cosmetic Act prohibits the unauthorized disclosure of a method or process entitled to protection as a trade secret, except to DHHS or to the courts.

(C) No provision.

House bill

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(1) In General.—Provides that States must require hospitals, nursing facilities, home health or personal care providers, hospices, and HMOs receiving Medicaid funds to comply with requirements relating to patient advance directives, including living wills and other instructions recognized under State law relating to care when an individual is incapacitated. Requires that providers have written policies and procedures to (a) inform all adult patients at the time treatment is initiated (or on enrollment, in the case of an HMO) of their right to execute an advance directive and of the hospital's policies on implementation of that right, (b) document in medical records whether or not an individual has executed an advance directive, (c) not condition treatment or otherwise discriminate on the basis of whether a patient has executed an advance directive, (d) comply with State laws on advance directives, and (e) provide education for staff and the community on advance directives.

(2) Study to Assess Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—Requires the Secretary to enter into an agreement with the Institute of Medicine (IOM) to conduct a study of the context in which decisions on advance directives are made and carried out, including the incidence of process of decisions on life-sustaining treatments made with and without directives. Requires the Secretary to contract with IOM within 28 days after receiving an acceptable application. If IOM does not submit an acceptable application, requires the Secretary to select another contractor. Requires that the contractor report on the study to the Secretary and the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance within 4 years after enactment, including recommendations for such legislation as may be appropriate to carry out the purposes of this section.

(3) Public Education Demonstration Project.—Requires the Secretary, within 6 months after enactment, to develop and implement in selected States a demonstration project to inform the public of the option to execute advance directives and the patient's right to participate in and direct health care decisions. Requires the Secretary to report to the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance on the results of the project and whether it should be extended.

Effective date: (1) Applies to services furnished on or after the first day of the first month beginning more than 1 year after enactment. (2) and (3) Enactment.

(b) Improvement in Quality of Physician Services.—

(1) Use of Unique Physician Identifiers.—Requires the Secretary to establish a system, for implementation by July 1, 1991, for unique identifiers for physicians providing services for which payment may be made under Medicaid; the system may be the same as or different from the system for Medicare. Provides that, beginning with services furnished on or after the first day of the first quarter beginning more than 60 days after establishment of the system, Federal funding will be available for Medicaid physician services only when the unique identifier appears on the claim for the services. Requires that Medicaid contracts with HMOs require that the HMO maintain data on patient encounters sufficient to identify the physician who treated the patients. Requires that the State maintain a list, updated monthly, of the identifiers of physicians certified to participate under Medicaid.

(2) Foreign Medical Graduate Certification.—Provides that no unique identifier may be issued (and hence no Medicaid payment may be made to) a foreign medical graduate who has not passed the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) or previously received certification from or passed the examination of, the Educational Commission for Foreign Medical Graduates.

(3) Minimum Qualifications for Billing for Physicians' Services to Children and Pregnant Women.—Prohibits Medicaid payment for physician services to pregnant women or children under 21 furnished on or after January 1, 1992, unless the physician is board-certified in family practice or pediatrics or obstetrics (as appropriate), is employed by or affiliated with a federally qualified health center, has admitting privileges at a Medicaid-participating hospital, is a member of the National Health Service Corps, or has a documented consulting relationship with a family practitioner, pediatrician, or obstetrician for purposes of specialized treatment and hospital admission.

(4) Reporting of Misconduct or Substandard Care.—Requires that a State's system also provide for reporting by peer review organizations and private accreditation entities, and include reporting of any negative action taken by such organizations or entities or by licensing agencies.

Effective date: (1) Enactment, except that HMO record-keeping requirements are effective for contract years beginning after the date of the establishment of the system of unique physician identifiers; the requirement that States maintain updated lists of identifiers applies to Medicaid payments for quarters beginning more than 60 days after establishment of the system. (2) applies with respect to the issuance of an identifier applicable to services furnished on or after January 1, 1992. (3) Enactment. (4) applies to State information systems as of January 1, 1992, regardless of whether implementing regulations have been promulgated.

(c) Clarification of Authority of Inspector General.—Clarifies that the Secretary may delegate this authority to the Inspector General of the Department of Health and Human Services.

Effective date: Enactment.

(d) Notice to State Medical Board When Adverse Actions Taken.—Provides that the Medicaid agency must also notify the State medical licensing board when the adverse action is taken against a physician, regardless of ordinary requirements relating to patient confidentiality.

Effective date: Applies to sanctions effected more than 60 days after enactment.

(e) Miscellaneous Provisions.—

(1) Psychiatric Hospitals.—

(A) Allows the Secretary to specify in regulations alternative settings in which inpatient psychiatric services may be covered

(B) Establishes sanction provisions for inpatient psychiatric hospitals, as follows:

(i) If a State finds that a psychiatric hospital fails to meet certification requirements then, if the deficiencies immediately jeopardize the health and safety of patients, the State must terminate hospital's Medicaid participation. If there is no such immediate jeopardy, the State may choose to terminate participation, deny payment for individuals admitted after the date of the finding, or both.

(ii) If non-compliance continues for 3 months, the State must deny payment for new admissions; if it continues for 6 months, Federal funding for services in the hospital is denied until the hospital achieves compliance. Federal funding may be continued during the 6-month period if the State has an approved plan for corrective action, provided the State agrees to repay the funds if the plan is not complied with.

(2) State Utilization Review Systems.—Makes permanent that prohibition against requiring States to establish mandatory second surgical opinion or preadmission screening programs. Prohibits the Secretary from promulgating regulations requiring States to establish programs for ambulatory or same-day surgery or preadmission testing until 180 days after the Secretary has reported to Congress, for a representative sample of States, an analysis of procedures for which ambulatory or same-day surgery or preadmission testing are appropriate for Medicaid patients, and the effects of such programs on access, quality, and costs. Requires that the sample include some States that include such programs. Requires the Secretary to submit the report by January 1, 1993.

(3) Additional Miscellaneous Provisions.—

(A) Adds the services of pediatric or family nurse practitioners to the list of minimum required services, effective July 1, 1990.

(B) Provides, effective as if included in OBRA 1989, that the prohibition does not authorize withholding of information from Congress or congressional committees.

(C) Makes a technical change in the law relating to the Maternal and Child Health Block Grant.

Effective date: Enactment.

Senate amendment

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(1) In General.—

(2) Study to Assess Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(3) Public Education Demonstration Project.—

Effective date:

(b) Improvement in Quality of Physician Services.—No provision.

(c) Clarification of Authority of Inspector General.—No provision.

(d) Notice to State Medical Board When Adverse Actions Taken.—No provision.

(e) Miscellaneous Provisions.—

(1) Psychiatric Hospitals.—No provision.

(2) State Utilization Review Systems.—No provision.

(3) Additional Miscellaneous Provisions.—No provision.

Conference Agreement

13. Other Miscellaneous Provisions.—

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—The conference agreement includes the House bill, with amendments that exclude a study by the Institute of Medicine, and provide that the public education projects shall be national in scope, rather than a demonstration project.

(b) Improvement in Quality of Physician Services.—The conference agreement includes the House bill with amendments.

(c) Clarification of Authority of Inspector General.—The conference agreement includes the House bill.

(d) Notice to State Medical Board When Adverse Actions Taken.—The conference agreement includes the House bill.

(e) Miscellaneous Provisions.—The conference agreement includes items (1), (2), and (3) of the House bill.

TITLE V—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

I. Subtitle A—Human Resource and Family Policy Amendments

A. Chapter I—Child Support Enforcement

1. EXTENSION OF IRS INTERCEPT FOR NON-AFDC FAMILIES

(Section 5011 of the Conference Agreement)

Present law

States may collect child support arrearages of at least $500 owed to non-AFDC families through the Federal income tax refund offset mechanism. This provision expires at the end of 1990. A similar mechanism is authorized permanently for AFDC families, but the limit on arrearages is set at $150 by regulations. The arrearages must be owed to a "minor child." Spousal support is excluded from the definition of support that can be collected through this offset.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6001 of Senate amendment)

The provision permanently extends the present law provision that allows States to ask the IRS to collect child support arrearages of at least $500 out of income tax refunds otherwise due to non-custodial parents. The minor child restriction would be eliminated for adults with a current support order who are disabled, as defined under OASDI or SSI. In addition, the offset could be used for spousal support when spousal and child support are included in the same support order.

The provision would take effect on January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

2. EXTENSION OF INTERSTATE CHILD SUPPORT COMMISSION

(Section 5012 of the Conference Agreement)

Present law

The Family Support Act of 1988 established the Interstate Child Support Commission to report to Congress no later than May 1, 1991 on recommendations for improvements in the child support enforcement system and the Uniform Reciprocal Enforcement of Support Act. The Commission expires on July 1, 1991.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6002 of Senate amendment)

The provision would extend the life of the Commission to July 1, 1992 and would require it to submit its report no later than May 1, 1992. Also, the provision would authorize the Commission to hire its own staff.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

3. CHILD SUPPORT DEMONSTRATION

(Section 5013 of the Conference Agreement)

Present law

The Federal Government matches approved child support expenditures by States at a rate of 66 percent of total costs. The law requires each State to obtain an application for services from each family before this Federal matching can be received. By regulation, HHS has interpreted this requirement to mean a written application. The Secretary has disallowed Federal matching in some States if a written application has not been obtained.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes an amendment that would grant the State of Texas a waiver to continue an ongoing project in Bexar County on delinquency monitoring for child support enforcement. The State agency would be allowed to accept clients for the enforcement of court-established child support obligations without a written application and without collection of an application fee. The following conditions for granting this waiver would be established:

(1) The State agency must permit custodial parents to decline receiving child support services in writing before any services are provided;

(2) The State agency must ensure that the custodial and non-custodial parents are informed fully in writing about their rights and about the services and responsibilities of the agency during delinquency monitoring;

(3) The time frame for establishing a case record would start at the time that the option to decline services is offered and the time frame for the enforcement of support obligations would begin at the time the delinquency occurs; and

(4) The absence of a written application for the enforcement of a child support obligation could not be construed to eliminate the requirements for: (a) an application for requests for other services; and (b) compliance by the State agency to the time frames corresponding to those services.

As a condition of the granting of the waiver, the State agency would be required to perform a study on the cost-effectiveness of delinquency monitoring and submit it by December 31, 1991 to the Secretary of Health and Human Services and Congress. The study should use an experimental design with random assignment between experimental and control groups and must be performed with State funds only.

The cost of the project shall not exceed the lesser of $500,000; and 66 percent of expenditures used to carry out the project.

The waiver would be effective January 1, 1991 through September 30, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828, modified to require that the evaluation of the demonstration project must be conducted in accordance with such criteria as the Secretary may establish, in consultation with one or more representatives of organizations representing child support administrators, the General Accounting Office, the State of Texas, and such other individuals and organizations with experience in the evaluation of child support programs as the Secretary may designate. The Secretary must establish the criteria no later than February 1, 1991. The cost of the evaluation would be shared by the Federal government at the 66 percent child support matching rate. The waiver may be extended for a period of up to two years.

B. Chapter 2—Unemployment Compensation

1. EXTENSION AND MODIFICATION OF THE "REED ACT"

(Section 5021 of the Conference Agreement)

Present law

The "Reed Act", named after the Honorable Daniel A. Reed (R., N.Y.), Chairman of the Committee on Ways and Means when the law was passed in 1954, allows excess Federal unemployment taxes, which occur when the three Federal accounts of the Unemployment Trust Fund overflow, to be used for administrative purposes or benefits by the States. It begins to expire over a three-year period beginning July 1, 1991.

Since the "Reed Act" was enacted in 1954, overflows have occurred only in 1956, 1957 and 1958. These additional funds were available to be appropriated by State legislatures and could be used for administration or benefits. Although much of these funds have been spent for benefits, $52.3 million remained in the accounts of 35 States at the beginning of 1990. Under the Administration's projections, another overflow would probably not occur until 1997.

Under present law, any future excess Federal unemployment taxes would be distributed to the State accounts in proportion to the State shares of total wages subject to State unemployment taxes. States with relatively high State taxable wage bases and tax rates would tend to receive proportionately more than States with relatively low taxable wage bases and tax rates.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, contains a provision which would make the

"Reed Act" permanent. This would give States the authority to use funds that eventually overflow the Federal accounts of the unemployment trust fund for administrative purposes or benefits. In addition, it would modify the distribution formula so that any overflow would be distributed to the State accounts in the unemployment trust fund in proportion to each State's share of wages subject to Federal unemployment taxes paid in the prior calendar year instead of State taxable wages. States would be required to account for the "Reed Act" funds in accordance with standards set by the Secretary of Labor.

The provision would take effect on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H. R. 5828.

2. PROHIBITION ON COLLATERAL ESTOPPEL

Present law

Currently, 14 States prohibit courts from using quasi-judicial decisions reached in unemployment compensation hearings to stop lawsuits on related employment issues, such as wrongful discharge from a job. This judicial doctrine is called "collateral estoppel". Federal law has no provision. In the remaining 39 jurisdictions, courts may use this doctrine to stop lawsuits on other employment issues.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision which would require State unemployment compensation laws to prohibit courts from stopping lawsuit on related employment issues based on a decision made in an unemployment compensation hearing.

The provision would take effect on October 1, 1991, except in the case of a State the legislature of which has not been in session for at least 30 calendar days (whether or not successive) between the date of the enactment of this Act and October 1, 1991, such amendments shall take effect 30 calendar days after the first day on which such legislature is in session on or after October 1, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, i.e., no provision.

C. Chapter 3—Supplemental Security Income

1. TREATMENT OF VICTIMS' COMPENSATION PAYMENTS

(Section 5031 of the Conference Agreement)

Present law

Under present law, amounts received from victims' assistance funds are included as income or assets for purposes of determining eligibility and benefits for SSI.

House bill

No provision. H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that excludes from income for purposes of determining SSI eligibility and benefits any payment received from a State-administered victims' compensation fund.

In addition, any amount received from a State victims' compensation fund, to the extent that it represents compensation for expenses incurred or losses suffered as a result of a crime, shall be excluded from resources for the 9-month period beginning after the month in which it was received.

No person awarded victims' compensation, who was otherwise eligible for SSI and who refused to accept such compensation, would be considered ineligible for SSI as a result of such refusal.

The provision would take effect in the month beginning 6 months after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

2. ELIMINATE THE AGE LIMIT ON SECTION 1619 ELIGIBILITY

(Section 5032 of the Conference Agreement)

Present law

To be eligible for the Medicaid-only benefit under the section 1619 work incentive provisions an individual must be under 65 years old.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6010 of the Senate amendment)

The provision would eliminate this age limit and would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective with respect to benefits for months beginning on or after the first day of the sixth calendar month following the month of enactment.

3. TREATMENT OF IMPAIRMENT-RELATED WORK EXPENSES

(Section 5033 of the Conference Agreement)

Present law

Impairment-related work expenses (IRWE) are excluded from a disabled individual's earnings for determinations of: (1) whether earnings constitute "substantial gainful activity;" (2) the benefit amount of an eligible disabled individual; and (3) continuing eligibility on the basis of income.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6011 of the Senate amendment)

The proposal would exclude impairment-related work expenses from income in determining initial eligibility and reeligibility for SSI benefits, and in determining State supplementary payments.

The provision would take effect four months following the month of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

4. TREAT CERTAIN ROYALTIES AND HONORARIA AS EARNED INCOME

(Section 5034 of the Conference Agreement)

Present law

Under present law, royalties received are considered unearned income under the SSI program unless they are from self-employment in a royalty-related trade or business. Honoraria are also considered unearned income. After the first $20 of unearned income in a month is disregarded, this results in a dollar-for-dollar loss of SSI benefits.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6012 of the Senate amendment)

Any royalty which is earned in connection with the publication of an individual's work, or any honorarium which is received for services rendered would be treated as earned income for purposes of SSI eligibility and benefit determination. This would mean that income from these sources would be disregarded to the same extent that income from other types of earnings is disregarded (i.e., the first $65 of monthly earnings plus 50 percent of additional earnings).

The effective date for the provision would be the eighteenth month beginning after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective the thirteenth month beginning after the date of enactment.

5. STATE RELOCATION ASSISTANCE NOT COUNTED AS INCOME OR RESOURCES

(Section 5034 of the Conference Agreement)

Present law

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 excludes from income and resources any relocation assistance provided under the Act to individuals receiving Federal assistance, including SSI. Relocation assistance is paid when individuals are required to move by the Government. For example, the Government might need their land for a public building or highway or they might need to move because toxic wastes were discovered on the site. Under SSI, relocation assistance from any other source is considered income in the month received, and resources thereafter.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision to exclude from income and resources State relocation assistance.

The provision would take effect in the month beginning 6 months after the date of enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H. R. 5828, modified to provide that State relocation assistance payments will be excluded from resources for no more than 9 months. In addition, the provision would be in effect for only three years.

6. EVALUATION OF CHILD'S DISABILITY BY PEDIATRICIANS

(Section 5036 of the Conference Agreement)

Present law

Present law does not require that a pediatrician or other qualified specialist be involved in the evaluation of a child's disability case.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6013 of Senate Amendment)

The provision would require the Secretary of Health and Human Services to make reasonable efforts to ensure that a qualified pediatrician or other specialist in a field of medicine appropriate to the disability of the child evaluate the child's disability for purposes of determining eligibility for SSI.

The provision would take effect in the sixth month beginning after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

7. REIMBURSEMENT FOR VOCATIONAL REHABILITATION SERVICES

(Section 5037 of the Conference Agreement)

Present law

The Secretary of HHS is required to refer blind and disabled individuals who are receiving SSI benefits to State vocational rehabilitation agencies and is authorized to reimburse these agencies for the reasonable and necessary costs of the vocational rehabilitation services that are provided to recipients under certain specified conditions. Reimbursement is not allowable with respect to services provided in months for which individuals were not receiving cash benefits but were eligible for Medicaid because they were in "special status" under 1619(b), were in suspended benefit status, or were receiving Federally administered State supplementary payments but not Federal SSI benefits.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6015 of Senate Amendment)

The provision would implement a recommendation of the Disability Advisory Council to authorize reimbursement for vocational rehabilitation services provided in months for which individuals were in "special status" under section 1619(b), were in suspended benefit status, or were receiving Federally administered State supplementary payments.

The provision would take effect on the date of enactment and would apply to claims for reimbursement pending on or after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

8. PRESUMPTIVE ELIGIBILITY TIME PERIOD

(Section 5038 of the Conference Agreement)

Present law

The Social Security Administration can presume eligibility for up to 3 months while processing applications for SSI on the basis of disability or blindness. If the process takes longer than 3 months, those ultimately eligible for benefits after three months receive back payments. In 1989, the Social Security Administration estimates that the final decision on eligibility took longer than 3 months in 31 percent of the cases where presumptive eligibility had been granted. Those who are determined to be ineligible are not required to repay the benefits they received while SSA presumed their eligibility.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision to extend the period of presumptive eligibility from 3 to 6 months.

The provision is effective upon enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828, effective in the month beginning six months after enactment.

9. CONTINUING DISABILITY AND BLINDNESS REVIEWS

(Section 5039 of the Conference Agreement)

Present law

SSI recipients can participate in the work incentive provisions of section 1619 by earning amounts up to the level at which benefits cease ($857 per month for single persons). Even if they are no longer eligible for cash benefits, they can continue to receive Medicaid.

Participants in the work incentive provision are subject to continuing disability or blindness review at certain times: (1) within 12 months of initial eligibility for the work incentive provisions; (2) promptly when an individual's earnings alone would have made him ineligible for cash assistance or Medicaid for the prior 12 months under section 1619 and he has become eligible again for either Medicaid or cash assistance.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision which permits continuing disability reviews no more than once every 12 months. The provision is effective upon enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

10. CONCURRENT APPLICATIONS FOR SSI AND FOOD STAMPS

(Section 5040 of the Conference Agreement)

Present law

Public law 99-570, the Anti-Drug Abuse Act of 1986, amended the Social Security Act to require the Secretaries of HHS and Agriculture to develop a procedure to allow institutionalized individuals who are about to be released to make a single application for both SSI and food stamp benefits.

House bill

No provision.

Senate amendment (Section 6014 of Senate amendment)

Under this provision, the Secretary of HHS could either: (1) use a single application form for the food stamp and SSI programs; or (2) take concurrent applications for the SSI and food stamp programs.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

11. DISREGARD OF TRUST CONTRIBUTIONS

(Section 5041 of the Conference Agreement)

Present law

The term "trust" is not defined in either SSI law or regulations. SSI policy, as expressed in the program's operating manual, is to treat a trust as a resource when an individual owns the assets in the trust and, acting on his own behalf or through an agent (such as a representative payee for SSI benefits), has the legal right to use them for his own food, clothing, or shelter. If, however, the individual does not have the legal authority to access trust assets for his own food, clothing, or shelter (e.g., there is an intervening trustee), the trust is not considered a resource.

Cash payments made to an individual, including those from a trust (regardless of whether the trust is considered a resource), are considered income in the month received. Noncash payments for food, clothing, or shelter are also considered income. However, there are special rules under which noncash payments are presumed to have a maximum value of one-third of the Federal SSI monthly benefit amount, plus a $20-a-month income exclusion. If a person can show that any in-kind support and maintenance provided is less than the "presumed value," the lesser amount is considered income. Thus, any cash or noncash payment for food, clothing, or shelter affects SSI benefits and eligibility status. However, under SSA policy, a payment for certain social, medical, educational, transportation, or other services does not count as income, and does not affect SSI benefits or eligibility status.

House bill

No provision.

Senate amendment (Sections 6016-6018 of Senate amendment)

The SSI statute would be amended to specify that a trust established for an SSI recipient to which the recipient does not have legal access would not be counted as a resource, and certain non-cash contributions to a recipient would not be counted as income. In addition, the Secretary of HHS would be required to inform the family of a child who is awarded a retroactive payment as the result of the decision of the Supreme Court in Sullivan v. Zebley of the implications of such payments for SSI eligibility, that the family may be able to place the payment in a trust for the benefit of the child, and that legal assistance may be available. This information need not be provided in the form of a separate notice, but may be included in the notice of award of the retroactive payment.

Conference agreement

The conference agreement includes the Senate amendment requiring the Secretary to inform the family of a child who is awarded a retroactive payment as the result of the decision of the Supreme Court in Sullivan v. Zebley that the family may be able to place the payment in a trust for the benefit of the child.

The conference agreement does not include the Senate amendment with respect to the establishment of trusts. However, the managers recognize that it is important for SSI applicants and recipients to understand how different forms of income and resources are treated under the program, in order that they and their families can plan accordingly. They therefore intend that hearings be held during the 102nd Congress

to address such issues as: whether statutory language should be enacted to specify the conditions under which funds placed in a trust may be excluded from countable income and resources; whether any limits should be placed on the amounts that can be placed in trust; and the purposes for which trust funds may be expended without affecting SSI eligibility and benefits. The omission of the Senate provision from the conference agreement is not intended in any way to change current SSA policy with respect to trusts.

d. Chapter 4—to Families with Dependent Children

1. STATE OPTION TO REQUIRE MONTHLY REPORTING AND RETROSPECTIVE BUDGETING

(Section 5051 of the Conference Agreement)

Present law

Under section 402(a)(14) of the Social Security Act, States must require families with earned income or a recent work history to provide a monthly report on: (1) income and family composition during the prior month; and (2) estimates of the income and resources anticipated in the current or future months. With the approval of the Secretary, a State may select categories of these families to report at less frequent intervals, if monthly reporting is not cost effective.

AFDC eligibility and benefits are determined monthly. Generally, a family's eligibility for and amount of aid for a month are based on the family's income, composition and resources in that month. However, under section 402(a)(13) of the Social Security Act, for families who are subject to monthly reporting requirements, States are required to calculate benefits based upon retrospective budgeting. Under retrospective budgeting, although eligibility is based on the family's circumstances in the current month, payment amounts are based on the family's income in the first or second month preceding the current month.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6020 of Senate amendment)

The provision would give States the option of specifying from which categories of families, if any, monthly reports will be required. If the State exercises the option, it must describe in its State plan the categories subject to the reporting requirement. Further, the State may choose to apply the retrospective budgeting technique to any one or more of the categories to whom the reporting requirement applies.

The provision would take effect with respect to reports pertaining to, or aid payable for, months after September 1990.

Conference agreement

The conference agreement follows the Senate amendment.

2. TREATMENT OF FOSTER CARE MAINTENANCE PAYMENTS AND ADOPTION ASSISTANCE

(Section 5052 of the Conference Agreement)

Present law

Prior to October 1, 1984, a child receiving State or Federal foster care maintenance payments or adoption assistance did not have to be included in the AFDC family unit, and the income and resources of the child did not count as the income and resources of the AFDC family. A family unit rule implemented as part of the Deficit Reduction Act of 1984, however, required that any parent or sibling of a dependent child be included in the AFDC unit. This rule applied to any sibling receiving foster care or adoption assistance.

The Tax Reform Act of 1986 amended the AFDC law retroactively to October 1, 1984 to provide that, in determining a family's eligibility for or amount of AFDC benefits, a child receiving foster care maintenance payments under title IV-E would not be regarded as a member of the family, and the income and resources of the child would not be counted as the income and resources of the family (section 478 of the Social Security Act).

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6021 of Senate amendment)

A child receiving State and/or local foster care maintenance payments would not be regarded as a member of an AFDC family for purposes of determining a family's eligibility for or amount of AFDC benefits, and the child's income and resources would not be counted as the income and resources of the family.

Further, a child receiving adoption assistance payments under title IV-E, or State and/or local adoption assistance payments, would not be regarded as a member of an AFDC family for purposes of determining a family's eligibility for or amount of AFDC benefits, and the child's income and resources would not be counted as the income and resources of the family, unless this would result in lower benefits for the family.

The provision would also move the section 478 provision, as amended, from title IV-E of the Social Security Act to title IV-A.

The provision would take effect in the month beginning six months after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

3. ELIMINATING THE USE OF THE TERM "LEGAL GUARDIAN"

(Section 5053 of the Conference Agreement)

Present law

Section 402(a)(39) of the Social Security Act requires that, in determining AFDC benefits for a dependent child whose parent or legal guardian is under the age of 18, the State agency must include the income of the minor parent's own parents or legal guardians who are living in the same home.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6022 of Senate amendment)

The provision would delete all references to legal guardians.

Legal guardianship is not relevant to eligibility determination or the deeming of income under the AFDC program. For example, the use of the term "legal guardian" in the first instance is irrelevant since, even if such a guardian were appointed, the child would not be eligible for AFDC unless living with a relative specified in section 406 of the Social Security Act.

The use of the term "legal guardian" in the second instance is also inappropriate in the context of the AFDC statute. Unlike the parent-child relationship, legal guardianship has not been a basis for attributing income to AFDC beneficiaries. Using legal guardianship as a source of attributed income in three-generation families creates unequal treatment under the program. For example, if a minor child is living with an aunt who is her legal guardian, the aunt's income is not automatically attributed to the AFDC beneficiary; however, if the minor has a child, the guardian's income is included in the AFDC determination for the minor and her child.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

4. REPORTING OF CHILD ABUSE AND NEGLECT

(Section 5054 of the Conference Agreement)

Present law

Under current law, both the title IV-A (AFDC) and title IV-E (foster care and adoption assistance) State plan requirements stipulate that State agencies must report to appropriate court or law enforcement agencies instances of a child receiving program aid who is residing in a home that is unsuitable because the child is subject to abuse, neglect or exploitation (sections 402(a)(16) and 471(a)(9) of the Social Security Act).

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6023 of Senate amendment)

The provision would amend the AFDC, foster care and adoption assistance State plan requirements to require that each State agency report, to an appropriate agency or official, known or suspected instances of child abuse and neglect of a child receiving program aid. This would include instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment under circumstances which indicate that the child's health or welfare is threatened. The State agency would also be required to provide such information with respect to the situation as it may have.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective for months beginning six months after enactment.

5. PERMISSIBLE USES OF AFDC INFORMATION

(Section 5055 of the Conference Agreement)

Present law

Section 402(a)(9) of the Social Security Act restricts the use or disclosure of information about AFDC applicants and recipients to purposes directly connected with: (1) the administration of the AFDC program or several other specified Social Security Act programs; (2) any investigation, prosecution, or criminal or civil proceeding conducted in connection with such programs; (3) the administration of any other Federal or Federally-assisted program providing assistance or services to individuals on the basis of need; and (4) any audit of such programs.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6024 of Senate amendment)

The provision would add an explicit reference to title IV-E, the foster care and adoption assistance programs, to the list of programs for which information about AFDC applicants and recipients may be made available.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

6. REPATRIATION

(Section 5056 of the Conference agreement)

Present law

Section 1113 of the Social Security Act authorizes the Secretary to provide temporary assistance to U.S. citizens and their dependents if they: (1) have returned or been brought from a foreign country to the U.S. because of destitution or illness, or war, threat of war, invasion or similar crisis; and (2) are without resources.

Prior to June, 1990, the maximum amount of temporary assistance that could be provided in one fiscal year equaled $300,000. In June, 1990, the Secretary requested that the $300,000 limit be increased to $1 million, to accommodate the repatriation of several hundred Americans from Liberia. This increase was enacted in P.L. 101-382. According to the Secretary, the subsequent Iraqi invasion of Kuwait has placed new and unpredictable demands on the repatriation program. The Secretary expects the resulting program costs to exceed $1 million.

House bill

No provision. (H.R. 5828, as reported by the Ways and Means Committee, includes a provision similar to the Senate amendment.)

Senate amendment (Section 6025 of Senate amendment)

The provision temporarily repeals the $1 million spending cap for the repatriation program for fiscal years 1990 and 1991, and permits HHS to receive gifts from those wishing to contribute assistance to repatriated Americans through the repatriation program.

The provision would take effect for fiscal years beginning after September 30, 1989.

Conference agreement

The conference agreement follows the Senate amendment.

7. CHILDREN'S COMMISSION REPORTING DATE

(Section 5057 of the Conference agreement)

Present law

The National Commission on Children is directed to study and recommend to the President and the Congress ways to improve the well-being of children. P.L. 101-239 included an amendment to the original legislation that was intended to establish a final reporting date for the Commission of March 31, 1991. The amendment as enacted, however, includes a technical error.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6029 of Senate amendment)

The statute would be corrected to clarify that the final reporting date for the Commission is March 31, 1991.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

8. MORATORIUM ON FINAL REGULATIONS FOR EMERGENCY ASSISTANCE

(Section 5058 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) included a provision stating that any final regulation which would change any policy in effect immediately before the date of the enactment of that Act with respect to the use of emergency assistance or special needs funds under the AFDC program could not take effect before October 1, 1990. In addition, the Secretary could not otherwise modify any policy with respect to the use of emergency assistance or special needs funds before October 1, 1990.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision similar to the Senate amendment.)

Senate amendment (Section 6032 of Senate amendment)

The date on prohibition of issuance of final regulations would be extended to October 1, 1991.

Conference agreement

The conference agreement would extend the prohibition of issuance of final regulations, and the prohibition on modifying current policy, to October 1, 1991.

9. MINNESOTA FAMILY INVESTMENT PLAN

(Section 5059 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1989 permits the State of Minnesota to conduct a demonstration of the effectiveness of the Minnesota Family Investment Plan (MFIP). Under the demonstration, the State of Minnesota plans to determine whether its Family Investment Plan helps families to care for their children more effectively than do the AFDC and JOBS programs, as currently structured.

House bill

No provision. H.R. 5828, as reported by the Committee on Ways and Means, includes a provision which makes a series of technical changes that are necessary for the State to implement its Family Investment Plan.

The provision would take effect on the date of enactment.

Senate amendment

No provision.

Conference Agreement

The conference agreement includes the provision contained in H.R. 5828.

10. TECHNICAL AMENDMENT TO ALLOW GOOD CAUSE EXCEPTION

(Section 5060 of the Conference Agreement)

Present law

Under current law, as a condition of eligibility for AFDC, a parent must cooperate with the child support enforcement (IV-D) agency in establishing paternity, and in obtaining and enforcing a support order unless there is "good cause" for refusal. "Good cause" includes such factors as reasonable belief that cooperation could result in physical or emotional harm to the child or caretaker relative, and other factors established by regulation. The Family Support Act of 1988 established a similar requirement for cooperation with the IV-D agency in order for a family to be eligible to receive child care transition benefits. However, the "good cause" exception was omitted.

House bill

No provision.

Senate amendment (Section 6026 of Senate amendment)

The good cause exception from cooperating with the IV-D agency would be made applicable to transitional child care benefits to make it consistent with the exception that applies to AFDC cash benefits.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

11. JOBS TECHNICAL CORRECTION REGARDING PENALTY FOR FAILURE TO PARTICIPATE

(Section 5061 of the Conference Agreement)

Present law

The Family Support Act of 1988 added a penalty provision to the AFDC statute (section 402(a)(19)(G)) that provides that if the principal earner (in the case of a family eligible on the basis of the unemployment of the principal earner (AFDC-UP)) fails without good cause to participate in the JOBS program as required, the needs of that individual will not be taken into account in determining the amount of the family's AFDC benefit. If the spouse is not participating, the needs of the spouse will also not be taken into account. The penalty does not apply to benefits on behalf of any child in the family. When this new penalty language was added, however, the language contained in section 407 imposing a penalty for any child in the family if the principal earner fails to participate in the JOBS program was not repealed.

House bill

No provision.

Senate amendment (Section 6027 of Senate amendment)

The statute would be clarified by repealing the penalty language in section 407 that requires a reduction in AFDC benefits on behalf of a child in an AFDC-UP family if the principal earner fails to participate in the JOBS program.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective at the same time and in the same manner as the amendments made by title II of the Family Support Act of 1988 take effect.

12. TECHNICAL CORRECTION REGARDING AFDC-UP ELIGIBILITY REQUIREMENTS

(Section 5062 of the Conference Agreement)

Present law

Prior to October 1, 1990, participation in the Work Incentive (WIN) and Community Work Experience (CWEP) programs counted in the definition of "quarter of work" for purposes of qualifying a family for AFDC-UP. Title IV of the Family Support Act of 1988 amended the definition of "quarter of work" to include participation in JOBS, but

deleted references to WIN and CWEP. The result is that beginning October 1, 1990, prior participation in WIN or CWEP will not count toward the "quarter of work" requirement for purposes of establishing eligibility for AFDC-UP.

House bill

No provision.

Senate amendment (Section 6028 of Senate amendment)

Section 407(d) would be amended to allow participation in WIN and CWEP prior to October 1990 to count toward the "quarter of work" requirement for purposes of AFDC-UP eligibility.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

13. COMMUNITY DEVELOPMENT DEMONSTRATION TECHNICAL CORRECTION

(Section 5063 of the Conference Agreement)

Present law

The Family Support Act of 1988 authorized the Secretary of HHS to enter into agreements with up to 10 nonprofit organizations (including community development corporations) for the purpose of conducting demonstration projects to create employment opportunities for certain low income individuals. The authorization for the demonstrations is $6.5 million for each of fiscal years 1990, 1991, and 1992.

House bill

No provision.

Senate amendment (Section 6030 of Senate amendment)

The statute would be clarified to specify that the Secretary could enter into agreements with up to 10 nonprofit organizations each year. There would be no increase in the authorization.

Conference agreement

The conference agreement follows the Senate amendment.

14. GAO STUDY OF JOBS FUNDING FOR INDIAN TRIBES

(Section 5064 of the Conference Agreement)

Present law

Under the Family Support Act of 1988, Indian tribes (or Alaska Native organizations) may apply to operate JOBS programs. The statute requires that, in order to be considered by the Secretary, an application for Federal funding must be made within six months after enactment of the Family Support Act.

If an application is approved, the Secretary may grant funds to the tribe or Alaska Native organization (without a non-Federal matching requirement) to operate a JOBS program. The amount of funds is based on the ratio of adult AFDC recipients in the tribe relative to the adult AFDC recipients in the State. (The State's cap is appropriately reduced.) Requirements of the JOBS program may be waived if the Secretary determines that they are inappropriate.

House bill

No provision.

Senate amendment (Section 6031 of Senate amendment)

The bill would direct the General Accounting Office to conduct a study of how the provisions with respect to Indian tribes and Alaska Native organizations have been implemented by the Secretary and by such tribes and organizations, to describe any problems that may have been experienced in implementing the provisions, to determine to the extent possible the effectiveness of JOBS programs that are being operated by Indian tribes and Alaska Native organizations, and to make recommendations as to any legislative or administrative changes that could be made to improve the effectiveness of such programs.

Conference agreement

The conference agreement follows the Senate amendment.

Chapter 5—Child Welfare and Foster Care

1. ACCOUNTING FOR ADMINISTRATIVE COSTS

(Section 5071 of the Conference Agreement)

Present law

States are entitled to Federal reimbursement at a rate of 50 percent for expenditures made for the proper and efficient administration of the State title IV-E plan.

Under current law and regulation, Federal matching for administrative costs includes matching for activities that involve placement of the child in foster care, as well as what are ordinarily considered administrative "overhead" costs. These include activities related to child protections mandated by the Child Welfare and Adoption Assistance Amendments of 1980, such as: referral to services at time of intake; preparation for, and participation in, judicial determinations; development of a case plan for the child; periodic reviews of the child's case plan; and case management and supervision.

Although there are no official program data showing what portion of administrative costs go for child placement activities as opposed to ordinary administrative overhead, the Inspector General has estimated that only about 20 percent of foster care administrative costs represent what are traditionally considered administrative overhead expenses.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision similar to the Senate amendment.)

Senate amendment (Section 6040 of Senate amendment)

Title IV-E would be amended to specifically add "child placement services" as activities for which States are entitled to receive Federal reimbursement. This is not intended in any way to change the type of activities for which States are currently allowed to claim Federal reimbursement as an administrative cost under title IV-E. In order to provide the Congress with more specific information on how these child placement and administrative matching funds are being spent, the Congress expects that the Secretary will develop and establish uniform definitions for the activities reimbursable as child placement services and administration, and will require the States to account for expenditures according to these activities.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

2. SECTION 427 TRIENNIAL REVIEWS

(Section 5072 of the Conference Agreement)

Present law

Public Law 96-272, the Adoption Assistance and Child Welfare Amendments of 1980, was designed to provide financial incentives to the States to implement and operate a set of services and procedures to prevent the unnecessary removal of children from their home, prevent extended stays in foster care, and ensure that efforts are made to reunify children with their families or place them for adoption. The services and procedures are outlined in section 427 of the Social Security Act.

According to the HHS Section 427 Review Handbook, to verify compliance with section 427 requirements, HHS conducts a two-stage review. The first stage is an administrative review which determines whether States have developed policy and procedures to implement the section 427 requirements for all children in foster care under the responsibility of the State. The second stage of the review is the case record survey which confirms that the policies are being implemented throughout the State.

An initial review is conducted for the fiscal year in which the State first certifies its eligibility. If a State meets the initial review, a subsequent review is conducted for the following fiscal year. States that meet the requirements of this subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted, and every third year thereafter. This is known as the triennial review. The case record survey must confirm that the section 427 foster care protections are provided for at least 66% of the children in the initial review, 80% in the subsequent review, and 90% in the triennial review. If a State does not meet the established standards for the year under review, the review is conducted each succeeding year until eligibility is established.

The Omnibus Budget Reconciliation Act of 1989 included a provision which prohibited the Secretary from, before October 1, 1990, reducing payments to, seeking repayment from, or withholding any payments from any State as a result of a disallowance determination made in connection with a triennial review of State compliance with the section 427 foster care protections, for any fiscal year preceding fiscal year 1991.

HHS has convened a department-wide task force to review and revise the current section 427 review process. Draft regulations are expected during calendar year 1991.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6041 of Senate amendment)

The provision would extend the current prohibition on reducing payments to, seeking repayment from, or withholding payments from States to October 1, 1991, to apply to any determinations made in connection with a triennial review for any Federal fiscal year preceding fiscal year 1992.

The provision would take effect on October 1, 1990.

Conference agreement

The conference agreement follows the Senate amendment.

3. INDEPENDENT LIVING TO AGE 21 AT STATE OPTION

(Section 5073 of the Conference Agreement)

Present law

The Independent Living Program is a State entitlement program under title IV-E designed to help ease the transition of foster children age 16 and older to inde-

pendent living. Independent living services may include school and vocational training, living skills training, housing location and career planning assistance, counseling, service coordination, outreach, and the development of plans for independent living as part of the case plan.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6042 of Senate amendment)

The statute would be amended to allow States to include youths who have been "discharged" from the foster care system in services provided under the independent living program, up to age 21.

The provision would take effect on October 1, 1990.

Conference agreement

The conference agreement follows the Senate amendment.

F. Chapter 6—Grants to States for Child Care

1. GRANTS TO STATES FOR CHILD CARE

(Section 5081 of the Conference Agreement)

Present law

Federal matching is available to States on an entitlement basis to provide child care for AFDC parents who are participating in the JOBS program, and to provide child care for a period of 12 months after the family loses eligibility for AFDC as a result of increased hours of, or increased income from, employment.

House bill

No provision.

Senate amendment (Section 6043 of Senate amendment)

Funding for the existing title IV child care program would be increased to provide $65 million for each of fiscal years 1991-1995 to enable States to provide child care to low income non-AFDC families that the State determines: (1) need such care in order to work; and (2) would otherwise be at risk of becoming dependent upon AFDC.

Capped entitlement funds would be allocated on the basis of child population. Rules relating to Federal matching rates, reimbursement, standards, and fee schedules would remain the same as in current law. States would be required to report annually to the Secretary on child care activities carried out with funds under this entitlement.

In addition, the authorization for grants (enacted in the Family Support Act of 1988) to enable States to improve their child care licensing and registration requirements and procedures, and to monitor child care provided to children receiving AFDC, would be extended to provide $35 million for each of fiscal years 1992, 1993, and 1994 for these purposes.

Conference agreement

The conference agreement follows the Senate amendment, modified to provide $300 million for each of fiscal years 1991 through 1995. In addition, the conference agreement provides that all child care providers that receive funds under this provision must be licensed, regulated, or registered. As in the Senate amendment, all child care paid for with these funds must meet applicable standards of State and local law. However, there would be no requirement that individuals who provide care solely to members of their family be licensed, regulated, or registered.

It is the intent of the conferees that States will have maximum flexibility in determining how these new grant funds are used.

The $35 million currently authorized for grants to improve licensing and registration requirements and procedures, and to monitor child care provided to children of AFDC recipients, is increased to $50 million, beginning in fiscal year 1992 and extending through fiscal year 1994. One-half of these funds are earmarked for training child care providers. The remainder must be used for improving licensing and registration requirements and procedures, and for enforcement. Activities under the grant would apply to all children receiving services under title IV-A, not just those receiving AFDC.

2. CHILD CARE AND DEVELOPMENT BLOCK GRANT

(Section 5082 of the Conference Agreement)

The Conference report includes the Child Care and Development Block Grant Act of 1990. The purpose of this block grant program is to increase the availability, affordability, and quality of child care. The provision provides financial assistance to low-income, working families to help them find and afford quality child care services for their children. It also contains provisions to enhance the quality and increase the supply of child care available to all parents, including those who receive no financial assistance under the block grant program.

More specifically, the purpose of this block grant program is to give parents a variety of options in addressing family child care needs. Additionally, this provision is intended to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by the lack of available programs or financial resources to place a child in an unsafe or unhealthy child care arrangement; to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services; to provide assistance to families whose financial resources are not sufficient to enable such families to pay the full cost of necessary child care; to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services; and to provide assistance to states and Indian tribes to improve the quality of, and coordination among, child care programs and early childhood development programs.

The Conference agreement authorizes $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal years 1994 and 1995. Block grant funds are provided to states in accordance with a formula based on numbers of young children and of school lunch recipients.

Use of block grant funds for child care services

Each state shall use 75 percent of block grant funds for direct assistance to parents for child care services and to increase the supply and to improve the quality of child care. Block grant funds may only be used by the states for child care services and for activities which directly improve the availability and quality of care for families assisted under the Act. Quality activities eligible for funds under section 658E(c)(3)(B)(ii) should be the same type of quality activities specified in the quality reservation in section 658G. It is the conferees' intent that a preponderance of the block grant funds be spent specifically on child care services and a minimum amount on other authorized activities.

The managers believe that parents should have the greatest choice possible in selecting child care for their children. Thus, parents assisted under section 658(c)(3)(B) would have complete discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, family providers, centers, schools, and employers. All such providers may be paid through grants or contracts or through certificates provided to the parent. A parent assisted under section 658E(c)(3)(B) must be given the option of receiving a certificate.

Use of 25 percent reserve of funds

Each state shall reserve 25 percent of block grant funds for grants and contracts to providers of early childhood development or before- and after-school services, or both, and for activities to improve the quality of child care. Of the 25 percent reserve, not less than seventy-five percent of this reserve shall be allocated to early childhood development and before- and after-school care activities; not less than twenty percent for quality activities with the remaining five percent to be used for either purpose. A state may assign responsibility for the administration of early childhood development and latchkey programs to an agency other than the lead agency, such as an agency that has experience in the administration of existing education or preschool programs. Eligible quality activities include establishing or expanding resource and referral programs; making grants or loans to providers to assist them in meeting state and local child care standards; improving the monitoring of compliance with, and enforcement of, state standards and licensing and regulatory requirements; providing training and technical assistance; and improving salaries and other compensation paid to child care staff.

General provisions

Families eligible for assistance for child care are those who earn less than 75 percent of the state median income and who have children under age 13. The amount of assistance would be based on a sliding fee scale established by the state. Nothing in this subchapter is intended to prohibit the provision of services at no cost to families whose income is at or below the poverty level. Providers would receive payment at rates which would ensure equal access to services comparable to those provided to children whose care is not publicly subsidized.

Parental choice and involvement are further enhanced through provisions for unlimited parental access to children during the day and within the care setting, for parental complaint procedures and access to records of substantiated parental complaints, and for consumer education.

The managers intend that the determination whether any financial assistance provided under this subchapter, including a loan, grant or child care certificate, constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), all as amended, and the regulations issued thereunder, shall be made in accordance with those provisions.

To receive funds, a state shall submit a plan that includes: designation of a lead agency; local consultation regarding development of the plan; coordination with existing programs; use of funds for child care services, including early childhood education and before-and-after school care, and for activities related to quality and availability; supplement not supplant language; priority for very low income children and children with special needs; and use of a sliding fee scale. The managers intend that, to the maximum extent practicable, the lead agency be a state entity in existence on or before the date of enactment of this subchapter with experience in the administration of appropriate child care programs.

All eligible providers shall be licensed, regulated, or registered prior to payment and must comply with applicable state and local licensing and regulatory requirements. The state plan shall describe minimum health and safety requirements established by the state for all providers funded under this subchapter and ensure that such providers demonstrate compliance with these requirements. These health and safety requirements include the prevention and control of infectious diseases, building and physical premises safety, and a minimum health and safety training requirement appropriate to the provider setting. The state shall conduct a one-time review of state licensing and regulatory requirements and policies, unless the state has done so within three years prior to the date of enactment.

The state shall report to the Secretary of Health and Human Services annually on the use of funds under this subchapter; data on caregivers and children in care; activities to encourage public-private partnerships which promote business involvement in meeting child care needs; results of any review of state licensing and regulatory requirements; a rationale for any state actions to reduce the levels of state standards; state actions to improve the quality of care; and a description of standards in the state.

The Secretary will report to Congress annually on use of all Child Care and Development Block Grant Act funds in the states. The report will include a summary and analysis of the above data provided by the States to the Secretary and any recommendations to Congress on further steps necessary to improve access to quality and affordable child care.

II. Subtitle B—Old-Age, Survivors, and Disability Insurance

MAKE PERMANENT THE CONTINUATION OF DISABILITY BENEFITS DURING APPEAL

(Section 5102 of the Conference Agreement)

Present law

A disability insurance (DI) beneficiary who is determined to be no longer disabled may appeal the determination sequentially through three appellate levels within the Social Security Administration (SSA): a reconsideration, usually conducted by the State Disability Determination Service that rendered the initial unfavorable determination; a hearing before an SSA administrative law judge (ALJ); and a review by a member of SSA's Appeals Council.

The beneficiary has the option of having his or her benefits continued through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits are subject to recovery by the agency. (If an appeal is made in good faith, benefit recovery may be waived.) Medicare eligibility is also continued, but medicare benefits are not subject to recovery.

The Disability Reform Amendments of 1984 (P.L. 98-460) provided benefits through the hearing stage on a temporary basis. This provision was subsequently extended, most recently by the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239). That Act extends the provision to appeals of termination decisions made on or before December 31, 1990. Under this latest extension, payments may continue through June 30, 1991 (i.e., through the July 1991 check).

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6050 of Senate amendment)

The Senate amendment would make the temporary provision permanent. Thus, on a permanent basis, beneficiaries would have the option of having their DI and medicare benefits continued through the hearing stage of appeal. As under current law, DI benefits would be subject to recovery where the ALJ upheld the earlier unfavorable decision, while medicare benefits would not be subject to subsequent recovery.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

2. IMPROVEMENT OF THE DEFINITION OF DISABILITY APPLIED TO DISABLED WIDOW(ER)S

(Section 5103 of the Conference Agreement)

Present law

A widow(er) or surviving divorced spouse of a worker may be entitled to widow(er)'s benefits if he or she is age 60, or at any age if he or she is caring for the worker's child who is under age 16. A widow(er) or surviving divorced spouse with no child in care and who is under age 60 but is at least age 50 may be eligible for widow(er)'s benefits as a disabled widow(er).

Generally, disability is defined as an inability to engage in any substantial gainful activity (defined in regulations as earnings of more than $500 per month, effective January 1, 1990) by reason of a physical or mental impairment. The impairment must be medically determinable and expected to last for not less than 12 months or to result in death. A person (other than a disabled widow(er)) may be determined to be disabled only if, due to this impairment, he or she is unable to engage in any kind of substantial gainful work, considering his or her age, education and work experience, which exists in the national economy.

The definition of disability which is applied to widow(er)s, however, is stricter than that which is applied to workers and to Supplemental Security Income (SSI) disability applicants. First, a widow(er) must have a disability severe enough to prevent him or her from engaging in "any gainful activity" (little or no earnings at all) rather than substantial gainful activity (ordinarily, earnings of more than $500 per month). Second, for a disabled widow(er) the three vocational factors used in determining a worker's disability—age, education, and work experience—are not considered. Therefore, the disability must be established based on medical evidence alone.

Once SSA determines that an individual is disabled, there is a five-month waiting period before disability benefits are payable. Once disability benefits begin, there is a 24-month waiting period for entitlement to medicare benefits.

The stricter test of disability for disabled widow(er)s was established in the Social Security Amendments of 1967, which created this new entitlement to benefits. In explaining the reasons for the more restrictive rules, Ways and Means Committee Chairman Wilbur Mills stated on the House floor, "We wrote this provision of the bill very narrowly, because it represents a step into an unexplored area where cost potentials are an important consideration."

House bill

No provision. (H. R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6051 of Senate amendment)

Providing benefits to widow(er)s on the basis of disability has been found not to be a significant cost to the trust fund. Therefore, the provision would repeal the stricter definition of disability that must be met by a disabled widow(er) age 50-59 in order to qualify for widow(er)'s benefits and instead apply the definition of disability used for workers. Widow(er)s who had been receiving SSI disability benefits prior to becoming eligible for disabled widow(er)'s benefits would be able to count the months beginning with the month they first received these benefits toward satisfying the five-month waiting period for social security disability benefits and the 24-month waiting period for medicare benefits. In addition, widow(er)s who receive SSI disability benefits prior to becoming entitled to disabled widow(er)'s benefits would not lose medicaid eligibility as a result of receiving a higher social security benefit, but only for so long as they are not entitled to medicare benefits.

The provision would be effective for benefits payable for months after December, 1990, but only on the basis of applications filed or pending on or after January 1, 1991. The Secretary would not be required to make a new determination of disability for widow(er)s receiving SSI or disabled worker's benefits prior to becoming entitled to disabled widow(er)'s benefits. SSA would be required, to the extent possible, to notify such individuals of their eligibility for disabled widow(er)'s benefits.

Conference agreement

The conference agreement follows the Senate amendment.

3. PAYMENT OF BENEFITS TO A CHILD ADOPTED BY A SURVIVING SPOUSE

(Section 5104 of the Conference Agreement)

Present law

A child adopted by the surviving spouse of a deceased worker must meet two tests in order to be entitled to benefits as a surviving child. First, adoption proceedings must have been initiated prior to the worker's death, or the adoption must have been completed within two years of the worker's death. Second, the child must have been living in the worker's home and cannot have been receiving support from any source other than the worker or the spouse (e.g., a foster care program) in the year prior to the worker's death.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6052 of Senate amendment)

A child adopted by the surviving spouse of a deceased worker would be entitled to survivor's benefits if the child either lived with the worker or received one-half support from the worker in the year prior to death. The requirements relating to the timing of the adoption would not be changed.

The provision would be effective with respect to benefits payable for months after December 1990, but only on the basis of applications filed on or after January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

4. IMPROVEMENTS IN THE REPRESENTATIVE PAYEE SYSTEM

(Section 5105 of the Conference Agreement)

Present law

Under current law, the Secretary of Health and Human Services may appoint a relative or some other person (known as a "representative payee") to receive social security or SSI benefit payments on behalf of a beneficiary whenever it appears to the Secretary that the appointment of a representative payee would be in the best interest of the beneficiary.

The Secretary is required to investigate each individual applying to be a representative payee either prior to, or within 45 days after, the Secretary certifies payment of benefits to that individual. Present law does not specify what shall be included in the investigation.

The Secretary is required to maintain a system of accountability monitoring under which each representative payee is required to report not less than annually regarding the use of the payments. The Secretary is required to review the reports and identify instances where payments are not being properly used.

Any individual convicted of a felony under section 208 or section 1632 of the Social Security Act may not be certified as a representative payee.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is similar to the Senate amendment, with minor and technical differences).

Senate amendment (Section 6053 of Senate amendment)

a. Investigations of representative payee applicants

During the investigation of the representative payee applicant, the Secretary would be required to: 1) require the representative payee applicant to submit documented proof of identity; 2) conduct a face-to-face interview with the representative payee applicant when practicable; 3) verify the social security account number or employer identification number of the representative payee applicant; 4) determine whether the representative payee applicant has been convicted of a social security felony under section 208 or section 1632 of the Social Security Act; and 5) determine whether the representative payee applicant had ever been dismissed as a representative payee for misuse of a beneficiary's funds. An individual who had been convicted of a felony under section 208 or section 1632, or dismissed as a representative payee for misuse of the benefit payment, would not be permitted to be certified as a representative payee on or after January 1, 1991. The Secretary would be permitted to issue regulations under which an exemption from the prohibition against certification in the case of misuse would be granted on a case-by-case basis, if the exemption would be in the best interest of the beneficiary. The conferees intend that the exemption would be granted only in rare instances.

The Secretary would be required to: (1) terminate payments to a representative payee where the Secretary or court of law found that the representative payee had misused the benefit payments; (2) maintain a list of those terminated for misuse on or after January 1, 1991; and (3) provide such a list to local field offices. If the computer program necessary to maintain such a list is not developed by January 1, 1991, the list should be maintained manually. Under current SSA policy, misuse is defined as converting benefit payments for personal use, or otherwise diverting the payments in bad faith with a reckless indifference to the welfare and interests of the beneficiary. The conferees expect the Secretary to apply this definition under this provision.

The Secretary would be required to maintain a centralized, current file readily retrievable by all local SSA offices of: 1) the address and social security account number (or employer identification number) of each representative payee; and 2) the address and social security account number of each beneficiary for whom each representative payee is providing services as representative payee. In addition, local service offices would be required to maintain a list of all public agencies and community-based non-profit social service agencies qualified to serve as a representative payee in the area served by such office.

Current law prohibits any individual convicted of a felony under section 208 or section 1632 of the Social Security Act from serving as representative payee. The provision would require SSA to maintain a list of those convicted and make it readily available to local field offices.

b. Withholding of benefits

In cases where the Secretary is unable to find a representative payee, and the Secretary determines that it would cause the social security beneficiary or SSI recipient substantial harm to make direct payment, the Secretary would be permitted to withhold payment for up to one month. Not later than the expiration of the one month period, the Secretary would be required to begin direct payment to the beneficiary starting with the current month's benefit unless the beneficiary had been declared legally incompetent or was under age 15. Retroactive benefits would be withheld until a representative payee had been appointed or the Secretary determines a suitable representative payee could not be found. Retroactive benefits would be paid over such period as the Secretary determines is in the best interest of the beneficiary.

It is not the intention of the conferees to encourage SSA to withhold benefits from a beneficiary whom the Secretary has determined to need a representative payee. The beneficiary should be paid directly if at all possible, especially if the beneficiary had been using the benefit payment to meet immediate needs such as shelter, food and clothing.

The conferees do not wish SSA to view the one month withholding period as a routinely acceptable length of time in which to find a representative payee. The conferees expect SSA to make every effort to find a qualified representative payee for an individual as quickly as possible.

The conferees recognize that in some cases (such as an unreported change of address) SSA may not be officially notified of the need to change a representative payee. The conferees intend that the 1-month period of suspension shall be measured from the point the Secretary first becomes aware that a representative payee issue exists, and shall consider the objective of this provision met so long as the Secretary takes prompt action to minimize interruption of benefits.

c. Limitations on the appointment of representative payee

An individual who is a creditor providing goods and services to an OASDI or SSI beneficiary for consideration would be precluded from serving as the beneficiary's representative payee with certain exceptions. The exceptions would include: (1) a relative who resides in the same household as the beneficiary; (2) a legal guardian or representative; (3) a facility licensed or certified under State or local law; (4) an administrator, owner, or employee of such facility if the beneficiary resides in the facility and the local social security office has made a good faith effort to locate an alternate representative payee; and (5) an individual whom the Secretary determines to be acceptable based on a written finding reached under established rules that require the individual to show to the satisfaction of the Secretary that he or she poses no risk to the beneficiary, that the individual's financial relationship with the beneficiary poses no substantial conflict of interest, and no other more suitable representative payee exists.

d. Appeal rights and notices

The beneficiary would have the right to: 1) appeal the Secretary's determination of the need for a representative payee; and 2) appeal the designation of a particular person to serve as representative payee. In appealing either the determination or the designation, the beneficiary (or the applicant in cases of initial entitlement) would have a right to review the evidence upon which the determination was based and to submit additional evidence to support the appeal.

The Secretary would be required to send a written notice of the determination of the need for a representative payee to the beneficiary (other than a child under age 18 living with his parents), and each person authorized to act on behalf of an individual who is legally incompetent or is a minor.

The provision would require that the notices be provided in advance of any benefits being paid to a representative payee. In addition, the notice must be clearly written and explain the beneficiary's rights in an easily understandable manner.

e. High-risk representative payees

The Secretary would be required to study and provide recommendations as to the feasibility and desirability of formulating stricter accounting requirements for all high-risk representative payees and providing for more stringent review of all accounting from such representative payees. The Secretary would be required to define as high-risk representative payees: 1) non-relative representative payees who do not live with the beneficiary; 2) those who serve as a representative payee for five or more beneficiaries (under title II, title XVI or a combination thereof) and who are not related to them; 3) creditors of the beneficiary; and 4)

any other group determined by the Secretary to be high-risk.

The purpose of the provision is to identify groups or individuals serving as representative payees who may be likely to misuse or improperly use benefit payments. At a minimum, the conferees expect SSA to examine board and care operators, nursing homes, and individuals who are not related to nor living with the beneficiary. The proposal does not apply to Federal or State governmental institutions.

f. Restitution of benefits

In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misused benefits, the Secretary would be required to make repayment to the beneficiary. In addition, the Secretary would be required to make a good faith effort to obtain restitution of any misused funds.

g. Fee for representative payee services

Community-based non-profit social service agencies, in existence on October 1, 1988, which are bonded or licensed by their states and regularly serve as representative payees for five or more beneficiaries would be allowed to collect a monthly fee for representative payee services. The fee would be collected from the beneficiary's social security or SSI payment not to exceed the lesser of ten percent of the monthly benefit due or $25.

The provision would sunset after three years. The Secretary would be required to keep track of the number and type of groups who participated under this provision and report back to the Committee on Ways and Means and the Committee on Finance at the end of two years.

In general, the provision would prohibit an agency which is a creditor of the beneficiary from serving as a representative payee but would require the Secretary to develop regulations whereby exceptions would be granted on a case by case basis if the exception is in the best interest of the beneficiary.

The term "community-based, non-profit, social service agencies" means non-profit social service agencies which are representative of communities or significant segments of communities and that regularly provide services for those in need. Guardian, Inc., of Calhoun County, Michigan, is an example of a non-profit organization which regularly provides representative payee services. The Salvation Army, Catholic Charities, and Lutheran Social Services are examples of agencies providing social services to the needy.

Qualified organizations which charge or collect, or make arrangements to charge or collect, a fee in excess of the maximum fee would be subject to a fine of not more than $10,000.

Currently, SSA permits an individual serving as a representative payee to be reimbursed from the beneficiary's check for actual out-of-pocket expenses incurred on behalf of the beneficiary. These expenses include items such as stamps, envelopes, cab fare, or long-distance phone calls. It is the intention of the conferees that such individual representative payees would continue to be reimbursed in this manner. The conferees do not intend these representative payees to receive any additional fee for services.

The General Accounting Office would be directed to conduct a study of the advantages and disadvantages of allowing qualified organizations that charge fees to serve as representative payees to individuals who receive social security and SSI benefits, and to report its finding to the Finance and Ways and Means Committees by January 1, 1993.

h. Studies and demonstration projects

(i) The Secretary would be required to enter into demonstration arrangements with not fewer than two states under which the Secretary would make readily available to such states a list of all addresses where OASDI and SSI benefit payments are received by five or more unrelated beneficiaries. The Secretary would be required to make the information available to the state agencies primarily responsible for regulating care facilities or for providing adult or child protective services in the participating states.

The purpose of this demonstration project is to determine whether providing such information to the state protective service agencies would be useful in locating unlicensed board and care homes.

(ii) The Secretary would be required to study the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payee.

The information obtained from this study would assist the Ways and Means and Finance Committees in determining whether there are circumstances under which an individual with a conviction should be permitted to serve as a representative payee.

(iii) The Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Attorney General, would be required to study the feasibility of establishing and maintaining a list of the names and social security account numbers of those who have been convicted of social security or SSI check fraud violations under section 495 of title 18 of the U.S. Code. As part of the study, the Secretary would be required to consider the feasibility of providing such a list to social security field offices in order to assist claims representatives in the investigation of representative payee applicants. The Secretary would be required to report the results of the study, together with any recommendations, to the Committee on Ways and Means and the Committee on Finance no later than July 1, 1992.

Law enforcement agencies do not report violations under section 495 of title 18 of the U.S. Code to either SSA or the Department of Health and Human Services Inspector General. As a result, SSA is often unaware of arrests and convictions of individuals for violations under this section and therefore fails to obtain restitution or to prevent those convicted of such violations from serving as representative payee.

(iv) The Secretary would be required to conduct a study with the Department of Veterans' Affairs of the feasibility of designating the Department of Veterans' Affairs as the lead agency for administering a representative payee program for dual recipients of Old Age Survivors and Disability Insurance or Supplemental Security Income benefits and veterans' benefits. The Secretary would be required to report to Congress on the feasibility of this arrangement within six months after enactment.

In general, the provision would be effective July 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment with minor and technical changes.

5. STREAMLINING OF THE ATTORNEY FEE PAYMENT PROCESS

(Section 5106 of the Conference Agreement)

Present law

Attorneys and other persons who represent claimants before the Social Security Administration (SSA) are permitted to collect fees for their services, subject to approval and limits set by SSA. By regulation, the representative must submit a fee petition detailing the number of hours spent on the case and requesting a specific fee. The Administrative Law Judge (ALJ) who heard the case is required to review the fee petition. If the fee requested is less than $4,000, the ALJ has authority to approve or modify it. If the amount requested exceeds $4,000, it must be reviewed and approved or modified by the regional Chief ALJ. Where the claimant is represented by an attorney and a favorable determination is made, SSA by statute withholds up to 25 percent of the claimant's past-due social security benefits and pays the attorney directly. In cases where the claimant is concurrently entitled to both past-due social security and Supplemental Security Income (SSI) benefits and the SSI benefits are paid first, the amount of past-due social security benefits payable is reduced by the amount of SSI benefits that would not have been paid if the social security benefits had been paid monthly when due rather than retroactively. In many such cases, this leaves little or no past-due social security benefits out of which to pay the attorney the approved fee.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is similar to the Senate amendment with minor and technical differences.)

Senate amendment (Section 6054 of Senate amendment)

The provision would generally replace the fee petition process with a streamlined process in which SSA would approve any fee agreement jointly submitted in writing and signed by the representative and the claimant if the Secretary's determination with respect to a claim for past-due benefits was favorable and if the agreed-upon fee did not exceed a limit of 25 percent of the claimant's past-due benefits up to $4,000. The $4,000 limit could be increased periodically for inflation at the Secretary's discretion. If a fee was requested for a claim which did not meet the conditions for the streamlined approval process, it would be reviewed under the regular fee petition process.

A representative who is an attorney would be paid the approved fee out of the claimant's past-due social security benefits, prior to any reduction for previously-paid SSI benefits. However, if the attorney were awarded a fee in excess of 25 percent of the claimant's past-due social security benefits, the amount payable to the attorney out of the past-due social security benefits could not exceed 25 percent of these benefits.

The representative, the claimant, or the ALJ that heard the case would have the right to protest the approved fee. However, the ALJ could protest the approved fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest, or

on the basis of evidence that the fee is clearly excessive for the services rendered. SSA would review any protested fee and approve, modify, or disallow it. If the ALJ that heard the case filed the protest, a different ALJ would review the fee.

It is not the conferees' intent that this process be used to establish regular review of fees at the ALJ level. The Committee wishes to emphasize that the protest of a fee amount by an ALJ is to be made only in cases where there is prima facie evidence that the fee is clearly excessive in light of the services rendered.

In addition, with respect to reimbursement for travel expenses of individuals who represent claimants, such reimbursement could not exceed the maximum amount that would be payable for travel to the site of the reconsideration interview or proceeding before an ALJ from a point within the geographical area served by the office having jurisdiction over the interview or proceeding.

With the exception of the provisions relating to direct payment of an attorney's fee out of past-due benefits, conforming changes would be made with respect to representation of SSI applicants.

The provision would be effective for determinations made on or after July 1, 1991, and reimbursement for travel costs incurred on or after April 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

6. RES JUDICATA: APPEAL VERSUS REAPPLICATION

(Section 5107 of the Conference Agreement)

Present law

If a claimant for social security disability benefits successfully appeals an adverse determination by the Secretary, benefits can be paid retroactively for up to 12 months prior to the date of the original application.

If, however, instead of appealing, the claimant reapplies and is subsequently found to be disabled as of the date originally alleged, there are circumstances where retroactive benefits would be limited to 12 months prior to the date of the subsequent application (rather than prior to the date of the first application). This occurs when SSA's "reopening rules" do not permit the original application to be reopened. (SSA's administrative policy permits a case to be reopened within 12 months of an initial determination for any reason; and within four years if there is new and material evidence or the original evidence clearly shows on its face that an error was made in the original decision.)

A reapplication, in lieu of an appeal, also could result in an outright denial of social security or Supplemental Security Income (SSI) benefits without consideration of an individual's medical condition. This occurs in the case of social security when: (i) the claimant's insured status runs out before the date of the original denial; and (ii) there is no new and material evidence and no facts or issues that were not considered in making the prior decision. In the case of SSI, this occurs when (ii) applies. In these situations, SSA applies the legal principle of res judicata to deny the subsequent claim. Under this principle—the use of which is prescribed by SSA regulations—SSA will not consider the same claim again and again.

Prior to May 1989, SSA's standard denial notice informed claimants that they could reapply at any time but did not explain the potential adverse consequences of reapplying versus appealing a denial. A May 1989 modification of this notice informs claimants that reapplying may result in a loss of benefits but does not mention the second problem described above, i.e., an outright denial of eligibility without further consideration of the evidence.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is identical to the Senate amendment.)

Senate amendment

When a claimant for social security or SSI benefits can demonstrate that he or she failed to appeal an adverse decision because of reliance on incorrect, incomplete, or misleading information provided by SSA, his or her failure to appeal could not serve as the basis for denial by the Secretary of a second application for any payment under title II or title XVI. This protection would apply to both initial denials and reconsiderations by the Secretary. The Secretary also would be required to include in all notices of denial a clear, simple description of the effect on possible entitlement to benefits of reapplying rather than filing an appeal.

The provision would apply to adverse determinations made on or after January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment, with an effective date of July 1, 1991.

7. SSA TELEPHONE ACCOUNTABILITY DEMONSTRATION PROJECTS

(Section 5108 of the Conference Agreement)

Present law

The Social Security Act is silent regarding telephone service provided by SSA. In practice, SSA currently operates 37 teleservice centers (TSCs) that respond to inquiries from the public. In addition to providing general program information, these TSCs can schedule appointments at local offices and provide individual service, including discussing a person's eligibility and taking specific actions regarding his or her benefits. In October 1988, the TSCs were integrated into a toll-free telephone network that covered 60 percent of the population. In October 1989, toll-free service was extended via the TSCs and four new mega-TSCs to the entire country. At the same time, direct telephone access to SSA's local field offices was terminated, so that the public can no longer call most of these offices directly.

Since October 1989, there have been many complaints from the public about SSA's telephone service. These complaints focus on high 800 number busy rates, on problems with the accuracy and completeness of information provided to callers, and on difficulties caused by the elimination of telephone access to local offices.

House bill

No provision.

Senate amendment (Sections 6055-6056 of Senate amendment)

The Secretary would be required to carry out demonstration projects testing a set of accountability procedures in at least three teleservice centers. These procedures are intended to assure that individuals who conduct business with the agency via telephone concerning title II, title XVI, or title XVIII benefits are not disadvantaged, either as a result of receiving incorrect information or from their inability to document their own actions and requests. Under these procedures, callers who provide adequate identifying information would be given a written confirmation of the date and nature of their telephone communication with the agency. This confirmation would include the name of the SSA employee with whom the caller spoke, a description of any action that the employee said would be taken in response to the call, and any advice that the caller was given. SSA would be required to maintain a copy of this confirmation for a minimum of five years following the termination of the demonstration projects.

Routine telephone communication would be excluded from these requirements. Thus, callers making inquiries that do not relate to potential or current entitlement or eligibility for title II, title XVI or title XVIII benefits—i.e., questions about the location or hours of operation of local offices—would not be subject to the accountability procedures described above.

The Secretary would be required to issue a report to the Committee on Ways and Means and the Committee on Finance on the demonstration projects. This report would:

—(i) Assess the costs and benefits of the accountability procedures;

—(ii) Identify any major difficulties encountered in implementing the demonstration projects; and

—(iii) Assess the feasibility of implementing the accountability procedures nationally.

The telephone demonstration projects would be required to be initiated within six months of the enactment of this Act, and would continue for one to three years. The report would be submitted 90 days after the termination of the projects.

Conference agreement

The conference agreement follows the Senate amendment.

8. NOTICE REQUIREMENTS

(Section 5109 of the Conference Agreement)

Present law

The Secretary must use understandable language in notifying individuals of a denial of disability benefits. The law is silent regarding the language of other notices.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, provides that, in issuing notices regarding title II and title XVI benefits, the Secretary would be required to:

—(i) Use clear and simple language;

—(ii) Include the local office telephone number and address in notices generated by SSA local offices;

—(iii) Include the address of the local office which serves the recipient of the notice and a telephone number through which that office can be reached in notices generated by SSA central offices.

The provision would apply to notices issued on or after January 1, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828, effective with respect to notices issued on or after July 1, 1991.

9. RESTORATION OF TELEPHONE ACCESS TO THE LOCAL OFFICES OF THE SOCIAL SECURITY ADMINISTRATION

(Section 5110 of the Conference Agreement)

Present law

The Social Security Act is silent regarding telephone service provided by the Social Se-

curity Administration (SSA). In practice, SSA currently operates 37 teleservice centers (TSCs) that respond to inquiries from the public. In addition to providing general program information, these TSCs can schedule appointments at local offices and provide individual service, including discussing a person's eligibility and taking specific actions regarding his or her benefits. In October 1988, the TSCs were integrated into a toll-free telephone network that covered 60 percent of the population. In October 1989, toll-free service was extended via the TSCs and four new mega-TSCs to the entire country. At the same time, direct telephone access to SSA's local field offices was terminated, so that the public can no longer call most of these offices directly.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is similar to the Senate amendment, but requires restoration of SSA's local telephone service as soon as possible, but not later than 180 days following the date of enactment.)

Senate amendment (Section 6057 of Senate amendment)

The Senate amendment contains a provision that would require the Secretary to re-establish telephone access to local SSA offices at the level generally available on September 30, 1989 (the date just prior to the cut-off of direct telephone access to most local offices). The Secretary would also be required to re-list these local office numbers in local telephone directories (as well as in the directories used by public telephone operators in providing callers with information). The required telephone listings could include a brief instruction to the public to call SSA's 800 number for general information.

In addition, by January 1, 1993, the Secretary would be required to submit to the Committee on Finance and the Committee on Ways and Means a report which: (i) assesses the impact of the requirements established by this provision on SSA's allocation of resources, workload levels, and service to the public, and (ii) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices. If the Secretary's plan provides for maintaining or enhancing public access to local offices by individuals in need of assistance from a local SSA representative, it is the Conferees' intent to reconsider the need for a statutory requirement governing telephone access.

The provision would be effective April 1, 1991.

Not later than 90 days after enactment, the General Accounting Office would be required to report to the Committee on Finance and the Committee on Ways and Means on the level of public telephone access to the local offices of the Social Security Administration.

Conference agreement

The conference agreement generally follows the Senate amendment, but includes the effective date and GAO reporting deadlines contained in H.R. 5828.

10. IMPROVEMENT IN EARNINGS AND BENEFIT STATEMENTS

(Section 5111 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1989 required the Social Security Administration to establish a program under which covered workers receive periodic statements concerning their earnings and the potential benefits payable on the basis of those earnings. Under that legislation, these statements are to be provided on a biennial basis starting October 1, 1999.

House bill

No provision.

Senate amendment (Section 6058 of Senate amendment)

The requirement that earnings and benefit statements be provided biennially starting in 1999 would be modified to require annual statements beginning at that time. In addition, the Secretary of the Treasury would be authorized to disclose to the Commissioner of Social Security the mailing address of any taxpayer who is entitled to receive an earnings and benefit statement.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

11. PROVIDE A ROLLING FIVE-YEAR TRIAL WORK PERIOD FOR ALL DISABLED BENEFICIARIES (SECTION 5112 OF THE CONFERENCE AGREEMENT)

Present law

Under present law, disability beneficiaries who are still disabled but who want to return to work despite their disabling condition are entitled to a nine-month trial work period. (The months need not be consecutive.) During this period, disabled beneficiaries may test their ability to work without affecting their entitlement to disability benefits. Any work and earnings are disregarded in determining whether the beneficiary's disability has ceased. At the end of this period, the beneficiary's work and earnings are evaluated to determine whether he is able to engage in Substantial Gainful Activity (SGA), which is currently defined by regulation as earnings of more than $500 per month. If so, his benefits are terminated two months later.

Only one trial work period is allowed in any one period of disability. In addition, an individual who is entitled to disabled worker's benefits for which he has qualified without serving a waiting period (i.e., the worker was previously entitled to disabled worker's benefits within five years before the month he again becomes disabled) is not entitled to a trial work period.

House bill

No provision.

Senate Amendment (Section 6059 of Senate Amendment)

All beneficiaries would be given an opportunity to test their capacity to engage in substantial gainful activity over a sustained period of time before their benefits would be stopped by providing that a disabled beneficiary would exhaust his nine-month trial work period only if he performed services in any nine months within a rolling 60-month period (that is, within any period of 60 consecutive months) and repealing the provision which precludes a reentitled disabled worker from being eligible for a trial work period.

The provision would be effective January 1, 1992.

Conference agreement

The conference agreement follows the Senate amendment.

12. CONTINUATION OF BENEFITS ON ACCOUNT OF PARTICIPATION IN A NON-STATE VOCATIONAL REHABILITATION PROGRAM (SECTION 5113 OF THE CONFERENCE AGREEMENT)

Present law

Social Security disability insurance (DI) benefits or Supplemental Security Income (SSI) benefits based on disability that are paid to a beneficiary who has medically recovered may not be terminated or suspended because the disability has ceased if: (1) the individual is participating in an approved State vocational rehabilitation program, and (2) the Commissioner of Social Security determines that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual may be permanently removed from the benefit rolls. The 1988 Disability Advisory Council recommended that the same benefit continuation provisions be extended to beneficiaries who medically recover while participating in other approved vocational rehabilitation programs.

House Bill

No provision.

Senate Amendment (Section 6060 of Senate Amendment)

The provision would extend to those DI or SSI beneficiaries who medically recover while participating in a non-State vocational rehabilitation program approved by the Secretary the same benefit continuation rights as those who medically recover while participating in a State vocational rehabilitation program.

The provision would be effective with respect to benefits payable for months after the eleventh month following the month of enactment and would apply with respect to individuals whose disability has or may have ceased after such eleventh month.

Conference agreement

The conference agreement follows the Senate amendment.

13. LIMITATION ON NEW ENTITLEMENT TO SPECIAL AGE-72 PAYMENTS

(Section 5114 of the Conference Agreement)

Present law

Special age-72 benefits (so-called "Prouty benefits" after Senator Winston Prouty of Vermont) were enacted in 1966 to provide some payment to individuals who, when the social security program began or when coverage was extended to their jobs, were too old to earn enough quarters of coverage to become fully insured for regular retirement benefits.

When the benefits were created in 1966, it was expected that new entitlement under this provision would not be possible for anyone reaching age 72 after 1971. This is because individuals age 72 after 1971 who met the quarters-of-coverage requirements for Prouty benefits would also have enough quarters of coverage to be fully insured and thus eligible for the minimum benefit. Because the amount of the Prouty benefits was less than the amount of the minimum benefit payable at age 62, new entitlement to Prouty benefits would not occur. However, due to subsequent changes in the law, it is now theoretically possible for certain people who will reach age 72 after 1990 and who receive the frozen minimum benefit (due to a change in the law in 1977) or who receive less than the minimum benefit (due to its elimination in 1982) to become newly eligible for Prouty benefits. In 1990, the Prouty benefit amount is $159 per month.

House bill

No provision.

Senate amendment (Section 6061 of Senate amendment)

The provision would preclude the unintended payment of Prouty benefits (due to the interaction of the Prouty benefit provision with subsequent changes in the law affecting the minimum benefit) by providing that Prouty benefits would not be payable to any individual reaching age 72 after 1971. This change would not affect any current Prouty beneficiaries.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

14. ELIMINATION OF ADVANCE TAX TRANSFER

(Section 5115 of the Conference Agreement)

Present law

Because of the threatened insolvency of the social security trust funds, the Social Security Amendments of 1983 changed the rules for crediting the trust funds with social security tax receipts. Prior to 1983, the trust funds were credited with the receipts as they were collected throughout each month. Under the 1983 amendments, the trust funds are credited at the start of each month with the full amount of social security tax receipts which are expected to be collected throughout the month. These receipts are invested in interest bearing Treasury securities; however, an interest adjustment is made later to leave the trust funds with the same interest earnings that they would have had if the taxes had been credited on an "as received basis." The present crediting rules may present Treasury with a situation in which trust fund assets cannot be invested when the debt limit has been reached.

House bill

No provision.

Senate amendment (Section 6062 of Senate amendment)

The advance tax transfer provisions would be repealed, returning to the prior procedure of crediting the trust funds as tax receipts are received. However, the advanced tax transfer mechanism would be retained as a contingency to be exercised only to the extent that the Secretary of the Treasury determines is necessary to assure sufficient funds to meet current benefit obligations. This would give the social security program the same level of protection that it enjoys under present law without continuing the routine use of the advance transfer mechanism.

The provision would be effective after December 1990.

Conference agreement

The conference agreement follows the Senate amendment, effective the first day of the month following the month of enactment.

15. REPEAL OF RETROACTIVE BENEFITS FOR CERTAIN CATEGORIES OF INDIVIDUALS

(Section 5116 of the Conference Agreement)

Present law

Social security retirement and survivor benefits can be paid for up to six months prior to the month of application if the applicant were otherwise eligible for benefits during that period.

In general, retroactive benefits cannot be paid if doing so would cause a reduction in future monthly benefits (i.e., it would effectively mean that an individual would be filing for "early retirement," in which case an actuarial reduction in benefits is required). For example, if a retroactive application for retirement benefits were to cause a retiree's initial entitlement month to fall before the individual reached age 65, no retroactive benefits could be paid for the months prior to age 65. However, there are four exceptions to this rule which permit payment of retroactive benefits even though it causes an actuarial reduction in benefits.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6063 of Senate amendment)

The provision would eliminate eligibility for retroactive benefits for two categories of individuals eligible for actuarially reduced benefits: (1) individuals who have dependents who would be entitled to unreduced benefits during the retroactive period (e.g., a retiree under age 65 who has a spouse age 65 or over); and (2) individuals who have pre-retirement earnings over the amount allowed under the social security retirement test that could be charged off against benefits for months prior to the month of application, thus permitting an early retiree to receive benefits for months prior to actual retirement.

The provision would be effective with respect to applications for benefits filed on or after January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

16. CONSOLIDATION OF OLD COMPUTATION METHODS

(Section 5117 of the Conference Agreement)

Present law

A number of old, rarely-used benefit computation methods remain in the Social Security Act. They apply primarily to claims in which the worker filed for benefits or died before 1967 and are used only if they provide a higher benefit than newer computation methods.

Such computations must be done manually. The Social Security Administration (SSA) estimates it would be costly to develop computer programs for these rarely-used benefit computation methods.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6064 of Senate amendment)

The provision would eliminate all old computation methods which require manual intervention. It would substitute newer computation methods which may be fully processed by computer.

The provision would apply only to new claims for benefits, virtually all of which are for survivor's benefits, and to recomputations for certain retired workers now on the rolls who have recent earnings. However, it is unlikely that there are many individuals who are over 85 and are working at a wage high enough to result in an increase in benefits after a recomputation using a computation method to be eliminated under this provision. No benefits paid to individuals already on the rolls would be reduced.

The provision would be effective 18 months after the month of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

SUSPENSION OF DEPENDENT'S BENEFITS WHEN A DISABLED WORKER IS IN AN EXTENDED PERIOD OF ELIGIBILITY

(Section 5118 of the Conference Agreement)

Present law

A disability insurance beneficiary who successfully completes a nine-month trial work period has an extended period of eligibility during which he or she continues to receive medicare benefits and is eligible to receive disability benefits if earnings fall below $500 a month. The law is silent regarding the payment of benefits to dependents during this extended period. However, current Social Security Administration (SSA) policy provides that dependent's benefits are suspended during this period if the disabled worker's benefits are suspended.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6065 of Senate amendment)

The Senate amendment contains a provision that would codify current SSA policy which links the disabled worker's entitlement to monthly benefits and the dependent's entitlement to benefits for the same month. Thus, a dependent could receive benefits for a month only if the disabled worker received benefits for that month.

The proposal would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

18. PAYMENT OF BENEFITS TO DEEMED SPOUSE AND LEGAL SPOUSE

(Section 5119 of the Conference Agreement)

Present law

A spouse or widow(er) whose marriage is found to be invalid (i.e., the husband or wife failed to obtain a legal divorce from a previous spouse, or there was some defect in the marriage ceremony) is eligible for benefits as a "deemed" spouse or widow(er) if he or she is living with the worker (or was at the time of the worker's death) and there is no legal spouse who is currently entitled or had previously been entitled to benefits on the worker's record. In cases where a deemed spouse is paid benefits and a legal spouse later files for benefits, the deemed spouse's benefits are terminated when the legal spouse becomes entitled. The deemed spouse may again receive benefits if the legal spouse and the worker legally divorce, or if the legal spouse dies.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would pay benefits to both the legal spouse and the deemed spouse (or to both the legal widow and the deemed widow). That is, the existence of a legal spouse would no longer prevent a deemed spouse from receiving benefits on the worker's record or terminate the benefits of a deemed spouse who was already receiving benefits on the worker's record.

A deemed spouse or deemed widow(er) would be entitled to benefits on the work-

er's record on the same basis as if he or she were a legal spouse and would be paid within the family maximum. The legal spouse would also be entitled to benefits and would be paid outside the family maximum once the deemed spouse became entitled to benefits.

In order to qualify as a deemed spouse, the individual would be required to be living with the worker at the time of filing for benefits (or at the time of the worker's death, in the case of deemed widow(er)'s benefits). A deemed spouse who divorced the worker would be eligible for benefits on the same basis as if he or she were a divorced legal spouse.

The provision would be effective with respect to benefits payable for months after December 1990. With respect to deemed spouses or deemed widow(er)s whose benefits have been terminated prior to December 1990, the provision would be effective for applications filed on or after January 1, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

19. VOCATIONAL REHABILITATION DEMONSTRATION PROJECT

(Section 5120 of the Conference Agreement)

Present Law

Since the establishment of the Disability Insurance (DI) cash benefits program in 1956, the Social Security Administration (SSA) has been required to refer disabled beneficiaries and applicants to State vocational rehabilitation agencies so that the maximum number of them may be rehabilitated and return to work. When the services provided by a State agency result in a beneficiary engaging in substantial gainful activity for a least nine months, SSA reimburses the agency for the cost of these services from the DI trust fund (or, in the case of disabled widow(er)s and disabled adult children, from the OASI trust fund).

House Bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, requires SSA to develop and carry out demonstration projects assessing the advantages and disadvantages of permitting disabled beneficiaries to select a qualified rehabilitation agency, public or private, to provide them with services aimed at enabling them to engage in substantial gainful activity and leave the disability rolls. Those eligible to participate in the demonstration projects would include disability insurance beneficiaries, disabled widow(er)s, and disabled adult children. The project would be implemented in at least three sites in three separate states. They would include a sufficient number of beneficiaries and be of sufficient scope to permit an evaluation of:

The extent to which disabled beneficiaries will participate in the provider selection process (including an identification of their reasons for participating or not participating);

The characteristics (including impairments) of beneficiaries by the type of provider selected;

The rehabilitation needs of beneficiaries by the type of provider selected;

The extent to which non-State vocational rehabilitation firms accept referrals of disabled beneficiaries on the basis of current law reimbursement provisions and of the most effective mechanisms for reimbursing such providers within the framework of current law;

The extent to which providers participating in the demonstration projects contract out services and the types of services that are contracted out;

Whether beneficiaries who select their own vocational rehabilitation provider are more likely to work and leave the disability rolls than those who do not;

The cost effectiveness of permitting beneficiaries to select their vocational rehabilitation provider and of different types of providers; and

The feasibility of enacting the arrangement being tested on a national basis and the additional procedural safeguards, if any, needed to assure its effectiveness if made part of permanent law.

In selecting beneficiaries to participate in the project, the Secretary must choose those for whom there is a reasonable likelihood that the rehabilitation services provided will result in their performance of substantial gainful activity for a continuous period of nine months prior to the completion of the project.

Project participants would be permitted to select a qualified provider to furnish them with rehabilitation services. After seeking recommendations from disabled individuals and organizations representing them, the Secretary would designate a number of qualified providers in the geographic areas of each of the three demonstration sites. In addition, the Secretary would have authority to approve rehabilitation services provided outside these areas on a case-by-case basis.

Providers that participate in the project would be reimbursed in accordance with current law (section 222(d) of the Social Security Act), except that the Secretary would be permitted to contract with qualified providers on a fee-for-service basis to: (1) conduct vocational evaluations aimed at identifying those participants who have a reasonable potential for engaging in substantial gainful activity and being removed from the disability rolls if provided with vocational rehabilitation services; and (2) develop jointly with those participants an individualized written rehabilitation program.

This program would include, but not be limited to: (1) a statement of the individual's rehabilitation goal; (2) a statement of the specific rehabilitation services to be provided and the rehabilitation provider from which those services will be obtained; (3) the projected date for the initiation of such services and their anticipated duration; and (4) objective criteria and an evaluation procedure and schedule for determining whether the goals are being achieved.

The demonstration project would run for three years. By April 1, 1992, the Secretary would be required to submit a report on the progress of the projects to the Committee on Ways and Means and the Committee on Finance. A final report to these Committees would be due six months after completion of the projects, or by April 1, 1994.

Authority for this demonstration project is provided as an amendment to section 505 of the Social Security Disability Amendments of 1980. To allow for completion of these projects, the Secretary's general authority under section 505 would be extended by approximately three months, from June 10, 1993, to October 1, 1993.

The provision would be effective upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

20. USE OF SOCIAL SECURITY NUMBER BY CERTAIN LEGALIZED ALIENS

(Section 5121 of the Conference Agreement)

Present law

The use of a false social security number or social security card or the misreporting of social security covered earnings, with intent to deceive, is a felony under section 208 of the Social Security Act, punishable by a maximum penalty of up to $250,000 or up to 5 years imprisonment. The Immigration Reform and Control Act of 1986 (IRCA) extended amnesty and the opportunity to obtain legal status to certain illegal aliens who had been resident and working in the United States for a substantial period of time. However, persons legalized under IRCA are still subject to prosecution for use of a false social security number or card under section 208 of the Social Security Act. As a result, alien workers who are granted temporary or permanent legal resident status under IRCA, and who apply for a correct social security number or attempt to correct their earnings records with the Social Security Administration, may be subject to prosecution as a result of their previous use of a false number or card.

House bill

No provision. H.R. 2858 includes a provision that would amend the Social Security Act to provide that aliens who, under IRCA or section 902 of the Foreign Relations Authorization Act for Fiscal Years 1988 and 1989, applied for and were granted legal status would not be prosecuted under certain of the criminal provisions in section 208, by virtue of having used a false social security number or card or having misreported earnings with intent to deceive, during the period prior to, or within 60 days after enactment of this provision. The exemption would not apply to those who sold social security cards, possessed social security cards with intent to sell, possessed counterfeit social security cards with intent to sell or counterfeited social security cards with intent to sell.

The purpose of IRCA is to give most illegal aliens who had been long established in the United States (generally present since January 1, 1982) and who are contributing members of the society an opportunity to become legal residents and lead normal lives. The use of false social security numbers was a common practice among illegal aliens attempting to work in the United States.

When this population was given amnesty from prosecution for violation of the immigration laws, the fact that they could still be prosecuted for previously using a false social security number or card, even after obtaining temporary or permanent resident status, was not addressed. As a result, most of the legalized population is still technically subject to prosecution and loss of legal status as soon as they attempt to correct their earnings records. Many aliens who have applied for, or have been granted, amnesty have not yet corrected their social security earnings record for fear of prosecution under section 208.

The Conferees intend that this exemption apply only to those individuals who use a false social security number to engage in otherwise lawful conduct. For example, an alien who used a false social security number in order to obtain employment

which results in eligibility for social security benefits or the receipt of wage credits would be considered exempt from prosecution. However, an alien who used a false social security number for otherwise illegal activity such as bank fraud or drug trafficking would not be exempt from prosecution under this provision.

The provision would make the Social Security Act consistent with the amnesty provisions of IRCA. The Conferees believe that individuals who are provided exemption from prosecution under this proposal should not be considered to have exhibited moral turpitude with respect to the exempted acts for purposes of determinations made by the Immigration and Naturalization Service.

The exemption would apply to all individuals who received amnesty regardless of when they were granted status.

The provision would be effective for fraudulent use which occurred prior to, or within 60 days after, enactment by any person who is ultimately granted legal status under IRCA or section 902 of the Foreign Relations Authorization Act for fiscal years 1988 and 1989.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828 with minor changes.

21. REDUCTION IN WAGES NEEDED FOR A YEAR OF COVERAGE TOWARD THE SPECIAL MINIMUM BENEFIT

(Section 5122 of the Conference agreement)

Present law

A "special minimum" social security benefit is available to workers who have many years of work at modest wages. The amount of this benefit is determined by an alternative benefit computation that calculates the benefit based on the number of years of significant earnings, rather than on average lifetime earnings. It applies in cases where this computation results in a higher benefit than that which would be derived under the regular social security benefit computation rules.

The special minimum benefit is computed by multiplying the number of years of special minimum coverage by a base amount. However, only those years in excess of 10 and up to 30 can be multiplied by the base amount (e.g., if an individual has 30 years of coverage toward the special minimum, only 20 of these years can be multiplied by the base amount to determine the benefit amount). In 1990, the base amount is $21.90. A worker with 30 years of coverage under the special minimum would receive a benefit of $437.

For 1951–1978, the individual earns a year of coverage for each year in which he or she has wages or self-employment income of at least 25 percent of the social security contribution and benefit base for that year and, for years after 1978, at least 25 percent of the old-law contribution and benefit base for that year.

House bill

No provision. H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would reduce the amount of wages or self-employment income required to earn a year of coverage from 25 percent of the old-law contribution and benefit base (projected by the Congressional Budget Office to be $10,125 in 1991) to 15 percent of the old-law contribution and benefit base (projected to be $6,075 in 1991).

Because the minimum wage was not increased from 1981 through 1989, while the social security contribution and benefit base has been indexed to wage increases, the level of wages required to earn a year of coverage under the special minimum benefit provision has exceeded the minimum wage in every year since 1983. The provision would make it possible once again for a minimum-wage earner to earn years of coverage toward the special minimum. (In 1991, a full-time minimum wage worker would earn $8,606.)

The provision would be effective for years of coverage earned after 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

22. CHARGING OF EARNINGS OF CORPORATE DIRECTORS

(Section 5123 of the Conference agreement)

Present law

The Omnibus Budget Reconciliation Act of 1987 required that, for purposes of both social security taxation and the retirement test, corporate directors' earnings be treated as received in the year that the services to which they are attributable were performed. Prior to OBRA, because corporate directors' earnings were taxed when received, directors were able to avoid benefit reductions from the retirement test by deferring receipt of earnings until reaching age 70.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, would repeal the provision that treats directors' earnings as taxable in the year that the services to which they are attributable were performed. Thus, directors' earnings would be treated as received in the year that the relevant services are performed only for purposes of the social security retirement test.

The provision would be effective with respect to services performed in taxable years beginning after December 31, 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828 with technical drafting changes.

23. COLLECTION OF EMPLOYEE SOCIAL SECURITY TAX ON GROUP-TERM LIFE INSURANCE

(Section 5124 of the Conference agreement)

Present law

The Omnibus Budget Reconciliation Act of 1987 required the cost of employer-provided group-term life insurance to be included in wages for FICA tax purposes if it is includible for income tax purposes. Under current law, it is includible for income tax purposes to the extent that coverage exceeds $50,000.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, provides that in cases where an employer continues to provide taxable group-term life insurance to an individual who has left his employment, the former employee would be required to pay the employee portion of the FICA tax directly. To enable him to do this, the employer would be required to list separately on the former employee's W-2 each year the amount of the payment for group-term life insurance and the amount of the employee FICA tax imposed on it. Instructions on form 1040 would then direct the employee to add this amount to his total tax liability. This procedure follows an existing procedure by which employees with income from tips pay the employee share of the FICA tax directly when their wages are not sufficient to enable their employer to withhold it.

A conforming change would be made in the Railroad Retirement Tax Act.

The proposal would apply to group-term life insurance coverage provided after December 31, 1990.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

24. CROSS-REFERENCING OF RAILROAD RETIREMENT TIER 1 TAX RATE TO THE FEDERAL INSURANCE CONTRIBUTIONS ACT

(Section 5125 of the Conference Agreement)

Present law

The railroad retirement Tier 1 tax rate is equivalent to the combined OASDI and HI tax rates of the Federal Insurance Contributions Act (FICA). The Tier 1 rate is described numerically in the Railroad Retirement Tax Act.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment

The Senate amendment would amend the Railroad Retirement Tax Act to provide that the Tier 1 tax rate would be determined by cross-reference to the FICA tax rate.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

25. TWO-YEAR EXTENSION OF GENERAL FUND TRANSFER TO RAILROAD RETIREMENT TIER 2 FUND

(Section 5126 of the Conference Agreement)

Present law

The proceeds from the income taxation of railroad retirement Tier 2 benefits are transferred from the general fund of the Treasury in the Railroad Retirement Account. This transfer applies only to proceeds from the taxation of benefits which have been received prior to October 1, 1990. Proceeds from the taxation of benefits received after this date will remain in the general fund.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision similar to the Senate amendment but providing for a two-year rather than a one-year extension of the transfer provision.)

Senate amendment

The Senate amendment would provide for extending the transfer of proceeds from the income taxation of Tier 2 benefits for an additional year, that is, with respect to benefits received prior to October 1, 1991. The

continuation of this transfer is estimated to result in an additional deposit into the Railroad Retirement Account of $190 million.

The provision would be effective with respect to benefits received after September 30, 1990 and before October 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment with a modification under which the transfer would be extended for two years rather than one. This two-year extension is estimated to result in an additional deposit into the Railroad Retirement Account of $385 million.

The provision would be effective with respect to benefits received after September 30, 1990 and before October 1, 1992.

26. WAIVER OF THE TWO-YEAR WAITING PERIOD FOR CERTAIN DIVORCED SPOUSES

(Section 5127 of the Conference Agreement)

Present law

A divorced spouse is entitled to benefits on the record of a worker to whom he or she was previously married so long as three conditions are met: 1) both the worker and the divorced spouse are eligible for social security retirement benefits (i.e., are age 62 or older); 2) the marriage lasted 10 years; and 3) the worker is receiving benefits.

If the worker is eligible for benefits but is not receiving them (because the worker has not filed for benefits or because benefits have been suspended due to the retirement test), the divorced spouse may nevertheless be paid benefits on the worker's record, but only when the divorce has been final for two years. The purpose of this two-year waiting period is to prevent couples from obtaining a divorce solely to avoid suspension of spousal benefits under the retirement test. The waiting period is imposed on any divorced spouse whose former spouse does not receive benefits, regardless of whether the divorced spouse was receiving benefits prior to the divorce. Some people argue that the waiting period imposes a hardship on a spouse who had been receiving benefits prior to the divorce, but who loses these benefits because the former spouse returned to work after the divorce.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would waive the two-year waiting period for independent entitlement to divorced spouse's benefits if the worker was entitled to benefits prior to the divorce. In this way, a spouse whose divorce took place after the couple had begun to receive retirement benefits, and whose former spouse (the worker) returned to work after the divorce thus causing the suspension of benefits, would not lose benefits on which he or she had come to depend.

The provision would be effective for benefits payable for months after December, 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

27. PREEFFECTUATION REVIEW OF FAVORABLE DECISIONS BY THE SOCIAL SECURITY ADMINISTRATION

(Section 5128 of the Conference Agreement)

Present law

The Social Security Disability Amendments of 1980 require the Secretary of Health and Human Services (HHS) to review 65 percent of favorable title II decisions made by State Disability Determination Services (DDSs) each year prior to their effectuation. The review applies to favorable decisions on initial claims, on reconsiderations, and on continuing disability reviews. At Social Security Administration's (SSA's) current volume of applications and appeals, the agency is required to conduct about 450,000 preeffectuation reviews annually.

The Committee on Ways and Means approved the 65 percent requirement in 1980 as a means of promoting uniformity and accuracy in favorable disability decisions. At that time, the Committee noted that: ". . . in some instances reviewing this percentage of cases may not be cost effective—a lower or higher percentage may be prudent. If the Secretary finds this to be the case, we would expect him to report his findings to [the] Committee in an expeditious manner." (H. Rept. 96-100, p. 10)

Since 1981, SSA improved its capacity to identify the general types of approvals and continuances that are most likely to be incorrect. These improvements were documented in a March 1990 report by the General Accounting Office, which suggests that SSA can maintain current levels of accuracy, and possibly even improve upon them, by targeting preeffectuation reviews on error-prone cases.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, would reduce the percentage of favorable state agency decisions that the Secretary must review from 65 percent across-the-board to 50 percent of allowances. The 50 percent requirement would apply to both initial allowances and allowances upon reconsideration. The Secretary would also be required to review a sufficient number of continuances to assure a high level of accuracy in such decisions. To the extent feasible, the reviews would focus on allowances and continuances that are likely to be incorrect.

SSA would be required to submit annual written reports to the Committee on Ways and Means and the Committee on Finance which (i) state the number of preeffectuation reviews conducted the previous year and, (ii) based on these reviews, assess the accuracy of DDS decisions.

The provision would apply to reviews of state agency determinations made after fiscal year 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

28. INCREASE IN THE RETIREMENT TEST FOR WORKERS AGE 65-69

Present law

In 1990, individuals age 65-69 may earn up to $9,360 in annual wages or self-employment income and still be treated as retired; that is, they will have no reduction in their social security benefit as a result of earnings at or below this exempt amount. The exempt amount is automatically adjusted each year to reflect the change in average wages in the economy. The retirement test for those age 65-69 will rise to $9,720 in 1991 and is projected by the Congressional Budget Office to be $10,560 in 1992, $11,160 in 1993, $11,760 in 1994, and $12,480 in 1995. The retirement test for those under age 65 is currently $6,840 and will rise to $7,080 in 1991.

For earnings in excess of these amounts, beneficiaries age 65-69 lose $1 in benefits for every $3 in earnings. Beneficiaries under age 65 lose $1 in benefits for every $2 in earnings in excess of the limit. Persons age 70 years and older are not subject to the retirement test.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would increase the retirement test applied to those age 65-69 by $1,800 in 1993 and $2,640 in 1994 above the level which would occur under the automatic procedure. The resulting exempt amount is projected to be $12,960 in 1993 and $14,400 in 1994. These ad hoc increases would be included permanently in the exempt amount so that automatic increases in future years would be calculated based on an inclusion of these ad hoc increases.

The provision would be effective for taxable years ending after 1990.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, i.e., no provision.

29. ELIMINATION OF BENEFIT RECOMPUTATIONS FOR EARNINGS AFTER AGE 69

Present law

The amount of a worker's monthly social security retirement benefit is established at age 62. It is based on an average of the worker's lifetime earnings, using the 35 years with the highest earnings to compute the average. (For workers reaching age 62 in 1989 or earlier, fewer years are used in computing average lifetime earnings.) Earnings from years prior to the year the worker reached age 61 are indexed to reflect wage growth. A worker who does not have 35 years of earnings has a zero averaged into his or her average lifetime earnings for each year in which he or she had no wages or self-employment income.

If a worker continues to have earnings after age 61, and these earnings are higher than indexed earnings in one of the 35 years used to compute average lifetime earnings, the higher-earning year is substituted for a lower-earning year or a year with no earnings. This raises the worker's average lifetime earnings and the monthly benefit is recomputed to produce a higher benefit amount.

House bill

No provision. (H.R. 5828 includes a provision that would eliminate recomputations of benefits for beneficiaries with earnings in the year they reach age 70 or later years, except for beneficiaries with one or more "zero years" averaged into their average lifetime earnings.

The provision would be effective for recomputations of benefits on the basis of wages or self-employment income for years after 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, i.e., no provision.

30. RECOVERY OF OVERPAYMENTS FROM FORMER SOCIAL SECURITY BENEFICIARIES THROUGH TAX REFUND OFFSET

(Section 5129 of the Conference Agreement)

Present law

A Federal agency that is owed a past-due, legally enforceable debt, other than a title II overpayment, can collect it by having the Internal Revenue Service (IRS) withhold or reduce the debtor's income tax refund. To obtain repayment via a tax refund offset, the agency to which the debt is owed must:

(i) Notify the individual of its intention to recover the debt through the tax system;

(ii) Provide the individual with at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(iii) Consider any evidence presented by the individual and make a final determination that the debt is in fact owed and legally enforceable.

After the agency notifies the IRS of its final determination, the IRS reduces the amount of the individual's income tax refund, if any; pays this amount to the agency; and notifies the individual of the amount by which his tax refund has been reduced to repay his debt.

House bill

Social security overpayments to former beneficiaries would be recovered by withholding the amount due from Federal income tax refunds. This recovery method would be used only when benefit adjustments or direct payments by the overpaid individual have not been successful.

Specifically, the prohibition against recovering title II overpayments via a tax refund offset would be eliminated for former beneficiaries. (Current beneficiaries would continue to be exempt from the tax refund offset program.)

After being informed by the Social Security Administration (SSA) of its intention to recover an overpayment via a tax refund offset, former beneficiaries who are eligible to apply for a waiver of the overpayment would be given the opportunity to do so. In addition, the IRS would be required to establish a procedure by which a spouse could prevent his or her share of a joint tax refund from being withheld in an overpayment recovery action. The IRS would also be required to notify individuals who file joint returns of this procedure when it informs them that it is withholding their tax refund.

The proposal would take effect January 1, 1991, and would remain in effect as long as the existing Government-wide offset remains in effect (currently, until January 10, 1994).

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision.

31. TECHNICAL AMENDMENTS

(Section 5130 of the Conference Agreement)

The provision would correct several technical errors contained in the Social Security Act.

CHILD CARE STATEMENT OF MANAGERS

The Conference report includes the Child Care and Development Block Grant Act of 1990. The purpose of this block grant program is to increase the availability, affordability, and quality of child care. The provision provides financial assistance to low-income, working families to help them find and afford quality child care services for their children. It also contains provisions to enhance the quality and increase the supply of child care available to all parents, including those who receive no financial assistance under the block grant program.

More specifically, the purpose of this block grant program is to give parents a variety of options in addressing family child care needs. Additionally, this provision is intended to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by the lack of available programs or financial resources to place a child in an unsafe or unhealthy child care arrangements; to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services; to provide assistance to families whose financial resources are not sufficient to enable such families to pay the full cost of necessary child care; to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services; and to provide assistance to states and Indian tribes to improve the quality of, and coordination among, child care programs and early childhood development programs.

The Conference agreement authorizes $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal years 1994 and 1995. Block grant funds are provided to states in accordance with a formula based on numbers of young children and of school lunch recipients.

Use of block grant funds for child care services

Each state shall use 75 percent of block grant funds for direct assistance to parents for child care services and to increase the supply and to improve the quality of child care. Block grant funds may only be used by the states for child care services and for activities which directly improve the availability and quality of care for families assisted under the Act. Quality activities eligible for funds under section 658E(c)(3)(B)(ii) should be the same type of quality activities specified in the quality reservation in section 658G. It is the conferees' intent that a preponderance of the block grant funds be spent specifically on child care services and a minimum amount on other authorized activities.

The managers believe that parents should have the greatest choice possible in selecting child care for their children. Thus, parents assisted under section 658E(c)(3)(B) would have complete discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, family providers, centers, schools, and employers. All such providers may be paid through grants or contracts or through certificates provided to the parent. A parent assisted under section 658(c)(E)(c)(B) must be given the option of receiving a certificate.

Use of 25 percent reserve of funds

Each state shall reserve 25 percent of block grant funds for grants and contracts to providers of early childhood development or before- and after-school services, or both, and for activities to improve the quality of child care. Of the 25 percent reserve, not less than seventy-five percent of this reserve shall be allocated to early childhood development and before- and after-school care activities; not less than twenty percent for quality activities, with the remaining five percent to be used for either purpose. A state may assign responsibility for the administration of early childhood development and latchkey programs to an agency other than the lead agency, such as an agency that has experience in the administration of existing education or preschool programs. Eligible quality activities include establishing or expanding resource and referral programs; making grants or loans to providers to assist them in meeting state and local child care standards; improving the monitoring of compliance with, and enforcement of, state standards and licensing and regulatory requirements; providing training and technical assistance; and improving salaries and other compensation paid to child care staff.

General provisions

Families eligible for assistance for child care are those who earn less than 75 percent of the state median income and who have children under age 13. The amount of assistance would be based on a sliding fee scale established by the state. Nothing in this subchapter is intended to prohibit the provision of services at no cost to families whose income is at or below the poverty level. Providers would receive payment at rates which would ensure equal access to services comparable to those provided to children whose care is not publicly subsidized.

Parental choice and involvement are further enhanced through provisions for unlimited parental access to children during the day and within the care setting, for parental complaint procedures and access to records of substantiated parental complaints, and for consumer education.

The managers intend that the determination whether any financial assistance provided under this subchapter, including a loan, grant or child care certificate, constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), all as amended, and the regulations issued thereunder, shall be made in accordance with those provisions.

To receive funds, a state shall submit a plan that includes: designation of a lead agency; local consultation regarding development of the plan; coordination with existing programs; use of funds for child care services, including early childhood education and before-and-after school care, and for activities related to quality and availability; supplement not supplant language; priority for very low income childen and children with special needs; and use of a sliding fee scale. The managers intend that, to the maximum extent practicable, the lead agency be a state entity in existence on or before the date of enactment of this subchapter with experience in the administration of appropriate child care programs.

All eligible providers shall be licensed, regulated, or registered prior to payment and must comply with applicable state and local licensing and regulatory requirements. The state plan shall describe minimum health and safety requirements established by the state for all providers funded under this subchapter and ensure that such providers demonstrate compliance with these requirements. These health and safety requirements include the prevention and control of infectious diseases, building and physical

premises safety, and a minimum health and safety training requirements appropriate to the provider setting. The state shall conduct a one-time review of state licensing and regulatory requirements and policies, unless the state has done so within three years prior to the date of enactment.

The state shall report to the Secretary of Health and Human Services annually on the use of funds under this subchapter; data on caregivers and children in care; activities to encourage public-private partnerships which promote business involvement in meeting child care needs; results of any review of state licensing and regulatory requirements; a rationale for any station actions to reduce the levels of state standards; state actions to improve the quality of care; and a description of standards in the state.

The Secretary will report to Congress annually on use of all Child Care and Development Block Grant Act funds in the states. The report will include a summary and analysis of the above data provided by the States to the Secretary and any recommendations to Congress on further steps necessary to improve access to quality and affordable child care.

TITLE VI—ENERGY AND ENVIRONMENTAL PROGRAMS

SUBTITLE —NRC USER FEES

SEC. . NRC USER FEES AND ANNUAL CHARGES

Present law

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) requires the Nuclear Regulatory Commission (NRC) to collect annual charges from its licensees. The amount of the charges:

(1) when added to other amounts collected by the NRC (i.e., fees under the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701), may not exceed 33 percent of the NRC's costs; and

(2) must reasonably be related to the regulatory service provided by the NRC and fairly reflect the cost to the NRC of providing the service.

Section 5601 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) amended the 1985 law by increasing the amount of the NRC's costs recovered by fees and annual charges from 33 to 45 percent for two years, fiscal years 1988 and 1989.

Section 3201 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) amended the 1985 law by maintaining the amount of the NRC's costs recovered by fees and annual charges at 45 percent for a third year, fiscal year 1990. Without new legislation, the amount of the fees and annual charges will revert to 33 percent in fiscal year 1991.

House bill

Sections 4502 and 5101 of the House bill would repeal section 7601 of the 1985 law and replace it with new, permanent authority. Both House provisions would require the NRC to collect annual charges in an amount to recover 100 percent of its budget authority (including budget authority for both Salaries and Expenses of the NRC and the Office of the Inspector General), less amounts appropriated to the NRC from the Nuclear Waste Fund established by 42 U.S.C. 10222(c) and fees collected under the Independent Offices Appropriation Act. Although all NRC licensees would be subject to fees under the Independent Offices Appropriation Act, only persons licensed to operate nuclear power plants would be assessed annual charges. The amount of the annual charges would be determined by the NRC by rule and would have to bear a reasonable relationship to the NRC's cost of providing regulatory services to the licensee.

Senate bill

Section 2 of Title V of the Senate bill, like the House bill, would repeal section 7601 of the 1985 law and would require the NRC to recover 100 percent of its costs. It differs from the House provisions, however, in three respects. First, the Senate provision would authorize the NRC to impose annual charges for only five years, fiscal years 1991-1995. Second, it would permit (but would not require) the NRC to assess annual charges against any person who holds an NRC license, not just utilities operating nuclear power plants. Third, it would recover 100 percent of the Salaries and Expenses of the NRC and but not of the expenses of the NRC's Office of the Inspector General.

Conference agreement

In general.—The conference agreement follows the Senate bill with three changes. First, the Senate bill would have codified the annual charge authority in the Atomic Energy Act of 1954; the conference agreement does not. Second, the Senate bill would have recovered 100 percent of the NRC's Salaries and Expenses only; the conference agreement recovers 100 percent of both the NRC's Salaries and Expenses and the NRC's Office of Inspector General. Third, the Senate bill would have repealed section 7601 of the 1985 law; the conference agreement amends it to provide a "floor" on fees and annual charges equal to 33 percent of the NRC's budget authority. This floor would govern assessment of fees and annual charges after fiscal year 1995 unless Congress enacts new authority.

Duration of authority.—The conference agreement provides authority to collect fees and annual charges equal to 100 percent of the NRC's budget for only five years, fiscal years 1991 through 1995. The NRC's permanent authority to collect fees and annual charges equal to 33 percent of the NRC's budget authority will continue in force after fiscal year 1995.

Licensees subject to annual charges.—The conference agreement preserves the discretion the NRC has under present law to assess annual charges against all of its licensees. The conferees reaffirm the statement of the managers on the present authority. *See* 132 Cong. Rec. H879 (daily ed. March 6, 1986); 132 Cong. Rec. S2725 (daily ed. March 4, 1986).

The conferees note that in the NRC's report on the existing annual charge system requested by section 7601(a) of the 1985 law, the Commission found that "the large number of small licensees, the relatively small fees which would be collected, and the costs of administering such a collection program," make imposition of an annual charge on all of the NRC's approximately 8,000 non-power-reactor licensees impracticable. The conferees also understand that the direct cost of regulating non-power-reactor licensees amounts to approximately three percent of the NRC's costs and that a substantial percentage of the cost of providing regulatory services to non-power-reactor licensees are in fact recovered through fees assessed under the Independent Offices Appropriation Act. Finally, the conferees note that the U.S. Court of Appeals for the District of Columbia Circuit has concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees." *Florida Power & Light Co. v. NRC*, 846, F.2d 765, 770 (D.C. Cir. 1988), *cert. denied* 109 S.Ct. 1952 (1989).

The conference agreement preserves the NRC's discretion to impose annual charges on one or more classes of non-power-reactor licensees if the Commission believes it can fairly, equitably, and practicably do so.

As described below, increasing the amount of recovery to 100 percent of the NRC's budget authority will result in the imposition of fees upon certain licensees for costs that cannot be attributed to those licensees or classes of licensees. The Commission should assess the charge for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible.

Calculation of the annual charge.—The conferees recognize that, in directing the NRC to collect annual charges, "Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties" and that Congress must provide the agency "intelligible guidelines" for making these assessments. *See Skinner v. Mid-America Pipeline Co.*, 109 S.Ct. 1726, 1734 (1989) (upholding the law directing the Secretary of Transportation to collect user fees totalling 105 percent of the cost of administering the pipeline safety program). The conferees believe the conference agreement meets these requirements.

First, the conference agreement makes it clear that appropriations received by the NRC from the Nuclear Waste Fund established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) for licensing the Department of Energy's nuclear waste management program are not to be recovered by the annual charges. The Nuclear Waste Fund consists of money paid by NRC-licensed nuclear power reactors to the Department of Energy to site, construct, and develop high-level nuclear waste management facilities. Since nuclear utilities are paying for the cost of the NRC's high-level waste licensing activities through their payments to the Nuclear Waste Fund, recovery of Nuclear Waste Fund appropriations through the annual charge would constitute double payment by the utilities.

Second, the conference agreement provides that the amount recovered through annual charges is to be reduced further by the amount the NRC receives through fees assessed on licensees under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), through Part 170 of the NRC's rules (10 C.F.R. Part 170). These fees are intended to recover the costs to the NRC of providing individually identifiable services to applicants and holders of NRC licensees, though not the cost of generic activities that benefit licensees generally. The Committee expects the NRC to continue to assess fees under the Independent Offices Appropriation Act to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives.

Finally, the conference agreement provides that the balance of the NRC's annual budget authority after subtraction of amounts received from the Nuclear Waste Fund and the Independent Offices Appropriation Act fees is to be recovered from the NRC's licensees through the annual charges. The conference agreement does not require that the total amount intended to

be recovered through annual charges be divided among the power-reactor licensees equally, as was the case under the NRC's original rule implementing Public Law 99-272. Instead, the conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charge. Thus, the conference agreement provides that the NRC shall establish, by rule, a schedule of charges "fairly and equitably" allocating the total amount of charges to be recovered among its licensees, and that "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services" to the licensees.

The conferees understand that a substantial portion of the NRC's annual expenses, while not attributable to individual licensees and thus not recoverable under the Independent Offices Appropriation Act, are attributable to classes of licensees. The conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class.

In addition, however, the conferees recognize that there are expenses that cannot be attributed either to an individual licensee or a class of licensees. Examples of these expenses may include costs associated with certain generic research and rulemaking proceedings and the operating expenses of various NRC offices, including those of the Commissioners, the General Counsel, the Inspector General, and Governmental and Public Affairs. The conferees intend the NRC to fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Treatment of fines, penalties, and receipts of certain programs.—Under its existing rules, the NRC does not offset amounts paid by licensees as fines and penalties (including interest penalties) against the amount of annual charges to be collected. Conversely, the NRC does not seek to recover through the annual charge amounts received from participants in the cooperative nuclear safety research program, the material and information access authorization programs (including criminal history checks under section 149 of the Atomic Energy Act of 1954, 42 U.S.C. 2169), or amounts received for services rendered to foreign governments and international organizations. The conferees note that the NRC's current treatment of these fines, penalties, and receipts has been upheld in court. *Florida Power & Light Co. v. NRC*, 846 F.2d 765, 771 (D.C. Cir. 1988), *Cert denied* 109 S.Ct. 1952 (1989).

The conference agreement does not change these policies. Fines and penalties are assessed because of a failure of a licensee to comply with NRC standards and requirements. The purpose of the fine or penalty would be defeated if their assessment would result in a lowering of the offender's obligation to pay annual charges. Receipts from cooperative, international, and access authorization programs are collected from the entities benefiting from the particular program and are retained and used by the NRC for such program. Inclusion of the amount of these funds in the total amount recovered through the annual charge would result in double payment.

Subsection-by-subsection summary

Subsection (a)(1) requires the NRC to collect fees and annual charges.

Subsection (a)(2) provides that the first assessment made under this authority shall be made no later than September 30, 1991.

Subsection (a)(3) provides that the last assessment of annual charges made under this authority shall be made no later than September 30, 1995.

Subsection (b) provides that the NRC shall continue to collect fees under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). These fees are intended to recover the Commission's cost of providing any service or thing of value to a person regulated by the NRC.

Subsection (c) requires the NRC to collect, in addition to the Independent Offices Appropriation Act fees under subsection (b), an annual charge.

Subsection (c)(1) authorizes the NRC to impose an annual charge on any licensee of the NRC.

Subsection (c)(2) provides that the aggregate amount of annual charges shall, when added to the Independent Offices Appropriation Act fees collected under subsection (b), equal approximately 100 percent of the NRC's total budget authority for each fiscal year, less any amount appropriated to the NRC from the Nuclear Waste Fund.

Subsection (c)(3) directs the NRC to establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of charges among licensees and, to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees. The schedule may assess different annual charges for different licensees or classes of licensees based on the allocation of the NRC's resources among licensees or classes of licensees, so that the licensees who require the greatest expenditures of the NRC's resources will pay the greatest annual charge.

Subsection (d) defines the Nuclear Waste Fund established by section 302(c) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(c).

Subsection (e) amends section 7601 of the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272) to preserve existing authority for the NRC to collect user fees approximating 33 percent of the agency's budget. Following fiscal year 1995, annual charges will be assessed under section 7601 of the 1985 act instead of subsection (c) of the conference agreement.

STATEMENT OF MANAGERS

TONGASS TIMBER REFORM

House bill

Subtitle B of Title V of the House bill contains the Tongass Timber Reform Act of 1990 as passed the House.

Senate bill

Subtitle A of Title IV of the Senate bill contains provisions of the Tongass Timber Reform Act of 1990 as passed the Senate.

Conference agreement

Both the House and the Senate passed measures reforming the management of the Tongass National Forest. While the two bills differed in their approach to the various issues related to Tongass Timber Reform, each achieved savings through repeal of section 705(a) of the Alaska National Interest Lands Conservation Act (ANILCA) which provided for a direct appropriation for certain timber management activities on the forest. In lieu of reconciling the two approaches on Budget Reconciliation, both the House and Senate passed a separate agreement in the form of the conference report on H.R. 987. Accordingly, the respective House and Senate Committees have been credited with appropriate savings on Budget Reconciliation.

STATEMENT OF MANAGERS

SUBTITLE B—ABANDONED MINE RECLAMATION FUND

The House reconciliation bill contained the text of H.R. 2095 as passed by the House. The Senate bill contained no comparable provisions. The conferees accepted the text of the House bill with several substantive modifications described below.

1. Reauthorization of reclamation fees

The House bill authorized the collection of reclamation fees through September 30, 2007.

The conference agreement authorizes the collection of reclamation fees through September 30, 1995.

2. Modification of reclamation fees

The House bill provided for the modification of fees in certain instances after 1992 where the Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program certifies to the Secretary, and the Secretary concurs, that all priorities stated in section 403(a) for eligible land and waters pursuant to section 404 have been achieved.

The conference agreement eliminates the provision relating to the modification of fees.

3. Emergency program provisions

The House bill contained modifications to current authority relating to the emergency program.

The conference agreement deletes the provisions.

4. Objectives of the fund

The House bill contained provisions amending section 403 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), limiting the use of funds to priority 1, 2 and 3 reclamation projects and eliminating the lower priority projects.

The conference agreement deletes these provisions and maintains the current priority listing.

5. Environmental standards

The House bill contained provisions requiring the Secretary to establish by regulation standards for abandoned coal mine reclamation projects.

The conference agreement deletes the provision.

6. Funding for activities and construction related to the coal or minerals industry

The conference agreement added a provision stating that where the Governor, or head of a governing body of an Indian tribe determines, with the concurrence of the Secretary, that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in the State, then the State or Indian tribe may use annual grants made available under section 402(g)(1) to carry out such activities or construction. This provision is applicable only where states or Indian tribes have made certification under section 411(a) with the concurrence of the Secretary.

7. Abandoned minerals and mineral materials mine reclamation fund

The House bill contained a section creating a new abandoned minerals and mineral materials mine reclamation fund.

The conference agreement deletes the section.

OIL SHALE CLAIMS REFORM

House bill

Subtitle C of Title V of the House bill provides certain requirements for oil shale claims located pursuant to the mining laws of the United States.

Senate bill

The Senate bill has no comparable provision.

Conference agreement

The House recedes to the Senate position without prejudice to the House position.

NUCLEAR WASTE FUND

Present law

Section 302(a) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(a), requires civilian nuclear waste generators to pay fees to the Secretary of Energy for the disposal of their nuclear waste. These fees are deposited in a separate account in the Treasury known as the Nuclear Waste Fund, which can only be used to pay for nuclear waste disposal activities authorized by the Act.

Section 302(a)(2) and (3) set the amount of these fees at one mill (one-tenth of one cent) per kilowatt-hour of electricity associated with the waste. Section 302(a)(4) requires the Secretary of Energy to review annually the amount of fees being collected and to propose an increase or decrease in the amount of the fees if he finds too little or too much is being collected for full cost recovery.

House bill

The House bill would have imposed a surcharge on the fees to increase the amount collected in an amount that:

(1) "reflects the fair market value" of the Secretary's waste disposal activities;

(2) collects at least $5 million annually in fiscal years 1991 through 1995; and

(3) collects not more than:

(A) $6 million in fiscal year 1992;

(B) $7 million in fiscal year 1993;

(C) $8 million in fiscal year 1994; and

(D) $9 million in fiscal year 1995.

Senate bill

The Senate bill contains no comparable provision.

Conference agreement

The conference agreement does not include the House provision.

URANIUM ENRICHMENT ACT

Senate bill

Subtitle B of Title IV of the Senate bill includes a uranium enrichment provision which is a modification of S. 83, the Uranium Enrichment Act of 1989. The Act has been modified to provide for the following: (1) preclusion of payments in lieu of taxes by the Uranium Enrichment Corporation until fiscal year 1996; (2) restrictions on the expenditures of the Corporation and requirements to pay dividends during fiscal years 1991-1995; and (3) establishment of a fee of two-tenths of a mill per kilowatt-hour on net generation of electricity by each civilian nuclear power reactor during fiscal years 1991-1995.

House bill

The House bill contains no comparable provision.

Conference agreement

The conference agreement does not include the Senate provision on uranium enrichment.

The conferees recognize that the Federal uranium enrichment enterprise faces increasing competitive challenges. The conferees agree that priority should be given in the next session of Congress to legislation that allows the enterprise to operate, as a commercial enterprise, on a profitable and efficient basis in order to maximize the long term economic value of the enterprise to the United States Government. The legislation should also recognize the importance of maintaining a reliable and economical domestic supply of enrichment, of ensuring that the Nation's common defense and security objectives are achieved, and of conducting the enterprise's activities in a manner consistent with the health and safety of the public including the fair and equitable sharing of the costs of timely decontamination and decommissioning of the enrichment facilities.

EPA FEES

House bill

Sections 4521, 4522, 7103, and 9301 of the House bill include reference to, or provisions for, the assessment and collection of fees by the Environmental Protection Agency through the programs it administers.

Senate bill

Section 5001 of the Senate bill requires the Environmental Protection Agency to assess and collect $22,000,000 for the fiscal year 1991, and $33,000,000 in each fiscal years 1992, 1993, 1994, and 1995 for services and activities under the statutes it administers. A provision requires that the funds be deposited in a special United States Treasury fund, and authorizes appropriation to carry out the Agency's activities for which the fee or charge is made.

Conference substitute

The substitute provision requires the Environmental Protection Agency to assess and collect $28,000,000 in fiscal year 1991, and $38,000,000 in each fiscal years 1992, 1993, 1994, and 1995 above the amount of fees collected under current law. Of these sums, not more than $10,000,000, in any of the fiscal years 1991 to 1995, is to be collected for services and activities under the Federal Water Pollution Control Act. Further, no fees and charges may be derived from EPA programs within the jurisdiction of the House Committee on Energy and Commerce except as specifically authorized by the Clean Air Act Amendments of 1990, and fees collected pursuant to Section 26(a) and 305(e)(2) of the Toxic Substances Control Act in effect on the date of enactment.

The funds are to be deposited in a special account for environmental services in the U.S. Treasury, and to be available subject to appropriation for activities for which the fees are collected. A provision clarifies that the authorities of the Administrator under the Independent Offices Appropriations Act are not increased or diminished by the provisions in this section.

SUBTITLE D—COASTAL ZONE ACT REAUTHORIZATION AMENDMENTS OF 1990

Subtitle B of Title VII of the House bill contained the text of H.R. 4450, as passed by the House of Representatives on September 26, 1990. The Senate bill contained no similar provision.

The managers on the part of the Senate recede to the House with an amendment.

The Conference agreement, subtitle D of Title VI, contains the Coastal Zone Act Reauthorization Amendments of 1990.

SUMMARY OF THE PROVISIONS

The "Coastal Zone Act Reauthorization Amendments of 1990" makes the following major changes to the Coastal Zone Management Act of 1972:

(1) amends the "federal consistency" provisions to overturn the Supreme Court's 1984 decision in *Secretary of the Interior* v. *California*. This would clarify that all federal agency activities, whether in or outside of the coastal zone, are subject to the consistency requirements of section 307(c)(1) of the CZMA if they affect natural resources, land uses, or water uses in the coastal zone;

(2) establishes a "Coastal Zone Management Fund" consisting of CEIP loan repayments from which the Secretary shall pay for the federal administrative costs of the program and fund special projects, emergency state assistance, and other discretionary coastal zone management activities;

(3) reinstates program development grants by authorizing the Secretary to provide assistance to a state for development of a CZM program;

(4) encourages each coastal state, under a Coastal Zone Enhancement Grants Program, to continually improve its CZM program in one or more of eight indentified areas: coastal wetlands management and protection; natural hazards management (including potential sea and Great Lake level rise); public access improvements; reduction of marine debris; assessment of cumulative and secondary impacts of coastal growth and development; special area management planning; ocean resource planning; and siting of coastal energy and government facilities;

(5) authorizes the Secetary to make annual "Walter B. Jones" achievement awards to recognize individuals, local governments, and graduate students for outstanding accomplishments in the field of coastal zone management; and

(6) authorizes appropriations for five years at increased levels.

In addition, the subtitle establishes a Coastal Nonpoint Pollution Control Program. This program will require each coastal state to develop a program, to be implemented through the Coastal Zone Management Act and Section 319 of the Clean Water Act, to protect coastal waters from nonpoint pollution from adjacent coastal land uses.

SECTION-BY-SECTION ANALYSIS

Section 6201. Short title

Costal Zone Act Reauthorization Amendments of 1990.

Section 6202. Findings and purpose of this subtitle

This section enumerates the findings which underlie the subtitle, emphasizing the ever increasing pressures on coastal zone resources and the need to improve state management programs to meet these challenges.

Section 6203. Findings and policy of Coastal Zone Management Act of 1972

This section amends the findings and policies of the Coastal Zone Management Act (CZMA) of 1972. Changes in the findings emphasize the importance of proper man-

agement of the territorial sea and ocean waters, of controlling land use activities which result in nonpoint pollution of coastal waters, and of anticipating sea level rise.

Section 6204. Definitions

This section amends the definitions of the terms "coastal zone," and "water use," and adds a definition for the term "enforceable policy."

The term "coastal zone" is amended to expressly limit the seaward coastal zone boundary to the extent of state ownership and title (in most cases, three nautical miles). This amendment is necessary to clarify uncertainties raised by Presidential Proclamation 5928 (December 27, 1988).

The new term "enforceable policy" is defined in accordance with NOAA's existing regulations. This definition is intended to endorse existing NOAA and state practice.

Section 6205. Management program development grants

Much of the existing law relating to "program development" is transferred to section 306 or repealed. Discretionary program development assistance is authorized for fiscal years 1991, 1992, and 1993. A state may receive up to $200,000 in federal assistance for two successive years.

Section 6206. Administrative grants

This section amends section 306 of the CZMA substantially. Since section 306 governs approval and administration of state management programs, concern has been expressed that enactment of these provisions may create the implication that existing programs must be reapproved pursuant to the amended section 306. The conferees unequivocally reject this view. These amendments neither require nor authorize the reapproval of state management programs, and existing state programs shall remain eligible for grants after enactment. To the extent that new requirements have been added, the conference report contains deadlines, sanctions, or incentives for compliance which are the exclusive mechanisms through which the Secretary is authorized to act.

Section 6207. Resource management improvement grants

This section is amended to specifically authorize grants under this section to restore and enhance shellfish production from publicly owned lands.

Section 6208. Coordination and cooperation

This section amends the "federal consistency" provisions of the CZMA. The conferees' principal objective in amending this section is to overturn the decision of the Supreme Court in *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984) and to make clear that Outer Continental Shelf oil and gas lease sales are subject to the requirements of section 307(c)(1).

The amended provision establishes a generally applicable rule of law that *any* federal agency activity (regardless of its location) is subject to the CZMA requirement for consistency if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

Whether a specific federal agency activity will be subject to the consistency requirement is a determination of fact based on an assessment of whether the activity affects natural resources, land uses, or water uses in the coastal zone of a state with an approved management program. This must be decided on a case-by-case basis by the federal agency conducting the activity.

The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

The conference report does not include the statutory language from section 7207 (federal Agency Consistency) of the House bill. This language provided:

"The consistency requirements of section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) shall apply to federal agency activities or federally permitted activities under title I of the Marine Protection, Research, and Sanctuaries Act of 1972, if the federal activity or permitted activity affects land uses, water uses, or natural resources of the coastal zone."

This amendment provided specific clarification that federal agency activities and federal permits under the Ocean Dumping Act, including ocean dumping site designations, and operation and maintenance dredging, are subject to the requirements of section 307. The conferees agreed that this statutory provision is unnecessary because the amendments to section 307(c)(1) leave no doubt that all federal agency activities and all federal permits are subject to the CZMA's consistency requirements. The conferees support and endorse the intent of the House provision, but agreed that a statutory "listing" of activities should be avoided to prevent any implication that unlisted activities are not covered.

Finally, the conferees are aware of the argument that the application of federal consistency to activities under the Ocean Dumping Act amounts to state regulations of ocean dumping for purposes of section 106(d) of that Act. The conferees reject this argument.

A new section 307(c)(2) is added to the CZMA which authorizes the President to exempt a specific federal agency activity if the President determines that the activity is in the paramount interest of the United States. The provision is based on similar exemption provisions in other environmental statutes, including section 313(a) of the Clean Water Act, section 118(b) of the Clean Air Act, section 4(b) of the Noise Control Act, section 6001 of the Solid Waste Disposal Act, the Medical Waste Tracking Act of 1988, the Safe Drinking Water Act, and section 403 of the Powerplant and Industrial Fuel Use Act of 1978. The exemption authorized in subsection (c)(2) is not applicable to a class of federal agency activities but only to a specific activity.

This exemption provision reinforces the conferees' position that no federal agency activities are categorically excluded from the consistency provisions of section 307. Section 307(c)(2) is the only exemption authorized or intended for section 307(c)(1) activities.

Section 6208(c)(1)(C) clarifies the requirements that each federal agency carrying out an activity which affects the coastal zone must provide a consistency determination to the appropriate state agency. This determination must be provided at the earliest possible time but not later than 90 days prior to final approval of the activity. This new statutory provision codifies an existing CZMA regulation (15 CFR 930.34(b)).

Section 6208(b) makes technical and conforming changes to the other existing federal consistency provisions of sections 307(c)(3) (A) and (B), and (d). These provisions govern the consistency of private activities for which federal licenses or permits are required, and for state and local applications for federal financial assistance. The conference report does not alter the statutory requirements as currently enforced under sections 307(c)(3) (A) and (B), and (d) of the CZMA. These requirements are outlined in the NOAA regulations (15 CFR 930.50-930.56) and the conferees endorse this status quo.

The conferees want to make it clear that the changes made by section 6208(b) are technical modifications. None of the amendments made by this section are intended to change the existing implementation of these consistency provisions. For example, none of the changes made to section 307(c)(3) (A) and (B), and (d) change existing law to allow a state to expand the scope of its consistency review authority. Specifically, these changes do not affect or modify existing law or enlarge the scope of consistency review authority under section (c)(3) (A) and (B), and (d) with respect to the proposed project to divert water from Lake Gaston to the City of Virginia Beach, Virginia, for municipal water supply purposes. These technical changes are necessary to, and are made solely for the purpose of, conforming these existing provisions with the changes to section 307(c)(1) of the CZMA which are needed to overturn the *Watt* v. *California* Supreme Court decision.

Finally, section 6208(b) provides that federal agencies and applicants are required to be consistent with the "enforceable policies" of a state CZM program. They shall give adequate consideration to program provisions which are in the nature of recommendations. Again, this provision codifies the existing regulatory practice [15 CFR 930.39(c) and 930.58(a)(4)]. Federal agencies and applicants must be consistent with those policies which are enforceable under state law.

It is not the intent of the conferees that this subsection be construed to overturn, in whole or in part, the judicial decision in *American Petroleum Institute* v. *Knecht*. Federal agencies and applicants are assured that they will not be subjected to policies which are not enforceable under state law. However, this provision is not intended as a guarantee that the provisions of a coastal program will be so specific that users of the coastal zone must be able to rely on its provisions as predictive devices for determining the fate of projects without interaction with the relevant state agencies. Individual projects must be reviewed on a case-specific basis and states may identify mitigation and other management measures which are not specifically detailed in the management program but which, if implemented, would allow the state to find projects consistent with the enforceable policies of the program.

Finally, subsection 3208(c) adds a new subsection 307(i) to the CZMA. This new subsection authorizes federal fees to recover costs associated with the administration of consistency appeals under subsections 307(c)(3) (A) and (B), and (d). Fees charged

must represent the reasonable costs of administering these provisions. Fees will be assessed against "applicants" for required licenses and permits.

Section 6209. Coastal Zone Management fund

The existing section 308 (Coastal Energy Impact Program) is repealed. The new section establishes a Coastal Zone Management (CZM) Fund which will be used to fund administration of this Act.

Section 308(a)(1) establishes that obligations to repay outstanding loans made under the Coastal Energy Impact Program (CEIP) are not affected by this legislation. Approximately $87.5 million in CEIP loans are still outstanding.

Section 308(a)(2) requires that CEIP loan repayments be retained by the Secretary as offsetting collections and deposited into the Coastal Zone Management Fund established pursuant to subsection (b). In recent years, annual loan repayments have ranged from a low of $4 million to a high of $15 million, with an annual average of some $6-$8 million.

Section 308(b) directs the Secretary to establish and maintain a CZM fund, which shall consist of loan repayments collected and retained under section 308(a). Therefore, the conferees anticipate an annual expenditure of between $6 million and $8 million through the CZM Fund, subject to appropriation.

Section 308(b)(2) authorizes the Secretary to expend amounts in the Fund for administration of the coastal zone management program and for specified discretionary activities: regional and interstate projects (formerly section 309); demonstration projects; emergency assistance awards pursuant to section 314; program development grants pursuant to section 305; and to assist states in applying the public trust doctrine in the implementation of their CZM programs. The first use of amounts in the Fund is program administration and the conferees expect a vigorous federal program to assist the states in coastal zone management. The Secretary is then authorized to expend remaining amounts for the other specified activities.

Section 6210. Coastal Zone enhancement grants

Subsection (a) establishes a program, beginning in fiscal year 1991, to encourage continual improvements in state management programs in eight identified areas. The program is to include specific, measurable goals and milestones for improving the state management programs.

Subsection (a)(7) specifies that planning for the use of ocean resources is an area in which states may apply for assistance. In particular, the conferees intend that assistance be provided to Pacific Island States, recognizing that the Pacific Islands, given their long-standing and encompassing relationships with the ocean, may have a stronger interest in ocean resources beyond their coastal zone. This provision is intended to recognize this special relationship.

Grants under this section will be made from a set aside of at least 10 percent, but no more than 20 percent of funds appropriated under sections 306 and 306A. The conferees intend that the Secretary set aside the full 20 percent, unless because of lower than anticipated federal appropriations, such a withholding would significantly impair administration of the state management programs as a whole. Funds to administer this section are to be set aside *en bloc*, prior to allocation of state awards pursuant to section 306(c).

Section 6211. Technical assistance

This section adds a new section 310 to the CZM to require the Secretary to provide technical assistance and management-oriented research to support development and implementation of State coastal management programs.

Section 6212. Coastal Zone Management review

Subsection (a) mandates public participation in the evaluation of state programs and requires written response to all written comments recived.

Subsection (b) provides new authority for the Secretary to impose "interim sanctions" on a state program for not more than three years if the state is failing to adhere to its program. The conferees understand that disapproval of a management program under section 312(d) is an extraordinary step and has not been a useful tool for NOAA in correcting mild or moderate problems in state program administration.

Section 6213. Walter B. Jones Excellence in Coastal Management Awards

This section requires the Secretary to use amounts in the CZM Fund (section 308) to identify and appropriately acknowledge accomplishment in the field of coastal zone management by individuals (other than federal employees), local governments, and graduate students.

Section 6214. National Estuarine Research Reserve System

This section increases the financial assistance for land or water acquisition for any one estuarine research reserve from $4 million to $5 million, or 50 percent of the total costs, whichever amount is less. The section also increases the federal share of the costs from 50 percent to 70 percent for managing a reserve and constructing facilities, and for conducting educational or interpretive activities. However, activities which benefit the entire Reserve System may be federally funded up to 100 percent.

Section 6215. Authorization of appropriations

Appropriations are authorized for fiscal years 1991-1995 for sections 305, 306 and 306A, 310 and 315.

Section 6216. Conforming amendments

This section makes several technical and conforming changes.

Section 6217. Protecting coastal waters

Subsection (a) requires each state with a federally approved CZM program to develop a "Coastal Nonpoint Pollution Control Protection Program" to implement coastal land use management measures for controlling nonpoint source pollution. A maximum of four years is provided for each coastal state to comply with this requirement.

The provision reinforces existing requirements for effective land use control, and affirms that state programs under the CZMA and under section 319 of the Clean Water Act should be more effectively organized and coordinated in developing and implementing coastal land use management measures that will control nonpoint pollution of coastal waters. The states are provided maximum flexibility in establishing the state and local institutional arrangements to accomplish this formidable task. However the conference report requires that state programs under this section be developed and implemented inconformity with national guidelines regarding management measures.

LEGISLATIVE HISTORY

These provisions are derived from H.R. 4450 and S. 2782.

H.R. 4450 was introduced on April 3, 1990, by Congressman Dennis Hertel. It was reported from the House Committee on Merchant Marine and Fisheries on June 11, 1990, (H.Rpt. 101-535) and was passed by the House of Representatives (391-32) with a substitute amendment on September 26, 1990. The Congressional Record from September 26 contains a detailed statement of explanation (pages H8068-79).

S. 2782 was introduced on June 26, 1990, by Senator John Kerry. It was reported from the Senate Committee on Commerce, Science, and Transportation on June 27, 1990 (S.Rpt. 101-445).

POLLUTION PREVENTION

House bill

No comparable provision.

Senate bill

No comparable provision.

Conference provision

This section contains a pollution prevention initiative. This section is designed as a first step to maximize voluntary reduction of hazardous wastes and other pollutants created during the manufacturing process by improving the quality of information available to industry, states, and local and Federal officials.

TITLE VII—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

STATEMENT OF MANAGERS

Title VII—Civil Service and Postal Service Programs

"LUMP-SUM" RETIREMENT BENEFIT

House bill

Section 8001 of the House bill would *suspend* the lump-sum benefit for five years. Individuals retiring on or before October 31, 1990, or after September 30, 1995, would not be affected. Section 8001 also continues the 50/50 lump-sum benefit for employees 65 years or older who retire with 30 or more years of service. it also ensures that those entitled to the so-called 50/50 lump-sum payments will receive those payments in two calendar years (for tax purposes), and protects those individuals who have received prior refunds of retirement contributions, either as a result of retirement or separation, and who, but for the suspension of the lump-sum benefit, would not be required to redeposit those refunds in order to receive service credit for retirement purposes.

Senate amendment

Section 8001 of the Senate amendment would eliminate the lump-sum retirement benefit. The lump-sum benefit would be eliminated on November 1, 1990.

Conference agreement

The conference agreement adopts the House provision with the following changes: (1) the provision continuing the 50/50 lump-sum arrangement for employees retiring at age 65 or older with at least 30 years of service is deleted; (2) a provision continuing the exception in existing law for employees involuntarily separated is added (such employees may continue to elect a 50/50 lump-sum benefit); (3) a provision continuing the exception in existing law for critically-ill employees is added (such employees may elect a 100 percent lump-sum benefit); and (4) a provision is added to provide an additional year to elect the lump-sum benefit for employees mobilized in connection with

the Desert Shield operation. Finally, individuals retiring on or before November 30, 1990, would not be affected by the suspension of the lump sum benefit.

REFORMS IN THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

House bill

Section 8002 of the House bill requires that FEHBP carriers implement cost-containment measures; mandates cash management controls in administering payments from the Employees Health Benefits Fund; exempts the FEHBP from state premium taxes; and requires improved coordination between the Office of Personnel Management and the Department of Health and Human Services in order to ensure that Medicare's payments and limits can be correctly applied when the FEHBP carriers make a secondary payment.

Senate amendment

Section 8003 of the Senate amendment is similar to section 8002 of the House bill, except that it contains no provision relating to cash management controls.

Section 8005 of the Senate amendment applies Medicare part A hospital payment limits to payments to providers of services to FEHBP annuitant enrollees who are age 65 and older but not eligible for Medicare.

Conference agreement

The conference agreement includes the House and Senate provisions: requiring that FEHBP carriers implement cost-containment measures; exempting the FEHBP from state premium taxes; and requiring improved coordination between the Office of Personnel Management and the Department of Health and Human Services in order to ensure that Medicare's payments and limits can be correctly applied when the FEHBP carriers make a secondary payment. It includes the House provision which mandates cash management controls in administering payments from the Employees Health Benefits Fund and the Senate provision which applies Medicare hospital payment limits to payments to providers of services to FEHBP annuitant enrollees who are age 65 and older but not eligible for Medicare. The provision concerning Medicare hospital payment limits is effective January 1, 1992.

DISTRICT OF COLUMBIA FEHBP LIABILITY

Senate amendment

Section 8002 of the Senate amendment requires the Government of the District of Columbia to pay to the Employees Health Benefits Fund, annually, an amount equal to the cost of the employer's share of FEHBP premiums for retirees (and survivors) of the D.C. Government.

House bill

The House bill contains no similar provision.

Conference agreement

The Senate recedes to the House.

POSTAL SERVICE FEHBP LIABILITY

House bill

Section 8102 of the House bill requires the Postal Service to pay the employer FEHBP *premiums* for those postal employees (and survivors) who retired after June 30, 1971 (postal reorganization), but prorates the Postal liability to reflect only that portion of total service performed as an employee of the Postal Service.

Senate amendment

Section 8002 of the Senate amendment is the same as the House provision except that the liability of the Postal Service is not prorated.

Conference agreement

POSTAL SERVICE CSRS LIABILITY

House bill

Section 8103 of the House bill requires the Postal Service to fund Civil Service Retirement Systems (CSRS) cost-of-living adjustments for postal retirees (and survivors) who retire after postal reorganization. The Postal Service's liability is prorated to reflect only that portion of total service performed as an employee of the Postal Service.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The Senate recedes to the House.

USPS PAYMENTS FOR PRE-1987 LIABILITIES

House bill

Section 8103 of the House bill requires the Postal Service to make payments to the Civil Service Retirement and Disability Fund and the Employees Health Benefits Fund. The required payments are calculated to satisfy the liabilities which the Service would have incurred had sections 8348(m) and 8996(g)(2) of title 5, United States Code, as amended by section 8101 and 8102, been in continuous effect from July 1, 1971, (postal reorganization) through September 30, 1986. Section 8103 requires the Postal Service to discharge those liabilities by payments spread over fiscal years 1991 through 1995. The payments include interest accruing from October 1, 1990.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The conference agreement adopts the House provisions, but reduces the amounts required to be paid for past liabilities to reflect credits for payments required to be made by the Postal Service to the Civil Service Retirement and Disability Fund ($350 million) and the Employees Health Benefits Fund ($430 million) by the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203). The conferees note the total costs imposed on the Postal Service by the conference agreement are generally equivalent to those imposed by the Senate amendment.

COMPUTER MATCHING

Senate amendment

The Senate amendment includes the text of H.R. 5450, the Computer Matching and Privacy Protection Act Amendments of 1990, which passed the House on October 1, 1990. The Senate amendment makes two changes to the Computer Matching and Privacy Protection Act of 1988. First, the bill changes the period of time required by law to notify recipients of Federal benefit programs about the results of a computer match prior to taking adverse action against individuals. Second, the Senate amendment creates an alternative to independent verification requirements set up by the 1988 law in limited circumstances.

House bill

The House bill contains no comparable provision.

Conference agreement

The House recedes to the Senate.

PORTABILITY OF BENEFITS FOR NONAPPROPRIATED FUND EMPLOYEES

Senate amendment

The Senate amendment includes the text of H.R. 3139, the Portability of Benefits for Department of Defense Nonappropriated Fund Employees Act of 1989, which passed the House on October 1, 1990. The Department of Defense (DoD) has nearly 200,000 nonappropriated fund (NAF) employees who work in the military morale, welfare, and recreation work force. The FY 1989 Defense Authorization Act required DoD to reorganize the nonappropriated fund work force, which would cause up to 6,000 NAF employees to be converted to the civil service and up to 2,000 civil service employees to be converted to nonappropriated fund status.

The Senate amendment will allow the affected employees to make these changes without a loss in pay or benefits, such as retirement, leave, and health and life insurance. The Senate amendment allows service as a NAF employee to be creditable as Federal service for purposes of determining the order or retention during a reduction-in-force; computing the period of service used for determining eligibility for a periodic step increase; and determining the number of years of service applicable for accrual of annual leave.

The Senate amendment allows all annual leave, sick leave, and home leave of a NAF employee who moves to a civil service position to be transferred without limit. Likewise, all annual leave, sick leave, and home leave of a civil service employee who moves to a NAF position will be transferred without limit.

House bill

The House bill contains no comparable provision.

Conference agreement

The House recedes to the Senate.

TERMINATION OF CONTRIBUTION REQUIREMENTS

House bill

Section 8104 of the House bill provides that payments required from the Postal Service for unfunded liabilities created by certain Civil Service Retirement Systems COLAs shall cease to be required at the close of the fiscal year ending on September 30, 1995. Section 8104 further provides payments required from the Postal Service for health insurance premiums for retired postal employees (and survivors), shall not be required for any period beginning after September 30, 1995.

Senate amendment

The Senate amendment contains no comparable provision.

Conference agreement

The House recedes to the Senate.

TREATMENT OF CONTRIBUTION REQUIREMENTS FOR POSTAL RATEMAKING

House bill

Section 8105 of the House bill sets forth the rules which, for purposes of postal ratemaking, will ensure that the costs imposed on the Postal Service pursuant to the Budget Summit Agreement will be passed through to the postal ratepayers. Under section 8105, postal rates established pursuant to docket number R90-1 (*Postal Rate and Fee Changes, 1990*), or any other general rate case which occurs during the five-year period covered by the Budget Summit Agreement shall be increased, over the levels of rates which would otherwise be ap-

plicable, by an amount sufficient to enable the Postal Service to recover the costs imposed pursuant to the Budget Summit Agreement.

Senate amendment

The Senate amendment contains no comparable provision.

Conference agreement

The House recedes to the Senate.

The conferees note that the new payments required of the Postal Service by the conference agreement will be considered in postal rate making, just as payments imposed by past budget reconciliation acts have been considered during previous rate cases. The new payments required by this round of budget negotiations will be recouped over time.

The conferees understand that these new payments will, consistent with the requirements of the Postal Reorganization Act of 1970, legal precedent, and Postal Rate Commission regulation and practice, be considered by the Postal Rate Commission during the pendency of the rate case (Docket No. R90-1), as will other factors which have come to the attention of the Commission during its consideration of that rate case.

TITLE VIII—VETERANS' PROGRAMS

SUBTITLE A—COMPENSATION, DIC, AND PENSION

Compensation Benefits for Certain Incompetent Veterans

Current law

Section 3203(b) of title 38, United States Code, provides for the suspension of compensation and pension payments to an incompetent veteran with no spouse or child if the veteran is being furnished inpatient or domiciliary care at government expense and the value of the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside there) exceeds $1,500. Payments resume when the estate is reduced to $500. If the veteran regains competence for more than six months, the withheld amount must be paid to a veteran in a lump-sum. There are no restrictions on the amount of funds derived from disability compensation which may accumulate in the estates of noninstitutionalized incompetent veterans with no dependents.

House bill

Section 11001 would provide that (a) in the case of an incompetent veteran who has neither spouse, child, nor dependent parent and whose estate (excluding the value of the veteran's home) exceeds $25,000, compensation payments would be suspended until the estate is reduced to $10,000, and (b) if the veteran regains competence for more than six months, the withheld money would be paid in a lump-sum payment. This section would apply with respect to payments of compensation for months after October 1990 and would be effective through September 30, 1992.

Senate amendment

Section 11001 is substantively identical except that (a) the term "veteran's estate" would be specifically defined to include the market value (exclusive of the value of any mortgages) of all real and personal property owned by a veteran other than a principal residence and other personal effects suitable for such veteran's reasonable mode of living; (b) the lump-sum payment of withheld compensation would be made once the veteran has regained competence for 90 days; (c) the provision has no expiration date; and (d) the costs of administering this provision would be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

Conference agreement

Section 8001 follows the House bill, except that lump-sum payments of withheld benefits are to be made when the veteran has regained competence for more than 90 days and the costs of administration are to be paid from amounts available for the payment of compensation and pension.

The conferees note that current VA regulations (38 CFR 13.109) establish standards for determining the value of an estate for the purposes of section 3203(b) so as to exclude certain personal property. The conferees intend that this regulation be applied to the valuation of the veteran's estate (other than the veteran's home) for the purposes of the provision in the conference agreement.

According to CBO, the enactment of section 8001 would result in savings of $125 million in outlays in FY 1991 and total savings of $291 million in outlays in FYs 1991-1995.

Elimination of Presumption of Total Disability in Determination of Pension for Certain Veterans

Current law

Under section 502(a) of title 38, a veteran who is 65 years of age or older, or who becomes unemployable after age 65, is considered permanently and totally disabled for purposes of needs-based pension payable to wartime veterans. VA regulations (38 C.F.R. 4.17) relating to disability ratings for pension establish disability percentage requirements for ages below 65 that take into account the veteran's age, as well as his or her actual disabilities. When a veteran reaches age 55, a 60-percent rating for one or most disabilities is considered permanently and totally disabling. Veterans age 60 to 64 are considered permanently and totally disabled if they have disabilities rated at 50 percent.

House bill

Section 11002 would eliminate the presumptions of permanent and total disability for veterans who are 65 or older or who become unemployable after age 65. Section 11002 would be effective for pension claims filed after October 31, 1990.

Senate amendment

Section 11002 would eliminate the presumption of permanent and total disability for veterans who are age 65 or older, but would not affect the presumption for veterans who become unemployable after age 65. The section would apply to veterans who are not receiving pension on November 1, 1990.

Conference agreement

Section 8002 would eliminate the presumption of permanent and total disability for veterans who are age 65 or older and would eliminate the reference to age on the presumption for veterans who become unemployable. Section 11002 would amend section 502(a) of title 38 to provide that a veteran who, at any age, becomes unemployable as a result of disability reasonably certain to continue throughout his or her life would be considered permanently and totally disabled for purposes of pension eligibility. VA regulations already incorporate the unemployability standard for veterans of any age and the conferees do not intend to require any substantive change in the regulations as a result of the enactment of this provision.

The conferees note their expectation that, upon enactment of this provision, VA will extend to veterans age 65 or over its regulation (38 C.F.R. 4.17) providing for ratings of permanently and totally disabled for older veterans with disabilities that are by themselves rated at less than 100 percent disabling.

According to CBO, enactment of section 8002 would result in savings of $17 million in outlays in FY 1991 and total savings of $313 million in outlays in FYs 1991-1995.

Reduction in Pension for Veterans Receiving Medicaid-Covered Nursing Home Care

Current law

Under section 3203 of title 38, the pension of a veteran in a nursing home at VA expense who has no dependents is reduced to a maximum of $90 a month after the third month of care. Veterans in nursing homes under Medicaid do not have their pension benefits reduced, but are required to apply their VA pension toward the cost of their nursing home care.

House bill

Section 11003 would limit monthly pension payments to $90 for Medicaid-eligible recipients of a VA pension who have no dependents and who are in nursing homes participating in Medicaid—except in the cases of veterans who are in State veterans homes. The provision also would prohibit any part of that $90 payment from being applied to the cost of the veteran's nursing-home care. A veteran would not be liable for any payment of pension that is in excess of what this provision would allow and is paid before VA learns of the veteran's admission to a Medicaid nursing home. The costs of administering this provision would be paid from amounts available to the VA for the payment of compensation and pension.

This provision would take effect with respect to months after the month of enactment and expire on September 30, 1992.

Senate amendment

Section 11003 is substantively identical to the House bill except that (a) the veteran would be relieved of liability for overpayments except for those that are the result of the veteran's willful concealment of information needed to make the pension reduction; and (b) this provision would take effect on November 1, 1990, and has no expiration date.

Conference agreement

Section 8003 contains this provision and follows the Senate amendment relating to relief from liability for overpayments and the House bill with respect to the effective date and expiration date.

According to CBO, the enactment of section 8003 would result in savings of $22 million in outlays in FY 1991 and total savings of $124 million in outlays in FYs 1991-1995.

Ineligibility of Remarried Surviving Spouses or Married Children for Reinstatement of Benefits Eligibility

Current law

Under Section 101(3) of title 38, if the surviving spouse of a veteran who died from a service-connected condition remarries or if the needy surviving spouse of a wartime veteran who died from a non-service-connected cause remarries, the spouse no longer qualifies as a "Surviving spouse" of the veteran and thus is ineligible for dependency and indemnity compensation (DIC) or VA needs-based pension. Under section 103(d) of title

38, the spouse becomes eligible again when the remarriage is void, annulled, or terminated by death or divorce. The same rules apply, under section 103(e) of title 38, to restore benefits eligibility to a veteran's child whose marriage is void, annulled, or terminated by death or divorce while the child still meets the age requirements for the benefits.

A surviving spouse who lives with another person and holds himself or herself out openly as the third person's spouse (apparent remarriage) is barred from receiving DIC or pension while living with the other person. Upon termination of that arrangement, the surviving spouse regains eligibility.

House bill

Section 11004 would prohibit reinstatement of eligibility for (a) remarried surviving spouses or married children whose disqualifying marriages are void, annulled, or terminated by death or divorce, or (b) surviving spouses upon termination of an apparent remarriage. The provision would take effect on November 1, 1990.

Senate amendment

Section 11004 would prohibit reinstatement of eligibility for remarried surviving spouses whose marriages terminate by death or divorce and also would prohibit reinstatement upon termination of an apparent remarriage. The provision would apply to claims for reinstated benefits filed on or after November 1, 1990.

Conference agreement

Section 8002 would repeal sections 103(d)(2), (d)(3), and (e)(2) to prohibit reinstatement of eligibility for remarried surviving spouses or married children whose disqualifying marriages terminate by death or divorce and to prohibit reinstatement for remarried surviving spouses upon termination of an apparent remarriage. The repeals would take effect on November 1, 1990. The repeals would not reduce or terminate benefits to any individual whose benefits were predicated on the repealed provisions before November 1, 1990.

According to CBO, section 8004 would result in savings of $19 million in outlays in FY 1991 and total savings of $374 million in outlays in FYs 1991-1995.

Policy Regarding Cost-of-Living Increases in Compensation Rates

Current law

Under chapter 11 of title 38, VA pays monthly cash benefits to veterans who have service-connected disabilities. The basic amounts of compensation paid are based on percentage-of-disability ratings—which are in multiples of 10 percentage points—assigned to the veteran. Special monthly rates are payable to totally disabled veterans with certain specific, severe disabilities and combinations of disabilities, and a veteran whose disability is rated 30 percent or more also receives additional compensation for a spouse, children, and dependent parents.

Under chapter 13 of title 38, VA pays DIC to survivors of servicemembers or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during active service. Surviving spouses receive DIC at rates based on (1) the pay grade (service rank) of the deceased veteran, (2) whether the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance, and (3) the number of surviving children. When there is no surviving spouse, DIC is paid to surviving children.

House bill

Section 11005 would establish a point of order against any compensation/DIC COLA legislation which includes any authority to round the amounts of the monthly disability compensation in any manner other than to the next lower dollar amount or does not include an effective date for such increase of January 1, 1991, or later. Section 11005 would provide for the payment of additional amounts of compensation or DIC benefits during FY 1992 in order to repay the COLA withheld from compensation and DIC recipients for the month of December 1990. The additional amount would be effective January 1, 1992, and would appear in the recipient's February 1992 checks.

Separate legislation, section 106(b) of H.R. 5326 as passed by the House on October 15, 1990, would provide for repaying in January 1992 the amount of the COLA for December 1990 that is being withheld.

Senate amendment

Section 11005 would state that the FY 1991 compensation and DIC COLA will be no more than 4.5 percent, that all increases will be rounded down to the next lower amount, and that increase for disabilities rated at 10 percent and at 20 percent be $1 less than the amount equal to 4.5-percent increase.

Conference agreement

Section 8005 (1) states that (a) the FY 1991 compensation and DIC COLA will be no more than 5.4 percent, (b) all increases will be rounded down to the next lower dollar amount, and (c) the increases will become effective on January 1, 1991; and (2) provides that the increase that otherwise would have been paid for the month of December 1990 will be paid at the same time that the compensation and DIC payments for January 1992 are paid.

The compensation and DIC COLA is based on the COLA for Social Security benefits, which CBO estimated this summer to be 4.5 percent. After the Senate and the House reported their respective reconciliation bills, the actual Social Security COLA was calculated to be 5.4 percent. Section 8005 reflects this updated percentage.

According to CBO, the enactment of section 8005 would result in savings of $49 million in outlays in FY 1991 and total savings of $44 in outlays in FYs 1991-1995.

SUBTITLE B—HEALTH-CARE BENEFITS

Medical-Care Cost Recovery

VETERANS COVERED

Current law

Section 629(a) of title 38, United States Code, authorizes the Department of Veterans Affairs to collect from a third-party payer the reasonable cost of medical care VA furnishes for care and treatment of the non-service-connected disabilities of (a) any veteran covered under (1) a workers' compensation law, (2) a State law concerning no-fault automobile insurance, or (3) a State or local program of compensation for victims of a crime of personal violence; and (b) a veteran who has no service-connected disabilities and who has coverage under a health-plan contract (typically a health-insurance plan).

House bill

Section 11011(a) would amend section 629(a)(2) of title 38 to authorize VA, during the period ending on October 1, 1992, to collect from a third-party payer under a health-plan contract the reasonable cost of medical care VA furnishes for the treatment of a non-service-connected disability to a veteran who has a service-connected disability and who is entitled to care (or payment of the expenses of care) under the health-plan contract.

Senate amendment

Section 11011(a) of the Senate amendment is substantively identical except that the authority to make such collections would have no expiration date.

Conference agreement

The conference agreement follows the House bill except that the authority to make such collections would expire on October 1, 1993.

MAXIMUM AMOUNT RECOVERABLE

Current law

Section 629(c)(2)(B) of title 38 U.S.C. requires that regulations prescribed by the Secretary to implement third-party collections provide that the reasonable cost of care sought to be recovered from a third party liable under a health-plan contract not exceed the amount that the third party demonstrates to the satisfaction of the Secretary it would pay for care in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with non-Federal facilities in the same geographic area.

House bill

Section 11011(b) would make a clarifying change deleting the reference to prevailing rates and thus requiring that the regulations provide simply that the reasonable cost of care to be recovered or collected not exceed the amount that the third party would pay for care if provided by non-Federal facilities in the same geographic area.

Senate amendment

Section 11011(b) contains a substantively identical provision.

Conference agreement

Section 8011(b) contains this provision.

ESTABLISHMENT OF MEDICAL RECOVERIES FUND

Current law

Section 629(g) of title 38 requires that amounts collected or recovered from third parties be deposited into the Treasury as miscellaneous receipts.

House bill

Section 11011(c) would (a) establish in the Treasury a fund to be known as the Department of Veterans Affairs Third-Party Medical Recoveries Fund; (b) require that amounts recovered or collected under section 629 of title 38 be credited to this Fund; (c) require that sums in the Fund be available to the Secretary for necessary direct and indirect expenses for the identification, billing, and collection of the cost of care furnished under section 629, and costs related to the administration of the Fund and the collection of copayments for health care furnished under chapter 17 of title 38; and (d) require that, not later than January 1 of each year, an amount equal to the unobligated balance in the Fund at the close of business on September 30 of the preceding year be deposited into the Treasury as miscellaneous receipts.

Senate amendment

Section 11011(c), which would refer to the new fund as the "Medical-Care Cost Recovery Fund", is substantively identical to the House provision, except that it would require that the amount annually deposited into the Treasury as miscellaneous receipts be equivalent to the amount of the unobli-

gated balance at the close of business on September 30 of the preceding year minus any part of the Fund balance that the Secretary determines is necessary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs incurred in administering the program of medical-cost recovery.

Conference agreement

Section 8011(c) follows the Senate amendment.

TRANSFER TO FUND

Current law

No existing provision.

House bill

Section 11011(d) would (a) require the Secretary of the Treasury to transfer $25 million from the Department of Veterans Affairs Loan Guaranty Revolving Fund to the new fund; (b) provide that $25 million be available until September 30, 1991, for the support of the equivalent of 800 full-time employees and other administrative expenses; and (c) require that, notwithstanding section 629(g) of title 38 as proposed to be amended by section 11011(c), the first $25 million recovered or collected by VA during fiscal year 1991 as a result of third-party medical recovery activities be credited to the Loan Guaranty Revolving Fund.

Senate amendment

Section 11011(d) is substantively identical to the House provision.

Conference agreement

Section 8011(d) contains this provision.

DEFINITION OF HEALTH-PLAN CONTRACT

Current law

Section 629(i)(1)(A) of title 38 defines the term "health-plan contract" as an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar agreement under which health services for individuals are provided or the expenses of such services are paid.

House bill

Section 11011(e) would provide that a "health-plan contract" may also include a Medicare supplemental insurance policy and that, with respect to such a policy, VA medical facilities and personnel shall be deemed to be Medicare-participating providers and medical services covered by such a policy and furnished by VA shall be deemed to be Medicare-covered services.

Senate amendment

No provision.

Conference agreement

No provision.

EFFECTIVE DATE

House bill

Section 11011(f) would provide that the third-party' recovery amendments take effect as of October 1, 1990.

Senate amendment

Section 11011(e) is substantially identical to the House provision.

Conference agreement

Section 8011(e) contains this provision.

According to CBO, the enactment of section 8011 would result in savings of $113 million in outlays in fiscal year 1991 and a total savings of $826 million in outlays in fiscal years 1991 to 1995.

COPAYMENT FOR MEDICATIONS

Current law

Current law contains no provision for copayment for medications provided by the Department of Veterans Affairs.

House bill

Section 11012 would add to chapter 17 of title 38 a new section 622A which would (a) prohibit the Secretary from furnishing a drug on an outpatient basis for the treatment of any non-service-connected disability or condition of a veteran (other than a veteran with a service-connected disability rated 50 percent or more) unless the veteran pays $2 for each 30-day supply of the drug; (b) prohibit the amount of the charge from being reduced if the initial amount of the drug supplied is less than a 30-day supply; (c) require that amounts so collected be credited to VA's new Third-Party Medical Recoveries Fund (which would be established by new subsection (g) of section 629 as proposed to be added by section 11011); and (d) require that new section 622A of title 38, United States Code, take effect with respect to drugs furnished to a veteran after the later of October 31, 1990, or the date of enactment, whichever is later, and expire on September 30, 1991.

Senate amendment

Section 11012 would add to chapter 17 a new section 622A which would (a) require the Secretary to require a veteran (other than a veteran with a service-connected disability rated 50 percent or more) to pay $2 for each 30-day supply of a medication furnished on an outpatient basis; (b) prohibit the amount of the charge from being reduced if the initial amount of medication is less than a 30-day supply; (c) require that amounts so collected be credited to VA's new Medical-Care Cost Recovery Fund (which would be established by new subsection (g) of section 629 of title 38 as proposed to be added by section 11011); and (d) provide for new section 622A to take effect with respect to medications furnished after October 31, 1990.

Conference agreement

Section 8012 follows the Senate provision, except that (a) the Secretary would be prohibited from requiring a veteran to pay any amount in excess of the cost to the Secretary for medications, and (b) the provision would apply to medications furnished during the period from October 31, 1990, until September 30, 1991.

The Committees note that Section 8012 would not require copayments for medical supplies.

According to CBO, the enactment of section 8012 would result in savings of $66 million in outlays in FY 1991 and total savings of $85 million in outlays in fiscal years 1991 to 1995.

Modification of Health-Care Categories and Copayments

CATEGORIES OF VETERANS

Current law

Section 610(a) of title 38 establishes, for the purposes of determining a veteran's eligibility for hospital care and nursing home care, the following three categories of veterans:

(1) Category A veterans, who are veterans described in section 610(a)(1), which generally includes veterans who have service-connected disabilities, are former prisoners of war, were exposed to certain environmental hazards, are veterans of World War I, or have incomes below specified levels, which currently are (A) in the case of a veteran with no dependents, less than $17,214, or (B) in the case of a veteran with one dependent, less than 20,689, plus $1,150 for each additional dependent. VA must furnish necessary hospital care, and may furnish necessary nursing home care, to these veterans.

(2) Category B veterans, who are veterans not entitled to hospital care under section 610(a)(1) and who have incomes within specified ranges, which currently are (A) in the case of a veteran with no dependents, greater than $17,214 but less than $22,986, or (B) in the case of a veteran with one dependent, greater than $20,689 but less than $28,733, plus $1,150 added to each amount for each additional dependent. VA may furnish necessary hospital and nursing home care to these veterans on a space and resources available basis.

(3) Category C veterans, who are veterans not entitled to hospital care under section 610(a)(1) and who have incomes above specified levels, which currently are (A) in the case of a veteran with no dependents, greater than $22,986, or (B) in the case of a veteran with one dependent, greater than $28,733, plus $1,150 for each additional dependent. VA may furnish hospital and nursing home care to these veterans, on a space and resources available basis, only if they agree to pay a copayment for such services as specified in section 610(f).

(The income levels noted above are increased each January 1 by the same percentage as the Social Security cost-of-living adjustment granted as of the preceding December 1.)

House bill

Section 11013 eliminates the distinction between Category B and C veterans for purposes of paying copayments for inpatient, nursing home, and outpatient care. This section would establish two categories (instead of the current three categories) of veterans:

(a) Veterans described in section 610(a)(1), to whom VA must furnish necessary hospital care and may furnish nursing home care, without requiring any copayment for these services.

(b) Veterans who are not entitled to hospital care under section 610(a)(1) and who have income levels (adjusted annually by the same percentage as the Social Security COLA) which are (1) in the case of a veteran with no dependents, greater than $17,124, and (2) in the case of a veteran with one dependent, $20,689, plus $1,150 for each additional dependent, to whom VA may furnish necessary hospital and nursing home care, on a space and resource available basis, only if the veteran agrees to pay a copayment for such services as specified in section 610(f) (as proposed to be amended, as discussed below).

Senate amendment

Section 11013(a) contains a substantively identical provision.

Conference agreement

Section 8013(a) contains this provision.

REQUIREMENT TO MAKE COPAYMENT

Current law

Under sections 610(f) and 612(f) of title 38, the copayment requirements for a Category C veteran are as follows:

(a) For hospital care: (1) for the first 90 days of care during any 365-day period, an amount equal to the lesser of (A) the cost of furnishing such care, and (B) the amount of the inpatient Medicare deductible (currently $592), and (2) for each 90-day period after the first 90 days of care within a 365-day period, an amount equal to the lesser of (A) the cost of care, and (B) an amount equal to one-half of the Medicare deductible.

(b) For nursing home care: an amount equal to the lesser of (A) the cost of furnishing such care, and (B) the amount of the inpatient Medicare deductible for each 90 days of such care (or fraction thereof) during each 365-day period.

(c) For outpatient care: an amount equal to 20 percent (currently $26) of the estimate average cost of an outpatient visit in a VA facility during the calendar year in which services are furnished.

House bill

Section 11013 would require that all veterans not entitled to care pay the current copayments for inpatient and nursing home care. In addition, copayments for care furnished to these veterans (formerly Category B and C veterans) would be:

(a) $10 per day for hospital care starting on the first day of care.

(b) $5 per day for nursing home care starting on the first day of care.

(c) The existing copayment for an outpatient visit, which is an amount equal to 20 percent of the estimated cost of a VA outpatient visit during the calendar year in which the visit occurs.

Senate amendment

Section 11013 is substantively identical to the House provision, except that it would also link the new copayments to Consumer Price Index increases.

Conference agreement

Section 8013 follows the House bill.

Annual Caps on Copayments

Current law

Section 612(f) establishes an overall cap on the total amount a veteran may be required to pay for hospital, nursing home, and outpatient care (a) during any 90-day period, at an amount equal to the inpatient Medicare deductible, and (b) during any 365-day period, at an amount equal to four times the amount of the inpatient Medicare deductible. Section 612(f) also provides that a veteran may not be required to make any copayment for any days of care in excess of 360 days of care during any 365-calendar-day period.

House bill

Section 11013(b) would delete the caps on copayments. This section would require the current copayments to be paid by nonentitled veterans (formerly Category B and C veterans) in addition to the copayments per day of care. There would be no cap on the per day copayment charges.

Senate amendment

Section 11013(b) is substantively identical to the House provision.

Conference agreement

Section 8013(b) contains this provision.

Effective Date

House bill

Section 11013 would provide that amendments made by section 11013 apply with respect to hospital care and medical services received after the later of October 31, 1990, or the date of enactment, and expire on September 30, 1991.

Senate amendment

Section 11013 would require that amendments made by section 11013 apply with respect to hospital care and medical services received after October 31, 1990.

Conference agreement

Section 8013 follows the House bill.

According to CBO, enactment of section 8013 would result in savings of $35 million in outlays in fiscal year 1991 and total savings of $45 million in outlays in fiscal years 1991 to 1995.

SUBTITLE C—EDUCATION AND EMPLOYMENT

Limitation of Rehabilitation Program Entitlement to Service-Disabled Veterans Rated at 20 Percent or More

Current law

Section 1502 of title 38, United States Code, provides that all veterans with service-connected disabilities rated at 10-percent-or-more disabling who have an employment handicap are entitled to vocational rehabilitation services and assistance.

House bill

Section 11021 would (a) limit eligibility for vocational rehabilitation benefits to veterans with service-connected disabilities rated at 20 percent or more; (b) specify that eligibility for certain employment-assistance services currently available to those who have completed a VA vocational rehabilitation program would also be limited to veterans with service-connected disabilities rated at 20 percent or more; and (c) apply only to veterans originally applying for benefits on or after November 1, 1990.

Senate amendment

Section 11022 would (a) limit eligibility for vocational rehabilitation benefits to veterans with service-connected disabilities rated at 30 percent or more; and (b) take effect on the date of enactment, but would not affect the eligibility of persons who are participating in vocational rehabilitation at that time so long as there is no break in participation.

Conference agreement

Section 8021 would (a) limit the vocational-rehabilitation eligibility to veterans with service-connected disabilities rated at 20 percent or more; and (b) apply only to veterans originally applying for benefits on or after November 1, 1990.

According to CBO, the enactment of section 8021 would result in savings of $20 million in outlays in FY 1991 and total savings of $180 million in outlays in FYs 1991-1995.

SUBTITLE D—HOUSING AND LOAN GUARANTY ASSISTANCE

Election of Claim Under Guaranty of Manufactured Home Loans

Current law

Under section 1812(c)(3) of title 38, when a VA-guaranteed loan on a manufactured home terminates in default, VA may pay a claim against the guaranty only after the property is sold. VA then may satisfy the guaranty by paying the lender the difference between the veteran's debt and the resale price of the manufactured home, up to the maximum amount of the guaranty.

House bill

Section 11031 would amend section 1812 of title 38 to allow the lender to choose between the claim procedure under current law and submitting the lender's claim for guaranty of a loan on a manufactured home as soon as VA notifies the lender of VA's estimate of the value of the home. The lender then would bear any loss or profit on the actual resale.

Senate amendment

Section 11031 is substantively identical to the House bill.

Conference agreement

Section 8031 contains this provision.

According to CBO, the enactment of section 8031 would result in savings of $4 million in outlays in FY 1991 and total savings of $14 million in outlays in FYs 1991-1995.

Loan Fees

Current law

Section 1829 of title 38 establishes fees payable to VA for a VA-guaranteed home loan. The basic fee is 1.25 percent of the loan amount. The fee is reduced to 0.75 percent when a borrower makes a downpayment of at least 5 percent and to 0.5 percent when a borrower makes a downpayment of at least 10 percent. Veterans with a service-connected disability and survivors of veterans who died from a service-connected disability are exempt from paying the fee.

House bill

Section 11032 would increase fees for loans closed during the period beginning November 1, 1990, and ending September 30, 1991, by 0.5 percent. The basic fee would increase from 1.25 percent of the total loan amount to 1.75 percent, while the fees for loans with 5-percent or 10-percent downpayments would increase to 1.25 percent of the total loan amount to 1.75 percent, while the fees for loans with 5-percent or 10-percent downpayments would increase to 1.25 percent and 1 percent, respectively. The fee for assumptions of VA-guaranteed loans for which commitments are made on or after March 1, 1988, would increase from 0.5 percent to 1 percent.

Senate amendment

Section 11032, effective with respect to loans closed after October 31, 1990, permanently would increase the fees by 0.75 percent. The basic fee would increase to 2 percent and the fee for loans with 5-percent and 10-percent downpayments would increase to 1.5 percent and 1.25 percent, respectively.

Conference agreement

Section 8032 follows the House bill, except that the increase would be 0.625 percent for loans closed between November 1, 1990, and September 30, 1991. Thus, the basic fee would increase from 1.25 percent to 1.875 percent. The fees for loans with 5-percent and 10-percent downpayments would increase to 1.375 percent and 1.125 percent, respectively. The assumption fee would remain unchanged.

According to CBO, enactment of section 8032 would result in savings of $79 million in outlays in FY 1991 and total savings of $79 million in outlays in FYs 1991-1995.

SUBTITLE E—BURIAL AND GRAVE MARKER BENEFITS

Headstone or Marker Allowance

Current law

Section 906(d) of title 38 provides, in lieu of a VA-provided headstone or grave marker, for reimbursement for the cost of a headstone or grave marker for a veteran who is eligible to be, but is not, buried in a national cemetery. The amount of reimbursement may not exceed VA's current annual average actual cost for headstones and markers, which is currently $87.

House bill

Section 11041 would eliminate the headstone allowance with respect to deaths occurring on or after November 1, 1990.

Senate amendment

Section 11042 is substantively identical to the House provision.

Conference agreement

Section 8041 contains this provision.

According to CBO, the enactment of section 8041 would result in savings of $3 mil-

lion in outlays in FY 1991 and total savings of $19 million in outlays in FYs 1991-1995.

Plot Allowance Eligibility

Current law

Section 903(b) of title 38, United States Code, provides for the payment of a $150 plot allowance for a veteran not buried in a national cemetery—

(a) who was discharged or released from active military, naval, or air service for a disability incurred in the line of duty; or

(b) who was a veteran of any war; or

(c) by reference to section 902—

(1) who at the time of death was in receipt of either VA service-connected disability compensation (or but for the receipt of military retirement pay would have been entitled to compensation) or VA needs-based pension; or

(2) who either was a veteran of any war or was discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, whose body is held by a State (or a political subdivision of a State), and with respect to whom the Secretary determines (A) that there is no next of kin or other person claiming the body of the deceased veteran and (B) that there are not available sufficient resources to cover burial and funeral expenses.

Under section 903(b)(1), if an eligible veteran is buried (without charge for the cost of a plot or interment) in a State veterans cemetery which has similar criteria for burial as a national cemetery, VA pays the $150 plot allowance directly to the State.

House bill

Section 11042 would eliminate the plot allowance for those whose eligibility is based solely on the status of veteran of any war (as described in item (b), above), but not those war veterans with eligibility through the reference to section 902 based on their not having sufficient resources to cover burial and funeral expenses and having no one claiming their remains. The plot allowance would continue to be payable for all veterans who meet current eligibility standards and are buried in State veterans cemeteries, and to all veterans discharged from service due to line-of-duty disabilities. The change would take effect with respect to deaths occurring on or after November 1, 1990.

Senate amendment

Section 11041 is substantively identical to the House provision.

Conference agreement

Section 8042 contains this provision.

According to CBO, the enactment of section 8042 would result in savings of $27 million in outlays in FY 1991 and total savings of $147 million in outlays in FYs 1991-1995.

SUBTITLE F—MISCELLANEOUS

Use of Internal Revenue Service and Social Security Administration data for income verification

Current law

Section 6103(l)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)) authorizes disclosure by the Internal Revenue Service of certain third-party and self-employment tax information (from the Commissioner of Social Security or the Secretary of the Treasury) to certain Federal, State, and local entities administering certain programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program for purposes of income verification, but does not authorize such access to VA for verifying the eligibility of recipients of needs-based, veterans' benefits.

House bill

Section 11051 would amend paragraph (7) of section 6103(l) of the Internal Revenue Code of 1986 so as to require disclosure to VA of (a) such third-party and self-employment tax information for purposes of determining eligibility for VA needs-based pension and parents' dependency and indemnity compensation and VA health-care services based on income status, and (b) only wage and self-employment information from such returns for purposes of determining eligibility for compensation paid (pursuant to section 4.16 of title 38, Code of Federal Regulations) at the total-disability-rating level based on an individual determination of unemployability.

To the extent that VA's general operating expenses (GOE) account appropriations are insufficient to fund administrative costs to implement the program, the Secretary would be required to pay the expenses from amounts available to the Department for the payment of compensation and pension.

This provision would expire on September 30, 1992.

Senate amendment

Section 11051 is substantively identical to the House bill except that (a) the requirement to pay implementation expenses from amounts available for the payment of VA compensation and pension would not be contingent on the insufficiency of GOE funds, and (b) there would be no expiration date.

Conference agreement

Section 8051 follows the Senate amendment with respect to implementation costs and follows the House bill with respect to the expiration date.

According to CBO, the enactment of section 8051 would result in savings of $28 million in outlays in FY 1991 and total savings of $743 million in outlays in FYs 1991-1995.

Line of Duty

Current law

Under section 105(a) of title 38, direct, or primary, effects of willful misconduct are not considered to have been incurred or aggravated in the line of duty. As a result, the disabilities involved are not considered service connected for purposes of VA benefits eligibility. However, section 3.301 of title 38, Code of Federal Regulations, provides for the service-connection of disabilities that are a secondary result of actions that constitute willful misconduct, which VA defines to include the chronic use of alcohol or abuse of drugs. Also, section 105(a) prohibits VA from presuming that venereal disease was due to willful misconduct, provided the veteran complied with the applicable reporting and treatment regulations of the appropriate service department.

Sections 310, 331, and 521 of title 38 similarly prohibit payment of wartime disability compensation, peacetime disability compensation, and non-service-connected disability pension, respectively, when the veteran's disability is the result of willful misconduct.

House bill

Section 11052 would (1) amend section 105(a) of title 38 to repeal the prohibition against VA presuming that venereal disease resulted from willfull misconduct; and (2) amend sections 105(a), 310, 331, and 521 of title 38 to preclude payment of compensation or pension for the secondary effect of willful misconduct. The provision would apply to claims filed after October 31, 1990.

Senate amendment

Section 11052 would provide that injuries or diseases incurred during service as a result of willful misconduct or the abuse of alcohol or drugs will not be considered incurred in the line of duty and thus would not be compensated by VA as a service-connected disability. The provision would apply to line-of-duty determinations made on or after November 1, 1990.

Conference agreement

Section 8052 follows the Senate amendment except that the provisions would take effect with respect to claims filed after October 31, 1990.

The conferees intend the amendments to also preclude payment of compensation for certain secondary effects arising from willful misconduct. For example, payment would be precluded for a back disability or a cardiovascular disability arising as a secondary effect of a foot amputation due to a deliberately self-inflicted wound.

According to CBO, the enactment of section 8052 would result in savings of $10 million in outlays in FY 1991 and total savings of $334 million in outlays in FYs 1991-1995.

Requirement for Claimants to Report Social Security Numbers; Uses Of Death Information by the Department of Veterans Affairs

Current law

Section 7(a) of the Privacy Act of 1974 (Public Law No. 93-579), prohibits any Federal agency from denying to any individual a right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her Social Security number. This prohibition does not apply to any disclosure required by Federal statute.

Several statutory provisions allow VA to require disclosure of Social Security numbers (SSNs) by applicants for certain needs-based benefits or for loans made or guaranteed by VA. These provisions are implemented by section 1.575 of title 38, Code of Federal Regulations.

House bill

Section 11053 would require, upon the request of the Secretary, the disclosure of the SSNs of compensation and pension claimants and recipients and their dependents in connection with all claims for these benefits. Benefits would not be paid to an applicant or recipient who fails to provide a requested number, but no person may be required to furnish an SSN of a person who does not have one. Also, under this provision, VA would be required to compare its records regarding recipients of VA compensation or pension benefits with records of the Department of Health and Human Services in order to determine whether any recipient of these benefits is deceased.

Senate amendment

Section 11053 is substantively identical to the House bill except that it also provides that the costs of administering the program of comparing records shall be paid from the VA Compensation and Pension account.

Conference agreement

Section 8053 follows the House bill, except that the costs of administering the program would be paid from funds available for payment of compensation and pension.

According to CBO, enactment of section 8053 would result in savings of $4 million in

outlays in FY 1991 and total savings of $47 million in outlays for FYs 1991-1995.

TITLE IX—TRANSPORTATION

STATEMENT OF MANAGERS

House bill

Section 9001 of the House bill provided that it is the sense of the House of Representatives that, if any Senate amendment to H.R. 5835 provides for any increase in motor fuel excise taxes or aviation taxes that would be deposited in the Highway Trust Fund or Aviation Trust Fund, respectively, then the managers on the part of the House for the conference on the reconciliation bill should consider provisions which ensure that an amount equal to the estimated tax payments from any such increases enacted shall be made available in the fiscal year collected for highway and aviation purposes, respectively. Such provisions may include provisions similar to those included in the reconciliation submission of the Committee on Public Works and Transportation dated October 12, 1990, to the Committee on the Budget.

Senate bill

No comparable provision.

Conference agreement

Senate receded to the House with an amendment.

TITLE IX—AVIATION PROVISIONS

Statement of Managers

1. AUTHORIZATION OF AIRPORT IMPROVEMENT PROGRAM

House bill

$1.8 billion for FY 1991.
$1.9 billion for FY 1992.

Senate amendment

Same.

Conference substitute

House bill.

2. AUTHORIZATION OF FAA FACILITIES AND EQUIPMENT PROGRAM

House bill

$2.5 billion for FY 1991.
$3.0 billion for FY 1992.

Senate amendment

$3.0 billion for FY 1991.
$3.0 billion for FY 1992.

Conference substitute

House bill.

3. AUTHORIZATION OF FAA OPERATIONS

House bill

$4.088 billion for FY 1991.
$4,412,600,000 for FY 1992.

Senate amendment

Same.

Conference substitute

House bill

4. ELIMINATION OF "PENALTY CLAUSE" ON FAA OPERATIONS FROM THE TRUST FUND

House bill

Eliminates Penalty Clause which reduces authorization for FAA operations from the Trust Fund if Trust Fund capital programs are not fully funded.

Senate amendment

No change in current law. Penalty clause in effect for FY 1991 and 1992.

Conference substitute

House bill.

5. FUNDING OF FAA OPERATIONS FROM THE TRUST FUND

House bill

Funded at a level which allows 75% of the FAA's budget to come from Trust Fund.

Senate amendment

No change in current law.

Conference substitute

House bill.

6. TRUST FUND FUNDING OF SERVICES RECEIVED BY FAA FROM NOAA

House bill

$34.5 million for FY 1991.
$35.4 million for FY 1992.

Senate amendment

$30 billion for FY 1991 and for FY 1992.

Conference substitute

House bill.

7. MILITARY AIRPORT PROGRAM

(a) Funding

House bill

(a) Funding for FY 1991 and 1992 of not less than 1.5% of AIP program for conversion of former or current military airports to civilian commercial service or reliever airports.

Senate amendment

(a) Not less than 0.5% of AIP program.

Conference substitute

House bill.

(b) Number of Airports

House bill

(b) Not more than 8 airports designated for program. Two must be designated within 6 months of enactment and remainder by September 30, 1992.

Senate amendment

(b) Not more than 5 airports with the same time limits.

Conference substitute

House bill.

(c) Additional Funding

House bill

(c) Up to $5 million per airport may be used for construction of terminals, including gates.

Senate amendment

(c) Up to $3 million per airport may be used for the same purpose.

Conference substitute

House bill.

8. EXPANDED EAST COAST PLAN

House bill

Requires Environmental Impact Statement and safety studies for the FAA's Expanded East Coast Plan for air traffic routings.

Senate amendment

Same.

Conference substitute

House bill.

9. POLICY STATEMENT PROHIBITING AIRPORT DISCRIMINATION AGAINST SMALL AIRCRAFT

House bill

Prohibits discrimination between classes of aircraft.

Senate amendment

Same.

Conference substitute

House bill.

10. AUXILIARY FLIGHT SERVICE STATION PROGRAM

House bill

FAA required to develop a system of auxiliary flight service stations.

Senate amendment

Same.

Conference substitute

House bill. It is the content of the Conferees that the legislative history contained in House Report 101-581 controls for purposes of implementing this section.

11. STATE BLOCK GRANT PROGRAM

House bill

Extends program for 1 year.

Senate amendment

No similar provision.

Conference substitute

House bill.

12. VIRGIN ISLANDS

House bill

Requires study of Miami and Caribbean air traffic control; prohibits the FAA from contracting for air traffic control in St. Thomas and St. Croix until study completed; requires replacement of St. Thomas radar.

Senate amendment.

No similar provision.

Conference substitute.

House bill.

13. ENGINE CONDITION MONITORING SYSTEMS

House bill.

Requires study of potential use of engine condition monitoring system.

Senate amendment

No similar provision.

Conference substitute

House bill.

14. FAA PROCUREMENT REFORM

House bill

Authorizes FAA to enter into multi-year lease of property; designates FAA Administrator as the official authorized to make certain noncompetitive procurement awards; authorizes the FAA to undertake certain multi-year procurements of up to 5 years.

Senate amendment

No similar provision.

Conference substitute

House bill.

15. FIREFIGHTING TRAINING FACILITIES

House bill

Makes firefighting training facilities, on and off airport, eligible for AIP funding.

Senate amendment

No similar provision.

Conference substitute

House bill.

16. TRANSFER OF GEODETIC NAVIGATION INFORMATION

House bill

Requires the FAA and NOAA to upgrade geodetic coordinate navigation information.

Senate amendment

No similar provision.

Conference substitute

House bill.

17. BUY AMERICAN AND RELATED PROVISIONS

House bill

Requires FAA to utilize products made in America, subject to exceptions; provides that persons using fraudulent made-in-America labels shall be ineligible for FAA contracts for 3-5 years; prohibits FAA contracts with foreign companies whose government is found by the President to be engaging in procurement practices which discriminate against U.S. companies.

Senate amendment

No similar provision.

Conference substitute

House bill.

18. ATLANTIC CITY AIRPORT

House bill

No similar provision.

Senate amendment

Repeals provision requiring Atlantic City to form an entity meeting specified requirements to manage the airport as a prerequisites to receiving grants under the AIP program.

Conference substitute

Senate amendment.

19. DISASTER AREA REGULATIONS

House bill

No similar provision.

Senate amendment

Requires FAA to prohibit or restrict, for safety and humanitarian reasons, flights over inhabited areas which have been declared disaster areas in the State of Hawaii.

Conference substitute

Senate amendment.

20. PASSENGER FACILITY CHARGES

(a) Amount

House bill

(a) $1, $2, or $3.

Senate amendment

(a) Similar.

Conference substitute

House bill.

(b) Type of passenger who can be charged a PFC.

House bill

(b) Enplaned passengers. PFCs limited to two enplanements per trip. PFC may not be imposed on passengers traveling to or from cities receiving subsidized essential air service.

Senate amendment

(b) Passenger originating or terminating at the airport.

Conference substitute

House bill.

(c) Types of development funded by PFCs

House bill

(c) Projects which are AIP eligible, noise program—eligible, or gates.

Senate amendment

Same.

Conference substitute

House bill.

(d) Use of funds for projects at other airports

House bill

(d) PFCs may be used for eligible projects at other airports controlled by the same agency.

Senate amendment

(d) No provision.

Conference substitute

House bill.

(e) Use of proceeds to pay debt service.

House bill

(e) Authorizes use of PFC proceeds to pay debt service on bonds for eligible projects.

Senate amendment

(e) No provision.

Conference substitute

House bill.

(f) Prior approval required

House bill

(f) Prior approval required for all PFCs.

Senate amendment

(f) Prior approval required for all PFCs, but approval automatic if there is no disagreement with a proposed PFC from airport users or the general public.

Conference substitute

House bill.

(g) Criteria for approval

House bill

(g) Before approving a PFC, DOT must find that the projected revenues are needed for specific approved projects, and that these projects will enhance the safety, capacity or security of the national air transportation system, or reduce noise or enhance competition.

Senate amendment

(g) PFC must be found to be necessary to pay for specific projects. Approval is automatic if there is no objection (Sec. (f) above). In cases in which there is an objection, if the application involves projects eligible for federal funding, the PFC must be approved unless Secretary finds by substantial evidence that the proposed projects would not significantly benefit security, safety, noise mitigation or capacity. To approve a PFC for gates, the Secretary must find, by substantial evidence, that the proposed project is needed to increase capacity.

Conference substitute

House bill.

(h) Application process

House bill

(h) Before submitting a PFC application, the airport must give notice and an opportunity for consultation by air carriers. After application is submitted, DOT must give notice and an opportunity for comment. DOT must make a final decision in 120 days.

Senate amendment

(h) Before submitting a PFC application airport operator must give 75 days advance notice, and opportunities for interested persons to attend a meeting. Operator must solicit view from airport users and the general public. DOT shall establish procedures for appeals if there is opposition to a PFC.

Conference substitute

House bill with Senate provisions on consultation with airport users.

(i) General conditions on PFC program

House bill

(i) No new fees after September 30, 1992 if AIP funding for FY 1991 and 1992 is less than $3.7 billion or if EAS funding is less than $26.6 million in FY 1991 or $38.6 million in FY 1992.

Senate amendment

(i) No PFC's until a national aviation noise policy has been adopted and the unobligated balance in the Trust Fund has been reduced below $5 billion. No new PFCs may be imposed if appropriations are less than 90 percent of authorized funding for the AIP and EAS programs or if funds are spent from Trust Fund except as authorized by this Act. No PFCs may be charged by an airport which has not completed a Part 150 Noise Study. No PFC may be imposed by an airport with noise or access restrictions not in compliance with this law.

Conference substitute

House bill. No existing PFC shall be terminated if the funding conditions in the House bill are not met. No PFC's may be imposed until Secretary of Transportation has issued a final rule establishing procedures for airports to submit proposed airport restrictions on aircraft, and a Notice of Proposed Rulemaking on slot allocation.

(j) Relationship to air carrier contracts

House bill

(j) PFC revenues are not to be treated as airport revenues for purposes of air carrier-airport contracts.

Senate amendment

(j) Similar provision.

Conference substitute

House bill.

Senate provisions. Under the conference substitute, revenues derived from a PFC may not be treated as airport revenues for the purpose of establishing rates, fees and charges pursuant to a contract between an airport and an air carrier. The intent of this provision is that PFC revenues shall not directly or indirectly reduce the amounts charged air carriers under their contracts with the public agency that collects a PFC.

(k) Preemption

House bill

State and local governments may not regulate the collection of PFCs or the use of PFC revenues.

Senate amendment

No preemption of state action.

Conference substitute

House bill.

(l) Existing contracts

House bill

Contracts between air carriers and airports may not limit the airport's ability to collect PFCs or spend the revenues produced.

Senate amendment

Except as otherwise provided, this Act does not modify any existing contracts in place at the airport.

Conference substitute

House bill with modifications.

(m) Contractual agreements for PFC facilities

House bill

Facilities built with PFC revenues may not be subject to exclusive long term lease or use agreements, or leases which restrict the airport's ability to expand capacity.

Senate amendment

Gates constructed with PFC revenues may not be subject to lease of longer than 10 years or majority-in-interest clauses. Air carriers using facilities built with PFC revenues may not be charged a lower rate than carriers using other similar facilities at the airport.

Conference substitute

House bill.

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(n) Relationship to airport fees

House bill

No similar provision

Senate amendment

Capitol costs of projects built with PFC revenues shall not be included in the rate base for establishing fees and rates for air carriers.

Conference substitute

Senate amendment. Under this provision and the provision in (m) above, if rates, fees and charges paid by air carriers using non-PFC funded facilities reflect depreciation, amortization or other recovery of capital costs, then rates, fees and charges paid by air carriers using similar PFC funded facilities may be based on depreciation amortization or other recovery of capital costs paid from PFC revenues. Nothing in these provisions would preclude air carriers using PFC funded projects for being charged through depreciation, amortization or other recovery of capital costs of commonly used facilities, such as runways, or non-PFC funded projects, if such costs are determined on a blended basis for all carriers.

(o) PFC conditions

House bill

No similar provision.

Senate amendment

All sponsor assurances which are required in AIP grants shall be required for PFCs. PFC projects subject to Davis-Bacon Act and Veterans Preference requirement which are imposed on AIP grants.

Conference substitute

No provision.

(vi) Administrative provisions

House bill

(vii) PFCs collected by air carriers, separately identified on tickets; air carriers reimbursed for collection expenses; DOT to regulate handling of funds and conduct periodic audits. DOT given authority to terminate a PFC and conduct a set off against AIP grants if PFC funds are misused.

Senate amendment

(vii) Similar, except no specifics on DOT's right to terminate PFCs and collect set off.

Conference substitute

House bill

(k) Entitlement give back and reallocation

House bill

(k) Large and medium hubs imposing PFCs would have their AIP entitlement reduced 50%. 25% of the new funds made available would be added to the discretionary program established by existing law. The remaining 75% of the new funds made available would go into a new small airport fund—⅓ for general aviation airports, ⅔ for non-hubs and small commercial service airports.

Senate amendment

No similar provision.

Conference substitute

House Bill. Half the funds made available for the discretionary program of existing law would be available for grants to small hub airports.

21. STATE TAXING AUTHORITY

House bill

No similar provision.

Senate amendment

State may not tax aircraft flights which do not take off or land in state.

Conference substitute

Senate Amendment.

22. ESSENTIAL AIR SERVICE

House bill

Amends the essential air service to eliminate from the program cities at which subsidy has been terminated under procedures established by recent appropriations acts. Provides that the Secretary does not have discretion to eliminate other cities from the program.

Provides that funding for the EAS program will be contract authority payable from the Airport and Airway Trust Fund. The amount of funding made available is $38.6 million per year for FY 1992-1998.

Senate amendment

No similar provision.

Conference substitute

House bill

23. NOISE

(1) DOT required to develop National Aviation Noise Policy by October 1, 1991. Policy shall include a date for phasing out of Stage 2 aircraft.

(2) FAA required to develop notice and comment procedures for airport noise or access restrictions that first became effective after October 1, 1990, or were negotiated or executed agreements as of October 1, 1990, or where FAA has already formed a working group to examine the noise impact of air traffic control procedure changes,

(3) No restrictions on Stage 3 aircraft or State 2 aircraft of less than 75,000 pounds may be imposed, unless agreed to by all aircraft operators and the airport, or approved by FAA. Criteria for approval are specified.

(4) No other restriction may be imposed unless it is published at least 180 days before it becomes effective.

(5) Airports ineligible for AIP grants if Stage 3 restrictions are imposed after October 1, 1990 without approval of FAA or agreement between airport and aircraft operators.

(6) Aircraft operators may get reevaluation of previously approved (by FAA) Stage 3 restrictions, if there has been a change affecting the matter which were the basis for approval. Reevaluation may not be made within 2 years of approval.

(7) Provides that Federal government shall be liable for a "taking" resulting from disapproval of a noise restriction.

Conference substitute

(1) The Secretary is required to establish a national aviation noise policy not later than July 1, 1991.

(2) After date of enactment airports wishing to impose restrictions on the operation of Stage 2 aircraft are required to give public notice of the proposed restriction at least 180 days before its effective date and at the same time give public notice of specified analysis. Airports wishing to impose restrictions on the operation of Stage 3 aircraft may not impose these restrictions unless they are agreed to by the airport proprietor and aircraft operation (which is intended to be limited to present effort by restriction) or are approved by the Secretary of Transportation. Specified types of existing restrictions are exempted from these requirements. It is the intent of the managers that the restrictions in effect at Long Beach Airport may be continued in effect notwithstanding any stated sunset provision, in order to preserve the status quo at that airport. The managers further intend that in reference to section 332—

(A) the requirements of this section shall not apply to airport noise or access restrictions which—

(i) first became effective prior to October 1, 1990;

(ii) are implemented pursuant to an intergovernmental agreement executed prior to October 1, 1990; or

(iii) are implemented at an airport where the FAA already has formed a working group to examine the noise impact of air traffic control procedure changes.

(3) The Secretary is directed to determine by study the applicability of the requirements specified in (2) above to noise restrictions on the operation of Stage 2 aircraft weighing less than 75,000 pounds.

(4) In the event a proposed noise restriction is disapproved under the procedures of this section, the Federal Government shall assume liability for noise damages subject to specific requirements.

(5) On and after December 31, 1999, no person may operate to or from an airport in the United States aircraft with a maximum weight of more than 75,000 pounds unless the aircraft complies with Stage 3 noise levels. Waivers may be granted to permit the operation of 15 percent of an air carrier's fleet at Stage 2 levels through the year 2003 if the Secretary finds such waiver to be in the public interest. The Secretary shall establish schedules for phased in compliance with these requirements. An exemption is established for aircraft used solely to provide air transportation outside the 48 contiguous States.

(6) On and after the date of enactment, no person may import an aircraft of more than 75,000 pounds into the United States unless such aircraft complies with Stage 3 noise levels. This prohibition does not apply to aircraft owned by U.S. individuals and companies on date of enactment which enter the United States not later than 6 months after expiration of the lease agreement between the owner and the foreign air carrier.

24. SLOTS

House bill

No similar provision.

Senate amendment

(a) At National Airport, FAA shall create a pool of 30 daily air carrier authorizations for air carriers holding fewer than 12 existing slots. It shall be created so that actual daily operations do not exceed the total operations authorized by current regulations. New authorizations are allocated by lottery and designed to give each carrier the same number of authorizations not to exceed 12. If authorizations are unused, they will be distributed to other fewer-than-twelve slot carriers.

(b) FAA must create 30 new daily authorizations at LaGuardia, similar to National.

(c) Requires DOT studies of high density and buy sell rules.

Conference substitute

The Secretary is directed to initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at high density airports in order to provide improved opportunities for operations by new entrant carriers.

25. CERTIFICATE TRANSFERS

House bill

No similar provision.

Senate amendment

Before authorizing an air carrier certificate transfer, DOT must certify to Congres-

sional Committees that transfer is consistent with specific public interest criteria.

26. FEDERAL AVIATION ADMINISTRATION RESEARCH, ENGINEERING, AND DEVELOPMENT

House provision

The House provision is the "Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990".

Senate provision

No similar provision.

Conference

The conference adopted the House provision.

House provision

For Research, Engineering and Development the authorizations are as described in House Report 101-585.

Senate provision

For Research, Engineering and Development the authorizations are $260,000,000 for both fiscal years 1991 and 1992.

Conference

(See attached Conference chart)

Conference

For Research, Engineering and Developing the authorizations are as follows:

[In millions of dollars]

Budget category	Fiscal year— 1991 FAA submission	1991 authority	1992 authority
Air traffic control	103.8	135.8	135.8
Advanced computer	18.1	19.1	19.1
Navigation	3.4	3.4	3.4
Aviation weather	7.7	9.7	9.7
Aviation medicine	6.5	16.5	16.5
Aircraft safety/security	47.1	70.1	70.1
Environment	2.4	5.4	5.4
Total	190.0	260.0	260.0

The above reflects augmentations as described in House Report 101-585 of the folliowing amounts:

[In millions of dollars]

	Fiscal year— 1991	1992
Noise Research	3	3
Tiltrotor Aircraft	3	3
Aging Aircraft	5	5
Accident Prevention Research	10	10
Satellite Technology Applications	4	4
Aviation Security	8	8
University Research	9	9
Human Factors	4	4
Alcohol Research	10	10
ATC Training Research	3	3
ATC Automation Research	9	9
Aviation Weather	2	2
Total	70	70

ENHANCED AIRPORT CAPACITY

House provision

No comparable provision.

Senate provision

The Senate provision authorizes funding for enhanced airport capacity of $25,000,000 for fiscal years 1990, 1991 and 1992. It also provides that "Within 60 days of the last day of each of fiscal years 1990, 1991, and 1992, the Administrator shall transmit a report on expenditures made for research and development for enhanced airport capacity."

House provision

No comparable provision.

Conference

The Conference adopted the Senate provision.

WEATHER SERVICES

House provision

The House provision provides authorization for weather services of $34,521,000 for fiscal year 1991 and $35,389,000 for fiscal year 1992.

Senate provision

The Senate provision provides authorization for weather services of $30,000,000 for each of the fiscal years 1990, 1991 and 1992.

Conference

The Conferees adopted the House provision which is the Administration's requested amounts for fiscal years 1991 and 1992.

AVIATION RESEARCH GRANT AND CONSORTIUM PROGRAM

House provision

The House provision amends the Federal Aviation Act of 1958 to authorize the Administrator to make grants directly to colleges, universities and non-profit research organizations for conducting aviation research and to establish a research consortium, consisting of regional centers of excellence in areas deemed by the Administrator to be required for the long-term growth of aviation.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision authorizing the Administrator to make grants to colleges, universities and non-profit research organizations to conduct aviation research.

STUDY BY THE GENERAL ACCOUNTING OFFICE OF MULTIYEAR CONTRACTING AUTHORITY

House provision

The House provision requires the Comptroller General to conduct a study of the advisability of granting to the Administrator of the FAA authority to issue multiyear contracts.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision.

BUY-AMERICAN REQUIREMENT

House provision

The House provision authorizes the Administrator of the FAA to award a contract to a domestic firm under certain circumstances that under the use of competitive procedures would be awarded to a foreign firm.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision.

CATASTROPHIC FAILURE PREVENTION RESEARCH PROGRAMS

House provision

The House provision provides that the Administrator develop a research and development program to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes and articles manufactured for use in aircraft, aircraft engines, propellers and appliances which could result in a catastrophic failure of an aircraft.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision. The legislative history is detailed in House Science Committee report 101-585.

AVIATION RESEARCH AND CENTERS OF EXCELLENCE

House provision

No comparable provision.

Senate provision

The Senate provision amends the Federal Aviation Act of 1958 to authorize the Administrator to make grants to one or more colleges or universities to establish and operate several regional centers of air transportation excellence, whose locations shall be geographically equitable and directs the Research Advisory Committee established in Section 312(f)(2) of the Act to coordinate, disseminate and act as a clearinghouse for the work of the regional centers.

Conference

The Conference adopted the Senate provision but changed the responsibility of the Research Advisory Committee to review the work of the regional centers.

TITLE X—MISCELLANEOUS USER FEES AND OTHER PROVISIONS

SUBTITLE A—CUSTOMS USER FEES AND OTHER TRADE PROVISIONS

1. CUSTOMS USER FEES

(Section 12401 of the House bill; section 6301 of Senate amendment; section 10001 of conference agreement)

a. Extension of Fees

Present law

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 establishes customs user fees on the processing of merchandise, air passengers arriving from abroad, various conveyances, dutiable mail, and customs broker permits. Section 111(e) of the Customs and Trade Act of 1990 (Public Law 101-382) extends these fees through September 30, 1991.

House bill

Section 12401 extends the merchandise processing fees and other user fees through September 30, 1995.

Senate amendment

Section 6301(a) is identical.

Conference agreement

The conferees agree to the House and Senate provision.

b. Adjustment Authority

Present law

Present law provides no authority for the Customs Service to adjust the current merchandise processing fee on formal entries of 0.17 percent ad valorem. Section 113 of the Customs and Trade Act of 1990 requires Customs to estimate the amount of the merchandise processing fee that would be required to offset the salaries and expenses incurred by Customs in conducting its commercial operations, develop a methodology for computing the fee, and report the estimate and methodology to Congress.

House bill

No provision.

Senate amendment

Section 6301(b) authorizes the Secretary of the Treasury to adjust the fee to take

into account changes in economic conditions or trade flows, to avoid unintended under- or over-collections, and to help to ensure that the user fee will continue to conform to the requirements of the General Agreement on Tariffs and Trade (GATT).

The Secretary may adjust the merchandise processing fee on formal entries by the lesser of (1) the amount needed to meet the appropriate levels for allowable Commercial Operations costs, or (2) 0.02 percentage points (i.e., for a maximum level of 0.19 percent and a minimum level of 0.15 percent). When an adjustment is made, the Secretary shall take into consideration any under- or over-collections in prior years. The Secretary may adjust the fee only after: (1) publishing within 30 calendar days of the date of enactment of the Customs Service's regular annual appropriation, a notice of intent to adjust the fee, the amount of the proposed fee, and a request for public comment on the proposal; (2) consulting with the Senate Committee on Finance and the House Committee on Ways and Means for a period of 30 session days (as defined in the section); and (3) publishing a final determination of the new rate in the Federal Register after the public comment and Congressional consultation periods have expired. The new rate would be effective 15 days after the determination is published.

Conference agreement

The House recedes, with an amendment providing that the Secretary of the Treasury may adjust the fee only after: (1) publishing in the Federal Register within 45 calendar days of the date of enactment of the full-appropriation for the Customs Service a notice of intent to adjust the fee, the amount of the proposed fee, and request for public comment; (2) considering the public comment and consulting with the Senate Committee on Finance and the House Committee on Ways and Means during the 30-day period following the publication of the notice of intent; (3) providing to the Senate Committee on Finance and the House Committee on Ways and Means, upon expiration of the 30-day consultation period, written notification of the final determination to adjust the fee, the level of the fee and the methodology used to determine the level of the fee; and (4) submitting the final determination of the new rate for publication in the Federal Register upon expiration of the 15-"session-day" period (as defined in the section) following such notification to the Committees. The 15-day period is intended to ensure that Congress will have an opportunity to review the final determination and, if necessary, to act to change it before it goes into effect. The new rate would go into effect 15 calendar days after the final determination is published.

The conferees believe that the adjustment authority provided by this section will help to ensure that the user fee will continue to conform to the requirements of the GATT. The conferees also agree that if the Secretary of the Treasury determines not to adjust the fee from the levels established for the prior fiscal year, the Secretary must report such determination and the methodology used to justify the level of the fee to the Senate Committee on Finance and the House Committee on Ways and Means within 45 days of the date of enactment of Customs' full-year appropriation. Any ad valorem adjustment made under this authority remains in effect until a future adjustment is made. The ad valorem rate floor ($21) and ceiling ($400) provided for in current law remain in effect under any future fee adjustment. Under the fee adjustment provision, a full-year appropriation is intended to include a regular full-year appropriation bill, a continuing resolution making appropriations for a full fiscal year, and a continuing resolution making appropriations for the remainder of a full fiscal year.

c. Small User Fee Airports and Miscellaneous Matters

Present law

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 111 of the Customs and Trade Act of 1990, exempts air courier hubs, express consignment carrier facilities, and user fee airport operators from paying entry-by-entry fees on "informal" entries (i.e., generally, those valued at less than $1,250), but requires these facilities to reimburse Customs in an amount that is double their current assessment for Customs processing services.

House bill

No provision.

Senate amendment

The Senate amendment provides that user fee airports that process fewer than 25,000 informal entires annually would be required to collect the entry-by-entry fee, in addition to the reimbursement required under section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b), instead of paying the double reimbursement. User fee airports processing 25,000 or more informal entries annually would continue to be exempt from the entry-by-entry fees and subject to the double reimbursement requirement.

Conference agreement

The House recedes with a technical amendment. This change reflects the fact that the double reimbursement requirement imposed an unintended hardship on those user fee airports that process low volumes of informal entries. The conferees also believe that this change will help ensure continued compliance with our GATT obligations.

The conferees also agree to clarify the distinction, created in section 111 of the Customs and Trade Act of 1990, between "automated" and "manual" entries for purposes of assessing the merchandise processing fee on imported merchandise. The conferees believe that clarifying the definition of "manual entry" will eliminate an ambiguity which had caused confusion for importers, particularly along the U.S. border with Canada.

2. TECHNICAL CORRECTIONS TO THE CUSTOMS AND TRADE ACT OF 1990

(Sections 6311 and 6312 of Senate amendment; sections 10011, 10012, and 10013 of conference agreement)

Present law

On August 20, 1990, the Customs and Trade Act of 1990 (Public Law 101-382) was enacted.

House bill

No provision.

Senate amendment

Sections 6311 and 6312 correct technical and drafting errors in various miscellaneous tariff provisions of the Customs and Trade Act of 1990 and reinstate two statutory provisions of the Customs Forfeiture Fund that were inadvertently deleted from existing law.

Conference agreement

The House recedes with an amendment regarding additional technical corrections that came to the attention of the conferees after passage of the Senate amendment.

Managers' Report

PATENT AND TRADEMARK OFFICE USER FEES

The House recedes to the Senate with an amendment. The conferees agreed in Fiscal Year 1991 to place all receipts raised by the surcharge on Patent user fees in a special fund in the Treasury and credited as offsetting receipts. This special fund shall be solely for the use of the Patent and Trademark Office. Of this, $91 million shall be available to the Patent and Trademark Office to the extent provided in appropriations acts, and the additional $18.8 million shall be directly available to the Office. In Fiscal Years 1992 through 1995 all receipts shall be placed in this special fund in the Treasury and credited as offsetting receipts, to be available to the Patent and Trademark Office only to the extent provided in appropriations acts.

The Judiciary Committees in the House and Senate were instructed to raise $91 million through an increase in Patent and Trademark Office user fees in Fiscal Year 1991 in order to meet the targets of the Budget Resolution. Prior to the Budget Resolution, the House Appropriations Committee had appropriated, and the House of Representatives approved, $109,807,000 out of the General Fund of the Treasury for the Patent and Trademark Office. The Commerce, State and Justice Appropriations Conference Report provides only $91 million for the Patent and Trademark Office, including $3 million from the General Fund of the Treasury for support of core public functions of the Office. Accordingly, the conferees have agreed to raise user fees by 13% above the House and Senate reconciliation bills. This will generate $109,807,000 in surcharges.

Because Congress must reauthorize the Patent and Trademark Office in 1991, the conferees did not adjust the surcharge on user fees in Fiscal Years 1992 through 1995 and retain the figures in the House and Senate bills.

SUBTITLE C—SCIENCE AND TECHNOLOGY USER FEES

STATEMENT OF MANAGERS

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—NOAA USER FEES

Under current law, the National Oceanic and Atmospheric Administration (NOAA) can only recover its costs in selling information and data it produces, except where legislative authority directly permits NOAA to charge fair market value.

House provision

The House provision authorizes NOAA to sell data materials with commercial value at fair market prices. The legislation places a cap on total revenues from increased user fees at $1 million in FY 1991, and $2 million in each of the fiscal years 1992, 1993, 1994, and 1995. It also places a total cap of $8 million over five years.

Senate provision

The Senate provision authorizes NOAA to sell data information and materials at fair market prices. The Senate provision also provides that the Secretary of Commerce shall waive the assessment of fees as necessary to continue to provide weather warnings, watches, and similar products and services essential to the mission of the National Oceanic and Atmospheric Administration.

Conference

The Conference agreed to a substitute reflecting the Senate language with the inclusion of adjusted limitations on the total revenues that could be collected annually through assessment of fees. This change, for example, would permit the Secretary to charge fees for forecast services where such services are redistributed by commercial entities for a profit.

The Conferees expect that NOAA will seek to ameliorate the potential negative impact of increased fees by spreading the fees over a variety of data and information products provided by NOAA branches in addition to the Weather Service.

The Conferees agree that the existing statute authorizing the Secretary to recover fees collected by the National Environmental and Satellite Data Information Service (NESDIS) from archived data to offset NESDIS cost should be continued without change.

RADON PROFICIENCY PROGRAM USER FEES

House provision

Section 10003 establishes a mandatory radon measurement proficiency program at the Environmental Protection Agency funded by user fees. Section 10003(a) directs the Administrator to conduct research to develop, test, and evaluate radon measurement methods. Section 10003(b) directs the Administrator to establish a mandatory program requiring that any product, device, or person employing a technique in connection with a radon measurement offered to the public meet a minimum level of proficiency. This program would close existing loopholes, provide better consumer protection, and increase safeguards on public health. Section 10003(c) directs the Administrator to establish a schedule of user fees for applicants for certification, with the amount of such fees designed to cover the operating and administrative costs of the certification and research program.

Senate provision

There is no comparable Senate provision.

Conference

The Conference agreed to a Senate substitute for the House provision. The substitute is a compromise provision which directs the Administrator to collect user fees for the radon proficiency program which recover the costs of the proficiency program as well as an additional 1.5 million dollars per year for the research program. This provision would result in budgetary savings of 1.5 million dollars per year for FY 1991, 1992, 1993, 1994 and 1995. The substitute also directs the Administrator to conduct a study on the feasibility of establishing a mandatory proficiency program with a report to the Congress by March 1, 1991.

NUCLEAR WASTE FUND

Present law

Section 302(a) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(a), requires civilian nuclear waste generators to pay fees to the Secretary of Energy for the disposal of their nuclear waste. These fees are deposited in a separate account in the Treasury known as the Nuclear Waste Fund, which can only be used to pay for nuclear waste disposal activities authorized by the Act.

Section (a) (2) and (3) set the amount of these fees at one mill (one-tenth of one cent) per kilowatt-hour of electricity associated with the waste. Section 302(a)(4) requires the Secretary of Energy to annually review the amount of fees being collected and to propose an increase or decrease in the amount of the fees if he finds too little or too much is being collected for full cost recovery.

House provision

The House provision would have imposed a surcharge on the fees to increase the amount collected in an amount that:

(1) "reflects the fair market value" of the Secretary's waste disposal activities;

(2) collects at least $5 million annually in fiscal years 1991 through 1995; and

(3) collects not more than:

(A) $6 million in fiscal year 1992;

(B) $7 million in fiscal year 1993;

(C) $8 million in fiscal year 1994, and

(D) $9 million in fiscal year 1995.

Senate provision

The Senate provision contains no comparable provision.

Conference

The Conference agreement does not include the House provision.

URANIUM ENRICHMENT ACT

House provision

The House provision contains no comparable provision.

Senate provision

Subtitle B of Tile IV of the Senate provision includes a uranium enrichment provision which is a modification of S. 83, the Uranium Enrichment Act of 1989. The Act has been modified to provide for the following: (1) preclusion of payments in lieu of taxes by the Uranium Enrichment Corporation until fiscal year 1996; (2) restrictions on the expenditures of the Corporation and requirements to pay dividends during fiscal years 1991-1995; and (3) establishment of a fee of two-tenths of a mill per kilowatt-hour on net generation of electricity by each civilian nuclear power reactor during fiscal years 1991-1995.

Conference

The Conference agreement does not include the Senate provision on uranium enrichment.

The Conferees recognize that the Federal uranium enrichment enterprise faces increasing competitive challenges. The Conferees agree that priority should be given in the next session of Congress to legislation that allows the enterprise to operate, as a commercial enterprise, on a profitable and efficient basis in order to maximize the long term economic value of the enterprise to the United States Government. The legislation should also recognize the importance of maintaining a reliable and economical domestic supply of enrichment, of ensuring that the Nation's common defense and security objectives are achieved and of conducting the enterprise's activities in a manner consistent with the health and safety of the public including the fair and equitable sharing of the costs of timely decontamination and decommissioning of the enrichment facilities.

DEPARTMENT OF ENERGY USER FEE STUDY

House provision

Section 10004 directs the Department of Energy (DOE) to study and report to Congress its findings and recommendations on all of its user fees to determine how to recover reasonable operational costs from non-proprietary users and fair market value from proprietary users consistent with the DOE mission.

Senate provision

The Senate has no comparable provision.

Conference

The Conferees agree to a modified provision, directing the Secretary of Energy to conduct a study of its user fee assessment and collection practices and make recommendations on ways to improve those practices. The Conferees recognize that imposition of a user fee system could have a significant impact on the relationship between DOE facilities and our Nation's academic, scientific and commercial communities as well as other government agencies. The Conferees expect the Secretary's recommendations to be the subject of hearings prior to any proposed action by the Secretary to implement the recommendations.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

House provision

The House provision directs the National Aeronautics and Space Administration (NASA) to study and report to Congress on all of its user fee and assessment practices and to make recommendations on ways to maximize revenues and on the advisability of recovering fair market value for certain services.

Senate provision

The Senate has no comparable provision.

Conference

The House recedes.

DEPARTMENT OF TRANSPORTATION

House provision

The House provision requires the Secretary of Transportation to conduct a study of licensing fee assessment in order to offset the operating budget for this activity.

Senate provision

The Senate has no comparable provision.

Conference

The Conferees agree to modify the House provision by requiring a report on actions by the Department of Transportation (DOT) for the assessment and collection of licensing fees under the Commercial Space Launch Act. The Conferees recognize that DOT's Office of Commercial Space Transportation has proposed the collection of $200,000 in fee reimbursements as a part of its fiscal year 1991 budget.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

House provision

Section 10007 directs the National Institute of Standards and Technology (NIST) to study and report to Congress on the feasibility of charging fees for its services, including how to fully recover operational costs from non-proprietary users and fair market value from proprietary users consistent with the NIST mission. The study shall also include recommendations to recover the costs of carrying out the institute's contract and award programs.

The Secretary shall submit a report containing such findings and recommendations within 6 months after the date of enactment of this Act. There are authorized to be appropriated for carrying out this section not to exceed $500,000 out of funds otherwise available.

Senate provision

No provision.

Conference

The Conferees agree to modify the House provision by requiring the Secretary to undertake a study of current practices at, and any suggested improvement consistent with

the mission of, NIST for recovering the costs of services and materials provided to private and nonprofit organizations, including services provided on a proprietary basis to users of Institute facilities. The Secretary shall submit a report containing such findings to Congress within 6 months after the date of enactment of this Act.

The Conferees note that NIST already collects substantial fees as part of its existing cost-recovery program and intend that the Secretary provide the Committees with a full description of these existing practices. The study should state how the current fee structure fits with NIST's multiple missions.

SUBTITLE E: COAST GUARD USER FEES

Section 10401—Establishment and Collection of Fees for Coast Guard Services

DIRECT COAST GUARD USER FEES

Section 3001 of the Senate bill directed the Coast Guard to establish and implement a system for the collection of $200 million from payments by users of direct and indirect services provided by the Coast Guard. The system would begin operations on October 1, 1990, and continue through fiscal year 1995, generating each year $200 million plus an amount sufficient to compensate for inflation.

Section 7102 of the House bill repealed section 2110 of title 46, United States Code, which bars the Coast Guard from assessing direct user fees for services, such as inspection and examination of vessels, and the licensing of masters, mates, pilots, and engineers.

The managers on the part of the House recede to the Senate with an amendment.

The conference agreement repeals the existing prohibition on the imposition of certain fees by the Coast Guard. It would allow the Coast Guard to collect direct fees for services including inspection and examination of vessels, and licensing of masters, mates, pilots, and engineers. The Administration proposed the imposition of fees for these services in a letter from the Secretary of Transportation to the House and the Senate.

INDIRECT COAST GUARD USERS FEES

As explained above, Section 3001 of the Senate bill directed the Coast Guard to establish and implement a system for the collection of $200 million from payments by users of direct and indirect services provided by the Coast Guard. This provision allowed for the possibility of an indirect user fee on recreational boaters.

The House had no comparable provision.

The managers on the part of the House recede to the Senate with an amendment.

The conference agreement directs the Secretary to establish a fee or charge annually in fiscal years 1991, 1992, 1993, 1994, and 1995 on recreational vessels that are greaer than 16 feet in length. The agreement limits the amount the Coast Guard may collect from a recreational boat owner and establishes a graduated schedule so that owners of larger vessels pay a higher fee. Small vessels 16 feet and under are exempt. The fee or charge would apply only to vessels operating on navigable waters of the United States where the Coast Guard has a presence. The agreement also exempts from the fee program public vessels and vessels used by the Coast Guard Auxiliary. Finally, the agreement contains enforcement provisions to assure compliance with the program. The program will terminate after five years at the end of the 1995 fiscal year.

The Administration proposed the imposition of indirect user fees in a letter from Secretary of Transportation Skinner to the House and the Senate.

Section-by-Section

Section 10401(a) amends section 2110 of title 46, United States Code to authorize the Coast Guard to establish and collect certain direct fees for Coast Guard services.

Section 2110(a)(1) of title 46 requires the Secretary of the department in which the Coast Guard is operating to collect fees of charges for a service or thing of value provided by the Coast Guard. The Coast Guard is already permitted to collect fees for documentation of vessels and filing, recording, and discharge of commercial instruments and maritime liens. The conference agreement amends existing section 2110 of title 46, United States Code, to permit the Coast Guard to collect a direct user fee for inspection and examination of certain vessels and licensing, certification, and documentation of personnel. Users fees for these services are currently prohibited by statute.

User fees under this section would be charged only for Coast Guard Services provided to specific, identifiable users. Among the users that may be affected by user fees authorized under this section are persons who are issued certificates, permits, approvals, licenses, and documents by the Coast Guard and the owners, charterers, managing operators, agents, masters, or individuals in charge of United States-flag commercial vessels.

In establishing these fees or charges, the Coast Guard will have to consider the criteria provided under section 9701 of title 31, United States Code, known as the General User Fee Statute. Accordingly, each fee or charge must be fair and be based on the costs to the government, the value of the service or thing provided to the recipient, public policy or interest served, and other relevant facts.

Paragraph (2) limits the amount of the fee or charge that the Coast Guard may establish for an inspection or examination of a non-self-propelled tank vessel. The fee or charge may not exceed $500 annually.

Paragraph (3) permits the Secretary to adjust the fee or charge collected under paragraph (1) to accommodate changes in the cost of providing specific services. However, the adjusted charge may not exceed the total cost of providing the service for which the fee or charge is collected, including the costs of collections (which is the current rule as provided under the general user fee law).

Paragraph (4) prohibits the Secretary from collecting a fee or charge if it is in conflict with the international obligations of the United States.

Paragraph (5) prohibits the Secretary from collecting a fee or charge for any search and rescue services the Coast Guard may render.

Subsection (b) authorizes the Secretary to adopt rules assessing an indirect fee or charge to be collected annually from owners or operators of recreational vessels which measure over 16 feet in length. This fee will be collected only once each year for each of the next five fiscal years beginning in 1991. The indirect user fee authorized by this subsection is intended to require recreational boaters to share in the cost of existing Coast Guard programs, including search and rescue, boating safety, and aids to navigation, for which no direct user fee may be assessed, but which provides substantial benefits to recreational boaters.

Paragraph (2) provides that the indirect fee is to be collected on a graduated basis with the maximum allowable amount of the fee depending on the length of the vessel. No fee will be assessed on vessels 16 feet in length or less. Vessels over 16 feet in length, but less than 20 feet in length, may be assessed a fee of not more than $25. For vessels 20 feet or more in length but less than 27 feet in length, the fee may not be more than $35. For vessels 27 feet in length or more but less than 40 feet in length, the fee may not exceed $50. For vessels 40 feet in length or more, the fee may not exceed $100. The managers expect that a uniform charge will be established for each category.

Paragraph (3) limits the assessment of the fee to vessels operated on navigable waters of the United States where the Coast Guard has a presence.

Paragraph (4) provides that the fee may not be assessed on a public vessel or a vessel that qualifies as a public vessel by virtue of its use as a Coast Guard auxiliary vessel. It is intended to be imposed only on recreational vessel as that term is defined in 46 U.S.C. 2101(25). A recreational vessel is a vessel manufactured or operated primarily for pleasure or one which is leased, rented, or chartered to another for the latter's pleasure. The indirect fee or charge will not be imposed on a vessel engaged in commercial service, a fishing vessel, a fish processing vessel, or a fish tender vessel as these vessels are defined in 46 U.S.C. 2101 (11a), (11b), and (11c).

Subsection (c) authorizes the Secretary to recover appropriate administrative costs for collection and enforcement actions associated with the collection of delinquent fees or charges.

Subsection (d) authorizes the Secretary to employ a public or private agency to collect the fees or charges authorized by this legislation. The Secretary may enter into agreements with private enterprises or businesses to collect fees or charges. Any agreement shall be subject to reasonable terms and conditions agreed to by the Secretary and the collection service, and shall require an appropriate accounting to the Secretary. However, the collection service may not be used to institute litigation for collection of the fee. Federal agencies that serve as the collection agent must also account for their costs, and those costs must be credited to the account from which they are expended if the federal agency receives reimbursement of costs.

Subsection (e) authorizes a civil penalty of not more than $5,000 if a person fails to pay a charge or fee authorized under this subtitle. The current Coast Guard penalty assessment procedures in Part 1.07 of title 33, Code of Federal Regulations, may be used to assess the penalties prescribed by this Act.

Subsection (f) requires the Secretary of the Treasury, upon the request of the Secretary of Transportation, to deny clearance to a vessel to enter a place subject to the jurisdiction of the United States until the fee or charge is paid or a bond is posted for its payment.

Subsection (g) authorizes the Secretary to grant exemptions from the provisions of this legislation when the Secretary determines it is in the public interest to do so.

Subsection (h) provides that fees or charges collected by the Secretary shall be deposited in the general fund of the Treasury as proprietary receipts ascribed to Coast Guard activities.

Subsection (i) specifically limits the liability of the United States as a result of this Act. These fees or charges are not intended

to alter the duties or liabilities of the Coast Guard with respect to services it provides to the public. The Coast Guard's duties and liabilities would remain as prescribed by existing law as interpreted by court decisions with regard to the performance of any service or activity. The imposition of these fees or charges is not intended to alter the standard of care to which the United States would be held if no charges or fees were assessed. The conferees intend to limit the liability of the United States to that of a government entity with sovereign immunity, rather than that of a provider of services.

TONNAGE DUTIES

Section 7101 of the House bill increased the existing tonnage duty for all vessels entering a port of the United States from any foreign port or place in North America, Central America, part of South America, and other parts of that geographical area to 27 cents per ton, not to exceed $1.35 per ton per year. The current rate for vessels arriving from ports within this geographic area is 2 cents per ton, not to exceed 10 cents per ton per year. The House bill also increased the tonnage duty for vessels entering U.S. ports from other foreign ports or places to 81 cents per ton, not to exceed $4.05 per ton per year. The current rate for vessels arriving from ports in this geographic area is 6 cents not to exceed $1.35 per ton per year.

The Senate had no comparable provision.

The managers on the part of the Senate recede to the House with an amendment.

This provision amends 46 App. U.S.C. 121 to increase the tonnage taxes presently collected from vessels arriving in the United States from foreign ports. The conference agreement increases the existing tonnage duties by a factor of 4.5 in fiscal years 1991, 1992, 1993, 1994, and 1995. After fiscal year 1995, the tonnage fees will return to the amount imposed under existing law. The agreement also imposes a duty on vessels that depart a United States port, engage in cruises to nowhere, and return to the same United States port. Vessels exempt from this new duty are: vessels of the United States (for example, a vessel enagaged in the coastwise trade or a fishing vessel); recreational vessels; and United States vessels that are not documented, numbered, or titled, such as undocumented barges operating under section 12110(b) of title 46.

Section-by-Section

Section 10401(a) increases the amount of existing tonnage duties for all vessels entering a port of the United States from any foreign port or place in North America, Central America, part of South America, and other parts of that geographical area to 9 cents per ton, not to exceed 45 cents per ton per year. This section would also increase the tonange duty for vessels entering U.S. ports from other foreign ports or places to 27 cents per ton, not to exceed $1.35 per ton per year. This increase in the duty would be in effect and collectable for only five fiscal years beginning with fiscal year 1991; thereafter the duties would revert to the same amount as in effect prior to the passage of this legislation. Finally, vessels departing a United States port and returning to the same port, without going to another port or place, excepting vessels of the United States, recreational vessels, or a barge operating under authority of Section 12110(b) of this title, would pay 9 cents per ton, not to exceed 45 cents per ton per year for the next five fiscal years; in 1996 the rate for these vessels will be lowered to 2 cents per ton, not to exceed 10 cents per ton per year.

Tonnage taxes were first collected by the United States in 1790. The rates of regular tonnage duties now in effect have not been changed since 1909. Presently, all United States and foreign vessels arriving from foreign ports or places are required to pay the regular tonnage duty on their cargo carrying capacity, with certain exceptions. Vessels in distress or vessles not engaged in trade are not required to pay duty. Also, coastwise vessels and fishing vessels are specifically exempted from the duty.

Subsection (b) is a conforming amendment.

Subsection (c) provides that receipts from the increase in the tonnage charges will be deposited to the general fund as offsets to the Coast Guard operating budget.

TITLE XI—REVENUE PROVISIONS

A. Individual Income Tax Provisions

1. Individual income tax structure; individual alternative minimum tax rate; phaseout of personal exemptions

Present law

Individual income tax rates

Individual income tax rates are 15 and 28 percent, and the tax rates apply to taxable income brackets which vary according to the filing status of the taxpayer.

In addition, there is, in effect, a 33-percent marginal tax rate which serves to phase out the tax benefits of both the 15-percent tax rate and the personal exemption amounts, i.e., "the bubble."

Capital gains are taxed at ordinary income tax rates.

Taxable income brackets for 1990 brackets are shown below for 3 income tax filing statuses.

TAXABLE INCOME BRACKETS

Tax rate	Married joint return	Head of Household	Single individual
15 percent	0—$32,450	0—$26,050	0—$19,450
28 percent	$32,451—$78,400	$26,051—$67,200	$19,451—$47,050
33 percent[1]	$78,401—$185,730	$67,201—$157,890	$47,051—$109,100
28 percent	Over $185,730	Over $157,890	Over $109,100

[1] The 33-percent tax rate terminates and the 28-percent tax rate again applies after the benefits of the 15-percent rate and the personal exemptions claimed by each taxpayer have been phased out. The amount of taxable income at which the phaseout is completed varies according to each taxpayer's family and filing status. This table shows the level at which the 33-percent tax rate would end in order to phase out completely the benefits of the 15-percent tax rate plus the minimum number of personal exemptions for each of the tax filing statuses shown. For this table, married individuals filing a joint return and heads of households are assumed to claim two personal exemptions; one personal exemption is assumed for a single individual. Each personal exemption is phased out over $11,480 of taxable income.

Individual alternative minimum tax rate

An individual taxpayer is also subject to an alternative minimum tax (AMT) which is payable to the extent it exceeds the taxpayer's regular income tax liability. The AMT rate is 21 percent of the alternative minimum taxable income. The AMT rate is set at 75 percent of the maximum regular marginal tax rate of 28 percent.

Phaseout of personal exemptions

A deduction for an individual, the individual's spouse, and each dependent is allowed. For 1989, the amount of the deduction was $2,050 for each exemption. The exemption amount is adjusted for inflation. The benefit of the deduction, as well as the benefit of the 15-percent tax bracket, is phased out under present law by the imposition of the additional 5-percent tax described above. Each personal exemption phases out over $11,480 of taxable income.

House bill

Individual income tax rate

An explicit, permanent 33-percent marginal tax rate is imposed after the 15-and 28-percent marginal tax rate brackets. In addition, the House bill repeals the phaseouts of the tax benefits of the 15-percent rate and the personal exemption amounts. The new rate begins at the same level of taxable income as the phase-out range in present law.

Capital gains income is subject to a maximum marginal tax rate of 28 percent, other than for capital gains for which the taxpayer elects the exclusions permitted under the House bill and capital gains income subject to the surtax under the House bill.

Individual alternative minimum tax rate

The individual AMT rate is increased to 25 percent, in order to retain the relationship in present law between the AMT rate and the top marginal tax rate in the individual income tax.

Phaseout of personal exemptions

The additional 5-percent tax is repealed and an additional tax bracket at a 33-percent rate is imposed, as described above.

Senate amendment

No provision.

Conference agreement

Individual income tax rate

The conference agreement follows the House bill with modifications. The maximum marginal income tax rate in the statutory rate structure in sec. 1 is 31 percent; the phaseout of the personal exemptions and overall limitation on itemized deductions are additional adjustments apart from the statutory tax rate structure. The 31-percent marginal tax brackets in 1991 begin at the following amounts:

Single individual	$49,200
Joint return	82,050
Head of household	70,350
Married, filing separately	41,025
Estate and trusts	10,350.

The conference agreement also modifies the tax rates applicable to trusts and estates in order to not increase the benefit of the lower brackets that might otherwise arise from the adoption of the 31-percent marginal tax rate bracket. The conferees believe that modification of these rates is necessary to prevent additional undesirable incentives to create multiple trusts (i.e., the benefit of the lower brackets to a trust will be a maximum of $726.00 per year compared to $708.50 under present law).

Accordingly, the income tax rates and threshold amounts applicable to trusts and estates before the inflation adjustment for 1991 are adjusted as follows:

If taxable income is:	The tax is:
Not more than $3,300	15% of taxable income.
Over $3,300 but not over $9,900	$495.00 plus 28 percent of the excess over $3,300.
Over $9,900	$2,343.00 plus 31 percent of the excess of $9,900.

Individual alternative minimum tax rate

The conference agreement follows the House bill with a modification that reduces the individual AMT tax rate from the House bill rate to 24 percent.

Phaseout of personal exemptions

The deduction for personal exemptions is phased-out as the taxpayer's adjusted gross income exceeds a threshold amount. The threshold amount is $150,000 for joint returns, $125,000 for a head of household, $100,000 for single taxpayers, and $75,000 for a married person filing a separate return. The phaseout range for the personal exemptions is $122,500. These amounts are indexed for inflation.

The exemption amount for each exemption is phased out by two percent for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds the applicable threshold amount; the phaseout rate is 4 percent for a married person filing a separate return. Thus, for example, a joint return with an adjusted gross income of $212,500 (in 1991) would be entitled to deduct one-half the exemption amount for each exemption that otherwise would be deductible without regard to the phase-out. The provision is effective for taxable years beginning after December 31, 1990, and before January 1, 1996.

2. Limitation on Itemized Deductions

Present law

General rules for itemized deductions

Under present law, individuals who do not elect the standard deduction may claim itemized deductions (subject to certain limitations) for certain nonbusiness expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, casualty and theft losses, charitable contributions, qualified residence interest, a portion of personal interest (10 percent in 1990; zero thereafter), State and local income and property taxes, moving expenses, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Certain itemized deductions are allowed only to the extent that the amount of the expense incurred during the taxable year exceeds a specified percentage of the taxpayer's adjusted gross income (AGI). Unreimbursed medical expenses for care of the taxpayer and the taxpayer's spouse and dependents are deductible only to the extent that the total of such expenses exceeds 7.5 percent of the taxpayer's AGI. Nonbusiness casualty or theft losses are deductible only to the extent that the amount of the loss arising from each casualty or theft exceeds $100 and only to the extent that total casualty and theft losses exceed 10 percent of the taxpayer's AGI. Unreimbursed employee business expenses and certain other miscellaneous itemized deductions are deductible only to the extent that the total of such expenses and deductions exceeds two percent of the taxpayer's AGI.

Deduction for contribution of appreciated property

In computing taxable income, a taxpayer generally is allowed to deduct the fair market value of property contributed to a charitable organization.[1] In the case of a charitable contribution of tangible personal property, however, a taxpayer's deduction for regular tax purposes is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis.

Deduction for cosmetic surgery

For purposes of the medical expense deduction, eligible "medical care" expenses are defined as amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (sec. 213(d)(1)(A)). The Internal Revenue Service (IRS) has interpreted "medical care" as including procedures that permanently alter any structure of the body, even if the procedure generally is considered to be an elective, purely cosmetic treatment (such as removal of hair by electrolysis and face-lift operations).

House Bill

No provision.

Senate amendment

General limitation on itemized deductions

The Senate amendment provides that total otherwise allowable itemized deductions (other than medical expenses, casualty and theft losses, and investment interest) are reduced by an amount equal to five percent of the amount of a taxpayer's AGI in excess of $100,000.[2] In no event, however, are total otherwise allowable itemized deductions (excluding medical expenses, casualty and theft losses, and investment interest) reduced by more than 80 percent. The provision applies only to individual taxpayers and not to an estate or trust.

In computing the amount of the reduction of total itemized deductions under the provision, all present-law limitations applicable to such deductions first are applied and the otherwise allowable total amount of deductions then is reduced pursuant to the provision. For purposes of the alternative minimum tax, itemized deductions which are otherwise allowed in computing AMTI are not reduced by the provision (i.e., the cutback amount determined for regular tax purposes is disregarded in calculating AMTI).[3] For purposes of determining the tax treatment of State income tax refunds and other similar payments, the present-law tax benefit rule applies.

Deduction for contributions of appreciated tangible personal property

For purposes of computing alternative minimum taxable income, the present-law rule that treats as a tax preference item the amount of appreciation with respect to a charitable contribution of capital gain property (sec. 57(a)(6)) is repealed in the case of a contribution of tangible personal property. Thus, if a taxpayer makes a charitable contribution of tangible personal property (other than inventory or other ordinary income property, or short-term capital gain property), the use of which is related to the donee's tax-exempt purpose, the taxpayer is entitled to claim a deduction for both regular tax and alternative minimum tax purposes in the amount of the property's fair market value (subject to present-law percentage limitations). Contributions of inventory or other ordinary income property and short-term capital gain property continue to be governed by present-law rules.

Denial of deduction for unnecessary cosmetic surgery

The Senate amendment provides that expenses paid for cosmetic surgery or other similar procedures are not deductible medical expenses, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease. For purposes of this provision, cosmetic surgery is defined as any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

Effective date

The provisions are effective for taxable years beginning after December 31, 1990.

Conference Agreement

General limitation on itemized deductions

The conference agreement generally follows the Senate amendment, except that total otherwise allowable deductions (other than medical expenses, casualty and theft losses, and investment interest) are reduced by an amount equal to three percent of the amount of a taxpayer's AGI in excess of $100,000. In no event, however, are total otherwise allowable deductions (other than medical expenses, casualty and theft losses, and investment interest) reduced by more than 80 percent.

Inflation adjustments.—The conference agreement provides that for taxable years beginning after 1991, the $100,000 threshold amount will be adjusted for inflation.

Termination.—The conference agreement provides that the provision will not apply to taxable years beginning after December 31, 1995.

Deduction for contributions of appreciated tangible personal property

The conference agreement follows the Senate amendment, except that the provision applies only to contributions made during taxable years beginning in 1991. (Section 57(a)(6) will continue to apply to contributions of tangible personal property made in taxable years beginning after 1991.)

Denial of deduction for unnecessary cosmetic surgery

The conference agreement follows the Senate amendment.

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[1] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). Special rules also limit the amount of a charitable contribution deduction to less than the contributed property's fair market value in cases of contributions of inventory or other ordinary income property and short-term capital gain property.

[2] The threshold amount is $50,000 in the case of a separate return filed by a married individual within the meaning of section 7703. The threshold amounts are not indexed for inflation.

[3] This is accomplished by providing a negative adjustment for AMT purposes for the amount of the regular tax cutback in itemized deductions.

In addition, the conference agreement clarifies that if expenses for cosmetic surgery are not deductible under this provision, then amounts paid for insurance coverage for such expenses are not deductible under section 213 and reimbursement for such expenses is not excludable from the gross income of an individual under a health plan provided by an employer (including under a flexible spending arrangement).

3. Surtax on Individual Taxable Income

Present Law

No surtax applies to the taxable income of any individuals in present law. The individual alternative minimum tax (AMT) rate is 21 percent.

House Bill

A 10-percent surtax is imposed on an individual's taxable income over $1,000,000. The surtax raises the marginal tax rate on taxable income over $1,000,000 to 36.3 percent (33 percent + 3.3 percent). The 33 percent rate is the maximum individual income tax rate in the House bill. The surtax applies to taxable income over $500,000 in the case of married individuals filing separate returns.

The surtax applied to the AMT rate specified in the House bill raises the AMT marginal rate to 27.5 percent (25 percent + 2.5 percent).

The surtax on capital gains income raises the total tax rate on such income to 30.8 percent (28 percent + 2.8 percent). The maximum regular tax rate applied to capital gains income is 28 percent.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

4. INDEXING OF INCOME TAX BRACKETS AND PERSONAL EXEMPTIONS

Present Law

The threshold amounts for individual income tax rates are indexed annually for changes in the Consumer Price Index (CPI) that have occurred since the last such adjustment was made. Adjustments for changes in the CPI also are made annually in the personal exemption amount and the standard deduction amounts (including the additional amounts for blind or elderly taxpayers).

House Bill

Indexing of the threshold amounts for the tax brackets of the individual income tax is delayed by one year. Thus, the next adjustment for changes in the CPI will reflect the change in the CPI from 1990 to 1991, and the indexing will affect taxable years beginning after December 31, 1991.

The personal exemption amount allowed for each taxpayer and taxpayer's dependent will not be indexed for the 1991 tax year and so will remain unchanged at $2,050 for 1991. Indexing will resume for taxable years beginning after December 31, 1991, and the change will reflect increases in the CPI from 1990 to 1991.

The standard deduction amounts (including the additional amounts for blind or elderly taxpayers) are indexed for 1991 as in present law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

5. CAPITAL GAINS DEDUCTION FOR INDIVIDUALS

Present Law

Net capital gain is taxed at the same rate as ordinary income.

House Bill

The House bill provides individuals aged 25 or older with a deduction equal to 50 percent of net capital gains. The maximum amount of gain with respect to which the deduction may be taken is $200,000 over the individual's lifetime.

Assets eligible for the deduction are capital assets held for more than one year, but not including collectibles or publicly traded assets.

The lifetime capital gains deduction is not allowed in computing the minimum tax.

In addition to the lifetime capital gains deduction, the bill provides individuals (other than dependents) with a deduction of up to $1,000 of net capital gains each year. The amount of the deduction is phased out for those with adjusted gross incomes between $100,000 and $150,000.

Assets eligible for the annual $1,000 capital gains deduction are capital assets held for more than one year (including publicly traded assets), but not including collectibles.

Both the lifetime capital gains deduction and the annual $1,000 capital gains deduction apply to sales or exchanges of assets on or after October 15, 1990.

The bill also provides that all depreciation on real property is recaptured as ordinary income, effective for dispositions on or after October 15, 1990.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not contain the House bill provision.

B. MODIFICATIONS OF EARNED INCOME TAX CREDIT; DEPENDENT CARE TAX CREDIT

1. EARNED INCOME TAX CREDIT

a. Calculation of basic credit

Present Law

Certain individuals who maintain a home for one or more children are allowed an advance refundable tax credit based on the taxpayer's earned income (sec. 32). In 1990, the earned income tax credit (EITC) is equal to 14 percent of the first $6,810 of earned income.

The credit is phased out at a rate of 10 percent of the amount of adjusted gross income (or, if greater, earned income) that, in 1990, exceeds $10,730. The $6,810 and $10,730 amounts are adjusted annually for inflation, so that the maximum amount of credit and the maximum amount of income eligible for the credit increase with inflation.

The projected maximum amount of the credit in 1991 is $994. The actual maximum will depend on future inflation.

House Bill

The House bill modifies the EITC by providing an increase in the rate of the credit. The credit percentage is 18.5 percent for 1991, 19 percent for 1992 and 1993, and 20 percent for 1994 and thereafter. The phase-out percentage is 13 percent in 1991, 13.5 percent in 1992 and 1993, and 14 percent in 1994 and thereafter. The present-law dollar thresholds are retained.

The provision is effective for taxable years beginning after December 31, 1990.

Senate Amendment

The Senate amendment increases the amount of the EITC, modifies the present-law phase-out percentage, and adjusts the credit for family size as follows:

	Credit percentage	Phase-out percentage
For 1991:		
1 qualifying child	15.3	10.9
2 or more qualifying children	15.7	11.2
For 1992:		
1 qualifying child	15.95	11.4
2 or more qualifying children	16.55	11.8
For 1993:		
1 qualifying child	17.25	12.3
2 or more qualifying children	18.25	13.0
For 1994 and thereafter:		
1 qualifying child	20.5	14.6
2 or more qualifying children	22.5	16.1

As under present law, a taxpayer may receive the EITC on an advanced basis. However, the amount of the credit that may be received on this basis is limited to the credit that the taxpayer could receive if the taxpayer had only one qualifying child. If the taxpayer is entitled to receive a larger credit (e.g., by reason of family size), the balance of the credit may be refunded after the taxpayer's income tax return has been filed.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that the credit percentages and phase-out rates are modified and adjusted for family size as follows:

	Credit percentage	Phase-out percentage
For 1991:		
1 qualifying child	16.7	11.93
2 or more qualifying children	17.3	12.36
For 1992:		
1 qualifying child	17.6	12.57
2 or more qualifying children	18.4	13.14
For 1993:		
1 qualifying child	18.5	13.21
2 or more qualifying children	19.5	13.93
For 1994 and thereafter:		
1 qualifying child	23	16.43
2 or more qualifying children	25	17.86

For 1990, the maximum credit is $1,186 for taxpayers with one qualifying child and $1,228 for taxpayers with two or more qualifying children.

As under the Senate amendment, the amount of the credit that may be received on an advanced basis is limited to the credit that the taxpayer could receive if the taxpayer had only one qualifying child.

b. Modification of rules relating to eligibility for EITC

Present Law

The earned income credit is available to: (1) married individuals filing a joint return who are entitled to a dependency exemption for a child, (2) a head of household who resides with a child, or (3) a surviving spouse. In order to qualify to file as a head of household or surviving spouse, a taxpayer must establish that he or she has provided over half of the cost of maintaining the household for the year. In order to be eligible to claim a dependency exemption, the taxpayer, in general, must provide over half of the support for the child, and the child must have the same principal place of abode as the taxpayer for at least half the year. Benefits under the Aid to Families with Dependent Children (AFDC) program and other public assistance programs are not considered support provided by the taxpayer. Thus, for example, if more than half of the taxpayer's income is from AFDC or

sources other than the taxpayer's own income, the EITC generally is not available.

House Bill

Under the House bill, in order to qualify for the EITC, the taxpayer must meet the present-law earned income and adjusted gross income thresholds (as modified by the bill). In addition, the taxpayer must have a "qualifying child."

In order to be a qualifying child, an individual must satisfy a relationship test, a residency test, and an age test. The individual satisfies the relationship test if the individual is a son, stepson, daughter, or stepdaughter of the taxpayer, a descendent of a son or daughter of the taxpayer, or a foster or adopted child of the taxpayer. A foster child is defined as an individual whom the taxpayer cares for as the taxpayer's own child. An adopted child includes a child who is legally adopted, or who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer.

As under present law, if the individual is married at the close of the taxpayer's year, the taxpayer generally must be entitled to a dependency deduction for the taxable year with respect to such individual in order to claim the EITC.

An individual satisfies the residency test if the individual has the same principal place of abode as the taxpayer for more than half the taxable year (the entire year for foster children). It is intended that the determination of whether the residency requirement is met is made under rules similar to those applicable with respect to whether an individual meets the requirements for head-of-household filing status. Thus, for example, certain temporary absences due to education or illness are disregarded for purposes of determining whether the child had the same principal place of abode as the taxpayer for over half the year. As under present law, the residence must be in the United States.

An individual satisfies the age test if the individual (1) has not attained the age of 19 at the close of the taxable year; (2) is a full-time student who has not attained the age of 24 at the close of the taxable year; or (3) is permanently and totally disabled. Whether a child is a full-time student is determined under the rules relating to the dependency exemption (sec. 151(c)(4)). An individual is permanently and totally disabled if such individual meets the requirements relating to the credit for the disabled (sec. 22(e)(3)).

If, with respect to a taxable year, an individual is a qualifying child with respect to more than one taxpayer, then only the taxpayer with the highest adjusted gross income may claim the EITC with respect to that child for that year. In addition, a taxpayer may not claim the EITC if the taxpayer is a qualifying child.

As under present law, married taxpayers may only claim the EITC if they file a joint return.

Solely for purposes of the EITC, taxpayers are required to obtain and supply a taxpayer identification number (TIN) for each qualifying child who has attained the age of 1 as of the close of the taxable year of the taxpayer.

In order to claim the EITC, the taxpayer must complete and attach a separate schedule to his or her income tax return. In addition to the TIN requirement discussed above, this schedule is required to include the name and age of any qualifying children.

The Internal Revenue Service is to develop special procedures to notify taxpayers who have not claimed the EITC of their potential eligibility for the credit.

The provision is effective for taxable years beginning after December 31, 1990.

Senate Amendment

The Senate amendment is the same as the House bill, except that in addition to the information that may be required on the separate form under the House bill, the Senate agreement permits the Secretary to require adequate proof of the existence of health insurance if the taxpayer has claimed the supplemental EITC for health insurance (e.g., the policy number of the insurance or the employer identification number of the insurance company).

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Supplemental young child credit

Present Law

Under present law, the EITC is not adjusted by reason of family size or the fact that an infant is under the age of 1 as of the close of the taxable year of the taxpayer.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

If any of the taxpayer's qualifying children are under the age of 1 as of the close of the taxable year of the taxpayer, the conference agreement allows an additional credit. The supplemental young child credit amount is available in addition to the amount determined by family size and is in addition to any supplemental credit for health insurance. Using present-law income limits and phaseout ranges, the supplemental young child credit provides an additional credit percentage of 5 percent and an increased phaseout percentage of 3.57 percent. Thus, the maximum supplemental young child credit is projected to be $355 in 1991.

If the taxpayer claims the supplemental young child credit, the child that qualifies the taxpayer for such credit is not a qualifying individual under the dependent care credit (sec. 21).

The portion of the credit available under the supplemental credit is not available on an advance basis.

The provision is effective for taxable years beginning after December 31, 1990.

d. Supplemental EITC for certain health insurance premium expenses

Present Law

Expenses for medical care, including health insurance premiums, are deductible to taxpayers who itemize deductions to the extent the expenses exceed 7.5 percent of adjusted gross income (AGI).

Health insurance provided by an employer is excludable from gross income. Self-employed individuals are entitled to deduct 25 percent of the amount of health insurance expenditures; the provision for self-employed individuals expires with respect to expenses for health insurance coverage for periods after September 30, 1990.[4]

[4] Sec. 11410 of the bill extends this provision through 1991.

Present law does not provide a credit for the cost of health insurance.

House bill

No provision.

Senate Amendment

Under the Senate amendment, a credit is available to taxpayers for qualified health insurance expenses that includes coverage for a qualifying child. The health credit is refundable, but not on an advance basis. The taxpayer may elect not to receive the health credit.

Qualified health insurance expenses for which the credit is available are amounts paid during the taxable year for health insurance coverage that includes one or more qualifying children (as defined for purposes of the EITC). These expenses include those relating to the cost of coverage (i.e., premium cost) only. Thus, expenses such as copayments or deductibles under the insurance coverage, as well as other out-of-pocket medical expenses, are not eligible for the credit as qualified health insurance expenses. In addition, qualified health insurance expenses do not include amounts paid by an employee who contributes to his or her employer-sponsored health plan on a pre-tax basis (i.e., through a plan described in sec. 125). Qualified health expenses do include such employee contributions if made on an after-tax basis.

The calculation of the child health credit is generally the same as the calculation of the EITC. Thus, the same eligibility criteria and income phase-in and phase-out requirements apply. However, there is no family size adjustment with respect to the health credit.

The maximum amount of the credit is calculated based on a percentage of earned income. When fully phased in, the credit percentage is 5.5 percent of earned income (up to the maximum amount of creditable earned income in effect for the EITC) and the phaseout rate is 3.9 percent. The credit is phased in so that the credit percentage is 1.1 percent for 1991, 2.475 percent for 1992, 2.5 percent for 1993, and 5.5 percent for 1994 and thereafter. The phase-out percentage is 0.8 percent in 1991, 1.8 percent in 1992 and 1993, and 3.9 percent in 1994 and thereafter.

The maximum credit after application of the phase-out requirement is limited to no more than the actual cost of coverage to the taxpayer for family coverage. Thus, the credit is limited to the lesser of the maximum amount of the credit as phased out with respect to the taxpayer and the actual qualified health insurance expenses.

The amount of expenses against which the credit is allowed reduces the amount of expenses for which the medical expense deduction may be allowed (sec. 213). A similar rule applies with respect to the amount of health insurance expenses upon which the deduction for health insurance costs for self-employed individuals (sec. 162(l)) may be based.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, except that the credit percentage is 6 percent and the phase-out rate is 4.285 percent. For 1991, the maximum health credit is projected to be $426.

The conference agreement deletes the express provision allowing a taxpayer to elect not to receive the credit for health insurance expenses. The conferees intend that, as

is the case with respect to the dependent care credit, no formal election is necessary because the taxpayer may choose not to take the credit.

The conference agreement modifies the rule relating to the coordination of the health insurance credit with the medical expense deduction (sec. 213) and the deduction for health insurance expenses for self-employed individuals (sec. 162(l)). Under the conference agreement, the amount of any expenses eligible for the medical expense deduction or health insurance deduction for the self-employed is reduced dollar-for-dollar by the amount of allowable credit under this provision. Thus, for example, assume that a taxpayer pays a $3,000 premium for health insurance coverage for the taxpayer and his or her family (including at least one qualifying child), and by reason of such expense is entitled to a $200 credit under this provision. The amount of expenses (absent any other medical expenses for the taxable year) available to be considered by the taxpayer for purposes of the medical expense deduction under sec. 213 is $2,800 ($3,000 less $200).

e. Treatment of EITC for means-tested programs

Present Law

The AFDC statute provides for the disregard of the EITC from income in determining eligibility and benefits for AFDC recipients. The food stamp statute provides for disregarding the EITC for purposes of determining eligibility and benefits if it is paid as an advance payment. EITC payments received as a lump sum are counted as assets. Some means-tested programs, including housing assistance programs, treat the EITC as income for determining eligibility and benefits.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the EITC (including the child health insurance portion) is not taken into account as income (for the month in which such refund or payment is made or any month thereafter) or as a resource (for the month in which such refund or payment is made or the following month) for the purpose of determining the eligibility or amount of benefit of such individual for AFDC, Medicaid, SSI, and for low-income housing programs. In addition, effective January 1, 1991, the EITC is not counted as income for purposes of applying the AFDC gross income limit for applicants and recipients of AFDC. A State may waive any AFDC overpayment based on the failure to count the EITC toward the gross income limit between October 1, 1989, and December 31, 1990.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, except that the EITC (including the child health insurance portion) is also not taken into account as income (for the month in which such refund or payment is made or any month thereafter) or as a resource (for the month in which such refund or payment is made or the following month) for the purpose of determining the eligibility or amount of benefit of such individual for purposes of the food stamp program and for purposes of certain other housing programs.

2. DEPENDENT CARE TAX CREDIT

Present Law

A credit equal to 30 percent of employment-related dependent care expenses is provided to taxpayers who maintain a household for a qualified individual. The 30-percent rate is reduced for taxpayers with AGI greater than $10,000 so that the credit percentage is 20 percent for taxpayers with AGI greater than $28,000.

The maximum amount of expenses eligible for the credit is $2,400 for one qualifying individual, and $4,800 for two or more individuals. In addition, the amount of eligible expenses cannot exceed the lesser of the taxpayer's earned income or that of the spouse, if married.

A qualifying individual is one for whom the taxpayer is entitled to claim a dependency or spousal exemption and is (1) under the age of 13 or (2) mentally or physically incapable of caring for himself or herself.

The credit is nonrefundable.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the dependent care credit is made partially refundable, except that taxpayers with AGI of $28,000 or more are not entitled to any refundable portion of the credit. As under present law, the full amount of the credit is available to offset tax liability. Ninety percent of the remaining credit amount (i.e., the amount of the credit in excess of tax liability) may then be received as a refund. Dependent care expenses paid, reimbursed, or subsidized by the Federal, State or local government are generally not eligible for the credit.

For purposes of determining the amount of credit that are refundable and nonrefundable, other credits and deductions are applied before the dependent care credit, except for the EITC which is applied after the dependent care credit.

For example, assume a taxpayer with AGI not exceeding $28,000 has tax liability of $70 after the application of all credits and deductions except the dependent care credit and the EITC. The taxpayer has $100 of dependent care credit (prior to application of the limit on refundability), and $150 of EITC. The taxpayer offsets $70 of tax liability with the dependent care credit. Of the remaining $30 of dependent care credit, $27 (90 percent of $30) may be obtained as a refund, while all of the $150 of the EITC is refundable.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement does not include the Senate amendment.

3. STUDY OF ADVANCE PAYMENTS AND PUBLIC AWARENESS PROGRAM

Present Law

An employee may elect to furnish a certificate of eligibility for the EITC to his or her employer. Every employee for whom a certificate is in effect must receive, at the time wages are paid, an advance payment of the credit.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the Comptroller General of the United States, in conjunction with the Secretary of the Treasury, to conduct a study of an advance payment system for the EITC, to determine (1) the effectiveness of such a system; (2) ways to alleviate complexity under such a system, if any, for small business; and (3) any other problems in administration of such a system. The study is to include an analysis of why there is currently a low rate of participation in the advance payment program.

The Secretary of the Treasury is to establish a taxpayer awareness program to inform the taxpaying public of the availability of the earned income, dependent care, and health insurance credits.

The study of the advance payment system is required to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means no later than one year after enactment.

The public awareness program provision is effective for the first day of the first calendar year following the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. TAXPAYER IDENTIFICATION NUMBERS FOR CHILDREN 1 YEAR OR OLDER

Present Law

Under present law, a taxpayer is required to provide a taxpayer identification number (TIN) with respect to any dependent who has attained the age of 2 as of the close of the taxable year of the taxpayer (sec. 6109(e)).

House Bill

The House bill requires that solely for purposes of the EITC, taxpayers are required to obtain and supply a taxpayer identification number (TIN) for each qualifying child who has attained the age of 1 as of the close of the taxable year of the taxpayer.

Senate Amendment

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment, except that it conforms the present-law rules requiring taxpayers to provide TINs for dependents to the proposed rules for the EITC. Under the conference agreement, a taxpayer is required to provide a TIN for any dependent who has attained the age of 1 as of the close of the taxable year of the taxpayer.

The provision is effective for taxable years beginning after December 31, 1990.

C. EXCISE TAX PROVISIONS

1. INCREASE EXCISE TAXES ON DISTILLED SPIRITS, BEER, AND WINE

Present Law

Under present law, the following alcoholic beverages are subject to excise taxes at the rates indicated:

Beverage	Tax imposed
Distilled spirits	$12.50 per proof gallon.
Beer	9.00 per barrel generally.[1]
Still wines:	
Up to 14 percent alcohol	0.17 per wine gallon.
14 to 21 percent alcohol	0.67 per wine gallon.
21 to 24 percent alcohol[2]	2.25 per wine gallon.
Artificially carbonated wines	2.40 per wine gallon.

[1] The tax rate is $7.00 per barrel for certain small brewers.
[2] Wines containing more than 24 percent alcohol are taxed as distilled spirits.

House Bill

Increase in tax rates

The House bill provides for the following excise tax rates:

Beverage	Tax imposed
Distilled spirits	$13.50 per proof gallon.
Beer	18.00 per barrel generally.
Still wines:	
Up to 14 percent alcohol	1.27 per wine gallon.
14 to 21 percent alcohol	1.77 per wine gallon.
21 to 24 percent alcohol	3.35 per wine gallon.
Artificially carbonated wines	3.50 per wine gallon.

Small producer exception

Beer.—The House bill retains the present-law exception for certain small breweries (i.e., a $7 per-barrel rate remains in effect for the first 60,000 barrels of beer produced by domestic breweries with total production for the calendar year not exceeding 2 million barrels).

Wine.—The first 100,000 gallons of wine produced by domestic wineries with total production for the calendar year not exceeding 200,000 gallons are taxed at present-law rates.[5]

Effective date

The rate increases are effective on January 1, 1991, with floor stocks taxes being imposed on that date (including articles in foreign trade zones).

Senate Amendment

Increase in tax rates

The Senate amendment provides for the following excise tax rates, effective January 1, 1991:

Beverage	Tax imposed
Distilled spirits	$13.70 per proof gallon.
Beer	18.00 per barrel generally.
Still wines:	
Up to 14 percent alcohol	1.07 per wine gallon.
14 to 21 percent alcohol	1.57 per wine gallon.
21 to 24 percent alcohol	3.15 per wine gallon.
Artificially carbonated wines	3.30 per wine gallon.

Small producer exception

Beer.—The Senate amendment provides that certain small domestic breweries may claim a credit of $11.00 per barrel (i.e., the difference between the $18.00 per barrel rate provided for by the Senate amendment and the present-law $7 per barrel rate) on the first 30,000 barrels of beer produced during a calendar year. The credit is phased out for breweries with total production during the calendar year between 45,000 and 75,000 barrels.

Wine.—Small domestic wineries are entitled to a credit of 90 cents per wine gallon (the difference between the increased tax rates on wines provided for by the Senate amendment and the present-law rates) on the first 100,000 gallons of wine produced during a calendar year. The credit is phased out for wineries with total production during the calendar year between 150,000 and 250,000 gallons.[6]

Effective date

Same as the House bill.

Conference Agreement

Increase in tax rates

The conference agreement provides for the following excise tax rates:

Article	Tax imposed
Distilled spirits	$13.50 per proof gallon.
Beer	18.00 per barrel generally.
Still wines:	
Up to 14 percent alcohol	1.07 per wine gallon.
14 to 21 percent alcohol	1.57 per wine gallon.
21 to 24 percent alcohol	3.15 per wine gallon.
Artificially carbonated wines	3.30 per wine gallon.

Small producer exception

Beer.—The conference agreement follows the House bill.

Wine.—The conference agreement follows the Senate amendment, except that the conference agreement includes the adjustment for counting champagne from the House bill (i.e., production of champagne and sparkling wines, the rates on which are not increased, is excluded for purposes of determining the first 100,000 gallons of wine produced during a calendar year, but production of champagne and sparkling wines is included for purposes of determining total production of a winery).

Effective date

The conference agreement follows the House bill and the Senate amendment.

2. INCREASE TOBACCO EXCISE TAXES

Present Law

The following is a listing of the Federal excise taxes imposed on tobacco products under present law:

Article	Tax imposed
Cigars:	
Small cigars	$0.75 per thousand.
Large cigars	8.5% of suggested wholesale price, up to $20 per thousand.
Cigarettes:	
Small cigarettes	8.00 per thousand (16 cents per pack of 20 cigarettes).
Large cigarettes	16.80 per thousand.
Cigarette papers	0.005 per 50 papers.
Cigarette tubes	0.01 per 50 tubes.
Chewing tobacco	0.08 per pound.
Snuff	0.24 per pound.
Pipe tobacco	0.45 per pound.

House Bill

In general

The House bill increases by 25 percent the current excise taxes on all tobacco products, including cigarettes, cigars, chewing tobacco, snuff, and pipe tobacco (e.g., increase the tax on a pack of 20 small cigarettes from 16 cents to 20 cents per pack), effective January 1, 1991. Further, the bill increases by the same dollar amount as the previous 25-percent increase the excise taxes on all tobacco products (e.g., increase the tax on a pack of 20 small cigarettes from 20 cents to 24 cents per pack), effective January 1, 1993.

Floor stocks taxes are imposed on cigarettes at the time of each rate increase (including cigarettes in foreign trade zones).

In addition, the bill provides a modification to the method for calculating the excise tax on large cigars. Under the bill, the excise tax is based on the manufacturer's or importer's actual selling price, rather than the suggested wholesale price.

Specific tax rate increases

1991 rate increases.—The following table shows the specific tobacco excise tax rates under the bill as of January 1, 1991:

Article	Tax rate (January 1, 1991)
Cigars:	
Small cigars	$0.9375 per thousand.
Large cigars	10.625% of manufacturer's price, up to $25 per thousand.
Cigarettes:	
Small cigarettes	$10.00 per thousand (20 cents per pack of 20 cigarettes).
Large cigarettes	$21.00 per thousand.
Cigarette papers	$0.00625 per 50 papers.
Cigarette tubes	$0.0125 per 50 tubes.
Chewing tobacco	$0.10 per pound.
Snuff	$0.30 per pound.
Pipe tobacco	$0.5625 per pound.

1993 rate increases.—The following table shows the specific tobacco excise tax rates under the bill as of January 1, 1993:

Article	Tax rate (January 1, 1993)
Cigars:	
Small cigars	$1.125 per thousand.
Large cigars	12.75% of manufacturer's price, up to $30 per thousand.
Cigarettes:	
Small cigarettes	$12.00 per thousand (24 cents per pack of 20 cigarettes).
Large cigarettes	$25.20 per thousand.
Cigarette papers	$0.0075 per 50 papers.
Cigarette tubes	$0.015 per 50 tubes.
Chewing tobacco	$0.12 per pound.
Snuff	$0.36 per pound.
Pipe tobacco	$0.675 per pound.

Effective dates

The first rate increase described above is effective on January 1, 1991. The second rate increase described above is effective on January 1, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that (1) the Senate amendment does not provide the modification to the method for calculating the excise tax on large cigars (i.e., the current-law tax based on suggested wholesale price is retained), and (2) floor stocks taxes are imposed on all tobacco products.

Conference Agreement

The conference agreement follows the House bill.

3. EXPAND OZONE-DEPLETING CHEMICALS EXCISE TAX

Present Law

An excise tax is imposed on certain ozone-depleting chemicals. The amount of tax generally is determined by multiplying the base tax rate applicable for the calendar year by an ozone-depleting factor assigned to the chemical. Certain chemicals are subject to a reduced rate of tax for years prior to 1994.

The base tax rate applicable for 1991 is $1.37 per pound of ozone-depleting chemical; for 1992, $1.67 per pound of ozone-depleting chemical; and for 1993 and 1994, $2.65 per pound of ozone-depleting chemical. For years after 1994, the base tax rate increases by $0.45 per pound per year. A floor stocks tax applies upon each tax increase date occurring before 1995.

House Bill

The House bill expands the list of taxed chemicals by adding carbon tetrachloride,

[5] Production of champagne and sparkling wines (the rates on which are not increased) is excluded for purposes of determining the first 100,000 gallons of wine produced during a calendar year, but production of champagne and sparkling wines is included for purposes of determining whether total production of a winery exceeds 200,000 gallons.

The Treasury Department is granted authority to prescribe regulations to prevent the small producer exceptions from benefiting any person who produces more than 2 million barrels of beer or 200,000 gallons of wine during a calendar year.

[6] The Treasury Department is granted authority to prescribe regulations to prevent the small brewery and winery credits from benefiting any person who produces more than 75,000 barrels of beer or 250,000 gallons of wine during a calendar year.

methyl chloroform, CFC-13, CFC-111, CFC-112, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, CFC-216, and CFC-217 to the list of taxed chemicals.

The base tax rate is phased in for the newly taxed chemicals. For calendar years 1991 and 1992, the base tax rate is $1.37 per pound. For calendar year 1993, the base tax rate is $1.67 per pound. For calendar year 1994, the base tax rate is $3.00 per pound. For calendar year 1995, the base tax rate is $3.10 per pound. For calendar years after 1995, the base tax rate is to increase by $0.45 per pound as under present law.

The House bill is effective for newly taxable chemicals sold or used on or after December 31, 1990.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conference agreement is effective on January 1, 1991. The conferees intend that January 1, 1991, is a tax increase date and that consequently a floor stocks tax applies to newly taxed chemicals. In addition, the conference agreement makes technical modifications to the computation of the export exemption applicable to both chemicals taxable under present law and newly taxable chemicals.

4. INCREASE HIGHWAY AND MOTORBOAT FUELS EXCISE TAXES; EXCISE TAX ON RAIL FUELS

Present Law

Tax rates; exemptions

Federal excise taxes generally are imposed on gasoline (9 cents per gallon) and special motor fuels (9 cents per gallon) used in highway transportation and motorboats. In addition, a Federal excise tax is imposed on diesel fuel (15 cents per gallon) used in highway transportation. The 9-cents-per-gallon taxes on gasoline and special motor fuels and the 15-cents-per-gallon tax on diesel fuel are scheduled to expire after September 30, 1993.

Exemptions from some or all of these taxes are provided for fuels sold for export, for use in farming, for use by State and local governments, for use by nonprofit educational organizations, for use in off-highway business (e.g., in rail transportation), and for certain other uses.

A 6-cents-per-gallon exemption is provided from these taxes for certain fuels blended with alcohol, e.g., gasohol. The alcohol fuels exemption is scheduled to expire after September 30, 1993.

Use of revenues

Amounts equivalent to the revenues from the highway fuels taxes and motorboat fuels taxes are dedicated to the Highway Trust Fund and the Aquatic Resources Trust Fund, respectively. Amounts equal to 1 cent per gallon of the highway motor fuels taxes are set aside for the mass transit account of the Highway Trust Fund.

Collection of tax; registration

The 9-cents-per-gallon gasoline excise tax is imposed on the earlier of the removal or the sale of gasoline by the refiner, importer, or terminal operator (sec. 4081). The bulk transfer of gasoline to a terminal by a refiner or importer is not considered a removal or sale of gasoline by the refiner or importer. Under proposed Treasury regulations and Internal Revenue Service administrative practice, the tax generally is imposed on the earlier of (1) a sale within the terminal to an unregistered person, or (2) a removal from the terminal in a transfer which is not by pipeline or marine vessel. These rules and administrative practice further specify the parties that are liable for payment of the tax.

Persons subject to the gasoline and diesel fuel taxes are required to register with the Secretary of the Treasury before they incur any tax liability (sec. 4101). The Secretary also may require such registrants to post bond.

House Bill

No provision.

Senate Amendment

Tax rates; exemptions

The Senate amendment increases the present highway (including gasohol) and motorboat fuels taxes by 4 cents per gallon, effective on December 1, 1990, an additional 5 cents per gallon on July 1, 1991, and an additional 0.5 cents per gallon on January 1, 1992. It also imposes a 2-cents-per-gallon tax on fuels used in rail transportation, effective on December 1, 1990, an additional 2.5-cents-per-gallon tax on July 1, 1991, and an additional 0.25-cents-per-gallon tax on January 1, 1992.

Except as indicated above for fuels used in rail transportation, fuels used in off-highway business uses, in farming, by States and local governments, by school buses, and by other persons whose use is fully exempt from the present highway and motorboat fuels taxes are not subject to the increased rates. Certain intercity buses continue to be subject to a maximum fuels tax of 3.1 cents per gallon (including the 0.1 cent tax for the Leaking Underground Storage Tank Trust Fund). The excise tax exemption for gasohol made from ethanol and qualified ethanol fuel is reduced to 5.5 cents per gallon (4.0 cents in the case of partially exempt ethanol fuels). (See also the discussion relating to the alcohol fuels credit, exemption, and tariff (Item F.1.b.).)

Use of revenues

All of the revenues from the tax on fuels used in rail transportation and the amounts attributable to the reduction in the excise tax exemption for fuels made from ethanol are retained in the general fund. The revenues derived each year from 60 percent of the increases in the highway and motorboat fuel tax rates are dedicated to the Highway Trust Fund and Aquatic Resources Trust Fund, respectively; the revenues derived from the remaining 40 percent of the increases in the highway and motorboat fuel rates are retained in the general fund. Twenty percent of the increased revenues dedicated to the Highway Trust Fund are set aside for the mass transit account of that Trust Fund.

Revenues from the increased rates on motorboat fuels that are dedicated to the Aquatic Resources Trust Fund are to be deposited in a new Wetlands Restoration Account in the Aquatic Resources Trust Fund, to be expended to carry out the creation, restoration, protection, enhancement, and conservation of wetlands upon enactment of, and as provided in, qualified authorizing legislation substantially identical to the Coastal Wetlands Planning, Protection and Restoration Act as passed by the Senate on August 2, 1990.

Registration and reporting

Code section 4101 is amended to require that, in addition to persons subject to the gasoline and diesel fuel taxes, such persons as the Secretary requires by regulation must be registered. The Secretary is given authority to issue regulations which prescribe the manner, form, terms, and conditions of registration and to specify how the registration may be used. To the extent necessary to permit effective administration, the Secretary is authorized to disclose the name and registration number of each registrant and the address of each terminal owned by each registrant who is subject to the excise tax provisions.

As under present law, the Secretary is authorized to require, as a condition of registration, that registrants post a bond in such sum as the Secretary determines appropriate. The Senate amendment also provides that the Secretary may require a registrant, in addition or as an alternative to posting a bond, to agree to the imposition of a lien on such person's property (or rights to property) as the Secretary determines appropriate. The Secretary must release a lien in connection with a transfer of the property if a bond in an appropriate amount is furnished. The Secretary must respond not later than 90 days after the request for release of a lien in connection with the transfer of the property.

Persons registered as terminal operators, and from whose terminal gasoline is removed, are required to make a return, at such time and in such form as the Secretary requires by regulations.

Effective dates

The excise tax increase provisions are effective on December 1, 1990. The registration and reporting provisions are effective on January 1, 1991. Floor stocks taxes are imposed on December 1, 1990, July 1, 1991, and January 1, 1992 on inventories (including inventories in foreign trade zones) that are held on those dates and that were taxed at the old rates has been paid or that previously were exempt but which are taxed under the bill, e.g., fuels held for use in rail transportation.

The present-law motor fuels tax rates and increases (both the Trust Fund and deficit reduction portions) are extended through September 30, 1995. In general, the exemptions also expire on that date, but the alcohol fuels exemption is extended through September 30, 2000. The present-law (October 1, 1993) expiration of Highway Trust Fund expenditure authority is retained.

Conference Agreement

The conference agreement generally follows the Senate amendment, with the following modifications.

Tax rates; exemptions

The conference agreement increases the present highway (including gasohol) and motorboat fuels taxes by 5 cents per gallon, effective December 1, 1990. The conference agreement imposes a 2.5-cents-per-gallon tax on fuels used in rail transportation, also effective on December 1, 1990. The excise tax exemption for gasohol made from ethanol and qualified ethanol fuel is reduced to 5.4 cents per gallon. (See also the discussion relating to the alcohol fuels credit, exemption, and tariff (Item F.1.b.).) The excise tax exemption for partially exempt ethanol and methanol fuels remains at 50 percent of the applicable tax rate (i.e., 7 cents per gallon under the conference agreement).

Use of revenues

The revenues derived each year from one-half of the increases in the highway fuels taxes and motorboat fuels taxes are dedicated to the Highway Trust Fund and Aquatic Resources Trust Fund, respectively; the rev-

enues derived from the remaining half of the increases are retained in the general fund. All of the revenues from the tax on fuels used in rail transportation are retained in the general fund.

The conference agreement establishes the wetlands restoration program within the Sports Fish Restoration Account of the Aquatic Resources Trust Fund and provides an alternative method of funding the program. Under the conference agreement, amounts equivalent to the revenue from taxes imposed on gasoline used in small-engine outdoor power equipment are to be transferred from the Highway Trust Fund to the Sport Fish Restoration Account of the Aquatic Resources Trust Fund, to be used to carry out purposes that are substantially identical to those of the Coastal Wetlands Planning, Protection and Restoration Act, as set forth in S. 3252 as introduced on October 26, 1990. The conferees intend that small-engine outdoor power equipment include equipment powered by engines having less than 40 horsepower—such as riding and walk-behind rotary mowers, chainsaws, snowblowers, tillers, line trimmers and edgers, log splitters, leaf blowers, lawn vacuums, and leaf shredders and branch grinders.

Collection of tax

The conference agreement amends section 4081 and codifies present Treasury regulations and Internal Revenue Service administrative practice by imposing a tax on (1) the removal of gasoline from any refinery, (2) the removal of gasoline from any terminal, (3) the entry of gasoline into the United States, and (4) the sale to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such gasoline under (1), (2), or (3). The tax is not applicable to any entry or removal of gasoline transferred in bulk to a terminal, unless the entry or removal is by or to a person that is not registered (or the terminal operator is not registered). The entry of gasoline into the United States is considered to occur at the time the gasoline is transferred from customs custody unless the gasoline is transferred in bulk to a terminal. The conference agreement permits the Secretary, as he is permitted under present law, to prescribe rules and administrative procedures for determining liability for payment of tax.

Where a taxpayer willfully fails to pay the gasoline or diesel tax, the conference agreement imposes joint and several liability on (1) any officer, employee or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty and (2) any other person who willfully causes the taxpayer to fail to pay such tax.

The conference agreement provides for a refund (without interest) to any person who pays the tax on gasoline who establishes to the satisfaction of the Secretary that a prior tax was paid to the Treasury with respect to such gasoline. A refund will be paid only if the person paying the second tax files a claim for refund. The conference agreement contemplates that the Secretary will allow a refund pursuant to this provision only to the extent that evidence is provided clearly establishing that the prior tax was in fact paid to the Treasury with respect to the same gasoline on which the claimant has in fact paid tax. Section 6416(d) is amended to deny the taxpayer the option of a credit in lieu of a refund.

Registration and reporting

The conference agreement authorizes the Secretary to require registration of such persons as the Secretary determines appropriate and in such form and manner, and subject to such terms and conditions, as the Secretary requires by regulations. Such persons may include refiners, importers, terminal operators, blenders, compounders, throughputters, and traders of gasoline. The conferees intend that persons operating downstream of the terminal and not in the business of buying and storing gasoline in bulk in the terminal (e.g., wholesale distributors) will not be eligible for registration enabling them to purchase gasoline tax-free. The conference agreement also provides that the Secretary may deny registration to an applicant if the Secretary determines that denial is necessary to protect the revenue.

The conference agreement authorizes the Secretary to require such information reporting by any registered person or any other person as the Secretary deems necessary to carry out the petroleum products excise taxes. Under this authority, the Secretary may, for example, require registered terminal operators to report, with respect to removals from their terminals, (1) the name, address, and registration number of the owner of the gasoline (or, if the actual owner is not known to the terminal operator, the owner of record on the books of the terminal operator), (2) the amount of gasoline removed, and (3) such other information as the Secretary may require. In addition, the Secretary may, under this authority, require reporting by persons making tax-free transfers of gasoline to a registered terminal and by producers and wholesale distributors of alcohol that sell alcohol to a gasohol blender. A failure to file an information return or filing an incorrect return may subject the person required to file to penalties.

Effective dates

The fuels tax increase is effective on December 1, 1990, with applicable floor stocks taxes imposed on that date. No floor stocks tax is imposed on gasoline or diesel fuel held for use in an intercity bus where tax paid under section 4081 or 4091 with respect to such gasoline or fuel is refundable in whole or in part pursuant to section 6421(b) or 6427(b).

The provisions relating to the collection of the tax are effective on July 1, 1991.

5. Increase Airport and Airway Trust Fund Excise Taxes

Present Law

Aviation tax rates.—Excise taxes are imposed on air passenger transportation (8 percent), air freight (5 percent), international departures ($6 per person), noncommercial aviation gasoline (12 cents per gallon), and noncommercial aviation nongasoline fuels (i.e., jet fuels) (14 cents per gallon). The taxes are scheduled to expire after December 31, 1990.

Tax reduction trigger.—The aviation excise taxes (other than the international departure tax and the 9-cents-per-gallon basic portion of the tax on aviation gasoline) will be reduced by 50 percent beginning January 1, 1991, if appropriations from the Airport and Airway Trust Fund for fiscal years 1989 and 1990 for airport improvements, facilities and equipment, and research, engineering and development were less than 85 percent of the total amounts authorized for these programs. (The amounts appropriated for these programs for fiscal years 1989 and 1990 were 80.7 percent of the amounts authorized.) Thus, if the aviation excise taxes are extended beyond 1990, the tax reduction trigger is scheduled to go into effect on January 1, 1991.

Use of aviation tax revenues.—Revenues from the aviation excise taxes go to the Airport and Airway Trust Fund through December 31, 1990 (when the taxes are scheduled to expire).

House Bill

Aviation tax rates.—The House bill extends the current aviation excise taxes through December 31, 1995. Also, the House bill increases the tax on air passengers to 10 percent, the tax on air freight to 6.25 percent, the tax on noncommercial aviation gasoline to 15 cents per gallon, and the tax on noncommercial aviation jet fuel to 17.5 cents per gallon.

The increases in tax rates are effective on December 1, 1990, except that the increases in the taxes on air passengers and air freight apply only for amounts paid after November 30, 1990.

Tax reduction trigger.—The House bill repeals the aviation tax reduction trigger, effective on the date of enactment.

Use of aviation tax revenues.—Revenues from the extension of the current aviation excise taxes continue to go to the Airport and Airway Trust Fund through December 31, 1995. All revenues from the increases in aviation excise taxes are to go to the General Fund through 1992, and to the Airport and Airway Trust Fund for 1993-1995.

Senate Amendment

Aviation tax rates.—Same as the House bill, except that the increases in aviation excise tax rates are effective on January 1, 1991.

Tax reduction trigger.—Same as the House bill.

Use of aviation tax revenues.—Same as the House bill with respect to the use of the extension of the current aviation excise tax revenues. All revenues from the increases in aviation tax revenues will go to the Airport and Airway Trust Fund through 1995.

Conference Agreement

Aviation tax rates.—The conference agreement follows the House bill (i.e., the increases in tax rates are effective on December 1, 1990), with a modification providing that the increases in aviation tax rates (but not the extensions of the present-law rates) are contingent upon enactment as part of this budget reconciliation conference report of the Airport Noise and Capacity Act of 1990, the Aviation Safety and Capacity Expansion Act of 1990, and the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 in a form identical to the provisions of such Acts as included in the conference report on H.R. 5835 of the 101st Congress.

Tax reduction trigger.—The conference agreement follows the House bill and the Senate amendment.

Use of aviation tax revenues.—The conference agreement follows the House bill.

6. INCREASE IN HARBOR MAINTENANCE EXCISE TAX

Present Law

An excise tax of 0.04 percent of commercial value is imposed on commercial cargo loaded or unloaded at U.S. ports. The tax also generally applies to commercial ship passenger fares, except for certain ferry boats. There are certain exceptions for ship-

ments to or from (or between) the U.S. mainland, Hawaii, Alaska, and U.S. possessions.

Revenues from the tax go to the Harbor Maintenance Trust Fund. The authorizing statute permits Trust Fund expenditures of up to 40 percent of eligible harbor maintenance and related costs.

House bill

The House bill increases the harbor maintenance tax to 0.125 percent, effective on January 1, 1991.

Senate amendment

Same as the House bill, except that the Senate amendment also modifies the authorizing statute to permit Trust Fund expenditures of up to 100 percent of eligible harbor maintenance and related costs.

Conference agreement

The conference agreement follows the House bill.

7. REIMPOSE THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX

Present law

Prior to September 1, 1990, a tax of 0.1 cent per gallon was imposed on gasoline, diesel fuel, special motor fuels, aviation fuel, and fuels used on inland waterways. Amounts equivalent to the revenues from this tax were deposited in the Leaking Underground Storage Tank Trust Fund. The 0.1-cent tax was terminated on August 31, 1990, after the Fund reached a statutory ceiling of $500 million of net revenue. If the ceiling had not been reached, the tax was scheduled to expire after December 31, 1991.

House bill

The House bill reimposes the Leaking Underground Storage Tank Trust Fund tax, extends the tax through December 31, 1995, and eliminates the Trust Fund revenue ceiling. The provision is effective 30 days after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill except that the effective date is December 1, 1990.

Conference agreement

The conference agreement follows the Senate amendment.

8. GAS GUZZLER EXCISE TAX

Present law

An excise tax is imposed on automobiles that do not meet statutory standards for fuel economy (Code sec. 4064). The tax is imposed on the manufacturer or importer and generally applies to passenger automobiles with unloaded gross vehicle weights of 6,000 pounds or less. The amount of tax varies according to the fuel efficiency of a model of automobile. For 1986 and thereafter, no gas guzzler tax is imposed if the fuel economy of the automobile model is at least 22.5 miles per gallon (as determined by the Environmental Protection Agency). For the automobile models that do not meet that standard, the tax begins at $500 and increases to $3,850 for the automobile models with fuel economy ratings of less than 12.5 miles per gallon.

A special rule exempts from the gas guzzler tax manufacturers who lengthen existing automobiles (this process is frequently utilized in the manufacturing of stretch limousines). In addition, if the Secretary determines that it is not feasible for a small manufacturer (defined as a manufacturer of fewer than 10,000 automobiles) to meet the fuel economy standards, the Secretary may prescribe an alternate rate of tax for the small manufacturer. To date, the Secretary has not approved any application for an alternate rate of tax.

House bill

The House bill doubles the tax rates on automobiles that do not meet the statutory standard for fuel economy. Consequently, the tax begins at $1,000 for the automobile models that do not meet the 22.5 miles per gallon standard, and increases to $7,700 for the automobile models with fuel economy ratings of less than 12.5 miles per gallon.

In addition, the House bill subjects limousines (including stretch limousines) to the gas guzzler tax regardless of their weight and repeals the special rules permitting Treasury to set the rate of tax for small manufacturers.

The provision is effective on or after January 1, 1991.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

9. EXTENSION OF TELEPHONE EXCISE TAX; MODIFICATION OF COLLECTION PERIOD; EXEMPTION CERTIFICATES

a. Extension of tax

Present law

A 3-percent excise tax is imposed on local and toll telephone service. The tax is scheduled to expire after December 31, 1990.

House bill

No provision.

Senate amendment

The 3-percent telephone excise tax is permanently extended. The provision is effective on January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

b. Collection of tax

Present law

Tax billed to the customer in a semi-monthly period is considered to be collected during the second following semi-monthly period. The tax must be deposited within 3 banking days after the end of the semi-monthly period for which the tax is considered collected.

House Bill

No provision.

Senate amendment

The tax for a semi-monthly period is considered collected during the first week of the second following semi-monthly period. Deposit is required within 3 banking days after the end of the week for which the tax is considered to be collected.

The provision is effective for taxes considered collected for semi-monthly periods beginning after December 31, 1990.

Conference agreement

The conference agreement follows the Senate amendment, with the technical modification that the provision is effective for taxes considered collected during semi-monthly periods beginning after December 31, 1990.

c. Exemption certificates

Present law

Those claiming exemption from the telephone excise tax generally must file annual exemption certificates.

House bill

No provision.

Senate amendment

Communications service recipients exempt from the tax by reason of being a qualified international organization, nonprofit hospital, nonprofit educational organization, or a State or local government are relieved of filing a certificate of exemption annually after filing an initial certificate of exemption.

The provision is effective for any claim for exemptions made after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

10. LUXURY EXCISE TAX

Present law

No luxury excise taxes are imposed under present law. Although a number of luxury items were subject to various excise taxes in the past, those excise taxes were repealed in the Excise Tax Reduction Act of 1965.

House bill

Imposition of tax

The House bill imposes a 10-percent excise tax on the portion of the retail price of the following items that exceeds the thresholds specified below:

(1) Automobiles above $30,000.—An automobile is any passenger vehicle manufactured primarily for use (as well as sold primarily for use or actually used predominantly) on public streets, roads, and highways that is rated at 6,000 pounds unloaded gross vehicle weight or less. This includes trucks and vans, except that only trucks and vans with a loaded gross vehicle weight of 6,000 pounds or less are subject to this tax. Limousines are subject to this tax regardless of weight. Also, the tax does not apply to the sale or leasing of any passenger vehicle for use by the purchaser or lessee exclusively (other than a de minimis amount) in the active conduct of a trade or business of transporting persons or property for compensation or hire. Thus, for example, the tax will apply to a vehicle purchased or leased by a business and used to transport its employees or officers. The trade or business of transporting persons or property for compensation or hire does not include the leasing or rental of an automobile without a hired driver.

(2) Boats and yachts above $100,000.—Boats and yachts that are used exclusively (other than a de minimis amount) in a trade or business (except for entertainment or recreation purposes, including the trade or business of providing entertainment or recreation) are exempt from this tax. In addition, boats and yachts that are used exclusively in the trade or business of commercial fishing or of transporting persons or property for compensation or hire are exempt from this tax. The transporting of persons or property for compensation or hire includes transportation by a cruise ship (regardless of destination) or by a boat chartered with a pilot. These may be exempt from the tax provided that the other conditions for exemption are met.

(3) Aircraft above $100,000.—The tax applies to aircraft above $100,000, with exceptions for: aircraft used exclusively (other than a de minimis amount) in the trade or business of transporting persons or property for hire; cropdusters; certain helicopters used exclusively in transporting individuals, equipment, or supplies in the exploration,

development or removal of oil, gas, or hard minerals, or in planting or cutting of trees; and aircraft used exclusively for flight training purposes.

(4) Jewelry above $5,000.—The tax applies on an item- by-item basis. Custom fabrication of jewelry (from new or used materials) also is subject to this tax. Repairs and slight modifications to jewelry are not subject to this tax. For example, replacing a broken clasp on a necklace is not subject to a tax. Watches are included as jewelry.

(5) Furs above $10,000.—The tax applies to items made from fur or in which fur is a major component. The tax does not apply to leather or to artificial fur.

Special rules

Tax applicable only to newly manufactured items.—This tax applies only to the first retail sale (for a purpose other than resale) after manufacture, production or importation of items subject to the tax. It does not apply to subsequent sales of these items. Thus, for example, if a jeweler sells a new brooch (or a new brooch manufactured from used materials) for $10,000, that item is subject to this tax. If, however, the jeweler sells an antique brooch for $10,000, that item is not subject to this tax. If the sale is voided, the tax is refunded. Thus, for example, if a taxpayer purchases an item of jewelry subject to the tax and pays the tax, but later returns the item to the store for a refund of the purchase price, the tax would also be refunded at that time.

Collection and deposit of tax.—In general, the retailer must collect the tax and remit it to the IRS in accordance with the rules generally applicable to excise taxes.

Anti-abuse rules.—An anti-abuse rule prevents businesses from briefly using items subject to this tax in their trade or business and then selling them (or converting them to personal use) a short time thereafter as a way of avoiding this tax. An additional anti-abuse rule prevents the avoidance of the tax on automobiles, boats, yachts and aircraft through separate purchases of major component parts. Thus, for example, if the taxpayer purchases a sailboat from a distant boatyard without an inboard motor or mast, and purchases and has installed locally the inboard motor and mast, those purchases would be aggregated for purposes of this tax. The installer must collect the tax due and remit it to the IRS.

Special rule for leases.—A special rule applies to the leasing of boats and aircraft (as well as long-term leases of passenger vehicles) by a person in the trade or business of leasing. These lessors do not pay the tax on their purchase of these items; instead, their leasing of these items is treated as a sale (parallel to present-law excise tax rules). Thus, a pro-rata portion of the tax is due on each lease payment, unless the lease payment is being made by a person who would be exempt from the tax (because of the nature of the use of the item) if the person owned the item.

Exemptions.—In addition to the other exemptions from this tax, the tax on automobiles, boats, yachts, and aircraft does not apply to the sale of those items to the Federal Government or a State or local government for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities or to any person for use exclusively in providing emergency medical services.

Determination of price.—The retail sales price is the price paid by the retail customer, including any charge incident to placing the article in condition ready for use (such as preparation charges, dealer add-ons, and delivery charges). Retail sales taxes (if separately stated) are excluded. The retail sales price is determined without subtraction for any trade-in. Thus, the total price paid (whether paid in cash, in a trade-in, or otherwise) is the retail sale price. The manufacturer's suggested retail price (if any) is not the basis on which the price is computed. Significant variation from general retail market prices of comparable items may, however, be considered by IRS to be an indication of an attempt to avoid the tax. Similarly, the IRS may consider published guides to the value of used property (such as automobile "blue books") in considering whether the value of used property exchanged for the new items subject to tax was understated so as to reduce improperly the amount of luxury excise tax paid.

Tax applicable to imports.—This tax applies to all items subject to the tax upon their importation into the United States (regardless of whether the item was used outside the United States prior to importation), unless the item is being imported by someone in the trade or business for subsequent retail sale or leasing (in which instance the subsequent retail sale or lease would be subject to tax). Thus, for example, the tax is imposed on the retail value of a passenger vehicle (whether new or used) that an individual imports for personal use.

Tax inapplicable to exports.—This tax does not apply to exported items.

Effective date.—This tax applies to retail sales occurring on or after January 1, 1991. In general, the date on which a sale occurs is to be determined in accordance with existing rules for Federal excise taxes on heavy duty trucks. Thus, in general, a sale will be considered to occur upon the passage of title (regardless of when the contract for sale was or is executed or the purchase price was or is paid).

Senate Amendment

The Senate amendment is the same as the House bill, except that:

(1) the threshold for furs is $5,000 (instead of $10,000).

(2) The threshold for aircraft is $250,000 (instead of $100,000). A special rule also applies to aircraft at least 80 percent of the use of which is in a trade or business. The tax must be paid upon the purchase of these aircraft; after a period of one full year, the taxpayer who purchased such an aircraft and who can demonstrate that at least 80 percent of the use of the aircraft was in a trade or business during the preceding 12 month period, may claim a refund for the tax that was paid.

(3) The tax expires after December 31, 1999.

Conference agreement

The conference agreement generally follows the Senate amendment with several modifications. The thresholds for both furs and jewelry are $10,000. The special rule for aircraft at least 80 percent of the use of which is in a trade or business is modified. A taxpayer who purchases or leases an aircraft with respect to which the taxpayer reasonably anticipates that at least 80 percent of the use will be in a trade or business may file a certificate (in the form required by the Secretary) so stating. The filing of this certificate with the seller or lessor permits the purchase or leasing of the aircraft without the payment of tax. On its tax returns for the next two years, the taxpayer must demonstrate to the satisfaction of the Secretary that at least 80 percent of the use of the aircraft was in a trade or business. If this cannot be demonstrated, the taxpayer must pay the tax (with interest). If the taxpayer does not demonstrate business use as required and does not pay the tax, no depreciation deductions are allowed with respect to the aircraft.

In addition, the conference agreement reflects the following clarifications. First, use of an automobile exclusively for demonstration purposes while a potential customer is present is exempt from the use tax. Thus, the tax on vehicles used exclusively for these demonstration purposes will be due upon the sale of such vehicles to the customer. Second, passenger vehicles, boats, and aircraft used exclusively by the Federal government or a State or local government for public works purposes are exempt from the tax. Thus, a State ferry boat would not be subject to the tax. The use must be directly and integrally related to the public works purpose. Thus, transportation of a governmental executive would never qualify for this exemption. Third, the use tax is clarified by providing that it shall not apply to any use of an item after import if the user establishes to the satisfaction of the Secretary that the first sale or use occurred outside the United States prior to January 1, 1991. Thus, if an item is purchased outside the United States on July 1, 1991, is used outside the United States for one year, and is then imported into the United States for use on July 1, 1992, the use tax would apply to the value of the item on that date. If, however, the facts are the same except that the item was purchased on July 1, 1990, the use tax would not apply. Fourth, rebates that are fixed at the time of sale and that go directly to the customer are not included in the base for purposes of computing this tax.

The tax applies after December 31, 1990 and before January 1, 2000. The tax does not apply to an article purchased pursuant to a contract that was binding on the purchaser on September 30, 1990 and at all times thereafter and before January 1, 1991.

11. EXTEND SUPERFUND TAXES AND TRUST FUND

Present Law

Four different Superfund taxes are imposed under the Code. These are in general:

(1) A tax on petroleum, imposed at a rate of 9.7 cents per barrel, on domestic or imported crude oil or refined products;

(2) A tax on listed hazardous chemicals, imposed at a rate that varies from $0.24 to $10.13 per ton;

(3) A tax on imported substances that contain or use chemical derivatives of one or more of the hazardous chemicals described in (2) above; and

(4) An environmental tax equal to 0.12 percent of the amount of modified alternative taxable income of a corporation that exceeds $2 million.

The receipts from these taxes are deposited in the Hazardous Substance Superfund. Amounts in this Trust Fund are generally available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment.

In general, these taxes are scheduled to expire after December 31, 1991. However, these taxes would cease to apply earlier if the unobligated balance in the Trust Fund exceeds $3.5 billion on specified dates, or if the Secretary of the Treasury estimates that more than $6.65 billion of these taxes have been credited into the Trust Fund.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement extends without modification the current Superfund taxes for 4 years, and extends the Trust Fund for 4 years. The cap on the aggregate amount of Superfund tax revenue that may be collected is increased from $6.65 billion to $11.97 billion. This increase is proportionate (on an annual basis) to the aggregate amount of tax that may be collected under present law, which has proven adequate to meet actual and forecasted obligations of the Fund. The provision is effective from January 1, 1992 through December 31, 1995.

D. OTHER REVENUE-INCREASE PROVISIONS

1. AMORTIZATION OF POLICY ACQUISITION EXPENSES OF INSURANCE COMPANIES

Present Law

A life insurance company generally is required to compute its taxable income using an accrual method of accounting, or (to the extent permitted in Treasury regulations), using a combination of an accrual method of accounting with another permissible method (but not the cash method). To the extent not inconsistent with Federal income tax accounting rules and other Federal tax rules applicable to life insurance companies, all computations, however, are to be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

In determining net income from operations for purposes of the annual statement, in general, life insurance companies may deduct commissions and other selling expenses for the year in which incurred. Thus, for purposes of determining life insurance company taxable income under the regular tax, policy acquisition expenses generally are not subject to an amortization requirement.

In the case of certain reinsurance transactions, however, present law requires the reinsuring company to capitalize ceding commissions and amortize them over the useful life of the asset rather than permitting a current deduction for such expenses.[7]

Under the adjusted current earnings provision of the corporate alternative minimum tax, in the case of a life insurance company, acquisition expenses are capitalized and amortized generally in accordance with the treatment generally required under generally accepted accounting principles. Acquisition expenses that both vary with, and are primarily related to, the production of new business must be amortized under current generally accepted accounting principles (unlike under annual statement accounting rules).

Although property and casualty insurance companies are required to reduce the amount of the change in the unearned premium reserve by a fraction (20 percent) intended to represent the allocable portion of expenses incurred in generating the unearned premiums, such companies are not subject to an amortization requirement (either for regular tax or for corporate alternative minimum tax purposes) with respect to policy acquisition expenses.

[7] *Colonial American Life Insurance Co.* v. *Commissioner*, 109 S. Ct. 2408 (June 15, 1989), and Rev. Proc. 90-36 (indemnity reinsurance); Treas. Reg. sec. 1.817-4(d)(2) (assumption reinsurance).

House Bill

The House bill requires insurance companies to amortize policy acquisition expenses on a straight-line basis over a period of 120 months beginning with the first month in the second half of the taxable year. The bill provides that policy acquisition expenses required to be capitalized and amortized are determined, for any taxable year, for each category of specified insurance contracts, as a percentage of the net premiums for the taxable year on specified insurance contracts in that category. The House bill provides for three categories of specified insurance contracts: (1) annuity contracts, (2) group life insurance contracts, and (3) other specified insurance contracts that are not included in the other categories. The percentages for each of the categories are as follows:

	Percent
Annuities	1.50
Group life	1.80
Other life (including noncancellable or guaranteed renewable accident and health)	6.75

An annuity contract combined with noncancellable or guaranteed renewable accident and health insurance is treated as a noncancellable or guaranteed renewable accident and health insurance contract. Net premiums are defined under the bill as the excess of (1) the gross amount of premiums and other consideration on specified insurance contracts, over (2) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

A special rule is provided for certain reinsurance transactions. Under this rule, premiums and other consideration incurred for reinsurance are to be taken into account in determining net premiums only to the extent that the premiums and other consideration are includible in the gross income of a person subject to tax under Subchapter L or under Chapter 1 by reason of Subpart F of the Part III of Subchapter N.

It is believed that this rule may generally be consistent with existing income tax treaties. For example, the provision does not deny a deduction for reinsurance premiums paid to a foreign person. Rather, the provision affects the timing of a deduction for an amount of acquisition expenses, without regard to whether expenses are incurred by making a payment to a foreign or domestic person. However, it is intended that this rule apply even if there is found to be a conflict with a treaty.

The House bill provides a shorter amortization period of 60 months, rather than the generally applicable 120 months, for policy acquisition expenses of a company that meets the bill's definition of a small company. A small company is an insurance company that has assets of less than $500 million at the close of the taxable year. For purposes of determining assets, all insurance companies that are members of the same controlled group (determined under section 1563(a) with certain modifications) are treated as one company.

In the case of reinsurance contracts, the reinsurer may not apply the 60-month amortization period to the portion of amortizable policy acquisition expenses for the taxable year that are attributable to premiums or other consideration under a reinsurance contract unless for such taxable year each insurance company that takes into account premiums or other consideration with respect to the reinsured contract is a small company.

The House bill also provides rules regarding the treatment of ceding commissions in reinsurance transactions, treatment of qualified foreign contracts, repeal of the minimum tax treatment of acquisition expenses, treatment of cancellable accident and health insurance contracts of life insurance companies, treatment of life insurance reserves of property and casualty insurance companies, and waiver of estimated tax penalties.

The House bill provision generally is effective September 30, 1990.

Senate Amendment

The Senate amendment is the same as the House bill, except as follows.

The Senate amendment provides for the following categories of specified insurance contracts: (1) annuity contracts, (2) group life insurance contracts and noncancellable or guaranteed renewable accident and health insurance contracts, and (3) other specified insurance contracts that are not included in the other categories. The percentages for these categories are as follows:

	Percent
Annuities	1.85
Group life and noncancellable or guaranteed renewable accident and health	2.20
Other life	8.30

Generally, combinations of different types of specified insurance contracts are treated as other specified insurance contracts, unless the combination is of two types of insurance in the same category, in which case the combination contract is considered to be in that category.

The Senate amendment includes the House bill rule that premiums and other consideration incurred for reinsurance are to be taken into account in determining net premiums only to the extent that the premiums and other consideration are includible in the gross income of a person subject to tax under Subchapter L or under Chapter 1 by reason of Subpart F of Part III of Subchapter N. But the Senate amendment provides that it is intended that this rule not apply if there is found to be a conflict with a treaty.

The Senate amendment provides a shorter amortization period of 60 months, rather than the generally applicable 120 months, for the first $5 million of amortizable policy acquisition expenses of an insurance company for any taxable year. The availability of the 60-month amortization period is phased out ratably (on a dollar-for-dollar basis) as amortizable policy acquisition expenses increase from $10 million to $15 million. Thus, for example, an insurance company with $11 million of amortizable policy acquisition expenses for the taxable year amortizes $4 million of such expenses over a 60-month period. For purposes of determining the amount of amortizable policy acquisition expenses under this rule, all insurance companies that are members of the same controlled group of corporations (as defined in section 1563(a) with additional modifications) are treated as one company. The 60-month amortization period does not apply to any policy acquisition expenses for any taxable year that are attributable to premiums or other consideration under any reinsurance contract.

In addition, for any company that meets the definition of a small life insurance company, the Senate amendment repeals the amortization requirement under the adjusted current earnings provision of the corpo-

rate alternative minimum tax for the entire period the requirement is in effect (taxable years beginning after December 31, 1989). A small life insurance company is defined in the Senate amendment as a life insurance company that has assets of less than $500 million at the close of the taxable year. For purposes of determining assets, all insurance companies that are members of the same controlled group (determined under section 1563(a) with certain modifications) are treated as one company.

The Senate amendment provides regulatory authority to the Treasury Department to provide a separate category for a type of insurance contract, with a separate percentage applicable to the category, under certain circumstances. The authority may be exercised if the Treasury Department determines that the deferral of policy acquisition expenses for the type of contract which would otherwise result under the provision is substantially greater than the deferral of acquisition expenses that would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for the type of contract had been used. In making this determination, it is intended that the amount of a reserve for a contract not be taken into account.

If the authority is exercised, the Treasury Department is required to adjust the percentage that would otherwise have applied to the category that included the type of contract, so that the exercise of the authority does not result in a decrease in the amount of revenue received by reason of the amortization provision for any fiscal year.

Conference Agreement

The conference agreement follows the House bill, with modifications, with respect to categories of specified insurance contracts and treatment of reinsurance, and follows the Senate amendment with respect to small company rules and regulatory authority to provide separate categories. In addition, the conference agreement provides a transition rule with respect to the treatment of life insurance reserves of property and casualty insurance companies. The conference agreement otherwise follows the House bill and the Senate amendment.

Categories of specified insurance contracts

The conference agreement provides for three categories of specified insurance contracts: (1) annuity contracts, (2) group life insurance contracts, and (3) other specified insurance contracts (including noncancellable or guaranteed renewable accident and health insurance contracts) that are not included in the other categories. The percentages for each of the categories are as follows:

	Percent
Annuities	1.75
Group life	2.05
Other life (including noncancellable or guaranteed renewable accident and health)	7.70

An annuity contract combined with noncancellable or guaranteed renewable accident and health insurance is treated as a noncancellable or guaranteed renewable accident and health insurance contract. The conferees intend that net premiums with respect to specified insurance contracts include any premiums that are paid by means of a policyholder loan. Further, the conferees intend that the full amount of any advance premium is to be included in net premiums for the taxable year in which received and not for any later year in which the premium is due, so as to avoid double counting.

Treatment of reinsurance

Relation to income tax treaties

The conference agreement includes the rule of the House bill and the Senate amendment that premiums and other consideration incurred for reinsurance are to be taken into account in determining net premiums only to the extent that the premiums and other consideration are includible in the gross income of a person subject to tax under Subchapter L or under Chapter 1 by reason of Subpart F of Part III of Subchapter N.

The conferees believe that it is reasonable to interpret existing income tax treaties as being consistent with this rule. The conferees understand that an issue may be raised whether the rule is consistent with treaties that have a provision similar to paragraph 4 of Article 24 of the 1981 proposed U.S. model income tax treaty ("U.S. model treaty"). Paragraph 4 provides that, except where certain related party rules apply, interest, royalties, and other disbursements paid by a resident of one treaty country to a resident of the other treaty country shall, for the purposes of determining the taxable profits of the payor, be deductible under the same conditions as if they had been paid to a resident of the first treaty country.[8]

For the following reasons, the conferees believe that the rule is consistent with this language:

First, the rule does not deny a deduction for reinsurance premiums paid to any foreign person. Those premiums are fully deductible in computing net income. Rather, the provision affects the timing of a deduction for an amount of acquisition expenses incurred in originating insurance, without regard to whether the expenses were paid, or are payable, to a foreign or domestic person.

Second, in view of the policy acquisition expense amortization provision added to Subchapter L by the conference agreement, the conferees believe that a payment to such a foreign person cannot be said to meet the same conditions as a payment that a U.S. taxpayer is required to include in income under the principles of Subchapter L (either directly or because the U.S. taxpayer is a U.S. shareholder of a controlled foreign corporation), even if the foreign person resides in a country with a previously negotiated and ratified treaty. A company in the latter category will be subject to a modification in the way its income is taxed as a result of the amortization provision of the bill, while a company in the former category will not. A reinsurance contract entered into with a U.S. reinsurer will take into account the impact of the amortization provision on the U.S. company, while a reinsurance contract entered into with a reinsurer that is not subject to tax under the principles of Subchapter L will not.

The conferees believe that, in this case, it is unreasonable to interpret existing treaties containing the U.S. model treaty nondiscrimination provisions so as to require this difference to create an anomaly in the effect of the amortization provision on reinsurance entered into with U.S. and foreign nonresident reinsurers. Moreover, the conferees believe that such an interpretation is unreasonable in this case in light of the need to depart from what the conferees believe is the plain meaning of both the treaty language and the related OECD Commentary in order to arrive at that interpretation. The conferees therefore believe that, regardless of the fact that the foreign person may be resident in a treaty country, in this case it is appropriate, for treaty purposes, to draw a distinction between companies subject to tax under the principles of Subchapter L and those not subject to such tax, recognizing that many foreign persons may fall in the latter category. The conferees do not generally view statutory changes to the deductibility of payments made to foreign persons (or even such statutory changes accompanied by increased tax burdens on U.S. income) as consistent with the treaty language.

If the conferees are incorrect in their technical interpretation of the interaction between treaties and this rule for the treatment of premiums and other consideration incurred for reinsurance, the conferees intend that any contrary treaty provision not defeat this rule.

Requirement of consistent treatment of amounts payable under reinsurance arrangements

The conferees intend that taxpayers who are parties to a reinsurance arrangement treat amounts payable under the arrangement consistently in determining net premiums under the amortization provision. The conference agreement therefore provides that the Treasury Department is required to prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the parties to the reinsurance arrangement. The conferees strongly encourage the Treasury Department to provide prompt guidance as to the applicable rules for determining such consistent treatment. It is intended that such rules state what amounts are to be taken into account as premiums and other consideration by ceding companies and reinsurers (including under retrocessions), rather than merely requiring consistency.

In the absence of such guidance, the conferees intend that the following principles guide taxpayers in the application of this consistency requirement. The conferees intend no inference as to the content of guidance promulgated by the Treasury Department to ensure consistency.

First, in the absence of Treasury Department guidance, the principles of present law for determining the amount of premiums incurred in a reinsurance transaction[9] are to apply in determining the net premiums of the ceding company and the reinsurer for purposes of the amortization requirement.

Further, in the absence of Treasury Department guidance, the conferees intend that in the case of a modified coinsurance agreement, the amount of any payment that represents a reserve adjustment (including the amount of any payment that represents the investment income with respect to reserves) is to be taken into account

[8] This language is essentially identical to language in paragraph 5 of Article 24 of the 1977 model income tax treaty of the Organisation of Economic Cooperation and Development ("OECD"). The Commentary of the OECD Committee on Fiscal Affairs states that this language is designed to end a particular form of discrimination resulting from the fact that in certain countries the deduction of interest, royalties, and other disbursements allowed without restriction when the recipient is resident, is restricted or even prohibited when the recipient is a nonresident (Commentary on Article 24, para. 56).

[9] *See* Treas. Reg. sec. 1.817-4(d)(2).

in determining the net premiums of the reinsurer and the ceding company for purposes of the amortization requirement.[10]

In addition, in the absence of Treasury Department guidance, the conferees intend that in the case of a conventional coinsurance agreement, any amount payable by a reinsurer to a ceding company that represents the reserve of the reinsurer with respect to a reinsured contract, and that is payable by reason of the reinsurer transferring liability for losses under such contract to the ceding company, is to be taken into account in determining the net premiums of the reinsurer and the ceding company for purposes of the amortization requirement.

The conferees intend (without regard to the promulgation of Treasury Department guidance) that return premiums and policyholder dividends receivable by a ceding company under a reinsurance contract are to be included in the gross amount of premiums of the ceding company in determining the amortizable acquisition expenses of the ceding company. Similarly, return premiums and policyholder dividends payable by a reinsurer under a reinsurance contract are to reduce the gross amount of premiums of the reinsurer in determining the amortizable acquisition expenses of the reinsurer.

Small company rules

The conference agreement provides a shorter amortization period of 60 months, rather than the generally applicable 120 months, for the first $5 million of amortizable policy acquisition expenses of an insurance company for any taxable year. The availability of the 60-month amortization period is phased out ratably (on a dollar-for-dollar basis) as amortizable policy acquisition expenses increase from $10 million to $15 million. For purposes of determining the amount of amortizable policy acquisition expenses under this rule, all insurance companies that are members of the same controlled group of corporations (as defined in section 1563(a) with modifications) are treated as one company. The 60-month amortization period does not apply to any policy acquisition expenses for any taxable year that are attributable to premiums or other consideration under any reinsurance contract.

In addition, for any company that meets the definition of a small life insurance company (within the meaning of section 806, as modified, one with assets of less than $500 million at the close of the taxable year), the conference agreement repeals the amortization requirement under the adjusted current earnings provision of the corporate alternative minimum tax for the entire period the requirement is in effect (taxable years beginning after December 31, 1989).

[10] Thus, in the absence of Treasury Department guidance, in the case of a modified coinsurance agreement, the net premiums of the ceding company generally are to be determined by reducing gross premiums by the excess (if any) of (1) the reinsurance premiums and reserve adjustments payable to the reinsurer under the agreement over (2) the reserve adjustments and policyholder dividends receivable from the reinsurer under the agreement. In the event that the reserve adjustments and policyholder dividends receivable from the reinsurer under the agreement exceed the reinsurance premiums and reserve adjustments payable to the reinsurer under the agreement, then the excess amount is to increase the gross premiums of the ceding company in determining the amortizable acquisition expenses of the ceding company. Similar rules are to apply in determining the net premiums of the reinsurer under a modified coinsurance agreement.

Regulatory authority to provide separate categories

The conference agreement follows the Senate amendment in providing regulatory authority to the Treasury Department to provide a separate category for a type of insurance contract, with a separate percentage applicable to the category, under certain circumstances.

Treatment of life insurance reserves of property and casualty insurance companies

The conference agreement provides a transition rule for property and casualty insurance companies that are required by the bill to change the method of determining the amount of the reserve for noncancellable or guaranteed renewable accident and health insurance. Under the conference agreement, the change is to be treated as a change in method of accounting that is initiated by the taxpayer and that is made with the consent of the Treasury Secretary. The net amount of the adjustment that is required by section 481 of the Code (whether positive or negative) is to be taken into account over a period that does not exceed 4 taxable years beginning with the first taxable year that begins on or after September 30, 1990. The requirement under section 832(b)(4)(C) of the Code (to include a certain portion of the unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987) is not altered by this provision, but rather, is intended to continue as under present law.

2. TREATMENT OF SALVAGE AND SUBROGATION OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Present law

A property and casualty insurance company, in determining its underwriting income for Federal income tax purposes, may deduct losses incurred. The deduction for losses incurred includes losses paid during the year and the increase in discounted unpaid losses for the year. Present law requires paid losses to be reduced by the increase in salvage (including subrogation claims) recoverable. Since 1947, Treasury regulations have provided an exception to the requirement that paid losses be reduced by salvage, if under applicable State law or State insurance rules the salvage may not be treated as an asset for statutory accounting purposes. This regulatory exception was removed, in temporary Treasury regulations originally promulgated December 30, 1987, but the effective date of the temporary regulations has been deferred several times, and the temporary regulations at present are technically in effect for taxable years beginning after December 31, 1989.

House Bill

The deduction allowed to property and casualty insurance companies for losses incurred, both paid and unpaid, is reduced by estimated recoveries of salvage (including subrogation claims) attributable to such losses, whether or not the salvage is treated as an asset for statutory accounting purposes. The Treasury Department is required to issue regulations providing for discounting of salvage taken into account under the provision.

The House bill also waives additions to tax under section 6655 with respect to any underpayment of estimated tax for any period before March 16, 1991, to the extent the underpayment was created or increased by the treatment of salvage under the bill.

The provision applies for taxable years beginning after December 31, 1989. The House bill provides a "fresh start", i.e., a permanent forgiveness of income in the amount of the adjustment that would otherwise be includible in gross income.

The amount of the adjustment is the discounted amount of estimated salvage recoverable as of the close of the last taxable year beginning before January 1, 1990. The House bill provides for recapture of the excess, if the amount of the adjustment is overstated. The House bill also provides that the earnings and profits of an insurance company for its first taxable year beginning after December 31, 1989, is increased by the amount of the adjustment.

Senate amendment

The Senate amendment is the same as the House bill, except that, with respect to the effective date, the Senate amendment provides a partial fresh start, for 23 percent of the amount of the adjustment, and provides a comparable forgiveness of income equal to 23 percent of the amount of the adjustment for companies that took estimated salvage into account for the last taxable year beginning before January 1, 1990. The remaining amount of the adjustment is required to be included in income over a period that does not exceed 4 years.

Conference agreement

The conference agreement follows the Senate amendment, with a modification in the application of the effective date.

The conference agreement provides that 87 percent of the amount of the adjustment that otherwise is included in income over a period not to exceed 4 years is forgiven under the bill. The conference agreement also provides that, for companies that took estimated salvage into account in determining the deduction for losses incurred for the last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of the last taxable year beginning before January 1, 1990, is allowed as a deduction ratably over the first 4 taxable years beginning after December 31, 1989.

Under the conference agreement, the calculation under the rule that applies in the event of the overstatement of the adjustment is made as follows. If for any taxable year beginning after December 31, 1989, the full amount of the adjustment determined without regard to discounting exceeds the sum of (1) the amount of salvage recovered taken into account for the taxable year and for any preceding taxable year beginning after December 31, 1989, attributable to losses incurred for an accident year beginning before 1990, and (2) the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such pre-1990 losses, then 87 percent of the excess (as adjusted) is included in gross income for such taxable year. The amount of the excess is adjusted for this purpose by multiplying the excess by the ratio of the full amount of the adjustment determined on a discounted basis to the full amount of the adjustment determined without regard to discounting.

The conference agreement clarifies that the Treasury Department regulatory authority to provide that amounts of estimated salvage are determined on a discounted basis does not apply to reinsurance recoverable.

The conference agreement also provides that the amount of estimated salvage recoverable shall be determined on a discounted

basis in accordance with procedures established by the Treasury Department. Thus, pending issuance of regulations or other Treasury guidance with respect to discounting of estimated salvage recoverable, the conferees anticipate that taxpayers will compute discounted salvage in accordance with the principles set forth in the legislative history to the House bill and the Senate amendment, and the rules for determining the applicable interest rate for discounting unpaid losses.

3. COMPLIANCE PROVISIONS

a. Suspension of statute of limitations during proceedings to enforce certain summonses

Present law

The statute of limitations for most tax returns (whether corporate or individual) is three years. The IRS and the taxpayer can together agree to extend the statute of limitations, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the statute of limitations by providing notice to the IRS on the appropriate form. Because of the complexity of the issues involved, the IRS frequently cannot complete an audit of a corporate tax return within the statutorily specified three-year period.

During an audit, the IRS frequently requests informally that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS is compelled to seek information by issuing an administrative summons. Such a summons will not be enforced by judicial process unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition in court to have an administrative summons quashed where this is permitted by statute (for example, under sections 6038A(e)(4) or 7609(b)(2)).

House Bill

In general, the House bill tolls the statute of limitations for a corporation during the period of time that the corporation and the IRS are in court litigating the issue of whether the corporation must comply with a specific type of summons issued by the IRS (called, for purposes of this provision, a "designated summons"). The statute of limitations may only be suspended with respect to a corporation; it may not be suspended with respect to individuals.

The IRS may issue a designated summons, which must be issued at least 60 days before the day on which the period for assessment of tax for the year in question (including any extensions) would otherwise expire. A designated summons may be issued by the IRS only once for any tax return of a taxpayer.

The statute of limitations is suspended for the period that commences when a lawsuit is brought in court to either enforce or quash the designated summons and ends on the date there is a final resolution of the summonsed person's response to the summons. For these purposes, the term "final resolution" means the same as it does in section 7609(e)(2)(B). In general, this means that no court proceeding remains pending and that the summonsed person has complied with the summons to the extent required by the court. If a court requires additional compliance to any extent with the summons, the statute of limitations is suspended for an additional 120 days after final resolution of the summonsed person's response. If additional compliance is not required, the assessment period would in no event expire until the 60th day after that final resolution. This provision is designed to preserve the ability of the IRS to conclude the audit and assess any taxes that may be due regardless of the length of time that it might take to obtain judicial resolution of the summons enforcement lawsuit.

These rules for suspending the statute of limitations also apply with respect to any summons issued to any person during the 30-day period following the issuance of the designated summons, so long as the subsequent summons pertains to the same tax return as the designated summons. This is necessary because, for example, a designated summons may be issued to a corporation that cannot respond adequately on the grounds that the summonsed information is in the control of a shareholder; a summons to the shareholder for the same information would be necessary to obtain the summonsed information. Thus, the statute of limitations is tolled during the course of any enforcement litigation over the subsequent summons.

This provision applies to any tax (regardless of whether imposed before, on, or after the date of enactment) if the statute of limitations for the assessment of the tax has not expired on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the statute of limitations may be extended with respect to any taxpayer.

Conference Agreement

The conference agreement follows the House bill.

b. Apply accuracy-related penalty more effectively to section 482 adjustments

Present law

Valuation questions are frequently central to disputes between taxpayers and the IRS involving section 482. Substantial valuation overstatements are subject to penalty. A substantial valuation overstatement occurs if the value of any property claimed on a tax return is 200 percent or more of the amount determined to be correct. The penalty is 20 percent of the understatement of tax attributable to the substantial valuation overstatement. No penalty is imposed if it is shown that there was reasonable cause for the underpayment and that the taxpayer acted in good faith, or if the portion of the underpayment for the taxable year attributable to substantial valuation overstatements does not exceed $5,000 ($10,000 in the case of corporation other than ar. S corporation or a personal holding company).

House bill

The present-law valuation overstatement penalty is extended to apply to specified valuation misstatements in connection with section 482. First, the penalty applies to the understatement of tax attributable to a net section 482 transfer price adjustment for the taxable year that exceeds $10,000,000. The net section 482 transfer price adjustment is the net increase in taxable income for a taxable year that results from all adjustments under section 482 in the price of any property or services. For this purpose, rules similar to the rules of the last sentence of section 55(b)(2) apply. That is, in the case of a taxpayer whose regular tax is determined by reference to an amount other than its taxable income, it is the increase in that other amount resulting from section 482 adjustments that constitutes the taxpayer's net section 482 transfer price adjustment.

Second, the penalty also applies in instances where the transfer price claimed on the return is 200 percent or more (or 50 percent or less) of the amount determined to be the correct transfer price under section 482.

Third, as under present law, the penalty is doubled in cases of gross valuation misstatements (where the dollar amount described above exceeds $20,000,000 or the percentages described above are 400 percent or more (or 25 percent or less)).

The reasonable cause and de minimis exceptions in present law also apply to these modifications.

The provision is effective for taxable years ending after the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with certain modifications and technical clarifications.

First, the conference agreement clarifies that the valuation misstatement penalties (and thresholds) relating to adjustments under section 482 apply to underpayments resulting from adjustments in prices for any property or services (or for the use of property). Thus, the conference agreement makes clear that a penalty may apply, for example, in a case where the amount of a royalty claimed on the tax return is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of the royalty (assuming that neither the de minimis exception nor the reasonable cause exception applies). In general, the conferees intend that the term "price for any property or services (or for the use of property)" be broadly interpreted to encompass consideration of all kinds that may be adjusted by the IRS under section 482, including but not limited to purchase prices, fees for services, royalties, interest, and rents.

Second, the conference agreement clarifies the rule in the House bill and Senate amendment providing for the application of rules similar to the rules of the last sentence of section 55(b)(2) in determining the amount of the net section 482 transfer price adjustment. Thus, the conference agreement expressly provides that if the regular tax (as defined in section 55(c)) imposed on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of the taxpayer for purposes of the definition of net section 482 transfer price adjustment.

For example, assume that under section 482 the IRS makes a single adjustment to the net income of a foreign corporation for the taxable year, and that adjustment consists of a $25,000,000 decrease in the foreign corporation's interest expense. Assume also that the foreign corporation is subject to U.S. regular tax only with respect to its gross income which is either derived from sources within the United States or effectively connected with the conduct of a trade or business in the United States (or both). Further, assume that the section 482 decrease in interest expense increases by less than $10,000,000 the foreign corporation's taxable income effectively connected with the conduct of a trade or business in the

United States. Under the conference agreement, the net section 482 transfer price adjustment for the taxable year of the foreign corporation does not exceed $10,000,000.

As another example, assume the same facts as above except that the foreign corporation is a controlled foreign corporation, and the $25,000,000 interest expense adjustment results in a U.S. shareholder having an additional subpart F inclusion in excess of $10,000,000. Under the provision, the net section 482 transfer price adjustment for the taxable year of the U.S. shareholder may exceed $10,000,000 (assuming neither the reasonable cause exception nor the foreign-to-foreign adjustment exception, as described below, applies).

The conference agreement further provides two modifications, under which certain net increases in taxable income resulting from section 482 adjustments are disregarded in determining whether a taxpayer's net section 482 transfer price adjustment exceeds the $10,000,000 or $20,000,000 thresholds. First, under the conference agreement there is disregarded any portion of the net increase in taxable income which is attributable to a redetermination of a price, if it is shown that there was a reasonable cause for the taxpayer's determination of the price, and that the taxpayer acted in good faith with respect to the price. The conferees intend that the same standard of reasonable cause and good faith apply for purposes of this modification as would otherwise apply to the valuation misstatement penalty under section 6664(c).

Second, in determining whether a taxpayer's net section 482 transfer price adjustment exceeds the $10,000,000 or $20,000,000 thresholds, under the conference agreement there is disregarded any portion of the net increase in taxable income which is attributable to any transaction solely between foreign corporations (unless the treatment of that transaction affects the determination of any such foreign corporation's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business in the United States). For example, assume that a net increase in the taxable income of a U.S. shareholder results from an adjustment in the royalty paid by one controlled foreign corporation to another controlled foreign corporation. Assume that neither foreign corporation earns any income from U.S. sources or income effectively connected with the conduct of a trade or business in the United States. Under the conference agreement's foreign-to-foreign adjustment exception, the net increase in the U.S. shareholder's taxable income resulting from the IRS's adjustment of the royalty amount will not be counted in determining whether the net section 482 transfer price adjustment of the U.S. shareholder exceeds $10,000,000 or $20,000,000.

Assume, however, that even without regard to the foreign-to-foreign royalty adjustment the net section 482 transfer price adjustment of the U.S. shareholder exceeds $10,000,000. Under the conference agreement, the penalty does apply to any substantial valuation misstatement resulting from that foreign-to-foreign royalty adjustment (unless an exception, such as reasonable cause, applies).

c. Treatment of persons providing services

Present law

Tax returns and return information are confidential, and may not be disclosed without statutory authorization. Unauthorized disclosure is punishable upon conviction by a fine of up to $5,000, a prison sentence of not more than 5 years (or both) (sec. 7213), or, in addition, a private lawsuit for damages (sec. 7431).

The IRS is permitted to disclose returns and return information to other persons to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns.

House bill

The House bill provides that persons who provide services to the IRS and to whom the IRS discloses returns and return information pursuant to section 6103, are subject to the same penalties for unauthorized disclosure as are IRS employees. No inference is intended that these persons were not subject to these penalties for unauthorized disclosure prior to this amendment.

The provision is effective on the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

d. Application of 1989 information reporting and related amendments to open years

Present law

Information reporting and maintenance

Under present law, any corporation that is 25-percent owned by one foreign person and is either a domestic corporation or a foreign corporation that conducts a trade or business in the United States (a "reporting corporation") must furnish the IRS with such information as the Secretary may prescribe, with respect to taxable years beginning after July 10, 1989, regarding transactions carried out directly or indirectly with certain foreign persons treated as related to the reporting corporation ("reportable transactions") (sec. 6038A(a)). A related person for this purpose includes a 25-percent shareholder as well as any person that is treated as related within the meaning of sections 267(b), 707(b)(1), or 482.

A reporting corporation is also required to maintain (or cause another person to maintain), at the location, in the manner, and to the extent prescribed by regulations, any records deemed appropriate to determine the correct tax treatment of reportable transactions with respect to taxable years beginning after July 10, 1989 (sec. 6038A(a)). The Secretary has broad flexibility in prescribing these regulations,[11] including, for example, the flexibility to exclude classes of supporting documentation from any general regulatory specification that the required records be maintained within the United States.[12]

Application of U.S. legal process to foreign persons

The statutory scope of general IRS summons authority extends to certain persons that are not themselves subject to tax in the United States. In addition, the Code provides that in order to avoid the consequences of the noncompliance rule (discussed below) with respect to certain reportable transactions for taxable years beginning after July 10, 1989, each foreign person that is a related party of a reporting corporation must agree to authorize the latter to act as its agent in connection with any request or summons by the IRS to examine records or produce testimony related to any reportable transaction, solely for the purpose of determining the tax liability of the reporting corporation (sec. 6038A(e)(1)).

Sanctions for noncompliance

Monetary penalty

Failure to furnish the IRS with information or to maintain records with respect to a taxable year beginning after July 10, 1989, as required under section 6038A (a) and (b) is subject to a monetary penalty of $10,000, and additional penalties are imposed if the failure continues more than 90 days after the IRS notifies the taxpayer of the failure (sec. 6038A(d)). The additional penalties are $10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90th day following IRS notification. An exception from liability for the monetary penalty exists in cases in which the taxpayer demonstrates to the satisfaction of the Secretary that reasonable cause exists for the failure to furnish required information or maintain required records (sec. 6038A(d)(3)).

Noncompliance rule

Failure of a related party to designate a reporting corporation as its agent for accepting service of process in connection with reportable transactions (as discussed above), or, under certain circumstances, noncompliance with IRS summonses in connection with reportable transactions, can result in the application of the noncompliance rule in computing tax liability with respect to a taxable year beginning after July 10, 1989. For certain payments to related parties in connection with reportable transactions, this rule permits the IRS to allow the reporting corporation only those deductions and amounts of cost of goods sold as shall be determined by the Secretary in the Secretary's sole discretion, based on any information in the knowledge or possession of the Secretary or on any information that the Secretary may choose to obtain through testimony or otherwise (sec. 6038A(e)).

Prior law

The information reporting and related requirements described above reflect provisions of the Omnibus Budget Reconciliation Act of 1989 ("the 1989 Act") amending the prior-law provisions of Code section 6038A. The 1989 Act amendments apply only to taxable years beginning after July 10, 1989. The information reporting and related requirements applicable to taxable years beginning before July 11, 1989, are less extensive than those described above.

House bill

The House bill generally extends the application of the 1989 Act amendments to the information reporting and related provisions of section 6038A so that they also apply to future acts (and failures to act) in connection with taxable years beginning before July 11, 1989.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

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[11] "Explanation of Provisions Approved by the Committee on October 3, 1989," Senate Finance Committee Print, 101st Cong., 1st Sess. 114-16 (1989).

[12] *Id.* at 114.

e. Information reporting by foreign corporations engaged in U.S. business

Present law

In general

A foreign corporation that is engaged in a trade or business within the United States during the taxable year is subject to U.S. income tax on its taxable income which is effectively connected with the conduct of that trade or business (sec. 882(a)(1)). A foreign corporation is also subject to a flat 30-percent branch profits tax on its "dividend equivalent amount," which is a measure of the U.S. effectively connected earnings of the corporation that are removed in any year from the conduct of its U.S. trade or business.

In determining the taxable income of a foreign corporation, gross income includes only gross income which is effectively connected, whether derived from sources within or without the United States (sec. 882(a)(2)), and deductions generally are allowed only to the extent they are connected with such effectively connected gross income (sec. 882(c)(1)). For this purpose, deductible expenses (other than interest expense) are allocated and apportioned to effectively connected gross income under the same rules that are applicable for allocating and apportioning the expenses of U.S. persons between U.S. and foreign sources (Treas. Reg. sec. 1.882-4(c)). With respect to computing deductible interest expense, regulations generally require that the worldwide liabilities of the foreign corporation be taken into consideration in determining which liabilities are treated as "U.S.-connected liabilities," that amount being based on a specified percentage of the corporation's U.S. effectively connected assets. Deductible interest expense is determined by multiplying the amount of such U.S.-connected liabilities by one or more average rates of interest (Treas. Reg. sec. 1.882-5). A foreign corporation is also subject to a branch level interest tax, which amounts to a flat 30 percent of the interest deducted by the foreign corporation in computing its U.S. effectively connected income but not paid by the U.S. trade or business.

Information reporting and maintenance

A foreign corporation may claim the benefit of deductions and credits only if it files or causes to be filed with the Secretary a true and accurate return in the manner prescribed in subtitle F of the Code, which return includes all the information deemed necessary by the Secretary for the calculation of those deductions or credits (sec. 882(c)(2)). A foreign corporation that claims deductions from effectively connected gross income is subject to certain rules for providing information with respect to those expenses. Under regulations, if a foreign corporation is requested to do so by the IRS district director, it must furnish information, in English if so requested, sufficient to establish that the corporation is entitled to the deductions in the amounts claimed. The information must be submitted in a form suitable to permit verification of the deductions claimed (Treas. Reg. sec. 1.882-4(c)(2)).

Transactions with certain related persons

As described more fully in Part d. above ("Application of 1989 information reporting and related amendments to open years"), under present law, any foreign corporation that conducts a trade or business in the United States and that is 25-percent owned by one foreign person (in terms defined by the Code, a "25-percent foreign-owned" corporation that is also a "reporting corporation") must furnish the IRS with such information as the Secretary may prescribe, with respect to taxable years beginning after July 10, 1989, regarding transactions carried out directly or indirectly with certain foreign persons treated as related to the reporting corporation ("reportable transactions") (sec. 6038A(a)). A reporting corporation is also required to maintain (or cause another person to maintain), at the location, in the manner, and to the extent prescribed by regulations, any records deemed appropriate to determine the correct tax treatment of reportable transactions with respect to taxable years beginning after July 10, 1989 (sec. 6038A(a)).

Failure to furnish the IRS with information or to maintain records with respect to a taxable year beginning after July 10, 1989, as required under section 6038A (a) and (b) is subject to a monetary penalty of $10,000, and additional penalties are imposed if the failure continues more than 90 days after the IRS notifies the taxpayer of the failure (sec. 6038A(d)). The additional penalties are $10,000 for each 30-day period (or fraction thereof) during which the failure continues following the 90th day after IRS notification.

As described in Part d. above, certain requirements for furnishing information to the IRS concerning certain related party transactions also apply to taxable years of a foreign corporation beginning before July 11, 1989, so long as the foreign corporation was 50 percent owned by one foreign person. The penalty for failure to meet these requirements is $1,000, plus an additional $1,000 (up to a maximum of $24,000) for each 30-day period (beginning 90 days after IRS notification) that the failure remained or remains outstanding.

Application of U.S. legal process to foreign persons

Failure of a related party to designate a reporting corporation as its agent for accepting service of process in connection with reportable transactions (as discussed in Part d. above), or, under certain circumstances, noncompliance with IRS summonses in connection with reportable transactions, can result in the application of the noncompliance rule (discussed in Part d. above) in computing tax liability with respect to a taxable year beginning after July 10, 1989.

The fact that compliance with the summons would lead to the imposition of civil or criminal penalties on the reporting corporation (or a related party) under any foreign law does not constitute grounds for either quashing or refusing to enforce the summons. Thus, although in some instances the noncompliance rules are inapplicable if the summons is quashed or a court refuses to enforce, the noncompliance rule *does* apply in a case where compliance with the summons is illegal under foreign law (unless an independent ground to quash or refuse enforcement exists, other than that the corporation is unable to provide records requested in the summons by reason of the fact that the reporting corporation failed to maintain records as required under the provision).

House Bill

The House bill adds new section 6038C to the Internal Revenue Code. The new provision subjects all foreign corporations that carry on trades or businesses in the United States to information reporting and record maintenance rules that are similar to the present-law rules contained in section 6038A applicable to certain 25-percent foreign-owned corporations. While under section 6038A these rules (and the related sanctions) are generally applicable only to furnishing information, maintaining records, and complying with summonses pertaining to related party transactions, and then only when the foreign corporation is 25-percent foreign-owned, under new section 6038C these rules apply to related party transactions in the case of any foreign corporation with a U.S. trade or business, whether or not the foreign corporation is 25-percent foreign-owned. In addition, under new section 6038C these rules apply to information, records, and summonses regarding such other information as the Secretary may prescribe by regulations relating to any item not directly connected with such a related party transaction. The House bill generally applies the section 6038C provisions to future acts (and failures to act) without regard to the taxable year involved. The bill does not affect the application of section 6038A under present law (as amended by the 1989 Act) to foreign corporations in the case of past acts (and failures to act).

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

f. Studies and other administrative matters

Present law

In the Tax Reform Act of 1986, Congress stated that a comprehensive study of intercompany pricing rules should be conducted by the Internal Revenue Service and that careful consideration should be given to whether the existing regulations could be modified in any respect. Such a study was issued by the Treasury and IRS in October 1988. Changes to the regulations are yet to be proposed. In addition, in the Revenue Reconciliation Act of 1989, a legislative intention was expressed that the IRS report on its efforts to audit U.S. taxpayers that are subsidiaries of or otherwise related to foreign corporations. It was intended that such a report be submitted to Congress within five years after the 1989 Act amendments to section 6038A took effect.

House bill

The House bill provides for a report to be made by the Secretary of the Treasury or his delegate regarding the effectiveness of the compliance provisions contained in this part of the bill (described above) in increasing compliance with Code section 482, the use of advanced determination agreements with respect to section 482 issues, possible additional statutory provisions or administrative changes to assist the IRS in increasing compliance with section 482, and coordination of the administration of section 482 with the administration of similar provisions of foreign tax laws and of domestic non-tax laws. The House bill provides for this report, along with such recommendations as the Secretary may deem advisable, to be submitted to the House Committee on Ways and Means and the Senate Committee on Finance no later than March 1, 1992.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

g. Extend statute of limitations for collection of taxes

Present law

After an assessment of tax has been made, the Internal Revenue Service (IRS) must institute collection proceedings to collect this tax within 6 years. Otherwise, the IRS is barred from collecting the assessment.

House bill

No provision.

Senate amendment

The Senate amendment extends the statute of limitations for the collection of taxes after assessment from 6 years to 10 years.

Conference agreement

The conference agreement follows the Senate amendment.

h. Modifications relating to reporting of cash received in a trade or business

Present law

A person engaged in a trade or business who receives, in the course of the trade or business, more than $10,000 in cash or foreign currency in one or more related transactions must report it to the Internal Revenue Service (IRS) and provide a statement to the payor. Reporting is required whether or not consideration is returned for the cash and whether or not the cash is received for the recipient's own account or for the account of another (with narrow exceptions provided by IRS regulations).

For purposes of the reporting requirement, only currency is treated as cash—not checks, traveller's checks, drafts, money orders, or other cash equivalents. A transaction subject to reporting is any receipt of cash including receipt in connection with the purchase of goods or services, the purchase or exchange of property, the opening of a deposit or credit account, or any similar transaction.

The recipient of the cash is required to report the name, address and taxpayer identification number of the payor, the amount of cash received, the date and nature of the transaction, and such other information as the Secretary may require. In addition to furnishing reports on each cash transaction to the IRS, the recipient of the cash must furnish each payor an annual statement aggregating the amounts of cash received from him. This statement must be furnished on or before January 31 of the year following the year of the reportable event.

Any taxpayer subject to this provision who receives more than $10,000 in cash in one or more related transactions is required to report those transactions. For example, assume that an individual purchases a $8,000 item and a $1,500 item at an auction. The auction house adds a 10-percent buyer's premium and a 5-percent local sales tax. The taxpayer pays his $10,972.50 bill in cash. The auction house must report on that transaction. The auction house could not avoid the reporting requirement by presenting two separate bills of $9,240 and $1,732.50.

Reporting is not required on payments (1) that are received in a transaction reported under the Bank Secrecy Act if the Secretary of the Treasury determines that the report under this provision would duplicate the report under the Bank Secrecy Act, or (2) that are received by certain specified financial institutions within the meaning of the Bank Secrecy Act.

The penalty for failure to file required reports with the IRS and to furnish statements to taxpayers is similar to that imposed on failures to make other information reports and statements. Thus, the penalty is $50 per failure, subject to a maximum of $250,000 for any calendar year. The penalty is not applicable if the failure is due to reasonable cause and not to willful neglect. If, however, the failure to file required reports with the IRS is due to intentional disregard of the filing requirements, the penalty is 10 percent of the aggregate amount of the items required to be reported and the $250,000 limitation does not apply. In addition, under section 7203, any willful violation related to the filing of returns relating to cash receipts of more than $10,000 received in the course of conducting a trade or business is, upon conviction, punishable by a fine of not more than $25,000 ($100,000 in the case of a corporation) or imprisonment not to exceed 5 years or both. Similar civil and criminal penalties apply to persons who, for the purpose of evading the return requirement, cause or attempt to cause a trade or business to fail to file, or to file falsely, a required return.

House bill

The House bill provides that, to the extent provided in Treasury regulations, any monetary instrument (whether or not in bearer form) other than personal checks with a face amount of not more than $10,000 is included in the definition of cash. Revised Treasury regulations must be issued not later than June 1, 1991. In addition, the bill increases the penalty for intentional disregard of these reporting requirements to mirror the civil penalty applicable for currency transaction reports filed under the Bank Secrecy Act. Thus, the penalty is the greater of $25,000 or the amount of cash received in the transaction (but no more than $100,000). The heading of the provision of present law prohibiting evasion techniques is clarified. The Treasury Department is required to submit to the Congress no later than March 31, 1991, a study of the operation of section 6050I.

The House bill is effective generally for cash received after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

i. Extend IRS user fees

Present law

The Internal Revenue Service (IRS) provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes. The IRS responds to these inquiries through the issuance of letter rulings, determination letters, and opinion letters. The IRS charges a fee for most requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The legislation that requires the establishment of this fee program provides that it is not to apply to requests made after September 29, 1990.

House bill

The House bill extends for five years the IRS program that requires the payment of a fee for most requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The provision applies to requests made after September 29, 1990.

Senate amendment

The Senate amendment permanently extends the IRS program that requires the payment of a fee for most requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The provision applies to requests made after September 29, 1990. The IRS may collect the fee for requests made after September 29, 1990, and on or before the date that is 30 days after the date of enactment at such time as the IRS may determine in its discretion. The fee for any request made more than 30 days after the date of enactment must be collected in advance.

CONFERENCE AGREEMENT

The conference agreement follows the House bill (*i.e.*, the IRS user fee program is extended for five years), with the following modification. The IRS may collect the fee for requests made after September 29, 1990, and on or before the date that is 30 days after the date of enactment at such time as the IRS may determine in its discretion. The fee for any request made more than 30 days after the date of enactment must be collected in advance.

4. CERTAIN CORPORATE TAX PROVISIONS

a. Impose corporate tax on divisive transactions in connection with certain changes of ownership

Present law

A corporation generally must recognize gain on the sale or distribution of appreciated property, including stock of a subsidiary. However, corporate distributions of subsidiary stock that meet the requirements of section 355 of the Code are tax-free both to the distributing corporation and to the distributee shareholders.

Present law imposes a 5-year holding period requirement for any corporate distributee that has acquired 80 percent of the stock of a corporation ("target"), unless the stock was acquired solely in nontaxable transactions. If the 5-year holding period is not met, distributions of subsidiaries by the target corporation are not tax-free under section 355.

House bill

In addition to the provisions of present law, the House bill generally requires recognition of corporate-level gain (but does not require recognition by the distributee shareholders) on a distribution of subsidiary stock qualifying under section 355 if, immediately after the distribution, a shareholder holds disqualified stock that constitutes 50-percent or more of the vote or value of the distributing corporation or of a distributed subsidiary. Disqualified stock is stock that was acquired by purchase (as defined in the provision) within the preceding 5-year period and after October 9, 1990.

The House bill contains attribution rules under which a person and certain related persons are treated as one. It also provides rules to determine the relevant date of purchase in certain related party cases.

Stock is generally considered acquired by purchase for purposes of this provision if it is acquired in any transaction in which the acquiror's basis of the stock is not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired and is not determined under section 1014(a).

Except as provided in regulations, stock is not generally considered acquired by purchase if it is acquired in an exchange to which section 351, 354, 355 or 356 applies. However, stock acquired in an exchange to which section 351 applies is treated as acquired by purchase to the extent that such stock is acquired in exchange for any cash,

cash item, marketable security, or debt of the transferor.

The Treasury Department has authority to exclude transactions from the definition of a purchase to the extent consistent with the purposes of the provision.

For purposes of determining whether stock is acquired during the 5-year period ending on the date of the distribution, the holding period of such stock is reduced for any period in which the holder's risk of loss with respect to such stock is directly or indirectly substantially diminished by any device or transaction.

The Treasury Department has general regulatory authority to prevent the avoidance of the purposes of the provision through any means, including through the use of related persons, pass-through or intermediary entities, options, or other arrangements.

The House bill applies to distributions of stock after October 9, 1990. Transitional relief is provided if the acquisition of stock by purchase after October 9, 1990 is pursuant to a binding written contract in effect on October 9, 1990, and at all times thereafter before such acquisition. Transitional relief is also provided if the acquisition of stock by purchase after October 9, 1990 is pursuant to a tender offer filed with the Securities and Exchange Commission before October 10, 1990, or pursuant to an offer the material terms of which were described in a written public announcement before October 10, 1990, which was the subject of a prior filing with the Securities and Exchange Commission, and which is subsequently filed with the Securities and Exchange Commission before January 1, 1991. Stock acquired under these rules is treated as acquired before October 10, 1990.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement is generally the same as the House bill and the Senate amendment, with certain clarifications.

In general

The conference agreement generally requires recognition of corporate-level gain (but does not require recognition by the distributee shareholders) on a distribution of subsidiary stock or securities qualifying under section 355 (whether or not part of a reorganization otherwise described in section 361(c)(2)) if, immediately after the distribution, a shareholder holds a 50-percent or greater interest in the distributing corporation or a distributed subsidiary that is attributable to stock or securities that were acquired by purchase (as defined in the provision) within the preceding 5-year period. Thus, for example, under the provision, the distributing corporation will recognize gain on the distribution of subsidiary stock and securities if a person purchases distributing corporation stock or securities, and within 5 years, 50 percent or more of the subsidiary stock is distributed to that person in exchange for the purchased stock or securities. The distributing corporation will recognize gain as if it had sold the distributed subsidiary stock and securities to the distributee at fair market value.

Related persons are treated as one person for purposes of the provision. Thus, for example, in determining whether a person holds a 50-percent or greater interest, a corporation and its more than 50-percent-owned subsidiary are treated as one person. The related party rules applied for this purpose are the rules of sections 707(b)(1) and 267(b).

In addition, persons acting pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing or any controlled corporation are treated as one person for purposes of determining whether a shareholder holds a 50-percent or greater interest acquired by purchase.

Other attribution rules

For purposes of determining attribution from an entity, the rules of section 318(a)(2) are applied, substituting 10 percent for 50 percent in section 318(a)(2)(C). Where securities are owned by an entity, a person who would be deemed to own all or a portion of the stock (if any) owned by the entity under these attribution rules will be deemed to own the same proportion of securities (if any) held by such entity.

Disqualified distribution

A disqualified distribution is any section 355 distribution if, immediately after the distribution, any person holds disqualified stock in either the distributing corporation or any distributed controlled corporation constituting a 50-percent or greater interest in such corporation.

Disqualified stock

The conference agreement defines disqualified stock to include any stock in the distributing corporation or any controlled corporation acquired by purchase (as defined) after October 9, 1990 and during the 5-year period ending on the date of the distribution. In addition, disqualified stock includes stock in any controlled corporation received in the distribution, to the extent attributable to distributions on stock or securities in the distributing corporation acquired by purchase after October 9, 1990 and during the 5-year period ending on the date of the distribution.

Example 1.—Assume that after the effective date, individual A acquires by purchase a 20-percent interest in the stock of corporation P and a 10-percent interest in the stock of its subsidiary, S, and 40 percent or more of the stock of S is distributed to A within 5 years in exchange for his 20-percent interest in P. (The remainder of the S stock distributed in the section 355 distribution is distributed to other shareholders). Under the provision P must recognize gain with respect to the distributed stock of the S because all 50 percent of the stock of S held by A is disqualified stock.

Example 2.—Assume that after the effective date individual A acquires by purchase a 20-percent interest in corporation P and P redeems stock of other shareholders so that A's interest in P increases to a 30 percent interest. Within 5 years of A's purchase, P distributes 50 percent of the stock of its subsidiary, S, to A in exchange for his 30 percent interest in P (the remainder of the stock of S distributed in the section 355 transaction is distributed to other shareholders). P recognizes gain on the distribution of the stock of S because all 50 percent of the stock of S held by A is disqualified stock.

Fifty percent or greater interest

The conference agreement provides that a 50-percent or greater interest means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock. Whether disqualified stock constitutes a 50-percent or greater interest is determined immediately following the distribution of stock (whether to that shareholder, or to other shareholders). In applying the 50-percent or greater interest test, all stock that the shareholder (including related parties) acquires after the effective date of the provision by purchase (or that is attributable to distributions on stock or securities acquired after the effective date by purchase), as that term is defined for purposes of the provision, is taken into account.

Acquisition by purchase

Stock or securities are generally considered acquired by purchase for purposes of the provision if they are acquired in any transaction in which the acquiror's basis of the stock or securities is not determined in whole or in part by reference to the adjusted basis of such stock or securities in the hands of the person from whom acquired and is not determined under section 1014(a). Thus, for example, stock issued by a corporation to a transferor in a section 1032 contribution to capital is acquired by the transferor by purchase. Further, stock or securities acquired by a partner in a section 732(b) distribution from a partnership is acquired by purchase at the time of the distribution because the partner's basis in the stock or securities is determined by reference to the partner's basis in the liquidated partnership interest.

Stock or securities are not generally considered acquired by purchase if they are acquired in an exchange to which section 351, 354, 355 or 356 applies.

Stock acquired in an exchange to which section 351 applies is treated as acquired by purchase to the extent that such stock is acquired in exchange for any cash, cash item, marketable stock or securities, or debt of the transferor.

If property is acquired in a carryover basis transaction (including a gift, tax-free reorganization or liquidation, contribution to a partnership or corporation, or distribution of property from a partnership under section 732(a)) from a transferor who, directly or indirectly, acquired the property by purchase, the acquiror is generally considered to have acquired the property by purchase on the date that the transferor actually acquired it by purchase. However, the time of the purchase could be later in some circumstances. As one example, the time of purchase could be later under the "deemed purchase" rules described below if the property is acquired in a carryover basis transaction from an entity whose holdings were attributed to the acquiror and the acquiror had acquired his interest in the entity by purchase at a date later than the date the entity was considered to have purchased the stock. As another example, to the extent gain is recognized in a carryover basis transaction, any property treated as purchased under regulations may be treated as acquired by purchase at the time of the transaction.

Five-year period

Gain is recognized under the provision in the case of a section 355 distribution within 5 years after a shareholder acquires stock or securities by purchase (if the shareholder meets the 50-percent or more ownership test immediately after the distribution).

For purposes of determining whether stock or securities are acquired during the 5-year period ending on the date of the distribution, the holding period of such stock or securities is reduced for any period during which the holder's risk of loss with respect to such stock or securities or with respect to any portion of the activities of the corpora-

tion is directly or indirectly substantially diminished by any device or transaction, including: a short sale; the holding by any person of a put, a call, or any other option; or the use of any special class of stock. It is expected that all the facts and circumstances relating to the stock or securities and the corporate activities, as well as any other arrangements related to the holdings, will be scrutinized to determine whether the holder's risk of loss has been substantially diminished. Risk of loss ordinarily will not be considered to be substantially diminished solely by virtue of customary indemnities given by the seller of stock.

If stock or securities grant special rights or bear special risks with respect to the earnings or the other aspects of less than all of the activities of a corporation, such stock or securities shall be considered to diminish substantially the holder's risk of loss with respect to some of the activities of the corporation for purposes of this provision and the holding period of such stock or securities shall be suspended. One example is so-called "tracking stock" that grants particular rights to the holder or the issuer, or bears particular risks for the holder or the issuer with respect to the earnings, assets, or other attributes of less than all the activities of a corporation or any of its subsidiaries. Another example is stock or securities (or any related instruments or arrangements) the terms of which provide for the distribution (whether or not at the option of any party or in the event of any contingency) of any controlled corporation or other specified assets to the holder or to persons other than the holder.

If a person acquires shares of more than one class of stock or securities, some but not all of which have a suspended holding period, it is expected that the respective values of such instruments will be closely scrutinized to assure that the purposes of this section are not avoided by allocation of more or less than fair market value to the different instruments.

"Deemed purchase" and other timing rules

If any person acquires by purchase an interest in an entity and any stock or securities held by such entity are attributed to such person under the rules of section 318(a)(2) (modified as described above), such person is treated as acquiring such stock or securities by purchase on the later of the date of the purchase of the interest in the entity or the date the stock or securities are purchased by the entity (or treated as purchased under the carryover basis or other applicable rules).

The "deemed purchase" rule also applies to determine the timing of a purchase where a person and an entity are treated as a single person under the related party rules. Thus, if a person who is already treated as one person with an entity, purchases an additional interest in that entity, that person is treated as purchasing (on the date the interest is purchased) the additional amount of stock or securities owned by the entity that is attributed to the person under section 318(a)(2) by reason of the increased interest in the entity. This timing rule applies even though the person was already treated as owning such stock or securities under the related party rules, prior to purchasing the increased interest in the entity.

Under the basic purchase rules, if persons or entities are treated as one person and one later acquires stock or securities from the other by purchase, the date of the later purchase is the date used for purposes of the 5-year test.

The following examples illustrate the operation of these timing rules:

Example 3.—Assume that individual A purchases 10 percent of the stock of corporation P, which has held 100 percent of the stock of corporation T for more than 5 years at the time of A's purchase. A is deemed to have purchased 10 percent of P's T stock at the time A purchased the P stock. If A later purchases an additional 41 percent of the stock of P, A is deemed to have purchased an additional 41 percent of P's T stock at the time of such later purchase. Because A and P are now related persons under section 267(b), they are treated as one person and A is treated as owning all of P's T stock. A is treated as acquiring 51 percent of the T stock by purchase at the times of A's respective purchases of P stock; the remaining 49 percent of T stock is treated as acquired when P acquired the T stock.

Example 4.—Assume that A has owned 60 percent of P's stock for more than 5 years and P has owned 40 percent of T's stock for more than 5 years. A and P are treated as one person and A is treated as owning 40 percent of T for more than 5 years. If P later purchases an additional 20 percent of the stock of T, A is treated as acquiring by purchase such other 20 percent at the date of P's purchase. If A then purchases an additional 10 percent of P's stock, under the attribution rule and the deemed purchase timing rule, A is deemed to have purchased 10 percent of T's stock at that time (including 10 percent of the 20 percent A was treated as acquiring when P purchased the additional 20 percent of T stock). This timing result under the deemed purchase rule applies even though A is already treated as owning all of P's T stock under the related party rule. Thus, A will be treated as owning all 60 percent of the T stock owned by P and as having purchased a total of 24 percent of T's stock as a result of the purchase of T stock by P and the purchase of P stock by A.

Example 5.—Assume that A purchases a 20-percent interest in partnership M. M has owned 30 percent of the stock and 25 percent of the securities of corporation P for more than 5 years. P has owned 40 percent of the stock and 100 percent of the securities of corporation T for more than 5 years. Under section 318(a)(2), A is deemed to own 6 percent of the stock of P corporation and therefore is deemed to own the same percentage of the stock and securities owned by P corporation. A is deemed to own 2.4 percent of T's stock and 6 percent of T's securities; and the T stock and securities are deemed to have been purchased on the date that A purchased the M partnership interest. If M later purchases an additional 10 percent of P stock, 2 percent of the stock and securities owned by P (i.e., .8 percent of T's stock and 2 percent of T's securities) are deemed to have been purchased by A on such later date.

Example 6.—A and B are brother and sister. For more than 5 years, A has owned 75 percent of the stock of corporation P and B has owned 25 percent of the stock of corporation P. A and B are treated as one person under the rules of section 267(b) and the stock of each is treated as purchased on the date it was purchased by A and B, respectively. If B now purchases from A 50 percent of the P stock, A and B are still treated as one person. However, the 50 percent of P stock that B purchased is treated as purchased on the date of that purchase.

Regulatory authority

The Treasury Department has general regulatory authority (1) to prevent the avoidance of the purposes of the provision through any means, including through the use of related persons, intermediaries, pass-through entities, options, or other arrangements; and (2) to exclude from the provision transactions that do not violate the purposes of this provision. The conferees intend that the Treasury Department consider whether special rules may be appropriate in the case of certain foreign transactions.

In determining whether a person has acquired by purchase a 50-percent or greater interest, the conferees intend that pursuant to the Treasury Department's general regulatory authority to prevent avoidance of the provision, an option to acquire stock (including rights to acquire stock, warrants, obligations convertible into stock, or other similar interests) will be treated as exercised if that would cause the person to have a 50-percent or greater interest acquired by purchase and where, under all the facts and circumstances, (including projected earnings or appreciation and including the risk-shifting or other effects of any other arrangements with the option holder or related parties) the effect of the option would be to avoid the application of the provision. For example, assume individual A acquires 10 percent of the stock of corporation P by purchase within 5 years prior to a pro-rata distribution of its subsidiary, S, and at the time of the distribution or immediately thereafter A has an option to acquire another 40 percent of the stock of S. If, under all the facts and circumstances, the effect of the option is to avoid the application of the provision, A will be deemed to have acquired by purchase 50 percent of the stock of the subsidiary for purposes of the provision and the distribution would be a disqualified distribution taxed at the corporate level. The same result would follow if the option were to acquire another 40 percent of the stock of P rather than S.

In determining whether a shareholder has acquired by purchase a 50-percent or greater interest within 5 years prior to a distribution, the conferees expect that the regulations will consider the effect of related transactions in determining an acquiror's percentage interest and in determining the time of a purchase. Thus, as one example, a subsequent redemption that is related to a distribution of stock will result in the distributing corporation recognizing corporate-level gain with respect to the distribution if the redemption results in the shareholder having acquired by purchase a 50-percent or greater interest.

Regulations may also provide in appropriate cases that an exchange to which section 351, 354, 355, or 356 applies is treated as a purchase. As one example, assume that individual A has owned stock of corporation P for more than 5 years and acquires stock of corporation D and boot in exchange for P stock in a statutory merger qualifying under section 368(a)(1)(A). The conferees intend that the Treasury Department will issue regulations that generally treat the D stock acquired by A as acquired by purchase at the time of the merger because gain recognized by A in the merger increases A's basis in the D stock. Similarly, if gain is not recognized in the merger and A had acquired the P stock by purchase within 5 years prior to the merger, it is expected that regulations will generally treat A as acquiring the

D stock by purchase at the time A purchased the P stock. In addition, the conferees intend that the regulations treat property constituting boot as acquired by purchase.

The conferees also expect that regulations may provide that a section 351 exchange in which cash, cash items, marketable stock or securities, or debt of the transferor are transferred will not be treated as a purchase where the transferors and transferee (if in existence before the transaction) are members of the same affiliated group both before and after the section 351 exchange and any related transactions, except where the transaction results in increasing ownership or providing a basis step-up inconsistent with the purposes of this section. It is further expected that the regulations will not treat any part of the stock of the transferee acquired in a section 351 exchange as acquired by purchase if such items are transferred as part of an active trade or business (including debt incurred in the ordinary course of the trade or business) and such items do not exceed the reasonable needs of such trade or business.

The purposes of the provision are not generally violated if there is a distribution of a controlled corporation within 5 years of an acquisition by purchase and the effect of the distribution is neither (1) to increase ownership in the distributing corporation or any controlled corporation by persons who have directly or indirectly acquired stock within the prior five years, nor (2) to provide a basis step-up with respect to the stock of any controlled corporation.

For example, assume that individual A acquires by purchase 60 percent of corporation P, which has a first-tier and a second-tier subsidiary (S and T, respectively). Further assume that within 5 years after A's 60-percent acquisition of P corporation, S distributes all the stock of T to P in a transaction otherwise qualifying under section 355. Although the distribution would be a disqualified distribution under the basic operation of the provision, the conferees expect that regulations will provide that the provision does not apply to require S to recognize corporate-level gain on the distribution. However, if T were further distributed prorata to all of P's shareholders, so that A obtained a stepped-up basis in the stock of T immediately after the distribution, then corporate level gain would be recognized. Similarly, if T were distributed in a section 355 transaction to A in exchange for his P stock, corporate level gain would be recognized on that distribution.

By contrast, assume that 50 percent of the P stock is owned by corporation N, the remaining P stock is owned by unrelated persons, and A purchases all the stock of N from the N shareholders. If within 5 years of A's purchase N exchanges its P stock for stock of S, P would recognize corporate-level gain on the distribution because A's indirect interest in S was increased as a result of the distribution.

As another example of an acquisition that regulations may treat as not being by purchase, assume that individuals A and B form partnership M. On the formation, A contributes all of the stock of corporation D, which A has held for more than 5 years, and B contributes other property. Three years later, due to business differences, A and B agree to cease partnership operations and terminate M. Pursuant to the plan of liquidation, A receives the stock of D and B receives the other property. As a result of these events, assume that A's interest and basis in the D stock are the same as immediately before the formation of M. Provided that neither A, B, nor any other person has directly or indirectly avoided the purposes of the provision as a result of any partnership or related transactions, the regulations may provide that the liquidating distribution under section 732(b) is not treated as the purchase of the D stock by A, and that A acquired the D stock at the time A originally acquired the D stock (more than 5 years ago).

Effective date

The provision generally applies to distributions of stock after October 9, 1990. In determining whether the distribution occurs within 5 years after stock or securities are acquired by purchase, only stock or securities acquired by purchase after October 9, 1990 are taken into account.

Transitional relief is provided for distributions after October 9, 1990 that are pursuant to a binding written contract in effect on October 9, 1990 and at all times thereafter before such distribution.

Transitional relief is also provided if the acquisition of stock or securities by purchase after October 9, 1990 is pursuant to a binding written contract in effect on October 9, 1990, and at all times thereafter before such acquisition. Transitional relief is further provided if the acquisition of stock or securities by purchase after October 9, 1990 is pursuant to a transaction reflected in documents filed with the Securities and Exchange Commission before October 10, 1990, or pursuant to a transaction the material terms of which were described in a written public announcement before October 10, 1990, which was the subject of a prior filing with the Securities and Exchange Commission, and which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991. Stock or securities with respect to which transitional relief is provided under these rules is treated as acquired before October 10, 1990.

No inference is intended whether any distribution described in the transitional rules otherwise qualifies for tax-free treatment under section 355 of the Code.

b. Modify treatment of preferred stock issued with a redemption premium

Present law

If preferred stock is considered to have an unreasonable redemption premium, the portion of the premium that is considered to be unreasonable is deemed to be distributed to the preferred stockholder ratably over the time during which such stock cannot be called for redemption.

If a debt instrument is issued with original issue discount (OID), the holder of the instrument includes the entire amount of OID in gross income over the term of the instrument on an economic accrual basis if the amount of OID exceeds the product of (1) one-quarter of one percent of the stated redemption price and (2) the number of complete years to maturity.

House bill

The House bill applies the economic accrual rule and the de minimis rule applicable to debt instruments issued with OID to preferred stock that is subject to mandatory redemption, or is puttable, at a premium, regardless of whether the stock is callable.

In general, the OID de minimis rule will not apply to preferred stock that is callable solely at the option of the issuer (unless such stock is subject to a mandatory redemption or is puttable). Nonetheless, the economic accrual rule will apply to the entire call premium on such stock if such premium is considered to be unreasonable without regard to this provision. In such cases, except as provided in regulations, the entire call premium will be accrued over the period of time during which the preferred stock cannot be called for redemption.

There is no intention to limit the present-law authority of the Secretary and the IRS regarding the proper treatment of redemption premiums on preferred stock. Thus, the Secretary may determine what constitutes a redemption premium (or a disguised redemption premium). For example, if at the time of issuance of cumulative preferred stock there is no intention for dividends to be paid currently, the IRS may treat such dividends as a disguised redemption premium. In addition, the Secretary may treat stock that, in form, is merely callable as being subject to mandatory redemption or a put if the existence of other arrangements effectively require the issuer to redeem the stock.

It is intended that the economic accrual and OID de minimis rules generally apply as described above as of the effective date of the bill without regard to when the regulations are amended to reflect such rules. Except as provided herein, there is no intention to limit the authority of the Secretary to promulgate regulations relating to the accrual of redemption premiums on callable preferred stock. It is expected that such regulations will be prospective.

The provision is effective for stock issued on or after October 10, 1990, unless issued pursuant to a binding written contract in effect on October 9, 1990, and at all times thereafter until such issuance, or pursuant to an SEC or similar state registration statement filed before such date and the stock is issued within 90 days of the filing.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. In addition, the conference agreement provides that the provision does not apply to stock issued after October 9, 1990, pursuant to a plan filed before October 10, 1990, in a title 11 or similar case.

c. Expand and clarify information reporting and allocation rules for certain acquisitions

Present law

Special allocation and information reporting rules apply to applicable asset acquisitions (sec. 1060). The information reporting rules of section 1060 do not apply to an acquisition of a trade or business which is structured as a stock acquisition if the transferee does not elect under section 338 to treat the stock purchase as an asset acquisition. It is unclear, however, whether these reporting rules apply to such a stock acquisition if a section 338 election or a section 338(h)(10) election is made.

Courts apply different standards in determining whether a party to a sale of a business can assert an allocation of consideration to assets that is inconsistent with the allocation contained in a written agreement. In the Danielson case, the Third Circuit held that a party could refute a purchase price allocation only if the proof would be admissible in an action to show unenforceability because of mistake, undue influence, fraud, or duress.

House bill

The House bill provides that in the case of a stock purchase where a section 338(h)(10) election is made, the purchasing corporation and the selling consolidated group must report information with respect to the consideration received in the transaction at such times and in such manner as may be provided in regulations under section 338. The committee report clarifies that, in general, the reporting and allocation rules of section 1060 do not apply in any case in which a stock purchase is treated as an asset purchase under section 338.

In addition, the House bill provides that where a person holds at least 10 percent of the value of an entity and both transfers an interest in the entity and also enters into an employment contract, covenant not to compete, royalty or lease agreement or other agreement with the transferee, such person and the transferee must report information concerning the transaction at such time and in such manner as the Secretary may require.

Finally, the House bill provides that a written agreement regarding the allocation of consideration to, or the fair market value of, any of the assets in an applicable asset acquisition will be binding on both parties for tax purposes, unless the parties are able to refute the allocation or valuation under the standards set forth in the Danielson case.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment. In addition, the conferees are aware that the information reporting rules under section 1060 may, in certain circumstances, duplicate the reporting requirements under section 6050J (relating to foreclosures and abandonments of security). Thus, the conferees intend that if a lender is required to report under section 6050J upon the foreclosure of property, no reporting is required under section 1060 by the lender, provided that no allocation is required to be made (under the residual method required by section 1060) to goodwill or going concern value. The conferees do not intend to limit the Secretary's authority under section 6050J. In particular, the conferees do not intend to limit the Secretary's authority to: (1) require reporting under section 6050J of information that is similar to that required under section 1060; or (2) exempt borrowers and lenders that are required to report under section 6050J from the reporting rules of section 1060.

d. Expand the definition of a corporate equity reduction transaction for purposes of limiting certain NOL carrybacks

Present law

The ability of a C corporation to obtain refunds of taxes paid in prior years by carrying back net operating losses (NOLs) is limited in cases where the losses are created by interest deductions allocable to a corporate equity reduction transaction ("CERT"). A CERT includes the acquisition of 50 percent or more of the vote or value of the stock of another corporation. However, a CERT does not include the acquisition of the stock of another corporation (1) that, immediately before the acquisition, was a subsidiary of an affiliated group, or (2) with respect to which an election under section 338 was made to treat the stock acquisition as an asset acquisition.

House bill

The House bill repeals the exception to the definition of a CERT relating to the acquisition of the stock of another corporation which, immediately before the acquisition, was a member of an affiliated group (other than the parent of such group). The provision is effective for acquisitions on or after October 10, 1990, unless pursuant to a binding written contract in effect before and on such date and at all times thereafter until such acquisition.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

e. Clarify treatment of debt exchanges

Present law

Income from the cancellation of indebtedness

In general.—Gross income includes income from the cancellation of indebtedness (COD). Taxpayers in title 11 cases and insolvent debtors generally exclude COD from income but reduce tax attributes by the amount of COD created on the discharge of debt. The amount of COD excluded from income by an insolvent debtor not in a title 11 case cannot exceed the amount by which the debtor is insolvent. For all taxpayers, the amount of COD generally is the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy such debt. The COD rules generally apply to the exchange of an old obligation for a new obligation, including a modification of the old debt that is treated as an exchange (a debt-for-debt exchange).

Treatment of stock-for-debt exchanges.—For purposes of determining COD, if a debtor corporation transfers stock to a creditor in satisfaction of debt, the corporation is treated as having satisfied the debt with an amount of money equal to the fair market value of the stock. However, taxpayers in title 11 cases and insolvent debtors generally may issue stock in satisfaction of debt without creating COD (the stock-for-debt exception).

Original issue discount rules

The issuer of a debt instrument with original issue discount (OID) generally accrues and deducts the discount, as interest, over the term of the instrument on an economic accrual basis. The holder of an OID instrument also includes the amount of OID in income on an economic accrual basis. Original issue discount is the excess of the stated redemption price at maturity over the issue price of a debt instrument. For purposes of the OID rules, the issue price of a debt instrument that is issued for property generally is determined by reference to fair market value if either the debt instrument or the property for which it was issued is publicly traded (sec. 1273(b)(3)). If neither the debt instrument nor the property for which it is issued is publicly traded, the issue price of the instrument generally is its stated principal amount, provided the instrument has adequate stated interest. If the debt instrument lacks adequate stated interest, the issue price of the instrument generally is determined by using the applicable Federal rate to discount all payments due under the instrument (sec. 1274). Finally, for debt-for-debt exchanges in a reorganization, the issue price of a new debt instrument is not less than the adjusted issue price of the old debt instrument (sec. 1275(a)(4)). In certain other cases, issue price is equal to stated redemption price at maturity (sec. 1273(b)(4)).

House bill

Debt-for-debt exchanges

Under the House bill, for purposes of determining the amount of COD of a debtor that issues a new debt instrument in satisfaction of an old debt, such debtor will be treated as having satisfied the old debt with an amount of money equal to the issue price of the new debt. For this purpose, the issue price of the new obligation will be determined under the general rules applicable to debt instruments issued for property (i.e., secs. 1273(b) and 1274). For debt instruments subject to section 483 (rather than sec. 1274), the issue price as determined under section 1273(b)(4) is reduced to exclude unstated interest for purposes of determining COD.

In addition, the reorganization exception in section 1275(a)(4) of the OID rules is repealed. Thus, either or both COD or OID may be created in a debt-for-debt exchange that qualifies as a reorganization, so long as the exchange qualifies as a realization event under section 1001 for the holder. The provision does not change the present-law rules of section 354, 355, or 356 regarding the amount of gain or loss recognized or not recognized in a reorganization. The repeal of section 1275(a)(4) will be applicable to the holder as well as the issuer of the new debt instrument for purposes of determining the issue price of the new debt instrument received in a debt-for-debt exchange.

Stock-for-debt exchanges

The House bill also repeals the stock-for-debt exception for title 11 cases and insolvent debtors for taxpayers that issue disqualified stock in exchange for debt. For this purpose, disqualified stock is any stock with a stated redemption price and that either has a fixed redemption date, is callable by the issuer, or is puttable by the holder. In addition, disqualified stock will not be considered to be stock for purposes of the de minimis rule of section 108(e)(8).

Effective date

The provision generally is effective for debt-for-debt or stock-for-debt exchanges occurring on or after October 10, 1990. The provision does not apply to an exchange that is pursuant to a written binding contract in effect on October 9, 1990, and all times thereafter before the exchange. The provision does not apply to an exchange that is pursuant to a tender offer or exchange offer filed with the Securities and Exchange Commission before October 10, 1990. The provision does not apply to an exchange that is pursuant to an offer the material terms of which were described in a written public announcement before October 10, 1990, and which was the subject of a prior filing with the Securities and Exchange Commission, and which is subsequently filed with the Securities and Exchange Commission before January 1, 1991.

In addition, the provision does not apply to an exchange resulting from a proceeding in a title 11 or similar case that had been filed before October 10, 1990.

Senate amendment

The Senate amendment generally follows the House bill. However, under the Senate amendment, the provision does not apply to an exchange that is pursuant to a transaction the material terms of which were described in a written public announcement before October 10, 1990, and which was the

subject of a prior filing with the Securities and Exchange Commission, and which is subsequently filed with the Securities and Exchange Commission before January 1, 1991.

Conference agreement

The conference agreement generally follows the House bill as modified by the Senate amendment.

The conference agreement also modifies the effective date provisions. Under the agreement, the provision generally is effective for debt instruments issued, or stock transferred, after October 9, 1990, in satisfaction of any indebtedness. The provision does not apply to a debt issuance or a stock transfer that is pursuant to a written binding contract in effect on October 9, 1990, and all times thereafter before such issuance or transfer. The provision does not apply to a debt issuance or a stock transfer that is pursuant to a transaction that was described in documents filed with the Securities and Exchange Commission before October 10, 1990. The provision does not apply to a debt issuance or a stock transfer that is pursuant to a transaction the material terms of which were described in a written public announcement before October 10, 1990, and which was the subject of a prior filing with the Securities and Exchange Commission, and which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

The conferees recognize that, with respect to debt restructurings, documents filed with the Securities and Exchange Commission may not initially describe all the final terms relevant to the instruments to be issued in connection with such filings. Amendments or supplements may be required in response to certain market conditions, comments by the Securities and Exchange Commission, continuing negotiations with bondholders, and otherwise. The conferees intend that the transition rules provided in this provision would continue to apply in those instances.

Finally, the provision does not apply to an issuance or transfer in a title 11 or similar case which was filed before October 10, 1990.

5. MODIFY RULES RELATING TO INTEREST PAID BY CORPORATIONS TO THE IRS ON TAX OBLIGATIONS

Present law

In general, corporations are allowed an income tax deduction for all inderest paid or accrued, including interest on tax obligations.

Individuals are not permitted to deduct personal interest. For this purpose, personal interest includes interest on underpayments of the individual's income taxes, even if all or a portion of the individual's income is attributable to a trade or business.

Interest is charged on the underpayment of tax. The underpayment rate is the sum of the short-term Federal rate plus 3 percentage points.

House bill

No provision.

Senate amendment

The Senate amendment denies corporations a deduction for interest attributable to periods after 30 days after the earlier of the furnishing of a notice of proposed deficiency (commonly called a 30-day letter) or the furnishing of a statutory notice of deficiency issued pursuant to section 6212 (commonly called a 90-day letter). In the case of an underpayment of a tax other than an income tax, a notice provided by the IRS that is similar to these notices is treated similarly.

The provision is effective for interest attributable to periods beginning on or after January 1, 1991, regardless of the taxable period (if any) to which the underlying tax may relate.

Conference agreement

The conference agreement establishes an underpayment rate equal to the sum of the short-term Federal rate plus 5 percentage points (the "AFR plus 5 rate"). The AFR plus 5 rate is applicable to C corporations for purposes of determining the rate of interest attributable to periods after the 30th day following the earlier of the furnishing of a notice of proposed deficiency (commonly called a 30-day letter) or the furnishing of a statutory notice of deficiency issued pursuant to section 6212 (commonly called a 90-day letter). In the case of an underpayment of a tax other than an income tax, a notice provided by the IRS that is similar to these notices is treated similarly. For example, a notice under section 6303 is one type of similar notice.

The AFR plus 5 rate applies to the amount determined to be the underpayment, regardless of the amount of tax assessed in the 30-day letter, 90-day letter, or other notice.

The AFR plus 5 rate does not apply to the interest charges that the taxpayer timely assesses against itself in return for using a method of tax accounting or reporting that defers the payment of tax. For example, the AFR plus 5 rate does not apply to the interest charges relating to installment obligations of nondealers (sec. 453A(c)) or passive foreign investment companies (sec. 1291(c)).

The AFR plus 5 rate does not apply to any underpayment of a tax for any taxable period if the underpayment is $100,000 or less. Underpayments of different types of taxes (e.g., income taxes and employment taxes) as well as underpayments relating to different taxable periods would not be added together for purposes of determining the $100,000 threshold.

Under present law, the Secretary has the authority to credit the amount of any overpayment against any liability under the Code (sec. 6402). To the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax (sec. 6601(f)). The Secretary should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice.

The provision is effective for purposes of determining interest for periods after December 31, 1990, regardless of the taxable period (if any) to which the underlying tax may relate.

6. EMPLOYMENT TAX PROVISIONS

a. Increase dollar limitation on amount of wages and self-employment income subject to the Medicare hospital insurance payroll tax

Present law

As part of the Federal Insurance Contributions Act (FICA), a tax is imposed on employees and employers up to a maximum amount of employee wages. The tax is comprised of two parts: old-age, survivor, and disability insurance (OASDI) and Medicare hospital insurance (HI). For wages paid in 1990 to covered employees, the HI tax rate is 1.45 percent on both the employer and the employee on the first $51,300 of wages and the OASDI tax rate is 6.2 percent on both the employer and the employee on the first $51,300 of wages.

Under the Self-Employment Contributions Act of 1954 (SECA), a tax is imposed on an individual's self-employment income. The self-employment tax rate is the same as the total rate for employers and employees (i.e., 2.9 percent for HI and 12.40 percent for OASDI). For 1990, the tax is applied to the first $51,300 of self-employment income and, in general, the tax is reduced to the extent that the individual had wages for which employment taxes were withheld during the year.

The cap on wages and self-employment income subject to FICA and SECA taxes is indexed to changes in the average wages in the economy. In 1991, the amount of wages or self-employment income subject to the tax will be $53,400.

House bill

The House bill increases the cap on wages and self-employment income considered in calculating HI tax liability to $100,000. As under present law, for years beginning after 1991, this cap is indexed to changes in the average wages in the economy. The OASDI wage cap remains at the level provided under present law.

The provision is effective on January 1, 1991.

Senate amendment

The Senate amendment is the same as the House bill, except that the cap considered in calculating HI tax liability is increased to $89,000.

Conference agreement

The conference agreement follows the House bill and the Senate amendment except that the cap considered in calculating HI tax liability is increased to $125,000.

b. Extend Medicare coverage of, and application of hospital insurance tax to, all State and local government employees

Present law

Before enactment of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA), State and local workers were covered under Medicare only if the State and the Secretary of Health and Human Services entered into a voluntary agreement providing for coverage under the social security and Medicare programs (OASDI and HI). In COBRA, the Congress extended Medicare coverage (and the corresponding hospital insurance payroll tax) on a mandatory basis to State and local government employees (other than students) hired after March 31, 1986.

For wages paid in 1990 to Medicare-covered employees, the total HI tax rate is 2.9 percent of the first $51,300 of wages. In 1991, the amount of wages subject to tax will be $53,400. The tax is divided equally between the employer and the employee.

House bill

No provision.

Senate amendment

The Senate amendment requires coverage of all employees of State and local governments under Medicare without regard to the employee's date of hire. The 2.9-percent HI payroll tax rate is phased in with respect to newly covered State and local government employees so that the tax rate is 1.6 percent in 1992, 2.7 percent in 1993, and 2.9 percent in 1994 and thereafter. The present-law student exception is retained with respect to students employed in public schools, col-

leges, and universities. As under present law, coverage may be provided to such individuals at the option of the State government.

In the case of certain employees who are required to pay the HI tax as a result of the provision and who meet certain other requirements, State and local service prior to the effective date of the provision is deemed to have been covered by the HI tax for purposes of determining Medicare eligibility. Prior State and local service is counted regardless of whether such service was continuous.

Under the provision, the HI trust fund is reimbursed from the general fund of the Treasury for any additional cost arising by reason of this provision.

The Secretary of Health and Human Services is required to provide a process by which employees may provide evidence of prior State and local governmental service if such service is necessary to qualify for coverage under the program.

The provision is effective with respect to services performed after December 31, 1991.

Conference agreement

The conference agreement does not include the Senate amendment.

c. Extend social security coverage (OASDHI) to State and local government employees not covered by a public employee retirement program

Present law

Under present law, employees of State and local governments are covered under social security by voluntary agreements entered into by the States with the Secretary of Health and Human Services (HHS). After a State has entered into such an agreement, it may decide, or permit its political subdivisions to decide, whether to include particular groups of employees under the agreement. All States have entered into such agreements. The extent of coverage is high in some States and limited in others. Nationally, about 72 percent of State and local workers are covered by social security.

With certain exceptions, a State has broad latitude to decide which groups of State and local employees are covered under its agreement. In some cases in which States have elected not to provide coverage, a part of the workforce does not participate in any public retirement plan.

For 1990, the social security (Old Age, Survivors, and Disability Insurance) tax rate is 6.2 percent of covered wages up to $51,300 and is imposed on both the employer and employee (for a total of 12.40 percent). In 1991, the amount of wages subject to tax is $53,400.

As part of the Federal Insurance Contributions Act (FICA), a Medicare hospital insurance tax is imposed (HI). For wages paid in 1990 to covered employees, the HI tax rate is 1.45 percent on both the employer and the employee on the first $51,300 of wages.

House bill

The House bill requires social security (Old Age, Survivors, and Disability Insurance) coverage for State and local workers who are not covered by a State voluntary agreement or a retirement system in conjunction with their employment for the State or local government and subjects the wages of such employees to the OASDI tax under the Federal Insurance Contributions Act (FICA). An exception is provided for students employed in public schools, colleges, and universities, for whom coverage may, as under present law, be provided at the option of the State government. This exception maintains parallel coverage rules for students employed by public educational institutions and those employed by private schools, colleges, and universities.

A retirement system is defined as under the definition of retirement system in the Social Security Act (42 U.S.C. sec. 418(b)(4)). Thus, a retirement system is defined as a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

Whether an employee is a member (i.e., is a participant) of a retirement system is based upon whether that individual actually participates in the program. Thus, whether an employee participates is not determined by whether that individual holds a position that is included in a retirement system. Instead, that individual must actually be a member of the system. For example, an employee (whose job classification is of a type that ordinarily is entitled to coverage) is not a member of a retirement system if he or she is ineligible because of age or service conditions contained in the plan and, therefore, is required to be covered under social security. Similarly, if participation in the system is elective, and the employee elects not to participate, that employee does not participate in a system for purposes of this rule, and is to be covered under the social security system.

The Secretary of the Treasury, in conjunction with the Social Security Administration, is required to issue guidance in order to implement the purposes of this provision.

The provision is effective with respect to services performed after December 31, 1990.

Senate amendment

The Senate amendment is the same as the House bill, except that the provision is effective with respect to services performed after December 31, 1991.

Conference agreement

The conference agreement follows the House bill and Senate amendment, except that the provision is effective with respect to services performed after June 30, 1991.

As under the House bill and Senate amendment, an exception is provided for students employed in public schools, colleges, and universities, for whom coverage may, as under present law, be provided at the option of the State government. The conference agreement also contains other exceptions as contained in the House bill and Senate amendment (e.g., service by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100).

The conference agreement follows the House bill and the Senate amendment with respect to the definition of retirement system, except that the Secretary of the Treasury and the Social Security Administration are authorized to provide guidance under which a particular plan or class of plans will not be considered a retirement system if such characterization is necessary to effectuate the purposes of this provision.

The conference agreement follows the House bill and Senate amendment in that whether an employee is a member (i.e., is a participant) of a retirement system is based upon whether that individual actually participates in the program. Thus, whether an employee participates is not determined by whether that individual holds a position that is included in a retirement system. Instead, that individual must actually be a member of the system. For example, an employee (whose job classification is of a type that ordinarily is entitled to coverage) is not a member of a retirement system if he or she is ineligible because of age or service conditions contained in the plan and, therefore, is required to be covered under social security. Similarly, if participation in the system is elective, and the employee elects not to participate, that employee does not participate in a system for purposes of this rule, and is to be covered under the social security system.

Except as otherwise provided under the conference agreement, or in guidance promulgated by the Secretary of the Treasury, rules similar to those applicable in determining whether an individual is an active participant for purposes of contributing to an individual retirement account (Code sec. 219) apply in determining whether a specific employee is a member of a retirement system.

The conference agreement extends Medicare coverage to, and applies the HI tax with respect to the wages of, those employees (otherwise not already subject to the HI tax) who become subject to OASDI by reason of this provision.

d. Extend Federal Unemployment Tax (FUTA) surtax

Present Law

The Federal Unemployment Tax Act (FUTA) imposes a gross employer tax of 6.2 percent on the first $7,000 paid annually to each employee. This 6.2-percent rate includes a temporary surtax of 0.2 percent. Employers in States meeting certain requirements and with no overdue Federal loans are eligible for a full 5.4-percentage point credit, making the basic net FUTA tax rate 0.8 percent. The 0.2-percent surtax is scheduled to expire for wages paid after 1990, after which the basic net FUTA tax rate will be 0.6 percent.

House Bill

The House bill extends the 0.2-percent surtax imposed on employers under the Federal Unemployment Tax Act (FUTA) through 1995.

The provision is effective with respect to wages paid on or after January 1, 1991.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Increase in railroad retirement tier 2 payroll taxes

Present Law

Railroad employers, employees, and employee representatives are subject to a payroll tax to fund tier 2 railroad retirement benefits. The tax rate is 4.90 percent for employees, 16.10 percent for employers, and 14.75 percent for employee representatives. In 1990, the tax is imposed on wages up to a maximum of $38,100. In 1991, this wage base will be $39,600.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the tier 2 tax rate by 0.10 percent for employees (for a total rate of 5.00 percent), 0.30 percent for employers (for a total rate of 16.40 percent), and 0.30 percent for employee representatives (for a total rate of 15.05 percent).

The provision applies to compensation paid after December 31, 1990, in the case of

the employer tax and to compensation received after December 31, 1990, in the case of the employee and employee representative taxes.

Conference Agreement

The conference agreement does not include the Senate amendment.

f. Payroll tax deposit stabilization

Present Law

Treasury regulations have established the system under which employers deposit income taxes withheld from employees' wages and FICA taxes. The frequency with which these taxes must be deposited increases as the amount required to be deposited increases.

Employers are required to deposit these taxes as frequently as eight times per month, provided that the amount to be deposited equals or exceeds $3,000. These deposits must be made within three banking days after the end of the eighth-monthly period.

Effective August 1, 1990, employers who are on this eighth-monthly system are required to deposit income taxes withheld from employees' wages and FICA taxes by the close of the applicable banking day (instead of by the close of the third banking day) after any day on which the business cumulates an amount to be deposited equal to or greater than $100,000 (regardless of whether that day is the last day of an eighth-monthly period).

For 1990, the applicable banking day is the first. For 1991, the applicable banking day is the second. For 1992, the applicable banking day is the third. For 1993 and 1994, the applicable banking day is the first. The Treasury Department is given authority to issue regulations for 1995 and succeeding years to provide for similar modifications to the date by which deposits must be made in order to minimize unevenness in the receipts effects of this provision.

House Bill

The House bill requires that deposits equal to or greater than $100,000 must be made by the close of the next banking day for all years. Thus, no change from present law is necessary for calendar year 1990, but for calendar years 1991 and 1992 deposits are accelerated. The regulatory authority provided to the Treasury Department is repealed. The provision is effective for amounts required to be deposited after December 31, 1990.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. TRUSTS WITH FOREIGN GRANTORS

Present Law

A grantor who transfers property to a trust while retaining certain powers or interests over the trust is treated as owner of the trust for income tax purposes under the so-called "grantor trust rules." If a grantor or other person is treated as the owner of a trust, the income and deductions of the trust are included directly in the grantor's taxable income. The nominal grantor is not treated as the grantor if another party is in fact the grantor.

House Bill

The House bill provides that a U.S. person who is a beneficiary of a trust is treated as the grantor to the extent that the beneficiary transferred property, directly or indirectly, to a foreign person who otherwise would have been treated as the owner under the "grantor trust rules." This rule would apply even if the beneficiary was not a U.S. person at the time of the transfer. For purposes of the rule, annual gifts of less than $10,000 are disregarded.

The provision applies to any trust created after the date of enactment and any portion of an existing trust that is attributable to amounts contributed after that date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The conferees intend that no inference be drawn that would prevent a court from treating a person who is not directly the grantor as the grantor under present-law trust rules.

E. Extend Expiring Tax Provisions Through 1991

1. ALLOCATION AND APPORTIONMENT OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Present Law

Under a statutory rule, research and experimental expenditures are allocated as follows: (1) expenses for research that is undertaken solely to meet certain legal requirements imposed by a political entity and which cannot reasonably be expected to generate income (beyond de minimis amounts) outside that entity's jurisdiction are allocated to income from sources in that jurisdiction; (2) remaining research expenses which are conducted in the United States are allocated 64 percent to U.S. source income, and such expenses which are conducted outside of the United States are allocated 64 percent to foreign source income; and (3) remaining research expenses are allocated and apportioned on the basis of either sales or gross income. If gross income is used, however, the amount apportioned to foreign source income can be no less than 30 percent of the amount that would be so apportioned under the sales method.

Research expenses incurred by U.S. persons for activities conducted in space, in Antarctica, or on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, U.S. possession, or the United States, are allocated and apportioned in the same manner as if they were attributable to activities conducted in the United States. Such expenses incurred by foreign persons are allocated and apportioned as if they were attributable to activities conducted outside the United States.

The statutory allocation rule is effective only for the taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990, and applies only to that portion of research expenses treated as having been paid or incurred during the first nine months of the first taxable year beginning after August 1, 1989, and before August 2, 1990. In determining which research expenses for that year are treated as paid or incurred in the first nine months of the year, research expenses are treated as if paid or incurred ratably throughout the taxable year.

Research expenditures that are not covered by the effective date of the statutory rule are allocated pursuant to Treasury regulations which were promulgated in 1977. Under those regulations, research and experimental expenditures are generally allocated as follows: (1) expenses for research that is undertaken solely to meet certain legal requirements imposed by a political entity and which cannot reasonably be expected to generate income (beyond de minimis amounts) outside a single geographical source are allocated to income from that source; and (2) remaining research expenses are generally apportioned to foreign source income based on either (a) gross sales, except that a taxpayer using this method may first apportion at least 30 percent of such expenses exclusively to the source where over 50% of the taxpayer's research is performed; or (b) gross income, except that expenses apportioned to U.S. and foreign source income using a gross income method cannot be less than 50% of the respective portions that would be apportioned to each income grouping using a combination of the sales and place-of-performance methods.

House bill

No provision.

Senate amendment

The Senate amendment extends the application of the statutory allocation rule so that it applies to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991. Thus, under the Senate amendment, the statutory allocation rule applies to the remainder of the year covered by the 1989 Act as well as to the subsequent year.

Conference agreement

The conference agreement follows the Senate amendment.

2. RESEARCH AND EXPERIMENTATION TAX CREDIT

Present law

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after December 31, 1990, and a special rule to prorate qualified research expenditures applies in the case of any taxable year which begins before October 1, 1990, and ends after September 30, 1990.[13] The 20-percent tax credit also applies to certain payments to universities for basic research.

House bill

No provision.

Senate amendment

The 20-percent incremental credit for qualified research expenditures and the university basic research credit are extended through December 31, 1991. The special rule to prorate research expenditures incurred during 1990 is repealed.

The provision is effective for taxable years beginning after December 31, 1989.

Conference agreement

The conference agreement follows the Senate amendment.

3. EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

Present law

Under present law, an employee (including a self-employed individual) must include in income and wages, for income and employment tax purposes, the value of educa-

[13] Under this special proration rule, the amount of qualified research expenses incurred by a taxpayer prior to January 1, 1991, is multiplied by the ratio that the number of days in that taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991.

tional assistance provided by an employer to the employee, unless (1) the cost of such assistance qualifies as a deductible job-related expense of the employee (secs. 132, 162) or (2) the educational assistance is provided under an educational assistance program that meets certain requirements (sec. 127).

The exclusion for educational assistance benefits provided pursuant to an educational assistance program described in section 127 expired for taxable years beginning after September 30, 1990. Only amounts paid before October 1, 1990, in a taxable year beginning in 1990 are taken into account in determining the amount of the exclusion.

No more than $5,250 of educational assistance benefits provided during any calendar year can be excluded from the income of an employee. In addition, the exclusion for educational assistance benefits does not apply to graduate level courses. Specifically, the exclusion does not apply to any payment for, or the provision of any benefits with respect to, any course taken by an employee who has a bachelor's degree or is receiving credit toward a more advanced degree if the particular course can be taken for credit by any individual in a program leading to a law, business, medical, or other advanced academic or professional degree.

To the extent that employer-provided educational assistance is not excludable from income because it exceeds the maximum dollar limitation or because of the limitation on graduate-level courses, it may be excludable from income as a working condition fringe benefit (sec. 132(d)), provided the requirements of that section are otherwise satisfied (e.g., the education is job related as defined under sec. 162).

House bill

No provision.

Senate amendment

The Senate amendment extends the exclusion for employer-provided educational assistance benefits through taxable years beginning before January 1, 1992. The special rule limiting the exclusion in the case of a taxable year beginning in 1990 is repealed. In addition, the restriction on graduate level courses is repealed.

The provision generally is effective for taxable years beginning after December 31, 1989, except that the repeal of the restriction on graduate level courses is effective for taxable years beginning after December 31, 1990.

Conference agreement

The conference agreement follows the Senate amendment.

4. EXCLUSION FOR EMPLOYER-PROVIDED GROUP LEGAL SERVICES; TAX EXEMPTION FOR QUALIFIED GROUP LEGAL SERVICES ORGANIZATIONS

Present law

Under present law, amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) are excluded from the employee's gross income for income and employment tax purposes (sec. 120). The exclusion also applies to any services received by an employee (or the employee's spouse or dependents) or any amounts paid to an employee under such a plan as reimbursement for the cost of legal services for the employee (or the employee's spouse or dependents). The exclusion is limited to an annual premium value of $70. In order to be a plan under which employees are entitled to tax-free benefits, a group legal services plan is required to fulfill certain requirements. One such requirement is that group legal services benefits may not discriminate in favor of highly compensated employees in certain respects.

The exclusion for group legal services benefits expired for taxable years beginning after September 30, 1990. Only amounts paid before October 1, 1990, in taxable years beginning in 1990 for coverage before October 1, 1990, are taken into account in determining the amount of the exclusion for the year.

In addition, present law provides tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan (sec. 501(c)(20)). The tax exemption for such an organization expired for taxable years beginning after September 30, 1990.

House bill

No provision.

Senate amendment

The Senate amendment extends the exclusion for employer-provided group legal services and the tax exemption for qualified group legal services organizations through taxable years beginning before January 1, 1992. In addition, the special rule limiting the exclusion in the case of taxable years beginning in 1990 is repealed.

The provision is effective for taxable years beginning after December 31, 1989.

Conference agreement

The conference agreement follows the Senate amendment.

5. TARGETED JOBS TAX CREDIT

Present law

A tax credit is available on an elective basis to employers of individuals described in at least one of nine targeted groups. The nine groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled. The credit generally is equal to 40 percent of the first $6,000 of qualified first year wages. A credit equal to 40 percent of up to $3,000 of wages to any disadvantaged summer youth employees is also allowed. The employer's deduction for wages must be reduced by the amount of the credit. The credit expired on September 30, 1990.

Present law also authorizes appropriations for administrative and publicity expenses relating to the credit through September 30, 1990. These monies are to be used by the Internal Revenue Service (IRS) and Department of Labor to inform employers of the credit program.

House bill

No provision.

Senate amendment

The Senate amendment extends the targeted jobs tax credit through December 31, 1991. Generally, the authorization for appropriations also is extended.

Conference agreement

The conference agreement follows the Senate amendment. The conference agreement also clarifies that an individual is to be treated as convicted, for purposes of the credit, if a State court places him on probation without making a finding of guilty (deferred adjudication). This clarification is made on a prospective basis and no inference is intended by this clarification as to present law.

6. BUSINESS ENERGY TAX CREDITS

Present law

Business energy tax credits were allowed through September 30, 1990, for three types of energy property:

Percent credit Solar energy	10
Geothermal energy	10
Ocean thermal energy	10

House bill

No provision.

Senate amendment

The business energy tax credits are extended for qualified property which is placed in service after September 30, 1990, through December 31, 1991.

Conference agreement

The conference agreement follows the Senate amendment, with the modification that the one-year extension of the business energy tax credits does not include ocean thermal property.

7. LOW-INCOME RENTAL HOUSING TAX CREDIT

Present law

A tax credit is allowed in annual installments over 10 years for qualifying low-income rental housing, which may be newly constructed or substantially rehabilitated residential rental property. For most newly constructed and substantially rehabilitated housing placed in service after 1987, the credit percentages are adjusted monthly to maintain a present value of the credit stream of 70 percent of the total qualified expenditures. In the case of housing receiving other Federal subsidies (including the use of the proceeds of tax-exempt bonds) and the acquisition of an existing building which is substantially rehabilitated, monthly adjustments are made to maintain a present value of the credit stream of 30 percent of the total qualified expenditures. Generally, that part of the building for which the credit is claimed must be rented to qualified low-income tenants at restricted rents for 15 years after the building is placed in service. In addition, a subsequent additional 15-year period of low-income use is generally also required.

In order for a credit to be claimed with respect to a building, the building owner generally must receive a credit allocation from the appropriate credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The low-income housing credit is allocated by State or local government authorities subject to an annual limitation for each State. The annual State credit limitation was $1.25 per resident for years before 1990 and is $0.9375 per resident for 1990.

House bill

No provision.

Senate amendment

The Senate amendment extends the low-income rental housing tax credit through December 31, 1991. It also restores the credit allocation limit to $1.25 per State resident for 1990 and makes several changes to the low-income credit. In addition, the Senate amendment makes the following modifications.

Rights of first refusal

The amendment expands present law to provide that tenant cooperatives, resident management corporations, qualified nonprofits, and governmental agencies, as well as tenants acting individually, may have a

right of first refusal to purchase their units at the end of the compliance period.

Definition of qualified nonprofit

The amendment provides that a qualified nonprofit organization must own (directly or indirectly) an interest in the project throughout the compliance period. Also, a qualified nonprofit organization (as determined by the State housing credit agency) may not be affiliated with or controlled by a for-profit organization.

10-year rule

The amendment provides an exception from the 10-year placed-in-service rule for owner-occupied single family dwelling units that have had no use other than as a principal residence for the owner thereof for the 10-year period before its placement in service with respect to which the credit is claimed.

Compliance

The amendment provides that qualified allocation plans must include a procedure for monitoring and reporting noncompliance to the IRS.

Intermediary costs

The requirement that the amount of intermediary costs be given the highest priority in allocating the credit is deleted from the qualified plan requirements and is instead made a factor in project evaluations.

Gross rent limitation

For purposes of the gross rent rules, the amendment provides that FmHA's Section 515 program is to be treated comparably to the HUD Section 8 program.

Qualified census tracts

The amendment authorizes the Secretary of Housing and Urban Development (HUD) to use data from census enumeration districts in lieu of data from census tracts in situations where data from census tracts is unavailable.

Credit and HUD Section 8 programs

The amendment provides an exception from the denial of the credit in conjunction with the Section 8 Moderate Rehabilitation program for funds disbursed under the Stewart B. McKinney Homeless Assistance Act of 1988.

Units occupied by students

The amendment provides that dwelling units occupied by students receiving AFDC payments do not fail to qualify for the credit.

Passive loss rules

The amendment modifies the $25,000 deduction equivalent allowance by removing the $200,000 to $250,000 adjusted gross income phaseout range for the rehabilitation tax credit in certain circumstances. This phaseout range is removed with respect to any portion of the passive activity credit that is attributable to the rehabilitation investment credit (within the meaning of section 48(o)) with respect to a building for which a credit is determined under section 42 for such year.

Effective dates

The amendments generally are effective for determinations made under section 42 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990. For projects not subject to the credit allocation limits, the amendments generally apply to buildings placed in service after December 31, 1990.

The provisions relating to rights of first refusal, the definition of qualified nonprofit, the 10-year rule, and units occupied by students are effective upon date of enactment.

The provision relating to compliance monitoring and reporting procedures in State allocation plans is effective for calendar years beginning after December 31, 1991.

The provision which removes the adjusted gross income limitation for rehabilitation tax credits, in certain circumstances, under the passive loss rule is effective in taxable years ending after December 31, 1990, for property placed in service for purposes of the rehabilitation tax credit after December 31, 1990. In addition, if the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1990.

Conference agreement

The conference agreement follows the Senate amendment, with the following modifications.

Rights of first refusal

The conference agreement follows the Senate amendment.

Definition of qualified nonprofit

The conference agreement follows the Senate amendment.

10-year rule

The conference agreement follows the Senate amendment.

Compliance

The conference agreement follows the Senate amendment.

Intermediary costs

The conference agreement follows the Senate amendment.

Gross rent limitation

The conference agreement follows the Senate amendment.

Qualified census tracts

The conference agreement follows the Senate amendment.

Credit and HUD Section 8 programs

The conference agreement follows the Senate amendment with a modification. The modification is to mandate a study to be undertaken jointly by the Secretary of the Treasury and the Inspector General of the Department of Housing and Urban Development. The purpose of the study is to report on the combined use of the low-income credit and Section 8 Moderate Rehabilitation funds and the effectiveness of this provision in meeting the objectives of the low-income housing credit. Congress is concerned about the use of the low-income credit with such funds in light of previous allegations of questionable practices with the Section 8 Moderate Rehabilitation program. The report is to be submitted to the House Ways and Means Committee and the Senate Finance Committee by January 1, 1993.

Units occupied by students

The conference agreement follows the Senate amendment.

Passive loss rules

The conference agreement follows the House bill.

Election to accelerate credit

The conference agreement permits individual taxpayers, who held an interest in a low-income housing credit property on October 26, 1990, to claim credits in taxable year 1990 with respect to that interest which are otherwise allowable in future years. The election may increase the credit claimed in 1990 by up to 50 percent of the otherwise allowable credit. This election is binding on all successors in interest to the taxpayer. In the case of property owned by a partnership, the election is made at the partnership level and is binding on all partners.

Allowable credits, in future years, for the same property are ratably reduced by the additional amount of the credit claimed in 1990. For example, if a taxpayer elected to claim an additional $70 of credit, with respect to a credit property which is eligible for seven years of credit after 1990, then the allowable credit in each of the subsequent seven years is reduced by ten dollars per year.

Effective dates

The amendments generally are effective for determinations made under section 42 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990. For projects not subject to credit allocation limits, the amendments generally apply to buildings placed in service after December 31, 1990 but only with respect to bonds issued after December 31, 1990.

The provisions relating to rights of first refusal, the definition of a qualified nonprofit, the 10-year rule, and units occupied by students are effective upon the date of enactment.

The provision relating to compliance monitoring and reporting procedures in the State allocation plans is effective after December 31, 1991.

The provision relating to the election to accelerate the credit is generally effective for taxable years ending after October 26, 1990.

The provision relating to bond-financed buildings in progress in the termination year of the credit (section 42(o)) is effective for calendar years after 1989.

8. MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES

Present law

Qualified mortgage bonds (QMBs) generally are used to finance the purchase or qualifying rehabilitation or improvement of single family, owner-occupied homes. The recipients of QMB-financed loans must meet purchase price, income, and other restrictions.

Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates (MCCs). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC generally remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs generally are subject to the same borrower eligibility requirements as QMBs.

Effective for loans originating after December 31, 1990, a portion of the QMB and MCC subsidy (other than qualified home improvement loans) is recaptured upon disposition of a house financed with an assisted loan within ten years. The amount of the recapture is phased out for taxpayers who have resided in the home for more than five years. The recapture is the lesser of fifty percent of the gain realized on disposition or 1.25 percent of the initial loan principal multiplied by the number of years (up to a maximum of 5 years) that the taxpayer has

owned the home. Recapture only applies to certain recipients whose income rises substantially after the financing is received.

Authority to issue QMBs and to exchange private activity bond volume authority for authority to issue MCCs expired on September 30, 1990.

House bill

No provision.

Senate amendment

The Senate amendment extends the QMB and MCC programs through December 31, 1991. It also delays the effective date of the recapture provision for one year. Specifically, the recapture provision becomes effective for loans originating or MCCs issued after December 31, 1991, rather than loans originating or MCCs issued after December 31, 1990.

Conference agreement

The conference agreement follows the Senate amendment on the extension of authority to issue QMBs and MCCs, but adopts certain modifications to the present recapture rules in lieu of delaying the effective date of those rules as was provided in the Senate amendment.

The conference agreement includes three principal modifications to the present-law rules governing recapture of the subsidy provided by QMBs and MCCs. First, the maximum recapture period is reduced from 10 years to 9 years. Second, the amount recaptured is adjusted annually throughout this 9-year period rather than monthly. Thus, the recapture amount is the lesser of: (1) 50 percent of the gain realized on disposition or (2) a percentage of the imputed MRB or MCC subsidy (other than qualified home improvement loans). The imputed subsidy limitation is 20 percent for dispositions within one year after a homebuyer receives the MRB or MCC financing. The percentage increases to 40 percent in year two, 60 percent in year three, 80 percent in year four, and 100 percent in year five. The imputed subsidy limitation then is reduced to 80 percent in year six, 60 percent in year seven, 40 percent in year eight, 20 percent in year nine and zero thereafter. Third, the recapture provision's income adjustment exception is liberalized to determine the 5-percent-per-year inflation adjustment with compounding.

These modifications are effective as if included in the Technical and Miscellaneous Revenue Act of 1988.

9. QUALIFIED SMALL-ISSUE BONDS

Present law

Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the net proceeds of the bonds is to be used to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds").

The issuer of a qualified small-issue bond must receive an allocation from the State private activity volume cap. Authority to issue qualified small-issue bonds expired September 30, 1990.

House bill

No provision.

Senate amendment

The Senate amendment extends authority to issue qualified small-issue bonds through December 31, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

10. DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

Present law

Present law provides a deduction for 25 percent of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents. The 25-percent deduction is also available to a more than 2-percent shareholder of an S corporation.

No deduction is allowable for any taxable year in which the self-employed individual or eligible S corporation shareholder is eligible to participate (on a subsidized basis) in a health plan of an employer of the self-employed individual (or of such individual's spouse).

The 25-percent deduction expires for taxable years beginning after September 30, 1990. For taxable years beginning in 1990, the deduction is allowed only for premiums paid for coverage before October 1, 1990. In addition, an individual's earned income for the taxable year beginning in 1990 is pro rated in determining the applicable deduction for such year.

House bill

No provision.

Senate amendment

The Senate amendment extends the 25-percent deduction for health insurance costs of self-employed individuals through taxable years beginning before January 1, 1992. In addition, the special rule prorating the deduction for taxable years beginning in 1990 is repealed.

The provision is effective for taxable years beginning after December 31, 1989.

Conference agreement

The conference agreement follows the Senate amendment.

11. ORPHAN DRUG TAX CREDIT

Present law

A 50-percent tax credit is allowed for qualified clinical testing expenses incurred during the taxable year for human clinical tests of drugs for certain rare diseases or conditions. Clinical testing expenses do not qualify for the credit unless the drug previously has been approved for human testing by the Food and Drug Administration (FDA), but the drug has not yet been approved for sale by the FDA.

This tax credit expires after December 31, 1990.

House bill

No provision.

Senate amendment

The credit will be allowed for expenses incurred in qualified human clinical testing after December 31, 1990, and before January 1, 1992.

Conference agreement

The conference agreement follows the Senate amendment

F. OTHER TAX INCENTIVE PROVISIONS

1. ENERGY INCENTIVE PROVISIONS

a. Credit for nonconventional fuels

Present law

In general

Nonconventional fuels are eligible for a production credit that is equal to $3 per barrel or BTU oil barrel equivalent (adjusted for inflation). Qualified fuels must be produced from a well drilled, or a facility placed in service, before January 1, 1991. The production credit is available for qualified fuels sold before January 1, 2001.

Qualified fuels include (1) oil produced from shale and tar sands, (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass, and (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Gas produced from tight formations

Under the nonconventional fuels production credit, qualifying gas produced from a tight formation only includes gas the price of which is regulated by the United States or for which the maximum lawful price is at least 150 percent of the applicable price under section 103 of the Natural Gas Policy Act of 1978 (P.L. 95-621). As a cumulative result of various legislative and regulatory actions that have occurred since the section 29 credit was enacted, the credit presently is not available to most gas produced from tight formations, and will no longer be available for any such gas as of January 1, 1993.

House bill

No provision.

Senate amendment

The January 1, 1991 drilled or placed-in-service date and the sunset date of January 1, 2001 under section 29 are repealed, and the nonconventional fuels credit is made permanent under the Senate amendment. For purposes of the credit, the Senate amendment treats as qualifying tight formation gas any gas produced from a tight formation (1) which is produced from a well drilled after December 31, 1990, or (2) which, as of April 20, 1977, was committed or dedicated to interstate commerce. Wells producing gas that was not committed or dedicated to interstate commerce as of April 20, 1977, and thus was subject to decontrol under provisions of the Natural Gas Policy Act of 1978, do not qualify for reinstatement of the credit under the Senate amendment. The provisions related to natural gas produced from tight formations apply to qualifying tight formation gas which is produced after December 31, 1990.

Conference agreement

The conference agreement generally follows the Senate amendment with the following two modifications. First, rather than extending the section 29 credit permanently, the conference agreement extends both the drilled or placed-in-service date and the sunset date of the credit for two years. Thus, the credit will apply with respect to qualified fuels which are produced from a well drilled before January 1, 1993, or produced in a facility placed in service before January 1, 1993, and which are sold before January 1, 2003.

Second, the conference agreement specifies that the amount of credit allowable under section 29 with respect to any qualifying production from an enhanced oil recovery project must be reduced by the amount of general business credit claimed with respect to that project for the taxable year or any prior taxable year that is attributable to the enhanced oil recovery credit provided under a separate provision of the conference agreement.

b. Alcohol fuels credit, exemption, and tariff

Present law

An income tax credit of 60 cents per gallon is allowed to producers and blenders of alcohol (190 or greater proof) used as fuel, sold at retail for use as fuel, or mixed with fuel in a mixture used as fuel in a

motor vehicle driven on highways. Alcohol with a proof greater than 150 but less than 190 is allowed a credit of 45 cents per gallon. The alcohol fuels may be blended with gasoline, diesel fuel, or special motor fuels. The income tax credit is scheduled to expire after December 31, 1992.

Alternatively, in lieu of the income tax credit, a 6-cents-per-gallon excise tax exemption from excise taxes on gasoline, diesel fuel, or special motor fuels used to finance the Highway Trust Fund is allowed on the sale of an alcohol fuel mixture that consists of 10-percent alcohol fuel and 90-percent motor fuel. The excise tax exemption terminates after September 30, 1993.

In addition, a tariff of 15.85 cents per liter (metric equivalent of 60 cents per gallon) of imported alcohol fuel is levied to offset the domestic alcohol fuels tax credit and excise tax exemption. Certain quantities of alcohol fuel may be imported duty-free from Caribbean Basin Initiative (CBI) countries, if the alcohol fuel meets statutory requirements with respect to value added in the CBI. Imports of ETBE (ethyl tertiary butyl ether) enter with a duty rate of 6.66 cents per liter. The three import provisions terminate after December 31, 1992 (except that the ETBE tariff also expires on an earlier date, if any, that Treas. Reg. 1.40-1 is withdrawn or declared invalid).

House bill

No provision.

Senate amendment

A new 10-cents-per-gallon income tax credit is allowed for production of up to 15 million gallons per year of ethanol by an eligible small ethanol producer, defined as a person with a productive capacity for alcohol not in excess of 20 million gallons of alcohol per year. Appropriate anti-abuse rules are included (1) to recapture the credit in event of failure to use ethanol or an ethanol fuel mixture as fuel and (2) to prevent the credit from benefiting directly or indirectly any producer with a productive capacity in excess of 20 million gallons of alcohol per year or any person with respect to more than 15 million gallons of ethanol per year.

The income tax credit of 60 cents per gallon for ethanol fuels or ethanol fuel mixtures is decreased to 55 cents per gallon for 190 or greater proof ethanol. The credit for 150 to 190 proof ethanol is reduced from 45 cents to 40 cents per gallon.

The excise tax exemption is reduced from 6 cents per gallon to 5.5 cents per gallon for a 10-percent ethanol fuel/90-percent motor fuel mixture.

The credit and the excise tax exemption for alcohol fuels and alcohol fuel mixtures are extended through December 31, 2000, and September 30, 2000, respectively. In addition, at any time prior to January 1, 2001, the credit and the excises tax exemption will terminate, or will be reinstituted, at the same time that the Highway Trust Fund financing rates under the motor fuels excise taxes expire, are terminated, or are reinstituted. Unused credits may be carried forward only for two taxable years after termination of the credit.

Appropriate adjustments are made in the tariff schedules to reduce the tariff on ethanol from 15.85 cents per liter to 14.53 cents per liter. These adjustments conform the tariff rate to the reduced income tax credit of 55 cents per gallon. The tariff and the CBI exemption terminate after September 30, 2000, and in the case of ETBE, the earlier date, if any, on which Treas. Reg. sec. 1.40-1 is withdrawn or declared invalid. The tariff rate is inapplicable during any period when the Highway Trust Fund financing rate is not in effect.

The provisions of the Senate amendment are effective after December 31, 1990.

Conference agreement

The conference agreement follows the Senate amendment with modifications.

The additional alcohol fuels credit of 10 cents per gallon is made available to producers with annual production capacity of up to 30 million (instead of 20 million) gallons of alcohol. The ethanol blender credit is reduced to 54 cents per gallon, and the ethanol exemption from the gasoline tax is reduced to 5.4 cents per gallon of gasohol mixture. Corresponding adjustments are made to the tariffs on ethanol and ETBE. The tariff on ethanol will decrease to 14.27 cents per liter (11.34 cents per liter on imports from Canada) and the tariff on ETBE will decrease to 5.99 cents per liter (4.76 cents per liter on imports from Canada).

The conference agreement modifies the anti-abuse rules in the Senate amendment to provide that in the case of flow-thru entities, the productive capacity limitation will be applied at both the entity and interest holder levels.

The conference agreement includes an extension of the tax and tariff provisions relating to ethanol. As under present law, the tariff provision on ETBE would cease to have effect in the event that Treasury regulation sec. 1.40-1 (relating to ETBE) is withdrawn or judicially declared invalid. The conferees intend that no inference be drawn as to Congressional acquiescence in such regulation under present law.

c. Tax credit for costs attributable to enhanced oil recovery projects and qualified exploratory costs

Present law

Enhanced oil recovery

Under present law, no tax credit is allowed for costs related to enhanced oil recovery projects (generally these projects are referred to as tertiary recovery projects).

Exploratory drilling costs

Under present law, an operator who pays or incurs intangible drilling or development costs ("IDCs") in the development of a domestic oil or gas property may elect either to expense or capitalize such amounts. If a taxpayer elects to expense IDCs, the taxpayer deducts the amount of the IDC as an expense in the taxable year the cost is paid or incurred. Generally, if IDCs are not expensed, but are capitalized, they can be recovered through depletion or depreciation, as appropriate, or under a special election, they may be amortized over a 60-month period. In the case of a nonproductive well ("dry hole"), IDCs may be deducted, at the election of the operator, as an ordinary loss in the taxable year in which the dry hole is completed. In the case of an integrated oil company, 30 percent of the IDCs on productive wells must be capitalized and amortized over a 60-month period.

House bill

No provision.

Senate amendment

General rule

The Senate amendment adds a new domestic energy exploration and production tax credit as a component of the general business credit. The exploration and production credit is equal to 15 percent of qualified costs attributable to qualified enhanced oil recovery ("EOR") projects and to certain exploratory drilling in the United States. To the extent that a credit is allowed for these costs, the taxpayer must reduce the amount otherwise deductible or required to be capitalized and recovered through depreciation, depletion, or amortization, as appropriate, with respect to these costs.

The amount of the exploration and production credit is to be reduced in a taxable year following a calendar year during which the average price of crude oil exceeds $28 (adjusted for inflation). The credit will be reduced ratably over a $6 phaseout range.

Tax credit base

One component of the exploration and production credit base consists of qualified enhanced oil recovery costs. This term includes the following costs which are paid or incurred with respect to a qualified domestic EOR project: (1) the cost of tangible property which is an integral part of the project and with respect to which depreciation or amortization is allowable; (2) intangible drilling and development costs with respect to which a taxpayer may make an election to deduct under section 263(c); and (3) the cost of tertiary injectants with respect to which a deduction is allowable under section 193.

The second component of the exploration and production credit base includes qualified exploratory costs attributable to domestic exploratory drilling. The term qualified exploratory costs generally means intangible drilling and development costs of a taxpayer other than an integrated oil company that the taxpayer may elect to deduct under section 263(c), and that are paid or incurred in connection with the drilling of an exploratory well located in the United States. However, qualified exploratory costs do not include any cost related to the acquisition, construction, transportation, erection, or installation of an offshore platform. Nor do they include costs incurred after the commencement of the installation of the production string of casing.

Effective date

The enhanced oil recovery portion of the exploration and production credit is effective for taxable years beginning after December 31, 1990, with respect to costs paid or incurred in EOR projects begun or significantly expanded after that date. The exploratory drilling portion of the exploration and production credit is effective for taxable years beginning after December 31, 1990, for costs paid or incurred after that date.

Conference agreement

The conference agreement generally follows the Senate amendment, with the modification that the credit applies only to qualified enhanced oil recovery costs. That is, the conference agreement does not include qualified exploratory costs in the credit base.

In addition, the conference agreement incorporates several other modifications to the Senate amendment. Nine tertiary recovery methods were listed in the June 1979 Department of Energy regulations (section 212.78(c)). The conferees intend that a project employing one of these listed methods generally be considered a qualified enhanced oil recovery project. In addition, for purposes of the enhanced oil recovery credit, immiscible non-hydrocarbon gas displacement generally is considered a qualifying tertiary recovery method, even if the gas injected is not carbon dioxide. By inclusion of this additional qualifying method, the conferees intend no inference regarding

whether the costs of these injectants are deductible under section 193. The Secretary of the Treasury is granted the authority under the conference agreement to clarify the scope and parameters of the listed tertiary recovery methods for application of the enhanced oil recovery credit (e.g., the Secretary may re-examine the use of polymer-augmented water flooding and may distinguish situations in which this method is appropriately treated as a tertiary recovery method from situations in which it is not). In addition, the Secretary is given discretion to add to the list of qualifying methods to take into account advances in enhanced oil recovery technology. The conferees expect that the Secretary will issue regulations regarding the enhanced oil recovery credit in a timely manner.

Under the conference agreement, one component of the base of the enhanced oil recovery credit is intangible drilling costs with respect to which the taxpayer may elect to deduct under section 263(c). The conferees wish to clarify that in the case of an integrated oil company, the credit base includes those intangible drilling costs which the taxpayer is required to capitalize under section 291(b)(1).

d. Modification of percentage depletion rules

Present Law

In general

Under present law, certain persons owning economic interests in domestic oil and gas producing properties may deduct an allowance for depletion in computing taxable income. The percentage depletion allowance for oil and gas is computed as a fixed percentage (i.e., 15 percent) of the taxpayer's gross income from the oil or gas property.

Net income limitation

The allowance for percentage depletion is subject to a net income limitation; that is, the deduction for percentage depletion is limited (on a property-by-property basis) to an amount not in excess of 50 percent of the taxpayer's net taxable income from the property, computed without a deduction for depletion.

Transferred property limitation

The allowance for percentage depletion generally does not apply to interests in oil or gas properties that were transferred after December 31, 1974 by one taxpayer to another if, at the time of the transfer, the principal value of the property had been demonstrated by prospecting, exploration, or discovery work.

House Bill

No provision.

Senate amendment

Net income limitation

Under the Senate amendment, the net income limitation on oil and gas percentage depletion is increased from 50 percent to 100 percent of the net income from the property.

Transferred property limitation

The Senate amendment repeals the prohibition on claiming percentage depletion on transferred proven oil and gas properties.

Percentage depletion on marginal production

In addition, under the Senate amendment, the statutory percentage depletion rate will be increased by one percent (subject to a maximum rate increase of 10 percent) for each whole dollar that the average domestic wellhead price of crude oil for the immediately preceding calendar year is less than $20 per barrel (not to be adjusted for inflation). This provision of the Senate amendment applies only to interests in marginally producing oil and gas wells (i.e., stripper wells or wells that produce heavy oil) held by independent producers or royalty owners.

Effective dates

The provisions related to the net income limitation and the percentage depletion rate for marginal properties are effective for taxable years beginning after December 31, 1990. The provision repealing the transfer rule is effective for property transfers occurring after October 11, 1990.

Conference Agreement

The conference agreement generally follows the Senate amendment, subject to the following modification and clarification.

The conference agreement modifies the manner in which marginal production is defined for purposes of the provision of the Senate amendment that increases the rate of percentage depletion on such production in certain cases. (In addition, this modified definition applies to the provision of the conference agreement that provides a special deduction from alternative minimum taxable income for percentage depletion attributable to marginal production.)

Under the conference agreement, the term marginal production includes (1) crude oil and natural gas produced from a domestic stripper well property, and (2) oil produced from a domestic property, substantially all of the production from which during the year is heavy oil (i.e., oil that has a weighted average gravity of 20 degrees API or less corrected to 60 degrees Fahrenheit). A stripper well property is any oil or gas producing property which produces a daily average of 15 or less equivalent barrels of oil and gas per producing oil or gas well on such property in the calendar year during which the taxpayer's taxable year begins.

The determination of whether a property qualifies as a stripper well property under the conference agreement shall be made separately for each calendar year. The fact that a property does or does not qualify as a stripper well property for one year shall not affect the determination of the status of that property for a subsequent year. The stripper well property determination is to be made by a taxpayer for each separate property interest, as defined under section 614, held by the taxpayer during a calendar year. The determination is to be based on the total amount of production from all producing wells that are treated as part of the same property interest of the taxpayer. For this purpose, a well is considered a producing well only if it produces more than an insignificant amount of oil or gas during the calendar year. A property qualifies as a stripper well property for a calendar year only if the wells on such property were producing during that period at their maximum efficient rate of flow.

Where a taxpayer's property consists of a partial interest in one or more oil or gas producing wells, the determination of whether the property is a stripper well property or a heavy oil property shall be made with respect to total production from such wells, including the portion of total production attributable to ownership interests other than the taxpayer's.

The conference agreement clarifies the application of the marginal property determination with respect to a taxpayer with a taxable year other than the calendar year. In such a case, the taxpayer must determine whether its property interest qualifies as a stripper well property or a heavy oil property on the basis of production from the producing wells on the property during the calendar year. If a property qualifies as a stripper well or heavy oil property for a calendar year, then the taxpayer's share of production from that property for its taxable year beginning in that calendar year will qualify as marginal production. If in the following calendar year the property does not satisfy the definition of a stripper well property, then the taxpayer's share of production from that property for its following taxable year will not be treated as marginal production.

e. Alternative minimum tax relief for oil and gas operations

Present law

Under present law, corporations and individuals are subject to an alternative minimum tax which is payable, in addition to all other tax liabilities, to the extent that it exceeds the taxpayer's regular income tax owed. The tax is imposed at a flat rate of 20 percent (21 percent in the case of individuals) on alternative minimum taxable income in excess of the exemption amount.

The items of tax preference relating to oil and gas operations for which additions are made to taxable income to arrive at alternative minimum taxable income are as follows: (1) to the extent that a percentage depletion deduction for regular tax purposes represents depletion in excess of the taxpayer's basis in the depletable property, that deduction constitutes an item of tax preference (the "percentage depletion preference"), and (2) the amount of intangible drilling costs (IDCs) that are expensed in excess of the amount that would have been allowable if the costs had been capitalized and recovered through cost depletion or amortized ratably over a 10-year period and that are in excess of 65 percent of the amount of net oil and gas income is an item of tax preference (the "excess IDC preference").

For taxable years beginning after 1989, the alternative minimum taxable income of a corporation is increased by an amount equal to 75 percent of the amount by which adjusted current earnings (ACE) exceed prenet operating loss alternative minimum taxable income. In general, adjusted current earnings means alternative minimum taxable income with additional adjustments. These adjustments generally follow the rules presently applicable to corporations in computing their earnings and profits.

The adjustments specifically relating to oil and gas operations are as follows: (1) the allowance for depletion for any property placed in service in a taxable year beginning after 1989 shall be computed using the cost depletion method (the "ACE depletion adjustment"), and (2) intangible drilling costs deductible under section 263(c) in taxable years beginning after 1989 are capitalized and amortized over the 60-month period beginning with the month in which such costs are paid or incurred (the "ACE IDC adjustment").

House bill

No provision.

Senate amendment

The Senate amendment provides a special energy deduction for purposes of computing alternative minimum taxable income. The deduction is based on a specified portion of the various oil and gas related tax preference items. In addition, for corporations,

the deduction generally includes a specified percentage of the energy-related portion of the adjusted current earnings adjustment.

Specifically, the special energy deduction is initially determined by determining the taxpayer's (1) intangible drilling cost preference and (2) marginal production depletion preference. The intangible drilling cost preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to the excess IDC preference and the ACE IDC adjustment. The marginal production depletion preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to the excess depletion preference and the ACE depletion adjustment attributable to marginal production. The intangible drilling cost preference is then apportioned between (1) the portion of the preference related to qualified exploratory costs and (2) the remaining portion of the preference. The portion of the preference related to qualified exploratory costs is multiplied by 75 percent and the remaining portion is multiplied by 15 percent. The marginal production depletion preference is multiplied by 50 percent. The three products described above are added together to arrive at the taxpayer's special energy deduction (subject to certain limitations).

The special energy deduction is not allowed to the extent that it exceeds 40 percent of alternative minimum taxable income determined without regard to either the special energy deduction or the alternative tax net operating loss deduction. Any special energy deduction amount limited by the 40-percent threshold may not be carried to another taxable year. In addition, the combination of the special energy deduction, the alternative tax net operating loss deduction, and the alternative minimum tax foreign tax credit cannot reduce more than 90 percent of the taxpayer's alternative minimum tax liability determined without such items.

The special energy deduction will be phased out in taxable years that follow calendar years in which the price of crude oil exceeds a specified level. The amount of the special energy deduction (determined without regard to the phase-out) is to be reduced for any taxable year that immediately follows a calendar year during which the average price of crude oil exceeds $28 per barrel (adjusted for inflation using the GNP implicit price deflator) and will be completely phased out if the average price of oil exceeds such inflation adjusted amount by $6 or more in such year.

The special energy deduction is effective for taxable years beginning after December 31, 1990.

Conference agreement

The conference agreement generally follows the Senate amendment. The conference agreement clarifies that for purposes of determining the intangible drilling cost preference and marginal production depletion preference, respectively, alternative minimum taxable income is computed without taking into account the special energy deduction and the alternative tax net operating loss deduction.

The conference agreement clarifies that the special energy deduction has no effect on the tax base for the environmental tax computed under section 59A. That is, the environmental tax is equal to 0.12 percent of alternative minimum taxable income determined without regard to (1) the alternative tax net operating loss deduction, (2) the environmental tax deduction, and (3) the special energy deduction.

In addition, the conference agreement provides a number of modifications and clarifications with respect to the definitions of the terms qualified exploratory costs and exploratory well. Generally, qualified exploratory costs are IDCs which the taxpayer may elect to deduct as expenses under section 263(c), and which are attributable to the drilling of a domestic oil or gas well. With regard to this definition, the conferees wish to clarify that IDCs attributable to the drilling of nonproductive wells are not precluded from being treated as qualified exploratory costs. In addition, costs which the taxpayer elects to capitalize and amortize under section 59(e) are treated as IDCs for purposes of determining total IDCs and the exploratory portion of total IDCs. Under the conference agreement, IDCs paid or incurred after the installation of the production string of casing begins with respect to a well also are not precluded from being treated as qualified exploratory costs.

Under the conference agreement, a well (the "new well") generally qualifies as an exploratory well if at the time it is completed (or if not completed, at the time drilling operations cease), there is no completed oil or gas well that is capable of production in commercial quantities within a 1.25 mile radius of the new well. If the new well is drilled within 1.25 miles of a completed well capable of production in commercial quantities of oil or gas, it will qualify as an exploratory well if it is drilled to a total depth at least 800 feet below the completion depth of the deepest completion depth of any oil or gas well capable of production in commercial quantities within that 1.25 mile radius. For purposes of applying this distance test, the conferees wish to clarify that distance is to be measured by reference to the surface locations of the relevant wells. If the new well fails both the distance and depth tests, it nevertheless will be considered an exploratory well if it is drilled into a new reservoir of oil or gas and is capable of production in commercial quantities. A reservoir, for this purpose, generally is a separate and distinct producing oil or gas reservoir that is not in communication with any other producing reservoir. The conference agreement specifies that a gas well will not be treated as having been completed into a new reservoir if the reservoir consists of a deposit of tight formation gas, Devonian shale, or coal seams gas.

The conference agreement provides that with respect to the drilling of offshore wells, the term exploratory well generally includes wells drilled from a mobile drilling rig or ship. The conference agreement provides, however, that qualified exploratory costs do not include IDCs attributable to any well drilled from an offshore platform, unless it can be demonstrated by the taxpayer that the well is drilled into a reservoir that has not previously been penetrated by any well.

Under the conference agreement, a well generally is presumed to be capable of production in commercial quantities at the time that it has been completed with the installation of a "christmas tree" or other mechanism to regulate the flow of oil or gas. An offshore well generally is deemed not to be capable of production in commercial quantities prior to the time of the installation of the related offshore platform or other production system. Under the conference agreement, a well generally is considered completed when the production string of casing and a "christmas tree" or other mechanism to regulate the flow of oil or gas has been installed.

2. SMALL BUSINESS INCENTIVES

a. Revision of estate freeze rules

Present law

Estate tax inclusion relating to estate freezes

If a person, in effect, transfers property having a disproportionately large share of the potential appreciation in such person's interest in an enterprise while retaining an interest, or right in, the enterprise, then the transferred property is includible in his gross estate (Code sec. 2036(c)). Dispositions of either the transferred or retained property prior to the transferor's death result in a deemed gift equal to the amount that would have been includible in the gross estate had the transferor died at the time of the transfer.

Preferred interests in corporations and partnerships

The transfer of a residual interest in a corporation or partnership for less than full and adequate consideration is a gift. The value of a residual interest in a corporation or partnership often is determined by subtracting the value of the preferred interest from the value of all interests in the corporation or partnership.

Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Under the "willing buyer, willing seller" valuation standard, it is assumed that rights will be exercised so as to maximize the value of the owner's interests. The failure to exercise rights in an arm's-length manner may give rise to a taxable gift.

Gift tax statute of limitations

Generally, no proceeding in a court for the collection of gift tax can begin without an assessment within 3 years after the filing of the return. If no return is filed, the tax may be assessed, or a suit commenced to collect the tax without assessment, at any time.

Trusts and term interests in property

The transfer of a remainder interest in property results in a taxable gift if the value of the remainder interest exceeds the value of any consideration received for such interest. The value of the remainder interest is the value of the entire property less the value of rights in the property retained by the transferor. Income interests retained by the transferor generally are valued pursuant to Treasury tables that assume a rate of return on the underlying property equal to 120 percent of the applicable Federal midterm interest rate.

Options and buy-sell agreements

Some courts have held that the price contained in a buy-sell agreement limits fair market value for estate tax purposes if the price is fixed or determinable, the estate is obligated to sell, the agreement contains restrictions on lifetime transfers, and there is a valid business purpose for the agreement.

Lapsing rights

Some courts have held that the fair market value of property is determined the moment after death. Under this theory, the value attributable to a right that lapses upon death is not subject to estate tax.

House Bill

No provision.

Senate Amendment

Estate tax inclusion relating to estate freezes

The Senate amendment repeals section 2036(c) retroactively.

Preferred interests in corporations and partnerships

The Senate amendment provides rules for valuing certain rights held by the transferor or certain family members immediately after the transfer of a residual interest in a corporation or partnership. The rules rely on present law principles that value residual interests by subtracting the value of preferred interests from the value of the entire corporation or partnership, with an adjustment to reflect the actual fragmented ownership. The rules apply in determining the value of a residual interest that is transferred to, or for the benefit of, a family member.

The Senate amendment establishes specific valuation rules for three types of retained rights. First, a retained liquidation, put, call, conversion or similar right is valued at zero, unless such right must be exercised at a specific time and amount. Second, a retained distribution right that is noncumulative or lacks a preference upon liquidation is valued at zero if the transferor and applicable family members control the corporation or partnership. Third, a cumulative distribution right having a preference upon liquidation in a corporation or partnership in which the transferor and applicable family members retain control is valued under a special standard: the determination of whether a dividend can reasonably be expected to be timely paid is made without regard to the transferor's control. The amendment exempts from these rules a retained interest that is publicly traded, that is of the same class as the transferred interest, that is of the same class but for nonlapsing differences in voting power, or that possesses proportionally the same rights as the transferred interest.

The Senate amendment values a redemption or liquidation right without a fixed date at zero even if such right is held in conjunction with a cumulative distribution right. The Senate amendment does not specify the treatment of a distribution right with no fixed termination date.

The Senate amendment increases the amount of estate or gift tax on a subsequent transfer of the retained preferred interest by the time value of accumulated distributions. The amount of accumulated distributions and interest thereon that is subject to gift or estate tax is capped at an amount equal to (1) the excess of the fair market value of the residual interests in the corporation or partnership at the date of the subsequent transfer over the fair market value of such interests at the date of the initial transfer multiplied by (2) a fraction the numerator of which is the value of the preferred interests in the corporation or partnership held by the transferor and the denominator of which is the value of all such interests.

The Senate amendment also provides that the aggregate value of the junior equity interests in a corporation or partnership can be no less than 10 percent of the sum of the total equity in the corporation or partnership plus any debt which the corporation or partnership owes to the transferor or members of his family.

Except as provided in Treasury regulations, any redemption, recapitalization, contribution to capital, or other change in the capital structure of a corporation or partnership is treated as a transfer of an interest in such entity if an individual or applicable family member thereby receives a retained right affected by the bill. Regulations also may provide that such an event results in a transfer if the individual or applicable family member thereafter holds such an interest.

Statute of limitations

The Senate amendment provides that the gift tax statute of limitations runs for transfers subject to the rules governing preferred interests in corporations and partnerships and to increases in taxable gifts with respect to cumulative preferred stock only if the transfer is disclosed on a gift tax return with sufficient detail to apprise the Secretary of the Treasury of the nature of the transferred and retained interests.

Trusts and term interests in property

Under the Senate amendment, retained interests in trusts or term interests in property generally are valued at zero for gift tax purposes unless they take the form of an annuity or unitrust interest.

Buy-sell agreements

The Senate amendment provides that the value of property is determined without regard to any option, agreement, right or restriction, unless (1) the option, agreement, right or restriction is a bona fide business arrangement, (2) the option, agreement, right or restriction is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration, and (3) the terms of the option, agreement, right or restriction are comparable to those obtained in similar arrangements entered into by persons in an arm's length transaction.

Lapsing rights

Under the Senate amendment, the value of property is determined without regard to any restriction other than a restriction which by its terms will never lapse.

In addition, any right held by the decedent with respect to property includible in the gross estate which effectively lapses on the death of the decedent would, in valuing such property in the estate, be deemed exercisable by the estate.

Treasury study

The Senate amendment requires that the Secretary of the Treasury study buy-sell agreements and discretionary rights that have the potential for distorting transfer tax value and report the results of the study no later than December 31, 1992.

Effective date

The Senate amendment generally applies to transfers made and agreements entered into (or substantially modified) after October 8, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

Preferred interests in corporations and partnerships

Valuation of distribution rights

The conferees are concerned that by ignoring liquidation, put, call and conversion rights held in conjunction with a distribution right, the Senate amendment undervalues certain applicable retained rights. By valuing at zero a liquidation right associated with a distribution right, the Senate amendment permits the possibility that the distribution right also would receive little value, particularly when such liquidation right is likely to be exercised at the earliest possible date.

Accordingly, the conference agreement modifies the rules applicable to the valuation of distribution rights. Under the conference agreement, a retained interest that confers (1) a liquidation, put, call or conversion right and (2) a distribution right that consists of the right to receive a qualified payment (as defined below) is valued on the assumption that each right is exercised in a manner resulting in the lowest value for all such rights. Each right receives a value consistent with that assumption.

Example 1.—Father retains cumulative preferred stock in a transaction to which the provision applies. The cumulative dividend is $100 per year and the stock may be redeemed at any time after two years for $1,000. Under the conference agreement, the value of the cumulative preferred stock is the lesser of (1) the present value of two years of $100 dividends plus the present value of the redemption for $1,000 in year two, or (2) the present value of $100 paid every year in perpetuity. If the present values are substantially identical, the stock receives such value.

A qualified payment is a dividend payable on a periodic basis and at a fixed rate [14] under cumulative preferred stock (or a comparable payment under a partnership agreement).[15] A transferor or applicable family member may elect to treat any other distribution right as a qualified payment to be paid in the amounts and at the times specified in the election.

The election to treat distribution rights as qualified payments cannot be inconsistent with the legal instrument underlying the right. Accordingly, the transferor cannot elect to treat a distribution right as a right to receive a qualified payment in excess of amounts that could actually be received under the instrument. For example, a transferor cannot elect to value a noncumulative right to $100 per year on the assumption that it would pay $110 per year.

Example 2.—Father and Daughter are partners in a partnership to which Father contributes an existing business. Father is entitled to 80 percent of the net cash receipts of the partnership until he receives $1 million, after which time he and Daughter both receive 50 percent of the partnership's cash flow. Father's liquidation preference equals $1 million. Under the conference agreement, the retained right to $1 million is valued at zero, unless Father elects to treat it as a right to receive qualified payments in the amounts, and at the times, specified in the election. If Father elects such treatment, amounts not paid at the times specified in the election become subject to the compounding rules.

Regulatory authority

The conference agreement also grants the Secretary of the Treasury regulatory authority to treat a retained interest as two or

[14] For this purpose, a fixed rate includes one bearing a fixed relationship to a specified market rate.

[15] A transferor or applicable family member may elect not to treat such a dividend (or comparable payment) as a qualified payment. If the transferor made such an election, unpaid amounts on cumulative preferred interests would not be subject to the compounding rules.

more separate interests under the provision. Such treatment would allow value to be accorded to the participating feature of a participating preferred interest pursuant to the exception for retained interests that are of the same class as the transferred interest.

Example 3.—Mother owns all the stock in a corporation. One class is entitled to the first $100 in dividends each year plus half the dividends paid in excess of $100 that year; the second class is entitled to one half of the dividends paid above $100. The preferred right under the first class is cumulative. Mother retains the first class and gives the second class to Child. Under the conference agreement, Treasury regulations may treat an instrument of the first class as two instruments under the provision: one, an instrument bearing a preferred right to dividends of $100; the other, an instrument bearing the right to half the annual dividends in excess of $100, which would fall within the exception for retained interests of the same class as the transferred interest.

Example 4.— Father and Daughter enter into a partnership agreement under which Father is to receive the first $1 million in net cash receipts and is thereafter to share equally in distributions with Daughter. Under the conference agreement, Treasury regulations may treat Father's retained interests as consisting of two interests: (1) a distribution right to $1 million and (2) a 50 percent partnership interest. Father could elect to treat the first interest as a right to receive qualified payments at specified amounts and times; the second interest would fall within the exception for retained interests of the same class as the transferred interest.

Limitation on transfer tax inclusion

Under the conference agreement, the limitation on the amount of unpaid dividends and interest subject to subsequent transfer tax equals (1) the excess of the fair market values of equity interests that are junior to any retained preferred interests at the date of the later transfer over such values as of the date of the prior transfer of the junior interest, multiplied by (2) a fraction (determined immediately before the later transfer), the numerator of which is the number of shares of preferred interests held by the transferor and the denominator of which is the number of all shares of the same class of preferred interest. This limitation applies with respect to each class of preferred held by the transferor or applicable family member.

Example 5.—A corporation has four classes of stock. Class A is entitled to the first $10 of dividends each year; Class B is entitled to the second $10 of dividends each year; Class C is entitled to the third $10 of dividends each year; and Class D is entitled to all dividends in excess of those paid to classes A, B and C. Classes A, B and C all have cumulative rights to dividends. In a transaction to which the provision applies, Father gives Daughter stock in classes A and C while retaining stock in class B. Class D is owned by an unrelated party. Dividends are not paid on the class C stock and several years later Father dies holding the class B stock. The cap on future amounts subject to transfer tax equals the excess of the fair market value of stock in classes C and D at the date of Father's death over such value at the date of the gift multiplied by a fraction equal to the percentage of class B stock held by Father.

Exceptions

Under the conference agreement, a retained interest is valued under present law if it is of a class which is proportionally the same as the transferred interest but for nonlapsing differences in voting power (or, in the case of a partnership, nonlapsing differences with respect to management and limitations on liability). This exception would apply, for instance, if the retained and transferred interests consisted of two classes of common stock, which shared in all distributions, liquidation and other rights in a two-to-one ratio. It would not apply to a partnership with both a general and limited partner if one partner had a preference with respect to distributions.

Except as provided in Treasury regulations, a right that lapses by reason of Federal or State law generally would be treated as nonlapsing under this exception. The conferees intend, however, that Treasury regulations may give zero value to rights which lapse by reason of Federal or State law that effectively transfer wealth that would not pass in the absence of a specific agreement. Such regulations could, for example, give zero value to a management right that lapses by reason of the death of a partner under the Uniform Partnership Act as adopted in a State if the decedent had waived in the partnership agreement the right to be redeemed at fair market value under that Act.

Definitions

The conference agreement modifies two definitions in the Senate amendment.

Junior equity interest.—In the case of a partnership, a junior equity interest is any partnership interest under which the rights to income and capital are junior to the rights of all other classes of equity interests in the partnership.

Transfer.—Except as provided in Treasury regulations, a contribution to capital, or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership is treated as a transfer of an interest in such entity if an individual or applicable family member thereby receives a retained right whose value would be affected by the provision. Regulations also may provide that such an event results in a transfer if the individual or applicable family member thereafter holds such an interest.

The conferees understand that such regulations would apply the provision to a contribution to capital, or a redemption, recapitalization, or other change in capital structure of a corporation or partnership that effects a transfer (determined under the above valuation rules). Thus, for example, the regulations might provide that a contribution to capital, or a redemption, recapitalization or other change in capital structure is subject to these rules if such event would result in a gift if all applicable retained interests were valued at zero.

The conference agreement provides, however, that the provision would not apply to a change in capital structure other than a contribution to capital if the interests held by the transferor, applicable family members, and family members are substantially identical before and after the change. The provision would not apply, for example, to a recapitalization not involving a contribution to capital if all shareholders held substantially identical interests both before and after the recapitalization. Nor would it apply to a change in corporate name. In addition, the conferees intend that the addition of capital to an existing partnership or corporation would result in the application of these rules only to the extent of such contribution.

Buy-sell agreements and options

The conferees do not intend the provision governing buy-sell agreements to disregard such an agreement merely because its terms differ from those used by another similarly situated company. The conferees recognize that general business practice may recognize more than one valuation methodology, even within the same industry. In such situations, one of several generally accepted methodologies may satisfy the standard contained in the conference agreement.

Treatment of certain restrictions and lapsing rights

In general

The conference agreement modifies the provision in the Senate amendment regarding the effect of certain restrictions and lapsing rights upon the value of an interest in a partnership or corporation. These rules are intended to prevent results similar to that of *Estate of Harrison* v. *Commissioner*, 52 T.C.M. (CCH) 1306 (1987). These rules do not affect minority discounts or other discounts available under present law. The conferees intend that no inference be drawn regarding the transfer tax effect of restrictions and lapsing rights under present law.

Lapsing rights

The conference agreement provides that the lapse of a voting or liquidation right in a family-controlled corporation or partnership results in a transfer by gift or an inclusion in the gross estate. The amount of the transfer is the value of all interests in the entity held by the transferor immediately before the lapse (assuming the right was nonlapsing) over the value of the interests immediately after the lapse. The conference agreement grants the Secretary of the Treasury regulatory authority to apply these rules to rights similar to voting and liquidation rights.

Example 6.—Parent and Child control a corporation. Parent's stock has a voting right that lapses on Parent's death. Under the conference agreement, Parent's stock is valued for Federal estate tax purposes as if the voting right of the parent's stock were nonlapsing.

Example 7.— Father and Child each own general and limited interests in a partnership. The general partnership interest carries with it the right to liquidate the partnership; the limited partnership interest has no such right. The liquidation right associated with the general partnership interest lapses after ten years. Under the conference agreement, there is a gift at the time of the lapse equal to the excess of (1) the value of Father's partnership interests determined as if he held the right to liquidate over (2) the value of such interests determined as if he did not hold such right.

Restrictions

Under the conference agreement, any restriction that effectively limits the ability of a corporation or partnership to liquidate is ignored in valuing a transfer among family members if (1) the transferor and family members control the corporation or partnership, and (2) the restriction either lapses after the transfer or can be removed by the transferor or members of his family, either alone or collectively.

Example 8.—Mother and Son are partners in a two-person partnership. The partnership agreement provides that the partnership cannot be terminated. Mother dies and leaves her partnership interest to Daughter. As the sole partners, Daughter and Son acting together could remove the restriction

on partnership termination. Under the conference agreement, the value of Mother's partnership interest in her estate is determined without regard to the restriction. Such value would be adjusted to reflect any appropriate fragmentation discount.

This rule does not apply to a commercially reasonable restriction which arises as part of a financing with an unrelated party or a restriction required under State or Federal law. The provision also grants to the Treasury Secretary regulatory authority to disregard other restrictions which reduce the value of the transferred interest for transfer tax purposes but which do not ultimately reduce the value of the interest to the transferee.

b. Treatment of certain expenditures incurred to make businesses accessible to disabled individuals

Present Law

Under present law, a taxpayer may elect to deduct up to $35,000 of certain architectural and transportation barrier removal expenses for the taxable year in which paid or incurred rather than capitalizing such expenses.

House Bill

No provision.

Senate Amendment

Disabled access credit

Under the Senate amendment, an eligible small business that elects the application of the provision is allowed a nonrefundable income tax credit equal to 50 percent of the amount of the eligible public accommodations access expenditures for any taxable year that exceed $250 but do not exceed $10,250.

An eligible small business is defined for any taxable year as any person that is engaged in the trade or business of operating a public accommodation and is required by Federal law to make such accommodation accessible to, or usable by, individuals with disabilities, and that either (1) had gross receipts for the preceding taxable year that did not exceed $4 million or (2) has fewer than 30 full-time employees during the taxable year.

Eligible public accommodations access expenditures are defined as amounts paid or incurred by a taxpayer either (1) for the purpose of removing architectural, communication, or transportation barriers which prevent a public accommodation operated by the taxpayer from being accessible to, or usable by, an individual with a disability, or (2) for providing auxiliary aids or services to an individual with a disability who is an employee of, or using, a public accommodation operated by the taxpayer.

The disabled access credit applies to expenditures paid or incurred after the date of enactment.

Reduction of amount deductible as architectural and transportation barrier removal expenses

The Senate amendment also reduces the amount of architectural and transportation barrier removal expenses that may be deducted for any taxable year to $15,000.

The reduction in the amount of deductible architectural and transportation barrier removal expenses applies to taxable years beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

First, an eligible small business is defined for any taxable year as a person that had gross receipts for the preceding taxable year that did not exceed $1 million or had no more than 30 full-time employees during the preceding taxable year.

Second, the amount of the credit for any taxable year is equal to 50 percent of the eligible access expenditures for the taxable year that exceed $250 but do not exceed $10,250. Eligible access expenditures are defined as amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements of the Americans With Disabilities Act of 1990 (as in effect on the date of enactment of the credit).

Eligible access expenditures generally include amounts paid or incurred (1) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities; (2) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (3) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments; (4) to acquire or modify equipment or devices for individuals with disabilities; or (5) to provide other similar services, modifications, materials, or equipment. The expenditures must be reasonable and necessary to accomplish these purposes.

Finally, the disabled access credit is included as a general business credit and, thus, is subject to the rules of present law that limit the amount of the general business credit that may be used for any taxable year. The portion of the unused business credit for any taxable year that is attributable to the disabled access credit is not to be carried back to any taxable year ending before the date of enactment of the credit.

c. Expand election to expense certain depreciable business property

Present Law

Under section 179 of the Code, a taxpayer generally may elect, subject to certain limitations, to deduct the cost of up to $10,000 of qualifying property for the taxable year in which the property is placed in service, in lieu of depreciating such property. For this purpose, qualifying property is generally defined as depreciable tangible property that is purchased for use in the active conduct of a trade or business.

House Bill

No provision.

Senate Amendment

The Senate amendment amends section 179 to allow taxpayers to elect to deduct the cost of up to $14,000 of qualifying property for the taxable year in which the property is placed in service, subject to the limitations of present law.

The provision is effective for property placed in service in taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement does not include the Senate amendment.

d. Review of impact of IRS regulations on small business

Present Law

The Internal Revenue Service (IRS) must submit proposed regulations (after they are published) to the Small Business Administration (SBA) for comment on the impact of those regulations on small business. The SBA must respond within four weeks. Similar rules apply to final regulations that do not supersede proposed regulations.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

IRS must continue to submit proposed regulations (after they are published) to the SBA for comment on the impact of those regulations on small business. The SBA must respond within four weeks. The IRS must consider the SBA comments and discuss them in the preamble of the final regulations. Similar rules apply to final regulations that do not supersede proposed regulations. The provision applies to regulations issued after the date that is 30 days after the date of enactment.

e. Requirement of pie charts in IRS tax form instruction booklets

Present Law

There is no requirement for the Internal Revenue Service (IRS) to publish pie charts. Pie charts illustrating where the Government dollar comes from and where it goes have, however, been published by the IRS in Publication 17, Your Federal Income Tax.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement requires the IRS to include two pie charts in individual income tax form instruction booklets: one depicting sources of Government revenue and the other showing how that revenue is spent. This provision applies to instructions prepared for taxable years beginning after 1990.

G. OTHER PROVISIONS

1. TAX TECHNICAL CORRECTIONS

House bill

No provision in H.R. 5835. H.R. 5822 as reported by the House Ways and Means Committee contains technical, clerical, and conforming amendments to the Revenue Reconciliation Act of 1989, the Technical and Miscellaneous Revenue Act of 1988, and other recently enacted tax legislation (H. Rpt. 101-894).

Senate amendment

No provision.

Conference agreement

The conference agreement contains the tax technical correction provisions of H.R. 5822 as reported by the House Ways and Means Committee.

Tax-exempt bonds.—With regard to the technical corrections to the tax-exempt bond provisions of the 1989 Act, the conferees wish to clarify that the legislative history specifying the treatment of investment earnings in determining whether the expenditure requirements of the 24-month exception to arbitrage rebate requirement have been satisfied is intended to apply only to bonds issued after October 16, 1990.

OID.—One of the technical corrections provides rules for determining the yield on a debt instrument that makes a payment or payments in the form of the stock of the issuer (or a related person). The conferees understand that, in the case of a debt instrument that makes payments in the form

of stock which provides for an annual dividend rate and a stated redemption amount by a fixed date, the amount of stock to be taken into account under the technical correction should generally be determined by discounting such payments. The discount rate for such purpose shall be the yield on the debt instrument, determined assuming the payments under the stock are made as provided.

2. REPEAL OF OBSOLETE PROVISIONS ("DEADWOOD"); REQUIREMENTS FOR CERTAIN TREASURY STUDIES

House Bill

No provision in H.R. 5835. H.R. 5822 as reported by the House Ways and Means Committee repeals expired and obsolete provisions (referred to as "deadwood") of the Internal Revenue Code of 1986 (H. Rpt. 101-894).

H.R. 5822 also revises the requirements for various Treasury studies which Congress has mandated in previous years.

Senate Amendment

No provision.

Conference Agreement

The conference agreement contains the "deadwood" provisions and the Treasury study provisions of H.R. 5822 as reported by the House Ways and Means Committee.

3. INCREASE IN REFUND REVIEW THRESHOLD FOR REPORTS SUBMITTED TO THE JOINT COMMITTEE ON TAXATION

Present law

No refund or credit in excess of $200,000 of any income tax, estate or gift tax, or certain other specified taxes, may be made until 30 days after the date a report on the refund is provided to the Joint Committee on Taxation (sec. 6405). A report is also required in the case of certain tentative refunds. Additionally, the staff of the Joint Committee on Taxation conducts post-audit reviews of large deficiency cases and other select issues.

House bill

No provision. (H.R. 5822 as reported by the Ways and Means Committee contains the provision which is included in the Senate amendment.)

Senate amendment

The Senate amendment increases the threshold above which refunds must be submitted to the Joint Committee on Taxation for review from $200,000 to $1,000,000. The staff of the Joint Committee on Taxation would continue to exercise its existing statutory authority to conduct a program of expanded post-audit reviews of large deficiency cases and other select issues, and the IRS is expected to cooperate fully in this expanded program.

The provision is effective on the date of enactment, except that the higher threshold does not apply to a refund or credit with respect to which a report was made before the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

4. ACCESS TO TAX INFORMATION BY THE DEPARTMENT OF VETERANS AFFAIRS

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances (Code sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

Among the disclosures permitted under the Code is disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of 1977. This disclosure, pursuant to a written request by the agency, is for the purpose of determining eligibility for, and the correct amount of benefits under, certain enumerated programs. Any authorized recipient of return information must maintain a system of safeguards to protect against unauthorized redisclosure of the information.

House bill

The House bill allows disclosure of certain third-party and self-employment tax information to the Department of Veterans Affairs (DVA) to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs. Thus, the DVA will have direct access to information on the types and amounts of income received by veterans. The income tax returns filed by the veterans themselves will not be disclosed to DVA.

The DVA is required to comply with the safeguards presently contained in the Code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The House bill is effective on the date of enactment. Information disclosed pursuant to this provision may not be used to reduce, deny, or otherwise affect any benefit provided before the date of enactment.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment, with technical modifications. The provision expires in two years. GAO is required to do a detailed report on the effects of the provision.

5. INCREASE IN THE PERMANENT PUBLIC DEBT LIMIT

Present Law

The permanent limit on the public debt is $3,122.7 billion. A temporary limit through October 24, 1990, is $3,195 billion.

House Bill

The permanent public debt limit is increased from the present permanent level of $3,122.7 billion to $4.5 trillion ($4,500 billion) from the date of enactment through September 30, 1993.

Effective on October 1, 1993, the permanent debt is increased by an additional $500 billion to $5.0 trillion ($5,000 billion).

Senate amendment

The permanent public debt limit is increased by $321 billion to $3,443.7 billion

Conference agreement

The conference agreement follows the House bill and the Senate amendment with a modification to increase the permanent public debt limit to $4,145,000,000,000.

In addition, the Secretary is instructed to credit to Federal funds (except the Civil Service Retirement and Disability Trust Fund or the Thrift Savings Fund of the Federal Employee's Retirement System) an amount equal to interest income lost because of a failure to invest amounts in any Federal fund during the debt issuance suspension period from October 15, 1990, through December 31, 1990.

TITLE XII—PENSIONS

A. TREATMENT OF EMPLOYER REVERSIONS OF QUALIFIED PLAN ASSETS TO EMPLOYERS AND TRANSFERS TO RETIREE HEALTH ACCOUNTS

Present law

Under present law, pension plan assets generally may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities as of the date of plan termination. An employer may not recover residual assets (i.e., those that remain after all benefit liabilities have been satisfied) unless the pension plan provides for an employer reversion, the reversion does not contravene other provisions of law, and the other requirements of titles I and IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA) are met. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to a 15-percent excise tax (sec. 4980).

Subject to certain limitations, under present law, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan and (b) 150 percent of the plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets, and (b) the actuarial value of the plan's assets.

Under present law, a pension plan may provide medical benefits to retirees through a section 401(h) account that is part of such plan. The assets of a pension plan may not be transferred to a section 401(h) account without disqualifying the pension plan, subjecting the amounts transferred to income tax and the reversion excise tax. In addition, generally under the fiduciary responsibility provisions of title I of ERISA, once assets are contributed to a pension plan, those pension assets may only be used to pay pension benefits and reasonable administrative expenses under the plan prior to plan termination.

House bill [1]

Treatment of employer reversions of qualified plan assets

Reversion excise tax

Under the House bill, the rate of the reversion excise tax is increased to either 50 percent or 20 percent. The applicable rate depends, in part, on the actions of the employer in connection with the plan termination. The excise tax rate is 20 percent if the employer (1) establishes or maintains a qualified replacement plan following the plan termination to which the employer transfers assets equal to 30 percent of the maximum reversion that could be received (reduced by the present value of certain increases in participants' nonforfeitable accrued benefits that take effect upon the termination), or (2) provides pro-rata increases

[1] The House bill contains amendments to both the Internal Revenue Code and the Employee Retirement Income Security Act of 1974, as amended (ERISA). In the House bill, amendments to ERISA are in Title III of the bill (Committee on Education and Labor) and amendments to the Internal Revenue Code are in Title XIII of the bill (Committee on Ways and Means: Revenues).

in the nonforfeitable accrued benefits of all participants (including nonactive participants) in connection with the plan termination equal to at least 25 percent of the maximum reversion that could be received. If the employer does not maintain a qualified replacement plan or provide certain pro-rata benefit increases, the reversion excise tax rate is 50 percent. The excise tax is 20 percent in the case of an employer who, as of the plan termination date, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in liquidation under similar proceedings under State law.

Under the House bill, in order for a plan to be a qualified replacement plan, substantially all of the participants in the terminating plan who remain as employees of the employer after the termination are required to be active participants in the replacement plan. Certain other requirements must also be satisfied.

Fiduciary rules

The House bill clarifies the application of ERISA's fiduciary responsibility provisions to implementation of certain of the reversion excise tax provisions by delineating specific fiduciary duties that exist if an employer elects to establish or maintain a qualified replacement plan or to increase benefits pursuant to the reversion excise tax rules. The amendments to ERISA make clear that these provisions are also subject to the fiduciary duties and legal and equitable remedies under present law. As under present law, these specific duties do not apply to settlor decisions.

Transfers to retiree health accounts

Qualified transfers

Under the House bill, on a temporary basis, qualified transfers of excess assets are permitted from the pension assets in a defined benefit pension plan (other than a multiemployer plan) to the section 401(h) account that is a part of such plan. The assets transferred are not includible in the gross income of the employer and are not subject to the excise tax on reversions. The defined benefit pension plan does not fail to satisfy the qualification requirements (sec. 401(a)) solely on account of the transfer and does not violate the present-law requirement that medical benefits under a section 401(h) account be subordinate to the retirement benefits under the plan. The transfer also is not a prohibited transaction.

In order to qualify for the treatment described above (i.e., to be a qualified transfer): (1) except with respect to a special rule for 1990 expenses, a transfer of assets to a section 401(h) account may be made only once in any taxable year of the employer and may be made only in taxable years beginning after December 31, 1990, and before January 1, 1996; (2) the transferred assets (and income thereon) are required to be used to pay certain retiree health benefit liabilities; (3) certain vesting requirements must be satisfied with respect to benefits under the pension plan; (4) the employer must satisfy a minimum cost requirement with respect to retiree health benefits provided in the year of a transfer and the following 4 years; (5) the amount transferred cannot exceed certain limits; and (6) the transfer cannot contravene any other provision of law.

The requirement that the transfer cannot contravene any other provision of law is designed to clarify that the amendments to ERISA and the Code authorizing the transfer do not supersede any other legal restrictions that may prevent or limit an employer's ability to divert pension assets to satisfy other preexisting corporate liabilities for retiree health benefits. For example, the ability of an employer to transfer assets from the ongoing pension plan to a section 401(h) account may be subject to collective bargaining under relevant law. An employer's ability to transfer assets may also be subject to other laws, such as those applicable to government contractors.

The special rule for 1990 provides that a transfer is treated as a qualified transfer if the transfer is made with respect to qualified current retiree health liabilities for the employer's first taxable year beginning after December 31, 1989, and meets certain other requirements. The employer's otherwise allowable deductions for the 1990 taxable year are reduced by the amount of the qualified transfer made to reimburse 1990 expenses.

For taxable years other than 1990, the amount that can be transferred is reduced to the extent that the employer has previously made a contribution to a section 401(h) account or a welfare benefit fund relating to the same liabilities. The portion of existing reserves that relate to qualified current retiree health liabilities is determined on a pro-rata basis. Solely for purposes of the special rule for 1990, the maximum amount of assets that may be transferred for 1990 liabilities is not reduced by a contribution to a welfare benefit fund in 1990 to fund retiree health benefits for participants in the section 401(h) account.

Fiduciary rules

Under the House bill, a transfer made in accordance with the provision does not violate the anti-inurement and exclusive purpose provisions of title I of ERISA. Although the decision to transfer assets is a settlor decision made by the employer, the implementation of that decision by the fiduciary is subject to the fiduciary duties and legal and equitable remedies under ERISA.

The House bill also amends title I to require that notice of a proposed transfer be provided to the Secretary of Treasury, the Secretary of Labor, plan participants, and employee representatives (if any) at least 60 days prior to the transfer. The notice must include information about the amount of excess pension assets, the portion of assets to be transferred, the amount of health benefit liabilities expected to be provided with the transferred assets, and the amount of each participant's pension benefits that will be nonforfeitable after the transfer.

Effective date

The provisions relating to reversions apply to reversions occurring after September 30, 1990, other than (1) in the case of plans subject to title IV of ERISA, reversions pursuant to a termination, notice of which was provided under such title to participants (or if no participants, the Pension Benefit Guaranty Corporation) on or before such date, and (2) in the case of plans not subject to title IV of ERISA, but subject to title I, a notice of intent to reduce future benefit accruals was provided to plan participants on or before such date.

The provision permitting the transfer of excess pension assets to pay current retiree health benefits is effective for transfers occurring in taxable years beginning after December 31, 1990, and before January 1, 1996.

Senate amendment [2]

Treatment of employer reversions of qualified plan assets

The Senate amendment is the same as the House bill, except that the excise tax is 40 percent if the employer (1) does not maintain a qualified replacement plan to which the employer transfers assets equal to 20 percent of the reversion (reduced by the present value of increases in participants' nonforfeitable accrued benefits that take effect upon termination) or (2) provide pro-rata benefit increases to plan participants (including nonactive participants) equal to at least 15 percent of the reversion.

Transfers to retiree health accounts

The Senate amendment is the same as the House bill, except that in allocating existing reserves to qualified current retiree health liabilities, the Senate amendment permits the liabilities to be allocated on a pro-rata basis or otherwise as provided by the Secretary.

Effective date

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

Treatment of employer reversions of qualified plan assets

Reversion excise tax

The conference agreement follows the House bill and the Senate amendment with the following modifications. Under the conference agreement, the rate of the reversion tax is increased to 50 percent or 20 percent, depending on the circumstances. The excise tax rate is 20 percent if the employer transfers assets equal to 25 percent of the maximum reversion that could be received (reduced by the present value of certain increases in participant's benefits that take effect upon the termination), or (2) provides pro-rata benefit increases in the accrued benefits of qualified participants in connection with the plan termination equal to at least 20 percent of the maximum reversion that could be received. The reversion tax is 50 percent if the employer does not maintain a qualified replacement plan or provide certain pro-rata benefit increases.

The conference agreement clarifies the rules regarding (1) benefit increases that reduce dollar for dollar the 25-percent cushion requirement and (2) pro-rata benefit increases under the 20-percent pro-rata benefit increase provision.

With respect to benefit increases that reduce the 25-percent cushion, the conference agreement clarifies that the increases may be provided to any group of participants and/or beneficiaries under the plan (provided the increases satisfy the generally applicable qualification requirements, such as the nondiscrimination rules). Thus, for example, under this provision benefit increases may be, but are not required to be, provided to participants in pay status.

The conference agreement also clarifies the participants to whom benefit increases must be provided under the pro-rata benefit increase rule. Under this provision, increases must be provided to all qualified participants. Qualified participants include active participants, participants in pay status, certain beneficiaries, or individuals who have a nonforfeitable right to an ac-

[2] In the Senate amendment, Internal Revenue Code and ERISA changes are in both Title VII (Committee on Finance—Revenues) and Title X (Committee on Labor and Human Resources).

crued benefit under the terminated plan as of the termination date (determined without regard to this provision) and whose service terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs. Thus, for example, individuals who terminated employment before the termination date and received a lump-sum distribution of their benefits would not be qualified participants. Under the conference agreement, as under the House bill and the Senate amendment, the aggregate maximum benefit increase that may be provided under this provision to qualified participants other than active participants is 40 percent of the aggregate minimum required benefit increase.

The conference agreement also clarifies that the increases under both benefit increase provisions are to be made to participants' accrued benefits (rather than nonforfeitable accrued benefits). Total accrued benefits (including the increase in benefits under the provision) will become nonforfeitable upon plan termination.

Under the conference agreement, the participation requirement applicable to qualified replacement plans is modified so that, in order for the requirement to be satisfied, at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are required to be active participants in the replacement plan. The conference agreement also clarifies that the employer is determined on a controlled group basis.

The conference agreement provides that, as provided by the Secretary of the Treasury, a plan of a successor employer may be taken into account in determining whether there is a qualified replacement plan.

Of course, the present-law permanence requirement which precludes premature plan termination applies to both the terminating plan and the replacement plan.

The conferees intend that the Secretary of the Treasury will prevent avoidance of the reversion tax provisions, for example, in cases involving avoidance of the replacement plan rules through successive plan terminations or abuses of the participation rule.

Transfers to retiree health accounts

The conference agreement follows the House bill and the Senate amendment with the following modifications: (1) the conference agreement does not adopt the provision of the Senate bill permitting allocation of existing reserves to qualified current retiree health liabilities on other than a pro-rata basis, and (2) the conference agreement provides that no addition to tax shall be made under the estimated tax provisions for the taxable year preceding the taxpayer's first taxable year beginning after December 31, 1990, with respect to any underpayment that occurs by reason of the rule permitting reimbursement of 1990 qualified current retiree health liabilities.

Effective date

The conference agreement adds an additional transitional rule under the reversion excise tax provisions. Under the conference agreement, in the case of plans not subject to either title I or title IV of ERISA, the provisions relating to the reversion excise tax do not apply to terminations with respect to which a request for a determination letter was filed with the Secretary of the Treasury before October 1, 1990. In addition, in the case of plans that have only one participant, the provisions relating to the reversion tax do not apply if a resolution terminating the plan was adopted before October 1, 1990.

B. INCREASE IN PBGC PREMIUMS

Present law

Under present law, a flat-rate per-participant premium of $16 is payable with respect to each single-employer defined benefit pension plan covered under title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The premium is payable to the Pension Benefit Guaranty Corporation (PBGC). An additional premium of $6.00 multiplied by $1,000 of unfunded vested benefits is payable with respect to underfunded plans. The maximum additional per-participant premium (i.e., the total additional premium divided by the number of plan participants) is capped at $34.

House bill [3]

The House bill raises the flat-rate PBGC premium to $19, increases the assessment per $1,000 of unfunded vested benefits to $9, and increases the per-participant cap on the additional premium to $53.

The increases in the premium are effective for plan years beginning after December 31, 1990.

Senate amendment [4]

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

TITLE XIII—BUDGET ENFORCEMENT

BUDGET ENFORCEMENT ACT OF 1990

The conference agreement adds new enforcement mechanisms for discretionary spending entitlements, and receipts to preserve the deficit reduction achieved by this Act over the next five years. The conference agreement adds a pay-as-you-go mechanism to ensure that any new entitlement or receipt legislation will not increase the deficit. The conference agreement also sets forth limits (caps) on discretionary spending provided in the annual appropriations process for each of fiscal years 1991 through 1995, and enforces these through a mechanism to require across-the-board cuts within any category to make up for any overages. To enforce deficit targets in fiscal years 1994 and 1995, the conference agreement extends the existing Gramm-Rudman-Hollings mechanism through fiscal year 1995, but with new procedures to allow adjustment for revised economic and technical estimates, in 1994 and 1995 at the President's option.

I. ENFORCING DISCRETIONARY SPENDING LIMITS

Current law

Under the Congressional Budget Act of 1974, the Senate and the House of Representatives limit discretionary spending primarily through overall allocations to their respective Appropriations Committees in the joint statement of the managers accompanying the concurrent resolution on the budget. These allocations, made pursuant to section 302(a) of the Congressional Budget Act of 1974, are sometimes called "302(a)s" or "crosswalks." All committees must then divide these allocations among their subcommittees or programs. The Committees on Appropriations—which have jurisdiction over discretionary spending—must divide the allocations among their 13 subcommittees (including their Subcommittees on Defense and on Foreign Operations) under section 302(b) of the Congressional Budget Act. A point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any legislation that would cause spending to exceed these subdivided limits.

House bill

The House bill sets forth, in a new section of the Congressional Budget Act, limits for discretionary spending in three categories—defense, international, and domestic—for fiscal years 1991 through 1993, and in one category—discretionary spending—for fiscal years 1994 and 1995. The House bill creates a new mechanism for across-the-board cuts—called "sequestration"—within a category if discretionary spending for a fiscal year exceeds spending in that category. The President orders these cuts for that fiscal year within 15 days after the end of a session. Under a "look-back" procedure, if legislation is enacted for that fiscal year in the next session that causes spending to exceed a category's limit, then the applicable spending limits for the next fiscal year are reduced accordingly, and a further sequestration occurs unless appropriations legislation adjusts spending downward.

The initial limits proposed by the House include separate amounts of new budget authority and outlays by category (for fiscal years 1991 through 1993) and by total (for fiscal years 1994 and 1995).

The House bill provides that the President shall adjust the spending limits in the annual budget submission for changes in concepts and definitions, inflation, credit reestimates, Internal Revenue Service compliance funding, debt forgiveness, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

Senate amendment

The Senate amendment sets forth as a freestanding part of the Omnibus Budget Reconciliation Act of 1990 limits for discretionary spending in the same categories and for the same years as in the House bill. The Senate amendment also creates a new mechanism for across-the-board cuts—called "sequestration"—within a category if discretionary spending exceeds spending for that category. In the Senate amendment, however, the President orders these cuts on November 15 for appropriations bills enacted before November 1 or after June 30 of a fiscal year, or 15 days after enactment for bills enacted between October 31 and July 1.

The initial limits on discretionary spending proposed by the Senate are the same as those proposed by the House. As does the House bill, the Senate amendment provides that the President may adjust the spending limits in the annual budget submission for changes in inflation, credit reestimates, Internal Revenue Service compliance funding, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

The Senate amendment allows for changes in the definition of "budget authority" (which it changes elsewhere)—but not changes in other concepts and definitions, and allows for adjustment for debt forgiveness for the Arab Republic of Egypt and the Polish government—but not other debts.

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[3] In the House bill, this provision was in both Title III (Committee on Education and Labor) and Title XII (Committee on Ways and Means: Spending).

[4] In the Senate amendment, this provision was in both Title VI (Committee on Finance—Spending Reductions) and Title X (Committee on Labor and Human Resources).

Conference agreement

The conference agreement establishes the limits on discretionary spending by category, as proposed by the House and Senate, as a new title VI of the Congressional Budget Act of 1974.

The initial limits on discretionary spending are as follows (in billions of dollars):

	Fiscal year—				
	1991	1992	1993	1994	1995
Defense:					
Budget authority	288.918	291.643	291.785		
Outlays	297.660	295.744	292.686		
International:					
Budget authority	20.100	20.500	21.400		
Outlays	18.600	19.100	19.600		
Domestic:					
Budget authority	182.700	191.300	198.300		
Outlays	198.100	210.100	221.700		
Total discretionary:					
Budget authority				510.800	517.700
Outlays				534.800	540.800

The President shall adjust the spending limits according to the method proposed by the House, except with regard to limited defined special allowances. The conference agreement accepts the Senate approach for adjustments for the International Monetary Fund and debt forgiveness. The special allowances authorize the President to adjust the spending limits for new budget authority and associated outlays by specified percentages, depending on the spending category and the fiscal year. Outlay limits for categories of discretionary spending also shall be increased by specified dollar amounts so long as the budget authority limits for the applicable categories are not breached; this special outlay allowance insulates the legislative process from estimating differences.

The conference agreement accepts a compromise mechanism for initiating across-the-board spending cuts if discretionary spending limits are breached. During the session in which the fiscal year begins, the enactment of legislation causing a breach in the spending limits of any category would trigger a presidential sequestration order that would impose across-the-board cuts in that category bringing spending down to the established limits. This presidential sequestration order would be issued within 15 days after the end of a session of Congress. During the following session, the enactment of legislation causing a breach in the spending limits would trigger sequestration 15 days after enactment if the legislation were enacted before July 1, or would reduce the applicable spending limits for the next fiscal year by the amount of the breach if the legislation were enacted on or after July 1.

II. ENFORCING PAY-AS-YOU-GO

Current law

Under current law, the Senate and the House of Representatives limit entitlements through spending allocations to their respective authorizing committees in the joint statement of the managers accompanying the concurrent resolution on the budget, just as with discretionary spending. A point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any new entitlement program that would cause spending to exceed limits that flow from these allocations. Similarly, the concurrent resolution on the budget sets a revenue floor, and a point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any tax-cutting legislation that would cause revenues to fall below the floor in the resolution.

House bill

The House bill creates a new "pay-as-you-go" mechanism to require across-the-board cuts in those entitlement programs subject to Gramm-Rudman-Hollings if new entitlement spending or tax-cutting legislation increases the deficit. The President orders these cuts on October 15—the same date that a final sequestration order is issued pursuant to Gramm-Rudman-Hollings. The House bill cuts the first $5 billion in excess solely from entitlement programs now covered by Gramm-Rudman-Hollings. In the case of any excess above $5 billion, the House would cut 50 percent of the further excess from entitlement and 50 percent from discretionary spending.

Senate amendment

The Senate amendment creates a mechanism similar to the House bill, except that the President orders these cuts on November 15, and makes the across-the-board cuts solely in entitlement programs now covered by Gramm-Rudman-Hollings. Discretionary programs would not be reduced through the pay-as-you-go sequester.

Conference agreement

The conference agreement makes across-the-board cuts only in non-exempt entitlement programs, as in the Senate amendment. These cuts are ordered on the same day as the discretionary spending and deficit sequestrations. The conference agreement includes a provision for emergency direct spending or receipts legislation, which would not be subject to the pay-as-you-go requirement.

Section 252(b)(1) of the conference agreement excludes from the pay-as-you-go sequester procedure legislation maintaining the deposit insurance guarantee in effect on the date of enactment. The conferees intend that the funding to meet deposit insurance liabilities that meet existing commitments be exempt from any pay-as-you-go sequestration.

III. REVISING AND ENFORCING DEFICIT TARGETS

Current law

Gramm-Rudman-Hollings established deficit targets ("maximum deficit amounts") in 1985 and the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 revised them as follows (in billions of dollars):

	1985 law	1987 revision
Fiscal year:		
1986	171.9	
1987	144	
1988	108	144
1989	72	136
1990	36	100
1991	0	64
1992		28
1993		0

Gramm-Rudman-Hollings enforces these targets, based on projections of the deficit, through across-the-board cuts on October 15. The cuts cancel non-exempt budgetary resources to achieve outlay savings sufficient to reduce the deficit to the maximum deficit amount. Under section 301(i) of the Congressional Budget Act, budget resolutions must also meet these maximum deficit amount targets or be subject to a point of order (that requires 60 votes to waive in the Senate and a three-fifths majority to waive in the House). Gramm-Rudman-Hollings expires on September 30, 1993. For a discussion of current law, see the conference report to accompany H.J. Res. 324 (Increasing the Statutory Limit on the Public Dept), House Report 100-313 (September 21, 1987), 100th Cong. 1st Sess., pages 42-62.

House bill

The House bill revises the deficit targets as follows (in billions of dollars):

	Current law	House bill
Fiscal year:		
1986	171.9	
1987	144	
1988	144	
1989	136	
1990	100	
1991	64	302.3
1992	28	276.8
1993	0	189.7
1994		58.1
1995		18.7

The House bill amends Gramm-Rudman-Hollings to provide for sequestration in a manner similar to current law, except that for fiscal years 1991 through 1993 the President must annually revise the targets for changes in economic and technical assumptions occurring since the last year. As a consequence, during those years, the sequester covers only changes caused by legislative actions. The consequences of those actions, however, are addressed by the new mechanisms for enforcement of the discretionary spending limits and pay-as-you-go. Thus, during the first three years covered by the House bill, this should not require the President to order cuts under the conventional Gramm-Rudman-Hollings process. For fiscal years 1994 and 1995, the House bill authorizes (but does not require) the President to continue the process of adjustment for economic and technical changes, but continues a process similar to the current Gramm-Rudman-Hollings for those years if the President chooses not to make such adjustments.

Senate amendment

The Senate amendment revises the deficit targets as follows (in billions of dollars):

	Current law	Senate Amendment
Fiscal year:		
1986	171.9	
1987	144	
1988	144	
1989	136	
1990	100	
1991	64	242
1992	28	219
1993	0	165
1994		86
1995		62

The Senate amendment retains much of the language of the existing Gramm-Rudman-Hollings, but adopts a process similar to the House bill for annual adjustment of the deficit targets.

The revised deficit targets proposed by the Senate differ from those proposed by the House because of differences in economic and technical assumptions.

Conference agreement

The conference agreement revises the deficit targets (as a new section of the Congressional Budget Act of 1974) as follows (in billions of dollars):

	Current law	House bill
Fiscal year:		
1986	171.9	
1987	144	
1988	144	
1989	136	

	Current law	House bill
1990	100	
1991	64	327
1992	28	317
1993	0	236
1994		102
1995		83

The conference agreement incorporates the procedures proposed by the House under which the President must adjust the deficit targets for fiscal years 1991 through 1993 and may adjust the target for fiscal years 1994 and 1995. The deficit targets established reflect current economic projections and the removal of Social Security trust fund balances from the deficit calculation. These deficit targets will be adjusted for further updated economic and technical factors through fiscal year 1993.

IV. RESTORATION OF FUNDS SEQUESTERED

Current law

Under current law, an initial sequestration order, issued August 25, withholds budgetary resources at the sequestered levels effective October 1. A final sequestration order, issued October 15, permanently cancels budgetary resources, effective that date, and supersedes the initial sequestration order. After their issuance, initial and final sequestration orders can be rescinded and sequestered funds restored only upon the enactment of a law specifically directing those actions. The sequester for fiscal year 1991 was suspended temporarily by four continuing appropriations measures enacted in October: H.J. Res. 655 (P.L. 101-403), H.J. Res. 666 (P.L. 101-412), H.J. Res. 677 (P.L. 101-444), and H.J. Res. 681 (P.L. 101-461).

House bill

The House bill rescinds both the initial and final sequestration order for fiscal year 1991, reverses any action taken to implement the orders, and restores any sequestered budgetary resources.

Senate amendment

The Senate amendment proposes identical language.

Conference agreement

The conference agreement incorporates the House and Senate language rescinding the fiscal year 1991 sequester and restoring sequestered amounts.

V. SEQUESTRATION REPORTS AND ORDERS

Current law

Under current law, the Directors of the Office of Management and Budget and the Congressional Budget Office issue initial and revised sequestration reports each year in August and October which estimate the baseline deficit for the fiscal year, determine whether the deficit target has been exceeded, and calculate the percentages and amounts by which spending in non-exempt accounts must be reduced to lower the estimated deficit to the target level.

The Office of Management and Budget Director's initial and revised sequestration reports trigger initial and final presidential sequestration orders which implement any required sequestration reductions specified in the reports (the Congressional Budget Office reports are advisory). The General Accounting Office also issues a compliance report in November, which is also advisory. Through fiscal year 1992, a sequestration order is triggered if the baseline deficit exceeds the deficit target by more than $10 billion. For fiscal year 1993, when the target is zero, any deficit excess would trigger sequestration. The sequestration process expires at the end of fiscal year 1993. The President's sequestration orders must comply fully with the Office of Management and Budget Director's reports.

Sequestration reports and orders are only in August and October each year. There are no procedures for issuing additional or revised reports and orders to eliminate any excess deficit that occurs after the sequestration process for a fiscal year has been completed. Further, if sequestration is triggered, it applies to all non-exempt accounts. The only categorization is that one-half of the reductions are made in defense programs, with the other half coming from non-defense programs. There are no separate or specialized reporting requirements or presidential orders for other categories of spending.

House bill

The House bill establishes new sequestration reporting requirements and presidential sequestration orders to implement the discretionary spending sequester (enforcing the discretionary spending categories), the pay-as-you-go sequester (enforcing the deficit-neutrality of mandatory spending and receipt legislation), and the deficit sequester (enforcing the deficit targets).

The bill establishes the following timetable for sequestration reports and orders:

On or before	Action to be completed
First Monday in February	Lock in the Office of Management and Budget estimating assumptions.
August 15	Initial snapshot.
August 20	Sequester preview.
Latest possible date before October 15.	Final snapshot.
October 15	Pay-as-you-go and deficit sequester reports; Presidential order.
Within 15 days after end of session	Discretionary sequester reports; Presidential order.
30 days later	GAO compliance report.

On August 20, both the Congressional Budget Office and the Office of Management and Budget Directors issue sequester preview reports to the President and Congress for the pay-as-you-go and deficit sequesters for the fiscal year. For the pay-as-you-go sequester preview, the reports must set forth the change in the deficit for the fiscal year caused by the enactment of direct spending and receipts legislation, identify each law included in the estimate, and calculate the appropriate sequester percentage. For the deficit sequester, the reports must estimate the baseline deficit for the fiscal year, any deficit excess, the deficit margin, any deficit excess remaining after the pay-as-you-go sequester has been made, and calculate the specified reductions required to eliminate any remaining deficit excess.

On October 15, the Office of Management and Budget and Congressional Budget Office Directors issue revised pay-as-you-go and deficit sequester reports updated to reflect laws enacted through the final snapshot date and containing all the information required in the sequester preview reports. If the revised Office of Management and Budget report indicates that any pay-as-you-go and deficit sequester is required, the President shall issue an order on the same date implementing the sequester without change.

Within 15 days after the end of the session, the Congressional Budget Office and Office of Management and Budget Directors issue discretionary spending sequestration reports to the President and Congress. In general, the reports shall explain any adjustments made in the discretionary spending limits for budget authority and outlays for each fiscal year through fiscal year 1995, specify any breach in the discretionary categories for the current year and the budget year, and calculate the sequestration necessary to achieve the required reduction. If the Office of Management and Budget report indicates that any discretionary sequester is required, the President shall issue an order on the same date implementing the sequester without change.

Within 30 days of the issuance of the discretionary spending sequester report and order, the General Accounting Office (GAO) shall submit to the President and Congress a compliance report on all the sequester reports and orders issued for the fiscal year.

Senate amendment

The Senate amendment provides that the estimates and determinations necessary to implement the new pay-as-you-go sequester and any deficit sequester shall be issued as part of the initial and revised sequestration reports required under current law. However, the Senate amendment changes the dates of submission for these reports. For the Congressional Budget Office, the initial sequestration report is due on January 27 (March 10 in years in which a new President is inaugurated) and the revised report is due on November 10 (the Congressional Budget Office reports remain advisory). For the Office of Management and Budget, the initial sequestration report is due simultaneously with submission of the President's budget—February 1 in most years, and March 15 in years in which a new President is inaugurated—and the revised report is due on November 15. An initial sequestration order would be issued simultaneously with the initial report and become effective on October 1. A final sequestration order would be effective November 15.

For discretionary spending sequestration, the Senate amendment requires both the Congressional Budget Office and the Office of Management and Budget to report to the President within 5 days after enactment of an appropriations act. The reports must determine whether any of the discretionary spending categories have been exceeded as a result of the act, and, if necessary, calculate the amounts and percentages by which spending in the affected categories must be reduced in the appropriate category to eliminate any excess. If the Office of Management and Budget report calculates a discretionary spending sequestration, the President must issue an order implementing the sequestration reductions—within 15 days if the measure is enacted before June 30, and on November 15 if the measure is enacted between June 30 and November 1.

Conference agreement

As soon as possible after Congress completes action on a discretionary spending, direct spending, or revenue bill, and after consultation with the budget committees, the Congressional Budget Office (CBO) is to provide the Office of Management and Budget (OMB) with an estimate of the bill's effect on spending and revenues. Within 5 days after the bill's enactment, OMB transmits to the Congress its own estimate of the bill's budgetary impact. OMB is required to explain differences between its estimates and those of CBO. OMB is also required to use its bill estimates in subsequent sequestration reports.

The timetable for sequestration reports and orders is as follows:

Date	Action
5 days before the budget	CBO sequestration preview report.
President's budget submission	OMB sequestration preview report.
August 15	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session	CBO final sequestration report.
15 days after end of session	OMB final sequestration report.
30 days later	GAO compliance report.

This timetable continues the feature of current law in which CBO issues its reports 5 days before OMB, and OMB is required to explain differences between its estimates and those of CBO.

All 3 sequestration reports will contain updated estimates of the maximum deficit amount and the discretionary spending limits for each category. They will also contain estimates of any net deficit increase or decrease (under the pay-as-you-go provisions), any excess deficit (compared to the deficit target), and the sequestration reductions and percentages necessary to eliminate a deficit increase or excess deficit. The final sequestration reports will include estimates of new budget authority and outlays for each discretionary spending category, the amounts of any breach in the discretionary spending limits, and the sequestration percentages necessary to eliminate a breach. In addition, the final reports will contain, for each budget account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and outlays and the required reductions.

An extra pair of sequestration reports and an additional Presidential order will be required if, after the final sequestration report but before July 1, enactment of an appropriation bill causes a discretionary spending breach. These within-session sequestration reports are to contain the same information regarding discretionary spending as a final end-of-session sequestration report.

VI. TREATMENT OF SOCIAL SECURITY

Current law

Under current law, the Social Security trust funds are off-budget but are included in deficit estimates and calculations made for purposes of the sequestration process. However, Social Security benefit payments are exempt from any sequestration order.

Section 310(g) of the Congressional Budget Act of 1974 prohibits the consideration of reconciliation legislation "that contains recommendations" with respect to Social Security. (A motion to waive this point of order requires 60 votes in the Senate and a simple majority in the House.)

House bill

The House bill reaffirms the off-budget status of Social Security and removes the trust funds—excluding interest receipts—from the deficit estimates and calculations made in the sequestration process. The House bill retains the current law exemption of Social Security benefit payments from any sequestration order.

The House bill creates a "fair wall" point of order (as free-standing legislation) to prohibit the consideration of legislation that would change the actuarial balance of the Social Security trust funds over a 5-year or 75-year period. In the case of legislation decreasing Social Security revenues, the prohibition would not apply if the legislation also included an equivalent increase in Medicare taxes for the period covered by the legislation.

Senate amendment

The Senate amendment also reaffirms the off-budget status of Social Security and removes the trust funds from the deficit estimates and calculations made in the sequestration process. However, unlike the House bill, the Senate amendment removes the gross trust fund transactions—including interest receipts—from the sequestration deficit calculations. The Senate amendment also retains the current law exemption of Social Security benefit payments from any sequestration order.

The Senate amendment also creates a procedural fire wall to protect Social Security financing, but does so by expanding certain budget enforcement provisions of the Congressional Budget Act of 1974. The Senate amendment expands the prohibition in Section 310(g) of the Budget Act to specifically protect Social Security financing, prohibits the consideration of a reported budget resolution calling for a reduction in Social Security surplus, and includes Social Security in the enforcement procedures under Sections 302 and 311 of the Budget Act. The Senate amendment also requires the Secretary of Health and Human Services to provide an actuarial analysis of any legislation affecting Social Security, and generally prohibits the consideration of legislation lacking such an analysis.

For more on the budgetary treatment of Social Security under current law and historically, see SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. No. 101-426, 101ST CONG. 2D SESS. (1990).

Conference agreement

The conference agreement incorporates the Senate position on the budgetary treatment of the Social Security trust funds, reaffirming their off-budget status and removing all their transactions from the deficit estimates and calculations made in the sequestration process.

Further, the conference agreement provides that the "fire wall" procedure proposed by the House shall apply only to the House and that the "fire wall" procedures proposed by the Senate shall apply only to the Senate.

VII. CREDIT REFORM

Current law

The credit programs of the Federal Government are displayed in the budget on a cash accounting basis. Cash accounting overstates the real economic cost of direct loan programs and understates the real economic costs of loan guarantee programs in the year loans are made.

House bill

The House bill provides for a revised system of accounting for Federal credit programs that requires the appropriation of budget authority equal to the cost to the government, which is the estimated net present value of the cash flows associated with federal direct loan and loan guarantee programs. The revised accounting would also apply to any modifications in the costs of outstanding direct loans or loan guarantees. An exception from the requirement for an appropriation is provided for existing entitlement credit programs and the credit activities of the Commodity Credit Corporation. The credit program cost estimates will not include administrative expenses, but these expenses will be displayed in the program account as a separate subaccount on a cash basis. All of the residual cash flows associated with direct loan and loan guarantee programs not included in the cost to the government estimate would be non-budgetary and treated as means of financing.

The House bill gives the Director of the Office of Management and Budget (OMB) the authority to make credit cost estimates for the Executive Branch. The OMB Director could also delegate such authority to any Federal agency through written guidelines. The Director of the OMB would have access to necessary data from the Federal agencies and has a mandate to work with the Congressional Budget Office to improve cost estimates through an annual review process. The House bill authorizes the President to establish the necessary non-budgetary accounts and the Secretary of the Treasury to borrow from, receive from, lend to, or pay to such amounts as may be appropriate to these non-budgetary accounts. These transactions will be subject to the Antideficiency Act. The House bill also authorizes the funds necessary to implement this change in credit accounting.

The House bill makes credit reform effective starting in fiscal year 1992 and provides that direct loans and loan guarantees made before this date shall be reflected in the budget on a cash basis. The House also provides permanent indefinite authority to liquidate the loan obligations and guarantee commitments made prior to October 1, 1991.

The House bill also calls for a study by the OMB and the CBO concerning whether the accounting for Federal deposit insurance programs should be made on a cash basis, on the same basis as loan guarantees, or on some other basis.

Finally, the House bill would no longer require the inclusion of credit authority amounts in budget resolutions, allocations, costs estimates, or any other document related to the Budget Act.

Senate amendment

The Senate amendment states that the purposes of credit reform is to measure accurately the costs of Federal credit programs, place the cost of credit programs on a budgetary basis equivalent to other Federal spending, encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries, coordinate accounting and review of credit programs by CBO and OMB, and enhance the Congressional oversight of credit programs.

The Senate amendment defines "Federal agency", "direct loan", "direct loan obligation", "loan guarantee", "loan guarantee commitment", "cost to the government", "subsidy account", "financing account", and "liquidating account". Of particular note, the "cost to the government" was defined as the estimated long-term net present value of a loan guarantee. The Senate bill emphasized the variety of cash flows to be estimated by listing the specific contractual cash flows to be measured and the variations to the contractual cash flows that could occur.

The Senate amendment made in the responsibility of the Director of OMB to estimate the costs to the government of federal credit programs, establish reporting requirements by the agencies, and monitor agency performance with respect to credit programs. In developing the estimates, the Senate mandates coordination with the CBO and consultation with the Congress. Any changes to the estimating criteria are to be reported to the Congress. CBO and OMB are to study the differences in long-term administrative costs for credit programs vis-a-vis grant programs.

The Senate amendment requires that the executive budget submission include both direct loan obligation and loan guarantee commitment levels, and the estimated cost to the government of these credit levels. No direct loan or loan guarantee or modifica-

tion of an outstanding loan could be made without appropriations in advance.

The Senate Amendment lays out the responsibilities of each Federal agency to credit timely submissions of credit data, make annual requests for credit appropriations, use due diligence in carrying out responsibilities for credit programs under the new credit cost controls, and maintaining the reserves of the financing accounts.

* * * and applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The point of order would sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Section 1107 lays out the budgetary treatment of federal credit programs. The cost to the government of direct loan and loan guarantee programs will be carried in the appropriate budget function. The financing accounts will be treated as a means of financing, but their aggregated activity will be displayed in the budget documents in a function known as "credit financing activities". The section makes it clear that the financing activities are off-budget and not subject to budget act points of order.

Section 1108 provided the authority necessary for appropriations of budget authority for the cost to the government. The head of each Federal agency has authority to issue notes to the Secretary of the Treasury should the resources of the financing accounts prove insufficient to meet the obligations of the financing account. The Secretary of the Treasury has authority to set the terms and conditions of such borrowings. The Senate bill authorizes appropriations for the funding needs of the liquidating accounts and authorized appropriations for the salaries and expenses necessary to carry out credit reform.

Deposit insurance programs and other government programs are excluded from credit reform. OMB and CBO are directed to study the applicability of credit reform to the excluded programs and to Government Sponsored Enterprises.

Nothing in the Senate bill is to be construed as limiting existing mandatory credit authorities nor establishing a limit on existing credit programs. Nor does the Senate bill contemplate changing the existing authorities for the liquidation of obligations made prior to enactment of credit reform. Excess funds in the liquidating accounts are to be transferred to the Treasury on at least an annual basis.

Credit reform is made effective for fiscal year 1992. OMB is to submit an explanation of its credit reform methodology with its annual budget submission; CBO is to include the cost to the government for all reported bills.

The Senate amendment defines a government sponsored enterprise (GSE) to emphasize that to qualify as a GSE and thereby escape budget act treatment, GSE must: have a federal charter; be privately owned; be controlled by a board of directors elected by the owners; and be a financial institution with powers to make loans, guarantee loans, issue debt, or guarantee the debt of others. Further, a GSE could not exercise powers that are reserved to the Government (eg. taxing powers or regulating interstate commerce), commit the Government financially, or employ federal civil servants.

The Senate amendment creates a new point of order that will lie against legislation that did not provide a subsidy appropriation for the cost to the government of credit activities and applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The 302(f)(2) point of order will sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Conference agreement

The conference agreement indicates that the purpose of credit accounting reform is to measure more accurately the costs of Federal direct loan and loan guarantee programs, to place the cost of those programs on a basis equivalent to other spending, to encourage more efficient delivery of Federal assistance, and to improve the allocation of resources between credit and other spending programs. The conference agreement also substantially accepts the definitions in the Senate bill.

The conference agreement requires that, starting with fiscal year 1992, the budget cost of credit programs be the net present value of the long-term costs to the Government, excluding administrative costs and incidental effects on governmental receipts and outlays. All of the other cash flows resulting from credit programs will be treated as means of financing and included in nonbudgetary financing accounts. The cash flows resulting from direct loan obligations and loan guarantee commitments made prior to fiscal year 1992 will be reflected in the budget on a cash flow basis.

The conference agreement provides that the Director of the Office of Management and Budget will be responsible for coordinating credit cost estimates for the executive branch and may delegate that authority to other agencies based upon written guidelines. The Director of the Office of Management and Budget is to consult with the Director of the Congressional Budget Office in developing guidelines for credit cost estimates and in reviewing and improving those estimates.

The conference agreement requires the appropriation of new budget authority to cover the cost of direct loan and loan guarantee programs before new assistance can be provided. An exception to this requirement is provided for entitlement credit programs (such as the guaranteed student loan program and veteran's home loan guaranty program) and for the credit programs of the Commodity Credit Corporation. The agreement also provides that budget authority must be available to cover the cost of modifying any outstanding direct loan or loan guarantee. Administrative expenses for credit programs will continue to be counted on a cash flow basis, but displayed in a separate subaccount within the account for the credit program.

In a few cases, the cost to government of a loan or guarantee may be zero or negative. In such case, it is still necessary for appropriations bills to provide specific authority before loans could be made. Providing such authority will generate an off-setting receipt (negative budget authority and outlays) which would be credited to the appropriations committees and count against discretionary spending limits.

The conference agreement provides that, if initial estimates of the costs of credit activity are determined to be incorrect, reestimates are recorded on the budget as soon as possible. These reestimates will take the form of payments from the treasury to the financing accounts or vice versa. The reestimate is discounted back to the time when the loan was disbursed; the discounted portion is charged to the program account (as a mandatory) and the rest is charged to net interest.

The conference agreement provides authority for the Secretary of the Treasury to conduct the transactions necessary to maintain the non-budgetary financing accounts.

As part of the transition provisions, new credit authority is made subject to a 302 point of order in the Senate in fiscal year 1991. However, the agreement sunsets this point of order in both houses in 1992.

If excesses were to develop in the financing accounts, the agreement presumes that these excesses would revert to the treasury. These excesses do not include balances necessary to maintain adequate reserves, achieve mandated capital levels, or preserve the mutuality of certain credit programs.

The financing accounts are made subject to the Antideficiency Act. However, Federal agencies will continue to administer and operate direct loan and loan guarantee programs as they do now. Permanent indefinite authority is provided to make any payments required to liquidate direct loan obligations and loan guarantee commitments made prior to fiscal year 1992. The agreement provides an authorization to cover the administrative expenses of implementing credit accounting reform. Finally, the activities of Federal insurance programs are excluded from credit accounting reform, but the Director of the Office of Management and Budget and the Director of the Congressional Budget are required to study whether the accounting for Federal deposit insurance programs should be a cash basis, on the same basis as loan guarantees, or on a different basis.

VIII. GOVERNMENT SPONSORED ENTERPRISES

Current law

Congress has created several Government-sponsored enterprises or GSEs to help make credit more reliably available to farmers, homeowners, colleges, and students. Through federal charters provided in statute, GSEs are privately owned and operated, limited in their activities to specific economic sectors, and given certain benefits that help them accomplish their goals.

Due to the public missions described in the charters of these entities, the Government does have an interest in the activities of the GSEs. While there is no explicit Federal backing for the GSEs, in 1987, the Government infused significant additional resources into the Farm Credit System when the system had financial difficulties. This Government financial assistance to a GSE and the problems of the Savings and Loan sector have generated increased interest in Congressional oversight of the GSEs.

House bill

Section 13501(a), of the House bill defined GSEs for this legislation to include the Farm Credit System (including Farm Credit Banks, Banks for Cooperatives, Federal Agricultural Mortgage Corporation, and the Farm Credit Insurance Corporation) the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and Student Loan Marketing Association.

Senate amendment

The Senate had no similar provision.

Conference report

The conference report adopts the House language except that it deletes the reference to the Farm Credit Insurance Corporation which is an on-budget entity.

House bill

Subsection (b) mandates a Treasury study on the financial safety and soundness of GSEs, the adequacy of the existing regulatory structure for GSEs, and the financial exposure of the Federal Government posed by GSEs. The Department of the Treasury shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs and recommended legislation.

Senate amendment

Section 12254(a)(1) of the Senate amendment contained an essentially identical provision.

Conference report

The conference report accepts the House provision but expands the scope of the Treasury study to analyze the impact of GSE activities on Treasury borrowing.

House bill

Subsection (c) mandates a Congressional Budget Office study on GSEs due to Congress no later than April 30, 1991. The study will include an analysis of the financial risks each GSE assumes, how Congress may improve its understanding of those risks, the supervision and regulation of GSEs' risk management, and the financial exposure of the Federal Government posed by GSEs. The study will also include an analysis of alternative models for oversight of GSEs of the costs and benefits of each alternative model to the Government and to the markets and beneficiaries served by GSEs.

Senate amendment

The Senate amendment contains a mandate for a similar study.

Conference report

The conference report accepts the House language with the scope expanded to include an analysis of the effects of GSE activities on Treasury borrowing.

House bill

Section (d) provides the Treasury and the CBO full access to GSE books and records and other information as requested by the Secretary of the Treasury or the Director of the Congressional Budget Office. This subsection also allowed the Secretary of the Treasury and the Director of the Congressional Budget Office to request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of a GSE.

Senate amendment

The Senate amendment contains essentially the same provision.

Conference report

The conference report adopts the House language.

House bill

Subsection (e) provides for the confidentiality of the information provided to Treasury and the Congressional Budget Office. The House bill requires the Secretary of the Treasury and the Director of the Congressional Budget Office to determine and maintain the confidentiality of any book, record, or information made available by a GSE, consistent with the level of confidentiality established by the GSE involved. The Department of the Treasury and the Congressional Budget Office were made exempt from Freedom of Information Act requirements for the purpose of this Act. Finally, an officer or employee of the Department of the Treasury or the Congressional Budget Office were made subject to the penalties set forth in section 1906 of title 18, United States Code, if, by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential under this section and if he or she discloses the material in any manner other than to an officer or employee of the Department of the Treasury Congressional Budget Office or pursuant to the exceptions set forth in such section 1906.

Senate amendment

The Senate amendment contained (at 12254(a)(C) essentially similar language to the House bill except that the Senate provided a separate standard of confidentiality for the Congressional Budget Office (at 12254(b)) that did not impose the penalties contemplated by the House bill.

Conference report

The conference report adopted the House language with respect to Treasury confidentiality and the Senate language with respect to CBO confidentiality requirements.

House bill

Subsection (f) put into statutory language the requirement that the committees of jurisdiction in the House and Senate prepare and report legislation to ensure the financial soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government no later than September 15, 1991.

Senate amendment

Beginning at subsection (a), the Senate amendment incorporates a sense of the Congress resolution that the appropriate committees of jurisdiction will study the Administration's proposals with respect to GSEs and report legislation by September 15, 1991. Committee legislation will ensure the financial safety and soundness of the GSEs. The sense of the Congress resolution states that if the appropriate committees of jurisdiction failed to act, the Senate will consider GSE legislation on the floor. The sense of the Congress language was intended to be advisory and not binding on the Committees or the leadership if intervening events next year prevented such consideration.

Conference report

The conference adopts the House language with respect to consideration of legislation by the appropriate committees of jurisdiction. However, the conference decides to make the statutory nature of the House language apply only to the House, while the Senate will retain the language in the form of a sense of the Senate resolution. This language intends to provide impetus for Senate action. The conference report also drops the original Senate language that referred to floor action.

The conference report also adopts a provision that was not contained in either bill, requiring the President's budget to analyze and discuss the financial condition of the GSEs, and the financial exposure of the Federal Government, if any, posed by the GSEs.

Section 13501(f) of the bill requires the committees of jurisdiction in the House and Senate to report legislation to ensure the financial soundness of government sponsored enterprises by September 15, 1991. If such legislation is not reported, it is the intent of the conferees that the Leadership of the House and Senate ensure that, by the end of the first session of the 102nd Congress, there is consideration of, and a vote on, legislation the Administration may submit on the financial soundness of GSEs.

The conferees intend that nothing in subtitle E be construed as changing the existing committee jurisdictions with regard to government-sponsored enterprises.

IX. ADDITIONAL CHANGES TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

Current law

The Congressional Budget and Impoundment Control Act of 1974, as amended, provides for the adoption each year of a concurrent resolution on the budget setting forth spending, deficit, and revenue levels. The budget resolution is enforced principally through points of order against legislation violating budget resolution spending, revenue, and deficit levels, and through reconciliation instructions to congressional committees. Budget resolutions include budget levels for three fiscal years, but only the first year levels are binding (i.e., enforceable by points of order).

The budget resolution may not provide for a deficit in excess of the Gramm-Rudman-Hollings deficit target for the fiscal year. There are no other restrictions on congressional discretion in setting budget resolution levels under current law.

Title X of the Act establishes congressional procedures for considering impoundment of funds by the executive branch.

House bill

The House bill amends the Congressional Budget Act to establish procedures for enforcing the discretionary spending limits established for fiscal years 1991–1995 through action each year on the budget resolution. Through fiscal year 1995, budget resolutions are required to cover five fiscal years.

The House bill also establishes a procedure for automatic reconciliation instructions to the tax committees should legislation be enacted reducing revenues without an offset.

The House provisions are enacted as temporary amendments to the 1974 Budget Act, generally expiring at the end of fiscal year 1995.

Senate amendment

The Senate amendment also expands 1974 Budget Act enforcement procedures to ensure compliance with the discretionary spending limits and pay-as-you-go requirements to assure that the 5-year, $500 billion deficit reduction plan is implemented and maintained. In addition, the Senate amendment establishes new timetables for congressional and executive budget actions, strengthens and permanently codifies the Byrd Rule on extraneous matter, and makes other conforming changes in the 1974 Budget Act.

The Senate amendment makes permanent changes in the 1974 Budget Act.

Conference agreement

The conference agreement includes a number of budget process changes. It makes temporary changes in the Congressional Budget Act to create 5-year budget resolutions that would be enforced by points of order against exceeding committee allocations for both the first year and the total of the 5 years covered by the budget resolution. Section 601(b) of the conference agreement also creates temporary points of order in the Senate against violating the discretionary spending limits.

The conference agreement codifies section 273 of the Balanced Budget and Emergency Deficit Control Act of 1985 as part of the Congressional Budget Act without change.

Following the Senate bill, the conference agreement allows for display of the increase in the debt as a measure of the deficit, display of Federal retirement trust fund balances, and the creation in budget resolutions of pay-as-you-go provisions similar to reserve funds established in budget resolutions since 1987. The conference agreement standardizes the language of points of order, corrects a precedent in the Senate that effectively kills amendments between Houses if points of order under the Congressional Budget Act are sustained against them (*see* Senate Precedent PRL19860313-003 (Mar. 13, 1986) (LEGIS, Rules database)), and similarly makes clear that if a point of order under the Act is sustained against a bill, the bill should be sent back to committee instead of the calendar, so that the committee may then take corrective action to improve the bill. The conference agreement makes clear that amendments between the Houses on budget resolutions are covered in the Senate under section 305(c), which also deals with conference reports on budget resolutions. The conference agreement also repeals section 202 of public law 100-119, the exceptions to which the conferees believe had come to be abused (*see* W. Dauster, CONGRESSIONAL BUDGET ACT ANNOTATED 567-77 (1990)) and codifies the Byrd Rule on extraneous matter in reconciliation bills (*see id.* at 593-650; section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), amended by the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), and amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 20.5, 101 Stat. 754, 784-85 (Sept. 29, 1987)).

The conference report also makes conforming changes to title 31 of the United States Code to make clear that funds sequestered are not available for expenditure and that ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

X. DEFINITION

Current law

Section 257 of Gramm-Rudman-Hollings defined the terms "automatic spending increase," "budget outlays," "budget authority," "concurrent resolution on the budget," "deficit," "maximum defict amount," "real economic growth," "sequester," "sequestration," "account," "sequesterable resource," "margin," "prepayment of a loan," "outlay rate," and "combined outlay rate."

Specifically, section 257 defines "margin" to mean $10 billion for fiscal years 1988 through 1992 and zero for fiscal year 1993. If the deficit exceeds the Gramm-Rudman-Hollings targets by less then the margin through fiscal year 1992, a sequester order is not triggered.

House bill

The House bill moves the definitions section to a new section 250 and retains or revises the definitions of "outlays," "budget authority," "maximum deficit amount," "real economic growth," "sequester," "sequestration," "account," and "prepayment of a loan." the House bill adds to the definitions section new definitions for "breach," "category," "baseline," "budgetary resources," "discretionary appropriations," "direct spending," "current," "sale of an asset," "budget year," "current year," "outyear," "OMB," and "CBO," but strikes definitions for "automatic spending increase," "concurrent resolution on the budget," "deficit," sequesterable resources," "outlay rate," and "combined outlay rate." Finally, the House bill redefines "margin" to mean $15 billion for fiscal years 1994 and 1995 (minus any authorized outlay adjustments).

Senate amendment

The Senate amendment redefines "margin" to mean zero for fiscal years 1991 through 1993 and $15 billion for fiscal years 1994 and 1995. Other than in the definition of "Margin," the Senate amendment makes no changes in the Gramm-Rudman-Hollings definitions.

Conference agreement

The conference agreement accepts the definition changes proposed by the House, except that no definition of "sale of an asset" is provided. Additionally "margin" is redefined to mean zero for fiscal years 1992 and 1993 and $15 billion for fiscal years 1994 and 1995.

XI. PRESIDENT'S BUDGET SUBMISSION

The conference agreement includes provisions permitting the President to delay submission to Congress of The Budget of the United States Government from the present requirement of "on or before the first Monday after January 3 of each year" to not later than the first Monday in February. The conferees intended that this increased flexibility be used very rarely to meet only the most pressing exigencies. An orderly and timely budget process requires that Presidential submissions be made on or before the first Monday after January 3 whenever possible. The conferees expect that Presidential submission dates will comply with the January deadline.

XII. SCOREKEEPING

The conferees recognize that, because of the constraints imposed by the Supreme Court's decision in *Bowsher v. Synar*, the conference agreement vests substantial power to estimate the costs of legislation with the Office of Management and Budget. The conferees are concerned that the Office of management and Budget has not always shown complete ojectivity in its estimates. The conferees urge the Congress to scrutinize the scorekeeping of the Office of Management and Budget as that Office implements the procedures under this conference agreement. The conferees considered procedures under which Congress would enact into law Congressional Budget Office cost estimates as part of any spending legislation. Should the Office of Management and Budget abuse its scorekeeping power, the conferees believe that the Congress should adopt such procedures at that time.

Section 251(a)(7) and 252(d) of Gramm-Rudman-Hollings as amended by this conference agreement provide that the Office of Management and Budget must make its estimates in conformance with scorekeeping guidelines determined for consultation among the Senate and House Committees on the Budget, the Congressional Budget Office, and the Office of Management and Budget. These provisions carry on and codify the existing consultative process that has led to these parties developing the following scorekeeping guidelines:

SCOREKEEPING GUIDELINES FOR FY 1991

The guideline listed below reflect general budget scorekeeping conventions that will be used by the House and Senate Budget Committees and the Office of Management and Budget in measuring compliance with Congressional budget targets and the Budget Summit Agreement.

To the extent possible under the Budget Enforcement Act of 1990, the Gramm-Rudman-Hollings statute, the Congressional Budget Office and the Office of Management and Budget will follow these guidelines in calculating deficit estimates and making projections for Gramm-Rudman-Hollings and the Budget Enforcement Act 1990.

For both budget scorekeeping and Gramm-Rudman-Hollings, final scoring will necessarily depend on the review of legislation by the scorekeepers, as provided in the Budget Enforcement Act of 1990, the Congressional Budget Act and Gramm-Rudman-Hollings. These rules will be reviewed on an annual basis.

1. Mandatory spending

The list of accounts that are considered mandatory for purposes of scoring appropriations bills follows.

2. Outlays prior

Outlays from prior-year appropriations will be classified consistent with the discretionary/mandatory classification of the account from which the outlays occur.

3. Direct spending programs

Entitlements and other mandatory programs (including offsetting receipts) will be scored at current law levels, unless congressional action modifies the authorizing legislation. Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations bills will be scored against the Appropriations Committee section 302(b) allocations in the House and the Senate except for those savings provisions that are to be enacted by an authorizing committee pursuant to the Budget Summit Agreement.

4. Transfer of budget authority from a mandatory account to a discretionary account

The transfer of budget authority to a discretionary account will be scored as an increase in discretionary budget authority and outlays in the gaining account. The losing account will not show an offsetting reduction if the account is an entitlement or mandatory.

5. Permissive transfer authority

Permissive transfers will be assumed to occur (in full or in part) unless sufficient evidence exists to the contrary. Outlays from such transfers will be estimated based on the best information available, primarily historical experience and, where applicable, indications of Executive or Congressional intent.

This guideline will apply to specific transfers (transfers where the gaining and losing accounts and the amounts subject to transfer can be ascertained) for FY 1991 and to both specific and general transfer authority thereafter.

6. Reappropriations

Reappropriations of expiring balances of budget authority will be scored as new budget authority in the fiscal year in which the balances become newly available.

7. Advance appropriations

Advance appropriations of budget authority will be scored as new budget authority in the fiscal year in which the funds become newly available for obligation, not when the appropriations are enacted.

Advance appropriations will be classified as mandatory or discretionary consistent with the mandatory list below.

8. Rescissions and transfers of unobligated balances

Rescissions of unobligated balances will be scored as reductions in current budget authority and outlays in the year the money is rescinded.

Transfers of unobligated balances will be scored as reductions in current budget authority and outlays in the amount from which the funds are being transferred, and as increases in budget authority and outlays in the account to which these funds are being transferred.

In certain instances, these transactions will result in a net negative budget authority amounts in the source accounts. Such amounts of budget authority will be projected at zero. Outlay estimates for both the transferring and receiving accounts will be based on the spending patterns appropriate to the respective accounts.

9. Delay of obligations

Appropriations bills specify a date when funds will become available for obligation. It is this date that determines the year for which new budget authority is scored. In the absence of such a date, the bill is assumed to be effective upon enactment.

If a new appropriation provides that a portion of the budget authority shall not be available for obligation until a future fiscal year, that portion shall be treated as an advance appropriation of budget authority. If a law defers existing budget authority (or unobligated balances) from a year in which it was available for obligation to a year in which it was not available for obligation, that law shall be scored as a rescission in the current year and a reappropriation in the year in which obligational authority is extended. If the authority to obligate is contingent upon the enactment of a subsequent appropriation, new budget authority and outlays will be scored with the subsequent appropriation. If an appropriation is contingent on enactment of a subsequent authorization, new budget authority and outlays will be scored with the appropriation. If an appropriation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority will be scored with the appropriation and outlays will be estimated based on the best information about when (or if) the contingency will be met. Non-lawmaking contingencies within the control of the Congress are not scoreable events.

10. Absorption

Appropriations bills or reports should contain language that clearly specifies the extent to which funds for pay raises are either provided or absorbed within the levels appropriated in the bill, or remain to be provided.

11. Scoring purchases, lease-purchases and leases

General Rule.—When a bill provides the authority for an agency to enter into a contract for the purchase, lease-purchase, or lease of a capital asset, budget authority will be scored in the year in which the budget authority is first made available in the amount of the government's total estimated legal obligations.

Outlays for a purchase or for a lease-purchase in which the Federal government assumes substantial risk—for example, through an explicit government guarantee of third-party financing—will be spread across the period during which the contractor constructs, manufactures, or purchases the asset. Outlays for a lease, or for a lease-purchase in which the private sector retains substantial risk, will be spread across the lease period. In all cases, the total amount of outlays scored over time against a bill will equal the amount of budget authority scored against that bill.

Implementation of the Rule.—Contracts under existing authority will not be rescored. Purchases and lease-purchases will be scored on the basis of this rule starting in FY 1991. Multi-year leases will be scored consistent with current practice, rather than this rule, in FY 1991.

Further details.—See "Addendum: Details on scoring purchases, lease-purchases, and leases".

12. Write-offs of uncashed checks, unredeemed food stamps, and similar instruments

Exceptional write-offs of uncashed checks, unredeemed food stamps, and similar instruments (i.e., write-offs of cumulative balances that have built up over several years or have been on the books for several years) shall be scored as an adjustment to the means of financing the deficit rather than as an offset. An estimate of write-offs or similar adjustments that are part of a continuing routine process shall be netted against outlays in the year in which the write-off will occur. Such write-offs shall be recorded in the account in which the outlay was originally recorded.

13. Reclassification after an agreement

Except to the extent assumed in a budget agreement, a law that has the effect of altering the classification of spending and revenues (e.g. from discretionary to mandatory, special fund to revolving fund, on-budget to off-budget, revenue to offsetting receipt), will not be scored as reclassified for the purpose of enforcing a budget agreement.

ADDENDUM: DETAILS ON SCORING PURCHASES, LEASE-PURCHASE, AND LEASES

Budget Authority.—Budget authority *scored against a bill* will include all costs of the project except for imputed interest costs calculated at Treasury rates. Imputed interest costs will not be scored against a bill or for current level but will count for other purposes.

Criteria for Defining a Lease.—Under a lease arrangement, owenership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease period. In addition, the Government should enter into the contract for limited use of an asset and not consume a substantial portion (75 percent) of its economic value. All risks of ownership of the asset (e.g. financial responsibility for destruction or loss of the asset) should remain with the lessor.

Illustrative Criteria Determining Private Risk.—Legislation and lease-purchase contracts will be considered against the following type of illustrative criteria to evaluate the level of private-sector risk in a project.

There should be no explicit government guarantee of third party financing.

All risks to ownership of the asset (e.g. financial responsibility for destruction or loss of the asset, etc.) should remain with the lessor unless the Government was at fault for such losses.

The asset should be a general purpose asset rather than for a special purpose of the Government and should not be built to unique specification for the Government as lessee. There should be a private-sector market for the asset.

The project should not be constructed on Government land.

Directed Scorekeeping.—Language that attempts to waive the Anti-Deficiency Act, or to limit the amount of timing of obligations recorded, does not change the government's obligations or obligation authority, and so will not affect the scoring of budget authority or outlays.

Authority to Obligate.—Unless bill language that authorizes a project clearly states that *no* obligations are allowed unless budget authority is provided specifically for that project in an Appropriations bill in advance of the obligation, the bill will be interpreted as providing obligation authority, in an amount to be estimated by the Congressional Budget Office (for the Congress) and the Office of Management and Budget (for the Executive).

APPROPRIATED ENTITLEMENTS AND MANDATORIES FOR FISCAL YEAR 1991

Commerce-Justice-State

Payment to the Foreign Service retirement and disability fund
19-0540-0-1-153
Fishermen's guaranty fund
19-5121-0-2-376
Salaries of judges:
Supreme Court, S&E [1]
10-0100-0-1-752
U.S. Court of International Trade [1]
10-0400-0-1-752
U.S. Court of Appeals [1]
10-0510-0-1-752
Courts of Appeals, District Courts, etc.[1]
10-0920-0-1-752
Payment to judicial officers' retirement fund
10-0941-0-1-752
Fees and expenses of witnesses
15-0311-0-1-752
Independent counsel
15-0327-0-1-752
Public Safety Officers benefits
15-0403-0-1-754
Civil liberties public education fund
15-0329-0-1-808

Defense

Payment to the Central Intelligence Agency retirement fund
56-3400-0-1-054

District of Columbia

No mandatory accounts

Energy-Water

No mandatory accounts

Foreign Operations

Housing and other credit guaranty programs
72-4340-0-3-151
Guarantee reserve fund
11-4121-0-3-152
Payment to the Foreign Service retirement and disability fund
11-1036-0-1-153

Interior

Miscellaneous trust funds
14-9971-0-7-302

[1] Account split—Only salaries of judges are mandatory.

Range improvements
14-5132-0-2-302
Administration of territories [2]
14-0412-0-1-808
Compact of free association [3]
14-0415-0-1-808

Labor-HHS-Education

Guaranteed student loans
91-0230-0-1-502
Higher education facilities loans
91-0240-0-1-502
College housing and academic facilities loans [4]
91-0242-0-1-502
Federal unemployment benefits and allowances (FUBA)
16-0326-0-1-504
16-0326-0-1-603
Social services block grant
75-1634-0-1-506
Payments to States for foster care and adoption assistance
75-1645-0-1-506
Rehabilitation services and handicapped research
91-0301-0-1-506
Vaccine improvement program trust fund
20-8175-0-7-551 [5]
Retirement pay and medical benefits for commissioned officers
75-0379-0-1-551
Medicaid
75-0512-0-1-551
Medical facilities guarantee and loan fund
75-4430-0-3-551
HMO loan and loan guarantee fund
75-4420-0-3-551
Health professions graduate student loan insurance fund
75-4305-0-3-553
Payments to health care trust funds
75-0580-0-1-571
Advances to the unemployment trust fund
16-0327-0-1-601
Special benefits
16-1521-0-1-601
16-1521-0-1-602
Black lung disability trust fund
20-8144-0-7-601
Federal payments to the railroad retirement accounts
60-0113-0-1-601
Special benefits for disabled coal miners
75-0409-0-1-601
Supplemental security income program [6]
75-0406-0-1-609
Family support payments to States
75-1501-0-1-609
Payments to States for family support activities
75-1509-0-1-609
Payments to social security trust funds
75-0404-0-1-651

Legislative Branch

Compensation of members, Senate
00-0100-0-1-801
Compensation of members, House
00-0200-0-1-801
Payments to widows and heirs of deceased members of Congress
00-0215-0-1-801
Payments to widows and heirs of deceased members of Congress—Senate
00-0115-0-1-801

Military Construction

No mandatory accounts.

Rural Development—Agriculture

Reimbursement to the rural electrification and telephone fund
12-3101-0-1-271
Conservation reserve program [7]
12-3319-0-1-302
Dairy indemnity program
12-3314-0-1-351
Temporary emergency food assistance program (TEFAP) [8]
12-3635-0-1-351
Federal Crop Insurance Corporation fund
12-4085-0-1-351
Agricultural credit insurance fund [9]
12-4140-0-3-351
Commodity Credit Corporation fund
12-4336-0-3-351
Payments to the farm credit system financial assistance corp.
20-1850-0-1-351
Rural housing insurance fund [9]
12-4141-0-3-371
Rural communication development fund
12-4142-0-3-452
Rural development insurance fund [9]
12-4155-0-3-452
Special milk program
12-3502-0-1-605
Food donations programs for selected groups [10]
12-3503-0-1-605
Food stamp program
12-3505-0-1-605
Child nutrition programs
12-3539-0-1-605
Nutrition assistance for Puerto Rico
12-3550-0-1-605
Funds for strengthening markets (section 32) [11]
12-5209-0-2-605

Transportation

WMATA, interest payments
46-0300-0-1-401
FAA, aircraft purchase loan guarantee program
69-1399-0-1-402
Coast Guard, retired pay
69-0241-0-1-403

Treasury—Postal Service

Payment to the Postal Service fund for non-funded liabilities
18-1004-0-1-372
Government payment for annuitants, employees health benefits
24-0206-0-1-551
Government payment for annuitants, employees life insurance
24-0500-0-1-602
Compensation of the President
11-0001-0-1-802
Payment of government losses in shipment
20-1710-0-1-803
Payment to civil service retirement and disability fund
24-0200-0-1-805

Veterans—HUD

FSLIC resolution fund
51-4065-0-3-371
Federal Housing Administration fund [12]
86-4070-0-3-371
Veterans Benefits Administration
Insurance and indemnities
36-0120-0-1-701
Compensation
36-0153-0-1-701
Pensions
36-0154-0-1-701
Burial benefits
36-0155-0-1-701
Readjustment benefits
36-0137-0-1-702
Guaranty and indemnity fund
36-4023-0-3-704
Loan guaranty revolving fund
36-4025-0-3-704

DISCRETIONARY APPROPRIATIONS CATEGORIES

The following is a list of discretionary accounts organized by three subsets of discretionary appropriations: defense, international, and domestic discretionary, pursuant to Section 250(c)4(A). New accounts or activities shall be categorized in consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate.

APPROPRIATED DEFENSE DISCRETIONARY ACCOUNTS FOR FISCAL 1991

COMMERCE, JUSTICE, STATE

Department of Transportation, Maritime Administration, Ready reserve force
69-1710-0-1-054

DEFENSE

Department of Defense, Procurement, Coastal defense augmentation
17-0380-0-1-051
Military personnel, Marine Corps
17-1105-0-1-051
Operation and Maintenance, Marine Corps
17-1106-0-1-051
Operation and Maintenance, Marine Corps Reserve
17-1107-0-1-051
Reserve personnel, Marine Corps
17-1108-0-1-051
Procurement, Marine Corps
17-1109-0-1-051
Research, development, test, and evaluation, Navy
17-1319-0-1-051
Reserve personnel, Navy
17-1405-0-1-051
Military personnel, Navy
17-1453-0-1-051
Aircraft procurement, Navy
17-1506-0-1-051
Weapons procurement, Navy
17-1507-0-1-051
Shipbuilding and conversion, Navy
17-1611-0-1-051
Operation and Maintenance, Navy
17-1804-0-1-051

[2] Account split—The interest rate differential related to the Guam Power Authority refinancing and the Northern Marianas covenant will be scored as mandatory.

[3] Account split—The account shall be split between mandatory payments (required by treaty) and discretionary costs.

[4] Account split—Payment of interest to Treasury shall be scored as mandatory. Loan levels shall be scored as discretionary loan limitations and borrowing authority.

[5] The administrative expenses associated with this account are discretionary within the jurisdiction of the Commerce, Justice, State subcommittee.

[6] Account split—Administrative expenses shall be scored as discretionary BA and outlays.

[7] Appropriations to fund an agreed-upon level of 40 million acre minimum specified in authorizing legislation shall be scored as mandatory. Appropriations above this level shall be scored as discretionary.

[8] Account split—Only purchases of commodities for Hunger Prevention Act are mandatory.

[9] Account split—Appropriations for losses will be scored as mandatory. Changes to loan levels allocated to authorizing committees will be scored as discretionary.

[10] Account split—Only purchases of commodities for Hunger Prevention Act are mandatory.

[11] The entire account shall be scored as mandatory except to the extent that discretionary set asides are specified in appropriations language.

[12] Account split—Payments for interest, net realized losses, and temporary mortgage assistance payments are mandatory. Administrative expenses transferred to Management and Administration and Inspector General accounts will be classified as a discretionary obligation limitation and outlays.

Operation and Maintenance, Navy Reserve
17-1806-0-1-051
Other procurement, Navy
17-1810-0-1-051
Navy Stock Fund
17-4911-0-4-051
Navy Industrial Fund
17-4914-0-4-051
Marine Corps Industrial Fund
17-4914-0-4-051
Operation and Maintenance, National Board for the Promotion of Rifle Practice, Army
21-1705-0-1-051
Military Personnel, Army
21-2010-0-1-051
Operation and Maintenance, Army
21-2020-0-1-051
Aircraft procurement, Army
21-2031-0-1-051
Missile procurement, Army
21-2032-0-1-051
Procurement of weapons and tracked combat vehicles, Army
21-2033-0-1-051
Procurement of ammunition, Army
21-2034-0-1-051
Other procurement, Army
21-2035-0-1-051
Research Development, test and evaluation, Army
21-2040-0-1-051
Military Personnel, National Guard personnel, Army
21-2060-0-1-051
Operation and Maintenance, Army National Guard
21-2065-0-1-051
Reserve personnel, Army
21-2070-0-1-051
Operation and Maintenance, Army Reserve
21-2080-0-1-051
Revolving and management funds, Army stock fund
21-4991-0-4-051
Army Industrial Fund
21-4992-0-4-051
Aircraft procurement, Air Force
57-3010-0-1-051
Missile procurement, Air Force
57-3020-0-1-051
Other procurement, Air Force
57-3080-0-1-051
Operation and Maintenance, Air Force
57-3400-0-1-051
Military personnel, Air Force
57-3500-0-1-051
Research, development, test, and evaluation, Air Force
57-3600-0-1-051
Reserve personnel, Air Force
57-3700-0-1-051
Operation and Maintenance, Air Force Reserve
57-3740-0-1-051
Operation and Maintenance, Air National Guard
57-3840-0-1-051
National Guard personnel, Air Force
57-3850-0-1-051
Air Force stock fund
57-4921-0-4-051
Air Force Industrial Fund
57-4922-0-4-051
Operation and Maintenance, Defense agencies
97-0100-0-1-051
Court of Military Appeals, Defense
97-0104-0-1-051
Drug interdiction and counter-drug activities, Defense
97-0105-0-1-051
Goodwill Games
97-0106-0-1-051
Office of the Inspector General
97-0107-0-1-051
Procurement, Defense agencies
97-0300-0-1-051
National guard and reserve equipment
97-0350-0-1-051
Defense production act purchases
97-0360-0-1-051
Chemical agents and munitions destruction, Defense
97-0390-0-1-051
Research, development, test, and evaluation, Defense agencies
97-0400-0-1-051
Developmental test and evaluation, Defense
97-0450-0-1-051
Operational test and evaluation, Defense
97-0460-0-1-051
Environmental Restoration, Defense
97-0810-0-1-051
Humanitarian assistance
97-0819-0-1-051
Defense Stock Fund
97-4961-0-4-051
Defense Industrial Fund
97-4962-0-4-051
Emergency Response Fund
97-4965-0-4-051
Central Intelligence Agency, Enhanced security countermeasures capabilities
56-3401-0-1-054
Intelligence community staff
95-0400-0-1-054

ENERGY AND WATER

Department of Energy, Atomic energy defense activities
89-0220-0-1-053
Defense Nuclear Facilities Safety Board, S&E
95-3900-0-1-053

MILITARY CONSTRUCTION

Department of Defense, Family Housing, Navy and Marine Corps
17-0703-0-1-051
Military construction, Navy
17-1205-0-1-051
Military construction, Naval Reserve
17-1235-0-1-051
Family Housing, Army
21-0702-0-1-051
Military construction, Army
21-2050-0-1-051
Military construction, Army National Guard
21-2085-0-1-051
Military construction, Army Reserve
21-2086-0-1-051
Family Housing, Air Force
57-0704-0-1-051
Military construction, Air Force
57-3300-0-1-051
Military construction, Air Force Reserve
57-3730-0-1-051
Military construction, Air National Guard
57-3830-0-1-051
Base realignment and closure account
97-0103-0-1-051
Military construction, defense agencies
97-0500-0-1-051
Family Housing, Defense agencies
97-0706-0-1-051
North Atlantic Treaty Organization infrastructure
97-0804-0-1-051
Family housing, Homeowners assistance fund, Defense [1]

[1] Portion of account is non-appropriated mandatory.

97-4090-0-3-051

VETERANS', HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES

Federal Emergency Management Agency, S&E (Defense-related activities)
58-0100-0-1-054
Emergency management planning and assistance (defense-related)
58-0101-0-1-054
Selective Service System, S&E
90-0400-0-1-054

APPROPRIATED INTERNATIONAL DISCRETIONARY ACCOUNTS FOR FISCAL YEAR 1991

COMMERCIAL, JUSTICE, STATE

Foreign Claims Settlement Commission, S&E
15-0100-0-1-153
Payment of Vietnam and U.S.S. Pueblo prisoner of war claims
15-0104-0-1-153
Department of State, Administration of Foreign Affairs, S&E
19-0113-0-1-153
Soviet-East European research and training
19-0118-0-1-153
Administration of Foreign Affairs, Protection of foreign missions and officials
19-0520-0-1-153
Emergencies in the diplomatic and consular service
19-0522-0-1-153
Payment to the American Institute in Taiwan
19-0523-0-1-153
Office of the Inspector General
19-0529-0-1-153
Acquisition and maintenance of buildings abroad
19-0535-0-1-153
Acquisition and maintenance of buildings abroad (special foreign currency)
19-0538-0-1-153
Representation Allowances
19-0545-0-1-153
International Organizations and Conferences, contributions for international peacekeeping activities
19-1124-0-1-153
International conferences and contingencies
19-1125-0-1-153
Contributions to international organizations
19-1126-0-1-153
U.S. bilateral science and technology agreements
19-1151-0-1-153
International Trade Commission, S&E
34-0100-0-1-153
Commission on the Ukraine Famine, S&E
48-0050-0-1-153
Commission for the Study of Intl. Migration and Coop., S&E
48-1400-0-1-153
Arms Control and Disarmament Agency, activities
94-0100-0-1-153
Commission for the Preservation of America's Heritage Abroad, S&E
95-3700-0-1-153
Department of State, Payment to the Asia Foundation
19-0525-0-1-154
United States Information Agency, S&E
67-0201-0-1-154
East West Center
67-0202-0-1-154
Radio construction
67-0204-0-1-154
Radio broadcasting to Cuba
67-0208-0-1-154

Educational and cultural exchange programs
67-0209-0-1-154
National Endowment for Democracy
67-0210-0-1-154
Office of the Inspector General
67-0300-0-1-154
Board for International Broadcasting, Grants and expenses
95-1145-0-1-154
Israel relay station
95-1146-0-1-154
Japan-United States Friendship Commission trust fund
95-8025-0-1-154

FOREIGN OPERATIONS

Department of State, U.S. emergency refugee and migration assistance
11-0040-0-1-151
Multilateral assistance, Contribution to the Inter-American Dvlt. Bank
11-0072-0-1-151
Contribution to the International Development Association
11-0073-0-1-151
Contribution to the Asian Development Bank
11-0076-0-1-151
Contribution to the Intl. Bank for Reconstruction
11-0077-0-1-151
Contribution to the International Finance Corporation
11-0078-0-1-151
Contribution to the African Development Fund
11-0079-0-1-151
Contribution to the African Development Bank
11-0082-0-1-151
Peace Corps
11-0100-0-1-151
African Development Foundation
11-0700-0-1-151
Agency for Intl. Development, Operating expenses
11-1000-0-1-151
Trade and Development Program
11-1001-0-1-151
Multilateral assistance, Int. organizations and programs
11-1005-0-1-151
AID, operating expenses
11-1007-0-1-151
Sahel development program
11-1012-0-1-151
American schools and hospitals abroad
11-1013-0-1-151
Sub-Saharan Africa development assistance
11-1014-0-1-151
Functional development assistance program
11-1021-0-1-151
Department of State, International narcotics control
11-1022-0-1-151
AID, International disaster assistance
11-1035-0-1-151
Special assistance initiatives
11-1042-0-1-151
Inter-American Foundation
11-4031-0-3-151
Department of State, migration and refugee assistance
19-1143-0-1-151
Overseas Private Investment Corporation
71-4030-0-3-151
AID, Private sector revolving fund
72-4341-0-3-151
International security assistance, peacekeeping operations
11-1032-0-1-152
Economic support fund
11-1037-0-1-152
Special assistance for Central America, reconciliation assistance
11-1038-0-1-152
International Security Assistance, Military assistance
11-1080-0-1-152
International military education and training
11-1081-0-1-152
Foreign military financing
11-1082-0-1-152
Department of State, FMS interest buydown
11-8882-0-1-152
Anti-terrorism assistance
19-0114-0-1-152
Intl. Monetary Programs, Contribution to enhanced structural adjustments facility
11-0005-0-1-155
Military sales programs, special defense acquisition fund
11-4116-0-3-155
Export-Import Bank of the United States
83-4027-0-3-155

LABOR, HHS

United States Institute of Peace, operating expenses
95-1300-0-1-153

AGRICULTURE RURAL DEVELOPMENT AND RELATED AGENCIES

Foreign assistance programs, Expenses, Public Law 480
12-2274-0-1-151

APPROPRIATED DOMESTIC DISCRETIONARY ACCOUNTS FOR FISCAL YEAR 1991

COMMERCE, JUSTICE, STATE

Department of State, International Commissions, S&E, IBWC
19-1069-0-1-301
Construction, IBWC
19-1078-0-1-301
American section, international commissions
19-1082-0-1-301
Conservation and land management, Intl. fisheries commissions
19-1087-0-1-302
Marine Mammal Commission, S&E
95-2200-0-1-302
National Oceanic and Atmospheric Administration, operations, research and facilities
13-1450-0-1-306
Aviation weather services program
13-8105-0-7-306
NOAA, Damage assessment and restoration revolving fund [1]
Commission on Agricultural Workers, S&E
48-0057-0-1-352
Department of Commerce, General Administration, S&E
13-0120-0-1-376
Minority Business Development Agency
13-0201-0-1-376
Export Administration, Operations and administration
13-0300-0-1-376
Bureau of the Census, S&E
13-0401-0-1-376
Periodic censuses and programs
13-0450-0-1-376
National Institute of Standards and Technology, scientific and technical research
13-0500-0-1-376
National Telecommunications and Information Administration, S&E
13-0550-0-1-376
United States Travel and Tourism Administration, S&E
13-0700-0-1-376
Patent and Trademark Office, S&E
13-1006-0-1-376
Technology Administration, S&E
13-1100-0-1-376
International Trade Administration, operations and administration
13-1250-0-1-376
Economic and Statistical Analysis, S&E
13-1500-0-1-376
NIST, working capital fund
13-4650-0-4-376
NOAA, Fishing vessel and gear damage compensation fund
13-5119-0-2-376
Fishermen's contingency fund
13-5120-0-2-376
Foreign fishing observer fund
13-5122-0-2-376
Fisheries promotional fund
13-5124-0-2-376
Promote and develop fishery products and research pertaining [2]
13-5139-0-2-376
Economic Development Administration, miscellaneous appropriations
13-9911-0-1-376
Department of State, fishermen's protective fund
19-5116-0-2-376
Federal Communications Commission, S&E
27-0100-0-1-376
Federal Trade Commission, S&E
29-0100-0-1-376
Securities and Exchange Commission, S&E
50-0100-0-1-376
Small Business Administration, S&E
73-0100-0-1-376
Office of the Inspector General
73-0200-0-1-376
Pollution control equipment contract guarantee revolving fund
73-4147-0-3-376
Business loan and investment fund
73-4154-0-3-376
Direct Loans
Guaranteed Loans
Surety bond guarantees revolving fund
73-4156-0-3-376
Christopher Columbus Quincentennary Jubilee Commission, S&E
76-0800-0-1-376
Competitiveness Policy Council
95-3750-0-1-376
Advisory Commission on Conferences in Ocean Shipping, S&E
48-2500-0-1-403
Federal Maritime Commission, S&E
65-0100-0-1-403
Maritime Administration, Ship construction
69-1708-0-1-403
Operating Differential subsidies
69-1709-0-1-403
Operations and Training
69-1750-0-1-403
War risk insurance revolving fund
69-4302-0-3-403
Vessel operations revolving fund
69-4303-0-3-403
Economic Development Administration, Grants and loans administration
13-0125-0-1-452
Office of the Inspector General
13-0126-0-1-452

[1] Treasury identification number not yet assigned.

[2] Portion of account is nonappropriated permanent.

Economic Development assistance programs
13-2050-0-1-452
Guaranteed Loans
Regional development programs
13-2100-0-1-452
NOAA, coastal energy impact fund
13-4315-0-3-452
Economic development revolving fund
13-4406-0-3-452
Miscellaneous appropriations (area and regional dvlt.)
13-9911-0-1-452
Small Business Administration, disaster relief and insurance, disaster loan fund
73-4153-0-3-453
Direct Loans
Department of Commerce, NTIA, Public telecommunications facilities, planning and construction
13-0551-0-1-503
Department of Health and Human Services, vaccine improvement program trust fund
20-8175-0-7-551
Department of Justice, federal law enforcement activities, General Admin., S&E
15-0129-0-1-751
Department of Justice, working capital fund
15-4526-0-4-751
Federal Bureau of Investigation, S&E
15-0200-0-1-751
Interagency law enforcement, Organized crime drug enforcement
15-0323-0-1-751
General Administration, Office of the Inspector General
15-0328-0-1-751
Emergency Drug funding
15-0331-0-1-751
United States Parole Commission, S&E
15-1061-0-1-751
Drug Enforcement Administration, S&E
15-1100-0-1-751
Immigration and Naturalization Service, S&E
15-1217-0-1-751
Immigration Emergency Fund
15-1218-0-1-751
Equal Employment Opportunity Commission, S&E
45-0100-0-1-751
Commission on Civil Rights, S&E
95-1900-0-1-751
Supreme Court of the United States, S&E [3]
10-0100-0-1-751
Care of the building and the grounds
10-0400-0-1-752
United States Court of International Trade, S&E [3]
10-0400-0-1-752
United States Court of Appeals for the Federal Circuit, S&E [3]
10-0510-0-1-752
Courts of Appeals, District Courts, and other judicial services, S&E [2 3]
Defender services
10-0923-0-1-752
Fees of jurors and commissioners
10-0925-0-1-752
Administrative Office of the United States Courts, S&E
10-0927-0-1-752
Federal judicial center, S&E
10-0928-0-1-752
Courts of Appeals, District Courts, and other judicial services, court security
10-0930-0-1-752
Furniture and furnishings
10-0932-0-1-752
United States Sentencing Commission S&E
10-0938-0-1-752
Department of Justice, General Legal Activities, S&E
15-0128-0-1-752
Antitrust division, S&E
15-0319-0-1-752
United States Attorneys, S&E
15-0322-0-1-752
United States Marshals Service, S&E
15-0324-0-1-752
Community Relations Service, S&E
15-0500-0-1-752
Support of United States prisoners
15-1020-0-1-752
Assets forfeiture fund [2]
15-5042-0-2-752
United States trustees system fund
15-5073-0-2-752
Payment to the Legal Services Corporation
20-0501-0-1-752
State Justice Institute, S&E
48-0052-0-1-752
Federal Prison System, buildings and facilities
15-1003-0-1-753
Salaries and Expenses
15-1060-0-1-753
Federal Prison Industries, Incorporated [2]
15-4500-0-4-753
Office of Justice Programs, Justice Assistance
15-0401-0-1-754
National Institute of Corrections
15-1004-0-1-754
Commission on Security and Cooperation in Europe, S&E
09-0110-0-1-801
Dwight David Eisenhower Centennial Commission, expenses
76-1700-0-1-801
Office of the United States Trade Representative, S&E
11-0400-0-1-802
The Judiciary, Bicentennial activities
10-0933-0-1-808
Commission on the Bicentennial of the U.S. Constitution, S&E
76-0054-0-1-808
Martin Luther King, Jr. Federal Holiday Commission, S&E
76-0600-0-1-808
Department of Justice, Working Capital Fund
15-4526-0-4-751

DEFENSE

Mildred and Claude Pepper Foundation
97-0826-0-1-552

DISTRICT OF COLUMBIA

Federal payment to the District of Columbia
20-1700-0-1-806

ENERGY AND WATER

Department of Energy, General science and research activities
89-0222-0-1-251
Office of the Nuclear Waste Negotiator, S&E
48-0070-0-1-271
Nuclear Waste Technical Review Board, S&E
48-0500-0-1-271
Geothermal resources development fund
89-0206-0-1-271
Energy supply, R&D activities
89-0224-0-1-271
Uranium supply and enrichment activities
89-0226-0-1-271
Environmental restoration and waste management
89-0237-0-1-271
Southeastern Power Administration, Operation and Maintenance
89-0302-0-1-271
Southwestern Power Administration, Operation and Maintenance
89-0303-0-1-271
Operation and Maintenance, Alaska Power Administration
89-0304-0-1-271
Isotope production and distribution fund
89-4180-0-3-271
Colorado river basins power marketing fund, Western Area P.A.
89-4452-0-1-271
Construction, rehabilitation, operation and maintenance, Western Area P.A.
89-5068-0-2-271
Nuclear waste disposal fund
89-5227-0-2-271
Nuclear Regulatory Commission, S&E
31-0200-0-1-276
Office of the Inspector General
31-0300-0-1-276
Federal Energy Regulatory Commission
89-0212-0-1-276
Departmental Administration
89-0228-0-1-276
Office of the Inspector General
89-0236-0-1-276
Department of the Interior, Bureau of Reclamation, Loan Program
14-0667-0-1-301
Direct Loans
Construction program
14-0684-0-1-301
Working capital fund
14-4524-0-4-301
Emergency fund
14-5043-0-2-301
General investigations
14-5060-0-2-301
Operation and Maintenance
14-5064-0-2-301
General administrative expenses
14-5065-0-2-301
Colorado River dam fund, Boulder Canyon project [2]
14-5056-0-2-301
Corps of Engineers, Inland waterways trust fund
20-8861-0-7-301
Delaware River Basin Commission, S&E
46-0100-0-1-301
Contribution to Delaware River Basin Commission
46-0102-0-1-301
Susquehanna River Basin Commission, S&E
46-0500-0-1-301
Contribution to Susquehanna River Basin Commission
46-0501-0-1-301
Flood control, Mississippi River and tributaries
96-3112-0-1-301
Corps of Engineers, General investigations
96-3121-0-1-301
Corps of Engineers, Construction, general
96-3122-0-1-301
Corps of Engineers, Water resources, operation and maintenance, general
96-3123-0-1-301
Corps of Engineers, General expenses
96-3124-0-1-301
Corps of Engineers, Flood control and coastal emergencies
96-3125-0-1-301
Corps of Engineers, Regulatory Program
96-3126-0-1-301
Corps of Engineers, Revolving fund
96-4902-0-4-301

[3] Portion of account is mandatory.

Harbor maintenance trust fund
96-8863-0-7-301
Corps of Engineers, operation and maintenance, general
96-3123-0-1-303
Contribution to Interstate Commission on the Potomac River Basin
46-0446-0-1-304
Appalachian Regional Commission, development programs
46-0200-0-1-452
Tennessee Valley Authority fund (area and regional development)
64-4110-0-3-452
Environmental restoration and waste management
89-0237-0-1-271

INTERIOR

Department of the Treasury, Financial Management Service, Energy security reserve
20-0112-0-1-271
Biomass energy development
20-0114-0-1-271
Department of Energy, fossil energy research and development
89-0213-0-1-271
Naval petroleum and oil shale reserves
89-0219-0-1-271
Clean coal technology
89-0235-0-1-271
Alternative Fuels Production
89-5180-0-2-271
Energy conservation
89-0215-0-1-272
Emergency energy preparedness, strategic petroleum reserve
89-0218-0-1-274
SPR petroleum
89-0233-0-1-274
Emergency preparedness
89-0234-0-1-274
Energy information, policy, and regulation, Energy Information Administration
89-0216-0-1-276
Economic regulation
89-0217-0-1-276
Department of Agriculture, Forest Service, Construction
12-1103-0-1-302
Forest research
12-1104-0-1-302
State and Private Forestry
12-1105-0-1-302
National forest system
12-1106-0-1-302
Firefighting
12-1111-0-1-302
Range betterment fund
12-5207-0-2-302
Acquisition of lands for national forests, special acts
12-5208-0-5-302
Acquisition of lands to complete land exchanges
12-5216-0-2-302
Resource management-timber receipts
12-5220-0-1-302
Gifts, donations and bequests for forest and rangeland research
12-8034-0-7-302
Bureau of Land Management, Management of lands and resources
14-1109-0-1-302
Construction and access
14-1110-0-1-302
Oregon and California grant lands
14-1116-0-1-302
Firefighting
14-1119-0-1-302
Office of Surface Mining Reclamation and Enforcement, regulation and technology
14-1801-0-1-302
Minerals management service, leasing and royalty management
14-1917-0-1-302
Bureau of Indian Affairs, Operation of Indian programs (cons. & land management)
14-2100-0-1-302
Bureau of Land Management, Working capital fund
14-4525-0-0-302
OSMRE, Abandoned mine reclamation fund
14-5015-0-2-302
BLM, Service charges, deposits, and forfeitures
14-5017-0-2-302
Land acquisition
14-5033-0-2-302
Department of Agriculture, Forest Service, land acquisition
12-5004-0-2-303
Urban Park and Recreation Fund
14-1031-0-1-303
Department of the Interior, Operation of the national park system
14-1036-0-1-303
John F. Kennedy Center for the Performing Arts
14-1038-0-1-303
Construction
14-1039-0-1-303
National recreation and preservation
14-1042-0-1-303
Illinois and Michigan canal national heritage-corridor Commission
14-1043-0-1-303
United States Fish and Wildlife Service, Resource management
14-1611-0-1-303
Construction
14-1612-0-1-303
Rewards and Operations
14-1692-0-1-303
Land acquisition
14-5020-0-2-303
National Park Service, Land acquisition [2]
14-5035-0-2-303
Historic preservation fund
14-5140-0-2-303
North American Wetlands Conservation Fund [2]
14-5241-0-2-303
Advisory Council on Historic Preservation, S&E
95-2300-0-1-303
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14-0102-0-1-306
Construction Management
14-0103-0-1-306
Office of Inspector General
14-0104-0-1-306
Office of the Solicitor
14-0107-0-1-306
Oil spill emergency fund
14-0119-0-1-306
Geological survey, Surveys, investigations and research [2]
14-0804-0-1-306
Bureau of Mines, mines and minerals
14-0959-0-1-306
Soledad Canyon demonstration project [1]
National Park Service, ground transportation, Construction (trust fund)
14-8215-0-7-401
Pennsylvania Avenue Development Corporation, S&E
42-0100-0-1-451
Public development
42-0102-0-1-451
Land acquisition and development fund
42-4084-0-3-451
National Capital Planning Commission, S&E
92-2500-0-1-451
Commission of Fine Arts, S&E
95-2600-0-1-451
Bureau of Indian Affairs, Operation of Indian programs (Area and regional dvlt.)
14-2100-0-1-452
Construction
14-2301-0-1-452
Miscellaneous payments to Indians
14-2303-0-1-452
Payment to the Navajo Rehabilitation Trust Fund
14-2368-0-1-452
Revolving fund for loans
14-4409-0-3-452

Direct Loans

Indian loan guaranty and insurance fund
14-4410-0-3-452

Guaranteed Loans

Department of the Interior, Bureau of Indian Affairs, Operation of Indian programs (elementary, secondary, and vocational education)
14-2100-0-1-501
Department of Education, Office of Elementary and Secondary Education, Indian Education
91-0101-0-1-501
Institute of American Indian and Alaska Native Culture, S&E
95-2900-0-1-502
Smithsonian Institution, S&E
33-0100-0-1-503
Museum programs and related research (special foreign)
33-0102-0-1-503
Construction and improvements, National Zoological Park
33-0129-0-1-503
Repair and restoration of buildings
33-0132-0-1-503
Construction
33-0133-0-1-503
National Gallery of Art, S&E
33-0200-0-1-503
Repair, restoration, and renovation of buildings
33-0201-0-1-503
Woodrow Wilson International Center, S&E
33-0400-0-1-503
Payment to the endowment challenge fund
33-0401-0-1-503
National Endowment for the Arts, grants and administration
59-0100-0-1-503
National Endowment for the Humanities, grants and administration
59-0200-0-1-503
Institute of Museum Services, grants and administration
59-0300-0-1-503
Commission of Fine Arts, National capital arts and cultural affairs
95-2602-0-1-503
Department of HHS, Indian Health Service, Tribal health admin.[2]
75-0390-0-1-551
Indian health facilities
75-0391-0-1-551
Federal Indian Health Administration
75-0392-0-1-551
Department of the Interior, National Indian Gaming Commission
14-0118-0-1-806
BLM, Payments in lieu of taxes
14-1114-0-1-806
U.S. Fish and Wildlife Service, National wildlife refuge fund [2]
14-5091-0-2-806
Territorial and Intl. Affairs, Admin. of territories [3]

14-0412-0-1-808
Trust Territory of the Pacific Islands
14-0414-0-1-808
Compact of free association [2 3]
14-0415-0-1-808
Office of Navajo and Hopi Indian Relocation, S&E
48-1100-0-1-808
Franklin Delano Roosevelt Memorial Commission, S&E
76-0700-0-1-808
United States Holocaust Memorial Council
95-3300-0-1-808

LABOR, HHS

Department of Education, Office of Elementary and Secondary Education, Impact aid
91-0102-0-1-501
Chicago litigation settlement
91-0220-0-1-501
Office of Special Education and Rehabilitative Services, Education of the handicapped
91-0300-0-1-501
Office of Vocational and Adult Education [2]
91-0400-0-1-501
OSERS, Payments to institutions for the handicapped (elementary, secondary, & voc.)
91-0600-0-1-501
OESE, Compensatory education for the disadvantaged
91-0900-0-1-501
School improvement program
91-1000-0-1-501
Office of Bilingual Education and Minority languages Affairs, Bilingual and immigrant education
91-1300-0-1-501
National Commission on Migrant Education, S&E
95-0600-0-1-501
Higher Education, Natl. Commission on Responsibilities for Financing Post Sec.
48-0400-0-1-502
Department of Education, Office of Postsecondary Educ., Student Financial Assistance
91-0200-0-1-502
Higher education
91-0201-0-1-502
College housing and academic facilities loans [3]
91-0242-0-1-502
Direct Loans
OSERS, Payments to institutions for the handicapped (Higher education)
91-0601-0-1-502
Payments to institutions for the handicapped (Higher education)
91-0602-0-1-502
Office of Postsecondary Education, Howard University
91-0603-0-1-502
Corporation for Public Broadcasting fund
20-0151-0-1-503
Department of Education, Office of Educational Research and Improvement, Libraries
91-0104-0-1-503
Departmental Management, Program admin. (Research and general education aids)
91-0800-0-1-503
Office of Educational Research and Improvement, Research, Statistics, and Improvement of practice
91-1100-0-1-503
Natl. Commission on Libraries and Information Science, S&E
95-2700-0-1-503
White House conference on library and information services
95-2701-0-1-503
Department of Labor, Employment and Training Administration, program admin.
16-0172-0-1-504
Training and employment services
16-0174-0-1-504
Community service employment for older Americans
16-0175-0-1-504
Worker Readjustment
16-0176-0-1-504
State unemployment insurance and employment service operations
16-0179-0-1-504
Unemployment Trust fund (Training and employment)[1]
20-8042-0-7-504
Department of Health and Human Services, Family Support Admin., Work Incentives
75-1505-0-1-504
Department of Labor, Labor-Management Services, S&E
16-0104-0-1-505
Employment Standards Administration, S&E
16-0105-0-1-505
Departmental Management, Office of the Inspector General
16-0106-0-1-505
Special foreign currency program
16-0151-0-1-505
Salaries and Expenses
16-0165-0-1-505
Bureau of Labor Statistics, S&E
16-0200-0-1-505
National Labor Relations Board, S&E
63-0100-0-1-505
Federal Mediation and Conciliation Service, S&E
93-0100-0-1-505
National Mediation board, S&E
95-2400-0-1-505
ACTION, Operating expenses
44-0103-0-1-506
Department of HHS, Family Support Admin., Grants to states for special services
75-1504-0-1-506
Human development services
75-1636-0-1-506
National Council on Disability, S&E
95-3500-0-1-506
Department of HHS, Health resources and services (health care services)
75-0350-0-1-551
Health Care Financing Administration, program management (Health care services)
75-0511-0-1-551
Centers for Disease Control, Disease control, research and training (Health care services)
75-0943-0-1-551
Assistant Secretary for Health, Public Health service management (Health care services)
75-1101-0-1-551
Alcohol, Drug Abuse, and Mental Health Administration, Federal subsidy for Saint Elizabeths Hospital
75-1300-0-1-551
Alcohol, drug abuse, and mental health (Health care services)
75-1361-0-1-551
HCFA, Program management (Health research)
75-0511-0-1-552
National Institutes of Health, Natl. Library of Medicine (Health research)
75-0807-0-1-552
John E. Fogarty International Center
75-0819-0-1-552
Buildings and Facilities
75-0838-0-1-552
National Institute on Aging (Health research)
75-0843-0-1-552
Natl. Institute of Child Health and Human Development
75-0844-0-1-552
Office of the Director (Health Research)
75-0846-0-1-552
Research resources (Health research)
75-0848-0-1-552
National Cancer Institute (Health research)
75-0849-0-1-552
National Institute of General Medical Science (Health Research)
75-0851-0-1-552
National Institute of Environmental Health Sciences (Health research)
75-0862-0-1-552
National Heart, Lung and Blood Institute (Health research)
75-0872-0-1-552
National Institute of Dental Research (Health research)
75-0873-0-1-552
National Institute of Diabetes and Digestive and Kidney Disease
75-0884-0-1-552
National Institute of Allergy and Infectious Diseases (Health Research)
75-0885-0-1-552
National Institute of Neurological Disorders and Stroke (Health Research)
75-0886-0-1-552
National Eye Institute (Health research)
75-0887-0-1-552
National Institute of Arthritis and Musculoskeletal and Skin
75-0888-0-1-552
National Center for Nursing Research (Health Research)
75-0889-0-1-552
National Institute on Deafness and other Communicative Disorders
75-0890-0-1-552
National center for human genome research (Health research)
75-0891-0-1-552
Centers for Disease Control, Disease control, research, and training (Health Research)
75-0943-0-1-552
Assistant Secretary for Health, Public health management (Health Research)
75-1101-0-1-552
Scientific activities overseas (special foreign currency program)
75-1102-0-1-552
Medical treatment effectiveness
75-1105-0-1-552
ADAMHA, alcohol, drug abuse, and mental health (Health research)
75-1361-0-1-552
Agency for Health Care Policy and Research, Health Care Policy and Research
75-1700-0-1-552
Health resources and services (Education and training of health workers)
75-0350-0-1-553
National Library of Medicine (Education and training of health workers)
75-0807-0-1-553
National Institute on Aging (Educ. and training of health care workers)
75-0843-0-1-553
National Institute of Child Health & Human Dvlt. (Educ. and training of health workers)
75-0844-0-1-553
Office of the Director (Education and training of health care workers)
75-0846-0-1-553

Research resources (Education and training of health care workers)
75-0848-0-1-553
National Cancer Institute (Education and training of health care workers)
75-0849-0-1-553
National Institute of General Medical Sciences (Educ., etc.)
75-0851-0-1-553
National Institute of Environmental Health Sciences (Educ., etc.)
75-0862-0-1-553
National Heart, Lung and Blood Institute (Educ., etc.)
75-0872-0-1-553
National Institute of Dental Research (Educ., etc.)
75-0873-0-1-553
National Institute of Diabetes and Digestive and Kidney Disease (Educ., etc.)
75-0884-0-1-553
National Institute of Allergy and Infectious Diseases (Educ., etc.)
75-0885-0-1-553
National Institute of Neurological Disorders and Stroke (Educ., etc.)
75-0886-0-1-553
National Eye Institute (Educ., etc.)
75-0887-0-1-553
National Institute of Arthritis and Musculoskeletal and Skin
75-0888-0-1-553
National Center for Nursing Research (Educ., etc.)
75-0889-0-1-553
National Institute on Deafness and other Communicative Disorders
75-0890-0-1-553
National center for human genome research (Educ., etc.)
75-0891-0-1-553
ADAMHA, alcohol, drug abuse and mental health (Educ., etc.)
75-1361-0-1-553
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75-4306-0-3-553
Health education loans
75-4307-0-3-553
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16-0400-0-1-554
Mine Safety and Health Administration, S&E
16-1200-0-1-554
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95-2100-0-1-554
Federal Mine Safety and Health Review Commission, S&E
95-2800-0-1-554
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20-8004-0-7-571
Medicare, HCFA, Federal hospital insurance trust fund [2]
20-8005-0-7-571
Department of Labor, Pension Benefit Guaranty Corporation fund [2]
16-4204-0-3-601
Employment Standards Adm, Special workers' compensation expenses [2]
16-9971-0-7-601
Railroad Retirement Board, Federal windfall subsidy [2]
60-0111-0-1-601
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60-8010-0-7-601
Rail Industry Pension Fund [2]
60-8011-0-7-601
Supplemental Annuity Pension Fund [2]
60-8012-0-7-601
Department of Labor, Employment and Training Administration, unemployment trust fund (unemployment compensation) [2]
20-8042-0-7-603
Department of HHS, Office of the Secretary, General Departmental Management
75-0120-0-1-609
Policy research
75-0122-0-1-609
Office of the Inspector General
75-0128-0-1-609
Social Security Administration, Supplemental security income program [3]
75-0406-0-1-609
Family Support Administration, Program administration
75-1500-0-1-609
Low income home energy assistance
75-1502-0-1-609
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75-1503-0-1-609
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20-8006-0-7-651
Dept. of HHS, security, Federal disability insurance trust fund [2]
20-8007-0-7-651
Department of Defense, Soldiers' and Airmen's Home, Operation and maintenance
84-8931-0-7-705
Capital outlays
84-8932-0-7-705
Department of HHS, Office of the Secretary, Office for Civil Rights
75-0135-0-1-751
Department of Education, Departmental Management, Office for Civil Rights
91-0700-0-1-751
Office of the Inspector General
91-1400-0-1-751
Legislative Branch, National Commission on Children
09-1050-0-1-801
United States Bipartisan Commission on Comprehensive Health
09-1100-0-1-801
National commission on acquired immune deficiency syndrome
09-1300-0-1-801
National Commission to Prevent Infant Mortality
48-1500-0-1-808

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03-0102-0-1-376
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09-0310-0-1-376
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09-0200-0-1-801
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03-0101-0-1-503
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03-0141-0-1-503
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03-0146-0-1-503
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00-0101-0-1-801
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00-0107-0-1-801
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00-0108-0-1-801
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00-0110-0-1-801
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00-0123-0-1-801
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00-0126-0-1-801
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00-0127-0-1-801
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00-0128-0-1-801
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00-0129-0-1-801
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00-0130-0-1-801
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00-0140-0-1-801
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00-0170-0-1-801
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00-0171-0-1-801
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00-0172-0-1-801
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00-0180-0-1-801
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00-0181-0-1-801
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00-0182-0-1-801
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00-0185-0-1-801
Joint Item: Special Services office
00-0190-0-1-801
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00-0208-0-1-801
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00-0400-0-1-801
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00-0425-0-1-801
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00-0460-0-1-801
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00-0474-0-1-801
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00-0476-0-1-801
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00-0499-0-1-801
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00-0825-0-1-801
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01-0100-0-1-801
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01-0106-0-1-801
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01-0109-0-1-801
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01-0110-0-1-801
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01-0122-0-1-801
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01-0136-0-1-801
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01-0155-0-1-801
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01-0160-0-1-801
Library of Congress, Congressional Research Service, S&E
03-0127-0-1-801
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04-0203-0-1-801
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05-0107-0-1-801
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08-0100-0-1-801
Legislative Branch Boards and Commissions: Biomedical ethics, S&E
09-0400-0-1-801
Office of Technology Assessment, S&E
09-0700-0-1-801
Commission on Railroad Retirement Reform

48-0850-0-1-801
GPO, Office of Superintendent of Documents, S&E
04-0201-0-1-808

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12-3100-0-1-271
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12-4230-0-3-271
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12-1066-0-1-301
River basin surveys and investigations
12-1069-0-1-301
Watershed and flood prevention operations
12-1072-0-1-301
Conservation and land management, Conservation operations
12-1000-0-1-302
Resource conservation and development
12-1010-0-1-302
Great plains conservation program
12-2268-0-1-302
Agricultural Stabilization and Conservation Service, Agricultural conservation program
12-3315-0-1-302
Water Bank program
12-3320-0-1-302
Forestry incentives program
12-3336-0-1-302
Pollution control and abatement, Departmental Admin., Hazardous waste management
12-0500-0-1-304
ASCS, Colorado river basin salinity control program
12-3318-0-1-304
Rural clean water program
12-3337-0-1-304
Farm income stabilization, Federal Crop Insurance Corporation, Administrative and operating expenses
12-2707-0-1-351
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12-3300-0-1-351
Food and Nutrition Service, Temporary emergency food assistance program [3]
12-3635-0-1-351
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12-4140-0-3-351
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78-4131-0-3-351
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12-0115-0-1-352
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12-0117-0-1-352
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12-0118-0-1-352
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12-0120-0-1-352
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12-0130-0-1-352
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12-0300-0-1-352
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12-0502-0-1-352
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12-0503-0-1-352
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12-0900-0-1-352
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12-1400-0-1-352
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12-1401-0-1-352
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12-1404-0-1-352
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12-1500-0-1-352
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12-1600-0-1-352
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12-1601-0-1-352
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12-1701-0-1-352
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12-1801-0-1-352
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12-2100-0-1-352
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12-2300-0-1-352
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12-2400-0-1-352
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12-2500-0-1-352
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12-2501-0-1-352
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12-2600-0-1-352
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12-2800-0-1-352
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12-2900-0-1-352
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12-3000-0-1-352
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12-3200-0-1-352
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12-3501-0-1-352
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12-4609-0-4-352
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12-8880-0-1-352
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12-2071-0-1-371
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12-4141-0-3-371
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95-1400-0-1-376
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12-2001-0-1-452
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12-2065-0-1-452
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12-2066-0-1-452
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12-2967-0-1-452
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12-3102-0-1-452
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12-4155-0-3-452
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12-4231-0-3-452
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12-4233-0-3-452
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12-3316-0-1-4532
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12-3700-0-1-554
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75-0600-0-1-554
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75-0603-0-1-554
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12-2002-0-1-604
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12-2004-0-1-604
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12-2006-0-1-604
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12-2064-0-1-604
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12-2070-0-1-604
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12-3503-0-1-605554
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12-3508-0-1-605
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12-3510-0-1-605
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12-3512-0-1-605

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69-5167-0-2-304
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69-0320-0-1-304
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69-5167-0-2-304
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69-5170-0-2-304
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30-0100-0-1-401
Dept. of Transportation Federal Railroad Administration, Northeast corridor improvement program
69-0123-0-1-401
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69-0552-0-1-401
Railroad-highway crossings demonstration projects
69-0557-0-1-401
National Highway Traffic Safety Administration, Operations and research
69-0650-0-1-401
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69-0651-0-1-401
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69-0700-0-1-401
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69-0702-0-1-401
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69-0704-0-1-401
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69-0720-0-1-401
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69-0745-0-1-401
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69-0747-0-1-401
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69-1120-0-1-401
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69-1121-0-1-401
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69-1127-0-1-401
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69-1128-0-1-401
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69-1129-0-1-401
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69-4100-0-3-401
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69-4411-0-3-401
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69-8009-0-7-401
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69-8014-0-7-401
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69-8016-0-7-401
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69-8017-0-7-401
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69-8020-0-7-401
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69-8048-0-7-401
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69-8083-0-7-401
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69-8191-0-7-401
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69-8402-0-8-401
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69-9911-0-1-401
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69-9913-0-1-401
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69-9972-0-7-401
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69-0150-0-1-402
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69-1301-0-1-402
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69-4120-0-3-402
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69-8104-0-7-402
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69-8106-0-7-402
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69-8107-0-7-402
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69-8108-0-7-402
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69-0201-0-1-403
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69-0240-0-1-403
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69-0242-0-1-403
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69-4535-0-4-403
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69-4743-0-4-403
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69-8003-0-7-403
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69-8149-0-7-403
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95-4061-0-3-403
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69-0102-0-1-407
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69-0104-0-1-407
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69-0108-0-1-407
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69-0130-0-1-407
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69-0142-0-1-407
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69-1850-0-1-407
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69-4520-0-4-407
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69-5172-0-2-407
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95-0310-0-1-407
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95-3200-0-1-751
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20-8865-0-7-808

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18-1001-0-1-372
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11-0033-0-1-453
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95-2000-0-1-505
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11-0212-0-1-551
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24-8135-0-7-602
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20-0104-0-1-751
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20-0105-0-1-751
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20-0602-0-1-751
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20-0604-0-1-751
Bureau of Alcohol, Tobacco, and Firearms, S&E
20-1000-0-1-751
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20-1408-0-1-751
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95-1700-0-1-751
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11-0037-0-1-802
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11-0038-0-1-802
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11-0061-0-1-802
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11-0110-0-1-802
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11-0111-0-1-802
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11-0201-0-1-802
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11-0210-0-1-802
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11-0211-0-1-802
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11-0300-0-1-801
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11-1454-0-1-802
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11-1457-0-1-802
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11-1900-0-1-802
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11-2000-0-1-802
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11-2200-0-1-802
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11-5001-0-1-802
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47-0105-0-1-802
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20-0101-0-1-803
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20-0106-0-1-803
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20-0171-0-1-803
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20-0560-0-1-803
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20-0911-0-1-803
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20-0912-0-1-803
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20-0913-0-1-803
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20-0919-0-1-803
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20-1616-0-1-803
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20-1801-0-1-803
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20-4501-0-1-803
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20-4502-0-1-803
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20-5693-0-1-803
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20-9911-0-1-803
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47-0108-0-1-804
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47-0110-0-1-804
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47-0116-0-1-804

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47-0535-0-1-804
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47-0900-0-1-804
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88-0300-0-1-804
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24-0100-0-1-805
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20-5694-0-2-808
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49-0100-0-1-251
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49-0106-0-1-251
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49-0150-0-1-251
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49-0200-01-1-251
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49-0202-0-1-251
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49-0300-0-1-251
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80-0103-0-1-253
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80-0105-0-1-253
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90-0108-0-1-253
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80-0103-0-1-254
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80-0108-0-1-254
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80-0103-0-1-255
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80-0108-0-1-255
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80-0109-0-1-255
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68-0107-0-1-271
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20-8145-0-7-304
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20-8153-0-7-304
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68-0100-0-1-304
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68-0103-0-1-304
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68-0104-0-1-304
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68-0107-0-1-304
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68-0108-0-1-304
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68-0110-0-1-304
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68-0112-0-1-304
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68-0200-0-1-304
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22-1500-0-1-371
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25-4470-0-3-371
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86-4070-0-3-371
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86-4072-0-3-371
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86-4115-0-3-371
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86-4238-0-3-371
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47-4549-0-3-376
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95-3601-0-1-376
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80-0103-0-1-402
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80-0107-0-1-402
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82-1300-0-1-451
Department of Housing and Urban Development, Policy Development and Research, Research and technology
86-0108-0-1-451
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86-0143-0-1-451
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86-0162-0-1-451
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86-0164-0-1-451
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86-0170-0-1-451
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86-0171-0-1-451
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86-0182-0-1-451
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86-0187-0-1-451
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86-0189-0-1-451
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86-4036-0-3-451
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58-0100-0-1-453
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58-0101-0-1-453
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58-0104-0-1-453
Office of the Inspector General
58-0300-0-1-453
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11-0055-0-1-506
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Department of Health and Human Services, Office of the Secretary, Office of Consumer Affairs
75-0137-0-1-506
Department of HUD, Housing counseling assistance
86-0156-0-1-506
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61-0100-0-1-554
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48-1300-0-1-604
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86-0143-0-1-604
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86-0163-0-1-604
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86-0164-0-1-604
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86-0178-0-1-604
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86-0181-0-1-604
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86-0188-0-1-604
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86-0195-0-1-604
Home ownership and opportunity for people everywhere
86-0196-0-1-604
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86-0197-0-1-604
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86-4042-0-3-604
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86-4044-0-3-604
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Nehemiah housing opportunity fund
86-4071-0-1-604
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Public Housing Commission
86-7888-0-1-604
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86-7880-0-1-604
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58-0103-0-1-605
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36-0103-0-1-702
Vocational rehabilitation revolving fund
36-4114-0-3-702
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36-4118-0-3-702
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36-0110-0-1-703
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36-0111-0-1-703
Grants to the Republic of the Philippines
36-0144-0-1-703
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36-0152-0-1-703
Medical care
36-0160-0-1-703
Medical and prosthetic research
36-0161-0-1-703
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36-0181-0-1-703
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36-4013-0-3-703
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36-4538-0-3-703
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36-4024-0-3-704
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21-1805-0-1-705
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36-0151-0-1-705
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36-0170-0-1-705
Grants for the construction of State veterans cemeteries
36-0183-0-1-705
American Battle Monuments Commission, S&E
74-0100-0-1-705
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95-0300-0-1-705
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86-0143-0-1-751
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86-0144-0-1-751
Executive Office of the President, National Space Council, S&E
11-0020-0-1-802
Council on Environmental Quality and Office of Environmental
11-1453-0-1-802
Office of Science and Space Technology Policy, S&E
11-2600-0-1-802
Department of the Treasury, Office of Revenue Sharing, S&E
20-0107-0-1-806

TITLE XIV—OTHER

INVESTMENT

There is a clear need for greater investment in the areas of education, health, housing, science and low-income programs. The House Democratic leadership believes that every effort must be made to advance legislatively in budget resolutions, authorizing bills and appropriation bills funding levels which will achieve the goals set forth for the following functions:

INTERNATIONAL AFFAIRS (150)

Increases over current services provided for under this function should reach, at least, $1.8 billion in Budget Authority and $1.7 billion in Outlays by FY 1993 and, to the degree possible, be targeted for Southern African Development Assistance, Ethiopia/Sudan Famine Relief, the PL480 program and Refuge Assistance programs.

GENERAL SCIENCE, SPACE AND TECHNOLOGY (250)

Increases over current services provided for under this function should reach, at least, $500 million in Budget Authority and $400 million in Outlays by FY 1993 and, to the degree possible, be targeted for Science and Technology programs for Historically Black Colleges and Universities.

ENERGY (270)

Increases over current services provided for under this function should reach, at least, $500 million in Budget Authority and $400 million in Outlays by FY 1993 and, to the degree possible, be targeted for Hispanic and Historically Black Colleges and Universities consortia agreements with the Department of Energy.

COMMERCE AND HOUSING CREDIT (370)

Increases over current services provided for under this function should reach, at least, $2 billion in Budget Authority and $2 billion in Outlays by FY 1993 and, to the degree possible, be targeted for the programs of the Gonzalez, Dellums and Conyers housing bills (H.R. 5157, 1122 and 969)

COMMUNITY AND REGIONAL DEVELOPMENT (450)

Increases over current services provided for under this function should reach, at least, $2.6 billion in Budget Authority and $300 million in Outlays by FY 1993 and, to the degree possible, be targeted for the programs of the Urban Homesteading Act (H.R. 1181)

EDUCATION AND TRAINING (500)

Increases over current services provided for under this function should reach, at least, $2.4 billion in Budget Authority and $2.0 billion in Outlays by FY 1993 and, to the degree possible, be targeted to fund the Carl D. Perkins Vocational Education Act, the School Lunch and Nutrition Act, Head Start and Handicapped Education, to create Educational R&D Districts for educational research and development, Youth Incentive, Employment, Drop-Out Prevention and Anti-Gang Violence programs, and to create a new government guaranteed bond program to raise capital improvement fund for private Historically Black Colleges and Universities

INCOME SECURITY (600)

Increases over current services provided for under this function should reach, at least, $1.5 billion in Budget Authority and $1.5 billion in Outlays by FY 1993 and, to the degree possible, be targeted to fund WIC, School Breakfast and Child Care Food programs, AFDC Assistance and Community Food Nutrition, AFDC Work Activities, Job Opportunities and Basic Skills (JOBS) Training and Snack to Child Care and Temporary Emergency Food Assistance programs

VETERANS BENEFITS AND SERVICES (700)

Increases over current services provided for under this function should reach, at least, $500 million in Budget Authority and $500 million in Outlays by FY 1993 and, to the degree possible, be targeted for expanding Education, Training, and Rehabilitation and for increases in Veterans Housing, Hospital and Medical benefits.

We look forward to working with the Congressional Black Caucus on this important matter.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference, and as exclusive conferees with respect to any proposal to report in total disagreement:

LEON E. PANETTA,
RICHARD GEPHARDT,
BILL FRENZEL,

As additional conferees from the Committee on the Budget, for consideration of title XIV of the House bill, and all other provisions of the House bill and the Senate amendment on which conferees from more than one of the other standing committees of the House are appointed, and modifications committed to conference:

RED JENKINS,

From the Committee on Agriculture, for consideration of title I and subtitle B of title V of the House bill, and title I and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
JERRY HUCKABY,
TOM COLEMAN,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title II of the House bill, and title II of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,

From the Commitee on Education and Labor, for consideration of title III and sections 12403 and 13323 of the House bill, and subtitle F of title VI, part 4 of subtitle D of title VII, title X, and section 6401 of the Senate amendment, and modifications committed to conference:

GUS HAWKINS,
WILLIAM D. FORD,

From the Committee on Energy and Commerce [health] for consideration of subtitles A and B of title IV and subtitles B, C, and D of title XII of the House bill, and part 2 of subtitle B and subtitle C of title VI of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
NORMAN F. LENT,

From the Commitee on Energy and Commerce (transportation), for consideration of sections 4511, 4521, and 4522 of the House bill, and sections 3002 and 3003 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
THOMAS A. LUKEN,
NORMAN F. LENT.

From the Commitee on Energy and Commerce (energy), for consideration of sections 4501, 4502, 5101, and 10002 of the House bill, and subtitle B ot title IV and section 502 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
NORMAN F. LENT,

From the Committee on Government Operations, for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
HENRY A. WAXMAN,
BARNEY FRANK,
HOWARD C. NIELSON,

From the Committee on Interior and Insular Affairs, for consideration of title V and sections 4502 and 10002 of the House bill, and subtitles A and B of title IV and section 502 of the Senate amendment, and modifications committed to conference:

MORRIS K. UDALL,
GEORGE MILLER,

From the Commitee on the Judiciary, for consideration of title VI of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
BOB KASTENMEIER,
CARLOS J. MOORHEAD,

From the committee on Merchant Marine and Fisheries (tonnage duties, coast guard fees, and cargo preference), for consideration of sections 7101 and 702 of the House bill, and section 3001 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
BILLY TAUZIN,

From the Committee on Merchant Marine and Fisheries (EPA fees), for consideration of section 7103 of the House bill, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
ROBERT W. DAVIS,

From the Commitee on Merchant Marine and Fisheries (coastal zone management), for consideration of subtitle B of title VII of the House bill, and modifications committed to conference:

WALTER B. JONES,
DENNIS M. HERTEL,
ROBERT W. DAVIS,

From the Committee on Post Office and Civil Service, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,

From the Committee on Public Works and Transportation (aviation) for consideration of subtitles B and C of title IX of the House bill, and subtitle B of title III of the Senate amendment, and modifications committed to conference:

GLENN M. ANDERSON,
JAMES L. OBERSTAR,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (transportation trust funds), for consideration of subtitle A of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (EPA fees), for the consideration of subtitle D of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Rules, for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN MOAKLEY,
BUTLER DERRICK,
ANTHONY C. BEILENSON,
JAMES H. QUILLEN,
MARTIN FROST,
CHARLES PASHAYAN, Jr.,

From the Committee on Science, Space, and Technology, for consideration of title X of the House bill, and subtitle B of title IV and sections 3004 and 3024 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
MARILYN LLOYD,

From the Committee on Veterans' Affairs, for consideration of title XI (except section 11051) of the House bill, and title XI of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
DOUGLAS APPLEGATE,
BOB STUMP,

From the Committee on Ways and Means (revenues and debt ceiling), for consideration of title XIII, subtitles E and F of title XII, and sections 3102, 3121, 7101, and 11051(a) of the House bill, and title VII (except subtitle C), and subtitles D and E of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,

From the Committee on Ways and Means (medicare), for consideration of subtitle A through D of title XII and subtitle A of title IV of the House bill, and subtitle B of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,

From the Committee on Ways and Means (Social Security), for consideration of part 5 of subtitle A of title VI of the Senate amendment, and modification committed to conference:

DAN ROSTENKOWSKI,
ANDREW JACOBS, Jr.,

From the Committee on Ways and Means (child care and human resources), for consideration of parts 1 through 4 of subtitle A and subtitle F of title VI and subtitle C of title VII of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
THOMAS J. DOWNEY,

As an additional conferee for consideration of subtitle B of title V of the House bill, and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

R. J. MRAZEK,

As an additional conferee for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

SILVIO O. CONTE,

As an additional conferee for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

CARL D. PURSELL,
Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK J. LEAHY,
DAVID PRYOR,
RICHARD G. LUGAR,
BOB DOLE,
THAD COCHRAN,

From the Committee on Banking, Housing and Urban Affairs:

DON RIEGLE,
ALAN CRANSTON,
CHRISTOPHER J. DODD,

From the Committee on the Budget:

JIM SASSER,
PETE V. DOMENICI,

From the Committee on Commerce, Science, and Transportation:

DANIEL K. INOUYE,
WENDELL FORD,
JOHN BREAUX,
JOHN D. ROCKEFELLER IV,
JOHN C. DANFORTH,
BOB PACKWOOD,
TED STEVENS,

From the Committee on Energy and Natural Resources:

BENNETT J. JOHNSTON,
DALE BUMPERS,
WENDELL FORD,
JAMES A. MCCLURE,
PETE V. DOMENICI,

From the Committee on Environment and Public Works:

QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
BOB GRAHAM,
JOHN H. CHAFEE,

From the Committee on Finance:

LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
D.L. BOREN,
GEORGE MITCHELL,
DAVID PRYOR,
JOHN D. ROCKEFELLER IV,
BOB PACKWOOD,
BOB DOLE,
JOHN C. DANFORTH,
JOHN H. CHAFEE,

From the Committee on Governmental Affairs:

JOHN GLENN,
JIM SASSER,
DAVID PRYOR,

From the Committee on the Judiciary:

DENNIS DECONCINI,
PATRICK LEAHY,
ORRIN HATCH,

From the Committee on Labor and Human Resources for the Child Care and Development Block Grant Act:

EDWARD M. KENNEDY,
CHRISTOPHER J. DODD,
ORRIN G. HATCH,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
CHRISTOPHER J. DODD,

From the Committee on Labor and Human Resources for pension provisions (reversions and retiree health transfers):

EDWARD M. KENNEDY,

HOWARD M. METZENBAUM,
From the Committee on Veterans' Affairs:
ALAN CRANSTON,
DENNIS DECONCINI,
JOHN D. ROCKEFELLER IV,
Managers on the Part of the Senate.

Mr. SCHIFF. Mr. Speaker, I rise in reluctant support of H.R. 5835, the reconciliation conference report. I will vote for this bill only because there is no longer a better alternative.

I want to stress, however, that I am not reluctant to finally address the budget deficit. Quite the contrary, I believe that the time for exercising this responsibility is long overdue. The debt owed by our Government now totals over $3 trillion. This money must all be repaid someday—and it will be repaid—perhaps by our children and our grandchildren, if we fail to act now.

Further, we must still pay the interest on this debt out of the budget for each current year. Interest alone on the national debt in the fiscal year ending September 30, 1990, reached $175 billion and accounted for 15 percent of all Federal spending. This amounted to two times what the Government spent on the entire Medicare Program. It is absolutely essential to reduce the deficit by $500 billion over the next 5 years. Without the interest payment on the national debt, we could save that amount of money in less than 3 years with no other budget changes.

But, since we do have this huge debt and interest payment, the real issue here does not revolve around the necessity of a new budget approach—but rather, on which approach is best for us to take to reduce the deficit.

Following the defeat of the bipartisan budget summit agreement, Members of Congress split into two factions: the majority supported higher taxes with inadequate spending controls; the minority—including me—supported spending reductions, with no tax increase.

The majority argued that their approach to an increase in taxes was fair. But, I believe that any raise in taxes for the American people is unjustified when we have taken inadequate steps to eliminate excessive and wasteful spending which has instead been allowed to continue. In fact, even while we debate an increase in taxes, pork barrel projects fill the appropriation bills unabated; and, we are all embarrassed by an overseas junket by our own colleagues. Obviously, we have no business discussing additional taxes in this unrestrained environment.

Unfortunately, the majority used its voting strength to not only pass its own bill, but also to prevent the minority from bringing a spending-cut proposal to the House floor for a vote. Congress now has absolutely no chance to move in this more responsible direction.

Mr. Speaker, that sums up the situation as of now. A bipartisan group brings to us, once again, a compromise budget proposal. This proposal, to be sure, contains lower taxes and some future spending controls, which were not contained in the majority House bill. However, it is to be criticized for raising taxes at all. I both spoke against and voted against the procedure in which we now consider this important legislation. Members do not have adequate time to study this proposal. Although its broad outlines are widely known, the details were made available to Members only moments ago. We cannot possibly analyze the legislation or its impact on the American people.

While I am disappointed that the majority in Congress did not adopt my approach to reducing the deficit, it is urgent that a decision be made and that the Government take action to address the deficit crisis. If I had designed this bill myself, it would have been far different from the one before us. But, the real choice I must now make is not whether I do, or do not like this bill—that would be an obvious "No." Rather, the issue I now face is one of alternatives: if this bill is defeated, what would we face as a Congress and as a nation? I believe the answer to that question would be another business as usual budget which ignores the deficit, or even worse, a continuation of the stalemate which has paralyzed our Government for months and resulted in a shutdown of the Government recently. This is particularly unacceptable because our country is in the midst of an international crisis and our President is struggling to hold together a fragile international coalition.

Mr. Speaker, I will vote "yes" on this budget package. Our country cannot endure continued indecision and inaction. Failing to address the deficit problem would be irresponsible and failing to enact a budget at all would be devastating.

Mrs. BOGGS. Mr. Speaker, I rise today to indicate my sincere concern over establishing a user fee for the National Flood Insurance Program. I understand that reducing the deficit and balancing the budget is a difficult, unwieldy process. However, I regret that this budget includes the imposition of a user fee on the National Flood Insurance Program.

As many of you know, Hale, my husband, was the father of this well-conceived program. It serves the practical purpose of helping those who live and work in flood-prone areas to develop a partnership with the Federal Government in supporting their own assistance program and in fostering responsible mitigation and development practices. There was an urgent need to help individuals subject to disaster, to spare the Federal Government huge outlays for outright disaster relief and to encourage communities, developers, and individual property owners to plan and build responsibly for the mitigation of potential flood damage.

The National Flood Insurance Program has served this Nation and the State of Louisiana admirably since its inception in 1968. Increasingly, that service has had a handsome price for the homeowner. In order to take care of the program and deal with tight fiscal conditions, the average premium rates have risen to $250 a year, which, for many homeowners, virtually equals the entire package of other homeowner insurance. From 1981 to 1988, rate increases amounted to 120 percent in order to make the program self-supporting or actuarially sound. The people who benefit from flood insurance have paid their dues through increased premiums throughout the 1980's. I do not see the sense in trying to balance the budget on their shoulders in the 1990's.

Furthermore, implementing a user fee for this program is counterproductive. If fees go up, fewer people will buy insurance, and the policy base will shrink. Affordability is the key to increasing the number of policies in force, and I know that the Banking Committee has been hard at work to find new mechanisms to effectively increase the policy base.

Mr. STANGELAND. Mr. Speaker, I rise to address water quality, wetlands, and Superfund-related provisions in H.R. 5853, the Omnibus Budget Reconciliation Act of 1990.

The Committee on Public Works and Transportation worked with the Merchant Marine and Fisheries Committee to revise provisions in H.R. 4450, a bill to reauthorize the Coastal Zone Management Act of 1972. We included provisions in the House-passed bill particularly related to water quality and the roles of EPA and NOAA. Our committee had also focused on wetlands-related issues in H.R. 4450 and other CZMA reauthorization bills.

The language in H.R. 5853 embodies a compromise. House Public Works and Transportation Committee, the House Merchant Marine and Fisheries Committee, the Senate Environment and Public Works Committee, and the Senate Commerce, Science and Transportation Committee have all worked on the current language regarding water quality.

The House Public Works and Transportation has been involved in development of Coastal Zone Management Act legislation throughout the session. Because of our jurisdiction over pollution of navigable waters, we have held a strong interest in coastal water quality and proposals regarding combined efforts of NOAA and EPA, such as H.R. 4030 and H.R. 4450. For further background, I would refer to the floor statement of Chairman GLENN ANDERSON on passage of H.R. 4450 in the September 26, 1990, issue of the CONGRESSIONAL RECORD, page H8082.

The water quality provisions in the reconciliation bill reflect our committee's comments. I still have some concerns about the bill but believe that on the whole it presents a positive step forward. The Nation should increase its efforts to combat coastal nonpoint source pollution. The bill before us should help.

EPA and NOAA are to review and approve State coastal water quality plans. The Senate and House Public Works Committees have agreed to provisions that call for reduced funding under section 319 of the Clean Water Act for States failing to submit approvable coastal water quality programs. I am concerned this approach toward sanctions might ultimately hurt State nonpoint source pollution control efforts. However, I recognize the need to provide some kind of incentives and sanctions to implement a workable program.

The provisions also require that NOAA consult EPA before recommending any extensions of the inland boundaries of the coastal zone. This is an important requirement and is meant to ensure that inland coastal zones are modified only after appropriate review.

EPA is also required to issue guidance on coastal nonpoint source management measures—that is, best management practices that are economically achievable. Typically these are voluntary measures. Nothing in the legislation provides additional authority to manage or regulate nonpoint source pollution beyond what is already contained in existing law.

As for wetlands, Mr. Speaker, I would merely point out that earlier CZMA reauthorization bills provided more extensive provisions on wetlands. The bill before us today does not contain such provisions. However, our committee, as well as others, plans to consider comprehensive coastal and inland wetlands legislation next Congress.

Finally, Mr. Speaker, I would like to address provisions related to the Comprehensive Environmental Response Compensation, and Liability Act of 1980, also known as Superfund. H.R. 5853 extends the taxes and program authorizations for the Superfund Program. These important, far-reaching provisions will help to ensure more stability and continuity as the Superfund Program continues to mature.

Since its inception, Mr. Speaker, Superfund has been a lightning rod for controversy and criticism. This continues today. Accordingly, our actions in the reconciliation bill should not be construed as an affirmation of the status quo. Instead, we simply want to give the program a chance to mature, the EPA an opportunity to implement mandates and put to use a steady source of funding, and the Congress an adequate amount of time to provide extensive oversight and review.

Also since its inception, Mr. Speaker, the Superfund Program has drawn the serious attention and involvement of the House Public Works and Transportation Committee. With its jurisdiction over toxic waste and surface and ground water pollution, our committee played an integral role in developing the 1980 act and the Superfund Amendments and Reauthorization Act of 1986. This extensive involvement continues today and will certainly continue tomorrow and beyond.

In fact, Mr. Speaker, I would expect our committee to hold vigorous oversight and investigations hearings throughout the next Congress. Now is not the time to neglect the program—which truly is at a critical juncture. Superfund is too important and the risk of complacency too great.

Mr. LENT. Mr. Speaker, the conference report before us extends from December 31, 1991, to December 31, 1995, the taxing authority which funds the Hazardous Substances Trust Fund [Superfund]. I understand that this measure was included yesterday in order to assure the U.S. Environmental Protection Agency [EPA] that Superfund funding will continue beyond next year. I have been advised that EPA had already begun to plan for the possibility that Congress would not extend the taxing authority next year, and would have had to begin to slow work next year if EPA was not assured soon that the taxing authority would be extended beyond December 31, 1991.

Mr. Speaker, this aspect of the conference report should not be interpreted as approval and acceptance of the current Superfund Program for the next 5 years. The Senate Budget Committee report released last summer and most recent action of the House Appropriations HUD and Independent Agencies Subcommittee raise serious questions about this program, as have numerous other reports.

Next year, as we begin the second decade of Superfund, we owe it to our constituents to undertake a thorough review of the structure of the program. We need to understand how it affects the ability of the U.S. Environmental Protection Agency to accomplish the goal of Superfund; that is, the cleanup of the Nation's worst hazardous waste sites. We must also understand how it affects both large and small manufacturers, recyclers, financial institutions, State and local governments, and others. And with this information, we must be prepared to improve this Nation's hazardous waste cleanup law.

Although reauthorization of the Solid Waste Disposal Act—also known as RCRA—is considered a priority of some of the committees with jurisdiction for Superfund, that does not preclude us from considering improvements to the Superfund legislation. This body was able to pass amendments to Superfund in 1984, the same year Congress last reauthorized the Solid Waste Disposal Act. Further, in addition to passing a major reauthorization of Superfund the following Congress, Congress also reauthorized the Safe Drinking Water Act and the Clean Water Act. The Superfund Program is too big and too important to our constituents to allow it to drift into its second decade.

Mr. MCMILLEN of Maryland. Mr. Speaker, today I rise in support of the budget compromise.

These budget negotiations have gone on and on. It is time to put partisanship behind. This is a fair and equitable package. It contains real spending cuts combined with revenue enhancements and tough deficit enforcement mechanisms. This bill is not perfect. I would have preferred a surtax on millionaires and lower cuts in Medicare. But the Republican White House would not budge.

But we can fight this battle another day. However, if the Republicans continue to oppose this package for the sake of the wealthy, they risk changing the meaning of G-O-P from Grand Old Party to "Guard Our Profits."

We have an opportunity to eliminate one of the great uncertainties that is facing this Nation's and world's economic marketplace. A budget agreement would go a long way towards restoring financial calm in a world faced with rising oil prices, and spectre of war. It would also encourage the Fed to ease monetary policy by lowering interest rates. We must, today, show not only our constituents, but the rest of the world, that we are willing to govern.

To not support this budget compromise is a vote in favor of economic anarchy, and against stability and common sense. Without this budget agreement, the wealthy will still pay higher taxes because of the economic downturn that would result. Real assets are depreciating, and the wealthy are already paying a hidden tax caused by our inaction.

This package is also a dramatic improvement over other proposals which have been presented to this House because it does not tamper with the indexing for inflation of tax rates. this would have meant an incidious bracket creep for millions of middle income Americans, and I am happy we have done away with that aspect of the package.

Finally, I am supportive of this budget package because it contains, for the first time, a national policy relating to aircraft noise abatement. This package provides that no airline may add new stage 2 aircraft to its existing fleet, and that all airlines must reduce to 15 percent the total fleet representation of stage 2 aircraft by July 1, 1999. I am especially pleased that original proposals to terminate high density rules, and USURP local authority over noise abatement measures for stage 2 aircraft were eliminated from this final agreement. I think this is a positive step toward a reasonable Federal noise policy that has been long over due.

Let's vote for this budget package, let's vote for real deficit reduction. Let's vote for America's economic future.

Mr. WEISS. Mr. Speaker, my decision to vote against the final budget package is an extremely difficult one.

What I would have preferred—and what I think a majority of my colleagues would have preferred—is a simple, explainable package, which would have imposed a surcharge on million dollar incomes without tampering with deductibility or personal exemptions.

Such a package, we have been told, is unacceptable to the Senate because it is unacceptable to President Bush. Since President Bush has changed his mind on this issue on several occasions, I, for one, would have been willing to test the theory that it would have been ultimately unacceptable to him.

There are many reasons to support this budget package. It protects low-income elderly and disabled beneficiaries from the impact of the higher Medicare payments contained in the original summit agreement; it contains reductions in Medicare which mirror the House-passed Democratic alternative of $10 billion in savings as opposed to the $30 billion sought in the original summit proposal; it is in keeping with the spirit of the House-passed plan which I supported by reestablishing some progressivity in the Tax Code and provides for a tax cut for those families with incomes of $20,000 or less. In addition, many Members take the position, which I think has merit, that we must take action and begin to reduce the deficit which will strangle us if we allow it to continue.

This package is going to pass without my vote. My reasons for voting "no" are as straightforward as this bill is complicated. To avoid simply raising the rates at the highest levels of income, this package contains proposals which limit deductibility of expenses for incomes of $100,000 or more, phases out personal deductions for higher income taxpayers, and increases the amount of income subject to the Medicare tax from $51,300 to $125,000.

The limitation on deductibility is the most troubling aspect of this troika of revenue raisers. This means that for those earning income in excess of $100,000, 3 percent of mortage interest expenses, and State and local property and incomes taxes will be excluded from allowable deductions. This plan makes no distinction between single taxpayers and families as to income, a flaw which even its sponsor says should be corrected. More important, it is directly aimed at high income, high State and local tax areas like New York City. Even though the package calls for what seems to be a modest exclusion of 3 percent, the original Senate proposal called for an exclusion of 8 percent. Once this precedent is adopted

there is nothing to prevent the percentage from going even higher. In the meantime, States and cities like New York, which have continued to offer much needed services while Federal dollars have been reduced, will suffer.

Presently in New York, we have serious budgetary problems. The city is considering levying an income tax surcharge and the State is facing a billion dollar deficit. Limits on deductibility will only compound our problems.

It is no secret that we do have families with high incomes in New York—and high taxes and expenses. The combination of reducing deductibility, phasing out exemptions based on family size, and increasing the Medicare tax, again without distinguishing between individuals and families, places the revenue burden of this budget package squarely on the shoulders of many New Yorkers.

There are other serious problems with this package. Even though the Medicare cuts are not as bad as the original summit plan, those cuts still hurt. Essentially, the burden for providing for Medicare services has been shifted to paying patients. Older Americans will be hit hard by the increase in the deductible from $75 to $100 or more, and the increase in the premium from $28.60 to approximately $46.20. These increases are difficult to bear for many older Americans who live on fixed incomes.

The burden of these increased expenses could have been lifted if Congress simply would have cut more from the unacceptably high defense budget, which stands at $297 billion and is even more if the cost of Operation Desert Shield is calculated in. The programs initiated in the cold war, like the Stealth bomber and star wars, cost the taxpayer billions of dollars, but these programs fail to recognize the obvious reality that the cold war is over.

Even if Congress was to reap savings from these programs, this budget package disallows any shifting of savings between discretionary and defense accounts, effectively ruling out any chance for a peace dividend before fiscal year 1994.

A simpler—and fairer—way to deal with the budget problem would have been to modify this package by imposing a surcharge on million dollar incomes, retaining full deductibility, seeking deeper cuts in the defense budget, and allowing fewer increases in Medicare beneficiary payments. I am hopeful that in the 102d Congress we will correct this plan and get on with the business of putting our economic house in order.

Mr. OBERSTAR. Mr. Speaker, I would like to clarify the intent of section 9126 in the aviation title of reconciliation, a section dealing with the four high-density airports, Chicago O'Hare, Washington National, New York's LaGuardia, and Kennedy. At these airports, aircraft operations are limited by Federal law or regulation to reduce congestion and limit noise.

Some of my colleagues have expressed concern that the rulemaking contemplated by section 9126 might increase aircraft operations at the four high-density airports, endangering safety and increasing congestion and noise. These concerns were justified with respect to the bill which the Senate passed, but I can assure my colleagues that the conference bill now before us does not raise these problems.

The conference bill requires the Secretary to initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at the high-density airports to promote new entry. The use of the term "existing capacity" means that the rulemaking would not consider increases in hourly or daily flights at the high-density airports. The number of flights would continue to be limited by the FAA's slot regulations, and in the case of National Airport, by law.

I would also note that section 9126 only directs the Secretary to initiate a rulemaking proceeding. The Secretary is not directed to reach any particular decision in the rulemaking. At the conclusion of the rulemaking, the Secretary is free to decide that there should be no changes in the current system of allocating slots.

My colleagues should also be aware that the aviation title of reconciliation bill will greatly reduce noise by requiring the airlines to replace 85 percent of their noisiest aircraft by mid-1999 and the remaining 15 percent no later than 2003. This phaseout of stage 2 aircraft will reduce the number of persons living in noise-impacted areas near airports from 3 million today to about 1 million early in the next century.

In conclusion, I am pleased to advise my colleagues that the aviation portion of the reconciliation bill will greatly reduce noise, and that the bill will not increase operations at the high-density airports.

Mrs. LOWEY of New York. Mr. Speaker, I rise in very reluctant support of this final budget agreement.

This budget is far from perfect. I strongly believe that we should have cut waste and fraud more, cut the military more, protected our families and our senior citizens better, and raised taxes less.

However, after long and careful consideration, I have decided to support this budget package. It is clear to me that this is the best plan which can possibly be achieved at this time. Not only is this budget plan far preferable to, and far more progressive than the earlier plan devised by the President and congressional leaders, but failure to adopt this plan could be catastrophic for our Nation.

Failure to move forward at this stage would signal the unwillingness of Congress to deal effectively with one of our Nation's most important problems: The Federal budget deficit. It would contribute substantially to our Nation's growing economic woes. And very likely, it would result in a final budget package that would harm New York's families, senior citizens, and veterans far more than the present package.

This is one of those times in the history of our Nation when political posturing and partisan bickering must be put aside, when our priority must be serving the national interest and protecting American families. Although I know in my heart that we could have done better, it is of overwhelming importance to end the long budget deadlock, achieve substantial deficit reduction, and protect American families from further harm.

I agree with the critics of this plan that we should do more to cut waste, fraud, and abuse in the Federal Government before we resort to higher taxes on any Americans. We know about the influence-peddling at HUD, the widespread abuses by Pentagon contractors, and the boondoggle subsidies for wealthy farmers and agribusiness. We also know that New York taxpayers are being unfairly burdened as a result of the savings and loan bailout, which will cost this Nation more than it cost to fight World War II.

Rather than raise taxes substantially, we should act forcefully to eliminate waste, fraud, and abuse. And we should jain savings and loan criminals and seize their assets to recover more of the costs of the savings and loan bailout.

While I am pleased that the overall tax package is more progressive than earlier proposals, I am deeply disturbed about the impact of certain new taxes that are imposed by the final budget agreement. I have repeatedly expressed my strong opposition to limits on the deduction for State and local taxes. The final agreement will reduce the itemized deductions of some taxpayers by 3 percent. Although this is preferable to earlier proposals for a reduction of 8 percent or more, I strongly believe that any limitation on deductions which extends to State and local taxes amounts to double taxation. Fortunately, this particular provision is sunset after 5 years, and I hope that we will work to repeal it long before that.

I am also very concerned about provisions of the final budget agreement which phase out the personal exemption for certain taxpayers. This proposal places an unfair burden on some families in my district which are already being taxed too heavily. These increases are unwarranted, and they should not have been included in this package.

I am deeply disappointed that the President chose to oppose an alternative which would have achieved much greater fairness: A tax surcharge on millionaires. During the past 10 years, the super-wealthy in this Nation have been the beneficiaries of numerous tax cuts and tax shelters. As we attempt to achieve major deficit reductions, it makes eminent sense to call upon this group of Americans to pay more of their fair share. It would have been far preferable to impose a surcharge on millionaires, while further limiting the new tax burden on middle-income Americans.

Despite my specific disagreements with these tax proposals, I am pleased that the present package is greatly improved from the original budget summit agreement between the President and congressional leaders, which sought to place the majority of the tax burden on the middle class. Furthermore, if this package fails, there is a strong likelihood that attempts would be made to place more drastic limits on the deductibility of State and local taxes and dig deeper into the pockets of middle-income Americans.

Although I am pleased that Medicare cuts have been significantly reduced, I remain opposed to the extent of cuts in this package. The President had originally proposed Medicare cuts totaling more than $90 billion. The budget summit agreement reduced these cuts

to $60 million. Fortunately, this final agreement reduces Medicare cuts still further, to less than $44 billion, with most of the reductions to be borne by Medicare providers, rather than beneficiaries.

I feel strongly that we should not continue to place the burden of deficit reduction on the backs of our Nation's senior citizens. Year after year, time after time, the elderly have been called upon to bear an inordinate share of the deficit reduction burden. This is simply wrong. Rather than contemplating further damaging cuts in the Medicare Program, we should be seeking ways to further meet the health care needs of senior citizens—through preventive care and home-based long-term care, both of which will save our Nation money in the long run.

Further, I must express my opposition to the changes in veterans programs contained in this legislation. Our Nation's veterans, who have given so much to protect our freedom, deserve fairness from the Federal Government. I am pleased that, despite these cuts, this year's VA-HUD appropriations measure contains significant expansions in veterans health care and compensation. We should not even consider further cuts in veterans' entitlements.

In addition, we cannot continue to overlook the fact that it is now possible to achieve large savings in our Nation's military budget without harming our national security. Such savings could be used to lessen the impact of cuts in Medicare or tax increases in this package.

In failing to cut the military budget substantially, we are abandoning a historic opportunity to reorder our Nation's priorities in light of the end of the cold war. Despite the dramatic changes in the Soviet Union and Eastern Europe, we continue massive spending in preparation for an east-west conflict—spending on such wasteful weapons systems as star wars, the MX missile, the trident II missile, and others.

We must remain strong, and we must be able to respond quickly and effectively to regional crises. But now is the time to acknowledge that continued massive spending on nuclear weapons is not in our Nation's best interests. Now is the time to acknowledge that our allies must bear their fair share of the burden of defending freedom around the globe. They must ante up, or we will go belly up.

As a Member of Congress, I am committed to reordering our Nation's priorities to revitalize our economy, strengthen our families, expand opportunities for our children, and meet urgent human needs. I am well aware that this budget package is not the best we could possibly achieve so far as these important goals are concerned.

However, if we fail to approve a budget tonight, these goals may become more distant than ever. Our economy is already reeling, and failure to cut the deficit could sent it into a nosedive, threatening the economic future of our Nation. The result will be fewer opportunities for all Americans, and a significant threat to the future of our families and children.

A total breakdown of the budget process would raise the risks of a Government shutdown and across-the-board cuts in programs of importance to all Americans, from crime prevention and anti-drug efforts to social security and Medicare, from education to pollution control, from housing to air traffic control. It would also raise the risks that a future budget package will harm American citizens even more—through damaging tax increases and damaging cuts in programs on which they rely.

However, the real test for Congress tonight is a test of leadership. Tonight, we face a responsibility which is larger than any of the specific provisions contained in this package—a responsibility to end the long paralysis over the budget and to achieve the deficit reductions we all know are needed to restore fiscal integrity in our Nation. Tonight, we are called upon to put aside partisan differences and parochial concerns, and act collectively in the interest of our future and the future of our children.

All across America, people are wondering whether Congress has the ability to put aside petty concerns, to stand up to the lobbyists and the special interests, and to make the tough decisions which are required to put our finances in order once again.

This is the largest deficit reduction package in the history of our Nation. It is the most important step toward fiscal integrity in recent history. And although it is flawed, it deserves our support.

Of course this budget plan could be better. But the very future of our economy hangs in the balance. If we hope to revitalize our economy and restore our competitiveness as a nation, if we hope to achieve a secure and prosperous future for ourselves and our children, then we must do what we know is right: We must act now to reduce the deficit.

Mr. Speaker, we could have done better, but it is now time for Congress to prove that it can act forcefully in response to a national crisis. Partial victory is far preferable to total defeat, and for that reason, I call upon my colleagues to join me in approving this flawed, but necessary, deficit reduction package.

Mr. HENRY. Mr. Speaker, one of the major components of the budgetary savings achieved by the Education and Labor Committee in this budget reconciliation package is a substantial increase in the maximum penalties which may be assessed for violations of standards promulgated by the Occupational Safety and Health Administration. Just as with the increase in maximum fines for mine safety and child labor, I share the view of those who have argued that it is inappropriate to make these penalties a matter of gaining revenue, and therefore this change ought not be done through a budget bill.

OSHA is a unique program in that in nearly half of the States, the program is administered by the States, which have their own safety and health laws and enforcement, and whose penalties do not revert to the Federal Treasury but to the respective States, in some cases for earmarked funds. Given that the change we are making in the Federal statute is being made in a revenue bill, for revenue purposes, I do not believe that our action in this bill should be construed as requiring the States which operate their own occupational safety and health programs under OSHA's approval to adopt the same changes.

It is my understanding that the current administrative practice under the OSH Act for approval of State plans involves determining whether the State plan is "at least as effective" as the Federal OSH Act. There are a number of factors used in making this determination, such as the maximum amount of civil penalties, enforcement mechanisms, legal mechanisms, staffing levels, and others. Accordingly, even though the Federal penalties are being increased, this would not necessarily require corresponding increases in the State penalty level. All factors, including but not limited to, the amount of the penalties should be considered in determining whether a State plan is "at least as effective" as the Federal OSH Act.

One of the things we have to be concerned about is the possibility that if the States were required to amend their statutes to follow these changes in the budget bill, that some State legislatures may decide simply to discontinue the State program. In addition to losing the strengths of the State program, such a decision would have the reverse effect on the Federal budget from that which we seek, that is, it would increase costs to the Federal Government.

Mr. CARDIN. Mr. Speaker, I rise in support of the conference report on the budget reconciliation. Several weeks ago when I indicated my support for the budget summit, I said my principal reason for supporting the resolution was that it would mean real deficit reduction. This conference report carries out that objective. The growth of our budget deficit will be reduced by almost $500 billion over the next 5 years. It is the largest attack on the deficit of this country in its history and far greater progress than any of us predicted when we started the 101st Congress in January 1989.

When I indicated my support for the budget resolution, I also indicated that there were two areas where improvements in the budget resolution were necessary. I said the initial Medicare cuts recommended by the President were unjustified. This conference report has adopted a recommendation which I co-authored with the Democrats on the Health Care Subcommittee of the Ways and Means Committee which has reduced the increased cost to the Medicare beneficiary to a much more acceptable level.

My second objection dealt with tax fairness. The President's proposal quite frankly imposed too great of a tax burden on our middle income taxpayers relative to high income taxpayers. Again, this conference report has answered that concern. Those taxpayers in the highest income brackets will pay the greatest additional taxes.

This conference report, along with the appropriations bills, will ensure that all of the new revenues and spending reductions will go to deficit reduction. The revenue represents less than 30 percent of the total reduction with spending cuts comprising the lion's share of the deficit reduction targets. We have listened to our constituents when they have said cut the deficit and look first to spending cuts and only then to new taxes with any new taxes strictly dedicated to reducing the deficit.

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Mr. Speaker, this conference report is the first major step to reducing our budget deficit.

Mr. LEWIS of Florida. Mr. Speaker, I rise in strong support of the provisions relating to the Federal Aviation Administration Research and Development Programs contained in the Budget Reconciliation Act.

The FAA R&D section authorizes funding for fiscal years 1991 and 1992. In addition, the section mandates that the Agency undertake a catastrophic failure prevention research program. This is the substance of H.R. 4887, which I introduced earlier this year. The purpose of this program is to prevent accidents like the Sioux City crash in 1989 and the loss of the top of the Aloha Airlines aircraft that occurred in a 1988 flight. Each accident occurred because of undetected cracks almost two decades old.

The crash of flight 232 in Sioux City, IA, last July, was a preventable accident caused by the disintegration of an engine fan disk. The problems began as an undetected crack that grew for almost 17 years. Until this crash, FAA had not mandated the type of inspections that would uncover the existence of these flaws, nor had they even studied the possibility that such an accident could happen.

The Aloha Airlines accident in April 1988 was caused by cracks and corrosion in the metal skin that began in the early 1970's. The 1988 accident was characterized as a 1 in 10 billion occurrence. However, since that time more intensive inspections have found numerous aging aircraft with extensive cracks. This is another example of agency tombstone technology that was begun to correct a problem only after a major accident.

These were preventable accidents, but the FAA efforts were not sufficient to detect the problems. The section in this bill requires the FAA to develop a workable research program to detect these and similar problems before they become catastrophic accidents.

It is no longer acceptable to the flying public to wait for an accident before beginning the program in tombstone technology. Instead, we must have aggressive research programs directed toward the prevention of all aviation fatalities.

The bill authorizes $10 million for the program for 1991 and a like amount for 1992.

Contained within this effort is the requirement that FAA investigate new and innovative approaches to inspecting aircraft for the effects of structural aging. Specifically, the legislative intent is for FAA to develop more effective nondestructive testing technology that would reduce human error and improve testing "on the wing," thereby reducing hanger teardown inspections. This would significantly improve the level of safety of aging aircraft.

The Aviation Medicine Program contains earmarks of $10 million in 1991 and $10 million in 1992 for research in drug and alcohol testing. The current Federal standard of 0.04 percent blood alcohol concentration for operation of commercial carriers is based on limited research and may place aviation safety at risk. The legislation's intent is to direct the FAA to establish a research program to develop scientifically valid maximum allowable levels of alcohol, drugs, or other substances in the blood of pilots, air traffic controllers, and others who are in safety critical positions. The goal of this new research initiative is to determine a scientifically valid maximum safe level of alcohol, drugs, or other substances in the body, below which there is no risk of decreased human performance that would lead to error thereby endangering the flying public.

Currently, there is no test method used for pilots, controllers, or others in safety critical positions to determine if they are within the allowable blood concentrations for alcohol, drugs—including prescriptions—or other substances before they assume their duties. Therefore, the legislative intent is to mandate that the FAA establish a research program having as its goal the development of a rapid technology that can be used to assess the ability of pilots, controllers, or others in safety critical positions to properly perform their required duties. This technology is to be used to detect skill impairment due to alcohol, drugs, or other substances.

There is currently no reliable data base, or data collection mechanism, by which FAA or the NTSB can determined the level of alcohol abuse in aviation. While the data seems to indicate that there is no serious problem, other indicators suggest othewise. It is vital to the public confidence in aviation that a valid determination be made regarding the degree to which alcohol, drugs, and other substances pose, or do not pose, a hazard to aviation safety. The legislative intent is that FAA establish such a reseach effort and to present a report to Congress by September 30, 1992 on the status and progress of the research program.

I congratulate Chairman ROE and ranking Republican member WALKER for their leadership and support of the FAA R&D provisions in this legislation. I also want to thank Senators HOLLINGS, FORD, DANFORTH, and MCCAIN for their support.

As most of my colleagues know, the staff is responsible for much of the detailed work necessary to bring this legislation before the House. I would like to recognize the efforts of Rob Ketcham, Tony Taylor, Dave Clement, and Chris Wydler of the Science Committee; and Sam Whitehorn, Carol Carmody, and John Timmons of the Senate Commerce Committee.

CONFERENCE REPORT ON H.R. 3789, STEWART B. McKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT OF 1990

Mr. HALL of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 530 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 530

Waiving certain points of order against consideration of the Conference Report on the bill (H.R. 3789) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes, and against its consideration.

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 3789) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the Homeless, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. HALL] is recognized for 1 hour.

Mr. HALL of Ohio. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 530 is the rule providing for the consideration of the conference report on H.R. 3789, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990.

The rule waives all points of order against the conference report and against its consideration. This rule is necessary so that we may expeditiously bring up the report which was agreed to by the conferees. The rule also provides that the conference report will be considered as read when called up for consideration.

Mr. Speaker, this is a very important piece of legislation. This conference agreement will authorize $1.8 billion for fiscal years 1991 and 1992 for emergency homeless assistance. The measure has provisions to help house people. But it also has important provisions to address the comprehensive range of services needed to help homeless people get back on their feet. The bill offers help in health care, job training, education, and counseling.

In addition, Mr. Speaker, I am pleased to note that the bill has authorized food assistance to be distributed to needy people. Under the food assistance provisions, the Government will draw upon the expertise of nonprofit organizations that have experience offering food and shelter to the homeless. As chairman of the Select Committee on Hunger, I am glad to see this cooperative public-private approach taken.

As one who has personally worked with homeless people, I have seen many people suffering. As a nation, we cannot allow this to continue. I support the conference agreement, which addresses the comprehensive problems faced by those who have no home. This rule was unanimously voted out of the House Rules Committee, and I urge my colleagues to adopt it.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to commend the chairman and the ranking Republican member of the Banking Committee, the gentleman from Texas [Mr. GONZALEZ] and the gentleman from Ohio [Mr. WYLIE], for their leadership in producing this conference

report. I also would like to commend the gentlewoman from New Jersey [Mrs. ROUKEMA], the subcommittee ranking Republican, for her work in bringing this legislation to the floor.

Mr. Speaker, we are all concerned about the plight of the homeless and especially homeless families with young children. The question is, what is the best way to solve the problem.

Mr. Speaker, I support this rule so that the House may get down to business and consider the merits of this important legislation.

Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I have no requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. GONZALEZ. Mr. Speaker, pursuant to the provisions of House Resolution 530, I call up the conference report on the bill (H.R. 3789) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 530, the conference report shall be considered as having been read.

(For conference report and statement, see proceedings of the House of Thursday, October 25, 1990.)

The SPEAKER pro tempore. The gentleman from Texas [Mr. GONZALEZ] will be recognized for 30 minutes, and the gentlewoman from New Jersey [Mrs. ROUKEMA] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas [Mr. GONZALEZ].

PARLIAMENTARY INQUIRY

Mr. GONZALEZ. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. GONZALEZ. Mr. Speaker, would it be proper to move the previous question at this time? Is it necessary or not?

The SPEAKER pro tempore. If no one wishes to debate the issue, the Chair would certainly entertain that request.

Mr. GONZALEZ. Mr. Speaker, we do have requests for time.

The SPEAKER pro tempore. Then the gentleman from Texas [Mr. GONZALEZ] will proceed, and he is recognized for 30 minutes.

Mr. GONZALEZ. Mr. Speaker, the McKinney reauthorization bill provides a most comprehensive approach to dealing with the Nation's homeless. As much as I praise all of the efforts that have been put into this, by not only the committee of jurisdiction, the Committee on Banking, Finance and Urban Affairs, and the Subcommittee on Housing, but the four or five other committees that had sequential referral of this bill for their great consideration in record time; nevertheless, it is with a great deal of sadness that I appear before the House to ask speedy approval, even though somewhat late, of this legislation, for the reason that I had hoped we would not tend to make permanent what we initiated as an emergency—homeless assistance attempts several Congresses ago, but which finally materialized in the last Congress because this is a second authorization of a comprehensive or fairly comprehensive homeless assistance act.

Mr. Speaker, the reason I say that is that it was our subcommittee that first brought to the Nation and brought to its attention what was obviously, as early as December 4 1982, a problem of new dimensions that I, for one, who have good memory and have the years to recall the Depression, had not seen these conditions; that is, families, not the traditional ne'er-do-well or what we used to call in the Depression the hobo, but families—mothers, fathers, with one or two children—living in automobiles, huddling under freeways, and not just in the North, but all over the country, even in the Sun Belt, even in my own city of San Antonio where I witnessed that year a family, a husband and wife with one kid, living in a parked car in a city park of San Antonio.

We then had, after we had that initial hearing on December 4, 1982, the death by freezing to death of an individual here on the streets of Washington. We had a couple in New York, and one in Chicago, and it became obvious that the nature of the problem was new and novel and had to have a cause. We related it to the abandonment of a commitment on a national basis to housing or shelter.

Mr. Speaker, shelter throughout mankind's existence is one of the three indispensable facts of necessity of life: Food, clothing, and shelter. It is just painful for me to say that we are going to request what I consider to be a very fairly sizable amount of money because throughout the land we still have reports of a growing number of homelessness with this disturbing incident of several hundred thousand children, children in America, in a homeless environment.

□ 1130

So this is the best attempt, and I want to applaud the efforts of so many people.

Mr. Speaker, while the bill authorizes emergency assistance, it is greatly needed because of the millions of homeless persons on our streets who are in dire need of shelter, food, and health care.

This is the second reauthorization of the McKinney Homeless Programs, which represents the Banking Committee's as well as the other committees of jurisdiction, efforts to provide the bare necessities to our Nation's homeless. The bill authorizes a total of $937 million for fiscal year 1991 and $941 million for fiscal year 1992 to provide emergency assistance to the homeless.

The bill represents the legislative efforts of five committees of jurisdiction—Banking, Energy and Commerce, Education and Labor, Government Affairs, and Veterans' Affairs. Each committee has worked diligently to provide their individual outstanding contribution to this conference report.

This bill also represents Congress' longstanding commitment to addressing the need of assistance to the homeless. In December 1982, the Banking Committee held the first major congressional hearing which brought national attention to the issue of homelessness in America. Since that time we have continued our efforts to assist the homeless, principally through the reauthorization of the Stewart B. McKinney Homeless Assistance Act. Clearly, this bill is not a pancea; however, it does provide a modicum of assistance to our Nation's most needy citizens.

This bill is a bipartisan effort. Of particular note I would like to recognize the outstanding contributions of my colleagues BRUCE VENTO and the ranking minority member of the Banking Committee, CHALMERS WYLIE, and the ranking minority member of the Housing Subcommittee, MARGE ROUKEMA, each of whom have greatly added to this bill.

Given the urgent need to assist the homeless, I ask that the House fully support this bill.

Mrs. ROUKEMA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3789, to reauthorize the McKinney Homeless Assistance Act. Despite the fact that the provisions of the McKinney Act were included in the National Affordable Housing Act passed by this body yesterday, I believe it is important that we bring this bill up today in order to more formally recognize the importance of this act.

I want to take this opportunity to recognize and congratulate our chairman, Mr. GONZALEZ, for his total dedication to the poor and homeless in this Nation. I also want to commend the gentleman from Minnesota [Mr. VENTO] for his dedication and commitment to these efforts on behalf of the McKinney Act and those it serves. No Member of this body, other than the namesake of this legislation, has been so readily identified with the goals of this legislation.

The McKinney Act is designed to respond to a crisis of people and of families without shelter. Clearly, the Congress, in conjunction with State and local governments, must continue to

respond to this growing national problem. As the chairman has.

Despite the commitment of the Congress, and the work of thousands of dedicated individuals and organizations in the field, homelessness not only continues, but is sadly on the rise.

A recent report of the U.S. Conference of Mayors stated that requests for emergency shelter had increased by 25 percent in some 27 cities surveyed last year; 22 percent of those requests went unmet due to the lack of resources. It is these unmet human needs that are the targets of the programs in the McKinney Homeless Assistance Act.

H.R. 3789 provides that all McKinney Act homeless programs be reauthorized through fiscal year 1992. Budget authority for section 8 MOD REHAB SRO would be increased to $80 million, and supplemental assistance for facilities to aid the homeless would be authorized at $30 million. Supportive housing would be expanded to $150 million.

The Emergency Shelter Grant Program would be authorized at $131 million.

HOMELESS PREVENTION

Of particular interest to me is the provision which allocates funds for homeless prevention.

For several years now the Congress has seen a disturbing increase in the number of homeless people in our country.

As has been established by many reports and by testimony before the Housing Subcommittee, the causes are several and complex but in many cases simply involve economic disruption.

While most of HUD's homeless programs assist in building or rehabilitating shelters for use by providers to help people who are already homeless, there are some funds available in McKinney for essential services and prevention. However, there has traditionally been a 20-percent limit on the amount which States and local governments can use to help prevent homelessness.

While prevention is hard to sell because it is difficult to prove exactly how successful this type of program can be, a recent GAO report concluded that while prevention activities are a necessary component of the effort to combat homelessness. However, not enough funds are available.

State officials have indicated that intervention before a family becomes homeless is three times more cost-effective than putting the family in an emergency shelter and 30 times more economical than a welfare hotel.

And, one of the beneficiaries of this kind of renewed emphasis on prevention are single mothers who continue to represent the fastest-growing component of the Nation's homeless population.

The Shelter Plus Care Program, which I strongly promoted and endorsed, provides rental assistance to homeless individuals, and their families, who are seriously mentally ill, or have chronic problems with alcohol, other drugs, or both.

Under the program, rental assistance is linked to supportive services in order to assist program participants to live independently.

The program requires a local match for services which would include drug counseling; education; job training; employment counseling; and any other services the local communities deem appropriate to allow participants to transition from homelessness to independent living and permanent housing.

This local match requirement is a key because it represents the heart of the Federal-local cooperative effort to assist those homeless who need special attention.

More than most elements of this bill, it defines our purposes and focuses on the goals, that is, to not perpetuate homelessness but to get at the root causes of our growing homeless population.

As a result of these facts, we were successful in offering two amendments to the McKinney Act which raised the existing cap on "essential services" within the Emergency Shelter Grant Program and raised from 20 percent to 30 percent the amount of funds which could be used for prevention activities.

Finally, the legislation creates two innovative initiatives.

First, it provides for the administration's Shelter Plus Care Program. Shelter Plus Care authorizes HUD to provide rental housing assistance matched with supportive services for those homeless individuals who suffer from chronic alcoholism or drug abuse or who are mentally ill.

The second program authorizes a security deposit loan fund through which loans can be made to homeless individuals for a security deposit or a first month's rent for those who are trying to make the transition to permanent housing.

Mr. Speaker, I cannot overstate the critical importance of this legislation in helping to address our national problem of homelessness and I urge my colleagues to support this legislation.

Mr. WYLIE. Mr. Speaker, I rise in support of the conference report to accompany H.R. 3789, to reauthorize the Stewart B. McKinney homeless assistance programs. As Chairman GONZALEZ indicated, for programs under the Banking Committee's jurisdiction, the provisions in this conference report are identical to the provisions contained in title VIII, subtitle C of the conference report to accompany S. 566, the National Affordable Housing Act, which passed the House yesterday. This measure is necessary since our McKinney homeless assistance programs are covered by other committees as well.

Mr. Speaker, the chairman of our committee, Mr. GONZALEZ, again deserves special recognition for his leadership on this legislation. Mrs. ROUKEMA, the distinguished ranking member of the Housing Subcommittee deserves our admiration for the bipartisan cooperation in producing this conference report. Finally, I want to recognize and congratulate, the gentleman from Minnesota, BRUCE VENTO, for his tireless efforts on behalf of the McKinney Act. It clearly required a cooperative teamwork effort in order to develop an effective legislative response in attacking homelessness.

The conference agreement provides that all McKinney Act homeless assistance programs under the Banking Committee's jurisdiction would be reauthorized through fiscal year 1992. Funding for the section 8 Moderate Rehabilitation Single Room Occupancy [SRO] Program would be increased to $80 million. Supplemental assistance for facilities to assist the homeless would be authorized at $30 million. Supportive housing would be expanded to $150 million. The successful Emergency Shelter Grant Program would be authorized at $131 million. And the essential service cap under which homeless prevention activities falls, would be increased from 20 percent to 30 percent. This provision will provide our local communities much needed flexibility to target emergency shelter grant funds for necessary services to prevent homelessness.

The conference report also authorizes a new initiative proposed by the administration. The administration's Shelter Plus Care Program, which will couple long term housing assistance and supportive services for the homeless who are chronically mentally ill, or suffering from problems related to alcohol or drug abuse. This is truly an innovative concept proposed by Secretary Kemp which addresses two special need areas which are not well served by current McKinney Act programs that are designed to assist those who are temporarily homeless.

Mr. Speaker, based on over 3-years of experience with our existing McKinney Act programs under the Banking Committee's jurisdiction, this conference report also includes a restructured block grant approach beginning in fiscal year 1993. The restructured program authorizes the HUD Secretary to allocate funds for HUD administered McKinney Act programs to States and local communities in a more efficient, flexible, and consolidated basis. The formula approach is delayed for 2 years in order to allow the Secretary time to review the 1990 census data and develop a formula using objective criteria which reflects local communities need for homeless assistance.

Mr. Speaker, for programs under the Banking Committee's jurisdiction, the aggregate funding is slightly over the President's budget request for fiscal year 1991. Our Banking Committee Program total is $603.4 million, while the President's budget request for 1991 is $587.2 million.

Our favorable consideration of this conference report is necessary to assure that other programs under the McKinney Act outside of

the Banking Committee's jurisdiction are permitted to continue.

Mr. Speaker, I urge adoption of the conference report.

Mr. GONZALEZ. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota [Mr. VENTO] who has been, as was well-stated by the ranking minority leader on the subcommittee, the gentlewoman from New Jersey [Mrs. ROUKEMA], a leader in this respect.

Mr. VENTO. Mr. Speaker, I rise in strong support of the conference report on H.R. 3789, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990. Mr. Speaker, may we never learn to accept the proposition of homeless Americans. Clearly in the 1980's and now in the 1990's this phenomenon is still growing. The new American dilemma, homelessness, speaks to fundamental change in our society.

The production of this conference agreement is the result of some very hard work over the past 2 years. In addition to reauthorizing the current McKinney programs and creating new education provisions for homeless children, a new demonstration program for homeless prevention act is included in this conference agreement, along with some very necessary modifications to the Federal Surplus Property for the Homeless Program.

Mr. Speaker, this measure, this agreement demonstrates the continuity of national policy and national values to address the crisis of homelessness at the local level where the great needs occur. The conference agreement authorizes over $900 million in each fiscal year 1991 and fiscal year 1992 which includes over $380 million for the administration's Shelter Plus Care Program. The conference agreement reauthorizes vital programs serving the homeless, including emergency shelter, transitional housing, job training, adult and youth education, health care and substance abuse treatment, and programs targeted to homeless veterans. These provisions recognize the multifaceted nature of homelessness.

The agreement does carry over an agreement reached on the 1990 housing conference of S. 566, which requires a study of a possible allocation formula and the feasibility of a block grant for Emergency Shelter Grants, Supportive Housing and Supplemental Assistance for the Homeless [SAFAH] over an 18-month period. Should the Department of housing and Urban Development [HUD] determine a feasible formula and/or Congress approve a formula, these three programs could begin to be allocated by formula (block granted) after being reauthorized beginning in fiscal year 1993. I have questions regarding the further applicability of a block grant of these limited funding levels. However, the agreement reached in the Housing conference committee is a reasonable compromise that will allow Congress to fully review this issue in the next session prior to reauthorization and implementation of such a change.

Mr. Speaker, it has taken extraordinary cooperation from nine committees in the House and Senate along with the administration to achieve this, the 1990 McKinney Act, H.R. 3789. This measure reaches out to the poorest of the poor, providing basic human service needs for the homeless. Mr. Speaker, national homeless assistance has been a congressional initiative starting early in the last decade. Congressman CHALMERS WYLIE joined me in writing the first provisions. Since then, hundreds of Members of Congress have enlisted in this initiative. We were finally joined in recent years by the administration. All of us would prefer that this problem not exist but certainly, congressional indifference to the homeless would be worse. We are responding both with these emergency measures, transitional provisions and improved housing actions in the housing and community development laws that we have enacted.

I want to thank the committee members and staff in the House who have worked so hard on this legislation at a very hectic time and would especially thank Chairman GONZALEZ and his staff and Congresswoman MARGE ROUKEMA for their active role in getting this conference agreement to the floor intact, but I'm especially grateful to Kirsten Johnson, my personal legislative assistant, who has monitored and greatly assisted me in the past 2 years with this measure.

I urge my colleagues to support this agreement and to help render this bill nonessential in the future.

□ 1140

Mr. GONZALEZ. Mr. Speaker, I yield 5 minutes to the gentlewoman from Illinois [Mrs. COLLINS], representing the Committee on Government Operations.

Mrs. COLLINS. Mr. Speaker, I am pleased to join the chairman of the Banking Committee, the gentleman from Texas [Mr. GONZALEZ], in urging support for the conference report on H.R. 3789. With four other colleagues from the Committee on Government Operations, I served as a conferee on matters in H.R. 3789 relating to providing surplus property for the homeless.

Before we passed the McKinney Act in 1987, we at the Federal level had virtually ignored the needs of homeless for emergency food and shelter, education, or AFDC benefits. The act required that those life-giving benefits be provided. There had been no Federal policy to address the serious shortage of shelter for the homeless. The act, for the first time, made surplus Federal property—land, buildings, and supplies—available to organizations assisting the homeless.

My Government Activities and Transportation Subcommittee of the Government Operations Committee has direct jurisdiction over the General Services Administration's implementation of this landmark legislation. In fact, I am proud to be able to say that the McKinney Act's provisions regarding surplus property are the result of my subcommittee's lengthy, and ongoing work with the Senate Governmental Affairs Committee.

In the past fiscal year, surplus supplies like clothing and furniture were transferred to homeless assistance providers. These supplies orginally cost the Government $4.6 million. As for surplus buildings and land, through June 15, 1990, there have been 28 no-cost leases or permits for such property to homeless providers. Many applications for other properties are pending.

Even so, barriers existed to making surplus land and buildings available. That was confirmed in a General Accounting Office report, dated October 9, 1990, that I and Senator GLENN requested. GAO's findings and our own investigation assisted us in joining Senator GLENN to fashion an amendment to the McKinney Act to make sure that assistance providers get all needed information about available surplus properties and that they will have a full and preferred opportunity to apply for such property.

That amendment was refined over the last 2 weeks, and the key elements now appear in the conference agreement. Those changes amend section 501 of the act, and are found in title IV of H.R. 3789. Its purpose is to give homeless assistance providers more and better information about the availability of suitable unused or underutilized property for the homeless. The revision also gives them fuller opportunities to apply for and obtain such property. The changes in the act will give the homeless a leg up by requiring new information gathering mechanisms that are clearly defined and precisely scheduled. Publication and other dissemination modes are likewise clearly spelled out and precisely scheduled.

As indicated in the conference agreement, homeless assistance providers have a guaranteed period of 60 days for submitting a notice of interest to apply. During 90 days thereafter, the provider may submit the application. The Health and Human Services Department must then act promptly on that application. Until HHS has reached a decision on that application, no other use of the property can be made.

Homeless providers' applications are given priority of consideration over other uses for the surplus property. Of course, it is not intended that surplus properties be held for homeless use indefinitely, and provisions are included toward that end. Also, a special provision is included to allow for consideration of other needs for the property if those needs are fully justified as meritorious and compelling.

In addition, the conference agreement allows the providers the opportunity to obtain title to the property under a Federal Property Act procedure to transfer, at no cost, surplus real property to public bodies and other organizations serving public health purposes. The conference agreement makes expressly clear that use for homeless assistance is such a public health purpose.

I believe that this portion of the conference agreement, when fully implemented, will have an important secondary effect. While landholding agency heads will continue to make the final decision, the agreement's regular reporting requirements will remind those agency heads, the Congress and the public, what and where those inventories are. Our intent was to improve the readiness and willingness of landholding agencies to honor fully section 202(c) of the Federal Property Act, which since 1949 has required them to survey their property continuously to determine which is excess to their needs and then promptly report it to GSA.

Finally, Mr. Speaker, I wish to compliment the members and staff of the Senate Governmental Affairs Committee for their careful and diligent work, and for their cooperation in working out certain changes which I believe prove beneficial to all interests concerned. And I wish to add that the proposed amendment could not have been worked out successfully without the prior continuous cooperation and flexibility of the principal affected agencies—namely, HUD, HHS, and GSA.

Once more, I urge my colleagues to support the conference agreement.

Mr. GONZALEZ. Mr. Speaker, I yield 2 minutes to the the distinguished gentleman from Montana [Mr. WILLIAMS] representing the Committee on Education and Labor.

Mr. WILLIAMS. Mr. Speaker, I thank the gentleman for yielding the time and want to point out to my colleague that section 622 of this bill is my legislation creating a job corps for homeless families. That legislation had 46 cosponsors in the House, and we have now added it as an amendment to this act.

This new Job Corps for Homeless Families is designed to provide sevices and facilities to eligible homeless individuals and their families who have not attained the age of 25 at the time of enrollment.

These services and facilities shall be provided under a project agreement with one or more State or local agencies that: First, requires such State and local agencies to provide not less than 50 percent of the costs; second, contains provisions to ensure that enrollees and their families are effectively assisted in obtaining all necessary health, education and social services provided by existing Federal, State, and local programs; and, third, requires State and local agencies to provide transitional assistance, including housing, necessary to effect successful job placements for enrollees.

I want to thank the committee for accepting my legislation as an amendment to this act, and thank the chairman.

I note, by the way, that my legislation was also included in the House-passed JTPA bill.

Mrs. ROUKEMA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to follow up on some of the important statements made by our colleague, the gentleman from Minnesota [Mr. VENTO]. We have provided the new direction in this legislation in that we provide over the next 2 years a program for a block grant formula. This initiative was first proposed in committee by may colleague, the gentleman from Pennsylvania [Mr. RIDGE], and myself, and I am happy to say it was incorporated in this program under which the Secretary of HUD will develop a new block grant formula which will place more flexibility and responsibility on addressing the homeless problem on local communities.

Under the block grant local communities will be required to develop strategies for homeless populations which are really tailored to their local needs. We have given the Secretary in this legislation a 2-year period in which to develop this, for reasons which are obvious, I think. If we are going to go from categorical programs to a block grant we have to take into consideration not only the new census data, but also an evaluation of the programs as they presently exist.

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I think the flexibility here, both in terms of the timing as well as in terms of developing this initiative with local input is very, very important, and I think it is completely consistent with the program that we adopted in the omnibus housing bill, the home program, which, again, follows the same course of action.

Mr. Speaker, I yield back the balance of my time.

Mr. GONZALEZ. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. MILLER], representing the Committee on Education and Labor.

Mr. MILLER of California. Mr. Speaker, I rise in support of the conference agreement to amend the Stewart B. McKinney Homelessness Assistance Act, to extend programs providing urgently needed assistance to the Nation's homeless population. I want to thank my colleague from Minnesota [Mr. VENTO] for his leadership on this issue and his hard work on this legislation.

I am especially pleased that this bill includes provisions to better serve homeless families and their children. First, the legislation authorizes a new Homeless Prevention Demonstration Program. This is a long overdue effort, designed to fund family support centers that target comprehensive support services to families and individuals at risk of homelessness living in or near low-income housing and also gateway programs that provide literacy and basic skills training programs in public housing authorities.

As the Select Committee on Children, Youth, and Families has documented, families with children are the fastest growing group among the homeless. Sheltering and protecting these families is of course a national priority, Mr. Speaker, but this growth cannot be tolerated. These demonstration efforts provide a new opportunity to prevent homelessness in the first place, and I applaud the conferees for reaching agreement to include these timely provisions.

I am especially gratified that provisions from the Access to Education for Economic Security Act, a bill introduced by Ms. SLAUGHTER of New York, and my colleague from New York, Mr. SHUMER, cosponsored have been incorporated into this legislation.

Without an education, homeless children run a high risk of continuing a cycle of poverty. The Access to Education for Economic Security Act builds on education provision in the Stewart McKinney Act to provide the necessary financial and technical support to State and local educational agencies to ensure that homeless children and youth enroll and succeed in public schools.

In a world where nothing remains constant, school is an environment that helps meet emotional as well as academic needs. Homeless children face tremendous obstacles in their pursuit of an education. Routine paperwork, such as obtaining birth certificates or medical or academic records, can be an enormously complicated procedure for families with no permanent address. The Access to Education for Economic Security Act helps to remove these, and other barriers in the educational system, faced by homeless children and their families.

The McKinney Homeless Act is a response to the crisis of homeless people. For both our cities and our suburbs, homeless populations have become a permanent fact of life. And whether resulting from the scarcity of affordable housing, or the inadequacy of public benefits, or a lack of jobs, or an increase in family crises—or some combination of these—the reality is a significant portion of this Nation's homeless population are families with children. Forty percent of the homeless are recent study.

The McKinney legislation is multifaceted, with 17 separate programs for homeless assistance. Despite the painful fact that families with children comprise a significant portion of the Nation's homeless, many homeless families still cannot find temporary shelter for even one night. In two-thirds of the cities surveyed by the conference of mayors, emergency shelters report they must turn families away because they lack the space to house them.

This legislation reauthorizes housing programs for State and local governments homes shelters, transitional housing demonstrations targeted at handicapped and homeless families; section 8 assistance for single room occupancy units; the Federal Emergency Management Agency emergency food and shelter program; and the Interagency Council on the Homeless which is responsible for disseminating funding and regulatory information.

It also reauthorizes health care programs for homeless individuals and families including substance abuse services and community mental health services for chronically mentally ill homeless individuals.

The legislation also provides adult education programs to improve literacy and basic skills for homeless individuals; State grants to improve educatrion for homeless children and youth; as well as job training demonstration programs and community service block grant funds for community action programs to meet the needs of the homeless.

Finally, the act reauthorizes the Veterans' Administration medical programs as well as job training programs for homeless veterans.

Mr. Speaker, I am especially gratified that provisions from a bill I introduced along with 24 of my colleagues from both sides of the aisle, H.R. 5666, the Primary Pediatric Outreach and Care for Disadvantaged Children Act of 1990, have been incorporated into the bill we are considering today. A companion bill was introduced in the Senate by Senator DODD and others. The purpose of the legislation is to fund innovative demonstration projects that provide basic health care services to homeless children. There may be no group more medically neglected or underserved by the Nation's patchwork system of health care than poor and homeless children—and no group for whom comprehensive preventive health care is more urgent.

The agreement reached under the leadership of my colleague, Mr. WAXMAN, chairman of the Subcommittee on Health and the Environment, amends section 340 of the Public Health Service Act, Health Care for the Homeless, to provide primary pediatric and preventive health care. I would hope, Mr. Speaker, that such services will include basic preventive as well as acute care services including immunizations, health screening and growth assessments to homeless children. The success of the grant program will depend on its flexibility, its emphasis on supporting a range of effective local initiatives, and its support of a broad range of needed health services within those initiatives.

The legislation is modeled after a triumphantly successful program in New York—the Children's Health project—cofounded and directed by Dr. Irwin Redlener. The project utilizes mobile medical vans to bring health care to homeless children and youth in family shelters and welfare hotels in New York City.

Mr. Speaker, if 7 years as chairman of the Select Committee on Children, Youth, and Families have any lesson to teach, it is that poor children and families in this country face dramatic, continually unmet, service needs. Over the years, we have heard about these needs, we have learned how we might meet them, and yet we have barely begun to do the job.

In 1988, 33 million nonelderly Americans went without health insurance of any kind. Of these, more than 9 million were children. These are the people who have fallen between the cracks, covered neither by public insurance nor by an often capricious, hit-or-miss system of private health provision.

Such serious financial barriers keep too many children from receiving the preventive health care they need. The National Association of Children's Hospitals and Related Institutions estimate 7 million U.S. children do not receive routine medical care. Childhood immunizations promise dramatic declines in incidence of serious childhood illnesses, but in 1985, less than 60 percent of children under age 4 had received the complete basic series of immunizations against these diseases.

And despite the demonstrated cost-savings—every $1 spent on childhood immunization can save $10 in later health care costs—immunization rates for preschool children against diphtheria, tetnus, and pertussis [DPT] average 41 percent lower in the United States than in many Western European countries; our polio immunization rates are 67 percent lower than those in Europe.

As a result of our neglect, low-income children in the United States are about twice as likely as higher income children to be born at low birthweight, two to three times more likely to experience postneonatal mortality, and three times more likely to have delayed immunizations and lead poisoning. Children in poverty are almost 50 percent more likely to have a disability than children from higher income families.

All of the problems that we see among low-income children are even more urgent among homeless children. On any given night, as many as 500,000 children are homeless, and there are more than a million runaway or homeless youth in emergency shelters or on the street.

As the select committee documented in its hearings on the effects of homelessness on children, their health risks are multiplied, and the opportunity to receive adequate services diminished dramatically. Homeless children frequently receive their health care in more costly emergency rooms, receive little, if any preventive health care, and have far fewer dental visits compared to the general pediatric population. Substandard living conditions, a preoccupation with survival, and serious barriers to care—lack of child care, transportation, and above all, financial resources—make seeking or keeping a medical appointment virtually impossible.

As a result, upper respiratory infections are twice as common among homeless children as among children seen in regular ambulatory settings, skin disorders about four times as common, GI disorders about three or four times as common, ear infections nearly twice as common and poor dentition more than 10 times as common. Rates of anemia and chronic health conditions are also twice as high among homeless children as among children in general. Homeless children are also at great risk for malnutrition, emotional stress and poor school performance. Less than one-third of the 1 to 2-year-olds seen by Dr. Redlener were immunized.

Compared to adolescents living at home, the health status of homeless youth is seriously impaired. Sexually transmitted diseases, malnutrition, alcohol and drug use, pregnancy, assault, and high-risk for HIV exposure are among the most serious problems. In a survey of homeless teens in Hollywood, CA, almost half the females reported one or more pregnancies and almost half of the survey sample had attempted suicide sometime in their lives.

As James Wright, the principal investigator of a national evaluation of health care for the homeless, testified at the Select Committee hearing, "any disorder you choose to pick turns out

to be very much more common among homeless children than among children in general * * *." He concluded: "[P]ersons who are denied adequate shelter not only lose the roof over their heads; they also thereby become exposed to a range of risk factors that are strongly deleterious to their physical well-being."

The health care provisions targeted to homeless children in this bill is an important beginning to solving the drastic health problems of homeless and disadvantaged children in this country. I am pleased that language was included to provide 12 months of transitional health, even after a family finds permanent housing, and that children in rural areas will be served as well. But it is a beginning long overdue.

I urge my colleagues to join me in support of these provisions as well as the other emergency measures we must take to assist the homeless until we find more permanent, enduring solutions.

Mr. GONZALEZ. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, I rise today in strong support of the conference report on H.R. 3789, the McKinney Homeless Assistance Reauthorization Act.

Homeless individuals and families often face a daunting array of problems. In addition to lack of housing, many have poor job skills, chronic drug or alcohol dependency, untreated mental illness, and increasingly, AIDS.

Important programs authorized under this bill will help homeless people in our districts face these problems, giving them the tools with which to rebuild new lives, and avoid future homelessness.

I believe that we can solve the homeless problem, that we can help struggling Americans, that we can stabilize families and give homeless children hope for the future.

I hope that we can fulfill the promise of this act by fully funding it. Housing leaders across my home State of Connecticut have told me that these programs work, but that there isn't enough money. Part of the reason there isn't enough money is that the McKinney Act has only been funded at about 60 percent of what has been authorized in the past.

I urge my colleagues to join me in support of this conference report.

Mr. GONZALEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to close by thanking all of the Members who have represented the various committees as we have here today who contributed so much and so creatively to this comprehensive homeless assistance act.

I wanted, above all, to thank the gentlewoman from New Jersey [Mrs. ROUKEMA] and the gentleman from Ohio [Mr. WYLIE], who is the ranking minority member of the full committee, but particularly the gentlewoman from New Jersey [Mrs. ROUKEMA]. She has, as she stated, and perhaps she did not mention a couple, but she has more than several sections in this legislation that she very creatively initiated and we improved at the subcommittee level after a number of comprehensive hearings. I wanted to express my gratitude to all the members of the subcommittee and the minority members on the staffs, again, in this case, Mr. John Valencia has been indefatigable, and the staff director, Mr. DeStefano as well as the counsel, Ms. Fischer, and the others. I wish I could take the time to mention all.

Ms. OAKAR. Mr. Speaker, I rise in support of H.R. 3789, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990. The bill provides $644.2 million for fiscal year 1991 and $656.6 million for fiscal year 1992 to reauthorize the McKinney Homeless Act programs.

It has been estimated that there are 200,000 to 1.3 million homeless people in the United States. Many of these people are poor and have been priced out of the housing market because of the lack of affordable housing. A growing number of the homeless are families with children where one or both of the parents are employed. However, many of the homeless are deinstitutionalized people, alcoholics, drug abusers, and people who lack skills. These are the most vulnerable homeless and they need comprehensive services and training to get back on their feet.

The people administering the addiction programs for alcohol and drugs should be trained and certified with experience in these areas.

A major problem is that many of these programs and services are administered by different agencies and their administration is not coordinated. In some cases you may have shelter assistance going to one project and education and training assistance going to another project. This will not work. A project is going to have to provide decent and safe shelter as well as other services to help alleviate the condition of homelessness.

I believe that this bill will help to provide coordinated services to the homeless. The bill establishes a new program, the Shelter Plus Care Program that authorizes HUD to provide rental housing assistance to homeless individuals and their families who are seriously mentally ill or who have chronic problems with alcohol or other drugs. It requires recipients to supplement the amount of rental housing assistance with an equal amount of funds for supportive services from other sources. This is a positive provision for the vulnerable homeless.

The bill also reauthorizes the interagency council on the homeless, the Federal Emergency Management Food and Shelter Program; Homeless Shelter Programs; health care for the homeless; the block grant for community mental health services; education, training, and community services programs; and programs for veterans.

Again, I believe that this is a good bill. But let me mention a concern that I have with one of the provisions. I am one of the original sponsors of the transitional housing for the homeless mentally ill who have been deinstitutionalized. This program comes under the supportive housing provision of the McKinney Act. The program seems to be working well as a demonstration grant program, but the conferees have agreed to include this program in a block grant in fiscal year 1993.

While it appears that a block grant would be easier to administer and heightens flexibility at the local level, I believe that the McKinney Act is working well with a mixture of formula and categorical grants. Additionally, I believe that we should create a block grant for these programs only if we dramatically increase the authorization levels.

Mr. Speaker, this bill addresses the problem of homelessness in a comprehensive manner. It will provide necessary assistance to those most in need and will give hope to homeless Americans. I urge my colleagues to support this conference report.

Mr. MILLER of California. Mr. Speaker, I rise in support of the conference agreement to amend the Stewart B. McKinney Homelessness Assistance Act to extend programs providing urgently needed assistance to the Nation's homeless population. I want to thank my colleagues from Minnesota [Mr. VENTO] for his leadership on this issue and his hard work on this legislation.

I am especially pleased that this bill includes provisions to better serve homeless families and their children. First, the legislation authorizes a new "Homeless Prevention Demonstration Program." This is a long overdue effort, designed to fund family support centers that target comprehensive support services to families and individuals at risk of homelessness living in or near low-income housing and also gateway programs that provide literacy and basic skills training programs in public housing authorities.

As the Select Committee on Children, Youth, and Families has documented, families with children are the fastest growing group among the homeless. Sheltering and protecting these families is of course a national priority, Mr. Chairman, but this growth cannot be tolerated. These demonstration efforts provide a new opportunity to prevent homelessness in the first place, and I applaud the conferees for reaching agreement to include these timely provisions.

I am especially gratified that provisions from the Access to Education for Economic Security Act, a bill introduced by Ms. SLAUGHTER of New York, and my colleagues from New York, Mr. SCHUMER, co-sponsored have been incorporated into this legislation.

Without an education, homeless children run a high risk of continuing a cycle of poverty. The Access to Education for Economic Security Act builds on education provision in the Stewart McKinney Act to provide the necessary financial and technical support to State and local educational agencies to ensure that homeless children and youth enroll and succeed in public schools.

In a world where nothing remains constant, school is an environment that helps meet emotional as well as academic needs. Homeless children face tremendous obstacles in their pursuit of an education. Routine paperwork, such as obtaining birth certificates or medical or academic records, can be an enormously complicated procedure for families with no permanent address. The Access to Education for Economic Security Act helps to remove these, and other barriers in the educational system, faced by homeless children and their families.

The McKinney Homeless Act is a response to the crisis of homeless people. For both our cities and our suburbs, homeless populations have become a permanent fact of life. And whether resulting from the scarcity of affordable housing, or the inadequacy of public benefits, or a lack of jobs, or an increase in family crises, or some combination of these, the reality is a significant portion of this Nation's homeless population are families with children. Forty percent of the homeless are children and families, according to the U.S. Conference of Mayor's recent study.

The McKinney legislation is multifaceted, with 17 separate programs for homeless assistance. Despite the painful fact that families with children comprise a significant portion of the Nation's homeless, many homeless families still cannot find temporary shelter for even one night. In two-thirds of the cities surveyed by the Conference of Mayors, emergency shelters report they must turn families away because they lack the space to house them.

This legislation reauthorizes housing programs for State and local government's home shelters, transitional housing demonstrations targeted at handicapped and homeless families; section 8 assistance for single room occupancy units; the Federal Emergency Management Agency emergency food and shelter program; and the Interagency Council on the Homeless which is responsible for disseminating funding and regulatory information.

It also reauthorizes health care programs for homeless individuals and families including substance abuse services and community mental health services for chronically mentally ill homeless individuals.

The legislation also provides adult education programs to improve literacy and basic skills for homeless individuals; State grants to improve education for homeless children and youth; as well as job training demonstration programs and Community Service Block Grant funds for Community Action Programs to meet the needs of the homeless.

Finally, the act reauthorizes the Veterans' Administration medical programs as well as job training programs for homeless veterans.

Mr. Chairman, I am especially gratified that provisions from a bill I introduced along with 24 of my colleagues from both sides of the aisle, H.R. 5666, "the Primary Pediatric Outreach and Care for Disadvantaged Children Act of 1990," have been incorporated into the bill we are considering today. A companion bill was introduced in the Senate by Senator DODD and others. The purpose of the legislation is to fund innovative demonstration projects that provide basic health care services to homeless children. There may be no group more medically neglected or underserved by the Nation's patchwork system of health care than poor and homeless children—and no group for whom comprehensive preventive health care is more urgent.

The agreement reached under the leadership of my colleague, Mr. WAXMAN, chairman of the Subcommittee on Health and the Environment, amends section 340 of the Public Health Service Act, Health Care for the Homeless, to provide primary pediatric and preventive health care. I would hope, Mr. Chairman, that such services will include basic preventive as well as acute care services including immunizations, health screening and growth assessments to homeless children. The success of the grant program will depend on its flexibility, its emphasis on supporting a range of effective local initiatives, and its support of a broad range of needed health services within those initiatives.

The legislation is modeled after a triumphantly successful program in New York, "The Children's Health Project," cofounded and directed by Dr. Irwin Redlener. The project utilizes mobile medical vans to bring health care to homeless children and youth in family shelters and welfare hotels in New York City.

Mr. Speaker, if 7 years as chairman of the Select Committee on Children, Youth, and Families have any lesson to teach, it is that poor children and families in this country face dramatic, continually unmet, service needs. Over the years, we have heard about these needs, we have learned how we might meet them, and yet we have barely begun to do the job.

In 1988, 33 million nonelderly Americans were without health insurance of any kind. Of these, more than 9 million were children. These are the people who have fallen between the cracks, covered neither by public insurance nor by an often capricous, hit-or-miss system of private health provision.

Such serious financial barriers keep too many children from receiving the preventive health care they need. The National Association of Children's Hospitals and Related Institutions estimate 7 million U.S. children do not receive routine medical care. Childhood immunizations promise dramatic declines in incidence of serious childhood illnesses, but in 1985, less than 60 percent of children under age 4 had received the complete basic series of immunizations against these diseases.

And despite the demonstrated cost-savings—every $1 spent on childhood immunization can save $10 in later health care costs—immunization rates for preschool children against diphtheria, tetanus, and pertussis [DPT] average 41 percent lower in the United States than in many Western European countries; our polio immunization rates are 67 percent lower than those in Europe.

As a result of our neglect, low-income children in the United States are about twice as likely as higher income children to be born at low birthweight, two to three times more likely to experience postneonatal mortality, and three times more likely to have delayed immunizations and lead poisoning. Children in poverty area almost 50-percent more likely to have a disability than children from higher income families.

All of the problems that we see among low-income children are even more urgent among homeless children. On any given night, as many as 500,000 children are homeless, and there are more than a million runaway or homeless youth in emergency shelters or on the street.

As the select committee documented in its hearings on the effects of homelessness on children, their health risks are multiplied, and the opportunity to receive adequate services diminished dramatically. Homeless children frequently receive their health care in more costly emergency rooms, receive little, if any preventive health care, and have far fewer dental visits compared to the general pediatric population. Substandard living conditions, a preoccupation with survival, and serious barriers to care—lack of child care, transportation, and above all, financial resources—make seeking or keeping a medical appointment virtually impossible.

As a result, upper respiratory infections are twice as common among homeless children as among children seen in regular ambulatory settings, skin disorders about four times as common, GI disorders about three or four times as common, ear infections nearly twice as common and poor dentition more than 10 times as common. Rates of anemia and chronic health conditions are also twice as high among homeless children as among children in general. Homeless children are also at great risk for malnutrition, emotional stress and poor school performance. Less than one-third of the 1 to 2 year-olds seen by Dr. Redlener were immunized.

Compared to adolescents living at home, the health status of homeless youth is seriously impaired. Sexually transmitted diseases, malnutrition, alcohol and drug use, pregnancy, assault, and high-risk for HIV exposure are among the most serious problems. In a survey of homeless teens in Hollywood, CA, almost half the females reported one or more pregnancies and almost half of the survey sample had attempted suicide sometime in their lives.

As James Wright, the principal investigator of a national evaluation of health care for the homeless, testified at the Select Committee hearing, "any disorder you choose to pick turns out to be very much more common among homeless children than among children in general. * * *" He concluded: "[P]ersons who are denied adequate shelter not only lose the roof over their heads; they also thereby become exposed to a range of risk factors that are strongly deleterious to their physical well-being."

The health care provisions targeted to homeless children in this bill is an important beginning to solving the drastic health problems of homeless and disadvantaged children in this country. I am pleased that language was included to provide 12 months of transitional health, even after a family finds permanent housing, and that children in rural areas will be served as well. But it is a beginning long overdue.

I urge my colleagues to join me in support of these provisions as well as the other emergency measures we must take to assist the homeless until we find more permanent, enduring solutions.

Mr. GOODLING. Mr. Speaker, I rise in support of this conference report. Although I do not necessarily agree with all the additional provisions that were added by the Senate, I believe that the compromise we reached resolves most of my original concerns.

The education programs under this conference report have been restructured. This restructuring clarifies the role of the State, consolidates two smaller programs into the main program for homeless children and youth, and requires a study of the methods of data collection so that a more accurate accounting of homeless children can be achieved. Outreach to homeless children has been difficult because of our inability to accurately estimate the number of homeless children in the United States. With the results of the study conducted under these amendments this barrier should be removed and better targeting of these programs accomplished.

The Education and Labor Committee focus has always been on access to quality programs. One group of children that consistently faces barriers to getting an education is the homeless. Homeless children deserve to have access to a free public education as do the other children in this country. These amendments help us toward that goal.

For example, currently the Department of Education estimates that there are 274,000 homeless school-age children, 28 percent of whom do not attend school regularly. The homeless advocates believe that there are almost twice again as many—500,000—with half not attending school on a regular basis. Regardless of the number, these statistics are cause for concern and demonstrate our need for better information.

The conference report includes a new demonstration program for family resource centers run through cooperative arrangements between local educational agencies, private industry councils, and public housing agencies. Although this concept may be duplicative of other programs under our committee's jurisdiction, the attempt here is to develop an intergenerational, comprehensive approach to the problems of homelessness and its prevention.

I would have preferred that these amendments be handled through the existing programs under the Education and Labor Committee's jurisdiction, but through negotiation we were able to develop strong coordination and nonduplication language. Additionally, we made this concept a demonstration that will be evaluated and reviewed after 3 years to assess its effectiveness as an intervention with respect to homelessness prevention.

Overall, the amendments to the education programs in this conference report are an attempt to address the problems we see in the current law and further focus the resources available to providing our homeless children a chance to receive the education they deserve. These children are among our most needy.

Again, I support this conference report, and encourage my colleagues to do the same.

Mr. MILLER of Washington. Mr. Speaker, I rise in support of H.R. 3789, reauthorization of the McKinney Homeless Assistance Act. In 1987, I was an original cosponsor of the First Federal Homeless Assistance Act. This act provided funds for a variety of programs to help the homeless in our country, but did not provide funds for homeless children's education.

During this session of Congress, I introduced legislation to amend the McKinney Act providing funds for educating homeless children. My bill would allow nonprofits for preschools to compete for funds. And it points out the need for homeless education funding in areas like Seattle and other parts of my district in Washington State.

I am delighted that this years McKinney Assistance Act incorporates the essence of my bill and authorizes funds for State and local education agencies to educate homeless children. It funds each State coordinator of education for children and youth. And it provides funds for education grants to expand existing programs that are successful.

Providing educational opportunities to homeless children keeps them in school and gives them the tools they need to be successful adults. This will help stop the cycle of homelessness.

Mr. GONZALEZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks the conference report to H.R. 3789, just considered and adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT ON H.R. 4653, EXPORT FACILITATION ACT OF 1990

Mr. GORDON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 532 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 532

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 4653) to reauthorize the Export Administration of 1979, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Tennessee [Mr. GORDON] is recognized for 1 hour.

Mr. GORDON. Mr. Speaker, I yield the customary 30 minutes, for the purposes of debate only, to the gentleman from New York [Mr. SOLOMON], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 532 waives all points of order against consideration of the conference report on H.R. 4653, the Export Facilitation Act of 1990. Under the rules of the House, conference reports are privileged and are considered in the House under the 1 hour rule with no amendments being in order. The rule also waives all points of order against the conference report. Finally, the rule provides that when the conference report is called up for consideration, it shall be considered as read.

Mr. Speaker, the conference report will relax export controls to Eastern Europe and the Soviet Union; eliminate export controls to our NATO allies and establish licensing requirements and sanctions for chemical and biological weapons and missile technology. The conference report will also impose economic sanctions on IRAC.

House Resolution 532 is a noncontroversial rule and allows for the consideration of the conference report for H.R. 4653. Members will have the opportunity to fully debate the merits of the conference report during general debate.

I urge my colleagues to adopt House Resolution 532.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the rules coming before us at this point in the session are so much alike that I am tempted to prerecord my statement here. As is now standard practice, the rule presently before us waives all points of order against consideration of the conference report and all points of order against the conference report itself.

There is not a Member in this House right now sitting here today who has any idea what kind of rules are being waived.

Mr. Speaker, the conference report on this bill, the Export Facilitation Act, sets forth the export policies and procedures of the U.S. Government. It is one of the most important bills we will pass during this Congress. Although I am constrained to protest a rule that makes such indiscriminate use of waivers as this one does, I shall not ask Members to oppose the rule.

□ 1200

This conference report must be permitted to go forward.

Mr. Speaker, I will conclude by making a few comments about the conference report itself. I opposed this legislation when the House considered this bill in June. However, I am happy to report that the conference report makes substantial changes, mostly for the better, in some key areas. Back in June the House debated this bill within a context that was character-

ized by a certain amount of what I thought was wishful thinking and euphoria about the course of events in the Soviet Union.

Accordingly, this bill, in my view, went much too far in liberalizing the export controls and other trade policies that affect our country's trade relations with the Soviet Union.

Now that a more realistic assessment of the Soviet Union's prospects has become, I think, the conventional wisdom around here, this conference report has moved the issue of export controls to the Soviets back to a position that is within the parameters which the administration negotiated at Cocom with the other Western industrialized countries.

So in that respect, I think the administration agrees with the bill. This conference report contains some very tough policy language concerning China; and it maintains the present role of the Department of Defense in scrutinizing the applications for export licenses to controlled countries. I feel very strongly that the Defense Department should maintain that control.

I am a little concerned that the conferees allowed my amendment, which would have prohibited the export of United States-manufactured satellites to China, to be watered down by some Members of the other body. I really wish that had not happened.

I must advise the Members that there is still a possibility that this conference report could be vetoed, or more likely pocket vetoed.

The administration is concerned about some of the extraneous provisions that were included in the conference report, although the general provisions relating to national security and foreign policy are evidently acceptable to the administration. Having said all that, I will not ask for a vote on the rule.

Mr. Speaker, I yield back the balance of my time.

Mr. COOPER. Mr. Speaker, I have no further requests for time, I yield back the balance of time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. FASCELL. Mr. Speaker, I call up the conference report on the bill (H.R. 4653) to reauthorize the Export Administration Act of 1979, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to House Resolution 532, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of October 25, 1990.)

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I am pleased to bring to the House the conference report on H.R. 4653, the Omnibus Export Amendments Act of 1990.

I first would like to commend the many members who devoted many long hours and efforts to producing this legislation, particularly the principal author, Mr. GEJDENSON, chairman of the Subcommittee on International Economic Policy, and his ranking member, Mr. ROTH. I would also like to thank the other two committees which were involved in the conference—the Committee on Ways and Means and the Committee on Banking, Finance and Urban Affairs—for their cooperation.

Mr. Speaker, this conference report is a major legislative initiative to update United States export control policy to deal with the dramatic changes in world events—the transformation of Eastern Europe, the growing threat of the proliferation of missile technology and chemical and biological weapons and Iraq's invasion of Kuwait.

In brief summary, this legislation:

First, in the Export Administration Act, codifies the June 6-7 1990, high level Cocom agreement with respect to the relaxation of export controls, specifically with respect to computers and telecommunication; decontrols all items within Cocom; establishes procedures which will provide for the routine updating of the list of controlled items; distinguishes between items controlled on the munitions list and the commodity control list; relaxes controls on exports to eligible countries in Eastern Europe, including providing the most favorable treatment—national discretion—for the export of telecommunications equipment; provides for judicial review of actions taken under the Export Administration Act;

Second, for missile technology, establishes a control list and licensing requirements for equipment and technology which would assist in the proliferation of missile capability, and requires the imposition of sanctions on U.S. and foreign persons violating those requirements;

Third, for chemical and biological weapons proliferation, requires the imposition of sanctions against countries that use chemical and biological weapons and against foreign firms which promote chemical and biological proliferation;

Fourth, for sanctions on Iraq, imposes economic sanctions on Iraq because of its invasion of Kuwait and because of its violation of human rights, support for terrorism, and role in proliferation;

I would like to note that, with respect to section 104 on supercomputer exports, the provision states that the indexing system applies only to destinations that are countries adhering to the treaty on the nonproliferation of nuclear weapons. The reference should have been also to the Treaty of Tlatelolco, adherents to which also should be eligible for exports under the indexing system.

With respect to title IV on chemical and biological weapons control, the following is a more detailed elaboration:

The Chemical and Biological Weapons Control and Warfare Elimination Act of 1990 imposes 1 year of mandatory sanctions against countries which use chemical and biological weapons in violation of international law and against foreign firms which assist countries to obtain chemical or biological weapons capability.

This legislation is title IV of the Omnibus Export Amendments Act of 1990. It represents a conference compromise between the House chemical weapons sanction bill, H.R. 3033, which passed the House on November 13, 1989, and the Senate substitute to H.R. 3033 which passed the Senate on May 17, 1990.

On the key issue of country sanctions, the conference agreement, as proposed by the House, is stronger than both the original House and Senate provisions.

The conference agreement establishes a 1-year minimum penalty period on country violators unlike the original House and Senate versions which establish no minimum penalty period.

The conference agreement also retains the House phased-in approach to sanctions on countries while retaining positions of both the House and the Senate to be firm and definite against country users of chemical and biological weapons.

The purpose of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1990 is threefold: First, to stop the proliferation of chemical weapons; second, to penalize countries and companies illegally using or transferring chemical and biological weapons; and third, to establish a meaningful mandatory sanctions regime against country and company violators.

The goal of this House-Senate compromise legislation is to express the strong feeling that whenever chemical or biological weapons are used or the capability to produce these weapons is passed on, Congress strongly disapproves and expects strong and immediate remedial action.

We want to make sure that business as usual will not take place between our country and the offending country, company, or individual. Sanctions in this compromise bill are mandatory and swift. The legislation recognizes that the President may conceivably need some discretion regarding the sanctions, and therefore, it provides for a presidential waiver authority after 1 year of mandatory sanctions. The legislation also noted specific and strict criteria for any removal or termination of sanctions by the President. But, the clear intent of the bill is to provide the President with the authority and framework for immediate and strong action to stop the use and proliferation of chemical and biological weapons.

This compromise legislation is complementary to President Bush's September 1989 U.N. initiative that will hopefully lead to a global ban on the production and use of chemical weapons. It is also compatible with Secretery of State Baker's own admonition in his October 23, 1989, San Francisco arms control speech: "States (who use chemical weapons) must know that they will pay a price for their inhumanity."

The legislation is straightforward. First, there are provisions which focus on stopping proliferation of chemical and biological weapons including controls on U.S. exports and sanctions on foreign firms involved in proliferation. Second, there are sanctions against countries which use CBW or prepare to do so in violation of international law. Third, the President is required to report extensively to Congress on CBW activity around the world so that the various committees of the Congress can fulfill their oversight responsibilities.

A year ago the Bush administration supported the House bill, H.R. 3033. While this was one of the first attempts to draft such broad, generic sanctions, it was also important because it marked a departure by this administration from the previous administration which was unwilling to consider any sanctions legislation since it was viewed as an unnecessary infringement on executive branch prerogatives and privileges.

The Bush administration rejected that view and worked with the House of Representatives, recognizing that a joint approach to this problem would substantially increase the possibility of stopping the use and proliferation of chemical and biological weapons. Since the House-Senate compromise also recognizes the importance of executive branch decisionmaking and implementation on imposing sanctions, it is my position that this legislation should become law with Presidential approval and not by a veto override.

It is important to point out that the legislation clearly indicates the desirability of immediately pursuing multilateral sanctions whenever possible and also immediately contacting the government of jurisdiction when a foreign company or individual is involved in a violation.

This legislation sets out an effective and reasonable framework for action to halt the proliferation and use of chemical and biological weapons and I urge its adoption.

To understand the importance of this legislation, it is necessary to know its legislative history and the opinions which have shaped it during its evolution.

On September 22, 1988, the Committee on Foreign Affairs ordered reported favorably, by voice vote, H.R. 5337, the Sanctions Against Iraqi Chemical Weapons Use Act. This legislation passed on the floor of the House by a vote of 388 to 16 on September 27, 1988. Even though this legislation was not enacted into law it did demonstrate strong bipartisan congressional concern with the use of chemical weapons and specifically with the Iraqi use of chemical weapons in the Iran-Iraq war and against its Kurdish population. The committee experience in drafting this sanctions legislation and the concern regarding chemical weapons use and proliferation carried over into the 101st Congress. Members and staff began, in February 1989, on a bipartisan basis, to draft more general chemical weapons sanctions legislation. Later, working sessions on the draft legislation included representatives of the administration.

On May 4, 1989, the Subcommittee on Arms Control, International Security and Science and the Subcommittee on International Economic Policy and Trade held a joint hearing on chemical weapons proliferation and use. The subcommittees heard the testimony of Assistant Secretary H. Allen Holmes of the Department of State on CBW proliferation control.

On July 27, 1989, the same two subcommittees met in a joint session to mark up chemical weapons sanctions legislation which was introduced by myself, Mr. BROOMFIELD and Mr. GEJDENSON. That legislation passed unanimously in both subcommittees and became H.R. 3033, the Chemical and Biological Warfare Elimination Act and was reported favorably to the Committee on Foreign Affairs.

On November 1, 1989, the Committee on Foreign Affairs met to mark up H.R. 3033, and favorably reported H.R. 3033 with an amendment by myself and Mr. BROOMFIELD for consideration by the House of Representatives.

During consideration and action on the Iraqi sanctions legislation in the 100th Congress the primary concern was to stop Iraqi use of chemical weapons against its Kurdish population and to assure that chemical weapons would not be used again in the Iran-Iraq war. While the legislation focused specifically on the Iraqi case there was a recognition that the committee should also focus more broadly on the question of the utility of sanctions legislation related to the more generalized problem of chemical weapons proliferation and use.

The Iraqi sanctions legislation passed in the House on September 27, 1988, but was never enacted into law. Even though Iraqi use of chemical weapons reportedly stopped and even though the legislation was never enacted, by the beginning of the 101st Congress the committee recognized the strong interest amongst Members to benefit from the legislative exercise of the Iraqi sanctions legislation by drafting a general framework of sanctions to address the problem of chemical weapons use and proliferation. In fact, the graduated approach to sanctions in the Iraqi sanctions bill, invoking some sanctions immediately and specifying other sanctions that may be imposed later, was reflected in the House legislation, H.R. 3033.

At the beginning of the 101st Congress committee members and majority and minority staff began to work on drafting bipartisan chemical weapons sanctions legislation. Before the May 4 hearing on chemical weapons proliferation the administration expressed an openness to considering that some form of chemical weapons legislation might be helpful and a willingness to work with committee staff in a cooperative way on proposed legislation.

In the testimony at the joint subcommittees' hearing of May 4, Assistant Secretary H. Allen Holmes of the Department of State gave official expression to the administration desire to coordinate efforts with Congress on chemical weapons sanctions in order to improve, in Assistant Secretary Holmes' words, the "prospects for success in achieving President Bush's ultimate goal of a world without chemical weapons." Assistant Secretary Holmes' statement concerning the Bush administration's desire to take a joint approach with Congress to the sanctions question represented a clear departure from previous administrations which were unwilling to consider sanctions legislation which was viewed as unnecessary infringement on executive branch prerogatives. Assistant Secretary Holmes stated this new policy on sanctions:

> In working with the Congress on the proposed legislation, we accept in principle that some form of sanctions, if appropriately formulated, would give the administration an additional instrument against countries that use CW, and companies that aid proliferation. It is in our interest for the President to have a broad range of instruments including appropriate sanctions available.

On July 27, 1989, the Subcommittee on Arms Control, International Securi-

ty and Science and the Subcommittee on International Economic Policy and Trade marked up and passed unanimously the chemical weapon legislation, H.R. 3033, introduced by myself, Mr. BROOMFIELD and Mr. GEJDENSON. The specific aims of the legislation were to stop chemical weapons proliferation, to penalize countries, companies, and individuals illegally using or transferring chemical weapons and to establish a meaningful mandatory sanctions regime against country and company violators.

The purpose of the House legislation and now this House-Senate compromise is to establish a new decisionmaking framework for the U.S. Government so that the Government can act quickly and effectively when confronted with use of chemical weapons or with actions that contribute to the proliferation of chemical and biological weapons. It was the intent of the Committee on Foreign Affairs and the House of Representatives and now it is the intent of the Congress to draft and enact legislation which would have resulted, for example, in sanctions against Iraq for using chemical weapons against its Kurdish population. The sanctions regime established by this legislation sets out a quick and effective system of sanctions for dealing with violators in order to stop the use and spread of chemical and biological weapons.

Three months of cooperative effort followed the July 27 hearing between members, minority and majority staff, and the executive branch. Those negotiations and drafting sessions resulted in some final changes to improve the legislation. Those changes were incorporated in a substitute bill which was offered by myself and Mr. BROOMFIELD as an amendment to H.R. 3033 on November 1, 1989. Upon adoption of these changes, the executive branch testified in support of the legislation and recommended enactment of H.R. 3033 as reported by the Committee on Foreign Affairs.

The Fascell-Broomfield substitute made three changes. First, the same language was adopted in the two Presidential waiver authorities standardizing them to read that the President must determine that the waiver of sanctions to be imposed on foreign persons or companies and of foreign countries is "important to the national security interests of the United States." The second change clarified the desired sequence of events once a chemical weapons proliferation violation has taken place—a violation is determined, consultations occur, corrective measures are taken by the concerned government with primary jurisdiction, sanctions may or may not be imposed, and a report to Congress follows if sanctions are not imposed. The third revision involved a modification of section 102(b) of H.R. 3033 which amends section 6 of the Export Administration Act to require a validated license for the export of any goods or technology that would assist a "recipient country," other than "a country," in acquiring the ability to proliferate chemical or biological weapons.

On May 17, 1990, the Senate passed a substitute to H.R. 3033 entitled the Chemical and Biological Weapons Control Act of 1990. House and Senate conferees met for the first time on October 11, 1990, to resolve the differences between the two bills. The major differences between the two bills involved the Presidential waivers and the actual sanctions to be imposed. The Senate bill had no Presidential waiver for sanctions against companies and a 1-year nonrenewable waiver for sanctions against countries. The House bill provided for Presidential waivers for both companies and countries. The Senate bill imposed Government procurement sanctions but no import sanctions on companies and nine sanctions immediately against countries. The House bill imposed either Government procurement or import sanctions or both against companies and a phased approach of imposing at least three sanctions immediately against countries and at least one more after 3 months if the violation has not ceased.

The differences between the House and Senate versions were resolved in conference on October 18, 1990, when I and the House conferees made a proposal on the waiver/sanctions issue which was accepted without amendment by the Senate conferees.

The compromise imposed 1 year of mandatory sanctions on both companies and countries with the possibility of a Presidential waiver after the 1-year mandatory period. Company sanctions include both import sanctions and Government procurement sanctions. The country sanctions stipulate that the President select 6 sanctions from a total list of 11 possible sanctions to be applied immediately, and at least 1 additional sanction after 3 months if the violation has not ceased.

The conference compromise represents a strong and effective legislative response to the unacceptable behavior of any companies that proliferate CBW or any countries that use or prepare to use CBW in violation of international law.

The goal of all of this legislative work on CBW sanctions is to express the strong feeling that whenever chemical or biological weapons are used or the capability to produce them is passed on, Congress disapproves and wants sanctions imposed.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to commend Chairman FASCELL, Congressmen ROTH and BEREUTER, and the subcommittee chairman, Congressman GEJDENSON, for their hard work on this legislation.

This bill takes U.S. export control law in the right direction. If it became law, it would go a long way toward improving U.S. competitiveness and our trade deficit. However, I do have one reservation in supporting this conference report.

The conferees failed to reach agreement with the administration on title IV of the conference report, concerning chemical and biological weapons sanctions. I want to emphasize that the administration supports the concept of such sanctions.

In fact, the administration supported a House bill on this subject earlier in the year that would have bolstered the President's authority to apply sanctions. At the same time, it provides the flexibility to do so in a manner consistent with overall national security interests.

It is my understanding that the agreement reached in conference on this important issue does not meet the administration's concerns that there be adequate Presidential discretion and flexibility. This is regrettable given the administration's repeatedly—stated support for appropriate and responsible CBW sanctions legislation.

Otherwise, I support this conference report. This world has changed dramatically in the past few years. The Japanese, Germans and French are already dividing the markets in newly democratic Eastern European nations.

It is time for our exporters to have the opportunity to get a foothold in the same markets. Export controls must recognize the importance of economic strength and the right of the U.S. businessman to export.

I would like to submit for the RECORD letters from Secretary of State Baker and NSC Advisor Scowcroft explaining the administration's concerns with this conference report.

THE WHITE HOUSE,
Washington, DC, October 10, 1990.

Hon. WILLIAM BROOMFIELD,
Ranking Member, Committee on Foreign Affairs, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN BROOMFIELD: As the conference on the Export Administration Act Reauthorization (EAA) begins, I believe it important to provide the general view of the Administration on the legislation.

We support enactment of legislation in all four of the general areas covered: EAA reauthorization and amendments; sanctions involving chemical and biological weapons; sanctions on Iraq; and sanctions involving missile technology.

More specifically, the Administration supported S. 2927 as reported by the Senate Banking Committee. In addition, we supported the sanctions on chemical and biological weapons in H.R. 3033. Both bills made helpful contributions to U.S. export control policy.

However, we have serious concerns with many of the provisions being brought into conference.

Chemical/Biological Weapons: We are prepared to endorse a conference report only if it supports multilateral cooperation in stemming the use and proliferation of chemical weapons and if it provides adequate discretion to the President in determining whether and which sanctions to impose.

Missile Technology: Our concerns regarding missile technology sanctions are similar to those on chemical weapons. It is imperative that the conference report support, not undercut, the President's discretion on our ongoing efforts to achieve necessary multilateral cooperation in limiting the transfer of missile technology. This provision also raises serious questions of extraterritoriality under international law.

U.S.-Origin Satellites: We oppose language that would ban the launching of U.S.-built or-designed satellities on People's Republic of China launchers. The Congress has already enacted and the President signed legislation that imposes a broad range of sanctions on China, including on U.S.-origin satellites. Denying the President flexibility at this late stage in managing the sanction on U.S.-origin satellites will directly harm the economic interests of the U.S. and its ally Australia.

Internal Executive Branch Management: The Administration strongly opposes provisions that dictate internal procedures and decision processes, such as decisions on what items should be considered munitions or how interagency disputes should be resolved. Such provisions are inconsistent with the President's constitutional authority to manage the operation of the Executive Branch.

Commodity Jurisdiction: The Administration strongly opposes provisions in the House bill that equate the U.S. Munitions List with the Cocom International Munitions List, without Presidential discretion to determine what items should be considered "munitions" and whether certain items or technologies should be exported to unstable regions, such as the Middle East. The Administration has provided alternative language that meets our concerns in this area.

Targeted Sanctions and Prohibitions: We oppose provisions in the bills which mandate that the President take certain actions or impose mandatory sanctions, on companies or countries, without adequate provision for Presidential discretion. These provisions could unnecessarily impair U.S. industry's competitiveness or U.S. foreign policy objective, and may also violate the constitutional authority of the President to conduct the foreign affairs of the nation.

Arbitrary Changes to Control Levels: The Administration is strongly opposed to provisions in H.R. 4653 that impose modifications to U.S. export control lists without sufficient concern for national security. In sensitive areas such as telecommunications and supercomputer controls, the Administration must take account of a diverse number of strategic and highly technical concerns in developing our control lists in cooperation with our Allies. Further, the bill includes provisions inconsistent with current Cocom obligations.

EXIMBank Provisions: The Administration opposes section 205 of S. 2927, which requires implementation of the interest equalization program. The Administration believes that this is an unnecessary program that would add to the contingent liabilities of the Federal Government. The Administration will seek its deletion. Regarding section 206, which would require Eximbank to establish a program of guarantees to support the sale of defense articles and services to Japan and NATO countries, the Administration objects particularly to the mandatory and permanent nature of this program. The Administration is, however, considering further the issue of financing military exports raised by section 206 and expects to reach a conclusion shortly.

Senior advisors to the President would like to recommend that he sign the bill finally presented to the President. However, it must be supportive of our national security and foreign policy objectives. These objectives include effectiveness in our export controls, such effectiveness requiring an ability to target sanctions and to ensure that they are supportive of and consistent with our multilateral control efforts. If our concerns are not addressed, and this fundamental need not satisfied, the President's senior advisors will recommend that he veto the bill.

Sincerely,

BRENT SCOWCROFT.

THE SECRETARY OF STATE,
Washington, DC, October 16, 1990.

Hon. WILLIAM S. BROOMFIELD,
House of Representatives,
Washington, DC.

DEAR BILL: You and your colleagues will soon address differing House and Senate chemical weapons (CW) sanctions legislation (H.R. 3033 and S. 195) in the context of a conference on the Export Administration Act. I want to take this opportunity to convey directly to you the Administration's position on these bills; we have conveyed specific comments to your staff on the differences in the two bills.

The President has taken the lead in seeking multilateral agreement on a global and comprehensive ban on CW and on stemming their proliferation in the meantime. We have already achieved a high degree of international cooperation in this effort. Further strengthening of this cooperation, including achieving a CW convention containing provisions for sanctions, presents a difficult challenge. The Administration welcomes strong bipartisan congressional support for this important national objective and believes that the Congress can help by enacting legislation that strengthens our diplomatic hand. This requires legislation based on international cooperation rather than unilateral fiat.

The House version of H.R. 3033 is supportive of our multilateral objectives; its endorsement by the conference committee would reinforce international multilateral efforts and demonstrate unified, bipartisan support. The House bill provides for meaningful sanctions on CW users and against companies that support CW programs, yet enables the President to target these sanctions for maximum effectiveness, taking into account the entire range of our national security and foreign policy interests.

The Senate version, which provides for mandatory sanctions, does not give the President sufficient flexibility to impose or waive sanctions based on a consideration of the nation's security interests. In addition, one provision of the Senate bill requires certain determinations and, in some cases, follow-on actions by the President in response to requests from relevant committee chairmen. As formulated, this provision is unconstitutional, as it is inconsistent with *INS v. Chadha.*

The Administration is prepared to endorse a conference report that supports multilateral cooperation in stemming the use and proliferation of CW and provides adequate discretion to the President in determining whether and which sanctions to impose. However, the President's senior advisors will recommend that he veto a CW sanctions bill that does not take account of these concerns.

We urge the conferees to agree on a bill that the President can sign. Such a bill would bolster the President's authority to apply sanctions, while providing the flexibility to do so in a manner consistent with overall U.S. national interests.

OMB advises there is not objection to submission of this report to Congress. Enactment of CW sanctions legislation (e.g., Senate-passed S. 195) that does not provide adequate Presidential discretion would not be in accord with the President's program.

With best personal regards,

Sincerely yours,

JAMES A. BAKER III.

Mr. MARKEY. Mr. Speaker, I rise in support of the conference report and ask unanimous consent to revise and extend my remarks and insert extraneous material.

Mr. Speaker, I am rising in reluctant support of this conference report, because I feel that this legislation does not go far enough toward removing obsolete controls over exports of telecommunications equipment and technology to Eastern Europe and the Soviet Union.

In June this body voted overwhelmingly to attach tough telecommunications decontrol language to this bill. The House telecommunications provisions would have:

First, allowed exports of telecommunications equipment to Eastern Europe using the Cocom national discretion procedure—under which exports would likely be approved with only a requirement to report statistics to Cocom;

Second, allowed exports at national discretion of telecommunications technology to Eastern European countries which had adopted safeguards and inspection regimes to prevent diversion; and,

Third, allowed exports of telecommunications equipment to the Soviet Union at national discretion, but retained existing restrictions on technology transfer.

The House telecommunications provisions would have replaced obsolescent Cold War controls which have barred Eastern Europe and the Soviets from gaining access to the information technologies they need to build pluralistic societies and free market economies.

In today's global marketplace, telecommunications represents the essential infrastructure of modern business and manufacturing. You can't have a stock market without computer networks, telephones and fax machines. You can't manage a modern factory without computers and private networks for management, product design and development and inventory control. If Eastern Europe and the Soviet Union are to make the transition to a free-market, they need access to modern telecommunications equipment.

Telecommunications is also the tool of grassroots democracy. From Bucharest to Beijing, we've seen how FAX machines and electronic mail have taken control of information out of the hands of privileged bureaucrat-

ic elites and into the hands of the people. If Eastern Europe and the Soviet Union are to build stable and viable democracies, they will need access to the telecommunications tools that make free and open communications between their people and the outside would possible.

Unfortunately, the final conference report dropped many key provisions of the House bill. Telecommunications exports to Eastern Europe are to be controlled under Cocom's least restrictive control procedures—either decontrol or national discretion. This is an important step forward, for it will allow Poland, Czechoslovakia, and Hungary to obtain access to more modern telecommunications transmission equipment and switching systems.

At the same time, the bill does not direct relaxation of technology exports to Eastern Europe. More importantly, it does nothing to relax controls on telecommunications exports to the Soviet Union. Right now, the aging dictators in the People's Republic of China are eligible to receive telecommunications transmission systems and telecommunications network management and control equipment that cannot be legally exported to the Soviet Union. As a result, Nobel laureate Mikhail Gorbachev can't buy his people as sophisticated a phone system as we can send to Li Peng.

Even worse, the Bush administration is proposing to reverse the limited relaxation in controls on fiberoptics agreed to at the Cocom meeting in June of this year. In response to a letter from the distinguished gentleman from Connecticut [Mr. GEJDENSON] and myself, National Security Advisor Brent Scowcroft has confirmed that the administration is seeking to reverse the June 1990 Cocom agreement that certain fiberoptic cables and lasers used in fiberoptics telecommunications transmission would be exportable to the Soviets at national discretion. Under the administration's Cocom core list proposal these items would be embargoed, and could only be exported if Cocom approved a general exception to the embargo.

General Scowcroft has the audacity to claim in his letter that this short sighted proposal will eliminate controls which disadvantage U.S. industry. In reality, it will only further undermine efforts by companies such as U.S. West and Corning to participate in the construction of fiberoptics networks such as the $500 million trans-Soviet cable. The administration will not stop the Soviets from moving to fiber—which is available from a variety of non-Cocom foreign sources, a fact that the Commerce Department has already confirmed. Consequently, the administration's rollback proposal will only give our foreign competitors time to catch up with us and open markets that should be going to American companies.

This bill does nothing to repudiate the administration's short sighted policies on fiberoptics. One can only hope that our Cocom allies will give the administration's fiberoptics rollback proposals the rejection they so fully deserve.

I recognize that the distinguished gentleman from Connecticut has worked hard to reach an equitable compromise on the telecommunications provisions of this bill. I regret that his counterparts in the Senate do not share his enlightened understanding of these issues, and that the administration has allowed itself to be dominated by unreconstructed cold warriors in the National Security Agency, who would prefer to spy on the Soviets than give them a chance to shout democracy from the technological rooftops.

We need a new approach. Instead of trying to prevent Gorbachev from building a modern civilian telecommunications infrastructure in his country, we should be working with Gorbachev to confront the real threat facing our national security—the proliferation of weapons of mass destruction to unstable regimes in the Third World. This bill is a first step in that direction, but it does not do what really needs to be done: create a fully integrated multilateral technology control regime for nuclear, ballistic missile, and chemical weapons technologies.

Again, I urge adoption of the conference report, which represents a modest but useful step forward toward decontrolling telecommunications exports. I ask unanimous consent to insert into the RECORD at this point a copy of the aforementioned correspondence with the White House.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 7, 1990.

President GEORGE H.W. BUSH,
The White House,
1600 Pennsylvania Avenue, NW.,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our concern over reports that the Administration is considering a proposal to renege on an agreement to relax multilateral export controls over certain fiberoptics telecommunications transmission equipment to the Soviet Union. We believe that such a change in policy would be ill-advised and we strongly urge you not to suggest such a change as part of the United States COCOM core list proposal.

At a time when the Soviet Union is actively supporting America's efforts to rally world opinon against Iraq's invasion of Kuwait and seizure of American and Western hostages, we believe it would send precisely the wrong signal for the United States to table a proposal at COCOM which rolls back the existing level of fiberoptics transmission technology which is exportable to the Soviet Union. The premise that existing COCOM limits on fiberoptics exports are somehow insufficient to assure U.S. national security seems particularly questionable at a time when the Soviets are joining in resisting Iraqi aggression.

Instead of pursuing such a policy, we believe that a further relaxation of COCOM limits on exports of telecommunications equipment is warranted, particularly in the areas of fiberoptic and microwave telecommunications transmission equipment. As you may recall, last June the House of Representatives voted 365-47 to include provisions in the Export Facilitation Act which would liberalize controls over exports of telecommunications equipment. We believe that the strong bipartisan support for these provisions remains unchanged, and we would urge you to press for a further lifting of the COCOM limits on exports of telecommunications equipment and technology during the COCOM core list discussions this fall.

While the U.S. still must control the export of certain highly sophisticated equipment and technology to the Soviet Union, an increasing focal point of U.S. export control policy must be to prevent the proliferation of weapons of mass destruction, particularly in the countries of the Middle East. Instead of trying to roll back previously agreed-to multilateral export controls in order to prevent the Soviet Union from gaining access to communications technologies that facilitate the free spread of ideas and nurture the growth of democratic and free market institutions, we would suggest that greater attention be given to working cooperatively with the Soviet Union to tighten multilateral controls over the proliferation of nuclear, chemical, biological and ballistic missile technologies. It is time for your Administration to begin articulating a post-Cold War technology control policy agenda to deal with the proliferation threat.

Sincerely,

EDWARD J. MARKEY,
Chairman, Subcommittee on Telecommunications and Finance.
SAM GEJDENSON,
Chairman, Subcommittee on International Economic Policy and Trade.

THE WHITE HOUSE,
Washington, DC, October 23, 1990.

Hon. EDWARD J. MARKEY,
Chairman, Subcommittee on Telecommunications and Finance, House of Representatives, Washington, DC.

DEAR CONGRESSMAN MARKEY: Thank you for your letter of September 7, 1990, to the President, cosigned by Congressman Gejdenson, on the issue of export controls. In particular, you call for relaxation of controls on telecommunications equipment.

I believe that the National Security Agency and Department of State have offered briefings to you on the rationale for our export controls on telecommunications equipment and technology. Over the past six months, as we reviewed our policy, we took account of the urgent need for the Soviets and Eastern Europeans to have access to higher levels of telecommunications equipment, both to improve their infrastructure in support of economic reform, and to encourage the evolution of democratic institutions that rely on open and free communication.

The Administration believes that it met these goals in the COCOM-agreed positions adopted by the June High Level Meeting at COCOM. At that time, we decontrolled a broad range of telecommunications equipment and technology, including satellite ground stations for television, weather and civil communication and land mobile radio communications equipment. Further, for verifiable civilian end users, we agreed to consider favorably license applications for digital switches and packet switches. The combined effect of these actions is to make available to the Soviets all the necessary components of near state-of-the-art telecommunications systems. Beyond these actions, we proposed in COCOM even more liberal treatment for Eastern Europe.

I firmly believe that it would be irresponsible at this time to go beyond the control proposals being negotiated at this time at COCOM. You suggest that the U.S. would renege on commitments made at the COCOM meeting. That is not the case. In one specific area of fiber optic technology we intend to change an administrative exception procedure, one which would disadvantage U.S. industry, to a general excep-

tion level requiring full COCOM approval. But no telecommunications equipment decontrolled at the June HLM would be recommended for renewed control.

In our view, telecommunications systems already available to the Soviets are sufficient to meet their civilian needs. Access to the most modern telecommunications technologies, on the other hand, would undoubtedly do serious harm to the U.S. and its allies.

Finally, the Administration supports enhancing nonproliferation export controls in accordance with multilateral agreements that are the key to their effectiveness. We are exploring our options for including the U.S.S.R. in those control regimes.

Sincerely,

BRENT SCOWCROFT.

Mr. FASCELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut [Mr. GEJDENSON].

Mr. GEJDENSON. Mr. Speaker, I would like to thank the chairman, the gentleman from Florida [Mr. FASCELL] for this tremendous leadership and his support on the work that they have done, as well as the gentleman from Michigan [Mr. BROOMFIELD] on the other side, and the gentleman from Wisconsin [Mr. ROTH] who has worked with Members throughout the process. Many others, including the gentleman from Nebraska [Mr. BEREUTER] on the minority side, and some on the Democratic side, including the gentleman from California [Mr. BERMAN] and others have contributed in a significant way to the legislation that we have before Members.

This legislation will, hopefully, work to make this country more competitive and will make the trade policy for high technology firms more certain and more speedy.

The legislation does several very important things. It significantly relaxes controls on exports to Eastern Europe, and to a lesser extent, the Soviet Union. It imposes regulatory controls on the export of missile technology and on chemical and biological weapons. It also imposed penalties on United States and foreign individuals who violate these restrictions, and on countries that engage in the use of chemical and biological weapons. It also codifies tough economic sanctions on Iraq.

The world has changed. It is essential that the United States respond to that change, both in Eastern Europe and in hot spots around the world like the Middle East.

The bill has a number of significant provisions to respond to these changes in Eastern Europe and the Soviet Union, in particular. First, it requires the United States to propose the international body, Cocom, to ease controls on telecommunications equipment to Poland, Hungary, and Czechoslovakia. All such equipment would be subject to national discretion treatment. In particular, this means that all fiber optic transmission equipment would be sent to these countries without going through Cocom.

It also requires the United States to propose the decontrol of computers at least up to the level of which the PRC gets preferential treatment.

Second, it contains several provisions which require the executive branch to keep up with changes in technology. Controls on high-technology items must be dynamic in order to be meaningful. We cannot continue to control items that are several generations old. We have given the executive branch some discretion in this area. Should this discretion be abused, I will personally lead an effort in this next Congress to limit the latitude of an executive branch.

One of these provisions would provide for indexing of supercomputers. There was a story in one of the major business magazines that indicated that they could buy supercomputers from the Bulgarians, at Los Alamos Laboratories, but if Los Alamos wanted to take the very same computer it would be illegal for them to sell back to the Bulgarians. It allows the benefit of approach to be extended to the signers of the Nuclear Nonproliferation Treaty to members in good standing. It also is our intention to include signers of the Treaty of Tlateloco. It eliminates all national security licenses for items going to Cocom, and for almost all items to be exported from Cocom countries. This provision does allow items that Cocom unanimously agrees to be controlled within Cocom, provided all country suppliers, including those outside of Cocom, agree.

Fourth, the bill attempts to expedite the interagency process. Where the Commerce Department is given discretion to make decisions, we expect it to do so. Where other agencies are given a role, we do not expect them to be obstructionist. Unless disputes are resolved quickly and effectively, U.S. business and economy will be damaged significantly.

Americans have enough difficulty competing abroad without having their hands tied by feuding bureaucratic agencies.

Fifth, the bill provides for meaningful judicial review of the actions of agencies that implement the EAA. Too often in the past, the law has been simply disregarded.

This bill would also enhance our country's woefully inadequate export promotion program.

□ 1210

Again, I would like to commend and thank particularly the chairman of the committee and the ranking members and others on my subcommittee, the gentleman from Wisconsin [Mr. ROTH], the gentleman from Nebraska [Mr. BEREUTER], and others who have worked so hard together to come up with a product of which I think we can all be proud.

Mr. BEREUTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the conference report.

I want to commend, particularly, the distinguished gentleman from Connecticut, the chairman of the subcommittee, [Mr. GEJDENSON] for the long, difficult, and excellent work that he has led the subcommittee through in the course of passing the legislation and in successfully completing this conference.

Appropriate commendations are also directed to the gentleman from Michigan [Mr. BROOMFIELD], the ranking member of the full committee, to the ranking member of the subcommittee, the gentleman from Wisconsin [Mr. ROTH] and to the chairman, of course, of the full committee, the distinguished gentleman from Florida [Mr. FASCELL].

The gentleman from Connecticut [Mr. GEJDENSON] has very adequately explained the details of the legislation in the conference report. Since Chairman GEJDENSON has very adequately explained this legislation I will make just a few overall comments about it, directed to the membership for their consideration in deciding whether or not they will support this conference report. I strongly encourage such support.

First of all, I can give you absolute assurance that we have worked very carefully with personnel from the intelligence community and from the National Security Council, among others. You, therefore, can vote for this legislation without any jeopardy to the national security. Even though we are, for example, changing the way that high tech, telecommunications and supercomputer equipment can be exported, you have the assurance from this Member who has worked very diligently to alleviate that particular concern.

This legislation makes major advances in helping exporters from this country to be competitive in the markets that are opening up in Central and Eastern Europe. We give differential and favorable treatment to Czechoslovakia, to Poland and Hungary which is appropriate with the democratization changes that are taking place with assurances that the safeguards are in place to guard against the inappropriate transshipment of technology and other exports.

We maintain the tougher export controls, at this point, with respect to the rest of the Warsaw Pact countries, including the Soviet Union, but we give the President opportunities to add additional countries to the aforementioned three countries, as appropriate.

I think this legislation is particularly necessary and advantageous in assuring that we remain competitive and in fact increase our export competitiveness. In the past far too many uncesary and rediculous delays have plagued our exporters. They have faced far too much red tape. There have been far too many instances where it has taken our Government too long to conclude that there is undeed foreign availability for a product. Thus our exporters were placed at a severe and crucial disadvantage as conpared to major West European and Japanese export competitors.

Now we are presenting legislation which will facilitate that licensing process. We have forced decisions to be made—one way or another—in a timely fashion. We have separated out those things which need not be as tightly controlled from those which most assuredly must be controlled quite carefully, and we have taken these steps in conjunction with our Cocom allies.

So, Mr. Speaker, I want to conclude by thanking the members of the minority staff on the Foreign Affairs Committee, especially Stephen Biegun and J. Walker Roberts and several members of the Intelligence Committee staff from both sides of the aisle, who have assisted this Member in his effort to perfect certain sections related to intelligence and national security matters.

Mr. Speaker, the only concern that I am aware the administration has relates to the CBW provisions. The Presidential waiver provisions are very unsatisfactory as far as the Administration is concerned. However, at this point I have no definitive word from the White House as to whether or not a veto will be forthcoming over this CBW or the Cuba sanction provisons.

In any case, I urge my colleagues to support this legislation because of the improvements provided through the other major sections of this legislation.

Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Wisconsin [Mr. ROTH], the ranking member of the subcommittee.

Mr. ROTH. Mr. Speaker, I thank the gentleman from Nebraska for yielding this time to me and associate myself with his remarks.

I thank our chairman, the gentleman from Florida [Mr. FASCELL] and our ranking member, the gentleman from Michigan [Mr. BROOMFIELD] and, of course, the subcommittee chairman, the gentleman from Connecticut [Mr. GEJDENSON] for all their hard work on this legislation.

Mr. Speaker, this is really far-reaching legislation because it redraws the fine lines of prohibited conduct in the area of high-technology exports. In 1949, the beginning of the cold war, this legislation really had its genesis. Since that time, this legislation has been reviewed every so often, but now that the cold war is over, many of us feel that it is time to think anew and to act anew in this area. That is why this legislation is so important, because it addresses problems our exporters encounter today. Congress is making it easier for exporters to compete overseas. At the same time we are protecting our most sensitive technology.

Our markets are becoming internationalized and are global in every way. If our people are going to compete, then they are going to have to work within the rules we have established, and these rules are established under this legislation.

There have always been, since 1949, turf battles with our agencies. We again experience these same turf battles, but I think we have overcome many of the battles and hurdles that we had before.

We want our manufacturers to be able to compete internationally, and we have taken that into consideration, in fact it was always uppermost in our deliberations. This legislation, is forward looking, marching off into the 1990's to keep ourselves and our manufacturers competitive in the world markets.

In this new world of economic competition it won't do to come in second to Japan or Germany. We have to reestablish the United States as No. 1.

Coming out on top in this new intense economic competition is not going to be easy. It's going to take a lot of hard work.

We're going to have to come up with a winning game plan. We need to have our Government fight for fairness for our exporters. We need to cut out waste and excessive regulations which prevent our industries from competing on a level playing field with foreign competition.

In short, what we need to do is allow American business and American workers to do what they do best—compete and win.

Why is this competition so important? The answer can be said in one word—jobs.

If our economy is to continue to grow, if we are to sustain our high living standards, if our children and the students with us here today are going to have jobs and opportunities tomorrow—we need to expand our economy and that means exports.

The Commerce Department tells up that a new job is created with every $45,450 worth of export sales. In fact, while exports currently directly account for 6.2 percent of civilian employment in the U.S. exports account for 15.3 percent of employment growth.

We also have a multiplier effect. For every job created directly by exports there are twice as many other jobs created indirectly for truckers, dock workers, insurers, and administrative professionals.

We all know exports are a key part of the future of the U.S. economy and the bill recognizes this fact. This legislation reforms our export control laws in several important ways.

We cut back on bureaucracy and red tape involved in exports to Western Europe by establishing a license free zone within Cocom. In 1988, the Commerce Department processed 27,500 licenses for exports to Cocom. This bill will eliminate the need for almost all of the paperwork.

Provisions of this bill make it easier to sell products the new and expanding markets in the reformed nations of Eastern Europe. Exports to Poland, Hungary and Czechoslovakia will now be subject to fewer regulations and controls.

This legislation also helps to better define the respective roles of the Departments of Commerce, State, and Defense in the export licensing process by setting out clearer guidelines for commodity jurisdiction.

While relaxing export controls for countries that pose a lesser strategic threat to the United States, the conference also recognized the fact that new and dangerous threats to Western security interests exist. Terrorist organizations and nations that support international terrorism are actively trying to achieve technologies which would make the world a more dangerous place.

The new dangers that America faces in the form of terrorism and proliferation of weapons of mass destruction by giving greater latitude to the President in controlling these technologies. This bill sends a clear signal to the world that the United States takes very seriously its commitment to stop the spread of technologies that could be used to build weapons of mass destruction. Nuclear, biological, and chemical weapons technologies and products subject to the missile technology control regime must be kept in tight control.

Mr. Speaker, this conference report bring our Nation's export control laws up to date. Above all, we must make sure our trade policies are right for the times. This legislation strikes just the right balance between our national security interests and economic interests and deserves our support.

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for his excellent comments. He has been a leader in the area of facilitating our export competitiveness. The gentleman is perfectly right talking about the kind of turf battles we have had between Defense, Commerce, and State, and I think with this legislation we have at least reduced the likelihood of such battles.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. HORTON].

Mr. HORTON. Mr. Speaker, I rise along with the gentleman from California [Mr. MCCANDLESS] to engage the gentleman from Florida [Mr. FASCELL] and the gentleman from Wisconsin [Mr. ROTH] in a colloquy.

Mr. Speaker, may I ask the chairman, as I indicated in a previous colloquy on June 6, 1990, I am concerned that since the decision of the U.S. Court of Appeals for the Ninth Circuit in *Spawr Optical Research, Inc.* v. *United States,* 864 F.2d 1467 (1988), there is no longer a clear nationwide rule governing the burden of proof the

U.S. Government must prove beyond a reasonable doubt in criminal prosecutions under the Export Administration Act.

In the previous colloquy, may I say to the chairman, both the chairman and the ranking member, the gentleman from Wisconsin [Mr. ROTH] agreed that since its enactment the Export Administration Act has required the Government to prove beyond a reasonable doubt in such prosecutions that:

First, the commodity in question had been listed by the Secretary of Commerce on the Commodity Control List prior to export—thus creating the legal requirement to obtain a validated license to export;

Second, that the commodity was exported without obtaining such a license; and

Third, that the exporter intended to export the commodity.

This is the established nationwide rule articulated in *United States* v. *Gregg*, 629 F2d 1430, 1437 (8th Cir. 1987) and followed in other circuits until the Spawr decision in 1988.

In the period since our colloquy, I say to the Ninth Circuit has issued yet another decision which aggravates the problem. On September 14, 1990, the Court of Appeals for the Ninth Circuit in a case styled United States versus Mandel, reaffirmed the Spawr decision as the controlling precedent governing the burden of proof the U.S. Government must prove in criminal prosecutions under the Export Administration Act.

Under the Spawr decision the Ninth Circuit held that the U.S. Government need not prove beyond a reasonable doubt that the commodity in issue had been listed on the commodity control list and therefore was subject to the export licensing requirement. Mandel reaffirms the Spawr holding and explicitly reiterates that judges and juries must accept without question the U.S. Government's allegation that the Secretary of Commerce had listed the commodity on the Commodity Control List prior to the export of the commodity.

Mr. Speaker, I say to the chairman, the proliferation of the Spawr decision is beginning to produce devastating effects on our export trade and the free exchange of technical and scientific ideas. I have letters from well-known scientists and scientific societies and important exporters who assert that this lack of a uniform national standared concerning the burden of proof in criminal prosecutions under the Export Administration Act adversely impacts the disseminating of scientific information, creates a chilling effect on the free exchange or technical information and ideas, and impairs our export trade. All of these scientists and exporters urge Congress in the reauthorization of the Export Administration Act to clarify this matter and to reestablish a uniform nationwide rule. To cite but one example, the Optical Society of America, the largest society in the world devoted to the scientific and technological applications of light, publishes five journals throughout the world dealing with advanced technical subjects and conducts numerous international conferences. The Optical Society believes that the Spawr decision has created an intolerable situation and urges Congress to establish a uniform national rule, namely the Gregg rule, and to repudiate the misinterpretation of the law by the Ninth Circuit in the Spawr decision. I say to the chairman, I believe there is complete agreement in both Houses that there must be a clear, uniform national rule and it is up to Congress to clarify the situation.

Mr. Speaker, I would ask the chairman, now that the conference between the House and Senate on the reauthorization of the Export Administration is concluded, what is the status of the problem?

□ 1220

Mr. GEJDENSON. If the gentleman will yield, the topic that he is concerned with is dealt with in the House report and, for the first time, the EEA will include judicial review and give those individuals seeking protection through the judicial system far greater avenue than we have had in the past.

So the gentleman certainly has done yeoman's effort on this particular issue and his constituents ought to be very thankful for the effort he has put in on their behalf.

Mr. HORTON. I thank the gentleman.

Mr. Speaker, I would say that I was asking also on behalf of the gentleman from California [Mr. MCCANDLESS].

Mr. BEREUTER. Mr. Speaker, I reserve the balance of my time.

Mr. GEJDENSON. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. MINETA].

Mr. MINETA. I thank the gentleman for yielding the time at this point.

Mr. Speaker, I rise today in strong support of the conference agreement for the Export Facilitation Act of 1990.

Mr. Speaker, as you well know, I represent Silicon Valley, where small high-technology companies depend on the ability to export for their lifeblood. Therefore, I am fully aware of the need to tailor United States export control policy to reflect the political climate in the Soviet Union and Eastern Europe.

The competitive position of U.S. industry during the 1990's and into the next century will depend on our ability to adapt export policy to a quickly changing world.

The future of U.S. industry also will depend on our ability to streamline a problematic U.S. export control policy.

The Export Facilitation Act will liberalize the system of export controls but still will allow for sufficient protection of U.S. national security. It recognizes the need to rebuild the Eastern European countries to help ensure their successful transition to democracy and to a marketplace economy.

The current export control system has become a model of inefficiency and bureaucratic wrangling for high-technology exporters.

This legislation will force evaluation of each item to be placed on the Commodity Control List to ensure that controls will not be applied arbitrarily, and will guarantee that the list will be updated frequently.

The legislation also will distinguish between dual-use items and munitions to minimize bureaucratic disputes and simplify the decisionmaking process. By providing for indexing procedures, the act also recognizes the rapid advancement of high-technology exports.

Mr. Speaker, the Export Facilitation Act will help to ensure U.S. industry a competitive position in the world market.

In closing, Mr. Speaker, I wish to commend the gentleman from Florida, Chairman FASCELL, and the gentleman from Connecticut, the chairman of the Subcommittee on International Economic Policy and Trade, Mr. GEJDENSON, for their invaluable work and effort in bringing this legislation to this point. I would also like to thank Mr. BROOMFIELD, Mr. BEREUTER, Mr. ROTH, and my fine colleagues from California, Mr. BERMAN and Mr. LEVINE.

Mr. BEREUTER. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MCCANDLESS].

Mr. Speaker, I want to say that while the gentleman is a distinguished member of the Committee on Banking Finance and Urban Affairs, he has been very active and influential in export matters.

Mr. MCCANDLESS. I thank the gentleman for yielding.

Mr. Speaker, I want to express my appreciation to my colleagues for their efforts to clarify the legislative intent behind the Export Administration Act.

The judicial misinterpretation of the act by the Ninth Circuit Court has impaired the ability of the United States to compete in world markets.

In addition, the Spawr decision has inflicted a severe injustice to one of my constituents who was convicted of exporting a commodity which had never been listed on the Commodity Control List and did not require an export license.

As my colleagues pointed out, it was never Congress intent under the act to prohibit such actions, much less make them a crime.

This legislation will clarify that the Government must establish proof of all three elements to constitute a crime under the Act.

It is my hope that the Ninth Circuit will take notice of our actions today.

Mr. BEREUTER. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Minnesota [Mr. FRENZEL] who has been extraordinarily active and involved in export matters and trade matters generally.

Mr. FRENZEL. Mr. Speaker, in general, this is not a bad bill. There have been some improving changes made in the Export Administration Act.

But at the same time, I must say it falls 100 miles short of what I think is necessary if the United States is to stop shooting itself in the foot and restricting unnecessarily its capability to export around the world.

I think the distinguished gentleman from Connecticut has done a superior job in the face of overwhelming odds, and I do not want to denigrate his work, nor that of the rest of his committee against a recalcitrant delegation from the other body, they worked hard for the modest gains of the bill.

But while the bill is an improvement over current law, it is surely no landmark legislation.

The saddest part of this whole story, as has been indicated before on the floor of this House, is that the inclusion of the CBW features look as though they are going to condem the bill to a pocket veto.

When we get to try to mix our inclinations to serve humanity along with our needs to expand our commercial activities, we always get into trouble and confusion. This is no bill in which to put in CBW restrictions. The foreign policy restrictions on exports should be contained in another piece of law, their own statute. The EAA should be a commercial bill all by itself.

While I give high credit to the gentleman from Connecticut and those who worked with him on this bill, I intend to vote against it, and I shall not mourn when it is pocket vetoed.

Mr. BEREUTER. Mr. Speaker, I have no more requests for time, and I yield back the balance of my time.

Mr. GEJDENSON. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. LEVINE].

Mr. LEVINE of California. Mr. Speaker, let met begin by complimenting and commending my friend who has so ably chaired this subcommittee and who has done such a superb job in putting this legislation together, as well as the chairman of the full committee, the gentleman from Florida [Mr. FASCELL], the ranking member, and the gentleman from Nebraska, with whom I have the privilege of cochairing the Export Task Force. This has been a bipartisan product and reflects very thoughtful and effective and diligent work of the leadership of the full committee and the subcommittee on both sides of the aisle.

Mr. Speaker, the conference report makes urgently needed modifications to the export administration policy of the United States. It represents the culmination of over a year of study and work by the Subcommittee on International Economic Policy and Trade and by the full Committee on Foreign Affairs. I believe we owe a debt of gratitude, as I indicated, to the Members that I referred to.

I also believe we owe a debt of gratitude to the gentleman from Wisconsin [Mr. ROTH], who has shown leadership in this area for some time, and to Members on both sides of the aisle for bringing about essential and overdue reform to the very complex area of U.S. export control.

□ 1230

Mr. Speaker, the distinguished gentleman from Minnesota [Mr. FRENZEL] who just spoke raised questions about the appropriateness of including critical questions of U.S. foreign policy on a piece of legislation that deals primarily with trade policies, and I must respectfully disagree with my distinguished friend's conclusions and assert, as I believe Americans have done now for 200 years, that a key component of our foreign policy has to do with the principles for which this Nation stands, the values that this Nation represents and the foreign policy messages that this country feels that it is extremely important to communicate, and it is for those reasons that this bill also contains very important mandated sanctions on any country that uses chemical weapons in violation of international law, as well as stiff sanctions against companies and individuals that knowingly contribute to the chemical or biological weapons capability of other nations. The gentleman from Florida [Mr. FASCELL], the chairman of the full committee, the gentleman from Connecticut [Mr. GEJDENSON], the chairman of the subcommittee, and the gentleman from California [Mr. BERMAN], my friend, have all been very critical leaders in moving this very important provision of this bill, and they are important provisions that appropriately are included in the legislation before us today.

Mr. Speaker, I must confess to a degree of astonishment when I heard that there are now indications from the administration that the President is considering vetoing this legislation, legislation which is critical for the health of many high technology American industries, as my friend from the Silicon Valley, the gentleman from California [Mr. MINETA], just emphasized, industries that depend on exports for their survival because of the chemical weapons sanctions in this bill. Such a veto would be a seriously grave mistake and would be a particularly grave mistake at this time as it would send exactly the wrong signal to people such as Saddam Hussein at a critical and dangerous time when the messages that should be coming out of our country should be a united message from the executive branch, the legislative branch, Democrats and Republicans alike, that we will simply not countenance the use of chemical weapons or the use of biological weapons.

At a time, Mr. Speaker, when over 200,000 brave young Americans are putting their lives on the line in an effort in part to counter a chemical weapons threat and in an effort to tell our friends in the Persian Gulf that we stand behind them despite the chemical and biological weapons capacity that exists in Iraq and that has already been used, the very suggestion that a country that uses chemical weapons and that has used chemical weapons against its own people will not be sanctioned, is simply the wrong message to be sending at this point in time.

I have been gratified by the administration's response since August 2, after Iraqi troops crossed the Kuwaiti border, but I and others on this floor were deeply concerned that it took the administration as long as it did to get to where it now appropriately is in terms of saying to Saddam Hussein that neither the use of chemical weapons, nor unchecked naked aggression, shall be allowed to pay in the postcold war era.

Signing this piece of legislation with the important chemical weapons provision in it will help to underscore that important message that the administration has been attempting to communicate and that the Congress will be communicating with this piece of legislation. I would hope, Mr. Speaker, that the administration would stay with the message since August 2, not revert to the messages of before August 2, withdraw its veto threat and sign this extremely important piece of legislation.

Mr. GEJDENSON. Mr. Speaker, I yield 5 minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, first of all, like our colleagues, I would like to commend the gentleman from Connecticut [Mr. GEJDENSON] for, I think, a first rate job in of all the years to be tackling difficult issues. Chairman GEJDENSON really had an enormous challenge in front of him, and I think he did a superb job, and I want to thank him for his help and assistance.

I specifically want to rise and discuss the question of telecommunications exports under this legislation. The House accepted my amendment to promote telecommunications exports, and it seems to me that this legislation is really just a first step toward promoting telecommunication exports under this legislation. And of course, it is particularly important that telecommunications exports be targeted at Eastern Europe, the way this legislation does.

I want to take special note of the fact that all telecommunications export equipment under this legislation would be subject to national discretion treatment. So what that means is that no longer would there have to be a Cocom approval, and I think that it is a significant step forward. The legislation is a significant step forward in that no longer would Cocom approval be necessary for telecommunications exports to Eastern Europe, Poland, Hungary, and Czechoslovakia specifically, and the fact is it is simply impossible to get democracy across in Eastern Europe if they cannot get a dial tone, and in many parts of Eastern Europe people are waiting more than a year to get a telephone, and I think this part of the legislation will help significantly.

However, Mr. Speaker, I think we also should take special note of what the telecommunications section does not do, and that is that it really does not expand significantly the market in Russia. I think that is unfortunate. Some have said that this is going to in some way damage our national security if telecommunications exports are accessible in the Soviet Union. I think quite the opposite. I think the telecommunications will promote democracy rather than retard it, and I am hopeful that in the days ahead this paranoid notion that somehow telecommunications exports should be restricted in such a dramatic fashion with the Soviet Union will be abandoned.

I think the evidence is also clear that the Soviet Union is going to get the telecommunications exports anyway, possibly through Koreans or others, but I think those products are going to get into the Soviet Union, and I think it is unfortunate that the restrictions are not truly lifted so that our industries and our workers would have access to send these products to the Soviet Union as well as Poland, Hungary, and Czechoslovakia, and this legislation does.

Again I want to thank the gentleman from Connecticut [Mr. GEJDENSON]. Specifically the language in my amendment has been included in the bill to address the question of how the administration would conduct these negotiations in the manager's report, and I want to thank the gentleman for his help and support.

Mr. GEJDENSON. Mr. Speaker, I would just like to thank the gentleman from Oregon [Mr. WYDEN] for his kind remarks and say how much the committee appreciates the work he has done on this issue. He has been a leader in the Congress on the issue of high technology exports and trade, and he made a tremendous contribution in this piece of legislation in particular.

Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. HOUGHTON] who, as I mentioned earlier, is one of the Members, along with the gentleman from Wisconsin [Mr. ROTH] and the gentleman from Nebraska [Mr. BEREUTER] who did the heavy lifting, the hard work, that it took to pull this package together, and he deserves a great deal of credit for the insight and the wisdom he brought to us in a number of hearings.

□ 1240

Mr. HOUGHTON. Thank you very much. I think those are too kind words. The chairman of my subcommittee is the one that really led us. His instincts were right, he was always on target, and I think others of us who were part of it were proud to work with him.

Mr. Speaker, I would like to rise in support of the conference report. The people who worked on this, and I have not seen many committees work, worked very, very hard. It was extraordinary participation and involvement.

The gentleman from Florida [Mr. FASCELL], the gentleman from Michigan [Mr. BROOMFIELD], obviously our chairman, the gentleman from Connecticut [Mr. GEJDENSON], and the gentleman from Nebraska [Mr. BEREUTER], deserve commendation. I happened to be a small part of this process in the early stages.

We fought hard for a bill that would create a license-free Cocom and increased role for the Department of Commerce and reduction in bureaucratic wrangling. That is important when you look over the next hill and take a look at one of the elements necessary for American competitiveness. They reside right in those elements, particularly with the Commerce Department.

The details of the bill have been clearly spelled out, and I will not go into those. I personally believe this legislation is needed. It is forward-looking, it makes major advances in export competitiveness, and, importantly, as you look out, it will give the United States industry a better chance to compete for new markets in Eastern and Central Europe and the Soviet Union, while at the same time protecting our own national interest.

If there is anything we need at this particular time, it is this type of bureaucratic-free export incentive for an American industry which has been battered and looking toward sort of a recessionary trend. Compromises were made, but I think they were fair.

Mr. Speaker, I want to again say that I support this conference report.

Mr. GEJDENSON. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. BERMAN], who has been cooperative and helpful through the entire process of this bill. I particularly would like to thank him for his work and for the work of his staff on this issue.

Mr. BERMAN. I thank the gentleman for his sincere comments.

Mr. Speaker, I rise in strong support of the bill. I think it is important to remember that this legislation is dealing wth two very clear realities of the 1990's. One is the end of the cold war. There are major provisions here that remove barriers that have existed, many for good purposes, and the ability of our commercial interests in this country to legitimately exploit trade and export opportunities with countries in Eastern Europe, barriers that existed at the time because of the fears of concerns that they might somehow allow the transfer of technology that would erode our national security situation.

This bill is a recognition, and it is the most sensible recognition so far this year in Congress, of the fact that circumstances have changed and that for our own economic strength, it is important that we remove those barriers, move forward, establish those commercial relationships, and help U.S. companies protect U.S. jobs to allow the United States to maintain its leadership at the cutting edge of technology.

It also recognizes another important reality, and that is that the growing danger to United States national security interests is coming not so much from the hemorrhaging of technology these days to the Soviet Union, but rather from the proliferation of weapons of mass destruction and the technology that allows countries to produce those weapons of mass destruction, most specifically nuclear weapons, chemical weapons, and ballistic missile technology.

This legislation contains significant tough proposals and sanctions against the proliferation of missile technology. It focuses on the missile technology control regime and the efforts of the United States and other Western countries to restrict the flow of that kind of technology; in other words, from shifting from an East-West focus to a North-South focus in terms of trying to impede the development of these terrible weapons of war, these weapons that countries have forsworn their use for many, many years.

Obviously events in Iraq are so clear to everyone. All of the signs of what Iraq was doing in its efforts to secure

the capability to produce these weapons are now abundantly clear to all Americans and the people of all the world.

This legislation takes a step that tells not just American companies, but companies anywhere else in the world, that your desire for profits, your desire to enhance your own business, cannot come before the worldwide concern to stop dangerous tyrants from acquiring these weapons, this technology, and, in the case of many of these countries, most particularly Saddam Hussein's Iraq, the acquiring of the ability to use weapons of mass destruction means the willingness to use those weapons. He has demonstrated that very clearly to the world.

Third, there is the issue of the chemical weapons sanctions. Two years after the Iraqis under Saddam Hussein's leadership used nerve gas, both in its war with Iran and against its own Kurdish people, we are finally now taking meaningful steps to say that the United States will exercise its moral authority to impose sanctions on governments that use chemical weapons.

The gentleman from Minnesota earlier indicated, well, why is this in the Export Administration Act? The fact is, of course, the House did not put it in the Export Administration Act; the Senate did. But it does have a logic in that we are dealing here with the export of technology, in this case the export of technology to produce and manufacture chemical weapons.

We are hearing from the White House indications that they might actually consider vetoing this very important piece of legislation, this legislation which will help American companies based on an absurd perspective, a purely conceptual abstract perspective, that they do not have waiver authority to lift and keep from imposing sanctions on governments that use chemical gas.

This is one of the craziest things I have ever heard of. I urge the President not to take the advice of those people who are so obsessed with the conceptual flexibility of the administration to waive congressional restrictions in critical foreign policy issues, that he would actually contemplate vetoing this bill.

What kind of message does that send to the world, that the first meaningful chemical sanctions that come to his desk, because they say that if you use gas you are subject to prohibitions on getting foreign aid, arms sales, export licenses from U.S. companies, because the government that uses gas is going to be subject to those prohibitions, and that the President cannot waive them, not forever, but for 1 year, in other words, a certainty that sanctions will flow, I think that it behooves all of us to let the White House know very clearly what a terrible signal that will send if it chooses to veto this legislation based on the fact that he cannot waive meaningful sanctions during the first year after it is determined that a government uses poison gas in violation of the 1925 treaty that all the nations of the world signed forswearing ever using these terrible instruments of war.

For all of these reasons, I support this bill. I compliment very deeply the chairman of the subcommittee for his tremendous efforts, for his help on these critical issues, and the chairman of the Committee on Foreign Affairs, who for years has been trying to deal with the issue of chemical weapons and chemical weapons use and how the world is handling this issue.

I think we have a piece of legislation now that we can be proud of, and hopefully cooler minds will prevail, it will become law, and we will have accomplished something in this session that I think we can all be proud of.

Mr. GEJDENSON. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Speaker, I would first of all like to commend the gentleman from Connecticut [Mr. GEJDENSON] for the hard work he has put into this effort. It has been a long, tortuous process. I understand what he has gone through. I appreciate what the gentleman has accomplished.

Mr. Speaker, I would like to ask the gentleman from Connecticut [Mr. GEJDENSON], he was part of the debate that occurred the other day with reference to the State, Commerce, Justice bill with regard to the sale of technology to Third World countries. I would hope the gentleman would explain how the provisions in this bill with reference to that would impact, for instance, on the sale of a vector processor to Brazil, which might ultimately arrive in Iraq, which is what we were debating last week.

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Mr. GEJDENSON. Mr. Speaker, there are a number of ways the bill deals with that.

In the most specific sense, what the bill does is, in working with the MTCR, establish a list of countries of concern. Any items going to those countries would first get a DOD review along with a Commerce Department review. Additionally, as I think the gentleman knows, the foreign policy provisions in the act give the administration the authority to control virtually all items going to countries, so we have a number of provisions both in the missile technology regime, which is set up for the first time and moves toward international coordination, which I think the gentleman will agree really is much more significant in achieving our goals, but also retains the ability of the United States to act unilaterally where the United States feels that is necessary.

Mr. SMITH of Florida. Is the gentleman satisfied that we can prevent that flow of technology which would allow the upgrading of capabilities ultimately, for instance, in Iraq, to wind up with more devastating weapons as a result of what may flow out of the United States.

Mr. GEJDENSON. Absolutely, and without question.

Mr. SMITH of Florida. I thank the gentleman. That is an important matter of concern for all of us.

Mr. GEJDENSON. I commend the gentleman from Florida for his work that he has done, again, not just since August 2, and the invasion where it has become popular to watch Iraq, but before the invasion when Iraqis were killing Kurds and doing many of their other deeds.

Mr. ENGEL. Mr. Speaker, I rise today to express my support for the conference report on the Export Facilitation Act. I have had the privilege of working with the other members of the International Economic Policy and Trade Subcommittee and its able chairman, Mr. GEJDENSON, to help craft this bill and I sat on the conference committee. I feel this bill is an important step forward in enabling American high-technology companies to complete in the international marketplace.

I am pleased that my legislation, H.R. 4562, the Export Licensing Adjustment Act, was included, with perfecting amendments, in this conference report. For the first time, the Department of Commerce will be required to remove items that are obsolete, with respect to our national security, from the commodity control list. This indexing process will enable our exporters to sell American goods as soon as the items no longer pose a threat to our security and will help to maintain American manufacturing jobs. It is my strong hope that my contribution to this legislation will, in combination with other provisions of this conference report, curtail the bureaucratic foot dragging that has come to characterize our export licensing system.

In an era when the United States continues to run huge trade deficits, this legislation will move us toward a more competitive international position. It reduces bureaucratic restrictions in areas where the United States is more competitive, such as supercomputers and telecommunications. I full expect that as time goes on and the countries of Eastern Europe more completely exert their independence from the Soviet Union we will want to further deregulate United States sales of high-technology sales to these new democracies. In addtion, we must carefully examine the strategic gains and losses which we would incur by selling items such as fiber optic cable for civilian end uses to the Soviet Union. We no longer live in a world where military capacity defines strategic strength. A consideration of the long-term health of our economy should be considered as well.

I also want to stress my support for the restrictions on missile technology and chemical and biological weapons production included in

the conference report. Our immediate security is now threatened as much or more by terrorist countries like Iraq and Libya than by the Soviet Union. The provisions in this bill, if properly administered, should be very effective in keeping biological, chemical, and advanced missiles out of the hands of terrorist leaders.

The United States can no longer afford to tie one arm behind its back when attempting to compete in the international marketplace. The post-World War II period, when the United States was the dominant industrial power, is clearly over. The United States is still the largest economy in the world, but we need to take decisive steps to ensure its continued vibrancy. It's time to wake up to the economic challenges we face from other nations. This bill is a step forward, but must be followed by legislative initiatives that continue to improve our export licensing system.

Mr. BROOMFIELD. Mr. Speaker, I would like to commend Chairman FASCELL, Congressmen ROTH and BEREUTER, and the subcommittee chairman, Congressman GEJDENSON, for their hard work on this legislation.

This bill takes U.S. export control law in the right direction. If it becomes law, it would go a long way toward improving U.S. competitiveness and our trade deficit. However, I do have one reservation in supporting this conference report.

The conferees failed to reach agreement with the administration on title IV of the conference report, concerning chemical and biological weapons sanctions. I want to emphasize that the administration supports the concept of such sanctions.

In fact, the administration supported a House bill on this subject earlier in the year that would have bolstered the President's authority to apply sanctions. At this same time, it provides the flexibility to do so in a manner consistent with overall national security interests.

It is my understanding that the agreement reached in conference on this important issue does not meet the administration's concerns that there be adequate Presidential discretion and flexibility. This is regrettable given the administration's repeatedly stated support for appropriate and responsible CBW sanctions legislation.

Otherwise, I support this conference report. The world has changed dramatically in the past few years. The Japanese, Germans, and French are already dividing the markets in newly democratic Eastern European nations.

It is time for our exporters to have the opportunity to get a foothold in the same markets. Export controls must recognize the importance of economic strength and the right of the U.S. businessman to export.

Mr. KLECZKA. Mr. Speaker, I am very pleased that the House has passed the Export Facilitation Act H.R. 4653 before adjourning this year.

Never before has the international economy been as free from trade restrictions or as vulnerable to collapse as it is today. To cope with the emerging markets in Eastern Europe, EC 1992, the Third World and conflict in the Middle East, trade financing agencies must be strengthened now to compete profitably in this new world order.

H.R. 4653 provides the necessary tools and protections to insure that the American Government and our businesspeople may flourish in overseas markets.

As an advocate of the Export-Import Bank's role in promoting U.S. commercial exports, I am particularly pleased that the Eximbank Interest Subsidy Program is extended through fiscal year 1992 by this measure. To preserve a foothold for key U.S. commercial products in overseas markets, H.R. 4653 authorizes $35 million for the Interest Subsidy Program in fiscal year 1992, requiring the entire amount be used to combat the anticompetitive trade practices of our major foreign competitors.

As for Eximbank financing weapon exports, H.R. 4653 requires Congress to promptly and thoroughly examine the issues surrounding this controversial matter in the next session. The reasonable approach to resolving this issue has my full support.

The programs and activities supported by the Export Facilitation Act will strengthen our economy during the upcoming years. For this reason, I urge my colleagues to vote for passage of the conference report on H.R. 4653.

Mr. STARK. Mr. Speaker, this legislation before us, the conference report on the Export Facilitation Act [EFA], contains important recognition of our evolving national security needs.

The cold war is over. Poland, Czechoslovakia, and Hungary are democracies, East Germany no longer exists, and the Soviet Union is deciding which path to capitalism it should follow.

On the other hand, Iraq, Iran, Libya, Syria, and other Third World states are developing ever greater and more frightening military capabilities and are demonstrating their willingness to use them. Already, despotic regimes in the world's most unstable regions can produce their own chemical, biological, and sophisticated conventional weapons, with nuclear warheads and long-range missiles only a few years away. These countries are quickly becoming as threatening to us as the Soviet Union ever was.

In response to these developments, we and our allies must greatly adjust our export controls. This legislation moves us in that direction. It liberalizes export licensing requirements for trade with Eastern Europe, helping both our exporters and their economic development. At the same time, using the authority of the Foreign Policy Controls in section 6 of the Export Administration Act, it maintains controls on trade of certain items to certain countries. We can still stop a sale of nuclear triggers to Iraq.

The EFA also puts new emphasis on controlling the transfer of missiles and chemical weapons to Third World countries. I am especially supportive of the mandatory sanctions on foreign companies that help transfer such technology. We've got to send a message to those who would profit at the world's expense that they will face grave consequences for doing so. Helping Libya build a chemical weapons plant merits at the very least 1 or 2 year import and procurement ban by the United States.

Finally, I am very glad to see that the bill calls for sanctions on countries not complying with the trade embargo of Iraq and Kuwait. As I have said a number of times, the embargo remains our best chance for diplomatic solution to this crisis, avoiding a bloody, costly war. I introduced the Iraq Embargo Enforcement Act to help strengthen the embargo by putting import sanctions on foreign companies found trading with Iraq. The provision in the legislation before us accomplishes much the same goal; it allows the president to selectively bar imports from countries which are not in compliance. I would have preferred mandatory sanctions against specific violators, but this is an important step in the right direction.

Overall, this bill is a good start to recognizing our changing security needs. But it is only a start. There are still too many different agencies monitoring different categories of exports. I am very concerned about the liberalizing of controls on dual-use nuclear items. For example, high-speed oscilloscopes—devices useful for processing data from nuclear tests—could now be sold to Eastern Europe. We'll then have to rely on these hard-currency starved countries' export controls to prevent a diversion to Iraq, Pakistan, Libya, or elsewhere. That's a gamble I'd rather not take.

The sanctions on foreign companies selling chemical weapons and missile technology should be extended to cover nuclear items as well. I have recently introduced the Non-Proliferation Act of 1990 which would do just that. I will reintroduce it next January and perhaps we can strengthen the proliferation controls then.

My major concern, though, is the recent developments in Cocom, the export control agreement between the United States and our allies to prevent the transfer of sophisticated technology to the Soviet Union and its allies. As items are dropped from the Cocom list, we may still require licenses if they are exported to the Third World. Our allies may drop their controls on these items altogether. That means the Iraqis might be able to buy their nuclear triggers directly and openly in Western Europe.

Cocom has proven very effective over the years. Now that its original need is greatly diminished, we shouldn't just let the agreement die. We should reorient it to prevent the proliferation of weapons of mass destruction to the countries in the Third World. We should open up Cocom to include Eastern Europe, eventually the Soviet Union, and any other countries which have adequate export controls and can demonstrate a commitment to nonproliferation. We could create a license-free zone for trade between members, giving nonparties to the agreement a strong incentive to join and thus demonstrate their nonproliferation credentials. The agreement would require an enforcement mechanism, such as common sanctions against foreign companies which violate the controls.

Mr. Speaker, far ranging steps of this kind are necessary if we are to meet the national security needs of the 1990's and beyond. The Export Facilitation Act is an important first step in this direction. It has some flaws and limitations, but overall moves us forward on the right path, and I urge support for its passage.

Mr. Speaker, I have no further requests for time, I yield back the bal-

ance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GEJDENSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Connecticut?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3134. An act for the relief of Mrs. Joan R. Daronco.

The message also announced that the Senate insists upon amendments to the bill (H.R. 5311) "An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991" disagreed to by the House, agrees to the further conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. GRAMM, Mr. DOMENICI, and Mr. HATFIELD, to be the conferees on the part of the Senate.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken later today.

ASBESTOS SCHOOL HAZARD ABATEMENT REAUTHORIZATION ACT OF 1989

Mr. THOMAS A. LUKEN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1893) to authorize the Asbestos School Hazard Abatement Act of 1984.

The Clerk read as follows:

S. 1893

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Asbestos School Hazard Abatement Reauthorization Act of 1989".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Environmental Protection Agency has estimated that more than forty-four thousand school buildings contain friable asbestos, exposing more than fifteen million school children and one million five hundred thousand school employees to unwarranted health hazards.

(2) All elementary and secondary schools are required by the Asbestos Hazard Emergency Response Act to inspect for asbestos, develop an asbestos management plan, and implement such plan.

(3) The Environmental Protection Agency has estimated it will cost local education agencies more than $3,000,000,000 to comply with the Asbestos Hazard Emergency Response Act.

(4) Without a continuing program of information assistance, technical and scientific assistance, training, and financial support, many local educational agencies will be unable to carry out sufficient response actions to prevent the release of asbestos fibers into the air.

(5) Without the provisions of sufficient financial support, the cost to local educational agencies of implementing asbestos response actions may have an adverse impact in their educational mission.

(6) The effective regulation of interstate commerce for the protection of human health and the environment requires the continuation of programs to mitigate hazards of asbestos fibers and materials emitting such fibers.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To direct the Environmental Protection Agency to maintain a program to assist local schools in carrying out their responsibilities under the Asbestos Hazard Emergency Response Act.

(2) To provide continuing scientific and technical assistance to State and local agencies to enable them to identify and abate asbestos health hazards.

(3) To provide financial assistance to State and local agencies for training of persons involved with inspections and abatement of asbestos, for conducting necessary reinspections of school buildings, and for the actual abatement of asbestos threats to the health and safety of school children or employees.

(4) To assure that no employee of a local educational agency suffers any disciplinary action as a result of calling attention to potential asbestos hazards which may exist in schools.

SEC. 3. AMENDMENTS TO ASBESTOS SCHOOL HAZARD ABATEMENT ACT OF 1984.

Except as otherwise specifically provided, whenever in this Act a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Asbestos School Hazard Abatement Act of 1984 (20 U.S.C. 4011 et seq.).

SEC. 4. ASBESTOS HAZARDS ABATEMENT PROGRAM.

Subsection (b) of section 503 is amended—

(1) in paragraph (2), by inserting "educational" after "local";

(2) in paragraph (2), by inserting ", including parent and employee organizations," after "institutions"; and

(3) by amending paragraph (3) to read as follows:

"(3) not later than November 15 of each year for which this title is authorized, the development and distribution of applications, or notifications to all local educational agencies of the availability of application forms including information for obtaining such forms; and".

SEC. 5. STATE RECORDS AND PRIORITY LISTS.

(a) MAINTENANCE OF RECORDS.—Subsection (a) of section 504 is amended—

(1) by striking out "Not later than" and all that follows through "maintaining records on—" and inserting in lieu thereof "The Governor of each State shall maintain records on—";

(2) in paragraph (2), by inserting "and other response actions" after "abatement activities";

(3) by inserting "and" after the semicolon at the end of paragraph (2); and

(4) in paragraph (3), by striking out "subparagraph (B)" and inserting in lieu thereof "paragraph (2)".

(b) DELETION OF DEPARTMENT OF EDUCATION REFERENCES.—Subsection (b)(1) of section 504 is amended—

(1) by striking out "Not later than six months after the date of the enactment of this title and annually thereafter," and inserting in lieu thereof "Each year, in accordance with procedures established by the Administrator,";

(2) in subparagraphs (A) and (B), by striking out "and the Secretary of the Department of Education" both places it appears;

(3) in subparagraph (A), by inserting "and" after the semicolon at the end of such subparagraph; and

(4) by striking out subparagraph (C).

(c) DETERMINATION OF ADEQUACY OF RESOURCES.—Subsection (b)(4) of section 504 is amended—

(1) by redesignating subparagraph (F) as subparagraph (G); and

(2) by inserting after subparagraph (E) the following new subparagraph:

"(F) Any additional costs to the local educational agency of meeting the special needs of disadvantaged students.".

(d) CONFORMING AMENDMENT.—Section 504 is further amended by striking out subsection (c).

SEC. 6. FINANCIAL ASSISTANCE.

(a) APPLICATION APPROVAL DEADLINE.—Subsection (b) of section 505 is amended—

(1) in paragraph (2), by striking out "applications shall be submitted," and inserting in lieu thereof "the Governor shall submit applications,";

(2) in paragraph (2), by adding at the end the following: "The Administrator shall approve or disapprove applications for financial assistance no later than April 30 of each year."; and

(3) by striking out paragraph (3).

(b) RANKING APPLICATIONS.—Subsection (c)(2)(B)(iv) of section 505 is amended by striking out "is cost-effective compared to other techniques including management of material containing asbestos" and inserting in lieu thereof "uses the least burdensome methods which protect human health and the environment".

(c) DELETION OF REFERENCE TO DEPARTMENT OF EDUCATION REPORT.—Subsection (c)(3) of such section is amended by striking out "shall consider—" and all that follows through the end of the paragraph and in-

serting in lieu thereof the following: "shall consider the financial resources available to the applicant as certified by the Governor pursuant to section 504(b)(4).".

(d) ADDITIONAL LIMITATION.—Subsection (d) of such section is amended to read as follows:

"(d) LIMITATION.—In no event shall financial assistance be provided under this title to an applicant if—

"(1) the Administrator determines that such applicant has resources adequate to support an appropriate asbestos materials abatement program; or

"(2) the applicant is not in compliance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).".

(e) REQUIREMENT TO DEPOSIT FUNDS INTO ASBESTOS TRUST FUND.—Subsection (f) of such section is amended in paragraph (3) by striking out "for deposit in the general fund" and inserting in lieu thereof the following: "for deposit in the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act (Public Law 99-519; 20 U.S.C. 4022)".

(f) ADDITIONAL REQUIREMENTS FOR APPLICATION APPROVAL.—Subsection (g) of such section is amended—

(1) in paragraph (1), by striking out "within the five-year period beginning on the effective date of this title" and inserting in lieu thereof "in accordance with such procedures as may be developed by the Administrator";

(2) in paragraph (2)(B), by amending clauses (i) and (ii) to read as follows:

"(i) the local educational agency has prepared and is implementing an asbestos management plan, as required under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.); and

"(ii) all activities to be conducted with the financial assistance will be performed by individuals trained and accredited in conformance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) and regulations promulgated under that title;"; and

(3) by striking out paragraph (4).

SEC. 7. ADMINISTRATIVE PROVISIONS.

Section 506 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) PROCEDURES.—The Administrator also shall establish procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 505, for—

"(1) abating asbestos materials in school buildings;

"(2) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

"(3) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken.

"(c) RELATIONSHIP TO OTHER LAWS.—Nothing contained in this title shall be construed, interpreted, or applied to diminish in any way the level of protection required under any other State or Federal worker protection or other applicable laws.".

SEC. 8. ANNUAL REPORT.

(a) REPORT DEADLINE.—The first sentence of section 507 is amended to read as follows: "During each calendar year until 1999, the Administrator shall prepare and submit, not later than June 1 of each year, to the Committee on Environment and Public Works of the Senate and to the Committee on Energy and Commerce of the House of Representatives a report on the loan and grant program authorized by section 505 of this title.".

(b) CONTENTS OF REPORT.—Paragraph (6) of such section is amended by inserting before the period the following: "and the amount of resources needed by such schools, categorized by State, to abate all remaining asbestos hazards".

SEC. 9. RECOVERY OF COSTS.

Paragraph (2) of section 508(a) is amended by inserting after "repay to the United States," the following: "by deposit in the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act (20 U.S.C. 4022),".

SEC. 10. DEFINITIONS.

Section 511 is amended—

(1) in paragraph (3), by inserting ", vibration," after "damage from water"; and

(2) by adding at the end the following new paragraph:

"(9) The term 'response action' has the meaning given such term by section 202(11) of the Toxic Substances Control Act (15 U.S.C. 2642(11)).".

SEC. 11. AUTHORIZATION.

(a) AUTHORIZATION.—Paragraph (1) of section 512(a) is amended to read as follows: "There are hereby authorized to be appropriated for the asbestos abatement program not more than $200,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995. In addition, for such purposes and for each of such fiscal years there are authorized to be appropriated out of the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986 (20 U.S.C. 4022) such sums as are contained in such trust fund in each of such fiscal years.".

(b) SPECIFIC PROGRAMS.—Subsection (b) of section 512 is amended by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) Of those sums appropriated for the implementation of this title, not more than 5 percent may be reserved during each fiscal year for the administration of this title and for programs including (but not limited to) the following:

"(A) The establishment of training centers for contractors, engineers, school employees, parents, and other personnel to provide instruction, in accordance with title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.), on asbestos assessment and abatement.

"(B) The development and dissemination of abatement guidance documents to assist in evaluation of potential hazards and the determination of proper abatement programs.

"(C) The development of rules and regulations regarding inspection, reporting, and recordkeeping.

"(D) The development of a comprehensive testing and technical assistance program.

"(3) Of those sums appropriated for any fiscal year for the implementation of this title, the Administrator may use not more than 5 percent to provide grants to States for the following purposes:

"(A) Assisting local educational agencies in performing the periodic reinspections and training activities required under title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.).

"(B) Establishing and maintaining programs to accredit personnel performing asbestos inspections and response actions.".

SEC. 12. CONFORMING AMENDMENTS TO ASBESTOS TRUST FUND.

(a) AMOUNTS TRANSFERRED TO TRUST FUND.—Section 5(b)(1) of the Asbestos Hazard Emergency Response Act of 1986 (Public Law 99-519) is amended—

(1) in subparagraph (A), by striking out "as in effect on the date of the enactment of this Act, and" and inserting in lieu thereof a comma;

(2) in subparagraph (B), by striking out the period at the end and inserting in lieu thereof ", and"; and

(3) by adding at the end the following new subparagraph:

"(C) amounts received as proceeds from any judgment recovered in any suit brought pursuant to section 508(a)(1) of the Asbestos School Hazard Abatement Act of 1984 (20 U.S.C. 4017(a)(1)).".

(b) EXPENDITURES FROM TRUST FUND.—Section 5(d) of such Act is amended by striking out "as in effect on the date of the enactment of this Act".

SEC. 13. EPA INFORMATION OR ADVISORY.

Section 203(d) of title II of the Toxic Substances Control Act is amended by adding the following new paragraph at the end thereof:

"(7) The Administrator shall, not later than 30 days after enactment of this paragraph, publish and distribute to all local education agencies and State Governors information or an advisory to—

"(A) facilitate public understanding of the comparative risks associated with in-place management of asbestos-containing building materials and removals;

"(B) promote the least burdensome response actions necessary to protect human health, safety, and the environment; and

"(C) describe the circumstances in which asbestos removal is necessary to protect human health.

"Such information or advisory shall be based on the best available scientific evidence and shall be revised, republished, and redistributed as appropriate, to reflect new scientific findings.".

SEC. 14. TECHNICAL AMENDMENTS.

(a) SECTION HEADINGS.—(1) Section 501 is amended by striking out "SEC. 501." and inserting the following section heading:

"SEC. 501. SHORT TITLE.".

(2) Section 502 is amended by striking out the section heading and "SEC. 502." and inserting in lieu of the section heading the following:

"SEC. 502. FINDINGS AND PURPOSES.".

(3) Section 503 is amended by striking out the section heading and "SEC. 503." and inserting in lieu of the section heading the following:

"SEC. 503. ASBESTOS HAZARD ABATEMENT PROGRAM.".

(4) Section 504 is amended by striking out the section heading and "SEC. 504." and inserting in lieu of the section heading the following:

"SEC. 504. STATE RECORDS AND PRIORITY LISTS.".

(5) Section 505 is amended by striking out the section heading and "SEC. 505." and inserting in lieu of the section heading the following:

"SEC. 505. FINANCIAL ASSISTANCE.".

(6) Section 506 is amended by striking out "SEC. 506." and inserting the following section heading:

"SEC. 506. ADMINISTRATIVE PROVISIONS.".

(7) Section 507 is amended by striking out "SEC. 507." and inserting the following section heading:

"SEC. 507. ANNUAL REPORT.".

(8) Section 508 is amended by striking out "SEC. 508" and inserting the following section heading:

"SEC. 508. RECOVERY OF COSTS.".

(9) Section 509 is amended by striking out "SEC. 509." and inserting the following section heading:

"SEC. 509. EMPLOYEE PROTECTION.".

(10) Section 510 is amended by striking out "SEC. 510." and inserting the following section heading:

"SEC. 510. AFFECT ON RIGHTS UNDER OTHER LAWS."

(11) Section 511 is amended by striking out "SEC. 511." and inserting the following section heading:

"SEC. 511. DEFINITIONS.".

(12) Section 512 is amended by striking out "SEC. 512." and inserting the following section heading:

"SEC. 512. AUTHORIZATION.".

(b) SUBSECTION HEADINGS.—(1) Section 502(a) is amended by inserting "FINDINGS.—" after "(a)".

(2) Section 502(b) is amended by inserting "PURPOSE.—" after "(b)".

(3) Section 503(a) is amended by striking out "(1)" and inserting in lieu thereof "ABATEMENT PROGRAM.—".

(4) Section 503(b) is amended by inserting "DUTIES.—" after "(b)".

(5) Section 504(a) is amended by inserting "RECORDS.—" after "(a)".

(6) Section 504(b) is amended—

(A) by inserting "PRIORITY LIST.—" after "(b)";

(B) by inserting "activities and other response actions" after "abatement" each place it appears in subparagraphs (A) and (B) of paragraph (1);

(C) in paragraph (1)(B), by striking out "section 503(b)(3) and"; and

(D) in paragraph (4)(C), by inserting a comma after "per capita income".

(7) Section 505 is amended—

(A) in subsection (a), by inserting "ASSISTANCE PROGRAM.—" after "(a)";

(B) in subsection (b), by inserting "APPLICATION SUBMISSION.—" after "(b)";

(C) in subsection (c), by inserting "REVIEW OF APPLICATION.—" after "(c)";

(D) in subsection (e), by inserting "AMOUNT OF LOAN OR GRANT.—" after "(e)";

(E) in subsection (f), by inserting "LOAN AGREEMENT.—" after "(f)"; and

(F) in subsection (g), by inserting "APPLICATION REQUIREMENTS.—" after "(g)".

(6) Section 506(a) is amended by inserting "REGULATIONS.—" after "(a)".

(7) Section 506(d) (as redesignated by section 7) is amended—

(A) by inserting "OTHER AUTHORITY.—" after "(d)"; and

(B) by inserting a comma after "standards" the first place it appears.

(8) Section 508(a) is amended by inserting "LOAN CONDITION.—" after "(a)".

(9) Section 508(b) is amended by inserting "EXPEDITIOUS RECOVERY.—" after "(b)".

(c) MISCELLANEOUS TECHNICAL AMENDMENTS.—(1) Section 505(b) is amended in paragraph (1) by striking out the comma after "educational agency".

(2) Section 505(c) is amended—

(A) in paragraph (2), by inserting "and" after the semicolon at the end of subparagraph (A); and

(B) in paragraph (2), by inserting a comma after "confined space" in subparagraph (B)(ii) and after "techniques" in subparagraph (B)(iv).

(3) Section 505(e) is amended by striking out "per centum" both places it appears and inserting in lieu thereof "percent".

(4) Section 505(g) is amended—

(A) by redesignating the subparagraph (B) appearing after paragraph (3) as paragraph (4) and conforming the margin accordingly; and

(B) by inserting a comma in paragraph (4) (as so redesignated) after "section 512(b)(1)".

(5) Section 508 is amended by striking out "sections" and inserting in lieu thereof "section".

(6) Section 511 is amended—

(A) by striking out "For purposes of this title—" and inserting in lieu thereof "For purposes of this title:";

(B) by striking out "the" at the beginning of each paragraph and inserting in lieu thereof "The";

(C) by striking out the semicolon at the end of each paragraph and inserting in lieu thereof a period;

(D) by striking out the word "each" in paragraph (3); and

(E) by inserting "secondary" before "school" in paragraph (5).

SEC. 15. ASBESTOS ABATEMENT TRAINING AMENDMENTS.

(a) ACCREDITATION REQUIREMENT FOR WORKERS IN PUBLIC AND COMMERCIAL BUILDINGS.—(1) Paragraphs (1) and (3) of section 206(a) of the Toxic Substances Control Act (15 U.S.C. 2646) are amended by adding before the comma at the end of each the following: "or in a public or commercial building".

(2) Clauses (i) and (iii) of section 206(b)(1)(A) of such Act are amended by adding before the period at the end of each the following: "or in public or commercial buildings".

(3) Not later than one year after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency shall revise the model contractor accreditation plan promulgated under section 206(b)(1) of the Toxic Substances Control Act (15 U.S.C. 2646(b)(1)) to increase the minimum number of hours of training, including additional hours of hands-on health and safety training, required for asbestos abatement workers and to make such other changes as may be necessary to implement the amendments made by paragraphs (1) and (2).

(4) Section 207 of such Act (15 U.S.C. 2647) is amended by adding at the end thereof the following:

"(g) Any contractor who—

"(1) inspects for asbestos-containing material in a school, public or commercial building;

"(2) designs or conducts response actions with respect to friable asbestos-containing material in a school, public or commercial building; or

"(3) employs individuals to conduct response actions with respect to friable asbestos-containing material in a school, public or commercial building;

and who fails to obtain the accreditation under section 206 of this Act, or in the case of employees to require or provide for the accreditation required, is liable for a civil penalty of not more than $5,000 for each day during which the violation continues, unless such contractor is a direct employee of the Federal Government.".

(b) DISCLAIMER.—In exercising any authority under the Toxic Substances Control Act in connection with the amendment made by subsection (a) of this section, the Administrator of the Environmental Protection Agency shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(c) EFFECTIVE DATE.—This section shall take effect upon the expiration of the 12-month period following the date of the enactment of this Act. The Administrator may extend the effective date for a period not to exceed one year if the Administrator determines that accredited asbestos contractors are needed to perform school-site abatement required under the Asbestos Hazard Emergency Response Act (15 U.S.C. 2641) and such an extension is necessary to ensure effective implementation of section 203 of the Toxic Substances Control Act.

SEC. 16. TRAINING GRANTS.

(a)(1) AUTHORIZATION FOR TRAINING GRANTS.—Title II of the Toxic Substances Control Act (15 U.S.C. 2641 et seq.) is amended by adding at the end the following:

"SEC. 216. TRAINING GRANTS.

"(a) GRANTS.—The Administrator is authorized to award grants under this section to nonprofit organizations that demonstrate experience in implementing and operating health and safety asbestos training and education programs for workers who are or will be engaged in asbestos-related activities (including State and local governments, colleges and universities, joint labor-management trust funds, and nonprofit government employee organizations) to establish and, or, operate asbestos training programs on a not-for-profit basis. Applications for grants under this subsection shall be submitted in such form and manner, and contain such information, as the Administrator prescribes.

"(b) AUTHORIZATION.—Of such sums as are authorized to be appropriated pursuant to section 512(a) of the Asbestos School Hazard Abatement Act of 1984 (20 U.S.C. 4011 et seq.) for the fiscal years 1991, 1992, 1993, 1994, and 1995, not more than $5,000,000 are authorized to be appropriated to carry out this section in each such fiscal year.".

(2) The table of contents for title II of such Act (contained in section 1 of such Act) is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Training grants.".

(b) EFFECTIVE DATE.—Section 216 of the Toxic Substances Control Act, as added by subsection (a), shall take effect on the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. THOMAS A. LUKEN] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1893, the Asbestos School Hazardous Abatement Reauthorization Act of 1989 [ASHAA] will permit school officials to effectively undertake the critically necessary asbestos abatement activities required by the Asbestos Hazard Emergency Response Act [AHERA] to protect our children, asbestos workers, and other building occupants from developing serious diseases such as asbestosis in their later years.

Since ASHAA's enactment in 1984, the Federal Government has awarded grants and loans to primary and secondary schools to inspect for asbestos and to develop asbestos management plans.

Unfortunately, because of the sometimes extraordinarily high cost of asbestos abatement and the lack of adequate Federal funding, many schools have been unable to fully implement their management plans. Worse yet are the situations where school officials have contracted for asbestos abatement only to find later that the abatement activities were carried out by inexperienced or poorly trained workers who actually aggravated the asbestos contamination problem.

S. 1893, reauthorizes ASHAA to take into account the high costs associated with plan implementation.

Hearings held by the Subcommittee on Transportation and Hazardous Materials earlier this Congress clearly showed the need for reauthorization of this act. EPA estimates that some 31,000 school buildings contain some form of asbestos material and that as many as 15 million schoolchildren are exposed; almost one-third of the Nation's school population. And as many as 1.4 million school employees work in buildings that contain asbestos materials.

During the 1990 award cyle, only 11 percent of school funding requests for assistance were granted. Thus, the largest part of this program of comprehensive asbestos abatement in our schools is yet to be carried out.

In addition to reauthorizing this program, the bill requires EPA to increase the number of hours for asbestos abatement worker training accreditation while also extending these requirements to workers who inspect for asbestos or abate friable asbestos in public and commercial buildings. These additional requirements are essential to the successful implementation of all abatement activities. Testifying at the subcommittee's hearings, an EPA Assistant Administrator said that:

[U]nless all safeguards are properly applied and strictly adhered to, exposure in the building can rise, perhaps to levels where we know disease can occur. Consequently, an ill conceived or poorly conducted removal project can actually increase rather than eliminate risk.

The bill also authorizes annual training grant program for nonprofit organizations to establish and operate asbestos training programs to insure that asbestos workers in public and commercial buildings are properly trained.

Finally, the bill holds contractors civilly liable for failing to obtain accreditation for or hiring an employee without the necessary accreditation to undertake asbestos inspections or abatement activities.

In addition to enjoying bipartisan support, S. 1893, as amended is supported by, among others, the National Educators Association, the Parent Teachers Association, the Laborers International, and the Service Employees International Union.

I would like to thank my colleague, Mr. WHITTAKER, for his extraordinary efforts in helping to move this very important bill forward and I urge my colleagues to support this measure.

Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1893, the Asbestos School Hazard Reauthorizatioin Act. This important legislation will ensure continued funding of the Federal Loan and Grant Program for schools under the Asbestos School Hazard Abatement Act [ASHAA]. Congress set up the ASHAA Program to help needy schools meet the requirements imposed by the Asbestos Hazard Emergency Response Act [AHERA] to properly manage friable asbestos.

In addition to reauthorizing the existing ASHAA Program for the next 5 years, S. 1893 makes several significant additions to existing law. First, it amends the application process to ensure that schools will receive ASHAA moneys in time for abatement work to be conducted over the summer school recess.

Second, it requires the Environmental Protection Agency to issue an information advisory on the comparative risks of removal and in place management of asbestos. The advisory would encourage decision makers to undertake the least burdensome response action that is protective of human health, and would describe the type of circumstances in which removal of asbestos is appropriate. The goal of this advisory is to prevent unnecessary removals undertaken in response to past Congressional action, and to correct the misperception that all absestos should be immediately removed.

Third, the bill expands the types of buildings subject to the requirement that abatement contractors be accredited. As specified by existing law, the EPA has established a model contractor accreditation plan which describes, at 40 CFR 763, subpart E. appendix C, the type of training required for certain categories of workers abatting friable absestos in schools. The bill would require these training requirements be extended to public and commercial buildings.

Fourth, the bill directs EPA to increase the number of hours required for their category of absestos abatement workers as that term is used in subsection 1E of the model plan. Currently these workers must receive 24 hours of training to become accredited. The bill requires this number to be increased, but does not specify what the new requirement should be. In addition, the bill directs EPA to make terchnical corrections to conform the language of the model plan with the expanded coverage to public and commercial buildings.

These provisions do not require or suggest the accreditation of any category or person not now required to be accredited before performing asbestos abatement work in schools. The changes made by this legislation to the accreditation program only apply to the types of buildings and the number of hours of training. For example, flooring contractors who remove asbestos containing floors using recognized safe work practices and who are not required to become accredited under the existing model contractor accreditation plan would not be required to be accredited as a result of this legislation.

Fifth, the bill authorizes an expansion of an existing training grant program administered by the EPA. Under this legislation, State and local governments, colleges and universities and other nonprofit organizations, as well as joint labor-management trust funds and nonprofit governmental employee organizations would be eligible for grants to establish and operate asbestos training programs.

Finally, I want to express my strong support for the following language regarding the ASHAA funding mechanism which appears in Senate Committee Report 101-353:

Another funding issue merits attention. It has been the practice of EPA to automatically reject the top 30 percent of the applications received on the basis of per capita income. The cutoff point has been approximately $10,000 per capita. For private schools, EPA uses the per-pupil spending to eliminate the top 30 percent of the applicant pool. In some cases, this approach is flawed, particularly if schools are facing extraordinary asbestos abatement costs. Use of this cutoff point can sometimes result in needy schools being eliminated from the applicant pool. Financial need cannot be fully evaluated without considering the cost of an abatement project, the number of people available to share the burden, the additional costs of serving disadvanantaged students, and other factors, such as the local cost of living which may result in inflated per-pupil

expenditures or per-capita income. EPA indicated in testimony before the subcommittee that it is presently reassessing its funding policies and cosidering adoption of an "exceptions" policy to its per-capita and per-pupil cutoffs. The committee is supportive of this effort and encourages EPA to make adjustments, as appropriate, in its funding criteria to accommodate the curcumstances outlined.

As a member of the House Energy and Commerce Subcommittee on Transportation and Hazardous Materials, it is my intent to continue dialog with EPA to ensure that the wishes of both the House and Senate, as expressed in the Senate committee report language, are implemented by EPA.

By closing, I wish to thank Chairmen DINGELL and LUKEN, and our ranking member, Mr. LENT, for their efforts on this legislation. Together, we have worked closely with the Senate to develop legislative language acceptable to all parties that is of real benefit to the public health.

□ 1300

Mr. Speaker, I would like to engage in a colloquy with the gentleman from Michigan [Mr. DINGELL], the chairman of the Committee on Energy and Commerce, relative to the Senate bill, S. 1893, over which his committee has jurisdiction.

I would ask the chairman of the committee if my understanding is correct that section 15(a)(3) of S. 1893, which requires the Administrator of the Environment Protection Agency to revise the model contractor accreditation plan, does not require the accreditation of any category of individuals not now required to be accredited to perform asbestos abatement work in schools?

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. I am happy to yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, the gentleman from Kansas, the ranking Republican member of the Subcommittee on Transportation and Hazardous Materials, is correct. The provision referenced by the gentleman does not require any category of individuals who are not now required to be accredited to perform asbestos work in schools to become accredited pursuant to this provision. For example, flooring contractors are not now considered abatement contractors and would not be required to be accredited under this provision. Neither does the provision affect or modify the existing authority of the EPA to define the coverage of types of asbestos workers subject to the model contractor accreditation plan.

Mr. WHITTAKER. Mr. Speaker, I thank the gentleman for his response. I also wish to affirm with the chairman that the passage of this legislation renders unnecessary the consideration of similar provisions in the Clean Air Act amendments currently in conference with the Senate.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL], the chairman of the full committee.

Mr. DINGELL. Mr. Speaker, I have a sad duty to perform today, that is to note the retirement of my distinguished friend, the gentleman from Ohio [Mr. THOMAS A. LUKEN], the chairman of the subcommittee, and the retirement of my very distinguished friend from Kansas, the gentleman from Kansas [Mr. WHITTAKER], the ranking minority member. They have served this body with great distinction. They have earned the affection and the respect of their colleagues by their demeanor and by their behavior but also by the outstanding way in which they have carried out their functions as the chairman of the subcommittee and as the ranking minority member. They have performed in those capacities with extraordinary skill and dedication.

Mr. Speaker, for that we owe them a great vote of gratitude.

It is also to be observed that in their individual capacities as Members of this body they have also earned the respect and the affection of all of their colleagues by the dedication, the effort, and the gracious diligence with which they have performed their duties as Members of this body.

I wish to congratulate them for distinguished service to the people of the country. I wish to commend them for their service here in this body, and I wish to express my personal sorrow and regret that they will not be with us next year. They have served us well. They deserve the thanks of this institution and the people they have served. They will be missed, and it is my hope that they will enjoy great happiness and success in their future undertakings in other capacities.

We wish them well, and it is our hope that they will find greater happiness in their new endeavors.

Mr. THOMAS A. LUKEN. Mr. Speaker, I thank the gentleman.

Mr. WHITTAKER. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Speaker, first of all, I would like to associate myself with the remarks of my colleague, the gentleman from Michigan. Clearly we are going to miss the very able contributions of the gentleman from Ohio and the gentleman from Kansas. The quality of their work is obviously reflected in the bill before us.

Mr. Speaker, I rise in strong support of the bill. However, I would like to make several observations relative to the issue before us.

Obviously exposure to asbestos is a very, very dangerous hazard, a public health hazard, an occupational hazard.

Unfortunately, a very broad perception has been allowed to circulate that the best way of abating this hazard always involves removal, and many times efforts at removing asbestos are counterproductive to the kinds of abating of exposures which is really the thrust and the heart of this legislation.

The legislation before us does yeoman's work in making very, very clear as a matter of public policy for the Environmental Protection Agency and also in helping educate the public to the fact that abatement does not inherently mean removal.

However, having said that, I also want to point out a potential problem in the legislation, a problem which already is being addressed in negotiation between the staff of the Committee on Energy and Commerce, both the majority and minority, and the committee staff of the Committee on Education and Labor, both the majority and minority staff.

This bill extends the asbestos-in-schools program to more broader concerns with other public and commercial buildings, and it also, as has been explained, establishes criteria by which workers will be accredited and licensed or designated in one way or another as being sufficiently trained and certified for dealing with asbestos hazards.

However, my concern is, as both gentlemen know, to ensure that as the EPA develops these criteria it does so in conjunction with existing other criteria which are published by the Occupational Safety and Health Administration in the Department of Labor. At this point there is nothing in the act to ensure that type of coordination. I simply want to express my appreciation to the gentleman from Ohio and the gentleman from Kansas, who both assured those of us on the Committee on Education and Labor that efforts will be made forthwith to address this issue in subsequent opportunities.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before I yield back the balance of my time, I would like to take this opportunity to once again express my appreciation to my subcommittee chairman, the gentleman from Ohio [Mr. THOMAS A. LUKEN]. As we are both closing out our congressional careers, I want to emphasize my good fortune in having as diligent and conscientious a subcommittee chairman as the gentleman from Ohio [Mr. THOMAS A. LUKEN] to work with in my role as subcommittee ranking member.

Good luck to you, TOM.

Mr. Speaker, I yield back the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in yielding back the balance of my time, I would like to extend best wishes to the gentleman from Kansas. We have had an especially close personal relationship for the last 4 years. He is the ultimate gentleman, a person who is easy to work with. He has been a full partner. He has been entitled to, and has received, the respect of all the Members in the House, but he has been especially a friend to those of us on this side of the aisle in this subcommittee. I will certainly miss the close relationship with the gentleman from Kansas [Mr. WHITTAKER].

Mr. Speaker, I wish to enter into the RECORD copies of letters supporting my amendment to S. 2936 from the following organizations:

National Governors' Association.
National Conference of State Legislatures.
National League of Cities.
U.S. Conference of Mayors.
National Association of Towns and Townships.
National Industrial Transportation League.
Chemical Manufacturers Association.
Association of American Railroads.
American Trucking Association.
National Tank Truck Carriers.
National Solid Waste Management Association.
Fraternal Order of Police.
International Association of Fire Fighters.
International Association of Fire Chiefs.
International Brotherhood of Teamsters.
Railway Labor Executives' Association.
E.I. du Pont de Nemours & Company.
General Electric Company.
Union Carbide Corporation.
Dow Chemical U.S.A.

[Letters referred to follow:]

FRATERNAL ORDER OF POLICE,
GRAND LODGE,
Columbus, OH, October 25, 1990.

Hon. THOMAS A. LUKEN,
Chairman, House Subcommittee on Transportation and Hazardous Materials, Washington, DC.

DEAR MR. CHAIRMAN: It is my understanding that negotiations between the House Committee on Energy and Commerce, the House Committee on Public Works and Transportation and the Senate Committee on Commerce, Science and Transportation have been ongoing with respect to the crafting of a compromise between HR 3520 and S. 2393.

I have had the opportunity to review the October 23 text of proposed compromise language drafted by the staff of the two House committees relative to public and private sector employee training as well as improvements to hazardous materials identification systems. It is my understanding, based upon the representations of your Subcommittee staff to my counsel, that those specific provisions have not been altered by any subsequent negotiations as of the date of this letter. With that understanding, and on behalf of the National Fraternal Order of Police, I do endorse the contents of the October 23 compromise language.

Although the final content of the legislation reauthorizing the Hazardous Materials Transportation Act is not likely to reflect the ideal objectives of the NFOP with respect to the identification and tracking of hazardous wastes, I am pleased that you and your staff have taken steps to address the thrust of our concerns with this legislation.

With kind personal regards, I remain

Sincerely,

DEWEY R. STOKES,
National President.

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS,
October 25, 1990.

Hon. THOMAS A. LUKEN,
Chair, Subcommittee on Transportation and Hazardous Materials, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the 180,000 members of the International Association of Fire Fighters, I wish to offer our endorsement of the Luken/Mineta compromise on the Hazardous Materials Transportation Act of 1990.

This legislation will provide important new protections for fire fighters across the country. The provisions for emergency responder training will help prepare fire fighters for hazardous materials incidents, and the language on identification of hazardous cargo lays the groundwork for establishing a comprehensive, effective information system.

The fire fighters of this nation need these protections, and I urge you to do everything within your power to assure enactment of this legislation during the 101st Congress.

Sincerely,

FREDERICK H. NESBITT,
Director of Governmental Affairs.

ASSOCIATION OF AMERICAN RAILROADS,
October 25, 1990.

Hon. THOMAS A. LUKEN,
Chairman, Subcommittee on Transportation and Hazardous Materials, Washington, DC.

DEAR MR. CHAIRMAN: This morning your staff made available to the AAR a draft hazardous materials bill, the Luken/Mineta compromise bill. The AAR recognizes the substantial effort you have devoted to the enactment of hazardous materials legislation in this Congress.

The AAR understands that a wide ranging bill such as this one affects many parties. We would like you to know that insofar as the AAR is concerned, we will not oppose passage of the Luken/Mineta bill because of the inclusion of section 30, which provides that the Act and its amendments do not affect the preemption afforded by section 205 of the Federal Railroad Safety Act. Thus, the bill does not impair the railroad industry's position in the PUC of Ohio v. CSX case.

Once again, we commend you for the leadership you have demonstrated over the years in the field of rail safety.

Sincerely,

WILLIAM H. DEMPSEY
President.

October 25, 1990.

Representative THOMAS A. LUKEN,
Chairman, Subcommittee on Transportation and Hazardous Materials, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the state and local government officials represented by our organization, we strongly encourage you to take immediate action on legislation to revise the Hazardous Materials Transportation Act of 1974. The Luken-Mineta compromise is consistent with the positions of our respective organizations.

Members of our organization have worked for many years for the enactment of reauthorization legislation which enhances public safety and recognizes the integral role played by states and local governments in the regulation of hazardous materials transportation. After exhaustive discussions on this subject, we believe that this proposal achieves the important public policy goal of protecting the public and emergency response personnel, while preserving vital state and local government autonomy. That objective is reached by striking a fair balance among the concerns of all affected parties.

Passage of this legislation would be a significant accomplishment of the 101st Congress. We support your efforts to ensure passage of this important measure during House consideration.

Sincerely,

WILLIAM T. POUND,
Executive Director, National Conference of State Legislatures.
J. THOMAS COCHRAN,
Executive Director, U.S. Conference of Mayors.
RAYMOND C. SCHEPPACH,
Executive Director, National Governors' Association.
DONALD J. BORUT,
Executive Director, National League of Cities.

INTERNATIONAL ASSOCIATION
OF FIRE CHIEFS,
October 25, 1990.

Hon. THOMAS A. LUKEN,
Chairman, Subcommittee on Transportation and Hazardous Materials, Washington, DC.

DEAR CHAIRMAN LUKEN: As the House Public Works and Transportation Committee and the Energy and Commerce Committee nears completion of its work with the Senate Commerce, Science and Transportation Committee on the Hazardous Materials Transportation Act (HMTA), I wish to reaffirm the support of the International Association of Fire Chiefs for the Luken/Mineta Compromise version of the HMTA.

We are generally pleased with the provisions and the intent of the legislation. In particular, the requirements that address the specific allocation of financial resources, and their percentages, directed towards political subdivisions, contained in Section 109, Public Sector Planning and Training Grants.

The IAFC feels that the process by which the funds are made available to the local jurisdictions in Section 109(a) and (b) is as critical as the agency designated to carry out the programs. As was borne out during the many hours of testimony on this issue, the fire service is clearly recognized as the

primary first responder to hazardous materials emergencies. Therefore, it is critical that under Section 190(a) and (b) of the bill specify that the state fire service training agency and the state fire marshal have approval in determining the priority of which local hazardous materials programs, within a given state, will be recommended to receive funding under both the planning and training grant programs authorized by this legislation.

The legislation currently provides the Secretary of Transportation with the latitude to utilize other federal agencies to administer the allocation of those funds. The IAFC feels that the Secretary should give consideration to Federal Emergency Management Agency (FEMA) as the agent for administering the funds. Despite FMEA's less-than-favorable history with certain response agencies of local government, we feel that FEMA's new leadership is now demonstrating a new commitment. Furthermore, FEMA has the mechanism in-place to manage programs of this scope. Combining that organizational capability with the hazardous materials programs within FEMA's U.S. Fire Administration, the National Fire Academy, and the State and Local Programs Directorate, further supports the use of FEMA in this role.

As the final version of the HMTA is crafted, we urge you to clarify the provisions of section (g) Training Curriculum (page 54 of the staff discussion draft issued on 10/23/90) to reflect the following:

1. Require all recommended training courses and curricula (section 2A, 2B and 2C) meet the provisions of NFPA 471 and 472, Professional Qualifications for Hazardous Materials Response Personnel.

2. The Secretary shall utilize the established fire service training delivery systems at the state and local level, such as those established through the National Fire Academy, to disseminate course materials and programs authorized under this act.

We are hopeful that an agreeable Hazardous Materials Transportation bill will move forward before the close of this session of Congress.

We appreciate your commitment to putting together this important piece of legislation, and we stand ready to assist you in whatever means deemed appropriate to successfully gain its passage.

Sincerely,

W.D. HILTON,
President.

CHEMICAL WASTE TRANSPORTATION INSTITUTE,
Washington, DC, October 25, 1990.

Hon. Congressman TOM LUKEN,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN: I am writing on behalf of the Chemical Waste Transportation Institute (CWTI) in support of the Luken-Mineta compromise on H.R. 3250, the Hazardous Materials Transportation Uniform Safety Act of 1990.

The CWTI is part of the National Solid Wastes Management Association, a not-for-profit association that represents approximately 2,500 waste management companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Our members are both private and for hire carriers that operate in interstate and intrastate commerce, including to and from points in Ohio. The CWTI is the only organization that solely represents companies engaged in hazardous waste transportation.

We understand that floor consideration of H.R. 3520 is imminent. We believe that the compromise makes significant and long needed safety improvements to the Hazardous Materials Transportation Act in the areas of routing, identification of the regulated community, planning and training for emergency response, strengthened enforcement, and uniform application of hazardous materials regulations. Also, the Institute is particularly pleased with the provisions dealing with tampering, federal preemption, state use of fees, and state uniformity of permit forms and procedures.

In our opinion, the compromise captures the best provisions from both versions of the legislation which were reported from the House Energy and Commerce Committee and the House Public Works Committee. If any amendments are offered to this legislation during floor consideration, we urge you to follow the lead of its authors as to the disposition of such amendments.

As we have followed H.R. 3520 through the legislative process, you have demonstrated a strong commitment to safety in the transportation of hazardous materials. The passage of the Luken-Mineta compromise provides an opportunity to further that commitment.

Sincerely,

BRUCE SWONGER,
Chairman.

UNION CARBIDE CORPORATION,
Washington, DC, October 25, 1990.

Hon. THOMAS A. LUKEN,
Hon. NORMAN Y. MINETA,
U.S. House of Representatives,
Washington, DC.

DEAR CHAIRMAN LUKEN AND CHAIRMAN MINETA: Union Carbide Corporation encourages the enactment of the "Luken-Mineta Hazardous Materials Transportation Uniform Safety Act of 1990 compromise".

The legislation is not ideal. As we study it we recognize some faults. Chief among these is that it does not limit the amount of fees that states may impose. However, by and large the legislative package you have crafted is acceptable. It is a suitable compromise.

We applaud your efforts and those of your staff in pursuing this initiative. Union Carbide has long advocated amending and reauthorizing the HMT Act.

I am,

Sincerely,

T.D. FINNIGAN,
Assistant Director, Federal Affairs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, & HELPERS OF AMERICA
Washington, DC, October 25, 1990.

Hon. THOMAS A. LUKEN,
Chairman, House Transportation and Hazardous Materials Subcommittee, Washington, DC.

DEAR MR. CHAIRMAN: The International Brotherhood of Teamsters represents over a half million workers employed in the transportation, handling, and storage of hazardous materials. Moreover, Teamster Local Unions throughout the country represent thousands of other workers in the private and public sectors who are engaged in the clean-up and emergency response to hazardous material incidents. On behalf of these workers, the International Brotherhood of Teamsters endorses the compromise version of H.R. 3520, the Hazardous Materials Transportation Safety Act of 1990.

The International Brotherhood of Teamsters has long advocated the permitting and registration of hazardous material shippers and carriers. Additionally, we support provisions of the legislation which establish federal standards for highway routing of hazardous material shipments. These provisions provide for increased shipper/carrier responsibility, needed uniformity and the proper identification of the principal participants in this industry.

The legislation contains a number of provisions which will increase the protection of workers health and safety. The bill provides for basic training requirements of hazardous material employees. These federal standards will form the basis for the proper techniques for the "safe loading, unloading handling, storing, and transporting of hazardous materials and the emergency preparedness for responding to an accident or incident involving the transportation of hazardous materials" Additionally, the bill provides for a targeted training grant program to be administered by the National Institute of Environmental Health Sciences. These grants will be made available to nonprofit organizations in order to train and educate hazardous material employees in these techniques. These two provisions are a major first step in improving worker health and safety in the transportation industry.

Finally, we would like to voice our strong support of a National Academy of Science study of methods to improve the information that is essential for emergency responders to properly and safely respond to hazardous material incidents. This provision is based upon a proposal introduced by Congressman Applegate which provides for a modern computer information system to address these concerns. This study will provide for an independent examination of all the facets of this proposed system. We look forward to working with the Congress in implementing a system which will be based upon the recommendations contained in the National Academy of Science study.

We urge all members of the Senate to vote in favor of this needed legislation.

Sincerely,

DAVID A. SWEENEY,
Director, Department of Legislation.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Washington, DC.

To: Congressman Thomas Luken.
From: James J. Kennedy, Jr., Executive Secretary-Treasurer.
Date: October 25, 1990.

We do not oppose the Luken-Mineta compromise on the Haz-Mat bill, S2936.

CHEMICAL MANUFACTURERS ASSOCIATION,
Washington, DC, October 25, 1990.

Hon. THOMAS A. LUKEN,
Chairman, Subcommittee on Transportation and Hazardous Materials, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Chemical Manufacturers Association (CMA) has reviewed the "Luken-Mineta compromise" of the "Hazardous Materials Transportation Uniform Safety Act of 1990" and encourages the passage of this legislation.

CMA is a nonprofit association whose member companies represent more than 90 percent of the productive capacity of basic industrial chemicals in the United States.

The Luken-Mineta compromise draft represents a significant improvement over the current regulatory system. While CMA still has some concerns with specific provisions of the compromise, these concerns are overshadowed by the compromise draft's significant contributions to hazardous materials transportation safety. CMA recognizes and appreciates your efforts to strengthen the HMTA and we hope that the 101st Congress will pass the Luken-Mineta compromise.

If you have any questions or comments call Gary Griffith, Legislative Representative for Energy and Transportation, at 887-1136.

Sincerely,

ROBERT A. ROLAND,
President.

NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS,
Washington, DC, October 25, 1990.

Hon. THOMAS LUKEN,
Chairman, Transportation and Hazardous Materials Subcommittee, Washington, DC.

DEAR REPRESENTATIVE LUKEN: On behalf of the 13,000 small local governments represented by the National Association of Towns and Townships (NATaT), I would like to express our support for the Luken-Mineta compromise legislation on hazardous materials transportation.

Members of our organization have worked for many years for the enactment of reauthorization legislation which enhances public safety and recognizes the integral role played by local and state governments in the regulation of hazardous materials transportation. After exhaustive discussions on this subject, we believe that the proposal achieves the important public policy goal of protecting the public and emergency response personnel, while preserving vital local and state government interests. That objective is reached by striking a fair balance among the concerns of all affected parties.

Funding for emergency response training is desperately needed by small local governments. Passage of this legislation, therefore, would be a significant accomplishment of the 101st Congress. We support your efforts to ensure passage of this important measure yet this session.

Sincerely,

JEFFREY SCHIFF,
Executive Director.

E.I. DU PONT DE NEMOURS & CO.,
Wilmington, DE, October 25, 1990.

Hon. JOHN DINGELL,
Chairman, Energy and Commerce Committee, U.S. House of Representatives, Rayburn Office Building, Washington, DC.

DEAR CHAIRMAN DINGELL: On behalf of E.I. du Pont de Nemours and Company, we would like you to encourage the passage of S. 2936, the Hazardous Materials Transportation Uniform Safety Act of 1990.

This Bill provides a framework that allows the industry to move forward in an effort to improve the safe transportation of hazardous materials. In support of this legislation, we feel you would be contributing to the prevention of transportation incidences and the protection of the public, carriers, employees and the environment to the exposure of hazardous materials.

Sincerely,

RICHARD G. WEISS,
Manager, Hazardous Materials, Materials and Logistics Department.

GENERAL ELECTRIC CO.,
Washington, DC, October 25, 1990.

Re: Hazardous Materials Transportation Uniform Safety Act of 1990, H.R. 3520.

Hon. JOHN DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: After several years of consideration, the Senate Committee on Commerce, Science, and Transportation and the House Committees on Public Works and Transportation and Energy and Commerce have agreed to a compromise bill that significantly amends the Hazardous Materials Transportation Act. Our company supports that bill.

A workable and efficient program for the transportation of hazardous materials that assures protection of public health and safety is essential to the economic well-being of our country. The compromise bill that has been agreed to by the committees represents an improvement in the existing law that will contribute to a more workable and efficient program for such materials and should be enacted by this Congress.

We would hope that the very few concerns of certain interested parties could be resolved amicably to allow the Congress to act on the compromise bill before it adjourns.

Sincerely,

ROBERT W. BARRIE,
Manager.

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE,
Arlington, VA, October 25, 1990.

Hon. JOHN DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Rayburn Office Building, Washington, DC.

DEAR CHAIRMAN DINGELL: The National Industrial Transportation League, the nation's oldest and largest shippers' transportation trade association, would like to take this opportunity to express its support for S. 2936, Hazardous Materials Transportation Uniform Safety Act of 1990.

The League has worked with your staff and the other concerned parties to develop a legislative proposal which meets the needs of all the interests involved in the transportation of these commercially essential, but potentially dangerous, commodities. We believe that this cooperative effort has resulted in a reform proposal which enhances both safety and efficiency.

The League strongly urges that S. 2936 be enacted into law during this Congressional session so that these reforms can help improve the safe movement of hazardous materials, and aid U.S. business as it tries to compete in the global marketplace.

Sincerely,

JAMES E. BARTLEY,
Executive Vice President.

NATIONAL TANK TRUCK CARRIERS, INC.,
Alexandria, VA, October 25, 1990.

Hon. THOMAS LUKEN,
Chairman, Subcommittee on Transportation and Hazardous Materials, Committee on Energy & Commerce, U.S. House of Representatives and

Hon. NORMAN MINETA,
Chairman, Subcommittee on Surface Transportation, Committee on Public Works and Transportation, U.S. House of Representatives.

GENTLEMEN: National Tank Truck Carriers, Inc., is the trade association of the nation's tank truck industry. Our 200 members specialize in the bulk transportation of hazardous materials, hazardous substances and hazardous wastes throughout the United States.

For the past several years, we have been extensively involved in and supportive of Congressional efforts to modernize and streamline the Hazardous Materials Transportation Act of 1974.

In this context, therefore, we are pleased to lend our support to the "Luken/Mineta Compromise" which will be offered for consideration by the House.

The legislation would enhance safety in the transportation of hazardous materials by: 1) better defining the regulatory roles of both Federal and non Federal governmental entities; 2) giving states a comprehensive planning mechanism to be used in evaluating and assigning highway routes for hazardous materials shipments; and 3) providing for an industry-funded program which will enable states to better train and equip personnel who respond to "hazmat" incidents and accidents.

We enthusiastically support the proposed legislation, and urge its enactment.

Very truly yours,

CLIFFORD J. HARVISON,
President.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Alexandria, VA, October 25, 1990.

Hon. THOMAS A. LUKEN,
Chairman, Subcommittee on Transportation and Hazardous Materials, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the American Trucking Associations, this is to express support for the "Luken/Mineta Compromise" to S. 2936, the proposed Hazardous Materials Transportation and Amendment Act of 1990.

Enactment of the measure will lead to safety improvements in the transportation of hazardous materials by providing strong federal guidelines to be followed by the states in designating highway routes for haz mat shipments, and establish registration fees which will provide funding for training personnel who respond to hazardous materials shipments.

In summary, the bill will significantly improve the Hazardous Materials Transportation Act of 1974. We hope it will be favorably considered before adjournment of the 101st Session of the Congress.

Sincerely,

THOMAS J. DONOHUE,
President.

DOW CHEMICAL U.S.A.,
Washington, DC., October 26, 1990.

Re S. 2936—Reauthorization of Hazardous Materials Transportation Act (HMTA)

Hon. THOMAS A. LUKEN,
Chairman, Subcommittee on Transportation and Hazardous Materials, Committee on Energy and Commerce, U.S. House of Representatives, House Office Building, Washington, DC.

DEAR CONGRESSMAN LUKEN: It was very gratifying to learn that the House of Representatives passed the Luken/Mineta compromise amendment to S. 2936 and returned it to the Senate. The Dow Chemical Company supports the Luken/Mineta compromise and I have sent a letter to Senator Hollings as Chairman of the Senate Commerce Committee urging that he do everything possible to obtain passage of S. 2936 as amended by the Luken/Mineta compromise.

You are to be commended for your leadership in the effort to reauthorize the Hazardous Materials Transportation Act. Without your efforts and the very capable assistance of David Tittsworth, we would never have seen the passage of the Luken/Mineta compromise. I feel that this is very effective legislation and, as you know, we have been advocating such legislation for a long time.

We sincerely hope that the Senate passes S. 3936 as it was received from the House. Regardless of how it turns out, I want to thank you for your interest, leadership and efforts on this legislation. Without you and David it is unlikely that we would have reached this point in the legislative process. Let's hope that the Senate can do its part before the adjournment of the 101st Congress.

Veary truly yours.

RICHARD M. PATTERSON,
Government Relations Manager.

Mr. LENT. Mr. Speaker, I rise in support of S. 1893, the Asbestos School Hazard Reauthorization Act. This legislation is very similar to legislation introduced in the House by Mr. LUKEN and cosponsored by Mr. WHITTAKER, and they are commended for their work with the Senate in jointly developing the final language of the bill.

This legislation continues the Federal Loan and Grant Program that has made significant progress in funding the abatement of the friable asbestos in our Nation's schools. While this bill does not amend the program's allocation formula, I note that the Environmental Protection Agency has committed itself to a review of its current policies for awarding loans and grants. The goal of this review is to allow funds to go to some high cost school districts which are not currently eligible to receive funds.

In addition, this legislation expands the existing accreditation program, for asbestos abatement contractors and workers in schools, to public and commercial buildings. Once the decision has been made to abate friable asbestos, this legislation ensures that it will be done by trained, professional personnel. The legislation makes no changes in the types of asbestos abatement work subject to the existing model contractor accreditation plan, only in the types of buildings where the work is being done.

Once again, I wish to commend Chairmen DINGELL and LUKEN and Mr. WHITTAKER, the ranking member of the subcommittee, who labored in this bipartisan effort to develop legislation acceptable to both the House and Senate, and I urge all my colleagues to support this legislation.

Mr. BONIOR. Mr. Speaker, I rise in support of the reauthorization of the Asbestos School Hazard Abatement Act. This legislation will provide important, necessary resources to reduce the risk from a known human carcinogen from our Nation's schools. I want to especially commend Mr. LUKEN, the subcommittee chairman, Mr. WHITTAKER, the ranking subcommittee member as well as committee chairman Mr. DINGELL for their efforts in bringing this legislation to the floor.

I would like to draw the House's attention to a provision in the bill which increases the minimum numbers of hours required for the training of asbestos abatement workers and extends those requirements for work in public and commercial buildings. Testimony before Congress from labor representatives as well as news reports have amply demonstrated that the current 24 hours of training is inadequate to prepare workers for the complexity of asbestos abatement work.

In addition to increasing the hours of training the provision requires the Environmental Protection Agency to increase the number of hours of hands-on training in order to safely protect workers and building occupants from the risks associated with inadequate abatement practices. By increasing the minimum number of hours of both classroom and hands-on training, exclusive of meals and breaks, this provision will protect human health from the hazards of airborne asbestos in our Nation's schools as well as in public and commercial buildings. I previously suggested a similar amendment which the House adopted in the Energy and Commerce Committee amendments to H.R. 3030, the Clean Air Act legislation.

I appreciate the concern of the subcommittee chairman and ranking member as well as the committee chairman on the issue of protecting asbestos abatement workers. This legislation will ensure that those workers receive better training. I urge its adoption.

Mr. THOMAS A. LUKEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Ohio [Mr. THOMAS A. LUKEN] that the House suspend the rules and pass the Senate bill, S. 1893.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

□ 1310

GENERAL LEAVE

Mr. THOMAS A. LUKEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the Senate bill, S. 1893, the bill just passed.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Ohio?

There was no objection.

MONEY LAUNDERING ENFORCEMENT AMENDMENTS OF 1990

Mr. ANNUNZIO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5889) to require the Federal depository institution regulatory agencies to take additional enforcement actions against depository institutions engaging in money laundering, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5889

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Money Laundering Enforcement Amendments of 1990".

SEC. 2. AUTHORITY TO APPOINT CONSERVATOR FOR DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING.

(a) NATIONAL BANKS.—

(1) IN GENERAL.—Section 203(a) of the Bank Conservation Act (12 U.S.C. 203(a)) is amended—

(A) by redesignating paragraphs (6), (7), and (8) as paragraphs (7), (8), and (9), respectively; and

(B) by inserting after paragraph (5) the following new paragraph:

"(6) The Attorney General notifies the Comptroller in writing that the bank has been found guilty of a money laundering offense.".

(2) FACTORS REQUIRED TO BE CONSIDERED; EXCEPTION IN CASE OF CHANGE IN CONTROL.—Section 203 of the Bank Conservation Act (12 U.S.C. 203) is amended by adding at the end the following new subsection:

"(f) SPECIAL RULES RELATING TO APPOINTMENT OF CONSERVATOR UNDER SUBSECTION (a)(6).—

"(1) FACTORS FOR CONSIDERATION IN APPOINTING CONSERVATOR.—In making any determination under subsection (a)(6) to appoint a conservator for any national bank, the Comptroller of the Currency shall take into account the following factors:

"(A) The extent to which directors or senior executive officers (as defined by the Comptroller pursuant to section 32(f) of the Federal Deposit Insurance Act) of the national bank knew of, or were involved in, the commission of the money laundering offense of which the bank was found guilty.

"(B) The extent to which the offense occurred despite the existence of policies and procedures within the national bank which were designed to prevent the occurrence of any such offense.

"(C) The extent to which the national bank has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the bank was found guilty.

"(D) The extent to which the national bank has implemented additional internal controls (since the commission of the offense of which the national bank was found guilty) to prevent the occurrence of any other money laundering offense.

"(2) CHANGE IN CONTROL EXCEPTION.—If the ownership or control of any national bank referred to in subsection (a)(6) is acquired (as defined in section 13(f)(8)(B) of the Federal Deposit Insurance Act)—

"(A) after the commission of any money laundering offense;

"(B) by any person who was not an institution-affiliated party of the bank, or any affiliate of any such party (as such terms are defined in section 3 of the Federal Deposit Insurance Act) at the time of the offense; and

"(C) in an arms-length transaction (as determined by the Comptroller) which was entered into in good faith by such person,

subsection (a)(6) shall not apply to such national bank with respect to such offense.

"(3) MONEY LAUNDERING OFFENSE DEFINED.—For purposes of this subsection and subsection (a)(6), the term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.".

(b) INSURED SAVINGS ASSOCIATIONS.—

(1) FEDERAL SAVINGS ASSOCIATIONS.—Section 5(d)(2)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)(A)) is amended—

(A) by redesignating clauses (vii) and (viii) as clauses (viii) and (ix), respectively; and

(B) by inserting after clause (vi) the following new clause:

"(vii) the Attorney General notifies the Director in writing that the association has been found guilty of any money laundering offense;".

(2) STATE SAVINGS ASSOCIATIONS.—Section 5(d)(2)(C) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)(C)) is amended—

(A) by redesignating clauses (v) and (vi) as clauses (vi) and (vii), respectively; and

(B) by inserting after clause (iv) the following new clause:

"(v) the Attorney General notifies the Director in writing that the association has been found guilty of any money laundering offense;".

(3) FACTORS REQUIRED TO BE CONSIDERED; EXCEPTION IN CASE OF CHANGE IN CONTROL.—Section 5(d)(2) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)) is amended by adding at the end the following new subparagraphs:

"(J) FACTORS FOR CONSIDERATION IN APPOINTING CONSERVATOR OR RECEIVER UNDER SUBPARAGRAPH (A)(vii) OR (C)(v).—In making any determination under subparagraph (A)(vii) or (C)(v) to appoint any conservator or receiver for any savings association, the Director shall take into account the following factors:

"(i) The extent to which directors or senior executive officers (as defined by the Director pursuant to section 32(f) of the Federal Deposit Insurance Act) of the savings association knew of, or were involved in, the commission of the money laundering offense of which the association was found guilty.

"(ii) The extent to which the offense occurred despite the existence of policies and procedures within the savings association which were designed to prevent the occurrence of any such offense.

"(iii) The extent to which the savings association has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the association was found guilty.

"(iv) The extent to which the savings association has implemented additional internal controls (since the commission of the money laundering offense of which the savings association was found guilty) to prevent the occurrence of any other money laundering offense.

"(K) CHANGE IN CONTROL EXCEPTION UNDER SUBPARAGRAPH (A)(vii) OR (C)(v).—If the ownership or control of any savings association referred to in subparagraph (A)(vii) or (C)(v) is acquired (as defined in section 13(f)(8)(B) of the Federal Deposit Insurance Act)—

"(i) after the commission of any money laundering offense;

"(ii) by any person who was not an institution-affiliated party of the association, or any affiliate of any such party (as such terms are defined in section 3 of the Federal Deposit Insurance Act) at the time of the offense; and

"(iii) in an arms-length transaction (as determined by the Director) which was entered into in good faith by such person,

subparagraph (A)(vii) or (C)(v), as the case may be, shall not apply to such association with respect to such offense.

"(L) MONEY LAUNDERING OFFENSE DEFINED.—For purposes of subparagraphs (A)(vii), (C)(v), (J), and (K), the term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.".

(4) CONFORMING AMENDMENT.—Section 5(d)(2)(D) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)(D)) is amended by adding at the end the following new clause:

"(iii) In the case of any determination by the Director that the ground specified in subparagraph (C)(v) exists with respect to any insured State savings association, clause (ii) of this subparagraph shall be applied by substituting '10 days' for '30 days'.".

(c) INSURED STATE BANKS.—

(1) IN GENERAL.—Section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)) is amended by adding at the end the following new paragraph:

"(10) APPOINTMENT OF CONSERVATOR UPON CONVICTION FOR MONEY LAUNDERING.—

"(A) IN GENERAL.—Upon receipt of written notice from the Attorney General that an insured State bank has been found guilty of a money laundering offense, the Board of Directors may appoint itself conservator for the bank.

"(B) FACTORS FOR CONSIDERATION IN APPOINTING CONSERVATOR.—In making any detemination under subparagraph (A) to appoint the Corporation conservator for any insured State bank, the Board of Directors shall take into account the following factors:

"(i) The extent to which directors or senior executive officers (as defined by the Corporation pursuant to section 32(f)) of the bank knew of, or were involved in, the commission of the money laundering offense of which the bank was found guilty.

"(ii) The extent to which the offense occurred despite the existence of policies and procedures within the bank which were designed to prevent the occurrence of any such offense.

"(iii) The extent to which the bank has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the bank was found guilty.

"(iv) The extent to which the bank has implemented additional internal controls since the commission of the offense of which the bank was found guilty) to prevent the occurrence of any other money laundering offense.

"(C) NOTICE AND OPPORTUNITY FOR APPOINTMENT OF CONSERVATOR BY STATE BANKING SUPERVISOR.—If the Board of Directors determines that the Corporation should be appointed conservator under subparagraph (A) for any insured State bank—

"(i) the Board of Directors shall promptly notify the State banking supervisor of such bank of such determination; and

"(ii) the authority to appoint the Corporation conservator for such bank under subparagraph (A) shall be effective only if no conservator has been appointed by such supervisor for such bank before the end of the 10-day period beginning on the date such supervisor receives notice under clause (i).

"(D) CHANGE IN CONTROL EXCEPTION UNDER SUBPARAGRAPH (A).—If the ownership or control of any insured State bank referred to in subparagraph (A) is acquired (as defined in section 13(f)(8)(B))—

"(i) after the commission of any money laundering offense;

"(ii) by any person who was not an institution-affiliated party of the bank, or any affiliate of any such party at the time of the offense; and

"(iii) in an arms-length transaction (as determined by the Board of Directors) which was entered into in good faith by such person.

subparagraph (A) shall not apply to such bank with respect to such offense.

"(E) MONEY LAUNDERING OFFENSE DEFINED.—For purposes of this paragraph, the term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(c)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(9)) is amended by striking "paragraph (4) or (6)" and inserting "paragraph (4), (6), or (10)".

(d) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206(h)(1) of the Federal Credit Union Act (12 U.S.C. 1786(h)(1)) is amended—

(A) by redesignating subpargraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C) the Attorney General notifies the Board in writing that an insured credit union has been found guilty of a money laundering offense;".

(2) FACTORS REQUIRED TO BE CONSIDERED; DEFINITION.—Section 206(h) of the Federal Credit Union Act (12 U.S.C. 1786(h)) is amended—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

"(9) FACTORS FOR CONSIDERATION IN APPOINTING CONSERVATOR UNDER PARAGRAPH (1)(c); DEFINITION.—

"(A) FACTORS FOR CONSIDERATION IN APPOINTING CONSERVATOR.—In making any determination under paragraph (1)(C) to appoint itself conservator for any insured credit union, the Board shall take into account the following factors:

"(i) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

"(ii) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

"(iii) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was convicted.

"(iv) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

"(B) MONEY LAUNDERING OFFENSE DEFINED.—For purposes of this paragraph and paragraphs (1)(C) and (2)(C), the term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.".

(3) CONFORMING AMENDMENT.—Section 206(h)(2) of the Federal Credit Union Act (12 U.S.C. 1786(h)(2)) is amended by adding at the end the following new subparagraph:

(C) APPLICATION IN CASE OF MONEY LAUNDERING OFFENSE.—In the case of any determination by the Board that the ground specified in paragraph (1)(C) exists with respect to any insured credit union, subparagraph (B) of this paragraph shall be applied by substituting '10 days' for '30 days'.".

SEC. 3. REVOCATION OF CHARTER OF FEDERAL DEPOSITORY INSTITUTIONS AUTHORIZED FOR MONEY LAUNDERING OFFENSES.

(a) NATIONAL BANKS.—Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended by adding at the end the following new subsection:

"(d) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OFFENSES.—

"(1) NOTICE OF INTENTION TO DECLARE CHARTER FORFEITED.—

"(A) IN GENERAL.—If the Comptroller of the Currency receives written notice from the Attorney General that any national bank and directors or senior executive officers of the bank have been found guilty of any money laundering offense, the Comptroller may issue a notice to the national bank of the Comptroller's intention to declare all rights, privileges, and franchises of such bank to be forfeited.

"(B) NOTICE REQUIRED IN CERTAIN CASES.—If the money laundering offense of which any national bank and directors or senior executive officers of the bank have been found guilty is an offense under section 1956 or 1957 of title 18, United States Code, the Comptroller shall issue the notice described in subparagraph (A) to the national bank.

"(2) CONTENTS OF NOTICE.—Any notice issued by the Comptroller pursuant to paragraph (1) shall contain the date (not to exceed 90 days after the date such notice is issued) and the place of a hearing on the proposed forfeiture.

"(3) HEARING, FORFEITURE OF CHARTER.—If, on the basis of the evidence presented at a hearing conducted in accordance with section 554 of title 5, United States Code, before the Comptroller of the Currency (or any person designated by the Comptroller for such purpose), the Comptroller finds that, taking into account the factors required to be considered under paragraph (4), the gravity of the offense of which the national bank was found guilty outweighs the benefits which the continued operation of the bank may provide (taking into account whether there will be significant losses to the Bank Insurance Fund), the Comptroller may issue an order declaring all rights, privileges, and franchises of such bank to be forfeited.

"(4) FACTORS FOR CONSIDERATION IN CHARTER REVOCATION PROCEEDING.—In making any determination under paragraph (3) to declare the forfeiture of all rights, privileges, and franchises of any national bank, the Comptroller of the Currency shall take into account the following factors:

"(A) The extent to which directors or senior executive officers of the national bank knew of, or were involved in, the commission of the money laundering offense of which the bank was found guilty.

"(B) The extent to which the offense occurred despite the existence of policies and procedures within the national bank which were designated to prevent the occurrence of any such offense.

"(C) The extent to which the national bank has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the bank was found guilty.

"(D) The extent to which the national bank has implemented additional internal controls (since the commission of the offense of which the bank was found guilty) to prevent the occurrence of any other money laundering offense.

"(5) APPEARANCE, CONSENT TO FORFEITURE.—Unless the national bank shall appear at the hearing by a duly authorized representative, the bank shall be deemed to have consented to the forfeiture of all rights, privileges, and franchises of the bank and the order referred to in paragraph (3) may be issued.

"(6) JUDICIAL REVIEW.—Any order issued by the Comptroller of the Currency under this subsection may be reviewed in the manner provided in chapter 7 of title 5, United States Code.

"(7) CHANGE IN CONTROL EXCEPTION.—If the ownership or control of any national bank referred to in paragraph (1) is acquired (as defined in section 13(f)(8)(B) of the Federal Deposit Insurance Act)—

"(A) after the commission of any money laundering offense;

"(B) by any person who was not an institution-affiliated party of the bank, or any affiliate of any such party (as such terms are defined in section 3 of the Federal Deposit Insurance Act), at the time of the offense; and

"(C) in an arms-length transaction (as determined by the Comptroller) which was entered into in good faith by such person,

this subsection shall not apply to such national bank with respect to such offense.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) MONEY LAUNDERING OFFENSE DEFINED.—The term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.

"(B) NATIONAL BANK.—The term 'national bank' includes any Federal branch (as defined in section 3(r) of the Federal Deposit Insurance Act).

"(C) SENIOR EXECUTIVE OFFICERS.—The term 'senior executive officers' has the meaning given to such term by the Comptroller of the Currency pursuant to section 32(f) of the Federal Deposit Insurance Act.".

(b) FEDERAL SAVINGS ASSOCIATIONS.—Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by adding at the end the following new subsection:

"(w) FORFEITURE OF CHARTER FOR MONEY LAUNDERING OFFENSES.—

"(1) NOTICE OF INTENTION TO DECLARE CHARTER FORFEITED.—

"(A) IN GENERAL.—If the Director receives written notice from the Attorney General that any Federal savings association and directors or senior executive officers of the association have been found guilty of any money laundering offense, the Director may issue a notice to the Federal savings association of the Director's intention to declare the charter of the association to be forfeited.

"(B) NOTICE REQUIRED IN CERTAIN CASES.—If the money laundering offense of which any Federal savings association and directors or senior executive officers have been found guilty is an offense under section 1956 or 1957 of title 18, United States Code, the Director shall issue the notice described in subparagraph (A) to the association.

"(2) CONTENTS OF NOTICE.—Any notice issued by the Director pursuant to paragraph (1) shall contain the date (not to exceed 90 days after the date such notice is issued) and the place of a hearing on the proposed forfeiture.

"(3) HEARING, FORFEITURE OF CHARTER.—If, on the basis of the evidence presented at a hearing conducted in accordance with section 554 of title 5, United States Code, before the Director (or any person designated by the Director for such purpose), the Director finds that, taking into account the factors required to be considered under paragraph (4), the gravity of the offense of which the Federal savings association was found guilty outweighs the benefits which the continued operation of the association may provide (taking into account whether there will be significant losses to the Savings Association Insurance Fund or the Resolution Trust Corporation), the Director may issue an order declaring the charter of the association to be forfeited.

"(4) FACTORS FOR CONSIDERATION IN CHARTER REVOCATION PROCEEDING.—In making any determination under paragraph (3) to declare the forfeiture of the charter of any Federal savings association, the Director shall take into account the following factors:

"(A) The extent to which directors or senior executive officers of the savings association knew of, or were involved in, the commission of the money laundering offense of which the association was found guilty.

"(B) The extent to which the offense occurred despite the existence of policies and procedures within the savings association which were designed to prevent the occurrence of any such offense.

"(C) The extent to which the savings association has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the association was found guilty.

"(D) The extent to which the savings association has implemented additional internal controls (since the commission of the offense of which the savings association was found guilty) to prevent the occurrence of any other money laundering offense.

"(5) APPEARANCE, CONSENT TO FORFEITURE.—Unless the Federal savings association shall appear at the hearing by a duly authorized representative, the association shall be deemed to have consented to the forfeiture of the charter of the association and the order referred to in paragraph (3) may be issued.

"(6) JUDICIAL REVIEW.—Any order issued by the Director under this subsection may be reviewed in the manner provided in chapter 7 of title 5, United States Code.

"(7) CHANGE IN CONTROL EXCEPTION.—If the ownership or control of any Federal savings association referred to in paragraph (1) is acquired (as defined in section 13(f)(8)(B) of the Federal Deposit Insurance Act)—

"(A) after the commission of any money laundering offense;

"(B) by any person who was not an institution-affiliated party of the association, or any affiliate of any such party (as such terms are defined in section 3 of the Federal Deposit Insurance Act), at the time of the offense; and

"(C) in an arms-length transaction (as determined by the Director) which was entered into in good faith by such person.

this subsection shall not apply with respect to such association.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) MONEY LAUNDERING OFFENSE.—The term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.

"(B) SENIOR EXECUTIVE OFFICERS.—The term 'senior executive officers' has the meaning given to such term by the Director pursuant to section 32(f) of the Federal Deposit Insurance Act.".

"(C) FEDERAL CREDIT UNIONS.—Title I of the Federal Credit Union Act (12 U.S.C. 1752 et seq.) is amended by adding at the end the following new section:

"SEC. 130. FORFEITURE OR ORGANIZATION CERTIFICATE FOR MONEY LAUNDERING OFFENSES.

"(a) NOTICE OF INTENTION TO DECLARE CHARTER FORFEITED.—

"(1) IN GENERAL.—If the Board receives written notice from the Attorney General that any Federal credit union and directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union have been guilty of any money laundering offense, the Board may issue a notice to the Federal credit union of the Board's intention to declare the charter of the credit union to be forfeited.

"(2) NOTICE REQUIRED IN CERTAIN CASES.—If the money laundering offense of which any Federal credit union and directors, committee members, or senior executive officers of the credit union have been found guilty is an offense under section 1956 or 1957 of title 18, United States Code, the Board shall issue the notice described in paragraph (1) to the credit union.

"(b) CONTENTS OF NOTICE.—Any notice issued by the Board pursuant to subsection (a) shall contain the date (not to exceed 90 days after the date such notice is issued) and the place of a hearing on the proposed forfeiture.

"(c) HEARING, FORFEITURE OF CHARTER.—If, on the basis of the evidence presented at a hearing conducted in accordance with section 554 of title 5, United States Code, before the Board (or any person designated by the Board for such purpose), the Board finds that, taking into account the factors required to be considered under subsection (d), the gravity of the offense of which the Federal credit union was found guilty outweighs the benefits which the continued operation of the credit union may provide (taking into account whether there will be significant losses to the National Credit Union Share Insurance Fund), the Board may issue an order declaring the charter of the credit union to be forfeited.

"(d) FACTORS FOR CONSIDERATION IN CHARTER REVOCATION PROCEEDING.—In making any determination under subsection (c) to declare the forfeiture of the charter of any Federal credit union, the Board shall take into account the following factors:

"(1) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

"(2) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

"(3) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was found guilty.

"(4) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

"(e) APPEARANCE, CONSENT TO FORFEITURE.—Unless the Federal credit union shall appear at the hearing by a duly authorized representative, the credit union shall be deemed to have consented to the forfeiture of the charter of the credit union and the order referred to in subsection (c) may be issued.

"(f) JUDICIAL REVIEW.—Any order issued by the Board under this subsection may be reviewed in the manner provided in chapter 7 of title 5, United States Code.

"(g) MONEY LAUNDERING OFFENSE DEFINED.—For purposes of this section, the term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.".

SEC. 4. AUTHORITY TO TERMINATE THE INSURED STATUS OF STATE DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING.

(a) STATE DEPOSITORY INSTITUTIONS OTHER THAN STATE CHARTERED CREDIT UNIONS.—

(1) TERMINATION AUTHORIZED UPON CONVICTION OF DEPOSITORY INSTITUTION.—Section 8(a)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(2)(A)) is amended—

(A) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(B) by inserting after clause (i) the following new clause:

"(ii) the Attorney General has provided written notice that an insured State depository institution has been found guilty of any money laundering offense;".

(2) EXCEPTION IN CASE OF CHANGE IN CONTROL.—Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is amended by adding at the end the following new paragraph:

"(11) CHANGE IN CONTROL EXCEPTION—If the ownership or control of any State depository institution referred to in paragraph (2)(A)(ii) is acquired (as defined in section 23(f)(8)(B))—

"(A) after the commission of any money laundering offense;

"(B) by any person who was not an institution-affilitated party of the institution, or any affiliate of any such party, at the time of the offense; and

"(C) in an arms-length transaction (as determined by the Board of Directors) which was entered into in good faith by such person,

paragraph (2)(A)(ii) shall not apply to such depository institution with respect to such offense.".

(3) HEARING ON TERMINATION REQUIRED UPON CONVICTION OF INSTITUTION AND DIRECTORS AND OFFICERS.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end the following new subsection:

"(v) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OFFENSES.—

"(1) NOTICE OF INTENTION TO TERMINATE INSURANCE.—

"(A) IN GENERAL.—If the Board of Directors receives written notice from the Attorney General that any insured State depository institution and directors or senior executive officers of the depository institution have been found guilty of any money launcering offense, the Board of Directors may issue a notice to the depository institution of the Board of Directors' intention to terminate the insured status of such depository institution.

"(B) NOTICE REQUIRED IN CERTAIN CASES.—If the money laundering offense of which any insured State depository institution and directors or senior executive officers of the depository institution have been found guilty is an offense under section 1956 or 1957 of title 18, United States Code, the Board of Directors shall issue the notice described in subparagraph (A) to the depository institution.

"(2) NOTICE TO STATE BANKING SUPERVISOR.—A copy of any notice issued by the Board of Directors under paragraph (12) to any insured State depository institution shall promptly be transmited by the Board of Directors to the appropriate State banking supervisor of such depository institution.

"(3) CONTENTS OF NOTICE.—Any notice issued by the Board of Directors pursuant to paragraph (1) shall contain the date (not to exceed 90 days after the date such notice is issued) and the place of a hearing on the proposed termination of insured status.

"(4) HEARING, TERMINATION OF INSURED STATUS.—If, on the basis of the evidence presented at a hearing conducted in accordance with section 554 of title 5, United States Code, before the Board of Directors (or any person designated by the Board of Directors for such purpose), the Board of Directors finds that, taking into account the factors required to be considered under paragraph (5), the gravity of the offense of which the depository institution was found guilty outweighs the benefits which the continuation of the insured status of the depository institution may provide (taking into account whether there will be significant losses to the Bank Insurance Fund, the Savings Association Insurance Fund, or the Resolution Trust Corporation), the Board of Directors may issue an order terminating the insured status of such State depository institution effective not earlier than the end of the 10-day period beginning on the date the State banking supervisor (of such depository institution) receives notice of the issuance of such order from the Board of Directors.

"(3) FACTORS FOR CONSIDERATION IN PROCEEDING TO TERMINATE INSURED STATUS.—In making any determination under paragraph (4) to terminate the insured status of any State depository institution, the Board of

Directors shall take into account the following factors:

"(A) The extent to which directors or senior executive officers of the depository institution knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty.

"(B) The extent to which the offense occurred despite the existence of policies and procedures within the depository institution which were designed to prevent the occurrence of any such offense.

"(C) The extent to which the depository institution has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty.

"(D) The extent to which the depository institution has implemented additional internal controls (since the commission of the offense of which the depository institution was found guilty) to prevent the occurrence of any other money laundering offense.

"(6) APPEARANCE, CONSENT TO TERMINATION OF INSURED STATUS.—Unless the State depository institution shall appear at the hearing by a duly authorized representative, the depository institution shall be deemed to have consented to the termination of the insured status of the depository institution and the order referred to in paragraph (4) may be issued.

"(7) JUDICIAL REVIEW.—Any order issued by the Board of Directors under this subsection may be reviewed in the manner provided in chapter 7 of title 5, United States Code.

"(8) CHANGE IN CONTROL EXCEPTION.—If the ownership or control of any depository institution referred to in paragraph (1) is acquired (as defined in section 13(f)(8)(B))—

"(A) after the commission of any money laundering offense;

"(B) by any person who was not an institution-affiliated party of the institution, or any affiliate of any party, at the time of the offense; and

"(C) in an arms-length transaction (as determined by the Board of Directors) which was entered into in good faith by such person,

this subsection shall not apply to such depository institution with respect to such offense.

"(9) DEFINITIONS.—For purposes of this subsection and paragraphs (2)(A)(ii) and (11) of subsection (a)—

"(A) MONEY LAUNDERING OFFENSE.—The term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.

"(B) SENIOR EXECUTIVE OFFICERS.—The term 'senior executive officers' has the meaning given to such term by the Board of Directors pursuant to section 32(f) of the Federal Deposit Insurance Act.".

(b) STATE CHARTERED CREDIT UNIONS.—

(1) TERMINATION AUTHORIZED UPON CONVICTION OF DEPOSITORY INSTITUTION.—The 1st sentence of section 206(b)(1) of the Federal Credit Union Act (12 U.S.C. 1786(b)(1)) is amended by inserting "or the Board is notified in writing by the Attorney General that an insured credit union has been found guilty of any money laundering offense," after "entered into with the Board,".

(2) HEARING ON TERMINATION REQUIRED UPON CONVICTION OF INSTITUTION AND DIRECTORS AND OFFICERS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following new subsection:

"(t) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OFFENSES.—

"(1) NOTICE OF INTENTION TO TERMINATE INSURANCE.—

"(A) IN GENERAL.—If the Board receives written notice from the Attorney General that any insured State chartered credit union and directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union have been found guilty of any money laundering offense, the Board may issue a notice to the credit union of the Board's intention to terminate the insured status of such credit union.

"(B) NOTICE REQUIRED IN CERTAIN CASES.—If the money laundering offense of which any insured State chartered credit union and directors, committee members, or senior executive officers of the credit union have been found guilty is an offense under section 1956 or 1957 of title 18, United States Code, the Board shall issue the notice described in paragraph (1) to the credit union.

"(2) NOTICE TO STATE CREDIT UNION SUPERVISOR.—A copy of any notice issued by the Board under paragraph (1) to any insured State chartered credit union shall promptly be transmitted by the Board to the appropriate State credit union supervisor of such credit union.

"(3) CONTENTS OF NOTICE.—Any notice issued pursuant to paragraph (1) shall contain the date (not to exceed 90 days after the date such notice is issued) and the place of a hearing on the proposed termination of insured status.

"(4) HEARING, TERMINATION OF INSURED STATUS.—If, on the basis of the evidence presented at a hearing conducted in accordance with section 554 of title 5, United States Code, before the Board (or any person designated by the Board for such purpose), the Board finds that, taking into account the factors required to be considered under paragraph (5), the gravity of the offense of which the credit union was found guilty outweighs the benefits which the continuation of the insured status of the credit union may provide (taking into account whether there will be significant losses to the National Credit Union Share Insurance Fund), the Board may issue an order terminating the insured status of such State chartered credit union effective not earlier than the end of the 10-day period beginning on the date the State credit union supervisor (of such credit union) receives notice of the issuance of such order from the Board.

"(5) FACTORS FOR CONSIDERATION IN PROCEEDING TO TERMINATE INSURED STATUS.—In making any determination under paragraph (4) to terminate the insured status of any State chartered credit union, the Board shall take into account the following factors:

"(A) The extent to which directors, committee members, or senior executive officers (as defined by the Board in regulations which the Board shall prescribe) of the credit union knew of, or were involved in, the commission of the money laundering offense of which the credit union was found guilty.

"(B) The extent to which the offense occurred despite the existence of policies and procedures within the credit union which were designed to prevent the occurrence of any such offense.

"(C) The extent to which the credit union has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the credit union was found guilty.

"(D) The extent to which the credit union has implemented additional internal controls (since the commission of the offense of which the credit union was found guilty) to prevent the occurrence of any other money laundering offense.

"(6) APPEARANCE, CONSENT TO TERMINATION OF INSURED STATUS.—Unless the State chartered credit union shall appear at the hearing by a duly authorized representative, the credit union shall be deemed to have consented to the termination of insured status of the credit union and the order referred to in paragraph (4) may be issued.

"(7) JUDICIAL REVIEW.—Any order issued by the Board under this subsection may be reviewed in the manner provided in chapter 7 of title 5, United States Code.

"(8) MONEY LAUNDERING OFFENSE DEFINED.—For purposes of this subsection and subsection (b)(1), the term 'money laundering offense' means any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The last sentence of section 8(a)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(2)(A)) is amended by inserting "and shall not apply with respect to any notice under clause (ii)" before the period.

(2) Section 8(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(6)) is amended by striking "such termination" the 1st place such term appears and inserting "any termination of the insured status of any depository institution under this subsection or subsection (v)".

(3) The 1st sentence of section 8(a)(7) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(7)) is amended by striking "this subsection" and inserting "this subsection or subsection (v),".

(4) The 1st sentence of section 206(c) of the Federal Deposit Insurance Act (12 U.S.C. 1786(c)) is amended by striking "(a)(2) or (b)" and inserting "(a)(2), (b), or (t)".

(5) The 1st sentence of section 206(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1786(d)(1)) is amended by striking "(a)(1) or (b)" and inserting "(a)(1), (b), or (t)".

SEC. 5. REMOVAL OF PARTIES INVOLVED IN CURRENCY REPORTING VIOLATIONS.

(a) FDIC INSURED INSTITUTIONS.—

(1) VIOLATION OF REPORTING REQUIREMENTS.—Section 8(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(2)) is amended to read as follows:

"(2) SPECIFIC VIOLATIONS.—

"(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

"(i) any institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code (unless such violation was inadvertent or unintentional);

"(ii) any director or officer of any insured depository institution has knowledge that any other institution-affiliated party (with respect to such institution) has committed—

"(I) any violation of such subchapter II; or

"(II) any criminal violation of section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31 of such Code; or

"(iii) any director or officer of any insured depository institution has committed any violation of the Depository Institution Management Interlocks Act,

the agency may serve upon such party, director, or officer a written notice of the agency's intention to remove the person from office.

"(B) FACTORS TO BE CONSIDERED UNDER SUBPARAGRAPH (A)(ii).—In determining whether an officer or director should be removed under the circumstances described in subparagraph (A)(ii), the agency shall consider whether the director or officer took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) FELONY CHARGES.—Section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended by striking "(g)(1)" and all that follows through the end of paragraph (1) and inserting the following:

"(g) PROVISIONS APPLICABLE IN THE CASE OF FELONY CHARGES AGAINST INSTITUTION-AFFILIATED PARTIES.—

"(1) SUSPENSION OR PROHIBITION AUTHORIZED.—

"(A) IN GENERAL.—If—

"(i) any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(I) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under State or Federal law, or

"(II) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense under section 5322 of title 31, United States Code; and

"(ii) the appropriate Federal banking agency determines that the continued service or participation by such party may—

"(I) pose a threat to the interests of the depository institution's depositors; or

"(II) threaten to impair public confidence in the depository institution, the agency may, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution.

"(B) PROVISIONS APPLICABLE TO SUBPARAGRAPH (A) NOTICE.—

"(i) NOTICE TO INSTITUTION.—A copy of any notice issued under subparagraph (A) shall be served upon the depository institution referred to in such subparagraph.

"(ii) EFFECTIVE PERIOD.—Any suspension or prohibition notice under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the agency.

"(C) REMOVAL OR PROHIBITION UPON CONVICTION.—If—

"(i) any judgment of conviction or any agreement to enter a pretrail diversion or other similar program is entered, and has become final, against any institution-affiliated party in connection with any crime described in subparagraph (A)(i)(I); and

"(ii) the appropriate Federal banking agency determines that continued service or participation by such party may—

"(I) pose a threat to the interests of the depository institution's depositors; or

"(II) threaten to impair public confidence in the depository institution,

the agency may issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution.

"(D) REMOVAL AND PROHIBITION REQUIRED FOR CONVICTION OF CERTAIN OFFENSES.—If any judgment of conviction or an agreement to enter any pretrial diversion or other similar program is entered, and has become final, against any institution-affiliated party in connection with any crime described in subparagraph (A)(i)(II), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution.

"(E) PROVISIONS APPLICABLE TO SUBPARAGRAPH (C) OR (D) NOTICE.—

"(i) NOTICE TO INSTITUTION.—A copy of any order issued under subparagraph (C) or (D) shall also be served upon the depository institution referred to in such subparagraph.

"(ii) EFFECTIVE DATE OF CERTAIN ORDERS.—If the institution-affiliated party against whom an order is issued under subparagraph (C) or (D) is a director or officer of any insured depository institution, such party shall cease to be a director or officer of such depository institution upon receipt of notice by the institution under clause (i).

"(F) AUTHORITY OF AGENCY TO PROCEED IN OTHER CASES.—A finding of not guilty or other disposition of any charge described in clause (i) of subparagraph (A) shall not preclude the agency from thereafter instituting proceedings to remove such party from office or to prohibit further participation in the affairs of an insured depository institution pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

"(G) EFFECTIVE PERIOD OF NOTICE OR ORDER.—Any notice of suspension or order of removal or prohibition issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.".

(b) CREDIT UNIONS.—

(1) VIOLATION OF REPORTING REQUIREMENTS.—Section 206(g)(2) of the Federal Credit Union Act (12 U.S.C. 1786(g)(2)) is amended to read as follows:

"(2) SPECIFIC VIOLATIONS.—

"(A) IN GENERAL.—Whenever the Board determines that—

"(i) any institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code (unless such violation was inadvertent or unintentional);

"(ii) an officer or director of an insured credit union has knowledge that any other institution-affiliated party (with respect to the insured credit union) has committed—

"(I) any violation of such subchapter II; or

"(II) any criminal violation of section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31 of such Code; or

"(iii) an officer or director of an insured credit union committed any violation of the Depository Institution Management Interlocks Act, the Board may serve upon such party, officer, or director a written notice of the Board's intention to remove such person from office.

"(B) FACTORS TO BE CONSIDERED UNDER SUBPARAGRAPH (A)(ii).—In determining whether an officer or director should be removed as a result of the application of subparagraph (B), the Board shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) FELONY CHARGES.—Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is amended to read as follows:

"(1) SUSPENSION OR PROHIBITION AUTHORIZED.—

(A) IN GENERAL.—If—

"(i) any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(I) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under State or Federal law; or

"(II) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense under section 5322 of title 31, United States Code; and

"(ii) the Board determines that the continued service or participation by such party may—

"(I) pose a threat to the interests of the credit union's members; or

"(II) threaten to impair public confidence in the credit union,

the Board may, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the credit union.

"(B) PROVISIONS APPLICABLE TO SUBPARAGRAPH (A) NOTICE.—

"(i) NOTICE TO INSTITUTION.—A copy of any notice issued under subparagraph (A) shall be served upon the credit union referred to in such subparagraph.

"(ii) EFFECTIVE PERIOD.—Any suspension or prohibition notice under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Board.

"(C) REMOVAL OR PROHIBITION UPON CONVICTION.—If—

"(i) any judgment of conviction or any agreement to enter a pretrial diversion or other similar program is entered, and has become final, against any institution-affiliated party in connection with any crime described in subparagraph (A)(i)(I); and

"(ii) the Board determines that continued service or participation by such party may—

"(I) pose a threat to the interests of the credit union's depositors; or

"(II) threaten to impair public confidence in the credit union,

the Board may issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union.

"(D) REMOVAL AND PROHIBITION REQUIRED FOR CONVICTION OF CERTAIN OFFENSES.—If any judgment of conviction or any agreement to enter a pretrial diversion or other similar program is entered, and has become final, against any institution-affiliated party in connection with any crime described in subparagraph (A)(i)(II), the Board shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union.

"(E) PROVISIONS APPLICABLE TO SUBPARAGRAPH (C) OR (D) NOTICE.—

"(i) NOTICE TO INSTITUTION.—A copy of any order issued under subparagraph (C) or (D) shall also be served upon the credit union referred to in such subparagraph.

"(iii) EFFECTIVE DATE OF CERTAIN ORDERS.—If the institution-affiliated party against whom an order is issued under subpara-

graph (C) or (D) is a director or officer of any insured credit union, such party shall cease to be a director or officer of such credit union under clause (i).

"(F) AUTHORITY OF BOARD TO PROCEED IN OTHER CASES.—A finding of not guilty or other disposition of any charge described in clause (i) of subparagraph (A) shall not preclude the Board from thereafter instituting proceedings to remove such party from office or to prohibit further participation in the affairs of an insured credit union pursuant to paragraph (1), (2), or (3) of subsection (g) of this section.

"(G) EFFECTIVE PERIOD OF NOTICE OR ORDER.—Any notice of suspension or order of removal or prohibition issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Board.".

SEC. 6 MONEY LAUNDERING ENFORCEMENT ACTIVITIES.

(a) INCLUSION IN ANNUAL REPORTS REQUIRED.—Section 918(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833) is amended—

(1) by redesignating paragraph (6) as paragraph (8); and

(2) by inserting after paragraph (5) the following new paragraphs:

"(6) The names and locations of all insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), insured credit unions (as defined in section 101(7) of the Federal Credit Union Act, and institution-affiliated parties (as defined in section 3(u) of the Federal Deposit Insurance Act and section 206(r) of the Federal Credit Union Act, respectively) which were found guilty of any offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.

"(7) The actions taken by the appropriate agency described in subsection (b) with respect to any insured depository institution, insured credit union, or institution-affiliated party described in paragraph (6) as a result of such institution, credit union, or party having been found guilty of an offense under section 1956 or 1957 of title 18, United States Code, or section 5322 of title 31, United States Code.".

(b) NO PARTICIPATION IN AFFAIRS OF DEPOSITORY INSTITUTION AFTER CONVICTION FOR MONEY LAUNDERING OFFENSE.—Section 19(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829(a)(1)) is amended by inserting "or any money laundering offense (as defined in section 8(v)(9)(A))" after "breach of trust".

(c) ATTORNEY GENERAL NOTICE REQUIREMENT.—Section 1956 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(g) NOTICE OF CONVICTION OF FINANCIAL INSTITUTIONS.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957, or section 5322 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.".

(d) TECHNICAL CORRECTIONS TO PROVISIONS RELATING TO MONEY LAUNDRY ENFORCEMENT ACTIVITIES.—

(1) Section 5318(a)(1) of title 31, United States Code, is amended—

(A) by striking "or the Postal Inspection Service"; and

(B) by inserting "United States" before "Postal Service".

(2) Section 5322(a) of title 31, United States Code, is amended by striking "imprisonment" and inserting "imprisoned for".

(3) Section 8(b)(4) of the Federal Deposit Insurance Act is amended by striking "subsections (c), (d), (h), (i), (k), (l), (m), and (n)" and inserting "subsections (c) through (s) and subsection (u)".

SEC. 7. CIVIL MONEY PENALTIES.

(a) IN GENERAL.—Section 5321(a)(6) of title 31, United States Code, is amended to read as follows:

"(A) IN GENERAL.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.

"(B) PATTERN OF NEGLIGENT ACTIVITY.—If any financial institution engages in a pattern of negligent violations of any provision of this subchapter, or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than $5,000 on the financial institution.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to violations committed after the date of the enactment of this Act.

SEC. 8. AUTHORITY TO ORDER DEPOSITORY INSTITUTIONS TO OBTAIN COPIES OF CTRS FROM CUSTOMERS WHICH ARE UNREGULATED BUSINESSES.

Section 5326 of title 31, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) AUTHORITY TO ORDER DEPOSITORY INSTITUTIONS TO OBTAIN REPORTS FROM CUSTOMERS.—

"(1) IN GENERAL.—The Secretary of the Treasury may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

"(A) to request any financial institution (other than a depository institution) which engages in any reportable transaction with the depository institution to provide the depository institution with a copy of any report filed by the financial institution under this subtitle with respect to any prior transaction (between such financial institution and any other person) which involved any portion of the coins or currency (or monetary instruments) which are involved in the reportable transaction with the depository institution; and

"(B) if no copy of any report described in subparagraph (A) is received by the depository institution in connection with any reportable transaction to which such subparagraph applies, to submit (in addition to any report required under this subtitle with respect to the reportable transaction) a written notice to the Secretary that the financial institution failed to provide any copy of such report.

"(2) REPORTABLE TRANSACTION DEFINED.—For purposes of this subsection, the term 'reportable transaction' means any transaction involving coins or currency (or such other monetary instruments as the Secretary may describe in the regulation or order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.".

SEC. 9. IDENTIFICATION OF FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5326 the following new section:

"§ 5327. Identification of financial institutions

"(a) REGULATIONS REQUIRED.—By July 1, 1991, the Secretary shall prescribe regulations requiring each depository institution to identify any customer (of the depository institution) which—

"(1) is a financial institution described in—

"(A) any subparagraph of section 5312(a)(2) other than subparagraphs (A) through (G); or

"(B) any regulation under any such subparagraph; and

"(2) has any account with the depository institution.

"(b) REPORTS REQUIRED.—Each depository institution shall report the names of and other information about financial institution customers required to be identified under subsection (a) to the Secretary at such times and in such manner as the Secretary shall prescribe by regulation.

"(c) REPORTING OFFENSES.—No person shall cause or attempt to cause any depository institution to fail to file a report required by this section or to file a report containing a material omission or misstatement of fact.

"(d) AVAILABILITY OF REPORTS.—The Secretary shall provide reports filed under subsection (b) to appropriate State financial institution supervisory agencies for supervisory purposes.

"(e) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' means any financial institution described in subparagraph (A), (B), (C), (D), (E), or (F) of section 5312(a)(2)."

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 5321(a) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(7) FINANCIAL INSTITUTION IDENTIFICATION VIOLATIONS.—

"(A) PENALTY AUTHORIZED.—The Secretary may impose a civil penalty on any person who willfully violates any provision of section 5327 or any regulation prescribed under such section.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed $10,000 per day for each day during which a report remains unfiled or a report containing a material omission or misstatement of fact remains uncorrected."

(c) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5326 the following new item:

"5327. Identification of financial institutions.".

SEC. 10. UNIFORM STATE LICENSING AND REGULATION OF CHECK CASHING SERVICES.

(a) UNIFORM LAWS AND ENFORCEMENT.—For purposes of preventing money laundering and protecting the payment system from fraud and abuse, it is the sense of the Congress that the several States should—

(1) establish uniform laws for licensing and regulating businesses which—

(A) provide check cashing services, transmit money, or issue or redeem money

orders, travelers' checks, and other similar instruments; and

(B) are not depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act); and

(2) provide sufficient resources to the appropriate State agency to enforce such laws and regulations prescribed pursuant to such laws.

(b) MODEL STATUTE.—It is the sense of the Congress that the several States should develop, through the auspices of the National Conference of Commissioners on Uniform State Laws, the American Law Institute, or such other forum as the States may determine to be appropriate, a model statute to carry out the goals described in subsection (a) which would include the following:

(1) LICENSING REQUIREMENTS.—A requirement that any issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments, and any transmitter of money, other than a depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), be licensed and regulated by an appropriate State agency in order to engage in any such activity within the State.

(2) LICENSING STANDARDS.—A requirement that—

(A) in order for any issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments, and any transmitter of money to be licensed in the State, the appropriate State agency shall review and approve—

(i) the business record and the capital adequacy of the business seeking the license; and

(ii) the competence, experience, integrity, and financial ability of any individual who—

(I) is a director, officer, or supervisory employee of such business; or

(II) owns or controls such business; and

(B) any record, on the part of any business seeking the license or any persons referred to in subparagraph (A)(ii), of—

(i) any criminal activity;

(ii) any fraud or other act of personal dishonesty;

(iii) any act, omission, or practice which constitutes a breach of a fiduciary duty; or

(iv) any suspension or removal, by any agency or department of the United States or any State, from participation in the conduct of any federally or State licensed or regulated business,

be grounds for the denial of any such license by the appropriate State agency.

(3) PROCEDURES TO ENSURE COMPLIANCE WITH FEDERAL CASH TRANSACTION REPORTING REQUIREMENTS.—A civil or criminal penalty for operating any business referred to in paragraph (1) without establishing and complying with appropriate procedures to ensure compliance with subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions).

(4) CRIMINAL PENALTIES FOR OPERATION OF BUSINESS WITHOUT A LICENSE.—A criminal penalty for operating any business referred to in paragraph (1) without a license within the State after the end of an appropriate transition period beginning on the date of the enactment of such model statute by the State.

(c) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study of—

(1) the progress made by the several States in developing and enacting a model statute which—

(A) meets the requirements of subsection (b); and

(B) furthers the goals of—

(i) preventing money laundering by businesses which are required to be licensed under any such statute; and

(ii) protecting the payment system, including the receipt, payment, collection, and clearing of checks, from fraud and abuse by such businesses; and

(2) the adequacy of—

(A) the activity of the several States in enforcing the requirements of such statute; and

(B) the resources made available to the appropriate State agencies for such enforcement activity.

(d) REPORT REQUIRED.—Before the end of the 3-year period beginning on the date of the enactment of this Act and by the end of each 1-year period beginning after the end of such period, the Secretary of the Treasury shall submit a report to the Congress containing the findings and recommendations of the Secretary in connection with the study under subsection (c), together with such recommendations for legislative and administrative action as the Secretary may determine to be appropriate, including any recommendation pursuant to subsection (e).

(e) RECOMMENDATIONS FOR INCENTIVES OR SANCTIONS IN CASES OF INADEQUATE REGULATION AND ENFORCEMENT BY STATES.—If the Secretary of the Treasury determines that any State has failed—

(1) to enact a statute which meets the requirements described in subsection (b);

(2) to undertake adequate activity to enforce such statute; or

(3) to make adequate resources available to the appropriate State agency for such enforcement activity,

the report submitted pursuant to subsection (d) shall contain recommendations for legislation establishing incentives which may be provided or sanctions which may be imposed to remedy such failure.

(f) FEE LIMITATIONS.—

(1) CONSIDERATION.—It is the sense of the Congress that the several States should consider, in connection with the enactment of any statute described in this section, whether or not limitations on any fee imposed, charged, or collected for cashing or redeeming any checks, money orders, travelers' checks, or other similar instruments are appropriate.

(2) SUBSECTION (e) NOT APPLICABLE.—Subsection (e) shall not apply with respect to paragraph (1).

SEC. 11. PROHIBITION OF ILLEGAL MONEY TRANSMITTING BUSINESSES.

(a) IN GENERAL.—Chapter 95 of title 18, United States Code, is amended by adding at the end the following section:

"§ 1960. Prohibition of illegal money transmitting businesses

"(a) OFFENSE ESTABLISHED.—Whoever conducts, controls, manages, supervises, directs, or owns all or part of any business with the knowledge that such business is an illegal money transmitting business shall be fined in accordance with title 18, or imprisoned not more than 5 years, or both.

"(b) DEFINITIONS.—As used in this section—

"(1) ILLEGAL MONEY TRANSMITTING BUSINESS.—The term 'illegal money transmitting business' means a money transmitting business that affects interstate or foreign commerce in any manner or degree and which is knowingly operated in a State—

"(A) without the appropriate money transmitting State license; and

"(B) where such operation is punishable as a misdemeanor or a felony under State law.

"(2) MONEY TRANSMITTING.—The term 'money transmitting' includes transferring funds on behalf of the public by any means including transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier.

"(3).—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

(b) FORFEITURE.—

(1) IN GENERAL.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "or 1957" and inserting ", 1957, or 1960".

(2) ENFORCEMENT PROVISION.—Section 981(b) of title 18, United States Code, is amended by striking "or 1957" and inserting ", 1957, or 1960".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 95 of title 1, United States Code, is amended by adding at the end the following new item:

"1960. Prohibition of illegal money transmitting businesses.".

SEC. 12. PROVISIONS RELATING TO RECORDKEEPING WITH RESPECT TO CERTAIN INTERNATIONAL FUNDS TRANSFERS.

Section 21(b) of the Federal Deposit Insurance At (12 U.S.C. 1829b(b)) is amended—

(1) by striking "(b) Where" and inserting "(b)(1) Where"; and

(2) by adding at the end the following new paragraph:

"(2) FUNDS TRANSFERS.—

"(A) IN GENERAL.—Before February 15, 1991, the Secretary, after consultation with the Board of Governors of the Federal Reserve System and State banking supervisors, shall prescribe such final regulations as may be appropriate to ensure that insured depository institutions, businesses that provide check cashing services, money trnasmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which—

"(i) involve international transactions; and

"(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing Services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments,

as will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(B) FACTORS FOR CONSIDERATION.—In prescribing the regulations required under subparagraph (A), the Secretary shall consider—

"(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

"(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

"(C) Availability of records.—Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary upon request.".

SEC. 13. NONDISCLOSURE OF ORDERS.

Section 5316 of title 31, United States Code, is amended by adding at the end the following:

"(c) NONDISCLOSURE OF ORDERS.—No financial institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of or terms of the order to any person except as prescribed by the Secretary.".

SEC. 14. GUIDELINES FOR REGULATORS OF FINANCIAL INSTITUTIONS AND PROSECUTORS.

(a) REGULATORY GUIDELINES.—

(1) AUTHORIZED.—The Secretary of the Treasury may issue guidelines for civil enforcement of subchapter II of chapter 53 of title 31, United States Code, and sections 1956 and 1957 of title 18 of such Code.

(2) INITIAL DETERMINATION REQUIRED.—Before the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary shall make a determination, after consideration of comments received pursuant to paragraph (3), whether to issue guidelines under paragraph (1).

(3) PUBLIC COMMENTS.—Before making the determination under paragraph (2), the Secretary shall provide opportunity for public comment, and notice of such opportunity, on the extent to which compliance with subchapter II of chapter 53 of title 31, United States Code, and sections 1956 and 1957 of title 18 of such Code, criminal referral reporting obligations, and cooperation with law enforcement authorities would be enhanced by the issuance of guidelines under paragraph (1).

(b) PROSECUTORIAL GUIDELINES.—

(1) AUTHORIZED.—The Attorney General may issue guidelines for prosecutions of violations of sections 1956 and 1957 of title 18, United States Code, and subchapter II of chapter 53 of title 31 of such Code.

(2) INITIAL DETERMINATION REQUIRED.—Before the end of the 180-day period beginning on the date of the enactment of this Act, the Attorney general shall make a determination, after consideration of comments received pursuant to paragraph (3), whether to issue any guidelines under paragraph (1).

(3) PUBLIC COMMENTS.—Before making the determination under paragraph (2), the Attorney General shall provide opportunity for public comment, and notice of such opportunity, on the extent to which compliance with sections 1956 and 1957 of title 18, United States Code, and subchapter II of chapter 53 of title 31 of such Code, criminal referral reporting obligations, and cooperation with law enforcement authorities would be enhanced by the issuance of guidelines under paragraph (1).

SEC. 15. AMENDMENTS RELATING TO EXEMPTIONS FROM CASH TRANSACTION REPORTING REQUIREMENTS.

Section 5318(f) of title 31, United States Code, is amended to read as follows:

"(f) REQUIREMENTS RELATING TO EXEMPTIONS UNDER SUBSECTION (a)(5).—

"(1) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless—

"(A) the relevant financial institution prepares and maintains a written statement which describes in detail the basis for the determination by the institution that such person is qualified for such exemption, including the facts relied upon by the institution in making such determination; and

"(B) the person (or, in the case of a person which is not an individual, a senior executive officer (as defined by regulation which the Secretary of the Treasury shall prescribe) submits to the institution, after reviewing the statement of facts prepared by the institution pursuant to subparagraph (A), a written certification, under penalty for perjury, of the truth and correctness of such facts.

"(2) ANNUAL REVIEW AND REISSUE OF STATEMENTS REQUIRED.—No statement prepared and maintained by any financial institution pursuant to paragraph (1)(A) shall be effective after the end of the 1-year period beginning on the date the statement was prepared.

"(3) ANNUAL REPORT TO SECRETARY.—Each financial institution shall submit a list containing the name and address of each person with respect to whom such institution maintains any statement prepared pursuant to paragraph (1)(A) to the Secretary of the Treasury before the end of each year.".

SEC. 16. ACCESS BY STATE FINANCIAL INSTITUTION SUPERVISORS TO CURRENCY TRANSACTIONS REPORTS.

Section 5319 of title 31, United States Code, is amended—

(1) in the first sentence, by striking "to an agency" and inserting "to an agency, including any State financial institutions supervisory agency,"; and

(2) by inserting after the second sentence the following new sentence: "The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes.".

SEC. 17. REPORTS ON USES MADE OF CURRENCY TRANSACTION REPORTS.

(a) REPORT TO CONGRESS ON USE OF TRANSACTION REPORTS.—Before the end of the 180-day period beginning on the date of the enactment of this Act and by the end of the 1st 3 1-year periods beginning after the end of such period, the Secretary of the Treasury shall submit a report to the Congress containing the following information:

(1) The number of each type of report filed with the Secretary pursuant to subchapter II of chapter 53 of title 31, United States Code (or any regulation prescribed or order issued pursuant to such subchapter) during the preceding fiscal year.

(2) The number of reports filed with the Secretary pursuant to section 6050I of the Internal Revenue Code of 1986 (relating to transactions involving currency) during the preceding fiscal year.

(3) The Secretary's estimate of the rate of compliance with the reporting requirements by persons required to file reports described in paragraph (1) or (2).

(4) The manner in which the department of the Treasury and other agencies and departments of the United States collect, organize, analyze and use the reports described in paragraphs (1) and (2)—

(A) to support investigations and prosecutions of violations of the criminal laws of the United States;

(B) to support investigations and prosecutions of violations of the laws of foreign countries; and

(C) to support civil enforcement of the laws of the United States, including provisions relating to asset forfeiture.

(5) A summary of actions commenced and sanctions imposed during the preceding fiscal year against persons who failed to file any report described in paragraph (1) or (2) and any other step taken by the Secretary to ensure maximum compliance with the reporting requirements referred to in such paragraphs.

(6) A summary of criminal indictments or informations filed during the preceding fiscal year which were the result, in large part, of investigations which were initiated on the basis of any analysis of any report described in paragraph (1) or (2).

(7) A summary of criminal indictments or informations filed during the preceding fiscal year which were the result, in large part, of investigations which were initiated on the basis of information relating to suspicious financial transactions provided voluntarily by financial institutions (as defined in section 5312(a)(2) of title 31, United States Code).

(b) ADVISORY GROUP ON REPORTING REQUIREMENTS.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall establish an Advisory Group on Reports on Monetary Instruments Transactions consisting of representatives of the Department of the Treasury and of financial institutions and other persons subject to the reporting requirements referred to in paragraphs (1) and (2) of subsection (a).

(2) PURPOSES.—The Advisory Group shall provide a means by which the Secretary—

(A) informs private sector representatives, on a regular basis, of the ways in which the reports referred to in paragraphs (1) and (2) of subsection (a) have been used for the purposes described in subsection (a)(4);

(B) informs private sector representatives, on a regular basis, of how information regarding suspicious financial transactions provided voluntarily by financial institutions has been used for the purpose described in subsection (a)(4); and

(C) receives advice on the manner in which the reporting requirements referred to in paragraphs (1) and (2) of subsection (a) should be modified to enhance the ability of law enforcement agencies to use the information provided for law enforcement purposes.

(3) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act shall not apply to the Advisory Group on Reports on Monetary Instruments Transactions established pursuant to paragraph (1).

SEC. 18. INFORMATION FROM CURRENCY SURPLUS REPORTS REQUIRED TO BE PROVIDED TO THE ATTORNEY GENERAL AND THE SECRETARY OF THE TREASURY.

At the request of the Attorney General of the United States or the Secretary of the Treasury, the Board of Governors of the Federal Reserve System shall provide any information and data contained in or related to the cash surplus reports of the Federal Reserve banks (relating to currency held by each such bank and depository institutions within the Federal Reserve bank districts) which may be relevant or useful for detecting violations of money laundering, recordkeeping, and reporting requirements to the Attorney General and the Secretary of the Treasury.

SEC. 19. STUDY OF METHODS FOR TRACING FEDERAL RESERVE NOTES.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—Before the end of the 30-day period beginning on the date of the enactment of this section, the Secretary of the Treasury shall establish a study group composed as follows:

(A) The Assistant Secretary of the Treasury for enforcement (who shall serve as the chairperson of the group).

(B) The Director of the Bureau of Engraving and Printing in the Department of the Treasury.

(C) At least 1 member appointed by the Secretary from each of the following communities who are recognized experts in the area of electronic scanning:

(i) The Federal Reserve System.

(ii) The scientific community.

(iii) Private industry.

(D) Such additional number of members as the Secretary determines to be appropriate who shall be appointed by the Secretary from among individuals who are specially qualified to serve on the study group by virtue of their education, training, or experience.

(2) DUTIES OF THE STUDY GROUP.—The study group established pursuant to paragraph (1) shall—

(A) survey methods and technologies that may be used in the printing of Federal Reserve notes in denominations of $10 or more to make such notes traceable by an electronic scanning device (including Federal Reserve notes in circulation on such date of enactment);

(B) assess and evaluate the cost of implementing the methods and technologies surveyed and the amount of time needed to implement each such method or technology; and

(C) evaluate the extent to which each of the methods and technologies surveyed would protect the right of individuals to privacy in the conduct of financial transactions.

(3) TERMS.—

(A) IN GENERAL.—Members of the study group shall be appointed for the live of the study group.

(B) VACANCY.—Any vacancy on the study group shall be filled in the manner in which the original appointment was made.

(C) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in any office described in subparagraph (A) or (B) of paragraph (1), any individual serving in such office in an acting capacity shall be a member of the study group while serving in such capacity.

(4) BASIC PAY AND EXPENSES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), members of the study group shall each be entitled to be paid at a rate determined by the Secretary of the Treasury for each day (including travel time) during which they are engaged in the actual performance of duties vested in the study group, except that such rate may not exceed the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(B) NO ADDITIONAL COMPENSATION FOR FEDERAL EMPLOYEES.—Members of the study group who are full-time officers or employees of the United States shall receive no additional pay by reason of their service on the study group.

(C) EXPENSES.—Members of the study group may be allowed travel expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business on the business of the study group in accordance with section 5703 of title 5, United States Code.

(5) ADMINISTRATIVE SUPPORT.—The Secretary of the Treasury shall provide the study group with such administrative support services, including a meeting room, as the Secretary determines is appropriate in order for the study group to carry out the requirements of this section.

(6) TERMINATION.—Upon issuance of the report by the Secretary of the Treasury under subsection (b), the study group shall cease to exist.

(7) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act shall not apply with respect to the study group.

(b) REPORT TO CONGRESS.—Before the end of the 180-day period beginning on the date of the enactment of this section, the Secretary of the Treasury shall submit a report to the Congress containing a summary of the findings and recommendations of the study group under subsection (a)(1), together with such recommendations for administrative or legislative action as the Secretary may determine to be appropriate.

(c) LIMITATION ON EXPENDITURES.—The Secretary of the Treasury may not spend more than $100,000, regardless of the source of such funds, in carrying out the requirements of this section.

SEC. 20. GAO FEASIBILITY STUDY OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a feasibility study of the Financial Crimes Enforcement Network (popularly referred to as "Fincen") proposed to be established by the Secretary of the Treasury in cooperation with other agencies and departments of the United States and appropriate Federal banking agencies.

(b) SPECIFIC REQUIREMENTS.—In conducting the study required under subsection (a), the Comptroller General shall examine and evaluate—

(1) the extent to which Federal, State, and local governmental and nongovernmental organizations are voluntarily providing information which is necessary for the system to be useful for law enforcement purposes;

(2) the extent to which the operational guidelines established for the system provide for the coordinated and efficient entry of information into, and withdrawal of information from, the system;

(3) the extent to which the operating procedures established for the system provide appropriate standards or guidelines for determining—

(A) who is to be given access to the information in the system;

(B) what limits are to be imposed on the use of such information; and

(C) how information about activities or relationships which involve or are closely associated with the exercise of constitutional rights is to be screened out of the system; and

(4) the extent to which the operating procedures established for the system provide for the prompt verification of the accuracy and completeness of information entered into the system and the prompt deletion or correction of inaccurate or incomplete information.

(c) REPORT TO CONGRESS.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the study conducted pursuant to subsection (a), together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

SEC. 21. REPORTS ON AMOUNTS AND DENOMINATIONS OF CURRENCY CONFISCATED IN CONNECTION WITH DRUG SEIZURES AND DRUG-RELATED MONEY LAUNDERING.

(a) COLLECTION OF INFORMATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall collect and maintain information on—

(A) the total dollar amount of Federal Reserve notes (and any other currency) which are confiscated by law enforcement agents in connection with the seizure of any controlled substance or any enforcement action with regard to a drug-related money laundering operation; and

(B) the total dollar amount of each denomination of such notes and other currency.

(2) INFORMATION PROVIDED BY OTHER AGENCIES.—In the case of any confiscation described in paragraph (1) by any Federal law enforcement agents who are not employed within the Department of the Treasury, the head of the department or agency in which such agents are employed shall promptly provide the information referred to in such paragraph to the Secretary of the Treasury.

(b) PLAN FOR COLLECTION OF INFORMATION FROM STATE AND LOCAL AGENCIES.—

(1) IN GENERAL.—The Secretary of the Treasury shall develop a plan for obtaining from appropriate agencies and departments of State and local governments information on the amounts and the denominations of Federal Reserve notes (and any other currency) which are confiscated by State or local law enforcement agents in connection with the seizure of any controlled substance or any enforcement action with regard to a drug-related money laundering operation.

(2) REPORT.—Before the end of the 90-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on the plan developed pursuant to paragraph (1), including such recommendations for legislative or administrative action as the Secretary determines to be necessary to implement the plan.

(c) PERIODIC REPORTS ON COLLECTED INFORMATION.—The Secretary of the Treasury shall submit a report to the Congress containing a summary of the information collected and maintained by the Secretary under this section at the end of each 6-month period beginning after the date of the enactment of this Act.

(d) REPORT ON NEED FOR ADDITIONAL INFORMATION.—Before the end of the 90-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Congress on what other information (in addition to the information maintained pursuant to subsection (a)) would be needed in order to determine—

(1) whether Federal Reserve notes in denominations of $50 and $100 are used primarily for drug trafficking and other illegal activities; and

(2) the feasibility of withdrawing Federal Reserve notes in denominations of $50 and $100 from circulation and the deterrent effect such withdrawal would have on drug trafficking and other illegal activities.

(e) REPORT ON CURRENCY CHANGES.—Before the end of the 90-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Attorney General and the Administrator of Drug Enforcement, shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate

and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on the advantages for money laundering enforcement, and any disadvantages, of—

(1) changing the size, denominations, or color of United States currency; or

(2) providing that the color of United States currency in circulation in countries outside the United States will be of a different color than currency circulating in the United States.

SEC. 22. USE OF CERTAIN RECORDS.

Section 1112(f) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(f)) is amended—

(1) in paragraph (1), by inserting "or the Secretary of the Treasury" after "the Attorney General"; and

(2) in paragraph (2), by inserting "and only for criminal investigative or prosecutive purposes relating to money laundering by the Department of the Treasury" after "the Department of Justice".

SEC. 23. ADDITIONAL WHISTLEBLOWER PROTECTIONS.

(a) ADDITIONAL COVERAGE ESTABLISHED.—Section 33(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(a)) is amended to read as follows:

"(a) IN GENERAL.—

"(1) EMPLOYEES OF DEPOSITORY INSTITUTIONS.—No insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any federal banking agency or to the Attorney General regarding any possible violation of any law or regulation by the depository institution or any director, officer, or employee of the institution.

"(2) EMPLOYEES OF BANKING AGENCIES.—No Federal banking agency, Federal home loan bank, or Federal Reserve bank may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any such agency or bank or to the Attorney General regarding any possible violation of any law or regulation by—

"(A) any depository institution or any such bank or agency;

"(B) any director, officer, or employee of any depositor institution or any such bank; or

"(C) any officer or employee of the agency which employs such employee.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 33(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(c)) is amended by inserting ", Federal home loan bank, Federal Reserve bank, or Federal banking agency" after "depository institution".

(c) DEFINITION.—Section 33 of the Federal Deposit Insurance (12 U.S.C. 1831j) is amended by adding at the end the following new subsection:

"(e) FEDERAL BANKING AGENCY DEFINED.—For purposes of subsections (a) and (c), the term 'Federal banking agency' means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision.".

(d) EFFECTIVE DATE.—Paragraph (2) of section 33(a) of the Federal Deposit Insurance Act (as added under the amendment made by subsection (a)) shall be treated as having taken effect on January 1, 1987, and for purposes of any cause of action arising under such paragraph (as so effective) before the date of the enactment of this Act, the 2-year period referred to in section 33(b) of such Act shall be deemed to begin on such date of enactment.

SEC. 24. CURRENCY REPORTING REQUIREMENTS APPLICABLE TO CONGRESS.

(a) IN GENERAL.—Any officer of the Senate or the House of Representatives who provides check cashing or deposit services for Members of Congress shall provide such services in accordance with such procedures as may be necessary to ensure compliance with subchapter II of chapter 53 of title 31, United States Code.

(b) EXERCISE OF RULEMAKING POWER.—Subsection (a) is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such it shall be considered as part of the rules of each House, and shall supersede any other rule only to the extent of any inconsistency with such rule; and

(2) with full recognition of the constitutional right of either House to change such rule (so far as relating to such House) in the same manner and to the same extent as in the case of any other rule of such House.

SEC. 25. CLARIFICATION OF ATTORNEY GENERAL'S FORFEITURE SALE AUTHORITY.

Section 511(e)(1)(B) of the Controlled Substances Act (21 U.S.C. 881(e)(1)(B)) and section 2245(f)(2) of title 18, United States Code, are each amended by inserting ", by public sale or any other commercially feasible means," after "sell".

SEC. 26. ADDITION OF CONFORMING PREDICATE MONEY LAUNDERING REFERENCES TO "INSIDER" EXEMPTION FROM THE RIGHT TO FINANCIAL PRIVACY ACT.

Section 1113(l)(2) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(l)(2)) is amended by inserting ", or section 1956 or 1957 of title 18 of such Code" after "any provision of subchapter II of chapter 53 of title 31, United States Code".

SEC. 27. CLARIFICATION OF DEFINITION OF "MONETARY INSTRUMENTS".

Section 1956(c)(5) of title 18, United States Code, is amended to read as follows:

"(5) the term 'monetary instruments' means—

"(A) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders; and

"(B) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;".

SEC. 28. MONEY LAUNDERING AMENDMENTS.

Section 1956(c)(1) of title 18, United States Code, is amended by striking "State or Federal" and inserting "State, Federal, or foreign".

SEC. 29. DEFINITION OF "SPECIFIED UNLAWFUL ACTIVITY" FOR MONEY LAUNDERING STATUTE.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "section 1005, 1006, or 1007 (relating to false statements by an employee of a financial institution), section 1014 (relating to false statements in connection with loan and credit applications)," after "section 875 (relating to interstate communications),"; and

(2) by striking "section 1344 (relating to bank fraud),".

SEC. 30. CORRECTION OF ERRONEOUS PREDICATE OFFENSE REFERENCE UNDER 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 310 of the Controlled Substances Act (21 U.S.C. 830) (relating to precursor and essential chemicals)" and inserting "subsection (d) or (g)(1) of section 401 of the Controlled Substances Act (21 U.S.C. 841) (relating to precursor and essential chemicals)".

SEC. 31. STRUCTURING TRANSACTIONS TO EVADE CMIR REPORTING REQUIREMENTS.

(a) IN GENERAL.—Section 5324 of title 31, United States Code, is amended—

(1) by striking "No Person" and inserting "(a) DOMESTIC COIN AND CURRENCY TRANSACTIONS.—No person"; and

(2) by adding at the end the following new subsection:

"(b) INTERNATIONAL MONETARY INSTRUMENT TRANSACTIONS.—No person shall for the purpose of evading the reporting requirements of section 5316—

"(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file a report required under section 5316;

"(2) file, or cause or attempt to cause a person to file, a report required under section 5316 that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.".

(b) CONFORMING AMENDMENT.—Section 5321(a)(4)(C) of title 31, United States Code, is amended by striking "under section 5317(d)".

The SPEAKER pro tempore. Is a second demanded?

Mr. WYLIE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. ANNUNZIO] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois [Mr. ANNUNZIO].

Mr. ANNUNZIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring this bill to the floor today. This is legislation designed to get tough with banks and other financial institutions convicted of laundering money. Bankers who want to launder money deserve to learn a new trade—making license plates.

I appreciate the assistance and cooperation in crafting this legislation received from the chairman of the Banking Committee, the gentleman from Texas [Mr. GONZALEZ], and the ranking minority member of the Subcommittee on Financial Institutions, the gentleman from Ohio [Mr. WYLIE].

Without their assistance, we would not be considering this bill today. Both worked hard on this legislation, and deserve credit for this bipartisan

effort on preventing money laundering.

Laundering money is as necessary to drug dealers as water is to fish. Without a friendly place to launder their cash, the drug dealer is left with a vast pile of paper dollars. Those dollars are nothing but pieces of paper until the dope dealer can convert them to bank credit.

This tough money laundering bill takes the profit out of laundering for banks. Money laundering is a serious breach of the bank's charter.

If a bank is convicted of money laundering, along with two or more of its officers or directors, it faces the death penalty of having its charter revoked. We cannot put banks in jail, but we can take away their charter to do business, and for corrupt financial institutions, we should. This bill is substantially similar to H.R. 3848, which passed the House by a vote of 406 to 0 on April 25. The current bill differs from H.R. 3848 only by incorporating several provisions contained in the money laundering legislation which passed the Senate on October 5. By adding the Senate provisions, which complement the House provisions, this bill can go over to the Senate and be passed without the necessity of additional amendments or a conference.

Money laundering is a serious crime. Drug dealers sell drugs out of the profit motive. The drug business is a cash business and the drug dealers must find a way to convert their cash into bank credit.

The drug war has become increasingly more violent as the dealers are beginning to lose. Brutal killings are becoming commonplace as drug dealers fight to maintain their share of a shrinking, but still incredibly profitable market. Here in Washington, two individuals had their heads bound with tape, and then were executed on a public street by drug dealers in a dispute over money.

Anyone who launders drug money shares responsibility for these brutal drug slayings. Laundered money is the fruit of human tragedy. It comes from addicts who sell their bodies, or even their children's bodies, to get drugs. It is money stolen to support drug habits, or paid to killers to protect the drug trade's profits.

Money laundering is not a genteel, victimless crime. It is stained with the blood of innocent children killed in the crossfire of drug violence. This bill gets tough with the money launderers.

Twenty years ago this week, Congress enacted the Bank Secrecy Act. This law was designed to enable law enforcement authorities to track the deposits of large sums of cash into the banking system. The law has been strengthened over the years and remains the prime tool for detecting money laundering.

The bill before us today further strengthens the act. It aims to take money laundering out of banks, and banks and bankers out of money laundering.

The bill bans individuals convicted of money laundering from bank employment. It allows Federal regulators to remove the management of banks convicted of money laundering. The bill permits the revocation of the charters of banks engaged in money laundering when two or more officers or directors are also convicted.

Money laundering threatens the safety and soundness of banks and corrupts the banking system. It must be stopped. And banks that engage in money laundering must be stopped.

It is no coincidence that the National Bank of Washington, which recently failed, was also heavily involved with money laundering. The same management which allowed money laundering to occur was also responsible for the failure of the bank that will cost the taxpayer $500 million.

This legislation will enable the Federal bank regulators to remove that kind of management. It not only takes the profit out of money laundering, it takes the management out of money laundering institutions.

The legislation deserves the support of this House. It goes after those individuals and institutions who launder money for the drug dealers, crooks, and killers of this Nation, and puts them out of business.

Mr. Speaker, I urge passage of this legislation.

Mr. WYLIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5889, the Money Laundering Enforcement Amendments Act of 1990.

I want to commend especially the efforts of the chairman, the gentleman from Illinois [Mr. ANNUNZIO] of the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance for his strong effort and support of this legislation. I would also commend the chairman of the committee, the gentleman from Texas [Mr. GONZALEZ], for making it possible for Members to bring this legislation to the floor today.

I am an original cosponsor of this legislation and I am proud to say so. H.R 5889 gives this body another chance to pass vitally needed money laundering legislation in a package which I feel represents the will of the House and addresses the concerns of the other body. The bill before Members today contains the essential elements of H.R. 3848, the bill that passed the House on April 25, 1990. It also contains some minor changes to those provisions that were in S. 3037.

However, I would add that other Senate-passed provisions that were in S. 3037 have been deleted from this bill. An attempt was made to go to conference with those other provisions, and that failed. So, we are bringing the bill back up here as a clean bill, having to do only with money laundering. One of those provisions I would refer to is a provision which would redesign our coins. I want every Member to know that that has been deleted from the bill. It is gone, it is finished, and will not be in the bill as far as this Member is concerned.

Mr. Speaker, though budget matters and the Iraqi invasion are the current headlines, the scourge of drug use and drug-related violence continue to plague our society. While most of our banks have become increasingly cooperative when it comes to reporting suspecting money launderers, billions of dollars in drug proceeds are still being laundered through unlicensed money transmitters, as well as through financial institutions. Money laundering is the lifeblood of any drug enterprise. We enacted legislation in the past two Congresses to criminalize many violations such as structuring transactions and "smurfing", which is a use of a number of cash transactions under $10,000 to avoid reporting. We have made it more difficult to launder money, and Federal prosecutors have had some success in prosecuting money launderers based on legislation which the chairman of the subcommittee, the gentleman from Illinois, and I have cosponsored in the past, and have seen enacted into law.

Some recent bank scandals, however, indicate Congress needs to take additional action to deter illegal money laundering activities. This bill creates another deterrent by saying to money laundering institutions that they will be placed in conservatorship or receivership if the officers of their institution engage in money laundering, thereby zeroing out the stockholders' interest in the institution and creating the potential for removal of the officers and directors of that bank.

□ 1320

The bill also creates the ultimate sanction in extreme cases, the loss of the institution's charter.

Mr. Speaker, there are several other provisions in this bill which I think are significant, and I will ask that they be included in my statement in the RECORD at this point:

Financial institutions can be fined up to $5,000 for negligent violations of money laundering statutes.

Willful violations merit fines up to $10,000 per day.

Persons operating illegal money transmitting businesses can be fined or imprisoned for up to five years.

We provide a sense-of-the-Congress resolution urging States to enact legislation to regulate check cashing businesses. We also suggest a model statute for the States. These provisions were the contribution of my colleague, JIM SAXTON, from New Jersey.

The bill has been thoughtfully drafted in a bipartisan manner after extensive hearings. I would urge passage of this legislation as another needed step in the war against drugs.

Mr. WALKER. Mr. Speaker, will the gentleman yield to me?

Mr. WYLIE. Of course, I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, as the gentleman well knows, at this time of the year when we are moving in on the end of the congressional session, much of what we do around here is fueled by rumor. One of the rumors that is presently circulating in the House is the fact that the Senate intends to use this bill as a vehicle to tack on $57 billion in RTC moneys for the upcoming year.

Can the gentleman give me some assurance that we will not see this bill come back and a unanimous-consent request with that kind of money attached coming over from the Senate?

Mr. WYLIE. I can indeed. That is a foul rumor, I will tell the gentleman. There will not be any attempt made to put the $57 billion provisions on this bill. That was an amount which was thrown around as being needed to solve the rest of the problems of the failed savings and loans.

Mr. WALKER. Or $40 billion is another figure.

Mr. WYLIE. Well, all right. The Senate Banking Committee did report out a bill which would provide for $57 billion in funding.

Our House Banking Committee reported out on a voice vote a bill which would fund to the tune of $10 billion the RTC, but to go over only until February 15, 1991.

We also had a provision in that bill which would limit recovery of any individual to $100,000 of their deposit, which I think was needed. That was a sweetener.

Now, there is a possibility that we might try to get legislation passed which would provide an additional $10 billion in funding to take us to February 15, and to limit recovery of depositors to $100,000 per account, but the chairman of the full Banking Committee, the gentleman from Texas [Mr. GONZALEZ], assured us in open committee that that would be the limit, that would be the most that we would try to get.

In any event, there will not be $57 billion or $40 billion or $30 billion. There is a possibility of $10 billion, but I doubt if that will be attached to this bill.

Mr. WALKER. Mr. Speaker, if the gentleman will yield further, this is a good bill and one that merits the support of the Members of this House as an obvious extension of the war on drugs, but there would be, I think, many Members of the body who would be concerned if we even ended up with a $10 billion supplement attached to this bill and that this bill was used as a vehicle to move things other than new law with regard to money laundering, and I thank the gentleman for his explanation.

Mr. WYLIE. Mr. Speaker, I share the gentleman's concern, and that would be mine also.

Mr. ANNUNZIO. Mr. Speaker, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Illinois.

Mr. ANNUNZIO. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I want the gentleman from Pennsylvania [Mr. WALKER] to know that I am in no position to know or control what the Senate is going to do, but I do control myself, and I want to assure the gentleman that I will bitterly fight any move on the part of the Senate to attach that type of an amendment to this legislation.

Mr. WALKER. Mr. Speaker, I thank the gentleman.

Mr. ANNUNZIO. Mr. Speaker, I yield such time as he may consume to the gentleman from Delaware [Mr. CARPER], the dean of the Delaware delegation.

Mr. Speaker, I want to publicly thank the gentleman for all his hard work and effort and helping us to craft this legislation.

Mr. CARPER. Mr. Speaker, I thank the chairman for yielding this time to me, and I thank him for his kind words.

Mr. Speaker, I would be remiss if I did not acknowledge the leadership the gentleman has shown on this effort and to thank him for the opportunity to play a role in the crafting of this legislation.

Also, I do not see the gentleman from Florida [Mr. MCCOLLUM] on the floor, but he was also a key player in the crafting of the legislation of this committee.

Mr. Speaker, in the last several years over 60 financial institutions in our country have been convicted of money laundering.

In some cases, those were isolated instances, almost aberrations. In other instances, the amount of involvement with senior officials within those institutions was pervasive. The amount of money that was involved was great.

The penalties that have been brought to bear on those who violated our money laundering laws have not always reflected the gravity of those crimes. Major drug trafficking would not exist in our country today if it were not that the moneys, the profits therefrom, can be laundered. In too many instances the punishment for those who have laundered funds in our Nation represent a slap on the wrist.

This bill is a wake-up call to financial institutions and to those who run them who might be considering money laundering. No more business as usual.

To those institutions that are doing a good job, we thank you. We want you to continue those efforts. To those institutions who are doing a perfunctory job in enforcing the laws and the regulations, who are not complying, look out, we are coming to get you.

If a financial institution is convicted under this legislation, the Federal regulator responsible for that institution is expressly authorized to appoint a conservative for that institution.

If a federally chartered institution, plus two or more officers or directors of that institution, are convicted of money laundering, then the Federal regulator must convene a hearing to determine if the charter of that institution is to be revoked.

If the institution is a State-chartered institution and two or more of its senior directors or officials are convicted along with that institution, the FDIC must convene a hearing to explore the revocation of the deposit insurance for that institution.

With the adoption of this legislation, we also say to an individual convicted of money laundering, when you are in jail spend some time working on your resume, because you are not ever going to go back to work for that financial institution where you used to work. You are not ever going to work for a financial institution in our country again.

This legislation also indicates that we want the Treasury to go to work on wire transferring that involves money laundering. We want the Federal Government to work more clearly and closely with States in sharing information to support the enforcement of our laws. We do a number of other positive things with this legislation.

Mr. Speaker, let me just conclude. The sale of illegal drugs in our country, for it to be stopped we need a comprehensive approach. We need tough law enforcement. We need education for the young people, especially on the dangers that drugs pose for them.

We need to provide treatment for those who are addicted. We need to try to eradicate the source of drugs wherever they come from, and we also need as a key element to stop the pervasive sale of drugs in our society to insure that those who permit the profits, the proceeds of illegal drug sales, to be prosecuted and to be prosecuted diligently and toughly. This legislation does just that.

Again, I salute the gentleman from Illinois [Mr. ANNUNZIO], the gentleman from Ohio [Mr. WYLIE], the gentleman from Florida [Mr. MCCOLLUM] and others with whom we have joined in this effort, and again I thank the gentleman for the time that has been yielded to me today.

Mr. WYLIE. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Speaker, I thank the ranking member, the gentleman from Ohio, for yielding this time to me.

I would like to begin by thanking the chairman and the ranking member and the chairman of the full committee for their very able help and assistance in making a bill which I introduced, H.R. 3939, a part of this bill adopted as a title of H.R. 3848.

Mr. Speaker, drugs have managed to undercut the strength, vitality, and safety of our great Nation. We all know the harm drugs can cause. However, one avenue that has allowed the drug pushers, dealers, and importers to go about their business undetected, is money laundering.

Money laundering allows drug criminals to shuffle their loot through banks, credit unions, and storefront check cashers. The end result is squeaky clean money, money that law enforcement officials cannot trace as drug profits.

This bill will not solve the drug problems in America—but, it will limit the ability of drug rings to prey on the innocent. It is imperative Congress act swiftly, and pass H.R. 5889 in order to plug the gaping holes in the money laundering prevention system.

Earlier this year, I introduced H.R. 3939, which was adopted as a title in H.R. 3848, the Depository Institution Money Laundering Act of 1990, passed by the House earlier this year. H.R. 5889, which we consider now, contains legislation to encourage the States to enact laws to license and regulate check cashing services.

As with all provisions in the bill, the goal: Clamp down, and make it as difficult as possible for drug lords to operate their business in, and outside the United States.

As we speak, many States do not even regulate or license the check cashing industry. This has to come to a halt now.

Failure on the part of Congress to control the financial crimes relating to drug trafficking, is like throwing out the welcome mat to drug cartels who, far too often, work in collusion with many nonbank check cashing shops.

I ask my colleagues to support this bill. It is the right, and necessary thing to do. We need to send two messages from Capitol Hill to those forces involved in the drug war.

One is to the brave men and women in law enforcement, who put their lives on the line for us each day—Congress intends to help in whatever way it can to make drug transactions even more difficult.

The second message, is to criminals who insist on trafficking drugs—with the passage of this bill, your days are numbered.

□ 1330

Mr. ANNUNZIO. Madam Speaker, I yield 2 minutes to the gentleman from Minnesota, [Mr. VENTO], one of the hardest working and most knowledgeable members of our committee. I want to express my appreciation for all the help and assistance and cooperation we received from him on this bill.

Mr. VENTO. I thank the gentleman for yielding some time to me on this measure.

We had considered this measure earlier this year and acted on it and sent it to the Senate, but they have not responded in a direct way on our measure. So now the House is trying once again. Hopefully by the conclusion of this 101st Congress we will see this measure, the Money Laundering Enforcement Amendments of 1990, enacted.

I am very proud of the role that our chairman, the chairman of the subcommittee, the gentleman from Illinois [Mr. ANNUNZIO] has played, not just in this measure that is before us today but in the last decade when he has provided leadership on the issue of money laundering and the illegal use of our financial institutions by criminal elements in this country.

Most recently, of course, by those who are using it to launder the illgotten gains from the sale of drugs.

Frankly, a lot of work has gone into the proposal before us. The chairman convened hearings not just in this session of Congress but in past sessions of Congress to try to stem the use of our financial institutions for this purpose.

Madam Speaker, it is an outrage that the financial institutions of this country are pliable and usable for the purpose of such illegal cash and financial activities.

Clearly with the proper type of regulatory framework, and the improvements outlined in the legislation before us today, Congress is taking a big step toward limiting the improper use of financial institutions.

I think the credit for this really goes to the dogged determination of Congressman FRANK ANNUNZIO, and his chairmanship of the Subcommittee on Financial Institutions this year and in the past.

Chairman ANNUNZIO has brought in witnesses, researched the matter, ordered extensive investigatory staff work on the improper use of financial institutions, and used the information to craft legislation, dealing with the problems that are occurring.

I wish we could receive the cooperation necessary in all instances to achieve what is required, but frankly it has been a long hard path to bring this measure to fruition in 1990. Chairman ANNUNZIO certainly deserves my support and the support of all the Members of this body in his efforts to enact this important legislation today and hopefully the Senate will respond to this initiative and not get mired down in unrelated issues. We need this new law and policy, so let us all vote for the measure today once more.

Mr. WYLIE. Madam Speaker, I yield 3 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Madam Speaker, I am pleased to rise in support of H.R. 5889, the Money Laundering Enforcement Amendments of 1990, which expand our current efforts to combat money laundering, and I commend the gentleman from Illinois [Mr. ANNUNZIO] distinguished subcommittee chairman of Financial Institutes of the Banking Commission for proposing this measure, and I would also like to commend the gentleman from California [Mr. TORRES] for his efforts to revisit this issue to the floor and the gentleman from Ohio [Mr. WYLIE], the ranking minority member of the Banking Commission for his leadership on this issue.

Madam Speaker, for years we have been attempting to address the atrocities of the extensive drug trade. No other single deterrent is as effective as cutting out the profits derived from the sale of illicit narcotics. We all know that the profits from the illicit sale of drugs cannot benefit the drug kingpins unless their ill begotten money is laundered.

Madam Speaker, I believe that strengthening the requirements and increasing penalties is an effective way of attacking the money laundering link in the chain of drug trafficking. Given the existing State and Federal regulatory powers, and the added provisions of H.R. 5889, money laundering may no longer prove to be the weakest link in the chain of trafficking.

Simply put, the strict penalties which include the revocation of Federal charters and Federal deposit insurance and the prohibition of a convicted money launderer from any affiliation with a financial institution are added discentives for committing these felonious acts.

This measure also directs the Treasury to adopt final regulations on recordkeeping for international fund transfers by February 15, 1991. Madam Speaker, officials in the field, Federal prosecutors, and Justice Department officials and agents all agree that wire transfers are an essential source of information in tracking money launderers.

As the drug problem becomes more and more pervasive we must not fail to address this critical problem on all fronts, to cover supply and demand and to reduce the drugs profits by this kind of effective money laundering regulation. Accordingly, I wholeheartedly support H.R. 5889, and I urge our colleagues to join in full support.

Mr. ANNUNZIO. Madam Speaker, I yield 1 minute to my friend, the gentlewoman from Illinois [Mrs. COLLINS], a distinguished member of the Committee on Government Operations.

Mrs. COLLINS. Madam Speaker, as a longtime member of the Select Committee on Narcotics Abuse and Control, I rise today in support of H.R. 5889, the Money Laundering Prevention Act. During the time I have served as Congresswoman from the Seventh Congressional District of Illinois. I have watched in horror as drugs have spread their evil influence throughout my district, as well as throughout the rest of this country. I have seen men and women who have lost their will, their determination and their self-respect and the means by which to support their families, because of drugs. I have seen fathers lose jobs, women lose husbands, and children lose mothers to the powerful influence of drugs. On TV news, I have seen men, women, and children who have killed or been killed because of drugs or simply because they were caught in the crossfire of drug use, abuse, distribution or trafficking.

To me, one of the most culpable and shameless components of the drug crisis are the drug dealers—the drug lords who run their illegal businesses at the expense of the lives of others and who certainly do not deserve the huge profits that they reap.

The most despicable of all players in this worldwide scourge of greed and misdeed is the banker who launders the blood money for the dealer. The Treasury Department estimates that $100 billion a year is currently laundered through U.S. financial institutions. This is far too much money to be in such undeserving hands.

The Money Laundering Prevention Act is an important step in preventing drug lords from easily transferring their dirty money into respectable bank accounts managed by disrespectful bankers. Appointing a conservator, revoking the charter and terminating the deposit-insurance of a bank, credit union, or savings and loan that is convicted of money laundering will be an important deterrent for financial institutions which may be tempted to try to cleanse the huge sums of money of the drug dealers. Releasing cash transaction reports and customs monetary instrument reports to state banking regulatory agencies will be a further vital step toward increasing state involvement in the investigation and prosecution of such institutions.

This is a good, solid, vitally needed legislation which addresses a critical problem and I urge my colleagues to support it.

To me this legislation is critically important, and I commend the gentleman from Illinois [Mr. ANNUNZIO] for offering it.

Mr. WYLIE. Madam Speaker, I yield 3 minutes to the gentleman from Florida [Mr. MCCOLLUM], the gentleman to whom the gentleman from Delaware [Mr. CARPER] referred when he said he has indeed been a very distinguished player in the drafting of this excellent piece of legislation.

Mr. MCCOLLUM. Madam Speaker, I thank the gentleman from Ohio [Mr. WYLIE] very much for yielding this time to me.

Madam Speaker, the war on drugs, as we all know, has to be fought on many fronts. We cannot just win it one way or the other. It has been a long battle with overseas operations, getting Colombia to cooperate and so forth, efforts at interdiction, efforts at supporting local law enforcements, efforts with respect to user accountability and educational rehabilitation.

We all know that the thing that drives the engine is the profit, the profit that these big drug barons get, the money, the cash.

When they sell that cash on the streets, the way they get it into their hands and into the system is through the banking mechanisms in large measure in our country and in the world. They have to deposit that money. When they do that, because of efforts we made some time back, they are committing a crime just doing that; not only the drug transaction but the monetary transaction.

To receive or to deposit or to transfer money that you know is from a drug crime is against the Federal law.

What we are doing today is to add to that law some important ingredients.

Yes, I am very proud to have worked with the gentleman from Delaware and the chairman of my committee, the gentleman from Illinois [Mr. ANNUNZIO] and the gentleman from Ohio [Mr. WYLIE] to come up with this legislation today.

What we are doing is, we are saying to the banking community out there that you had darned well better be on your P's and Q's, you are not only at risk for having an individual involving themselves in money laundering, but you may lose your charter. The way the charter is going to be lost is if a bank or institution itself is convicted and any two or more officers or directors are convicted of money-laundering crimes.

□ 1340

If that has happened, then the regulators will have permission for the first time to pull the charter and revoke it. I think that is the singly most important feature of this legislation, though there are many others with which I agree.

Madam Speaker, we are long overdue in putting that charter revocation provision into law, and I think the American public will be well served if charters are yanked where the institutions involved have two or more directors or officers who have been convicted of money laundering who are at the very top of the pyramid who are clearly involved. Now there are not going to be many of those, but, by golly, where it happens there ought to be a tough deterrent message that is sent in that case.

We also have the provisions with respect to conservatorship and receivership, canceling a stockholder's interest in the institution, and we have the fines for the negligent violations of the money laundering statutes that banks will have as a deterrent to keep them from being as careless as they might otherwise be.

Madam Speaker, these are very important improvements in the laws that will deter money laundering that will get at the profit motive that is the motive in drug crimes today.

So, again I commend my colleagues who have worked so hard on this. I thank the gentleman from Illinois [Mr. ANNUNZIO] for his good work, and the ranking Republican, the gentleman from Ohio [Mr. WYLIE] for their consideration in considering the suggestions that I made in the committee that are now in this bill and hopefully will become law after today.

Mr. ANNUNZIO. Madam Speaker, I yield 2 mintues to the gentleman from California [Mr. TORRES]. I want to state for the record that he has performed invaluable service in the area of wire transfer, and all the members of our committee appreciate his hard work in that area.

Mr. TORRES. Madam Speaker, I want to rise in strong support of this clean money laundering bill that we are considering today under suspension of the rules. It represents the compromise position on the antimoney laundering provisions that were approved earlier this year by the House and the Senate.

I am particularly pleased that the provisions requiring implementation of wire transfer regulations are included in this compromise. As my colleagues are aware, these regulations are critical to stopping the flow of high volumes of drug money overseas through the wire transfer system.

Each year, trillions of dollars are wire transferred in and out of the country in the normal course of legitimate, worldwide business. The system is so efficient, it takes just 40 cents and 3 seconds to move $1 million halfway around the world. The problem is: Drug profits look just like corporate profits to the computers. Because many of the transactions are done anonymously, it is nearly impossible for law enforcement to trace the illegitimate transactions.

The wire transfer regulations that the Treasury Department has proposed will require a record of some

basic information about these transactions. This will create a trail of the money as it flows from bank to bank, making it easier for law enforcement to trace the movement of drug money. I want to thank the chairman, Mr. ANNUNZIO of Illinois, for his arduous work and that of his staff in bringing this bill to the floor. I want to thank my own staff namely, Nancy Alcalde who has been so key to this legislation. Again, my colleagues, I urge your support for this bill which will help stop the use of our banking system by the drug world.

Mr. ANNUNZIO. Madam Speaker, I reserve the balance of my time.

Mr. WYLIE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I would conclude my own remarks by saying that this is an excellent piece of legislation. It gives us more tools in the fight against drugs. The bill will allow us to fight money launderers both domestically and internationally, and I urge my colleagues to support this very excellent piece of legislation.

Madam Speaker, I yield back the balance of my time.

Mr. ANNUNZIO. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I want to express my deep appreciation to the minority, the ranking minority member of our committee, to all of the members of the committee, to the staff, the Members on the Democratic side, for the input that they have had in this legislation and for watching it very carefully.

Mr. GONZALEZ. Madam Speaker, on April 25 of this year, the House voted 406 to 0 to approve H.R. 3848, antimoney laundering legislation that extends the reach of the Bank Secrecy Act of 1970.

This unanimous vote is as strong a statement as can be made about the importance of a bill dealing with an issue of deep and genuine concern for all Americans and, secondly, that H.R. 3848 was a well-drafted and meaningful addition to existing money laundering laws.

Similar legislation was introduced in the Senate and, on October 5, the full Senate passed a bill by voice vote. Due to popularity of the money laundering issue, the original text of the Senate bill was often amended both in the Senate Banking Committee and on the Senate floor. Many of these amendments, while of considerable merit, did not relate to anti-money laundering issues and contributed to the Senate's failure to request a conference and to appoint conferees to the original money laundering legislation.

The bill before the House today is a restatement of the House of Representative's unanimous position on money laundering as reflected in H.R. 3848. Today's bill is essentially identical to the bill the House passed in April. In a few instances, this bill has been improved to reflect the concerns expressed by the Senate in the core of the money laundering legislation they adopted. These minor modifications have been made to enhance the prospects for the Senate to be able to take this legislation from the Senate desk and send it along for the President's signature.

Before we act on this bill, let me again commend the work of the chairman of the Financial Institutions Subcommittee, the Honorable FRANK ANNUNZIO. The core element of this bill is still Chairman ANNUNZIO's work on charter revocation for those financial institutions who knowingly cooperate with money launderers. This bill reflects FRANK ANNUNZIO's strong leadership in the fight against those who seek to profit from the sale of illegal drugs in our society.

My colleagues, I strongly urge another unanimous vote in support of this bill so that we can move along with our efforts to deter money launderers and the drug dealers they support.

Ms. OAKAR. Madam Speaker, I rise in support of H.R. 5889, the money laundering enforcement amendments of 1990.

Madam Speaker, I want to commend Chairman ANNUNZIO of the Subcommittee on Financial Institutions of the Banking, Finance, and Urban Affairs Committee as well as Chairman GONZALEZ of the full committee and Mr. WYLIE, the ranking minority member, for their tremendous leadership on this measure. The subcommittee and the full committee have worked very hard to produce this excellent legislation.

This bill is a tough anticrime bill that deserves the support of the full House. The legislation allows the appropriate Federal regulators to appoint a conservator for any financial institution convicted of money laundering after considering the extent to which senior management was involved; whether the institution had policies and procedures designed to prevent money laundering; and whether the institution has implemented new procedures to prevent the recurrence of the offense. In addition, the bill directs regulators to revoke the charter of financial institutions of which two or more officers and directors are convicted of money laundering crimes.

The legislation also allows regulators to terminate deposit insurance for State-chartered banks after the conviction of two or more officers and directors for money laundering offenses. Furthermore, any person affiliated with a financial insitution who is convicted of money laundering, or structuring transactions to evade reporting requirements, will be barred from future employment or affiliation with financial institutions. The agencies are also empowered to ban officers and directors who had knowledge of money laundering and to suspend persons charged with money laundering. Taken collectively this is tough legislation for financial crimes which sends a strong signal to potential criminals within financial institutions.

Again, I want to congratulate Chairman GONZALEZ and Chairman ANNUNZIO for their fine work on this measure. This is timely legislation which our constituents demand we enact. I urge all Members of the House to support this measure.

Mr. RANGEL. Mr. Speaker, today we consider H.R. 5889, a bill designed to combat money laundering. This legislation is very similar to H.R. 3848, the Depository Institution Money Laundering Amendments of 1990, which passed the House overwhelmingly earlier this year. Money laundering is an essential component of drug trafficking. I am pleased that the House is taking action to fight narcotics trafficking by enacting this important bill on money laundering, and I hope the Senate will adopt this legislation.

This bill includes an amendment I offered to H.R. 3848 which was adopted unanimously. The amendment requires the Secretary of the Treasury to collect and maintain data on the amounts of the denominations of Federal Reserve notes which are confiscated by Federal and local law enforcement agents in connection with the seizure of any controlled substance or any enforcement action related to drug-related money laundering operations.

Mr. Speaker, my amendment will also require Treasury to develop a plan to collect such information from State and local law enforcement agencies, to report to Congress every 6 months on information collected regarding denominations of currency seized, and to inform Congress of any additional information Treasury would need to determine the extent to which large denominations of currency are used for illegal activities and the deterrent effect on that withdrawal of such denominations from circulation would have on drug trafficking and other illegal activities.

It is not my intent to hinder legitimate commerce, but I believe it is important to ascertain whether withdrawing $50 and $100 bills from circulation would hinder the money laundering process. The Treasury Department, pursuant to a requirement of the Anti-Drug Abuse Act of 1988, previously reported that withdrawing $50 and $100 bills would have a negligible impact on criminal activity. However a study by the General Accounting Office of this matter found that there was an inadequate factual basis for Treasury's determination. Thus, I believe further study of this issue is warranted.

The bill also makes other needed reforms in the financial services industry designed to deter money laundering. It provides authority to revoke the charters of financial institutions involved in money laundering. It provides that the appropriate Federal regulator may appoint a conservator for any financial institution convicted of money laundering after considering the extent to which senior management was involved, and whether the institution had policies and procedures designed to prevent money laundering. Other factors which would also be considered are the degree to which the institution cooperated with law enforcement officials, and whether the institution has implemented new procedures to prevent the recurrence of the offense. In the case of a State chartered bank, the FDIC shall notify the appropriate State regulator 10 days before the appointment of the conservator.

After the conviction of a financial institution and two or more officers and directors for money laundering, the appropriate Federal regulator shall hold a hearing to decide whether to revoke the charter of the institution. The regulator would consider the factors mentioned above. After the conviction of a State chartered bank and two or more officers and directors for money laundering, the FDIC shall

hold a hearing to decide whether to revoke the charter of the institution.

Other provisions in the bill authorize the Treasury Department to impose a $5,000 fine on any financial institution found to engage in a pattern of negligent violations of currency reporting requirements, in addition to any other fines that may be imposed, and provide that persons who in good faith report suspicious transactions or refuse to do business with those persons whom they reported, shall be exempt from civil liability. State financial institution regulators also shall have access to currency transaction reports maintained by the Treasury.

Mr. Speaker, because this legislation enhances the ability of Federal and State regulators and law enforcement agencies to combat money laundering effectively, I urge its adoption by the House of Representatives.

Mr. ANNUNZIO. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. UNSOELD). The question is on the motion offered by the gentleman from Illinois [Mr. ANNUNZIO] that the House suspend the rules and pass the bill, H.R. 5889, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANNUNZIO. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

RED ROCK CANYON NATIONAL CONSERVATION AREA ESTABLISHMENT ACT OF 1990

Mr. VENTO. Madam Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4559) to establish the Red Rock Canyon National Conservation Area, with an amendment.

The Clerk read as follows:

House amendment to Senate amendment to H.R. 4559: In lieu of matter inserted by Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Red Rock Canyon National Conservation Area Establishment Act of 1990".

SEC. 2. DEFINITIONS.

For the purposes of this Act, the term—

(a) "conservation area" means the Red Rock Canyon National Conservation Area established pursuant to section 3 of this Act;

(b) "public lands" has the meaning stated in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e)); and

(c) "Secretary" means the Secretary of the Interior.

SEC. 3. ESTABLISHMENT OF THE CONSERVATION AREA.

(a) IN GENERAL.—(1) In order to conserve protect, and enhance for the benefit and enjoyment of present and future generations the area in southern Nevada containing and surrounding the Red Rock Canyon and the unique and nationally important geologic, archeological, ecological, cultural, scenic, scientific, wildlife, riparian, wilderness, endangered species, and recreation resources of the public lands therein contained, there is established the Red Rock Canyon National Conservation Area.

(2) The conservation area shall consist of approximately 83,100 acres as generally depcited on a map entitled "Red Rock Canyon National Conservation Area—Proposed" numbered NV-RRC-NCA-001 and dated June, 1990.

(3) The map refered to in paragraph (2) shall be on file and available for inspection in the appropriate offices of the Bureau of Land Management, Department of the Interior.

(b) LEGAL DESCRIPTION.—(1) As soon as practicable after the date of enactment of this Act, the Secretary shall file a legal description of the conservation area established by subsection (a) with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, and such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographic errors in the legal description.

(2) The legal description described in paragraph (1) shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management, Department of the Interior.

(c) DISCREPANCIES.—In case of any discrepancy between or among the map described in subsection (a), the amount of acreage stated in subsection (a), or the legal description filed by the Secretary pursuant to subsection (b), the map described in subsection (a) shall control any question concerning the boundaries of the conservation area.

SEC. 4. MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Director of the Bureau of Land Management, shall subject to existing rights, manage the conservation area to conserve, protect, and enhance the resources described in section 3 in accordance with this Act, the Federal Land Policy and Management Act of 1976, and other applicable laws. The Secretary shall only allow such uses of the conservation area as he finds will further the purposes for which the conservation area is established.

(b) HUNTING.—Subject to paragraph (2), the Secretary shall permit hunting within the conservation area in accordance with the laws of the State of Nevada.

(2) The Secretary, after consultation with the Nevada Department of Wildlife, may issue regulations designating zones where and establishing when hunting shall not be permitted for reasons of public safety, administration, or public use and enjoyment.

(c) PREVENTIVE MEASURES.—Nothing in this Act shall preclude measures as the Secretary deems necessary to prevent devastating fire or infestation of insects or disease within the conservation area.

(d) MECHANIZED VEHICLES.—Except when needed for administrative or emergency purposes, the use of mechanized vehicles in the conservation area shall be allowed only on roads and trails specifically designated for such use as provided in the management plan prepared pursuant to section 5.

(e) LIMITS ON VISITATION AND USE.—The Secretary may limit the visitation and use of the conservation area as the Secretary finds appropriate for the protection of the resources of the conservation area.

SEC. 5. MANAGEMENT PLAN.

(a) IN GENERAL.—(1) Within 3 full fiscal years following the fiscal year in which the date of enactment of this Act occurs, the Secretary shall develop and transmit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives a general management plan for the conservation area, which shall describe the appropriate uses and development of the conservation area consistent with purposes of this Act.

(2) The management plan described in paragraph (1) shall be developed with full public participation and shall include—

(A) an implementation plan for a continuing program of interpretation and public education about the resources and values of the conservation area;

(B) a proposal for administrative and public facilities to be developed, expanded, or improved for the conservation area including the Red Rock Canyon visitors center, to accommodate visitors to the conservation area;

(C) a cultural resources management plan for the conservation area, prepared in consultation with the Nevada State Historic Preservation Officer, with emphasis on the preservation of resources in the conservation area and the interpretive, educational and long-term scientific use of those resources, giving priority to the enforcement of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) and the National Historic Preservation Act (16 U.S.C. 470 et seq.) within the conservation area;

(D) a wildlife resource management plan for the conservation area prepared in consultation with appropriate departments of the State of Nevada and using previous studies of the area; and

(E) a recreation management plan, including non-motorized dispersed recreation opportunities for the conservation area in consultation with appropriate departments of the State of Nevada.

(b) WILDERNESS STUDY AREAS.—Subject to section 7 of this Act, nothing in this Act is intended to alter the requirements of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), or section 5(a) of the National Forest and Public Lands of Nevada Enhancement Act of 1988 (102 Stat. 2751), as those requirements apply to the lands within or adjacent to the conservation area as of the date of enactment of this act.

SEC. 6. ACQUISITIONS.

(a) IN GENERAL.—(1) Within the conservation area, and subject to the provisions of this section, the Secretary is authorized to acquire lands, interests in lands, and associated water rights, by donation, purchase with donated or appropriated funds, exchange for Federal lands outside the conservation area, or transfer from another Federal agency with the concurrence of the head of the appropriate agency thereof.

(2) Lands or interests therein owned by the State of Nevada or a political subdivision thereof may be acquired by donation or exchange only.

(3) No privately owned lands, interests in lands, or associated water rights, may be acquired without the consent of the owner thereof unless the Secretary determines that, in his judgment, the property is subject to, or threatened with, uses which are having, or would have, an adverse impact on the resource values for which the conservation area was established.

(4) Any lands, waters, or interests therein within the boundaries of the conservation area which after the date of enactment of this Act may be acquired by the United States shall be incorporated into the conservation area and be managed accordingly, and all provisions of this Act and other laws applicable to conservation areas shall apply to such incorporated lands.

(b) LAND EXCHANGES.—All exchanges pursuant to subsection (a) shall be made in a manner consistent with section 206 of the Federal Land Management and Policy Act of 1976 (43 U.S.C. 1716).

SEC. 7. WITHDRAWAL.

Except as specifically authorized in this Act, and subject to valid existing rights, all Federal lands within the conservation area and all lands and interests therein which are acquired by the United States after the date of enactment of this Act for inclusion in the conservation area are withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from operation under the mineral leasing and geothermal leasing laws, and all amendments thereto.

SEC. 8. COOPERATIVE AGREEMENTS.

In order to encourage unified and cost-effective management and interpretation of natural and cultural resources in the conservation area, the Secretary is authorized and encouraged to enter into cooperative agreements with other Federal, State, and local agencies and non-profit entities providing for the management and interpretation of natural and cultural resources in the conservation area.

SEC. 9. COORDINATED MANAGEMENT.

The Secretary shall coordinate the management of the conservation area with that of surrounding State and Federal lands in such manner as best to meet the present and future needs of the American people.

SEC. 10. WATER.

(a) Within the conservation area designated by this Act, there is hereby reserved a quantity of water sufficient to fulfill the purposes for which the conservation area is established.

(b) The priority date of the water rights reserved in paragraph (a) shall be the date of enactment of this Act.

(c) The Secretary shall take all steps necessary to protect the water rights reserved by this section, including the filing of a claim for quantification of such rights in any appropriate water adjudication in the courts of the State of Nevada in which the United States is or may be joined and which is conducted in accordance with the McCarren Amendment (43 U.S.C. 666).

(d) The Federal water rights reserved by this Act shall be in addition to any water rights which may have been previously secured by the United States for purposes other than for the conservation area.

(e) The Federal water rights reserved by this Act are specific to the conservation area designated by this Act. Nothing in this Act shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation.

SEC. 11. NO BUFFER ZONES.

The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area that would not be permitted in the conservation area shall not preclude such activities or uses on such lands up to the boundary of the conservation area to the extent consistent with other applicable law.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The SPEAKER pro tempore. Is a second demanded?

Mrs. VUCANOVICH. Madam Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes, and the gentlewoman from Nevada [Mrs. VUCANOVICH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the measure under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota.

There was no objection.

Mr. VENTO. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this is a bill to establish the Red Rock Canyon National Conservation Area near Las Vegas, NV. The bill was introduced by the gentleman from Nevada [Mr. BILBRAY] and was first passed by the House on September 25, 1990.

The Senate has now returned the bill to us with a number of amendments. Many of these are acceptable. However, with respect to some of the provisions of the Senate version, we believe that it is necessary to make further changes. This is particularly true with regard to some of the requirements for management of the area and with regard to the process for perfection of water rights. The changes with regard to management issues result from the fact there are a growing number of national conservation areas that either have been designated or have been considered for designation. It is important to bring some consistency to the management of the areas Congress identifies as qualifying for this special designation.

With regard to water rights, this issue has come before the House on many occasions and our amendment attempts to provide real water rights protection that is sensitive to both State and Federal needs.

There are two deletions of House language by the Senate in which we are recommending concurrence because we believe the intent of the deleted portions is accomplished either by existing law or by the remaining language in the bill. The first of the deletions modifies the House language providing the Secretary the authority to implement reasonable limits to visitation and use. The Senate version deletes the specific House wording regarding the ability of the Secretary to require permits and to close portions of the area to public use. The second deletion by the Senate concerns the authority of the Secretary to acquire land outside of the conservation area for the purpose of construction or improvement of access roads to the conservation area.

Madam Speaker, I urge my colleagues to support this measure, which incorporates the revisions we believe are necessary and to return it to the Senate so that it may be acted upon before adjournment.

Mrs. VUCANOVICH. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in opposition to the amendment to the Senate amendment to H.R. 4559. This bill, as amended, would establish the Red Rocks National Conservation Area within my congressional district. I continue to oppose creating a reserved Federal water right, as section 10 would do, rather than recognizing the jurisdiction of the State of Nevada to allocate water resources within its borders. As I reiterated when this bill passed on the suspension calendar but a few days ago, state sovereignty over water rights is a principle upon which I do not choose to compromise.

□ 1350

As with the wilderness water rights debate of last year, the issue here is largely academic. In this case, Madame Speaker, there simply is no surface water here to be allocated. I see no reason to override state sovereignty unless and until a compelling reason for doing so is demonstrated. I do not believe that such a showing has been made here.

The amendment offered by Chairman VENTO directs the Secretary of the Interior to take the steps necessary to protect the water right granted in this bill in the appropriate State court. But, when the United States enters the State court to seek its appropriation the Congress will have already determined that the purposes for which the United States is seeking the water right prevail over Nevada's definition of beneficial uses. Madam Speaker, this provision eviscerates the body of water law for the Western

States that adhere to the doctrine of prior appropriation. Just how much water is sufficient to fulfill "geologic, archeological, ecological, cultural, scenic, scientific, wildlife, endangered species, riparian, wilderness, and recreation resources * * *" for which the area is to be set aside?

Furthermore, Madam Speaker, the ill-defined Federal water right that remains in the amendment at hand could well frustrate future attempts to pump ground water outside the Red Rocks area. In Nevada, ground water is subject to appropriation in a similar manner as surface waters. The broad grant contained in this amendment may preclude the Nevada State Engineer from approving future groundwater applications in any area adjacent to Red Rocks Canyon. For these reasons I continue to oppose H.R. 4559.

□ 1350

Mr. VENTO. Madam Speaker, I yield such time as he may consume to the sponsor of the measure, the gentleman from Nevada [Mr. BILBRAY].

(Mr. BILBRAY asked and was given permission to revise and extend his remarks.)

Mr. BILBRAY. Madam Speaker, I rise in support of the bill and the amendments that are being proposed. I have looked them over, gone over them, and support the amendments. I believe they are acceptable to the Senate, as are some of those that we are making.

Madam Speaker, I would like to enter into a brief colloquy with the chairman on some questions that have come to my attention in the last few days.

Madam Speaker, the designation of the Red Rock Canyon into a conservation area is a critically important action for the people of Nevada and the United States. However, I would like to confirm the current activities of the James Hardy gypsum operation at the Blue Diamond Mine, including the use of an access road lying within the boundaries of the conservation area and which the company has used since 1924. The right of way permitting the use of this road has been authorized by the BLM. The activities of the gypsum operation on their own property include mining practices such as blasting. Such legislation incorporates language which protects all valid and existing rights. Because the language provides no buffer zones, the language protects the activities engaged in by the James Hardy Gypsum Co., on their private lands near the conservation area.

Is it the understanding of the subcommittee chairman that the James Hardy Gypsum Co. will be able to continue the activities of their mining operations and that it is consistent with the designation of the conservation area?

Mr. VENTO. Yes. Madam Speaker, if the gentleman will yield, the Red Rock Canyon legislation provides for the protecting of all valid and existing rights in the conservation area. The preexisting activities of the James Hardy gypsum operation are not restricted by the creation of the Red Rock Canyon conservation area. The management of the Red Rock Canyon conservation area fall under the jurisdiction and management of the BLM. In counsel with the staff of my subcommittee, we find these preexisting activities are consistent with the legislation.

Mrs. VUCANOVICH. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CRAIG. Mr. Speaker, I oppose the amendment to the Senate amendment to H.R. 4559. The bill, as amended, would establish the Red Rocks National Conservation Area in the State of Nevada. H.R. 4559 would create a new reserved Federal water right in the Red Rocks Canyon Area of Nevada.

Red Rocks Canyon is a Bureau of Land Management WSA [Wilderness Study Area] national conservation area that does not currently have a reserved water right under the Winter doctrine. This legislation will create such a water right. To create a new Federal reserved water right will only lead to the taxing of the meager water reserves of the arid country where this area lies.

The continual creation of new Federal water rights in the arid West only leads to greater and greater problems. Each new Federal water right created by this Congress confuses State water rights and clouds future uses of water in the arid West.

Mr. Speaker, this Congress must realize that the life blood of the West is its water. We can ill afford that life blood to be continually drained by the creation of Federal water rights for ill defined Federal uses.

The SPEAKER pro tempore (Mrs. UNSOELD). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4559, with an amendment.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in with an amendment.

A motion to reconsider was laid on the table.

AUTHORIZING THE RUMSEY INDIAN RANCHERIA TO CONVEY A CERTAIN PARCEL OF LAND

Mr. RICHARDSON. Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3703) to authorize the Rumsey Indian Rancheria to convey a certain parcel of land, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

TITLE I—RUMSEY INDIAN RANCHERIA

SECTION 101. FINDINGS.

The Congress finds that—

(1) the Rumsey Indian Rancheria, a part of the Wintun Tribe of Indians, is a federally recognized Indian tribe, located in Rumsey, California, where eighty-three and thirty-nine hundredths acres of land are held in trust for the Rancheria by the United States;

(2) in February, 1987, fee simple title to property located at lot 23, Sierra Meadows subdivision, unit 5A, Washoe County, Nevada, commonly known as 978 O'Callahan Street, Sparks, Nevada, was transferred to the Rancheria which it presently holds under the name Wintun Indian Tribe;

(3) such property is located approximately one hundred twenty-five miles from the Rancheria trust land base in California, and ownership of such land, which is in a residential area, provides no significant benefit for the tribal members;

(4) the most beneficial use of such land is to sell it at its present market value and to utilize the proceeds for the improvement of the tribe's economic and social welfare; and

(5) section 2116 of the Revised Statutes (25 U.S.C. 177) prohibits the conveyance of any lands owned by Indian tribes without the consent of Congress.

SEC. 102. CONVEYANCE OF LAND.

(a) AUTHORITY.—Notwithstanding section 2116 of the Revised Statutes (25 U.S.C. 177), Rumsey Indian Rancheria is authorized to convey that land known as lot 23, Sierra Meadows subdivision, unit 5A, Washoe County, Nevada, commonly known as 978 O'Callahan Street, Sparks, Nevada, to any bona fide purchaser for value.

TITLE II—MILLE LACS INDIAN RESERVATION LEASE

SEC. 201. MILLE LACS INDIAN RESERVATION LEASE TO MINNESOTA STATE HISTORICAL SOCIETY.

The first section of the Act of August 9, 1955 (25 U.S.C. 415), is amended by inserting "the Mille Lacs Indian Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society," after "the Navajo Reservation,".

TITLE III—INDIAN FOREST AND WOODLANDS

SEC. 301. SHORT TITLE.

This title may be cited as the "National Indian Forest Resources Management Act".

SEC. 302. FINDINGS.

The Congress finds and declares that—

(1) the forest lands of Indians are among their most valuable resources and Indian forest lands—

(A) encompass more than 15,990,00 acres, including more than 5,700,000 acres of commercial forest land and 8,700,000 acres of woodland,

(B) are a perpetually renewable and manageable resource,

(C) provide economic benefits, including income, employment, and subsistence, and

(D) provide natural benefits, including ecological, cultural, and esthetic values;

(2) the United States has a trust responsibility toward Indian forest lands;

(3) existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian forest lands;

(4) the Federal investment in, and the management of, Indian forest land is significantly below the level of investment in, and management of, National Forest Service forest land, Bureau of Land Management forest land, or private forest land;

(5) tribal governments make substantial contributions to the overall management of Indian forest land; and

(6) there is a serious threat to Indian forest lands arising from trespass and unauthorized harvesting of Indian forest land resources.

SEC. 303. PURPOSES.

The purposes of this title are to—

(1) allow the Secretary of the Interior to take part in the management of Indian forest lands, with the participation of the lands' beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;

(2) clarify the authority of the Secretary to make deductions from the proceeds of sale of Indian forest products, assure the use of such deductions on the reservation from which they are derived solely for use in forest land management activities, and assure that no other deductions shall be collected;

(3) increase the number of professional Indian foresters and related staff in forestry programs on Indian forest land; and

(4) provide for the authorization of necessary appropriations to carry out this title for the protection, conservation, utilization, management, and enhancement of Indian forest lands.

SEC. 304. DEFINITIONS.

For the purposes of this title, the term—

(1) "Alaska Native" means Native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604);

(2) "forest" means an ecosystem of at least one acre in size, including timberland and woodland, which—

(A) is characterized by a more or less dense and extensive tree cover,

(B) contains, or once contained, at least ten percent tree crown cover, and

(C) is not developed or planned for exclusive nonforest use;

(3) "Indian forest land" means Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken;

(4) "forest land management activities" means all activities performed in the management of Indian forest lands, including—

(A) all aspects of program administration and executive direction such as—

(i) development and maintenance of policy and operational procedures, program oversight, and evaluation,

(ii) securing of legal assistance and handling of legal matters,

(iii) budget, finance, and personnel management, and

(iv) development and maintenance of necessary data bases and program reports;

(B) all aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans;

(C) forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment;

(D) protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of firebreaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements;

(E) protection against insects and disease, including—

(i) all aspects of detection and evaluation,

(ii) preparation of project proposals containing project description, environmental assessments and statements, and cost-benefit analyses necessary to secure funding,

(iii) field suppression operations, and

(iv) reporting;

(F) assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance, and report, demand letter, and testimony preparation;

(G) all aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents including—

(i) cruising, product marking, silvicultural prescription, appraisal and harvest supervision,

(ii) forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products,

(iii) archeological, historical, environmental and other land management reviews, clearances, and analyses,

(iv) advertising, executing, and supervising contracts,

(v) marking and scaling of timber, and

(vi) collecting, recording and distributing receipts from sales;

(H) provision of financial assistance for the education of Indians enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses;

(I) participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands;

(J) improvement and maintenance of extended season primary and secondary Indian forest land road systems; and

(K) research activities to improve the basis for determining appropriate management measures to apply to Indian forest lands;

(5) "forest management plan" means the principal document, approved by the Secretary, reflecting and consistent with a tribal integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include—

(A) standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and

(B) standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan;

(6) "forest product" means—

(A) timber,

(B) a timber product, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products,

(C) bark,

(D) Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, and herbs,

(E) other marketable material, and

(F) gravel which is extracted from, and utilized on, Indian forest lands;

(7) "forest resources" means all the benefits derived from Indian forest lands, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest lands;

(8) "forest trespass" means the act of illegally removing forest products from, or illegally damaging forest products on, forest lands;

(9) "Indian" means a member of an Indian tribe;

(10) "Indian land" means land title to which is held by—

(A) the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or

(B) an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation;

(12) "reservation" includes Indian reservations established pursuant to treaties, Acts of Congress or Executive orders, public domain Indian allotments, and former Indian reservations in Oklahoma;

(13) "Secretary" means the Secretary of the Interior;

(14) "sustained yield" means the yield of forest products that a forest can produce continuously at a given intensity of management; and

(15) "tribal integrated resource management plan" means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of such tribe's natural resources.

SEC. 305. MANAGEMENT OF INDIAN FOREST LAND.

(a) MANAGEMENT ACTIVITIES.—The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian

Self-Determination Act (25 U.S.C. 450 et seq.).

(b) MANAGEMENT OBJECTIVES.—Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives—

(1) the development, maintenance, and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to—

(A) the harvesting of forest products,

(B) forestation,

(C) timber stand improvement, and

(D) other forestry practices;

(2) the regulation of Indian forest lands through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives and forest marketing programs;

(3) the regulation of Indian forest lands in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) the development of Indian forest lands and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) the retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) the management and protection of forest resources to retain the beneficial effects to Indian forest lands of regulating water run-off and minimizing soil erosion; and

(7) the maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

SEC. 306. FOREST MANAGEMENT DEDUCTION.

(a) WITHHOLDING OF DEDUCTION.—Pursuant to the authority of section 1 of the Act of February 14, 1920 (41 Stat. 415; 25 U.S.C. 413), the Secretary shall withhold a reasonable deduction from the gross proceeds of sales of forest products harvested from Indian forest land under a timber sale contract, permit, or other harvest sale document, which has been approved by the Secretary, to cover in whole or part the cost of managing and protecting such Indian forest land.

(b) AMOUNT OF DEDUCTION.—Deductions made pursuant to subsection (a) shall not exceed the lesser amount of—

(1) 10 percent of gross proceeds, or

(2) the percentage of gross proceeds collected on the date of enactment of this title as forest management deductions by the Secretary on such sales of Indian forest products,

unless the appropriate Indian tribe consents to an increase in the deductions.

(c) USE OF DEDUCTION.—The full amount of any deduction collected by the Secretary shall be expended according to an approved expenditure plan, approved by the Secretary and the appropriate Indian tribe, for the performance of forest land management activities on the reservation from which such deductions are collected and shall be made available to the tribe, upon its request, by contract or agreement for the performance of such activities.

(d) LIMITATIONS.—(1) Forest management deductions withheld pursuant to this section shall not be available to—

(A) cover the costs that are paid from funds appropriated specifically for fire suppression or pest control, or

(B) otherwise offset Federal appropriations for meeting the Federal trust responsibility for management of Indian forest lands.

(2) No other forest management deductions derived from Indian forest lands shall be collected to be covered into the general funds of the United States Treasury.

SEC. 307. FOREST TRESPASS.

(a) CIVIL PENALTIES; REGULATIONS.—Not later than 18 months from the date of enactment of this title, the Secretary shall issue regulations that—

(1) establish civil penalties for the commission of forest trespass which provide for—

(A) collection of the value of the products illegally removed plus a penalty of double their value,

(B) collection of the costs associated with damage to the Indian forest land caused by the act of trespass, and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility with the Department of the Interior for the detection and investigation of forest trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) TREATMENT OF PROCEEDS.—The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of forest products from the Indian forest lands upon which such trespass occurred.

(c) CONCURRENT JURISDICTION.—Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) shall have concurrent civil jurisdiction to enforce the provisions of this section and the regulation promulgated thereunder. The Bureau of Indian Affairs and other agencies of the Federal government shall, at the request of the tribe, defer to tribal prosecutions of forest trespass cases. Tribal court judgments regarding forest trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section.

SEC. 308. DIRECT PAYMENT OF FOREST PRODUCTS RECEIPTS.

(a) REGULATIONS.—Notwithstanding any other law, the Secretary shall, within 1 year from the date of enactment of this title, promulgate regulations providing for the payment of the receipts from the sale of Indian forest products as provided in this section.

(b) PAYMENT INTO A BANK DEPOSITORY.—Upon the request of an Indian tribe, the Secretary shall provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit or other harvest sale document which has been approved by the Secretary, shall make prompt direct payments of the gross proceeds of sales of such forest products, less any amounts segregated as forest management deductions pursuant to section 306, into a bank depository account designated by such Indian tribe.

SEC. 309. SECRETARIAL RECOGNITION OF TRIBAL LAWS.

Subject to the Secretary's responsibilities as reflected in sections 302(2) and 303(1) and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest lands, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest lands. Such cooperation shall include—

(1) assistance in the enforcement of such laws;

(2) provision of notice of such laws to persons or entities undertaking activities on Indian forest lands; and

(3) upon the request of an Indian tribe, the appearance in tribal forums.

SEC. 310. INDIAN FOREST LAND ASSISTANCE ACCOUNT.

(a) ESTABLISHMENT.—At the request of an Indian tribe, the Secretary may establish a special Indian forest land assistance account within the tribe's trust fund account to fund the Indian forest land management activities of such tribe.

(b) DEPOSITS AND EXPENDITURES.—(1) The Secretary may deposit into the Indian forest land assistance account established pursuant to subsection (a) any funds received by the Secretary or in the Secretary's possession from—

(A) non-Federal sources, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation,

(B) donations and contributions,

(C) unobligated forestry appropriations for the benefit of such Indian tribe, and

(D) user fees or other funds transferred under Federal interagency agreements if otherwise authorized by Federal law and, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation.

Funds deposited in such account shall be for the purpose of conducting forest land management activities on the Indian forest lands of such tribe.

(2) Funds in the Indian forest land assistance account and any interest or other income earned thereon shall remain available until expended and shall not be available to otherwise offset Federal appropriations for meeting the Federal responsibility for management of Indian forest lands.

(c) AUDITS.—At the request of an Indian tribe or upon the Secretary's own volition, the Secretary may conduct audits of the Indian forest land assistance account and shall publish the results of such audit.

SEC. 311. TRIBAL FORESTRY PROGRAMS.

(a) ESTABLISHMENT.—The Secretary shall establish within the Bureau of Indian Affairs a program to provide financial support to forestry programs established by an Indian tribe.

(b) SUPPORT ALLOCATION FORMULA; CRITERIA.—(1) The Secretary, with the participation of Indian tribes with Indian forest lands, shall establish, and promulgate by regulations, a formula—

(A) for the determination of Indian tribes eligible for such support,

(B) for the provision of levels of assistance for the forestry programs of such tribes, and

(C) the allocation of base support funds to such tribes under the program established pursuant to subsection (a).

(2) The formula established pursuant to this subsection shall provide funding necessary to support—

(A) one professional forester, including fringe benefits and support costs, for each eligible tribe, and

(B) one additional professional forester or forest technician, including fringe benefits and support costs, for each level of assistance for which an eligible Indian tribe qualifies.

(3) In any fiscal year that appropriations are not sufficient to fully fund tribal forestry programs at each level of assistance under the formula required to be established in this section, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance.

SEC. 312. ASSESSMENT OF INDIAN FOREST LAND AND MANAGEMENT PROGRAMS.

(a) INITIAL ASSESSMENT.—(1) Within 1 year after the date of enactment of this title, the Secretary, in consultation with affected Indian tribes, shall enter into a contract with a non-Federal entity knowledgeable in forest management practices on Federal and private lands to conduct an independent assessment of Indian forest lands and Indian forest land management practices.

(2) Such assessment shall be national in scope and shall include—

(A) an in-depth analysis of management practices on, and the level of funding for, specific Indian forest land compared with similar Federal and private forest lands,

(B) a survey of the condition of Indian forest lands, including health and productivity levels,

(C) an evaluation of the staffing patterns of forestry organizations of the Bureau of Indian Affairs and of Indian tribes,

(D) an evaluation of procedures employed in timber sales administration, including preparation, field supervision, and accountability for proceeds,

(E) an analysis of the potential for reducing or eliminating relevant administrative procedures, rules and policies of the Bureau of Indian Affairs consistent with the Federal trust responsibility,

(F) a comprehensive review of the adequacy of Indian forest land management plans, including their compatibility with applicable tribal integrated resource management plans and their ability to meet tribal needs and priorities,

(G) an evaluation of the feasibility and desirability of establishing minimum standards against which the adequacy of the forestry programs of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian tribes can be measured, and

(H) a recommendation of any reforms and increased funding levels necessary to bring Indian forest land management programs to a state-of-the-art condition.

(3) Such assessment shall include specific examples and comparisons from each of the regions of the United States where Indian forest lands are located.

(4) The initial assessment required by this subsection shall be completed no later than 36 months following the date of enactment of this title. Upon completion, the assessment shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

(b) PERIODIC ASSESSMENTS.—On each 10-year anniversary of the date of enactment of this title, the Secretary shall provide for an independent assessment of Indian forest lands and Indian forest land management practices under the criteria established in subsection (a) which shall include analyses measured against findings in previous assessments.

(c) STATUS REPORT TO CONGRESS.—The Secretary shall submit, within 1 year of the first full fiscal year after the date of enactment of this title and within 6 months of the end of each succeeding fiscal year, a report to Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes a report on the status of Indian forest lands with respect to standards, goals and objectives set forth in approved forest management plans for each Indian tribe with Indian forest lands. The report shall identify the amount of Indian forest land in need of forestation or other silviculture treatment and the quantity of timber available for sale, offered for sale, and sold for each Indian tribe.

(d) ASSISTANCE FROM SECRETARY OF AGRICULTURE.—The Secretary of Agriculture, through the Forest Service, is authorized to provide, upon the request of the Secretary of the Interior, on a nonreimbursable basis, technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by this title.

SEC. 313. ALASKA NATIVE TECHNICAL ASSISTANCE PROGRAM.

(a) ESTABLISHMENT.—The Secretary, in consultation with the village and regional corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), shall establish a program of technical assistance for such corporations to promote the sustained yield management of their forest resources. Such technical assistance shall also be available to promote local processing and other value-added activities with such forest resources.

(b) INDIAN SELF-DETERMINATION ACT.—The technical assistance to be provided by the Secretary pursuant to subsection (a) shall be made available through contracts, grants or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

SEC. 314. ESTABLISHMENT OF INDIAN AND ALASKA NATIVE FORESTRY EDUCATION ASSISTANCE.

(a) FORESTER INTERN PROGRAM.—(1) Notwithstanding the provisions of title 5 of the United States Code governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau of Indian Affairs at least 20 forester intern positions for Indian and Alaska Native students.

(2) For purposes of this subsection, the term "forester intern" means an Indian or Alaska Native who—

(A) is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields, and

(B) is appointed to one of the positions established under paragraph (1).

(3) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an approved post-secondary or graduate school in a full-time forestry-related curriculum.

(4) A forester intern shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for 2 years for each year of education for which the Secretary pays the intern's educational costs under paragraph (3) of this subsection.

(5) A forester intern shall be required to report for service with the Bureau of Indian Affairs during any break in attendance at school of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement.

(b) COOPERATIVE EDUCATION PROGRAM.—(1) The Secretary shall maintain, through the Bureau of Indian Affairs, a cooperative education program for the purpose of recruiting promising Indian and Alaska Native students who are enrolled in secondary schools, tribally-controlled community colleges, and other post-secondary or graduate schools for employment as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise.

(2) The cooperative educational program that is to be maintained under paragraph (1) shall be modeled on and shall have essentially the same features of the program operated on the date of enactment of this title pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) Under the cooperative agreement program that is to be maintained under paragraph (1), the Secretary shall pay all costs for tuition, books, and fees of an Indian or Alaska Native student who—

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement, and

(B) is interested in a career with the Bureau of Indian Affairs, an Indian tribe or a tribal enterprise in the management of Indian forest land.

(4) Financial need shall not be a requirement to receive assistance under the cooperative agreement program that is to be maintained under this subsection.

(5) A recipient of assistance under the cooperative education program that is to be maintained under this subsection shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for one year for each year for which the Secretary pays the recipient's educational costs pursuant to paragraph (3).

(c) SCHOLARSHIP PROGRAM.—(1) The Secretary is authorized to grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipient's forestry or forestry-related course of study, with

(A) the Bureau of Indian Affairs;

(B) a forestry program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination Act (25 U.S.C. 450 et seq.);

(C) an Indian enterprise engaged in a forestry or forestry-related business; or

(D) an Indian tribe's forestry-related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited postsecondary or graduate institution.

(d) FORESTRY EDUCATION OUTREACH.—The Secretary shall conduct, through the Bureau of Indian Affairs, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, a forestry education outreach program for Indian and Alaska Native youth to explain and stimulate interest in all aspects of Indian forest land management and careers in forestry.

(e) ADEQUACY OF PROGRAMS.—The Secretary shall administer the programs described in this section until a sufficient number of Indians and Alaska Natives are trained to ensure that there is an adequate number of qualified, professional Indian foresters to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for Indian tribes.

SEC. 315. POSTGRADUATION RECRUITMENT, EDUCATION AND TRAINING PROGRAMS.

(a) POSTGRADUATION RECRUITMENT.—The Secretary shall establish and maintain a program to attract Indian and Alaska Native professional foresters and forester technicians who have already graduated from their course of postsecondary or graduate education for employment in either the Bureau of Indian Affairs forestry programs or, subject to the approval of the tribe, in tribal forestry programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian and Alaska Native professional foresters or forestry technicians in exchange for the Secretary's assumption of the employee's outstanding student loans. The period of employment shall be determined by the amount of the loan that is assumed.

(b) POSTGRADUATE INTERGOVERNMENTAL INTERNSHIPS.—For the purposes of training, skill development and orientation of Indian, Alaska native, and Federal forestry personnel, and the enhancement of tribal and Bureau of Indian Affairs forestry programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal, Indian, and Alaska Native forestry personnel. Such program shall—

(1) for agencies within the Department of the Interior—

(A) provide for the internship of Bureau of Indian Affairs, Alaska Native, and Indian forestry employees in the forestry-related programs of other agencies of the Department of the Interior, and

(B) provide for the internship of forestry personnel from other Department of the Interior agencies within the Bureau of Indian Affairs and, with the consent of the tribe, within tribal forestry programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an interagency agreement, internships within the Bureau of Indian Affairs and, with the consent of the tribe, within a tribal forestry program of other forestry personnel of such agencies who are above their sixth year of Federal service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian and Alaska Native forestry employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) CONTINUING EDUCATION AND TRAINING.—The Secretary shall maintain a program within the Division of Forestry of the Bureau of Indian Affairs for the ongoing education and training of Bureau of Indian Affairs, Alaska Native, and Indian forestry personnel. Such program shall provide for—

(1) orientation training for Bureau of Indian Affairs forestry personnel in tribal-Federal relations and responsibilities;

(2) continuing technical forestry education for Bureau of Indian Affairs, Alaska Native, and tribal forestry personnel; and

(3) developmental training of Indian and Alaska Native personnel in forest land based enterprises and marketing.

SEC. 316. COOPERATIVE AGREEMENT BETWEEN THE DEPARTMENT OF THE INTERIOR AND INDIAN TRIBES.

(a) COOPERATIVE AGREEMENTS.—(1) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements with Indian tribes to—

(A) engage in cooperative manpower and job training and development programs,

(B) to develop and publish cooperative environmental education and natural resource planning materials, and

(C) to perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

The Secretary may enter into such agreements when the Secretary determines the public interest will be benefited.

(2) In such cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of section 3324, title 31, United States Code, relating to the advance of public moneys.

(b) SUPERVISION.—In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of section 2671 through 2680 of title 28, United States Code, and section 8101 through 8193 of title 5, United States Code.

(c) SAVINGS CLAUSE.—Nothing in this title shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

SEC. 317. OBLIGATED SERVICE: BREACH OF CONTRACT.

(a) OBLIGATED SERVICE.—Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this title, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(b) BREACH OF CONTRACT; REPAYMENT.—Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

SEC. 318. AUTHORIZATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

SEC. 319. REGULATIONS.

Except as otherwise provided by this title, the Secretary is directed to promulgate final regulations for the implementation of the title within eighteen months from the date of its enactment. All regulations promulgated pursuant to this title shall be developed by the Secretary with the participation of the affected Indian tribes.

SEC. 320. SEVERABILITY.

If any provision of this title, or the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this title shall not be affected thereby.

SEC. 321. TRUST RESPONSIBILITY.

Nothing in this title shall be construed to diminish or expand the trust responsibility of the United States toward Indian forest lands, or any legal obligation or remedy resulting therefrom.

TITLE IV—INDIAN CHILD PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Indian Child Protection and Family Violence Prevention Act".

SEC. 402. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress, after careful review of the problem of child abuse on Indian reservations and the historical and special relationship of the Federal Government with Indian people,

(1) finds that—

(A) incidents of abuse of children on Indian reservations are grossly underreported;

(B) such underreporting is often a result of the lack of a mandatory Federal reporting law;

(C) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government;

(D) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children are often deficient;

(E) funds spent by the United States on Indian reservations or otherwise spent for the benefit of Indians who are victims of child abuse or family violence are inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse or family violence and their families; and

(F) there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are

members of, or are eligible for membership in, an Indian tribe; and

(2) declares that two major goals of the United States are to—

(A) identify the scope of incidents of abuse of children and family violence in Indian country and to reduce such incidents; and

(B) provide funds for mental health treatment for Indian victims of child abuse and family violence on Indian reservations.

(b) PURPOSE.—The purposes of this title are to—

(1) require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse;

(2) establish a reliable data base for statistical purposes and to authorize a study to determine the need for a central registry for reported incidents of abuse;

(3) authorize such other actions as are necessary to ensure effective child protection in Indian country;

(4) establish the Indian Child Abuse Prevention and Treatment Grant Program to provide funds for the establishment on Indian reservations of treatment programs for victims of child sexual abuse;

(5) provide for technical assistance and training related to the investigation and treatment of cases of child abuse and neglect;

(6) establish Indian Child Resource and Family Services Centers in each Bureau of Indian Affairs Area Office which will consist of multi-disciplinary teams of personnel with experience and training in the prevention, identification, investigation, and treatment of child abuse and neglect;

(7) provide for the treatment and prevention of incidents of family violence;

(8) establish tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country; and

(9) authorize other actions necessary to ensure effective child protection on Indian reservations.

SEC. 403. DEFINITIONS.

For the purposes of this title, the term—

(1) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior;

(2) "child" means an individual who—

(A) is not married, and

(B) has not attained 18 years of age;

(3) "child abuse" includes but is not limited to—

(A) any case in which—

(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

(4) "child neglect" includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;

(5) "family violence" means any act, or threatened act, of violence, including any forceful detention of an individual, which—

(A) results, or threatens to result, in physical or mental injury, and

(B) is committed by an individual against another individual—

(i) to whom such person is, or was, related by blood or marriage or otherwise legally related, or

(ii) with whom such person is, or was, residing;

(6) "Indian" means any individual who is a member of an Indian tribe;

(7) "Indian child" has the meaning given to such term by section 4(4) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(4));

(8) "Indian country" has the meaning given to such term by section 1151 of title 18, United States Code;

(9) "Indian reservation" means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(10) "Indian tribe" and "tribal organization" have the respective meanings given to each of such terms under section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b);

(11) "inter-tribal consortium" means a partnership between—

(A) an Indian tribe or tribal organization of an Indian tribe, and

(B) one or more Indian tribes or tribal organizations of one or more other Indian tribes;

(12) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country;

(13) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved;

(14) "persons responsible for a child's welfare" means any person who has legal or other recognized duty for the care and safety of a child, including—

(A) any employee or volunteer of a children's residential facility, and

(B) any person providing out-of-home care, education, or services to children;

(15) "related assistance"—

(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

(B) may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents;

(16) "Secretary" means the Secretary of the Interior;

(17) "shelter" means the provision of temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents; and

(18) "Service" means the Indian Health Service of the Department of Health and Human Services.

SEC. 404. REPORTING PROCEDURES.

(a) REPORT TO LOCAL LAW ENFORCEMENT AGENCY.—(1) Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1169. Reporting of child abuse

"(a) Any person who—

"(1) is a—

"(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

"(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

"(C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,

"(D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,

"(E) psychiatrist, psychologist, or psychological assistant,

"(F) licensed or unlicensed marriage, family, or child counselor,

"(G) person employed in the mental health profession, or

"(H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;

"(2) knows, or has reasonable suspicion, that—

"(A) a child was abused in Indian country, or

"(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and

"(3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency,

shall be fined not more than $5,000 or imprisoned for not more than 6 months or both.

"(b) Any person who—

"(1) supervises, or has authority over, a person described in subsection (a)(1), and

"(2) inhibits or prevents that person from making the report described in subsection (a),

shall be fined not more than $5,000 or imprisoned for not more than 6 months or both.

"(c) For purposes of this section, the term—

"(1) 'abuse' includes—

"(A) any case in which—

"(i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and

"(ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and

"(B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

"(2) 'child' means an individual who—

"(A) is not married, and

"(B) has not attained 18 years of age;

"(3) 'local child protective services agency' means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and

"(4) 'local law enforcement agency' means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of

alleged child abuse within the portion of Indian country involved.

"(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.".

(2) The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1169. Reporting of child abuse.".

(b) NOTIFICATION OF CHILD ABUSE REPORTS.—(1) When a local law enforcement agency or local child protective services agency receives an initial report from any person of—

(A) the abuse of a child in Indian country, or

(B) actions which would reasonably be expected to result in abuse of a child in Indian country, the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under subsection (c) to such agency.

(2) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.

(c) WRITTEN REPORT OF CHILD ABUSE.—(1) Within 36 hours after receiving an initial report described in subsection (b), the receiving agency shall prepare a written report which shall include, if available—

(A) the name, address, age, and sex of the child that is the subject of the report;

(B) the grade and the school in which the child is currently enrolled;

(C) the name and address of the child's parents or other person responsible for the child's care;

(D) the name and address of the alleged offender;

(E) the name and address of the person who made the report to the agency;

(F) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and

(G) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

(2)(A) Any local law enforcement agency or local child protective services agency that receives a report alleging abuse described in section 503(3) shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

(B) Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency shall prepare a final written report on such allegation.

(d) CONFIDENTIALITY OF INFORMANT.—The identity of any person making a report described in subsection (b)(1) shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a State or the Federal Government who needs to know the information in the performance of such employee's duties.

SEC. 405. CENTRAL REGISTRY.

(a) PREPARATION OF STUDY.—The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General of the United States, is hereby authorized and directed to prepare a written study on the feasibility of, and need for, the establishment of a Central Register for reports or information on the abuse of children in Indian country.

(b) CONTENT OF STUDY.—The study conducted pursuant to subsection (a) shall include, but shall not be limited to—

(1) the need for, and purpose of, a Central Register;

(2) the examination of due process implication of the maintenance of such a register;

(3) the extension of access to information contained in the register;

(4) the need and process for expunging information from the register;

(5) the types, and duration of maintenance, of information in the register; and

(6) the classes of persons who should be covered by such register.

(c) The Secretary shall complete the study conducted pursuant to this section and shall submit such study, together with recommendations and draft legislation to implement such recommendations, to the Congress within 180 days after the date of enactment of this title.

SEC. 406. CONFIDENTIALITY.

Pursuant to section 552a of title 5, United States Code, the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), or any other provision of law, agencies of any Indian tribe, of any State, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties. For purposes of this section, Indian tribal governments shall be treated the same as other Federal Government entities.

SEC. 407. WAIVER OF PARENTAL CONSENT.

(a) EXAMINATIONS AND INTERVIEWS.—Photographs, x-rays, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse in Indian country shall be allowed without parental consent if local child protective services or local law enforcement officials have reason to believe the child has been subject to abuse.

(b) INTERVIEWS BY LAW ENFORCEMENT AND CHILD PROTECTIVE SERVICES OFFICIALS.—In any case in which officials of the local law enforcement agency or local child protective services agency have reason to believe that an Indian child has been subject to abuse in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian.

(c) PROTECTION OF CHILD.—Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child and, where time permits, shall be conducted with the advise, or under the guidance, of a local multidisciplinary team established pursuant to section 411 or, in the absence of a local team, a multidisciplinary team established pursuant to section 410.

(d) COURT ORDERS.—Upon a finding of reasonable suspicion that an Indian child has been the subject of abuse in Indian country, a Federal magistrate or United States District Court may issue an order enforcing any provision of this section.

SEC. 408. CHARACTER INVESTIGATIONS.

(a) BY SECRETARY OF THE INTERIOR AND THE SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary and the Secretary of Health and Human Services shall—

(1) compile a list of all authorized positions within their respective departments the duties and responsibilities of which involve regular contact with, or control over, Indian children,

(2) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by the respective Secretary in a position listed pursuant to paragraph (1), and

(3) prescribe by regulations minimum standards of character that each of such individuals must meet to be appointed to such positions.

(b) CRIMINAL RECORDS.—The minimum standards of character that are to be prescribed under this section shall ensure that none of the individuals appointed to positions described in subsection (a) have been found guilty of, or entered a plea of nolo contendere or guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; or crimes against persons.

(c) INVESTIGATIONS BY INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—Each Indian tribe or tribal organization that receives funds under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 shall—

(1) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by such tribe or tribal organization in a position that involves regular contact with, or control over, Indian children, and

(2) employ individuals in those positions only if the individuals meet standards of character, no less stringent than those prescribed under subsection (a), as the Indian tribe or tribal organization shall establish.

SEC. 409. INDIAN CHILD ABUSE TREATMENT GRANT PROGRAM.

(a) ESTABLISHMENT OF GRANT PROGRAM.—The Secretary of Health and Human Services, acting through the Service and in cooperation with the Bureau, shall establish an Indian Child Abuse Treatment Grant Program that provides grants to any Indian tribe or intertribal consortium for the establishment on Indian reservations of treatment programs for Indians who have been victims of child sexual abuse.

(b) GRANT APPLICATIONS.—(1) Any Indian tribe or intertribal consortium may submit to the Secretary of Health and Human Services an application for a grant under subsection (a).

(2) Any application submitted under paragraph (1)—

(A) shall be in such form as the Secretary of Health and Human Services may prescribe;

(B) shall be submitted to such Secretary on or before the date designated by such Secretary; and

(C) shall specify—

(i) the nature of the program proposed by the applicant,

(ii) the data and information on which the program is based,

(iii) the extent to which the program plans to use or incorporate existing services available on the reservation, and

(iv) the specific treatment concepts to be used under the program.

(c) MAXIMUM GRANT AMOUNT.—The maximum amount of any grant awarded under subsection (a) shall not exceed $500,000.

(d) GRANT ADMINISTRATION AND FINAL REPORT.—Each recipient of a grant awarded under subsection (a) shall—

(1) furnish the Secretary of Health and Human Services with such information as such Secretary may require to—

(A) evaluate the program for which the grant is made, and

(B) ensure that the grant funds are expended for the purposes for which the grant was made, and

(2) submit to such Secretary at the close of the term of the grant a final report which shall include such information as the Secretary may require.

(e) there is hereby authorized to be appropriated to carry out the provisions of this section $10,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

SEC. 410. INDIAN CHILD RESOURCE AND FAMILY SERVICES CENTERS.

(a) ESTABLISHMENT.—The Secretary shall establish within each area office of the Bureau an Indian Child Resource and Family Services Center.

(b) MEMORANDUM OF AGREEMENT.—The Secretary and the Secretary of Health and Human Services shall enter into a Memorandum of Agreement which provides for the staffing of the Centers established under this section.

(c) CENTER STAFFING.—Each Center established under subsection (a) shall be staffed by a multidisciplinary team of personnel with experience and training in prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect.

(d) CENTER RESPONSIBILITIES AND FUNCTIONS.—Each Center established under subsection (a) shall—

(1) provide advice, technical assistance, and consultation to Indian tribes, tribal organizations, and inter-tribal consortia upon request;

(2) provide training to appropriate personnel of Indian tribes, tribal organizations, the Bureau and the Service on the identification and investigation of cases of family violence, child abuse, and child neglect and, to the extent practicable, coordinate with institutions of higher education, including tribally controlled community colleges, to offer college-level credit to interested trainees;

(3) develop training materials on the prevention, identification, investigation, and treatment of incidents of family violence, child abuse, and child neglect for distribution to Indian tribes and to tribal organizations;

(4) develop recommendations to assist Federal and tribal personnel to respond to cases of family violence, child abuse, and child neglect; and

(5) develop policies and procedures for each agency office of the Bureau and service unit of the Service within the area which, to the extent feasible, comply with tribal laws pertaining to cases of family violence, child abuse, and child neglect, including any criminal laws, and which provide for maximum cooperation with the enforcement of such laws.

(e) MULTIDISCIPLINARY TEAM PERSONNEL.—Each multidisciplinary team established under this section shall include, but is not limited to, personnel with a background in—

(1) law enforcement,

(2) child protective services,

(3) juvenile counseling and adolescent mental health, and

(4) domestic violence.

(f) CENTER ADVISORY BOARD.—The Secretary, in consultation with the Secretary of Health and Human Services, shall establish, for each Indian Child Resource and Family Services Center, an advisory board to advise and assist such Center in carrying out its activities under this Act. Each advisory board shall consist of 7 members appointed by the Secretary from Indian tribes and human service providers served by an area office of the Bureau. Members shall serve without compensation, but may be reimbursed for travel and other expenses while carrying out the duties of the board. The advisory board shall assist the Center in coordinating programs, identifying training materials, and developing policies and procedures relating to family violence, child abuse, and child neglect.

(g) APPLICATION OF THE INDIAN SELF-DETERMINATION ACT TO CENTERS.—Indian Child Resource and Family Services Centers established under subsection (a) shall be subject to the provisions of the Indian Self-Determination Act. If a Center is located in an area office of the Bureau which serves more than one Indian tribe, any application to enter into a contract to operate the Center pursuant to such Act must have the consent of each of the other tribes to be served under the contract, except that, in the Juneau Area, only the consent of such tribes or tribal consortia that are engaged in contracting of Indian Child Protection and Family Violence Prevention programs pursuant to such Act shall be required. This section shall not preclude the designation of an existing child resource and family services center operated by a tribe or tribal organization as a Center if all of the tribes to be served by the Center agree to such designation.

(h) APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section $3,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

SEC. 411. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish within the Bureau an Indian Child Protection and Family Violence Prevention Program to provide financial assistance to any Indian tribe, tribal organization, or inter-tribal consortium for the development of an Indian Child Protection and Family Violence Prevention program.

(b) INDIAN SELF-DETERMINATION ACT AGREEMENTS.—The Secretary is authorized to enter into agreements with Indian tribes, tribal organizations, or inter-tribal consortia pursuant to the Indian Self-Determination Act for the establishment of Indian Child Protection and Family Violence Prevention programs on Indian reservations.

(c) INVESTIGATION AND TREATMENT AND PREVENTION OF CHILD ABUSE AND FAMILY VIOLENCE.—An Indian tribe operating an Indian Child Protection and Family Violence Prevention program established under this section shall designate the agency or officials which shall be responsible—

(1) for the investigation of reported cases of child abuse and child neglect; and

(2) for the treatment and prevention of incidents of family violence; and

(3) for the provision of immediate shelter and related assistance for victims of family violence and their dependents.

(d) PROGRAM RESPONSIBILITIES AND FUNCTIONS.—Funds provided pursuant to this section may be used for—

(1) the establishment of a child protective services program which may include—

(A) the employment of child protective services staff to investigate cases of child abuse and child neglect,

(B) training programs for child protective services personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of child abuse and child neglect, and

(C) purchase of equipment to assist in the investigation of cases of child abuse and child neglect;

(2) the establishment of a family violence prevention and treatment program which may include—

(A) the employment of family violence prevention and treatment staff to respond to incidents of family violence,

(B) the provision of immediate shelter and related assistance for victims of family violence and their dependents,

(C) training programs for family violence prevention and treatment personnel, law enforcement personnel, and judicial personnel in the investigation, prevention, and treatment of cases of family violence; and

(D) construction or renovation of facilities for the establishment of family violence shelters;

(3) the development and implementation of a multidisciplinary child abuse investigation and prosecution program which may—

(A) coordinate child abuse prevention, investigation, prosecution, treatment, and counseling services,

(B) develop protocols among related agencies to ensure that investigations of child abuse cases, to the extent practicable, minimize the trauma to the child victim, and

(C) provide for the coordination and cooperation of law enforcement agencies, courts of competent jurisdiction, and other tribal, Federal, and State agencies through intergovernmental or interagency agreements that define and specify each party's responsibilities;

(4) the development of tribal child protection codes and regulations;

(5) the establishment of training programs for—

(A) professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of prevention, identification, investigation, and treatment of family violence, child abuse, and child neglect,

(B) instruction in methods of protecting children from abuse and neglect for persons responsible for the welfare of Indian children, including parents of, and persons who work with, Indian children, or

(C) educational, identification, prevention and treatment services for child abuse and child neglect in cooperation with preschool, elementary and secondary schools, or tribally controlled community colleges (within the meaning of section 2 of the Tribally Controlled Community College Act of 1978 (25 U.S.C. 1801));

(6) other community education efforts for tribal members (including school children) regarding issues of family violence, child abuse, and child neglect; and

(7) such other innovative and culturally relevant programs and projects as the Secretary may approve, including programs and projects for—

(A) parental awareness and self-help,

(B) prevention and treatment of alcohol and drug-related family violence, child abuse, and child neglect, or

(C) home health visitor programs,

that show promise of successfully preventing and treating cases of family violence, child abuse, and child neglect.

(f) SECRETARIAL REGULATIONS; BASE SUPPORT FUNDING.—(1) The Secretary, with the participation of Indian tribes, shall establish, and promulgate by regulations, a formula which establishes base support funding for Indian Child Protection and Family Violence Prevention programs.

(2) In the development of regulations for base support funding for such programs, the Secretary shall develop, in consultation with Indian tribes, appropriate caseload standards and staffing requirements which are comparable to standards developed by the National Association of Social Work, the Child Welfare League of America and other professional associations in the field of social work and child welfare. Each level of funding assistance shall correspond to the staffing requirements established by the Secretary pursuant to this section.

(3) Factors to be considered in the development of the base support funding formula shall include, but are not limited to—

(A) projected service population of the program;

(B) projected service area of the program;

(C) projected number of cases per month; and

(D) special circumstances warranting additional program resources, such as high incidence of child sexual abuse, high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(4) The formula established pursuant to this subsection shall provide funding necessary to support—

(A) one child protective services or family violence caseworker, including fringe benefits and support costs, for each tribe; and

(B) an additional child protective services and family violence caseworker, including fringe benefits and support costs, for each level of assistance for which an Indian tribe qualifies.

(5) In any fiscal year that appropriations are not sufficient to fully fund Indian Child Protection and Family Violence Prevention programs at each level of assistance under the formula required to be established in this subsection, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance.

(g) MAINTENANCE OF EFFORT.—Services provided under contracts made under this section shall supplement, not supplant, services from any other funds available for the same general purposes, including, but not limited to—

(1) treatment, including, but not limited to—

(A) individual counseling,

(B) group counseling, and

(C) family counseling;

(2) social services and case management;

(3) training available to Indian tribes, tribal agencies, and Indian organizations regarding the identification, investigation, prevention, and treatment of family violence, child abuse, and child neglect; and

(4) law enforcement services, including investigations and prosecutions.

(h) CONTRACT EVALUATION AND ANNUAL REPORT.—Each recipient of funds awarded pursuant to subsection (a) shall—

(1) furnish the Secretary with such information as the Secretary may require to—

(A) evaluate the program for which the award is made, and

(B) ensure that funds are expended for the purposes for which the award was made; and

(2) submit to the Secretary at the end of each fiscal year an annual report which shall include such information as the Secretary may require.

(i) APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section $30,000,000 for each of the fiscal years 1992, 1993, 1994, and 1995.

SEC. 412. REPORT.

On or before March 1, 1991, and March 1 of each calendar year thereafter, the Secretary shall submit to the Congress a report involving the administration of this title during the calendar year preceding the calendar year in which such report is submitted.

TITLE V—INDIAN HEALTH CARE

SEC. 501. SHORT TITLE.

This title may be cited as the "Indian Health Care Amendments of 1990".

SEC. 502. REFERENCES.

Except as may otherwise be specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

SEC. 503. MENTAL HEALTH PREVENTION AND TREATMENT SERVICES.

(a) PURPOSES.—The purposes of this section are to—

(1) authorize and direct the Indian Health Service to develop a comprehensive mental health prevention and treatment program;

(2) provide direction and guidance relating to mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence, to those Federal, tribal, State, and local agencies responsible for programs in Indian communities in areas of health care, education, social services, child and family welfare, alcohol and substance abuse, law enforcement, and judicial services;

(3) assist Indian tribes to identify services and resources available to address mental illness and dysfunctional and self-destructive behavior;

(4) provide authority and opportunities for Indian tribes to develop and implement, and coordinate with, community-based mental health programs which include identification, prevention, education, referral, and treatment services, including through multidisciplinary resource teams;

(5) ensure that Indians, as citizens of the United States and of the States in which they reside, have the same access to mental health services to which all such citizens have access; and

(6) modify or supplement existing programs and authorities in the areas identified in paragraph (2).

(b) AMENDMENT.—Title II of the Act is amended by adding at the end thereof the following new section:

"SEC. 209. MENTAL HEALTH PREVENTION AND TREATMENT SERVICES.

"(a) NATIONAL PLAN FOR INDIAN MENTAL HEALTH SERVICES.—(1) Not later than 120 days after the date of enactment of this section, the Secretary, acting through the Service, shall develop and publish in the Federal Register a final national plan for Indian Mental Health Services. The plan shall include—

"(A) an assessment of the scope of the problem of mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence, among Indians, including—

"(i) the number of Indians served by the Service who are directly or indirectly affected by such illness or behavior, and

"(ii) an estimate of the financial and human cost attributable to such illness or behavior;

"(B) an assessment of the existing and additional resources necessary for the prevention and treatment of such illness and behavior; and

"(C) an estimate of the additional funding needed by the Service to meet its responsibilities under the plan.

"(2) The Secretary shall submit a copy of the national plan to the Congress.

"(c) MEMORANDUM OF AGREEMENT.—Not later than 180 days after the date of enactment of this section, the Secretary and the Secretary of the Interior shall develop and enter into a memorandum of agreement under which the Secretaries shall, among other things—

"(1) determine and define the scope and nature of mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence, among Indians;

"(2) make an assessment of the existing Federal, tribal, State, local, and private services, resources, and programs available to provide mental health services for Indians;

"(3) make an initial determination of the unmet need for additional services, resources, and programs necessary to meet the needs identified pursuant to paragraph (1);

"(4)(A) ensure that Indians, as citizens of the United States and of the States in which they reside, have access to mental health services to which all citizens have access;

"(B) determine the right of Indians to participate in, and receive the benefit of, such services; and

"(C) take actions necessary to protect the exercise of such right;

"(5) delineate the responsibilities of the Bureau of Indian Affairs and the Service, including mental health identification, prevention, education, referral, and treatment services (including services through multidisciplinary resource teams), at the central, area, and agency and service unit levels to address the problems identified in paragraph (1);

"(6) provide a strategy for the comprehensive coordination of the mental health services provided by the Bureau of Indian Affairs and the Service to meet the needs identified pursuant to paragraph (1), including—

"(A) the coordination of alcohol and substance abuse programs of the Service, the Bureau of Indian Affairs, and the various tribes (developed under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986) with the mental health initiatives pursuant to this Act, particularly with respect to the referral and treatment of dually-diagnosed individuals requiring mental health and substance abuse treatment; and

"(B) ensuring that Bureau of Indian Affairs and Service programs and services (including multidisciplinary resource teams) addressing child abuse and family violence are coordinated with such non-Federal programs and services;

"(7) direct appropriate officials of the Bureau of Indian Affairs and the Service,

particularly at the agency and service unit levels, to cooperate fully with tribal requests made pursuant to subsection (d); and

"(8) provide for an annual review of such agreement by the two Secretaries.

"(d) COMMUNITY MENTAL HEALTH PLAN.—(1) The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a community mental health plan providing for the identification and coordination of available resources and programs to identify, prevent, or treat mental illness or dysfunctional and self-destructive behavior, including child abuse and family violence, among its members.

"(2) In furtherance of a plan established pursuant to paragraph (1) and at the request of a tribe, the appropriate agency, service unit, or other officials of the Bureau of Indian Affairs and the Service shall cooperate with, and provide technical assistance to, the tribe in the development of such plan. Upon the establishment of such a plan and at the request of the tribe, such officials, as directed by the memorandum of agreement developed pursuant to subsection (c), shall cooperate with the tribe in the implementation of such plan.

"(3) Two or more Indian tribes may form a coalition for the adoption of resolutions and the establishment and development of a joint community mental health plan under this subsection.

"(4) The Secretary, acting through the Service, may make grants to Indian tribes adopting a resolution pursuant to paragraph (1) to obtain technical assistance for the development of a community mental health plan and to provide administrative support in the implementation of such plan.

"(5) There is hereby authorized to be appropriated $500,000 for fiscal year 1991 and $1,000,000 for fiscal year 1992 to carry out this subsection.

"(e) MENTAL HEALTH TRAINING AND COMMUNITY EDUCATION PROGRAMS.—(1) The Secretary and the Secretary of the Interior, in consultation with representatives of Indian tribes, shall conduct a study and compile a list, of the types of staff positions specified in paragraph (2) whose qualifications include, or should include, training in the identification, prevention, education, referral, or treatment of mental illness or dysfunctional and self-destructive behavior.

"(2) The positions referred to in paragraph (1) are—

"(A) staff positions within the Bureau of Indian Affairs, including existing positions, in the fields of—

"(i) elementary and secondary education;

"(ii) social services and family and child welfare;

"(iii) law enforcement and judicial services; and

"(iv) alcohol and substance abuse;

"(B) staff positions with the Service; and

"(C) staff positions similar to those identified in subparagraphs (A) and (B) established and maintained by Indian tribes, including positions established in contracts entered into under the Indian Self-Determination Act.

"(3)(A) The appropriate Secretary shall provide training criteria appropriate to each type of position identified in paragraph (2)(A) and ensure that appropriate training has been, or will be, provided to any individual in any such position. With respect to any such individual in a position identified pursuant to paragraph (2)(C), the respective Secretaries shall provide appropriate training to, or provide funds to an Indian tribe for the training of, such individual. In the case of positions funded under a contract entered into under the Indian Self-Determination Act, the appropriate Secretary shall ensure that such training costs are included in the contract, if necessary.

"(B) Funds authorized to be appropriated pursuant to this subsection may be used to provide training authorized by this paragraph for community education programs described in paragraph (5) if a plan adopted pursuant to subsection (d) identifies individuals or employment categories, other than those identified pursuant to paragraph (1), for which such training or community education is deemed necessary or desirable.

"(4) Position-specific training criteria described in paragraph (3) shall be culturally relevant to Indians and Indian tribes and shall ensure that appropriate information regarding traditional Indian healing and treatment practices is provided.

"(5) The Service shall develop and implement or, upon the request of an Indian tribe, assist such tribe to develop and implement, a program of community education on mental illness and dysfunctional and self-destructive behavior for individuals, as determined in a plan adopted pursuant to subsection (d). In carrying out this paragraph, the Service shall provide, upon the request of an Indian tribe, technical assistance to the Indian tribe to obtain or develop community education and training materials on the identification, prevention, referral, and treatment of mental illness and dysfunctional and self-destructive behavior.

"(6) There is hereby authorized to be appropriated—

"(A) $500,000 for fiscal year 1991 to carry out this subsection, of which $100,000 shall be allocated for community education under paragraph (5); and

"(B) $5,000,000 for fiscal year 1992 to carry out this subsection, of which $1,200,000 shall be allocated for community education under paragraph (5).

"(f) STAFFING.—(1) Within 90 days after the date of enactment of this section, the Secretary shall develop a plan under which the Service will increase the health care staff providing mental health services by at least 500 positions within five years after the date of enactment of this section, with at least 200 of such positions devoted to child, adolescent, and family services. Such additional staff shall be primarily assigned to the service unit level for services which shall include outpatient, emergency, aftercare and follow-up, and prevention and education services.

"(2) The plan developed under paragraph (1) shall be implemented under the Act of November 2, 1921 (25 U.S.C. 13) popularly known as the "Snyder Act").

"(g) STAFF RECRUITMENT AND RETENTION.—(1) The Secretary shall provide for the recruitment of the additional personnel required by subsection (f) and the retention of all Service personnel providing mental health services. In carrying out this subsection, the Secretary shall give priority to practitioners providing mental health services to children and adolescents with mental health problems.

"(2) In carrying out paragraph (1), the Secretary shall develop a program providing for—

"(A) the payment of bonuses (which shall not be more favorable than those provided for under sections 116 and 117) for service in hardship posts;

"(B) the repayment of loans (for which the provisions of repayment contracts shall not be more favorable than the repayment contracts under section 108) for health professions education as a recruitment incentive; and

"(C) a system of postgraduate rotations as a retention incentive.

"(3) This subsection shall be carried out in coordination with the recruitment and retention programs under title I.

"(4) There are authorized to be appropriated $1,200,000 for the fiscal year 1992 to carrying out this subsection.

"(h) MENTAL HEALTH TECHNICIAN PROGRAM.—(1) Under the authority of the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Secretary shall establish and maintain a Mental Health Technician program within the Service which—

"(A) provides for the training of Indians as mental health technicians; and

"(B) employs such technicians in the provision of community-based mental health care that includes identification, prevention, education, referral, and treatment services.

"(2) In carrying out paragraph (1)(A), the Secretary shall provide high standard paraprofessional training in mental health care necessary to provide quality care to the Indian communities to be served. Such training shall be based upon a curriculum developed or approved by the Secretary which combines education in the theory of mental health care with supervised practical experience in the provision of such care.

"(3) The Secretary shall supervise and evaluate the mental health technicians in the training program.

"(4) The Secretary shall ensure that the program established pursuant to this subsection involves the utilization and promotion of the traditional Indian health care and treatment practices of the Indian tribes to be served.

"(5) For purposes of providing the training required under this subsection, there are authorized to be appropriated $1,000,000 for the fiscal year 1992, which shall remain available until expended.

"(i) MENTAL HEALTH RESEARCH.—(1) The Secretary, acting through the Service and in consultation with the National Institute of Mental Health, shall enter into contracts with, or make grants to, appropriate institutions for the conduct of research on the incidence and prevalence of mental disorders among Indians on Indian reservations and in urban areas. Research priorities under this subsection shall include—

"(A) the inter-relationship and inter-dependence of mental disorders with alcoholism, suicide, homicides, accidents, and the incidence of family violence, and

"(B) the development of models of prevention techniques.

The effect of the inter-relationships and interdependencies referred to in subparagraph (A) on children, and the development of prevention techniques under subparagraph (B) applicable to children, shall be emphasized.

"(2) For purposes of carrying out this subsection, there are authorized to be appropriated $2,000,000 for the fiscal year 1992, which shall remain available until expended.

"(j) FACILITIES ASSESSMENT.—(1) Within one year after the date of enactment of this section, the Secretary, acting through the Service, shall make an assessment of the need for inpatient mental health care among Indians and the availability and cost of inpatient mental health facilities which can meet such need. In making such assessment, the Secretary shall consider the possible conversion of existing, under-utilized

service hospital beds into psychiatric units to meet such need.

"(2) There are authorized to be appropriated $500,000 for the fiscal year 1992 to make the assessment required by this subsection.

"(k) ANNUAL REPORT.—The Service shall develop methods for analyzing and evaluating the overall status of mental health programs and services for Indians and shall submit to the Congress an annual report on the mental health status of Indians which shall describe the progress being made to address mental health problems of Indian communities.

"(l) MENTAL HEALTH DEMONSTRATION GRANT PROGRAM.—(1) The Secretary, acting through the Service, is authorized to make grants to Indian tribes and inter-tribal consortia to pay 75 percent of the cost of planning, developing, and implementing programs to deliver innovative community-based mental health services to Indians. The 25 percent tribal share of such cost may be provided in cash or through the provision of property or services.

"(2) The Secretary may award a grant for a project under paragraph (1) to an Indian tribe or inter-tribal consortium which meets the following criteria:

"(A) The project will address significant unmet mental health needs among Indians.

"(B) The project will serve a significant number of Indians.

"(C) The project has the potential to deliver services in an efficient and effective manner.

"(D) The tribe or consortium has the administrative and financial capability to administer the project.

"(E) The project will deliver services in a manner consistent with traditional Indian healing and treatment practices.

"(F) The project is coordinated with, and avoids duplication of, existing services.

"(3) For purposes of this subsection, the Secretary shall, in evaluating applications for grants for projects to be operated under any contract entered into with the Service under the Indian Self-Determination Act, use the same criteria that the Secretary uses in evaluating any other application for such a grant.

"(4) The Secretary may only award one grant under this subsection with respect to a service area until the Secretary has awarded grants for all service areas with respect to which the Secretary receives applications during the application period, as determined by the Secretary, which meet the criteria specified in paragraph (2).

"(5) Not later than 180 days after the close of the term of the last grant awarded pursuant to this subsection, the Secretary shall submit to the Congress a report evaluating the effectiveness of the innovative community-based projects demonstrated pursuant to this subsection. Such report shall include findings and recommendations, if any, relating to the reorganization of the programs of the Service for delivery of mental health services to Indians.

"(6) There is authorized to be appropriated $2,000,000 for fiscal year 1991 and $3,000,000 for fiscal year 1992 to carry out the purposes of this subsection. Grants made pursuant to this subsection may be expended over a period of three years and no grant may exceed $1,000,000 for the fiscal years involved.".

SEC. 504. HEALTH CARE DELIVERY DEMONSTRATION PROJECTS.

Title III of the Act is amended by adding at the end thereof the following new section 307:

"SEC. 307. INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT.

"(a) HEALTH CARE DELIVERY DEMONSTRATION PROJECTS.—The Secretary, acting through the Service, is authorized to enter into contracts with, or make grants to, Indian tribes or tribal organizations for the purpose of carrying out a health care delivery demonstration project to test alternative means of delivering health care and services through health facilities to Indians.

"(b) USE OF FUNDS.—The Secretary, in approving projects pursuant to this section, may authorize funding for the construction and renovation of hospitals, health centers, health stations, and other facilities to deliver health care services and is authorized to—

"(1) waive any leasing prohibition;

"(2) permit carryover of funds appropriated for the provision of health care services;

"(3) permit the use of non-Service Federal funds and non-Federal funds;

"(4) permit the use of funds or property donated from any source for project purposes; and

"(5) provide for the reversion of donated real or personal property to the donor.

"(c) CRITERIA.—(1) Within 180 days after the date of enactment of this section, the Secretary, after consultation with Indian tribes and tribal organizations, shall develop and publish in the Federal Register criteria for the review and approval of applications submitted under this section. The Secretary may enter into a contract or award a grant under this section for projects which meet the following criteria:

"(A) There is a need for a new facility or the reorientation of an existing facility.

"(B) A significant number of Indians, including those with low health status, will be served by the project.

"(C) The project has the potential to address the health needs of Indians in an innovative manner.

"(D) The project has the potential to deliver services in an efficient and effective manner.

"(E) The project is economically viable.

"(F) The Indian tribe or tribal organization has the administrative and financial capability to administer the project.

"(G) The project is integrated with providers of related health and social services and is coordinated with, and avoids duplication of, existing services.

"(2) The Secretary may provide for the establishment of peer review panels, as necessary, to review and evaluate applications and to advise the Secretary regarding such applications using the criteria developed pursuant to paragraph (1).

"(3)(A) The Secretary shall enter into contracts or award grants under this section for a demonstration project in each of the following service units which meets the criteria specified in paragraph (1):

"(i) Cass Lake, Minnesota.
"(ii) Clinton, Oklahoma.
"(iii) Harlem, Montana.
"(iv) Mescalero, New Mexico.
"(v) Owyhee, Nevada.
"(vi) Parker, Arizona.
"(vii) Schurz, Nevada.
"(viii) Winnebago, Nebraska.
"(ix) Ft. Yuma, California.

"(B) After entering into contracts or awarding grants in accordance with subparagraph (A), and taking into account contracts entered into and grants awarded under such subparagraph, the Secretary may only enter into one contract or award one grant under this subsection with respect to a service area until the Secretary has entered into contracts or awarded grants for all service areas with respect to which the Secretary receives applications during the application period, as determined by the Secretary, which meet the criteria developed under paragraph (1).

"(c) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

"(d) SERVICE TO INELIGIBLE PERSONS.—The authority to provide services to persons otherwise ineligible for the health care benefits of the Service and the authority to extend hospital privileges in service facilities to non-Service health care practitioners as provided in section 713 may be included, subject to the terms of such section, in any demonstration project approved pursuant to this section.

"(e) EQUITABLE TREATMENT.—For purposes of subsection (c)(1)(A), the Secretary shall, in evaluating facilities operated under any contract entered into with the Service under the Indian Self-Determination Act, use the same criteria that the Secretary uses in evaluating facilities operated directly by the Service.

"(f) EQUITABLE INTEGRATION OF FACILITIES.—The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into with the Service under the Indian Self-Determination Act, are fully and equitably integrated into the implementation of the health care delivery demonstration projects under this section.

"(g) REPORT TO CONGRESS.—Within 90 days after the end of the period set out in subsection (a), the Secretary shall prepare and submit to Congress a report, together with legislative recommendations, on the findings and conclusions derived from the demonstration projects.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary for fiscal years 1991 and 1992 for the purpose of carrying out this section, which are authorized to remain available until expended.".

SEC. 505. HEALTH CARE SERVICES FOR URBAN INDIANS.

(a) HEALTH PROMOTION AND DISEASE PREVENTION.—Section 503 of title V (25 U.S.C. 1653) is amended by adding at the end the following new subsection:

"(c)(1) The Secretary, acting through the Service, shall facilitate access to, or provide, health promotion and disease prevention services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section.

"(2) There is authorized to be appropriated $1,000,000 for fiscal year 1992 to carry out this subsection.".

(b) IMMUNIZATION.—Section 503 of title V, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(d)(1) The Secretary, acting through the Service, shall facilitate access to, or provide,

immunization services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section.

"(2) In making any grant to carry out this subsection, the Secretary shall take into consideration—

"(A) the size of the urban Indian population to be served;

"(B) the immunization levels of the urban Indian population, particularly the immunization levels of infants, children, and the elderly;

"(C) the utilization by the urban Indians of alternative resources from State and local governments for no-cost or low-cost immunization services to the general population; and

"(D) the capability of the urban Indian organization to carry out services pursuant to this subsection.

"(3) For purposes of this subsection, the term 'immunization services' means services to provide without charge immunizations against vaccine-preventable diseases.

"(4) There are authorized to be appropriated $1,000,000 for fiscal year 1992 to carry out this subsection.".

(c) MENTAL HEALTH SERVICES.—Section 503 of title V, as amended by subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(e)(1) The Secretary, acting through the Service, shall facilitate access to, or provide, mental health services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section.

"(2) A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment of the mental health needs of the urban Indian population concerned, the mental health services and other related resources available to that population, the barriers to obtaining those services and resources, and the needs that are unmet by such services and resources.

"(3) Grants may be made under this subsection—

"(A) to prepare assessments required under paragraph (2);

"(B) to provide outreach, educational, and referral services to urban Indians regarding the availability of direct mental health services, to educate urban Indians about mental health issues and services, and effect coordination with existing mental health providers in order to improve services to urban Indians;

"(C) to provide outpatient mental health services to urban Indians, including the identification and assessment of illness, therapeutic treatments, case management, support groups, family treatment, and other treatment; and

"(C) to develop innovative mental health service delivery models which incorporate Indian cultural support systems and resources.

"(4) There is authorized to be appropriated $500,000 for fiscal year 1991 and $2,000,000 for fiscal year 1992 to carry out this subsection.".

(d) PREVENTION AND TREATMENT OF CHILD ABUSE.—Section 503 of title V, as amended by subsections (a), (b), and (c), is further amended by adding at the end the following new subsection:

"(f)(1) The Secretary, acting through the Service, shall facilitate access to, or provide, services for urban Indians through grants to urban Indian organizations administering contracts entered into pursuant to this section to prevent and treat child abuse (including sexual abuse) among urban Indians.

"(2) A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment that documents the prevalence of child abuse in the urban Indian population concerned and specifies the services and programs (which may not duplicate existing services and programs) for which the grant is requested.

"(3) Grants may be made under this subsection—

"(A) to prepare assessments required under paragraph (2);

"(B) for the development of prevention, training, and education programs for urban Indian populations, including child education, parent education, provider training on identification and intervention, education on reporting requirements, prevention campaigns, and establishing service networks of all those involved in Indian child protection; and

"(C) to provide direct outpatient treatment services (including individual treatment, family treatment, group therapy, and support groups) to urban Indians who are child victims of abuse (including sexual abuse) or adult survivors of child sexual abuse, to the families of such child victims, and to urban Indian perpetrators of child abuse (including sexual abuse).

"(4) In making grants to carry out this subsection, the Secretary shall take into consideration—

"(A) the support for the urban Indian organization demonstrated by the child protection authorities in the area, including committees or other services funded under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), if any;

"(B) the capability and expertise demonstrated by the urban Indian organization to address the complex problem of child sexual abuse in the community; and

"(C) the assessment required under paragraph (2).

"(5) There is authorized to be appropriated $500,000 for fiscal year 1991 and $2,000,000 for fiscal year 1992 to carry out this subsection.".

SEC. 506. FACILITIES ASSESSMENT.

(a) SURVEY.—The Secretary shall conduct a survey of all facilities used by contractors under title V of the Indian Health Care Improvement Act and shall submit a report to the Congress on such survey not later than one year after the date of enactment of this Act. The report shall, at a minimum, contain the following information for each location:

(1) The extent to which the facility meets safety and building codes and, if direct care is provided, the extent of compliance with Joint Commission for Accreditation of Health Care Organizations (JCAHO) standards.

(2) The extent to which improvements, expansion, or relocation is necessary to meet program requirements, provide adequate services, or achieve building code compliance.

(3) Any lease restriction that would hamper accomplishment of needed improvement, expansion, or relocation.

(4) The term of the lease, if appropriate, the age of the structure, and the structure's life expectancy with and without improvement.

(5) An assessment of the deficiencies of the facility.

(b) REPORT.—The report shall contain general recommendations for addressing the deficiencies of facilities in which programs funded under title V of the Indian Health Care Improvement Act are located and shall propose specific policies for accomplishing those recommendations.

(c) MINOR RENOVATIONS.—Title V, as amended by section 301, is further amended by adding at the end the following new section:

"SEC. 509. FACILITIES RENOVATION.

"The Secretary may make funds available to contractors under this title for minor renovations to facilities, including leased facilities, to assist such contractors in meeting or maintaining the Joint Commission for Accreditation of Health Care Organizations (JCAHO) standards. There is authorized to be appropriated $1,000,000 for fiscal year 1992 to carry out this section.".

SEC. 507. REPORTS.

Section 507 of title V (25 U.S.C. 1657) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary, acting through the Service, shall submit a report to the Congress not later than March 31, 1992, evaluating—

"(A) the health status of urban Indians;

"(B) the services provided to Indians through this title;

"(C) areas of unmet needs in urban areas served under this title; and

"(D) areas of unmet needs in urban areas not served under this title.

"(2) In preparing the report under paragraph (1), the Secretary shall consult with urban Indian health providers and may contract with a national organization representing urban Indian health concerns to conduct any aspect of the report.

"(3) The Secretary and the Secretary of the Interior shall—

"(A) assess the status of the welfare of urban Indian children, including the volume of child protection cases, the prevalence of child sexual abuse, and the extent of urban Indian coordination with tribal authorities with respect to child sexual abuse; and

"(B) submit a report on the assessment required under subparagraph (A), together with recommended legislation to improve Indian child protection in urban Indian populations, to the Congress no later than March 31, 1992.".

SEC. 508. URBAN HEALTH PROGRAMS BRANCH.

Title V is further amended by adding at the end the following new section:

"SEC. 511. URBAN HEALTH PROGRAMS BRANCH.

"(a) ESTABLISHMENT.—There is hereby established within the Service a Branch of Urban Health Programs which shall be responsible for carrying out the provisions of this title.

"(b) STAFF, SERVICES, AND EQUIPMENT.—The Secretary shall appoint such employees to work in the branch, including a program director, and shall provide such services and equipment, as may be necessary for it to carry out its responsibilities. The Secretary shall also analyze the need to provide at least one urban health program analyst for each area office of the Indian Health Service and shall submit his findings to the Congress as a part of the Department's fiscal year 1993 budget request.".

SEC. 509. ALASKA RESIDENTIAL YOUTH TREATMENT CENTER.

(a) AMENDMENT.—Section 4227(b) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25

U.S.C. 2474(b)) is amended by adding at the end thereof the following:

"(3) Notwithstanding any other provision of this subtitle, the Secretary may, from amounts allocated to the Alaska area from funds appropriated pursuant to this section, make funds available to the Tanana Chiefs Conference, Incorporated, for the purpose of maintaining a residential youth treatment facility in Fairbanks, Alaska.".

(b) LEASE OF FACILITIES.—The Secretary of Health and Human Services, acting under section 4209(c) and 4227(b) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act, may—

(1) without regard to section 4209(c)(2) of that Act, lease from the Tanana Chiefs Conference facilities that are located in Fairbanks, Alaska, and that the Tanana Chiefs Conference has leased from another entity, and

(2) if the Secretary enters into a lease under paragraph (1) for at least 40 years, renovate the facilities to the extent needed.

(c) SELF-DETERMINATION CONTRACTS FOR STAFFING AND OPERATION.—The Secretary of Health and Human Services, acting under section 102 of the Indian Self-Determination and Education Assistance Act, may contract with the Tanana Chiefs Conference to staff and operate the facilities leased under subsection (b), without a request of an Indian tribe, and without regard to the definition and proviso in section 4(l) of that Act.

Mr. RICHARDSON (during the reading). Madam Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

Mr. RICHARDSON. Madam Speaker, H.R. 3703 is a very noncontroversial bill authorizing a small tribe in California to sell a tract of its land. It passed the House on the Unanimous-Consent Calendar on October 1. The Senate sends it back to us without amendment to its text, but with the addition of the text of another House bill and three Senate bills.

The Senate has added, without further amendment, the text of H.R. 3618 authorizing a small tribe in Minnesota to enter into long-term leases of its land. H.R. 3618 also passed the House by unanimous consent on October 1.

The Senate has added to H.R. 3703 the text of three Senate bills which the House recently passed. For reasons wholly unrelated to Indian affairs or to those bills, holds have been placed on those bills in the Senate and Senate concurrence in the House amendments to those bills has not been obtainable.

H.R. 3703 now contains the text of S. 1270, establishing certain Indian health programs. The House passed S. 1270 by voice vote under suspension of the rules on October 22. The Senate has made no further amendment to the text as passed by the House.

H.R. 3703 now contains the text of S. 1783, the Indian child abuse legislation. The House passed S. 1783 by voice vote under suspension of the rules on October 16. The Senate has made no further amendments to the text as passed by the House.

Finally, Madam Speaker, H.R. 3703, as amended by the Senate, now contains the text of S. 1289, the Indian forestry legislation. The House passed S. 1289 by voice vote under suspension of the rules on October 10. The Senate has made only minor amendments to that text which are acceptable to the Interior Committee.

Madam Speaker, H.R. 3703, as amended by the Senate, simply contains legislation which this House has already passed either by unanimous consent or by voice vote under suspension of the rules. I urge the House to concur in the Senate amendments.

GENERAL LEAVE

Mr. RICHARDSON. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material, on the Senate amendment to H.R. 3703.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objections.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from New Mexico?

There are no objections.

A motion to reconsider was laid on the table.

PRINTING OF PROCEEDINGS OF PORTRAITURE PRESENTATION OF THE HONORABLE GLENN M. ANDERSON

Mr. BATES. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 506) authorizing printing of the transcript of proceedings of the Committee on Public Works and Transportation incident to presentation of a portrait of the Honorable GLENN M. ANDERSON, as amended.

The Clerk read as follows:

H. RES. 506

Resolved, That the record of proceedings of the Committee on Public Works and Transportation on November 14, 1989, incident to the presentation of a portrait of the Honorable Glenn M. Anderson to the Committee, shall be printed as a House document, with illustrations and suitable binding. In addition to the usual number, there shall be printed, for the use of the Committee, such number of copies of the document (of which not more than 125 copies may be casebound) as does not exceed a cost of $1,200.

The SPEAKER pro tempore (Mr. MAZZOLI). Is a second demanded?

Mr. ROBERTS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. BATES] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. BATES].

Mr. BATES. Mr. Speaker, I rise today in support of House Resolution 506 to authorize the publication which summarizes the proceedings of the portraiture ceremony in honor of GLENN M. ANDERSON. The portraiture ceremony recognized GLENN M. ANDERSON's distinguished service in the House of Representatives and as chairman of the Committee on Public Works and Transportation.

GLENN ANDERSON has represented California's 32d Congressional district of Congress for more than 20 years. As chairman of the House Committee on Public Works and Transportation since 1988, Congressman ANDERSON has been an advocate for the rebuilding of the American infrastructure and for major environmental initiatives. Under his leadership, the committee has been in the forefront in planning for the transportation needs of the 21st century.

As chairman of the committee's Subcommittee on Aviation, Mr. ANDERSON guided the overhaul of the Nation's aviation system in the mid and late 1980's. As chairman of the Subcommittee on Surface Transportation, he was the leader in two major revisions of the Nation's highway, transit and highway safety laws, including a gas tax increase which drastically increased Federal investment in transportation.

Congressman ANDERSON has been a leader in battles for better transportation, for improved highways and transit, and for port development. He has worked diligently during his time in Congress for coordination of different modes of transportation. As committee chairman, he is undertaking a national series of hearings to gather information on infrastructure needs and to increase public awarness of the growing national infrastructures crisis.

GLENN ANDERSON is admired by his colleagues, and appreciated by all those he has worked with and helped. It is an honor for me to rise today in support of House Resolution 506.

Mr. Speaker, I reserve the balance of my time.

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join Chairman BATES in recognizing our distinguished colleague, the Honorable GLENN ANDERSON, for his numerous accomplishments while serving the House of Representatives.

Throughout his service, Congressman ANDERSON has worked diligently and effectively as chairman of the House Committee on Public Works and Transportation.

Mr. Speaker, many of my colleagues may not know that Congressman ANDERSON began his public service career at 27 years of age. In dedicating his life to serving the people of California,

Congressman ANDERSON has touched the lives of many individuals.

I urge Members to support House Resolution 506.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BATES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. BATES] that the House suspend the rules and agree to the resolution, House Resolution 506, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the resolution, as amended, was agreed to.

The title of the resolution was amended so as to read: "Resolution authorizing the printing of the record of proceedings of the Committee on Public Works and Transportation incident to the presentation of a portrait of the Honorable Glenn M. Anderson.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BATES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on House Resolution 506, just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

□ 1400

PRINTING OF PROCEEDINGS OF PORTRAITURE PRESENTATION OF THE HONORABLE AUGUSTUS F. HAWKINS

Mr. BATES. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 515) authorizing printing of the transcript of the proceedings of the Committee on Education and Labor incident to the presentation of a portrait of the Honorable AUGUSTUS F. HAWKINS, as amended.

The Clerk read as follows:

H. RES. 515

Resolved, That the record of proceedings of the Committee on Education and Labor on October 10, 1990, incident to the presentation of a portrait of the Honorable Augustus F. Hawkins to the Committee, shall be printed as a House document, with illustrations and suitable binding. In addition to the usual number, there shall be printed, for the use of the Committee, such number of copies of the document (of which not more than 125 copies may be casebound) as does not exceed a cost of $1,200.

The SPEAKER pro tempore (Mr. MAZZOLI). Is a second demanded?

Mr. ROBERTS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. BATES] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. BATES].

Mr. BATES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of House Resolution 515, to authorize the publication of the transcript of the proceedings of the Committee on Education and Labor at the presentation of a portrait of its chairman, Honorable AUGUSTUS F. HAWKINS.

GUS HAWKINS has been a valued Member of this body since 1963. Following 28 years in the California State Assembly, where he authored more than 100 laws, GUS HAWKINS has been a champion of children, the disadvantaged, working people, minorities, and senior citizens in the U.S. Congress.

He has served his constituency, both in his district in south central Los Angeles, and in the schools and workplaces across America, with energy, creativity, and determination.

He is the author of more than 17 Federal laws including the Full Employment and Balanced Growth Act; title VII of the Civil Rights Act; establishing the Equal Employment Opportunity Commission; the Job Training Partnership Act; the School Improvement Act, which rewrote virtually all major elementary and secondary education programs; and several major civil rights acts.

As we enter the waning hours of the 101st Congress, GUS is still battling for the causes he so strongly believes in. He will bring an omnibus education measure before us shortly, and continues to work to strengthen major child care legislation.

It is with a great deal of admiration and appreciation that I urge support for this resolution, which honors one of our most respected colleagues.

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join my colleague in honoring the numerous accomplishments of the Honorable GUS HAWKINS.

Congressman HAWKINS has served in the House of Representatives since 1963. Throughout his service he has taken special interest in fighting for the civil rights of all Americans. He has served his constituents and our country with true fairness and a determination for equality. He is admired by all that have worked with him.

At the end of the 101st Congress, the service of Chairman HAWKINS will come to an end with his retirement. His dedication and willingness to tackle major issues will certainly be missed by this institution.

I urge my colleagues to support passage of House Resolution 515 in recognition of Chairman HAWKINS' many accomplishments.

Mr. SPEAKER, I yield back the balance of my time.

GENERAL LEAVE

Mr. BATES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BATES. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. BATES] that the House suspend the rules and agree to the resolution, House Resolution 515, as amended.

The question was taken; and (two-third having voted in favor thereof) the rules were suspended and the resolution as amended, was agreed to.

The title of the resolution was amended so as to read: "Resolution authorizing the printing of the record of proceedings of the Committee on Education and Labor incident to the presentation of a protrait of the Honorable AUGUSTUS F. HAWKINS.".

A motion to reconsider was laid on the table.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AUTHORIZATION ACT OF 1990

Mr. HERTEL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4115) to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Oceanic and Atmospheric Administration Authorization Act of 1990".

TITLE I—OCEAN AND COASTAL PROGRAMS

SEC. 101. SHORT TITLE.

This title may be cited as the "Ocean and Coastal Programs Authorization Act of 1990".

SEC. 102. NATIONAL OCEAN SERVICE.

(a) MAPPING, CHARTING, AND GEODESY.—There are authorized to be appropriated to the Secretary of Commerce (hereafter in this Act referred to as the "Secretary") for carrying out mapping, charting, and geode-

sy activities of the National Oceanic and Atmospheric Administration (including geodetic data collection and analysis) under the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law, not more than $60,251,000 for fiscal year 1991, and not more than $62,962,000 for fiscal year 1992.

(b) OBSERVATION AND ASSESSMENT.—There are authorized to be appropriated to the Secretary for carrying out observation and assessment activities of the National Oceanic and Atmospheric Administration under the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law, not more than $61,655,000 for fiscal year 1991, and not more than $63,175,000 for fiscal year 1992.

(c) OCEAN AND COASTAL MANAGEMENT.—There are authorized to be appropriated to the Secretary for carrying out ocean and coastal management activities of the National Oceanic and Atmospheric Administration under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), the Coastal Zone Management Act of 1972 (33 U.S.C. 1451 et seq.), and any other law, not more than $73,326,000 for fiscal year 1991, and not more than $87,481,000 for fiscal year 1992. Amounts appropriated pursuant to this subsection shall not be used for activities authorized separately under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 et seq.).

SEC. 103. OCEANIC AND ATMOSPHERIC PROGRAMS.

(a) CLIMATE AND AIR QUALITY RESEARCH.—

(1) There are authorized to be appropriated to the Secretary to enable the National Oceanic and Atmospheric Administration to carry out its climate and air quality research duties, $111,385,000 for fiscal year 1991 and $130,186,000 for fiscal year 1992. Such duties include interannual and seasonal climate research, long-term climate and air quality research, and the National Climate Program.

(2) Of the sums authorized under paragraph (1) of this subsection, $8,000,000 for fiscal year 1991 and $6,000,000 for fiscal year 1992 are authorized to be appropriated for the implementation of a nationwide climate services system and applied climatology program.

(3) Of the sums authorized under paragraph (1) of this subsection, $3,700,000 for fiscal year 1991 and $3,700,000 for fiscal year 1992 are authorized to be appropriated for the activities of the National Climate Program and the Regional Climate Centers.

(b) ATMOSPHERIC PROGRAMS.—

(1) There are authorized to be appropriated to the Secretary to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric research duties, $45,895,000 for fiscal year 1991 and $43,200,000 for fiscal year 1992. Such duties include research for developing improved prediction capabilities for atmospheric processes, as well as solar-terrestrial services and research.

(2) Of the sums authorized under paragraph (1) of this subsection, $250,000 for fiscal year 1991 and $150,000 for fiscal year 1992 are authorized to be appropriated for tornado and severe thunderstorm weather research activities in the southeastern coastal plain region of the United States.

(d) CLIMATE SERVICES SYSTEM MODERNIZATION.—

(1) The Secretary shall direct the Office of the Chief Scientist of the National Oceanic and Atmospheric Administration to prepare and submit to Congress, not later than one year after the date of enactment of this Act, a plan for the implementation of a nationwide climate services system and applied climatology program. Such plan shall include detailed requirements and schedules for the improvement of (A) the timeliness of climate services, (B) the spatial coverage of weather observational networks, (C) the quality control of climate data, (D) access to climate data, (E) the use of climate data, (F) the coordination of Regional Climate Centers with Federal climate centers, and (G) private sector participation in providing climate services.

(2) Of the sums authorized under subsection (a)(1), $200,000 are authorized to be appropriated for fiscal year 1991 for the purposes of implementing paragraph (1) of this subsection.

(d) OCEAN AND GREAT LAKES RESEARCH.—There are authorized to be appropriated to the Secretary for carrying out ocean and Great Lakes research activities of the National Oceanic and Atmospheric Administration under the Act entitled "An Act to define the function and duties of the Coast and Geodetic Survey, and for other purposes", approved August 3, 1947 (33 U.S.C. 883a et seq.), the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Bureau to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), the National Sea Grant College Program Act (33 U.S.C. 1121 et seq.), and any other law involving those activities, not more than $86,787,000 for fiscal year 1991, and not more than $92,392,000 for fiscal year 1992.

(e) ZEBRA MUSSEL AND OTHER EXOTIC SPECIES RESEARCH.—In addition to amounts authorized under subsection (d), there are authorized to be appropriated to the Office of Oceanic and Atmospheric Research not more than $4,500,000 for fiscal year 1991, and not more than $4,700,000 for fiscal year 1992, for research on methods to control and eradicate harmful exotic species in the Great Lakes, including the zebra mussel, river ruffe, Asiatic crab, rusty crawfish, alewife, and spiny water flea. Of the amounts appropriated under this authorization, one-fourth shall be made available to the Great Lakes Environmental Research Laboratory in Ann Arbor, Michigan, and three-fourths shall be made available to the National Sea Grant College Program, pursuant to section 206 of the National Sea Grant College Program Act (33 U.S.C. 1125). No funds appropriated under this subsection may be spent on research relating to sea lampreys.

(f) OYSTER DISEASE RESEARCH.—Pursuant to section 206 of the National Sea Grant College Program Act (33 U.S.C 1125), $3,000,000 may be appropriated for fiscal year 1991, and $3,135,000 may be appropriated for fiscal year 1992, for priority oyster disease research.

(g) PACIFIC ISLAND NETWORK.—In addition to amounts authorized under subsection (d), there are authorized to be appropriated to the National Sea Grant College Program not more than $150,000 for fiscal year 1991, for provision of technical assistance to Pacific island nations on marine-related problems in aquaculture, fisheries, coastal resource management, communications, and education, through the program known as the "Pacific Island Network".

SEC. 104. PROGRAM SUPPORT.

(a) ADMINISTRATION AND SERVICES.—There are authorized to be appropriated to the Secretary for carrying out executive direction and administrative support, provision of retired pay of National Oceanic and Atmospheric Administration commissioned officers, and policy development) under the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 587-1 et seq.), and any other law involving those activities, not more than $70,382,000 for fiscal year 1991, and not more than $73,549,000 for fiscal year 1992.

(b) FACILITIES.—There are authorized to be appropriated to the Secretary for acquisition, construction, maintenance, and operation of facilities of the National Oceanic and Atmospheric Administration under any law involving those activities, not more than $9,232,000 for fiscal year 1991, and not more than $9,647,000 for fiscal year 1992.

(c) MARINE SERVICES.—There are authorized to be appropriated to the Secretary for carrying out marine services activities of the National Oceanic and Atmospheric Administration (including ship operations, maintenance, and support) under the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving those activities, not more than $91,375,000 for fiscal year 1991, and not more than $104,487,000 for fiscal year 1992.

(d) AIRCRAFT SERVICES.—There are authorized to be appropriated to the Secretary for carrying out aircraft services activities of the National Oceanic and Atmospheric Administration (including aircraft operations, maintenance, and support) under the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Bureau to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), and under any other law involving those activities, not more than $9,678,000 for fiscal year 1991, and not more than $10,114,000 for fiscal year 1992.

SEC. 105. REQUIREMENT OF NOTICE OF REPROGRAMMING.

The Secretary shall not reprogram an amount appropriated under the authority of this Act unless, before carrying out that reprogramming, the Secretary provides notice of that reprogramming to the House of Representatives and the Senate.

SEC. 106. PRICE FREEZE ON CHARTS AND OTHER PRODUCTS OF NOAA.

Notwithstanding section 1307 of title 44, United States Code, the price of nautical charts or other nautical products produced or published by the National Oceanic and Atmospheric Administration and sold after the date of enactment of this Act shall be the price of that type of chart or product on the date of enactment of this Act.

SEC. 107. REPORT ON SATELLITE OCEANOGRAPHY.

(a) IN GENERAL.—The Committee on Earth and Environmental Sciences of the Federal Coordinating Council for Science, Engineering, and Technology (hereinafter in this section referred to as the "Committee"), in consultation with Federal, academic, and commercial users of remotely sensed data, shall consider and develop detailed findings and recommendations regarding—

(1) the most urgent current needs of oceanographic researchers within the Fed-

eral Government, the academic community, and the private sector, for remote sensing capabilities and remotely sensed data, including findings regarding the present inadequacies in these capabilities and data; and

(2) the major goals of satellite oceanography for the next 10 years.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Committee shall submit to the House of Representatives and the Senate a report which describes the findings of the Committee. The report shall include recommendations for, or a description of actions being taken toward—

(1) correcting inadequacies in remote sensing capabilities;

(2) improving availability of remotely sensed data; and

(3) achieving the major goals of satellite oceanography developed pursuant to subsection (a)(2).

SEC. 108. REPORT ON SATELLITE CAPABILITIES FOR FISHERIES ENFORCEMENT.

Not later than 6 months after the date of the enactment of this Act, the Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the heads of other Federal agencies, shall prepare and submit to the House of Representatives and the Senate a report describing how current and planned satellite capabilities of the Federal Government can aid in the enforcement of Federal fisheries laws and the implementation of international fisheries conservation programs.

SEC. 109. COOPERATIVE INSTITUTE OF FISHERIES OCEANOGRAPHY.

(a) ESTABLISHMENT.—There is established within the National Oceanic and Atmospheric Administration a Cooperative Institute of Fisheries Oceanography (hereinafter in this section referred to as the "Institute"), in partnership with Duke University and the Consolidated University of North Carolina.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Secretary not more than $500,000 for fiscal year 1991, and not more than $500,000 for fiscal year 1991, and not more than $525,000 for fiscal year 1992, to remain available until expended, for use for activities of the Institute.

(c) USE OF AMOUNTS APPROPRIATED.—Amounts appropriated under the authority of subsection (b) may be used for—

(1) administration of the Institute;

(2) research conducted by the Institute; and

(3) preparation of a 5-year plan for research and for development of the Institute.

(d) REPORT.—Within one year after the date of the enactment of this Act, the Institute shall submit to the Congress and the Under Secretary of Commerce for Oceans and Atmosphere, the plan developed pursuant to subsection (c)(3).

SEC. 110. AUTHORITY TO ACQUIRE REAL PROPERTY AND IMPROVEMENTS IN HAMPTON ROADS, VIRGINIA.

(a) IN GENERAL.—The Under Secretary of Commerce for Ocean and Atmosphere is authorized to acquire, by exchange or lease-purchase or both, real property and improvements thereto in the area of Newport News-Norfolk, Virginia, for the purpose of consolidating facilities of the National Oceanic and Atmospheric Administration.

(b) CONDITIONS.—The authority of the Under Secretary to acquire real property or improvements under subsection (a) shall be subject to the following conditions:

(1) All actions taken by the Under Secretary to acquire such property or improvements must be in the best interests of the United States.

(2) In any case in which such acquisition is by lease-purchase—

(A) the term of the lease may not exceed 30 years;

(B) title to such property or improvements will be transferred to the United States upon expiration of such term; and

(C) obligations of funds to carry out such lease-purchase shall—

(i) be without regard to section 1341(a)(1)(B) of title 31, United States Code, and section 3733 of the Revised Statutes of the United States (41 U.S.C. 12); and

(ii) be treated as budget authority and outlays for a fiscal year only to the extent that expenditures pursuant to such obligations are made in the fiscal year.

SEC. 111. MODERNIZATION OF THE NOAA FLEET.

(a) FINDINGS.—The Congress finds that—

(1) the 23 vessels of the National Oceanic and Atmospheric Administration (hereinafter in this section referred to as "NOAA") support important fisheries, oceanographic, mapping, and surveying, global climate assessment, and meteorological programs and projects;

(2) NOAA most recently acquired a research vessel in 1980;

(3) the NOAA fleet is rapidly approaching obsolesence and, by the end of this century, only a few NOAA vessels will remain in operation;

(4) NOAA has new responsibilities for surveying and mapping the Exclusive Economic Zone of the United States and its offshore territories and possessions, for monitoring global climate change, and for fisheries research, that require the addition of new vessels to its current fleet;

(5) recent advances in technology have led to the development of new scientific equipment for research vessels which world enable NOAA to perform its functions more efficiently;

(6) other agencies of the Federal Government that operate research vessels, including the Department of the Navy, are already implementing plans to modernize their fleets; and

(7) NOAA has not developed a plan to replace its current fleet.

(b) REPORT ON NOAA FLEET.—The Secretary of Commerce shall not later than December 31, 1990, submit a report to the Congress on the status and modernization needs of the NOAA fleet and the funding required to meet these needs. The report shall—

(1) contain a plan for replacing the current NOAA fleet over the next 15 years and for acquiring new vessels to meet current and projected requirements;

(2) identify any needs for new authority or additional personnel to carry out that plan, including the authority to enter into multiyear contracts for leasing or acquiring new vessels;

(3) identify any impediments to acquiring all of the new vessels and scientific equipment under that plan in private shipyards in the United States; and

(4) indicate whether vessels acquired by the Federal Government as a result of default under title XI of the Merchant Marine Act of 1936 (46 App. U.S.C. 1271 et seq.), or seized under other applicable law, are suitable for use by NOAA in its oceanographic research fleet.

SEC. 112. NOAA FACILITIES IN KODIAK, ALASKA.

(a) PLAN.—Not later than 6 months after the date of the enactment of this title, the Secretary of Commerce shall prepare and transmit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan for the movement of the National Marine Fisheries Service facilities on Kodiak Island, Alaska, to an alternative location within the boundaries of the Kodiak Island Borough.

(b) CONSIDERATION.—In preparing the plan required under subsection (a), the Secretary of Commerce shall consider—

(1) hazards to human helath from retaining existing facilities, including hazards associated with asbestos and electrical wiring;

(2) the feasibility of locating National Marine Fisheries Service facilities in proximity to other facilities supporting functions of the National Oceanic and Atmospheric Administration and to facilities supporting the University of Alaska and the Alaska Department of Fish and Game; and

(3) such other factors as the Secretary of Commerce considers appropriate.

(c) RESTRICTION ON TRANSFERRING POSITIONS.—The plan prepared under subsection (a) shall not require transferring personnel positions from any National Oceanic and Atmospheric Administration facility located utside of the State of Alaska.

SEC. 113. GEOGRAPHIC INFORMATION SYSTEMS.

(a) IN GENERAL.—The Secretary may make grants and provide other financial assistance to States under sections 102(a) and 102(c) of this title, and provide technical assistance to develop geographic information systems relating to lands and waters within the coastal zone. The information contained in these geographic information systems shall be sutiable for use in making land-use regulatory decisions by Federal, State, and local government agencies under applicable Federal and State law.

(b) COST SHARING.—Grants made under this section shall not exceed 50 percent of the total cost to a State for development of a geographic information system.

(c) STANDARDS AND GUIDELINES.—The Secretary shall develop data standards and exchange formats for geographic information systems developed with assistance under subsection (a), and guidelines to facilitate the exchange of information among and between Federal, State, and local government and private users of geographic information system. In developing standards, formats, and guidelines, the Secretary shall consult with the Federal Interagency Coordinating Committee on Digital Cartography, as defined in the Office of Management and Budget circular A-16 (revised).

(d) DEFINITIONS.—As used in this section, the term—

(1) "geographic information system" means all activities associated with preparing and collecting maps, charges, and other graphical or digital representations of physical features, phenomena, and legal boundaries of the earth. Such systems may include—

(A) a reference frame consisting of a geodetic network:

(B) a series of current, accurate large-scale maps;

(C) a cadastral boundary overlay delineating all cadastral parcels;

(D) a system for indexing and identifying each cadastral parcel; and

(E) a series of land data files, each including the parcel identifier, which can be used to retrieve information and cross reference between and among other data files; and

(2) "coastal zone" means the coastal waters and adjacent shorelands as defined

in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

TITLE II—NATIONAL WEATHER SERVICE

SEC. 201. OPERATIONS AND RESEARCH.

(a) There are authorized to be appropriated to the Secretary to enable the National Oceanic and Atmospheric Administration to carry out the operations and research duties of the National Weather Service, $294,556,000 for fiscal year 1991 and $303,100,000 for fiscal year 1992. Such duties include meteorological, hydrological, and oceanographic public warnings and forecasts, as well as applied research in support of such warnings and forecasts, but do not include duties described in section 202.

(b)(1) The Secretary shall direct the Office of the Chief Scientist of the National Oceanic and Atmospheric Administration to establish an advisory committee of tropical cyclone research experts to make recommendations for Atlantic tropical cyclone research activities and Atlantic tropical cyclone reconnaissance procedures.

(2) The Secretary, working jointly with other agencies as appropriate and utilizing the expertise of the advisory committee established under paragraph (1), shall establish a 5-year program for collecting operational and reconnaissance data, conducting research, and analyzing data on Atlantic tropical cyclones to assist the forecast and warning program and increase the understanding of the causes and behavior of Atlantic tropical cyclones.

(3) Within 120 days after the date of enactment of this Act, the Secretary shall develop and submit to the Congress a management plan for the program established under paragraph (2) which shall include organizational structure, goals, major tasks, and funding profiles for the five year duration of the program.

(c) Of the sums authorized under subsection (a) of this section, $500,000 for fiscal year 1991 and $250,000 for fiscal year 1992 are authorized to be appropriated for the purposes of implementing subsection (b) of this section.

(d) Of the sums authorized under subsection (a) of this section, $4,000,000 for fiscal year 1991 and $3,000,000 for fiscal year 1992 are authorized to be appropriated for the Stormscale Operational and Research Meteorology (STORM) program.

SEC. 202. SYSTEMS ACQUISITION.

There are authorized to be appropriated to the Secretary to enable the National Oceanic and Atmospheric Administration to carry out the public warning and forecast systems duties of the National Weather Service, $156,221,000 for fiscal year 1991 and $206,763,000 for fiscal year 1992. Such duties include the development, acquisition, and implementation of major public warning and forecast systems.

SEC. 203. WEATHER SERVICE MODERNIZATION.

(a) The Secretary shall prepare, after consultation, as appropriate, with other Federal and public agencies responsible for providing or utilizing weather services, and shall submit to Congress before the beginning of each fiscal year, an updated National Implementation Plan for the modernization of the National Weather Service. The National Implementation Plan updates shall include—

(1) an overall schedule for modernization;

(2) detailed requirements for new technologies, facilities, staffing levels, and funding during the next two fiscal years beginning after the date of such submission, in accordance with the overall schedule for modernization;

(3) detailed plans and schedules for facility site procurement and preparation in accordance with the overall schedule for modernization;

(4) special measures to test, evaluate, and demonstrate key elements of the modernized National Weather Service operations before national implementation, including a multistation operational demonstration which tests the performance of all components of the modernization in an integrated manner for a sustained period; and

(5) detailed plans and funding requirements for meteorological research described in section 103 (a) through (c) of this Act to assure that new techniques in forecasting will be developed to utilize the new technologies being implemented in the modernization.

(b) The Secretary shall include as part of the first update of the National Implementation Plan submitted under subsection (a) after the date of enactment of this Act, a description of the resources needed to conduct a demonstration of modernized weather forecasting technologies at a site in the northeastern United States. The description shall include a schedule for completion of the demonstration, estimates for necessary equipment and personnel, and an assessment of the value of conducting such a demonstration.

SEC. 204. CLOSURE, AUTOMATION, OR RELOCATION OF FIELD OFFICES.

(a) The Secretary shall not close, consolidate, automate, or relocate any National Weather Service Office or National Weather Service Forecast Office unless the Secretary has certified to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that such action will not result in any degradation of weather services provided to the affected area. Such certification shall include—

(1) a detailed comparison of services provided to the affected area and the services to be provided after such action;

(2) any recent or expected modernization of National Weather Service operations which will enhance services in the affected area; and

(3) evidence, based upon operational demonstration of modernized National Weather Service operations, which support the conclusion that no degradation in services will result from such action.

(b) The Secretary shall not close, consolidate, automate, or relocate any National Weather Service Office or National Weather Service Forecast Office located at an airport unless the Secretary first conducts an air safety appraisal to determine the effect of such action on aircraft safety, and includes in the certification required under subsection (a) a certification that such action will not result in a decrease in aircraft safety.

(c) The Secretary shall not close, consolidate, automate, or relocate any National Weather Service Office which is the only office in a State, unless the Secretary first evaluates the effect on weather services provided to in-State users, such as State agencies, civil defense officials, and local public safety offices, and includes in the certification required under subsection (a) a certification that a comparable level of weather services provided to such in-State users will remain.

TITLE III—NATIONAL ENVIRONMENTAL SATELLITE, DATA, AND INFORMATION SERVICE

SEC. 301. SATELLITE OBSERVING SYSTEMS.

(a) There are authorized to be appropriated to the Secretary to enable the National Oceanic and Atmospheric Administration to carry out its satellite observing systems duties $258,450,000 for fiscal year 1991 and $310,693,000 for fiscal year 1992. Such duties include spacecraft procurement, launch, and associated ground station system changes involving polar orbiting and geostationary environmental satellites and land remote sensing satellites, as well as the operation of such satellites.

(b) The authorization provided for under subsection (a) of this section shall be in addition to funds authorized under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) for the purpose of carrying out such duties relating to satellite observing systems.

(c) Of the sums authorized under subsection (a) of this section, $250,000 for fiscal year 1991 and $250,000 for fiscal year 1992 are authorized to be appropriated for geologic sea surface research and basic geologic remote sensing for energy resources at the Cooperative Institute for Applied Remote Sensing.

SEC. 302. ENVIRONMENTAL DATA MANAGEMENT.

There are authorized to be appropriated to the Secretary to enable the National Oceanic and Atmospheric Administration to fund those duties relating to data and information services, $22,174,000 for fiscal year 1991 and $29,200,000 for fiscal year 1992. Such duties include climate data services, ocean data services, geophysical data services, and environmental assessment and information services.

SEC. 303. TRANSFER OF ARCHIVING RESPONSIBILITY FOR LAND REMOTE-SENSING DATA.

(a) FINDINGS.—The Congress finds that—

(1) section 602 of the land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) directs the Secretary of Commerce to provide for the archiving of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) the Secretary of Commerce currently provides for the archiving of Landsat data at the Department of the Interior's EROS Data Center, which is consistent with the requirement of such section 602(g) to use existing Federal Government facilities to the maximum extent practicable in carrying out this archiving responsibility;

(3) the Landsat data collected since 1972 are an important global data set for monitoring and assessing land resources and global change;

(4) the Secretary of the Interior maintains archives of aerial photography, digital cartographic data, and other Earth science data at the EROS Data Center that also are important data sets for monitoring and assessing land resources and global change;

(5) it is appropriate to transfer authority for section 602 of the land Remote-Sensing Commercialization Act of 1984 to the Secretary of the Interior; and

(6) the Secretary of the Interior should explore ways to facilitate the use of archiving data for research purposes consistent with other provisions of such Act.

(b) AMENDMENTS.—The Land Remote-Sensing Commercialization Act of 1984 is amended—

(1) in section 402(b)(4), by inserting "of the Interior" after "Secretary";

(2) in sections 602 (b), (c), (d), (f), and (g), by inserting "of the Interior" after "Secretary" each place it appears; and

(3) by adding at the end of section 602 the following new subsection:

"(h) In carrying out the functions of this section, the Secretary of the Interior shall consult with the Secretary to ensure that archiving activities are consistent with the terms and conditions of any contract or agreement entered into under title II, III, or V of this Act and with any license issued under title IV of this Act.".

TITLE IV—AGRICULTURAL WEATHER INFORMATION

SEC. 401. SHORT TITLE.

This title may be cited as the "National Agricultural Weather Information System Act of 1990".

SEC. 402. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) a major cause of variability and losses in agricultural production is weather and climate factors;

(2) extreme weather conditions, such as drought, appear to be occurring more frequently, and further climate changes are likely;

(3) the Federal Government has repeatedly assumed responsibility for emergency aid for agricultural producers who suffer losses due to weather;

(4) it would be prudent and cost effective to prevent or reduce agricultural losses due to weather factors through better use of weather and climate information;

(5) current agricultural weather and climate information and its delivery to agricultural producers are not adequate; and

(6) better application of weather and climate information will help conserve water resources, allow agricultural chemicals to be applied in a more efficient fashion with less stress on the environment, and reduce energy consumption by improved management decisionmaking.

(b) PURPOSES.—The purposes of this title are to—

(1) provide a nationally coordinated agricultural weather information system, based on the participation of universities, State programs, Federal agencies, and the private weather consulting sector, and aimed at meeting the weather and climate information needs of agricultural producers;

(2) facilitate the collection, organization, and dissemination of advisory weather and climate information relevant to agricultural producers, through the participation of the private sector and otherwise;

(3) provide for research and education on agricultural weather and climate information, aimed at improving the quality and quantity of weather and climate information available to agricultural producers, including research on short-term forecasts of thunderstorms and on extended weather forecasting techniques and models;

(4) encourage, where feasible, greater private sector participation in providing agricultural weather and climate information, to encourage private sector participation in educating and training farmers and others in the proper utilization of agricultural weather and climate information, and to strengthen their ability to provide site-specific weather forecasting for farmers and the agricultural sector in general; and

(5) ensure that the weather and climate databases needed by the agricultural sector are of the highest scientific accuracy and thoroughly documented, and that such databases are easily accessible for remote computer access.

SEC. 403. AGRICULTURAL WEATHER OFFICE.

(a) ESTABLISHMENT OF THE OFFICE AND ADMINISTRATION OF THE SYSTEM.—The Secretary of Agriculture shall establish in the Department of Agriculture an Agricultural Weather Office to plan and administer the National Agricultural Weather Information System. The System shall be comprised of the Office established under this section and the activities of the State agricultural weather information systems described in section 406(b)(1).

(b) AUTHORITY.—The Secretary of Agriculture, acting through the Office, may—

(1) enter into cooperative projects with the National Weather Service, for support of operational weather forecasting and observation useful in agriculture, for joint workshops to train agriculturalists about the optimum utilization of agricultural weather and climate data, for joint development of improved computer models and computing capacity, and for efforts to enhance the quality and availability of weather and climate information needed by agriculturalists;

(2) obtain standardized weather observation data collected in near real time through State agricultural weather information systems;

(3) provide, through the Cooperative State Research Service, competitive grants under section 405 for research in atmospheric sciences and climatology;

(4) provide grants to eligible States under section 406 to plan and administer State agricultural weather information systems;

(5) coordinate the activities of the Office with the weather and climate research activities of the Cooperative State Research Service, the National Academy of Sciences, the National Science Foundation Atmospheric Services Program, and the National Climate Program;

(6) encourage private sector participation in the National Agricultural Weather Information System through mutually beneficial cooperation with the private sector, particularly in generating weather and climate data useful for site-specific agricultural weather forecasting; and

(7) represent the Department of Agriculture on agrometeorology and climate matters with the World Meteorological Organization, the Intergovernmental Program on Climate Change, and relevant science and technology agreements.

(c) APPOINTMENT OF DIRECTOR.—The Secretary of Agriculture shall appoint a Director to manage the activities of the Agricultural Weather Office and to advise the Secretary of Agriculture on scientific and programmatic coordination for climate, weather, and remote sensing.

SEC. 404. NATIONAL ADVISORY BOARD ON AGRICULTURAL WEATHER.

(a) ADVISORY BOARD.—

(1) The Secretary of Agriculture shall establish the Advisory Board on Agricultural Weather to advise the Director of the Agricultural Weather Office with respect to carrying out this title.

(2) The Board shall have nine members, appointed by the Secretary of Agriculture in consultation with the Director of the National Weather Service, of which two members shall be from each of the four Cooperative Extension Service Regions. Of the two members from each region, one shall be an agricultural producer and one shall be an agricultural or atmospheric scientist. At least two members of the Board shall be appointed from among individuals who are engaged in providing private meteorology services or consulting with a private meteorology firm.

(3) The Board shall elect a chairperson from among its members.

(4) Each board member shall be appointed for a three year term, except that to ensure that members of the Board serve staggered terms, the Secretary of Agriculture shall appoint three of the original members of the Board to appointments for one year, and three of the original members to appointments for two years.

(5) The Board shall meet not less than twice annually.

(6) Members of the Board shall serve without compensation, but while away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as individuals employed in Government service are allowed travel expenses under section 5703 of title 5, United States Code.

(b) FEDERAL ADVISORY COMMITTEE ACT.—Section 14(a)(2) of the Federal Advisory Committee ACt (5 U.S.C. App. 2 section 14(a)(2)) shall not apply with respect to the Board.

SEC. 405. COMPETITIVE GRANTS PROGRAM.

(a) GRANTS.—With funds allocated to carry out this section, the Secretary of Agriculture may make grants, on a competitive basis, to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations and corporations, and individuals to carry out research in all aspects of atmospheric sciences and climatology that can be shown to be important in both a basic and developmental way to understanding, forecasting, and delivering agricultural weather information.

(b) PRIORITY.—In selecting among applicants for grants under subsection (a), the Secretary of Agriculture shall give priority to proposals which emphasize—

(1) techniques and processes that relate to weather-induced agricultural losses, and to improving the advisory information on weather extremes such as drought, floods, freezes, and storms well in advance of their actual occurrence;

(2) improvement of site-specific weather data collection and forecasting; or

(3) impact of weather on economic and environmental costs in agricultural production.

SEC. 406. STATE AGRICULTURAL WEATHER INFORMATION SYSTEMS.

(A) GRANTS.—

(1) With funds allocated to carry out this section, the Secretary of Agriculture shall make grants to not fewer than 10 eligible States to plan and administer, in cooperation with the Director of the Agricultural Weather Office, the Administrator of the Cooperative Extension Service, the Administrator of the Cooperative State Research Service, and others as appropriate (such as the directors of the appropriate State agricultural experiment stations and State extension programs), advisory programs for State agricultural weather information systems.

(2) For purposes of selecting among applications submitted by States for such grants, the Secretary of Agriculture shall take into consideration the recommendation of the

Advisory Board on Agricultural Weather and consult with the Director.

(3) In selecting among applications submitted for such agrants, the Secretary of Agriculture shall ensure equitable geographic distribution.

(b) ELIGIBILITY TO RECEIVE GRANTS.—To be eligible to receive a grant under subsection (a), the chief executive officer of a State shall submit to the Secretary of Agriculture an application that contains—

(1) assurances that the State will expend such grant to plan and administer a State agricultural weather system that will—

(A) collect observational weather data throughout the State and provide such data to the National Weather Service and the Agricultural Weather Office;

(B) develop methods for packaging information received from the National System for use by agricultural products (with State extension services and the private sector to serve as the primary conduit of agricultural weather forecasts and climatic information to producers); and

(C) develop programs to educate agricultural producers on how to best use weather and climate information to improve management decisions; and

(2) other assurances and information as the Secretary of Agriculture may require by rule.

SEC. 407. FUNDING.

(a) ALLOCATION OF FUNDS.—Not less than 15 percent and not more than 25 percent of the funds appropriated for a fiscal year to carry out this title shall be used for cooperative work with the National Weather Service entered into under section 403(b)(1). Not less than 15 percent and not more than 25 percent of the funds shall be used by the Cooperative State Research Program for a competitive grants program under section 405. Not less than 25 percent and not more than 35 percent of the funds shall be divided equally between the participating States under section 406. The remaining funds shall be allocated for use by the Agricultural Weather Office and the Cooperative Extension Service in carrying out generally the provisions of this title.

(b) LIMITATIONS ON USE OF FUNDS.—Funds provided under the authority of this title shall not be used for the construction of facilities. Each States or agency receiving funds shall not use more than 30 percent of such funds for equipment purchases. Any use of the funds in facilitating the distribution of agricultural and climate information to producers shall be done with consideration for the role that the private meteorological sector can play in such information delivery.

(c) AUTHORITY OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of the fiscal years 1991 and 1992 to carry out this title.

TITLE V—TROPICAL CYCLONE RESEARCH PROGRAM

SEC. 501. SHORT TITLE.

This title may be cited as the "Tropical Cyclone Research Act of 1990".

SEC. 502. FINDINGS.

The Congress finds that—

(1) many areas of the United States, including those bordering the Atlantic Ocean and Gulf of Mexico, rely on data provided by the Department of Defense through the Air Force WC-130 weather reconnaissance aircraft to predict the intensity, speed, and direction of movement of tropical cyclones, including hurricanes and tropical storms;

(2) these same areas also rely on data collected by the Department of Commerce through the National Oceanic and Atmospheric Administration's satellite, radar, aircraft, and buoy technologies to predict tropical cyclone behavior and to conduct research on improving forecasts and warnings;

(3) satellites, including the Geostationary Operational Environmental Satellites, are an important source of tropical cyclone information, but they cannot provide the same quality of information as is supplied by weather reconnaissance aircraft;

(4) there is currently only one Geostationary Operational Environmental Satellite positioned over the United States and the loss of its ability to collect data would severely restrict tropical cyclone information gathering; and

(5) a vigorous research program in tropical cyclone behavior and forecasting is important if the accuracy of prediction of tropical cyclones is to be significantly improved.

SEC. 503. ESTABLISHMENT OF PROGRAM.

The Secretary of Defense and the Secretary of Commerce shall establish a five-year joint program which expands the plan established in section 201(b) for collecting operational and reconnaissance data, conducting research, and analyzing data on tropical cyclones to assist the forecast and warning program and increase the understanding of the causes and behavior of tropical cyclones.

SEC. 504. RESPONSIBILITIES.

(a) The Secretary of Defense shall have the responsibility for maintaining, flying, and funding tropical cyclone reconnaissance aircraft to accomplish the program established under section 201(b)(2) and to transfer the data to the Secretary of Commerce, unless a joint agreement is reached, with the approval of both the transfer of such responsibility to an appropriate Federal agency or department.

(b) The Secretary of Commerce shall have the responsibility of funding and carrying out data gathering and research by remote sensing, ground sensing, and other technologies necessary to accomplish the program established under section 503.

SEC. 505. MANAGEMENT PLANS.

(a) The Secretary of Defense and the Secretary of Commerce shall jointly develop, and, within 120 days after the date of enactment of this Act, submit to the Congress, a management plan for the program established under section 503 and section 201(b), which shall include organizational structure, goals, major tasks, and funding profiles for the five-year duration of the program.

(b) The Secretary of Defense and the Secretary of Commerce shall jointly develop, and, within four years after the date of enactment of this Act, submit to the Congress, a management plan providing for continued tropical cyclone surveillance and reconnaissance which will adequately protect the citizens of the coastal areas of the United States.

(c) The management plan and program shall provide for a minimum of the same level and quality of protection as the current tropical cyclone surveillance and reconnaissance program. The management plan and program shall in no way allow any reduction in the level, quality, timeliness, sustainability and area served, including the Hawaiian Islands, of both the existing principal and backup severe storm reconnaissance and tracking systems.

TITLE VI—GROWTH DECISION AID

SEC. 601. STUDY AND DECISION AID.

(a) The Secretary of Commerce, in consultation with the Administrator of the Environmental Protection Agency, shall conduct a study of the environmental implications and potential consequences of growth and development of urban, suburban, and rural communities. The study shall include an evaluation of the issues of farmland conversion, air and water pollution, and the need for, and impact of, expanded support infrastructure. Based upon the findings of the study, the Secretary shall produce a decision aid to assist State and local authorities in planning and managing urban, suburban, and rural growth and development while preserving environmental quality.

(b) The Department of Commerce, in cooperation with the Administrator of the Environmental Protection Agency, shall consult with other appropriate Federal departments and agencies as necessary in carrying out this section.

(c) The Secretary of Commerce shall submit to the Congress a report containing the decision aid produced under subsection (a) no later than January 30, 1992. The Secretary shall notify appropriate State and local authorities that such decision aid is available on request.

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUMWAY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. HERTEL] will be recognized for 20 minutes, and the gentleman from California [Mr. SHUMWAY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. HERTEL].

Mr. HERTEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to ask my colleagues' support for H.R. 4115, the Ocean and Coastal Programs Authorization Act of 1990.

It was 20 years ago almost to the day that the National Oceanic and Atmospheric Administration was created. Since its creation in 1970, NOAA has been a national leader in ocean and coastal research and management. Among its strongest initiatives are the very successful Coastal Zone Management Program and the National Sea Grant Colleges Program. It is the intent of this legislation to reaffirm the Congress' commitment to NOAA's mission and to the leadership this agency has shown during its 20-year history.

The joint committee amendment before you today authorizes NOAA's mapping, charting, and geodesy programs at $60 million for fiscal years 1991 and 1992. These programs include nautical and aeronautical charting and survey work on the exclusive economic zone. The bill further authorizes the agency's observations and assessment

programs at $162 million and NOAA's ocean and coastal management programs at $73 million, including the Coastal Zone Management Program.

Under NOAA's climate and air quality research programs, there are authorized over $100 million for the National Global Change Research Program. This funding will ensure that NOAA's vital research on the role of the oceans in determining future weather patterns may continue. Authorizations for NOAA's ocean and Great Lakes research programs are also included in this package. These moneys will fund the Great Lakes Environmental Research Laboratory in Ann Arbor, MI, and the National Undersea Research Program.

H.R. 4115 contains several other important and innovative programs, including an authorization for funding of priority oyster disease research in the mid-Atlantic region, the establishment of a Cooperative Institute of Fisheries Oceanography in North Carolina, and an authorization for modernizing and rehabilitating NOAA's outmoded and obsolete fleet of 23 vessels. In addition, H.R. 4115 authorizes $4.5 million for research on methods to tackle zebra mussels and other harmful exotic species, which are currently wreaking havoc in the Great Lakes ecosystems.

The Merchant Marine and Fisheries Committee supports this bill wholeheartedly and we urge the House to endorse this important environmental legislation.

Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker, I rise in support of H.R. 4115, to authorize the National Oceanic and Atmospheric Administration's programs for fiscal year 1991 and fiscal year 1992.

Mr. Speaker, this is the second year in a row that the Congress has considered legislation to specifically authorize NOAA's programs. In the past, the Appropriations Committee has appropriated funds for NOAA's ocean and coastal programs pursuant to their general authority authorizing the agency. By considering NOAA's program authorization separately each year, the Merchant Marine and Fisheries Committee, the Science, Space, and Technology Committee, and the Congress, I believe, improve both our oversight of the agency and the agency's administration of these programs.

Mr. Speaker, the ocean environment is an increasingly important issue. Just one example of this is the role of our oceans in global climate issues, which is becoming increasingly better understood. Accordingly, NOAA's importance and prominence as a Federal agency has gown in recent years. This legislation recognizes the important role that NOAA plays within the Federal Government and the international community in dealing with these important and complex ocean and coastal issues. Most of the funding levels in the bill are consistent with either last year's appropriation level or current law. While some are higher in key areas, they are, as a whole, quite resonable.

The Merchant Marine and Fisheries Committee was able to work out a deal with the Science, Space, and Technology Committee so that this bill includes authorizations for all of NOAA's programs within one bill, including those programs which fall in their jurisdiction—such as the satellite and weather programs. By doing so, we have a comprehensive bill which addresses NOAA's programs and issues on agencywide basis.

Mr. Speaker, I believe this is an important bill, and I congratulate the subcommittee chairman, Mr. HERTEL, for his leadership on this legislation and for bringing it to the floor today. I urge support of this legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS. Mr. Speaker, I wonder if the chairman of the Oceanography Subcommittee would respond to a brief question on H.R. 4155.

I would ask the subcommittee chairman, of the amount that is authorized for the national ocean service, is it not true that $750,000 has been earmarked to be used to obtain updated current and water level data in Galveston Bay-Houston ship channel for improved navigation safety, oilspill response, search and rescue, and environmental management.

Mr. HERTEL. Mr. Speaker, if the gentleman will yield, the gentleman is correct.

Mr. FIELDS. Mr. Speaker, I thank the gentleman.

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Mr. SHUMWAY. Mr. Speaker, I reserve the balance of my time.

Mr. HERTEL. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. ROE], chairman of the Committee on Science, Space, and Technology, who has done so much on this.

Mr. ROE. Mr. Speaker, I rise in support of the National Oceanic and Atmospheric Administration Authorization Act of 1990.

I would like to thank the many distinguished Members for their work and collaboration on this bill.

Congressman WALTER JONES, of North Carolina, chairman of the Committee on Merchant Marine and Fisheries; Congressman ROBERT DAVIS of Michigan, ranking Republican of the Committee on Merchant Marine and Fisheries; Congressman DENNIS HERTEL, of Michigan, chairman of the Oceanography and Great Lakes Subcommittee; and Congressman NORMAN SHUMWAY, of California, ranking Republican of the Oceanography and Great Lakes Subcommittee.

On the Science, Space, and Technology Committee, I want to recognize Congressman ROBERT WALKER, of Pennsylvania, ranking Republican member of the committee; Congressman JAMES SCHEUER, of New York, chairman of the Subcommittee on Natural Resources, Agriculture Research and Environment; Congresswoman CLAUDINE SCHNEIDER, ranking Republican member of the Subcommittee on Natural Resources, Agriculture Research, and Environment.

In addition, Congressman TOM MCMILLEN of Maryland, distinguished member of the Committee on Science, Space, and Technology; is to be commended.

I thank them all for their hard work in bringing this legislation before the House of Representatives today.

The United States experiences more severe weather than any other nation on Earth. Each year, we can expect on the average of 1,000 tornadoes; 1,000 flash floods; 10,000 severe thunderstorms; 10 extremely hazardous winter storms; and at least 10 hurricanes or severe tropical storms.

To help us cope with these threatening weather phenomena, we have at our disposal;

Weather research to enable us to project the possible routes of hurricanes;

Hurricane reconnaissance aircraft to track and monitor the strength of hurricanes;

Weather satellites to provide early warning of storm front development; and

Weather forecasting science to give us early warnings of tornado formation.

These vital programs and services are provided by the men and women who work for and with the National Oceanic and Atmospheric Administration. They save thousands of lives each year.

However, the equipment currently in use by the National Weather Service is outdated, outmoded, and in many cases, unreliable and inoperative.

It is critical that we authorize sufficient funds to enable the National Weather Service to modernize this vintage equipment.

The faster we move to update the weather service equipment with the advanced technologies now available, the better our information will be.

This means enhanced protection for lives and property.

The bill before us today provides funding authorization for the continued operation of all Weather Service offices with simultaneous modernization of weather forecasting technology. We believe this is an essential investment.

In addition, the legislation contains funding for all scheduled weather satellite procurements, as well as the additional funding for the launch of the geostationary environmental satellite to replace the weather satellite that failed in January 1989; continuation and completion of the Landsat Commercialization Program and the operational support activities; and expanded atmospheric research in support of the Global Climate Change Program.

Mr. Speaker, we are powerless to prevent the devastation and destruction of severe weather. In addition, we are extremely limited in our understanding of global climate change. The programs we authorize through NOAA will help us protect our citizens in the wake of severe weather, and educate us to better predict what activities affect climate change. I urge support of this authorization.

Mr. SHUMWAY. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, the action that the House is taking today is a commendable effort to try to get a multiyear NOAA authorization bill into law this year to allow for sound, long-term planning for that agency. It combines the wet NOAA for ocean and coastal programs offered by the Committee on Merchant Marine and Fisheries and the dry NOAA bill that is the product of the Committee on Science, Space, and Technology on which I serve.

Our part of the bill provides for modernization of weather forecasting technology in the interests of public safety and private welfare, all requested satellite procurements, and global change research.

Mr. Speaker, H.R. 4115 also includes language that I offered requiring the Commerce Department and the EPA to produce a decision aid to assist State and local authorities in planning and managing suburban and rural growth and development.

This is an effort to make certain that as our local officials are faced with growth and development concerns that they will have planning documents from which to work that will show them what works and what does not across the Nation. I think it should help local people in handling growth-related problems that are facing so many communities and areas today.

Overall, the Science Committee's contribution is fiscally responsible as it provides for those critical NOAA programs under our jurisdiction at 2½ percent below the President's 1991 request. Fifteen-percent growth is then necessary in 1992 to cover the capital costs associated with new weather radars and satellites consistent with current Commerce Department planning.

I wish to add my congratulations to our chairman, the gentleman from New Jersey [Mr. ROE], and to the subcommittee chairman, the gentleman from New York [Mr. SCHEUER], and the subcommittee vice-chairman the gentlewoman from Rhode Island [Ms. SCHNEIDER], for the work that they did in helping to being this bill together and also as our chairman, the gentleman from New Jersey [Mr. ROE] has pointed out, our colleagues on the Committee on Merchant Marine and Fisheries who I think have done a commendable job in working with us in order to bring this combined bill today.

Mr. HERTEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank all the people involved, but really, last year we had the first NOAA authorization separate from the Department of Commerce in the 20-year history of NOAA, because the gentleman from California [Mr. SHUMWAY], the ranking member, and I believed we should have the focus for all the excellent work and important work NOAA has done in separate authorization.

I think with the help of the Committee on Science, Space and Technology and the chairman, the gentleman from New Jersey [Mr. ROE], we have been able to do that, I think, very well in the second year of the authorization and to celebrate 20 years of NOAA, and to thank the employees, the men and women, for all the things they have done under very difficult circumstance, because for the last 10 years we have had cuts in funding at NOAA, an absolute freeze in other years.

This year the Bush administration has increased funding 36 percent, so we are making progress, hoping to fix up some of the facilities, the fleet of 26 ships and the rest, and we are very happy to have that progress.

We are very happy, and fellow Members, if you are concerned about global change, if you are concerned about oilspills, if you are concerned about reducing pollution, if you are concerned about coastal protection, then you will understand how important this NOAA bill is to have passed on suspension.

Mr. SCHEUER. Mr. Speaker, I rise in support of H.R. 4115, to authorize the National Oceanic and Atmospheric Administration [NOAA] for fiscal years 1991 and 1992.

I want to commend the chairmen of the two committees with jurisdiction over NOAA's programs for working together to bring this bill to the floor, Science Committee Chairman BOB ROE and Merchant Marine Committee Chairman WALTER JONES.

I also want to commend the ranking minority members of those committees, BOB WALKER and BOB DAVIS, and the chairman and ranking member of the Oceanography Subcommittee, DENNIS HERTEL and NORMAN SHUMWAY.

I also particularly want to take this opportunity to thank CLAUDINE SCHNEIDER for her hard work and unswerving dedication to the environment over the 4 years that she has served as the ranking minority member of the Natural Resources Subcommittee.

Mr. Speaker, this bill marks the first time that a truly comprehensive NOAA authorization has been brought to the floor. In the past, NOAA programs have been authorized in a piecemeal fashion. And all too often, NOAA programs have been funded in a similar piecemeal fashion, lost in the Department of Commerce bureaucratic maze.

Fortunately, under the strong leadership of NOAA Administrator John Knauss, NOAA is poised to fulfill its mission as one of the preeminent science agencies of the Federal Government.

This comprehensive authorization bill is intended to serve as a congressional charter for a newly revitalized NOAA.

NOAA's responsibilities are impressive. Perhaps the NOAA agency that most affects our daily lives is the National Weather Service.

It is interesting to note that during the recent flaps on Government shut-downs, one of the services almost always noted by the media was the concern that National Weather Service forecasters would be off the job.

The predicted consequences were dire, form threats to shipping and air traffic, to school weather closings.

H.R. 4115 authorizes an ambitious modernization program for the National Weather Service. The bill would upgrade the Weather Service's present decrepit 1950's-era weather radar to a new, state-of-the-art Doppler radar system with much greater accuracy for predicting severe storms.

As these new technologies come on line, it will be necessary to close or consolidate some of the outmoded weather service offices. This bill contains a detailed certification procedure to ensure that no community will suffer a degradation in weather services as a result of the closing of weather stations.

H.R. 4115 also provides authorizations for the satellite programs operated by NOAA's national environmental satellite, data, and information services.

These satellites bring us up-to-the-minute weather information and provide us with irreplaceable data about severe storms and hurricanes.

The bill also contains funding for the continued operation of Landsats 4 and 5, and for the launch of Landsat 6.

Landsat has provided us with invaluable information about the Earth's resources, and is perhaps our greatest source of information for understanding global change processes from its unique records that span 20 years.

Finally, the provisions of the bill under the Science Committee's jurisdiction provides authorizations for NOAA's Office of Ocean and Atmospheric Research.

This office carries out leading edge research on atmospheric processes which produce hurricanes and tornados, and key environmental issues such as ozone depletion, acid rain, and climate change.

The bill also includes authorizations for the National Ocean Service and other programs under the jurisdiction of the Merchant Marine Committee.

Mr. Speaker, it is our hope that this comprehensive NOAA authorization bill will help to forge a better understanding of the importance of this oft-neglected agency.

I urge my colleagues to support this bill.

Mr. PATTERSON. Mr. Speaker, I just wanted to take a moment today to commend the chairman and the ranking minority Member for their work on H.R. 4115, the NOAA authorization bill. NOAA and the National Weather Service provide valuable services to the people of this Nation. They provide timely information and warnings that can save lives in extreme situations.

There are two parts of this bill that I believe are especially important. First, this legislation focuses attention on Atlantic hurricanes. Just over a year ago, my State of South Carolina was devastated by Hurricane Hugo. However, because of the early warning from the various government weather agencies, we were able to save untold lives.

Yet, earlier this year, the Secretary of Defense sent a memo to the Secretary of the Air Force ordering him to cease operations of the hurricane reconnaissance program—the hurricane hunter aircraft. Fortunately, through the timely intervention of the chairman and his committee, this order was rescinded. This legislation will ensure that we keep this essential program operating for the safety of the people of my State and all other States subject to these devastating storms.

The second important provision of this bill addresses the Weather Service modernization program. The future modernization plan of the Weather Service will call for the closure of many Weather Service facilities across the Nation as new advanced technology like the NEXRAD radar system comes on line.

Yet some of us have concerns about parts of this new technology. While the NEXRAD system will be a wonderful improvement in some areas of the country, there are a few areas of the country, like my district, where the current modernization plan may actually provide less coverage and warning.

Last year, the chairman and ranking member authorized a hearing in my district with several members of the Science, Space and Technology Committee. Those hearings revealed that the modernization plan could leave my district without the kind of weather coverage it needs during the severe weather that is common in my area.

For this reason, I appreciate the committee including language requiring that the Weather Service certify that there will not be a degradation of service before these vital offices are closed. I also appreciate that this certification must be based on operational evidence. This provision is vital to the safety of the people of my district

Mr. Speaker, the Science, Space and Technology Committee has done a commendable job on this legislation. I urge support for the bill.

Mr. PRICE. Mr. Speaker, I rise today in support of H.R. 4115, a bill reauthorizing the National Oceanic and Atmospheric Administration [NOAA].

In my brief remarks, I would like to address one program within the NOAA—the National Weather Service. Our Natural Resources Subcommittee, under Mr. Scheuer's able leadership, has undertaken a careful investigation of the National Weather Service's ability to detect hazardous weather and to issue timely warnings to the affected areas. Our scrutiny was prompted in part by a devastating tornado that tore through nine North Carolina counties without warning on November 28, 1988, killing four people, injuring 157 others and damaging hundreds of homes and businesses.

I am particularly pleased that this bill includes an amendment that TIM VALENTINE and I have offered to ensure that our severe storm research efforts gives particular attention to storm formations in the Southeast region. In hearings in North Carolina and South Carolina, it became apparent that tornado activity is becoming more frequent in our region. It is essential that we earmark some funds to study this phenomenon especially since eastern storm cells possess a unique character as compared to tornadoes in the West and Midwest where most of the current research is done.

I am also pleased that the bill authorizes sufficient resources to enable the National Weather Service to modernize its vintage equipment. The equipment currently in use is representative of the technology of the 1950's. It is outdated, outmoded, and in many cases, unreliable and inoperative. It is essential that we move quickly to take advantage of the improved forecasting capabilities that the Next Generation Radar System [NEXRAD] and other modernization efforts promise.

The importance of this was again underscored by the tornato in my district. The National Weather Service offices in North Carolina did not provide any advance warning of the tornadoes and no watch was issued prior to the initial tornado. In fact, the Raleigh-Durham radar had been out of service for 8 days, because of a lack of spare parts and spare part modification kits, as well as problems with the spare part distribution system.

Mr. Speaker, by passing this bill we put in place the opportunity to save lives and avoid a repetition of the problems we experienced in North Carolina. I urge my colleagues to support this bill, and I urge the Senate to take up this legislation before adjournment.

Mr. JONES of North Carolina. Mr. Speaker, I rise in strong support of H.R. 4115, the National Oceanic and Atmospheric Administration Authorization Act of 1990. The substitute amendment for H.R. 4115 authorizes programs of the National Oceanic and Atmospheric Administration [NOAA] for fiscal years 1991 and 1992.

The chairman of our Oceanography and Great Lakes Subcommittee, Mr. HERTEL, introduced H.R. 4115 to authorize NOAA's ocean and coastal programs. The bill was referred sequentially to the Committee on Science, Space, and Technology. The substitute bill before you today contains agency-wide authorizations and represents the first omnibus NOAA authorization bill taken up by the House.

The substitute bill authorizes $1.36 billion for fiscal year 1991 and $1.54 billion for fiscal year 1992 for NOAA programs. This includes $470.8 million in fiscal year 1991 and $512.1 million in fiscal year 1992 for ocean and coastal programs. H.R. 4115 authorizes funding for such important marine and Great Lakes programs as oceanic, coastal and Great Lakes research; coastal zone management; the National Sea Grant College Program; and the National Marine Sanctuaries Program.

I am pleased that we were able to work out a substitute bill with the Committee on Science, Space and Technology. I urge the support of the House for passage of this authorizing legislation.

Ms. SCHNEIDER. Mr. Speaker, I rise in support of H.R. 4115, the National Oceanic and Atmospheric Authorization Act of 1990. As an original cosponsor and a member of both committees of jurisdiction, the Science Committee and the Merchant Marine and Fisheries Committee, I am pleased that this critical legislation is moving forward.

NOAA serves a vital function in providing services nationwide. It's mission is indispensable to the adequate understanding and management of our world's resources. H.R. 4115 provides essential support to NOAA's programs, which include important services such as the National Weather Service, ocean and coastal programs, and atmospheric and satellite programs. I am particularly pleased to note the inclusion of language I authored to benefit the Nation, as a whole, and Rhode Island, in particular.

First, under this bill, the *Albatross IV,* NOAA's primary research vessel for the Northeast, will be provided with $1.8 million for reactivation and operation. It has been a proven workhorse for two very important NOAA fishery research labs—one located in Woods Hole, MA, and the other in Narragansett, RI. The *Albatross IV* will contribute immensely to four major research areas: First, assessment of depleted commercial fishery stocks; second, marine mammal research; third, monitoring effects of global climate change; and fourth, monitoring the effects of pollution and habitat loss on offshore ecosystems.

Second, NOAA's estuarine living marine resources [ELMR] project will receive the necessary funds to round out its national mission to develop a comprehensive information base on fish and invertebrates in the 116 estuaries throughout the contiguous United States. The addition of $150,000 to the oceans assessment section will be used specifically to augment the northeast region which includes Narragansett Bay.

Third, the increase of $200,000 for NOAA's coastal ocean management, planning, and assessment system [COMPAS] will establish a pilot project in Narragansett Bay, RI. This innovative and comprehensive computer information and mapping system is designed to manage a variety of coastal resource information and present it in many valuable forms, including maps, graphics, data, and hydrologic models. COMPAS will integrate existing coastal resource information into a single, user-friendly environment and will improve information transfer among the States and the Federal Government.

Finally, this bill provides support for the operation of National Weather Service Stations needed for reliable weather forecasting and national safety. For example, weather was cited as a factor in one-third of all fatal air car-

rier accidents from 1980 to 1984. Concerns have arisen in my own State of Rhode Island with the possibility of closing the State's only weather station at Green Airport. Therefore, I am pleased that my language was included to ensure that no airport weather service station would be closed except where it can be certified that there will be no decrease in the safety of air travel.

Mr. Speaker, in conclusion, I applaud the programs established under H.R. 4115, the NOAA Authorization Act of 1990. I overwhelmingly urge my colleagues to support it.

Mr. DAVIS. Mr. Speaker, I rise in strong support of this legislation and commend Chairman HERTEL for his work in developing and bringing this bill to the floor this year. This bill contains important authorizations for Great Lakes programs within the jurisdiction of the Merchant Marine and Fisheries Committee. Included is $10 million for the preparation of Great Lakes shoreline maps to help government and private citizens alike deal with harmful and costly fluctuating water levels in the Great Lakes. Damage caused by these Lake levels was calculated at over a billion dollars in 1986, and a small program of assistance now can avert future disaster later.

Funding for control and eradication of the zebra mussel is also a part of this bill. As the Fish and Wildlife Service estimates that this exotic species will cost the Great Lakes $1.2 billion over the next 10 years, the $4.5 million provided in H.R. 4115 is an excellent investment. Funding for the Great Lakes Environmental Research Laboratory at Ann Arbor is also restored. This means that the important work that the NOAA scientists there have begun in water pollution and exotic species research can continue.

In addition H.R. 4115 authorizes the National Sea Grant Program for fiscal year 1991. This program has been of great benefit to the Great Lakes States, although stronger attempts should be made to distribute grants to qualified smaller schools and institutions, such as Michigan Technological University, which is especially well situated to conduct research on Lake Superior issues.

The bill also authorizes funds for the Coastal Zone Management Act and NOAA's work in natural resource damage claims in fiscal year 1991. These programs are vital to protecting our coastal areas, and they need funding. Finally, H.R. 4115 creates the Florida Keys National Marine Sanctuary, a worthy area in need of additional protection. I support all these programs and ask that my colleagues join me, Chairman HERTEL, and Chairman FASCELL in supporting this bill.

Mr. HERTEL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SHUMWAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Michigan [Mr. HERTEL] that the House suspend the rules and pass the bill, H.R. 4115, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration, and for other purposes.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HERTEL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks of H.R. 4115, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

AUTHORIZING MARINE BIOTECHNOLOGY RESEARCH, TRAINING, AND TECHNOLOGY TRANSFER STUDY AND PROGRAM

Mr. ROE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5992) to authorize the Secretary of Commerce to conduct a marine biotechnology research, training, and technology transfer study and program.

The Clerk read as follows:

H.R. 5992

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BIOTECHNOLOGY RESEARCH.

(a) STUDY AND REPORT.—The Secretary of Commerce, in consultation with the Director of the National Science Foundation, the Secretary of the Navy, and the heads of other appropriate Federal agencies, shall conduct a study of the status of marine biotechnology research, training, and technology transfer efforts in the United States, and of the comparative status of such efforts undertaken in foreign countries. The Secretary of Commerce, in cooperation with the Director of the National Science Foundation, the Secretary of the Navy, and the heads of other appropriate Federal agencies, shall submit a report to Congress within one year after the date of enactment of this Act on the findings of the study. The report shall make recommendations on future directions for marine biotechnology research, training, and technology transfer, and shall include a plan which identifies each agency's role in funding a Federal program to support marine biotechnology research, training, and technology transfer, and which may include the establishment of marine biotechnology centers by agencies other than the National Oceanic and Atmospheric Administration, but shall not include the establishment of such centers within the National Oceanic and Atmospheric Administration unless specifically authorized by statute enacted after the date of enactment of this Act. Such plan shall not require the National Oceanic and Atmospheric Administration to provide funding for such program.

(b) RESEARCH PROGRAM.—Consistent with the role for the National Oceanic and Atmospheric Administration contained in the plan required under subsection (a), the Secretary of Commerce shall carry out a program of marine biotechnology research, training, and technology transfer. For fiscal year 1992, such sums are authorized to be appropriated from sums otherwise authorized to be appropriated by law.

The SPEAKER pro tempore. Is a second demanded?

Mr. WALKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. ROE] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. WALKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to offer my support, and that of the Committee on Science, Space, and Technology, for the Marine Biotechnology Research Act offered by the distinguished gentleman from Maryland [Mr. MCMILLEN].

I would like to, at the outset compliment Congressman TOM MCMILLEN, the sponsor of the bill, and certainly pay our high regards to the chairman of the full Committee on Merchant Marine and Fisheries, Congressman WALTER JONES, chairman of the Committee on Merchant Marine and Fisheries, and Congressman DENNIS HERTEL, chairman of the Oceanograph and Great Lakes Subcommittee for their support of this measure; also the gentleman from California [Mr. SHUMWAY] for working very diligently on this legislation.

I would also like to thank my colleagues on the Science Committee, Congressman ROBERT WALKER, ranking Republican member of the committee, Congressman JAMES SCHEUER, chairman of the Subcommittee on Natural Resources, Agriculture Research and Environment, and Congresswoman CLAUDINE SCHNEIDER, ranking Republican member of the subcommittee for their support.

The Science Committee strongly supports the development of emerging, cutting edge technologies that have potential economic benefits and/or social value. Marine biotechnology clearly holds such promise.

Few applied technologies have as much potential as the one we are considering today.

This new and exciting science is already beginning to reap rewards, especially in the area of environmental protection.

We have all read about microbes that devour toxic chemicals. These microbes are equipped with genes to ensure that they self-destruct once they have digested all of the toxics present in a crude oil spill.

Current marine biotechnology research is uncovering the molecular process involved in biofouling, the encrusting of marine life such as barnacles on ship's hulls. Biofouling costs this Nation more than $1 billion annually, and present paints and coatings used to control biofouling pose environmental hazards.

The scientific dividends of marine biotechnology are matched only by the potential of this science to improve our international competitive standing. If America can successfully apply this knowledge to the creation of new products and processes, we will have truly gained a competitive edge in the global marketplace.

To exploit the potential of this innovative technology we must have a rational plan for Federal research activity. Mr. MCMILLEN's legislation mandates the development of such a plan for Federal biotechnology research. We need such a coordinated and coherent effort to replace the present patchwork of diverse Federal efforts. Passage of this important legislation will move us toward that goal.

I urge my colleagues to support this important initiative.

Mr. WALKER. Mr. Speaker, the minority has no objection to the passage of this legislation, and I reserve the balance of my time.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Maryland [Mr. MCMILLEN], the author of the legislation.

Mr. MCMILLEN of Maryland. Mr. Speaker, I could not be more pleased that the House is considering today H.R. 5922, an initiative to authorize a Federal Marine Biotechnology Program. At the outset I would like to extend my most sincere thanks to the chairman of the Science Committee, Chairman BOB ROE, for his assistance and guidance in the molding of this legislation. Thanks are also due to Chairman DENNIS HERTEL, chair of the Oceanography Subcommittee of the Merchant Marine and Fisheries Committee, for his invaluable input into the bill.

Today, we have a unique opportunity to seize the initiative, to forge ahead boldly in the area of scientific endeavor. H.R. 5922 calls for the authorization of a governmentwide program for the development of marine biotechnology. To the uninitiated, marine biotechnology may seem to be another esoteric technology. In fact, it is a fascinating science that has the potential to dramatically enhance our quality of life.

Among many other missions, marine biotechnologists will probe the vast potential of the oceans in an effort to improve the human condition and restore the Earth's environment. They will investigate methods of solving the problems surrounding worldwide ocean pollution.

A special research priority among future research centers will be discovering ways in which we can increase our food harvest from the sea. This area is known as aquaculture, and it holds great promise in our efforts to feed the world's population in a cost-effective way.

Looking at this topic from a trade perspective, marine biotechnology has the potential to significantly enhance this Nation's competitiveness in the global marketplace. Currrently we have a 5- to 10-year head start over the Japanese, our nearest competitors, in the area of applied marine biotechnology. However, the Japanese are quickly closing the gap in this economically promising field. Recently MITI, the Japanese Ministry of International Trade and Industry, disclosed that that country has embarked on a $500 million campaign to shore up their research capabilities in this critical scientific area.

This will be accomplished by two state-of-the-art research facilities, both of which are slated for completion in the early 1990's. We cannot let the economic promise of marine biotechnology and its many useful applications go the way of the semiconductor. Decisive, definitive action on the part of this body is necessary to safeguard our competitive advantage in this exciting and potentially beneficial scientific area.

This is why this bill is so critical to scientific progress in this country. Presently our marine biotech efforts are scattered among various different Federal agencies. The effort is plagued by poor coordination and reduced resources. NOAA—the National Oceanic and Atmospheric Administration—is capable of devoting only $100,000 a year to its own in-house research efforts. There is a need for an overarching master plan—one that guides the development of this technology.

Chairman ROE of the Science Committee has often eloquently mentioned to this body that the new wealth of this country will result from scientific advancements. This is an ideal example of a technology that can be exploited for the betterment of the human condition. I urge the adoption of H.R. 5922.

Mr. WALKER. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, the United States has been issued a challenge by Japan in the field of marine biotechnology.

Although American scientists have made many of the initial discoveries in this field, the money that the Japanese are currently capable of pouring into their research efforts, as a result of Government intervention, is enabling them to surpass the United States in the practical application of new information and breakthroughs.

As a result, an article in the Scientist magainze recently warned that, "Just as with the semiconductor and electronic technologies, it may be the Japanese who best exploit what marine biotechnology has to offer and who capture billions of dollars in new seafood, specialty chemical, pharmaceutical, enzyme, and waste detoxification markets." For example, the Scientist further notes that while Americans first discovered the unusual organisms residing in deep-sea hydrothermal vents, the Japanese, through applied research, were able to isolate the first antibiotic from one of these organisms.

Mr. Speaker, the expertise and creativity of United States scientists is crucial to new discoveries in the field, but in the long-run creativity alone cannot compete with continuously higher levels of Japanese funds expended on extensive research. The Japanese Government has taken major steps, along with various private interests, to develop preeminence in the field of marine biotechnology. The Japanese Ministry of International Trade and Industry [MITI], in cooperation with 24 private Japanese companies and banks, have organized the Japanese Marine Biotechnology Institute. The institute, although based largely on American programs and discoveries, and staffed by U.S. trained scientists, will be 10 times larger than anything which exists in this country.

We must develop a national long-term plan to support marine biotechnology research, training, and technology transfer here in the United States. H.R. 5922 seeks to accomplish this worthy goal. As a starting block for the United States to retain our advantage in the field of marine biotechnology, I urge all my colleagues to support this bill.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SCHEUER], the chairman of the Subcommittee on Natural Resources, Agricultural Research and Environment.

Mr. SCHEUER. Mr. Speaker, I rise in support of H.R. 5922 which would authorize a study and a program of marine biotechnology research.

I want to especially express my thanks to the sponsor of this act, the gentleman from Maryland, who has been such a truly creative thinker and leader on the Committee of Science, Space, and Technology.

I visited the gentleman's Marine Biotechnology Exhibition in Baltimore at the aquarium down there, and it is a phenomonal achievement. Certainly the gentleman is pointing the way not only in what the city of Baltimore has done, but in his initiative and his driving leadership to the cause of getting the United States into the competition on marine biotechnology.

Mr. MCMILLEN of Maryland. Mr. Speaker, will the gentleman yield?

Mr. SCHEUER. I yield to the gentleman from Maryland.

Mr. MCMILLEN of Maryland. Mr. Speaker, I want to thank the gentleman from New York for conducting a hearing in Baltimore sometime ago on this subject, and certainly thank the gentleman for his leadership on these areas of new wealth, as well.

Mr. SCHEUER. Mr. Speaker, I thank the gentleman for his comments, and I do wish to commend him in the strongest terms for his outstanding leadership, foresight, insight, and imagination.

Mr. Speaker, I rise in support of H.R. 5922, which would authorize a study and a program of marine biotechnology research, and I commend the sponsor of the act, the distinguished Representative from Maryland, Mr. MCMILLEN, for his foresight in introducing this bill.

Mr. Speaker, the powerful new scientific tools afforded by biotechnology are beginning to move from scientific discoveries to practical applications. Nowhere are the breakthroughs more exciting than in the field of marine biotechnology.

While the United States has been sluggish in committing resources to marine biotechnology research, Japan has launched a major new initiative. Japan plans to spend more than $500 million in the next decade or marine biotechnology.

We should not sit back and let another innovative industry slip through our fingers. We must renew our commitment to competitiveness in emerging technologies.

The legislation introduced by the distinguished gentleman from Maryland [Mr. MCMILLEN], moves us toward the development of a national plan for the exploitation of this emerging industry. I urge my colleagues to support this important legislation.

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Mr. ROE. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Speaker, I want to thank the gentleman from New Jersey [Mr. ROE] and the gentleman from Pennsylvania [Mr. WALKER] for their leadership on this committee and for bringing this very important legislation to the floor of the House.

I particularly want to congratulate my colleague and friend, the gentleman from Maryland [Mr. MCMILLEN] for his leadership in this area.

Mr. Speaker, through recent years we in Maryland have watched the genesis of a most exciting industry—biotechnology. Growing out of high-technology research in a variety of disciplines, biotechnology holds the promise for wide ranging advances—from microorganisms that can consume urban waste and turn it into a vast energy source, to enhancements of the world's food supply.

Maryland has been a leading center for biotechnology research in this Nation with a long list of institutions involved, including: the Johns Hopkins University and Medical System; the Hopkins—owned Dome Biotechnology Industrial Park; the University of Maryland's Biotechnology Institute, Medical Center, and Biotechnology Engineering Center; as well as the National Institutes of Health, the National Bureau of Standards, the Food and Drug Administration, and a host of other Federal agencies.

Marine biotechnology is one of the most promising facets of this young industry. The Center for Marine Biotechnology in Baltimore, part of the University of Maryland's Biotechnology Institute, had been a pioneer in this field under the direction of Dr. Rita Colwell. Over the past decade work has been pursued on such widely divergent projects as using the flora and fauna of the ocean to produce diagnostic test kits to measure the purity of drinking water, alter naturally occurring organisms to enable them to clean up ocean pollutants, and advance aquaculture to help fish, oysters, and other shellfish grow faster and bigger, rid them of disease, and improve seafood harvests.

The United States is the global leader in biotechnology today, but our position is not unchallenged. In fact, the Japanese Ministry of International Trade and Industry [MITI] recently invested some $500 million in marine biotechnology alone. Two new research centers will open in Japan within the year. A 1989 Food and Drug Administration study showed 54 United States companies with 97 products in the clinical testing stage or beyond; but at the same time the Japanese were also advancing in the field with 24 companies having 42 products at the same stages of development.

While there is a great deal of progress being made in this field currently, the need for greater Federal involvement and the focus it can provide is real. This authorization has my full support as it will serve to secure the United States' position in this most promising industry. The Committees on Merchant Marine and Fisheries, and Science, Space, and Technology are to be congratulated for their leadership in this field.

Mr. WALKER. Mr. Speaker, I yield back the balance of my time.

Mr. ROE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. ROE] that the House suspend the rules and pass the bill, H.R. 5922.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 5922, AUTHORIZING A MARINE BIOTECHNOLOGY RESEARCH, TRAINING, AND TECHNOLOGY TRANSFER STUDY AND PROGRAM

Mr. ROE. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill (H.R. 5922) to authorize the Secretary of Commerce to conduct a marine biotechnology research, training, and technology transfer study and program, the Clerk be authorized to make such technical and conforming changes as may be necessary to reflect the actions of the House in passing the bill, H.R. 5922.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

IMPROVING AND CLARIFYING ARCTIC RESEARCH AND POLICY ACT OF 1984

Mr. ROE. Mr. Speaker, I ask unanimous consent that the Committee on Science, Space, and Technology be discharged from further consideration of the Senate bill (S. 677) to amend the Arctic Research and Policy Act of 1984 to improve and clarify its provisions, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from New Jersey?

Mr. WALKER. Reserving the right to object, Mr. Speaker, and I shall not object, I just rise in support of the bill and to indicate that the Office of Management and Budget has no objection to the bill and the amendment.

Mr. ROE. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from New Jersey.

Mr. ROE. Mr. Speaker, I thank the gentleman from Pennsylvania for yielding to me.

Mr. Speaker, the bill, S. 677, amends the Arctic Research and Policy Act to improve the operations of the Arctic Research Commission, which was created by the act. The proposed changes to the act were recommended by the Arctic Research Commission and were put forward in a legislative proposal by Mr. YOUNG in H.R. 2317 and by Senators MURKOWSKI and STEVENS in S. 677.

The Arctic Research and Policy Act establishes both the Commission and the Interagency Arctic Research Policy Committee. These bodies are charged with developing and implementing a comprehensive, coordinated research policy to guide the Nation's scientific activities in the Arctic. The proposed technical amendments to the act are to facilitate the work of the Commission and interagency committee, and the proposed changes are supported by both bodies. The legislation would expand the Commission from five to seven members to broaden the range of scientific representation, as well as allow the Commission to call on outside specialists as needed for technical support. Changes are also proposed in reporting requirements to Congress that will help make the interagency committee more responsive to the Commission's recommendations.

Mr. Speaker, the amendments proposed in S. 677 to the Arctic Research and Policy Act will enable the Commission and interagency committee to perform their statutory duties more effectively and thereby help the Nation maintain a vigorous research program in a region of great scientific interest and economic importance. I urge my colleague to support passage of S. 677.

Mr. WALKER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Speaker, I want to compliment the chairman and the ranking member of this committee for bringing this legislation to the floor. As a sponsor of H.R. 2317, which is the companion bill to S. 677, the recognition of the Arctic, and we have had a lot of comments, a lot of scientific research, a great deal of international interest in the Anarctic, but the recognition of the Arctic and the role it will play and the well-being of the rest of the world, as well as the United States, the proximity to our neighbor, Russia, also the great abundance of resources that should be available to the people of the United States. As everybody knows, in the Arctic we have vast quantities of oil beneath the cap and near the cap that have not been developed nor explored, which are needed in this country, so that we would not have to be dependent on the Mideast, if they were properly developed.

So I want to compliment the gentleman for bringing this bill to the floor. I am sure the studies will show that it is to go forth with the Arctic to be the provider for the resources of the Nation.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The clerk read the Senate bill, as follows:

S. 677

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of a provision, the reference shall be deemed to be made to the Arctic Research and Policy Act of 1984.

SEC. 2. Section 103(b)(1) (15 U.S.C. 4102(b)(1)) is amended—

(1) in the text above clause (A), by striking out "five" and inserting in lieu thereof "seven";

(2) in clause (A), by striking out "three" and inserting in lieu thereof "four"; and

(3) in clause (C), by striking out "one member" and inserting in lieu thereof "two members".

SEC. 3. Section 103(d)(1) (15 U.S.C. 4102(d)(1)) is amended by striking out "GS-16" and inserting in lieu thereof "GS-18".

SEC. 4. (a) Section 104(a) (15 U.S.C. 4102(a)) is amended—

(1) in paragraph (4), by striking out "suggest" and inserting in lieu thereof "recommend";

(2) in paragraph (6), by striking out "suggest" and inserting in lieu thereof "recommend";

(3) in paragraph (7), by striking out "and" at the end thereof;

(4) in paragraph (8), by striking out the period and inserting in lieu thereof a semicolon; and

(5) by adding at the end thereof the following new paragraphs:

"(9) recommend to the Interagency Committee the means for developing international scientific cooperation in the Arctic; and

"(10) not later than January 31, 1991, and every 2 years thereafter, publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 107 in the performance of its duties.".

(b) Section 104(b) is amended to read as follows:

"(b) Not later than January 31 of each year, the Commission shall submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.".

SEC. 5. Section 106 (15 U.S.C. 4105) is amended—

(1) in paragraph (3), by striking out "and" at the end thereof;

(2) in paragraph (4), by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) appoint, and accept without compensation the services of, scientists and engineering specialists to be advisors to the Commission. Each advisor may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims) of the United States Code, an advisor appointed under this paragraph shall not be considered an employee of the United States for any purpose.".

SEC. 6. Subsection (b)(2) of section 108 (15 U.S.C. 4107(b)(2)) is amended to read as follows:

"(2) a statement detailing with particularity the recommendations of the Commission with respect to Federal interagency activities in Arctic research and the disposition and responses to those recommendations.".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 987, TONGASS TIMBER REFORM ACT

Mr. MILLER of California. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 987) to amend the Alaska National Interest Lands Conservation Act, to designate certain lands in the Tongass National Forest as wilderness, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

Mr. SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement, see proceedings of the House of October 23, 1990.)

The SPEAKER pro tempore. The gentleman from California [Mr. MILLER] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MILLER].

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the conference report on H.R. 987, now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the conference report on H.R. 987, the Tongass Timber Reform Act.

Few matters have received more attention from the Interior Committee over the years than the debate over management of the vast public lands in the State of Alaska. Due largely to efforts of Chairman UDALL and the Interior Committee, the landmark Alaska National Interest Lands Conservation Act of 1980 set aside over 100 million acres in new or expanded national parks, wildlife refuges, and wilderness areas.

The conference report on H.R. 987 takes care of unfinished business from ANILCA. Since 1980, it has become increasingly clear that the Alaska Lands Act failed to establish a reasonable balance between timber harvest and other uses of the resources of the Tongass National Forest.

Mr. Speaker, this conference report is a true compromise. Not everyone will be satisfied. The House bill provided for tougher restraints on the timber industry and more lands protection. The Senate bill had provided for fewer reforms and set aside less lands. In merging the two approaches, the conference committee has produced strong, comprehensive reform legislation aimed at curbing the abuses which have long plagued our Nation's largest national forest.

Key features of H.R. 987 as reported from conference are elimination of the $40 million permanent fund and 4.5 billion board feet per decade timber supply mandate, increased buffer protection for salmon streams, mandated changes in the long-term timber contracts, and permanent protection for over 1 million acres of critical fish and wildlife habitat.

Mr. Speaker, I want at this time to acknowledge our colleague BOB MRAZEK who is the original sponsor of this legislation and who deserves the credit for its success. I also want to thank the other conferees, especially Mr. GEJDENSON and Mr. VENTO, who deserve special recognition for their chairing hearings and laying the groundwork for this legislation.

Mr. Speaker, I would also like to recognize the input of the members of the Agriculture Committee who have been terribly helpful in getting this bill to the floor, the gentleman from Indiana [Mr. JONTZ], the gentleman from Kansas [Mr. GLICKMAN], and the gentleman from California [Mr. BROWN], all of whom debated this issue in the Agriculture Committee and helped with it during the floor debate on this important matter when it was before the Congress earlier this year.

I want to express my gratitude for the tireless work of Bart Koehler and the Southeast Alaska Conservation Council on Tongass reform. Quite simply, Mr. Speaker, we would not be here on the House floor today without SEACC. Fighting a seemingly unwinnable battle against powerful timber interests and the entrenched bureaucracy of the Forest Service, this remarkable coalition of small communities, fishermen, and other concerned Alaskans has prevailed.

Also, Mr. Speaker, we would not be here without the work of staff members, Dan Kish and Rick Agnew from the minority side representing the office of the gentleman from Alaska [Mr. YOUNG]; the minority members of our committee, Dan Kish and Rick Agnew and my own staff person from the subcommittee, Jeff Petrich, who worked tirelessly on this effort.

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Finally I guess I would like to recognize the gentleman from Alaska [Mr. YOUNG].

I would say to my colleagues that one of the more difficult tasks in this Congress is representing a State the size of Alaska with its diverse interests, being a single-Member delegation from that State. While it represents an area in size almost equal to some 25 percent of the land mass of the lower 48 States, it has only one Representative in this body. Yet we find that so many of our national policies crisscross that State, whether it is defense policy, environmental policy. Alaska very often becomes the focus of those debates and those discussions.

I want to say that Mr. YOUNG has adequately and properly represented his constituency in Alaska on this matter. The manner in which he conducted himself throughout the deliberations in the Committee on Interior and Insular Affairs and on the floor of this Congress and in the conference committee helped us provide a compromise that I think recognizes the diverse constituency around the Tongass and the multiple uses necessary in the Tongass so that all Alaskans may benefit from this legislation, from those who enjoy it to those who must make their living within the Tongass.

It has been a long and tortuous trip to get us here, many, many years of deliberation and discussion. Mr. YOUNG has been at the center of those debates throughout the discussions within this Congress.

Mr. Speaker, I have additional comments on specific provisions of the conference report which I will insert in the RECORD.

TITLE I—FOREST MANAGEMENT PROVISIONS

SECTION 101. TO REQUIRE ANNUAL APPROPRIATIONS FOR TIMBER MANAGEMENT ON THE TONGASS NATIONAL FOREST

The Conference Report amends section 705(a) of ANICLA to repeal the $40 million permanent appropriation and to eliminate the unrealistically high and uneconomic mandate that the Forest Service make available 4.5 billion board feet of timber per decade. As amended, section 705(a) makes absolutely clear that the Tongass timber program is subject to the appropriations process and every law applicable to national forest management. The phrase "other applicable law" also includes provisions, such as the subsistence requirements of Title VIII of ANILCA, which are unique to Alaska.

Pursuant to section 705(a) as amended by the Conference Committee, the Forest Service is directed to seek to meet market demand for timber "to the extent consistent with providing for multiple use and sustained yield of all renewable forest resources". Included within the scope of "renewable forest resources" is fish and wildlife habitat. This language requires the Forest Service to meet the needs of resource based industries other than timber—including commercial fishing, sport hunting, sport fishing, and tourism—and provide for noncommodity uses of forest resources for subsistence and recreation.

The revised section 705(a) puts a halt to the Forest Service's "timber first" approach to managing the Tongass. The Forest Service originally interpreted ANILCA section 705(a) as a mandate to offer 450 million board feet of timber annually, no matter what the market demand, impact on other multiple uses, or cost to the taxpayers. As amended, section 705(a) requires that timber sale offerings, even if consistent with other resource needs and sustained yield principles, must not be in excess of actual market demand.

The net effect of section 705(a), as amended, is to assure Tongass planning and management does not give timber harvest priority over other uses of the national forest. Given the overwhelming sense of Congress that the Forest Service has mismanaged the Tongass, the burden is now on the agency to prove that it can be responsive to the changing public views of how—and for what purposes—this forest should be managed. The era of preferential treatment for a single commodity, timber, is over.

SECTION 102. IDENTIFICATION OF LANDS UNSUITABLE FOR TIMBER PRODUCTION

The Conference Report amends section 705(d) of ANILCA to clarify that lands should not be excluded from harvesting for economic reasons alone in the suitability analysis required under section 6(k) of the National Forest Management Act of 1976 ("NFMA"). This limited exemption gives the Forest Service some flexibility to allow for the harvesting of marginal timber stands. Section 102 is consistent with Congress' intent to redirect the Forest Service away from its past course of promoting the excessive harvesting of the highest volume old-growth timber from the Tongass.

The section 6(k) provision is clearly not a mandate that "below cost" timber sales be required in perpetuity. The costs and benefits associated with inclusion of economically unsuitable timber in the harvest schedule should be fully evaluated in relevant planning documents and budget submissions to Congress.

SECTION 103. FISHERIES PROTECTION

Section 103 of the Conference Report provides for a minimum 100-foot buffer strip on each side of anadromous stream systems (Class I) and tributaries with resident fish (Class II). The House bill protected other significant tributaries (Class III) with mandatory 100-foot buffers, but the Conference Committee agreed to allow such buffers to be established according to the "best management practices" of the Forest Service.

The buffer language was modeled after the National Marine Fisheries Service's recommendations. While the Conference Committee has allowed for some flexibility on Class III streams, it is with the clear expectation that the Forest Service will assure protection of riparian habitat and water quality. To condemn Class III waters to improper harvesting techniques, such as cutting to streamside, would be absolutely contrary to the intent of Congress.

Over 90 percent of the salmon commercially harvested in Southeast Alaska are spawned and reared in the streams and lakes of the Tongass National Forest. The forest's riparian habitat supports a renewable resource of great significance to the Southeast Alaskan economy. While the Forest Service is on record as opposing mandated buffer zones, it is the Congress' expectation that the agency will now faithfully execute the law and devote its energies in the future to protecting lakes and streams of the Tongass beyond the statutory minimum requirements.

SECTION 104. FUTURE REPORTS ON THE TONGASS NATIONAL FOREST AND CONSULTATION

The Conference Report amends section 706(b) of ANILCA to require the Forest Service to report to Congress on the impacts of timber harvest on subsistence, wildlife and fisheries habitats. The Forest Service must also consult with the Southeast Alaska commercial fishing organizations in preparing management status reports for Congress.

To date, the Forest Service has a serious credibility problem with the public, the courts, and the Congress when it dismisses the negative impacts of the timber industry's operations in the Tongass. It is simply outrageous that the multi-million dollar draft Tongass Land Management Plan Revision perpetuates the agency's fantasy that—no matter how much of the Tongass is harvested—no adverse impacts whatsoever occur for fisheries, recreation or subsistence. Section 104 is included in the Conference Report in an effort to encourage the Forest Service to provide more comprehensive, and candid, information about the status of the Tongass.

SECTION 105. SMALL BUSINESS SET ASIDE PROGRAM

Section 105 of the Conference Report contains two provisions which are intended to assist the development of small businessess in the Tongass. In Reid Brothers Logging Company v. Ketchikan Pulp Company and Alaska Lumber and Pulp Company, the Federal courts held in 1981 that the two long-term contract holders systematically violated the anti-trust laws over a 16-year period and drove many small timber companies out of business.

The Conference Report's small business provisions, in addition to the long-term contract modifications, are intended to encourage fair competition in the Southeast Alaska timber industry. Section 105(c) was added to the Conference Report in order to make clear that the small business programs shall not benefit the holders of the long-term contracts or their affiliates.

SECTION 106. TENAKEE SPRINGS ROAD

The Conference Report prohibits the Forest Service from connecting Tenakee Springs with the logging road system on Chichagof Island. The need for Congress to intervene in this matter illustrates the Forest Service's insensitivity to the desires of small communities in Southeast Alaska.

TITLE II—TONGASS NATIONAL FOREST LANDS PROTECTION

The Conference Report provides for the permanent protection from commercial timber harvest of 18 areas comprising over 1 million acres. Six areas totaling approximately 300,000 acres are protected as wilderness and 12 areas totaling approximately 718,000 acres are protected according to the Tongass Forest Plan management criteria of Land Use Designation II ("LUD II").

The House conferees felt strongly that more acres should have been protected and more Wilderness designated than in the Conference Report. In particular, key portions of Upper Hoonah Sound, Nutkwa, West Duncan Canal, and tributaries to Salmon Bay Lake were not included in the lands protected by the Conference Committee. The House conferees also argued that areas such as Kadashan should have been designated Wilderness.

However, the Conference Committee has produced a reasonable compromise by permanently protecting many of the most important areas from the House bill. The values of the areas in the House bill are described in the Interior Committee report on H.R. 987 (Rept. 101-84, Part 1). It is important to note that the areas which have not been protected by the Conference Committee remain subject to the Tongass Land Management Plan revision and may be placed off limits to commercial timber harvest in that process.

The specially designated LUD II areas will require careful and prudent management by the Forest Service. As adopted by the Conference Committee, the primary management directive is that LUD II areas "are to be managed in a roadless state to retain their wildland character". While LUD II designation permits certain specified activities not allowed in Wilderness, it is clear that the overriding priority is to protect these areas of critical fish and wildlife habitat by discouraging unnecessary development (such as road corridors) and requiring that permitted development (such as mining on patented claims) be limited in scope to be compatible with the area's wildland character. Other allowed activities (such as personal use of wood), should not be abused so as to undercut the protected status of the LUD II areas and degrade their natural integrity.

TITLE III—MODIFICATION OF LONG-TERM TIMBER SALE CONTRACTS IN ALASKA

Instead of canceling the long-term timber contracts with the Ketchikan Pulp Company and the Alaska Pulp Corporation as provided for in the House bill, the Conference Report modifies the contracts as set forth in nine specific reform directives.

As identified by the Forest Service's Reid Brothers Review Team and explained in detail in the Interior Committee's report on H.R. 987 (Rept. 101-84, Part 1) the long-term contracts vary substantially from standard short-term, competitively bid independent national forest sales. Despite a specific Congressional directive in section 15(b) of the National Forest Management Act of 1976, the Forest Service has failed to eliminate the inequities between short-term sales and long-term contracts in Alaska. In particular, the long-term contract holders have paid substantially lower stumpage rates for Tongass timber.

In order to assure that valuable public resources in the Tongass are protected and wisely managed and in order to promote fair competition, the Conference Report finds that it is in the national interest to modify the long-term contracts. The basic source for the Conference Report's modifications is the recommendations of the Forest Service's Reid Brothers Review Team.

Section 301(c)(1) is intended to standardize timber sale administration on the Tongass. For example, unlike short-term sale procedures, clearcut units under the long-term contracts are not completely surveyed, marked, cruised and appraised before completion of environmental assessment procedures or even before formal release to the contract holder. This provision would require the Forest Service to change its management practices.

Paragraph (2) prohibits "high-grading" or harvesting a disproportionate amount of the highest volume, best quality Tongass timber. This provision mandates that the highest volume timber stands be harvested only in proportion to the extent that they currently exist in each contiguous management area (141 management areas were designated by the 1979 TLMP). This assures that there will be a non-declining even flow of the highest-volume old-growth timber over the 100-year rotation. Only the highest-volume old-growth stands that are currently in the timber base of a management area shall be used in determining the proportionate rate of harvest.

The high-grading prohibition is extremely important. It constitutes one of the most critical reforms in both the long-term contracts and Forest Service management practices. The intent is to spread the harvest of the highest volume timber over the rotation, thus providing for sustained yield of the Tongass resources. The TLMP schedule, which provides for a disproportionate harvest of the best timber in the earliest decades of the timber rotation, must now comply with this paragraph.

Paragraph (3) prohibits the Forest Service from offering additional timber to the long-term contract holders unless they have substantially harvested all the timber released within three years, unless and only to the extent that specific harvests are blocked by third-party lawsuits. This provision will stop the contract holders from amassing backlogs of timber while cutting only the best stands.

Paragraph (4) requires the Forest Service to determine the location, size and timing of harvests. This provision stops the practice of allowing the contract holders to dictate precise locations of harvests in the field. The differences between the planned timber harvests set forth in environmental assessments and what is actually harvested has been substantial. It is intended that the Forest Service strictly control any changes in harvest unit location, size and timings and that such changes be in compliance with NEPA and fully disclosed to the public.

Paragraph (5) requires that timber rejected by a contract holder be subtracted from the volume remaining under the appropriate contract. It is the intent of this provision that the Forest Service make every practicable effort to sell rejected timber, especially to independent small businesses in Southeast Alaska.

Paragraph (6) provides that all utility logs offered under the long-term contracts shall be fully counted against the respective contract volume requirements. This will require an accounting of all utility logs delivered in the past to the contract holders.

Paragraph (7) directs that the Forest Service allocate purchaser road credits—which are discounts in timber prices in return for logging road construction—in the same manner that is used in the standard,

short-term sales program. Unlike short-term sale purchasers, the contract holders have been allowed to "bank" road costs which exceeded the value of the timber purchased. This provision would prohibit that practice.

Paragraph (8) constitutes the most important reform of the long-term contracts. Under this provision, the unfair pricing advantage which the contract holders have enjoyed for decades is eliminated. The Forest Service is required to increase the price of timber released to the long-term contract holders to reflect the prices that would be received in competitively bid timber sales. The provision is also intended to incorporate the findings of the Reid Brothers Review Team pricing validation report which determined that the prices used to appraise timber under the long-term contracts were not based on arms length transactions.

Paragraph (9) prohibits the Forest Service from supplying the contract holders with timber of higher value or quality than timber offered to all other purchasers under the standard, short-term sales program. This provision is intended to specifically eliminate any long-term contract provision which provides for "mid market" timber or any other guarantee of timber which exceeds the standard offering to short-term purchasers. This provision is intended to make absolutely certain that high-grading will be not be perpetuated on the Tongass.

Section 301(d) of the Conference Report requires the Forest Service to implement the mandates of this section by making the necessary revisions to the text of the long-term contracts. This duty is purely ministerial. The Forest Service's sorry record of failure to achieve fundamental reforms in the long-term contracts necessitates this approach. To assure that the Forest Service does not hinder in any way implementation of the reforms, section 301(g) of the Conference Report provides for an audit by the General Accounting Office and compliance report to Congress.

No later than ninety-days after date of enactment, the Forest Service is required to submit the text of the revised contracts to Congress along with a certification that the revisions are in compliance with this section. After 90 days, the Forest Service has absolutely no authority to release timber to the long-term contract holders under terms other than those set forth in this section. It is important to note that, should the contract holders sue to enjoin implementation of the section, the Forest Service can not release timber under the "old" contract terms.

Section 301(e) requires the Forest Service to conduct a comprehensive assessment of whether multiple use and sustained yield needs can be met consistent with providing the volume of timber allowed under the modified contracts. The Forest Service is also required to study the potential impacts of eliminating the two monopoly contract areas. The study, along with the Forest Service's recommendations, shall be submitted to Congress no later than one year after date of enactment.

These provisions are of particular significance to the House conferees who remain skeptical that true contract reform can be achieved without addressing the issues of contract volumese and monopoly areas.

Section 301(f) is an important directive to the Forest Service to take any other actions necessary, beyond revising the text of the long-term contracts, to change management practices to be consistent with this section. For example, high-grading should be stopped, whether by the long-term contract holders, or by independent operators. The Forest Service is also encouraged to carry out the intent of this reform legislation by going beyond the bare minimum requirements. As just one example, the Forest Service could address the Congressional concern about the conflicts between contract volume requirements and multiple use, be engaging in a cooperative effort with the State of Alaska to fully utilize private timber and the vast amount of beach logs as alternative sources of wood fiber for the pulp mills.

TITLE IV.—HAIDA LANDS SELECTIONS

Section 401 of the Conference Report allows the Haida Corporation to accelerate selection of 5,800 acres of land in the area of Sultzer Portage. While section 401(d) expressly prohibits the Haida Corporation from exercising additional selection rights in the Nutkwa LUD II area, it is not anticipated that the Haida Corporation will select additional acreage in any of the areas protected by this legislation.

TITLE V.—MISCELLANEOUS PROVISIONS

Section 602(a) of the Senate bill directed the Forest Service to engage in negotiations with the Sealaska Corporation involving an exchange of certain lands in the Greens Creek area of Admiralty Island National Monument. According to Secretary Yeutter's letter to the Conferees dated October 11, 1990, an exchange is necessary to allow expansion of the existing Greens Creek mine operation. According to Secretary Yeutter, the Forest Service is engaged in ongoing negotiations with the Sealaska Corporation concerning a Greens Creek land exchange.

Section 602(a) was dropped by the Conference Committee. However, this change was made without prejudice to ongoing negotiations between Sealaska and the Forest Service. A fair value exchange of the Greens Creek assets, especially if the United States acquires significant surface estate in the trade, could well be in the national interest. The Greens Creek exchange, including the mine oeprator's claims to extralateral rights to develop minerals on federally owned lands within Admiralty Island National Monument, should receive serious attention in the next Congress.

Section 502(b) of the Conference Report directs the Forest Service to negotiate with three Alaska Native Corporations in order to acquire privately owned inholdings with the Cube Cove area of Admiralty Island National Monument. The first priority of the negotiations, which reflects a longstanding interest of the Interior Committee, is to protect the unharvested Lake Florence drainage. It is intended that the Forest Service take this directive seriously and to submit to Congress an acquisition proposal which is a fair deal for the taxpayers.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank the chairman of the subcommittee, the gentleman from California [Mr. MILLER], for those kind words. It, however, makes it difficult for me to follow my script. I am going to suggest, Mr. Speaker, that what has been said here is partially true in the sense that this is an amendment to the Alaska National Lands Act of 1980.

Mr. Speaker, most of those people in this room were not here in 1980, when the Alaska National Lands Act literally set aside 100 million acres for what we call exclusive use in parks and refuge. In that it also added 5½ million acres of the 17½ million acres in the Tongass Forest. At that time we were told these were the pristine acres that must be set aside, the old-growth timber, the rainforest will be preserved.

We though at that time we had accomplished a working solution to a problem, recognizing the need of the working Alaskan, the logger, the store owner, the school teacher, and the student himself.

We thought we had reached that solution by setting aside 5½ million acres that never was ever written about or talked about how much land was set aside in 1980. Well, we did that, thinking we had reached a compromise at that time.

I am not going to lay the blame for this on the chairman's back because, very frankly, he came after that fact. He did not live through that period of time.

Mr. Speaker, there are those groups who, at that time, said, "Well, that is not enough, we are going to give some more." They came down with a bill, and I will say this, a bill that was so onerous that it makes it hard for me to talk when I think about it.

It is a bad bill, was a bad bill, it passed this House overwhelmingly because of the pressure. But it was not the large timber companies, it was the environmental groups across this Nation not understanding what they were doing to the Alaskan people. And it passed. And it went over to the Senate side.

I thought the Senate itself, and I may mention the Senate because I have two colleagues over there, I think they did a very good and admirable job.

I will say that what came out of this is not a compromise. Let us make it perfectly clear; it was a compromise between the Senate bill, it was a compromise between the House bill, but it was not a compromise with the 1980 act.

I will tell you what this bill really does; it does break the 1980 deal, it takes an additional 1 million acres of land out of forest management and multiple use, it closes 300,000 acres to mining in southeast Alaska, one of southeast Alaska's most promising economic diversifications; it unilaterally changes some aspects of the contracts in the only year-round private industry in southeast Alaska and threatens Alaska's third largest industry. It throws out the forest laws passed by the Congress which applied

to every forest in the country and replaces that with the forest management preferred, quite frankly, by some of those on the Hill.

It once again proves that Alaska is being treated like a colony or a territory rather than as a State of the Union.

Mr. Speaker, again may I say if we did not even act on this bill, 90 percent of the Tongass would be off limits to timber, 90 percent. What this does is add 1 million acres, and very frankly then just 92 percent will be off limits.

What has bothered me, and I hope we have the assurance of my chairman, is that the working person of America has to be considered when we pass these environmental pieces of legislation. And I truthfully will suggest I do not think they have been really considered.

What concerns me the most, Mr. Chairman, I hope I can indulge in a colloquy with the chairman of the subcommittee: As I mentioned a little earlier, we set aside 5½ million acres of wilderness in the Tongass. And now we set aside another million acres.

As the chairman of the committee which handles Alaskan issues, the gentleman from California [Mr. MILLER], I hope that I can ask the gentleman a direct question that we will not be revisiting this issue next year or the year after that or the year after that or the year after that, so that there is some reliability of where my people are going to be in the working field.

Mr. Speaker, will the gentleman please address that issue at this time and see where we are?

Mr. MILLER of California. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from California.

Mr. MILLER of California. I thank the gentleman for yielding.

Mr. Speaker, I would say, as manager of this legislation, it is our belief that this is in fact a true compromise, that while there were parties and organizations on one side that wanted more wilderness, there were clearly parties, organizations, and entities on the other side that wanted a reduction in those areas.

We believe we have put together a compromise that brings some finality to this issue, and that is based upon the fact that this is a good-faith compromise between members of this committee, the minority members of this committee, the Members of the Senate and all of the entities which have been involved in this debate over the last 5, 6, 7 years.

It is not our intention to revisit this issue, provided that the spirit and the intent of this legislation is carried out, and I believe that it will be.

I think that speaks for itself. This is not a conclusion that was arrived at lightly by any party to these deliberations. Everybody had to give up something.

But the purpose of arriving at this compromise was to settle this issue, and I would say that that is the intent of myself, and I believe I speak for others who have struggled with this from this side so terribly long.

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Mr. YOUNG of Alaska. Mr. Speaker, what concerns me is immediately upon the conference, and I want to compliment the chairman and his work with the conference, immediately upon filing the conference report we had comments on how mention from the Wilderness Society and from much of those other groups said it is a good beginning, and that so much bothers me that, if that is a good beginning, then, very frankly, we ought not have the legislation because they want more, and more, and more on settling factors for people of my State because it is more apparent each day. So, he is the chairman of the committee, and I am going to take his word as a fellow colleague that this will be not revisited next year because the Wilderness Society wishes to do it, or Friends of the Earth, or whatever much of those bunch of people that live in this Hill, around this Hill, trying to, very frankly, put the American people out of work.

Mr. Speaker, I am going to suggest one thing we have got to start doing around here is start thinking about workers. We hear people down in the well talking about workers and how we got to protect American jobs when we got people taking jobs away from Americans every day. True environmental action.

I want to ask my colleagues, "Who are these environmental groups? What are they made of?" They are white, they are well-educated, and they have got theirs, and they don't let anybody else have any of their own.

Mr. Speaker, I do not see any of the homeless or impoverished. I do not see any migrants. I do not see any of those people come to this country because it is a great country. I do not see those people. I see those that have it, and I get very upset, Mr. Speaker, when I start talking about hearing people on that side of the aisle, very frankly, saying we have to protect the environment, and yet we have got to protect American jobs. We cannot do it by locking up resources. We cannot do it by locking up land.

So, Mr. Speaker, I am going to suggest this still is not a good bill. It is bad legislation. It is better than what passed the House, and I will admit that, but it still affects American workers in Alaska and workers in Alaska, and this is just a stepping stone. Every time I hear any body in this floor talk about we have to set this amount of land aside without consideration of the individuals. I think it is wrong, as I said before, and it is, very frankly, un-American.

Mr. Speaker, I said that in the Niobrara River argument and I said it before. When we take away the rights of individuals in this country to make a living, it is not correct for this body to do so.

I rise in the strongest opposition to the conference report on H.R. 987, the Tongass Timber Reform Act. This is not, as some maintain, a compromise. There is no compromise to it. The antijobs environmental elitists get the gold mine, and the working men and women of Alaska get unemployed.

The name of this bill should be "it's never enough." Back in 1980, environmentalists wouldn't stop until they got 5.4 million acres of wilderness in huge chunks. They even agreed to automatic funding to build roads in the Tongass to access timber for industry on the remaining land in return for wilderness. But that wasn't enough. The ink wasn't even dry on the Alaska Lands Act before they were complaining about timber harvesting on the rest of the Tongass. Then they complained about the automatic funding they agreed to—it just wasn't enough. So they got someone from Long Island to introduce a bill to cut off the automatic funding. But that wasn't enough. They wanted more land. The local communities in southeast Alaska got together and came up with a settlement that would have banned timber harvest on 673,000 acres important to communities. Environmentalists praised the compromise, and the Senate made it their bill after it was endorsed by the Governor and the legislature. But it wasn't enough. This bill almost doubles that local solution, and is a slap in the face to the local people of southeast Alaska. But how much of the Tongass is already protected from timber harvest? A quarter? A third? A half? How about 90 percent. That's right; 90 percent of the Tongass is off limits without this bill. This bill says to the workers in southeast Alaska that 90 percent for recreation and tourists isn't enough; 10 percent for your job is too much.

This bill will be a good test of the Democratic Party's plant-closing bill. They say they're for the working man and woman, and they are—unless the working man or woman is doing something their most pampered special interest group—the environmentalists—don't like.

I'd like to take a few minutes to address myself to the working men and women of southeast Alaska who will bear the brunt of this legislation. But the message is the same for farmers and working men and women throughout this country.

The Democratic Party is in wholesale retreat from the working man in this country. They want your votes, and they sound like they're out to help you, but they don't care about you, and bills like this show it.

The liberal Democrats don't care about loggers and millworkers in Sitka, Ketchikan, Wrangell, Klawock, or Haines—just like they don't care about them or their families in Pacific Northwest or anywhere else.

The liberal Democrats don't care about stevedores or longshoremen if they're loading logs or pulp or lumber year-around.

The liberal Democrats don't care about—they don't even like—miners in Juneau—the State political bureaucrats just proved that by driving 7800 potential jobs at the quartz Hill Mine in Ketchikan out of the State.

The liberal Democrats don't care about the people in the oil industry in Alaska. They like the political jobs they have at the Departments of Fish and Game and DEC because of the oil money, but they don't like where it comes from.

And they use those political jobs as pulpits from which they attack the working men and women so they can protect their weekend retreats on forest land owned by all Americans.

They say that this won't hurt workers in Alaska. That's bull. You need trees if you're a logger, millworker or stevedore or longshoreman, and this bill takes over a million acres of trees away from you on the Tongass.

That's on top of the 5½ million acres they took in 1980.

Let's face it, folks, they don't care about you. You're just a source to tax—to get more money. You're just an individual, though, an if you lose your job, they don't care—they'll just raise taxes on everybody else.

If you're tired of giving them your vote and having them make fun of you and then do away with your jobs, stop.

They will do this as long as they can get away with it, and when they get caught, they will stop. It's up to you.

So what does the bill do?

It breaks the 1980 deal the environmentalists agreed to on automatic funding in return for wilderness.

It takes over 1 million acres of land out of forest management and multiple uses.

It closes 300,000 acres to mining, one of southeast Alaska's most promising economic diversifications.

It unilaterally changes some aspects of the contacts in the only year-round private industry in southeast Alaska, and threatens Alaska's third-largest industry.

It throws out the forest laws passed by Congress which apply to every forest in the country, and replaces that with the forest management preferred by a couple of Hill staffers.

It once again proves that Alaska is being treated like a colony or a territory, rather than as a State of the Union.

That's all it does.

It does something else, too.

Without this act, only 10 percent of the Tongass is available for the workers; 90 percent is off limits forever.

That should be proof to the working men and women of the Tongass. The sponsors of this bill don't even want you to have 10 percent to feed your families on.

Mr. Speaker, I restate my strongest opposition to this bill.

I am pleased to be able to include a provision which will permit the Haida Native Corp. to receive its land selections under the 1986 legislation we passed on its behalf. The lands it will receive are traditional Haida lands. The lands will be subject to an easement in favor of the Government to allow public transportation corridor through the area, with ownership of the timber to remain in Haida Corp. It is our intent that Haida Corp. retain full control over the timber and surface estate covered by the easement, except to the extent the Government needs to exercise control for road-building activities.

Mr. Speaker, I reserve the balance of my time.

Mr. MILLER of California. Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota [Mr. VENTO]. He has been very instrumental in hammering out this agreement, and I want to thank him for all of his time and effort on behalf of this legislation.

Mr. VENTO. Mr. Speaker, I rise in strong support of this conference report.

The Tongass temperate rain forest in southeast Alaska and the House have waited a long time for this day. It was almost 10 years ago, on November 12, 1980, that the House of Representatives reluctantly agreed to the Udall-Anderson bill, and cleared the way for President Carter to sign into law the Alaska National Interest Lands Conservation Act.

The Alaska Lands Act contained much good. I supported Chairman Udall's decision to acquiesce in the Senate version, despite the refusal of the Senate to go into conference with the House to try to reconcile the different versions of the bill. But I shared his profound regret about the Senate's provisions for future management of those parts of the Tongass National Forest that were not included in conservation system units.

Those Senate provisions laid the groundwork for a decade of disgrace in the Tongass that will end when this conference report is enacted into law.

When I say a decade of problems a decade of disgrace in the Tongass, Mr. Speaker, I am referring to the way the Forest Service has interpreted and implemented the provisions of the Alaska Lands Act mandating a timber-supply quota of 4.5 billion board feet per decade and providing for an automatic, unappropriated flow of at least $40 million every year for the Forest Service to meet that quota.

The conference report now before us, like the bills the House passed in 1988 and again last year, would remove these pernicious provisions from the Alaska Lands Act.

I well recall that when this part of the Alaska lands bill was being debated in the Senate, Agriculture Secretary Bob Bergland, a fellow Minnesotan, called it a mandate to overcut the Tongass. He was right. Through the past decade it distorted the planning process and management of the Tongass, to unduly emphasize timber cutting at the expense of noncommodity uses of that precious temperate zone rain forest—one of the few such forests—and the many species that depend on it.

The House-passed version of the Tongass bill and reconciliation package woud have simply repealed that part of the Alaska Lands Act. That would have unequivocally put the management of the Tongass on the exact same footing as the other national forests. This conference report is a little less clear-cut, since it rewrites that part of the Alaska Lands Act instead of repealing it. I would have preferred outright repeal, but I agreed to the conference language because I believe that it has the same effect. That is, it eliminates the bias in favor of timber production, and reasserts the requirements that the Forest Service is to manage these national forest lands for the full spectrum of uses and with appropriate balance among all the renewable resources—timber, fish and wildlife, recreation, and others—and uses. All the laws and policies that apply generally to the national forest system will apply in full to the Tongass under this language, and therefore I believe that it is acceptable and meets the House's goal of a basic reform of section 705(A) of the Alaska Lands Act.

But just reforming this part of the Alaska Lands Act, by itself would not be enough to put management of the Tongass on a sound footing, because of a second basic problem—one that goes back even further. I refer to the two 50-year timber contracts based on legislation of the 1940's.

As the 1988 House-passed Tongass bill stated, these contracts, relics of another era, have undermined fair competition and have failed to provide a fair financial return to the people of the United States, the owners of the Tongass National Forest. More than that, they have undermined sound management of the Tongass because they have in effect allowed fundamental land-use decisions to be controlled by the holders of the contracts and not by the National Government.

To remedy this, the House-passed bill provided for outright cancellation of the contracts. The Senate's version did not go that far, providing only for modifications to the contract terms. Out of the conference has emerged a compromise. Frankly, it is not as strong as I would have wished. But that is the nature of compromise, and I support this one, which directs mandatory modifications in the contracts and calls for further review of additional steps concerning them that may be necessary to bring management of the Tongass into line with other national forests and the national interest.

In connection with the requirement for further reviews and reports, Mr. Speaker, I should report that during the conference on the Tongass Timber Reform Act, the conferees from Alaska made it clear that they hoped

that this legislation would end Congressional decisionmaking about the Tongass. I understand the importance of providing some certainty for everyone involved, and I hope that it will not be necessary for Congress to revisit the issues dealt with in the Tongass parts of this conference report. However, there should be no doubt in anyone's mind that the willingness of supporters of the House-passed Tongass bill to agree to the compromise language about the contracts contained in this conference report is based on our intention of closely monitoring its implementation to make sure that it is achieving the intended goals. If the further reviews and reports required by this part of the conference report show that the contracts are continuing to distort the management of the Tongass to an unacceptable degree, further actions will have to be given serious consideration.

Finally, Mr. Speaker, the Tongass parts of this conference report, like the House bill, would provide permanent protection of some very important parts of the Tongass, by designating them as wilderness. Other areas that the House would have so designated are given a somewhat less complete protection, putting them off-limits to timber harvest but allowing other activities that wilderness would preclude. Again, this is a compromise, but one that I believe is acceptable and deserving of approval.

In particular, I am glad that the conference report will provide for wilderness designation for the Young Lake Area, and for its addition to the Admiralty Island National Monument.

With respect to Admiralty Island, Mr. Speaker, the conference report includes the Senate provisions calling for further negotiations aimed at acquisition of the Lake Florence Area. That area is the last uncut portion of the major inholding within the Admiralty Island Monument owned by the Shee Atika Corp., the Native corporation whose shareholders are the Native people of Sitka, and Sealaska, the regional corporation for southeast Alaska.

The establishment of that inholding, and the subsequent cutting of the timber on most of these lands, is another source of regret for many of us. This is another legacy of the Senate version of the Alaska Lands Act.

It is also something that the House worked hard to avoid. In the 99th Congress, the House passed a bill, cosponsored by our former colleague, John Seiberling, along with the gentleman from Alaska [Mr. YOUNG] and Chairman UDALL, that provided for a generous offer to Shee Atika and Sealaska, for acquisition of these Admiralty Island lands in exchange for money and other lands, including interests in the Greens Creek Area where active mineral development is underway. I strongly supported that bill, which passed the House in August 1986.

Unfortunately, the Senate never acted on that bill, and most of the timber on Shee Atika's Admiralty Island lands has now been cut.

If there had been time to do so, Mr. Speaker, it would have been desirable to work out for inclusion in this conference report detailed provisions for keeping the last of that timber from being harvested, and for addition of the Lake Florence Area to the Admiralty Island National Monument. However, those provisions have not been worked out, and it would be absolutely wrong to hold up this legislation, this long-overdue reform of management of the entire Tongass National Forest, in an effort to resolve remaining questions. Therefore, I join in support of the conference report's provisions calling for serious, expedited negotiations between the Forest Service and the parties involved, to try to achieve this goal of saving the Lake Florence area, and I urge the administration to make this a high priority matter.

In conclusion, Mr. Speaker, I would be remiss if I did not express my appreciation and admiration for the leadership on this important matter that has been demonstrated by my colleague on the Interior Committee, the gentleman from California [Mr. MILLER] working closely with Chairman UDALL and other members of our committee, including the gentleman from Connecticut [Mr. GEJDENSON] and with the gentleman from New York [Mr. MRAZEK]—who has played an outstanding role in bringing us to this conference report—Mr. MILLER has demonstrated the tenacity and resourcefulness that have made possible a successful resolution on this protracted struggle. I congratulate him for what has been achieved, and I urge all Members to join with us in overwhelming support for this conference report.

Mr. YOUNG of Alaska. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, I thank the gentleman from Alaska [Mr. YOUNG], my colleague, for yielding.

Mr. Speaker, I did not intend to get involved in this discussion, but since we have talked about the environmental party in American politics, I think the American people would like to know just what the environmental party is in this country and the political clout that they have achieved. It is interesting to compare their size; that is to say, they have a contributing base in this Nation of a little less than 13 million people, and that contributing base contributes roughly $335 million a year to influence public policy in America. If my colleagues contrast that quantity of people and money with the contributing base of the two national, Democrat and Republican Parties, it is interesting by way of contrast because the Democrat and Republican Parties combined nationally have a contributing base of about 2.4 million people, and this base of contributors contributes roughly $93 million a year; $93 million for the two national parties in American politics to influence public policy; $335 million for the environmental party, a little less than 13 million in a contributing base versus 2.4 million with the two major parties.

Is it any wonder that this Nation is now experiencing energy dependence? This environmental party has stopped nuclear power development in America. They have stopped development of an oil field of huge dimensions in ANWR in northeastern Alaska. They have stopped developing the resources off of the Nation's coastlines around America and because of this energy dependence, have now contributed to the reality that we have 200,000 men of this Nation in the sands in the Middle East, prepared to put their lives on the line because some people in this country are unwilling to develop the resources of this country. Not only are they unwilling to develop the resources in this country, but they want to lock up even more in the State of Alaska.

Mr. Speaker, I say it is time to identify this environmental party. They have every right to exist; do not misunderstand me. I am not suggesting that they do not have the right to exist.

Mr. Speaker, these are the organizations that comprise this environmental party: The Center for Marine Conservation, the Clean Water Action Project, the Environmental Defense Fund, Greenpeace, U.S.A., National Audubon Society, National Wildlife Federation, National Resources Defense Council, the Nature Conservancy, Public Interest Research Groups, Sierra Club, the Wilderness Society, and World Wildlife Fund.

The people who comprise this environmental party are to be congratulated. They have a ring through the nose of the U.S. Congress, and the reality of their ability to get things done politically in the House and in the Senate is very simple: The fear on the part of Members from the bite of crossing the environmental party is far greater than the political clout or bite that might be forthcoming from the combined manufacturers, the energy producers, and the utilities in this country.

It is a sad day for all of us, but it is a reality of what we are facing, that this environmental party is the tail wagging the dog in American politics.

□ 1500

Mr. GEJDENSON. Madam Speaker, will the gentleman yield?

Mr. DANNEMEYER. I yield to the gentleman from Connecticut.

Mr. GEJDENSON. Madam Speaker, I would just say two things: The Tongass bill does not deal with an energy issue directly. Second, it was the party of the gentleman from California [Mr. DANNEMEYER], in a rush to deregulate government, that ended up leaving us without an energy policy. We had an energy policy in 1980, and it was the gentleman and his party that took it apart in the last decade.

Mr. DANNEMEYER. Madam Speaker, reclaiming my time, I guess if you drink the water in the home State of the gentleman from Connecticut [Mr. GEJDENSON] all the time, my good friend, you may come to that conclusion. But I look at the water glass a little differently. I say that this environmental party has established an energy dependence for Americans, sadly for all of us, and the wisest thing we can do here today, not only do we have this bill, but the next bill we are going to take up I am told is the amendments to the Clean Air Act, which is another story all of its own.

Mr. MILLER of California. Madam Speaker, I yield 2 minutes to the gentleman from Connecticut [Mr. GEJDENSON].

Mr. GEJDENSON. Madam Speaker, I thank the gentleman for his kind words and for the work he has done here today.

You know, as we look back to the Grand Canyon and other national treasures, there is not a great debate about the balance. But I am sure at the time there were those who wanted to develop the Grand Canyon, who wanted to develop some of those splendid areas in this country.

When we sit here so often and sanctimoniously tell poorer nations in Central America and South America to protect their rain forests, and you look at the little amount we have done here, this bill is a small step in the right direction.

It is the great effort of the gentleman from California [Mr. MILLER], and his tenacity, that has brought use to this point. We held hearings on this bill which I chaired 3 or 4 years ago as a result of the legislation of the gentleman from New York [Mr. MRAZEK]. We have gone past the House two or three times at this point. It is only because of the tremendous effort of the gentleman from California [Mr. MILLER] that has brought us to this point that we have a bill that starts to protect some of the most beautiful places in this country, like the Lisianski River.

I want to commend the chairman of the committee, the gentleman from California [Mr. MILLER], for his great work on this issue.

Mr. MILLER of California. Madam Speaker, I yield 3 minutes to the gentleman from New York [Mr. MRAZEK], clearly the moving force behind this legislation, and who has worked long and hard on seeing it to a successful conclusion.

Mr. MRAZEK. Madam Speaker, I can well remember 5 years ago when a member of my staff, who is an outdoorsman and environmentalist, came back from the Tongass National Forest and said what a remarkable treasure it truly is for the heritage of the United States of America. But he suggested that we were losing that heritage; that that 17 million-acre forest was being clearcut. In other words, 500- and 600-year-old trees, trees here when Christopher Columbus discovered the New World, were being cut down by a Japanese holding company that controlled a company called Alaska Pulp, and trees that were worth hundreds of dollars were being sold to the Japanese for the cost of Big Mac hamburgers.

The Tongass National Forest is actually the last great habitat for the grizzly bear and the last unspoiled habitat for the bald eagle. It is some of the most pristine wilderness that you will ever want to see. Some day hopefully your grandchildren will see it.

I am very proud of the fact that the gentleman from California [Mr. MILLER] and others held in the House and Senate worked together to do some things that are going to allow the timber industry in Alaska to coexist with the fishing industry and tourism, so that that priceless resources of this Nation, the largest national forest in the United States of America, will be protected and preserved for the future, where we are not going to cut down timber when there is no demand for it, and we are going to reform the contracts so that that Japanese holding company will be paying a fair price for the timber it cuts down, and we are going to see certain areas, specially sensitive areas, set aside to be kept forever wild.

Madam Speaker, I would like to join the gentleman from Connecticut [Mr. GEJDENSON], because although I am proud to be the person who first introduced the Tongass Timber Reform Act 5 years ago, truly the legacy of protecting this great forest primarily rests with the gentleman from California [Mr. MILLER], who has carried this fight forward, and who I was very proud to visit Alaska with and see firsthand just how extraordinary a place the Tongass National Forest truly is. If you and your family cannot get up there, know at least that your grandchildren will be able to.

The SPEAKER pro tempore (Mrs. UNSOELD). The gentleman from Alaska [Mr. YOUNG] has 7 minutes remaining, and the gentleman from California [Mr. MILLER] has 7 minutes remaining.

Mr. YOUNG of Alaska. Madam Speaker, I yield such time as he may consume to the gentleman from Utah [Mr. HANSEN].

Mr. HANSEN. Madam Speaker, I would like to make some remarks on the land exchange discussions on Admiralty Island in Alaska. As the members of the Tongass conference committee know, there is an operating mine on Admiralty Island—the Greens Creek Mine—which is operated by the Kennecott Corp. of Salt Lake City. The Senate version of the Tongass bill contained a provision to encourage land exchange discussions between the U.S. Forest Service and the Sealaska Corp., an Alaska Native Corporation. The purpose of these discussions was to place the lands surrounding the Greens Creek Mine into private ownership to allow for mineral exploration and possible development. Senator GARN of Utah was the sponsor of the so-called Greens Creek Land Exchange Amendment at the time of Senate floor consideration of the Tongass bill. The land exchange would have involved the Forest Service, Sealaska, and the Kennecott Corp. on behalf of the Greens Creek joint venture, which owns the mine. It was anticipated that a land exchange agreement that all parties could support could be reached.

Unfortunately, no such agreement was reached. In fact, since Senate adoption of the amendment, negotiations between the parties have ceased and I am informed that there is no hope of consensus among the parties. For this reason the conference committee wisely dropped the Garn amendment from the final Tongass bill.

I wholeheartedly support the decision of the conference committee on this matter. It is unrealistic and a mistake for the Forest Service to continue one-sided negotiations that cannot be successful. As my esteemed colleague, Senator GARN, stated on the Senate floor:

> There is no Congressional mandate for the current negotiations to continue . . . the deletion of the amendment should clearly send the signal that no negotiations are requested or required by the Congress.

Additionally, I would state that no land exchange agreement can hope to succeed unless it ensures that the concerns and interests of the single most affected party, the Greens Creek joint venture, are dealt with. This ultimately means that the Greens Creek joint venture must be involved in any negotiations of interested parties in a Greens Creek land exchange. Since the current process has not succeeded, as evidenced by the failure of the negotiations and the deletion of the Garn amendment by the conference

committee, I would advise the Forest Service to begin to look at other options.

Mr. YOUNG of Alaska. Madam Speaker, I promised myself I would not get emotionally involved about this and get worked up about it today, but it is very difficult when I hear the two previous speakers get down in the well and flat not tell what I believe is the truth.

I hear about the last rain forests. It is a rain forest, but people forget in 1980 we set aside 5½ million acres of the finest timberland in the world that was rain forest and protected it forever, the 500-year-old trees. That was done. We thought we had a deal.

As the gentleman from California [Mr. MILLER] said, along came this group and said:

That ain't enough. We want to take so much that we will stop all logging in southeast Alaska.

Seventeen million acres of trees, and we cut less than 10,000 acres a year. That is less than 1 percent of the total land mass cut in New York State, let alone California, Oregon, and Washington. California, Oregon, and Washington cut as much timber in 1 year as we plan on cutting in 10 years. But somewhere along the line people lost sight of what happened in 1980, why we passed that legislation, what we thought we had done, and how we thought we had created a table of stability.

Then when I hear the gentleman from Minnesota saying it is maybe not enough, or we are going to look at it next year, and he said, I think we set it aside, but I am not sure, and the gentleman from Connecticut saying maybe we ought to come back and do it again.

No wonder my people are saying, where are we, America? What is Congress doing to us, because of 13 million people, of the elitist, waffle-stomping people that are trying to ruin this country? If we did not have any land set aside, none at all, Madam Speaker, none at all, I would be on the side of the gentleman from California [Mr. MILLER], and I would be the first one to say that, because I think some of these areas should have been set aside, and they were in 1980.

But when I hear the gentleman from Long Island [Mr. MRAZEK] talk about the last rain forest, and we must protect it, and it is being clearcut, nonsense. Nonsense, I say to you.

Madam Speaker, I hope that we are not back in this well fighting this battle 2 years or 3 years or 4 years from now because some little group over here walking around with packs on their backs with their little plastic oil derivative backpack saying they ought to set more land aside because I saw it and it was clearcut.

Madam Speaker, let me say something about timber. Timber is not a nonrenewable resource. Sweden today out-produces us in timber, and they have been cutting trees for 1,000 years. Timber is what we must leave as a legacy to our future generations, by managing it, by growing it as they do in the State of Washington, the State of the gentlewoman from Washington [Mrs. UNSOELD]. They have more trees now than they had in 1930.

Management can achieve it if we are allowed to do it. But for some along the line who are saying save the 500-year-old tree, and the more timber set aside, the more we are going to have in the future, that is not the way it works.

Madam Speaker, I am going to suggest another thing. The people of my State voted for statehood, thinking they would be given a fair shake, and be considered as Americans equally treated. This legislation does not treat them equally. They set up a different managed forest than any other forest in the United States. That is incorrect.

Madam Speaker, I am not one that cannot count. I would suggest also that this Congress is going to pass this conference report. I do not plan on asking for a rollcall vote, for those Members who are listening to this, and I hope the gentleman from California [Mr. MILLER] does not call for a rollcall vote. But I can assure those on the other side of the aisle that have taken jobs away from Alaskans, and those that promote this type of legislation on the outside, that 13 million people, they had better not come back at me again. I may be only one, but they had better not come back at me again. They had better leave my people alone and leave my State alone.

I will suggest respectfully that this battle is to cease. It is to stop. Enough is enough.

□ 1519

If I have to call on the chairman, the gentleman from California, and the chairman, the gentleman from Minnesota, and the gentleman from New York next year, I hope it is on amicable terms. I can assure Members that it will not be if my jobs are taken away from my Alaskans.

Madam Speaker, I would like to make a statement regarding land exchange negotiations between Sealaska Corp., and the Forest Service involving lands on Admiralty Island. During the course of debate on the Tongass bill, H.R. 987, Senator GARN offered an amendment directing the Forest Service to consider an exchange between the Forest Service and Sealaska involving the subsurface in the Greens Creek area of Admiralty Island. At Mr. GARN's insistence, the amendment was dropped.

I want to emphasize that the conference committee's agreement to drop the Garn amendment should in no way be taken as an indication that the Congress does not favor an exchange. It is important to recognize that the full mineral potential of the Greens Creek area cannot be accomplished without an exchange or an extension by law of the ability to prove up their claims. This was tried administratively and legislatively, to no avail. Secretary Yeutter sent a letter to several of the conferees stating that he hopes an exchange can be accomplished to permit such development, and that without an exchange such development may well not be possible. I agree.

I sincerely hope the Forest Service will be able to negotiate an equitable exchange agreement. I encourage the Forest Service to carry out negotiations with appropriate parties and to come to Congress with any agreement that is complete for ratification.

Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of California. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, quickly, let me just thank everybody who has been involved in this compromise for all of their hard work.

Also let me quickly just say that I think the attacks made on the environmental community by the gentleman from California are irresponsible and reckless. To attack the Sierra Club, the Wilderness Society, the Audubon Society, and the National Wildlife Federation is outrageous.

America ought to be thankful for the environmental movement. As we watched the Berlin Wall come down and we walked behind that wall, we saw polluted rivers, children dying from pollution, people choking on their own water, people who could not breathe their air, unsafe atomic power plants, and the destruction, the absolute destruction of the natural resources of that country.

We are not in that position in this country, and we are not in that position because of the environmental movement, and the gentleman ought to understand that.

The gentleman's reckless and outrageous comments do not do justice, and certainly do not do the environmental movement of this country justice.

Mr. UDALL. Madam Speaker, it was almost 10 years ago to the day that I stood on the floor of this House and asked my colleagues to pass the Alaska National Interest Lands Conservation Act. After many years of painstaking work by the House, the Senate had finally bestirred itself to pass a bill. After it had acted, the Senate refused to conference with the House, insisting that we take their bill or leave it.

We took the Senate bill, despite my grave misgivings about many of its provisions. At the time I said that the greatest failing of the Senate Alaska lands bill was, without question, its treatment of the Tongass National Forest in Southeast Alaska. The Wilderness designations were easy ones for the most part, limited to treeless, rocks and ice areas. The mandate that the Forest Service provide 4.5 billion board feet of timber per decade to two pulp mills was, I said, a mandate to over-

cut the Nation's last temperature rain forest. And the provision of an annual, off-budget flow of at least $40 million, ostensibly for intensive management of marginal forest lands, was an open invitation to misuse of public funds.

That day, I said that I "shed a tear" for southeast Alaska and its magnificent forest, and that the House would never rest until we had gotten it right, once and for all.

Today, Madam Speaker, I can wipe away that tear and rejoice in the fulfillment of the promise made that day.

After years of so much work, and so much bargaining, a conference report on the Tongass Timber Reform Act, is before us. It terminates the annual, off-budget $40 million appropriation. It terminates the 4.5 billion board feet per decade mandate. It forces broad and significant changes in two 50-year timber contracts that are at the heart of so many of the Tongass' woes. And it protects more than a million acres of some of the most magnificent timber lands left on this planet. I truly believe that this agreement advances the public interest in fisheries, wildlife, recreation, and wise use of tax dollars, yet protects the private interests of the timber industry.

Many people deserve credit for this rare achievement. But I want to express my special thanks to BOB MRAZEK, for his dedication, to SAM GEJDENSON, for his tenacity, to Senator BENNETT JOHNSTON, for his statesmanship and most especially to GEORGE MILLER, for his incredible patience, skill, and strength. And finally, I want to applaud Bart Koehler of the southeast Alaska conservation coalition and all the residences of southeast Alaska who devoted so much of their lives and energy to this great cause.

Mr. ORTIZ. Mr. Speaker, I rise in support of the conference report for the Coastal Barrier Improvement Act, H.R. 2840 and would like to revise and extend my remarks.

I would like to take this opportunity to thank Chairman JONES, Chairman STUDDS, and Chairman GONZALEZ for their hard work on this bill.

I appreciate the overtime and special attention given by the staffs of both the Merchant Marine and Fisheries Committee and the Banking, Finance and Urban Affairs Committee.

I would like to take this opportunity to clarify certain provisions in the bill that pertain to two units in my congressional district, T-11 and T-12.

Included in this bill is the prohibition of HUD assistance and Federal flood insurance to areas adjacent to unit T-11.

It is my understanding that the intention of this provision is directed at prohibiting Federal funds from being used in a way that directly facilitates development on unit T-11 which is included in the CBRS.

Let the record clearly show that it is not the intent of this legislation to penalize communities adjacent to unit T-11 from receiving flood insurance and HUD assistance that they are normally entitled to on the basis that they are geographically located next to unit T-11.

With regard to unit T-12, the Department of the Interior is authorized to purchase certain property in that unit that is especially environmentally sensitive.

I believe this is a very fair and reasonable compromise and it responds to the needs of the local community as well as concerns raised by many environmental groups.

Again, I appreciate the many long hours that were spent by Members and staff to ensure that many areas would not be adversely impacted by this legislation.

Mr. MILLER of California. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. UNSOELD). The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and agree to the conference report on the bill, H.R. 987.

PARLIAMENTARY INQUIRY

Mr. DANNEMEYER. Parliamentary inquiry, Madam Speaker.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. DANNEMEYER. Madam Speaker, is there any additional time available?

The SPEAKER pro tempore. All time has expired.

The question was taken; and (two-thirds having vetoed in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

ALLOWING LEGAL ALIENS TO WORK ON AND OPERATE COMMERCIAL FISHING VESSELS

Mr. JONES of North Carolina. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4796) to allow legal aliens to work as masters and pilots aboard commercial fishing vessels and to allow United States' businesses owned by legal aliens to operate such vessels, as amended.

The Clerk read as follows:

H.R. 4796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION.—For purposes of the application of sections 8103(a), 12102, 12110, and 12111 of title 46, United States Code, to a fishing vessel operating in waters subject to the jurisdiction of the United States off the coast of the State of California, the term "citizen of the United States" includes an alien lawfully admitted to the United States for permanent residence.

SEC. 2. TERMINATION.—This section shall terminate on October 1, 2000.

The SPEAKER pro tempore. Is a second demanded?

Mr. GOSS. Madam Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. JONES] will be recognized for 20 minutes, and the gentleman from Florida [Mr. Goss] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. JONES].

Mr. JONES of North Carolina. Madam Speaker, on October 15, 1990, this House passed H.R. 4009, the Federal Maritime Commission authorization bill. Section 317 of that bill is identical to the language of the bill presented to you now.

This bill, as amended, will allow certain individuals—lawfully admitted to the United States who are permanent residents and who fish in California waters—to own and pilot small fishing vessels until October 1, 2000.

Mr. MINETA has forcefully brought to my attention the need for legislation to allow certain Vietnamese aliens lawfully admitted to the United States for permanent residence to continue to own and operate their fishing vessels in the waters off California.

These hard-working people want only to pursue their chosen livelihood, but application of current law would prevent that and might result in throwing them onto the welfare roles. No one wants such an absurd result. This bill will solve their predicament.

Madam Speaker, I yield such time as he may consume to the gentleman from California [Mr. MINETA].

Mr. MINETA. Madam Speaker, I rise in strong support of H.R. 4796, legislation to allow individuals who are permanent residents to own and pilot smaller fishing vessels.

I want to commend Chairman JONES for his outstanding effort and leadership on this legislation.

I introduced this bill to assist legal permanent residents who have been adversely impacted by a 200-year-old law. In 1989, the Coast Guard, for the first time in recent memory, began to enforce this law in the San Francisco Bay area. The only individuals impacted by the Coast Guard actions were Vietnamese fishermen who had applied for citizenship but have not yet had their applications approved or who are not yet eligible to apply.

As a result, the Vietnamese fishermen were faced with the dilemma of giving up their professions and living on welfare to support their families or trying to continue fishing while facing fines of $500 each time they were cited, and being threatened by the Coast Guard with the loss of their boats and licenses. A permanent resident must wait 5 years before applying for citizenship, and because it takes approximately 2 years to process a citizenship application, the fisherman would essentially be unable to earn a living for 7 years.

We are all very sensitive to any possible openings or loopholes in U.S. maritime law for future foreign competition or labor.

That is why I worked with union representatives and members of the House Merchant Marines and Fisheries Committee to find an adequate resolution to the problem faced by these legal residents while addressing any legitimate concerns of U.S. citizen fishermen by including a 10-year sunset provision.

This bill is very narrowly crafted to aid legal residents who have every intention of becoming U.S. citizens and are anxious to be self-sufficient.

Recognizing that these permanent resident fishermen are, for all intents and purposes, akin to citizens by virtue of the fact that they pay taxes and support the economy, this legislation will allow them to continue pursuing their trade and supporting their families instead of being forced onto welfare.

Again, Madam Speaker, I am grateful to the distinguished gentleman from North Carolina, Chairman JONES, for his interest, hard work, and efforts in getting this legislation passed.

Mr. GOSS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this bill permits aliens lawfully admitted to the United States for permanent residence to operate fishing vessels off the coast of California for the next 10 years. This should allow these individuals enough time to complete the citizenship process and, thus, qualify to continue to operate these vessels beyond that point. This provision passed the House earlier as part of H.R. 4009 and the minority has no objections.

Madam Speaker, I yield back the balance of my time.

Mr. JONES of North Carolina. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina [Mr. JONES] that the House suspend the rules and pass the bill, H.R. 4796, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of North Carolina. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4796, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

FLORIDA KEYS NATIONAL MARINE SANCTUARY AND PROTECTION ACT

Mr. HERTEL. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5909) to establish the Florida Keys National Marine Sanctuary, and for other purposes.

The Clerk read as follows:

H.R. 5909

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Florida Keys National Marine Sanctuary and Protection Act".

SEC. 2. FINDINGS.—The Congress finds and declares the following:

(1) The Florida Keys extend approximately 220 miles southwest from the southern tip of the Florida peninsula.

(2) Adjacent to the Florida Keys land mass are located spectacular, unique, and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs.

(3) These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and esthetic values which give this area special national significance.

(4) These environments are the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved.

(5) These marine environments are subject to damage and loss of their ecological integrity from a variety of sources of disturbance.

(6) Vessel groundings along the reefs of the Florida Keys represent one of many serious threats to the continued vitality of the marine environments of the Florida Keys which must be addressed in order to protect their values.

(7) Action is necessary to provide comprehensive protection for these marine environments by establishing a Florida Keys National Marine Sanctuary, by restricting vessel traffic within such Sanctuary, and by requiring promulgation of a management plan and regulations to protect sanctuary resources.

(8) The agencies of the United States must cooperate fully to achieve the necessary protection of sanctuary resources.

(9) The Federal Government and the State of Florida should jointly develop and implement a comprehensive program to reduce pollution in the waters offshore the Florida Keys to protect and restore the water quality, coral reefs, and other living marine resources of the Florida Keys environment.

POLICY AND PURPOSE

SEC. 3. (a) POLICY.—It is the policy of the United States to protect and preserve living and other resources of the Florida Keys marine environment.

(b) PURPOSE.—The purpose of this Act is to protect the resources of the area described in section 5(b), to educate and interpret for the public regarding the Florida Keys marine environment, and to manage such human uses of the Sanctuary consistent with this Act. Nothing in this Act is intended to restrict activities that do not cause an adverse effect to the resources or property of the Sanctuary or that do not pose harm to users of the Sanctuary.

DEFINITION

SEC. 4. As used in this Act, the term "adverse effect" means any factor, force, or action that would independently or cumulatively damage, diminish, degrade, impair, destroy, or otherwise harm—

(1) any sanctuary resource, as defined in section 302(8) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(8)); or

(2) any of those qualities, values, or purposes for which the Sanctuary is designated.

SANCTUARY DESIGNATION

SEC. 5. (a) DESIGNATION.—The area described in subsection (b) is designated as the Florida Keys National Marine Sanctuary (in this Act referred to as the "Sanctuary") under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.). The Sanctuary shall be managed and regulations enforced under all applicable provisions of such title III as if the Sanctuary had been designated under such title.

(b) AREA INCLUDED.—(1) Subject to subsections (c) and (d), the area referred to in subsection (a) consists of all submerged lands and waters, including living marine and other resources within and on those lands and waters, from the mean high water mark to the boundary described under paragraph (2), with the exception of areas within the Fort Jefferson National Monument. The Sanctuary shall be generally identified and depicted on National Oceanic and Atmospheric Administration charts FKNMS 1 and 2, which shall be maintained on file and kept available for public examination during regular business hours at the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration and which shall be updated to reflect boundary modifications under this section.

(2) The boundary referred to in paragraph (1)—

(A) begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(B) then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(C) then runs southward to the northeastern corner of the existing Key Largo National Marine Sanctuary located at 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(D) then runs southwesterly approximately to the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,
(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,
(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,
(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,
(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,
(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,
(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and
(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(E) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(F) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(G) then follows the southern boundary of Biscayne National Park and the northern boundary of Key Largo National Marine Sanctuary to the southeasternmost point of Biscayne National Park; and

(H) then follows the eastern boundary of the Biscayne National Park to the beginning point specified in subparagraph (A).

(c) AREAS WITHIN STATE OF FLORIDA.—The designation under subsection (a) shall not take effect for any area located within the waters of the State of Florida if, not later than 45 days after the date of enactment of this Act, the Governor of the State of Florida objects in writing to the Secretary of Commerce.

(d) BOUNDARY MODIFICATIONS.—No later than the issuance of the draft environmental impact statement for the Sanctuary under section 304(a)(1)(C)(vii) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(a)(1)(C)(vii)), in consultation with the Governor of the State of Florida, if appropriate, the Secretary of Commerce may make minor modifications to the boundaries of the Sanctuary as necessary to properly protect sanctuary resources. The Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a written notification of such modifications. Any boundary modification made under this subsection shall be reflected on the charts referred to in subsection (b)(1).

PROHIBITION OF CERTAIN USES

SEC. 6. (a) VESSEL TRAFFIC.—(1) Consistent with generally recognized principles of international law, a person may not operate a tank vessel (as that term is defined in section 2101 of title 46, United States Code) or a vessel greater than 50 meters in length in the area to be avoided described in the Federal Register notice of May 9, 1990 (55 Fed. Reg. 19418-19419).

(2) The prohibition in paragraph (1) shall not apply to necessary operations of public vessels. For the purposes of this paragraph, necessary operations of public vessels shall include operations essential for national defense, law enforcement, and responses to emergencies that threaten life, property, or the environment.

(3) The provisions of paragraphs (1) and (2), including the area in which vessel operations are prohibited under paragraph (1), may be modified by regulations issued jointly by the Secretary of the department in which the Coast Guard is operating and the Secretary of Commerce.

(4) This subsection shall be effective on the earliest of the following:

(A) the date that is six months after the date of enactment of this Act,

(B) the date of publication of a notice to mariners consistent with this section, or

(C) the date of publication of new nautical charts consistent with this section.

(b) MINERAL AND HYDROCARBON LEASING, EXPLORATION, DEVELOPMENT, AND PRODUCTION.—No leasing, exploration, development, or production of minerals or hydrocarbons shall be permitted within the Sanctuary.

COMPREHENSIVE MANAGEMENT PLAN

SEC. 7. (a) PREPARATION OF PLAN.—The Secretary of Commerce, in consultation with appropriate Federal, State, and local government authorities and with the Advisory Council established under section 208, shall develop a comprehensive management plan and implementing regulations to achieve the policy and purpose of this Act. The Secretary of Commerce shall complete such comprehensive management plan and final regulations for the Sanctuary not later than 30 months after the date of enactment of this Act. In developing the plan and regulations, the Secretary of Commerce shall follow the procedures specified in sections 303 and 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433 and 1434), except those procedures requiring the delineation of Sanctuary boundaries and development of a resource assessment report. Such comprehensive management plan shall—

(1) facilitate all public and private uses of the Sanctuary consistent with the primary objective of Sanctuary resource protection;

(2) consider temporal and geographical zoning, to ensure protection of sanctuary resources;

(3) incorporate regulations necessary to enforce the elements of the comprehensive water quality protection program developed under section 8 unless the Secretary of Commerce determines that such program does not meet the purpose for which the Sanctuary is designated or is otherwise inconsistent or incompatible with the comprehensive management plan developed under this section;

(4) identify needs for research and establish a long-term ecological monitoring program;

(5) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 9 of this Act and section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);

(6) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary;

(7) promote education, among users of the Sanctuary, about coral reef conservation and navigational safety; and

(8) incorporate the existing Looe Key and Key Largo National Marine Sanctuaries into the Florida Keys National Marine Sanctuary except that Looe Key and Key Largo Sanctuaries shall continue to be operated until completion of the comprehensive management plan for the Florida Keys Sanctuary.

(b) PUBLIC PARTICIPATION.—The Secretary of Commerce shall provide for participation by the general public in development of the comprehensive management plan.

(c) TERMINATION OF STUDIES.—On the date of enactment of this Act, all congressionally mandated studies of existing areas in the Florida Keys for designation as National Marine Sanctuaries shall be terminated.

FLORIDA KEYS WATER QUALITY

SEC. 8. (a) WATER QUALITY PROTECTION PROGRAM.—(1) Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency and the Governor of the State of Florida, in consultation with the Secretary of Commerce, shall develop a comprehensive water quality protection program for the Sanctuary. If the Secretary of Commerce determines that such comprehensive water quality protection program does not meet the purpose for which the Sanctuary is designated or is otherwise inconsistent or incompatible with the comprehensive management plan prepared under section 7, such water quality program shall not be included in the comprehensive management plan. The purposes of such water quality program shall be to—

(A) recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the Sanctuary, including restoration and maintenance of a balanced, indigenous population of corals, shellfish, fish and wildlife, and recreational activities in and on the water; and

(B) assign responsibilities for the implementation of the program among the Governor, the Secretary of Commerce, and the Administrator in accordance with applicable Federal and State laws.

(2) The program required by paragraph (1) shall, under applicable Federal and State laws, provide for measures to achieve the purposes described under paragraph (1), including—

(A) adoption or revision, under applicable Federal and State laws, by the State and the Administrator of applicable water quality standards for the Sanctuary, based on water quality criteria which may utilize biological monitoring or assessment methods, to assure protection and restoration of the water quality, coral reefs, and other living marine resources of the Sanctuary;

(B) adoption under applicable Federal and State laws of enforceable pollution control measures (including water quality-based effluent limitations and best management practices) and methods to eliminate or reduce pollution from point and nonpoint sources;

(C) establishment of a comprehensive water quality monitoring program to (i) determine the sources of pollution causing or contributing to existing or anticipated pollution problems in the Sanctuary, (ii) evaluate the effectiveness of efforts to reduce or eliminate those sources of pollution, and (iii) evaluate progress toward achieving and maintaining water quality standards and toward protecting and restoring the coral reefs and other living marine resources of the Sanctuary;

(D) provision of adequate opportunity for public participation in all aspects of developing and implementing the program; and

(E) identification of funding for implementation of the program, including appropriate Federal and State cost sharing arrangements.

(b) COMPLIANCE AND ENFORCEMENT.—The Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the Governor of the State of Florida

shall ensure compliance with the program required by this section, consistent with applicable Federal and State laws.

(c) CONSULTATION.—In the development and implementation of the program required by paragraph (1), appropriate State and local government officials shall be consulted.

ADVISORY COUNCIL

SEC. 9. (a) ESTABLISHMENT.—The Secretary of Commerce, in consultation with the Governor of the State of Florida and the Board of Country Commissioners of Monroe County, Florida, shall establish an Advisory Council to assist the Secretary in the development and implementation of the comprehensive management plan for the Sanctuary.

(b) MEMBERSHIP.—Members of the Advisory Council may be appointed from among (1) Sanctuary managers, (2) members of other government agencies with overlapping management responsibilities for the Florida Keys marine environment, and (3) representatives of local industries, commercial users, conservation groups, the marine scientific and educational community, recreational user groups, or the general public.

(c) EXPENSES.—Members of the Advisory Council shall not be paid compensation for their service as members and shall not be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members.

(d) ADMINISTRATION.—The Advisory Council shall elect a chairperson and may establish subcommittees, and adopt by-laws, rules, and such other administrative requirements and procedures as are necessary for the administration of its functions.

(e) STAFFING AND OTHER ASSISTANCE.—The Secretary of Commerce shall make available to the Advisory Council such staff, information, and administrative services and assistance as the Secretary of Commerce determines are reasonably required to enable the Advisory Council to carry out its functions.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. (a) AUTHORIZATION FOR SECRETARY OF COMMERCE.—Section 313(2)(C) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444(2)(C)) is amended by striking "$3,000,000" and inserting in lieu thereof "$4,000,000".

(b) AUTHORIZATION FOR EPA ADMINISTRATOR.—There are authorized to be appropriated to the Administrator of the Environmental Protection Agency $750,000 for each of the fiscal years 1991 and 1992.

(c) REPORT.—The Secretary of Commerce shall, not later than March 1, 1991, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the future requirements for funding the Sanctuary through fiscal year 1999 under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 14321 et seq.).

The SPEAKER pro tempore. Is a second demanded?

Mr. GOSS. Madam Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. HERTEL] will be recognized for 20 minutes, and the gentleman from Florida [Mr. Goss] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. HERTEL].

Mr. HERTEL. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise to ask my colleague's support for H.R. 5909, the Florida Keys National Marine Sanctuary and Protection Act.

Many of you may recall that a similar measure, H.R. 3719 was reported favorably by this House earlier in the session. While the bill before you is very similar to that original bill, this measure represents a compromise between the House and Senate positions on the bill.

This compromise legislation expands the National Marine Sanctuary Program to include more than 2,600 square nautical miles of the newly established Florida Keys Marine Sanctuary. The original bill established sanctuary boundaries encompassing approximately 1,600 square nautical miles. The bill also provides for the development and implementation of a comprehensive management plan for the sanctuary, one which incorporates public input into the process. Finally, H.R. 5909 contains measures that will ensure better land based pollution management practices to improve the water quality around the coral reefs and thereby, ensure the long-term health of the reefs.

My colleagues, I urge your strong support of H.R. 5909, a bill that will set aside and preserve the most precious of all underwater treasures, Florida's coral reefs, from vessel groundings, water pollution, and commercial exploitation. Protecting the coral reefs of the Florida Keys will ensure that this national treasure is available for the benefit and enjoyment of the American people for generations to come.

The Merchant Marine and Fisheries Committee supports this bill wholeheartedly and we urge the House to endorse this important environmental legislation.

Mr. GOSS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today in strong support of H.R. 5909, which a revised version of H.R. 3719, the Florida Keys Protection Act. The legislation we are considering today, like its predecessor, would begin the process for offering genuine protection of the Florida Keys coral reef.

Our colleague DANTE FASCELL, as well as Senator BOB GRAHAM in the other body, deserve special congratulations and thanks. Without their leadership and hard work, the effort to protect this resource would never have proceeded to this point.

The Florida Keys Protection Act would create the Florida Keys National Marine Sanctuary. Such a step has become necessary to protect the reef in light of the increasing stress placed upon it due to pollution and vessel traffic.

Coral reefs have been called the oceans' rainforests because of the diversity and spectacular nature of their marine life. As the world's third-largest, the Keys reef is a unique national treasure.

National treasures carry special stewardship responsibilities; unfortunately, these stewardship responsibilities are not currently being met. A June 1988 workshop convened by the National Oceanic and Atmospheric Administration concluded that the reef is in serious trouble. Without timely action, we could face its permanent loss.

H.R. 5909 would provide immediate help, not just from the Federal Government, but from all levels of government and citizens groups alike. It would ban oil and gas drilling and channelize commercial traffic away from the reef by codifying the Coast Guard's designated "area to be avoided." Perhaps most importantly, the management plan would require the development of a water quality plan to protect the reef against its greatest threat: water pollution.

This bill is a model of cooperative governing. It allows ample opportunity for public comment, and it has the strong support of the State Government. Moreover, it is a bill which has been negotiated with the Senate and is acceptable to the other body.

The time to act is now. Rather than watching its destruction, we can help preserve the Florida Keys reef's vitality. I urge my colleagues to support the bill.

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Madam Speaker, I reserve the balance of my time.

Mr. HERTEL. Madam Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Madam Speaker, south Florida is home to some of our Nation's most unique natural resources, resources that are in need of Federal protection. Last year, Congress approved legislation to expand the Everglades National Park in an effort to protect these precious wetlands. Today, the House can approve a bill establishing a Florida Keys National Marine Sanctuary, an action that will help permanently preserve the only living coral reefs in North America.

We in Florida were horrified last fall when, during one 3-week span, three commercial freighters ran aground on the Keys' coral reefs. As luck would have it, the release of oil was minimal and the reefs escaped catastrophic

damage. An important lesson, however, did not escape us. Without Federal protection, these coral reefs are doomed.

I have often had the pleasure of driving down one of the Nation's most beautiful highways, the one connecting Miami and Key West. As you drive the length of the Keys, you see beautiful shores and witness numerous commercial and recreational activities that are dependent on the coastal environment. Oil washing up on these shores or reefs damaged beyond repair are images that should be painful to all Americans.

H.R. 5909 will provide the Keys several essential protections. Oil drilling will be banned in the waters surrounding the Keys and tankers will no longer be permitted to travel dangerously close to the sensitive reefs. With the threat of oil spills and tanker grounding removed, the Keys will be preserved for future generations to enjoy.

I commend my colleague, Mr. FASCELL, the distinguished chairman of the House Foreign Affairs Committee, for his hard work on this legislation and I urge my colleagues to support this important environmental initiative.

Mr. HERTEL. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I just want to thank the gentleman from Florida [Mr. GOSS] and the gentleman from Florida [Mr. SMITH] for all their hard work and really congratulate the gentleman from Florida [Mr. FASCELL], the sponsor of this bill, for all that he has done all of these many years in working on this.

Mr. STANGELAND. Madam Speaker, I rise in support of H.R. 5909, a bill to protect the Florida Keys.

This legislation reflects changes agreed to by various House and Senate committees. This includes our Committee on Public Works and Transportation. Because of our jurisdiction over the pollution of navigable waters, we have worked on and reviewed the water quality components of this bill as well as those of its predecessor, H.R. 3719, which passed the House on July 23, 1990.

With few exceptions, we've retained the same water quality provisions contained in H.R. 3719. For example, H.R. 5909 includes provisions the Public Works and Transportation Committee added relating to existing laws such as the Federal Water Pollution Control Act. Nothing in the bill provides authority inconsistent with or in addition to existing authority under the Federal Water Pollution Control Act. For example, we are not giving EPA or NOAA any new authority to regulate point source and nonpoint source pollution not already addressed in Federal law. This is not a mandate for Federal land use planning.

We depart from H.R. 3719, however, by revising the role of NOAA in establishing and approving the water quality plan and by authorizing $1.5 million for EPA to develop and help implement the water quality plan.

Madam Speaker, I appreciate the opportunity to make these comments and commend the bill's sponsors for their commitment to protecting the keys.

Mr. FASCELL. Madam Speaker, I rise to urge our colleagues to support H.R. 5909, the Florida Keys Sanctuary and Protection Act. This bill is very similar to H.R. 3719, legislation which the House of Representatives passed on July 23, but takes into account concerns raised by the other body. It is expected that if we pass this bill today, the other body will take it up quickly and send it to the President for his signature.

I wish to thank Chairman WALTER JONES, who has cosponsored this measure, and the chairman of the two subcommittees of jurisdiction, DENNIS HERTEL and GERRY STUDDS, for their assistance in bringing this measure to the floor. I would also like to thank members of the Public Works and Transportation Committee and the Water Resources Subcommittee, particularly Chairman GLENN ANDERSON and Chairman HENRY NOWAK, and ranking members JOHN PAUL HAMMERSCHMIDT and ARLAN STANGELAND for their assistance in developing the provision which addressed water quality; and the chairman of the Subcommittee on Water, Power, and Offshore Energy Resources, GEORGE MILLER, for his assistance on the provision which will prohibit oil drilling in the sanctuary. Finally, I also want to thank the able staff whose hard work and cooperation has allowed us to take substantial steps to protect the coral reefs.

This legislation still creates a unified Florida Keys National Marine Sanctuary; it still bans oil drilling in the sanctuary; it still calls for the development and implementation of a comprehensive management plan; it still calls for the creation of an advisory council to assist the sanctuary's managers; it still codifies an International Maritime Organization's area to be avoided to keep large commercial freighters from running aground on the reefs; and it still calls for the development and implementation to protect and restore the water quality in the sanctuary.

The one major change from the bill that the House previously passed is the boundary of the sanctuary. It now includes a narrow strip that is seaward of Biscayne National Park and reaches south to the Dry Tortugas to protect areas of coral reef that were not in the original bill. It also includes the backwaters north of the keys in order to protect seagrass communities that serve as vital fish hatcheries.

A year ago yesterday, the *Alec Owen Maitland* ran aground in the Key Largo National Marine Sanctuary. In the following 17 days, two more freighters would run aground on coral reefs in the Florida Keys. These incidents brought into focus just how threatened the reef system is from a variety of sources. This bill represents a real effort by many of our colleagues to address these threats in a prompt and expeditious effort to save the only living coral reef system in North America. I urge our colleagues to support H.R. 5909.

Mr. JONES of North Carolina. Madam Speaker, I would like to offer my strongest support for H.R. 5909, the Florida Keys National Marine Sanctuary and Protection Act.

This bill is very similar to H.R. 3719, which passed the House in July.

H.R. 5909 would designate the Florida Keys National Marine Sanctuary and provide comprehensive protection for the nationally significant marine resources of the Florida Keys.

The virtues of that bill were well stated by a bipartisan group of my colleagues at that time and I will not belabor those points here.

I would like to point out that the water quality protection package in H.R. 5909 has been revised to the satisaction of the committees under whose jurisdiction this legislation falls in the other body.

We are passing the Florida Keys marine sanctuary bill again today to convey to the other body our strong desire for its enactment, and to assist the other body in sending this bill quickly to the President.

I urge the House to support this important legislation to protect and preserve the marine environment offshore the Florida Keys.

Mr. HERTEL. Madam Speaker, I yield back the balance of my time.

Mr. GOSS. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mrs. UNSOELD). The question is on the motion offered by the gentleman from Michigan [Mr. HERTEL] that the House suspend the rules and pass the bill, H.R. 5909.

The question was taken; and (two-thirds having voted in favor therof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HERTEL. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5909, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 1630, CLEAN AIR ACT AMENDMENTS, AND AGAINST ITS CONSIDERATION

Mr. BONIOR, from the Committee on Rules, submitted a privileged report (Rept. No. 101-954) on the resolution (H. Res. 535) waiving certain points of order against consideration of the conference report on the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, and against its consideration, which was referred to the House Calendar and ordered to be printed.

CONFERENCE REPORT ON S. 1630, CLEAN AIR ACT AMENDMENTS OF 1990

Mr. BONIOR. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 535 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 535

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes. All points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration. The conference report shall be debatable for not to exceed two hours, with one hour and forty minutes to be equally divided and controlled between the majority and minority parties, and with twenty minutes to be controlled by a Member opposed to the conference report.

The SPEAKER pro tempore. Pursuant to House Resolution 535, the gentleman from Michigan [Mr. BONIOR] is recognized for 1 hour.

Mr. BONIOR. Madam Speaker, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which time I yield myself such time as I may consume.

Mr. Speaker, House Resolution 535 waives all points of order against the conference report and against its consideration. The rule also provides that the conference report will be considered as read when called up for consideration.

Finally, the rule provides for 2 hours of general debate, equally divided and controlled between the majority and minority parties, with 20 minutes to be controlled by Members opposed to the bill.

Mr. Speaker, this is a vitally important bill. It incorporates a number of significant agreements made by the conferees on important aspects of the Clean Air Act.

It includes provisions addressing attainment and maintenance of ambient air quality standards, mobile sources of air pollution, toxic air pollution, acid rain, permits, enforcement, stratospheric ozone protection, miscellaneous provisions, and clean air research.

Mr. Speaker, this conference report contains the first major revision of the clean air act in 13 years. During that time, we have seen our air quality diminish and our dependence on foreign oil increase. Passage of the legislation will take a major step forward in protecting human health and our irreplaceable natural resources.

I am particularly pleased that a job displacement provision—originally offered by Mr. WISE of West Virginia—was kept in the final bill. Unemployment compensation would be extended beyond normal eligibility requirements to those most in need.

I want to applaud the gentlemen from the committee—Mr. DINGELL, Mr. LENT, Mr. WAXMAN, and Mr. MADIGAN—for their outstanding efforts in bringing this bill to final passage.

It will surely go down as one of the greatest legislative achievements in modern times, and certainly in the time that I have held public office.

I urge my colleagues to support this rule.

Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when this clean air bill was first introduced it seemed an impossibility to work out an agreement between all factions of this Congress and the industries throughout the country, but miracles do happen, and impossible dreams do come true. Thanks to those who worked diligently for long hours hammering out this legislation, it seems that they have an agreement which is acceptable to most everyone in the country. However it is not perfect. It is going to cause hardships, and it will be very expensive to comply with its requirements.

Clean air is a very high-sounding goal, and who in the world could be again clean air? The conferees have worked out a measure that is acceptable and, Mr. Speaker, I urge adoption of this rule. Congratulations are in order to all of those who have had a hand in it, the chairman of the Committee on Energy and Commerce the gentleman from Michigan [Mr. DINGELL], the ranking Republican on that committee, the gentleman from New York [Mr. LENT], and the leaders of all of the other committees with jurisdiction.

I urge adoption of the rule.

Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker and Members, I rise in opposition to the conference report and to the rule.

It is too bad that my colleague, the gentleman from California [Mr. MILLER] is not here for this exchange, because I wanted him to particularly hear this. He would not yield to me before.

But for we Americans to understand the political clout and influence of the environmental party, we have to understand its theology.

□ 1530

The environmental party in American politics today essentially believes that what we see in this world is all there is and all that ever will be. As an institution or a force, it does not believe in a hereafter. I am not suggesting that many of the members of the environmental party do not believe in a hereafter. I am not suggesting that at all. I am sure many do, but as a political force, the environmental party does not believe in a hereafter. That is its theology.

Accordingly, when anyone talks about, as in the case of the gentleman from Alaska [Mr. YOUNG], utilizing a resource that God put on this Earth, they get very disturbed about building a road, about building a water resource, taking timber from the forests, consuming any resource, because from the viewpoint of the theology of the movement, that is all there ever will be.

Then my colleague also observed that when the Berlin wall came down we saw the pollution that exists in Eastern Europe. Admittedly, that is true. It is that way because of centralized planning, which does now work economically, to provide the needs of people. That is partly why the Communist system failed. The irony of it is that when the Eastern bloc countries, the Soviet Union and Communist countries in Eastern Europe are moving away from centralized planning, this very act that we are about to take up on the floor, the Clean Air Act Amendments, moves America in the direction precisely where the Communist system wants to leave, because there is a provision of this act that will permit a zealous Administrator of EPA to enforce an industrial policy for America. That is a very sobering, disturbing fact.

This bill will require 150,000 businesses in the country to get a permit to be in business. That gives powerful decisionmaking power in whoever is heading the EPA in Washington, DC because they can grant a permit and continue it to certain industries, and then they can take away a permit to operate from others.

I have here a letter signed by seven people, among them three Nobel Prize winners in America, George Stigler, from the University of Chicago; James Buchanan, from the George Mason University; and Milton Friedman, from Hoover Institution. They have now written a letter to the President of the United States saying, in effect, that this bill should not become law.

The cost of this bill will be very high. A report to the Business Roundtable places the cost at more than $50 billion a year, and while the vice president of Resources for the Future estimates each American household could spend an additional $300 to $400 annually. Also signing this letter is a gentleman from the Brookings Institution, one on the left, liberal political side here in Washington, Robert Crandall; along with Manuel Johnson, a former member of the Federal Reserve Board; James Miller, head of OMB under Ronald Reagan, our former President; and Bill Niskanen, former Chairman of the Council of Economic Advisers.

The opinion of these distinguished leaders in our country should not be summarily disallowed.

Let me come back just for a moment to the environmental party and its political clout in America. I want to quote what they seek to do for the Nation, by one of them, the current Administrator of the EPA, William Reilly, and this is what he says:

Many environmentalists remain ambivalent and some openly suspicious about many forms of economic growth and development. Entire industries are viewed as unnecessary or downright illegitimate by a shifting subset of activists, although not mainstream environmental opinion. These skeptics equate growth with pollution, the cavalier depletion of natural resources, the destruction of natural systems, and more abstractly, the estrangement of humanity from its roots in nature.

The environmental party in this country can be summed up in one very short phrase: It seeks to change America to a society which worships the creation rather than the creator. I do not know about other Members, but I do not choose to go in that direction.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. GREEN].

Mr. GREEN of New York. Mr. Speaker, I rise today in strong support of this rule and the Clean Air Act Amendments conference report. That sweeping agreement marks the first clean air legislation in 13 years, and it follows 3 long and often difficult months of intense negotiations between House and Senate conferees. I should like to express my deep appreciation to the distinguished chairman of the Energy and Commerce Committee, Mr. DINGELL, as well as the distinguished gentleman from California [Mr. WAXMAN], for their diligent and laborious efforts to enact this much-needed legislation this session. The clean air package is an equitable compromise between environmental and economic interests.

The time for action is long overdue. We have received sufficient scientific evidence that depletion of the upper ozone layer can cause increased cancers, that ground-level pollution can foul the lungs, that acid rain can destroy waterways and vegetation.

Today, we have a tremendous opportunity to make a difference. This legislation will help us to guarantee clean, healthy air for our citizens, as well as the rest of the world. Passage of a strong and comprehensive Clean Air Act in this, the 101st, Congress will permit States and cities that have not achieved clean air standards, like my own city of New York, to reevaluate their situations and, with the help of the Environmental Protection Agency, develop new plans to help them achieve clean air standards.

The Clean Air Act was amended last in 1977. That was 13 years ago, and since then we have learned a great deal more about how we are changing our environment. It is now time to face the realities of ozone depletion, global warming, acid rain, and other airborne chemicals. It is time to reduce the dangers to the public health.

Mr. Speaker, the conference report before us today will help us to fulfill our promise to the American people of a clean, safe environment. Although some like the gentleman from California, Mr. DANNEMEYER, may argue that the costs of enacting this bill are too great, I contend that the costs of not enacting clean air legislation this year are greater still. I urge all of my colleagues to join me in supporting this rule and the conference agreement.

Mr. QUILLEN. Mr. Speaker, I yield 5 additional minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, in 1970 the Federal Government enacted the Clean Air Act that we are amending today, and in 1979 I would like to quote from a debate that took place in the United States Senate. This is Senator MOYNIHAN speaking, and I will just use a very small portion of it.

Already some sources predict that over 50,000 lakes in North America will become sterile, or perhaps by the end of the decade. All of these trends are disturbing.

Then he goes on to say this:

The simple fact is that the chemical aftermath combustion of fossil fuels is carried high into the air and vents by wind to different parts of the globe. Rain carries these acids to the ground, and with it a variety of harmful, environmental consequences, come about.

That is what the premise of the action that was taken in 1979 was. As a result of that concern, Congress spent a little less than $600 million and 10 years of study in the NAPAP study, and it produced its report earlier this year, one of the best kept secrets among studies produced in America, because what that NAPAP study produced in the way of a conclusion does not sustain the fears of Senator MOYNIHAN and those who have said the sky is falling from acid rain in the country. The NAPAP study is a product of some of the best scientists that our Nation can produce. They concluded that we cannot discern a relationship that can be precise between the emission of SO_2 and the fact that certain lakes in America are now acid in their content. The report told readers that those lakes that are acidic have been that way since preindustrial times. I am not suggesting that it is against the public interest to reduce pollution of any pollutant in this country. The one that we are talking about in connection with acid rain is, indeed, sulfur dioxide. A political level of reduction of 10 million tons was pulled out of the air. The NAPAP study tells citizens that if we reduce that 10 million-ton goal of reduction to 8 million tons, we can cut in half the cost to the utilities in the Midwest which, incidentally, is in the multibillion-dollar range.

But no, the committee did not choose to reduce the political goal of 10 million tons to 8 million tons.

Incidentally, we could also get this same reduction of 10 million tons by the year 2010 if we would impose a requirement of 40 years on the life of any coal-burning power plant in America and require that its replacement use new source performance standards, at no cost to the utilities in this country.

On the one hand, this bill will impose a multibillion-dollar cost in the acid rain section, and yet on the other hand, as I say, if we just pursued a policy of streching out the deadline to attain this reduction in the year 2010, whereas under this bill it all must be achieved by the year 2000, such is the political clout of the environmental party in this country that it has been able to produce this aspect of this bill.

I can share with my colleagues that since the Clean Air Act was adopted in 1970, this country has witnessed an 88-percent decline in lead that we emit into the air. Sulphur dioxide has decreased by 35 percent. Carbon monoxide by 32 percent; particulates by 21 percent; ozone by 16 percent and nitrogen oxide by 12 percent.

With respect to the existing Clean Air Act, I can share with my colleagues that I believe, and I sincerely believe this, that if we just leave the existing law alone we will move along on the desire of all of us to have clean air in America; but no, Congress in this instance is concerned about moving the process along and accelerating the goal of cleaning up our air.

I can only share with my colleagues, I wish Congress, specifically the House of Representatives, was as concerned about reducing the deficit of this Nation by cutting spending as they are concerned about this claim of reducing pollution; but unfortunately, we do not have that same discipline about reducing spending. We only have this idea that we are going to somehow reduce pollution in America.

These Nobel Prize winners that I have referred to earlier, telling us that by the adoption of this Act we are going to put such a profound adverse impact on the economy that we are going to transfer tens of thousands of jobs outside this country; that will come about as a result of these 150,000 businesses not going to put up with the bureaucracy of applying for a permit to the EPA in Washington, DC. Reputable economists predict that thousands of them will move outside the United States.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BONIOR. Mr. Speaker, I have no further requests for time. I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DANNEMEYER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 390, nays 26, not voting 16, as follows:

[Roll No. 524]

YEAS—390

Ackerman	Condit	Gephardt
Alexander	Conte	Geren
Anderson	Conyers	Gibbons
Andrews	Cooper	Gillmor
Annunzio	Costello	Gilman
Anthony	Coughlin	Gingrich
Archer	Courter	Glickman
Aspin	Cox	Gonzalez
Atkins	Coyne	Goodling
AuCoin	Craig	Gordon
Baker	Crockett	Goss
Ballenger	Darden	Gradison
Barnard	Davis	Grandy
Bartlett	de la Garza	Grant
Barton	DeFazio	Gray
Bateman	Derrick	Green
Bates	DeWine	Guarini
Beilenson	Dickinson	Gunderson
Bennett	Dicks	Hall (TX)
Bentley	Dingell	Hamilton
Bereuter	Dixon	Hansen
Berman	Donnelly	Harris
Bevill	Dorgan (ND)	Hayes (IL)
Bilbray	Dornan (CA)	Hayes (LA)
Bilirakis	Douglas	Hefley
Bliley	Downey	Hefner
Boehlert	Dreier	Henry
Boggs	Duncan	Herger
Bonior	Durbin	Hertel
Borski	Dwyer	Hiler
Bosco	Dymally	Hoagland
Boucher	Dyson	Hochbrueckner
Boxer	Early	Hopkins
Brooks	Eckart	Horton
Broomfield	Edwards (CA)	Houghton
Browder	Edwards (OK)	Hoyer
Brown (CA)	Emerson	Huckaby
Brown (CO)	Engel	Hughes
Bruce	English	Hutto
Bryant	Erdreich	Hyde
Buechner	Espy	Inhofe
Bunning	Evans	Ireland
Bustamante	Fascell	Jacobs
Byron	Fawell	James
Callahan	Fazio	Jenkins
Campbell (CA)	Feighan	Johnson (CT)
Campbell (CO)	Fields	Johnson (SD)
Cardin	Fish	Johnston
Carper	Flake	Jones (GA)
Carr	Flippo	Jones (NC)
Chandler	Foglietta	Jontz
Chapman	Ford (MI)	Kanjorski
Clarke	Ford (TN)	Kaptur
Clay	Frank	Kasich
Clement	Frenzel	Kastenmeier
Clinger	Frost	Kennedy
Coble	Gallegly	Kennelly
Coleman (MO)	Gallo	Kildee
Coleman (TX)	Gaydos	Kleczka
Collins	Gejdenson	Kolbe
Combest	Gekas	Kolter
Kostmayer	Owens (NY)	Skaggs
Kyl	Owens (UT)	Skeen
LaFalce	Oxley	Skelton
Lagomarsino	Packard	Slattery
Lancaster	Pallone	Slaughter (NY)
Lantos	Panetta	Slaughter (VA)
Laughlin	Parker	Smith (FL)
Leach (IA)	Parris	Smith (IA)
Leath (TX)	Pashayan	Smith (NJ)
Lehman (CA)	Patterson	Smith (TX)
Lehman (FL)	Paxon	Smith (VT)
Lent	Payne (NJ)	Smith, Robert (NH)
Levin (MI)	Payne (VA)	Smith, Robert (OR)
Lewis (FL)	Pease	Snowe
Lewis (GA)	Pelosi	Solarz
Lipinski	Penny	Solomon
Lloyd	Perkins	Spence
Long	Petri	Spratt
Lowery (CA)	Pickett	Staggers
Lowey (NY)	Pickle	Stallings
Luken, Thomas	Porter	Stangeland
Machtley	Poshard	Stark
Madigan	Price	Stearns
Manton	Pursell	Stenholm
Markey	Quillen	Stokes
Martin (IL)	Rahall	Studds
Martin (NY)	Rangel	Swift
Martinez	Ravenel	Synar
Matsui	Ray	Tallon
Mavroules	Regula	Tanner
Mazzoli	Rhodes	Tauke
McCandless	Richardson	Taylor
McCloskey	Ridge	Thomas (CA)
McCollum	Rinaldo	Thomas (GA)
McCrery	Ritter	Thomas (WY)
McCurdy	Roberts	Torres
McDade	Robinson	Torricelli
McDermott	Roe	Towns
McHugh	Rogers	Traficant
McMillan (NC)	Rohrabacher	Traxler
McMillen (MD)	Ros-Lehtinen	Unsoeld
McNulty	Rose	Valentine
Meyers	Rostenkowski	Vander Jagt
Mfume	Roth	Vento
Miller (CA)	Roukema	Visclosky
Miller (WA)	Rowland (CT)	Vucanovich
Mineta	Rowland (GA)	Walgren
Mink	Roybal	Walker
Moakley	Russo	Walsh
Molinari	Sabo	Washington
Montgomery	Saiki	Watkins
Moody	Sangmeister	Waxman
Moorhead	Savage	Weber
Morella	Sawyer	Weiss
Morrison (CT)	Saxton	Weldon
Morrison (WA)	Schaefer	Wheat
Mrazek	Scheuer	Whittaker
Murphy	Schiff	Whitten
Murtha	Schneider	Williams
Nagle	Schroeder	Wilson
Natcher	Schuette	Wise
Neal (MA)	Schulze	Wolf
Neal (NC)	Schumer	Wolpe
Nelson	Sensenbrenner	Wyden
Nielson	Serrano	Wylie
Nowak	Sharp	Yates
Oberstar	Shaw	Young (FL)
Obey	Shays	
Olin	Sikorski	
Ortiz	Sisisky	

NAYS—26

Applegate	Holloway	Mollohan
Armey	Hubbard	Myers
Burton	Hunter	Shumway
Crane	Lewis (CA)	Shuster
Dannemeyer	Lightfoot	Smith, Denny (OR)
DeLay	Livingston	Stump
Hammerschmidt	Marlenee	Sundquist
Hancock	McEwen	Upton
Hastert	Miller (OH)	

NOT VOTING—16

Brennan	McGrath	Udall
Dellums	Michel	Volkmer
Hall (OH)	Oakar	Yatron
Hatcher	Sarpalius	Young (AK)
Hawkins	Smith (NE)	
Levine (CA)	Tauzin	

□ 1607

Mr. HAMMERSCHMIDT changed his vote from "yea" to "nay."

Mr. HEFLEY changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. RES. 682. Joint resolution waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2830) entitled "An Act to extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural research and related programs, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes."

CONFERENCE REPORT ON S. 1630, CLEAN AIR ACT AMENDMENTS OF 1990

Mr. DINGELL. Mr. Speaker, pursuant to the provisions of House Resolution 535 I call up the conference report on the Senate bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

The Clerk read the title of the Senate bill.

□ 1610

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to House Resolution 535, the conference report is considered as read.

(For conference report and statement see prior proceedings of the House of today, Friday, October 26, 1990.)

The SPEAKER pro tempore. Pursuant to House Resolution 535, the gentleman from Michigan [Mr. DINGELL] will be recognized for 50 minutes, the gentleman from New York [Mr. LENT]

will be recognized for 50 minutes, and the gentleman from California [Mr. DANNEMEYER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to begin by commending certain Members who have worked very hard on this. The gentleman from California [Mr. WAXMAN], the chairman of the Health Subcommittee, has worked long and hard on this matter. My very dear friend, the gentleman from New York [Mr. LENT], the ranking minority member, provided such valuable leadership and was such a close and valued friend in working out the very great difficulties associated with this measure. I also want to recognize the gentleman from Indiana [Mr. SHARP], chairman of the Energy Subcommittee, as well as the gentleman from Illinois [Mr. MADIGAN], the gentleman from California [Mr. MOORHEAD], and the gentleman from Louisiana [Mr. TAUZIN], as well as the gentleman from Ohio [Mr. ECKART], and the gentleman from Washington [Mr. SWIFT], all of whom provided valuable leadership in the course of the conference. Other Members, whose names I will mention later, were also enormously helpful in bringing this matter to the point where we see it today.

I also want to acknowledge the contributions of Senator MAX BAUCUS, who chaired the conference and helped bring it to a successful conclusion, and Senator JOHN CHAFEE, the ranking Republican of the Committee on Environment and Public Works. In addition, special recognition is owed to the distinguished Senate majority leader, GEORGE MITCHELL, whose dream of a new clean air bill is about to be realized.

Mr. Speaker, it gives me great pleasure to rise in support of the conference report on S. 1630, the Clean Air Act Amendments of 1990, and to offer it to this body for approval.

It has been my privilege as a Member of Congress to participate in the writing of every clean air bill ever passed. None of those previous measures remotely approaches the complexity or comprehensiveness of the bill we are considering today. The clean air laws on the books right now essentially comprise just two of the titles in this year's legislation. In fact, this year's bill is really five or six separate bills rolled into one.

With this legislation, we are addressing the full range of air quality issues. We are establishing a tough and effective program for controlling urban smog, one that will force State and local governments to come to grips with their problems. We are reducing motor vehicle emissions by another 40 to 60 percent, to bring us to the point at which, as compared to 1970, 98 to 99 percent of the emissions from our cars will have been eliminated. We are going to reduce hazardous emissions of some 189 substances by as much as 90 percent. We are going to cut sulfur dioxide emissions thought to cause acid rain by 10 million tons annually. We will take the first steps toward protecting the stratospheric ozone layer.

This bill's impact will be felt in virtually every aspect of human endeavor and nearly every economic activity. Its costs will be significant, but reasonable in light of what we are attempting to achieve. This bill is the product of sometimes tense and always time-consuming negotiations. It represents thousands and thousands of hours of work, and at least that many compromises great and small. We have had to resolve scores of differences between industries, between regions, and between Members. In the end, we have produced a bill better than those passed by either the House or the Senate earlier this year, and better than the administration's initial proposal.

Mr. Speaker, America already has the toughest air quality laws in the world. With this act, we will be raising our standards even higher. We will also be fulfilling our responsibility to the American people who have told us that they are willing to make some sacrifices in pursuit of a cleaner environment.

For the first time, this legislation recognizes the need to control emissions not only from large industries and sources, but from small sources as well. At the same time we have included provisions aimed at helping small businesses cope with many requirements of this legislation.

Similarly, this bill establishes a reformulated gasoline program for nine ozone nonattainment cities, and an oxygenated gasoline program for carbon monoxide nonattainment cities. Both programs will bring significant health benefits to the large populations in these areas and open new markets to farmers, at modest cost to motorist and with minimal disruptions in the supply of this critical fuel.

The legislation significantly strengthens current law as it applies to new nonroad vehicles and engines. EPA is directed by the legislation to undertake an analysis of this issue and, on the basis of that study, move forward with regulation of emissions from several of these sources. States are preempted from regulating only two categories of new nonroad vehicles and engines—first, small farm and construction equipment, and second, new locomotives and new engines used in locomotives. With regard to this latter category, we balanced the need to control emissions from new locomotives against our belief that State efforts to regulate locomotive emissions or operations would impose an unconstitutional burden on interstate commerce. As a result, we require the EPA to regulate new locomotive emissions within 5 years, without first subjecting such emissions to the study I previously mentioned.

I will not predict that with the passage of this bill, we will succeed in our efforts to control air pollution. I believe that too many such predictions were made in 1977 and they proved erroneous. I believe that what we have done in this legislation is to try to learn from our past mistakes and to devise a comprehensive program that seeks to address all the problem areas.

At this juncture, I think it is important to recognize that EPA will have many new responsibilities under this legislation. At one point, we counted more than 400 regulations that would be required, many in a short period of time. I am very concerned that EPA will not do an adequate and fair job in this regard in implementing this legislation, including the needed rulemakings.

Likewise, the realization of the benefits of the reformulated and oxygenated gas programs will depend on the proper implementation of this program by EPA.

In these and other areas, it is my intention to conduct vigorous oversight of the EPA to ensure that the law is properly and fairly implemented.

The credit for our success in this endeavor goes to a great number of people, first and foremost the Energy and Commerce Committee's Ranking Republican, my good friend from New York, Congressman NORM LENT. Our committee has always benefited from extremely capable minority leadership, and NORM LENT's wisdom, counsel, and guidance have brought us to this successful conclusion.

I also want to express my appreciation to Chairman WAXMAN, who has long led the fight for a clean air bill, and Chairman SHARP, who engineered the resolution of regionally divisive acid rain legislation.

Others include Chairman TOM LUKEN, who we will miss; Congressman GERRY SIKORSKI, who finally realized the fruits of his labors for acid rain legislation; and subcommittee ranking minority members MADIGAN and MOORHEAD who for their valuable leadership. I also want to mention DENNIS ECKART, AL SWIFT, JACK FIELDS, RALPH HALL, TOM BLILEY, MIKE SYNAR, HOWARD NIELSON, ROY ROWLAND, MIKE BILIRAKIS, TOM MANTON, MIKE OXLEY, JIM SLATTERY, RON WYDEN, TOM TAUKE, RICK BOUCHER, BOB WHITTAKER, BILLY TAUZIN, and many more.

I also want to give special attention to Chairmans ROE, ROSTENKOWSKI, ANDERSON, UDALL, JONES, and HAWKINS for their patience and good will in helping us to resolve these matters.

I want to specially commend Congressman WISE, the Committee Education and Labor, and the Committee and Ways and Means for the resolution for the so-called Wise amendment, that amendment is an extraordinary addition to this environmental legislation. We have long known that while environmental laws create jobs, they can also cost jobs, and those hurt are not the same people who benefit from the new jobs. The coal miner and the auto worker do not suddenly become experts in technology for controlling air pollution. They do not get a replacement job merely because we pass a clean air law. The Wise amenment recognizes this problem and attempts to deal with it as effectively as possible. I am proud to say this landmark provision is included in this bill.

Last, but certainly not least, I want to thank the staff who worked tirelessly on this bill, too often at the expense of their lives outside this body, and at the expense of their good health.

Conferees Staff: Kevin Sheekey, Midori Okazaki, Ruth Fleisher, Ellen Hollis, Ken Rosenbaum, Grace Warren, Anne Forristall, Sara Franko, Roger Claussen, Ellen Doneski, Renee Eastman, Karen Mogan, Steve Vest, Mike Scrivner, Mark Dungan, Dave Joergenson, Michael Frank, Rob Mooney, J.D. Dergerian, Gail Giblin, Beverly Marshall, Jayne Anne Rex, Dennis Limbach, and Bob Meyer.

Health and Environment Subcommittee: Phil Schiliro, Greg Wetstone, and Phil Barnett.

Energy and Power Subcommittee: Shelley Filder, Judi Greenwald, Tom Runge, Rick Counihan, and Sue Sheridan.

Transportation and Hazardous Materials Subcommittee: John Arlington and Cheryl DeSiena.

Legislative Counsel: Pope Barrow and Renate Stehr.

Full Committee Minority Staff: Margaret Durbin, Chuck Knauss, John Shelk, Jessica Laverty, Keith Cole, Charles Ingebretson, and Darlene McMullen.

Full Committee Majority Staff: Dave Finnegan, John Orlando, Jack Clough, Alan Roth, Dick Frandsen, Mike Woo, Lisa Kountoupes, Will Kenworthy, Carla Van't Hoff, Linda Good, Charlotte Watkins, Barboura Flues, Candy Butler, Anne Butler, Melody Pickett, Michelle Mundt, and Sharon Davis.

Mr. Speaker, this is a tough bill, a costly bill, but most importantly, a fair bill. It is also an historic bill, and I am proud to present it to you this afternoon. I believe you will find it worthy of your support, and I urge you to approve the conference report on S. 1630 today.

□ 1620

Mr. Speaker, I reserve the balance of my time.

Mr. LENT. Mr. Speaker, I yield myself such time as I shall consume.

Mr. Speaker, I rise in support of the conference report on S. 1630, the Clean Air Act Amendments of 1990.

President Bush, in a Rose Garden Ceremony on July 21, 1989, transmitted to the Congress a proposed bill to strengthen the Clean Air Act in three major areas: acid rain, urban air pollution, and toxic air emissions. The President said, and I quote, "It's time to break the gridlock on this issue. It is time to cooperate for clean air by passing a new Clean Air Act this year."

While the President's goal of completing action on a bill in 1989 proved overly ambitious, we are here today with a landmark piece of legislation on clean air.

President Bush broke a decade-long legislative logjam with the proposal he announced in July 1989. Above all others, the President deserves the credit for providing the necessary leadership on this issue. I was pleased to have been asked by the President to be the primary Republican sponsor in the House of the President's original Clean Air Bill. Along with Chairman DINGELL. This conference report builds upon the President's bold clean air initiatives. It achieves the goals he set for us.

This legislation is probably the most far-reaching of any bill to be considered in the entire 101st Congress. It is the product of thousands of hours of hard work by Members and staff on both sides of the aisle. The legislative details reflect literally hundreds of compromises among the dozens of competing regional and philosophical interests affected by the bill. It also represents an extraordinary effort among the other committees with interest in this legislation.

When President Bush called us together in the Rose Garden a little over 15 months ago, he said:

> The Clean Air Act that I'm sending to Congress today has been made possible thanks to the outstanding efforts and the bipartisan support of Republicans and Democrats alike. Protecting the world's shared natural heritage must be a global, universal priority. Just as environmental probelms respect no borders, our solutions must transcend political boundaries.

Mr. Speaker, we have lived up to the President's words on this score. We have worked well together to deliver this conference report for the consideration of the House. We had the benefit of bipartisan support when the bill passed the House in May of this year. I urge similar bipartisan support for this historic conference report.

In conclusion, Mr. Speaker, I want to make a few personal observations. This conference report is not only about clean air, and jobs, and energy security, it is also people: Members and staff who came together and spent dozens of days and nights, away from home, in around the clock sessions over many months, all in the name of good public policy on these issues.

Mr. Speaker, I want to just take a moment and especially thank Chairman JOHN DINGELL, and subcommittee chairmen HENRY WAXMAN and PHIL SHARP for their help. I was aided on this side of the aisle by my good friends, and the ranking subcommittee Republicans, ED MADIGAN of Illinois and CARLOS MOORHEAD of California. Also on the conference report were BILL DANNEMEYER of California, BOB WHITTAKER of Kansas, the gentleman from Iowa, Mr. TAUKE, The gentleman from Virginia, Mr. BLILEY, the gentleman from Texas, Mr. FIELDS, the gentleman from Ohio, Mr. OXLEY, the gentleman from Utah, Mr. NIELSON, and the gentleman from Florida, Mr. BILIRAKIS, and all of the other House conferees as well. On their behalf, I commend the staff of the committee for their work.

Thanks go to Margaret Durbin, minority staff director, to Chuck Knauss, our chief clean air counsel, and to the rest of our clean air staff of Jessica Laverty, John Shelk, Keith Cole, and Charles Ingebretson.

Mr. Speaker, I urge that this conference report be adopted.

Mr. Speaker, I reserve the balance of my time.

Mr. DANNEMEYER. Mr. Speaker, I yield 3 minutes to my colleague, the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, we have a penchant in this body for voting for things that sound good, but we find out later were not quite so good. A perfect example was a couple of years ago we voted for the catastrophic health care bill, and then afterwards we found out that it was really a bad bill, and we had to come back here and repeal it, and a lot of us had egg all over our face.

In the last few years we have passed a lot of pieces of legislation that raised taxes and cost American consumers more money. We are really doing that in spades this year.

The reconciliation bill we are going to be looking at is going to raise taxes unbelievably. The Americans With Disabilities Act passed earlier is going to saddle American business with additional regulation and additional costs. In any event, we have a lot of legislation that passes here that costs the American consumers and taxpayers and businesses a lot of money, and we find out later that it was not quite so good, and this is a bill that fits that description exactly, in my view.

We are all for clean air. We are all for cleaning up the environment. We are all for clean water. But we want to

do it in such a way that we do not destroy the American economy in the process.

Let me tell Members just a few things that are in this bill that America needs to know about.

First of all, in order to combat acid rain which affects less than 2 percent of the lake areas in the Northeast we are going to have an additional cost of $4 to $8 billion because of this bill.

To combat acid rain, electricity rates in the Midwest will increase at least 15 percent, and many believe as high as 30 percent per year on the average homeowner.

To combat acid rain, we are going to see at least 40,000 to 50,000 persons in the Midwest lose their jobs.

To combat vehicle pollutants, new automobiles must have a new tailpipe, an additional tailpipe that is going to cost $600 per car.

In addition to this new cost, the American consumer will also bear the brunt of higher gas taxes, Middle East market instability and the higher cost of reformulated gasoline.

Under the mobile sources provision of the bill, gasoline must be reformulated to clean the final 4 percent. We already get 96 percent of the pollutants out with current systems, but we have to get the last 4 percent and we are going to try to add additional requirements, and we are not even sure we have the technology to do that.

What about the permitting? What will come as a result of the Clean Air Act Amendments? First of all, there is a 2-to-1 cost/benefit ratio. For every $2 we spend, we are going to get $1 in benefits.

Furthermore, 134,000 small businesses will be required to go through Federal point source pollution permitting processes, and it is going to cost each one of these businesses $8,000 to $22,000 per year per business, and that is going to be passed on to the consumer in higher prices.

Of course, there is going to have to be additional governmental personnel out there to police these requirements, and that is going to cost the taxpayers billions of dollars in additional money that we do not have at this time when we have huge deficits, and they are trying to load the American taxpayer down with additional taxes on the backs of the American taxpayer.

This bill is going to cost $50 billion more per year than we are already spending, and we are already spending $32 billion a year to clean up the air. And it is going to cost nationwide at least 600,000 to 700,000 jobs, and in my State alone it is going to have an adverse impact on at least 200,000 jobs.

Mr. Speaker, this legislation sounds good, but it is bad for America, and it is bad for the economy. Let us junk this bill and come back with a clean air bill that will not hurt the economy but still clean up the environment.

□ 1630

Mr. DANNEMEYER. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, I will vote for passage of the conference report on the Clean Air Act Amendments. I also want to point out that I voted for the original Wise amendment in the House bill, and as one of the House conferees on this provision, I support its inclusion in the final bill.

As a member of the Education and Labor Committee, I was also a conferee on section 303 of the Senate bill and section 302 of the House bill, which specifically require the Department of Labor, Occupational Safety and Health Administration, to issue a chemical process safety standard within 12 months of passage of the act. Although OSHA has already issued a proposed rule, I support that language in the bill, to insure that OSHA does in fact follow through and adopt a standard after years of inaction on such a standard.

The problem, and the reason I chose not to sign the conference report on the Education and Labor sections, is that the bill also contains other provisions, related to these OSHA provisions but unfortunately not jointly discussed by our two committees, that will create new and expensive duplication of programs, of regulations, and investigations related to handling of chemicals.

Not only will OSHA now issue regulations regarding the handling of hazardous chemicals in the workplace, so also will the Environmental Protection Agency. EPA's will in fact cover many of the very same things as OSHA's: prevention, mitigation and emergency response to accidental releases.

This duplication is supposed to be all somehow mitigated by the requirement that the President review the authorities of the various Federal agencies in this area and "clarify and coordinate agency responsibilities to assure the most effective and efficient implementation." But even that authority is specifically limited by denying the President authority to modify or reassign the specific regulatory functions given to the respective agencies. Vague director to the executive and regulatory agencies to coordinate their efforts may insure that telephone calls are made, but it does not prevent the cost to creating duplicative programs which add to the unnecessary cost of Government.

In addition to that, however, the Clean Air Act Amendments will establish a new, independent Chemical Safety and Hazard Investigation Board, charged with doing what OSHA, EPA, and numerous State and local safety officials are already charged with doing, that is, investigating releases of hazardous chemicals which endanger worker or public health and safety. The Board is also supposed to do research and make recommendations for safe handling of chemicals to EPA and to OSHA.

I obviously have nothing against regulation of handling of hazardous chemicals, not against thorough investigation of the causes of significant releases. The issue, it seems to me is how to regulate in the most cost-effective way, both to the Government and to the private sector. Simply piling up agencies is not the way to do so.

Furthermore, this bill marks a major incursion of EPA into regulating the workplace, and thus further confuses the roles of EPA and OSHA. I am not trying to defend the entire 20-year history of OSHA, just as I suspect that there are others who would not wish to defend the entire history of EPA. But I do believe, Mr. Speaker, that if we are going to make this change and give EPA this role, that it should be done as a deliberate policy decision in consideration of the respective roles, strengths and weaknesses of the two agencies, and I don't believe that has happened in this case.

Mr. DANNEMEYER. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Speaker, I rise in opposition to the conference report.

Mr. Speaker, what good is a bill designed to clean the air when it simultaneously suffocates the economy?

If we're really looking to clean the air, Mr. Speaker, maybe we should start by cleaning the air with the American people. Let's tell them what this bill costs. And then let's tell them what they get for that cost.

The acid rain section of this bill alone will cost between $5 and $8 billion per year with some States absorbing 15 to 30 percent increases in electricity rates. The acid rain section alone will cost between 40,000 and 50,000 jobs.

The entire bill will cost between $38 to $75 billion, and force between a half million to 1½ million American workers to lose their jobs.

So, Mr. Speaker, you can see that we're talking about a pretty high price tag. The Clean Air Act is the most expensive piece of environmental legislation in history.

I think if we continue to clean the air with the American people paying for it, we have to tell them what they're getting.

Well, as far as acid rain goes, we will be achieving a 10 million ton reduction in sulfur dioxides in the air by 1999. It's important to note that according to the NAPAP study, a $600 million study billed to the taxpayers, we could achieve the same 10 million ton reduction in sulfur dioxides by the year 2010 for no additional costs to consumers, without one job loss and without electricity rate increases.

So what are the American people paying for? Not the reduction in sulfur dioxides but having that reduction occur 10 years earlier. I must point out, however, that the NAPAP study found that the widespread allegations of some environmental extremists that acid rain was leading to devastation of the environment is not supported by scientific evidence. Thus, for a cost of somewhere between $5 and $8 billion to consumers, politicians will be able to say we hope to realize a 50 percent reduction in sulfur dioxide emissions. What they will not be able to say is that we will have any real improvement in our environment. Can this possibly be worth it?

Here's something else the American people are paying for with this bill. The ozone section mandates that oxygenated gasoline, made of alternative fuels, be used in automobiles in

nine cities, including my district in Houston. The problem is, Mr. Speaker, studies show that ethanol actually contributes to smog formation. We Americans will end up paying $600 more per auto and get dirtier air!

This brings to mind the fact that this bill mandates the spending of $45 billion in the name of reducing the health risks caused by pollution. It is well known that the total likely risk of deaths covered by the entire clean air bill is no greater than 1,000 and is probably much lower. I must wonder then if the American people know what they're getting for their money. The budget of the National Institutes of Health for Research on Cancer, AIDS and Heart Disease is $7.6 billion per year. Under the clean air bill, we are spending seven times as much for 200 to 1,000 deaths at risk while the NIH budget covers over 900,000 premature deaths at risk annually.

It is quite evident, Mr. Speaker, that the health benefits issue was raised because the aquatic effects and forest damage from pollution, studied for 10 years by the top scientists, were shown to be practically nonexistent. Their study showed that no forests have been damaged by acid rain except about one-tenth of 1 percent of red spruces at high altitudes; only one-tenth of 1 percent of all forests have been damaged by SO_2; no damage has been evident to crops; the ph balance of lakes and streams in the Northeast are down and the acidity of these lakes is slightly less today than it was 150 years ago.

So you see, Mr. Speaker, the Clean Air Act purports to produce significant improvements in our environment, in our forests, in our lakes and in the air we breathe. However, many of the most costly provisions are not based on sound science. Politicians have completely ignored the facts and studies that indicate that we do not need this bill. The scandal is that our economy, the competitiveness of our business and our standard of living will pay severely for the imaginary benefits we are supposed to receive.

When all indicators show us slipping into a recession, when we are on the brink of raising taxes to historic highs, when we are on the verge of war that highlights the imprudence of dependence on foreign oil, is this monstrosity of a clean air bill worth the sledge-hammer blow it will deal to our economy, to inflation, to unemployment and the sharp increase it will force in U.S. energy consumption?

Is it worth the killing burdens it will stack on the shoulders of American companies struggling to compete? We already spend over $80 billion per year on pollution control in this country. This translates into a total loss of $142 billion of GNP through this year and if you take into account the loss of this money circulating in the economy, total costs in GNP losses are a staggering $221 billion. The Clean Air Act will increase the diversion of desperately needed capital investment into expensive pollution abatement with questionable benefits. The costly effects will ring throughout the economy in reduced productivity, higher prices, higher interest rates and reduced purchasing power and the loss of hundreds of thousands of jobs. This is hardly worth it.

Mr. Speaker, this bill is a political document full of hot air. This bill doesn't smell like clean air to me. It smells of stale cigar smoke and the sweat of political wheeling and dealing.

Mr. Speaker, the clean air bill stinks!

Mr. DINGELL. Mr. Speaker, I yield 7 minutes to the gentleman from California [Mr. WAXMAN], chairman of the subcommittee.

Mr. WAXMAN. Mr. Speaker, this is a historic day, Mr. Speaker, and I am delighted to rise in support of the conference agreement on S. 1630, the Clean Air Act Amendments of 1990.

In passing this bill, Congress is adopting the most effective and comprehensive air pollution control program in the world. Today we are putting the United States back where it once was and where it should always be: leading all countries in promoting policies that protect the health of our citizens and the future of our planet.

We lost that place during the 1980's. The Reagan administration started the decade by pledging to eviscerate the Clean Air Act. They proposed doubling the amount of pollution from cars, weakening the air quality protections for our national parks, and diluting the act's standards. They urged us to fight ozone depletion with sunglasses, sunscreen, and sunhats. They told us that acid rain always needed another study, and that we had no toxic air pollution problem.

That decade of neglect is over. We are changing it today. This bill, crafted through months of intense negotiations by the conferees, manages to clean the air without damaging our economy. Good environmental policy is reconciled with sound economics.

This legislation will clean the air in our Nation's dirtiest cities. Smog, which plagues over 150 million Americans, will be only a memory in most cities by the year 2000. That means parents won't have to worry when their children play outdoors. It also means the healthiest, as well as the most vulnerable, of our neighbors can breath easy when they walk to work or sit in a park.

We'll accomplish this goal by tightening down on all sources of air pollution. We start with cars and trucks. This bill cuts tailpipe standards dramatically, imposes additional requirements on new vehicles, and demands that pollution control equipment last longer. It also mandates new types of vehicles: clean fuel cars and trucks.

These low-polluting vehicles are our best hope for clean air in the new century. As more and more cars crowd our roads, it is essential that we begin the transition away from gasoline-powered cars to solar, electric, natural gas, and hydrogen vehicles. That is the next challenge, and we start to face it with this bill.

We are asking the automakers to do a lot in this legislation, perhaps more than any other industry. I am confident they will meet this challenge and, in doing so, produce a new generation of clean cars that can be exported to the entire world.

For the first time, we also ask the oil companies to pitch in against air pollution. Reformulated gas is the single most effective emission reduction tool available. Gasoline will become cleaner as a result of this bill, and that means older cars will pollute less and our cities will become cleaner faster.

We also require other sources of urban air pollution to do their fair share. Factories will have to be cleaner, consumer products will have to meet new standards, and sources currently not covered—like offshore drilling rigs—will have to cut emissions. Instead of setting unrealistic and unattainable goals, we have crafted a tough program designed to succeed. The progress will be gradual, but it will come, and our children will be grateful.

Yet smog is only one of the important pollution problems addressed in this bill. Another is toxic air pollution.

For 20 years we have waited for the EPA to control hazardous air pollutants. These are substances so dangerous Congress created a special control program for them in 1970. But EPA has ignored the law and regulated only a handful of toxics. Over 2 billion pounds of toxics flow into communities around our country, causing incredible cancer risks.

This bill will help those communities. We are listing 189 substances as toxic air pollutants, thus bringing a definitive end to EPA indecision. A new control regime—one that targets big and small sources, as well as cars and trucks—is established. We provide for protection of the Great Lakes and coastal waters, and at last establish a program to prevent accidental and catastrophic releases of dangerous air pollutants, like the accident that killed thousands of unsuspecting residents while they slept in Bhopal, India, a few years ago.

This bill also takes a giant step toward protecting our planet's ozone layer. We build on the Montreal protocol and establish the most comprehensive program any country has proposed. We will dramatically cut ozone-depleting substances, and provide for recycling, servicing, and safe disposal guidelines.

Last, since 1981 many of my colleagues have tried to enact acid rain legislation. We were blocked by calls for endless studies and delaying tactic after delaying tactic. This legislation ensures we will wait no more. By the end of the century we will cut SO_2 emissions by 10 million tons, and then will cap those levels so emissions don't gradually increase again.

President Bush deserves great credit for breaking this stalemate. When he introduced his bill last year, he ended, once and for all, all debate over

whether acid rain was a serious problem. I may have disagreed with many of the President's policy calls, but he clearly moved the process forward.

I am proud of this conference report and the exemplary dedication and hard work of so many who brought us to this point. Ten years in the making, there are literally hundreds of people who influenced this legislation. Most especially, those in the environmental and public interest community, as well as state and local government groups, have received little recognition. But at each step they have made this legislation better.

My colleagues on the Energy and Commerce Committee have done extraordinary work, and not just this year. Early in the 1980's colleagues—like Jim Florio, TIM WIRTH, and Mickey Leland—laid the groundwork for the bill we are considering today. We cannot pass this bill without remembering their efforts.

Similarly, my current colleagues on the committee have worked tirelessly for a strong and sensible bill. NORM LENT and ED MADIGAN have provided invaluable leadership, and others, like GERRY SIKORSKI, fought the tough fight without publicity or showmanship. GERRY is content to just make a difference. There are, of course, many others. But to name only a few will slight others who have worked just as hard; I will simply say that they have all served this House extraordinarily well.

There are also many members off the committee who can take special satisfaction in this legislation. We all know the enormous contributions that JERRY LEWIS, SILVIO CONTE, BRUCE VENTO, BILL GREEN, SHERRY BOEHLERT, and many others have made. This bill is much better because of their efforts.

There are also many in the other body who have played critical roles in shaping this bill. The Senate conferees, of course, deserve enormous credit for the quality of this conference report. They were ably led by MAX BAUCUS, JOHN CHAFEE, and DAVE DURENBERGER. Special recognition must also go to the Senate majority leader, GEORGE MITCHELL. He, more than any other member of either body, is responsible for this legislation.

I also want to mention the great former Senator from Vermont, Bob Stafford. In the early to mid-1980's, he tenaciously resisted any weakening of the law. Because he fought so well and succeeded, we are able to pass this bill today.

Now it is no secret that I have spent most of the 1980's battling with JOHN DINGELL over this issue. And I think we both learned that neither of us could really accomplish much without the other's help. He is the toughest opponent anyone could have, and the best ally anyone could want. As we bridged our differences this year and found agreement, my already considerable respect for him has continued to grow. Without him, no legislation would have been possible.

Mr. Speaker, I also want to mention the critical role countless staff people have played through the years in bringing us to this moment. Many have left the Hill, but they and their contributions are remembered. Nor can we pass this bill without acknowledging the efforts of Dave Finnegan, Chuck Knauss, Pope Barrow, Mike Shields, Kate Kimball, Bob Hurley, Jimmie Powell, Steve Shimberg, Kathy Cudlipp, Steve Roady, Joe Goffman, and many others.

Last, Mr. Speaker, I want to note my special pride and appreciation for my two subcommittee staff members, Greg Wetstone and Phil Barnett. Since the beginning of this Congress they have done everything possible to bring sound legislation to this floor. I can only say they have been remarkable, and the quality of this bill reflects their commitment and talent.

Mr. Speaker, I hope all my colleagues will join me in enacting this landmark bill. It puts us on the right track to face the new challenges of the year ahead.

Mr. LENT. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. MARTIN].

Mrs. MARTIN of Illinois. Mr. Speaker, I rise in support of this bill with congratulations to the committee.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. MOORHEAD], the ranking member of the Subcommittee on Energy and Power.

Mr. MOORHEAD. Mr. Speaker, I rise in support of the conference report on S. 1630.

Due to the superb efforts of a large number of Members and staffers, we have a clean air bill which I believe is sound and workable. The bill is imperfect, to be sure; it will cost money to implement. But it will also move the Nation strongly closer toward a cleaner and more healthy environment.

I also think it will push technology which will help the Nation develop clean burning fuels. It will push the development of cleaner vehicles. It will aid with the development of energy sources, and it will promote the development of emission-control devices for engines of all types.

Mr. Speaker, I see in my home State of California the beginnings of an environmental industry, which is in part, a response to our actions here in Congress. I think the Nation can, and will, begin to export environmental expertise and technology.

□ 1640

It will help our Nation in a number of ways, and it helps the nations of the world meet and solve their very serious pollution problems.

Mr. Speaker, I am pleased to have played a role in the formation of this legislation. The Markey-Moorhead amendment to the acid rain section of the bill promotes the conservation and the use of renewable energy sources by the Nation's utilities. In light of the problems in the Middle East, Markey-Moorhead is timely and apt.

I am also pleased that California will be able to continue its pioneering work in controlling emission from some of the nonroad engines and vehicles. This section of the bill is very important to California, and it will eventually be important to the Nation in its quest for cleaner air.

I appreciate the help we received from other States with low sulfur emissions on the issue of cost-sharing and I think it's correct that the bill contains an amendment which retains the traditional rights of local governments in land-use decision.

Under this legislation, we can meet clean air goals as efficiently and cost effectively, and as rapidly as possible.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa, a member of the committee [Mr. TAUKE].

Mr. TAUKE. Mr. Speaker, the history of the Clean Air Act and the Committee on Energy and Commerce chronicles my own membership on this distinguished panel.

I want to take this opportunity to say to the Members of this body that it has been a real honor for me to serve on the Committee on Energy and Commerce, and on the Subcommittee on Health and the Environment. The battle over the Clean Air Act was fought with strong leadership on all sides. I want to take this moment to pay tribute to the gentleman from New York [Mr. LENT] who is the ranking Republican on the "Committee on Energy and Commerce, as well as the gentleman from Illinois [Mr. MADIGAN], the senior Republican on the Subcommittee on Health and Environment for the outstanding leadership that they have provided on our side of the aisle on this issue.

I also want to pay tribute to an outstanding chairman of the committee, the gentleman from Michigan [Mr. DINGELL], a great chairman of the subcommittee, the gentleman from California [Mr. WAXMAN], again, providing strong leadership, fighting for ideals and fighting for principles.

On the Committee on Energy and Commerce, in the course of this battle, there were many Members who were very active. What distinguishes this committee, I think, is that the members were active policymakers, working hard for the views and the values they thought were important in this legislation. There was vigorous debate that resulted in compromise. It was hard work by staff that advised Members,

and as a result, I think we see Congress operating at its best. This is a product of Congress at its best. I have been proud to be a part of it.

For the Nation, this is a triple winner. It means first, we have a cleaner environment. Second, it means that I believe we will have a boost to our economy. Why people always say, "It will cost a lot of money." Yes, it will cost money. However, I think it will mean a stronger economy for our Nation because we will be developing new industries such as ethanol in my own State, as well as industries that will provide expertise for other nations around the world who will follow the United States in the battle for clean air.

Finally, in the long term, it will mean reduced dependence on foreign oil. So, this, Members, is a piece of work we can all be proud of, and it is a piece of work that should enjoy strong support in the Congress.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California, [Mr. ANDERSON], chairman of the Committee on Public Works and Transportation.

Mr. ANDERSON. Mr. Speaker, I rise in support of the Clean Air Act Amendments of 1990.

We as a nation face a mounting array of challenges to our health and safety from worsening environmental conditions. On the Public Works and Transportation Committee, we know how important alternative transportation and clean air can be—and we know how closely linked they are. Unless an adequate transportation infrastructure is provided, and changes are made in the way we travel, the next decade will only bring us increasing gridlock and traffic congestion, declining air quality and increasing dependence and reliance on foreign oil.

The Public Works and Transportation Committee has traditionally met the transportation and public works needs of this Nation. We are proud of our accomplishments: our interstate highways, our public transit systems, inland waterways, flood control projects, public buildings, transportation safety and our aviation program. They are all testimony to the committee's effort in improving the quality of life for all Americans.

Of no lesser importance, is the role we play in protecting human health and the environment. The committee is no stranger to the needs of protecting our irreplaceable natural resources. We believe they are a cornerstone in the building of a better and safer America.

However, we also believe that infrastructure and its beneficial impact on economic development can coexist with the goal of a cleaner environment. We can improve our air quality, as well as have an efficient and easily accessible transportation system. Through careful planning, we can reduce the emissions that pollute our air, while meeting the vital transportation needs of our Nation.

Clean air and freedom of movement can mutually coexist. That is why the Public Works Committee considered several provisions in the Clean Air Act amendments that directly affect our national transportation system. These issues include the use of highway funding sanctions, and the conformity of transportation plans, programs, and projects with an air quality implementation plan approved by the Environmental Protection Agency.

The bill expands the application of highway sanctions as a means of enforcing the requirements of the Clean Air Act amendments. At the same time, it provides the Secretary of Transportation the authority to exempt certain types of projects from the highway sanction provisions. Included among these are safety projects which will result in a significant reduction, or avoidance of, accidents; and projects which encourage an increase in vehicle occupancy rates. These exemption provisions are vital to the safety of the traveling public and to the operational efficency of our Nation's transportation system.

The conformity provisions significantly increase the emphasis on air quality considerations during the transportation planning and programming process by ensuring that such plans and programs, when taken as a whole, meet the conformity test included in the Clean Air Act amendments of 1990. This process also ensures that every project is not individually assessed for regional air quality impacts, where the case could falsely be made that any new highway project could worsen air quality.

These provisions also require the Administrator, with the concurrence of the Secretary of Transportation, to promulgate new conformity criteria and procedures for transportation plans, programs and projects within 1 year of enactment of this bill. By having EPA, the expert on air quality, and DOT, the expert on transportation, working together to reach agreement before promulgation, more effective conformity criteria and procedures will result.

The conferees also adopted the Senate version of section 108(f), with some modifications. Among the modifications, the reference to road charges, tolls, parking surcharge and other pricing mechanisms was deleted from (1)(A)(vii). These economic strategies were deleted from this clause of section 108(f) in order to avoid the implication that such strategies were available only in downtown areas, or other areas of emission concentration, or during periods of peak use. Section 172(c) of the bill establishes the general requirements for implementation plans in non-attainment areas. The general plan provisions include the use of economic incentives such as fees, marketable permits, and auctions of emission rights, as may be necessary to provide for attainment of standards. This broad authority to adopt economic strategies in the general provisions for nonattainment plans includes strategies such as road charges, tolls, parking surcharges, and other pricing mechanisms. The limited context for the use of such strategies suggested by section 108(f)(1)(A)(vii) was potentially inconsistent with the general provision of the bill and was therefore removed.

Another provision of section 108(f) removed by the conference was the requirement for the conversion of fleet vehicles to cleaner engines or fuels [(1)(A)(xiii)]. This provision was deleted because it was potentially inconsistent with the mandatory deadline for the adoption of clean fuel programs for fleets contained in title II of the bill. However, deletion of this provision from section 108(f) should not be construed to foreclose States from developing clean fuel programs for fleets sooner than the deadline for mandatory programs, if they choose to do so.

Attached in an analysis of the highway sanction and conformity review transportation provisions. This analysis reflects the intent of the Public Works Committee, and is intended to provide guidance to the Administrator and the Secretary on how these provisions should be implemented. Congressmen HAMMERSCHMIDT, MINETA, and SHUSTER join me in submitting this for the RECORD.

These transportation and air quality issues are important to the Congress, the vitality of the transportation program, clean air and the Nation. I urge adoption of the conference agreement.

SECTION-BY-SECTION ANALYSIS OF TITLE I—PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS

HIGHWAY SANCTIONS

Section 101(c): Section 101(c) of the House bill, which was incorporated into the Conference Agreement, adds a new section 110(m) to the Clean Air Act. The Environmental Protection Agency is empowered by this section, under certain circumstances, to apply sanctions to any portion of a state that the Administrator determines reasonable and appropriate for the purpose of ensuring that the requirements of the Conference Agreement are met. However, this section prohibits the Administrator from applying sanctions on a statewide basis during the 24-month period following a finding of a state implementation plan (SIP) deficiency, when one or more political subdivisions covered by the applicable implementation plan is principally responsible for such deficiency. Statewide sanctions may be imposed following the 24-month period if the deficiency is not yet corrected. This provision will ensure that the available sanctions are initially applied to the geographical areas under the control of the government agency

principally responsible for the failure to comply with the Clean Air Act and with authority to remedy the deficiency. The past failure of state legislatures to approve inspection and maintenance programs required by a SIP can be cited as an appropriate circumstance where sanctions beyond the immediate non-attainment area may be appropriate.

Section 102(g): This section of the Conference Agreement requires the EPA Administrator to impose sanctions for any of the following if not corrected within 18 months: failure to submit a plan or plan element meeting the minimum criteria of section 110(k); EPA disapproval of a state plan in whole or in part; failure to make any required submission satisfying the minimum criteria of section 110(k); and failure to implement any requirement of an approved plan. Only one of the available sanctions is to be imposed initially, unless the Administrator finds a lack of good faith. If the deficiency is not corrected within 6 months after the first sanction is imposed, the Administrator must impose the second sanction. The range of sanctions available is the same as in the House bill: a two-for-one emissions offset for new or modified stationary sources, and the withholding of approval for Federal-aid highway projects. As a general principle, it is the intent of this legislation that highway funding sanctions should only be used as a means for enforcing compliance with the requirements of the legislation as a result of a failure to submit, receive approval for, or to implement the transportation provisions required by the Act for controlling mobile source pollutants.

The Conference Agreement provides the Secretary of Transportation with the authority to exempt certain classifications of projects from the highway sanction if it is imposed. Under the safety exemption to highway sanctions, the principal purpose of the project must be to improve highway safety, but the project may also have other important benefits. It is the intent of the Committee that this means that the project can have other significant purposes besides safety improvement. For example, it is essential to allow safety-related projects such as resurfacing, restoring, or rehabilitating projects to proceed. Such projects are critical to correct rutted pavements and prevent the deterioration of pavements and bridges to conditions which threaten safety. Capital programs for public transit which can be funded under title 23 can also be exempt by the Secretary. Such programs can include projects that incorporate high occupancy vehicle (HOV) lanes, exclusive HOV lanes, carpool/vanpool programs, and other programs or projects which increase the vehicle occupancy rates as defined by DOT. The Secretary of Transportation is responsible for the determination of which projects meet the safety and other exemption categories included in the bill, except that the Administrator, in consultation with the Secretary, determines which projects will improve air quality and would not encourage single occupancy vehicle capacity.

Language in the Senate bill, which would have permitted title 23 funds that were made available to the state to be diverted to a non-attainment area and to be used to fund projects whether or not the projects were authorized under title 23, was deleted. Thus, the exemptions to highway sanctions only permit the funding or projects otherwise eligible under title 23. In addition, it is the intent of this Committee that highway sanctions are not applicable to transportation projects funded under the Urban Mass Transportation Act.

The Committee understands that tolls have long been recognized control measures which discourage automobile travel demand. The introduction of toll facilities which also incorporate strong financial incentives or physical facilities for high occupancy vehicles or other transit modes into local and regional transportation plans would represent a major departure from the predominance of the "single occupant vehicle/freeway" travel mode. Experience on toll facilities indicates that financial incentives on a tolled facility greatly increase the average vehicle ridership figures for the facility. It would be expected that over the life of the toll facility, toll revenues would be used to construct HOV or other transit facilities in the medican or adjacent to the toll road. It has also long been recognized that toll facilities often have extremely low fatality rates due to the fact that they are well constructed, well maintained and well patrolled. Therefore, these types of facilities could be justified on both safety and public transit grounds.

CONFORMITY

Section 101(f): This section of the Conference Agreement amends section 176(c) of the Clean Air Act to further define the conformity provision for all federal plans and programs. Additional provisions are developed pursuant to the comprehensive planning process under section 134 of title 23 of the United States Code, or the Urban Mass Transportation Act, and for projects which are included in such plans and programs. This provision significantly increases the emphasis on air quality considerations during the transportation planning and programming process by ensuring that such plans and programs, when taken as a whole, meet the conformity tests included in the Conference Agreement. In addition, the transportation program must also provide for the timely implementation of those transportation control measures for which transporation agencies are responsbile consistent with schedules included in the applicable implementation plan. The "applicable implementation plan" refers to the air quality implementation plan approved or promulgated under section 110. Finally, the Conference Agreement indicates that emissions associated with such plans and programs must be consistent with necessary emissions reductions contained in the applicable implementation plan.

This process recognizes that transportation-related air quality issues must be analyzed on a system-wide basis and be controlled through regional strategies in order to be effective. Consequently, individual projects contained in transportation plans and programs should be analyzed in the aggregate, rather than individually where assessments of regional impacts cannot be measured with any degree of accuracy. This process would not require that each individual project in the transportation plans and programs be analyzed individually to meet the conformity provisions contained in the bill; rather, it requires the transportation plans and programs when taken as a whole to conform to the SIP. This in turn necessitates greater coordination and cooperation between transportation and air quality officials during the development of both the transportation plans and programs, and the state implementation plans to ensure that sufficient control measures are included in the implementation plans to achieve timely attainment of the standards and required emission reductions.

The success of transportation control measures is dependent on their financial feasibility. Therefore, it is the Committee's intent that, until a metropolitan planning organization determines that adequate funding for measures dependent on the receipt of transportation funds (including Federal-aid Highway and Urban Mass Transportation funds) can reasonably be assumed to be available, air quality agencies should not schedule them in an implementation plan.

This provision also recognizes that mobile source emissions are best analyzed during the planning process where: (1) the impacts of population growth, land use changes, travel demand, modal choice, mobile source emissions, and increases in cost, trips, and vehicle miles traveled can best be evaluated and understood; (2) trade-offs can be made regarding investments in freeways, transit, and high occupancy vehicles strategies; (3) trade-offs can be made between stationary, areawide, and mobile source controls; and (4) specific control measures can be developed and included in the implementation plan. This process allows greater flexibility to state and local transportation and air quality officials to develop the appropriate mix of control measures for expeditiously attaining the standards.

The provision ensures that only those projects that come from a conforming plan and program, and whose design concept and scope have not changed significantly from those contained in such plans and programs, can proceed without additional analysis. A project whose design concept or scope (e.g., number of lanes, degree of access control, etc.) has changed significantly, or a project not derived from a conforming plan or program, would have to be analyzed in the aggregate with other projects in the conforming transportation plan and progam to determine if the project would cause such transportation plans and programs to exceed their emission reduction projections and schedules in the non-attainment areas. If it does, then state and local transportation officials have the choice of either not advancing the project; modifying the project to offset the emissions; or committing to other changes in their transportation plans and programs, or to measures which are enforceable through the implementation plan, that offset such emissions.

The Conference Agreement incorporates interim conformity procedures which will be in effect until such time as the EPA approves the state's SIP revisions that include revised conformity procedures. It is the intent of this provision that current conformity determinations for transportation plans and programs, that were in effect prior to enactment of the Clean Air Act Amendments of 1990, remain in effect for a period of 12 months or until such time as the plans and programs are revised, whichever is shorter. Transportation projects that come from a transportation program that was found to conform within 3 years prior to the date of enactment of the Act may proceed for a 12-month period. After 12 months the projects must come from a conforming transportation plan and program that meet the requirements of the interim provisions. These provisions are intended to provide for the continued orderly development and implementation of Federal-aid transportation plans and programs.

The interim conformity procedures require that transportation plans and pro-

grams contribute to annual emission reductions consistent with sections 182(b)(1) and 187(g)(7) in ozone and carbon monoxide non-attainment areas, respectively. The intent of this provision is that transportation plans and programs result in a reduction in mobile source emissions in the non-attainment area. This section does not require transportation plans and programs to achieve specific emission reduction targets during the interim timeframe, since a state implementation plan must first be developed and approved before such emission reductions can be assigned to mobile, stationary and areawide sources.

The interim procedures indicate that transportation projects in carbon monoxide non-attainment areas, among other things, conform if they eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project. These provisions provide the flexibility to make this determination as part of the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development. In some cases, where the roadway alignment is set, such as for lane addition projects and intersection improvements, it may be desirable to complete this analysis during the system planning process. In other cases, especially where the alignment is not set, it may be necessary to complete this analysis during the environmental review phase of project development.

In any case, the requirements of this provision will be met if the project taken as a whole reduces the severity and number of violations of the carbon monoxide standards. Thus, for example, a project that eliminates four carbon monoxide "hot spot" violations but in so doing creates another, will have met this test, since the project overall reduces the number of carbon monoxide violations and contributes to an improvement in air quality.

The Conference Agreement requires the EPA Administrator to promulgate criteria and procedures for determining conformity. In the case of transportation plans, programs and projects, the Administrator, with the concurrence of the Secretary of Transportation, is required to issue criteria and procedures for determining conformity. It is the intent of this provision that EPA and DOT work together and reach agreement on the transportation conformity procedures before they are issued by EPA. This will result in 1) greater coordination between Federal, state and local transportation and air quality officials; 2) sounder and more effective decisions because it will integrate the expertise of the respective agencies in both air quality and transportation planning and programming; and 3) result in a stronger Clean Air Act.

The Committee notes that while conformity applies to transportation plans, programs and projects, the approaches for making conformity determinations for such plans, programs and projects may be different. Transportation plans, which are long-range planning documents, often include statements of transportation policies, strategies and objectives, and not well defined projects. Transportation programs, on the other hand, include a multi-year program of specific projects. It is, therefore, the Committee's intent that the different approaches for making conformity determinations for transportation plans and programs be covered in the conformity procedures that are required to be promulgated. With regard to project conformity determinations, the Committee would expect the Administrator to promulgate carbon monoxide criteria and procedures, similar to those included in the interim procedures discussed above, during the rulemaking process.

The Conference Ageeement permits a suit to be brought against the Administrator and the Secretary of Transportation to ensure timely promulgation of the conformity criteria and procedures. It is the Committee's intent that the promulgation of these criteria and procedures be given top priority within the Administration, and that a mechanism be developed to quickly resolve differences that develop on policy and technical issues between EPA and DOT.

States are required to submit SIP revisions, which include conformity procedures, to the Administrator and the Secretary of Transportation within 24 months of enactment. It is the intent of this provision that the Secretary will review and provide comments to the Administrator before the Administrator approves the SIP revisions.

VMT FORECASTING PROCEDURES

Section 104: This section of the Conference Agreement requires that implementation plans for carbon monoxide areas with a design value above 12.7 ppm include forecasts of vehicle miles traveled in the non-attainment area for each year prior to attainment of the standards. The Conference Agreement requires that these forecasts be based on guidance issued by the Administrator, in consultation with the Secretary of Transportation. It is the intent of this provision that the EPA seek the active participation of the DOT in the development of this guidance, in order to utilize its expertise in traffic forecasting procedures.

Mr. DINGELL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Indiana [Mr. SHARP], chairman of our Subcommittee on Energy and Power.

Mr. SHARP. Mr. Speaker, I rise in support and celebration of one of the most important achievements of this Congress. I join with the rest of my colleagues to welcome passage today of the Clean Air Amendments of 1990 and I congratulate those who have worked so tirelessly toward this day.

I thank the distinguished gentleman Mr. [DINGELL], for yielding. I want to offer him my thanks. I appreciate his extraordinary efforts in steering this legislation through, in recognizing the concerns of us in the Midwest on the acid rain. His valuable work has produced something that I think will help us have not only a better bill for the health of Americans, but also with the least possible cost to the country. I also want to thank our distinguished colleague from New York [Mr. LENT].

Mr. Speaker, a good deal of comment has been made about the important work of many members. One who should be mentioned is our distinguished colleague from the State of Washington, Mr. SWIFT, who led a group called the Group of Nine, to try to bring together people who had contending points of view on this issue before the Energy Committee was fully into markup on the issue.

I primarily want to thank our colleagues from the Midwest who banded together on a bipartisan basis to try to do what we could, and I think we were successful in reducing the cost of compliance to our electric rate payers and in reducing the burden on our folks who work in the coal mines throughout Appalachia and the Midwest.

I thank Mr. MADIGAN, Mr. ECKART, Mr. OXLEY, Mr. LUKEN, and Mr. BRUCE, and we particularly appreciated the work of Mr. SIKORSKI who not only was willing to join in with us at a critical point to make this happen, but led the fight for acid rain legislation for years.

Mr. Speaker, I think thanks clearly must go to many members of the staffs of various members and subcommittees of the Committee on Energy and Commerce. Mr. Finnegan and Mr. Knauss have been rightfully and prominently mentioned for their considerable work. Mr. Woo of the Committee on Energy and Commerce also deserves mention. I owe a special debt of gratitude to Ms. Shelley Fidler, and Ms. Judi Greenwald, who worked tirelessly, efficiently, and effectively to try to improve this legislation.

Truly, this bill is one which will change this country and all our lives and keep the promise of clean air, healthy air, for all Americans.

Contained in almost one thousand pages are provisions that will protect us from harmful gasoline vapors when we fuel our cars; cut the pollution that contributes to acid rain; by half—in just one decade—rid us of the black smoke from urban buses that chokes city dwellers; boost the development of whole new industries to produce clean alternative fuels and the cars and trucks to use those fuels; and develop technologies for industry to stop toxic, cancer-causing pollution from hurting thoses living and working near industrial facilities.

The legislation, while extremely important, is expensive. Many of its authors worked hard to keep its costs as low as possible while not sacrificing the environmental goals.

Mr. Speaker, these Clean Air Act Amendments are technical, complex and extremely far-reaching in their impact.

This legislation took months to complete. We are up against the deadline of adjournment without the traditional opportunity to consult fully with our colleagues and others to be certain we have done everything we could to clarify, refine, modify and hone this legislation. In some areas we are charting a new course in environmental regulation. Undoubtedly, there will be problems. But it should be clear to all that the authors of these amendments—compromises all—were united in the goal of cleaner air at the most reasonable possible cost.

I am going to use my time, Mr. Speaker, to explain more fully some of the areas in the legislation in which I was most involved.

First, let me start with acid rain. We in the Midwest were asked to make more than our fair share of reductions when this bill was first submitted. We were able to win significant concessions that allow us to enthusiastically support the bill and that will ease the pain for our electric ratepayers.

Briefly, Mr. Speaker, the acid rain title is a dramatic departure from the command and control strategies of past environmental laws. It uses a system of pollution allowances to supplant traditional emissions limitation regimes. Using allowances, those subject to the reduction requirements of the legislation will have flexibility in their compliance options, will have the potential of lower cost compliance and, for those who have the ability to over-control, or reduce more than required in the statute, the ability to sell allowances to others to help offset the costs of compliance.

It was certainly my goal, shared with the other authors of this legislation, to get government out of the way of this system of allowances as much as possible—letting allowances flow freely and creating a market in allowances. Where there are tensions between this new system and the past, we must treat the old ways as a backstop rather than the preeminent regulatory regime.

I have been especially concerned with workability issues. The acid rain bill imposes new, enormously complicated requirements upon individual utilities, and superimposes an allowance trading system that should significantly reduce the costs of complying with those requirements.

I am particularly concerned that utilities have adequate leadtime to comply through whatever means they choose, including the buying and selling of allowances. Thus the bill requires EPA to move quickly to produce a final list of the allowances to be allocated to each and every affected utility unit in the country. The allowance list is to be proposed by December 31, 1991, and a final list is to be promulgated by December 31, 1992.

Utilities who are allowed to make choices as to how their allowances are to be calculated must make such choices expeditiously—by March 31, 1991. If utilities do not make their choices on time, EPA will make the choice for them, based on EPA's determination of which choice would be most advantageous for the utility. Any Governors of qualified States who wish to utilize the alternative allowance allocation under section 406, must inform the Administrator of that decision by June 30, 1991. Again, if the Governors do not make their elections in a timely fashion, EPA will make the decision for them.

The conferees believe this schedule is necessary, appropriate, feasible, and critical to the success of the program. The Energy Information Administration and the Environmental Protection Agency worked long and hard over the summer to develop the draft national allowance database version 1 [NADB], which the conferees expect to be used for purposes of allocating allowances. This effort involved filling in the blanks for an enormous amount of missing data on fuel use, actual emission rates, and allowable emission rates in the NURF and EIA databases referred to in the acid rain title. Because of this recent major effort, we expect the NADB to be finalized promptly, with a minimal number of changes.

The conferees expect EPA to address data issues and to allocate allowances accurately and fairly. EPA must always keep in mind that because of the cap, special treatment for one utility could disadvantage over utilities, and delays in the process for purposes of addressing one utility's concern could hurt all other utilities. In addition, while the data may not be perfect, the National Allowance Database is extremely carefully done and based on publicly available data sources.

The conference agreement also incorporates a fleshing out of the concept of compliance plans in the context of the acid rain title. The basic implementation tool of this title is: First, every affected source must have a continuous emission monitor; second, allowances are allocated to sources by the Administrator and traded among sources; third, at the end of every year (after an appropriate truing up period) actual annual emissions must match actual annual allowances, and fourth, owners or operators must pay an excess emission penalty of $2,000 per ton for any annual emissions in excess of annual allowances and these excess emissions must be offset in the following year. While this implementation tool is innovative, the conferees believe it is at least as rigorous as the more traditional command and control approaches to environmental regulation.

Thus, in general, unlike under other parts of the amendments, the means of compliance is not particularly important. In general, for this title, EPA should not be concerned with the method of compliance a unit chooses.

There are some specific exceptions to this general rule. In order to meet other national objectives, the acid rain title provides incentives to use certain compliance strategies. In the following circumstances—and only in those circumstances—compliance plans serve a necessary function to ensure that utilities actually follow through on utilizing these specific strategies:

For purposes of receiving 2-year extensions and bonus allowances during phase I if they employ efficient pollution control equipment, either for a single unit or for a bubble with two or more units.

For purposes of receiving 4 year extension of the phase II deadline for repowering with a clean coal technology. Utilities receive bonus allowances for early energy conservation and renewable energy technology.

For purposes of emission averaging or alternative emission rates under certain circumstances, in lieu of complying with the basic unit-by-unit basic nitrogen oxides [NO_x] control program.

For purposes of, during phase 1 (1995-99) substituting unaffected units for affected units.

In all other cases, a simple statement that the utility's allowances will match its emissions by the applicable deadline is all that is required.

Title IV contains a default system of unit-by-unit emission limitations, which go into effect if the allowance system does not work. I do not expect the emission limitation system to ever be operative. Once the allowances and allowance regulations are issued and the tracking system is in place, the emission limitations written into the bill shall be null and void. The only operative requirement is that allowances match emissions.

Section 416 of the conference agreement reflects a merger of the House and Senate auction and direct sale provisions. The Administrator shall tap 2.8 percent of the annual allowances. This works out to be 150,000 allowances for each year of phase I (2.8% of 5.3 million allowances) and 250,000 for each year of phase II (2.8% of 8.9 million allowances). The charts in section 416 lay out the schedule for sale of these allowances:

For purposes of the auction, allowances are to be allocated and sold on the basis of bid price. The Administrator is required to sell the tapped allowances to bidders, starting with the highest bid and continuing until all the allowances are sold or all the bidders are accommodated, whichever comes first. For the tapped allowances, sellers may not set minimum prices; bidders are required to submit bid schedules which specified prices for the quantity of allowances they wish to purchase. Any revenues from the auction are returned pro rata to the owners or operators from whom they were tapped. Once all of the tapped allowances have been sold, owners or operators wishing to offer additional (i.e., more than the 2.8 percent tap) allowances for sale at any auction may do so. Such allowances may be offered in advance or on a "spot" basis, and at a minimum price, and the revenues from any such sale

are returned in full to such owner or operator. For purposes of selling additional allowances, the Administrator shall match the highest bids to the lowest minimum prices.

The auction system is intended to be part of the market, not to be the entire market. I expect that the majority of allowances will be bought and sold outside of the auction and direct sale system.

Once the auction has been in place long enough, the Administrator is given a fair amount of latitude to modify the size of the auction, but not the pricing or upfront payment mechanism.

It is not expected that many allowances will be needed at the $1,500/ton direct sale reserve established under section 416. Independent power producers may apply to the Administrator to be guaranteed to be first in line to buy these allowances.

Mr. Speaker, I also want to say a word about the legislation and its new standards and programs affecting the heavy duty truck industry.

These amendments will present a challenge to our domestic industry. Current emissions standards will create a clean and smokeless diesel engine by 1994. NO_x emissions will be reduced by 69 percent and particulates—that horrible black smoke—by 90 percent. It is against this new 1994 baseline, then, that we will ask this industry to make even further advances in the latter half of the decade.

The most important achievement of the Clean Air Act Amendments, perhaps, as regards this segment of the domestic transportation industry, is that we maintained lead time and stability for this industry in complying with all existing and new requirements of the Clean Air Act. This is an industry that has and must continue to meet the challenge of cleaner and more advanced engines and fuels. To do so, the authors of this bill felt strongly that we needed to allow the industry to focus limited funds and technical resources in a way likely to achieve the desired results at the lowest cost and with the highest likelihood of success.

This means allowing adequate lead time to meet new standards and stability of those standards before beginning a new round of technical challenges. I am personally very pleased with the results of this approach in the past. I participated during the last Clean Air Act Amendments in getting this concept into the law. It gets the job done. And restating it in this version of the amendments should end the argument about whether or not Congress really means it. We do!

There were those who wanted to use these amendments and their new alternative fuels program to create a market niche for one new fuel or another. I think it is significant that Congress will not tilt the playing field. Reformulated diesel or gasoline, natural gas, methanol, electricity—maybe even fuels I can't name—all can play under this legislation if they meet the ambitious clean air goals we have set. Health, energy, financial and environmental benefits will determine which new fuels will be the fuels of the future. And that is the way it ought to be.

There is a complex and far reaching new program to allow California to lead the Nation in putting these new alternative fuels and cars on the highways. We allow other States to adopt the California program. But it was important to the authors of the legislation that the opt-in as it is called also be accompanied by strict adherence to the California testing and enforcement regimes. This is crucial because utilizing the entire program will protect manufacturers from having to produce engines and vehicles that are different for different States.

Mr. Speaker, an important part of title II of the legislation is the dramatic, new reformulated gasoline proposal for nine ozone nonattainment cities, and an oxygenated gasoline program for carbon monoxide nonattainment cities. The former program begins on January 1, 1995. The latter begins in the winter of 1992, unless waived by EPA.

Both programs can bring significant health benefits to the large populations in these areas and open new markets to farmers—which I strongly support—at modest cost to motorists and with minimal disruptions in the supply of this critical fuel. But to achieve this balance, the Administrator must adhere to the following important interpretations of and qualifications to the legislative language.

Mr. Speaker, I feel a special responsibility for this provision of the Clean Air Act Amendments because I chair the Energy and Power Subcommittee of the House Energy and Commerce Committee. This provision presents challenges and problems that can affect this country's energy future. I felt it an obligation to review carefully the reformulated provisions and to lay out my views of the way this program should proceed.

Cost and energy requirements: The Administrator must, in shaping the reformulated gas program, consider in new 211(k)(1) the overall "cost" of the program's emission reductions and its effects on the Nation's "energy requirements." In particular:

The Administrator has claimed this program will only cost motorists about 4 to 6 cents per gallon extra, and the conferees have relied upon this prediction. In addition, one of the Nation's major energy requirements is an adequate supply of energy at a reasonable cost. Reformulated gasoline thus is not an at any cost program, and is not to be administered in a way that results in pump price increases that are significantly in excess of this estimate.

Furthermore, cost is not limited simply to the financial cost of new refinery investments and oxygenate producing and handling facilities, presumably spread smoothly over all gallons of the new gas that is produced and sold over a long period of time. Such a total original cost approach might be appropriate for a regulated utility industry, but it is not true for gasoline. Instead, the Administrator must recognize that gasoline is "inelastic" and is traded in a deregulated commodity market where supply and demand set retail prices.

Crude oil and fuel markets have repeatedly experienced very large price increases and declines because of very small shortages or gluts. For example, 2 percent or 3 percent crude oil shortages in the two major disruptions of the 1970's doubled and tripled world oil prices. Today's worldwide crude shortage is reportedly only about 1 percent, yet prices have doubled. Similar large, rapid, up-and-down price movements occurred in January and February of this year, due to very modest weather-related shortages and gluts of heating oil, diesel fuel, and propane. In sum, modest physical shortages can easily double consumer fuel prices; worse increases would result from larger shortages.

Gasoline prices in and out of the affected areas are an obvious, unmistakable index of this program's "cost." In contrast, estimates of possible future supply or even current physical supply are often uncertain or disputed, and may or may not be correct. Accordingly, this program shall not be carried out in a manner that permits even modest physical shortages of refining and oxygenate capacity, or modest disruptions in deliveries to the nine large ozone areas, if those shortages or disruptions result in unacceptable price hikes to ultimate consumers at the retail pump. This applies to all cost considerations in new 211 (k) and (m).

It is critical for the Administrator to expedite the process of defining acceptable parameters for the new fuel, testing it, and permitting the construction of new refinery capacity to produce it well before the January 1, 1995 deadline. Both the development and the enforcement of this program must recognize that lengthy or repeated refinery reconfigurations or shutdowns can spell unacceptable shortages of both conventional and reformulated gasoline, especially in view of the current record lack of spare refining capacity.

Mobile toxics: The provisions of section 206, requiring EPA rules barring hazardous air pollutants from motor vehicle fuels effective in May 1995, are not intended to create a second refor-

mulated gasoline that is different from or meets more stringent standards than the gasoline required under 211(k). Nor may such rules conflict with, change, or nullify the antidumping rules under 211(k)(8).

Baseline vehicles: New 211(k)(2)(A) and other provisions on VOC's, air toxics, and antidumping, require the use of "baseline vehicles" to fairly compare the emissions of different fuels. In all four provisions, the baseline vehicles are intended to be the same: representative model year 1990 vehicles.

Three variables will influence the comparisons: The different fuels; the test cars that burn these fuels; and the varying (and in fact declining) emissions performance of each test car over time.

The intent is that the latter two of these variables always be held constant by EPA, so that for each required comparison, only the two compared fuels vary. This prevents an improper comparison of apples and oranges.

For example, a VOC emissions test may occur in 1991, using 1-year-old 1990 vehicles. This may show the required reductions have been achieved, and be the basis for huge investments in new refineries to produce the new gasoline. But years later, in 1994, for example, when the 1990 cars are older and dirtier emitters, the new gasoline may fail the test it passed 3 years earlier: Even though it is chemically identical to its successful predecessor, the aging 1990 cars may have changed in unexpected ways and show only a failing 13 percent reduction in VOC emissions, compared to a successful 16 percent reduction that occurred 3 years earlier in the younger 1990 cars.

Accordingly, the baseline vehicle provisions shall be read together with new 211(k)(4)(C) as follows:

Comparing results derived in one year from young baseline vehicles with those derived in later years from old baseline cars is unfair. EPA cannot do this.

Each refiner, blender, and importer shall be allowed to "lock in" on tests successfully performed at one point in time with the baseline vehicles, and cannot thereafter have their investments imperiled by different and worse results apparently owing to an aging baseline vehicle fleet.

Chemical identity within reasonable tolerances to a successfully tested fuel is the key; continuing successful tests on an aging and increasingly unpredictable fleet are not.

Representative 1990 MY vehicles are chosen so that EPA need not assemble and maintain, through the 1990s, a much larger fleet of cars somehow representative of all cars (of all model years and makes) on the highways in 1990.

Technically infeasible: As used in the nitrogen oxide "cap" provision in new 211(k)(2)(A) and elsewhere, this phrase shall be interpreted in a commonsense fashion that considers all aspects of this complex new program. For example, a certain chemical process to limit NO_x may in principle be available; but if it costs $10 billion, or if it requires physical conditions like those on the surface of the sun, it is not "technically feasible" within the meaning of new 211(k).

Similarly, a cost-effective chemical process may exist on a laboratory or pilot plant scale, but there may not be enough time to scale it up to the full, industrial-scale level that will supply all the needs of the affected cities within a shortage. Or scientific data may be lacking, and may require years to compile. Again, in such a case, compliance would be "technically infeasible."

An appropriate adjustment to the NO_x cap under new 211(k)(2)(A) does not allow the costlier of two different alternatives, because that would not accord with the cost consideration requirement of 211(k)(1). Nor does this adjustment authority allow EPA to in effect "rewrite" the formula in 211(k)(3)(A) by, for example, an adjustment that completely prohibits any benzene or aromatics. Adjust as used in subparagraph (k)(2)(A) means instead a partial waiver.

Thus, there are several ways to prevent any breach of the NO_x cap, which EPA and refiners may use separately or in combination:

An adjustment, i.e., a partial waiver under (k)(2)(A);

An "entire waiver" under (k)(2)(A);

A waiver under (k)(2)(B), if there is interference with a NAAQ standard; or

a waiver under new 211(m)(3)(A), if the area in question is an "overlap" area that is subject to both the reformulated and the oxygenated gasoline programs.

Other NO_x cap issues: The NO_x cap in 211(k)(2)(A) does not require reductions of NO_x.

NO_x cap results on baseline cars may be averaged by EPA. For example, if there are five baseline cars, and three show slight reductions, one shows no change, and one shows a slight increase, EPA may find 211(k)(2)(A) is satisfied. Requiring no increase from any of the vehicles under all operating conditions is a perfect example of how EPA, by extremely demanding test protocols, could in effect convert the NO_x cap into a NO_x reduction requirement. This is not intended.

No rewriting of the minimum performance standards in (3)(B), in any way that makes them more stringent, is allowed under the aegis of NO_x cap adjustments. Only the specified elements of the (3)(A) formula are within EPA's purview here.

Large VOC reductions gained through an oxygen content that also "breaks" the NO_x cap, cannot subsequently be used as the marker that must be equaled or exceeded under the more stringent of test in 211(k)(3).

Aggregation: A reformulated gasoline may still qualify under (3)(B) even if it has some VOCs and some toxics that increase, compared to baseline gasoline. Aggregate decreases on a mass basis of all toxics and all VOC's are the standard; so a small decline or even a rise in one or two is not disqualifying, if other declines offset them and yield a sufficiently large aggregate decline in emissions.

Aromatics: EPA can not take advantage of significant variations in physical and chemical properties of the many different kinds of aromatics, to "rig" a formula gasoline under (3)(A) containing an unrepresentative selection of aromatics of unusually low volatility or toxicity.

Multiple categories: Many compounds or types of chemicals noted in new 211(k) are subsets of each other. For example, benzene is an aromatic hydrocarbon, so reductions in benzene—to satisfy the benzene cap—will also count toward required reductions in aromatics and toxics as appropriate.

Benzene is also a VOC and a toxic air pollutant, so benzene reductions in the new gasoline should, for example, to some degree yield lower toxics in evaporative, running, and refueling emissions from baseline cars. Like tailpipe emission reductions, any of these three types of emission reductions (from lower benzene) would all count toward the percentage reductions for VOC's and toxics set by new 211(k)(3)(B).

Heavy metals: Reformulated gasoline may not include a heavy metal additive such as, for example, manganese.

However, under 211(k)(2)(D), the Administrator may waive this prohibition if he determines that a reformulated market-grade gasoline containing the heavy metal additive will not have (when tested on a basis consistent with that originally applied to the certification of reformulated fuel not containing the metal) total emissions of toxic air pollutants, on an aggregate mass or cancer risk basis above those which would be emitted from a reformulated market-grade gasoline of equivalent octane which did not contain the heavy metal additive.

The 211(k)(2)(D) ban is aimed against achieving a new reformulated gasoline by the addition in the refining and blending process of new heavy metal additives. The goal is to eliminate existing toxic components of gas, and not replace them with new ones. This focus, and EPA's establishment of reasonable testing tolerances, do not set up a new ban against mere trace amounts of metals at or below levels now in baseline 1990 gasoline, and which originated in the crude oil.

Certification: EPA must act on a petition for approval of reformulated gasoline within 180 days, in order that large investments in new facilities are not delayed by uncertainty over the proposed fuel's legality. If EPA does

not act in that period, the fuel or slate of fuels is deemed certified.

"Slate of fuels" refers to a combination of the (typically) three grades or octanes of gasolines—premium, midgrade, and regular—and perhaps some specified proportion or relative volumes of them.

Procedures comparable to those under existing 211(f)(4) will apply to certifications under 211(k)(4). Any automatic approval, as a technical matter, can subsequently be nullified by an actual EPA disapproval of the petition.

Such a subsequent reversal could jeopardize large investments that were presumptively legal when made, and could create severe fuel shortages and economic hardships in affected covered areas. Accordingly, such reversals should be rare or non-existent, and based only on extraordinarily compelling reasons.

With regard to enforcement, any such disapproval can operate only prospectively. A reasonable time period for new compliance measures—new permits, new investment, new construction—must be granted by EPA. Nor can civil penalties under section 211 be assessed in such cases, for sales after the automatic approval and before the new compliance date set after the disapproval.

Enforcement: The intent of new 211(k)(5) is to penalize only the refiner, blender, importer, or marketer who knew or reasonably should have known that:

Its conventional gasoline has been wrongfully represented as reformulated gasoline, and is illegally being sold or will be illegally sold for ultimate consumption in a covered ozone non-attainment zone, or

Its reformulated gasoline which, after appropriate crediting or pooling adjustments, does not meet certification standards, is being wrongfully represented as certified reformulated gasoline and is being sold for ultimate consumption in a covered ozone nonattainment zone.

No penalties are intended for any gasoline refiner, blender, importer, or marketer under section 211(d), providing $25,000 per day civil penalties, if the wrongful conduct is taken by another entity beyond their control, or if the conduct at issue involves only wholesales of conventional gasoline intended for ultimate consumption outside of covered areas.

Credits in general: Three different crediting programs (also referred to as "pooling" or "trading" programs) are established under new subsections 211(k) and (m):

One for oxygen, aromatics, and benzene in reformulated gasoline, under 211(k) (7);

One for anti-dumping rules covering nonreformulated gasoline, under 211(k) (8);

One for oxygen in oxygenated gasoline, in 211(m) (5).

The first and the third crediting programs operate only within a specific ozone or carbon monoxide nonattainment area. The second one applies outside of those areas and covers all of a given company's output nationwide. To the maximum practicable extent, the Administrator should operate them in a similar fashion to minimize complexities and costs.

The overall goal, as with other trading programs in the Clean Air Act Amendments of 1990, it to permit an aggregate "least-cost" solution that, for example, allows the cheapest oxygen suppliers or the cheapest aromatics reducers to overachieve and handle a disproportionate share of the total burden. Less efficient competitors can buy credits and thus contract out some of the work to their more efficient brethren. Lower consumer prices result.

Similarly, low octane grades of one refiner's gasoline may overachieve on aromatics reductions, to offset excesses from other grades; or one of a company's three refineries may overachieve with respect to benzene or oxygen. In each case, pooling is allowed.

Averaging over time: In each of the three crediting/pooling programs, EPA must set a reasonable time period over which average specifications can be met. It could be the winter season in the oxygenated program, or a three-month quaterly period in the reformulated program. It should not be so short (i.e., a single day, hour, or minute) that averaging over time becomes impossible for mechanical or measuring reasons, or that unreasonable limits on supply flexibility and cost savings are forced on refiners, blenders, or importers.

Averaging within a company, or "pooling": In view of the chemical differences among different grades and octanes of gasoline, from premium to regular, EPA is also directed to give refiners, blenders, and importers maximum reasonable flexibility to pool under 211(k)(7) on an intra-company basis. It would be impermissible for EPA to deny pooling rights to a refiner in the following case:

Refiner A has a premium reformulated with 2.0 percent benzene, a midgrade with 0.6 percent benzene, and a regular with 0.4 percent benzene. Each grade made up one-third of A's volume of sales in the same period last year, and is projected to do the same again in the coming year. Pooled together, A's gasoline meets 211(k)'s requirements. But if sales of premium turn out to be larger than expected, EPA can require greater offsetting reductions in the immediately following period.

To ease enforcement burdens, EPA could insist on checking credited volumes and weights for each company at the refinery gate, the point of importation, or the point of blending.

Continuous, universal physical testing by EPA to determine that pooling complies with 211 (k) or (m) is not contemplated. Instead, refiners, blenders, and importers are expected to conduct appropriate compliance tests periodically, and maintain records suitable for EPA to fully enforce compliance. And EPA may of course go behind these records, and engage in fuller audits if it chooses.

Intracompany pooling procedures established under the certification process—for example, to allow high aromatic levels for premium with lower offsetting levels for regular—would supercede any more formal crediting procedures set up by EPA.

Many refiners may properly prefer the more informal, intra-company pooling approach; in part, this results from the obstacles that may hamper larger, EPA-regulated inter-company credit programs, which may well entail greater bureaucratic and logistic difficulties. That is why the credit programs are not mandatory, and cannot be imposed on unwilling companies. In contrast, intracompany pooling shall be allowed by EPA to any comany affirmatively seeking it.

Credit standard: The phrase "that would occur in the absence of such credits" as used in the three clauses of 211(k)(7)(C), refers to the aromatic, oxygen, or benzene content specified for a non-attainment under 211(k). It means the use of pooling or credits is not allowed to change the aggregate levels of these three components of gasoline in a given area, from what they would be in that area if each single gallon exactly met 211(k)'s requirements. It does not require or allow EPA to guess what each company might do if no pooling or crediting were allowed.

Antidumping credits and rules: By nature, this program is company specific. Averaging over a certain time (quarterly, for example) and within a given company (among a single comany's three different refineries, for example) is allowed.

The purpose of new 211(k)(8) is to prevent a specific company's actual post-1994 conventional gasoline from having greater emissions than that same company's actual 1990 gasoline (or the equivalent, subject to reasonable test tolerances).

Each refiner, blender, and importer is allowed to collect and compile data regarding its 1990 gasoline, and commercial data used by each such company in the ordinary course of business, and showing the identity of its suppliers, the grades of products purchased or sold, and related volumes and dates, would satisfy this provision.

This provision does not require (or provide authority for EPA to require) the reformulation of any gasoline sold outside of covered areas, and 211(k)(8)(C) is not to be construed in a

way that would require such a reformulation.

Summertime baseline gasoline is as specified in (10)(B)(i). This does not indicate precisely which of the many diffferent aromatics, olefins, and saturates are to be included in the baseline. But EPA should not "rig" or "game" the resulting baseline gasoline by selecting unrepresentative sets of these different compounds that are of unusually low volatility or toxicity.

Harmonization: Title 2 does not contemplate a proliferation of new reformulated gasolines in the same state or nonattainment zone. Thus, if California, under section 249(c)(2), prescribes a ore stringent or different reformulated gasoline, and requires it to be produced, distributed, and made available in California, then that prescription and requirement shall apply in California instead of the 211(k) program.

In opt-in States, the intent is that EPA shall by rule ensure that any control or prohibition respecting reformulated gasoline shall be consistent with the 211(k) requirements, the section 246 requirements respecting fleet programs, and the section 249 requirements respecting the California pilot program.

Such regulations shall ensure that no more than one prohibition or requirement respecting reformulated gasoline will apply in any area, and shall provide maximum air quality benefit consistent with technical feasibility, cost, and domestic supply and distribution capacity.

Oxygenated gasoline—covered areas: Approximately 40 areas are covered by new 211(m)(1), ranging from Los Angeles and Denver with 1988-89 carbon monoxide design values of 23.4 and 16.2, down to the relatively cleaner but still covered areas with 1988-89 design values of 9.5 p.p.m. or more. Waivers under 211(m) may however reduce this total number of areas.

Enforcement: Like 211(k)(5), and new 211(m)(2) does not ban perfectly lawful and routine wholesales of unoxygenated gasoline—where the selling refiner, the sale, or the buyer are within a covered area—so long as that gasoline is intended for and does move to areas outside of the covered area, where retail sales of unoxygenated gasoline are routine and perfectly legal.

Broader literal readings of the word "any" in the phrase "any gasoline sold," or the word "indirectly" in the phrase "sold or dispensed directly or indirectly" are impermissible.

Such a reading would only cut off the wholesale fuels trade in major American port cities such as Houston, New York, Los Angeles, and Philadelphia, since many fuel dealers in these cities will supply both these cities and many other areas farther inland. A ban on any handling of unoxygenated fuel by these dealers would, by reason of their status as dual suppliers to both types of areas, impose a de facto embargo on fuel shipments to uncovered inland areas where unoxygenated gasoline remains perfectly legal after late 1992. No such result is allowed.

Overlaps, types of oxygenates: The winter oxygenate requirement of 2.7 percent in 211(m) (2) overrides the lower 2.0 percent requirement under 211(k), in those cities which are subject to overlapping reformulated and oxygenated programs. But in such overlaps, all oxygen waivers under 211(k) remain available and effective, since the oxygenated gasoline in these cities is technically reformulated gasoline.

The level of 2.7 percent was chosen in part to provide more even opportunities for competition between the two major oxygenates, methyl tertiary butyl ether (or MTBE), and ethyul alcohol (or ethanol).

The Administrator may not discriminate among these different oxygenates, and should encourage fair competition among them. As long as the percentage of weight requirement is met, and other requirements of new 211 (k) and (m) are satisfied, any oxygenate should be allowed to satisfy new United States needs.

However, EPA must consider the different handling and transportation needs of different oxygenates, and the problems that can result if they are commingled, because these factors will bear on the adequacy of distribution capacity to, and supply in end user markets.

Improper commingling of MTBE gasoline with "oxygenless" gasoline intended to be blended with ethanol can for example create excessive levels of oxygen, if and when ethanol is erroneously added to the already oxygen-rich MTBE gas, and produce a fuel that may violate specifications. Or ethanol, which unlike gasoline has an affinity for water, may be introduced erroneously into gasoline pipelines or storage tanks containing some water at the bottom; such tanks and pipes are adequate for MTBE blended gasoline, but may need dewatering before they can hold gasohol or ethanol.

These potential problems may require segregation of these two oxygenates and the gasolines containing them, but of course do not disqualify either oxygenate.

Waivers for lack of distribution or supply capacity: EPA shall consider all relevant factors, including current and projected gasoline prices within and without covered CO areas in granting waivers under 211(m)(3)(C).

Though this provision refers to inadequate supply or capacity, estimating the logistics and thus the ultimate capacity of a complex and interconnected system of oxygenate plants, refineries, railroad tank cars for ethanol and ethers, pipelines for blended gasolines, storage tanks, and blending facilities may be difficult. Moreover, a given capacity may be adequate in a period of low demand, but inadequate during higher demand.

To illustrate, there is disagreement today on the fundamental question of whether there is any shortage of crude oil worldwide at present, with some observers inexplicably contending there is no shortage even though crude oil prices have doubled in 2 months. The fungibility of oil, an inability to trace movement of specific shipments through the distribution system, lack of real-time data on all levels of storage, and the constant influence of prices on volumes supplied, all complicate this process.

Moreover, as noted earlier in 1, a tiny error of overestimation by EPA can result in very large price increases.

Accordingly, EPA should make its best advance estimate on this issue; but it should also carefully watch cash and futures oxygenated gasoline prices, and be ready to reverse an earlier estimate of adequate capacity that proves, in the real world of market prices, to be inaccurate.

As a technical matter, there is never a shortage in a decontrolled commodity market. EPA is directed to disregard this technical reality, and focus instead on a real world meaning that includes fuel shortages and high prices.

Comprehensive EPA approach: When considering waiver petitions under 211(m)(3)(C), EPA should—

a. Determine the demand for exygenates in each covered area;

b. Determine the expected domestic production capacity for oxygenates likely to be available at least three months prior to the effective date of this provision:

c. Determine the necessary logistics to supply oxygenates to and within the covered areas;

d. Determine the minimum time requirements for the necessary supply and distribution infrastructure to be made available for each covered area;

e. Evaluate the demand for oxygenates outside of the covered area, and determine the effects requiring oxygen in the covered areas will have on areas currently served by oxygenates (seeking to avoid reallocation of existing supplies of oxygenate to the greatest possible extent);

f. Evaluate competition among covered and noncovered areas for available supplies of oxygenates, and competition's likely effect on the availability and cost of oxygenates in these areas,

g. Provide for a reasonable margin of safety in its estimates of supply to minimize the chances of supply shortages in covered areas,

h. Evaluate and seek to prevent any economically wasteful or irrational actions which may be associated with an early effective date in any covered area, such as for example, the construction of oxygenate storage tanks that will be used only in their first year because rising future oxygenate production could satisfy area demands without any storage,

i. Consider how much savings could be effected by delaying the early effective date in the case of such waste,

j. Establish a list of priority covered areas based upon their severity of nonattainment and the role of motor vehicles in contributing to the area's nonattainment status,

k. Publish a list of areas to be covered each year in sufficient time to assure the availablity of necessary infrastructure by the effective date, and

l. Provide for reconsideration on an areawide basis if supply shortages or infrastructure delays prevent or are likely to prevent compliance by the effective date.

No partial waivers: Too many logistic and refinery reconfiguration problems may arise if partial waivers allowing weaker oxygen concentrations, partial geographic areas, or shorter periods are granted. 211(m)(3)(C)(ii) bans such partial waivers to retain a balance between workability and advance certainty for suppliers.

In particular, new 211 (k) and (m) already create several new kinds of gasoline, and different oxygen concentrations may already exist under the various NOx cap provisions of these two subsections. Further balkanizing of the gasoline industry—with different 02 concentrations in different East Coast cities, for example—potentially risks further disruptions and more individualized precision from refiners, which may not be possible. Segregating a great many individually tailored blends will also be more difficult for the pipeline and terminal segments of the industry. The Colonial Pipeline, which services 6 of the 40 areas, would be more prone to bottlenecks, for any given shipment might be legal in only some or one of those cities.

EPA is not bound to continue a misestimate of adequate capacity by this clause: If, for example, a price spike in mid-winter indicates a shortage, a waiver under clause (i) can then be granted; such a waiver is not an impermissible partial delay or lesser waiver under clause (ii).

Other O_2 waivers: Analogously, EPA should also avoid a proliferation of too many different 02 levels when it grants partial oxygen content waivers, to solve NO_x cap or NAAQS problems under other provisions of 211 (k) and (m).

"Distribution capacity," as used in 211(m)(3)(C), includes everything needed to get to the final pump; for example, interstate transportation, local distribution, storage, trucks, blending facilities, and so on.

Other exemptions: Neither 211(k) nor 211(m) allows EPA to grant waivers or exemptions to only a specified subset or class of refiner, blender, importer, or marketer. Rules or orders of general or particular applicability that in effect return to a scheme of preferential regulatory status for small or large refiners, for example, are not allowed.

No return to oil price and allocation controls: EPA must not, in administering the oxygenated and reformulated gasoline programs, reinvent oil price and allocation controls like those administered by the Department of Energy in the 1970s.

By its decisions on permits for MTBE plants and new refinery units and related offsets, capacity waivers, technical feasibility determinations, enforcement interpretations, and so on, EPA may force costly, lengthy compliance efforts on all segments of the gasoline refining and marketing industry.

Ill-considered regulatory decisions can create delays, and in turn, restrict supplies of certified reformulated and certified oxygenated gasoline. Delays for any reason could thus give EPA restrictive control over gasoline supplies to many of the largest American markets.

Control over supply means control over price. EPA must be sensitive to this danger: New 211 (k) and (m) do not intend to resurrect a 1970's DOE type scheme of detailed government intervention in U.S. gasoline markets. An approach of this sort would be especially unacceptable, in view of the fact that DOE's restrictions artificially lowered prices, whereas EPA restrictions on supply would artificially raise them.

Imports: New 211(m)(3) refers to domestic supply because imports may be unavailable, unreliable, or highly priced. While world supplies are growing, so is world demand; foreign suppliers may not wish to disrupt existing contract relationships with foreign buyers by making spot sales to the United States; and higher world prices may boost domestic prices, as routinely happens with crude oil.

In any event, reliance on imported oxygenates or reformulated gasoline may simply trade one type of fuel import dependency for another. New 211 (k) and (m) do not prohibit such imports or raise their price; but EPA, in making planning and waiver decisions, must not count on imports to fill apparent domestic gaps.

Mr. Speaker, once again, I want to emphasize my pleasure, and relief, that we have the end in sight—that this Nation will have a renewed and vibrant Clean Air Act to move us toward fulfilling the promise of clean, healthy air for all Americans.

I would also like to note, Mr. Speaker that both the House bill and the Senate bill contained provisions addressing EPA's recent WEPCo interpretations. Those interpretations could prevent utilities from undertaking needed equipment changes (including even projects to reduce emissions) at their power plants without first meeting expensive and time-consuming new source review requirements.

The House and Senate bills only addressed part of the problem—WEPCo's impact on pollution control projects—even through WEPCo threatens many other legitimate power plant activities. After passage of the bills, the administration stated that WEPCo could be resolved in a comprehensive fashion administratively without any change in the law. With the understanding that no amendments were needed to resolve the entire WEPCo problem, the Conferees decided to drop the limited WEPCo amendments in the bills.

We expect and urge the Administration to promptly reconsider EPA's WEPCo interpretations. The Administration has ample authority to do this and should quickly move to resolve WEPCo in a responsible manner that will promote cost-effective pollution control decisions, encourage energy efficiency projects, and assure that electric reliability will be maintained.

Mr. DANNEMEYER. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri [Mr. HANCOCK].

Mr. HANCOCK. Mr. Speaker, I rise in opposition to this conference report. Because I oppose this legislation I have been labeled as being against clean air. That is just not true. As much as anyone, I want to clean the air and work to maintain a safe and unpolluted environment.

Since we began debating this issue, I have asked hundreds of my constituents if they are in favor of clean air, 100 percent said "yes." But when I asked how many of them were ready to see their utility rates rise between 15 and 30 percent and face a likely job loss of between 40,000 and 60,000 nationwide, their response was less than enthusiastic.

And when I told them that the goal of the acid rain title of the bill, which will cost between $5 and $8 billion a year to reduce 10 million tons of SO_2 emissions by 1999, could be achieved by the year 2010 for no job loss or rate increase, they got down-right mad.

So Mr. Speaker, I cannot support legislation which places such a huge financial burden on rate payers when the same desired results can be reached at less cost and in a reasonable timeframe.

Much of what Congress has done over the last few weeks has helped steer our country toward a recession. And this legislation will keep driving us in that direction. Just last week,

three Nobel Prize winning economists warned our President that, quote, "The Clean Air Act's unduly stringent and extremely costly provisions could seriously threaten this Nation's economic expansion."

One thing's for sure—to repeat a popular phrase—this bill may result in the cleanest depression in history.

Before I came to Washington, Mr. Speaker, I was a small businessman. For some reason, too many Members in Congress think that if you own a business, you are rich. Well, I want you to know that for the overwhelming majority of small businesses in this country, that is just not the case. And on top of all the mandates we place on businesses as it is, this bill will place an additional onerous burden on 143,000 small businesses. For the first time, small businesses must go through Federal point-source pollution-permitting processes, with estimated costs of between $8,000 and $22,000 dollars per small plant annually, or $1 to $3 billion per year nationally.

Can we afford the same type of governmental industrial planning that the Soviet Union is in the process of eliminating?

It is no surprise that this conference report is coming up just 11 days before the election. To vote against this could be political suicide. And a Presidential veto would be a kiss of death for Republicans. I'm not surprised we are considering this today. All throughout the process, this legislation has been molded by environmental special interests—and of course politics, but not sound public policy.

I urge my colleagues to join me and oppose this bill. There are alternatives to clean the air that are not as costly or burdensome as this proposal. They received little consideration. With the current fiscal problems of our government, and the impending recession facing our nation, let's defeat this conference report and try next year to develop a clean air policy which helps our environment, but does not overburden our economy.

□ 1650

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas [Mr. HAMMERSCHMIDT], the ranking member of the Committee on Public Works and Transportation.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise to add my support for the transportation provisions of the conference agreement and to concur with the statement of Chairman ANDERSON in that regard. In particular, by preserving the key concepts from the House bill on the issues of sanctions and conformity review, I believe that we have adopted a workable program in the transportation area that will advance the goals of cleaner air and of mobility.

I would like to extend special thanks to Chairman DINGELL, Mr. LENT, and Mr. WAXMAN of the Committee on Energy and Commerce for the cooperative manner in which they have worked with the Committee on Public Works and Transportation to craft these provisions.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, I rise today in strong support of this conference report, and I am pleased—no, overjoyed—to be a part of this truly historic occasion.

Enactment of this major revision of the Clean Air Act, with provisions to reduce the hideous threat of acid rain, is the most important environmental legislation considered and passed by the Congress in the past decade.

For 10 years now, I have had the distinct pleasure to work with my good friend JOHN DINGELL, chairman of the full committee and my colleague on the Migratory Bird Commission; with HENRY WAXMAN and GERRY SIKORSKI; my good friend NORM LENT, the ranking member and many many other members who have assisted me in my pursuit of acid rain control legislation.

I probably sound like a broken record to many Members when I recount for them the horror stories of uncontrolled acid rain.

The streams and lakes in my district and throughout New England have been devastated by this silent killer.

The rain of death has severely damaged forests and vegetation across the Northeast, and aquatic life is threatened to the point where periodic fish kills are not uncommon.

Witnessing this damage first hand, and realizing as a sportsman and environmentalist that our natural resources could be damaged beyond repair, I undertood a decade long effort to control acid rain causing pollutants.

Consideration of this conference report today is the culmination of that effort.

In 1983, I introduced legislation, supported and endorsed by the New England congressional delegation, which contained the strongest controls on acid rain emissions ever proposed to that point.

And, 2 years later, I introduced, with Congressmen SIKORSKI and WAXMAN, what was again the most broad based, comprehensive acid rain bill on record.

The bill was cosponsored by over 150 House Members from all regions of the country and representing positions across the political spectrum.

Although neither of these measures were enacted into law, the broad-based support and the approach taken in these bills helped form the base of the bipartisan effort that emerged earlier in this Congress when President Bush endorsed the idea of strong and effective acid rain controls and Clean Air Act reforms.

Although I strongly support the effort embodied in this conference report, I am disapointed that one important provision was not included in the final agreement.

During House consideration of this bill, Congressman WYDEN and I offered an amendment to increase environmental protection for our national parks. This amendment would have ensured air quality standards for our national parks and wilderness areas. Although I strongly supported inclusion of the provision in the final agreement, I understand the art of compromise, and I hope the committee pursues this issue in the future as the opportunity presents.

Mr. Speaker, enactment of this legislation puts a shining star on the record of the 101st Congress. Over the past several months, the record around here for tending to the people's business has been less than perfect.

Today, we have an opportunity to enhance and improve that record. These revisions to the Clean Air Act will leave a lasting legacy to future generations of Americans—to our children and grandchildren who will enjoy the fruits of our work for decades to come.

Because of this legislation, the air will be clean. Our fish and wildlife resources will be protected. And the environment will be safer.

This is a monumental piece of legislation, a testament to how bipartisan approaches to national problems can make the difference, and where Presidential leadership has saved the day.

Mr. Speaker, I proudly urge my colleagues to support these amendments to the Clean Air Act, amendments made to reduce the silent killer of acid rain.

Mr. DYMALLY. Mr. Speaker, I yield 2 minutes to the gentleman from Kentucky [Mr. HUBBARD].

Mr. HUBBARD. Mr. Speaker, surely all Americans are supportive of the concept of clean air. And, yes, sincere congratulations to the Members of Congress and the staff who continue to work to ensure that health standards in this country remain high.

The costs of this legislation will be very high to the Federal Government, to small and large businesses and to each American household. Each family could spend an additional $300 to $400 annually in increased utility bills because of this legislation.

Our economy is currently in a fragile and vulnerable condition.

This, added to the current crisis in the Middle East, just simply increases the prospects that Americans could face some extremely difficult economic times ahead.

This Clean Air Act's unduly stringent and extremely costly provisions

could seriously threaten our Nation's economic expansion.

It's very understandable that a majority of our Members today find a clean air bill irresistible. It's not easy to oppose a clean air bill. Most likely, if I represented Vermont or Oregon or Massachusetts or Florida, I could go along with this bill. I could be a hero to Greenpeace and the Sierra Club. But I represent nine counties in western Kentucky which produce high-sulfur coal.

This legislation, unfortunately, works to the detriment of my congressional district. Clean air—the words are magic. For the high-sulfur coalfields of my district, this bill means lost jobs.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. BLILEY], a member of the conference committee.

Mr. BLILEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to commend the gentleman from New York [Mr. LENT], the gentleman from Michigan [Mr. DINGELL], the gentleman from California [Mr. WAXMAN], the chairman of the subcommittee, and the gentleman from Illinois [Mr. MADIGAN], the ranking member of the subcommittee.

Mr. Speaker, for 10 long years we have labored through countless hours of hearings, through endless markups, to arrive at this day.

Is this a perfect bill? No, it is not a perfect bill. No bill as complex as this could be. It represents truly a bipartisan compromise. Of all the many contentious issues that have been before our subcommittee and committee, this is probably the most.

During consideration of the Clean Air Act Amendments of 1990 on May 23 of this year, I made a number of observations about various aspects of title III—hazardous air pollutants. Those remarks may be found on pages H2844-45 of the CONGRESSIONAL RECORD of that day.

The specific issues I addressed were as follows: Coordination with the Solid Waste Disposal Act; requirements for municipal waste incineration; discretionary listing authority; categorization or subcategorization; and categories of pollutants without a CAS number.

I shall speak to and scorecard each of those matters in sequence, and also touch on two other title III matters—coke oven emissions and the mandatory substances on the initial list for sudden and accidental release requirements. I also shall discuss briefly the regulation of fuels under title II.

Last May I stated that one of my paramount interests with respect to the Clean Air Amendments of 1990 was to try to encourage utilization of the principle of cost-effectiveness in this legislation. That has not always been easy or politically possible. However, if done in consonance with an appropriate level of protection for health and environment, the public will be better served by this ambitious bill (S. 1630). On the other hand, to the extent that S. 1630 departs from that principle, it justifiably can be accused of wasting precious resources without a commensurate benefit being bestowed upon society.

Title III of S. 1630, relating as it does to hazardous air pollutants, is a portion of the bill where the potential for control overkill is particularly great because the public values to be protected are especially fragile and sensitive, both in perception and reality. Nevertheless, proceeding with caution, with health and environmental protection being the objective, the principle of cost effectiveness can be employed here as well.

COORDINATION WITH THE SOLID WASTE DISPOSAL ACT

Last May, I was able to get some language placed in title III in the set of committee amendments successfully offered en bloc to H.R. 3030. The text of that language was as follows:

(u) In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act, the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum the ambitious schedule for regulation under title III and the strain it will place on EPA resources and those of the regulated community.

EPA is currently well along in the process of promulgating stringent air emissions for several specific types of facilities for the same pollutants that are listed under title III of H.R. 3030, as reported. For industrial boilers and furnaces that burn hazardous waste fuel, EPA has proposed both technology-based and health-based emissions limitations on potentially hazardous air pollutants that may be emitted by such sources. See 54 FR 43718, October 26, 1989; 52 FR 16982, May 6, 1987. These regulations, which are more stringent than the stringent requirements that currently apply to hazardous waste incinerators, are being promulgated pursuant to RCRA, not the Clean Air Act, and are expected to be issued in final form within a year.

Compliance with these regulations will require many facilities to install expensive new control technology and to go through an elaborate and costly permitting process. To require EPA to impose an additional layer of extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

That language survived without change in the conference report on S. 1630. Accordingly, the relevant legislative history on the amendment, contained in my May floor statement, implicitly was ratified by the action of the conferees. The discussion last spring, therefore, is worth repeating today for convenience, as follows:

The purpose of my amendment language is to allow EPA to avoid imposing additional emission limitations on a source category or subcategory when such limitations would be unneccessary and duplicative. The amendment would not automatically exclude source categories that are subject to controls under another program, but would simply require the Administrator, to the maximum extent practicable and consistent with the provisions of section 301, to ensure the consistency of subtitle C of the Solid Waste Disposal Act [SWDA] and this section. After all, the purpose of the legislation is to place an appropriate level of control and is not to enshrine control for control's sake. This is particularly important in light of regulation on sources that EPA may determine will be appropriately controlled by another regulatory program would yield no environmental benefits, but it could impose a large burden on both the regulated facilities and Federal and State permit writers. Even if the level of emissions control required under different regulations is essentially the same, the costs of subjecting facilities to detailed monitoring and operating requirements that have been separately promulgated pursuant to different statutory authority, or by different offices within EPA and different State agencies, are likely to be high.

In my view, my language tries to rationalize the appropriate level of control under this legislation with that in companion environmental statute. Indeed, section 1006(b) of the SWDA requires integration with the Clean Air Act of all provisions of SWDA for purposes of administration and enforcement and avoidance of duplication to the maximum extent practicable. To me this is nothing more than the exercise of common sense.

REQUIREMENTS FOR MUNICIPAL WASTE INCINERATION

Last May I observed that H.R. 3030 did not have a specific provision regulating municipal waste incineration. However, absent such a specific provision, it could happen that such incinerators might find themselves regulated in an inappropriate way under generic provisions of title III. The bill that passed the other body had a specific set of regulations applicable to municipal waste incinerators which largely built upon the ongoing rulemaking for those sources. In May, I stated that:

On December 20, 1989, EPA proposed stringent emissions limitations and compliance schedules for existing municipal waste combustors—see 54 FR 52209—and for new, modified of reconstructed municipal waste combustors, see 54 FR 52251. Hearings on those regulations, which have long been in the developmental stage and have been the subject of extensive comments, commenced in January 1990, and further comments for the record were filed by March 1, 1990.

Though somewhat modified to engraft some of the concepts of general title III regulation, the other body's provision relating to emissions was largely adopted. The regulation of ash under subtitle C of RCRA was not allowed, without prejudice, for 2 years—thus allowing the possible resolution of that matter in the upcoming RCRA reauthorization during the next Congress. I was quite pleased that the con-

ference report provisions, in the main, allow the rulemaking which has long been in the regulatory pipeline to proceed, with some adjustments and modifications. I was glad that the conferees deleted the illogical specific reference to source separation and recycling which, though part of the ongoing clean air rulemaking, currently have a very shaky statutory basis and, unsurprisingly, were challenged by a number of commentators on the rulemaking.

DISCRETIONARY LISTING AUTHORITY

Last May I observed that:

Another example comes to mind with respect to the appropriate level of regulation of those substances which are on both the 301 list and the initial list of substances under those other provisions of title III regulating sudden and accidental releases. It is clear that, unless there is a commitment to avoid inconsistency, duplication, and inappropriate control, some of the sources of those chemicals will find themselves subjected to regulatory overkill. It is important that this matter be clarified. Proposed section 112(c)(4) provides discretionary authority to the Administrator to list categories or subcategories under section 112(c) that had been regulated under section 112 prior to enactment. No health benefit would flow from requiring EPA to promulgate new section 112 standards for sources that are meeting standards that provide an ample margin of safety under existing NESHAPS. Accordingly, because of this, section 112(c)(4) authority should be utilized only if the applicable standards needs to be revised. Of course, in some instances, the existence of new sudden and accidental requirements may make the lack of need for any additional title III regulation even more compelling.

I was pleased that the House provision was adopted by the conferees, thereby preserving an additional degree of flexibility in the bill.

CATEGORIZATION OF SUBCATEGORIZATION

It is apparent that if the title III MACT requirements are to work sensibly, it is important that the appropriate control measure be employed in light of the nature of the facility to be regulated. Some industries have processes which are central to appropriate subcategories of the industry. Thus it is vital to utilize subcategorization to prevent the cost-ineffective application of a MACT which is inappropriate to the kind of process which is integral to a source. Given the dramatic increase in the presumed cost of this bill, use of this flexibility becomes even more essential. Pages 170-171 of Senate Report 101-228 states the following: "The Administrator may consider the type of process employed in making decisions on subcategories and standards." As I pointed out last May, there is nothing in the language of the House bill to prevent such an interpretation. Proposed section 112(d)(1), as adopted by the conferees, gave EPA the discretion to distinquish among classes, types, and sizes of sources within a category or subcategory. Furthermore, there was additional flexibility build into proposed section 112(d)(3) in the conference report respecting the degree of reduction achievable for similar sources in category of subcategory. As stated in the House Report 101-490, part 1, on pages 328-329:

Thus, in either case, as EPA searches to determine the best controlled "similar sources" in a category or subcategory these factors must play a role in determining the degree of stringency and the similar sources. The word, according to a dictionary definition, "similar" means "showing some resemblance; * * * alike though not identical." This requires EPA to ascertain if the sources in a category or subcategory are similar to the "best controlled" existing or new source. There may be important differences or characteristics. The physical characteristics and type of operation of the facility may, in fact, distinguish the sources and demonstrate that, in fact, they are not or are similar. In addition, EPA has to consider the above statutory factors, including costs, in determining stringency and similarity.

The MACT provision in the bill gives the Administrator discretion in categorizing and subcategorizing facilities for regulation under subsection (d).

By way of illustration, for aluminum reduction plants, appropriate subcategories would be vertical stud Soderberg, horizontal stud Soderberg, and prebake anode. In the chloralkali industry, except for chlorine, the potential for emissions from the processes relates to quite different materials and product characteristics. Thus an appropriate subcategorization would be asbestos diaphragm cell, mercury cell, and membrane cell.

The inherent flexibility of the adopted provision will allow use of the appropriately targeted technology. It would be a pity if EPA did not properly avail itself of the rational regulatory tool of subcategorization.

CATEGORIES OF POLLUTANT WITHOUT A CAS NUMBER

In May I addressed the important regulatory flexibility to be sought in allowing recognition of the fact that differences existed in substances within a compound category, as follows:

Lastly, the bill designates on the list of regulated hazardous air pollutants 17 broad categories of pollutants without a CAS number. To ensure that substances are not unnecessarily regulated by emission standards based on the health risks posed by a very different toxic pollutants within the same broad pollutant category, the bill allows EPA to delete from regulation those unique chemical substances that do not meet the criteria for adding a pollutant to the list of toxic air pollutants. Also, to ensure that unique chemical substances that are only mildly toxic and noncarcinogenic are regulated on the basis of the specific risks posed by the unique chemical substances and not on the basis of risks posed by a known human carcinogen or a severely toxic unique chemical substance in the same pollutant category, the Administrator should establish emission standards with respect to the health and environmental effects of the substances actually emitted by a source.

I am pleased to report that the provisions of the House passed bill were improved by adoption of language in the Senate version permitting the Administrator to take cognizance of the different toxic risks represented by unique chemical substances within broad categories.

SUDDEN AND ACCIDENTAL SUBSTANCE LIST

In its initial list of the prevention of sudden, accidental releases, the Senate bill included four industrial solvents—toluene, methyl alcohol, acetone, and methyl ethyl ketone—that are not on the original EPCRA section 302 list. The House version did not.

OSHA has fixed the short term exposure limit [STEL] of these four chemicals at over 150 parts per million (ppm), and as high as 1,000 ppm—for acetone. The STEL's are a measure of the acute health effects for the chemicals. The STEL's of the chemicals on the EPCRA section 302 list are generally in the 1 to 50 ppm range. This makes the four above named chamicals clearly less hazardous.

Inclusion of those chemicals would result in additional unnecessary expense for sophisticated air dispersion modeling techniques for these companies who use the four chemicals in question because a sudden release of the above four chemicals would certainly not pose the same acute risks as would a release of the EPCRA section 302 chemicals. Also, the preparation of a Hazard Assessment would pose an unnecessarily heavy manpower/paperwork burden.

Because of the relatively low acute toxicity of these four chemicals and the unnecessary additional burden that such inappropriate inclusion would impose, I was glad to see the conferees drop those four chemicals from the mandatory substances on the list. To avoid trivializing the list, the Administrator in the exercise of his discretion should not include them on the list. The conferees recognized that their inclusion was inappropriate.

COKE OVEN EMISSIONS

In 1981 the steel industry successfully pushed for passage of H.R. 3520—the so-called steel stretchout legislation—to give itself time and conditions, not available to other industries, to comply with certain Clean Air Act requirements. That measure passed on the floor of the House under suspension of the rules with only three dissenting votes on May 28, 1981, and the version sent to President passed the House on June 26, 1981 with only four dissenting votes. In both instances I was one of the dissenters. Now in S. 1630 the steel industry is getting a 17-year extension from the date they would otherwise have to meet stringent health-based standards. It is true that in order to qualify for the extension to the year 2020, coke ovens would have to meet interim standards

of increasing stringency. However, once again, the steel industry has secured an arrangement not available to others, despite the risk posed by many of such ovens and despite the availability of appropriate clean coke oven technology.

FUELS

No other provisions in the conference report on S. 1630 have as much potential for chaos, and are so fraught with interpretative difficulties as those relating to fuels. This is so, in part, because disparate provisions were crafted without sufficient coordinative attention to the technicalities and implications of other sections. Also, the new proscriptions were insufficiently sensitive to the enormous complexities of the petroleum refining, marketing, and distribution industry in this country. Furthermore, the considerable expense, capital planning, permitting, and construction demands of this legislation add to the daunting task of implementation of these provisions. Given the fragility of our energy situation and rising consumer disquietude with prices, this radical program is not unlike a leap in the dark. The program offers real dangers of market balkanization, coupled with potential harmonization and enforcement difficulties which bring unpleasant memories of the emergency petroleum allocation program. As only one example, consider the fact that reformulated gasoline under California's clean fuel program in part c of title II will use the definitional term nonmethane organic gas [NMOG] adjusted for reactivity, whereas reformulated gasoline in part b of title II used the term VOC's and is measured on a mass basis. Some of the pitfalls were ably addressed by Senator Johnston on page S15541 of the CONGRESSIONAL RECORD of October 17, 1990.

It is absolutely essential that EPA utilize regulatory flexibility to harmonize the requirements under parts b and c, as well as to mitigate any potential disruption caused by part B. Proposed section 211(k)(1) sets forth the bedrock regulatory foundation for the reformulated gasoline program to require the greatest reduction in emissions of ozone forming VOC's and toxics achievable, taking a variety of factors into consideration. It is vital that section 211(k)(1) be viewed as residual authority to modify the more specific requirements throughout proposed section 211(k), if implementation of them would run afoul of the factors in section 211(k)(1). In short, notwithstanding the apparent mandatory style of the other requirements, they may be adjudged to be merely required targets—the dates and specifics of which may be adjusted to comport with reality and the basic foundational demands of section 211(k)(1).

EXPLANATION OF HEAVY METALS PROVISION

Under the conference agreement, a reformulated fuel cannot include a heavy metal unless the EPA Administrator determines that the reformulated fuel containing the heavy metal will not increase, on an aggregate mass or cancer-risk basis, total emissions of toxic air pollutants. For purposes of this section, the term "toxic air pollutants" means benzene, butadiene, formaldehyde, polycyclic organic material [POM], and acetaldehyde.

The conference agreement specifically mentions lead and manganese as two examples of heavy metals. These two metals were mentioned because they are the two now controlled by the existing section 211 of the Clean Air Act. This new provision regarding heavy metals builds upon these existing requirements.

The certification required concerning aggregate mass or cancer-risk is in addition to other tests in current law. In particular, the existing provisions of section 211 of the Clean Air Act which require EPA to find that a fuel or fuel additive will not cause or contribute to a failure of any emissions control device or system will continue to be applicable to fuels and fuel additives, including fuel additives and fuels containing heavy metals. The conference agreement allows the EPA to look at aggregate mass or cancer risk of the emissions of the five toxic air pollutants. A fuel is not required to meet both tests. It is assumed that unless the reformulated fuel containing the heavy metal significantly increases on a net basis emissions of carcinogens among the five air toxic pollutants, when compared with a comparable market grade reformulated fuel not containing the heavy metal, EPA will utilize the aggregate mass test for determining whether the reformulated fuel containing the heavy metal can be certified.

In testing reformulated fuels for the emissions impact of heavy metals, the Administrator shall compare the emissions characteristics of a reformulated market-grade fuel containing the heavy metal with those of a market-grade fuel not containing the metal. This comparison shall be conducted on a basis consistent with that originally applied to the certification of a reformulated fuel of equivalent octane not containing the heavy metal. For example, where the performance characteristics of a fuel are changed by the addition of a heavy metal, EPA should compare market-grade fuels of equivalent performance characteristics. Simply "splash-blending" a heavy metal into a reformulated fuel, when the octane level or other performance characteristics of such a fuel would be changed, would not be a proper way of conducting such a comparison.

The automatic certification procedures under the reformulated fuels section are applicable to all reformulated fuels, including those containing heavy metals. Thus, as long as a reformulated fuel containing a heavy metal meets the performance standards, it can be automatically certified as well as any other reformulated fuel. In no way is this provision intended to affect heavy metals which originated in the crude oil and are contained in gasoline in trace amounts, or which are contained in baseline 1990 gasoline.

Mr. Speaker, one of the issues which the Clean Air Act of 1990 address is the control of emissions of gasoline vapors which escape from motor vehicles during refueling. I have been deeply involved in the debate over this issue during consideration of clean air legislation over the past several years.

I have long advocated the use of onboard vapor recovery systems to control these gasoline vapor emissions for several reasons. First, onboard systems have been determined by the Environmental Protection Agency to be the most cost-effective means of controlling these emissions. The cost of equipping a vehicle with an onboard system is estimated to be less than $100. The alternative stage II controls are estimated to be between $40,000 and $60,000 per fuel retail outlet with eight nozzles or more. Maintenance slots for stage II are estimated to be approximately $6,000 to $9,000 per year. Gasoline marketers already face substantial costs in complying with underground storage tank and other environmental regulations. Obtaining financing for the stage II controls may be difficult, potentially forcing fuel retailers out of business, and making access to motor fuel difficult.

I am proud that this bill makes the wise choice in requiring vehicles to be equipped with onboard canisters. Because the issue of controlling refueling vapors has been controversial over the years, I want to make sure that we understand what the bill requires.

Those amendments revise section 202(A)(6). The bill requires Administrator of the EPA within one year of enactment of this paragraph to promulgate standards requiring that all new light-duty vehicles manufactured in the fourth model year after the model year in which the standards are promulgated, and in all subsequent model years, be equipped with onboard systems for the control of emissions during refueling.

Before promulgating such standards, the Administrator is to consult with the Secretary of Transportation regarding the safety of such vehicle onboard systems. It is not the intent of this provision to limit or impede the performance by the Administrator for the Administrator's nondiscretionary duty to promulgate standards requiring onboard vapor recovery systems. EPA must issue these standards.

Further, to avoid the unnecessary expenditure of capital for the installation of stationary stage II vapor recovery equipment in nonattainment areas where such regulations requiring stage II must or may be waived because of the issuance of standards requiring vehicle onboard vapor recovery systems, the requirements under title I relating to the installation of stage II shall not take effect before the promulgation by the Administrator of standard requiring onboard vapor recovery systems under title II.

I also want to note my concern about the potential use of stage II to control air toxics. Stage II should be a control measure of last resort. EPA should first seek alternatives such as the onboard vapor recovery systems or reduced emissions of aromatics and benzene from gasoline.

I am also proud to be a part of this historic agreement on acid rain control legislation. This is an important day for this committee and an important day for the country.

This legislation is the strongest acid rain control measure to ever come before this body. The bill cuts the precursors of acid rain in half and it keeps the emission at these new low levels. This bill will greatly reduce the threat to Virginia's lakes, streams, and forests posed by acid rain.

Just as importantly, this measure retains the innovative least-cost principles of the President's bill. This bill keeps much of the flexibility that allows States and localities to make the most efficient decision for their particular situation. The bill also keeps intact the emission allowance system that will provide an environmentally sound market approach to our future energy needs.

I am pleased that this refined proposal includes variations of themes that I advanced with my amendment in the Subcommittee on Health and Environment. First of all, this bill recognizes the need to distribute allowances to those clean units already under the 1.2 lb/MBU standard. It eastablishes an equitable distribution formula that takes into account projections for future growth. The bill also includes an early auction of allowances as I proposed to prevent the hording of these allowances. This mechanism will ensure the proper operation of the emission allowance trading system.

I want to commend all of my colleagues for their participation in this hard-fought, fair agreement.

□ 1700

Mr. SWIFT. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio, Mr. THOMAS A. LUKEN.

Mr. THOMAS A. LUKEN. Mr. Speaker, this is truly a historic occasion. After almost a decade, we have finally passed a clean air bill that promises to be strong but fair.

The commitment, dedication and time put into this project by the Members, staff, and other interested parties, is reflected in the final product before us today.

Many of the issues that we have had to come to terms with in this legislation were highly contentious, as local interests and needs produced deep splits among the conferees along regional lines. Perhaps no issue was more regionally divisive than the regulation of pollutants which are precursors to acid rain. The acid rain issue pitted the so-called clean States against the Midwest in a battle that threatened to kill the ensire bill.

There will be losses of jobs in one area and gains in others, significant shifts. That means sacrifice and suffering.

There was serious danger that Members would lose sight of our ultimate goal to produce a strong but equitable bill. But I am happy to say that in the end, through the efforts and support of people directly affected such as PHIL SHARP and MIKE OXLEY and even of those whose interests were not similar to the Midwest's, the conferees were able to produce an acid rain title that is, on balance, more fair and workable.

I must say that upon reflection of some of the statements made against states like Ohio, Indiana, and Illinois, during the acid rain debate, I was struck by the failure of some to recognize the interdependency of each State in this Union and of the intricacy of our common environment. I hope that Members will come to recognize these interrelationships and accept responsibility for addressing other pressing environmental problems like our growing solid waste crisis and the long distance interstate transportation of solid waste.

As a conferee on this legislation I am pleased to see that a number of matters in the proposal that are not in the area of acid rain, such toxics, enforcement, mobile sources, permits and other sources, In the area of mobile sources, the bill establishes a number of new tailpipe standards and other standards applicable to the motor vehicles industry, All of these are quite stringent. They will require over the next decade the use of engineers and other sources to bring about compliance.

Nevertheless, I am pleased to see that included in the propoals is an intention of Congress that EPA not further tighten down on these standards through regulatory actions. As a conferee I believe that is wise policy. In short, it provides that Congress intends that EPA not take further action over the next decade to increase stringency of these standards and requirements. Congress is stating that there should be stability in that industry in that where there are new requirements EPA not in fact increase the stringency of the regulations. In my view that is a sound approach.

Let me also express my views on other mobile source matters:

In the case of onboard controls, intent of Congress is that EPA resolve safety concerns before mandating onboard controls. The consultation with DOT must be meaningful, with EPA satisfactorily addressing any NHTSA concerns, Onboard controls should be required only if they are safe.

As the text of the conference report states, the onboard vapor recovery requirements is limited to light-duty vehicles, which means passenger cars. Congress made this choice because it was clear that applying onboard to trucks would be infeasible and inappropriate, due in part to their larger fuel tanks.

Manufacturers are to specify which engine families are to be covered by the new standards, which must be projected to meet the necessary percentages for each model year. As in California, manufacturers may use, and EPA would be expected to accept, projected sales information in determining compliance with the percentage phase-in requirements.

California has also recently issued regulations regarding emission control diagnostic systems that monitor a wide range of emission control functions.

Congress expects EPA to conform its implementation requirements and procedures to those of California. Here as elsewhere, California's program in this area is sufficiently rigorous for the Nation as a whole.

It is heartening to see the clean air feud finally come to an end, as the Members of both Houses and the industrial community and environmental groups have come together at last to produce this package.

Mr. Speaker, I want to congratulate and applaud the fine efforts of my colleagues, especially Chairman JOHN DINGELL, PHIL SHARP, and HENRY WAXMAN.

Congratulations.

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. FIELDS], a member of the committee.

Mr. FIELDS. Mr. Speaker, this is an important day for all Americans. Finally—after 13 years of legislative deadlock—we have clean air legislation before us today.

No other single bill considered in the 101st Congress will have more lasting impact on our Nation and its people than will the Clean Air Act of 1990. No other legislation considered by this Congress will be more important in determining what kind of Nation our children, and our children's children, will inherit.

I want to thank my colleagues on the Energy and Commerce Committee—particularly Chairman DINGELL and the ranking Republican, NORMAN LENT as well as the committee staff and individual members' staff for their diligent efforts to fashion a clean air bill. Countless hours were spent by staff and committee members to reach agreement on this bill, which contains some of the most contentious issues imaginable. Also, I'd like to acknowledge the efforts of President Bush, who began this debate by introducing his own clean air plan more than a year ago.

The Clean Air Act of 1990 is a strong bill that will make cleaner air a reality for all Americans. It will sharply reduce urban smog; cut 90 percent of carcinogenic and toxic emissions by industry; force the development of new and cleaner blends of gasoline and cleaner cars, trucks, and buses; and at long last begin the process of halting the environmental toll of acid rain.

Like any bill, this one is a compromise—which means that the final product is far from perfect. Indeed, if I were drafting the bill, it would look vastly different. We all agree on the need to revamp our Nation's clean air law; where we disagree is on whether or not to consider this bill in a vacuum—without regard to its effects on the economy and on the jobs of working Americans. I believe that it is essential that we strike a balance between two competing considerations: stronger environmental protection and a strong economy with jobs for all Americans. While the provisions in the bill place new restrictions and demands on industry, much of the cost of those restrictions will be passed on to consumers in the form of more expensive cars and gasoline, increased utility rates and higher prices on a broad range of goods and services.

Americans are already spending $32 billion a year to clean our Nation's air. There's no doubt that more needs to be done. But it concerns me greatly that the cost of this bill has increased so dramatically. While the Administration estimates that this bill represents an additional yearly cost of $25 billion, industry groups have projected the figure to be between $50 billion and $100 billion. And if history is any guide, the actual cost of complying with the clean air reforms will be far greater than our wildest expectations. Whatever the final cost of the bill, one thing is certain—it will be an expensive drain on our constituents' pocketbooks and on our Nation's economy.

Mr. Speaker, the Clean Air Act of 1990 is easily one of the greatest accomplishments of the 101st Congress. It is a historic compromise that will affect not only this generation of Americans, but future generations as well. I've expressed my lingering concerns about the cost of the legislation and the fact that we're placing additional demands on industry which may not be technologically feasible. If this bill is not workable, Congress will be forced to revisit this issue at some future point. But for now, for today, passage of this legislation is extremely welcome. The time is right for Congress to make good on its promise to deliver legislation to the President which will achieve the goal of cleaner air for all Americans.

TITLE II: ALTERNATIVE FUELS

Mr. Speaker, although this program may overreach, it is founded on a very important principle—namely that environmental performance not fuel content specifications should be the cornerstone for reformulated gasoline requirements. Even where certain fuel content requirements are set, such as those for benzene and oxygen, the program provides flexibility by avoiding a per gallon requirement and instead through a credits program allows averaging over a refiners' pool of fuel sold in each covered nonattainment area.

With regard to aromatics, we have provided even more flexibility by allowing not only averaging but also by permitting equivalency to be demonstrated. In other words, if a fuel with a different amount of aromatics meets the VOC and air toxics performance standards, it shall be certified as complying with the program's requirements.

EPA must test a fuel meeting the content specifications to compare its VOC and air toxic reductions to the performance standards set in this bill. If this fuel formula achieves greater reductions, the performance standards will be adjusted accordingly.

EPA must test a fuel meeting the content specifications to compare its VOC and air toxic reductions to the performance standards set in this bill. If this fuel formula achieves greater reductions, the performance standards will be adjusted accordingly.

To provide as much leadtime as possible, EPA shall promulgate regulations concerning the required emission reductions with 1 year of enactment. These regulations shall be based on a consideration of the cost of achieving those reductions; their air quality, health and environmental impacts; and their energy impacts. Should EPA miss this regulatory deadline, we must recognize that we may need to reconsider and extend the effective date for this program.

There are other important regulatory deadlines that EPA must meet if there is any hope of implementing this program in 1995—namely, the issuance of regulations pertaining to fuel certification procedures and antidumping requirements as well as harmonization of this program with other fuel requirements contained in this bill.

The certification process is one area where we may have created an unworkable situation. Fuel manufacturers must petition EPA to certify their fuel or slate of fuels. EPA is supposed to act on these petitions within 180 days. If EPA does not act within this time period, the fuel is deemed certified. However, the door is left open to later EPA action even after refiners may have made considerable investments in refinery modifications which could then be rendered obsolete. I intend to monitor this process closely and offer possible amendments to improve it in the future should that prove necessary.

Meanwhile, EPA should act as expeditiously as possible on such petitions. No fuel manufacturer should be liable for any type of retroactive penalty for selling a fuel that was deemed approved but later disapproved. And, if EPA does subsequently disapprove a fuel, a reasonable period must be provided for a fuel manufacturer to come into compliance.

Regarding the antidumping provisions, EPA shall issue regulations within 1 year of enactment to ensure that the quality of gasoline is maintained in areas not included in the reformulated gasoline program. These regulations shall require that each refiner, blender or importer annually certify that emissions of carbon monoxide, VOC's, NO_x and air toxics do not in the aggregate exceed the average for his 1990 fuel from representative vehicles. Again, these regulations must be issued promptly to allow fuel manufacturers to plan accordingly.

Conflicts could arise from overlapping requirements under the fleet program; the reformulated gasoline provisions; the oxygenated fuels provisions; opt ins to the reformulated gasoline program; the California pilot program; and States that opt into the California program through section 177. Clearly, the potential for conflict great and it was not our intent to create requirements for several different types of reformulated fuel within any covered nonattainment area.

If we think that the timeframe for meeting the reformulated gasoline requirements is tight, one has only to look at the oxygenated fuel provisions to realize how overly ambitious we in Congress have been. The oxygenated fuel program will begin in all carbon monoxide nonattainment areas in less than 2 years, despite the fact that numerous studies, including work by the Congressional Research Service, have clearly demonstrated that domestic supply and distribution capacity will simpy not be adequate to meet the demands of the program. And, we have compounded this error by requiring oxygen in reformulated gasoline year-round despite the additional cost to consumers and the lack of demonstrated environmental benefits.

Fortunately, at least in the case of the oxygenated fuel program, we recognized our limitations and provided for a waiver if such domestic capacity is insufficient. However, this waiver is to be administered through a petition process at EPA and prompt EPA action will be necessary. EPA will have to consolidate such petitions to take a broad national view of availability and must consider the cost of such fuel to consumers. Priority should be given to areas with the most severe problems or to those there the expected benefits of this program are expected to be the greatest.

In closing, it is clear that we have designed a very ambitious and challenging program for both reformulated gasoline and oxygenated fuels—a program that may later prove to be infeasible and need further adjustment. It relies on prompt and expeditious action by EPA in promulgating and implementating regulations. Should EPA be unable to meet its regulatory deadlines, we may be forced as part of

a technical corrections package to adjust the effective date of the program accordingly.

It is essential that EPA, in developing this regulatory program, make no distinctions among classes of refiners, blenders, importers or marketers and provide no exemptions. EPA must carefully consider the implications of any expansion of the reformulated gasoline program through opt-ins and evaluate the impact on fuel supplies and cost. EPA must make every effort to act within the 180 days provided to certify a refiner's fuel or slate of fuels to provide the type of certainty necessary to proceed with major refinery modifications. EPA must, where possible, streamline the permitting process to allow these modifications to be made. And, EPA must develop and apply appropriate testing tolerances to all aspects of this program.

Mr. Speaker, in this legislation we have also required the State of California, where some of the Nations worst air pollution problems exist, to implement a pilot program of clean-fuel vehicles and clean alternative fuels. For several years California has been developing just such a fuels program, and the Federal requirements are intended to be installed only if California fails to adopt a clean fuel program.

The Federal requirements should provide an important test of clean fuels. Although valuable experience and data will be gained from such a program relative to both fuels and vehicles, the most important lesson learned will be the acceptability of such clean fuels to consumers. We, as legislators, must recognize that while we can establish goals and requirements for States, individuals, and companies, the utlimate test of our work will rest with the consumer. The California program will test this maxim.

Fuel suppliers are required to produce, distribute, and make fuel available at sufficient geographic locations, and in relation to the number of vehicles on the road, so that consumers will find it convenient to use clean fuels. But the marketplace will determine the demand for clean fuels and the ultimate success of this program.

Both EPA and the refining industry are faced with a formidable task in implementing this program. I intend to watch this process closely and suggest whatever adjustments may prove necessary to ensure that high quality fuel continues to be available to American consumers at a reasonable price.

Finally, the conferees have adopted the concept of pool averaging for refiners, blenders, importers and marketers with regard to the specifications for aromatics, oxygen and benzene, in order to provide flexibility in meeting the stringent new requirements of this section. To implement averaging, the principle of marketable credits, as recommended by the President, has been utilized. The conferees anticipate that this system of pool averaging and marketable credits will be critical to the workability of the reformulated gasoline requirements, and expect EPA to ensure that the program set up under the regulations both operates efficiently and can be enforced effectively.

TITLE I (NONATTAINMENT) AND THE IMPACT ON CONSTRUCTION AND MODIFICATION PROJECTS REQUIRED BY OTHER TITLES OF THE LEGISLATION

Mr. Speaker, the title I provisions address the failure of our nonattainment areas to achieve the ambient air quality deadlines in existing law. We have placed what we hope are more realistic deadlines in this new law. We have not, however, simply continued to tell the States to do a plan to clean their air. That did not work. We have imposed some very stringent requirements on nonattainment areas which will in turn have to impose such requirements on industry in those areas. These new title I provisions include increased offset requirements, limited netting and restrictions on preconstruction permitting.

These preconstruction requirements will have a major impact on construction and modification projects required within discrete timeframes by other titles of the legislation. It is crucial that EPA interpret title I appropriately, or it will be impossible to meet many of these stringent new provisions.

Examples of some of these new requirements found in other titles, which effect almost every sector of industrial America, including the following:

Projects to modify chemical plants to incorporate the new Maximum Achievable Control Technology requirements [MACT] for air toxics under title III;

Projects to modify motor vehicle plants to make clean fuel vehicles under title II;

Projects to modify electric utility generating plants to reduce sulfur oxides under title V;

Projects to modify general manufacturing plants to reduce NO_x emissions; and

Modifications to refineries needed to make clean alternative fuels and reformulated gasoline for conventional vehicles under title II.

I would like to focus briefly on this last requirement. This legislation orders the petroleum industry to produce a significantly cleaner burning gasoline by January 1, 1995. This new fuel would be the only gasoline allowed to be sold in nine of our biggest cities—volumes which represent 25 percent of the total gasoline sold in this country.

There is no data that indicates the stringent specifications for this reformulated fuel can be met. But, we do know that if it can be made, major reconstruction and retooling of oil refineries will be necessary. Such construction projects generally take up to 5 years, but in this case we are not even giving the industry that long. Furthermore, no construction can commence until EPA publishes regulations on how to certify this fuel as in compliance, and then all of the new preconstruction requirements of title I must be met. If the fuel cannot be produced by January 1, 1995, no gasoline can be sold in these nine cities—there is no provision in the legislation for an extension of time.

It is crucial that EPA not allow these new title I provisions to prevent or interfere with these types of projects required elsewhere in the bill, and we must make it clear that it is Congress' intent that they not do so.

EPA and the States should exercise maximum discretion to expedite such projects and minimize the adverse effects of the new title I provisions on such projects. Without in any way limiting the possibilities, here are a few examples of how EPA and the States could help:

Tailor the boundaries of nonattainment areas under section 107(d) as closely as possible to the actual areas where exceedances are measured by the EPA-approved monitoring network. This will help assure that the new title I nonattainment requirements are focused on areas where they are needed most and prevent them from interfering with beneficial projects located in areas which do not experience monitored exceedances.

Subdivide nonattainment areas under sections 107(d), 181(a), 186(a), and 188(a) so that the severity of their designations match the severity of their nonattainment problem as measured by the EPA-approved monitoring network. This will also help assure that the new title I nonattainment requirements are focused on areas where they are needed most.

Move quickly to remove construction moratoria in certain areas under section 110(n) ("Savings Clause").

Interpret the permit requirements themselves to enable the rapid approval of such projects to the maximum extent possible. For example, EPA and the States should fully credit all emissions reductions made to enable compliance with the requirements of the act.

Adopt RACT, CTG's, and other technology controls under sections 182, 183, and 190 for such projects which enable them to be conducted in as cost effective a manner as possible, considering all relevant environmental impacts.

Provide full credit towards attainment under section 182 for such projects.

Provide that the special rules for modifications in section 182(c) (7) and (8), which are triggered by de minimus increases under section 182(c)(6) are applied to promote the construction of discreet operations, units or other pollutant-emitting activities at those sources which enable plants to more readily comply with the Act.

Adopt NO_x controls only if necessary for such projects under section 182(f).

Include such projects specifically in the expanded NO_x study under section 185(b).

Title I establishes tough new preconstruction policies such as increased offset requirements, limited netting and restrictions on permitting. Although the potential is clearly there, it is not Congress' intent that these new requirements prevent or interfere with an industry's ability to meet the other requirements of the bill such as the production of reformulated gasoline, within the required timeframes. EPA and the States must streamline the process and demonstrate flexibility to ensure that this legislation, taken in it entirety, works in concert not at cross purposes.

TITLE I: OTHER PROVISIONS

The regulations adopted pursuant to Section 712 shall not establish requirements for OCS facilities that are more stringent than those requirements for onshore facilities. OCS facilities should carry their fair-share burden for assisting in cleaning the Nation's air; however, it is expected that onshore districts will not adopt emission control or offset requirements which would, in effect, prohibit OCS development.

In addition, the marine vapor recovery control requirements in title I represent a very important means by which port areas can address their ozone nonattainment problem. Clearly, these new requirements are intended only as nonattainment measures, although state and local authorities could extend the requirements to other areas if they choose.

TITLE III: OIL AND GAS WELLS AND § 112(D)

Section 301, paragraph (p) instructs the Administrator to determine if oil and gas wells and associated equipment located in SMSA/CMSA areas greater than 1 million people present greater than a negligible risk. If the Administrator determines that such wells present such a risk, he shall promulgate standards applicable to such wells. Oil and gas wells, and associated equipment and gas processing, have generally very low emissions of air toxics. Furthermore, these operations are typically located in remote areas, with wells and equipment widely dispersed geographically, rather than concentrated in a single area. For these reasons, it is very unlikely that oil and gas sources would present a significant risk to human health and it is not expected that this source category would need to be a listed category designated for regulation. However, if any oil and gas wells are located in a SMSA/CMSA greater than 1 million people, the Administrator is instructed to determine if any of the wells (or associated equipment) present greater than a negligible risk. Since oil and gas wells (and assoicated equipment) can vary in terms of size, thruput, distance from residential areas, etc., it is critical that the exploration and production source category be divided into several subcategories. The negligible risk determination should then be made for each source subcategory. If a well (or piece of associated equipment) does present greater than a negligible risk, the Administrator shall promulgate standards that are applicable to only those wells (and associated equipment) and/or subcategory that exceeds the specified risk level.

One additional point, the conference agreement alters the definition of MACT in section 112(d) with respect to the MACT floor. The bill narrows the exclusion for LAER sources as compared to the original House provision. However, it is important to emphasize that, even with the revised MACT floor provision, the bill still specifies that cost and cost-effectiveness considerations are key criteria in determining MACT. The definition of MACT does not contemplate a mechanical approach, such as the so-called top down approach, where cost effectiveness concerns are relegated to secondary considerations.

TITLE V: UNITS IN PROGRESS

Under title V, acid deposition control, section 405(g) addresses those utility units in progress and for which second phase allowances are issued in amounts as designated under the available options.

Permanent allowances will be issued starting with the second phase for units listed as eligible units in progress unless the unit exercises other option provisions to receive allowances. The permanent allowances issued under any provision of section 405(g) shall be treated as are any other allowances for purposes under the act including holding, using, purchasing, trading, pooling, selling, auctioning, transferring, banking, and other uses. These allowances shall not be subject to the reallocation, reduction, or redistribution mechanisms in this title. Units issued allowances under this subsection shall not exceed that annual sulfur dioxide tonnage emission limitation unless the owner or operator holds for use additional allowances equal to the amount of emissions over the initial allocation.

MODIFICATIONS GENERALLY

One of the major differences between the provisions in title III in the House and Senate bill is the treatment of modifications to existing sources. The House bill included modified existing major sources in its definition of new source, while the Senate bill had limited the new source definition to new and reconstructed sources.

Because of the preconstruction approval requirements for new sources, there was concern that the House definition would have delayed and impeded manufacturers from making the changes necessary to improve processes and introduce new products and processes. To avoid such delays and burdens, the conferees crafted an alternative provision on modifications.

Under the conference report, modifications are not included in the definition of new source and hence will not be subject to the same preconstruction approval requirements as new sources. Instead, modifications are treated separately. Moreover, requirements for modifications do not apply to a source until there is an approved permit program in that State. This should insure that there is a permit program in place that is designed to expeditiously deal with modifications.

A modification is defined as a physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant. However, a source which offsets the increase with an equal or greater decrease in other more hazardous emissions will not be considered as having made a modification. The source simply needs to submit a showing to the permitting authority of such offset to avoid being considered as having made a modification. EPA is required to publish guidance which should help facilitate such showings by identifying the relative hazards of emissions of the hazardous air pollutants. The conferees imposed one limitation on the offset; that is if the source will be increasing emissions of a carcinogen, then the emissions which are decreased must also be of a carcinogen.

With the exception of the allowance for a de minimis increase in emissions, the definition is identical to the definition of modifications in section 111 of existing law. Under this provision, EPA has issued regulations specifying certain kinds of activities which would not constitute a modification. Clearly the conferees intend that such kind of activities would also be excluded from triggering the modification definition in new section 112.

A major source which does make a modification without any offset must obtain a determination from its permitting authority that the existing source MACT standard applicable to the modification will be met. In instances where there is no applicable MACT standard, this determination is to be made on a case-by-case basis. Obviously in either case, if the source has satisfied the requirements of subsection (i) regarding alternative emission limitations and has a permit reflecting the alternative limitation, this would serve as the basis for the requirements relating to the modification.

The bill requires the permitting authority to establish reasonable procedures to assure that the requirements for modifications are reflected in the permit. This is one of the most important elements of the conference agreement on this issue. It was included to assure that sources making modifications are not caught in the delays that can frequently occur with permitting authority to establish procedures that allow sources to anticipate and provide for modifications in their permit, and to the extent such modifications are not anticipated, to quickly notify the permitting authority so that changes can be appended to the permit. As long as the permit provides that the existing source MACT standard will be complied with in the event of a modification, the objectives of the modification provision in the law will have been satisified. If there is no existing source MACT standard, then the conferees expect an expeditious determination of what emission limitations the modification must meet.

Again let me stress that the objective of the provision on modification is to assure that any such modifications are made in conformance with existing source MACT standard. At the same time, the conferees did not want to see modification requirements impose delays on batch processing operations or delays for manufacturers who want to change or improve manufacturing processes or who want to initiate the manufacture of new products. The competitive posture of the country cannot afford such delays. And equally important, we can satisfy the our environmental objectives without such preapproval delay.

Another issue of concern relating to modifications is the so-called WEPCo issue. Most of the attention on that issue has focused on utilities. But EPA's WEPCo approach poses many of the same problems for industrial sources as for utilities. For example, many industries, such as the petroleum and automobile industries, will have to make modifications to their facilities in order to meet the act's pollution control objectives—for example, changes at refineries to allow production of reformulated gasoline or changes at auto plants to produce different vehicles or to meet new pollution control standards. It is of critical importance, if this legislation is to work effectively, that these facilities not be caught in a cascade of new review requirements because of modifications undertaken to comply with this legislation. EPA needs to address these industrial issues when it reconsiders its WEPCo approach.

This legislaion takes as one of its core principles that the control requirements for non-attainment areas should be differentiated depending on the severity of the non-attainment problem in the area. California, accordingly, will fact the strictest controls in the bill. This is true both for direct control requirements and for related requirements, such as new source review provisions. For new source review, the

bill's provisions for extreme areas preclude any use of the de minimis netting concept of section 182(c)(6) and also lower the threshold for major source review to 10 tons per year.

The demand for natural gas will increase because of this legislation. It is important that, at the same time that the bill increases the attractiveness of natural gas as a fuel, it not frustrate the ability of the pipeline companies to deliver new supplies of natural gas to areas such as New England. This is one of the major reasons why the final bill revised the provisions of section 182(f) relating to NO_x controls to provide flexibility in addressing NO_x emissions and offset requirements. This will help ensure that new compressor stations can be located in non-attainment areas. Section 182(f) does not, of course, address attainment areas in the Northeast Transport region or elsewhere; in thos areas the rules for new source review of NO_x emissions remain unchanged.

Mr. DANNEMEYER. Mr. Speaker, I yield 2½ minutes to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Speaker, I rise in opposition to the legislation before us this afternoon. There is no question that all of us in this body want a safe, healthy, and attractive environment in which to live. There is, however, a question as to how far we can afford to go in pursuit of this goal. Therefore, before we make a decision on the Clean Air Act amendments, this Congress must first answer the following: "Do the proposed reductions in emissions result in a significant reduction in health risk, and is the reduction in health risk, whatever it may be, worth the cost associated with the reduction?" The facts convince me to reply with a resounding "no."

In 1987, the Environmental Protection Agency published a study titled, "Unfinished Business." The study, among other things, examined the number of cancers thought to be caused by environmental exposures of all kinds. It concluded that hazardous air pollutants are responsible for only 0.3 percent of all cancers. In 1988, the National Acid Precipitation Assessment Program issued its preliminary report on acid rain in North America. That study, which by the way cost the taxpayers $600 million, determined that a mere 2 percent of our lakes are critically acidic, and of those, 90 percent were acidic before the industrial revolution. The report went on to state that some acid lakes are created in the absence of acid rain. For example, even though rain in Florida is only one-sixth as acidic as rain in the Adirondacks, 12 percent of Florida's lakes are acidic as compared with 10 percent of the lakes in the northeast.

Findings such as these cause me to wonder whether Americans will get what they pay for with this clean air package. The latest estimates report that the Clean Air Act amendments will cost Americans $36 billion annually but only yield $14 billion in benefits. Each American household is expected to incur extra expenses of $300 to $400 a year as a result of this legislation. Where do these costs come from you ask? They are the costs passed on by the utility companies, car manufacturers, and dry cleaners who will be charged $25 a ton for operating permits and will spend up to $200,000 apiece on new equipment. These costs might be bearable if they had equivalent benefits accompanying them, but they do not. It has been estimated that a 50-percent reduction in emissions caused by these sources would yield only a 3-percent decrease in the number of acid lakes in the Northeast.

Mr. Speaker, until I find conclusive evidence to justify a multibillion-dollar piece of legislation that could cost our economy hundreds of thousands of jobs, I cannot in good conscience support it. I urge my colleagues to vote "no" on the clean air conference report.

□ 1710

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Speaker, after more than a year of debate which culminates over a decade of work, we are about to cast the final vote on a major rewrite of the Clean Air Act. In 1977 when the Clean Air Act was last amended, it was assumed that Congress would amend this measure on a regular basis. However, for over 10 years, we could not narrow our differences, find middle ground, and pass a comprehensive clean air bill.

Last July, President Bush helped break the stalemate when he introduced the bill before us which includes provisions addressing industrial and automobile emissions, air toxics, and acid rain. Few environmental bills have been this complex or have the potential for disruption to our economy as this one. It pitted the environment against the economy, the East against the West, and one industry against another. To reconcile these issues, the conference committee had to make many difficult decisions.

I have been among the most skeptical about this bill because I wanted to ensure fairness to my home State of Ohio, particularly regarding the need for further acid rain controls and the benefits of those controls. Further, I wanted to provide clarity with the American people as to the costs of the bill. Conservative estimates indicate Americans will pay between $25 and $50 billion a year for cleaner air. To achieve this goal of improved health and welfare for our constituents, we will be asking them to pay the price through job losses, higher consumer product prices, high utility rates; in other words through changed life styles.

While this final bill is far from perfect, I believe we have come a long way toward the President's goal of balance and reasonableness. Underlying President Bush's clean air legislation was the desire to not only protect human health but to improve the quality of life of all Americans. It is my belief that this landmark legislation represents our best effort to negotiate a balance between the multitude of interests we represent and ensure that as a result, Americans will be better off, not worse off.

I am particularly pleased that we could blunt the impact on Ohio by including in the final agreement a provision which gives 200,000 additional allowances to Ohio, Indiana, and Illinois in phase I, and 50,000 new allowances to nine Midwestern States in phase II. We were also able to provide some assistance for two unique problems in my home State, the Zimmer plant, currently under construction, and Ohio Edison's small units which are the most costly and difficult to retrofit with scrubbers.

One of the key components of President Bush's bill was the concept of allowing the market to encourage reductions in pollution. This provision also caused divisions between the Midwest and the other States, to eliminate the argument that the Midwest would hoard allowances, and not give access to utilities in other States, I am happy to say that my proposal for auctioning allowances which was a part of the acid rain compromise adopted during consideration by the Energy and Commerce Committee has been retained by the conference. This mechanism will provide money to Midwest utilities faster and will also help to ensure that allowances are available to utilities across the Nation when needed for economic growth.

Mr. Speaker, throughout the development of this legislation, we have worked to ensure that environmental progress does not jeopardize economic growth. We have added new environmental control requirements, but we have also tried to maintain flexibility in the permitting and review provisions of the bill, so that needed industrial modernization projects do not languish through months or years of permitting delay.

Of necessity, many of these issues have been left to EPA's discretion in implementing the legislation. This is true for such significant issues as the modification/de minimus provisions of section 182(c) (6)–(8) in title I; modification permit procedure provisions section 112(G)(3); in the so-called "WEPCo" issue in the acid rain title; and the permit flexibility provision of section 502. We fully anticipate that in addressing these issues after enactment, EPA will recognize the need for flexibility. This is not only a matter of

economic importance; it serves important environmental purposes. We have presented industry with a tremendous challenge; we cannot take away from them the tools in terms of modernization and process changes, that will allow them to meet that challenge.

We have been careful to provide this flexibility in each of the titles relating to stationary sources:

In title I, we have left the current netting and bubbling provisions unaffected in all but serious, severe and extreme areas. And even in those areas, while we have lowered the de minimus threshold to 25 tons, we have tied the de minimum provisions of section 182(c)(6) to the modification provisions of section 182(c) (7) and (8).

In title III, we have included modifications as a separate category for review as a separate category for review purposes, thus ensuring that existing sources can modify without triggering new source MACT. Just as importantly, we have structured the modification provisions so that sources need not await lengthy permit revisions or modifications before undertaking plant modifications.

In title IV, we have deleted all general provisions relating to the WEPCo modification issue. We did so in the contemplation that EPA will develop reasonable, revised WEPCo regulations that will allow plants to add pollution control equipment, switch to cleaner fuels, and refurbish old facilities without running afoul of NSPS or PSD modification issues.

In title V, we have explicitly provided permitting authorities with broad discretion to allow plant revisions without requiring permit modifications or revisions.

Finally, both the House bill and the Senate bill contained provisions addressing EPA's recent WEPCo interpretations. Those interpretations could prevent utilities from undertaking needed equipment changes—including even projects to reduce emission—at their powerplants without first meeting expensive and time-consuming new source review requirements.

The House and Senate bills only addressed part of the problem—WEPCo's impact on pollution control projects—even though WEPCo threatens many other legitimate powerplant activities. After passage of the bills, the administration stated that WEPCo could be resolved in a comprehensive fashion administratively without any change in the law. With the understanding that no amendments were needed to resolve the entire WEPCo problem, the conferees decided to drop the limited WEPCo amendments in the bills.

We expect and urge the administration to promptly reconsider EPA's WEPCo interpretations. The administration has ample authority to do this and should quickly move to resolve WEPCo in a responsible manner that will promote cost-effect pollution control decisions, encourage energy efficiency projects, and assure that electric reliability will be maintained.

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Utah [Mr. NIELSON].

Mr. NIELSON of Utah. Mr. Speaker, I rise today to join many of my colleagues in support of S. 1630, The Clean Air Act amendments of 1990.

This landmark legislation is the result of many, many days of work in bringing together the House and Senate versions of the Clean Air Act amendments. The spirit of compromise that was present during house negotiations earlier this year was also present during the conference. Without it we would not have had a bill this year.

During consideration there were many obstacles to overcome. Concerns were raised over costs, impacts to the environment, industry and consumers, regional differences, et cetera. It was difficult to reconcile these issues into economically and environmentally sound legislation.

I would like to commend the chairman of the House Caucus, Mr. DINGELL and the chairman of the conference, Senator BAUCUS, for their leadership during this process. I would like to also recognize all the conferees for their efforts to resolve the differences and come to closure on this very important piece of legislation. It was not always easy but overall the feelings of comity and nonpartisanship did prevail.

This comprehensive legislation addresses a number of pollution problems. I feel we have made some valuable improvements in the nonattainment title. The programs outlined here will hopefully provide for attainment of the national ambient air quality standards by many cities that currently violate the standards.

The final bill includes very stringent requirements for the control of PM10. PM10, or fine particulate matter, is a serious problem for many western cities. Its sources include major industrial polluters such as steel plants and oil refineries, small area sources such as woodburning stoves, as well as fugitive dust from unpaved roads, heavy construction equipment and agricultural dust. This fine dust can cause serious health problems for many individuals living in nonattainment areas.

With this legislation, PM10 will, for the first time, be specifically identified as a pollutant covered under the Clean Air Act. Up until this point, PM10 has been controlled only through EPA regulation. My district in central Utah has a serious PM10 nonattainment problem. Therefore, including stringent requirements for the control of PM10 because a major focus of mine as the legislation moved through the Energy and Commerce Committee and through the conference. I had the opportunity to offer strengthening amendments and to ensure the success of these very important provisions.

The control requirements mandated by this legislation will be very difficult for many areas to implement since control strategies for many sources are simply not known or, as in the case of woodburning stoves, will require individual lifestyle changes. My own State, I am proud to say, has been ahead of most other States in developing strategies to control PM10 and the major PM10 contributor in Utah county has already begun the process of installing pollution control equipment.

I regret that the finall bill does not include a provision from the Senate bill concerning fugitive dust from hard rock, noncoal and surface coal mines. This provision would have allowed Governors in States with approved PSD programs to elect not to apply PM10 PSD increments to fugitive dust from hardrock, noncoal, and surface coal mines, except in class I areas.

Fugitive dust emissions from mining can cause exceedance of PM10 increments even after best available control technology is installed as required. If fugitive emissions must be considered in determining compliance with the increments, it becomes more difficult to permit new or expanded mines, which generally are located in sparsely populated areas. In light of our failure to adopt the Senate provision on fugitive dust, I hope that EPA will commit itself to work with my State and other States in the west to ensure the continued growth of the hard rock mining industry.

The mobile sources title was one of the more contentious we dealt with during the conference. It was very difficult to find a balance between all the competing interests and philosophies represented by the conferees. I do think the final draft will push all the industries involved toward cleaner fuels and vehicles. An important move in order to combat the problems caused by the increasing number of vehicles and miles travelled.

One particular section of the title 1 would like to address is the oxygenated fuels program in carbon monoxide nonattainment areas. This is very critical to one of the urban areas in my district. Provo/Orem is one of the top worst cities out of attainment for the CO standard. The State of Utah is very interested in participating in the oxygenated fuels program to address the problem, but they are concerned with their ability to meet the deadline. I am pleased that there are waiver provisions in the legislation for problems with either distribution capacity or doestic supply or oxygenates.

There is no existing infrastructure for distribution of oxygenated fuels in the Provo/Orem area. They also have a problem with a considerable percentage of cars being driven into the city from outlying areas that would not fall under the program. The State has informed me that they want to meet the 1992 deadline but due to the problems mentioned above, they may not be able to. I do not think this is a concern unique to Provo, there will be many cities in the same situation. I am pleased that the administrator must consider domestic supply of oxygenates separately from distribution capacity of oxygenated fuel as a basis for a waiver from the deadline. This means that if there is adequate domestic supply but Provo has a problem with inadequate distribution capacity, the administrator could waive the requirements of the progam for 1 year with an addition year possible if needed. This is a fair and reasonable approach for all the cities who will be trying to meet the program requirements.

Good work was also done on Title 3, the hazarous air pollutants portion of the bill. It is past time to deal with the problems addressed in the title. Hopefully the requirements set out here will assist EPA in regulating the pollutants that have not had standards set for them. I would like to emphasize that EPA's highest priority should be to set standards for the unregulated pollutants. My understanding is that the statement of managers states that reviewing standards now in effect should be a lower priority than adopting standards for unregulated pollutants unless delaying the review would result in risks to public health or the environment. I hope that EPA will follow that mandate and set standards as soon as possible.

The acid rain title was also one that was very contentious. The issue caused regional splits among conferees that lead to considerable debate. The midwest is the area that has to make the most sulfur dioxide reductions and they are understandably concerned with the cost of this. Those of us from States that have already paid to reduce the emissions at great cost, are understandably unwilling to pay twice.

This bill we have before us today has preserved the polluter pay principle by and large. It provides the polluters with some different ways to clean up, some incentives and other things to soften the blows, but it is definitely a polluter pay provision, which I think is important.

This title contains a provision that not only will further reduce emissions of sulfur dioxide, but also will help ensure that refining capacity in the United States is maintained. This provision would allow small diesel fuel refiners to earn sulfur dioxide allowances for manufacturing low sulfur diesel fuel for both on- and off-highway use.

Recently finalized EPA regulations and this bill require that diesel fuel produced for on-highway use meet a sulfur content of no greater than 0.05 percent by weight. While the bill mandates this level beginning October 1, 1993, the EPA regulations would provide a 2-year extension for the requirement for small refiners. However, small refiners would have to meet an interim content level in 1993. While a compliance extension may sound favorable, it fails to address the real problem confronting small refiners: a limited ability to raise capital to purchase and install the required equipment.

In the interest of providing meaninful compliance assistance and assuring more immediate and greater sulfur dioxide reductions, the conference agreement allows small refiners to gain marketable allowances to help recoup some of the capital investment cost—but only if the small refiner goes beyond the desulfurization mandate to include off-highway diesel fuel, as well as on-highway. EPA conservatively estimates that the provision would further reduce sulfur dioxide emissions by as much as 15,000 tons per year by the year 2000. This is a laudable provision and I am pleased that it now will be part of the Clean Air Act.

I am also pleased that the title provides allowances for those units that are already clean, provides for national allowance trading and has no Governor's veto provision. However, I do think the incentives for use of scrubber technology unfairly disadvantage low sulfur coal. I also have reservations about the dates of compliance in the NO_x program and the deletion of the NO_x-SO_x trading provisions that were in the House version.

The final comment I would like to make on the acid rain title deals with the National Acid Precipitation Assessment Program, or NAPAP, study. After spending over a half a billion taxpayer dollars, Congress has ignored the findings of this study. It shows we have cleaned up more than we have taken credit for it in the bill. It also shows that there is a negligible difference between a 10 million ton and an 8 million ton reduction environmentally, but a considerable cost differential.

During committee and floor consideration I tried to include an amendment that would have EPA review the NAPAP study to get the scientific facts on acid rain before us. I was not allowed to offer the amendment either time. I know that some have expressed questions with the NAPAP study results, but it is the best scientific data we have to date. Congress is going to impose a very costly program on the Nation, particularly the midwest, that may have been mitigated if we had paid more attention to science than politics.

Overall I think we have a very good package, one which I can support. I am proud that I was part of the process that provides the American people with programs that will address the air pollution problems of our country and will lead us toward cleaner air.

In conclusion, I would like to recognize the work of President Bush and the administration in providing Congress with the initial framework of a comprehensive clean air bill. Without the support of the administration and the dedication of many Members of Congress, this bill would have received the same fate of the many other throughout the last decade, it would have failed in committee.

Mr. Speaker, I hope we can pass S. 1630 today and send it on to the President for his signature.

In receding to the House provision on utility emissions, the Senate acted in part to recede from its conference proposal that would have created the discretionary authority to require scrubbing of utility emissions. The Senate recognized that the House provision includes the directive that EPA examine alternative control strategies. This provision contains the appropriate flexibility so that, in the event EPA finds it appropriate to regulate certain utility emissions, EPA could avoid any scrubbing requirement. In receding, the Senate is consistent with the intent of the Senate-passed subparagraph (e)(5)(E) that prohibited imposition of utility scrubber requirements. It is the sense of the conferees that EPA's ultimate decision avoid any conflict with title IV implementation, including the compliance flexibility and cost-effectiveness goals which are central to the acid rain program.

It is my understanding that no provision in this title or subsection of this title will in any way limit a utility's flexibility of choice in complying with the requirements of this act.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Speaker, I rise today to join my colleagues in support of the conference report on this landmark legislation, to urge its adoption by the House, and also to add my commendation to Chairman DINGELL, Vice Chairman LENT, Chairmen SHARP and WAXMAN, my fellow conferees, and particularly to all the staff. I am especially pleased that the Senate accepted for inclusion in this conference report legislative language that was offered by myself and several other House Members regarding offshore oil drilling and air toxics. I consider these provisions to be especially important to the preservation of the environment, particularly in my State of Florida.

These new offshore provisions will require the Environmental Protection Agency to regulate air emissions from drilling activities. EPA will set standards equivalent to onshore regulations and will be required to adopt State

and local air quality standards. In addition, the new legislation will require EPA to study and regulate air toxics that build up in the marine environment.

I also want to say that acid rain standards included in this legislation are major achievements of the first magnitude. The acid rain provisions will require the removal of 12.5 million tons of sulfur dioxide and nitrous oxide from utility sources.

We have been talking about acid rain for years and not acting; in fact I cosponsored subcommittee chairman WAXMAN's acid rain legislation 4 years ago. Now we finally are taking the necessary steps to curtail the acidification of our Nation's lakes and streams and the corresponding destruction of forest areas and crop yields.

During Energy and Commerce Committee action, I noted that we were groping our way as if through a mist, that we understood the general outline and mass of this enormous rewrite of our Nation's air quality laws, but that perhaps we did not fully comprehend its intricate structure, the daunting complexity of its details nor its complete impact on our daily lives.

Today, having wandered long through a conference that sometimes seemed to stretch endlessly before us, I have to tell you, and I doubt that anyone here will refute me, that we still may not fully comprehend these things. How this legislation is interpreted and applied in several of its key provisions—particularly in the acid rain title—will determine its full impact on all of us. I believe that the allowance system instituted under this title is innovative and interesting. I only still hold concerns that it works as advertised in its implementation.

As to allowances, I do wish to clarify one issue; that is, the allowances that are allocated to clean utility companies. After extensive hearings, the House allocated allowances to these units based on their allowable emission rate. It was my understanding that allowable emission rate means that rate which is contained in their federally enforceable permit. I understood, and still understand, that the Senate agrees with the House position.

The term allowable was specifically used to allow these clean units the allowances needed to ensure they could operate safely and efficiently. I am concerned about this issue due to the fact that DOE and EPA may have misinterpreted the language in 402(r) to mean less than allowable.

This is a very important issue to my State. When this issue was dissussed in committee the term allowable emission rate meant, in fact, the allowable emission rate. That is the intent of the drafters, the Congress, and I trust that the implimenters, DOE and EPA, shall abide by that intent.

I also want to say that throughout the long process that has led us here today, we have maintained our sights on our primary purpose: To substantially improve the quality of the air we breathe and to do so in a responsible and effective manner.

The report that we, who have served on the conference committee, deliver to the House today represents a good faith effort on all of our parts to secure this long-awaited goal. We have come a long way from the what-now-seems-simple request first presented to the Nation by the President 2 years ago. I believe we bring to you legislation that will advance us far into the future as we seek to preserve and protect our air, our environment and our quality of life. I urge its adoption.

□ 1720

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman for New Jersey [Mr. ROE], chairman of the Committee on Science, Space, and Technology.

Mr. ROE. Mr. Speaker, I think this legislation is the highlight of this Congress. Clean air is life itself.

Mr. Speaker, I rise today in strong support of the conference report on S. 1630, the Clean Air Act amendments of 1990. I would like to applaud the leadership diligence and hard work of the chairman of the Energy and Commerce Committee Mr. DINGELL of Michigan and the ranking Republican member of the Energy and Commerce Committee, Mr. LENT of New York, as well as the Health and Environment Subcommittee chairman, Mr. WAXMAN of California, and the ranking Republican member, Mr. MADIGAN of Illinois.

I would like to commend Mr. SCHEUER of New York and Ms. SCHNEIDER of Rhode Island, the chairman and ranking Republican member of the Natural Resources Subcommittee of the Science Space and Technology Committee for their diligence in guiding forward the research and development provisions of this legislation. I would also like to recognize the important contribution of Mr. SMITH of New Hampshire to the acid rain research provision and the strong support of the Science Committee's ranking Republican member, Mr. WALKER of Pennsylvania.

I would particularly like to thank all of the staff. I would say to the gentleman from Michigan [Mr. DINGELL] I think one thing that is predominant in the effort here is the outstanding work that was put in by all of the staff members from all of the committees. It was a great achievement, and I want to applaud them.

Mr. DINGELL. Mr. Speaker, if the gentleman will yield, I would like to commend him and his staff for the fine way in which we worked together.

Mr. ROE. Mr. Speaker, our committee is proud of its participation in the clean air conference. Both the House and Senate bills, and now the conference agreement, recognize the critical role of research and development. Research and Development is essential in the characterization of the adverse effects of air pollution, the development and evaluation of control technologies, and the generation of cost effective solutions. We believe that a firm base of scientific knowledge provides the foundation for sound and effective policy decisions. We see research as a tool for intelligent action; not as an excuse for inaction.

Although the Clean Air Act has been amended several times over the past two decades, the research and development provisions of the bill have remained essentially untouched.

When one contemplates the overwhelming changes that have transpired during those 20 years, we're left wondering why such an essential part of the Clean Air Act has been virtually ignored over the years.

Since passage of the original Clean Air Act, the nature of environmental air problems has changed dramatically. When we first set up an air pollution research program at the Environmental Protection Agency [EPA], we were mostly concerned with dirty, visible smokestack emissions.

Today, that problem has largely diminished. Instead, we are facing a multitude of new, complex air pollution problems, such as air toxics, ozone and carbon monoxide nonattainment, indoor air pollution, acid rain, and global atmospheric changes. Yet EPA's research mandate has not changed.

When the Environmental Protection Agency was established in 1970, its single most important mandate was to approach the environment as a complex, interrelated whole. Research was envisioned as a critical part of that strategy.

While EPA's regulatory responsibilities have been increasing, the agency's budget for environmental research has been shrinking. In real dollars the budget has decreased 20 percent in just the last 10 years. As a result EPA's emphasis on the basic research and development has suffered.

We can no longer and will not accept the status quo when it comes to air pollution problems.

A research and development program driven by today's basic knowledge will be incapable of anticipating the future.

This title reauthorizes sections 103 and 104 of the Clean Air Act, provisions which direct EPA to carry out research, development, and demonstration programs in support of the Clean Air Act.

Under the existing Clean Air Act, EPA has broad authority to conduct research. In practice, however, most of

EPA's research up to now has been narrowly focused on efforts to support specific regulatory requirements, not on understanding the broad effects of air pollution.

The research and development provision of the Clean Air Act will reinvigorate EPA's long-term air pollution research while maintaining the technical support that is necessary to carry our regulatory responsibilities.

It will enable EPA to evaluate the control technologies that we are adopting today and to generate tomorrow's solutions to complex air pollution problems.

This legislation will provide direction and emphasis on monitoring and modeling of pollutants, health and ecological effects, pollution prevention and control technologies, and alternative fuels.

Research directed in these areas will enhance EPA's ability to predict the need for future action.

We have learned over the last 20 years that air pollution problems are complex and that easy answers are not readily forthcoming.

We know that we face a daunting challenge to provide clean air for future generations of Americans. We also face formidable challenges to protect the Earth's atmosphere.

This legislation is premised on the belief that without a sound scientific foundation, even our most well intentioned efforts to improve air quality are doomed to failure.

The time has come to recognize that air pollution research is just as important as regulations in fighting and preventing air pollution.

Mr. LENT. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. SCHULZE].

Mr. SCHULZE. Mr. Speaker, I rise today in support of S. 1630, the conference report on the Clean Air Act. I applaud the work of Chairman DINGELL, Vice Chairman NORMAN LENT, and all Energy and Commerce Conference Committee members for bringing this landmark legislative to the floor.

This legislation goes a long way toward correcting the air quality problems facing the country today. We in Congress have battled for the past 13 years trying to reach an agreement on clean air legislation. I am gratified that we finally have this opportunity to pass a bill which will improve the health and environment of all Americans.

The conference report before us strikes a necessary balance between economic and environmental concerns. While this report was not arrived at without sacrifices being made, it will substantially reduce air pollution without crippling economic activity.

I am particularly pleased with the air toxic provisions. The air toxic provisions establishes a list of 189 toxic chemicals. Under the agreement, the Environmental Protection Agency [EPA] will establish a standard for toxic air emissions which requires installation of the maximum achievable control technology, taking cost into account. After 8 years EPA must determine whether air toxic emissions cause a significant health risk.

In addition, EPA must set residual risk standards which may cause cancer wherever the risk is greater than 1-in-1 million to a person in the general population.

The conference report will also go a long way in cleaning up the smog problem facing our Nation, from Los Angeles to the Fifth Congressional District of Pennsylvania. The bill tightens emissions standards for conventional gasoline-fueled vehicles and establishes a program for alternative or clean fuel vehicles.

The acid rain provisions establish a two-phase plan to reduce sulfur dioxide emissions by 10 million tons per year by the year 2000. Coming from Pennsylvania, which suffers from the worst acid rain in the Nation, I strongly support this provision. The agreement also preserves the bonus allowance program for high-emitting plants that use emission control technology in phase I, and a comparable bonus allowance pool for plants in clean and growth States during phase II.

The last provision I would like to address is the enforcement section. I support the strengthening of the civil and criminal penalties for violations of the Clean Air Act. I also support the provisions in the conference report which would not hold a person criminally liable for a good faith attempt to comply with the recordkeeping requirements or for information discovered in the course of a voluntary environmental audit of a plant or business.

In conclusion, Mr. Speaker, I urge my colleagues to support this landmark environmental legislation. The bill will go a long way in improving the health and environmental quality for our children and grandchildren, without causing undue economic hardships on America's business and industry.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. RINALDO], a member of the Committee on Energy and Commerce.

Mr. RINALDO. Mr. Speaker, over 8 years ago, I made reforming the Clean Air Act one of my chief legislative priorities. Since then, I have worked to clean up our atmosphere and to end acid rain. As a part of that effort, I am proud to have sponsored the first comprehensive approach to ending acid rain. That legislation and bills introduced by several of my colleagues have evolved into the first complete revision of our efforts to clean up the atmosphere since 1977. Today's passage of the conference report to S. 1630, the Clean Air Act amendments means that the people of New Jersey will eventually get the healthier, cleaner air that we have worked toward for so long.

Air pollution imposes a very real and increasing cost on our society. We have known for many years that air pollution causes many respiratory problems, but modern research reveals that the threat to our health goes well beyond just our lungs. It is also responsible for increased incidents of cancer, birth defects, and other diseases. Air pollution and acid rain kill fish and wildlife, while also destroying forests and fields. It reduced agricultural yields and forest productivity.

Since the original Clean Air Act was passed in 1970, a great deal of progress has been made in eliminating some types of atmospheric pollution. Unfortunatley, neither the 1970 bill nor its 1977 rewrite anticipated some of the problems that we face today.

Economic growth has greatly increased the amount of pollution that is emitted into the air. Some chemicals that we used to regard as harmless have been revealed to be highly toxic, and industrial smoke and exhaust that we once thought contained only a few dangerous compounds have been found to include many hazardous substances. As a result, between added pollution and newly discovered dangers, over 121 million Americans live in areas where air pollution exceeds Federal health standards.

Today, the House of Representatives gives its final approval to a tough, but fair bill that will sharply reduce the pollution that people in New Jersey have had to breathe every day. My colleagues on the conference committee have labored long and hard to come up with compromise legislation that deals with the many different types of air pollution. For the most part, this is due to the leadership of Chairman JOHN DINGELL and ranking minority member NORMAN LENT.

There are many parts of this bill that I would like to have seen strengthened. In particular, I am disappointed that the visibility standards that would have protected our national parks were diluted to the extent that they are. On the other hand, I am very pleased that the Senate provisions that would have classified the ash and waste from incinerators as nontoxic have been dropped. On balance, this is a good bill, and I am proud to give it my support.

Today's vote means that in time, acid rain will no longer be a threat to our forests and lakes. In addition, S. 1630 represents a major step toward fighting global warming and protecting our ozone layer. It also deals with smog, toxic air emissions, pollution from cars and trucks, and a number of other problems.

The controls contained in S. 1630 are strong, but realistic. While large plants will be subject to strict emissions standards, this bill also addresses the small sources that together cause most air pollution.

It would have been simple to slap restrictions on small businesses, and to leave it up to them to figure out how to comply. However, the permits and enforcement sections take a balanced approach that makes it very clear that emissions must be controlled, but also provides for technical assistance and

eased permitting procedures for small businesses. I am especially pleased that in title V, the EPA Administrator is given the discretion to exempt one or more area source categories from all or any part of the permitting requirements.

Pollution from cars, trucks, and buses is a severe problem for New Jersey, and it was essential that this legislation included a truly realistic approach to cleaner cars and cleaner fuels. I am delighted that this bill will require auto manufacturers and fuel companies to meet strict new emissions standards.

At the time, this House passed H.R. 3030 last May, none of us realized that the Iraqi invasion of Kuwait would plunge this Nation into a new energy crisis. Now, we are all too aware of our reliance on imported oil, and we are equally aware of the effect of increased gasoline prices on our economy.

As a result, I am pleased that in addition to reducing pollution from conventional automobiles, we are also mandating an alternate fuels program. This provision was originally intended as a way to reduce pollution, but now it is even more important as a way to reduce this country's dependence on gasoline. Although S. 1630 does not require centrally fueled fleets to begin to purchase clean fuel vehicles until the 1998 model year, I hope that the auto industry will not wait until then to market these vehicles. Today's situation in the Middle East shows that we do not have the luxury of waiting until the last moment.

The new fuel and vehicle standards will force advances in technology that are badly needed. We cannot simply sit back and let clean cars and fuels develop slowly and haphazardly. At the same time, there is no way that Congress can legislate chemistry or engineering. Today we are doing neither, but we are letting producers know that while we appreciate their efforts up until now, much more is needed, and quickly.

Since New Jersey leads the Nation in chemical production, it is also very important to our citizens that S. 1630 includes strong language on toxix air pollutants. While our companies have an excellent safety record, we have simply not known the effects of many pollutants or how to effectively control them.

S. 1630 includes a list of 189 hazardous pollutants, and directs EPA to identify the major sources of their emissions, and to require the maximum achievable reduction in the danger that they pose. This Congress made a similar effort in 1970, but in 20 years, only seven pollutants have been controlled. This time, we make it very clear that the EPA is to control these toxics without any further delays or excuses.

The bill also sets up special procedures for handling potentially dangerous accidental releases of toxic gases. For the first time, safety standards and emergency programs will be established to help to prevent these accidents, and to deal with them if they do occur.

Smog is a very real problem for New Jersey. This legislation establishes strong new standards that will require States and localities to develop smog control programs, and to implement them. Noble statements and nicely written plans will no longer be enough. Interim goals will have to be established and met to ensure that real progress is being made.

For those of us in New Jersey, it is equally important that this bill addresses the air pollution that comes into our State from other areas. It sets up regional councils to ensure that a State with strict air quality controls does not suffer because its neighbors have looser standards.

This is a major problem for New Jersey, since it is surrounded by industrial areas in other States. I have seen studies that show that even if every plant and business in New Jersey totally stopped operations, and every car, trucks, and bus in the State was idle, New Jersey would still be out of compliance because of the pollution blown in from other States.

The acid rain section is especially important to me. It does more than just reduce sulfur dioxide emissions by 10 million tons a year and nitrogen oxide emissions by 2.5 million tons annually. It places an absolute cap on the total amount of these pollutants that can be emitted in the future. We will not face a situation in 2020, where pollution has again crept up to critical levels. For every new ton of these emissions, one will have to be reduced from another source.

The mechanism to achieve this will be a system of allowances that can be bought and sold as they are needed. The compromise between the House version and the Senate plan fairly distributes these allowances among the various areas of the country, and allows for future growth. There was a great potential for sectional conflicts in dividing these allowances, but through the efforts of the conferees, these problems were avoided.

Finally, we have informed the world that this country will take the leadership in eliminating the CFC's and HCFC's that are destroying the ozone layer and causing global warming. As the world's leading industrial nation, we can do no less, and we invite them to follow our lead.

Mr. Speaker, we have heard a great deal about the cost that this bill will impose on the economy. I have seen a great variety of numbers thrown about. However, we are not, as some have charged, heaping more costs upon an already weakened economy; we are taking steps to strengthen our future.

I am confident that this bill will increase the efficiency of our economy and stimulate the development of new technology. Our economic future will depend on the most effective and efficient use of our resources, and S. 1630 will encourage our economy to move in this direction.

This is a good bill. It is not a perfect bill, but it is much better than most of us on the Energy and Commerce Committee expected when we began to work on it over 1 year ago. I am proud to support S. 1630 today, because in the relatively near future, the people of New Jersey will again breathe the pure air that enabled us to be known as the Garden State.

Mr. DANNEMEYER. Mr. Speaker, I yield 3½ minutes to the gentleman from Ohio [Mr. APPLEGATE].

Mr. APPLEGATE. I thank the gentleman for yielding.

Mr. Speaker, I would go along with some of the accolades to a degree of the conferees for the work they have done on this. They have done yeoman's work. I thank the conferees also for the provisions that they have offered and placed in this bill to help two aluminum plants, one in Ohio and one in West Virginia.

Nevertheless, I must oppose the bill in its present form, particularly with regard to title III and title V.

I do not have any illusions that we are going to change anyone's mind, because it is going to pass overwhelmingly. There was only 21 Members that voted against it before.

While there were some allowances made for Ohio, Indiana, and Illinois, the bill still leaves the Midwest vulnerable to economic devastation in the high-sulfur coal fields. It is likely to cost some 6,000 jobs in those areas. Six thousand jobs, remember that.

It is going to cost $25 to $50 billion a year to implement this. Much of this will be in the utility rates that people are going to have to pay when they turn on their toaster, lights, furnace, or whatever.

Some of it will be in the steel industry, even though they got some help in this bill. There are going to be billions of dollars that will have to be spent, which will help to cause us to lose some of the competitive edge that we have over foreign steel.

They took out a governor's authority to be able to determine the legislation's effect in a particular State, and then they say in the case of Ohio that if there is an economic effect by this, that they would have to use high sulfur coal. Of course, they would still have to meet the emissions standards. But they took that out. That will help.

There is no time for clean coal technology, because phase I, 1995, will

knock that out. There will be no money left in order to use clean-coal technology, which is the best approach to all of this.

Very importantly, which was pointed out too, was at the conclusion of the NAPAP study, the National Acid Precipitation Assessment Program, it was not used. The cost to the taxpayers of this country was $550 million, and it took 10 years. The conclusions are not going to be considered in this.

Why is this? The environmentalists supported it in 1980. Why do they not support it now? They do not support it now because it is not saying what they wanted it to say.

I checked the records on some of these, and the gentleman from California, who has been a very avid supporter of all of this, was one of the voters who supported it at that time. All that was to be done was to determine the cause and effect of acid rain, and to tell people in the country and in the Congress what direction we should take to do something about the problem.

It concluded, for one thing, that in 30 years, regardless of anything that we did, that the level of emissions was going to be the same, whether we spent a dime or not.

I am not saying we should not spend any more money. All of this is still going to cost hundreds of billions of dollars when this thing is fully implemented.

Just reducing it from 10 million tons to 8 million tons, the extra 2 million tons is going to cost twice as much as the first 8 million tons. It is like trying to take a glass of water, emptying the water out, and getting the last drop out.

What I am saying is this looks good for now, but take a look down the road in the future. It is not good policy. I know it is going to pass. I would like to see a better bill, because I would like to be able to vote for a good clean air bill.

□ 1730

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. SCHAEFER], a member of the committee.

Mr. SCHAEFER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, over the course of the last couple of months, this institution and the congressional process have received what some believe the harshest of criticism. At times it has been deserved. But today, that same Congress and much maligned process have brought to the floor landmark legislation to protect and improve the Nation's air quality. For the American people and this prestigious body, it could not have come at a better time.

S. 1630 has proven, in a slow deliberate fashion, that the system still does work. After literally years of often contentious negotiations, we have brought to the verge of passage arguably the most far-reaching piece of environmental legislation in memory. It is as meaningful as it is responsible.

Needless to say, this clean air package is not everything that everyone hoped for. It is unquestionably a compromise. But for my constituents in the Denver metro area, passage of this bill means attainment of the elusive health-based standard for carbon monodixe. More importantly, it means we can likely maintain that standard for years to come.

That Denver and other Colorado cities are likely to stay in attainment can largely be attributed to several provisions of this conference report. Consider that up to 90 percent of a city's carbon monoxide is caused by motor vehicles. Given projected increases in vehicle miles travelled, significant reductions in tailpipe emissions are essential. Tighter tailpipe standards for vehicles, cold weather emissions requirements and alternative fuels programs promise to provide the reductions in cabron monoxide necessary to meet the challenges of future growth.

I note that provisions of title II provide that the specified numerical emissions standards set forth in this bill shall not be modified by the administrator after enactment for any model year before model year 2004. It is also provided for elsewhere in title II that EPA review and revise as necessary the current certification test procedures for new motor vehicles. Understand that if EPA decides to pursue a rulemaking to modify the test procedures to make necessary appropriate changes, that such changes shall not have the effect of making the specified new numerical standards more stringent.

As a member of the committee which began this process more than 3 years ago, I have witnessed the many obstacles which this bill has overcome. Without the leadership of many, particularly Chairmen DINGELL and WAXMAN and Congressman LENT, we never would have reached this point. All of us, particularly those representing nonattainment areas, owe them a sincere debt of gratitude. I would also like to thank David Eck on my staff, who worked long and hard on this issue.

Mr. Speaker, this is truly historic legislation and I am pleased to have been a part of the process. And although the 101st Congress has had moments we might like to forget, in this one we can all take pride.

Mr. DINGELL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from West Virginia [Mr. WISE], the author of a major amendment.

Mr. WISE. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, the first thanks I want to give, because I would not be here tonight without his support, is to Chairman DINGELL, and those men and women who are going to lose their jobs or are in fear of losing their jobs owe you a strong vote of thanks, Mr. Chairman, because of your immovable support, as only you can be immovable, in the conference, which means we are here, and we are able to have this amendment considered tonight.

I also wish to thank very much Chairman FORD of the Education and Labor Committee for his support, and Chairman DOWNEY of the Ways and Means Subcommittee, and NORM LENT, who opposed my amendment on the floor but stood up for the House position, and of course, Congressman RIDGE, who sponsored this amendment on the House floor.

This bill passed by a large bipartisan majority in the House, and this amendment comes back with exactly the same results as it left, with the recognition that jobs will be lost inevitably under this legislation, but that the people of this country have a right to know that if they lose their jobs due to direct Federal action, that the Federal Government will assist them in making a reasonable transition to new employment.

I am happy to report that because of the conscious efforts of the conferees, the original amount of dollars, $250 million, is still intact over a 5-year period or $50 million a year. It is now all under title 3 of the Job Training Partnership Act.

Who can apply for grants? Indeed, if there is job loss; local government units, public agencies, private industrial councils, employers, employee groups and trade unions will be eligible to apply for the training money. The applicants for the first time, and I say this is the first time this requirement has been in the Job Training Partnership Act, must give assurances in their grant application that these displaced workers who qualify will receive weekly cash benefits in addition to the training. This act also requires that the workers must be in training to receive their benefits.

It says that eligible displaced workers will qualify for weekly benefits if their current total family income is less than the lower living standard. That is greater than the poverty level. In my State it is $18,500 a year, and it is a significant change from the original amendment which would have limited the cash benefits to only 26 additional weeks. This provides that if somebody is eligible their benefits can continue as long as they are training, which in some cases could be as long as 2 years.

To those who are concerned about this legislation, let me say it does not provide welfare. If avoids it.

Let me say it is not just a bill for high-sulfur coal miners, but for all workers. It is not unlimited spending, but it is capped, and indeed, any expansion of this program requires a Presidential signature.

This bill is an insurance policy. I hope and pray that not one job is lost as a result of this legislation, but if it is, and to the extent that there are job losses, this bill is here as their insurance policy.

So it says, and it is a bold step for this Congress, that preserving the economy and the environment can go hand-in-hand, and that as we have an obligation to preserve the environment, so must we safeguard individual economic situations.

Mr. DANNEMEYER. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, is this country slipping into a congressionally induced recession? I fear the answer may be yes.

The budget agreement, inspired by the ludicrous idea that we can prevent an economic slowdown by heaping $140 billion in new taxes on the economy, is exhibit A. This bill, a return to the stifling regulation of the Carter years, is exhibit B.

Certainly it is the Government's necessary role to protect the quality of our environment. But there is a difference between taking prudent, cost-effective steps to achieve this goal and killing economic growth with this extreme overreaction.

The laws already on the books have worked. According to the EPA statistics for the 10-year period from 1978 to 1987, emissions of sulfur dioxide have been reduced by 17 percent, suspended particulates dropped by 23 percent, and carbon monoxide by 25 percent. The air today is far cleaner than it was 20 years ago. There is little reason to believe that this new measure will produce marginal benefits proportional to its marginal costs.

Let us look at those costs. Michael Boskin, chairman of the Council of Economic Advisers, estimates the costs of this bill will range from $25 billion to $30 billion annually. The Clean Air Working Group estimates a cost double that.

What that means is higher consumer prices, industry failures, and the loss of hundreds of thousands of jobs. In my State of Texas alone, 65,000 jobs may be lost.

As three Nobel Prize winning economists wrote in a letter to President Bush last week: "The Clean Air Act's unduly stringent and extremely costly provisions could seriously threaten this Nation's economic expansion."

If, as we all fear, this Nation lapses once again into a recession, the American people will have only their Congress to blame. I have no doubt they will do exactly that.

Vote no on this conference report. Keep us out of a recession.

Mr. LENT. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. MCEWEN].

Mr. MCEWEN. Mr. Speaker, I would like to have this opportunity to clarify provisions in the Clean Air Act amendments with regard to the definition of vehicle fleets. The clean air legislation identifies a number of requirements for fleet operators. However, the issue of exactly what is considered a vehicle fleet, and therefore, what vehicles are subject to the requirements, is left open for interpretation by the Environmental Protection Agency.

It is my understanding that the fleet requirements are applicable to vehicles primarily operating in nonattainment areas and are not intended to apply to vehicles which may be operating temporarily in a nonattainment area, such as at a construction site.

Thus, if a construction company is based in a nonattainment area and primarily operating out of a nonattainment area, it would not be required to buy a fleet of clean fuel vehicles in order to bid on and carry out a job in a nonattainment area. Such a company would not be considered as primarily operating in the nonattainment area for that period.

Furthermore, vehicles which are fueled during a construction job at a temporary fueling station at the construction site should not be regarded as centrally fueled vehicles.

Mr. Speaker, thank you for your time and for allowing me to clarify what had the potential to significantly reduce the ability of the construction industry to provide service and competitive prices over a wide market area.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, I rise in strong support of this bill.

I would like to enter into a colloquy.

In consideration of a power unit's baseline, and the 1985 emission rate used for calculating the allowance allocation, the bill does not specifically allow for alternate years for units such as TMPA's Gibbons Creek Stream Electric Station which, because of the energy crisis, built and operated a powerplant to utilize a low-grade fuel resource not previously considered economical to burn due to difficulties of burning this low-grade fuel, TMPA had a significantly longer startup and test period than would be considered normal for fossil-fired steam electric stations. In situations like this, does the bill allow the administrator, EPA to consider a different period of time that reflects the plant's actual operating conditions to determine its allowance allocations?

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from New York.

Mr. LENT. Mr. Speaker, in response to the gentleman's question, the bill does not specifically address a situation that is unique to TMPA. The bill does, however, provide for a plant like TMPA, which had a prolonged outage during the baseline period, to disregard that outage in calculating its allowances.

Mr. BARTON of Texas. I thank the gentleman for his response.

Mr. Speaker, I rise in support of the conference report to S. 1630, Clean Air Act amendments. If you asked me at the beginning of the session if we would be here today ratifying the final touches on the most comprehensive environmental legislation ever introduced and that I could support it, I would have said most assuredly—no. But through the visionary leadership of President Bush and diligent job of shepherding by Chairman DINGELL and Vice Chairman LENT, we are here today to pass and send back to the President a bill that sets in place the most stringent environmental regulations ever. I want to also commend the personal staff and committee counsels for their hard work and the tireless effort exerted in negotiating, sometimes around the clock, every line and word of S. 1630.

I think a fair balance was achieved in melding concern for the environment while not stifling economic growth. In the long run, the only truly successful environmental policies are ones based on flexible free-market principles. It will be seen if an economy can remain healthy while cleaning up the environment. I believe this can be done. The engine of economic growth will simply be run on clean burning natural gas from Texas.

After participating actively in the committee process as a member of the Energy and Commerce Committee and having seen how each title was put together, I have only four words on the prospects of the law: I hope it works. The Environmental Protection Agency [EPA] has a Herculean task ahead of them in the next 2 years. It has been estimated that S. 1630 will require the EPA to promulgate more rules and regulations in the next 2 years than it has in the past 13 years, since enactment of the last Clean Air Act amendments. I hope they are up to the task, and we are not back here next successive years considering the Clean Air Act technical corrections bill.

Specifically, in the bill I am happy the conference committee retained a provision I added in the Energy and Commerce Committee to require the cities with the worst smog problems to incorporate a system of onroad emissions testing into their enhanced inspection and maintenance program. These cities would be required to using an innovative onroad remote sensing device to measure smog technology developed by Dr. Donald Stedman of the University of Denver. No one argues that 10 percent of the cars on the road contribute 50 percent of the pollution

emitted. This technique effectively measures and identifies the gross polluting vehicles that emit over half the pollution. Contrary to some studies, not all gross polluters are old cars. With onroad emission testing, localities can notify the owners of older cars and have their cars tuned up at a much lesser cost than phasing out all old cars.

Dr. Stedman's studies have indicated that the traditional annual stationary method of testing and inspection auto emissions is ineffective. It is analogous to giving all drivers a breathalyzer test once a year to combat drunk driving. With the extreme and in some cases even draconian sanctions facing cities and regions that do not attain certain percentage reductions contained in the bill, I am confident that requiring the implementation of a system of onroad testing will allow our Nation's dirtiest cities to realistically achieve the smog reductions required by S. 1630 and avoid these harsh penalties.

I am also pleased the conference accepted an amendment I offered with Mr. BILIRAKIS in the committee to initiate a fuel cell powered vehicle research and demonstration program. Fuel cell powered vehicles use carbon-free hydrogen to produce electricity. A fuel cell electric vehicle uses nonpolluting technology. Texas A&M, located in my district, has one of the premier hydrogen research centers in the world. We must invest in this type of nonpolluting technology to help ensure a cleaner, safer environment in the future.

Also during committee consideration of the Clean Air bill, I worked with Congressmen SLATTERY and RICHARDSON, to improve the accidental release section of the air toxic title. It appears as though the section was improved upon in conference with the Senate provisions.

The amendment specifically addressed the prevention and containment of catastrophic accidental releases of hazardous chemicals. It will require all manufacturers and businesses that use hazardous chemicals to establish a risk management plan. This plan will assess the potential for an accidental release caused in the transportation, storage, or burning of hazardous materials. The plan will also include a prevention program that implements safety precautions and employee training to deal with an accidental release. Finally, the plan requires a response program that coordinates local agencies, emergency health facilities, and information services when responding to an unanticipated accidental release. The amendment also creates an accidental release investigation board to investigate the causes of all accidental releases. This board is similar to the existing National Transportation Safety Board that investigates airplane accidents.

I realize almost all of my colleagues are going to join me in supporting the conference report to S. 1630. However, I would urge my colleagues to study the provisions contained in this bill closely when Congress adjourns and specifically its economic impact on virtually every American citizen and business. Every member should keep in mind that cleaning up the environment is not free and will cost every American family about $300 to $400 a year.

□ 1740

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Speaker, I rise in strong support of the conference agreement on the Clean Air Act Amendments of 1990.

I would like to comment and congratulate Mr. DINGELL, Mr. WAXMAN, and Mr. LENT for their hard work, diligence, and creativity in bringing this monumental agreement to the floor. Each member of the Committee on Energy and Commerce and our dedicated staff deserve our accolades for a job well done. I would also like to recognize the contribution of Mr. SIKORSKI on the acid rain title and the chairman of the Science, Space, and Technology Committee, Mr. ROE, for his work on the research and development title.

This critical legislation will reduce significantly urban smog; it will decrease acid rain by reducing airborne pollutants by 10 million tons; and it will launch a new generation of vehicles powered by alternative fuels. Its impacts on our environment will be both positive and long lasting.

It has been 13 years since the Clean Air Act was last amended and in that time the complexity of air pollution problems has increased exponentially. This legislation will aid EPA in dealing with those complexities and allow us to move forward in the protection of the air we breathe and thus the public health of our citizens.

I am especially proud of the research and development title of this legislation as it is based on H.R. 4197, a bill introduced by myself and Mr. SMITH of New Hampshire, with the strong support of Chairman BOB ROE of the Science Committee and CLAUDINE SCHNEIDER, the ranking Republican on the Natural Resources Subcommittee. This legislation was introduced in response to the recommendations of EPA's Independent Science Advisory Board. The board recommended that EPA's research program be expanded and redirected to broaden our base of scientific knowledge.

Ronald Reagan claimed that we didn't possess adequate knowledge to enact stronger environmental regulations. Yet, with unrepentant cynicism, he refused to fund research; thus he intended to doom us to eternal ignorance. George Bush has told us that he is the "Environmental President," yet his clean air bill also ignored research needs. I believe that his Office of Management and Budget will not give up the fight. They will attempt instead to undermine the will of Congress by refusing to fund adequately this researh.

We should no longer accept this hypocritical status quo. In the future, if we are to ask the right questions and generate the answers to tomorrow's problems, we must find research today. Every single successful corporation in America appreciates this basic truth.

We must all be vigilant and watch to ensure that the soul of the Bush administration is not dominated by the shortsighted views of OMB.

Research and development is the basis for intelligent and cost effective regulations. We must put an end to the cynicism of the Reagan years and move toward the realization that research costs are returned many times over by the cost-effectiveness of high quality policy decisions.

Mr. LENT. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. SMITH].

Mr. SMITH of New Jersey. Mr. Speaker, I rise in strong support of the Clean Air Act Amendments of 1990.

Finally, after 13 years, the Clean Air Act has been appropriately updated, reformed, and strengthened to address and respond to numerous pressing environmental needs.

Mr. Speaker, I truly believe this to be one of the most important environmental achievements of the decade. The threat acid rain poses to lakes, rivers, forests, and the animals that inhabit these ecosystems can no longer be ignored. The legislation before us requires substantial reductions in sulfur dioxide [SO_2] emissions which cause acid rain.

I am also pleased to note that this conference agreement deals with the growing problem of urban smog by creating a new schedule for cities to meet established air quality standards. Furthermore, the bill includes language regarding toxic emissions. Nearly 250 categories of toxic polluters and 187 hazardous substances are listed in the legislation for control and regulation.

While this measure has had a long and arduous journey through the legislative process, it reflects the goals and aims of tbe House, Senate, President Bush, and above all, the American public. Members may recall that legislative efforts to reduce air pollution first began in 1963 with the enactment of the Clean Air Act. A 1970 rewrite of this law was followed by a set of amendments passed in 1974 and again in 1977. Thirteen years later, we are again rewriting the law and making it tougher. Much of the credit, Mr. Speaker, must go to President Bush for designating the 1990's as the Decade of Clean Air. Without the President's determination and support, we would not be here today with a bill that will shortly become law.

Mr. Speaker let me focus for a moment on the bill's provisions for dealing with urban smog. After much debate, a realistic schedule for controlling this problem has, fortunately, been established by the conferees. Nationwide, cities would be classified according to the severity of their air quality problem. The five categories for ozone-nonattainment would be: marginal, moderate, serious, severe, and extreme. Cities would be expected to meet attainment within 3, 6, 9, 15, and 20 years, according to their category. Furthermore, new restructions have been placed on the release of volatile organic compounds which would also be established according to a graduated scale of severity.

Mobile sources of air pollution, such as cars and trucks, would likewise be subjected to new controls. Buses, which utilize diesel fuel, would be expected to meet new standards and be powered by cleaner diesel fuels. By model year 1998, fleet vehicles, whether taxis or trucks, would have to meet emissions standards 80 percent cleaner than today's. Tailpipe emissions for cars and light-duty trucks will generally follow the House-passed language. Nitrogen oxide will be reduced from the current 1 gram to 0.6 gram per mile and the hydrocarbon standard will be 0.25 gram per mile as opposed to the current 0.41 gram per mile.

Mr. Speaker, alternative fuels, which are not addressed in our current clean air laws, will get a major boost through the passage of this bill. Reformulated gasoline will have to be sold in the nine cities in the Nation with the worst smog problem beginning in 1995. The new gasoline sold must reduce toxic emissions by 15 percent for approval.

Major sources of toxic emissions must install the maximum achievable control technology [MACT] between 1994 and 2003. Upon their installation, the Environmental Protection Agency [EPA] will issue health-based standards which address the health risks and cancer dangers of persons exposed to the emissions from these sources.

Turning again to acid rain control, Mr. Speaker, electric utility plants would be required to reduce SO_2 emissions by 10 million tons annually by the year 2000. This would be accomplished through a two-part process whereby the utilities would meet certain standards by 1995 and 2000. A market-based allowance system would ensure compliance. Each year, a limited number of allowances would be provided to fossil fuel utilities. If necessary, the plant could release one ton of SO_2 in a calendar year if the allowance was not used in the specified year. If the plant surpassed the standards, it would be permitted to sell or transfer the allowance to other utilities.

This conference agreement, Mr. Speaker, is a sound piece of legislation, which deserves the support of the Members. I yield back the balance of my time.

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. MADIGAN], a member of the conference and the ranking member of the Health Subcommittee.

Mr. MADIGAN. Mr. Speaker, I rise to speak in support of the conference report on S. 1630 and to compliment the chairman of the Energy and Commerce Committee, Mr. DINGELL, and the ranking member, NORM LENT, for their tireless efforts in negotiating this piece of legislation through the committee, the House, and the conference committee. They did a masterful job. Mr. WAXMAN and Mr. SHARP also deserve to be complimented along with many other members of the committee and the staff for their equally tireless effort and willingness to work with other Members to put this legislation together.

Mr. Speaker, this bill will result in cleaner air. Complying with its requirements will challenge industry and individuals to find ways to work and live in a more environmentally benign and beneficial manner. Manufacturing, transportation and life styles will change. Because of the scope and complexity of its provisions it will be years before we know the true costs and benefits associated with this bill.

Mr. Speaker, I support this bill and urge my colleagues to support it.

With respect to the mobile sources provisions in the bill, Congress has recongnized the importance of assigning a share of the responsibility for reducing auto emissions to the source of those emissions—gasoline. The bill establishes performance standards for fuel quality which will minimize emissions of hydrocarbons, carbon monoxide, oxides of nitrogens, and hazardous air pollutants for in-use vehicles. The program will maximize environmental benefit, minimize cost, and increase the role of alternative fuels by requiring the sale of cleaner-burning gasolines in the worst ozone nonattainment areas.

Specifically, the bill establishes a cap on the emission of oxides of nitrogen, requires a minimum of 2 percent oxygen by weight, limits benzene to no more than 1 percent by volume, and prohibits heavy metals, including lead and manganese, from all gasolines sold in the nine worst ozone-polluted areas beginning January 1, 1995. It is important to note, however, that these are minimum standards—that as EPA promulgates regulations, the Administrator has the flexibility to make these requirements more stringent if it is determined that tighter standards are necessary to achieve the greatest reductions in VOC's and toxics.

For example, if EPA determines that it is possible to limit benezene to less than 1 percent, to 0.8 percent as in the original House bill, or less if technically and economically feasible, then EPA has the flexibility to do so.

I am particicularly concerned that benzene levels be reduced as much as is technically and economically feasible. Benezene is a known carcinogen. Yet it is widely used an octane enhancer in today's gasolines—averaging 1.5 to 2.5 percent in most octane grades but as much as 5 percent in some premium grades. Rising benzene levels is one reason a recent EPA report concluded that exposure to gasoline emissions is the cause of more than 50 percent of all toxic-related cancer deaths each year. Certainly, if EPA concludes that additional reductions in this dangerous compound are possible, the provisions of this legislation allow the Administrator make the appropriate adjustments.

Similarly, if the Administrator determines that requiring more than 2 percent oxygen will result in greater reductions of VOC's or toxics, the legislation provides the flexibility to increase the oxygen content accordingly.

The objective of the reformulated gasoline provision is to clean up gasoline. The minimum levels required in section 219 are not intended to constrain EPA from enacting more stringent regulations where it is possible to achieve greater reductions in VOC's and toxics.

The bill requires the greatest reduction in emissions of ozone forming volatile organic compounds and emissions of hazardous air pollutants achievable through the use of reformulated gasoline. In order to reach those reductions, the bill requires the Administrator to determine the more stringent of either a formula stipulated in the legislation or specific performance standards for VOC's and toxics. The formula establishes criteria for benzene, aromatics, heavy metals, detergents, and oxygen content. The performance standards require reductions in each VOC's and toxics of 15 percent in 1995, and 25 percent in 2000—if technically feasible, but not less than 20 percent.

Again, the Administrator has the authority to make the formula more stringent. Contrary to some advertisements that we have created "Government gas" setting a specific formula for EPA to follow, the legislation only sets minimum standards for the formula fuel in broad categories for gasoline components.

Specifically, the legislation states that the benzene level in the formula fuel "shall not exceed 1 percent by volume," but EPA can require further reductions. The bill states that aromatic hydrocarbon content "shall not exceed 25 percent by volume," but EPA could determine that further reductions in aromatics are possible. ARCO, for example, is now marketing a reformulated gasoline which has just 20 percent aromatic content. This could well become the standard for the formula fuel and all reformulated gasoline. Finally, the formula referred to in the legislation states that the oxygen content "shall equal or exceed 2 percent by weight," EPA could require additional oxgen content if it determines that more oxygen will effect greater reductions in ozone forming VOC's and toxics.

The objective of the formula is to establish environmentally sound standards for the most critical components of gasoline. If EAP determines that a more stringent fuel formula will yield additional environmnetal benefits, the Administrator must, under this provision, adjsut the formula accordingly.

With the passage of this bill, Congress has concluded that replacing highly toxic and reactive octane boosters in gasoline with oxygenates will provide much cleaner, safer gasoline and tremendous reductions in ozone. First, the dramatic CO reductions, which is a catalyst in the formation of urban ozone, achieved through the use of oxygenates will have a beneficial impact on ozone. Moreover, researchers have concluded that exposure to carbon monoxide is a serious public health concern. Even low levels of CO exacerbate cardiovasucular diseases, impairs aerobic capacity, visual perception, manual dexterity, and learning ability, thus CO emission reduction will reduce public health risks associated with gasoline.

Second, oxygenates reduce exhaust VOC emissions. As gasoline in reformulated to reduce more reactive octane boosers, the beneficial impact of oxygenates will be realized. In fact, oxygenates are the least reactive octane enhancers currently available. One recent study demonstrated that if oxygenates are used to replace petroleum based octane such as xylene, VOC emissions are reduced more than 10 percent.

Finally, EPA has reported that 50 percent of all toxic related cancer deaths are caused by gasoline emissions. The reason for this is the increasing levels of toxics used to boost octane in today's gasoline. As a result, the legislation requires that toxic levels be reduced year round. As oxygenates provide octane without the public health consequences associated with petrochemically derived octane boosters such as benzene, the legislation similarly requires that oxygenates be used year round to assure that the public health objectives of the bill are realized.

In addition to these environmental reasons for the requirement to use oxygen in reformulated gasolines, the energy security value of replacing petrochemically derived octane with alternative fuels is a critical concern. EPA has concluded that the oxygen requirements of the clean air legislation will displace more than 500,000 barrels of oil a day in the near term, and as much as 3 million barrels a day when fully implemented. In the absence of a specific oxygen requirement, however, these benefits would not be realized, and in fact, oil utilization could increase as alkylation further reduces the output of gasoline from each barrel of crude oil.

Because of the serious public health consequences of benzene, the legislation also contains a specific requirement to dramatically reduce benzene levels in gasoline. Benzene, a known carcinogen, is used by oil refiners to increase octane levels in gasoline. The average gallon of gasoline sold today contains 2 to 3 percent benzene. Some high octane grades of gasoline, however, can contain as much as 5 percent benzene. However, many refineries today produce gasolines with less than 1 percent benzene, and all refineries can meet the standard with only minor changes to the refinery operations.

Over the past several years, in response to the lead-phasedown mandated by EPA and in order to maximize gasoline octane, the major oil refineries have dramatically increased the levels of aromatic compounds—known collectively as BTX. Aromatics are highly toxic, particularly benzene, a known carcinogen. Other aromatics, such as xylene, are also highly reactive which exacerbates ozone pollution. As a result, in the prescribed formula for reformulated gasoline which EPA will use to measure relative pollution benefits of various fuel formulations, the legislation has specifically capped aromatic levels at 25 percent.

According to recent EPA estimates, almost 19 million metric tons of VOC's are emitted into the atmosphere each year in this country, and more than one-third of them, 6.5 million metric tons, are attributable to highly photoreactive aromatics such as xylene in today's gasoline. A 25-percent cap on aromatics would result in approximately 4 billion gallons less aromatic production annually. But even if the formula is not utilized, if gasoline marketers can satisfy the requirements of the legislation by meeting the other performance standards, it is clear that aromatic content will have to be reduced. And this will have an immediate positive impact on our Nation's health and environment.

As reformulated gasolines will provide the most cost-effective and environmentally responsible pollution reductions strategy available to ozone nonattainment areas, the bill allows all other ozone nonattainment areas to opt-in to the program beginning January 1, 1995, provided EPA is satisfied that sufficient supplies of reformulated gasolines could be made available. By encouraging other areas to opt-in to the program, the legislation will dramatically improve fuel quality nationwide.

The legislation protects against the transfer of toxic, ozone forming components in gasoline from nonattainment areas to attainment areas by establishing procedures for the Administrator to determine a baseline chemical composition for gasoline sold or introduced into commerce by a refiner, blended, or importer in 1990. The regulations provide that fuel sold by such refiner, blender, or importer not increase emissions of VOC's, oxides of nitrogen, carbon monoxide, or toxic air pollutants except that increases in emissions of oxides of nitrogen attributable to the addition of oxygenates can be offset by resulting reductions in VOC's, carbon monoxide, or toxic air pollutants.

In short, the reformulated gasoline requirements will provide security—environmental security by reducing CO, VOC's and toxics, and energy security by extending each barrel of crude oil and increasing our use of domestically produced alternative fuels.

"Oxygenated" fuels produce a reduction in CO emissions directly related to the leaning effect they have on a vehicle's engine. This linear relationship between oxygen and CO reductions means that the percentage of oxygen by weight in the automobile's final fuel determines the amount of CO emissions reduction. In order to achieve the greatest level of CO reduction, without disrupting current oxygenate markets, the legislation prohibits the sale of gasoline in carbon monoxide nonattainment areas that do not contain at least 2.7 percent oxygen beginning in 1992.

Cold ambient temperatures and atmospheric temperature inversions are critical factors in carbon monoxide pollution formation. As a result, virtually all carbon monoxide exceedences are observed during the months between October and April when climatic changes occur. Under the legislation, the Administrator is given some flexibility in determining the actual portion of the year in which the area is prone the high ambient concentrations of carbon monoxide to determine the length of the oxygenated fuels program. The Administrator should err on the side of environmental certainty, and should avoid setting widely differing program periods for each CO nonattainment area which will create a patchwork of gasoline regulatory requirements. Such a situation would be a impractical, unnecessary, and confusing for both consumers and gasoline marketers alike. In any event, the legislation stipulates that the timeframe for the program is not to be less than 4 months.

In order to provide gasoline marketers with maximum flexibility, the legislation instructs the Administrator to promulgate regulations "allowing the use of marketable oxygen credits from fuels with higher oxygen content than required to offset the sale or use of fuels with a lower oxygen content than required." However, credits may be traded only while the program is in effect, and only within each nonattainment area, not between nonattainment areas.

The legislation includes a requirement to label oxygenated fuels at retail. The goal of the labeling provision is to encourage consumers to purchase these fuels and to educate them as to the environmental benefits of their use. For years, many States have required pump labeling of only ethanol blends. In addition to creating an antiethanol bias, State labeling laws serve as a platform for oil companies to conduct antiethanol advertising. The presence of "No Alcohol" signs in conjunction with ethanol labels only serves to fuel consumer misperception that ethanol blends should be avoided. The simple, uniform pump label for all oxygenates required by this legislation will eliminate the current confusion created by the existing patchwork of State labeling provisions which are both misleading and deleterious to the national goal of encouraging the use of oxygenated fuels.

The net effect of these provisions is to create a tremendous new market opportunity for ethanol and ETBE-blended gasolines. Industry has estimated that the near-term impact of the CO program will result in an additional 500 to 600 million gallons of ethanol demand annually, utilizing between 200 and 240 million bushels of corn. Moreover, the reformulated gasoline requirements effective in 1995 will provide an additional market opportunity for ethanol manufactured into ETBE—ethyl tertiary butyl ether. Because of its lower volatility and superior blending characteristics, ETBE may prove to be a more valuable octane/oxygenate fuel additive than MTBE, the petroleum derived oxygenate manufactured today by several major oil companies.

Most importantly, however, is the fact that Americans across the country will enjoy cleaner, safer air while actually reducing our growing dependence on imported oil. In fact, as a direct result of the oxygen standard established in this legislation, CO nonattainment areas will realize a net reduction of more than 2.5 billion tons of carbon monoxide emissions—approximately 14 percent of the total CO emissions in those areas. The oxygenated fuel performance standard alone, will yield enough CO reduction to bring all CO nonattainment areas into compliance. At the same time, ozone nonattainment areas into compliance. At the same time, ozone nontainment areas will reduce the toxic, ozone-forming aromatics by more than 4 billion gallons annually—providing a dramatic step forward for our Nation's health and environment.

With regard to energy security, a recent analysis completed by the U.S. EPA determined that the oxygenated fuels and reformulated gasoline provisions of the Clean Air Act would displace more than twice the amount of oil that we have been importing from Iraq and Kuwait. The study concluded that between 800,000 and 1.5 billion barrels of oil per day would be replaced by the increased use of alternative fuels such as ethanol upon passage of this important legislation.

Finding the proper balance between establishing sound environmental standards for gasoline while providing appropriate industry flexibility in meeting those standards was a particularly difficult assignment. But I believe this agreement has achieved those diverse objectives, and I urge my colleagues to support it.

Finally, Mr. Speaker, with respect to subsection 183(e), I want to observe that the term "consumer and commercial products" for purposes of this subsection is extremely broad. Except for certain specific items listed at the end of the definition, such products include any substance, product, or article the use, consumption, storage, disposal, destruction, or decomposition of which results in the release of VOC's. The specification of some products in the definition; that is, "including paints, coatings, and solvents * * * any container or packaging," is not intended to exclude other products or detract from the breadth of this definition. Indeed, according to OTA's "Catching Our Breath" report, industrial solvent use accounts for the largest percentage of total solvent use in nonattainment areas. Thus, for example, substances and products used in industrial applications are obviously an important area for study and regulation under this subsection.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California [Mr. WAXMAN], for purposes of a colloquy.

Mr. WAXMAN. Mr. Speaker, I want to clarify two points regarding the consumer products provision in title I.

Section 183(e)(9) requires consultation with EPA when a State plans to regulate VOC emissions from consumer or commercial products. The provision is intended to create a clearinghouse of information to encourage national uniformity. It is not intended to preempt or otherwise limit the authority of States to propose or adopt regulations affecting such products, either before or after EPA adopts regulations.

Is this correct?

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. WAXMAN. I am happy to yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, I agree with the distinguished gentleman.

Mr. WAXMAN. Mr. Speaker, section 183(e)(3) limits EPA regulation to product categories which account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, in ozone nonattainment areas. Credit toward the 80 percent threshold should be given to emission reductions from any consumer or commercial products made after enactment of this bill, not solely from products that would otherwise be regulated.

Is this correct?

Mr. DINGELL. If the gentleman will yield further, I agree with the gentleman.

Mr. WAXMAN. I thank the gentleman.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma [Mr. SYNAR].

Mr. SYNAR. Mr. Speaker, first of all, let me join in the congratulations of our chairman, the gentleman from Michigan [Mr. DINGELL], the gentleman from California [Mr. WAXMAN], the gentleman from New York [Mr. LENT], and all of those Members who have worked so hard to get us to this day.

Let me take this opportunity to also thank the members of the staff in both the majority and the minority, both House and the Senate for the excellent job they have done. I want to particularly thank Ruth Fleischer on my staff who worked so hard, as well as Rick Young, Bob Roach, Jeff Clark, and David Berrick.

As our Nation begins its journey through the decade of the 1990's, it is clear that protecting the environment of our country and of this planet has become a foremost goal.

I am particularly proud of the positive impact that this clean air bill will have on my own home State of Oklahoma. Finally, the city of Tulsa will attain the status of a clean air city which it has long deserved.

The alternative fuels and reformulated gas provisions will allow us to ensure that the State of Oklahoma's natural gas industry, propane industry, and reformulated gas industry will have a role in our Nation's future energy mix.

Oklahoma ratepayers will be happy to know that they will not see skyrocketing rates because of this legislation.

These provisions and others will guarantee a cleaner Oklahoma, a healthier Oklahoma, and a more economically viable Oklahoma.

This clean air bill will be the benchmark of this Nation's commitment to its environment. This clean air bill set the standard by which we will judge all future environmental legislation in the decade of the 1990's, and this clean air bill will be an announcement to the rest of the world of our Nation's intent to keep our promise to preserve this planet.

Mr. Speaker, this is an historic day for the Congress. We are acting on the conference report on the Clean Air Act reauthorization, the single most sweeping piece of environmental legislation we have ever passed. When the Energy and Commerce Committee began its work on the bill almost 2 years ago, not one of us was certain that all the extremely

contentious issues that were raised could be resolved. But the Nation is lucky. Not only were these issues dealt with, but the results are superior.

In addition to updating our current program for controlling ozone emissions, the new law deals with subjects never before regulated by the Federal Government. These include entirely new schemes for regulating toxic air pollutants, combating acid rain, and producing new, much cleaner vehicle fuels.

These innovations should produce significantly more healthful air and give rise to new or revitalized industries. While the costs of the bill are extensive, they will be phased in over a 15-year period. Conferees took care to make the bill's requirements as cost-effective and efficient as possible. The new emissions trading provisions of the acid rain title are an example of this approach and should provide a model for future environmental problems such as global warming.

The bill provides a significant boost for the Oklahoma natural gas industry which provides great clean air benefits, both as a vehicle fuel in a new generation of clean cars and trucks, and as a substitute for coal in utility and industrial boilers in order to combat acid rain.

Fortunately, the city of Tulsa will be off the ozone nonattainment list before the Clean Air Act of 1990 is enacted. This means that Tulsa, having come into compliance with the 1977 act and for as long as it remains in compliance, will escape the new requirements of the new ozone title. However, the bill contains language establishing a transitional category for cities like Oklahoma City which are currently close to attaining clean air standards.

The fuels section contains new requirements for the reformulation of gasoline to reduce its pollution. The two-pronged program covers both ozone and carbon monoxide nonattainment areas with varying requirements phasing in beginning in 1992 for carbon monoxide and 1995 for ozone. The conferees wisely chose to include language requiring the Administrator of the Environmental Protection Agency to determine if supplies of oxygenates are sufficient to meet the requirements of this title and not cause disruptions in the supply of gasoline. While I strongly support the goals of the reformulated gasoline title, I urge the EPA Administrator to exercise caution in applying its requirements in order to avoid this drawback.

I am pleased that the conferees included several provisions in the bill which I advocated that will have a great impact on important Oklahoma industries. These are: exemptions for stripper well emissions for well located in marginal and moderate ozone nonattainment areas and all but the most populous ones; new requirements for alternative fuels which allow clean, compressed natural gas and propane to participate in both the car and truck programs; flexible provisions, including the use of equivalent formulae, for meeting the reformulated gasoline requirements; new studies prior to the regulation of hydrofluoric acid, an important component of reformulated gasoline; language to prevent the aggregation of oil or gas wells located in the same field that might otherwise have triggered the provisions of the toxics title; use of allowable and not actual emissions for computation of acid rain allowances to avoid penalizing States like Oklahoma whose economies were depressed in the base years; and, finally, efforts along with other clean State members, to ensure we got our fair share of acid rain allowances and could grow in the future.

Two further issues were especially vital to me and reflected the work of the Government Operations' Subcommittee on Environment, Energy, and Natural Resources which I chair. The first relates to national park and wilderness visibility. The original amendment which I offered with Congressman WYDEN grew out of hearings held before the subcommittee last March. Unfortunately, the conferees chose to accept the weaker and more limited Senate version which fails to deal with the prevention of significant deterioration issues raised in our hearing and in a GAO report prepared for our subcommittee. I hope the Congress can revisit the issue in the near future to ensure clean air for our Nation's most treasured areas.

The second issue deals with radionuclides, which are radioactive air pollutants regulated by the EPA. I am pleased that the conferees agreed to limit changes proposed by the Senate which would have undermined EPA's authority to regulate these pollutants.

The conferees agreed to require the EPA Administrator to determine, through rulemaking, whether the Nuclear Regulatory Commission's regulations for radioactive air pollutants meet the Clean Air Act's test of protecting public health. Nuclear medical research and treatment facilities will have up to 2 years to make their case to EPA to exempt them, by this rulemaking, from Clean Air Act regulation.

The conferees agreed that Department of Energy facilities, which I have examined in many hearings over the last 3 years, must comply fully with the new amendments and gave EPA discretion to apply the new amendments to coal-fired boilers, underground and surface uranium mines, and mill tailings piles.

In short, while this bill is not without new economic costs, it also presents many new economic opportunities which the people of Oklahoma and the Nation must be bold enough to seize. And it promises a clean, healthy environment for all of us.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. SYNAR. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I want to commend the gentleman for his statement and I concur in it.

Mr. Speaker, I rise in strong support of the Clean Air Act Amendments of 1990.

The passage of this long overdue bill will have a profound effect on the health and quality of life of the people of this Nation. By breaking the decade of deadlock on clean air, we are making great progress toward fulfilling the promise made to the American people of clean, healthy air.

The bill before us is a strong and comprehensive rewrite of our outdated clean air laws. The bill is not perfect, and its passage will not automatically guarantee clean air. Some of the provisions in the final conference report are stronger than the House-passed bill, some are weaker. The lack of protection for national parks and wilderness area is a serious omission in the conference report. On balance, however, the bill is a vast improvement of our clean air laws.

Even with the passage of this bill today, we will face a significant task in fulfilling the promise of healthy air for the American people. We cannot rest our clean air laurels on a single law. The assault on our environment is dynamic and ever-changing and we must defend the quality of our air with constant vigilance. We must be vigorous in overseeing the implementation of the new law. The Environmental Protection Agency's enforcement of the Clean Air Act has been at its best spotty and at its worst, dismal.

Many people have contributed to the historic legislation we are considering today. In particular, I commend the chairman and ranking member of the Energy and Commerce Committee, Mr. DINGELL and Mr. LENT, for their patience and dedication to achieving passage of a new clean air act. The chairman of the Subcommittee on Health and the Environment, Mr. WAXMAN, has done an outstanding job and has been a real hero for environmental concerns relative to this clean air measure. These and other members and their staffs have labored for thousands of hours on what has been called the most complex piece of environmental legislation ever passed. If politics is the art of compromise, this bill is the Mona Lisa of environmental law. Mr. Speaker, I commend and congratulate our Minnesota colleague GERRY SIKORSKI for the success he has achieved in a special role as a member of the conference and principal sponsor of the acid deposition provisions of this measure before us today.

Mr. Speaker, I have had a longstanding interest in improving air quality. I come from a State which proudly places a premium on natural resource values. Minnesotans have a strong conservation and environmental ethic. Minnesotans do not take clean air and clean water for granted. They expect and demand sound State and National law and policy to achieve and maintain clean air. Naturally we are concerned about acid rain in the fragile lakes in northern Minnesota, or about health advisories for fish caught in Lake Superior because of airborne toxic contamination. Minnesota has strong environmental laws, including one of the few State acid rain control laws in the country, but air quality doesn't begin and end within the confines of a State or the boundary of our Nation. Clearly this issue of air quality must be addressed nationally and internationally.

I have attempted to take an active role in congressional efforts to overhaul the Clean Air Act. In 1980 our first success was with building the foundation of information with a new data base provision which focused on both acid deposition and carbon dioxide. I was pleased to sponsor and vote for this building block. In 1982, JERRY LEWIS and I introduced the Commitment to the Clean Air Act Resolution, a proposal which garnered the bipartisan support of over 100 Members of Congress. In 1985, my Subcommittee on National Parks and Recreation investigated the impacts of air pollution on national park units which reflect the adverse impacts of air pollution from visibility to physical ozone problems. These hearings documented the deterioration of cultural

resources and the impaired visibility occurring at our Nation's crown jewels, the national parks. I have long worked on and cosponsored legislation to control acid deposition and pay for it in an equitable fashion, at one point introducing my own legislation on the topic.

In 1987, my colleague BILL GREEN and I sent out a letter calling on the Energy and Commerce Committee to report on strong and comprehensive legislation to reauthorize our Nation's clean air laws. The Vento-Green letter identified the serious air quality problems facing our Nation at the time—smog, acid rain, ozone depletion, and global warming, airborne toxics and air pollution in pristine areas. The letter suggested broad goals for pollution reduction, as well as specific targets and means of meeting those targets. Two hundred and thirty Members—a bipartisan majority—signed our letter. The letter served as a strong message for this Congress, that a majority wanted and would support a strong new clean air act, and that those who delayed or frustrated action could not hide or deny the House its will to enact a new, good, clean air law.

Although no clean air legislation was passed in the 100th Congress, the Vento-Green letter was a strong and clear demonstration of the significant support that existed in the House for a timely and tough clean air act. It reflected the deep feelings of the American people about the importance of clean air. The American people were tired of breathing dirty air and they wanted their Government to act. Another Vento-Green letter was sent last year urging President Bush to submit strong and comprehensive clean air legislation to the House. This letter again received strong bipartisan support. The submission of a bill by President Bush was a welcome change from the negative environmental leadership exhibited by the Reagan administration. The 1989 President's bill finally set the stage for House and Senate action on this complex issue. A final Vento-Green letter was sent last November urging the Energy and Commerce Committee to complete its consideration of the clean air bill in a timely fashion. Again garnering good support, I'm certain that my collegues have signed many letters for Vento/Green, but today we can testify to the positive results from our effort.

Mr. Speaker, the length and complexity of this bill prohibit me from explaining the many important changes contained in it which will clean our Nation's air. The bill sets in place new requirements for the control of emissions from mobile sources, which cause 50 percent of urban ozone pollution. Tighter tailpipe emissions standards for cars and trucks would be phased in between 1994 and 1998. The California pilot program and a new fleet program will promote the development of clean fueled vehicles. Reformulated gasoline will be required in the nine smoggiest cities. New actions would be required for carbon monoxide nonattainment areas such as my district of St. Paul, MN.

The acid rain program was carefully developed to achieve the reductions in emissions needed to protect public health while being fair to States which will have to bear the disproportionate share of the burden for reducing acid rain. The program will achieve a 10-million-ton reduction in sulfur dioxide and a large reduction in nitrogen oxide emissions. I'm glad that the incentive program for utilities to use energy conservation and renewable energy to achieve emissions reductions has been expanded. This bill also establishes a program to regulate 189 toxic substances which are responsible for thousands of cancer cases annually. Smaller sources of toxic pollution such as printers, bakers, dry cleaners, and gas stations would also be regulated. Under the bill, these small businesses have the right to seek help from State environmental agencies in understanding what they must do to comply with the new law.

Although I am going to support this bill, I find it necessary to point out the dramatic and serious changes that have been made to the national parks and wilderness area provisions that were included in the House-passed version of the bill. I want to make it clear to my colleagues that the conference committee report absolutely eviscerates the clean air protection provisions for parks and wilderness areas.

As chairman of the Subcommittee on National Parks and Public Lands, I have on many occasions received the testimony of Federal land managers and public witnesses and have seen first hand the evidence of the degradation of our national parks and wilderness areas resulting from current air quality standards. In fact, National Park Service surveys have cited poor air quality as the most frequent threat to the physical resources of the National Park System. Whether it is the adverse effects of visibility at Grand Canyon and Shenandoah National Parks or the physical damage to trees and other plant life at Acadia, Glacier, and Mt. Rainier National Parks, problems associated with the degradation of air quality in America's special places are found from sea to sea.

The bill we have before us no longer holds the bright promise of protecting the air quality of our national parks and wilderness areas. The protection so painfully crafted by the House for these areas is no longer in the bill. The bill no longer provides new protection to class I and II areas that are at risk. And, for class I areas, the bill abandons raising the visibility protection standard to the same level as the air quality standard. These changes are extremely ill advised and will lead to continued deterioration of some of the resources Americans hold most dear.

Mr. Speaker, I urge my colleagues to support this legislation to ensure improved air quality for all Americans. The benefits of this landmark legislation will be felt in our lungs, pocketbooks, and our natural environment well into the 21st century.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, I rise in support of the legislation as a conferee.

Mr. Speaker, I am very pleased to be here to see 10 years work in the Commerce Committee about to bear fruit.

When Congress passed the Clean Air Acts of 1970 and 1977, it had a simple goal: clean, healthy air for everyone. Over the years, the Clean Air Act has reduced pollution. But it's never done the whole job.

Nearly 150 million Americans live in areas that haven't met the basic standards for two common pollutants: ozone, a component of smog, and carbon monoxide. My home district's air still exceeds those standards 1 or 2 days each year. And Oregon has some serious problems associated with smoke from woodstoves and field burning.

Another disappointment has been EPA's failure to deal with a broad range of toxic chemicals in the air. In Oregon alone, over 20 million pounds of industrial toxics were reported discharged into the air in 1987. Nationwide, these discharges, along with toxics from car and truck exhausts, are blamed for causing 1,600 to 3,000 cancers a year. Yet, of the hundreds of potential toxic chemicals in air pollution, EPA has regulated only seven since 1970.

EPA has also failed miserably to implement the visibility protection provisions we wrote in 1977. In 13 years, not one polluter has had to cut back under those laws.

Also, we are grappling now with problems few had heard of when the act was first written: acid rain and destruction of the ozone layer.

The act we lay before the House today is our response to those problems. We've written tough standards to clean up city air. We have a list of 189 toxics that EPA will have to regulate. And we have a truly groundbreaking program to reduce the pollution causing acid rain.

I'd like to take a few moments to discuss in more detail some of the provisions I gave special attention to during conference deliberations.

As the sponsor of the park protection amendments in the House bill, I was active in representing the House in negotiations with the Senate on these and related PSD issues. That included negotiation on the amendments to the visibility protection program and the amendment to the definition of best available control technology [BACT].

The House agreed to accept the Senate language on both these provisions. The House was concerned that the change in the definition of BACT might be construed to allow relatively low-sulfur coal to be used as a substitute for control technology in regions of the country that currently require new sources to use both low-sulfur fuel and controls. However, the Senate assured us that this change was not intended to allow States to relax the level of performance now required of new plants.

The Senate explanation seems to square with the Environmental Protection Agency's view of this provision,

as described by Assistant Administrator Rosenberg in an October 17 letter to myself and Mr. WAXMAN. We asked the agency what the impact of the Senate's language might be on emissions from new plants. Mr. Rosenberg replied as follows:

In analyzing the impact of the Senate bill on the electric utility sector, EPA assumed that the additional language would have no real impact on BACT determinations. In determining what BACT should be for a particular facility, the permitting authority would take into account the inherent "cleanliness" of a fuel (i.e. a naturally low sulfur content) just as the permitting authority currently takes into account the "cleanliness" of a fuel achieved through fuel cleaning or treatment in making BACT determinations. EPA views this amendment as merely codifying its present practice, which holds that clean fuels are an available means of reducing emissions to be considered along with other approaches in identifying BACT level controls.

With the assurance of both the Senate and EPA that this would not allow low-sulfur coal alone to qualify as BACT in regions where both low-sulfur coal and technical controls have been required, we accepted the Senate language.

On the issue of visibility protection, as the floor debate in each body indicates, both House and Senate agreed strongly on the need to address this problem. EPA's record on implementation of the visibility provisions of the 1977 clean air amendments has been disappointing.

Neither the original House language nor the Senate language adopted in conference repealed or lessened EPA's obligations under the 1977 law, and I encourage EPA to implement that law fully as soon as possible. In fact, the amendments to section 304 in the enforcement title of these amendments should make EPA's failure to complete regulations after the 13 years actionable as unreasonable delay. If missing a 2-year deadline by 11 years is not unreasonable, I'm not sure what is.

The conference language on visibility requires EPA to establish a research program. Under this program, EPA with other agencies can continue to gather baseline data needed to measure reasonable progress toward the 1977 visibility goals. EPA can also accelerate study of individual sources to determine whether existing plume blight regulations apply.

The conference language sets up a regional commission mechanism that will encourage EPA to tailor make regulations to address specific regional problems. This language contemplates EPA establishing clean air corridors and requiring offsets, alternative siting analysis, and other part D style measures of sources locating in such corridors. The current Clean Air Act section 169A(a)(4) empowers EPA to adopt such measures to assure reasonable progress.

Clean air corridors are airsheds with few sources of visibility-impairing pollutants. Air moving in from these corridors provides the clearest viewing days in class I areas. The corridors are not buffer zones referred to in section 169A(e).

Finally, the language provides for better notice to Federal land managers of new pollution sources that might affect public lands. It also directs Federal land managers to actively identify those air-quality related values of their lands that are vulnerable to air pollution. Knowing the sensitivities of their lands will, we hope, make the land managers more alert to potential threats. This language does not prevent a land manager from identifying a new value at risk in response to a new permit application and acting to protect that value in a permit proceeding.

I was also active, with Mr. BOUCHER, in negotiations over the small business provisions in title V. The point of these provisions is to ensure that the thousands of small businesses regulated under this act will not be tossed into the same bureaucratic ocean as the multibillion-dollar industrial giants.

The provision requires States to establish small business stationary source technical and environmental compliance assistance programs. These programs will be set up in advance of the State permit programs to help small businesses begin to comply early, and to help them have a greater say in the design of the general State permit programs and other parts of the State regulatory system.

These programs will help small businesses get information both about the technical side of pollution control and the procedural side. Together, this information should improve compliance with the act.

The provision should also help State regulators get more input from small sources and make the regulators more sensitive to the abilities and needs of small business. The conference language encourages flexibility in applying the act to small sources, though no weakening of the act's standards should be implied.

EPA is directed to help the States implement this program. Though the conference language does not expressly require EPA to maintain a national clearinghouse on small source compliance technology directly available to small sources, this would be a logical and helpful step for the agency to take under section 507(b).

The eligibility provisions were painstakingly crafted to capture those small sources most in need of assistance. The States and EPA have the flexibility to adjust eligibility to the program. And of course, nothing in the language prohibits a State from granting technical or compliance advice to any other sources, as the State sees fit.

The Compliance Assistance Panel called for in subsection (e) is an essential component of any State assistance program—without a panel to provide guidance and feedback, it would be difficult to ensure that a program would adequately address the needs of small business stationary sources. EPA should only approve State implementation plans that include compliance assistance panels.

Finally, I note that the provision on fees allows reductions for small sources where appropriate. The State has some flexibility, under the general permit fee provisions, to adjust fee levels for any source so long as the average fee charged meets the statutory minimum.

While on the subject of permit fees, I would like to make a general observation on State authority here. The House insisted that State fees be limited to an amount necessary to cover the direct and indirect costs of the permit program. We did not wish the fee provision to be any more than a user fee to cover expenses.

But this should not be read as an attempt to limit a State's inherent powers to levy taxes should a State so choose. I doubt that we could constitutionally interfere with that. If a State wished to levy a pollution tax independent of its States implementation plan, nothing in this bill would prevent it.

I was also active in negotiations in the toxics title, especially concerning regulation of radionuclides. The Senate was concerned about dual regulation of radionuclides by EPA and the Nuclear Regulatory Commission. I would observe that even when pursuing apparently the same standard of protecting the public health, EPA has tended to set better, more protective standards and has had better enforcement efforts and mechanisms than NRC. I would encourage the Administrator to not abdicate the agency's regulatory role here lightly.

I am particularly pleased that we managed to convince the Senate not to grandfather the Department of Energy's activities under the old toxics laws. The Department is, in effect, a multibillion dollar industry handling some of the most toxic materials known to man. It's safety record has been deplorable, both with radioactive materials and with conventional toxics, such as beryllium. I encourage EPA to regulate these facilities promptly under the new law.

I wish to touch briefly on the provision of the acid rain title defining "baseline," where an explanation of the conferees' deliberations might provide some guidance to the Administrator.

The Senate-passed language gave the Administrator broad discretion to adjust baselines of plants experiencing long outages. The House language required adjustments for plants down more than 4 months.

The conferees agreed that the Administrator should give full allowances to base-load plants but should not give windfall allowances to peaking plants designed to have outages. As we could not agree on precise legislative language on the point, we agreed to give the Administrator discretion and to provide the best guidance we could in the statement of managers.

I would hope the Administrator is sensitive to the conferees' intent and provides reasonable allowances to plants like the Boardman plant in my home State, which was designed as a base-load plant but was down for extended periods in the baseline years.

Mr. Speaker, as I noted before, this is a ground-breaking public health bill. Change won't come overnight. It will take years for all cities to meet the basic urban smog standards. The toxic regulations for all those chemicals will take almost a decade to put in place. And under the most optimistic projections, we won't have full acid rain control until after the turn of the century. But this new act will renew the promise Congress made in 1970: healthy air for all Americans.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. MCMILLEN].

Mr. MCMILLEN of Maryland. Mr. Speaker, I rise in support of the conference report.

Mr. Speaker, I rise in support of the conference report on the Clean Air Act Amendments of 1990. After 20 years of intense, sometime fierce debate, the Congress of the United States has risen to the challenge and agreed to sweeping changes to the air quality laws of the United States. I salute the efforts of the conferees—most notably Mr. DINGELL from the House contingent to the conference. Your task was not an easy one, and I tip my hat to you for your extraordinary accomplishment.

As a member of the House Energy and Commerce Committee, I am pleased to see that much of the work of the House committee remained through conference. Along with Representative SIKORSKI of Minnesota, I authored an amendment to H.R. 3030 that required the EPA to study and regulate airborne toxics that "bioaccumulate" in fish and marine life. This provision in the clean air bill, helps us to preserve delicate ecosystems such as the Chesapeake Bay, an important part of my congressional district.

I am pleased that the conferees moved ahead so productively in the area of auto emissions. Important provisions were added to the final conference report that mandated clean fuels and clean cars. Comprehensive and progressive fleet provisions were put into place as part of the House-Senate compromise. While any successful clean air package is dependent on the mandatory participation of automobile fleets, we must not lose sight of the fact that car and truck fleets already—at this moment—contribute to cleaner air quality. Typically fleets are composed of late-model cars that are well-maintained; certainly better maintained than the average family car. For these reasons, fleet autos are less likely to pollute the air than any representative sample of autos traveling American roadways. Further, fleets are composed of almost eclusively domestic cars—an added bonus when one considers our trade imbalance situation.

So, in the final analysis, we need to consider the many advantages of car and truck fleets before considering further regulations.

Again, I commend my colleagues for their monumental achievement in reaching an agreement, and I look forward to the speedy passage of this landmark bill.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina [Mr. MCMILLAN], a member of the committee.

Mr. MCMILLAN of North Carolina. Mr. Speaker, I would first like to thank and congratulate the chairman, ranking member, members of committee and House conferees and their staff for the tremendous effort they put into this legislation. I know they spent endless hours defending the House provisions. As a result, we have the best—a bill that the House can support.

I am proud to serve on the Energy and Commerce Committee, which hammered out a tough, but practical bill, H.R. 3030. My colleagues on the conference committee were able to hold the line in preserving its workability.

Each one of us represents different parts of the Nation, with varying environmental problems and economies. Congress should not dilute our duty to be environmentally responsible and economically sound at the same time. I believe that tough standards can be achieved with flexibility built into the means. In fact, part of our challenge is to stimulate alternative and competitive means of meeting these standards. For the most part, the conference report embodies this philosophy.

In closing, I would like to remind everyone of our individual responsibility in the challenge to clean up our environment. Government can do much, but prevention rests essentially in the people's hands—preventing it and paying for it. We are on the threshold of adopting and enforcing the toughest clean air standards in the world. I hope the public is prepared to pay the price. I urge my colleagues to support the conference report on S. 1630.

Mr. DANNEMEYER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. MILLER].

Mr. MILLER of Ohio. Mr. Speaker, I rise in opposition to the conference report on Clean Air Amendments of 1990. While no one questions the good intentions of this bill, it nevertheless will have a very adverse impact on the economy of this country and especially for those consumers in the Midwest in the form of much higher utility bills and it will especially pinch the wallets of those on limited incomes.

Additionally, this bill further exacerbates an already bleak job picture for Appalachia miners. This bill also concerns me because it virtually ignores the results of the National Acid Precipitation Assessment Program [NAPAP], a 10-year, $600 million study which the hardworking taxpayers of this country paid for and the bill may inadvertently kill an innovative and environmentally sound technology known as clean coal technology; a technology in which the hardworking taxpayer has already invested $1.3 billion, a technology which if allowed to fully develop, could provide cleaner air, cleaner soil, cleaner water, and at the same time offer efficiency increases of up to 150 percent over conventional technology, all at far less cost.

Mr. Speaker, now is not the time to be hampering technologies which would allow us to burn all of our domestic coal and develop energy independence.

Innovative clean coal technology provides us with a responsible and lasting way to improve our environment while ensuring an abundant, secure, and cost effective source of energy. Not only could this technology make us a winner at home but it could make the United States a winner in the global market. Developing nations are dependent upon coal to meet their energy needs and the U.S. leadership in developing environmentally and economically effective technologies for the use of coal could help solve a major world resource issue.

While I wish to thank the conferees for those provisions inserted which will ease the affects of this bill on the Midwest, I feel that we are rushing ahead of ourselves and ignoring the science behind this measure. Costly judgment are being made which in the long run could be ineffective and in the short run close down coal mines and put people out of work. For this reason I am compelled to vote no on this bill in support of my coal miners in Appalachia.

□ 1750

The SPEAKER pro tempore (Mr. MAZZOLI). The Chair would advise that the gentleman from Michigan [Mr. DINGELL] has 19 minutes remaining, the gentleman from New York [Mr. LENT] has 18½ minutes remaining, and the gentleman from California [Mr. DANNEMEYER] has 2½ minutes remaining.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Alabama [Mr. CALLAHAN], a member of the committee.

Mr. CALLAHAN. Mr. Speaker, there have been many skeptics that predicted we would not enact a clean air bill this year, but they have been proven wrong. They have been proven wrong because of the tenacity of the chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL] and the ranking member of our committee, the gentleman from New York [Mr. LENT].

I commend them and commend all the other members of the conference committee who put in unbelievable hours in finalizing this bill. I especially commend the staff of our committee, who have spent untold hours, and who I hope will be able to get some badly needed sleep which will probably be on their agenda tonight.

However, it has been a lengthy process in reaching this compromise, and no Member was totally successful in promoting his or her total interest, and I remain concerned about the overall cost of the amendments that may be entailed for consumers. However, I believe this package represents the best efforts of a great many people. It deserves our support. It has had more hours of deliberations than any other measure that has come before this Congress probably in the past decade. I urge my colleagues to vote in favor of the conference report.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Washington [Mr. SWIFT].

Mr. SWIFT. Mr. Speaker, we have heard some people on the floor who have indicated that they would like to have environmental protection at no cost at all. I wish that were true. I wish that I was rich and handsome and 35 again. I wish there was no poverty or hunger in this world. I wish Saddam Hussein would withdraw, and our troops could come home. I wish that people who think we can have environmental protection as a free lunch would understand how silly that is.

A group of Members worked very hard on title I, the nonattainment sections, and one of the things we were concerned about was making this as cost effective as we could while meeting the goal. We succeeded in that, and what we proposed is largely what is contained in the legislation.

It was the EPA who said that that particular proposal was successful in reducing urban smog, as the most environmentally stringent bill introduced in the last Congress, and also at the least cost to the economy. It can be done, and it has been done time and time again in this legislation. But why can it not be free? Because we are trying to address some standards. What are the standards? They are absolute standards. They are not cost-benefit standards. They are absolute standards. What are the standards? That the air that Americans breathe must be healthy.

I have talked to a lot of people who are going to pay a lot of money to make this possible. The automobile industry, the utility industry, and others in this city over the last 2 or 3 years. I have said, if they want to go to the American public with a cost-benefit ratio that says that if it costs too much, we will not have the air people breathe be healthy, but if they wish to go with that policy, they will at least be consistent. Then they can come and talk about it costing too much. However, unless they are willing to do that, and incidentally, I never had a single taker, then we are stuck with a standard that says the air must be, by medical definition, healthy to breathe. It is going to cost something. It is worth it.

Mr. Speaker, 2 years ago in the closing days of the 100th Congress eight of my colleagues from the Energy and Commerce Committee and I introduced a clean air bill. Dubbed the "Group of Nine," we spent close to a year learning the substance of the complex issue of urban smog in an effort to put together a proposal which might help bridge the gap separating those entrenched on opposite sides of the highly politicized decade-old clean air battle. Armed with substance, we developed what I believe was a reasonable approach that would achieve two goals: cleaner air and an efficient method of getting cleaner air. It was not our intention to introduce our proposal as legislation. Rather, we had hoped that the proposal might provide a vehicle for negotiations leading to a compromise bill. When it became clear that there was not to be a clean air bill in the 100th Congress, we officially introduced our legislation.

At that time we were frustrated by what we saw as the intransigence of extremists on both sides—industry and environmental—yet again preventing the passage of clean air legislation which was not wholly to their liking. The extremists included those who concerned themselves only with the cost of clean air, without regard for the cost having to breathe dirty air, as well as those who would sacrifice any progress toward cleaner air for perfection. These extremists outside of Congress had created a polarized political climate which made it virtually impossible for many Members of Congress to compromise. We were particularly frustrated because in the course of drafting our proposal we had met with reasonable voices from both camps who stood strongly for their positions yet sought to find new ways of achieving their goals.

But while the extremists may have won the battle in the 100th Congress, today's passage of the Clean Air Act amendments clearly demonstrates that they have lost the war. After over a decade of deadlock, we now have agreement on sweeping changes which strengthen our Nation's clean air law. The agreement is not only a victory for the American people, who will have cleaner air, but also for Congress as an institution. We have overcome vast political and regional differences to reach a compromise which balances the need for environmental protection against economic considerations and recognizes the disparate impact the bill will have on various regions of the country.

Crafting this complex piece of legislation has not been easy. Nor will everyone be pleased with the entire package. Industry and environmental groups both express displeasure with certain provisions of the bill. Indeed, there are provisions I would like to change. However, I believe the bill is environmentally strong, and represents a reasonable approach to achieving cleaner air.

This comprehensive legislation will reduce more air pollution caused by more substances from more sources, using bold new approaches, than ever before and will improve the quality of the air we breathe from coast to coast and do it in the most efficient and effective manner.

I am pleased that the final package includes in large measure the House provisions to title I. The provisions were drawn in large part from the proposal which the Group of Nine developed last Congress. These provisions were found by an EPA study to be as successful in reducing urban smog as the most environmentally stringent bill introduced last Congress, but did so at the least cost to the economy.

I am also pleased that the final package includes a version of the Wise amendment. Clearly there are costs associated with achieving clean air and it is irresponsible of us not to consider them. The Wise amendment recognizes that if the Government requires action to protect the environment, we have the responsibility to help families and communities that are adversely affected by that action. I hope that the concern that is being expressed in this context will be extended to the timber families and communities of the Pacific Northwest.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. PURSELL].

Mr. PURSELL. Mr. Speaker, as an original cosponsor of the Clean Air Act Amendments of 1990, I rise on behalf of Mr. UPTON and myself in strong support of this conference report, and appreciate a colloquy with the gentleman from New York [Mr. LENT].

Mr. Speaker, I wish to seek clarification of two crucial provisions of the legislation that directly affects a publicly owned electric system in my district. The Michigan South Central Power Agency operates a 55-megawatt coal-fired generating plant that is a classic "little clean" under both versions of the legislation. Because of unavoidable technical problems with the plant's state-of-the-art pollution control equipment, the plant experienced abnormally low capacity factors in the baseline years 1985-87. As a result, under the standard formula contained in the bills, the plant would receive too few allowances to operate at efficient capacity.

The legislation before us today would moderate the standard formula to reward public citizen efforts to clean up the air like those taken by the municipal system in my district. I would appreciate it if the gentleman

would confirm my understanding that under sections 405(d)(4) and 402(r) of the legislation, allowances will be allocated to units which commenced commercial operation on or after January 1, 1981, and before December 31, 1985, on the basis of the qualifying plant's 1985 permitted, or allowable, emissions rate multiplied times a 65-percent capacity factor, as opposed to the plant's actual emissions rate in the baseline years.

Mr. LENT. Mr. Speaker, will the gentleman yield?

Mr. PURSELL. I yield to the gentleman from New York.

Mr. LENT. The gentleman from Michigan is correct. The legislation allocates allowances on the basis of such plant's federally enforceable 1985 permitted emissions rate and not the actual performance of the plant in the past.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. ECKART], who has been invaluable in helping to handle this legislation.

Mr. ECKART. Mr. Speaker, "Yes, Virginia, there is a Santa Claus."

Mr. Speaker, a lot of people said it could not be done. Others said it would not be done. And a handful of naysayers, whispering behind their hands, said it should not be done. But we did it anyway.

Today's action has been a long time coming, too long, but it is an action that was worth waiting for. The conference report on the Clean Air Act Amendments of 1990 is an agreement of historic proportions—a measure that in a straightforward manner deals not only with complex and technical problems, but with legitimate and competing regional issues as well as divergent approaches and philosophies.

Perhaps the regional differences were the most difficult.

As Members of Congress, we all take an oath of office, in which we swear that our first allegiance will be to our Nation. Yet there may sometimes be tension between that promise and our promises to our constituencies—all politics is local, but the best policy may not always be—we must always strive to find the proper balance.

I believe we have succeeded. The question of how best to control acid rain, who would pay and who would benefit, put us to the test, caused us to examine our interrelatedness. The questions were not easily answered, but I am satisfied that they were fairly answered. The Acid Rain Control Program adopted by the conferees will be tough on my region and my State, but our final agreement will help mitigate the adverse economic consequences while still achieving our goal of a 10 million ton reduction.

Mr. Speaker, I am particularly proud that the Clean Air Act Amendments of 1990 will contain ozone and carbon monoxide nonattainment provisions taken wholly from the House bill. Those provisions, known as the Swift-Eckart amendment to title 1, were the result of many long hours of negotiation that actually began 3 years ago, with the efforts of nine members of the Energy and Commerce Committee who became known as the Group of Nine.

The Group of Nine came together around one common goal—the fostering of a debate on clean air issues that could bring together those two clean air giants, Chairman DINGELL and Chairman WAXMAN. We started with ozone and CO nonattainment, and we took a fresh approach. Our philosophy was that arbitrary deadlines and draconian sanctions cannot by themselves force attainment of the clean air standards, rather, that improved planning and monitoring, strong and reasonable control measures geared to each nonattainment area's peculiar problems, and sanctions appropriate to the failure or violation, will meet with more success. That approach ultimately earned the approval not only of Mr. DINGELL and Mr. WAXMAN, but of the Energy and Commerce Committee, the full House, and, finally, the other body. I am proud of the contribution the Group of Nine was able to make to the effort that has led us all to this day.

Mr. Speaker, as a Member from a Great Lakes State, I am particularly pleased that, with the enactment of this legislation, we will at long last get an air toxics control program that works. We all know that current section 112 has been an abysmal failure. So far, under the old law, EPA has regulated only seven toxic air pollutants. Under the Clean Air Act Amendments of 1990, EPA will regulate approximately 200 listed air toxics, and must promulgate technical control requirements for sources of all those listed pollutants within 10 years after the date of enactment. Importantly, a Great Lakes specific study, monitoring network, and regulatory provision has been included in the air toxics agreement. This is great news for the Great Lakes, where the major source of pollution now is the air—not polluted rivers or streams, not Superfund sites or landfills.

One other provision of the air toxics agreement deserves special mention, Mr. Speaker, and that is the steel industry coke oven-specific regulatory program. Due to the enormous capital investment that will be required over the next decade of the American steel industry in order to clean it up and make it more efficient, the conferees felt it appropriate to extend the deadline for compliance with the residual risk standard for those coke ovens that would comply with a more stringent regulatory regimen in the earlier years. Some characteristics of this provision have created the inaccurate impression that the conferees have let the steel industry's coke ovens off the regulatory hook. Nothing could be further from the truth. Here are the facts:

Coke ovens seeking the extension will be required to meet the new law's MACT standard—maximum achievable control technology—in 1993, fully 2 years earlier than any other industry.

Five years later, in 1998, coke ovens will be required to meet an EPA-promulgated LAER standard—lowest achievable emissions rate. The LAER standard is the toughest standard in the Clean Air Act regulatory hierarchy, under both the current law and these proposed amendments. Thus, by 1998, every coke oven battery in the country will be operating at LAER, something that no other American industry will be required to do. Importantly, any coke oven that does not meet the LAER standard in 1998 must meet the residual risk standard in 2003—like all other industries—or shut down.

Only those coke ovens meeting the 1993 early MACT standard and the 1998 LAER standard will be granted the residual risk extension in 2020.

Again, in 2007, EPA will conduct an evaluation to determine whether the 1998 LAER still represents the actual lowest achievable emission rate. If it does not, EPA will promulgate a new LAER standard, which must be met by 2010.

So, Mr. Speaker, the actual effect of the new coke oven provisions over the next 30 years will be to continually force technology, until the American steel industry operates the cleanest, most efficient coke ovens possible. This is the toughest regulatory regimen in the new air toxics program, and yet it will ensure that American steel-making capacity does not go down the tubes in the next decade. I have a more detailed explanation of this provision, Mr. Speaker, which I will have inserted in the RECORD at this point:

EXPLANATION OF TITLE III COKE OVEN PROVISIONS

Title III of the Conference Agreement contains several provisions specifically addressed to coke oven batteries. These include specific MACT-setting provisions, an extension of the residual risk standard compliance date, and a control technology study.

The owners and operators of coke oven batteries may elect either of two sets of provisions. One option requires coke oven batteries to meet MACT requirements by December 31, 1995, and residual risk-based emission standards by January 1, 2003. This is roughly comparable to the schedule which will be required for other source categories for which EPA will be promulgating MACT standards within the first two years after enactment.

Coke oven batteries may follow another option, however. A coke oven battery that meets a special MACT requirement of 8 percent leaking doors by the date three years after enactment, then meets a LAER-level technology-based standard by January 1, 1998, will have until January 1, 2020, to meet the residual risk-based emission standards under subsection (f).

EPA is required to promulgate MACT standards for coke oven batteries by December 31, 1992. These standards will be based on the definition of MACT in subsection (d), with some additional requirements. These MACT standards, to be followed by those coke oven batteries not seeking extensions, at a minimum must not exceed 8 percent leaking doors (with no exclusion for just-closed doors). In addition, EPA must evaluate the effectiveness and suitability of using sodium silicate luting compounds to prevent door leaks, taking into account costs and reasonable commercial warranties.

The Agency must also evaluate Jewell design Thompson non-recovery coke oven batteries and other non-recovery technologies, as well as other appropriate emission control and coke production technologies. These technologies are to be considered as a basis for MACT standards for new coke oven batteries.

The compliance date for these MACT standards for existing coke oven batteries is December 31, 1995.

EPA is also required to promulgate work practice regulations applicable to all coke oven batteries as part of their section 112(d)(8) MACT requirements. These regulations will require, as appropriate, the use of sodium silicate luting compounds (if EPA determines such luting compounds to be an effective means of emissions control and achievable within the meaning of subsection (d)) and door and jam cleaning practices. The compliance date for these regulations is three years after enactment.

Coke oven batteries electing to qualify for the residual risk compliance date extensions to 2020 must meet a special MACT requirement under subsection (d)(8)(C), two years earlier, rather than the general MACT for existing coke ovens under subparagraph (A). That special MACT requirement is 8 percent leaking doors, 1 percent leaking lids, 5 percent leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for just-charged doors. The MACT compliance date for coke oven batteries seeking the extension is three years after enactment. These batteries would also be required to meet the work practice regulations at the same time.

An extension of the subsection (f) residual risk standard until January 1, 2020, is available for coke oven batteries that meet the technology-based standards of subsection (d)(8)(C) and subsection (i)(8). By December 31, 1992, EPA is required to promulgate emission limitations for coke oven batteries reflecting the lowest achievable emission rate (as defined in section 171) for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. This is a LAER-type standard, although it is based on what rebuilt batteries might achieve, not greenfield new batteries. It cannot be less stringent than 3 percent leaking doors (5 percent for tall batteries), with an exclusion for just-charged ovens. This standard must be expressed in terms of mass emissions, unless EPA finds a mass emissions standard would not be practicable. The compliance date for this LAER standard, for those coke oven batteries seeking the extension, is January 1, 1998.

There is a default provision, providing that in the case EPA does not promulgate a LAER standard before January 1, 1998, the emissions limitation will be 3 percent leaking doors (5 percent for tall batteries), or the mass emissions equivalent, with no exclusion for just-charged ovens.

By January 1, 2007, EPA is required to review the LAER standard, and revise it as necessary to reflect the lowest emission rate that can then be achieved. The compliance date for the revised LAER standard, if one is promulgated, will be January 1, 2010. Coke oven batteries that have qualified for the extension will be required to meet the 2010 standard, but non-compliance does not abrogate the residual risk extension to 2020. Any non-compliance would be an enforcement matter, and as with post-compliance violations of the 1998 standard, coke oven batteries out of compliance with any 2010 standard would be subject to penalty and abatement, but would not automatically forfeit the extension.

It may be that in some cases a coke oven battery can meet the residual risk standard under subsection (f) as established for that battery by January 1, 2003, and will not require the extension. Section 112(i)(8)(D) makes it clear than a coke oven battery may elect to meet the residual risk standard on that timetable, without having to meet the more stringent technology-based standards of subsection (i)(8)(B) or (C). To provide for the timely exercise of this option, if no residual risk-based emission limitations have been promulgated for the coke oven battery, EPA shall promulgate emission limitations in accordance with subsection (f) for such coke oven battery. Although the NAS, Commission, and EPA studies of the residual risk provisions may refine those requirements, under current residual risk estimation methodology such emission limitations would be derived by using the emission factors, local meteorology, and population density for the particular coke oven battery, together with the unit risk factor.

Subsection (i)(8)(F) clarifies that the reconstruction of a coke oven battery with an extension to 2020 does not deprive it of that extension. A coke oven battery qualifying for an extension will have to meet the residual risk standard in 2020, but merely reconstructing or replacing the battery (and perhaps technically qualifying as a "new source") does not accelerate that compliance date. For the purposes of subsection (i)(8)(F), the term "reconstruction" includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

In closing, Mr. Speaker, let me say that I am honored to have been associated with the historic achievement that will come to be known as the Clean Air Act Amendments of 1990. It is a fair bill. It is a comprehensive piece of legislation that says to all of us in all sectors of the country that the time has come to stop doing business as usual when it comes to polluting our environment. It is a bill that is as big and as grand as that which it seeks to protect. Its enactment will say to all who watch this country that we do very much care about our precious natural resources, and that we honor the memory of the first conservationist, Teddy Roosevelt, who admonished us all that we must, indeed, leave the world a little better than we found it.

□ 1800

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Mr. Speaker, it has been a long 13 years for the people of the Los Angeles basin who have been crying out for a Clean Air Act.

I have to say what a gratifying thing it was for me to see the distinguished chairman of the full committee, the gentleman from Michigan [Mr. DINGELL] standing there agreeing time after time with the statements made by my friend, the gentleman from Los Angeles [Mr. WAXMAN]. We all know that over the decade of the 1980's one of the things that was constantly said is that we could not get DINGELL and WAXMAN together because Detroit and Los Angeles could not get together. Well, it has been done and I congratulate them and, of course, the ranking member, the gentleman from New York [Mr. LENT], for working so diligently to make this happen.

I also would like to congratulate my friend, the gentleman from California [Mr. DANNEMEYER], who pointed out some very appropriate flaws; but in a moment I would like to counter some of the things the gentleman from California [Mr. DANNEMEYER], said during the debate on the rule.

My friend, the gentleman from Washington [Mr. SWIFT], said that we are going to have a tremendous cost with this bill. Yes, we know, we have to strike a balance between the economic cost and the environmental benefits; but we also have to remember that there is going to be a cost benefit to this bill, and it is twofold. No. 1, a decrease in health care costs for Americans and second, as America's technological advances move forward we will see a tremendous opportunity for us to export that technology into the Eastern bloc where as Mr. DANNEMEYER said this pollution exists. It will be U.S. technology developed as a by-product of this act which will address the international pollution problem and create jobs in the United States.

We have to recognize, Mr. Speaker, that there are going to be benefits all the way down the line.

I would like specifically to congratulate the conferees for their dilgence in insuring that the Senate language dealing with incinerators was knocked out. There has been a very dubious track record on the use of incineration.

I congratulate the conferees for working on that and I look forward to voting for this conference report.

Mr. Speaker, there are a number of provisions, such as the new mandates on reformulated gasoline, where the economic costs of

the incremental environmental benefits appear excessive. However, unlike the deficit reduction package, this conference agreement is, as I said, a bipartisan compromise and it represents a good faith effort by Congress to clean up our Nation's polluted cities.

The Senate language I mentioned would have defined municipal incinerator ash as nonhazardous. That language did not acknowledge the dubious environmental record of incinerators. The EPA expects the number of incinerators to increase by one-third over in the next 5 years. Since tests have shown fly and bottom ash to be highly toxic, we should continue to work to keep such ash from being dumped in municipal landfills to prevent groundwater contamination and other environmental threats.

In addition, provisions on mobile and stationary emissions, OCS air pollution, ozone depleting chemicals, and acid rain provide needed flexibility in achieving pollution reduction goals in a cost-effective manner. The legislation is structured in such a way that it will allow us to adapt to changing environmental conditions. It will utilize the success of America's technologial leadership in meeting pollution reduction objectives.

Certainly, the legislation isn't costless, and our Nation will have to undertake sacrifices. But it is a step toward ensuring a cleaner environment for both current and future generations, and I urge adoption of the conference reprort.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, I rise in strong support of the conference report on the Clean Air Act Amendments of 1990.

This legislation represents a historic environmental victory after 13 years of legislative struggle. It demonstrates that the Congress is able to pass tough and sensible environmental legislation in the face of enormous special interest opposition. We would not be here without the leadership of Chairman DINGELL and Subcommittee Chairman WAXMAN.

In my State the air is clean. Kansas City may soon become the first city of 1 million or more to be in attainment for all six criteria air pollutants. Our electric powerplants generate power cleanly through the use of low sulfur coal and scrubbers. Among States, Kansas ranks relatively low—30th—in terms of toxic air emissions.

For clean States, like Kansas, this legislation is fair and even though we will reap relaively few direct environmental benefits.

This legislation will dramatically boost the use of clean burning fuels like ethanol which is produced from grain.

In the Nation's nine smoggiest cities—which consume 22 percent of the gasoline—ethanol and other oxygenates will be needed to boost the octane rating of gasoline once smog-forming and cancer-causing components are removed.

In 44 cities that fail to meet Federal standards for carbon monoxide pollution, adding oxygen to gasoline will dramatically reduce carbon monoxide emissions from automobiles, the primary source of carbon monoxide pollution.

The new Clean Air Act also avoids unnecessary regulation of clean States in some key ways.

All too often, EPA has proposed uniform regulations on a nationwide or regionwide basis, even though air quality varies dramatically between States and within States. In this respect, the Clean Air Act makes an important distinction by requiring that fuel volatility regulations be set separately for attainment and nonattainment areas.

Avoiding unnecessary regulation of fuel volatility will save Kansas consumers $30 million per year. In the future, I hope that EPA will, wherever possible, avoid imposing unnecessary expenses on attainment areas—especially rural America—by promulgating regulations that effect only those areas where air quality problems exist.

For agriculture, the Clean Air Act will avoid placing a dual regualtory burden on the production, storage, and use of nitrogen fertilizer. Ammonia—the most common form of nitrogen fertilizer—will be regulated to prevent large accidental releases. Ammonia will not be regulated for low-level, routine emissions which pose no risk to human health or the environment.

Finally, the Clean Air Act Amendments of 1990 establishes an environmentally sound and regionally fair Acid Rain Program.

This bill will not require clean States to help subsidize clean up costs of dirty utilities. Kansas utilities, like those in other clean States, have already spent hundreds of millions of dollars to control air emissions. Clean utilities are also provided ample emissions allowances to expand generation to accommodate future economic growth without purchasing pollution offsets from dirty utilities in other States.

Amidst the many complexities of the acid rain title, there is one provision of particular importance to clean States—the definition of "allowable 1985 emissions rate" found in section 402(r).

The key point regarding this definition is that "allowable 1985 emissions rate" is not to be interpreted to be synonymous with the maximum actual emission rate at a specific unit during 1985.

The Senate-passed bill contained a definition of allowable 1985 emission ratemaking clear that the allowable 1985 emission rate is the federally enforceable emission limitation of sulfur dioxide and nitrogen oxides applicable to a particular unit in 1985. The allowable emission rate is a key factor in determining the allocation of allowances to super clean utility units.

While the federally enforceable emission limitations are expressed in a variety of different ways in State implementation plans, the bottom line is that the allowable rate is virtually always higher than the actual emission rate achieved by a utility unit. Coal varies in its sulfur content within a given coal seam and even within a given fuel shipment. Utilities routinely burn coal that is rated below their allowable emissions rate to provide a margin of safety against violating the allowable rate.

Unfortunately, an Energy Information Administration [EIA] analysis of allowance allocations under the Senate bill erroneously assumes that the allowable emission rate is synonymous with the maximum actual emission rate achieved at each unit during the baseline period. As a result of this error, EIA's analysis understated clean unit allowance allocations by 200,000 tons and opened up disagreements among House conferees.

Basing allowance allocations on a unit's actual emission rate, as EIA did, would effectively reduce allowable emission rates for the cleanest coal-fired units in the country. The utilities that own super clean coal units would be forced to find coal that is even lower in sulfur content, to add additional technological controls, or to buy emission allowances to maintain generation. This was not the Senate's intent and the conferees have clarified this by electing to use the Senate definition of allowable emission rate, rather than inserting actual emission rate in the relevant subsections of section 405.

It should now be completely clear to EPA that the conferees intend that the definition of allowable 1985 emission rate shall not be interpreted to mean the maximum actual emission rate achieved by super clean units during 1985.

The conference report also exempts all existing utility units of 25 megawatts or less. This provision is vitally important to a number of small municipal utilities in Kansas and Elsewhere, and I strongly supported its inclusion in the final bill. At the same time, however, I believe it is important to allow these and other units to voluntarily "Opt-in" to the Emission Reduction Program, becoming affected units. Thus, the bill directs, in section 410, that units 25 megawatts and under, and other units that are not "affected units" under the bill, may elect to become affected units and to receive allowances.

Mr. Speaker, the Clean Air Act Amendments of 1990 is landmark legislation and is long overdue. I am proud to have served on the conference committee that produced this leg-

islation, and I look forward to its implementation in the coming decade.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Speaker, as a Member of Congress who has pushed long and hard for tougher air quality legislation, I rise in strong support of the bill, and I encourage my colleagues to join me in voting for final passage.

For 13 years the American people have demanded stronger clean air laws, and I am proud to have played a leading role in bringing this bill to the floor for final consideration. As environmental groups have already stated, the Clean Air Act Amendments of 1990 is one of the most significant pieces of environmental legislation of the decade.

Through hard work and responsible compromise the House and Senate conference committee has been able to report a good bill that addresses the major air pollution problems facing our Nation. Tough new standards for urban smog, motor vehicle and toxic emissions, acid rain control, and ozone-depleting chemicals are all included in this landmark bill.

I want to join in complementing JOHN DINGELL, NORM LENT, CARLOS MOORHEAD, HENRY WAXMAN, JERRY LEWIS, SIL CONTE, ED MADIGAN, PHIL SHARP, BILLY TAUZIN, many, many others, and of course George Bush for their contributions to the process.

Of particular interest to my district is the clean coasts amendment which I introduced with Congressmen MEL LEVINE, BILL LOWERY, and MIKE BILIRAKIS bringing emission controls to offshore oil facilities on the Outer Continental Shelf. The district I represent has one of the most serious ozone problems in the country. One reason the counties of my district still exceed the health standards set by Federal and State laws is the lack of adequate controls on ozone transport from OCS facilities. This amendment, which is a part of the final bill, is designed to solve this problem. I think it is a fair solution for both sides.

Early in the session I joined a number of my colleagues in sending a letter to President Bush urging him to reauthorize and strengthen the Clean Air Act, and I cosponsored H.R. 3030 when the legislation was first introduced. When the bill ran into difficulties in the House and Senate conference, I contacted the conferees on numerous occasions to stress upon them the importance of reaching a compromise and reporting out an acceptable bill. Because of their efforts, we now have the opportunity to vote on final passage.

Mr. Speaker, we have always known that cleaning our nation's air would require sacrifices from every segment of our society. Yet to do nothing would cost us much more in the long run. Today we have the opportunity to take a major step towards cleaning our air. I strongly support H.R. 3030, and urge every member of the House to vote in favor of the bill.

I would also like to submit for the RECORD an analysis of the Outer Continental Shelf provisions by my constituent William Martin, Assistant Director of the Santa Barbara Air Pollution Control District.

AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES CLEAN AIR ACT AMENDMENTS OF 1990

SECTION 712

Summary

The bill adds a new section to the Act that requires the Administrator within 12 months of enactment, to promulgate requirements applicable to air pollution from all Outer Continental Shelf (OCS) sources, except sources offshore Texas, Louisiana, Mississippi, and Alabama. For OCS sources within 25 miles of the seaward boundary of a state, these EPA requirements must be the same as would be applicable if the sources were located in the corresponding onshore area. The requirements take effect with respect to new sources on the date of promulgation and for existing sources 24 months later and are enforced as standards promulgated under Section 111. States may be delegated the authority to implement and enforce the requirements if they submit regulations to the Administrator which the Adminstrator finds are adequate. For OCS sources located offshore Texas, Louisiana, Mississippi and Alabama, the Secretary of the Interior shall complete a study of the impacts of air pollutant emissions on coastal air quality. The bill defines the terms "corresponding onshore area" and "OCS source".

General Discussion

The construction and operation of Outer Continental Shelf (OCS) facilities emit a significant amount of air pollution which can adversely impact coastal air quality in the United States. Uncontrolled operational emissions from an OCS Platform and associated Marine vessels can exceed 500 tons oxides of nitrogen (NO_x) and 100 tons of reactive hydrocarbons annually. Uncontrolled platform construction emissions can exceed 350 tons of NO_x, while drilling an exploratory OCS well can cause emissions in excess of 100 tons of NO_x. Existing pollution control technology can significantly reduce these pollution levels. Under current federal regulation, these major sources of air pollution are not required to be mitigated or controlled. Large discrepancies exist in the regulation of air pollution from virtually identical onshore and OCS sources. In some areas, EPA requires stringent pollution controls onshore and within state waters to improve coastal air quality, while the Interior Department allows unmitigated OCS pollution under the provisions of the Outer Continental Shelf Lands Act.

Of primary concern is the fact that OCS air pollution is causing or contributing to the violation of federal and state ambient air quality standards in some coastal regions, with the potential that unmitigated OCS pollution will prevent certain coastal regions from attaining federal and state clean air standards. In Santa Barbara and other coastal regions, unmitigated OCS emissions could entirely negate the effect of all onshore emission reductions relied upon to achieve federal and state clean air standards. The adoption of more stringent regulations onshore to compensate for the effect of these unmitigated OCS emissions could only be done, if at all, with great cost to onshore industries and with substantial disruption to life-styles of coastal residents. The magnitude of OCS pollution and the fact that the prevailing winds bring much of this pollution onshore has lead the Environmental Protection Agency to express concern about the onshore air quality impacts from OCS development.

Coastal economic development goals can only be achieved through the permitting and regulation of many low-polluting facilities. While keeping within allowable air quality standards, over ten times as much low-polluting development can be permitted, as compared to highly polluting development. Application of the same requirements of all offshore and onshore projects will preclude a few "dirty" projects from using up an air basin's remaining capacity to absorb pollutant and thereby impede future development.

DISCUSSION OF SUBSECTION (A): REQUIREMNTS FOR CERTAIN AREAS

Subsection (a) applies to OCS sources located offshore of the states along the Pacific, Arctic and Atlantic Coasts, and along the U.S. Gulf Coast offshore the State of Florida eastward of longitude 87°30'. This subsection is intended to cover all OCSA sources except those located in the Gulf of Mexico west of longitude 87°30'.

For platforms located further than 25 miles from the seaward state boundary, it is intended that the EPA administrator analyze the extent of onshore air pollution impacts and require an appropriate level of pollution control to protect Federal and State ambient air quality standards and prevent significant deterioration of air quality. OCS facilities located within 25 miles of the seaward state boundary, will be regulated using the same air quality protection requirements as would apply if the OCS sources were located within the corresponding onshore area. These requirements are intended to include, but not be limited to, emission control requirements for new, modified, and existing facilities; offset requirements for new and modified facilities; and permitting, monitoring, reporting, enforcement, and testing requirements for all facilities. Administrative requirements, including the assessment of fees, will be established by the air quality permitting agency. These provisions will minimize differences in air pollutant regulation which currently exist between OCS sources and sources located in the corresponding onshore area. OCS air pollution is to be regulated to protect both Federal and State ambient air quality standards, and to prevent significant deterioration of air quality. It is intended that OCS emissions be included in any State Implementation Plan (for the corresponding onshore area) required under this Act.

Marine vessels emissions, including those from crew and supply boats, construction barges, tugboats, and tankers, which are associated with an OCS activity, will be included as part of the OCS facility emissions for the purposes of regulation. Air emissions associated with stationary and in-transit activities of these vessels will be included as part of the facility's emissions for vessel activities within a radius of 25 miles of the exploration, construction, development or production location. This will ensure that the

cruising emissions from marine vessels are controlled and offset as if they were part of the OCS facility's emissions.

This subsection provides EPA, the federal agency experienced and knowledgeable in air quality regulation, up to 12 months to establish regulations to implement this subsection. Said regulations shall address administrative procedures necessary for EPA to implement this subsection in areas where delegation to a state or local agency has not occurred. For all air quality requirements regulating OCS facilities within 25 miles of any state, EPA should not write a unique set of requirements, but should include the same requirements for emission controls, offsets, permitting, monitoring, reporting, and testing, as would apply if the OCS source was located in the corresponding onshore area. The regulations should also specify the procedures to be followed by the EPA Administrator in determining under what circumstances the more stringent requirements of another onshore area shall apply, rather than the requirements of the closest onshore area. Said procedures shall consider those factors specified in this subsection, and shall apply whether or not EPA has delegated authority to a state or local air regulatory agency.

New OCS sources and modifications to existing OCS sources shall comply with the requirements of this subsection on the date of rule promulgation. New sourcese are defined as per Section 111(a) of the Act to include any source which commences construction after promulgation of the rule. Any exploratory well which has commenced drilling by the date of rule promulgation shall be considered an existing source.

This subsection transfers the responsibility for OCS air regulation from the Interior Department (under OCSLA) to the Environmental Protection Agency (EPA), in order to ensure consistent implementation of air quality laws and regulations for both onshore and offshore sources. It is also expected that EPA will delegate the authority to implement this subsection to the agency which has been delegated Clean Air Act authority to regulate air pollution in the corresponding onshore area, whether that agency is a state or local air regulatory agency. EPA should delegate such authority expeditiously following receipt of a written petition requesting delegation from an onshore air regulatory agency. EPA should not withhold such delegation unless EPA finds that the onshore air regulatory agency's regulations are substantially inadequate to meet the requirements of this Act.

This subsection is intended to supersede section 5(a)(8) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334 (a)(8)). This subsection does not repeal or modify any other federal, state, or local authorities with respect to air quality, such as the Coastal Zone Management Act (16 U.S.C. 1451, et seq.) or other laws. It is intended that the requirements of the OCSLA Section 5(a)(8) shall remain in effect only for the 12 month period following enactment of this Section. This subsection supersedes the requirements under Section 5(a)(8) which have been interpreted by the Department of the Interior to require air pollution regulation only when the agency has proven that an individual OCS facility will cause a significant adverse impact on onshore air quality.

Discussion of Subsection (b): Provisions Applicable Offshore Texas, Lousiana, Mississippi, and Alabama

Subsection (b) requires the Secretary of the Interior to complete a study of the impacts of current and future OCS emission sources located in the western and central Gulf of Mexico, west of longitude 87° 30', on air quality within the States of Texas, Louisiana, Mississippi and Alabama. It is intended that the Secretary consult with the EPA Administrator on the scope and conduct of the study and on recommended actions which are found to be necessary based on the results of the study.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Minnesota [Mr. SIKORSKI], who has worked hard and long on the acid rain provisions.

Mr. SIKORSKI. Mr. Speaker, I had a simple statement prepared for today: "Hallelujah!"

But this occasion calls for a little more. Indeed, this occasion is many things.

It's a celebration of fine work by good people:

President Bush a year and a half ago broke the dam holding back clean air by committing this nation to clean air by the 21st century. He was right, his actions were good, and praise for him is well deserved.

Chairman DINGELL kept the crucial pressure on and kept clean air moving—even when he wasn't wholly happy with its insides. That takes a big man, a fine chairman.

Chairman WAXMAN, Mr. Clean Air, pushed and pushed and pushed for the best possible Clean Air Act and he won it through his persistence, eloquence and talent—and excellent staff.

Well, today is a celebration, but this occasion is also historic—this has taken almost a decade and a half. Most of the Members in this body, including myself, weren't even here the last time we passed clean air. And it is likely we will not touch this, in this magnitude, for another decade.

This occasion is both historic and timely in that it demonstrates—in the midst of crisis and torment—that this institution can take within its awkward hands an impossibly complex and technical host of interrelated health, environmental and economic problems, weigh the options, the costs and benefits, the regional and the parochial and political concerns—and produce a law that is hailed by environmentalists, industry, everyone as a template of creative and tough action.

This occasion is much more. It is a mortal acknowledgement of a very primary human duty: in the book of Genesis, humankind is given "dominion over the fish of the sea, the birds of the air, and over all the Earth." With that power comes the responsibility of stewardship. The Clean Air Act before us, with a mother's touch, warmly embraces that stewardship.

When our America, when our children, look back on this century, the words recorded in this Chamber today will be dusty and forgotten, but our action bright and alive and life-giving. We kept our promise to the American people—clean air for all Americans.

ACID RAIN

I must say some—soon dusty and forgotten—words about acid rain.

For over a decade now, I have worked, sweated, swore and pushed, prodded and pinched, campaigned and cajoled to end acid rain on this continent in this century.

Garrison Keillor said on my birthday a few years ago that the first words out of my mouth were, "Stop Acid Rain." Let me explain why:

The Ojibway word "minnesota" means land of sky blue waters. The land I was born and raised and educated in, the land I love, Minnesota, is the land of 10,000 sky blue lakes. It is the headwaters of three continental watersheds and 90,000 miles of streams, and caresses the largest body of fresh water in the world. Water washes and nourishes and defines my Minnesota—it is our economy, it is our environment, it is our culture, our way of life. And the assassin acid rain threatens it.

This act meets the acid test on acid rain: it has strong SO_x and NO_x provisions, good timelines, flexibility and fairness for all regions of our diverse America, and it means "the polluter pays." Vigilantly enforced, it means living lakes and healthy lungs, protection for America's forests, farmlands, mountains, deserts, hunting, and fishing. It means no more pock marks on the face of the Statue of Liberty and fewer tax dollars to mend our historic monuments.

AIR TOXICS

The air toxics title will begin to put an end to the annual, routine legal release of over 2.7 billion pounds of toxic chemicals—mutagens and carcinogens, neurotoxins and teratogens—into our air. That's 10 pounds for every American man, woman, or child. We know this because my community right to know amendment won five years ago on this very floor in a knock-down, drag-out fight. It won by one vote—and spawned a new title on air toxics in clean air law. I supported amendments to the air toxics title requiring the best available control technology; the establishment of a health-based standard for residual risk; reduction of emissions from cars and trucks, the source of over half of all toxic emissions; coverage of not just half, but all toxic emitting factories—including incinerators; and the establishment of standards for areas like the Great Lakes, where we are at special risk. I'm proud to have fostered the Great Lakes coverage in the House markup.

URBAN AIR POLLUTION

We have attempted to bring the cities of this Nation, in this century, into compliance with existing health-based ozone and carbon monoxide standards, by requiring adequate reductions from all sources, large and small, the factory downtown and the Pontiac next door. And what we can't achieve by the year 2000, we hope to finish in the first part of the twenty-first century.

The amendment Bill Green, Representative of New York, and I, offered on this floor a few months ago on emission warranty requirements for new automobiles provided a fair shake for consumers, small businesses and the environment. The Sikorski-Green amendment is intact in this act.

WHAT DOES THIS MEAN?

Passage of this clean air bill means healthier Americans and a cleaner America. It means the protection of human life, human health, our natural resources and our national economy. Our legacy will be more than dirty air, devastated resources and damaged lungs; it will be a cleaner environment, a revitalized American economy and a better life for our children.

To paraphrase Dante, we may not have the power to create heaven on Earth, but we do have the will and means to restore one portion of the art of God eternal: clean skies for our children and our memory—or as the Constitution notes, "ourselves and our posterity."

I think we inch closer to that nobility in this act.

I'd like to close with a personal note. For close to a decade I have spoken in Minnesota, in Washington, across America, and in Canda and in Europe as well—about acid rain and clean air. At times I was a little strong, at times not strong enough. I guess I can dump those notes, but before I do, I'd like to end with a quotation that ended most of those speeches. It helps define why we are here in this House, committing this important act. From Loren Eisley, in "The Immense Journey:"

If there is magic on the planet, it is contained in water * * * its substance reaches everywhere; it touches the past and prepares the future; it moves under the poles and wanders thinly in the heights of air. It can assume forms of exquisite perfection in a snowflake, or strip the living into a shining bone cast up by the sea.

Today, we are making a little magic of our own.

In the beginning of clean air legislation there was HENRY WAXMAN. HENRY WAXMAN, champion of the environment and leader in the fight for clean air and against the ravages of acid rain. HENRY WAXMAN, giving voice to those speaking for the threatened wilderness, for the vulnerable for clean air. And now, at the conclusion of the clean air legislation there is HENRY WAXMAN.

HENRY WAXMAN has worked tirelessly and without surcease to focus attention on and draft a balanced, national approach to this national problem. HENRY WAXMAN had a vision of a restored environment, cleaner air and healthier Americans as a result. With the passage of the Clean Air Act Amendments of 1990, HENRY's vision will largely become reality. HENRY WAXMAN provided the leadership and the guidance that produced a clean air bill that is stronger from an environmental and health perspective, as well as an industry perspective, than the legislation the President offered and that the House and the Senate passed. HENRY is the compass that kept clean air legislation on course and deserves the lionshare of the credit for the integrity of this historical piece of legislation. And on a very personal note, I am deeply indebted to him for allowing me to work shoulder to shoulder with him in this fight, and to be able to call him a friend.

Credit must also go to the distinguished Speaker of the House of Representatives, Mr. FOLEY, and his formidable counterpart, the majority leader of the U.S. Senate, Mr. MITCHELL. Without their support, we would not be on this floor today heralding this prodigious accomplishment. They have shepherded this legislation through and provided the kid-glove handling of the political and industrial pressures that sought to thwart this bill simply to protect their economic bottomline—their profit margins. I am particularly grateful to the Speaker for providing me with the opportunity to see my work come to fruition by appointing me to this august conference committee. At no small discomfort to him, he stood up for what was fair and right. I thank him. And I am personally indebted to the Senate majority leader for his work in the other body on corollary acid rain legislation.

And certainly, the President who proposed the first-ever administration backed acid rain proposal deserves commendation. The President's proposal called for acid rain reduction goals identical to the reductions achieved in my legislation and included a feature for which I had fought—a cap on emissions to prevent deterioration of acid rain reduction in the future. I applaud the President's efforts. I am grateful for his stepping into the clean air arena because we needed him to weigh in to give the extra punch needed to insure passage of this legislation.

The chairman of the Energy and Commerce Committee, JOHN DINGELL, and the Chairman of the conference committee, MAX BAUCUS, merit recognition. Clean air has been a tough political issue for JOHN DINGELL, representing Detroit and its environs. But the chairman agreed to work with the President and ultimately sponsored the administration's proposal, yielding the Dingell/Lent bill. Throughout the process he has exhibited his extraordinary legislative talents, protecting the House's jurisdictional concerns, and the interests of the House Members as articulated in the House-passed bill. And Chairman BAUCUS has sacrificed much of his time and energy over the past year, despite other pressing considerations, to pass an environmentally tough clean air bill in the Senate, providing an important backstop which made the strengthened final product of this conference possible.

I also want to commend Mr. SHARP, who worked arduously to insure that the Midwest were protected from economic havoc while he worked to protect the environment. He fought valiantly to retain regional balance without forfeiting environmental protection, and I believe, on balances that he was successful.

To all my colleagues on the Energy and Commerce Committees and the conference committee, congratulations and thank you for your patience.

In this Chamber today there has been much jubilation and, appropriately, there have been words of commendation for our colleagues. We are all participants in an historic event and the accolades for the Speaker, the majority leader of the Senate, the President, and the committee chairmen and subcommittee chairmen are fitting. But I would like to take a few moments to recognize and honor the superhuman efforts of a few of my associates that have toiled in relative anonymity, but without whom we would not be here celebrating this extraordinary occasion.

The staff that has labored on this issue has remained undaunted despite the often tremendous and harsh personal sacrifices they have had to make to get this vaunted clean air bill from subcommittee through full committee to the floor and now through the intense conference negotiations. Many times Members have been there through rough negotiations, but when the policy decisions are made and the Members go home, we leave the staff to draft the language, to reconcile the technicals, and finish the job—dotting the i's and crossing the t's. They have been largely unheralded, but their sacrifices have not been taken for granted. Staff has stoically endured gruesome hours, lack of sleep, and has dealt with immensely complex technical issues and somehow converted them into legislative language that will effectively change industry's current practices. Their efforts will result in an enhanced environment. Wedding anniversaries have passed, birthdays of participants and their families have passed, the first day of school, religious holidays, and an unusually spectacular Washington early autumn

have passed. These sacrifices that our staffs have made in our pursuit of good public policy do not go unnoticed and unappreciated. Nor have the attendant sacrifices of their families and loved ones who have had to be supportive and tolerant of the long hours and who were, perhaps, unavoidably neglected for the sake of resolving clean air legislation before Congress adjourns. They, too, deserve our mention and thanks. The staffs' endurance is testimony to their commitment to producing a bill that we all can be proud to present to the American people and that will achieve, with the least pain possible, cleaner air for all Americans by the end of this century.

And I would like to take a special moment to thank three individuals who I have had the honor of working with on this issue over too many years. Together we have fought in the trenches, from the inception of acid rain legislation in the House—with four separate hybrids of acid deposition and control legislation—H.R. 3400, H.R. 4567, H.R. 2666, and H.R. 1470—to develop viable legislation that would serve to push, prod, pinch, and cajole the nay-sayers. Finally, this year, with the added impetus from the administration, the strength of our arguments have persuaded the majority of the House and Senate that acid rain legislation is needed and needed now. I believe that acid rain legislation is the engine of the clean air bill and that these individuals are the spark plugs of the legislation. Phil Schiliro, Greg Wetstone and Phil Barnett have given generously to the development of my legislation. They have provided wise counsel from their vast repositories of technical expertise, from the scientific to the legislative, the technical to the practical, and have been an unwavering source of support throughout this process. I have relied on them and have never been disappointed. Phil, Phil and Greg have been staunch talented defenders of the environment and helped to insure that the polluter pays and the environment is protected. All Americans should be grateful that their talents have been utilized as tools for the public good. Their efforts will directly result in cleaner air, clean air, clear lakes, green trees, and quicker salvation of treasured national monuments.

I am reminded of the television commercials that talk about miraculous scientific discoveries that occur in darkened laboratories in the deep of night because of the contributions of unknown American heroes who significantly improve the quality of life of all Americans. Phil Schiliro, Gregory S. Wetstone, and Philip Barnett are such heroes. And their accomplishments are nothing short of miraculous. I am deeply grateful for their work, for their assistance, and their friendship. The victory of ultimate passage of a strong acid rain and clean air bill is in a very real, very personal way theirs stand proud.

□ 1810

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. Mr. Speaker, I rise in strong support of the Clean Air Act amendment. There has been a great deal of discussion and concern throughout the country about establishing an energy policy for this Nation. I believe this Clean Air Act is a giant step in the right direction of a national energy policy. The policy direction here is to utilize in an environmentally sound way one of the most abundant energy resources of this Nation, coal, more particularly low-sulfur coal.

If we are to move away from a dependency on foreign oil and improve our environment, this is a major move in that direction.

I congratulate the leaders who put the package together and urge its passage.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia [Mr. ROWLAND] who was very helpful in the conference.

Mr. ROWLAND of Georgia. Mr. Speaker, the Clean Air Act Amendments of 1990 represents the best that legislative compromise can achieve. Balancing diverse regional and State interests, conflicting industrial concerns, public health and environmental concerns, with the risks of such a major regulatory burden in a fragile economic situation and arriving at a final bill is really in my opinion a major accomplishment. I wish to speak on two major portions of the bill of which I have participated and made some contributions: acid rain and toxic air pollutants.

I believe that the acid rain title represents a major and difficult compromise. Allocating a scarce resource and allowances, while trying to allocate equitably the impacts of the provisions was difficult and at times almost impossible. Fortunately, Georgia survived the process with a fair share of allowances and a fair share of the pain. Georgia is currently and will continue to be one of the highest growth States in the Union. Economic growth and the associated growth in electricity demand is phenomenal. I am gratified that this bill recognizes this unique situation and makes some allowance adjustments.

Another provision which I consider to be of major importance, not only for this bill, but for all future environmental laws to protect the public health is the establishment of a Risk Assessment and Management Commission. This commission will consider the results of a National Academy of Sciences study which is directed by this bill. The study by the NAS will investigate and report to the Congress on the appropriate controls of risks remaining after the application of MACT standards, and provide independent scientific analysis and judgement on risk-assessment methodologies.

Mr. Speaker, many have criticized this Congress for not doing well the people's business. In the years to come, however, I believe that the Nation will look back on the Clean Air Act Amendments of 1990 and note that this Congress has really done a great job.

I want to thank all of the Members and the staff who worked and help me participate, especially the gentleman from Michigan [Mr. DINGELL], the gentleman from California [Mr. WAXMAN], the gentleman from New York [Mr. LENT], the gentleman from Illinois [Mr. MADIGAN], the gentleman from Indiana [Mr. SHARP] for their hard work, Dave Finnegan, Chuck Kanos, for all the help that they provided me and participating in this legislation.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. MCCANDLESS].

Mr. McCANDLESS. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of S. 1630, the Clean Air Act Amendments of 1990.

I commend the conferees on this bill for their perseverance and hard work. Completing a conference of this magnitude is quite an accomplishment.

Living in Southern California teaches one to appreciate clean air and to never take it for granted. After 8 years as a member of the South Coast Air Quality Management District, during which I served 7 years as its first chairman, and also as a member of the California Air Resources Board, I commend the intent of this bill toward improving the quality of our air.

I am pleased that the conferees have agreed to language in title I of the House-passed clean air bill which concerns emission offsets. By allowing the required reduction in emission offsets to come from another nonattainment area, which is more severely polluted, additional flexibility and greater levels of pollution reductions overall, can be achieved.

In this manner, through emission trading, reasonable growth can occur in a clean manner without undue hardship.

Mr. Speaker, I plan to support the clean air bill before the House today.

Mr. LENT. Mr. Speaker, I yield 2½ minutes to the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Speaker, it has been said many times by many people that we did not inherit the

Earth from our ancestors, we are borrowing it from our children.

With that thought in mind, we have a special responsibility as trustees for their legacy to protect and enhance the quality of the environment.

You know, it is a popular theory in some quarters these days, to say that Congress cannot do anything worthy of note in a timely fashion.

We are disproving that theory here today.

The work we are about is of historic consequence, and there are a great many people that deserve a great deal of credit:

The chairman of the full committee, the gentleman from Michigan, Mr. DINGELL; the gentleman from California, Chairman WAXMAN, "Mr. Clean Air;" the gentleman from New York [Mr. LENT]; the people who have been mentioned so favorably here today who have labored so long and hard, deserve a great deal of praise.

But I will reserve the greatest praise for the American people because this issue clearly proves that when they speak, we listen.

The Congress of the United States is responsive. Ladies and gentleman, the people of America are ahead of us on this very sensitive issue of the environment. They spoke, we listened, we acted.

There are a lot of heros today. President Bush has been mentioned in very favorable terms, and rightly so, because the big change, the big change that got this movement going in the Congress of the United States was leadership from the Oval Office.

I say that as a Republican who, quite frankly, admitted disappointment in the previous administration. But George Bush is an environmental President. He put this matter at the top of his agenda, and he provided leadership.

But he did not do it alone. He did it with the Democrats and Republicans. Together we have fashioned a proposal that passes the test with flying colors.

There is another person who deserves mention, another person whose name has not been mentioned on this floor today. His name is Brian Mulroney, the Prime Minister of Canada. I remember vividly when President Ronald Reagan went to Quebec City some years ago for the Shamrock Summit No. 1, well briefed, thinking that the prime minister would talk first about trade—that is certainly very important—or perhaps about mutual defense—that too is important. But President Reagan was surprised because Prime Minister Mulroney said, "Mr. President, the issue of acid rain is critically important to our two nations.

"We have to do something about it."

We have done something about it. I am very proud to have played a small part in fashioning this final compromise version that we are all so proud of, particularly in the area of acid rain. For the first time, we addressed the sensitive issue of ozone depletion, in an amendment authored by JIM BATES, of California, and coauthored by me.

I thank from the bottom of my heart the gentleman from Michigan [Mr. DINGELL], the gentleman from California [Mr. WAXMAN], the gentleman from New York [Mr. LENT], but most of all I thank my colleagues in the House of Representatives who had the wisdom to pass this great legislation.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina [Mr. PRICE].

Mr. PRICE. Mr. Speaker, I rise in strong support of the conference report.

Mr. Speaker, I rise in strong support of the conference report on S. 1630, the Clean Air Act amendments. I view this legislation as the greatest accomplishment of the 101st Congress, and I salute Chairmen JOHN DINGELL and HENRY WAXMAN, and the many others who helped steer this legislation to passage, for their efforts.

There is no question that reauthorization and strengthening of the Clean Air Act is long overdue. The serious problems of our dirtiest cities—the extreme, severe, and serious nonattainment areas—have been thoroughly documented. It is time for Congress to act on clean air legislation to help control smog in urban areas, tighten restrictions on tailpipe emissions, ensure tougher regulation of toxic chemical emissions, and clean up the sources of acid rain.

Clean air is clearly one of our Nation's most pressing environmental concerns, and S. 1630 would provide the comprehensive approach we need to ensure that the air is clean for future generations. We have overcome many competing industry and regional demands to reach this point, and I urge my colleagues to support the conference agreement.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Arkansas [Mr. ALEXANDER].

Mr. ALEXANDER. Mr. Speaker, I wish so much that I could have had time to speak in support of this bill, but I have labored for 15 years along with others to see this evening.

I want to congratulate everyone who has had something to do with it.

Mr. Speaker, I rise today in very strong support of the Clean Air Act Amendments of 1990.

There is considerable reference to the cost of this bill. Between 1970-80 our Nation spent $1.1 trillion to import foreign oil, and, today we deploy about 200,000 troops at a cost of about $1 billion per month to protect the oil supply from the Persian Gulf.

And in considering these costs we can afford to install scrubbers on the Nation's smoke stacks, provide biofuels from the farm to supply our Nation's energy and bring our troops home from Saudi Arabia.

This bill is good for America. It's good for our skies, good for our national security, and good for the health and welfare of our children and grandchildren. It is, perhaps, the only way to preserve our natural resources, contain exorbitant defense spending, and protect the air we all breathe.

Our Nation's environmental balance has reached a precarious point. Air pollution has dangerous effects on our health, our climate, our agriculture, our forests, even our buildings.

The pollution controls in this bill make tremendous strides toward reversing some of these problems. For example, these changes will improve public health—reducing risk of chronic lung damage, reducing risk of cancer, and lessening periods of restricted activities and impaired lung function. It will increase agricultural yields by a few billion dollars per year and return acidified lakes and streams to a viable state.

It will clear up the hazy skies so we can see our forests and wilderness areas once again. It will stop corrosion of architectural structures due to acidic deposition. And it will ensure that we pass along a healthy, life-sustaining ecosystem to future generations.

Mr. Speaker, I want to focus my remarks today on provisions of S. 1630 that deal with motor vehicle emissions and fuel composition. As one of four congressional representatives to the U.S. Alternative Fuels Council, I am particularly excited that our efforts over the past decade are finally coming to fruition.

Approximately half of the ozone-forming emissions and almost 90 percent of the carbon monoxide in the atmosphere comes from mobile sources—cars, trucks, and buses.

Any effective controls on ozone and carbon monoxide must deal with mobile source pollution.

The automobile industry has taken some big steps in altering tailpipe design to decrease hydrocarbon and nitrogen oxide emissions, and this bill tightens up standards even more. But with today's technology, there's a limit on how much tailpipe standards can reduce polluting emissions.

Careful transportation planning that includes carpooling, high-occupancy vehicle rules, and regulations on driving during certain times of the day can achieve additional emission reductions. But again, our ability to restrict vehicle usage is limited.

Especially in rural areas like the district I represent, public transportation and easy access to basic services simply isn't available. People have to use their cars to get to work, to buy

their groceries, or to see the doctor. Stringent transportation controls aren't a realistic solution to this problem.

So how do we reach the necessary emission levels? How do we clean up the air without imposing onerous burdens on the American economy and consumers?

It's becoming clear that alternative grain-based fuels like ethanol are part of the answer.

The fuel requirements in this bill allow our Nation's farmers to help us meet emission targets. It encourages us to rely on the grain fields of Middle America, instead of the oil fields of the Middle East for our energy.

It's really the only solution that makes sense.

Without a coherent national energy policy, U.S. petroleum imports have increased over the past decade as our domestic production has dropped.

Now, we're spending billions of dollars on a military operation to protect these foreign sources. We're sending American men and women overseas to put their lives on the line for our oil supply.

We're asking Americans to pay the bill for our fiscal woes at the same time the oil companies are asking them to pay more and more at the gas pump.

The bottom line is this: It just isn't sound policymaking to incur these costs for a fuel that kills Americans every time they breathe in the air and damages our environment every time someone turns a car's ignition key. Especially when we have cleaner fuels that make money for American farmers instead of Middle Eastern oil sheiks.

That's why the clean fuel sections of this bill are so important.

Let me take a few minutes to explain what I mean.

The broad goals of the bill outlined in title I of S. 1630 revise Clean Air Act requirements for areas that have not yet attained health-based air quality standards. Specifically, most ozone nonattainment areas must reduce emissions of hydrocarbons by 15 percent within 6 years. At that point, areas which are still polluted must achieve reductions of 3 percent each following year. Similar deadlines exist for attaining carbon monoxide air quality standards.

About half of ozone and carbon monoxide emissions comes from small sources which are difficult to regulate carefully. But the other half of the emissions—from motor vehicles—can be substantially lowered through the bill's mandates for oxygenated fuels and clean-fueled vehicles.

Title II requires the use of cleaner, reformulated gas with an oxygen content of 2.0 percent in the nine cities with the worst ozone pollution beginning in 1995. This gasoline must have 15 percent lower emissions of hydrocarbons and toxics by 1995; this figure ratchets up to a minimum of 20 percent in 2000.

In the more than 40 cities with high carbon monoxide pollution levels, the bill mandates use of gasoline with a minimum oxygen content of 2.7 percent.

This section of the bill also establishes two programs to promote the development and use of clean-fueled vehicles. In about 25 cities with the most severe ozone and carbon monoxide pollution, a percentage of new vehicles sold must be clean fueled. Additionally, 70 percent of new cars and light-duty trucks and 50 percent of heavy-duty trucks that are parts of fleets must be clean fueled.

What all these requirements mean is a tremendous potential for expanding the market for alternative fuels.

There are a number of fuels that can meet the 2.0-percent and 2.7-percent oxygen levels. Right now, ethanol, methanol, and their derivatives are the most frequently used additives for increasing oxygen content. But because the ratio of oxygen to other atoms is higher in ethanol than methanol, ethanol is more effective in reaching higher oxygen levels.

Today, we consume about 825 million gallons of ethanol each year. With the new requirements we are considering today, annual ethanol consumption should triple, I am advised. As additional cities look to clean fuels to attain air quality standards, this demand will be even higher.

Right now, almost all ethanol is produced from corn. If we triple ethanol consumption, we'll use a total of approximately 1 billion bushels of grain per year to meet our energy needs. Using a rule of thumb developed by analysts at the Congressional Research Service, that translates into $1,980 million less in farm program costs and $440 million more in farm income each year.

When given a choice between lowering farm program payments and paying huge sums to defend foreign oil sources, how can we afford not to support this bill?

A substantial portion of our corn harvest is an important food source. As ethanol demand increases, we must support investigation into other crops that hold promise as biofuel feedstocks.

Research at Arkansas State University [ASU], in Jonesboro, AR, may provide a key to this puzzle. At my request, the Appropriations Committee provided $100,000 to ASU in fiscal year 1991 for experimentation on crop substitution and ethanol production from nontraditional crop sources.

With these funds, ASU will explore the potential for making ethanol out of crops easily grown in the Mississippi Delta region, like milo and sorghum.

If such crops prove effective as biofuel feedstocks, our farm program must be flexible enough to provide financial security for producing energy crops. An amendment I introduced that was incorporated into the 1990 farm bill allows farmers to grow feedstocks for ethanol or other biofuels on their flexible crop acreage without decreasing base acreage levels.

Mr. Speaker, we all want to finish up our business here and go home to our constituents. Before we do, we have the opportunity right now to make a real difference in our environment, our health, our agricultural economy, and the price of our military spending.

I urge all of my colleagues to vote "aye" on this bill.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York [Mr. MANTON], who has been very interested in and has worked very hard on this legislation.

Mr. MANTON. Mr. Speaker, I rise in strong support of the conference report on S. 1630, the Clean Air Act Amendments of 1990. I want to take this opportunity to commend and congratulate the distinguished chairman of the Energy and Commerce Committee, my good friend from Michigan, for his remarkable and tireless work in bringing this conference report to the floor today. I also want to pay tribute to the gentleman from California [Mr. WAXMAN], the gentleman from Indiana [Mr. SHARP], and my friend from New York, the ranking minority member of the committee, Mr. LENT, for their diligence and tireless efforts in making the passage of this landmark clean air legislation a reality.

As a new member of the Energy and Commerce Committee, I am deeply honored to have played a role in the long and arduous process of writing the most comprehensive and complex piece of environmental legislation that has ever been considered by this Congress.

Mr. Speaker, Americans deserve clean air. We need dramatic reductions in smog and cancer causing toxic pollutants. The majestic forests and lakes of the northeast deserve protection from the ravages of acid rain. The conference report under consideration today will accomplish these noble goals.

First, the conference report will require cities that are covered by a blanket of smog to take significant new and aggressive steps to limit ozone and carbon monoxide pollution. Second, the conference report will require auto makers to produce new, cleaner cars and to develop fleets and urban buses that operate on clean alternative fuels. Oil companies will be required to develop new, cleaner gasoline. Third, our

industries will be required to dramatically reduce emissions of toxic pollutants. Fourth, the bill will reduce the emission of acid rain causing pollutants by 50 percent. Finally, the legislation will phase out the production of chemicals that deplete the Earth's protective ozone layer.

Mr. Speaker, most important, this legislation will create a cleaner environment without imposing undue hardships or unbearable costs on any one industry or any one segment of our society. This, then, is a proposal every Member of the House can be proud of.

Mr. Speaker, once again I want to applaud chairman DINGELL and Chairman WAXMAN for their heroic efforts in crafting this historic measure. This House, and indeed, the Nation owe them a special debt of gratitude. I urge my colleagues to vote for the conference report.

Mr. Speaker, at this time I would like to enter into a brief colloquy with the distinguished chairman of the Committee on Energy and Commerce. As approved by the House, H.R. 3030 amended section 108(f) of the Clean Air Act to require States, in considering transportation control measures, to ensure adequate access to downtown, other commercial and residential areas and avoid measures that increase or relocate emissions and congestion rather than reduce them.

The House report language on section 108(f), and on the specific provisions to offset growth in vehicle miles traveled in severe ozone nonattainment areas, makes it clear this is a requirement on the States in revising their State implementation plans.

Although the conference report deletes that sentence from section 108(f), the conference report requires States to choose from among and implement transportation control measures in a manner that ensures access, and to avoid using counterproductive measures which merely relocate emissions and congestion. As my chairman knows, this language was added as an amendment to section 182(c) of the act for serious ozone, section 182(d) of the act for severe ozone areas, and section 187(b) for serious carbon monoxide areas by cross reference to severe ozone. Is my understanding correct?

□ 1820

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. MANTON. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, the gentleman from New York [Mr. MANTON] is correct. He was the author of that section and understands very well what transpired.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. RITTER].

Mr. RITTER. Mr. Speaker, I want to thank the gentleman from New York [Mr. LENT] for yielding. I want to commend my colleagues for their efforts in quest of a responsible Clean Air Act authorization. The American people are demanding healthier, cleaner and clearer air, and, with this legislation, we are hoping to improve upon the 1973 and 1977 amendments of the original Clean Air Act of 1970.

I recognize that the Clean Air Act is not a perfect bill. But, very capable and sincere people worked very hard to put this historic legislation before us today.

I would like to say that some environmental problems pose far more significant health and environmental risks than others. I offered an amendment that would set out prioirities to evaluate the respective risks and to put them into perspective. That way we can tackle the worst environmental hazards first. Unfortunately that amendment was not made a part of this final bill, but, hopefully, as we go forward, we can focus needed attention on the highest priority hazards to health and the environment.

Some control technologies will prove reliable and cost-effective; others, less reliable, more expensive and with potential to substitute one environmental problem for another, such as scrubbers. Scrubbers can take an air pollution problem and convert it to a solid waste problem, that is, scrubber sludge. I offered an amendment to extend the time to be able to apply clean coal technology to a greater extent to avoid some of these problems. I think we need to take another look at the scrubber versus clean coal technology debate in the course of the implementation of the bill.

With regard to the economics of emission trading, if implemented as intended, these provisions can result in savings for electric utility customers while helping attain a substantial reduction in the emission of SO_2 by utilities. An ideal, balanced allowance market will result in the total cost of control being minimized while SO_2 emissions are maintained at the agreed-upon level.

I fought long and hard for a reasonable standard for heavy duty vehicles so that truck manufacturers like Mack Truck in my district will be able to meet the standards while at the same time meeting the needs for cleaner air. I am glad the conferees were able to work out an acceptable compromise. I look forward to the onset of the "clean diesel" and innovation beyond that.

I also would have liked to see Congress apply its own nearly $600 million, 10-year, National Acid Precipitation Assessment Program [NAPAP] study to the debate, and I am sad that that did not occur. The debate would certainly have been more informed.

Finally, the Clean Air Act amendments will cost Americans $20 to $50 billion a year for the foreseeable future, and that is why the final compromise contains an amendment that I offered requiring accountability for these costs. The "accountability" amendment requires reports on the benefits and costs resulting from the act. It would lay out health and environmental quality benefits plus economic advantages resulting from the act. It would also document the impact on American jobs, energy security, and U.S. competitiveness in national and international markets.

Mr. Speaker, I pledge, as a member of the Committee on Energy and Commerce and as a member of the Committee on Science, Space, and Technology to work through the years ahead to reach the goals of the Clean Air Act Amendments of 1990.

In closing. I'd like to commend two of the truly great legislators in this body, Chairman JOHN DINGELL and subcommittee Chairman HENRY WAXMAN. My full committee ranking Republican member NORM LENT deserves substantial praise. He did the utmost to make the bill workable and its goals achievable.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS. Mr. Speaker, I am delighted that the conference report on the Clean Air Act amendments, S. 1630 has finally reached final consideration by the House. It is as comprehensive a package of reforms as could be and it will make a clear, quantifiable improvement in the quality of life in America. To all my colleagues involved in this bill, especially to those with whom I serve on the Energy and Commerce Committee, I extend a sincere congratulations for having worked together, successfully, through so many agonizingly difficult, and contentious issues over so may tiresome hours.

The reckless dumping of dirty, deadly chemicals, and emissions into our atmosphere is injurious to both public health and the environment in which we live. It is such a common occurrence that environmental protection has become one of the most important issues of this generation.

Clean air is neither a novelty item nor a luxury, rather, it is the foundation on which our entire survival is based. The massive pumping of carbon dioxide has drilled a hole in the ozone layer, a significant expansion of which has been known to cause health problems and death. Autos, trucks, and buses still account for 45 percent of the ozone problem. In 1980, ozone standards were exceeded on 28 days in Illinois; in 1988, they were exceeded on 32 days. The proliferation of air toxics is no better. In 1988, 46 million pounds

of toxic chemicals were spewed into the air by Chicago-area industries, up from 38 million pounds the year before.

At the other end of the spectrum of consequences, the daily inhalation of pollutants which have become commonplace has drastically increased rates of cancer and lung disease in residents of Chicago and elsewhere. Of the 46 million pounds of toxics pumped into Chicago's air in 1988, 1.4 million pounds were cancer-causing carcinogens.

Today, we are responding forcefully and with total commitment to recapturing our future put in jeopardy by careless indifference toward environmental and health concerns. Some industries have been protesting that proposals affecting automobiles and their fuels, electric utilities, and the use or production of toxics will cause them to change their way of doing business. Well, that's precisely the point. American business has been too often conducted with little or no regard for environmental concerns.

I am fully confident, however, that the ingenious, creative American entrepreneurial spirit will have no trouble developing and adjusting the new standards set forth in this legislation. I have already seen many examples of environmentally sound methods of profitable production and am aware that many others exist. Most importantly, our country's untapped resources for innovation of atmospherically safe production and manufacturing alternatives are staggering.

Motor vehicles provide an excellent example. They are the main contributors to Chicago's air quality malaise. American manufacturers have already developed many methods of better controlling the emissions from autos, trucks, and buses. Yet, those methods have been left in the labs rather than built into the vehicles. S. 1630 would bring these technologies to the fore.

I want our automakers to experience continued growth in the United States and abroad in the 1990's and the next century. But they won't succeed by saving $50 or $100 at the cost of environmental irresponsibility. As consumers increasingly demand vehicles with the lowest possible emissions, they will turn to whichever manufacturer best satisfies that need. To remain competitive, our auto manufacturers must make a serious commitment to producing vehicles that are economically and environmentally viable.

Consequently, I am very supportive of the conference report's requirements on tailpipe emissions as well as the provisions on alternative fuels, superclean fleet and other vehicles, and reformulated gasoline. I am pleased that the conference report also embraces the position which I propounded months ago to ensure not only that buses meet stringent standards, but that transit authorities be allowed to attain those standards by use of the economical clean diesel technologies. I am optimistic that a combination of solutions will lead to a profound improvement in air quality, both in Chicago and nationwide.

Chicago's air pollution problems unfortunately do not end there. Acid rain is endemic to the Midwest and other areas, and Chicago is not exempt. It takes a daily toll in vital ways. It contaminates and limits the growth of crops, weakens our trees, poisons our waters, kills our fish, and even fizzles away the paint on our cars. I am convinced that the acid rain title of the bill will drastically reduce this problem. I am only disappointed that my provision to protect low-income residents from resulting electricity cost increases was dropped from the bill.

The bottom line is that our Nation's utilities and production facilities must reach beyond coal, oil, and fossil fuels. The focus must shift instead toward conservation and renewables such as hydropower, solar thermal, photovoltaics, geothermal, and wind. These clean sources and energy, available in virtually limitless supply, are the way of the future. Although applications of these sources were initially developed in the United States, in the past decade, Japan and other countries have taken the lead in their development. I would hate to see another American industry take a loss in competitiveness by resisting this inevitable trend of the future. Consequently, I am very pleased with the inclusion in the acid rain title of a provision which I helped develop to encourage utilities to reach their air quality goals through greater use of renewable energies and conservation. It allows a small pool of the sulfur-dioxide allowances credits to be allocated to utilities that clean their emissions through the use of conservation and renewable energies during the first years after passage of this bill.

There are other major ingredients in a balanced, comprehensive and effective clean air bill which are addressed. The toxic emissions from stationery sources must be sharply curtailed. An amendment which I offered earlier in the process ensured that existing sources adhere to a strong standard of maximum achievable control technology. We also took a tough stand to prevent accidental releases of toxics which can lead to catastrophe.

The rights of private citizens are also protected. Earlier this year, I developed language on citizen suits which was incorporated into the enforcement title of the bill. The objective is to ensure the rights of the clean air laws, even when the authorities have chosen not to pursue violations. If we are taking action for strong clean air legislation, then we must also ensure that the resulting legislation is fully enforceable. Clean citizen suit provisions are the key to that.

Also in regards to enforcement, I succeeded in amending the bill to ensure that, in the case of noncompliance with the National Ambient Air Quality Statistics' limits on ozone, sanctions will be applied to the broadest possible areas, known as CMSA's and MSA's, rather than to small segments of a city which would yield no tangible benefits.

Mr. Speaker, I am pleased that clean air legislation has finally come to fruition. We have acted to make our Nation competitive in the long run, while acting on the air quality imperatives of coming decades. The businesses worth bolstering are those which eagerly embrace the future, not those which fight against it. I look forward to long-range improvements in public health as well as the environment as a result of this monumentally historic legislation.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Speaker, I would simply express my strong support for this conference on the Clean Air Act and commend the conferees for the excellent job they have done, especially the gentleman from Michigan [Mr. DINGELL] and the gentleman from New York [Mr. LENT]. My congressional district includes a large segment of the Catskill and Adirondack Mountains, and over the years I have witnessed first hand the terrible destruction acid rain has caused our region of New York. I am grateful the conferees accepted meaningful clean coal language which will dramatically reduce the emissions which cause this environmental damage.

I would also express my appreciation to the conferees for accepting my amendment entitled "Adirondack Destruction Assessment." This provision of the bill allows for the continued research of the effects of acid rain on the ecosystem of the hundreds of small lakes and streams in the Adirondack Mountains.

I would especially like to thank Chairman ROE for the outstanding job he has done on this bill, and Chairman DINGELL, NORM LENT, the ranking minority member, and Congressman BOEHLERT for his strong support. As an original sponsor of the Clean Air Act, I am pleased that, after many years of work, the Congress is giving its final approval to the bill. I would also praise President George Bush for without his leadership this landmark legislation would not have become a reality.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York [Mr. BRUCE] who has had great interest in this matter.

Mr. BRUCE. Mr. Speaker, the Clean Air Act Amendments of 1990 have taken a long time to draft, and it is a tribute to the work of many Members of the House and several Members of the other body, that this legislation has been completed. It would be difficult to give credit everywhere it is due, but a number of people need to be recognized.

The issue of amendments to the Clean Air Act has been before the Energy and Commerce Committee for more than two decades, during which time two men represented the deep divisions in this country on environmental policy. Committee Chairman JOHN DINGELL has long been a forceful advocate of protecting the Nation's economy from overrestrictive environmental controls which would burden the competitive capabilities of our industries. Health and Environment Subcommittee Chairman HENRY WAXMAN, spurred by the smog problems in the Los Angeles area he represents, has long countered this advocacy with hard-fought support for legislation to protect the Nation's citizens from the harmful effects of acid rain, airborne toxics, urban smog and, particularly, automobile emissions. Throughout the 1980's, these two men disagreed on how best to merge environmental and economic policy. Meanwhile, air quality in this Nation, while still among the best in the world, deteriorated.

Because of the difficulties that have developed between Chairmen DINGELL and WAXMAN over the years, nine Democratic members of the Energy and Commerce Committee came together several years ago, to try to get the process of passing clean air legislation moving again.

Our goal was to build a substantive bridge between the two, where a political bridge had failed to be constructed. These nine, who came to be known as the "Group of Nine," became personally involved in pouring through detailed scientific and technical data on the sources of air pollution, meeting with environmental and industry representatives, and debating solutions to the problems caused by urban smog. Hundreds of hours were devoted by each of the nine members to finding the substantive bridge that had kept clean air legislation off the President's desk for more than a decade.

After struggling within the group of nine, we introduced legislation in the 100th Congress which provided for greater environmental controls at less cost than any other smog legislation which had been introduced to that point. That legislation was reintroduced in the 101st Congress as H.R. 99, and became the backbone of the President Bush's proposal for controling urban smog. For those who drafted H.R. 99—AL SWIFT, PHIL SHARP, BILLY TAUZIN, MIKE SYNAR, DENNIS ECKART, JIM SLATTERY, JIM COOPER, RICK BOUCHER, and myself—the adoption of the conference report on S. 1630, the Clean Air Act Amendments of 1990, will mean that our efforts have been successful. Where political bridges had collapsed, substantive bridges stood firm.

A great deal of credit must also be given to other Members who remained strong advocates of environmental controls throughout the less-than-friendly years of the Reagan administration. GERRY SIKORSKI has been a prominent advocate of significantly reducing the emissions of acid rain. Today marks a significant accomplishment of his tenure.

Our departed colleague, Mickey Leland, must be credited with his tough stand on reducing airborne toxics. Other members of the committee, including RON WYDEN and BILL RICHARDSON, have also played prominent roles in pursuing environmental quality legislation. And RALPH HALL has worked closely with me and others from the oil and gas producing States to involve that industry in this process.

While the Midwest will certainly suffer some pain from the provisions of the acid rain agreement between House and Senate conferees, those of us from the heartland owe a great deal of thanks to two men in committee leadership positions. Energy and Power Subcommittee Chairman PHIL SHARP has spent hundreds of hours pursuing an acid rain agreement which recognizes the substantial costs that acid rain controls will impose on our ratepayers and industries. His leadership has been crucial to negotiating a better deal for the Midwest than was offered in the legislation sent to Congress by President Bush and Vice President Dan Quayle.

Health and Environment Subcommittee ranking member ED MADIGAN, whose district borders my own, has also worked vigorously to protect ratepayers and industries in our region and also deserves a great deal of credit for improving this agreement from the versions proposed by the President and approved by the Senate. Others who helped to form a Midwest coalition because we were significantly outnumbered at every step in the process also deserve accolades. THOMAS LUKEN, despite his nearing retirement from this body, has worked hard for his State. DENNIS ECKART and MIKE OXLEY have also contributed mightily to the uphill battle to win concessions for our region.

I have worked with dozens of other members both on and off the Energy and Commerce Committee, whom I would like to thank, including ranking Republican NORM LENT, ROY ROWLAND, MIKE OXLEY, TOM BLILEY, MICHAEL BILIRAKIS, GLENN POSHARD, DICK DURBIN, JERRY COSTELLO, BOB WISE, JOHN MURTHA, CARLOS MOORHEAD, and JIM SLATTERY. Many more deserve my personal thank you, and many others deserve recognition for the roles they have played.

Most importantly, I would like to thank the many staff people who played essential roles in drafting this legislation, including Dave Finnegan and Mike Woo of the full committee staff, subcommittee staffers Shelley Fidler, Judi Greenwald, Greg Wetstone, Phil Barnett and Phil Schiliro, and minority counsels Chuck Knauss and John Shelk. And a personal thank you for a job well done to Mike Bushman of my staff, who sat through thousands of hours of discussion and never failed to give us good advice, and solid arguments. In addition, dozens of personal staffers had a tremendous impact on the final version of this legislation and deserve credit for moving this legislation forward in a productive manner.

Chairman DINGELL and Chairman WAXMAN, in particular, have done the most to put aside philosophical differences to reach agreements on this legislation. I urge the President to sign this conference report into law so that air quality improvements, which have been put on hold, may finally be put into action.

The Clean Air Act Amendments of 1990 is a complicated measure containing many provisions of controversy. This is by far the strongest environmental measure Congress has passed in more than a decade, and probably the most comprehensive environmental legislation Congress has ever passed. I would like to now discuss some of the specific provisions of the legislation.

First, the bill puts the United States into a position of global leadership on reducing emissions of chemicals which deplete the ozone layer. Air toxics will be reduced by at least 90 percent, and human health will be protected to the lowest possible levels—a level most nations could only dream of attaining. The emissions of acid rain precursors are being cut in half, at large cost to the Nation's industrial heartland. Urban smog will be dramatically reduced through a comprehensive approach which recognizes the role of autos, large factories, and small businesses in contributing to ozone, and which also recognizes the need to protect human lungs.

As the Environmental Protection Agency undertakes the massive project of meeting deadlines set in the Clean Air Act, I hope Congress will be vigorous in its oversight. I also hope we will be fair.

Under title II of this bill, EPA is to promulgate regulations within 12 months that will enable manufacturers to determine whether their vehicles perform acceptably in various State inspection and maintenance pro-

grams. It is understood that these new regulations are not intended to be section 202 standards. They are intended to improve the correlation between State inspection and maintenance program testing and the types of full-scale testing that EPA conducts to determine compliance with section 202 standards.

For much too long, there has been poor correlation between State testing and EPA testing, and this section should help address that problem.

In developing the regulations required by this section, EPA has a difficult job ahead. There are many independent State inspection and maintenance programs, and they use differing test procedures. By the time EPA publishes the necessary regulations, it may be less than 1 year until model year 1993 vehicles enter production. For that reason, my understanding is that this title would not require emission test data demonstrating compliance with the new regulations. Instead, EPA would be given authority to withhold a certificate of conformity if it determines that a vehicle or engine for which a certificate has been sought cannot pass the new regulations. I believe this is an appropriate approach to this important section of the bill.

Second, in addition, it is clear that conferees purposefully adopted the House of Representatives' list of air toxics; that list does not contain ammonia and hydrogen sulfide. The committee does not intend to regulate the use of anhydrous ammonia as a nitrogen fertilizer, a decision of great importance to farmers who otherwise might have had to use unnecessary, expensive control equipment. But clearly we intend that accidental release provisions protect human health. Ammonia has been shown not to be a carcinogen, mutagen or teratogen, but clearly in large amounts could be hazardous.

Third, on the issue of off-road engines and vehicles, I believe that the EPA must give careful consideration to regulations of emissions from these engines and vehicles only if such reductions are needed to help urban areas meet air quality standards. While costs, available technology, lead time and other criteria must be taken into consideration, the committee does not intend in its preemption language to stop emission reductions from vehicles under 175 horsepower. Rather, it is the committees belief that one Federal standard must apply to all similar vehicles and engines. As the European community moves toward standardized requirements, the United States should not move toward separate systems of regulation.

As EPA considers all of the regulations required by this bill, I hope the agency will keep in mind the need to be cost-effective. With a bill expected to add $25 billion annually in pollution control requirements to the Nation's economy, it is imperative that required environmental reductions be real, and that they be achieved in the least costly manner possible, while protecting human health.

Fourth, this legislation, for the first time, extends the Clean Air Act to cover currently unregulated sources of emissions from consumer and commercial products. As a member of the committee who helped draft this section, I think several features of the House amendment adopted by the conferees merit emphasis.

First, subsection 183(e) requires the Administrator to prepare and submit to Congress, within 3 years, a study of emissions of volatile organic compounds [VOC] into the ambient air from consumer and commercial products. The study is to determine the potential of such products to contribute to ozone levels in areas which violate the NAAQS, and to establish criteria for regulating such products or classes or categories thereof. This is a new area of regulation for the Administrator, which could potentially affect hundreds of thousands of products throughout the country. Accordingly, it is expected that the Administrator will prepare the study and report with close consultation and comment by interested parties, such as State environmental agencies, appropriate Federal agencies, affected industries, and the general public.

Paragraph 183(e)(3) provides that, upon submission of the report, the Administrator shall list those categories of consumer or commercial products which, based on the study, account for at least 80 percent of the VOC emissions—on a reactivity-adjusted basis—from such products in areas that violate the NAAQS for ozone. At such time, the Administrator is also to divide the list into 4 groups and establish priorities for subsequent regulation based upon the criteria set forth in paragraph 2. These criteria require the Administrator to consider the following attributes of consumer or commercial products: uses, benefits, and commercial demand; health or safety functions; VOC reactivity; ease of cost-effective controls; and the availability of alternative products which are of comparable costs, considering health, safety and environmental benefits.

Thereafter, the Administrator is to promulgate regulations as to each of the 4 groups in seriatum priority order every 2 years until all four are subject to regulation. The regulations shall require best available controls, as defined in this subsection, and may exempt health use products. The potential systems of regulation are broad, and include the use of CTG's in lieu of regulations, where CTG's would be substantially as effective as regulations in reducing emissions of VOC's to the ambient air in areas which violate the NAAQS for ozone.

It is important to note there that regulations/CTG's are to be applied only at the level of the manufacturer, processor, wholesale distributor or importer, and are to take into account technical and commercial feasibility, costs, lead time, and competition. Some States have begun to act with respect to consumer and commercial product VOC emissions, and some manufacturers of such products have already made, and are making, reductions in the VOC's released to the ambient air from their products. These are positive developments for which credit is to be accorded by the Administrator in developing regulations/CTG's. Thus, this section requires that the Administrator give credit toward the 80-percent emissions calculation for emission reductions made after the date of enactment, and that, as regulations/CTG's are developed, similar credit will be applied to those products which have made reductions.

While the Administrator must promulgate regulations/CTG's under this subsection, the States may develop and submit to the Administrator, procedures under State law for implementing and enforcing those regulations/CTG's. If the Administrator finds the State procedure adequate, it shall be approved. The Congress is well aware that most consumer and commercial products are intended to be marketed nationwide in interstate commerce. Accordingly, the legislation reflects the view that uniformity of regulation is an important objective. Thus, this subsection also requires the Administrator to establish a clearinghouse of information, studies, and regulations proposed and promulgated, and to disseminate such information collected as requested by States. Further, any State which proposed regulations other than those promulgated by the Administrator, must consult with the Administrator regarding whether any other State has promulgated or is promulgating regulations as to products covered by this subsection, and no State regulations regarding the size, shape or labeling of a product may be promulgated, unless the Administrator finds that such regulations are useful in meeting any NAAQS.

Regulations promulgated by the Administrator under this subsection as to each of the four groups of products, must apply best available controls as defined in paragraph 1. This definition is new and specific to this subsection, and requires that any controls be technologically feasible, economically feasible, and consider health, environmental, and energy implications. Further, consistent with best available controls, the regulations under this subsection may include any system of regulation as the Administrator deems

appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or reasonable fees, charges, and other economic incentives—including marketable permits and auctions of emissions rights—concerning the manufacture, processing, distribution, use consumption, or disposal of the product. Thus, it may be that the most effective technique for regulating VOC emissions from a particular product would be a revision to the directions for time of use of the product. The most effective technique for some other product could be feedstock substitution or reformulation where that was technologically and economically feasible for that product. The ultimate objective is to reduce VOC emissions to the ambient air in nonattainment areas from products where those emission reductions are technologically and economically feasible for a product consistent with the other criteria mentioned in this subsection.

The term "consumer and commercial products" for purposes of this subsection is very broad. Except for some specifically noted items, it includes any substance, product or article of use, consumption, storage, disposal, destruction or decomposition of which results in the release of VOC's. This is inconsistent with OTA's Catching Our Breath study for Congress, which found that industrial solvent use accounts for the largest percentage of total solvent use in nonattainment areas. Accordingly, the substances and products used in industrial processes are to be a high priority for EPA to study and regulate.

Fifth, I am pleased that the title on ozone depleting substances has been resolved to the satisfaction of the Congress, industry, and the environmental organizations that are concerned with this global issue. However, it is important to commend the U.N. environment programme for the groundbreaking work that resulted in the Montreal protocol, an unprecedented environmental treaty that brought the nations of the world together to address ozone protection.

As we embark on passing this CFC and HCFC legislation, we need to understand the international process from which this legislation differs; our first efforts should always be to work within the protocol process, and we need to understand that any example we set for the rest of the world must be technically feasible, scientifically based, economically justified, and environmentally significant.

The CFC phaseout presents a significant challenge to U.S. industry and potential difficulties for the U.S. economy. The commercialization of CFC substitutes is dependent on critical environmental and toxicity testing that is expected to be completed within the next 2 to 5 years. In addition, the phaseout of HCFC's by 2030 could have significant ramifications to the U.S. industries seeking to develop and market these substitutes around the world. Congress needs to be prepared to analyze the progress of the CFC alternatives, since many critical uses will depend on them, such as refrigeration, air conditioning, and medical uses. Many industries such as electronics, defense, automobile, and foam will be dependent on substitutes. Any disruption in the availability of these substitutes could be critically damaging to the environment, U.S. citizens, and the U.S. economy.

It is important that this section be implemented in a manner that recognizes the important role of U.S. industry in developing an effective international solution, and the need to avoid duplicative or overburdensome regulatory initiatives of the Federal, State, and local levels on this matter.

Finally, I add my support to the statement of interpretation of title VI offered by my colleagues from Ohio and Texas, Mr. OXLEY, and Mr. HALL.

I believe the Energy and Commerce Committee has done its job in protecting human health while making required reductions cost-effective. Again, I urge the adoption of this conference report.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Vermont [Mr. SMITH].

Mr. SMITH of Vermont. Mr. Speaker, I thank the gentleman from New York [Mr. LENT] for yielding, and I rise in support of the Clean Air Act.

Coming from the State of Vermont, which has been a leader consistently in fighting for strong clean air legislation in general and an end to the pollution and the devastation caused by acid rain on our highest peaks and in our upland lakes more specificially, I, as the sole Member of Congress from Vermont, and I know all Vermonters applaud the passage of a clean air bill finally. It is a giant step forward across the board in clean air measures and an especially strong measure when it comes to fighting acid rain.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. HALL].

Mr. HALL of Texas. Mr. Speaker, the Congress has been swept along on the tide of environmental concerns. I too joined many in the American public and in my own Fourth Congressional District of Texas who feel our next generation should be able to breathe cleaner air.

The 1977 Clean Air Act was an environmental landmark, and has done much to improve the quality of our air—motor vehicles are some 90 percent cleaner than ever before—many utilities have installed scrubbers at great expense. Yet in these amendments we are asking for more.

However, my support of this conference report is not without reservations—it concerns me in many aspects. Primarily because we tried to develop policy, in many instances, around unknown and commercially untried science. Therefore, flexibility must be considered if the technology can not be achieved. We have made no secret that many provisions were crafted to force technology—which may or may not be achievable.

We are asking our business and industrial community to move in uncharted waters—and we are asking them to do so in times of economic uncertainty and facing a recession this country has not had to address for a number of years.

The States of California, New York, New Jersey, Ohio, Texas, California, Connecticut, and Pennsylvania will be the hardest hit. Two Texas counties, Dallas and Harris rank in the top 10 for impact by requirements imposed by this legislation.

As a member of the conference committee, I was particularly concerned about the new requirements of a reformulated gas. I am not at all comfortable that what we have written as a reformulated gas policy will do what we intend. I therefore submit the following statements on what we think the program should be and intends to do by this statute.

Section 219 adds new subsections 211 (k) and (m) to establish a reformulated gasoline program for nine ozone nonattainment cities, and an oxygenated gasoline program for carbon monoxide nonattainment cities at or above 9.5 ppm.

The former program begins on January 1, 1995. The latter begins in the winter of 1992, unless waived by EPA.

Both programs may bring significant health benefits to the large populations in these areas and open new markets to farmers, at modest cost to motorists and with minimal disruptions in the supply of this critical fuel. But to achieve this balance, the Administration must adhere to the following important interpretations of and qualifications to the legislative language.

Many features of these programs were not included in the original House or Senate committee-reported versions of the bill, but were added subsequently, during floor debate. A clear legislative history for the House- and Senate-passed versions of these programs is thus not fully available. In addition, the final version of these programs set out in the conference report differs in many ways from the House- and Senate-passed versions. The following statement explains these differences and provides the legislative intent of the final version.

Cost and energy requirements: The administrator must, in shaping the re-

formulated gas program, consider in new 211(k)(1) the overall cost of the program's emission reductions and its effects on the Nation's "energy requirements." In particular:

The Administrator has claimed this program will only cost motorists about 4 to 6 cents per gallon extra, and the conferees have relied upon this prediction. In addition, one of the Nation's major energy requirements is an adequate supply of energy at a reasonable cost. Reformulated gasoline thus is not an "at any cost" program, and is not to be administered in a way that results in pump price increases that are significantly in excess of this estimate.

Furthermore, cost is not limited simply to the financial cost of new refinery investments and oxygenate producing and handling facilities, presumably spread smoothly over all gallons of the new gas that is produced and sold over a long period of time. Such a total original cost approach might be appropriate for a regulated utility industry, but it is not true for gasoline. Instead, the Administrator must recognize that gasoline is inelastic, and is traded in a deregulated commodity market where supply and demand set retail prices.

Crude oil and fuel markets have repeatedly experienced very large price increases and declines because of very small shortages or gluts. For example, 2 percent or 3 percent crude oil shortages in the two major disruptions of the 1970's doubled and tripled world oil prices. Today's worldwide crude shortage is reportedly only about 1 percent, yet prices have doubled. Similar large, rapid, up-and-down price movements occurred in January and February of this year, due to very modest weather-related shortages and gluts of heating oil, diesel fuel, and propane. In sum, modest physical shortages can easily double consumer fuel prices; worse increases would result from larger shortages.

Gasoline prices in and out of the affected areas are an obvious, unmistakable index of this program's cost. In contrast, estimates of possible future supply or even current physical supply are often uncertain or disputed, and may or may not be correct. Accordingly, this program shall not be carried out in a manner that permits even modest physical shortages of refining and oxygenate capacity, or modest disruptions in deliveries to the nine large ozone areas, if those shortages or disruptions result in unacceptable price hikes to ultimate consumers at the retail pump. This applies to all cost considerations in new 211 (k) and (m).

It is critical for the Administrator to expedite the process of defining acceptable parameters for the new fuel, testing it, and permitting the construction of new refinery capacity to produce it well before the January 1, 1995, deadline. Both the development and the enforcement of this program must recognize that lengthy or repeated refinery reconfigurations or shutdowns can spell unacceptable shortages of both conventional and reformulated gasoline, especially in view of the current record lack of spare refining capacity.

Similarly, in moving from the phase I 1995 standards for VOC's and toxic pollutants to the phase II 2000 standards, refiners may be compelled to make additional major modifications in their manufacturing processes. Typically, such modifications require as many as 5 years to complete. In recognition of this timing factor, the feasibility test and any consequent adjustment in the performance standards under 211(k)(3)(B) should be completed by the Administrator no later than January 1, 1995.

Import dependency is part of the consideration of energy requirements set by 211(k)(1). This program is premised upon domestic refining capacity. Imported reformulated—if it exists at all in 1995 or thereafter—is certainly not banned by 211(k); but EPA should ensure that reliance upon imports for early implementation does not jeopardize the development of adequate domestic facilities.

Mobil toxics: The provisions of section 206, requiring EPA rules barring hazardous air pollutants from motor vehicle fuels effective in May 1995, are not intended to create a second reformulated gasoline that is different from or meets more stringent standards than the gasoline required under 211(k). Nor may such rules conflict with, change, or nullify the antidumping rules under 211(k)(8).

Coverage: The regulations under 211(k)(2) apply to refiners, blenders, importers, and marketers. Some of these terms overlap: For example, some refiners also market their gasoline, and some marketers splash blend ethanol into gasoline, and thus are also blenders.

Baseline vehicles: New 211(k)(2)(A) and other provisions on VOC's, air toxics, and antidumping, require the use of baseline vehicles to fairly compare the emissions of different fuels.

These comparisons will occur at different times and will involve different fuels. For example, the VOC comparison may occur early, in 1992 or 1993, and will examine: First, VOC emissions from the industry's 1990 baseline gasoline; and second, VOC emissions from a specific refiner's proposed reformulated gasoline. The antidumping comparison may occur later, in 1994 for example, and will examine emissions from a specific refiner's 1990 gasoline, and from that same refiner's 1995 conventional gasoline. Enforcement comparisons may occur even later, in the late 1990's.

In all four provisions, the baseline vehicles are intended to be the same: representative model year 1990 vehicles.

Three variables will influence the comparisons: The different fuels; the test cars that burn these fuels; and the varying—and in fact declining—emissions performance of each test car over time.

The intent is that the latter two of these variables always be held constant by EPA, so that for each required comparison, only the two compared fuels vary. This prevents an improper comparison of apples and oranges.

For example, a VOC emissions test may occur in 1991, using 1-year old 1990 vehicles. This may show the required reductions have been achieved, and be the basis for huge investments in new refineries to produce the new gasoline. But years later, in 1994, for example, when the 1990 care are older and dirtier emitters, the new gasoline may fail the test it passed 3 years earlier: Even though it is chemically identical to its successful predecessor, the aging 1990 cars may have changed in unexpected ways—and show only a failing 13 percent reduction on VOC emissions, compared to a successful 16 percent reduction that occurred 3 years earlier in the younger 1990 cars.

Indeed, the use of a mass basis test that compares the percentage difference between emissions from baseline gas and from the proposed reformulated gas, may guarantee failure in subsequent tests using older, dirtier cars: Suppose baseline gas yields 100 mass units of VOC emissions on the young baseline car in 1991, and the reformulated yields 85. This 15 percent gain passes the 211(k) test. But 3 years later, the same absolute difference at a higher level would fail: 120 units and 105 units—solely from the dirtier car—are still 15 units apart, and the reformulated gas is still better, but it is only about 13 percent better.

Accordingly, the baseline vehicle provisions shall be read together with new 211(k)(4)(C) as follows:

Comparing results derived in 1 year from young baseline vehicles with those derived in later years from old baseline cars is unfair. EPA cannot do this.

Each refiner, blender, and importer shall be allowed to lock in on test successfully performed at one point in time with the baseline vehicles, and cannot thereafter have their investments imperiled by different and worse results apparently owing to an aging baseline vehicle fleet.

Chemical identity within reasonable tolerances to a successfully tested fuel is the key; continuing successful tests on an aging and increasingly unpredictable fleet are not.

Representative 1990 MY vehicles are chosen so that EPA need not assemble and maintain, through the 1990's, a much larger fleet of cars somehow representative of all cars—of all model years and makes—on the highways in 1990.

Technically infeasible: As used in the nitrogen oxide cap provision in new 211(k)(2)(A) and elsewhere, this phrase shall be interpreted in a commonsense fashion that considers all aspects of this complex new program. For example, a certain chemical process to limit NO_x may in principle be available; but if it costs $10 billion, or if it requires physical conditions like those on the surface of the sun, it is not technically feasible within the meaning of new 211(k).

Similarly, a cost-effective chemical process may exist on a laboratory or pilot plant scale, but there may not be enough time to scale it up to the full, industrial-scale level that will supply all the needs of the affected cities without a shortage. Or scientific data may be lacking, and may require years to compile. Again, in such a case, compliance would be technically infeasible.

The phrase "technological feasibility" in 211(k)(3)(B) refers to the same commonsense concerns about workability at a reasonable cost and on schedule in the real world.

An appropriate adjustment to the NO_x cap under new 211(k)(2)(A) does not allow the costlier of two different alternatives, because that would not accord with the cost consideration requirement of 211(k)(1). Nor does this adjustment authority allow EPA to in effect rewrite the formula in 211(k)(3)(A) by, for example, an adjustment that completely prohibits any benzene or aromatics. Adjust as used in subparagraph (k)(2)(A) means instead a partial waiver.

Thus, there are several ways to prevent any breach of the NO_x cap, which EPA and refiners may use separately or in combination:

An adjustment, that is, a partial waiver under (k)(2)(A),

An entire waiver under (k)(2)(A),

A waiver under (k)(2)(B), if there is interference with a NAAQ standard, or

A waiver under new 211(m)(3)(A), if the area in question is an overlap area that is subject to both the reformulated and the oxygenated gasoline programs.

Other NO_x cap issues:

The NO_x cap in 211(k)(2)(A) does not require reductions of NO_x.

NO_x cap results on baseline cars may be averaged by EPA. For example, if there are five baseline cars, and three show slight reductions, one shows no change, and one shows a slight increase, EPA may find 211(k)(2)(A) is satisfied. Requiring no increase from any of the vehicles under all operating conditions is a perfect example of how EPA, by extremely demanding test protocols, could in effect convert the NO_x cap into a NO_x reduction requirement. This is not intended.

No rewriting of the minimum performance standards in (3)(B), in any way that makes them more stringent, is allowed under the aegis of NO_x cap adjustments. Only the specified elements of the (3)(A) formula are within EPA's purview here.

Large VOC reductions gained through an oxygen content that also breaks the NO_x cap, cannot subsequently be used as the marker that must be equaled or exceeded under the more stringent of test in 211(k)(3).

A reasonable testing tolerance is expressly provided for oxygen in new 211(k)(2)(B). Under 211(k)(4)(C), EPA must also establish reasonable testing tolerances for all other aspects of this program, to minimize cost and make it workable and verifiable in the real world. EPA is specifically expected to promptly establish such tolerance limits. Similar reasonable tolerances are also intended for the CO program in 211(m).

No equivalency for benzene or oxygen: New 211(k)(2) sets forth the hard and fast features of reformulated gasoline. To be certified under new 211(k)(4)(B), each of the NO_x, oxygen, benzene, and heavy metal provisions in new paragraph (2) must always be satisfied—or waived by their own terms, as in the NO_x, oxygen, and heavy metal provisions.

In addition to these latter three waivers, flexibility is also provided by new paragraph (3), which gives refiners the choice between a formula, in (3)(A), or a performance standard, in (3)(B). The more stringent air toxic provision controls, as does the more stringent VOC—volatile organic compound—provision.

More stringent means the one achieving greater emissions reductions.

A reformulated gasoline may still qualify under (3)(B) even if it has some VOC's and some toxics that increase, compared to baseline gasoline. Aggregate decreases on a mass basis of all toxics and all VOC's are the standard; so a small decline or even a rise in one or two is not disqualifying, if other declines offset them and yield a sufficiently large aggregate decline in emissions.

Equivalency for aromatics: Read together, paragraphs 211(k) (2), (3), and (4) leave open the possibility that a reformulated gasoline may have an aromatics content exceeding 25 percent by volume. But its composition would have to be such, that both its VOC and toxic emissions were equal to or lower than those of a gasoline meeting the formula in (3)(A) or the performance standards in (3)(B).

EPA cannot take advantage of significant variations in physical and chemical properties of the many different kinds of aromatics, to "rig" a formula gasoline under (3)(A) containing an unrepresentative selection of aromatics of unusually low volatility or toxicity.

Multiple categories: Many compounds or types of chemicals noted in new 211(k) are subsets of each other. For example, benzene is an aromatic hydrocarbon, so reductions in benzene—to satisfy the benzene cap—will also count toward required reductions in aromatics and toxics as appropriate.

Benzene is also a VOC and a toxic air pollutant, so benzene reductions in the new gasoline should, for example, to some degree yield lower toxics in evaporative, running, and refueling emissions from baseline cars. Like tailpipe emission reductions, any of these three types of emission reductions—from lower benzene—would all count toward the percentage reductions for VOC's and toxics set by new 211(k)(3)(B).

Heavy metals: Reformulated gasoline may not include a heavy metal additive such as, for example, manganese.

However, under 211(k)(2)(D), the Administrator may waive this prohibition if he determines that a reformulated market-grade gasoline containing the heavy metal additive will not have—when tested on a basis consistent with that originally applied to the certification of reformulated fuel not containing the metal—total emissions of toxic air pollutants, on an aggregate mass or cancer risk basis above those which would be emitted from a reformulated, market-grade gasoline of equivalent octane which did not contain the heavy metal additive.

It would not be proper for EPA, under 211(k)(2)(C), to determine whether a heavy metal such as manganese can be granted a waiver by simply taking a reformulated gasoline and splash-blending the heavy metal additive into it; and it would be erroneous, if the five toxic air pollutant emissions increased in such a test, to then conclude that the heavy metal additive must be prohibited.

Instead, the heavy metal additive is a part of a whole reformulated fuel. It is the fuel in its entirety, not the additives, which must meet the performance standards set by 211(k). Thus, if the heavy metal additive were also an octane enhancer, and backed out aromatics, it might—when added to a regular-grade reformulated fuel—make that fuel a midgrade reformulated fuel. Accordingly, the proper course for EPA is to compare apples with apples, by comparing emissions from a market-grade reformulated fuel containing the heavy metal additive with a reformulated market grade fuel of

equivalent octane that does not contain it.

This provision does not provide a substitute test for approval of fuels or fuel additives: The new tests regarding aggregate mass or cancer risk are in addition to other tests set by existing law and the new amendments to the Clean Air Act.

The existing provisions of section 211 of the Clean Air Act which require EPA to find that a fuel or a fuel additive will not cause or contribute to a failure of any emissions control device or system, will continue to be applicable to fuels and fuel additives, including additives containing heavy metals.

The 211(k)(2)(D) ban is aimed against achieving a new reformulated gasoline by the addition in the refining and blending process of new heavy metal additives. The goal is to eliminate existing toxic components of gas, and not replace them with new ones. This focus, and EPA's establishment of reasonable testing tolerances, do not set up a new ban against mere trace amounts of metals at or below levels now in baseline 1990 gasoline, and which originated in the crude oil.

Performance standards: New 211(k)(3)(B) directs the Administrator, in performing the feasibility test, to consider the cost of achieving the prescribed reductions in VOC and and toxic pollutant emissions.

In making this determination, the Administrator should assess whether the tighter phase II performance standards are cost effective, compared to alternatives that are also available to achieve the needed reductions in emissions if the standards are not tightened. Effects of compliance with the tightened phase II standards on retail gasoline prices in the covered areas must be taken into account.

Certification: EPA must act on a petition for approval of reformulated gasoline within 180 days, in order that large investments in new facilities are not delayed by uncertainty over the proposed fuel's legality. If EPA does not act in that period, the fuel or slate of fuels is deemed certified.

"Slate of fuels" refers to a combination of the typically three grades or octanes of gasolines—premium, midgrade, and regular—and perhaps some specified proportion or relative volumes of them.

The conferees expect that procedures comparable to those under existing 211(f)(4) will apply to certifications under 211(k)(4). Any automatic approval, as a technical matter, can subsequently be nullified by an actual EPA disapproval of the petition.

Such a subsequent reversal could jeopardize large investments that were presumptively legal when made, and could create severe fuel shortages and economic hardships in affected covered areas. Accordingly, such reversals should be rare or nonexistent, and based only on extraordinarily compelling reasons.

With regard to enforcement, any such disapproval can operate only prospectively. A reasonable time period for new compliance measures—new permits, new investment, new construction—must be granted by EPA. Nor can civil penalties under section 211 be assessed in such cases, for sales after the automatic approval and before the new compliance date set after the disapproval.

Enforcement: The intent of new 211(k)(5) is to penalize only the refiner, blender, importer, or marketer who knew or reasonably should have known that:

Its conventional gasoline has been wrongfully represented as reformulated gasoline, and is illegally being sold or will be illegally sold for ultimate consumption in a covered ozone nonattainment zone, or

Its reformulated gasoline which after appropriate crediting or pooling adjustments, does not meet certification standards, is being wrongfully represented as certified reformulated gasoline and is being sold for ultimate consumption in a covered ozone nonattainment zone.

No penalties are intended for any gasoline refiner, blender, importer, or marketer under section 211(d), providing $25,000 per day civil penalties, if the wrongful conduct is taken by another entity beyond their control, or if the conduct at issue involves only wholesales of conventional gasoline intended for ultimate consumption outside of covered areas.

For example, the following conduct is not a violation:

Refiner A wholesales both conventional and reformulated gasoline to large marketer B, who maintains large terminals in Philadelphia, a covered area. Both A and B are located in Philadelphia, and the wholesales occur there. The two kinds of gas are clearly segregated and separately and accurately marked as "certified reformulated" and "uncertified conventional." B then sells the reformulated gas in the Philadelphia area, and resells the conventional gas outside the covered Philadelphia area.

Though A has sold some uncertified gasoline to B in a covered area, no violation occurs.

Assume the same location and wholesales between refiner A and marketer B, and the same clear marking and branding of shipments. However, B then changes the markings on the uncertified gas, and sells both shipments to jobber C, who B knows makes most of his resales in the Philadelphia area.

Though A was technically covered by earlier versions of 211(k)(5), that language has been changed, and he does not violate the final provision. B has in effect smuggled conventional gas into Philadelphia, and has violated this provision. C has not. But if the markings were amateurish and the switch was obvious, or if C failed to make reasonable advance checks of quality specified by EPA, then C may also have violated this provision.

A similar interpretation applies to the enforcement provisions of new 211(m), which are to be adapted into SIP's so that enforcement standards similar to 211(k)(5) apply to the CO program.

Opt-ins: The basic purpose of new 211(k)(6) is to extend the reformulated gas program to additional areas beyond the nine original covered areas, so long as the Administrator—prior to the effective date of the program in the opt-in cities—is fully assured on three points:

That new demand from the new areas will not stretch limited domestic capacity already dedicated to the 211 (k) and (m) areas, so that those areas experience even slight physical shortages and commensurate steep price hikes;

That domestic supplies will also be adequate to fully handle the new demand in the opt-in areas; and

That refiners have adequate advance notice of increased demand created by opt-in areas, to efficiently plan, finance, gain offsets for, gain permits for, and construct the required new capacity.

Credits in general: Three different crediting programs—also referred to as "pooling" or "trading" programs—are established under new subsections 211 (k) and (m):

One for oxygen, aromatics, and benzene in reformulated gasoline, under 211(k)(7);

One for antidumping rules covering nonreformulated gasoline, under 211(k)(8); and

One for oxygen in oxygenated gasoline, in 211(m)(5).

The first and the third crediting programs operate only within a specific ozone or carbon monoxide nonattainment area. The second one applies outside of those areas and covers all of a given company's output nationwide.

To the maximum practicable extent, the Administrator should operate them in a similar fashion to minimize complexities and costs.

The overall goal, as with other trading programs in the Clean Air Act Amendments of 1990, is to permit an aggregate least-cost solution that, for example, allows the cheapest oxygen suppliers or the cheapest aromatics reducers to overachieve and handle a disproportionate share of the total burden. Less efficient competitors can buy credits and thus contract out some of the work to their more efficient brethren. Lower consumer prices are the result.

Similarly, low octane grades of one refiner's gasoline may overachieve on aromatics reductions, to offset excesses from other grades; or one of a company's three refineries may overachieve with respect to benzene or oxygen. In each case, pooling is allowed.

Averaging over time: In each of the three crediting/pooling programs, EPA must set a reasonable time period over which average specifications can be met. It could be the winter season in the oxygenated program, or a 3-month quarterly period in the reformulated program. It should not be so short—that is, a single day, hour, or minute—that averaging over time becomes impossible for mechanical or measuring reasons, or that unreasonable limits on supply flexibility and cost savings are forced on refiners, blenders, or importers.

Averaging within a company, or pooling: In view of the chemical differences among different grades and octanes of gasoline, from premium to regular, EPA is also directed to give refiners, blenders, and importers maximum reasonable flexibility to pool under 211(k)(7) on an intercompany basis. It would be impermissible for EPA to deny pooling rights to a refiner in the following case:

Refiner A has a premium reformulated with 2.0 percent benzene, a midgrade with 0.6 percent benzene, and a regular with 0.4 percent benzene. Each grade made up one-third of A's volume of sales in the same period last year, and is projected to do the same again in the coming year. Pooled together, A's gasoline meets 211(k)'s requirement. But if sales of premium turn out to be larger than expected, EPA can require greater offsetting reductions in the immediately following period.

To ease enforcement burdens, EPA could insist on checking credited volumes and weights for each company at the refinery gate, the point of importation, or the point of blending.

Continuous, universal physical testing by EPA to determine that pooling complies with 211 (k) or (m) is not contemplated. Instead, refiners, blenders, and importers are expected to conduct appropriate compliance tests periodically, and maintain records suitable for EPA to fully enforce compliance. And EPA may of course go behind these records, and engage in fuller audits if it chooses.

Intracompany pooling procedures established under the certification process—for example, to allow high aromatic levels for premium with lower offsetting levels for regular—would supercede any more formal crediting procedures set up by EPA.

Many refiners may properly prefer the more informal, intracompany pooling approach; in part, this results from the obstacles that may hamper larger, EPA-regulated intercompany credit programs, which may well entail greater bureaucratic and logistic difficulties. That is why the credit programs are not mandatory, and cannot be imposed on unwilling companies. In contrast, intracompany pooling shall be allowed by EPA to any company affirmatively seeking it.

Averaging between or among companies is nevertheless permissible, and could allow variations on the following example: Refiners A and B each supply half the reformulated gasoline in a covered area. A's weighted average benzene content in the second quarter of 1996 is 1.5 percent and B's is 0.5 percent. With trading, that area's benzene content meets 211(k)'s requirement.

However, only a joint certification of both refiner's gasolines together could render legal the 1.5 percent benzene content of A's gasoline. In such a case, EPA's certification could require guarantees that B continue to supply the same covered area as A; and both companies' fuels together would be viewed as the slate of fuel certified under 211(k)(5).

Credit standard: The phrase "that would occur in the absence of such credits" as used in the three clauses of 211(k)(7)(C), refers to the aromatic, oxygen, or benzene content specified for a nonattainment area under 211(k). It means the use of pooling or credits is not allowed to change the aggregate levels of these three components of gasoline in a given area, from what they would be in that area if each single gallon exactly met 211(k)'s requirements. It does not require or allow EPA to guess what each company might do if no pooling or crediting were allowed.

Antidumping credits and rules: By nature, this program is company specific. Averaging over a certain time—quarterly, for example—and within a given company—among a single company's three different refineries, for example—is allowed.

The purpose of new 211(k)(8) is to prevent a specific company's actual post-1994 conventional gasoline from having greater emissions than that same company's actual 1990 gasoline—or the equivalent, subject to reasonable test tolerances.

Each refiner, blender, and importer is allowed to collect and compile data regarding its 1990 gasoline, and commercial data used by each such company in the ordinary course of business, and showing the identity of its suppliers, the grades of products purchased or sold, and related volumes and dates, would satisfy this provision.

In the event of inadequate and unreliable data, a substitution of baseline gasoline for actual 1990 gasoline would occur only for the specific refiner, blender, or importer with a data deficiency.

Fair tests in baseline cars are required.

This provision does not require—or provide authority for EPA to require—the reformulation of any gasoline sold outside of covered areas, and 211(k)(8)(C) is not to be construed in a way that would require such a reformulation.

Summertime baseline gasoline is as specified in (10)(B)(i). This does not indicate precisely which of the many different aromatics, olefins, and saturates are to be included in the baseline. But EPA should not "rig" or "game" the resulting baseline gasoline by selecting unrepresentative sets of these different compounds that are of unusually low volatility or toxicity.

Wintertime baseline gasoline means the average 1990 wintertime gasoline. This means gasoline sold during the first few months of 1990—in the winter—and during the last month or two of 1990—in the winter; but if split up data of this sort is unavailable, EPA can use either 1989-90 or 1990-91 data. Expedition favors the former. A nationally representative sample is required.

Harmonization: Title II does not contemplate a proliferation of new reformulated gasolines in the same State or nonattainment zone. Thus, if California, under section 249(c)(2), prescribes a more stringent or different reformulated gasoline, and requires it to be produced, distributed, and made available in California, then that prescription and requirement shall apply in California instead of the 211(k) program.

In opt-in States, the intent is that EPA shall by rule ensure that any control or prohibition respecting reformulated gasoline shall be consistent with the 211(k) requirements, the section 246 requirements respecting fleet programs, and the section 249 requirements respecting the California pilot program.

Such regulations shall ensure that no more than one prohibition or requirement respecting reformulated gasoline will apply in any area, and shall provide maximum air quality benefit consistent with technical feasibility, cost, and domestic supply and distribution capacity.

Oxygenated gasoline—covered areas: Approximately 40 areas are covered by new 211(m)(1), ranging from Los Angeles and Denver with 1988-89 carbon monoxide design values of 23.4 and 16.2, down to the relatively cleaner but still covered areas with 1988-89 design values of 9.5 ppm or more. The 1988-89 design values should use 1988-89 monitoring data to establish which areas are included in the program.

Waivers under 211(m) may however reduce this total number of areas.

Enforcement: Like 211(k)(5), new 211(m)(2) does not ban perfectly

lawful and routine wholesales of unoxygenated gasoline—where the selling refiner, the sale, or the buyer are within a covered area—so long as that gasoline is intended for and does move to areas outside of the covered area, where retail sales of unoxygenated gasoline are routine and perfectly legal.

Broader literal readings of the word "any" in the phrase "any gasoline sold," or the word "indirectly" in the phrase "sold or dispensed directly or indirectly" are impermissible.

Such a reading would only cut off the wholesale fuels trade in major American port cities such as Houston, New York, Los Angeles, and Philadelphia, since many fuel dealers in these cities will supply both these cities and many other areas farther inland. A ban on any handling of unoxygenated fuel by these deals would, by reason of their status as dual suppliers to both types of areas, impose a de facto embargo on fuel shipments to uncovered inland areas where unoxygenated gasoline remains perfectly legal after late 1992. No such result is allowed.

Overlaps, types of oxygenates: The winter oxygenate requirement of 2.7 percent in 211(m)(2) overrides the lower 2.0 percent requirement under 211(k), in those cities which are subject to overlapping reformulated and oxygenated programs. But in such overlaps, all oxygen waivers under 211(k) remain available and effective, since the oxygenated gasoline in these cities is technically reformulated gasoline.

The level of 2.7 percent was chosen in part to provide more even opportunities for competition between the two major oxygenates, methyl tertiary butyl ether [MTBE], and ethyl alcohol [ethanol].

Both these oxygenates have been shown to be effective in lowering CO emissions from motor vehicles. Precisely how this occurs is complex, but is primarily related to the enleanment of the air-to-fuel ratio caused by the oxygen content of the fuel.

Other factors affecting the potential reduction of carbon monoxide involve the process by which the oxygenate is added to the finished fuel, which differs for the two major oxygenates:

MTBE is added exclusively at gasoline refining facilities, where the finished fuel may be adjusted to accommodate the blending properties of this ether. This process may result in a reduction in the finished gasoline of aromatic components which are major contributors to incomplete combustion and emissions of CO. If this reduction in CO emissions occurs, it is additive to the effects of the addition of oxygenate.

Ethanol is instead usually added to oxygenless gasoline at a gasoline terminal facility in the market area, possibly far downstream from the refinery area. The addition may occur directly in the tank wagon as gasoline is being loaded. This method may not gain the additive benefits of extra CO emission reductions achieved when oxygenate is blended in a refinery facility where further adjustments are also made to the other components of the gasoline.

Ethyl tertiary butyl ether, or ETBE, is another oxygenate that may meet the requirements of 211 (k) and (m). Others may be developed.

The Administrator may not discriminate among these different oxygenates, and should encourage fair competition among them. As long as the percentage of weight requirement is met, and other requirements of new 211 (k) and (m) are satisfied, any oxygenate should be allowed to satisfy new U.S. needs.

However, EPA must consider the different handling and transportation needs of different oxygenates, and the problems that can result if they are commingled, because these factors will bear on the adequacy of distribution capacity to, and supply in, end user markets.

Commingling of MTBE gasoline with oxygenless gasoline intended to be blended with ethanol can for example create excessive levels of oxygen, if and when ethanol is erroneously added to the already oxygen-rich MTBE gas, and produce a fuel that may violate specifications. Or ethanol, which unlike gasoline has an affinity for water, may be introduced erroneously into gasoline pipelines or storage tanks containing some water at the bottom; such tanks and pipes are adequate for MTBE blended gasoline, but may need dewatering before they can hold gasohol or ethanol.

These potential problems may require segregation of these two oxygenates and the gasolines containing them, but of course do not disqualify either oxygenate.

Duration of winter: The legal effect of three phrases in the language of 211(m)(2)—"the portion of the year," "not less than 4 months," and "may reduce the period"—is to give EPA discretionary authority to set variable winter periods for different cities, during which oxygenated gasoline is required. Health hazards from CO, weather effects, and CO emissions with and without the required oxygenated gasoline all bear on EPA's decision here.

Stationary source waiver: The word "significantly" was added because mobile sources of CO will always contribute to some extent to nonattainment. But if the major cause of CO in a given area is stationary sources, the oxygenated gasoline program shall be waived.

Waivers for lack of distribution or supply capacity: EPA shall consider all relevant factors, including current and projected gasoline prices within and without covered CO areas in granting waivers under 211(m)(3)(C).

Though this provision refers to inadequate "supply" or "capacity," estimating the logistics and thus the ultimate capacity of a complex and interconnected system of oxygenate plants, refineries, railroad tank cars for ethanol and ethers, pipelines for blended gasolines, storage tanks, and blending facilities may be difficult. Moreover, a given capacity may be adequate in a period of low demand, but inadequate during higher demand.

To illustrate, there is disagreement today between two expert Government agencies—the Energy Information Administration and the International Energy Agency—on the fundamental question of whether there is any shortage of crude oil worldwide at present, with one of the agencies inexplicably contending there is no shortage even though crude oil prices have doubled in 2 months. The fungibility of oil, an inability to track movement of specific shipments through the distribution system, lack of real-time data on all levels of storage, and the constant influence of price on volumes supplied, all complicate this process.

Moreover, as noted earlier in 1, a tiny error of overestimation by EPA can result in very large price increases.

Accordingly, EPA should make its best advance estimate on this issue; but it should also carefully watch cash and futures oxygenated gasoline prices, and be ready to reverse an earlier estimate of adequate capacity that proves, in the real world of market prices, to be inaccurate.

As a technical matter, there is never a shortage in a decontrolled commodity market. EPA is directed to disregard this technical reality, and focus instead on a real world meaning that includes fuel shortages and high prices.

Comprehensive EPA approach: When considering waiver petitions under 211(m)(3)(C), EPA shall—

Determine the demand for oxygenates in each covered area,

Determine the expected domestic production capacity for oxygenates likely to be available at least 3 months prior to the effective date of this provision,

Determine the necessary logistics to supply oxygenates to and within the covered areas,

Determine the minimum time requirements for the necessary supply and distribution infrastructure to be made available for each covered area,

Evaluate the demand for oxygenates outside of the covered area, and determine the effects requiring oxygen in the covered areas will have on areas currently served by oxygenates—seeking to avoid reallocation of existing

supplies of oxygenate to the greatest possible extent,

Evaluate competition among covered and noncovered areas for available supplies of oxygenates, and competition's likely effect on the availability and cost of oxygenates in these areas,

Provide for a reasonable margin of safety in its estimates of supply to minimize the chances of supply shortages in covered areas,

Evaluate and seek to prevent any economically wasteful or irrational actions which may be associated with an early effective date in any covered area, such as for example, the construction of oxygenate storage tanks that will be used only in their first year because rising future oxygenate production could satisfy area demands without any storage,

Consider how much savings could be effected by delaying the early effective date in the case of such waste,

Establish a list of priority covered areas based upon their serverity of nonattainment and the role of motor vehicles in contributing to the area's nonattainment status,

Publish a list of areas to be covered each year in sufficient time to assure the availability of necessary infrastructure by the effective date, and provide for reconsideration on an areawide basis if supply shortages or infrastructure delays prevent or are likely to prevent compliance by the effective date.

No partial waivers: Too many logistic and refinery reconfiguration problems may arise if partial waivers allowing weaker oxygen concentrations, partial geographic areas, or shorter periods are granted. Section 211(m)(3)(C)(ii) bans such partial waivers to retain a balance between workability and advance certainty for suppliers.

In particular, new 211 (k) and (m) already create several new kinds of gasoline, and different oxygen concentrations may already exist under the various NO_x cap provisions of these two subsections. Further balkanizing of the gasoline industry—with different O_2 concentrations in different east coast cities, for example—potentially risks further disruptions and more individualized precision from refiners, which may not be possible. Segregating a great many individually-tailored blends will also be more difficult for the pipeline and terminal segments of the industry. The Colonial Pipeline, which serves 6 of the 40 areas, would be more prone to bottlenecks, for any given shipment might be legal in only some or one of those cities.

EPA is not bound to continue a misestimate of adequate capacity by this clause: If, for example, a price spike in midwinter indicates a shortage, a waiver under clause (i) can then be granted; such a waiver is not an impermissible partial delay or lesser waiver under clause (ii).

Other O_2 waivers: Analogously, EPA should also avoid a proliferation of too many different O_2 levels when it grants partial oxygen content waivers, to solve NO_x cap or NAAQS problems under other provisions of 211 (k) and (m).

"Distribution capacity," as used in 211(m)(3)(C), includes everything needed to get to the final pump, that is, interstate transportation, local distribution, storage, trucks, blending facilities, and so on.

Other exemptions: Neither 211(k) nor 211(m) allows EPA to grant waivers or exemptions to only a specified subset or class of refiner, blender, importer, or marketer. Rules or orders of general or particular applicability that in effect return to a scheme of preferential regulatory status for small or large refiners, for example, are not allowed.

No return to oil price and allocation controls: EPA must not, in administering the oxygenated and reformulated gasoline programs, reinvent oil price and allocation controls like those administered by the Department of Energy in the 1970's.

By its decisions on permits for MTBE plants and new refinery units and related offsets, capacity waivers, technical feasibility determinations, enforcement interpretations, and so on, EPA may force costly, lengthy compliance efforts on all segments of the gasoline refining and marketing industry.

Ill-considered regulatory decisions can create delays, and in turn, restrict supplies or certified reformulated and certified oxygenated gasoline. Delays for any reason could thus give EPA restrictive control over gasoline supplies to many of the largest American markets.

Control over supply means control over price. EPA must be sensitive to this danger: New 211 (k) and (m) do not intend to resurrect a 1970's DOE type scheme of detailed Government intervention in U.S. gasoline markets. An approach of this sort would be especially unacceptable, in view of the fact that DOE's restrictions artificially lowered prices, whereas EPA restrictions on supply would artificially raise them.

Imports: New 211(m)(3) refers to "domestic supply" because imports may be unavailable, unreliable, or highly priced. While world supplies are growing, so is world demand; foreign suppliers may not wish to disrupt existing contract relationships with foreign buyers by making spot sales to the United States; and higher world prices may boost domestic prices, as routinely happens with crude oil.

In any event, reliance on imported oxygenates or reformulated gasoline may simply trade one type of fuel import dependency for another. New 211 (k) an (m) do not prohibit such imports or raise their price; but EPA, in making planning and waiver decisons, must not count on imports to fill apparent domestic gaps.

Attainment areas: Under 211(m)(6), EPA has authority to adjust the scope, extent, oxygen concentration, duration, and geographic coverage of a 211(m) program in a previously covered area that reaches attainment. The phrase "to the extent" has been added at the end of paragraph (6) to indicate that attainment does not end completely the need for an oxygenated fuels program—since that might push the area back into nonattainment. However, attainment may mean that the oxygenated fuels program can be eased, or made smaller or shorter in some sensible fashion.

Reports: EPA is to report to Congress well in advance if problems develop in either the 211 (k) or (m) programs.

Just in Texas alone, we are talking about tripling the staff of the Texas Air Quality Board just to do the duplicative permitting process alone. The permit fees themselves will be $25 per ton and Texas businessmen will pay $40 to $50 milllion dollars per year as a result of new permit requirements. Almost 7 percent of our work force will be used just to comply with these requirements.

Because of fierce competition internationally and the additional burden this legislation will impose on our businesses to the tune of $30 to $50 million per year, the National Association of Manufacturers does not feel they can support this conference report.

In the acid deposition control title, the conference added a provision concerning information on carbon dioxide emissions monitoring from utility plants. This will allow utilities to satisfy the requirements by performing calculations using monitoring data from fuel sampling or fuel analyses.

Under title IV, acid deposition control, section 405(g) addresses those utility units in progress and for which second phase allowances are issued in amounts as designated under the available options.

Permanent allowances will be issued starting with the second phase for units listed as eligible units in progress unless the unit exercises other option provisions to receive allowances. The permanent allowances issued under any provision of section 405(g) shall be treated as are any other allowances for purposes under the act including holding, using, purchasing, trading, pooling, selling, auctioning, transferring, banking, and other uses. These allowances shall not be subject to the reallocation, reduction or redistribution mechanisms in this title. Units

issued allowances under this subsection shall not exceed that annual sulfur dioxide tonnage emission limitation unless the owner or operator holds for use additional allowances equal to the amount of emissions over the initial allocation.

This act requires the Environmental Protection Agency to perform a study and to report to Congress by January 1, 1994, on the economic and environmental consequences of trading sulfur dioxide allowances for nitrogen dioxide allowances. However, because of the environmental benefits of nitrogen oxide reductions in certain urban areas as well as in rural areas, the Administrator should prepare to institute a trading system allowing nitrogen oxide emission reductions to be traded for sulfur dioxide allowances. This trading mechanism should be instituted by rulemakings as soon as the study shows, as expected, that there is no harm from such trades and that encouraging reductions in nitrogen oxides emissions from facilities could be beneficial. If the press of other requirements should delay the completion of such a report to the Congress, and barring any definitive scientific evidence to the contrary, then the Administrator should institute such a trading mechanism for nitrogen oxide emission reductions in exchange for sulfur dioxide allowances.

While there is evidence that nitrogen oxide reductions in certain ozone nonattainment areas would worsen the ambient air levels of ozone, in other urban and rural areas the decrease of nitrogen oxides would be of benefit in decreasing the potential for acid rain. In fact, the decrease of nitrogen oxides would be as beneficial as a decrease in sulfur dioxide emissions into the atmosphere. The flexibility to achieve the least-cost reductions in emissions of acidic pollutants should be encouraged and provided for by the Administrator. The nitrogen oxide emission reductions in exchange for sulfur dioxide allowances can be accomplished by a mechanism which the Administrator can establish in rulemaking, and which will benefit not only the environment but also provide an incentive to make these reductions.

Mr. Speaker, the conference committee has worked very hard to devise a tough, fair, and workable compromise concerning the further regulation of ozone depleting compounds and protection of the ozone layer. Nevertheless, I would like to stress that industries which rely on these chemicals have already been motivated by established incentives to phase out of their use of these chemicals on the most rapid timetables possible.

The Montreal protocol has been recently renegotiated to toughen the phasedown and eventual phaseout of these chemicals. Industry, which has been overwhelmingly supportive of the Montreal protocol, has been preparing for the termination of CFC production by the year 2000 well before this legislation addressed a phaseout.

In addition, CFC recovery and recycling has been motivated by the need to prohibit venting, the increased cost of the CFC's, and the need to keep an existing supply of CFC's available to service and maintain existing equipment that will rely on CFC's beyond a phaseout. Both the automobile and the air conditioning and refrigeration industries have made substantial progress on their own to prepare an infrastructure and a marketplace for recycled CFC refrigerants. While much recovery and recycling is occuring today, these industries are already prepared for the requirements in this legislation.

While we are concerned about ozone depletion, we must be cautious that this legislation does not prematurely accelerate the phaseout of substitute compounds such as HCFC's, which the legislation addresses. I understand that scientists agree that the HCFC compounds may be used well into the next century without additional impact on the ozone layer. In fact, I understand that these HCFC's are a necessary transitional compound that will make the phaseout of CFC's possible by 2000.

I wish to make it clear that while this Congress has spoken in regard to the elimination of HCFCs, industry has our assurance that notwithstanding new and compelling scientific data proving that their use is far more detrimental to the ozone layer than earlier believed, HCFC production will not be frozen before 2015; and HCFC production will not be eliminated before 2030. Any acceleration of these established dates without scientific justification will disadvantage industries which are relying on the timetables we set into law today.

Investment in HCFC production and technology is crucial if the world is to be successful in eliminating CFC use. Passage of this law today sends a clear message to industry that HCFC investments are worthwhile and economically justified.

SECTION 701—PART B REPEAL

The conference substitute adopts the Senate proposal to create a new title VI of the Clean Air Act to address "Stratospheric Ozone Protection."

SECTION 702—STRATOSPHERIC OZONE PROTECTION

The conference substitute adopts the Senate approach and, as explained below, combines the Senate and House proposals.

DEFINITIONS—NEW SECTION 601

The conference substitute includes definitions of: appliance (combining the Senate and House proposals; baseline year (modeled after the House proposal); class I substance and class II substance (modeled after the House proposal); Commissioner (from House proposal); consumption (modeled after the Montreal Protocol); import (from the Senate bill); medical device (combining the Senate and House proposals); ozone-depletion potential (from the House proposal); and produce, produced, and production (combining the Senate and House proposals).

Controlling and ultimately eliminating the production of ozone-depleting substances is one of the key features of this new title. Therefore, the definition of "production" is extremely important.

The Senate bill, the House amendment and the conference substitute define "production" to exclude the manufacture of a controlled substance that is recycled or reused. This provision is designed to avoid the problem of double counting, i.e. forcing a producer to use production allowances when the producer is simply reprocessing a previously produced and used substance.

This provision is also designed to allow reprocessing of previously, legally produced substances after the ultimate phaseout date for production of such substances. This provision does not, however, exclude from the production controls and ultimate prohibitions a substance that is produced with the intent to eventually reuse or recycle it. All new production falls outside the scope of the "reuse/recycle" exclusion.

The manufacture of substances that are "used and entirely consumed" in the manufacture of other chemicals (or the regeneration of chemical catalysts) is also excluded from the definition of "production". This provision is necessary because some of the substances covered by this new title are feedstocks for other important substances.

The conference substitute includes a technical correction to this provision of the original Senate and House proposals. The requirement that the controlled substance be "entirely consumed" is qualified by adding the parenthetical "except for trace quantities". This modification is designed to allow for the fact that, as a result of certain chemical and physical properties, nothing is "entirely consumed."

The conference substitute does not include a requirement to construe the term "production" in a manner consistent with the Protocol because the Protocol has not yet approved destruction technologies for purposes of subtracting from the production allocation. In the course of implementing this Act, however, EPA shall consider whether an exclusion will be allowed on a case-by-case basis for the manufacture of controlled substances that are (1) not manufactured for commercial purposes; (2) coincidental, unavoidable byproducts of a manufacturing process; or (3) contained and subsequently destroyed using maximum available control technologies. When the Protocol parties have approved destruction technologies, the Administrator shall take these into account and ensure that adequate safeguards exist to preclude abuse.

The conference substitute's definition of the "Montreal Protocol" includes a reference to "amendments that have entered into force." This reference includes all such amendments, not just those that the United States has ratified.

LISTING OF CLASS I AND CLASS II SUBSTANCE—NEW SECTION 602

The substitute adopts the House amendment terminology regarding "class I and class II substance" and combines the balance of the two proposals. The minimum lists of compounds are expanded to include a number of CFCs and HCFCs that were

added to the Montreal Protocol after Senate and House consideration of the legislation. The substitute also establishes a threshold ozone depletion factor of 0.2 for compounds to be listed as a class I substance. Compounds below this ODF would require the consideration of other factors by the Administrator, such as significant volume, before they should be considered for listing as class I compounds.

MONITORING AND REPORTING REQUIREMENTS—NEW SECTION 603

On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported or exported a class I or class II substance during the previous reporting period is required to file a report with EPA setting forth the amount that such person produced, imported, or exported. EPA is also authorized to use whatever information gathering authority is available in order to collect in a timely fashion the initial baseline reports necessary for establishing the production and consumption rules required by the Act.

The requirement that EPA's amended regulation shall conform to the requirements of this section does not limit EPA's authority to require additional or more detailed reporting than that required by this section. EPA's current regulations, as provided in new section 193 of title I of the Act, as added by this Act, will remain in effect until modified.

The conference substitue combines the Senate and House proposals for EPA, NASA and NOAA monitoring and reporting to Congress requirements, including the Senate proposals for a technology status report (to be submitted not later than 2015 as opposed to the original Senate date of 2010) and an emergency report regarding atmospheric chlorine loading that is projected to occur as a result of global production, consumption and use of class II substances. The reports by EPA, NASA, and NOAA should also take into account the degree to which global compliance or non-compliance with the Montreal Protocol is affecting or altering the base case scenario.

PHASEOUT OF PRODUCTION AND CONSUMPTION OF CLASS I SUBSTANCES—NEW SECTION 604

Effective January 1 of each year starting with 1991, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by such person in the baseline year (1989 for carbon tetrachloride and methyl chloroform, and 1986 for CFCs and halons).

The schedule set forth in Table 2 of the conference substitute is subject to acceleration by the Administrator under new section 606 (Accelerated Schedule).

The Montreal Protocol subjects "consumption" to the same controls and reduction schedule as applies to "production." The conference substitute includes this aspect of the Protocol and directs the Administrator to promulgate regulations to insure that the consumption of Class I substances in the United States is controlled and eliminated on the same schedule as provided in this title for production and in a manner consistent with the term as defined by the Protocol, which is, 'consumption = production + imports − exports'.

The substitute prohibits production of all class I substances (other than methyl chloroform) as of January 1, 2000, and prohibits production of methyl chloroform as of January 1, 2002. The Administrator is authorized on a conditional basis to grant specified limited extensions of the termination date for production of limited quantities of class I substances, to the extent such action is consistent with the Montreal Protocol, for: essential uses of methyl chloroform (between January 1, 2002 and January 1, 2005); medical devices; fire suppression or explosion prevention on the North Slope of Alaska (solely with respect to halons between January 1, 2000 and January 1, 2005), and export to developing countries.

EPA should authorize the limited production of such applications unless it is able to determine that safe and effective substitutes are available, taking into account the effects of available substitutes on health and safety, the technological adequacy of substitutes, and other relevant factors.

The methyl chloroform extension is necessary for national security, electronics applications, transportation and building safety and other important applications where factors such as nonflammability are important (e.g., certain contact bond adhesives) and adequate substitutes have not been identified. The Administrator is also expected to examine whether safe and effective substitutes for methyl chloroform will be available for purposes of airline safety by the year 2005 and to report to Congress.

The granting of any extension under this title must be in accordance and consistent with the Montreal Protocol. If the Protocol does not authorize the extension being sought, the provision of the Protocol takes precedence and no such extension may be granted by the Administrator.

Any failure of the Administrator to promulgate regulations as required by this title, or any court order delaying the effective date of such regulations, shall not alter the effective dates of the statutory requirements and prohibitions that are set forth in this title.

It has been suggested that, with respect to the 1991 control period, there is insignificant time for EPA to complete a notice and comment rulemaking and that, notwithstanding the self-effectuating nature of the statutory requirement to reduce production in 1991, regulations are necessary to implement the "consumption" controls and would be helpful with respect to the "production" controls. It is expected that, solely with respect to the 1991 control period, existing EPA regulations will be revised by direct final rule. Such revised regulations should add baseline allocations for the chemicals not already regulated and require the 15 percent reduction where applicable to class I compounds. This will leave the original allocation and trading provisions in place until revised in accordance with this Act.

PHASEOUT OF PRODUCTION AND CONSUMPTION OF CLASS II SUBSTANCES—NEW SECTION 605

The Senate statement of national policy is modified, restated as "the purpose of Congress", and included in new section 603 (Monitoring and Reporting).

Effective January 1, 2015, production of my class II substance must be frozen at baseline levels (to be established by the Administrator) and the use of any such substance shall be unlawful unless such substance (1) has been used, recovered and recyled, (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals, or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020. Effective January 1, 2030, it shall be unlawful to produce any quantity of a class II substance.

As with class I substances, the Administrator is directed to promulgate regulations to control and eliminate "consumption" (consistent with the definition in the Protocol) of class II substances and, on a conditional basis, is authorized to grant limited exceptions for purposes of use in medical devices and for export to developing countries in accordance with the Montreal Protocol.

ACCELERATED SCHEDULE—NEW SECTION 606

A combination of the Senate and House proposals is included in the conference substitute. The control schedules under sections 604 and 605 are subject to acceleration under circumstances that are defined.

EXCHANGE AUTHORITY—NEW SECTION 607

Subsection (a) of this section of the conference substitute requires the Administrator to issue allowances for class I and class II substances and requirements for transfers of these allowances. It is expected that these rules will be promulgated consistent with the production and consumption rules required under sections 604 and 605. Also, since there are no regulations required on class II compounds, it is not expected that the Administrator will promulgate production allowances for class II compounds until such time as would be required under this Act, subject to any acceleration of the phaseout of production under section 606.

The Administrator is also directed to promulgate regulations that will authorize interpollutant transfers, as in the Senate bill, and trades with other persons, as in the House amendment.

Interpollutant transfers are limited to transfers among substances listed in the same group under new section 602. This precludes, for example, the ability of a producer to avoid mandated reductions in the production of methyl chloroform in exchange for making greater reductions than is otherwise required in CFC-11 production.

The same limitation applies to trades with other persons.

NATIONAL EMISSION REDUCTION PROGRAM—NEW SECTION 608

Prior to January 1, 1992, EPA must promulgate regulations establishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

Within 4 years after enactment, the Administrator must promulgate regulations regarding the use and disposal of all class II substances as well as all class I uses and disposal practices that are not covered by the earlier regulations. Such regulations shall become effective not later than 12 months after promulgation.

In promulgating regulations for these uses the Administrator shall take into account the extent to which emissions reductions can be achieved, the costs and benefits of implementing available controls, and the time before which certain uses may no longer rely on the covered substances. Also, the regulations which are required to take effect 60 months from the date of enactment may still impose deadlines beyond the 60 month timeframe.

The use and disposal regulations must include standards and requirements that satisfy the criteria set forth in the bill, including requirements that reduce the use and emis-

sion of class I and class II substances to the lowest achievable level and requirements that class I and class II substances contained in bulk in appliances be removed from such appliances prior to disposal of the appliance or delivery of the appliance for recycling.

The reference to "in bulk" distinguishes this requirement from another requirement dealing with products in which a class I or class II substance is incorporated so as to constitute an inherent element of the product. An examle of the "in bulk" reference is the class I or class II refrigerant in an appliance. An example of the "inherent element" reference is the insulation in a building or insulation that was made with a class I or class II substance which is now incorporated in the walls of the appliance.

Effective July 1, 1992, it will be unlawful for any person maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration to knowingly vent, release, or dispose of any class I or class II substance used as a refrigerant in a manner which permits such substance to enter the environment. Exceptions to this prohibition are included for certain de minimis releases.

Effective 5 years after enactment, the prohibition on venting or release shall also apply to all substances that are used as refrigerants as substitutes for class I or class II refrigerants. The prohibition shall apply to all such substitute substances except in cases when the Administrator determines that the venting, release, or disposal of a particular substitute substance does not pose a threat to the environment.

SERVICING OF MOTOR VEHICLE AIR CONDITIONERS—NEW SECTION 609

Effective January 1, 1992 (or, January 1, 1993 in the case of persons who certify by January 1, 1992, that they are repairing or servicing motor vehicles at an entity which performed service on fewer than 100 motor vehicle air conditioners during 1990), any person who services motor vehicle air conditioning systems for consideration (1) must "properly use" extraction and reclamation equipment that is certified as meeting the standards set by the equipment that is certified as meeting the standards set by the Society of Automotive Engineers, and (2) must be "properly trained and certified." The phrases "properly using" and "properly trained and certified" are defined in this section of the conference substitute. This section includes a certification requirement that is applicable to each person performing service on motor vehicle air conditioners for consideration.

Effective 2 years after enactment, it shall be unlawful to sell or distribute, or offer for sale or distribution, to any person (other than professionals who are in compliance with the requirement to use extraction and reclamation equipment) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioning system and is in a container which contains less than 20 pounds of such refrigerant.

NONESSENTIAL PRODUCTS CONTAINING CHLOROFLUOROCARBONS—NEW SECTION 610

The conference substitute includes the House amendment with two modifications to the prohibition on the use of class II substances. First, the prohibition on the use of class II substances in plastic foam products does not apply to certain foams that are used for motor vehicle safety purposes in accordance with Federal Motor Vehicle Safety Standards. Second, the Administrator is authorized to grant exceptions from the prohibition on pressurized dispensers which contain a class II substance when (1) the use of the pressurized dispenser is determined to be essential as a result of flammability or worker safety concerns, and (2) the only available alternative to the use of a class II substance is the use of a class I substance which legally could be substituted for the class II substance.

The conference substitute also does not prohibit insulating foams made with class II compounds (which could include foams that are necessary for energy efficient building construction, appliances, or for the insulation of sensitive medical supplies and sensitive electronic components.)

Including authority for the Administrator to grant such exceptions is necessary to account for the fact that the aerosol ban which has been in effect in the United States since 1978 for certain class I substances is not a complete ban. Assuming the use of class I substances in certain pressurized dispensers remains legal after 1994, it may be counter-productive to prohibit the use of class II substances (substances that are generally less potent ozone depleters) in certain "essential" applications if the only available substitutes are class I substances which could be legally used in place of the class II substance. For this reason, the Administrator is authorized to grant limited exceptions. The conference substitute does not presume or imply that the existing aerosol uses or other uses not specifically listed are non-essential and the Administrator shall consider these uses on a case-by-case basis in accordance with the listed relevant factors.

LABELING—NEW SECTION 611

Effective 30 months after enactment, containers of a class I or class II substance and products containing class I substances must be labeled. Products containing or made with (but no longer containing) a class II substance must be similarly labeled if the Administrator determines that there are substitute products or manufacturing processes. The determination invoves a three part test.

Products made with but no longer containing class I substances must be labeled unless the Administrator determines that there are no substitute products or manufacturing processes. As with the previously discussed determination, the statutory language includes a three part test, including whether the substitutes reduce the overall risk to human health and the environment.

Effective January 1, 2015, the labeling requirements will apply, without exception, to all products containing a class II substance and to all products made with a process that uses a class I or class II substance.

SAFE ALTERNATIVES POLICY—NEW SECTION 612

The Administrator is directed to promulgate regulations prohibiting the replacement of any class I or class II substance with a substitute which the Administrator determines may present adverse effects to human health or the environment if an alternative that reduces the overall risk to human health and the environment has been identified. The Administrator is required to publish lists of the identified safe alternatives within 2 years of enactment. It is important to note that the standard applies to substitutes for class II compounds as well as to other compounds. It is expected that the Administrator shall not prohibit the use of a class II substance in the absence of clear information concerning the reduction of overall risk to human health and the environment by the current or potential availability of the identified substitutes. Also, the Administrator shall base risk estimates on the total environmental risk (toxicity, flammability, atmospheric, etc.) that is perceived to exist, not just the risk as it relates to ozone depletion. The Administrator shall, with the assistance of the Science Advisory Board, update the risk assessment from ozone depletion and take into account the global and domestic controls that are scheduled to occur as a result of the Montreal Protocol, this Act, and accelerated industry phaseout efforts.

The Administrator is also directed to require that any person who produces a chemical substitute for a class I substance (1) provide the Administrator with such person's health and safety studies on such substitute, including unpublished studies, and (2) notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as class I substitutes.

FEDERAL PROCUREMENT—NEW SECTION 613

The conference substitute includes a modified version of the House amendment's provision on federal procurement. The modification adds a deadline for other agencies to revise their regulations and a requirement that each agency certify to the President that its regulations have been modified in accordance with this section. This provision does not prohibit the purchase of equipment or products made with or relying on the covered substances, or bulk supplies of covered substances necessary to maintain or operate existing equipment, but would require the agencies to consider this in their purchasing decisions and to work towards the purchase of ozone protecting technologies to the maximum extent practicable.

RELATIONSHIP TO OTHER LAWS—NEW SECTION 614

The substitute repeals the provision of current law that preempts State and local governments in certain circumstances and establishes a narrow, two year exception to the principle of non-preemption that is codified in section 116 of the Clean Air Act.

State or local laws would be preempted if they include "servicing" requirements that would require the retrofitting or modification of existing equipment, or specific product bans that would have the practical effect of requiring new equipment designs. Also, laws would be preempted that prohibit the sale of appliances that use or contain foam insulation manufactured with covered substances. A provision is added to make it clear that this title is a supplement to the Montreal Protocol. It does not supplant the Protocol and it does not abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol.

Many of the provisions in this title are more stringent than the provisions of the Protocol such as the production phasedown schedule for CFCs, halons, and methyl chloroform, and the elimination date for production of methyl chloroform. There are also areas in which the Protocol has no similar provisions including the controls and elimination of HCFC production, recycling and emissions control requirement, and the safe alternatives policy.

In areas in which the Protocol is more stringent, the provisions of the Protocol are controlling. If the Protocol is modified in the future to include new provisions that

are more stringent than this legislation, such more stringent provisions will be controlling.

In the sections where the Administrator or another government official is authorized to grant extensions or exceptions to the requirements of this title, the legislation includes an express limitation. The Administrator or other official may exercise such authority only to the extent that such action is consistent with the Montreal Protocol. The provisions of this Act may not be used to justify or authorize any action that is inconsistent with the terms of the Protocol.

To prevent persons subject to United States' jurisdiction from transferring technology or investing in facilities to produce controlled substances in countries that are not parties to the Montreal Protocol, the President is directed to prohibit the export of technologies used to produce a class I substance; to prohibit the direct or indirect investments in facilities designed to produce class I or class II substances in nations that are not parties to the Protocol; and to direct that no government agency provide subsidies or assistance for the purpose of producing a class I substance.

AUTHORITY OF THE ADMINISTRATOR—NEW SECTION 615

The Administrator is authorized to prescribe regulations as may be necessary to carry out this title. The phrase "to affect the stratosphere" includes, but is not limited to, stratospheric ozone depletion. Effects such as anthropogenically induced cooling of the stratosphere are included and must be considered, but only as it relates to carrying out this title on stratospheric ozone protection.

TRANSFER AMONG PARTIES TO THE MONTREAL PROTOCOL—NEW SECTION 616

A new section based on the Montreal Protocol's provisions for "industrial rationalization" is included in the conference substitute. For purpose of this section, the phrase "production allowance" is used to indicate a portion of United States' "calculated level of production", as that phrase is used in the Protocol. The authority provided in this section is limited and subject to a number of conditions, including the requirement for implementing regulations. The section is not intended to require that other nations adopt the same control schedule as adopted by the United States, but that another nation reduce its production be achieved level in the same manner as provided for in the U.S. when it is transferring production rights into the U.S. Unlike Section 607 transfers conducted under this section do not require that a 'net reduction' be achieved in production in the year in which the transfer occurs.

INTERNATIONAL COOPERATION—NEW SECTION 617

The Senate provision regarding international agreements is included in the conference substitute. As a result, United States' delegations to future meetings of the parties to the Montreal Protocol are expected to seek modifications to the Protocol, consistent with the logical framework of the Protocol, that will make the requirements of the Protocol at least as stringent as the requirements applicable in the United States as a result of this legislation. At a minimum, U.S. delegations are expected to seek control schedules for the Protocol that are consistent with the U.S. control schedule for the substances covered by this legislation.

The House provision authorizing funds to assist developing countries is included in the conference substitute. At the June 1990 meeting of the parties to the Protocol in London, representatives of China and India indicated that their countries intend to join as parties to the Protocol. In this event, the expected contribution to the fund by the United States will increase accordingly. In recognition of this new development, the conference substitute includes a provision to increase the authorization of appropriations by an additional $30,000,000 if and when China and India become parties. In the event that one but not both of the countries were to sign the Protocol, it is expected that a corresponding amount would be appropriated.

MISCELLANEOUS PROVISIONS—NEW SECTION 618

A modified version of the House provision is included in the conference substitute. This section makes it clear that more stringent state and local government requirements for the protection of the stratosphere are not preempted by this Act, except as provided for in section 614.

This section also provides that federal facilities shall be subject to all requirements of this title and to all State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer.

SECTION 701—METHANE STUDIES

A modified version of the Senate provision requiring studies of methane emissions and options to reduce methane emissions is included in the conference substitute, but this provision does not create any new regulatory authority.

No doubt, Mr. Speaker, many provisions will have to be visited again in the near future out of necessity as the numerous provisions are examined, regulations developed, and implementations formulated. Only with the confidence that the members of this conference will respond to that need for corrections am I joining in support of this major step forward in pushing for strong environmental policy.

In addition to the investments that have already been made by utility owners and investors in the State of Texas alone, which by the way are considered some of the cleanest, we are asking them to make an additional capital investment of $1.5 billion over the next 10 years to comply with the requirements and create offsets for growth. That billion dollar price tag will have to be passed on to our ratepayers who already have paid more for emission controls than States who will receive the lion's share of benefits from this legislation.

It is with these reservations and statements to make clear my understanding of what the conference committee agreed to that I am willing to support this report and commend my colleagues for taking a cautious step toward passing the strongest, most far-reaching environmental legislation in the history of our civilization.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I would like to engage the distinguished chairman of the Subcommittee on Energy and Power in a colloquy on a matter contained in the acid rain title of the bill. This is important to a utility in my district which has voluntarily exceeded sulfur emissions in the recent years by burning a grade of fuel which is significantly cleaner than the fuel the utility is permitted to burn under its operating permit.

S. 1630 grants the Environmental Protection Agency the authority to determine the amount of allowances for sulfur emissions which each utility will be given. The reason I rise in colloquy is to ensure that, under the acid rain title, the EPA will determine a utility unit's allowance on the basis of what the unit is permitted or authorized to emit under its operating permit. It is important, so as not to inadvertently penalize a utility for overcomplying with sulfur emissions standards, to base its allowances on what a unit is permitted to emit, and not some lower actual emissions rate which may not reflect the utility's approved operating permit and allowable fuel use. Is that the chairman's understanding?

Mr. DINGELL. Mr. Speaker, yes, it is. The gentleman from Texas [Mr. PICKLE], is correct.

Mr. PICKLE. I thank the gentleman very much.

Mr. Speaker, let me add this: I was a member of the Energy and Commerce Committee in 1965 when we passed the first clean air bill. Then I was a member of that committee when we passed the 1970 bill. Now today this bill is the granddaddy of all clean air bills.

I want to compliment the chairman of this committee [Mr. DINGELL] for this great work. This bill will be known in the years to come, as a landmark in the field of clean air, just as the Civil Rights Act of 1964 is a landmark in human rights. So, Mr. Chairman, congratulations.

Mr. DINGELL. Mr. Speaker, I love my dear friend from Texas [Mr. PICKLE], and I remember when he was on the committee with great affection.

Mr. Speaker, I yield 1 minute to the distinguished gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Speaker, I rise as an original cosponsor of the Clean Air Act to express my very strong support for the conference agreement. It is a remarkable legislative achievement, and I want to pay particular tribute to Chairman DINGELL and Mr. WAXMAN for their leadership, as well as to Mr. LENT and Mr. MADIGAN. This landmark legislation will significantly advance the public interest in securing a safe and healthy environment for ourselves and for future generations.

Mr. Speaker, I would like to engage the chairman in a brief colloquy. I seek clarification of two crucial provisions of the legislation that directly affect the publicly owned electric system in my district.

Key sections are section 402(r) defining allowable 1985 emissions rates, and section 405(d)(4), allocating allowances to certain new cleaning units which commence commercial operation on or after January 1st, 1981 and before December 31, 1985.

As I understand the legislation, these provisions with respect to this system in my district, are designed to ensure the allocation of allowances to units on the basis of the qualifying plant's 1985 permitted or allowable emissions rate, multiplied times a 65 percent capacity factor, as opposed to the plant's actual rate in the baseline years.

Mr. DINGELL. If the gentleman would yield, the gentleman is correct.

Mr. WOLPE. I thank the chairman for clarification. I want to express my commendations to him and to the gentleman from California [Mr. WAXMAN], the gentleman from New York [Mr. LENT], and the gentleman from Illinois [Mr. MADIGAN], for a truly remarkable legislative achievement.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Michigan [Mr. CARR].

Mr. CARR. Mr. Speaker, I congratulate the gentleman from Michigan [Mr. DINGELL] and all who put this fine package together.

Mr. Speaker, I am concerned about a provision of the Clean Air Act amendments that would require onboard refueling controls on light-duty vehicles. My understanding of this provision is that we are not creating a new risk to the public's health and safety. Ultimately, the purpose of the Clean Air Act is to improve the public's health through a cleaner environment. It is not our intention to permit a provision of the new Clean Air Act to undermine our laws on motor vehicle safety.

Specifically, I am concerned that EPA give adequate consideration to the safety of onboard systems before requiring them on new cars. Numerous experts in motor vehicle safety have forcefully argued that these canisters will increase the risk of motor vehicle fires. Highly respected organizations ranging from the National Safety Council to the Insurance Institute for Highway Safety and many others have raised serious questions about the safety of onboard systems, concerns which have been echoed by the National Highway Traffic Safety Administration and the National Transportation Safety Board.

The National Safety Council said recently, "Environmental health and public safety go hand-in-hand, and advances in one field should not undermine important goals in the other."

The Insurance Institute for Highway Safety said: "Mandating onboard vapor recovery systems now would amount to simply trading off one public health problem for another."

I applaud the Conferees for adding language to the Clean Air Act amendments that would ensure proper, effective consideration of these serious safety issues, before a requirement is issued, and for adding some additional lead time to permit more testing and evaluation.

EPA must not require onboard systems, if the vehicle safety experts at the Department of Transportation conclude that the systems pose an increased risk to motor vehicle safety. The safety of my constituents is very important to me. I am voting for this bill with the understanding that EPA will not proceed to require onboard systems unless they are found to be safe.

Mr. DANNEMEYER. Mr. Speaker, I yield myself our remaining time, 2½ minutes.

Mr. Speaker, I have half a dozen studies here I would like to submit into the RECORD at this time, as well as a statement exhibiting professional scientific analyses as distinguished from politics, saying that we should not be adopting this bill at this time.

Mr. Speaker, I want to congratulate the environmental party in America for producing this legislative overkill. It is legislative overkill, because if we leave the existing law alone—now, listen to this—by the mid-1990's, all areas in America will be in attainment for the existing Clean Air Act, except about half a dozen, one of which is southern California.

I accept the fact that in areas like southern California we have to take additional steps because of the dirty air we have there to get to the goals of the Clean Air Act.

Because of the legislative overkill, we are going to require that every consumer that purchases a new car in this country is required to pay about $600 to $1,000 for additional pollution control equipment, in order to do what? We have already squeezed out 96 percent of the pollutants that come out of the tailpipe. We are going to squeeze out another 1 or 2 percent, for another $600 to $1,000 per car.

In southern California we have to pay that. In Missouri or South Carolina or Minnesota, we are in attainment now. I do not think that is good science. It may be good politics, but I wonder.

With respect to acid rain, the science is that there is no correlation we can prove with scientific proof that the emission of SO_2 is proximately causing the acidity in certain lakes in the northeast part of the country.

The science from the NAPAP study shows that those lakes that are now acid have been that way from preindustrial times. Even if we want to go forward and reduce 10 million tons of SO_2, the way to get there is impose a requirement that no powerplant can last longer than 40 years, impose new source performance standards, and extend the deadline to 2020, and we will get that 10-million-ton reduction without any cost to the consumers of this country. But because of the legislative overkill in this bill, we cannot wait. We have got to get it done by the year 2000, and incur a multibillion cost upon the consumers of this country.

Then the toxic section. When we ride across America in an airline, or drive a car for 40 miles, or paddle a canoe for 6 minutes, there is a risk of 1 in a million we are going to die. We assume that level of risk day-in and day-out.

But do you know what you have to do in order to be exempt from the regulatory hand of the EPA in terms of a permit if you produce a product in this country that emits pollutants? You have to prove you have a risk less than 1 in a million.

This is legislative overkill. I am happy to be in the company of three distinguished Nobel Prize laureates who say in a letter to the President we should kill this bill.

Mr. Speaker, I rise in opposition to this well-intentioned but fatally flawed legislation. As the only member of the conference committee to oppose the conference agreement, I would like to raise several important points with my colleagues.

First, since the enactment of the Clean Air Act in 1970, the quality of our air has improved. Since 1978, the EPA reports that emissions of ambient airborne lead have declined by 88 percent, sulphur dioxide emissions have dropped by 35 percent, carbon monoxide by 32 percent, particulate matter by 21 percent, ozone by 16 percent, and nitrogen oxide by 12 percent, all at a cost of slightly more than $30 billion each year to American consumers.

The bulk of these reductions, it is important to note, occurred during the longest and greatest peacetime economic expansion in our history—the Reagan expansion of the 1980's. Economic growth and environmental progress, in other words, can coexist peacefully if properly managed. In fact, we can expect these trends to continue, as consumers replace their older, dirtier cars with new, cleaner ones and as electric utilities build plants that conform to the Clean Air Act's rigid standards for new sources of pollution.

But many enivronmentalists do not accept this premise. As EPA Administrator William K. Reilly has observed:

Many environmentalists remain ambivalent—and some openly suspicious—about many forms of economic growth and development. Entire industries are viewed as unnecessary or downright illegitimate by a shifting subset of activist, although not mainstream, environmentalist opinion * * *.

These skeptics equate growth with pollution, the cavalier depletion of natural resources, the destruction of natural systems, and—more abstractly—the estrangement of humanity from its roots in nature.

This disregard for future economic growth, I respectfully submit, reigns triumphant in the legislation before us today.

It now appears that our economy is stalling, with unemployment and inflation on the rise and overall economic growth either flat or on the decline. In my opinion, it is ill-advised for the Congress to more than double the cost and scope of the Clean Air Program at this time. Economists who have reviewed this legislation believe it will impose more than $50 billion in additional regulatory costs on the business and industrial sectors with little, if any, environmental benefits. Literally every industry in America will be subject to the tender mercies of the EPA and its ever-expanding army of environmental police.

Michael Boskin, Chairman of the President's Council of Economic Advisers, has acknowledged that this legislation will result in severe economic dislocations. In a July 24, 1990, letter to the chairman of the Energy and Commerce Committee, Mr. DINGELL, Boskin wrote:

Assertions * * * to the effect that expanded clean air programs would on balance create jobs, increase productivity, and make the U.S. economy more competitive in world markets are at best wishful thinking * * *. The President's support for this proposal was *not* premised on the view that its costs would be negligible; he is fully aware that *any* environmentally strong clean air bill will reduce real income growth and cause some temporary unemployment." (Emphasis in original.)

Specifically, Boskin explained that, "Resources that must be devoted to reducing air pollution are simply not available to produce consumer goods and services or to make investments that would increase productivity" and predicted that, if enacted, clean air legislation will lower future economic growth, impede international competitiveness and overall productivity growth, and force some employers to relocate offshore.

Paul Portney, senior fellow at Resources for the Future, examined both the House and Senate versions of the Clean Air Act amendments and agreed that the costs associated with this bill far outweigh its potential benefits. According to Portney, total annual costs will be between $29 and $36 billion while the annual benefits will range between $6 and $25 billion, with a best guess at $14 billion annually. Portney concluded his excellent study with a warning that we would all do well to consider:

If these estimates are even close to correct, Congress and the President are about to shake hands on a landmark piece of environmental law for which costs may exceed benefits by a considerable margin * * *. If it were more widely appreciated that, when fully implemented, the clean air amendments may cost each U.S. household $300–$400 per year, perhaps opposition would be sharper.

Other prominent economists have voiced their concerns with respect to this bill. Citizens for a Sound Economy recently circulated a letter signed by three Nobel Laureates, a former Director of OMB, a former Chairman of the President's Council of Economic Advisers, a former Vice Chairman of the Federal Reserve Board, and a senior fellow at the liberal Brookings Institution in which they described the Clean Air Act amendments as "an unwise, ill-advised patchwork of legislation that should not be enacted." They added that, "There is little evidence that these new regulations would actually improve the quality of the air," and predicted that, "The Clean Air Act's unduly stringent and extremely costly provisions could seriously threaten this Nation's economic expansion."

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Few Americans are opposed to the concept of clean air. We laud your efforts, and those of members of Congress, to ensure that health standards in this country remain high. But we believe that the clean air bill presently being considered in Congress is an unwise, ill-advised patchwork of legislation that should not be enacted.

The cost of the bill will be very high: a report to the Business Roundtable places the cost at more than $50 billion a year, while a vice president at Resources for the Future estimates each American household could spend an additional $300 to $400 annually. Yet, there is little evidence that these new regulations would actually improve the quality of air.

Moreover, there is widespread agreement that our economy is currently in a fragile and vulnerable condition. This, added to the crisis in the Middle East, raises the prospects that Americans could face some very difficult economic times ahead. The Clean Air Act's unduly stringent and extremely costly provisions could seriously threaten this nation's economic expansion.

Mr. President, now is not the time to enact legislation with questionable benefits but certain and serious economic costs. We urge you to prevent enactment of the Clean Air Act of 1990.

Sincerely your.

James M. Buchanan, George Mason University, Nobel Laureate, Economics; Robert W. Crandall, Senior Fellow Economic Studies, The Brookings Institution; Milton Friedman, Hoover Institution, Nobel Laureate Economics; Manuel H. Johnson, Former Vice Chairman, Federal Reserve Board; James C. Miller III, Former Director, Office of Management and Budget; William A. Niskanen, Former Chairman, Council of Economic Advisers; George J. Stigler, University of Chicago, Nobel Laureate, Economics.

Each of the major parts of this bill poses its own set of problems. I would like to discuss each of them briefly.

OZONE NONATTAINMENT

This legislation would require cities that fail to meet Federal standards for ozone, carbon monoxide, and particulate matter to adopt sweeping measures to comply with these Federal standards. Ninety-six cities currently are out of compliance with the Federal ozone standard, even though most meet it more than 99 percent of the time. One review of EPA data from 1981 to 1985 found that, with the exception of Los Angeles, every nonattainment area in America met the Federal standard at least 99.5 percent of the time. Some of these nonattainment areas met the standard 99.98 percent of the time; or 4,999 out of every 5,000 hours.

In addition, this bill mandates the installation of additional pollution control devices on new cars that will add between $600 and $1,000 to its cost. Other provisions would mandate the production and sale of cleaner burning reformulated gasoline in certain cities that have failed to meet Federal standards for ozone. Still other provisions would require fleet vehicle owners to purchase super-clean cars, buses, and trucks in certain nonattainment cities.

Since the passage of the original Clean Air Act, automakers have removed 96 percent of tailpipe emissions; this legislation will charge consumers up to $1,000 to remove an additional 1 or 2 percent. Many experts believe that, instead of increasing the price of a new car, Congress should instead encourage consumers to retire their old, dirty cars. In southern California, several oil companies have taken this approach. Unocal, for example, will send $5 million to purchase 7,000 pre-1971 cars registered in the Los Angeles basin and send them to the junk yard. Officials there estimate that these cars exceed Federal emissions standards for new cars by a factor of 60. Ironically, this legislation will hamper this sort of innovative approach because it will induce consumers to keep unsafe, fuel-inefficient, polluting cars for as long as possible.

A strong case can be made for the proposition that the original Clean Air Act has reduced urban smog.

According to EPA, the total number of ozone nonattainment days recorded at the thousands of monitors in metropolitan areas around the country declined steadily from 1980 to 1989, with the downward trend interrupted only by three unusually dirty years. In fact, few people realize that 1989 was by far the cleanest year of the decade, with less than half as many nonattainment days as in 1980.

To the extent that a problem exists, it is predominantly local in nature and affects only a few metropolitan areas. Robert W. Crandall, senior fellow of economic studies at the Brookings Institution, criticized the new clean air bill's emphasis on national solutions to what are essentially regional or local problems. He writes:

Because Los Angeles and other smoggy metropolitan areas have been unwilling to reduce emissions sufficiently through traffic controls, or through small commercial/industrial-source controls to meet the EPA air-quality standard, consumers of new vehicles in most other parts of the country are saddled by Congress with ever tighter controls, even though most of these areas do not need further major pollution reductions.

* * * The principal policy result from Los Angeles' problem is ever more expensive cars for residents of Boise and Butte but very little improvement in the smog in Los Angeles.

Crandall estimates that this bill will increase the total cost of pollution control equipment to between $1,500 and $2,000 per car.

ACID RAIN

In 1980, the Congress created the National Acid Precipitation Assessment Program

[NAPAP] to study the acid rain problem. At the time, there was widespread concern that acid rain would result in the end of civilization as we know it. For example, the Senate sponsor of the original NAPAP legislation expressed the fear that "over 50,000 lakes in North America will become sterile, perhaps by the end of the decade." But that was only part of it. Proponents of the NAPAP study linked sulphur dioxide emissions to declines in crop and forest productivity, death of fish populations, erosion of marble and limestone buildings, and other dire effects in areas comprising more than half the continental United States.

Ten years and $537 million later, the NAPAP findings are available just in time to influence the congressional debate on the new clean air bill. Most taxpayers would undoubtedly assume that we would listen to the experts and incorporate their conclusions into our acid rain provisions. Unfortunately, the Congress has chosen to ignore these findings.

Contrary to the fears of those who created NAPAP, acid precipitation is not responsible for such calamities. For example, the NAPAP scientists found that, while most of the lakes adversely affected by acidic deposition are in the Adirondack region of New York State, only 2 percent of the lake area there is acidic. Many of these acidic lakes, moreover, are acidic because of natural factors and have been acidic since preindustrial times. With respect to the decline in certain fish populations, NAPAP concluded that only one-third of that decline can be attributed to acid rain. Finally, the researchers reported that:

Surveys indicate that the majority of North American forests are healthy. No regional patterns of adverse effects on crop growth and production have been identified related to acidic deposition.

NAPAP's scientists modeled five scenarios—everything from a program with no additional sulphur dioxide controls to a 12-million ton reduction by the year 2000. The researchers concluded:

The annual costs for sulphur dioxide emission controls start at a few hundred dollars per ton removed for the first few million tons of reduction, and increase to approximatley $800 to $1,200 per ton removal for national reductions in the range of 10 million tons.

The costs associated with these scenarios are as follows:

ANNUAL DIRECT COST OF SULPHUR DIOXIDE REDUCTIONS

[1990 dollars in billions]

Scenario	Cost
12-million ton reduction	$4.5 to $7.5
10-million ton reduction	$2.7 to $4.0
8-million ton reduction	$1.7 to $2.7

Thus, the cost of an 8-million-ton reduction falls within a range of $213 to $338 per ton removed. The cost of removing an additional 2 million tons is $500 to $650 per ton. Most importantly, the NAPAP scientists found that the difference in environmental benefits between an 8- and a 10-million-ton reduction cannot be distinguished.

NAPAP also found that a 50-percent reduction in sulphur dioxide emissions, approximately equivalent to the 10-million-ton reduction required in this bill, would yield only a 3-percent decrease in the number of acidic lakes in the Adirondacks, and no change in the percent of acidic mid-Atlantic highland streams.

These findings suggest that, at most, this bill should require no more than an 8-million-ton reduction in sulphur dioxide, and perhaps achieve this goal over a longer period simply by tightening new source performance standards on new facilities.

AIR TOXICS

The air toxics provisions in this legislation are by far the most expensive part of the bill. Over 150,000 businesses, some of them as small as the neighborhood dry cleaning establishment, will have to install state-of-the-art technology to control emissions of 189 chemicals by at least 90 percent. The legislation requires EPA to establish emission standards for cancer-causing chemicals without regard to toxicity or human exposure.

As Robert Crandall of the Brookings Institution explained, the debate over toxic air pollutants is remarkable given the small number of cancers thought to be caused by environmental exposures of all kinds. A 1981 study by two renowned epidemiologists from Oxford, Sir Richard Doll and Richard Petro, concluded that pollution accounted for only 2 percent of all cancers. EPA's own 1987 study, "Unfinished Business," concluded that hazardous air pollutants are responsibile for between 0.2 and 0.4 percent of all cancers.

How many cancer deaths will the Clean Air Act amendments prevent? Paul Portney of Resources for the Future reviewed this EPA data and concluded that "500 cases is probably a generous estimate of the reduced cancer risk associated with the emissions controls." EPA data indicates, moreover, that emissions of hazardous air pollutants are declining under current law. According to the EPA's toxics release inventory, toxic air emissions fell more than 6 percent between 1987 and 1988—a total decline of 148.4 million pounds.

In addition, EPA recently negotiated reductions in toxic air emissions totaling 9.5 million pounds per year from the 40 worst emitting plants in the country. These actions will reduce overall emissions from these plants by 83 percent by 1993. Thus, it appears that there will be similar continued progress in this area with no new Federal legislation.

PERMITS

For the first time, this legislation will require approximately 150,000 businesses to obtain operating permits from EPA officials. In addition to a $25 per ton emission fee, businesses will need to purchase and install monitoring equipment at an additional cost of $50,000 to $200,000.

According to a study by CONSAD Research Corp., the permitting requirements in this bill will cost $10 billion annually to implement and will result in the direct loss of 350,000 jobs. This estimate is in addition to the $50 billion estimate for the other titles of the bill and does not include computer hardware costs and the salaries of employees to operate the monitoring systems.

In addition, the citizen suit provisions in this title will enable environmental activists to delay many industrial projects and will further erode the competitiveness of American industry.

THE WISE AMENDMENT

Another startling precedent established in this bill is the revised Wise amendment adopted by the conferees. This would establish a new $250 million program to provide job training and weekly benefit payments to workers who lose their jobs as a consequence of the Clean Air Act.

The problem identified in the Wise amendment applies equally to workers who lose their jobs as a consequence of other Federal policies. This amendment represents the proverbial camel's nose under the tent. If the economic consequences of this bill prove to be as dire as most economists predict, eligible unemployed workers will quickly deplete the annual $50 million authorization and pressure will grow on the Congress to expand the scope of this program, perhaps by transforming it into an entitlement.

Finally, we should not be creating new Federal programs in these harsh budgetary times.

EFFECT ON LOW-INCOME HOUSEHOLDS

If any part of America can be said to be a laboratory for clean air legislation, it is my home area of southern California, known as the south coast basin, which includes Los Angeles, Orange, Riverside, and San Bernardino Counties. Confronted with the worst urban smog problem in America, the South Coast Air Quality Management District has proposed the most ambitious air pollution control plan in our Nation's history. It is instructive, then, to review the first comprehensive assessment of the plan's estimated impact on low- and middle-income households.

The results indicate that this legislation will place an enormous economic burden on the families least able to shoulder it. EPA Administrator Reilly has observed that environmental issues have never ranked high on the agenda of the economically disadvantaged. This is indeed unfortunate because there is every reason to believe that the legislation before us today will further ensnare low-income families in the so-called poverty trap.

Conducted by National Economic Research Associates [NERA], the study concludes that the total economic benefit of the plan is $2.9 billion, or about $600 per year for each of the south coast basin's 4.8 million households while the cost of the plan is $12.8 billion, or $2,700 per household per year. Significantly, NERA found that low-income households will pay the greatest share of the compliance costs under the plan. The following table contains their findings:

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT PLAN

[Cost burden as a pecent of income]

Income	Percent
$7,500	17.7
$15,000	10.6
$25,000	8.7
$35,000	7.0
$50,000	6.3
$75,000	5.7
Over $75,000	6.1

This is the first indepth study of which I am aware that quantifies the effects of the Clean

Air Act on households by income. To further underscore this point, the California Trucking Association [CTA] has examined this legislation and believes that the proposed Clean Air Act Amendments will economically devastate minority truck drivers and their families in California. The CTA estimates that 72 percent of minority truck drivers, who earn an average wage of $12.31 per hour, will lose their jobs as a result of this legislation.

THE ENVIRONMENTAL PARTY

As my above comments indicate, there are many losers in this legislation—American industry, American consumers, and low-income households, for example—but the biggest winner is the environmental party. It is my contention that the organizations that comprise the environmental party represent the most potent political force in American politics today. The combined political clout of these organizations is so profound that many members of Congress will vote for this bill today, even though they privately harbor grave doubts about the merits of its provisions.

How powerful is the environmental party?

Six political organizations comprise the base of our two party political system. Three organizations are controlled by Democrats: Democratic National Committee [DNC], Democratic Congressional Campaign Committee [DCCC], and the Democratic Senatorial Campaign Committee [DSCC]. Three are controlled by Republicans: Republican National Committee [RNC], National Republican Congressional Committee [NRCC], and the Republican Senatorial Committee [RSC].

Data from the Federal Elections Commission [FEC] reveal that the Republican organizations accepted total contributions of $71.1 million in calendar year 1989. Democrat organizations took in $18.6 million in the same year. The donor base for Republicans is 1,881,260, while the donor base for Democrats is not available—but, if we extrapolate, the Democrats could have a donor base of about 489,128. Thus, both parties took in $89.7 million and have an approximate donor base of 2,370,388.

Now consider the environmental party.

Twelve organizations comprise the base of support for the environmental party: Center for Marine Conservation, Clean Water Action Project, Environmental Defense Fund, Greenpeace, USA, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, the Nature Conservancy, Public Interest Research Group, Sierra Club, the Wilderness Society, and World Wildlife Fund.

All told, the environmental party has an operating budget of $336.3 million, 1988 and a donor base of 12,959,000. That's nearly $250 million more than the Republican and Democrat parties combined and a donor base of some 10 million persons more.

The environmental party is an awesome new dimension in American politics. And today they will have won a stunning victory, purportedly on behalf of the environment but actually at the expense of most American businesses and consumers.

I urge my colleagues to oppose this bill.

Mr. Speaker, I would like at this time to insert the following materials into the RECORD which relate to the legislation before us today. These are studies and scholarly articles assessing the various provisions in the Clean Air Act, especially with respect to the projected cost of this bill relative to its expected environmental benefits.

These studies include:

The administration's latest cost estimate of the House and Senate bills, dated September 25, 1990.

A study by Paul Portney of Resources for the Future, "Economics and the Clean Air Act" (1990).

A study by Bretton Sciaroni, "The Cost of Clean Air," dated September 26, 1990, and published by Citizens Against Government Waste.

Robert W. Crandall's article "The Clean Air Act at Twenty," which appeared in the September 1990 issue of the Journal of Regulation and Social Costs.

The statement of James R. Mahoney, director of the National Acid Precipitation Assessment Program, before the final NAPAP task force meeting at the National Academy of Sciences on September 5, 1990.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS,
Washington, DC, September 25, 1990.

Enclosed is a copy of the Administration's latest analysis, prepared by an interagency group led by CEA, of the costs of the House and Senate Clean Air Act bills. A copy of this document was sent to Chairman Dingell last Friday in response to his specific request. Since our analysis is relevant to the decisions facing the conference, we are sending copies to all conferees.

Sincerely,

MICHAEL J. BOSKIN.

Enclosure.

ESTIMATED DIRECT COSTS OF CLEAN AIR PROPOSALS

The Administration's estimates of the costs of the Administration, Senate, and House Clean Air Act amendments in the years 1995 and 2005 are shown in the attached Cost Summary table. These estimates cover only direct costs and assume the availability of only current technology. They do not cover private sector administrative and legal costs, which could be quite substantial but are extremely difficult to estimate quantitatively, or transfer payments to persons and other provisions with potentially significant budgetary impact. All estimates are in 1989 dollars except for estimated costs of acid rain provisions. (See footnote 1 to the Cost Summary table.) Substantial uncertainty inevitably attaches to any cost estimates of this sort.

Both House and Senate bills have significantly higher direct costs than the Administration proposal in both 1995 and 2005. Because some House provisions are significantly more costly and some are significantly less costly than their Senate counterparts, the conference can raise or lower total direct cost substantially, depending on which provisions it selects from each bill.

The 1995 direct costs shown for the Administration proposal are slightly above the January 23 projections due to upward revisions in air toxics cost estimates. Year 1995 direct costs for the Senate and House bills are more than 60 percent greater than Administration bill costs, due mainly to tighter tailpipe standards and requirements for reformulated gasoline and oxygenated fuels. (The dollar differences are of course smaller than in 2005, since the bills' provisions phase in over time.)

The oxygenated and reformulated fuels requirements added by the House and Senate pose particular problems. Unlike most provisions, the fuels requirements take effect in either 1991 or 1992—almost immediately. Given prevailing lead times for plant construction, these provisions pose a real threat of disruption in fuel markets by requiring producers to attempt to squeeze oxygenate out of existing uses temporarily. It may simply be impossible to meet these requirements. Both bills give EPA the ability to delay their onset if it finds that fuel markets would be disrupted. If for any reason EPA is unable to do this, we estimate that direct costs of the House and Senate fuels provision would average at least $3 billion annually between 1992 and 1994, and retail gasoline prices would rise by considerably more than our long-run cost estimate of between 6 and 7 cents per gallon.

The estimated year 2005 direct costs of the Administration proposal have increased modestly since January 23, due to upward revisions in air toxics cost estimates, which are partially offset by downward revisions in ozone nonattainment cost estimates. The Senate and House bills are both more costly—by about 30 percent—than the Administration proposal. Taking the most costly features from each of these bills, and adding the costs of the Tier III tailpipe standards, could result in a total annual phased-in cost exceeding $35 billion.

The year 2005 Senate estimate does not include the additional $5.6 billion direct cost (over and above the cost of the Senate cold-start CO provision) of Tier II tailpipe standards for hydrocarbons and NOx, which are mandatory if 12 or more of the 27 serious nonattainment areas outside California exceed the ozone standard for any 4 days during the 3-year period beginning in January 1999. If the other nonattainment provisions do not bring these areas into attainment as projected, the Senate bill will become almost 70 percent more expensive than the Administration proposal.

Taken together, the year 1995 and 2005 direct cost estimates show a significant movement of the costs of clean air legislation toward the immediate future—and thus an increase in the present value of those costs that is not fully captured here.

Though we have devoted considerable effort to analysis of air toxics control costs, the estimates reported here are still somewhat rough. Considerable uncertainty attaches to these estimates.

As noted above, our estimates for all titles encompass direct control costs only and do not include the likely substantial costs to the private sector of navigating the regulatory process. The nonattainment provisions of the House bill, which extend coverage to many smaller pollution sources, are even more onerous than the Senate provisions in terms of the private sector regulatory burden.

The reduction in Senate acid rain direct costs reflects the use of earlier starting dates, which allows for smaller emissions reductions and emissions reduction costs in 2005 without reducing either lifecycle costs or emissions reductions from the Administration program.

Finally, our cost estimates do not explicitly reflect transfer payments to individuals or other provisions with potentially significant budget implications. For example, under the House version of the acid rain title, three plants that supply electricity exclusively to DOE uranium enrichment facilities are allocated significantly fewer emis-

sions allowances than other comparable plants. The resulting extra costs of over $100 million annually in Phase I will be passed through to DOE, which may be unable to pass these costs fully through to its own customers. The House labor protection provision provides for payments to workers who claim to be impacted by tighter environmental requirements. While the initial authorization request is modest, similarly structured programs have, in the recent past, quickly grown to multi-billion dollar proportions.

More detailed summaries of the direct cost estimates (by title) for the Administration, Senate Compromise, Senate bill, and House bill are attached. Tables 1 and 2 present a list of major changes in provisions and associated direct costs for years 1995 and 2005. Tables 3 and 4 summarize in more detail that changes in year 2005 direct costs for the Senate and House bills relative to the Administration bill. Table 5 presents a detailed account of the year 2005 nonattainment title direct costs for each bill. As noted above, these estimates include only direct costs; they do not cover the potentially substantial (but almost impossible to estimate quantitatively) private sector costs of coping with the regulatory system, transfer payments to persons, and budget implications. Actual direct costs could, of course, be above or below these estimates.

CLEAN AIR ACT AMENDMENTS: COST SUMMARY

[Billions of 1989 dollars]

	Administration proposal		Senate comp.	Senate bill	House bill
	Jan. 23 est.	Rev. est.			
Year (1995):					
Nonattainment	5.2	5.2	7.0	7.0	6.8
Acid rain	.4	.4	.8	.8	.8
Air toxics	1.0	1.1	1.1	1.1	1.1
Oxy fuels and reform gas	.2	.2	[2] 1.3	2.9	3.2
Total	6.8	6.9	10.2	11.8	11.9
Year (2005):					
Nonattainment	10.1	[3] 9.5	[4] 11.4	[4] 14.7	[4] 13.4
Acid rain	4.1	4.1	3.9	[5] 3.9	4.3
Air toxics	4.7	5.9	6.7	6.7	7.5
Other [6]	0	0	0	.1	.2
Total	18.9	19.5	22.0	25.4	25.4

[1] Acid rain costs are in 1988 dollars to maintain consistency with January 23 EPA Cost Comparison and subsequent acid rain reports. In 1990 (second quarter) dollars, acid rain costs would be about 8 percent higher than the figures above, and other costs would be about 4 percent higher. These estimates are of direct costs only and do not include potentially substantial private sector administrative and legal costs.

[2] Estimate counts oxy fuels for CO nonattainment areas, but not reformulated gas for ozone areas, as part of the compromise. Alternatively, both provisions could be viewed as outside the compromise.

[3] Revised estimate takes into account reduction of progress requirement costs by $545 million due to NOx reductions and $100 million correction for basic I/M.

[4] Reformulated gasoline and oxygenated fuels costs (oxy fuels only for Senate compromise) are included nonattainment costs. Senate and House fuels provisions cost $1.8 billion and $2.9 billion respectively in 2005. House costs are for statutory recipe; flexibility provisions may allow for somewhat lower costs.

[5] Reduction from the Administration estimate reflects one year earlier start of program which spreads cost over longer interval. There is no reduction in program lifecycle cost.

[6] Includes visibility and miscellaneous provisions.

TABLE 1.—CLEAN AIR COST ESTIMATES: MAJOR CHANGES ($200 MILLION OR MORE) IN YEAR 1995 [1]

[Millions of 1989 dollars]

I. Revisions to estimate for original administration bill: Air Toxics (MACT and area sources)	+$100
II. Changes from administration bill to Senate compromise:	
Tailpipe-extended useful life	+300
NO_x tailpipe	+1,300
Oxygenated fuels	+1,272
Ozone transport region controls	+340
III. Changes from Senate compromise to final Senate: Reformulated gas	+1,588
IV. Changes from administration bill to House bill:	
Alternative fuels	+260
NO_x tailpipe	+1,300
Oxygenated fuels	+1,505
Reformulated gas	+1,730
NO_x stationary controls	+200
New CTG's	+200

[1] These estimates are of direct costs only and do not include potentially substantial private sector administrative and legal costs. See footnote 1 to Cost Summary table.

TABLE 2.—CLEAN AIR COST ESTIMATES: MAJOR CHANGES ($200 MILLION OR MORE) IN YEAR 2005 [1]

[Millions of 1989 dollars]

I. Revisions to estimate for original administration bill:	
NO_x offsets progress requirements	−$545
Air toxics (MACT, area sources, and residual risk)	+1,175
II. Changes from administration bill to Senate compromise:	
Tailpipe/extended useful life	+240
NO_x Tailpipe	+1,300
Oxygenated fuels (CO nonattainment areas)	+340
Ozone transport region controls	+340
Residual risk	+500
Progress requirements	−640
NO_x offset progress requirements	−600
Acid rain (lower 2005 emissions reductions plus scrubbing inducements)	−209
III. Changes from Senate compromise to final Senate:	
Cold temperature CO	+2,300
Reformulated gas	+1,265
IV. Changes from administration bill to House bill:	
Tailpipe/extended useful life	+240
Commercial and consumer solvents	+770
Alternative fuels	+260
NO_x tailpipe	+1,300
Oxygenated fuels	+390
Reformulated gas	+2,290
NO_x stationary controls	+200
New CTG's	+200
Mobile source toxics	+1,100
Residual risk	+300
Acid rain (NO_x controls, scrubbing inducements)	+300
Progress requirements	−1,400
NO_x offset progress requirements	−650

[1] These estimates are of direct costs only and do not include potentially substantial private sector administrative and legal costs. See footnote 1 to Cost Summary table.

TABLE 3.—SENATE BILL COST ESTIMATE—YEAR 2005 CHANGES FROM ADMINISTRATION BILL [1]

[Billions of 1989 dollars]

Nonattainment:	
Original administration (revised)	$9.5
Motor vehicle/fuels:	
Tailpipe/extended useful life	.240
Oxygenated fuels	.340
Onboard	.180
Alt. fuels fleets	.110
NO_x tailpipe	1.326
Cold-start CO	2.266
Reformulated Gas	1.265
Other:	
RACT to 50 tpy	.034
New CTG	.100
Enhanced I/M	.023
NO_x stationary (non-utility)	.150
Transport regions	.340
Progress—identifiable	−.140
Progress—assumed	−405
Progress offsets (NO_x)	−.600
Progress offsets (reformulated)	−.095
Senate nonattainment estimate	14.7
Acid rain:	
Original administration	4.1
Lower emissions reductions in 2005	−.3
Scrubbing inducements and other	+.1
Air toxics:	
Original administration (revised)	5.9
MACT for 100 percent of major sources	.1
Accidental releases	.2
Residual risk	.5
Senate air toxics estimate	6.7
Other:	
Original administration	0
Miscellaneous provisions	.1
Senate bill total estimate	25.4

[1] These estimates are of direct costs only and do not include potentially substantial private sector administrative and local costs. See footnote 1 to Cost Summry table.

TABLE 4.—HOUSE BILL COST ESTIMATE—YEAR 2005 CHANGES FROM ADMINISTRATION BILL [1]

[Billions of 1989 dollars]

Nonattainment:	
Original administration (revised)	$9.5
Motor vehicles/fuels:	
Tailpipe/extended useful	.240
Alternative fuels	.260
No_x tailpipe	1.326
Oxygenated fuels	.390
Reformulated gas	2.290
Other:	
RACT to 50 tpy	.053
Transport regions	.180
New CTG	.190
Basic I/M	.070
Enhanced I/M	.013
NO_x stationary (non-utility)	.206
Commercial and Consumer Solvents	.770
Progress—identifiable	−.199
Progress—assumed	−1.200
Progress offsets	−.700
House nonattainment estimate	13.4
Acid rain:	
Original administration	4.1
Additional NO_x reduction requirement (met with extra SO_2 reductions)	.2
House acid rain estimate	4.3
Air toxics:	
Original administration (revised)	5.9
Mobile source toxics (title II)	1.1
MACT for 100 percent of major sources	.1
Accidental releases	.2
Delisting ammonia	−.1
Residual risk	.3
House air toxics estimate	7.5
Other:	
Original administration	0
Visibility	.150
Other miscellaneous	.100
House "other" estimate	.2
House bill total estimate	25.4

[1] These estimates are of direct costs only and do not include potentially substantial private sector administrative and legal costs. See footnote 1 to Cost Summary table.

TABLE 5.—ESTIMATED NONATTAINMENT COSTS IN 2005 [1]

[Millions of 1989 dollars]

Provision	Administration	Senate compromise	Senate bill	House bill
Stationary:				
TSDF	$1,800	$1,800	$1,800	$1,800
Municipal landfills	69	69	69	69
Consumer/commercial solvents	430	430	430	1,200
Architectural coatings	0	0	0	0
Marine vessels	51	51	51	51
	2,350	2,350	2,350	3,120
Motor vehicles/fuels:				
RVP II	280	280	280	280
Evap. and running losses	68	68	68	68
Tailpipe extended useful life	510	750	750	610
Stage II and onboard	160	340	340	140
Alt fuels—fleets	0	110	110	350
Alt fuels—non fleets	0	0	0	0
Reformulated	0	0	1,265	2,290
Mobile NO_x	415	1,741	1,741	1,741
Oxygenated fuels	200	540	540	590
Cold CO	128	128	2,394	128
	1,761	3,957	7,488	6,197
Area specific:				
RACT to 50 tpy	0	34	34	53
New CTG	420	520	520	610
Enhanced IM	87	110	110	100
Basic IM	0	0	0	70
Ozone transport	0	340	340	200
NO_x stationary (non-utility)	0	150	150	206
	507	1,154	1,154	1,239
Progress requirements:				
Identifiable controls	250	110	110	51
Assumed controls	4,900	4,495	4,305	3,700

TABLE 5.—ESTIMATED NONATTAINMENT COSTS IN 2005 [1]—Continued

[Millions of 1989 dollars]

Provision	Administration	Senate compromise	Senate bill	House bill
Offsets—reformulated	0	0	95	0
Offsets—NO_x	−545	−1,115	−1,115	−1,195
	4,605	3,490	3,395	2,556
Fees	300	380	300	300
Total estimate (dollars in billions)	9.5	11.3	14.7	13.4

[1] These estimates are of direct costs only and do not include potentially substantial private sector administrative and legal costs. See footnote 1 to Cost Summary table.

Economics and the Clean Air Act

(By Paul R. Portney)

RESOURCES FOR THE FUTURE

Arguably the nation's most important environmental statute, the Clean Air Act is sure to be amended by the 101st Congress. In neither its current nor its likely new form does the Act feature much of a role for economic considerations. In fact, one approach that many economists would presumably favor—the balancing of benefits and costs in setting air quality or source discharge standards—has been found by courts to be inconsistent with the law (*Lead Industries Association v. EPA* (1980)). Here I describe the likely changes in the Clean Air Act and what is known (and, more often, not known) about their associated costs and benefits, and identify respects in which air quality regulation could be improved from an economic perspective.

The Changing Face of Air Pollution Control

About $90 billion is spent each year in the United States to comply with federal environmental regulations (Environmental Protection Agency (1990b)). Of this amount, approximately $30 billion is required by the Clean Air Act, about $30 billion by the Clean Air Act, and the remaining $30 billion by a variety of statutes concerned with solid and hazardous wastes; pesticides, herbicides, and fungicides; drinking water contaminants; and the manufacture and use of potentially toxic chemicals. As explained in more detail below, the Clean Air Act amendments may—when fully implemented in ten to fifteen years—more than $30 billion (in current dollars) to annual compliance expenditures.[1] Thus, they will more than double current annual spending for air pollution control in the U.S., and produce important benefits, as well.

The proposed changes have three major components. First, to curb "acid rain," electric utilities will be forced to reduce their cumulative annual emissions of sulfur dioxide (SO_2) by 10 million tons per year from 1980 levels, after which emissions will be capped at the new, lower level. This is to be accomplished in two phases, the first to be completed by the mid-1990s, the second by the year 2000. They must also reduce nitrogen oxide emissions by about 2 million tons annually.

Second, in response to slow progress in conquering smog and other urban air quality problems, a variety of additional control measures will be required of factories and other so-called stationary sources, and tighter emissions standards will be established for cars, trucks, and buses. Third, all major sources of what are called hazardous air pollutants—those substances capable of causing cancer or other illnesses—will be required to install new pollution control equipment to be specified by the Environmental Protection Agency, and may have to take further control measures in the future.

I turn now to the costs and benefits associated with these three provisions.

ACID DEPOSITION

We have a better understanding of the expenditures required to control SO_2 emissions at coal-fired electric power plants than for any other source of air pollution. There exists a fairly accurate inventory of pollutant emissions for each of these plants, as well as a variety of models designed to predict pollution control expenditures as a function of the type and level of control required (Starobin (1990)). According to these models, affected utility sources will have to spend about $4 billion annually to comply with the acid rain provisions of the clean air amendments once the whole program is in place.

This total would have been much greater—for the same emissions reduction—had the President and congressional leaders not embraced an approach to pollution control long championed by economists. Namely, affected power plants will be allowed to meet their emissions reductions using any approach they choose, including purchasing "excess" emissions reductions from other sources willing to cut back by more than required in the legislation. Unless state governors or public utility commissions restrict this trading—which they will have the legal authority to do—the 10 million ton per year reduction will take place at those sources which can control SO_2 emissions most inexpensively. Had Congress instead required the adoption of flue-gas desulfurization equipment at existing plants, as it did in the 1977 amendments affecting all future powerplants, the acid rain provisions would have cost $2-3 billion more annually.[2]

The benefits of SO_2 control are much harder to pin down. The legislation was originally motivated by a concern that acid rain was rendering many lakes in New England and elsewhere incapable of supporting aquatic life, was threatening forest and agricultural productivity, and was damaging statuary and other exposed materials. To assess the seriousness of these problems, in 1980 the federal government launched the National Acid Precipitation Assessment Program (or NAPAP), a ten-year, $500 million research effort.

The NAPAP program has produced some unexpected conclusions (NAPAP (1990)). First, surveys show that the percentage of lakes that are acidified is less than first feared—about 14 percent in the Adirondacks, 23 percent in Florida, and less than 5 percent in other regions. Moreover, it is unclear the extent to which these problems are due to power plant emissions. Second, research suggests that acid rain is having virtually no effect of agricultural output, and that its effects on forests are limited to mountaintops in the northeastern United States. Finally, the NAPAP report concludes that while acid rain is responsible for some damage to exposed materials, reliable estimates of nationwide damages are not yet available.

Controlling power plant emissions is also expected to reduce airborne concentrations of sulfate particles by about 40 percent in the eastern U.S. Experts believe these particles are among the more harmful air pollutants from the standpoint of human health (Lippman (1990)). SO_2 control may reduce sulfate-related morbidity and possibly even premature mortality, although there is little consensus about the magnitude of such effects.[3] Also, sulfate particles are a cause of poor visibility, and several studies have reported large aesthetic benefits to visibility improvement (Tolley and Fabian (1988)). Taking all these factors into account, I hazard the guess that the benefits from SO_2 control will be $2-8 billion annually.

URBAN AIR POLLUTION

Although it receives little attention, air quality has improved significantly in most U.S. cities over the last two decades. For example, airborne concentrations of lead and particulate matter, two of the more harmful pollutants, have fallen by 95 percent and 38 percent, respectively (Environmental Protection Agency (1990a)). Nevertheless, air quality in many metropolitan areas still falls short of the health-based standards set by EPA. To speed up progress, Congress is enacting a number of additional measures aimed mostly at the volatile organic compounds (VOCs) that help create smog. These measures include possible additional controls on petroleum refineries, chemical plants, and other large industrial facilities, and—for the first time—controls on many dry-cleaning establishments, auto paint shops, bakeries, and other so-called "area sources" of VOCs. In addition, the clean air amendments will mandate a new round of emissions reductions for all cars and light-duty trucks and require enhanced vehicle inspection and maintenance programs, as well as the installation of vapor recovery equipment on gasoline pumps, in moderately "dirty" metropolitan areas. In the most polluted areas, the amendments will additionally require plans to limit vehicle use, probably impose a second round of reductions in tailpipe emissions from cars, and implement a "clean fuels" program (which requires the use of reformulated gasoline, methanol, or ethanol).

No one has yet carefully estimated the annual compliance expenditures associated with these proposals. However, in 1989 the Office of Technology Assessment (OTA) surveyed a number of available measures to

[1] As shown by Kopp and Hazilla (1990), environmental compliance expenditures are not identical to the social costs of pollution control. Ideally, the latter should be measured by the aggregate compensation required to "make whole" all individuals suffering utility losses as a result of environmental regulation (from job losses, higher prices, reductions in product quality and so on). The two measures will be equal only under conditions unlikely to obtain in reality. Nevertheless, there is a close connection between them, and compliance expenditures are often compared to benefits for seat-of-the-pants program evaluation; this is the approach taken here.

[2] As Ackerman and Hassler (1981) point out, Congress took this forced-technology approach in 1977 to protect the jobs of high sulfur coal miners. The new amendments may contain a provision to assist coal miners and other workers who lose their jobs as a result of new air pollution controls.

[3] As Lipfert, Morris and Wyzga (1989) point out, some epidemiological studies have found statistically significant links between ambient sulfate concentrations and premature mortality; however, these findings are often quite sensitive to model specification, thus calling into question the size (or even the existence) of this effect. In its 1984 review of the potential benefits of controlling sulfates and other praticles, the Office of Technology Assessment concluded that, ". . . this pollutant mix [small particles including sulfates] could be responsible for about 50,000 premature deaths per year . . ." See OTA (1984).

reduce urban smog (OTA (1989)). The options OTA examined are very similar to those likely to be adopted under the new clean air proposals and thus provide valuable information about possible new compliance expenditures.

According to OTA, the control measures examined would cost the nation $9-12 billion annually when fully implemented by 2004. However, OTA did not include several measures contained in the proposed clean air amendments, like the second round of motor vehicle emissions controls sure to be required for model year 2004. The cost of this add-on is quite uncertain, with estimates ranging from $100-600 per vehicle. Splitting the difference, this will add about $5 billion to the annual cost of the urban air quality measures. Nor did OTA consider an alternate fuels provision of the sort Congress seems sure to pass. This will add another $3 billion or so to annual compliance expenditures. Finally, under the new legislation, costs will be incurred for the control of other air pollutants besides VOCs that OTA did not consider—notably, fine particulates and carbon monoxide. These controls, too, will add to annual pollution control expenditures. All things considered, these urban air quality provisions seem likely to add $19-22 billion annually to air pollution control costs by the year 2005.

As part of its 1989 study, the OTA also commissioned an analysis of the economic benefits that would accompany the control measures it examined (Krupnick and Kopp (1989)). By design, this analysis looked only at acute health effects and the deleterious effect of ozone on agricultural output. To estimate health benefits, the most defensible clinical and epidemiological studies were used to make predictions of the reduced incidence of asthma attacks, chest pain, and other adverse health effects that would accompany reduced ozone concentrations. These effects were the monetized using the results of surveys eliciting individuals' willingness to pay for reduced likelihood of specific symptoms and illnesses, resulting in annual health benefits ranging from $0.5 to $4.0 billion. Agricultural benefits were estimated in a somewhat analogous fashion: assumptions about reduced ozone concentrations were used to make predictions about increases in output for specific field crops; yield increases were then valued using market prices for each crop, resulting in agricultural benefits of $1 billion annually.

Of course, other benefits are also possible. Because there is no convincing epidemiological evidence linking prolonged exposures to ozone to chronic respiratory disease, no benefits of this sort were included. If such a link is demonstrated, benefits might be substantially larger. Nor did the OTA benefit study include possible reductions in damage to forests or materials; this imparts a downward bias to the estimate. Also, reduced VOC emissions may improve visibility; this effect was also ignored in the benefit estimate. Controlling VOCs from mobile sources will reduce ambient concentrations of benzene, butadiene, and other carcinogens, so that some reduction in cancer may result. Finally, the cost estimate above ($19-22 billion per annum) includes added controls on particulate matter. These will produce benefits not included in the OTA study. Taking all these things into account, the benefits associated with the urban air quality provisions should fall in the range of $4-12 billion per year.

HAZARDOUS AIR POLLUTANTS

By far the least well understood part of the impending changes in air quality regulation pertains to added controls on sources of hazardous air pollutants. In response to the slow pace of regulation to date (only seven substances have been regulated in 20 years), Congress will require the adoption of the "maximum available control technology" (or MACT) for all major sources of about 190 chemicals and compounds. The controls required for a particular kind of plant are to be identical regardless of its location or the size of the affected local population. A second round of controls aimed at residual risk—that remaining after the adoption of MACT—may also be required, as well.

Little is known about the compliance cost associated with this set of provisions because it will depend on the control technologies that EPA specifies as the maximum achievable. The Bush administration estimated that these technological requirements would cost about $3 billion annually, but this was for only a subset of all the sources now likely to be regulated. More pessimistic analyses conducted for industry groups put the costs of the MACT and residual risk provisions in the range of $14-62 billion per year (Denny Associates (1990)). An educated guess here—and it is no more than that—is that when fully implemented, spending for technological controls on hazardous air pollutants will fall in the range of $6-10 billion per year.

What will these controls buy? According to EPA, the 100 or so most prominent hazardous air pollutants may be responsible for as many as 1,700-2,700 additional cancer cases per year (EPA 1989)). Of these, only 20 percent were associated with the large stationary sources installing controls. Coupled with the fact that EPA's risk assessment methodology is designed to overestimate risk far more often than it underestimates it, 500 cases is probably a generous estimate of the reduced cancer risk associated with the emissions controls.[4]

Recent hedonic wage studies yield an implicit value of a "statistical life" of about $3 million (Fisher, Chestnut and Violette (1989)). If the regulations actually prevent 500 cancers, and if all would result in death, benefits would amount to $1.5 billion annually. In addition, some non-cancer health benefits may accompany the controls, although these are even more difficult to quantify.[5]

On the other hand, the average age of the individuals on whom the hedonic studies are based is about 40 years, and the mortality risks posed by the occupations in which they work are generally immediate. Thus, on average, 35 life years would be lost due to premature mortality among these individuals, and this clearly affects the risk premia they require. However, the average number of life years lost due to pulmonary disease (such as lung cancer) is about 12. This suggests that $1.5 billion might overestimate the true health benefits of hazardous air pollution control. Taking all these factors into account, I put the benefits of controlling hazardous air pollutants at $0-4 billion annually (the lower bound is zero because it is possible that no cancers will be prevented by the legislation).

Summary and Recommendations

By the year 2005 or so, the U.S. may be spending $29-36 billion more each year on air pollution control than it is today. Annual benefits of the proposed changes probably range from $6-25 billion ($2-9 billion for acid rain, $4-12 billion for urban air quality, and $0-4 billion for hazardous air pollutants). I would speculate that the most likely value is about $14 billion or so ($5 billion for acid rain, $8 billion for urban air quality and no more than $1 billion for air toxics). Blodgett (1990) recently reviewed air pollution benefit studies and concluded that ". . . attaining the goals of the [amended] Clean Air Act would yield benefits valued at $16 billion dollars per year, or more."

If these estimates are even close to correct, Congress and the President are about to shake hands on a landmark piece of environmental law for which costs may exceed benefits by a considerable margin. Why is this so?

To repeat, the costs of the proposed new air quality controls have been little analyzed and even the preliminary results have not been accessible to the public. If it were more widely appreciated that, when fully implemented, the clean air amendments may cost each U.S. household $300-400 per year, perhaps opposition would be sharper. In addition, the likely benefits of the progress may be misperceived. For example, the public may feel that cancer will be materially affected by the impending regulations, even though the analysis above suggests otherwise.

A more positive explanation is possible, of course. Many proponents believe that regulation-induced innovation will cause pollution control costs to fall over time. Also, some argue that individual attach higher values or reduced health and ecological risks than those used above; if so, benefits could exceed my estimates. While I believe the former set of explanations is more likely than the latter, one certainly cannot rule out a more favorable benefit-cost ratio than that projected here.

Putting aside this question for the moment, consider the means by which our air quality goals are pursued. The cost-effectiveness of the clean air legislation could be improved substantially.

First, the marketable permit approach embodied in the acid rain portion of the legislation should be extended to the urban air quality and hazardous air pollution portions of the law. Study after study has shown great disparities in control costs between air pollution sources (Tietenberg (1985)). While there exists some flexibility in the proposed amendments, sources of VOCs should be given the full range of opportunities for cost-effective pollution control, as are sources of SO_2. The potential cost savings are difficult to predict but they may be in the billions annually.

Second, in several respects the clean air legislation described above takes a broad national approach even though serious urban air quality problems are limited to a dozen or so cities, and even though only a relatively small number of sources of hazardous air pollutants pose unacceptably high risks to nearby populations. By targeting control efforts more effectively, we can capture most of the benefits of the broader, scattergun approach at a fraction of the costs (Nichols

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[4] Using a different approach to estimate reduced cancer incidence, Graham and Gray (1990) arrive at a similar figure.

[5] One might argue that prevention of cancer deaths should be valued more highly than deaths due to other causes because of the lengthy morbidity that often precedes it, and because the risks are involuntarily borne.

(1984)). Analyzing this possibility would be worth the time and effort required.

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THE COST OF CLEAN AIR

(By Bretton G. Sciaroni)

I. INTRODUCTION

The 1990 amendments to the Clean Air Act, the most significant environmental legislation since 1977, have been a long time coming. Although new legislation was first discussed during the Reagan Administration, it was not until June 12, 1989 that the Bush Administration proposed the first major revisions of the Clean Air Act.

The administration recommendations address a number of environmental concerns, and proposed both national permits and enforcement programs. Among the environmental problems to be curbed by the legislation are:

Acid Rain: In order to combat acid rain, sulfur dioxide emissions emanating from electric utilities are to be reduced by 10 million tons annually from 1980 levels. In addition, nitrogen oxide levels are to be reduced by two million tons per year.

Urban Air Pollution: The new legislation will establish and enforce standards for ozone and carbon monoxide to be reached in U.S. cities by the year 2000. Control measures will be imposed on factories and other stationary sources, and more restrictive emissions standards will be required for cars, trucks, and buses.

Air Toxics: Provisions in the proposed legislation establish a process to employ the best technology currently available to achieve an estimated near term reduction of 75 to 90 percent in toxic pollutants believed to cause cancer and other health problems.

By mid-1990, both house of Congress had passed versions of the act, which have yet to be reconciled. However, the bill is deficient in a number of significant aspects. Provisions in the House and Senate versions of the legislation could be as much as five times as expensive as the original administration proposal. It is unclear that benefits will outweigh the direct costs of the legislation. Indeed, where estimates can be calculated, it is apparent that the direct costs will be far greater than benefits to be derived from the programs. Moreover, there are indirect costs and unintended consequences associated with these programs that have not been calculated. Finally, the proposed legislation is both complex and rigid, and will serve to further the growth of the environmental bureaucracy in the federal government. Because of concerns about the current legislation, there is a threat of a presidential veto.

II. MAJOR PROBLEMS WITH THE CLEAN AIR ACT

A. Excessive Cost

A major criticism of the current Clean Air Act concerns its direct and indirect economic consequences. Briefly, the argument is that the costs of the legislation, with its deleterious impact on the economy, is not offset by the benefits to the environment. This is not true of all of the provisions of the bill, which in many respects is well-balanced and features innovative, market-based solutions to environmental ills. However, besides the direct costs, among the indirect consequences of the legislation are lower productivity and consumption, loss of competitiveness, and unemployment.

The Bush Administration has stated from the beginning that any significant clean air legislation will result in economic dislocations, including reduction in real incomes and unemployment, it contends that the congressional versions of the bill will slow economic growth and prove costly to U.S. firms, workers and consumers. Indeed, a number of sections in both the House and Senate versions of the bills offer questionable environmental benefits, and are inordinately costly. An examination of the specific provisions of the clean air amendments indicates how costly the new legislation could be.

(1) Direct Costs

(i) Acid Rain Control: The goal of reducing 10 million tons per year of pollutant emissions from coal-fired electric power plants is estimated to cost from $4 billion to $10 billion per annum. The virtue of the approach adopted by both the Bush Administration and Congress is that power plant managers can accomplish the emissions reduction target by using any means they choose. This flexibility will allow them to determine the least expensive means, thus saving additional billions of dollars that would be passed along to consumers in higher prices for electricity. Nevetheless, the economic impact of this new law will be substantial. For instance, it has been estimated that the cost of electricity in the Middle Western states will be raised 20%.[1]

On the other hand, the benefits to be derived from the proposed acid rain control program are more difficult to assess. First, a recent study indicates that the dangers posed by acid rain may not be as great as originally thought. A ten-year study on acid rain, the National Acid Precipitation Program, concluded that the percentage of lakes effected were less than had been believed. Also, the fear that acid rain had a deleterious effect on agriculture produce could not be proven as its effects are primarily felt on the higher elevations of mountains in the northeastern part of the country. James Mahoney, the director of the 10 year, $600 million study, has stated that the clean air act's acid rain control provisions would have no measurable impact on the environment.[2] Other concerns associated with acid rain could either not be adequately assessed or were proven to be exaggerated.[3]

It is also believed that the reduction of power plant emissions will reduce the sulfate particles thought to be injurious to human health. Whether and the extent to which these particles are injurious to humans is a matter of some conjecture, and the lack of solid data has precluded any consensus on the particles' effect. In short, it is not known whether the benefits to be derived from the Clean Air Act's proposed controls on power plants will outweigh the costs.[4]

(ii) Urban Air Pollution: Despite the improvement in the quality of air in U.S. cities since the first Clean Air Act, the EPA considers air quality in many cities to be deficient.[5] In order to further arrest the emission of smog, the Clean Air Act includes additional measures including more controls on refineries, chemical plants, and other large industrial facilities. Most notably, there will be controls on smaller businesses heretofore unaffected by urban air pollution regulations. Included are dry-cleaning plants, auto paint shops, and even bakeries.

Another important provision of the new legislation will impose new requirements on cars and small trucks. For example, because it is believed that surface ozone and carbon monoxide levels have reached crisis proportions, new tailpipe emission standards will be imposed in order to reduce volatile organ-

[1]Footnotes at end of article.

ic compounds (VOC) and nitrogen oxide (NOx).

However, the new standards that auto manufacturers will be required to meet can only be justified by the current smog situation in Southern California. According to Kay Jones, former senior adviser for the Counicl on Environmental Quality, "Except for L.A., there is no ozone crisis in the United States. It is simply untrue that hundreds of millions of Americans are exposed to high ozone levels. the ozone problem in the Los Angeles basin is the worst in the nation and completely unlike that other areas face." In fact, according to Jones, U.S. urban air quality has improved under currently-mandated catalytic technology, cutting auto emissions in half since 1970. Moreover, current trends indicate that, "The majority of U.S. cities where ozone levels now exceed federal standards will likely come into attainment within five years without additional controls . . . outside of California, the health and safety risks are too insignificant to warrant that kind of draconian measure. We do not have to treat the nation as if it were Los Angeles." [6]

The cost of most of these proposals is not known. Furthermore, the Bush Administration has not attempted to analyze how much some of the provisions will cost. For example, the Council of Economic Advisers (CEA) did not hazard a guess about the cost of a key part of the Senate version of the bill that imposes a second phase of tailpipe controls if certain standards are not met. In addition, the CEA did not assign a cost to another provision that requires automobile manufacturers to install new equipment to prevent cars from emitting pollutants when started. It is believed that this provision will cost about $2 billion per year.[7]

However, in 1989, the Office of Technology Assessment (OTA) conducted a study concerning a number of smog control measures which approximate some of those included in the curent clean air proposals.[8] The OTA study estimated that the controls would cost $9-12 billion per year when fully implemented.[9] However, this estimate is surely low as the OTA study did not include a number of measures included in the legislation currently pending. For example, the so-called "phase-two" tailpipe standards, which were not included in the OTA study, would cost anywhere from $100 to $600 per vehicle.[10] Also, the OTA study did not include an alternate fuels provision. In addition, other pollutants were not considered in the 1989 report.[11] Altogether, the array of measures currently being considered will likely add over $20 billion per year to air pollution costs.

The OTA report also examined the benefits to be accrued by new urban air pollution standards. Health effects and agricultural output were considered as the two relevant benefits. Taking into consideration the benefits associated with the new requirements of the OTA study as well as those amendments likely to be added by Congress, the benefits of the new legislation could range from $4-12 billion per year.[12]

(iii) Hazardous Air Pollutants: The Clean Air Act will attempt to reduce the effect on humans of hazardous air pollutants. It does this by establishing primary and residual risk standards. Both standards set the acceptable level of health risk based on statistical data. The primary standard has been set at six cancer deaths per million, or 10(−6). However, after the primary standard is achieved, there is to be a second analysis regarding how to further reduce the level of acceptable health risk. This is known as the "residual risk."

The current approaches toward both primary and residual risks are unrealistic. First, we do not know enough about cancer risks and how to establish standards. For example, the EPA has established a standard exposure level of 24 hours per day, seven days a week. But, surely, this is an unrealistic standard as no person will have this amount of exposure to hazardous air pollutants. In fact, there is insufficient data to establish a baseline, and so it will be impossible to measure the effect on health after the legislation's implementation.[13]

Second, whatever risk standards are established, it is unlikely that they will be cost effective. Indeed, cost-benefits analysis might indicate that the money spent on technology to control hazardous air pollutants would be better spent on medical research to find a cure for cancer.[14]

In addition, legislation will require the acquisition of the "maximum available control technology" (MACT) for major sources of hazardous air pollutants.[15] The controls required of a certain type of plant must be the same for all plants of that type regardless of the particular circumstances at each plant's location. This requirement also makes estimating the cost of the amendment uncertain since it is not known what technologies will be mandated by the EPA.

Thus, the estimated cost to control hazardous air pollutants varies widely. The Bush Administration's estimate of $3 billion per year is certainly low as it did not consider all the sources likely to fall under the regulations. Some of those outside of the government have estimated that, if both the primary and residual programs are considered, the cost could range from $14-62 billion per year.

Given that the EPA overestimates risk, the benefits to be derived from this legislation will be minimal. The EPA estimates that 100 of the most serious hazardous air pollutants may cause 1,700-2,700 cancer cases per annum. Only one-fifth of these were blamed on the large stationary sources that will be required to have controls.[16] Therefore, no more than 500 cancer cases can be atrributed to this type of pollution. Based on this data, one estimate of the benefits to be derived from this legislation is $0-4 billion annually.[17]

(iv) Summary: Overall Cost: The estimate of the direct compliance costs of the clean air bills vary widely. The administration estimated that its proposal would impose direct costs of almost $20 billion annually. Both congressional bills are estimated to be more costly. The Bush Administration believes that the price tag of the two bills will be at least 25% higher. If the more costly features of the House and Senate versions of the bill are enacted, including the costs of the tailpipe standards automatically triggered under the Senate bill, the Bush Administration believes that it would result in a total cost of $35 billion annually.[18] Surprisingly, the Environmental Protection Agency (EPA) maintains that all three versions of the legislation afford similar levels of environmental benefits.

In light of the fact that the government tends to underestimate the cost of programs, others believe that the ultimate direct costs will be far greater than the above estimates. For example, a study issued by the Business Roundtable in January, 1990 estimated that the proposed clean air amendments could cost the economy as much as $104 billion a year.[19] A more recent review prepared for industry's Clean Air Working Group estimated a cost range from $51 to $91 billion per year, totals far above administration or congressional estimates.[20] The study concluded that the amendments "would be nearly twice the country's current rate of air pollution control expenditures and would be the most costly environmental legislation ever passed in the United States." [21]

Estimates of the benefits to be derived from the proposed legislation are also difficult to make. As has been mentioned, it is problematic to make such estimates with any degree of confidence.[22] Nevertheless, the Congressional Research Service of the Library of Congress reviewed the air pollution benefit studies and concluded that the Clean Air Act would have benefits of $16 per billion per year.[23]

Based on the above calculations, the conclusion reached by many observers is that, regardless of which version of the clean air act is adopted, the costs of the proposed legislation will far outweigh the benefits.

(2) Indirect Costs

There will also be indirect costs to the clean air legislation. Most prominently, real consumption and productivity will decline. As a consequence of its enactment, the labor required in order to reduce air pollution will not be available to produce consumer goods and services, and there will be a diminution of productivity with the diversion of capital investment to environmental safeguards and control technology.

Furthermore, the proposed legislation will reduce U.S. international competitiveness. The diversion of resources such as labor and investment necessary to fulfill the mandates of the Clean Air Act will hamper our ability to compete. For an economy already deficient in skilled labor and having a lower rate of investment in productive capital in comparison to other major industrialized nations, the clean air requirements will act as a further impediment to U.S. global competitiveness. In part, this is because the new regulations and permitting procedures will increase the time required to create new products or production facilities. In fact, the costs associated with the new demands of pollution control may cause some industries to move offshore.

Finally, whichever version of the clean air bill is passed, there will be unemployment as a consequence. Even though the U.S. labor market is thought to be flexible, clean air legislation will have a negative effect and perhaps lasting impact on employment. Workers in certain occupational categories may face prolonged unemployment or considerable real income loss.

The prospect of industry moving offshore and the resultant unemployment has given the EPA little pause. For example, in 1989 Rep. John Dingell, Chairman of the House Committee on Energy and Commerce, initiated a General Accounting Office investigation concerning wood furniture plant closings in Southern California and the movement of those plants to Mexico because of the restrictions contained in the original Clean Air Act. Rep. Dingell requested that EPA also investigate this matter. However, the EPA declined to do so, stating its belief that the decline in employment in certain sectors of the economy, "will be largely offset by new jobs in the pollution control and services industry." Rep. Dingell responded to this assertion by questioning the indirect costs of such movements of industry offshore and even whether it is true that

the jobs are offset. According to Dingell, the EPA "fails to recognize or discuss the social impact of job loss or wage cuts on the existing wage earner and his or her family. It fails to recognize or discuss that the new jobs may be in other States, or miles away, or even Nations apart. It fails to recognize or discuss the impact on productivity and growth of the economy. It fails to recognize or discuss the wage differential of the jobs lost and those gained, or the time delay between jobs lost and jobs replaced. It fails to recognize or discuss the secondary effects on other industries. It fails to recognize or discuss the competition impacts. It fails to recognize or discuss the impact on minorities. It fails to recognize or discuss the impact on umemployment costs. Despite these failures, the EPA and environmental organizations have made this offset claim several times without explaining the basis for it and the Administration, in providing cost estimates of its proposal has, to my knowledge, never discussed these very relevant concerns." [24]

B. Oppressive Regulatory Regime.

A far less examined aspect of the legislation is the regulatory regime that will be created. The Clean Air Act is incredibly complicated and gives immense authority to the federal government. Among the important issues that remain relatively unexamined are:

(1) The Clean Air Act is complicated and rigid. The proposed bills have hundreds of pages of regulations that allow no flexibility either for government departments and agencies or for the regulated industries. For example, the legislation will make it difficult, if not impossible, for industries to obtain approval for plant modification and expansion. Yet, industries, already faced with the legal burdens of implementation, will be subject to severe enforcement sanctions if they are not in compliance.

(2) The act imposes an onerous regulatory structure on small businesses. These small enterprises have neither the ability to be responsive to the new regulations (with its tight control requirements and complicated monitoring, record-keeping, and other paperwork burdens), nor will their compliance have a great effect on air quality. The clean air legislation creates an entirely new permitting system encompassing tens of thousands of businesses which have never been subject to environmental regulation. According to Frank Swain, formerly chief counsel for the U.S. Small Business Administration, "These businesses, because of their use of common solvents and chemicals causes them to emit something from the EPA's list of nearly 200 toxic substances, must follow a lengthy and expensive procedure set out by the bill in order to receive from the state government or the EPA an operating permit. And if there are missteps along the way to applying for this permit, the unwary entrepreneur can find himself or herself threatened with tremendous civil penalties or even a date with a local prosecutor interested in possible criminal violations." [25]

Also, there is the fear that local or regional air quality agencies will not be able to meet the bill's requirement for a 24 percent reduction in emissions within the first six years, and that inability will mean that the burden for reaching the target will fall on thousands of small businesses.

(3) Finally, the legislation concentrates power in the federal bureaucracy for implementation and enforcement. The bill will impose rigid federal rules that will govern state and local air pollution efforts. For the first time, the bill would give the federal government authority over permit conditions for all enterprises. Under the permitting title, the EPA can close any business in the country, or force the enterprise to meet any conditions in order to continue to operate. Furthermore, it will empower the EPA Administrator to dictate to local authorities or impose sanctions. It therefore limits the ability of state and local government to implement the act's requirements in the most cost effective manner.

There are significant cost considerations concerning the power that the EPA Administrator will have. For example, it has been estimated that he will have discretionary authority over $40 billion per year in costs depending upon the final provisions adopted in the Clean Air Act. For example, the House ozone non-attainment NO_x reduction requirements and the Senate transport region NO_x control requirements total over $10 billion per year and would be subject to EPA Administrator review and approval. Also, the House "Tier II" tailpipe provision authorizes the administrator to evaluate the need for, cost effectiveness of, and technical feasibility of those second phase controls. He would have the latitude for courses of action that could cost an additional $10 billion per year.[26]

Because the public debate has been dominated by analysis and discussion of the problems of the cost of the proposed legislation, these negative aspects have been neglected. However, critics of the act have argued that the states and industry should have the option of choosing the most flexible approach to achieving the desired environmental benefits and that market incentives should play a major role. Unfortunately, the current regulatory scheme does not permit such solutions.

III. CONCLUSION

President Bush told Congress in January, 1990 that he would not approve new clean air legislation from Congress if its cost exceeded his own plan by more than 10 percent. However, Council of Economic Advisers member Richard L. Schmalensee has admitted to the difficulty of even estimating what a 10 percent greater cost is. He merely stated that the 10 percent figure was Bush Administration shorthand for a "major cost increase."

The evidence indicates that the proposed versions of the Clean Air Act will constitute a major cost increase over both the current cost of clean air controls and the Bush Administration's proposals. Both the direct and indirect costs of the clean air legislation will have disastrous consequences for the U.S. economy and will cost consumers, workers, and corporations massive sums of money. Furthermore, the taxpayer will have to pay for a growing federal bureaucracy to govern these detailed new regulations. Finally, it is not even clear that the sacrifices being asked of consumers, workers, taxpayers, and entrepreneurs will ultimately lead to benefits that can be justified by the enormous costs associated with the legislation.

It is not certain that the U.S. ever would be able to afford the price tag for the proposed amendments. But at a time when events in the Middle East will dictate higher energy costs, it is evident that these "draconian" measures are premature, and perhaps permanently so.

FOOTNOTES

[1] Warren Brookes, "Will Clean Air Act Be Derailed?" Washington Times (August 9, 1990) at G1. Brookes argues that the acid rain provisions will not only be extremely costly, but will actually delay development and implementation of clean coal technology as it will divert capital into trying to improve existing coal plants. Instead, Brookes advocates stringent new source performance standards and the imposition of 40 year plant life limits. Thus, the same results can be achieved within the next two decades without undue costs.

[2] Paul Craig Roberts, "Adding Up the Clean Air Costs," Washington Times (April 18, 1990) at F4.

[3] National Acid Precipitation Assessment Program, 1989 Report to the President and Congress (1990).

[4] One study has guessed that the benefits could be $2-8 billion annually. Paul R. Portney, "Economics and the Clean Air Act," (Resources for the Future) at 4-5.

[5] For example, in the last twenty years, lead in the air has been cut by 95%. Environmental Protection Agency, National Air Quality and Emissions Trends Report (March 1990).

[6] Warren Brookes, "Bringing Back Malaise?" Washington Times (Nov. 2, 1989) at F1. For the areas that are more heavily polluted, the amendments to the Clean Air Act will require controls on the use of vehicles and another level of regulations on emissions from tailpipes of automobiles.

[7] Paul Starobin, "Foggy Forecasts," National Journal (May 19, 1990) at 1213.

[8] Although OTA did conduct a study in 1989, subsequently, when the OTA was requested to do similar analysis on the costs of the Senate version of the Clean Air Act, it declined. A manpower shortage was cited as the reason.

[9] Office of Technology Assessment, Catching Our Breath: Next Steps for Reducing Urban Ozone (1989).

[10] The Senate version of the Clean Air Act includes automatic triggers to force more stringent tailpipe emission standards to take effect by the year 2004.

Although the range in additional costs per car is considerable, uncertainty marks the entire debate over the Clean Air Act. For example, the American Lung Association estimated that the cost of motor-vehicle pollution controls could range from $4.43-$93.49 billion per year. In addition, according to Paul R. Portney, the chief economist of President Carter's Council on Environmental Quality, virtually nothing is known about the costs of curbing emissions of toxic chemicals. Paul Starobin, "Foggy Forecasts," National Journal (May 19, 1990) at 1212.

Warren Brookes has noted that one unintended consequence of the tailpipe standards is that it will actually slow down the improvement of automobile emissions. It is estimated that 85% of the emissions come from the 45% of automobiles that were manufactured prior to 1983. The higher cost of new automobiles that adhere to the Clean Air Act's tailpipe standard will encourage people to hold on to the older cars. Brookes, "Will Clean Air Act Be Derailed?" op. cit.

[11] The OTA study only considered "volatile organic compounds" that help create smog. The legislation currently being considered on Capitol Hill would consider other air pollutants as well, such as fine particulates and carbon monoxide.

In addition, forcing the adoption of fuels like ethanol and methanol could prove to be extremely costly. The environmental think tank Resources for the Future estimated that the costs of emission reduction using methanol could be as high as $31,000 to $66,000 a ton. Cited in Brookes, "Will Clean Air Act Be Derailed?" op. cit.

[12] Portney, op. cit. at 7.

[13] Denny Technical Services, op. cit. at 11-12.

[14] A 1989 EPA study estimated that there were 300-500 cancer deaths per year that could be attributed to hazardous industrial pollutants. Nevertheless, estimates of the initial controls to be imposed on these stationary sources range from $5 billion to $7 billion, which again raises cost-benefit questions. Starobin, op, cit, at 1215. One commentator has noted that, compared to cancer-related deaths, more "will be killed in highway accidents as a result of the downsizing of cars required to meet emission and fuel-efficiency standards." Paul Craig Roberts, "Adding Up the Clean Air Costs," op. cit.

[15] The Senate version of the amendment has been judged the most onerous. The Senate would interpret the lowest achievable emission rate controls as the maximum available control technology. The Senate bill would require all facilities to achieve a one in ten thousand residual risk or be closed down.

The cost of the Senate bill would be $18.2 billion per year. If the second phase risk standards are enforced the total cost would be considerably more. Denny Technical Services, "Clean Air Act Legislation: House/Senate Side-By-Side Comparison," (July 30, 1990) at 3.

[16] Environmental Protection Agency, "Cancer Risk from Outdoor Expousre to Air Toxics," (September 1989).

[17] The lower boundary is set "because it is possible that no cancers will be prevented by the legislation." Portney, op. cit. at 9.

[18] Letter from CEA Chairman Michael Boskin to Representative John Dingell (July 24, 1990) at 2.

[19] Starobin, op. cit.

[20] The principal cost difference between the upper and lower limits depends upon whether the Senate or House versions of the bill are adopted. The primary provisions comprising the difference are the air toxics provisions (the House bill is estimated to be $11.1 billion less per year than the Senate bill), the "Tier II" tailpipe requirements (the House bill would be nearly $10 billion per year less than the Senate version), the nitrogen oxides control requirements, and the reformulated gasoline provisions (limited reformulated gasoline distribution would reduce the upper costs by $12.3 billion per year). Denny Technical Services, "Clean Air Act Legislation: House/Senate Side-by-Side Comparison," (July 30, 1990) at i.

[21] Id. at iii-iv.

[22] According to one study, "The benefits to be achieved are highly uncertain and do not justify such an expenditure. Changes in human health and environmental effects would likely never be known. The effects baseline for comparing differences following implementation of the controls contained in the amendments is either too uncertain or does not exist." Denny Technical Services, op. cit. at iv.

[23] John Blodgett, "Potential Benefits of Enacting Clean Air Act Amendments," (Congressional Research Service; Feb. 5, 1990).

[24] Letter of Representative John Dingell to Secretary of Labor Elizabth Dole and CEA Chairman Michael Boskin (June 18, 1990) at 2.

[25] Frank S. Swain, "Clean Air Act Filled With Traps for Small Business," Human Events (July 7, 1990) at 16.

[26] Denny Technical Services, op. cit. at 7-8.

The Clean Air Act at Twenty

(By Robert W. Crandall)

Twenty years have passed since Congress launched the first major federal attack on the nation's air pollution problems by passing the Clean Air Act Amendments of 1970.[1] Now, after two decades and hundreds of billions of dollars of expenditures on air-pollution controls. Congress is poised to strike another ostensible blow for the environment by enacting a set of "tough" new amendments. Most students of the environment would agree that the Clean Air Act has hardly been an unqualified success and desperately needs a thorough overhaul.[2] Unfortunately neither the Congress nor the Administration is willing to address the fundamental flaws in the existing law. We are about to get a "new" Clean Air Act that is more-and, in some cases, much more-of the same.

The current Clean Air Act relies heavily on technology-based regulation that is not guided by standard cost-benefit or risk-assessment criteria. The law establishes uniform national air quality standards that are supposed to be met by all areas of the country regardless of climate, topography or industry structure. These air-quality criteria are to be met through tight technology-based standards on new industrial-utility sources and stringent exhaust controls on new cars, and through state-imposed standards on existing industrial and utility plants. Older vehicles are largely exempt from regulation, and there are virtually no economic incentives utilized to induce polluters to reduce pollution efficiently.

It is now clear that existing policy has been both ineffective and inefficient. Many large cities still have rather high levels of urban smog, and a large number of older power plants continue to belch vast quantities of sulfur oxides. Had new cars and old cars or new power plants and older power plants been treated equally, we would now have more modern power plants, a newer stock of cars on the road and less pollution. Moreover, were pollution standards set in proportion to the risk that pollution poses to the population, we might have a more sensible approach to controlling toxic pollutants.

Unfortunately, the 1990 amendments address very few of the flaws in the current Act. Instead, the current emphasis is on new provisions to control toxic emissions and acid rain despite very little evidence that such provisions are justified by any reasonable comparison of the potential costs and benefits of such controls.

Congress and the Bush Administration appear to want to address the new "green" mood of the country. But the greens have little regard for economic efficiency, or for the consumption of ordinary goods and services. Responding to pressure from the environmentalists, Congress and the Administration are moving rapidly to enact a new set of extremely costly controls. With one exception (that may be eliminated as the debate moves to the House of Representatives), the package that is likely to emerge from Congress will continue to emphasize Washington-dictated engineering controls that are neither efficient nor even very well targeted at the serious environmental problems of the day. Central planning may be dead in Eastern Europe, but it is very much alive in US environmental policy circles.

THE PROBLEMS

Most of the nation's air-pollution problems fall into one of three categories: (i) urban smog caused by motor-vehicle emissions and by numerous industrial and commercial sources of hydrocarbons and oxides of nitrogen (NOX); (ii) "acid rain" thought to be caused by sulfur and nitrogen oxides; and (iii) toxic air pollutants. Each of these problems is currently the subject of active congressional debate and is likely to be addressed by the new Clean Air Act.

Automobile pollution and urban smog.

Automobile pollution controls began in the 1967 model year in California and in the 1968 model year for the rest of the country. By 1981, a new car had to meet standards for unburned hydrocarbons, carbon monoxide and oxides of nitrogen that were about 95 percent below unregulated 1966 levels.[3] While the 1977 amendments required that new cars meet these standards for 50,000 miles, automobile owners have very little incentive to ask for enforcement of these warranties because lower emission rates do not contribute to the vehicle owner's satisfaction in operating his car.

The two pollution problems most directly associated with auto emissions are photochemical smog, caused by the combination of reactive hydrocarbons and oxides of nitrogen in the presence of sunlight, and carbon monoxide. The smog problem is the more serious of the two, affecting a large number of metropolitan areas.

Areas that fail to meet EPA's air quality standards for photochemical smog or carbon monoxide are required to erect "inspection and maintenance" programs to catch the most egregious polluters among the existing vehicle stock, but these programs have yet to demonstrate their effectiveness in reducing pollution.[4] Had anti-pollution policies been founded on market-based incentives, pollution "control" would be much more effective. Instead, virtually all of the control effort for automobiles is directed at *new* vehicles. This policy has produced more costly emissions controls, little pollution abatement, an older and less safe vehicle stock, and less employment and output in the auto industry. It is no surprise that the average age of cars on the road has increased by two years since our current approach to pollution control began in the late 1960's after falling throughout the 1950s and early 1960s.

Moreover, these new-car controls are imposed on all cars, regardless of where they are driven even though most of the country does not have an automobile-pollution problem. One frequently hears that 130 million people live in areas with "unhealthy" air. Such statements conjure up images of blankets of toxic smoke hanging permanently over most of our cities. In fact, the EPA air-quality standard for smog is based on the second-highest daily maximum one-hour concentration of ozone at any monitor in the area.[5] A very large share of metropolitan areas that fail to meet this standard fail only for a few hours per year and even then only at some monitoring sites. Only 62 million people live in areas that fail to meet the standard for more than six hours per year, and in even these areas not all 62 million are exposed to smog for more than a fraction of these six hours.[6]

Given that the urban smog problem is largely concentrated in southern California, Houston and the New York-New Jersey-Connecticut SMSA, one might expect our anti-smog policy to be regional or local in nature with tighter controls in those areas, but less stringent ones in Santa Fe, New Mexico or Boise, ID. This policy would require citizens of smoggy areas to confront directly the issues of how much pollution they have created and how much they want to pay to reduce smog. Unfortunately, our automobile-emissions policy is largely a *national* one, requiring all cars to meet standards that are necessary for only a small share of the country.[7] The new Clean Air Act amendments will further tighten these uniform national new-car emission standards, adding to the current control costs of about $1,500 to $2,000 for every car sold in the US.[8] Ultimately, the new motor-vehicle standards in the 1990 legislation are likely to add about $3.5 billion to annual pollution-control costs, but these expenditures will have only a small effect on urban smog in the dirtiest cities, such as Los Angeles or Houston.

In addition to the motor-vehicle standards, the Clean Air Act requires states to impose their own standards on commercial and industrial sources of hydrocarbons and NO_x as well as possible controls on vehicle use if all else fails. In practice, however, these industrial pollution control policies are only imperfectly enforced, leaving most of the burden for pollution reduction on the new additions to the vehicle fleet. Thus, because Los Angeles and other smoggy metropolitan areas have been unwilling to reduce emissions sufficiently through traffic controls, or through small commercial/industrial-source controls to meet the EPA air-quality standard, consumers of new vehicles in most other parts of the country are saddled by Congress with ever tighter controls, even though most of these areas do not need further major pollution reductions.

There is now considerable discussion of tightening the EPA ambient air-quality

standard for smog because recent scientific evidence suggests some health effects at smog levels that are close to the current standard of 0.12 parts per million (PPM) or even lower.[9] Many of these new discoveries involve cellular changes in laboratory tests that have not been extrapolated to effects on humans, but they may presage some new health effects. To date, most of the human-health evidence on photochemical smog involves a reversible reduction of "pulmonary function"-or lund function-that principally affects a person's ability to exercise or work strenuously during the period of heaviest pollution.

There is very little evidence of long-term, chronic human health effects from smog. But the new evidence from laboratory studies could well induce EPA to reduce the ambient standard from 0.12 PPM to 0.10 PPM and even to extend the standard to an 8-hour averaging period because EPA is instructed by the Act to respond to any evidence of a health threat, regardless of its severity. A tighter ambient standard would then provoke further demands for more stringent controls on all new cars even though the smog problem would still be a regional one. If citizens of Los Angeles will not support a regional policy that is stringent enough to meet the 0.12 standard, they surely cannot or will not try to meet a standard of 0.10. The principal policy result from Los Angeles' problem [10] is ever more expensive cars for residents of Boise and Butte but very little improvement in the smog in Los Angeles.

A recent report by the Office of Technology Assessment (OTA) estimates that if all areas were to meet the 0.12 PPM standard, "respiratory symptoms" would fall by 25 hours per 100 persons per year, but only about half of these symptoms are severe enough currently to restrict activity or exercise levels. Some may be as limited as occasional coughing; others may be more severe. How much would these people pay to avoid these generally mild effects of smog? OTA estimates that they might be willing to pay between $570 million to $3.7 billion per year to avoid these effects, given reasonable estimates of the benefits of cleaner air on the ability to exercise strenuously or to avoid the discomfort of coughing. This suggests that the total health costs of smog are between $4.38 and $28.46 per year per resident of the areas with "unhealthy" air, or about 0.1 percent of income per capita in these areas—a low valuation because the health threat is perceived as being so mild.

How much would it cost to bring these 130 million people into a situation of year-round healthy air? The OTA report gives us quite a shock: No known strategy will get us there. All known controls would only achieve about two-thirds of the pollution necessary to achieve "healthy" air, and this would cost between $4.2 billion and $7.1 billion by 1994 in the unhealthy areas alone, and as much as $8.8 billion to $13 billion by 2004 for the entire country. Thus, the costs of further tightening on a national basis are perhaps four times the estimated benefits of cleaner air.[11]

It is likely that even the $4.2 billion to $7.1 billion in new controls would not solve two-thirds of the problem because the models on which the estimates of pollution reduction are based are too optimistic. Moreover, the controls never work as well as advertised, particularly after a few years of use. For example, cars designed to meet a standard of 0.41 grams per mile of hydrocarbons average about 1 gram per mile halfway through their useful life.

None of the estimates of the costs and benefits of tighter emissions standards take into account their effect on other threats to human health and safety. By further increasing the cost of new cars, these standards will induce consumers to keep unsafe, fuel-inefficient, polluting cars even longer. The resulting short-run effect on highway safety could easily outweigh any of the benefits of further attempts to control urban smog through new-car standards.[12]

ACID RAIN

The least controversial of all of the current amendments to the Clean Air Act are those involving sulfur dioxide emissions by industrial and utility sources.[13] For decades, residents of the Northeast and of Eastern Canada have complained of the acidity of their lakes and streams. This acidity has been attributed in part to emissions of sulfur oxides, principally by coal-burning power plants and all nitrogen oxides from motor vehicles as well as industrial/utility sources. Although there is considerable controversy about the precise sources of the acidification of these water bodies, it has been generally agreed that utility emissions from upwind states in the East and Midwest shoulder part of the blame.

The Congress established the National Acid Precipitation Action Project (NAPAP) in 1980 to study acid rain and report its results to the public. After spending $500 million on research, NAPAP will release its final report in a few months, but Congress is rushing to act before the report's release. Preliminary indications are that NAPAP will conclude that there is a link between sulfur dioxide (SO_2) emissions and acidity of streams and lakes in the Northeast, but that these effects are quite mild.[14] Moreover, NAPAP apparently has concluded that acid rain is responsible for very little forest damage—except in the Great Smoky Mountains.

Without waiting for the NAPAP report, the Bush Administration and Congress have decided to move quickly to reduce SO_2 emissions by 10 million tons by around the year 2000. The 10-million ton reduction has been an article of faith among environmentalists but remains unsupported by any cost-benefit analysis. This 10-million ton annual reduction would likely cost about $5 billion per year if done efficiently. How much is such a reduction worth? No one knows, but some suggest that much the same effects could be obtained by spending a few million dollars to dump lime into the lakes and streams of the Northeast and Quebec each year.[15] Thus, Congress is opting for a policy that costs hundreds of times more than a simple solution which would have a much more immediate effect on the acidity of northeastern lakes and streams.

Notwithstanding their likely ineffectiveness, the current proposals on acid rain are superior to the previous policy in at least one respect that illustrates the fundamental flaw in our current approach to clean air. In 1977, a curious alliance of environmentalists and high-sulfur coal interests advanced into law a provision that requires all new sources of SO_2 to use the best available "continuous-emission-reduction technology." Simply put, this provision requires utilities to install scrubbers on all new boilers regardless of the sulfur content of the coal they burn. Since low-sulfur coal sells at a premium in the Midwest and East because much of it must be imported from western states, this provision reduces the demand for low-sulfur coal and stimulates the demand for dirty Appalachian and midwestern coal.[16] If a utility has to install a scrubber anyway, why should it pay a premium for less-polluting coal? There is no provision in the 1970 or 1977 amendments that rewards a utility for exceeding the technology-based standard.[17]

Every analysis of sulfur-oxides policy since 1977 has focused first and foremost on the effect on Eastern and Midwestern coal demand because of the influence of the eastern coal industy.[18] The effects on sulfur dioxides emission have generally been relegated to a secondary role in these analyses. Indeed, the 1977 provisions may even have increased sulfur-oxides emissions by postponing boiler replacements (old boilers are allowed to pollute more heavily) and by inducing the installation of balky scrubbers that do not work as well as promised.[19] Clean coal does not have this problem.

In 1990, with Canada leaning heavily on the Bush Administration, the politics of acid rain suddenly changed. To its credit, the Administration proposed a new plan that would allow for more efficient reductions of sulfur oxides and would repeal the 1977 scrubbing requirement.[20] Utilities will now apparently be free to choose scrubbers, clean coal, coal washing or whatever approach has the lowest cost. With mandated scrubbers, they had no such choice even if low-sulfur coal were available at very low prices from nearby mines. In their rush to judgment before the appearance of the NAPAP report, the participants in the 1990 debate never considered whether the costs that will result from the 1990 amendments are justified by the prospective benefits.

TOXIC AIR POLLUTANTS

Among the most contentious issues in the recent Clean Air Act debate is the issue of how to control toxic pollutants. The rational approach to this problem would be to establish controls that vary in stringency with the toxicity of the substance emitted and the number or sensitivity of the people exposed. A chemical plant emitting a mildly toxic substance in the middle of a desert would be controlled far less than, say, a coke oven emitting known carcinogens in a densely-populated area.

The current Clean Air Act has a provision requiring the best available control technology for any toxic pollutant identified by EPA. Once EPA listed a toxic pollutant under this provision, it had to mandate these technology-based standards for every source of the pollutant regardless of the risk it posed to humans. As a result, EPA simply did not list many airborne pollutants as toxic under this provision. To its credit, EPA apparently found that the costs of this approach were far too great given the limited health benefits from any prospective reductions in toxic pollutants.

The 1990 amendments to the Clean Air Act are likely to force EPA to set standards for 140 pollutants chosen by Congress. These standards will have to be "maximum available control technology" (MACT)—or the tightest standards feasible under current technology. Surprisingly, this provision has been readily accepted by virtually all parties to the current debate even though it will require EPA to set technology standards without regard to toxicity or human exposure. It appears that Congress and the Administration have learned nothing from the costly folly of technology-based approaches to controlling sulfur oxides and other pollutants.

Also at issue in the Congressional debate over the toxic provision is what to require *beyond* MACTI. Many would like to see the

law require that no maximally exposed individual (MEI) be exposed to more than a 1 in 1,000,000 lifetime risk of cancer, regardless of the costs. This would require EPA to determine the probability of cancer for that unlikely individual who stood at the polluting plant's fenceline and breathed the emissions full time for his entire life. Others hope simply to finesse the issue by remanding it to a study commission for binding recommendations.

The debate over toxic air pollutants is remarkable given the small number of cancers now thought to be caused by environmental exposures of all kinds. In 1978, Secretary Califano of HEW gave a speech to the AFL-CIO in which he claimed that a recent government study suggested that 20 to 38 of all concers may result from occupational exposures to nine chemicals.[21] This estimate was roundly criticized as highly inflated, and subsequent estimates have placed the share of cancers caused by occupational exposures at about 4 percent and by pollution at about 2 percent.[22] EPA's own analysis suggests that hazardous air pollutants are responsible for about 0.2 to 0.4 percent of all cancers.[23] A recent study estimated that the maximum number of annual cancers caused by hazardous air pollutants from large industrial sources is 500, but the number could be much less. Since no form of control can eliminate all exposures, the toxic provisions in the new legislation are likely to reduce the annual number of cancers by far less than 500 per year.[24]

IS THERE HOPE FOR MORE EFFICIENT POLICIES?

Congress is rarely as interested in efficiency as in the distribution burden of a policy. For example, it recently prevented the Federal Communications Commission from fully implementing a policy that would have reduced overpriced long-distance calls and increased severely-underpriced local telephone service even though such repricing would increase US economic welfare by billions of dollars per year. Congress simply could not bring itself to allow the price of telephone service to rise by as much as $5 or $6 per month because some of the burden would fall on low-income citizens. Alternatively, the last five years' changes in tax policy, designed in part to spur economic efficiency, provide some hope that even politicians may care about economic growth and efficiency.[25] As the evidence mounts that poorly-conceived environmental policies retard economic growth while having only marginal effects on environmental quality, we may begin to see some rationality in the design of anti-pollution policies.

The current approach to controlling emissions is extremely inefficient for a number of reasons. First, the Clean Air Act does not require regulators to seek the lowest-cost solution to any pollution problem. Second, most air-pollution standards are based on some notion of "best-available" technology, and the "best" available often varies substantially in cost across industries.[26] Third, the Clean Air Act loads the cost on new sources—new automobiles, new power plants, new industrial plants—thereby discouraging investment in new durable goods or productive capacity, encouraging the use outdated facilities and perhaps even retarding environmental progress.

Economists have long had a solution for the wasteful approaches to regulating pollution: use pollution taxes or tradeable pollution rights. Pollution taxes would penalize polluters in proportion to the amount they pollute. All polluters would decide on emissions controls by comparing their costs with the benefits of reduced pollution taxes. As a result, emissions controls would be efficient and effective, and—if the tax is set properly—we would achieve just the right amount of control. Alternatively, polluters could be given "rights" to pollute that they could either use or sell to another polluter. If controls cost less than the value of the rights, the polluter would install the controls and sell the rights to another polluter whose control costs are higher. Once again, effective and efficient control would result, not the current hodgepodge of costly technology-based standards that are neither effective nor efficient.

Unfortunately, these economically-efficient approaches do not necessarily provide the lowest political costs to legislators, nor are they supported by environmentalists, who generally care little about economic efficiency. In the current debate over acid rain, however, tradeable pollution rights have begun to gain favor. Large polluters—generally, electric utilities—would be allowed to reduce pollution by a specified amount or to purchase these reductions from other would-be polluters. If fully implemented, this approach would allow the utilities with the lowest costs of sulfur-oxides control to shoulder the most responsibility in reducing SO_2 emissions, resulting in the lowest total cost to society as a whole with the same prospective benefits.

The only other slight opening for economic rationality in the current debate over reforming the Clean Air Act is to be found in proposals to require different approaches to urban smog control across areas with different degrees of pollution. The dirtiest cities would be encouraged to use alternative or reformulated motor vehicle fuels to reduce either smog or carbon monoxide. Unfortunately, even this opening may be closed by parochial interests seeking to drive up farm incomes by requiring ethanol or ethanol blends in these dirty areas, even though other blends may be more appropriate and lower in cost.

Studies showing the truly enormous costs and limited progress under the Clean Air Act have had surprisingly little impact. A recent study has shown that the full costs of air-pollution controls are far above official estimates of $25 to $30 billion per year.[27] Jorgenson and Wilcoxen estimate that the full cost of just the motor-vehicle standards are nearly $40 billion per year.[28] Much of this impact is due to the effect of these regulations on the economy's net capital formation which in turn reduces potential economic growth.

The evidence on the benefits of the last twenty years of pollution controls is much more scanty because the data on air-pollution trends are so poor. SO_2 and particulate concentrations have apparently declined, but no one can be sure that these are due to pollution controls. The evidence tends to show much more modest improvement in urban smog (ozone) despite more than 20 years of motor-vehicle controls.[29] Moreover, the General Accounting Office regularly reminds us that even these trends are suspect given the poor quality control in monitoring air pollution in earlier years.

Even those improvements that have occurred may not have actually improved human health. The evidence on the health effects of urban smog, particulate matter or various sulfur compounds is still fraught with uncertainty. In some cases, it may be prudent to act to protect potential health threats even before the health threats are fully understood. For many air pollutants, however, the prospective health effects are not of a magnitude that would require such expensive prevention. In particular, lacking further evidence on the effects of urban smog on human health, the new $10 billion annual program to reduce smog nationwide seems most imprudent.

Unfortunately, the mounting evidence on costs and the lack of beneficial effects seems to have little impact upon those charged with designing and executing air pollution policy. In other areas of public policy, some might be asking what benefits derive from $25 to $30 billion or more in annual costs. In the case of air pollution policy, however, such questions are apparently deemed irrelevant.

WHY A NATIONAL POLICY?

Current environmental policy too frequently requires uniform national solutions to problems that vary enormously across the country. Where pollution problems are most severe or where preferences for air purity are weakest, we might expect policymakers to set air-pollution goals that are less stringent than in the middle of Yellowstone Park or a rural county in North Dakota. The current policy, however, requires EPA to set the same air-quality goals and mandate the same "best available" technology for all areas of the country regardless of cost or need.

Furthermore, the federal government sets pollution emission standards for each of the multitude of sources of air pollution. These national standards could hardly be efficient across all plants in the same industry, yet EPA must set Best Available Control Technology (BACT) or Reasonably Efficient Control Technology (RACT) standards on a national basis. In an era when centrally-dictated solutions have fallen into disrepute throughout the world, EPA is reaching for even more national authority—particularly for toxic pollutants.

A DISMAL OUTLOOK

None of the above analysis is likely to matter much in the near future. Environmental issues are increasingly religious in nature, and sectarian strife will likely dominate the debate. There is ample evidence that current policy is enormously wasteful—often deliberately so—and not particularly effective. Congress' own Office of Technology Assessment has demonstrated that continuing to pursue the goal of urban smog control everywhere down to 0.12 parts per million is folly. Because emotions and passions loom so large in this debate, environmentalists will not abandon their belief in the current policy instruments and goals despite substantial evidence that there is a better way. There is a strong anti-growth element in the environmental movement, and this element has won enormous victories in the past in the design and execution of environmental policy.[30] There is little reason to hope that 1990 will be any different.

Nevertheless, in a spirit of unfounded optimism, I offer a few suggestions for addressing the most pressing problems in current air pollution policy:

1. Substitute an economic incentive system—pollution taxes or tradeable pollution rights—for the current technology-based standards system.

2. Allow air pollution goals to vary across regions of the country. Los Angeles should be allowed to accede to a higher level of pollution *de jure*, not just *de facto*. This would relieve Fargo and Boise from having to pay even more for new cars so that Los Angeles

can move closer to an unattainable standard.

3. Target environmental control efforts to those problems creating the greatest potential health problems. This is particularly important for "hazardous" air pollutants because human exposures to these pollutants vary enormously as does the toxicity of these pollutants themselves.

4. Improve the nation's air pollution monitoring system. The current ignorance about the effects of twenty years of policy and hundreds of billions of dollars in control costs stems from insufficient data on air quality. It is surely madness to spend $40 billion per year or more without being able to ask whether these expenditures are having any effect.

None of these proposals will emerge in the 1990 version of the Clean Air Act. Perhaps next time Congress acts on the matter—sometime after the year 2000 when citizens ask why they have spent so much for so little for so long—it will adopt a more rational approach to a very serious problem.

ENDNOTES

[1] In 1977, Congress Amended the Clean Air Act, which had originally been enacted in 1963. It was the 1970 Amendments, however, that established the basic form of today's federal air pollution policy.

[2] See, For example, Thomas Tietnberg, *Emissions Trading: An Exercise in Reforming Pollution Policy*, Washington, DC: Resources for the Future, 1986 and Paul R. Portnney "Air pollution Policy," *Protection*. Washington, DC: Resources for the future, 1990.

[3] See Lawrence J. White, *The Regulation of Air Pollutant Emissions from Motor Vehicles*. Washington: American Enteprise Institute, 1982.

[4] It is very difficult to measure pollution from short-term tests in inspection stations or repair garages. Moreover, those conducting the tests may be poorly trained or have little incentive to report the test results accurately.

[5] The standard currently requires that no area exceed a maximum one-hour average of 0.12 parts per million more than once per year.

[6] Office of Technology Assessment, *Catching Our Breath: Next Steps for Reducing Urban Smog*, July 1989.

[7] California is the only state that departs from these uniform national standards, but the federal Clean Air Act will soon impose California standards to mid-1990s cars. Of course, California is also likely to tighten its standards again, given its smog problems.

[8] All cost estimates are imprecise, as are benefit estimates. In 1986 Crandall, *et al.*, estimates that new-car standards cost about $1,600 per car for 1984 models, including the costs of equipment, maintenance and fuel penalties. With technological progress, these costs have probably fallen, but the new tighter standards in the 1990 legislation will surely add a few hundred dollars per car.

[9] By current law, EPA must set these national ambient standards for each "criteria" pollutant at a level that is protective of human health with an adequate margin of safety. Apparently, it may not weigh the degree of the health risk in this process; thus, it must reduce the standard until the probability of any effect on the most sensitive groups in the population is *de minimis*.

[10] And New York's and Houston's problem.

[11] This does not mean that tightening smog controls on existing cars, utility plants or dry cleaners in Los Angeles, Houston or Birmingham (AL) would not make sense. It is the uniform *National* approach that gives rise to costs far in excess of benefits because most of the country has only a few days of "unhealthy" air per year.

[12] See Robert W. Crandall and John D. Graham, "The Effect of Fuel Economy Standards on Automobile Safety," *The Jornal of Law and Economics*, April 1989, pp. 97-118.

[13] Who pays for the reduction in SO2 is quite controversial. This issue almost led to the scuttling of the 1990 legislation when Senator Byrd asked the Senate to subsidize *directly* his constituents in the high-sulfur coal fields. High-sulfur coal had been subsidized indirectly for 13 years by Section 111 of the Act, as amended in 1977.

[14] Preliminary conclusions frm NAPAP have been leaked to the press, but it has not issued its final report. An earlier progress report issued in late 1987 was criticized by environmentalists as being to sanguine about the effects of acid rain. Its *1989 Report to the President and Congress* is now available from the Council on Environmental Policy.

[15] See Warren Brookes, "Byrd's Killer Amendment," *The Detroit News*, March 20, 1989. The Reagan Office of Management and Budget prepared an analysis of proposed acid-rain controls that concluded that the costs per pound of fish protected would range from $6,315 to $66,160.

[16] This is surely a curious "environmental policy" for environmentalists to support. For a blistering critique of the policy, see Bruce A. Ackerman and William T. Hassler, *Clean Coal/Dirty Air or How the Clean Air Act Became a Multi-Billion-Dollar Bail-Out for High-Sulfur Coal Producers and What Should be Done About It*, New Haven: Yale University Press, 1981.

[17] Of course, a pollution tax might even induce utilities to employ scrubbers and cleaner coal—a combination that would not occur under current policy.

[18] See, for example, Congressional Budget Office, *The Clean Air Act, the Electric Utilities, and the Coal Market*, April 1982.

[19] A 1978 EPA simulation, prepared to guide the rulemaking required by the 1977 Washington: The Brookings Institution, 1983, Ch. 7.

[20] If they survive a Conference Committee, these provisions will allow utilities to trade "emission reduction credits" among themselves. This will permit those utilities with relatively high marginal control costs to buy their reductions from those with lower cleanup costs. For an analysis of marketable permits, see Robert W. Hahn and Roger G. Noll, "Designing a Market for Tradable Emission Permits," in Wesley Magat ed., *Reform of Environmental Regulations*, Cambridge, MA: Ballinger, 1982, or Thomas Tietenberg, *Emissions Trading: An Exercise in Reforming Pollution Policy*. Washington, DC: Resources for the Future, 1985.

[21] See Edith Efron, *The Apocalypics: Cancer and the Big Lie*, New York; Simon and Schuster, 1984, p. 438, and *Science*, (202), 1978, p. 602.

[22] See Richard Doll and Richard Peta, *The Causes of Cancer;* New York Oxford University Press, 1981; Michael Cough, "Estimating 'Environmental' Carcinogenesis: A Comparison of Divergent Approaches," Resources for the Future, Discussion Paper CRM 89-01, October 1988.

[23] EPA, *Unfinished Business: A Comparative Assessment of Environmental Problems*, Appendix 1, February 1987.

[24] Paul W. Portney, "Economics and the Clean Air Act," *The Journal of Economic Literature*, forthcoming.

[25] This line was written during the earlier "read my lips" era of national public policy.

[26] By "cost", I mean the incremental cost per ton of pollution removed. For evidence on this inefficiency, see Crandall, *op cit.* and Tietenberg, *op. cit.*

[27] Michael Hazilla and Raymond J. Kopp, "The Social Costs of Environmental Quality Regulations: A General Equilibrium Approach," Resources for the Future (ms.), August 1986; Dale W. Jorgenson and Peter J. Wilcoxen, "Environmental Regulation and U.S. Economic Growth," Harvard Institute of Economic Research, October 1989.

[28] Jorgenson and Wilcoxen, *op cit.*, p.55. Specifically, they estimate that elimination of all motor-vehicle controls would raise real GNP by 0.752 percent. At 1990 GNP levels, this translates into approximately $40 billion per year.

[29] See Paul R. Portney, "Air Pollution Policy," in Paul R. Portney (ed.), *Public Policies for Environmental Protection*, Washington, DC: Resources for the Future, 1990. Portney stresses that it is difficult to attribute the improvements measures by EPA to environmental policy. He also notes the problems in using EPA data, given the small number of consistently-monitored sites for some pollutants.

[30] Perhaps the most notorious example involved the National Resources Defense Council's suit against a 1979 EPA decision to relax scrubbing requirements on some new western utilities because the tightest scrubbing standards actually produced greater emissions and greater costs than the weaker standard that was finally adopted.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I rise in strong support of this landmark environmental legislation.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. Mr. Speaker, I thank the distinguished chairman of the Energy and Commerce Committee for yielding. I join in the accolades and commendations that have been given him this afternoon in crafting this very fine piece of legislation.

Mr. Speaker, I commend also the chairman of the subcommittee, the gentleman from California [Mr. WAXMAN], and the ranking minority member, the gentleman from New York [Mr. LENT].

Mr. Speaker, there is the one time that I feared that if Congress rushed headlong into reauthorizing the Clean Air Act that we may have been headed toward controlling the wrong substance in the wrong manner and at the wrong time. Today those fears have been allayed. We are indeed enacting upon a very important piece of legislation for the country.

Of particular interest to this gentleman from West Virginia are the acid rain control provisions of this measure. At the beginning of this Congress, when it became apparent that President Bush as well as the leaderships of both the House and Senate were going to push for legislation to reauthorize the Clean Air Act, I dropped my longstanding opposition to acid rain control legislation. I did this not only because the political leadership of the United States was for the first time unified on the issue, but for another very substantive reason. Earlier legislative action would have been premature. Studies were incomplete. The types of measures that were under consideration in the past would have unduly harmed all of West Virginia. There simply was not a mindset among the propondents of acid rain controls to fashion a bill that incorporated what I felt were some basic elements of equity and fairness.

In early 1989, as the process began, I stated that I would seek to ensure that any acid rain bill which passes the Congress does not adversely impact the economic interests of my congressional district. Today, I am pleased to say that the conference agreement does no harm to southern West Virginia.

Before us is what I view as a dovetailing of the economic and environmental interests in acid rain control, at least from the perspective of this gentleman from southern West Virginia.

In fact, in anticipation of this legislation there has been something approaching euphoria in the low-sulfur coalfields of southern West Virginia.

All types of numbers have been bandied about. I have heard people announce that the bill will create 1,000 or 3,000 or even 6,000 new coal mining jobs in southern West Virginia. The fact of the matter is that nobody can say with any certainty just how many jobs this measure will foster in the southern coalfields of my State. But it is a fact that more jobs in this region will be an outgrowth of what we do today.

I spoke of a dovetailing of interests. Obviously, this legislation will reduce those emissions which give rise to acidic deposition. That's one for the environment.

Yet, because of the bill's elimination of the percentage reduction requirement of the 1977 amendments, and its allowing electric utilities the freedom of choice in how to come into compliance with emission requirements, I expect there will be increased demand for low-sulfur southern West Virginia coal. That's one for the economy and employment situation of the region I have the honor to represent.

And finally, because of the technology incentives provided by the pollution allowances system in this measure, and its incorporation of a worker compensation and training program, the ramifications of obtaining cleaner air on those who produce high-sulfur coal need not be as feared as in the beginning of this process.

All in all, Mr. Speaker, this is a very well balanced measure. I give it my support.

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Mr. LENT. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, I rise in strong support of this bill. There are a multitude of compromises in the conference report, beautifully put together, a remarkable achievement.

Mr. DINGELL. Mr. Speaker, I will break with precedent and yield my final 1 minute to the gentleman from California [Mr. LEVINE].

Mr. LEVINE of California. Mr. Speaker, I want to commend the chairman and the subcommittee chairman as well as the ranking member and the entire committee for their marvelous work in putting this landmark bill together.

Mr. Speaker. I rise today on the historic occasion of passage of a new Clean Air Act. The document we will vote on today is the product of well over two years of hard work, and the recognition that, as the leaders of this Nation, we have an obligation to dramatically improve our air quality.

This legislation will make important strides to this end. It tackles not just one or two issues, but rather a host of the outstanding problems which have been degrading our air quality. Agreements on acid rain, smog, toxics, auto emissions, and catastrophic releases are all included in this historic package.

I applaud the untiring efforts of the distinguished chairman of the Energy and Commerce Committee and those of the chairman of the subcommittee on Health and the Environment. Their enduring commitment to resolve a multitude of problems and bring a final conference report to the floor means that within the next 2 weeks this Nation will have a new Clean Air Act.

Indeed, we owe the entire Energy and Commerce Committee a large debt of gratitude for this feat.

I am particularly pleased that this bill addresses two outstanding matters which are of important significance to the state of California.

First, the legislation closes a loophole for California which allows offshore oil rigs to escape any regulation under the Clean Air Act. I want to thank the House conferees for their steadfast help in maintaining this provision.

When one considers that a single rig can produce as much pollution per day as 15,000-100,000 cars, closing this loophole becomes an important clean air provision. Under the new law, the EPA will regulate the rigs off California.

Those within 28 miles of shore will have to meet the same requirements as onshore facilities.

Second, the legislation addresses an accidental release problem, for the Nation—which regulators in my district have already started to resolve.

The problem is that of hydrofluoric acid . . . a chemical which can form a deadly cloud that travels for miles in the instance of a worst-case accidental release.

While the south coast air quality management district is on the verge of resolving this matter in my district—the toxics section of the bill includes a study to determine how best to address the hazards elsewhere in the Nation.

Again, Mr. Speaker, I applaud the hard work and outstanding efforts of the Energy and Commerce Committee and urge my colleagues to support the conference agreement.

Mr. LENT. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Speaker, I rise in support of the Conference Report on S. 1630, the Clean Air Act Amendments of 1990.

Today, in the closing days of the 101st Congress, the American people have the right to expect a budget agreement that is fair and honest and smart.

But if there is any other single piece of legislation that cannot and must not be left unfinished in this Congress, it is the Clean Air Act Amendments of 1990.

There is absolutely no doubt that Americans want cleaner air for themselves and their children. This is especially true in California, where we have already made economic sacrifices to protect our health.

This is why I am proud to have worked on the conference report, and why I hope the House and the Senate will vote their final approval of the 1990 amendments.

As Chair of the House Subcommittee on Surface Transportation. I can say without fear of contradiction that the 1990 clean air amendments are a necessity, not a luxury.

Cars and trucks account for half our ozone pollution in urban areas, half our toxic emissions nationwide, and 90 percent of carbon oxide pollution.

I believe that Americans have a right not to choke to death from air pollution, and that the clean air amendments will protect this right without foregoing the need to move people and goods.

Less than 1 year from now, our current Federal highway, mass transit and highway safety assistance programs will expire.

As the subcommittee rewrites those programs during the coming months, it is my intention not only to improve our roads and bridges but encourage the protection of our air quality with renewed attention to transit.

In other words, this country has a golden opportunity to determine its quality of life and improve its economic development to meet the challenges of the 1990's.

The Clean Air Act Amendments of 1990 are an essential ingredient of this opportunity, and one that should not be missed.

I urge an "aye" vote on the conference report.

Mr. LENT. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, at the outset of this debate I noted that the legislative odyssey which produced this bill began in the rose garden with the President's proposal. The legislation in this conference report fulfills the President's pledge "to see to it that every American, in every city in America, will breathe clean air."

We rightfully celebrate the achievement marked by this bill—particularly at a time when many are questioning the ability of Congress to do the people's business. However, while the work of the Congress on clean air is near an end, at least for now, the real work of putting this law into effect has barely begun.

The regulators, the courts, and others who will administer and enforce the new clean air law should be mindful of the President's statement to us last year that sound ecology and a strong economy need not be mutually exclusive. That delicate balance will only be maintained in practice if the new law is administered firmly, but also fairly and flexibly.

Mr. Speaker, there are several discrete provisions in the conference agreement that I would like to discuss very briefly. In title I of the bill, the EPA Administrator is required to pro-

mulgate standards for the recovery of vapors created by the loading and unloading of marine tank vessels if the Administrator believes these vapors cause or contribute to air pollution that may be reasonably anticipated to endanger public health or welfare. These marine vapor recovery control requirements are an important means by which port areas can address this ozone nonattainment problem. Clearly the potential environmental benefits from these new requirements will be most apparent in nonattainment areas, although States and local authorities may choose to extend the requirements to other areas.

Also in title I, the Administrator is required to issue control techniques guidelines [CTG's] for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of the date of enactment. This provision is not intended to limit the number of CTG's issued to just 11. Rather, the bill provides the Administrator with the authority to issue such additional CTG's as he deems necessary. The Administrator should exercise this authority expeditiously to issue guidelines for other smaller source categories, such as commercial bakeries, where such CTG's would further the purposes of the act and provide necessary guidelines to the States.

With respect to section 112(d) of the bill, I would like to clarify that this subsection is not intended to act as a disincentive for conducting further research into new products and processes, or reduce the competitiveness of U.S. industry by providing public disclosure of business or technical information, such as proprietary process technology, through regulations which are not applicable to foreign manufacturers.

While we have labored to remain true to the President's goal of a cost-effective and workable clean air law, there is no denying that this bill is a more expensive one, despite my best efforts to keep the final bill within reason. The risks associated with any bill of this type are not only financial in nature, they also go to the uncertainty of achieving the ambitious goals set for those in the private sector who must comply with this law. It will take the best technical minds and billions of dollars to comply with this bill—particularly in the energy and manufacturing industries.

When President Bush first announced the principles of what has become the clean air legislation we consider today, he told Chairman DINGELL and me that we could not, and we must not fail. He challenged us to prevail in getting the job done. He asked for our support to make a new clean air law a reality.

Mr. Speaker, in closing, I want to say I am indebted to Chairman DINGELL for his forceful leadership and cooperation, without which this bill would not be at the conference report stage.

I also want to pay tribute to his top staffer, Dave Finnegan, and his Republican counterpart, Chuck Knauss, for the great effort that they made in achieving this compromise.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. LENT. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, never have I had the privilege of working with a finer gentleman or a more loyal friend or more capable and devoted ally than I had in this instance in working with my dear friend from New York. I am proud of him and I am proud of what we have done.

Mr. LENT. I thank the chairman.

Mr. GEPHARDT. Mr. Speaker, passage of the Clean Air Act Amendments of 1990 will mark an historic investment in protecting our environment and our future.

Air pollution now imposes on our country a health care bill of $100 billion annually. It causes thousands of premature deaths and a diminished quality of life. So the American people have rightly demanded action.

Today we have a bill that we can all be proud of. In spite of the administration's cynical suggestion that Congress would weaken the President's proposal, in fact we have substantially improved upon that proposal. Many colleagues, their staffs, and people from across the country have labored untold hours to craft a strong bill. The chairman and members of the Energy and Commerce Committee, and many other Members, have played critical roles in improving this legislation and moving it forward.

On issue after issue, Democrats in the Congress have taken the lead to strengthen the environmental protections in this bill and reduce the costs imposed on us by pollution. In tightening the controls on toxic substances, cleaning up our gasoline, promoting the development of cleaner vehicles, reducing ozone depletion, and reducing acid rain, Democrats, rather than accepting weaker standards, have sought new approaches. The result is that this legislation provides a framework that should enable the country to achieve its goals in an effective and efficient manner.

The clean air bill takes action on several issues.

First, this bill requires significant steps to reduce urban smog. It would impose tougher standards on automobiles and require refiners to produce cleaner gasoline. S. 1630, more effectively than the President's proposal, allows for the use of alternate fuels like ethanol and natural gas that can reduce our dependence on imported oil.

Our legislation also includes a program to require use of clean-fuel vehicles in fleets and a pilot plan to sell up to 300,000 ultraclean cars per year in Los Angeles. This will promote the development of new technologies and help that region address its severe smog problem. We also strengthen warranty requirements for two of the most important automobile pollution control devices: catalytic converters and electronic control units.

This legislation also addresses acid rain. This bill reduces utility emissions that contribute to acid rain by 10 million tons per year. And it holds those emissions at under 10 million tons per year in the future. Further, it includes some important provisions to mitigate costs and disruptions to communities, particularly a program of unemployment insurance and retraining assistance for workers displaced as a result of the bill's requirements.

Third, this bill takes the most effective action ever to reduce toxic air pollution. In the last decade, regulations have been promulgated for only seven hazardous air pollutants. This bill would assure regulation of 189 major industrial sources, twice the number proposed for action by President Bush; require plans to achieve 90 percent reductions in emissions of the most hazardous pollutants; require the development of urban air toxics control strategies to reduce cancer risks; and implement planning to prevent accidental releases.

Fourth, this legislation reduces the use of chemicals known to contribute to global warming and to deplete the Earth's ozone layer. This bill would again position the United States as a leader in the international effort to protect the ozone layer.

Around the turn of the century one observer aptly noted this:

> God has lent us the Earth for our life . . . . It belongs as much to those who are to come after us, and whose names are already written in the book of creation, as to us.

We are stewards, and we must pass on a clean environment to our children. Our job is to protect our environment and our resources—to ensure that the future for our children and theirs can be as bright or better than ours. Today we can take an important step toward fulfilling that commitment. I urge my colleagues to support the conference report.

Mr. MOORHEAD. Mr. Speaker, when future analysts look back at the Clean Air Act Amendments of 1990, one of the most significant features will turn out to be the provisions on reformulated gasoline and oxygenated fuels. Together, these provisions are a recognition that changes in fuel composition as well as changes in vehicle hardware are helpful in reducing harmful emissions.

While the potential benefits of reformulated gasoline and oxygenated fuels are indeed significant, I am concerned about the uncertainty which surrounds how these ambitious goals will be achieved and whether it can be done on time without costly disruptions. As the ranking Republican member of the Subcommittee on Energy and Power, as a senior conferee on the House-Senate committee which produced this conference report, and as one who represents an area which will be subject to these requirements, I took a keen interest in seeing to it that much needed flexibility was introduced into the final bill.

The conference committee had the benefit of a September 1990 report from the Office of Technology Assessment entitled, "Replacing Gasoline: Alternative Fuels for Light-Duty Vehicles." This report concluded that, "We cannot overstress the uncertainty associated with projecting the emissions-reduction potential of reformulated gasoline." The report went

on to note that "reformulated gasoline is a concept, not a reality."

We have set requirements for reformulated gasoline driven by the stated performance standards for reducing ozone-forming volatile organic compounds and specified toxic air pollutants in gasoline in the nine worst ozone nonattainment areas, which account for fully one-quarter of all gasoline sold in the United States. This gasoline must achieve the greater of the emissions reductions achieved by these standards or achieved by the formula in the bill.

Given the uncertainties surrounding reformulated gasoline, we balanced the desire for obtaining emissions reductions from cleaner gasoline with a mechanism to provide much-needed flexibility to refiners and others in meeting the bill's requirements. This flexibility is important given the warnings from the Department of Energy and the refining industry that meeting the bill's requirements by the stated deadlines will be difficult at best.

The conference agreement adopts pool averaging by individual refiners, blenders, importers and marketers to determine compliance with the specifications for aromatics, oxygen and benzene, in order to provide the desired flexibility in meeting these tough new requirements. To implement pool averaging, the mechanism of marketable credits, as recommended by the President for acid rain and oxygenated fuels, is extended to reformulated gasoline. The system of pool averaging of gasoline sold by an individual refiner, blender, importer or marketer in a given nonattainment area is critical to the workability of the reformulated gasoline requirements.

As spelled out in the statement of managers, individual refiners, blenders, importers and marketers will earn credits for selling gasoline with higher oxygen content, and lower aromatic and benzene content, than required by the provisions of section 211(k) of the Clean Air Act as added by the bill. The credit system allows those subject to these requirements to average the contents of all gasoline they sell in a nonattainment area to determine compliance with the new law. Each and every gallon of gasoline sold in a given nonattainment area need not meet the content specifications so long as the volume-weighted average of the gasoline sold in the covered area by refiners and others is equal or more than the 2.0 percent oxygen requirement—or other applicable level—and equal or less than the applicable content limit for aromatics and benzene. Pooling or averaging will result in the most cost effective enforcement of the new law.

EPA will need to determine the precise dimensions of the pooling or credit system in keeping with the overriding goal of making it workable. The limit on the use of credits stated in new section 211(k)(7)(C) is based upon looking at the overall fuel content of all gasoline sold by all fuel providers in an area. The use of credits is only limited if the use of such credits would result in an overall average gasoline content in the area less stringent than the content specified for the area under that subsection. Since credits may only be used in the same covered nonattainment area in which they were earned, over time this narrow limitation on the use of credits will not be breached. The issue addressed by the limitation in section 211(k)(7)(C) is the coordination of when credits are earned and when credits may be used. EPA will determine the time period, such as annually, over which the average content of gasoline is determined for this purpose. We expect that EPA will keep in mind the critical and central purpose of the credit program and the fact that an efficient credit trading system was key to reaching agreement on the reformulated gasoline provisions. An overly technical reading of the legislative language would defeat this purpose.

As a practical matter, the need to gain EPA approval for new fuels could potentially create a regulatory backlog, not to mention creating a race against the clock to develop gasoline which meets the bill's requirements by 1995, which entails obtaining the necessary permits, and modifying and constructing refining facilities to meet the demand for cleaner gasoline. To expedite matters, the bill requires that a proposed fuel or slate of fuels be deemed certified by EPA if the agency fails to take final action within 180 days of receiving a petition for approval. If EPA subsequently disapproves a fuel, a reasonable period of time must be provided for a refiner to come into compliance, giving that large investments will already have been made to produce the new fuel.

As I noted earlier, reformulated gasoline is a concept, not a reality. Mindful of that fact, we are embarking upon a great experiment. Much is on the line with this experiment. If it is successful, our air will be cleaner and our economy will not be disrupted. However, it will not be successful unless the new program is administered with flexibility and with a coordinated effort by regulatory agencies to provide the private sector with direction and time to comply. The concerns I have in this regard are shared on a bipartisan basis by the chairman of the Subcommittee on Energy and Power [Mr. SHARP]. He has done an excellent job of examining these provisions in detail and I want to associate myself with his remarks on the intent underlying these provisions.

Mr. FORD of Michigan. Mr. Speaker, I rise in strong support of this conference report on the Clean Air Act of 1990 and the magnificent work of my friend, JOHN DINGELL.

This is one of the most important pieces of environmental legislation in this century, one that will affect not just the quality of our air, but the survival of the entire planet's ecosystem. We are taking enormous strides toward protecting the Earth's ozone layer by phasing out the use of CFC's. We are tackling the poisoning of the world's greatest bodies of fresh water—the Great Lakes—by airborne toxins. And we are forcing tough new requirements on utilities to deal with acid rain and its effects on forests, lakes, and fish.

The dramatic improvements in our environment that this law will bring about are not without cost. But JOHN DINGELL is more than just an environmentalist, he is also a realist and a protector of the working man. No one has battled longer and harder to make sure that the burdens we impose on industry are reasonable. JOHN DINGELL has felt the anger of the environmental movement and some of this Nation's most powerful politicians because he refused to react in a knee-jerk way to demands for change that would have needlessly risked tens of thousands of jobs.

Chairman DINGELL is a careful, steady legislator. His guiding principle is one we should all heed: Do what is necessary to protect our environment; don't do what is unnecessary.

Unlike too many environmentalists, JOHN DINGELL is also a man of enormous compassion. When the gentleman from West Virginia, Mr. WISE, took up the cause of his constituents who work in the high-sulfur coal mines that may be devastated by this legislation, President Bush and OMB, prominent environmental groups, the Senate, and many in the House opposed him. They took the position that we had no obligation to those miners or anyone else whose job was eliminated because of this act of Congress.

I joined Mr. WISE in his fight to protect the economic future of his miners and their families, and we got important help from others, including most notably, the gentleman from New York, TOM DOWNEY.

But without the total commitment of JOHN DINGELL, this fight for the potential victims of environmental protection would have been hopeless. The chairman was the 900-pound gorilla who made this victory possible.

The terms of our victory are fairly impressive, in my estimation. The Clean Air Employment Transition Assistance Program will consist of a $250 million grant program in the Department of Labor over 5 years, with $50 million authorized in this fiscal year. When a business closes or lays off workers as a consequence of this act, because demand for its products or services is adversely affected, because a product is banned, or because its production processes have become uneconomical, State government, substate grantees, employers, employer associations, and representatives of employees may apply to the Secretary of Labor for funds to help these laid off find new employment. The range of potential services includes job and career counseling, basic and remedial education, on-the-job training, classroom training, job search and relocation allowances, and needs-based payments.

The level of payment and the determination of need for weekly benefits were thorny issues. The conferees settled on a generous test of need. Any individual who is enrolled in training in a timely manner and whose family income after job loss is not greater than the lower living standard income level—$20,500 for a family of four in my congressional district—must be provided a weekly benefit at the level of State unemployment compensation benefits or the poverty level, whichever is higher. This benefit must be paid once an eligible individual is enrolled in training and must be continued as long as the individual participates in training, unless his failure to participate is not his fault, as might happen because of the employee's illness, the illness of an instructor, or the administrative problems of a service provider.

This is not a welfare program or even a compensation program, though I believe the Government has at least a moral obligation to compensate people when it consciously, deliberately eliminates their jobs for the greater good. The Wise amendment creates, rather, a

program to help the most seriously affected workers find new employment, whether by relocating them to a place where jobs are more abundant, by helping them acquire new skills, or by helping them market their skills better in their own area. Nevertheless, the benefit component of the Wise amendment is crucial to its success. No one should be denied the training and reemployment services authorized by this bill because of need. The weekly benefits that the service providers must make available will ensure that no one is forced to choose between taking a low skill, minimum wage job to support his or her family instead of enrolling in training or education classes that could ensure them a future of job security and fulfillment.

Once again, I salute Mr. WISE for his tenacity and effectiveness, and Mr. DINGELL for his essential, powerful assistance.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of the conference report on the Clean Air Act Amendments of 1990.

At the outset, I wish to congratulate Chairman DINGELL and the other members of the Energy and Commerce Committee for their extraordinary efforts in successfully completing the clean air conference. All Americans will be better off due to their hard work.

I also thank Chairman DINGELL and the Energy and Commerce Committee conferees and their staff for working cooperatively with the Committee on Merchant Marine and Fisheries on many of the provisions within our jurisdiction.

One of the provisions with which we were particularly concerned was the development of marine vessel standards. The language we have agreed to is based principally on the House bill, although, at the suggestion of the Committee on Merchant Marine and FIsheries, further modifications were made in the House provision to ensure that the Coast Guard is an active participant in developing and implementing the new emission standards. The Coast Guard's role is particularly important since many of these vessels carry flammable cargoes and, unless safety considerations are given a high priority, according to the Coast Guard, fires, explosions, tank ruptures, and oilspills could well result. I believe the provision we have worked out will result in improvements in air quality; at the same time, important safety considerations in the operation of tank vessels will be taken into account. If there is anything we have learned from the tragedy of the *Exxon Valdez* oilspill, it is that marine safety is critical to achieving our environmental goals. Any proposal, no matter how well intended, that creates a hazard to marine safety, does not serve the environmental goals of the United States.

The final provision on marine vessel standards implements the 1988 study of the National Research Council [NRC] on controlling hydrocarbons from marine vessel emissions. The NRC recommended a coordinated program between the Coast Guard and the Environmental Protection Agency [EPA], and this coordinated program is what the conference has approved.

Marine vessels produce emissions primarily from loading and ballasting, with volatile organic compounds [VOC's] or hydrocarbons being released. The NRC concluded that control and recovery of these compounds from tankships and tank barges was feasible, provided that national safety standards for vapor emission controls were developed and implemented. According to the Coast Guard, vapor control systems must be designed and operated safely to prevent the occurrence of fires, explosions, tank ruptures, and oilspills.

The final language on marine vessel standards provides a coordinated Federal-State program for the control of marine vessel emissions and a cooperative EPA-Coast Guard program which acknowledges these agencies' traditional roles. In the first place, EPA is specifically authorized, within 2 years from enactment of the Clean Air Act Amendments of 1990, to promulgate Federal standards applicable to emission of VOC's and other air pollutants from the loading and unloading of tank vessels. EPA must consult with the Coast Guard in establishing these standards. The Coast Guard will be particularly important in advising EPA on the availability of particular control technologies, the costs of the technology, and safety factors associated with its use—all factors the EPA must consider in setting the national standard.

Vessels subject to these standards are those defined in section 2102 of title 46, United States Code, and include U.S.- and foreign-flag vessels that enter U.S. ports. Insofar as practicable, the standards should apply to loading and unloading facilities, the terminals, and not to the vessels themselves.

The Federal standards will not go into effect until EPA finds, after consultation with the Coast Guard, that the technology to meet the standards does exist and is cost-effective. However, the effective date of the standards shall not be postponed more than 2 years after the rules are promulgated. I encourage EPA, which has already begun to develop these standards, to consult with the Coast Guard at the earliest practicable time so the Coast Guard's views on the availability and safety of the technology needed to meet the standards are fully taken into account.

The conference report authorizes and directs the Coast Guard to issue regulations on the safety of equipment that will be used to comply with the new Federal standards. The Coast Guard has already issued one final rule on the safe design, installation, and operation of marine vapor control systems—55 Federal Register 25396–25451, June 21, 1990, to be codified at 33 CFR parts 154, 155, 156, and 46 CFR parts 30, 32, 35, and 39. It may be, however, that additional regulations or revisions to the final rule will be needed to accommodate EPA's development of new emission standards and to take into account any changes needed as a result of the Coast Guard's testing of available technology. The Coast Guard has already met the 6-month requirement in the conference agreement for issuing a rule on equipment safety. This would not preclude the Coast Guard's later amending or updating its rule to take into account changed circumstances or new EPA standards.

The conference text specifically requires that the EPA emission standards, and any emission standards adopted by States or local governments from the loading and unloading of tank vessels, be consistent with the Coast Guard's safety equipment regulations. This will not only ensure vessel equipment compatibility, but will also ensure that the operation of marine vapor recovery systems will be conducted in a safe manner on board vessels.

The conference report authorizes both EPA and the Coast Guard to ensure compliance with the EPA vessel emission standards. I expect that the EPA and the Coast Guard will enter into a memorandum of understanding providing for their respective enforcement roles. As the chief inspector and enforcer of vessel compliance with U.S. laws, the Coast Guard should be given the primary role in inspecting vapor recovery systems on board vessels and ensuring compliance with applicable emission standards. The Coast Guard can also use its enforcement authority, under title 46 United States Code, to issue, suspend, modify, or revoke certificates of inspection or compliance, if it finds violations of the emission standards or equipment safety regulations.

Once EPA has promulgated emission standards, no State or local government may adopt or attempt to enforce any standard respecting emissions from tank vessels unless its standard is no less stringent than the Federal standard. Since EPA expects to propose emission standards in 1991, the States may be prudent to wait to develop their own standards until after the Federal standards have been issued. This will enable the States to meet the Federal standard, ensure greater consistency of standards that will affect vessels operating in interstate and maritime commerce, and enable conformance with the Coast Guard safety regulations.

Vessel emissions may contribute to ozone or toxics problems in some States, but not in others. States may well decide that these emissions are not a problem in particular regions and therefore choose not to apply the Federal standards in those regions. Otherwise, facilities and terminals, including many which are municipally owned, will have to install costly but needless marine vapor recovery systems.

I wish to make brief reference to the other provisions within the jurisdiction of the Merchant Marine and Fisheries and to changes that we obtained in those provisions. With respect to the EPA monitoring program in title I on the effects of atmospheric deposition of hazardous air pollutants to the Great Lakes, Lake Champlain, and other coastal waters, we have added a specific role for the National Oceanic and Atmospheric Administration [NOAA], to cooperate in the development and implementation of this program. NOAA already has a network of monitoring stations throughout the Great Lakes, Chesapeake Bay, and other vital coastal estuaries. In carrying out the research program, EPA should also look to the estuarine research reserves established under section 315 of the Coastal Zone Management Act of 1972, as amended. These reserves, which represent biologically and geologically diverse estuarine regions, will provide a valuable baseline from which to detect changes in coastal waters due to hazardous air pollutants. I also expect EPA, NOAA and the Fish and Wildlife Service to cooperate in conducting the broader research program of

ecosystem damage from air pollutants authorized by title IX of the bill.

The conference report also requires EPA to conduct a 2-year study on the health and environmental impacts of the combustion of contaminated used oil in ships. EPA should look to both the Coast Guard and the Maritime Administration within the Department of Transportation for assistance in preparing this study and report to Congress.

Finally, the Senate receded to the House provisions on the regulation of emissions from facilities on the Outer Continental Shelf, including associated vessels. This will mean that for areas offshore California, EPA will now establish the emission standards and, if their standards are adequate, EPA can delegate the authority to implement and enforce the air quality requirements to States. This transfer of responsibility from the Secretary of the Interior to the Administrator of EPA should provide southern California, in particular, the assurance it has sought that OCS emissions will not contribute to existing and severe air pollution problems. At the same time, I expect that the standards will not be set in such a way as to preclude all offshore development or to impose a higher burden on offshore than onshore sources of pollution. If the State standards are set so as to unfairly discriminate against or impose unreasonable burdens on offshore development, I would not expect that EPA would find these provisions to be adequate for purposes of permitting a delegation of authority to the State. I also expect that EPA will continuously review the State's program for OCS facilities to make sure that it continues to be fair and adequate and, if necessary, to revoke the delegation. As part of its responsibility for the Outer Continental Shelf and adjacent coastal regions, the Committee on Merchant Marine and Fisheries will closely follow the implementation of this new authority.

Mr. Speaker, I urge my colleagues to vote for the clean air conference report, a successful conclusion for the 101st Congress, and one which should bring a breath of fresh air to the country.

Mr. BORSKI. Mr. Speaker, I rise today in strong support of the conference report on S. 1630, the Clean Air Act Amendments of 1990.

Mr. Speaker, this is a historic moment. We are about to approve landmark environmental legislation. It has been a long time coming.

I was not in Congress when the Clean Air Act was first passed in 1970, or in 1977 when it was last amended. That vital legislation went a long way towards improving air quality in my hometown of Philadelphia and throughout the United States.

In the intervening years, however, the air has not been so sweet. The march of progress has eroded much of the gain provided by the original Clean Air Act. In fact, Philadelphia now ranks in the top 10 of the smoggiest cities in the country.

The sheer number of cars on the road today has virtually negated the fact that those cars are much cleaner than they were 20 years ago. More people are driving more cars more places. The volume of traffic has cities throughout the United States choking on smog.

In addition, powerplants spew sulfur dioxide and nitrogen oxide into the air, which then falls as acid rain, a phenomenon virtually unknown in 1970. That acid rain is damaging lakes and forests.

The original Clean Air Act led to the regulation of only a handful of toxic pollutants. Since then, there have been discoveries of new toxics and more information is now available on their effects on the public's health.

Now, Mr. Speaker, on the eve of what many believe will be the environmental decade, Congress is acting to return breathable, healthy air to the United States.

This is a comprehensive clean air bill. S. 1630 will set deadlines to clean up the air in the dirtiest cities and tighten tailpipe emissions standards for cars, trucks, and buses, to help reduce urban smog.

S. 1630 will reduce sulfur dioxide and nitrous oxide emissions and place a nationwide cap on those emissions, to protect our lakes and forests.

This legislation will also reduce and regulate over 100 of the worst toxic pollutants, to protect the public's health, and help prevent the accidential release of dangerous toxic substances.

The time has come to renew the promise of the Clean Air Act of 20 years ago: clean air for all Americans. S. 1630 will renew that pledge and I strongly support its passage.

My only regret is that S. 1630 does not do enough to recognize and encourage the use of mass transit as a resource to help clean the air. Public transit is the cleanest, safest, and most efficient way to move people.

Millions of cars are creating thousands of traffic jams and spewing tons of pollution into the air. By reinvesting in America's mass transit system, we could reduce the number of cars on the road, eliminate at least some of the traffic jams and significantly cut down on the smog in our cities.

I will continue to work for greater utilization of mass transit in this country. Having said that, I urge my colleagues to join me in supporting S. 1630, the Clean Air Act amendments.

Ms. SNOWE. Mr. Speaker, I am happy to rise today in support of the conference report to S. 1630, the Clean Air Act amendments. The Nation has waited far too long for Congress to improve our air pollution laws, our action today will serve to protect and improve our air quality throughout the country.

The conference report that is before us today, represents the most significant environmental accomplishment of the 101st Congress. Our approval of this legislation will lead to the first comprehensive restructuring of our air pollution standards in over a decade. It represents the climax of years of negotiation and the triumph of so many Members who have sought to protect the health of their constituents and the environment.

I would also like to recognize the contribution of President Bush, who made the strengthening of the Clean Air Act a priority. If it had not been for President Bush's challenge to Congress to bring a new and improved Clean Air Act to the White House, we would likely still be sifting through the same old morass of legislative proposals.

While we may disagree with some of the individual provisions within this legislation, there is no denying that this bill represents a true compromise that soundly and responsibly addresses this Nation's clean air needs.

As a Representative of the State of Maine, I would like to note my specific support for title V of S. 1630, which addresses the harmful effects of acid rain. When people think of Maine, they think of forested landscapes dotted with clear lakes and rivers. Maine depends upon the income that is generated by the forest products industry and the tourism industry which utilize these precious resources.

The ravages of acid rain can easily lay waste to our forests and lakes, which is why Maine made the conscious decision to refrain from some industrial growth that would damage our cherished way of life. This decision came with a price—lower economic expansion compared to the midwest.

S. 1630 utilizes a system of pollution credits which will allow polluting utilities to choose the most efficient means by which to control their harmful emissions. This system is both fair and effective—the air will be cleaner and the polluters will pay for the costs. That was a principle of mine throughout the 1980's, and I'm pleased to see it enshrined in this bill.

The success of the original Clean Air Act cannot be denied—it is hard to imagine how our air quality would have deteriorated without it. Nevertheless, the United States has changed considerably since 1972 and the need for new regulations is as great today as it was then.

Today we are faced with new problems that were unknown only a decade ago. The trend of global warming forces us to find ways of limiting our reliance on fossil fuels and to find cleaner, safer, and renewable forms of energy.

Ozone presents a particularly tough problem: we have too much on the ground and too little in the upper atmosphere. I am particularly concerned about ground level ozone because of the nonattainment levels that plague much of Maine's coast.

Again, the conference report addresses this issue fairly and effectively. Many nonattainment areas, including much of Maine, have high ozone levels due to pollution sources that are downwind. S. 1630 would allow these areas to be exempted from strict control legislation. It would not make sense to punish an area that is aleady suffering from a problem that it did not create.

Mr. Speaker, the American people have waited too long for a new Clean Air Act. President Bush provided the leadership to move the debate and now the Congress has responded with a bill that we all can support. It fairly and realistically addresses our air pollution problems and provides remedies that will allow our constituents to breath easier without taking the breath away from business and industry. I urge my colleagues to join me in support of the conference report to S. 1630.

Mr. LIGHTFOOT. Mr. Speaker, I rise in opposition to the conference report on the Clean Air Act of 1990. There is no question we all want clean air, clean water, and a clean environment. It would be absurd to deny that how

we handle our environment is a legacy for all our children and grandchildren. However, I cannot support this legislation, which I believe has costs that will significantly outweigh the benefits. The chairman of the Energy and Commerce Committee, which has jurisdiction over this bill, acknowledges that its impact will be felt in virtually every facet of life in the United States. There are estimates this legislation will cost in excess of $40 billion. As many as 1.5 million American workers will be displaced by the requirements of this legislation. In this time of rising budget deficits, and an economy that appears to be headed for tough times, is this a cost we are prepared to pay? I would respectfully suggest we are not. In addition, I question if this legislation will achieve the laudable goals it sets forth. I understand the conference report contains a provision much like one contained in the House-passed version of this bill. Under this system of emissions allowances in which so-called "clean" fossil-fuel burning units may sell allowances, or authorizations to release emissions, to so-called "dirty" units. I believe we need to have uniform standards. I do not believe we should allow units to buy a clean bill of health from the Federal Government. There is no question we have made notable strides since the first Clean Air Act passed in 1970. We certainly should not stop in our efforts to correct the environmental excesses of the past. However, I do not believe this legislation is the way to go. For that reason, I will vote no on the conference report and urge my colleagues to do the same. Mr. Speaker, I also would like to insert for the RECORD an article from the Council Bluffs Nonpareil, discussing the concerns about this legislation.

[From the Council Bluffs Nonpareil, Oct. 26, 1990]

ANTI-POLLUTION OVERKILL

In an age of yawning federal deficits, politicans can't create big public programs with impunity. So they satisfy their urge for grand accomplishments by passing mandates for private spending, like the mammoth Clean Air Act of 1990.

Headed for passage by Congress this week, this landmark monster will cost the public as much again as the latest tax increases—or more: Estimates run to $75 billion a year. If the tax hike is ill advised on the eve of a recession, doubling it will deal the economy a serious blow.

But unlike Washington's new taxes, the bill for clean air will be hidden in higher prices for goods and services including electricity, steel, paint, printing and dry cleaning. The price of a car will go up some $600 as more advanced pollution-control devices are required.

Public spending on unemployment will rise, too, with job-loss estimates mounting to 1.5 million. The clean air bill itself provides $250 million in special compensation for workers displaced by its provisions—a rash precedent that will come to haunt future budget summits.

Not only does this grandiose bill cost too much, but it centralizes decision making in Washington, far from the communities that stand to lose jobs. Especially small-business managers will be bowed down by a cascade of new requirements for federal permits, fees, engineering studies, health-risk assessments and emissions monitoring as the number of controlled air toxins rises from 7 to 189. Maybe they'll get a sympathetic hearing from 190 new technical experts at the Environmental Protection Agency in Washington, D.C.

Backers of this first anti-pollution blockbuster in 13 years say the expense and regulation are justified by the prospect of a cleaner environment. They might be right if America's air were foul or getting dirtier; and if health problems attributable to air pollution were numerous; and if local governments had shown indifference to pollution. But none of those is true.

Since the first Clean Air Act was passed in 1970, air quality has improved enormously, and improvements are projected to continue as technology advances. Estimates of lives saved by the new bill range from negligible to thousands (compare that with 1 million deaths from heart disease annually), and most of those would be in areas with serious air problems—such as Los Angeles, already slated for a massive 20-year clean-up required by the state.

In the absence of any national air-pollution emergency, the president should veto this harmful bill.

Mr. BARTON of Texas. Mr. Speaker, I rise in support of the conference report to S. 1630, Clean Air Act amendments. If you asked me at the beginning of the session if we would be here today ratifying the final touches on the most comprehensive environmental legislation ever introduced, and that I could support it, I would have said most assuredly—no. But through the visionary leadership of President Bush and diligent shepherding by Chairman DINGELL and Vice Chairman LENT, we are here today to pass and send back to the President, a bill that sets in place the most stringent environmental regulations ever. I want to also commend the personal staff and committee counsels for their hard work, and the tireless effort exerted in negotiating, sometimes around the clock, every line and word of S. 1630.

I think a fair balance was achieved in melding concern for the environment while not stifling economic growth. In the long run, the only truly successful environmental policies, are ones based on flexible free-market principles. It will be seen if an economy can remain healthy while cleaning up the environment. I believe this can be done. The engine of economic growth will simply be run on clean burning natural gas from Texas.

After participating actively in the committee process as a member of the Energy and Commerce Committee and having seen how each title was put together, I have only four words on the prospects of the law: I hope it works. The Environmental Protection Agency [EPA] has a Herculean task ahead of them in the next 2 years. It has been estimated that S. 1630 will require the EPA to promulgate more rules and regulations in the next 2 years than it has in the past 13 years, since enactment of the last clean air act amendments. I hope they are up to the task, and that we are not back in successive years considering the Clean Air Act Technical Corrections bill.

Specifically, in the bill I am happy the conference committee retained a provision I added in the Energy and Commerce Committee, to require the cities with the worst smog problems to incorporate a system of on-road emissions testing into their enhanced inspection and maintenance program. These cities would be required to use an innovative on-road remote sensing device to measure smog technology developed by Dr. Donald Stedman of the University of Denver. No one disputes the fact that 10 percent of the cars on the road contribute 50 percent of the pollution emitted. This technique effectively measures and identifies the gross polluting vehicles that emit over half the pollution. Contrary to some studies, not all gross polluters are old cars. With on-road emissions testing, localities can notify the owners of older cars and have their cars tuned up at a much lesser cost than phasing out all old cars.

Dr. Stedman's studies have indicated that the traditional annual stationary method of testing and inspection of auto emissions is ineffective. It is analogous to giving all drivers a breathalyzer test once a year to combat drunk driving. With the extreme, and in some cases even draconian sanctions facing cities and regions that do not attain certain percentage reductions contained in the bill, I am confident that requiring the implementation of a system of on-road testing will allow our Nation's dirtiest cities to realistically achieve the smog reductions required by S. 1630, and avoid those harsh penalties.

I am also pleased that the conference accepted an amendment I offered with Mr. BILIRAKIS in the committee to initiate a fuel cell-powered vehicle research and demonstration program. Fuel cell-powered vehicles use carbon-free hydrogen to produce electricity. A fuel cell electric vehicle uses non-polluting technology. Texas A&M University, located in my district, has one of the premier hydrogen research centers in the world. We must invest in this type of non-polluting technology to insure a cleaner, safer environment in the future.

Also during committee consideration of the Clean Air Bill, I worked with Congressmen SLATTERY and RICHARDSON, to improve the accidental release section of the air toxic title. It appears as though the section was improved in conference with the Senate provisions.

The amendment specifically addressed the prevention and containment of catastrophic accidental releases of hazardous chemicals. It will require all manufacturers and businesses that use hazardous chemicals, to establish a risk management plan. This plan will assess the potential for an accidental release caused in the transportation, storage, or burning of hazardous materials. The plan will also include a prevention program that implements safety precautions, and employee training, to deal with an accidental release. Finally, the plan requires a response program that coordinates local agencies, emergency health facilities, and information services, when responding to an unanticipated accidental release. The amendment also creates an accidental release investigation board to investigate the causes of all accidental releases. This board is similar to the existing National Transportation Safety Board that investigates airplane accidents.

I realize almost all of my colleagues are going to join me in supporting the conference report to S. 1630. However, I would urge my colleagues to study the provisions contained in this bill closely when Congress adjourns

and specifically its economic impact on virtually every American citizen and business. Every Member should keep in mind that cleaning up the environment is not free, and will cost every American family about $300 to $400 a year.

Mrs. KENNELLY. Mr. Speaker, I rise in strong support of the clean air conference report. This is a great moment in the 101st Congress. When we approve this conference report, we will have approved one of the most important bills of this Congress. In fact, we will have enacted one of the most important environmental laws of the past 20 years.

We are taking a giant step forward in addressing problems like acid rain, toxic pollution, and global warming—problems that we have heard much talk of in the scientific community, and that through this legislation we will now attack.

And finally, this bill is a victory for the 121 million Americans who live in areas across the Nation where air pollution is considered unhealthy.

I am pleased to have been a conferee on this important legislation and commend the other conferees and the staff for all their hard work in reaching this bipartisan agreement.

I urge my colleagues to join me in supporting this landmark legislation.

Ms. PELOSI. Mr. Speaker, I rise in support of S. 1630, the clean air bill.

Mr. Speaker, we have reached a moment of truth in the decade-long debate on clean air. Over this same period of time, warnings have escalated about air pollution, which has become the legacy of our blind embrace of technological innovation.

Traditional air pollution control methods have proved inadequate for the dimensions of the task before us. Studies show that more than 150 million Americans live in areas where the air is dangerously polluted. Birth defects, asthma, and cancer are among the health hazards posed by toxic air pollutants, and acid rain from industrial emissions is killing fish and plant life in our lakes and rivers.

We have reached a moment of truth: We can no longer ignore the threats posed by ozone depletion and global warming.

I am pleased that the United States, as the leading polluter in the past, is taking the lead in pursuing a comprehensive clean air policy.

Recent polls indicate that Americans are becoming more aware of environmental concerns and confirm that 65 to 70 percent of the public favors environmental protection above economic success. Where we have used the environment to reap economic profit, we must now invest in our environmental capital so that we all profit—by breathing clean air, by drinking clear water, and by promoting environmental security for all of the world's inhabitants.

The "Green Movement" starts with each of us, in making individual changes in our daily lives that will have a beneficial effect on our larger communities and the world.

I want to praise the work of the principal clean air negotiators, Senator MITCHELL and Congressmen DINGELL and WAXMAN, for their strong leadership on this important initiative.

It is true that we have more work to do. This legislation today answers questions that were asked many years ago, and even more questions have arisen in recent times.

The fight for clean air must be continued. We must look, not only at factory and automobile emissions, but also at transit and urban development policies. Just as our atmosphere is vital to all aspects of life, clean air considerations must be included in all areas of public policy.

We are all stockholders in the environment and must continue our work to protect the natural inheritance of future generations. I encourage my colleagues to support S. 1630, and again recognize the role of our colleague, HENRY WAXMAN, who has led the fight for clean air. His leadership has brought honor to the California delegation.

Mr. MOLLOHAN. Mr. Speaker, I rise in opposition to the conference report.

I recognize the tremendous work that Chairman DINGELL has undertaken to bring this bill to the floor, and I wish I could support this bill, Mr. Speaker, but I cannot.

Proponents of the bill have talked at some length about what this bill will do. Looking at the acid deposition title, for instance, we are told that this bill will reduce sulfur dioxide emissions by roughly 10 million tons. We are told how this reduction will be achieved. We are even occasionally told how much it will cost a lot. What we are not told, however, is what this reduction will do, what it will mean, how our lives will be improved.

It is assumed, it is held as a matter of fact, an inquestioned and unquestionable truth, that a 10 million ton sulfur dioxide reduction will achieve any number of profound improvements in our health and our environment. Unfortunately, Mr. Speaker, that is just not the case.

Ten years ago, there was one issue on which proponents and opponents of an acid rain bill could agree: the need for more scientific and technical information. Congress joined together and established the National Acid Precipitation Assessment Program. The idea was that the best scientific and technical minds and resources available to the Federal Government would spend 10 years and well over half a billion dollars to obtain solid information about acid deposition.

The final report was issued this year. The results confirmed what I have been suggesting for years: The realized and potential damage of acid deposition has been grossly exaggerated. The NAPAP study shows that fewer than 1,200 lakes—most more accurately described as ponds—have become acidified. This is less than 4 percent of all lakes in areas where acidification could be expected. Compare this to the environmental claim that tens of thousands of lakes would become acidified.

NAPAP says that, with the single exception of high elevation red spruce in selected areas of the country, there is no evidence of any general forest decline as a result of acid deposition. Compare this to the claims that forests across the country would be devastated.

Did this Congress pay any attention to the NAPAP study? Unfortunately, no—the supposed claimed benefits had moved from the realm of science and economics to the realm of politics. When this bill was written, Mr. Speaker, we no longer cared about the facts.

This bill, Mr. Speaker, sacrifices policy to politics, and it should be defeated.

Ms. OAKAR. Mr. Speaker, I rise in support of the conference report on the clean air amendments, despite some strong reservations with respect to title V of the legislation.

For the past month—day and night—the committees concerned with this legislation have been meeting to reach the agreement that has brought to the floor the first amendments to the Clean Air Act in 13 years. The Members of this House and the American people are indebted to the chairman of the committee, the gentleman from Michigan, Mr. DINGELL, and the chairman of the subcommittee, Mr. WAXMAN, for their vision, their leadership, their efforts, their skills, and their stamina. This bill is a prodigious achievement.

We are all travelers on a common planet. This bill is a landmark in efforts to clean up a very important part of that planet, and to provide an example to the rest of the world of what should be done and how it should be done to preserve our common environment.

My reservations arise from the fact that this bill will become the most important energy policy legislation of the next decade. I am concerned that energy security matters were not adequately considered during the process. For example, the present structure of title V would appear to defer rather than encourage the introduction of clean coal technology that can give this Nation cleaner air, cleaner water, and cleaner soil. Clean coal technologies can also give us better energy efficiency, and thus avoid the prospect of brownouts and blackouts that this legislation may bring on because coal burning units are forced into premature retirement.

Also, clean coal could allow us to use the tremendous energy resources we have in this country to bolster our energy independence.

With these reservations, I still endorse this legislation as a tremendous congressional achievement.

Mr. CLAY. Mr. Speaker, I rise in support of the conference report. I am particularly pleased that the conference committee has seen fit to include language prohibiting the use of foreign nationals as strikebreakers and I want to commend my colleagues on the Judiciary Committee for their efforts in this regard. As some of my colleagues may recall, TWA was able to replace American workers lawfully exercising their right to strike with foreign nationals on overseas flights originating or terminating in the United States. The use of such foreign nationals not only made a mockery of the rights of American workers that our labor laws seek to protect, but raised issues concerning passenger safety.

Thanks to the efforts of the ranking Republican on the Subcommittee on Labor-Management Relations, the gentlewoman from New Jersey, Mrs. ROUKEMA, language was included in the House-passed version of the Immigration Reform and Control Act of 1986 to deny admission to alien crewmembers during a strike in the bargaining unit in which the alien intended to work. Regrettably, the conference committee altered the language so as to effectively gut its protections and included a 1-year sunset on the provision which expired on November 5, 1987. In the 100th Con-

gress, the gentlewoman from New Jersey introduced legislation to make permanent the ban on the use of alien strikebreakers. Hearings were held by my subcommittee and on March 22, 1988, this body passed H.R. 285, a bill reported by the Education and Labor Committee, on the suspension calendar. Regrettably, the other body failed to act.

I am very pleased that today this issue is finally being put to rest. As provided by the legislation reported by the conference committee, airlines will no longer be able to hire and employ foreign nationals for the purpose of replacing American workers who are exercising their right to strike. I am confident that this legislation will end the outrageous practice of intentionally replacing American workers with aliens for the purpose of nullifying the right of American workers to strike. I want to commend the chairman and ranking Republican member of the Judiciary Committee, Mr. BROOKS and Mr. FISH, the chairman of the subcommittee, Mr. MORRISON, and the gentlewoman from New Jersey for their efforts to end this inadvertent and unfortunate loophole in our immigration laws.

Mr. POSHARD. Mr. Speaker, I rise in opposition to the conference report on S. 1630, the Clean Air Act Amendments of 1990. I truly wish I could support this important piece of environmental legislation, but I simply cannot.

The main reason I cannot is its regional inequity. Currently, the Midwest produces about 60 percent of the Nation's emissions of sulfur dioxide, yet we will be shouldered with the burden of making almost 90 percent of the reductions required by this bill. It is simply unfair to push the Midwest's shaky economy to the brink of bankruptcy while we struggle to solve a national problem.

The people of southern Illinois have come to the aid of our fellow Americans when others have been afflicted with hurricanes, floods, earthquakes, droughts, savings and loan collapses, municipal bankruptcies, and other manmade and natural disasters. It is clearly unjust for the Midwest to pay billions simply because the type of coal that lies under our land is high in sulfur.

There is absolutely no doubt in my mind that this bill will hurt my State. It is estimated that Illinois electric rates will rise 4 percent and in my area they will go up 10 to 20 percent. Demand for Illinois coal will be reduced by a third and the best estimates suggest that the State will lose 16,000 jobs. Most of those who lose their jobs will be from my district.

High-sulfur coal mining is the major industry in my area, and most of our electric utilities use local coal. Right now, southern Illinois already has double-digit unemployment and this conference report will be a crippling blow to our regional economy.

The one part of the bill which could slightly soften the blow is the Wise provision to provide job training benefits to those people put out of work by this bill. I worked hard to get that language included, but even with the retraining, there will be no good jobs for these unemployed men and women in southern Illinois.

Mr. Speaker, there can be no doubt about my credentials on environmental issues. I am one of just 27 Members of the House who received a 100 percent rating on environmental issues with the League of Conservation voters in 1990. But, this report is just too hard on the people of southern Illinois and I must vote against it.

Mr. WALGREN. Mr. Speaker, today is a landmark day as the House of Representatives passes the clean air bill, the first in over a decade. Passage of a clean air bill is not only important for the country, it is important for the world. We have to ask ourselves, what kind of planet do we want and what kind of planet can we get? Study after study tells us that the Earth is facing unprecedented threats of pollution. The viability of the planet is at stake; the productivity of the planet is at stake. World leaders, including the Pope, are recognizing that we all have to do more to protect the fragility of the Earth.

By the middle of the next century, our world of 5 billion people must make room for another 5 billion. The global economy of $14 trillion could be five times as large as today. As many developing nations increase their energy use and economic output, the United States' leadership in taking care of the planet becomes all the more important. The clean air bill is based on several important considerations. First, everyone must share in the burden of reducing pollution, every industry and every individual. Second, we must put in place incentives to develop new technologies that prevent pollution, the front-end approach. Preventing pollution initially is far better than reining it in after the fact. Third, doing nothing only exacerbates the problem, making pollution more intractable and controls more expensive. To quote President Reagan's science advisor:

If we take the conservative point of view that we must wait until the scientific knowledge is definite, the accumulated acid deposition and damaged environment may reach the point of irreversibility.

HEALTH-BASED STANDARDS

The cornerstone of the Clean Air Act is a set of clean air standards that localities must meet to protect human health. The standards are central to the law because air pollution is unhealthy. Ozone aggravates asthma and decreases overall lung function. Smog irritates the eyes. Carbon monoxide reduces the ability of blood to deliver oxygen to the body's tissues. In my own area of Pittsburgh, hospitals report increases in emergency room admissions on days of heavy pollution.

The bill addresses several serious, air problems.

OZONE/SMOG

Over 150 million Americans in over 100 areas, mostly the major metropolitan areas, do not meet ozone standards and many do not meet carbon monoxide standards. Who among us can forget the hot summer of 1988 when ozone pollution reached unprecedented heights? The bill before us sets new deadlines for reducing ozone, generally requiring areas to cut ozone precursors by 15 percent in 6 years.

Cars and trucks are the single largest source of ozone and carbon monoxide pollution in areas not attaining standards. While we have tightened up on tailpipe emissions over the years, much of that progress has been offset by increases in the numbers of cars and the vehicle miles traveled. Most areas of Pennsylvania continue to exceed allowable ozone levels. During the summer of 1988, 90 percent of all Pennsylvanians were exposed to unhealthy levels of this dangerous and unhealthy pollutant.

In western Pennsylvania, scientists estimate that highway vehicles account for more than half of all man-made emissions of volatile organic compounds, a major precursor to ground-level ozone. By providing a tough schedule of tailpipe emissions reductions, the bill will ensure that the gasoline-powered cars of the 1990's and beyond are as clean as can be expected.

One of the most innovative and forward-looking provisions of H.R. 3030 deals with the introduction of a comprehensive clean-fueled vehicle program.

S. 1630 contains tough requirements to encourage urban buses, commercial and Federal fleet vehicles, and private passenger automobiles to begin making the transition to cleaner fuels. Shifting our dependence on traditional gasoline to cleaner burning substitutes will improve our environment, boost our energy security, and promote competition between energy sources. S. 1630 contains a number of measures to discourage the rapid growth of vehicle miles traveled [VMT's] by promoting public transportation.

Passage of S. 1630 will allow us, in the words of President Bush, "to reconcile the automobile with the environment."

Toxic or hazardous air pollutants cause cancer, neurological disorders, dysfunctions, and genetic mutations. Between 1980 and 1987, there were 11,048 accidental releases of toxics in the United States. And we cannot forget the tragic accident at Bhopal, India, when 3,000 people were killed. In 19 years, EPA has regulated only 8 of many toxics. The bill today puts tough new requirements on the EPA list and regulates 170 toxic pollutants. The bill directs EPA to develop emissions standards that require the maximum achievable reductions within 10 years. For residual risks, EPA would publish standards that provide an ample margin of safety to protect the public health. The bill addresses the special problems of the steel industry by giving plants until 2020 to meet standards, but it requires reductions in steps until that time.

INTERSTATE POLLUTION

Air pollution does not respect State boundaries, especially in my area of western Pennsylvania. This imported pollution places increased economic burdens on the receiving communities, increasing costs to utilities and consumers for technology to control pollution from other States. For example, one study showed that sulfur dioxide pollution from Ohio and West Virginia power plants may be costing three western Pennsylvania utilities as much as $1 billion in added lifetime pollution costs.

The conference report includes several provisions giving the receiving States more tools to combat transboundary pollution. In addition, the bill establishes regional approaches for developing acceptable controls for neighboring States or areas.

ACID RAIN AND PENNSYLVANIA

The acid rain provisions of this bill will have a great impact on Pennsylvania. Since Penn-

sylvania is both a high emitter of sulfer dioxide [SO_2] and a receiver of the most acidic rainfall in the country, this bill will challenge Pennsylvania to be a part of the solution.

I have been struck by the damage to many of the State's prized landmarks such as in Gettysburg National Park where the names of the soldiers who died there have been all but washed away from the monuments. Evidence continues to mount that many of our lakes and streams are affected by acid rain. In fact, Pennsylvania has some of the most acidic rain in the country. One EPA study has found that a reduction of 10 million tons nationally could bring $160 million in benefits to Pennsylvania.

The bill is much improved over the bill submitted by the President. In the Energy and Commerce Committee, on which I serve, we were able to modify the bill to address many of the problems of the original bill.

Unlike many other States, we cannot characterize Pennsylvania as a clean or dirty State. Through aggressive implementation of the Clean Air Act Amendments of 1977 and local efforts to clean up what was once called the "dirty city," my home region in western Pennsylvania has made significant strides in controlling utility emissions of sulfur dioxide. Of the 9 scrubbers in Pennsylvania, 6 are within 25 miles of downtown Pittsburgh. Yet with all this behind us, the State as a whole is still one of the top 5 emitters of SO_2 in the Nation.

Because of the unique character of the State we had a number of problems with the President's bill. Some utilities that had already installed scrubbers were not given credit for previous efforts, or worse, due to the economic conditions for previous efforts, or worse, due to the economic conditions in the baseline years, they would not be given enough credit to run their clean plants. In addition, a utility that had hoped to shut down several old small units as a part of its compliance realized that it would not be able to use the allowances generated by the shutdown, and the plants that did need to do more to clean their emissions found that the bill's date and reduction targets limited their options in a way that would cost their customers much more money.

Each of these problems is now addressed. The provisions on baselines and credits for clean utilities will enable clean plants to run effectively. The trading and allowance provisions adopted in the committee will allow more flexibility for dirty plants. And many of the technical problems with the bill have been cleaned up including the removal of one clean plant in Pennsylvania that had mistakenly been added to the list of 107 plants for first phase reductions.

I would especially like to thank the conference committee for adopting several amendments, amendments I offered to promote development and use of clean coal technologies. With these additions, cleaning up the air and developing our Nation's most abundant form of domestic fossil energy are compatible. One amendment expanded the number of technologies eligible for special incentives from the five in the President's bill to any other boiler technology that achieves better pollution control of more than one pollutant and is more efficient than conventional boilers with a conventional scrubber.

My second amendment would allow a utility to comply using clean coal technology at a new site if the old plant is retired. This provision prevents the locking in of a utility at a site that should be abandoned or is too small when it repowers. Without this flexibility, the bill may discourage what is a commonsense compliance option.

Third, I offered an amendment that allows a utility which has tried and failed to comply with a clean coal technology to switch to another technology without penalty.

Finally, I want to thank the conference committee and particularly Mr. DINGELL and Mr. SHARP for assisting my local utility, Duquesne Light and General Public Utilities costing western Pennsylvania 2,000 jobs.

It is a real tribute to many Members of Congress and to the President that this Clean Air Act bill is before the House after a 10-year stalemate. As a 12-year member of a core group that pressed to strengthen the law, I am pleased to have been a part of this historic effort to give us, our children, and our grandchildren cleaner air. There could hardly be a more basic commodity than the air we breathe. This is a big step toward preserving it—and preserving the planet.

Mr. OXLEY. Mr. Speaker, after more than a year of debate which culminates over a decade of work, we are about to cast the final vote on a major rewrite of the Clean Air Act. In 1977 when the Clean Air Act was last amended, it was assumed that Congress would amend this measure on a regular basis. However, for over 10 years, we could not narrow our differences, find middle ground, and pass a comprehensive clean air bill.

Last July, President Bush helped break the stalemate when he introduced the bill before us which includes provisions addressing industrial and automobile emissions, air toxics, and acid rain. Few environmental bills have been this complex or have the potential for disruption to our economy as this one. It pitted the environment against the economy, the East against the West, and one industry against another. To reconcile these issues, the conference committee had to make many difficult decisions.

I have been among the most skeptical about this bill because I wanted to ensure fairness to my home State of Ohio, particularly regarding the need for further acid rain controls and the benefits of those controls. Further, I wanted to provide clarity with the American people as to the costs of the bill. Conservative estimates indicate Americans will pay between $25 and $50 billion a year for cleaner air. To achieve this goal of improved health and welfare for our constituents, we will be asking them to pay the price through job losses, higher consumer product prices, high utility rates; in other words through changed life styles.

While this final bill is far from perfect, I believe we have come a long way toward the President's goal of balance and reasonableness. Underlying President Bush's clean air legislation was the desire to not only protect human health but to improve the quality of life of all Americans. It is my belief that this landmark legislation represents our best effort to negotiate a balance between the multitude of interests we represent and ensure that as a result, Americans will be better off, not worse off.

I am particularly pleased that we could blunt the impact on Ohio by including in the final agreement a provision which gives 200,000 additional allowances to Ohio, Indiana, and Illinois in phase I, and 50,000 new allowances to nine Midwestern States in phase II. We were also able to provide some assistance for two unique problems in my home State, the Zimmer plant, currently under construction, and Ohio Edison's small units which are the most costly and difficult to retrofit with scrubbers.

One of the key components of President Bush's bill was the concept of allowing the market to encourage reductions in pollution. This provision also caused divisions between the Midwest and the other States. To eliminate the argument that the Midwest would hoard allowances, and not give access to utilities in other States, I am happy to say that my proposal for auctioning allowances which was a part of the acid rain compromise adopted during consideration by the Energy and Commerce Committee has been retained by the conference. This mechanism will provide money to Midwest utilities faster and will also help to ensure that allowances are available to utilities across

Mr. Speaker, throughout the development of this legislation, we have worked to ensure that environmental progress does not jeopardize economic growth. We have added new environmental control requirements, but we have also tried to maintain flexibility in the permitting and review provisions of the bill, so that needed industrial modernization projects do not languish through months or years of permitting delay.

Of necessity, many of these issues have been left to EPA's discretion in implementing the legislation. This is true for such significant issues as the modification/de minimus provisions of section 182(C) (6)–(8) in title I; modification permit procedure provisions in section 112(g)(3); the so-called WEPCO issue in the acid rain title; and the permit flexibility provision of section 502. We fully anticipate that in addressing these issues after enactment, EPA will recognize the need for flexibility. This is not only a matter of economic importance; it serves important environmental purposes. We have presented industry with a tremendous challenge; we cannot take away from them the tools in terms of modernization and process changes, that will allow them to meet the challenge.

We have been careful to provide this flexibility in each of the title relating to stationary sources:

In title I, we have left the current netting and bubbling provisions unaffected in all but serious, severe and extreme areas. And even in those areas while we have lowered the de minimus threshold to 25 tons, we have tied the de minimum provisions of section 182(C)(6) to the modification provisions of section 182(c) (7) and (8).

In title III, we have included modifications as a separate category for review purposes, thus ensuring that existing sources can modify

without triggering new source MACT. Just as importantly, we have structured the modification provisions so that sources need not await lengthy permit revisions or modifications before undertaking plant modifications.

In title IV, we have deleted all general provisions relating to the WEPCO modification issue. We did not in the contemplation that EPA will develop reasonable, revised Wepco regulations that will allow plants to add pollution control equipment, switch to cleaner fuels, and refurbish old facilities without running afoul of NSPS or PSD modifications issues.

In title V, we have explicitly provided permitting authorities with broad discretion to allow plant revisions without requiring permit modifications or revisions.

Mr. Speaker, following President Bush's lead, the final bill includes provisions which will require the use of clean fuels. Cleaner fuels will provide significant environmental benefit without putting even more stringent controls on automobiles. I am particularly pleased by the clean fuels program that struck a balance between oil and gas refiners, farmers, and the environment. The oxygenated fuels program will allow for the use of MTBE and ethanol as additives to achieve the required level of oxygen. The program will result in an increased demand of 600 million gallons of ethanol, creating a market for some 240 million bushels of corn. In turn, increased demand for corn will increase farm income and lower Federal farm program costs.

While title III addresses 189 toxic air pollutants and the control of those pollutants, I wish to focus on the provisions of the utility air toxics study, section 112(n) of the act as added by the conference agreement. With respect to air toxics generally, the Senate and House bills included provisions that differed substantially with respect to scientific studies, timing, and regulatory requirements. The House provision required that the EPA Administrator perform a 3-year study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units and report the results of that study to the Congress.

On the other hand, the Senate provision was the result of a complex, and ultimately unsatisfactory, set of negotiations. Unlike the House provision, scientific studies were not to serve as the basis for regulation, but simply were to be included in the docket of the regulatory process leading to regulations. Under the Senate provision, regulations for the control of particulates and mercury would have had to be promulgated no sooner or later than 5 years after enactment.

Rather than accept the Senate provision, the conference favored an approach that adopted the basic House provision. The provision did contain two constructive elements found in the Senate provision; a direction to the National Institute of Environmental Health Sciences to conduct a study on a mercury threshold below which adverse effects on human health are not expected to occur and the requirement that EPA study mercury emissions from all sources. The conferees agreed to the House provisions because of the logic of basing any decision to regulate on the results of scientific study and because of the emission reductions that will be achieved and the extremely high costs that electric utilities will face under other provisions of the new Clean Air Act amendments.

As we all know, the utility industry has been singled out for regulation under the acid rain provisions. The utility industry may also face additional controls for NO_x emissions for ozone control, and revised PM10 controls. All of these programs will result in substantial reductions in emissions of conventional and potentially hazardous air pollutants. Even without all of these reductions in air pollution, the health risks from emissions of hazardous air pollutants from powerplants are vanishingly small, as EPA has repeatedly recognized.

Under the existing section 112 of the Clean Air Act, EPA has addressed the question whether additional regulation of powerplants is necessary to control air toxic emissions to protect the public health. EPA, thus far, has studied several substances for which emissions data and some indicator of toxicity exist: arsenic, beryllium, cadmium, hexavalent chromium, formaldehyde, and radionuclides. EPA found that additonal regulation of emissions of these substances from powerplants was unnecessary. For some other substances listed in S. 1630, such as mercury and other volatile substances, little scientific evidence exists about either emissions rates or effects on public health or welfare. Under the conference agreement adopting the approach that the House included in its bill, these and other scientific issues will be examined, and regulations will be imposed only if warranted by the scientific evidence.

As I noted, the conferees changed only slightly the provision approved by the House. The changes to this provision, and other parts of the bill, clarified the nature of the studies to be conducted on emissions from powerplants and specifically exempted utility units from the provisions of section 112(c)(6), which addresses regulation of seven specified categories of substances.

In addition, section 112(n) provides that the Administrator shall regulate electric utility steam generating units if he finds, based on the studies, that regulation is appropriate and necessary. Under the conference agreement, if the Administrator regulates fossil fuel fired electric utility steam generating units by adopting any major source standard or any area source standard under section 112 for those units, he may do so only in compliance with subsection (n).

Pursuant to section 112(n), the Administrator may regulate fossil fuel fired electric utility steam generating units only if the studies described in section 112(n) clearly establish that emissions of any pollutant, or aggregate of pollutants, from such units cause a significant risk of serious adverse effects on the public health. Thus, if the Administrator regulates any of these units, he may regulate only those units that he determines—after taking into account compliance with all provisions of the act and any other Federal, State, or local regulation and voluntary emission reductions—have been demonstrated to cause a significant threat of serious adverse effects on the public health.

In sum, I believe that the conference committee produced a utility air toxics provision that will provide amply protection of the public health while avoiding the imposition of excessive and unnecessary costs on residential, industrial, and commercial consumers of electricity.

My next points are directed at title IV, the acid rain provisions. The conferees have decided to add 200,000 phase I and phase II allowances to the acid rain title, reflecting methodological errors by EPA. These additional allowances are a result of three basic errors that were made in calculating the emission reductions which would occur under the legislation. These mistakes are summarized below.

First, EPA underestimated 1980 utility emissions by failing to use the currently applicable sulfur-to-SO_2 conversion factor during coal combustion. In 1980, EPA assumed that 95 percent of the sulfur was emitted as SO_2, while the balance was retained in bottom ash, rejected in pulverizers, or captured by precipitators. In 1982, EPA revised its "Compilation of Air Pollutant Emission Factors (AP–42)" to indicate it estimated that 97.5 percent of the sulfur in boilers is emitted as SO_2. The 97.5 percent conversion factor was used in the 1985 emissions inventory. Had 97.5 percent been used in 1980, as advocated by NAPAP and DOE, emissions in 1980 would have been at least 180,000 tons higher.

Second, EPA, DOE, and NAPAP underestimated 1980 utility emissions by failing to account for scrubber operability in 1980. Each agency implicitly assumed that at scrubbed units, 31 GW in 1980, the scrubber operated 100 percent of the time that boilers operated, even though contemporaneous EPA contractor reports show that this was not the case. Scrubbers averaged only 80 percent operability in 1980, meaning that 20 percent of the time the boiler operated with uncontrolled emissions. This situation reflected the immaturity of scrubber technology. Had EPA accounted for this fact, EPA's emission estimate would have been 370,000 tons higher than it was.

Third, EPA underestimated 1980 nonutility emissions through reliance on a faulty data base. Using NAPA data—which is supported by DOE, was thoroughly peer reviewed, and conforms to the 1985 NAPAP emissions inventory—it is clear that actual 1980 nonutility emission were 400,000 tons greater in 1980 than EPA has acknowledged.

While these errors in aggregate represent nearly 1 million tons, it was a political decision to limit the size of additional allowance to 200,000 tons. It is important to remember that these extra allowances do not breach the goal set forth in the acid rain title to achieve a 10-million-ton reduction in SO_2 emissions from 1980 levels by the year 2000.

To achieve the most cost-effective SO_2 reductions, the bill contains a market based sulfur dioxide allowance trading system. I wish to address for a moment the importance of this system. If implemented as intended, these provisions can result in savings for electric utility customers while helping attain a substantial reduction of SO_2 by utilities. It has been estimated that 20 to 40 percent of the costs incurred under the traditional command and control approach to regulation, will be saved under the allowance system. The range

of savings, however, depends upon the freedom granted utilities to buy and sell allowances. It is essential that we not stifle this new form of market with excessive or variable regulatory controls.

The basic premise of the allowance trading system is that control costs differ markedly between utilities. Some utilities may find it relatively inexpensive to overcontrol and generate excess allowances, with the intent to sell them to utilities which have higher control costs. Overall, an ideal, balanced allowance market will result in the total cost of control being minimized while SO_2 emissions are maintained at the desired level.

To obtain the maximum benefits and maintain a balanced market with the allowance system, several elements are necessary. First, both buyers and sellers must have the ability and willingness to make allowance commitments. Second, it is necessary that barriers to allowance trading are kept to a minimum. Third, information on allowance transactions must be made readily available.

The bill requires an element of trust—trust that each will benefit from the transaction and trust that the Government will not interfere with the property interest that owners and operators will have in allowances created, sold or purchased. It is reasonable to extrapolate that buyers and sellers in the allowance market will plan over the long term, and may, in some instances, require allowance commitments of 15 to 20 years. For firms to make this type of commitment requires a stable market, one that will not change without proper notice; that is, the full and public debate and legislative action. Under the bill, firms are assured of their freedom to contract according to mutually agreed upon terms, terms which are legally enforceable in the courts.

Barriers to allowance transactions may take any number of forms, and the Administrator must use great care to avoid doing anything to help erect those barriers. That is why the conference committee has streamlined the process whereby a utility or utilities can pool allowances so as to operate within the confines of the law. Under provisions of the allowance tracking system, we have provided for the creating of allowance pools. Owners or operators need only record with the Administrator that they intend to enter into such agreements. Once in place, these voluntary pooling agreements can operate to reduce the number of actual transfers of allowances and, thus, the overall compliance burden. For example, utilities or operating companies can keep and share one set of allowance books to accommodate their emission allowance requirements. Here, as elsewhere, it is necessary to keep the volume of information that buyers and sellers are required to provide to a minimum, lest the system breakdown in the face of heavy trading.

In other types of allowance transactions, only the essentials are to be reported, akin to the stock market publication of the terms of a transaction, including price, number of allowances, and duration. This information will facilitate the functioning of the allowance system by allowing firms to assess their opportunities relative to the market and make decisions to buy or sell allowances on that basis.

In all, we have crafted a workable allowance system that should provide maximum freedom and a minimum amount of redtape for buyers and sellers. In the end, utility customers in all our States should benefit from this free-market approach.

One of the keys to ensuring that the market-based emissions trading system succeeds is the annual auction of sulfur dioxide allowances. The auction will guarantee that a significant volume of allowances is available for interstate and interutility trading starting in just 3 years. This will jump start the trading system and will provide evidence to the industry, State utility commissions, and the Federal Government that the emissions trading program works. While the auction is not the primary market, it will guarantee that the private market gets started.

I believe that the responsibility for designing and running the auction should be vested in the Department of the Treasury, not EPA, though EPA and DOE should be consulted. There are three reasons for this: First, the Treasury Department has more expertise in this complicated area; second, EPA is already going to be overloaded with all the other requirements of the act; and third, this independence of the auction from other aspects of the program should prevent any hidden agendas from creeping into the auction design.

Turning to another potential barrier, I rise to address the exemption from Securities Exchange Commission jurisdiction granted to utility holding companies regulated under the Public Utilities Holding Company Act of 1935 as it related to the allowance trading program. Under the 1935 act, the Commission is granted authority to review the lawfulness and appropriateness of a range of transactions entered into by regulated holding companies. The conference agreement provides that holding company allowance transactions involving associate and unrelated companies are not subject to Commission jurisdiction. The Commission has offered its views concerning exemption in a letter dated October 11, 1990, and sent to Senator JAMES A. MCCLURE by Richard C. Breeden, Chairman of the Commission. Chairman Breeden specifically stated that "the Commission would not oppose enactment of the Amendments if they provided that the creation, acquisition or disposition of allowances for sale or trade, including the issuance of securities or the undertaking of any other financing transactions with respect to the 1935 act." It is the sense of the conferees that allowance transactions involving regulated holding companies with associate or unrelated companies are exempt from Commission jurisdiction under the 1935 act.

My final point about title IV regards nitrogen oxides emissions control. Both the Senate and House versions of S. 1630 contained an acid rain provision dealing with emissions of nitrogen oxides. Both were designed to achieve the emissions reductions through the application of low-nitrogen oxides burner [LNB] technology to wall-fired and tangentially fired steam electric coal fired utility boilers. There were major differences between the two bills that the conference was able to resolve. In the end, the conferees found the Senate version of the NO_x emission limitations preferable to the House version, because the alternative emission limitation and averaging provisions of the Senate bill gave stronger assurances that only LNB technology would be required.

The consensus within the conference committee was that the installation of LNB technology on all phase I units by 1995 would be unachievable for many utilities. This, in part, is due to the projected inability of domestic manufacturers to provide an adequate supply of LNB equipment. In addition, we had concerns about the length of the time off line required to install the equipment. As a result, we created provision that will allow a blanket extension of 15 months for any unit unable to install, test or operate low-NO_x burners on a unit, taking into account system reliability.

No one among the conferees wished to create instances in which a utility would be penalized for being unable to meet a 1995 deadline. This is particularly true given that longer outages for the installation of control technology will have to be phased, planned, and coordinated in a very careful manner within power pools because of the impact those outages may have on the availability of electricity. For that reason, the conferees crafted a provision that will take into account: First, the possible unavailability of equipment at the time the unit would need to be scheduled for its outage, second, the time necessary to install and test that equipment, and third the scheduling of such major outages. It was our collective view that the Administrator should give wide latitude to the engineering judgment of individual utilities in order to ensure adequate supplies of electricity and the opportunity for domestic vendors to meet the demand for low NO_x burners.

In sum, the conference agreement recognizes the limits of commanding early performance of a difficult and important task and gives due consideration to the interplay of suppliers, utilities and electric demand.

Finally, Mr. Speaker, I would like to address the issue of stratospheric ozone depletion. The global environmental issue of ozone depletion causes much concern and deserves an appropriate response. Therefore, in 1987, the U.S. Government, industry, and environmental organization representatives played a strong leadership role in the negotiation and completion of the Montreal protocol on substances that deplete the ozone layer. This international agreement, which was modified and strengthened in June, has been signed by approximately 60 nations representing almost 90 percent of worldwide CFC production. It has been hailed as an unprecedented and successful example of how the nations, industry and environmental groups could work to resolve a serious global environmental issue.

Scientific consensus has established that the only means of assuring the protection of the Earth's ozone layer is through coordinated global action. The Montreal protocol strikes a delicate balance among the competing global economic interests in order to assure the achievement of an urgent environmental protection goal. We need to be mindful of the international agreement and we need to be careful that this legislation does not erode or

destroy the delicate balance which this treaty provides. This Congress must continue to respond appropriately to ozone depletion by respecting the international process and ensuring its success.

While the CFC phaseout schedule presented in this legislation is very similar to the international schedule, I remain concerned about this legislation's treatment of HCFC's, or hydrochlorofluorocarbons. HCFC's, which have one-twentieth the ozone depletion potential of CFC's, have not been regulated by the Montreal protocol. However, the protocol has established a declaration of intent to phase out HCFC's no later than 2040, and if possible, no later than 2020.

I understand that a United Nations Environment Programme Assessment Report has concluded that these compounds are essential in order to achieve the rapid phaseout of CFC's; and that the HCFC's can be used well into the next century without any significant environmental impact. We must be cautious that our unilateral regulation of HCFC's does not send the wrong signal to the international community, nor to U.S. industry which needs to be assured of adequate production and an adequate supply of these substitute compounds.

In addition to the phaseout schedules on CFC's and HCFC's, this legislation prohibits venting of CFC's, mandates recovery and recycling of used CFC refrigerants, requires labeling, establishes product controls, and requires the development of a safe alternatives policy. Congress needs to be sensitive to the impacts that these regulatory measures may have on consumers and industry, especially small business. I ask the EPA Administrator to do everything possible to mitigate any disadvantageous, burdensome, and unnecessary impacts that may be caused by overzealous promulgation of these regulations. I believe that industry has proven its desire to implement safe and effective substitutes as rapidly as possible; and I believe that industry will continue to respond to appropriate and necessary regulations.

Last, I remain concerned that while we are addressing an appropriate response to a global environmental issue, we have not adequately preempted State and local laws which intend to address ozone depletion, but have very little environmental significance. The proliferation of State and local laws has proven to be unnecessary given the Montreal protocol and the Congress' and EPA's attention to the issue. Industries which have put their time and financial resources into phasing out of CFC's, researching alternative substances, and redesigning CFC-reliant products have been unnecessarily burdened with State and local requirements that are not productive. State and local governments are best equipped to handle State and local environmental problems; while responses to global environmental issues such as ozone depletion should be coordinated internationally.

U.S. industry, policymakers, and environmentalists should spread the word that the Montreal protocol is a dynamic and unprecedented international process that is working successfully. I believe that Congress should continue to be aware of this process and find ways to encourage the global effort of ozone protection and to avoid disruptive initiatives that will only impact consumers and industries, without any environmental benefit.

Mr. Speaker, I am attaching herewith a statement expressing our understanding of title VI to be included in the RECORD as part of my statement.

Thank you.

STATEMENT OF UNDERSTANDING—TITLE VI

SECTION 701—PART B REPEAL

The conference substitute adopts the Senate proposal to create a new title VI of the Clean Air Act to address "Stratospheric Ozone Protection."

SECTION 702—STRATOSPHERIC OZONE PROTECTION

The conference substitute adopts the Senate approach and, as explained below, combines the Senate and House proposals.

DEFINITIONS—NEW SECTION 601

The conference substitute includes definitions of:

Appliance (combining the Senate and House proposals);

Baseline year (modeled after the House proposal);

Class I substance and class II substance (modeled after the House proposal);

Commissioner (from House proposal);

Consumption (modeled after the Montreal Protocol);

Import (from the Senate bill);

Medical device (combining the Senate and House proposals);

Ozone-depletion potential (from the House proposal);

Produce, produced, and production (combining the Senate and House proposals).

Controlling and ultimately eliminating the production of ozone-depleting substances is one of the key features of this new title. Therefore, the definition of "production" is extremely important.

The Senate bill, the House amendment and the conference substitute define "production" to exclude the manufacture of a controlled substance that is recycled or reused. This provision is designed to avoid the problem of double counting, i.e., forcing a producer to use production allowances when the producer is simply reprocessing a previously produced and used substance.

This provision is also designed to allow reprocessing of previously, legally produced substances after the ultimate phaseout date for production of such substances. This provision does not, however, exclude from the production controls and ultimate prohibitions a substance that is produced with the intent to eventually reuse or recycle it. All new production falls outside the scope of the "reuse/recycle" exclusion.

The manufacture of substances that are "used and entirely consumed" in the manufacture of other chemicals (or the regeneration of chemical catalysts) is also excluded from the definition of "production". This provision is necessary because some of the substances covered by this new title are feedstocks for other important substances.

The conference substitute includes a technical correction to this provision of the original Senate and House proposals. The requirement that the controlled substance be "entirely consumed" is qualified by adding the parenthetical "except for trace quantities". This modification is designed to allow for the fact that, as a result of certain chemical and physical properties, nothing is "entirely consumed."

The conference substitute does not include a requirement to construe the term "production" in a manner consistent with the Protocol because the Protocol has not yet approved destruction technologies for purposes of subtracting from the production allocation. In the course of implementing this Act, however, EPA shall consider whether an exclusion will be allowed on a case-by-case basis for the manufacture of controlled substances that are (1) not manufactured for commercial purposes; (2) coincidental, unavoidable byproducts of a manufacturing process; or (3) contained and subsequently destroyed using maximum available control technologies. When the Protocol parties have approved destruction technologies, the Administrator shall take these into account and ensure that adequate safeguards exist to preclude abuse.

The conference substitute's definition of the "Montreal Protocol" includes a reference to "amendments that have entered into force." This reference includes all such amendments, not just those that the United States has ratified.

LISTING OF CLASS I AND CLASS II SUBSTANCE—NEW SECTION 602

The substitute adopts the House amendment terminology regarding "class I and class II substance" and combines the balance of the two proposals. The minimum lists of compounds are expanded to include a number of CFCs and HCFCs that were added to the Montreal Protocol after Senate and House consideration of the legislation. The substitute also establishes a threshold ozone depletion factor of 0.2 for compounds to be listed as a class I substance. Compounds below this ODF would require the consideration of other factors by the Administrator, such as significant volume, before they should be considered for listing as class I compounds.

MONITORING AND REPORTING REQUIREMENTS—NEW SECTION 603

On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported or exported a class I or class II substance during the previous reporting period is required to file a report with EPA setting forth the amount that such person produced, imported, or exported. EPA is also authorized to use whatever information gathering authority is available in order to collect in a timely fashion the initial baseline reports necessary for establishing the production and consumption rules required by the Act.

The requirement that EPA's amended regulation shall conform to the requirements of this section does not limit EPA's authority to require additional or more detailed reporting than that required by this section. EPA's current regulations, as provided in new section 193 of title I of the Act, as added by this Act, will remain in effect until modified.

The conference substitute combines the Senate and House proposals for EPA, NASA and NOAA monitoring and reporting to Congress requirements, including the Senate proposals for a technology status report (to be submitted not later than 2015 as opposed to the original Senate date of 2010) and an emergency report regarding atmospheric chlorine loading that is projected to occur as a result of global production, consumption and use of class II substances. The reports by EPA, NASA, and NOAA should also take into account the degree to which global compliance or noncompliance with the Montreal Protocol is affecting or altering the base case scenario.

PHASEOUT OF PRODUCTION AND CONSUMPTION OF CLASS I SUBSTANCES—NEW SECTION 604

Effective January 1 of each year starting with 1991, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by such person in the baseline year (1989 for carbon tetrachloride and methyl chloroform, and 1986 for CFCs and halons). The schedule set forth in Table 2 of the conference substitute is subject to acceleration by the Administrator under new section 606 (Accelerated Schedule).

The Montreal Protocol subjects "consumption" to the same controls and reduction schedule as applies to "production." The conference substitute includes this aspect of the Protocol and directs the Administrator to promulgate regulations to insure that the consumption of class I substances in the United States is controlled and eliminated on the same schedule as provided in this title for production and in a manner consistent with the term as defined by the Protocol, which is "consumption = production + imports − exports".

The substitute prohibits production of all class I substances (other than methyl chloroform) as of January 1, 2000, and prohibits production of methyl chloroform as of January 1, 2002. The Administrator is authorized on a conditional basis to grant specified limited extensions of the termination date for production of limited quantities of class I substances, to the extent such action is consistent with the Montreal Protocol, for: essential uses of methyl chloroform (between January 1, 2002 and January 1, 2005); medical devices; fire suppression or explosion prevention on the North Slope of Alaska (solely with respect to halons between January 1, 2000 and January 1, 2005), and export to developing countries.

EPA should authorize the limited production for such applications unless it is able to determine that safe and effective substitutes are available, taking into account the effects of available substitutes on health and safety, the technological adequacy of substitutes, and other relevant factors.

The methyl chloroform extension is necessary for national security, electronics applications, transportation and building safety and other important applications where factors such as nonflammability are important (e.g., certain contact bond adhesives) and adequate substitutes have not been identified. The Administrator is also expected to examine whether safe and effective substitutes for methyl chloroform will be available for purposes of airline safety by the year 2005 and to report to Congress.

The granting of any extension under this title must be in accordance and consistent with the Montreal Protocol. If the Protocol does not authorize the extension being sought, the provision of the Protocol takes precedence and no such extension may be granted by the Administrator.

Any failure of the Administrator to promulgate regulations as required by this title, or any court order delaying the effective date of such regulations, shall not alter the effective dates of the statutory requirements and prohibitions that are set forth in this title.

It has been suggested that, with respect to the 1991 control period, there is insignificant time for EPA to complete a notice and comment rulemaking and that, notwithstanding the self-effectuating nature of the statutory requirement to reduce production in 1991, regulations are necessary to implement the "consumption" controls and would be helpful with respect the "production" controls. It is expected that, solely with respect to the 1991 control period, existing EPA regulations will be revised by direct final rule. Such revised regulations should add baseline allocations for the chemicals not already regulated and require the 15-percent reduction where applicable to class I compounds. This will leave the original allocation and trading provisions in place until revised in accordance with with this Act.

PHASE OUT OF PRODUCTION AND CONSUMPTION OF CLASS II SUBSTANCES—NEW SECTION 605

The Senate statement of national policy is modified, restated as "the purpose of Congress", and included in new section 603 (Monitoring and Reporting).

Effective January 1, 2015, production of any class II substance must be frozen at baseline levels (to be established by the Administrator) and the use of any such substance shall be unlawful unless such substance (1) has been used, recovered and recycled, (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals, or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020. Effective January 1, 2030, it shall be unlawful to produce any quantity of a class II substance.

As with class I substances, the Administrator is directed to promulgate regulations to control and eliminate "consumption" (consistent with the definition in the Protocol) of class II substances and, on a conditional basis, is authorized to grant limited exceptions for purposes of use in medical devices and for export to developing countries in accordance with the Montreal Protocol.

ACCELERATED SCHEDULE—NEW SECTION 606

A combination of the Senate and House proposals is included in the conference substitute. The control schedules under sections 604 and 605 are subject to acceleration under circumstances that are defined.

EXCHANGE AUTHORITY—NEW SECTION 607

Subsection (a) of this section of the conference substitute requires the Administrator to issue allowances for class I and class II substances and requirements for transfers of these allowances. It is expected that these rules will be promulgated consistent with the production and consumption rules required under sections 604 and 605. Also, since there are no regulations required on class II compounds, it is not expected that the Administrator will promulgate production allowances for class II compounds until such time as would be required under this Act, subject to any acceleration of the phaseout of production under section 606.

The Administrator is also directed to promulgate regulations that will authorize interpollutant transfers, as in the Senate bill, and trades with other persons, as in the House amendment. Interpollutant transfers are limited to transfers among substances listed in the same group under new section 602. This precludes, for example, the ability of a producer to avoid mandated reductions in the production of methyl chloroform in exchange for making greater reductions than is othewise required in CFC-11 production. The same limitation applies to trades with other persons.

NATIONAL EMISSION REDUCTION PROGRAM—NEW SECTION 608

Prior to January 1, 1992, EPA must promulgate regulations establishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

Within 4 years after enactment, the Administrator must promulgate regulations regarding the use and disposal of all class II substances as well as all class I uses and disposal practices that are not covered by the earlier regulations. Such regulations shall become effective not later than 12 months after promulgation.

In promulgating regulations for these uses the Administrator shall take into account the extent to which emissions reductions can be achieved, the costs and benefits of implementing available controls, and the time before which certain uses may no longer rely on the covered substances. Also, the regulations which are required to take effect 60 months from the date of enactment may still impose deadlines beyond the 60-month timeframe.

The use and disposal regulations must include standards and requirements that satisfy the criteria set forth in the bill, including requirements that reduce the use and emission of class I and class II substances to the lowest achievable level and requirements that class I and class II substances contained in bulk in appliances be removed from such appliances prior to disposal of the appliance or delivery of the appliance for recycling.

The reference to "in bulk' distinguishes this requirement from another requirement dealing with products in which a class I or class II substance is incorporated so as to constitute an inherent element of the product. An example, the "in bulk" reference is the class I or class II refrigerant in an appliance. An example of the "inherent element" reference is the insulation in a building or insulation that was made with a class I or class II substance which is now incorporated in the walls of the appliance.

Effective July 1, 1992, it will be unlawful for any person maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration to knowingly vent, release, or dispose of any class I or class II substance used as a refrigerant in a manner which permits such substance to enter the environment. Exceptions to this prohibition are included for certain de minimis releases.

Effective 5 years after enactment, the prohibition on venting or release shall also apply to all substances that are used as refrigerants as substitutes for class I or class II refrigerants. The prohibition shall apply to all such substitute substances except in cases when the Administrator determines that the venting, release, or disposal of a particular substitute substance does not pose a threat to the environment.

SERVICING OF MOTOR VEHICLE AIR CONDITIONERS—NEW SECTION 609

Effective January 1, 1992 (or, January 1, 1993 in the case of persons who certify by January 1, 1992, that they are repairing or servicing motor vehicles at an entity which performed service on fewer than 100 motor vehicle air conditioners during 1990), any person who services motor vehicle air conditioning systems for consideration (1) must "properly use" extraction and reclamation

equipment that is certified as meeting the standards set by the Society of Automotive Engineers, and (2) must be "properly trained and certified." The phrases "properly using" and "properly trained and certified" are defined in this section of the conference substitute. This section includes a certification requirement that is applicable to each person performing service on motor vehicle air conditioners for consideration.

Effective 2 years after enactment, it shall be unlawful to sell or distribute, or offer for sale or distribution, to any person (other than professionals who are in compliance with the requirement to use extraction and reclamation equipment) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioning system and is in a container which contains less than 20 pounds of such refrigerant.

NONESSENTIAL PRODUCTS CONTAINING CHLOROFLUOROCARBONS—NEW SECTION 610

The conference substitute includes the House amendment with two modifications to the prohibition on the use of class II substances. First, the prohibition on the use of class II substances in plastic foam products does not apply to certain foams that are used for motor vehicle safety purposes in accordance with Federal Motor Vehicle Safety Standards. Second, the Administrator is authorized to grant exceptions from the prohibition on pressurized dispensers which contain a class II substance when (1) the use of the pressurized dispenser is determined to be essential as a result of flammability or worker safety concerns, and (2) the only available alternative to the use of a class II substance is the use of a class I substance which legally could be substituted for the class II substances.

The conference substitute also does not prohibit insulating foams made with class II compounds (which could include foams that are necessary for energy efficient building construction, appliances, or for the insulation of sensitive medical supplies and sensitive electronic component.)

Including authority for the Administrator to grant such exceptions is necessary to account for the fact that the aerosol ban which has been in effect in the United States since 1978 for certain class I substances is not a complete ban. Assuming the use of class I substances in certain pressurized dispensers remains legal after 1994, it may be counter-productive to prohibit the use of class II substances (substances that are generally less potent ozone depleters) in certain "essential" applications if the only available substitutes are class I substances which could be legally used in place of the class II substance. For this reason, the Administrator is authorized to grant limited exceptions. The conference substitute does not presume or imply that the existing aerosol uses or other uses not specifically listed are non-essential and the Administrator shall consider those uses on a case-by-case basis in accordance with the listed relevant factors.

LABELING—NEW SECTION 611

Effective 30 months after enactment, containers of a class I or class II substance and products containing class I substances must be labeled. Products containing or made with (but no longer containing) a class II substance must be similarly labeled if the Administrator determines that there are substitute products or manufacturing processes. The determination involves a three part test.

Products made with but no longer containing class I substances must be labeled unless the Administrator determines that there are no substitute products or manufacturing processes. As with the previously discussed determination, the statutory language includes a three part test, including whether the substitutes reduce the overall risk to human health and the environment.

Effective January 1, 2015, the labeling requirements will apply, without exception, to all products containing a class II substance and to all products made with a process that uses a class I or class II substance.

SAFE ALTERNATIVES POLICY—NEW SECTION 612

The Administrator is directed to promulgate regulations prohibiting the replacement of any class I or class II substance with a substitute which the Administrator determines may present adverse effects to human health or the environment if an alternative that reduces the overall risk to human health and the environment has been identified. The Administrator is required to publish lists of the identified safe alternatives within 2 years of enactment. It is important to note that the standard applies to substitutes for class II compounds as well as to other compounds.

It is expected that the Administrator shall not prohibit the use of a class II substance in the absence of clear information concerning the reduction of overall risk to human health and the environment by the current or potential availability of the identified substitutes. Also, the Administrator shall base risk estimates on the total environmental risk (toxicity flammability, atmospheric, etc.) that is perceived to exist, not just the risk as it relates to ozone depletion. The Administrator shall, with the assistance of the Science Advisory Board, update the risk assessment from ozone depletion and take into account the global and domestic controls that are scheduled to occur as a result of the Montreal Protocol, this Act, and accelerated industry phaseout efforts.

The Administrator is also directed to require that any person who produces a chemical substitute for a class I substance (1) provide the Administrator with such person's health and safety studies on such substitute, including unpublished studies, and (2) notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as class I substitutes.

FEDERAL PROCUREMENT—NEW SECTION 613

The conference substitute includes modified version of the House amendment's provision on federal procurement. The modification adds a deadline for other agencies to revise their regulations and a requirement that each agency certify to the President that its regulations have been modified in accordance with this section. This provision does not prohibit the purchase of equipment or products made with or relying on the covered substance, or bulk supplies of covered substances necessary to maintain or operate existing equipment, but would require the agencies to consider this in their purchasing decisions and to work toward the purchase of ozone protecting technologies to the maximum extent practicable.

RELATIONSHIP TO OTHER LAWS—NEW SECTION 614

The substitute repeals the provision of current law that preempts State and local governments in certain circumstances and establishes a narrow, two year exception to the principle of non-preemption that is codified in section 116 of the Clean Air Act.

State or local laws would be preempted if they include "servicing" requirements that would require the retrofitting or modification of existing equipment, or specific product bans that would have the practical effect of requiring new equipment designs. Also, laws would be preempted that prohibit the sale of appliances that use or contain foam insulation manufactured with covered substances.

A provision is added to make it clear that this title is a supplement to the Montreal Protocol. It does not supplant the Protocol and it does not abrogate the responsibilities or obligations of the United States to implement fully the provision of the Montreal Protocol.

Many of the provisions in this title are more stringent than the provisions of the Protocol such as the production phasedown schedule for CFCs, halons, and methyl chloroform, and the elimination date for production of methyl chloroform. There are also areas in which the protocol has no similar provisions including the controls and elimination of HCFC production, recycling and emissions control requirements, and the safe alternatives policy.

In areas in which the Protocol is more stringent, the provisions of the Protocol are controlling. If the Protocol is modified in the future to include new provisions that are more stringent than this legislation, such more stringent provisions will be controlling.

In the sections where the Administrator or another government official is authorized to grant extensions or exceptions to the requirments of this title, the legislation includes an express limitation. The Administrator or other official may exercise such authority only to the extent that such action is consistent with the Montreal Protocol. The provisions of this Act may not be used to justify or authorize any action that is inconsistent with the terms of the Protocol.

To prevent persons subject to United States' jurisdiction from transferring technology or investing in facilities to produce controlled substances in countries that are not parties to the Montreal Protocol, the President is directed to prohibit the export of technologies used to produce a class I substance; to prohibit the direct or indirect investments in facilities designed to produce class I or class II substances in nations that are not parties to the Protocol: and to direct that no government agency provide subsidies or assistance for the purpose of producing a class I substance.

AUTHORITY OF THE ADMINISTRATOR—NEW SECTION 615

The Administrator is authorized to prescribe regulations as may be necessary to carry out this title. The phrase "to affect the stratosphere" includes, but is not limited to, stratospheric ozone depletion. Effects such as anthropogenically induced cooling of the stratosphere are included and must be considered, but only as it relates to carrying out this title on stratospheric ozone protection.

TRANSFER AMONG PARTIES TO THE MONTREAL PROTOCOL—NEW SECTION 616

A new section based on the Montreal Protocol's provisions for "industrial rationalization" is included in the conference substitute. For purpose of this section, the phrase "production allowance" is used to indicate a portion of United States' "calculated level of production", as that phrase is used in the Protocol. The authority provided in this section is limited and subject to a number of conditions, including the requirement for

implementing regulations. The section is not intended to require that other nations adopt the same control schedule as adopted by the United States, but that another nation reduce its production be achieved level in the same manner as provided for in the United States when it is transferring production rights into the United States. Unlike Section 607 transfers conducted under this section do not require that a "net reduction" be achieved in production in the year in which the transfer occurs.

INTERNATIONAL COOPERATION—NEW SECTION 617

The Senate provision regarding international agreements is included in the conference substitute. As a result, United States' delegations to future meetings of the parties to the Montreal Protocol are expected to seek modifications to the Protocol, consistent with the logical framework of the Protocol, that will make the requirements of the Protocol at least as stringent as the requirements applicable in the United States as a result of this legislation. At a minimum, U.S. delegations are expected to seek control schedules for the Protocol that are consistent with the U.S. control schedule for the substances covered by this legislation.

The House provision authorizing funds to assist developing countries is included in the conference substitute. At the June 1990 meeting of the parties to the Protocol in London, representatives of China and India indicated that their countries intend to join as parties to the Protocol. In this event, the expected contribution to the fund by the United States will increase accordingly. In recognition of this new development, the conference substitute includes a provision to increase the authorization of appropriations by an additional $30,000,000 if and when China and India become parties. In the event that one but not both of the countries were to sign the Protocol, it is expected that a corresponding amount would be appropriated.

MISCELLANEOUS PROVISIONS—NEW SECTION 618

A modified version of the House provision is included in the conference substitute. This section makes it clear that more stringent state and local government requirements for the protection of the stratosphere are not preempted by this Act, except as provided for in section 614.

This section also provides that federal facilities shall be subject to all requirements of this title and to all State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer.

SECTION 701—METHANE STUDIES

A modified version of the Senate provision requiring studies of methane emissions and options to reduce methane emissions is included in the conference substitute, but this provision does not create any new regulatory authority.

Mr. DAVIS. Mr. Speaker, I rise in support of the conference report on S. 1630, the Clean Air Act Amendments of 1990.

Mr. Speaker, there were several sections of this legislation in which the Merchant Marine and Fisheries Committee had interest. The first of these sections deals with the regulation of vessel emissions during the loading and unloading of tank vessels. In this section we have assigned the task of developing these regulations to both EPA and the Coast Guard.

This is a good and workable combination which will merge the expertise of EPA in determining the levels of VOC's and other emissions from these vessels with the long-standing expertise of the Coast Guard in monitoring vessel operations and the safety of equipment necessary on these vessels. I am pleased that both agencies will be working together in developing these regulations, combining each agency's proven areas of expertise.

It is important to note that the authority for enforcement of these regulations will also be a joint effort, but with each agency enforcing those requirements with which they are most familiar. EPA will enforce the emission regulations, and the Coast Guard will be responsible for all onboard inspections, consistent with traditional Coast Guard role on regulating vessel safety and operation. Vessel safety is of overriding importance in this area, and the Coast Guard will assist in enforcing emission standards established under this act to ensure that vessels are operated in a safe manner. Finally, I want to make clear that nothing in this act is intended to overturn the Supreme Court's decision in *Ray* v. *Atlantic Richfield Company,* 435 U.S. 151 (1978).

The second section, which I have a great interest in, is the section establishing a monitoring network in the Great Lakes to assess the extent of the atmospheric deposition of hazardous pollutants. While this section also pertains to Lake Champlain, the Chesapeake Bay, and other coastal waters, it is the Great Lakes monitoring which hits home for my constituents.

I am especially pleased that this monitoring and investigative provision will attempt to use, and add to, the data bases already available through NOAA and the International Joint Commission.

The third section of interest to the Merchant Marine and Fisheries Committee dealt with the regulation of the air quality of offshore oil and gas facilities operating on the Outer Continental Shelf. While the Conference Report does not include several of the sections from the Senate version which I supported, and will needlessly split the regulatory jurisdiction between two Federal agencies, I must support the conference report as a whole because of the major steps it takes in meeting national air quality standards.

Mr. Speaker, it was also important to the final agreement on this legislation that the economics of clean air be considered. We cannot ruin the economy of specific regions of the country or certain industries to meet overzealous and unrealistic goals. This legislation attempts to balance the environmental concerns with the economic realities of this country, and I support its passage.

Thank you, Mr. Speaker.

Mr. FRENZEL. Mr. Speaker, this clean air bill has been a long time coming. All through the Reagan years, the Congress had the luxury of avoiding tough decisions because the President, whose priorities lay elsewhere, did not press for this legislation.

With the election of George Bush, the game changed. Clean air became a Presidential priority. International promises were made. The administration served notice on Congress that it could hide no longer.

The result is this clean air bill with its strong provisions against acid rain. Nothing as complicated as this bill can be hailed as a perfect, or even a model bill. We can all see flaws now. We will find many more.

But what we have here is a landmark effort, an epochal achievement, and perhaps the most important break through legislation passed during my time in Congress. This is a blockbuster.

To those who labored for this achievement, I give my congratulations and my thanks. At the head of that list is President Bush whose unswerving commitment really caused this suppressed plant to flower at last.

For all of us, it is a job well begun. Ours is now the easy job. All we have to do is vote affirmatively. I shall do so with enthusiasm.

Mr. OWENS of Utah. Mr. Speaker, I congratulate Chairman DINGELL and others on the committee for the success of their long, arduous efforts.

I rise in strong support of the conference report. It is not perfect, and I believe the House version was, in some ways, preferable, but I am confident this action today will lead to significantly cleaner air.

Unfortunately, when the clean air conferees emerged, one House provision that meant a great deal to the West was nowhere to be seen. Abandoned under pressures of time and duress, the "visibility" amendment, originally proposed by RON WYDEN, would have had a long-lasting and significant impact on the future of western vistas.

It was short-sighted of the Senate to fight so vehemently against this sensible provision. What good is the most magnificent scenery in the country—that of the Colorado plateau—if it cannot be seen? Utah's tourism is dependent on the visibility of its exceptional attractions. The Navajo powerplant on the Arizona-Utah border has served as a warning of what could occur throughout the entire region without additional protection. The opposite rim of the Grand Canyon is barely visible through the haze on some days.

As more populated areas of the country attempt to export their pollution to us in the desolate West, additional legal protection will become absolutely essential. While the horizons in Los Angeles broaden, ours will become increasingly clouded.

Somewhere in the cost-benefit analysis that led the Senate to oppose this provision, we forgot to ask how much a clear view of the Grand Canyon is worth. To borrow a phrase, are we in danger of selling this irreplaceable birthright for a mess of powerplant "wattage?"

We need a provision that protects the quality of pure, limitless western air. We need it because that air quality will eventually disappear without it. It will be traded for cleaner air on the west coast, admittedly a worthy goal, but one which could better be achieved through conservation and alternative energy sources. The "visibility" amendment didn't mean the end of coal-fired powerplants in the West—not at all. It would only mean that any plants built would be extraordinarily clean. I believe the Senate erred in insisting on the myopic view that a multiyear study was prefer-

able to actual enforcement of air quality on the Colorado plateau. The visual resource of the West has inestimable value, and we have an inescapable responsibility, as stewards of our national treasures, to protect it.

Mr. MAVROULES. Mr. Speaker, at last it appears we will have a new clean air bill. After 13 years, industry, environmental, and Government leaders have put aside some of their parochial interests long enough to forge a comprehensive agreement. This agreement, in the form of the conference report on S. 1630, will clean up our Nation's air. While it is not a perfect bill, it is a great improvement over previous efforts to address the problems of acid rain, urban smog, air toxics, and ozone depletion; however, it does not address air pollution caused visibility problems in our national parks.

These new policies will decrease acid rain causing sulfur dioxide and nitrogen oxide emissions from smokestacks by one half, with half of the sulfur dioxide reductions occurring by 1995. In addition, nitrogen oxides emissions will be cut by 2 to 4 million tons annually. This should slow down the forest damage and acidification of streams in New England and other Eastern States, as well as help prevent these problems from occurring in other regions of the country. It will also prevent numerous respiratory problems in susceptible individuals, such as those with asthma and heart and lung disease. These individuals will not have to worry that by merely breathing the air, they are worsening their health and their quality of life, not to mention perhaps even shortening their lives. Foresters will not have to worry about long-term damage to trees, whether crop trees or wild. Sportfishermen, and others who enjoy our eastern lakes and streams, will be able to continue to enjoy the fish and other wildlife which abound in our waterways, without fear that it will soon disappear due to acidification of the water. It may even be possible to reclaim some lost lakes and forests.

Additionally, S. 1630 attacks the problem of urban smog in our Nation. By establishing five categories of ozone nonattainment areas—marginal, moderate, serious, severe, and extreme—it allows pollution reductions to be tailored to meet the needs of individual communities and regions of the Nation based on the actual level of pollution in that area. For example, in only the most extreme pollution areas, that is, the Los Angeles area, will the most sweeping pollution control measures be required. In marginal areas, only modest pollution control measures will be required. Furthermore, by establishing separate standards for ozone and carbon monoxide, it dictates that communities meet standards for both of these public health related pollutants thereby protecting their citizens from the adverse health effects of these substances.

Among other issues included in this proposal is the requirement that EPA establish safety standards for 189 toxic pollutants, hazardous to human health. This means that major polluters will be required to install the best available control [BAST] technology to reduce toxic air emissions by up to 90 percent by the year 2003.

Starting with the 1994 model year, all new automobiles will be required to reduce tailpipe emissions by 35 percent; emissions must be reduced by 60 percent by the model year 1996. In addition, starting with model year 1998, all new cars will have their pollution control equipment warranted for 10 years or 100,000 miles, consequently sparing consumers the cost of expensive repairs for new emission control equipment. In the dirtiest area of the Nation—southern California—car manufacturers will be required to do even more: they must produce and sell a specified number of "clean" cars—150,000 by 1996 and 300,000 by 1998. Once perfected, this new technology will be available to other regions of the country to use if they wish. The oil companies will also have to do their share by offering reformulated gasoline, which burns more cleanly, beginning in 1992 in cities with the most severe carbon monoxide problems.

In addition to addressing near ground level pollution problems, this legislation also confronts the problem of stratospheric ozone depletion by the phasing out of those chemicals which destroy stratospheric ozone. This ozone layer protects humans, as well as all plants and animals, from the destructive activity of ultraviolet radiation from the sun. Without the protection of this layer, plant and animal life on the Earth's surface could not survive. It stops the production of chlorofluorocarbons and carbon tetrachloride, the most damaging of these chemicals, by the year 2000. It also phases out production and use of other ozone depleting chemicals, such as hydrochlorofluorocarbons, by the year 2030. This will give industry plenty of time to develop safer substitutes. In addition, it requires the disposal and recycling of ozone depleting chemicals to minimize the release of these substances into the atmosphere.

Attacking these pollution problems is very costly, and this bill does not forget that people may be affected by some of its provisions. Thus, it establishes a worker compensation program for affected workers and extends unemployment benefits to these workers, as long as they are in retraining programs.

While there is cost associated with controlling our Nation's air pollution problems, the cost associated with damage to human health and lost labor and productivity from increased respiratory diseases are much higher than the cost of implementing the controls. There is also cost associated with losing forests and streams to pollution: the loss of recreation and food from fish. One need only look at the pollution problems in other parts of the world, especially Eastern Europe, to see that it is better for our Nation, and more cost effective, to address pollution problems than to ignore them and suffer the environmental and human health problems that follow. I urge our communities and governments across our Nation to take this legislation seriously and work together to see that our air is as clean and safe as possible, not only for ourselves, but for our children and grandchildren.

Mr. RICHARDSON. Mr. Speaker, I rise in strong support of the Clean Air Act. Today is a historic moment as it has been over a decade since the Congress has substantially reviewed and reauthorized the Clean Air Act. Despite the act's mandate to provide all Americans with clean air to breath we find today, that over one half of our population is exposed to pollutants, such as carbon monoxide, ozone, nitrogen oxide, sulfur dioxide, and air toxics that exceed standards targeted in the original act. Doctors, scientists, and EPA agree that these pollution levels are unsafe for human health.

REFORMULATED GASOLINE PROVISION

I am pleased that provisions similar to those I sponsored and were part of in the House-passed bill, have been retained in the final legislation. These include a reformulated gasoline provision requiring the 9 worst ozone nonattainment cities to sell clean gasoline that has been reformulated to remove ozone forming and toxic air pollutants, and a provision requiring the 44 carbon monoxide nonattainment cities to sell gasoline containing 2.7 percent oxygen.

DESCRIPTION OF TODAY'S GASOLINE

Today's gasoline is a complex mixture of toxic compounds which is responsible for over half of the Nation's toxic air pollution and most of our Nation's urban smog. It contains more aromatic compounds and more volatile chemicals than ever before.

OIL IMPORTS: THE MIDDLE EAST CRISIS

More importantly, the crisis in the Middle East has driven home the point that much of our foreign oil and many of the aromatic compounds added to our gasoline are imported. In fact, half of our total consumption of oil is imported. Up to 26 percent of this comes directly from the Persian Gulf with up to 600,000 barrels contributed by Saddam Hussein's Iraq.

SIGNIFICANT ENERGY, AGRICULTURAL, AND TRADE POLICY BENEFITS

Thus, requiring cleaner reformulated gasoline will not only reduce our dependence on the Middle East by replacing imported aromatic compounds with domestically produced renewable alcohols, it will proivde an important boost to farmers in the Mid-West and reduce the need for farm price supports. According to the GAO, this new market could save the U.S. Treasury more than $1.2 billion now spent on farm price supports annually. Additionally, by reducing our reliance on foreign oil imports and aromatic compounds, our balance of trade is sure to improve.

SIGNIFICANT CONSUMER AND AUTOMOTIVE BENEFITS

There are also substantial consumer and automotive benefits attached to limiting the aromatic content of gasoline. The high levels of aromatics and olefins in today's gasoline fouls engines and creates deposits which lead to engine knock. In fact, oxygenated fuels are recommended by General Motors to improve air quality. Limiting the aromatic content of gasoline and requiring additives will prevent the accumulation of deposits and lead to longer and more satisfactory car performance.

SIGNIFICANT HEALTH AND ENVIRONMENTAL BENEFITS

Last but not least, there are significant health and environmental benefits to be gained from reformulated gasoline. Like my own provision, the conference report reformulated gasoline provision requires a 15-percent reduction in toxic and ozone forming pollutants. This will significantly attack the health costs associated with air pollution which have been estimated to range from $4.4 to $93.4 billion annually by the American Lung Association.

ACCIDENTAL AIR TOXIC RELEASE PROVISIONS

I am also pleased a provision similar to an air toxics accidental release provision I sponsored was part of the House bill that was included in the conference report.

STATISTICS ON AIR TOXIC ACCIDENTAL RELEASES

There have been more than 11,000 accidental releases of toxic chemicals in the U.S. between 1980 and 1987. As a result, more than 300 people have died and more than 10,000 were injured. Just last year, a tragic accidental chemical leak in Texas led to the death of 22 people.

Despite these deaths, nothing in current law requires chemical or other facilities handling toxic chemicals to take steps to avoid the accidental release of dangerous chemicals into the air. In fact, an EPA study concluded that since 1980, 17 different chemical accidents in the United States had the potential to create disasters as great as the one in Bhopal, India, which killed over 2,000 people.

PROVISIONS TO PREVENT AIR TOXIC ACCIDENTAL RELEASES

The accidental air toxic release provision will require EPA to regulate 100 dangerous chemicals, and require facilities handling air toxics to evaluate their risk of accidental air toxic release. The provision would also establish an independent accidental release investigation board, modeled after the extremely successful National Transportation Safety Board, to investigate air toxic accidental releases and recommend changes to reduce the risk of future accidents.

UNITED STATES/MEXICO BORDER PROVISIONS

Finally, I am pleased provisions similar to an amendment I sponsored in the House were included to begin to regulate cross-border air pollution from Mexico. There is no question that the United States has worsening air pollution from Mexico. Smog from Mexico border cities knows no boundaries.

MEXICO LACKS STRINGENT AUTO OR INDUSTRIAL POLLUTION STANDARDS

Cars in Mexico are not required to have anti-pollution devices—nor are controls on industrial emissions tightly regulated. Levels of carbon monoxide and other toxics from auto emissions in Mexico City's atmosphere have reached crisis levels, with hundreds of deaths annually attributed directly to atmospheric pollution. Additionally, levels of carbon monoxide in the atmosphere have consistently exceeded U.S. Federal standards at several points along the border due both to domestic air pollution and from pollution across the border.

U.S. BORDER CITY ATTAINMENT STATUS IS JEOPARDIZED

It is quite likely that United States border city attainment status will be jeopardized by air pollution drifting across from Mexico. It is critically important to begin standardizing environmental regulations between the United States and Mexico and to establish greater rapport and coordination on air and other pollution issues.

INDEPENDENT POWER PRODUCERS PROVISION

Finally, I am pleased that independent power producer provisions similar to those I sponsored in the House have been retained. It is estimated that independent power producers will account for at least 40 percent of all new capacity in the next decade. Independent power producers have proven to be a clean and reliable source of energy in harmony with the spirit of the clean air bill. I am pleased that the conference report ensures a competitive market for independents.

Air pollution knows no political boundaries. I am pleased that Congress understands this important fact and has enthusiastically endorsed final passage of the Clean Air Act reauthorization.

Mr. McGRATH. Mr. Speaker, I rise today in strong support of the House-Senate conference report on S. 1630, the Clean Air Act Amendments of 1990.

As we are all well aware, this is the first time the original Clean Air Act has been amended since 1977. Warring factions from both political and geographic spectrums had stalled previous efforts to enhance our air quality laws. However, with President Bush showing the leadership he campaigned on, House and Senate Members were able to hammer out a bill that, I am confident, will be signed into law in the very near future.

I was encouraged to see that the environmental threat posed to the health and welfare of our country was placed on a higher plateau than individual interests. This is not a perfect clean air bill. To manufacture a piece of legislation palatable to this entire body would be unrealistic. However, I believe conferees and staff put forth a yeoman's effort to ensure this legislation received support from advocates and skeptics alike.

Briefly, the conference report establishes new guidelines for polluted areas to achieve Federal standards governing levels of ozone, carbon monoxide, and small particulates in the air. For example, most ozone nonattainment areas would be required to achieve compliance with the Federal standard within the next decade, although timetables for each area would depend on the severity of its pollution problem.

Also, the bill calls for new programs to encourage the use of clean fuels, such as methanol, natural gas, and reformulated gasoline. Starting in 1995, in the nine cities with the Nation's most severe ozone pollution, only reformulated gasoline that meets clean fuel program emission standards, can be sold.

In addition, the measure prescribes new, technology-based emission controls for sources of air pollutants. Under current law, only seven such pollutants have been regulated since 1970. The conference report establishes a list of 189 hazardous pollutants, and directs the Environmental Protection Agency [EPA] to identify the types of industrial and other facilities that are major emissions sources, and to establish regulations requiring implementation of technology to control these emissions.

Finally, the bill establishes controls of sulfur dioxide and nitrogen oxides that cause acid rain—a problem we in New York are most familiar. I am especially pleased that this section was included in the conference report. During the past decade, the acid rain debate has been one of the most divisive environmental issues facing Congress. The term acid rain is commonly used, when referring to forms of acid precipitation including rain, snow and fog, and is thought to be produced by oxide emissions of sulfur and nitrogen from factories, powerplants, and motor vehicles.

By the year 2000, the acid rain program would result in estimated emissions reductions of 10 million tons of sulfur dioxide. Utility emissions of nitrogen oxides also will be reduced. The measure would also establish a system of marketable pollution allowances to reduce the costs of acid rain.

This is indeed landmark legislation. For the first time, we have an opportunity to address the fallout of acid rain. For the first time, we have the opportunity to address the effects of nearly 200 harmful chemical agents. For the first time, we have an opportunity to phase-out chemicals that deplete the ozone layer. Mr. Chairman, this is a bill of first. It is designed to preserve our forests, lakes, and streams. Most importantly, it is a measure that will improve the quality of life for our children and for future generations to come.

Mr. GALLO. Mr. Speaker, as we enter the final days of the 101st Congress, the long-awaited and much-needed clean air agreement is today before the House of Representatives for final passage, and I am proud to cast my vote in favor of this bipartisan conference report.

For those of us who have been fighting for passage of significant and workable clean air legislation for more than 4 years, this conference report is a strong endorsement of our commitment to provide cleaner air.

The battle over clean air has been raging for over 13 years and finally, this year, we have achieved the bipartisan support we needed to pass the agreement. This landmark legislation is the direct result of the environmental leadership of President George Bush and the willingness of the Congress to work in a bipartisan fashion to construct a law that will allow us all to live in a healthier and safer environment.

This conference agreement calls for broad revisions to the Clean Air Act passed in 1977. It includes measures to meet air quality standards in polluted area, tighten emissions standards, requirements for the sale of cleaner fuels, and cars, and sets in place programs to cut emissions that cause acid rain.

Compromises were reached on reformulated gasoline, air toxic emissions, fleet requirements, worker compensation and retraining, visibility in our national parks, and the phasing out of the ozone depleting CFC's and HFC's. These compromises put forth our good faith effort in providing a quality life that we deserve.

In this agreement, we are in several instances, mandating future technology. But, as with the Clean Air Act of 1970 and 1977, we are applying our best current judgment, knowing full well that the next scientific study or the next technological breakthrough may change the assumptions contained in this bill. This is not a perfect bill, however, it is an important step toward the economic and environmental balance, that is required to achieve clean air.

We know that we must find ways to meet our goals, and with this conference agreement, we have worked together to forge a bipartisan consensus that, for the most part, is realistic and workable along with fostering competitiveness.

With this monumental agreement, the House has set aside partisan environmental politics in favor of bipartisan environmental policy. This law will have a global effect for the people of the United States, and the people of the world, and I was happy to play a role in the passage of this legislation. I urge the adoption the conference report.

Mr. SMITH of New Hampshire. Mr. Speaker, I rise in strong support of the conference report and ask unanimous consent to revise and extend my remarks.

I first want to thank the conferees and their staff for the countless hours they have invested in this comprehensive rewrite of the Clean Air Act. The conference report they have produced, offers a fair and workable solution to an enormously complicated issue. I am delighted to be able to lend it my support.

As chairman of the Republican Acid Rain Task Force, I am especially gratified that this conference report addresses the problem of acid rain pollution in a responsible manner.

No area is in greater need of the relief from acid rain that this legislation would provide than my home State of New Hampshire. Other than ozone nonattainment, our number one air pollution problem in New Hampshire is acid rain. This legislation contains the mechanisms, through controls on sulfur dioxide and nitrogen oxides, to halve acid rain pollution by the year 2000.

New Hampshire also will benefit from the conference report's focus on ozone pollution. In recent years, two cities in the First Congressional District—Manchester and Portsmouth—have violated the existing Clean Air Act's health standards for ozone. On midsummer days, when skies are sunny and temperatures high, thousands of residents of these towns breathed ozone in concentrations above the national standard. With its emphasis on clean fuels and clean-fuel vehicles in nonattainment areas, this clean air rewrite will help our State bring its growing ozone problem under control.

Finally, I am delighted that the conferees have included in the conference report the research and development language that I worked with Mr. ROE and Mr. SCHEUER to produce. This language will renew and update the research title of the Clean Air Act to provide for acid rain monitoring after the expiration of the National Acid Precipitation Assessment Program in 1990.

For nearly a decade, air pollution has remained Congress' greatest unresolved environmental challenge. Finally, we have an opportunity to address it effectively. I ask my colleagues to support the conference report. Thank you, Mr. Speaker.

Mrs. MARTIN of Illinois. Mr. Speaker, I rise today in strong support of the conference report for the Clean Air Act Amendments of 1990.

I would like to take this opportunity to both thank and congratulate the members of the Energy and Commerce Committee and their staff, who have worked interminable hours to bring this conference report to the floor today.

These amendments will have a significant effect upon both the economy and people of Illinois. Under title II of the 1990 amendments, reformulated gasoline would be mandated in the nine cities with the most severe ozone pollution, including Chicago, beginning in 1995.

Although these revisions to the Clean Air Act pose a challenge to Chicago and Illinois, they also provide some very important tools to assist the city of Chicago in its ongoing efforts to attain the national ambient air quality standard [NAAQS]. Mayor Daley of Chicago stated in a recent correspondence, "The mandated sale of reformulated gasoline is a new control under the 1990 amendments which should benefit the region through significant reductions in mobile source emissions as early as 1992."

Mandated cleaner fuels will create a larger market for the sale of ethanol, which is good for the Illinois farmer, good for the environment, and good for reducing reliance on imported oil. Illinois is one of the top producers of ethanol, which is produced from corn.

Of great concern to the people of Illinois during the formulation of the 1990 amendments to the Clean Air Act were the acid rain provisions. The least-cost way of reducing sulfur dioxide [SO_2], largely held responsible for acid rain, was to require coal-fired utilities to reduce their SO_2 emissions. Illinois produces high sulfur coal and, thus, 5,000 of the 15,000 coal miners in Illinois are already out of work because of reduced demand for high-sulfur coal.

For those who remain—and for the thousands of other workers whose livelihoods will be affected by this legislation—we have succeeded in providing an opportunity for retraining and temporary support while they prepare for a new life. Through the tireless efforts of Mr. WISE of West Virginia, the 1990 amendments authorize $250 million over 5 years to provide for those individuals and their families who are adversely affected by the acid rain provisions.

In addition, the 1990 amendments, in recognition of the significant SO_2 emission reductions required of coal-fired utilities, special consideration will be given to those utilities if they submit proposals for funding to the Clean Coal Technology Program. Techniques have been developed which can remove sulfur from coal, allowing coal-fired utilities to continue to use Illinois' ubiquitous energy resource.

There is no question that this is the most important environmental legislation to come before Congress in 13 years. It is a work of artful compromise among environmental groups, the administration, Members of Congress, and industry. Through their efforts we can look forward to significant reductions in acid rain, urban smog, and toxic air pollutants through tough new laws and enforcement—guaranteeing cleaner air for future generations of Americans.

Today we can celebrate an almost unprecedented step toward providing for a cleaner and healthier environment. I urge my colleagues to vote in favor of this conference report.

Mrs. MORELLA. Mr. Speaker, I rise in strong support of this conference report on the Clean Air Amendments Act. This legislation is a complex bill, the result of a multitude of compromises. The first Clean Air Act, enacted in 1970 and amended in 1977, set us on the road to cleaning up unhealthy levels of air pollution and preserving pristine air quality. The Clean Air Act Amendments of 1990 is a comprehensive reauthorization of the 1970 initiative.

I received thousands of postcards, letters, and phone calls from Montgomery County, MD, residents indicating support for alternative fuels and extended warranties for cleaner cars, prevention of toxic-releasing accidents, protection of our national parks from air pollution, and the swift phasing out of ozone depleting chemicals. I am pleased that steps were taken to address each of these concerns, and I believe that the country is prepared to take the necessary steps to clean up our air, and to prevent its future deterioration.

This comprehensive legislation deals with attainment and maintenance of air quality standards, a critical concern for my congressional district which is a part of the Washington metropolitan area. In addition, there are provisions mandating clean fuels and clean-fueled vehicles. Maximum achievable control technology [MACT] is required on plants causing major toxic air pollution.

An Acid Rain Control Program is mandated; there are stiff enforcement provisions, and protection of the ozone layer is addressed. Finally, as a member of the Committee on Science, Space, and Technology, I am pleased that there are clean air research provisions, providing for an Environmental Protection Agency program investigating the health effects of air pollution. The EPA is also asked to develop ways to prevent air pollution.

Mr. Speaker, this legislation is good news, but I realize that Americans will pay a serious price for improved air quality. There will be higher consumer prices, job losses and dislocations, and changed lifestyles, but we have little choice if we are to provide a liveable environment for ourselves and our grandchildren.

Mr. Speaker, I urge my colleagues to support this landmark legislation.

Mr. STOKES. Mr. Speaker, I rise today in support of the conference report on S. 1630, the Clean Air Act Amendments of 1990. The Clean Air Act, which was first passed in 1970, has not been amended since 1977. The bill before us today represents a major stride in the fight against air pollution from urban smog, emissions or airborne toxics, and acid rain.

I also want to take this opportunity to commend the chairman of the Energy and Commerce Committee, the gentleman from Michigan [Mr. DINGELL], and the ranking minority member of the committee, the gentleman from New York [Mr. LENT], for their leadership in bringing this bill to the House floor through many hours of hearings and long days in conference committee. I would also commend all the other conferees for their tireless dedication to the goal of producing a bill that will address the problem of air pollution in a comprehensive way. Lastly, I want to express my thanks to the staff who have worked incredibly long hours in drafting the language and preparing the conference report for consideration.

S. 1630 brings the Nation into compliance with clean air standards first established by the original 1970 act but which were not met by that act or the subsequent amendments.

The key features of the bill are: tough new limits on tailpipe emissions of cars; a requirement for new pollution-control devices on major sources of toxic air pollutants; strict timetables and pollution-control requirements for reducing urban smog; and new acid rain controls.

Mr. Speaker, I support the majority of the amendments to the Clean Air Act contained in the conference report. These include: requirements for production of clean fuel vehicles; encouragement of research into reformulated gasolines and other clean fuels; phaseout of ozone-depleting chemicals; and an extension of automotive pollution control device warranties.

Some of the most important aspects of the bill are the provisions dealing with automobile tailpipe standards, and clean cars/clean fuels development. S. 1630 will require cuts of 35 percent in hydrocarbon tailpipe emissions and 60 percent in nitrogen oxide emissions, beginning in 1994. A second phase of even more stringent tailpipe emission standards would go into effect in the year 2003, if the Environmental Protection Agency finds that the additional reductions would be technologically feasible. In addition, pollution control equipment on cars would be required to last for 10 years or 100,000 miles as of 1996.

The conference report includes mandates for the development of reformulated fuels, which burn cleaner than current petroleum formulas, and cars which can use these fuels. The conference report requires that reformulated gasoline would have to be sold in the 40 cities that do not meet Federal air quality standards for carbon monoxide beginning in 1992.

Beginning in 1996, a pilot program would be established in California that would require the sale of 150,000 clean-fueled vehicles per year, rising to 300,000 per year in later years. The conference report also sets up a Clean-Fuel Fleet Program for cities with the dirtiest air that would require 80-percent cuts in emissions for cars and a 50-percent reduction in emissions for trucks beginning in 1998.

Mr. Speaker, this bill will be tremendously beneficial to all of us. Air pollution causes sickness and disease and costs the U.S. economy billions of dollars a year in lost productivity. It is important that we take action now to reduce air pollution, so that we may leave the legacy of a cleaner environment to future generations.

I urge all my colleagues to support the conference report S. 1630, and to strike a blow for clean air.

Mr. HUGHES. Mr. Speaker, I rise in strong support of the conference report on the Clean Air Act. As one of the conferees on this legislation, representing the Merchant Marine and Fisheries Committee, I was privileged to participate in developing this historic legislation. There is no question but that this bill rates as one of the most significant environmental accomplishments of the Congress in recent decades.

When the angels in heaven look down upon our beautiful planet, I've often wondered if they shake their heads in disgust at what they see. That is, if they can see anything at all through the layers of smog and pollution which we have allowed to accumulate over the years.

Clean air is not a privilege. It's a right which we have inherited as citizens of this planet, and which we have a responsibility to protect and assure for future generations to enjoy. It's sad to say we have done a very poor job of safeguarding this precious resource in recent decades. I'm optimistic that passage of this bill signals a renewal of our commitment to a living and breathing planet. This is one vote which we will always be able to look back upon with pride.

It's now estimated that some 121 million Americans—nearly half the population of our country—live in areas where the air is polluted. Scientific evidence is continuing to mount that air pollution contributes to a variety of health problems, including respiratory problems, cancer, and birth defects. Just as importantly, air pollution is destroying our rivers and streams, killing our forests, and devastating our fish and wildlife populations.

We've known about these problems for years. I'm grateful that we are finally doing something about it.

Under this bill, tough new controls will be put in place to reduce industrial emissions of airborne toxics. Specifically, some 250 major industrial polluters, such as chemical plants and oil refineries, will have to install new technology to reduce toxic emissions by the year 2003. In addition, the EPA will be required to regulate smaller sources of these pollutants.

In the area of automobile emissions, the legislation requires a 60-percent cut in nitrogen oxides and a 35-percent reduction in hydrocarbons—two primary components of smog—by 1994. By 1996, automobiles will have to meet much tougher tailpipe emissions standards. The bill also encourages the use of "clean" fuels, such as ethanol and methanol, as an alternative to gasoline, and imposes additional clean-fuel requirements in our Nation's most polluted cities.

To help control acid rain, the bill establishes new controls on emissions of sulfur dioxide and nitrogen oxide. Acid rain is known to be killing our lakes and aquatic environment and is thought to be damaging our forests. These new restrictions will go a long way toward protecting those elements of our environment which are least able to defend themselves against the airborne assaults of acid rain.

Mr. Speaker, I realize this is not a perfect bill, but I also understand how difficult it is to reconcile our economic needs with our environmental goals. It's been 20 years since the original Clean Air Act was adopted and 13 years since it was last updated. We've lost a lot of ground since that time. This bill is fair to industry and it's fair to society. I'm very pleased to join in supporting this historic legislation.

The SPEAKER pro tempore. (Mr. MAZZOLI). All time has expired.

Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DANNEMEYER. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 401, nays 25, not voting 6, as follows:

[Roll No. 525]

YEAS—401

Ackerman	Dingell	Holloway
Alexander	Dixon	Hopkins
Anderson	Donnelly	Horton
Andrews	Dorgan (ND)	Houghton
Annunzio	Dornan (CA)	Hoyer
Anthony	Douglas	Huckaby
Archer	Downey	Hughes
Aspin	Dreier	Hutto
Atkins	Duncan	Hyde
AuCoin	Durbin	Inhofe
Baker	Dwyer	Ireland
Ballenger	Dymally	Jacobs
Barnard	Dyson	James
Bartlett	Early	Jenkins
Barton	Eckart	Johnson (CT)
Bateman	Edwards (CA)	Johnson (SD)
Bates	Edwards (OK)	Johnston
Beilenson	Emerson	Jones (GA)
Bennett	Engel	Jones (NC)
Bentley	English	Jontz
Bereuter	Erdreich	Kanjorski
Berman	Espy	Kaptur
Bevill	Evans	Kastenmeier
Bilbray	Fascell	Kennedy
Bilirakis	Fawell	Kennelly
Bliley	Fazio	Kildee
Boehlert	Feighan	Kleczka
Boggs	Fields	Kolbe
Bonior	Fish	Kolter
Borski	Flake	Kostmayer
Bosco	Flippo	Kyl
Boucher	Foglietta	LaFalce
Boxer	Ford (MI)	Lagomarsino
Brooks	Ford (TN)	Lancaster
Broomfield	Frank	Lantos
Browder	Frenzel	Laughlin
Brown (CA)	Frost	Leach (IA)
Brown (CO)	Gallegly	Leath (TX)
Bruce	Gallo	Lehman (CA)
Bryant	Gaydos	Lehman (FL)
Buechner	Gejdenson	Lent
Bunning	Gekas	Levin (MI)
Bustamante	Gephardt	Levine (CA)
Byron	Geren	Lewis (CA)
Callahan	Gibbons	Lewis (FL)
Campbell (CA)	Gillmor	Lewis (GA)
Campbell (CO)	Gilman	Lipinski
Cardin	Gingrich	Livingston
Carper	Glickman	Lloyd
Carr	Gonzalez	Long
Chandler	Goodling	Lowery (CA)
Chapman	Gordon	Lowey (NY)
Clarke	Goss	Luken, Thomas
Clay	Gradison	Machtley
Clement	Grandy	Madigan
Clinger	Grant	Manton
Coble	Gray	Markey
Coleman (MO)	Green	Martin (IL)
Coleman (TX)	Guarini	Martin (NY)
Collins	Gunderson	Martinez
Condit	Hall (OH)	Matsui
Conte	Hall (TX)	Mavroules
Conyers	Hamilton	Mazzoli
Cooper	Hansen	McCandless
Coughlin	Harris	McCloskey
Courter	Hastert	McCollum
Cox	Hatcher	McCrery
Coyne	Hayes (IL)	McCurdy
Craig	Hayes (LA)	McDade
Darden	Hefley	McDermott
Davis	Hefner	McHugh
de la Garza	Henry	McMillan (NC)
DeFazio	Herger	McMillen (MD)
Dellums	Hertel	McNulty
Derrick	Hiler	Meyers
Dickinson	Hoagland	Mfume
Dicks	Hochbrueckner	Michel

Miller (CA)	Ridge	Solomon
Miller (WA)	Rinaldo	Spence
Mineta	Ritter	Spratt
Mink	Roberts	Staggers
Moakley	Roe	Stallings
Molinari	Rogers	Stangeland
Montgomery	Rohrabacher	Stark
Moody	Ros-Lehtinen	Stearns
Moorhead	Rose	Stenholm
Morella	Rostenkowski	Stokes
Morrison (CT)	Roth	Studds
Morrison (WA)	Roukema	Sundquist
Mrazek	Rowland (CT)	Swift
Murphy	Rowland (GA)	Synar
Murtha	Roybal	Tallon
Nagle	Russo	Tanner
Natcher	Sabo	Tauke
Neal (MA)	Saiki	Tauzin
Neal (NC)	Sangmeister	Taylor
Nelson	Sarpalius	Thomas (CA)
Nielson	Savage	Thomas (GA)
Nowak	Sawyer	Thomas (WY)
Oakar	Saxton	Torres
Oberstar	Schaefer	Torricelli
Obey	Scheuer	Towns
Olin	Schiff	Traficant
Ortiz	Schneider	Traxler
Owens (NY)	Schroeder	Udall
Owens (UT)	Schuette	Unsoeld
Oxley	Schulze	Upton
Packard	Schumer	Valentine
Pallone	Sensenbrenner	Vander Jagt
Panetta	Serrano	Vento
Parker	Sharp	Visclosky
Parris	Shaw	Volkmer
Pashayan	Shays	Vucanovich
Patterson	Sikorski	Walgren
Paxon	Sisisky	Walker
Payne (NJ)	Skaggs	Walsh
Payne (VA)	Skeen	Washington
Pease	Skelton	Watkins
Pelosi	Slattery	Waxman
Penny	Slaughter (NY)	Weber
Perkins	Slaughter (VA)	Weiss
Petri	Smith (FL)	Weldon
Pickett	Smith (IA)	Whittaker
Pickle	Smith (NE)	Whitten
Porter	Smith (NJ)	Williams
Price	Smith (TX)	Wilson
Pursell	Smith (VT)	Wise
Quillen	Smith, Denny (OR)	Wolf
Rahall	Smith, Robert (NH)	Wolpe
Rangel	Smith, Robert (OR)	Wyden
Ravenel	Snowe	Wylie
Ray	Solarz	Yates
Regula		Yatron
Rhodes		Young (FL)
Richardson		

NAYS—25

Applegate	Hammerschmidt	Myers
Armey	Hancock	Poshard
Burton	Hubbard	Robinson
Combest	Kasich	Shumway
Costello	Lightfoot	Shuster
Crane	Marlenee	Stump
Dannemeyer	McEwen	Young (AK)
DeLay	Miller (OH)	
DeWine	Mollohan	

NOT VOTING—6

Brennan	Hawkins	McGrath
Crockett	Hunter	Wheat

□ 1906

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein tabular and extraneous matter on S. 1630.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Michigan?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 3000. An act to require that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured, to provide for accreditation of laboratories engaged in fastener testing, to require inspection, testing, and certification, in accordance with standardized methods, of fasteners used in critical applications to increase fastener quality and reduce the danger of fastener failure, and for other purposes;

H.R. 4630. An act to acquire and study certain lands in the State of New Mexico, and for other purposes;

H.R. 4521. An act to establish a Hydrogen Research and Development Program; and

H.R. 5567. An act to authorize international narcotics control activities for fiscal year 1991, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4739) "An act to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5803) "An act making appropriations for the Department of Defense for the fiscal year ending September 30, 1991, and for other purposes."

The message also announced that the Senate had passed a bill and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 2385. An act to establish the National Forest Foundation, and

S. Con. Res. 158. Concurrent resolution directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 4739.

□ 1910

DIRECTING THE CLERK TO MAKE TECHNICAL CORRECTIONS IN ENROLLMENT OF H.R. 4739, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1991

Mr. MONTGOMERY. Mr. Speaker, I offer a concurrent resolution (S. Con. Res. 158) directing the Clerk of the House to the Representatives to make technical corrections in the enrollment of the bill (H.R. 4739) to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, and I ask unanimous consent for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Mississippi?

Mr. STUMP. Reserving the right to object, Mr. Speaker, and I shall not object, I yield to the gentleman from Mississippi for a brief explanation.

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman from Arizona for giving me the opportunity to explain this matter.

This resolution would make technical and clerical corrections in the enrollment of the Defense authorization bill, as reported by the committee of conference and adopted by the House.

Mr. STUMP. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 158

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 4739) to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 101(e)—

(A) strike out "$2,526,884,000" and insert in lieu thereof "$2,541,884,000"; and

(B) strike out "$1,103,747,000" and insert in lieu thereof "$1,118,747,000".

(2) In sections 151(a), 152(a), and 211(a), insert "authorized to be" before "appropriated".

(3) In section 217(d)—

(A) insert "(1)" before "The Secretary of Defense"; and

(B) at the end of subsection (d)(1) add the following: "The amount of the limitation in

subsection (c) shall be increased by any amount so transferred.".

(4) In section 242(a), strike out "by the Secretary of Defense" and insert in lieu thereof "to the Secretary of Defense".

(5) In section 1405(a)—

(A) insert "(1)" before "Subchapter IV";

(B) insert "(other than section 1558)" after "United States Code"; and

(C) in paragraph (2), strike out "the sections of that subchapter" and insert in lieu thereof "sections 1551 through 1557"; and

(6) In section 1405(b)(7), insert "or paragraph (6)" after "under paragraph (4)".

(7) In section 1408, strike out "$300,000" and insert in lieu thereof "$1,000,300,000".

(8) In section 1519(d)(2)—

(A) strike out "the Naval Home and"; and

(B) add at the end the following new sentence: "Beginning on October 1, 1991, funds required for the operation of the Naval Home shall be drawn from the account of the Naval Home.".

(9) In section 6 of the Export Administration Act of 1979 (as proposed to be added by section 1702(a) of the bill)—

(A) strike out "5(a)(4)(D)" in paragraphs (1), (2), and (3) and insert in lieu thereof "5(b)(2)(C)"; and

(B) strike out "which the Secretary of State has determined under subsection (j) has" in subsection (l)(3)(B) and insert in lieu thereof "the government of which has been determined under subsection (j) to have".

(10) In section 11B(c) of the Export Administration Act of 1979 (as proposed to be added by section 1702(b) of the bill), insert "and subsections (k) and (l) of section 6" after "For purposes of this section".

(11) In section 4303(a)(2), strike out "September 30, 1990" and insert in lieu thereof "September 30, 1991".

The SPEAKER pro tempore. The question is on the concurrent resolution.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the subject of my special order today honoring Representative BILL NELSON, of Florida.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. WEBER asked and was given permission to address the House for 1 minute.)

Mr. WEBER. Mr. Speaker, I do not want to take up the time of the House any more than is necessary. I have no objection to what is going on.

I see the distinguished gentleman from Pennsylvania [Mr. GRAY], the majority whip on the floor.

Many Members have been asking me, and I am wondering myself, if we can have some better idea of the procedure for the rest of the evening, and particularly can the gentleman give us any clue as to where we stand on the possible consideration of the Reconciliation bill.

Mr. GRAY. Mr. Speaker, will the gentleman yield?

Mr. WEBER. I yield to the distinguished majority whip.

Mr. GRAY. Mr. Speaker, I will say to the distinguished gentleman that it is our intention to do suspensions.

We will also perhaps bring up the District of Columbia appropriations bill.

There will be votes, but we will roll the votes on the suspensions.

It is our expectation that reconciliation will come up late this evening.

Also, Mr. Speaker, I would add to this that we expect to bring the Immigration bill to the floor.

Mr. WEBER. So Mr. Speaker, if I am correct in understanding what the distinguished whip is telling us, we are going to debate suspensions, roll the votes on suspensions; later in the evening we will take up the votes on suspensions. We will deal with both the debate and the vote on the Immigration bill and take up reconciliation, is that correct?

Mr. GRAY. And the D.C. appropriations, that is correct.

Mr. WEBER. Mr. Speaker, I thank the distinguished whip.

It is our understanding this is all a little bit in flex. Does the gentleman have an idea when Members might expect perhaps the first vote to begin to occur?

I yield to the distinguished whip.

Mr. GRAY. I would expect the first votes would not occur for at least one hour.

Mr. WEBER. Mr. Speaker, my last question to the gentleman, is there any expectation on the part of the distinguished majority whip when Members might have a copy of the reconciliation bill to look at?

I yield to the distinguished majority whip.

Mr. GRAY. As soon as the reconciliation bill is printed, it will immediately be made available for Members here in the House of Representatives.

Mr. WEBER. Mr. Speaker, I thank the distinguished whip for his most informative and illustrative comments. I now am clear on what the rest of the evening will entail.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. WEBER. I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, I just wonder if the whip can tell us, will there also be a list brought of those little special provisions that the conferees have been noted to produce in tax bills, that the taxpayers of America do not find out about until two weeks later that we have in the bill?

Mr. GRAY. Mr. Speaker, if the gentleman will yield, I would say to the distinguished gentleman from California, that it is my best knowledge that there are none of those in this particular reconciliation bill.

Mr. DANNEMEYER. As of now, but how about an hour from now?

Mr. GRAY. I would also say to the distinguished gentleman from California, Mr. Speaker, that as he knows, the House bill contained none of those, and it is our expectation that the final reconciliation report will not have any rifle shot special features.

Mr. DANNEMEYER. Mr. Speaker, I thank the gentleman for his expectation, but hope springs eternal.

Mrs. MINK. Mr. Speaker, we expressed great concern earlier with respect to the child care bill and there was considerable discussion at the time we debated the budget reconciliation measure.

My question is, Does the measure that we will be considering tonight contain the child care legislation?

Mr. GRAY. Mr. Speaker, will the gentlewoman yield?

Mrs. MINK. I yield to the gentleman from Pennsylvania.

Mr. GRAY. Mr. Speaker, the answer to the question of the gentlewoman from Hawaii is yes. We will have included in the reconciliation bill the issue of child care.

Mrs. MINK. Mr. Speaker, I thank the gentleman.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENROLLMENT OF H.R. 4653, EXPORT ADMINISTRATION ACT OF 1979 REAUTHORIZATION

Mr. FASCELL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 392) to correct technical errors in the enrollment of the bill (H.R. 4653) to reauthorize the Export Administration Act of 1979, and for other purposes.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. MILLER of Washington. Reserving the right to object, Mr. Speaker, I would ask if the distinguished chairman of the Foreign Affairs Committee would be so kind as to explain the details of the concurrent resolution.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. MILLER of Washington. I yield to the gentleman from Florida.

Mr. FASCELL. I would say, Mr. Speaker, that the concurrent resolu-

tion makes technical corrections in the enrollment of the conference report adopted overwhelmingly in the House. If makes no substantive changes.

Mr. MILLER of Washington. With that assurance of no substantive changes, Mr. Speaker, the minority has no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 392

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill (H.R. 4653) to reauthorize the Export Administration Act of 1979, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) In the proposed subparagraph (C) of section 5(a)(4) of the Export Administration Act of 1979 (as contained in section 103(2) of the bill), strike "re-export" and insert "reexport".

(2) In the proposed subparagraph (D)(i) of section 5(a)(4) of the Export Administration Act of 1979 (as contained in section 103(2) of the bill) strike "re-export" each place it appears and insert "reexport".

(3) In the proposed paragraph (7)(A) of section 5(a) of the Export Administration Act of 1979 (as contained in section 104(b) of the bill), strike ", done at Washington, London, and Moscow on July 1, 1968," and insert "(done at Washington, London, and Moscow on July 1, 1968) or the Treaty for the Prohibition of Nuclear Weapons in Latin America (done at Mexico on February 14, 1967),".

(4) In section 106 of the bill, strike "of the Export Administration Act of 1979".

(5) In the proposed paragraph (2) of section 5(b) of the Export Administration Act of 1979 (as contained in section 106 of the bill)—

(A) in subparagraph (A), strike "this section" and insert "paragraph (1)"; and

(B) in subparagraph (B)—

(i) in clause (ii), strike "of such performance indicating" and insert "that such performance indicates";

(ii) in clause (ii), strike "propose tightening" and insert "more restrictive"; and

(iii) in clause (iii), by striking "Soviet troops" and inserting "Soviet military forces".

(6) In the proposed subparagraph (D) of section 5(c)(5) of the Export Administration Act of 1979 (as contained in section 107(2) of the bill), strike "both Committees" and insert "both such committees".

(7) In the proposed subsection (g)(2) of section 17 of the Export Administration Act of 1979 (as contained in section 108(a) of the bill)—

(A) in subparagraph (A), insert "group known as the" after "List of the"; and

(B) in subparagraph (B), strike "group known as the".

(8) In the proposed paragraph (8)(A) of section 5(c) of the Export Administration Act of 1979 (as contained in section 109(a) of the bill), strike "telecommunications equipment exports" and insert "exports of telecommunications equipment".

(9) In the proposed paragraph (3) of section 5(c) of the Export Administration Act of 1979 (as contained in section 112(a)(2) of the bill), strike "revisions of" in the last sentence and insert "revisions in".

(10) In the proposed paragraph (9)(G) of section 5(c) of the Export Administration Act of 1979 (as contained in section 112(b) of the bill), insert before the period at the end the following: ", and shall implement any other changes in export controls that are necessary to carry out such decision".

(11) In the proposed paragraph (8) of section 5(e) of the Export Administration Act of 1979 (as contained in section 115 of the bill), strike "check" and insert "inspect".

(12) In the proposed subsection (g) of section 5 of the Export Administration Act of 1979 (as contained in section 116 of the bill), in the third sentence strike "Goods or" and insert "With respect to goods or".

(13) In the proposed subsection (r)(1) of section 5 of the Export Administration Act of 1979 (as contained in section 119 of the bill), insert "group known as the" after "Lists of the".

(14) In the proposed subsection (r)(2)(C) of section 10 of the Export Administration Act of 1979 (as contained in section 120 of the bill), strike "the government of which is determined under section 6(j) to have" and insert "whose government is determined for purposes of section 6(j) to be a government that has".

(15) In the proposed subsection (q) of section 6 of the Export Administration Act of 1979 (as contained in section 125(c) of the bill)—

(A) in paragraph (2), strike "ensure effective control of proliferation through" and insert "discourage proliferation by"; and

(B) in paragraph (3), strike "in subparagraph (1)" and insert "set forth in paragraph (1)".

(16) In the proposed subsection (k)(2) of section 6 of the Export Administration Act of 1979 (as contained in section 302(a)(2) of the bill) strike "consistent with purposes" and insert "consistent with the purposes".

(17) In the proposed subsection (l)(3) of section 6 of the Export Administration Act of 1979 (as contained in section 302(a)(2) of the bill)—

(A) in subparagraph (A), strike "adherent to the Missile Technology Control Regime" and insert "MTCR adherent"; and

(B) in subparagraph (B), strike "the government of which has been determined under subsection (j) to have" and insert "whose government is determined for purposes of subsection (j) to be a government that has".

(18) In the proposed section 11B of the Export Administration Act of 1979 (as contained in section 302(b) of the bill)—

(A) amend the section heading to read as follows: "MISSILE PROLIFERATION CONTROL VIOLATIONS"; and

(B) in subsection (b)(7)(iii), strike "NATO Programs of Cooperation" and insert "Programs of Cooperation of the North Atlantic Treaty Association".

(19) In the proposed section 71(c) of the Arms Export Control Act (as contained in section 303 of the bill), strike "appropriate official" and insert "appropriate officials".

(20) In the proposed section 73(a)(2) of the Arms Export Control Act (as contained in section 303 of the bill)—

(A) in subparagraph (A)(ii), strike "controlled under this Act" and insert "on the United States Munitions List"; and

(B) in subparagraph (C), strike the comma after "production of missiles".

(21) In the proposed section 73(g)(1)(C) of the Arms Export Control Act (as contained in section 303 of the bill), strike "NATO Programs of Cooperation" and insert "Programs of Cooperation of the North Atlantic Treaty Association".

(22) In the proposed section 11C(d) of the Export Administration Act of 1979 (as contained in section 423(a) of the bill), insert "the" after "only if".

(23) In the proposed section 81(a)(1)(B) of the Arms Export Control Act (as contained in section 423(b) of the bill), strike "technologiy" and insert "technology".

(24) In the proposed section 81(d) of the Arms Export Control Act (as contained in section 423(b) of the bill), insert "the" after "only if".

(25) In section 441(a)(1) of the bill, strike "date of enactment" and insert "date of the enactment".

(26) In section 441(b) of the bill—

(A) in paragraph (1), strike "date of enactment" and insert "date of the enactment"; and

(B) in paragraph (2), strike "date of enactment" and insert "date of the enactment".

(27) In section 442(A)(8) of the bill, strike "exports of" and insert "exports to".

(28) In section 442(c) of the bill, strike "12 month" and insert "12-month".

(29) In section 442(d)(1)(A) of the bill, strike "12 month" and insert "12-month".

(30) In section 442(e)(1)(A) of the bill, strike "paragraphs" and insert "any of paragraphs".

(31) In section 442(e)(2) of the bill, strike "license issued" and insert "license was issued".

(32) In section 523(c)(1) of the bill, strike "date of enactment" and insert "date of the enactment".

(33) In section 523(d)(1) of the bill, insert a comma after "in lieu of".

(34) In section 525 of the bill—

(A) in paragraph (1), strike "date of enactment" and insert "date of the enactment"; and

(B) in paragraph (2), strike "date of enactment" and insert "date of the enactment".

(35) In section 602(a) of the bill, strike "date of enactment" and insert "date of the enactment".

(36) In section 602(b) of the bill, strike "date of enactment" and insert "date of the enactment".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

MRS. JOAN R. DARONCO

Mr. FRANK. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3134) for the relief of Mrs. Joan R. Daronco, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. CREDITABLE CIVILIAN SERVICE.

(a) TIME OF CREDITABLE CIVILIAN SERVICE.—For the purposes of the entitlement of Joan Daronco, the widow of Judge Richard Daronco (a deceased judge of the United States District Court for the Southern District of New York), to benefits under section

376 of title 28, United States Code, Richard Daronco shall be deemed—

(1) to have completed eighteen months of creditable civilian service as a judicial official prior to his death on May 21, 1988, in addition to any other creditable civilian service, computed in accordance with subsection (k) of that section, he may have had;

(2) to have actually made the salary deductions as provided by subsection (b) of that section for those eighteen months; and

(3) to have received the salary paid to Federal district court judges for the eighteen month period ending on the date of his death.

(b) EFFECTIVE DATE.—Subject to section 6, this section shall be effective as of May 21, 1988.

SEC. 2. LUMP SUM PAYMENT.

(a) APPROPRIATION OF LUMP SUM PAYMENT.—Subject to section 4, the Secretary of the Treasury shall pay to Joan Daronco, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined pursuant to paragraph (1) of section 3 less the amount determined pursuant to paragraph (2) of section 3. If the amount determined pursuant to this subsection is less than zero, the Secretary shall withhold any monthly annuity Joan Daronco may be entitled to under this Act until such deficit is eliminated.

(b) PAYMENT INTO FUND.—The Secretary of the Treasury shall pay into the Judicial Survivors' Annuity Fund, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined pursuant to paragraph (2) of section 3.

(c) LIMITATION OF ATTORNEYS' AND AGENTS' FEES.—It shall be unlawful for an amount of more than 10 per centum of the amount determined pursuant to paragraph (1) of section 3 to be paid to or received by any attorney or agent for any service rendered in connection with the benefits provided by this Act. Any individual who is found guilty of a violation of this subsection shall be fined not more than $1,000.

SEC. 3. DETERMINATION OF AMOUNT OF PAYMENT.

The Director of the Administrative Office of the United States Courts shall determine each of the following:

(1) AMOUNT OF ANNUITIES.—The amount equal to the total amount of annuities Joan Daranco would have received under section 1(a) for the period beginning on the effective date of section 1 and ending on the last day of the month which follows the month which this Act takes effect.

(2) AMOUNT OF SALARY DEDUCTIONS.—The amount equal to the sum of—

(A) the total of salary deductions, as provided by section 376(b) of title 28, United States Code, that would have been deducted and withheld from the salary Judge Richard Daronco is deemed to have received under section 1(a)(3) had such deductions and withholdings been made for eighteen months prior to his death on May 21, 1988; and

(B) the amount of interest, computed at 3 per centum per annum compounded on December 31 of each year, that would accrue on the amount determined pursuant to subparagraph (A) of this paragraph.

SEC. 4. APPLICATION FOR ANNUITIES.

The lump sum payment, and any annuity, Joan Daronco is entitled to be paid pursuant to section 2(a) shall be paid only if she files an application for such payment to the Director of the Administrative Office within one year after the date of enactment of this Act.

SEC. 5 OTHER BENEFITS.

Benefits under this Act shall be paid notwithstanding Joan Daronco's eligibility or receipt of other Federal, State, or local benefits.

SEC. 6 EFFECTIVE DATE.

This Act shall be effective on the date the application referred to in section 4 is filed.

Mr. FRANK (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Massachusetts?

There was no objection.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1023

Mr. MORRISON of Connecticut. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 1023.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

□ 1920

CONFERENCE REPORT ON H.R. 1396, INTERNATIONAL SECURITIES ENFORCEMENT COOPERATION ACT OF 1989

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 1396) to amend the Federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement.

The Clerk read the title of the bill.

(For conference report, see proceedings of the House of Tuesday, October 23, 1990.)

The SPEAKER pro tempore (Mr. MAZZOLI). Is a second demanded?

Mr. RINALDO. Mr. Speaker, I demand a second.

Mr. SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from New Jersey [Mr. RINALDO] will be recongized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report accompanying H.R. 1396. H.R. 1396 originated in the House as the International Securities Enforcement Cooperation Act of 1989. This package of reform legislation is yet another step forward in assuring that the securities markets are fully up to date in order to absorb the revolutionary challenges of globalization and modernization in the securities markets of today.

The House passed H.R. 1396 in its original form on September 25, 1989. The Senate then adopted H.R. 1396 on November 16, 1989, with a package of amendments. Those amendments included the Securities and Exchange Commission authorization, lifting pay cap restrictions on compensations for SEC employees, new leasing authority for the SEC, the Trust Indenture Reform Act of 1990, the Shareholder Communications Improvement Act of 1990, and two amendments to the Public Utility Holding Company Act of 1935 which would have benefited utilities in Vermont and Kentucky. The House passed H.R. 1396 in amended form on October 1, 1990. The conference report that now lies before the House would retain the International Securities Enforcement Cooperation Act in its original form as well as the SEC authorization for fiscal years 1990 and 1991, the Trust Indenture Reform Act, the Shareholder Communications Improvement Act, and new SEC leasing authority.

This reform package follows naturally from the passage in the last Congress of the Insider Trading and Securities Fraud Enforcement Act of 1989. It also appropriately follows H.R. 3657, the Securities Markets Reform Act of 1990, and S. 647, the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, both of which have been signed into law by President Bush. After the boom times of the 1980's, Wall Street must live with the realities of an up-to-date regulatory structure which promotes the healthy operation of the securities markets, identifies problem areas, and facilitates vigorous enforcement and prosecution of the law.

The international enforcement bill, which was the original H.R. 1396 component, contains the following elements. First, it grants the SEC an exemption from the Freedom of Information Act for records provided to the Commission by foreign securities authorities under certain specified circumstances. Second, it facilitates greater access to Commission enforcement files by domestic and foreign law enforcement officials. Third, it permits the SEC to sanction securities professionals for violations of foreign securities laws. Fourth, it expands the authority of self-regulatory organizations to exclude convicted felons from membership based on violations of foreign laws. Finally, it authorizes the SEC to accept reimbursement for ex-

penses incurred on behalf of foreign governmental authorities in their investigations.

The Trust Indenture Reform Act, introduced as H.R. 1786, and the Shareholder Communications Improvement Act, introduced as H.R. 2780, were introduced by the gentleman from New Jersey [Mr. RINALDO]. Beyond expanding the SEC's legislative tools in the international arena and elsewhere, this resolution reauthorizes the SEC for fiscal years 1990 and 1991.

With regard to the provision on Securities and Exchange Commission leasing authority, the conference report requires that this authority granted the Commission to lease its own office space directly will be exercised aggressively by the Commission to achieve actual cost savings and to increase the Commission's productivity and efficiency. I want to emphasize the focus on cost-saving by the Federal Government. The conference report also notes the representation on this subject made by Commission Chairman Richard C. Breeden in letters of October 16 and 18, 1990. In those letters, the Commission Chairman stated, among other points, that the grant of this leasing authority at this time is essential, because the Commission's present lease expires in July 1992 and the process of negotiating a new lease must begin by the end of 1990. The conference report requires that the Commission keep the appropriate committees and subcommittees of Congress fully and currently informed of the effectiveness of the Commission's exercise of its new leasing authority, and the assurance that precious Commission resources are not diverted unnecessarily. At this time I would like to insert in the RECORD the letters sent by Chairman Breeden.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, October 16, 1990.

Hon. EDWARD J. MARKEY,
Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN MARKEY: Thank you for the opportunity to provide additional information in support of the Securities and Exchange Commission's (Commission) request for independent leasing authority and an exemption from the General Services Administration's space management directives. Providing the Commission with this relief would result in savings to the Commission of approximately $1 million annually, while giving us needed flexibility relative to working conditions for the Commission and its staff.

The savings would result both from the benefit of direct leasing in today's very soft commercial real estate market, and from relieving the Commission from making unreimbursed contributions to GSA's captial building fund. For example, in 1991, the Commission would pay GSA $8.15 million for its headquarters space, although GSA would pay the landlord only $7.6 million for those facilities. In 1992, GSA would pay the landlord $7.8 million for all headquarters space but would charge the Commission $9.3 million. If we include estimates for the regional offices, we project that direct leasing would save the Commission approximately $1 million in 1991 and at least $2 million in 1992.

Independent leasing authority would also allow the Commission, like the other financial regulatory agencies, to enter into its own contracts for reconfiguration work at all of its facilities. The present system requires GSA approval for all but relatively minor construction projects, resulting in significant delays.

I am deeply grateful for your concern for and support of the Commission. We would be pleased to provide additional information to support our request for independent leasing authority and an exemption from GSA space management rules. Please do not hesitate to contact me or to have your staff contact James McConnell, Executive Director, at 202-272-2700 for further assistance.

Sincerely,

RICHARD C. BREEDEN,
Chairman.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, October 18, 1990.

Hon. EDWARD J. MARKEY,
Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR CHAIRMAN MARKEY: This responds to your request for additional information concerning Section 103 of H.R. 1396, the "Securities Act Amendments of 1990," as passed by the Senate. Section 103 would, among other things, authorize the Commission to lease its own office space directly and would exempt the Commission from regulations and directives of the General Services Administration governing space.

This provision would substantially improve the Commission's ability to administer the federal securities laws in three ways. First, as I indicated both in my earlier letter to you and in our telephone conversation of October 16th, the Commission would recognize substantial cost savings if it could enter into its own leases. Currently, the Commission pays rent on its headquarters building to GSA at a rate of $26.90 per square foot, while the GSA pays rent to the building's owner at a rate of $24.18 per square foot. As Attachment A indicates, elimination of this differential would save the Commission over $1 million in the current fiscal year. For fiscal year 1992, it is estimated that the Commission could recognize a savings of approximately $2 million. Because the Commission's staff already performs virtually all of the work in negotiating and administering leases for Commission office space, the agency would not require any additional personnel to exercise this leasing authority.

Second, this provision would give the Commission greater flexibility in allocating office space. Currently, GSA regulations set limits on permissible agency office space. After an exchange of correspondence in early 1989, the GSA has been willing to accommodate the Commission's needs on a case-by-case basis. There can be no assurance, however, that the GSA will do so in the future. Even with the GSA's greater willingness to grant case-by-case waivers, the Commission still has a shortage of file space, conference and testimony rooms, and individual offices for employees, particularly the Commission's professionals, to work efficiently and without undue distraction. In fact, in the headquarters office approximately 70 percent of the Commission's nonsupervisory attorneys and accountants, including a substantial number of senior professionals, share offices. Under the Commission's fiscal year 1991 appropriation, which will permit a 14 percent increase in Commission resources, the office space situation will significantly worsen.

Third, this provision would allow the Commission to eliminate a disparity in working conditions between Commission employees and those of other financial regulators. At present, all other financial regulatory agencies, including the four bank regulatory agencies, the National Credit Union Administration, and the Commodity Futures Trading Commission, have their own leasing authority. Like these agencies, the Commission requires this leasing flexibility to perform its work efficiently and effectively. This authority would also assist the Commission in recruiting and retaining qualified staff.

Giving the Commission independent leasing authority now is essential. The Commission's lease on its headquarters office expires in July 1992. Because negotiating a new lease will require approximately eighteen months, the Commission needs to begin the process of evaluating its space needs and negotiating a lease before the end of 1990.

Of course, the Commission's exercise of this independent leasing authority would continue to be subject to Congressional oversight, both through the appropriations process as well as through oversight by the Commission's two oversight committees.

I hope that this information, along with the information provided by the Commission's staff in its meeting yesterday with members of your staff, is helpful. I continue to appreciate your concern for the Commission.

Sincerely,

RICHARD C. BREEDEN,
Chairman.

Mr. Speaker, this reform package continues the progression of a year of remarkable legislative achievement in the securities area. Market Reform, civil remedies and penny stock legislation have all been sent to the President, and we are continuing to move forward in the important area of enhancing the responsibilities of public accountants to root out financial fraud. I hope, working together with our minority, and with Chairman DINGELL, we can continue to produce the type of important, reform minded legislation that is essential to building an honest, efficient, modern securities marketplace.

In conclusion, Mr. Speaker, I want to again note the tremendous contribution of the minority, Mr. RINALDO and Mr. LENT, as well as Chairman DINGELL, and the staffs on both sides of the aisle, in helping to bring this package to the floor today. It is this bipartisan cooperation that has marked all of our successful efforts at the Telecommunications and Finance Subcommittee, and I look forward to many more trips to the floor with my colleagues on these issues.

I urge my colleagues to support this conference report.

SEC Space Cost Analysis for Headquarters and Regions GSA vs Independent Leasing

Fiscal 1991 SEC Headquarters Direct Lease payment to the Building Owner: 300,347 sq. ft. at $24.18	$7,260,937
GSA Charges to SEC: 300,347 sq. ft. at $26.90	8,079,612
Annual savings (difference) for headquarters	818,675
Regional estimate of savings	250,000
Total Estimated Savings	1,068,675
Fiscal 1992 SEC Headquarters Direct Lease payment to the Building Owner: 300,347 sq. ft. at $26.24	7,882,735
GSA Charges to SEC: 300,347 sq. ft. at $31.12	9,345,348
Annual savings (difference) for headquarters	1,462,613
Regional estimate of savings	500,000
Total estimated savings	$1,962,613

Mr. Speaker, I reserve the balance of my time.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 1396, the Securities Acts Amendments of 1990.

This most important legislation is the third bill enacted by the House this year significantly revising the Federal securities laws. The importance of providing the Securities and Exchange Commission with the legal tools it needs to meet regulatory challenges in the global financial markets of the 1990's is self-evident.

Title I of H.R. 1396 authorizes the appropriations for the Securities and Exchange Commission for fiscal years 1990 and 1991 and authorizes the Commission to directly lease space for its offices.

Title II deals with international securities law enforcement, authorizing the SEC to establish procedures for providing information to foreign securities regulators after receiving assurances of confidentially. Recognizing the sensitivity of this information, the legislation wisely permits the SEC to refuse to disclose records obtained from a foreign securities authority, if public disclosure of such records would violate the laws of that country. Nothing in this bill, however, would authorize the SEC to withhold information from the Congress.

As capital moves from country to country, so do manipulators and frauds. H.R. 1396 authorizes the SEC to impose sanctions on or to deny registration of brokers or dealers and their associated persons on the basis of misconduct in a foreign country. It also authorizes the SEC to accept payment and reimbursement from a foreign securities authority for expenses incurred in providing assistance to them.

Title III contains the provisions of the Shareholder Communications Imporovement Act, a bill I had the privilege of introducing in the House. It will improve communications between mutual funds and their shareholders and ensure that proxy materials and annual statements are delivered in a timely fashion so that informed voting decisions can be made.

Finally, title IV of H.R. 1396 enacts the language of the Trust Indenture Reform Act, another bill I introduced in the House, authorizing the SEC to eliminate currently required boiler plate in trust agreements that serve only to raise administrative costs and that do not provide additional investor protection.

In closing, I want to commend the chairman of the Energy and Commerce Committee and the chairman of the Telecommunications and Finance Subcommittee, my friends Mr. DINGELL and Mr. MARKEY, as well as the ranking Republican on the Energy and Commerce Committee, Mr. LENT, for their assistance and cooperation in the work which produced this timely conference report for the consideration of the House today.

Mr. Speaker, I reserve the balance of my time.

ENVIRONMENTAL IMPACT STATEMENT FOR MISSILE PROGRAM ON KAUAI

(By unanimous consent, Mrs. MINK was allowed to speak out of order.)

Mrs. MINK. Mr. Speaker, I rise to announce that Senator AKAKA in the other body and I are introducing legislation today that mandates that the Army do an environmental impact statement before it proceeds any further with its STARS program at the Pacific Missile Range Facility on the island of Kauai in Hawaii.

STARS is the Army's proposed program to assemble, test, and launch missiles from Kauai in connection with developing the strategic defense initiative, commonly called the star wars program.

I am introducing this bill today, Mr. Speaker, because I am appalled that the Army refuses to do a full study before proceeding with this program. The Army concludes that this program is not a major Federal action and therefore does not require an Environmental Impact Statement. But Mr. Speaker, the facts paint another picture. I am convinced there are serious health and environmental concerns.

Mr. Speaker, the State government of Hawaii, the congressional delegation from Hawaii, and officials on the island of Kauai are united in their concern over this program. I urge the Army to prepare the Environmental Impact Statement and I also urge swift passage of this legislation.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in conclusion, I want to again note the tremendous contribution of the minority, Mr. RINALDO and Mr. LENT, as well as Chairman DINGELL, and the staffs on both sides of the aisle, including Howard Homonoff, Herb Brown, Consuela Washington, and Steve Blumenthal, in helping to bring this package to the floor today. It is this bipartisan cooperation that has marked all of our successful efforts at the Telecommunications and Finance Subcommittee.

I urge my colleagues to support this conference report.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and agree to the conference report on the bill, H.R. 1396.

The question was taken; and (two thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, AUTHORIZATIONS FOR FISCAL YEARS 1990 AND 1991

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and take from the Speaker's table the bill (H.R. 3310) to authorize appropriations for activities of the National Telecommunications and Information Administration for fiscal years 1990 and 1991, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment.

Strike out all after the enacting clause and insert:

That there is authorized to be appropriated for activities of the National Telecommunications and Information Administration $14,554,000 for fiscal year 1990 and $18,000,000 for fiscal year 1991, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for fiscal year 1991.

SEC. 2. (a) The Congress finds that—

(1) the Pacific Ocean region is of strategic and economic importance to the United States;

(2) other nations, especially the Soviet Union and Japan, are seeking to increase their influence in this region;

(3) because the Pacific Basin communities are geographically isolated and because many are relatively poor, they are in great need of quality, low-cost communications services to maintain contact among themselves and with other countries;

(4) from 1971 until 1985, such communications needs were satisfied by the Pan-Pacific Educational and Cultural Experiments by Satellite Program (hereinafter referred to as the "PEACESAT Program") operating over the ATS-1 satellite of the National Aeronautics and Space Administration;

(5) the ATS-1 satellite ran out of station-keeping fuel in 1985 and has provided only intermittent service since then;

(6) the Act entitled "An Act to provide authorization of appropriations for activities of the National Telecommunications and Information Administration", approved November 3, 1988 (Public Law 100-584; 102 Stat. 2970), authorized $3,400,000 in funding during fiscal years 1988 and 1989 for re-establishing the communications network of the PEACESAT Program;

(7) Congress appropriated $1,700,000 for fiscal year 1988 and $200,000 for fiscal year 1989 for the purposes of re-establishing the communications network of the PEACESAT Program;

(8) since 1988, significant progress has been made to ensure resumption of this vital communications service by repairing earth terminals in the Pacific communities, by identifying the short-term and long-term needs of the residents of these communities, and by negotiating to acquire the use of the GOES-3 satellite owned by the National Oceanic and Atmospheric Administration, which is expected to provide service from 1990 to 1994;

(9) the National Telecommunications and Information Administration will issue a contract for the design and construction of earth terminals to work with the GOES-3 satellite by early 1990 that will exhaust the funds previously appropriated;

(10) additional funding will be necessary for fiscal years 1990 and 1991 to pay for the costs of operating the GOES-3 satellite, for installing the earth stations and training engineers to operate them, and for administering the program; and

(11) necessary to enable the Secretary of Commerce to conduct an effective audit of such funds.

(c) The Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipient that are pertinent to the funds received under subparagraph (A) of this paragraph.

(d) There are authorized to be appropriated $1,000,000 for fiscal year 1990 and such sums as may be necessary for fiscal year 1991 for use by the Secretary of Commerce in the negotiation for and acquisition of capacity and equipment under subsection (c)(1) of this section and the management of the operation of satellite communications services under subsection (c)(2) of this section. Sums appropriated pursuant to this subsection may be used by the Secretary of Commerce to cover administrative costs associated with the provisions of this section.

(e) The Secretary of Commerce shall consult with appropriate departments and agencies of the Federal Government, representatives of the PEACESAT Program, and other affected parties regarding the development of a long-term solution to the communications needs of the Pacific Ocean region. Within one year after the date of enactment of health care practitioners need, the procedures to gather and disseminate such information, and the types of communications equipment and training needed by rural health care practitioners to obtain access to such information.

(f) Not later than 1 year after the Panel is established under subsection (b), the Secretary of Commerce shall prepare and submit, to the Committee on Commerce, Science, and Transportation and the Committee on Labor and Human Resources of the Senate and to the Committee on Energy and Commerce of the House of Representatives, a report summarizing the recommendations made by the Panel under subsection (b).

(g) There is authorized to be appropriated to the Secretary of Commerce to carry out this section $1,000,000 to remain available until expended.

SEC. 4. (a) Section 226 of the Communications Act of 1934 (47 U.S.C. 226) is amended by striking "30" each place it appears in subsection (b) (1) and (2), subsection (c)(1), and subsection (h)(1)(A) and inserting in lieu thereof "90".

(b) Section 226(b)(1) of the Communications Act of 1934 (47 U.S.C. 226(b)(1)) is amended—

(1) in subparagraph (H) by adding "and" at the end;

(2) in subparagraph (I) by striking "; and" and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).

The SPEAKER pro tempore. Is a second demanded?

Mr. RINALDO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes, and the gentleman from New Jersey [Mr. RINALDO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3310, as amended by the Senate, provides authorization of appropriations for the National Telecommunications and Information Administration [NTIA] for fiscal years 1990 and 1991. The Senate amendment represents a compromise from the original House-passed bill. The differences between the two bills are minor and in some cases are technical drafting changes. The compromise retains the House-passed funding for fiscal year 1990 of $14,554,000 and increases the authorization for fiscal year 1991 to $18,000,000.

This modest increase is necessary for NTIA to continue its Eastern European telecommunications initiative, which supports pilot projects to assist the development and operation of private telecommunications or broadcasting facilities, supports field assessments of the telecommunications needs and priorities of Eastern European countries, evaluates the spectrum management systems of these countries, and develops recommendations for improvements in such systems.

H.R. 3310, as amended, authorizes appropriations of $1 million in fiscal year 1990 and such sums as may be necessary for fiscal year 1991, for use by the Secretary of Commerce in negotiating and acquiring capacity and equipment for the PEACESAT Program. This satellite program provides vital communications services to the geographically isolated and relatively poor communities of the Pacific Basin region.

The legislation will also improve the ability of rural health care providers to use the telecommunications network to obtain health information and to consult with others concerning the delivery of patient care. It establishes an advisory panel to develop recommendations for the enhancement of rural health care through the collection of information needed by providers and improvement in the use of telecommunications for the dissemination of such information.

Since its formation in 1978, NTIA has served as the principal executive branch adviser to the President on domestic and international telecommunications policy. Additionally, NTIA administers the Public Television Facilities Program, a matching grant program designed to fund facilities and to increase the coverage of public television and public radio. NTIA also allocates and manages the Federal radio frequency spectrum and conducts extensive research in telecommunications sciences at the Institute of Telecommunications Sciences. In the international arena, NTIA continues to advance U.S. trade and technology interests in the expanding global telecommunications market.

Mr. Speaker, I think all of us have come to realize the importance telecommunications will have in the U.S. economy of the future. Because NTIA is "the" agency within the executive branch responsible for the formulation of our Nation's telecommunications policy, it will play a crucial role in determining how telecommunications affect every sector of American society—from business, to the home, and to our schools. Every effort the

agency makes in advancing the benefits of telecommunications technologies in both the public and private sectors should be encouraged. In this regard I feel strongly that the utilization of these technologies for the education of America's students should be actively promoted and developed.

For example, the EDSAT Institute based in Washington, DC, is currently bringing together leaders from the private and public sectors to formulate proposals and investigate the possibility of launching a public domain satellite for educational purposes. Programs such as these, which could empower schools across the country with the ability to reap the benefits of advanced telecommunications, should be fully explored.

The overall funding authorized in H.R. 3310 enables NTIA to effectively continue its important role in developing our national policy for the telecommunications industry. The funding levels reflect a balance between the importance telecommunications has in our national and global economies and the budgetary constraints under which we are presently operating. I ask my colleagues for their strong support of this legislation.

SUMMARY OF H.R. 3310 AS AMENDED—NATIONAL TELECOMMUNICATIONS INFORMATION ADMINISTRATION AUTHORIZATION FOR FISCAL YEARS 1990 AND 1991

OVERALL APPROPRIATIONS

This legislation authorizes appropriations for the National Telecommunications Information Administration (NTIA) of $14,554,000 for fiscal year 1990 and $18 million for fiscal year 1991. This funding includes an increase of $3 million over the request for NTIA's international activities, which is to be used for an Eastern European telecommunications initiative.

EASTERN EUROPE

In previous years, the NTIA has conducted detailed telecommunications infrastructure studies and provided expert advice and technical assistance to telecommunications entities in Thailand, the Marshall Islands, Costa Rica, Guatemala, and the People's Republic of China. This bill provides authorization to expand NTIA's ongoing international activities in Eastern Europe. The increased funding in the bill shall be used to: Support field assessments of the telecommunications needs and priorities of Eastern European countries; evaluate the spectrum management systems of Eastern European countries and develop recommendations for improvements in such systems; support educational and training programs for Eastern European telecommunications professionals; support pilot projects to assist the development and operation of private telecommunications or broadcasting facilities in Eastern Europe; and, provide grants for market research projects by small and medium-sized U.S. telecommunications companies seeking to do business in Eastern Europe.

In addition, the NTIA shall submit a report to the appropriate committees of Congress by April 1, 1991, on the status of the Eastern European telecommunications initiative, describing the results of the field assessments of telecommunications needs and priorities for Eastern European countries, the status of projects begun under the initiative and the NTIA's plans for continuing these projects. This report shall also provide an assessment of the competitive position of the U.S. telecommunications industry in the new Eastern European market relative to foreign telecommunications entities.

PEACESAT PROGRAM

From 1971 until 1985, the Pan-Pacific Educational and Cultural Experiments by Satellite Program (PEACESAT) operated over ATS-1, a National Aeronautics and Space Administration (NASA) satellite, providing critical communications links to the geographically isolated and relatively poor communities of the Pacific Basin. The ATS-1 satellite ran out of station-keeping fuel in 1985 and Congress appropriated $1.7 million for fiscal year 1988 and $200,000 for fiscal year 1989 to re-establish the communications network of the PEACESAT Program.

Significant progress has been made to ensure the resumption of this vital communications service, however additional funding will be necessary for fiscal years 1990 and 1991, for the costs of satellite operations, administration and personnel training.

The legislation further requires that the Secretary of Commerce expeditiously negotiate for and acquire satellite space segment capacity and related ground equipment to provide interim communications service to the former users of the NASA ATS-1 satellite. This will be undertaken until viable alternatives are available to serve the educational, medical, and cultural needs of the Pacific Basin communities.

The legislation authorizes appropriations of $1 million in fiscal year 1990 and such sums as may be necessary for fiscal year 1991 for use by the Secretary of Commerce in negotiating and acquiring capacity and equipment for the PEACESAT program. The bill requires the Secretary of Commerce to consult with appropriate departments and agencies of the Federal Government, representatives of the PEACESAT Program, and other affected parties regarding the development of a long-term solution to the communications needs of the Pacific Ocean region. The Secretary must report to the Congress on the progress and results of such consultation within one year after the date of enactment of this Act.

RURAL HEALTH CARE PROVIDERS

The legislation also seeks to improve the ability of rural health care providers to use telecommunications to obtain health information and to consult with others concerning the delivery of patient care. It requires the Secretary of Commerce, in conjunction with the Secretary of Health and Human Services to establish an advisory panel to develop recommendations for the improvement of rural health care through the collection of information needed by providers and improvement in the use of telecommunications to disseminate such information.

Within one year after the panel is established, the Secretary of Commerce is required to submit to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Labor and Human Resources, and the House Committee on Energy and Commerce, a report summarizing the recommendations made by the panel. Appropriations of $1 million are authorized to carry out the purposes of this section.

TECHNICAL DRAFTING CHANGES

The amendment also contains technical drafting changes to Public Law 101-435, which will ensure operator service providers can meet the requirements of the legislation.

□ 1930

Mr. Speaker, I yield back the balance of my time.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3310, authorizing funds for the National Telecommunications and Information Administration for fiscal years 1990 and 1991, as amended by the other body.

NTIA is the executive branch's principal adviser on all issues involving telecommunications. Leadership in this field is increasingly becoming essential to all segments of our economy.

The NTIA bill was passed originally by the House over a year ago, on October 30, 1989, and authorized $14.554 million for fiscal year 1990 and $18 million for fiscal year 1991.

The other body passed this legislation earlier this week with the same base authorized funding levels. They also added three amendments which I fully support and with which I urge the House to concur.

The first amendment provides for the continuation of NTIA's work on the Peacesat Program. This is a satellite system designed to meet the unique communication needs of the Pacific Basin region that has been supported and funded by Congress for many years.

The Senate amendment authorizes $1 million for fiscal 1990 and such sums as necessary in fiscal 1991 to carry out the goals of the Peacesat Program.

The second amendment requires NTIA to study ways in which our Nation's telecommunications network can be modernized to improve the ability of rural health care providers to use it. The amendment also authorizes an additional $1 million for NTIA to carry out this study.

Improving the use of the telecommunications network to better serve health care providers has been an important concern of many of our committee's members of both parties, including myself, since I also serve as the ranking Republican on the Aging Committee, as well as the gentleman from Iowa [Mr. TAUKE].

All members of the Energy and Commerce Committee expect this NTIA initiative to be an important step in determining how Government policies should encourage the modernization of our telecommunications network in a manner that benefits all Americans.

Finally, the bill makes a technical correction in the new section 226 of the Communications Act, regarding

operator services, which became law just last week. The need for this correction was brought to the committee's attention after the bill had been approved by both Houses. It is necessary to ensure that telephone calling card operations are not disrupted by the requirements of the new law, and to give pay-phone operators additional time to comply with the requirements of the new law. Again, it is a provision which is agreed upon by the committee leadership on both sides of the aisle.

Mr. Speaker, this bill is not controversial. It was approved in 1989 by the House under suspension of the rules. The amendments made by the other body were done after full consultation and cooperation with Chairmen DINGELL and MARKEY, Mr. LENT, the ranking member of the full committee, and myself. We all support the bill and the amendments.

I urge the House to support H.R. 3310, as amended.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. RINALDO. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Speaker, I thank the gentleman from New Jersey [Mr. RINALDO] very much, and I thank him for the good year we had on both sides of the jurisdiction, securities and telecommunication. I want to compliment his staff, Terry Haines, for his work on the legislative package that we put together this year, as well as David Leach from the full committee. I would also like to, on the Senate side, just note the excellent work of Tommy Cohen, Gina Keeney, and John Windhausen, and all of the staff over there that worked together with us in the course of the year. They all deserve credit, Senator HOLLINGS and Senator INOUYE. And from my own staff I would like to thank Jerry Slimmy for all of his hard work in this legislation in helping in putting this together in a form which I think is worthy of presentation and acceptance by the House this evening.

Mr. RINALDO. Mr. Speaker, I thank the gentleman from Massachusetts [Mr. MARKEY] for his kind comments, and, Mr. Speaker, I guess this is the last bill we will be bringing up from our section of the subcommittee, but I do want to say very sincerely that the leadership of the gentleman from Massachusetts [Mr. MARKEY] on the Subcommittee on Telecommunications and Finance should serve as a model in the entire Congress for the cooperation we received, and I look forward to working with the next chairman in the next Congress to further the interests of the legislative proposals that we currently are considering and to enact the legislative proposals, I would say, that we currently have on the agenda, and I thank the gentleman from Massachusetts [Mr. MARKEY] once again for his cooperation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3310.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to H.R. 3310 just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

NUTRITION LABELING AND EDUCATION ACT OF 1990

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 3562) to amend the Federal Food, Drug, and Cosmetic Act to prescribe nutrition labeling for foods, and for other purposes.

The Clerk read as follows:

Senate amendments:

Page 2, line 22, strike out "and"

Page 3, line 2, strike out "measure" and insert: "measure, and".

Page 3, after line 2, insert:

"(E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under this Act before October 1, 1990, if the Secretary determines that such information will assist consumers in maintaining health dietary practices.".

Page 3, strike out lines 3 to 7, and insert: "The Secretary may by regulation require any information required to be placed on the label or labeling by this subparagraph or subparagraph (2)(A) to be highlighted on the label or labeling by larger type, bold type, or contrasting color if the Secretary determines that such highlighting will assist consumers in maintaining healthy dietary practices.".

Page 3, line 9, strike out "listed in" and insert "required by".

Page 3, line 9, strike out "or (1)(D)" and insert ", (1)(D), or (1)(E)".

Page 3, lines 17 and 18, strike out "or (1)(D)" and insert ", (1)(D), or (1)(E)".

Page 3, line 24, strike out "shall" and insert "may".

Page 4, line 1, strike out "may".

Page 8, line 23, strike out "of labeling" and insert "or labeling".

Page 9, line 5, strike out "may" and insert "shall".

Page 9, line 6, after "form" insert "prescribed by the Secretary".

Page 10, line 9, strike out "18" and insert "24".

Page 11, strike out lines 12 to 21.

Page 11, line 22, strike out "(3)" and insert "(2)".

Page 11, line 24, strike out "18" and insert "24".

Page 12, line 3, strike out "18" and insert "24".

Page 12, line 6, strike out "(4)" and insert "(3)".

Page 13, line 5, after "in" insert "clauses (A) through (C) of".

Page 13, line 17, strike out "subparagraph (3)" and insert "subparagraph (3) or 5(D)".

Page 13, lines 23 and 24, strike out "(4)(A)(ii), (4)(A)(iii), and (5)" and insert "(4)(A)(ii) and (4)(A)(iii) and clauses (A) through (C) of subparagraph (5)".

Page 17, after line 2, insert:

"(D) Subparagraph (2) does not apply to a claim described in subparagraph (1)(A) which uses the term 'diet' and is contained in the label or labeling of a soft drink if (i) such claim is contained in the brand name of such soft drink, (ii) such brand name was in use on such soft drink before October 25, 1989, and (iii) the use of the term 'diet' was in conformity with section 105.66 of title 21 of the Code of Federal Regulations. Such a claim is subject to paragraph (a).

"(E) Subclauses (i) through (v) of subparagraph (2)(A) do not apply to a statement in the label of labeling of food which describes the percentage of vitamins and minerals in the food in relation to the amount of such vitamins and minerals recommended for daily consumption by the Secretary.".

Page 20, line 11, strike out "(vi)" and insert "(v)".

Page 20, line 19, strike out "(2)(B).". and insert: "(2)(B)".

Page 20, after line 19, insert:

"(D) A subparagraph (1)(B) claim made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances shall not be subject to subparagraph (3) but shall be subject to a procedure and standard, respecting the validity of such claim, established by regulation of the Secretary.".

Page 21, after line 6, insert:

(iii) shall, in defining terms used to characterize the level of any nutrient in food under section 403(r)(2)(A)(i) of such Act, define—

(I) free,

(II) low,

(III) light or lite,

(IV) reduced,

(V) less, and

(VI) high,

unless the Secretary finds that the use of any such term would be misleading,

Page 21, line 7, strike out "(iii)" and insert: "(iv)".

Page 21, line 10, after "403(r)(2)(A)(i)" and insert: "of such Act".

Page 21, line 11, strike out "(iv)" and insert: "(v)".

Page 21, line 12, after "403(r)(1)(A)" and insert: "of such Act".

Page 21, line 15, after "403(r)(2)(B)" and insert: "of such Act".

Page 21, line 16, strike out "(v)" and insert: "(vi)".

Page 21, line 23, strike out "(vi)" and insert: "(vii)".

Page 22, line 3, strike out "(vii)" and insert: "(viii)".

Page 22, line 5, strike out "(and)"

Page 22, line 6, strike out "(viii)" and insert: "(ix)".

Page 22, line 8, strike out "meaning." and insert: "meaning," and

Page 22, after line 8, insert:

"(ix) shall establish, as required by section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims respecting the following nutrients and diseases meet the requirements of section 403(r)(5)(D) of such Act; folic acid and neural tube defects, antioxident vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and heart disease".

Page 22, line 9, strike out "18" and insert: "24".

Page 22, line 15, strike out "18" and insert: "24".

Page 22, line 18, strike out "18" and insert: "24".

Page 23, strike out lines 17 to 21, and insert:

"(C) if the Secretary is diligently prosecuting a proceeding in court pertaining to such food, has settled such proceeding, or has settled the informal or formal enforcement action pertaining to such food.

In any court proceeding described in subparagraph (C), a State may intervene as a matter of right.", and

Page 24, line 8, strike out "subject to sections 403(r)(1)(B) and 403(r)(3)" and insert: ", subject to sections 403(r)(1)(B) and 403(r)(3) or sections 403(r)(1)(B) and 403(r)(5)(D)".

Page 24, line 21, strike out "which" and insert: "that".

Page 24, line 22, strike out "which" and insert: "that".

Page 24, line 24, strike out "foods" and insert: "food".

Page 25, line 1, strike out "foods" and insert: "food".

Page 25, line 6, strike out "foods" and insert: "food".

Page 25, line 7, after "403(q)" insert: "except a requirement for nutrition labeling of food which is exempt under subclause (i) or (ii) of section 403(q)(5)(A)".

Page 25, line 8, after "claims" insert: "of the type described in section 403(r)(1)".

Page 25, line 10, after "403(r)" insert: ", except a requirement respecting a claim made in the label or labeling of food which is exempt under clause (B) of such section".

Page 25, strike out lines 13 to 16.

Page 25, line 17, strike out "(2)" and insert "(b)".

Page 25, line 21, strike out "(A)" and insert "(1)".

Page 25, line 23, strike out "(B)" and insert "(2)".

Page 26, line 1, strike out "(C)" and insert "(3)".

Page 26, line 5, strike out "The" and insert "For the purpose of implementing section 403A(a)(3), the".

Page 27, line 6, strike out "18' and insert "24".

Page 27, line 17, strike out "18" and insert "24".

Page 27, line 20, strike out "24" and insert "30".

Page 28, line 17, strike out "(b)(2)" and insert "(b)".

Page 28, after line 20, insert:

(c) CONSTRUCTION.—(1) The Nutrition Labeling and Education Act of 1990 shall not be construed to preempt any provision of state law, unless such provision is expressly preempted under section 403A of the Federal Food, Drug and Cosmetic Act.

(2) The amendment made by subsection (a) and the provisions of subsection (b) shall not be construed to apply to any requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food.

(3) The amendment made by subsection (a), the provisions of subsection (b) and paragraphs (1) and (2) of this subsection shall not be construed to affect preemption, express or implied, of any such requirement of a State or political subdivision, which may arise under the Constitution, any provision of the Federal Food, Drug, and Cosmetic Act not amended by subsection (a), any other Federal law, or any Federal regulation, order, or other final agency action reviewable under chapter 7 of title 5, United States Code.

Page 29, strike out lines 11 and 12, and insert:

SEC. 701(e) (21 U.S.C. 371(e)) is amended by striking out "Any action for the issuance, amendment, or repeal of any regulation under section 401, 403(j), 404(a), 406, 501(b), or 502(d) or (h) of this Act" and inserting in lieu thereof the following: "Any action for the issuance, amendment, or repeal of any regulation under Section 403(j), 404(a), 406, 501(b), or 502(d) or (h) of this Act, and any action for the amendment or repeal of any definition and standard of identity under Section 401 of this Act for any dairy product (including products regulated under parts 131, 133 and 135 of title 21, Code of Federal Regulations) or maple sirup (regulated under Section 168.140 of title 21, Code of Federal Regulations).

Page 31, line 2, strike out "18" and insert "24".

Page 33, line 13, strike out "403A(b)(2)" and insert "403A(b)".

Page 33, line 15, strike out "9" and insert "18".

Page 33, line 19, strike out "18" and insert "24".

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this legislation now being considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am delighted to ask my colleagues to vote today to enact the Nutrition Labeling and Education Act of 1990. This bill will accomplish the first reform of food labeling in more than two decades. It is one of the most important pieces of consumer legislation that we have passed since I have been a Member of this body, and I am proud to have contributed to its enactment.

The bill will require all manufacturers of packaged foods to provide complete nutrition information about their products. Information about calories, fat, salt and other important ingredients will be mandated by law.

Information about the nutritional ingredients in fruits, vegetables, and fish will be made available through signs or brochures.

Consumers have long demanded this information, but under current law it is optional. Under the bill it will be mandatory.

In addition, the bill will once and for all settle the confusion surrounding health claims. For example, the term "light" has a different meaning in different products. The bill will prohibit manufacturers from using terms like "light," "high," and "low" unless they have been defined. Then the terms will have to be used in a manner that is consistent with the FDA's definition. The bill explicitly gives the FDA the authority to use notice and comment rulemaking to allow terms such as "light" to be used for butter.

The bill will also prohibit disease claims—such as fiber prevents cancer—unless the Food and Drug Administration has found that the claim is supported by science. In fact, the bill requires that there be a scientific agreement supporting such claims.

The Senate amendment does not affect the House provisions, section 403(q)(4), regarding the labeling of fresh fruits and vegetables. It is expected that industry through trade associations—for example, Produce Marketing Association—will continue to work with the Food and Drug Administration in developing adequate data for the labeling varieties of vegetables and fruit required in new section 403 (V)(4)(d)(ii), as has been the custom over the past decade. It is recognized that such a partnership has not only promoted increased efficiency and effectiveness of scarce resources, but has provided greater awareness on the part of both Government and industry of the nature and magnitude of problems in securing data adequate for consumers' needs. These partnerships also provide assurances that the data bases which are created fairly represent the nutritional quality of foods in the marketplace and meet consumers' needs.

Health claims were not permitted on foods until the 1980's. But when the FDA relaxed enforcement of regulations during the early years of the Reagan administration, it lost control

of the marketplace, and many unfounded claims began being used of foods. This bill will recognize the marketplace so that only truthful claims may be made on foods.

The bill also provides that once the strong Federal standards for nutrition labeling are in place, the States will be prohibited from adopting a different standard.

Mr. Speaker. This bill could not have been made possible without the enormous contribution by distinguished colleague, Mr. MADIGAN. I would also like to acknowledge the important contribution of Mary McGrane, counsel for the minority. Finally, I would be remiss if I did not mention the skillful drafting of the House Legislative Counsel David Meade and of our own counsel, Bill Schultz.

A number of changes are made in the Senate amendment. Mr. MADIGAN and I have agreed on a statement of managers, which provides our understanding of how these changes affect the regulation of vitamins, minerals and supplements.

Mr. Speaker. This bill has the support of all the major consumer and public health groups that have offered an opinion on it. It is an excellent piece of legislation, and I urge all Members to support it.

STATEMENT OF HOUSE FLOOR MANAGERS

H.R. 3562, as adopted by the House of Representatives, prohibits disease claims on food (such as "fiber in cereal prevents cancer") until the Food and Drug Administration (FDA) has reviewed the claim, received public comment, and issued a regulation finding that there is a "significant scientific agreement" that the claim is valid. The validity of these claims, which are defined in section 403(r)(1)(B), must be based on scientific evidence, including evidence from well-designed studies, and the agreement must be among experts qualified by scientific training and experience to evaluate the claim.

The Senate version of the bill, which we are voting on today, retains this standard for all foods except vitamins, minerals, herbs, and other similar nutritional substances (referred to below as "vitamins"). The bill requires that vitamins that include claims defined under section 403(r)(1)(B) shall be subject to a "procedure and standard" defined by the Secretary in regulations that require an evaluation of the validity of the claim. The FDA is given the discretion to define both the procedure and the standard because the principals in the Senate could not agree on the appropriate procedure or the appropriate standard.

It is obvious from the language that the agency could adopt the same procedure and standard that Congress has adopted for disease claims on food other than vitamins; it is also obvious that it could adopt a stronger standard for vitamins, minerals herbs, and other similar nutritional substances.

Whatever approach the agency takes, it must adopt a system that evaluates the validity of any disease claims made with respect to these substances. Its system must be based on considerations of public health and consumer fraud. As in every similar decision made by the agency today, we fully expect that the agency's evaluation of disease claims made with respect to vitamins will be based on sound scientific principles.

There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims. The potential is just as great for vitamins as it is for other products. In our view, vitamins and the other substances covered by this provision should be subject to at least as strong a standard as is applicable to other foods that contain claims that the food will treat a disease or health condition.

□ 1940

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would first like to concur with the statement of the gentleman from California regarding the amendment adopted by the Senate addressing disease claims and vitamins.

Mr. Speaker, I am pleased to support H.R. 3562. Neither Federal regulation nor industry efforts have kept pace with scientific knowledge about diet and nutrition. This bill is an effort to remedy this situation while allowing FDA sufficient flexibility to modify the rules when valid, new scientific information is presented. Given increased awareness and advances in our scientific knowledge on the relationship between diet and health, this legislation is very timely.

In the past few years, important scientific evidence has been repeatedly reported that clearly links dietary habits to good health. For this reason, the need to provide consumers with better information about the foods they eat is important. The current array of nutrition labels provides more confusion than information. This legislation accomplishes the goal of providing complete and meaningful information to consumers without being overly burdensome on industry.

The main features of the bill requires food products—except meat, poultry, and eggs—to disclose their nutritional content. Every food would have a uniform label that would disclose the amount of fact, calories, salt, and other nutrients. It requires nutritional information of fruit, vegetables, and fish to be conveyed by a sign or brochure.

Regarding nutrition claims on foods, the bill requires that content claims such as light, low, et cetera, would have to be consistent with terms defined by the FDA. This is to address the current problem of companies using these terms differently and inconsistently. On some products, "light" means low in fat; on others, such as some brands of olive oil, it refers to the color of the product. The bill would also require that disease claims, such as bran prevents cancer, would have to be substantiated by the FDA. Once the FDA decides that a specific claim is valid, then any company could make a claim that was consistent with the FDA's findings.

And finally, it was decided that the fairest way to expect the food industry to support a nutrition labeling bill, was to give them some types of preemption of some burdensome State laws that interfered with their ability to do business in all 50 States. Therefore, the bill provides industry with uniformity of law in a number of important areas—such as standards of identity, imitation labeling, and ingredient labeling—that will permit them to conduct their business in an efficient and cost-effective manner.

I urge my colleagues to support this bill.

I would say in closing that I would like to repay the kind words that the gentleman from California [Mr. WAXMAN] gave, because I do not believe this very important bill could have ever reached the floor here tonight without his dedication to the good things that are contained in this bill, and without the hard work of all the staff members whom he has mentioned, including Mary McGrane, who could not be with us this evening because she is home with a brandnew baby. We wish her and that baby well, and we know that baby will have a better life because of this bill, because that baby, like her mother, will be able to know exactly what she is eating by being able to read nutritional labels that are really meaningful and fully informational.

I thank the gentleman from California [Mr. WAXMAN] for all his good work on this bill.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

I thank my good friend, the gentleman from Illinois [Mr. MADIGAN] for those very kind, generous remarks. As we deal with landmark legislation such as this, we have to recognize it has taken many years to come to this point. Those of us who are on the appropriate committees get to put the final bill together. We work off of the contributions of those who have preceded us, those who have fought the battle for consumer information.

Mr. Speaker, I am honored to yield 4 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], who has been the champion for the consumer in so many ways, and particularly in getting information to them that the consumer wants to know about in eating different food products.

Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. MOAKLEY. Mr. Speaker, I am extremely happy to come before you today to express my continued strong support for H.R. 3562, the Nutrition Labeling and Education Act of 1990. As you know, the Senate earlier this week overwhelmingly approved this landmark legislation. I am delighted that this critical measure is coming

back to the House today for final approval.

Passage of H.R. 3562 will ensure that informative and accurate nutrition labeling will be on most packaged foods in the very near future. This issue is very important to me and I thank the gentleman from California [Mr. WAXMAN] for his ongoing and tireless efforts to enact into law, during the 101st Congress, a strong, responsible, and fair nutrition labeling bill. I know that he and his staff, particularly BILL SCHULTZ, have spent many months working on this legislation not just in the House but in negotiations with the Senate as well.

Not only has he been able to accommodate the concerns of business, he has also been successful in keeping the strong consumer protection language that is so critical to this bill.

With the enactment of this bill, consumers will, for the first time, be able to purchase foods with nutrition content labeling on all packages. Currently only about half of the food products found on the grocers' shelves contain any nutrition information on the label. And of those with labels, only the ones making specific health, diet, or nutrition claims are required by law to list nutrition contents.

The current format for nutrition labeling on foods is often inadequate for today's consumer needs. In many cases the information is confusing and, in some cases, very misleading. Terms such as lite, high fiber, and low cholesterol, which now have little or no guidelines, will be defined and their use restricted to the FDA definition. This bill will help curb misleading claims and will direct the Food and Drug Administration to present information in a more understandable and usable format to help consumers better understand and utilize this information in the context of the total daily diet.

More and more the evidence is clear that diet is a major component in our overall good health. Healthy eating can enhance our quality of life and significantly lower our risk for certain illnesses. Countless studies and research findings clearly indicate that the two leading killers in our Nation, heart disease and cancer, are influenced by the foods we eat, particularly by those foods high in saturated fats. Yet current labels do not give information on saturated fat or on the percentage of fat, both of which are major dietary factors. This bill will give us that information as well as other vital facts about the foods we consume.

Again, I want to express my strong support for this legislation and I urge my colleagues to join with me in passing this landmark nutrition labeling initiative.

□ 1950

Mr. MADIGAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Speaker, I am just here this evening to tell a little personal story about this legislation and about a gentleman in my district, Mr. Phil Sokolof who has been working on this issue and issues like this for many many years. Mr. Sokolof, who is flying into Washington tonight so that we might have a bill signing ceremony in the Speaker's office tomorrow morning, Mr. Chairman, to which you are invited, and I hope you will attend, has been working on issues like this for many many years.

Phil is a widower. He is a father of two grown children in Omaha. He had a heart attack himself about 24 years ago that nearly claimed his life.

Since then, Phil has devoted a good deal of his personal wealth, his personal fortune, which he has earned himself from a small business he operates in Omaha, NE, towards helping people live better. Phil will tell you about his personal experience in sponsoring cholesterol tests in Grand Island, NE, where an individual was tested at 300, and Phil spoke with that individual and others and convinced them to change their diet and to bring their cholesterol down and extend their life expectancy.

Phil, you might remember, this last spring single-handedly undertook a campaign against McDonalds, against Arby's, against Hardee's, against the junk food dealers of America that serve in excess of 20 million junk food meals a day in America, and through nationwide full-page advertisements pointed out that they were cooking their french fries in beef tallow instead of vegetable oil, and through those advertisements convinced that industry to change the way it prepares its food, to bring down significantly the amounts of saturated fat in the preparation of junk food, thereby, no doubt, extending the lives of millions of Americans over the next several years.

More recently, Mr. Speaker, when Phil found out that this bill was stuck over in the Senate as a matter of personal privilege, he began running advertisements, a copy of which I have here, and which I will include in the RECORD this evening, calling on the Senate to let go of the bill and to release it. Phil went after the Senate, and the Senate finally did, finally passed the bill yesterday or the day before. So it is over here at the tail end of this Congress in time for final passage.

So I just would like to congratulate Phil on all of his work on this and other issues.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. HOAGLAND. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, I am heartened to hear Mr. Sokolof is coming for the bill signing tomorrow. I have not had the opportunity to meet him. His ads played such an important role in educating the public and the Congress about the importance of this legislation.

What he was able to do on his own as an individual citizen is an inspiration, because he took on an issue, pushed it, worked hard, rallied people behind it, and I think this bill is a tribute to his tenacity, and I thank the gentleman for pointing out the role that he has played.

Mr. HOAGLAND. He is an extraordinary individual, and with the permission of my committee chairman I would like to designate him as an unofficial cosponsor of this legislation.

The ad referred to follows:

[From the New York Times, Oct. 23, 1990]

IT'S WRONG AMERICA!

SPECIAL INTERESTS ARE TRYING TO DEPRIVE YOU . . .

It's wrong!

One organization, the National Milk Producers Federation, is endeavoring to pressure Senators to hold passage of the first comprehensive food labeling bill in our nation's history.

As of Monday, October 22, this food association is attempting to hamper passage of the landmark food labeling bill, already passed by the 435 Member House of Representatives.

Senate Majority Leader George Mitchell cannot give extended floor debate to this bill, with the time needed for resolution of the budget problem. If allowed to come to the floor without special interests' opposition, S 1425/HR 3562, The Nutrition Labeling and Education Act, a bipartisan effort that will benefit all Americans, will be swiftly and overwhelmingly enacted into law.

This vital food labeling bill, endorsed by the leading U.S. health experts and organizations, will require that food companies identify precise amounts of saturated fat, cholesterol, sodium, sugar, calories, and other important information. The barrage of misleading nutrition and health claims is an abuse that will be stopped.

If the bill is not passed before Congress adjourns this month, the Food and Drug Administration will soon enact weaker food labeling regulations. Court challenges will delay their implementation indefinitely. The public's opportunity to have a comprehensive food labeling bill may be gone forever.

Americans, don't allow food organizations to take away your right to make informed choices necessary to lead healthier lives.

Phil Sokolof
4601 South 76th Street
Omaha, Nebraska 68127
(402) 339-3813.

Our country desperately needs this historic food labeling bill. If it does not pass, Sen-

ators bowing to the will of special interests will bear the responsibility.

(Phil Sokolof, as a private citizen, paid for this ad. Mr. Sokolof is president of National Heart Savers Association, a private foundation not permitted to promote legislation.)

Mr. WAXMAN. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I thank the gentleman from California for yielding the time, and I congratulate him and the gentleman from Illinois [Mr. MADIGAN] for their important contributions.

Mr. Speaker, I also rise in support of the Nutrition Labeling and Education Act of 1990. This is an important initiative that will provide consumers with standardized nutrition labeling information so that they can make informed choices in the packaged food products that they purchase in grocery stores.

As my distinguished colleagues, Mr. WAXMAN and Mr. MADIGAN know, one of the major concerns that I initially had with this legislation was the labeling requirements of fresh fruits and vegetables and fresh seafood, and what compliance burdens would be imposed on supermarkets that sell these items.

Back in July, just prior to the August recess, I was pleased that we were able to put together a compromise on the coverage of raw agricultural commodities and fresh fish which now has been agreed to by the Senate. The compromise is reasonable and fair to the supermarket industry and consumers alike because it will allow for the competitive marketplace to come forward with voluntary nutrition programs for a set period of time before any mandatory requirements are triggered. In my opinion, this is the preferable course of action because it will encourage creativity and will allow information to be presented to consumers in many different formats. Under this approach, I predict that in a very short period of time the supermarket industry will devise a wide range of ways in which to convey nutrition information to their customers.

I commend Mr. WAXMAN, Mr. MADIGAN, as well as Mr. MCMILLAN of North Carolina, and Mr. DINGELL for working together with the supermarket industry in fashioning this commonsense compromise on fresh fruits and vegetables and raw fish. I urge my colleagues to vote for the nutrition labeling bill.

Mr. SLATTERY. Mr. Speaker, I rise today to give my strong support for H.R. 3562, the Nutrition Labeling and Education Act.

For years now, consumers have had to struggle with food labels that are hard to read, difficult to understand, and sometimes misleading. As Americans are becoming more concerned with the long-term health effects of their diets, we have responsibility to make certain they are receiving accurate information about the food they purchase. This bill will set national guidelines for disclosing fats, sodium, protein, fiber, cholesterol, and other nutrients and will restrict the types of health claims food companies can make about their products.

My good friend HENRY WAXMAN, who is chairman of the Health and the Environment Subcommittee and the sponsor of this bill, deserves credit for his vision and hard work getting this legislation passed.

At this time, I would also like to comment on a provision I read in the Senate record regarding "Light" labeling. The FDA currently has broad authority to define the term "Light." In the spirit of this landmark legislation, I hope the FDA will include in its definition reductions in fat, calories, or sodium—as it does currently. I also would urge the FDA to make certain that consumers understand what the term "Light" means when it is printed on packages of food they purchase at the market.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and concur in the Senate amendment to the bill H.R. 3562.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

ADDRESSING IMMEDIATE PROBLEMS AFFECTING ENVIRONMENTAL CLEANUP ACTIVITIES

Mr. THOMAS A. LUKEN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 3187) to address immediate problems affecting environmental cleanup activities.

The Clerk read as follows:

S. 3187

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS.

Section 119 of the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980, as amended, is amended—

(1) by deleting the period at the end of subparagraph (B) in subsection (e)(2) and inserting "; and";

(2) by adding at the end of subparagraph (B) of subsection (e)(2) the following new subparagraph:

"(C) any surety who, after October 16, 1990, and before Janury 1, 1993, provides a bid, performance or payment bond to a response action contractor, and begins activities to meet its obligations under such bond, but only in connection with such activities or obligations."; and

(3) by adding at the end thereof the following new subsection:

"(g) SURETY BONDS.—

"(1) If under the Miller Act, 40 U.S.C. sections 270a-270f, surety bonds are required for any direct Federal procurement of any response action contract, they shall be issued in accordance with 40 U.S.C. sections 270a-270d.

"(2) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, no right of action shall accrue on the performance bond issued on such response action contract to or for the use of any person other than the obligee named in the bond.

"(3) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

"(4) Nothing in this subsection shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices or procedures. Nothing in this subsection shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgments, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond."

"(5) This subsection shall not apply to bonds executed before October 17, 1990, or after December 31, 1992."

The SPEAKER pro tempore. Under the rule, a second is not required on this motion.

The gentleman from Ohio [Mr. THOMAS A. LUKEN] will be recognized for 20 minutes, and the gentlaman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, currently, there are over 1,000 Superfund sites listed on the Environmental Protection Agency's national priorities list pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA], yet only 29 sites have been cleaned up.

Although the slow pace of these cleanups is attributable to more than one or two factors, it has become clear that a very likely contributing factor is the inability of Superfund response action contractors to obtain a surety bond where applicable Federal law so requires.

Testimony received during hearings in the other body on S. 3187, the companion bill to which I recently intro-

duced as H.R. 5827, indicated that only one surety company is currently writing bonds for Superfund contractors and that only two contracting firms have been able to obtain the necessary bonding.

With over 1,000 sites nearing or at the stage where cleanup activities should proceed, it is clear that we will need more than two contracting firms to do the job in a timely manner. Moreover, the lack of competition created by the current situation threatens to drive up the costs of already expensive cleanup projects.

There are two immediate problems perceived by surety companies, environmental groups, contractors, and unions which underlie the unavailability of surety bonds. First, is the lack of clarity in CERCLA section 119 regarding the scope of Superfund's indemnification provision where the surety must undertake the completion of a cleanup project for a response action contractor.

S. 3187 makes it clear that where a surety providing bonds steps into the shoes of a response action contractor and begins activities to meet its obligations under its bond, the surety's Superfund liabilities and access to Superfund indemnification should be identical to those provided to the response action contractor under CERCLA.

Second, sureties have expressed great fear and unwillingness to be held liable under CERCLA for personal or property damage caused by a response action contractor who doesn't have standard liability insurance should the surety have to step in to complete a cleanup project for the contractor.

A new section 119(g) also provided for by S. 3187 makes it clear that unless otherwise provided for, a surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the sum of the bond. The section further clarifies that a surety may not be liable to the Government for loss or liability arising from personal injury or property damage whether or not caused by the breach of the bonded contract.

This bill specifically does not preempt State laws or requirements and would not affect Superfund cleanup projects that are State run as opposed to federally run.

S. 3187 passed the Senate on October 18, 1990, by unanimous consent, and is supported by the Sierra Club, the Environmental Defense Fund, the Laborers International Union of the AFL-CIO, the National Constructors Associations, the Associated General Contractors of America, and the American Insurance Association. In other words, the cleanup contractors, the insurers, and the environmental groups all support this legislation—a rare and not to be missed opportunity.

Mr. Speaker, I would also like to submit for the RECORD letters from three companies, CIGNA, F&D Companies, and Seaboard Surety Co. which all indicate that passage of this legislation will help to resolve the stumbling blocks that have prevented sureties from issuing bonds to Superfund contractors in the past.

Although I regret the inclusion of a Senate amendment by Senator METZENBAUM which will limit the effective date of this legislation to 2 years, it is my hope that the Members involved with the reauthorization of CERCLA will make the provisions of this bill permanent.

I would like to thank my colleague Mr. WHITTAKER for his support and the support of the minority as well as Mr. BOUCHER and Mr. SLATTERY who are original cosponsors of H.R. 5827.

I urge my colleagues to support this important legislation which is aimed at increasing the effectiveness and the quality of Superfund cleanup projects, while decreasing the long delays which have plagued the Federal Government's cleanup efforts under the Superfund law and which now threaten the ultimate success of our national cleanup strategy.

CIGNA BOND SERVICES,
Philadelphia, PA, October 19, 1990.

Hon. JOHN D. DINGELL,
Chairman, Energy and Commerce Committee, Rayburn House Office Building, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We understand that H.R. 5827, which would clarify the liability of surety companies issuing performance and payment bonds in connection with Superfund cleanup projects, has been recently introduced. We are very encouraged by this development as this legislation will enable sureties to underwrite individual contracts and contractors with respect to Superfund projects on their individual merits with reduced concerns about non-traditional liabilities under their bonds. In the past, these concerns have precluded practically all involvement in these projects by the major sureties.

Though the bill does not include all proposals submitted by the American Insurance Association, we anticipate the ability to proceed with our normal underwriting procedures on bond requests where this legislation is applicable. As with all other surety requests, of course, we would provide * * * those companies which our underwriting indicates * * * financially and technically qualified to perform the work in question.

There are many areas of concern which remain to be resolved, however, this resolution addresses the most critical issues and will permit surety companies to proceed under their standard underwriting processes and criteria. Consequently, we urge you to pass this legislation.

Sincerely,

ROBERT E. GIVEANS
Vice President.

THE F&D COMPANIES,
Baltimore, MD, October 19, 1990.

Re S. 3187 and H.R. 5827/To address immediate problems affecting environmental cleanup activities.

Hon. JOHN D. DINGELL,
Chairman, Energy and Commerce Committee, Rayburn House Office Building, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Fidelity & Deposit Companies, based on statistics provided by the Surety Association of America, has been the largest writer of surety bonds for many years, and has among its clients contractors who are eminently qualified to undertake hazardous waste remediation projects.

Concern for perceived potential strict liability of the surety and the fact that existing legislation does not offer the same protection to the surety as it does to the contractor (i.e. negligence standard and Federal indemnification) has caused us to avoid writing bonds covering the remediation of hazardous waste on public projects.

While the proposed legislation does not address many of our concerns such as the statute of limitations and a statute of repose, it will allow us to consider providing bonds to qualified contractors on Federal lead projects.

We support this legislation and are confident it will allow for increased consideration of bonding for hazardous waste remediation projects.

Very truly yours,

JOSEPH C. EANES, Jr.,
President.

SEABOARD SURETY CO.,
Bedminster, NJ, October 19, 1990.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to inform you that Seaboard Surety Company, an underwriter for Ebasco of Superfund remediation projects, supports the passage of H.R. 5827 legislation pending before your Committee. This legislation would clarify the liability of companies which write surety bonds for Superfund site remediations.

The provision of this bill, and its Senate companion bill, S. 3187, address two primary areas of concern to my company: 1) that a surety performing under its bond will operate under the liability standard and indemnification now available to its contractor; and 2) that my company's liability is limited to completion of the contract work in accordance with the plans and specifications. The legislation clarifies that my company is not a liability insurer.

With the passage of this legislation, we would be in a position to support contractors such as Ebasco in this critical program in the future.

Sincerely,

GEORGE F. THOMPSON,
President.

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Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 3187, a bill to address immediate prob-

lems affecting environmental cleanup activities carried out under the Superfund Program.

Recently, I along with the gentleman from Ohio [Mr. LUKEN] and the other members of the Subcommittee on Transportation and Hazardous Materials, became aware of a real crisis facing the Superfund Program. Ambiguities in judicial interpretations of Superfund liability have caused surety bonding companies to stop issuing these bonds. Performance bonds are required on Federal construction projects including Superfund remedial actions. Without these bonds, Superfund cleanups could be stalled indefinitely at Federal facilities and EPA-lead sites.

This legislation is narrowly crafted to clarify the intent of Congress that sureties receive the same protection as Superfund contractors. In addition, it clarifies that sureties issuing performance bonds on a Superfund cleanup bear the traditional responsibility to complete the project as they would on other types of construction projects.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to, first of all, commend both the gentleman from Kansas [Mr. WHITTAKER] and the gentleman from Ohio [Mr. THOMAS A. LUKEN], the chairman of the subcommittee.

Mr. Speaker, I rise in support of S. 3187, addressing the current shutdown of the surety bonding market for Superfund cleanup projects. Overly broad judicial rulings have created substantial uncertainty in the bonding market.

Since many Superfund cleanups require performance bonds as a matter of Federal law, this climate of uncertainty threatens to stop the Superfund program in its tracks.

S. 3187 would address this crisis by providing that the surety would have the same protections as its contractor, if the surety begins activities to meet its obligations. In addition, the provisions clarify that the surety will have only its traditional responsibility to complete the project and see that all of the contractor's bills are paid.

If the bill is not enacted, the market for these bonds will remain constricted, as is now the case. This is a narrowly crafted bill, that clarifies what I believe to be the original intent of the drafters of Superfund. I urge my colleagues to support this bill.

Mr. THOMAS A. LUKEN. Mr. Speaker, currently, there are over 1,000 Superfund sites listed on the Environmental Protection Agency's national priorities list pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA], yet only 29 sites have been cleaned up.

Although the slow pace of these cleanups is attributable to more than one or two factors, it has become clear that a very likely contributing factor is the inability of Superfund response action contractors to obtain a surety bond where applicable Federal law so requires.

Testimony received during hearings in the other body on S. 3187, the companion bill to which I recently introduced as H.R. 5827, indicated that only one surety company is currently writing bonds for Superfund contractors and that only two contracting firms have been able to obtain the necessary bonding.

With over 1,000 sites nearing or at the stage where cleanup activities should proceed, it is clear that we will need more than two contracting firms to do the job in a timely manner. Moreover, the lack of competition created by the current situation threatens to drive up the costs of already expensive cleanup projects.

There are two immediate problems perceived by surety companies, environmental groups, contractors, and unions which underlie the unavailability of surety bonds. First, is the lack of clarity in CERCLA section 119 regarding the scope of Superfund's indemnification provision where the surety must undertake the completion of a cleanup project for a response action contractor.

S. 3187 makes it clear that where a surety providing bonds steps into the shoes of a response action contractor and begins activities to meets its obligations under its bond, the surety's Superfund liabilities and access to Superfund indemnification should be identical to those provided to the response action contractor under CERCLA.

Second, sureties have expressed great fear and unwillingness to be held liable under CERCLA for personal or property damage caused by a response action contractor who doesn't have standard liability insurance should the surety have to step in to complete a cleanup project for the contractor.

A new section 119(g) also provided for by S. 3187 makes it clear that unless otherwise provided for, a surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of fund remaining to be paid under the contract, up to the sum of the bond. The section further clarifies that a surety may not be liable to the Government for loss or liability arising from personal injury or property damage whether or not caused by the breach of the bonded contract.

This bill specifically does not preempt State laws or requirements and would not affect Superfund cleanup projects that are State run as opposed to federally run.

S. 3187 passed the Senate on October 18, 1990, by unanimous consent, and is supported by the Sierra Club, the Environmental Defense Fund, the Laborers International Union of the AFL-CIO, the National Constructors Associations, the Associated General Contractors of America, and the American Insurance Association. In other words, the cleanup contractors, the insurers, and the environmental groups all support this legislation—a rare and not be missed opportunity.

Mr. Speaker, I have received letters from three companies, CIGNA, F&D Companies, and Seaboard Surety Co., which all indicate that passage of this legislation will help to resolve the stumbling blocks that have prevented sureties from issuing bonds to Superfund contractors in the past.

Mr. WHITTAKER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. THOMAS. A. LUKEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Ohio [Mr. THOMAS A. LUKEN] that the House suspend the rules and pass the Senate bill, S. 3187.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. THOMAS A. LUKEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 3187, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

CONFERENCE REPORT ON H.R. 4487, NATIONAL HEALTH SERVICE CORPS REVITALIZATION AMENDMENTS OF 1990

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 4487) to amend the Public Health Service Act to revise and extend the program for the National Health Service Corps, and to establish certain programs of grants to the States for improving health services in the States.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference and report and statement, see proceedings of the House of Thursday, October 25, 1990.)

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Speaker, H.R. 4487 was introduced on April 4 by Mr. RICHARDSON, Mr. COOPER, Mr. SLATTERY, Mr. TAUKE, Mr. SYNAR, Mr. BOUCHER, Mr. ROWLAND, Mr. TOWNS, myself, and 18 other Members. It would revise and extend the authorization for the National Health Service Corps to meet the needs of rural and urban underserved areas for primary health care services.

This bill was reported from the Committee on Energy and Commerce with bipartisan support. The committee amendments reflect substantive contributions from Mr. MADIGAN, Mr. TOWNS, Mr. BILIRAKIS, and Mr. RICHARDSON. I would also like to recognize the work that Mr. SLATTERY, Mr. COOPER, and Mr. TAUKE did in committee to create a product that both sides of the aisle can enthusiastically support. In addition, I would like to acknowledge Mr. STENHOLM, who authored the concept of a program of incentives to States to establish rural health offices.

The National Health Service Corps is the way in which the Federal Government makes primary health care available to underserved rural or urban communities. The corps provides scholarships or repays health education loans for doctors and other health professionals. In exchange, the recipients agree to provide primary health care at designated sites in health manpower shortage areas for a specified period of time.

The corps is 20 years old this year. Over the past two decades, the corps has placed over 10,000 physicians and other health professionals in rural and urban communities that have been left unserved by the market. It has been a critical source of staffing for the community and migrant health center programs as well as the Indian Health Service.

As we enter the 1990's, the corps faces a major challenge.

According to the Department, there are about 12.5 million Americans living in over 1900 rural and urban areas with a shortage of primary care practitioners. The problem is not that these Americans are all uninsured; while some of them are, many have public or private coverage. The problem is that there are no primary care doctors or other health professionals serving the communities in which they live.

Unfortunately, because of some bad decisions made in the early 1980's, the corps is not in a position today to meet the needs of most of the Nation's 1935 underserved communities or population groups. To eliminate these shortages would require 4,147 primary care physicians.

This year, the corps expects to have only 1,751 physicians and other health professionals in the field. There are currently 123 scholarship recipients and 74 loan repayment recipients available for placement. By 1993, the number of scholarship recipients available for placement will decline to 18. At the same time, the number of health manpower shortage areas may grow larger than 1,900, as older rural physicians retire, and as competition for new primary care practitioners increases.

The logic of these numbers is obvious.

Unless we revitalize the corps, we are never going to meet the needs of the 12.5 million unserved Americans, and we may leave even more unserved.

The bill before the House this afternoon would provide the policy tools for eliminating primary care shortages during the coming decade. It would revise and extend the corps scholarship and loan repayment programs through fiscal year 2000. It would revise and extend the State loan repayment program through fiscal year 1995. And it would establish a 3-year program to stimulate the development of State offices of rural health.

As requested by the administration, the first year authorization for the corps scholarship and loan repayment programs would be $63.9 million. According to the Congressional Budget Office, the bill would result in new budget authority of $137 million in fiscal year 1991, and $740 million over the next 5 years. This modest investment will pay large dividends by making primary care services available to millions of Americans over the next decade.

I urge my colleagues to support this critical bill.

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the bill, H.R. 4487, now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield 5 minutes to the gentleman from New Mexico [Mr. RICHARDSON] who was the primary sponsor of this legislation and worked so diligently on its behalf in the subcommittee and committee. He is here today to present the arguments and the presentation of important features of this bill to the House of Representatives.

Mr. RICHARDSON. Mr. Speaker, as the sponsor of H.R. 4487, the National Health Service Revitalization Amendments of 1990, with my colleagues, Mr. COOPER, Mr. SLATTERY, Mr. TAUKE, and Mr. WAXMAN, I am pleased we are taking up the conference report today. The National Health Service Corps [NHSC] is the Federal Government's primary means of recruiting physicians to rural, inner city, and other areas suffering from health manpower shortages. As such, the corps has been a successful and model program for recruiting physicians and other health care personnel into medically underserved areas.

CRISIS IN RURAL HEALTH CARE

Due to the budget cuts of the 1980's, the corps has declined from a peak field strength of 3,127 NHSC providers in 1986 to the 123 scholarship recipients available for placement this year.

As a result, the corps is no longer even minimally meeting its mandate "to improve and maintain the health status of medically underserved populations." Given the crisis in rural health care, this cannot and should not be allowed to continue. Today, people living in rural areas continue to be in poorer health, travel farther for health care, report chronic or serious illness more frequently, and are more likley to die from injury. Moreover, rural residents are more than twice as likely as the Nation as a whole to face shortages of primary care physicians.

H.R. 4487 REVITALIZES THE NATIONAL HEALTH SERVICE CORPS

The conference report on H.R. 4487 and changes made in the House of Representatives will renew the National Health Service Corps' commitment to primary health care for medically underserved areas. It continues the current loan repayment program and rejuvenates the scholarship program by insuring that a minimum of 30 percent of appropriated funds are used for scholarships each fiscal year. In this way, the corps will meet both short- and long-term needs by replenishing the supply of doctors to medically underserved areas.

H.R. 4487 INSURES MIDLEVEL PRACTITIONER SCHOLARSHIPS

The legislation also requires that a minimum of 10 percent of appropriated funds be used for scholarships for midlevel practitioners such as nurse practitioners, nurse midwives, and physician assistants. Better utilization of midlevel practitioners can increase the productivity of primary care physicians and save money in the long run.

H.R. 4487 WORKS TO RECRUIT AND RETAIN PROVIDERS

To help retain NHSC providers and get them into the neediest areas, among other things, H.R. 4487 increases the maximum loan payment, and directs the corps to give priority to individuals with characteristics that increase the probability that they will remain in the underserved area when their obligation is completed.

In addition, H.R. 4487 establishes as a priority the assignment of corps personnel to areas with the greatest shortages based on the following criteria: the ratio of health manpower to the number of individuals; the rate of infant mortality, low birthweight, and poverty; access to primary health care services; and the effect on access to primary care if corps members are not assigned to a site.

H.R. 4487 also requires that the National Advisory Council on the corps be more representative of the corps and hopefully more responsive; and adds clarifying language delineating priorities in awarding scholarships to those who have already received corps scholarships, scholarships under the title VII Exceptionally Financially Needy Program, or who are minority or disadvantaged.

H.R. 4487 ESTABLISHES GRANT PROGRAM FOR RURAL HEALTH OFFICES

H.R. 4487 also establishes a new grant program to help States operate new and existing State offices of rural health. Under the legislation, State offices of rural health would be required to serve as clearinghouses on rural health information, and provide technical assistance. States could also use these funds to recruit and retain health care professionals in rural areas.

H.R. 4487 REAUTHORIZES THE STATE LOAN REPAYMENT PROGRAM

H.R. 4487 also reauthorizes the State loan repayment program and insures that the State loan repayment program coordinates with and supports national efforts to eliminate health manpower shortage areas.

In closing, I would ask my colleagues' support of H.R. 4487 and point out the critical need to reauthorize and revitalize the National Health Service Corps.

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Mr. MADIGAN. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. Mr. Speaker, I wish to thank all those who have been part of the development of this legislation. It has been a top priority of the House Rural Health Care Coalition because it is a giant step forward in ensuring that there will be adequate health care professionals to serve rural America.

Over the past decade, we had gradually phased down the National Health Service Corps in the belief that we no longer needed this kind of activity, this kind of push, in order to get health care professionals to locate in rural areas. Now we see that health care professionals have not moved into the medically underserved areas without this kind of extra assistance and incentive offered by government.

Since 1981 the number of medically underserved areas has increased by 36 percent. It has not decreased. Today, over 33.6 million Americans live in areas that have inadequate numbers of primary health care providers to ensure access to basic health care service. This legislation in this conference report will address the needs of these citizens in three basic ways. First, we are revitalizing the scholarship program to increase the number of health professionals available to serve in rural America; second, we are expanding and improving the loan repayment program under which physicians, nurses, physician assistants, and allied health professionals may receive educational loan repayment in exchange for serving in an underserved area; and third, we are extending the State loan repayment program under which States may qualify for Federal matching funds to establishing loan repayment programs of their own.

On behalf of the 145 members of the House Rural Health Care Coalition, I thank all the Members who have been involved in the development of this legislation. I ask my colleagues to vote positively in this conference report.

Mr. WAXMAN. Mr. Speaker, this bill before Members today was cosponsored by a number of members of our committee including Mr. RICHARDSON, Mr. COOPER, Mr. SLATTERY, Mr. TAUKE, Mr. SYNAR, Mr. BOUCHER, Mr. ROWLAND, Mr. TOWNS, myself and 18 others.

I yield 3 minutes to an important member of our subcommittee who played such a vital role in the development of this legislation, the gentleman from Oklahoma [Mr. SYNAR], who has been a leader in the Rural Health Caucus and made enormous contributions in this and so many other health care areas.

Mr. SYNAR. Mr. Speaker, first of all let me take this opportunity to thank all of those Members who have been recognized, who are members of the Rural Health Care Coalition, for their outstanding work on this piece of legislation. This legislation was part of the original Rural Health Care Coalition agenda this session. As we end this session of Congress, in the next couple of days, the success of this coalition has become apparent. Hopefully, in the years ahead the coalition can seize upon these victories to improve the health care of rural America even more.

William Jennings Bryan, earlier this century, in his famous Cross of Gold speech said: "Destroy our cities and they will spring up again as if by magic; but destroy our farms, and the grass will grow in every city in this country."

Rural America is unique in many ways, but probably most unique in the population characteristics with respect to medical needs. It has two characteristics: one, it is older; second, it is poorer. With those unique characteristics comes different health needs, rural America needs more primary care, more nurses, and more allied health personnel. These people are not always available in rural America.

This legislation will begin to solve the problems that we face with these shortages in rural America.

The winners with the passage of this legislation will be those doctors, those nurses, those allied health personnel who will come to rural America. They will learn that rural America is a great place to live and build a future with their families. The winners will also be millions of Americans who can count on these people for their health needs, not only for themselves but for future generations.

Most importantly, the big winner will be rural America itself. As we have learned in our work through the Rural Health Care Coalition, without rural health care there will be no rural towns. Without rural towns, there will be no rural economic future.

This legislation is very important to the future of rural America.

Mr. MADIGAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. BILIRAKIS] who has worked among the hardest to make this bill possible. I know that all citizens of Florida will be very proud of the hard work done by Mr. BILIRAKIS.

Mr. BILIRAKIS. Mr. Speaker, we have heard here tonight, the National Health Service Corps was formed to provide health care professionals to those communities of greatest need, both urban and rural, that otherwise cannot recruit and retain health care providers. Since its inception, it has placed over 12,000 physicians and other health care providers in medically underserved areas across the Nation.

Due to cutbacks in funding over the years, the number of members in the corps has steadily declined. While we have more physicians in this country than at any other time, many inner-city and rural communities face a decline in the availability of health care services. The Department of Health and Human Services estimates that it would take more than 4,000 physicians to eliminate just the primary care shortage areas.

The legislation before us today will help revitalize the corps by clarifying that its purpose is to provide primary health services.

This legislation, which I strongly support, enhances the National Health Service Corps and will help to bring health care personnel to underserved areas.

When the bill was considered by the Health Subcommittee, I was personally interested in it for a number of reasons but particularly because of a health care crisis in my district. In early 1990, a community and migrant health center in Dade City, FL was forced to close down obstetric services when a National Health Service Corps ob-gyn resigned from the facility. Because this physician left the clinic before his commitment with the National Health Service Corps had been completed, the Dade City clinic was not prepared for his departure and did not have the resources to hire a replacement.

I found that this particular doctor bought out the remainder of his contract. In other words, the taxpayers paid his medical school expenses in return for a pledge to serve in NHSC for a certain number of years—but he reneged on that pledge with the buyout.

During the Energy and Commerce Committee's consideration of the bill, I brought this incident to the attention of my colleagues. I wanted to assist the Dade City facility so that the clinic's expectant mothers would not have to continue to give birth in the emergency room of a nearby hospital. I felt they had the right to receive prenatal care, delivery room services, and postnatal care just like every other expectant mother.

Fortunately, that clinic was able to receive additional funding to hire a new doctor and is providing obstetric services to its patients once again. However, I know there are other clinics in America that are experiencing similar problems. This bill somewhat, in part, addresses the problem by increasing the amount of the penalty.

However, in order to better improve the situation, I authored a provision in this bill that would provide some relief to specific health centers that lose their National Health Service Corps professionals prematurely. This language was unanimously approved by the Energy and Commerce Committee. Although National Health Service Corps health professionals must pay a penalty if they leave before their term of commitment is completed, clinics are currently unable to use any of this money because it goes directly to the general revenue fund. My provision creates a special fund within the National Health Service Corps targeted specifically for clinics that prematurely lose National Health Service Corps health professionals. The money for this fund would come from the penalty dollars paid by those health professionals who leave the corps early. The money would then be distributed to clinics who lose corps professionals in order to assist the facilities in hiring replacement personnel.

The intent of my provision is to keep these clinics operating at full capacity instead of allowing the overall health delivery system to decline when a corps professional resigns early. It is my hope that this special fund will prevent other health centers from closing their doors on their patients who are in need of health services.

Finally, I wanted to express my appreciation to health subcommittee chairman HENRY WAXMAN and ranking minority member ED MADIGAN for their willingness to work with me during consideration of this legislation. I also wanted to acknowledge the hard work of majority and minority counsels, Andy Schneider and Howard Cohen who were of great assistance to me.

This legislation will significantly improve health care services for underserved areas of our country. As a member of the House-Senate conference committee, I urge my colleagues to support it.

□ 2020

Mr. WAXMAN. Mr. Speaker, I am pleased to yield 4 minutes to the gentleman from Kansas [Mr. SLATTERY], a cosponsor of this legislation and an original supporter of the National Health Service Corps and a distinguished member of our subcommittee.

Mr. SLATTERY. Mr. Speaker, first let me say to the chairman of the subcommittee that I deeply appreciate his involvement in this measure. Without his leadership and tenacity, we would not be moving this kind of health care legislation. I know this has been a big day for him because of the Medicaid legislation we will be dealing with later on this evening.

But I would also like to express my gratitude to all the people who have been mentioned here earlier this evening, the gentleman from New Mexico [Mr. RICHARDSON], the gentleman from Tennessee [Mr. COOPER], the gentleman from Iowa [Mr. TAUKE], and certainly the gentleman from Illinois [Mr. MADIGAN] for their important leadership on this bill, and I would like to pay special tribute to our colleague, the gentleman from Kansas [Mr. WHITTAKER] who is serving his last few hours in this body. I say to the gentleman from Kansas that he has done a great job here in representing southeast Kansas. I know they will long remember the efforts the gentleman has made in this body on their behalf.

Mr. Speaker, thousands of poor communities, especially rural ones, received doctors they would not otherwise have had because of the National Health Service Corps [NHSC]. However, due to drastic budget cuts during the 1980's, the corps is on the verge of disappearing.

H.R. 4487 would reauthorize and revitalize the corps' ability to provide health professionals to areas with chronic shortages of medical personnel.

This bill will bring more doctors and mid-level health professionals to rural Kansas—including 17 medically underserved counties.

These counties in Kansas include: Jackson, Nemaha, Leavenworth, Geary, Rawlins, Gove, Lincoln, Ellsworth, Marion, Dickinson, Washington, Wabaunsee, Osage, Coffey, Woodson, Linn, Marshall, and Morris Counties. They have been designated as health manpower shortage areas by the Department of Health and Human Services.

Close to 2,000 communities with almost 34 million people face health care shortages. They need an estimated 4,000 health professionals to provide even minimal medical services.

The corps went a long way toward meeting these needs by offering scholarship and loan repayment awards to medical students in exchange for a commitment to practice in underserved areas.

At one time, 3,000 corps doctors were serving 5 million patients per year. However, the budget cuts of the 1980's slashed the number of scholarships awarded from more than 6,400 in 1980 to less than 50 in 1988. Communities served by the corps are losing 600 practitioners a year with no replacements.

While a significant increase in funding will make a big difference, there are other changes in this program that must be made. I believe the changes proposed in this bill will strengthen the corps and make a basically good program much better.

This bill achieves a good balance between scholarship awards and loan repayment contracts.

H.R. 4487 would maintain a necessary mix of scholarship and loan repayment awards. It sets a minimum floor for the amount of funding alloted for scholarships in order to guarantee that the neediest and least attractive shortage areas receive physicians and primary care health personnel.

The current trend to rely solely on the loan repayment program does not achieve this important objective.

Few things are more important to the future of rural America than the availability of quality, affordable health care. This is a proven program with a 96-percent completion rate—13 percent of this rate reflects buyouts—that has put doctors and health care professionals in communities where medical serivces were most needed.

The scholarship set-aside for mid-level practitioners like nurse practitioners, nurse midwives, and physicians' assistants, is necessary to ensure that much needed basic primary care reaches individuals and families in rural and inner-city areas.

To meet the primary care needs of underserved communities in the 1990's, we will have to use the corps. In the short run, we will have to rely on the loan repayment program. However, we also need to start funding new scholarships, so that by the mid-1990's we will again have an adequate supply of primary care physicians and mid-level personnel coming out of the pipeline, available for placement in the areas with greatest need.

Ultimately, it is my hope that this bill would encourage young physicians, dentists, nurses, and other health professionals to serve in areas where they are most needed, instead of choosing areas where they can earn the most money to repay expensive school loans.

Mr. WAXMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee [Mr. COOPER], a cosponsor of the legislation, a member of the rural health caucus, and a distinguished member of our committee.

Mr. COOPER. Mr. Speaker, I thank the distinguished chairman of the subcommittee for yielding me this time.

I would like to add my words of praise both for the chairman, the gentleman from California [Mr. WAXMAN], and the gentleman from Illinois [Mr. MADIGAN]. They have shown great leadership on this important legislation.

I would also like to single out a former staff member of mine, Atul Gawande who is attending medical school, a young man who came to my staff a year ago and helped to draft very key parts of this legislation. I hope, of course, he will end up serving in one of these rural areas.

Mr. Speaker, in relatively short order tonight, we have addressed three bills of profound importance. Each has passed, or in this case will pass, by huge majorities, majorities which mask the years of debate and turmoil that went into putting these pieces of legislation together.

The Clean Air Act is clearly a great landmark to preserve the health of Americans; the Food Labeling Act, another great landmark, and tonight we are revitalizing the National Health Service Corps. That probably sounds like a lot of large words, but it will bring doctors back to rural America. It will bring doctors to the inner cities where they are most needed.

It is a shame that a successful program like this was largely discarded in the Reagan years in the false belief that somehow the free market would allocate doctors fairly across America. At least in my district, doctors were as likely to locate in some of my counties as we were likely to receive Cadillac or BMW dealerships. They simply were not coming.

Whereas in normal areas of America there is about one doctor for every 600 or 800 prospective patients, in one of my counties there was one doctor for every 16,000 people.

Mr. Speaker, we clearly need legislation and many parts of this Nation need legislation like this to bring doctors back where they belong.

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I am delighted to see this program not only funded adequately but also reorganized in a way to make it more user friendly for prospective medical students and graduate medical students so they will come back to the areas where they are most needed.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of this bill.

The National Health Service Corps was formed to provide health care professionals to those communities of greatest need, both urban and rural, that otherwise cannot recruit and retain health care providers. Since its inception it has placed over 12,000 physicians and other health care providers in medically underserved areas across the Nation.

Due to cutbacks in funding over the years, the number of members in the corps has steadily declined. While we have more physicians in this country than at any other time, many inner city and rural communities face a decline in the availability of health care services. The Department of Health and Human Services estimates that it would take more than 4,000 physicians to eliminate just the primary care shortage areas.

The legislation before us today will help revitalize the corps by clarifying that its purpose is to provide primary health services.

The bill provides Secretary Sullivan's proposal of $63.9 million and "such sums as necessary" in the outyears for the authorization for the scholarship and loan program; 30 percent of the funds appropriated would be required to be used for new scholarships for physicians. An additional 10 percent would be required to be used for new scholarships for nurse practitioners, nurse midwives, or physician assistants.

The bill also establishes a program to help fund grants to States for offices of rural health. States would be required to provide non-Federal contributions toward the program. The State offices of rural health would be required to: First, establish and maintain a clearinghouse for information on rural health; second, coordinate State activities regarding rural health care in order to avoid duplication; and third, identify Federal and State rural health programs and provide technical assistance to facilities regarding participation in these programs.

This legislation enhances the National Health Service Corps and will help to bring health care personnel to underserved areas.

I urge my colleagues to support it.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, we have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the conference report on the bill, H.R. 4487.

The question was taken; and (two thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

INJURY PREVENTION AND CONTROL ACT OF 1990

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 5113) to amend the Public Health Service Act to revise and extend the program for the prevention and control of injuries.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Injury Control Act of 1990".

SEC. 2. REVISION AND EXTENSION OF PROGRAM FOR PREVENTION AND CONTROL OF INJURIES.

(a) RESEARCH.—Section 391(a) of the Public Health Service Act (42 U.S.C. 280b(a)) is amended—

(1) in paragraph (2), by inserting after "grants to" the following: ", or enter cooperative agreements or contracts with,"; and

(2)(A) in paragraph (1), by striking "and" after the semicolon at the end;

(B) in paragraph (2), by stiking the period at the end and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(3) make grants to, or enter into cooperative agreements or contracts with, academic institutions for the purpose of providing training on the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries.".

(b) CONTROL ACTIVITIES.—Section 392(b)(2) of the Public Health Service Act (42 U.S.C. 280b-1(b)(2)) is amended to read as follows:

"(2) work in cooperation with other Federal agencies, and with public and nonprofit private entities, to promote injury control.".

(c) REQUIREMENT OF REPORT ON ACTIVITIES OF AGENCY.—Section 393 of the Public Health Service Act (42 U.S.C. 280b-2) is amended to read as follows:

"SEC. 393. REPORT.

"By not later than September 30, 1992, the Secretary, through the Director of the Centers for Disease Control, shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities conducted or supported under this part. The report shall include—

"(1) information regarding the practical applications of research conducted pursuant to subsection (a) of section 391, including information that has not been disseminated under subsection (b) of such section; and

"(2) information on such activities regarding the prevention and control of injuries in rural areas, including information regarding injuries that are particular to rural areas.".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 394 of the Public Health Service Act (42 U.S.C. 280b-3) is amended—

(1) in the first sentence, by inserting before the period the following: ", $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993";

(2) by striking the subsection designation; and

(3) by striking the second sentence.

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 5113 is to reauthorize the Federal Injury Control Program whose authority expires at the end of fiscal year 1990.

The Injury Control Program, administered by the Centers for Disease Control, provides grants to State and local health departments and to academic institutions, for programs and research on the prevention and control of injuries, trauma care, and spinal cord injury. The program has grown significantly since it was first established and is now supporting over 25 grants to State and local health departments, seven Injury Control Research Centers, and 38 other research projects.

H.R. 5113 would reauthorize the Injury Control Program at authorization levels of $30 million in fiscal year 1991 and "such sums as may be necessary" in both fiscal year 1992 and 1993. No other substantive changes would be made to the programs.

This legislation has bipartisan support. It has been introduced by our distinguished colleague, Congressman BRUCE, along with myself and Congressman MADIGAN, the distinguished ranking Republican member of the Health Subcommittee.

I urge all Members to support H.R. 5113 with the Senate amendment.

Mr. Speaker, I reserve the balance of my time.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, for people under 44 years of age, injury is the leading cause of death. Tragically, nearly 1 in 4 Americans will be seriously injured this year and these injuries will be costly. The total lifetime costs of injuries sustained in 1985 was estimated at $185 billion.

The Centers for Disease Control's Injury Control Program provides grants for research on the causes of injuries, acute care, and rehabilitation.

CDC's injury control program also provides grants and works with State and local health departments to control injuries and to evaluate these interventions.

This program not only saves money by avoiding health care costs for treating injuries but saves lives and prevents needless pain and suffering.

I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 5113.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

HEALTH OBJECTIVES 2000 ACT

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2056) to amend title XIX of the Public Health Service Act to provide grants to States to establish and implement State health objectives plans, and for other purposes, as amended.

The Clerk read as follows:

S. 2056

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Year 2000 Health Objectives Planning Act".

SEC. 2. GRANTS FOR STATE PLANS REGARDING HEALTH OBJECTIVES FOR YEAR 2000.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall make grants to the States for the purpose of assisting each State receiving such a grant with the development of a State plan for improving the health status of the population of the State.

(b) STATEWIDE ASSESSMENT REGARDING YEAR 2000 HEALTH OBJECTIVES.—

(1) IN GENERAL.—The Secretary may not make a grant under subsection (a) unless the State involved agrees, subject to paragraph (2), that in carrying out the purpose described in such subsection the State will conduct a statewide assessment to determine the extent to which the health status of the population of the State does not meet the objectives established by the Secretary for the health status of the population of the United States for the year 2000.

(2) DESIGNATION OF REQUIRED DETERMINATIONS REGARDING OBJECTIVES.—

(A) The Secretary may not make a grant under subsection (a) unless the State involved agrees that the statewide assessment under paragraph (1) will be conducted with respect to each of the year 2000 objectives designated under subparagraph (B).

(B) For purposes of subparagraph (A), the Secretary, acting through the Director of the Centers for Disease Control and in consultation with the States, shall designate the year 2000 objectives with respect to which the statewide assessments under paragraph (1) are required to be conducted.

(C) Subject to compliance with subparagraph (A), a statewide assessment under paragraph (1) may be conducted by a State with respect to year 2000 objectives that are not designated under subparagraph (B).

(c) PLAN FOR MEETING OBJECTIVES.—The Secretary may not make a grant under subsection (a) unless the State involved agrees that—

(1) in the case of each year 2000 objective that the statewide assessment under subsection (b)(1) indicates is not met, the State plan developed under subsection (a) will specify the activities that should be carried out in order to meet or exceed the objective;

(2) with respect to such activities, the plan will make recommendations for the State and for political subdivisions of the State, including recommendations for establishing or modifying public health and health financing programs, for funding levels of such programs, for maintaining sufficient numbers of appropriate personnel, for collecting appropriate data, and for coordinating the public health activities of the State and such subdivisions; and

(3) not later than April 1, 1992, the State will submit to the Secretary a copy of the completed plan, including a copy of the statewide assessment under subsection (b)(1).

SEC. 3. CERTAIN REQUIREMENTS REGARDING RECEIPT OF GRANT.

(a) SUBMISSION OF STATEMENT REGARDING INTENDED SCOPE OF STATE ASSESSMENT.—The Secretary may not make a grant under section 2(a) unless the State submits to the Secretary a statement describing the intended scope of the statewide assessment under section 2(b)(1) that will be conducted with the grant, including a specification of the year 2000 objectives with respect to which the assessment will be conducted.

(b) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under section 2(a) unless—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the statement required in subsection (a); and

(3) the application otherwise is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this Act.

SEC. 4. GENERAL PROVISIONS.

(a) AMOUNT OF GRANT.—In the case of any State whose application under section 3(b) is approved, the amount of the grant under section 2(a) to the State shall, subject to the extent of amounts made available in appropriations Acts, be the greater of—

(1) $100,000; and

(2) the amount determined by the Secretary, after consideration of the statement submitted by the State pursuant to section 3(a), to be appropriate with respect to carrying out the purpose described in section 2(a).

(b) CERTAIN ASSISTANCE FROM SECRETARY.

(1) TECHNICAL ASSISTANCE.—The Secretary may, directly or through grants or contracts, provide technical assistance to States regarding the planning, development, and operation of programs to carry out the purpose described in section 2(a).

(2) PROVISION OF SUPPLIES AND SERVICES IN LIEU OF GRANT PAYMENTS.—

(A) Upon the request of a State receiving payments from a grant under section 2(a), the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such section and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of payments under section 2(a) to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(c) REPORT TO CONGRESS.—Not later than September 30, 1992, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing the statewide assessments and state plans received by the Secretary under section 2(c)(3).

SEC. 5. UNIFORM USE OF HEALTH-STATUS INDICATORS AND OF METHODS OF COLLECTING AND REPORTING DATA.

The Secretary, acting through the Director of the Centers for Disease Control and in consultation with the States, shall—

(1) develop a set of health-status indicators appropriate for Federal, State, and local health agencies to measure health status;

(2) develop model methods of collecting and reporting data on whether the year 2000 objectives are being met;

(3) encourage the uniform use by States and other entities of such methods and such indicators in order to ensure the utility and comparability of such data; and

(4) develop national data sources to measure progress toward meeting the year 2000 objectives.

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(2) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(3) YEAR 2000 OBJECTIVES.—The term "year 2000 objectives" means the objectives described in section 2(b)(1).

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this Act, there is authorized to be appropriated $10,000,000 for fiscal year 1991.

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill S. 2056, presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, last month, Secretary Sullivan released an important new report, Healthy People 2000. That report—the product of a 3-year effort conducted by the Department of Health and Human Services in collaboration with the States and numerous national and voluntary professional organizations—identifies specific health objectives for our Nation to meet by the year 2000. These objectives range from cancer and heart disease prevention, nutrition and tobacco, minority health, and other areas.

The purpose of S. 2056 is to help States begin to meet these goals. The legislation would establish a 1-year $10 million year 2000 planning grant program under which funds would be made available to the States through the Centers for Disease Control. States would be required to conduct a statewide health status assessment to determine the extent to which specified health objectives are not being met and to develop a statewide plan for implementing activities designed to achieve or exceed those objectives. The specified health objectives would be designated by CDC after consultation with the States.

Mr. Speaker, there is much work to be done to meet the Secretary's year 2000 health objectives. And it will take a real commitment and substantial Federal funds for us to get where the Bush administration says America should be. S. 2056 is a small, but important first step in helping to ensure that we get there—and get there on time. I would urge my colleagues, therefore, to support this important legislation.

Let me close by acknowledging the work of Senator HARKIN, the original sponsor of this legislation. I would also like to thank Congressman MADIGAN, the distinguished ranking Republican of the Health and Environment Subcommittee for his assistance in helping us move this bill so quickly.

I urge all Members to support S. 2056 with an amendment.

Mr. Speaker, I reserve the balance of my time.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, recently, the Department of Health and Human Services released a document entitled "Healthy People 2000: National Health Promotion and Disease Prevention Objectives." This document contains a national strategy for improving the health of the Nation over the next decade. It is the product of a national effort involving professionals and citizens, private organizations, and public agencies from every part of the country.

The purpose of healthy people 2000 is to commit the Nation to the attainment of three broad goals of achieving reductions in preventable death and disability, improving access to preventive services, and reducing disparities in the health status of our population.

This bill provides for 1-year planning grants to assist States in the implementation of the year 2000 health objectives. The plans are to include one, a statewide needs assessment to determine its needs with respect to the year 2000 health objectives and two, recommendations for meeting those needs. Ten million dollars are authorized for this program.

I urge my colleagues to support this bill.

Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Madam Speaker, I yield 3 minutes to the gentlewoman from Ohio [Ms. OAKAR] who has been such a leading player in the health care field and who this year singlehandedly accomplished more than any single member not on the committee dealing with Medicare and Medicaid in expanding benefits for prevention.

It is appropriate she be able to speak on this bill which will further the goals she has fought so diligently for.

Ms. OAKAR. Madam Speaker, I thank the distinguished subcommittee chairman.

Madam Speaker, I hope that the American people realize that some of the best legislation is being passed right as we speak and has been offered by the distinguished chairman of the Subcommittee on Health and the Environment of the Committee on Energy and Commerce. I want to thank the distinguished chairman, Mr. WAXMAN, and his distinguished minority leader, the gentleman from Illinois [Mr. MADIGAN].

Chairman WAXMAN is one of my heroes. I want to return the compliment because he is one of my absolute heroes when it comes to this particular issue of health care. I think he has done more in this area than anyone I can think of. I want to compliment HENRY and his colleagues for bringing

these bills before us in the late hours of Congress. They are significant bills.

I also want to pay tribute to Senator HARKIN of Iowa for bringing the bill up on the Senate side.

Madam Speaker, I had the pleasure of serving on the Pepper Commission with my friend, Chairman WAXMAN, during the course of the 101st Congress. We are so pleased, I am so pleased, that some of the bills such as the Alliance for Aging Research, which Mr. ROYBAL, the chairman of the Select Committee on Aging, sponsored. We saw that in the Congress yesterday, a piece of legislation which enacted provisions to establish 12 regional Claude D. Pepper Centers for research, training and outreach for Alzheimer's disease, osteoporosis, and other afflictions that impair the independence of older Americans.

Also adopted in that bill was a provision to require the Department of Health and Human Services to establish a Federal Task Force on Aging Research. We think that is important. This was consistent with a few other recommendations that I made to the Commission because there were significant increases in the level of Federal funding for research on these terrible diseases. Hopefully, one day we will find a cure.

These are recommendations that were adopted by the Pepper Commission that we are seeing enacted today and yesterday.

I am so pleased that these initiatives are part of our legislative agenda.

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Madam Speaker, I offered the goal of reaching the attainment of 21 specific national health objectives by the year 2000. I was happy that with the help of the gentleman from California [Mr. WAXMAN] and others that is part of the Commission report, and among those are: reducing alcohol consumption, tobacco, illegal drug use, improving nutrition, increasing physical activity and fitness, prevention, detection, control of cancer, high blood pressure, HIV infection and other sexually transmitted diseases, and other chronic illnesses, to reduce occupational and environmental health hazards and a general emphasis on preventative health care that will save both money and lives in our country.

In addition, I want to acknowledge the wonderful work of a very fine organization, the Association of State and Territorial Health Officials, that was crucial in bringing this package to the attention of the Pepper Commission, and indeed to the attention of Congress.

I certainly urge my colleagues to support the legislation. This represents a change toward common sense in our national approaches to meaningful cost containment in Federal health policy that is not at the expense of quality and access of the care we provide to our people, and I just wanted to make this final point:

While this is seed money, if we achieved a 1-percent reduction in the societal costs associated with only 12 of the 21 health objectives, the return on a $600 million investment for the first year would be equal to 10 to 1. In other words, we would achieve a savings of over $6 billion for the $600 million invested.

So, Madam Speaker, this is a great beginning, and I again want to compliment the chairman and the distinguished minority leader.

TWENTY-ONE NATIONAL HEALTH OBJECTIVES

1. Prevent, detect and control cancer; (educating women regarding the importance of mammograms and pap smears are central to this objective);
2. Reduce tobacco use;
3. Reduce alcohol and other drug abuse;
4. Improve nutrition;
5. Increase physical activity and fitness;
6. Improve mental health and prevent mental illness;
7. Reduce environmental health hazards;
8. Improve occupational safety and health;
9. Prevent and control unintentional injuries;
10. Reduce violent and abusive behavior;
11. Prevent and control HIV infection and AIDS;
12. Prevent and control sexually transmitted diseases;
13. Immunize against and control infectious diseases;
14. Improve maternal and infant health;
15. Improve oral health;
16. Reduce adolescent pregnancy and improve reproductive health;
17. Prevent, detect, and control high blood cholesterol and high blood pressure;
18. Prevent, detect, and control other chronic diseases and disorders;
19. Maintain the health and quality of life of older people;
20. Improve health education and access to preventive health services;
21. Improve surveillance and data systems.

Mr. WAXMAN. Madam Speaker, we have no further requests for time, and I yield back the balance of our time.

The SPEAKER pro tempore (Mrs. UNSOELD). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the Senate bill, S. 2056, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

The title of the Senate bill was amended so as to read: "An act to establish a program of grants for the development of State plans for meeting the objectives established by the Secretary of Health and Human Services for the health status of the population of the United States for the year 2000."

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 1602, TRAUMA CARE SYSTEMS PLANNING AND DEVELOPMENT ACT OF 1989

Mr. WAXMAN. Madam Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 1602) to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. BILIRAKIS. Madam Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement see proceedings of the House of today, Friday, October 26, 1990.)

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Florida [Mr. BILIRAKIS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this pending legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I am pleased to present to the House the conference report accompanying the bill H.R. 1602, the Trauma Care Systems Planning and Development Act.

The principal purpose of the legislation is to reduce death and disability due to injury. The legislation authorizes a program of incentive grants to States to develop regional systems of trauma care and to designate trauma centers in both urban and rural regions.

H.R. 1602 provides a 3-year authorization of appropriations for the establishment of a formula grant program to States for the planning and development of trauma care systems. Funds would be allocated to States on the basis of a formula which includes factors of population and the relative size of States. In addition, the legislation authorizes new programs of trauma care research and demonstration grants to improve the quality of trauma care in rural areas.

Organizations like the American College of Surgeons have established nationally recognized standards for assuring the quality of trauma care serv-

ices. The leadership demonstrated by the college represents an important resource to States in developing and implementing standards to provide trauma patients the highest quality of care.

Finally, I want to express my appreciation to and acknowledge the contribution of the bill's author, Mr. BATES, for his commitment and leadership in the field of trauma care. The gentleman has been instrumental in focusing greater public attention on the need for and the lifesaving benefits of trauma care systems.

I also want to thank the ranking minority member of the subcommittee, Mr. MADIGAN, for his commitment to trauma care and assistance in the development of this bill over the past 3 years.

Madam Speaker, I reserve the balance of our time.

Mr. BILIRAKIS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, the Trauma Care Systems Planning and Development Act is designed to assist States in the development, implementation, and improvement of regional systems of trauma care.

The compromise establishes a formula grant to assist States in developing a comprehensive trauma care system. To receive a grant States must develop a trauma care plan which incorporates nationally recognized standards to ensure the highest quality of care.

The agreement recognizes that rural populations suffer a tremendous number of deaths and disabilities due to accidental injuries. The bill provides that 10 percent of appropriations will be available for the purpose of making demonstration grants in rural areas.

The bill also permits States to use a portion of their allotment to reimburse trauma centers for uncompensated care. The States must demonstrate to the Secretary's satisfaction that a trauma care system is in place which meets all the requirements of this act.

I urge my colleagues to support this legislation.

Madam Speaker, I reserve the balance of my time.

Mr. BATES. Mr. Speaker, I rise in strong support of the conference report on the Trauma Care and Emergency Medical Services Act of 1989. Let me first thank Chairmen WAXMAN and DINGELL, and the ranking minority members, Mr. LENT and Mr. MADIGAN. Their support of this legislation has been pivotal in getting this bill this far, and I thank them for their efforts.

As someone who has witnessed in his district what an integrated and comprehensive trauma care system can do, I am confident that this legislation will promote the development and implementation of trauma systems nationally.

Effective trauma systems save lives—20,000 lives, according to the estimates of the American College of Surgeons—20,000 individuals with serious injuries from automobile accidents, fires, victims of violent crime—will survive their injuries.

But what we need to do, to ensure that those lives are saved, is implementation of an integrated trauma care system in many parts of our country where trauma care now means transporting a victim to the nearest emergency room.

Quick access to care; capable EMS personnel; specialized trauma facilities staffed with surgeons; and, finally, rehabilitation services: All these components are critical for quality trauma care.

These standards are those set by the American College of Surgeons. And in those areas that have implemented them, trauma systems have saved lives. So I am extremely proud that the conference report adopted the ACS standards, and I urge my colleagues to support this conference report.

Mr. WAXMAN. Mr. Speaker, I rise in strong support of the conference report on the Trauma Care Systems Planning and Development Act. I want to first thank my fellow conferees on this bill, the chairman of the Health and Environment Subcommitee, Mr. WAXMAN, the chairman of the full committee, Mr. DINGELL and the ranking minority members, Mr. LENT and Mr. MADIGAN. It has been their strong support which has made passage of this important legislation possible.

This legislation is important because for far too long in this country we have ignored what we can do to prevent the deaths caused by serious injury. Often victims of car accidents, burns, gunshots are taken to the nearest emergency room where they may languish before being treated with prompt medical care.

The American College of Surgeons estimates that 20,000 lives could be saved if States implemented comprehensive trauma networks. Trauma is the No. 1 killer of children, responsible for 80 percent of the deaths that occur between ages 15 and 24. It affects the elderly, the poor who often have higher risk jobs, older cars, and live in areas with high crime rates.

I am pleased that the conference report adopted the language of my bill, which requires trauma systems to meet the standards set by the American College of Surgeons. Those elements: access, prehospital care, hospital care, and rehabilitation are all necessary together to provide the best possible chance of caring for the severely injured and can mean the difference between life and death.

And I want to commend the chairman of the subcommittee, Mr. WAXMAN, for having the foresight to attach an amendment to the crime bill earlier this year, which will provide money to hospitals who handle a large number of indigent patients. Now it will be possible for many financially burdened hospitals to continue accepting the poor.

Finally, Mr. Speaker, the proponents of this bill have said it is important because trauma costs the U.S. health care system $120 billion a year and more than $30 billion in lost wages and productivity. Those are important figures, but I ask my colleagues to support this piece of legislation because the cost of saving thousands of lives each year can not be measured in dollars and cents alone.

Mr. WAXMAN. Madam Speaker, we have no further requests for time, and I yield back the balance of our time.

Mr. BILIRAKIS. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the conference report on the bill, H.R. 1602.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

TRANSPLANT AMENDMENTS ACT OF 1990

Mr. WAXMAN. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 2946) to amend the Public Health Service Act to revise and extend the program establishing the National Bone Marrow Donor Registry, and for other purposes.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Transplant Amendments Act of 1990".

SEC. 2. TABLE OF CONTENTS.

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TITLE I—NATIONAL BONE MARROW DONOR REGISTRY

SEC. 101. ESTABLISHMENT OF A NATIONAL BONE MARROW DONOR REGISTRY.

(a) REGISTRY.—Title III of the Public Health Service Act (42 U.S.C. 301 et seq.) is amended—

(1) by redesignating parts I, J, and K as parts J, K, and L, respectively; and

(2) by inserting after section 377 (as added by section 207 of this Act) the following new part:

"PART I—NATIONAL BONE MARROW DONOR REGISTRY

"SEC 379. NATIONAL REGISTRY.

"(a) ESTABLISHMENT.—The Secretary shall by contract establish and maintain a National Bone Marrow Donor Registry (referred to in this part as the 'Registry') that meets the requirements of this section. The Registry shall be under the general supervision of the Secretary and under the direction of a board of directors that shall include representatives of marrow donor centers, marrow transplant centers, persons with expertise in the social science, and the general public.

"(b) FUNCTIONS.—The Registry shall—

"(1) establish a system for finding marrow donors suitably matched to unrelated recipients for bone marrow transplantation;

"(2) establish a system for patient advocacy, separate from mechanisms for donor advocacy, that directly assists patients, their families, and their physicians in the search for an unrelated marrow donor;

"(3) increase the representation of individuals from racial and ethnic minority groups in the pool of potential donors for the Registry in order to enable an individual in a minority group, to the extent practicable, to have a comparable chance of finding a suitable unrelated donor as would an individual not in a minority group;

"(4) provide information to physicians, other health care professionals, and the public regarding bone marrow transplantation;

"(5) recruit potential bone marrow donors;

"(6) collect, analyze, and publish data concerning bone marrow donation and transplantation; and

"(7) support studies and demonstration projects for the purpose of increasing the number of individuals, especially minorities, who are willing to be marrow donors.

"(c) CRITERIA, STANDARDS, AND PROCEDURES.—Not later than 180 days after the date of enactment of this part, the Secretary shall establish and enforce, for entities participating in the program, including the Registry, individual marrow donor centers, marrow donor registries, marrow collection centers, and marrow transplant centers—

"(1) quality standards and standards for tissue typing, obtaining the informed consent of donors, and providing patient advocacy;

"(2) donor selection criteria, based on established medical criteria, to protect both the donor and the recipient and to prevent the transmission of potentially harmful infectious diseases such as the viruses that cause hepatitis and the etiologic agent for Acquired Immune Deficiency Syndrome;

"(3) procedures to ensure the proper collection and transportation of the marrow;

"(4) standards that require the provision of information to patients, their families, and their physicians at the start of the search process concerning—

"(A) the resources available through the Registry;

"(B) all other marrow donor registries meeting the standards described in this paragraph; and

"(C) in the case of the Registry—

"(i) the comparative costs of all charges by marrow transplant centers incurred by patients prior to transplantation; and

"(ii) the success rates of individual marrow transplant centers;

"(5) standards that—

"(A) require the establishment of a system of strict confidentiality of records relating to the identify, address, HLA type, and managing marrow donor center for marrow donors and potential marrow donors; and

"(B) prescribe the purposes for which the records described in subparagraph (A) may be disclosed, and the circumstances and extent of the disclosure; and

"(6) in the case of a marrow donor center or marrow donor registry participating in the program, procedures to ensure the establishment of a method for integrating donor files, searches, and general procedures of the center or registry with the Registry.

"(d) COMMENT PROCEDURES.—The Secretary shall establish and provide information to the public on procedures, which may include establishment of a policy advisory committee, under which the Secretary shall receive and consider comments from interested persons relating to the manner in which the Registry is carrying out the duties of the Registry under subsection (b) and complying with the criteria, standards, and procedures described in subsection (c).

"(e) CONSULTATION.—The Secretary shall consult with the board of directors of the Registry and the bone marrow donor program of the Department of the Navy in developing policies affecting the Registry.

"(f) APPLICATION.—To be eligible to enter into a contract under this section, an entity shall submit to the Secretary and obtain approval of an application at such time, in such manner, and containing such information as the Secretary shall by regulation prescribe.

"(g) ELIGIBILITY.—Entities eligible to receive a contract under this section shall include private nonprofit entities.

"(h) RECORDS.—

"(1) RECORDKEEPING.—Each recipient of a contract or subcontract under subsection (a) shall keep such records as the Secretary shall prescribe, including records that fully disclose the amount and disposition by the recipient of the proceeds of the contract, the total cost of the undertaking in connection with which the contract was made, and the amount of the portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"(2) EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the recipient of a contract or subcontract entered into under this section that are pertinent to the contract, for the purpose of conducting audits and examinations.

"(i) PENALTIES FOR DISCLOSURE.—Any person who discloses the content of any record referred to in subsection (c)(5)(A) without the prior written consent of the donor or potential donor with respect to whom the record is maintained, or in violation of the standards described in subsection (c)(5)(B), shall be imprisoned for not more than 2 years or fined in accordance with title 18, United States Code, or both.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1991 and such sums as may be necessary for each of fiscal years 1992 and 1993.

"SEC. 379A. STUDY BY THE GENERAL ACCOUNTING OFFICE.

"(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study that evaluates—

"(1) the costs and benefits of the search process for an unrelated bone marrow donor among different marrow donor registries;

"(2) the extent to which marrow donor registries protect donor confidentiality;

"(3) the relationship between the Registry, individual marrow donor centers, and other marrow donor registries;

"(4) the effectiveness and appropriateness of policies and procedures of marrow donor centers, marrow transplant centers, and marrow donor registries, including—

"(A) the process of donor recruitment, including the policy of asking each donor whether the donor would want to donate more than one time;

"(B) the maintenance and updating of donor files; and

"(C) the policy of initially typing donors for A/B antigens only instead of initially typing for both A/B and D/R antigens;

"(5) the ability of the marrow donor registries to incorporate changes in medical research and clinical practice; and

"(6) the costs associated with tissue typing.

"(b) REPORT.—Not later than 1 year after the date of enactment of this part, the Comptroller General shall complete the study required under subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the findings made by the study and recommendations for legislative reform.".

(b) CONFORMING AMENDMENT.—Section 373 of the Act (42 U.S.C. 274a) is amended—

(1) in the section heading, by striking "and Bone Marrow Registry";

(2) by striking "(a)"; and

(3) by stiking out subsection (b).

SEC. 102. SAVINGS PROVISIONS

(a) IN GENERAL.—This title, and the amendments made by this title, shall not affect any legal document, including any order, regulation, grant, or contract, in effect on the date of enactment of this Act, or any administrative proceeding or lawsuit pending on the date, that relates to the bone marrow registry established under section 373(b) of the Public Health Service Act (as it existed before the amendment made by section 101(b) of this Act).

(b) CONTINUED EFFECT.—A legal document described in subsection (a) or an order issued in a lawsuit described in subsection (a) shall continue in effect until modified, terminated, or revoked.

(c) PROCEEDINGS.—In any administrative proceeding or lawsuit described in subsection (a), parties shall take appeals, and officials shall hold proceedings and render judgments, in the same manner with the same effect as if this title had not been enacted.

TITLE II—ORGAN TRANSPLANTS

SEC. 201. ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS.

(a) SECTION HEADING.—Section 371 of the Public Health Service Act (42 U.S.C. 273) is amended in the section heading by striking "assistance for".

(b) AUTHORITY REGARDING CERTAIN GRANTS.—

(1) SPECIAL PROJECTS.—Section 371(a)(3) of the Act (42 U.S.C. 273(a)(3)) is amended by striking "may make grants for special projects" and inserting the following: "may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) and other nonprofit private entities for the purpose of carrying out special projects".

(2) CONSIDERATIONS IN MAKING CERTAIN GRANTS.—Section 371(a) of the Act (42 U.S.C. 273(a)) is amended by striking paragraph (4).

(c) SERVICE AREA OF QUALIFIED ORGAN PROCUREMENT ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (E) of section 371(b)(1) of the Act (42 U.S.C. 273(b)(1)(E)) is amended to read as follows:

"(E) has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area,".

(2) CONFORMING AMENDMENT.—Section 401(c)(3) of the Health Omnibus Programs Extension of 1988 (Public Law 100-607; 42 U.S.C. 273 note) is repealed.

(d) EFFECTIVENESS REGARDING NUMBER OF ORGANS PROCURED.—Section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

"(2)(A) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall publish in the Federal Register a notice of proposed rulemaking to establish criteria for determining whether an entity meets the requirement established in paragraph (1)(E).

"(B) Not later than 1 year after the date of the enactment of this paragraph, the Secretary shall publish in the Federal Register a final rule to establish the criteria described in subparagraph (A).".

(e) TECHNICAL CORRECTION REGARDING PUBLIC LAW 100-607.—Section 402(c)(2) of the Health Omnibus Programs Extension of 1988 (Public Law 100-607; 102 Stat. 3115) is amended by inserting "at the end" after "the comma".

SEC. 202. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.

(a) MINIMUM QUALIFICATIONS OF CONTRACTOR.—Section 372(b)(1) of the Public Health Act (42 U.S.X. 274(b)(1)) is amended—

(1) in subparagraph (A), by striking "which is not engaged in any activity unrelated to organ procurement" and inserting "that has an expertise in organ procurement and transplantation"; and

(2) in subparagraph (B), to read as follows:

"(B) have a board of directors—

"(i) that includes representatives of organ procurement organizations (including organizations that have received grants under section 371), transplant centers, voluntary health associations, and the general public; and

"(ii) that shall establish an executive committee and other committees, whose chairpersons shall be selected to ensure continuity of leadership for the board.".

(b) RESPONSIBILITIES OF NETWORK.—Section 372(b)(2) of the Act (42 U.S.C. 274(b)(2)) is amended—

(1) in subparagraph (D)—

(A) by inserting "nationwide" after "organizations in the"; and

(B) by inserting "equitably among transplant patients" after "organs";

(2) by striking "and" at the end of subparagraph (I);

(3) by striking the period at the end of subparagraph (J) and inserting ", and"; and

(4) by adding at the end of the following new subparagraphs:

"(K) work actively to increase the supply of donated organs.

"(L) submit to the Secretary an annual report containing information on the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network.".

(c) TECHNICAL CORRECTION.—Section 372(b)(2)(F) of the Act (42 U.S.C. 274(b)(2)(F)) is amended by striking "compatability" and inserting "compatibility".

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on December 31, 1990.

SEC. 203. GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS.

Section 374 of the Public Health Service Act (42 U.S.C. 274b) is amended—

(1) in subsection (a), by striking "No grant" and all that follows through "373" the first place that the term appears and inserting the following: "No grant may be made under this part";

(2) in subsection (b)—

(A) by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(B) by striking "section 371" in paragraph (1) (as so redesignated) and inserting "section 371(a)(1)";

(C) by striking "paragraphs (2) and (3) of section 371(a)" in the first sentence of paragraph (2) (as so redesignated), and inserting "section 371(a)(2)"; and

(D) by adding at the end the following new paragraph:

"(3) Grants or contracts under section 371(a)(3) may be made for not more than 3 years."; and

(3) in subsection (c)—

(A) by inserting "or contract" after "grant" in the first sentence of paragraph (1);

(B) by inserting "and contracts" after "grants" each place the term appears in the second sentence of paragraph (1); and

(C) by inserting "or contract" after "grant" each place the term appears in subparagraphs (A) and (B) of paragraph (2).

SEC. 204. ADMINISTRATION.

(a) IDENTIFIABLE ADMINISTRATIVE UNIT.—Section 375 of the Public Health Service Act (42 U.S.C. 274c) is amended in the matter preceding paragraph (1) by striking ", during fiscal years 1985 through 1990,".

(b) STRIKING OF EXPIRED REQUIREMENT REGARDING CERTAIN REPORTS.—Section 375 of the Act (42 U.S.C. 274c) is amended—

(1) in paragraph (3), by striking "receiving funds under section 371"; and

(2) in paragraph (4), to read as follows:

"(4) provide information—

"(i) to patients, their families, and their physicians about transplantation; and

"(ii) to patients and their families about the resources available nationally and in each State, and the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network, in order to assist the patients and families with the costs associated with transplantation.".

SEC. 205. REPORT.

Section 376 of the Public Health Service Act (42 U.S.C. 274d) is amended in the first sentence by striking "The Secretary" and all that follows through "publish" and inserting "Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate,".

SEC. 206. STUDY BY GENERAL ACCOUNTING OFFICE AND AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by adding at the end the following new sections:

"SEC. 377. STUDY BY GENERAL ACCOUNTING OFFICE.

"(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study for the purpose of determining—

"(1) the extent to which the procurement and allocation of organs have been equitable, efficient, and effective;

"(2) the problems encountered in the procurement and allocation; and

"(3) the effect of State required-request laws.

"(b) REPORT.—Not later than January 7, 1992, the Comptroller General of the United States shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

"SEC. 378. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this part, there are authorized to be appropriated $8,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.".

(b) CONFORMING AMENDMENT.—Section 371 of the Public Health Service Act (42 U.S.C. 273) is amended by striking subsection (c).

SEC. 207. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall become effective on October 1, 1990, or on the date of the enactment of this Act, whichever occurs later.

TITLE III—SEVERABILITY

SEC. 301. SEVERABILITY.

If any provision of this Act, amendment made by this Act, or application of the provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions or amendments to any person or circumstance shall not be affected.

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Madam Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Madam Speaker, I yield myself such time as I may consume.

Mr. Speaker, the legislation before us represents a compromise between the provisions of H.R. 5146 which passed the House on July 23d and S. 2946 as reported by the Senate Labor and Human Resources Committee. I am pleased to report that it has not been necessary to request a conference to resolve the differences between these similar bills.

As in the original House bill, the legislation will extend for 3 fiscal years the authorization of appropriations for the activities of the Division of Organ Transplantation at the Department of Health and Human Services. These activities include the support of: (1) organ procurement organizations; (2) the national organ procurement and transplantation computer network; (3) the scientific registry on organ transplants; and (4) projects to increase organ donations.

The legislation extends the authorization of appropriations for these activities for 3 fiscal years.

In addition, S. 2946 strengthens and extends funding authority for the National Bone Marrow Donor Registry at levels sufficient to achieve the goal of registering 250,000 marrow donors.

Mr. Speaker, organ transplants represent a modern medical miracle.

With the development of new drugs to prevent organ rejection, the number of organ transplant operations and the life-span of transplant recipients will increase.

Unfortunately, despite promising results in the science of transplantation, we have been less successful in increasing the number of donated organs. Much more needs to be done to encourage Americans, particularly minority Americans, to sign donor cards, become bone marrow donors, and give the gift of life.

I urge support for the legislation and reserve the balance of my time.

□ 2050

Mr. MADIGAN. Madam Speaker, I yield myself such time as I may consume.

Congress originally enacted the National Organ Transplant Act to address problems related to: The availability of organs; the coordination of ongoing organ procurement activities; the lack of awareness of the public of the need for organ donation; and the financing of procurement and transplantation of organs. This act has proven to be successful, especially in educating the public about the need for organ donation.

This reauthorizing legislation makes a number of useful changes to current law.

The bill establishes a national bone marrow donor registry. The registry will establish a system for finding marrow donors for those who need bone marrow transplants; establish a system for patient advocacy; and attempt to increase the number of donors, especially from racial and ethnic minorities. Currently, there are approximately 100,000 registered bone marrow donors. The goal is to increase that number to 250,000.

The bill also repeals the new standards for Medicare reimbursement that would have required the service areas served by organ procurement organizations to procure organs from 50 donors a year. This requirement put the majority of organ procurement organizations in serious jeopardy of losing their Medicare certification. This would have resulted in serious damage to the organ procurement program.

I urge my colleagues to join me in supporting this legislation.

Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. UNSOELD). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the Senate bill, S. 2946.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the Senate bill was passed.

A motion to reconsider was laid on the table.

ADMINISTRATIVE DISPUTE RESOLUTION ACT

Mr. GLICKMAN. Madam Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 2497) to authorize and encourage Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Administrative Dispute Resolution Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) administrative procedure as embodied in chaper 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;

(2) administrative proceedings have become increasingly formal, costly, and lengthy resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes;

(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;

(4) such alternative means can lead to more creative, efficient, and sensible outcomes;

(5) such alternative means may be used advantageously in a wide variety of administrative programs;

(6) explicit authorization of the use of well-tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

(7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector but may also take the lead in the further development and refinement of such techniques; and

(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public.

SEC. 3. PROMOTION OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

(a) PROMULGATION OF AGENCY POLICY.—Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall—

(1) consult with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service; and

(2) examine alternative means or resolving disputes in connection with—

(A) formal and informal adjudications;

(B) rulemakings;

(C) enforcement actions;

(D) issuing and revoking licenses or permits;

(E) contract administration;

(F) litigation brought by or against the agency; and

(G) other agency actions.

(b) DISPUTE RESOLUTION SPECIALIST.—The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for the implementation of—

(1) the provisions of this Act and the amendments made by this Act; and

(2) the agency policy developed under subsection (a).

(c) TRAINING.—Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

(d) PROCEDURES FOR GRANTS AND CONTRACTS.—

(1) Each agency shall, review each of its standard agreements for contracts, grants, and other assistance and shall determine whether to amend any such standard agreements to authorize and encourage the use of dispute resolution.

(2)(A) Within 1 year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act and the amendments made by this Act.

(B) For purposes of this section, the term "Federal Acquisition Regulation" means the single system of Government-wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(a)).

SEC. 4. ADMINISTRATIVE PROCEDURES.

(a) ADMINISTRATIVE HEARINGS.—Section 556(c) of title 5, United States Code, is amended—

(1) in paragraph (6) inserting before the semicolon at the end thereof the following: "or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter"; and

(2) by redesignating paragraphs (7) through (9) as paragraphs (9) through (11), respectively, and inserting after paragraph (6) the following new paragraphs:

"(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

"(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;".

(b) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

"581.Definitions

"For the purposes of this subchapter, the term—

"(1) 'agency' has the same meaning as in section 551(1) of this title;

"(2) 'administrative program' includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

"(3) 'alternative means of dispute resolution' means any procedure that is used, in lieu of an adjudication as defined in section 551(7) of this title, to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

"(4) 'award' means any decision by an arbitrator resolving the issues in controversy;

"(5) 'dispute resolution communication' means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the netural, parties or nonparty participants; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

"(6) 'dispute resolution proceeding' means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

"(7) 'in confidence' means, with respect to information, that the information is provided—

"(A) with the expressed intent of the source that it not be disclosed; or

"(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

"(8) 'issue in controversy' means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement between the agency and persons who would be substantially affected by the decision but shall not extend to matters specified under the provisions of sections 2302 and 7121(c) of title 5;

"(9) 'neutral' means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

"(10) 'party' means—

"(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

"(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

"(11) 'person' has the same meaning as in section 551(2) of this title; and

"(12)) 'roster' means a list of persons qualified to provide services as neutrals.

"§ 582. General authority

"(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

"(b) An agency shall consider not using a dispute resolution proceeding if—

"(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative prcedent;

"(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

"(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

"(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

"(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

"(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

"(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

"§ 583. Neutrals

"(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

"(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

"(c) In consultation with the Federal Mediation and Conciliation Service, other appropriate Federal agencies, and professional organizations experienced in matters concerning dispute resolution, the Administrative Conference of the United States shall—

"(1) establish standards for neutrals (including experience, training, affiliations, diligence, actual or potential conflicts of interest, and other qualifications) to which agencies may refer;

"(2) maintain a roster of individuals who meet such standards and are otherwise qualified to act as neutrals, which shall be made available upon request;

"(3) enter into contracts for the services of neutrals that may be used by agencies on an elective basis in dispute resolution proceedings; and

"(4) develop procedurs that permit agencies to obtain the services of neutrals on an expedited basis.

"(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

"(e) Any agency may enter into a contract with any person on a roster established under subsection (c)(2) or a roster maintained by other public or private organizations, or individual for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.

"§ 584. Confidentiality

"(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless—

"(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

"(2) the dispute resolution communication has already been made public;

"(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

"(4) a court determines that such testimony or disclosure is necessary to—

"(A) prevent a manifest injustice;

"(B) help establish a violation of law; or

"(C) prevent harm to the public health or safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases

that their communications will remain confidential.

"(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any dispute resolution communication, unless—

"(1) the communication was prepared by the party seeking disclosure;

"(2) all parties to the dispute resolution proceeding consent in writing;

"(3) the dispute resolution communication has already been made public;

"(4) the dispute resolution communication is required by statute to be made public;

"(5) a court determines that such testimony or disclosure is necessary to—

"(A) prevent a manifest injustice;

"(B) help establish a violation of law; or

"(C) prevent harm to the public health and safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

"(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

"(7) the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

"(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

"(d) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

"(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

"(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

"(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

"(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

"(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

"(j) This section shall not be considered a statute specifically exempting disclosure under section 552(b)(3) of this title.

"§ 585. Authorization of arbitration

"(a)(1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to—

"(A) submit only certain issues in controversy to arbitration; or

"(B) arbitration on the condition that the award must be within a range of possible outcomes.

"(2) Any arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing.

"(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

"(b) An officer or employee of an agency may offer to use arbitration for the resolution of issues in controversy, if such officer or employee—

"(1) has authority to enter into a settlement concerning the matter; or

"(2) is otherwise specifically authorized by the agency to consent to the use of arbitration.

"§ 586. Enforcement of arbitration agreements

"An agreement to arbitrate a matter to which this subchapter applies is enforceable pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

"§ 587. Arbitrators

"(a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

"(b) The arbitrator shall be a neutral who meets the criteria of section 583 of this title.

"§ 588. Authority of the arbitrator

"An arbitrator to whom a dispute is referred under this subchapter may—

"(1) regulate the course of and conduct arbitral hearings;

"(2) administer oaths and affirmations;

"(3) compel the attendance of witnesses and production of evidence at the hearing under the provisions of section 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and

"(4) make awards.

"§ 589. Arbitration proceedings

"(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

"(b) Any party wishing a record of the hearing shall—

"(1) be responsible for the preparation of such record;

"(2) notify the other parties and the arbitrator of the preparation of such record;

"(3) furnish copies to all identified parties and the arbitrator; and

"(4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

"(c)(1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

"(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

"(3) The hearing shall be conducted expeditiously and in an informal manner.

"(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

"(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

"(d) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending part to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

"(e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless—

"(1) the parties agree to some other time limit; or

"(2) the agency provides by rule for some other time limit.

"§ 590. Arbitration awards

"(a)(1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

"(2) The prevailing parties shall file the award with all relevant agencies, along with proof of service on all parties.

"(b) The award in an arbitration proceeding shall become final 30 days after it is served on all parties. Any agency that is a party to the proceeding may extend this 30-day period for an additional 30-day period by serving a notice of such extension on all other parties before the end of the first 30-day period.

"(c) The head of any agency that is a party to an arbitration proceeding conducted under this subchapter is authorized to terminate the arbitration proceeding or vacate any award issued pursuant to the proceeding before the award becomes final by serving on all other parties a written notice to that effect, in which case the award shall be null and void. Notice shall be provided to all parties to the arbitration proceeding of any request by a party, nonparty participant or other person that the agency head terminate the arbitration proceeding or vacate the award. An employee or agent engaged in the performance of investigative or prosecuting functions for an agency may not, in that or a factually related case, advise in a decision under this subsection to terminate an arbitration proceed-

ing or to vacate an arbitral award, except as witness or counsel in public proceedings.

"(d) A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of title 9. No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

"(e) An award entered under this subchapter in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding, whether conducted under this subchapter, by an agency, or in a court, or in any other arbitration proceeding.

"(f) An arbitral award that is vacated under subsection (c) shall not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

"(g) If an agency head vacates an award under subsection (c), a party to the arbitration (other than the United States) may within 30 days of such action petition the agency head for an award of attorney fees and expenses (as defined in section 504(b)(1)(A) of this title) incurred in connection with the arbitration proceeding. The agency head shall award the petitioning party those fees and expenses that would not have been incurred in the absence of such arbitration proceeding, unless the agency head or his or her designee finds that special circumstances make such an award unjust. The procedures for reviewing applications for awards shall, where appropriate, be consistent with those set forth in subsection (a) (2) and (3) of section 504 of this title. Such fees and expenses shall be paid from the funds of the agency that vacated the award.

"§ 591. Judicial Review

"(a) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

"(b)(1) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 10(b) of title 9.

"(2) A decision by the head of an agency under section 590 to terminate an arbitration proceeding or vacate an arbitral award shall be committed to the discretion of the agency and shall not be subject to judicial review.

"§ 592. Compilation of information

"The Chairman of the Administrative Conference of the United States shall compile and maintain data on the use of alternative means of dispute resolution in conducting agency proceedings. Agencies shall, upon the request of the Chairman of the Administrative Conference of the United States, supply such information as is required to enable the Chairman to comply with this section.

"§ 593. Support services

"For the purposes of this subchapter, an agency may use (with or without reimbursement) the services and facilities of other Federal agencies, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals. An agency may accept voluntary and uncompensated services for purposes of this subchapter without regard to the provisions of section 1342 of title 31.".

(c) TECHNICAL AMENDMENT.—The table of sections at the beginning of chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

"581. Definitions.
"582. General authority.
"583. Neutrals.
"584. Confidentiality.
"585. Authorization of arbitration.
"586. Enforcement of arbitration agreements.
"587. Arbitrators.
"588. Authority of the arbitrator.
"589. Arbitration proceedings.
"590. Arbitration awards.
"591. Judicial review.
"592. Compilation of information.
"593. Support services.".

SEC. 5. JUDICIAL REVIEW OF ARBITRATION AWARDS.

Section 10 of title 9, United States Code, is amended—

(1) by redesignating subsections (a) through (e) as paragraphs (1) through (5), respectively;

(2) by striking out "In either" and inserting in lieu thereof "(a) In any"; and

(3) by adding at the end thereof the following:

"(b) The United States district court for the district wherein an award was made that was issued pursuant to section 590 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 582 of title 5.".

SEC. 6. GOVERNMENT CONTRACT CLAIMS.

(a) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 606) is amended by adding at the end the following new subsections:

"(d) Notwithstanding any other provision of this Act, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, United States Code, or other mutually agreeable procedures, for resolving claims. In a case in which such alternative means of dispute resolution or other mutually agreeable procedures are used, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his or her knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. All provisions of subchapter IV of chapter 5 of title 5, United States Code, shall apply to such alternative means of dispute resolution.

"(e) The authority of agencies to engage in alternative means of dispute resolution proceedings under subsection (d) shall cease to be effective on October 1, 1995, except that such authority shall continue in effect with respect to then pending dispute resolution proceedings which, in the judgment of the agencies that are parties to such proceedings, require such continuation, until such proceedings terminate.".

(b) JUDICIAL REVIEW OF ARBITRAL AWARDS.—Section 8(g) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)) is amended by adding at the end the following new paragraph:

"(3) An award by an arbitrator under this Act shall be reviewed pursuant to sections 9 though 13 of title 9, United States Code, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.".

SEC. 7. FEDERAL MEDIATION AND CONCILIATION SERVICE.

Section 203 of the Labor Management Relations Act, 1947 (29 U.S.C. 173) is amended by adding at the end the following new subsection:

"(f) The Service may make its services available to Federal agencies to aid in the resolution of disputes under the provisions of subchapter IV of chapter 5 of title 5, United States Code. Functions performed by the Service may include assisting parties to disputes related to administrative programs, training persons in skills and procedures employed in alternative means of dispute resolution, and furnishing officers and employees of the Service to act as neutrals. Only officers and employees who are qualified in accordance with section 583 of title 5, United States Code, may be assigned to act as neutrals. The Service shall consult with the Administrative Conference of the United States and other agencies in maintaining rosters of neutrals and arbitrators, and to adopt such procedures and rules as are necessary to carry out the services authorized in this subsection.".

SEC. 8. GOVERNMENT TORT AND OTHER CLAIMS.

"(a) FEDERAL TORT CLAIMS.—Section 2672 of title 28, United States Code, is amended by adding at the end of the first paragraph the following: "Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.".

"(b) CLAIMS OF THE GOVERNMENT.—Section 3711(a)(2) of title 31, United States Code, is amended by striking out "$20,000 (excluding interest)" and inserting in lieu thereof "$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe".

SEC. 9. USE OF NONATTORNEYS.

(a) REPRESENTATION OF PARTIES.—Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act, shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine—

(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

(b) REPRESENTATION AND ASSISTANCE BY NONATTORNEYS.—A person who is not an attorney may provide representation or assistance to any individual in a claim or dispute with an agency, if—

(1) such claim or dispute concerns an administrative program identified under subsection (a);

(2) such agency determines that the proceeding or procedure does not necessitate representative or assistance by an attorney under subsection (a)(2); and

(3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

(c) DISQUALIFICATION OF REPRESENTATION OR ASSISTANCE.—Any agency that adopts regulations under subchapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to—

(1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and

(2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons.

SEC. 10. DEFINITIONS.

As used in this Act, the terms "agency", "administrative program", and "alternative means of dispute resolution" have the meanings given such terms in section 581 of title 5, United States Code, as added by section 4(b) of this Act.

SEC. 11. SUNSET PROVISION.

The authority of agencies to use dispute resolution proceedings under this Act and the amendments made by this Act shall terminate on October 1, 1995, except that such authority shall continue in effect with respect to then pending proceedings which, in the judgment of the agencies that are parties to the dispute resolution proceedings, required such continuation, until such proceedings terminate.

The SPEAKER pro tempore. Is a second demanded?

Mr. JAMES. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes, and the gentleman from Florida [Mr. JAMES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this law, which has previously passed the House, authorizes each Federal agency to promulgate policies that address a full range of alternative means of dispute resolutions in each administrative program of such agency.

It directs each agency to designate a senior official to be the dispute resolution specialist to implement the provisions of the act. It authorizes the use of such techniques as negotiation, mediation, arbitration, or related procedures.

The process is voluntary on the parties, but they must use a binding arbitration process or other dispute resolution technique.

The agency is authorized to use neutrals as conciliators, facilitator, or mediator, and the act provides a sunset authorization for these procedures on October 1, 1995.

As the prime sponsor of this bill, I introduced it to try to bring some common sense back to Government by authorizing Federal agencies to use these settlement tools, like conciliation, mediation, and mini trials, as an alternative to litigation in the Federal sector.

In my judgment, this process will offer great opportunity to see if the process works so that all over this country of ours we can try to move to resolve disputes, both in the Federal Government, as well as in courts of this country, through means other than expensive and time-consuming litigation.

The Senate amendments basically have been agreed to by all parties. The administration supports this bill, as well as the American Bar Association.

Madam Speaker, I reserve the balance of my time.

Mr. JAMES. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 2497, the Administrative Disputes Resolution Act, as amended by the Senate.

This legislation recognizes that administrative proceedings have become increasingly characterized by excessive delays, high cost, and formality. Alternative means of dispute resolution, when entered into with the consent of all of the parties, offer the possibility of decisions which are faster, less expensive and less contentious, as well as more creative and efficient. H.R. 2497 contemplates a significant increase in the use of mediation, settlement negotiations, arbitration, and similar approaches to compromise and settlement. The potential for its use in resolving many of the less complex claims by both creditors and the Government arising out of the savings and loan crisis is manifest.

I would take particular note of one of the Senate amendments relating to the award of attorneys fees and expenses to a private party if an agency vacates arbitral award. This provision was placed in H.R. 2497 in committee at my initiative, because it is important in such circumstances to restore the parties to the status quo before the commencement of the arbitration. If we do not do this, the financial disincentive will most certainly discourage recourse to arbitration. The Senate counterpart bill, S. 971, originally dealt with this problem by providing that if an agency vacates an award a private party may petition for an award of attorneys fees and expenses pursuant to the Equal Access to Justice Act. The problem there, however, is that the Equal Access to Justice Act requires the petitioning party to have prevailed. Since this will not have been the case, Senator GRASSLEY wisely offered an amendment, which was adopted in committee, which restored almost all of the House bill language applicable to the circumstances.

Other Senate amendments first, raise from $20,000 to $100,000 the ceiling on claims which can be settled or compromised without prior written approval by the Attorney General, second, except from the bill's coverage appeals involving pay, health or life insurance, retirement benefits or certain personnel practices, and third, assure a certain degree of public access to the proceedings and the decision taken.

Madam Speaker, unfortunately one Senate amendment presents a point of considerable confusion. It appears to be an indirect and convoluted attempt to apply the provisions of the Freedom of Information Act to these dispute resolution deliberations and proceedings. That result would undermine the confidentiality of these proceedings and discourage the use of the option created in H.R. 2497. For that reason it is our hope that this ambiguous provision will be interpreted so as to insure the full effectiveness and utilization of the Administrative Dispute Resolution Act.

Madam Speaker, I ask my colleagues to join with me in support of H.R. 2497, the Administrative Disputes Resolution Act, as amended by the other body.

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Madam Speaker, I yield back the balance of my time.

Mr. GLICKMAN. Madam Speaker, I compliment the gentleman from Florida [Mr. JAMES] for the work he did in the area of the Equal Access for Justice Act.

I also want to thank very much Chairman FRANK, the chairman of my subcommittee who was most responsible in dealing with this particular issue, and also Chairman BROOKS and Mr. FISH, as well as Philip Harter of the American Bar Association, the folks at the Administrative Conference of the U.S. Public Citizen, the Department of Justice and the Members from the other body, Mr. GRASS-

LEY, Mr. LEVIN, Mr. KOHL, and Mr. LEAHY for their help.

In closing, I would say this bill sets up a structure for the use of dispute resolution and establishes guidelines for deciding when dispute resolution in the executive branch is and is not appropriate. Once implemented, this process should save the Federal Government and the private sector millions of dollars.

Mr. JAMES. Madam Speaker, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Florida.

Mr. JAMES. Madam Speaker, I would like to thank the gentleman from Kansas [Mr. GLICKMAN] for the introduction of the bill and for his assistance in all of the technical aspects of the bill. He did a fine job.

This is a noncontroversial bill. It will speed up resolution especially in the scenario whereby the party that would dare back off from the order—they are not required to adhere to the order—but if they do, at least they must pay the costs and expenses of the other side in order to proceed, and that will have a deterrent effect to prevent them from walking away from the proceedings. So there is sufficient leverage to make it work.

I want to thank the gentleman so much for his help and guidance and for filing the bill. I am sure it will help the Government save tremendous expense. Both sides will benefit from this proceeding.

I thank the gentleman for yielding.

Mr. GLICKMAN. I thank the gentleman from Florida.

Mr. FRANK. Madam Speaker, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Massachusetts [Mr. FRANK], the chairman of the subcommittee.

Mr. FRANK. I thank the gentleman for yielding. I just want to acknowledge the work of the gentleman from Kansas.

This is in some ways a companion to the bill we passed earlier dealing with negotiations in the regulatory area. We understand, those of us on the Judiciary Committee, the efficiency gains society can make from dealing better, more efficiently with our disputes. I commend the gentleman. This is one of those things that a lot of people talk about, but he has taken the initiative in it, and we were delighted that the gentleman from Kansas did all of the heavy lifting on this while we just accommodated him. He is entitled to a great deal of credit for the kind of legislation which does not get a lot of attention, it is not terribly controversial, but we think has a real potential to improve the efficiency with which our society functions. I want to acknowledge that on this as on so many other things, the ranking minority member, Mr. JAMES, has been helpful and cooperative, and we have been able to put this together in a good fashion.

I thank the gentleman.

Mr. GLICKMAN. Madam Speaker, I thank my colleagues for their comments.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 2497.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GLICKMAN. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to H.R. 2497 just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

CRIMINAL VICTIMS PROTECTION ACT OF 1990

Mr. BROOKS. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 1931) to prevent the discharge in a chapter 13 bankruptcy proceeding of certain debts arising out of the debtor's operation of a motor vehicle while legally intoxicated, as amended.

The Clerk read as follows:

S. 1931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Victims Protection Act of 1990".

SEC. 2. NONDISCHARGEABILITY OF CERTAIN DEBTS ARISING FROM UNLAWFUL DRIVING WHILE INTOXICATED OR IMPAIRED.

(a) AMENDMENT TO CHAPTER 5.—Section 523(a)(9) of title 11, United States Code, is amended to read as follows:

"(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance; or".

(b) AMENDMENT TO CHAPTER 13.—Section 1328(a)(2) of title 11, United States Code, is amended by inserting "or 523(a)(9)" after "523(a)(5)".

SEC. 3. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR RESTITUTION IMPOSED FOR COMMITTING CRIMES.

Section 1328(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "or" at the end,

(2) in paragraph (2) by striking the period at the end and inserting"; or", and

(3) by adding at the end the following:

"(3) for restitution included in a sentence on the debtor's conviction of a crime.".

SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. FISH. Madam Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The genetleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from New York [Mr. FISH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, the Criminal Victims Protection Act makes needed changes to the way in which the Bankruptcy Code treats debts that arise out of illegal conduct—namely, legal liabilities resulting from driving while intoxicated, and criminal restitution obligations. Both these provisions are essential to prevent misuse of the Bankruptcy Code as a means to evade responsibility for reprehensible actions where a debt to society or to an individual must be paid.

The first section of the bill expands a 1984 addition to the Bankruptcy Code which already prevents a drunk driver from using a chapter 7 bankruptcy liquidation proceeding to escape a court judgment. Some drunk drivers have attempted to circumvent the 1984 provision by resorting to a chapter 13 reorganization proceeding, under which debts are generally discharged—that is, canceled—once a debtor has completed a 3-5 year "good faith" payment plan.

The bill closes this loophole by extending the important 1984 victim protection provisions to chapter 13, so that drunk drivers cannot escape the consequences of their conduct. The bill also expands the 1984 provision to cover all drunk driving claims, whenever filed, and all instances of driving while intoxicated—whether as a result of alcohol or other drugs.

The second section of the bill corrects a similar serious gap in the Bankruptcy Code's treatment of criminal restitution, which became obvious 4

months ago. The Bankruptcy Code already considers criminal restitution to be a nondischargeable debt under chapter 7 liquidation. That was made clear in the 1986 Supreme Court decision of Kelly versus Robinson. However, on May 29, 1990, the Supreme Court in the Pennsylvania Department of Public Welfare versus Davenport decision unfortunately ruled that criminal restitution debts can be evaded in chapter 13 reorganization proceedings, because the chapter 7 exception does not apply there.

Section 2 corrects this inequitable result by making criminal restitution payments nondischargeable in chapter 13 as well, thereby cutting off any manipulation of the bankruptcy system by a debtor with criminal restitution obligations.

The legislation before us now is a substitute for language which the Senate passed in September. The Senate version was also included in the Senate crime bill.

The language before us was drafted in response to testimony received on both these bankruptcy issues by my Subcommittee on Economic and Commercial Law. The substitute language makes both drunk driving related debts and criminal restitution obligations nondischargeable in chapter 13, as they currently are in chapter 7.

In addition, the 1984 drunk driving provision is rewritten to include all drunk driving claims involving death or personal injury, whether they have reached final judgment when the bankruptcy case is filed or not, and all instances of driving while intoxicated, whether by alcohol or by another drug or substance. This language passed the House this summer as title 19 of H.R. 5269, the 1990 omnibus crime bill.

It is our understanding that the Senate agrees to and will accept our language.

Mr. FISH. Madam Speaker, I yield myself such time as I may consume.

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Madam Speaker, I am pleased to speak in support of S. 1931 as amended—bankruptcy legislation designed to prevent individuals from avoiding intoxicated driving related liabilities and criminal restitution obligations.

Members of Congress, I believe, share a common conviction that intoxicated drivers who kill or injure others—and persons ordered to pay restitution in criminal cases—must not be permitted to avoid their responsibilities by seeking Bankruptcy Code protection. A major purpose of bankruptcy law, as we all know, is to assist the honest debtor confront financial distress and maximize recoveries for the benefit of creditors collectively. Individuals who inflict harm on others by wrongful conduct—and incur related debts to society and their victims—must be encouraged to bear the consequences of their own actions.

Bankruptcy Code section 523(a) currently carves out 10 exceptions to discharge in recognition of the fact that a debtor's interest in obtaining a "fresh start" must be subordinated to the interests of others with greater equities. The exception to discharge for drunk driving related liability—incorporated in subsection (a)(9)—is an important example. Our society cannot tolerate the carnage on our highways that often results when people choose to drink and drive. The rights of those who suffer from the actions of a drunk driver must take precedence over the desire of the drunk driver to wipe the slate clean.

S. 1931 as amended improves the language of the section 523(a)(9) exception to discharge in two significant ways: First, the requirement that the debt arise "from a judgment or consent decree entered in a court of record against the debtor" is deleted—thus obviating the necessity of having a determination by a nonbankruptcy court. Second, the new formulation clearly expands the reference to intoxication beyond the alcohol context by explicitly referring to the use of "alcohol, a drug, or another substance."

This legislation closes a loophole in current law that may permit intoxicated drivers to misuse the bankruptcy process. Debtors who complete plan payments in a chapter 13 case—the adjustment of debts provisions—obtain a broader discharge than that available in a liquidation case. Although the broader discharge serves in part as an inducement to file under chapter 13—and make some future income available to creditors—a discharge of debt relating to driving while intoxicated is simply unacceptable. The societal interest both in discouraging such driving and compensating victims must take precedence over more general considerations of bankruptcy policy.

A similar principle applies to criminal restitution obligations. A criminal court's interest in effectuating sentences that include restitution requirements must not be subordinated in a chapter 13 case to bankruptcy related considerations. The recent Supreme Court decision in Pennsylvania versus Davenport—holding that restitution payments "are dischargeable under chapter 13"—necessitates the action we take today.

I commend the chairman of our committee, the gentleman from Texas [Mr. BROOKS], for bringing this important legislation to the floor. My colleague on the committee, the gentleman from Pennsylvania [Mr. GEKAS], deserves special credit for introducing legislation in June to overrule the Davenport decision and make criminal restitution payments nondischargeable in chapter 13 cases. The legislation before us reflects his important contribution.

I urge my colleagues to join me in supporting S. 1931 as amended.

Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the Senate bill, S. 1931, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

The title of the Senate bill was amended so as to read: "A bill to amend title 11 of the United States Code with respect to the nondischargeability of debts arising from unlawful driving while intoxicated or impaired and arising from restitution imposed for committing crimes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PATENTS IN SPACE ACT

Mr. KASTENMEIER. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 2946) to amend title 35, United States Code, with respect to the use of inventions in outer space.

The Clerk read as follows:

H.R. 2946

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patents in Space Act".

SEC. 2. SPACE INVENTIONS.

(a) AMENDMENTS TO TITLE 35, UNITED STATES CODE.—Chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"§ 105. Inventions in outer space

"(a) Any invention made, used, or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used, or sold within the United States for the purposes of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a

party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space.

"(b) Any invention made, used, or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used, or sold within the United States for the purposes of this title if specifically so agreed in an international agreement between the United States and the state of registry.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"105. Inventions in outer space.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsections (b), (c), and (d) of this section, the amendments made by section 2 shall apply to all United States patents granted before, on, or after the date of the enactment of this Act, and to all applications for United States patents pending on, or filed on, or after such date of enactment.

(b) AMENDMENTS NOT TO AFFECT PRIOR DECISIONS.—The amendments made by section 2 shall not affect any final decision made by a court or the Patent and Trademark Office before the date of the enactment of this Act with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

(c) AMENDMENTS NOT TO AFFECT CERTAIN PENDING CASES.—The amendments made by section 2 shall not affect the right of any party in any case pending in a court on the date of the enactment of this Act to have the party's rights determined on the basis of the substantive law in effect before such date of enactment.

(d) AMENDMENTS TO BE PROSPECTIVE IN APPLICATION.—The amendments made by section 2 shall not apply to any process, machine, article of manufacture, or composition of matter, an embodiment of which was launched before the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rules, a second is not required on this motion.

The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, today I bring before the House the bill H.R. 2496, the Patents in Space Act. This legislation is essential to protect American inventions in outer space. Americans have made important gains and discoveries in space at great risk and cost to the American people, including the loss of American lives. Now we must act to assure that scientific advances in space are protected by our intellectual property laws.

At the outset, I would like to express my appreciation to the chairman of the Committee on Science, Space, and Technology, Mr. ROE, and to the ranking minority member of my subcommittee, Mr. MOORHEAD, for their work on patents in space.

The Patents in Space Act has been the subject of extensive hearings in the Subcommittee on Courts, Intellectual Property, and the Administration of Justice, which I chair, and in the Committee on Science and Technology. The bill passed the House in the 99th and 100th Congresses and passed the Senate for the first time in May of this year under the leadership of Senator DECONCINI. On September 18 of this year, the Judiciary Committee favorably reported H.R. 5598, which includes as title I, the Patents in Space Act. The report on H.R. 5598, the Patent Competitiveness and Technological Act of 1990, will be filed today. We will work hard next year to enact the other four titles in H.R. 5269, including title II, transgenic animal patent improvements, a measure that is also necessary to address the important advances that are taking place in American technology, and in this case, biotechnology.

The act states that inventive or other activities which occur in outer space on board U.S. space vehicles—including both shuttle and any space stations—shall be treated for patent purposes as though these activities occurred within the United States. Specifically, the bill amends the patent law by adding a new section 105 to title 35 of the United States Code, which provides that an invention made, used or sold on space vehicles under the jurisdiction or control of the United States shall be deemed to have been made or used within the United States. Special rules apply to space objects flown under the registry of a foreign state. The terms "foreign state" and "state of registry" include international intergovernmental organizations such as the European Space Agency.

This legislation provides a clear, definite and understandable set of rules for determining when and how U.S. patent law applies in outer space. This clarification serves to enhance the commercialization of space and to encourage investors in the space shuttle and future space stations or platforms to commercially utilize space. This clarity has also become important in international agreements dealing with cooperative activities in outer space, such as the intergovernmental agreement for space station freedom. The legislation is now necessary to implement certain intellectual property provisions in the intergovernmental agreement for space station freedom.

The bill serves our objectives. First, it provides that actions which occur in outer space can infringe a U.S. patent.

Second, this bill assures that space inventions are patented according to the first to invent system consistent with U.S. law and not pursuant to a first to file system.

Third, this bill aims to regulate prior art and thus would provide needed conformity in law.

Finally, this bill assures those concerned with national or international security that inventions in outer space are controlled by the Invention Secrecy Act.

This bill is prospective in application. It will not apply to any process, machine, article of manufacture, or composition of matter, that is launched before the effective date of this bill. If, however, an existing patent covers a product launched after the effective date, use of the product aboard a U.S. vehicle without consent could constitute an act of infringement.

I urge my colleagues to support this bill.

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Madam Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 2946, the Patents in Space Act, which would clarify the application of the U.S. patent law to activities aboard American vehicles in outer space. This legislation originated with the National Aeronautics and Space Administration [NASA] and is strongly supported by the administration, the intellectual property law community, as well as by several trade associations and individual companies.

In both the 99th and 100th Congress legislation very similar to H.R. 2946 passed the House without opposition only to quietly die in the Senate. Perhaps the wait for passage of this legislation has been worthwhile in that it has been refined and improved upon this Congress. A good example of this is the provision in H.R. 2946 which clarifies that U.S. patent law will not apply to foreign-registered space objects unless the foreign state of registry so agrees. This would include international intergovernmental agencies like the European Space Agency.

It is the opinion of various academic and industrial patent law experts that H.R. 2946 merely restates current law. Nonetheless, I agree with those who believe that it is important for us to resolve the issue in a timely fashion, as opposed to leaving its resolution to the judiciary. This is especially true in light of the increasing potential for the commercialization of space and the resulting use of inventions in the process. Therefore the thrust of H.R. 2946 is to amend chapter 10 of title 35 United States Code to provide that

"any invention made, used or sold" on space vehicles under the jurisdiction of the United States shall be deemed to have been made, used, or sold within the United States. In my opinion this legislation represents a constructive change in the law that will enhance the commercialization of space.

I would like to commend the chairman of the Subcommittee on Courts, Intellectual Property and the Administration of Justice Mr. KASTENMEIER, for his excellent work and perseverance on the legislation. Also, the members of the Science, Space, and Technology Committee have considered this legislation and made positive contributions to it. I would like to commend them for their efforts, especially those of the chairman of the committee, Mr. ROE, and its ranking member, Mr. WALKER. Madam Speaker, this bill has strong support and I urge its passage.

Madam Speaker, I reserve the balance of my time.

Mr. KASTENMEIER. Madam Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. ROE], the distinguished chairman of the Committee on Science, Space, and Technology.

Mr. ROE. Madam Speaker, I rise in strong support of S. 459, inventions in outer space. The Science, Space, and Technology Committee, as well as the House and Senate Judiciary Committees, have worked for a long time to develop legislation that will define and describe the governance of patents for inventions in outer space. Today's bill is critical, not only to clarify the law for an emerging commercial industry, but also to enable the accomplishment of international cooperative projects in space such as the space station freedom.

I want to commend all of my colleagues who have labored on this legislation. I want to thank the gentleman from Pennsylvania [Mr. WALKER], ranking Republican member of the Committee on Science, Space, and Technology. I also want to extend special recognition and thanks to the gentleman from Wisconsin [Mr. KASTENMEIER], and the gentleman from California [Mr. MOORHEAD] of the Judiciary Committee for their expertise and cooperation.

Madam Speaker, this bill will establish unequivocally that an object made, used, or sold in outer space will be considered to be made, used, or sold in the United States if one of two criteria are met. The first criteria is if the spacecraft is under the jurisdiction or control of the United States, unless otherwise provided in an international treaty or unless the spacecraft is registered to a foreign state. The second criteria is, irrespective of the jurisdiction or control, if provided or stipulated in an international treaty to which the United States is a party.

I would like to take a moment to review the legislative history of this bill, In the 99th Congress, the House acted favorably on H.R. 4316, and in the 100th Congress we passed H.R. 1510. Neither bill was taken up by the other body. In this Congress two bills have been introduced, H.R. 2946 and H.R. 5598. In addition, H.R. 5145, the Omnibus Space Commercialization Act of 1991, contains the substance of this legislation.

The bill which we are considering today, S. 459, reflects the essential language and intent of these previous bills, both of which received substantial consideration in the House.

Madam Speaker, the need for this legislation is still widely acknowledged today, despite the length of time it has taken to bring it to fruition. This bill will establish a climate of legal certainty for intellectual property rights in space at a time when it is crucial to nurture and facilitate the development of a commercial space industry.

We are presently engaged in the design and development of the space station, the centerpiece of our future space program. We have several international partners in this endeavor, but we also expect that the private sector will position themselves to exploit unique capabilities of this facility. A clear legal framework for the applicability of patent laws is absolutely necessary in order for these partners and users to justify their investments.

Madam Speaker, I would like to include as a part of my statement a recent letter I received from Adm. Richard H. Truly, Administrator of the National Aeronautics and Space Administration, in which he expresses his strong desire to see this legislation enacted. I would like to point out that while the United States had signed intergovernmental agreements for the space station over 2 years ago, those agreements have no enforcement validity without this legislation in place. This is of great concern to our international partners and is widely viewed as a bellweather of congressional support for serious international cooperation.

Madam Speaker, this is enabling legislation for the new era in space development and commercialization. It will serve us well into the 21st century and I ask for its speedy passage.

Madam Speaker, this concludes my statement.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, DC, August 14, 1990.

Hon. ROBERT A. ROE,
Chairman, Committee on Science, Space, and Technology, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I wish to express my appreciation for your efforts and those of your Committee and its staff in formulating the latest version of H.R. 2946, the "Patents in Space Act." Your efforts have been invaluable in obtaining support for the bill by United States industry and by our international partners in the Space Station Freedom Program. The early enactment of this legislation is important to ongoing relationships with our international partners in developing understandings and agreements for the use of Space Station Freedom.

As you know, clarity and certainty as to the applicability of U.S patent law to space activities will have a direct impact on U.S. competitiveness, on private investment in commercial activities in space, and on our relationships with the international partners in the Space Station Freedom Program. With the resolution of patent law applicability to space activities, private entities will be more inclined to invest in commercial activities in space, and U.S. competitiveness will benefit.

Of more immediate importance, however, is the fact that while the United States has signed the Intergovernmental Agreement, (IGA) for Space Station Freedom, the agreement cannot be entered into force without the enactment of legislation such as H.R. 2946. The fact that the U.S. has not yet been able to enter the IGA into force, almost two years after its signing, is of great concern to all our partners, because it is being perceived that U.S. support for the IGA or even for the program itself may be waning.

Since a Senate version of H.R. 2946 has now been passed, I believe that Congress is now close to enacting legislation which clarifies the application of U.S. patent law to space activities. To ensure that the IGA is duly entered into force and that we send the proper signal to our Space Station Freedom partners, I urge you to report H.R. 2946 favorably out of your Committee at the earliest opportunity. I appreciate your efforts in support of this important matter.

Sincerely,

RICHARD H. TRULY,
Administrator.

Mr. MOORHEAD. Madam Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. WALKER], the ranking member of the Committee on Science, Space, and Technology.

Mr. WALKER. Madam Speaker, I thank the gentleman for yielding me this time.

Madam Speaker, the passage of the inventions in space bill is a significant step in promoting the use of space for commercial purposes. With the coming experiments in space on advanced materials and pharmaceuticals, it is vital that any inventions resulting from such research receive the full protection of U.S. patent law. In that manner the investment U.S. companies make to further new technologies and subsequent industrial development will be fully rewarded.

I consider this legislation to be of such importance that I included it in my omnibus space commercialization bill introduced earlier in this Congress. It is only by planning for the future now that we can ensure our country of a healthy share of the many benefits that a space-based industrial sector will bring.

Mr. YOUNG of Florida. Mr. Speaker, I rise in strong support of S. 2946, the National Marrow Donor Program Reauthorization Act.

Let me thank the chairman of the committee, my colleague from California HENRY WAXMAN, and the ranking Republican member, ED MADIGAN, for their strong support of the National Marrow Donor Program and for their efforts to see legislation enacted to reauthorize for 3 years this program which has proven to be today's modern medical miracle.

Chairman WAXMAN cosponsored H.R. 4580, legislation I introduced last April, to begin its movement through the House and Senate on its path to enactment. Eight months later, we have completed another of the major steps during the last 6 years in which I have worked to establish and fund this national registry of volunteer marrow donors who offer the gift of life and hope to more than 9,000 Americans with leukemia and 60 other blood disorders.

Marrow transplantation is a cure for these previously fatal diseases which strike children and adults of all ages and races. Before establishment of this registry, it was impossible to identify unrelated marrow donors for the more than 80 percent of leukemic patients in need of transplant. Today, less than 3 years after the program's activation, one American every day is given a second chance at life through a marrow transplant made possible by this registry.

With the vision and leadership of Dr. Robert Graves, president of the board of the National Marrow Donor Program, and Adm. Elmo Zumwalt, Jr., its chairman of the board, the dream of a National Marrow Donor Program turned to reality in 1987 with the appropriation of funds to the Navy by the Appropriations Subcommittee on Defense.

Under the Navy's guidance and leadership, the national registry became operational on December 16, 1987, when the first donor and patient were matched and brought together. Since that time, 475 individuals and families have been given the chance for a new life free from life-threatening disease.

The secret to the success of the national program is the generous spirit of the 215,000 Americans who have taken a quick and simple blood test that allows them to be entered into the national registry. Last year at this time, the goal of the national program was a typed registry of 100,000 volunteers.

We have more than doubled that goal in large part due to the appropriation of $15 million by this Congress in May and October to cover the $75 per person cost of the laboratory fees for the testing of volunteers. In addition to supporting general donor recruitment efforts, these funds are being used to encourage minority donors to volunteer for the program. Because genetics play a major role in the successful matching of donors and patients, black patients will most likely find a donor in the black community, Hispanic patients will most likely find their donor in the Hispanic community, and Asian patients will find their donor in the Asian community.

There is a need for greater minority participation in the program because less than 6 percent of the volunteers are from minority groups. This makes it virtually impossible for patients from these sectors of the population to find that perfect stranger who can provide them with the living gift of life.

With the reauthorization of the National Marrow Donor Program, the Congress reaffirms its long-term commitment to this program and allows us to accelerate our efforts to find a matched donor, anywhere in the world, for every person in need of a marrow transplant. This program truly has become international in scope as associations have been established and are being developed in Canada, Great Britain, France, and Israel, among other nations. Representatives of the national program are actively working to establish links to programs in the Soviet Union, and a United States delegation is in Japan this week to finalize development of a national registry there. These international ties are already producing lifesaving results as a French donor has been found through our national registry for a Soviet patient who received a transplant in Seattle. A Canadian woman is alive today and is playing a major role in the development of the national program after receiving the gift of life from a United States donor in Washington, DC.

Mr. Speaker, the worldwide enthusiasm and excitement generated by this program was evident here in the Capitol this week as more than 1,000 Members of Congress, congressional staff, and visitors to the Capitol turned out Wednesday to enroll in the national registry. Within 5 hours, the capacity of the laboratory assigned to process these blood tests was exceeded and another 800 volunteers were placed on a waiting list to sign up next Tuesday and Wednesday in a followup testing session in the House and Senate.

Giving hope and life to do so many through the National Marrow Donor Program has been one of the most rewarding experiences of my life. I look forward to working with my colleagues on the House Appropriations Committee and the chairman and members of the authorizing committee to continue our efforts to improve this miraculous process which has proven to unite the world by crossing geographic and political borders. The goal of the National Marrow Donor Program is simple and rests at the heart of all mankind. It is to allow one person to anonymously give to a perfect stranger the greatest gift of all—the gift of life.

Mr. MOORHEAD. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KASTENMEIER. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. UNSOELD). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 2946.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 2946, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. KASTENMEIER. Madam Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 459) to amend title 35, United States Code, with respect to the use of inventions in outer space, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

□ 2020

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. MOORHEAD. Madam Speaker, reserving the right to object, and I shall not object, I want to give the chairman of the subcommittee an opportunity to explain what he is doing.

Mr. KASTENMEIER. Madam Speaker, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Madam Speaker, the purpose of this request is to pass the Senate bill which is identical to the House bill, H.R. 2946, with one minor technical error, which the House has just passed. It is my purpose in taking up the Senate bill that Mr. ROE will subsequently take up a concurrent resolution to correct the one typographical error so that the bill can be sent to the President for signature.

Mr. MOORHEAD. Madam Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 459

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INVENTIONS IN OUTER SPACE.

(a) IN GENERAL.—Chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"§ 105. Inventions in outer space

"(a) Any invention made, used or sold in outer space on a space object or component thereof under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for the purpose of this title, except with respect to any space object or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party, or with respect to any space object or component thereof that is carried on the registry of a foreign state in accordance

with the Convention of Registration of Objects Launched into Outer Space.

"(b) Any invention made, used or sold in outer space on a space object or component thereof that is carried on the registry of a foreign state in accordance with the Convention on Registration of Objects Launched into Outer Space, shall be considered to be made, used or sold within the United States for the purpose of this title if specifically so agreed in an international agreement between the United States and the state or registry.".

(b) TABLE OF CONTENTS.—The table of sections of chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"105. Inventions in outer space.".

SEC. 2. SPECIAL RULES.

(a) EFFECTIVE DATE.—Subject to subsections (b), (c), and (d) of this section, the amendments made by the first section of this Act shall apply to all United States patents granted before, on, or after the date of enactment of this Act, and to all applications for United States patents pending on or filed on or after such date of enactment.

(b) FINAL DECISIONS.—The amendments made by the first section of this Act shall not affect any final decision made by the court or the Patent and Trademark Office before the date of enactment of this Act with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

(c) PENDING CASES.—The amendments made by the first section of this Act shall not affect the right of any party in any case pending in a court on the date of enactment of this Act to have the party's rights determined on the basis of the substantive law in effect before such date of enactment.

(d) NON-APPLICABILITY.—The amendments made by the first section of this Act shall not apply to any process, machine, or article or manufacture, or composition of matter, an embodiment of which was launched prior to the date of enactment of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 2946) was laid on the table.

CORRECTING A TECHNICAL ERROR IN ENROLLMENT OF S. 459, USE OF INVENTIONS IN OUTER SPACE

Mr. ROE. Madam Speaker, I offer a concurrent resolution (H. Con. Res. 393) to correct a technical error in the enrollment of the bill (S. 459) to amend title 35, United States Code, with respect to the use of inventions in outer space, and ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 393

Resolved by the House of Representatives (the Senate concurring), that in the enrollment of the bill (S. 459) to amend title 35, United States Code, with respect to the use of inventions in outer space, the Secretary of the Senate shall make the following correction:

In section 2(d), strike "article or manufacture" and insert "article of manufacture".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. MOORHEAD. Madam Speaker, reserving the right to object, I do so only for the purpose of giving the chairman of the Committee on Science, Space, and Technology an opportunity to explain this.

Mr. ROE. Madam Speaker, I thank my distinguished colleague for yielding.

In response to my colleague's inquiry, the concurrent resolution changes one typographical error in a Senate bill. The resolution now before Members requires the Secetary of the Senate, in section 2(d) of S. 459 to replace the phrase "article for manufacture" with the phrase "article of manufacture."

This is a simple change of one word, "for" to "of." This is the language that the Senate originally intended to pass. The change has no substantive effect whatsoever.

As just stated, this will enable the language that we have all agreed upon to go to the President for signature.

Mr. MOORHEAD. Madam Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 3045, COPYRIGHT REMEDY CLARIFICATION ACT

Mr. KASTENMEIER. Madam Speaker, I call up the conference report on the bill (H.R. 3045) to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House on October 16, 1990.)

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 30 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I urge my colleagues to approve the conference report on H.R. 3045, the Copyright Remedy Clarification Act. This act is a very simple piece of legislation. As its name implies, it clarifies that the intent of Congress, when it passed the 1976 Copyright Act, was that all remedies for copyright infringement would apply to States, as well as to private individuals. Because certain recent Supreme Court cases raised doubts about whether the 1976 language was sufficient to achieve this result, legislation is needed.

There were sound policy reasons for Congress' decision in 1976, as my subcommittee heard in our hearings this Congress from the Register of Copyrights and other experts in the copyright and sovereign immunity fields. The decision in 1976 was arrived at after extensive negotiations among all interested parties. It was a fair balance then, and it continues to be today.

As a result of today's uncertainty about whether all copyright infringement remedies are applicable when States infringe a copyright, real problems have arisen. In too many cases, States are unlawfully using copyrighted materials without paying for them. There is no valid reason why States that infringe copyrights should be held to a lesser standard than is applied to a private individual. To hold States to a lesser standard would violate the essential purposes of our copyright laws and the constitutional mandate supporting those laws. It would discourage creativity and dissemination of copyrighted works to the public, and it would be unfair and nonsensical. For example, unless we clarify the law, a private institution such as the University of Southern California would have to pay damages if it violates UCLA's copyright, but UCLA would be immune if it violated USC's copyright.

For these many reasons, Congress must clarify that States are fully liable for copyright infringement. This bill does just that and I urge my colleagues to approve the conference report.

Mr. MOORHEAD. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of the conference report on H.R. 3045, the Copyright Remedy Clarification Act. I would like to commend the

chairman of the Subcommittee on Courts, Intellectual Property and the Administration of Justice, Mr. KASTENMEIER, as well as the other members of the subcommittee, especially the gentleman from New York [Mr. FISH] the gentleman for Illinois [Mr. HYDE] and the gentleman from North Carolina [Mr. COBLE] for their excellent work on the legislation. Likewise Senators DECONCINI, HATCH, and SIMON are to be commended for their initiative on the legislation in the other body.

This important legislation serves the overriding purpose of restoring Congress' original intent when it enacted the 1976 Copyright Act that: The same remedies shall be available for such infringements by State governments as are available for infringements by private parties.

Madam Speaker, each of the various remedies contained in the Copyright Act, including injunctions, actual and statutory damages and attorneys fees and costs, is an integral part of the comprehensive remedy that Congress devised in 1976 and is essential to the act's overall effectiveness. The legislation now before us recognizes this important point and deserves the immediate and full support of the House.

Mr. KASTENMEIER. Madam Speaker, I yield back the balance of my time.

Mr. MOORHEAD. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 5311, DISTRICT OF COLUMBIA APPROPRIATIONS ACT 1991, AND AGAINST ITS CONSIDERATION

Mr. HALL, from the Committee on Rules, submitted a privileged report (Rept. No. 101-957) on the resolution (H. Res. 536 waiving certain points of order against consideration of the conference report on the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration, which was referred to the House Calendar and ordered to be printed.

CONFERENCE REPORT ON H.R. 5311, DISTRICT OF COLUMBIA APPROPRIATIONS, ACT 1991

Mr. HALL. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 536 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 536

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. HALL] is recognized for 1 hour.

Mr. HALL from Ohio. Madam Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN] pending which I yield myself such time as I may consume.

Madam Speaker, House Resolution 536 waives all points of order against the conference report on H.R. 5311, the District of Columbia appropriation bill for fiscal year 1991 and against its consideration. The rule further provides the conference report shall be considered as having been read.

Madam Speaker, this is the conference report that the House has voted down on two previous occasions. Because of the action of the House the conferees have agreed to make three basic changes to the conference report which should make the bill acceptable to the House and the President.

Specifically, the conferees agreed to continue existing law restrictions over both Federal and District funding for abortions.

They reduced funding in the bill by $2 million in departmental administration and eliminated an earmark for the Department of Education.

Finally, the Senate has receeded to the mandatory sentencing amendment and the conferees have agreed to address the measure in the next Congress.

Madam Speaker, I urge my colleagues to support House Resolution 536.

Madam Speaker, for the purpose of debate I yield to the gentleman from Tennessee.

□ 2130

Mr. QUILLEN. Madam Speaker, I thank the gentleman for yielding to me. The gentleman has explained the provisions of the rule. This has been worked out so that it is agreeable to all the parties involved. I know of no dissension whatsoever. It was favorably reported by the Rules Committee, as a matter of fact, unanimously.

So therefore, Madam Speaker, I urge the adoption of the rule and the adoption of the conference report.

Mr. HALL of Ohio. Madam Speaker, I yield 5 minutes to the gentleman from California [Mr. DIXON].

Mr. DIXON. Madam Speaker, I would like to thank the members of the District of Columbia Appropriations Committee, both on the Democratic side and on the Republican side, for their diligence and hard work, and particularly the ranking member, the gentleman from New Jersey [Mr. GALLO], who has exhibited considerable skill and tact in resolving difficult and complex issues.

The gentleman from Ohio correctly indicated that this third conference report on H.R. 5311 reflects three changes. First, we put in language that the existing law as it relates to the District of Columbia using its own local money, shall be the desire of this House, and that is that local funds cannot be used for abortions, for rape, incest, and ectopic pregnancies.

The second issue for those who felt there was too much money in this bill, we have trimmed another $2 million, and now this bill is $10.6 million lower than last year.

It is one of two appropriation bills that are lower than last year, and although I fail to understand why since it was within its 302 allocation and it was lower than last year's bill, that in fact there were those Members who thought it had too much money in it.

The third issue, and the Senate receded on this item, was a Senate concept that the Federal Government, that is, the Congress, should mandate enhanced penalties and mandatory sentences for the District of Columbia. We felt this was a major intrusion into the Home Rule Act, and that at a time when the District's prisons are already overcrowded, and the city is under court orders to reduce overcrowding, the District of Columbia could not absorb the penalty enhancements and mandatory sentences that start at 10 years, go to 20 years, and 30 years for convictions of violent crimes.

Second, on this same issue there is a great financial expense associated with the Senate proposals and, if anything, the matter should be studied. So the Senate receded on that issue.

Madam Speaker, it is a conference report that I will bring to the House and ask the Members to adopt because it is the 11th hour. There is no alternative. The House is once again mandating to the residents of the District how they are to spend their own money, and once again we will see the President gleefully sign this bill; but it is a compromise that is necessary at this point in time. It is one that I certainly am not happy with.

Mr. QUILLEN. Madam Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. HALL of Ohio. Madam Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. DIXON. Madam Speaker, I call up the conference report on the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenue of said District for the fiscal year ending September 30, 1991, and for other purposes.

The Clerk read the title of bill.

The SPEAKER pro tempore. Pursuant to House Resolution 536, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of today, Friday, October 26, 1990.)

The SPEAKER pro tempore. The gentleman from California [Mr. DIXON] will be recognized for 30 minutes, and the gentleman from New Jersey [Mr. GALLO] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. DIXON].

Mr. DIXON. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, just a minute ago I indicated what this conference report does. I will certainly recommend an aye vote on it. I am certainly not happy with it.

The gentleman from Michigan behind me just asked what this bill does. This bill establishes that the existing law as it relates to the right of the District of Columbia to spend its local money on abortions shall be restricted to those cases where the life of the mother would be endangered if the fetus were carried to term.

This bill, in an effort to meet the cries that it has to much money, is $10.6 million less than last year. How can there be too much money when it is within the revised 302 allocation? In any event, we have reduced the bill by $2 million. We have taken $1 million from the additional $15 million that we put into education, and we have taken $1 million away from the Department of Administrative Services where we had provided $1 million to partially restore the cuts in their budget base.

So what this conference report does is get the bill down to the White House so that the District can get its Federal payment and move on with their business.

Certainly I think with the new District Administration that will be coming in this January, it will be a new day here in the District of Columbia, and they will demonstrate that they have a right to govern and make their own decisions. And I hope next year this House and the President of the United States will change their attitude on this issue.

Mr. GALLO. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I closed my remarks yesterday by saying that we were at the 11th hour.

Today, we are approaching midnight.

Earlier today, the conference committee on H.R. 5311 met to consider changes to this report that will be acceptable to the Members of this body.

We cut $2 million from this bill in the area of administrative services and salary reserves.

We also removed language which will allow current law to stand regarding abortion in the District of Columbia.

That was a painful decision for many of us.

But, we have done what we had to do to bring this bill back to the floor with enough support to pass it.

With these thoughts in mind, and with the understanding that the hour is late, I urge my colleagues to support this amended conference report to move the process forward.

Mr. HOAGLAND. Madam Speaker, I'd like to take this opportunity to explain my vote against the D.C. appropriations bill yesterday. My major objection to the bill was its inclusion of over $500 million in Federal dollars to a city that is already oversubsidized.

Allow me to clarify my objections with a few facts and figures. In Nebraska, total government expenditures—Federal, State, and local—were $3,814 per person in fiscal year 1989. In the District of Columbia, per capita outlays in the same year were $8,291—more than twice the per capita outlay in Nebraska.

Federal payments to Nebraska in fiscal year 1989 for highways, education, et cetera, were $448 per person, or about 12 percent of the total government expenditures. Federal payments to the District of Columbia in fiscal year 1989 for government services were $2,417 per person, or 29 percent of total government expenditures.

It is simply difficult to justify supporting a budget which is so obviously unfair to my region of the country. How could I justify this to my Nebraska constituents? How can I agree to what amounts to a transfer of Nebraska-earned dollars to a city whose management is so poor, who is so seemingly undeserving of aid from Nebraska?

One might argue that D.C. residents are more poverty-stricken and need assistance from Nebraska. But the facts tell a different story. In 1988, per capita income in the District was $21,389. In Nebraska it was $14,774.

This is probably the case because the Federal Government supports a safe, secure, relatively wealthy middle class of Government workers in the District. In 1989, 40.6 percent of those who worked in the District of Columbia were employed by the Federal or District governments or by Metro. In 1989, 19.9 percent of those who worked in Nebraska were employed by Federal, State, and local governments. Surely it is not lack of job security which makes District residents deserving of our aid.

Other relevant facts: Nebraska, consisting of 77,227 square miles, has 9,870 miles of paved highway to maintain. We do that within the $3,814 annual per capita expenditure. The District has 68.25 square miles.

If the District is considered a State, its per capita income of $21,389 ranks it second among all States, after only Connecticut. Nebraska's per capita income of $14,774 ranks it 30th.

Madam Speaker, I would ask unanimous consent to include in the RECORD a chart which illustrates some of the more pertinent statistics.

Madam Speaker, the District of Columbia should be subsidizing Nebraska, not vice versa. How can I vote for a subsidy from Nebraska taxpayers to the District of Columbia when Mayor Marion Barry has spent 12 years doling out hundreds of millions of dollars of city contracts to his friends, with alleged kickbacks in some instances of 5 to 15 percent, when there is also evidence that the District is extremely lax in the collection of taxes. The District has a contracting system that does not work; it has a tax collection system that does not work; it has far too many employees. Why should Federal taxpayers outside the District subsidize it?

If the argument is that the District provides services to residents of the neighboring States of Virginia and Maryland that commute to work in the District each day, the appropriate solution is an earnings tax on those commuters, not additional taxes on Nebraskans.

I can only hope that the next District mayor's administration proves to be more effective, and that this city begins to operate with far less money. Until it does, or until I am otherwise convinced that these discrepancies are necessary, I cannot support its appropriations bills.

Thank you, Madam Speaker.

GOVERNMENT SPENDING IN NEBRASKA AND THE DISTRICT OF COLUMBIA

Item	District of Columbia	Nebraska
Income per capita, 1988	$21,389	$14,774
Percent employed by Federal Government	32.3	2.5
State and local government	8.3	17.4
Total (percent)	40.6	19.9
Total Government general expenditures [1] per capita, fiscal year 1989	$8,291	$3,814
Federal payments per capita, fiscal year 1989	$2,417	$448
Percent of total Government expenditures	(29)	(12)

[1] Total Government expenditures include all current expenditures including capital outlays, utilities, and public employee retirement systems.
Source: U.S. Bureau of the Census.

Mr. GALLO. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DIXON. Madam Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

REPORT ON STATUS OF APPROPRIATION BILLS

(Mr. HOYER asked and was given permission to address the House for 1 minute.)

Mr. HOYER. Madam Speaker, I would bring to the attention of the House that the status now is that we have passed six appropriation bills through the entire process and we have six of those bills on the desk of the President of the United States.

We have now just passed the District of Columbia conference report and that is pending in the Senate, along with the Transportation conference report and military construction report, which means that we have those three in the Senate.

The Labor, Health and Human Services and Education just passed today in the Senate and is also on the President's desk, or on the way to the President's desk. There were two amendments in disagreement, and I understand the Senate deferred on those, so that bill is now complete.

The Foreign Operations bill has been completed. The paperwork is in process and we expect to be considering that bill on Saturday.

The Interior and legislative bills are still in conference. We would, of course, hope that they would be completed tonight and would be considered tomorrow.

Madam Speaker, I would point out to the House that all the conference reports without exception are within the allocations ascribed to those committees, so I think we are well within our fiscal constraints that we have adopted pursuant to the budget resolution.

Madam Speaker, I would also state that as a member of the D.C. Subcommittee of the Appropriations Committee, I look forward to next year's consideration of that bill. We are going to have new leadership in the District of Columbia. There are two candidates running for that office, one whom I favor, and I know another one who others in this body favor. Both are looking toward bringing a breath of fresh air and a new look to the administration of government in the District of Columbia.

I think that will have the effect, frankly, of giving this body and the body on the other side the opportunity to look at the District of Columbia in a new way, to establish a new relationship, to bring some optimism to the administration of the government of the District of Columbia, particularly as it relates to its relationship to the House and the Senate.

□ 2140

I wanted to say that one of the things that concern the chair to the committee and, I know, others is that from time to time—and I might say that there are others who do this as well, and I have done it from time to time—we intrude upon the home rule that we have given to the District of Columbia. From time to time they have problems like any government has problems. I think it is a testimony to the District of Columbia that in this most recent election they made a selection, they made a commitment to new directions in their government. I look forward with a great deal of personal optimism to reestablishing a relationship of trust and confidence with the Hill and city hall.

I might say, Madam Speaker, that I am so pleased to see the chairman of the Committee on Rules come into the Chamber. We have waited with bated breath for his appearance here in the Hall of the House. He now awaits with bated breath the papers that he is looking for.

Madam Speaker, I am reminded, while the chairman of the Committee on Rules is here, that the Committee on Rules—and I want to thank the gentleman from New York [Mr. SOLOMON], as well and all the other members of the Committee on Rules—who have been on call hour to hour and minute to minute, almost, because of the way that as we close this session out, we have so many conference reports coming out, we have so many bills coming out, that they have been on call at all times, unlike some other committees who can say, "We have done our business."

The business of the Committee on Rules is never done. Therefore, they are always on call.

We who are served by the Committee on Rules appreciate their efforts and commitment to the performance of their duties.

Mr. SOLOMON. Madam Speaker, will the gentleman yield?

Mr. HOYER. I am glad to yield to the gentleman from New York.

Mr. SOLOMON. Madam Speaker, I thank the gentleman for yielding, and I thought he might be happy to yield.

Madam Speaker, I just want to tell the gentleman that we are so fortunate to have a chairman of the Committee on Rules who, during these long, long hours of our meetings, manages to get a little frivolity involved, and it makes our lives a little easier. So we thank the gentleman.

Mr. HOYER. I thank the gentleman for asking me to yield.

Madam Speaker, I have found the chairman a serious student of government and of the processes of democracy, but from time to time he does have the Irish wit that we all love and which endears him to us all.

Mr. MOAKLEY. Madam Speaker, I am grateful and thank the two gentleman for filling up time in such a wonderful way.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 358) entitled "An act to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes."

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 358, IMMIGRATION ACT OF 1990

Mr. MOAKLEY. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 531 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 531

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore (Mrs. UNSOELD). The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Madam Speaker, I yield the customary 30 minutes to my dear friend, the gentleman from Tennessee [Mr. QUILLEN] the ranking minority member of the Committee on Rules, and pending that, I yield myself such time as I may consume.

PARLIAMENTARY INQUIRY

Mr. ROYBAL. Madam Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. ROYBAL. Madam Speaker, it is my understanding that the managers

of this bill, both the majority and the minority, are in favor of the rule. There are many in this House who are against the rule. Is it possible for those who are against the rule, to also have time allotted to us? By that I mean one-third of the time.

The SPEAKER pro tempore. The gentleman from California [Mr. ROYBAL] will have to have time yielded to him from either the gentleman from Massachusetts [Mr. MOAKLEY] or the gentleman from Tennessee [Mr. QUILLEN].

Mr. ROYBAL. Would it be in order then, Madam Speaker, to ask each side whether or not at this time they can each give 5 minutes so that those who are opposed to the rule may be heard?

The SPEAKER pro tempore. The Chair will advise the gentleman that is not a parliamentary inquiry.

Mr. MOAKLEY. Madam Speaker, I will be glad to yield 10 minutes to the gentleman from California [Mr. ROYBAL], and I am sure my dear friend, the gentleman from Tennessee [Mr. QUILLEN] will probably yield 10 minutes to the gentleman from California [Mr. ROYBAL].

Mr. QUILLEN. Madam Speaker, I will be glad to do so, although this is setting a kind of record. We have never done this before.

Mr. MOAKLEY. I know, but I think, to accommodate the gentleman from California in this situation——

Mr. QUILLEN. Madam Speaker, I will be glad to yield the time to the opposition to the rule, whatever is required.

Mr. MOAKLEY. Madam Speaker, that is why he is my very dear friend from Tennessee.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Madam Speaker, House Resolution 531 waives all points of order against the conference report to S. 358, the Immigration Act of 1989, and against its consideration. The rule further provides that the conference report is to be considered as having been read when called up for consideration.

Madam Speaker, this conference report that the House will consider tonight will substantially revise the policy of the United States in regards to legal immigration. Under this conference agreement, the amount of visas that will be issued will increase from about 500,000 to 700,000 for the years 1992, 1993, and 1994, the amount will then drop to 675,000 for 1995.

In addition, Madam Speaker, the conference agreement will enhance the enforcement provisions of immigration law with respect to criminal aliens, strengthens provisions of the 1986 act relating to antidiscrimination, provides for 140,000 visas for persons on the basis of job skills, and provides for a new category of diversity visas that will broaden the regional base from which people come to the United States.

Madam Speaker, I would like to take a moment to express my deep gratitude to House and Senate conferees on this bill for maintaining my provision to offer temporary protection to refugees who have fled war-torn El Salvador. As many Members know, this has been an issue that has been close to my heart for many years.

I truly believe that temporarily suspending deportations for these people, given all the atrocities perpetrated by the left and the right, is an appropriate response—and may very well save some lives. Madam Speaker, this humanitarian gesture would not have been possible without the commitment and strong support of my dear friend from Texas, the chairman of the Judiciary Committee, JACK BROOKS. Nor would it have been possible without the valuable support of the chairman of the Immigration Subcommittee, my colleague and friend from Connecticut, BRUCE MORRISON.

Madam Speaker, I also want to extend a special thank you to the senior Senator from Massachusetts, TED KENNEDY, and the distinguished Senator from Wyoming, ALAN SIMPSON—for their assistance and understanding on this matter. It is the right thing to do.

□ 2150

Mr. QUILLEN. Madam Speaker, as my colleagues know, in the Committee on Rules, when we had the hearing, the only opposition to the rule and the bill was by the gentleman from California [Mr. ROYBAL]. He made some good points, but in defense of our position on the bill itself, I feel that the cards that are being issued for employment purposes are a good thing, and should be continued.

Madam Speaker, the rule was reported unanimously, as I recall, by voice vote.

It now is almost 10 o'clock in the closing hours of the session. I am glad to yield to the opposition 10 minutes, whoever on this side would desire to be heard, or on the other side, as a matter of fact.

Madam Speaker, I have no request for time, other than the gentleman from California [Mr. ROYBAL], and I reserve the balance of my time.

Mr. MOAKLEY. Madam Speaker, I yield 10 minutes to the gentleman from California [Mr. ROYBAL].

The SPEAKER pro tempore. The gentleman from California [Mr. ROYBAL] is recognized for a total of 20 minutes.

Mr. ROYBAL. Madam Speaker, I thank the gentleman from Massachusetts [Mr. MOAKLEY] and the gentleman from Tennessee [Mr. QUILLEN] for yielding this time to me.

Madam Speaker, I listened very carefully to everything that was said by both the minority and the majority. But not a single one of them actually explained what was in the bill. So, it seems to be that that duty is now left up to me, and I am going to read part of that bill just to make sure that it is clearly written in the RECORD.

What they failed to say was that the conferees simply wrote into the conference report the start of a national identification system. They failed to tell us that that particular identification system was not in the original House bill. It was also not in the original Senate bill. Therefore, it was not within the scope of the conference.

In spite of that they went ahead, and wrote into the conference a national identification system. All this was written in the bill, not the report. The report however is very cleverly covered with lots of very fancy additions, but we all know that report language has no effect in law. The bill, in section 522, says that the Attorney General shall—not may, but shall—establish a pilot program under which in the case of three States which provide for the issuance of drivers licenses and related identification documents in accordance with a system described in section B.

Now one thing they did not do was to say that there would be reimbursement to these poor three States that are going to be saddled with this duty.

Now one may ask what is section B? Section B is system requirements. And it simply says that the system for the issuance of licenses or documents must be consistent with a biometric identification system developed pursuant to section 9105 of the Anti-Drug Abuse Act of 1988. It says nothing about the Immigration Act, but the Anti-Drug Abuse Act of 1988.

Then it goes on to say that it must require that an applicant for a drivers license or other forms of identification be issued a temporary drivers license or other form of identification upon demonstrating qualifications and that the drivers license, or other form of identification, be made to the resident address of the applicant after a waiting period of 30 days in which the State has used that biometric identification system and other means to confirm the identification information presented by the applicant.

Madam Speaker, my colleagues might ask: What is this biometric identification system? I do not think there is anyone in the House that really knows unless they did the work that I did in looking it up.

So, I went first to the Webster's new Collegiate Dictionary, and this is what it says. It defines biometric, or biometry, as a statistical analysis of biological observations and phenomena. It was very difficult for me to really

know what that means. In seeking to find out more about it, I discovered that biometric information means the use of unique physical characteristic to identify a person beyond a shadow of a doubt. Types of identification which can be used include fingerprinting, which we know is being used, skull measurements; in other words, everyone's skull in the three States that are going to be used as a guinea pig will be measured; retinal scans will be made—they are going to look into everyone's eyes, straight into their eyes, take all kinds of measurements, and then take a sample of their voice. That is what a biometric identification entails.

Three States of the Union are going to be used as guinea pigs to do just that.

Now the argument is that everybody is going to have to have an identification card issued to them. Well, that is not so. To begin with, only the residents or three States will get the full treatment. No more. Not all the American people. When we finally get to finalize this, then all the American people will have to have some form of identification tag issued to them after they went through the biometric identification system that I just described.

Madam Speaker, it seems to me that what has to be done in this particular instance is to look at the situation the way it really is, and not install or start a system that has already failed in other countries.

What will it do to the American people? Well, we don't really know because no public hearings were ever held. The truth of the matter is that this was done without a single moment of debate. There were no hearings held by any committee of the House or Senate anywhere in the country, not even here in Washington, DC. The establishment of such a system was the brainchild of someone from the other body who wanted it, and got it done.

Madam Speaker, I do not think that the American people want a national ID system. They, in my opinion, will not stand still for a national identification system, particularly if where they have to go through this biometric analysis that has to be done. If a vote in favor of the rule guarantees passage then I ask, "Are we going to tell the American people, after we do this, that this Congress was too weak to give them a civil rights act, but in its place we gave them a national identification system?"

□ 2200

We will also have to tell them that we did this all by ourselves without hearings, and without debate. It will be a sad day in this country if everyone had to carry an identification card in their possession.

Are we going to really not vote against this rule, and then have to explain to the American people why it was more important for this House to start a national identification plan before we even considered the budget of the United States that is going to run this country for the next year?

Why, I ask, is this so important? Why can we not ask them to take this conference report back, take this ID section out, and then bring the Immigration Act back to us maybe tomorrow, or whenever it may be?

I am prepared to vote for it, without a national identification system. I don't think the American people deserve the kind of treatment one sees in the conference report before the House and ask for a no vote on the rule.

Madam Speaker, I yield back the balance of my time.

Mr. MOAKLEY. Madam Speaker, how much time did the gentleman yield back?

The SPEAKER pro tempore (Mr. MAZZOLI). The gentleman from California [Mr. ROYBAL] yielded back 1 minute.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. COLEMAN].

Mr. COLEMAN of Texas. I thank the gentleman for yielding me this time.

Mr. Speaker, I want to join in the remarks of the gentleman from California [Mr. ROYBAL] and say to Members here in the House that I come before you opposed to this rule, because I favored the Immigration Act when it passed the House. What this rule makes in order, unfortunately, is a conference report that took the House legislation and added the things that the Senate wanted, and did great harm to the House legislation.

Mr. Speaker, I would point out to all Members that they just brought over this thing from the Senate. The problem with what they brought over is that we could talk about it at length, and we need to talk about it before we try to adopt this rule.

As I understand the procedures of the House, we have an opportunity to defeat this rule and send the Committee on Rules back to permit taking out the national identification card system referred to by the gentleman from California [Mr. ROYBAL].

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. COLEMAN of Texas. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Speaker, the gentleman from Texas [Mr. COLEMAN] knows that if that happens, there is no conference report, and it is all over.

Mr. COLEMAN of Texas. Mr. Speaker, could we have it in disagreement, a technical disagreement with the Senate?

Mr. MOAKLEY. If the gentleman will yield further, you could do that in an appropriations bill. But on an authorization bill, that would just dissolve the conference report and there would be no more conference report.

Mr. COLEMAN of Texas. Mr. Speaker, reclaiming my time, then we would be put in a position of having to wait 2 whole months before we could get a national identification card system for America. I for one am willing to wait those 2 months.

Mr. Speaker, let me tell Members what else they did to this bill. I do not know what happened to our House conferees over there. A lot of Members voted for this legislation because we believed in family reunification. We thought it was important for America to have not a policy of having families separated, but one that would bring them back together.

The act did that as it passed this House. But guess what they did in conference? They made great reductions in the number of visas that will be permitted to permit that family reunification.

Mr. Speaker, let me give Members some numbers. We should be ashamed in bringing before this House a conference report that does the devastating things this does to what we passed in this House. We ought to stand up for what we did in this House, on both sides of the aisle. We fought for a good bill and had a good bill.

The second preference category, as Members know, was designed to allow U.S. permanent residents to reunite with spouses and children. There currently is a very long backlog of applications. Do you know how many? According to the State Department, it is 400,000, nearly half a million.

Due to that backlog, permanent residents must wait a minimum of 22 months to be reunited with their spouses and children. Consequently, our House bill would have granted 115,000 visas per year for the spouses and minor children of permanent residents. Unmarried adult sons and daughters of permanent residents would have received 35,000 visas under a separate visa category. What did the conference do? They reduced that number down to 88,000 for spouses and minor children, and only 26,000 for unmarried adult sons and daughters of permanent residents.

In short, the conference took the second preference category for visas and reduced it by 24 percent. Would that we could do that in some of our spending programs.

First preference visas, in addition to that, for unmarried sons and daughters of U.S. citizens and their children, were reduced from 54,000 in the House bill to only 23,400 in the conference report, a 57-percent reduction.

I do not think that speaks very well for this legislation. So for those Members that were going to vote for this rule in the belief that what we have

done is to provide for family reunification to go a long way toward helping that, I say, at least in terms of first preference, you have not even gone halfway toward helping, and certainly in terms of the second preference category. That is a shame. We should not allow it.

I have not even had an opportunity yet to read the conference report as it relates to this series of alleged reforms that we said we were making in the asylum adjudication process. For those that are attorneys, perhaps, or those that may have practiced in this area of law, many of you know the big issue here is due process. We have not even seen that.

From what they brought us so far that we know about, I recommend that Members not be so quick to vote for this particular rule.

Mr. MOAKLEY. Mr. Speaker, I yield 4 minutes to the gentleman from California [Mr. BERMAN], a member of the conference committee.

Mr. BERMAN. I thank the gentleman from Massachusetts [Mr. MOAKLEY] for yielding me this time.

My friends, the gentleman from California [Mr. ROYBAL] and the gentleman from Texas [Mr. COLEMAN], have urged a no vote on the rule. In the specifics of some of their points, they are absolutely correct.

The provision that was added in the conference committee with respect to not a national identifier, but a pilot project, by the way, totally divorced from any national clearing system, was not included in either the House or Senate bills as introduced or passed by either House. It is clearly outside the scope of the conference report.

The gentleman from Texas [Mr. COLEMAN] points out that the provisions of the House bill have been compromised and diluted to some extent. He is also correct.

The procedural rules in the Senate allowed that strong-minded, strong-willed Senator, to have exceptional influence on the ability of the conference committee to impose and legislate along the lines of the House bill.

But I suggest to Members of this Congress who believe in immigration, who believe in family reunification, who accept the principles that caused the House to support this bill in the first place, that the true comparison here is not with what the bill was when it left the House, or was what the bill was when it left the Immigration Subcommittee, but with existing law.

In almost every respect, in so many ways, thousands and thousands, tens of thousands of people in this country, and even larger numbers of people who are close relatives of people in this country, will be given opportunities by this legislation that they do not have under present law to come out of the shadows, to avoid exploitation, and to reunify with their families.

□ 2210

I opposed the efforts of the conference committee to reduce the results of our House action. I know the House bill was a better bill, but I cannot, and I would suggest that no one in good conscience can argue that this bill should be defeated because of the fact of that provision.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield?

Mr. BERMAN. I am happy to yield to the gentleman from California.

Mr. ROYBAL. Mr. Speaker, I do not think anyone is saying that the bill should be defeated. We think that the rule must be defeated because you went beyond the scope of the conference because you did not put any money in for the States to be reimbursed and for other purposes.

We are asking that the rule not be adopted. Let it go back to the Senate, and then we can fix it up after that.

Mr. BERMAN. In response to my friend's questions, I point out that many of these provisions in this bill are provisions that my friend from California [Mr. ROYBAL] has been fighting for, for many, many years.

The chairman of the Rules Committee has explained what will happen if we defeat this rule, and his inability to structure a rule which allows us to disagree with one provision which is obnoxious to many Members of this Congress.

The effect of defeating this rule is to require a new conference committee. If there is one thing I know after 8 years of being here it is that on this issue, with these conferees, there will be no new conference committee, and significant, important gains that we achieved will be lost for this session. People will be hurt, and thousands and tens of thousands of people that this bill will help will not receive the help they need.

Mr. QUILLEN. Mr. Speaker, I yield 7 minutes to the gentleman from New York [Mr. FISH].

Mr. MOAKLEY. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. FISH].

The SPEAKER pro tempore. The gentleman from New York [Mr. FISH] is recognized for 8 minutes.

Mr. FISH. Mr. Speaker, I thank my friends for yielding.

Mr. Speaker, my remarks will be primarily in response to the gentleman from California, because I think we all know that if he prevails on the rule, then that is the end of immigration; that is the end of efforts in three different Congresses when the Senate has acted on this bill, and certainly the end for any further consideration in this Congress.

I credit the gentleman from California with his humor on defining biometric. The bill in front of us, incidentally, refers to the use of biometric identification systems as developed pursuant to the Anti-Drug-Abuse Act of 1988. So we have a history. We know that what we are talking about here is fingerprints, not the old-fashioned fingerprints, but the new technology of readable fingerprints.

The gentleman should also realize that his home State of California has already started developing exactly this same process.

The words "I.D." in the statute are not a funny thing to bring us a national I.D. I.D.'s are what you have today in any place that issues a driver's license. If you do not care to drive, but you wish an identification card similar to a driver's license so that you can use it for check cashing purposes or other things, you can get that in lieu of a driver's license. We included this in the statute simply as a matter of courtesy.

So the gentleman says to us what is the situation as it really is? The situation as it really is is that we passed in 1986 the Immigration Reform Act, at which time we listed a number of identifiers that could be used for anybody in the United States to present himself for employment to prove that he was eligible for that employment. One of these identifiers was a driver's license, and another was a Social Security card, documents that have proven to be fairly unreliable, easy to forge, and have therefore created problems of reliability both for the employer and for the job applicant.

The gentleman will remember that the General Accounting Office has found that employers' confusion and uncertainty about the verification system has caused much of the discrimination that has been found and has advocated a simpler identification system.

So what we have before us is a concept. We do not know if it is going to work. That is why it is a pilot program. But the idea is to see whether or not we could provide an identification system which will be reliable, which will be tamper-proof on which the employer could rely which the applicant for a job could present in the absence of all of these other types of identifiers and say this is it, this is the foolproof document and if you do not believe this, and if you discriminate against me, I am going to go to the Office of Special Counsel in the Department of Justice and bring suit. This removes any reason to discriminate.

I really do not understand why it is that some of our colleagues feel just the reverse. It seems to me that the reason for our claim is because everybody in the United States, not just a newly legalized alien, but everybody who wants to, they do not have to, it is

truly optional, may have the I.D. or the driver's license. It seems to me it is far more likely to prevent discrimination rather than cause it, because the system would be reliable and the employee could trust it as a true form of identification.

Mr. COLEMAN of Texas. Mr. Speaker, will the gentleman yield?

Mr. FISH. I am happy to yield to my friend from Texas.

Mr. COLEMAN of Texas. Mr. Speaker, I thank the gentleman for yielding, and I thank the gentleman from Massachusetts for yielding an extra minute. I think one of the questions that certainly I think we can get into is the issue about why some of us do feel differently about it, and we can do that later on, but I think for this 1 minute we have perhaps the gentleman could tell us which three States have been selected to begin the national identification program and how much it will cost, and if the Federal Government intends to pay for all of it?

Mr. FISH. We do not name that in the statute, so I cannot answer the gentleman's question.

Mr. COLEMAN of Texas. Could the gentleman tell me why it was not, why they were not named in the statute?

Mr. FISH. No, I do not have any idea. It just says that the Attorney General shall establish a pilot program in up to three States, which means it could be one or two.

Mr. COLEMAN of Texas. And who will pick those three States?

Mr. BROOKS. Mr. Speaker, will the gentleman yield to me?

Mr. FISH. Certainly, I yield to the gentleman from Texas.

Mr. BROOKS. Mr. Speaker, if I could be of some help to my beloved friend from El Paso in answering that question, the distinguished Attorney General of the United States would select the three States. Which three I do not know. It would be on a voluntary basis. If the States did not wish to participate, they need not.

I do not believe Texas is going to jump up and say we would like to do that, so I do not think the gentleman has anything to worry about.

Mr. COLEMAN of Texas. If the gentleman will continue to yield, my concern, I would say to the dean of our delegation, I would only say, sir, that my concern is not only which States, but who indeed winds up paying for all of this, and whether or not any of the States are required or volunteer, and by the way, the legislation does not say volunteer, and I worried about that because the conference report that I have seen does not say that, but I am also concerned about who winds up paying. A lot of us, as you know, from our State are concerned that when the Federal Government passes laws like this they do not participate in the funding of these matters.

Mr. FISH. Let me just repeat, Mr. Speaker, that today already a driver's license is one of the identifier documents. This bill builds on a technology we did not have in effect at that time or earlier when we discussed this in the earlier part of the decade of the 1980's, and it will enable us to have a far more reliable one. If this project proves successful, and only if it proves successful, it could go a step further and on the driver's license you could imprint such information as "work authorization permitted," and then the individual could take that to his prospective employer and avoid all of the hassles we are experiencing today.

I really do not know why anybody who is interested in the civil liberties of aliens who are eligible to work in the United States could possibly object to this statute.

□ 2220

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentlemen from California [Mr. EDWARDS], a member of the Committee on the Judiciary.

Mr. EDWARDS of California. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this is an old subject that has come up time after time. It seems to me that almost every time we have an immigration bill this subject comes up, and someone tries to insert in the bill an I.D. card. An I.D. card is something that is very repugnant to a free society, and especially since the history of I.D. cards is so well known to most of the people of this world.

One might ask who would be asked to show the I.D. card as someone walks down the street in an American city or an American town. It would not necessarily at all be someone who looks Anglo or white or somebody; it is always going to be someone who looks a little different from the rest of us.

So there is going to be nothing but a lot of discrimination in an I.D. card.

Second, Mr. Speaker, this part of the immigration bill came right out of the blue, as the very distinguished Member, my colleague, the gentleman from California [Mr. ROYBAL], pointed out. There have been no hearings on this. It was just put in almost without any thought whatsoever at the conference.

I was not a member of the conference, but I was watching it, and we were all very disturbed that all of a sudden an I.D. card appeared, and it is no comfort to any of us that it is a pilot program in three States.

I do not like to use the word "slippery slope," but if ever I saw a slippery slope, this is it. Someone wants to start this odious practice in the United States for Americans to carry I.D. cards, so a cop can stop you on the street and say, "Show me your I.D. card." That is not the kind of a country we want to have, and I want to compliment the gentleman from California [Mr. ROYBAL], who has been fighting this battle for nearly three decades.

I am so disturbed that he is perhaps going to lose it for the first time.

I ask the Members to support the gentleman from California [Mr. ROYBAL] in his request. I compliment him on his valiant fight for these many years for freedom in this country.

Mr. FISH. Mr. Speaker, will the gentleman yield?

Mr. EDWARDS of California. I am happy to yield to the gentleman from New York.

Mr. FISH. Mr. Speaker, is it not true that somebody whether his name is a Hispanic name or an Anglo name who goes to apply for a job still has to prove that he is eligible to work in the United States under the employer-sanction provision of the 1986 act?

Mr. EDWARDS of California. Let me answer my friend from New York who understands civil liberties better than anybody.

The SPEAKER pro tempore. The time of the gentleman from California [Mr. EDWARDS] has expired.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. FISH].

Mr. EDWARDS of California. Mr. Speaker, will the gentleman yield?

Mr. FISH. I am happy to yield to the gentleman from California.

Mr. EDWARDS of California, Mr. Speaker, may I respond?

The gentleman from New York knows that I or you, the gentleman from New York [Mr. FISH], will not be asked for an I.D. card. It is going to be someone who looks different than we do who is going to be asked for it, for an I.D. card, and that is the essence of the discrimination that is going to exist.

Mr. FISH. Mr. Speaker, does not that happen today, I ask the gentleman from California [Mr. EDWARDS]? Does not that happen today when the individual you are describing goes to get a job? Is he not asked to prove that he is eligible to work in the United States?

Mr. EDWARDS of California. If the gentleman will yield further, I assure the gentleman that someone who is white, middle class, going into a bank to ask for a job is not going to be asked for an I.D. card, someone who looks different than the gentleman or I.

Mr. FISH. The Hispanic the gentleman is describing, the gentleman is making it sound as if he's being asked for I.D. is something in the future. I am trying to pin the gentleman down that that type of action is going on today, that the employer is asking the individual with a Hispanic name or Hispanic looks to prove his bona fides

right now, today, and all we are doing is making it easier for him to prove his bona fides.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to my colleague, the gentleman from Connecticut [Mr. MORRISON], who has been a valuable asset and a hard worker on this immigration bill.

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman, the chairman of the Committee on Rules, for yielding me this time.

Mr. Speaker, I rise in support of this rule, and I urge my colleagues not to allow the best to be the enemy of the good, as we debate one of the most far-reaching, and one of the most appropriate reforms of our legal immigration system that has ever been considered in this Nation.

First, to address the objections to the rule on the basis that this legislation, in some fashion, is not as favorable to family unification or other goals that the House had as the House bill, it certainly is true that there are certain respects in which, as happens in all conference committees, we compromised with the other body, with respect to numbers, but anyone concerned about unification of families, especially immediate relatives, should leap at the opportunity to adopt this legislation, which expands dramatically, the opportunity for spouses and minor children to be reunited, much higher numbers than exist under the current law, much more attention to those individuals who are legalized under the 1986 law, to see to it that those families are brought together on a legal basis.

This family unification legislation is excellent, and is far superior than current law.

Now, with respect to the issue of the identification card, there is no requirement for an identification card in this legislation. This is the opportunity for the Attorney General to designate a pilot program, a pilot program that the States are free to pursue under their existing authority, and the State of California is already pursuing. But, most importantly, this legislation and the statement of managers accompanying it are quite clear about what cannot be done in the pursuit of identifier, the ways in which we cannot create a national data bank in which national data-sharing cannot occur, and that the only thing that can be done is, that the three pilot States can create a driver's license that is more secure from tampering and more secure with respect to identification than they might otherwise pursue. There is no specter of national identifier here.

Those who suggest that that kind of a specter exists in this legislation, are seeing ghosts where they do not exist. It would not be the case that we would be receiving the support for this legislation from such organizations as the National Council for La Raza if this were a real problem. This is an organization that for years has been diligent in opposing a system of national identification. They are supporting this legislation. They do not wish to see this legislation defeated by a defeat of this rule.

I urge a vote in support of this rule and of this legislation.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. TORRES].

Mr. TORRES. Mr. Speaker, I rise in opposition to the rule, and join with my colleague from California, Mr. ROYBAL, in voting against the rule. I do so to draw the attention of my colleagues to section 522 of the bill which calls for a pilot program in three States on the use of driver's licenses for establishing employment authorization.

The rule is written in such a way that the gentleman from California is precluded from raising a point of order against section 522.

Let us all be aware of the tremendous irony of the matter we have before us. As a free nation, I abhor I.D. cards for work authorization. What next? These are the instruments of a police state.

Ironically, the government of South Africa, after years of struggle, just abolished identifier pass books that were used to discriminate against its black citizens. Ironically, at the same time, the United States considers taking the idea up.

I note that the proposed pilot project is to be tested in three States. What States? California, Texas? Presumably, one of those States could be the State of Virginia. Let me read to you a statute passed in Virginia in 1680, as part of the first major slave codes:

> No Negro or slave may go from his owner's plantation without a certificate and then only on necessary occasions; the punishment: twenty lashes on the bare back, well laid on * * *

Mr. Speaker, we fought a civil war to rid this country of just such laws.

I rise today, in part, to inform my colleagues that there are a significant number of Members of this body who will not countenance even the hint of adopting legislation that will take us down that road again.

When I was privileged to serve as this Nation's Ambassador to Unesco in Paris, my children were required to have on their person, at all times, an identification card issued by the Government of France.

My young son, with his long curly hair and olive skin, looked more like someone from Algeria or a Middle Eastern country than an American. He was constantly stopped by the police and questioned.

One day he left our house without his I.D. card and was picked up by the police and thrown in jail. When I went down to the station to secure his release, I vowed to myself and to my children, that if I had it in my power, I would never let such a system take foothold in the United States. My colleagues, I stand before you in fullfillment of that pledge.

Yet, despite these reservations, I support this legislation. The need for reform of our immigration law is overwhelming. This legislation provides for permanent increases in family-based immigration, and it has other provisions to protect the integrity of the family, such as temporary visas for family members of newly legalized members. All these provisions motivate me to support this bill. I just cannot support the manner in which the conference report comes before us, protecting as the rule does, a provision for repugnant identification cards.

□ 1030

Mr. MOAKLEY. Mr. Speaker, I would like to make crystal clear one thing: If this rule is defeated, there is no conference committee in existence. The Senate has already spoken. There will be no conference committee to send this back to. A vote against this rule kills the bill. Any progress that was made in the bill is gone. Do not think that it will be automatically taken up next year. Just ask the conferees how tough it was to get to this stage.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. ROYBAL. Is it possible for this same bill to come up in January, February, or March? Why is it that it always comes up the last minute of a session? Let Members try it in January or February. I will vote for it.

Mr. MOAKLEY. All I have to say, if Members want to know how difficult this was, any person could have gone to the conference and seen how difficult it was moving between the Senate position and the House position. This is not automatic.

If Members recall, the last immigration we had was 5 years ago. Do not think that we can send this conference report back to be addressed at a conference committee, if we kill the rule, there is no conference committee to send it back to.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. ORTIZ].

Mr. ORTIZ. Mr. Speaker, I rise in opposition to the rule on this bill.

I would like to associate myself with the comments of the gentleman from California, Chairman ROYBAL and Mr. COLEMAN, and would like to express my strong opposition to a provision in

the conference report that instructs the Attorney General to establish a pilot program for a national identification card system.

I am very concerned that this provision was included in this bill when it was not included in either the originally passed version of the House or Senate bill.

I am not aware of any in-depth consideration of the potential negative impact this will have on minority individuals, particularly Hispanic and Asian-Americans. I understand that Californians are now part of this pilot program. If so, why hasn't this information—on how this has impacted the Mexican-American and Asian community come to light? I share the concerns of many Members of this body who believe that it is important to strengthen our U.S. borders against illegal immigration.

However, I am concerned about the potential widespread discrimination which may occur against Hispanic and Asian Americans as a result of implementing this program.

I am not convinced that the requirement of a national identification system is enough to justify the infringement upon the civil rights of individuals who may experience discrimination as a result of this requirement.

According to a recent study by the General Accounting Office, employers will only request the showing of such a card by foreign looking and speaking American citizens and other legal workers, mainly Asians and Hispanic-Americans.

This supports the concern that this identification card will not be required universally of all citizens, regardless of how they look or sound.

Although many proponents claim that this is only a pilot program, there can be no doubt that this is the foundation of requiring a widespread national identification system.

And this can only be disastrous for the Hispanic community.

As many strides have been made with regard to providing more employment opportunities for Hispanics, requiring a national identification card will further create fear and suspicions among employers who are in a position to hire Hispanics.

I urge my colleagues to oppose the rule and return this bill to conference to delete this injurious provision for a pilot program for a national identification program.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. Mr. Speaker, I also rise in opposition to this rule. I congratulate those who have come before me and so expertly articulated the reasons for opposing it. I bring to the attention of the House an additional reason to oppose the rule. The point was made very succinctly by my colleague from Texas [Mr. COLEMAN], a moment ago, and by others, that a bill which many Members of this House voted for because it promised to increase the ability of families who are here today, without all of their constituent members, to be able to unify. So family unit was the cry that brought together the great majority to pass this bill through the House of Representatives.

However, the family unit provisions in this bill have been dramatically reduced, as the gentleman from Connecticut [Mr. MORRISON] acknowledged a moment ago, and as the gentleman from Texas [Mr. COLEMAN] articulated very well.

Where did they go? I can tell Members where 10,000 of those visas went. Ten thousand of those visas went to allow millionaires to come into the United States, people who would qualify for entry into this country for no other reason than the fact that they are millionaires. The bill that left this House had no such provision. In fact, a provision very much like it was stricken in the Committee on the Judiciary, but coming back from the conference committee, what does it say? We do not have room for all the family unification that was in the bill when it left the House, but we have room for 10,000 persons who can qualify for the United States by buying citizenship here if they have a million bucks to do it.

What the bill says, if they will come into the country and invest enough to create 10 jobs, they can stay. This is all they have to do. After that, they can bring in their wife and kids, once they become a citizen, and they can also apply to bring in their brothers and sisters when the time comes that they are citizens of the United States.

Mr. Speaker, I submit to Members very simply that this provision is an unbelievable departure from our tradition of cherishing our most precious birthright as Americans, and that is our American citizenship. I think that in many respects this bill, as written as it has come back from conference as a culmination of the 1980's in which we tripled our national debt, the biggest debtor nation in the world. We cannot pay bills without borrowing staggering sums of money. We sold off our most precious economic assets. Foreign ownership tripled in the last 7 years. We are selling now our most precious possession, that of citizenship, for $500,000 in the rural areas, or $1 million in cities can buy citizenship in the United States today, if we pass this bill before Members today.

Have we no self-respect as a Nation? Are we so broke we have to sell our birthright? I urge Members to vote no on this rule. I congratulate the gentleman from California [Mr. ROYBAL] and others for coming forward and calling this rule to the attention of the House at this late hour. Vote no on the rule before Members.

Mr. QUILLEN. Mr. Speaker, I agree with the chairman of the Committee on Rules when he said this bill is dead if it is not passed this evening.

□ 2240

No bill is carried over at the end of a Congress at all. In a new Congress it has to be reintroduced, go through the committee process, go through the House and the Senate, go back to conference and go back to be voted on again in each House. Since no conference report at the end of a Congress is carried over, it is important to proceed with this immigration measure.

I think it is helpful to the immigrants who come and seek employment to have an identification card when they do not have a Social Security card and maybe not even a driver's license. If they have that card it seems to me that they are provided identification for employment, and after all, employment is what this is all about. There is not any discrimination.

Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Speaker, I do not normally vote against the rule, but I am going to vote against this rule.

Let me tell you something, I am sick and tired of people saying this is an ugly bill, but it is the best we can do.

I rise in opposition to that notion. I rise in opposition to the notion that we have to accept something that is really bad and that will hurt the majority of the people, when we do not have to.

As the gentleman from California [Mr. ROYBAL] has said, better we have nothing than this.

Send this back. We will do it in January and we will do it right.

I understand the need that some people feel that there must be a better way to have people identified as eligible for work than the employer himself having to make a decision or rationalize about whether this person is legal or not, because he cannot make a determination between a forgery and the real thing.

I suggest that we have already in law what is necessary to do that. It is called a Social Security number, not the card which can be forged, but the number. The number is assigned to someone. All you have to do is get the agencies that are already in place to identify that that number is eligible to that person.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. BROOKS], the chairman of the Judiciary Committee, who has been outstanding in bringing this bill to the floor and bringing it to where it is today.

Mr. BROOKS. Mr. Speaker, some concern has been expressed that a provision contained in this conference report and in the rule would start us down a path toward a national identification card. I think that such claims grossly exaggerate precisely what this minor provision does. What it does is as follows, and I tell you forthrightly, it allows up to three States to participate voluntarily. If they do not want to do it, they do not have to do it. That is what voluntary means.

And there is a 3-year pilot program to test whether a drivers' license containing fingerprints may provide a reliable identification method for determining eligibility to work in the United States. This driver's license would not be the sole means by which a person could show work eligibility. A person can now use and could continue to use a U.S. passport, a certificate of naturalization, or several other documents, including a green card which has a thumb print already on it, or a foreign passport.

No individual will be required to use this type of driver's license for any purpose whatsoever.

Mr. Speaker, this is a good and a balanced rule, bringing out a good and a balanced bill. If you want an immigration bill, you can pass it now. If you do not want one, go ahead and kill it.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would hope that the Members would pay attention to this. In this bill for the first time the people of El Salvador who are in this country illegally because of fear of prosecution or fear of having their human rights abused will be able to stay here for 18 months.

I hope the people who have been speaking on the identification card will pay very close attention, because this is the first, and I do not know if it will ever happen again.

Mr. ACKERMAN. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from New York.

Mr. ACKERMAN. Mr. Speaker, I rise in favor of this measure.

Mr. FISH. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from New York.

Mr. FISH. Mr. Speaker, I think this is very important, because the gentleman has brought up additional features other than what we were debating here.

Mr. Speaker, it has taken the House 3 years to get the bill to the floor. It is not something we are going to address again in February and bring up.

Not only is the protected status measure that the gentleman has been after for 6 years in this bill, but there are also provisions that I think a lot of Members would not want to see go down the drain, such as prohibiting the deportation of spouses and minor children of legalized aliens whose status has been left uncertain since the legalization process in 1986.

We extend the deadline for legalized aliens. That was my amendment, adopted by the House, when we learned that 35,000 already had missed the deadline for the second stage legalization, that this number could go up to 100,000.

Do you want them to be deported? Do you want them to revert to illegal status? This bill would give them 1 more year to come forward and finish that process. These are the things that we are not even talking about in this bill.

Mr. QUILLEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Mr. Speaker, I rise as being opposed to the rule.

Mr. SERRANO. Mr. Speaker, I rise in strong opposition to the rule preceding the conference report on S. 358, including provisions mandating a uniform national work permit document or identification card, proposed to reform discriminatory practices which have resulted from employer sanctions.

Mr. Speaker, our current documentation system demands that employees provide employers with documentation to prove their legal residence in the United States. In my district, Dominicans, Haitians, Asians, Puerto Ricans, and African-Americans are often subject to employer discrimination, because they may look or sound foreign. I ask my colleagues to consider how a national identification card would correct this unjust prejudice. With a national identification card, employers would still scrutinize more stringently and selectively the identification cards of these minorities, or avoid the risk of employer sanctions and not consider hiring them at all.

Why would one single document as proof of legal residence in the United States be any different from the current law which demands two documents? Would there not exist the same possibility of fraud with a national identification card, and would employers still not be discouraged from hiring on the basis of qualifications, not color or accent?

If such a uniform document was created by our passage of this rule, a national computer data base of every citizen and noncitizen in this country would be created. This would take many years, cost millions of dollars, and would be subject to error and inaccuracy, as people enter and exit our Nation. The current files of the Immigration and Naturalization Service are incomplete and there is no comprehensive record of all U.S. citizens.

But, Mr. Speaker, if there were, in fact, a computer data base containing each persons' name and legal status, would this not allow, or even encourage the possible use of this list for improper purposes—by police or other Government agencies, to monitor or track individuals' activities?

Last, Mr. Speaker, I would like to remind my colleagues that there has not been a single hearing or review to explore the effects of this provision, by appropriate committees and subcommittees. More importantly, the mandate of a national identification card was not a part of either immigration bill when considered and passed by the House and Senate. I strongly urge my colleagues to consider the drastic and long-lasting effects of this provision, which would seriously infringe on the civil liberties and rights of all Americans.

I urge my colleagues to defeat the recommended rule.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore [Mr. MAZZOLI] announced that the noes appeared to have it.

Mr. MOAKLEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 186, nays 235, not voting 11, as follows:

[Roll No. 526]

YEAS—186

Ackerman	Fish	Machtley
Alexander	Foglietta	Madigan
Annunzio	Frank	Manton
Anthony	Frost	Markey
Applegate	Gaydos	Martin (IL)
Aspin	Gejdenson	Matsui
Atkins	Gephardt	Mavroules
AuCoin	Gibbons	Mazzoli
Barnard	Gilman	McCloskey
Beilenson	Gingrich	McCollum
Berman	Glickman	McDade
Bevill	Gordon	McDermott
Bilbray	Gradison	McHugh
Bliley	Grandy	McMillen (MD)
Boehlert	Gray	McNulty
Bonior	Green	Meyers
Borski	Gunderson	Michel
Bosco	Hall (OH)	Miller (OH)
Brennan	Hamilton	Miller (WA)
Brooks	Hastert	Mineta
Broomfield	Henry	Moakley
Cardin	Hoagland	Molinari
Carper	Hochbrueckner	Montgomery
Clement	Holloway	Moody
Clinger	Houghton	Morella
Condit	Hoyer	Morrison (CT)
Conte	Hughes	Morrison (WA)
Cooper	Hunter	Mrazek
Costello	Hutto	Myers
Courter	Hyde	Nagle
Coyne	Johnson (SD)	Natcher
Darden	Johnston	Neal (MA)
DeFazio	Kanjorski	Nelson
Derrick	Kastenmeier	Nowak
DeWine	Kennelly	Oakar
Dingell	Kolter	Oberstar
Dixon	Kostmayer	Obey
Donnelly	Kyl	Owens (UT)
Dorgan (ND)	LaFalce	Pallone
Dwyer	Lantos	Parker
Early	Lehman (FL)	Pashayan
Engel	Levin (MI)	Patterson
Fascell	Levine (CA)	Pelosi
Fawell	Lipinski	Penny
Fazio	Lowey (NY)	Porter
Feighan	Luken, Thomas	Price

Quillen	Shays	Traxler
Rahall	Shuster	Unsoeld
Rinaldo	Slaughter (NY)	Vander Jagt
Ritter	Slaughter (VA)	Walgren
Roe	Smith (FL)	Walsh
Rose	Smith (IA)	Watkins
Roukema	Smith (NJ)	Waxman
Rowland (CT)	Smith (TX)	Weber
Rowland (GA)	Solarz	Weiss
Russo	Spratt	Weldon
Sabo	Stark	Whittaker
Sangmeister	Studds	Whitten
Scheuer	Swift	Wolf
Schneider	Synar	Wyden
Schulze	Tauke	Wylie
Schumer	Thomas (WY)	Yates

NAYS—235

Anderson	Grant	Ravenel
Andrews	Guarini	Ray
Archer	Hall (TX)	Regula
Armey	Hammerschmidt	Rhodes
Baker	Hancock	Richardson
Ballenger	Hansen	Ridge
Bartlett	Harris	Roberts
Barton	Hatcher	Robinson
Bateman	Hayes (IL)	Rogers
Bates	Hayes (LA)	Rohrabacher
Bennett	Hefley	Ros-Lehtinen
Bentley	Hefner	Rostenkowski
Bereuter	Herger	Roth
Bilirakis	Hertel	Roybal
Boggs	Hiler	Saiki
Boxer	Hopkins	Sarpalius
Browder	Hubbard	Savage
Brown (CA)	Huckaby	Sawyer
Brown (CO)	Inhofe	Saxton
Bruce	Ireland	Schaefer
Bryant	Jacobs	Schiff
Buechner	James	Schroeder
Bunning	Jenkins	Schuette
Burton	Jones (GA)	Sensenbrenner
Bustamante	Jones (NC)	Serrano
Byron	Jontz	Sharp
Callahan	Kaptur	Shaw
Campbell (CA)	Kasich	Shumway
Campbell (CO)	Kennedy	Sikorski
Carr	Kildee	Sisisky
Chandler	Kleczka	Skaggs
Chapman	Kolbe	Skeen
Clarke	Lagomarsino	Skelton
Clay	Lancaster	Slattery
Coble	Laughlin	Smith (NE)
Coleman (MO)	Leach (IA)	Smith (VT)
Coleman (TX)	Leath (TX)	Smith, Denny (OR)
Collins	Lehman (CA)	
Combest	Lent	Smith, Robert (NH)
Conyers	Lewis (CA)	
Coughlin	Lewis (FL)	Smith, Robert (OR)
Cox	Lewis (GA)	
Craig	Lightfoot	Snowe
Crane	Livingston	Solomon
Dannemeyer	Lloyd	Spence
Davis	Long	Staggers
de la Garza	Lowery (CA)	Stallings
DeLay	Marlenee	Stangeland
Dellums	Martin (NY)	Stearns
Dickinson	Martinez	Stenholm
Dicks	McCandless	Stokes
Dornan (CA)	McCrery	Stump
Douglas	McCurdy	Sundquist
Downey	McMillan (NC)	Tallon
Dreier	Mfume	Tanner
Duncan	Miller (CA)	Tauzin
Durbin	Mink	Taylor
Dymally	Mollohan	Thomas (CA)
Dyson	Moorhead	Thomas (GA)
Eckart	Murphy	Torres
Edwards (CA)	Murtha	Torricelli
Edwards (OK)	Neal (NC)	Towns
Emerson	Nielson	Traficant
English	Olin	Udall
Erdreich	Ortiz	Upton
Espy	Owens (NY)	Valentine
Evans	Packard	Vento
Fields	Panetta	Visclosky
Flake	Parris	Volkmer
Flippo	Paxon	Vucanovich
Ford (TN)	Payne (NJ)	Walker
Frenzel	Payne (VA)	Washington
Gallegly	Pease	Wilson
Gallo	Perkins	Wise
Gekas	Petri	Wolpe
Geren	Pickett	Yatron
Gillmor	Pickle	Young (AK)
Gonzalez	Poshard	Young (FL)
Goodling	Pursell	
Goss	Rangel	

NOT VOTING—11

Boucher	Horton	Oxley
Crockett	Johnson (CT)	Wheat
Ford (MI)	McEwen	Williams
Hawkins	McGrath	

□ 2308

Messrs. WISE, BROWN of Colorado, DICKS, HARRIS, DOWNEY, McMILLAN of North Carolina, THOMAS of Georgia, PICKETT, POSHARD, BUNNING, ERDREICH, HEFLEY, SKEEN, KLECZKA, and ROHRABACHER changed their vote from "yea" to "nay."

Messrs. ANNUNZIO, DERRICK, McCOLLUM, DEWINE, MATSUI, COSTELLO, RUSSO, and SCHEUER changed their vote from "nay" to "yea."

So the resolution was not agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 2310

ANNOUNCEMENT OF REPUBLICAN CONFERENCE

(By unanimous consent, Mr. LEWIS of California was given permission to speak out of order.)

Mr. LEWIS of California. Mr. Speaker, by way of making an announcement, members of the Republican conference, there will be a conference in the Cannon Caucus Room at 11:30 to discuss items that may be before us this evening.

ANTARCTIC PROTECTION ACT OF 1990

Mrs. UNSOELD. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3977) to protect and conserve the continent of Antarctica, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate Amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This act may be cited as the "Antarctic Protection Act of 1990".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Antarctic continent with its associated and dependent ecosystems is a distinctive environment providing a habitat for many unique species and offering a natural laboratory from which to monitor critical aspects of stratospheric ozone depletion and global climate change;

(2) Antarctica is protected by a series of international agreements, including the Antarctic Treaty and associated recommendations, the Convention on the Conservation of Antarctic Seals, and the Convention on the Conservation of Antarctic Marine Living Resources, which are intended to conserve the renewable natural resources of Antarctica and to recognize the importance of Antarctica for the conduct of scientific research;

(3) recurring and recent developments in Antarctica, including increased siting of scientific stations, poor waste disposal practices, oil spills, increased tourism, and the over-exploitation of marine living resources, have raised serious questions about the adequacy and implementation of existing agreements and domestic law to protect the Antarctic environment and its living marine resources;

(4) the parties to the Antarctic Treaty have negotiated a Convention on the Regulation of Antarctic Mineral Resources Activities which the United States has signed but not yet ratified;

(5) the Convention on the Regulation of Antarctic Mineral Resources Activities does not guarantee the preservation of the fragile environment of Antarctica and could actually stimulate movement toward Antarctic mineral resource activity;

(6) the exploitation of mineral resources in Antarctica could lead to additional degradation of the Antarctic environment, including increased risk of oil spills;

(7) the Antarctic Treaty Consultative Parties have agreed to a voluntary ban on Antarctic mineral resource activities which needs to be made legally binding;

(8) the level of scientific study, including necessary support facilities, has increased to the point that some scientific programs may be degrading the Antarctic environment; and

(9) the planned special consultative meeting of parties to the Antarctic Treaty and the imminence of the thirtieth anniversary of the Antarctic Treaty provide opportunities for the United States to exercise leadership toward protection and sound management of Antarctica.

(b) PURPOSE.—The purpose of this Act is to—

(1) strengthen substantially overall environmental protection of Antarctica;

(2) prohibit prospecting, exploration, and development of Antarctic mineral resources by United States citizens and other persons subject to the jurisdiction of the United States;

(3) urge other nations to join the United States in immediately negotiating one or more new agreements to provide an indefinite ban on all Antarctic mineral resource activities and comprehensive protection for Antarctica and its associated and dependent ecosystems; and

(4) urge all nations to consider a permanent ban on Antarctic mineral resource activities.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) The term "Antarctica" means the area south of the Antarctic Convergence as defined in section 303(1) of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2432).

(2) The term "Antarctic mineral resource activity" means prospecting, exploration, or development in Antarctica of mineral resources, but does not include scientific research within the meaning of article III of the Antarctic Treaty, done at Washington on December 1, 1959.

(3) The term "development" means any activity, including logistic support, which takes place following exploration, the purpose of which is the exploitation of specific mineral resource deposits, including processing, storage, and transport activities.

(4) The term "exploration" means any activity, including logistic support, the purpose of which is the identification or evaluation of specific mineral resource deposits. The term includes exploratory drilling, dredging, and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development.

(5) The term "mineral resources" means all nonliving natural nonrenewable resources, including fossil fuels, minerals, whether metallic or nonmetallic, but does not include ice, water, or snow.

(6) The term "person" means any individual, corporation, partnership, trust, association, or any other entity existing or organized under the laws of the United States, or any officer, employee, agent, department, or other instrumentality of the Federal Government or of any State or political subdivision thereof.

(7) The term "prospecting" means any activity, including logistic support, the purpose of which is the identification of mineral resource potential for possible exploration and development.

(8) The term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere.

SEC. 4. PROHIBITION ON ANTARCTIC MINERAL RESOURCE ACTIVITIES.

Pending a new agreement among the Antarctic Treaty Consultative Parties in force for the United States, to which the Senate has given advice and consent or which is authorized by further legislation by the Congress, which provides an indefinite ban on Antarctic mineral resource activities, it is unlawful for any person to engage in, finance, or otherwise knowingly provide assistance to any Antarctic mineral resource activity.

SEC. 5. INTERNATIONAL AGREEMENT.

(a) It is the sense of Congress that the Secretary of State should enter into negotiations with the Antarctic Treaty Consultative Parties to conclude one or more new international agreements to—

(1) conserve and protect permanently the natural environment of Antarctica and its associated and dependent ecosystems;

(2) prohibit or ban indefinitely Antarctic mineral resource activities by all parties to the Antarctic Treaty;

(3) grant Antarctica special protective status as a land of science dedicated to wilderness protection, international cooperation, and scientific research;

(4) ensure that the results of all scientific investigations relating to geological processes and structures be made openly available to the international scientific community, as required by the Antarctic Treaty; and

(5) include other comprehensive measures for the protection of the Antarctic environment.

(b) It is the sense of Congress that any treaty or other international agreement submitted by the President to the Senate for its advice and consent to ratification relating to mineral resources or activities in Antarctica should be consistent with the purpose and provisions of this Act.

SEC. 6. ENFORCEMENT.

(a) IN GENERAL.—A violation of this Act or any regulation promulgated under this Act is deemed to be a violation of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431-2444) and shall be enforced under that Act by the Under Secretary or another Federal official to whom the Under Secretary has delegated this responsibility.

(b) PENALTY.—If the Under Secretary determines that a person has violated section 4—

(1) that person shall be ineligible to locate a mining claim under the mining laws of the United States; and

(2) the Secretary of the Interior shall refuse to issue a patent under the mining laws of the United States, or a lease under the laws of the United States related to mineral or geothermal leasing, to any such person who attempts to perfect such patent or lease application after the Under Secretary has made such determination.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) to the Under Secretary not more than $1,000,000 for each of fiscal years 1991 and 1992 to carry out the purposes of this Act; and

(2) to the Secretary of State not more than $500,000 for each of fiscal years 1991 and 1992 to carry out section 5 of this Act.

Mr. CONTE (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. ALEXANDER). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentlewoman from Washington?

Mr. CONTE. Mr. Speaker, reserving the right to object, I do so to yield to the gentlewoman from Washington [Mrs. UNSOELD].

Mrs. UNSOELD. Mr. Speaker, H.R. 3977, Mr. CONTE's Antarctic Protection Act of 1990, passed the House less than 2 weeks ago and has now come back from the Senate with an amendment.

The amendment is a result of the negotiations that we have conducted with the Senate and the administration. The compromise amendment establishes an important policy that mining should not take place in Antarctica and therefore should be enacted.

I am confident that this version of the Antarctic Protection Act of 1990 is acceptable to the administration and will be signed by the President into law.

I urge the House to accept the amendment and send this important bill to the President.

Mr. CONTE. Mr. Speaker, further reserving the right to object, I rise in support of H.R. 3977, the Antarctic Protection Act of 1990, as revised and amended by the Senate.

As presented to the House today, H.R. 3977 represents an important statement on the part of the U.S. Congress and an important policy change for the administration. It says simply and powerfully that the United States supports a ban on mineral resource activity in Antarctica, and that message of strong environmental protection for this magnificent continent is expressed in several sections of this legislation. As the author of this bill, I will take the opportunity to explain in detail the provisions of this legislation as revised, so that there is no ambiguity with respect to the congressional intent with respect to the meaning and effect of this act, and then I will highlight the reasons motivating the enactment of this important legislation.

Section 1 titles the legislation the Antarctic Protection Act of 1990.

Section 2 includes congressional findings and statements of the purpose of this legislation. Subsection (a) was revised as follows. The findings of the Senate companion bill, S. 2575, in some cases slightly revised, were used to replace the findings proposed by the House in paragraphs (1), (2), and (3). Those paragraphs in the Senate bill expressed essentially the same policy concerns as the House version, but in more detail. Paragraphs (4), (5), (6), and (7) of the House bill were accepted without amendment and included in this final version.

One of the most important findings in this subsection is paragraph (5) which essentially says that the Convention on the Regulation of Antarctic Mineral Resources Activities [CRAMRA] is unacceptable as an international framework to guarantee environmental protection of Antarctica. In effect, the Congress is rejecting CRAMRA, and supporting a new agreement which provides permanent, long-term protection for Antarctica. Some have argued that CRAMRA provides environmental protection and includes an indefinite ban on mineral activity. The Congress has rejected this argument by adoption of this bill because CRAMRA could ultimately lead to the commercial exploitation of the continent. CRAMRA provides a mechanism for Antarctic mineral resource development, and any agreement with such a mechanism is inconsistent with the findings, purpose, and provisions of this legislation. Complete and permanent protection from the ravages of commercial development can only be guaranteed if we reject the idea of mineral development, not provide for its possibility, or facilitate its existence.

And finally, with respect to the findings section of the bill, the final version accepts paragraphs (7) and (8) of the Senate bill which were renumbered as paragraphs (8) and (9) respectively in the final version.

The purposes of this act are clearly stated by subsection 2(b). The act is designed to strengthen substantially the overall environmental protection of Antarctica by prohibiting mineral activity by U.S. citizens and those subject to the laws of the United States, by urging other nations to negotiate a

new agreement to provide an indefinite ban on all Antarctica mineral resource activities, and by urging all nations to consider a permanent ban on Antarctica mineral resource activities. The House and Senate were careful to draft the language of this section to indicate that CRAMRA, or a revised version of that convention, would not satisfy the provisions of this act. An indefinite and permanent ban on mineral resource activities negotiated to satisfy this act cannot be part of CRAMRA, but instead must be part of a new agreement which provides for comprehensive environmental protection for Antarctica or an agreement standing alone which provides for an indefinite and permanent ban on mineral resource activity. This distinction is especially important when interpreting the effect of section 4 of this act, which prohibits U.S. citizens and those subject to the laws of the United States from engaging in Antarctic mineral resource activities pending a new agreement which provides for an indefinite ban.

Section 3 includes the definitions of terms used in this act, and with only a few minor modifications, the terms as defined in the House passed bill are included in this final version. Paragraph (6) of this section defines "person" as used in the operative provisions of this act, and the term warrants clarification at this point. Individuals included in this definition are intended to be those individuals who are citizens of or permanent resident aliens of the United States, and those who are subject to the laws of the United States who do not fall within the aforementioned categories. "Person" also refers to any "corporation, partnership, trust, association, or any other entity existing or organized under the laws of the United States". This definition is intentionally broad, and in interpreting the provision, the broadest possible meaning consistent with the jurisdiction of U.S. courts defining the class of persons covered should be used. The Congress intended to capture all entities in the use of this definition so that the intent and spirit of the law was not subverted by legal technicalities. Further, the term "person" means "any officer, employee, agent, department, or other instrumentality of the Federal Government or any State or political subdivision thereof". This definition, in relation to section 4, means that the Federal Government cannot in any way, through its programs, employees, financial support or protection of U.S. laws assist in any way Antarctic mineral resources activities.

Section 4 is the heart and soul of H.R. 3977. This section makes it unlawful for any U.S. citizens, permanent resident aliens or any person subject to the laws of the United States, to engage in, finance or knowingly provide assistance to any Antarctic mineral resource activity. This ban or prohibition shall remain in effect until a new agreement is negotiated among the Antarctic Treaty consultative parties which provides for an indefinite ban on Antarctic mineral resource activities, and until that agreement is approved by Congress or ratified by the Senate. This is an important and tough standard to meet that should be understood clearly.

The ban on mineral activity remains in effect until there is a new agreement. This clearly means that CRAMRA or any modified version of that convention will not satisfy this requirement. Adoption of this act is a clear statement by the Congress, and when the President signs it, by the administration, that CRAMRA is dead. That convention is not a viable solution to the problem of protection of the Antarctic environment.

In addition, the ban on mineral activity for U.S. citizens remains in effect until the new agreement is ratified by the Senate or approved through further legislation by the Congress. This means that an agreement, even if negotiated to provide a permanent or indefinite ban on Antarctic mineral resource activities, will not cause this ban to become ineffective. The new agreement must be ratified by the Senate or approved through legislation by the Congress before the ban is replaced by the international agreement.

Section 4 is an important statement by Congress. It says that no American or any person subject to the laws of the United States, or any entity corporate or otherwise, or the Federal, State, or local government shall assist the development of mineral resources in Antarctica, and this command, by force of law, is enforced by criminal and civil penalties. It's a clear statement by the Congress, and by implication the President, when he signs the legislation, that the United States is against the development of mineral resources in Antarctica, and the United States is in support of an indefinite and permanent ban for all nations on Antarctic mineral resource activities. And for the purposes of this legislation the words "permanent" and "indefinite" are used interchangeably, and essentially mean the same thing: a ban that is without time limitation and one that does not include a regime designed to regulate Antarctic mineral resource activities.

Section 5 expresses the sense of the Congress with respect to the international agreements needed to implement this legislation. Under this section, the Secretary of State is requested to negotiate one or more international agreements which accomplish three fundamental goals. First, the agreement should permanently and indefinitely ban Antarctic mineral resource activities. That means the ban should not be part of any regime regulating Antarctica mineral resource activities, like CRAMRA. A revised version of CRAMRA to include specific reference to an indefinite ban would not satisfy the request made by this section. The ban must not be tied to a minerals regime, and it must be a ban that is without time limitation, that is a permanent or indefinite ban on Antarctic mineral resource activities.

Second, the international agreement should provide for the comprehensive environmental protection of Antarctica, including the conservation and protection of the natural environment of the continent and its associated and dependent ecosystems.

Third, the international agreement must include special provisions for scientific activity on the continent, granting Antarctica special protective status as a land of science and ensuring that the results of all scientific investigations relating to geological processes and structures be made open to the international scientific community.

Finally, section 5(b) provides that any international agreement which will be used to satisfy the requirements of section 4 or otherwise should be consistent with the purpose and provisions of this act. That purpose and the provisions are clearly explained in this statement, and it should be clear to our negotiators what the Congress intends by this legislation.

Section 6 provides the enforcement mechanism for this act, particularly as it relates to section 4. In the interests of brevity and consistency, the enforcement section was modified in House committee from the original version introduced as H.R. 3977. Instead, the bill now makes criminal and civil penalties for violation of this act effective by reference to the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431-2444). I would also point out that it is the intent of the Congress that if the criminal and civil penalties cited in the Antarctic Marine Living Resources Act are increased, those newly increased penalties will become the penalties for violations of this act. And if for some reason that law is repealed or the penalties are reduced, the law as of this date shall remain effective.

Section 6(b) provides additional penalties for violation of this act, and those sanctions were suggested by the Committee on Interior and Insular Affairs. The provision basically says that if any person is found to engage in or support Antarctic mineral resource activities violating section 4 of this act, then that person should not enjoy the rights to mineral development in this country. Under this subsection, the Under Secretary makes the determina-

tion as to a violation under section 4, and the Secretary of the Interior imposes additional sanctions once that determination is made.

In order to carry out the provisions of this act, section 7 provides authorization of appropriations to the Under Secretary in the amount of $1 million for each of the fiscal years 1991 and 1992, and to the Secretary of State in the amount of $500,000 for each of the fiscal years 1991 and 1992. The Secretary of State shall use these funds only to negotiate a permanent and indefinite ban on Antarctic mineral resource activities, or an agreement providing for comprehensive measures to protect the Antarctic environment.

One section was notably dropped from the House passed bill, and I regret that this provision was deleted. Section 5 of the House passed bill would have applied the requirements of the National Environmental Policy Act to major Federal actions in Antarctica. The provision passed by the House also included an exemption for national security and foreign policy concerns. The intent of this provision was to make sure that our scientific activities and logistical support on the continent were in and of themselves not contributing to the degradation of the Antarctic environment. It's a simple requirement: Scientific activity should not degrade the environment which it is studying. This provision was not designed or intended to hinder or prohibit any scientific activity in Antarctica. It only requires that environmental review be conducted by everyone with activities on the continent.

Now, I know that the National Science Foundation and others in the administration have expressed concerns about this section—that scientific projects, with limited windows of opportunity in which to set up experiments, will be adversely affected by citizen suits. Well, the statistics about NEPA litigation just don't support that concern. In 1988, for example, only 91 cases were brought against all Federal agencies under NEPA, and of those 91 cases, only 7 resulted in injunctions that delayed the projects in any way. In addition, it is unlikely that specific scientific projects will be covered under NEPA as a major Federal action. Construction projects and other major activities will probably be covered, and for those actions, there will be ample time for Federal agencies to comply with environmental reports.

I just can't understand the hypersensitivity of NSF with respect to applying NEPA to activities in Antarctica, and I will continue to pursue this issue in the next Congress and in the appropriations process for fiscal year 1992.

Mr. Speaker, I would like to take this opportunity to briefly outline the policy justifications for this bill and the implications of its passage.

Even though this area is thousands of miles from our shores, and dramatically different from the climate and environment of our country, Antarctica is an important conservation issue for the United States. It's important because Antarctica is the last, relatively untouched continent on the planet, providing unparalleled research opportunities, and the United States is in a position to exert international leadership to permanently protect and conserve this last frontier.

I regret that I've never been to visit this amazing place, but from what I've read and seen on videotape, it's much more than the common perception of a land of rock and ice. Antarctica is a land of the living, supporting a myriad of fish and wildlife species. For example, Antarctica is the most important feeding ground in the Southern Hemisphere for whales and dolphins. Two-thirds of the world's seals live in Antarctica, and approximately 200 species of finfish have been recorded in the waters off the coast. This area supports 35 species of birds and penguins, many of which occur only in Antarctica.

In addition to the fish and wildlife values of the continent, Antarctica provides a one-of-a-kind scientific laboratory that cannot be reproduced on this or any other planet. For over 30 years, several nations have used Antarctica to enhance the understanding of our environment, and to further science. This peaceful, essentially harmless use of the continent, should remain its only use.

In some respects, the unique scientific research potential in Antarctica and the significant wildlife and fisheries values of the continent, are protected under existing international agreements. But today, we have the opportunity to provide for the further protection of this seventh continent.

The purpose of H.R. 3977, the Antarctic Protection Act of 1990, is to increase protection for the Antarctic environment, prevent minerals exploitation, and urge other nations to join the United States in these goals. While some would argue that the adoption of the Wellington Convention [CRAMRA] will achieve the same results, the bottom line is that this treaty could ultimately lead to the exploitation of the continent. Complete and permanent protection from the ravages of commercial development can only be guaranteed if we reject the idea of mineral development, not provide for its possibility, or facilitate its existence. Instead, we must use our position in the world to negotiate an international agreement for the permanent protection and conservation of the continent.

It's true. This bill calls for unilateral action on the part of the United States, and as a result, complete protection is not ensured. But that leadership, embodied in this action can provide the framework for international cooperation among all interested parties to universally and permanently protect this irreplaceable resource. Already, even before final enactment, this legislation has influenced the international community with respect to mineral development of Antarctica. Australia, for example, has taken a leadership role in efforts to protect the environment of Antarctica. During House consideration of H.R. 3977, I included in the RECORD a joint statement by Australian Senator Gareth Evans, Minister for Foreign Affairs and Trade and Mrs. Ros Kelly, Minister for the Environment given on August 17, 1990, and which explain the need for strong environmental protection for the continent. At this point, I will include a news release issued by the Australian Embassy entitled "Australia to Legislate Ban on Antarctica." I am pleased that our friends down under are joining with the United States to take additional action to increase environmental protection of Antarctica.

This is a rare opportunity to leave a lasting legacy to future generations, to preserve a continent, pristine and intact. Antarctica is a beautiful place, a relatively unspoiled ecosystem abundant in fish and wildlife resources. It's an area that we can still talk about protecting now, instead of trying to restore later. H.R. 3977 provides an initial layer of protection that I hope will develop into blanket protection for all time.

It's a simple but powerful message: Saving a continent from exploitation is a once in a lifetime chance. Let's not miss it.

Mr. Speaker, I take back my invitation to invite the House up there, because with all of the hot air that I hear today, we would have a gigantic melt out there.

Mr. JONES of North Carolina. Mr. Speaker, H.R. 3977, Mr. CONTE'S Antarctic Protection Act of 1990, passed the House less than 2 weeks ago and has now come back from the Senate with an amendment.

With action by the House today, we will be able to send the President a bill that will provide important protections for the Antarctic Continent. I urge my colleagues' support for final passage of H.R. 3977.

The bill before the House reflects the negotiations we have had both with the Senate and the administration over the final text of H.R. 3977. To achieve this agreement, all sides were forced to compromise, but I believe the compromise bill establishes an important policy for the Congress and the United States on whether mining should or should not take place in Antarctica and therefore should be enacted. I am confident that this version of the Antarctic Protection Act of 1990 is acceptable to the administration and will be signed by the President into law.

H.R. 3977 was referred originally to the Committees on Merchant Marine and Fisheries and Foreign Affairs. Both committees reported identical legislation, and the House of Representatives passed the bill, with some modest modifications, on October 15, 1990.

When the Merchant Marine and Fisheries Committee reported H.R. 3977 (H. Rpt. 101-692, part 1), it contained two important components. One was a ban on U.S. citizens engaging in mineral resource activities in Antarctica. The other was the clarification that the National Environmental Policy Act, or NEPA, applied to the activities of Federal agencies in Antarctica.

I very much regret that, in negotiations with the administration, they have remained adamantly opposed to the full application of NEPA in Antarctica. I find it difficult to understand how the application of NEPA to U.S. activities in Antarctica can impinge on the foreign policy of the United States or interfere unduly with legitimate scientific research. However, the issue of the application of NEPA to activities of U.S. agencies in the global commons is one that we will certainly revisit in the 102d Congress.

The heart of the bill reported by the Merchant Marine and Fisheries Committee, the ban on mining in Antarctica by U.S. citizens, has remained intact and is the central feature of the bill before the House today. H.R. 3977 prohibits any U.S. citizen and persons subject to U.S. jurisdiction from engaging in any Antarctic mineral resource activity, either directly or indirectly by providing technical or financial assistance to another person. The prohibition applies to all stages of mineral activity, including prospecting, exploration, and commercial recovery, and to all forms of minerals, including oil, gas, and hard minerals. With enactment of this prohibition, the United States will be firmly on record that we do not want mining to occur in Antarctica. That is certainly the preferred policy of the U.S. Congress.

If there is any continent more inhospitable and more inappropriate for mining than Antarctica, I am not aware of it. Antarctica is intended to be a land of peace and science. These are the essential goals of the Antarctic Treaty. The very question of mining has disrupted the usual peace and consensus among the Antarctic Treaty parties, and has the potential, if undertaken, to interfere with ongoing scientific research. Because the Antarctic environment is relatively pristine, it serves as an important natural laboratory from which to monitor critical changes in the global environment.

From Antarctica, we have learned invaluable lessons about our global climate. From Antarctica, United States and other scientists first detected the hole in the ozone layer that serves as a protective shield from the harmful effects of the Sun's rays. We are also learning what could happen to sea levels if the world climate starts to warm up and the polar ice caps melt. Moreover, according to the Office of Technology Assessment in its 1989 report on "Polar Prospects: A Minerals Treaty for Antarctica," the technology does not currently exist to conduct mining operations safely in Antarctica and to respond in the event of an oilspill.

The Antarctic Treaty consultative parties are meeting next month near Santiago, Chile. On the agenda is the negotiation of a new agreement to provide comprehensive and permanent environmental protection for Antarctica. Implicitly on the agenda must be the question of mining. The parties have already agreed to an informal moratorium on mining pending the entry into force of the convention on the Regulation of Antarctic Mineral Resources, or CRAMRA, which was concluded in 1988. But the parties have failed to reach consensus on ratification and entry into force of CRAMRA. Australia, France, and New Zealand, among others, have decided not to ratify CRAMRA. Therefore, it is imperative that the informal moratorium be made legally binding.

H.R. 3977 provides a clear example of how the informal moratorium can become enforceable in domestic legislation at least for one of the treaty parties, the United States. Recognizing that H.R. 3977 is limited in its application and effect to U.S. citizens, the legislation also calls on the President and the Secretary of State to negotiate with other Antarctic Treaty parties a legally binding moratorium that will apply to all parties.

Section 5 of the legislation provides the sense of the Congress that one or more new international agreements are needed to provide permanent and comprehensive environmental protection for Antarctica. This protection is, unfortunately, missing from the current Antarctic Treaty System. One such agreement would grant Antarctica special protective status as a land of science dedicated to wildness protection, international cooperation, and scientific research. Another agreement would prohibit or ban indefinitely Antarctic mineral resource activities.

CRAMRA is not an agreement within the meaning of either section 4 or 5 of the bill because CRAMRA does not prohibit or ban mining indefinitely. Rather, CRAMRA establishes a regulatory framework under which mining is authorized to take place. Congress intends that a new agreement must be negotiated to replace CRAMRA and to ban mining indefinitely. The agreement can be separate or tied to a new comprehensive environmental convention but, in either case, it must contain a prohibition on mining. The prohibition should ban indefinitely mining in Antarctica by all treaty parties.

Part of our negotiations with the administration have involved the differences between the words "prohibition' and "indefinite ban." Frankly, in the English language, I do not see any distinction between these terms. Congress' intent is clear: We do not want to see mining take place in Antarctica now and for an indefinite period of time into the future. I hope that this policy will be endorsed by all the Antarctic Treaty parties and become part of the permanent policies and purposes of the Antarctic Treaty system. There are more important and more immediate issues to be addressed in Antarctica, including the environmental issues raised by my bill, H.R. 4210, the Antarctic Environmental Protection Act of 1990, and I sincerely hope the treaty parties will resolve the mining issue and turn their attention to these issues.

To protect the interests of U.S. citizens, the prohibition on their mining activities will remain in effect until the Antarctic Treaty parties negotiate a new agreement that bans mining indefinitely and this new agreement enters into force for the United States. For the prohibition in section 4 to be lifted or superseded, the Congress will have to consent to the new agreement, either by the Senate's giving its advice and consent to a new treaty, convention, or protocol, or through the enactment of new legislation. It may well be that the prohibition in section 4 will remain in place indefinitely, or it may be replaced with a new international agreement containing a ban and additional environmental protections in force for all treaty parties.

H.R. 3977 assigns the Under Secretary of Commerce for Oceans and Atmosphere—the Administrator of the National Oceanic and Atmospheric Administration—the responsibility for enforcing the mining ban in the United States. The Under Secretary should use all of the enforcement tools available under the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431-2444), including the application of civil and criminal penalties, where appropriate.

In addition to the enforcement tools of the Antarctic Marine Living Resources Convention Act, H.R. 3977, also provides another sanction. Once the Under Secretary has determined that a violation of the Antarctic Protection Act of 1990 has occurred, the Under Secretary should report this violation to the Secretary of the Interior, who will ensure that the violator is ineligible to locate a mining claim under the mining laws of the United States or to perfect a mining patent or lease under the laws of the United States.

Finally, H.R. 3977 authorizes modest appropriations to the Under Secretary and the Secretary of State to implement their respective responsibilities under the act.

Mr. Speaker, I wish to congratulate and thank the original sponsor of this legislation, Mr. SILVIO CONTE, for his unfailing efforts to have H.R. 3977 passed and enacted into law. I also wish to thank Chairman STUDDS of the Merchant Marine and Fisheries Committee and the leadership of the Foreign Affairs Committee, including Chairman FASCELL, Chairman YATRON, and Representative OWENS, for their support, enthusiasm, and unflagging efforts to bring the Antarctic Protection Act of 1990 to this final stage of passage.

Mr. Speaker, I urge my colleagues to pass H.R. 3977 and send it to the President.

Mr. CONTE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentlewoman from Washington?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. UNSOELD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous

material on the Senate amendment to H.R. 3977.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Washington?

There was no objection.

□ 2310

TRIBUTE TO THE HONORABLE WES WATKINS

(Mr. McCURDY asked and was given permission to address the House for 1 minute.)

Mr. McCURDY. Mr. Speaker, I would ask the House this evening, if I may, to join with the Oklahoma delegation in wishing our colleague who is going to be retiring from our midst this year because of an unsuccessful race for Governor, WES WATKINS, who is going to be returning to Oklahoma, our best, and we in the Oklahoma delegation feel such pride, having served with WES for so many years in this Chamber. WES is obviously one of the most popular Members of this body. He is a very able representative of the southeastern district, the Third District of Oklahoma, and I know each of my colleagues will join us in expressing our appreciation for WES' service. And also we would wish him and his lovely wife, Lou, the best in years to come, and the whole Oklahoma delegation wants to recognize WES.

FASTENER QUALITY ACT

Mr. DINGELL. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3000) to require that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured, to provide for accreditation of laboratories engaged in fastener testing, to require inspection, testing, and certification, in accordance with standardized methods, of fasteners used in critical applications to increase fastener quality and reduce the danger of fastener failure and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fastener Quality Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the American economy uses billions of fasteners each year;

(2) millions of mismarked, substandard, counterfeit, and other nonconforming fasteners have been sold in commerce to end-users in the United States, and their use has dramatically increased the risk of equipment and infrastructure failures;

(3) both the military and civilian sectors of the economy have encountered unnecessary, unwarranted, and dangerous equipment and construction failures, as well as extraordinary expenses, as a result of the use of nonconforming fasteners;

(4) the sale in commerce of nonconforming fasteners and the use of nonconforming fasteners in numerous critical applications have reduced the combat readiness of the Nation's military forces, endangered the safety of other Federal projects and activities, and cost both the public and private sectors large sums in connection with the retesting and purging of fastener inventories;

(5) the purchase and use of nonconforming fasteners stem from material misrepresentations about such fasteners made by certain manufacturers, importers, and distributors engaged in commerce;

(6) current fastener standards of measurement evaluate bolts and other fasteners according to multiple criteria, including strength, hardness, and composition, and provide grade identification markings on fasteners to make the characteristics of individual fasteners clear to purchasers and users;

(7) current tests required by consensus standards, designed to ensure that fasteners are of standard measure, are adequate and appropriate for use as standards in a program of high-strength fastener testing;

(8) the lack of traceability by lot number of fasteners sold in commerce is a serious impediment to effective quality control efforts; and

(9) the health and safety of Americans is threatened by the widespread sale in commerce of mismarked, substandard, and counterfeit fasteners, a practice which also harms American manufacturers, importers, and distributors of safe and conforming fasteners, and workers in the American fastener industry.

(b) PURPOSE.—In order to protect public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the traceability of fasteners used in critical applications, and generally to provide commercial and governmental customers with greater assurance that fasteners meet stated specifications, it is the purpose of this Act to create procedures for the testing, certification, and distribution of certain fasteners used in commerce within the United States.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) "alter" means to alter—

(A) by through-hardening,

(B) by electroplating of fasteners having a minimum tensile strength of 150,000 pounds per square inch, or

(C) by machining;

(2) "consensus standards organization" means the American Society for Testing and Materials, American National Standards Institute, American Society of Mechanical Engineers, Society of Automotive Engineers, or any other standard-setting organization determined by the Secretary to have comparable knowledge, expertise, and concern for health and safety in the field for which such organization purports to set standards;

(3) "container" means any package of fasteners traded in commerce;

(4) "Director" means the Director of the National Institute of Standards and Technology;

(5) "fastener" means—

(A) a—

(i) screw, nut, bolt, or stud having internal or external threads, or

(ii) a load-indicating washer,

with a nominal diameter of 5 millimeters or greater, in the case of such items described in metric terms, or ¼ inch or greater, in the case of such items described in terms of the English system of measurement, which contains any quantity of metal and is held out as meeting a standard or specification which requires through-hardening,

(B) a screw, nut, bolt, or stud having internal or external threads which bears a grade identification marking required by a standard or specification,

(C) a washer to the extent that it is subject to a standard or specification applicable to a screw, nut, bolt, or stud described in subparagraph (B), or

(D) any item within a category added by the Secretary in accordance with section 4(b),

except that such term does not include any screw, nut, bolt, or stud that is produced and marked as ASTM A 307 Grade A;

(6) "grade identification marking" means any symbol appearing on a fastener purporting to indicate that the fastener's base material, strength properties, or performance capabilities conform to a specific standard of a consensus standards organization or other person;

(7) "importer" means a person located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States for resale or such person's use within the United States;

(8) "Institute" means the National Institute of Standard and Technology;

(9) "lot" means a quanitity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer and submitted for inspection and testing at one time;

(10) "manufacturer" means a person who fabricates fasteners, or who alters any item so that it becomes a fastener;

(11) "original equipment manufacturer" means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products;

(12) "private label distributor" means a person who contracts with a manufacturer for the fabrication of fasteners bearing the distributor's distinguishing insignia;

(13) "Secretary" means the Secretary of Commerce;

(14) "standards and specifications" means the provisions of a document published by a consensus standards organization, a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener; and

(15) "through-harden" means heating above the transformation temperature followed by quenching and tempering.

SEC. 4. SPECIAL RULES FOR FASTENERS.

(a) WAIVER REQUIREMENT.—If the Secretary determines that any category of fastener is not used in critical applications, the Secretary shall waive the requirements of this Act with respect to such category.

(b) ADDITIONAL ITEMS.—If the Secretary determines that—

(1) a category of screw, nut, bolt, or stud which is not described in section 3(5)(A)(i) or (B),

(2) a category of item which is associated with a fastener described in section 3(5)(A), (B), or (C), or

(3) a category of item which serves a function comparable to that served by a fastener so described

is used in critical applications, the Secretary may include such category under sec-

tion 3(5)(D) and therefore within the definition of fasteners under this Act.

(c) NOTICE AND OPPORTUNITY FOR COMMENTS.—The Secretary shall provide advance notice and the opportunity for public comments prior to making any determination under subsections (a) and (b) and shall act through the Director in making any such determination.

SEC. 5. TESTING AND CERTIFICATION OF FASTENERS.

(a) REQUIREMENT.—(1) No fastener shall be offered for sale or sold in commerce unless it is part of a lot which—

(A) conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and

(B) has been inspected, tested, and certified as provided in subsections (b) and (c) of this section.

(2)(A) Paragraph (1)(B) of this subsection shall not apply to fasteners which are part of a lot of 50 fasteners or less if, within 10 working days after the delivery of such fasteners, or as soon as practicable thereafer—

(i) inspection, testing, and certification as provided in subsections (b) and (c) is carried out; and

(ii) written notice detailing the results of such inspection, testing, and certification is sent (I) to all purchasers of such fasteners, except retail sellers and retail consumers, and (II) to any retail seller or retail consumer who, prior to delivery, requests such written notice.

(B) If a fastener is sold under this paragraph, each purchaser of such fastener, except for retail sellers and retail consumers unless such retail sellers and retail consumers request such notice in advance, shall be provided, contemporaneously with each sale and delivery, written notice stating that such fastener had not yet been inspected, tested, and certified as required by this Act.

(b) INSPECTION AND TESTING.—(1) The manufacturer of a lot of fasteners shall cause to be inspected and tested a representative sample, as provided in paragraph (2) of this subsection, of the fasteners in such lot to determine whether the lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured. Such inspection and testing shall be performed by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6. The standards and specifications to which the manufacturer represents such lot has been manufactured shall be disclosed by the manufacturer to the laboratory at the time the lot is submitted for inspection and testing under this paragraph. The manufacturer of a lot may perform the inspection and testing required by this paragraph in a laboratory which it owns or with which it is otherwise affiliated, if such laboratory is accredited in accordance with the procedures and conditions specified by the Secretary under section 6; unless the Secretary finds that, as to a specific type of fastener and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with the accredited laboratory would increase the protection of health and safety of the public or industrial workers.

(2) the size, selection, and integrity of the sample to be inspected and tested under paragraph (1) shall be governed—

(A) by the standards and specifications to which the manufacturer represents the fasteners in the sample have been manufactured; or

(B) if such standards and specifications do not provide for the size, selection, or integrity of the sample, by sampling procedures prescribed by the Secretary, who shall to the extent practicable use consensus testing standards and related materials.

Nothing in this paragraph shall prohibit a purchaser from requiring the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards and specifications or in the applicable sampling procedures prescribed by the Secretary.

(c) LABORATORY REPORT OF TESTING.—If a laboratory performing the inspection and testing under subsection (b)(1) determines, as to the characteristics selected under the sampling procedures prescribed by the Secretary and based on the sample examined, that a lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured, the laboratory shall provide to the manufacturer a written inspection and testing report with respect to such lot. The report, which shall be in a form prescribed by the Secretary by regulation, shall—

(1) state the manufacturer's name, the part description, and the lot number and note the grade identification mark and insignia found on the fasteners;

(2) reference the standards and specifications disclosed by the manufacturer with respect to such lot under subsection (b)(1) or, where applicable, certified by the manufacturer under section 7(c)(1);

(3) list the markings and characteristics selected under the Secretary's procedures for testing, such as the chemical, dimensional, physical, mechanical, and any other significant characteristics required by the standards and specifications described in paragraph (2) and specify the results of the inspection and testing under subsection (b)(1);

(4) state whether, based on the samples provided as representative of the lot, such lot has been found after such inspection and testing to conform to such standards and specifications; and

(5) bear the original signature of a laboratory employee or officer determined by the Secretary to be responsible for the accuracy of the report and of the inspection and testing to which it relates.

SEC. 6. LABORATORY ACCREDITATION.

(a) ESTABLISHMENT OF ACCREDITATION PROGRAM.—Within 180 days after the date of enactment of this Act, the Secretary, acting through the Director, shall issue regulations which shall include—

(A) procedures and conditions, including sampling procedures referred to in section 5, for the accreditation by the Institute of laboratories engaged in the inspection and testing of fasteners under section 5;

(B) procedures and conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), using to the extent practicable the requirements of national or international consensus documents intended to govern the operation of accreditation bodies, under which private entities may apply for approval by the Secretary to engage directly in the accreditation of laboratories in accordance with the requirements of this Act; and

(C) conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), under which the accreditation of foreign laboratories by their governments or organizations recognized by the Director shall be deemed to satisfy the laboratory accreditation requirements of this section.

(2) Upon establishing a laboratory accreditation program under paragraph (1), the Secretary shall publish a notice in the Federal Register stating that the Secretary is prepared to accept applications for accreditation of such laboratories.

(3) No accreditation provided under the terms of this subsection shall be effective for a period of greater than 3 years.

(b) LABORATORY ACCREDITATION PROCEDURES.—Existing Institute accreditation procedures stated in part 7 of title 15, Code of Federal Regulations, as in effect on the date of enactment of this Act, supplemented as the Secretary considers necessary, shall be used to accredit laboratories under the accreditation program established under subsection (a).

(c) ENSURING COMPLIANCE.—The Secretary shall ensure that—

(A) private entities accrediting laboratories under procedures and conditions established under subsection (a)(1)(B) comply with such procedures and conditions, and

(B) laboratories accredited by such private entities, or by foreign governments pursuant to subsection (a)(1)(C), comply with the requirements for such accreditation.

(2) The Secretary may require any such private entity or laboratory to provide all records and materials that may be necessary to allow the Secretary to carry out this subsection.

(d) OPERATION OF LABORATORY ACCREDITATION PROGRAM.—(1) The Director may hire such contractors as are necessary to carry out the acceditation program established under subsection (a).

(2) Costs to the Institute and to the Secretary for the establishment and operation of the accreditation program under this section shall be fully reimbursable to the Institute or to the Secretary, as appropriate, through fees or other charges for accreditation services under such program.

(e) RECOMMENDATIONS TO CONSENSUS STANDARDS ORGANIZATIONS.—The Director shall periodically transmit to appropriate consensus standards organizations any information or recommendations that may be useful in the establishment or application by such organizations of standards and specifications for fasteners.

SEC. 7 SALE OF FASTENERS SUBSEQUENT TO MANUFACTURE.

(a) DOMESTICALLY PRODUCED FASTENERS.—It shall be unlawful for a manufactuer to sell any shipment of fasteners (except fasteners for which the Secretary has waived the requirements of this Act pursuant to section 4) which are manufactured in the United States unless the fasteners are accompanied, at the time of delivery, by a written certificate by the manufacturer certifying that—

(1) the fasteners have been manufactured according to the requirements of the applicable standards and specifications and have been inspected and tested by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6; and

(2) an original laboratory testing report described in section 5(c) is on file with the manufacturer, or under such custody as may be prescribed by the Secretary, and available for inspection.

(b) FASTENERS OF FOREIGN ORIGIN.—Except as provided in paragraph (2) of this subsection, it shall be unlawful—

(A) for any person to sell to any importer, and

(B) for any importer to purchase,

any shipment of fasteners which are manufactured outside the United States unless delivery of such shipment to such importer is

accompanied by a manufacturer's certificate as described in subsection (a), an original laboratory testing report described in section 5(c), with respect to each lot from which such fasteners were taken, and any other relevant lot identification information.

(2) The requirement under paragraph (1) of this subsection that the delivery of such a shipment to such importer be accompanied by an original laboratory testing report shall not apply to the case of fasteners imported into the United States—

(A) as products manufactured within a nation which a party to a congressionally-approved free trade agreement with the United States that is in effect, so long as the Secretary certifies that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory testing report for such fasteners; or

(B) as Canadian-origin products under the United States-Canada Automobile Pact for use as original equipment in the manufacture of motor vehicles.

(c) OPTION FOR IMPORTERS AND PRIVATE LABEL DISTRIBUTORS.—(1) Nothwithstanding section 5(a) and subsections (a) and (b) of this section, delivery of a lot, or portion of a lot, of fasteners may be made to an importer or private label distributor without the required original copy of the laboratory testing report if—

(A) the manufacturer provides to the importer or private label distributor a manufacturer's certificate certifying that the fasteners have been manufactured according to the requirements of the applicable standards and specifications; and

(B) the importer or private label distributor assumes responsibility in writing for the inspection and testing of such lot or portion by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6.

(2) If the importer or private distributor assumes the responsibility in writing for the inspection and testing of such lot or portion, the provisions of section 5(a) and subsections (a) and (b) of this section shall apply to the importer or private label distributor in the same manner and extent as to a manufacturer; except that the importer or private label distributor shall provide to the testing laboratory the manufacturer's certificate described under paragraph (1) of this subsection.

(d) ALTERATIONS SUBSEQUENT TO MANUFACTURE.—(1) Any person who significantly alters a fastener so that such fastener no longer conforms to the description in the relevant certificate issued under section 5(c), and who thereafter offers for sale or sells such altered fastener, shall be treated as a manufacturer for purposes of this Act and shall cause such altered fastener to be inspected and tested under section 5 or this section as though it were newly manufactured, unless delivery of such fastener to the purchaser is accompanied by a written statement noting the original lot number, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

(2) Any person who knowingly sells an altered fastener and who did not alter such fastener shall provide to the purchaser a copy of the statement required by paragraph (1).

(e) COMMINGLING.—(1) Subsequent to paragraph (2), it shall be unlawful for any manufacturer or any person who purchases any quantity of fasteners for resale at wholesale to commingle like fasteners from different lots in the same container; except that such manufacturer or such person may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations, provided that any container which contains like fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

(2) Paragraph (1) does not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturers.

(f) SUBSEQUENT PURCHASER.—(1) It shall be unlawful for any person to sell fasteners, of any quantity, to any person who purchases such fasterners—

(A) for sale at wholesale, or

(B) for assembling components of a product or structure for sale,

unless the container of fasteners sold is conspicuously marked with the number of the lot from which such fasteners were taken, except that this requirement shall not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer.

(2) If a person who purchases fasteners for purposes other than those described in paragraph (1)(A) and (B) so requests either prior to the sale or at the time of sale, the seller shall conspicuously mark the container of fasteners with the lot number from which such fasteners were taken.

(g) REGULATIONS.—The Secretary may issue such regulations as may be necessary to ensure compliance with the provisions of this section.

SEC. 8. MANUFACTURERS' INSIGNIAS.

(a) GENERAL RULE.—No fastener which is required by the standards and specifications to which it was manufactured or private label distributor shall be offered for sale or sold in commerce unless the manufacturer or private label distributor of such fastener has complied with the requirements prescribed by the Secretary in connection with the program established under subsection (b) of this section.

(b) RECORDATION.—The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers and private label distributors described in subsection (a), to ensure the traceability of a fastener to its manufacturer or private label distributor.

SEC. 9. REMEDIES AND PENALTIES.

(a) CIVIL REMEDIES.—(1) The Attorney General may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any person who violates this Act or any regulation under this Act.

(2) An action under paragraph (1) may not be brought more than 10 years after the date on which the cause of action accrues.

(b) CIVIL PENALTIES.—(1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or any regulation under this Act shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The finding and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisidiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) CRIMINAL PENALTIES.—(1) Whoever knowingly certifies marks, offers for sale, or sells a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

SEC. 10. RECORDKEEPING REQUIREMENTS.

(a) LABORATORIES.—Laboratories which perform inspections and testing under section 5(b) shall retain for 10 years all records concerning the inspection and testing, and certification, of fasteners under section 5.

(b) MANUFACTURERS, IMPORTERS, PRIVATE LABEL DISTRIBUTORS, AND PERSONS WHO MAKE SIGNIFICANT ALTERATIONS.—Manufacturers, importers, private label distributors, and

persons who make significant alterations shall retain for 10 years all records concerning the inspection and testing, and certification, of fasteners under section 5, and shall provide copies of any applicable laboratory testing report or manufacturer's certificate upon request to any subsequent purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate relates.

SEC. 11. RELATIONSHIP TO STATE LAWS.

Nothing in this Act shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of this Act are in conflict with such State law.

SEC. 12. CONSTRUCTION.

Nothing in this Act shall be construed to limit or otherwise affect the authority of any consensus standards organization to establish, modify, or withdraw any standards and specifications under any other law or authority in effect on the date of enactment of this Act.

SEC. 13. REGULATIONS.

The Secretary shall within 180 days after the date of enactment of this Act issue such regulations as may be necessary to implement this Act.

SEC. 14. ADVISORY COMMITTEE.

Within 90 days after the date of enactment of this Act, the Secretary shall appoint an advisory committee consisting of representatives of fastener manufacturers, importers, distributors, end-users, independent laboratories, and standards organizations. The Secretary and Director shall consult with the advisory committee—

(1) prior to promulgating any regulations under this Act; and

(2) in such other matters related to fasteners as the Secretary may determine.

SEC. 15. APPLICABILITY.

The requirements of this Act shall be applicable only to fasteners fabricated 180 days or more after the Secretary issues final regulations required under sections 5, 6, and 8, except that the Secretary may extend such time period if the Secretary determines that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required. Upon any such extension, and every 6 months thereafter during such extension, the Secretary shall submit a report to the Congress explaining the reasons for such extension and the steps being taken to ensure the accreditation of a sufficient number of laboratories.

The SPEAKER pro tempore (Mr. MAZZOLI). Is a second demanded?

Mr. RITTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. DINGELL] will be recognized for 20 minutes and the gentleman from Pennsylvania [Mr. RITTER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I yield 10 minutes to the distinguished gentleman from California [Mr. BROWN], chairman of the subcommittee of the Committee on Space, Science, and Technology that has worked very closely with us on this important matter and which shares jurisdiction on this legislation, and I ask unanimous consent that he be permitted to yield blocks of that time in such fashion as he chooses.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. BROWN] will be recognized for 10 minutes and the gentleman from Michigan [Mr. DINGELL] will be recognized for 10 minutes.

The Chair recognizes the gentleman from Michigan [Mr. DINGELL]

Mr. DINGELL. Mr. Speaker, I yield myself such time as I may consume.

This important piece of legislation, which is vital to the protection of American citizens in their daily lives and to our national defense and industrial base, was very carefully crafted during an extensive investigation and protracted negotiations with all parties concerned over the last 3 years.

The House produced an excellent bill, which was passed by unanimous consent with over 150 cosponsors from both parties. This has always been a nonpartisan bill, reflecting its serious and technical nature. The House bill incorporated the best elements of bills initially introduced by the Committees on Energy and Commerce and Science and Technology.

I am pleased to report to my colleagues that the Senate, especially Chairman HOLLINGS of the Commerce Committee, Senator GORE of the Science Subcommittee, and Senator DANFORTH, the ranking Republican member, made further technical improvements in the legislation. I very much appreciate the hard work that the Senate performed, and I am pleased to accept the Senate Amendment.

This bill will, for the first time, require high strength fasteners intended for critical applications in national defense, aerospace, nuclear power generation, chemical and refining plants, bridges, trucks and buses, highrise buildings, and many other uses be tested by a laboratory accredited by an independent, third party before the fasteners can be sold in commerce. The requirements of the bill apply equally to fasteners of domestic or foreign origin. The bill also requires lot control of fasteners as they move through the distribution system to the end user, through markings on their packaging, and the registration of the manufacturers marks so that end users will know who produced the fasteners.

Supporters of this bill include leading trade associations, such as the chemical manufacturers, major unions, such as the Ironworks, and responsible companies including Boeing Aircraft and DuPont, all of whom are dependent on the quality of the fasteners that hold their products and plants together. NASA and the Departments of Defense and Justice have written letters or testified in favor of a fastener bill.

The hour is late and the need for this very carefully drafted legislation is well known.

Mr. RITTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 3000, the Fastener Quality Act. I would like to associate myself with the remarks of the gentleman from Michigan [Mr. DINGELL], chairman of the Committee on Energy and Commerce.

Industrial fasteners are the sinews that quite literally bind the mechanical instruments of an economy together.

Unfortunately, Mr. Speaker, hearings in the Oversight and Investigation Subcommittee several years ago demonstrated that substandard and often counterfeit fasteners were being used in the United States, and that this posed a real threat to many industrial products and safety, and included products such as tanks and aircraft of the military and aircraft of the civilian sector as well.

I have a genuine concern for the problems arising from the use of substandard and counterfeit or improperly marked fasteners. I happen to be a former metallurgist, and I am familiar with the processes like alloying, heat treatment, and mechanical processing, and I know that real tragedy can result from the use of fasteners that fail to meet appropriate specifications and prove to be the real weak links in a chain.

H.R. 3000 addresses the problems uncovered in the Oversight and Investigation Subcommittee hearings. It calls for the adoption of voluntary standards for the fastener market. It provides a tracking system to ensure the traceability of fasteners. Finally, it requires testing of domestic and imported fasteners to ensure that consumers are protected against substandard and counterfeit fasteners.

The industry and trade associations worked together with a bipartisan coalition in the Congress to craft this legislation.

□ 2330

I want to commend the chairman, the gentleman from Michigan [Mr. DINGELL], and the ranking Republican, the gentleman from New York [Mr. LENT] of the Committee on Energy and Commerce and also the gentleman from New Jersey [Mr. ROE], the chairman, and the ranking Republican, the gentleman from Pennsylvania [Mr.

WALKER], of the Committee on Science, Space, and Technology, for their leadership on this issue, and also the gentleman from California [Mr. BROWN].

Mr. Speaker, I urge my colleagues to support H.R. 3000.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wish to indicate my concurrence with the excellent description and analysis of the bill that has been presented.

Before completing my statement, I would like to engage in a brief colloquy with the gentleman from Michigan [Mr. DINGELL] with regard to the amendment forthcoming from the other body, if the gentleman would be willing to respond.

It is my understanding that the other body, in its consideration of the bill, has added a clause to section 5(b)(1) that would provide the Secretary of Commerce with the authority to ban manufacturer-affiliated laboratories from performing specific types of testing on specific types of fasteners if the Secretary determined that it would increase the protection of health and safety of the public or industrial workers.

This provision, I believe, is contrary to the thrust of H.R. 3000 as passed by the House, which was to ensure that all fastener laboratories, whether or not owned by manufacturers, were operating in a manner to protect the health and safety of the public. Given the incredible disruption that manufacturers might face if they were unable to certify their own fasteners in their own in-house laboratories, particularly the overwhelming number of honest manufacturers who will go to great lengths and expense to comply with this act, I would like to ask the chairman to clarify this new authority.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. BROWN of California. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, H.R. 3000 is designed, as the gentleman knows, to hold all parties involved in the manufacture, sale, and distribution of graded fasteners accountable for their actions. That is why this bill mandates that all graded fastener lots be tested, all testing be done in certified labs and that all lots be accompanied by a written certification. It is going to take some time before the certification standards are developed and labs are certified to these standards. It would anticipate that the department, and particularly the National Institute of Standards and Technology, will be spending most of its time and energy ensuring that the lab certification process is implemented in a timely fashion, not in conducting an examination into whether to ban manufacturer-affiliated labs from certifying fasteners.

Mr. BROWN of California. Mr. Speaker, is it the gentleman's expectation that any decision to ban in-house testing of fasteners would be made only after there is clear evidence of continued widespread failure of manufacturer-affiliated labs to comply with this act, and that such a ban would only be imposed after the Secretary of Commerce consulted with his advisory committee, as established in section 14 of the act, and requested public comment on such proposed regulations?

Mr. DINGELL. Mr. Speaker, I agree that we need to give this bill time to work and to assess its effectiveness. If there is clear evidence that nonconforming fasteners are continuing to enter our economy due to widespread fraudulent activities of manufacturer-affiliated labs, then I expect the Secretary to promulgate regulations that will deal with this problem.

Mr. BROWN of California. I thank the gentleman for engaging in this colloquy to clarify this issue.

Mr. Speaker, I rise to urge my colleagues to support the compromise version of H.R. 3000, the Fastener Quality Act. The amendments requested by the Senate are minor and in my opinion will have no significant effect on the implementation of this legislation.

H.R. 3000 is urgently needed to guarantee the quality of high strength nuts, bolts, and other fasteners which are used in critical applications. This country has endured an epidemic of dangerous episodes caused by the counterfeiting of expensive high strength fasteners. Bolt-related failures have occurred in bridges, power plants, and aircraft. Lives have been lost.

However, I would note that the Secretary will have the authority to decertify any laboratory found to have fraudulently violated the provisions of this act. It may be more effective to have the Secretary selectively decertify the labs of the few companies that may foolishly choose to continue to endanger the health and safety of our Nation rather than impose a blanket restriction on in-house testing for the entire fastener industry.

I would anticipate that barring clear evidence of widespread fraud at certified manufacturer-affiliated labs, the Secretary will first use his decertification authority before moving to promulgate broader regulations in this area. Furthermore, I expect the Secretary to make extensive use of his advisory committee, which is comprised of representatives of the manufacturers, distributors, end-users, independent laboratories, and standards organizations, before promulgating any regulations under this act.

Counterfeit fasteners have infiltrated our military and space programs, leading to unreliability of expensive systems and costly retrofit. The launch of *Discovery* was threatened when NASA discovered false certifications of fasteners it had purchased. Only this legislation can prevent unscrupulous businessmen from taking the chances that make them a quick buck but endanger public health and safety.

The legislation now before the House should go a long way toward making our buildings, infrastructure, motor vehicles, airplanes, and equipment free from the scourge of counterfeit and substandard fasteners. The Fastener Quality Act, which has been developed jointly by the Committees on Energy and Commerce and on Science, Space, and Technology, provides for standardization of fasteners through accreditation of fastener-testing laboratories. It also sets up procedures under which samples of every lot of fasteners that have been manufactured to qualify for use in critical applications will be tested in these accredited laboratories before they can be sold in this country. Civil and criminal penalties are included to take the financial incentive out of fastener fraud.

Let's take this opportunity to shut down the producers of counterfeit fasteners once and for all. I urge my colleagues to join me in voting for this important legislation.

Mr. RITTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROWN of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Michigan [Mr. DINGELL] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3000.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

□ 2340

GLOBAL CHANGE RESEARCH ACT OF 1990

Mr. BROWN of California. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 169), to amend the National Science and Technology Policy, Organization, and Priorities Act of 1976 in order to provide for improved coordination of national

scientific research efforts and to provide for a national plan to improve scientific understanding of the Earth system and the effect of changes in that system on climate and human well-being, as amended.

The Clerk read as follows:

S. 169

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Global Change Research Act of 1990".

SEC. 2. DEFINITIONS.

As used in this Act, the term—

(1) "Committee" means the Committee on Earth and Environmental Sciences established under section 102;

(2) "Council" means the Federal Coordinating Council on Science, Engineering, and Technology;

(3) "global change" means changes in the global environment (including alterations in climate, land productivity, oceans or other water resources, atmospheric chemistry, and ecological systems) that may alter the capacity of the Earth to sustain life;

(4) "global change research" means study, monitoring, assessment, prediction, and information management activities to describe and understand—

(A) the interactive physical, chemical, and biological processes that regulate the total Earth system;

(B) the unique environment that the Earth provides for life;

(C) changes that are occurring in the Earth system; and

(D) the manner in which such system, environment, and changes are influenced by human actions;

(5) "Plan" means the National Global Change Research Plan developed under section 104, or any revision thereof; and

(6) "Program" means the United States Global Change Research Program established under section 103.

TITLE I—UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM

SEC. 101. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress makes the following findings:

(1) Industrial, agricultural, and other human activities, coupled with an expanding world population, are contributing to processes of global change that may significantly alter the Earth habitat within a few human generations.

(2) Such human-induced changes, in conjunction with natural fluctuations, may lead to significant global warming and thus alter world climate patterns and increase global sea levels. Over the next century, these consequences could adversely affect world agricultural and marine production, coastal habitability, biological diversity, human health, and global economic and social well-being.

(3) The release of chlorofluorocarbons and other stratospheric ozone-depleting substances is rapidly reducing the ability of the atmosphere to screen out harmful ultraviolet radiation, which could adversely affect human health and ecological systems.

(4) Development of effective policies to abate, mitigate, and cope with global change will rely on greatly improved scientific understanding of global environmental processes and on our ability to distinguish human-induced from natural global change.

(5) New developments in interdisciplinary Earth sciences, global observing systems, and computing technology make possible significant advances in the scientific understanding and prediction of these global changes and their effects.

(6) Although significant Federal global change research efforts are underway, an effective Federal research program will require efficient interagency coordination, and coordination with the research activities of State, private, and international entities.

(b) PURPOSE.—The purpose of this title is to provide for development and coordination of a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.

SEC. 102. COMMITTEE ON EARTH AND ENVIRONMENTAL SCIENCES.

(a) ESTABLISHMENT.—The President, through the Council, shall establish a Committee on Earth and Environmental Sciences. The Committee shall carry out Council functions under section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) relating to global change research, for the purpose of increasing the overall effectiveness and productivity of Federal global change research efforts.

(b) MEMBERSHIP.—The Committee shall consist of at least one representative from—

(1) the National Science Foundation;

(2) the National Aeronautics and Space Administration;

(3) the National Oceanic and Atmospheric Administration of the Department of Commerce;

(4) the Environmental Protection Agency;

(5) the Department of Energy;

(6) the Department of State;

(7) the Department of Defense;

(8) the Department of the Interior;

(9) the Department of Agriculture;

(10) the Department of Transportation;

(11) the Office of Management and Budget;

(12) the Office of Science and Technology Policy;

(13) the Council on Environmental Quality;

(14) the National Institute of Environmental Health Sciences of the National Institutes of Health; and

(15) such other agencies and departments of the United States as the President or the Chairman of the Council considers appropriate.

Such representatives shall be high ranking officials of their agency or department, wherever possible the head of the portion of that agency or department that is most relevant to the purpose of the title described in section 101(b).

(c) CHAIRPERSON.—The Chairman of the Council, in consultation with the Committee, biennially shall select one of the Committee members to serve as Chairperson. The Chairperson shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.

(d) SUPPORT PERSONNEL.—An Executive Secretary shall be appointed by the Chairperson of the Committee, with the approval of the Committee. The Executive Secretary shall be a permanent employee of one of the agencies or departments represented on the Committee, and shall remain in the employ of such agency or department. The Chairman of the Council shall have the authority to make personnel decisions regarding any employees detailed to the Council for purposes of working on business of the Committee pursuant to section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651).

(e) FUNCTIONS RELATIVE TO GLOBAL CHANGE.—The Council, through the Committee, shall be responsible for planning and coordinating the Program. In carrying out this responsibility, the Committee shall—

(1) serve as the forum for developing the Plan and for overseeing its implementation;

(2) improve cooperation among Federal agencies and departments with respect to global change research activities;

(3) provide budgetary advice as specified in section 105;

(4) work with academic, State, industry, and other groups conducting global change research, to provide for periodic public and peer review of the Program;

(5) cooperate with the Secretary of State in—

(A) providing representation at international meetings and conferences on global change research in which the United States participates; and

(B) coordinating the Federal activities of the United States with programs of other nations and with international global change research activities such as the International Geosphere-Biosphere Program;

(6) consult with actual and potential users of the results of the Program to ensure that such results are useful in developing national and international policy responses to global change; and

(7) report at least annually to the President and the Congress, through the Chairman of the Council, on Federal global change research priorities, policies, and programs.

SEC. 103. UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM.

The President shall establish an interagency United States Global Change Research Program to improve understanding of global change. The Program shall be implemented by the Plan developed under section 104.

SEC. 104. NATIONAL GLOBAL CHANGE RESEARCH PLAN.

(a) IN GENERAL.—The Chairman of the Council, through the Committee, shall develop a National Global Change Research Plan for implementation of the Program. The Plan shall contain recommendations for national global change research. The Chairman of the Council shall submit the Plan to the Congress within one year after the date of enactment of this title, and a revised Plan shall be submitted at least once every three years thereafter.

(b) CONTENTS OF THE PLAN.—The Plan shall—

(1) establish, for the 10-year period beginning in the year the Plan is submitted, the goals and priorities for Federal global change research which most effective advance scientific understanding of global change and provide usable information on which to base policy decisions relating to global change;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling,

participation in international research efforts, and information management, required to achieve such goals and priorities;

(3) indentify and address, as appropriate, relevant programs and activities of the Federal agencies and departments represented on the Committee that contribute to the Program;

(4) set forth the role of each Federal agency and department in implementing the Plan;

(5) consider and utilize, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, or other entities;

(6) make recommendations for the coordination of the global change research activities of the United States with such activities of other nations and international organizations, including—

(A) a description of the extent and nature of necessary international cooperation;

(B) the development by the Committee, in consultation when appropriate with the National Space Council, of proposals for cooperation on major capital projects;

(C) bilateral and multilateral proposals for improving worldwide access to scientific data and information; and

(D) methods for improving participation in international global change research by developing nations; and

(7) estimate, to the extent practicable, Federal funding for global change research activities to be conducted under the Plan.

(c) RESEARCH ELEMENTS.—The Plan shall provide for, but not be limited to, the following research elements:

(1) Global measurements, establishing worldwide observations necessary to understand the physical, chemical, and biological processes responsible for changes in the Earth system on all relevant spatial and time scales.

(2) Documentation of global change, including the development of mechanisms for recording changes that will actually occur in the Earth system over the coming decades.

(3) Studies of earlier changes in the Earth system, using evidence from the geological and fossil record.

(4) Predictions, using quantitative models of the Earth system to identify and simulate global environmental processes and trends, and the regional implications of such processes and trends.

(5) Focused research initiatives to understand the nature of and interaction among physical, chemical, biological, and social processes related to global change.

(d) INFORMATION MANAGEMENT.—The Plan shall provide recommendations for collaboration within the Federal Government and among nations to—

(1) establish, develop, and maintain information bases, including necessary management systems which will promote consistent, efficient, and compatible transfer and use of data;

(2) create globally accessible formats for data collected by various international sources; and

(3) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating and adapting to the effects of global change.

(e) NATIONAL RESEARCH COUNCIL EVALUATION.—The Chairman of the Council shall enter into an agreement with the National Research Council under which the National Research Council shall—

(1) evaluate the scientific content of the Plan; and

(2) provide information and advice obtained from United States and international sources, and recommended priorities for future global change research.

(f) PUBLIC PARTICIPATION.—In developing the Plan, the Committee shall consult with academic, State, industry, and environmental groups and representatives. Not later than 90 days before the the Chairman of the Council submits the Plan, or any revision thereof, to the Congress, a summary of the proposed Plan shall be published in the Federal Register for a public comment period of not less than 60 days.

SEC. 105. BUDGET COORDINATION.

(1) COMMITTEE GUIDANCE.—The Committee shall each year provide general guidance to each Federal agency or department participating in the Program with respect to the preparation of requests for appropriations for activities related to the Program.

(b) SUBMISSION OF REPORTS WITH AGENCY APPROPRIATIONS REQUESTS.—(1) Working in conjunction with the Committee, each Federal agency or department involved in global change research shall include with its annual request for appropriations submitted to the President under section 1108 of title 31, United States Code, a report which—

(A) identifies each element of the proposed global change research activities of the agency or department;

(B) specifies whether each element (i) contributes directly to the Program or (ii) contributes indirectly but in important ways to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(2) Each agency or department that submits a report under paragraph (1) shall submit such report simultaneously to the Committee.

(c) CONSIDERATION IN PRESIDENT'S BUDGET.—(1) The President shall, in a timely fashion, provide the Committee with an opportunity to review and comment on the budget estimate of each agency and department involved in global change research in the context of the Plan.

(2) The President shall identify in each annual budget submitted to the Congress under section 1105 of title 31, United States Code, those items in each agency's or department's annual budget which are elements of the Program.

SEC. 106. SCIENTIFIC ASSESSMENT.

On a periodic basis (not less frequently than every 4 years), the Council, through the Committee, shall prepare and submit to the President and the Congress an assessment which—

(1) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings;

(2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and

(3) analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years.

SEC. 107. ANNUAL REPORT.

(a) GENERAL.—Each year at the time of submission to the Congress of the President's budget, the Chairman of the Council shall submit to the Congress a report on the activities conducted by the Committee pursuant to this title, including—

(1) a summary of the achievements of the Program during the period covered by the report and of priorities for future global change research;

(2) an analysis of the progress made toward achieving the goals of the Plan;

(3) expenditures required by each agency or department for carrying out its portion of the Program, including—

(A) the amounts spent during the fiscal year most recently ended;

(B) the amounts expected to be spent during the current fiscal year; and

(C) the amounts requested for the fiscal year for which the budget is being submitted.

(b) RECOMMENDATIONS.—The report required by subsection (b) shall include recommendations by the President concerning—

(1) changes in agency or department roles needed to improve implementation of the Plan; and

(2) additional legislation which may be required to achieve the purposes of this title.

SEC. 108. RELATION TO OTHER AUTHORITIES.

(a) NATIONAL CLIMATE PROGRAM RESEARCH ACTIVITIES.—The President, the Chairman of the Council, and the Secretary of Commerce shall ensure that relevant research activities of the National Climate Program, established by the National Climate Program Act (15 U.S.C. 2901 et seq.), are considered in developing national global change research efforts.

(b) AVAILABILITY OF RESEARCH FINDINGS.—The President, the Chairman of the Council, and the heads of the agencies and departments represented on the Committee, shall ensure that the research findings of the Committee, and of Federal agencies and departments, are available to—

(1) the Environmental Protection Agency for use in the formulation of a coordinated national policy on global climate change pursuant to section 1103 of the Global Climate Protection Act of 1987 (15 U.S.C. 2901 note); and

(2) all Federal agencies and departments for use in the formulation of coordinated national policies for responding to human-induced and natural processes of global change pursuant to other statutory responsibilities and obligations.

(c) EFFECT ON FEDERAL RESPONSE ACTIONS.—Nothing in this title shall be construed, interpreted, or applied to preclude or delay the planning or implementation of any federal action designed, in whole or in part, to address the threats of stratospheric ozone depletion or global climate change.

TITLE II—INTERNATIONAL COOPERATION IN GLOBAL CHANGE RESEARCH

SEC. 201. SHORT TITLE.

This title may be cited as the "International Cooperation in Global Change Research Act of 1990".

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Pooling of international resources and scientific capabilities will be essential to a successful international global change program.

(2) While international scientific planning is already underway, there is currently no comprehensive intergovernmental mechanism for planning, coordinating, or implementing research to understand global change and to mitigate possible adverse effects.

(3) An international global change research program will be important in building future consensus on methods for reducing global environmental degradation.

(4) The United States, as a world leader in environmental and Earth sciences, should help provide leadership in developing and implementing an international global change research program.

(b) PURPOSES.—The purposes of this title are to—

(1) promote international, intergovernmental cooperation on global change research;

(2) involve scientists and policymakers from developing nations in such cooperative global change research programs; and

(3) promote international efforts to provide technical and other assistance to developing nations which will facilitate improvements in their domestic standard of living while minimizing damage to the global or regional environment.

SEC. 203. INTERNATIONAL DISCUSSIONS.

(a) GLOBAL CHANGE RESEARCH.—The President should direct the Secretary of State, in cooperation with the Committee, to initiate discussions with other nations leading toward international protocols and other agreements to coordinate global change research activities. Such discussions should include the following issues:

(1) Allocation of costs in global change research programs, especially with respect to major capital projects.

(2) Coordination of global change research plans with those developed by international organizations such as the International Council on Scientific Unions, the World Meteorological Organization, and the United Nations Environment Program.

(3) Establishment of global change research centers and training programs for scientists, especially those from developing nations.

(4) Development of innovative methods for management of international global change research—

(A) use of new or existing intergovernmental organizations for the coordination or funding of global change research; and

(B) creation of a limited foundation for global change research.

(5) The prompt establishment of international projects to—

(A) create globally accessible formats for data collected by various international sources; and

(B) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to possible adverse effects of global change.

(6) Establishment of international offices to disseminate information useful in identifying, preventing, mitigating, or adapting to the possible effects of global change.

(b) ENERGY RESEARCH.—The President should direct the Secretary of State (in cooperation with the Secretary of Energy, the Secretary of Commerce, the United States Trade Representative, and other appropriate members of the Committee) to initiate discussions with other nations leading toward an international research protocol for cooperation on the development of energy technologies which have minimally adverse effects on the environment. Such discussions should include, but not be limited to, the following issues:

(1) Creation of an international cooperative program to fund research related to energy efficiency, solar and other renewable energy sources, and passively safe and diversion-resistant nuclear reactors.

(2) Creation of an international cooperative program to develop low cost energy technologies which are appropriate to the environmental, economic, and social needs of developing nations.

(3) Exchange of information concerning environmentally safe energy technologies and practices, including those described in paragraphs (1) and (2).

SEC. 204. GLOBAL CHANGE RESEARCH INFORMATION OFFICE.

Not more than 180 days after the date of enactment of this Act, the President shall, in consultation with the Committee and all relevant Federal agencies, establish an Office of Global Change Research Information. The purpose of the Office shall be to disseminate to foreign governments, businesses, and institutions, as well as the citizens of foreign countries, scientific research information available in the United States which would be useful in preventing, mitigating, or adapting to the effects of global change. Such information shall include, but need not be limited to, results of scientific research and development on technologies useful for—

(1) reducing energy consumption through conservation and energy efficiency;

(2) promoting the use of solar and renewable energy sources which reduce the amount of greenhouse gases released into the atmosphere;

(3) developing replacements for chlorofluorocarbons, halons, and other ozone-depleting substances which exhibit a significantly reduced potential for depleting stratospheric ozone;

(4) promoting the conservation of forest resources which help reduce the amount of carbon dioxide in the atmosphere;

(5) assisting developing countries in ecological pest management practices and in the proper use of agricultural and industrial chemicals;

(6) promoting recycling and source reduction of pollutants in order to reduce the volume of waste which must be disposed of, thus decreasing energy use and greenhouse gas emissions.

TITLE III—GROWTH DECISION AID

SEC. 301. STUDY AND DECISION AID.

(a) The Secretary of Commerce shall conduct a study on the implications and potential consequences of growth and development on urban, suburban, and rural communities. Based upon the findings of the study, the Secretary shall produce a decision aid to assist State and local authorities in planning and managing urban, suburban, and rural growth and development while preserving community character.

(b) The Secretary of Commerce shall consult with other appropriate Federal departments and agencies as necessary in carrying out this section.

(c) The Secretary of Commerce shall submit to the Congress a report containing the decision aid produced under subsection (a) no later than January 30, 1992. The Secretary shall notify appropriate State and local authorities that such decision aid is available on request.

The SPEAKER pro tempore (Mr. MAZZOLI). Is a second demanded?

Mr. WALKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. BROWN] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. WALKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. BROWN].

Mr. BROWN of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us today (S. 169) will be critical to our ability to avoid future environmental crises. The Global Change Research Act of 1990 establishes a research program that will provide the information that the United States and the other nations of the world will need to deal intelligently with the looming problems of global warming, ozone depletion, and ecosystem destruction.

I want to commend my colleagues in the House for their relentless efforts and leadership in bringing this bill to the floor. I first want to thank two subcommittee chairmen of the Committee on Science, Space, and Technology: Representative JAMES SCHEUER, chairman of the Subcommittee on Natural Resources, Agriculture Research, and Environment, and Representative RALPH HALL, chairman of the Subcommittee on International Scientific Cooperation. I also want to recognize the important contribution of the ranking Republican members of these subcommittees, Representative CLAUDINE SCHNEIDER and Representative RON PACKARD, respectively.

Chairman DANTE FASCELL and ranking Republican member WILLIAM BROOMFIELD, of the Committee on Foreign Affairs are also to be commended for their significant contributions to improve the international provisions of this bill. On the Senate Committee on Commerce, Science, and Transportation, Senator ERNEST HOLLINGS and ranking Republican Senator JOHN DANFORTH, were instrumental in shaping this bill.

The bill before us is a substitute amendment for S. 169, which passed the Senate earlier this year. It is based largely on H.R. 2984, which was ordered reported by the Committee on Science, Space, and Technology on April 18. It is the product of several hearings, much careful deliberation, and a multitude of discussions among the committees involved. In many ways, this bill is the culmination of work which began in the mid-1970's, when the Science Committee held the very first congressional hearings on the issue of global warming due to the greenhouse effect.

Over the past year, global environmental change has become a primary concern of heads of state worldwide. Mrs. Thatcher, Mr. Mitterand, Mr. Gorbachev, and President Bush have all convened international conferences

to discuss the effects of human activities on our global environment. There are good reasons for this attention, since responses to global environmental change will affect every major economic sector, including energy, agriculture, and transportation, of both developed and developing nations.

If we hope to get the answers needed to develop intelligent policies to address the hardships that global environmental change could bring, an unprecedented, interdisciplinary research effort must be firmly established in the United States. This effort will also require strong international cooperation and cost-sharing over an extended period, since it will be extremely demanding and expensive. The administration's budget request for global change research in fiscal year 1991 is over $1 billion.

S. 169 codifies, strengthens, and enhances the global change research efforts now going on in the administration. It establishes a permanent U.S. global change research program and gives the Committee on Earth and Environmental Sciences a legislative charter and the resources it needs to do an effective job of coordinating the program. It provides that the information produced by the program will be translated periodically into publicly available assessment documents. It urges the President to seek international agreements on global change research and on development of energy technologies that have minimally adverse effects on the environment. And finally, the bill brings industry and environmental groups into the process by allowing them to review and comment on the research plan.

Mr. Speaker, nations across the globe are now in the midst of planning for a framework convention on global climate change to be considered in 1992 in Brazil at the United Nations Conference on Environment and Development. In 2 weeks, the World Climate Conference begins in Geneva where dozens of nations will gather to share the fruits of their climate research. The United States, as a world leader in scientific research, now has a golden opportunity to show strong, unified support for an endeavor that very well could spare the Earth from a global environmental crisis. The Global Change Research Act of 1990 will help to provide this Nation and the other nations of the world with the research-based answers needed to respond effectively to the environmental challenges of the 21st century.

Mr. WALKER. Mr. Speaker, I yield myself such time as I may consume. I also rise in support of this bill. First of all, I would like to congratulate the gentleman from California for his hard work on this bill as well as the many others who have contributed a lot to the bill.

We have much to learn about the influence of human-induced activity in naturally occurring phenomena on global climate change. Only through a coordinated approach which pools the resources of the various Federal departments and agencies will we have an effective means of arriving at the answers we need to formulate policy.

The bill before us is the product of many hours of discussion between the Congress and the administration. The Science Committee received a great many constructive suggestions from the Office of Science and Technology Policy and from executive branch officials already engaged in the process of coordinating this Nation's global climate change research. I believe that the result of this work is a sound measure which provides a strong foundation for the important work that will be done by the Committee on Earth and Environmental Sciences.

The Office of Management and Budget has indicated that this bill will be signed.

Mr. Speaker, I would like to engage in a colloquy with the gentleman from California.

Mr. BROWN, this bill includes a provision directing the Secretary of Commerce to examine the consequences and the management of growth in urban, surburban, and rural communities. The purpose is to provide a decision aid for local officials. NOAA, which is part of the Department of Commerce, has extensive expertise in air and water environmental science. Would anything in this act restrict the Secretary from utilizing this expertise in conducting a study?

Mr. BROWN of California. Mr. Speaker, if the gentleman will yield, I appreciate the gentleman raising this question. It represents an important contribution which he has made to the bill, and we are very pleased with that.

My response to the gentleman's question is that I would say, there is nothing in this act which would restrict the Secretary in such a way. In fact, from my understanding, the Secretary would be expected to draw upon the expertise of NOAA, regarding environmental effects, and consult with other environmental agencies as well.

Mr. WALKER. Mr. Speaker, I thank the gentleman very much for his information.

I have no further requests for time, and I yield back the balance of my time.

Mr. BROWN of California. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Texas [Mr. HALL].

Mr. HALL of Texas. Mr. Speaker, I rise in strong support of S. 169, the Global Change Research Act of 1990. I believe that it provides a very essential congressional input into the entire area of global change. I urge its passage.

I would like to say a few words of explanation about title II, the international component of the global change bill.

The basis for this title came from hearings that the gentleman from New York [Mr. SCHEUER] and I convened on international research programs during the last Congress. In testimony from a NASA witness, we learned that about 90 percent of the world's research on the Antarctic ozone hole is being funded by the U.S. Government and that about 70 percent of the greenhouse effect research is also funded by U.S. taxpayers. I am certainly in favor of the United States taking the leading role in important environmental research programs. But if the problems are global, the studies need to be global, the funding should be global, and ultimately the solutions will need to be global.

Title II of the bill calls on the Secretary of State to begin discussions leading toward agreements on cooperative global change research. This may well be the direction in which the administration and other nations are already heading, but title II gives them all a nudge in that direction, and provides congressional guidance on the substance of those discussions.

International agreements and protocols on global change research are intended to serve two purposes.

First, they would set up a way in which the costs of conducting global change research could be spread equitably among the nations of the world which are best able to afford it.

Second, these agreements would bring the developing nations of the world into the Global Change Program—for example, by creating research centers and training centers in these nations. The developing world—because of its large land mass, its tropical forests, and its increasing levels of pollution—will have a larger role to play in global change research in the coming years. And more importantly, if we hope to reach agreement among nations in solving global environmental problems, a critical first step will be to reach common understandings through joint research programs.

Finally, Mr. Speaker, let me point out that section 204 of the bill sets up a Global Change Research Information Office to distribute information to developing nations on ways that they can respond to global change, for instance by reducing waste and energy consumption. This is a useful addition to the bill which was proposed by the gentleman from New Jersey [Mr. SMITH] during deliberations by the Committee on Foreign Affairs.

Mr. Speaker, I believe that S. 169 provides essential congressional input into the entire area of global change, and I urge all Members to support it.

Mr. BROWN of California. Mr. Speaker, I appreciate the gentleman's comments. As chairman of the Subcommittee on International Scientific Cooperation, he has made a big contribution to the international aspects of this legislation. We appreciate that very much.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of the joint committee substitute to S. 169, the National Global Change

Research Act of 1990. Senator HOLLINGS and I first introduced global change research legislation in the 100th Congress. In the 101st Congress, I introduced two global change research bills, H.R. 980 and H.R. 3332. On September 26, 1989, the Merchant Marine and Fisheries Committee ordered H.R. 980 reported to the House of Representatives with one additional amendment (H. Rept. 101-394, part 1).

After more than 2 years of effort, I am pleased to join my colleagues, Chairmen ROE and FASCELL in bringing this legislation to the floor. The substitute bill represents the best chance for stand-alone global change legislation to be enacted in the 101st Congress.

The bill we are bringing to the floor today will improve our understanding of global climate change. Section 102 of the bill directs all Federal agencies involved in global climate change research to coordinate their scientific research. The mechanism for this coordination is the establishment, through the Federal Coordinating Council for Science, Engineering, and Technology [FCCSET], of the Committee on Earth and Environmental Sciences [CEES], as the lead entity for overseeing the implementation of a 10-year interagency research plan.

Section 102 also establishes the membership of CEES and designates a process for the selection of a chairperson. The chairperson will be chosen by the chairman of the FCCSET from those Federal agencies and departments that contribute substantially, in terms of scientific research capability and budget, to the Federal global change program. The chairperson is expected to be knowledgeable and experienced with regard to the administration of scientific research programs.

It is my strong recommendation that the chairperson come from one of the following scientific research agencies: the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, the National Science Foundation, or the U.S. Geological Survey. I am concerned that only those agencies that are not mission oriented or policy driven be eligible for the chairmanship.

The CEES is an existing, but nonstatutory arm of the Office of Science and Technology Policy. The bill would build on the existing structure by giving CEES a statutory charter. As the Federal Government's interagency committee for earch sciences, CEES is currently charged with planning and coordinating Federal agency activities on global change research. Section 102 of the bill would provide the CEES with new authority to develop and coordinate plans for interagency research on climate change. Such plans would identify critical research needs and provide for cooperation among Government, industry, and academic scientists in the United States and overseas.

Section 103 of the bill establishes an interagency U.S. global research program to be implemented by the plan developed under section 104.

Section 104 provides for the development of the National Global Change Research Plan, a 10-year plan for national research on the processes and factors which contribute to global environmental change. The plan would: Identify the goals, priorities, and approaches for global change research to be conducted and funded by the Federal Government; describe the specific role of each Federal agency in implementing the plan; recommend allocations of Federal funding among specific research activities; provide for the coordination of relevant programs and activities of Federal agencies involved in the implementation of the plan; and describe the specific research and other activities to be conducted under the plan.

Section 104 also specifies that the plan provide for the allocation of research responsibilities among Federal agencies. The recently published document, "Our Changing Planet: The FY 1991 U.S. Global Change Research Plan," describes the research responsibilities of the various Federal agencies and departments involved in global change research. It is our intention that these roles and responsibilities should be incorporated into the plan. However, the committee expects that the plan will more clearly identify research priorities and will specifically assign agency responsibilities in meeting those priorities.

The Merchant Marine and Fisheries Committee is concerned about the relative lack of involvement in ecological research of two key agencies, the U.S. Fish and Wildlife Service [USFWS] and NOAA, particularly the National Marine Fisheries Service [NMFS]. The committee trusts that the plan will provide for the involvement of these two agencies and that these agencies will have well-developed roles under the CEES plan.

Pursuant to this, USFWS should have a major responsibility for ecological studies and monitoring and assessment related to the negative impacts of global environmental change to fish and wildlife; prediction, detection, modeling, and assessment of changes in wetlands, terrestrial and aquatic communities, endangered species, fish and wildlife habitats, and biodiversity; and development and management of long-term plans and activities for mitigation of fish and wildlife resources.

NMFS should have responsibility for the collection, analysis, and dissemination of information on the status of fish, marine mammals, and endangered species stocks related to the possible impacts of global environmental change; provide a sound scientific basis for predicting changes in the habitat of living marine resources and the impact of that change upon these resources resulting from global change; and provide timely information concerning the impacts of global change to living marine resources, their habitats, and their use with the assistance of computers and other automated devices.

By developing a coordinated research plan, we will enhance our understanding of the Earth system on a global scale, improve our capability to predict natural or human induced changes and, most importantly, provide the best scientific information on which we can develop necessary and responsible policy decisions.

The Committee on Merchant Marine and Fisheries is concerned about the need for sound budget coordination in the development of the global change plan. We would have preferred a requirement that Congress receive a summary of the CEES review of agency budgets. Although that provision did not remain in the bill, it is expected that the administration will provide the needed information to Congress so that proper oversight of the program may be facilitated.

Title II of the substitute amendment provides for international cooperation in global change research. Section 203 asks the President, through the Secretary of State and in cooperation with the CEES, to initiate discussions with other nations leading toward an international protocol to coordinate global change research activities. The negotiations should include discussion of: The allocation of costs in global change research programs, coordination of global change research plans, establishment of global change research centers, and the establishment of international offices to disseminate information useful in identifying, preventing, mitigating, or adapting to the possible effects of global change.

Section 203 also provides for the initiation of discussions with other nations leading toward an international research protocol for cooperation on the development of energy technologies that have minimally adverse effects on the environment. These discussions are intended to include: The creation of an international cooperative program to fund research related to energy efficiency, creation of an international cooperative program to develop low-cost energy technologies that are appropriate to the environmental, economic, and social needs of developing nations and exchange of information concerning environmentally safe energy technologies and practices.

Section 204 of the substitute provides for the establishment of an office of global change information. The purpose of the office is to disseminate information to foreign governments, businesses and institutions, as well as citizens of foreign countries, information available in the United States that would be useful in addressing global climate change.

Two summers ago, Congress finally woke up to the need to focus more intently on the issue of global climate change. A significant number of bills were introduced in this Congress. Congressional committees held numerous hearings. As a result, we know a great deal more about the issue of global climate change.

However, a number of uncertainties continue to divert attention from the need to take actions that would benefit our environment regardless of whether the Earth is undergoing human induced climatic warming. This legislation will help address the uncertainties by developing a coordinated Federal research program.

In recent months, world attention has focused increasingly on potential changes in the Earth's climate and environment. Average global temperatures in the past decade have been the warmest on record. Droughts have devastated parts of India, Africa, and North America, and at the same time, heavy rainfall has occurred in traditionally arid regions of South America. Floods have threatened thousands in Bangladesh, and the Sahara Desert is continuing its slow spread over northern Africa. The atmosphere's protective ozone layer is thinning perceptibly, and each spring, ozone concentrations over Antarctica drop

dramatically. Some of these environmental and climatic trends are a result of natural changes, but increasing evidence indicates that human activity is exerting a growing influence on the Earth system.

Mr. Speaker, in 2 weeks, environmental ministers from around the world will gather for the second World Climate Conference in Geneva, Switzerland. The U.S. delegation is being led by the Under Secretary of Commerce for Oceans and Atmosphere, Dr. John Knauss. The United States is coming under ever increasing criticism for failing to take stronger measures to address the growing consensus that emissions resulting from human activities are substantially increasing the atmospheric concentrations of the greenhouse gases, carbon dioxide, methane, chloroflorocarbons [CFC], and nitrous oxide. According to the interim report of the United Nations' intergovernmental panel on climate change, these increases will enhance the greenhouse effect, resulting on average in an additional warming of the Earth's surface. What the IPCC interim report is unable to predict is the timing, magnitude, and regional patterns of climate change. The substitute bill before the House today seeks to address this remaining uncertainty by establishing a comprehensive 10-year global change research plan.

I would like to thank my colleagues from the Committees on Science, Space, and Technology and Foreign Affairs for their cooperation in achieving a substitute bill that is acceptable to everyone.

Mr. Speaker, I support this bill and urge my colleagues in the House to support its passage.

Mr. SCHEUER. Mr. Speaker, I rise in support of the substitute amendment to S. 169, the Global Change Research Act of 1990.

The passage of this bill marks a rare day in history when the Congress and the administration set their difference aside to do the right and proper thing. After all, it is only right and proper that government, faced with the knowledge that global environmental changes could threaten and permanently damage Earth's life-sustaining systems, should act in the interest of the people by attempting to reduce the risk of such a disaster.

Our best scientists have warned us that human activities—such as the burning of fossil fuels and the rampant destruction of the world's forests—could commit the Earth to irreversible and unpredictable climate changes.

They have warned us that biological species extinction is occurring at an alarming rate, and that depletion of the ozone layer could disrupt crucial ecological systems.

One of the most acute of these warnings was uttered 3 years ago by a hearing witness from NASA who told a congressional committee, on a smoldering summer day, that he believed global warming had indeed arrived.

This event and other scientific studies have caused many Members of Congress to take heed to these warnings, and to introduce legislation to address the problem.

Some of the bills introduced are ambitious, comprehensive policy strategies, including everything from automobile efficiency standards to tree-planting.

There are those of us who have remained skeptical, noted the many scientific uncertainties regarding global change, and adopted a "wait-and-see" attitude.

Although I personally believe it is much too dangerous to do nothing but wait, we should all recognize how important it is that we see more clearly the nature of global change, through scientific research.

It is only right and proper that the United States endowed with scientific capabilities unmatched elsewhere in the world, should be a leader in the effort to better understand global environmental change. Passage of this legislation will go far to establish such leadership.

The substitute amendment to S. 169 is very similar to H.R. 2984, which was reported out of the Subcommittee on Natural Resources, Agriculture Research, and Environment, which I am privileged to chair, earlier this year.

Title I of the bill formally establishes the United States Global Change Research Program, a billion-dollar program now being conducted in 10 Federal agencies.

The program is to include several research elements, including:

Data collection and monitoring; historical studies; prediction of global processes and trends through modeling; periodic scientific assessments of the effects of global change on critical natural and human systems; development of a national information base and participation in efforts to make data and information systems internationally usable and available; and measures for increasing international cooperation in global change research.

Title I also codifies and permanently establishes an interagency committee in the President's science office, the Committee on Earth and Environmental Sciences, or CEES, to coordinate and oversee implementation of the U.S. global change research program.

The CEES is responsible for ensuring that U.S. efforts in each of the program elements just mentioned are both efficient and sufficient. The CEES is required to carry out several functions, namely:

To establish research priorities in a global change research plan; to oversee implementation of the global change research plan and program; to help ensure that data and information produced as a result of global change research is readily usable by policymakers; to provide periodic reviews, scientific assessments, and budget advice to the Congress and the President regarding global change research; to work with non-Federal groups to coordinate Federal global change programs with the programs of these groups; and to participate in and coordinate international global change research activities.

Congress and the administration have worked together to draft a bill that gives CEES just enough structure and responsibility to render it an effective coordinating body, while leaving the CEES enough flexibility to do the job it has shown us it can do so well.

One particular structural feature of the bill worth noting is the creation of a position for an executive secretary.

This provision was intended to relieve the agency representatives on the CEES of the burden of administering CEES activities, so they could focus their attention on the research.

The Subcommittees on Natural Resources, Agriculture Research, and Environment; and International Scientific Cooperation have enjoyed a productive and congenial working relationship with the Committee on Earth and Environmental Sciences as it currently operates.

It is our intention that this bill to codify and strengthen CEES will only enhance that relationship, and will improve the ability of Congress to oversee the interagency research program that could be the key to our ultimate survival on this fragile planet, Earth.

Mr. ROE. Mr. Speaker, I rise in support of S. 169, the Global Change Research Act of 1990.

The bill before us today was made possible by the diligent efforts of a number of committees in both the House and Senate. But equally importantly, the Office of Management and Budget and the Office of Science and Technology Policy have worked very hard and very cooperatively with all the committees over the past few weeks to reach agreement on a bill that would enable the best scientific research program to go forward. I commend the White House for their efforts in this regard, and look forward to continuing cooperation between the Congress and the administration in this important program.

I will defer to Mr. SCHEUER and Mr. HALL, the subcommittee chairmen who shepherded this bill through the Science Committee's Environmental and International Subcommittees, to describe the specific provisions of the legislation. However, I would like to comment on how this amendment complements existing Federal efforts. The administration has been quite supportive of global change research—the budget request for these activities in fiscal year 1991 is over $1 billion, a 57-percent increase over this year's levels. Further, the administration has established the Committee on Earth and Environmental Sciences under the President's Science Office as the lead organization for coordinating a rapidly growing research program which spans over 10 Federal agencies and departments.

S. 169 does codify this interagency research program in global change. However, it does much more than rubberstamp ongoing activities. It also solidifies and strengthens the program by adding several critical elements:

First, the bill establishes a permanent U.S. Global Change Research Program and gives the Committee on Earth and Environmental Sciences a legislative charter and the resources it needs to do an effective job of coordinating the program. The committee is currently operating under an Executive order which expires on December 31 of this year. The Congress has seen interagency committees come and go over the years; the message here is that this one is here to stay.

Second, the bill provides that the voluminous amount of information produced by the program will be translated at least once every 4 years into publicly available assessment documents which address the effects and long-term trends associated with global change. In this way, we will improve on what we learned from the process in the acid rain program, a 10-year research effort designed to yield definitive scientific answers authorized by the Science Committee. The Committee

wants to ensure that global change research and the development of effective policies to respond to global change will occur in parallel as we continuously broaden our knowledge and understanding of global change.

Third, the President is directed to seek international agreements on global change research and on development of energy technologies which have minimally adverse effects on the environment. This bill provides for extensive international participation and cost sharing, and brings the developing nations into the program through research and training opportunities.

Fourth, the bill brings industry and environmental groups into the process by allowing them to review and comments on the research plan. This provision will avoid the pitfalls of earlier environmental programs in which Federal programs were not open to public review.

Mr. Speaker, because this bill before us is somewhat different from the bills reported by the various House committees, I think it would be useful for me to take a few minutes to describe the views of the Committee on Science, Space, and Technology on some specific provisions in the legislation.

Title I of the bill effectively makes the Committee on Earth and Environmental Sciences, or CEES, the focal point for coordination of U.S. national and international efforts in global change research. It charges CEES with the responsibility for overseeing implementation of the program. What this means is that the CEES will be expected to look for and eliminate any duplication of effort. It will also be expected to ensure that research needs are being met. This process should allow the American people to get maximum benefit of every research dollar spent.

Under this legislation, the CEES must develop a national global change research plan, which will establish global change research goals and priorities for the subsequent 10 years. The authors of this legislation do not mean to imply, however, that useful information and recommendations should flow from the program only after the culmination of a 10-year period. Although the plan describes a 10-year research program, the results of that program should be consolidated and communicated frequently.

As large as this research effort is and will become, its resources are nevertheless limited. Thus, we must take extra precautions to ensure that the research funded answers fundamental policy questions. For example, how much carbon dioxide can we continue to emit into the atmosphere without triggering irreversible and globally damaging processes? Which CFC substitutes will best protect the ozone layer? Why are some ecosystems in danger of collapsing?

The authors of this legislation believe strongly that academic, industry, environmental, State government, and other groups should have an opportunity to provide advice to those in the Federal Government administering the program. After all, the environmental and financial impacts of global change are likely to be large and far-reaching. Further, as the Federal program matures, other research programs funded and operated by States, industry, and environmental groups are likely to flourish, increasing the need for coordination at all levels.

To provide open avenues of communication among researchers, the CEES, policymakers, and the public, several provisions have been included. First, a 90-day public comment period is required before the national global change research plan can be submitted. Second, the plan will contain an analysis of current trends in global change and a projection of major trends for the subsequent 25 to 100 years. A third provision mandates that scientific assessment documents which integrate, evaluate, and interpret the findings of the program be provided to the Congress at least every 4 years. And finally, the CEES is required to engage in regular consultations with industry, academic, and environmental groups. The committee expects that CEES would seek the views of these groups with respect to both planning and activities.

To provide adequate peer review of the program, the National Academy of Sciences will consider the scientific content of the plan and provide information and advice to the CEES on future global change research and assessment priorities. The CEES has established an ongoing and effective relationship with the Academy, which has provided scientific assessments of global change for well over a decade. This relationship should continue, both because the Academy can serve as a useful scientific sounding board for the program and because the Academy, through the International Council of Scientific Unions and other bodies, has a wide range of connections with international research programs in global change.

If the CEES is to have a major and lasting effect on coordination of the Global Change Research Program, it must have the authority to influence the process by which Federal budget priorities are established. The CEES should be an equal partner with the Office of Management and Budget [OMB] in formulating budget decisions that affect the program. The legislation is constructed to involve the CEES in all stages of the interagency budgetary process.

First, it directs the CEES to provide guidance to Federal agencies on their global change research programs during the preparation of agency appropriations requests. Each agency is required to include in its request for appropriations a report to Congress which identifies and states the portion of its request for each element of the Global Change Research Program. Most importantly, the CEES is given an opportunity to review and comment on the budget request for each agency in the context of the plan. The committee expects that the CEES will work closely with the OMB on these during this budgetary review period. The CEES has been given this role since it clearly has the best perspective on whether an agency's submission is in fact reflective of the scientific priorities established under the plan.

To provide Congress and the President with a useful tool for oversight of the Global Change Research Program, an annual report is required. The report is to include information on expenditures during the recently concluded fiscal year, the current fiscal year, and the fiscal year for which the budget is being submitted. The committee expects that this budgetary information will continue to be organized and transmitted to the Congress in a format similar to that used in the CEES reports entitled "Our Changing Planet."

It is important to note that it is the plan, rather than the annual report, which will be available for public review and comment. While the plan should indeed include budgetary information, it is expected that this information will appear as long-term cost projections for particular programs. For example, NASA's Earth Observing Program is expected to cost $17 billion between now and the year 2000.

Title II, which contains the international provisions of this bill, is critical. While international scientific planning in global change research is already underway, there is currently no comprehensive intergovernmental mechanism for planning, coordinating, or implementing research to understand global change and to mitigate its adverse effects. In addition, while the United States should take the lead in developing an international global change research program, pooling of international resources and scientific capabilities will clearly be necessary for a successful program.

A key element in these discussions will be cost sharing. The United States is currently bearing a disproportionate share of the burden for funding global change research, in part because there is no effective forum where national governments can commit themselves to supporting a fair share of a truly international global change research program. Further, given the need for worldwide ground-based data and the need to train a new generation of Earth scientists, a proactive program by the developed world to involve scientists and institutions of the developing world is essential. Finally, if the nations of the world are ever to agree on solutions to global change, it will be critical that they develop a consensus on the scientific underpinnings of the problem.

The need for international cooperation is equally great in the area of energy technologies as it is in the area of global change research. Even should the nations of the developing world conclude that they need to move toward energy-efficient technologies to reduce local and global pollution, they may lack effective information, technology, or resources to do so. The bill aims therefore at negotiation of an international protocol to develop energy technologies which have minimally adverse effects on the environment. The intent of the committee in adopting subsection 203(b) is to focus the resources of the developed world on the production and dissemination of technologies which can help the developing world to mitigate the effects of global change. It may be difficult if not impossible for the developing world to utilize these technologies without an aggressive program of technology transfer by the developed world.

In section 204 of the bill, the President is directed to establish an Office of Global Change Research Information to disseminate research information useful for developing effective response strategies related to global change, such as methods to reduce waste and energy consumption. The committee expects the President to take the necessary steps to

inform potential users of the results of global change research. Probably the most effective method for doing so would be to disseminate information on the office through the overseas missions of the State Department and the U.S. Information Agency.

Mr. Speaker, I appreciate the opportunity to explain the purposes of these provisions in the bill. S. 169 is an important piece of legislation, and the result of excellent cooperation between the Congress and the administration. I urge my colleagues to support it.

Mr. BROWN of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. BROWN] that the House suspend the rules and pass the Senate bill, S. 169, as amended.

The question was taken; and two-thirds having voted in favor thereof, the rules were suspended and the Senate bill, as amended, was passed.

The title of the Senate bill was amended so as to read: "An act to require the establishment of a United States Global Change Research Program aimed at understanding and responding to global change, including the cumulative effects of human activities and natural processes on the environment, to promote discussions toward international protocols in global change research, and for other purposes."

A motion to reconsider was laid on the table.

□ 2350

GENERAL LEAVE

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on S. 169, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Calfornia?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF S. 169, NATIONAL GLOBAL CHANGE RESEARCH ACT OF 1990

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent that in the engrossment of the Senate bill (S. 169) to amend the National Science and Technology Policy, Organization, and Priorities Act of 1976 in order to provide for improved coordination of national scientific research efforts and to provide for a national plan to improve scientific understanding of the Earth system and the effect of changes in that system on climate and human well-being, the Clerk be authorized to make such technical and conforming changes as may be necessary to reflect the actions of the House in passing the Senate bill, S. 169.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from California?

There was no objection.

POLLUTION PREVENTION ACT OF 1990

Mr. THOMAS A. LUKEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5931) to implement the national objective of pollution prevention by establishing a source reduction program at the Environmental Protection Agency, by assisting States in providing information and technical assistance regarding source reduction, and for other purposes.

The Clerk read as follows:

H.R. 5931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Pollution Prevention Act of 1990".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
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SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasize multimedia management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this Act.

(b) POLICY.—The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "toxic chemical" means any substance on the list described in section 313(c) of the Superfund Amendments and Reauthorization Act of 1986.

(4) The term "release" has the same meaning as provided by section 329(8) of the Superfund Amendments and Reauthorization Act of 1986.

(5)(A) The term "source reduction" means any practice which—

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service.

(6) The term "multi-media" means water, air, and land.

(7) The term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

SEC. 4. EPA ACTIVITIES.

(a) AUTHORITIES.—The Administrator shall establish in the Agency an Office to carry out the functions of the Administrator under this Act. The Office shall be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multi-media approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) FUNCTIONS.—The Administrator shall develop and implement a strategy to pro-

mote source reduction. As part of the strategy, the Administrator shall—

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved methods of coordinating, and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this Act to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to businesses. The strategy shall also consider the capabilities of various businesses to make use of the source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this Act, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

(7) establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(8) establish a training program on multimedia source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.

(9) identify and make recommendations to Congress to eliminate barriers to source reduction including the use of incentives and disincentives;

(10) identify opportunities to use Federal procurement to encourage source reduction;

(11) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(12) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

SEC. 5. GRANTS TO STATES FOR STATE TECHNICAL ASSISTANCE PROGRAMS.

(a) GENERAL AUTHORITY.—The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) CRITERIA.—When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) MATCHING FUNDS.—Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) EFFECTIVENESS.—The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) INFORMATION.—States receiving grants under this section shall make information generated under the grants available to the Administrator.

SEC. 6. SOURCE REDUCTION CLEARINGHOUSE.

(a) AUTHORITY.—The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to—

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 5 on the operation and success of state source reduction programs.

(b) PUBLIC AVAILABILITY.—The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this Act and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall permit entry and retrieval of information to any person.

SEC. 7. SOURCE REDUCTION AND RECYCLING DATA COLLECTION.

(a) REPORTING REQUIREMENTS.—Each owner or operator of a facility required to file an annual toxic chemical release form under section 313 of the Superfund Amendments and Reauthorization Act of 1986 ("SARA") for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceding calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 313(c) of that Act. This section shall take effect with the annual report filed under section 313 for the first full calendar year beginning after the enactment of this Act.

(b) ITEMS INCLUDED IN REPORT.—The toxic chemical source reduction and recycling report required under subsection (a) shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made based on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate:

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraph (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the reporting year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year.

For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA PROVISIONS.—The provisions of sections 322, 325(c) and 326 of the Superfund Amendments and Reauthorization Act of 1986 shall apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of that Act. The Administrator may modify the form required for purposes of reporting information under section 313 of that Act to the extent he deems necessary to include

the additional information required under this section.

(d) ADDITIONAL OPTIONAL INFORMATION.—Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) AVAILABILITY OF DATA.—Subject to section 322 of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 313 of the Superfund Amendments and Reauthorization Act of 1986. In addition, if the public disclosure of any quantity specified in section 7, paragraphs (1), (2), and (8) of subsection (b) would divulge information qualifying as a trade secret under section 322(b) of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall only make available the percentage by which the volume of the toxic chemical has changed.

SEC. 8. EPA REPORT.

(a) BIENNIAL REPORTS.—The Administrator shall provide Congress with a report within eighteen months after enactment of this Act and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 4(b) and of the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant programs established under this Act in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statues.

(b) SUBSEQUENT REPORTS.—Each biennial report submitted under subsection (a) after the first report shall contain each of the following:

(1) An analysis of the data collected under section 7 on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC codes or other categories which were not covered in a prior report until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 7 for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and nonregulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multi-media source reduction.

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

SEC. 9. SAVINGS PROVISIONS.

(a) Nothing in this Act shall be construed to modify or interfere with the implementation of title III of the Superfund Amendments and Reauthorization Act of 1986.

(b) Nothing contained in this Act shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

SEC. 10. AUTHORIZATION OR APPROPRIATIONS.

There is authorized to be appropriated to the Administrator $8,000,000 for each of the fiscal years 1991, 1992, and 1993 for functions carried out under this Act (other than State grants), and $8,000,000 for each of the fiscal years 1991, 1992, and 1993 for grant programs to States issued pursuant to section 5.

SEC. 11. IMPLEMENTATION.

The Administrator is authorized to issue such rules, regulations, and orders as may be necessary to carry out the provisions of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. THOMAS A. LUKEN] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, since 1970 Congress has enacted extensive environmental legislation directed toward the treatment and disposal of toxic wastes. There has also been substantial legislation designed to handle the cleanup of waste dumps and spills.

While these are very important pieces of legislation, it is becoming clear to many in Government and industry, as well as to private individuals, that end-of-the-pipe pollution controls are not enough. Enormous amounts of toxic waste continue to be released into the air, water, and land, despite stricter pollution controls and skyrocketing waste management costs.

The Pollution Prevention Act, the bill now before the House, heralds a new approach to preventing environmental pollution. While other legislation has focused on the treatment or disposal of waste that has already been created, this bill is aimed at reducing toxic waste at the source, before it is generated.

Mr. Speaker, there is increasing evidence of the economic and environmental benefits to be realized in reducing toxic industrial waste at the source rather than managing such waste after it is produced. In reports to Congress in 1986 and 1987, the Office of Technology Assessment projected that source reduction techniques using existing technology could reduce waste currently generated by as much as 50 percent over the next 5 years. Furthermore, OTA concluded that a modest Federal investment in waste reduction information collection and a grant program to the States for technical assistance to aid industry would more than pay for itself in a few years.

Testimony received by our subcommittee showed that some companies have made substantial reductions in their toxic waste by implementing manufacturing process changes, raw material substitutions, and other available techniques. At the same time, factors inhibiting the increased use of these kinds of source reduction techniques by other companies have little to do with technological constraints, economic costs, or governmental prohibitions. In fact, lack of awareness or lack of information was cited as the most common reason more companies do not practice source reduction. Many company managers simply are not aware of techniques that could be applied to their business operations. Industries and regulators are frequently so oriented toward meeting the requirements and deadlines of current pollution control regulations and statutes that they do not seek out innovative alternatives.

To help remedy this problem, the Pollution Prevention Act requires the Environmental Protection Agency to develop and implement a strategy to promote waste reduction at the source. The bill also directs EPA to establish a source reduction clearinghouse to compile information on approaches to source reduction and to facilitate the transfer of source reduction technology; to disseminate information on source reduction techniques; and to promote public education on the benefits of source reduction. In addition, the bill authorizes a program of matching grants to the States for waste reduction programs that promote the use of source reduction techniques by industry.

Finally, the bill requires industrial generators of toxic chemicals to file annual reports on their source reduction and recycling activities. These reports allow the public to see just who is really doing something about pre-

venting pollution. These are not regulatory provisions: the bill merely requires disclosure of the amount of toxic waste being reduced at the source or being recycled. Our experience has been that disclosure can be very effective in producing tangible results. It opens the door to making significant reductions in the amount of toxic waste generated in this country every year.

Mr. Speaker, at a May 1989 hearing our subcommittee held on this legislation the Administrator of the Environmental Protection Agency, Mr. William Reilly, stated that he supported the concepts embodied in this bill but that it ought to be expanded even further. Mr. Reilly stated that he expected EPA to submit its own pollution prevention legislation by July 1, 1989. Well, it has been well over a year now, and we still don't have his proposal.

Mr. Speaker, pollution prevention won't wait. We must take the first steps to reduce the amount of toxic waste being generated now.

I would like to thank the gentleman from Kansas [Mr. WHITTAKER] for the assistance and cooperation of the minority in moving this bill forward. In addition, I would very much like to thank Mr. WOLPE for his tenacity and very hard work in getting and maintaining the support necessary to press ahead with this important legislation. I urge my colleagues to act favorably on this measure.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5931, the Pollution Prevention Act of 1990. The passage of this bill today is a tribute to the untiring efforts of its sponsor, the gentleman from Michigan, Mr. WOLPE, and its cosponsor, the gentlewoman from Rhode Island, Ms. SCHNEIDER.

Introduced over 3 years ago, this legislation was well ahead of its time. It is founded on the important concept of source reduction as a means of preventing pollution more effectively than the use of end-of-the-pipe controls.

Instead of creating a new cumbersome regulatory program, the Wolpe-Schneider bill harnesses the power of public opinion and the markets to aid the environment by giving the public a more complete picture of how a company manages, or prevents, the generation of waste.

I am pleased to see that the bill as passed by the Senate contains an important amendment recognizing the confidential nature of some of the required information, and expands the available protection accordingly.

Enactment of this legislation has been a long, difficult process, and the sponsors are to be especially commended. It is my firm belief that future environmental legislation will rely more heavily on the nonregulatory approach to source reduction embodied in the Wolpe-Schneider bill.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Speaker, I want to first express my appreciation both to the chairman and also to the ranking member, the gentleman from Kansas [Mr. WHITTAKER] for all their assistance and cooperation in moving this legislation forward.

This bill, H.R. 5931, is virtually identical to an earlier bill, H.R. 1487, that I introduced with the gentlewoman from Rhode Island [Ms. SCHNEIDER]. It contains some minor changes designed to expedite the final passage of the bill in the closing hours of the session.

The bill is essentially the same as that which we originally were moving.

The only two points that I would make in addition to those that have been made by the explanation of the chairman this evening, one is to highlight the very broad bipartisanship that this bill enjoys in its cosponsorship.

The second is to highlight the rather remarkable coalition of interest that have come in support of this legislation, ranging from the Sierra Club within the environmental community to the Dow Chemical Co. and other chemical industries on the other end.

In demonstration of the growing recognition that what makes good sense for the environment can also make good sense for industry, by preventing pollution at the source industry saves enormous sums of money that would otherwise have to be invested in treating and cleaning up the wastes that are produced after the fact; so we put together an important coalition of common self-interest here in this one that has been critical to advancing the legislation to this point.

Mr. Speaker, I would like to engage the chairman in a brief colloquy. Currently, EPA has underway a number of activities in the area of pollution prevention. This bill would add additional responsibilities to the Office of Pollution Prevention. Would the funding authorized in this bill be for the purpose of paying for the additional responsibilities required by this legislation?

Mr. THOMAS A. LUKEN. Mr. Speaker, if the gentleman will yield, the gentleman is correct. We are aware that EPA is involved in pollution prevention efforts that are not covered by this legislation and are funded separately. This legislation would not limit those activities, and we encourage the agency to proceed with them but not at the expense of the pollution prevention work and funding specified in this legislation.

Mr. WOLPE. I thank the gentleman for that clarification. My next question pertains to the reporting provisions of the legislation. As I understand it, while these establish minimum requirements for EPA, they do not preclude the Agency from collecting additional information related to pollution prevention under the authority of existing statutes.

Mr. THOMAS A. LUKEN. That is also correct. The bill makes it quite clear that nothing in this legislation should be construed as limiting EPA's existing authorities.

□ 2400

Mr. WHITTAKER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Ohio [Mr. THOMAS A. LUKEN] that the House suspend the rules and pass the bill (H.R. 5931).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid upon the table.

GENERAL LEAVE

Mr. THOMAS A. LUKEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

CORRECTING A CLERICAL ERROR IN PUBLIC LAW 101-383, ENERGY POLICY AND CONSERVATION ACT AMENDMENTS OF 1990

Mr. SHARP. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3156) to correct a clerical error in Public Law 101-383, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. WHITTAKER. Mr. Speaker, reserving the right to object, I do so in order to give the gentleman from Indiana [Mr. SHARP] the opportunity to explain the reason for his unanimous consent request.

Mr. SHARP. I thank the gentleman for yielding.

Mr. Speaker, this is to correct an error that somewhere between passage of the act until it was typed and sent to the President for signature, one line was dropped from this legislation which we passed just a few weeks ago on the strategic petroleum reserve.

Essentially in the act that we passed we established a pilot program on a refined products reserve. We asked the Department of Energy to report back to us about their experience and their analysis and study of this issue. We find that in the legislation that actually reached the President's desk, it does not give the guidance to the department as to what we want them to study.

While it is quite minor in its impact, we would like the legislation to be correct and the law to be correct for the department.

I might add while we have a few moments here as they are awaiting other business to come to the floor, I might indicate a couple of items in that legislation which are not reflected before us.

The most important thing we have done in this country in the last decade on energy is to have a strategic petroleum reserve with 690 million barrels of oil in it. It is precisely because of its existence and because our allies have done a similar kind of policy in agreement with us, particularly the Germans, the Japanese, the Danish, and others, we have a massive reserve that can be sold in the marketplace, to help see to it that our economies are shored up in times of an energy crisis.

Some of us believe the policy should have already been triggered but that is an honest dispute in the country at the moment.

In addition, we provided, in the legislation in which we are making a technical correction, the President with the authority to go ahead and run a test sale which the department is in the process of doing with up to 5 million barrels of oil, so that we make sure this system works efficiently and effectively as it must in a crisis.

And we also established a refined products reserve because one of the concerns that many of us have had was that while we had the crude oil, the nature of the crisis sometimes is one in which the refined products such as gasoline or heating oil or diesel fuel or propane is not available when it is really needed, and the prices shoot through the roof as they did last January.

What is actually before us tonight is a very minor correction in that law that we passed overwhelmingly in the House and Senate and President Bush signed into law. So I would trust there would be no objection to what we are doing.

Mr. WHITTAKER. Mr. Speaker, the minority concurs in the unanimous-consent request.

Accordingly, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The Clerk read the Senate bill as follows:

S. 3156

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLERICAL AMENDMENT.

Section 160(g)(7) of the Energy Policy and Conservation Act, added by section 7 of the Energy Policy and Conservation Act Amendments of 1990 (Public Law 101-383), is amended by inserting "with regard to future storage of refined petroleum products and" after "recommendations".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ANNUAL REPORT ON U.S. LONG-TERM AGRICULTURAL TRADE GOALS AND STRATEGY, FISCAL YEAR 1991—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Agriculture, the Committee on Foreign Affairs, and the Committee on Ways and Means.

(For message, see proceedings of the Senate of today, Friday, October 26, 1990.)

FOOD AND DRUG ADMINISTRATION REVITALIZATION ACT

Mr. SHARP. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 845) to amend the Federal Food, Drug, and Cosmetic Act to revitalize the Food and Drug Administration, and for other purposes.

Mr. SHARP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would provide for a consolidated administrative and laboratory facility for the Food and Drug Administration; recovery and retention of fees for requests under the Freedom of Information Act, the establishment of scientific review groups; and automation of the Food and Drug Administration.

There is an authorization of $100 million for the building, with an authorization of such additional sums as are necessary.

Mr. Speaker, this bill was adopted unanimously by the other body and I urge the Members to enact it.

Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, over the course of the years the Committee on Energy and Commerce has held several hearings at which the FDA testified. We have consistently heard that they do not have sufficient resources to adequately perform their ever-growing responsibilities. This legislation is a step to remedy that problem.

The bill provides funding for the construction of a consolidated FDA administrative and laboratory facility. To relieve some of the financial burden of the freedom of information requests, the Secretary is authorized to charge fees for such requests, and to help FDA operate more efficiently, the bill provides funds to automate appropriate activities.

If the FDA is to continue to ensure the safety of our food, drugs, and medical devices, we must provide it with these needed resources.

I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SHARP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation is a part of the ongoing effort to make sure that we have an effective Food and Drug Administration. There has been a great deal of concern on behalf of Mr. WAXMAN and others that we have been without a Commissioner for the last year and a half.

As I understand it, that situation has now been cured and there is great hope that we will see the agency move more effectively to carry out the mandates of Congress, because all of us expect when we are purchasing food, wherever we go, the grocery store, the corner Mom and Pop store, wherever it is, we can count on that food being free of carcinogens, being free of things that would be destructive to our health.

We are very fortunate in this country to have had a longstanding effort on behalf of the protection of our food supply. This is just one more element in the effort to make sure that we have an effective agency. Mr. WAXMAN, of course, has been among the Nation's leaders in seeing that that happens.

Mr. WHITTAKER. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. BROWN].

Mr. BROWN of Colorado. Mr. Speaker, if the chairman would be willing to respond, I was wondering what the cost of this building might be.

Mr. SHARP. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Colorado. I yield to the gentleman from Indiana.

The Clerk read as follows:

S. 845

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Food and Drug Administration Revitalization Act".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to the Federal Food, Drug, and Cosmetic Act.
TITLE I—CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY
Sec. 101. Consolidated administrative and laboratory facility.
TITLE II—RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS
Sec. 201. Recovery and retention of fees for FOIA requests.
TITLE III—SCIENTIFIC REVIEW GROUPS
Sec. 301. Scientific review groups.
TITLE IV—AUTOMATION OF FDA
Sec. 401. Automation of FDA.

SEC. 2. REFERENCES TO THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

Except as otherwise specifically provided whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

TITLE I—CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY

SEC. 101. CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY.

Chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 710. CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY.

"(a) AUTHORITY.—The Secretary, in consultation with the Administrator of the General Services Administration, shall enter into contracts for the design, construction, and operation of a consolidated Food and Drug Administration administrative and laboratory facility.

"(b) AWARDING OF CONTRACT.—The Secretary shall solicit contract proposals under subsection (a) from interested parties. In awarding contracts under such subsection, the Secretary shall review such proposals and give priority to those alternatives that are the most cost effective for the Federal Government and that allow for the use of donated land, federally owned property, or lease-purchase arrangements. A contract under subsection shall not be entered into unless such contract results in a net cost savings to the Federal Government over the duration of the contract, as compared to the Government purchase price including borrowing by the Secretary of Treasury.

"(c) DONATIONS.—In carrying out this section, the Secretary shall have the power, in connection with real property, buildings, and facilities, to accept on behalf of the Food and Drug Administration gifts or donations of services or property, real or personal, as the Secretary determines to be necessary.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $100,000,000 for fiscal year 1991, and such sums as may be necessary for each of the subsequent fiscal years, to remain available until expended.".

TITLE II—RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS

SEC. 201. RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS.

Chapter VII (21 U.S.C. 371 et seq.) (as amended by section 101 of this Act) is further amended by adding at the end thereof the following new section:

"SEC. 711. RECOVERY AND RETENTION OF FEES FOR FREEDOM OF INFORMATION REQUESTS.

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drugs, may—

"(1) set and charge fees, in accordance with section 552(a)(4)(A) of title 5, United States Code, to recover all reasonable costs incurred in processing requests made under section 552 of title 5, United States Code, for records obtained or created under this Act or any other Federal law for which responsibility for administration has been delegated to the Commissioner by the Secretary;

"(2) retain all fees charged for such requests; and

"(3) establish an accounting system and procedures to control receipts and expenditures of fees received under this section.

"(b) USE OF FEES.—The Secretary and the Commissioner of Food and Drugs shall not use fees received under this section for any purpose other than funding the processing of request described in subsection (a)(1). Such fees shall not be used to reduce the amount of funds made to carry out other provisions of this Act.

"(c) WAIVER OF FEES.—Nothing in this section shall supersede the right of a requester to obtain a waiver of fees pursuant to section 552(a)(4)(A) of title 5, United States Code.".

TITLE III—SCIENTIFIC REVIEW GROUPS

SEC. 301. SCIENTIFIC REVIEW GROUPS.

CHAPTER IX (21 U.S.C. 391 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 903. SCIENTIFIC REVIEW GROUPS.

Without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commissioner of Food and Drugs may—

"(1) establish such technical and scientific review groups as are needed to carry out the functions of the Food and Drug Administration (including functions prescribed under this Act); and

"(2) appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.".

TITLE IV—AUTOMATION OF FDA

SEC. 401. AUTOMATION OF FDA.

Chapter VII (21 U.S.C. 371 et seq.) (as amended by sections 101 and 201 of this Act) is further amended by adding at the end thereof the following new section:

"SEC. 712. AUTOMATION OF FOOD AND DRUG ADMINISTRATION.

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drug Administration to ensure timely review of activities regulated under this Act.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated each fiscal year such sums as are necessary to carry out this section.".

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Indiana [Mr. SHARP] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. SHARP].

Mr. SHARP. I thank the gentleman for yielding.

Mr. Speaker, as I understand it, although I was not personally involved in this legislation—I am here simply to fill in the position at this hour—there is an authorization of $100 million. Of course it will have to be appropriated and they will scrutinize the recommended plans for the facility.

Mr. BROWN of Colorado. Has there been a study done to see if in this current real estate market it might be wiser to rent the space or lease the space than it would be to build an entire new building?

Might it be more cost-effective to lease this space rather than build another new building in the current real estate market?

Mr. SHARP. From the information that I am provided, Senator HATCH has been the leading voice on this issue, has had very extensive hearings on this issue. While I am not sure an actual specific study was done, an extensive investigation was made by the Senate under the direction of Mr. HATCH.

Mr. BROWN of Colorado. I thank the gentleman for his statement.

□ 0010

Mr. WHITTAKER. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield back the balance of our time as well.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and pass the Senate bill, S 845.

The question was taken.

Mr. BROWN of Colorado. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered as withdrawn.

SAFE MEDICAL DEVICES ACT OF 1990

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 3095) to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement see proceedings of the House of October 26, 1990.)

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report this legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Safe Medical Devices Act represents the first reform of medical device law since 1976, when Congress adopted the first law designed to regulate medical devices.

The need for reform has been the subject to extensive studies by the General Accounting Office.

H.R. 3095 will modify current law to give the American people greater protection against dangerous medical devices.

Mr. Speaker, the legislation enjoys broad bipartisan support and was reported by the Committee on Energy and Commerce without dissent.

At this time, I want to commend the chairman of the Committee and principal cosponsor of this legislation, Mr. DINGELL, for the many years he has labored to strengthen the medical device law. Early hearings before his Oversight and Investigation Subcommittee exposed critical deficiencies in FDA procedures and statutory requirements that are being addressed in this legislation.

I also want to single out the invaluable contributions of the ranking minority member of the subcommittee, Mr. MADIGAN, for his interest in and support of this legislation. His efforts were critical of passage of similar legislation during the 100th Congress. His contributions have greatly enhanced the prospect for enactment of this most necessary public health and safety measure.

Finally I want to commend the efforts of Senator KENNEDY and his talented staff for their hard work in resolving the differences between our bills.

I urge support for the conference report.

Mr. Speaker, I reserve the balance of our time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, medical devices are currently regulated under the 1976 amendments to the Federal Food, Drug and Cosmetic Act. The legislation has not been addressed since, and over the years certain problems have developed with implementation of several of the primary sections of the original legislation.

Specifically, a number of the requirements of the legislation have not been implemented by the FDA. Additionally, the FDA lacks some needed authority which will codify many of their current practices. The legislation before us today will codify FDA current practice in approving devices through the 510K process and give the agency additional authority to require evidence of comparable safety and efficacy to devices currently on the market. It also provides the agency with streamlined procedures to carry out the reclassification of devices and the development of performance standards. Finally, it strengthens reporting requirements by requiring hospitals to report all deaths associated with medical devices to the FDA.

Mr. Speaker, I urge my colleagues to support this legislation. I would also note that the administration has no objection to this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the conference report on the bill, H.R. 3095.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 3630, EMERGENCY SUBSTANCE ABUSE TREATMENT IMPROVEMENT ACT OF 1990

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 3630) to amend the Public Health Service Act with respect to the prevention and treatment of substance abuse, including establishing separate block grants with respect to substance abuse and mental health.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement see proceedings of the House of today, October 26, 1990).

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the pending legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to present to the House the conference report on H.R. 3630, the Emergency Drug Abuse Treatment Expansion Act of 1989.

There has been much talk this year about the drug crisis in this country—and the crisis it creates for the criminal justice system, for our law enforcement officials, in our schools and at our borders. Drug abuse touches people's lives in every city and every State—and it destroys them.

As chairman of the Subcommittee on Health and the Environment, I submit to you that this crisis is a health crisis as well. Victims of the war on the streets overwhelm the doctors and nurses of our emergency rooms. Drug addicted women give birth to addicted babies and send infant mortality rates soaring. Thousands of children are doomed each year to painful drug withdrawals in the cradle and lifelong battles with disabilities. And the sharing of dirty needles is spreading the AIDS virus like wildfire among a population that is difficult to reach and difficult to treat.

Last year the President's national drug control strategy laid out the priorities for the war on drugs. The need for improved and expanded drug treatment programs was at the top of the list. The President asked for more drug treatment slots. He told the States to coordinate their services and to plan how they will spend their money. He asked for resources targeted at pregnant women to protect their babies and to get them off drugs.

The conference agreement we are bringing to the floor does all the things that the President asked for. The bill requires that States stop the now common practice of denying pregnant addicts access to drug treatment and requires increased funding for treatment services available to women. Special emphasis is placed upon providing services to address the problems of women with dependent children.

Mr. Speaker, the House and Senate went through some serious negotiations leading to this conference agreement. In fact, the conference started during the first session. Compromises were made on each side. There were disappointments. There were successes. There was a genuine attempt to put together a conference agreement that all parties could agree on.

I want to take a moment and call attention to a special provision of the bill providing for establishment of a drug treatment demonstration project for the National Capital area. The legislation fulfills the President's promise to make our Nation's Capital a model for the organization and delivery of drug treatment services. It represents a bold initiative that has never been previously attempted. The project is not limited to Washington but incorporates the surrounding cities and counties of Maryland and Virginia. Drug abuse is a regional problem that affects all political jurisdictions. A regional solution is critical to the success of this project. Over the next 3 fiscal years, $25 million will be allocated to this important project.

I encourage my colleagues in the House to join with me in supporting the conference report.

Mr. Speaker, I reserve the balance of our time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this House passed H.R. 3630 and the Senate passed S. 1735 last session. The conferees on this legislation were not able to reach an agreement at that time. This legislation represents a compromise on those bills.

The bill establishes in law the Office for Treatment Improvement; provides for several demonstration projects; requires that a certain percentage of funds be used to fund substance abuse treatment for pregnant women; requires States with the highest incidence of AIDS to designate one drug treatment center which can provide AIDS/HIV early intervention and drug treatment services to IV drug users; and requires that States submit to the Secretary of HHS a statewide treatment plan as a condition of the receipt of block grant allotments.

Mr. Speaker, I urge my colleagues to join me in supporting this bill.

I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time and yield back the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I, too, have no further requests for time and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the conference report on the bill, H.R. 3630.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

□ 0026

TEMPORARY EXTENSION OF CERTAIN LAWS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Mr. GONZALEZ. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5933) to provide for the temporary extension of the certain laws relating to housing and community development, as amended.

The Clerk read as follows:

H.R. 5933

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EFFECTIVE DATE OF TEMPORARY EXTENSION OF EMERGENCY LOW INCOME HOUSING PRESERVATION ACT OF 1987 AND CORRECTION OF ANY REPEAL.

(a) EFFECTIVE DATE OF EXTENDER.—Public Law 101-402 shall be deemed to have taken effect as if such law were enacted on September 29, 1990.

(b) STATUS OF ACT.—The Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note) shall be deemed to have been in effect on and after September 29, 1990, as if Public Law 101-402 had been enacted on September 29, 1990.

(c) CORRECTION OF ANY REPEAL.—The provisions of the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note), other than section 203, are amended to read as such provisions were in effect on September 29, 1990. The amendment made by this subsection shall take effect as if this Act were enacted on September 29, 1990.

(d) EFFECTIVE DATE.—If the Cranston-Gonzalez National Affordable Housing Act is enacted before the enactment of this Act, this section shall be deemed to have taken effect immediately before the enactment of the Cranston-Gonzalez National Affordable Housing Act.

SEC. 2. ADDITIONAL TEMPORARY EXTENSION OF EMERGENCY LOW INCOME HOUSING PRESERVATION ACT OF 1987.

(a) EXTENSION.—Section 203(a) of the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note) is amended by striking "October 31, 1990" and inserting "February 1, 1991, or the date of enactment of the Cranston-Gonzalez National Affordable Housing Act, whichever is earlier".

(b) EFFECTIVE DATE.—If the Cranston-Gonzalez National Affordable Housing Act is enacted on or after October 31, 1990, this section shall be deemed to have taken effect on October 30, 1990.

SEC. 3. INTERAGENCY COUNCIL ON THE HOMELESS.

(a) EXTENSION.—If upon enactment of this Act, section 209 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11319) provides for the termination of the Interagency Council on the Homeless on October 31, 1990, then notwithstanding such section, the Interagency Council on the Homeless shall cease to exist, and the requirements of title II of the Stewart B. McKinney Homeless Assistance Act shall terminate, on February 1, 1991.

(b) LIMITATIONS.—If upon enactment of this Act such section 209 provides for termination of the Council (referred to in subsection (a)) on a date other than October 31, 1990, this section shall not apply. This section shall not apply with respect to any amendment to section 209 of the Stewart B. McKinney Homeless Assistance Act made after the date of the enactment of this Act.

SEC. 4. FHA MORTGAGE LIMIT.

(a) EXTENSION.—If upon enactment of this Act, section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) provides for an increase in the maximum dollar amount limitations on the principal obligations of mortgages insured under such section until October 31, 1990, then notwithstanding such section, such maximum dollar amount limitations may be increased (to the percent specified in such section) until February 1, 1991.

(b) LIMITATIONS.—If upon enactment of this Act such section 203(b)(2) provides for an increase in the maximum dollar amount limitations (referred to in subsection (a)) until a date other than October 31, 1990, this section shall not apply. This section shall not apply with respect to any amendment to section 203(b)(2) of the National Housing Act made after the date of the enactment of this Act.

AMENDMENT TO H.R. 5933

Add at the end of the bill, a new section as follows:

SEC. 5. MINIMUM STATE ALLOCATION.

Section 213(d)(1)(A) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(d)(1)(A)) is amended by inserting after the first sentence the following: "The Secretary may allocate assistance under the preceding sentence in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in subsection (a)(1) in each fiscal year.".

The SPEAKER pro tempore (Mrs. UNSOELD). Is a second demanded?

Mr. WHITTAKER. Madam Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. GONZALEZ] will be recognized for 20 minutes, and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. GONZALEZ].

Mr. GONZALEZ. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this bill would extend the authority for the Interagency Council on the Homeless, the FHA loan limit, and the Emergency Low Income Housing Preservation Act of 1987 until the enactment of S. 566, the National Affordable Housing Act. The conference report on S. 566 passed the House yesterday. This temporary extension is to ensure that there is no gap between the current expiration of these provisions at the end of the month and the enactment of S. 566. This extension has been requested by the administration and will enable HUD to continue its administration of these housing programs without unnecessary disruption.

This amendment is necessary because the printed version of S. 566 did not include a provision that was agreed upon by the conferees. This agreement was unanimous on both sides of the aisle, in both bodies. It provides that not less than one half of 1 percent of the funds available for section 8 and public housing be made available under the fair share distribution system to each State.

Mr. WHITTAKER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I urge the adoption of H.R. 5933, as amended.

Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GONZALEZ. Madam Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. GONZALEZ] that the House suspend the rules and pass the bill, H.R. 5933, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. The House will now stand in recess subject to the call of the Chair.

Accordingly (at 12 o'clock and 25 minutes a.m.) the House stood in recess subject to the call of the Chair.

□ 0135

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. MAZZOLI) at 1 o'clock and 35 minutes a.m.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate has passed without amendment a bill of the House of the following title:

H.R. 5667. An act to amend the Water Resource Development Act of 1974 to transfer jurisdiction of the Big South Fork National River and Recreation Area from the Secretary of the Army to the Secretary of the Interior and for other purposes.

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2840. An act to reauthorize the Coastal Barrier Resources Act, and for other purposes;

H.R. 3338. An act to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes;

H.R. 5235. An act to designate the Owens Finance Station of the United States Postal Service in Cleveland, Ohio, as the "Jesse Owens Building of the United States Postal Service"; and

H.R. 5390. An act to prevent and control infestations of the coastal inland waters of the United States by the zebra mussel and other nonindigenous aquatic nuisance species, to reauthorize the National Sea Grant College Program, and for other purposes.

The message also announced that the Senate agrees to the report of the Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 996) "An act to establish the Congressional Scholarships for Science, Mathematics, and Engineering, and for other purposes."

The message also announced that the Senate recedes from its amendments to the amendments of the House to the amendments of the Senate numbered 31 and 163-164 to the bill (H.R. 5257) "An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1991, and for other purposes."

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 2740) "An act to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes," agrees to the conference asked by the House of Representatives on the disagreeing votes of the two Houses thereon, and appoints Mr. BURDICK, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. REID, Mr. CHAFEE, Mr. SYMMS, and Mr. WARNER; from the Committee on Commerce, Science, and Transportation for section 309 of the Senate bill: Mr. HOLLINGS, Mr. EXON, and Mr. DANFORTH; to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1532. An act to amend the Volunteers in the National Forests Act of 1972 to permit volunteers to be considered employees under section 3721 of title 31, United States Code;

S. 3084. An act to provide for the settlement of water rights claims of the Fallon Paiute-Shoshone Indian Tribes and for other purposes;

S. 3176. An act to promote environmental education, and for other purposes; and

S. 3180. An act to amend provisions of title 18, United States Code, relating to terms of imprisonment and supervised release following revocation of a term of supervised release.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF CONFERENCE REPORT ON H.R. 5835, OMNIBUS BUDGET RECONCILIATION ACT OF 1990, AND AGAINST ITS CONSIDERATION

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 101-962) on the resolution H. Res. 537) waiving certain points of order against consideration of the conference report on the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, and against its consideration, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF CONFERENCE REPORT ON S. 358, IMMIGRATION ACT OF 1990

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 101-963) on the resolution (H. Res. 538) waiving certain points of order against consideration of the conference report on the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States,

and to provide for administrative naturalization, and for other purposes, and against its consideration, which was referred to the House Calendar and ordered to be printed.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONSIDERATION OF CONFERENCE REPORT ON H.R. 5835, OMNIBUS BUDGET RECONCILIATION ACT OF 1990, AND AGAINST ITS CONSIDERATION

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 537 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 537

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

Debate on the conference report shall continue not to exceed one hour, equally divided and controlled by chairman and ranking minority member of the Committee on the Budget. The previous question shall be considered as ordered on the conference report to final adoption without intervening motion, except one motion to recommit if offered by Representative Michel of Illinois or his designee.

Sec. 2. Following disposition of the conference report, no further disposition of H.R. 5835 shall be in order except pursuant to a subsequent order of the House.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, I ask unanimous consent that the time specified for debate on the conference report on H.R. 5835 be extended from 1 to 2 hours.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina [Mr. DERRICK]?

There was no objection.

Mr. DERRICK. Mr. Speaker, under the rules of the House, conference reports are privileged and are considered in the House under the hour rule with no amendments in order. House Resolution 537 waives all points of order against the conference report on H.R. 5835, the Omnibus Budget Reconciliation Act of 1990, and against its consideration. The rule provides that when the conference report is called up for consideration, it shall be considered as read. The rule divides the 2 hours of debate equally between the chairman and ranking minority member of the Committee on the Budget, and provides for one motion to recommit if offered by Mr. MICHEL or his designee. Finally, the rule specifies that after disposition of the conference report by the House, that no further motion is in order in the House related to H.R. 5835 except as subsequently ordered by the House.

Mr. Speaker, we are all eager to finish our work for the year, so I will not take much time here. As my colleagues are well aware, the conference report on the Omnibus Budget Reconciliation Act of 1990 is the legislation implementing the deficit reduction plan agreed to at the budget summit as reflected in House Concurrent Resolution 310, the concurrent resolution on the budget for fiscal year 1991. The conference report achieves deficit reduction totaling approximately $40 billion in fiscal 1991 and $500 billion over 5 years.

Mr. Speaker, also included in the conference agreement, and equally vital to this deficit reduction effort, are the reforms to the congressional budget process. As a conferee, I am pleased to report that the strong enforcement provisions in the House-passed bill have been further improved in the conference committee. These reforms will impose the strict budgetary discipline we need to enforce the summit agreement and keep us on the deficit reduction path we embark upon today.

Mr. Speaker, I urge all Members to support the rule and the reconciliation conference report.

□ 0140

Mr. QUILLEN. Mr. Speaker, I yield myself as much time as I may use.

Mr. Speaker, here it is 20 minutes till 2 on Saturday morning. We have had long sessions, more Saturday and Sunday sessions than we had since World War II, as I understand it. This is a very critical period in the fiscal history of this Nation of ours.

We are about to enter into an in-depth debate on the omnibus budget reconciliation bill. I urge my colleagues to weigh very carefully the issues we are about to confront.

Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Mr. Speaker, I thank my colleague for yielding the time.

Mr. Speaker, I rise in opposition to the rule. I am really hard pressed to understand why, as the gentleman from Tennessee said, we are here at now 19 minutes before 2 o'clock. Like everyone, I am very tired, I am very frustrated with this process.

We have just had a long and drawn out meeting in which we have tried to put these numbers together, and they do not seem to mesh. We do not know if this package is going to be a $473 billion deficit reduction package, a $488 billion deficit reduction package, a $492 billion deficit reduction package, or even maybe a $410 billion budget deficit reduction package, which we had in the Kasich-Pursell package, but which we were not able to consider. Why? Because it did not reach the $500 billion level.

So Mr. Speaker, it seems to me that there is no way that we can bring up a rule that provides 1 hour of debate on a measure which is going to have such sweeping changes when it comes to public policy.

I urge a vote against the rule, and I thank my friend for yielding.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I am going to support the rule. Members want to vote. And I am going to oppose the bill. I think it is un-American. I think it is another budget in a long line of American budgets that is great for Japan and Germany.

Any budget that increases foreign aid with our deficit is un-American.

Any budget that will allow our Government to forgive a $7 billion loan to Egypt when we are going belly-up is un-American.

Any budget that will continue to allow billions and billions of dollars to be spent on the protection of Japan and Germany, who are in good fiscal order, is un-American.

Any budget that will allow our taxpayers money to be used to build a new NATO airbase in Italy is un-American.

Ladies and gentlemen, it is over. The Warsaw Pact is dead. We have missiles with no spare parts. We do not need a modification of policies, we need a change.

Let me just tell you how bad it is. It was cited in the newspapers of this country several days ago that Germany is paying Soviet soldiers to leave, and they will not go back home to Russia. They say there is no clothes, no food, no gas, no lights, no housing, and they will not leave.

I am not cracking a joke. I want you to listen to this. One of the Soviet soldiers said that he and his bride were offered a vacant apartment in Chernobyl. Now we all know how the Soviets are just dying to live in Chernobyl.

Think about what I am telling you. It is not funny.

What we are doing in this last minute is we are trying to stop Niagara Falls by hiring a bunch of beavers. Get out your calculators. Get out your calculators and your pencils and just figure one thing out tonight. We borrowed more money from Social Securi-

ty last year than this budget will raise next year.

We are going to be back here, whoever is reelected next year, with more debt, more taxes, and beer drinkers did not get us into this.

I do not understand what is going on here. I know that we are probably going to pass this token piece of bad legislation, brought about with a shotgun at the last minute. But I am going to tell you what, I do not like my taxpayers getting a big hit, because mine are at the bottom of the list, and that gasoline tax and all of those other taxes hit mine much harder than they hit yours.

I am against it. I am going to vote for the rule so you can all have your vote. But count me out. I cannot and will not vote for a budget that continues to tax mom and dad and then ships it overseas.

Mr. QUILLEN. Mr. Speaker, to clear up some misunderstanding, the gentleman from South Carolina [Mr. DERRICK] asked unanimous consent that the debate time on the reconciliation bill be extended to 2 hours. I wanted to make that clear.

Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma [Mr. INHOFE].

Mr. INHOFE. Mr. Speaker, I rise tonight to suggest that you can have it both ways. It is possible to be supporting a man that I think is a truly great President, President Bush, and yet vote against the rule and vote against this budget that is coming up that we are being asked to consider tonight.

The President did not do this. This budget was conceived by the majority, the same liberal majority that has run this country for half a century. We are looking at a budget tonight that maybe somebody else saw. Here it is almost 2 o'clock in the morning. I did not see any of this until midnight. Maybe someone else did, but I did not.

We are asked to look at this and make a major decision without having any time when we could do this at any time tomorrow.

This has been characterized by one of the think tanks, on information available to them, as the single greatest tax increase in American history, and the greatest spending increase in American history.

I do not know who benefits. It certainly is not the veterans. It is not the older people, Medicare recipients or beneficiaries and not the providers either. They say the providers are not going to be hurt, but I do not know about the providers in your district, but I have four hospitals in Tulsa, OK that are just barely holding on and they are losing massive amounts of money on their Medicare treatments.

The assumptions that this is based on, as near as I can determine, is a 4 percent growth, and as near as I can determine it is $24 oil. Neither one is a realistic assumption.

So what could we do as an alternative? I think there is an alternative tonight. I think we could vote down the rule, vote down the bill, pass a continuing resolution to February. We would be saving approximately a half-billion dollars a day until then. Go to the elections on November 6, and elect some conservatives who are not going to come in here and tax and spend and tax and spend. That is a better chance for America.

□ 0150

Mr. DERRICK. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, I received a letter from a constituent from New Mexico today:

DEAR CONGRESSMAN RICHARDSON: I have voted for you in every election in which you have run. I was going to do so this year, but events in Washington in recent weeks make it clear that the country is suffering from incumbency. No principle has as much importance to the House, Senate, or White House than that of preserving incumbency. The Nation's economy, principles, and young people in the Mideast are to be sacrificed so no incumbent is blamed for problems or the solutions of problems so everyone can maintain their power based upon incumbency. As you might guess from the above, I plan to vote against you in November. If we throw all the rascals out, maybe there is some hope for our future.

Mr. Speaker, there is good reason to vote for this deficit-reduction package, because it is deficit-reduction package and tax fairness. But I have three reasons why I think we should vote for this tax package today: First, because we can get out; second, because we can get out; third because we can get out.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, it certainly would be a principle to stand for for all of us to vote for the package simply so we could go home.

But I am a little bit concerned about the way in which we are considering this in the package that we are considering. It is my understanding that a copy of the package was not even available when this rule was adopted in the Committee on Rules. Is that correct? Has the conference report on this been filed?

The conference report has not been filed. The chairman of the Committee on the Budget shakes his head. It has not been filed.

There was no copy available of this package when the Committee on Rules adopted this rule. I do not see any copies available on the floor. We have been handed a few sheets of paper here and there telling us purportedly what is in the bill, but when you begin to ask questions about specifics that somehow we are not quite sure.

For example, over in the Republican conference, we were given at least three or four different figures of what the final product may be in terms of the 5-year projected savings. We were told this was going to meet a $500 billion target. In fact, Republicans were told that they could not have a rule that brought their bill to the floor because it fell below the $500 billion target. Guess what, so does the package that is about to come to us tonight.

The highest figure we heard for this package in the Republican conference was $492 billion, and it ranged down to $473 billion. No one is quite certain exactly what the figure is, but we know it is not $500 billion, and so this rule is a little bit out of order if you take what the debate was just the other evening when we were told that the Republicans could not bring their package to the floor that fell below the $500 billion figure.

I also am a little bit concerned about calling this a deficit-reduction package, because if we look at the numbers on the sheet we were given in terms of the nominal dollars over the next 5 years, you take a look at just the first year, the first year is the only year that means anything; 1991, all of us know, is the only year that means anything in this package, because we are going to be back here next year doing all of this all over again.

What happens in 1990 in this budget-deficit-reduction package? The 1991 outlays go up $109 billion over 1990. Revenues go up $106 billion over 1990. Every dime of revenue is going to pay for new spending, and so we have not budget-deficit reduction, we simply have taxes going to pay for new spending.

What happens to the deficit? That deficit goes up by $34 billion in the first year.

Budget deficit, my friends? Sounds like budget-deficit increases to me, certainly in the first year.

Then we are a little bit concerned about what may be down in this package. We know, for instance, that there is a cigarette tax in it of 8 cents a pack. However, we are also told down in it is a $100 million tax gift to large cigar manufacturers. Hit the consumer with 8 cents; give the companies a big bonanza.

We are also told that there is a wine tax in it, but then we are also told that some wineries are going to get hundreds of millions of dollars worth of benefits down in the package.

We are also told that benefits are going to go to some foreign and domestic insurance companies, to some private foundations, to some titleholding

companies, to some tax-exempt bond underwriters, to some rental-tuxedo stores. There is one low-income America will appreciate. Get those rental-tuxedo stores geared up for all the low-income people across the country; crop dusters are also going to get a little bit of a break out of this; aviation-fuel distributors; partnerships; mutual funds; real-estate transactions; estate-tax treatment; general-aviation aircraft; ethanol and corn subsidies; New Bedford fishermen and a couple of other little items that have been thrown down into the package.

I do not know if all of those are in there. We have been told that some of those are in there. I would like to know. It would be handy to have the package on the floor before we vote on it. It might even be handy to have the package on the floor before we vote on the rule for the consideration, because it would be awfully nice to know that at this early hour in the morning we are voting on something that the Members actually have some idea what it is. I do not think that is going to be possible.

At some point here, hopefully before the debate begins, we are going to file the package on the floor. It will come out here, I assume, in a pile of Xeroxed sheets, and any Member that so desires can probably go and root through the Xeroxed papers to find out whether or not some of these things I just mentioned are down in there.

Who knows, you might find one of them. Then again, you might not. But you can bet one thing, some day in the very near future there will be headlines in the paper telling us all about some of the things that were down in this package that we voted on in the dead of night.

I would suggest that that is probably not a position that most of us should want to be in.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. PURSELL].

Mr. PURSELL. Mr. Speaker, ladies and gentlemen, the summit package was voted on in the middle of the night. The Democratic budget plan was voted on in the middle of the night. The gentleman from Ohio [Mr. KASICH] and myself were asked to write a GOP plan which we did in the middle of the day, brought it to the Committee on Rules and, lo and behold, the Committee on Rules denied us the rule to offer our plan to the American public in the middle of the night. Tonight, again, No. 4, four strikeouts in a row, we are voting on this reconciliation package in the middle of the night, and all over the week in which we talk about the great civil rights bill, the minority has been denied the opportunity to present a plan to America to govern with less taxes and less spending.

I think some Members now on the Democratic side regret that decision. Give us a chance to vote on our package. We should have had that opportunity. We are now here tonight looking at all of the appropriation bills.

As a member of the Committee on Appropriations, I have calculated it is about $32 billion of new spending over 1990, so we are asking the President will he or will he not vote those high-spending bills in order to bring down the deficit, in order to save money for the American taxpayer.

But, no, we are going to increase this tax package by $135 billion to $140 billion of new money, new taxes.

When the economy is pretty shaky, I cannot for the life of me tell you any economist that says raise taxes in a period where we have a downturn in economic conditions in this country.

So I say, Mr. Speaker, the American public and my State of Michigan who have had several tax revolts, it is a catastrophic error tonight to vote for a package that produces $150 billion in new taxes and jeopardizes the American economy for the next 5 years.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. KASICH].

Mr. KASICH. Mr. Speaker, I guess all we were trying to ask for here about a week—2 weeks ago from the Committee on Rules was a degree of fairness.

We went to the Committee on Rules with a package that had $410 billion worth of deficit reduction over 5 years, so there never was any real question about whether it was enforceable, because we did not put any new taxes in, and we were denied the opportunity to bring this to the House floor.

It was not a money package. It was a package that was printed out and costed out by the CBO and the OMB, and it had $410 billion in cuts.

We were told that we would not have an opportunity to offer that package for the simple reason that we did not reach the $500 billion in deficit reduction.

Tonight we are going to vote on a package that is also not going to reach the $500 billion package, but yet this package is made in order.

□ 0200

I understand that it is very difficult when time comes to try to move something, sometimes we cannot get caught by the details. However, this is really a question of fairness. Here we have a group of people who worked together for a long period of time on this side of the aisle, who produced a responsible alternative that did not raise the taxes on the American people. We stood up to the plate, and we made the hard cuts that were demanded of Members. We reached $410 billion, and they said no. However, tonight, just a short week later, we come to the floor, and now the $500 billion has been changed.

Baseball season is over, but if this was baseball season, last week we only got 2 outs, and this week they get 4 outs. That just is not fair.

Now, why are we operating here at 2 o'clock in the morning? First of all, the reason we are operating here at 2 o'clock in the morning is because those who support this package are fighting a war of attrition. Basically, they just hope every person will fall asleep or fall over before the time comes to vote, and there will be enough people standing who will vote for their package. I will not fall asleep. I will vote against the package if for no other reason than the fact that we did not have an opportunity to offer our alternative.

However, what the gentleman from Pennsylvania [Mr. WALKER] pointed out a few minutes ago is mind-boggling. In the first year, $109 billion in additional spending, paid for by $106 billion in additional revenues, with a deficit of $34 billion. If the American people knew this, and knew that we were doing it at 2 o'clock in the morning, and if Members think they have been angry until now, wait until they wake up tomorrow morning and read the headlines.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois [Mrs. MARTIN].

Mrs. MARTIN of Illinois. Mr. Speaker, early this morning, most television stations in America signed off by playing the National Anthem. I mentioned this because for some reason the occasion brings to mind the opening words of the Star Spangled Banner:

Oh say can you see by the dawn's early light
What so proudly we hail.

Those words come back to me, Mr. Speaker, because, quite frankly, we are not being allowed to see "by the dawn's early light," what it is that is being so proudly hailed. For some reason, we are being asked to consider and debate and vote on a multimillion dollar tax package in the dead of night.

The previous speaker said, "Wait till the people read tomorrow's headlines." But tomorrow's headlines have already been written, which is the main reason we are debating in the dead of the night.

That does Members not proud, when we have the most important and biggest package of tax increases, perhaps in the history of the Republic, we should have done better. Decent people are on both sides of this issue. That debate could have been heard and understood by the American people. It should have been heard and understood by the American people.

However, I do want to thank the leadership for changing their respective mind on both sides of the aisle, as

tired as we all are, to have originally planned only 1 hour of debate on this, made a mockery of the entire process. This was changed to 2 hours. For that I am grateful, because I think it speaks well for those who at least understand there should be some better debate.

Mr. Speaker, whether you are for or against this bill, the American people are not benefiting by the road on which we reach our decision. I do not happen to believe that new taxes are the answer, but I do not think any Member has to believe this is the way to get to our decision.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, I rise in support of House Resolution 537, providing for the consideration of the conference report for H.R. 5835, the Omnibus Reconciliation Act of 1991. This rule waives all points of order against the conference report. I support this rule simply because the time has come to stop posturing and enact a plan to reduce the Federal budget deficit.

I need not really remind anyone of the long and painful journey we have taken to arrive at the conference report. It all started almost 9 months ago when the President submitted his budget. This body responded with a partisan, parochial plan of its own. We then endured 5 months of summit negotiations culminating in a campout at Andrews Air Force Base. Three weeks ago this body voted against this product of our labors, the conference report on the budget resolution. After some fine tuning, a conference report on the budget resolution was ultimately passed. Last week, the House passed a reconciliation bill to comply with the budget resolution. Today, we finally have the opportunity to see the product of our labors enacted into law.

I, as much as anyone, have some doubts about the reconciliation bill. Most importantly, it fails to make real reductions in nondefense discretionary spending. It relies too heavily on taxes. It does not do enough to rein in growth in entitlement programs other than Medicare and Medicaid. And it fails to reconcile $3 billion in deficit reduction not allocated to committee.

Yet even with these shortcomings, it is still a package that deserves our support. It provides real deficit reduction in the amounts of about $42 billion in fiscal year 1991, and about $479.1 billion over 5 years. Growth in discretionary spending is held down to the rate of inflation. Serious efforts have been made to slow down growth in Medicare, one of the fastest growing Federal programs. Finally, the enforcement provisions give us a tool to control the explosive growth in entitlement programs.

Let us not forget the challenge before us. We must rein in our deficits because they threaten the vitality of our Nation's economy. Our untamed budget deficits serve only to drive up interest rates, increase our dependence on foreign capital, and push the economy toward recession.

If we are to gain control over these deficits we must make the compromises that the people demand of their elected representatives. I urge my colleagues to support both the rule and the conference report on the reconciliation bill.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, the American people are outraged by those who sneak up on them in the dead of night and take money out of their pockets. Newspapers may have missed their deadlines, and the television audience may be asleep, but the American people are waking up. They are not going to have this massive tax increase hoisted off upon them in the name of deficit reduction.

We all know this is a tax increase, and next year the deficit will be much larger than it is today.

I received this letter from one of my constituents:

DEAR CONGRESSMAN ROHRABACHER: No new taxes. New taxes will not decrease the deficit. New taxes equal new spending. Cut unnecessary and foolish spending instead. Joseph Thomas, from Westminister, California.

The American people, they know. We are not fooling anybody.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Speaker, I notice some of the heads nodding here and the yawns, and I know Members are all tired and should be home and in bed where proper citizens should be at this hour, rather than here debating what is perhaps the most important issue that has confronted this Congress this year.

I rise in opposition to the rule, only because I think this whole process is absurd to an extreme. I think the American people recognize that. They will communicate with Members.

The problem is, at this hour, most C-SPAN viewers have already retired, and this is probably as good a time as any to conduct so important a business issue as faces this Congress today.

I can totally understand why any Member of this Chamber would support this. We have talked about this bubble. We are going to sock it to the rich. Right, because when we get out of the bubble, and we finally get to a 28-percent rate, those are the people in the highest income bracket. Now we will take them to 31 percent.

Well, with the payraise that this body voted itself, next year we will be making about $127,000 a year, right? By putting a 31-percent top rate, marginal rate, we are all going to enjoy a magnificent tax break. We will save ourselves about $1,000 in taxes that otherwise we would have to pay. Now, of course, we are not rich. We are only in the top 5 percent of income brackets in this Nation. Hardly what one could define as rich, right?

We do, however, pay about 40 percent of all the taxes paid, those people in the top 5 percent, but those people in that middle income bracket in the top 5 percent of wage earners probably are due this long overdue tax break that is provided which is the 31 percent bracket, for those people that will be earning that modest $127,000 a year, serving the Nation's interests here, at 2 o'clock in the morning, on this absurdity.

I rise in opposition to the rule. I rise in opposition to the bill.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. THOMAS].

Mr. THOMAS of California. Mr. Speaker, I read in the CONGRESSIONAL RECORD of October 16, a comment from our colleague, the gentleman from Wisconsin [Mr. MOODY], in discussing the rule at that time. He said:

The President was the umpire in this game, your President, the GOP President. He came here and said the rules are this: $500 billion, and not a penny less.

The chairman of the Committee on Budget, the gentleman from California [Mr. PANETTA] said:

Obviously the main issue here is the issue of whether or not an alternative amendment ought to be provided, and the reasons it should not be provided are basically three. No. 1, we have been struggling for the last 6 months to try to reach targets of $40 billion in the first year; $500 billion over 5 years.

Mr. Speaker, I ask of the chairman of the Committee on Budget, perhaps the gentleman did not hear his words that were spoken a week ago about the requirement for denying an alternative; did the measure under which this rule make in order achieve $500 billion over 5 years?

Mr. PANETTA. Mr. Speaker, if the gentleman will yield, the best estimates we have now that we are looking at a package somewhere about $490 billion, which is the largest deficit reduction package in the history of this country.

Mr. THOMAS of California. Thank you.

Mr. MOODY, once again:

We came here and said the rules are this: $500 billion and not a penny less.

We were denied the opportunity to present an alternative less than $500 billion. Your original package was not $500 billion.

□ 0210

This package is not $500 billion, yet you use the rules and deny others their fair opportunity to offer an alternative.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. LIGHTFOOT].

Mr. Speaker, I spent this afternoon and most of this evening working with some economic development people, chamber of commerce folks, people working with the census, county agents, people with State tax rolls.

I went through a little drill that I think will be instructive to anyone who has not decided what they want to do with this particular package.

In my State of Iowa, a typical community is about 5,500. It has about 2,600 households with a median income of $26,860. With the increases in income tax of about $107, coupled with the excise taxes of around $269, multiplied by those homes, my little community, which has $13,000,000 in retail sales, will lose $979,056 from the people who live in it.

We also are in a farming area. If you reach out and take in the farmers in the trade area, which I figured at 945 farms, based on one county, those people will lose $450,349 through increased income taxes, and through the farm bill which we passed this week, losing 6 percent off of a $67 million gross, an additional $4,049,372.

So this little rural community out in Iowa is going to lose $5,479,000.32 in cold hard cash, which is 42 percent of that little community's annual retail sales.

So I would suggest to any of you who have not taken time to go through this package and see what it does to you and your community, to do it.

Mr. Speaker, I urge a no vote on the rule, a no vote on the package, and I have already voted no on the farm bill.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. JAMES].

Mr. JAMES. Mr. Speaker, I am concerned. We are told we have a deficit reduction package. Yes, a deficit reduction package from $300 billion, allegedly. It is a $46 billion reduction, one-sixth of the $300 billion is cut. It is not much of an effort.

Then there was some argument from the gentleman from Pennsylvania [Mr. WALKER] that that does not even exist, that you are still worse off because there is more spending than revenues. I do not know which is correct, nor will I presume to say which is correct.

But what I am concerned about is the process that we are following under this rule in the 1 hour of debate, based on a presentation of figures and facts that none of us have had time to examine.

What I am concerned about is the so-called hidden bills that will benefit specific corporations that Mr. Darman could not answer for us today. We asked him that question point blank, "Can you promise us there is no special benefit to a corporation that we will later find out about by listening to the news?"

No such representation could be made.

Indeed, we could have the equivalency of a catastrophic health insurance type problem or something almost as embarrassing as Barbados or something of that nature in relationship to the breaks that may occur in that bill, and yet we are doing it at this hour of the morning. That is absolutely absurd when you are staring eyeball to eyeball at no less than $250 billion in deficits in this next year.

In 5 years, we will have a $5 trillion deficit, some say. If we are admitting that it is $5 trillion now, what indeed will it be in 5 years?

You call it a deficit reduction package? That is almost an obscenity to use that terminology when you have a $250 billion debt, and to follow this rule with a 1-hour debate is absurd.

Mr. Speaker, I will vote against the rule. I will vote against the bill, and I submit that anyone with one degree or ounce of sanity will do likewise.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. KYL].

Mr. KYL. Mr. Speaker, this is a sad night in the House of Representatives.

When prisoners are held, they are made more compliant by two techniques: deny them sleep and deny them information. If this rule is adopted, we will be denied both when we debate and have to ultimately act upon this bill.

What is lost in allowing this bill to lay over just a few hours that it would take to at least print it so that people could read it to know what is in it? I am afraid we know the answer. We will know what is in it and it is likely to pass.

That is why this rule must be adopted, so we get on with the business of passing a bill before the American people can find out what we are doing.

But as one of my colleagues pointed out, in a couple weeks the editorialists will be pointing out what we did and then many of us will regret that we voted aye on the bill.

For that reason, Mr. Speaker, I suggest a no vote on the bill.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, for the last number of hours I have been watching and listening to news commentators discuss this new proposed conference report and debate the pros and cons of it, just as if they have actually read it.

Mr. Speaker, I do not think anyone, except perhaps a few chosen, have actually read this agreement. It is not even available here on the House floor tonight for us to look at at this time.

What I would like to tell the American people is what we do have to look at. I received a printout listed at 4:43 p.m. that said the total tax revenues in the conference report would be $137.2 billion. That was at 4:43.

About 3 hours later, at 7:30, there was a new printout that said the total tax increase of the conference report would be $146.6 billion. That means in about 3 hours, taxes just went up by about $13 billion, or it means the information in one or both of these reports is not accurate.

The final sheet I have suggests that the actual budget reduction proposed is $473 billion, but the distinguished chairman of the Budget Committee says that the actual budget reduction is $490 billion. If the distinguished chairman is correct, where is the other $17 billion coming from? We just do not know. That is why the rule should be defeated and we should examine this conference report in the light of day.

Mr. QUILLEN. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I urge the Members to vote for the rule. After all, 2 hours of general debate might be enlightening to all of us.

Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. Mr. Speaker, I thank my colleague, the gentleman from Tennessee [Mr. QUILLEN] for yielding me this time.

Mr. Speaker, it has been indeed a bizarre session, this Second Session of the 101st Congress. All of us need to be disappointed and concerned at our failure to have acted more timely than we have acted, but this bizarre session hopefully is coming to a close. It must come to a close.

This is Saturday, October 27, 27 days into the Federal fiscal year. At midnight of this day, the Government of the United States closes up again, unless we either enact this resolution or another continuing resolution.

□ 0220

The people of the United States are weary of this struggle. They are weary of our indecisiveness. You can pick up this package, you can tell all of the things that are bad about it, but I would suggest, especially to my colleagues on this side of the aisle, that there is no other package left. The American people are looking to us to give them a deficit reduction package, and they will take some flaws if they get the package, and this is that package.

It has been said this is not the full $500 billion, but do we have a package that we can muster a majority of the votes in this House or the other House to pass that $500 billion package? Is it any better than this package?

The time has come, the American people will hold those who make it impossible for deficit reduction to be enacted accountable for our failure to do so and bringing the Government once more to a state of crisis and to closure.

Mr. Speaker, I would urge support for this rule, I would urge support for the package.

PARLIAMENTARY INQUIRY

Mr. HENRY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. (Mr. MAZZOLI). The gentleman will state it.

Mr. HENRY. Mr. Speaker, I pose a question to the Chair, a parliamentary inquiry.

On October 16, when the House voted the reconciliation measure, it took 5 days to receive a copy of the Journal with the measure itself printed and displayed before the American public.

We do not yet have, at least before us, a copy of this measure. Can the Chair assure the Members and the American public that this measure will be published and spread before the American public at least 3 days prior to the national election?

The SPEAKER pro tempore. The Chair would advise the gentleman from Michigan that the rules will be followed in the printing and publishing of the conference report.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, and I yield back 15 seconds.

The SPEAKER pro tempore. The gentleman yields back the balance of his time.

Mr. DERRICK. Mr. Speaker, I yield 2 minutes to the distinguished chairman of the Committee on the Budget, the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, we are in these last final hours. I, too, recognize that we are tired and exhausted. It has been a long road.

The rule is, obviously, essential to the process of taking up the conference report on reconciliation.

I would urge Members to pass and adopt the rule so that we can proceed to that debate.

I guess what I would hope is that as we enter that debate, maybe for just one moment in this session, that one moment on the debate, we could set aside the political differences and the partisan attacks and all the finger-pointing and all the excuses and maybe just for that moment focus on the interest of the country and debate the fact that we face a very serious problem that has to be confronted, a deficit approaching $300 billion, a national debt over $3.2 trillion.

The American people have had enough of fooling around in the sense that we try to kid them that somehow we can confront the deficit and it does not involve pain, it does not involve sacrifice.

The fact is it does.

That is what this package is all about. We have a very large deficit reduction package. It consists of 70 percent spending savings and about 29 percent in revenues.

It is balanced, it is fair. In terms of the package itself, it largely reflects many of the elements in the summit agreement, many of the elements obviously adopted in the budget resolution, in budget reconciliation, and all of the Members have seen those packages and seen what the elements of those are.

We have had 12 committees working to come up with these savings and producing them, with the last 2 having completed their job only yesterday.

The material is here, it will be here to brief all Members on what the elements of this package are.

I ask Members to look at that material, to consider the issues, to debate those issues because in the end what the American people want tonight is not political excuses or political attacks, they want us to govern this Nation.

Let us get on with that.

Mr. DERRICK. Mr. Speaker, I move the previous question on the resolution, as modified.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution, as modified.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DERRICK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently, a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 275, nays 142, not voting 15, as follows:

[Roll No. 527]

YEAS—275

Ackerman	Boehlert	Chapman
Alexander	Boggs	Clarke
Anderson	Bonior	Clay
Andrews	Borski	Clement
Annunzio	Bosco	Clinger
Anthony	Boxer	Coleman (TX)
Applegate	Brennan	Collins
Aspin	Brooks	Condit
Atkins	Browder	Conte
AuCoin	Brown (CA)	Conyers
Barnard	Bruce	Cooper
Bateman	Bryant	Costello
Bates	Byron	Coyne
Beilenson	Campbell (CO)	Darden
Bennett	Cardin	Davis
Berman	Carper	de la Garza
Bevill	Carr	DeFazio
Bilbray	Chandler	Dellums
Derrick	Kolter	Rangel
Dicks	Kostmayer	Ray
Dingell	LaFalce	Richardson
Dixon	Lancaster	Roe
Donnelly	Lantos	Rose
Dorgan (ND)	Laughlin	Rostenkowski
Downey	Leath (TX)	Roukema
Durbin	Lehman (CA)	Rowland (CT)
Dwyer	Lehman (FL)	Rowland (GA)
Dymally	Levin (MI)	Roybal
Dyson	Levine (CA)	Russo
Early	Lewis (GA)	Sabo
Eckart	Lipinski	Sangmeister
Edwards (CA)	Lloyd	Sarpalius
Engel	Long	Savage
English	Lowey (NY)	Sawyer
Erdreich	Luken, Thomas	Scheuer
Espy	Madigan	Schroeder
Evans	Manton	Schumer
Fascell	Markey	Serrano
Fazio	Martinez	Sharp
Feighan	Matsui	Shaw
Fish	Mavroules	Sikorski
Flippo	Mazzoli	Sisisky
Foglietta	McCloskey	Skaggs
Ford (MI)	McCurdy	Skelton
Frank	McDermott	Slattery
Frenzel	McHugh	Slaughter (NY)
Frost	McMillan (NC)	Smith (FL)
Gaydos	McMillen (MD)	Smith (IA)
Gejdenson	McNulty	Smith (VT)
Gephardt	Mfume	Solarz
Geren	Michel	Spratt
Gibbons	Mineta	Staggers
Gilman	Mink	Stallings
Glickman	Moakley	Stenholm
Gonzalez	Mollohan	Stokes
Goodling	Montgomery	Studds
Gordon	Moody	Swift
Gray	Morella	Synar
Guarini	Morrison (CT)	Tallon
Hall (OH)	Morrison (WA)	Tanner
Hall (TX)	Mrazek	Tauzin
Hamilton	Murphy	Taylor
Hansen	Murtha	Thomas (GA)
Harris	Nagle	Torres
Hatcher	Natcher	Torricelli
Hayes (IL)	Neal (MA)	Towns
Hefner	Neal (NC)	Traficant
Hertel	Nelson	Traxler
Hoagland	Nielson	Udall
Hochbrueckner	Nowak	Unsoeld
Horton	Oakar	Valentine
Houghton	Oberstar	Vento
Hoyer	Obey	Visclosky
Hubbard	Olin	Volkmer
Huckaby	Ortiz	Walgren
Hughes	Owens (NY)	Washington
Hutto	Owens (UT)	Watkins
Jacobs	Pallone	Waxman
Jenkins	Panetta	Weiss
Johnson (CT)	Parker	Wheat
Johnson (SD)	Pashayan	Whitten
Johnston	Patterson	Williams
Jones (GA)	Payne (NJ)	Wilson
Jones (NC)	Payne (VA)	Wise
Jontz	Pease	Wolf
Kanjorski	Penny	Wolpe
Kaptur	Perkins	Wyden
Kastenmeier	Pickett	Wylie
Kennedy	Pickle	Yatron
Kennelly	Poshard	Young (AK)
Kildee	Price	Young (FL)
Kleczka	Rahall	

NAYS—142

Archer	Combest	Gallo
Armey	Coughlin	Gekas
Baker	Courter	Gingrich
Ballenger	Cox	Goss
Bartlett	Craig	Gradison
Barton	Crane	Grandy
Bentley	Dannemeyer	Grant
Bereuter	DeLay	Green
Bilirakis	DeWine	Gunderson
Bliley	Dickinson	Hammerschmidt
Broomfield	Dornan (CA)	Hancock
Brown (CO)	Douglas	Hastert
Buechner	Dreier	Hefley
Bunning	Duncan	Henry
Burton	Edwards (OK)	Herger
Callahan	Emerson	Hiler
Campbell (CA)	Fawell	Holloway
Coble	Fields	Hopkins
Coleman (MO)	Gallegly	Hunter

Hyde	Packard	Skeen
Inhofe	Parris	Slaughter (VA)
Ireland	Paxon	Smith (NE)
James	Petri	Smith (NJ)
Kasich	Porter	Smith (TX)
Kolbe	Pursell	Smith, Denny (OR)
Kyl	Quillen	Smith, Robert (NH)
Lagomarsino	Ravenel	Smith, Robert (OR)
Leach (IA)	Regula	Snowe
Lent	Rhodes	Solomon
Lewis (CA)	Ridge	Spence
Lewis (FL)	Rinaldo	Stangeland
Lightfoot	Ritter	Stearns
Livingston	Roberts	Stump
Lowery (CA)	Robinson	Sundquist
Machtley	Rogers	Tauke
Marlenee	Rohrabacher	Thomas (CA)
Martin (IL)	Ros-Lehtinen	Thomas (WY)
Martin (NY)	Roth	Upton
McCandless	Saiki	Vucanovich
McCollum	Saxton	Walker
McCrery	Schaefer	Walsh
McDade	Schiff	Weber
McEwen	Schneider	Weldon
Meyers	Schuette	Whittaker
Miller (OH)	Schulze	
Miller (WA)	Sensenbrenner	
Molinari	Shays	
Moorhead	Shumway	
Myers	Shuster	

NOT VOTING—15

Boucher	Gillmor	Oxley
Bustamante	Hawkins	Pelosi
Crockett	Hayes (LA)	Stark
Flake	McGrath	Vander Jagt
Ford (TN)	Miller (CA)	Yates

□ 0246

Mrs. SAIKI changed her vote from "yea" to "nay."

So the resolution as modified, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

POINT OF PERSONAL PRIVILEGE—CHARGES FILED BEFORE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

Mr. DENNY SMITH. Mr. Speaker, I rise to a point of personal privilege.

The SPEAKER pro tempore (Mr. MAZZOLI). The Chair is aware of the press accounts. The gentleman is recognized for 1 hour on his point of personal privilege.

□ 0250

Mr. DENNY SMITH. Mr. Speaker, this is probably the most important speech that I have given to this point in my life, and it is 10 till 3, if I read my watch correctly, on a very important legislative day. I had thought a long time about whether or not I should do this, and how it should be done. But I feel so incensed that my honor and my name have been besmirched by a process that I think is a misuse and an abuse of the ethics system. And I would say to all of you that this is very important to each and every one of you, because this, but for the grace of God go I, is certainly true, this could happen to any Member in this body, and it is time it stopped.

I do not know that you can do any good for this Member. There are a couple of other Members, one on each side of the aisle, that have been rumored are in the same kind of a fix. But I think it is wrong, and I think this is something that needs to be done.

I realize this is an important legislative day. We have probably just had the most important rule of the year, and we are about ready, sometime in the next couple of hours, to take up the so-called deficit reduction bill.

But in the meantime, when there are other small pieces of business, this is the most important business for this Member at this time in my career.

I think I will start off by reading to you a letter that I received this legislative day, but October 26, and it is from the Ethics Committee. It is:

DEAR COLLEAGUE: This is in further references to your letter of October 9, 1990 seeking, information regarding assertions of misconduct lodged against you. The committee has decided not to initiate an investigation since there will be an insufficient opportunity to consider the conduct involved. Sincerely, Julian C. Dixon, Chairman: John T. Myers, Ranking Minority Member.

Now this is a nonanswer. This is not good enough. This House is under attack on ethics situations because we are not standing up for what we are and what we believe in.

I will continue. Let me read to you, or at least portions of my letter written on October 9. It is written to the Honorable JULIAN DIXON, and I actually wrote letters to each one of the members of the committee on both sides of the aisle.

DEAR JULIAN, I have learned from newspaper reports that a complaint has been filed against me with the Committee on Standards of Official Conduct. I have received no formal notification of the charges, nor a copy of the complaint.

However, it should be clear that this complaint, given its timing, was motivated purely by politics. I am in one of the closest reelection races in the Nation, and I expect it to be rough, even nasty. But it is important that the race be decided on the issues, not on cynical tactics used only to draw attention away from the issues.

I guess that paraphrases it. I will include this entire letter in the RECORD.

The answer I got I received on October 18, and I think it is also interesting. It begins Dear Colleague and it is dated October 18.

This will respond to your letter of October 9, 1990 concerning newspaper reports that a complaint has been filed against you with this Committee, and if these reports are accurate, you request that the Committee expedite a review of the charges and officially respond as soon as possible.

While we appreciate and are sensitive to your interest in determining the status of any activities of the Committee that may involve you, the committee directs your attention to House rule X(4)(e)(2)(F), which reads: "No information or testimony received, or the contents of a complaint or the fact of its filing, shall be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full Committee."

In other words, I have no opportunity to know what the charge is against me nor that I face. It goes on, and I will also include this in the RECORD.

In light of the above, it would be inappropriate and at variance with controlling House and Committee Rules to respond to your concerns. While the Committee may revisit its general policy regarding informing of Members about the status of any Committee actions in which they may be involved, any such disclosures are, for the present time, subject to the limitations of the above-referenced rules. Sincerely, Julian C. Dixon and John T. Myers.

Thus, after some further discussion, the committee has now come back with the letter of today where the final paragraph, and I will read it to you again, says that:

The Committee has decided not to initiate an investigation since there will be an insufficient opportunity to consider the conduct involved.

I might just have you go back and think about the oath we take when we are sworn in to office:

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion, and that you will well and faithfully discharge the duties of the office on which you are about to enter, so help you God.

I have done that, and I cannot be more incensed by the fact that politics are more important here than principle. And I think in my lifetime and what I have done, I think that is the seventh time that I have taken the oath officially.

I served in the Air Force for approximately 10 years, had a year of combat in Vietnam. I have had 10 years of combat here in the House of Representatives. I am extremely proud and feel very, very privileged to have served here for 10 years.

But I am absolutely irritated that this process could be misused to the point where my good name could be forever besmirched.

So I ask you to think about that. It is very, very important, important to all of you, I am sure.

This oath means honesty, integrity, honor. This is a code I have lived my life by. These principles are more important to me than money, than position or reelection, and I think if you realize it, it is more important to you too. I think for those of us who are in public service, which is difficult at best these days, you realize what kind of a situation we face.

I will never forget after my dad died, he had left me a good name, but I did not recognize that was the most important thing he had given me, and I started doing business. I took over a business. It was small, three county

newspapers, and I would go in and try and get credit, and do business with the suppliers and so forth. Maybe some of you have had the same experience. And they would take me. I was a new guy and they did not immediately take to that. But when they found out who my dad was, they immediately said, "Sure. Oh, yeah. I know Elmo and I'll do business with you."

That is the most important thing you have, the only credit, the only currency you really operate with as an individual in our free society.

So I am here tonight to reclaim that name. And it is important to me.

Let me go back through what has occurred here. If in fact my honesty, and integrity and honor have been challenged by this vicious political smear, I need to lay out the charges for you so that you can understand how I got to be incensed.

First off, how did I get involved in this? An article was written in the Oregonian on December 17, 1989, a very detailed article. I spent probably 12 hours with the reporter. He is the most or best prepared reporter I have ever dealt with, and we all deal with these guys all of the time. I have worked with them a lifetime as a publisher. I have seen people. He would come in with question upon question generated out of his computer. I opened up my tax returns. I said I would never do that, but it was to prove my good name and to establish that I had done nothing wrong. And so we did that.

This article, which I also will have made a part of the RECORD, was very good. I disagree with a couple of words in it, but on balance, it is an extremely good document, and I have nothing to be ashamed of for it.

□ 0300

I responded with openness and candor. This was run on December 17. On the morning of the 18th, I held a 3-hour press conference. We had four TV cameras there, and every little question I answered. The next 2 days I went to every newspaper in my district and talked to editorial boards, again, opening myself up to every possible question so that nobody could say I had not answered a question or that I was trying to dodge something, trying to hide something. I think that is extremely important. It is what keeps us with that good name.

Now, let me tell you how I found out about the fact I was going to have an ethics filing. I received from the Gannett News Service on the fax the filing which was a news release from the Democratic Congressional Campaign Committee, BERYL ANTHONY, Jr., Democrat, Arkansas, chairman, for immediate release, September 19, 1990, and the headline is, "Smith Guilty of Ethical Misconduct, Complaint Charges." And it goes on. The list of charges, the formal filings, which was done by the lawyer for the campaign committee, was in fact included with the charges, with the attachments. It was signed by Robert Bauer, general counsel of the DCCC, and I think has been pretty well proven to be wrong in the public press of the article that Alan Ota did. If it was a serious effort, it would have been filed much sooner.

The majority knows that if there had been anything wrong here that it would have been filed in February or March, and they would have been able to remove me from this House, and they would like to have done that to match the loss of the Speaker and Mr. Coelho. They did not do that. They did not do that because it is a false charge.

Again, I am back to claiming my good name. I would like to have this entered into the RECORD also.

Let me just take some quotes out of some articles that have fallen since I am sort of retracing my steps now, retracing back to June 24 when, in an article, Mr. Coran, who was, or is, the campaign manager for my opponent, Mr. Kopetski, and I quote:

> Coran says they want to wait for the right time to let Smith have it. "We want to make sure he is dealing with it in September" when people are paying attention, said Coran, adding that is also when Smith does not have a lot of time for this to play out. Coran even hints that nobody has filed a complaint against Smith with the House Ethics Committee yet because the Democrats are waiting for the November election to get closer. "I don't want to tip the hand," Coran said, when asked if a complain will be filed.

That is from the Portland Oregonian on June 24, 1990.

August 23, BERYL ANTHONY has made a trip to aid in fundraising for my opponent, as he should. Two quotes from two different newspapers, one the Klamath Falls Herald News:

> Complaint on Denny Smith Unlikely. A Democratic campaign panel probably won't file an ethics complaint against U.S. Rep. Denny Smith, R., Oregon, because it would look like political opportunism, the committee chairman says. Rep. Berryl Anthony, D., Arkansas, head of the Democratic Campaign Committee, made the remark Tuesday during a stop in Portland to attend a fundraiser for Smith's Democratic opponent, Mike Kopetski. Kopetski has accused Smith of illegally using congressional staff and equipment on his reelection campaign.

Same day, August 23, but a different newspaper, Albany Democrat Herald:

> Kopetski's allegations are the type that would be investigated by the House ethics committee. He turned the complaint over to the campaign committee because Anthony, as a House Member, could formally ask for an investigation, but Anthony said that if that were done the allegation would shift immediately from if you have got a complaint, why don't you file it to they filed a complaint but it was the chairman of a campaign committee that filed it. That's just not the way our ethics process works, Anthony said.

There are other quotes here, and they are similar in nature, but they are from other newspapers, and I think should be included in the RECORD.

You know, we face the press every day, but when you're going to be tried and convicted in the press on something as serious as this, it is wrong, and every one of you could have this happen, and you should all be just as concerned as I am.

The House is on trial in this election. We are on trial because of the fact we have not kept the ethics process for what it was originally designed.

I need to thank the Speaker. Mr. FOLEY was extremely courteous to this gentleman. He allowed me this point of personal privilege. He and I had a nice conversation in his office about 1 hour ago, and the Speaker said to me:

> You know, when I was on the ethics committee, if anything came during the election cycle from a candidate or from a campaign, I threw it out.

Now, I know he did not do that alone, but I think that we should go back to that process.

This is outrageous that this could be done in a period of time when you do not have time to investigate it properly, and regardless of the outcome of the election on November 6, I want a commitment from the ethics committee that this be investigated to protect my good name, and I appreciate the chairman and the ranking member being here and the other Members that I have talked to, and I think that is one of those things that you are honorbound to do for this Member of this body.

You know, when the committee did not hear Mike Kopetski's charges because they did not have enough time, let me go back and look at the filing date on this. I realize they have been busy. They have had a lot of things on their plate, and we have, too. This was sent out September 19, but I think that the actual receipt date, and I cannot quite read it, it is either 13 or 18 on the copy, but very clearly we have had some time.

The charges are specious, in my estimation. They need to be explained. There is no doubt about that. I could have been called in. This could have gone on. It was not a special-investigator kind of a situation. I think it should have been done.

This is a very cynical abuse of the ethics system by my opponent, Mike Kopetski, and the Democratic Congressional Campaign Committee, and in my estimation, it is the ugliest form of partisan politics.

You know, putting politics above principle, as my opponent, Mr. Koptski, has done, perverts our position and pollutes our democracy.

I would just ask the majority: Do the Democrats need another seat so

badly that they would warp this system?

I have some friends over here, but I do not think that you really want to do that. I think that is wrong.

This game can be played by two, and it is not right.

I do not mind having my record looked into, but this is an absolute perversion of the system of ethics.

I would go back to the fact that if I had done something wrong with the time that was allocated and allowed between December 17 and the filing on September 18, that they could have, in fact, brought an investigation early on.

I know from my opponent's campaign records that he had a lawyer looking into this in January and February. I think that if they had something, they should have brought if forward then when it could have been dealt with correctly.

I guess now I have a request of the Ethics Committee. I would urge that the Ethics Committee convene tomorrow and consider the charges. I ask for nothing less than my good name.

In a little less than a week, the voters in my district will be asked to choose between me and the man who accused me before this Ethics Committee. The people of my district have a right to know whether or not I am an honorable man.

If I am left twisting in the wind, it sets a dangerous precedent for everyone who sits in this House. It is essential for everyone in this room that this matter be resolved.

HOUSE OF REPRESENTATIVES, COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, DC, October 26, 1990.

Hon. DENNY SMITH,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR COLLEAGUE: This is in further reference to your letter of October 9, 1990, seeking information regarding assertions of misconduct lodged aganist you.

The Committee has decided not to initiate an investigation since there will be an insufficient opportunity to consider the conduct involved.

Sincerely,

JULIAN C. DIXON,
Chairman.

JOHN T. MYERS,
Ranking Minority Member.

HOUSE OF REPRESENTATIVES,
Washington, DC, October 9, 1990.

Hon. JULIAN DIXON,
Committee on Standards of Official Conduct, Rayburn House Office Building, Washington, DC.

DEAR JULIAN: I have learned from newspaper reports that a complaint has been filed against me with the Committee on Standards of Official Conduct. I have received no formal notification of the charges nor a copy of the complaint.

However, it should be clear that this complaint, given its timing, was motivated purely by politics. I am in one of the closest reelection races in the nation and I expect it to be rough, even nasty. But it is important that the race be decided on the issues, not on cynical tactics used only to draw attention away from the issues.

My opponent and I have very different stands on the issues important to voters in Oregon's 5th District. And those are the issues they should weigh in their decision. This complaint is nothing more than political deception designed to blur what is one of the clearest choices between candidates in the country.

Democratic Congressional Campaign Committee Chairman, Beryl Anthony, publicly stated in August that filing a complaint at that time would look like "political opportunism." The filing came weeks later. My opponent's campaign manager, Ted Coran, said in June, "We want to make sure he is dealing with it in September," * * * when I wouldn't "have a lot of time for this to play out." Mr. Anthony also said, "That's just not the way our ethics process works." He is exactly right. Using the Committee so cynically not only obscures the real issues of the campaign, it threatens the integrity of the Committee and our ethics process, which is already suspect in the eyes of many voters.

Given the statements of our colleague, Beryl Anthony, the arrogance of the Kopetski Campaign's manager, and the abuse of the Committee this complaint represents, I ask that the Committee expedite a review of the charges and officially respond as soon as possible. I am confident that I have done nothing wrong or unethical and that the Committee will reach the same conclusion. However, waiting until after the election to make such a determination will only distort the election and establish a dangerous precedent for future candidates to abuse the system in this way.

I understand the importance of refraining from publicly discussing cases before the Committee. However, given the timing, the blatant misuse of the ethics process, and the lack of any credible evidence of wrong-doing on my part, I ask the Committee to officially respond to the complaint by throwing it out and expressing its contempt for such an arrogant misuse of the one Committee in the House which must remain above politics.

Best regards,

DENNY SMITH,
Member of Congress.

HOUSE OF REPRESENTATIVES, COMMITTEE ON STANDARDS OF OFFICAL CONDUCT,
Washington, DC, October 18, 1990.

Hon. DENNY SMITH,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR COLLEAGUE: This will respond to your letter of October 9, 1990, concerning newspaper reports that a complaint has been filed against you with this Committee, and if these reports are accurate, you request that the Committee expedite a review of the charges and officially respond as soon as possible.

While we appreciate and are sensitive to your interest in determining the status of any activities of the Committee that may involve you, the Committee directs your attention to House Rule X4(e)(2)(F), which reads:

"No information or testimony received, or the contents of a complaint or the fact of its filing, shall be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee."

In addition, Committee Rule 6(b) states:

"Unless otherwise authorized by the Committee, no information received by the Committee, respecting any alleged violation by a Member, officer, or employee of the House of Representatives of the Code of Official Conduct or of any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his duties or the discharge of his responsibilities shall be disclosed to the public before the transmittal under Rule 11 of the Committee rules to such Member, officer, or employee of a Statement of Alleged Violation in connection with such violation."

In light of the above, it would be inappropriate and at variance with controlling House and Committee Rules to respond to your concerns. While the Committee may revisit its general policy regarding the informing of Members about the status of any Committee actions in which they may be involved, any such disclosures are, for the present time, subject to the limitations of the above-referenced Rules.

Sincerely,

JULIAN C. DIXON,
Chairman.

JOHN T. MYERS,
Ranking Minority Member.

[News release from the Democratic Congressional Campaign Committee, Sept. 19, 1990]

SMITH GUILTY OF ETHICAL MISCONDUCT, COMPLAINT CHARGES

(By Beryl Anthony, Jr.)

WASHINGTON.—Congressman Denny Smith, R-OR, has used his official position as a Member of Congress for his own personal gain, and he has used his Congressional office and material for campaign activities—all violations of House ethics rules, a complaint filed with the U.S. House Committee on Standards of Official Conduct charged today.

The complaint, signed by Robert Bauer, general counsel to the Democratic Congressional Campaign Committee (DCCC), details four major areas of misconduct by Smith in dealings with savings and loan institutions in his Congressional district. The four are:

Lobbying federal regulators for "special treatment" for himself: This charge deals with Smith's lobbying of the Federal Home Loan Bank Board (FHLBB) to soften its policies against directors of failed savings and loan institutions while Smith himself was a director of a failing thrift.

Lobbying federal regulators for "special treatment" for his contributors: The complaint charges that Smith is guilty of misconduct because he appealed to the FHLBB for special treatment for a major campaign contributor.

Acceptance of improper gifts: The complaint questions a loan Smith received from a savings and loan institution for a failing partnership he co-owned. Smith admitted the deal was a losing business venture. The Savings and Loan institution eventually lost $1.4 million on the loan, which contributed to the institution's collapse in 1987.

The complaint questions payments Smith received from a savings and loan institution of $51,000 in cash and $133,000 in stock options for land Smith did not own.

Violations of Federal Banking Regulations: Smith received a home mortgage loan from a Savings and Loan institution while he was a director of that thrift. Both House ethics rules and FHLBB regulations were

violated by this transaction, the complaint charges.

"Much of the information (above), reported in two Oregon newspapers, has been supplied or confirmed by Congressman Smith himself," Bauer said in the complaint. "* * * he clearly has violated House Rule XLIII of the Code of Official Conduct governing proper conduct by Members and conflicts of interest."

The complaint details another series of violations concerning Smith's use of his Congressional office and equipment for campaign-related activities, a violation of House rules. They are:

Smith listed his official Congressional telephone number on campaign literature.

Smith used official material, produced by his Congressional staff, in campaign literature.

"* * * Congressman Denny Smith has repeatedly acted with brazen disregard of the Rules of the House and the rules of law," the complaint states.

"The charges in this complaint are very serious," Bauer said. "After a lengthy investigation, we made the decision there was no other recourse but to ask the Ethics Committee to investigate the matter."

Bauer asked for an immediate investigation by the Ethics Committee because of the seriousness of the charges.

PERKINS COIE,
Washington, DC, September 14, 1990.

Hon. JULIAN C. DIXON,
Chairman, Committee on Standards of Official Conduct, Washington, DC.

DEAR MR. CHAIRMAN: Late last year, a complaint was filed with the Committee on House Administration alleging misconduct on the part of Congressman Denny Smith (OR-5). That complaint, describing repeated misuse of the Congressman's official funds for campaign purposes, was returned without disposition as filed "in the appropriate forum." Since that time, we have learned that Congressman Smith has not stopped using official resources for the overt benefit of his reelection campaign; he has, if anything, escalated such activity. This repeated violation of House Ethics Rules cannot continue.

Perhaps more importantly, recent public accounts of congressional lobbying on behalf of the directors of failing savings and loan institutions raise even more serious ethical questions about Congressman Smith's conduct. Much of the information, reported in two Oregon newspapers, has been supplied or confirmed by Congressman Smith himself. Assuming the facts reported are true—and the Congressman does not assert otherwise—he clearly has violated House Rule XLIII of the Code of Official Conduct governing proper conduct by Members and conflicts of interest.

Therefore, we feel constrained to file this complaint against Congressman Denny Smith with the Committee on Standards of Official Conduct, and respectfully request that the Committee investigate and make a determination in these matters, as outlined below. This complaint will explain matters previously presented to House Administration as well as matters not yet addressed by any congressional committee.

A. MISUSE OF OFFICIAL RESOURCES

The enclosed campaign literature, published by Friends of Denny Smith, the principal campaign committee of Congressman Smith, bears the official telephone number of the Congressman's Washington, D.C. congressional office as well as the official telephone number of the Congressman's Oregon district office. This presence of the Congressman's officially funded telephone numbers in campaign literature constitutes the use of official expense allowance funds for a campaign activity, in violation of Rules of the U.S. House of Representatives.

The U.S. House of Representatives Congressional Handbook expressly provides that Members' office allowances are to be used for official expenses "in support of the conduct of the Member's official and representational duties," and not for defraying "personal, political or campaign related expenses." See U.S. House of Representatives Congressional Handbook, prepared by the Committee on House Administration, Sept. 1985, at page 2.1. Furthermore, the House Ethics Manual specifically incorporates these House Administration regulations, and prohibits the use of any official resources to conduct or engage in campaign or political activities. See Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives, prepared by the Committee on Standards of Official Conduct, 100th Cong., 1st Sess., 1987, at page 150. Clearly, the use of congressional phone lines and congressional staff time to field responses to Congressman Smith's campaign fundraising appeal violates these House regulations.

We have also enclosed a copy of an official mailing that Congressman Smith sent to his constituents under his franking privilege in June 1989, one month before the campaign solicitation discussed above was sent in July 1989. Except for the occasional added or altered sentence, the franked "Business Update" is used verbatim as the text of the "Report to Members" portion of Congressman Smith's "Golden Eagle Club" campaign solicitation. Congressman Smith has effectively channelled the congressional staff time and resources that went into researching and preparing his official mailing into his campaign coffers, in violation of House Rules and House Administration Committee Regulations.

The Smith campaign's immediate use of official literature as a vehicle for campaign fundraising improperly circumvents congressional directives meant to separate campaign business from official business. In fact, the Smith campaign avoided doing any research or preparation for its mailing, by appropriating the work already done by congressional staff on the official mailing. This amounts to a conversion of congressional resources for campaign purposes, and obviously also violates the Congressional Handbook and House Ethics Manual prohibitions cited above.

Moreover, a Committee on Standards of Official Conduct Advisory Opinion has specifically addressed this issue when interpreting House Rule XLIII, Clause 6, and House Rule XLV. Although Advisory Opinion No. 6, Issued September 14, 1982, allowed for members to "later distribute[e] [previously franked official materials] at campaign committee expense" under certain enumerated circumstances, see House Ethics Manual at page 157, as a limited exception to the "general rule that certain events or activities may be deemed 'offical' or 'political' but not both, and that the member must exercise his judgment in making such determinations," id., the Ethics Manual makes clear that campaign use of official material may be made only "once the official use of material is exhausted." Id. It is difficult to imagine how a "Business Update" that purports to be reporting on timely issues could have outlived its official use merely one month after its issuance. At a minimum, the Smith campaign committee itself must have believed the information in this "Business Update" to still wield currency, because the campaign chose to include this information in its "Report to Members."

Furthermore, the Advisory Opinion cites examples of materials that would be considered appropriate for use as reprints. These include "reprints from the Congressional Record, radio and television programs, correspondence from public officials, etc." Id. These examples notably do not resemble the type of material reprinted here: official, timely information generated by the research of congressional staff for official purposes, on official time. Under this analysis, therefore, the campaign literature may also violate House Rule XLIII, Clause 6, and House Rule XLV.

Mr. Chairman, we ask only that Congressman Smith's opponent be permitted to wage a fair battle against the incumbent Republican. The Congressman's opponent would have to spend thousands of dollars in campaign funds for similar research and response services, and these campaign expenditures would have to be reported to the Federal Election Commission. We look to you to ensure that Congressman Smith is not permitted to circumvent House requirements and tip the scales in his favor unfairly.

VIOLATIONS OF CONFLICT OF INTEREST RULES

Members of the U.S. House of Represenatives are expressly prohibited from using their official position in the Congress for their own personal gain. See House Rule XLIII, cl. 3; Code of Ethics for Government Service, 72 Stat., Part II, B 12, ¶ 5. The House Ethics Manual explains that this requires the Member to examine his "financial transactions and benefits" to ensure that he has not "'used his political influence, the influence of his position to make pecuniary gains.'" Ethics Manual for Members, Officers and Employees of the U.S. House of Representatives, 100th Cong., 1st Sess., at 116 (quoting 114 CONGRESSIONAL RECORD 8807, Apr. 3, 1968, remarks of Rep. Price). Furthermore, the Committee on Standards of Official Conduct has admonished all Members to "avoid situations in which even an inference might be drawn suggesting improper action" in this regard. See House Report 100-46, "Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St Germain," Apr. 9, 1987, at pp. 3, 9, 43. Finally, and more generally, House Rule XLIII, cl. 1 instructs every Member to "conduct himself at all times in a manner which shall reflect credibly on the House of Representatives."

According to information in newspaper reports that Congressman Denny Smith does not disavow, he has violated these directives numerous times since 1986.

1. Lobbying federal regulations for "special treatment" for himself

First, according to reports in The Oregonian and the Statesman Journal, Congressman Smith fervently lobbied the Federal Home Loan Bank Board for a softening of its policies against directors of failed savings and loan institutions who has been responsible for their institutions' bankruptcy, during a period in which he himself was a director of a failing thrift, American Federal Savings & Loan of Salem, Oregon. As stated by one FHLB regulator, the "propriety of a Congressman who [was] sitting on the board of directors of a failed savings and

loan trying to influence the agency's policy on directors liability" was extremely troublesome. This action might have raised conflict of interest concerns standing alone; however, Congressman Smith simultaneously lobbied the Board for "special treatment" for himself as a director of American Federal, seeking civil immunity for himself in a separate campaign he waged one-on-one with FHLBB regulators.

Although Congressman Smith claimed that his appeal was simply on behalf of affected individuals in his district, it nonetheless appears that, as The Oregonian put it, he "walked a fine line" between personal and professional lobbying, and that his appeal for "special treatment" violated both the language and the spirit of House Rule XLIII. The inappropriate nature of this behavior is compounded by the fact that Smith actually obtained lenient treatment only for himself, and not for all thrift directors.

2. Lobbying federal regulations for "special treatment" for his contributors

In a second situation raising questions of misconduct. The Oregonian revealed that in May, 1988, Smith again appealed to the FHLB for "special treatment," this time on behalf of Jimmie C. Taylor, a defendant in a civil suit brought by federal regulators against the former directors and officers of State Federal Savings & Loan Association of Corvallis, Oregon,. Taylor was a major contributor to Congressman Smith's campaign, a fact the Congressman highlighted during his own campaign before the Board for leniency for Taylor. The argument Smith made in defense of Taylor was wholly specious: he argued that the lawsuit was a waste of the government's time and money, despite the fact that the subsequent verdict against State Federal actually yielded $6 million, or six times its legal costs. Nevertheless when his lobbying efforts proved unsuccessful, Congressman Smith proceeded to write to then-President Reagan, seeking dismissal of then-FHLBB Chairman Edwin J. Gray because of the regulator's presumed unresponsiveness.

Through this effort, the Congressman blatantly disregarded the admonition of the Code of Ethics for Governemnt Service that House Members shall never "discriminate unfairly by the dispensing of special favors or privileges to anyone" not accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." Code of Ethics for Government Service, 72 Stat., Part II, B 12, ¶ 5. His ardent defense of Taylor in these circumstances can only be construed as a special favor to a contributor.

3. Acceptance of improper gifts

A third violation of the House Rules, reported in a separate Oregonian article, arises out of questionable financing Congressman Smith obtained from Citizens Savings & Loan Association for a failing industrial park partnership he co-owned in Salem. In addition to the general conflict of interest and conduct rules already discussed, Smith's deal with Citizens also implicates House Rule XLIII, cl. 4, outlining restrictions on Members' receipt of gifts.

In 1982, Congressman Smith obtained financing from Citizens on a losing business venture that, even Smith admitted, no other buyer would consider. Citizens ultimately lost $1.4 million on the project, which contributed to its collapse in 1987. The taxpayer bailout of Citizens amounted to approximately $141 million, yet Smith did not have to pay one penny of the $1.4 million Citizens lost in the industrial park deal.

This transaction raises numerous ethical issues. First, it is not clear exactly how Smith persuaded Citizens to fund a deal that, according to a former employee of the Federal Home Loan Bank in Seattle, no "prudent thrift operator" would undertake. One of Citizens' directors suggested that Citizens initially bought into the deal to gain access to a Member of Congress, and, through him, to FHLBB regulators who would be responsible for approving a merger Citizens was considering with another thrift.

The only explanation Congressman Smith offered was that the industrial park was appraised at about one-third higher than it should have been on the open market, and that, therefore, the acquisition artificially "pump[ed] up [Citizens'] balance sheets," thereby forestalling its ultimate demise. Indeed, Smith admitted to The Oregonian that the deal was a "deception * * * known within the savings and loan industry."

Smith's admitted complicity with what he knew to be the fraudulent appraisal of his industrial park, and the resulting misrepresentations on Citizens' books, clearly amounts to misconduct. Obviously, complicity by a Congressman in fraud is antithetical to the ideal of reflecting "creditably" on the U.S. House of Representatives.

Additional ethical questions are raised by an unusual "side transaction" in which, The Oregonian reported, Citizens paid Smith $51,000 in cash and $133,000 in stock for part of an option on 17.6 acres of undeveloped land next to the industrial park. The strange part of this side deal was that Smith apparently did not own the undeveloped land; it belonged to a separate company, owned by Smith's partner in the industrial park. Smith claimed that he received a share of the option sale because it was transferred to his business partnership, but the newspaper did not elaborate as to how, when, or why this occurred. Moreover, his Ethics in Government Act personal financial disclosure statements shed little light on the circumstances surrounding this transaction. It would appear that Citizens may have made a gratuitous gift to Smith in violation of House Rule XLIII, cl. 4 (prohibiting Members from accepting gifts aggregating $100 or more in a year from any one entity with a direct interest in legislation).

4. Violations of Federal banking regulations

Finally, The Oregonian also reported potential violations of federal banking regulations by virtue of Congressman Smith's receipt of a home mortgage loan from American Federal Savings & Loan while he was a director of that thrift. The Oregonian reported that Congressman Smith obtained a $229,500 mortgage loan in January, 1986 to finance his McLean, Virginia house, and that American Federal waived the standard $5,000 loan fee to Smith on this loan. However, 12 C.F.R. 563.43(d) (1989) provides that any special perquisites made to a thrift's own directors, such as a loan fee waiver, may occur only after full disclosure to and prior approval by the FHLBB. According to newspaper accounts, no such prior disclosure and approval were pursued in the case of Congressman Smith's fee waiver. Furthermore, 12 C.F.R. 564.43(b)(i) allows mortgage loans to be made to a thrift's directors only to the director's principal residence. Since Congressman Smith's principal residence appears to be in his Oregon district, where he votes, a mortgage loan made on his second residence in Virginia would violate this FHLBB regulation. Thus, it would appear that both the loan itself and the fee waiver violated FHLBB regulations. Obviously, any such violation would not comport with House Rule XLIII.

C. REQUESTED ACTION

Mr. Chairman, over the past four years, Congressman Denny Smith has repeatedly acted with brazen disregard for the Rules of the House and rules of law. However, he has implied in the newspapers that the fact that no one has initiated an ethics complaint means that he has done nothing wrong. Perhaps this complaint will put the Congressman on notice that this is an inadequate view of Congressman conduct.

We have taken the liberty of attaching the various newspaper accounts which describe Congressman Smith's activity and transactions in greater detail. We will be happy to supplement this with any other documents or information we might have that would aid the Committee's investigation and prompt action in these serious matters.

Respectfully submitted,

ROBERT F. BAUER,
Counsel to the Democratic Congressional Campaign Committee.

CONGRESSMAN DENNY SMITH BUSINESS UPDATE

DEAR FRIEND: It's shaping up to be a long, hot summer for the Oregon business community.

The spotted owl controversy could send Oregon reeling. Depending on whose statistics you quote, job loss estimates range from 10,000 all the way up to 187,000. Preserving our environment is certainly important, but the welfare of working Oregonians must be a top priority.

Oregonians have always relied on the land for our economic livelihood. At the same time, Oregonians have * * * a healthy environment * * * we have designated 3.4 million acres of our land as wilderness * * * about one acre for every man, woman and child in Oregon.

My message at the recent "timber summit" was clear * * * any solution must protect the jobs and families of Oregon millworkers and loggers.

The Tax Reform Act of 1986 continues to give us trouble. Business owners have flooded the Congress with letters protesting the cumbersome rules of Section 89. Over 300 members have cosponsored legislation calling for the repeal of Section 89, but the chance for repeal appears slim because of opposition from House leadership.

Ways and Means Chairman Dan Rostenkowski, who helped draft the 1986 Tax Bill, is opposed to a repeal of Section 89. He has, however, introduced legislation that would modify the rules.

Rosty's "modifications" would include elimination of data collection requirements, and would call for an availability test. As the rule stands now, your benefit plan would be in violation if the benefits are used by less than a certain percentage of non-highly compensated employees. Under Rosty's plan, you would be in compliance if benefits are at least available to those employees.

I've told the House leadership that changes are appreciated, but repeal remains my top priority.

President Bush vetoed the legislation that raised the minimum wage to $4.75 per hour.

His veto was sustained by the House on June 14.

I voted with the President because the large hike would have resulted in the loss of 100,000 to 200,000 jobs. We would have actually harmed the people we were trying to help.

It is unlikely that House leadership will allow a smaller hike on the floor. President Bush has called for a $4.35/hour minimum wage with a sub-minimum training wage. I will keep you informed if something happens this year.

As I warned two months ago, mandated medical and parental leave may be headed for the House floor before the end of the year. They will be costly to both consumers and employers.

One version would force employers with 39 or more employees to provide 13 weeks of medical leave over a one-year period AND 10 weeks of family leave over a two-year period. Businesses would be subject to harsh penalties for non-compliance—up to four times the actual damages plus attorney's fees.

Here comes the outrageous part * * * the cost to business and consumers will be between $375 million/year and $2.5 billion/year.

I supported the savings and loan reform package for several reasons. It was a crisis situation that begged for congressional action * * * the industry was losing $30 million per day.

In addition, there were amendments included in the package that will severely punish unethical directors, and keep the crisis from reoccurring. The pricetag for this legislation is high, but waiting would have cost American taxpayers even more.

As always, I'm just a phone call away if you need help. Please keep in touch.

Sincerely,

DENNY SMITH
Member of Congress.

JULY 24, 1989.

DEAR ——: We are off to a great start in recruiting Golden Eagle Club members for my 1990 re-election campaign!

The Federal Election Committee (FEC) report we file on July 31, 1989, will show a balance on hand of approximately $75,000. Needless to say, we'd like to keep that information confidential until the report is actually filed.

That's a big step in the right direction compared to where we were earlier this year. But it's still far short of where we were two years ago at this point when we had the benefit of funds carried over from the previous campaign. (Our June 30, 1987 FEC report showed $166,000 on hand.)

I'm happy to report that the Golden Eagle Club is growing, due largely to the efforts of Club members. Marion County Finance Chairman Bob Freres personally recruited five new members for the Club, increasing our membership to over thirty-five.

If each one of our prospective members joins now, we will be well on our way toward a resounding win in 1990.

To demonstrate to you the benefits of membership, the first quarterly Report to Members is enclosed. It is designed to keep members informed on where we stand financially and politically, and will be mailed regularly to you as soon as you join, as well as to any new members you recruit.

The Report consists of a number of newsclips from various sources around the state and nation, advance information on fundraising events, and updated lists of Golden Eagle Club members.

We are constantly building our fundraising network, and your help in expanding that network will be deeply appreciated.

Clearly, the major issue facing Oregon today is the timber supply crisis that will be coming to a head this fall and winter. The lack of an adequate timber supply threatens to close mills throughout the state, throwing thousands of Oregonians out of work.

I viewed the recent "Timber Summit" as my opportunity to take a public stand for the people whose jobs are threatened by the radical preservationists who would like to see logging in our national forests stopped.

As a native Oregonian, I've enjoyed the opportunity to fish our rivers, camp in our forests and hunt wild game. No one wants to see those opportunities lost, especially for our children and grandchildren. But those opportunities will be available only if there are jobs for the people who want to enjoy all Oregon has to offer.

That is why my efforts have been, and will continue to be, to protect working Oregonians who are dependent on our resources.

And in view of the problems facing our state and nation, it's vital that we keep business-minded people like yourself working to preserve the jobs and quality of life in Oregon. As I said earlier, your help in expanding our fundraising network can help us build an unbeatable team for the 1990 election.

One thing I have come to appreciate more than ever during this battle over timber supply is the need to do a better job of communicating with you. And I want you to know that I consider that communication a two-way street.

I will work to keep you informed, but more importantly, I need your input. Please call me personally whenever you have something to discuss. You can reach me at my Washingon office, 202 225-5711 or in Oregon 399-5756. I am here working for you, and will strive to offer you the best service possible.

Best personal regards,

DENNY SMITH,
Member of Congress.

P.S. I will keep members of the Golden Eagle Club informed on a quarterly basis—and more often as key issues arise—so that they will have the opportunity to offer input. Please join now by sending your check for $1000.00 so you can continue to receive these reports and your name can be added to this important list.

CONGRESSMAN DENNY SMITH'S GOLDEN EAGLE CLUB, REPORT TO MEMBERS, JULY 1989

It's shaping up to be a long, hot summer for the Oregon business community.

SPOTTED OWL CONTROVERSY

The spotted owl controversy could send Oregon reeling. Depending on whose statistics you quote, job loss estimates range from 10,000 all the way up to 50,000. Preserving our environment is certainly important, but the welfare of working Oregonians must be a top priority.

Oregonians have always relied on the land for our economic livelihood. At the same time, Oregonians have promoted a healthy environment . . . we have designated 2.4 million acres of our land as wilderness . . . about one acre for every man, woman and child in Oregon.

Radical preservationist groups—the Oregon Natural Resources Council and the Ancient Forest Alliance—want to stop all old-growth logging, and shut down Oregon's timber industry. Such drastic moves would send Oregon's economy into a tailspin.

My message at the June "timber summit" was clear . . . any solution must keep mills running and protect the jobs and families of Oregon millworkers and loggers.

TAX REFORM ACT, SECTION 89

The Tax Reform Act of 1986 continues to give all of us trouble. Business owners have flooded Congress with letters protesting the cumbersome rules of Section 89. Over 300 of my colleagues have co-sponsored legislation calling for the repeal of Section 89, but the chance for repeal appears slim because of opposition from the tax-and-spend, Eastern liberal establishment.

Ways and Means Chairman Dan Rostenkowski, who helped craft the 1986 Tax Bill, is opposed to a repeal of Section 89. He has, however, introduced legislation that would modify the rules.

Rosty's "modifications" would include elimination of data collection requirements, and would call for an availability test. As the rule stands now, your benefit plan would be in violation if the benefits are used by less than a certain percentage of non-highly compensated employees. Under Rosty's plan, you would be in compliance if benefits are at least available to those employees.

I've signed a "discharge petition" which will force a vote on the repeal of Section 89. This is just another example of a liberal Congress working to harm business instead of working to promote economic growth.

MINIMUM WAGE ISSUE

Expect minimum wage to be a campaign issue during the 1990 Election.

President Bush vetoed legislation that raised the minimum wage to $4.55 per hour. His veto was sustained by the House on June 14.

I voted with President Bush because the large hike would have resulted in the loss of 400,000 to 600,000 jobs. We would actually have harmed the people we were trying to help.

It is unlikely that the Speaker will allow us to vote on a compromise. President Bush called for a $4.25/hour minimum wage with a sub-minimum training wage. I supported the President because I felt he offered a true compromise.

Sadly, the liberal Congress was more interested in playing politics than in helping low-income workers. It's clear that their plan is to use the President's veto against pro-business Congressmen during the 1990 Election. I will need your help to deflect their charges.

MEDICAL AND PARENTAL LEAVE MANDATES

Mandated medical and parental leave may be headed for the House floor before the end of the year. These mandates will be costly to both consumers and employers.

One version would force employers with 35 or more employees to provide 15 weeks of medical leave over a one-year period and 10 weeks of family leave over a two-year period. Businesses would be subject to harsh penalties for non-compliance—up to four times the actual damages plus attorney's fees.

Here comes the outrageous part . . . the cost to business and consumers will be between $573 million/year and $2.6 billion/year.

SAVINGS AND LOAN REFORM

I supported the savings and loan reform package for several reasons. It was a crisis situation that begged for Congressional

action—the industry was losing $30 million per day.

In addition, there were amendments included in the package that will severely punish unethical directors, and keep the crisis from reoccurring. The price tag for this legislation is high, but waiting would have cost American taxpayers even more.

GOLDEN EAGLE CLUB MEMBERS—JULY 1989

Joseph W. Angel II, Portland, OR; Julie Beecher, Dallas, TX; Broughton H. Bishop, Portland, OR; Mr. & Mrs. Ronald D. Bodell, Scappoose, OR; C.M. Bishop, Jr., Portland, OR; William Call, Milwaukee, OR; Mr. & Mrs. Ward Cook, Portland, OR; Fred Fields, Portland, OR; Rob Freres, Lyons, OR; Neil J. Gagnon, New York, NY; Richard Gilder, Jr., New York, NY; Mrs. Loydee Grainger, Dallas, OR; Edward Halton, Jr., Portland, OR; Mr. & Mrs. L. Hanel, Hood River, OR; Mark S. Hemstreet, Portland, OR; Aaron Jones, Eugene, OR; Wesley LeMatta, Camas, WA; Harry Merlo, Portland, OR; Ellison C. Morgan, Portland, OR; Gertrude J. Morgan, Stayton, OR; James D. Morgan, Scio, OR; Vernon R. Morgan, Stayton, OR; William R. Morgan, Sublimity, OR; Thomas P. Moyer, Portland, OR; M. Dean Pape, Eugene, OR; R.H. Pickens, Dallas, TX; Robert Praegitzer, Dallas, TX; Arthur Riedel, Portland, OR; Harold Simmons, Dallas, TX; Delford M. Smith, McMinnville, OR; Mr. & Mrs. Edwin Stanley, Portland, OR; Michael Viny, Independence, OH; Neil Viny, Independence, OH; Greg Warne, Colton, OR; Mr. & Mrs. Kent Wiley, Albany, OR; Robert C. Young, Aumsville, OR; William H. Zavin II, Portland, OR.

COMING DOLLAR EVENTS

Bruce Ward and Terry Emmert Bar "B" Que—August 12, 1989.

Art Riedel's Friendship Boat Trip—August 21, 1989.

Denny Smith Golf Tournament—September 8, 1989.

Lee Atwater Reception—October 11, 1989.

[From the Oregonian, Sept. 24, 1990]

COMPLAINT TIMED FOR MAXIMUM CAMPAIGN EXPOSURE

(By Alan K. Ota)

WASHINGTON.—Democrat Mike Kopetski learned about the power of ethics probes to reform government while serving as an aide to the Senate Watergate Committee in the early 1970s.

But somewhere along the way, he seems to have forgotten his lines.

For months, Kopetski accused Rep. Denny Smith, R-Ore., of unethical conduct in lobbying federal regulators on behalf of the savings and loan industry. He zeroed in on information first published in The Oregonian nine months ago about Smith's ties to three since-failed Oregon thrifts.

But instead of pushing for a formal investigation of his charges, the former two-term state representative from Keizer waited.

The Democratic Congressional Campaign Committee finally last week—seven weeks before the Nov. 6 election—filed a House formal ethics complaint accusing Smith of using his office for personal gain. It alleged Smith lobbied for the thrift industry while obtaining financial benefits, including a home loan, a loan-fee waiver and new financing for a losing business venture.

These are serious charges and will be handled in due course by the House Committee on Standards of Official Conduct.

But Robert Bauer, general counsel for the Democratic Congressional Campaign Committee, acknowledged last week that he was ready to file the complaint fully two months ago. Democrats said it was held up by the order of the campaign committee's chairman. Rep. Beryl Anthony, D-Ark., and by Kopetski himself—who had the final say.

For months, Kopetski demurely kept clear of any complaint. The reason: He said he feared his involvement would look politically motivated.

In fact, the Democrats' delay looks just like that—a campaign ploy. The timing virtually assured no probe could be completed before the Nov. 6 election. It also gave Kopetski a weapon to use without fear of contradiction. Ted Coran, Kopetski's campaign manager, told The Oregonian's reporter Jeff Mapes in June that he felt it might be a good idea to hold back on hammering Smith.

"We want to make sure he is dealing with it in the fall," Coran said.

Delaying an ethics complaint might look like a smart political move, but its hardly the thing to expect a man who wants to be seen as a reformer.

And that's the catch in all this for Kopetski.

He calls himself the voice of change. "I have this anger," he said last week, "about the way things work in Washington."

He points to that shiny bullet in his résumé. Records show he worked on the Watergate investigation as research aide for about 11 months in 1973 and 1974 at a monthly salary of $1,045.

In 1988, Kopetski sent out a campaign brochure describing his Watergate stint as a "formative experience. It taught him a lot about what happens when people in government sacrifice their integrity for a political victory."

The message gets fuzzy when looking at the deliberate delay in filing the ethics complaint.

One of the flaws in Congress is obviously the ethics system.

In the illustrious history of the House, few members have had the temerity to file an ethics complaint against a colleague. Only two have been filed in recent years. Members often tolerate alleged transgressions.

The complaint against Smith was a case in point.

Under House rules, for the committee to file the complaint, Democrats first had to get three congressmen to refuse to file it—Jim Moody of Wisconsin and Howard Berman and George E. Brown, Jr., both of California. It was hard work just to find those three to refuse, publicly to process the complaint, according to Kopetski.

Asked last week why no member of Congress would endorse the Smith complaint, Bauer said simply, "Congressmen are loath to file complaints."

If put in the same position, Kopetski said he would act differently. He said he would personally file any similar complaint based on the same degree of evidence against a colleague as long as he is not an election opponent.

In Congress, Kopetski said, "members have a responsibility to police themselves." Should he defeat Smith, Kopetski could have the chance to act on that. But would hire?

Kopetski wants to be on the House Banking Committee—the perfect spot for a reformer. But asked last week, Kopetski said he had not given thought to the question of whether congressmen—say, members of the House Banking Committee—should be investigated for misdeeds in the thrift debacle. "I don't know," he said.

[From the Oregonian, Dec. 17, 1989]

SMITH TREADS FINE LINE IN DUAL ROLES

(By Alan K. Ota and Mark Kirchmeier)

Rep. Denny Smith, R-Ore., sought civil immunity for himself as the director of a troubled savings and loan while lobbying for virtually the same protection for all thrift directors in 1987—blurring the line between his role as a congressman and as a private citizen.

Details of his campaign for leniency for thrift directors—and a separate campaign for civil immunity for himself—were culled from documents requested under the Freedom of Information Act.

Edwin J. Gray, former chairman of the Federal Home Loan Bank Board, said that Smith wanted "special treatment" and questioned the propriety of Smith's effort "to get regulators to modify a position" that would benefit the congressman.

No one has alleged any specific violation of any law or House ethics rule by Smith.

However, an investigation by The Oregonian showed that Smith walked a fine line between his role as a public official and director of a private company.

It was not unusual for Smith as a member of Congress to seek a policy change on behalf of constituents. He wanted regulators to prosecute thrift officials for crimes such as fraud but opposed their policy of trying to collect damages from directors of failed thrifts for poor management or negligence.

What was unusual was that Smith was the director of a thrift at the time and that he began making separate contacts with regulators to try to get their promise not to file suits against one board in particular—the one he sat on.

The policy change he requested could have halted dozens of lawsuits by regulators to collect losses from thrift directors for civil negligence.

Smith's lobbying came to light at a time when the savings and loan industry was in financial turmoil and its relationship with regulators and politicians was under scrutiny.

Wholesale failures in the thrift industry in the 1980s led to the biggest taxpayer bailout ever as the government had to make good on guaranteed deposits or keep ailing thrifts afloat with new capital. The rescue mission will cost at least $600 for every American.

Smith found himself in the middle of the unfolding disaster as the director of American Federal Savings & Loan of Salem; a partner in an ill-fated real estate venture with Citizens Savings & Loan Association of Salem; and the staunch defender of the directors of State Federal Savings & Loan Association of Corvallis. All three were saddled with bad loans that caused them to fail between 1985 and 1987, leaving the government with a $400 million loss.

Regulators sued Citizens and State Federal officials for negligence. U.S. Attorney Charles Turner blamed State Federal's losses on the largest bank fraud and "one of the worst economic crimes" in Northwest history.

Smith joined the American Federal board in 1977 and remained for seven years after his 1980 election to Congress.

An investigation found that Smith:

Sought civil immunity from regulators as an American Federal director in 1987. He also lobbied for blanket civil immunity for all thrift directors.

Was in a real estate partnership that left the failed Citizens Savings & Loan Association of Salem with a $1.4 million loss. Regulators said the deal made the thrift "appear solvent longer than was really the case."

Received a $5,000 mortgage loan fee waiver as a director of American Federal, when it had heavy losses in 1986.

Smith strongly opposed federal suits against directors as part of his campaign against a pair of lawsuits filed by regulators in May 1986 naming 24 directors and officers of State Federal Savings & Loan Association.

Smith's lobbying got so much attention it may have prompted a federal inquiry into his real estate deal with Citizens. The probe—possibly in retaliation for his strong criticism of regulators—found no wrongdoing.

Smith attributed the inquiry to vengeful regulators. "They would love to have had something on me," Smith said. "I was poking them in the eye on this other deal," he added, referring to his criticism of the State Federal lawsuits. Top regulators who ordered the probe either refused to comment or said they could not recall their motivations.

Smith's efforts began in 1986 and continued into 1988. Smith attacked Gray's policy of suing directors of failed thrifts and sought his ouster as bank board chairman. Smith's contacts provoked allegations of impropriety from Gray and one other regulator.

"He called me on the phone, upbraided me in very strong language, interspersed with swear words and personal attacks," said David Felt, a lawyer who formerly worked for the Federal Savings and Loan Insurance Corp.

Felt joined Gray in questioning the propriety of a congressman who's sitting on the board of directors of a failed savings and loan trying to influence the agency's policy" on directors' liability.

Smith said he sought the change to help constituents, not himself.

"Rather than having a nambypamby approach to something that was very hurtful to some of my constituents, I was very aggressive. I tried to get the regulators off their back," Smith said, "I don't think I did anything wrong. I don't think there is anything I would do differently."

In May 1986, federal regulators filed lawsuits alleging negligence by 24 former directors and officers of State Federal.

Jimmie C. Taylor, a State Federal defendant who gave $1,600 to Smith's 1980 campaign, asked him to intervene. Taylor, who bought the thrift with partners in 1982, said he sought but got no help from Oregon's two senators.

Smith knew State Federal from the 1960s when his late father, former Gov. Elmo Smith, served on the board of State Federal's predecessor. Smith accused federal lawyers of "blackmail"—forcing defendants unable to afford a lengthy trial to admit negligence and trigger directors' insurance policies. He said the tactic was unfair and not cost-effective.

But regulators said selective lawsuits recovered money and served as a deterrent to mismanagement of savings and loans.

Smith told Gray in a July 17, 1986, letter that some defendants were "friends and financial contributors." He said he did not want to "interfere in legitimate criminal prosecution," but that "good faith business transactions" should not prompt criminal charges. He said lawsuits would deter good directors from serving on savings and loan boards.

A month later, Smith asked President Reagan in a letter to fire Gray. "Local officials," Smith said, "have been led down the road by the regulators and then clobbered from above."

His telephone calls and letters prompted warnings he was off limits.

Ralph Christy, a federal lawyer, told Smith in a September 1986 letter, "I continue to believe it is inappropriate for us to be discussing the details and merits of a case that is pending in court."

Settlement of the State Federal lawsuits eventually yielded $6 million—six times legal costs. That was part of about $100 million regulators said they netted after all costs from lawsuits against officials of 200 failed thrifts.

In his interventions, Smith blamed State Federal's failure on a poor economy and poor supervision by regulators who later filed suits to divert attention from their own mistakes.

Prosecutors found another cause—fraud that accounted for $100 million, or two-thirds of State Federal's losses. Turner said conspirators "helped themselves to depositors' money at the expense of taxpayers."

Smith said he had been unaware of the extent of crimes by three State Federal officers later implicated in the fraud.

While lobbying for the change in federal thrift policy, Smith began separate efforts to get civil immunity for himself and other directors of American Federal. He said he made at least one telephone request to James R. Faulstich, president of the Federal Home Loan Bank of Seattle in about March of 1987. He said he asked for immunity in conversations with Faulstich and two of the Seattle bank's directors, William E. Love, a Portland attorney, and G. Dale Weight, chairman of Benj. Franklin Federal Savings and Loan Association.

Smith said he pursued a two-pronged approach in lobbying—working as a congressman for a policy change among regulators in Washington, D.C., and as a private citizen to obtain civil immunity for himself and other members of a private company's board. "I was trying not to get the two things mixed up," he said.

[From the Sunday Oregonian, Dec. 17, 1989]

UNUSUAL PIPCO DEAL HELPS SMITH CUT LOSSES

(By Alan K. Ota and Mark Kirchmeier)

When his partnership in a Salem industrial park started losing money, Rep. Denny Smith, R-Ore., and his business partner looked to Citizens Savings and Loan Association for help.

At a time when the two partners could find no other buyer willing to touch the project, Citizens agreed in 1982 to finance the park's mounting debts and provide tax benefits in return for a share of the partnership, the Pacific Industrial Parks Co.

"We thought we'd be hard-pressed to sell that operation. We'd been trying," Smith recalled.

Smith said he and his PIPCO partner, John Kitzmiller Jr., finally concurred that they could no longer afford further losses and needed to either sell it or "at least get somebody to assume this liability and get it off our backs."

The deal helped forestall—but in the end, contributed—Citizens' financial ruin. It was based on an incorrect assumption that Salem's depressed industrial rental market would turn around quickly, creating a big profit from a fast resale. Instead, Citizens lost so much on the deal—$1.4 milion—that it was probed by federal regulators.

Citizens' failure in 1987 will cost federal regulators an estimated $141 million.

No wrongdoing was ever alleged in the federal probe of PIPCO, but one former regulator remains critical of the deal. William H. Hansen, a former federal thrift examiner, said Smith got a deal that allowed him to avoid paying any share of the $1.4 million debt incurred by Citizens on the partnership's behalf.

"I can't imagine any prudent thrift operator doing the PIPCO deal. If an average person asked for those terms, on that kind of venture, they'd be laughed out of the room," said Hansen, a former employee of the Federal Home Loan Bank in Seattle.

Other financial experts also said the PIPCO deal was unusual because it did not require all partners to share losses. For his part, Smith said he was surprised Citizens made the deal. "We couldn't believe our good fortune. . . . I agree it wasn't a good deal for them in the long term. But we thought the economy was going to turn around," he said.

New managers at Citizens eventually found vague working of an agreement effectively exempted Smith from paying $350,000 he otherwise would have owed for PIPCO. Smith said he followed the terms of the original contract, refusing Citizens' later request to help pay monthly bills. He said he was never asked to pay any debt.

Smith did not escape unscathed, however. He confirmed he was required to pay taxes on money Citizens contributed to the partnership.

Regulators concluded Citizens got short-term, illusory financial health from the deal, while Smith was able to cut his losses.

Kitzmiller, who died in 1984, and Smith were partners in PIPCO, which operated the industrial park near Interstate 5 in northeast Salem. Smith said he entered the deal so he could be the landlord for his company, Eagle Newspapers Inc., which occupies part of the industrial park.

When Citizens joined the partnership, Smith said personal losses of as much as $5,000 a month were "eating us alive" because there were too few tenants to pay bills—including a $24,000 monthly mortgage payment.

Citizens agreed to buy into the partnership—in return for financing the industrial park's continuing losses—as part of a program designed to increase its net worth by trading stock for real estate. The stock was used to help purchase land underneath the project and an option on an adjacent tract.

The deal was signed June 30, 1982, at a meeting in the Salem home of Gerald S. Rawlins, the vice chairman and a major stockholder of Citizens. Smith attended with his longtime friend, Kitzmiller, and several accountants.

Rawlings recalled later that he first met Smith in his Washington, D.C., office sometime before the Salem meeting.

Rawlins said he wanted to see if Smith would make introductions to federal regulators to prepare for a merger of Citizens and Frontier Pacific Savings & Loan Association; a thrift that was being organized in Oregon. The merger plan was later shelved, and Smith's help was not needed.

Rawlins denied offering Smith any favor in the PIPCO transaction.

Later, Rawlins was one of 11 former Citizens directors, officers and employees sued

by federal regulators for alleged negligence in management of the thrift's affairs. That suit, however, did not mention the PIPCO deal.

In a side transaction, Citizens gave Smith $51,000 in cash and $133,000 in stock for part of an option on 17.6 acres of undeveloped land next to the industrial park. It also gave money and stock to Kitzmiller, and his company, Gerlinger Industries Corp., a machine shop operator. The option was owned by Gerlinger, according to Marion County records. Smith said he received a share of the option sale because it was transferred by Gerlinger Inc. to the PIPCO partners, Smith and Kitzmiller.

When Mike Bush, a federal thrift examiner, investigated Smith's involvement in the project in April 1987, he reported in a three-page memo that the deal appeared to give Smith two benefits—relief from debt and tax deductions.

Smith said he wound up paying a tax bill of about $170,000 in state and federal taxes in 1986 on the PIPCO deal—erasing $100,000 in tax benefits he received on the project after Citizens began paying operating losses.

He said an Internal Revenue Service audit of his 1986 tax return concluded he properly paid for PIPCO income.

Bush said Citizens used the industrial park to help it "appear solvent longer than was really the case." Smith said the thrift valued the industrial park at about $5 million about twice the underlying $2.45 million mortgage on the property. The valuation turned out to be a third more than a subsequent appraisal.

For his part, Smith said he had understood Citizens' motivation for the deal to "pump up their balance sheets" with an asset valued at the "highest possible appraisal."

"It was a deception I guess that was known within the savings and loan industry and very much accepted by the Federal Home Loan Bank," Smith said.

Bush concluded that poorly kept records of the PIPCO agreement effectively exempted Smith from any part of Citizens' $1.4 million in PIPCO losses. Another federal analysis of the deal concluded that Smith could not have paid much of that loss, in any case, because his assets were "protected by trusts."

* * * right to make requests for immunity and a federal policy change in separate conversations with federal officials but that it would have been inappropriate for him to raise the issue in the same conversation.

As a result, he said he decided not to mention his request for personal immunity when four federal regulators came to his office to discuss his request for leniency for all thrift directors on April 1, 1987.

Harry Quillian, then the bank board's top lawyer, said Smith argued unsuccessfully for a standard of conduct "where anything better than criminal was OK" for a thrift director. Quillian said he later learned of Smith's "self-interest" as a director who might be sued himself.

While Smith had no effect on thrift policy in Washington, D.C., his personal immunity request got close attention from Seattle regulators. The Seattle office conducted an investigation of Smith and the other American Federal directors, and promised to oppose any litigation against them.

Regulators put American under tight supervision in December 1985 when it was in the midst of its sixth straight year of financial losses. Its merger with Home Federal Savings & Loan Association in August 1987 produced a new thrift that failed a year later, leaving the government with a $113 million loss.

Regulators ordered the resignation of American Federal and Home Federal directors in March 1987 to prepare for the merger. Until shortly before that request arrived, the old American Federal board had included one other influential Oregonian besides Smith—Gerry Frank, the chief of staff for Sen. Mark O. Hatfield, R-Ore. Frank resigned, citing concern about the thrift's move into new types of investments besides home mortgages.

Smith was the only American Federal director who is known to have contacted federal regulators seeking civil immunity for members of his board. Frank said he contacted no regulators.

Despite his request for immunity in 1987, Smith said recently it was unlikely American officials would be sued, because unlike Citizens and State Federal, its directors were not stockholders and could not benefit financially from approving risky loans.

Recently Smith, in explaining his request for immunity, said he didn't trust the regulators. He said he was worried that regulators like Gray might "try and come in and cut my legs off."

Smith said he told Faulstich he would oppose the merger unless the board got civil immunity to assure that regulators "were not going to stick us just like they have every* * *.

Faulstich's office hired a Seattle law firm to see if there were grounds for any lawsuits. It also began an inquiry into Smith's attendance at American Federal board meetings and his real estate partnership with Citizens.

The brief probe resulted in no finding of wrongdoing by anyone.

Smith could not recall a March 26, 1987, draft letter to the Seattle bank that was attributed to him but never sent. The draft circulated among American Federal and Home Federal officials, and a copy ended up in regulators' hands.

"We should receive a 'hold-harmless' agreement for anything but criminal activity," the draft letter said. Smith said he agreed with its sentiment.

Faulstich did not have the power to grant immunity, but in June 1987, he wrote an open letter to American Federal directors pledging to recommend against federal lawsuits.

Regulators in Seattle and San Francisco said it was highly unusual for a federal savings and loan official to make such a recommendation and put it in a letter. Their standard practice was to remain silent about legal intentions until a three-year statute of limitations expired. Faulstich declined requests to discuss his recommendation or his office's handling of the Smith case.

A subsequent regulator's investigation has resulted in no action against Home Federal or American Federal officials.

Darrel W. Dochow, formerly, Faulstich's deputy and now a deputy director of the Federal Home Loan Bank in Washington, D.C., said he did not recall details of the Smith probe that were contained in memoranda addressed to him. He said there was "controversy" about Smith serving as a thrift director while in Congress, partly because regulators doubted he could attend board meetings. The regulators found Smith attended 47 of 86 meetings for six years ending in 1986, for which he received $35,000 in fees.

Dochow said he did not know why Smith's business deal with Citizens was investigated.

In a separate examination at American Federal, Bernard E. Landreth, a federal examiner, found the thrift violated federal regulations by not fully disclosing or getting required board approval in advance for the waiver of a $5,000 loan fee for Smith's mortgage on a McLean, Va., home. Thrift officials blamed the January 1986 violation on bad records that did not reflect the board's advance approval.

Such fee waivers were a common prerequisite for American Federal officials. Smith said he was unaware of the violation.

The 1986 examination did not mention one other detail: The waiver in Smith's case was for a mortgage on a second home. The loan was made on Jan. 17, 1986, for $229,500 at a market interest rate.

Federal regulations on insider transactions permit thrift directors to obtain mortgage loans of more than $100,000 only on their "principal residence." Smith said American Federal directors asked him "two or three times" in meetings about that regulation.

Smith said one director, Richard L. Hendrie, asked him, "Is that your principal residence or not?"

Smith replied, "As a congressman, my principal residence will always be in the state of Oregon, but my wife and children are living in this house in Virginia."

In the end, the American Federal board decided to OK the loan—and the loan fee waiver. Hendrie recalled it was a hard decision.

Smith said he filed his taxes and voted in Oregon, but that his family had then lived mainly in Virginia. He said he commuted weekly to Oregon and also spent summers in the Salem house he has lived in since 1973.

Smith said he believed he lived up to the spirit of the "principal home" restriction since he lived in both houses and that the thrift could afford the loan fee waiver despite its financial troubles in 1986.

[From the New York Times, Sept. 21, 1990]

DEMOCRATS ASK FOR ETHICS INQUIRY OVER CONGRESSMAN'S S&L ROLE

(By Philip Shenon)

WASHINGTON, September 20.—In the first public complaint filed before the House ethics committee concerning the savings and loan crisis, a group of Democrats said today they are asking for an inquiry into the activities of Representative Denny Smith, an Oregon Republican.

The group, the Democratic Congressional Campaign Committee, said it has filed a complaint on Wednesday with the House Committee on Standards and Official Conduct accusing Mr. Smith of "brazen disregard of the rules of the House and the rules of law."

A five-term Congressman who is facing a difficult re-election battle this year, Mr. Smith described the complaint today as "dirty politics" by his Democratic opponent and insisted that he had done nothing wrong.

Mr. Smith has been the subject of a number of newspaper articles in Oregon that have questioned his role as a director of the defunct American Federal Savings and Loan Association of Salem, Ore., and his ties to other thrift institutions in the state.

DEMOCRATS HAD THREATENED

The reports have said that in the late 1980's, in his last days as a director of the failing savings and loan, Mr. Smith pressed Federal regulators for a promise that he and other directors would be granted immunity from lawsuits that might arise from the collapse of American Federal.

Federal regulators described Mr. Smith's request as highly unusual, and the House ethics manual warns members against trying to influence regulators when a lawmaker has a personal stake in a matter under review.

Democrats had long been threatening to file a complaint against Representative Smith, and some Democrats have privately said that they held off because they did not want to open the door to similar complaints against members of their own party.

The Democratic Congressional Campaign Committee is responsible for fund raising for House candidates. In a statement made public today along with the complaint against Representative Smith, the general counsel of the Campaign Committee, Robert Bauer, said: "The charges in this complaint are very serious. We made the decision there was no other recourse but to ask the ethics committee to investigate the matter."

A spokesman for the National Republican Congressional Committee, Gary Koops, said the group had no plans to file a similar complaint with the ethics committee about the actions of Democratic members of the House who have been linked to the savings and loan crisis.

Mr. Koops described the complaint against Mr. Smith as an "abuse of the process" and a last-minute effort to "prop up a candidate who is clearly floundering"—namely, Mr. Smith's Democratic opponent in the November election, Mike Kopetski. Recent polls in Oregon have suggested a tight race between the two.

In a statement today, Mr. Smith said he was not worried "about an honest inquiry" by the ethics committee. "I'm confident they would clear me of any charges," he said. "But I am bothered by Kopetski using innuendo and rumor to carry out a political hatchet job."

Mr. Smith has said in the past that in dealing with Federal regulators, he tried to separate his role as Congressman from his role as a savings and loan director.

The Senate Ethics Committee is now investigating five senators who intervened with Federal regulators on behalf of a failing savings and loan controlled by Charles H. Keating, Jr., a jailed Arizona businessman who made campaign contributions to each of the lawmakers.

The complaint this week against Representative Smith draws largely on newspaper reports from Oregon and centers on his involvement with American Federal and two other savings and loan associations.

Mr. Smith was a director of American Federal from 1977 to 1987, when he was forced off the board after its merger with another thrift institution, Home Federal Savings and Loan.

In his last days as a director, he met with Federal regulators from Seattle who were trying to save American Federal by merging it with Home Federal.

The regulators have said that Mr. Smith agreed to go along with the merger as long as he and other American Federal directors were granted immunity from possible Federal lawsuits charging civil negligence and fraud.

The regulators have said they eventually agreed to provide Mr. Smith with a letter stating that fraud did not appear to have contributed to American Federal's troubles. Shortly after the merger, the new savings and loan collapsed, at a cost to taxpayers of $113 million.

A spokeswoman for the House ethics committee said Mr. Smith was the first Representative to be publicly identified as the subject of an ethics complaint linked to the crisis.

[From the Washington Post, Sept. 20, 1990]

DEMOCRATS CITE REP. DENNY SMITH IN ETHICS COMPLAINT

The Democratic Congressional Campaign Committee (DCCC) yesterday narrowed its sights on one of its prime election targets by filing a complaint with the House ethics committee against Rep. Denny Smith (R-Ore.).

The complaint draws largely on newspaper accounts of Smith's intervention with federal regulators on behalf of thrift directors, including himself. It also alleges that Smith improperly used Capitol Hill employees in the preparation of campaign fundraising appeals.

Smith is facing a tough reelection battle against Democrat Mike Kopetski, who lost his first bid in 1988 by 707 votes.

Late last year, the Portland Oregonian reported that Smith in 1987 had pressed federal banking regulators for civil immunity for directors of failed thrifts at the same time he was a director of American Federal Savings & Loan of Salem. Smith also sought immunity for himself. DCCC counsel Robert F. Bauer called these actions a "brazen disregard" for conflict of interest rules.

Smith has argued that he did nothing wrong. Federal regulators, he has said, should pursue directors of failed thrifts if they believed criminality is an issue but should not file civil suits against them. He said yesterday that the DCCC action is "dirty politics."

[From the Oregonian, Sept. 20, 1990]

ETHICS COMPLAINT HITS DENNY SMITH OVER S&L TIES

(By Alan K. Ota)

WASHINGTON.—Democrats filed an ethics complaint against U.S. Rep. Denny Smith, R-Ore., Wednesday charging that he used his office for personal gain in connection with the savings and loan industry.

The Democratic Congressional Campaign Committee filed the complaint with the House Committee on Standards of Official Conduct just seven weeks before the Nov. 6 election. The complaint was largely based on information about Smith's ties to the thrift industry first reported by The Oregonian last December.

The complaint's timing left little time for a full investigation before November.

Jan Keyes, a spokeswoman for the ethics panel, said investigations took at least "several months" and sometimes up to a year. She refused to confirm the filing of the complaint, citing the panel's policy of keeping its investigations secret until they are completed.

Howard Schloss, a spokesman for the Democratic committee, said the complaint had been filed with the tacit approval of Democrat Mike Kopetski, Smith's political opponent. "They knew what we were doing," Schloss said of the Kopetski campaign.

The complaint focused on Smith's ties with three failed savings and loans and also revived a prior complaint about his use of his congressional office to put out campaign literature.

Smith portrayed the complaint as an attempt by Kopetski to use "political dirty tricks" in response to a recent public opinion poll showing the challenger behind in the race. The poll taken for The Oregonian in late August showed Smith with 47 percent support to 41 percent for Kopetski, with a margin of error of 4 percentage points.

"I asked Mike months ago to file his complaint or shut up. He and the DCCC know this is dirty politics. I know it's dirty politics," Smith said.

Kopetski, for his part, said he hoped the investigation could be completed before the election. He has been using Smith's connection to the savings and loan scandal in his campaign, including a recent mailer titled "Five Ways Denny Smith Personally Contributed to the $500 Billion Savings and Loan Crisis."

The ethics complaint makes four charges against Smith for activities involving thrifts. It charges that he:

Used his office for personal gain by lobbying for civil immunity for himself as director of the since failed American Federal Savings & Loan Association of Salem;

Did a "special favor" by lobbying federal regulators on behalf of Jimmie C. Taylor, a past campaign contributor, who sat on the board of the since-failed State Federal Savings & Loan Association of Albany;

Accepted an improper gift when he and his business partners got financing for a money-losing business venture, a Salem industrial park, from the since failed Citizens Saving and Loan Association of Salem;

Got an improper home loan and loan-fee waiver for a second house, in Virginia, from American Federal while he was on its board. The complaint said approval of the loan and the fee waiver violated a thrift regulation permitting loans and fee waivers for directors only for their "principal residence."

The complaint also raised anew complaints that Smith had put his official telephone number on campaign literature and had sent out a campaign letter that resembled work done by his official staff last year. The House Administration Committee rejected a similar Democratic complaint last year.

Robert Bauer, the general counsel for the Democratic committee, said he had been ready to file the new complaint for two months but the panel's chairman, Rep. Beryl Anthony, D-Ark., had refused to support it. Party officials previously said they would not file it unless Kopetski agreed.

Asked why Anthony had finally decided to support the complaint, Bauer said, "I changed his mind." Bauer denied there were political reasons for delay.

[From the Albany (OR) Democrat-Herald, Sept. 20, 1990]

DEMOCRATS ALLEGE SMITH VIOLATIONS

(By Charles E. Beggs)

SALEM.—Republican U.S. Rep. Denny Smith is accused of breaking House ethics rules in allegations brought by the House Democratic Campaign Committee.

Robert Bauer, general counsel to the campaign committee, filed the complaint Wednesday with the House Committee on Standards of Official Conduct, also known as the ethics committee.

The complaint says Smith violated ethics rules by using his office for personal gain in dealings involving savings and loan associations.

He also is accused of breaching House rules by using his congressional office and equipment on his re-election campaign.

"The charges in this complaint are very serious," Bauer said in a copy of the complaint and summary received in Salem. "After a lengthy investigation, we made the decision there was no other recourse but to ask the Ethics Committee to investigate the matter."

Smith's Democratic challenger, Mike Kopetski, said he hoped the committee will investigate the charges "and make a judgment prior to the election."

Smith said the charges amount to "dirty politics" by Kopetski.

"He is a politician behind in the polls and will now do anything to get back in this race, including using dirty political tricks to confuse the voters," Smith said.

The 5th District congressman is seeking re-election to sixth term in the Nov. 6 general election.

The ethics allegations have had an on-again, off-again history.

Kopetski's campaign discussed the pending complaint in midsummer, but it wasn't filed. The campaign committee chairman, Rep. Beryl Anthony, D-Ark., said during an Oregon visit last month that his committee probably wouldn't file a complaint because it would seem to be political opportunism.

Anthony never ruled out that charges might be filed, Anthony aide Howard Schloss said Wednesday from Washington.

Smith said he's not worried about an honest inquiry by the committee.

"But I am bothered by Kopetski using innuendo and rumor to carry out a political hatchet job," Smith said.

The complaint says that according to news accounts, Smith "fervently lobbied the Federal Home Loan Bank Board for a softening of its policies against directors of failed savings and loan institutions who had been responsible for their institutions' bankruptcy" while Smith was a director of a failing thrift, American Federal Savings & Loan of Salem.

Smith also is accused of seeking special treatment for Jimmie Taylor, a defendant in a civil lawsuit against former directors and officers of State Federal Savings & Loan of Corvallis and a major contributor to Smith's campaign.

The congressman made a "wholly specious" argument that the lawsuit was a waste of government time and money, but the eventual verdict against the savings and loan yielded $6 million, or six times the cost of the case, the complaint says.

Actually there was no verdict. The lawsuits were dismissed, settlement terms, if any, were sealed, and government lawyers have refused to dicusss them. In the only result that became public, that of Jim Jordan of Albany, no money was paid.

The conduct violated an ethics rule against dispensing special favors or privileges, the complaint says.

The complaint also alleges federal savings and loan regulations appear to have been violated by a $229,500 home mortgage loan to Smith by American Federal Savings & Loan while he while he was a director of the thrift.

The institution waived a standard $5,000 loan fee to Smith without making a required prior disclosure to federal regulators, according to the complaint.

The complaint also says ethical questions arise involving financing that Smith obtained from Citizens Savings & Loan for an industrial park partnership in Salem in which he was a co-owner.

The thrift lost $1.4 million on the loan, and eventually collapsed in 1987.

The complaint also charges that Smith violated House rules by listing his congressional telephone number on campaign literature and using material produced by his congressional staff in a campaign mailing.

[From the Statesman Journal, Sept. 20, 1990]

DEMOCRATS: SMITH BROKE RULES

U.S. Rep. Denny Smith, R-Ore., was accused Wednesday of violating House ethics rules in a complaint filed by the House Democratic Campaign Committee.

Robert Bauer, the general counsel to the campaign committee, filed the complaint with the House Committee on Standards of Official Conduct, known as the ethics committee.

The complaint accuses Smith of violating ethics rules by using his office for personal gain in dealings involving savings and loan associations.

He also is accused of breaking House rules by using his congressional office and equipment for his re-election campaign.

"The charges in this complaint are very serious," Bauer said in a copy of the complaint and summary received in Salem. "After a lengthy investigation, we made the decision there was no other recourse but to ask the ethics committee to investigate the matter."

Smith's Democratic challenger, Mike Kopetski of Keiser, said in a statement that he hoped that the committee would investigate the charges "and make a judgment prior to the election."

Smith said the charges amounted to dirty politics by Kopetski.

"He is a politician behind in the polls and will now do anything to get back in this race, including using dirty political tricks to confuse the voters," Smith said.

The 5th District congressman is seeking re-election to a sixth term in the Nov. 6 general election. He beat Kopetski by 707 votes in 1988.

The complaint says that according to news accounts, Smith "fervently lobbied the Federal Home Loan Bank Board for a softening of its policies against directors of failed savings and loan institutions who had been responsible for their institutions' bankruptcy" while he was a director of a failing thrift, American Federal Savings & Loan of Salem.

The complaint also contends that:

Smith sought special treatment for Jimmie Taylor, a defendant in a civil lawsuit against former directors and officers of State Federal Savings & Loan of Carvallis and a major contributor to Smith's campaigns.

The complaint says that Smith made a specious argument that the lawsuit was a waste of government time and money, although the eventual verdict against the savings and loan yielded $6 million, or six times the cost of the case.

The conduct violated an ethics rule against dispensing special favors or privileges.

Federal savings and loan regulations appear to have been violated by a $229,500 home mortgage loan to Smith by American Federal Savings & Loan while he was a director of the thrift.

The institution waived a standard $5,000 loan fee to Smith without making a required prior disclosure to federal regulators, according to the complaint.

Ethical questions arose involving financing that Smith obtained from Citizens Savings & Loan for an industrial park partnership in Salem in which he was a co-owner.

The thrift lost $1.4 million on the loan and eventually collapsed in 1987.

Smith violated House rules by listing his congressional telephone number on campaign literature and using material produced by his congressional staff in a campaign mailing.

"Over the past four years, Congressman Denny Smith has repeatedly acted with brazen disregard for the rules of the House and rules of law," Bauer said in concluding the complaint.

Smith previously has said that minor mistakes were made involving campaign material and that his other work only involved helping people who were being hounded by regulators.

The ethics allegations have had an on-again, off-again history.

Members of Kopetski's campaign discussed the pending complaint in midsummer, but it wasn't filed. The campaign committee chairman, Rep. Beryl Anthony, D-Ark., said during an Oregon visit last month that his committee probably wouldn't file a complaint because it would seem to be political opportunism.

But Anthony never ruled out that charges might be filed, Anthony aide Howard Schloes said Wednesday from Washington.

Ethics committee rules allow an individual or organization not officially connected with the House to lodge a complaint against any member or officer if three members of Congress are asked to submit it but decline to do so.

Democratic Reps. George Brown and Howard Berman of California and Jim Moody of Wisconsin provided what Bauer termed the "pro forma" refusal to initiate the complaint. Bauer then submitted the matter.

In raising questions about Smith's handling of office accounts and staff work assignments, Bauer acknowledged that the Democratic Campaign Committee was acting on Kopetski's behalf.

"We ask only that Congressman Smith's opponent be permitted to wage a fair battle against the incumbent Republican," Bauer wrote in a letter to ethics committee chairman Rep. Julian C. Dixon, D-Calif..

Smith said he was not worried about having an honest inquiry by the committee.

[From the Daily Courier]

DEMOS FILE ETHICS CHARGE AGAINST SMITH

(By Judy Fahys)

WASHINGTON, DC.—A Democratic political committee has made Rep. Denny Smtih, R-Ore, the target of an ethics complaint—only weeks before he faced Democratic opponent Mike Kopetski in a tight re-election contest.

Charges outlined in a filing Wednesday by the Democratic Congressional Campaign Committee (DCCC) allege that Smith misused his clout as a congressman to influence federal savings and loans banks and S&L regulators. The complaint also charges that Smith used his congressional office staff and facilities for political purposes.

The DCCC, the political arm of Democratic House candidates, said in its complaint that Smith has shown a "brazen disregard" for ethics rules.

"He has implied in the newspapers that the fact that no one has initiated an ethics complaint means that he has done nothing wrong," wrote Robert Baner, DCCC's attorney. "Perhaps this complaint will put the congressman on notice that this is an inadequate view of congressional conduct."

In a statement issued from his Capitol Hill office, the incumbent accused his opponent of "underhanded politics" prompted by a poll showing Smith leading the race by six points.

"I asked Mike months ago to file his complaint or shut up," Smith said. "He and the DCCC know this is dirty politics, I know its dirty politics and Oregon voters will know it is dirty politics."

"I've been straightforward and upfront with the voters about my involvement in the S&L issue . . ." Smith said. "Even Kopetski's own campaign manager has said a filing at this point would be nothing but a blatant political act. He was exactly right," Smith commented.

Kopetski, a former state senator, has threatened a number of times to file a complaint. And earlier this month, DCCC Chairman Beryl F. Anthony, Jr., of Arkansas said the committee was unlikely to file the complaint now because people might discount the charges as election season politics.

But DCCC's Bauer said Wednesday's action was geared towards fighting "a pattern of indifference to (House ethics) requirements" by Smith. "We're not asking them (the members of the ethics panel) to do anything with regard to the election," Bauer said.

The charges are contained in an 8-page letter to the Committee on Official Standards and Conduct, the formal name for the six-member bi-partisan panel that considers ethics charges.

The complaint begins by saying Smith used his congressional telephone number and included large sections of congressional newsletter material produced by his congressional staff in a July 24 campaign fundraising pitch.

Citing newspaper reports about Smith's S&L ties, the complaint alleges the lawmaker sought special treatment for himself when he lobbied the Federal Home Loan Bank Board (FHLBB) to protect bank directors of troubled thrifts from civil lawsuits. Smith was a director of American Federal Savings & Loan of Salem before it was taken over by Federal authorities.

The complaint also says Smith improperly campaigned before the FHLBB on behalf of "a major contributor" to Smith's campaigns who was in trouble with the regulators. Smith petitioned then-President Ronald Reagan to fire the agency's chairman when his efforts failed.

Another allegation states that Smith benefited in an unusual $229,500 home mortgage loan from American and that he was involved in a questionable deal on an industrial park with Citizens Savings and Loans Association.

In response, Smith said he has been "straightforward and upfront with the voters" on the issue all along and that he would be exonerated.

"I'm not worried about an honest inquiry by the committee," Smith said. "I'm confident they would clear me of any charges, but I am bothered by Kopetski using innuendo and rumor to carry out a political hatchet job."

Gary Koops, a spokesman for the National Republican Congressional Committee, called the complaint an effort "to save a floundering campaign" by Kopetski, who trails Smith by six points in recent polls.

"It's crap," said Koops, whose group is the GOP counterpart to the Democrats' committee. "It's nothing but a political ploy."

"It's terrible that someone like Mike Kopetski who is trying desperately to find a job, would try to politicize a committee that Congress takes very seriously."

Kopetski issued a statement from his Salem campaign offices.

It said: "These are very serious charges and it is our hope that (the) ethics committee will investigate them and make a judgement prior to the election. The voters of the 5th District have a right to know how Congressman Smith has conducted himself and used his public office."

[From the Roll Call, Sept. 24, 1990]

ETHICS COMPLAINT AGAINST SMITH MAY IGNITE HILL S&L WAR

(By Glenn R. Simpson)

Reversing its recent position, the Democratic Congressional Campaign Committee has filed an ethics complaint against Rep. Denny Smith (R-Ore), an action that could provoke a round of retaliatory S&L strikes.

Already, the National Republican Congressional Committee is considering a Federal Election Commission complaint against veteran Rep. Frank Annuzio (D-Ill), aides said, after news reports on Friday revealed that the subcommittee chairman in charge of thrift oversight had inadequately disclosed S&L related donations.

After months of speculation that the DCCC would file a complaint against Smith, Chairman Beryl Anthony (D-Ark) indicated in August that the campaign committee would not file a complaint against the Oregon Congressman, who is the former director of a defunct savings and loan associations (Roll Call, Sept. 10). Then, on Sept. 14, the campaign committee reversed its position again.

The call for an ethics committee investigation broke new ground. It is the first complaint filed this year by either party as a result of the savings and loan debacle.

Democrats have speculated that one reason the DCCC hesitated earlier was that strategists feared that Republicans would strike back by filing S&L based complaints against Democratic incumbents, touching off a partisan war less than two months before the election.

DCCC officials, however, strongly deny that such consideration entered into the earlier delay in filing the complaint.

The complaint, which is dated Sept. 14, is based on articles published late last year in the Oregonian newspaper detailing several questionable dealings by Smith related to Oregon S&Ls.

The complaint also alleges improper use of Congressional staff and equipment by Smith to aid his re-election campaign. Smith, who won re-election in 1988 by 707 votes, is locked in an intense rematch with his 1988 Democratic opponent, former state Rep. Mike Kopetski.

The heart of the complaint is an allegation that Smith committed three major violations of House rules against conflicts of interest while serving on the board of American Federal Savings and Loan of Salem. The DCCC also claims Smith broke federal banking laws in 1986 in obtaining a $220,000 loan from the S&L at the same time that he was a director of the thrift.

Smith served as a director of American Federal from 1977 to 1987. At that point, the thrift merged with another S&L, which failed at a cost to taxpayers of $113 million.

Two of the alleged conflicts of interest involve Smith's efforts to lobby federal banking officials for lenient treatment of S&L directors found to be negligent. The lobbying, the complaint charges, occurred at the same time Smith was a director of a failing thrift.

Smith waged a campaign for immunity from prosecution for himself, and simultaneously sought to convince federal regulators to adopt a policy of not suing any thrift director accused of simple negligence. The Congressman admits to these activities but denies that either amounts to a conflict of interest.

Another charge is that Smith lobbied federal thrift officials for special treatment of a major campaign contributor who was being sued by the Federal Home Loan Bank Board for his role in the failure of another Oregon thrift.

The DCCC also charged that Smith violated a House prohibition against accepting improper gifts when he obtained favorable financing from yet another Oregon S&L for an industrial park he owned. A fifth accusation is that Smith, as part of the complex industrial park deal, received $51,000 in cash and $133,000 in stock in exchange for an option on some undeveloped land adjacent to the industrial park.

DCCC Counsel Robert Bauer, another of the complianants, wrote that much of the S&L related information it contains "has been supplied or confirmed by Congressman Smith himself. Assuming the facts reported are true—and the Congressman would not assert otherwise—he clearly has violated House Rule XLIII of the Code of Official Conduct governing proper conduct by Members and conflicts of interest."

Smith has strongly denied any impropriety. "I'm not worried about an honest inquiry by the committee. I'm confident they would clear me of any charges," he said last week. But Smith has focused most of his efforts on attacking the compliant as a "cynical and underhanded political trick" by Kopetski.

With evident relish, he has pointed to Anthony's comments that such a complaint would be discounted as purely political.

The DCCC apparently had a change of heart. Asked why the campaign committee waited nine months after the S&L allegation surfaced before filing, DCCC spokesman Howard Schloss said, "This sort of compliant takes many months to research and put together, and this is not something you can do in a couple weeks. Our attorney did a very careful, lengthy investigation which brought us to this point."

But in January, a DCCC aide said a compliant would be filed "in the next couple weeks" by an individual or organization in Oregon (Roll Call, Jan. 11).

Schloss acknowledged that legal research was not the sole reason for the delay. He said Anthony resisted filing a complaint but was persuaded to do so by Bauer, who "felt that these charges were of such a serious nature" that the party was obligated to make a complaint.

Bauer confirmed this account. Anthony, said Bauer, "was reluctant to file the complaint, and I put some considerable pressure on him, and he concluded that it was something we should proceed to do."

But Bauer said that Anthony's reluctance was philosophical. "He's not generally, not in the normal case, prepared to file a com-

plaint against another Member, or have the committee do so while he is chairman."

Democratic sources have speculated privately that the campaign committee may have been reluctant to file the complaint for fear of inviting GOP retaliation against Democratic Members who are vulnerable on S&L issues.

The New York Times reported Friday that "some Democrats have privately said that they held off because they did not want to open the door to similar complaints against members of their own party."

But Democratic officials rejected the explanation. "I never heard any such discussion," said Bauer.

Schloss said, "That didn't enter into our decision-making process at all, at no point." Smith aides and the NRCC also discount this explanation. They claim the DCCC did not file the charges earlier this year because they are baseless and will not stand up to prolonged scrutiny.

No Democratic House Member in 1990 has been the subject of a GOP ethics complaint related to S&L issues, but a week after Anthony indicated there would not be a complaint against Smith, Illinois state Sen. Walter Dudycz (R), who is mounting a stiff challenge to Annunzio, began to take action that could result in the ethics committee investigating Annunzio's role in the S&L scandal (Roll Call, Sept. 3).

Dudycz did not file a formal complaint at the time. But Bod Dudycz, his brother and campaign manager, said that he called the NRCC on Friday to find out how he might go further in his efforts to have Annunzio investigated.

He said ethics-related moves against the 13-term Congressman have stemmed from the local campaign, although the NRCC has been aware of the efforts and not discourage them.

Meanwhile, on Friday, the National Journal and Chicago Tribune reported that Annunzio, the number-two Democrat on the House banking committee, received $12,000 from individuals affiliated with a Maryland savings bank earlier this year as he was opposing a proposal that would have harmed the thrift.

FEC records filed by the Annunzio campaign did not disclose the donors' links to the thrift, the news reports said.

"We are looking at the facts in the case," NRCC communications director John Roberts said Friday. "If there are grounds for an FEC complaint, we'll make one."

Roberts said the DCCC complaint against Smith will not affect the NRCC's decision on Annunzio and that the committee would not engage in say "frivolous charges."

NRCC spokesman Gary Koops offered his own explanation as to why the complaint against Smith was finally filed by the Democrats: "I think they decided to slide it in to appease Kopetski."

Smith and his aides sang a similar tune, claiming Kopetski pushed for filing the complaint after a recent poll showed Jim trailing Smith by 6 percentage points.

Kopetski campaign manager Ted Coran denied that the poll had anything to do with the filing of the complaint. He suggested in a telephone interview that he had hoped the DCCC would file the complaint but he said he left the matter up to DCCC officials. "They basically told us, 'Don't worry,' " said Coran.

"We've known the seriousness of the charges," he added. "They're fairly indisputable, and when we turned it over to the folks back East we could only hope they would do the right thing."

Coran indicated that "political gameplaying" had delayed the filing of the charges. "Do we think that to a large extent politics has muddled this whole issue? Unfortunately we do, but we also understand that's the nature of the system, and we're not going to cry over the spilled milk."

Kim Mattingly contributed to this report.

[From the Albany Democrat-Herald, Sept. 21, 1990]

IN SLICK TRICKS, IT'S DEMOS' TURN

In the contest of who can do the slickest tricks in the 5th District congressional campaign, the latest move was that of the Democrats, who file an ethics complaint against Republican Denny Smith.

The House Democratic Campaign Committee filed the complaint on Wednesday several months late, but perfectly timed to cause Smith the greatest possible grief. It's early enough not to seem like a last-minute charge. And it's late enough that the House Ethics Committee can't possible make a thorough review and throw out the complaint before the election. So it will just hang there, perhaps impressing voters who don't know any better. The timing alone reveals the filing as cynically calculated.

The main allegations—the congressman's actions in connection with savings and loans—came up last December when The Oregonian published them. The Portland paper noted that "no one has alleged any specific violation of any law or House ethics rule by Smith." It also reported that his aggressive lobbying on behalf of savings and loan directors had prompted a federal investigation, an investigation that found no wrongdoing.

The whole story was laid out in the papers when it came up. More recently the New York Times warmed it up, but the facts cited in the Democratic Campaign Committee's complaint are the same as those reported last December. There's nothing new on Smith and the S&L front.

The facts are that State Federal Savings & Loan or Corvallis was closed by the government in late 1985. In 1986 the Federal Savings & Loan Insurance Corp. hired a Portland law firm to bring lawsuits against 23 former directors and other State Savings officials charging various civil violations and seeking $73 million in damages. Smith urged the government to prosecute anybody suspected of fraud, but he believed the former directors were being hounded without justification, and he urged the government to back off. Because of his first-hand experience as a director of American Savings & Loan in Salem, he knew that part-time, outside directors were in no position to thwart bank employees doing crooked things in secret. He also knew that government regulators had approved loans they then turned around and claimed were breaches of fiduciary duty.

All the FSLIC lawsuits against the ex-State Savings directors were dismissed without trial. How much, if anything, the government received in settlements is not established. Government lawyers had refused to say. But in the settlement of the one case where a defendant was not intimated and fought back by filing a countersuit, we know the government got zilch.

Mike Kopetski, the Democratic candidate, and the Democratic Campaign Committee probably figure that this story is complicated enough so that most voters won't remember the details, that all they will remember are the headlines accusing Smith of something shady.

A few weeks ago Smith used something Kopetski had said about the Iraq situation to attack the Democrat for alleged appeasement. Smith's radio ads featuring the voice of Hitler were out of line. So he's in a poor spot to complain about the latest Kopetski counterpunch. But people who care about truth have reason to be dismayed by this trick as much as they resented those ads.

SMITH: NO RULES BROKEN—HE SAYS POLITICS LED TO COMPLAINT

(By Dave Bems)

U.S. Rep. Denny Smith, R-Ore., charged Thursday that an ethics complaint filed against him on behalf of his Democratic opponent, Mike Kopetski, was a dirty political trick timed to coincide with the November election.

Smith declined to respond to the specific charges, which were turned over Wednesday to the House Ethics Committee.

"This is a dirty political trick," Smith said during an afternoon press conference. "Mike knows it's a dirty political trick. You know it's a dirty trick. And I think the Oregon voters are going to know it's a dirty political trick.

"When we have received from the committee an analysis of what they have to say about the complaint as filed, then I'll talk about the complaint as filed?"

Kopetski later said: "He's not responding to the charges, which he should do. He would have called any filing of a complaint at any time dirty politics. That's a strategy to shift away from the allegation at hand.

"What's important is that they investigate this. What's important is that Denny Smith answers the charges."

The complaint, which Kopetski passed last month to the Democratic Congressional Campaign Committee, accused Smith of violating House rules by using his office for political gain in dealings involving the savings and loan associations.

Smith also is accused of breaking House rules by using congressional offices and equipment for his re-election bid.

Ethics committee administrators have until Wednesday to give the complaint to the committee's Democtatic chairman and ranking Republican member. The eight-member panel—composed of four Democrats and four Republicans—they will have 30 days to decide whether it will investigate the charges.

Jan, the committee administrator, is prevented by House rules from discussing the Smith complaint. But she said that it was difficult to predict when an ethics investigation could be completed.

"Each investigation is different," she said. "It's done on a case-by-case basis. They range from months to years."

A possible roadblock: Congress is scheduled to adjourn next month and will not reconvene until January.

Questions about Smith's dealings with three Oregon savings and loan associations publicly surfaced late last year. This summer, Kopetski charged that Smith illegally used congressional office resources to benefit his campaign.

Smith, who represents the 5th Congressional District, repeatedly has denied any wrongdoing.

Rep. Beryl Anthony, D-Ark.—the chairman of the House Democratic campaign committee—said last month during a Portland visit that his committee might not seek an ethics investigation of Smith because such an effort could be viewed as politically

motivated. Anthony's committee advises Democratic House candidates.

However, Howard Schloss, a spokesman for the campaign committee, said Thursday: "Our attorney . . . convinced us that these charges are of such nature that the ethics committee was the only forum through which these charges could be explained. We gave Denny Smith eight months to answer these, but he did anything but that.

"To us, it's very clear that these rules have been violated."

Gary Koops, a spokesman for the competing National Republican Congressional Committee, said: "It's so blatantly political. Even Anthony's own words make the point that it's a political move."

Kopetski said the charges could be viewed as politically motivated; "we're involved in politics."

But he said that the complaint was legitimate, and that Smith should respond to the charges.

"That's what's important," Kopetski said. "That is what the voters of the district and the rest of the Congress need to know."

Smith charged that the complaint was filed Wednesday—and not earlier—because Kopetski and Democratic campaign officials knew that the panel would be unable to fully investigate the charges before the November election.

"I . . . said that if it came down after the first of July that it was not a realistic effort to do something other than politics," Smith said. "I think this is one of the most disgusting situations that I've been involved with in the 11 years that I've been in the Congress."

"If in fact there has been anything wrong in what I have done, the ethics committee (previously) would have had a charge filed, and if they could have made it stick, I would no longer be in the Congress. I have done nothing wrong."

The complaint contends that:

Smith lobbied the now-defunct Federal Home Loan Bank Board for a softening of its policies against directors of failed savings and loan institutions who had been responsible for their institution's bankruptcy, while he was a director of a failing thrift, American Federal Savings & Loan of Salem.

He sought special treatment for Jimmie Taylor, a defendant in a civil lawsuit against former directors and officers of State Federal Savings & Loan of Corvallis and a major contributor to Smith's campaign.

The conduct violated an ethics rule against dispensing special favors or privileges.

Federal savings and loan regulations appear to have been violated by a $229,500 home mortgage loan to Smith by American Federal Savings & Loan while he was a director of the thrift.

The institution waived a standard $5,000 fee to Smith without making a required prior disclosure to federal regulators, according to the complaint.

Ethical questions arose involving financing that Smith obtained from Citizens Savings & Loan for an industrial park partnership in Salem in which he was a co-owner.

The thrift lost $1.4 million on the loan and collapsed in 1987.

Smith violated House rules by listing his congressional telephone number on campaign literature and using material produced by his congressional staff in a campaign mailing.

HOUSE HAS PROCEDURES FOR ETHICS COMPLAINTS

The rules of the U.S. House of Representatives outline a strict process for reviewing the ethics complaint against Rep. Denny Smith, R-Ore.

The committee could proceed through the following steps.

Dismiss the charges if its members determine that they fall outside its jurisdiction.

Agree to investigate if its membership has "reason to believe" that a rules violation occurred.

Agree to drop the complaint or issue a "statement of alleged violation," which committee administrator Jan Keyes likened to a court indictment.

Hold a disciplinary hearing to determine whether there's "clear and convincing proof" of a rules violation.

Vote to issue a critical "letter of reproval."

Pass its findings to the full House if there is "clean and convincing proof" of wrongdoing.

By a majority vote, the House could decide to reprimand or censure Smith—or a two-thirds vote of the House could force the expulsion of the five-term incumbent.

Four House members have been expelled in U.S. history, three during the Civil War. The fourth—Rep. Ozzie Myers, D-Pa.—was expelled in October 1980 in connection with the FBI's ABSCAM investigation, when he was convicted of accepting bribes from FBI agents posing as Arab sheiks.

[From the Corvallis (OR) Gazette-Times, Dec. 17, 1989]

SMITH LOBBIED TO PROTECT THRIFT DIRECTORS

PORTLAND.—Rep. Denny Smith, R-Ore., lobbied for protection of directors of troubled savings and loan institutions in 1987—while he himself was one of them, The Oregonian reported in Sunday editions.

Details of his campaign for leniency for thrift directors and a separate effort to seek civil immunity for himself were outlined in documents obtained by the Portland newspaper through the Freedom of Information Act.

No one has alleged any specific violation of law or House ethics by Smith.

Edwin J. Gray former chairman of the Federal Home Loan Bank Board, said Smith wanted "special treatment" and questioned the propriety of his effort "to get regulators to modify a position" that would benefit him.

Wholesale failures in the savings and loan industry in the 1980s led to the biggest taxpayer bailout ever as the government made good on federally guaranteed deposits and injected new capital into ailing institutions.

Smith was director of American Federal Savings & Loan of Salem, a position to which he was named in 1977. He remained on the job for seven years after his 1980 election to Congress.

Smith also was a partner in a real estate venture with Citizens Savings & Loan of Salem.

Smith strongly opposed federal lawsuits against directors as part of his campaign against a pair of May 1986 Lawsuits naming 24 directors and officers of State Federal Savings & Loan Association of Corvallis.

Smith's lobbying drew so much attention, it may have prompted a federal inquiry into his real estate deal. The probe found no wrongdoing.

Smith attributed the inquiry to vengeful regulators.

"They would love to have had something on me," Smith said "I was poking them in the eye on this other deal," he said, referring to his criticism of the State-Federal lawsuits. Those regulators who were involved either declined comment or said they could not recall their motivations.

Smith's efforts began in 1986 and continued into 1988.

At least one other regulator besides Gray complained about Smith.

"He called me on the phone, upbraided me in very strong language, interspersed with swear words and personal attacks," said David Felt, a lawyer who formerly worked for the Federal Savings and Loan Insurance Corp.

Felt said he questioned "the propriety of a congressman who's sitting on the board of directors of a failed savings and loan trying to influence the agency's policy" on directors' liability.

Smith said he had not sought the change for himself.

"Rather than having a namby-pamby approach to something that was very hurtful to some of my constituents, I was very aggressive," Smith said, "I tried to get the regulators off their back. I don't think I did anything wrong. I don't think there is anything I would do differently."

In May 1986, federal regulators filed lawsuits against former directors and officers of State Federal. Jimmie C. Taylor, a defendant who gave $1,600 to Smith's 1980 campaign, asked him to intervene.

Smith wrote to Gray. In a letter dated July 17, 1986, he said he did not want to "interfere in legitimate criminal prosecution," but that "good faith business transactions" should not prompt criminal charges.

A month later, Smith wrote President Reagan, asking him to fire Gray.

"Local officials have been led down the road by the regulators and then clobbered from above," Smith wrote.

[From the Corvallis (OR) Gazette-Times, Sept. 21, 1990]

ETHICS CHARGES POLITICAL IN NATURE

Cynical is the exact word that describes the filing of a formal ethics complaint against Rep. Denny Smith by the Democratic Congressional Campaign Committee.

Smith's questionable involvement in some savings and loans activities first came up in articles published in the Oregonian last December, fully nine months ago. (Only lately have the slow-moving national newspapers and columnist tried to tackle the issues. When they do, they do so superficially with quite a few inaccuracies.).

The Oregonian uncovered no violations of the law or congressional code of ethics. Still, a probe by the House ethics panel might have been useful to delineate the "fine line" the Republican says he walked. As a director of American Federal Savings & Loan of Salem, Smith sought immunity for himself from civil lawsuits brought by thrift regulators.

Separately, as a congressman, he lobbied for immunity for the directors of State Federal Savings & Loan Association of Corvallis. He also wrote President Reagan lambasting Edwin J. Gray, chairman of the Federal Home Loan Bank Board, and calling for Gray's resignation.

But apparently the fine line was not worth worrying about in January or February, when the impact on the Smith-Mike Kopetski campaign would be minimal. The Democratic Congressional Campaign Com-

mitttee held off filing a complaint until now, when Congress is in full swing trying to get out of Washington by mid-October.

No one is going to convene the House Ethics Committee to examine Smith's record. No one is going to undertake a tedious investigation, sort through documents or interview witnesses. All that's going to happen in that the attack ads aimed at Smith will include some phrase like, "A formal ethics complaint is pending against Denny Smith for using his position to help S&L fat cats."

Until now, Kopetski was maintaining the high ground in the down and dirty campaign for the Fifth District. He just lost it with the help of the Democratic Congressional Campaign Committee.

[From the Oregonian, June 24, 1990]

SMITH KICKING IN AFTERBURNERS EARLY IN RACE

(By Jeff Mapes)

Keeping up with Rep. Denny Smith hasn't been easy lately.

First he's dragged President Bush into a White House meeting with the timber industry to talk about the spotted owl. Oops, no, it's really a meeting with chief of staff John Sununu. Gulp, now Sununu's office says he won't be around when the Oregon Republican brings his group in. Wait, Sununu did show up.

Then Smith's cranking out computerized letters to constituents explaining how he's hard at work fighting offshore oil drilling, drift-netting and environmentalists who want to lock up our forests. But, uh oh, that darn computer is sending some people eight copies of the letter.

It's OK, though, Smith fired off a press release that includes a memo from the Subcommittee on Communications, Computers and Office Systems explaining that the glitch "in all probability" was caused by a power outage. Whew, for a while there it might have looked like the famously anti-government-spending congressman was wasting taxpayer money.

It's almost five months before the election, but folks in the 5th Congressional District open their local newspaper to find a full-page ad featuring the smiling faces of Smith and his Democratic opponent, Mike Kopetski.

What the heck, why not give your opponent some free ink. After Kopetski got within 707 votes of beating Smith in 1988, you can't pretend the guy doesn't exist. Better to slam him now as a tax-and-spend liberal, a lockup-the-trees environmentalist and another of those "left-wing activists" who doesn't want to change the Constitution to outlaw flag burning.

But, darn it, everyone keeps talking about about the way it accuses Kopetski of being "very hip." What does that mean?

"The word 'hip' means to us what it is," said Tony Williams, Smith's press secretawry. "Kopetski is a trendy guy who goes along with the flow and doesn't have any real convictions for what he believes in."

Ah, this frenetic activity is starting to make some sense. Smith has to get cracking and let everyone know he's the straight-shooting incumbent taking care of the district while Kopetski is a trendy liberal who will do anything to get into office.

Who knows how much time Smith has to define himself and run down Kopetski? That's because whatever mudballs he can throw at his opponent, Kopetski has a couple of huge pies waiting in reserve.

Ever since the abortion-rights forces have been awakened by the Supreme Court's Webster decision, folks have been talking about how Smith will lose votes because of his strong anti-abortion position.

But some of the Kopetski strategists are getting more excited about Smith's little problem with the savings and loan scandal. Last December, The Oregonian revealed that Smith had lobbied to protect directors of thrift institutions from a wide range of civil lawsuits. At the time, he was a director of American Federal Savings & Loan of Salem—one of 126 savings and loans that has gone belly-up.

Smith defends his actions as proper, but it seems pretty clear that he won't be able to say he did much to head off one of the biggest financial debacles in American history.

As the cost of the taxpayer bailout rises, so does Smith's vulnerability on this issue. The latest government estimate is $500 billion over 40 years—or roughly what it would take to prop up the economies of Eastern Europe. One academic think tank says it could approach $1 trillion.

That's the kind of real money that "cuts through it all," said Ted Coran, Kopetski's campaign manager. "It makes the spotted owl insignificant; it makes abortion kind of a parlor discussion."

So far, Kopetski has discussed the issue gingerly. His pollster, Mark Nelson, said he wants to make sure he has his facts right. Coran says they want to wait for the right time to let Smith have it.

"We want to make sure he is dealing with it in September" when people are paying attention, said Coran, adding that is also when Smith "doesn't have a lot of time for this to play out."

Coran even hints that nobody has filed a complaint against Smith with the House Ethics Committee yet because the Democrats are waiting for the November election to get closer. "I don't want to tip the hand," Coran said when asked if a complaint will be filed.

Who knows? Maybe the Kopetski side is blowing smoke—like the pitcher who pretends to be a spitballer just to unnerve his opponents.

But Smith is sure doing everything he can. Ah, here's mail call, and guess who's writing?

This time it's a memo to the press from Smith's campaign manager that begins: "Over the past several months, the Mike Kopetski for Congress Campaign has had more staff transition than a 7-Eleven Store."

That ought to throw Kopetski's convenience-store campaign for a loop.

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If not, the Committee on Ethics becomes nothing more than a pawn before the cynical chess game of a modern campaign. What Mike Kopetski did was very wrong, but if we, the Members of Congress, allow this cynical trick to succeed, we will do irreparable damage to this institution, which each and every one of the Members know deserves much better.

I ask Members to do the right thing. I ask Members to call for a special meeting of the Committee on Ethics tomorrow and made a decision, up or down, for or against. Tell the Mike Kopetskis of the world that this Congress cannot be used or abused no matter how ambitious a politician may be.

BEST WISHES TO VIRGINIA SMITH

(Mr. CONTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I want to apologize to VIRGINIA SMITH for I want to take a special order. I had a special order, and it looks like the way we are going I will never be able to do it.

I thank Members for this indulgence. I want to say a few words for a dear and beloved friend of mine,

VIRGINIA SMITH; since 1975, she has graced this Congress with her presence, and when she departs for greener pastures at the close of this session, we are all going to miss her dearly. I have known VIRGINIA for the past 16 years, and over that span she has proven herself, time and time again, to be an outstanding Member of this body, as well as a true representative of her Nebraska constituents. She has fought for the interests of rural America. She has promoted the values of the ethics of American heartland. She serves her constituents with a vigor and a commitment that continues to astound.

I do not think there is a finer, a more loyal, nor a more concerned friend of this country's farmers and ranchers than VIRGINIA SMITH.

VIRGINIA, we will miss you. We will miss you greatly, and you will leave a great void in this Congress. We wish you and your husband the very best. May you have many decades of good health and happinesss, and reward the harvest of a lifetime of dedicated service to the great State of Nebraska and the United States of America.

Mr. BEREUTER. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Speaker, this small delegation from Nebraska, Mr. HOAGLAND and myself and VIRGINIA SMITH, on behalf of PETER and myself, we want to thank the gentleman for taking this time. We have an extraordinary lady in our delegation, a great Member of Congress. We will miss her greatly, and we will add our remarks as many others will.

Mr. CONTE. Mr. Speaker, it is a true pleasure for me to say a few words for my dear, beloved friend, VIRGINIA SMITH. Since 1975 she has graced this Congress with her presence, and when she departs for greener pastures at the close of this session, we are all going to miss her dearly.

I have known VIRGINIA for the past 16 years, and over that span she has proven herself time and time again to be an outstanding Member of this body, as well as a true representative of her Nebraska constituents. She

has fought for the interests of rural America, promoted the values and ethics of America's heartland, and served her constituents with a vigor and commitment that continues to astound. I do not think there is a finer, more loyal, nor more concerned friend of this country's farmers and ranchers than VIRGINIA SMITH.

I have had the good fortune to work closely with VIRGINIA for the past 14 years on the Appropriations Committee, and I have watched her put her wealth of experience to work for her district, her State, and her country. She has been an energetic leader on the Agriculture Subcommittee, and a stalwart contributor to the Energy and Water Subcommittee.

I remember when VIRGINIA first came to me seeking a position on the committee.

She showed me her resume, and there on the pages-long list of honors, awards, and experience, was "VIRGINIA SMITH, Honorary Nebraska Porkette." She pointed to that and said "SILVIO, I have what it takes to be on Appropriations—I know how to bring home the bacon!" I promise her the next available seat.

There was no doubt in my mind that she would make an excellent contribution to the Appropriations Committee.

With her reputation for tenacity and persistence, she would have no trouble slugging it out in the scramble for earmarks and funding. And to no one's surprise, that proved to be the case. She became an expert appropriator. But I did not realize how skilled she had become at getting what she wanted until a few years ago, when I overheard VIN WEBER ask her how to get an earmark into one of the bills. She turned to him and said, "VIN, don't you know? You just ask for it, and it appears."

Only for you, VIRGINIA, only for you.

A case in point is when VIRGINIA wanted $10 million to start building the Davis Creek Dam in Nebraska. I told her it would never hold water. The environmentalists opposed it, the taxpayer groups opposed it, the Secretary of the Interior, OMB, and the President opposed it. But VIRGINIA didn't bother with all that, she took her persuasive Nebraska charm straight to the top, and she single-handedly made it happen. No wonder she was named Water Statesman of the Year for 1989.

In addition to our friendship, VIRGINIA and I developed an excellent working relationship. In fact, the only thing we have ever really been at odds about have been essential air service, and we debated the merits of that program many times. She finally gave up trying to convince me of the error of my ways after saying her evening prayers one day.

VIRGINIA first asked God whether there would be an end to hunger in the world, and God answered "not in your lifetime, VIRGINIA." She then asked whether there would be peace on earth, and again God responded, "Not in your lifetime, VIRGINIA." So she thought she'd try something a little simpler, and asked "Will SILVIO ever support essential air service?" and God paused a moment then said, "Not in my lifetime, VIRGINIA."

Seriously, Mr. Speaker, I consider it the highest privilege to have known and worked with VIRGINIA for all these years. She has made a tremendous contribution to Nebraska, to the Congress and to the Nation. The people in the Cornhusker State must be very proud of her. She is a first-class lady and a first-class Congresswoman, and next year her absence will be felt.

VIRGINIA, I wish you and your husband, Haven, all the best for your retirement, and I hope that you will come visit us here in Washington as often as you can.

Mr. WHITTEN. My service with VIRGINIA SMITH on the Appropriations Committee and on the Subcommittee on Energy and Water, and Rural Development and Agriculture and Related Agencies has been enjoyable. She is a fine colleague and Congresswoman.

Since she announced her retirement, I have said many fine and truthful statements about VIRGINIA SMITH's record of service on the Appropriations Committee and in the House of Representatives many times. And personally it is hard to be original on this occasion.

Talented, industrious, effective, a credit to her district and State, we shall miss her in the Congress.

Fortunately, the benefits of her efforts here will last for years to come.

VIRGINIA, we shall miss you and wish for you and Haven many happy and enjoyable years.

Mr. BEREUTER. Mr. Speaker, the great plains of Nebraska have produced and nurtured some astonishing, capable and energetic women. Some of them, such as Mari Sandoz, Bess Streeter Aldrich, and Willa Cather, made an indelible literary impression on the nation's readers. Others, such as Bess Furman Armstrong, pioneered in the field of political journalism. Dorothy Weyer Creigh recorded with her historian's perceptiveness the earliest days of the State and its communities. In 1986, Nebraska was the first State in a general election face-off to field two women for the State's highest elective office, and elected Kay Orr as the first Republican woman Governor in the country.

Nebraska's outstanding women are also business owners, farmers and ranchers, teachers and community workers. In innumerable cases, they possess a strength of character and a determination to get things done. This is the environment and heritage that produced VIRGINIA SMITH, who for the past 16 years has represented the vast 62-county Third District of Nebraska in the Congress of the United States. Her departure from this body will most assuredly mark the end of an era, but serve as an inspiration to achievement for other Nebraska women—and men, too. As the ranking Republican on the House Agriculture Appropriations Committee, Nebraska has had a staunch friend and an unmoveable champion.

VIRGINIA knew her district and its concerns well before she came to Congress. She served for 20 years as the Chair of the American Farm Bureau Women. She and her husband, Haven, farmed and ranched in the cattle-rich, hard-grass pasturelands and rolling wheat fields of Nebraska's southern panhandle. Just a stone's throw from the borders of Colorado and Wyoming, we sometimes hear that VIRGINIA and Haven are going to retire to their little place out west, near Chappel, NE, but we know she is really never going to retire.

In many ways, VIRGINIA'S congressional district is as much western as midwestern. Driving west on Interstate 80, through VIRGINIA SMITH country, one gazes to the horizon across high plains that slowly rise to meet the Rockies. God only knows how VIRGINIA and Haven covered that immense land, but they did, every year—visiting all of the counties at least one time. It was almost always Haven who drove all those miles. And in each and every one of those tiny towns and crossroads, VIRGINIA was never "Congresswoman," rather, she was simply VIRGINIA, who greeted her friends, who just happened to be constituents, by their first names and asked after their children and grandchildren. She was just VIRGINIA, who remembered Uncle Clarence's illness, Aunt Clara's retirement from the school board, or the Hansen's foreclosure sale. She remembered and cared about the countless accomplishments, sadnesses, and milestones that made up the lives of the people she represented in Congress. And because she was devoted to them, they were devoted to her.

In fact, after her first close election to Congress in 1974, VIRGINIA was subsequently elected by wide margins. These margins of victory must haunt her first opponent in a general election, who surely misspoke himself when saying toward the end of that first campaign that women do not belong in politics. How could he have known that he was, even at that time, up against a political legend in the making?

Of course it is well-known among VIRGINIA'S friends that 75 percent, 80 percent, or even 85 percent of the vote wasn't good enough. When her election totals were in, it is humourously alleged that VIRGINIA would fret and fume about the 25 percent, 20 percent or 15 percent of the third district voters who opposed her. Those few timid naysayers had more impact on VIRGINIA SMITH than they will ever know, as she would stew and worry about what had gone wrong and how she could attract their votes the next time around.

VIRGINIA, let me make another observation before closing. You have always employed mostly home-grown talent in your office, and I believe they have, over the years, mirrored your commitment to your constituents. Your staff always responded, in professional, friendly, Nebraska-style good humor, to the requests and concerns of your district and to all Nebraskans. It is certainly a tribute to you that even as you face the closing days of the 101st Congress, many of your long-time staff are still with you—busy at work and always totally supportive.

VIRGINIA, I am going to miss you. You and I have collaborated on virtually every agricultural issue that has come before the Congress in the last several years—we've fought cargo preference, tried to straighten out ag credit problems, and worked to develop strong farm bills in 1981, 1985, and 1990. Your dedication to the health and prosperity of Nebraska, and in particular, the third district, but also to our alma mater, the University of Nebraska, is an example of the finest and most selfless public service. In all the years I have known you, it is obvious that your greatest aspiration has been to serve your constituents. This you have done, in great and good measure, and no successor can really every replace you. Instead, he or she will inherit a constituency with high

expectations for quality representation. I will wish them good luck, for they will have a big job to do. On behalf of Louise and me, for you VIRGINIA SMITH, my friend and fellow Nebraskan, and for your fine and dedicated helpmate, your husband Haven, may the coming years bring you time for friends and family, good health, and the generous blessings of the Almighty.

Mr. McDADE. Mr. Speaker, I want to thank my colleague, SILVIO CONTE, for arranging this special order to honor one of the truly outstanding Members of Congress, VIRGINIA SMITH of Nebraska's Third District.

I was sorry to hear earlier this year that VIRGINIA decided not to continue her career in Congress. She will be missed as an effective legislator, a tireless advocate of her constituents and a trusted and respected colleague. Her list of legislative victories is a long one, as is her list of friends.

The people of Nebraska could not have a better representative. I have been able to watch VIRGINIA fight on the floor of the House and in the Appropriations Committee to insure that rural and small town interests are not shortchanged in a Congress that is increasingly dominated by urban and suburban interests. Her assignments on the Rural Development, Agriculture and Related Agencies Subcommittee, where she serves as vice chairwoman, and the Energy and Water Development Subcommittee, put her in an ideal position to work on behalf of the citizens of rural America.

While VIRGINIA is easily identified with rural issues, she also should be recognized for her work on behalf of small business, senior citizens, the free enterprise system, responsible Federal deficit reduction and a strong national defense. She has received countless awards which acknowlege her fine work. Her constituents rewarded her hard work by sending her back to Congress year after year.

VIRGINIA was tenacious when fighting for her causes, but she always treated her colleagues with kindness and the utmost courtesy. When VIRGINIA spoke on an issue, her colleagues listened. When she went to bat for her constituents—which was often—she always gave it her best effort. She won many battles, and she always fought with integrity.

I join my colleagues in honoring her today. It has been a pleasure to serve with her. She served her Nation and her constituents with honor and distinction. I wish her the very best as she moves on to new challenges.

Mr. REGULA. Mr. Speaker, I rise to pay tribute and bid farewell to my friend and colleague VIRGINIA SMITH. I have served with VIRGINIA on the Appropriations Committee for many years and can attest to the distinguished and unwavering service she has given her constituents. VIRGINIA argued her causes with dignity and tenacity and I would dare say, like the Nebraska Cornhuskers, her wins outnumbered the losses.

But VIRGINIA will be missed not only by her constituents in Nebraska, but by everyone in rural America and the agriculture community. VIRGINIA has been a strong and effective advocate for these causes and her voice on these issue will be hard to replace.

A Roman scholar, Pliny the elder had this to say about agriculture which seems eminently appropriate in describing our colleague, VIRGINIA SMITH:

> The agricultural population, says Cato, produces the bravest men, the most valiant soldiers, and a class of citizens the least given of all to evil designs.

If Pliny had written in the 20th century he surely would have included women in that description and VIRGINIA could have served as his model.

VIRGINIA SMITH has left her mark on this body not only as a legislator, but as a fine lady. She will be greatly missed.

Mr. ROYBAL. Mr. Speaker, I rise to pay tribute to our friend and colleague, Congresswoman VIRGINIA SMITH of Nebraska, who will be retiring at the end of this session.

As a fellow member of the Appropriations Committee, I have known her since she came to Washington in 1974. She has always served her constituents in Nebraska's Third District with great dedication. During her years on the Appropriations Committee, VIRGINIA has been a proponent of conservative fiscal policies. I have seen her firm support for the farm programs which are so vitally important to her district and to the nation.

Mr. Speaker, I have known the gentlewoman from Nebraska as a steady advocate of rural Americans. The House of Representatives will not be the same without her.

Mr. BEVILL. Mr. Speaker, I rise to pay special tribute to my good friend and colleague, VIRGINIA SMITH, who is retiring at the end of the 101st Congress.

She has served her constituents and our country for 16 years and she has done a most outstanding job. No one works harder than VIRGINIA and I know she will continue to be very active in civic affairs following her retirement.

I am really going to miss VIRGINIA SMITH on my Energy and Water Development Appropriations panel. I have come to depend on her keen insight into many issues facing this country.

As you know, my committee is one of the most nonpartisan committees in the Congress. That's because of Members like Virginia who are so thoughtful and so dedicated to the real needs of our Nation.

Nebraska has certainly had a strong voice with VIRGINIA in Congress. She has been a very effective representative for rural America. And, she has also served our Nation as an able advocate for our energy needs.

Congress is losing one of its ablest, most respected members. But, if I know VIRGINIA, she's going to be as productive as ever.

VIRGINIA, I wish you all the best.

Mr. GREEN of New York. Mr. Speaker, I rise today to pay tribute to VIRGINIA SMITH, my dear friend and distinguished colleague of the House Appropriations Committee, who is retiring at the close of this, the 101st, Congress.

I should like to thank the ranking member of the House Appropriations Committee, Mr. SILVIO CONTE of Massachusetts, for sponsoring tonight's special order in VIRGINIA'S honor.

As the senior Republican woman in the 101st Congress, and the ranking minority member of the Rural Development, Agriculture and Related Agencies Appropriations Subcommittee, VIRGINIA has served the farming interests of her Nebraskan constituents to the hilt. Likewise, as the first woman to be elected to a full term in Congress from the State of Nebraska, she has acquired the respect of all those who have had the distinct pleasure of working with her in this body.

At this time, I should like to offer my very best wishes to VIRGINIA upon her retirement. I know that our colleagues join me in thanking her for her 16 years of dedicated service to the State of Nebraska as well as this country and our world.

Mr. HORTON. Mr. Speaker, it is with both great sadness and a deep sense of admiration that I rise to honor our colleague in the House of Representatives, the leading stateswoman of Nebraska, who has served its people as an elected official for 16 years; and a woman who is esteemed, admired, and loved by her colleagues in this body, the Honorable VIRGINIA SMITH.

In 1974, VIRGINIA became the first woman from Nebraska elected to a full term in the House of Representatives. VIRGINIA'S commitment to the interests of Nebraska's Third District combined with her warmth and tireless dedication solidified her support at home. Perhaps nothing can attest to her popularity more than the fact that in 1982, she became the first House Member from Nebraska to be unchallenged in a general election.

VIRGINIA will always be remembered for her unyielding support of Nebraska's farmers and ranchers as well as all of rural America. As the ranking Republican on the Appropriations Subcommittee on Agriculture, VIRGINIA has succeeded in representing the interests of her rural district with distinction. Yet, one might conclude that VIRGINIA was a spendthrift. Nothing could be further from the truth. Well known for frugality with Federal dollars, she has returned over $1.5 million in salaries and office expenses, and she has often donated her congressional pay raises to worthy charities. This commitment to fiscal responsibility have earned her nine Watchdog of the Treasury Awards from the National Federation of Independent Businessmen. Indeed, VIRGINIA has distinguished herself in this body as an effective and remarkable political leader.

VIRGINIA'S accolades are numerous: She is the senior ranking Republican woman in the 101st Congress; she is dean of the Nebraska congressional delegation; she has been inducted into the Nebraska Hall of Agricultural Achievement; and she has received the National Water Resources Association's Water Statesman of the Year Award in 1989 for her years of dedication to the cause of water resource development. Without VIRGINIA'S persistence and determination, it is doubtful that the United States would have a national water conservation and water development program under congressional control today.

The retirement of a stateswoman such as VIRGINIA SMITH, who so brilliantly represented the interests of her constituents in rural America, is a tremendous loss to this body and more importantly to the people of Nebraska's Third District. I would like to extend my heartfelt appreciation to VIRGINIA for her 16 years of distinguished service to this body. I wish her continued happiness and success as she retires from public life. She will be missed.

Mr. GALLO. Mr. Speaker, during these last days of the 101st Congress, it is important that we not forget to pause for a while to acknowledge the contributions of one of our Members who is retiring—the Honorable VIRGINIA SMITH from Nebraska's Third District.

Mrs. SMITH has served in this body for 16 years. Although I have only served with Mrs. SMITH for 6 years of that time, it is clear to me that her service has benefited not only her Nebraska constituents but the Nation as a whole.

When I was appointed to the Appropriations Committee at the beginning of the 101st Congress, Representative SMITH was one of the first Members I looked to for guidance and I was never disappointed.

At a time when the American public has serious doubts about the Congress as an effective institution, Mrs. SMITH stands out as a stellar example of a thoughtful, conscientious lawmaker who has pursued issues of importance to the Nation with vigor, understanding, and compassion.

So, I join with my colleagues today in saluting Mrs. SMITH, to wish her well in her retirement and to let her know how much we will all miss her.

Mr. MAZZOLI. Mr. Speaker, I rise today to pay tribute to a retiring colleague and friend, Congresswoman VIRGINIA SMITH of Nebraska.

As the Representative for the western two-thirds of Nebraska, VIRGINIA SMITH has served 16 years in the Congress and retires the senior ranking Republican woman in the 101st Congress.

Congresswoman SMITH began her career in the Congress as a member of the Interior Committee and the Education and Labor Committee. She soon became a member of the Appropriations Committee, where she looked after Nebraskan concerns as the ranking Republican member of the Subcommittee on Rural Development, Agriculture, and Related Agencies. She also served as the second ranking Republican member of the Appropriations Subcommittee on Energy and Water Development.

Because of VIRGINIA'S tireless efforts on behalf of the people of Nebraska, she was the first woman to be inducted into the Nebraska Hall of Agricultural Achievement in 1987. This is among the many agricultural and water development-related awards she has earned over the years.

In addition to her legislative and parliamentary prowess—well known in this Congress—VIRGINIA is one of the nicest, most charming and courteous Members of the House. Her smile and cheerful greetings have brightened many a day here for me and for many of my colleagues.

Mr. Speaker, I wish Virginia and her devoted husband, Mr. Haven Smith, all the best of health and much happiness in the years ahead.

We will miss you, VIRGINIA.

Mr. WOLF. Mr. Speaker, I want to join with my colleagues today as we salute the gentlewoman from Nebraska, VIRGINIA SMITH, who is leaving at the end of the 101st Congress after honorably serving the Third District of Nebraska since 1975.

It has been a pleasure to serve with VIRGINIA SMITH. Working with her on the Appropriations Committee, I have been impressed by her persistence as a loyal advocate for the farm community. She has been a staunch supporter of rural interests and the agricultural economy of central Nebraska. VIRGINIA SMITH has played a vital role in farm issues for many years, both in Nebraska and through her work nationally with the American Farm Bureau Federation.

With unending devotion to her State and country, VIRGINIA SMITH has ably represented the people of Nebraska's Third District for 16 years in Congress. We thank her for her faithful commitment to public service and wish her well for the future.

Mrs. VUCANOVICH. Mr. Speaker, tonight we are honoring one of my very special friends in this House. VIRGINIA SMITH was one of the first Members to welcome me when I came here in 1983. She offered her friendship and help with no reservations.

Others can talk about her work on the Appropriations Committee and specifically on the Agriculture Subcommittee. She has been a strong advocate for her agriculture constituents, as she should be.

I want to tell you about a visit I made to her district for a hearing on an issue which is near and dear to VIRGINIA and to the folks she represents. I am talking about a hearing on designating the Niobrara River as a wild and scenic river.

When we arrived at the hearing, VIRGINIA was received with a respectful standing ovation. People stood in line at the podium just to say hello to her. Throughout the entire hearing her constituents expressed themselves in simple and clear terms that they supported VIRGINIA'S position for a study on this issue—rather than an outright designation. Even the 2 or 3 people who were supporting the immediate designation out of the approximately 350 or 400 who were there were also very respectful of their Congresswoman, VIRGINIA SMITH.

When the hearing was over VIRGINIA SMITH was acknowledged again with an outpouring of affection and support. Her people swarmed around her.

We here in the House will miss VIRGINIA, but the folks she has represented so well for the past 16 years will miss her more.

I am proud to have served with VIRGINIA and will miss her very much. I hope she and her husband, Haven, have a well-deserved long and happy retirement.

Mrs. MORELLA. Mr. Speaker, Nebraska and the Nation will lose one of the great advocates for agriculture with the retirement of Congresswoman VIRGINIA SMITH.

This eight-term veteran, who is the dean of the Nebraska delegation, has tirelessly looked out for the concerns of the Nation's farmers and ranchers as ranking member of the Appropriations Subcommittee on Rural Development, Agriculture and Related Agencies.

The fact is that American agriculture has seldom had a more articulate backer; in fact, she has, more broadly speaking, been a persuasive advocate of the oft overlooked rural interests of the Nation.

Mrs. SMITH also has brilliantly represented her district by winning Federal approval of a number of needed Federal projects.

Her grace and good natured cheer—even during times of high-pressured debate on the floor—will be missed by all of us who have had the privilege of serving with her.

I join my colleagues, and her constituents, in wishing her continued success in the future.

Mr. CRANE. Mr. Speaker, we will all miss the pleasant manner, lovely smile, and hard-working presence of our colleague, VIRGINIA SMITH of Nebraska.

We don't blame Mrs. SMITH for wanting to leave this sometimes chaotic Chamber, but we wish she had not decided to do so.

VIRGINIA SMITH has been a credit to her Nebraska constituents. She has served them well, ably assisted by her knowledge of agriculture and education. She has been a leader in the fight for women's rights.

Her hard work on the House Appropriations Committee is well-known to all of us.

Each of us will miss VIRGINIA SMITH when she takes her well-deserved retirement after 16 years of distinguished service in the House of Representatives.

Mr. ROE. Mr. Speaker, I am pleased to participate in this special order to honor the gentlelady from Nebraska, Congresswoman VIRGINIA SMITH.

VIRGINIA SMITH can teach us all something about achievement and excellence. She was headed straight for center stage by the time she was 15 years old and graduated high school as valedictorian of her class.

I guess from then on one could say, there was no stopping her. She has been a distinguished legislator for 16 years in the House of Representatives. She has served on the Interior Committee, the Education and Labor Committee, and now holds the ranking Republican seat on the Committee on Appropriations Subcommittee on Rural Development, Agriculture, and Related Agencies.

She has been a crusader in agriculture achievement and has been recognized throughout the country for her astute understanding and clear articulation of farm issues. One of her primary legislative initiatives of the current Congress is the establishment of a national institute to develop new industrial uses for agricultural commodities.

Following the path of excellence, VIRGINIA SMITH has collected honors and awards in numbers too numerous to mention. She holds an honorary doctorate of law and an honorary doctorate in humane letters. Last year, she received the Water Statesman of the Year Award, the highest honor bestowed by the National Water Resources Association.

She has been the recipient of nine Watchdog of the Treasury Awards from the National Associated Businessmen, and nine Guardian of Small Business Awards from the National Federation of Independent Businessmen. She was the first woman to be inducted into the Nebraska Hall of Agriculture Achievement and 1 of the 16 Members of Congress to receive the first Golden Plow Award presented by the American Farm Bureau Federation.

As the senior-ranking Republican woman in the 101st Congress, and the first woman ever elected to a full term in the Congress from the State of Nebraska, she has blazed the trail for women's leadership in the Congress.

Mr. Speaker, VIRGINIA SMITH has served her constituents and her country with honor. We are grateful for the 16 years she has given to us in the House. We have been enriched and enlightened by her presence during that time. I wish to thank her and wish her well in whatever future endeavors she chooses to undertake.

Ms. SNOWE. Mr. Speaker, I rise to join in saluting our cherished colleague VIRGINIA SMITH, and to tell her of my joy in having known her and sadness that she's leaving.

Mr. Speaker, the other day I was thinking about VIRGINIA, and about her extraordinary record of accomplishment here in the House of Representatives. A question occurred to me, and it is this: Do the people of Nebraska realize what they are losing?

I suspect so, since the voters of the Third District have shown the great wisdom of sending her here for 16 outstanding years.

To me, VIRGINIA SMITH could easily lay claim to the words uttered by Shakespeare's King Lear: "* * * the best of me is diligence."

Diligence to her constituents, to the farmers of Nebraska and the Midwest; diligence to small businessmen and women, and to the average taxpayer; diligence to rural communities; and diligence to the concerns of the women of her State and country.

I, too, represent a rural district, so I have a special appreciation for VIRGINIA's effective leadership in the Rural Health Care Coalition. Her legislative efforts to remove the unfair urban bias in many Federal funding programs, whether health care or transportation, have helped people in my district in Maine as well as her own State, and for that I am grateful.

And I am grateful as well for VIRGINIA's eloquence when discussing the need for more women in the U.S. Congress. A few years ago, I recall, some of us Republican Congresswomen were being honored at a Ripon Society dinner. VIRGINIA SMITH delivered a very persuasive and moving address on why more women are needed in higher office.

Of course, I have a personal bone to pick with VIRGINIA and her decision to retire. With her departure, and if I am fortunate enough to be reelected, I will be the senior Republican woman in the House. I'm not sure I like the sound of that.

Mr. Speaker, VIRGINIA SMITH has proven herself a loyal friend, a committed representative, a nimble thinker, and tireless advocate. She is, in short, what all of us who serve here aspire to be. I am just happy to have had the chance to call VIRGINIA SMITH "colleague."

Mr. MILLER of Ohio. Mr. Speaker, I want to join my House colleagues today in paying tribute to one of the most distinguished Members to have served this country—VIRGINIA SMITH.

After 16 dedicated years in the House, serving the good citizens of Nebraska's Third Congressional District, VIRGINIA SMITH is retiring. She will be greatly missed both in Washington and, especially, in the debates of the House Appropriations Committee where I had the pleasure and privilege of serving with her for several years. It was in that capacity that I witnessed her strength as an able legislator and representative. On more than one occasion, she presented her thoughtful comments on controversial issues and gained the respect and admiration of her colleagues, the staff and the House for having done her homework. I sought her advice on several matters, not the least of which was her expertise on agriculture and the family farm. She has more than a passing interest in agriculture—she comes from a ranching background and her district is rich in farming tradition and production.

VIRGINIA SMITH was a leader in this House and I wish her the very best in retirement. She will be remembered in this Chamber as a great friend, an outstanding lawmaker, and a servant of a great and grateful nation. Thank you, VIRGINIA, for everything.

Mr. COUGHLIN. Mr. Speaker, I rise to take part in this special tribute to a special lady. Our valued colleague, Congresswoman VIRGINIA SMITH, is retiring after 16 years in the U.S. House of Representatives. Elected to the 94th Congress on November 5, 1974, the gentlewoman from Nebraska has been reelected to each suceeding Congress. While it gives me great pleasure to recognize her many accomplishments, it gives me great sadness to think of this House without her.

As the vice chairman of the Agriculture Appropriations Subcommittee, VIRGINIA SMITH has been a champion of, and a tireless worker for, farmers across the United States. She was well-qualified to work in the agriculture field as a former national chairman of the American Farm Bureau Women, chairman of the Presidential Task Force on Rural Development, president of the American Country Life Association, and member of the board of directors of the Agricultural Hall of Fame. She was well-qualified to work in the appropriations field as a winner of the Watchdog of the Treasury Award every year she has been in Congress.

The gentlewoman from Nebraska may appear grandmotherly, soft spoken, and modest, but do not let that image fool you. She can turn into a tiger when she wants something for her home State. I can still remember her strong interest in ensuring that essential air service to small, rural communities continued to be funded despite administration opposition. VIRGINIA telephone me, wrote me, called on me in my office, buttonholed me in the hall, saw me on the floor, and chatted with me in committee. "Now LARRY," she would start, finger wagging in schoolmarm fashion, "rural areas need air services." I might add that VIRGINIA got what she wanted.

It has been a genuine pleasure to know and serve with VIRGINIA SMITH. I wish her and her husband, Haven, all the best in retirement.

Mr. LIVINGSTON. Mr. Speaker, I rise tonight in heartfelt tribute to a Member who has truly enriched my experiences here.

I have worked side-by-side with VIRGINIA SMITH since joining this august group back in 1977. We have served together on the Appropriations Committee, and have frequently found ourselves on the same side on many tough questions. All the time, she has conducted herself with the dignity and the grace that befits a lady of her stature.

Throughout my 13 years here, I have admired her steadfast devotion to constituents, to State and to country. It always seemed that, no matter what the problem, she brought a commonsense, Midwestern approach to bear. For that, VIRGINIA, I thank you.

In short, Mr. Speaker, the House of Representatives is a better place for having been graced by VIRGINIA SMITH these last 16 years. As she leaves us now, I would only say, "Bon voyage and congratulations on a job well done."

LEGISLATIVE PROGRAM

(Mr. HOYER asked and was given permission to address the House for 1 minute.)

Mr. HOYER. Mr. Speaker, I want to announce to the Members of the House that we will be taking up just a few suspensions. The paperwork is still being done. We hope to have it within the hour, prior to 4 o'clock, at which time we will immediately take up the reconciliation bill.

However, we will do a few suspensions in that timeframe.

SILVER COIN PROOF SETS ACT

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3237) to authorize the Secretary of the Treasury to sell certain silver proof coin sets, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Texas?

Mr. HILER. Mr. Speaker, reserving the right to object, I yield to the gentleman from Texas [Mr. GONZALEZ] for an explanation of the bill.

Mr. GONZALEZ. Mr. Speaker, on Tuesday, October 23, the Senate passed by voice vote, S. 3237, a bill which authorizes the Secretary of the Treasury to establish an annual sale of silver proof coin sets.

Under the provisions of this bill, coins will be made of an alloy of 90 percent silver and 10 percent copper. The Secretary will be required to obtain the silver from existing federal stockpiles and, should the supply be exhausted, the Secretary shall purchase silver mined in the United States providing that the price for the silver does not cost more than the average world price for silver.n

Although the authority to sell silver proof coin sets was contained in legislation passed in both the House and the Senate last year, the sets were never authorized because of disagreements involving other provisions in the bills. Hearings on this legislation were held again this year and the Director of the Mint has testified on a number of occasions that she had no objections to the sale of silver proof coin set.

Mr. Speaker, I urge the adoption of this bill.

Mr. HILER. Mr. Speaker, further reserving the right to object, as the

chairman of the full Committee on Banking, Finance and Urban Affairs has mentioned, this was legislation that was caught up in controversy at the tail end of the first session of the 101st session of the Congress.

The part of this bill represented was not controversial. It will be a very, very significant program for the U.S. Mint and the numismatic community. I urge my colleagues to support this provision.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3237

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Silver Coin Proof Sets Act".

SEC. 2. SILVER COIN PROOF SETS.

Section 5132(a) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5);

(2) by striking "(2)" in paragraph (4), as redesignated, and inserting "(3)"; and

(3) by inserting the following new paragraph:

"(2)(A) In addition to the coins described in paragraph (1), the Secretary shall sell annually to the public directly and by mail, sets of proof coins minted under paragraphs (1) through (6) of section 5112(a).

"(B) Notwithstanding any other provision of law, for purposes of this paragraph—

"(i) the coins described in paragraphs (1) through (4) of section 5112(a) shall be made of an alloy of 90 percent silver and 10 percent copper; and

"(ii) all coins minted under this paragraph shall have a mint mark indicating the place of manufacture.

"(C) All coins minted under this paragraph shall be considered to be—

"(i) numismatic items for purposes of paragraph (1) and section 5111(a)(3); and

"(ii) legal tender, as provided in section 5103.

"(D) The Secretary shall obtain silver for coins minted under this paragraph by purchase from stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.). At such time as the silver stockpile is depleted, the Secretary shall obtain silver for such coins by purchase of silver mined from natural deposits in the United States or in a territory or possession of the United States not more than 1 year following the month in which the ore from which it is derived was mined. The Secretary shall pay not more than the average world price for such silver. The Secretary may issue such regulations as may be necessary to carry out this subparagraph.".

The SPEAKER pro tempore. The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

COASTAL BARRIER IMPROVEMENT ACT OF 1989

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and take from the Speaker's table the bill (H.R. 2840) to reauthorize the Coastal Barrier Resources Act, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read as follows:

Senate amendments: Page 2, strike out lines 9 to 13, and insert:

"(2) CONFORMING AMENDMENTS.—Section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) is amended—

"(A) in subsection (a), by striking "Coastal Barrier Resources".

"(B) in subsection (b)(1), by striking "of the enactment of this Act" and inserting in lieu thereof "on which the relevant System unit or portion of the System unit was included within the System under this Act or the Coastal Barrier Improvement Act of 1990".

"(C) at the end of subsection (b)(2), by striking "of enactment".

Page 2, after line 13, insert:

(c) OTHERWISE PROTECTED AREAS.—Section 3(1) of the Act (16 U.S.C. 3502(1)) is amended—

(1) by striking "(i)" immediately before "contain few"; and

(2) by inserting a period immediately following "ecological processes" and striking the balance of the sentence.".

Page 2, line 24, strike out "June 20" and insert: October 24

Page 4, line 16, before "Not" insert: (1)

Page 4, line 18, strike out "(1)" and insert: (A)

Page 4, line 23, strike out "(2)" and insert: (B)

Page 5, after line 4, insert:

(2) If, in the case of any minor and technical modification to the boundaries of System units made under the authority of subsection (d) of this section, an appropriate chief executive officer of a State, county or equivalent jurisdiction, or State coastal zone management agency to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, or if the Secretary fails to adopt a modification pursuant to a proposal submitted by an appropriate State coastal zone management agency under paragraph (1) of this subsection, the Secretary shall submit to the chief executive officer a written justification for the failure to make modifications consistent with such comments or proposals.

Page 5, line 10, strike out "area of qualified" and insert: undeveloped

Page 5, line 10, after "barrier" insert: not included within the System;

Page 5, strike out lines 11 to 14

Page 5, line 15, strike out "coastal zone management agency" and insert: Governor

Page 5, lines 16 and 17, strike out "and which has such a program approved"

Page 5, line 18, strike out "the area of qualified coastal barrier" and insert: those undeveloped coastal barriers not included within the System

Page 5, line 20, strike out "1 year" and insert: 18 months

Page 5, line 22, strike out "a State coastal zone management agency" and insert: the Governor of any State

Page 6, lines 16 and 17, strike out "State coastal zone management agency" and insert: Governor of a State

Page 6, line 21, strike out "(d)" and insert: (e)

Page 6, after line 21, insert:

(d) ADDITION OF EXCESS FEDERAL PROPERTY.—(1) CONSULTATION AND DETERMINATION.—Prior to transfer or disposal of excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et. seq.) that may be an undeveloped coastal barrier, the Administrator of General Services shall consult with and obtain from the Secretary a determination as to whether and what portion of the property constitutes an undeveloped coastal barrier. Not later than one hundred and eighty days after the initiation of such consultation, the Secretary shall make and publish notice of such determination. Immediately upon issuance of a positive determination, the Secretary shall—

(A) prepare a map depicting the undeveloped coastal barrier portion of such property; and

(B) shall publish in the Federal Register notice of the addition of such property to the System.

(2) EFFECTIVE DATE OF INCLUSION.—An area to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under subsection (d)(1)(B) with respect to that area.

(3) REVISION OF MAPS.—As soon as practicable after the date on which a unit is added to the System under subsection (d)(2), the Secretary shall revise the maps referred to in section 4(a) of the Act (as amended by section 3 of this Act) to reflect each such addition.

Page 6, line 22, strike out "(d)" and insert: (e)

Page 6, line 24, strike out "18 months" and insert: 2 years

Page 7, lines 15 and 16, strike out "State coastal zone management agency" and insert: Governor of a State

Page 8, line 3, strike out "(e)" and insert: (f)

Page 8, line 7, strike out " State coastal zone management" and insert: Governor of a State

Page 8, line 9, after "(c)" insert: or of an addition to the System pursuant to subsection (d),

Page 11, lines 14 and 15, strike out "of the enactment of the Coastal Barrier Improvement Act of 1990" and insert: on which the relevant System unit or portion of the System unit was included within the System

Page 14, strike out all after line 15 over to and including line 10 on page 10, and insert:

(2) PREPARATION AND SUBMISSION OF MAPS.—

(A) As soon as practicable after the date of the enactment of this Act, the Secretary shall prepare maps identifying the boundaries of those undeveloped coastal barriers (as that term is defined in section 3(1) of the Coastal Barrier Resources Act (16 U.S.C. 3502(1)) of the United States bordering the Pacific Ocean south of 49 degrees north latitude.

(B) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Environment and Public Works of the Senate maps identifying the boundaries of those undeveloped coastal barriers of the United

States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System."

Page 20, line 8, after "is" insert: "in".

Page 20, line 9, after "protected" insert: "area".

Page 24, strike out all after line 23 over to and including line 2 on page 25 and insert:

(1) the term "undeveloped coastal barrier" means—

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that —

(i) is subject to wave, tidal, and wind energies, and

(ii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters;

but only if such features and associated habitats contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes.

(2) the term "otherwise protected area" means an undeveloped coastal barrier within the

Page 25, line 7, strike out "(2)" and insert: "(3)".

Page 25, line 10, strike out "(3)" and insert: "(4)".

Page 25, line 12, strike out "(4)" and insert: "(5)".

Page 26, after line 10, insert:

SEC. 14. CERTIFICATION OF COMPLIANCE.

Section 7 of the Coastal Barrier Resources Act (16 U.S.C. 3506) is amended to read as follows:

"SEC. 7. CERTIFICATION OF COMPLIANCE.

"(a) REGULATIONS.—Not later than twelve months after the date of enactment of the Coastal Barrier Improvement Act of 1990, the head of each Federal agency affected by this Act shall promulgate regulations to assure compliance with the provisions of this Act.

"(b) CERTIFICATION.—The head of each Federal agency affected by this Act shall report and certify that each such agency is in compliance with the provisions of this Act. Such reports and certifications shall be submitted annually to the Committees and the Secretary.".

SEC. 15. DARE COUNTY, NORTH CAROLINA TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina all rights, title, and interest of the United States in Coast Guard property and improvements located on the northern end of Pea Island east side of State road 1257, 0.3 miles north of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.

The SPEAKER pro tempore. Is a second demanded?

Mr. GOSS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes and the gentleman from Florida [Mr. Goss] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2840 is a bill that has three purposes: To save money, to save the environment, and to save human lives.

The bill expands and improves the National Coastal Barrier Resources System, thereby providing increased protection for hundreds of thousands of acres of environmentally fragile areas along our Nation's coasts.

If enacted, the bill would prohibit Federal subsidies for development on hundreds of thousands of acres of currently undeveloped coastal barriers. In so doing, it will discourage perilous and unwise development in coastal areas and save the Federal Government hundreds of millions of dollars.

Coastal barriers deserve and need special protection. They create and maintain the wetlands and estuaries that nourish our commercial and recreational fisheries; they provide habitat for migratory waterfowl; and they provide boundless opportunities for recreation. For these reasons and because coastal barriers are so vulnerable to damage from erosion and flood, they are dangerous places to live, expensive places to insure, and the wrong places to build.

The Coastal Barriers Resources System was created 7 years ago to ban Federal flood insurance, housing loans, highway grants, and other support for ecologically harmful development in certain coastal barriers. According to the Department of the Interior, the system has already saved the Federal Government more than $1 billion.

The bill before us today reflects 2 years of hearings, meetings, and site visits conducted by members and staff, using recommendations provided by the Department of the Interior as a starting point. The amendments made by the bill would add over 750,000 acres of undeveloped coastal barriers and associated wetlands to the system. Included in the system, for the first time, would be almost 30,000 acres along the shores of the Great Lakes; 65,000 acres in the Florida Keys; over 20,000 acres in Puerto Rico; and 3,700 acres in the Virgin Islands. Hundreds of thousands of acres of wetlands and secondary coastal barriers along the Atlantic and gulf coasts would be added to the system, as well.

It is important to emphasize that under the bill, citizens will not be prevented from developing currently undeveloped coastal barriers, but they will have to do so, not at the risk of the Federal taxpayer, but at their own risk and expense.

In closing, I would like to thank the chairman of the full committee, the gentleman from North Carolina [Mr. JONES]; the chairman of the Subcommittee on Oceanography and Great Lakes, the gentleman from Michigan [Mr. HERTEL]; and the ranking minority member of our committee, the gentleman from Michigan [Mr. DAVIS]; for their help in bringing this bill to the floor. I also congratulate the junior Senator from Rhode Island for his leadership in gaining approval for the bill in the other body.

Mr. Speaker, it is not often we come up with a program that protects the environment, protects people, and protects the Federal Treasury, but that's what the Coastal Barrier Resources System has been doing for the past 8 years, and that's what this bill will help us do twice as effectively in the future.

Mr. GOSS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2840 and urge its adoption.

H.R. 2840 was passed by the House earlier this year. It is the product of extensive work by House and Senate committees, including hearings, site visits, and consultations with the affected public. The bill we are addressing today contains primarily the House language with the exception of small changes made by the Senate. The members of our committee have examined these changes and found them to be acceptable.

H.R. 2840 is one of those rare pieces of legislation that help protect the environment while saving the taxpayers money. I believe it should be supported by the Members of the House.

Mr. STUDDS. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. ORTIZ].

Mr. ORTIZ. Mr. Speaker, I do support the bill. It is a good bill. I thank the chairman of the committee, the gentleman from Massachusetts [Mr. STUDDS].

Mr. DAVIS. Mr. Speaker, I rise in support of H.R. 2840, a bill that may well affect the lives of the 2,300 Great Lakes landowners who live in my district. The reason I know this is because I contacted every one of them to explain the Coastal Barrier Resources System and to ask for their help in our deliberations. Because of this, I would like to thank Chairmen HERTEL and STUDDS for their extraordinary cooperation in seeing that the extension of the Coastal Barrier Resources System to this new geographic area is done as fairly and accurately as possible. Chairman HERTEL should be especially commended for marshaling this bill through the House and seeing that our interests were protected when the Senate considered this bill.

The bill before us will include 33,000 acres of Great Lakes shoreline and habitat in the system, of which over 13,000 acres are in my district alone. In fact, my district will have more coastal barrier units—36—than any

other in the country, and Michigan will have more new CBRA areas—46—than any other State in the Nation, save Virginia and New York.

The areas which were not included in the bill in many cases were misidentified by the Department of the Interior because of outdated maps, unclear aerial photography, and lack of site visits to verify their eligibility. However, the included areas represent the Great Lakes' most fragile coastal shores which are prone to erosion and flooding caused by severe winter storms and which serve as important fish and wildlife habitat.

Mr. Speaker, I urge my colleagues to support the bill as is, which may do much to protect Federal investments when the Great Lakes rise to record levels again, while preserving a delicate balance for those who live and work there. Much time and energy has been spent here, especially by Chairman HERTEL, and we should not leave this legislation unfinished.

Mr. STUDDS. Mr. Speaker, I would like to take a moment to clarify the intentions of the House and Senate conferees with respect to section 6217, establishing a new Coastal Nonpoint Pollution Control Program. This section is drawn largely from titles II and III of H.R. 2647, a bill to reauthorize the Coastal Zone Management Act [CZMA], as reported earlier this year by the Committee on Merchant Marine and Fisheries. A major difference is that section 6217 is drafted as a freestanding provision of law, rather than as amendments to the CZMA and the Clean Water Act [CWA].

The central purpose of section 6217 is to strengthen the links between Federal and State coastal zone management and water quality programs and to enhance State and local efforts to manage land use activities which degrade coastal waters and coastal habitats.

So-called nonpoint source pollution, caused by a variety of land use practices, is the leading cause of water quality degradation in many coastal water bodies. Section 6217(a) requires all coastal States to develop and implement a Coastal Nonpoint Pollution Control Program. Although the bill does not attempt to dictate who or what authorities within a State must meet this mandate, the conferees intend that State coastal zone management authorities and water pollution control agencies will have a dual and coequal role. In this respect, the division of responsibility at the State level will mirror that at the Federal level between the Environmental Protection Agency [EPA] and the National Oceanic and Atmospheric Administration [NOAA].

The purpose of the nonpoint pollution control program is to develop and implement land use management measures that are needed to protect and restore coastal waters. Several points should be made about the intention of the conferees with respect to these State programs:

First, the responsibility for developing and implementing land use management measures rests solely with the States, not with NOAA or EPA;

Second, the management measures are required—at a minimum—to conform to and comply with guidelines established by EPA, as provided under subsection (g);

Third, both the program and the management measures are to be integrated closely with other Clean Water Act and Coastal Zone Management programs. Thus, the new program will not and ought not bear the full burden of restoring and maintaining coastal water quality, but will operate instead in conjunction with controls on point sources established under the Clean Water Act and associated State programs.

Section 6217(a)(2) outlines requirements for integrating the new program into existing programs. The requirements are needed because of the freestanding nature of the new program and the concomitant need to minimize unnecessary duplication or conflicts at the Federal, State, or local level. This provision is intended to strengthen the requirements for protecting coastal waters that now exist in section 319 of the Clean Water Act and in the Coastal Zone Management Program, as reflected in the implementation requirements in section 6217(c)(2).

Subsection (b) spells out the core requirements of the program. The first requirement is that States develop and implement management measures for the control of nonpoint sources of pollution in coastal waters generally. These management measures must—at a minimum—conform to the guidance developed by EPA pursuant to subsection (g).

The requirement that States develop and implement these management measures has been intentionally divorced from identified water quality problems because of the enormous difficulty of establishing cause and effect linkages between land use and water quality. The current water quality planning provisions and nonprofit source control provisions of the Clean Water Act suggest that States can only impose additional controls on nonpoint sources if they can demonstrate water quality problems. But the fact is that, with few exceptions, neither States nor EPA have the money or the time to create the complex monitoring programs that would be required to document a causal link between specific land use activities and specific water quality problems. Under the core program established in subsection (b), States will be able to concentrate their resources on developing and implementing measures that experts agree will reduce pollution significantly.

Subsection (b) also requires a second tier of pollution control efforts that are targeted to those coastal land uses that are recongized to cause or contribute to water quality problems generally. Paragraph (1) requires that the program identify land uses that may cause or contribute significantly to a failure to achieve or maintain water quality standards in coastal waters, or that foreseeably threaten coastal waters with increased pollution. The requirements of paragraph (1) are intended to mesh with and expand upon the basic obligation under the Clean Water Act for States to achieve and maintain water quality standards and designated uses. Where these standards or designated uses are not being achieved, paragraph (1) requires the imposition of additional management measures on land uses that contribute significantly to water quality degradation.

Paragraph (2) requires the identification of important coastal areas—as contrasted to individual land uses under paragraph (1)—that need additional measures to protect against anticipated pollution problems. Unlike paragraph (1), the imposition of additional management measures are not contingent upon identified water quality problems, and are to be established as a preventative step to avoid water quality problems that might otherwise develop.

For those land uses and critical areas identified in paragraphs (1) and (2), the subsection requires States to implement additional measures to achieve and maintain applicable water quality standards and to protect designated uses beyond those required in the core program. These additional measures will be developed by the individual States, tailored to the specific problems they must solve, and built upon technical guidance provided by EPA and NOAA.

Subsections (b) (4) and (5) provide for technical assistance and public participation under the program. Paragraph (6) outlines administrative mechanisms to be developed to improve the integration of the program with existing State programs associated with land use, point source pollution and habitat protection. No one particular mechanism is required by this paragraph, but the establishment of appropriate mechanisms to achieve the desired coordination is required. Subsection (b)(7) requires those administering the program at the State level to recommend modifications to the inland boundary of the coastal zone if necessary to achieve the purposes of the CZMA and this program. Paragraph (7) is to be understood in conjunction with the review of the same issue by NOAA and EPA, as required by subsection (e).

Subsection (c) provides for the review and approval of the State programs by NOAA and EPA. The conferees expect that the Administrator of EPA and the Secretary of Commerce (the Secretary) will develop an explicit agreement on the appropriate division of agency responsibilities under this section. Recognizing EPA's role in controlling water pollution, the conferees expect the Administrator to assume the lead responsibility under the agreement for determining how the new program will mesh with existing point source controls and whether States are meeting their obligation to achieve water quality standards and protect designated uses.

The conferees expect that NOAA will assume primary responsibility for determining the appropriate role for State coastal zone management agencies in developing and implementing land use management measures. EPA would have the primary responsibility for assigning corresponding roles for approved State nonpoint source management programs under section 319 of the Clean Water Act.

Subsection (c)(2) provides for the implementation of the new program through existing State nonpoint source pollution and coastal zone management programs. The requirement to make necessary changes in those programs exists despite the fact that this section does not amend either section 319 of the Clean Water Act or the Coastal Zone Management Act.

Subsection (c)(3) requires that certain assistance under the Coastal Zone Management

Act and the Clean Water Act be withheld if a State does not meet the requirements of this section. The authority to withhold funds shall be exercised in accordance with the agreed allocation of responsibilities between the two agencies pursuant to subsection (c)(1) and shall reflect EPA and NOAA's traditional responsibilities for the Clean Water Act and the CZMA, respectively. The conferees expect that the Administrator and the Secretary to consult closely with each other and with State officials prior to exercising this authority.

Subsection (d) requires the Secretary and the EPA to provide technical assistance to States to develop and implement their Coastal Nonpoint Source Control Programs. This technical assistance would extend beyond the development of guidance under subsection (g) to assistance in developing and evaluating additional management measures that may be required of States under the program.

Subsection (e) requires the Secretary, in consultation with EPA, to review and make recommendations to States on the adequacy of the inland boundaries to their coastal zones. The conferees intend this requirement to be read in conjunction with the obligation of States to review the adequacy of their inland boundaries and propose appropriate modifications, as called for under subsection (b)(7).

Subsection (g) requires EPA, in consultation with the Secretary, the U.S. Fish and Wildlife Service and other Federal agencies, to develop and publish guidance specifying the minimum management measures that will apply to State Coastal Nonpoint Pollution Control Program. The conferees intend that States, working from the guidance, will establish and implement in their programs the management measures provided for in that guidance.

Because State coastal zone management program are expected to serve as a major conduit for implementing these management measures, the conferees fully expect that NOAA will play a major consultative role in developing the guidance under subsection (g) to ensure that State and local authorities will be able to implement the management measures called for by it.

Under this subsection, EPA will prepare guidance specifying management measures that could be used to control nonpoint sources of pollution that affect coastal waters. The conferees expect that EPA, in developing its guidance, will concentrate on the large nonpoint sources that are widely recognized as major contributors of water pollution and on which there is broad consensus on the appropriate management measures that must be developed and implemented. These measures might include, among others, use of buffer strips, setbacks, techniques for identifying and protecting critical coastal areas and habitats, soil erosion and sedimentation controls, and siting and design criteria for water-related uses such as marinas.

Conversely, the conferees also expect that EPA will not attempt to develop guidance for management measures that will unduly intrude upon the more intimate land use authorities properly exercised at the local level.

In one sense, subsection (g) directs EPA to develop the equivalent of technology-based controls for nonpoint sources, as it has done previously for point sources under the Clean Water Act. Those technology-based controls detail pollutant limits which apply to effluents discharged from industrial and municipal point sources. As defined in subsection (g)(5), the term "management measure" is patterned after the definition of "best available technology" under section 304(b)(2) of the Clean Water Act, which also speaks in terms of economic and technical achievability.

This does not mean, however, that the conferees expect guidance under this section to have the same level of specificity for nonpoint sources as were developed by EPA for effluent guidelines under the Clean Water Act. This is true because the ability of a particular management measure to deal with nonpoint source pollution from a particular site will be subject to a variety of factors too complex to address in a single set of simple, mechanical prescriptions developed at the Federal level. Thus, the conferees expect EPA in its guidance to offer State officials a number of options and to permit them considerable flexibility in selecting the management measures appropriate for their State. This flexibility is particularly important because States will, as previously mentioned, be required to demonstrate that they can implement management measures in conformity with the EPA guidance. It may be appropriate in certain circumstances for the guidance for particular management measures to apply regionally, rather than nationally, for those sources where regional differences are substantial and must be accounted for.

It is also important to emphasize that, unlike the EPA effluent guidelines for point sources, the nonpoint pollution management measures will not be directly or automatically applicable to categories of nonpoint sources as a matter of Federal law. Instead, these measures must be established under state law through the Coastal Nonpoint Pollution Control Program. This is reflected in a new section 306(d)(16) of the CZMA, provided for in section 6206 of this Act, which requires that state coastal zone programs shall provide for enforceable policies and mechanisms to implement the applicable management measures of this new program. In short, the management measures must be enforceable under state law.

Paragraph (3) of the subsection requires the Administrator, in consultation with the Secretary, to publish proposed guidance within 6 months after enactment of the section, and promulgate final guidance within 18 months. Since the guidance is a central part of the overall program, the conferees have tied the dates by which States must submit their programs to the date of promulgation of the guidance. The conferees are cognizant of the fact that by structuring the time requirements in this manner, delay by EPA could push back the entire effort. Accordingly, the conferees expect that, if a delay develops, an action would certainly lie under Federal law to compel the Administrator to act promptly. Of course, the sufficiency of the guidance would be fully reviewable under the Administrative Procedures Act.

The conferees recognize that the requirements of the new Coastal Nonpoint Pollution Control Program represent a substantial challenge to Federal and state authorities. Without doubt, the call for technology-based management measures on nonpoint sources is a substantial advance in the basic architecture of nonpoint source programs under the Clean Water Act. While these are similar in kind to the advances in 1972 that were made in controlling point sources, there remain important distinctions, as noted above. The Conferees expect that EPA, NOAA and other Federal authorities will proceed firmly but cautiously in developing the technology-based guidance that will serve as the core of the program, and that a productive partnership will be developed both between EPA and NOAA, and between Federal and state authorities, as they move to meet these new challenges.

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Mr. STUDDS. Mr. Speaker, I have no further requests for time. Let me just assure Members that all the usual and requisite commendations of Members on both sides of the aisle are included in the Extensions of Remarks.

Mr. GOSS. Mr. Speaker, I yield back the balance of my time.

Mr. STUDDS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Massachusetts [Mr. STUDDS] that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 2840.

The question was taken and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

NATIONAL ENVIRONMENTAL EDUCATION ACT

Mr. JONTZ. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3176) to promote environmental education, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. GOODLING. Reserving the right to object, Mr. Speaker, I will not object, and I take this time only to allow the gentleman to explain his motion.

Mr. JONTZ. Mr. Speaker, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Indiana.

Mr. JONTZ. Mr. Speaker, I would be happy to explain.

This is the National Environmental Education Act, S. 3176. This is a revised version of the legislation which passed this House on Friday, September 28.

S. 3176 would establish an Office of Environmental Education within the

EPA to administer and coordinate the Federal Government's environmental education contributions.

The bill establishes an environmental education and training program for teacher training in the development and delivery of environmental education programs.

The bill also establishes an environmental educational grant program to support activities of local school systems, colleges, and public broadcasting organizations.

In addition, this legislation would establish college-level environmental internships in Federal agencies and would establish a National Environmental Education and Training Foundation.

The bill authorizes $12 million for each fiscal year 1992 and 1993, $13 million for fiscal year 1994, and $14 million for fiscal year 1995 and 1996 for the EPA and the Foundation for these activities.

Mr. Speaker, I want to take a moment first of all to thank my colleague on the Education and Labor Committee, the gentleman from California [Mr. MILLER], who introduced the original House legislation; also Chairman HAWKINS, the ranking member; the gentleman from Pennsylvania [Mr. GOODLING], and on our Select Education Subcommittee, Chairman OWENS; the ranking member, the gentleman from Texas [Mr. BARTLETT], and also thanks to Chairman DINGELL of the Energy and Commerce Committee.

Mr. Speaker, I urge support of the Members for this motion.

Mr. GOODLING. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3176

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) TITLE.—This Act may be cited as the "National Environmental Education Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Findings and policy.
Sec. 3. Definitions.
Sec. 4. Office of Environmental Education.
Sec. 5. Environmental education and training program.
Sec. 6. Environmental education grants.
Sec. 7. Environmental internships and fellowships.
Sec. 8. Environmental education awards.
Sec. 9. Environmental Education Advisory Council and Task Force.
Sec. 10. National Environmental Education and Training Foundation.
Sec. 11. Authorization.

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) Threats to human health and environmental quality are increasingly complex, involving a wide range of conventional and toxic contaminants in the air and water and on the land.

(2) There is growing evidence of international environmental problems, such as global warming, ocean pollution, and declines in species diversity, and that these problems pose serious threats to human health and the environment on a global scale.

(3) Environmental problems represent as significant a threat to the quality of life and the economic vitality of urban areas as they do the natural balance of rural areas.

(4) Effective response to complex environmental problems requires understanding of the natural and built environment, awareness of environmental problems and their origins (including those in urban areas), and the skills to solve these problems.

(5) Development of effective solutions to environmental problems and effective implementation of environmental programs requires a well educated and trained, professional work force.

(6) Current Federal efforts to inform and educate the public concerning the natural and built environment and environmental problems are not adequate.

(7) Existing Federal support for development and training of professionals in environmental fields is not sufficient.

(8) The Federal Government, acting through the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to support development of curricula, special projects, and other activities, to increase understanding of the natural and built environment and to improve awareness of environmental problems.

(9) The Federal Government, acting through the coordinated efforts of its agencies and with the leadership of the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to develop programs to provide increased emphasis and financial resources for the purpose of attracting students into environmental engineering and assisting them in pursuing the programs to complete the advanced technical education required to provide effective problem solving capabilities for complex environmental issues.

(10) Federal natural resource agencies such as the United States Forest Service have a wide range of environmental expertise and a long history of cooperation with educational institutions and technology transfer that can assist in furthering the purposes of the Act.

(b) POLICY.—It is the policy of the United States to establish and support a program of education on the environment, for students and personnel working with students, through activities in schools, institutions of higher education, and related educational activities, and to encourage postsecondary students to pursue careers related to the environment.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Agency" means the United States Environmental Protection Agency;

(3) "Federal agency" or "agency of the United States" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation;

(4) "Secretary" means the Secretary of the Department of Education;

(5) "local education agency" means any education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381) and shall include any tribal education agency;

(6) "not-for-profit" organization means an organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation pursuant to the provisions of section 501(a) of such Code;

(7) "noncommercial education broadcasting entities" means any noncommercial educational broadcasting station (and/or its legal nonprofit affiliates) as defined and licensed by the Federal Communications Commission;

(8) "tribal education agency" means a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs;

(9) "Federal natural resource management agencies" means the United States Forest Service, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service;

(10) "environmental engineering" means the discipline within engineering and science concerned with the development and application of scientific and technical solutions to protecting the aquatic and atmospheric environment, including, but not limited to, all phases of water resources planning, water supply, water treatment, air pollution characterization and control, remediation of hazardous substances, environmental transport of contaminants in surface and ground water and atmosphere, and methods for assessment and control of pollution;

(11) "environmental education" and "environmental education and training" mean educational activities and training activities involving elementary, secondary, and postsecondary students, as such terms are defined in the State in which they reside, and environmental education personnel, but does not include technical training activities directed toward environmental management professionals or activities primarily directed toward the support of noneducational research and development;

(12) "Foundation" means the National Environmental Education and Training Foundation established pursuant to section 10 of this Act; and

(13) "Board of Directors" means the Board of Directors of the National Environmental Education and Training Foundation.

SEC. 4. OFFICE OF ENVIRONMENTAL EDUCATION.

(a) The Administrator shall establish an Office of Environmental Education within the Environmental Protection Agency.

(b) The Office of Environmental Education shall—

(1) develop and support programs and related efforts, in consultation and coordination with other Federal agencies, to improve

understanding of the natural and built environment, and the relationships between humans and their environment, including the global aspects of environmental problems;

(2) support development and the widest possible dissemination of model curricula, educational materials, and training programs for elementary and secondary students and other interested groups, including senior Americans;

(3) develop and disseminate, in cooperation with other Federal agencies, not-for-profit educational and environmental organizations, State agencies, and noncommercial educational broadcasting entities, environmental education publications and audio/visual and other media materials;

(4) develop and support environmental education seminars, training programs, teleconferences, and workshops for environmental education professionals, as provided for in section 5 of this Act;

(5) manage Federal grant assistance provided to local education agencies, institutions of higher education, other not-for-profit organizations, and noncommercial education broadcasting entities, under section 6 of this Act;

(6) administer the environmental internship and fellowship programs provided for in section 7 of this Act;

(7) administer the environmental awards program provided for in section 8 of this Act;

(8) provide staff support to the Advisory Council and Task Force provided for in section 9 of this Act;

(9) assess, in coordination with other Federal agencies, the demand for professional skills and training needed to respond to current and anticipated environmental problems and cooperate with appropriate institutions, organizations, and agencies to develop training programs, curricula, and continuing education programs for teachers, school administrators, and related professionals;

(10) assure the coordination of Federal statutes and programs administered by the Agency relating to environmental education, consistent with the provisions and purposes of those programs, and work to reduce duplication or inconsistencies within these programs;

(11) work with the Department of Education, the Federal Interagency Committee on Education, and with other Federal agencies, including Federal natural resource management agencies, to assure the effective coordination of programs related to environmental education, including environmental education programs relating to national parks, national forests, and wildlife refuges;

(12) provide information on environmental education and training programs to local education agencies, State education and natural resource agencies, and others; and

(13) otherwise provide for the implementation of this Act.

(c) The Office of Environmental Education shall—

(1) be directed by a Director who shall be a member of the Senior Executive Service;

(2) include a headquarters staff of not less than six and not more than ten full-time equivalent employees; and

(3) be supported by one full-time equivalent employee in each Agency regional office.

SEC. 5. ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM.

(a) There is hereby established an Environmental Education and Training Program. The purpose of the program shall be to train educational professionals in the development and delivery of environmental education and training programs and studies.

(b) The functions and activities of the program shall include, at a minimum—

(1) classroom training in environmental education and studies including environmental sciences and theory, educational methods and practices, environmental career or occupational education, and topical environmental issues and problems;

(2) demonstration of the design and conduct of environmental field studies and assessments;

(3) development of environmental education programs and curriculum, including programs and curriculum to meet the needs of diverse ethnic and cultural groups;

(4) sponsorship and management of international exchanges of teachers and other educational professionals between the United States, Canada, and Mexico involved in environmental programs and issues;

(5) maintenance or support of a library of environmental education materials, information, literature, and technologies, with electronic as well as hard copy accessibility;

(6) evaluation and dissemination of environmental education materials, training methods, and related programs;

(7) sponsorship of conferences, seminars, and related forums for the advancement and development of environmental education and training curricula and materials, including international conferences, seminars, and forums;

(8) supporting effective partnerships and networks and the use of distant learning technologies; and

(9) such other activities as the Administrator determines to be consistent with the policies of this Act.

Special emphasis should be placed on developing environmental education programs, workshops, and training tools that are portable and can be broadly disseminated.

(c)(1) The Administrator shall make a grant on an annual basis to an institution of higher education or other institution which is a not-for-profit institution (or consortia of such institutions) to operate the environmental education and training program required by this section.

(2) Any institution of higher education or other institution (or consortia of such institutions) which is a not-for-profit organization and is interested in receiving a grant under this section may submit to the Administrator an application in such form and containing such information as the Administrator may require.

(3) The Administrator shall award grants under this section on the basis of—

(A) the capability to develop environmental education and training programs;

(B) the capability to deliver training to a range of participants and in a range of settings;

(C) the expertise of the staff in a range of appropriate disciplines;

(D) the relative economic effectiveness of the program in terms of the ratio of overhead costs to direct services;

(E) the capability to make effective use of existing national environmental education resources and programs;

(F) the results of any evaluation under paragraph (5) of this subsection; and

(G) such other factors as the Administrator deems appropriate.

(4) No funds made available to carry out this section shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building.

(5) The Administrator shall establish procedures for a careful and detailed review and evaluation of the environmental education and training program to determine whether the quality of the program being operated by the grantee warrants continued support under this section.

(d)(1) Individuals eligible for participation in the program are teachers, faculty, administrators and related support staff associated with local education agencies, colleges, and universities, employees of State education, environmental protection, and natural resource departments, and employees of not-for-profit organizations involved in environmental education activities and issues.

(2) Individuals shall be selected for participation in the program based on applications which shall be in such form as the Administrator determines to be appropriate.

(3) In selecting individuals to participate in the program, the Administrator shall provide for a wide geographic representation and a mix of individuals, including minorities, working at primary, secondary, postsecondary levels, and with appropriate other agencies and departments.

(4) Individuals selected for participation in the program may be provided with a stipend to cover travel and accommodations from grant funds awarded pursuant to this section in such amounts as the Administrator determines to be appropriate.

SEC. 6. ENVIRONMENTAL EDUCATION GRANTS.

(a) The Administrator may enter into a cooperative agreement or contract, or provide financial assistance in the form of a grant, to support projects to design, demonstrate, or disseminate practices, methods, or techniques related to environmental education and training.

(b) Activities eligible for grant support pursuant to this section shall include, but not be limited to, environmental education and training programs for—

(1) design, demonstration, or dissemination of environmental curricula, including development of educational tools and materials;

(2) design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;

(3) projects to understand and assess a specific environmental issue or a specific environmental problem;

(4) provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and

(5) design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.

(c) In making grants pursuant to this section, the Administrator shall give priority to those proposed projects which will develop—

(1) a new or significantly improved environmental education practice, method, or technique;

(2) an environmental education practice, method, or technique which may have wide application;

(3) an environmental education practice, method, or technique which addresses a skill or scientific field identified as a priority in the report developed pursuant to section 9(d) of this Act; and

(4) an environmental education practice, method or technique which addresses an environmental issue which, in the judgment of the Administrator, is of a high priority.

(d) The program established by this section shall include solicitations for projects, selection of suitable projects from among those proposed, supervision of such projects, evaluation of the results of projects, and dissemination of information on the effectiveness and feasibility of the practices, methods, techniques and processes. Within one year of the date of enactment of this Act, the Administrator shall publish regulations to assure satisfactory implementation of each element of the program authorized by this section.

(e) Within 90 days after the date on which amounts are first appropriated for carrying out this Act, and each year thereafter, the Administrator shall publish a solicitation for environmental education grants. The solicitation notice shall prescribe the information to be included in the proposal and other information sufficient to permit the Administrator to assess the project.

(f) Any local education agency, college or university, State education agency or environmental agency, not-for-profit organization, or noncommercial educational broadcasting entity may submit an application to the Administrator in response to the solicitations required by subsection (e) of this section.

(g) Each project under this section shall be performed by the applicant, or by a person satisfactory to the applicant and the Administrator.

(h) Federal funds for any demonstration project under this section shall not exceed 75 percent of the total cost of such project. For the purposes of this section, the non-Federal share of project costs may be provided by inkind contributions and other noncash support. In cases where the Administrator determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, the Administrator may approve grants under this section with a matching requirement other than that specified in this subsection, including full Federal funding.

(i) Grants under this section shall not exceed $250,000. In addition, 25 percent of all funds obligated under this section in a fiscal year shall be for grants of not more than $5,000.

SEC. 7. ENVIRONMENTAL INTERNSHIPS AND FELLOWSHIPS.

(a) The Administrator shall, in consultation with the Office of Personnel Management and other appropriate Federal agencies, provide for internships by postsecondary level students and fellowships for in-service teachers with agencies of the Federal Government.

(b) The purpose of internships and fellowships pursuant to this section shall be to provide college level students and in-service teachers with an opportunity to work with professional staff of Federal agencies involved in environmental issues and thereby gain an understanding and appreciation of such issues and the skills and abilities appropriate to such professions.

(c) The Administrator shall, to the extent practicable, support not less than 250 internships each year and not less than 50 fellowships each year.

(d) The internship and fellowship programs shall be managed by the Office of Environmental Education. Interns and fellows may serve in appropriate agencies of the Federal Government including, but not limited to, the Environmental Protection Agency, the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Council on Environmental Quality, Federal natural resource management agencies, the Department of Agriculture, and the National Science Foundation.

(e) Interns shall be hired on a temporary, full-time basis for not to exceed 6 months and shall be compensated appropriately. Fellows shall be hired on a temporary full-time basis for not to exceed 12 months and shall be compensated appropriately. Federal agencies hiring interns shall provide the funds necessary to support salaries and related costs.

(f)(1) Individuals eligible for participation in the internship program are students enrolled at accredited colleges or universities who have successfully completed not less than four courses or the equivalent in environmental sciences or studies, as determined by the Administrator.

(2) Individuals eligible for participation in the fellowship program are in-service teachers who are currently employed by a local education agency and have not less than 2 years experience in teaching environmental education, environmental sciences, or related courses.

(g) Individuals shall be selected for internships and fellowships based on applications which shall be in such form as the Administrator considers appropriate.

(h) In selecting individuals for internships and fellowships, the Administrator shall provide for wide geographic, cultural, and minority representation.

SEC. 8. ENVIRONMENTAL EDUCATION AWARDS.

(a) The Administrator shall provide for a series of national awards recognizing outstanding contributions to environmental education.

(b) In addition to such other awards as the Administrator may provide for, national environmental awards shall include—

(1) The "Theodore Roosevelt Award" to be given in recognition of an outstanding career in environmental education, teaching, or administration;

(2) The "Henry David Thoreau Award" to be given in recognition of an outstanding contribution to literature on the natural environment and environmental pollution problems;

(3) The "Rachael Carson Award" to be given in recognition of an outstanding contribution in print, film, or broadcast media to public education and information on environmental issues or problems; and

(4) The "Gifford Pinchot Award" to be given in recognition of an outstanding contribution to education and training concerning forestry and natural resource management, including multiple use and sustained yield land management.

(c) Recipients of education awards provided for in subsection (b) shall be nominated by the Environmental Education Advisory Council provided for in section 9 of this Act.

(d) The Administrator may provide for the "President's Environmental Youth Awards" to be given to young people in grades kindergarten through twelfth for an outstanding project to promote local environmental awareness.

(e)(1) The Chairman of the Council on Environmental Quality, on behalf of the President, is authorized to develop and administer an awards program to recognize elementary and secondary education teachers and their local educational agencies who demonstrate excellence in advancing environmental education through innovative approaches. One teacher, and the local education agency employing such teacher, from each State, including the District of Columbia and the Commonwealth of Puerto Rico, are eligible to be selected for an award pursuant to this subsection.

(2) The Chairman is authorized to provide a cash award of up to $2,500 to each teacher selected to receive an award pursuant to this section, which shall be used to further the recipient's professional development in environmental education.

(3) The Chairman is also authorized to provide a cash award of up to $2,500 to the local education agency employing any teacher selected to receive an award pursuant to this section, which shall be used to fund environmental educational activities and programs. Such awards may not be used for construction costs, general expenses, salaries, bonuses, or other administrative expenses.

SEC. 9. ENVIRONMENTAL EDUCATION ADVISORY COUNCIL AND TASK FORCE.

(a) There is hereby established a National Environmental Education Advisory Council and a Federal Task Force on Environmental Education.

(b)(1) The Advisory Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this Act. With respect to such matters, the Council shall be the exclusive advisory entity for the Administrator. The Council may exchange information with other Advisory Councils established by the Administrator. The Office of Environmental Education shall provide staff support to the Council.

(2) The Advisory Council shall consist of 11 members appointed by the Administrator after consultation with the Secretary. Two members shall be appointed to represent primary and secondary education (one of whom shall be a classroom teacher); two members shall be appointed to represent colleges and universities; two members shall be appointed to represent not-for-profit organizations involved in environmental education; two members shall be appointed to represent State departments of education and natural resources; two representatives shall be appointed to represent business and industry; and one representative shall be appointed to represent senior Americans. A representative of the Secretary shall serve as an ex officio member of the Advisory Council. The conflict of interest provision at section 208(a) of title 18, United States Code, shall not apply to members' participation in particular matters which affect the financial interests of employers which they represent pursuant to this subsection.

(3) The Administrator shall provide that members of the Council represent the various geographic regions of the country, has minority representation, and that the professional backgrounds of the members include scientific, policy, and other appropriate disciplines.

(4) Each member of the Advisory Council shall hold office for a term of 3 years, except that—

(A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of the members first taking office shall expire as follows: four shall expire 3 years after the date of enactment of this Act, four shall expire 2 years after

such date, and three shall expire 1 year after such date, as designated by the Administrator at the time of appointment.

(5) Members of the Advisory Council appointed under this section shall, while attending meetings of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(6) Section 14(a) of the Federal Advisory Committee Act relating to termination, shall not apply to the Advisory Council.

(c)(1) The Federal Task Force on Environmental Education shall advise, consult with and make recommendations to the Administrator on matters relating to implementation of this Act and assure the coordination of such implementation activities with related activities of other Federal agencies.

(2) Membership of the Task Force shall include the—

(A) Department of Education,

(B) Department of the Interior,

(C) Department of Agriculture,

(D) the Environmental Protection Agency,

(E) National Oceanic and Atmospheric Administration,

(F) Council on Environmental Quality,

(G) Tennessee Valley Authority, and

(H) National Science Foundation.

(3) The Environmental Protection Agency shall chair the Task Force.

(4) The Administrator may ask other Federal agencies to participate in the meetings and activities of the Task Force where the Administrator finds it appropriate in carrying out the requirements of this Act.

(d)(1) The Advisory Council shall, after providing for public review and comment, submit to the Congress, within 24 months of enactment of this Act and biennially thereafter, a report which shall—

(A) describe and assess the extent and quality of environmental education in the Nation;

(B) provide a general description of the activities conducted pursuant to this Act and related authorities over the previous 2-year period;

(C) summarize major obstacles to improving environmental education (including environmental education programs relating to national parks and wildlife refuges) and make recommendations for addressing such obstacles;

(D) identify personnel skills, education, and training needed to respond to current and anticipated environmental problems and make recommendations for actions to assure sufficient educational and training opportunities in these professions; and

(E) describe and assess the extent and quality of environmental education programs available to senior Americans and make recommendations thereon; describe the various Federal agency programs to further senior environmental education; and evaluate and make recommendations as to how such educational apparatuses could best be coordinated with non-profit senior organizations across the Nation, and environmental education institutions and organizations now in existence.

(2) The Federal Task Force on Environmental Education shall review and comment on a draft of the report to Congress.

SEC. 10. THE NATIONAL ENVIRONMENTAL EDUCATION AND TRAINING FOUNDATION.

(a) ESTABLISHMENT AND PURPOSES.—

(1) ESTABLISHMENT.—(A) There is hereby established the National Environmental Education and Training Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

(B) The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States.

(2) PURPOSES.—The purposes of the Foundation are—

(A) subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

(3) PROGRAMS.—The Foundation will develop, support, and/or operate programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

(b) BOARD OF DIRECTORS.—

(1) ESTABLISHMENT AND MEMBERSHIP.—(A) The Foundation shall have a governing Board of Directors (hereafter referred to in this section as "the Board"), which shall consist of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board shall oversee the activities of the Foundation and shall assure that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to environmental education and training.

(B) The Administrator of the Environmental Protection Agency shall, pursuant to paragraph (2), appoint the Director of the Office of Environmental Education established pursuant to section 3 of this Act as an ex-officio member of the Board. Ex officio membership shall also be offered to other Federal agencies or departments with an interest and/or experience in environmental education and training.

(C) Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(2) APPOINTMENT AND TERMS.—(A) Members of the Board shall be appointed by the Administrator of the Environmental Protection Agency.

(B) Within 90 days of the date of the enactment of this Act, and as appropriate thereafter, the Administrator shall publish in the Federal Register an announcement of appointments of Directors of the Board. At the same time, the Administrator shall transmit a copy of such announcement to the Education and Labor Committee and the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate. Such appointments shall become final and effective 90 days after publication in the Federal Register.

(C) The directors shall be appointed for terms of 4 years, except that the Administrator, in making the initial appointments to the Board, shall appoint 5 directors to a term of 2 years, 4 directors to a term of 3 years, and 4 directors to a term of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

(3) CHAIR.—The Chair shall be elected by the Board from its members for a 2-year term.

(4) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(5) MEETINGS.—The Board shall meet at the call of the Chair at least twice a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with this subsection.

(6) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(7) GENERAL POWERS.—(A) The Board may complete the organization of the Foundation by—

(i) appointing officers and employees;

(ii) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this section; and

(iii) undertaking such other acts as may be necessary to carry out the provisions of this section.

(B) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(i) Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service,

and may be paid without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(ii) The first officer or employee appointed by the Board shall be the Executive Director of the Foundation who (I) shall serve, at the direction of the Board, as the Secretary of the Board and the Foundation's chief executive officer, and (II) shall be experienced in matters relating to environmental education and training.

(c) RIGHTS AND OBLIGATIONS OF THE FOUNDATION.—

(1) IN GENERAL.—The Foundation—

(A) shall have perpetual succession;

(B) may conduct business throughout the several States, territories, and possessions of the United States and abroad;

(C) shall have its principal offices in the District of Columbia or in the greater metropolitan area; and

(D) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The service of notice to, or service of notice upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(2) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(3) POWERS.—To carry out its purposes under section 10(a) of this Act, the Foundation shall have, in addition to the powers otherwise given it under this section, the usual powers of a corporation acting as a trustee, including the power—

(A) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(B) to acquire by purchase or exchange any real or personal property or interest therein;

(C) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(D) to sue, or to be sued, and complain or defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(E) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(F) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

(d) CONDITIONS ON DONATIONS.—

(1) For the purposes of this section, a gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current future interest therein is for the benefit of the Foundation.

(2) No donation, gift, devise, bequest, property (either real or personal), voluntary services, or any other thing of value may be accepted by the Foundation if it—

(A) is contingent upon the transmission by the Foundation of materials or information prepared by the donor or a third party in such a fashion as to convey a particular point of view favorable to the economic interests of the donor or its constituents or associates; or

(B) in the judgment of the Board carries with it an explicit or implied requirement on the part of the Foundation to do a specific act or make general representations which are to the benefit of the donor and which are not consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act.

(3) No materials bearing "logos", letterhead or other means of identification associated with a donor or third party may be transmitted by the Foundation for use in environment education and training except as required pursuant to subsection (f).

(e) ADMINISTRATIVE SERVICES AND SUPPORT.—Subject to the requirements of this subsection, the Administrator may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under subsection (b)(6) of this section, not to exceed then current Federal Government per diem rates, for a period of up to 4 years from the date of enactment of this Act, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the costs of providing such services. With respect to personnel, the Administrator may provide no more than 1 full-time employee to serve the Foundation in a policy capacity, and may provide clerical and other support staff at a level equivalent to 2 full-time equivalent employees to the Foundation, for a period not to exceed 2 years from the date of initial assignment of any personnel for this purpose.

(f) REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress a report of its proceedings and activities during the year, including a full and complete statement of its receipts, expenditures, and investments.

(g) VOLUNTEER STATUS.—The Administrator may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Environmental Protection Agency, as volunteers in the performance of the functions authorized herein, in the manner provided for under this section.

(h) AUDITS AND PETITION OF THE ATTORNEY GENERAL FOR EQUITABLE RELIEF.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (Public Law 88-504; 36 U.S.C. 1101-1103), the Foundation shall be treated as a private corporation established under Federal law.

(i) UNITED STATES RELEASE FROM LIABILITY.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

(j) AMENDMENT AND REPEAL.—The Congress expressly reserves the right to repeal or amend this section at any time.

SEC. 11. AUTHORIZATION.

(a) There is hereby authorized to be appropriated to the Environmental Protection Agency to carry out this Act not to exceed $12,000,000 for each fiscal year 1992 and 1993, not to exceed $13,000,000 for fiscal year 1994, and not to exceed $14,000,000 for each fiscal year 1995, and 1996.

(b) Of such sums appropriated in a fiscal year, 25 percent shall be available for the activities of the Office of Environmental Education, 25 percent shall be available for the operation of the environmental education and training program, 38 percent shall be available for environmental education grants, 10 percent shall be available for support of the National Environmental Education and Training Foundation, and 2 percent shall be available to support awards pursuant to section 8(e) of this Act.

(c) Funds appropriated pursuant to this section may be made available to the National Environmental Education and Training Foundation to—

(1) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local governments; and

(2) provide administrative services under section 10(d) of this Act

provided that the Administrator determines that such funds will be used to carry out the statutory purposes of the Foundation in a manner consistent with the goals, objectives and programs of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONTZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on S. 3176, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will take 1-minute speeches.

THE SUMMIT AND THE MIDDLE EAST CRISIS

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and to include extraneous material.)

Mr. GONZALEZ. Mr. Speaker, I had anticipated addressing the House later, perhaps at the time that we would have completed all business. It pertains to a matter that is both sad, distressing, and disappointing for me to speak as I feel impelled I must.

When we adjourned on August 3 last, there were intimations that the President would take action with respect to the invasion of Kuwait.

As a matter of fact, no sooner were we adjourned, the President went to Camp David, decisions were made and announcements were made the following week that an expeditionary force

would be considered and probably be sent.

The other thing was that the President held a conference and announced the Democrats who were participating in the so-called summit at Andrews Air Force Base, blaming them for the obstaclization that led to an inconclusive result. That bothered me considerably, because I had been very critical of the process of what I considered to be the equivalent of a super markup, in secret, and above all tragically labeled a summit, as if we had two foreign potentaries deliberating, instead of two of our most important branches of the Government, and in secret.

So I then wrote a letter to the Speaker and pled with him to open up the sessions of the so-called economic summit or budget summit. Naturally, the Speaker has not replied to the request, did not and has not since then.

In that letter, I pointed out that it was tantamount to a super markup session, and that we held our markups in open session and that when we did, we had results and that everyone would be privy to who said what, what positions were taken by what Member, and therefore these charges that were inflaming passions on a partisan basis in an election year would be diminished and probably avoided. I still feel that way.

The results, as I predicted, were that if leaders do not lead, if leaders do not communicate, the odds are great that they will lose their following, and this happened to both the President and the congressional leaders in that rather sad result in voting down that budget resolution. It was inevitable.

After all, we are peers in this body. If we elect our leaders, which is the prerogative of the majority, it is very much like the President. The President is not superior under our Constitution. He is a first among equals, as Madison so aptly put it, and it is the same thing with our leadership.

So I then became alarmed when the news was announced and the chairman of the Joint Chiefs, Gen. Colin Powell made speeches and denunciated the Iraqi leader. This to me was unheard of. This was something that, yes, the President we could see would be very critical of this rather unwholesome personage, but for the chief military leader to be out denouncing the ruler of another country, unpopular as he might be, seemed to me to be out of keeping with the position of the military.

□ 0330

Then the announcement of the calling up of the Reserves. It seems to me that clearly here it was the duty of the President to consult with the Congress and that there was more than just a glimmer of violation of the clear intent of the War Powers Limitation Act of 1974.

So I then addressed another letter to our distinguished Speaker, and I suggested and requested that he consider consulting with the majority leader of the Senate, Senator MITCHELL, and calling a special session of the Congress in order to deliberate on what was clearly a far-reaching step that would involve the lives, the blood, and the treasure of the United States and where the President had not clearly and has not yet clearly outlined the military mission of this tremendous expeditionary force we have now in the Middle East.

What is the military mission? Not the political mission. We are now talking about soldiers, we are talking about warriors. And what has been the greatest tragic lesson we should have learned now since 1945? That is, as St. Paul said, "If the trumpet giveth an uncertain sound, then who shalt prepare for battle?"

And this is exactly what has been happening all along. The record of our military experience: In the Civil War, for example, when Lincoln had his first generals and his secretary and he had this great hero of the Mexican War, General Scott, issuing orders, the orders were so unclear and the mandate as a military mission to the generals in the field were so cloudy that they could not be interpreted. They were a failure.

If we read our history today, we see the greatness of a Grant and a Sherman, who when they ordered, they ordered in such clearly limpid language even the simplest soldier could follow his marching orders.

What is the mission of our military in the Middle East? Is it to defend Saudi Arabia? If so, the Saudi kings have issued a pronunciamento saying that they will not sanction any attack being initiated from Saudi soil, first.

Second, is it to support and defend the supply lines of oil? If that is the case, then there is no power on Earth that can defend those pipelines under the present circumstances.

But the danger is, and the danger to the Nation's destiny is, fraught with such potential for great mischief that I was compelled as of last night to introduce a resolution in which, in effect—and I ask my colleagues to listen to my words, give them serious consideration because we can be mixed here in this debate on the so-called budget, but hovering over us, hagriding our minds, hagriding the minds of our citizens will be the destiny and the fate of the soldiers that we have now in great numbers. Very seldom have we built up in such a quick fashion such an expeditionary force.

And at the time, as I have pointed out, when we are least able to finance a war. We cannot finance a war at this time because we are a debtor nation, for the first time.

In the two world wars, our Nation was the only creditor nation, and we were a creditor nation since 1914 until 1985. Now we are the biggest debtor nation in the world. I think it is pathetic when our President sends emissaries to the various nations, including Russia, asking for a handout. And what did Chancellor Kohl of Germany tell us? He said,

Well, maybe we can give you half a billion, but we won't give you one German soldier because our Constitution prohibits it.

Our Constitution prohibits what President Bush is doing now. President Bush is, in effect, conducting warlike preparations. It is inevitable. And the Congress has not declared war. And I will ask the President, for whom I have great respect and to whom I give him credit, I will ask, I will say, "Mr. President, why are you making war? The Congress has not declared war. You have not come before the Congress as you should." This is simply what I am saying in the resolution I have introduced tonight.

Joint resolution and letter follow:

H.J. RES. 685

Whereas the United States Constitution grants Congress the exclusive power to declare war;

Whereas U.S. Armed Forces were introduced in August 1990 by the President into a situation in the foreign land and waters of the Persian Gulf region where imminent involvement in hostilities in clearly indicated, without consultation with Congress or a declaration of war by Congress;

Whereas the Administration has announced its intention to escalate this action by deploying 100,000 more troops to the Persian Gulf region in addition to the 240,000 already deployed in connection with Operation Desert Shield;

Whereas these deployments are a commitment of United States Armed Forces into a foreign nation for an unknown period of time;

Whereas there has been no solidly defined and constant mission for U.S. troops in connection with "Operation Desert Shield" in that:

(1) the original deployment was purportedly to ensure the safety of Saudi Arabia and to prevent an Iraqi invasion of that country;

(2) the basis for the original deployment was altered to one of protection of American interests in the Gulf States' oil supply and to Iraqi withdrawal from Kuwait;

(3) the latest announcement by the Administration is that the mission will be further altered to one of taking offensive action against the country of Iraq;

(4) the effect of the deployments and the sanctions on the nation's economy as well as on the international community was not analyzed; and

(5) the wisdom of protecting foreign oil supplies as opposed to developing a national energy policy that would end dependence on foreign oil and the whims of foreign government officials has not been analyzed;

Whereas the military force introduced by the President without consideration of the collective judgment of the Congress has escalated the tension and the potential for world war;

Whereas the initial unilateral action by the President was taken without regard for the effects that diplomacy might have had to avert this crisis;

Whereas this deployment to the Middle East is subject to the limitations of the War Powers Resolution:

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That

(1) the deployment of United States Armed Forces into certain hostilities in the Middle East is subject to the War Powers Resolution,

(2) there has been no declaration of war, specific statutory authorization, or national emergency created by attack upon the United States, its territories or possessions, or its armed forces justifying the President's action in ordering the deployment of U.S. troops, and

(3) therefore this deployment shall be ceased immediately and all U.S. Armed Forces deployed to the Middle East in connection with "Operation Desert Shield" shall be withdrawn immediately.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 26, 1990.

Hon. THOMAS S. FOLEY,
The Speaker, House of Representatives,
U.S. Capitol Building, Washington, DC.

DEAR MR. SPEAKER: Congress must remain in a position to exercise its constitutional authority in regard to the Persian Gulf crisis. We must remain ready to act prior to war breaking out in the Middle East, and so we cannot adjourn at this time. It is imperative that you act only to recess, not adjourn, the House so that we will be in a position to act swiftly and meaningfully, not merely compliantly, as the Persian Gulf crisis continues.

Your decision to reserve the right to call Congress back into session for consultation on the Middle East situtation is not sufficient, as it would be cumbersome and time-consuming. Time is one thing that we do not have, as the Administration is escalating the level of war-making machinery and forces for Operation Desert Shield on a daily basis. Congress has not been consulted once on this crisis in a manner consistent with the U.S Constitution. When the Operation began, Congress was in recess and you refused to respond to my letter in August asking that Congress be called back to address this growing crisis. Why should we believe that Congress would be called back after adjournment if we could not even act during a short summer recess? It is a matter of life and death—for individuals as well as for our country—that Congress stand up and act according to the responsibilities for which we have been charged by the American people through the Constitution.

Your decision to create a bipartisan eighteen-member group that would be available to consult with the President during the adjournment period is not consitutional. The President must consult with Congress—not a coterie of your designees—under the War Powers Resolution. Where do the Speaker and Majority Leader get the power under this Act to designate such a group? And why are we even talking about such acts when Congress has not declared war? The actions the President has taken are acts of war. He has called up the reserves for the first time in twenty years; why is he making war when Congress has not declared war? Where is your leadership, Mr. Speaker? Where is the leadership of Congress? Where is the participation of the American people through their elected representatives? In the words of Richard Barnet, "If the President need not consult either the people or their representatives on such life-and-death decisions for the nation, what role is left for the people in setting the nation's course?" Must we dispense with democracy in order to protect the freedom of other nations?

There is no time for studies and commissions, for waiting until after the elections, for waiting until there is a consensus. We must act now—before war breaks out—to participte in the decision-making, to exercise our authority to declare or not declare war, and to lead with reasoned and deliberative action. We must not adjourn, Mr. Speaker.

With every good wish, I remain

Sincerely,

HENRY B. GONZALEZ,
Member of Congress.

SCHOOL DROP-OUT PREVENTION AND BASIC SKILLS IMPROVEMENT ACT OF 1990

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5140) to amend the Elementary and Secondary Education Act of 1965 to improve secondary school programs for basic skills improvement and dropout prevention and reentry, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Senate amendment: Page 11, after line 15, insert:

SEC. 4. CENTER FOR COMMERCE AND INDUSTRIAL EXPANSION.

(a) GRANT AUTHORIZED.—(1) The Secretary of Education (hereafter in this section referred to as the "Secretary") is authorized to award a grant to Loyola University of Chicago located in Chicago, Illinois, to pay the Federal share of the cost of construction and related costs for the establishment of a Center for Commerce and Industrial Expansion at Loyola University of Chicago.

(2) The Federal share shall not be less than 33 percent.

(b) APPLICATION.—No grant may be awarded under this section unless an application is made at such time, in such manner and containing or accompanied by such information, as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums, not to exceed $8,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 5. ASSISTANCE TO PROVIDE BASIC SKILLS IMPROVEMENT.

Section 6103 of the Secondary Schools Basic Skills Demonstration Assistance Act of 1988 (20 U.S.C. 3263) is amended by striking "fiscal year 1989" and inserting "each of the fiscal years 1991 and 1992".

SEC. 6. STATEMENT OF PURPOSE.

Section 6102(b) of the Training Technology Transfer Act of 1988 (20 U.S.C. 5092) is amended by striking "education training, and" and inserting "education and training of students and teachers and the".

SEC. 7. CENTERS FOR INTERNATIONAL BUSINESS EDUCATION.

Section 614(a) of the Higher Education Act of 1965 (20 U.S.C. 1130b(a)) is amended—

(1) by striking "$5,000,000" and inserting "$7,500,000"; and

(2) by striking "3 succeeding" and inserting "4 succeeding".

SEC. 8. DAKOTA WESLEYAN UNIVERSITY.

Notwithstanding the provisions of section 487(c)(2)(B) the Higher Education Act of 1965, the Secretary of Education shall reassess the amount owed by the Dakota Wesleyan University, located in Mitchell, South Dakota, in the amount of $159,260, plus any accrued interest thereon to $16,113.

Mr. WILLIAMS (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Montana?

Mr. GOODLING. Mr. Speaker, reserving the right to object, I reserve the right to object now that we have heard from St. Paul, and I would like to hear from St. Pat from Montana.

Mr. Speaker, could the gentleman tell me how much baggage has been added to this bill and how much it is going to cost us?

Mr. WILLIAMS. Mr. Speaker, will the gentleman yield to me?

Mr. GOODLING. I yield to the gentleman from Montana.

Mr. WILLIAMS. I thank the gentleman for yielding.

Mr. Speaker, the gentleman will remember this is the legislation that passed this House earlier and it amends the Elementary and Secondary Education Act to add a component for dropout prevention, placing it in the office of migrant education.

This legislation involves local education agencies. Particularly it uses community service organizations to assist in dropout prevention and reinstatement of people who have dropped out back into education service.

The Senate, after we sent this bill over to them, added several amendments. Let me explain them to the gentleman and to the House.

The Senate would extend, with one of their amendments, the Secondary School Basic Skills Act until 1992. I think that is not a controversial amendment.

Another Senate amendment would amend the Training and Technical Transfer Act, which this Congress passed a couple of years ago, by changing, in the act, the words "education training" and inserting the words "education and training of students."

That too I believe is a rather noncontroversial amendment.

A third amendment that the Senate added would increase the amount to be authorized for international business centers from $5 million to $7 mil-

lion. That is in keeping with inflation and in keeping with the fact that none of the centers have yet been authorized.

So the Senate is increasing the amount that may in the future be spent on those centers.

Another change that the Senators made is to authorize the payment of the Federal share of construction of a center for commerce and industrial expansion at Loyola University at Chicago.

A final change that the Senate made is to allow the Secretary of Education to reassess the amount of money that had been assumed to be owed. The amount has since been changed by the Secretary of Education, an amount owed on a Pell grant computation by Dakota Wesleyan University in South Dakota.

Mr. GOODLING. Further reserving the right to object, could the gentleman tell us on No. 3 any specific place for those centers?

Mr. WILLIAMS. The center would be, if so authorized and built and if 66 percent of the funds were expended by the university itself, the center would be located at Loyola University at Chicago.

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Mr. GOODLING. Mr. Speaker, do we have any idea how much money that costs?

Mr. WILLIAMS. The amendment of the Senate limits the cost, the Federal share, to no more than 33 percent of the entire cost, or no more than $8 million during all of the years of the construction phase.

Mr. GOODLING. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. SYNAR). Is there objection to the request of the gentleman from Montana?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Montana?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment H.R. 5140, the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

REFUGEE DAY

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 375) to designate October 30, 1990, as "Refugee Day" and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so simply to acknowledge our college, the author of the joint resolution here in the House, the gentleman from Florida [Mr. FASCELL].

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There is no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 375

Whereas in the past decade the world refugee population has more than doubled from 7,300,000 to 15,000,000;

Whereas the United States has always played a leading role in refugee matters worldwide;

Whereas the origins of the United States as a land of refuge for those escaping persecution and the development of the United States as a nation of immigrants gives the country a deep understanding of and sympathy for the plight of the 15,000,000 refugees in the world;

Whereas refugees who have come to the United States have made significant contributions to the country;

Whereas the United States consistently encourages other countries to expand efforts to help the needy population of refugees;

Whereas the current world refugee situation requires that the United States continue to be a leader in refugee affairs: Now, therefore, be it

Resolved by the Senate and House of Representatives, of the United States of America in Congress assembled, That—

(1) October 30, 1990, is designated as "Refugee Day"; and

(2) The President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL PARENTS AND TEACHERS ASSOCIATION WEEK

Mr SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 364) to designate the third week of February 1991 as "National Parents and Teachers Association Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so to yield to the gentleman from Nevada [Mr. BILBRAY].

Mr. BILBRAY. Mr. Speaker, I would like to offer House Joint Resolution 663 to designate the third week of February 1991 as National Parents and Teachers Association Week. This resolution passed the Senate unanimously on October 10, 1990, as Senate Joint Resolution 364.

Mr. Speaker, The act of educating is a fundamental and a critical component to becoming a population capable of exercising the fullest participation in this American democratic society.

Parent involvement is recognized to be one of the most important factors in improving educational excellence in the United States. The National Parent Teacher Association is this Nation's oldest and largest organization devoted to encouraging parents and other citizens to get involved in children's education.

House Joint Resolution 663, establishing PTA Week, coincides with the 94th anniversary of the founding of the National PTA on February 17. The observance of National PTA Week will serve to focus the Nation's attention on the critical need for parent involvement in not only their own children's education, but the educational system as a whole to benefit all children.

On behalf of the 6.8 million members of the National PTA, I respectfully ask you to join Senator HARRY REID and myself in helping to make National PTA Week a substantive contribution to educational improvement.

Mr. RIDGE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 364

Whereas the PTA is the oldest and largest parent-teacher association in the Nation;

Whereas studies have proven that parent involvement leads to better education of children;

Whereas the PTA provides the most effective means of participating in children's education;

Whereas the PTA is an organization for all people dedicated to the well-being of children;

Whereas the PTA can teach parents and teachers how to make a difference in the lives of their own, and all, children;

Whereas PTA Founder's Day is celebrated every February 17; Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the third week of February 1991 is designated as "National

Parents and Teachers Association Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL MEDAL OF HONOR DAY

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 652) to designate March 25, 1991, as "National Medal of Honor Day," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The Speaker pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. RIDGE. Mr. Speaker, reserving the right to object, I do so to recognize the chief sponsor of the resolution in the House, the gentleman from Washington [Mr. CHANDLER], and I yield to the gentleman.

Mr. CHANDLER. Mr. Speaker, I introduced House Joint Resolution 652 for one very important reason, and that is to bring attention to the Medal of Honor.

Mr. Speaker, there was a survey done by the Wall Street Journal about a year ago. Fifteen hundred American students. Fifty percent of those students thought that the Medal of Honor was an entertainment award, and only 5 percent of those students could say what it actually is.

The first Medal of Honor was presented by Abraham Lincoln on March 25, 1863, obviously during the Civil War, to six brave Americans. Since then, 3,412 men and women have been awarded the Medal of Honor.

Mr. Speaker, the purpose of House Joint Resolution 652 is to set aside the day, March 25, 1991, as National Medal of Honor Day to call attention, not only to this medal, but also to those few, very few, who have served their country with such great distinction that they have been honored with this Congressional Medal of Honor.

Mr. RIDGE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H. J. RES. 652

Whereas the Medal of Honor is the highest distinction that can be awarded by the President, in the name of the Congress, to members of the Armed Forces who have distinguished themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty;

Whereas only a few of the millions of men and women who have served the Nation in war, military operations, or other armed conflicts have received the Medal of Honor;

Whereas the 1st Medal of Honor awards were presented to 6 men on March 25, 1863, by the Secretary of War;

Whereas it is appropriate to honor the heroic recipients of the Medal of Honor;

Whereas public awareness of the importance of the Medal of Honor has declined in recent years; and

Whereas the designation of National Medal of Honor Day will focus the efforts of national, State, and local organizations striving to foster public appreciation and recognition of Medal of Honor recipients; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 25, 1991, is designated as "National Medal of Honor Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SAWYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the several joint resolutions just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

SMITH RIVER NATIONAL RECREATION AREA ACT

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 2566) to redesignate the Sunset Crater National Monument as the Sunset Crater Volcano National Monument, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. THOMAS of Wyoming. Mr. Speaker, reserving the right to object, I yield to the gentleman from Minnesota [Mr. VENTO] for an explanation of his request.

Mr. VENTO. Mr. Speaker, S. 2566 passed the Senate on June 14 of this year. It is a noncontroversial measure that would merely rename the existing Sunset Crater National Monument, in Arizona, as the Sunset Crater Volcano National Monument.

Today, I am asking that the House amend that Senate-passed bill by adding to it legislation designating the Smith River National Recreation Area, in northern California. This legislation is similar to H.R. 4309, a bill that passed the House on September 17 after being reported from the Committee on Interior and Insular Affairs. That bill was approved on suspension by a voice vote.

Since the House passed H.R. 4309, there have been discussions among interested parties, including the administration and people on the other side of the Capitol, and it has become evident that the chances for enactment of that very desirable bill this year would be improved if the House were to again send the bill to the Senate, with a few revisions.

The lands dealt with in the Smith River bill have been the subject of debate and discussion for a considerable number of years. The House's passage of H.R. 4309 last month was made possible because Representative Bosco was able, after several years of hard work, to achieve an unusual degree of consensus about how these lands should be managed by the Forest Service. It would be highly desirable to have this consensus embodied in law this year, and to assist in that I am today seeking to have the slightly revised form of the bill sent to the Senate.

I urge approval of this, and ask unanimous consent to revise and extend my remarks.

Mr. Speaker, in reaching a compromise to enable the Smith River National Recreation Area Act to become law this session, the proponents agreed to a very limited authority for salvage logging in section 5(a)(8).

The language in section 5(a)(8) clearly places the burden on the Forest Service to demonstrate a clear scientific basis for any decision to salvage log inside management areas designated for long-term protection from logging.

Simply hastening the reestablishment of tree cover or regeneration shall not be sufficient reasons to salvage log in the protected management areas. Natural recovery shall be preferred.

To eliminate fuels to reduce the chance of future forest fires or to thin areas to enhance wildlife habitat shall not be sufficient reasons to salvage log in the protected management areas. Natural processes shall be preferred.

We expect the Forest Service to adopt nonlogging alternatives in order to provide for or maintain or enhance biological and ecological diversity in the protected management areas before resorting to salvage logging.

We expect the Forest Service to consult with local interests, including conservation groups and their scientists,

before recommending to the Secretary that salvage logging be employed in the protected management areas.

The Subcommittee on National Parks and Public Lands intends to carefully monitor the Forest Service's implementation of the entire act, with particular scrutiny given to their tightly limited authority to engage in salvage. If there remains continued controversy or an indication of further abuse by the Forest Service, my subcommittee will not hesitate to exercise its oversight authority to make further changes as needed.

Mr. THOMAS of Wyoming. Mr. Speaker, I appreciate the explanation of the gentleman from Minnesota [Mr. VENTO].

Mr. BOSCO. Mr. Speaker, I appreciate very much the assistance the gentleman from Minnesota [Mr. VENTO] has provided in helping us move this legislation toward enactment. I also want to thank the ranking minority members of the Interior Committee for their cooperation in this process.

The legislation before you today contains several substantive changes from the version of H.R. 4309 approved by the House last month. These changes address the major objections raised by the administration and are the result of extensive discussions with the Forest Service and environmental organizations over the past few weeks. I believe adoption of these few amendments will make the bill acceptable to both the Senate and the administration and could clear the way for enactment of the legislation in this session.

The three major changes deal with H.R. 4309's provisions relating to mining, salvage logging in areas where timber harvest is otherwise prohibited, and forest receipts payments to local governments. I want to take this opportunity to explain the effect and intent of these amendments.

The compromise language dealing with salvage harvests would provide the Forest Service with very tightly limited authority to remove trees from areas that are otherwise off-limits to logging. Salvage harvests in other parts of the recreation area where timber harvest is explicitly permitted would not be affected. These areas include the streamside protection zones along designated wild and scenic rivers established under section 11, and three separate management areas—the North Fork, Middle Fork-Highway 199, and the Upper South Fork—where commercial timber harvest is not permitted. In all cases, removal of trees would be permitted under the revised language when necessary for human health and safety, to maintain trails or existing roads, for the development of recreation and other facilities, for the protection of the recreation area in the event of fire, or to improve fish and wildlife habitat.

Within the North Fork, Middle Fork-Highway 199 and Upper South Fork management areas, removal of trees damaged or down as result of fire, insects, disease, blowdown or other natural events would generally be retained in its natural condition. Removal of such timber would be permitted only if the Secretary of Agriculture determines that it is necessary to provide for, maintain or enhance biological and ecological diversity.

Under this construction, the burden of proof rests with the Forest Service to demonstrate clearly the scientific basis for determining that removal of trees would have ecologically beneficial effects. A simple finding of no adverse effects would not be sufficient, and the commodity value of the timber cannot be a factor in the determination.

The reason for this provision is simple. Other areas within the 300,000 acres encompassed by this recreation area have been specifically dedicated for timber production. Because of their unique values, these three management areas have been designated for special protection, and maintenance of natural ecological processes should be a dominant theme in their management. Fire, insects, disease and blowdowns are part of those natural processes. There may be instances where limited salvage logging is appropriate for ecological reasons, but those cases will be the exception rather than the rule. Absent compelling evidence to the contrary, nature should be allowed to take its course in these areas.

With regard to mining, the amendments would give explicit recognition to the rights associated with valid existing claims, and direct the Secretary to issue supplementary regulations designed to "promote and protect" the purposes for which the recreation area is created. Although I remain concerned about the potential for destructive mining, I am hopeful that the supplemental regulations will address these concerns, and I will encourage the Secretary to exercise his authority to acquire claims when necessary to ensure that noncommodity values are protected. If the mechanisms contained in this legislation are insufficient to protect against unacceptable mining activities, I may be forced to ask the Congress to revisit this issue in the future.

With regard to payments to local governments, I have reluctantly agreed to modify the provisions in H.R. 4309 that are intended to ensure against a sharp dropoff in funds for local schools and roads as a result of enactment of this legislation. My original proposal would have guaranteed payments for 5 years equal to the 5-year average prior to enactment, followed by a 10-year phaseout of the guarantee. The amendment I have agreed to would reduce the full guarantee to 2 years, but retain the following 10-year phased reduction.

In conclusion, Mr. Speaker, I believe this legislation remains entirely faithful to our original goal of trying to provide lasting protection for the unique assemblage of forests, mountains and rivers that have made the Smith River one of the most valuable elements of our National Wild and Scenic Rivers System. It promises to put an end to many of the deep conflicts that have made this part of California's north coast an environmental battleground for the past two decades. And I believe it can serve as a model for management of sensitive national forest lands elsewhere in the future.

I hope my colleagues will join me in working to enact this measure into law this year.

Mr. BOSCO. Mr. Speaker, I appreciate very much the assistance the gentleman from Minnesota, Mr. VENTO, has provided in helping us move this legislation toward enactment. I also want to thank the ranking minority members of the Interior Committee for their cooperation in this process.

The legislation before you today contains several substantive changes from the version of H.R. 4309 approved by the House last month. However, these changes are relatively minor in the context of the overall legislation, and I want to make clear for the record that it is our intent that the committee report that accompanied H.R. 4309 (H. Rept. 101-707) should remain part of the legislative history of this measure. The changes we have made address the administration's major objections to H.R. 4309 and are the result of extensive discussions with the Forest Service and environmental organizations over the past few weeks. I believe adoption of these few amendments will make the bill acceptable to both the Senate and the administration and could clear the way for enactment of the legislation in this session.

The three major changes deal with H.R. 4309's provisions relating to mining, salvage logging in areas where timber harvest is otherwise prohibited, and forest receipts payments to local governments. I want to take this opportunity to explain the effect and intent of these amendments.

The compromise language dealing with salvage harvests would provide the Forest Service with very tightly limited authority to remove trees from areas that are otherwise off-limits to logging. Salvage harvests in other parts of the recreation area where timber harvest is explicitly permitted would not be affected. These areas include the streamside protection zones along designated wild and scenic rivers established under section 11, and three separate management areas—the North Fork, Middle Fork-Highway 199, and the Upper South Fork—where commercial timber harvest is not permitted. In all cases, removal of trees would be permitted under the revised language when necessary for human health and safety, to maintain trails or existing roads, for the development of recreation and other facilities, for the protection of the recreation area in the event of fire, or to improve fish and wildlife habitat.

Within the North Fork, Middle Fork-Highway 199 and Upper South Fork management areas, removal of trees damaged or down as result of fire, insects, disease, blowdown or other natural events would generally be retained in its natural condition. Removal of such timber would be permitted only if the Secretary of Agriculture determines that it is necessary to provide for, maintain or enhance biological and ecological diversity.

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agement areas have been designated for specific protection, and maintenance of natural ecological processes should be a dominant theme in their management. Fire, insects, disease and blowdowns are part of those natural processes. There may be instances where limited salvage logging is appropriate for ecological reasons, but those cases will be the exception rather than the rule. Absent compelling evidence to the contrary, nature should be allowed to take its course in these areas.

With regard to mining, the amendments would give explicit recognition to the rights associated with valid existing claims, and direct to the Secretary to issue supplementary regulations designed to promote and protect the purposes for which the recreation area is created. Although I remain concerned about the potential for destructive mining, I am hopeful that the supplemental regulations will address these concerns, and I will encourage the Secretary to exercise his authority to acquire claims when necessary to ensure that noncommodity values are protected. If the mechanisms contained in this legislation are insufficient to protect against unacceptable mining activities, I may be forced to ask the Congress to revisit this issue in the future.

With regard to payments to local governments, I have reluctantly agreed to modify the provisions in H.R. 4309 that are intended to insure against a sharp drop-off in funds for local schools and roads as a result of enactment of this legislation. My original proposal would have guaranteed payments for five years equal to the five-year average prior to enactment, followed by a 10-year phase-out of the guarantee. The amendment I have agreed to would reduce the full guarantee to 2 years, but retain the following 10-year phased reduction.

In conclusion, Mr. Chairman, I believe this legislation remains entirely faithful to our original goal of trying to provide lasting protection for the unique assemblage of forests, mountains and rivers that have made the Smith River one of the most valuable elements of our National Wild and Scenic Rivers System. It promises to put an end to many of the deep conflicts that have made this part of California's north coast an environmental battleground for the past two decades. And I believe it can serve as a model for management of sensitive national forest lands elsewhere in the future.

I hope my colleagues will join me in working to enact this measure into law this year.

Mr. THOMAS of Wyoming. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2566

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION.

The Sunset Crater National Monument, Arizona, shall, on and after the date of enactment of this Act, be known and designated as the "Sunset Crater Volanco National Monument". Any reference to the Sunset Crater National Monument in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Sunset Crater Volanco National Monument.

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate bill be considered as read, printed in the RECORD, and open for amendment at any point.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. VENTO

Mr. VENTO. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. VENTO:

Strike all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

Sections 1 through 14 of this Act may be cited as the "Smith River National Recreation Area Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Smith River, undammed and free-flowing from its headwaters to the Pacific Ocean, represents one of the last wholly intact vestiges of an invaluable legacy of wild and scenic rivers;

(2) the Smith River watershed, from the diverse conifer forests of the Siskiyou Mountains and unique botanical communities of the North Fork serpentine to the ancient redwoods along the river's lower reaches, exhibits a richness of ecological diversity unusual in a basin of its size;

(3) the Smith River watershed's scenic beauty, renowned anadromous fisheries, exceptional water quality, and abundant wildlife combine with its ready accessibility to offer exceptional opportunities for a wide range of recreational activities, including wilderness, water sports, fishing, hunting, camping, and sightseeing;

(4) careful development and utilization at mutually compatible levels of recreation, fisheries, and timber resources on public lands will ensure the continuation of the Smith River watershed's historic role as a significant contributor to the region's local economy; and

(5) protection of the Smith River's unique values can be enhanced by a cooperative effort by Federal, State and local governments to coordinate land-use planning, management, and development of Federal and non-Federal lands throughout the watershed.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "excluded area" means one of the four areas specifically excluded from the recreation area, as generally depicted on the map referred to in section 4(b);

(2) the term "forest plan" means the land and resource management plan for the Six Rivers National Forest prepared pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

(3) the term "recreation area" means the Smith River National Recreation Area established by section 4;

(4) the term "Secretary" means the Secretary of Agriculture; and

(5) the term "inner gorge" means the inherently unstable steep slope (65 percent gradient or more) immediately adjacent to the stream or river channel, extending from the channel or recent floodplain to the first significant break in slope (usually 15 percent or more).

SEC. 4. SMITH RIVER NATIONAL RECREATION AREA.

(a) ESTABLISHMENT.—For the purposes of ensuring the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources, there is hereby established the Smith River National Recreation Area.

(b) BOUNDARIES.—(1) The recreation area shall consist of those lands within the area generally depicted on the map entitled "Proposed Smith River National Recreation Area" and dated July 1990. The map shall be on file and available for public inspection in the Office of the Chief, Forest Service, Department of Agriculture. The Secretary may, by publication of availability of a revised map and after public comment, make corrections or minor changes to the boundary of the recreation area.

(2) The exterior boundary of the recreation area, as generally depicted on the map, shall encompass the recreation area and the four excluded areas.

(c) BOUNDARY MODIFICATION.—The boundaries of the Six Rivers National Forest are hereby modified as generally depicted on the map referred to in subsection (b). A map and legal description of the boundary of the Six Rivers National Forest as modified by this subsection shall be on file and available for public inspection in the Office of the Chief, Forest Service, and the Office of the Forest Supervisor of the Six Rivers National Forest.

(d) TRANSFER.—The federally owned lands within the recreation area administered by the Secretary of the Interior on the date of enactment of this Act, comprising approximately 20 acres, are hereby transferred to the jurisdiction of the Secretary of Agriculture and shall be managed in accordance with the laws applicable to the National Forest System and this Act.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the recreation area in accordance with this Act and the laws, rules, and regulations applicable to the National Forest System in furtherance of the purposes for which the recreation area was established. In administering the recreation area, the Secretary shall, consistent with the applicable area management emphasis provided under subsection (b), undertake the following:

(1) Provide for a broad range of recreation uses and provide recreational and interpretive services and facilities (including trails and campgrounds) for the public.

(2) Provide and maintain adequate public access, including vehicular roads for general recreational activities such as camping, hiking, hunting, and fishing.

(3) Improve the anadromous fishery and water quality, including (but not limited to) stabilizing landslides, improving fish spawning and rearing habitat, and placing appropriate restrictions or limitations on soil disturbing activities.

(4) Permit the use of off-road vehicles only on designated routes.

(5) Provide for public health and safety and for the protection of the recreation area in the event of fire or infestation of insects or disease.

(6) Permit programmed timber harvest only in those management areas where timber harvest is specifically authorized by subsection (b). Timber management in these areas shall incorporate the use of strategies to reduce habitat fragmentation and employ silvicultural prescriptions designed to maintain or enhance biological diversity and wildlife habitats (such as retention of standing green trees, snags, and other coarse woody debris) by providing for a high level of structural and compositional diversity in managed stands.

(7) Permit removal of trees within streamside protection zones along those rivers and river segments specified in section 11 of this Act only when necessary for human health and safety, to maintain trails or existing roads, for the development of recreation or other facilities, for the protection of the recreation area in the event of fire, or to improve fish and wildlife habitat.

(8) Consistent with applicable requirements of law, permit removal of trees in those management areas where timber harvest is not specifically authorized by subsection (b) when necessary for human health and safety, to maintain trails or existing roads, for the development of recreation or other facilities, for the protection of the recreation area in the event of fire, or to improve fish and wildlife habitat. Timber damaged or down in these areas as a result of fire, insects, disease, blowdown or other natural events shall otherwise be retained in its natural condition, with removal permitted only upon a written determination by the Secretary, based upon written findings, that such removal is necessary to provide for or maintain or enhance biological and ecological diversity, without regard for the commodity value of the timber. Such a decision shall not be delegable by the Secretary but shall be subject to administrative appeal and judicial review.

(9) Provide for the long-term viability and presence of Port-Orford-cedar and ensure its continued present economic and noneconomic uses through implementation of management strategies developed by the Forest Service.

(10) Except where timber harvest is specifically authorized by subsection (b), protect, preserve, and increase old growth forest habitat in the recreation area.

(11) Provide for the restoration of landscapes damaged by past human activity consistent with the purposes of this Act.

(12) Develop a monitoring program to consistently gather water quality, air quality, wildlife, and fisheries data from representative Smith River subwatersheds.

(13) Develop and implement a management plan to maintain, protect, and promote habitat for native resident trout species in the recreation area.

(14) Cooperate with other Federal, State, and local government agencies in coordinating planning efforts throughout the Smith River watershed.

(b) MANAGEMENT AREAS.—(1) The recreation area shall contain eight management areas, as generally depicted on the map referred to in section 4(b). The Secretary may, pursuant to section 4(b), make minor revisions or amendments to the boundaries of the management areas.

(2) The Secretary shall administer each mangement area within the recreation area in accordance with the following:

(A) The management emphasis for the North Fork management area shall be on back-country and whitewater recreation, while recognizing unique botanic communities, outstanding whitewater, and historic and scenic values.

(B) The management emphasis for the Upper Middle Fork management area shall be on providing and maintaining ecologic and biologic diversity. Timber harvest shall be permitted, consistent with subsection (a)(6), only in existing plantations.

(C) The management emphasis for the Middle Fork-Highway 199 management area shall be on maintaining wildlife values and providing for a full range of recreation uses, with particular emphasis on the scenic and recreation values associated with the Smith River, old growth redwoods, and California State Highway 199.

(D) The management emphasis for the Upper South Fork management area shall be on wild river and roadless back-country recreation.

(E) The management emphasis for the Lower South Fork management area shall be on maintaining and protecting natural scenic values in the river canyon while providing for traditional and compatible river sports, including white water rafting, angling, sightseeing, and developed and dispersed recreation. Timber harvests based on uneven-aged management with extended rotations shall be allowed where consistent with protection of the scenic values of the recreation area.

(F) The management emphasis for the Lower Hurdygurdy Creek management area shall be on maintenance of wildlife values while providing rustic family and group recreation facilities for fishing, swimming, hunting, and camping. Timber harvests based on uneven-aged management with extended rotations shall be allowed where consistent with protection of scenic and wildlife values.

(G) The management emphasis for the prescribed timber management area shall be on providing a sustained yield of wood products while maintaining biological and ecological diversity.

(H) The management of the Siskiyou Wilderness management area shall be pursuant to the provisions of the Wilderness Act (16 U.S.C. 1131 et seq.). The Gasquet-Orleans Road corridor between the eastern edge of section 36, T. 14 N., R. 3 E., and the corridor's eastern terminus in the middle of section 26, T. 14 N., R. 4 E. shall be added to the Siskiyou Wilderness.

(c) WILD AND SCENIC RIVERS.—The river segments designated as wild and scenic rivers by the amendments made by section 10(b) of this Act shall be administered in accordance with this Act and the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). In case of conflict between the provisions of these Acts, the more restrictive provision shall apply.

SEC. 6. ACQUISITION AND DISPOSAL OF LANDS AND OTHER PROPERTY.

(a) ACQUISITION.—The Secretary is authorized to acquire by purchase, donation, exchange, or otherwise lands, waters, or interests therein (including scenic or other easements), and structures or other improvements thereon, within the boundaries of the recreation area as the Secretary determines appropriate for the purposes of this Act. In exercising this authority, the Secretary is directed to give prompt and careful consideration to any offer to sell, exchange, or otherwise dispose of such property made by an individual or organization. The Secretary shall not acquire any land or interest in land owned by the State of California or any of its political subdivisions within the recreation area except by donation or exchange. All lands acquired by the Secretary pursuant to this Act shall be subject to the laws and regulations pertaining to the National Forest System and this Act.

(b) TRANSFERS TO DEL NORTE COUNTY.—(1) Upon the adoption of a resolution by the Board of Supervisors of the County of Del Norte, California, accepting title to the lands decribed in paragraph (2) and subject to the County of Del Norte bearing the cost of the survey of such lands, the Secretary shall transfer all right, title, and interest of the United States in and to the lands described in paragraph (2).

(2) The lands referred to in paragraph (1) are described as follows:

(A) Lands north of tract 37, T. 17 N., R. 3 E., H.M., containing 6 acres, more or less, and more particularly described as:

Commencing at the N.E. corner of tract 37, T. 17 N., R. 3 E., H.M.; thence, northerly on a line continuing the eastern boundary of said tract 37 to a point where it intersects the southern boundary of the easement for State highway conveyed to the State of California, Department of Transportation, on the 17th day of May 1977, and recorded on June 22, 1977 at book 206 of Official Records, page 256; thence, southwesterly along the southern boundary of said easement to the point where it intersects the northern boundary of said tract 37; thence, easterly along the northern boundary of said tract 37 to the point of beginning.

(B) Lands east of tract 37, T. 17 N., R. 3 E., H.M., containing 6 acres, more or less, and more particularly described as:

Commencing at a point on the eastern boundary of tract 37, T. 17 N., R. 3 E., H.M., lying 332 feet southerly of the N.E. corner of said tract 37; thence, due east to the high water line of the Middle Fork of the Smith River; thence, southwesterly along the high water line of the Middle Fork of the Smith River to its intersection with the northern boundary of tract 38, T. 17 N., R. 3 E.; thence, westerly along the northern boundary of said tract 38 to its intersection with said track 37; thence, northerly along the eastern boundary of said tract 37 to the point of beginning.

(c) CONDITIONS OF TRANSFER.—Transfer of the lands and interests described in subsection (b)(2) of this section shall be subject to the condition that all right, title, and interest therein shall revert to the United States if the county of Del Norte, California, attempts to transfer any portion of such lands to any other entity or person or if Del Norte County permits any portion of such lands to be used for any purpose incompatible with the purposes of this Act. The Secretary shall include in any document of conveyance whereby such lands are transferred to the county of Del Norte appropriate provisions to implement this subsection.

(d) WITHDRAWAL.—Subject to valid existing rights, all public lands within the recreation area are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States. This subsection shall not affect the exchange authorities of the Secretary.

SEC. 7. FISH AND GAME.

Nothing in this Act shall be construed to affect the jurisdiction or responsibilities of

the State of California with respect to fish and wildlife, including the regulation of hunting, fishing, and trapping on any lands managed by the Secretary under this Act, except that the Secretary may designate zones where, and establish periods when, no hunting, fishing, or trapping shall be permitted for reasons of protecting nongame species and their habitats, public safety, administration, or public use and enjoyment. Except in emergencies, any regulation of the Secretary pursuant to this section shall be put into effect only after consultation with the fish and wildlife agency of the State of California.

SEC. 8. MINERALS.

(a) WITHDRAWAL.—Subject to valid existing rights, Federal lands within the exterior boundary of the recreation area are hereby withdrawn from all forms of location, entry, and patent under the United States mining laws and from disposition under the mineral leasing laws, including all laws pertaining to geothermal leasing.

(b) PATENTS.—Patents may not be issued under the mining laws of the United States after the date of enactment of this Act for locations and claims made before the date of enactment of this Act on Federal lands located within the exterior boundaries of the recreation area.

(c) ADMINISTRATION.—Subject to valid existing rights, except for extraction of common variety minerals such as stone, sand, and gravel for use in construction and maintenance of roads and other facilities within the recreation area and the excluded areas, all other mineral development on federally owned lands within the recreation area is prohibited.

(d) REGULATIONS.—The Secretary is authorized and directed to issue supplementary regulations to promote and protect the purposes for which the recreation area is designated.

SEC. 9. MANAGEMENT PLANNING.

The Secretary shall revise the document entitled "Smith River National Recreation Area Management Plan" dated February 1990 to conform to the provisions of this Act, and such revised plan shall guide management of the recreation area and shall be incorporated in its entirety into the forest plan for the Six Rivers National Forest. This incorporation shall not be deemed a revision or amendment to the forest plan for purposes of the section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974. The Secretary shall make such further revisions to the management plan as are necessary in order to include more specific development and use plans for the recreation areas. Such revisions shall be made no later than 5 years after the enactment of this Act. Such revisions and any other modifications of the management plan shall be made only through the processes of revision or amendment of the forest plan pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, including appropriate consultation with State and local government officials and provision for full public participation considering the views of all interested parties, organizations, and individuals.

SEC. 10. WILD AND SCENIC RIVERS.

(a) PREVIOUS DESIGNATIONS.—Previous designations dated January 19, 1990, by the Secretary of the Interior (46 Fed. Reg. 7483-84) under section 2(a)(ii) of the Wild and Scenic Rivers Act (16 U.S.C. 1273) of rivers within the exterior boundary of the recreation area are superseded by this Act.

(b) DESIGNATIONS.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274) is amended by adding at the end thereof the following new paragraphs:

"( ) SMITH RIVER, CALIFORNIA.—The segment from the confluence of the Middle Fork Smith River and the North Fork Smith River to the Six Rivers National Forest boundary, including the following segments of the mainstem and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from the confluence of the Middle Fork Smith River and the South Fork Smith River to the National Forest boundary, as a recreational river.

"(B) Rowdy Creek from the California-Oregon State line to the National Forest boundary, as a recreational river.

"( ) MIDDLE FORK SMITH RIVER, CALIFORNIA.—The segment from the headwaters to its confluence with the North Fork Smith River, including the following segments of the mainstem and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from its headwaters about 3 miles south of Sanger Lake, as depicted on the 1956 USGS 15' Preston Peak topographic map, to the center of section 7, T. 17 N., R. 5 E., as a wild river.

"(B) The segment from the center of section 7, T. 17 N., R. 5 E., to the center of section 6, T. 17 N., R. 5 E., as a scenic river.

"(C) The segment from the center of section 6, T. 17 N., R. 5 E., to one-half mile upstream from its confluence with Knopki Creek, as a wild river.

"(D) The segment from one-half mile upstream of its confluence with Knopki Creek to its confluence with the South Fork Smith River, as a recreational river.

"(E) Myrtle Creek from its headwaters in section 9, T. 17 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to the middle of section 28, T. 17 N., R. 1 E., as a scenic river.

"(F) Myrtle Creek from the middle of section 28, T. 17 N., R. 1 E., to its confluence with the Middle Fork Smith River, as a wild river.

"(G) Shelly Creek from its headwaters in section 1, T. 18 N., R., 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Patrick Creek, as a recreational river.

"(H) Kelly Creek from its headwaters in section 32, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the Middle Fork Smith River, as a scenic river.

"(I) Packsaddle Creek from its headwaters about 0.8 miles southwest of Broken Rib Mountain, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a scenic river.

"(J) East Fork Patrick Creek from its headwaters in section 10, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the West Fork of Patrick Creek, as a recreational river.

"(K) West Fork Patrick Creek from its headwaters in section 18, T. 18 N., R. 3 E., as depicted on the 1951 15' Gasquet topographic map to its confluence with the East Fork Patrick Creek, as a recreational river.

"(L) Little Jones Creek from its headwaters in section 34, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map to its confluence with the Middle Fork Smith River, as a recreational river.

"(M) Griffin Creek from its headwaters about 0.2 miles southwest of Hazel View Summit, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"(N) Knopki Creek from its headwaters about 0.4 mile west of Sanger Peak, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"(O) Monkey Creek from its headwaters in the northeast quadrant of section 12, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"(P) Patrick Creek from the junction of East and West Forks of Patrick Creek to its confluence with Middle Fork Smith River, as a recreational river.

"(Q) Hardscrabble Creek from its headwaters in the northeast quarter of section 2, T. 17 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

"( ) NORTH FORK SMITH RIVER, CALIFORNIA.—The segment from the California-Oregon State line to its confluence with the Middle Fork Smith River, including the following segments of the mainstem and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from the California-Oregon State line to its confluence with an unnamed tributary in the northeast quarter of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, as a wild river.

"(B) The segment from its confluence with an unnamed tributary in the northeast quarter of section 5, T. 18 N., R. 2 E., to its southern-most intersection with the eastern section line of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, as a scenic river.

"(C) The segment from its southern-most intersection with the eastern section line of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Stony Creek, as a wild river.

"(D) The segment from its confluence with Stony Creek to its confluence with the Middle Fork Smith River, as a recreational river.

"(E) Diamond Creek from California-Oregon State line to its confluence with Bear Creek, as a recreational river.

"(F) Diamond Creek from its confluence with Bear Creek to its confluence with the North Fork Smith River, as a scenic river.

"(G) Bear Creek from its headwaters in section 24, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Diamond Creek, as a scenic river.

"(H) Still Creek from its headwaters in section 11, T. 18 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to its confluence with the North Fork Smith River, as a scenic river.

"(I) North Fork Diamond Creek from the California-Oregon State line to its confluence with Diamond Creek, as a recreational river.

"(J) High Plateau Creek from its headwaters in section 26, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Diamond Creek, as a scenic river.

"(K) Stony Creek from its headwaters in section 25, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the North Fork Smith River, as a scenic river.

"(L) Peridotite Creek from its headwaters in section 34, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the North Fork Smith River, as a wild river.

"( ) SISKIYOU FORK SMITH RIVER, CALIFORNIA.—The segment from its headwaters to its confluence with the Middle Fork Smith River, and the following tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from its headwaters about 0.7 miles southeast of Broken Rib Mountain, as depicted on the 1956 USGS 15' Preston Peak Topographic map, to its confluence with the South Siskiyou Fork Smith River, as a wild river.

"(B) The segment from its confluence with the South Siskiyou Fork Smith River to its confluence with the Middle Fork Smith River, as a recreational river.

"(C) South Siskiyou Fork Smith River from its headwaters about 0.6 miles southwest of Buck Lake, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Siskiyou Fork Smith River, as a wild river.

"( ) SOUTH FORK SMITH RIVER, CALIFORNIA.—The segment from its headwaters to its confluence with the main stem of the Smith River, and the following tributaries, to be administered by the Secretary of Agriculture in the following classes:

"(A) The segment from its headwaters about 0.5 miles southwest of Bear Mountain, as depicted on 1956 USGS 15' Preston Peak topographic map, to Blackhawk Bar, as a wild river.

"(B) The segment from Blackhawk Bar to its confluence with the main stem of the Smith River, as a recreational river.

"(C) Williams Creek from its headwaters in section 31, T. 14 N., R. 4 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Eight Mile Creek, as a wild river.

"(D) Eight Mile Creek from its headwaters in section 29, T. 14 N., R. 4 E., as depicted on the 1955 USGS 15' Dillon Mtn. topographic map, to its confluence with the South Fork Smith River, as a wild river.

(E) Harrington Creek from its source to its confluence with the South Fork Smith River, as a wild river.

"(F) Prescott Fork of the Smith River from its headwaters about 0.5 miles southeast of Island Lake, as depicted on the 1955 USGS 15' Dillon Mtn. topographic map, to its confluence with the South Fork Smith River, as a wild river.

"(G) Quartz Creek from its headwaters in section 31, T. 16 N., R. 4 E., as depicted on the 1952 15' USGS Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(H) Jones Creek from its headwaters in section 36, T. 16 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(I) Hurdygurdy Creek from its headwaters about 0.4 miles southwest of Bear Basin Butte as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(J) Gordon Creek from its headwaters in section 18, T. 16 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(K) Coon Creek from the junction of its two headwaters tributaries in the southeast quadrant of section 31, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(L) Craigs Creek from its headwaters in section 36, T. 17 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(M) Goose Creek from its headwaters in section 13, T. 13 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(N) East Fork Goose Creek from its headwaters in section 18, T. 13 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Goose Creek, as a recreational river.

"(O) Buck Creek from its headwaters at Cedar Camp Spring, as depicted on the 1952 USGS 15' Ship Mountain topographic map, to the northeast corner of section 8, T. 14 N., R. 3 E., as a scenic river.

"(P) Buck Creek from the northeast corner of section 8, T. 14 N., R. 3 E., to its confluence with the South Fork Smith River, as a wild river.

"(Q) Muzzleloader Creek from its headwaters in section 2, T. 15 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Jones Creek, as a recreational river.

"(R) Canthook Creek from its headwaters in section 2, T. 15 N., R. 2 E., as depicted in the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(S) Rock Creek from the national forest boundary in section 6, T. 15 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

"(T) Blackhawk Creek from its headwaters in section 21, T. 15 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.".

(c) MANAGEMENT.—The management plan prepared under section 9 of this Act shall be deemed to satisfy the requirement for a comprehensive management plan required under section 3(d)(1) of the Wild and Scenic Rivers Act.

SEC. 11. STREAMSIDE PROTECTION ZONES.

(a) For each of the rivers and river segments specified in this subsection, there is hereby established a streamside protection zone in which timber harvesting shall be prohibited except as permitted by section 5(a)(7). Such zone shall extend 300 feet from each bank of the rivers and river segments, or 100 feet from the inner gorge of said rivers and river segments, or within the limit of high and extreme landslide hazards on said rivers and river segments, whichever is greater. The provisions of this subsection shall apply to the following rivers and river segments:

(1) Rowdy Creek (from California-Oregon border to NRA boundary).

(2) Shelly Creek (from its headwaters to Patrick Creek).

(3) East Fork Patrick Creek (from its headwaters to Patrick Creek).

(4) West Fork Patrick Creek (from its headwaters to Patrick Creek).

(5) Little Jones Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(6) Patrick Creek (from the confluence of the East and West forks of Patrick Creek to the Middle Fork of the Smith River).

(7) Monkey Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(8) Hardscrabble Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(9) Quartz Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(10) Jones Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(11) Upper Hurdygurdy Creek (from its headwaters to Dry Lake).

(12) Gordon Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(13) Coon Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(14) Craigs Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(15) Goose Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(16) East Fork of Goose Creek (from its headwaters to its confluence with Goose Creek).

(17) Muzzleloader Creek (from its headwaters to its confluence with Jones Creek).

(18) Canthook Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(19) Rock Creek (from the NRA boundary to its confluence with the South Fork of the Smith River).

(20) Blackhawk Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(b) For each of the rivers and river segments specified in this subsection there is established a streamside protection zone in which timber harvesting shall be prohibited except as permitted in section 5(a)(7). Such zone shall extend on the average of one-quarter mile on either side of said rivers and river segments, or 100 feet from the inner gorge of said rivers and river segments, or within the limit of high and extreme landslide hazards on said rivers and river segments, whichever is greater. The provisions of this subsection shall apply to the following rivers and river segments:

(1) Main stem Smith (from the South Fork to the NRA boundary).

(2) Middle Fork Smith (from its headwaters to its confluence with the Middle Fork of the Smith River).

(3) Myrtle Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(4) Kelly Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(5) Packsaddle Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(6) Griffin Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(7) Knopti Creek (from its headwaters to its confluence with the Middle Fork of the Smith River).

(8) North Fork of the Smith River (from the California/Oregon border to its confluence with the Middle Fork of the Smith River).

(9) Diamond Creek (from the California/Oregon border to its confluence with the North Fork of the Smith River).

(10) Bear Creek (from its headwaters to its confluence with Diamond Creek).

(11) Still Creek (from its headwaters to its confluence with the North Fork of the Smith River).

(12) North Fork of Diamond Creek (from the California/Oregon border to its confluence with Diamond Creek).

(13) High Plateau Creek (from its headwaters to its confluence with Diamond Creek).

(14) Stony Creek (from its headwaters to its confluence with the North Fork of the Smith River).

(15) Peridotite Creek (from its headwaters to its confluence with the North Fork of the Smith River).

(16) Siskiyou Fork, Smith River (from its headwaters to the Middle Fork of the Smith River).

(17) South Siskiyou Fork of the Smith River (from its headwaters to its confluence with the Siskiyou Fork of the Smith River).

(18) South Fork Smith River (from its headwaters to its confluence with the Middle Fork of the Smith River).

(19) Williams Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(20) Eight Mile Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(21) Harrington Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(22) Prescott Fork of the Smith River (from its headwaters to its confluence with the South Fork of the Smith River).

(23) Buck Creek (from its headwaters to its confluence with the South Fork of the Smith River).

(c) For the Lower Hurdygurdy Creek (from Dry Lake to its confluence with the South Fork of the Smith River) there is established a streamside protection zone in which timber harvesting shall be prohibited except as permitted in section 5(a)(7). Such zone shall extend one-eighth mile on either side of said Lower Hurdygurdy Creek.

(d) The provisions of this section shall be in addition to, and not in lieu of, any restrictions on timber harvesting or other activities applicable to the streamside protection zones established by this section under any other applicable provision of this Act.

SEC. 12. STATE AND LOCAL JURISDICTION AND ASSISTANCE.

(a) STATE AND LOCAL JURISDICTION.—Nothing in this Act shall diminish, enlarge, or modify any right of the State of California or any political subdivision thereof, to exercise civil and criminal jurisdiction or to carry out State fish and game laws, rules, and regulations within the recreation area, or to tax persons, franchise, or private property on the lands and waters included in the recreation area, or to regulate the private lands within the recreation area.

(b) COOPERATIVE AGREEMENTS.—The Secretary is authorized and encouraged to enter into cooperative agreements with the State of California or its political subdivisions for—

(1) the rendering on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire prevention agencies; and

(2) the planning for use, management, and development of non-Federal lands within the recreation area and elsewhere in the Smith River watershed in the furtherance of the purposes of this Act.

(c) TECHNICAL ASSISTANCE.—To enable the State of California and its political subdivisions to develop and implement programs compatible with the purposes of this Act, the Secretary, in consultation with the Secretaries of the Interior, Commerce, and Housing and Urban Development, shall consider upon request such technical assistance to the State and its political subdivisions as is necessary to fulfill the purposes of this section. Such assistance may include payments or grants, within existing programs, for technical aid and program development.

(d) LAND INFORMATION SYSTEM.—The Secretary of Agriculture shall assist the county of Del Norte in developing a land information system that will be compatible with the Forest Service and National Park Service systems for the Federal lands in Del Norte County and such non-Federal systems as may be appropriate and that will be made available to Federal and non-Federal entities for use in coordinating planning for the recreation area and other lands in the Smith River watershed.

SEC. 13. SAVING PROVISIONS.

(a) ACTIVITIES ON LANDS OUTSIDE OF RECREATION AREA.—Nothing in this Act shall limit, restrict, or require specific management practices on lands outside the recreation area boundary. The fact that activities or uses outside the recreation area can be seen, heard, or otherwise perceived within the recreation area shall not, of itself, limit, restrict, or preclude such activities or uses up to the boundary of the recreation area.

(b) PRIOR RIGHTS.—(1) Nothing in this Act shall limit, restrict, or preclude the implementation of valid timber sale contracts or other contracts or agreements executed by the Secretary before the date of enactment of this Act.

(2) Except as specifically provided herein nothing in this Act shall be construed as diminishing or relinquishing any right, title, or interest of the United States in any lands, waters, or interests therein within the boundaries of the recreation area designated by this Act.

(c) ROAD EASEMENTS.—Nothing in this Act shall be construed as affecting the responsibilities of the State of California or any of its political subdivisions with respect to road easements, including maintenance and improvement of State Highway 199 and County Route 427.

(d) RIGHTS OF ACCESS.—Existing rights provided by Federal law for access by private landowners across National Forest System lands shall not be affected by this Act.

(e) ENTITLEMENT MONEYS.—Annually for the first two full fiscal years after the date of enactment of this Act, the Secretary shall pay for use by units of local government within the recreation area an amount equal to the difference between the amounts payable for such purposes pursuant to the Act of May 23, 1908 (chapter 193; 35 Stat. 251; 16 U.S.C. 500) and the average amount paid for such purpose under such Act during the five fiscal years preceding the date of enactment of this Act. The amount payable under this subsection shall be reduced by 10 percent annually thereafter for each succeeding fiscal year until the amount payable shall be reduced 100 percent by the end of the twelfth fiscal year after the date of enactment. This subsection shall expire 11 years after the first payment pursuant to this subsection.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such funds as may be necessary to carry out this Act and the amendments made by this Act.

SEC. 15. REDESIGNATION.

The Sunset Crater National Monument, Arizona, shall, on and after the date of enactment of this Act, be known and designated as the "Sunset Crater Volcano National Monument". Any reference to the Sunset Crater National Monument in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Sunset Crater Volcano National Monument.

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Minnesota [Mr. VENTO].

The amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the Senate bill.

The Senate bill was ordered to be engrossed and read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. VENTO

Mr. VENTO. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. VENTO: Amend the title so as to read:

"To Establish the Smith River National Recreation Area, to redesignate the Sunset Crater National Monument, and for other purposes."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

□ 0350

THE UNFINISHED BUSINESS OF THE 101ST CONGRESS: AN ENERGY POLICY FOR THE NATION

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute, and to revise and extend

his remarks, and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, the 101st Congress is winding down without addressing one of the preeminent issues facing this Nation:

An energy policy for our country which will make us more reliant on our own natural resources and less on foreign oil and foreign credit.

While we have been sweating the details of the budget agreement, our troops have been sweating on the sands of Saudi Arabia.

They are there because of oil, because this Nation is hostage to foreign oil. The policy of the 1980's was to follow the free market, and that policy resulted in a flood of foreign crude into this country.

We are now more than 50 percent dependent on foreign oil—oil which costs us $1.1 trillion during the 10-year period 1980-90.

Oil import figures

Year:	*Imports*
1973	3.2
1974	3.5
1975	4.1
1976	5.3
1977	6.6
1978	6.4
1979	6.5
1980	6.3
1981	4.4
1982	3.5
1983	3.3
1984	3.4
1985	3.2
1986	4.2
1987	4.7
1988	5.1
1989	5.8
1990	[1] 6.3

[1] 8 mo. average.

NOTE.—Imports given in millions of barrels.

Source: Energy Information Administration.

1989 CRUDE OIL AND PETROLEUM PRODUCTS IMPORTS—BY COUNTRY OF ORIGIN

This listing includes imports only from those countries from which the United States imported crude oil in 1989. This listing rates the nations from highest to lowest volume. OPEC indicates that the name is a member of the Organization of Petroleum Exporting Countries.

Country	Barrels (thousands)	Region
Total imports	2,942,099	
Saudi Arabia [OPEC]	446,874	Middle East.
Canada	339,949	
Venezuela [OPEC]	318,545	
Nigeria [OPEC]	297,651	West Africa.
Mexico	279,968	
Iraq [OPEC]	164,022	Middle East.
Angola	103,549	West Africa.
Algeria [OPEC]	98,021	North Africa.
United Kingdom	78,683	
Indonesia [OPEC]	66,928	
Colombia	62,633	
Kuwait [OPEC]	57,326	Middle East.
Norway	50,469	
Trinidad and Tobago	34,482	
Ecuador [OPEC]	32,633	
China, Peoples Republic of	29,239	
Gabon [OPEC]	18,138	West Africa.
Cameroon	17,210	Do.
Malaysia	14,079	
Australia	12,995	
India	12,796	
Italy	12,382	
Peru	10,949	
United Arab Emirates [OPEC]	10,309	Middle East.
Zaire	9,594	West Africa.
Argentina	9,065	
Oman	7,072	Middle East.
Egypt	7,064	Do.
Thailand	5,951	
Syria	5,576	
Congo	5,330	Central Africa.
Brunei	4,649	
Tunisia	2,037	North Africa.
Benin	890	West Africa.
Qatar [OPEC]	767	Middle East.
Guatemala	655	
Other	14,485	

Source: Energy Information Administration, U.S. Department of Energy.

With this type dependence we certainly cannot afford a supply interruption, and that means we have to send the military when the potential for disruption appears.

We now deploy about 200,000 troops at a cost of $1 billion per month to protect the oil supply coming from the Persian Gulf.

I do not want my nation dependent on the likes of Saddam Hussein for its oil.

In crafting an energy policy, we will have to face the arguments of the big oil companies. And, they will come fast and furious. The oil companies do not want to share their $100 billion market with anyone.

It is unfortunate—and I might say unpatriotic—but many of these companies seem to be more concerned with their own profits than with the future of the Nation.

They should work with us—becoming energy companies, not just oil companies.

But, minds in the boardrooms of big oil will have to be changed.

It won't be an easy task—but it can—and must—be done.

The companies, for instance, will complain that alternative fuels cost more than gasoline, that the consumer won't be well served by expanding their use.

I don't believe the consumer was well-served when the oil companies hiked their prices almost from the time the first Iraqi troop set foot in Kuwait.

And, neither do consumers.

So, one of the first jobs we will have is finding out what gasoline really costs. It certainly costs more than the price we pay at the pump. Operation Desert Shield, for example, is a billion-dollar-a-month operation: An operation which must be charged to this account.

Factoring in the military escort alone makes gasoline cost about $5.50 a gallon.

I do not believe it makes much difference whether you are paying at the pump or in taxes—it's still coming out of your back pocket.

And, there are foreign aid costs, increases in health-care costs and environmental pollution due to auto emissions.

I am currently in the process of starting a study on the real cost of gasoline. I believe those figures are essential to our deliberations on the Nation's energy future.

America needs an energy policy based on self-reliance. It is a top priority and I hope—and will work to see—that another Congress does not come and go without such a policy being put into place.

Clean air legislation which we dealt with in this Congress resulted from a call by the people to make the air they breathe less harmful.

It is one step in the process. But, we must do more.

In the area of fuels, we have only two choices, as I see it: We can clean up the fuel or we can build engines capable of burning dirty fuels.

I believe the best solution would be to clean up the fuel supply. I am pleased to report, Mr. Speaker, that some automakers—and even some oil companies, agree.

And, cleaner burning fuels are available.

We have the fuels and much of the technology to make us less dependent on foreign oil, clean up our air, and stop the insane practice of borrowing foreign money to buy foreign oil.

In the case of ethanol, the money would go to American farmers, not foreign oil producers.

And, the capacity to produce the grains necessary to increase our supply of these fuels is at our fingertips.

Our farmers can grow the grain, we can turn it into ethanol and use it in our autos—today. The only ingredient missing is a policy which will help expand its use.

Unless demand is expanded, alternative fuels will remain only a bit player in our energy future.

And, there will be more Operation Desert Shields, more escorting tankers through the Persian Gulf, more borrowing and more fear that our supply will be cut off.

We should not live with this nightmare any longer.

And, the beauty is that we don't have to. The 102d Congress could start us in a new direction in energy.

But, first, we need a policy proposal.

Mr. Speaker, I call on President Bush to present such a proposal early in the new year. Congress will work with him in making our country more self-reliant in the energy field.

This is a problem which will only get worse. We have seen proof of that in our ever-increasing and dangerous dependence on foreign oil.

And, the urgency of the matter is easily understood when you realize that foreign oil producers can bring our economy to its knees within 30 days.

Our dependence on foreign oil has now placed us in the position possibly having to trade American blood for gasoline. I do not believe that is a position we want to be in. And, we can change it—in the 102d Congress.

A TRIBUTE TO ELIZABETH DOLE

(Mrs. JOHNSON of Connecticut asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Mrs. JOHNSON of Connecticut. Mr. Speaker, as Elizabeth Dole prepares to leave the Cabinet to assume the presidency of the American Red Cross, I just wanted to take a minute to express my appreciation for her outstanding performance as Secretary of Labor.

Secretary Dole has been an eloquent advocate for America's working men and women. Whether it was providing them with the skills for a job, protecting their health and safety on the job, or ensuring their security after retirement, the policies she advanced have made a positive difference in the life of our Nation and her people.

The one program of Secretary Dole's that I want to call special attention to is her "glass ceiling initiative." The objective of this initiative is to serve as a catalyst for change in both attitudes and policies, thereby removing barriers which prevent women and minorities from reaching the middle and top levels of management in business.

The first step in this initiative is currently underway—a series of nine compliance reviews of government contractors. The Department is investigating how senior management positions are filled, and whether minorities and women are being developed for such opportunities. Specifically, they are examining training, rotational assignments, developmental programs, and reward structures—all the indicators of upward mobility in corporate America.

Mr. Speaker, minorities and women will compose 85 percent of net work force growth in the coming years. If America is to remain competitive, then it is crucial that we remove the barriers which prevent them from reaching the top.

I salute Secretary Dole for her leadership, and will urge her replacement to continue this most important initiative.

GENERAL LEAVE

Mrs. JOHNSON of Connecticut. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on my tribute to Elizabeth Dole.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

NATIONAL INSTITUTES OF HEALTH AMENDMENTS OF 1990

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2857) to amend the Public Health Service Act to reauthorize certain Institutes of the National Institutes of Health, and for other purposes, as amended.

The Clerk read as follows:

S. 2857

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Institutes of Health Amendments of 1990".

SEC. 2. ESTABLISHMENT OF NATIONAL FOUNDATION FOR BIOMEDICAL RESEARCH.

Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended by adding at the end thereof the following new part:

"PART H—NATIONAL FOUNDATION FOR BIOMEDICAL RESEARCH

"SEC. 499A. ESTABLISHMENT AND DUTIES OF FOUNDATION.

"(a) IN GENERAL.—The Secretary shall establish a nonprofit corporation to be known as the National Foundation for Biomedical Research (hereafter in this section referred to as the 'Foundation'). The Foundation shall not, except for the purposes of the Ethics in Government Act and the Technology Transfer Act, be an agency or instrumentality of the United States Government.

"(b) DUTIES.—

(1) ESTABLISHMENT OF FUND FOR ENDOWING RESEARCH POSITIONS AT NATIONAL INSTITUTES OF HEALTH.—

"(A) The Foundation shall establish a fund whose primary purpose shall be to provide endowments for positions at the National Institutes of Health to conduct biomedical research. Such positions may be held by scientists without regard to whether the scientisis are employees of the Federal Government.

"(B) In addition to the purpose described in subparagraph (A), the fund established under such subparagraph may be expended to recruit scientists to hold the positions endowed by the fund.

"(C) The purposes for which an endowment under subparagraph (A) may be expended include support for the staffing, equipment, and quarters for the biomedical research conducted by scientists holding endowed positions under such subparagraph.

"(2) APPLICABILITY OF CERTAIN STANDARDS REGARDING NON-FEDERAL RESEARCHERS.—In the case of scientists holding endowed positions under paragraph (1)(A) who are not employees of the Federal Government, the Foundation shall negotiate a memorandum of understanding with the Director of the National Institutes of Health, subject to the approval of the Secretary, that specifies that any such scientist shall observe the ethical and procedural standards regulating research and research finding (including publications and patents) that are followed by scientists conducting research as employees of such Institutes, including standards under this Act, the Ethics in Government Act, and the Technology Transfer Act.

"(3) ADDITIONAL DUTIES.—The Foundation shall provide for biennial audits of the financial condition of the Foundation.

"(c) BOARD OF DIRECTORS.—

"(1) COMPOSITION.—

"(A) The Foundation shall have a Board of Directors (hereafter referred to in this section as the 'Board'), which shall be composed of ex officio and appointed members in accordance with this subsection. All members of the Foundation shall be voting members.

"(B) The ex officio members of the Council shall be—

"(i) the Chairman and ranking minority member of the Subcommittee on Health and the Environment (Committee on Energy and Commerce) or their designees, in the case of the House of Representatives;

"(ii) the Chairman and ranking minority member of the Committee on Labor and Human Resources or their designees, in the case of the Senate; and

"(iii) the Director of the National Institutes of Health.

"(C) The ex officio members of the Board under subparagraph (B) shall appoint to the Council 9 individuals from among a list of candidates to be provided by the National Academy of Science. Of such appointed members—

"(i) 4 shall be representative of the general biomedical field;

"(ii) 2 shall be representatives of the general biobehavorial field; and

"(iii) 3 shall be representatives of the general public.

"(2) CHAIR.—The ex officio members of the Board under paragraph (1)(B) shall designate an appointed member of the Board to serve as the Chair of the Board.

"(3) TERMS AND VACANCIES.—

"(A) the term of office of each member of the Board appointed under paragraph (2)(C) shall be 5 years, except that the terms of offices for the initial appointed members of the Board shall expire as determined by the ex officio members and the Chair.

"(B) Any vacancy in the membership of the Board shall be filled in the manner in which the original position was made and shall not affect the power of the remaining members to execute the duties of the Board.

"(C) If a member of the Board does not serve the full term applicable under subparagraph (A), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

"(D) A member of the Board may continue to serve after the expiration of the term of the member until a successor is appointed.

"(4) COMPENSATION.—Members of the Board may not receive compensation for service on the Board. Such members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board, as set forth in the bylaws issued by the Board.

"(d) INCORPORATION.—The initial members of the Board shall serve as incorporators and shall take whatever actions necessary to incorporate the Foundation.

"(e) NONPROFIT STATUS.—The Foundation shall be considered to be a corporation under section 501(c) of the Internal Revenue Code of 1986, and shall be subject to the provisions of such section.

"(f) EXECUTIVE DIRECTOR.—

"(1) In general.—The Foundation shall have an Executive Director who shall be appointed by the Board and shall serve at the

pleasure of the Board. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Board shall prescribe.

"(2) COMPENSATION.—The rate of compensation of the Executive Director shall be fixed by the Board.

"(g) POWERS.—In carrying out subsection (b), the Foundation may—

"(1) operate under the direction of its Board;

"(2) adopt, alter, and use a corporate seal, which shall be judicially noticed;

"(3) provide for 1 or more officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

"(4) hire, promote, compensate, and discharge officers and employees of the Foundation;

"(5) prescribe by its Board its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

"(A) its officers, employees, and agents are selected;

"(B) its property is acquired, held, and transferred;

"(C) its general operations are to be conducted; and

"(D) the privileges granted by law are exercised and enjoyed;

"(6) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this section;

"(7) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

"(8) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this subtitle;

"(9) establish a mechanism for the selection of candidates, subject to the approval of the Director of the National Institutes of Health or the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, for the endowed scientific positions within the organizational structure of the intramural research programs of the National Institutes of Health and the Alcolol, Drug Abuse, and Mental Health Administration and candidates for participation in the National Institutes of Health Scholars program;

"(10) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

"(11) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

"(12) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

"(13) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation;

"(14) appoint other groups of advisors as may be determined necessary from time to time to carry out the functions of the Foundation; and

"(15) exercise other powers as set forth in this section, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this subtitle.

"(h) ADMINISTRATIVE CONTROL.—No participant in the program established under this part shall exercise any administrative control over any Federal employee.

"(i) FUNDING—

"(1) AUTHORIZATION OF APPROPRIATIONS.—Subject to paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1995.

"(2) LIMITATIONS.—

"(A) Amounts appropriated under paragraph (1) or made available under subparagraph (C) may not be provided to the fund established under subsection (b)(1)(A).

"(B) For the first fiscal year for which amounts are appropriated under paragraph (1), $200,000 is authorized to be appropriated.

"(C) With respect to the first fiscal year for which amounts are appropriated under paragraph (1), the Secretary may, from amounts appropriated for such fiscal year for the programs of the Department of Health and Human Services, make available not more than $200,000 for carrying out this part, subject to subparagraph (A).".

SEC. 3. ESTABLISHMENT OF NATIONAL CENTER FOR MEDICAL REHABILITATION RESEARCH.

(a) IN GENERAL.—Subpart 7 of part C of title IV of the Public Health Service Act (42 U.S.C. 285g et seq.) is amended by inserting after section 451 the following new section:

"NATIONAL CENTER FOR MEDICAL REHABILITATION RESEARCH

SEC. 452. (a) There shall be in the Institute an agency to be known as the National Center for Medical Rehabilitation Research (hereafter in this section referred to as the 'Center'). The Director of the Institute shall appoint a qualified individual to serve as Director of the Center. The Director of the Center shall report directly to the Director of the Institute.

"(b) The general purpose of the Center is the conduct and support of research and research training (including research on the development of orthotic and prosthetic devices), the dissemination of health information, and other programs with respect to the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system (hereafter in this section referred to as 'medical rehabilitation').

"(c)(1) In carrying out the purpose described in subsection (b), the Director of the Center may—

"(A) provide for clinical trials regarding medical rehabilitation;

"(B) provide for research regarding model systems of medical rehabilitation;

"(C) coordinate the activities of the Center with similar activities of other agencies of the Federal Government, including the other agencies of the National Institutes of Health, and with similar activities of other public entities and of private entities;

"(D) support multidisciplinary medical rehabilitation research conducted or supported by more than one such agency;

"(E) In consultation with the advisory council for the Institute and with the approval of the Director of NIH—

"(i) establish technical and scientific peer review groups in addition to those appointed under section 402(b)(6); and

"(ii) appoint the members of peer review groups established under subparagraph (A); and

"(F) support medical rehabilitation research and training centers.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under subparagraph (E).

"(2) In carrying out this section, the Director of the Center may make grants and enter into cooperative agreements and contracts.

"(d)(1) In consultation with the Director of the Center, the coordinating committee established under subsection (e), and the advisory board established under subsection (f), the Director of the Institute shall develop a comprehensive plan for the conduct and support of medical rehabilitation research (hereafter in this section referred to as the 'Research Plan').

"(2) The Research Plan shall—

"(A) identify current medical rehabilitation research activities conducted or supported by the Federal Government, opportunities and needs for additional research, and priorities for such research; and

"(B) make recommendations for the coordination of such research conducted or supported by the National Institutes of Health and other agencies of the Federal Government.

"(3)(A) Not later than 18 months after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of the Institute shall transmit the Research Plan to the Director of NIH, who shall submit the Plan to the President and the Congress.

"(B) Subparagraph (A) shall be carried out independently of the process of reporting that is required in secitons 403 and 407.

"(4) The Director of the Institute shall periodically revise and update the Research Plan as appropriate, after consultation with the Director of the Center, the coordinating committee established under subsection (e), and the advisory board established under subsection (f). A description of any revisions in the Research Plan shall be contained in each report prepared under section 407 by the Director of the Institute.

"(e)(1) The Director of NIH shall establish a committee to be known as the Medical Rehabilitation Coordinating Committee (hereafter in this section referred to as the 'Coordinating Committee').

"(2) The Coordinating Committee shall make recommendations to the Director of the Institute and the Director of the Center with respect to the content of the Research Plan and with respect to the activities of the Center that are carried out in conjuction with other agencies of the National Institutes of Health and with other agencies of the Federal Government.

"(3) The Coordinating Committee shall be composed of the Director of the Center, the Director of the Institute, and the Directors of the National Institute of Aging, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Heart, Lung, and Blood Institute, the National Institute of Neurological Disorders and Stroke, and such other national research institutes and such representatives of other agencies of the Federal Government as the Director of NIH determines to be appropriate.

"(4) The Coordinating Committee shall be chaired by the Director of the Center.

"(f)(1) Not later than 90 days after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of NIH shall establish a National Advisory Board on Medical Rehabilitation Research (hereafter in this section referred to as the 'Advisory Board').

"(2) The Advisory Board shall review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research, and shall advise the Director of the Center and the Director of the Institute on the provisions of the Research Plan.

"(3)(A) The Director of NIH shall appoint to the Advisory Board 18 qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, 12 shall be representatives of health and scientific disciplines with respect to medical rehabilitation and 6 shall be individuals representing the interests of individuals undergoing, or in need of, medical rehabilitation.

"(B) The following officials shall serve as ex officio members of the Advisory Board:

"(i) The Director of the Center.

"(ii) The Director of the Institute.

"(iii) The Director of the National Institute on Aging.

"(iv) The Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

"(v) The Director of the National Institute on Deafness and Other Communication Disorders.

"(vi) The Director of the National Heart, Lung, and Blood Institute.

"(vii) The Director of the National Institute of Neurological Disorders and Stroke.

"(viii) The Director of the National Institute on Disability and Rehabilitation Research.

"(ix) The Commissioner for Rehabilitation Services Administration.

"(x) The Assistant Secretary of Defense (Health Affairs).

"(xi) The Chief Medical Director of the Department of Veterans Affairs.

"(4) The members of the Advisory Board shall, from among the members appointed under paragraph (3)(A), designate an individual to serve as the chair of the Advisory Board.".

(b) REQUIREMENT OF CERTAIN AGREEMENTS FOR PREVENTING DUPLICATIVE PROGRAMS OF MEDICAL REHABILITATION RESEARCH.

(1) IN GENERAL.—The Secretary of Health and Human Services and the heads of other Federal agencies shall—

(A) jointly review the programs being carried out (or proposed to be carried out) by each such official with respect to medical rehabilitation research; and

(B) as appropriate, enter into agreements for preventing duplication among such programs.

(2) TIME FOR COMPLETION.—The agreements required in paragraph (1)(B) shall be made not later than one year after the date of the enactment of this Act.

(3) DEFINITION OF MEDICAL REHABILITATION.—For purposes of this subsection, the term "medical rehabilitation" means the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system.

The SPEAKER pro tempore (Mr. MAZZOLI). Is a second demanded?

Mr. SMITH of New Jersey. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes, and the gentleman from New Jersey [Mr. SMITH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on S. 2857, the Senate bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume. The purpose of the House amendment is to establish a National Foundation for Biomedical Research and a National Center for Medical Rehabilitation Research.

Establishment of the National Foundation was a recommendation of the National Academy of Sciences' Institute of Medicine. The IOM conducted a thorough study of the National Institutes of Health's intramural research program. They believe NIH research would be strengthened by the establishment of a private research foundation modeled after the Henry M. Jackson Foundation for the Advancement of Military Medicine. The proposed Foundation is intended to establish an endowment to support the work of senior scientists involved in the NIH research program.

In addition, the legislation would expand Federal support of medical rehabilitation research through establishment of a National Center for Medical Rehabilitation Research within the National Institute of Child Health and Human Development.

I want to commend the efforts of the gentleman from Pennsylvania [Mr. WALGREN] and the gentleman from Florida [Mr. LEHMAN] for their concern and leadership in recognizing the importance of medical rehabilitation. The authority of the new center includes an important requirement that research include the development of orthotic and prosthetic devices.

Mr. Speaker, I urge support for the bill.

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to make an inquiry of the distinguished gentleman from California [Mr. WAXMAN], to ascertain, on page 2, under section 2, applicability of certain standards regarding non-Federal researchers, if the language has been added that would say "subject to the approval of the Secretary"?

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. SMITH of New Jersey. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, yes, that language has been added to the pending legislation.

Mr. SMITH of New Jersey. Mr. Speaker, I thank the chairman for making that change, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the Senate bill, S. 2857, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the Senate bill, as amended, was passed.

The title of the Senate bill was amended so as to read: "An Act to amend the Public Health Service Act with respect to certain programs for the National Institutes of Health.".

A motion to reconsider was laid on the table.

□ 0400

TRIBUTE TO THE HONORABLE HOWARD C. NIELSON

(Mr. OWENS of Utah asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of Utah. Mr. Speaker, I have had the pleasure and privilege of working with HOWARD NIELSON on Utah's behalf for the past 4 years. Throughout his four terms in the House, he has consistently demonstrated his dedication to both the citizens of Utah and the Third District.

With HOWARD's retirement, the House is losing its only certified statistician—unfortunately right at the time when we are in the middle of a critical budget numbers crunch which is quite certain to continue into the indefinite future. HOWARD's memory and his ability to analyze numbers is phenomenal and well known.

HOWARD earned several degrees in his academic career—a bachelor of science degree from the University of Utah in 1947, a master of science degree from the University of Oregon in 1949, an MBA from Stanford University in 1956, as well as a Ph.D. In 1958, also from Stanford. HOWARD taught courses in business administration and statistics at Brigham Young University, where he also served as chairman of the department of statistics from 1960–63.

All of us who know HOWARD know how good he is with numbers, a talent which he refined as a statistician for C&H Sugar Co., and as a research economist for the Stanford Research Institute. An expert in this field, HOWARD was also asked to serve as director of economic and statistical re-

search for the Eyring Research Institute, director of the center for business and economic research at BYU, and was elected president of the Utah Statistical Association. Throughout the years, despite his many commitments, he also managed to maintain a business research consulting practice.

HOWARD was elected to Congress after a productive career in Utah State government. During his four terms in the Utah House of Representative, HOWARD served one term as majority leader, and another as Speaker of the House. From 1973 to 1975, he was the Chairman of the Utah Legislative Council, and from 1974-76 he was a governing board member of the National Council of State Governments.

On November 2, 1982, the citizens of Utah sent HOWARD NIELSON to Congress. Over the last 4 years, we have had the opportunity to work together many times. This year alone, we collaborated on wild and scenic status for the Colorado River through Westwater and Cataract Canyons, on a bill to protect the area near Bryce Canyon from coal stripmining, and, of course, on the development of the Central Utah Water project. HOWARD is also a member of the House Energy and Commerce Committee, and has been an important voice for Utah during deliberations on the clean air bill and as a member of the Clean Air Conference Committee.

HOWARD's concern for his constituents was evident through his extensive and dedicated efforts on behalf of clean air legislation. I am very pleased that I could organize this tribute to honor and thank HOWARD. He has been an exceptional Member of the House. We will miss his voice and perspective. HOWARD, despite occasional differences in philosophy, has my deep respect. We've gone to the mat a few times for our beliefs and our constituents, and sometimes for reasons that weren't even that good, but I want to assure him that he will be missed. He has left his mark on this institution.

Mr. HERGER. Mr. Speaker, I am pleased to be able to join in this special order tonight, not only because I have tremendous respect for our colleague, HOWARD NIELSON, but as well because in the last 4 years, HOWARD has become a close friend of mine in the Congress. HOWARD helped introduce me to many of the other Members of the House, and I will always be grateful for his generosity in helping me get to know my fellow colleagues.

I'm sure each of us, in our first few years in the House, look to a few more senior Members for special guidance and counsel on how this institution works, and on how to approach the many complex issues which the Congress must deal with.

When I arrived in the House in 1987, many times I turned to HOWARD NIELSON for advice.

I was instantly drawn to HOWARD because of his engaging personality, and as well because I believe HOWARD is one of the brightest individuals we have serving in the House.

With a Ph.D. in business administration and statistics, HOWARD has the intellectual background and training to really understand the details of much of the legislative business the Congress takes up. I quickly noticed that HOWARD was someone whose analysis of legislation was nearly always on target. Moreover, I was impressed with HOWARD's values and judgment. Clearly, these were traits of a man of strong conviction and principle.

There are few men who have served in the Congress who have a deeper devotion to individual liberty and freedom than HOWARD NIELSON. HOWARD has been a good steward of the taxpayer's dollars. He has had the courage to say no to the many special interests that have helped cause our Federal budget problems. He has been a strong opponent of the tax and spend philosophy which is bankrupting our Nation. If there were more Members of HOWARD NIELSON's caliber in this body today, we wouldn't be struggling with the terrible budget crisis we are currently facing.

Certainly one of the reasons HOWARD has been such a source of good information to me and to many others on how legislative bodies work is his tremendous wealth of experience as a legislator.

HOWARD's four terms in the House cap a career that has included service as Speaker of the Utah House of Representatives. Indeed, he earned instant respect among his colleagues in the Utah House, as reflected by the fact that they chose him to be the majority leader within 2 years of his first election to the House.

HOWARD has also had a successful career as a professor of statistics at Brigham Young University, one of the top colleagues in the Nation.

While HOWARD is leaving the Congress, I know he has some exciting plans for the future. Together with his wife Julia, HOWARD is planning on undertaking a mission for the Church of Jesus Christ of Latter-day Saints, the Mormon. I find this so fully in keeping with the lifelong devotion to serving others and to serving God which both HOWARD and Julia have amply demonstrated.

Before I conclude my remarks this evening, I have one point I'd like to make to HOWARD on a personal note. I can think of no higher tribute to a friend or colleague than to say that they were there when you needed them. Well, HOWARD, when I had a special need for a member of my family, I turned to you for help, and you were there when I needed you. I will always remember that, and will always be very grateful for what you've done, as will my entire family. You have been a very true and very good friend, and one I hope to hear from frequently in the months and years to come.

As we near the final days of this session, we must sadly say goodbye to HOWARD, and wish him well in his future efforts. We in the Congress join his constituents in the Third District of Utah in saluting him for a job well done. It may well be many years before we see another man of HOWARD NIELSON's intellect and caliber serving with us here in the House. We will miss you, HOWARD, and we will always remember your remarkable achievements on behalf of the American people.

Mr. STALLINGS. Mr. Speaker, it has been a privilege to serve with HOWARD NIELSON. Throughout his 8 years in Congress, he has represented Utah with statesmanship and dignity.

As a freshman Congressman, I remember HOWARD taking the time to talk with me and share his perspective on service in the House. HOWARD and I come from similar backgrounds and represent similar districts. Our districts are primarily rural in nature, populated with self-sufficient and self-reliant people. In fact, I have the privilege of representing some of HOWARD's family in Congress while he represents some of mine.

We both worked for the same employer—the LDS Church Education System. He was on the faculty at Brigham Young University while I taught at the sister institution, Ricks College. Our home towns, Rexburg, ID, and Provo, UT, are college towns and our constituents share similar values.

HOWARD was always willing to work with me and provide advice and assistance as we dealt with the critical issues that impact western states. I will long value his counsel and judgment.

I know that HOWARD has an exciting future planned for himself and his family and I want to wish him the best as he continues his public service. The House of Representatives will miss his independent thinking and statesman-like approach to public policy. And I will miss my good friend HOWARD NIELSON.

Mr. LAGOMARSINO. Mr. Speaker, I rise this evening to pay tribute to a good friend and colleague, HOWARD NIELSON, who will be retiring from Congress after this session. It has been my privilege to work with HOWARD over the years he has been in Congress on many important issues affecting both the beautiful State of Utah and the Nation at large.

It can truly be said of HOWARD NIELSON that his greatest motivation has always been the people who elected him time and again to represent them in Congress. This he has done with the utmost of integrity, tarnishing not the role of a Federal representative, but rather, leaving behind a heritage and legacy which will add to the positive image and function that this institution has sought since its inception in 1789.

HOWARD, while your presence will be greatly missed in this Chamber, your inspiration and efforts to further the cause of life, liberty, and happiness for all men and women everywhere, will not soon be forgotten. Please accept my sincere desire for God's blessing in your future endeavors.

Mr. MAZZOLI. Mr. Speaker, it is with sadness that I say goodbye to our retiring colleague HOWARD C. NIELSON of Utah.

HOWARD NIELSON was first elected to the U.S. Congress in 1982 and has faithfully served his constituents in the Salt Lake City and Provo areas throughout his four terms in the House.

Before coming to Washington, Congressman NIELSON taught business administration and statistics at Brigham Young University, serving as chairman of the department of statistics for 3 years. He also exercised his capacity for organization as a business research consultant in Utah.

Piror to his election to the House, HOWARD served four terms in the Utah House of Representatives, with one term as majority leader and another as speaker of the House.

HOWARD has served on both the Government Operations Committee and the Energy and Commerce Committee. As a member of the Government Operations Committee, he served as ranking member of its Subcommittee on Government Activities and Transportation.

HOWARD has always had a found word and a cheerful hello for me and for all his colleagues. He will be missed.

Mr. Speaker, I wish HOWARD much health and very much happiness and much success in the future.

Mrs. COLLINS. Mr. Speaker, I want to take this opportunity to say a few words about one of our colleagues who'll be leaving us soon. I'm referring to my good friend from Utah, Mr. Nielson.

I have been privileged, indeed, to have Mr. NIELSON as the ranking minority member of my Government Activities and Transportation Subcommittee since 1986. Throughout his tenure, he has shown his strong commitment to public service and to working diligently toward truly bipartisan solutions to increasingly complex problems that affect all of our constituents.

Mr. NIELSON contributed immeasurably in trying to make air travel safe. Working together, we were the first to identify the serious maintenance problems at Eastern Airlines that resulted in indictments earlier this year. In the subcommittee's lengthy investigation of the Pan Am 103 disaster, Mr. NIELSON demonstrated his willingness to take on the tough political questions because it needed be done to protect people from future terrorist attacks.

He worked hard to ensure equal employment and equal business opportunities for all Americans. We looked at minority and women contractors' inability to obtain the bonding they need to compete for government contracts. And we looked at ongoing discriminatory hiring practices in the airline industry, with its pattern of refusing to hire black pilots, managers, and other professionals.

Mr. NIELSON was an important ally in trying to protect the public and the environment from hazardous substance spills—whether on our highways or on our railways.

He helped reverse policies in our cultural institutions that ignored the past and current contributions of countless minority artists. Because of our work, our society will be more accurately and fairly portrayed in museums across the country—to the benefit of all of our people.

He demonstrated his appreciation for the plight of growing numbers of homeless people in this country by laboring to change GSA policies that denied sorely needed property for shelters.

Mr. NIELSON's active involvement in our investigation into child care for Federal workers resulted in a greater than threefold increase in the number of child care centers for Federal workers.

I could go on, but I think it's clear that Mr. NIELSON has brought a degree of integrity and public spiritedness to both my subcommittee and this committee that will be hard to replace. I know I will miss him and I know I echo the feelings of many Members on both sides of the aisle.

Mrs. MORELLA. Mr. Speaker, in an era of specialists, our Utah colleague, HOWARD C. NIELSON, is a generalist whose encylopedic interests range from a passion for good Government, to the Mormon Church, to classical music.

HOWARD's serious approach toward his work in Congress—and his pursuit of conservative governmental principles—is pointed up by the fact that, even as he is getting ready to retire, he was a major player in the recently concluded clean air bill deliberations. None of us should be surprised that HOWARD was among those who were still plugging away at 5 a.m. on the final day of the conference.

HOWARD's round-the-clock effort as he closes out his congressional career has been a trademark of his work on and off the Energy and Commerce Committee during his four terms in Washington. A former professor of statistics with a fine analytical approach, he is known for his probing questions that quickly get to the bottom line.

HOWARD also has been known for his collegiality and basic good manners. Some years ago, an acquaintance of mine who served in this body wanted for district reasons to get on a committee on which HOWARD served, a committee on which there was no opening. The committee was not HOWARD's major one, and, with kindness and without fanfare, he agreed to give up his spot in order to help out a colleague.

In retirement, HOWARD may not face too many more 5 a.m. working sessions. But anyone who knows him recognizes that he will not be spending his time reclining in a hammock. His next challenge will be serving a mission for the Mormon Church—at a destination to be announced by the church in the near future. And he will seek to spend more time with his 28 grandchildren.

I've enjoyed working with him on the House Wednesday Group, where he is a valued member. He will be missed, and I join his constituents, and his colleagues in this House, in wishing him good luck and continued success in his future endeavors.

Mr. CRANE. Mr. Speaker, with our background in education, it is always a pleasure to serve with a former university professor. The holder of a Ph.D., HOWARD NIELSON's scholastic activities at Brigham Young University were in the field of statistics and economics. He also held the post of associate commissioner of education in Utah.

Besides serving his country in the House of Representatives, HOWARD saw wartime duty with the Army Air Corps.

Here in Congress, he became an expert on air transportation while a member of the House Government Operations Committee. While serving on the Energy and Commerce Committee, he devoted his energies to environmental and consumer protection problems.

HOWARD is to be envied by all of us. Having served his Nation in the military as well as the legislative arm of the Government, he now intends to devote his life to God. HOWARD and his lovely wife, Julia, are planning on doing missionary work for the Mormon Church upon his retirement.

HOWARD NIELSON has served his country well and he will be missed by his many friends and colleagues in Washington.

Mr. SCHULZE. Mr. Speaker, I appear before this distinguished body to pay a much-deserved tribute to our colleague, Congressman HOWARD CURTIS NIELSON, who will retire at the end of this session.

Congressman NIELSON brought to the Nation's Capitol an impressive and valuable mix of educational and professional background. He was a statistician for C&H Sugar, a research economist for the Stanford Research Institute, a radar mechanic in the Army Air Force during World War II, and a professor of business administration and statistics at Brigham Young University in Provo, UT, for nearly 25 years.

Upon his departure, HOWARD leaves behind an indelible mark of quality and service to his country. He is a man dedicated to principles of fair governance and generous service.

As vice chairman of the Steel Caucus, I have watched HOWARD work diligently to revitalize the U.S. steel industry. The capacity for producing high-quality and high volumes of steel is vital to our National Security and economic health. It is often quickly forgotten how important our independence from foreign suppliers truly is, until we see the likes of Saddam Hussein rear a warlike head over the horizon.

When foreign competitors used unfair trade practices to squeeze U.S. steel producers out of global competition, HOWARD went to work for his constituents and the larger welfare of his country. A concurrent onslaught of inequitable, foreign-steel trade practices, compounded by demands for swift progress toward environmental compatibility shut down the United States Steel plant in Orem, UT, in 1986.

Without hyberbole and fanfare, HOWARD rolled up his sleeves, applied his knowledge, mind and time. Within a year, he helped forge a new and vital competitor out of the abandoned shambles of Geneva Steel. He secured voluntary restraint agreements which prevented foreign companies from flooding the U.S. market with steel at below-cost prices. In the meantime, he gathered investors into a joint venture, which under his creative leadership, propelled Geneva Steel into the 21st century. Their modern equipment not only produces steel more efficiently, but with far less environmental impact.

This makes HOWARD NIELSEN a hero not only to the 1,800 workers whose jobs he helped restore, but to the environment. Even so, he is as unpretentious today as he was in 1941, when as a young laborer he helped build the new plant.

In his work to strengthen the steel industry, HOWARD never forgot the important balance between a strong industry and a clean environment. Even now, he is working tirelessly to mold a passable clean air bill which will reduce 189 industrial airborne toxins through the application of maximum achievable control technology.

Further, Congressman HOWARD NIELSEN was instrumental in establishing the Central Utah water project which will provide fresh water for agriculture, industry, and residents throughout the valley.

His constituents will surely remember him for his frequent personal visits to their towns and rural communities. During his 8-year tenure, HOWARD met constituents at nearly 1,000 townhall meetings. The man they met at these meetings is a man we know well—a man of empathy, a man of compassion, a man dedicated to the principles of good government.

Although we shall lose HOWARD NIELSEN as a valued colleague, his 7 children and 28 grandchildren will be glad to spend more time with him. Surely, wherever HOWARD goes, he will leave behind him a better world.

As I see it, the legacy of Congressman HOWARD NIELSON is a stronger American industry and a cleaner environment to sustain our lives. On behalf of us all, HOWARD, thank you for your dedication and example. We wish you happiness, health, and Godspeed.

Mr. BEREUTER. Mr. Speaker, this institution will surely miss the presence, good will, intellect, and accomplishment of our very distinguished colleague from Utah [Mr. NIELSON]. HOWARD is a man who distinguished himself in so many ways before he was elected to the House and he continued that pattern of exceptional distinction in public service in this body.

HOWARD NIELSON we all know to be a man of unfailing good humor, courtesy, rectitude, and patriotic devotion to public service and our Nation. There are so many fine things that can be said about our distinguished colleague from Utah, but this Member believes one short sentence might say it best:

HOWARD NIELSON is one of the finest men I have ever met or expect to meet.

HOWARD, this Member will greatly miss our daily contact, your keen mind, and wise counsel. I hope you will return to visit the Congress often. It is my fervent hope that you and your very wonderful wife, Julia, will have a wonderful and full life, enjoying your children, many grandchildren, and hosts of friends after your departure from the Congress. May God shower you and your family with the richest measure of His blessings. Louise joins me in this praise and prayer.

Mr. HANSEN. Mr. Speaker, when Congress adjourns for the session, it will mark the end of the congressional career of my good friend and colleague, HOWARD NIELSON.

HOWARD has represented his district and indeed, the entire State of Utah well. While many Members of Congress are show horses, HOWARD has been the workhorse of the Utah delegation. His tireless efforts have led to passage of important legislation, including the wild and scenic designation of segments of the Colorado River, important land exchange legislation, and most importantly, the Central Utah project. It was HOWARD's determination and statesmanship which kept the negotiatons on CUP alive when everyone else was ready to give up.

I have known HOWARD for many years, in both my professional and personal lives. He is a kind and caring man, always quick with an encouraging word or a helping hand. His honesty and integrity are standout qualities which are admired and appreciated by his friends, and constituents alike. So often in Congress, and indeed in the Utah delegation, deals are made only to fall apart because it is politically expedient for one of the parties involved. But once HOWARD gives his word, he will bend over backwards to deliver. Perhaps that's why HOWARD is known as the delegation's "one man truth squad."

HOWARD will be moving on to a calling in his church. I have no doubt he will serve in that capacity with all the dedication he has served in Congress. While I wish him all the best, I want him to know his presence will be missed by those of us who stay behind. Congress is saying farewell to one of its most capable legislators, and the delegation is saying good-by to a very good friend.

GENERAL LEAVE

Mr. OWENS of Utah. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the retirement of the Honorable HOWARD C. NIELSON.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Utah?

There was no objection.

INFRASTRUCTURE NO. 1 PRIORITY FOR 102D CONGRESS

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, as we wind down the 101st Congress, I think it behooves us to start laying plans for what may be anticipated to be done in the 102d Congress. I would like to think that one of the unfinished pieces of business that is going to have to be a large part of any agenda in the 102d Congress is probably going to have to be dealing with infrastructure.

I know that the Committee on Public Works and Transportation under the very able leadership of the gentleman from California [Mr. ANDERSON] and the gentleman from Arkansas [Mr. HAMMERSCHMIDT], the ranking Republican on the committee, are outlining for us already what we are going to have to do in terms of surface transportation, mass transit, bridges, and other kinds of infrastructure programs that we will need to carry us through the balance of the 1990's and prepare us for the 21st century.

Mr. Speaker, as we look at infrastructure in the 1960's and 1970's, we find that as far as local, State, and Federal Government is concerned, that we have spent roughly 2.3 percent of the GNP on transportation infrastructure. But in the 1980's that has dropped to four-tenths of 1 percent. So when people start wondering why has urban congestion gone up by 60 percent, why are 50 percent of our bridges either functionally obsolete or deficient, why do we need to pave about 1 million miles of our road system, it is just from the fact that we have neglected doing the kind of work that we should be doing on the transportation infrastructure.

So as we look at our agenda in the 102d Congress, I think that this whole issue of rewriting the highway bill is going to be an important part of our agenda. The present law we have expires on September 30 this year, and so by October 1, 1991, Mr. Speaker, I am hoping that the House and Senate will have accomplished their job, and get before the President a bill that he can sign that deals with transportation infrastructure.

We have bridges, we have highways that now are obsolete, and with the 1965 legislation that created the National Defense Highway Network, the interstate highway system will be completed by 1991. By that time, Mr. Speaker, we will have laid 43,000 miles of a highway system at a cost of $127 billion.

So the question is, what do we do then to prepare ourselves for the 21st century? We are hoping then that we will be able to create the highways of national significance and undertake this kind of a program.

Again, Mr. Speaker, I appreciate the time so that I might be able to sort of lay out for the Members what our plans will be for infrastructure for the 102d Congress.

WORK OF THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

(Mr. FAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAZIO. Mr. Speaker, I think we were all struck earlier this evening with the remarks of the gentleman from Oregon [Mr. SMITH]. I see my colleague on the floor, the gentleman from Indiana [Mr. MYERS] who is the ranking Republican member of the Ethics Committee. I spoke earlier with Chairman DIXON.

The first thing that strikes me is that all of us have to remember that we are all in this system of justice here in the House, just as in the rest of the country, where we are innocent until proven guilty. But I am particularly concerned about the good work that the committee has done in what is a very, very difficult Congress, and the gentleman from Indiana [Mr. MYERS] and the gentleman from California [Mr. DIXON] I think have served the institution superbly well.

I think it is most important that we think of the problem that the gentleman from Oregon [Mr. SMITH] brought before us tonight. In a long-term, generic sense, this is a problem for Congress regardless of whether the complaints come from within the body or from without. The inability to act

in a timely way is simply built into a system where we do not have enough people on staff, enough Members with enough time to always review the cases that come before us in a way which gives the kind of immediate or summary justice to all of the people who for one reason or another are brought before our committee.

There may well be some mechanism, one perhaps related to the kind that Speaker FOLEY suggested, where at a certain time in the year we just simply refuse to take any more complaints from whatever source. At the same time, the committee could not put itself in a position where it assumes anything about any of the complaints that are brought to our attention. We simply have to do our job by the institution, and that takes deliberation, that takes ample investigation, and it takes sincere consideration on both sides of the committee table.

I think it is regrettable that increasingly on both sides of the aisle, and I do not mean in this Chamber, but in this country, we have seen people using the Ethics Committee as another way station on the political campaign trail. Political consultants, campaign managers, have made it an automatic stopping place.

□ 0410

It has become an easy, cheap political story, and I think that has gotten in the way of those legitimate problems that occasionally come up in a campaign environment which should be brought to the committee but not always at the last minute. The problem with setting a deadline is so often people will file a day before just as they would a day before a statute would run on any kind of a civil or criminal problem that we see in the normal justice system.

There is no easy answer, but when our Task Force on Ethics considered this issue earlier this year, I must say there was a great deal of concern on the part of the minority that we not in any way impede access to the committee by any complainant. The feeling was that that would be interference in a process that should be open to the public and to the Members if they so chose to use it.

Mr. Speaker, I yield to my colleague, the gentleman from Indiana [Mr. MYERS] for any comments he might wish to make.

Mr. MYERS of Indiana. Mr. Speaker, I certainly thank our colleague from California who has had experience on the Committee on Standards of Official Conduct for his remarks.

What the gentleman has referred to here, it is unfortunate, through the years, I have been on this committee for 10 years, this is not a new incident. It happens almost every election year, and as Speaker FOLEY has advised the respondent this evening, the policy has been, in the years I have been on, generally after Labor Day we just do not take these issues up for several reasons. They are often obviously political.

In this atmosphere we have today, it seems all one has to do is point and accuse one of our colleagues of an ethics violation, and it is almost fatal. I think the American people really are too wise, I hope, and would look at the timing of some of these and realize they are politically motivated.

Unfortunately, things as far as the gentleman and I are concerned and the 12 Members who spend hour upon hour in that committee, it is politicizing us. We have a very difficult task. We are not asking for any pity now, but it is unfair to the system that our committee, who has the responsibility of protecting the integrity and the reputation of this House of Representatives, but to politicize this every 2 years in the last 30 or 60 days before an election is unfair to the institution, and that is what concerns me.

As the gentleman knows, we are considering right now, and I do not know who the new members will be next year, but we are going to leave a legacy of hopefully some improvements and some protections that every one of us has, and it is on both sides of the aisle, Republicans filing against Democrats, Democrats filing against Republicans, because they know it can be fatal, and that is too bad.

I just hope that the American people can see through these.

The gentleman from Oregon [Mr. DENNY SMITH] is not the only one. There are both sides of the aisle who are bleeding right now, and that is just really too bad, so I thank the gentleman for bringing it up this evening, the fact that it is a concern to all of us who are going to try to help in the future make sure this does not happen if there is a way, and we are searching for a way right now.

Mr. FAZIO. I appreciate the gentleman's comments.

Before yielding back, I wanted to indicate to the gentleman and to my chairman, the gentleman from California [Mr. DIXON], who I believe is upstairs, how much I have enjoyed serving with you during the 8 years I have been on the committee. I know this is awfully late and not an appropriate time to say this, but I know all the Members particularly value the service that the ranking member and the chairman provide, because it is three or four times as much as the very busy committee provides.

You truly are servants of this institution and deserve a lot of credit for the time you provide the Members.

Mr. Speaker, I yield to my colleague, the gentleman from New Jersey [Mr. TORRICELLI].

Mr. TORRICELLI. Mr. Speaker, before this Congress adjourns, something should be said for those of us who, unlike the gentleman from California, unlike the gentleman from Indiana [Mr. MYERS], the gentleman from California [Mr. DIXON], does not serve on the ethics committee.

In many ways this has been the Congress of ethics, and some will use that as a charge to suggest that ethical standards have been lowered.

But, indeed, if ethics have been discussed disproportionately in this Congress, it is because standards have been raised. Questions have been asked, because much has been expected, and from those of us who have not served on the ethics committee but watch your work, the gentleman from California [Mr. FAZIO], the gentleman from Indiana [Mr. MYERS], the gentleman from California [Mr. DIXON] and others, I think all of us owe you a great deal.

The hours you have spent, the fairness that you have brought, what you have done to enhance the reputation of this institution, we have learned a lot in this Congress. Even tonight we are reminded that while we try to raise standards, the threshold to bring cases, especially during political campaigns, needs to remain high as part of preserving the ethical standards of the institution.

But I do not want this Congress to end without, I think, on behalf of many people in this institution, thanking each Member on each side of the aisle who worked so hard to make this process work and the long hours they devoted to the process.

Well done.

Mr. FAZIO. I thank the gentleman for his comments.

CONFERENCE REPORT ON H.R. 5835, OMNIBUS BUDGET RECONCILIATION ACT OF 1990

Mr. PANETTA. Mr. Speaker, pursuant to the rule, I call up the conference report on the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1991, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER. Pursuant to House Resolution 537, the conference report is considered as read.

(For conference report and statement, see proceedings of the House of this date, Friday, October 26, 1990.)

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. WALKER. Mr. Speaker, if the conference report is being considered as read, is there a copy available for the Members to actually look at? I realize there is a copy at the desk, but

on this side we have no copy of the conference report, and I see no copy on the majority side. What is it that the Members are to utilize in order to find specific provisions?

The SPEAKER. The copy available at the desk will be available for the Members to examine.

Mr. WALKER. All of the Members are to use the one copy available at the desk? Is that correct?

The SPEAKER. The Chair does not note that there are any Members seeking to examine the report at the moment.

Mr. WALKER. As a further parliamentary inquiry, Mr. Speaker, I see a couple of Members at the desk right now looking through it, and that is the question as to whether or not that is going to be the only copy available.

Mr. PANETTA. Mr. Speaker, if the gentleman will allow me to answer, there are additional copies that are being copied now and brought to the floor. In the meantime, there are obviously summaries available on the desk for Members to look at.

Mr. WALKER. Mr. Speaker, I thank the gentleman, and I thank the Chair.

The SPEAKER. The gentleman from California [Mr. PANETTA] will be recognized for 1 hour, and the gentleman from Minnesota [Mr. FRENZEL] will be recognized for 1 hour.

The Chair recognizes the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference.

First of all, I wish to thank all of the Members for their patience and for their cooperation, recognizing that they are all tired, we are all tired, and very exhausted by what has been a very long process throughout this entire year, long and often frustrating in the effort to try to develop a final budget compromise, working with the administration.

The process has been focused on one goal and one goal only which is to try to confront what is perhaps the most serious problem facing this Nation, the tremendous deficits that we now confront in our economy.

What I would hope to do is to ask all Members for this moment, as we consider this conference report, to hopefully set aside the politics and the rhetoric and the political strategies, the 1-minute shots and perhaps focus on the issue of where we are as a Congress and as a nation. If we will do that, I believe there are three fundamental reasons why this conference report should be adopted.

The first is that it is absolutely essential to deficit reduction and represents the largest and most effective deficit reduction package in the history of this country.

The package that comes before us, using the OMB baseline, is $496 billion over 5 years.

□ 0420

Let me remind Members that the reconciliation target last year was about $14 billion. We achieved in real savings out of that $14 billion somewhere around $4 to $5 billion, because it was largely smoke and mirrors. I think the largest deficit reduction package we have passed in our history was something in the vicinity of about $35 billion back in 1981. Even those savings were questionable because of cost shifts, asset sales, and some of the gimmicks that were used in deficit reduction.

The package before Members consists of $496 billion in deficit reduction that is real, that does not involve any smoke and mirrors, and that constitutes tough and hard choices to try to achieve deficit reduction. Twelve committees of the House, and I would recommend Members to read the summary on the reports that we have provided, 12 committees of the House, and I pay tribute to each chairman and to all those committees for the tough choices that had to be made. I would recommend to Members that they walk through every one of these committees and look at the choices that were made, whether it was the Committee on Agriculture, the Committee on Banking, Finance and Urban Affairs, the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Interior and Insular Affairs, the Committee on Merchant Marine and Fisheries, the Committee on Post Office and Civil Service, the Committee on Veterans' Affairs, the Committee on Science, Space, and Technology, or the Committee on Ways and Means. Every one of them, every one had to make very tough choices that involved real savings, choices that impact on the American people and that impact on all Members. The only way we achieve real deficit reduction is by the willingness to make those kinds of tough choices. The combined savings that we have here represents in spending almost two-thirds of this package. We hear a lot of debate on the tax side. We hear a lot of debate about revenues. I would remind Members that two-thirds of this package over 5 years is spending savings. Close to $100 billion in mandatory savings that are part of the bill before the House, and in discretionary savings we are achieving close to $200 billion, largely out of the defense area, representing almost $300 billion in spending savings.

For those that rise and say we ought to do spending savings, let me assure the Members, two-thirds of this package comes out of spending. Less than one-third comes out of revenues.

But that represents, it seems to me, the kind of balance that we have to achieve if we are serious about deficit reduction.

Of that one-third raise in revenues, there are some that are saying it is the largest tax package in the history of this country. Wrong. It represents about 2.2 percent over 5 years. TEFRA, I will remind Members, was almost 3 percent in terms of the tax increase involved there. So this package is based on a balanced approach of spending, savings and revenues.

Is there sacrifice involved? You bet there is. We cannot solve a deficit reduction package that does not involve sacrifice on the part of everyone. Is everyone involved here in terms of sacrifice? Absolutely, because the fact is that every American, every American has to share in the obligation to confront what is a national problem, the problem of the deficit.

Is this sacrifice balanced and fair? Indeed it is. Fifty percent of the revenue burden falls on the wealthiest income earners in this country, and that is the way it should be.

The first package that came to the floor of the House, 26 percent of the burden fell on high income tax earners. So what we have before Members is a package that is, indeed, balanced and fair in how the sacrifice is distributed.

Is it enforceable? Indeed it is. We implement budget process changes here that guarantee that the targets established over the 3 years, and ultimately over the 5-year period, will be achieved. We implement pay as you go. For Members that have said we ought not to initiate any spending in the future unless we are willing to pay for it, that is exactly what this bill does. If a Member has a new initiative, if a Member has a new program, tell Members how they will pay for it. Unless they pay for it, that program is not going to happen. We have been trying to do that for years. In this package we finally take that step.

Second, it is essential that we adopt this for the health of our economy. I do not have to remind Members of the size of the deficit. It is growing day to day. We have an overall $2.3 trillion national debt that is eating away at our resources for the future. It is eating away at our economic life for the future. We are facing obviously the real possibility of a recession. Our economy is in desperate straits, and the question we have to ask tonight is, what happens if we fail? That is the question Members have to ask. What happens to this economy if we fail to adopt a serious deficit reduction package for this country? The answer to that is that if we fail, it is almost comparable to an act of irresponsibility by Members because we know that if we fail, we doom our economy to a deep

recession, without question. Without question. In addition to that, we know that if we do this, we threaten the people in our society with a sequester that could approach almost $100 billion. The consequences of that would be to undermine confidence in the United States of America at a time of crisis, crisis in the Middle East, and crisis in the world.

We are looking at a world that has increasing competitiveness by countries abroad. If we are going to compete in that kind of world, where do we stand, if we do not have the discipline to control our own economy?

The choice is very clear. It is a choice between whether or not we accept fiscal discipline in this country and try to get this country to become strong again in terms of our economy, or chaos. Both political and economic chaos.

A final reason that this package should be adopted is that we are not just talking about the deficit, we are not just talking about the economy. We are talking about the health of our system of government. The strength of our democracy, the strength of what we are about as a nation is our capacity to govern in freedom. Yes, we have freedoms, and we have rights to criticize, to attack, to speak out. That is right, that is what our country is all about, but that freedom is worth nothing if we do not have the capacity to govern, if we do not have the capacity to ask for sacrifice from our people, all people. My parents came to this country as immigrants. They came here because they sought an American dream. But they also knew that in seeking that American dream they would have to sacrifice. They would have to work. They would have to put money aside, because their whole dream was to give their children a better life. That is what the American dream is all about. Give our children a better life. For too long, we have avoided that challenge, sacrifice that is demanding, for whatever reason. We thought somehow that we could have it all, that we could cut taxes, we could raise defense spending, we could increase benefits, and nobody would have to pay, that the bill would never become due. The bill has become due. We have to pay it. Tonight is the night we take that step.

To the credit of the President of the United States, he was willing to take that step and provide that leadership. It was not easy. He took his hits, but he was willing to exercise leadership because he said the most important problem in this country is the problem of confronting the deficit. He was right.

The leadership of this Congress, the bipartisan leadership of this Congress including the Speaker, the majority leader, DICK GEPHARDT, and the gentleman from Illinois, BOB MICHEL, Senator BOB DOLE, Senator MITCHELL, all of them exercised leadership, including taking some hits from Members who said, "Do not do it," but they were willing to do it, to work with the President to try to confront this problem.

The test tonight is whether all Members are willing to govern and confront that problem as well. Let history tonight be our judge, and let it say that when we faced this crisis, we were willing to sacrifice, we were willing to make that test for our economy, for our future, but most importantly, to give our children a better life.

□ 0430

Mr. FRENZEL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, what seems like an eternity ago but was only a couple of weeks, this House voted down a budget resolution based on the summit agreement.

Now, when that happened we got a worse result. I think we should have learned from the experience that if this bill does not pass tonight, we will get a worse result. That should be especially apparent to Republicans, who may mourn the loss of entitlements savings and the increase in taxes that occurred by reason of the first budget resolution failure.

Instead of looking at all the things you do not like in this bill, I hope you will consider a few that are worthwhile.

In the first place, you do get $100 billion of entitlement savings.

In the second place, you do get a limit on domestic discretionary spending, not as tight a limit as many of us would like, but a limit, and you get fairly solid enforcement, the best enforcement the Congress has ever seen of these agreed limits.

Can it be breached? Yes, I suppose it can. Congress can always say, "notwithstanding any other provision of law" we are going to do something; but in this bill we have made it very difficult to avoid the pay-as-you-go, or to avoid the strictures of the agreed limits.

In this bill you are also getting some taxes. Most of us do not like taxes.

On the other hand, you get them along with the deficit reduction, and in the future you may get them simply for more spending. You may not like that nearly as well.

What happens if this bill fails? I think as many of you are aware, you are not going to get a CR at fiscal year 1990 rates. That is too good to be true.

What you will get is Armageddon.

You are going to get confusion for a couple of days. You are going to get people laid off, and eventually you are going to get a CR that is a good deal larger than most of us at least on this side of the aisle are willing to tolerate.

Mr. Speaker, we have come to what I hope is the end of a very long journey. We have run out of side alleys and avenues down which we can travel to avoid making the final decision. We have to act now.

I disagree with my chairman. For me, this is not a bill full of tough decisions, but apparently it may be for many of you. I hope those of you who do have a difficult time with this will finally make a positive decision in favor of this bill.

I do not think I need to repeat that the President of the United States and the joint bipartisan leadership of both Houses of this Congress support this bill very strongly. I hope it is swiftly adopted.

Mr. PANETTA. Mr. Speaker, I yield 7 minutes to the distinguished gentleman from Illinois [Mr. ROSTENKOWSKI], the chairman of the Committee on Ways and Means.

Mr. ROSTENKOWSKI. Mr. Speaker, it is time to end the budget debate, declare victory and move on.

What began as the Rostenkowski challenge so many months ago is before us today in its final form. Last March I challenged my colleagues, our President, and the American people to embrace a serious deficit reduction plan. That challenge has now been met.

This is a deficit reduction plan that deserves broad support; let me explain why.

First, it honestly reduces our exploding budget deficits. There's nothing phony in either the spending cuts or revenue increases it includes. What you see is what you get.

The deficit is an issue that we have ducked for more than a decade. Collectively, we have allowed a chronic problem to become a major threat to our international reputation and the economic health of our Nation.

We have tried to run and hide for too long. We have created an illusion of prosperity and attempted to hide a mountain of debt. That debt has tripled and we're now the largest debtor nation in the world.

Now is the time to act. One can quibble about the details, but the facts are certainly clear—this year's deficit will be reduced by $40 billion. Over the next 5 years, the deficit will be reduced by nearly $500 billion.

What's at stake here? Nothing less, in my opinion, than American self-respect. Why is it so important that the deficit be brought under control? Because we share the belief of our constituents who want America to regain its role as the world's economic superpower. Because we don't want our trading partners to view us as international debt addicts, and because we owe it to our children, who shouldn't be asked to pay our bills. By passing this conference report, we will reduce the debt burden on each of our kids by

$2,000. My colleagues, deficits do matter.

This conference report is a responsible and balanced plan of shared sacrifice. It acknowledges the need for both higher revenues and reduced spending. Let's take a closer look at what the conferees have done.

The tax component requires everyone but our poorest citizens to make a modestly larger contribution to the support of our government. It asks those who have the most—particularly those who have gained the most in the past 10 years—to bear the largest burden. That's only fair. I deeply believe in the principles of tax fairness and am pleased that the spirit of the Ways and Means tax plan has been preserved in this conference report.

In recent weeks some critics have characterized this commitment to progressivity as class warfare. They totally misunderstand and misrepresent the issue. All we're talking about here is simple fairness. And I think tax fairness is an ideal that all Americans understand and endorse, irrespective of income level or party affiliation.

During this long debate, we have proven that democracy is more important than efficiency. Despite the current discomfort in this House, despite our desire to adjourn, it is important to remind ourselves that fatigue and frustration are the prices we are willing to pay for the democracy we love.

We need not apologize for our commitment to democratic procedures. Personally, I'm proud of it.

We crafted this plan by following regular order and rejecting the shortcut of the summit. Clearly, I think we did the right thing by opening up the process to include full participation by the elected representatives of the people, but that also means that compromise was inevitable. Compromise means always having to say you're sorry to someone. There is an ample supply of compromise—of victory and disappointment—in this package.

I am on record endorsing a higher top tax rate. The principle of simplicity is severely compromised by the deduction limits and exemption phaseouts concocted to maintain the fiction of the 31 percent top rate.

The administration's stubborn insistence on the perception of a low rate has led to the creation of another bubble that will cause future confusion. Make no mistake, under this conference agreement, the real top rate is substantially higher than 31 percent.

Let me warn my colleagues that complaints about the complexity of these provisions will be heard next April. And let me assure you, my colleagues, that these complaints will be totally justified. Our quest for simplicity and clarity will have to be postponed to another day. But that other day will certainly come.

I am also disappointed that we were forced to drop the surtax on millionaires. It was popular, but it was also right. Let me stress my continuing commitment to the millionaires' surtax as a test of fairness, and let me be clear: we have not abandoned the issue of fairness. We will be back to fight another day. As General MacArthur said: "I shall return." Ultimately, perhaps sooner than you think, we will prevail.

The conference report also includes difficult spending cuts. The physicians and hospitals who serve millions of Medicare beneficiaries will receive less reimbursement than they anticipated. However, I believe we have made these cuts carefully enough so as not to compromise the quality or limit access to our healthcare system.

We designed these cuts to minimize the impact on Medicare beneficiaries. I am pleased that the House provisions for premiums and deductibles, which originated with the Ways and Means democratic alternative, prevailed in conference. That's a clear victory for our senior citizens. Medicare has served them well in the past. It will continue to do so in the future. The important addition of mammography benefits will make the Medicare program even more valuable to millions of older women.

At the same time we protected our senior citizens, we have invested in our youth. Our commitment to an expanded title IV childcare program and an expanded earned income tax credit is proof that we truly care about kids. We have ignored their needs for too long. It is an investment that will pay enormous dividends for the country in the years ahead.

Mr. Speaker, today we are at the end of a difficult process. In a few minutes, we will decide whether the economic gain is worth some political pain.

Today the music stops. It is time to choose. It is time for all of us to act responsibly. It is time to send a strong message to everyone—our constituents, our trading partners and our critics—that we, the elected representatives of the American people have the courage to confront this national problem and resolve it.

There are many people who deserve a lot of credit for the conference product we are considering tonight—TOM FOLEY, DICK GEPHARDT, BOB MICHEL, LEON PANETTA, and BILL FRENZEL are just a few. There are others in the other Chamber and even downtown who played essential roles that were both patient and positive. Everyone who votes for this conference report will share in the credit awarded to those who are willing to forswear petty politics for responsible governance.

A yes vote is a vote for responsible government and shared sacrifice. You will do yourself, this House and your country proud by voting aye on this conference report and enacting a plan of serious, and shared, deficit reduction.

Each of you who votes yes will be able to say that you have stared down the deficit. You will be able to look your constituents and the American people in the eye and say that you have governed fairly and responsibly in the Nation's best interest.

For each of you, my colleagues, that will be both good politics and good policy. Most of all, it will be good for your country.

There are a few additional points unrelated to this bill which I would like to make at this time.

Mr. Speaker, first I would like to comment on an issue that was first brought to my attention late last year relating to the deductibility of certain reserves or other liabilities on a property and casualty company's annual statement for future claim payments under minimum premium group accident and health insurance riders. Under such riders, the employer is responsible to the insurer for funding claims up to a certain trigger-point amount on a cumulative monthly basis. These minimum premium riders do not change the risk assumed by the insurance company, and the insurer remains liable for all unpaid claims as of the date of termination of the rider. The insurance company reflects on its annual statement a liability for the future unpaid claims upon termination of the minimum premium rider in an amount essentially equal to the termination premiums.

The Internal Revenue Service has taken the position, in a technical advice memorandum, that an insurer in these circumstances is not entitled to a current deduction for additions to its reserve. The IRS denied a current unpaid loss deduction on the ground that the insurer's liability does not arise until some future date, and at the same time denied a current unearned premium deduction on the ground that risks insured against have occurred during the policy year.

On May 23 of this year, Congressmen RANGEL, STARK, FRENZEL, GRADISON, and MCGRATH introduced H.R. 4902 to clarify that a current unpaid loss deduction is permitted to an insurance company in these circumstances. Last week this matter was considered by the full Ways and Means Committee, and the committee unanimously adopted the proposal for both life and property and casualty companies as an amendment to the small business bill.

Because of the procedural situation in which we find ourselves, we will not be able to include this amendment in the present legislation. Nevertheless, if this matter is not satisfactorily resolved, it continues to be my firm intention to have the Committee on

Ways and Means provide a legislative clarification as soon as possible.

Second, Mr. Speaker, Mr. GRADISON offered an amendment during the Ways and Means Committee markup of H.R. 5826, the Small Business Tax Incentive Act of 1990, that dealt with the application of the passive foreign investment company rules to U.S. mutual funds. The IRS has not prescribed by regulations any particular rules regarding the application of the passive foreign investment company rules to U.S. mutual funds; the purpose of Mr. GRADISON's amendment was to ensure that the IRS would prescribe such rules to provide a workable method for U.S. mutual funds to recognize their annual gains in a PFIC. Action on H.R. 5826 was not completed by the committee.

I wish to assure Mr. GRADISON that the inaction by our committee on H.R. 5826 does not alter any authority that the IRS possess under present law to prescribe regulations in connection with this issue.

Mr. Speaker, third, it has also come to my attention that the Internal Revenue Service has issued proposed regulations pursuant to section 461(h) of the Internal Revenue Code, which would reverse a revenue procedure allowing real estate developers to include in the basis of property, for purposes of determining taxable gain, costs which they are contractually liable to incur in the future. The proposed regulations would be effective for tax years beginning after December 31, 1989. The Congress intends to review the Service's proposed action to determine whether it is consistent with legislative intent. To permit such review, the Congress encourages the Service to make any such regulations prospective.

□ 0440

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Ohio [Mr. GRADISON], a member of the Committee on the Budget.

Mr. GRADISON. Mr. Speaker, colleagues for whom I have the greatest respect, have spoken about the good features of the budget reconciliation bill before us and have urged us to vote for it.

I should be a good candidate for an "aye" vote. I voted for the budget resolution which came out of the summit. I also voted for the version that followed its defeat. I did so to keep the process moving. At the time I said I'd read the "fine print" before voting on a final reconciliation bill. Well, I've read the fine print, and I do not like what I've read.

I have been willing to consider a tax increase as a last resort. Unlike many—perhaps most of my Republican colleagues—I recognize that increasing taxes may be needed as part of a deficit-reduction strategy. But to increase taxes without restraining spending makes no sense and is unfair to those whose taxes would increase. My constituents may be willing to pay more taxes to reduce the deficit, but not to finance huge spending increases.

I still might have supported the package if I thought the enforcement provisions were adequate and that the budget would actually be brought into balance in 1995. This is highly unlikely—not because the economic assumptions are so optimistic, but because we are held harmless when they are proven to be optimistic. Under this bill, we will not be required to make up for increases in the deficit that arise because economic reality fails to match our heroic assumptions.

But, some argue that this package will soon lead to a significant easing of interest rates. How can that happen given Treasury's huge borrowing requirements—$250 billion this year alone—and our continued heavy reliance on foreign lenders, even if this package is enacted? Credit markets are not made up of foolish people, here or abroad. They will see this as a feeble effort, and they will behave accordingly. In my view, so will the Federal Reserve, and for the same reasons. If interest rates decline it will be because of the weakness of the economy—not because of this package.

On the tax side and on the Medicare side—two areas in which I have special involvement because of my committee assignment—this budget-driven process has produced both bad tax law and bad health law.

For example, the huge hit on life insurance companies, described as related to "amortization of deferred acquisition costs," is nothing of the sort. Rather, it is a gross premium tax—actually a series of differing gross premium taxes which bear no relation either to profits or to the deferred costs actually experienced by the companies. What an incredible time—when life insurance companies are reeling from real estate losses, to hit them with a multibillion dollar tax increase unrelated to their income.

As for health policy, the continued Medicare reimbursement squeeze on health care providers—especially hospitals—means that the financial condition of many hospitals will be further weakened and that Medicare will continue to shift costs to non-Medicare patients, thus making it harder for the private sector to afford health insurance. Is this fairness?

And how about the billions of dollars of special deals for favored industries, financed in effect by increasing taxes on the middle class. Is this sound deficit reduction? Is this fairness?

And the bubble—yes, let's talk about the bubble. My Democrat friends, who helped create the bubble in 1986, have been denouncing it all over this country for months as favoring the rich. And what is their answer? Creating a new bubble. And what a bubble it is. The larger the family, the higher their tax rate.

How's that for a profamily Tax Code? A family in the new bubble faces a higher tax rate for each child they have.

Let me bring this blatantly antifamily provision down to earth; a family with two children would face a marginal tax rate of 33 percent; if a family happens to have four children, they would face a 34-percent rate; and, a family with six children would have their tax rate increased a full 3 percent, to 35 percent.

This is truly a bizarre way to raise revenues—on the backs of families with children. What absurd tax policy. Is this fairness?

Mark my words, we'll be back here in a few years with the Democrats who created this new bubble denouncing it, calling for its elimination, and blaming it on Republicans.

If my colleagues are not especially concerned about the hit on families from the tax provisions of this bill, perhaps the preferential treatment they lavish on themselves will focus their minds.

How do Members of Congress fare under this plan? Very well indeed, thank you very much. Members' income conveniently falls in the bracket which will have its tax rate cut, not increased. What a remarkable coincidence! Is this fairness?

No, Mr. Speaker, while I have voted to keep the process moving, I cannot vote for this package. Better to reject it, pass a continuing resolution at 1990 levels—which would do far more than the bill before us to restrain spending and reassure the credit markets—and close down this business-as-usual Congress.

Mr. PANETTA. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, the gentleman reflected on the 31 percent, but he did not reflect on the other elements of the tax package which increase the overall tax burden for Members of Congress just like everyone else above that income level.

Mr. GRADISON. Mr. Speaker, will the gentleman yield for one sentence?

Mr. PANETTA. I yield to the gentleman from Ohio.

Mr. GRADISON. I thank the gentleman for yielding.

Mr. Speaker, the cut of two points, which is the result of the bursting of the bubble, which brings Members down from 33 to 31 percent, is larger than the increase which is caused by increasing the hospital insurance tax base to $125,000. So there is a net decrease if you take both factors into account.

Mr. PANETTA. I thank the gentleman again. Our studies make very clear that when you combine the HI plus the exemption that the gentleman just complained about, plus the other provisions in here, the overall tax burden, whether it is Members of Congress or anyone else above that income level, goes up, and that is the way it should be.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield just briefly?

Mr. PANETTA. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. I thank the gentleman for yielding.

Mr. Speaker, I would point out if you operate at 1990 levels as was just suggested, that means $55 million less for S&L prosecutions, it means about $80 million, no more than $80 million less for drug enforcement.

Mr. PANETTA. Mr. Speaker, I yield 3 minutes to the chairman of the Committee on Public Works and Transportation, the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the reconciliation bill believing it will make a significant contribution to the economic well-being of our Nation. I want to make particular note of the aviation provisions because these sections, too, will make a significant contribution to our economic well-being.

Among the aviation provisions in this bill is the establishment of a new airport development financing mechanism, a locally imposed passenger facility charge. For a very nominal charge by local airports on airline passengers, we can expect as much as $1 billion per year to be created for development of airport infrastructure. We can expect that severe delays and congestion will be alleviated through this new charge. There are other important aviation provisions which I will not take the time to reference at this point.

However, there is one other provision of the bill which I believe should have further elaboration. Section 9304 (a)(2)(C)(v)(II) is not intended to prohibit such an airport operator as is described, from restricting changes in the levels of noise generated by such aircraft operations as are in effect as of the date of enactment of this act. This is a point which I hope will be followed carefully by those charged with administering this act.

Although I support this reconciliation bill, I regret the fact that for the first time we are asking American taxpayers to reduce the deficit through the gas tax. Along with the other members of the Committee on Public Works and Transportation, I have long opposed the use of the gas tax for deficit reduction. Since 1956, the gas tax has been dedicated to transportation and I believe it should continue to be used for that purpose. Using the gas tax for deficit reduction is regressive, it will make a recession more likely and divert money from necessary infrastructure investment.

I had hoped that in exchange for using the gas tax for deficit reduction, we would be able to spend part of the new gas tax funds for transportation. Unfortunately, that was not allowed in this bill. Instead, the reconciliation bill contains sense of the Congress language that any part of the increase deposited in the highway trust fund should be spent for transportation and that future budget resolutions should provide for this spending. It also endorses returning to the dedicated user fee principle no later than the end of fiscal year 1995.

These are important principles that I hope will be fulfilled in the coming years.

Again, I urge passage of the reconciliation bill.

□ 0450

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker and my colleagues, I certainly want to pay tribute at the very outset to my colleagues, the distinguished gentleman from California [Mr. PANETTA] and the distinguished gentleman from Minnesota [Mr. FRENZEL] and those others of the summiteers who began this tortuous trail months ago, as far back as May, and brought us to this point here this morning at 10 minutes to 5. I guess we are attempting to turn our backs on instant political gratification—the curse of this institution—and subject ourselves to long overdue discipline.

Mr. Speaker, the primary goal of this reconciliation compromise before us is credible, multiyear deficit reduction, and there is no denying, with all the complaints we hear, that the basic thrust of what we are doing here is reducing the deficit. One can argue about the degree to which that takes place, but that is what it is all about. The people all across this country have been telling us over and over to get on with it.

Very briefly, let us first look at a few things the package does not do:

It does not cut Social Security cost-of-living increases.

It does not increase taxes on Social Security benefits.

It does not reinstate the infamous bracket creep that was in the House-passed bill.

It does not increase taxes on home heating oil.

It does not include the provisions extending Medicare coverage to State and local employees not now covered.

It does not include the contentious 2-week waiting period for unemployment compensation.

And what about the positive side of the ledger? What does the package accomplish?

Spending, as a percent of gross national product, will fall from 22 percent this year to 18 percent in 1995.

Our entitlement reforms include over the next 5 years $15 billion in farm program savings; FHA reforms totaling $4 billion; postal reforms cutting back the $4.6 billion Federal taxpayer subsidy to the now-independent Postal Service; Federal work force reforms resulting in savings of $9.5 billion; veterans program changes, savings of $3.7 billion; student loan reforms saving $1.7 billion.

Then, Mr. Speaker, there is the Medicare Program savings totaling $43 billion. Providers will bear the largest burden of the Medicare reforms. Medicare beneficiaries are protected. Low income beneficiaries will continue to pay nothing.

Mr. Speaker, it is interesting that today I should receive a letter from the American Association of Retired Persons. I do not get one from them very often in this light, but I would like to read to you in part:

DEAR MR. LEADER: The American Association of Retired Persons commends you, the President, and the bipartisan Congressional leadership for concluding an agreement to reduce the federal deficit. The many months of negotiations have been a thankless but necessary task that we believe will contribute to the economic well-being of all Americans. We urge all members of the House and Senate to support the FY91 reconciliation bill.

We are pleased that this package moderates the increases in Medicare beneficiaries' out-of-pocket costs, when compared to the original summit agreement. We are, however, disappointed that the package reopens Medicare balance billing limits, allowing physicians to bill their Medicare patients more than was permitted under last year's Physician Payment Reform legislation. This is a serious step backward and one which we hope will not be allowed to extend beyond January 1, 1992 when the Medicare physician fee schedule is put into place.

Throughout this debate the Association has expressed its concern that a budget package must be responsive to the needs of low income Medicare beneficiaries, who will be particularly affected by any increases in Medicare cost-sharing requirements. In the face of increases in the Medicare premium and Part B deductible, we are particularly heartened by the Medicaid improvements that will help ease the cost of health care for lower income older and disabled Americans. These improvements coupled with major strides in health care coverage for low income women and children, also accomplished in this package, merit high praise.

The Association is also pleased that Social Security benefits have neither been cut nor taxed further in this package. Moreover, we believe that the removal of Social Security from the Gramm-Rudman-Hollings deficit calculation will help protect the promise of

Social Security for future generations and eliminate much confusion about the nature of our nation's deficit. We also appreciate the protection of private pensions accomplished in this plan through the curtailment of the unacceptable practice of pension plan raiding.

This budget debate has again highlighted one of the most serious problems facing this country: escalating health care costs and the inadequacy of Americans' health care coverage. Even with this new budget in place, we will all continue to feel the growing pressure to constrain the cost of health care in the federal budget and to ensure that Americans have access to the health care they need. It is essential that we strive for more comprehensive reform of our health care system. With this budget behind us, we urge your attention to this critical issue.

In expressing our support for this package, the Association also commends you, Mr. Leader, for your leadership in shaping this difficult agreement. Older Americans are willing to pay their share of a fair, effective and progressive plan. This plan deserves hard-earned praise for making the tax code more progressive, for shielding our most vulnerable citizens from increasing health care costs, and for helping to restore confidence in our economy. These are difficult but worthy accomplishments for a deficit reduction package which will serve the interests of all Americans.

Mr. Speaker, this really should be music to Republicans' ears: There is strong enforcement provisions to be enacted into law. The Gramm-Rudman targets are extended through 1995. Binding caps on total discretionary spending are set in law, and that means for our minority here that it has got to pass this House, the other House, and pass muster at the White House. If it does not, even in a minority status, we can sustain a veto to have that. That is in law. That is something we have never had before. New entitlements programs cannot be passed which would automatically increase the deficit.

Mr. Speaker, as the gentleman from California so well pointed out in his remarks, "If you want to play, you've got to pay." The American people have told us that they want this divided Government to be a decisive Government.

This compromise reconciliation bill is the best the present views and circumstances of the country will permit.

Mr. Speaker, Alexander Hamilton used precisely those words: "It's the best the present views and circumstances of the country will permit," to describe another compromise that purists despised, and that was the Constitution of the United States.

To those who find fault with what we have done and prefer to do nothing, we can only reply: "From the days of Alexander Hamilton to the present the American people would rather have imperfect progress than perfect paralysis."

Mr. Speaker, I would urge my colleagues to vote for this reconciliation compromise, and we will have a chance to reconcile ourselves once again with the American people.

Mr. PANETTA. Mr. Speaker, I yield 4 minutes to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I rise in support of the budget reconciliation this evening and am proud to support it, and I wanted to reemphasize some points related to senior citizens since in the very first budget package that came before us they took the hardest hit, and it was extremely, in my judgment, unfair, but I think Members should know, and our elderly and our families, that it was interesting that we heard from a lot of young people about that particular area as well, that the part B premium during 1991 for seniors will not have to pay an increase.

Mr. Speaker, we always revisit issues. I know this is a 5-year package, but I think we will revisit that, and I am pleased with that.

Another improvement is that seniors will pay $50 less for their annual Medicare deductible during 1995 than the defeated budget summit. State and local employees will not have to have a double hit, so they will not have to pay for the Medicare system since they have another health plan.

In addition, I think this is significant, that the cost-of-living adjustment, not only for Social Security recipients, but for Federal retirees, and railroad retirees, and military retirees, they will see their COLA increase at 5.4 percent in January, and another very significant part of this budget reconciliation is that for the first time in many years Social Security will really be off budget thanks to a provision that the gentleman from North Dakota [Mr. DORGAN] and others supported. Social Security will not be held hostage by the budget; and home heating oil was eliminated. There are other provisions that I think are excellent.

□ 0500

I wanted to especially thank the gentleman from California [Mr. PANETTA], my classmate, whom I have picked on in the past, and the gentleman from Minnesota [Mr. FRENZEL], and the majority leader and others, and especially the gentleman from Illinois [Mr. ROSTENKOWSKI], for fighting to have mammogram coverage put back into this package.

I think these gentlemen should know, and the American people should know, that for the first or second time in the history of Medicare, a preventive health care benefit has been added.

Mr. Speaker, we know that 42,000 women die of breast cancer every year. NCI, the National Cancer Institute, has said that if these women would have had a mammogram and early detection, 14,000 of these lives for sure would have been saved.

We know that when you have preventive health care you not only save money in the long run, but you certainly save lives.

Mr. Speaker, I want to thank the gentleman from Illinois [Mr. ROSTENKOWSKI] and the gentleman from California [Mr. PANETTA] and others publicly for making some Members in the other body take out their perks and extenders and all the things that we read about, and to extend this benefit for all the individuals covered under Medicare. It is very, very important.

Mr. Speaker, I also believe very strongly that this is the first step in having preventive health care included not only in Medicare, but in every policy in the United States. I really believe philosophically that if Members had no other reason to support this budget, remember, you are going to save a lot of lives by this provision.

Mr. Speaker, I want to thank Members for putting their feet to the fire. I apologize, I suppose, a little bit, but nonetheless, I think it was the right thing to do. You made us all proud.

Mr. Speaker, I again want to express my deepest appreciation for the support of the House leadership, Chairman PANETTA, Chairman ROSTENKOWSKI, Health Subcommittee Chairman STARK, and all your staff for keeping your commitment to me. At long last, low cost, cost-effective, life-saving screening mammography will be available to all American women covered under Medicare. When the Congress voted last November to repeal the 1988 Medicare Catastrophic Coverage Act, we also eliminated a major milestone in progressive, preventive health care coverage in the Medicare Program—we eliminated biennial screening mammography.

One out of every nine American women will develop breast cancer. The American Cancer Society reports that 42,000 American women died from breast cancer in 1988. Studies have convincingly shown that regular mammogram screening can prevent one-third or 14,000 of these deaths. Approximately 4,000 of these women are Medicare beneficiaries. The average cost of a mammogram is $100 to $120, which most Medicare beneficiaries can scarcely afford. Twenty-five States now mandate coverage of screening mammography by private health insurers. Today, Congress has a chance to take decisive action in support of cost-effective prevention in its public health policy. It is quite clear that the early treatment of the breast cancer victim costs about $10,000 to $15,000. The cost of cancer treatment in the second and third stages of development is approximately $65,000 to $125,000. Since I started fighting, over 6 years ago, for the inclusion of this benefit under Medicare, over 200,000 women have died from breast cancer. This is almost four times the number of American casualties in all 10 years of the Vietnam conflict. The National Cancer Institute, as well as the American Cancer Society recommend a baseline mammogram at age 35 and regular screening every 1 or 2 years

beginning at age 40, and annual mammography screening for all women over age 50.

I would like to add that the action we take here today on this provision should be a tribute to my dear friend, the late Rose Kushner, whose name will be instantly recognized by all who have fought for the causes of cancer patients. Her perseverance and single-minded devotion to these issues will be profoundly missed, especially at this time when we are so close to reaching many of her goals. Her generosity in helping others was unsurpassed, and I wish she was here to share this success. The legacy of Rose Kushner will be realized when we pass meaningful legislation which can bring hope, comfort, and a cure to the victims of cancer. We have begun by having funding increases in research for breast cancer.

Finally, we have thought of our children—of our young people. By comprehensively addressing the deficit we have said "no" to mortgaging the future of our children.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas [Mr. ARMEY], a member of the Committee on the Budget.

Mr. ARMEY. I thank the gentleman for yielding.

Mr. Speaker, I am a member of the Committee on the Budget, and I know practically nothing about this reconciliation package. I must confess I have seen the poke, but I have not had much chance to examine the pig that is in the poke.

That is better than I did with the budget to which we reconciled with this package. I never did see that package.

So what can I tell you I know? From the summary sheets I have, as near as I can tell, by comparison with continuing, if we just continued for the next 5 years to do what we did in fiscal 1990, which was to actually spend $1,252,000,000,000 and actually take in revenue $1,032,000,000,000, now, if we did that for the next 5 years, or if instead we did meet the outlay targets and the revenue targets that are summarized in this bill, we will, by passing this bill, add to what we are currently doing over the next 5 years $1,273,000,000,000 in new revenue taken from the American people.

That is more than the current budget of the United States. That will be added in the next 5 years in revenue.

We will spend an additional $900 billion in the next 5 years over what we are currently doing. For that, we will get something in the neighborhood of 500 billion dollars' worth of deficit reduction.

I do not consider that a good deal in terms of the alternatives that were not allowed on the floor.

Mr. Speaker, let me make one final point: I was elected to represent the people who hired me, not the Government.

Mr. PANETTA. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Illinois [Mr. DURBIN], a member of the Committee on the Budget.

Mr. DURBIN. Mr. Speaker, this is not my solution to the budget deficit challenge which we consider this evening. I voted for the Democratic plan. It was a better plan. No gas tax, income tax increases for the wealthy, and a capital gains plan designed to help working families, family farmers, and small businesses.

But our House plan stumbled in the Senate and was flatly rejected by President Bush.

Tonight we have a new plan. Not the best, but the best that we can do. Instead of higher taxes on the wealthy, which the President rejected, we have another damnable bubble. How much simpler this process would have been if the Republicans would have accepted a 33-percent tax rate for the rich, and a surcharge on millionaires.

Nevertheless, I am going to vote for this, and explain to my constituents that its passage was essential for the benefit of the American economy. But even after the House and Senate have acted, action must be taken under our Constitution by the President to make this bill a law.

I would hope that if the President signs it we will not hear comments from him afterward second guessing what was done. If the President does not like this bill, he should not sign it. If he does not agree that is in the best interest of the Nation, he ought to veto this bill.

But if the President signs it, I hope he does not try to sell to the American people the story that he really did not sign it into law, or that the Democratic devil somehow made him do it.

This bill and the buck stops in the Oval Office. If the President buys it, if he believes it is in the best interest of the Nation, and if he signs it, I hope he does not demean our constitutional process by telling this Nation that his signature on this bill was somehow coerced.

If politics is the art of compromise, this bill is an art form which may not quality for an NEA grant. But to me, it is an artful compromise, which is progressive and essential for this Nation to come to grips with its most challenging economic problem.

Mr. FRENZEL. Mr. Speaker, I yield 3½ minutes to the distinguished gentleman from North Carolina [Mr. McMILLAN].

Mr. McMILLAN of North Carolina. Mr. Speaker, as a supporter of the original budget summit agreement, I rise in support of this final compromise. Make no mistake about it; it is a compromise, designed to capture enough votes to pass and be signed into law by the President.

Every Member can easily find things they don't like about it and opt out. I could cite reasons to oppose it because of this or that special interest, even some long-held commitments. But after the initial special interest complaints, it is the American citizens' expectation that we decide in the national interest. And the national interest is clearly to pass a tough $490 billion deficit reduction package that is balanced and fair and achieves $7 of spending cuts for each $3 of new taxes—one that can achieve balance in 5 years.

It represents the most serious and enforceable restraint we've seen here in decades. Spending caps with sequester discipline designed to hold growth in total outlays over 5 years to a compound growth rate of 2.2 percent per year. Compared with double-digit increases in the cash, 1980's 4 to 5 percent increases since Gramm-Rudman.

I would prefer not to raise taxes at all but given the fact that Congress has failed to reduce spending enough for over a decade, it is compelling to do so if we are serious about deficit reduction and to do so with balance and fairness. The rich aren't complaining and the middle-income wage earner should breathe a sigh of relief that this is not the Democratic-sponsored House version of the bill.

I am willing to join the 100 percent antitax bandwagon if those same Representatives were willing to join the 100 percent spending freeze bandwagon which would double our numbers; they go hand-in-hand. But, I've been on this floor many times over the past 6 years speaking and voting for Frenzel's "freeze" amendments or the Penny 2-percent reductions in appropriations bills and seen such efforts go down in smoke—even mirrors. Many of those who say they won't tolerate more taxes will not tolerate minor restraints in their pet farm, water, or road programs. Well, you can't have it both ways; the day of judgment is here.

To those good friends of mine who consider the word "compromise" a four-letter word; I would suggest that governing in a republic is compromise when the national goal is compelling. And if you do not think compromise is the key to our political history, you should study how the Constitution was hammered out in Philadelphia.

The cost of eliminating the deficit should be shared fairly by everyone. This deal does it. To those who took a "no new tax" pledge 1, 2, or 4 years ago, we live in a drastically different world today. We lost our opportunity long ago to do it through spending restraint and economic growth alone. Eight years of strong economic growth have not erased it, because Congress failed to hold the line on spending.

I would not claim this package is a final cure. It is only a tough-minded start because the true test will be living up to its spending restraints, and what it yields in economic growth. It is our best hope for reducing interest rates and restoring savings and confidence which are the greatest of all growth stimulants.

It is not so tough in the first year to be recessionary—it is hopefully tough enough to convince Americans that we will balance the budget in 5 years.

It is the only winnable and credible option we have. The American people will complain about their frustrated special interests—and may even forgive us that—but they will never forgive us for failing to deal effectively with America's No. 1 problem.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I rise in opposition to the national aviation noise preemption provisions, in subtitle D of this bill entitled "Aviation Noise Policy" for the following reasons:

The noise preemption aspects of the bill are a blatant attempt by the airline industry to destroy the longstanding structure of Federal, State, and local power to address aircraft noise that has been established by the courts, the Congress, and the executive branch for the last 30 years.

This raw power grab is being done: First, without benefit of hearings on these preemption provisions, either in the House or the Senate; and second, at the 11th hour by being tacked on to the massive budget reconciliation bill. A decision as important as this is to the lives and welfare of millions of noise battered citizens, should be fully debated in the light of day, by both Houses of Congress—not greased through by legislative legerdemain.

The bill attempts to destroy significant longstanding local powers to control noise—leaving important decisions as to how much noise an airport community may desire and tolerate to the whim of a Federal bureaucrat hundreds, if not thousands, of miles away in Washington.

The bill gives the airline industry a Federal license to pollute—a Federal environment immunity no other industry enjoys. All other industries under the Clean Water Act and the Clean Air Act must meet Federal baseline environmental standards plus more stringent local standards adopted by State and local governments.

The bill's onerous provisions are an open invitation to municipalities to avoid construction of desperately needed new airport capacity. If some Federal bureaucrat can tell the municipal operator to use the new facilities without regard to the municipality's environmental decisions, the overwhelming incentive at the local government and State level will be to avoid or prohibit construction of new airports.

By the artifice of couching these destructive provisions in a deliberately soft and ambiguous term "national aviation noise policy," the airline industry has foisted upon us, a bill that is a disservice to the millions of citizens currently victimized by aircraft noise, and its passage tonight is hardly to our credit as a representative body.

For these reasons—among others—this bill should be rejected. We should address the issues encompassed in a prospective "national aviation noise policy" by carefully examining and considering the impacts of each of the suggested elements of the policy. Incidentally, one governmental official was overheard to remark during the final stages of drafting this bill that "This national noise policy will really stick it to the communities. We will have these stage II aircraft flying until 2015." This statement typifies an attitude to which the people, who must endure this noise, most strongly resent.

However, my purpose here is not to dwell on the bad things that the bill does. My purpose here is to emphasize what this legislation does not do. Nothing in this legislation—or in the virtually nonexistent legislative history underlying the legislation—addresses or attempts to preempt any of the longstanding rights and authorities:

The legislation does not address, or purport to preempt constitutional power of the States under the U.S. Constitution to expand, contract, limit, or otherwise alter the powers of the States' political subdivisions to construct or operate airport facilities. Because all municipalities which operate airports—as well as interstate compact agencies or authorities—construct and operate airports only pursuant to express State legislative authorization, nothing in this bill permits or authorizes the airport operator to exceed the limits of that State authorization. Moreover, nothing in this bill prevents the States from reducing or restricting the breadth and extent of the municipal operator's power to build and operate airports. Indeed, any attempt by the Congress to interfere with or override the powers of a State to expand or contract or abolish the powers of the State's political subdivisions would likely be unconstitutional.

Nothing in the bill purports to restrict or preempt the power of the States or their political subdivisions who operate airports to decide: First, to go out of the airport business altogether; second, to refuse to expand the physical facilities at the airports; or third, to reduce the level of airport services they provide. The airline industry and its allies have forgotten that it is the States and their political subdivisions—not the Federal Government—which bear the decisionmaking burden and authority to take on the entrepreneurial role of airport operators. The Federal Government does not have the authority or resources to site, build, and operate airports. Nor does the Federal Government have the constitutional or statutory power to order the States or their political subdivisions to build and operate airport facilities, or to maintain certain hours of operation. If an airport operator wanted to reduce its costs and shut down during the hours of 10 p.m. to 7 a.m. to save electricity costs and labor costs or keep a runway closed to save maintenance costs, there is nothing in Federal or constitutional or statutory law which could command that the operator stay open all night, or spend the maintenance money to open the runway, or to construct new runways.

Moreover, there is no impediment in the commerce clause—which the legislation purports to implement—which prevents the States or their political subdivisions which operate airports from deciding: First, to go out of the airport business altogether; second, to refuse to expand the physical facilities at the airports; or third, to reduce the level of airport services they provide. As market participants—as opposed to regulators—the States and their political subidivisions who are airport entrepreneurs are entitled to restrict or reduce their service or go out of business altogether without violating the restrictions of the commerce clause. As entrepreneurs, the States and their political subdivisions are in no different position than any private business entity that decides to restrict its level of business operations or go out of business altogether.

Nothing in this legislation addresses or purports to preempt the long-existing rights of school districts, hospitals, homeowners, or other persons suffering noise or air pollution injuries from aircraft operations from recovering property damage and personal injury under State tort law and State constitutional law. Under existing law, there is no preemption of these remedies and the damages are paid by the airport operators—who in turn pass these damage costs on to the airlines under airport lease indemnity agreements. Knowing the airlines and airport operators they will attempt to claim that the intent of Congress in passing this legislation was to preempt these critical State law remedies, but there is no legislative history to support such a claim.

Nor can the operators claim that this legislation leaves them without recourse to control noise. As noted above, nothing in this legislation or the Constitution can or could mandate that the States and their political subdivisions take on the entrepreneurial role of airport operator or mandate that the operator maintain a certain minimum level of business activity. Nothing in Federal law mandates that the operator put the airport where it is located or mandates that the operator build the number of runways that it has constructed. These have been and remain the decisions of the operator; and the operator—consistent with long-standing law—is responsible for the noise and air pollution injuries caused by the level of operations at that airport.

I cannot overemphasize the importance of these State law remedies. The Federal fifth amendment "Taking" remedy is simply inadequate. The Federal judicial remedy is limited to diminution in property value; it does not provide damages—as does State law—for the cost of repair for such items as soundproofing and for repainting pollution stained houses and public buildings. Further, the Federal remedy provides no damages—as does State law—for personal injuries caused by aircraft operations. Finally, because of a quirk in the Federal statute of limitations under 42 U.S.C., 1983, the Federal courts have construed the statute of limitations for taking of property to be only one or 2 years—a limitations period far less than State statutes of limitations for inverse condemnation actions for takings of property under State constitutions.

Finally, it is my understanding that under this legislation the Secretary of Transportation is required to draft a proposed national aviation noise policy which will be submitted to the Congress for review and approval. At that time we will have the opportunity to correct any of the findings and provisions of the current legislation.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, concerning the child care section of this legislation, it is vitally important that we realize what we are creating here today. These are new programs for early childhood education—we are not here establishing warehouses for the custody of children.

There is good reason for us to pay attention to this program of child care—and child care for preschoolers in particular. We know from the vast array of evidence presented to the Committee on Education and Labor that quality child care helps to improve dramatically, a child's academic and social preparedness for elementary school. This data parallels our known experience with Head Start; that quality child care and quality early education does what it promised to do—it helps otherwise disadvantaged children prepare for getting the most out of elementary school.

If the child care legislation before us today is adopted, we know that in the years ahead, as we are asked to appropriate more funds for these programs, that we will inquire about how valuable the programs have been for the limited numbers of children who will have been accommodated so far. This value that we will measure is whether the experience has been educational, whether it has, in fact, prepared children for their future academic and social experiences in school.

In testimony before the Committee on Education and Labor, Matia Finn-Stevenson, an expert in early child care stated and I quote:

A number of developments have contributed to the growth of school-based child care programs, including the increased awareness of the need for good quality child care services * * *. This interest, evident in schools' involvement in a variety of parent education and prekindergarten programs, has been fueled by research findings which have attested to the long-term benefits of early intervention. Early childhood programs are based on the premise that providing children with a head start on successful experiences in school will yield educational and other long-term benefits.

In the development of childcare legislation, I held out firmly in protecting the constitutional provision for the separation of church and State. It is in fact this controversy, over church and State, that has played a major role in the delay of enacting necessary and important child care improvements for our families. The argument centers on whether Federal tax dollars will go to churches who provide child care with no protection or questionable protections against discrimination or entanglement.

The Supreme Court, in Lemon versus Kurtzman, articulated a three-part test for determining whether a legislative or administrative act violates the Constitution's prohibition against laws "respecting an establishment of religion." First, the action must have a valid secular purpose. Second, it must not have as a primary effect the advancement or inhibition of religion. Third, it must not foster excessive entanglement between government and religion. This child care legislation before us today is questionable on the primary effect, and according to several constitutional experts, clearly unconstitutional on entanglement. These arguments have earlier been debated.

Americans United for Separation of Church and State in a summary of this bill writes:

Preschool day care and school-aged day care, both included in this act, involve substantial educational components and include counseling where religious issues and values may be communicated. For this reason there can be no meaningful constitutional distinction between tax-supported aid to elementary and secondary schools, which the Supreme Court has consistently struck down as a violation of the establishment clause. In fact, preschool programs may be even more constitutionally suspect, because of a more direct, personal involvement between the teacher and the child in preschool programs as distinguished from that in elementary schools.

Donald J. Cohen, M.D. publishes in the then U.S. Department of Health, Education and Welfare, and describes nursery schools as "educational programs available only part time—usually half a day from 2 to 5 days a week." These programs are to "concentrate on the child's social, emotional, and cognitive development." The years from 3 to 6, the publication points out "are an optimal period of mastering certain developmental tasks. Preschool developmental day care presents many opportunities to help a child master such tasks."

Americans United for Separation of Church and State tells us:

There has been an attempt by proponents of this bill to distinguish between tax aid to church-affiliated elementary and secondary schools and aid to church-affiliated day care programs. Churches operating day care programs know that there is really no valid distinction between the two. Both have specific educational components. Both involve teaching and counseling students of young and tender years. Both use church-hired personnel. Both have some religious purpose. And all involve the ministry of the church. This is true of a wide spectrum of religious bodies."

The Rev. Alfred Jenney, president of the American Association of Christian Schools has testified:

As far as the way we look at it * * * it's all just school whether it be 2-year-old children or 12th grade children. It's all just school. We don't look at it and say now, Do you have a high school, a junior high school, a grammar school, a kindergarten, a day-care facility, because it's all an educational operation, and it's all school to us. All of our education is religious.

In February, 1988, Reverend Moon's unification church opened its own child care center in New York. Their goal was to "help all young blessed children to establish the right kind of foundation to attend heavenly Father before they start going to public schools."

Child care has, whether we admit it or not, a significant, if not overwhelming, education component. The American Civil Liberties Union states:

Proponents of child care have spent the past few decades quite properly advancing the view that child care was not a mere custodial social service, but was an educational opportunity for pre-schoolers. It is impossible to seriously argue that Supreme Court precedent on private, religious "educational" programs is irrelevant because this bill promotes "child care."

American Civil Liberties Union goes on in their testimony to state:

The human interaction and institutional goals of most "child care" programs for 4-year-olds would be indistinguishable from the "educational" program for 5-year-olds in kindergarten.

Child care is, my friends, education. And if education does not take place, it is not quality child care.

It has been disheartening to me that many of my friends who share concerns for the children and families of this Nation, are ready to abandon the church-state separation to get a child care bill through the Congress. I voted against this bill before when it passed the House, for these reasons. And I will vote against it again today for the same reasons.

We had options open. We could have excluded all religious organizations from participating as providers of child care. This would have been, from a strict and rigid constitutional perspective, the safest. We knew, however, that one-third of the child care now provided in our country is offered by church-affiliated groups.

We could have, and I supported, allowing child care to be housed in church-related facilities, but with strong, certain language concerning management and instruction.

But we did not do this. In this conference report before us today, the Congress is all but abandoning strict separation. And that is why so many of the Members of this body sidestep the issue and insist on calling what we're doing—child care, and not education. This is why there is this strange reticence about conceding that childcare is principally an education activity. By falsely claiming that this is strictly child care and not education, there is an avoidance of dealing with the very real, still unresolved church-state problems in this legislation. The Congress knows it could not get away with subsidizing religious instruction and permitting religious discrimination in any existing federally funded educational program. There is a long line of Supreme Court cases that make it abundantly clear that Government funds for discretionary educational purposes cannot be transferred to what the court calls pervasively sectarian institutions like churches, synagogues, and parochial schools. This transfer of funds from Government to religious institutions has consistently been held to be in clear violation of the principle in the first amendment against the establishment of religion, against Government support for any or all religions.

Mr. Speaker, we know that the primary beneficiary of the grants under this bill will very likely be religious institutions. We also know that these religious institutions have often viewed their child-care programs as an adjunct to their religious mission and outreach.

Make no mistake about this. American religious institutions have a long and honorable history of aiding the children in their communities. That is commendable. What we have to remember is that these churches and synagogues have been doing this all these years without the spigot of Federal funding and without any regulations imposed as a legitimate corollary to that funding.

What we are doing here today, is different, we are about to enact legislation which will, for the first time, permit funds to go to religious institutions without the safeguards that we impose on other funding to religious institutions.

We would not think of permitting an elementary school receiving Federal funds to discriminate in hiring or admissions. We would not permit discrimination whether there was $1 or $1 million of Federal funding involved. Yet, in this legislation, we permit just such discrimination. We state in this legislation that there can be religious preference in child-care facilities which receive less than 80 percent of their budget from the Government.

Why, then, should this principle change when the child is 4 years old instead of 7 years old? Why should the nondiscrimination guarantee of our Constitution be altered when the program funded is after 3 o'clock instead of at noon?

For too long in the consideration of vitally important child care legislation for our Nation's families, we have been operating on the basis of fiction, on the basis of ignoring the Constitution. It is time to return to facts. It is time to set the record straight. Whether we admit it or not, we all in this Chamber today know that the funding in this authorization bill will go, in part, to the education, nothing less, of American children in institutions which have always viewed a part of their role to be the religious nurture of the young.

Of course, we need more available child care slots; we need to make a national commitment to helping parents find and fund safe and reliable quality child care. We do not just want to warehouse children and this bill does not do this. Throughout this legislation we talk of quality. We cannot have quality child care without education.

In our commitment to American families, we cannot and we must not avoid other commitments of this body. We must continue, as we have in the past, to prevent the Government from subsidizing religion and affirm that discrimination with Federal funding is always wrong.

Mr. PANETTA. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Michigan [Mr. FORD], chairman of the Committee on Post Office and Civil Service.

Mr. FORD of Michigan. Mr. Speaker, I rise in support of the matter before the House. No committee has had to wrestle harder and inflict more pain on more people than the two committees upon which I serve. It is not a pleasant proposition to support, but in my opinion it is absolutely necessary, and I am justifying this vote tonight on the ground that I am going to be able to look at my grandchildren, and I have three grandchildren of whom I am very proud, and say we finally started to take a step to let this generation pay its own bills and not put everything on the credit card for them to pay when they become the taxpayers of this country.

Mr. Speaker, the conference report we consider today includes a number of matters within the jurisdiction of the Committee on Post Office and Civil Service. While I was appointed as a conferee on these matters, I refrained from signing the conference report. I did so because I disagreed with the policy changes incorporated in the conference report. As in previous years, the defeated bipartisan budget summit agreement and subsequent reconciliation effort have been ignorant of the merits of public policy, instead, driven purely by the numbers. As an elected representative, I take offense at this mindless exercise.

If the conference report has any merit, it comes via not what it does but what it does not do. To paraphrase, "Ask not what this conference report does for you, ask what it does not do to you."

For the most part, the reconciliation conference report rejects the policy initiatives submitted by President Bush as part of his fiscal year 1991 budget.

CIVIL SERVICE MATTERS

President Bush recommended a 3.5-percent pay raise, effective in January 1991, for Federal white collar employees. Congress has seen fit to provide, in the fiscal year 1991 Treasury, Postal Service appropriations bill, a 4.1-percent pay raise for civil servants as a precursor to a pay system reformed through legislation which resulted from hundreds of hours of negotiations between the Committee on Post Office and Civil Service and the administration.

President Bush recommended the elimination of retirement COLA's for all civil service retirees, a diet COLA for CSRS participants, and the elimination of the lump sum retirement option. The reconciliation conference report dismisses the President's COLA slashing and includes only a 5-year suspension of the lump sum retirement provision, affording qualifying employees a reasonable opportunity to retire with the lump sum option intact for those who retire by November 30, 1990, or, in the case of employees essential to Operation Desert Shield, by November 30, 1991. Even during the short suspension of the benefit, the lump sum option would be retained for retirees who are involuntarily separated or faced with a life-threatening affliction. Common sense and common decency dictate no less, the overtures of President Bush's Office of Management and Budget notwithstanding.

President Bush also recommended a series of reforms for the Federal Employees Health Benefits Program [FEHBP], along with proposals which would shift costs from the Federal Government employer to FEHBP enrollees. The conference report includes those Bush administration recommendations which the Committee on Post Office and Civil Service found least offensive, and which, in the committee's judgment, posed the least threat to the health and well-being of Federal employees, retirees, and their dependents.

These initiatives include hospitalization cost containment measures, improved cash management, an exemption from State premium taxes, improved coordination with Medicare, and the application of Medicare part A hospital limits on FEHBP annuitants who are otherwise non-Medicare eligible. I should note that several of the matters legislated in the reconciliation package have already been undertaken administratively by the Office of Personnel Management. The intent of the conference agreement is merely to lend credence to these efforts and, more importantly, achieve permanent, quantifiable savings in the budget "shell game."

POSTAL SERVICE MATTERS

The Bush administration, continuing with the Reagan administration craze, proposed to treat the U.S. Postal Service as a cash cow—milking it dry at the expense of the Service, postal employees, and the American ratepayer.

Unavoidably, and despite the better wishes of many of us, sections 7101 through 7103 of the conference measure bite a hefty chunk out of the finances of the U.S. Postal Service. The practical effect of these sections is to transfer responsibility for COLA's and health benefit premiums for Postal Service employees retired during the period July 1, 1971, through September 30, 1986, and their survivors, from the Federal budget to the budget of the Postal Service. Over the next 5 years, the Congressional Budget Office estimates that the retroactive payments and funding requirements imposed on the Postal Service by this act will add up to about $4.8 billion.

Ultimately, these costs will be paid by the same persons who pay all the other costs of the Postal Service, postal ratepayers. Past reconciliation acts in 1985 and 1989 will by 1995 pile close to $4 billion in cost increases on the Postal Service, to be recouped from postal ratepayers. By effectively doubling that load, we absolutely guarantee that postal rates will be higher than they otherwise would have been.

My colleagues should understand, and there should be no doubt, that the imposition of these new costs on the Postal Service will have an impact on the current postal rate before the Postal Rate Commission—Docket No. R90-1. Consistent with the requirements of the Postal Reorganization Act of 1970, as well as the practices and procedures which apply to such matters, the Commission cannot ignore the fact that the costs of Postal Service for the period covered by the rate case have been increased by a specific and significant amount. The Commission will simply have to take this new factor into account in its deliberations.

The conferees considered, but did not adopt language which would have established specific rules for the treatment of these new costs in the current and future rate cases. Resisting the urge to micromanage, we ultimately decided that a better course was to leave the Commission free to do its job, and to consider these new liabilities to the same extent and in the same manner it would consider any other specific new postal cost. I am confident that the Commission will deal responsibly and expeditiously with this matter, as it has with simi-

lar matters in the past, recognizing that it provides no basis to delay the scheduled completion of the current rate proceeding, or to sidetrack that proceeding.

Under an accounting standards change now being considered, we understand that the question might arise whether the payments to be made by the Postal Service under this bill should be construed to relieve the Federal Government for the ultimate payment of retiree health benefits. If so construed, this bill might require postage ratepayers to suffer much larger rate increases, beginning in fiscal year 1994, than otherwise will be required. It is our intent that these payments are to be viewed solely as contributions to the Federal Employees Health Benefits Program, which remains a responsibility of the Federal Government.

Mr. Speaker, as a conferee from the Committee on Education and Labor, I rise in support of the conference report on the budget reconciliation bill and would like to clarify a few points about the increase in civil OSHA penalties included in the bill. The bill includes a sevenfold increase in maximum allowable civil penalties under OSHA and the establishment of a $5,000 mandatory minimum penalty for willful violations of OSHA. These changes are a significant improvement in the health and safety protections provided American workers. Civil penalties under the OSH Act have never been adjusted in the 20-year history of the act. In recent years there has been concern the OSH Act has not lived up to its stated purpose: to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions." It is shocking to note that in one State in recent years, the average penalty assessed for serious violations of the act in cases where a fatality occurred was only $32. These changes in civil penalties are included in this bill because, in addition to reducing the deficit, they provide a significant improvement in worker health and safety protection.

Those States operating under federally approved plans will also be required to bring their plans into compliance with these new civil penalties. The penalty changes in the bill are amendments to section 17 of the OSH Act. There are no changes in section 18 of the OSH Act. The requirement in section 18 that the State plan be at least as effective as the Federal system with regard to safety and health standards and the enforcement of such standards remains unchanged.

Thus, a State operating under a federally approved plan will have to reexamine its current plan to ensure that its enforcement mechanisms are at least as effective as the OSH Act, as amended by this reconciliation bill. In addition, the Secretary of Labor, as part of her responsibility to make a continuing evaluation of State plans, may have to take additional action to ensure substantial compliance with the OSH Act.

I also strongly support title XII of the bill. Title XII contains amendments to both the Internal Revenue Code [the code] and the Employee Retirement Income Security Act of 1974 [ERISA] relating to the use of so-called surplus pension assets and increasing the annual per capita premiums paid by single-employer defined benefit pension plans to the Pension Benefit Guaranty Corporation [PBGC].

In general, the provisions relating to the use of pension assets would increase the current reversion excise tax under section 4980 of the code from 15 percent to 50 percent. The tax would be reduced to 20 percent if the employer either established a qualified replacement plan with a cushion equal to 25 percent of the excess assets or increased benefits to participants in the terminating plan—provided that the aggregate value of the benefit increases are equal to 20 percent of the excess assets. In addition, title XII of the bill would permit, on a temporary basis, annual transfers of assets above a certain level from an ongoing pension plan to a separate account within the pension plan—a section 401(h) account. These assets must be used to pay retiree health expenses for current retirees who are also participants in the pension plan.

As the Committee on Education and Labor struggled with the problem of pension reversions over the last several years, we have had one goal: to encourage plan continuation, not plan termination. To that end, the various proposals the committee considered favorably were based on the concept that assets contributed to a pension plan ought to be used to pay pension benefits for the participants in that plan.

It is no surprise that this was our approach: pension assets represent the deferred wages of workers. Employers that prematurely terminate their pension plans to convert pension assets to other corporate uses are acting contrary to the purposes of the Employee Retirement Income Security Act of 1974 [ERISA]. Study after study has demonstrated that workers, retirees, and taxpayers are harmed when employers prematurely terminate their pension plans because active employees generally receive lower future pension benefits and retirees are less likely to receive cost-of-living adjustments.

I am pleased that the conference agreement provides a strong financial incentive for an employer terminating a defined benefit plan to maintain a qualified retirement plan following the termination or to provide benefit increases to plan participants before terminating the plan. It does so by allowing an employer to recover a greater share of the residual assets if the employer decides to establish a new plan or increase benefits, than the employer would be able to recover if it simply paid the tax.

The conference agreement also ensures that the interest of the taxpayers is protected by increasing the excise tax payable when an employer receives a reversion to either 50 percent or 20 percent, depending on whether the employer chooses to protect active workers through a replacement plan or active workers and retirees through pro rata benefit increases.

Another provision in the conference agreement represents a temporary attempt by Congress to provide some flexibility to employers with large retiree health liabilities. Employers and unions are struggling to cope with ever-escalating costs of retiree health benefits. Some large employers with overfunded pension plans—that is, plans with assets that currently exceed liabilities—have been urging Congress to allow them to transfer a portion of the pension plan surplus to a separate retiree health account within the pension plan. Under the fiduciary provisions of title I of ERISA, once assets are contributed to a pension plan, as long as the plan is ongoing, those assets may only be used to pay pension benefits and reasonable administrative expenses. So transfers of pension assets from an ongoing pension plan to this type of account cannot be made currently without violating title I.

Despite my concern over health care costs and the ability of employers to meet those costs in the future, I have reservations about permitting employers to reduce overall benefit security in the pension plan by transferring pension assets to satisfy an employer's preexisting and independent retiree health obligations. Although many pension plans may appear well-funded today, those assets are needed to pay future benefits. An economic downturn or a change in the employer's financial condition could eliminate surplus assets overnight and jeopardize benefit security. With some reluctance, the conferees have agreed to a temporary experiment. For 5 years, employers will be able to tap pension assets to pay health benefits under certain circumstances. During that period, we will be carefully monitoring the situation to make sure that participants and retirees are not disadvantaged by these transfers.

In order to minimize that possibility, the conferees agreed that the statutory changes necessary to effectuate the transfers clearly reflect the fact that the usual strict fiduciary requirements under ERISA apply to retiree health transfers.

The decision to transfer assets out of the pension plan is a settlor—and not a fiduciary—function. However, the implementation of that decision is a fiduciary function. For instance, because the level of the cushion required under the new section 420 of the code represents the maximum amount of assets that could be transferred under the code and ERISA, a fiduciary with respect to the plan must determine whether, given the actual facts and circumstances with respect to the particular plan, it is prudent to transfer as much of the amount of assets above the cushion described in section 420 of the code as the law allows. The intent of Congress with respect to these transfers is clear: the general fiduciary duties of an ERISA fiduciary and the legal and equitable remedies available if fiduciary duties are breached apply to the implementation of the employer's decision to use the retiree health transfer mechanism. Consistent with those duties, the fiduciary must ensure that the solvency of the pension plan and its ability to deliver pension benefits in the future are not jeopardized by the transfer.

In addition, the transfer cannot contravene any other provision of law. This provision is designated to clarify that the amendments to ERISA and the Internal Revenue Code authorizing the transfer do not supersede any other legal restrictions that prevent or limit an employer's ability to divert pension assets to satisfy other preexisting corporate liabilities for retiree health benefits. For instance, if the pension plan is collectively bargained, the abil-

ity of an employer to transfer assets from an ongoing pension plan to a section 401(h) account is subject to collective bargaining. An employer's ability to transfer assets is also subject to other laws, such as those that regulate Government contractors.

Finally, Mr. Speaker, I want to express my support for the conference agreement on child care. As the ranking member on the Education and Labor Committee, I cosponsored the ABC bill some 4 years ago and was a sponsor of the Education and Labor Committee's child care bill, H.R. 3, in this Congress. The conference agreement incorporates some of the provisions embodied in both of these bills.

I support the final compromise because it appears to be the best child care package we can achieve under the present circumstances, and it is one the President says he will sign. The compromise falls far short of what we expected to send to the President just 1 month ago. That agreement authorized more than twice as much funding for child care. It included wraparound services in the Head Start Program to enable children to remain in the same Head Start Program for the full day if their parents work or are in school. It established a formula-driven school-based program for before and after school care and preschool care. And, it established a separate program of grants and loans to encourage businesses to develop childcare programs for their employees.

The childcare compromise we are considering today as a part of the reconciliation package establishes a $750 million block grant to be distributed to States based on their relative numbers of children and relative poverty.

Under this new block grant, three-quarters of the funds received by each State would be used for direct assistance to low-income parents for child care services, with some funds being used for related child care activities. States would be required to establish certificate programs for parents who would be able to select from a range of child care providers. Eligible providers include relatives, family providers, churches, synagogues, centers, schools, and employers which have met certain health and safety standards.

Twenty-five percent of the funds would be reserved for before and after school services and early childhood development programs offered through schools, with a portion reserved for activities such as resource and referral programs which improve the quality of child care.

The reconciliation package also includes the following provisions for children and their parents which are outside the jurisdiction of the Education and Labor Committee: expansion of the earned income tax credit, a child health care tax credit, and a child care block grant under the Social Security Act.

Mr. Speaker, GUS HAWKINS, chairman of the Education and Labor Committee, was able to salvage more than anyone expected in this final compromise package because of his perseverance to do what was right, rather than what was expedient. I would like to commend my colleague for his tireless work on this major Federal initiative and for leaving behind an even larger legacy for the children of this country whom he championed.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. SCHEUTTE], a member of the Committee on the Budget.

Mr. SCHEUTTE. Mr. Speaker, I thank the gentleman for yielding the time.

Mr. Speaker, I rise in opposition to this proposal which is a tax increase proposal on middle-income Americans.

Look at this package. It has only been completed at 4 a.m. this morning, 1,600 pages, 2 hours of debate on a 5-year plan, one of the most important economic decisions we will make in this Congress and for this decade. What does it have? A deficit that will increase next year for fiscal 1991, tax increases of $140 billion, and domestic discretionary spending increases of $164 billion.

How can you call that deficit reduction? You cannot.

This is a tax increase proposal with no spending enforcement mechanism in the outyears.

The issue is not who to tax, or when to tax or how to tax. The issue is why would you tax. When this economy is on the brink of a recession, why throw it into reverse? When small businesses are making decisions whether to lay people off or keep them on the job, expand their businesses or contract, why would you take money out of people's pockets?

And talk about being competitive, if you sink this economy into a recession by higher taxes, you will not be helping this country in the future.

Mark my words, middle-income taxpayers will receive a tax increase in this bill if we pass it, and their days are numbered in the future, because the appetite in this Congress for more taxes is unending.

I urge my colleagues to vote no on this measure.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. ANDREWS].

Mr. ANDREWS. Mr. Speaker, For the past 3 weeks, the people of America have watched the Congress and have not liked what they have seen. If you listen to them—and many of us have—they think that we are incapable of governing. This budget plan before us today redeems us. It is progressive and fair, and shows that we have the courage to make hard choices on the budget.

Today we are reducing the deficit by cutting spending. Two-thirds of this 5-year agreement is spending cuts. A big chunk of that comes from the bill we're voting on today.

Compromise is the glue that holds our Government together, and this budget represents true compromise. The sacrifice we ask today is not more than anyone can bear.

For example, older Americans will not pay more for the part B premium. But they will have to pay a higher deductible for doctors' bills.

Hospitals will contribute heavily to deficit reduction, but inner-city and rural hospitals that are at risk of financial failure will not be forced to close their doors.

It protects our Nation's work force and our children by resolving the child care legislation. In this bill, we have not forgotten that soon two-thirds of all new jobs will go to women.

We expand the earned income tax credit, which helps the working poor and keeps people off welfare. The EITC is important to the Sun Belt where residents are nearly twice as likely to receive the credit.

The wealthy—who can afford to pay more—will pay more through limits on itemized deductions, a phaseout of the personal exemption, a top rate of 31 percent, and luxury excise taxes.

This plan is good for our energy independence. Congress is taking steps to establish a national energy policy which we have not had in 10 years. The timing is critical given world events.

We have become so embroiled in this budget fight that the process has almost overtaken the substance. Now is the time to lay down our swords and join together for the good of the country. I urge my colleagues to support the bipartisan compromise.

Mr. PANETTA. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. DOWNEY].

Mr. DOWNEY. Mr. Speaker, Joe Lewis once said about his opponent, Bill Conn, he could run, but he cannot hide, and neither can we. Unfortunately, we cannot even run, and we should not try.

It is time to pass this budget and to go home. There is more in this package for everyone to detest, and I have a couple of my favorites. One is the Pease plan which I personally think hurts my State, and the new jury-rigged personal exemption plan that creates a blister, or a boil, or a new bubble; however you want to characterize it, it is bad tax policy.

But notwithstanding the fact that I do not like those two provisions, I do like the fact that it makes us look serious in the eyes of the world as we attempt to come to grips with this budget deficit problem.

And it also has something for the children and the working parents of this country, because we finally deliver on the question of child care here. For 2 years we have struggled to put together a plan that people could live with, Democrats and Republicans, liberals and conservatives. We expand the earned income tax credit $13 billion over 5 years. We have a plan here for benefits, grants to States that will actually go to the States. There will actually be more child care slots, better child care delivered.

We are saying with this budget plan and the provisions of child care here that it is better for you to work, you will be better off, your family will be better off, and at every step of the way you will earn more money. That is what the earned income tax credit

does. That is what the grant programs do.

So, when people have asked you about the things they do not like, you can just take a moment and say yes, we have delivered some pain, but we also recognize our responsibilities, not only to the children of this country who will have less of a debt to pay as a result of this budget plan, but also to relieve some of the burdens and some of the concerns of their parents as they grow through a very fine and well-crafted child care provision.

I strongly urge my colleagues to support this budget package, and in particular the child care provisions.

Mr. FRENZEL. Mr. speaker, I yield such time as he may consume to the distinguished gentleman from Oklahoma, [Mr. EDWARDS], chairman of the Republican Policy Committee.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I rise in very strong opposition to this tax increase, spending increase, and in the short-term deficit increase.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, concern about the deficit is appropriate. I want to share with my colleagues what we are scheduled to increase the national debt by over the next 5 years:

In 1991, $362 billion; 1992, $375 billion; 1993, $346 billion; in 1994, $308 billion; and in 1995, $316 billion.

That works out, my friends, to $1.7 trillion increase in the national debt over the next 5 years. That is, if we do nothing tonight.

We are told that this package we are asked to approve will reduce that projected increase in the debt of $1.7 trillion to $1.2 trillion. If it would do that, it would make sense. But the reality is that this reconciliation package, which is supposed to reduce spending, actually increases it.

The former Speaker here just told us one of the things that he is proud to have in here is what? Child care spending, expansion of domestic spending. That is absolutely not what belongs in a deficit-reduction package, in my judgment, and certainly we should not be using it as a means of raising taxes on the American people.

What is the answer? If this Congress had the discipline to follow just limiting increases in spending annually to the rate of inflation in the 1980's, we would have a balanced budget today. In 1990, the spending was about $1.2 trillion. If we had limited increases in spending in the decade of the 1980's, the CPI total spending would be $903 billion.

In my humble opinion, what we should be doing is saying to the American people we are not undertaxed, we are spending too much. This information needs discipline and restraint spending in the future.

I ask for a no vote on this package.

□ 0520

Mr. PANETTA. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. KOSTMAYER].

Mr. KOSTMAYER. Mr. Speaker, it is morning in America, and I rise this morning in strong support of this package and in special tribute to my friend, the gentleman from California [Mr. PANETTA], with whom I came here almost 15 years ago.

I feel no embarrassment or shame in supporting this. I think this is a good time for the Congress, because we are addressing the most serious problem the country faces, and I commend President Bush, who has made enormous concessions on taxes and capital gains, and the minority leader, the gentleman from Illinois [Mr. MICHEL], and the gentleman from Minnesota [Mr. FRENZEL], all of those who have worked together, who have come together, at this point and this time in our country's history, when our country really needs us, when America cries out for leadership and aches for support and help and calls for us to do the right thing.

I support the Republicans and Democrats who have made this happen. I will vote for this package. I am proud to vote for it, because it is the right thing to do.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Iowa [Mr. LEACH].

Mr. LEACH of Iowa. Mr. Speaker, many figures apply to this bill. The challenge is to apply perspective.

Let me stress a couple of points. Members of my party might want to keep in mind, first, enforcement provisions are stronger and more consequential than a line-item veto.

Second, under a conservative American President, Ronald Reagan, Federal spending as a percentage of GNP rose a whopping 2 percent from 21 to 23. Under this bill, if a recession can be avoided, the prospect of reversing gears, reducing Federal spending as a percentage of GNP by 2 percent is quite real.

What could be more conservative than to attempt to force the size of Government as a percentage of gross national product down, to attempt to force Washington to live within its means?

Mr. Speaker, this Member is generally considered a moderate largely because of views held in the spectrum of social and foreign policy, but despite qualms, I voted for President Reagan's positions on major tax and spending issues, because I felt it important to chart a new course in the 1980's, because the alternatives were bleak, and because I did not want to Carterize my party's President.

As we stand on the lip of a recession, on the brink of a worldwide loss of confidence in our fiscal policy, as contrasted with a decade ago, with our foreign policy, it is time for Congress to stop fiddling and discipline itself. It is time to start leading and stop pandering.

The alternative is intra-party anarchy and extra-party fingerpointing all the way to a recession worldwide.

For the sake of the President and the Presidency, for the sake of the reputation of this body, for the sake of fairness and common sense, this deficit-reduction package deserves to be supported.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. GONZALEZ] for a brief colloquy.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman.

It is for the purpose of a question here. The conference report requires the committees of jurisdiction over the Government-sponsored enterprises to report legislation by September 15. Is it the understanding and the intent of the conferees that the committees of jurisdiction are the Committee on Banking, the Committee on Agriculture, and the Committee on Education and Labor?

Mr. PANETTA. If the gentleman will yield, the gentleman is correct, that it is the understanding and the intent of the conferees that the jurisdiction that the committees now have over this issue is not changed by this legislation.

Mr. GONZALEZ. I thank the gentleman.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, this is not the time to get involved in a deep committee jurisdictional squabble, but when you talk in terms of debt management and interest costs, the Committee on Ways and Means has been involved and must be involved and will be involved in this jurisdictional question. The Committees on Agriculture, Education and Labor and Banking are primary committees of jurisdiction, but so is the Ways and Means. That question was settled when the Resolution Trust Corporation was referred to us. Later on, I will have some remarks that I will put in the RECORD about the Government-sponsored enterprises—Fanny Mae, Freddie Mae, and Sallie Mae.

Mr. PANETTA. If the gentleman will yield, the gentleman from Texas is also correct, that the Committee on Ways and Means has jurisdiction over that area of GSE's.

Mr. Speaker, I yield 3½ minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Speaker, first of all, I would like to pay special tribute to my chairman, the gentleman from California [Mr. PANETTA], for an incredible job that he has done on the budget all year, and we are all proud of you, LEON, and the country owes you a great debt of gratitude.

I have been a member of this body now for 8 years. During that time I have firmly believed the biggest problem facing our great Nation is deficit reduction.

Ladies and gentlemen, I am convinced the package before us this evening is real deficit reduction. It has real enforcement provisions also, and that is equally important to this gentleman.

On the spending side, I hope we will take a look at exactly what we are talking about. On the spending side, there is at least $2 of spending reductions for every $1 of tax increases. There is $100 billion in entitlement cuts, real entitlement cuts, in agriculture, and in Medicare, and I do not believe the majority of this body wants to go a nickel further on Medicare or agriculture for that matter.

There are hard spending deductions in the Pentagon, real hard spending reductions in the Pentagon, and the minority leader has already pointed out the fact that based on the President's calculations, spending will drop from the current level of 22 percent of gross national product to less than 19 percent by 1995.

That is not a Democrat calculation. That is the President's calculation.

There are real spending limitations that are enforceable. Again, do not take this gentleman's word. Take the word of the gentleman from Illinois, the minority leader, on that point.

On the overall question of spending, I want to draw my colleagues' attention to some work that I had my staff do this afternoon. We hear a lot of people come down here and bemoan the fact that as an institution we are out of control on the spending side, and we hear people criticize all of this spending. I asked my staff today to go back and do a little research on the votes that were cast this year on spending measures. It is important for us to keep in mind that when you take interest payments off the table because we have to pay the interest payment on the national debt, and Medicare off the table, and retirement programs off the table, that is about $600 billion of the budget off the table.

The rest of spending is dealt with in our appropriation bills. Guess what, I looked over all the votes on appropriation bills, and fully two-thirds, two-thirds of this body voted for every appropriation bill passed by this body this year with the exception of the D.C. appropriation bill that passed today with a voice vote. And, yes, the minority voted overwhelmingly for all of those appropriation bills, too. Every one of them.

But think about it, at least two-thirds of us voted for all of the appropriation bills. Well, folks, tonight we have to decide whether we are going to pay those bills.

In the final analysis, we have one basic question to decide and to answer. Are we, as an institution, are we as leaders of this great country, willing to ask our constituents to forgo a little bit of their present so that our children and grandchildren might enjoy the future that we all want for them? That is the fundamental question. Are we willing to do what is right for this country?

I sincerely hope that the answer to that basic question is a resounding yes.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. Mr. Speaker, I rise in very strong support of the budget reconciliation act.

Title IX of H.R. 5835 reauthorizes the Airport Improvement Program. This provision passed the House earlier this summer in a slightly different form as H.R. 5170. The vote was 405 to 15. As ranking Republican on the Aviation Subcommittee, I have devoted tremendous time and energy overseeing the development of this very progressive and necessary legislation.

H.R. 5170 reauthorizes the airport construction program for 2 years. The bill also includes a major change in existing law that will allow airports, under carefully prescribed conditions, to assess a passenger facility charge. Both H.R. 5170 and the reconciliation bill permits airports to assess up to $3 charge on enplaning airline passengers. These funds represent a vital new source of financing for long-overdue airport construction projects such as runways, terminal buildings, aprons, and taxiways. These facilities are absolutely necessary if we hope to reduce congestion and delay in our national airways system.

In all fairness, if the aviation trust fund was operating as intended, we would have no need for passenger facility charges. Unfortunately, the trust fund is included in the unified budget, and as a result of Gramm-Rudman limitations, the unobligated balance is now greater than $7 billion.

I want to stress to all Members that the passenger facility charge is not Federal tax. It is a local tax that will be imposed by local airport authorities, and the revenues will remain at the airport. They will not flow through the U.S. Treasury.

The reconciliation bill also contains a provision that requires air carriers to phase out their noisy, stage two jet aircraft by the year 2000. While that phase out date is 10 years hence, it nevertheless compels air carriers to invest billions upon billions of dollars in new, quieter stage 3 aircraft, and in retrofitting their existing stage 2 aircraft with hush kits or new engines.

Mr. Speaker, title IX represents a rare nexus, enjoying the support of both air carriers and airports. I encourage Members to consider this provision as they weigh their support for the reconciliation bill.

Before closing, I want to acknowledge the hard work and skillful leaderhip of my friend and colleague, JIM OBERSTAR, chairman of the Aviation Subcommittee. Through his extraordinary efforts and patience, the Aviation Subcommittee has reported a number of landmark bills during the 101st Congress, bills that have addressed aircraft, aviation security, and airline mergers.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, I rise in reluctant support of the conference agreement.

Mr. FRENZEL. Mr. Speaker, I yield 3 minutes to the ever-recalcitrant gentleman from Ohio [Mr. KASICH], a member of the Committee on the Budget.

Mr. KASICH. Mr. Speaker, Members are sleeping around the Capitol, and I am afraid that the train is leaving the station, and it has the taxpayers' wallets right on it.

I will tell you why I say that. I appreciate the work that the chairman does and the gentleman from Minnesota [Mr. FRENZEL] and everybody in putting the package together. I know it is tough, but when we just tell the Members that under this package we are sanctioning an increase in domestic discretionary spending of 11.8 percent, $19 billion in budget authority.

□ 0530

That is what we are accepting as the base at which we are working.

Then we have what is called the baseline, this thing that no one seems to understand. What we do is we go from a summer baseline and we substitute a summit baseline, and that drives up our spending by an additional $14 billion over the next 4 years. So, what we do in the first year is we accept a 12-percent increase in discretionary spending, and then for the next 4 years we allow that cap to go up by more than $13 billion. They say this is a tough package? That makes tough choices?

Then what do we do? We do something we have never done in the 8 years I have been here. We have now accepted OMB's budget numbers. That has never happened before. Members know what the CBO budget numbers are. There are $474 billion in deficit reduction, not $490 billion something in deficit reduction. We were denied the right to come to this House floor and offer a package that made $490 billion worth of deficit reductions because we did not make $500 billion, and they do not make it either. They do not make $490 billion. They only make $470 billion. And they use the excuse that they did not make $500 billion, to give Members a chance

to offer a package without taxes. That is just not fair.

In addition to it, what do we get in the first year? We get $109 billion in additional spending, and we get $106 billion in additional taxes. Now, I am supposed to go home and tell something, that we are going to raise revenues by $106 billion, and sanction $109 billion in more spending, and they are going to come on this House floor and say we are saving money and making a tough choice? I maintain that it is very easy to raise taxes around here. The tough choices are to make the very tough cuts, to make the very tough cuts and to set the priorities.

I do respect what the gentleman from California [Mr. PANETTA] has tried to do in this package, what our administration has tried to do. I think they believe in this, and I understand why they believe in it, because they think they are moving the country in the right direction.

I just want to say to Members that the package that the gentleman from Michigan [Mr. PURSELL] tried to make, the Committee on Rules would have solved the big problem, using very tough discipline, without having to raid the pocketbooks of the American taxpayers.

Mr. PANETTA. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN of Michigan. Mr. Speaker, three quick points. It has been said here that the people in the income brackets that most Members of Congress are in would receive a tax cut. That is simply not true. It is not true. Do not say it. We include the HI phaseout of the exemptions and the deduction floor. That is not going to happen.

Second, there is talk about a bubble. It is too facile. What this does is to say this income goes up, the value of the exemption goes down. It would have been better to raise the rate from 31 to 32. It would have been easier, more equitable, but that was not possible. This was the only way to bring tax fairness.

Third, economic growth; there has been a lot of discussion there on your side of the aisle about economic growth. We cannot have economic growth in this country without deficit reduction. If we want to stimulate economic growth, vote for this deficit-reduction package. I urge that we vote for it tonight.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, in Coriolanus, Shakespeare said "In such business, action is eloquence." The time has come for action from this body. Republicans, Democrats, we are all Americans, and the people are waiting for Members to act. We have been lethargic. Here is an opportunity for Members to reduce our deficit. It is not perfect, as has been stated, but it is a compromise, and it is to reduce spending by over two-thirds. The revenue enhancements would be cut by about one-third.

It is something we can live with. We can change it in the future. It has adequate enforcement provisions in it, and what we are suffering under right now is a paralysis analysis. The people deserve much more. I would certainly ask that this House come together and pass this budget reconciliation. In such business, action is eloquence.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LEVINE].

Mr. LEVINE of California. Mr. Speaker, I rise in reluctant support of the agreement.

Our economy has entered into the early stages of a recession, It is thus critically important that Congress act to begin to put our economic house in order and put the brakes on our mounting budget deficit. It is now so late in the process that an imperfect agreement is better than no agreement at all.

This is not a perfect agreement. There is much in it that I would prefer not to be there. There are a number of things I would have preferred to see included which were left out.

Among those provisions I oppose are an increase in the gas tax. This tax increase will have a particularly negative impact on lower and middle-income people in California. This tax will be particularly regressive coming as it does at a time of record high gasoline prices.

While the cuts in Medicare have been significantly reduced, they could have been, and should have been, reduced further. Too many senior citizens live in our society at the edge of poverty. Too many of them are regularly faced with the stark choices of whether to pay their rent, heat their homes, or put food on the table. A society as wealthy as ours should not force the people who helped build our great Nation to make such choices. We need to do more for our poor elderly, not less.

The real tragedy of this situation is that it could have been avoided. Through the imposition of a windfall profits tax on oil companies we could have recouped the revenue needed to prevent cuts in Medicare. A surtax on those with incomes over $500,000 would have raised sufficient revenue to ease the burden on the elderly. Yet, because of opposition from some in the White House and the Senate such a surtax had to be removed from the bill. I hope that when Congress reconvenes next year that the matter of a surtax can be reopened, and used to ease the burden on the elderly, and our lower- and middle-class citizens.

I also take issue with the so-called Pease provisions of the bill. Because of the way in which the phaseout of deductions is structured they will work a particular hardship on families and residents of large States like California. This provision should be eliminated or improved next year. At the very least its provisions which negatively impact families should be repealed.

Despite all of my objections to this legislation, it deserves approval for a number of reasons. First, the time has come to get on with the process of governing, cut the deficit, and put an end to the circus which has swirled around the budget debate. The American people have lost patience with this spectacle, it has demeaned our country in the eyes of the world, and has tarnished the reputation of this institution.

Second, this legislation does improve the progressivity of the Tax Code. It eliminates the bubble. This bubble enables our wealthiest taxpayers to pay taxes at a lower rate than middle-income taxpayers. Once again, I would have preferred to see higher tax rates for those with incomes over $250,000 but at least this legislation is an important step in the right direction.

Third, this legislation will make significant reductions in our deficit. There is no question that they will not reduce the deficit as much as its drafters claim, but it will make significant reductions in the Federal deficit.

Our economy has already entered into the first recession of the 1990's. This recession has the potential to be dramatically different from any in our history. This is the first time we have entered into a recession with such a massive Federal deficit—some estimate in excess of $400 billion if the costs of the savings and loan bailout and the Persian Gulf operation are included and the Social Security surplus is removed. In fact, even with this bill our country will have to borrow more in the next 5 years than it did from 1975 to 1985, and nearly twice what it borrowed from 1775 to 1980.

Unless Congress acts now to pass this legislation and cut the deficit, and the Federal Reserve Board acts to cut interest rates, we may face a recession even worse than the recession of the early 1980's. Congress must not do anything to contribute to a worsening of this economic downturn.

The time to debate this issue has passed. Now is the time to act. I urge my colleagues to pass this legislation despite its shortcomings. We owe it to our constituents and the Nation.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Oklahoma [Mr. SYNAR].

Mr. SYNAR. Mr. Speaker, I rise in support of the resolution.

Mr. PANETTA. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, we must pass this bill tonight. We must do it for the American people.

Let me make this sober observation. As we take this big step, we ought to admit to ourselves we have not totally or immediately solved our problem. This battle is just beginning. We have not yet learned how best to control our spending, and we have not come to grip with our huge entitlement programs which constitutes two-thirds of our spending. That is the big task ahead.

So, this battle is just now starting. Next year, and the next session, and the next—we must find a better answer to those problems on spending and entitlements. But tonight, this bill must be passed to tell the American people we have done the responsible thing and that we can govern.

Mr. Speaker, the hour is late and the process we have gone through to reach this point has been long and difficult. But tonight we face the truest test of our convictions. Tonight, Mr. Speaker, we either fish or cut bait—we either act affirmatively or we admit defeat.

Twenty-one months ago, this Congress convened under a new administration whose Chief Executive observed that "a new breeze is blowing, and the old bipartisanship must be made new again." In his Inaugural Address to the Nation, President George Bush observed that "the American people await action. They didn't send us here to bicker. They ask us to rise above the merely partisan."

Well, Mr. Speaker, the breeze has been blowing pretty hard over the past few weeks, and it hasn't been new and fresh. We have once again challenged each other's motives instead of each other's ideas. But the President was right. The American people await action, Mr. Speaker. In fact, they're tired of waiting. I think they demand action.

The budget reconciliation bill before us tonight is far from perfect. It contains many provisions that I don't like, and it fails to address many issues I think should be addressed. I feel certain that each and every Member of this House, on both sides of the aisle, can say the same thing. Any Member who is looking for a reason to vote against this bill will certainly find many of them.

But tonight, for the first time in many years, we have an opportunity to do something meaningful about our Nation's budget deficit and national debt. Along with the President, we have the opportunity to make a $500 billion reduction in the deficit over 5 years. For all its imperfections, this measure before us tonight will accomplish that purpose.

I would like to call Members' attention to one specific aspect of this legislation relating to government sponsored enterprises, or GSE's. In this session of Congress, we were asked to raise $50 billion for the rescue of the savings and loans. When the 102d Congress convenes in January, provisions in this bill will ensure that the Congress will better understand the financial exposure of the Federal Government as a result of GSE's, which have implied Federal guarantees of over $800 billion.

The bill requires the Treasury and the Congressional Budget Office to each conduct a study of the financial exposure of the Federal Government posed by GSE's and report to Congress by April 30, 1991. Further, the bill requires action by the committees of jurisdiction in the House to minimize the possibility that the GSE's might require financial assistance from the Federal Government. In addition, the President's annual budget submission to Congress will also provide information about GSE's.

While I am pleased that the conference has included these provisions in the bill, I still believe that the Congress needs to go further. In conducting this study, it is important that the Treasury be able to provide the Congress and the American public with a better understanding of how credit-worthy these GSE's are. Such an understanding can only be obtained if Treasury has the ability to share certain information with outside market analysts and the Federal agencies which supervise the GSE's. Treasury asked the Congress to allow sharing of the information, but this legislation does not include that change. I believe that the integrity of the study would have been advanced if Treasury could use outside consultants. Further, an analysis by parties outside of Government would insulate the GSE's from allegations that the findings are political. But, as hard as it is for me to believe, this appears to be an idea before its time. So, we will need to look at this again very closely in the next Congress.

Undeniably, GSE's provide very important public benefits. With the capital provided by these entities, the public has access to housing, education, and food that otherwise might be denied. However, it is my judgment that the public will not be impressed with arguments that GSE's cannot meet their mission without acting in a financially risky manner. I believe that the financial soundness of the GSE's will serve to ensure that these entities will be preserved in order to continue their public good. While I truly believe that good government mandates action beyond what is in this legislation, I am pleased with the efforts by the leaders in the House to address this issue. I consider these requirements regarding GSE's to be very important and, with congressional support, they will have far-reaching consequences for the American public.

In the same spirit, I believe that eliminating our deficit requires us to take action beyond what is in this legislation. But, in my judgment, this bill is a clear declaration to the American people of our firm intention to make meaningful reductions in spending as well as raise necessary revenue in order to achieve our goal.

One of this bill's declarations is that Congress intends that the burden of deficit reduction will be borne in a fair and equitable manner among taxpayers. In order to accomplish that goal and also to ensure the fairness of the tax system, the plan contains a number of provisions aimed at allocating a larger share of deficit reduction to this Nation's wealthiest taxpayers. By adopting these measures, we are ensuring those taxpayers most able to contribute in our efforts to reduce the Federal budget deficit will do so.

This bill does include an increase in the gasoline excise tax, which I believe should not have been included. However, it is a less severe increase than either the one proposed by the budget summit agreement or the bill passed by the Senate.

Just as important, the bill reduces the Medicare Program by only $43 billion, instead of the $60 billion cut originally proposed in the budget summit agreement. This bill protects Medicare beneficiaries by keeping monthly premiums low and limiting the increase in the deductible.

I am convinced that the only way we can make a real dent in the budget deficit is to take bold steps. It won't be easy, and it will require us all to make some tough decisions, but this Nation faces no more important problem than reducing the deficit.

The breeze is blowing tonight, Mr. Speaker, and it is up to us to make sure that it is a new breeze of progress. Tonight we have a chance to put aside the bickering and rise above the partisan rhetoric. I strongly urge my colleagues to join together in supporting this budget reconciliation bill.

But, Mr. Speaker, as we take this first hard step toward deficit reduction, we must also remind ourselves this is just a first step and very important step. But we haven't solved our problem lately or immediately. We must find a better way to control our spending, and to come to grips with our huge entitlement programs. That is our big task ahead of us. Tonight, however, we must pass this bill, and be resolved to do better in the years ahead.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, it is a little difficult at times when we are presented 1,600 pages on the floor, to find out what is in the bill. However, it does appear in at least a quick cursory look at the bill that some of the special interests out in Gucci Gulch did, in fact, manage to get their provisions in this bill.

Going through the bill we found special tax treatment is given to taxicabs, insurance companies doing business abroad, manufacturers of cigars, small winery, small brewery, ethanol producer, general aviation aircraft, crop duster, estates, and trusts.

So, it is clear that despite all the talk about national interests, there is also special interests in this bill. I think it should be clear to the Members that if we vote for this bill, we are voting not only for deficit reduction, we are also voting to reducing taxes to some very important special interests, at least important to the people who drafted the bill.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Speaker, I rise in support of this conference report.

I do not agree with all provisions contained in the agreement; however, on balance I believe it is the best we can do under the circumstances. We must do something to put the country back on a sound financial footing. The budget deficit must be reduced and the budget eventually balanced. This agreement is a step in the right direction.

Many committees were mandated to reduce direct spending. The Committee on Veterans' Affairs was told to reduce spending by $620 million during the current fisal year and about $3.35 billion during the next 5 years.

In past years, veterans have been asked to help our Nation reduce the budget deficit, and they have responded favorably on every occasion. I believe they are willing to do their fair share again.

The conference agreement contains savings in veterans benefits and services of $621 million during the current fiscal year and $3.66 billion during the next 5 years. This brings the House and Senate Veterans' Affairs Committees in full compliance with the instructions contained in the budget resolution.

The committee faced the dilemma of weighing our budget directives against our responsibility to millions of veterans who are depending on us to preserve and protect their benefits. I believe the conference agreement meets both objectives effectively, responsibly and fairly.

We carefully studied every VA program to determine where these reductions or revenue enhancements might be implemented and cause the least strain on the VA and on veterans who use its services.

In my opinion, these savings can be absorbed without undue hardship on any one VA program or on veterans who receive benefits and use VA services. Most changes in current law would be prospective and, therefore, would protect current beneficiaries. It is an agreement which I believe veterans generally will understand and support.

A $621 million cut in entitlements and increased revenues in the current fiscal year 1991 budget is a substantial amount; however, it is much less than the alternative—$1.2 billion under Gramm-Rudman sequestration. Our veterans' benefits system simpy could not bear such an enormous blow to its budget.

I support the savings proposals before us, not because they cut veterans' programs. I support them because they will help avert a national disaster. That is exactly what we face unless we get control of the budget deficit. We can no longer continue down the same path of fiscal irresponsibility.

The Committee on Veterans' Affairs has complied with the reconciliation instructions contained in the budget resolution adopted by the House and Senate. I believe we have done our best to come up with a proposal that will not unduly affect our Nation's veterans.

I want to thank the gentleman from Arizona, BOB STUMP, for his cooperation and support in helping us reach the targets established by the House and Senate. I also want to thank all of our subcommittee chairmen, DOUG APPLEGATE, LANE EVANS, TIM PENNEY, and HARLEY STAGGERS, for the leadership they provided in putting the package together. I'm also grateful to the ranking minority members of the subcommittees, JOHN PAUL HAMMERSCHMIDT, BOB MCEWEN, CHRIS SMITH of New Jersey, and DAN BURTON, for their support. Every member of the committee was willing to work toward a common goal.

It has not been a pleasant task but a necessary one, and I want to thank the very able Chairman of the Budget Committee, LEON PANETTA, and its distinguished ranking minority member, BILL FRENZEL, for their understanding and support. Our committee worked with the Budget Committee in a very positive and constructive way. I am grateful for the work of every single member who has been involved in solving the complex problem confronting the President and the Congress on this issue.

I urge the adoption of the conference report.

Mr. PANETTA. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I am going to vote for this package, I think it was Benjamin Disraeli, the British Prime Minister, who said, "It is not enough that we do what is right; sometimes we have to do what is required." I suspect in this case that is the axiom we will have to use. What is required is that we vote for the bill; the country needs it. But this agreement does hurt my part of the country a little bit. We have negotiated some issues regarding the luxury tax on small airplanes with the chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI]. I think that that problem is substantially taken care of. However, agriculture takes a big hit in this reconciliation package.

Let's be honest about it. Probably the biggest single hit of all in the domestic spending area is in agriculture. We cut $13.5 billion, hard dollars, out of the farm program over 5 years and we change agriculture programs fundamentally in this proposal.

Now, unfortunately the original budget summit came up with these very big cuts that we are stuck with right now, numbers that were agreed to by the administration and the bipartisan leadership from the House and Senate. We from agricultural country are stuck with the fact that it does seem we are taking disproportionately big hits in our part of the country, because of this high-level agreement. We hope we can survive the cuts. We have developed proposals that soften these cuts. We hope these proposals, particularly the triple base proposal, which gives farmers flexibility and reduced payments on the acreage that they have historically gotten payments on, will give farmers increased income from the markeplace. That is at least what we are counting on. It may not work out that well. If it does not, we will come back to try to fix this program.

Rural America is under great stress right now. These program changes will produce some problems out there in rural America, but we are going to try to work with our farmers to make sure in fact that they can cope with these changes; but above all, our farmers, our rural Americans and everybody in this country wants to see a strong America, and a strong America is an America that deals credibly with its fiscal problems. This agreement is a credible first step toward fiscal responsibility.

The gentleman from California [Mr. PANETTA] and the gentleman from Minnesota [Mr. FRENZEL] have led us in this effort, reinforced the effort over and over again, and have convinced me that there is no other choice, notwithstanding my concerns about what this might do to rural America.

Mr. Speaker, there is no other realistic choice for all of America than to pass this budget.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York [Mr. HOUGHTON], a member of the Committee on the Budget.

Mr. HOUGHTON. Mr. Speaker, I strongly support this budget package. I want to tell you why, because there is absolutely no other option.

What do we have? If this goes down, we do one of three things. We try to pass another budget resolution. Is this going to be possible? Do we have time? For my money, every time we put another budget resolution on the table, it gets worse.

No. 2, if we do not do that, we have a continuing resolution. Do we want to go back to the people and say, "We failed. We can't govern," just before elections? I think that is a lousy option.

The last one, of course, is sequester, and who wants to go back and say that 30 to 40 percent of many of our discretionary programs are out. It does not make any sense at all.

When you are in business and when times are tough, you say to yourself, "I can't possibly increase my prices," in this case revenues, "because my customers are hurting. I can't possibly cut many of the programs that are important to the long-term health of the business," but you can, because you must. We must tonight, and I am for this proposition.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky [Mr. BUNNING].

Mr. BUNNING. Mr. Speaker, I rise in opposition to the budget resolution.

Mr. Speaker, 3 weeks ago, this body rejected, by a sizable margin, the budget summit agreement because it raised too many taxes, it failed to provide sufficient growth incentives to get our stalled economy moving, and because it failed to adequately restrain spending.

Now, 3 weeks later, we are considering a bill which instead of getting better has actually gotten worse.

Where is the growth? The only growth in here is Government spending. There is not a single economic growth incentive in this package.

Where are the budget cuts? This package cuts defense spending but it doesn't even pretend to cut domestic spending. In fact, it virtually guarantees increased domestic spending.

Where is the reform? The past 3 weeks are proof enough that the budget process is broken. But this bill does nothing to fix it. It provides for no permanent restraints on spending growth. It provides no provisions to improve the process. It does not include line item veto or enhanced recision authority or anything that holds out even a hint or promise for budgetary restraint in the future.

No, this bill is nothing but taxes. Even more taxes than the budget summit called for. We are talking somewhere in the neighborhood of $175 billion in taxes over the next 5 years.

And putting that kind of tax burden on an economy that is already on the slippery slope of recession, is foolhardy.

Nine years ago, we were on the edge of recession. And President Reagan proposed a dramatic cut in taxes and major cuts in spending. Democrats scoffed and called it voodoo economics.

But President Reagan's economic policy of tax cuts and budget cuts set off the longest sustained period of economic growth in the Nation's history.

Here we are in a similar position—economic growth has stalled. And what is the Democrat solution? To raise taxes and not cut spending. That is crazy, Mr. Speaker. It is not voodoo economics. It is doo-doo economics.

If anyone thinks that raising taxes is going to reduce the deficit, they have not been reading their history of the past 30 for 40 years. Every time Congress has raised taxes 1 dollar, it has increased spending by $1.58.

That is not a recipe for deficit reduction. It is a sure fire recipe for larger Government, larger deficits, and a sinking economy.

I urge my colleagues to reject this nonsense.

Mr. FRENZEL. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Florida [Mr. JAMES].

Mr. JAMES. Mr. Speaker, you know, I have been here nearly 2 years now, a couple months short of it, and I have learned to respect the intellect, the skill, and the energies of all of you.

Having said that, I know that you will all recognize that these figures that appear in the handout by the Democratic Party that we have $327 billion in deficit in 1991; $317 billion in 1992; $276 billion in 1993; $102 billion in 1994, and $83 billion in 1995; my point being, that is taxation. It is just in a different form. You are borrowing money instead of levying tax immediately. It is a taxation on the future and on the present, because you are creating a debt on the present taxpayers.

A case in point: If you had not had deficit spending to the extent we have had, you would have $100 billion less in interest on an annual basis. So this is taxation. This deficit is clearly taxation. You know that, so admit it. It is not deficit reduction.

I am ashamed and surprised that the Democrats have abandoned their insistence that you not have regressive taxes. This whole tax program is loaded with regressive taxes, as well as a revisiting of catastrophic taxation.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Speaker, I rise in behalf of the conference report. It is not the most beautiful document in the world, but it is gorgeous compared to our not doing anything.

Mr. PANETTA. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Mr. Speaker, I am for this because we have to be for it.

Mr. Speaker, I rise in support of the conference report on budget reconciliation.

The road here has been a long and difficult and often maddening one. We have all been so wrapped up in the effort to get to this point so we can declare victory on deficit reduction that it would be easy to forget what the negotiations are about.

The bottom line of this bill is deficit reduction. This deficit reduction is real. This deficit reduction will hurt, and this deficit reduction requires tough choices and asks sacrifices of all men and women of this Nation.

By now we have all realized that there is no attractive or easy revenue increase. But a revenue increase is necessary, as spending cuts are necessary. And all of us who worry about the future of the Nation and the American people the way I do have made the difficult decision to support deficit reduction. We need to set the Nation on a course of fiscal responsibility.

I do not like this bill. My constituents do not like it. But we have to do the right thing—support the budget reconciliation conference report.

Mr. PANETTA. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I certainly want to commend the gentleman from California for the work he has done on this issue in bringing us this close to something that is so important for the American public.

You are going to hear a lot of statistics tonight. I would like you to listen to some statistics that are more relevant than most anything else.

During the decade of the 1980's, from census to census, the United States grew by 25 million people, fully 10 percent of the population.

You have heard people on this floor tonight, especially those who are opposed to this bill, tell you that this bill increases spending. Well, there is going to be increased spending, folks. There are more Americans each year than ever before. We are not going to leave them in the dust. There are many more Americans, and the future of our country grows each year. That is part of the problem.

And the hidden statistics that no one will talk about, as we spend more and more, and do not get into the mode of deficit reduction, the cost of bearing the interest payment each year, as they go up, rob the American public of infinitely more dollars than does some of the small increases in taxes in this bill. Most of you do not want to admit it and do not want to see it, but it is true. The hidden cost of the interest payments in this country are what is robbing us of our economic future.

Mr. Speaker, this bill is fair. It raises more tax money again and on a progressive basis from those who can afford to pay and who have least paid during the decade of the eighties.

Think about the future of this country. Think about the young people who are coming into this world who must be removed from having that burden on their backs at an early age of paying the debt burden caused by the spending that we have put upon them. It is our problem to deal with now. This bill deals with it well.

Mr. Speaker, I urge you all to support this for the growth of this country and for the future generations of this country.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Arkansas [Mr. HAMMERSCHMIDT], the vice chairman of the Committee on Public Works and Transportation.

Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to address several provisions of the bill that fall within the jurisdiction of the Public Works and Transportation Committee.

The conference agreement requires the Environmental Protection Agency to collect fees in the amount of $180 million over 5 years, limiting the amount that can be collected from section 402 permits under the Clean Water Act to $10 million per year. I am very concerned about how this will be implemented. The fact is that we have no idea how EPA will carry out the mandate to collect fees in the clean water program or in any other program. We don't know who will be affected or how much any permit applicant will have to pay. I have no doubt that we will need to revisit this issue in the future.

Unfortunately, we find ourselves in these reconciliation bills being required to impose user fees, without having a detailed plan of how and on whom the fees would be imposed. Before we go down this road again of imposing user fees, we should have a clear picture of the affect the fees will have.

I was pleased that the conferees did not agree to any Corps of Engineers recreation user fees, which I was strongly opposed to. This proposal was not well thought out, was lacking in specific detail as to how it would be applied, and could have been very inequitable in its application.

The conference agreement unfortunately does not contain provisions recommended by the Committee on Public Works and Transportation which would have permitted the expenditure of the portion of any increased motor fuel tax or aviation tax going into the highway or aviation trust fund. While the committee opposed the use of any portion of these taxes for deficit reduction, our proposal recognized that some of the tax might be used for that purpose. All we proposed was to spend the portion designated for the trust funds—that is the portion not intended for deficit reduction.

The conference report does, however, contain the amendment which I authored along

with the gentleman from California [Mr. MINETA], stating the sense of Congress that motor fuel excise taxes that are deposited in the highway trust fund should be available for surface transportation programs and that the budget resolutions for fiscal years 1991–95 should accommodate spending for the new tax receipts in the trust fund. The provision also reaffirms the user fee principle that all motor fuel taxes should be deposited in the trust fund.

It is my understanding that the conference report also contains a 4-year extension of the Superfund taxes and a 3-year extension of the Superfund Program. This should not, however, be interpreted to indicate that Congress will not review, or consider changes to, the Superfund Program during this period. I am confident the Public Works and Transportation Committee will be conducting vigorous oversight of the program during this period to ensure that any problems in the program can be addressed.

One of the significant portions of the bill is the part that deals with aviation. Although it has not received the attention of some of the other titles, the changes made by the aviation portion will have a tremendous impact on air travelers in this country.

For the first time in almost two decades, airports will have the option of assessing a passenger facility charge [PFC]. This charge is to be used to increase airport capacity which will make room for new airline competition and should ultimately lead to lower airline passenger fares.

This bill also includes a landmark noise provision. This provision calls for the elimination of the noisy stage 2 aircraft by 1999. It allows a small portion of an airline's fleet to remain stage 2 for a few years beyond 1999 under carefully defined circumstances. To protect airlines who must convert to quiet stage 3 aircraft sooner than they might have wished, the bill gives their operations with quiet stage 3 aircraft some protection against burdensome local restrictions.

It is important to note that this legislation will not prevent local airports from banning noisy stage 2 aircraft as long as they analyze the need for the restriction and wait 180 days before it goes into effect. Likewise, the bill permits airports to impose restrictions on flights of stage 3 aircraft as long as the Secretary of Transportation approves the restriction.

The aviation portion of this bill also has an element that should help small communities and rural areas. That is the provision that revises the small community essential air service program. As revised, this provision ensures that all communities now receiving essential air service [EAS] will continue to do so. Moreover, it authorizes funding levels beginning in fiscal year 1992 that should be sufficient to support the EAS Program at the service levels Congress envisioned when it last reauthorized the program in 1987. These funding levels are achieved by tapping the aviation trust fund and using contract authority.

I would like to thank my fellow conferees on the aviation portion, Chairman ANDERSON and Subcommittee Chairman OBERSTAR, for their hard work. I would also like to recognize the ranking subcommittee member BILL CLINGER who, though not a conferee, played a key role in the process and was in all the important meetings.

Tribute should also be paid to Secretary of Transportation Sam Skinner whose persistence and hard work were invaluable in bringing this aviation bill together. A lot of credit should also go to his assistants Galen Reser, Bert Randall, and the ever-present Todd Hauptli who were always very helpful.

In short, the aviation portion of this bill will expand capacity, improve service and safety, and benefit airlines, airports, passengers, and airport neighbors. I am pleased that it is included in this reconciliation bill.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Speaker, I rise this morning in strong support of this resolution.

I believe that the deficit is most assuredly a problem. It is a cancer that eats away at the health of our Nation. It adds daily to the huge debt that is already built up. It threatens to undermine our economy in the near term and it piles up a debt on our children in the long term.

Now, this morning we have two choices. One is economic and the other is political. The economic choice requires a yes vote, a yes vote to say no, it is not perfect; no, we do not like it; no, it is not pretty; yes, it is a compromise, but it is what we have and it is what we can pass, or it is what we can defeat. A yes vote is the economic vote.

The political vote is a no vote. We have all had the phone calls from the people who do not want to pay any higher taxes, even though this package is 30 percent taxes and 70 percent spending reductions. The political vote is no because you have heard the people who do not want to see programs cut.

Now, there is a myth out there in this land that somehow we can have it both ways, that you can reduce deficits or ignore them and not raise taxes, not cut spending, not taxes, no spending, no problem. That is a myth, and it is going to kill the economy of this country.

Now, if you decide to vote no tonight, you can go back out there and campaign in the week we have left before the election and look those voters right in the eye and say, "I saved your program and I voted against those taxes," but I want you to do one thing before you go out and give that speech, looking those voters in the eye. I want you to go home and look your kids in the eye or your grandkids.

You say, "I took the easy vote. I took the no vote." It is popular politically, but you paid for it.

Mr. Speaker, I urge you to vote for this package.

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Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. COX].

Mr. COX. I thank the gentleman for yielding.

Mr. Speaker, the overriding objective at 10 minutes to 6:00 in the morning is to vote on a package that no one has yet had the opportunity to read. It is in a large, oversized corrugated box. I have been given the opportunity to walk around it, gaze upon it from several angles, certainly not to read its well over 1,500 pages.

We are judging not just a book but an entire set of encyclopedias by its cover. What the cover is is tough spending cuts and tough tax increases. From everything I have been able to glean, including questioning our own leadership and representatives from the White House, that is a fake.

The spending cuts are a fake. The reconciliation bill on which we are shortly going to vote contains built-in spending increases, not spending cuts. The savings are the same kind of savings that Lucy Ricardo got from going to another sale.

It is putting on five coats and taking one off. That is not getting undressed.

Specifically, the new spending built into the baseline in this reconciliation bill would increase domestic discretionary spending by $165 billion. It would increase entitlement spending by $569 billion.

Three-quarters of a trillion dollars of new spending over the period of this plan, the largest spending increase in any 5-year period in American history.

As Edmund Burke said, "the only thing necessary for the triumph of evil is for good men to do nothing."

Tonight the vast majority of Republicans will do something; we are going to stand up and vote "no" on this package. We are going to represent the vast majority of the American people who said, "We are mad as hell and we are not going to take it anymore."

Mr. PANETTA. Mr. Speaker, I just suggest to the gentleman that that is doing nothing.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from New York [Mrs. LOWEY].

Mrs. LOWEY of New York. Mr. Speaker, I rise in opposition to subtitle (d) aviation noise policy.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Speaker, I rise in support of this budget reconciliation.

I do not share the conventional wisdom—that the debate over this budget was an example of the failure of the Congress or of democratic government.

It was not neat. It was not pretty. But it was one of the great successes of the past decade.

This was a fundamental debate over the issue of economic equity in America—about fairness, about progressivity, about financial burdensharing.

This was a debate about how we allocate the responsibility for reactivating and rejuvenating the American economy and the American society.

There are many Members of this House who deserve enormous credit for reformulating this budget plan, and for making it into a progressive statement of concern and support for tens of millions of middle-American families. No one deserves more credit than the chairman of the Committee on Ways and Means, and I want to salute Chairman ROSTENKOWSKI for his enormous efforts and achievements in this historic bill.

The President and the summit presented us with a choice: Pay for the excesses of the 1980's by burdening the middle-income family that got nothing from the trickle-down promises of Reaganomics.

That summit agreement was nothing more than the continuation of the inequities of the past decades.

It ignored the 37 million Americans who lack health insurance and raised the cost of health care for seniors.

It ignored the deterioration of living standards and real wages of the working families in America.

It sent the bill for Reagan's folly to the middle class.

And we said "no."

No to inequity. No to privilege. No to trickle down. No to regressivity.

That summit plan was rejected. It was rejected by the American people who heard the President's call, read the plan, and let their elected representatives know that they wanted no part of another decade of Reaganomics, another decade of defending privilege, another decade of weighing down the average American family.

The budget we will pass tonight represents a basic change in direction.

This budget puts an end to the tax holiday of the rich. It tells them it's time to share the burden of rebuilding America.

Is this a perfect budget? No.

Does this budget remedy all the inequities of the last decade? No.

It could do more, especially if the President had not spent much of the last 2 months holding out for a capital gains tax for the richest 5 percent of Americans, and then fighting a surtax on the 65,000 Americans who earn a million dollars a year.

It should do more to bring the $290 billion military budget into conformity with military and political realities around the world.

Old adversaries are remaking their societies, massive arms control negotiations are going into effect: And yet the Pentagon, it's businesses as usual.

This budget has no peace dividend; it makes no recommitment of resources to improving education, expanding health care, upgrading housing, or rebuilding our transportation systems.

It makes cuts in health care at a time when we have millions of children who are not receiving immunizations, health screenings, or basic nutrition.

Lastly, let me say to those who decry the debate we have endured:

The test of any system of government is not the order and conformity with which it arrives at difficult decisions—and changing the fiscal direction of this Nation is a very difficult task.

If orderliness were the test, the Soviet Union's disastrous 5-year plans, adopted without dissent, were models of economic strategy. Mao Zedong's Great Leap Forward was a brainstorm.

Democracy isn't supposed to be polite. Sometimes passions are loosed when issues like fairness and justice are challenged. If we'd had a few more passionate debates during the Reagan years instead of too often acting like legislative zombies, there would be less need for S&L bailouts, massive new taxes, and health care sacrifices by seniors now.

Let me address some of the particular achievements in this package.

I support the child care and earned income tax provisions included in the Omnibus Budget Reconciliation Act of 1990. After a long and hard-fought battle, Mr. Speaker, I am pleased that the legislation under consideration today will, for the first time, give States the authority, flexibility, and financial assistance to improve and expand child care opportunities for the Nation's working families. I want to thank my colleagues from the Committee on Education and Labor and the Committee on Ways and Means for their leadership in crafting this agreement, and particularly Chairman ROSTENKOWSKI and Acting Chairman DOWNEY who have delivered very substantial sums for building a better child care system in this country.

While this bill does not go as far as I had hoped in ensuring adequate protection for children and in maximizing quality, it represents a first step toward a national child care policy.

CHILD CARE NEED BURGEONS IN THIS DECADE

In 1984, the Select Committee on Children, Youth, and Families, which I chair, brought renewed attention to child care through a yearlong investigation. At the end of this extensive review, the committee concluded in a unanimous report, "Families and Child Care: Improving the Options," that the need for child care far outweighed the supply of safe and reliable care, and that the Federal Government had a significant role, in partnership with States and localities and the private sector, in responding to this growing domestic need.

In my own State of California, child care experts estimate that there is at least a 500,000 shortfall in licensed child care, with the worst shortages occurring for infants and young school children. The recent child care report from the National Academy of Sciences found, from a survey of the child care market in three low-income urban areas, that little center-based care was available for infants and no excess capacity of infant care in family day care homes.

The result is haphazard and tumultuous arrangements for families, and too often unsafe and even dangerous environments for children.

In its 1984 review, the committee also recognized the keen and enduring importance of attending to children's developmental and safety needs and strongly recommended that future legislation address the quality of child care, especially in the areas of training and compensation of child care workers, through model health and safety standards, enforcement, and parental involvement. We suggested offering guidance to States to upgrade the quality of existing programs, and provide resources to do so. I continue to believe that this must be an essential element of any national policy.

I am especially pleased, Mr. Speaker, that in the final hours of negotiation between House Ways and Means and Senate Finance conferees, agreement was reached to establish a $50 million incentive grant program for States to enhance the quality of their child care programs, beef up enforcement, and train child care providers. I couldn't be more pleased that half of these funds must be used by States for training.

Mr. Speaker, I am pleased to support the resources made available for training under the incentive grant program. After a decade of research, there is a very strong consensus about training. When adequately trained, well-compensated, and consistent caregivers are present, opportunities for positive, stimulating, and nurturing child care experiences are greatest. Child care that incorporates enriching and comprehensive early childhood development components can have long-lasting and significant effects on a child's academic and social behavior and achievement.

Yet, as the use of child care has soared in the past decade, staff turnover has nearly tripled. And child care workers—while better educated than the average worker—have watched their salaries fall by more than 20 percent, to an average hourly wage of $5.35.

The first comprehensive profile in a decade of the relationship between training and compensation of child care staff and the quality of child care in America, the National Child Care Staffing Study [NCCSS] examined the quality of care in 227 child care centers in five metropolitan areas—Atlanta, Boston, Detroit, Phoenix, and Seattle—and concluded that the education of child care teachers and the arrangement of their work environment are key to the quality of services children receive. Children attending lower quality child care centers and centers with more teacher turnover are less competent in language and social development. Most critical is the NCCSS finding that child care providers who had 15 hours or more of current in-service training engaged in more appropriate caregiving, and that work experience alone was not sufficient to ensure quality, even for experienced providers.

Despite the evidence, States don't provide or require the training that results in healthier children. According to the National Academy of Sciences Panel on Child Care: 23 States do not require preservice training for center-based teachers; 32 States don't even require first-aid training for center-based staff; and 34 States, including my own State of California,

do not require any preservice training for family day care providers.

We have hundreds of examples of how good child care can reap enormous benefits for children and their families. We should be building policy based on those examples. But because policies which fail to protect children persist and resources for child care have been scarce, there are still children in the current child care system who are at risk. Countless press reports include cases of neglect and accidental injury in family day care homes that were unregulated, unsafe, overcrowded, and inadequately supervised by untrained or underage providers.

Tragically, because of the insufficiency of quality care in so many regions of this country, some families have no choice. In 1988, after the State of Illinois closed down an unlicensed family care home in Waukegan where 47 children were found spending their days in a small Cape Cod-style home, parents protested because it was the only child care alternative that they could afford.

I am disappointed, Mr. Speaker, that provisions were dropped from the House-passed bill to expand Head Start to a full-day, full-year program to meet the needs of low-income working families, and chapter I expansions to heighten critical school involvement in the provision of early childhood education, as well as before and after-school child care for school-age children.

AN ENTITLEMENT APPROACH GUARANTEES FUNDS

I am supporting the child care and development block grant included in this reconciliation package. But, I call to my colleagues' attention the vagaries of an annual appropriations process. The fiscal year 1991 Labor-HHS-Education appropriations bill, recently passed by the House and Senate and sent to the President, includes $750 million for the block grant in fiscal year 1991. The problem is, the money is not obligated until September 7, 1991, virtually assuring no child care block grant programs will begin this year. And given the current budget crisis, there is no guarantee that any money will be available next year.

States cannot, and will not, undertake expansion of their current inadequate programs without greater assurances of ongoing Federal child care funding in the future. And so this bill could be an empty promise, except for the entitlement we have incorporated into this legislation.

I am especially pleased, Mr. Speaker, that the conferees agreed to maintain an expansion of title IV of the Social Security Act to help non-AFDC families pay for child care—$1.5 billion over 5 years. As an entitlement, this is the more reliable funding mechanism and adequate funds are more likely to reach those in need than through an appropriations process where funds have to be fought for every year.

EITC EXPANSION

Finally, as an original sponsor of the Employment Incentives Act, I strongly support the expansion of the earned income tax credit contained in this bill. This approach complements and is integral to a comprehensive national child care policy, for there is no greater disincentive to family self-sufficiency than to work all year and still be poor.

Based on what I know about child care—and I have been in this business for a long time, Mr. Speaker, the provisions in reconciliation offer the best first steps toward a child care policy that works for children and their families. I urge my colleagues to support this bill that will not only help families purchase the critical child care they need and protect their economic security, but also will allow States to begin to build a quality child care system that has as its foremost goal, the developmental and safety needs of children.

I also strongly support the Medicaid provisions contained in the Omnibus Budget Reconciliation Act of 1990 to significantly improve the health of the Nation's children. I want to thank my colleague, Mr. WAXMAN, chairman of the Subcommittee on Health and the Environment, for his outstanding leadership and unwavering persistence on behalf of the health of the Nation's women and children.

I am especially pleased to support the provisions in this bill which phase in mandated Medicaid coverage for children up to age 18 in poor families, perhaps the most medically neglected of all age groups.

Mr. Speaker, we have made progress in recent years, and this budget continues that progress. Let us continue to move forward and build on what we know works. I urge my colleagues to join in support of this critical and timely legislative package for the Nation's children.

If we fail to recognize the financial and human sacrifice of doing nothing, the budget deficit today will seem minuscule compared to the losses this Nation will face in the coming decades as a result of our neglect.

Mr. PANETTA. Mr. Speaker, I yield 30 seconds to the gentleman from Pennsylvania [Mr. KANJORSKI].

Mr. KANJORSKI. Mr. Speaker, some 200 years ago your predecessor, Frederick A.C. Muhlenberg, was the first Speaker of the U.S. House of Representatives. He was also the first Congressman who represented my district. To paraphrase his famous words as he went off to the Revolutionary War, he said, "There is a time to preach, there is a time to fight." My addition to his words of wisdom is, "There is a time to govern, and now is the time."

Mr. Speaker, today is D-day for the American Government.

Today is the day we decide whether we move forward with the largest deficit reduction package in our Nation's history, or lurch backward into further deadlock, despair, disarray, demagogy, and deficit spending.

The easy and popular choice today is to vote against the deficit reduction package; to pick apart its flaws, and there are many, and to note that any one of us could write a better package and a fairer package.

It is always easier to tear down than it is to build up.

But this is not a time merely to criticize. It is a time to be constructive as well.

As I have outlined in my previous speeches on the budget, Mr. Speaker, it is possible to prepare a better deficit reduction package, and I have done so.

My proposal would make deeper cuts in foreign aid, defense, and unnecessary agricultural subsidies. It would reduce the tax burden on senior citizens and working families, and would require millionaires to pay their fair share of the cost of running our Nation. My proposal would put a windfall profits tax on the outrageous profits of the multinational oil companies, profits which have doubled in the last 3 months.

Many of my recommendations were included in the deficit reduction package which passed the House on October 16, 1990. A number of them have even survived and are in the compromise agreement we are considering today. Unfortunately, a number of my recommendations have not been included in the final agreement.

Like a spoiled child who has lost a game, it is possible for Members to stomp and storm about the provisions in this agreement they do not like and threaten to take their ball and go home.

But we must recognize that we do not always get our own way, or have the opportunity to approve the best possible bill.

As Members of Congress we have a greater responsibility to those who elected us.

There is a time to govern, a time to lead, a time to put aside partisan differences, a time to compromise for the good of the Nation, and a time to make difficult choices and reject the siren cries of the special interests who do not like individual items in this bill.

This is such a time.

If we do not act on this agreement today we run a very real risk of the process falling apart, of never being able to put another agreement together, and of never being able to significantly reduce the deficit.

That would put our economy and our Nation in a tailspin. It could turn recession into depression.

This is a price we cannot afford. As much as we dislike some of the individual provisions in this agreement we must approve it to get on with the job of rebuilding our economy.

Each of us has a natural tendency to focus on the aspects of this agreement we do not like.

It is important to put these flaws in perspective, to remember that they are only a small part of a $500 billion agreement.

It is also worth reviewing some of the good parts of this agreement, and how different sectors of our society emerged from the budget battle.

First and foremost, this agreement does reduce the deficit by more than $40 billion this year and $500 billion over 5 years. That is real money in anybody's book.

Best of all, these are real savings, not "blue smoke and mirrors" cuts as we have seen in past plans.

Second, the agreement is fairly balanced between spending cuts and revenue increases. While it is popular in certain demagogic quarters to decry this agreement as just a big tax increase, that is an unfair and inaccurate characterization.

The vast majority of this agreement, more than two-thirds of the total, comes from spending cuts, not tax increases.

For every $1 in new revenues there is at least $2 in spending cuts.

Some people have asked me why this legislation has to contain any revenue increases at all, why we cannot reduce the deficit through budget cuts alone.

The answer is that while we could balance the budget through spending cuts alone, in order to do so we would either have to make unacceptably large cuts in Social Security, which the Congress and I do not want to make; or in defense, which the President is unwilling to make; or we would have to totally eliminate whole agencies like the FBI, the FAA, or the Labor Department.

The size of our deficit is so large that it cannot be eliminated exclusively through spending cuts. Nonetheless, this agreement, which contains more than twice as much in spending cuts as it does in revenue increases, has a reasonable balance.

Third, the final agreement is much fairer to lower and middle class families than the agreement prepared by the President's budget summit. As a result of strong bargaining by the House, the tax burden on working families has been cut back substantially, and the wealthy will pay a fairer share of the burden.

The tax agreement contained in the original summit agreement drafted by the President and the leadership had its priorities completely upside down. It proposed increasing the taxes on low income families the most and high income families the least. It also placed a substantial new burden on middle income families.

This agreement reversed those priorities, taxing people earning over $200,000 the most, and people earning under $20,000 the least. It reinforces the American tradition of taxing people based on their ability to pay.

PERCENT CHANGES IN FEDERAL TAXES BY INCOME

Adjusted gross income (in thousands)	Less than 10	10 to 20	20 to 30	30 to 40	40 to 50	50 to 75	75 to 100	100 to 200	Over 200
President's original summit plan	7.6	1.9	3.3	2.9	2.9	1.8	2.1	1.9	1.7
Final compromise plan	−2.0	−3.2	1.8	2.0	2.0	1.5	2.1	2.3	6.3

Source: Joint Committee on Taxation.

It is clear from this table that the final compromise agreement we are considering today is much fairer than the original summit plan endorsed by the President.

The following table outlines how much of our total tax burden different income groups pay under current law, and how much they will pay after this legislation is enacted into law. The table makes it clear that passage of this bill will make the Tax Code more progressive.

PERCENTAGE OF TOTAL INCOME TAX REVENUES BY INCOME GROUP

Adjusted gross income (in thousands)	Less than 10	10 to 20	20 to 30	30 to 40	40 to 50	50 to 75	75 to 100	100 to 200	Over 200
Current law	1.6	7.6	11.9	13.4	10.2	20.0	7.7	12.1	15.4
New plan	1.6	7.2	11.8	13.4	10.2	19.9	7.7	12.1	16.1

Source: Joint Committee on Taxation.

It is worth noting a few specific improvements this new plan makes to the original summit agreement, which I voted against, and which was rejected by the Congress.

We cut by nearly 60 percent the gas tax increase proposed by the President's budget summit. If the original House position had been accepted by the President and the Senate we would have totally eliminated the increase in gas taxes.

We eliminated the proposed 2-cent-a-gallon tax on home heating oil endorsed by the President. This insensitive White House proposal would have devastated northeastern Pennsylvania families and senior citizens living on low or fixed incomes, while having little or no impact on the President's affluent, country club buddies in his home State of Texas. Fortunately, it is no longer in the bill.

We also eliminated the proposal the President insisted upon earlier to double the length of time unemployed workers and their families must wait before they can start collecting unemployment benefits. Like Social Security, unemployment benefits are paid out of special trust funds with dedicated sources of revenue to guarantee that funds are available when they are needed. It is cruel to make workers and their families wait a half a month before they receive their first dollar of benefits. The President's budget summit agreement contained such a recommendation. The agreement we are considering today does not.

Fourth, we have virtually eliminated the cuts in Medicare for the elderly pushed by the White House and we have blocked any reduction in Social Security benefits. In addition this bill specifically guarantees that Social Security, which is funded through its own dedicated source of revenues, would be off-budget and off Gramm-Rudman. It also makes it easier to block legislation which would cut Social Security benefits or the level of funding in the Social Security trust fund. As a result senior citizens will no longer have to worry about funds being diverted from the Social Security trust fund to other purposes. Their hard-earned contributions and benefits will be safely protected.

The President's original budget agreement would have doubled both the annual Medicare deductible and the monthly premiums paid by senior citizens for part B doctors' bills. Instead, under this agreement, the annual deductible, will increase only $25—one-third the size of the President's proposal—and monthly premiums will remain at 25 percent of program costs.

In addition, various other administration-backed proposals to cut Medicare benefits and increase payments by senior citizens have been rejected.

The final agreement protects some of society's most vulnerable citizens, seniors living on fixed incomes. As a result it has received the support of every major senior citizen organization in the United States.

As we bring this lengthy, 10-month budget process to a close there are several lessons we should learn.

Never again should we delay so long in passing important budget legislation. We must insist that the President submit his budget on time, and that it be based on "real" numbers

rather than "blue smoke and mirrors" and "rosy scenarios." For our part, we must act on appropriations bills more quickly. When the 1991 fiscal year started on October 1, 1990 the House had passed only 10 of the 13 regular appropriations bills and the Senate had passed only 5 of the 13 bills. We can and should do better.

Never again should we turn over the deficit reduction process to a small group of Congressional and White House negotiators. The summiteers were out of touch with both the Congress and the American public, and that is why their original agreement was rejected.

Furthermore, it is fundamentally wrong to transform our form of government from a democracy of the people to an oligarchy of the few. We were elected to make the tough decisions and we should get on with the job, rather than turning it over to someone else. Turning the job over to the small group of summiteers also resulted in the loss of the valuable experience embodied in our committee system.

I anticipate that our budget problems and our economic problems as a Nation are sufficiently serious that even with the enactment of this legislation we will have to make additional cuts next year. No one should labor under the delusion that this bill is a panacea which will cure all our economic ills.

The probability of a serious economic recession will worsen our budgetary problems, and it calls into question some of the economic assumptions which underlie this budget agreement.

As a result our task next year will be even more difficult than it was this year, and it is thus important that we begin work immediately on the fiscal year 1992 budget. I urge the President, the Budget and Appropriations Committees to begin that work now, rather than wait until the beginning of 1991.

As we begin this process again let us also remember who has already contributed to our deficit reduction efforts in the past, and who has not. Let us also not lose sight of who can afford further cuts. We should be targeting millionaires, windfall profit rich multinational oil companies, foreign aid, and wasteful subsidy programs for the next round of cuts, not working families or senior citizens living on fixed incomes.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida [Mr. SHAW], a member of the Committee on Ways and Means.

Mr. SHAW. I thank the gentleman for yielding.

Mr. Speaker, I would like for just a couple of moments to speak to the conservative colleagues on this side of the aisle. You know, for so long here in this House we have been mistreated by the majority, we have been left out of conferences and we have not been players.

Sometimes we do not recognize when we have been brought to the table and we have been part of the deal-making and we have been part of the process which we call the democratic process and the way this House should work.

This happens to be one of those occasions. All of us here in this House, on both sides of the aisle, liberals, conservatives, Democrats and Republicans, have the greatest respect for the gentleman from Minnesota [Mr. FRENZEL]. He would not be here supporting a package which is a tax-and-spend package. And for this to be characterized as a tax-and-spend package is simply not there. This is one of the first times that we have had a chance, we the conservative Members of this House, on both sides of the aisle, have had a chance for our voices to be heard.

Let us not turn away from it, let us not sit down and curse the darkness. Let us light a light bulb. Let us be able to go home and tell our kids and our grandchildren that we have done something for them today, that we have turned this terrible deficit process around, that we have put in place a process where there will be curbs on spending, that we have voted for some real cuts and, yes, we have voted for some revenue. But the sting of the revenue is very little, considering the benefit that future generations will get from the vote tonight.

We know that the Democrats are going to have to carry the majority of the vote tonight, but I hope that my colleagues on this side of the aisle will recognize when you are part of the process and will vote "yes" so we can bring about a respectable number of Republicans with us on this most important vote.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California [Mr. HERGER].

Mr. HERGER. Mr. Speaker, I rise in strong opposition to this massive $137 billion tax increase. Let us be honest about it: That is just what this bill is, a massive tax increase. If we get deficit reduction of any significance from a bill that contains at least $245 billion in new spending, I will be very surprised.

This legislation only fans the flames of public outrage with the U.S. Congress. To say that we are letting the American people down is a gross understatement. They are asking us to control spending, and we are not even willing to try.

The public is not stupid; they are not going to stand for paying 5 cents a gallon in additional gas taxes so that the Federal Government can give a grant to renovate Lawrence Welk's birthplace as a tourist attraction. No wonder people are fed up. They should be, and so am I.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from South Carolina [Mr. SPENCE].

Mr. SPENCE. Mr. Speaker, there is no denying that we have a budget deficit. It is too bad that this topic was not more popular in some quarters years ago when too many in this Congress loaded the budget with spending on top of spending, without a care to where that would put this country in the years ahead.

It is no surprise that we have a deficit, and the reason shouldn't come as a shock to anyone; we have spent too much money unnecessarily. It is time for government to tighten its belt. It's that simple. Just take a look at the hidden line items that have been funded over the years. Now I might be naming someone's special project, but here it goes:

Thousands of dollars to study the mating habits of frogs in South America, when we have our own frogs right here at home!

$2.1 million for the national survey of American sexual habits and attitudes. There were probably cheaper ways of conducting this study.

$107,000 to study the sexual habits of Japanese quail. The conclusion, you may be relieved to know, is that male quail prefer female quail over other males, or ducks.

It is true that these are, in themselves, small amounts compared with the total budget, but, taken together, these projects do add up.

The true insult is that the big-government spenders have caused our people to be taxed too much to pay for it. In 1930, 15 percent of our income went for taxes of one kind or another, now we pay about 44 percent, and by the year 2000, just 9 years away, it is estimated that two-thirds of a person's income will be taken for taxes. This is money that the individual taxpayer has better ideas on how it could be spent.

Even so, taxes cannot pay for our excesses. We already have borrowed over $3 trillion and we are still borrowing money just to pay the interest on this debt.

It is obvious that we have to cut this deficit but we don't have to increase taxes to do it. All the proposals that we have been permitted to consider raise taxes on all of our people, in one way or another, and adds to the burden of the taxpayer. Not many of the American people realize the multiplicative nature of these taxes and the costs of their eminent and expansive damages. Consider the ripple effect an increase in the gasoline tax would cause. The extra cost that truckers will pay will inevitably be passed along from distributors to stores and finally

to the consumer. The ramifications of this unfair double tax will be evident in the loss of buying power of each and every individual as the price of every good and service escalates.

Although some proposals are more egregious than others, all of them add to the Medicare burden on our elderly. This particular group in our society, our own mothers and fathers and grandparents, have already given the better part of their lives in contributing to the well-being of America and it is clearly unfair to demand that they pay a higher price.

We simply do not need to raise taxes. We can cut or freeze spending. Even the so-called spending cuts included in the various proposals we have considered, ironically labeled as deficit "reduction" or the "last best hope," only make cuts in spending increases in existing programs. To most people, a cut in an increase is still an increase no matter how you cut it. In addition, new and additional spending programs are included in the deficit reduction bills. And I regret being cynical about such things, but tradition seems to bear out that the more revenues the government receives, the more it will spend. The American people are not asking us to spend more. They are telling us to spend less. Fiscal sanity cannot be achieved through devious methods and I will not be a part of it. I ask my colleagues to join me in opposing new taxes and to make real cuts in government spending.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. I thank the gentleman for yielding.

Mr. Speaker and my colleagues, it has taken us a long time to get where we are. We should have been here a long time ago. It has been a very tumultuous 2 weeks. One of the things that I do not think many people will accuse me of being is liberal, inclined to be excessive in spending, and I am not much of a mathematician.

But to my colleagues on this side of the aisle, I would say that I do count fairly well. We could not count enough votes even to force a vote on deficit reduction that was brought about only by reductions in spending.

Well, I would have liked it that way, but the votes, the numbers, are not there. I accept the reality that we must have a deficit reduction package. It has revenue in it. It has spending in it. It has enforcement provisions that are going to contain spending. Some say they are not strong enough.

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But I would say to my colleagues who say they are not strong enough, "What do you have if you don't have this package which does have the best enforcement provisions that anyone has been able to write that can constitutionally bind us?"

Mr. Speaker, I think the time has come when America's impatience is going to be all-consuming and will consume us if we do not take this decisive step, if we do not give the American people a deficit reduction package.

I urge support for this bill.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, this is not a deficit reduction package. Next year; does anyone actually believe that next year we are going to come in here and the deficit is going to be lower? This is not a deficit reduction package. Next year we are going to come here, and I am going to reread these words, and we are all going to look at that and say, "Yes, the deficit is actually larger."

Big surprise. Who is it a surprise to? It is a surprise to the American people supposedly, but they are not being fooled. This is a massive tax increase. It is not a deficit reduction package.

Mr. Speaker, none of the soak-the-rich rhetoric is going to fool the American people because they know they are going to pay higher taxes, and they will be paying higher taxes. The soak-the-rich rhetoric is not going to be any consolation to the man who we have taxed out of a job because this country is teetering on the edge of a recession. We all know that. We know it is a weak economy.

Mr. Speaker, we are passing a massive tax increase on the edge of a recession. We are going to tax people right out of a job. If we are not increasing their taxes, we are going to tax them by eliminating their work.

Mr. Speaker, I must say to my colleagues, "If you're voting this package to get out of here, if that's why you're voting for that, just to get out of here, you're going to have trouble getting back in here because the American people aren't going to stand for this type of irresponsibility. When they start losing their work because of this recession you've taxed us into, they're going to want you out of your job, and, if you want to go home now, they're not going to let you come back."

Spending is still going up under this package. It is going up, up, up. It is not a deficit reduction package. We have not said no to one Federal program. We cannot even say no to dirty art.

The SPEAKER pro tempore. (Mr. FAZIO). It is now after 6 a.m. The gentleman from Minnesota [Mr. FRENZEL] has 13½ minutes remaining, and the gentleman from California [Mr. PANETTA] has 14½ minutes remaining.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. MCHUGH].

Mr. MCHUGH. Mr. Speaker, the country desperately needs this package despite its imperfections.

Mr. Speaker, I rise in support of this deficit reduction package.

For 9 years, our country has suffered under fiscal policies that were unrealistic and unfair. Those policies tripled our debt, crippled our trade balance, and mortgaged our future. For 9 years, the President told our people that there was no problem and no need for painful adjustments. For 9 years, Congress was unable or unwilling to make those adjustments alone.

Now, at long last, the President and Congress are facing up to the problem. For the first time, we have come together on real spending cuts and revenue increases. This deficit reduction package is not perfect. Each of us would have written it differently. But it represents real deficit reduction, and it is a fair compromise.

The time for negotiation and delay is past. The time for action is now. The people expect us to govern. I urge my colleagues to support this package.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN].

Mr. PANETTA. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Speaker, all across America the question is being asked: "Why is the public so turned off on politics?"

Mr. Speaker, I think one reason is simply that the public understands that all too often they have not been told the truth.

I remember in 1981 when the Congress passed the budget and tax plans which doubled military spending and cut tax for the wealthy by huge amounts, and set us on the road to exploding deficits. Five Republicans and 123 Democrats who still serve here this morning including myself opposed those decisions, but we lost. President Reagan won. For the last decade the hard truths about the Federal budget have been hidden from the American people. They have been told that we would simply grow out of those deficits without the need for any real pain. Mr. Speaker, echoes of that escapism still are present on the floor this morning.

But at long last the American people are finally being told the truth, that those deficits cannot be contained without both spending reductions and revenue increases. This is the beginning of the end of the escapism which has, in my view, corrupted the economic debate of the 1980's.

The second reason I think Americans have been so turned off on politics is because since 1978 the wealthiest 1 percent of Americans have seen their incomes essentially double at the same time that their tax rates were being cut in half, and the man in the

middle was being squeezed. Middle-class working families came to believe, unfortunately, that the fix was in for the high rollers while they were being left out. I think this budget changes that, too.

In contrast to the original budget deal which this House rightly turned down 2 weeks ago, this bill finally asks the very wealthy to begin to pay their fair share. It puts $20 billion back in the pockets of senior citizens. It cuts the tax hit on the middle class by one-third in comparison to the original summit package. It raises four times as much money from the wealthy as did the original package.

This bill does some dumb things. It does not go as far as we would want in shifting the burden of government from the middle class to the super rich, but it is a long overdue beginning, and we will continue that fight next year.

Mr. Speaker, I simply ask my colleagues to support this budget. It treats Americans like mature adults instead of manipulating them like children with easy-answer slogans. It puts us back on the road to fairness. It really calls us to a new maturity of political dialog. It closes the chapter on the greed and escapism of the 1980's.

It has been a long struggle to get to this point. It has been worth the fight. Vote for it. It is a good thing to do. It will help our country.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. ARCHER], vice chairman of the Committee on Ways and Means.

Mr. ARCHER. Mr. Speaker, I rise in opposition to the conference report on the fiscal year 1991 budget reconciliation bill. Earlier this year, President Bush extended his hand to Congress in a good faith effort to negotiate a bipartisan agreement to bring the Federal deficit under control. He asked the House and Senate leadership to join with him in devising a plan to reduce the deficit by $50 billion in fiscal year 1991 and $500 billion over the next 5 years.

I agreed to participate in those budget summit sessions because I shared the President's belief that the Federal budget deficit is the most important problems facing our Nation today, and I shared his hope that we could negotiate with the Democrat leadership on a bipartisan basis to come up with a deficit reduction plan that was in the best interests of our country.

What did the President get in return for extending his hand in good faith? In July, the Democrat leadership threatened to permanently break off the negotiations unless the President first agreed to publicly rescind his no new taxes pledge. They gave him an ultimatum. Either he agreed to include tax increases in the final agreement, or they would walk.

And because the President believed so strongly that a deficit reduction agreement was critical to the long term health of our Nation's economy, he issued a joint statement with the Democrat leadership that tax revenue increases would have to be a part of the bipartisan package. Yes, the Democrats got the President to agree to their coveted tax increases. But in return, they agreed to include three other critical components in the plan: significant spending reductions, economic growth incentives, and budget process reforms to enforce the agreement over the next 5 years.

After two more agonizing months of negotiations, the bipartisan negotiators finally reached agreement on a package which contained those four elements. The budget summit agreement wasn't perfect. In fact, there was something in it everyone could hate. But that is the essence of compromise. Everyone gives up something they want, and takes something they don't want.

I supported the original budget summit agreement, not because I liked it, but because I believed it was the best bipartisan budget we could ever get the Democrat leadership to agree to, given the current makeup of the Congress and the deep philosophical divisions between the parties. Yes, it unfortunately included some tax increases—but it also contained economic growth incentives, real spending reductions, and important budget process reforms to enforce those spending reductions in future years.

I am sorry to say that when the budget summit agreement went down to defeat, so did any notion of bipartisanship. Instead, what we got for the next 3 weeks was a steady barrage of demogogic rhetoric from the Democrat majority that the President's only concern was protecting the wealthy. Webster's defines demagoguery as "the use of popular prejudices and false claims and promises in order to gain power." And that's exactly what we got: popular prejudices and false claims.

The Democrats concluded there was no profit for them in bipartisanship. But they apparently did believe they could profit from inciting class warfare by charging that the wealthy weren't paying their fair share of the tax burden. The only problem with their rhetoric is that it's blatantly untrue.

Fact. The Federal Income Tax System is significantly more progressive today as a result of the tax policy changes enacted in the 1980's than it was during Jimmy Carter's presidency. Progressivity cannot be measured by looking solely at income tax rates. The income tax base must also be taken into consideration. And that base was significantly broadened by the Tax Reform Act of 1986. In exchange for the lower tax rates—which applied to all Americans—wealthy taxpayers gave up numerous deductions, credits, and exclusions. As a result, the wealthiest taxpayers are paying higher taxes now than they were during the late 1970's.

Fact. The reductions in marginal tax rates during the 1980's resulted in a significant increase in the tax burden on the richest Americans. Today, the richest 10 percent of all taxpayers pay 55.5 percent of all income taxes, up from 48 percent before the tax rate reductions of the 1980's.

Fact. The share of Federal income tax collections paid by the rich grew by 16 percent during the 1980's while it fell by 19 percent for the middle class and poor.

Fact. American families, no matter what their income levels, improved their positions during the 1980's. The growth in family incomes benefited all income groups.

The American public understands that our Nation's chronic Federal budget problems did not come about because they are undertaxed. The plain fact is that Federal taxes as a percent of GNP are at one of their highest levels in our Nation's peacetime history. In 1990, taxes as a portion of GNP will surpass 19 percent for the fourth year in a row. It's the Democrat's appetite for spending that is responsible for our mushrooming deficits. Over the past 20 years, Federal spending as a percent of GNP rose from 18.4 percent to 22.6 percent today.

The Democrat majority believes there should be a Federal solution to every problem in this country, and they spend the taxpayers' dollars like drunken sailors in order to find it. Even 10 years of $100 to $200 billion deficits and 3 trillion dollars' worth of public debt isn't enough to satisfy their voracious appetite for more and more Federal spending.

This budget reconciliation bill does nothing to change that pattern. Instead, it guarantees that Federal spending will increase by over 10 percent in 1991 alone—over twice the rate of inflation—and it raises taxes to pay for those spending increases.

And what happened to the other fundamental elements agreed to by the Democrat leadership? Where are the economic growth incentives and budget process reforms to enforce the minimal spending reductions slated to take place over the next 5 years? There are no economic growth incentives in this legislation. They've completely disappeared.

The budget process reforms have been substantially diluted from the original budget summit agreement. The mandatory domestic spending caps in the conference report have such a large fudge factor that they're virtually meaningless. The Democrats flatly refused to even consider my legislation to give the President a line item veto. They ignored the many excellent recommendations put forth by the Grace Commission to reduce spending and eliminate Government waste. Foreign aid spending goes almost totally untouched, the 5-year reductions in this category amount to a paltry $2 billion.

I say enough is enough. I refuse to ask my constituents to send any more of their hard-earned dollars to Washington so that the Democrats in Congress can find new and ingenious ways to spend it.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Iowa [Mr. GRANDY].

Mr. GRANDY. Mr. Speaker, once again I am going to join the majority of our minority and support this package tonight, and, before we get into the debate as to whether this is another one of these prejudiced packages where the majority gets everything, the Democrats get the gold mine and the Republicans get the shaft, let me point out three items that I think we can legitimately on our side call Republican initiatives that are in this package.

Mr. Speaker, one is the repeal of section 2036C. The real estate tax estate freeze is repealed, the proposal of the gentleman from Texas [Mr. ARCHER] signed on by many Republicans. Twenty-five percent deduction for the self-employed, an item that businessmen, small businessmen, and farmers, have been asking for for years, and Republicans have been trying to give them, and finally a new tax credit for the costs incurred in complying with the public accommodation provision of the Americans With Disabilities Act. That was introduced on this side of the aisle and has been tried to get into several packages.

Let me just say that there are small victories for us. Perhaps not the huge triumphs that we would wish. But none of these provisions were in either the summit package or in the Democratic package. They were in the Kasich-Pursell bill which was not allowed to come to this floor.

So, Mr. Speaker, although we have been denied, we have been allowed to put some of our language into this package, and I suppose at this point, at this late date, we have to be grateful for little favors. But I think we can say that we have made a difference in this package tonight. If we wait one more time, if we say no again, I think we can also legitimately say that we have abdicated any responsibility toward the reduction of this deficit.

Therefore, Mr. Speaker, I urge my colleagues here to support my colleagues here.

Mr. FRENZEL. Mr. Speaker, I yield 3½ minutes to the gentleman from Texas [Mr. DELAY].

□ 0610

Mr. DELAY. Mr. Speaker, I know we have had a long night, and it is 6:10 Saturday morning. I hope it is beautiful outside.

As I was listening to the remarks of those that support this package, something struck me, an old overused quote, that those who do not understand history, are destined to repeat it.

I want to bastardize that a little bit and say that those who do not remember history, are destined to repeat it.

Who are we trying to kid here? The American people, or each other? Who are we trying to convince here? The American people, or each other?

I have heard more rationalization about why I am voting for this bill than I have ever heard in a long time. You can rationalize it all you want to, you can try to cover it up all you want to, but history is repeating itself on the floor of this House.

We have had deficit reduction packages in the past. We have had 2-year, 3-year, and 5-year packages. Hardly any of them, in fact, I do not know of one that has lasted over 2 years. In 1982 we had a plan. It lasted 2 years. It was a 5-year plan. We got more spending and higher deficits. The American people remembered.

We have had Gramm-Rudman. It was a 5-year plan. It lasted 2 years, and we started changing the targets. It has slowed the increases in deficits slightly. The American people remembered.

So I took a look at this bill as a 2-year bill, because I know the appetite of Congress. This year, in 1991, at the end of 1991 we will have a higher deficit by $30 billion than we had last year, because of this wonderful deficit reduction package.

In 1992 we will have a higher deficit by about $10 to $20 billion over 1990, because of this wonderful deficit package.

But what do we get for that? We get about $164 billion in new taxes and increased taxes, and we get a huge increase in spending. We get new spending programs in this bill. Most of the slowdown in the increase in spending comes in the third and fourth and fifth year.

So what have we got? We have got a 2-year package with higher deficits in a deficit reduction plan.

This is a huge tax bill, on all Americans, that will have higher deficits than even last year, and huge increases.

Remember one thing: We do not know what is hidden in this bill.

I just want Members to think about this: remember one thing that we know, we do not know what is in this bill. We do not know what is hidden in this bill.

You may be voting for this bill because it is a solution to the chaos, but you are going to wake up Tuesday or Wednesday or Thursday before the next Tuesday election, and your papers will have read this bill, and they will start pointing out to you what is in this bill, and you are going to be embarrassed, and the American people will remember.

Mr. PANETTA. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Illinois [Mr. RUSSO].

Mr. RUSSO. I thank the gentleman for yielding.

Mr. Speaker, let me just say as someone who is finishing his sixth year on the Committee on the Budget, I want to congratulate the chairman, the gentleman from California [Mr. PANETTA], for the long hours he has put in. There is nobody that worked harder than he does. I know. We are roommates. He does not come home until late at night and gets up early in the morning. He has done a heck of a job. He is a man of a lot of integrity and credibility when it comes to the budget process.

The chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI], I want to thank for making tax fairness the issue for the Democratic Party and for this country.

I also want to say to the senior citizens in this country who have given my chairman a hard time, if it wasn't for the gentleman from Illinois [Mr. ROSTENKOWSKI], the cuts in Medicare would be $60 billion, not $42 billion.

I think it is important to point out that he fought very hard for the seniors in this country, and I am sure he would have liked to have done better. But I think saving $18 billion is something we ought to be applauding.

Now the public is still up, watching this debate. They must be the most confused group of people in the world.

They hear Members from one side of the aisle come in and say, "This is nothing but a tax increase, a sham. There is no deficit reduction."

Then you hear Members from this side of the aisle who point out the strong points. They even hear a minority on that side of the aisle who say that this is true deficit reduction.

Let me tell you, folks, this is without question a break with the past, a break with the past 10 years in which the rich of this country have been having a wonderful time at the expense of the middle class.

Does it go far enough? No, it does not. Do we want it to go farther? Yes, we do, and we will take care of that. But this is definitely a break from the past.

The middle class has been paying for mergers and acquisitions on Wall Street. They have been paying for savings and loan bailouts. They have been paying for the HUD scandal. They have been paying for defense waste, fraud, and abuse.

It is time we reversed that, and with this budget we do reverse that. In the progressivity charts, people making over $200,000 get a 6-percent increase in their taxes, the highest of any level. This is a change. It makes the Tax Code more fair. That is what we need to show to the American public, and it happens here.

We heard there is no deficit reduction, there is no reduction in spending.

Well, let me tell Members, if you think $99 billion in entitlement cuts in 5 years is no pain, just hold on. You are going to find out that pain as the people begin to realize the kind of cuts we had to make here, the kind of sacrifices we had to ask them to share.

Some Members want to get up here and castigate everything they see as not being deficit reduction. Do you know why? Because they want deficit reduction without pain.

That is not honest, that is not possible, and it just will not happen. So you can criticize all you want, but the pain is here, and we need to do something.

I guess $170 billion in deficit cuts over 5 years is not pain. I guess $69 bil-

lion of debt service reduction is not real.

This is a real package, and in the 6 years I have served on the Budget Committee, nothing has been as real as this. We ought to be proud of the fact that we are able to work together in a bipartisan way to achieve this. It does not go far enough, but it is a start.

I ask Members here tonight to support this. It is not perfect, but we need to support this. It is the right vote, it is the responsible vote, and it is the honest vote. The American people need honesty out of this body, and we are giving them honesty tonight.

Mr. FRENZEL. Mr. Speaker, I yield 1½ minutes to the distinguished gentlewoman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Speaker, there comes a time when one is simply obliged to act, and I believe we are at that time. If this were any easy matter, we would have had a budget resolution this year. If this were an easy matter, it would not have taken 4 months for the Congress and the executive branch to come to an agreement. If it were an easy matter, it would not have taken all of these difficult days for us to act on the budget summit agreement.

It is not an easy matter. But the economy is soft, jobs are threatened, and the quality of life is at stake for people in my district. We have men and women stationed in Saudi Arabia. This is simply not a time at which we can afford to have the United States of America have no budget.

This is not a bad budget. As budgets go, this is real change in the right direction. It has fixed a number of problems in the summit agreement, Medicare, home heating oil, fairness, and tax policy. It extends programs that have made a difference in the lives of my people, like mortgage revenue bonds and low-interest housing tax credits.

It moves us forward on some critically important programs like better health care for poor children. It provides a new family support program that has the potential to reduce poverty among children, like Social Security has reduced poverty among seniors.

Mr. Speaker, this is not perfect, but it is incremental change in the right direction, and for those who care about line item veto and recision authority, it has enforcement.

It does not solve our problems, but it helps move in that direction. I ask the support of Members.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Louisiana [Mr. MCCRERY], a member of the Committee on the Budget.

Mr. McCRERY. Mr. Speaker, this is not a good deficit reduction package, but it is the best deficit reduction package. It is better in my estimation than the budget summit agreement. It is better because the regressive tax increase has been reduced from 12 cents to a nickel.

□ 0620

It is better because the Medicare cuts in this package fall much less heavily on the elderly, and it is better because overall the taxes in this package are more progressive.

This package is better than either of the two realistic alternatives. It is better than sequestration, which would decimate our national defense, and it is better than a long-term continuing resolution, which would simply be more and more spending with no accountability, and that is unacceptable.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Speaker, the budget agreement is a cruel hoax—both on working men and women and on those with fixed incomes.

The political rhetoric is "tax the rich."

The budget agreement taxes everyone. Americans' cost of living is about to go up hundreds of billions of dollars in new taxes, fees, and assessments.

This is not necessary.

Control Government overhead spending—reduce it 10 percent for 1 year and then hold increases to the rate of inflation for 4 years—and taxpayers could save $143 billion without cutting their services and benefits.

Then why new taxes? Because the Democratic leadership is committed to policies of tax and spend. This budget agreement proposes the largest tax increase in American history, contains no significant incentives for economic growth or jobs, while increasing Government spending by almost $200 billion.

A "no" vote on the budget agreement is a "yes" vote for America.

When trying to reach a destination, it's easy to find yourself taking the same well-worn route. Mr. Speaker, this is exactly what Congress has done with the budget this year.

The traditional approach to reducing the deficit is to consider raising taxes or cutting Government programs or both. Inevitably, the focus is on what Government programs should be funded and who should get the money.

Perhaps we should take a road less traveled and look instead at how the public funds are spent.

To meet the Gramm-Rudman deficit reduction target for this year, anywhere between $30 and $50 billion will have to be generated by additional revenues or extracted from the budget.

All the discussion so far has involved more taxes or reductions in Government benefits such as entitlements and personnel. In fact thousands of furlough notices were mailed to Federal employees with the expectation that they would have to be laid off temporarily for the Gramm-Rudman target to be hit.

Let's climb out of that mental rut and turn to a part of the Federal budget that receives very little scrutiny: Indirect costs. Also known as overhead, indirect costs include such categories as travel, communications, printing, and supplies. Federal Government indirect costs this year will exceed $340 billion.

Before you reach for the 4-inch-thick copy of the Federal budget to check the figures, a gentle warning—you won't find them. There is simply no analysis or summary of indirect costs in the budget. Nor can you obtain such information readily from congressional sources. Members of my staff had to spend hours digging out the numbers from the Office of Management and Budget's private library.

But the effort was worth it. What we discovered was a way to reduce the deficit without hiking taxes 1 penny or trimming one Government program or benefit.

The solution: Substantial progress in reducing the deficit can be made by requiring all Federal managers to better manage indirect costs and reduce those expenditures by 10 percent. In some offices that means taking fewer trips, in others it might mean printing letters on both sides of the paper or keeping a closer watch on supplies.

Squeezing overhead costs may be a radical idea to the Government but it is an old concept to the private sector.

In researching this proposal, we called a number of randomly chosen Fortune 500 companies. Every business spokesperson contacted said either that a 10-percent cut in overhead was feasible or their company had actually implemented such a cut during a previous economic slowdown.

Taking the Government's total indirect costs, $340 billion, excluding $70 billion designated for research and development, leaves $270 billion in annual Government overhead. Reducing indirect costs 10 percent would save $27 billion. Holding increases in these costs to the inflation rate for 4 additional years would produce a 5-year deficit reduction package of $143 billion.

So let us change the direction of the deficit debate. It is not whether to increase taxes or decimate Government programs and personnel. The choice is between more taxes or less Government travel, maintaining programs or ordering fewer pencils, preserving benefits or passing on a new copy machine.

The vast majority of Americans oppose more taxes, want to make the

Federal bureaucracy more efficient, and need their Government benefits. Fortunately there is a way to do that and also reduce the deficit. But we need to shift mental gears and point the budget drivers toward indirect costs.

Mr. PANETTA. Mr. Speaker, I yield 30 seconds to the gentleman from Alabama [Mr. BROWDER].

Mr. BROWDER. Mr. Speaker, I have a question for the distinguished chairman of the Committee on the Budget.

Mr. Speaker, the Employment Service and the Unemployment Insurance Programs are paid for by dedicated employer taxes. Year after year, we fail to appropriate sufficient funds from those dedicated revenues in the unemployment trust fund. And now, with across-the-board funding cuts, we jeopardize the very programs that stabilize local economies and keep Americans working.

At present levels, if the economy worsens, unemployed workers will go to local offices for help, only to find a "closed" sign on the door. How can we tell workers that they are entitled to benefits when they are unemployed, if we don't provide a local office or staff to get those checks to them in a timely manner?

While the current shortfall is a serious one, if States know that additional funds can be made available in the future, they may be able to defer some expenses and keep offices open and services available in the interim. I would like to ask my colleague, the distinguished chairman of the Budget Commitee, whether the reforms to the budget process permit adjustments due to changes in the economy for critical employment and unemployment insurance programs?

Mr. PANETTA. Mr. Speaker, if the gentleman will yield, basically the budget process would provide, if the President determines that this is a dire emergency, that he could provide funding to meet those needs in that context.

We could also, if we want to, prioritize funding below the caps for these needs as well.

Mr. BROWDER. I thank the gentleman.

Mr. Speaker, on Monday the House approved the conference report on Labor, Health and Human Services, and Education fiscal year 1991 appropriations that, to meet spending limits, applied a 2.41-percent across-the-board cut to the discretionary programs within that appropriation.

I appreciate the difficult choices that had to be made by the conference committee and this House. However, I am concerned that the level of funds provided for State employment and unemployment programs will seriously jeopardize services to unemployed workers during an economic downturn in the months ahead.

Unemployment is on the rise nationwide. In September, the administration submitted an amended budget request for $90.7 million for employment insurance administration. The Secretary of Labor notified conferees, too, that the estimated need for additional funds for unemployment insurance had risen to $174 million due to deterioration in the economic outlook. The conferees recognized this problem in adding $90.7 million to the appropriation. However, the across-the-board cut took back $49 million of that $90.7 million leaving the Unemployment Insurance Program to begin a difficult year with a shortfall of $133 million.

The across-the-board cut, at the same time, jeopardizes the Nation's Employment Service—the State-Federal program designed to put people back to work. It's a double whammy. The reduced appropriation puts at risk a critical safety net for unemployed workers and their families and also partially guts the program that could put those unemployed workers back on the job.

Mr. PANETTA. Mr. Speaker, I yield 1 minute to the gentlewoman from Maryland [Mrs. BYRON].

Mrs. BYRON. Mr. Speaker, someone said that it is getting to be dawn outside. I am not sure, because we have been debating this since just early into this day.

Not one of us had been elected to take the easy way out, and on any budget vote there is no easy way out, only a courageous way. Now we have to begin to reduce that deficit that our constituency says must be done.

Earlier this evening in my office I was reading a letter. Let me quote from it.

I have always supported you. I have always voted for you for the last 12 years. I don't even know whether you have an opponent this year, but I plan to vote against you. Why? Because this Congress cannot lead, it cannot legislate, and it cannot make the hard decisions. I agree with your views and have always been happy to support you.

The time has come for this Congress to lead, and the time has come for this Congress to make the decisions.

The courageous vote is to support this package that is before us this evening.

Mr. FRENZEL. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Speaker, I regrettably oppose this package.

Mr. Speaker, I rise in opposition to this budget reconciliation package and I do so with regret. I believe my colleagues and the people of the Fifth Congressional District of New Jersey know my record as a fiscal conservative and that I have named the deficit "Public Enemy No. 1." There is no problem greater than getting control over the deficit now spiraling out of control, if we are to remain a global economic power, now and for future generations.

Nevertheless and regrettably, this budget is grossly inadequate in curbing spending and patently unfair in application.

Yet the budget package we debate today will fall significantly short of the $50 billion first year savings we were promised. And, based on the dubious enforcement procedures included in this package and official Washington's equally dubious track record, I would venture an educated guess that we will never see the $500 billion in deficit reduction over 5 years that this package promises.

However, although the Medicare cuts are not altogether acceptable, they are greatly improved over the previous summit package.

Admittedly, Medicare beneficiaries should bear their fair share of the deficit burden, but this proposal is out of proportion. Domestic discretionary spending is growing by the rate of approximately $42 billion annually. Should our sick elderly bear such a proportion of the deficit reduction? The answer is—no way.

Our past experience with Medicare cuts is clear. They have resulted in cutbacks in service. Cuts of this magnitude will not only put additional costly burdens on the sick elderly, but also result in further rationing of care.

However, my singular opposition to this package rests on a provision that marks a radical change in policy one that could be devastating for New Jersey. For the first time, this package would violate the sanctity of many critically important tax deductions. For the first time, this budget places limits on itemized deductions including limits on the deductibility of State and local income taxes, mortgage interest payments and charitable contributions.

Some say that this new tax will only impact on the wealthy. Nothing could be further from the truth. In many metropolitan areas with high housing costs, property tax rates, and State income taxes such as northern New Jersey, a two-worker family may easily earn over $100,000 per year. But these are not wealthy couples! These working families are house poor and struggling to make their payments.

Even if you disagree with the status of these families and claim that this new tax is fair because the dollar amount that these families will pay is relatively small, it is bad policy and will have a profound effect in future years.

If enacted, this budget will make a radical departure with long-established tax policy and open the floodgates on the limitation and eventual total elimination of the mortgage interest deduction and State and local tax deduction. This unprecedented incursion on deductions will make an inviting target for each year's budget bill. I hereby make the following prediction—that next year Congress will once again be faced with the need for more revenue and the first place the Ways and Means Committee will look is at further decreasing deductions and lowering the income level. The death knell of these deductions will be tolled.

These deductions are the only tax relief that more young families have. Limitation of this deduction in my district will drive more young couples out of the housing market. Are we going to deny them in an effort to save a

lower marginal tax rate for the richest one percent in the country? What this proposal comes down to is a back-door tax increase on two income families.

Once the principle of deductibility of State and local taxes and mortgage interest is violated, it will only be a matter of time before future tax writers lower the income floor, raise the percentage of the reduction or limit deductiblity entirely. And all this is being done so that we won't raise the rates on millionaires. I want fairness and I want a strong middle class. I say, "burst the bubble" fully to a marginal tax rate of 33 percent. Let's not have this back door marginal tax increase, which unfairly targets one segment of the population. Let's put our efforts into curbing spending, not taxing the middle class out of house and home.

Mr. Speaker, the public deficit is "Public Enemy No. 1." It stands at the root of this Nation's economic ills. There is no more important task than deficit reduction. However, I cannot, in good conscience, vote for such a package that does such violence to my constituents. This is not the best budget option we have and I will vote against it.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Florida [Mr. LEWIS].

Mr. LEWIS of Florida. Mr. Speaker, I thank the gentleman for yielding the time.

All of us want to go to heaven, but nobody wants to die to get there. This is what we have to look at tonight out of a 1,600-page reconciliation act. In my other hand I hold what it is going to look like when it is all bound up, and when you go home and you start finding out what is in it.

I think it is a tragedy and a travesty on the American public, the people of this country that we, within a few hours, get something like this that is going to be voted upon by this body. These are the papers that we can look at and that we are supposed to know what we are doing.

We do not know what we are doing. The public is right. They are concerned and they do not want any taxes. But the least we could have done was freeze spending and start from there, and we did not do that.

I am opposed to this package, and I hope all of my colleagues will be opposed to this package.

Mr. PANETTA. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Speaker, we have waited all night and through sunrise for this budget and this moment, but America has waited much longer.

Time and time again we have tried to tame the deficit monster. Time and time again we have failed.

But now is our last best chance, and reach for it we must.

Mr. Speaker, as the sun rears its fiery head over the Atlantic and brings day to Maine, New York, Maryland, and Georgia, let this mark the beginning of a new era, an era when we deal with our problems rather than shirk from them, an era when partisan bickering fades and bipartisan workmanship prevails, an era when we realize that whether we be individuals, companies, or governments that we must pay for our bounties and our blessings, and cannot have them for free, an era when no one shirks from his or her duty, but those who can afford more willingly pay more.

Finally, Mr. Speaker, we move into the 1990's and the 21st century to an era when America realizes that with the changes going on throughout the world and within our country that we have new challenges to meet, and an era that it can be said, hand in hand, we rose to meet the challenges and do the difficult things it took to keep our great land the leading country, the shining light of our world.

This vote begins that new era.

Mr. PANETTA. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Speaker, I rise in support of this conference report to accompany H.R. 5835, the Omnibus Reconciliation Act of 1990. In final form, it should be a bill that will allow us to achieve a good deficit reduction package given the limitations placed on the legislative branch to reach agreement with a President more intent on preserving the privileges of the wealthy than on rebuilding our economy and restoring fairness.

I hoped to be voting on a package that is not only fiscally responsible, but also makes major new investments in our people, realizes the full possibilities of an end to the cold war, and fully recovers from the wealthy what was stolen from the rest of the American people during the greedy days of the 1980's.

I will admit that I doubted that achieving this goal was possible given the lingering belief on the other side of the aisle in the voodoo magic of supply side economics, the cornerstone of which created the deficit in the first place. This program failed by nearly every measure: The national debt tripled, and just its interest payments today are one of the budget's largest components; annual GNP growth was the lowest in decades; military spending, including defense fraud doubled during peacetime. Government programs were scaled back, led by a wave of deregulation and budget cuts and emphasis on mergers and acquisitions replaced what should have been the emphasis on productivity.

As we enter the decade of the 1990's, we are saddled not only with the budget deficits but with scandals in the savings and loan industry, in HUD, with DOD's multibillion dollar excess inventory and elsewhere in the Government. Human needs have been largely forgotten. Those of us who have basic democratic ideals stemming from the party of the New Deal and of this Great Society are finding ourselves having to negotiate even further cuts in Medicare, housing, and education.

The message is clear. Over the past 10 years we have become so paralyzed by budget deficits of the Reagan-Bush administrations that we have become blinded to our human and social deficits. If this political paralysis continues, it will further sap our national strength in the next century. It's time to recognize that the gamble of enriching the rich with tax and special favors has been an enormous loss to the Nation. The supply side experiment has failed.

However, under the new bipartisan plan, I believe this bill respresents a significant step in the right direction.

Mr. Speaker, as the chairman of the Committee on Government Operations, which has principal jurisdiction over reforms to the budget process, our committee in consultation with the Committees on Budget and Rules, negotiated with the Senate budget process and Gramm-Rudman reforms to ensure that the 5-year resolution can be enforced.

It is easy for me to come before this body to speak in favor of including this title into the reconciliation Act. In a very real sense we are creating Gramm-Rudman-Hollings three. I opposed the original Gramm-Rudman-Hollings law in 1985. I opposed the revisions made in 1987. And if I could have my way today I would propose a significantly different budget process reform bill.

But this title is a product of extensive negotiations with the administration at the budget summit that the administration claimed was a deal breaker. The Congress—within those confines—has made it the least burdensome and restrictive as possible.

The enforcement mechanisms set forth under title 13 include provisions that establish caps for discretionary or appropriations bills in the three major catagories: domestic, international, and defense. Any appropriations bill that breaches the cap is subject to automatic sequestration within that category. If the breach is enacted prior to July 1, then the sequestration is within 15 days. After July 1, it comes at the end of a session.

The caps are ceilings on budget authority, not floors. Therefore if the Appropriations Committee in any given year appropriates less in one category—such as defense—and achieves greater deficit reductions, that is permitted.

For entitlements and revenues a pay-as-you-go mechanism was also created to ensure that any new entitlement or revenue legislation will not increase the deficit.

As chairman of the Government Operations Committee—the relevant committee of jurisdiction, it was my intention to ensure some key protections in this package. First, there is nothing that in any way is intended to prevent the committees from including CBO scorekeeping estimates in the underlying text of bills creating spending authority.

Second, with full adjustment for economic and technical assumptions, the administration will no longer be able to manipulate economic assumptions and overestimate tax collections, in order to trigger a sequester to reduce the deficit. A sequester could only be triggered as a result of policy changes that result in spending increases or revenue decreases. As a result, Congress would no longer have to face the demagoguery of the White House trying to blame the Congress for causing a sequester

which in reality was caused by phony numbers from OMB.

Third, the surplus in the Social Security trust fund will no longer be able to be used by this "read my lips and read my hips" President to mask the true size of the deficit. Truth in budgeting will be advanced and the elderly better protected.

The changes envisioned by this title will undoubtedly create a straightjacket approach to Federal budgeting. This probably will ensure that greater deficit reduction is achieved than in previous years. On the other hand, it will take a great deal of discretion away from Congress when it comes to setting spending and revenue policy.

For the next 3 years, and perhaps for the next 5 years, our hands will be tied tight. We will have little opportunity to raise new taxes to pay for our mounting social needs, to take advantage of what should be a large peace dividend, and to fund new investments needed to meet our urgent human needs and to make our work force more productive. Now we will have some ability to recoup the huge tax breaks which the wealthy have received over the past decade from supply side economics. Such restrictions truly make these budget process revisions a mixed blessing.

Mr. PANETTA. Mr. Speaker, I yield such time as she may consume to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding this time and I rise in reluctant support of this package.

I think after all is said and done, and we say mirror, mirror on the wall, who is the fairest of them all, the answer will still come back: "ROSTENKOWSKI".

Mr. CLAY. Mr. Speaker, I rise in support of title XII of the bill. Title XII contains amendments to both the Internal Revenue Code [the code] and the Employee Retirement Income Security Act of 1974 [ERISA] relating to the use of so-called surplus pension assets and increasing the annual per capita premiums paid by single-employer defined benefit pension plans to the Pension Benefit Guaranty Corporation [PBGC].

In general, the provisions relating to the use of pension assets would increase the current reversion excise tax under section 4980 of the code from 15 percent to 50 percent. The tax would be reduced to 20 percent if the employer either established a qualified replacement plan with a cushion equal to 25 percent of the excess assets or increased benefits to participants in the terminating plan—provided that the aggregate value of the benefit increases are equal to 20 percent of the excess assets. In addition, title XII of the bill would permit, on a temporary basis, annual transfers of assets above a certain level from an ongoing pension plan to a separate account within the pension plan—a section 401(h) account. These assets must be used to pay retiree health expenses for current retirees who are also participants in the pension plan.

Since the early 1980's, Congress has been concerned about employers prematurely terminating their pension plans in order to convert pension assets to other corporate uses. Over the years, Congress has considered a variety of approaches to the question of pension plan terminations for employer reversions. These terminations have occurred when plan assets are "overfunded"; that is, the assets of the plan exceed the assets necessary to pay plan liabilities on a particular date. Although pension plans may be overfunded at a given point in time based upon current obligations, the so-called excess assets are needed to meet the future retirement obligations of the plan. For many years, Members of Congress have advocated restricting the relatively unfettered ability of employers to terminate their pension plans prematurely by restructuring the financial incentives employers currently have to terminate their plans.

One of the major financial incentives for employers to terminate their single-employer defined benefit plans prematurely in order to convert pension assets to other corporate uses is the failure of current tax law to recapture the benefit the employer has received for the tax deferral of its contributions—and tax exemption for the earnings thereon—to the pension plan. Under current law, assets that revert to an employer upon plan termination are includible in the gross income of the employer and are subject to a 15 percent reversion excise tax under section 4980 of the code.

The excise tax on reversions was originally enacted in 1986 because the Congress believed that it was appropriate to limit the tax incentives available to the employer that maintains the pension plan. Congress recognized that the tax-deferred treatment of contributions to such plans was not intended to provide a taxpayer subsidized source of capital for general corporate expenditures. Rather this favorable tax treatment was intended solely to provide for the pension benefits of plan participants. To the extent that amounts in such plans are not used for pension purposes, Congress believed that the tax treatment of reversions should recognize that the benefits of this deferred taxation should be recaptured.

According to recent reports of the General Accounting Office [GAO], in most cases, a 15-percent excise tax is insufficient to recapture the tax benefits received. The GAO believes that the excise tax would have to be approximately 40 percent simply to recapture the average loss to the taxpayers of the tax benefit the employer has received. Therefore, it is appropriate to increase the excise tax to better approximate the tax benefits of the income deferral. As a result, the conference agreement reflects an agreement that a 20-percent excise tax is a reasonable amount of recovery to the Federal Government if accompanied by sufficient protections for the interests of workers and retirees when a pension plan terminates. If the employer chooses not to protect workers and retirees, it is appropriate for the excise tax to be substantially higher than 220 percent.

Moreover, terminations to recover employer reversions disrupt the stability of the private pension system. To the extent that the Reagan administration's 1984 reversion guidelines permit a company to terminate a plan, strip it down to bare termination liability, and then restart it without a cushion of assets, current law governing terminations for reversions also poses a grave threat to the financial stability of the single-employer pension plan termination system administered by the Pension Benefit Guaranty Corporation.

The Committee on Education and Labor and the Subcommittee on Labor-Management Relations, which I chair, has struggled with several approaches to this problem, including favorably reporting H.R. 1661, the Employee Pension Protection Act of 1989, on July 13, 1989. Throughout this process, we have had one goal: to encourage plan continuation, not plan termination. To that end, the various proposals the committee considered favorably were based on the concept that assests contributed to a pension plan ought to be used to pay pension benefits for the participants in that plan.

This approach was favored because it was consistent with the belief of most members of the committee and many others in Congress that pension assets represent the deferred wages of workers. On the other hand, others believe that pension assets belong to the employer and, therefore, any attempt to restrict their use upon plan termination is inappropriate.

After considerable study and discussion of this controversial and emotion-charged issue, I have concluded that asking the question, "Who owns the money?," is to focus on the wrong issue. Instead, the critical policy issue really is "What is pension surplus?"

Employers sponsoring single-employer defined benefit plans generally fund those plans based on a projection of what assets would be necessary to pay benefits in the future. These projections include certain assumptions concerning salary levels, retirement ages, turnover, and benefit improvements for both active workers and retirees. As a result of this focus on projected benefits and the desire of employers to fund pension obligations over an extended period of time on a relatively level basis, most pension plans have become substantially overfunded on a termination basis. Congress encouraged this overfunding in the name of benefit security by permitting tax-favored treatment for employer sponsored pension plans, while allowing employers substantial flexibility with respect to choice of funding method and actuarial assumptions used to determine tax-deductible contributions.

It is this situation, combined with the rules of ERISA concerning liability upon plan termination and the failure of the current tax law to recapture the tax benefit that employers have enjoyed, that create the financial incentives for an employer to terminate, rather than continue the plan. The tremendous upswing in corporate mergers, acquisitions, and leveraged buyouts has only increased the pressure on corporate management to terminate pension plans and strip out excess assets.

In 1988, employers first became subject to new maximum funding rules; that is, changes in the full funding limitation under ERISA and the Internal Revenue Code—enacted in the Consolidated Omnibus Budget Reconciliation Act of 1987—Public Law 100-219. These rules restricted the amount of deductible contributions an employer could make to a defined benefit pension plan generally to the

lesser of the contributions they could make under the old rules, or 150 percent of current liability. Current liability is, by definition in most cases, less than what the employer would have to provide on plan termination. Thus responsible employers trying to assure that sufficient assets would be available to pay benefits, not just today but in the future as well, saw their funding flexibility reduced practically overnight.

Members of the Committee on Education and Labor unsuccessfully opposed this change, arguing it was too extreme to deal with the potential abuses and would ultimately undermine the long-term fiscal soundness of the defined benefit system. Deficit reduction, however, was the objective that prevailed, not retirement policy.

Nevertheless, proponents to the new—and, in many cases, lower—full-funding limitations argued that it was really a solution to the problem of terminations for reversions. Over the long run, they asserted, the substantial surpluses in pension plans would disappear since employers would be precluded from making additional contributions for many years. In the meantime, of course, substantial termination for reversion activity continued.

Study after study has demonstrated that workers, retirees, and taxpayers are harmed when employers permaturely terminate their pension plans in order to convert pension assets to other corporate uses. Following a plan termination, current workers generally receive lower future pension benefits and retirees are less likely to receive cost of living adjustments.

The conference agreement reflects consensus that it is appropriate to reduce the financial incentive for employers to terminate pension plans as a means of financing other corporate needs, and ensure that the interests of workers, retirees, and the Federal Government are fairly protected before a company may gain access to pension plan assets.

In order to protect workers and retirees, the conference agreement provides a financial incentive for an employer terminating a defined benefit plan to maintain a qualified retirement plan following the termination or to provide benefit increases to plan participants before terminating the plan. It does so by allowing an employer to recover a greater share of the residual assets if the employer decides to establish a new plan or increase benefits, then the employer would be able to recover if it simply paid the tax.

At the same time that Congress has been struggling to resolve the pension asset reversion problem, however, some in the business community have advanced a proposal to permit employers to gain the beneficial use of pension plan assets without terminating the pension plan. These employers advocated changes in the law to permit transfers of certain pension assets to satisfy other corporate liabilities in the retiree health area. In part, this proposal was generated because the Financial Accounting Standards Board was poised to issue new accounting rules that would require employers to disclose their outstanding unfunded liability for retiree health benefits on corporate financial statements. As a result of congressional action in the 1984 Deficit Reduction Act that drastically limited employers' ability to advance fund retiree health promises, most employers have been funding their liabilities for employer sponsored retiree health plans on a pay-as-you-go basis out of corporate assets.

Members of the Committee on Education and Labor, and other Members of Congress, have been increasingly concerned about this inability of employers to utilize a tax-favored funding mechanism for retiree health benefits in light of the everescalating cost of providing these benefits. No one could have anticipated at the time employers promised these benefits that health care costs would increase as they have over the past few years. But many serious issues of entitlement remain to be discussed and decided before Congress reopens the door for employers to prefund retiree health liabilities.

Despite their concern over health care costs, a majority of the members of the committees of jurisdiction represented by the conferees have reservations about the wisdom of permitting employers to reduce overall benefit security in the pension plan by transferring pension assets to satisfy an employer's preexisting and independent retiree health obligations. Although many pension plans may appear well funded today, those assets are needed to pay future benefits. Furthermore, if there is a downturn in the economy or a change in the employer's condition, surplus assets could be eliminated overnight.

Congress is concerned about the long-term effect on benefit adequacy as well as benefit security if companies are allowed to siphon off assets that should be used for pension benefits and benefit increases. Permitting employers to transfer pension assets to satisfy employers' retiree health obligations will increase, rather than decrease the likelihood that the deferred wages of the participants in the pension plan will be used to further employer interests, and not the interests of workers. Instead of limiting employer access to pension plan assets to cases of plan termination, allowing transfers to retiree health plans would simply add yet another way of the employer to convert pension plan assets to its own use. I believe it important to revise the rules relating to plan terminations so that it is harder, not easier for the employer to gain access to plan assets.

Nevertheless, I understand that Congress is under great pressure to link pension plan terminations for employer reversions and retiree health. While my clear preference would be to deal with each issue separately, since the administration and the tax committees apparently want to provide some relief to employers in the retiree health area, I have reluctantly agreed to support such a proposal, provided that employer reversions are drastically curtailed.

Given the notion that we deal with both the employer reversion issue and retiree health transfers, my strong preference would have been to adopt the same provisions as were approved by the Committee last year as subtitle A of title III of H.R. 3299 (H. Rept. 101–247). Those provisions amended the fiduciary rules of title I of ERISA to permit qualified transfers of assets generally in excess of 150 percent of benefit liabilities from ongoing pension plans to special retiree health benefit accounts—so-called 401(h) accounts—permitted under the Internal Revenue code for many years to be established within the pension plan. At the same time, employers that terminated their pension plans would have been precluded, as fiduciary matter, from recovering any residual assets. Unfortunately, however, that proposal was not acceptable to the administration.

To address and balance these concerns in the retiree health area, the conference agreement contains a temporary rule allowing employers to transfer a portion of the assets set aside for pension benefits to a section 401(h) account as long as a cushion of assets in excess of the amount needed to fully fund the pension plan is retained.

In defining the maximum amount of assets an employer may transfer, the bill generally requires that the pension plan assets cannot fall below the full funding limitation after the transfer. In some cases, however, that would leave no cushion of assets over and above current liabilities. Thus the House and Senate bills provided that in no case can assets in the pension plan be reduced below 125 percent of current liabilities. Because we are concerned that benefit security will be compromised when transfers are made, the labor committees insisted that the statutory changes necessary to effectuate the policy of permitting limited transfers of pension assets to satisfy an employer's preexisting and independent obligations for retiree health benefits clearly reflect the fact that the usual strict fiduciary requirements apply to transfer. The decision to transfer assets out of the pension plan is a settlor, and not a fiduciary, function. But since the level of the cushion required under the new section 420 of the code represents the maximum amount of assets that could be transferred under the code and ERISA, a fiduciary with respect to the plan will have to determine whether, given the actual facts and circumstances with respect to the particular plan, it is prudent to transfer as much of the amount of assets above the cushion described in section 420 of the code as the law allows. The intent of Congress with respect to these transfers is clear: the general fiduciary duties of an ERISA fiduciary and the legal and equitable remedies available if fiduciary duties are breached are not overridden if and when the employer decides to avail itself of the retiree health transfer mechanism under section 420 of the code—as added by this bill. In accordance with those duties, the fiduciary must ensure that the current funding status of the pension plan and its ability to deliver pension benefits in the future are not jeopardized in any way.

In addition, the transfer cannot contravene any other provision of law. This provision is designed to clarify that the amendments to ERISA and the Internal Revenue Code authorizing the transfer do not supersede any other legal restrictions that prevent or limit an employer's ability to divert pension assets to satisfy other preexisting corporate liabilities for retiree health benefits. For instance, if the pension plan is collectively bargained, the ability of an employer to transfer assets from an ongoing pension plan to a section 401(h) account is subject to collective bargaining. An

employer's ability to transfer assets is also subject to other laws, such as those that regulate government contractors.

Some of the other requirements that the committee adopted last year with respect to the retiree health transfer proposal are retained; some have been altered as part of the consensus proposal developed by the tax and labor committees of the House and Senate. Certain requirements with respect to the transfer are imposed. Since the pension assets may be transferred only to a section 401(h) account that is part of the defined benefit plan, the amounts transferred from the pension plan may only be used to pay benefits for former employees, their spouses and dependents, who are entitled to benefits under both the pension plan and the retiree health plan on the date of the transfer. To protect pension plan participants, full vesting in accrued benefits is required at the time of the transfer.

Certain protections for retirees with respect to the benefits to be paid out of the assets transferred to the 401(h) account are also required, including a provision that requires employers to maintain employer provided retiree health expenditures for covered employees at a minimum dollar level for 5 years after each transfer. Although I believe the protections the Committee on Education and Labor adopted last year for example, prohibitions on reductions of health benefits and a freezing of employee cost sharing features of the plan to the levels 3 years prior to the transfer should be adopted, I recognize that the process of consensus-building often forces us to accept less than we would have liked.

Similarly, I believe that the ban on employer reversions that the Committee on Education and Labor adopted last year is the right approach. It is simple, straightforward, and leaves the decision of how to allocate residual assets among plan participants—both active and retired—in the hands of the employer. Most importantly, it clearly removes any financial incentive for the employer to terminate a pension plan.

However, in the spirit of compromise, this bill contains provisions amending both ERISA and the code that are similar to the proposal originally adopted as part of the budget summit agreement. Although the House rejected the summit agreement on October 4, 1990, the labor and tax committees agreed to carry forward a similar approach in our budget reconciliation bill. As chairman of the subcommittee on jurisdiction, I agreed to this approach, not because I believe that this particular proposal is the best one for solving the problem of employer reversions, but because it appears to be the only one around which political consensus can be reached at this time. And I firmly believe that further reversions must be curbed—we cannot continue the present law any longer.

The 50 percent excise tax on employer reversions adopted by the conferees is high enough so that, in addition to recapturing the average tax benefit that the employer has received, it will be a sufficient deterrent so that the reversion activity of the last 10 years may subside. In addition, the ability of an employer to avoid all but 20 percent of the tax by either establishing a replacement plan with a cushion representing 25 percent of the excess assets, or increasing benefits—with the aggregate value of all benefits increases equal to 20 percent—under the terminating plan, will create a strong incentive for continuation of pension plans for active workers and benefit increases for retirees and/or active workers in conjunction with plan terminations.

The House bill raised the level of both the excise tax—from 40 percent to 50 percent—and the cushion in the replacement plan—from 20 percent of the excess assets to 30 percent—from those levels agreed to in the budget summit agreement. The Senate bill reflected the summit agreement itself. Adoption in the conference agreement of the House figure on the excise tax and a compromise figure on the cushion will better protect plan participants and beneficiaries and encourage the continuation, rather than the termination, of pension plans. While not perfect, the provisions adopted by the Congress in title XII affecting plan terminations represents important and long overdue protections for workers and retirees covered under terminating plans.

I am far more concerned about the effect that the provisions in the conference agreement allowing transfers of pension assets to satisfy retiree health obligations will have on benefit security. I plan to carefully monitor the operation of section 420 of the code during the temporary period it is in existence to determine whether it compromises participants' benefit security under the pension plan. And I intend to make sure that the Department of Labor carefully reviews these transfers to assure that they are carried out in full accordance with ERISA's fiduciary rules.

Finally, I am distressed that Congress has been forced to raise insurance premiums paid to the Pension Benefit Guaranty Corporation [PBGC] for single-employer plans at this time. Both the budget summit agreement and the modified budget resolution assume an increase in the annual premiums paid to the PBGC sufficient to reduce the Federal deficit by $120 million in fiscal year 1991 and $640 million in fiscal years 1991–95.

After many years of insufficient premiums, the PBGC premium was substantially increased in 1985 and again in 1987. The PBGC has maintained a deficit in almost every year of its existence. The 1985 and 1987 increases were calculated to provide the PBGC with adequate resources to meet its long-term potential obligations. The PBGC is not experiencing any short-term financial hardship. In addition, while it still is operating at a deficit, the PBGC's long-term financial health has improved substantially since premium increases were last adopted in 1987. Thus a need for an additional premium increase at this time has not been demonstrated. That is why I argued strenuously during the budget process for the House and Senate negotiators to reject the administration's demand for a higher premium. But the budget instruction to raise the premium was solely based on deficit reduction. This is the first, and I hope the last, time that the Committee on Education and Labor has been instructed to increase PBGC premiums in the absence of a demonstrated programmatic need for an increase.

It is outrageous for the administration to insist on increasing the PBGC premium as a component of the overall deficit reduction effort. Every premium increase, even when warranted, provides a greater burden on plan sponsors and increases the disincentive to establish or maintain a defined benefit plan. I strongly urge the administration to avoid any further revenue-driven PBGC premium increases in the future.

Mr. HAWKINS. Mr. Speaker, the budget agreement includes a new grant program for States to establish child care programs which meet the needs of eligible families. This grant program is designed to increase availability, affordability, and quality of child care. This component authorizes funds for direct child care services, improving quality, increasing availability of care, and establishing or expanding early childhood education and latchkey programs.

While I support the child care proposal, I believe that it falls far short of the comprehensive bill over which I have labored for the past 3 years.

The agreement does not provide for a school-based program for early childhood education and latchkey children. I believe that this is most unfortunate, since the schools are the logical partners in providing this type of care. It is my sincere hope that the funds reserved for early childhood development and latchkey programs under this agreement will be ultimately administered by the education departments in the States.

While I am concerned that the authorization level for the overall bill is $1 billion less than my original proposal, only $100 million in the first year is specifically earmarked for early childhood education and latchkey programs. This amount is insufficient to meet the tremendous demand for such services. According to recent estimates, there are more than 10 million latchkey children in the United States and that number is increasing. Just last week we heard the horrifying news account of the 4-year-old girl who was left alone while she was ill. We must provide more assistance for parents who have to work and who are also concerned about their inadequately supervised children.

I am disappointed that the agreement sets only minimum health and safety standards. Other State-established standards which directly relate to quality, in areas such as group size, child-staff ratios, and inservice training were dropped from the agreement. These standards would help to ensure quality child care which compensates for a child's disadvantaged family environment.

The agreement also deletes two other components of a comprehensive bill which would have earmarked some of the funds for an expansion of the successful Head Start Program, which is now primarily a part-day program, into a full-day/full-year program for parents who work or are in education or training.

The child care public-private partnership, with its separate authorization of $25 million to encourage business participation in child care, was also rejected by the White House for reasons which were never fully explained.

Perhaps the most troubling aspect to me in this is child care certificates which can be used for sectarian care. I believe that this policy represents an infringement to the constitutional prohibition against an advancement

of religion and clearly involves an excessive entanglement of the Federal Government in religion. Although there are differing opinions on this issue within the Congress, I believe that the Supreme Court must ultimately resolve this constitutional question.

While the conferees have expressed differences of opinion on the issue of church-state, we share the view that the preponderance of the funds should be spent on direct child care services rather than on other authorized activities. I personally believe that States should use their own funds to plan and operate child care certificate programs, rather than using funds made available under this legislation for that purpose under the guise of increasing availability of care.

Two decades ago, President Nixon vetoed the child development programs which were designed to deliver a full range of services to the millions of children in the Nation who were suffering harm from the lack of adequate child development services, particularly during their early childhood years. We have waited too long for another bill to help enrich the lives of children.

Although this agreement is not perfect, from my standpoint, I will support it because I believe it represents the beginning of much-needed assistance for low-income, working families who desperately need such services. We, as a nation, can ill afford to wait another 20 years to enact legislation which is so important for our children. It is my hope that this assistance will take the form of high-quality, developmentally appropriate child care rather than just custodial care for children.

Children who are at the highest risk of failure in our society must receive the kind of quality care that will enable them to succeed despite adversity. The future of this Nation belongs to our children. Without quality preschool and educational opportunities, the future looks bleak—not only for our children, but for the Nation as a whole.

Mr. KLECZKA. Mr. Speaker, today the House will vote on the conference agreement for H.R. 5835, the Omnibus Budget Reconciliation Act of 1990. This bill is the final version of the $500 billion deficit reduction package negotiated by Congress and the President. Everyone will have a share of the sacrifices necessary to achieve this deficit reduction, but it is the fairest agreement we can expect to approve in order to put our fiscal house in order.

The original budget summit agreement was rejected by the House because its provisions were unfair and unacceptable. The budget reconciliation agreement corrects the harsh inequities in the failed summit plan.

One of the major problems with the summit plan was the huge cut slated for the Medicare Program—about $60 billion—that unfairly burdened the Nation's elderly. The reconciliation agreement removes two-thirds of the added out-of-pocket costs for the elderly. The deductible will increase only to $100, rather than the $150 deductible contained in the failed agreement. Furthermore, the annual increases in the Part B premium will be lower and slower than in the rejected plan.

Other inequities are corrected in the reconciliation agreement. These include removal of the 2-cent tax on heating oil and the 2-week delay for receiving unemployment benefits. In addition, the Budget Act reduces the gasoline tax increase from 12 cents to a nickel per gallon.

As for the fairness in the revenue provisions, I am pleased that the Democratic majority has ensured that U.S. taxpayers are treated fairly. Those individuals who are better able to afford the added tax burden are asked to contribute more. While tax rates are unchanged for low- and middle-income earners, a new 31 percent tax rate will affect higher income persons and the benefit of their deductions will be trimmed.

Throughout this debate, I have voiced my opposition to unfair hits on elderly and middle-income Americans. The original budget summit plan would have increased taxes for those earning between $20,000 and $50,000 by 3 percent to 3.5 percent. As for wealthy taxpayers earning over $200,000, the summit pact would have only increased taxes by 0.3 percent.

The budget reconciliation agreement contains provisions to correct these tax inequities. Although middle-income taxpayers earning $20,000 to $50,000 will pay an average of 2 percent more in taxes, those earning $200,000 and up will be paying 6.4 percent more.

Reforms in our budget process were included in the final agreement. These include requirements that future revenue or spending legislation be made budget-neutral; that is, we will have pay-as-you-go procedures. Also, the Social Security surplus is removed from budget calculations. This practice has masked the true size of the Federal deficit.

Mr. Speaker, this deficit reduction agreement is long overdue. The Nation's taxpayers want action. The Budget Reconciliation Act is far from perfect but it is a leap in the right direction for a sound economy and an improved standard of living. I urge my colleagues to support the Budget Reconciliation Act.

Mr. COYNE. Mr. Speaker, today we are voting on a bill which will provide the American people with the long-awaited 5-year deficit reduction of $500 billion. This proposed budget will distribute the burden of this unprecedented deficit reduction package in as fair and equitable a manner as any other proposal which has surfaced to date.

Achieving a 5-percent reduction in programs and a 2.5-percent increase in revenues should not be accomplished at the expense of the elderly, the working class, and the unemployed when the deficit can largely be attributed to the nearly 200 billion dollars' worth of annual interest payments on debt of $3.2 trillion.

My colleagues will recall that Federal indebtedness was only $908 billion at the end of fiscal year 1980, and will grow to $3.5 trillion in the coming year. Recall also that interest payments on the Federal debt more than doubled—going from $75.2 billion in 1980 to $170.1 billion in 1990. National defense showed a similar increase of 228 percent—going from $134 billion in 1980 to $303 billion in 1990.

This staggering indebtedness is the legacy from a decade of supply side economics, lack of attention to the emerging savings and loan disaster, and unprecedented defense expansion.

Mr. Speaker, this is not a tax-and-spend Democratic budget; 68 percent of the deficit reduction comes from spending reductions, only 32 percent from tax increases. This mix between spending reductions and revenue increases is nearly identical to that found in the summit package which was endorsed by the President and the leadership from across the aisle.

The tax changes are much more progressively distributed than were the original budget summit changes. This improved distribution is achieved by having people with earned incomes between $53,100 and $125,000 contribute more to the Medicare hospital insurance fund, reducing itemized deductions for families with over $100,000 in taxable income, limiting the tax reduction associated with personal deductions for couples earning between $150,000 and $275,000, imposing luxury taxes on boats, planes, and expensive automobiles, holding the increase in the gasoline tax to 5 cents, and raising the top statutory tax rate from 28 to 31 percent.

The burden associated with undoing this decade of high spending should not be borne by lower income families. They have already paid their share through lower real incomes in the last 10 years. Income growth during this period clearly favored the wealthiest: The average real income of the top 5 percent of the population increased from $120,253 to $148,438, while the average real income of the lowest 20 percent fell from $9,990 to $9,431.

This alternative attempts to distribute the burden in such a manner so as to restore fundamental fairness and equity. The October summit agreement would have people with over $200,000 of annual income paying a lower proportion of their income—25.6 percent—than families earning less than half as much income. The Democratic alternative would restore equity and fairness by having the wealthiest pay proportionately more in taxes than families with lower incomes by raising the effective tax rate to 26.8 percent for filers with incomes in excess of $200,000.

It accomplishes this movement toward a fair and just distribution of tax burden by allocating the changes in taxes in a far more progressive manner than the summit proposal. At the lower end of the distribution, today's alternative would offer a small decrease—2.1 percent—in the tax burden of those least able to afford a decrease in their after-tax incomes; the October summit would have families with under $10,000 incomes give up an additional 7.6 percent of their already meager incomes. The summit would require the wealthiest, that is, incomes over $200,000, to give up only 1.7 percent of their more than adequate and generous incomes, while today's proposal would ask for a progressivity-restoring 6.3 percent.

The change in the rate structure amounts to a decrease in taxes for many people while increasing the rate for only the wealthiest filers. Changing the rate structure still will keep the maximum rates considerably below the 50-percent rate which was in effect as recently as 1986 and dramatically below the 70-percent rate which was in effect until 1980.

Mr. Speaker, I do not need to stress the importance of deficit reduction. Reducing the

deficit will allow the economy to grow, free future generations of an onerous burden, and restore rationality to the budget process. We have waited too long to enact a budget; we must get on with the work our constituents sent us here to do.

I urge my colleagues on both sides of the aisle to support the amended proposal, now. It is consistent with the President's deficit reduction goals, moves us toward a budget for the entire Government before Saturday at midnight and represents a workable, doable, and realistic way to restore faith in the American democracy and the Congress.

Mr. DORNAN of California. Mr. Speaker, I rise today in strong opposition to the Rostenkowski Recession Act of 1990. And that's exactly what this bill is.

If Congress passes this huge tax hike—the biggest in history—there is simply no way we will avoid a recession; no way. And we all know what recession means, Mr. Speaker, lower tax revenues, higher unemployment with an attendant increase in welfare and unemployment insurance costs. Higher interest rates and a subsequent increase in the Government's cost of borrowing. In short, this huge tax hike will ensure that the deficit gets larger, not smaller.

Mr. Speaker, anyone who really believes that this plan will reduce the deficit by $500 billion over 5 years is deluding themselves. There is no way spending as a percent of GNP will be just over 18 percent 5 years from now. The spending cuts in this bill are fradulent and I predict right here and now that they will never occur. Why? Because we are asking Americans to put their trust in the Democrats in Congress, or people who, in Mr. DURBIN'S own words, overspent by $200 to $300 billion the last 10 years. Are we to believe that they are going to become fiscal conservatives overnight?

These Democrats are the same people who, while professing alarm at the growing size of the deficit, refused this year to cut spending across-the-board except in two cases, despite many amendments reducing spending bills anywhere from 7 percent to $19.90. My colleague from Minnesota, Mr. PENNY-- who is a real fiscal conservative—offered amendments to reduce spending by 2 percent across the board to 11 different appropriations bills. Only two passed, those to the DC appropriations bill and the legislative appropriations bill. These were easy votes to cast precisely because they amounted to very little in the way of savings and because neither bill had a constituency outside the Washington Beltway.

The people we are putting our faith in to cut spending, Mr. Speaker, are the same people who call a frivolous program like the National Endowment for the Arts critical, to quote my colleague from Oregon, Mr. AUCOIN. Is the NEA critical, Mr. Speaker? No. Defense is critical. The FAA is critical. The FBI is critical. Social Security is critical. But the NEA, Mr. Speaker? Critical? What does that say about how priorities are set on the tax-and-spend side of the aisle.

Another example. Back in 1985 President Reagan proposed 44 special interest and corporate welfare program terminations in his budget. The Democrats terminated only one, a block grant program, and almost reversed that decision a few months later, and these folks are going to control spending?

Anyone who thinks interest rates will fall under this plan is also in need of counselling. The economic assumptions underlying the package are a joke, a bad joke. The authors of this fiasco want us to believe that the largest tax-increase in history will trigger a doubling of economic growth between 1990 and 1991, and a tripling by 1992. Will Alan Greenspan lower interest rates? He will be under pressure to do so but that will be a mistake. Easy money in a low-growth, high-tax environment would only cause a rise in inflation, and at that point this whole house of cards will collapse. Once inflation increases, both foreign and domestic creditors would demand a premium in the form of higher long-term interest rates. In other words, interest rates will go up, not down.

Remember, most economists claim interest rates are too low as it is. Foreign interest rates are now well above U.S. rates, which makes it hard for us to attract the needed capital to finance our debt. If Greenspan lowers rates by a significant amount, we will lose even more foreign capital. To get it back, Greenspan will have to raise interest rates. Again, higher interest rates are the likely outcome of this policy. How's that supposed to help the situation.

And finally, anyone who believes that tax-and-spend Democrats will be satisfied with $190 billion in new taxes is living in a dream world. This bill has merely whetted their appetite for more. Indeed, my colleague from New York, Mr. OWENS was here in the well just yesterday telling us, or more accurately warning us, that the tax-and-spend crowd would be back with even more taxes on the rich. He was so excited he could hardly contain himself. Indeed, I have never seen him so ebullient, and that observation is certainly not limited to the gentleman from New York. The glee with which the Democrats in this Chamber have taken in confiscating more of the taxpayers' hard-earned money is certainly a site to behold. They are almost like gangsters after a heist, lurching about the room hugging each other and joyously throwing money in the air.

To my Republican colleagues I say this. We are supposed to be the ones to put a stop to this heist, remember? We are the good guys. In the great tax heist the Democrats are Al Capone, we are Elliot Ness.

And what guarantees do we have that the promised spending cuts will materialize? No offense, Mr. Speaker, but the word of the Democrats has not been worth much in the past. I think we all remember the TEFRA debacle, when President Reagan was promised $3 in spending cuts for every $1 in taxes. The taxes were collected but the spending cuts never materialized. Are we going to see a repeat of that? Probably. There is certainly nothing in this bill to prevent it from happening again. No balanced budget amendment. No line-item veto. No enhanced rescission authority. No mid-session Gramm-Rudman sequester. No elimination of current services budgeting. No cap on overall Federal spending growth. Nothing. Nada. Zip.

Another particularly offensive aspect of this bill is the "family tax," which would directly add $635 to the tax bill of some high earners for each child claimed as a dependent. I have already had several phone calls from some of my constituents with large families saying that this bill would have a devastating impact on them, and these are not rich families, Mr. Speaker. I think if you ever spend any time in southern California you know this is true.

Throughout this debate, the Democrats have tried to portray themselves as Robin Hood, robbing from the rich and giving to the poor. In reality, however, being equal opportunity thieves, they are robbing from the middle-class as well as the rich and giving the money to the richer, that is, the bureaucracy. Is there a richer institution in America than the Federal Government, Mr. Speaker? No. In fact, the Federal budget of the United States is larger than the entire GNP of what was West Germany. Are Americans really crying out for a wealthier bureaucracy? Can the bureaucracy do a better job of spending money than those who worked to earn it? This entire debate comes down to this: Who is going to control the Nation's output—the Federal bureaucracy or the people. I'm lining up with the people.

Let's take Joe Sixpack. He's had a hard day on the job and gets home a little bit testy because he had to pay more at the pump to fill his car up with gas. So he tries to relax with a cigarette and beer, both of which cost him more. Then he turns on the TV news and sees the Legal Services Corporation shilling for abortionists, the NEA funding more bigoted art, Ways and Means Committee members are studying the flora and fauna at taxpayer expense in the Caribbean—the same folks who wrote this turkey—and the Congress-driven savings and loan fiasco costing even more money. Is Joe Sixpack supposed to say, "This is all good stuff, now I see why my taxes were raised." Is he supposed to be thankful? Well that is exactly what we are asking of him, because you know as well as I do, Mr. Speaker, that any additional tax revenues will be used to fund the lowest priority programs, not the highest. We already have more than enough revenue to cover those.

Now the Democrats will again tell you that this is essentially a soak-the-rich plan. I say it should be a soak-the-bureaucracy plan. In any event, what they don't tell you is that they have again done away with indexing for a large number of taxpayers. The plan proposes to phase out tax deductions for upper income taxpayers, starting at a threshold of $100,000 a year, but the threshold is not indexed. This means that more and more taxpayers will be pushed over the threshold each year. A built-in tax increase that is going to cost taxpayers some $11 billion over the next 5 years.

But the most outrageous aspect of the Rostenkowski recession package is the provision requiring that any future tax cut has to be revenue neutral. Who will determine revenue neutrality? Incredibly, it will be congressional staff, which has proven itself incapable of accurately predicting the effects of fiscal policy changes. That is because around this place ideology even drives economic analysis. The continued use of static economic analysis—which assumes that people's behavior doesn't change with changes in fiscal policy—instead of dynamic analysis will preclude Congress

from ever passing progrowth tax cuts. This provision alone is enough to vote against the bill.

Mr. Speaker, we have a simple choice to make. Either we are going to take a smaller percentage of a large and growing economic pie, which is what Republicans want, or we are going to take a larger and larger percentage of a small and shrinking economic pie, which is what my Democrat colleagues want. That is the choice. If we pass this bill today, the recession that is sure to come as a result will have Made in Washington stamped all over it.

Thank you, Mr. Speaker.

Mr. SCHULZE. Mr. Speaker, I rise in reluctant opposition to the so-called deficit reduction package. This bill should be defeated because it does nothing to change the structural budget problems plaguing America; because it fails to achieve real spending cuts; and, because it grants billions in tax breaks to selected industries of powerful Congressmen.

The measure before us does nothing to control spending. There is no line-item veto, no enhanced rescission or deferral authority for the President, or no enforcement mechanism to ensure Congress keeps its promises of future spending reduction.

What about the supposed cuts in spending we are hearing about? It's a sham, Mr. Speaker. Under this proposal discretionary spending will increase by $132 billion. That is $132 billion of our tax dollars for Congress to squander on its own pet projects. What about Medicare cuts we have heard screams about? They, too, are not cuts, but a reduction in massive expected cost increases.

In addition to the numerous tax increases in the package, there are special tax breaks for ethanol producers and energy interests totaling over $2.5 billion. In testimony last year, a leading proponent of ethanol from the Senate testified that tax subsidies would no longer be needed once the price of oil exceeded $30 per barrel. Yet, ethanol subsidies have been continued at a huge cost to the Treasury. In fact, while the price of corn has dropped across the land, ethanol prices have skyrocketed right along with the price of oil. Taxpayers are being had in this reconciliation bill. Let there be no mistake about it.

The taxes in the bill are also a product of smoke and mirrors. A new top rate of 31 percent is supplemented by limits on itemized deductions and the personal exemption. In reality, tax rates on those making over $100,000 are being increased far beyond the 31 percent rate. The most important factor about this however, is the fact that a majority of small business owners pay taxes at the individual level, thus small business will be hit and hit hard by this bill.

The level of taxes in this bill, the largest tax increase in history, are also of such magnitude to send us over the brink into a recession. Make no mistake about it, gasoline taxes will immediately be felt across the economy. Airlines are already reporting huge losses and travel and transportation costs are skyrocketing. In fact, inflation caused by the imposition of the broad range of excise taxes could offset any possible reduction in interest rates by the Federal Reserve.

The economic impact of several of the taxes causes me great concern. Consumers are likely to buy jewelry and furs overseas to avoid a new 10 percent excise tax. The life and property and casualty insurance companies will bear an additional burden of well over $8 billion placed on them when private groups are questioning insurance company solvency. Thousands of my constituents are employed by these businesses. One particular provision increasing the interest rate on tax deficiencies of corporations could be a death knell for a major employer in my congressional district. Most of these taxes on selected products or industries don't make much economic sense. They distort the market, are uncompetitive, and should be realized for what they are: Pure and simple revenue grabs.

Mr. Speaker, all through this process, I have kept an open mind. I have been willing to accept taxes as part of a long-term agreement which would make us more competitive in world markets.

The bill before us does not cut spending; it does not promote economic growth or competitiveness; it is the wrong step to take at just the wrong time for the economic health of our Nation. I urge my colleagues to join me in opposing this measure and calling on the conference to enact a measure which will control Federal spending.

Mr. HALL of Ohio. Mr. Speaker, finally the House is full of the call for sacrifice—everybody's decided it's time for somebody else to make one.

I went home last weekend, and I'm here to report that the people of Dayton, OH, are mad at the Congress, and they're mad at the President. They want us to quit bickering, and quit trying to score political points off each other, and get on with governing this country.

I'm pretty mad, myself, and I'm really embarrassed with what we've been going through for the past few weeks.

We've missed or extended every deadline. Just when the American people think the fiscal clock has finally run out, the Congress adds a few more minutes to the hour. Only in Washington does the 11th hour seem to go on for weeks.

I feel sorry for the people who are trying to follow this process by watching C-SPAN. They see the same things happening over and over. They hear the same speeches over and over; most of the time, it's the same speakers. We ought to tell the American people, "Sorry, Congress has been showing reruns for the past month." We ought to do ourselves a big favor and turn the cameras off. We'd probably get more done.

But for those who are watching this on TV, let me tell you what's going on. This is the end of the budget process. It's been like a 10-month long root canal operation. But the novocaine ran out 30 days ago. We've gone from a thousand points of light to a thousand bones of contention. Everybody's got a problem, everybody's got an angle, everybody needs a loophole, everybody is making a speech, and everybody's got the answer.

Actually, I have a hard time with the phrase "budget process." Calling it a process implies that there's a method to this madness. There isn't: It's just plain madness.

The worst thing we're doing is treating Federal employees and American taxpayers like pawns in a game of chicken we're playing up and down Pennsylvania Avenue. That's not fair, and that's not what the voters sent us here to do. The American people sent us here to govern, not make them the victims in the battle between the President and Congress. I've introduced a bill that would avoid the Government shut-down if we haven't passed our appropriations by the end of a fiscal year. It would still be a deadline, we'd still have to meet it, but millions of innocent Federal Government employees wouldn't be faced with furloughs, and the Government would not shut down.

It just doesn't make sense to legislate with a gun to your head. There are hungry children in America, Mr. Speaker, and we don't seem to be able to feed them. We've got one of the highest infant mortality rates in the industrialized world. At-risk women and children should be a priority but they aren't. We don't have the money, and we don't have the time.

We ought to vote for this bill today, and get on with business, and try to come back here next year and think a little less of ourselves and a little more for the people who sent us here.

Mr. SYNAR. Mr. Speaker, today I am voting for the final reconciliation bill implementing the budget. While the budget does not include everything I would like to see in an agreement, I recognize that governing requires compromise. I do believe that the extension of these negotiations provided us with a significantly better outcome than the budget summit produced. This agreement is much fairer to my Oklahoma constituents and to all working Americans.

Three weeks ago during the first vote on the budget summit agreement, I stated that I did not anticipate an agreement that satisfied everyone, because I knew that everyone would have to sacrifice. This budget does contain provisions that will not be acceptable to various individuals and groups. If offered individually, I would not agree with items such as an increase in the gas tax. In reality, no agreement was possible or could get enough votes and secure the President's signature unless these provisions were included as part of an overall package. I did expect a deal that spread the burden among all income groups in a more evenhanded manner, contrary to the original agreement. This compromise goes a long way to achieving that goal.

The agreement significantly lessens the adverse impact on elderly Oklahomans. Medicare beneficiaries will not have to bear an unfairly high increase in premiums. Rather, the highest income taxpayers will be required to contribute more to the cost of the Medicare system by the application of Medicare taxes to higher wage earners. Taxes on luxury items are increased. The top tax rate has been raised. These provisions equalize the burden of deficit reduction which is so urgently needed.

Part of the price of compromise is the inclusion of provisions with which I do not agree. I have major problems with the lengthy amendments contained within this reconciliation bill which affect the budget process. We are ac-

ceding to the administration's wishes in a complaisant manner. This issue does not grab headlines and cannot be explained in the ever-popular 30-second sound bite. I think it is important to stress my objection to these amendments.

Some of my colleagues and members of the public feel that objecting is a futile exercise. I would like to point out, however, that these amendments to the budget process tend to validate the complaints against us that as Members of Congress we cannot govern. We continue to set up elaborate systems of procedure that eliminate the need to vote on specific issues. Automation is popular throughout industry, but I think we are carrying the concept too far as it applies to our jobs. At some point, the public may conclude that we truly are unnecessary.

The changes contemplated by the budget process amendments significantly weaken congressional authority with respect to policy decisions within the budget process. As an institution, we continue to give up our inherent powers while receiving nothing in return. The bill sets up a process that for the next 3 years locks in spending caps for three separate categories: Defense, domestic, and international. We are eliminating our ability to take care of national priorities on a comprehensive and cohesive basis. Instead of being able to set national priorities by evaluating all programs on an equal basis, we now have evaluations only within categories.

The poor and the needy will now have to compete with each other for funds instead of arguing about the wastefulness or obsolescence of certain weapons and other cold war programs. We do not seem to be concerned about the possibility that we may be fueling intergenerational fights over levels of funding. In order to pursue new initiatives in education or health care for the elderly, food supplemental programs may have to be reduced. This system also lessens the importance of constituent input.

Once again, we are trying to correct what is and has been proven to be a defective system. Gramm-Rudman has never worked and yet we continue to tinker with it by adding about 100 pages of amendments to it and the budget process. These changes require more contemplation, full and open hearings, and extensive discussion. We are in danger of becoming number crunchers.

I am not happy lending my vote in support of these amendments but feel that the budget decisions linked to these amendments are essential and, at this time, take precedence. I warn my colleagues, however, not to be surprised next year when these amendments come back to haunt us.

Mr. LAFALCE. Mr. Speaker, I rise today in strong support of the child care provisions included in the conference report on H.R. 5835, Omnibus Budget Reconciliation Act of 1990. After years of deliberation on the issue of child care, I am very pleased that the Congress and the President have been able to come together on a broad plan to address the diverse needs of struggling families by providing them with options which will accommodate their needs and desires.

While there has been much debate about how the Federal Government should respond to the considerable needs of America's struggling young families, there has been virtual unanimity that the rising demands and increasing challenges facing those families are a Federal concern. Fortunately, the debate progessed beyond the limited, although legitimate, issue of day care.

The American family has truly undergone remarkable change. As a result of economic necessity and increased opportunity, many more women have entered the workforce; and today, double paycheck and single parent families are common in America. The fact that more than half of all women with children under 1 year of age are in the work force underscores the gravity of the change. As a result of these developments and pressing economic demands, many families have had difficulty in making ends meet, narrowing their options for the day to day care of their young children.

The history of the child care debate has reflected this disconcerting situation and revealed the diversity of families' needs and desires—needs and desires that cannot be met by any single limited approach. Indeed, the issue is far more complex than the availability, quality, and affordability of day care.

I have consistently maintained that Federal child care legislation should be targeted to those families most in need and include a wide range of assistance. Most importantly, I feel very strongly that Federal assistance should accommodate parental desires—whether public, home-based or religious-based care; further, child care itself should not be favored over parents who choose to care for their own child or children full time.

I believe the child care proposal included in H.R. 5835 includes the necessary mix of broad tax relief for lower income families with young children and a wide range of Federal assistance to expand and improve the options available to parents. First, let me begin by saying that I am pleased that the assistance provided in this proposal is well-targeted to serve those Americans who are most in need, reversing the unfortunate trend of the 1980's toward decreasing progressivity in our Tax Code.

During the past decade, we witnessed the shifting of tax burdens away from the wealthy and onto those who are less able to pay. While Federal tax burdens were reduced on upper income households, the burden on low- and middle-income families grew. Meanwhile, the average hourly wage for American laborers fell steadily in real terms. Typical of an economic climate unfavorable to the weak, these developments have hit low-income families and their children the hardest. The tax provisions in the package, including a substantial increase in the earned income tax credit, a new supplemental tax credit for families with very young children and the refundability of the dependent care tax credit will provide long overdue tax relief and ease the financial burden of raising young children.

For the increasing number of dual paycheck and single parent families struggling to make ends meet, the new HHS block grant program to States will provide funds to augment child care services which will broaden the spectrum of services available and improve parents' confidence in their soundness.

Most importantly, choices about child care will rest with the parents. I am confident that the vouchers required under the new HHS block grant program will prove both effective and equitable, affording parents the necessary discretion in the choice of child care providers. And, States will be allowed flexibility with respect to regulations so as not to limit parents' options—whether a child care center, religious organization, a trusted home provider, or a child's relative.

The legislative approach embodied in this child care agreement represents a significant improvement over the original "ABC" child care proposal to create a Federal child care system. I believe this blended and flexible approach to assisting families with young children will prove effective and equitable. Clearly, this legislation represents a necessary and appropriate step in support of these families in our increasingly challenging world.

Mr. RAHALL. Mr. Speaker, as the chairman of the Subcommittee on Mining and Natural Resources, and a representative of the great State of West Virginia, it gives me distinct pleasure to note that the Abandoned Mine Reclamation Act of 1990 is part of the Omnibus Budget Reconciliation Act of 1990.

Prior to the enactment of the Surface Mining Control and Reclamation Act of 1977, in the absence of adequate regulation surface coal mining operations were often undertaken without due regard to the environment. By the 1970's, it became increasingly clear that the proliferation of acidified streams, highwalls, refuse piles, open mine shafts and other hazards associated with past coal mining practices could not be ignored. On August 3, 1977, President Carter signed into law the Surface Mining Control and Reclamation Act. The act set detailed mining and reclamation standards for coal operators. Moreover, it established an abandoned mine reclamation fund financed by a fee assessed on every ton of coal produced to provide for the restoration of inadequately reclaimed land that had been mined in the absence of effective regulations prior to August 3, 1977. The authority to collect these fees expires during August 1992.

The legislation before us today would extend the reclamation fees collection authority through to September 30, 1995. With some exceptions this is the same version of the bill I introduced, H.R. 2095, as reported by the Committee on Interior and Insular Affairs on September 13, 1989, that passed the House on October 23, 1989. It includes provisions of H.R. 538, introduced by Representative FRANK MCCLOSKEY, and H.R. 1315, sponsored by Representative CHRIS PERKINS. On October 16, 1990, the House again passed H.R. 2095 as part of H.R. 5835, the Omnibus Budget Reconciliation Act of 1990.

In conference with the Senate, the text of H.R. 2095 was retained except for six modifications and one addition. They are as follows: First, the authority to collect reclamation fees was extended through September 30, 1995, rather than the year 2007. Second, a provision that provided for modified reclamation fees after 1992 in States which have certified the completion of all abandoned coal mine projects was dropped. Third, provisions that would have expanded the scope of the emer-

gency program were deleted. Fourth, while the House bill limited the objectives of the fund to the first three priorities listed in current law, the agreement maintains the current law list of project priorities. Fifth, the requirement that the Secretary promulgate environmental standards for reclamation projects was deleted. Sixth, the bill's authorization of a new abandoned minerals and mineral materials mine reclamation fund was dropped. Finally, an amendment relating to certain projects in certified States was adopted.

Besides extending the authority to collect reclamation fees, the Abandoned Mine Reclamation Act of 1990 contains several other important initiatives which I will highlight.

First, the bill seeks to concentrate a greater amount of resources toward combating the highest priority abandoned coal mine reclamation projects. This goal would be accomplished by annually allocating 40 percent of the secretarial share of the fund to program States and tribes until they complete all of their priority 1 and 2 abandoned coal mine reclamation projects.

Second, the bill would provide additional resources to combat abandoned coal mine hazards by enabling interest to accure to unappropriated amounts in the abandoned mine reclamation fund and by strengthening reclamation fee compliance.

Third, the legislation explicitly recognizes the severe public health hazard associated with water supplies contaminated by abandoned coal mine workings. In many areas of the Appalachian region, ground water resources used for household water supply have been contaminated as a result of drainage from abandoned underground and surface mines. It is my view that when past coal mining practices have degraded ground water quality or depleted ground water quantity to such an extent that citizens no longer have an acceptable supply, an adverse impact on health, safety, and the general welfare is self-evident. It is also my understanding that under OSM policy reclamation projects involving water supply may be undertaken as they relate to the objectives and priorities of the fund. As such, a water source contaminated as a result of pre-August 4, 1977, coal mining should be treated as a priority 1 project if the contaminated water is posing an extreme danger to public health, safety, general welfare, and property, or, as a priority 2 project if the contaminated water is presenting a public health, safety, and general welfare hazard in the same fashion as these priorities apply to other types of projects such as burning refuse piles, landslides, and subsidence. The exception made by this legislation is that contamination of the water is no longer limited to having had to occur solely during the period prior to August 1977.

Fourth, the bill acknowledges the need to engage in the comprehensive abatement and treatment of acid mine drainage. Thousands of miles of Appalachian streams and countless watersheds have been degraded, and aquatic life destroyed, by acid mine drainage. The long-term impact of this problem on the quality of life, on wildlife and on recreation is devastating. With this legislation, the States will be able to leverage the use of abandoned mine reclamation funds to combat acid mine drainage.

Fifth, the bill seeks to address high-priority sites abandoned after enactment of the 1977 act prior to the promulgation of final implementing regulations. Tens of thousands of acres of land which were mined during the interim program period remain unreclaimed due to the lack of a Federal bonding requirement during that time. In addition, as a result of a rash of surety company insolvencies following that period, a new generation of abandoned mine sites unforseen by the original law were created. In many instances, the public health and safety threat posed by these areas exceed those of pre-August 3, 1977, sites.

Sixth, the bill would keep faith with the Law's unfulfilled commitment to provide adequate resources for the Rural Abandoned Mine Program. This program serves a distinctive purpose, and addresses slightly different problems than what is undertaken by the States through their Abandoned Mine Reclamation Program grant allocations. Under the bill, the financial resources available to RAMP will be dramatically increased. I would further note that this legislation clarifies the authority of the Soil Conservation Service to undertake RAMP projects on a hydrologic unit basis.

Mr. Speaker, at this point I insert into the RECORD an overview of the Abandoned Mine Reclamation Act of 1990:

ABANDONED MINE RECLAMATION ACT OF 1990

OVERVIEW OF THE LEGISLATION

Allocation of the Fund

Under the bill, as with current law, 50 percent of the reclamation fees collected in a state or tribe with a federally approved abandoned mine reclamation program would continue to be allocated to the state or tribe of fee origination. The remaining 50 percent of reclamation fees collected would continue to be dedicated to the Secretary's discretionary share of the Abandoned Mine Reclamation Fund. However, the legislation provides for the Secretarial share to be augmented by amounts earned from interest authorized to accrue to the unappropriated balance in the entire Fund.

State and Tribal Share

As under current law, the legislation provides for the state and tribal share of the Fund to be used by states and Indian tribes with approved abandoned mine reclamation programs for reclamation projects and to defray the administrative costs of their programs.

Current law also authorizes a state to deposit 10 percent of its state share funding on an annual basis into a special trust fund established by the state for the purpose of undertaking reclamation projects after 1992, the year in which the current law authorization for the collection of the reclamation fee expires. The legislation maintains this provision, but changes the date to 1995, the new expiration date for fee collections. In addition, the bill would authorize a state, at its option, to establish an acid mine drainage abatement and treatment fund with the 10 percent deposit instead of maintaining it for use after 1995. The purpose of this special fund would be to enable the state to undertake comprehensive acid mine drainage abatement and treatment projects within qualified watersheds. The bill makes no change to the current law provision authorizing a state to use up to $3 million of its state share funds to establish state coal mine subsidence insurance programs.

The legislation allows a state to use 30 percent of its annual grant to undertake eligible projects relating to contaminated water supplies, specifically authorizes the states to address these situations where the contamination predominantly, but not fully, occurred as a result of coal mining practices which occurred prior to the date of enactment of the Surface Mining Control and Reclamation Act of 1977. These types of projects would be undertaken as they relate to the priorities set forth in the law. This comports with current Office of Surface Mining Reclamation and Enforcement policy, with the exception that under present law the contamination must be shown to have occurred entirely prior to August 3, 1977.

The legislation would also authorize a state to use its share to reclaim certain coal mine sites abandoned after the enactment of SMCRA. Under the provision, the use of these funds would be limited to sites left unreclaimed during the "interim" federal regulatory period immediately after enactment of the SMCRA, or for sites left unreclaimed as a result of the surety company of an operator having become insolvent during the period between August 4, 1977, and the date of enactment of the Abandoned Mine Reclamation Act of 1990. Further, funds under the provision could only be used if the sites have the same or more urgent reclamation priority than pre-1977 "priority 1 and 2" sites.

Secretarial Share

Under the bill, as under current law, after the allocation of the state and tribal shares, the remaining amounts in the Fund (the Secretary's share of the reclamation fees plus all interest which would accrue to unappropriated balance in the Fund) would be available for: the Rural Abandoned Mine Program (RAMP), the Small Operators Assistance Program (SOAP), emergency reclamation projects, reclamation projects in states and on Indian lands without approved abandoned mine reclamation programs, federal administrative costs and for providing an additional allocation of funds to states and tribes with approved abandoned mine reclamation programs as a supplement to their annual grants.

However, the bill would make several changes to current policy governing the use of the Secretary's share of the Fund. Perhaps the major change made by the bill is the earmarking of funds for RAMP by allocating 20 percent of the Secretarial share of the Fund (including interest) on an annual basis for the program. Current law provides for "up to one-fifth" of the amount in the Fund to be transferred to the Soil Conservation Service for RAMP, a provision that provides no set allocation or earmarking of the Fund.

The bill would also allocate 40 percent of the Secretarial share of the Fund (including interest) on an annual basis for the purpose of providing a supplemental allocation to states and tribes with approved abandoned mine reclamation programs and which have not completed all of their high-priority public health and safety related projects (referred to as "priority 1 and 2" projects).

In addition, the legislation would authorize the use of the Secretary's share of the Fund, after all other obligations are met, to reclaim certain coal mine sites abandoned after the enactment of SMCRA. Under the provision, the use of these funds would be

limited to sites left unreclaimed during the "interim" federal regulatory period immediately after enactment of the SMCRA, or for sites left unreclaimed where the surety company of an operator having become insolvent during the period between August 4, 1977, and the date of enactment of the Abandoned Mine Reclamation Act of 1990. Funds under the provision could only be used for "priority 1 and 2" equivalent sites. As the program states would also have this authority, the Secretary could undertake these projects in non-program states and Indian lands, or, for that matter, in program states in a fashion similar to how the emergency program is operated in program states that have not assumed responsibility for emergency projects.

The final provision of the legislation relating to the allocation of the Fund provides for a minimum allocation of $2 million annually to states and Indian tribes with approved abandoned mine reclamation programs which have not completed their "priority 1 and 2" sites.

Certification Program

The legislation would maintain, albeit in a much more detailed fashion and with certain modifications, the current law authority which provides for a state or Indian tribe with a federally approved abandoned mine reclamation program to certify the completion of all abandoned coal mine reclamation projects and then direct its state or tribal share funds toward alleviating problems stemming from abandoned non-coal mining. Once certified, a state or tribe would not be eligible for Secretarial share funds.

Reclamation Fees

The bill would reauthorize the collection of the current reclamation fees (35 cents per ton of surface mined coal, 15 cents per ton of deep mined coal and 10 cents per ton for lignite) through September 30, 1995.

Miscellaneous Provisions

Pre-certification non-coal sites: Current law allows for expenditures to be made for non-coal abandoned mine sites prior to the completion of all abandoned coal mine projects under the "voids and tunnels" provision (section 409) if the reclamation work is certified by the state or Indian tribe as needed to protect public health and safety. The bill fine-tunes current law by defining public health and safety within the context of a "priority 1" equivalent project.

Inventory: The bill would provide statutory authority for the current abandoned mine land inventory used by the Office of Surface Mining Reclamation and Enforcement and the states, and limit the use of the inventory for planning purposes and to assist in the certification process.

Fee compliance: The bill would slightly expand the items which are required to be reported to the Office of Surface Mining Reclamation and Enforcement by coal operators in their current quarterly fee statement.

Small Operators Assistance Program: Current law limits assistance under this program to coal operators who produce less than 100,000 tons of coal per year. The bill would raise the tonnage limit to 300,000 tons of coal per year.

Mr. FRENZEL. Mr. Speaker, I yield myself the balance of our time.

The SPEAKER pro tempore (Mr. FAZIO). The gentleman from Minnesota [Mr. FRENZEL] is recognized for 3½ minutes.

□ 0630

Ms. SCHNEIDER. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentlewoman from Rhode Island.

Ms. SCHNEIDER. Mr. Speaker, I stand in opposition to this proposal.

Mr. Speaker, we have been waiting for a budget for 10 months. We are now 10 days short of congressional elections. The public is rightfully asking, "Where is the leadership in Washington?" Voters in Rhode Island are fed up with the inability of Congress to do its work. They've had enough and I've had enough.

I am sure that many of my colleagues are tempted to vote yes so that they can go home and campaign. But if we do that, we are merely continuing to avoid our responsibilty.

Passing a budget under these conditions, without giving it the careful consideration that a $1.2 trillion commitment deserves, might satisfy the short-term public outcry. Unfortunately, when we look at the results of our handiwork under the cold, hard light of dawn, I am afraid that we will still be asking "Where is the leadership in Washington?"

From my understanding, the budget we are considering commits us to spend $120 billion more than we spent last year. If we pass the budget before us, and the rosy economic projections are correct, we will see a growth in the national debt from the current level of $3 trillion to over $5 trillion by 1995.

Mr. Speaker, from every indication this is not a responsible budget. It is a continuation of the disastrous and irresponsible spending policies that we've been operating under for the decade I have been in the House.

In 1980, the national debt was a trillion dollars. With this budget, it will grow to $5 trillion in the next 5 years; $5 trillion that our children must pay back; $5 trillion that will displace investment capital; $5 trillion worth of debt that will generate interest payments in excess of $400 billion a year.

If we pass this budget tonight, Congress can adjourn, the newspapers will report that we've done our job, and the public may forgive our tardiness. Next year, Congress will return and the entire process will be played out again. Taxes will increase, but spending will increase faster.

The only way we can get control of the budget is to take control of the budget. That means setting a limit, setting priorities and living with those priorities.

We cannot afford everything that everyone wants. Leadership is the willingness to tell the voters that simple truth. Tonight I must join my constituents in asking, "Where is the leadership in Washington?"

Mr. DORGAN of North Dakota. Mr. Speaker, this budget agreement is a surrender to President Bush on the question of whether millionaires ought to pay their fair share of the taxes, and its business as usual on the spending priorities. It spends too much on defense and on foreign military aid, proposes devastating cuts to our farmers, and erodes Medicare benefits for the elderly.

With this agreement, the President succeeds in protecting the highest income earners from having to pay their fair share of taxes.

The tax program we passed through the House last week was a fair one. It included a 10-percent surtax on income over a million dollars a year and it eased the burden on the middle class. This budget agreement, under pressure from President Bush, has dropped that provision. So instead of millionaires paying a surtax, under this agreement, the rest of the American people will pay a higher gas tax.

Somebody missed the message about tax fairness.

On the spending side, this budget deficit reduction is more of the same. It will end up spending tens of billions of dollars more than is necessary in defense spending. It provides for building star wars, B–2 bombers, and overspending on the wrong kinds of foreign aid, while it also calls for an emasculation of the price support program for family farmers.

Farm price supports are only six-tenths of 1 percent of the Federal budget, and yet this budget agreement calls for 11 percent of the budget cuts to come from farm price supports. The baseline spending for farm price supports is the only one that is not adjusted for inflation, and yet this agreement will cut that baseline by 24 percent over the next 5 years. This will come at a time when grain prices have collapsed and many family farmers are flat on their back financially and desperately need a decent price support program to keep going.

I'm willing to support real budget cuts to reduce the Federal deficit, but I'm not willing to support business as usual with the bankrupt spending priorities that have gotten us to this point.

A Congress that lets the President push it into taxing and spending policies that protect the rich, and continue to overspend on defense even as it dismantles the price support program for family farmers, is making a very serious mistake.

The cold war is over and it's time now to begin cutting the defense budget. The speculative financial joyride of the 1980's is over too. It's time to ask those who made their millions in the 1980's to start paying their fair share of the taxes in the 1990's.

Because this budget fails to respond to those requirements, I voted no.

There is a critical need to cut our budget deficit, but there is a right way and a wrong way to do it. This is the wrong way.

Ms. PELOSI. Mr. Speaker, as we consider the budget reconciliation bill before us now, I would like to offer several observations on the process, as well as the product.

During the budget summit, the President and Congress agreed to reduce the deficit by $500 billion over the next 5 years. Two-thirds of the deficit reduction would come from spending cuts, while one-third would come from taxes. Debate followed on who would be taxed.

I voted against the original budget summit agreement because I did not believe that it was fair. It placed a disproportionate burden on the middle income, the elderly, the disabled and the unemployed.

I then supported the Rostenkowski progressive plan which would have produced an even larger budget deficit reduction, in a more equitable manner. The progressive plan would

have reduced defense spending to a more reasonable level and asked upper-income taxpayers to bear more of their fair share of the tax burden. The progressive plan was passed by the House of Representatives.

The House, the Senate and the executive branch entered protracted and prolonged negotiations in an attempt to develop a budget package that would have enough support to pass. This task has proven to be a trying, complicated and emotionally charged one.

This session of Congress has been drawn out by a debate over core values. The very essence of fairness is at stake. Fairness means nothing less than a real move to restore progressivity in our tax system. If you do not support progressivity, then you are turning your back on fairness.

The tax structure as it currently exists is unfair. The administration's budget proposals would have magnified the disparities between rich and poor. The President's early emphasis on a capital gains cut, which was a major factor in the difficulties in developing a budget, would have clearly benefited the wealthy.

The after-tax income share of the richest 2.5 million households in this country nearly equals the income share of the 100 million households with the lowest incomes. The Congressional Budget Office estimates that in 1990, the lowest 90 percent of all households had average capital gains of $299. The richest 1 percent of all households had average capital gains of $175,536. This disparity is reflected throughout the tax system.

During the 1980's, the "me-decade", the average real income of the top 5 percent of the population rose from $120,253 to $148,438. During that same time, the average real income of our poorest 20 percent fell from $9,900 to $9,431. If we looked at after-tax income, the gap would be even wider.

Like many of my Democratic colleagues, I have worked to promote a more progressive tax structure. I have also worked to ensure that the tax provisions in the budget reconciliation bill do not have an adverse impact on individuals who can least afford it. I am pleased that the package contains an extension of the low-income housing tax credit and an extension of mortgage revenue bonds, two programs vital to the production of affordable housing across the Nation. I am also pleased to see that it contains an extension of the targeted jobs tax credit.

I continue to have concerns about the impact of limiting itemized deductions on the abilities of our States and local communities to meet their own fiscal needs. As the Federal Government passes more and more of the burden of providing basic services on down to States and localities, we cannot also hamper the abilities of these entities to raise revenues to meet the growing needs.

While most of the public and congressional debate on budget reconciliation has focused on revenue and how to raise it, we have not paid anywhere near enough attention to the spending side of this deficit reduction package and what it should contain.

Mr. Speaker, for the past decade, we have faced a social action deficit in this country. The basic needs of our citizens are plainly and simply not being met. We have too many people who cannot afford health care, too many people who cannot read, too many people drinking polluted water and breathing polluted air, and too many people turning to drugs and crime out of desperation because they have such limited economic opportunities.

Delaying the peace dividend is denying the changes which have swept the world. It is also depriving our citizens of basic services. Do we really need this continuing bloated defense budget while our cities are experiencing a resurgence of urban blight? Do we really need to continue pouring money into star wars when we cannot afford to give our children basic educational opportunities that would enable them to become engineers? We plainly and simply cannot afford to delay action on turning the peace dividend to productive uses.

Mr. Speaker, we have in office a President who vetoes almost as many bills as he signs. Like a temperamental child, he throws temper tantrums when things do not go exactly his way. He has forgotten that the framers of the Constitution intended for our democratic process to be one of give and take. Negotiations over the budget have been so difficult because the President and his party have insisted that we should give and take a different way. They want to give to the rich and take from the poor and the middle class.

As we consider this budget reconciliation package, I urge my colleagues to remember the hundreds of thousands of unheard and unsung heroes—the people who work their hardest every day to make ends meet. These are the people this package should be designed to help. I reluctantly urge my colleagues to vote aye on the reconciliation package.

Mr. FRENZEL. Mr. Speaker, we are almost to the vote, and it is time for us to make what a number of our Members have described as a difficult decision.

It seems to me it is a pretty easy decision. The choice is whether you want to remove from our overall deficit over the next 5 years nearly $500 billon, or whether you want to end the year with a whimper and simply a reaffirmation of our continuing appropriations without any attempt for savings, without any enforcement, without any entitlement reduction. I think that way is a path toward destruction.

I must say it is not the most comfortable position in the world for me to be sandwiched between the gentleman from New York [Mr. SCHUMER] and the gentleman from Missouri [Mr. GEPHARDT], as the onion in the petunia patch, but this time I think it is important that both sides get together.

Over on our side we worried that the GPO is not going to print the bill as quickly as possible. I have talked to the agency at length, and it is going to do everything to see that it puts out a CONGRESSIONAL RECORD as soon as possible.

We have worried that legislative counsel may have been subverted in its work, and our staffs assure us that insofar as possible we have checked to see that what comes up is what went down.

We have heard complaints about rifle shots in the bill. This bill is, at least in the tax section, covered with generic law. There is no specific law referring to a single individual or a single company.

We have a bill that is endorsed by the President, endorsed by the joint leadership, and endorsed, I hope, by a majority of this Congress.

It is not a great milestone. It is not a terrible sacrifice. It is not a change in the way we tax the rich or the poor. People are going to suffer somewhat equally, and there is not enough savings in it for most of us Republians.

Nevertheless, it is the only savings bill that we are going to confront. Deficits have been our No. 1 problem. We have done nothing since 1981 to take any action against them, and now is our time to do it.

I implore you, never mind for yourself or your constituents, but for those of you who are young enough to have young children or old enough to have grandchildren, think a little bit about them when you think of our $3 plus trillion deficit that will be $5 trillion before the 5-year period is out. Do something good for your country and help us get the deficit down.

BUDGET SUMMIT AGREEMENT IN NOMINAL DOLLARS AND AS A PERCENTAGE OF GNP

[Dollars in billions]

	Actual 1990	1991	1992	1993	1994	1995
Outlays	1,252	1,361	1,392	1,381	1,343	1,385
Revenues	1,032	1,138	1,221	1,306	1,395	1,473
Economic adjustments		30	58	54	36	19
Deficit	−220	−254	−229	−129	17	68
Deficit-w/o Social Security	−278	−317	−297	−208	−76	−40
GNP	5,486	5,807	6,199	6,670	7,141	7,607

NOTE.—The average annual growth in outlays during this period is 2.1%. (2% on a compound basis.)

AS A PERCENT OF GNP

	1990	1991	1992	1993	1994	1995
Outlays	22.8	23.4	22.5	20.7	18.8	18.2
Revenues	18.8	19.6	19.7	19.6	19.5	19.4
Deficit	−4.0	−4.4	−3.7	−1.9	0.2	0.9

NOTE.—Based on information available at 4 p.m. October 26, 1990. All numbers subject to change.

RECONCILIATION CONFERENCE AGREEMENT

Reconciliation savings	Fiscal year 1991—		Fiscal year 1991–95—	
	Done	Inst.	Done	Inst.
Agriculture (Assumes no GATT effect):				
Commodity Programs	1.218		11.896	
APHIS fees	.059		.413	
REA loans	.024		.516	
FmHA loans	.280		2.114	
	1.581	1.022	14.939	13.627
Over/under instruction		.559		1.312
Banking:				
Bank Insurance Fund (BIF)	1.100		9.000	
FDIC borrowing	.003		.012	
FHA reforms	.397		2.564	
FHA assignment waivers	.212		1.010	

RECONCILIATION CONFERENCE AGREEMENT—Continued

Reconciliation savings	Fiscal year 1991—		Fiscal year 1991–95—	
	Done	Inst.	Done	Inst.
Flood/crime insurance	.014		.832	
	1.726	1.507	13.418	13.258
Over/under instruction		.219		.160
Education and Labor:				
Stafford loans	.0		1.695	
PBGC premiums	.120		.640	
OSHA/MSHA civil penalties	.112		1.137	
Child labor penalties	.003		.015	
	.235	.215	3.487	3.770
Over/under instruction		.020		−.283
Energy and Commerce:				
Medicare [1]	3.342		42.469	
Medicaid	.004		.607	
NRC fees [1]	.287		1.554	
Travel and tourism fees	.010		.078	
Railroad user fees	.020		.169	
EPA user fee [1]	.028		.180	
	3.691	3.731	45.057	43.721
Over/under instruction		−.040		1.336
Interior:				
Tongass	.028		.204	
NRC fees [1]	.287		1.554	
Abandon mine rec. fees	.000		.832	
	.315	.343	2.590	2.018
Over/under instruction		−.028		.572
Judiciary:				
Patent and trademark fee	.102	.091	.495	.495
Over/under instruction		.011		0
Merchant Marine and Fisheries:				
Tonnage taxes	.053		.265	
Coast Guard direct fees	.026		.165	
Coast Guard Indirect fees	.127		.718	
EPA user fees [1]	.028		.180	
	.181	.222	1.328	1.231
Over/under instruction		.041		.097
Post Office and Civil Service:				
Eliminate lump sum	1.390		7.600	
FEHB health reforms	.216		1.905	
Postal service payments	.654		4.680	
DoD portability	.006		.030	
Computer Matching	.056		.135	
	2.322	2.165	14.350	14.350
Over/under instruction		.157		0
Public works and Transportation:				
Increased aviation spending	0.		−.254	
EPA user fees [1]	.027		.180	
	.027	.042	.074	.254
Over/under instruction		−.015		.328
Science and Technology:				
NOAA fees	.002		.012	
Radon fees	.002		.008	
	.004	.005	.020	.025
Over/under instruction		−.001		−.005
Veterans:				
Med cost recovery	.113		.826	
Pension verification	.028		.743	
Willful misconduct	.010		.334	
Limit remote heirs	.125		.291	
Elim pension presum at 65	.017		.313	
Other vets	.328		1.158	
	.621	.620	3.665	3.350
Over/under instruction		.001		.315
Ways and Means:				
Medicare providers	2.992		32.404	
Medicare Beneficiaries	.350		10.065	
Medicare total [1]	3.342		42.469	
SS overpayments	0		.071	
Child care/Human Resources	−0.040		−.587	
Customs User fees	0		2.292	
PBGC fees [1]	.120		.640	
	3.422	3.320	44.885	55.603
Over/under instruction		.102		−10.718
Total reconciliation savings	10.422	9.082	99.137	107.406
Over/under instruction		1.340		−8.269
Reconciled revenues	17.607	13.225	137.169	118.800
Over/under instruction		4.382		18.369
Total reconciliation deficit reduction	28.029	24.307	236.306	246.206
Over/under instruction		3.722		−9.900

[1] Reconciled to more than one committee.Double count not included in total.

NOTE—The Agriculture numbers assume that the Ag Committee will remove a provision which allows certain agricultural spending to increase if there is no GATT agreement. If one assumes that this spending will be increased, savings from agriculture programs and overall savings from the package would be reduced by $7.1 B over five years.

1990 RECONCILIATION BILL CONFERENCE AGREEMENT

AGRICULTURE COMMITTEE

	Fiscal years	
	1991	1991–95
Summit	1,300	13,000
Instructions	1,022	13,627
Conference	1,581	14,939
Conference savings (in millions):		
15–15–15–15 triple base starting in 1992	868	9,085
12-month average season price	0	755
Soybeans loan origination fee of 2 percent	0	26
1991 feed grain ARP at 7.55 percent	289	905
1 percent loan origination fee	10	303
APHIS inspection fee	59	413
Reduction in milk price supports	51	822
REA loans	24	516
FmHA loans	280	2,114
Conference total	1,581	14,939

Changes from baseline:

Triple base of 15-15-15-15 percent beginning in 1991

Use 12 mo. (instead of 5 mo.) period to calculate season average price

Shift 25 percent REA loans to guaranteed loans

Shift most FmHA loans from direct to guaranteed

Set 1991 corn ARP at 7.5 percent

Set 1 percent assessment on all marketings of tobacco, sugar, peanuts, & honey

APHIS user fee on international passengers

The GATT language has been significantly watered down but still call for mandatory marketing loans and extra $1 Billion in export programs if a GATT agreement is not reached by June 30, 1992, provided "fast track" authority still applies to the passage of any agreement.

BANKING COMMITTEE

	Fiscal years	
	1991	1991–95
Summit	1,493,	12,465
Instructions	1,507	13,258
Conference	1,723	13,447
Conference savings (in millions):		
FHA assignment waivers	212	1,010
FHA reforms	397	2,564
Flood and crime insurance	14	833
FDIC premiums	1,100	9,000
Conference total	1,723	13,447

FHA will conduct auctions of the beneficial interest in mortgage loans in order to prevent their assignment to FHA (identical to provisions in Housing Conference Agreement).

The Committee also makes a number of changes to the FHA's single-family mortgage program. The principal changes include giving FHA the authority to assess annual premiums on the loan amounts, permanently increasing the ceiling for FHA-insured mortgages to $124,857, and requiring FHA's total portfolio of loans to be in a surplus position.

The bill reauthorizes flood and crime insurance. These programs are credited as producing savings over the next five years even though they lose money over the very long term.

The Committee accepts the summit agreement on FDIC premiums, assuming a final premium of 23 cents per $100 of assessable deposits. These premiums could be imposed under current law.

Coinage legislation is not contained in this bill.

The reconciliation bill gives the FDIC explicit authority to borrow from the Federal Financing Bank. This authority was already implicit in the act.

The conferees rejected the Senate provision which gave RTC and FDIC preference in law suits against individuals and organizations which cause bank failures.

EDUCATION AND LABOR COMMITTEE

	Fiscal year—	
	1991	1991–95
Shortfall: $283 million:		
Summit	215	3,770
Instructions	215	3,770
Conference	235	3,487
Conference Savings (in millions):		
Guaranteed Student Loan Program	(1)	1,695
PBGC premium increase	120	640
OSHA/MSHA civil fine increases	112	1,137
Child Labor Law penalties	3	15
Conference total	235	3,487

Student Loans.—Enacts a thirty-day delay on loans to first-time borrowers; requires borrowers without a high-school diploma or GED to pass an independent test; makes schools ineligible for loans with default rates in excess of 35 percent in 1991 & 1992 and 30 percent in 1993 and beyond, except Historically Black Colleges and tribally-controlled community colleges; extends current limitations on SLS loan program; tightens bankruptcy codes; mandates supplemental pre-claims assistance and reimburses guarantee agencies $50 per successful claim.

PBGC Premium increase.—Raises the flat rate premium from $16 to $19 per person, raises assessment per $1,000 of unfunded vested benefit premiums from $6 to $9, and raises overall cap on the variable rate portion for $34 to $53.

OSHA.—Raises the maximum fine sevenfold on all civil infractions and adds a minimum fine for each "willful violation" of $5,000; no other minimum fines.

MSHA.—Raises the maximum fine fivefold on civil violations of mandatory safety and health standards, but no minimum fines.

Child Labor Law Civil penalties.—Raises the maximum fine to $10,000 per person for violations, but no minimum fines.

NEW SPENDING

Child Care.—Child care legislation is included in reconciliation, authorizing $750 million in new spending in FY 1991. The Labor, HHS Appropriations agreement for FY 91 has set aside $732 million in BA. However, Outlays in 1991 will be only $28 million, due to a September starting date for the program. If fully appropriated, CBO estimates the program will cost almost $4 Billion over five years. In addition, child care tax credits and block grants are included in the Ways & Means/Finance portion of Reconciliation.

ENERGY AND COMMERCE COMMITTEE (FEES)

	Fiscal year—	
	1991	1991–95
Shortfall: $27 million		
Summit	344	2,008
Instructions	344	2,008
Conference	345	1,981
Savings from fees (in millions):		
NRC fees	287	1,554
Railroad safety user fees	20	169
Travel and tourism fees	10	78

ENERGY AND COMMERCE COMMITTEE (FEES)—Continued

	Fiscal year—	
	1991	1991–95
EPA user fees	28	180
Conference total	345	1,981

Nuclear Regulatory Commission Fees.—Allows for full cost recovery for the commission.

Railroad Fees.—Recovers railroad safety inspection costs.

Tourism and Travel.—Establishes fee for foreign airline and ship passengers entering U.S. In FY 1991, the fee would be $1 per person, bringing in revenue to cover the Department of Commerce's tourism activities.

EPA User Fee.—Collects auto certification fees included in Clean Air bill.

ENERGY AND COMMERCE COMMITTEE (MEDICAID)

	Fiscal Year—	
	1991	1991–95
Savings from Medicare/Medicaid (in millions):		
Medicaid savings	4	607
Provisions Relating to Medicaid Program		
Reductions in spending:		
Reimbursement for prescribed drugs	70	1,930
Requiring medicaid payment of premiums and cost-sharing for enrollment under group health plan where cost effective	85	1,005
Expansions in the Medicaid Program		
Protection of low-income medicare beneficiaries: Medicaid payment at a normal Federal-State matching share for mandatory coverage premiums for Medicare beneficiaries with incomes up to 100 percent of poverty in 1991 and 1992. 1993–94: Mandate payment of premiums only for those with income up to 110 percent. 1995 and beyond: Mandate payment of premiums only for those with incomes up to 120 percent of poverty	+32	+387
Frail elderly: Optional home and community-based care for the frail elderly	+40	+580
Child health: Phased-in mandatory coverage of children up to 100 percent of poverty; Continuous and presumptive eligibility for children and pregnant women; Hospital payment adjustment for children up to 6; mandatory stationing of eligibility workers at locations other than welfare offices	+40	+1,095
Developmentally disabled: Capped entitlement that would allow States to offer home and community-based services to individuals with mental retardation or related conditions	+5	+100
Uninsured families demonstration: Demonstrations to test the effects of eliminating the current categorical restrictions under the Medicaid Program	+12	+40
Psychiatric hospital disallowances: Limits disallowances of Federal matching funds	0	+16
Federally qualified health centers: Clarification of use of Medicare payment methodology	+3	+19
AIDS Demonstration projects: Authorizes funding for early medical intervention services for people infected with the AIDS virus or are at a high risk	+5	+30
Respite care demonstration projects: Extend the New Jersey respite care demonstration project	+2	+4
Nursing home reform provisions	+11	+15
Miscellaneous provisions: German reparations; personal care services; mental health facility demo; other misc	+1	+42
Conference total Medicaid	4	607

Note: Savings from Medicare are noted under the Ways and Means Committee.

Summit.—(Medicare—see Ways and Means). Medicaid—Summit assumed unspecified reductions of $220 million the first year and $2,600 million for five years. Also assumed was $2,000 million to pay the increased premiums and deductibles assumed in the Medicare package for beneficiaries at 115% of poverty.

House.—Medicaid expansions included: the $1,900 million over five years to cover Medicare premiums for beneficiaries whose incomes are below 125 percent of poverty level as assumed in the summit agreement. Expansions not assumed included: child health amendments ($560 million over five years); outreach locations for potential Medicaid beneficiaries ($229 million over five years) and maternal and child coverage for women through the post-partum period and through the first year of certain infants.

Conference agreement.—Medicaid savings achieved—$2,935 million; Medicaid expansions total is $2,328 million. The total savings: $4 million in 1991; and $607 million for five years.

Miscellaneous provisions having negligible or no budget impact.—Voluntary contributions; disproportionate share hospitals; hospice payments; Indiana disallowance; substitute physicians; purchase of COBRA continuation premiums; spousal impoverishment; hospice election; medically needy income levels; rehab services; alcoholism & drug dependency; medicaid spend-down option; state disability determination; miscellaneous HMO provisions; miscellaneous provisions relating to HCBS waivers.

INTERIOR COMMITTEE

	Fiscal year—	
	1991	1991–95
Summit	315	1,758
Instructions	343	2,018
Conference	315	2,590
Conference Savings (in millions):		
Tongass Timber Reform (H.R. 987)	28	204
NRC Fees (Section 7, H.R. 1549)	287	1,554
Abandoned Mine Reclamation fees	0	832
Conference total	315	2,590

The Tongass Timber Reform agreement cancels a permanent appropriation contained in current law. The Senate is due to consider whether to include language to renegotiate certain timber contracts which could lead to losses to the Treasury if an expected lawsuit against the government is successful. CBO does not score these potential losses in any case.

The NRC fees provision would increase the fee to cover 100 percent of NRC costs, including the Office of inspector general, for five years. After 1995 the fees would be subject to a floor of 33% of NRC costs unless Congress passes further legislation. The House passed bill had made the 100 percent fees permanent.

The Abandoned Mine Land Fund is reauthorized for three years (1992-95) at the current fee rates. The House bill, which assumed HR 2095 had reauthorized the fund for 15 years, had reduced certain states' fee rates and had authorized several new spending programs. The Conference agreement is $214 M higher than the House bill over five years.

Does not include oil shale fees which were in the House bill.

JUDICIARY COMMITTEE

	Fiscal year—	
	1991	1991–95
Summit	100	540
Instructions	91	495
Conference	102	495
Conference Savings:		
Increase Patent and Trademark fees	102	495
Conference total	102	495

Increase Patent and Trademark fees.—69 percent surcharge on Patent and Trademark Office (PTO) user fees, raising $109.8 M in FY 1991. All receipts raised by the surcharge will be placed in a special fund in the Treasury and credited as offsetting receipts. Of the money put into the special fund for FY 1991, $91 M shall be subject to appropriation and the additional $18.8 M shall be directly available to the PTO. All of the money in the special fund will be subject to appropriation in FYs 1992-1995.

The summit agreement provided for a 45 percent increase in Patent and Trade fees. The House passed bill provided for a 56 percent increase. This percentage was increased to 69 percent in conference, maintaining the provision in the House bill that allows individuals, non-profit organizations and small businesses (approximately 35 percent of filings) to continue receiving a 50 percent discount and in order to raise the required $109.8 M to make PTO self-funding.

MERCHANT MARINE COMMITTEE

	Fiscal year—	
	1991	1991–95
Summit	218	1,211
Instructions	222	1,231
Conference	234	1,328
Conference Savings (in millions):		
Raise vessel tonnage duties	53	265
Indirect Coast Guard user fees	127	718
EPA user fees [1]	28	180
Direct Coast Guard user fees	26	165
Conference total	234	1,328

[1] Shared jurisdiction with Energy and Commerce and Public Works.

Vessel Tonnage Duties.—The tonnage tax on commercial vessels using American ports has not been changed since 1909. Merchant Marine increases these fees by an inflation factor, raising the tax per metric ton of the vessel (NOT the cargo). These fees will not be in effect after FY 1995.

Indirect Coast Guard User Fees.—Imposition of a tax that applies to recreational vessels over 16 feet. Fees range from $25 up to $100 depending on the size of the boat. This tax will also expire after FY 1995.

EPA User Fees.—Directs the Environmental Protection Agency to collect fees for services related to water pollution control, pesticide registration, toxic chemical notifications, radon proficiency, vehicle engine certificates, and fuel economy testing.

Direct Coast Guard User Fees.—Repeals provisions blocking the Coast Guard from charging user fees for specific services. This is a direct user fee, as opposed to the indirect $25 decal fee which the committee did not recommend.

EXTRANEOUS ITEM

H.R. 4450, Coastal Zone Management Act Reauthorization requires the Department of Commerce to charge fees for processing appeals under the Coastal Zone Management Act. Saves less than $500,000 in each of the five years.

POST OFFICE AND CIVIL SERVICE

	Fiscal year—	
	1991	1991–95
Summit	1,935	14,400
Instructions	2,165	14,350
Conference	2,322	14,350
Conference Savings (in millions):		
Suspension of lump sum	1,350	7,600
Increase USPS FEHBP and CSRS liability	710	4,680
FEHBP administrative reforms	216	1,905
Computer matching privacy protection	0	135
Portability of benefits (Revenue)	6	30
Conference total	2,322	14,350

Suspends the lump sum option for five years for all retiring federal workers effective. Employees who turn in retirement notices on or before November 30, 1990, may opt for a 50/50 lump sum payment. Exempted from the suspension are those who are involuntarily separated from the civil service and those critically ill. Congressmen employees are *not* eligible for the lump sum. A provision provides an additional year to elect the lump sum benefit for employees mobilized in connection with the Desert Shield operation.

Increases Postal Service liability for FEHBP and CSRS costs after 1971. Requires Postal Rate Commission to consider these costs in setting postal rate adjustments. The Committee estimates that this would add an additional penny to first class rates.

ADMINISTRATIVE REFORM

Exempt FEHBP from state premium tax requirements in a manner similar to that for the Federal Employees's Life Insurance Fund.

Require improved cash management by reducing the 3-4 day float.

Require all FEHBP carriers to incorporate cost containment packages.

The Committee reported the package with a recommendation that the changes not be adopted.

PUBLIC WORKS COMMITTEE:

	Fiscal year—	
	1991	1991–95
Shortfall: $328 million		
Summit	18	134
Instructions	42	254
Conference	28	+74
Conference Savings (in millions):		
Aviation Programs		+254
EPA User Fees [1]	28	180
Conference Savings (in millions):	28	+74

[1] Shared jurisdiction with the Energy and Commerce and Merchant Marine Committees.

The committee has not reached their reconciliation targets. They authorized the EPA to impose user fees sufficient to collect $28 million in FY 1991, and $38 million annually thereafter, except that no more than $10 million can come from clean water programs. These savings are shared by the Merchant Marine and Energy and Commerce Committees.

DIRECT SPENDING CONTAINED IN THE FAA REAUTHORIZATION

H.R. 5170.—FAA reauthorization which allows the Secretary of Transportation to grant local airport authorities the authority to impose passenger facility charges. Also establishes a National Noise Policy.

This package also would increase by $100 million the 1992 contract authority for grants for airport development and airport planning (grants-in-aid), and would provide $38.6 million per year in contract authority for the small community air service program for FY 1992-1998.

SCIENCE, SPACE, AND TECHNOLOGY

	Fiscal year—	
	1991	1991–95
Shortfall: $5.5 million:		
Summit	5.0	25.0
Instructions	5.0	25.0
Conference	3.5	19.5

SCIENCE, SPACE, AND TECHNOLOGY—Continued

	Fiscal year—	
	1991	1991–95
Conference Savings (in millions):		
Radon testing research and development fees	1.5	.5
NOAA Weather Service fees	2.0	12.0
Total	3.5	19.5

Committee is below target $5.5 million or 22 percent. OMB estimated the NOAA fees would bring in $5 million per year and $25 million over five years. Committee minority says that the NOAA fee estimate could be raised, but it would be only a paper savings because it is doubtful that the fees would be collected at the higher level.

Radon fee is for R&D associated with the EPA radon testing program and is in addition to testing fees already authorized.

Nuclear Waste Disposal fee in original House bill was dropped in conference. Would have gotten $5 million per year.

VETERANS COMMITTEE

	Fiscal year—	
	1991	1991–95
Summit	500	2,700
Instructions	620	3,350
Conference	621	3,665
Conference Savings (in millions):		
Establish VA Medical Care Cost Recovery Fund and authorize, through September 30, 1993, certain recoveries from Third Parties	113	825
Require $2.00 prescription co-payment through September 30, 1991, for 30-day outpatient prescription	66	85
Repeal benefit restoration eligibility for remarried spouses and married children	19	374
Prohibit payment of compensation or pension for secondary effects of willful misconduct	10	334
Eliminate pension total disability presumption at age 65	17	313
Limit estates of certain incompetent veterans with no dependents	125	291
Modify medical care categories and co-payment requirements	35	45
Limit vocational rehabilitation to Veterans rated 20 percent or more	20	180
Access to IRS income data for pension income verification (Sec. 710, S. 2100)	28	743
Limit plot allowance	27	147
Reduce pension to Medicaid-eligible nursing home residents	22	124
Increase loan fees from 1.25 percent to 1.875 percent through 9/30/91	79	79
Require social security numbers, and match death records	4	47
Eliminate headstone and marker allowance	3	19
File manufactured housing loan payment claims prior to resale	4	14
1-month COLA delay to be repaid in FY92 and round down 4.5 percent COLA	49	43
Conference total	621	3,663

WAYS AND MEANS (OTHER)

	Fiscal year—	
	1991	1991–95
Summit	NA	NA
Instructions	NA	NA
Conference	206	2,508
Conference Saving (in millions):		
Unemployment compensation	0	0
Supplemental security income	−2	−15
AFDC	(1)	−4
Child welfare and foster care	(1)	(1)
Child Care	−45	−715
Social Security	88	85
PBGC	120	640
IRS user fees	45	225
Customs Service user fees	0	2,292
Conference total	206	2,508

[1] Note: All numbers subject to change.

Allowed withholding of Social Security overpayments from the Federal tax refunds of former beneficiaries. This option was recommended in the Summit agreement.

Increased flat, per participant PBGC premium by $3 to $19. Increased variable, per participant premium by $3 to $9 for each $1,000 of unfunded liability. Additionally, the maximum per participant premium was raised by $19 to $53.

Extended IRS user fee program.

Extended custom service user fees for four years.

Rejected Summit recommendation to require States impose a two-week waiting period before claimants can receive benefits.

WAYS AND MEANS (MEDICARE)

	Fiscal year—	
	1991	1991–95
Mandatory/Fee Savings (in millions): Part A provisions:		
Reduce capital-related payments by 15 percent in fiscal year 1991. Rural hospitals, sole community and EACH hospitals exempted	810	4,050
Increased payments for inter city and rural hospitals	+100	+2,000
Market Basket Update: MBI—2.0% (FY91) MBI—1.5% (FY92) MBI—1.4% (FY93)	580	11,300
DRG payment window	45	555
Direct graduate medical education: Hospital university nurse and GME recoupment delay	+205	+480
Freeze in fiscal year 1990 payment policies 11/1—12/31/90	495	495
PPS-exempt hospital adjustment	0	+140
Hospice	0	+4
Miscellaneous and technical, part A	+5	+45
Total part A	1,620	13,731
Part B provisions:		
Overpriced physicians services	290	2,565
Reduction in payment for radiology services and fees/technical radiology component	165	1,505
Physician update: primary care—2 percent in 1991; all other services—no update in 1991. Reduction of 0.4 percent in 1992 for all services	305	3,056
Other physician proposals including limiting payments to new physicians; limit payments to assistants at surgery and limit payments for interpretation of EKGs	90	1,585
Hospital outpatient services	355	2,560
Various graduate medical education provisions	+25	+65
Durable medical equipment and post cateract eyeglasses	245	2,450
Clinical laboratory services	85	1,150
Continue fiscal year—2 percent reduction policy to physician providers and suppliers under part B for 2 months	110	110
Medicare enhancements: Community and rural health centers; nurse practitioners in rural areas; nurse anesthetists; mental health; and other small enhancement	+64	+674
Total part B	1,556	14,242
Part A and B provisions:		
End Stage Renal Disease provisions—includes secondary payer; facility rate increase, dose level and home benefit demo	61	467
Extend secondary payer provisions	0	5,700
EPO self-administration	+15	+120
Total part A and part B	46	6,046
Beneficiary provisions:		
Part B premium increases ($29.90/91; $31.80/92; $36.60/93; $41.10/94 and $46.10/95)	0	7,455
Part B deductions from $75 to $100	350	2,610
Total beneficiary reductions	350	10,065
Medicare enhancements:		
Regional floor extension	+90	+365
Mammography	+140	+1,250
Total Medicare package	3,342	42,469

Summit: (Medicare) Assumed $4.9 B in cuts the first year with $1.7 B from beneficiaries. The 5-year savings was $60 B with $27.8 B from beneficiaries.

House bill as amended by the Rostenkowski amendment: (Medicare) Saved $3.7 B in the first year and $43.8 B over five years. The beneficiary portion was $350 M in the first year and $10 B over five years.

Conference agreement: (Medicare) Saves $3.342 B in FY 1991 and $42.469 B over five years. The beneficiary portion is $350 M in the first year and $10.065 B over five years.

WAYS AND MEANS (REVENUES)

[Instructed to raise $13,225 million in FY 1991 and $118,800 million over 5 years. $20 billion in unspecified deficit reduction was also available for revenue increases]

	Fiscal year—	
	1991	1991–95
Revenues (in billions)		
Revenue raisers:		
1. High-income individuals:		
a. Individual rate structure: 15 percent/28 percent/31 (24 percent AMT rate; 28 percent maximum capital gains rate)	0.8	11.2
b. Phase out personal exemption (2 percent/$2,500; $100,000/$125,000, $150,000 threshold)	1.0	10.8
c. Limit Itemized deductions (3 percent, over $100,000)	.5	17.9
d. 10 percent luxury excise tax	.1	1.5
e. Increase Medicare (HI) wage cap to $125,000	1.8	26.9
f. Eliminate deduction for cosmetic surgery	0	.2
2. Environmental provisions:		
a. 5 cent/gallon motor fuels tax	4.4	25.0
b. Double gas guzzler tax	.1	.4
c. Expand ozone depleting chemical excise tax	.1	.5
d. Leaking underground storage tank (LUST) trust fund (5 years)	.1	.6
e. Extend Hazardous waste superfund (4 years)		
3. Extend telephone tax	1.6	13.7
4. Increase tobacco tax by 4 cents per pack in 1991 and by 4 cents per pack in 1993	.5	5.9
5. Beer, wine and distilled spirits taxes	1.3	8.8
6. Increase Airport Trust Fund aviation excise taxes (5 years)	1.4	11.9
7. Increase harbor maintenance tax	.3	1.8
8. Loss deductions and salvage values for insurance companies (8-year phase-in)	.2	.6
9. Amortize insurance policy deferred acquisition expenses (DAC)	1.4	8.0
10. Adopt foreign compliance provisions including certain provisions from H.R. 4308	0	.3
11. Retiree health with reversion excise increase and asset cushion requirement	.5	.9
12. Increase tax on corporate underpayments	1.6	1.8
13. Certain business tax provisions:		
a. Expand and clarify reporting and allocation rules for certain asset acquisitions	0	.1
b. Require accrual of redemption premium for certain preferred stock	0	.4
c. Expand application of CERT rules to subsidiary acquisitions	0	.4
d. Require recognition of corporate-level gain in certain divisive corporate transactions (5-year limitation period)	0	.2
e. Clarify treatment of debt exchanges	.1	.4
14. IRS user fees	0	.2
15. State and local Social Security (OASDI)	.4	9.2
16. Extend FUTA 0.2 percent surtax (5 years)	.8	5.4
17. Payroll tax deposit stabilization	1.0	0
18. Extend statute of limitations to 10 years		
19. Increase penalties for reporting rules		
20. Foreign Trust provision	0	.3
Total gainers	20.2	164.6
Revenue losers:		
21. Extend expiring provisions through 12/31/91	−.2	−5.9
22. Energy incentives:		
a. Extend Section 29 with tight sands	−0	−.6
b. Ethanol incentives	−0	−.2
c. 15 percent credit for enhanced recovery	−0	−.2
d. Amend percentage depletion	−0	−.3
e. Reduce AMT for IDCs	−.1	−.8
f. Reduce AMT for percentage depletion	−0	−.4
23. Modify estate freeze rules	−0	−.8
24. Disabled persons access credit	−.1	−.4
25. Cap on Section 190 expensing at $15,000	−.1	−.4
26. Repeal AMT for contributions of appreciated property (1 year)	−0	−0
27. Progressivity/childcare:		
a. Increase EITC	−.1	−12.4
b. Child Health credit	−.1	−5.2
c. Increase standard deduction $500 for families with children under 1 year	−.1	−.7
Total losers	−2.6	−27.4
Net Deficit Reduction (in billions)	17.6	137.2

HIGHLIGHTS

The income tax rate provision bursts the bubble at 31 percent and increases the AMT to preserve the current gap between the top marginal rate and the AMT. Capital gains is limited to 28 percent.

The phase out of personal exemption is similar but not identical to the current law bubble. It would phase out all personal exemptions over a fixed $125,000 income range starting at $150,000 on joint returns. This works out to approximately a ½ percentage point increase per exemption in the marginal rate on income above the thresholds (which are higher than current bubble).

The limit on deductions for high income people is calculated like this: take the difference between a taxpayer's Adjusted Gross Income and $100,000; take 3 percent of that number; subtract the amount from the sum of state and local, interest and charitable itemized deductions.

Luxury tax applies to new items above the following thresholds: autos—$30,000; boats and yachts—$100,000; jewelry—$10,000; furs—$10,000; planes—$250,000. Tax would be sunsetted January 1, 2000.

The wage gap for the Medicare (HI) payroll tax is increased from $54,300 to $125,000.

The motor fuels tax would be effective 12/1/90. Railroads would pay 50 percent of the tax increase (2.5 cents). 50 percent to trust fund, 50 percent to general revenues.

The gas guzzler provision would double the current tax and subject limousines to the tax.

The ozone depleting chemical tax levies a tax on chemicals which are covered by the Montreal Protocol but which are not currently subject to excise tax.

The LUST Trust Fund tax extends a 1 cent/gallon tax on fuels used on the inland water which expired on 9/1/90.

The current law 3% telephone excise tax is extended and the collection period is modified.

Tobacco tax applies to all tobacco products and would increase excise taxes on products other than cigarettes by 25% for every 4 cent/pack increase in cigarettes. The tax on large cigars would be based on the actual retail price. Floor stock taxes would be imposed only on cigarettes.

Alcohol tax would 1) increase distilled spirits by $1.00 to $13.50 per proof gallon; 2) double beer tax to 32 cents/6 pack; 3) raise table wine rate to 25 cents/bottle and fortified wine proportionately. The provison includes an exemption for small domestic wineries and breweries.

Current Airport and Airways taxes would be extended for 5 years and increased as follows: passenger tax increased from 8% to 10%; freight tax increased from 5% to 6.25%; non-commercial gasoline and jet fuels increased by 3 cents and 3.5 cents respectively. The current law tax trigger which cuts airport taxes by 50% if trust fund appropriations do not reach 85% of authorizations would be repealed. The increased funds from this provision would be dedicated to the General Fund through 1992 and to the Airport trust fund thereafter.

Harbor Maintenance tax would be increased from 0.04% of cargo value to 0.125% for cargo value.

The insurance company salvage value provision closes a loophole which has allowed property and casualty companies to deduct losses without netting out their gains from salvage.

The DAC provision imposes a gross premium tax on life insurance companies for various categories of insurance policies. This tax acts as a surrogate for the amortization of the acquisition costs of their policies (eg. the commission paid to an insurance agent) over a 10 year period. Under current law insurance companies are generally able to deduct these costs immediately. Deferred acquisition expenses would be defined separately for annuities, group life, and other life policies.

Foreign compliance provisions include increased reporting requirements, extended statutes of limitation for certain proceedings and increased penalties for non-compliance. Rules apply to foreign and domestic corporations but not to individuals.

The retiree health provision would allow companies to transfer pension fund assets in excess of full funding limits to pay current retiree health costs. These transfers would not be subject to normal asset reversion penalties. The current 15% excise tax on reversions would be increased to 20%.

Certain business tax provisions are included that affect corporate depreciation, preferred stock, interest deductions, stock distributions, and debt exchanges. These provisions are not controversial.

The bill would require coverage under Social Security for all state and local employees not covered by a state or local retirement plan.

The bill extends the current law FUTA unemployment surtax on employers.

The payroll tax stabilization provision is a timing shift which results from last year's budget chicanery. Under current law, the amount of time employers have to remit the federal taxes they withhold from employees' paychecks is one day in 1990, two days in 1991, three days in 1992, and then back to one day in 1993. This provision simply stabilizes the period at one day for all years.

The increase in the EITC is adjusted for number of children.

The Child Health insurance credit is 6%, with a 4.29% phase out. Phaseout income levels are the same as for EITC.

BUDGET PROCESS AND ENFORCEMENT

ENFORCEMENT OF DISCRETIONARY CAPS ON APPROPRIATIONS

Caps established at Budget Summit Agreement levels are as follows:

	Fiscal years				
	1991	1992	1993	1994	1995
Defense BA	288.9	291.6	291.8		
Outlay	297.7	295.7	292.7		
International BA	20.1	20.5	21.4		
Outlays	18.6	19.1	19.6		
Domestic BA	182.7	191.3	198.3		
Outlays	198.1	210.1	221.7		
Total Discretionary	BA			510.8	517.7
Outlays				534.8	540.0

If OMB determines that any BA or outlay cap has been breached in any category, an automatic across-the-board offset will occur in all the appropriations within that category.

Offset would occur 15 days after end of Session of Congress, 15 days after enactment of any appropriations in new session before July 1. Appropriations enacted after July 1 subject to end of session offsets. [Summit agreement had timed offset to occur 15 days after enactment of each bill.]

Adjustments in caps will be made to "hold harmless" for actual inflation different than now projected, Presidentially-designated emergencies, Operation Desert Shield, Egyptian/Polish debt forgiveness, IMF funding, funding IRS enforcement, and in

FY 1992 and 1993, special allowances for BA and outlays.

PAY-AS-YOU-GO (PAYGO) ENFORCEMENT OF DEFICIT NEUTRAL MANDATORY/ENTITLEMENT/REVENUE LEGISLATION

Legislation increasing entitlements, reducing revenues or both must be offset with reduced entitlements or increased revenues or both so that it is deficit neutral in each of fiscal years 1991–1995.

Within 15 days after end of Session of Congress, an automatic offset will cut sequesterable mandatory programs by the amount of any net deficit increase in that fiscal year and the prior fiscal year caused by legislation which violates PAYGO.

Programs subject to PAYGO cuts are the same as sequesterable mandatory programs under present-law Gramm-Rudman, except that the maximum Medicare cut is increased to 4% (instead of 2%.) (Tentative as of 8:30 pm, October 26, 1990.)

Differences from summit agreement: occurs 15 days after end of session instead of 15 days after each bill. Revenues trigger PAYGO offset instead of being reconciled back to committee.

Five-year budget resolution will be required through FY 1995. Discretionary allocations will conform to discretionary caps. Enforcement of first year and five-year reconcilation of spending and revenue legislation. *Byrd rule* against extraneous provisions in reconciliation strengthened in the Senate and extended to include conference agreements.

GRH EXTENSION THROUGH FY 1995

New targets established for the budget deficit *without* social security (operating balances and interest are both *off*-GRH) and *with* deposit insurance, as follows:

FY 1991 $327 billion; FY 1992 $317 billion; FY 1993 $326 billion; FY 1994 $102 billion; FY 1995 $83 billion.

If social security had been included, the targets would have been as follows:

FY 1991 $253 billion; FY 1992 $234 billion; FY 1993 $137 billion; FY 1994 +$12 billion; FY 1995 +$63 billion.

These GRH targets will be adjusted for all remaining years through FY 1995, for economic and technical reestimates when the President's budget is submitted for FY 1992 and FY 1993. Adjustments in FY 1994 and 1995 at President's option. [Summit Agreement: economic adjustment in March, 1992, technical adjustment in FY 1993, and adjustments in FY 1994 and 1995 if unanimously recommended by a bipartisan leadership group.]

GRH "cushion" eliminated for FY 1991, 1992 and 1993 (not necessary because of adjustments in targets will eliminate sequesters unless deficit-increasing policies have been enacted). $15 billion cushion provided for FY 1994 and 1995. GRH calculations will hold harmless for increases in deposit insurance costs.

Sequester, if required, will occur 15 days after end of session. Sequester baseline locks in when President's budget is introduced.

Credit Reform: Both direct loans and loan guarantees will be scored to reflect the cost of their subsidy value. Budget authority will be appropriated equal to these subsidies when loans are obligated or guaranteed. This will decrease the budget effect of direct loan programs and increase that of guarantees.

GOVERNMENT SPONSORED ENTERPRISES

Treasury Department required to submit to Congress a study of GSEs and recommended legislation by April 30, 1991. CBO required to submit a study by the same date.

Committees with GSE oversight required to report by September 15, 1990, legislation to ensure the financial soundness of the GSEs and to minimize the possibility that a GSE might require future government assistance.

ENFORCEMENT OF DEFICIT REDUCTION

I. The Reconciliation Conference is, in general, faithful to the surprisingly effective provisions of the Summit Agreement. Principle enforcement is as follows:

A. Appropriations are controlled through the Automatic Categorical Offset (also called mini sequester). When an appropriations bill (regular or supplemental) exceeds the agreed limits according to OMB scoring, after 15 days the entire category, domestic, international, or defense, is automatically reduced across the board. This is a far more powerful fiscal weapon than enhanced rescission.

B. Entitlements are controlled through a similar offset. However, mandatory offset occurs only once per year at the end of the fiscal year. Entitlements over the agreed limits are automatically offset by reductions in other entitlements across the board. This is usually referred to as the Pay-As-You-Go Section.

C. Enforcement on revenue shortfalls is similar to entitlements. The offset is against mandatory expenditures and occurs at the end of the year.

II. Agreed BA and outlay limits are set for 5 years and enforced as though they were caps. Caps are to be adjusted in FY 91 and FY 92 to hold appropriators harmless for technical and economic assumptions.

III. All savings to meet agreed limits are reconciled for 5 years in this bill.

IV. Gramm-Rudman is extended for 5 years. It will service a back-up enforcement tool, and is not likely to be used at all.

V. Social Security is off-budget and off-Gramm-Rudman. It is protected by the Pay-As-You-Go rules, too.

VI. Treasury reports and Congressional action on GSEs are mandated.

VII. Costs of credit, direct and guaranteed, will become a part of FY 92 budget. In 1993, those costs will be included under the agreed limits and enforced as above.

VIII. Byrd rule which prevents extraneous amendments on reconciliation bills is extended to conference reports. This will make House add-ons more difficult.

Mr. PANETTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before I introduce the last speaker, I again want to pay tribute to my good friend, the gentleman from Minnesota [Mr. FRENZEL], who is today managing his last budget conference report. There is no Member who has served his constituents or his country better, and Bill, we will miss you for your efforts.

Mr. Speaker, I yield the balance of my time to the distinguished majority leader, the gentleman from Missouri [Mr. GEPHARDT], who has done an outstanding job in bringing this budget to a conclusion.

Mr. GEPHARDT. Mr. Speaker, Members of the Congress, I first want to thank the chairman of the committee who, I think, has done an outstanding job of leading us to this point. I also want to thank all of the chairmen, all of the Members on the other side of the aisle who have worked so hard in committee to bring this bill to the floor. I want to especially note the contribution of Chairman ROSTENKOWSKI, who I think, did a masterful job of writing a tax plan, and I want to thank BILL FRENZEL and BILL ARCHER, and I especially want to thank BOB MICHEL for truly being a leader on a very, very difficult topic.

Ladies and gentlemen, this morning is a time to rise to the occasion. It is not a morning for politics, although all of us love politics, and politics is part of our government and our life. It is not a morning either for ideology, even though all of us bring to this place deep-seated beliefs about how the country should be run and the direction in which the country should go. Neither is it a morning for worrying about 30-second spots that might be run against us if we vote for all of the unpopular things that are in this package.

Over the past 5 months, Democrats and Republicans, Representatives and Senators, members from the Executive Branch, and Congressmen, have all together compromised, and all have left to another day, the battles we devoutly wish to wage on this day.

And why have we put down our weapons on this morning of ideology and belief? We have done it because our economy and our country enters now a period of maximum danger. I said the other night, that if we have a recession in the next year, we will lose another 400 savings and loans. And how will we pay for them? How will we insure the deposits? We may lose another 300 or 400 banks. And how will we insure those deposits? We have 200,000 and another 100,000 of our young people on their way to the Arabian desert. And if our economy fails, how can they possibly succeed?

I think our country is in danger this morning, and I think this package offers the best hope that we can move back from that danger and move our country in a proper and in a safe direction.

A few months ago I was in Poland, and I talked with their leaders, their young new leaders. And they were talking about asking their people to sacrifice, and they talked about it with enthusiasm. I asked them how in the world they were going to get elected asking their people to pay more for food and more for rent and cutting down on government programs. And one of their young leaders looked me in the eye, and he said, "Congressman, our people want us to do this, because this is our chance to be free."

Ladies and gentlemen of the House, I think our people tonight want us to do what is right, because they know that our country is in danger.

A great writer once reflected on the decline of an ancient democracy, and he said this:

In the end, more than they wanted freedom they wanted security. They wanted a comfortable life, and they lost it all, security, comfort and freedom.

When the Athenians finally wanted not to give to society but for society to only give to them, when the freedom they wished for most was freedom from responsibility, then Athens ceased to be free.

If we are responsible this morning, then the very freedom that all of us together cherish, no matter what our beliefs, is in danger. And if we fail, it will be said in Europe and Japan and all over the world, that the world's greatest democracy, no longer has the will to govern.

Ladies and gentlemen, my colleagues, this morning is a time to prove our critics and our detractors wrong.

□ 0640

So I urge each Member this morning to support the economy, support the country, support the good people of this Nation. Vote for this package, and show all of the world that we have the will to govern, and that America is the greatest and freest democracy in the history of the world.

The SPEAKER. Under the rule, the previous question is ordered on the conference report.

The question is on the conference report.

The question was taken and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. FRENZEL. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 228, noes 200, not voting 5, as follows:

[Roll No. 528]

YEAS—228

Ackerman	Clement	Fazio
Anderson	Clinger	Feighan
Andrews	Coleman (MO)	Fish
Anthony	Conte	Flippo
Aspin	Conyers	Foglietta
Atkins	Cooper	Foley
AuCoin	Coughlin	Ford (MI)
Bateman	Courter	Ford (TN)
Bellenson	Coyne	Frank
Bennett	Crockett	Frenzel
Berman	Darden	Frost
Boehlert	Davis	Gejdenson
Boggs	de la Garza	Gephardt
Bonior	DeFazio	Gibbons
Borski	Derrick	Gilman
Bosco	DeWine	Glickman
Boucher	Dicks	Gonzalez
Boxer	Dingell	Goodling
Brooks	Dixon	Gordon
Brown (CA)	Donnelly	Grandy
Buechner	Downey	Gray
Bustamante	Durbin	Green
Byron	Eckart	Hall (OH)
Cardin	Edwards (CA)	Hamilton
Carper	Engel	Harris
Chandler	Espy	Hatcher
Chapman	Evans	Hawkins
Clarke	Fascell	Hefner
Hochbrueckner	McHugh	Sabo
Houghton	McMillan (NC)	Sawyer
Hoyer	McMillen (MD)	Scheuer
Hutto	McNulty	Schiff
Ireland	Meyers	Schroeder
Jenkins	Mfume	Schumer
Johnson (CT)	Michel	Serrano
Johnson (SD)	Miller (CA)	Shaw
Johnston	Miller (WA)	Shays
Jones (GA)	Mineta	Sikorski
Jones (NC)	Mink	Sisisky
Kanjorski	Moakley	Skaggs
Kaptur	Mollohan	Skeen
Kastenmeier	Montgomery	Skelton
Kennedy	Morella	Slattery
Kennelly	Morrison (CT)	Slaughter (NY)
Kildee	Morrison (WA)	Smith (FL)
Kleczka	Mrazek	Smith (IA)
Kostmayer	Murtha	Smith (NE)
LaFalce	Nagle	Smith (VT)
Lancaster	Neal (MA)	Solarz
Lantos	Neal (NC)	Spratt
Leach (IA)	Nelson	Stenholm
Leath (TX)	Oakar	Studds
Lehman (CA)	Oberstar	Swift
Lehman (FL)	Obey	Synar
Lent	Olin	Tallon
Levin (MI)	Ortiz	Tanner
Levine (CA)	Owens (UT)	Thomas (GA)
Lewis (CA)	Panetta	Torres
Lewis (GA)	Parker	Traxler
Lipinski	Payne (VA)	Udall
Livingston	Pease	Valentine
Lloyd	Pelosi	Vento
Lowery (CA)	Penny	Visclosky
Lowey (NY)	Pickle	Volkmer
Luken, Thomas	Poshard	Walgren
Madigan	Price	Watkins
Manton	Ray	Waxman
Markey	Rhodes	Wheat
Matsui	Richardson	Whittaker
Mavroules	Ridge	Whitten
Mazzoli	Ritter	Wilson
McCloskey	Roberts	Wise
McCrery	Rose	Wolf
McCurdy	Rostenkowski	Wolpe
McDade	Rowland (GA)	Wyden
McDermott	Russo	Wylie

NAYS—200

Alexander	Dreier	Inhofe
Annunzio	Duncan	Jacobs
Applegate	Dwyer	James
Archer	Dymally	Jontz
Armey	Dyson	Kasich
Baker	Early	Kolbe
Ballenger	Edwards (OK)	Kolter
Barnard	Emerson	Kyl
Bartlett	English	Lagomarsino
Barton	Erdreich	Laughlin
Bates	Fawell	Lewis (FL)
Bentley	Fields	Lightfoot
Bereuter	Flake	Long
Bevill	Gallegly	Machtley
Bilbray	Gallo	Marlenee
Bilirakis	Gaydos	Martin (IL)
Bliley	Gekas	Martin (NY)
Brennan	Geren	Martinez
Broomfield	Gillmor	McCandless
Browder	Gingrich	McCollum
Brown (CO)	Goss	McEwen
Bruce	Gradison	Miller (OH)
Bryant	Grant	Molinari
Bunning	Guarini	Moody
Burton	Gunderson	Moorhead
Callahan	Hall (TX)	Murphy
Campbell (CA)	Hammerschmidt	Myers
Campbell (CO)	Hancock	Natcher
Carr	Hansen	Nielson
Clay	Hastert	Nowak
Coble	Hayes (IL)	Owens (NY)
Collins	Hefley	Oxley
Combest	Henry	Packard
Condit	Herger	Pallone
Costello	Hertel	Parris
Cox	Hiler	Pashayan
Craig	Hoagland	Patterson
Crane	Holloway	Paxon
Dannemeyer	Hopkins	Payne (NJ)
DeLay	Horton	Perkins
Dellums	Hubbard	Petri
Dickinson	Huckaby	Pickett
Dorgan (ND)	Hughes	Porter
Dornan (CA)	Hunter	Pursell
Douglas	Hyde	Quillen
Rahall	Sensenbrenner	Sundquist
Rangel	Sharp	Tauke
Ravenel	Shumway	Tauzin
Regula	Shuster	Taylor
Rinaldo	Slaughter (VA)	Thomas (CA)
Robinson	Smith (NJ)	Thomas (WY)
Roe	Smith (TX)	Torricelli
Rogers	Smith, Denny (OR)	Towns
Rohrabacher	Smith, Robert (NH)	Traficant
Ros-Lehtinen	Smith, Robert (OR)	Unsoeld
Roth	Snowe	Upton
Roukema	Solomon	Vucanovich
Rowland (CT)	Spence	Walker
Roybal	Staggers	Walsh
Saiki	Stallings	Washington
Sangmeister	Stangeland	Weber
Sarpalius	Stark	Weiss
Savage	Stearns	Weldon
Saxton	Stokes	Williams
Schaefer	Stump	Yatron
Schneider		Young (AK)
Schuette		Young (FL)
Schulze		

NOT VOTING—5

Coleman (TX)	McGrath	Yates
Hayes (LA)	Vander Jagt	

□ 0657

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 5835, OMNIBUS BUDGET RECONCILIATION ACT OF 1990

Mr. PANETTA. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, the Clerk be authorized to make such technical and conforming corrections as may be necessary on the bill, H.R. 5835, the Omnibus Budget Reconciliation Act of 1990.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

GENERAL LEAVE

Mr. PANETTA. Mr. Speaker, I ask unanimous consent that all Members may have 7 calendar days within which to revise and extend their remarks, and include therein extraneous material, on the conference report on H.R. 5835, just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

HOUR OF MEETING ON SATURDAY, OCTOBER 27, 1990

Mr. PANETTA. Mr. Speaker, I ask unanimous consent that when the House adjourns this morning, Saturday, October 27, 1990, it adjourns to meet at 3 p.m. on today, Saturday, October 27, 1990.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Pursuant to clause 5, rule I, the Chair will postpone the vote on the Senate bill, S. 845, until the next legislative day.

□ 0700

LEGISLATIVE PROGRAM

(Mr. GEPHARDT asked and was given permission to address the House for 1 minute.)

Mr. GEPHARDT. Mr. Speaker, I will just take a moment to inform Members that we will meet at 3 on tomorrow. We have an immigration bill, we have a foreign operations bill, an interior bill, and a legislative bill on appropriations, and we have suspensions. Then we obviously have to wait for the other body to finish with this bill and to finish its business. Again we will meet at 3 p.m. today. I did not say that correctly. It is today.

Mr. Speaker, the finish time is a little hard to predict. It could be in the evening. We hope that it would not be very late, but there is no way of knowing.

If Members are intent on not missing any votes, then they would have to be prepared to be here through the evening.

Mr. FRANK. Mr. Speaker, would the gentleman yield?

Mr. GEPHARDT. I yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman for yielding.

Mr. Speaker, I would inquire of the majority leader: Just to make sure, the immigration bill that is coming up will have an amendment to remove the most controversial part, so the rest of it will be before us; is that what we are going to be doing?

Mr. GEPHARDT. The gentleman is correct.

CONFERENCE REPORT ON S. 1630, CLEAN AIR ACT AMENDMENTS OF 1990

Mr. DINGELL submitted the following conference report and statement of the Senate bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-952)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS

Sec. 101. General planning requirements.
Sec. 102. General provisions for nonattainment areas.
Sec. 103. Additional provisions for ozone nonattainment areas.
Sec. 104. Additional provisions for carbon monoxide nonattainment areas.
Sec. 105. Additional provisions for particulate matter (PM-10) nonattainment areas.
Sec. 106. Additional provisions for areas designated nonattainment for sulfur oxides, nitrogen dioxide, and lead.
Sec. 107. Provisions related to Indian tribes.
Sec. 108. Miscellaneous provisions.
Sec. 109. Interstate pollution.
Sec. 110. Conforming amendments.
Sec. 111. Transportation system impacts on clean air.

SEC. 101. GENERAL PLANNING REQUIREMENTS.

(a) AREA DESIGNATIONS.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended to read as follows:

"(d) DESIGNATIONS.—

"(1) DESIGNATIONS GENERALLY.—

"(A) SUBMISSION BY GOVERNORS OF INITIAL DESIGNATIONS FOLLOWING PROMULGATION OF NEW OR REVISED STANDARDS.—By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 109, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as—

"(i) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,

"(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

"(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised national ambient air quality standard.

"(B) PROMULGATION BY EPA OF DESIGNATIONS.—(i) Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

"(ii) In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator intends to make a modification, the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days before the date the Administrator promulgates the designation, including any modification thereto. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

"(iii) If the Governor of any State, on the Governor's own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3) (relating to redesignation).

"(iv) A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

"(C) DESIGNATIONS BY OPERATION OF LAW.—(i) Any area designated with respect to any air pollutant under the provisions of paragraph (1) (A), (B), or (C) of this subsection (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

"(ii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(E) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) is designated by operation of law, as an attainment area for such pollutant within the meaning of subparagraph (A)(ii).

"(iii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(D) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) is designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of subparagraph (A)(iii).

"(2) PUBLICATION OF DESIGNATIONS AND REDESIGNATIONS.—(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), or announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

"(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of sections 553 through 557 of title 5 of the United States Code (relating to notice and comment), except nothing herein shall be construed as precluding such public notice and comment whenever possible.

"(3) REDESIGNATION.—(A) Subject to the requirements of subparagraph (E), and on the basis of air quality data, planning and control considerations, or any other air quality-

related considerations the Administrator deems appropriate, the Administrator may at any time notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.

"(B) No later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

"(C) No later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator may deem necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that the phrase '60 days' shall be substituted for the phrase '120 days' in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area (or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.

"(D) The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

"(E) The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless—

"(i) the Administrator determines that the area has attained the national ambient air quality standard;

"(ii) the Administrator has fully approved the applicable implementation plan for the area under section 110(k);

"(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

"(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

"(v) the State containing such area has met all requirements applicable to the area under section 110 and part D.

"(F) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

"(4) NONATTAINMENT DESIGNATIONS FOR OZONE, CARBON MONOXIDE AND PARTICULATE MATTER (PM-10).—

"(A) OZONE AND CARBON MONOXIDE.—(i) Within 120 days after the date of the enactment of the Clean Air Act Amendments of 1990, each Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates (as the case may be), all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

"(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i) of this subparagraph, the Administrator shall promulgate such designations, making such modifications as the Administrator may deem necessary, in the same manner, and under the same procedure, as is applicable under clause (ii) of paragraph (1)(B), except that the phrase '60 days' shall be substituted for the phrase '120 days' in that clause. If the Governor does not submit, in accordance with clause (i) of this subparagraph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator deems appropriate.

"(iii) No nonattainment area may be redesignated as an attainment area under this subparagraph.

"(iv) Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under part D of this title as a Serious, Severe, or Extreme Area, the boundaries of such area are hereby revised (on the date 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within such 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). Whenever a Governor has submitted such a notice to the Administrator, such boundary revision shall occur on the later of the date 8 months after such classification or 14 months after the date of the enactment of the Clean Air Act Amendments of 1990 unless the Governor makes the finding referred to in clause (v), and the Administrator concurs in such finding, within such period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision required to be submitted after the date of the enactment of the Clean Air Act Amendments of 1990.

"(v) Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.

"(B) PM-10 DESIGNATIONS.—By operation of law, until redesignation by the Administrator pursuant to paragraph (3)—

"(i) each area identified in 52 Federal Register 29383 (Aug. 7, 1987) as a Group I area (except to the extent that such identification was modified by the Administrator before the date of the enactment of the Clean Air Act Amendments of 1990) is designated nonattainment for PM-10;

"(ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM-10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM-10; and

"(iii) each area not described in clause (i) or (ii) is hereby designated unclassifiable for PM-10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 163(b), until the Administrator determines that such designation is no longer necessary for that purpose.

"(5) DESIGNATIONS FOR LEAD.—The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of the date of the enactment of the Clean Air Act Amendments of 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase '2 years from the date of promulgation of the new or revised national ambient air quality standard' shall be replaced by the phrase '1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead'.".

(b) GENERAL REQUIREMENTS FOR IMPLEMENTATION PLANS.—Section 110(a)(2) of the Clean Air Act (42 U.S.C. 7410(a)(2)) is amended to read as follows:

"(2) Each implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

"(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

"(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

"(i) monitor, compile, and analyze data on ambient air quality, and

"(ii) upon request, make such data available to the Administrator;

"(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by

the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

"(D) contain adequate provisions—

"(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

"(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

"(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

"(ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);

"(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

"(F) require, as may be prescribed by the Administrator—

"(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

"(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

"(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;

"(G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;

"(H) provide for revision of such plan—

"(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

"(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;

"(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

"(J) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

"(K) provide for—

"(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

"(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

"(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover—

"(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

"(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V; and

"(M) provide for consultation and participation by local political subdivisions affected by the plan.".

(c) ADDITIONAL PROVISIONS.—Section 110 of the Clean Air Act (42 U.S.C. 7410) is amended by adding the following at the end thereof:

"(k) ENVIRONMENTAL PROTECTION AGENCY ACTION ON PLAN SUBMISSIONS.—

"(1) COMPLETENESS OF PLAN SUBMISSIONS.—

"(A) COMPLETENESS CRITERIA.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this Act.

"(B) COMPLETENESS FINDING.—Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

"(C) EFFECT OF FINDING OF INCOMPLETENESS.—Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

"(2) DEADLINE FOR ACTION.—Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

"(3) FULL AND PARTIAL APPROVAL AND DISAPPROVAL.—In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this Act. If a portion of the plan revision meets all the applicable requirements of this Act, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this Act until the Administrator approves the entire plan revision as complying with the applicable requirements of this Act.

"(4) CONDITIONAL APPROVAL.—The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

"(5) CALLS FOR PLAN REVISIONS.—Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 176A or section 184, or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this Act to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

"(6) CORRECTIONS.—Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

"(l) PLAN REVISIONS.—Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

"(m) SANCTIONS.—The Administrator may apply any of the sanctions listed in section 179(b) at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 179(a) in relation to any plan or plan item (as that term is defined by the Administrator) required under this Act, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this Act relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 179(a) to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 179(a), such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

"(n) SAVINGS CLAUSES.—

"(1) EXISTING PLAN PROVISIONS.—Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this Act.

"(2) ATTAINMENT DATES.—For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

"(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on the date of the enactment of the Clean Air Act Amendments of 1990, or

"(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of the date of the enactment of the Clean Air Act Amendments of 1990 or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

"(3) RETENTION OF CONSTRUCTION MORATORIUM IN CERTAIN AREAS.—In the case of an area to which, immediately before the date of the enactment of the Clean Air Act Amendments of 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 172(b)(6) (relating to establishment of a permit program) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1990) or 172(a)(1) (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 172(c)(5) (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.".

(d) CONFORMING AMENDMENTS.—Section 110 of the Clean Air Act (42 U.S.C. 7410) is amended as follows:

(1) Strike out subparagraph (A) and subparagraph (D) of section 110(a)(3).

(2) Strike out paragraph (4) of section 110(a).

(3) In subsection (c)—

(A) strike out subparagraph (A) of paragraph (2);

(B) strike out paragraph (2)(C);

(C) strike out paragraph (4); and

(D) in paragraph (5)(B) strike out "(including the written evidence required by part D),".

(4) Strike subsection (d) and in section 302 (42 U.S.C. 7602) add the following new subsection after subsection (p):

"(q) For purposes of this Act, the term 'applicable implementation plan' means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of this Act.".

(5) strike out subsection (e).

(6) In subsection (g), strike "the required four month period" and insert "12 months of submission of the proposed plan revision".

(7) In subsection (h)—

(A) strike "one year after the date of enactment of the Clean Air Act Amendments of 1977 and annually thereafter" and insert "5 years after the date of the enactment of the Clean Air Act Amendments of 1990, and every 3 years thereafter"; and

(B) strike the second sentence of paragraph (1).

(8) In subsection (a)(1) strike "nine months" each place it appears and insert "3 years (or such shorter period as the Administrator may prescribe)".

(e) FEDERAL FACILITIES.—The second sentence of section 118(a) of the Clean Air Act (42 U.S.C. 7418(a)) is amended to read as follows: "The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner.".

(f) CONFORMITY REQUIREMENTS.—Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) is amended by striking "(1)", "(2)", "(3)" and "(4)" where they appear, by inserting "(1)" after "(c)", striking "a plan" each place it appears and inserting in lieu thereof "an implementation plan" each place it appears and by adding the following at the end thereof: "Conformity to an implementation plan means—

"(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

"(B) that such activities will not—

"(i) cause or contribute to any new violation of any standard in any area;

"(ii) increase the frequency or severity of any existing violation of any standard in any area; or

"(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

"(2) Any transportation plan or program developed pursuant to title 23, United States Code, or the Urban Mass Transportation Act shall implement the transportation provisions of any applicable implementation plan approved under this Act applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this Act. In particular—

"(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23, United States Code, or the Urban Mass Transportation Act, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

"(B) no metropolitan planning organization or other recipient of funds under title 23, United States Code, or the Urban Mass Transportation Act shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

"(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23, United States Code, or the Urban Mass Transportation Act, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—

"(i) such a project comes from a conforming plan and program;

"(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

"(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

"(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when consid-

ered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

"(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) is approved, conformity of such plans, programs, and projects will be demonstrated if—

"(A) the transportation plans and programs—

"(i) are consistent with the most recent estimates of mobile source emissions;

"(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

"(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7); and

"(B) the transportation projects—

"(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, from a transportation program found to conform within 3 years prior to such date of enactment; and

"(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

"(4)(A) No later than one year after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1). No later than one year after such date of enactment, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects. A suit may be brought against the Administrator and the Secretary of Transportation under section 304 to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

"(B) The procedures and criteria shall, at a minimum—

"(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

"(ii) address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and

"(iii) address how conformity determinations will be made with respect to maintenance plans.

"(C) Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of such date of enactment, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection.".

SEC. 102. GENERAL PROVISIONS FOR NONATTAINMENT AREAS.

(a) DEFINITIONS.—(1) Part D of title I of the Clean Air Act is amended by inserting immediately after "PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS" the following:

"Subpart 1—Nonattainment Areas in General

"Sec. 171. Definitions.
"Sec. 172. Nonattainment plan provisions.
"Sec. 173. Permit requirements.
"Sec. 174. Planning procedures.
"Sec. 175. Environmental Protection Agency grants.
"Sec. 176. Limitations on certain Federal assistance.
"Sec. 177. New motor vehicle emission standards in nonattainment areas.
"Sec. 178. Guidance documents.".

(2) Section 171 of the Clean Air Act (42 U.S.C. 7501) is amended as follows:

(A) In the introductory language, strike out "and section 110(a)(2)(I)".

(B) Amend paragraph (1) to read as follows:

"(1) REASONABLE FURTHER PROGRESS.—The term 'reasonable further progress' means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.".

(C) Amend paragraph (2) to read as follows:

"(2) NONATTAINMENT AREA.—The term 'nonattainment area' means, for any air pollutant, an area which is designated 'nonattainment' with respect to that pollutant within the meaning of section 107(d).".

(b) NONATTAINMENT PLAN PROVISIONS IN GENERAL.—Section 172 (42 U.S.C. 7502) of the Clean Air Act is amended to read as follows:

"SEC. 172. NONATTAINMENT PLAN PROVISIONS IN GENERAL.

"(a) CLASSIFICATIONS AND ATTAINMENT DATES.—

"(1) CLASSIFICATIONS.—(A) On or after the date the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 107(d) with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on the date of the enactment of the Clean Air Act Amendments of 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

"(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of title 5 of the United States Code (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (l) of section 110 (concerning action on plan submissions) or section 179 (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

"(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

"(2) ATTAINMENT DATES FOR NONATTAINMENT AREAS.—(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 107(d), except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

"(B) The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 107(d).

"(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the 'Extension Year') the attainment date determined by the Administrator under subparagraph (A) or (B) if—

"(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

"(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

"(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

"(b) SCHEDULE FOR PLAN SUBMISSIONS.—At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 107(d), the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) and section 110(a)(2). Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) and section 110(a)(2).

"(c) NONATTAINMENT PLAN PROVISIONS.—The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

"(1) IN GENERAL.—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

"(2) RFP.—Such plan provisions shall require reasonable further progress.

"(3) INVENTORY.—Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

"(4) IDENTIFICATION AND QUANTIFICATION.—Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 173(a)(1)(B), from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

"(5) PERMITS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES.—Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173.

"(6) OTHER MEASURES.—Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

"(7) COMPLIANCE WITH SECTION 110(A)(2).—Such plan provisions shall also meet the applicable provisions of section 110(a)(2).

"(8) EQUIVALENT TECHNIQUES.—Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

"(9) CONTINGENCY MEASURES.—Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

"(d) PLAN REVISIONS REQUIRED IN RESPONSE TO FINDING OF PLAN INADEQUACY.—Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 110(k)(5) (relating to calls for plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 110 and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this Act, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before the date of the enactment of the Clean Air Act Amendments of 1990.

"(e) FUTURE MODIFICATION OF STANDARD.—If the Administrator relaxes a national primary ambient air quality standard after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.".

(c) NEW SOURCE PERMIT REQUIREMENTS.—Section 173 of the Clean Air Act (42 U.S.C. 7503) is amended as follows:

(1) Strike the center heading and "SEC. 173." and insert:

"SEC. 173. PERMIT REQUIREMENTS.".

(2) Insert "(a) IN GENERAL.—" before the first sentence.

(3) Insert the following after "(1)": "in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 110 and this part,".

(4) Make the following amendments in subparagraph (A) of paragraph (1):

(A) Insert "sufficient offsetting emissions reductions have been obtained, such that" immediately after the comma following "commence operation".

(B) Strike "allowed under the applicable implementation plan" and insert "(as determined in accordance with the regulations under this paragraph)".

(5) Make the following amendments in subparagraph (B) of paragraph (1):

(A) Insert "in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted," at the beginning thereof.

(B) Strike "'172(b)" and insert "172(c)".

(6) Make the following amendments in paragraph (4):

(A) Insert "the Administrator has not determined that" after "(4)".

(B) Strike "being carried out" and insert "not being adequately implemented".

(C) Replace the period at the end thereof with "; and".

(7) Add the following new paragraph after paragraph (4):

"(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.".

(8) Strike "(1)(A) shall be legally binding" in the concluding sentence of subsection (a), as redesignated by this subsection and insert "(1) shall be federally enforceable".

(9) Add a new subsection (b) to read as follows:

"(b) PROHIBITION ON USE OF OLD GROWTH ALLOWANCES.—Any growth allowance included in an applicable implementation plan to meet the requirements of section 172(b)(5) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) shall not be valid for use in any area that received or receives a notice under section 110(a)(2)(H)(ii) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) or under section 110(k)(1) that its applicable implementation plan containing such allowance is substantially inadequate.".

(10) Add the following new subsections at the end thereof:

"(c) OFFSETS.—(1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

"(2) Emission reductions otherwise required by this Act shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this Act shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

"(d) CONTROL TECHNOLOGY INFORMATION.—The State shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other States and to the general public.

"(e) ROCKET ENGINES OR MOTORS.—The permitting authority of a State shall allow a source to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

"(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on the date of enactment of this subsection.

"(2) The source demonstrates to the satisfaction of the permitting authority of the State that it has used all reasonable means to obtain and utilize offsets, as determined

on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

"(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration or other appropriate Federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

"(4) The source will comply with an alternative measure, imposed by the permitting authority, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the permitting authority may impose an emissions fee to be paid to such authority of a State which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous 3 years. The permitting authority shall utilize the fees in a manner that maximizes the emissions reductions in that area.".

(d) PLANNING PROCEDURES.—Section 174 (42 U.S.C. 7504) of the Clean Air Act is amended to read as follows:

"SEC. 174. PLANNING PROCEDURES.

"(a) IN GENERAL.—For any ozone, carbon monoxide, or PM-10 nonattainment area, the State containing such area and elected officials of affected local governments shall, before the date required for submittal of the inventory described under sections 182(a)(1) and 187(a)(1), jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990, or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such procedures the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. The implementation plan required by this part shall be prepared by an organization certified by the State, in consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection. Such organization shall include elected officials of local governments in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, the organization responsible for the air quality maintenance planning process under regulations implementing this Act, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part. Such organization may be one that carried out these functions before the date of the enactment of the Clean Air Act Amendments of 1990.

"(b) COORDINATION.—The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 108(e) shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title 23, United States Code, and such planning processes shall take into account the requirements of this part.

"(c) JOINT PLANNING.—In the case of a nonattainment area that is included within more than one State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.".

(e) MAINTENANCE PLANS.—After section 175 of the Clean Air Act insert:

"SEC. 175A. MAINTENANCE PLANS.

"(a) PLAN REVISION.—Each State which submits a request under section 107(d) for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance.

"(b) SUBSEQUENT PLAN REVISIONS.—8 years after redesignation of any area as an attainment area under section 107(d), the State shall submit to the Administrator an additional revision of the applicable State implementation plan for maintaining the national primary ambient air quality standard for 10 years after the expiration of the 10-year period referred to in subsection (a).

"(c) NONATTAINMENT REQUIREMENTS APPLICABLE PENDING PLAN APPROVAL.—Until such plan revision is approved and an area is redesignated as attainment for any area designated as a nonattainment area, the requirements of this part shall continue in force and effect with respect to such area.

"(d) CONTINGENCY PROVISIONS.—Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the national ambient air quality standard concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator's discretion, requires the State to submit a revised State implementation plan.".

(f) INTERSTATE TRANSPORT PROVISIONS.—

(1) INTERSTATE TRANSPORT COMMISSIONS.—After section 176 of the Clean Air Act (42 U.S.C. 7506) insert:

"SEC. 176A. INTERSTATE TRANSPORT COMMISSIONS.

"(a) AUTHORITY TO ESTABLISH INTERSTATE TRANSPORT REGIONS.—Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b), may—

"(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

"(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

"(b) TRANSPORT COMMISSIONS.—

"(1) ESTABLISHMENT.—Whenever the Administrator establishes a transport region under subsection (a), the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

"(A) The Governor of each State in the region or the designee of each such Governor.

"(B) The Administrator or the Administrator's designee.

"(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned.

"(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

"(2) RECOMMENDATIONS.—The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 110(a)(2)(D). Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

"(c) COMMISSION REQUESTS.—A transport commission established under subsection (b) may request the Administrator to issue a finding under section 110(k)(5) that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 110(a)(2)(D). The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 110(k)(5) at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission.

Approval or disapproval of such a request shall constitute final agency action within the meaning of section 307(b).".

(2) AMENDMENTS CONFORMING TO TRANSPORT PROVISIONS.—Section 106 of the Clean Air Act (42 U.S.C. 7406) is amended as follows:

(A) Insert "or of implementing section 176A (relating to control of interstate air pollution) or section 184 (relating to control of interstate ozone pollution)" immediately following "section 107".

(B) Insert "any commission established under section 176A (relating to control of interstate air pollution) or section 184 (relating to control of interstate ozone pollution) or" immediately following "program costs of".

(C) Insert "or such commission" in the last sentence immediately following "such agency".

(D) Insert "or commission" at the end thereof, immediately before the period.

(g) SANCTIONS.—After section 178 of the Clean Air Act (42 U.S.C. 7508) insert:

"SEC. 179. SANCTIONS AND CONSEQUENCES OF FAILURE TO ATTAIN.

"(a) STATE FAILURE.—For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 110(k)(5)), if the Administrator—

"(1) finds that a State has failed, for an area designated nonattainment under section 107(d), to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this Act applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 110(k),

"(2) disapproves a submission under section 110(k), for an area designated nonattainment under section 107, based on the submission's failure to meet one or more of the elements required by the provisions of this Act applicable to such an area,

"(3)(A) determines that a State has failed to make any submission as may be required under this Act, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this Act, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 110(k)(1)(A), or

"(B) disapproves in whole or in part a submission described under subparagraph (A), or

"(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 105.

"(b) SANCTIONS.—The sanctions available to the Administrator as provided in subsection (a) are as follows:

"(1) HIGHWAY SANCTIONS.—(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under title 23, United States Code, other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

"(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following—

"(i) capital programs for public transit;

"(ii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

"(iii) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

"(iv) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

"(v) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

"(vi) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

"(vii) programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

"(viii) such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial, and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

"(2) OFFSETS.—In applying the emissions offset requirements of section 173 to new or modified sources or emissions units for which a permit is required under part D, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

"(c) NOTICE OF FAILURE TO ATTAIN.—(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

"(2) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing such determination and identifying each area that the Administrator has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

"(d) CONSEQUENCES FOR FAILURE TO ATTAIN.—(1) Within 1 year after the Administrator publishes the notice under subsection (c)(2) (relating to notice of failure to attain), each State containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection.

"(2) The revision required under paragraph (1) shall meet the requirements of section 110 and section 172. In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.

"(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of section 172(a)(2), except that in applying such provisions the phrase 'from the date of the notice under section 179(c)(2)' shall be substituted for the phrase 'from the date such area was designated nonattainment under section 107(d)' and for the phrase 'from the date of designation as nonattainment'.".

(h) FEDERAL IMPLEMENTATION PLANS.—Section 110(c)(1) of the Clean Air Act (42 U.S.C. 7410(c)) is amended to read as follows: "(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

"(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under section 110(k)(1)(A), or

"(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.".

SEC. 103. ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS.

Part D of title I of the Clean Air Act is amended by adding the following new subpart at the end thereof:

"Subpart 2—Additional Provisions for Ozone Nonattainment Areas

AREAS

"Sec. 181. Classifications and attainment dates.
"Sec. 182. Plan submissions and requirements.
"Sec. 183. Federal ozone measures.
"Sec. 184. Control of interstate ozone air pollution.
"Sec. 185. Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain.
"Sec. 185A. Transitional areas.
"Sec. 185B. NO_x and VOC study.

"SEC. 181. CLASSIFICATIONS AND ATTAINMENT DATES.

"(a) CLASSIFICATION AND ATTAINMENT DATES FOR 1989 NONATTAINMENT AREAS.—(1) Each area designated nonattainment for ozone pursuant to section 107(d) shall be classified at the time of such designation, under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe

Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before the date of the enactment of the Clean Air Act Amendments of 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1.

"TABLE 1

Area class	Design value[1]	Primary standard attainment date[2]
Marginal	.121 up to .138	3 years after enactment.
Moderate	.138 up to .160	6 years after enactment.
Serious	.160 up to .180	9 years after enactment.
Severe	.180 up to .280	15 years after enactment.
Extreme	.280 and above	20 years after enactment.

[1] The design value is measured in parts per million (ppm).
[2] The primary standard attainment date is measured from the date of the enactment of the Clean Air Amendments of 1990.

"(2) Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after the date of the enactment of the Clean Air Amendments of 1990.

"(3) At the time of publication of the notice under section 107(d)(4) (relating to area designations) for each ozone nonattainment area, the Administrator shall publish a notice announcing the classification of such ozone nonattainment area. The provisions of section 172(a)(1)(B) (relating to lack of notice and comment and judicial review) shall apply to such classification.

"(4) If an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, by the procedure required under paragraph (3), adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

"(5) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the 'Extension Year') the date specified in table 1 of paragraph (1) of this subsection if—

"(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

"(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

"(b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

"(1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is designated attainment or unclassifiable for ozone under section 107(d)(4), and that is subsequently redesignated to nonattainment for ozone under section 107(d)(3), shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsection (a). Upon its classification, the area shall be subject to the same requirements under section 110, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(3), except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between the date of the enactment of the Clean Air Act Amendments of 1990 and the date the area is classified under this paragraph.

"(2) RECLASSIFICATION UPON FAILURE TO ATTAIN.—(A) Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

"(i) the next higher classification for the area, or

"(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

"(B) The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

"(3) VOLUNTARY RECLASSIFICATION.—The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

"(4) FAILURE OF SEVERE AREAS TO ATTAIN STANDARD.—(A) If any Severe Area fails to achieve the national primary ambient air quality standard for ozone by the applicable attainment date (including any extension thereof), the fee provisions under section 185 shall apply within the area, the percent reduction requirements of section 182(c)(2)(B) and (C) (relating to reasonable further progress demonstration and NO_x control) shall continue to apply to the area, and the State shall demonstrate that such percent reduction has been achieved in each 3-year interval after such failure until the standard is attained. Any failure to make such a demonstration shall be subject to the sanctions provided under this part.

"(B) In addition to the requirements of subparagraph (A), if the ozone design value for a Severe Area referred to in subparagraph (A) is above 0.140 ppm for the year of the applicable attainment date, or if the area has failed to achieve its most recent milestone under section 182(g), the new source review requirements applicable under this subpart in Extreme Areas shall apply in the area and the term 'major source' and 'major stationary source' shall have the same meaning as in Extreme Areas.

"(C) In addition to the requirements of subparagraph (A) for those areas referred to in subparagraph (A) and not covered by subparagraph (B), the provisions referred to in subparagraph (B) shall apply after 3 years from the applicable attainment date unless the area has attained the standard by the end of such 3-year period.

"(D) If, after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator modifies the method of determining compliance with the national primary ambient air quality standard, a design value or other indicator comparable to 0.140 in terms of its relationship to the standard shall be used in lieu of 0.140 for purposes of applying the provisions of subparagraphs (B) and (C).

"(c) REFERENCES TO TERMS.—(1) Any reference in this subpart to a 'Marginal Area', a 'Moderate Area', a 'Serious Area', a 'Severe Area', or an 'Extreme Area' shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

"(2) Any reference in this subpart to 'next higher classification' or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1.

"SEC. 182. PLAN SUBMISSIONS AND REQUIREMENTS.

"(a) MARGINAL AREAS.—Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of the date of the enactment of the Clean Air Act Amendments of 1990.

"(1) INVENTORY.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator.

"(2) CORRECTIONS TO THE STATE IMPLEMENTATION PLAN.—Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

"(A) REASONABLY AVAILABLE CONTROL TECHNOLOGY CORRECTIONS.—For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 181(a), a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 172(b) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990), as interpreted in guidance issued by the Administrator under section 108 before the date of the enactment of the Clean Air Act Amendments of 1990.

"(B) SAVINGS CLAUSE FOR VEHICLE INSPECTION AND MAINTENANCE.—(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 172(b)(11)(B) (as in effect immediately before the date of the enactment of the Clean

Air Act Amendments of 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after the date of the enactment of the Clean Air Act Amendments of 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95-294, 95th Congress, 1st Session, 281-291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 172(b)(11)(B) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) or the program already included in the plan, whichever is more stringent.

"(ii) Within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this Act, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 202(m)(3) (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

"(C) PERMIT PROGRAMS.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision that includes each of the following:

"(i) Provisions to require permits, in accordance with sections 172(c)(5) and 173, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

"(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 172(b)(6) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990), as interpreted in regulations of the Administrator promulgated as of the date of the enactment of the Clean Air Act Amendments of 1990.

"(3) PERIODIC INVENTORY.—

"(A) GENERAL REQUIREMENT.—No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1).

"(B) EMISSIONS STATEMENTS.—(i) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

"(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

"(4) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal area. Section 172(c)(9) (relating to contingency measures) shall not apply to Marginal Areas.

"(b) MODERATE AREAS.—Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

"(1) PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS.—

"(A) GENERAL RULE.—(i) By no later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after the year in which the Clean Air Act Amendments of 1990 are enacted. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this Act. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

"(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

"(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) in the case of Extreme Areas (with the exception that, in applying such provisions, the terms 'major source' and 'major stationary source' shall include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

"(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

"(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability. To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

"(B) BASELINE EMISSIONS.—For purposes of subparagraph (A), the term 'baseline emissions' means the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year of the enactment of the Clean Air Act Amendments of 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

"(C) GENERAL RULE FOR CREDITABILITY OF REDUCTIONS.—Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under title V.

"(D) LIMITS ON CREDITABILITY OF REDUCTIONS.—Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

"(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

"(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by the date of the enactment of the Clean Air Act Amendments of 1990 or required to be promulgated under section 211(h).

"(iii) Measures required under subsection (a)(2)(A) (concerning corrections to implementation plans prescribed under guidance by the Administrator).

"(iv) Measures required under subsection (a)(2)(B) to be submitted immediately after the date of the enactment of the Clean Air Act Amendments of 1990 (concerning corrections to motor vehicle inspection and maintenance programs).

"(2) REASONABLY AVAILABLE CONTROL TECHNOLOGY.—The State shall submit a revision

to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 172(c)(1) with respect to each of the following:

"(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of the enactment of the Clean Air Act Amendments of 1990 and the date of attainment.

"(B) All VOC sources in the area covered by any CTG issued before the date of the enactment of the Clean Air Act Amendments of 1990.

"(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

"(3) GASOLINE VAPOR RECOVERY.—

"(A) GENERAL RULE.—Not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 325).

"(B) EFFECTIVE DATE.—The date required under subparagraph (A) shall be—

"(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after the date of the enactment of the Clean Air Act Amendments of 1990;

"(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

"(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

"(C) REFERENCE TO TERMS.—For purposes of this paragraph, any reference to the term 'adoption date' shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

"(4) MOTOR VEHICLE INSPECTION AND MAINTENANCE.—For all Moderate Areas, the State shall submit, immediately after the date of the enactment of the Clean Air Act Amendments of 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) (without regard to whether or not the area was required by section 172(b)(11)(B) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) to have included a specific schedule for implementation of such a program).

"(5) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.15 to 1.

"(c) SERIOUS AREAS.—Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms 'major source' and 'major stationary source' include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

"(1) ENHANCED MONITORING.—In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

"(2) ATTAINMENT AND REASONABLE FURTHER PROGRESS DEMONSTRATIONS.—Within 4 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

"(A) ATTAINMENT DEMONSTRATION.—A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

"(B) REASONABLE FURTHER PROGRESS DEMONSTRATION.—A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) equal to the following amount averaged over each consecutive 3-year period beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, until the attainment date:

"(i) at least 3 percent of baseline emissions each year; or

"(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under section 182(g) and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accordance with subsection (b)(1)(C) and (D) (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1), that exceed the 15-percent amount of reductions required under subsection (b)(1)(A).

"(C) NO_x CONTROL.—The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1) (C) and (D)), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall issue guidance concerning the conditions under which NO_x control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

"(3) ENHANCED VEHICLE INSPECTION AND MAINTENANCE PROGRAM.—

"(A) REQUIREMENT FOR SUBMISSION.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by the Bureau of the Census, with a 1990 population of 200,000 or more.

"(B) EFFECTIVE DATE OF STATE PROGRAMS; GUIDANCE.—The State program required under subparagraph (A) shall take effect no later than 2 years from the date of the enactment of the Clean Air Act Amendments of 1990, and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include—

"(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 202; and

"(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

"(C) STATE PROGRAM.—The State program required under subparagraph (A) shall include, at a minimum, each of the following elements—

"(i) Computerized emission analyzers, including on-road testing devices.

"(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 207(b) unless a warranty remedy has been denied in writing, or for tampering-related repairs.

"(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in title V).

"(iv) Enforcement through denial of vehicle registration (except for any program in operation before the date of the enactment of the Clean Air Act Amendments of 1990 whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

"(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this Act, will result in emission reductions which equal or exceed the reductions which can be obtained through such annual inspections.

"(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

"(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

"(4) CLEAN-FUEL VEHICLE PROGRAMS.—(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of the date of the enactment of the Clean Air Act Amendments of 1990, a revision to the applicable implementation plan for each area described under part C of title II to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of title II, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of title II) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of title II.

"(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of title II, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of title II, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this Act for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall approve or disapprove any such revision within 30 months of the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 of the United States Code (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

"(C) If the Administrator determines, under section 179, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 179, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of title II.

"(5) TRANSPORTATION CONTROL.—(A) Beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 108(f) that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(e) and with the requirements of section 174(b) and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

"(6) DE MINIMIS RULE.—The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this Act unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

"(7) SPECIAL RULE FOR MODIFICATIONS OF SOURCES EMITTING LESS THAN 100 TONS.—In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 111(a)(4)) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a), except that such increase shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 173(a)(2) in the case of any such modification, the best available control technology (BACT), as defined in section 169, shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

"(8) SPECIAL RULE FOR MODIFICATIONS OF SOURCES EMITTING 100 TONS OR MORE.—In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 111(a)(4)) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a), except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 173(a)(2) (concerning the lowest achievable emission rate (LAER)) shall not apply.

"(9) CONTINGENCY PROVISIONS.—In addition to the contingency provisions required under section 172(c)(9), the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

"(10) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to 'attainment date' in subsection (b), which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

"(d) SEVERE AREAS.—Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) (relating to Serious Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms 'major source' and 'major stationary source' include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

"(1) VEHICLE MILES TRAVELED.—(A) Within 2 years after the date of enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 108(f), and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

"(B) Within 2 years after the date of enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(f) and shall, at a minimum, require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date.

"(2) OFFSET REQUIREMENT.—For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 169(3)) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

"(3) ENFORCEMENT UNDER SECTION 185.—By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 185.

Any reference to the term 'attainment date' in subsection (b) or (c), which is incorporated by reference into this subsection (d), shall refer to the attainment date for Severe Areas.

"(e) EXTREME AREAS.—Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. The provisions of clause (ii) of subsection (c)(2)(B) (relating to reductions of less than 3 percent), the provisions of paragraphs (6), (7) and (8) of subsection (c) (relating to de minimus rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) (relating to reductions of less than 15 percent) shall not apply in the case of an Extreme Area. For any Extreme Area, the terms 'major source' and 'major stationary source' includes (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

"(1) OFFSET REQUIREMENT.—For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 169(3)) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

"(2) MODIFICATIONS—Any change (as described in section 111(a)(4)) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 172(c)(5) and section 173(a), except that for purposes of complying with the offset requirement pursuant to section 173(a)(1), any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this Act.

"(3) USE OF CLEAN FUELS OR ADVANCED CONTROL TECHNOLOGY.—For Extreme Areas, a plan revision shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990 to require, effective 8 years after such date, that each new, modified, and existing electric utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen—

"(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

"(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term 'primary fuel' means the fuel which is used 90 percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978).

"(4) TRAFFIC CONTROL MEASURES DURING HEAVY TRAFFIC HOURS.—For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

"(5) NEW TECHNOLOGIES.—The Administrator may, in accordance with section 110, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that—

"(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after the date of the enactment of the Clean Air Act Amendments of 1990; and

"(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 110. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2), and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2).

Any reference to the term 'attainment date' in subsection (b), (c), or (d) which is incorporated by reference into this subsection,

shall refer to the attainment date for Extreme Areas.

"(f) NO_x REQUIREMENTS.—(1) The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for—

"(A) nonattainment areas not within an ozone transport region under section 184 if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

"(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under section 185B.

"(2)(A) If the Administrator determines that excess reductions in emissions of NOx would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

"(B) For purposes of this paragraph, excess reductions in emissions of NOx are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NOx are, for—

"(i) nonattainment areas not within an ozone transport region under section 184, emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

"(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

"(3) At any time after the final report under section 185B is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 184. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

"(g) MILESTONES.—

"(1) REDUCTIONS IN EMISSIONS.—6 years after the date of the enactment of the Clean Air Amendments of 1990 and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) and the corresponding requirements of subsections (c)(2) (B) and (C), (d), and (e). Such reduction shall be referred to in this section as an applicable milestone.

"(2) COMPLIANCE DEMONSTRATION.—For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

"(3) SERIOUS AND SEVERE AREAS; STATE ELECTION.—If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination—

"(A) to have the area reclassified to the next higher classification,

"(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

"(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90 days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6-month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

"(4) ECONOMIC INCENTIVE PROGRAM.—(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f).

"(B) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

"(i) Providing incentives for achieving emission reductions.

"(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

"(iii) Funding the administrative costs of State programs under this Act. Not more than 50 percent of such revenues may be used for purposes of this clause.

"(5) EXTREME AREAS.—If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

"(h) RURAL TRANSPORT AREAS.—(1) Notwithstanding any other provision of section 181 or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

"(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

"(i) RECLASSIFIED AREAS.—Each State containing an ozone nonattainment area reclassified under section 181(b)(2) shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

"(j) MULTI-STATE OZONE NONATTAINMENT AREAS.—

"(1) COORDINATION AMONG STATES.—Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in

this section referred to as a 'multi-State ozone nonattainment area') shall—

"(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

"(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

"(2) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under section 182 (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 179 (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

"SEC. 183. FEDERAL OZONE MEASURES.

"(a) CONTROL TECHNIQUES GUIDELINES FOR VOC SOURCES.—Within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall issue control techniques guidelines, in accordance with section 108, for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of such date of enactment, not including the categories referred to in paragraphs (3) and (4) of subsection (b) of this section. The Administrator may issue such additional control techniques guidelines as the Administrator deems necessary.

"(b) EXISTING AND NEW CTGS.—(1) Within 36 months after the date of the enactment of the Clean Air Act Amendments of 1990, and periodically thereafter, the Administrator shall review and, if necessary, update control technique guidance issued under section 108 before the date of the enactment of the Clean Air Act Amendments of 1990.

"(2) In issuing the guidelines the Administrator shall give priority to those categories which the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, including hazardous waste treatment, storage, and disposal facilities which are permitted under subtitle C of the Solid Waste Disposal Act. Thereafter the Administrator shall periodically review and, if necessary, revise such guidelines.

"(3) Within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall issue control techniques guidelines in accordance with section 108 to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of such coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. Such control technology guidance shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control technology guidance under this subsection, the Administrator shall consult with the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for such coatings. In evaluating VOC reduction strategies, the guidance shall take into account the applicable requirements of section 112 and the need to protect stratospheric ozone.

"(4) Within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall issue control techniques guidelines in accordance with section 108 to reduce the aggregate emissions of volatile organic compounds and PM-10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM-10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. Such control techniques guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control techniques guidelines under this subsection, the Administrator shall consult with the appropriate Federal agencies.

"(c) ALTERNATIVE CONTROL TECHNIQUES.—Within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall issue technical documents which identify alternative controls for all categories of stationary sources of volatile organic compounds and oxides of nitrogen which emit, or have the potential to emit 25 tons per year or more of such air pollutant. The Administrator shall revise and update such documents as the Administrator determines necessary.

"(d) GUIDANCE FOR EVALUATING COST-EFFECTIVENESS.—Within 1 year after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall provide guidance to the States to be used in evaluating the relative cost-effectiveness of various options for the control of emissions from existing stationary sources of air pollutants which contribute to nonattainment of the national ambient air quality standards for ozone.

"(e) CONTROL OF EMISSIONS FROM CERTAIN SOURCES.—

"(1) DEFINITIONS.—For purposes of this subsection—

"(A) BEST AVAILABLE CONTROLS.—The term 'best available controls' means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

"(B) CONSUMER OR COMMERCIAL PRODUCT.—The term 'consumer or commercial product' means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not include fuels or fuel additives regulated under section 211, or motor vehicles, non-road vehicles, and non-road engines as defined under section 216.

"(C) REGULATED ENTITIES.—The term 'regulated entities' means—

"(i) manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or

"(ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

"(2) STUDY AND REPORT.—

"(A) STUDY.—The Administrator shall conduct a study of the emissions of volatile organic compounds into the ambient air from consumer and commercial products (or any combination thereof) in order to—

"(i) determine their potential to contribute to ozone levels which violate the national ambient air quality standard for ozone; and

"(ii) establish criteria for regulating consumer and commercial products or classes or categories thereof which shall be subject to control under this subsection.

The study shall be completed and a report submitted to Congress not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990.

"(B) CONSIDERATION OF CERTAIN FACTORS.—In establishing the criteria under subparagraph (A)(ii), the Administrator shall take into consideration each of the following:

"(i) The uses, benefits, and commercial demand of consumer and commercial products.

"(ii) The health or safety functions (if any) served by such consumer and commercial products.

"(iii) Those consumer and commercial products which emit highly reactive volatile organic compounds into the ambient air.

"(iv) Those consumer and commercial products which are subject to the most cost-effective controls.

"(v) The availability of alternatives (if any) to such consumer and commercial products which are of comparable costs, considering health, safety, and environmental impacts.

"(3) REGULATIONS TO REQUIRE EMISSION REDUCTIONS.—

"(A) IN GENERAL.—Upon submission of the final report under paragraph (2), the Administrator shall list those categories of consumer or commercial products that the Administrator determines, based on the study, account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer or commercial products in areas that violate the NAAQS for ozone. Credit toward the 80 percent emissions calculation shall be given for emission reductions from consumer or commercial products made after the date of enactment of this

section. At such time, the Administrator shall divide the list into 4 groups establishing priorities for regulation based on the criteria established in paragraph (2). Every 2 years after promulgating such list, the Administrator shall regulate one group of categories until all 4 groups are regulated. The regulations shall require best available controls as defined in this section. Such regulations may exempt health use products for which the Administrator determines there is no suitable substitute. In order to carry out this section, the Administrator may, by regulation, control or prohibit any activity, including the manufacture or introduction into commerce, offering for sale, or sale of any consumer or commercial product which results in emission of volatile organic compounds into the ambient air.

"(B) REGULATED ENTITIES.—Regulations under this subsection may be imposed only with respect to regulated entities.

"(C) USE OF CTGS.—For any consumer or commercial product the Administrator may issue control techniques guidelines under this Act in lieu of regulations required under subparagraph (A) if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone.

"(4) SYSTEMS OF REGULATION.—The regulations under this subsection may include any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.

"(5) SPECIAL FUND.—Any amounts collected by the Administrator under such regulations shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available until expended, subject to annual appropriation Acts, solely to carry out the activities of the Administrator for which such fees, charges, or collections are established or made.

"(6) ENFORCEMENT.—Any regulation established under this subsection shall be treated, for purposes of enforcement of this Act, as a standard under section 111 and any violation of such regulation shall be treated as a violation of a requirement of section 111(e).

"(7) STATE ADMINISTRATION.—Each State may develop and submit to the Administrator a procedure under State law for implementing and enforcing regulations promulgated under this subsection. If the Administrator finds the State procedure is adequate, the Administrator shall approve such procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulations under this subsection.

"(8) SIZE, ETC.—No regulations regarding the size, shape, or labeling of a product may be promulgated, unless the Administrator determines such regulations to be useful in meeting any national ambient air quality standard.

"(9) STATE CONSULTATION.—Any State which proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other State or local subdivision has promulgated or is promulgating regulations on any products covered under this part. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promulgated regarding products covered under this subsection and disseminate such information collected as requested by State or local subdivisions.

"(f) TANK VESSEL STANDARDS.—

"(1) SCHEDULE FOR STANDARDS.—(A) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall promulgate standards applicable to the emission of VOCs and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of title 46 of the United States Code) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques. To the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels.

"(B) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds (after consultation with the Secretary of the Department in which the Coast Guard is operating) necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period, except that the effective date shall not be more than 2 years after promulgation of such regulations.

"(2) REGULATIONS ON EQUIPMENT SAFETY.—Within 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 of the United States Code and section 6 of the Ports and Waterways Safety Act (33 U.S.C. 1225). The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

"(3) AGENCY AUTHORITY.—(A) The Administrator shall ensure compliance with the tank vessel emission standards prescribed under paragraph (1)(A). The Secretary of the Department in which the Coast Guard is operating shall also ensure compliance with the tank vessel standards prescribed under paragraph (1)(A).

"(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

"(4) STATE OR LOCAL STANDARDS.—After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank vessels subject to regulation under paragraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

"(5) ENFORCEMENT.—Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this Act, as a standard under section 111 and any violation of such standard shall be treated as a violation of a requirement of section 111(e).

"(g) OZONE DESIGN VALUE STUDY.—The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of the date of the enactment of the Clean Air Act Amendments of 1990 for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. The results of the study shall be subject to peer and public review before submitting it to Congress.

"SEC. 184. CONTROL OF INTERSTATE OZONE AIR POLLUTION.

"(a) OZONE TRANSPORT REGIONS.—A single transport region for ozone (within the meaning of section 176A(a)), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 176A(a) (1) and (2) shall apply with respect to the transport region established under this section and any other transport region established for ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 176A(b)) as a result of the establishment of such region within 6 months of the date of the enactment of the Clean Air Act Amendments of 1990.

"(b) PLAN PROVISIONS FOR STATES IN OZONE TRANSPORT REGIONS.—(1) In accordance with section 110, not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following—

"(A) that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 182(c)(2)(A) (pertaining to enhanced vehicle inspection and maintenance programs); and

"(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after the date of the enactment of the Clean Air Act Amendments of 1990.

"(2) Within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 182(b)(3), and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures

within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

"(c) ADDITIONAL CONTROL MEASURES.—

"(1) RECOMMENDATIONS.—Upon petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the Commission (or their designees), the Commission may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart. The commission shall transmit such recommendations to the Administrator.

"(2) NOTICE AND REVIEW.—Whenever the Administrator receives recommendations prepared by a commission pursuant to paragraph (1) (the date of receipt of which shall hereinafter in this section be referred to as the 'receipt date'), the Administrator shall—

"(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

"(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by this subpart and are otherwise consistent with this Act.

"(3) CONSULTATION.—In undertaking the review required under paragraph (2)(B), the Administrator shall consult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

"(4) APPROVAL AND DISAPPROVAL.—Within 9 months after the receipt date, the Administrator shall (A) determine whether to approve, disapprove, or partially disapprove and partially approve the recommendations; (B) notify the commission in writing of such approval, disapproval, or partial disapproval; and (C) publish such determination in the Federal Register. If the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify—

"(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart or are otherwise not consistent with the Act; and

"(ii) recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

"(5) FINDING.—Upon approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State which is included in the transport region and to which a requirement of the approved plan applies, a finding under section 110(k)(5) that the implementation plan for such State is inadequate to meet the requirements of section 110(a)(2)(D). Such finding shall require each such State to revise its implementation plan to include the approved additional control measures within one year after the finding is issued.

"(d) BEST AVAILABLE AIR QUALITY MONITORING AND MODELING.—For purposes of this section, not later than 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

"SEC. 185. ENFORCEMENT FOR SEVERE AND EXTREME OZONE NONATTAINMENT AREAS FOR FAILURE TO ATTAIN.

"(a) GENERAL RULE.—Each implementation plan revision required under section 182(d) and (e) (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c), pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b), for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

"(b) COMPUTATION OF FEE.—

"(1) FEE AMOUNT.—The fee shall equal $5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

"(2) BASELINE AMOUNT.—For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions ('actuals') or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan ('allowables')) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year. Such guidance may provide that such average calculation for a specific source may be used if that source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

"(3) ANNUAL ADJUSTMENT.—The fee amount under paragraph (1) shall be adjusted annually, beginning in the year beginning after the year of enactment, in accordance with section 502(b)(3)(B)(v) (relating to inflation adjustment).

"(c) EXCEPTION.—Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection (a) with respect to emissions during any year that is treated as an Extension Year under section 181(a)(5).

"(d) FEE COLLECTION BY THE ADMINISTRATOR.—If the Administrator has found that the fee provisions of the implementation plan do not meet the requirements of this section, or if the Administrator makes a finding that the State is not administering and enforcing the fee required under this section, the Administrator shall, in addition to any other action authorized under this title, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a). If the Administrator makes such a finding under section 179(a)(4), the Administrator may collect fees for periods before the determination, plus interest computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes), to the extent the Administrator finds such fees have not been paid to the State. The provisions of clauses (ii) through (iii) of section 502(b)(3)(C) (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

"(e) EXEMPTIONS FOR CERTAIN SMALL AREAS.—For areas with a total population under 200,000 which fail to attain the standard by the applicable attainment date, no sanction under this section or under any other provision of this Act shall apply if the area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under this Act.

"SEC. 185A. TRANSITIONAL AREAS.

"If an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989, the Administrator shall suspend the application of the requirements of this subpart to such area until December 31, 1991. By June 30, 1992, the Administrator shall determine by order, based on the area's design value as of the attainment date, whether the area attained such standard by December 31, 1991. If the Administrator determines that the area attained the standard, the Administrator shall require, as part of the order, the State to submit a maintenance plan for the area within 12 months of such determination. If the Administrator determines that the area failed to attain the standard, the Administrator shall, by June 30, 1992, designate the area as nonattainment under section 107(d)(4).

"SEC. 185B. NO_x AND VOC STUDY.

"The Administrator, in conjunction with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control. The study shall examine the roles of NOx and VOC emission reductions, the extent to which NOx reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas, the sensitivity of ozone to the control of NOx, the availability and extent of controls for NOx, the role of biogenic VOC emissions, and the basic information required for air quality models. The study shall be completed and a proposed report made public for 30 days comment within 1 year of the date of the enactment of the Clean Air Act Amendments of 1990, and a final report shall be submitted to Congress within 15 months after such date of enactment. The Administrator shall utilize all available information and studies, as well

as develop additional information, in conducting the study required by this section.".

SEC. 104. ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS.

Part D of title I of the Clean Air Act is amended by adding the following new subpart at the end:

"Subpart 3—Additional Provisions for Carbon Monoxide Nonattainment Areas

"Sec. 186. Classifications and attainment dates.
"Sec. 187. Plan submissions and requirements.

"SEC. 186. CLASSIFICATION AND ATTAINMENT DATES.

"(a) CLASSIFICATION BY OPERATION OF LAW AND ATTAINMENT DATES FOR NONATTAINMENT AREAS.—(1) Each area designated nonattainment for carbon monoxide pursuant to section 107(d) shall be classified at the time of such designation under table 1, by operation of law, as a Moderate Area or a Serious Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before the date of the enactment of the Clean Air Act Amendments of 1990. For each area classified under this subsection, the primary standard attainment date for carbon monoxide shall be as expeditiously as practicable but not later than the date provided in table 1:

"TABLE 3

Area classification	Design value	Primary standard attainment date
Moderate..	9.1–16.4 ppm...	December 31, 1995
Serious...	16.5 and above.	December 31, 2000

"(2) At the time of publication of the notice required under section 107 (designating carbon monoxide nonattainment areas), the Administrator shall publish a notice announcing the classification of each such carbon monoxide nonattainment area. The provisions of section 172(a)(1)(B) (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

"(3) If an area classified under paragraph (1), table 1, would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the date of the enactment of the Clean Air Act Amendments of 1990 by the procedure required under paragraph (2), adjust the classification of the area. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for carbon monoxide in the area, the level of pollution transport between the area and the other affected areas, and the mix of sources and air pollutants in the area. The Administrator may make the same adjustment for purposes of paragraphs (2), (3), (6), and (7) of section 187(a).

"(4) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter in this subpart referred to as the 'Extension Year') the date specified in table 1 of subsection (a) if—

"(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

"(B) no more than one exceedance of the national ambient air quality standard level for carbon monoxide has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

"(b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

"(1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is designated attainment or unclassifiable for carbon monoxide under section 107(d)(4), and that is subsequently redesignated to nonattainment for carbon monoxide under section 107(d)(3), shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsections (a)(1) and (a)(4). Upon its classification, the area shall be subject to the same requirements under section 110, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(2), except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between the date of the enactment of the Clean Air Act Amendments of 1990 and the date the area is classified.

"(2) RECLASSIFICATION OF MODERATE AREAS UPON FAILURE TO ATTAIN.—

"(A) GENERAL RULE.—Within 6 months following the applicable attainment date for a carbon monoxide nonattainment area, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area has attained the standard by that date. Any Moderate Area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a)(1) as a Serious Area.

"(B) PUBLICATION OF NOTICE.—The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined, under subparagraph (A), as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

"(c) REFERENCES TO TERMS.—Any reference in this subpart to a 'Moderate Area' or a 'Serious Area' shall be considered a reference to a Moderate Area or a Serious Area, respectively, as classified under this section.

"SEC. 187. PLAN SUBMISSIONS AND REQUIREMENTS.

"(a) MODERATE AREAS.—Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area (or portion thereof, to the extent specified in guidance of the Administrator issued before the date of the enactment of the Clean Air Act Amendments of 1990), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection, within such periods as are prescribed under this subsection, except to the extent the State has made such submissions as of such date of enactment:

"(1) INVENTORY.—No later than 2 years from the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator.

"(2)(A) VEHICLE MILES TRAVELED.—No later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall contain a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area. The forecast shall be based on guidance which shall be published by the Administrator, in consultation with the Secretary of Transportation, within 6 months after the date of the enactment of the Clean Air Act Amendments of 1990. The plan revision shall provide for annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

"(B) SPECIAL RULE FOR DENVER.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, in the case of Denver, the State shall submit a revision that includes the transportation control measures as required in section 182(d)(1)(A) except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. If the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

"(3) CONTINGENCY PROVISIONS.—No later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall provide for the implementation of specific measures to be undertaken if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator if the prior forecast has been exceeded by an updated forecast or if the national standard is not attained by such deadline.

"(4) SAVINGS CLAUSE FOR VEHICLE INSPECTION AND MAINTENANCE PROVISIONS OF THE STATE IMPLEMENTATION PLAN.—Immediately after the date of the enactment of the Clean Air Act Amendments of 1990, for any Moderate Area (or, within the Administrator's discretion, portion thereof), the plan for which is of the type described in section 182(a)(2)(B) any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 182(a)(2)(B).

"(5) PERIODIC INVENTORY.—No later than September 30, 1995, and no later than the end of each 3 year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of subsection (a)(1).

"(6) ENHANCED VEHICLE INSPECTION AND MAINTENANCE.—No later than 2 years after the date of the enactment of the Clean Air Act

Amendments of 1990 in the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, a revision that includes provisions for an enhanced vehicle inspection and maintenance program as required in section 182(c)(3) (concerning serious ozone nonattainment areas), except that such program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

"(7) ATTAINMENT DEMONSTRATION AND SPECIFIC ANNUAL EMISSION REDUCTIONS.—In the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, no later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, a revision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. In the case of Moderate Areas with a design value of 12.7 ppm or lower at the time of classification, the requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the carbon monoxide standard by the applicable attainment date.

"(b) SERIOUS AREAS.—

"(1) IN GENERAL.—Each State in which all or part of a Serious Area is located shall, with respect to the Serious Area, make the submissions (other than those required under subsection (a)(1)(B)) applicable under subsection (a) to Moderate Areas with a design value of 12.7 ppm or greater at the time of classification, and shall also submit the revision and other items described under this subsection.

"(2) VEHICLE MILES TRAVELED.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990 the State shall submit a revision that includes the transportation control measures as required in section 182(d)(1) except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. In the case of any such area (other than an area in New York State) which is a covered area (as defined in section 246(a)(2)(B)) for purposes of the Clean Fuel Fleet program under part C of title II, if the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

"(3) OXYGENATED GASOLINE.—(A) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to require that gasoline sold, supplied, offered for sale or supply, dispensed, transported or introduced into commerce in the larger of—

"(i) the Consolidated Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) (CMSA) in which the area is located, or

"(ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide (as determined by the Administrator), with fuels containing such level of oxygen as is necessary, in combination with other measures, to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area. The revision shall provide that such requirement shall take effect no later than October 1, 1993, and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

"(B) Notwithstanding subparagraph (A), the revision described in this paragraph shall not be required for an area if the State demonstrates to the satisfaction of the Administrator that the revision is not necessary to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area.

"(c) AREAS WITH SIGNIFICANT STATIONARY SOURCE EMISSIONS OF CO.—

"(1) SERIOUS AREAS.—In the case of Serious Areas in which stationary sources contribute significantly to carbon monoxide levels (as determined under rules issued by the Administrator), the State shall submit a plan revision within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, which provides that the term 'major stationary source' includes (in addition to the sources described in section 302) any stationary source which emits, or has the potential to emit, 50 tons per year or more of carbon monoxide.

"(2) WAIVERS FOR CERTAIN AREAS.—The Administrator may, on a case-by-case basis, waive any requirements that pertain to transportation controls, inspection and maintenance, or oxygenated fuels where the Administrator determines by rule that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in the area.

"(3) GUIDELINES.—Within 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall issue guidelines for and rules determining whether stationary sources contribute significantly to carbon monoxide levels in an area.

"(d) CO MILESTONE.—

"(1) MILESTONE DEMONSTRATION.—By March 31, 1996, each State in which all or part of a Serious Area is located shall submit to the Administrator a demonstration that the area has achieved a reduction in emissions of CO equivalent to the total of the specific annual emission reductions required by December 31, 1995. Such reductions shall be referred to in this subsection as the milestone.

"(2) ADEQUACY OF DEMONSTRATION.—A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

"(3) FAILURE TO MEET EMISSION REDUCTION MILESTONE.—If a State fails to submit a demonstration under paragraph (1) within the required period, or if the Administrator notifies the State that the State has not met the milestone, the State shall, within 9 months after such a failure or notification, submit a plan revision to implement an economic incentive and transportation control program as described in section 182(g)(4). Such revision shall be sufficient to achieve the specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.

"(e) MULTI-STATE CO NONATTAINMENT AREAS.—

"(1) COORDINATION AMONG STATES.—Each State in which there is located a portion of a single nonattainment area for carbon monoxide which covers more than one State ('multi-State nonattainment area') shall take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

"(2) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in which there is located a portion of a multi-State nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for carbon monoxide in that portion within the period required under this part the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under section 187 (relating to plan submissions for carbon monoxide nonattainment areas). If the Administrator makes such finding, in the portion of the nonattainment area within the State submitting such petition, no sanction shall be imposed under section 179 or under any other provision of this Act, by reason of the failure to make such demonstration.

"(f) RECLASSIFIED AREAS.—Each State containing a carbon monoxide nonattainment area reclassified under section 186(b)(2) shall meet the requirements of subsection (b) of this section, as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) where such deadlines are shown to be infeasible.

"(g) FAILURE OF SERIOUS AREA TO ATTAIN STANDARD.—If the Administrator determines under section 186(b)(2) that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that a program of incentives and requirements as described in section 182(g)(4) shall be applicable in the area, and such program, in combination with other elements of the revised plan, shall be adequate to reduce the total tonnage of emissions of carbon monoxide in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the national primary ambient air quality standard for carbon monoxide.".

SEC. 105. ADDITIONAL PROVISIONS FOR PARTICULATE MATTER (PM-10) NONATTAINMENT AREAS.

(a) PM-10 NONATTAINMENT AREAS.—Part D of title I of the Clean Air Act is amended by adding the following new subpart after subpart 3:

"Subpart 4—Additional Provisions for Particulate Matter Nonattainment Areas

"Sec. 188. Classifications and attainment dates.
"Sec. 189. Plan provisions and schedules for plan submissions.
"Sec. 190. Issuance of guidance.

"SEC. 188. CLASSIFICATIONS AND ATTAINMENT DATES.

"(a) INITIAL CLASSIFICATIONS.—Every area designated nonattainment for PM-10 pursuant to section 107(d) shall be classified at the time of such designation, by operation of law, as a moderate PM-10 nonattainment area (also referred to in this subpart as a 'Moderate area') at the time of such designation. At the time of publication of the notice under section 107(d)(4) (relating to area designations) for each PM-10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. The provisions of section 172(a)(1)(B) (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

"(b) RECLASSIFICATION AS SERIOUS.—

"(1) RECLASSIFICATION BEFORE ATTAINMENT DATE.—The Administrator may reclassify as a Serious PM-10 nonattainment area (identified in this subpart also as a 'Serious Area') any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM-10 by the attainment date (as prescribed in subsection (c)) for Moderate Areas. The Administrator shall reclassify appropriate areas as Serious by the following dates:

"(A) For areas designated nonattainment for PM-10 under section 107(d)(4), the Administrator shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991.

"(B) For areas subsequently designated nonattainment, the Administrator shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.

"(2) RECLASSIFICATION UPON FAILURE TO ATTAIN.—Within 6 months following the applicable attainment date for a PM-10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date—

"(A) the area shall be reclassified by operation of law as a Serious Area; and

"(B) the Administrator shall publish a notice in the Federal Register no later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

"(c) ATTAINMENT DATES.—Except as provided under subsection (d), the attainment dates for PM-10 nonattainment areas shall be as follows:

"(1) MODERATE AREAS.—For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 107(d)(4), the attainment date shall not extend beyond December 31, 1994.

"(2) SERIOUS AREAS.—For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 107(d)(4), the date shall not extend beyond December 31, 2001.

"(d) EXTENSION OF ATTAINMENT DATE FOR MODERATE AREAS.—Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the 'Extension Year') the date specified in paragraph (c)(1) if—

"(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

"(2) no more than one exceedance of the 24-hour national ambient air quality standard level for PM-10 has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM-10 in the area for such year is less than or equal to the standard level.

No more than 2 one-year extensions may be issued under the subsection for a single nonattainment area.

"(e) EXTENSION OF ATTAINMENT DATE FOR SERIOUS AREAS.—Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c), if attainment by the date established under subsection (c) would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

"(f) WAIVERS FOR CERTAIN AREAS.—The Administrator may, on a case-by-case basis, waive any requirement applicable to any Serious Area under this subpart where the Administrator determines that anthropogenic sources of PM-10 do not contribute significantly to the violation of the PM-10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator determines that nonanthropogenic sources of PM-10 contribute significantly to the violation of the PM-10 standard in the area.

"SEC. 189. PLAN PROVISIONS AND SCHEDULES FOR PLAN SUBMISSIONS.

"(a) MODERATE AREAS.—

"(1) PLAN PROVISIONS.—Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

"(A) For the purpose of meeting the requirements of section 172(c)(5), a permit program providing that permits meeting the requirements of section 173 are required for the construction and operation of new and modified major stationary sources of PM-10.

"(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

"(C) Provisions to assure that reasonably available control measures for the control of PM-10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after the date of the enactment of the Clean Air Act Amendments of 1990.

"(2) SCHEDULE FOR PLAN SUBMISSIONS.—A State shall submit the plan required under subparagraph (1) no later than the following:

"(A) Within 1 year of the date of the enactment of the Clean Air Act Amendments of 1990, for areas designated nonattainment under section 107(d)(4), except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

"(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 107(d)(4).

"(b) SERIOUS AREAS.—

"(1) PLAN PROVISIONS.—In addition to the provisions submitted to meet the requirements of paragraph (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

"(A) A demonstration (including air quality modeling)—

"(i) that the plan provides for attainment of the PM-10 national ambient air quality standard by the applicable attainment date, or

"(ii) for any area for which the State is seeking, pursuant to section 188(e), an extension of the attainment date beyond the date set forth in section 188(c), that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

"(B) Provisions to assure that the best available control measures for the control of PM-10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

"(2) SCHEDULE FOR PLAN SUBMISSIONS.—A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 188(b)(2), the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

"(3) MAJOR SOURCES.—For any Serious Area, the terms 'major source' and 'major stationary source' include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM-10.

"(c) MILESTONES.—(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 171(1), toward attainment by the applicable date.

"(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

"(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient air quality standard for PM-10, if there is no next milestone) by the applicable date.

"(d) FAILURE TO ATTAIN.—In the case of a Serious PM-10 nonattainment area in which the PM-10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

"(e) PM-10 PRECURSORS.—The control requirements applicable under plans in effect under this part for major stationary sources of PM-10 shall also apply to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

"SEC. 190. ISSUANCE OF RACM AND BACM GUIDANCE.

"The Administrator shall issue, in the same manner and according to the same procedure as guidance is issued under section 108(c), technical guidance on reasonably available control measures and best available control measures for urban fugitive dust, and emissions from residential wood combustion (including curtailments and exemptions from such curtailments) and prescribed silvicultural and agricultural burning, no later than 18 months following the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall also examine other categories of sources contributing to nonattainment of the PM-10 standard, and determine whether additional guidance on reasonably available control measures and best available control measures is needed, and issue any such guidance no later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. In issuing guidelines and making determinations under this section, the Administrator (in consultation with the State) shall take into account emission reductions achieved, or expected to be achieved, under title IV and other provisions of this Act.".

(b) PM-10 INCREMENTS IN PSD AREAS.—Section 166 of the Clean Air Act (42 U.S.C. 7476) is amended by adding the following new subsection at the end:

"(f) PM-10 INCREMENTS.—The Administrator is authorized to substitute, for the maximum allowable increases in particulate matter specified in section 163(b) and section 165(d)(2)(C)(iv), maximum allowable increases in particulate matter with an aerodynamic diameter smaller than or equal to 10 micrometers. Such substituted maximum allowable increases shall be of equal stringency in effect as those specified in the provisions for which they are substituted. Until the Administrator promulgates regulations under the authority of this subsection, the current maximum allowable increases in concentrations of particulate matter shall remain in effect.".

SEC. 106. ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, AND LEAD.

Part D of title I of the Clean Air Act is amended by adding a new subpart after subpart 4 as follows:

"Subpart 5—Additional Provisions for Areas Designated Nonattainment for Sulfur Oxides, Nitrogen Dioxide, or Lead

"Sec. 191. Plan submission deadlines.
"Sec. 192. Attainment dates.

"SEC. 191. PLAN SUBMISSION DEADLINES.

"(a) SUBMISSION.—Any State containing an area designated or redesignated under section 107(d) as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to the date of the enactment of the Clean Air Act Amendments of 1990 shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.

"(b) STATES LACKING FULLY APPROVED STATE IMPLEMENTATION PLANS.—Any State containing an area designated nonattainment with respect to national primary ambient air quality standards for sulfur oxides or nitrogen dioxide under section 107(d)(1)(C)(i), but lacking a fully approved implementation plan complying with the requirements of this Act (including part D) as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990, shall submit to the Administrator, within 18 months of the date of the enactment of the Clean Air Act Amendments of 1990, an implementation plan meeting the requirements of subpart 1 (except as otherwise prescribed by section 192).

"SEC. 192. ATTAINMENT DATES.

"(a) PLANS UNDER SECTION 191(a).—Implementation plans required under section 191(a) shall provide for attainment of the relevant primary standard as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.

"(b) PLANS UNDER SECTION 191(b).—Implementation plans required under section 191(b) shall provide for attainment of the relevant primary national ambient air quality standard within 5 years after the date of the enactment of the Clean Air Act Amendments of 1990.

"(c) INADEQUATE PLANS.—Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before the date of the enactment of the Clean Air Act Amendments of 1990 but, subsequent to such approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years from the date of such finding.".

SEC. 107. PROVISIONS RELATED TO INDIAN TRIBES.

(a) DEFINITION OF AIR POLLUTION CONTROL AGENCY.—Section 302(b) of the Clean Air Act (42 U.S.C. 7602(b)) is amended by—

(1) deleting "or" at the end of paragraph (3);

(2) striking the semicolons at the end of paragraphs (1), (2), and (3) and inserting periods at the end of each such paragraph; and

(3) adding the following new paragraph after paragraph (4):

"(5) An agency of an Indian tribe.".

(b) DEFINITION OF INDIAN TRIBE.—Section 302 of the Clean Air Act (42 U.S.C. 7602) is amended by adding new subsection (r) to read as follows:

"(r) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

(c) SIPS.—Section 110 of the Clean Air Act (42 U.S.C. 7410) is amended by adding the following new subsection after subsection (n):

"(o) INDIAN TRIBES.—If an Indian tribe submits an implementation plan to the Administrator pursuant to section 301(d), the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 301(d)(2). When such plan becomes effective in accordance with the regulations promulgated under section 301(d), the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.".

(d) TRIBAL AUTHORITY.—Section 301 of the Clean Air Act (42 U.S.C. 7601) is amended by adding at the end thereof the following new subsection:

"(d) TRIBAL AUTHORITY.—(1) Subject to the provisions of paragraph (2), the Administrator—

"(A) is authorized to treat Indian tribes as States under this Act, except for purposes of the requirement that makes available for application by each State no less than one-half of 1 percent of annual appropriations under section 105; and

"(B) may provide any such Indian tribe grant and contract assistance to carry out functions provided by this Act.

"(2) The Administrator shall promulgate regulations within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990, specifying those provisions of this Act for which it is appropriate to treat Indian tribes as States. Such treatment shall be authorized only if—

"(A) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(B) the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

"(C) the Indian tribe is reasonably expected to be capable, in the judgment of the Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and all applicable regulations.

"(3) The Administrator may promulgate regulations which establish the elements of tribal implementation plans and procedures for approval or disapproval of tribal implementation plans and portions thereof.

"(4) In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

"(5) Until such time as the Administrator promulgates regulations pursuant to this subsection, the Administrator may continue to provide financial assistance to eligible Indian tribes under section 105.".

SEC. 108. MISCELLANEOUS GUIDANCE.

(a) TRANSPORTATION PLANNING GUIDANCE.—Section 108(e) of the Clean Air Act is amended by deleting the first sentence and inserting in lieu thereof the following: "The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after enactment of the Clean Air Act Amendments of 1989 and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards.".

(b) TRANSPORTATION CONTROL MEASURES.—Section 108(f)(1) of the Clean Air Act is amended by deleting all after "(f)" through the end of subparagraph (A) and inserting in lieu thereof the following:

"(1) The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies not later than one year after enactment of the Clean Air Act Amendments of 1990, and from time to time thereafter—

"(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to—

"(i) programs for improved public transit;

"(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

"(iii) employer-based transportation management plans, including incentives;

"(iv) trip-reduction ordinances;

"(v) traffic flow improvement programs that achieve emission reductions;

"(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

"(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

"(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

"(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

"(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

"(xi) programs to control extended idling of vehicles;

"(xii) programs to reduce motor vehicle emissions, consistent with title II, which are caused by extreme cold start conditions;

"(xiii) employer-sponsored programs to permit flexible work schedules;

"(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

"(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

"(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.".

(c) RACT/BACT/LAER CLEARINGHOUSE.—Section 108 of the Clean Air Act (42 U.S.C. 7408) is amended by adding the following at the end thereof:

"(h) RACT/BACT/LAER CLEARINGHOUSE.—The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.".

(d) STATE REPORTS ON EMISSIONS-RELATED DATA.—Section 110 of the Clean Air Act (42 U.S.C. 7410) is amended by adding the following new subsection after subsection (o):

"(p) REPORTS.—Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development effectiveness, need for revision, or implementation of any plan or plan revision required under this Act.".

(e) NEW SOURCE STANDARDS OF PERFORMANCE.—(1) Section 111(b)(1)(B) of the Clean Air Act (42 U.S.C. 7411(b)(1)(B)) is amended as follows:

(A) Strike "120 days" and insert "one year".

(B) Strike "90 days" and insert "one year".

(C) Strike "four years" and insert "8 years".

(D) Immediately before the sentence beginning "Standards of performance or revisions thereof" insert "Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.".

(E) Add the following at the end: "When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.".

(2) Section 111(f)(1) of the Clean Air Act (42 U.S.C. 7411(f)(1)) is amended to read as follows:

"(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) before the date of the enactment of the Clean Air Act Amendments of 1990 and for which regulations had not been proposed by the Administrator by such date, the Administrator shall—

"(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990;

"(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after the date of the enactment of the Clean Air Act Amendments of 1990; and

"(C) propose regulations for the remaining categories of sources within 6 years after the date of the enactment of the Clean Air Act Amendments of 1990.".

(f) SAVINGS CLAUSE.—Section 111(a)(3) of the Clean Air Act (42 U.S.C. 7411(f)(1)) is amended by adding at the end: "Nothing in title II of this Act relating to nonroad engines shall be construed to apply to stationary internal combustion engines.".

(g) REGULATION OF EXISTING SOURCES.—Section 111(d)(1)(A)(i) of the Clean Air Act (42 U.S.C. 7411(d)(1)(A)(i)) is amended by striking "or 112(b)(1)(A)" and inserting "or emitted from a source category which is regulated under section 112".

(h) CONSULTATION.—The penultimate sentence of section 121 of the Clean Air Act (42 U.S.C. 7421) is amended to read as follows: "The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) to ensure adequate consultation.".

(i) DELEGATION.—The second sentence of section 301(a)(1) of the Clean Air Act (42 U.S.C. 7601(a)(1)) is amended by inserting "subject to section 307(d)" immediately following "regulations".

(j) DEFINITIONS.—Section 302 of the Clean Air Act (42 U.S.C. 7602) is amended as follows:

(1) Insert the following new subsections after subsection (r):

"(s) VOC.—The term 'VOC' means volatile organic compound, as defined by the Administrator.

"(t) PM-10.—The term 'PM-10' means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

"(u) NAAQS AND CTG.—The term 'NAAQS' means national ambient air quality standard. The term 'CTG' means a Control Technique Guideline published by the Administrator under section 108.

"(v) NO_x.—The term 'NO_x' means oxides of nitrogen.

"(w) CO.—The term 'CO' means carbon monoxide.

"(x) SMALL SOURCE.—The term 'small source' means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

"(y) FEDERAL IMPLEMENTATION PLAN.—The term 'Federal implementation plan' means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.".

(2) Section 302(g) of the Clean Air Act (42 U.S.C. 7602(g)) is amended by adding the following at the end: "Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.".

(k) POLLUTION PREVENTION.—Section 101 of the Clean Air Act (42 U.S.C. 7401) is amended as follows:

(1) Amend subsection (a)(3) to read as follows:

"(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and".

(2) Amend subsection (b)(4) by inserting "prevention and" immediately after "pollution".

(3) Add a new subsection (c) to read as follows:

"(c) POLLUTION PREVENTICN.—A primary goal of this Act is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this Act, for pollution prevention.".

(l) Part D of title I of the Clean Air Act is amended by adding a new subpart after subpart 5 as follows:

"Subpart 6—Savings Provisions

"Sec. 193. General savings clause.

"SEC. 193. GENERAL SAVINGS CLAUSE.

"Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms, except to the extent otherwise provided under this Act, inconsistent with any provision of this Act, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.".

(m) BOUNDARY CHANGES.—Section 162(a) of the Clean Air Act (42 U.S.C. 7472(a)) is amended by adding at the end thereof the following: "The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to the date of the enactment of the Clean Air Act Amendments of 1977, or which may occur subsequent to the date of the enactment of the Clean Air Act Amendments of 1990.".

(n) BOUNDARIES.—Section 164(a) of the Clean Air Act (42 U.S.C. 7474(a)) is amended by inserting immediately before the sentence beginning "Any area (other than an area referred to in paragraph (1) or (2)" the following: "The extent of the areas referred to in paragraph (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to the date of the enactment of the Clean Air Act Amendments of 1977, or which may occur subsequent to the date of the enactment of the Clean Air Act Amendments of 1990.".

(o) ASSESSMENTS.—Section 108 of the Clean Air Act (42 U.S.C. 7408) is amended by adding at the end thereof a new subsection (g) to read as follows:

"(g) ASSESSMENT OF RISKS TO ECOSYSTEMS.—The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).".

(p) PUBLIC PARTICIPATION.—Section 307 of the Clean Air Act (42 U.S.C. 7607) is amended by adding the following after subsection (g):

"(h) PUBLIC PARTICIPATION.—It is the intent of Congress that, consistent with the policy of the Administrative Procedures Act, the Administrator in promulgating any regulation under this Act, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section 107(d), 172(a), 181 (a) and (b), and 186 (a) and (b).".

(q) ETHICS, FINANCIAL DISCLOSURE, AND CONFLICTS OF INTEREST.—Section 318 of the Clean Air Act (42 U.S.C. 7618) is repealed.".

SEC. 109. INTERSTATE POLLUTION.

(a) AMENDMENTS TO SECTION 126.—Section 126 of the Clean Air Act (42 U.S.C. 7426) is amended as follows:

(1) In subsection (b)—

(A) in the first sentence, following "major source", insert "or group of stationary sources"; and

(B) strike "110(a)(2)(E)(i)" and insert in lieu thereof "110(a)(2)(D)(ii) or this section".

(2) In subsection (c)—

(A) in the first sentence, following the words "violation of", insert "this section and"; and

(B) strike "110(a)(2)(E)(i)" wherever it appears and insert in lieu thereof "110(a)(2)(D)(ii) or this section".

(b) AMENDMENT TO SECTION 302.—Section 302(h) of the Clean Air Act (42 U.S.C. 7602(h)) is amended by inserting before the period ", whether caused by transformation, conversion, or combination with other air pollutants".

SEC. 110. CONFORMING AMENDMENTS.

The Clean Air Act is amended as follows—

(1) Strike, in section 161 (42 U.S.C. 7471), "identified pursuant to section 107(d)(1) (D) or (E)" and insert "designated pursuant to section 107 as attainment or unclassifiable".

(2) Strike, in section 162(b) (42 U.S.C. 7472(b)), "identified pursuant to section 107(d)(1) (D) or (E)" and insert "designated pursuant to section 107(d) as attainment or unclassifiable";

(3) Strike, in section 167 (42 U.S.C. 7477), the reference to "included in the list promulgated pursuant to paragraph (1) (D) or (E) of subsection (d) of section 107 of this Act" and insert "designated pursuant to section 107(d) as attainment or unclassifiable".

(4) Strike subsections (a) and (b) of section 176 (42 U.S.C. 7506).

(5) Amend section 307(d)(1) (42 U.S.C. 7607(d)(1)) as follows:

(A) Subparagraph (C) is amended to read as follows:

"(C) the promulgation or revision of any standard of performance under section 111, or emission standard or limitation under section 112(d), any standard under section 112(f), or any regulation under section 112(g)(1) (D) and (F), or any regulation under section 112(m) or (n),".

(B) Subparagraph (F) is amended to read as follows:

"(F) the promulgation or revision of any regulation under title IV (relating to control of acid deposition),".

(C) Delete "and" at the end of subparagraph (M), redesignate subparagraph (N) as subparagraph (U), and add the following new subparagraphs after subparagraph (M):

"(N) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 183(e),

"(O) the promulgation or revision of any regulation pertaining to field citations under section 113(d)(3),

"(P) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of title II,

"(Q) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 213,

"(R) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 217,

"(S) the promulgation or revision of any regulation under title IV (relating to acid deposition),

"(T) the promulgation or revision of any regulation under section 183(f) pertaining to marine vessels, and".

SEC. 111. TRANSPORTATION SYSTEM IMPACTS ON CLEAN AIR.

Section 108(f) of the Clean Air Act is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary of Transportation and the Administrator shall submit to Congress by January 1, 1993, and every 3 years thereafter a report that—

"(A) reviews and analyzes existing State and local air quality-related transportation programs, including specifically any analyses of whether adequate funding is available to complete transportation projects identified in State implementation plans in the time required by applicable State implementation plans and any Federal efforts to promote those programs;

"(B) evaluates the extent to which the Department of Transportation's existing air quality-related transportation programs and such Department's proposed budget will achieve the goals of and compliance with this Act; and

"(C) recommends what, if any, changes to such existing programs and proposed budget as well as any statutory authority relating to air quality-related transportation programs that would improve the achievement

of the goals of and compliance with the Clean Air Act.

"(4) In each report to Congress after the first report required under paragraph (3), the Secretary of Transportation shall include a description of the actions taken to implement the changes recommended in the preceding report.

TITLE II—PROVISIONS RELATING TO MOBILE SOURCES

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PART A—AMENDMENTS TO TITLE II OF CLEAN AIR ACT

SEC. 201. HEAVY-DUTY TRUCKS.

Section 202(a)(3) of the Clean Air Act (42 U.S.C. 7521(a)(3)) is amended as follows:

(1) Strike subparagraphs (A), (B), (C), (D), and (E) and insert the following:

"(A) IN GENERAL.—(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

"(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

"(B) REVISED STANDARDS FOR HEAVY DUTY TRUCKS.—(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

"(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NOx) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

"(C) LEAD TIME AND STABILITY.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

"(D) REBUILDING PRACTICES.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.".

(2) Redesignate subparagraph (F) as subparagraph (E) and insert "MOTORCYCLES.—" before "For purposes of this paragraph".

SEC. 202. CONTROL OF VEHICLE REFUELING EMISSIONS.

Section 202(a)(6) of the Clean Air Act (42 U.S.C. 7521(a)(6)) is amended to read as follows:

"(6) ONBOARD VAPOR RECOVERY.—Within 1 year after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ('onboard') systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

"IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage
Fourth	40
Fifth	80
After fifth	100

Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 182(b)(3) (relating to stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 182(b)(3) for areas classified under section 181 as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.".

SEC. 203. EMISSION STANDARDS FOR CONVENTIONAL MOTOR VEHICLES.

(a) STANDARDS.—Section 202 of the Clean Air Act (42 U.S.C. 7521) is amended by adding the following at the end thereof:

"(g) LIGHT-DUTY TRUCKS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES; STANDARDS FOR MODEL YEARS AFTER 1993.—

"(1) NMHC, CO, AND NOX.—Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NOx) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (gvwr) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

TABLE G.—EMISSION STANDARDS FOR NMHC, CO, AND NO_x FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A (5 yrs/50,000 mi)			Column B (10 yrs/100,000 mi)		
	NMHC	CO	NO_x	NMHC	CO	NO_x
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	[1] 0.4	0.31	4.2	[1] 0.6
LDT's (3,751–5,750 lbs. LVW)..	.32	4.4	[2] 0.7	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 206, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 206, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

[1] In the case of diesel-fueled LDTs (0–3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

[2] This standard does not apply to diesel-fueled LDTs (3,75'–5,750 lbs. LVW)

"IMPLEMENTATION SCHEDULE FOR TABLE G STANDARDS

Model Year	Percentage
1994	40
1995	80
After 1995	100

Percentages in the table refer to a percentage of each manufacturer's sales volume.

"(2) PM STANDARD.—Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (gvwr), the regulations under subsection (a) applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

"PM STANDARD FOR LDTs OF UP TO 6,000 LBS. GVWR

Useful life period	Standard
5/50,000	0.08 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 206 and for purposes of in-use compliance under section 207, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under section 206 and for purposes of in-use compliance under section 207, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

"IMPLEMENTATION SCHEDULE FOR PM STANDARDS

[In percent]

Model year	Light-duty vehicles	LDT's
1994	40	
1995	80	40
1996	100	80
after 1996	100	100

Percentages in the table refer to a percentage of each manufacturer's sales volume.

"(h) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR; STANDARDS FOR MODEL YEARS AFTER 1995.—Effective with respect to the model year 1996 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NOx), and particulate matter (PM) from light-duty trucks (LDTs) of more than 6,000 lbs. gross vehicle weight rating (gvwr) shall contain standards which provide that emissions from a specified percentage of each manufacturer's sales volume of such trucks shall comply with the levels specified in table H. The specified percentage shall be 50 percent in model year 1996 and 100 percent thereafter.

TABLE H—EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE AND DIESEL FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

LDT Test weight	Column A (5 yrs/50,000 mi)			Column B (11 yrs/120,000 mi)			
	NMHC	CO	NOx	NMHC	CO	NOx	PM
3,751–5,750 lbs. Tw	0.32	4.4	[1] 0.7	0.46	6.4	0.98	0.10
Over 5,750 lbs. Tw	0.39	5.0	[1] 1.1	.56	7.3	1.53	.12

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 206, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent) whichever first occurs.

For standards under column B, for purposes of certification under section 206, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.

[1] Not applicable to diesel-fueled LDTs.

"(i) PHASE II STUDY FOR CERTAIN LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS.—(1) The Administrator, with the participation of the Office of Technology Assessment, shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this title. The study shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight (lvw) of 3,750 lbs. or less specified in the following table:

"TABLE 3—PENDING EMISSION STANDARDS FOR GASOLINE AND DIESEL FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

Pollutant	Emission level[1]
NMHC	0.125 gpm
NO_x	0.2 gpm
CO	1.7 gpm

[1] Emission levels are expressed in grams per mile (gpm). For vehicles and engines subject to this subsection for purposes of section 202(d) and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs. Such study shall also consider other standards and useful life periods which are more stringent or less stringent than those set forth in table 3 (but more stringent than those referred to in subsections (g) and (h)).

"(2)(A) As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards, taking into consideration the waiver provisions of section 209(b). As part of such study, the Administrator shall also examine—

"(i) the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (lvw) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) for model years commencing not earlier than after January 1, 2003 and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

"(ii) the need for, and cost effectiveness of, obtaining further reductions in emissions from such light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards pursuant to State implementation plans and other requirements of this Act, including their feasibility and cost effectiveness.

"(B) The Administrator shall submit a report to Congress no later than June 1, 1997, containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submittal of such report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of such comments in the report to Congress.

"(3)(A) Based on the study under paragraph (1) the Administrator shall determine, by rule, within 3 calendar years after the report is submitted to Congress, but not later than December 31, 1999, whether—

"(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

"(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (lvw) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003 and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

"(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii).

The rulemaking under this paragraph shall commence within 3 months after submission

of the report to Congress under paragraph (2)(B).

"(B) If the Administrator determines under subparagraph (A) that—

"(i) there is no need for further reductions in emissions as provided in paragraph (2)(A);

"(ii) the technology for meeting more stringent emission standards will not be available as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (lvw) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); or

"(iii) obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (g) and (h). Nothing in this paragraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight (lvw) of 3,750 lbs. or less at any other time thereafter in accordance with subsection (a).

"(C) If the Administrator determines under subparagraph (A) that—

"(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

"(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (lvw) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

"(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall either promulgate the standards (and useful life periods) set forth in Table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) which are more stringent than those referred to in subsections (g) and (h). Any such standards (or useful life periods) promulgated by the Administrator shall take effect with respect to any such vehicles or engines no earlier than the model year 2003 but not later than model year 2006, as determined by the Administrator in the rule.

"(D) Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in Table 3 shall be promulgated in the rulemaking required under this paragraph. The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of section 304(a)(2) (relating to citizen suits).

"(E) Unless the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B) or to postpone the effective date of standards referred to in Table 3 in paragraph (1) or to establish alternative standards as provided in subparagraph (C), effective with respect to model years commencing after January 1, 2003, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), oxides of nitrogen (NO_x), and carbon monoxide (CO) from motor vehicles and motor vehicle engines in the classes specified in Table 3 in paragraph (1) above shall contain standards which provide that emissions may not exceed the pending emission levels specified in Table 3 in paragraph (1).".

(b) USEFUL LIFE.—Section 202(d) of the Clean Air Act (42 U.S.C. 7521(d)(1)) is amended as follows:

(1) Insert "except where a different useful life period is specified in this title" after "provide that".

(2) Strike the semicolon at the end of paragraph (1) and insert the following ", except that in the case of any requirement of this section which first becomes applicable after the enactment of the Clean Air Act Amendments of 1990 where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 207 up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;".

(3) Insert "and light-duty trucks up to 3750 lbs LVW and up to 6,000 lbs GVWR" after "engines" in paragraph (1).

(c) REVISED STANDARDS.—Subparagraph (C) of section 202(b)(1) of the Clean Air Act (42 U.S.C. 7521(b)(1)(C)) is amended to read as follows:

"(C) The Administrator may promulgate regulations under subsection (a)(1) revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this title may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) shall not be modified by the Administrator after the enactment of the Clean Air Act Amendments of 1990 for any model year before the model year 2004.".

(d) PROMULGATION.—Section 202(b)(2) of the Clean Air Act (42 U.S.C. 7521(b)(2)) is amended to read as follows:

"(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to the date of the enactment of the Clean Air Act Amendments of 1990), shall be promulgated by regulation within 180 days after such date.".

SEC. 204. CARBON MONOXIDE EMISSIONS AT COLD TEMPERATURES.

Section 202 of the Clean Air Act (42 U.S.C. 7521) is amended by adding the following new subsection after subsection (i):

"(j) COLD CO STANDARD.—

"(1) PHASE I.—Not later than 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1994 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain standards which provide that emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards shall take effect after model year 1993 according to a phase-in schedule which requires a percentage of each manufacturer's sales volume of light-duty vehicles and light-duty trucks to comply with applicable standards after model year 1993. The percentage shall be as specified in the following table:

"PHASE-IN SCHEDULE FOR COLD START STANDARDS

Model year	Percentage
1994	40
1995	80
1996 and after	100

"(2) PHASE II.—(A) Not later than June 1, 1997, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from model year 2001 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

"(B)(i) If as of June 1, 1997, 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from model year 2002 and later model year light-duty vehicles and light-duty trucks shall contain standards which provide that emissions of carbon monoxide from such vehicles and trucks when operated at 20 degrees Fahrenheit may not exceed 3.4 grams per mile (gpm) in the case of light-duty vehicles and 4.4 grams per mile (gpm) in the case of light-duty trucks up to 6,000 gvwr and a level comparable in stringency in the case of light-duty trucks 6,000 gvwr and above.

"(ii) In determining for purposes of this subparagraph whether 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the Administrator shall exclude the areas of Steubenville, Ohio, and Oshkosh, Wisconsin.

"(3) USEFUL-LIFE FOR PHASE I AND PHASE II STANDARDS.—In the case of the standards referred to in paragraphs (1) and (2), for purposes of certification under section 206 and in-use compliance under section 207, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend such useful life period (for purposes of section 206, or section 207, or both) if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life. If the Administrator extends such useful life period, the Administrator may make an appropriate adjustment of applicable standards for such extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (d).

"(4) HEAVY-DUTY VEHICLES AND ENGINES.—The Administrator may also promulgate regulations under subsection (a)(1) applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.".

SEC. 205. EVAPORATIVE EMISSIONS.

Section 202 of the Clean Air Act (42 U.S.C. 7521) is amended by adding the following new subsection after subsection (j):

"(k) CONTROL OF EVAPORATIVE EMISSIONS.—The Administrator shall promulgate (and from time to time revise) regulations appli-

cable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles—

"(1) during operation; and

"(2) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility, and to cost, energy, and safety factors associated with the application of the appropriate technology. The Administrator shall commence a rulemaking under this subsection within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990. If final regulations are not promulgated under this subsection within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall submit a statement to the Congress containing an explanation of the reasons for the delay and a date certain for promulgation of such final regulations in accordance with this Act. Such date certain shall not be later than 15 months after the expiration of such 18 month deadline.".

SEC. 206. MOBILE SOURCE-RELATED AIR TOXICS.

Section 202 of the Clean Air Act (42 U.S.C. 7521) is amended by adding the following new subsection after subsection (k):

"(l) MOBILE SOURCE-RELATED AIR TOXICS.—

"(1) STUDY.—Not later than 18 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this Act and associated with motor vehicles and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such controls. The study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1, 3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

"(2) STANDARDS.—Within 54 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) or section 211(c)(1) containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a), the availability and costs of the technology, and noise, energy, and safety factors, and lead time. Such regulations shall not be inconsistent with standards under section 202(a). The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.".

SEC. 207. EMISSION CONTROL DIAGNOSTICS SYSTEMS AND BUSES.

(a) EMISSION CONTROL DIAGNOSTICS.—Section 202 of the Clean Air Act (42 U.S.C. 7521) is amended by adding the following after subsection (l):

"(m) EMISSIONS CONTROL DIAGNOSTICS.—

"(1) REGULATIONS.—Within 18 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of—

"(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

"(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

"(C) storing and retrieving fault codes specified by the Administrator, and

"(D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

"(2) EFFECTIVE DATE.—The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

"(3) STATE INSPECTION.—The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under section 207(a) and (b).

"(4) SPECIFIC REQUIREMENTS.—In promulgating regulations under this subsection, the Administrator shall require—

"(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

"(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device which is only available from a vehicle manufacturer; and

"(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

"(5) INFORMATION AVAILABILITY.—The Administrator, by regulation, shall require (subject to the provisions of section 208(c) regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 208(c) if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 208(c), in carrying out the Administrator's responsibilities under this section.".

(b) BUSES.—Section 202 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(f) MODEL YEARS AFTER 1990.—For model years prior to model year 1994, the regulations under section 202(a) applicable to buses other than those subject to standards under section 219 shall contain a standard which provides that emissions of particulate matter (PM) from such buses may not exceed the standards set forth in the following table:

PM STANDARD FOR BUSES

Model year	Standard
1991	0.25
1992	.25
1993 and thereafter	.10

Standards are expressed in grams per brake horsepower hour (g/bhp/hr).

SEC. 208. MOTOR VEHICLE TESTING AND CERTIFICATION.

(a) ADDITIONAL TESTING PROCEDURES.—Section 206(a) of the Clean Air Act (42 U.S.C. 7525(a)) is amended by adding the following after paragraph (3):

"(4)(A) Not later than 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether model year 1994 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 207(b) for that model year, under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any 1994 or later model year vehicle or engine that the Administrator concludes cannot pass the test procedures established under this paragraph.

"(B) From time to time, the Administrator may revise the regulations promulgated under subparagraph (A), as the Administrator deems appropriate.".

(b) PROJECTED SALES NOT EXCEEDING 300.—Section 206(a)(1) of the Clean Air Act (42 U.S.C. 7525(a)(1)) is amended by striking the third sentence and inserting the following: "In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before the date of the enactment of the Clean Air Act Amendments of 1990) of vehicles or vehicle

engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 202 for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 202(d)) with the regulations prescribed under section 202.".

(c) FTP MODIFICATIONS.—Section 206 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(h) Within 18 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall review and revise as necessary the regulations under subsection (a) and (b) of this section regarding the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude.".

SEC. 209. AUTO WARRANTIES.

Effective with respect to new motor vehicles and engines manufactured in the model year 1995 and thereafter, section 207 of the Clean Air Act (42 U.S.C. 7541) is amended as follows:

(1) Strike out "useful life (as determined under section 202(d))" each place it appears in subsection (b) and insert "the warranty period (as determined under subsection (i))".

(2) Strike so much of section 207(b) as follows the third sentence thereof.

(3) Add the following new subsection at the end thereof:

"(i) WARRANTY PERIOD.—

"(1) IN GENERAL.—For purposes of subsection (a)(1) and subsection (b), the warranty period, effective with respect to new light-duty trucks and new light-duty vehicles and engines, manufactured in the model year 1995 and thereafter, shall be the first 2 years or 24,000 miles of use (whichever first occurs), except as provided in paragraph (2). For purposes of subsection (a)(1) and subsection (b), for other vehicles and engines the warranty period shall be the period established by the Administrator by regulation (promulgated prior to the enactment of the Clean Air Act Amendments of 1990) for such purposes unless the Administrator subsequently modifies such regulation.

"(2) SPECIFIED MAJOR EMISSION CONTROL COMPONENTS.—In the case of a specified major emission control component, the warranty period for new light-duty trucks and new light-duty vehicles and engines manufactured in the model year 1995 and thereafter for purposes of subsection (a)(1) and subsection (b) shall be 8 years or 80,000 miles of use (whichever first occurs). As used in this paragraph, the term 'specified major emission control component' means only a catalytic converter, an electronic emissions control unit, and an onboard emissions diagnostic device, except that the Administrator may designate any other pollution control device or component as a specified major emission control component if—

"(A) the device or component was not in general use on vehicles and engines manufactured prior to the model year 1990; and

"(B) the Administrator determines that the retail cost (exclusive of installation costs) of such device or component exceeds $200 (in 1989 dollars, adjusted for inflation or deflation as calculated by the Administrator at the time of such determination.

For purposes of this paragraph, the term 'onboard emissions diagnostic device' means any device installed for the purpose of storing or processing emissions related diagnostic information, but not including any parts or other systems which it monitors except specified major emissions control components. Nothing in this Act shall be construed to provide that any part (other than a part referred to in the preceding sentence) shall be required to be warranted under this Act for the period of 8 years or 80,000 miles referred to in this paragraph.

"(3) INSTRUCTIONS.—Subparagraph (A) of subsection (b)(2) shall apply only where the Administrator has made a determination that the instructions concerned conform to the requirements of subsection (c)(3).".

(4) Amend subsection (a)(1) by adding the following at the end thereof: "In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i).".

SEC. 210. IN-USE COMPLIANCE—RECALL.

Section 207(c) of the Clean Air Act (42 U.S.C. 7541(c)) is amended by adding the following at the end thereof:

"(4) INTERMEDIATE IN-USE STANDARDS.—

"(A) MODEL YEARS 1994 AND 1995.—For light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are subject to standards under table G of section 202(g)(1) in model years 1994 and 1995 (40 percent of the manufacturer's sales volume in model year 1994 and 80 percent in model year 1995), the standards applicable to NMHC, CO, and NOx for purposes of this subsection shall be those set forth in table A below in lieu of the standards for such air pollutants otherwise applicable under this title.

"TABLE A—INTERMEDIATE IN-USE STANDARDS LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	NMHC	CO	NO_x
Light-duty vehicles	0.32	3.4	[1] 0.4
LDT's (0-3,750 LVW)	0.32	5.2	[1] 0.4
LDT's (3,751-5,750 LVW)	0.41	6.7	[1] 0.7

[1] Not applicable to diesel-fueled vehicles.

"(B) MODEL YEARS 1996 AND THEREAFTER.—(i) In the model years 1996 and 1997, light-duty trucks (LDTs) up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are not subject to final in-use standards under paragraph (5) (60 percent of the manufacturer's sales volume in model year 1996 and 20 percent in model year 1997) shall be subject to the standards set forth in table A of subparagraph (A) for NMHC, CO, and NOx for purposes of this subsection in lieu of those set forth in paragraph (5).

"(ii) For LDTs of more than 6,000 lbs. gvwr—

"(I) in model year 1996 which are subject to the standards set forth in Table H of section 202(h) (50%),

"(II) in model year 1997 (100%), and

"(III) in model year 1998 which are not subject to final in-use standards under paragraph (5) (50%),

the standards for NMHC, CO, and NOx for purposes of this subsection shall be those set forth in Table B below in lieu of the standards for such air pollutants otherwise applicable under this title.

"TABLE B—INTERMEDIATE IN-USE STANDARDS LDTS MORE THAN 6,000 LBS. GVWR

Vehicle type	NMHC	CO	NOx
LDTs (3,751-5,750 lbs. Tw)	0.40	5.5	[1] 0.88
LDTs (over 5,750 lbs. Tw)	0.49	6.2	[1] 1.38

[1] Not applicable to diesel-fueled vehicles.

"(C) USEFUL LIFE.—In the case of the in-use standards applicable under this paragraph, for purposes of applying this subsection, the applicable useful life shall be 5 years or 50,000 miles or the equivalent (whichever first occurs).

"(5) FINAL IN-USE STANDARDS.—(A) After the model year 1995, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light duty vehicles, the standards for NMHC, CO, and NOx shall be as provided in Table G in section 202(g), except that in applying the standards set forth in Table G for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 100,000 miles, except that no testing shall be done beyond 7 years or 75,000 miles, or the equivalent whichever first occurs.

"LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1996	40
1997	80
1998	100

"(B) After the model year 1997, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of more than 6,000 lbs. gross vehicle weight rating (GVWR), the standards for NMHC, CO, and NOx shall be as provided in Table H in section 202(h), except that in applying the standards set forth in Table H for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

"LDTS OF MORE THAN 6,000 LBS, GVWR IMPLEMENTATION SCHEDULE

Implementation of Final In-Use Standards

Model year	Percent
1998	50
1999	100

"(6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—(A) In the case of diesel-fueled light-duty trucks up to 6000 lbs gvwr and light-duty vehicles, the useful life for purposes of determining in-use compliance with the standards under section 202(g) for NOx shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

"(B) In the case of diesel-fueled light-duty trucks of 6000 lbs gvwr or more, the useful life for purposes of determining in-use compliance with the standards under section 202(h) for Nox shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.".

SEC. 211. INFORMATION COLLECTION.

Section 208 of the Clean Air Act (42 U.S.C. 7542) is amended to read as follows:

"SEC. 208. INFORMATION COLLECTION.

"(a) MANUFACTURER'S RESPONSIBILITY.—Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and part C (including fees for testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C and regulations thereunder, or to otherwise carry out the provision of this part and part C, and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

"(b) ENFORCEMENT AUTHORITY.—For the purposes of enforcement of this section, officers or employees duly designated by the Administrator upon presenting appropriate credentials are authorized—

"(1) to enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engages to perform any activity required by subsection (a), for the purposes of inspecting or observing any activity conducted pursuant to subsection (a), and

"(2) to inspect records, files, papers, processes, controls, and facilities used in performing any activity required by subsection (a), by such manufacturer or by any person whom the manufacturer engages to perform any such activity.

"(c) AVAILABILITY TO THE PUBLIC; TRADE SECRETS.—Any records, reports, or information obtained under this part or part C shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or a particular portion thereof (other than emission data), to which the Administrator has access under this section, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the Administrator shall consider the record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. Any authorized representative of the Administrator shall be considered an employee of the United States for purposes of section 1905 of title 18 of the United States Code. Nothing in this section shall prohibit the Administrator or authorized representative of the Administrator from disclosing records, reports or information to other officers, employees or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under the Administrator's control from the duly authorized committees of the Congress.".

SEC. 212. NONROAD FUELS.

(a) FUELS AND FUEL ADDITIVES.—Section 211(a) of the Clean Air Act (42 U.S.C. 7545(a)) is amended by inserting "(including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles)" immediately after "fuel or fuel additive".

(b) ANALYTICAL TECHNIQUES.—Section 211(b)(2)(B) of the Clean Air Act (42 U.S.C. 7545(2)(B)) is amended by striking "or" after "vehicle" and inserting in lieu thereof a comma, and by inserting immediately after "vehicle engine," the phrase: "nonroad engine or nonroad vehicle,".

(c) REGULATION.—Section 211(c)(1) of the Clean Air Act (42 U.S.C. 7545(c)(1)) is amended by striking "or" after "motor vehicle" and inserting in lieu thereof a comma, and by inserting immediately after "motor vehicle engine" a comma followed by "or nonroad engine or nonroad vehicle".

SEC. 213. STATE FUEL REGULATION.

(a) IN GENERAL.—Section 211(c)(4)(A) of the Clean Air Act (42 U.S.C. 7545(c)(4)(A)) is amended as follows:

(1) Strike out "use of a" and insert "any characteristic or component of a".

(2) In clause (i) after "control or prohibition" insert "of the characteristic or component of a fuel or fuel additive".

(3) In clause (ii) after "such" insert "characteristic or component of a".

(b) FINDING OF NECESSITY.—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended by adding the following at the end: "The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.".

SEC. 214. FUEL WAIVERS.

(a) COVERAGE.—Section 211(f)(1) of the Clean Air Act (42 U.S.C. 7545(f)(1) is amended by inserting "(A)" immediately after "(1)" and by adding the following new subparagraph at the end thereof:

"(B) Effective upon the date of the enactment of the Clean Air Act Amendments of 1990, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206.".

(b) CONFORMING AMENDMENT.—Section 211(f)(3) of the Clean Air Act (42 U.S.C. 7545(f)(3)) is amended by inserting "(A)" immediately after "(1)".

SEC. 215. MISFUELING.

Section 211(g) of the Clean Air Act (42 U.S.C. 7545(g)) is amended to read as follows:

"(g) MISFUELING.—(1) No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled 'unleaded gasoline only,' which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which such person knows or should know is a vehicle designed solely for the use of unleaded gasoline.

"(2) Beginning October 1, 1993, no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40 or such equivalent alternative aromatic level as prescribed by the Administrator under subsection (i)(2).".

SEC. 216. FUEL VOLATILITY.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding the following new subsection at the end thereof:

"(h) REID VAPOR PRESSURE REQUIREMENTS.—

"(1) PROHIBITION.—Not later than 6 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.

"(2) ATTAINMENT AREAS.—The regulations under this subsection shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure of 9.0 pounds per square inch (p.s.i.) or lower in any area designated under section 107 as an attainment area. Notwithstanding the preceding sentence, the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch (psi) in any area, formerly an ozone nonattainment area, which has been redesignated as an attainment area.

"(3) EFFECTIVE DATE; ENFORCEMENT.—The regulations under this subsection shall provide that the requirements of this subsection

shall take effect not later than the high ozone season for 1992, and shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.

"(4) ETHANOL WAIVER.—For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under paragraph (1); Provided, however, That a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder if it can demonstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that

"(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection, and

"(B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4), and

"(C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend.

"(5) AREAS COVERED.—The provisions of this subsection shall apply only to the 48 contiguous States and the District of Columbia.".

SEC. 217. DIESEL FUEL SULFUR CONTENT.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding the following new subsection at the end thereof:

"(i) SULFUR CONTENT REQUIREMENTS FOR DIESEL FUEL.—(1) Effective October 1, 1993, no person shall manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

"(2) Not later than 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations to implement and enforce the requirements of paragraph (1). The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel in a particular manner in order to segregate it from motor vehicle diesel fuel. The Administrator may establish an equivalent alternative aromatic level to the cetane index specification in paragraph (1).

"(3) The sulfur content of fuel required to be used in the certification of 1991 through 1993 model year heavy-duty diesel vehicles and engines shall be 0.10 percent (by weight). The sulfur content and cetane index minimum of fuel required to be used in the certification of 1994 and later model year heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).

"(4) The States of Alaska and Hawaii may be exempted from the requirements of this subsection in the same manner as provided in section 324. The Administrator shall take final action on any petition filed under section 324 or this paragraph for an exemption from the requirements of this subsection, within 12 months from the date of the petition.".

SEC. 218. LEAD SUBSTITUTE GASOLINE ADDITIVES.

(a) ADDITIVES.—Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding the following at the end thereof:

"(j) LEAD SUBSTITUTE GASOLINE ADDITIVES.—(1) After the date of the enactment of the Clean Air Act Amendments of 1990, any person proposing to register any gasoline additive under subsection (a) or to use any previously registered additive as a lead substitute may also elect to register the additive as a lead substitute gasoline additive for reducing valve seat wear by providing the Administrator with such relevant information regarding product identity and composition as the Administrator deems necessary for carrying out the responsibilities of paragraph (2) of this subsection (in addition to other information which may be required under subsection (b)).

"(2) In addition to the other testing which may be required under subsection (b), in the case of the lead substitute gasoline additives referred to in paragraph (1), the Administrator shall develop and publish a test procedure to determine the additives' effectiveness in reducing valve seat wear and the additives' tendencies to produce engine deposits and other adverse side effects. The test procedures shall be developed in cooperation with the Secretary of Agriculture and with the input of additive manufacturers, engine and engine components manufacturers, and other interested persons. The Administrator shall enter into arrangements with an independent laboratory to conduct tests of each additive using the test procedures developed and published pursuant to this paragraph. The Administrator shall publish the results of the tests by company and additive name in the Federal Register along with, for comparison purposes, the results of applying the same test procedures to gasoline containing 0.1 gram of lead per gallon in lieu of the lead substitute gasoline additive. The Administrator shall not rank or otherwise rate the lead substitute additives. Test procedures shall be established within 1 year after the date of the enactment of the Clean Air Act Amendments of 1990. Additives shall be tested within 18 months of the date of the enactment of the Clean Air Act Amendments of 1990 or 6 months after the lead substitute additives are identified to the Administrator, whichever is later.

"(3) The Administrator may impose a user fee to recover the costs of testing of any fuel additive referred to in this subsection. The fee shall be paid by the person proposing to register the fuel additive concerned. Such fee shall not exceed $20,000 for a single fuel additive.

"(4) There are authorized to be appropriated to the Administrator not more than $1,000,000 for the second full fiscal year after the date of the enactment of the Clean Air Act Amendments of 1990 to establish test procedures and conduct engine tests as provided in this subsection. Not more than $500,000 per year is authorized to be appropriated for each of the 5 subsequent fiscal years.

"(5) Any fees collected under this subsection shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.".

SEC. 219. REFORMULATED GASOLINE AND OXYGENATED GASOLINE.

Section 211 of the Clean Air Act (42 U.S.C. 7545) is amended by adding the following at the end thereof:

"(k) REFORMULATED GASOLINE FOR CONVENTIONAL VEHICLES.—

"(1) EPA REGULATIONS.—Within 1 year after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

"(2) GENERAL REQUIREMENTS.—The regulations referred to in paragraph (1) shall require that reformulated gasoline comply with paragraph (3) and with each of the following requirements (subject to paragraph (7)):

"(A) NO_x emissions.—The emissions of oxides of nitrogen (NO_x) from baseline vehicles when using the reformulated gasoline shall be no greater than the level of such emissions from such vehicles when using baseline gasoline. If the Administrator determines that compliance with the limitation on emissions of oxides of nitrogen under the preceding sentence is technically infeasible, considering the other requirements applicable under this subsection to such gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph (including the oxygen content requirement contained in subparagraph (B)) or any requirements applicable under paragraph (3) (A).

"(B) OXYGEN CONTENT.—The oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this Act. The Administrator may waive, in whole or in part, the application of this subparagraph for any ozone nonattainment area upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard.

"(C) BENZENE CONTENT.—The benzene content of the gasoline shall not exceed 1.0 percent by volume.

"(D) HEAVY METALS.—The gasoline shall have no heavy metals, including lead or manganese. The Administrator may waive the prohibition contained in this subparagraph for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

"(3) MORE STRINGENT OF FORMULA OR PERFORMANCE STANDARDS.—The regulations referred to in paragraph (1) shall require compliance with the more stringent of either the requirements set forth in subparagraph (A) or the requirements of subparagraph (B) of this paragraph. For purposes of determining the more stringent provision, clause (i) and clause (ii) of subparagraph (B) shall be considered independently.

"(A) FORMULA.—

"(i) BENZENE.—The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

"(ii) AROMATICS.—The aromatic hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.

"(iii) LEAD.—The reformulated gasoline shall have no lead content.

"(iv) DETERGENTS.—The reformulated gasoline shall contain additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

"(v) OXYGEN CONTENT.—The oxygen content of the reformulated gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this Act.

"(B) PERFORMANCE STANDARD.—

"(i) VOC EMISSIONS.—During the high ozone season (as defined by the Administrator), the aggregate emissions of ozone forming volatile organic compounds from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of ozone forming volatile organic compounds from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in VOC emissions. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

"(ii) TOXICS.—During the entire year, the aggregate emissions of toxic air pollutants from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of toxic air pollutants from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in toxic air pollutants. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

Any reduction greater than a specific percentage reduction required under this subparagraph shall be treated as satisfying such percentage reduction requirement.

"(4) CERTIFICATION PROCEDURES.—

"(A) REGULATIONS.—The regulations under this subsection shall include procedures under which the Administrator shall certify reformulated gasoline as complying with the requirements established pursuant to this subsection. Under such regulations, the Administrator shall establish procedures for any person to petition the Administrator to certify a fuel formulation, or slate of fuel formulations. Such procedures shall further require that the Administrator shall approve or deny such petition within 180 days of receipt. If the Administrator fails to act within such 180-day period, the fuel shall be deemed certified until the Administrator completes action on the petition.

"(B) CERTIFICATION; EQUIVALENCY.—The Administrator shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—

"(i) comply with the requirements of paragraph (2), and

"(ii) achieve equivalent or greater reductions in emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (3).

"(C) EPA DETERMINATION OF EMISSIONS LEVEL.—Within 1 year after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall determine the level of emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants emitted by baseline vehicles when operating on baseline gasoline. For purposes of this subsection, within 1 year after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall, by rule, determine appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances).

"(5) PROHIBITION.—Effective beginning January 1, 1995, each of the following shall be a violation of this subsection:

"(A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

"(B) The sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered area, without (i) segregating such gasoline from reformulated gasoline, and (ii) clearly marking such conventional gasoline as "conventional gasoline, not for sale to ultimate consumer in a covered area".

Any refiner, blender, importer or marketer who purchases property segregated and marked conventional gasoline, and thereafter labels, represents, or wholesales such gasoline as reformulated gasoline shall also be in violation of this subsection. The Administrator may impose sampling, testing, and recordkeeping requirements upon any refiner, blender, importer, or marketer to prevent violations of this section.

"(6) OPT-IN AREAS.—(A) Upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any area in the State classified under subpart 2 of part D of title I as a Marginal, Moderate, Serious, or Severe Area (without regard to whether or not the 1980 population of the area exceeds 250,000). In any such case, the Administrator shall establish an effective date for such prohibition as he deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later. The Administrator shall publish such application in the Federal Register upon receipt.

"(B) If the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient domestic capacity to produce gasoline certified under this subsection, the Administrator shall, by rule, extend the effective date of such prohibition in Marginal, Moderate, Serious, or Severe Areas referred to in subparagraph (A) for one additional year, and may, by rule, renew such extension for 2 additional one-year periods. The Administrator shall act on any petition submitted under this paragraph within 6 months after receipt of the petition. The Administrator shall issue such extensions for areas with a lower ozone classification before issuing any such extension for areas with a higher classification.

"(7) CREDITS.—(A) The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

"(i) has an oxygen content (by weight) that exceeds the minimum oxygen content specified in paragraph (2);

"(ii) has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (3); or

"(iii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

"(B) The regulations described in subparagraph (A) shall also provide that a person who is granted credits may use such credits, or transfer all or a portion of such credits to another person for use within the same nonattainment area, for the purpose of complying with this subsection.

"(C) The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of the credits. Such regulations shall prohibit the granting or transfer of such credits for use with respect to any gasoline in a nonattainment area, to the extent the use of such credits would result in any of the following:

"(i) An average gasoline aromatic hydrocarbon content (by volume) for the nonattainment (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in the absence of using any such credits.

"(ii) An average gasoline oxygen content (by weight) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) lower than the average gasoline oxygen content (by weight) that would occur in the absence of using any such credits.

"(iii) An average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

"(8) ANTI-DUMPING RULES.—

"(A) IN GENERAL.—Within 1 year after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations applicable to each refiner, blender, or importer of gasoline ensuring that gasoline sold or introduced into commerce by such refiner, blender, or importer (other than reformulated gasoline subject to the requirements of paragraph (1)) does not result in average per gallon emissions (measured on a mass basis) of (i) volatile organic compounds, (ii) oxides of nitrogen, (iii) carbon monoxide, and (iv) toxic air pollutants in excess of such emissions of such pollutants attributable to gasoline sold or introduced into commerce in calendar year 1990 by that refiner, blender, or importer. Such regulations shall take effect beginning January 1, 1995.

"(B) ADJUSTMENTS.—In evaluating compliance with the requirements of subparagraph (A), the Administrator shall make appropriate adjustments to insure that no credit is provided for improvement in motor vehicle emissions control in motor vehicles sold after the calendar year 1990.

"(C) COMPLIANCE DETERMINED FOR EACH POLLUTANT INDEPENDENTLY.—In determining whether there is an increase in emissions in violation of the prohibition contained in subparagraph (A) the Administrator shall consider an increase in each air pollutant referred to in clauses (i) through (iv) as a

separate violation of such prohibition, except that the Administrator shall promulgate regulations to provide that any increase in emissions of oxides of nitrogen resulting from adding oxygenates to gasoline may be offset by an equivalent or greater reduction (on a mass basis) in emissions of volatile organic compounds, carbon monoxide, or toxic air pollutants, or any combination of the foregoing.

"(D) COMPLIANCE PERIOD.—The Administrator shall promulgate an appropriate compliance period or appropriate compliance periods to be used for assessing compliance with the prohibition contained in subparagraph (A).

"(E) BASELINE FOR DETERMINING COMPLIANCE.—If the Administrator determines that no adequate and reliable data exists regarding the composition of gasoline sold or introduced into commerce by a refiner, blender, or importer in calendar year 1990, for such refiner, blender, or importer, baseline gasoline shall be substituted for such 1990 gasoline in determining compliance with subparagraph (A).

"(9) EMISSIONS FROM ENTIRE VEHICLE.—In applying the requirements of this subsection, the Administrator shall take into account emissions from the entire motor vehicle, including evaporative, running, refueling, and exhaust emissions.

"(10) DEFINITIONS.—For purposes of this subsection—

"(A) BASELINE VEHICLES.—The term 'baseline vehicles' mean representative model year 1990 vehicles.

"(B) BASELINE GASOLINE.—

(i) SUMMERTIME.—The term 'baseline gasoline' means in the case of gasoline sold during the high ozone period (as defined by the Administrator) a gasoline which meets the following specifications:

"BASELINE GASOLINE FUEL PROPERTIES

API Gravity	*57.4*
Sulfur, ppm	*339*
Benzene, (percent)	*1.53*
RVP, psi	*8.7*
Octane, R+M/2	*87.3*
IBP, F	*91*
10 (percent), F	*128*
50 (percent), F	*218*
90 (percent), F	*330*
End Point, F	*415*
Aromatics, (percent)	*32.0*
Olefins, (percent)	*9.2*
Saturates, (percent)	*58.8*

"(ii) WINTERTIME.—The Administrator shall establish the specifications of 'baseline gasoline' for gasoline sold at times other than the high ozone period (as defined by the Administrator). Such specifications shall be the specifications of 1990 industry average gasoline sold during such period.

"(C) TOXIC AIR POLLUTANTS.—The term 'toxic air pollutants' means the aggregate emissions of the following:

"Benzene
"1,3 Butadiene
"Polycyclic organic matter (POM)
"Acetaldehyde
"Formaldehyde.

"(D) COVERED AREA.—The 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989 shall be 'covered areas' for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area under section 181(b), such Severe area shall also be a 'covered area' for purposes of this subsection.

"(E) REFORMULATED GASOLINE.—The term 'reformulated gasoline' means any gasoline which is certified by the Administrator under this section as complying with this subsection.

"(F) CONVENTIONAL GASOLINE.—The term 'conventional gasoline' means any gasoline which does not meet specifications set by a certification under this subsection.

"(l) DETERGENTS.—Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. Not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate a rule establishing specifications for such additives.

"(m) OXYGENATED FUELS.—

"(1) PLAN REVISIONS FOR CO NONATTAINMENT AREAS.—(A) Each State in which there is located all or part of an area which is designated under title I as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990 shall submit to the Administrator a State implementation plan revision under section 110 and part D of title I for such area which shall contain the provisions specified under this subsection regarding oxygenated gasoline.

"(B) A plan revision which contains such provisions shall also be submitted by each State in which there is located any area which, for any 2-year period after 1989 has a carbon monoxide design value of 9.5 ppm or above. The revision shall be submitted within 18 months after such 2-year period.

"(2) OXYGENATED GASOLINE IN CO NONATTAINMENT AREAS.—Each plan revision under this subsection shall contain provisions to require that any gasoline sold, or dispensed, to the ultimate consumer in the carbon monoxide nonattainment area or sold or dispensed directly or indirectly by fuel refiners or marketers to persons who sell or dispense to ultimate consumers, in the larger of—

"(A) the Consolidated Metropolitan Statistical Area (CMSA) in which the area is located, or

"(B) if the area is not located in a CMSA, the Metropolitan Statistical Area in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide to contain not less than 2.7 percent oxygen by weight (subject to a testing tolerance established by the Administrator). The portion of the year in which the area is prone to high ambient concentrations of carbon monoxide shall be as determined by the Administrator, but shall not be less than 4 months. At the request of a State with respect to any area designated as nonattainment for carbon monoxide, the Administrator may reduce the period specified in the preceding sentence if the State can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. For areas with a carbon monoxide design value of 9.5 ppm or more of the date of enactment of the Clean Air Act Amendments of 1990, the revision shall provide that such requirement shall provide that such requirement shall take effect no later than November 1, 1992 (or at such other date during 1992 as the Administrator establishes under the preceding provisions of this paragraph). For other areas, the revision shall provide that such requirement shall take effect no later than November 1 of the third year after the last year of the applicable 2-year period referred to in paragraph (1) (or at such other date during such third year as the Administrator establishes under the preceding provisions of this paragraph) and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

"(3) WAIVERS.—(A) The Administrator shall waive, in whole or in part, the requirements of paragraph (2) upon a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated gasoline would prevent or interfere with the attainment by the area of a national primary ambient air quality standard (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

"(B) The Administrator shall, upon demonstration by the State satisfactory to the Administrator, waive the requirement of paragraph (2) where the Administrator determines that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in an area.

"(C)(i) Any person may petition the Administrator to make a finding that there is, or is likely to be, for any area, an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline meeting the requirements of paragraph (2) or fuel additives (oxygenates) necessary to meet such requirements. The Administrator shall act on such petition within 6 months after receipt of the petition.

"(ii) If the Administrator determines, in response to a petition under clause (i), that there is an inadequate supply or capacity described in clause (i), the Administrator shall delay the effective date of paragraph (2) for 1 year. Upon petition, the Administrator may extend such effective date for one additional year. No partial delay or lesser waiver may be granted under this clause.

"(iii) In granting waivers under this subparagraph the Administrator shall consider distribution capacity separately from the adequacy of domestic supply and shall grant such waivers in such manner as will assure that, if supplies of oxygenated gasoline are limited, areas having the highest design value for carbon monoxide will have a priority in obtaining oxygenated gasoline which meets the requirements of paragraph (2).

"(iv) As used in this subparagraph, the term distribution capacity includes capacity for transportation, storage, and blending.

"(4) FUEL DISPENSING SYSTEMS.—Any person selling oxygenated gasoline at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce the carbon monoxide emissions from the motor vehicle.

"(5) GUIDELINES FOR CREDITS.—The Administrator shall promulgate guidelines, within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990, allowing the use of marketable oxygen credits from gasolines during that portion of the

year specified in paragraph (2) with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than required. No credits may be transferred between nonattainment areas.

"(6) ATTAINMENT AREAS.—Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.

"(7) FAILURE TO ATTAIN CO STANDARD.—If the Administrator determines under section 186(b)(2) that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that the minimum oxygen content of gasoline referred to in paragraph (2) shall be 3.1 percent by weight unless such requirement is waived in accordance with the provisions of this subsection.".

SEC. 220. LEAD PHASEDOWN.

Section 211 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(n) PROHIBITION ON LEADED GASOLINE FOR HIGHWAY USE.—After December 31, 1995, it shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 219(2)) any gasoline which contains lead or lead additives.".

SEC. 221. FUEL AND FUEL ADDITIVE IMPORTERS.

Section 211 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(o) FUEL AND FUEL ADDITIVE IMPORTERS AND IMPORTATION.—For the purposes of this section, the term 'manufacturer' includes an importer and the term 'manufacture' includes importation.".

SEC. 222. NONROAD ENGINES AND VEHICLES.

(a) EMISSION STANDARDS.—Section 213 of the Clean Air Act (42 U.S.C. 7547) is amended to read as follows:

"SEC. 213. NONROAD ENGINES AND VEHICLES.

"(a) EMISSIONS STANDARDS.—(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of the date of the enactment of the Clean Air Act Amendments of 1990.

"(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

"(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 202, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

"(4) If the Administrator determines that any emissions not referred to in paragraph (2) from new nonroad engines or vehicles significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

"(5) Within 5 years after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

"(b) EFFECTIVE DATE.—Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.

"(c) SAFE CONTROLS.—Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in such a new nonroad engine or new nonroad vehicle for purposes of complying with such standards if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 202(a)(4)(B).

"(d) ENFORCEMENT.—The standards under this section shall be subject to sections 206, 207, 208, and 209, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 202. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.".

(b) STATE STANDARDS.—Section 209 of the Clean Air Act (42 U.S.C. 7543) is amended by adding the following at the end thereof:

"(e) NONROAD ENGINES OR VEHICLES.—

"(1) PROHIBITION ON CERTAIN STATE STANDARDS.—No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

"(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

"(B) New locomotives or new engines used in locomotives.

Subsection (b) shall not apply for purposes of this paragraph.

"(2) OTHER NONROAD ENGINES OR VEHICLES.—(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

"(i) the determination of California is arbitrary and capricious,

"(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

"(iii) California standards and accompanying enforcement procedures are not consistent with this section.

"(B) Any State other than California which has plan provisions approved under part D of title I may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—

"(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

"(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.".

SEC. 223. NEW TITLE II DEFINITIONS.

(a) ADDITIONAL DEFINITIONS.—Section 216 of the Clean Air Act (42 U.S.C. 7550) is amended by adding the following at the end thereof:

"(7) VEHICLE CURB WEIGHT, GROSS VEHICLE WEIGHT RATING, LIGHT-DUTY TRUCK, LIGHT-DUTY VEHICLE, AND LOADED VEHICLE WEIGHT.—The terms 'vehicle curb weight', 'gross vehicle weight rating' (gvwr), 'light-duty truck' (ldt), light-duty vehicle, and 'loaded vehicle weight' (lvw) have the meaning provided in regulations promulgated by the Administrator and in effect as of the enactment of the Clean Air Act Amendments of 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term.

"(8) TEST WEIGHT.—The term 'test weight' and the abbreviation 'tw' mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

"(9) MOTOR VEHICLE OR ENGINE PART MANUFACTURER.—The term 'motor vehicle or engine part manufacturer' as used in sections 207 and 208 means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

"(10) NONROAD ENGINE.—The term 'nonroad engine' means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202.

"(11) NONROAD VEHICLE.—The term 'nonroad vehicle' means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.".

(b) DEFINITION OF MANUFACTURER.—Paragraph (1) of section 216 of the Clean Air Act (42 U.S.C. 7550) is amended by striking out "new motor vehicles or new motor vehicle engines" every place it occurs and inserting "new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines".

SEC. 224. HIGH ALTITUDE TESTING.

Section 215 of the Clean Air Act (42 U.S.C. 7549) is amended by adding the following at the end thereof:

"(e) HIGH ALTITUDE TESTING.—(1) The Administrator shall promptly establish at least one testing center (in addition to the testing centers existing on the date of the enactment of the Clean Air Act Amendments of 1990) located at a site that represents high altitude conditions, to ascertain in a reasonable manner whether, when in actual use throughout their useful life (as determined under section 202(d)), each class or category of vehicle and engines to which regulations under section 202 apply conforms to the emissions standards established by such regulations. For purposes of this subsection, the term 'high altitude conditions' refers to high altitude as defined in regulations of the Administrator in effect as of the date of the enactment of the Clean Air Act Amendments of 1990.

"(2) The Administrator, in cooperation with the Secretary of Energy and the Administrator of the Urban Mass Transportation Administration, and such other agencies as the Administrator deems appropriate, shall establish a research and technology assessment center to provide for the development and evaluation of less-polluting heavy-duty engines and fuels for use in buses, heavy-duty trucks, and non-road engines and vehicles, which shall be located at a high-altitude site that represents high-altitude conditions. In establishing and funding such a center, the Administrator shall give preference to proposals which provide for local cost-sharing of facilities and recovery of costs of operation through utilization of such facility for the purposes of this section.

"(3) The Administrator shall designate at least one center at high-altitude conditions to provide research on after-market emission components, dual-fueled vehicles and conversion kits, the effects of tampering on emissions equipment, testing of alternate fuels and conversion kits, and the development of curricula, training courses, and materials to maximize the effectiveness of inspection and maintenance programs as they relate to promoting effective control of vehicle emissions at high-altitude elevations. Preference shall be given to existing vehicle emissions testing and research centers that have established reputations for vehicle emissions research and development and training, and that possess in-house Federal Test Procedure capacity.".

SEC. 225. COMPLIANCE PROGRAM FEES.

Part A of title II of the Clean Air Act is amended by adding the following new section at the end thereof:

"SEC. 217. MOTOR VEHICLE COMPLIANCE PROGRAM FEES.

"(a) FEE COLLECTION.—Consistent with section 9701 of title 31, United States Code, the Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Administrator associated with—

"(1) new vehicle or engine certification under section 206(a) or part C,

"(2) new vehicle or engine compliance monitoring and testing under section 206(b) or part C, and

"(3) in-use vehicle or engine compliance monitoring and testing under section 207(c) or part C.

The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of vehicles or engines produced under a certificate of conformity. In the case of heavy-duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs.

"(b) SPECIAL TREASURY FUND.—Any fees collected under this section shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

"(c) LIMITATION ON FUND USE.—Moneys in the special fund referred to in subsection (b) shall not be used until after the first fiscal year commencing after the first July 1 when fees are paid into the fund.

"(d) ADMINISTRATOR'S TESTING AUTHORITY.—Nothing in this subsection shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in this part.".

SEC. 226. PROHIBITION ON PRODUCTION OF ENGINES REQUIRING LEADED GASOLINE.

Part A of title II of the Clean Air Act is amended by adding the following new section after section 217:

"SEC. 218. PROHIBITION ON PRODUCTION OF ENGINES REQUIRING LEADED GASOLINE.

"The Administrator shall promulgate regulations applicable to motor vehicle engines and nonroad engines manufactured after model year 1992 that prohibit the manufacture, sale, or introduction into commerce of any engine that requires leaded gasoline.".

SEC. 227. URBAN BUSES.

Part A of title II of the Clean Air Act is amended by adding the following new section after section 218:

"SEC. 219. URBAN BUS STANDARDS.

"(a) STANDARDS FOR MODEL YEARS AFTER 1993.—Not later than January 1, 1992, the Administrator shall promulgate regulations under section 202(a) applicable to urban buses for the model year 1994 and thereafter. Such standards shall be based on the best technology that can reasonably be anticipated to be available at the time such measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account. Such regulations shall require that such urban buses comply with the provisions of subsection (b) of this section (and subsection (c) of this subsection, if applicable) in addition to compliance with the standards applicable under section 202(a) for heavy-duty vehicles of the same type and model year.

"(b) PM STANDARD.—

"(1) 50 PERCENT REDUCTION.—The standards under section 202(a) applicable to urban buses shall require that, effective for the model year 1994 and thereafter, emissions of particulate matter (PM) from urban buses shall not exceed 50 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 202(a) as of the date of the enactment of the Clean Air Act Amendments of 1990 for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

"(2) REVISED REDUCTION.—The Administrator shall increase the level of emissions of particulate matter allowed under the standard referred to in paragraph (1) if the Administrator determines that the 50 percent reduction referred to in paragraph (1) is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. The Administrator may not increase such level of emissions above 70 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 202(a) as of the date of the enactment of the Clean Air Act Amendments of 1990 for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

"(3) DETERMINATION AS PART OF RULE.—As part of the rulemaking under subsection (a), the Administrator shall make a determination as to whether the 50 percent reduction referred to in paragraph (1) is technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors.

"(c) LOW-POLLUTING FUEL REQUIREMENT.—

"(1) ANNUAL TESTING.—Beginning with model year 1994 buses, the Administrator shall conduct annual tests of a representative sample of operating urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) to deter-

mine whether such buses comply with such standard in use over their full useful life.

"(2) PROMULGATION OF ADDITIONAL LOW-POLLUTING FUEL REQUIREMENT.—(A) If the Administrator determines, based on the testing under paragraph (1), that urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) do not comply with such standard in use over their full useful life, he shall revise the standards applicable to such buses to require (in addition to compliance with the PM standard applicable pursuant to subsection (b)) that all new urban buses purchased or placed into service by owners or operators of urban buses in all metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of 750,000 or more shall be capable of operating, and shall be exclusively operated, on low-polluting fuels. The Administrator shall establish the pass-fail rate for purposes of testing under this subparagraph.

"(B) The Administrator shall promulgate a schedule phasing in any low-polluting fuel requirement established pursuant to this paragraph to an increasing percentage of new urban buses purchased or placed into service in each of the first 5 model years commencing 3 years after the determination under subparagraph (A). Under such schedule 100 percent of new urban buses placed into service in the fifth model year commencing 3 years after the determination under subparagraph (A) shall comply with the low-polluting fuel requirement established pursuant to this paragraph.

"(C) The Administrator may extend the requirements of this paragraph to metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of less than 750,000, if the Administrator determines that a significant benefit to public health could be expected to result from such extension.

"(d) RETROFIT REQUIREMENTS.—Not later than 12 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations under section 202(a) requiring that urban buses which—

"(1) are operating in areas referred to in subparagraph (A) of subsection (c)(2) (or subparagraph (C) of subsection (c)(2) if the Administrator has taken action under that subparagraph);

"(2) were not subject to standards in effect under the regulations under subsection (a); and

"(3) have their engines replaced or rebuilt after January 1, 1995,

shall comply with an emissions standard or emissions control technology requirement established by the Administrator in such regulations. Such emissions standard or emissions control technology requirement shall reflect the best retrofit technology and maintenance practices reasonably achievable.

"(e) PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT.—The Administrator shall establish, within 18 months after the enactment of the Clean Air Act Amendments to 1990, and in accordance with section 206(h), procedures for the administration and enforcement of standards for buses subject to standards under this section, testing procedures, sampling protocols, in-use compliance requirements, and criteria governing evaluation of buses. Procedures for testing (including, but not limited to, certification testing) shall reflect actual operating conditions.

"(f) DEFINITIONS.—For purposes of this section—

"(1) URBAN BUS.—The term 'urban bus' has the meaning provided under regulations of the Administrator promulgated under section 202(a).

"(2) LOW-POLLUTING FUEL.—The term 'low-polluting fuel' means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel. In determining whether a fuel is comparably low-polluting, the Administrator shall consider both the level of emissions of air pollutants from vehicles using the fuel and the contribution of such emissions to ambient levels of air pollutants. For purposes of this paragraph, the term 'methanol' includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare."

(b) CONFORMING AMENDMENT.—Section 202(a)(4) of the Clean Air Act (42 U.S.C. 7521(a)(4)) is amended by striking out "standards prescribed under this subsection" every place it occurs and inserting "requirements prescribed under this title".

SEC. 228. ENFORCEMENT.

(a) INSPECTIONS AND TESTING.—Section 203(a)(2) of the Clean Air Act (42 U.S.C. 7522(a)(2)) is amended to read as follows:

"(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 208;

"(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 206(c) or section 208;

"(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 208;

"(D) for any manufacturer to fail to make information available as provided by regulation under section 202(m)(5);".

(b) TAMPERING WITH VEHICLE EMISSION CONTROLS.—(1) Section 203(a)(3) (42 U.S.C. 7522(a)(3)) is amended to read as follows:

"(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

"(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or".

(2) At the end of section 203(a) (42 U.S.C. 7522(a)) insert the following: "No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this title) and if such vehicle complies with the applicable standard under section 202 when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.".

(c) CIVIL AND ADMINISTRATIVE PENALTIES.—Section 205 of the Clean Air Act (42 U.S.C. 7524) is amended to read as follows:

"SEC. 205. CIVIL PENALTIES.

"(a) VIOLATIONS.—Any person who violates sections 203(a)(1), 203(a)(4), or 203(a)(5) or any manufacturer or dealer who violates section 203(a)(3)(A) shall be subject to a civil penalty of not more than $25,000. Any person other than a manufacturer or dealer who violates section 203(a)(3)(A) or any person who violates section 203(a)(3)(B) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to section 203(a)(3)(B) shall constitute a separate offense with respect to each part or component. Any person who violates section 203(a)(2) shall be subject to a civil penalty of not more than $25,000 per day of violation.

"(b) CIVIL ACTIONS.—The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 211(d), or section 213(d). Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this title, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

"(c) ADMINISTRATIVE ASSESSMENT OF CERTAIN PENALTIES.—

"(1) ADMINISTRATIVE PENALTY AUTHORITY.—In lieu of commencing a civil action under subsection (b), the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 211(d), or section 213(d), except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the

record after opportunity for a hearing in accordance with sections 554 and 556 of title 5 of the United States Code. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

"(2) DETERMINING AMOUNT.—In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this title, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

"(3) EFFECT OF ADMINISTRATOR'S ACTION.—(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act; except that any violation,

"(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

"(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b).

"(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act.

"(4) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

"(5) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

"(6) COLLECTION.—If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

"(A) after the order making the assessment has become final, or

"(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.".

(d) ENFORCEMENT OF FUELS REGULATIONS.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended to read as follows:

"(d) PENALTIES AND INJUNCTIONS.—

"(1) CIVIL PENALTIES.—Any person who violates subsection (a), (f), (g), (k), (l), (m), or (n) of this section or the regulations prescribed under subsection (c), (h), (i), (k), (l), (m), or (n) of this section or who fails to furnish any information or conduct any tests required by the Administrator under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation prescribed under subsection (c), (k), (l), or (m) of this section which establishes a regulatory standard based upon a multiday averaging period shall constitute a separate day of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with subsections (b) and (c) of section 205.

"(2) INJUNCTIVE AUTHORITY.—The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), (g), (k), (l), (m), and (n) of this section and of the regulations prescribed under subsections (c), (h), (i), (k), (l), (m), and (n) of this section, to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b) of this section. Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.".

(e) MISCELLANEOUS ENFORCEMENT.—(1) Section 203(a) of the Clean Air Act is amended as follows:

(1) Insert "or part C in the case of clean-fuel vehicles" before "(except" in paragraph (1),

(2) In paragraph (4) insert "or part C" after "202".

(3) At the end of paragraph (4)(A) insert "or (ii) the corresponding requirements of part C in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C" and in paragraph (4)(A) after "complied with" insert "(i)".

(4) At the end of paragraph (4)(B) insert "or the corresponding requirements of part C in the case of clean fuel vehicles".

(5) In paragraph (4)(C) insert after "207" the following: "and the corresponding requirements of part C in the case of clean fuel vehicles".

(6) In paragraph (4)(D) insert "or the corresponding requirements of part C in the case of clean fuel vehicles" before "with respect to any vehicle".

(7) Strike the period at the end of paragraph (4) and insert "; or" and add the following new paragraph after paragraph (4):

"(5) for any person to violate section 218, 219, or part C of this title or any regulations under section 218, 219, or part C.".

SEC. 229. CLEAN-FUEL VEHICLES.

(a) AMENDMENT TO TITLE II.—Title II of the Clean Air Act is amended by adding the following new part after part B:

"PART C—CLEAN FUEL VEHICLES

"SEC. 241. DEFINITIONS.

"For purposes of this part—

"(1) TERMS DEFINED IN PART A.—The definitions applicable to part A under section 216 shall also apply for purposes of this part.

"(2) CLEAN ALTERNATIVE FUEL.—The term 'clean alternative fuel' means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels, reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this title when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, the term 'clean alternative fuel' means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under section 243(d)(2) when operating on clean alternative fuel (or any CARB standards which replaces such standards pursuant to section 243(e)).

"(3) NMOG.—The term nonmethane organic gas ('NMOG') means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic gases containing 5 or fewer carbon atoms (i.e., aldehydes, ketones, alcohols, ethers, etc.), and all known alkanes, alkenes, alkynes, and aromatics containing 12 or fewer carbon atoms. To demonstrate compliance with a NMOG standard, NMOG emissions shall be measured in accordance with the 'California Non-Methane Organic Gas Test Procedures'. In the case of vehicles using fuels other than base gasoline, the level of NMOG emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.

"(4) BASE GASOLINE.—The term 'base gasoline' means gasoline which meets the following specifications:

Specifications of Base Gasoline Used as Basis for Reactivity Readjustment:	
API gravity	57.8
Sulfur, ppm	317
Color	Purple
Benzene, vol. (percent)	1.35
Reid vapor pressure	8.7
Drivability	1195

Antiknock index	87.3
Distillation, D-86 °F:	
IBP	92
10 (percent)	126
50 (percent)	219
90 (percent)	327
EP	414
Hydrocarbon Type, Vol. Percent FIA:	
Aromatics	30.9
Olefins	8.2
Saturates	60.9

The Administrator shall modify the definitions of NMOG, base gasoline, and the methods for making reactivity adjustments, to conform to the definitions and method used in California under the Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board, so long as the California definitions are, in the aggregate, at least as protective of public health and welfare as the definitions in this section.

"(5) COVERED FLEET.—The term 'covered fleet' means 10 or more motor vehicles which are owned or operated by a single person. In determining the number of vehicles owned or operated by a single person for purposes of this paragraph, all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person. The term 'covered fleet' shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles).

"(6) COVERED FLEET VEHICLE.—The term 'covered fleet vehicle' means only a motor vehicle which is—

"(i) in a vehicle class for which standards are applicable under this part; and

"(ii) in a covered fleet which is centrally fueled (or capable of being centrally fueled). No vehicle which under normal operations is garaged at a personal residence at night shall be considered to be a vehicle which is capable of being centrally fueled within the meaning of this paragraph.

"(7) CLEAN-FUEL VEHICLE.—The term 'clean-fuel vehicle' means a vehicle in a class or category of vehicles which has been certified to meet for any model year the clean-fuel vehicle standards applicable under this part for that model year to clean-fuel vehicles in that class or category.

"SEC. 242. REQUIREMENTS APPLICABLE TO CLEAN FUEL VEHICLES.

"(a) PROMULGATION OF STANDARDS.—Not later than 24 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations under this part containing clean-fuel vehicle standards for the clean-fuel vehicles specified in this part.

"(b) OTHER REQUIREMENTS.—Clean-fuel vehicles of up to 8,500 gvwr subject to standards set forth in this part shall comply with all motor vehicle requirements of this title (such as requirements relating to on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 244 with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part. Clean-fuel vehicles of 8,500 gvwr or greater subject to standards set forth in this part shall comply with all requirements of this title which are applicable in the case of conventional gasoline-fueled or diesel fueled vehicles of the same category and model year, except as provided in section 244 with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part.

"(c) In-use Useful Life and Testing.—(1) In the case of light-duty vehicles and light-duty trucks up to 6000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 243 shall be—

"(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

"(B) a period of 10 years or 100,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

"(2) In the case of light-duty trucks of more than 6000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 243 shall be—

"(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and

"(B) a period of 11 years or 120,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

"SEC. 243. STANDARDS FOR LIGHT-DUTY CLEAN FUEL VEHICLES.

"(a) EXHAUST STANDARDS FOR LIGHT-DUTY VEHICLES AND CERTAIN LIGHT-DUTY TRUCKS.—The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (gvwr) (but not including light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw)) or light-duty vehicles:

"(1) PHASE I.—Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table:

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM	HCHO (formaldehyde)
50,000 mile standard	0.125	3.4	0.4	.....	0.015
100,000 mile standard	0.156	4.2	0.6	[1] 0.08	0.018

Standards are expressed in grams per mile (gpm).
[1] Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

"(2) PHASE II.—Beginning with model year 2001, for air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM	HCHO (formaldehyde)
50,000 mile standard	0.075	3.4	0.2	.....	0.015
100,000 mile standard	0.090	4.2	0.3	0.08	0.018

[1] Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
Standards are expressed in grams per mile (gpm).
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

"(b) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. LVW AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR.—The standards set forth in this paragraph shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw) but not more than 5,750 lbs. lvw and not more than 6,000 lbs. gross weight rating (gvwr):

"(1) PHASE I.—Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. AND UP TO 5750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	PM	HCHO (formaldehyde)
50,000 mile standard	0.160	4.4	0.7	.....	0.018
100,000 mile standard	0.200	5.5	0.9	0.08	0.023

[1] Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
Standards are expressed in grams per mile (gpm).
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

"(2) PHASE II.—Beginning with model year 2001, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. LVW AND UP TO 5750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	[1]PM	HCHO (formaldehyde)
50,000 mile standard	0.100	4.4	0.4	.....	0.018
100,000 mile standard	0.130	5.5	0.5	0.08	0.023

Standards are expressed in grams per mile (gpm).
[1] Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

"(c) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS GREATER THAN 6,000 LBS. GVWR.—The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 6,000 lbs. gross weight rating (gvwr) and less than or equal to 8,500 lbs. gvwr, beginning with model year 1998. For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions of vehicles within the test weight categories specified in the following table shall not exceed the levels specified in such table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT DUTY TRUCKS GREATER THAN 6,000 LBS. GVWR

[Test Weight Category: Up to 3750 lbs. tw]

Pollutant	NMOG	CO	NO_x[1]	[1]PM	HCHO (formaldehyde)
50,000 mile standard	0.125	3.4	[2]0.4	.....	0.015
120,000 mile standard	0.180	5.0	0.6	0.08	0.022
Test Weight Category: Above 3750 but not above 5,750 lbs. tw					
50,000 mile standard	0.160	4.4	[2]0.7	0.018	
120,000 mile standard	0.230	6.4	1.0	0.10	0.027
Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gvwr					
50,000 mile standard	0.195	5.0	[2]1.1	.....	0.022
120,000 mile standard	0.280	7.3	1.5	0.12	0.032

Standards are expressed in grams per mile (gpm).
[1] Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
[2] Standard not applicable to diesel-fueled vehicles. For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

"(d) FLEXIBLE AND DUAL-FUEL VEHICLES.—

"(1) IN GENERAL.—The Administrator shall establish standards and requirements under this section for the model year 1996 and thereafter for vehicles weighing not more than 8,500 lbs. gvwr which are capable of operating on more than one fuel. Such standards shall require that such vehicles meet the exhaust standards applicable under subsection (a), (b), and (c) for CO, NOx, and HCHO, and if appropriate, PM for single-fuel vehicles of the same vehicle category and model year.

"(2) EXHAUST NMOG STANDARD FOR OPERATION ON CLEAN ALTERNATIVE FUEL.—In addition to standards for the pollutants referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below when the vehicle is operated on the clean alternative fuel for which such vehicle is certified:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL LIGHT-DUTY TRUCKS UP TO 6000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle Type	Column A (50,000 mi.) standard (gpm)	Column B (100,000 mi) standard (gpm)
Beginning MY 1996:		
LDT's (0-3,750 lbs. LVW) and light-duty vehicles	0.125	0.156
LDT's (3,751-5,750 lbs. LVW)	0.160	0.20
Beginning MY 2001:		
LDT's (0-3,750 lbs. LVW) and light-duty vehicles	0.075	0.090
LDT's (3,751-5,750 lbs. LVW)	0.100	0.130

For standards under column A, for purposes of certification under section 206, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 206, the applicable useful life shall be 100,000 miles.

LIGHT-DUTY TRUCKS MORE THAN 6000 LBS. GVWR

Vehicle Type	Column A (50,000 mi) Standard	Column B 120,000 mi) standard
Beginning MY 1998:		
LDT's (0-3,750 lbs. TW)	0.125	0.180
LDT's (3,751-5750 lbs. TW)	0.160	0.230
LDT's (above 5750 lbs. TW)	0.195	0.280

For standards under column A, for purposes of certification under section 206, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 206, the applicable useful life shall be 120,000 miles.

"(3) NMOG STANDARD FOR OPERATION ON CONVENTIONAL FUEL.—In addition to the standards referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A (50,000 mi) standard (gpm)	Column B (100,000 mi) standard (gpm)
Beginning MY 1996:		
LDT's (0-3,750 lbs. LVW) and light-duty vehicles	0.25	0.31
LDT's (3,751-5,750 lbs. LVW)	.32	.40
Beginning MY 2001:		
LDT's (0-3,750 lbs. LVW) and light-duty vehicles	.125	.156
LDT's (3,751-5,750 lbs. LVW)	.160	.200

For standards under column A, for purposes of certification under section 206, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 206, the applicable useful life shall be 100,000 miles.

LIGHT-DUTY TRUCKS OF UP TO 6000 LBS. GVWR

Vehicle type	Column A (50,000 mi) standard	Column B (120,000 mi) standard
Beginning MY 1998:		
LDT's (0-3,750 lbs. TW)	0.25	0.36
LDT's (3,751-5,750 lbs. TW)	.32	.46
LDT's (above 5,750 lbs. TW)	.39	.56

For standards under column A, for purposes of certification under section 206, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 206, the applicable useful life shall be 120,000 miles.

"(e) REPLACEMENT BY CARB STANDARDS.—

"(1) SINGLE SET OF CARB STANDARDS.—If the State of California promulgates regulations establishing and implementing a single set of standards applicable in California pursuant to a waiver approved under section 209 to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and such set of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 242 and subsection (a), (b), (c), or (d) of this section, such set of California standards shall apply to clean-fuel vehicles in such category in lieu of the standards otherwise applicable under section 242 and subsection (a), (b), (c), or (d) of this section, as the case may be.

"(2) MULTIPLE SETS OF CARB STANDARDS.—If the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under section 209 to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 242 and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as 'qualifying California standards' for purposes of this paragraph. Where more than one set of qualifying standards are established and administered

by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under section 242 and this section.

"(f) LESS STRINGENT CARB STANDARDS.—If the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board applicable to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section are modified after the enactment of the Clean Air Act of 1990 to provide an emissions standard which is less stringent than the otherwise applicable standard set forth in subsection (a), (b), (c), or (d), or if any effective date contained in such regulations is delayed, such modified standards or such delay (or both, as the case may be) shall apply, for an interim period, in lieu of the standard or effective date otherwise applicable under subsection (a), (b), (c), or (d) to any vehicles covered by such modified standard or delayed effective date. The interim period shall be a period of not more than 2 model years from the effective date otherwise applicable under subsection (a), (b), (c), or (d). After such interim period, the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) shall take effect with respect to such vehicles (unless subsequently replaced under subsection (e)).

"(g) NOT APPLICABLE TO HEAVY-DUTY VEHICLES.—Notwithstanding any provision of the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board nothing in this section shall apply to heavy-duty engines in vehicles of more than 8,500 lbs. gvwr.

"SEC. 244. ADMINISTRATION AND ENFORCEMENT AS PER CALIFORNIA STANDARDS.

"Where the numerical clean-fuel vehicle standards applicable under this part to vehicles of not more than 8,500 lbs. gvwr are the same as numerical emission standards applicable in California under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board ('CARB'), such standards shall be administered and enforced by the Administrator—

"(1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards applicable under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board ('CARB'); and

"(2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance,

unless the Administrator determines (in promulgating the rules establishing the clean fuel vehicle program under this section) that any such administration and enforcement would not meet the criteria for a waiver under section 209. Nothing in this section shall apply in the case of standards under section 245 for heavy-duty vehicles.

"SEC. 245. STANDARDS FOR HEAVY-DUTY CLEAN FUEL VEHICLES (GVWR ABOVE 8500 UP TO 26,000 LBS).

"(a) MODEL YEARS AFTER 1997; COMBINED NOx AND NMHC STANDARD.—For classes or categories of heavy-duty vehicles or engines manufactured for the model year 1998 or thereafter and having a gvwr greater than 8,500 lbs. and up to 26,000 lbs. GVWR, the standards under this part for clean-fuel vehicles shall require that combined emissions of oxides of nitrogen (NOx) and nonmethane hydrocarbons (NMHC) shall not exceed 3.15 grams per brake horsepower hour (equivalent to 50 percent of the combined emission standards applicable under section 202 for such air pollutants in the case of a conventional model year 1994 heavy-duty diesel-fueled vehicle or engine). No standard shall be promulgated as provided in this section for any heavy-duty vehicle of more than 26,000 lbs. gvwr.

"(b) REVISED STANDARDS THAT ARE LESS STRINGENT.—(1) The Administrator may promulgate a revised less stringent standard for the vehicles or engines referred to in subsection (a) if the Administrator determines that the 50 percent reduction required under subsection (a) is not technologically feasible for clean diesel-fueled vehicles and engines, taking into account durability, costs, lead time, safety, and other relevant factors. To provide adequate lead time the Administrator shall make a determination with regard to the technological feasibility of such 50 percent reduction before December 31, 1993.

"(2) Any person may at any time petition the Administrator to make a determination under paragraph (1). The Administrator shall act on such a petition within 6 months after the petition is filed.

"(3) Any revised less stringent standards promulgated as provided in this subsection shall require at least a 30 percent reduction in lieu of the 50 percent reduction referred to in paragraph (1).

"SEC. 246. CENTRALLY FUELED FLEETS

"(a) FLEET PROGRAM REQUIRED FOR CERTAIN NONATTAINMENT AREAS.—

"(1) SIP REVISION.—Each State in which there is located all or part of a covered area (as defined in paragraph (2)) shall submit, within 42 months after the enactment of the Clean Air Act Amendments of 1990, a State implementation plan revision under section 110 and part D of title I to establish a clean-fuel vehicle program for fleets under this section.

"(2) COVERED AREAS.—For purposes of this subsection, each of the following shall be a 'covered area':

"(A) OZONE NONATTAINMENT AREAS.—Any ozone nonattainment area with a 1980 population of 250,000 or more classified under subpart 2 of part D of title I of this Act as Serious, Severe, or Extreme based on data for the calendar years 1987, 1988, and 1989. In determining the ozone nonattainment areas to be treated as covered areas pursuant to this subparagraph, the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990.

"(B) CARBON MONOXIDE NONATTAINMENT AREAS.—Any carbon monoxide nonattainment area with a 1930 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989 (as calculated according to the most recent interpretation methodology issued prior to enactment of the Clean Air Act Amendments of 1990 by the United States Environmental Protection Agency), excluding those carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedances.

"(3) PLAN REVISIONS FOR RECLASSIFIED AREAS.—In the case of ozone nonattainment areas reclassified as Serious, Severe, or Extreme under part D of title I with a 1980 population of 250,000 or more, the State shall submit a plan revision meeting the requirements of this subsection within 1 year after reclassification. Such plan revision shall implement the requirements applicable under this subsection at the time of reclassification and thereafter, except that the Administrator may adjust for a limited period the deadlines for compliance where compliance with such deadlines would be infeasible.

"(4) CONSULTATION; CONSIDERATION OF FACTORS.—Each State required to submit an implementation plan revision under this subsection shall develop such revision in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment and other relevant factors.

"(b) PHASE-IN OF REQUIREMENTS.—The plan revision required under this section shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area. For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table:

CLEAN FUEL VEHICLE PHASE-IN REQUIREMENTS FOR FLEETS

(In percent)

Vehicle Type	MY1998	MY1999	MY2000
Light-duty trucks up to 6,000 lbs. gvwr and light-duty vehicles	30	50	70
Heavy-duty trucks above 8,500 lbs. gvwr	50	50	50

The term MY refers to model year.

"(c) ACCELERATED STANDARD FOR LIGHT-DUTY TRUCKS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES.—Notwithstanding the model years for which clean-fuel vehicle standards are applicable as provided in section 243, for purposes of this section, light duty trucks of up to 6,000 lbs. gvwr and light-duty vehicles manufactured in model years 1998 through model year 2000 shall be treated as clean-fuel vehicles only if such vehicles comply with the standards applicable under section 243 for vehicles in the same class for the model year 2001. The requirements of subsection (b) shall take effect on the earlier of the following:

"(1) The first model year after model year 1997 in which new light-duty trucks up to 6,000 lbs. gvwr and light-duty vehicles which comply with the model year 2001 standards under section 243 are offered for sale in California.

"(2) Model year 2001.

Whenever the effective date of subsection (b) is delayed pursuant to paragraph (1) of this subsection, the phase-in schedule under subsection (b) shall be modified to commence with the model year referred to in paragraph (1) in lieu of model year 1998.

"(d) CHOICE OF VEHICLES AND FUEL.—The plan revision under this subsection shall provide that the choice of clean-fuel vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this subsection.

"(e) AVAILABILITY OF CLEAN ALTERNATIVE FUEL.—The plan revision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

"(f) CREDITS.—

"(1) ISSUANCE OF CREDITS.—The State plan revision required under this section shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

"(A) The purchase of more clean-fuel vehicles than required under this section.

"(B) The purchase of clean fuel vehicles which meet more stringent standards established by the Administrator pursuant to paragraph (4).

"(C) The purchase of vehicles in categories which are not covered by this section but which meet standards established for such vehicles under paragraph (4).

"(2) USE OF CREDITS; LIMITATIONS BASED ON WEIGHT CLASSES.—

"(A) USE OF CREDITS.—Credits under this subsection may be used by the person holding such credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, such credits shall maintain the same value as if used at an earlier date.

"(B) LIMITATIONS BASED ON WEIGHT CLASSES.—Credits issued with respect to the purchase of vehicles of up to 8,500 lbs. gvwr may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 lbs. gvwr. Credits issued with respect to the purchase of vehicles of more than 8,500 lbs. gvwr may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 lbs. gvwr.

"(C) WEIGHTING.—Credits issued for purchase of a clean fuel vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

"(3) REGULATIONS AND ADMINISTRATION.—Within 12 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations for such credit program. The State shall administer the credit program established under this subsection.

"(4) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for Ultra-Low Emission Vehicles ('ULEV's) and Zero Emissions Vehicles ('ZEV's) which shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part. The Administrator shall certify clean fuel vehicles as complying with such more stringent standards, and administer and enforce such more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section. The standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

"(5) EARLY FLEET CREDITS.—The State plan revision shall provide credits under this subsection to fleet operators that purchase vehicles certified to meet clean-fuel vehicle standards under this part during any period after approval of the plan revision and prior to the effective date of the fleet program under this section.

"(g) AVAILABILITY TO THE PUBLIC.—At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, such fuel shall be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of such Federal facilities.

"(h) TRANSPORTATION CONTROL MEASURES.—The Administrator shall by rule, within 1 year after the enactment of the Clean Air Act Amendments of 1990, ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding title I.

"SEC. 247. VEHICLE CONVERSIONS.

"(a) CONVERSION OF EXISTING AND NEW CONVENTIONAL VEHICLES TO CLEAN-FUEL VEHICLES.—The requirements of section 246 may be met through the conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles which comply with the applicable requirements of that section. For purposes of such provisions the conversion of a vehicle to clean fuel vehicle shall be treated as the purchase of a clean fuel vehicle. Nothing in this part shall be construed to provide that any covered fleet operator subject to fleet vehicle purchase requirements under section 246 shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

"(b) REGULATIONS.—The Administrator shall, within 24 months after the enactment of the Clean Air Act Amendments of 1990, consistent with the requirements of this title applicable to new vehicles, promulgate regulations governing conversions of conventional vehicles to clean-fuel vehicles. Such regulations shall establish criteria for such conversions which will ensure that a converted vehicle will comply with the standards applicable under this part to clean-fuel vehicles. Such regulations shall provide for the application to such conversions of the same provisions of this title (including provisions relating to administration enforcement) as are applicable to standards under section 242, 243, 244, and 245, except that in the case of conversions the Administrator may modify the applicable regulations implementing such provisions as the Administrator deems necessary to implement this part.

"(c) ENFORCEMENT.—Any person who converts conventional vehicles to clean fuel vehicles pursuant to subsection (b), shall be considered a manufacturer for purposes of sections 206 and 207 and related enforcement provisions. Nothing in the preceding sentence shall require a person who performs such conversions to warrant any part or operation of a vehicle other than as required under this part. Nothing in this paragraph shall limit the applicability of any other warranty to unrelated parts or operations.

"(d) TAMPERING.—The conversion from a vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered a violation of section 203(a)(3) if such conversion complies with the regulations promulgated under subsection (b).

"(e) SAFETY.—The Secretary of Transportation shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles.

"SEC. 248. FEDERAL AGENCY FLEETS.

"(a) ADDITIONAL PROVISIONS APPLICABLE.—The provisions of this section shall apply, in addition to the other provisions of this part, in the case of covered fleet vehicles owned or operated by an agency, department, or instrumentality of the United States, except as otherwise provided in subsection (e).

"(b) COST OF VEHICLES TO FEDERAL AGENCY.—Notwithstanding the provisions of section 211 of the Federal Property and Administrative Services Act of 1949, the Administrator of General Services shall not include the incremental costs of clean-fuel vehicles in the amount to be reimbursed by Federal agencies if the Administrator of General Services determines that appropriations provided pursuant to this paragraph are sufficient to provide for the incremental cost of such vehicles over the cost of comparable conventional vehicles.

"(c) LIMITATIONS ON APPROPRIATIONS.—Funds appropriated pursuant to the authorization under this paragraph shall be applicable only—

"(1) to the portion of the cost of acquisition, maintenance and operation of vehicles acquired under this subparagraph which exceeds the cost of acquisition, maintenance and operation of comparable conventional vehicles;

"(2) to the portion of the costs of fuel storage and dispensing equipment attributable to such vehicles which exceeds the costs for such purposes required for conventional vehicles; and

"(3) to the portion of the costs of acquisition of clean-fuel vehicles which represents a reduction in revenue from the disposal of such vehicles as compared to revenue resulting from the disposal of comparable conventional vehicles.

"(d) VEHICLE COSTS.—The incremental cost of vehicles acquired under this part over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be required by the United States.

"(e) EXEMPTIONS.—The requirements of this part shall not apply to vehicles with respect to which the Secretary of Defense has certified to the Administrator that an exemption is needed based on national security consideration.

"(f) ACQUISITION REQUIREMENT.—Federal agencies, to the extent practicable, shall obtain clean-fuel vehicles from original equipment manufacturers.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be required to carry out the provisions of this section: Provided, That such sums as are appropriated for the Administrator of General Services pursuant to the authorization under this section shall be added to the General Supply Fund estab-

lished in section 109 of the Federal Property and Administrative Services Act of 1949.

"SEC. 249. CALIFORNIA PILOT TEST PROGRAM.

"(a) ESTABLISHMENT.—The Administrator shall establish a pilot program in the State of California to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

"(b) APPLICABILITY.—The provisions of this section shall only apply to light-duty trucks and light-duty vehicles, and such provisions shall apply only in the State of California, except as provided in subsection (f).

"(c) PROGRAM REQUIREMENTS.—Not later than 24 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations establishing requirements under this section applicable in the State of California. The regulations shall provide the following:

"(1) CLEAN-FUEL VEHICLES.—Clean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets referred to in section 246) in numbers that meet or exceed the following schedule:

"Model Years	Number of clean-fuel vehicles
1996, 1997, 1998.....	150,000 vehicles
1999 and thereafter.....	300,000

"(2) CLEAN ALTERNATIVE FUELS.—(A) Within 2 years after the enactment of the Clean Air Act Amendments of 1990, the State of California shall submit a revision of the applicable implementation plan under part D of title I and section 110 containing a clean fuel plan that requires that clean alternative fuels on which the clean-fuel vehicles required under this paragraph can operate shall be produced and distributed by fuel suppliers and made available in California. At a minimum, sufficient clean alternative fuels shall be produced, distributed and made available to assure that all clean-fuel vehicles required under this section can operate, to the maximum extent practicable, exclusively on such fuels in California. The State shall require that clean alternative fuels be made available and offered for sale at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling with clean alternative fuels, considering the number of, and type of, such vehicles sold and the geographic distribution of such vehicles within the State. The State shall determine the clean alternative fuels to be produced, distributed, and made available based on motor vehicle manufacturers' projections of future sales of such vehicles and consultations with the affected local governments and fuel suppliers.

"(B) The State may by regulation grant persons subject to the requirements prescribed under this paragraph an appropriate amount of credits for exceeding such requirements, and any person granted credits may transfer some or all of the credits for use by one or more persons in demonstrating compliance with such requirements. The State may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as the State finds appropriate.

"(C) The State may also by regulation establish specifications for any clean alternative fuel produced and made available under this paragraph as the State finds necessary to reduce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.

"(D) If a retail gasoline dispensing facility would have to remove or replace one or more motor vehicle fuel underground storage tanks and accompanying piping in order to comply with the provisions of this section, and it had removed and replaced such tank or tanks and accompanying piping in order to comply with subtitle I of the Solid Waste Disposal Act prior to the date of the enactment of the Clean Air Act Amendments of 1990, it shall not be required to comply with this subsection until a period of 7 years has passed from the date of the removal and replacement of such tank or tanks.

"(E) Nothing in this section authorizes any State other than California to adopt provisions regarding clean alternative fuels.

"(F) If the State of California fails to adopt a clean fuel program that meets the requirements of this paragraph, the Administrator shall, within 4 years after the enactment of the Clean Air Act Amendments of 1990, establish a clean fuel program for the State of California under this paragraph and section 110(c) that meets the requirements of this paragraph.

"(d) CREDITS FOR MOTOR VEHICLE MANUFACTURERS.—(1) The Administrator may (by regulation) grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of such manufacturer's share of the requirements of subsection (c)(1) of this section for any of the following (or any combination thereof):

"(A) The sale of more clean-fuel vehicles than required under subsection (c)(1) of this section.

"(B) The sale of clean fuel vehicles which meet standards established by the Administrator as provided in paragraph (3) which are more stringent than the clean-fuel vehicle standards otherwise applicable to such clean-fuel vehicle. A manufacturer granted credits under this paragraph may transfer some or all of the credits for use by one or more other manufacturers in demonstrating compliance with the requirements prescribed under this paragraph. The Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate. The Administrator shall grant credits in accordance with this paragraph, notwithstanding any requirements of State law or any credits granted with respect to the same vehicles under any State law, rule, or regulation.

"(2) REGULATIONS AND ADMINISTRATION.—The Administrator shall administer the credit program established under this subsection. Within 12 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations for such credit program.

"(3) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—The more stringent standards and other requirements (including requirements relating to the weighting of credits) established by the Administrator for purposes of the credit program under 245(e) (relating to credits for clean fuel vehicles in the fleets program) shall also apply for purposes of the credit program under this paragraph.

"(e) PROGRAM EVALUATION.—(1) Not later than June 30, 1994 and again in connection with the report under paragraph (2), the Administrator shall provide a report to the Congress on the status of the California Air Resources Board Low-Emissions Vehicles and Clean Fuels Program. Such report shall examine the capability, from a technological standpoint, of motor vehicle manufacturers and motor vehicle fuel suppliers to comply with the requirements of such program and with the requirements of the California Pilot Program under this section.

"(2) Not later than June 30, 1998, the Administrator shall complete and submit a report to Congress on the effectiveness of the California pilot program under this section. The report shall evaluate the level of emission reductions achieved under the program, the costs of the program, the advantages and disadvantages of extending the program to other nonattainment areas, and desirability of continuing or expanding the program in California.

"(3) The program under this section cannot be extended or terminated by the Administrator except by Act of Congress enacted after the date of the Clean Air Act Amendments of 1990. Section 177 of this Act does not apply to the program under this section.

"(f) VOLUNTARY OPT-IN FOR OTHER STATES.—

"(1) EPA REGULATIONS.—Not later than 2 years after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations establishing a voluntary opt-in program under this subsection pursuant to which—

"(A) clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California under this section, and

"(B) clean alternative fuels required to be produced and distributed under this section by fuel suppliers and made available in California

may also be sold and used in other States which submit plan revisions under paragraph (2).

"(2) PLAN REVISIONS.—Any State in which there is located all or part of an ozone nonattainment area classified under subpart D of title I as Serious, Severe, or Extreme may submit a revision of the applicable implementation plan under part D of title I and section 110 to provide incentives for the sale or use in such an area or State of clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California, and for the use in such an area or State of clean alternative fuels required to be produced and distributed by fuel suppliers and made available in California. Such plan provisions shall not take effect until 1 year after the State has provided notice of such provisions to motor vehicle manufacturers and to fuel suppliers.

"(3) INCENTIVES.—The incentives referred to in paragraph (2) may include any or all of the following:

"(A) A State registration fee on new motor vehicles registered in the State which are not clean-fuel vehicles in the amount of at least 1 percent of the cost of the vehicle. The proceeds of such fee shall be used to provide financial incentives to purchasers of clean-fuel vehicles and to vehicle dealers who sell high volumes or high percentages of clean-fuel vehicles and to defray the administrative costs of the incentive program.

"(B) Provisions to exempt clean-fuel vehicles from high occupancy vehicle or trip reduction requirements.

"(C) Provisions to provide preference in the use of existing parking spaces for clean-fuel vehicles.

The incentives under this paragraph shall not apply in the case of covered fleet vehicles.

"(4) NO SALES OR PRODUCTION MANDATE.—The regulations and plan revisions under paragraphs (1) and (2) shall not include any production or sales mandate for clean-fuel vehicles or clean alternative fuels. Such regulations and plan revisions shall also provide that vehicle manufacturers and fuel suppliers may not be subject to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

"SEC. 250. GENERAL PROVISIONS.

"(a) STATE REFUELING FACILITIES.—If any State adopts enforceable provisions in an implementation plan applicable to a nonattainment area which provides that existing State refueling facilities will be made available to the public for the purchase of clean alternative fuels or that State-operated refueling facilities for such fuels will be constructed and operated by the State and made available to the public at reasonable times, taking into consideration safety, costs, and other relevant factors, in approving such plan under section 110 and part D, the Administrator may credit a State with the emission reductions for purposes of part D attributable to such actions.

"(b) NO PRODUCTION MANDATE.—The Administrator shall have no authority under this part to mandate the production of clean-fuel vehicles except as provided in the California pilot test program or to specify as applicable the models, lines, or types of, or marketing or price practices, policies, or strategies for, vehicles subject to this part. Nothing in this part shall be construed to give the Administrator authority to mandate marketing or pricing practices, policies, or strategies for fuels.

"(c) TANK AND FUEL SYSTEM SAFETY.—The Secretary of Transportation shall, in accordance with the National Motor Vehicle Traffic Safety Act of 1966, promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles.

"(d) CONSULTATION WITH DEPARTMENT OF ENERGY AND DEPARTMENT OF TRANSPORTATION.—The Administrator shall coordinate with the Secretaries of the Department of Energy and the Department of Transportation in carrying out the Administrator's duties under this part.".

SEC. 230. TECHNICAL AMENDMENTS.

The Clean Air Act is amended as follows:

(1) In section 202(b)(3), strike out subparagraph (B).

(2) Strike out section 202(b)(4) (42 U.S.C. 7521(b)(4)).

(3) Strike out section 202(b)(5) (42 U.S.C. 7521(b)(5)).

(4) In section 202(b)(6) (42 U.S.C. 7521(b)(6))—

(A) strike out "(A)" after "(6)",

(B) strike out subparagraph (B), and

(C) redesignate paragraph (6) as paragraph (3) and redesignate clauses (i) through (iii) as subparagraphs (A) through (C).

(5) Strike out section 202(b)(7) (42 U.S.C. 7521(b)(7)).

(6) Strike out section 203(c) (42 U.S.C. 7522(c)).

(7) Strike out "announce in the Federal Register and" in section 206(e) (42 U.S.C. 7525(e)).

(8) In section 206(f) (42 U.S.C. 7525(f))—

(A) strike out "(1)" after "(f)",

(B) strike out paragraph (2), and

(C) insert "and all light-duty trucks manufactured during or after model year 1995" immediately after "1984".

(9) In section 207(g) strike out "(but not designed for emission control under the terms of the last three sentences of section 207(a)(1)" and insert "(but not designed for emission control under the terms of the last sentence of section 207(a)(3))".

(10) Strike out section 212.

PART B—OTHER PROVISIONS

SEC. 231. ETHANOL SUBSTITUTE FOR DIESEL.

Within one year after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall contract with a laboratory which has done research on alcohol esters of rapeseed oil to evaluate the feasibility, engine performance, emissions, and production capability associated with an alternative to diesel fuel composed of ethanol and high erucic rapeseed oil. The Administrator shall submit a report on the results of this research to Congress within 3 years of the issuance of such contract.

SEC. 232. ADOPTION BY OTHER STATES OF CALIFORNIA STANDARDS.

Section 177 of the Clean Air Act (42 U.S.C. 7507) is amended by adding the following at the end thereof:

"Nothing in this section or in title II of this Act shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a 'third vehicle') or otherwise create such a 'third vehicle'."

SEC. 233. STATES AUTHORITY TO REGULATE.

(a) STUDY.—The Administrator of the Environmental Protection Agency and the Secretary of Transportation, in consultation with the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that shall address at a minimum the following issues and such other issues as they shall deem appropriate—

(1) whether technologies exist to control some or all emissions of oxides of nitrogen from test cells;

(2) the effectiveness of such technologies:

(3) the cost of implementing such technologies;

(4) whether such technologies affect the safety, design, structure, operation, or performance of aircraft engines;

(5) whether such technologies impair the effectiveness and accuracy of aircraft engine safety design, and performance tests conducted in test cells; and

(6) the impact of not controlling such oxides of nitrogen in the applicable nonattainment areas and on other sources, stationary and mobile, on oxides of nitrogen in such areas.

(b) REPORT, AUTHORITY TO REGULATE.—Not later than 24 months after enactment of the Clean Air Act Amendments of 1990, the Administrator of the Environmental Protection Agency and the Secretary of Transportation shall submit to Congress a report of the study conducted under this section. Following the completion of such study, any of the States may adopt or enforce any standard for emissions of oxides of nitrogen from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study.

SEC. 234. FUGITIVE DUST.

(a) Prior to any use of the Industrial Source Complex (ISC) Model using AP-42 Compilation of Air Pollutant Emission Factors to determine the effect on air quality of fugitive particulate emissions from surface coal mines, for purposes of new source review or for purposes of demonstrating compliance with national ambient air quality standards for particulate matter applicable to periods of 24 hours or less, under section 110 or parts C or D of title I of the Clean Air Act, the Administrator shall analyze the accuracy of such model and emission factors and make revisions as may be necessary to eliminate any significant overprediction of air quality effect of fugitive particulate emissions from such sources. Such revisions shall be completed not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990. Until such time as the Administrator develops a revised model for surface mine fugitive emissions, the State may use alternative empirical based modeling approaches pursuant to guidelines issued by the Administrator.".

SEC. 235. FEDERAL COMPLIANCE.

Section 118 of the Clean Air Act is amended by inserting "GENERAL COMPLIANCE.—" after "SEC. 118. (a)" and by adding at the end thereof the following:

"(c) GOVERNMENT VEHICLES.—Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government shall comply with all applicable provisions of a valid inspection and maintenance program established under the provisions of subpart 2 of part D or subpart 3 of part D except for such vehicles that are considered military tactical vehicles.

"(d) VEHICLES OPERATED ON FEDERAL INSTALLATIONS.—Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility shall require all employees which operate motor vehicles on the property or facility to furnish proof of compliance with the applicable requirements of any vehicle inspection and maintenance program established under the provisions of subpart 2 of part D or subpart 3 of part D for the State in which such property or facility is located (without regard to whether such vehicles are registered in the State). The installation shall use one of the following methods to establish proof of compliance—

"(1) presentation by the vehicle owner of a valid certificate of compliance from the vehicle inspection and maintenance program;

"(2) presentation by the vehicle owner of proof of vehicle registration within the geographic area covered by the vehicle inspection and maintenance program (except for any program whose enforcement mechanism is not through the denial of vehicle registration);

"(3) another method approved by the vehicle inspection and maintenance program administrator.".

TITLE III—HAZARDOUS AIR POLLUTANTS

Sec. 301. Hazardous Air Pollutants
Sec. 302. Conforming Amendment
Sec. 303. Risk Assessment and Management Commission
Sec. 304. Chemical Process Safety Management
Sec. 305. Solid Waste Combustion
Sec. 306. Ash Management and Disposal

SEC. 301. HAZARDOUS AIR POLLUTANTS.

Section 112 of the Clean Air Act is amended to read as follows:

"SEC. 112. HAZARDOUS AIR POLLUTANTS.

"(a) DEFINITIONS. For purposes of this section, except subsection (r)—

"(1) MAJOR SOURCE.—The term 'major source' means any stationary source or

group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

"(2) AREA SOURCE.—The term 'area source' means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term 'area source' shall not include motor vehicles or nonroad vehicles subject to regulation under title II.

"(3) STATIONARY SOURCE.—The term 'stationary source' shall have the same meaning as such term has under section 111(a).

"(4) NEW SOURCE.—The term 'new source' means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

"(5) MODIFICATION.—The term 'modification' means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

"(6) HAZARDOUS AIR POLLUTANT.—The term 'hazardous air pollutant' means any air pollutant listed pursuant to subsection (b).

"(7) ADVERSE ENVIRONMENTAL EFFECT.—The term 'adverse environmental effect' means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

"(8) ELECTRIC UTILITY STEAM GENERATING UNIT.—The term 'electric utility steam generating unit' means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

"(9) OWNER OR OPERATOR.—The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a stationary source.

"(10) EXISTING SOURCE.—The term 'existing source' means any stationary source other than a new source.

"(11) CARCINOGENIC EFFECT.—Unless revised, the term 'carcinogenic effect' shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment. Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

"(b) LIST OF POLLUTANTS.—

"(1) INITIAL LIST.—The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds[1]
0	Glycol ethers[2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers[3]
0	Nickel Compounds
0	Polycylic Organic Matter[4]
0	Radionuclides (including radon)[5]
0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical

(i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

[1] X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)$_2$

[2] includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)$_n$-OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH2CH)$_n$-OH Polymers are excluded from the glycol category.

[3] includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C

[5] a type of atom which spontaneously undergoes radioactive decay.

"(2) REVISION OF THE LIST.—The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) as a result of emissions to the air. No air pollutant which is listed under section 108(a) may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 108(a) or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under title VI of this Act shall be subject to regulation under this section solely due to its adverse effects on the environment.

"(3) PETITIONS TO MODIFY THE LIST.—

"(A) Beginning at any time after 6 months after the date of enactment of the Clean Air Act Amendments of 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental effects of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

"(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

"(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

"(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) for which a deletion petition has been filed within 12 months of the date of enactment of the Clean Air Act Amendments of 1990.

"(4) FURTHER INFORMATION.—If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

"(5) TEST METHODS.—The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

"(6) PREVENTION OF SIGNIFICANT DETERIORATION.—The provisions of part C (prevention of significant deterioration) shall not apply to pollutants listed under this section.

"(7) LEAD.—The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

"(c) LIST OF SOURCE CATEGORIES.—

"(1) IN GENERAL.—Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

"(2) REQUIREMENT FOR EMISSIONS STANDARDS.—For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d), according to the schedule in this subsection and subsection (e).

"(3) AREA SOURCES.—The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990 and pursuant to subsection (k)(3)(B), list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after such date of enactment.

"(4) PREVIOUSLY REGULATED CATEGORIES.—The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

"(5) ADDITIONAL CATEGORIES.—In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) for the category or subcategory shall be promulgated within 10 years after the date of enactment of the Clean Air Act Amendments of 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

"(6) SPECIFIC POLLUTANTS.—With respect to alkylated lead compounds, polycyclic organic matter, hexaclorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzop- dioxin, the Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4). Such standards shall be promulgated not later than 10 years after such date of enactment. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

"(7) RESEARCH FACILITIES.—The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, 'research or laboratory facility' means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

"(8) BOAT MANUFACTURING.—When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this Act.

"(9) DELETIONS FROM THE LIST.—

"(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administra-

tor shall delete the source category from the list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3).

"(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

"(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

"(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

"(d) EMISSION STANDARDS.—

"(1) IN GENERAL.—The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) as the result of the authority provided by this sentence.

"(2) STANDARDS AND METHODS.—Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which—

"(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

"(B) enclose systems or processes to eliminate emissions,

"(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

"(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

"(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 114(c), in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

"(3) NEW AND EXISTING SOURCES.—The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than—

"(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

"(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

"(4) HEALTH THRESHOLD.—With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

"(5) ALTERNATIVE STANDARD FOR AREA SOURCES.—With respect only to categories and subcategories of area sources listed pursuant to subsection (c), the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f), elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

"(6) REVIEW AND REVISION.—The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

"(7) OTHER REQUIREMENTS PRESERVED.—No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, part C or D, or other authority of this Act or a standard issued under State authority.

"(8) COKE OVENS.—

"(A) Not later than December 31, 1992, the Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) of this subsection for coke oven batteries. In establishing such standards, the Administrator shall evaluate—

"(i) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reducing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

"(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

Such regulations shall require at a minimum that coke oven batteries will not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors. Notwithstanding subsection (i), the compliance date for such emission standards for existing coke oven batteries shall be December 31, 1995.

"(B) The Administrator shall promulgate work practice regulations under this subsection for coke oven batteries requiring, as appropriate—

"(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

"(ii) door and jam cleaning practices. Notwithstanding subsection (i), the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) in accordance with subsection (i)(8), the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i), the compliance date for such emission standards for existing coke oven batteries seeking an extension shall be not later than the date 3 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(9) SOURCES LICENSED BY THE NUCLEAR REGULATORY COMMISSION.—No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or

deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 111 or this section.

"(10) EFFECTIVE DATE.—Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

"(e) Schedule for Standards and Review.—

"(1) IN GENERAL.—The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) as expeditiously as practicable, assuring that—

"(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after the date of enactment of the Clean Air Act Amendments of 1990;

"(B) emission standards for coke oven batteries shall be promulgated not later than December 31, 1992;

"(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after the date of enactment of the Clean Air Act Amendments of 1990;

"(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after the date of enactment of the Clean Air Act Amendments of 1990; and

"(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(2) In determining priorities for promulgating standards under subsection (d), the Administrator shall consider—

"(A) the known or anticipated adverse effects of such pollutants on public health and the environment;

"(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

"(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

"(3) PUBLISHED SCHEDULE.—Not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990 and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) which shall be consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 304 of this Act.

"(4) JUDICIAL REVIEW.—Notwithstanding section 307 of this Act, no action of the Administrator adding a pollutant to the list under subsection (b) or listing a source category or subcategory under subsection (c) shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 307 when the Administrator issues emission standards for such pollutant or category.

"(5) PUBLICLY OWNED TREATMENT WORKS.—The Administrator shall promulgate standards pursuant to subsection (d) applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act) not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(f) STANDARD TO PROTECT HEALTH AND THE ENVIRONMENT.—

"(1) REPORT.—Not later than 6 years after the date of enactment of the Clean Air Act Amendments of 1990 the Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

"(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d);

"(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

"(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

"(D) recommendations as to legislation regarding such remaining risk.

"(2) EMISSION STANDARDS.—

"(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d), promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

"(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before the date of enactment of the Clean Air Act Amendments of 1990 and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

"(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) are required to be promulgated within 2 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

"(3) EFFECTIVE DATE.—Any emission standard established pursuant to this subsection shall become effective upon promulgation.

"(4) PROHIBITION.—No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

"(A) such standard shall not apply until 90 days after its effective date, and

"(B) the Administrator may grant a waiver permitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

"(5) AREA SOURCES.—The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) and for which an emission standard is promulgated pursuant to subsection (d)(5).

"(6) UNIQUE CHEMICAL SUBSTANCES.—In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

"(g) MODIFICATIONS.—

"(1) OFFSETS.—

"(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

"(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) sufficient to facilitate the

offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).C "(2) Construction, Reconstruction and Modifications.

"(A) After the effective date of a permit program under title V in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

"(B) After the effective date of a permit program under title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

"(3) PROCEDURES FOR MODIFICATIONS.—The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

"(h) WORK PRACTICE STANDARDS AND OTHER REQUIREMENTS.—

"(1) IN GENERAL.—For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f). In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

"(2) DEFINITION.—For the purpose of this subsection, the phrase 'not feasible to prescribe or enforce an emission standard' means any situation in which the Administrator determines that—

"(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

"(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

"(3) ALTERNATIVE STANDARD.—If after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

"(4) NUMERICAL STANDARD REQUIRED.—Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it is feasible to promulgate and enforce a standard in such terms.

"(i) Schedule for Compliance.—

"(1) PRECONSTRUCTION AND OPERATING REQUIREMENTS.—After the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h), no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program approved under title V) determines that such source, if properly constructed or reconstructed and operated, will comply with the standard, regulation or limitation.

"(2) SPECIAL RULE.—Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date 3 years after the date of promulgation if—

"(A) the promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and

"(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

"(3) COMPLIANCE SCHEDULE FOR EXISTING SOURCES.—

"(A) After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

"(B) The Administrator (or a State with a program approved under title V) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b).

"(4) PRESIDENTIAL EXEMPTION.—The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

"(5) EARLY REDUCTION.—

"(A) The Administrator (or a State acting pursuant to a permit program approved under title V) shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by the previous sentence.

"(B) An existing source which achieves the reduction referred to in subparagraph (A) after the proposal of an applicable standard but before January 1, 1994, may qualify under subparagraph (A), if the source makes an enforceable commitment to achieve such reduction before the proposal of the standard. Such commitment shall be enforceable to the same extent as a regulation under this section.

"(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990, pursuant to an information request issued under section 114.

"(D) For each source granted an alternative emission limitation under this paragraph there shall be established by a permit issued pursuant to title V an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f) and the Administrator shall, for the purpose of determining whether a standard under subsection (f) is necessary, review emissions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

"(E) With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying

for an alternative emissions limitation under this paragraph.

"(6) OTHER REDUCTIONS.—Notwithstanding the requirements of this section, no existing source that has installed—

"(A) best available control technology (as defined in section 169(3)), or

"(B) technology required to meet a lowest achievable emission rate (as defined in section 171), prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section until the date 5 years after the date on which such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

"(7) EXTENSION FOR NEW SOURCES.—A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) shall not be required to comply with the emission standard under subsection (f) until the date 10 years after the date construction or reconstruction is commenced.

"(8) COKE OVENS.—

"(A) Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C), subparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under subsection (f) until January 1, 2020.

"(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 171 for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than—

"(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

"(II) 1 per centum leaking lids;

"(III) 4 per centum leaking offtakes; and

"(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices.

"(ii) If the Administrator fails to promulgate such emission limitations under this subparagraph prior to the effective date of such emission limitations, the emission limitations applicable to coke oven batteries under this subparagraph shall be—

"(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

"(II) 1 per centum leaking lids;

"(III) 4 per centum leaking offtakes; and

"(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 171 at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

"(D) At any time prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) by the date such emission limitations would otherwise apply to such coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraphs (B) and (C) of this paragraph. Any such owner or operator shall be legally bound to comply with such emission limitations promulgated under subsection (f) with respect to such coke oven battery as of January 1, 2003. If no such emission limitations have been promulgated for such coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) for such coke oven battery.

"(E) Coke oven batteries qualifying for an extension under subparagraph (A) shall make available not later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (f).

"(F) Notwithstanding the provisions of this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject such source to emission limitations under subsection (f) more stringent than those established under subparagraphs (B) and (C) until January 1, 2020. For the purposes of this subparagraph, the term "reconstruction" includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

"(j) EQUIVALENT EMISSION LIMITATION BY PERMIT.—

"(1) EFFECTIVE DATE.—The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to title V in such State, but not prior to the date 42 months after the date of enactment of the Clean Air Act Amendments of 1990.

"(2) FAILURE TO PROMULGATE A STANDARD.—In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e) (1) and (3), and beginning 18 months after such date (but not prior to the effective date of a permit program under title V), the owner or operator of any major source in such category or subcategory shall submit a permit application under paragraph (3) and such owner or operator shall also comply with paragraphs (5) and (6).

"(3) APPLICATIONS.—By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

"(4) REVIEW AND APPROVAL.—Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 505. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

"(5) EMISSION LIMITATION.—The permit shall be issued pursuant to title V and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d). In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of subsection (i)(5). For purposes of the preceeding sentence, the reduction required by subsection (i)(5)(A) shall be achieved by the date on which the relevant standard should have been promulgated under subsection (d). No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

"(6) APPLICABILITY OF SUBSEQUENT STANDARDS.—If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i). If the Administrator promulgates a standard under subsection (d) that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to

comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

"(k) AREA SOURCE PROGRAM.—

"(1) FINDINGS AND PURPOSE.—The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources including a reduction of not less than 75 per centum in the incidence of cancer attributable to emissions from such sources.

"(2) Research program.—The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas and shall include within such program—

"(A) ambient monitoring for a broad range of hazardous air pollutants (including, but not limited to, volatile organic compounds, metals, pesticides and products of incomplete combustion) in a representative number of urban locations;

"(B) analysis to characterize the sources of such pollution with a focus on area sources and the contribution that such sources make to public health risks from hazardous air pollutants; and

"(C) consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants. Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(3) National Strategy.—

"(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990 and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

"(B) The strategy shall—

"(i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b), and

"(ii) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c). When identifying categories and subcategories of sources under this subparagraph, the Administrator shall assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d).

"(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Resource Conservation and Recovery Act) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

"(D) The strategy may also identify research needs in monitoring, analytical methodology, modeling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

"(E) Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

"(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after the date of enactment of then Clean Air Act Amendments of 1990.

"(G) As part of such strategy the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

"(4) Areawide Activities.—In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

"(5) REPORT.—The Administrator shall report to the Congress at intervals not later than 8 and 12 years after the date of enactment of the Clean Air Act Amendments of 1990 on actions taken under this subsection and other parts of this Act to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

"(l) STATE PROGRAMS.—

"(1) IN GENERAL.—Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r). A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this Act.

"(2) GUIDANCE.—Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of highrisk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b).

"(3) TECHNICAL ASSISTANCE.—The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 103 to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

"(4) GRANTS.—Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k).

"(5) APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

"(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement

established by the Administrator under this section;

"(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

"(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

"(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this Act.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

"(6) WITHDRAWAL.—Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

"(7) AUTHORITY TO ENFORCE.—Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

"(8) LOCAL PROGRAM.—The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

"(9) PERMIT AUTHORITY.—Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under title V.

"(m) ATMOSPHERIC DEPOSITION TO GREAT LAKES AND COASTAL WATERS—

"(1) DEPOSITION ASSESSMENT.—The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters. As part of such program, the Administrator shall—

"(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (2) of this subsection and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (4);

"(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

"(C) conduct research to develop and improve monitoring methods and to determine the relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters;

"(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act and drinking water standards established pursuant to the Safe Drinking Water Act; and

"(E) sample for such pollutants in biota, fish, and wildlife of the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters and characterize the sources of such pollutants.

"(2) GREAT LAKES MONITORING NETWORK.—The Administrator shall oversee, in accordance with Annex 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric deposition network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

"(A) As part of the network provided for in this paragraph, and not later than December 31, 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

"(B) The Administrator shall use the data provided by the network to identify and track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

"(C) The Administrator shall assure that the data collected by the Great Lakes atmospheric deposition monitoring network is in a format compatible with databases sponsored by the International Joint commission, Canada, and the several States of the Great Lakes region.

"(3) MONITORING FOR THE CHESAPEAKE BAY AND LAKE CHAMPLAIN.—The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmospheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain, investigate the sources of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutant loadings, and shall sample such pollutants in biota, fish and wildlife within the watersheds, as necessary to characterize such effects.

"(4) MONITORING FOR COASTAL WATERS.—The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings. For purposes of this subsection, 'coastal waters' shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act or listed pursuant to section 320(a)(2)(B) of such Act or estuarine research reserves designated pursuant to section 315 of the Coastal Zone Management Act (16 U.S.C. 1461).

"(5) REPORT.—Within 3 years of the date of enactment of the Clean Air Act Amendments of 1990 and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

"(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

"(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

"(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

"(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act or water quality standards pursuant to the Federal Water Pollution Control Act or, with respect to the Great Lakes, exceedances of the specific objectives of the Great Lakes Water Quality Agreement; and

"(E) a description of any revisions of the requirements, standards, and limitations pursuant to this Act and other applicable Federal laws as are necessary to assure protection of human health and the environment.

"(6) ADDITIONAL REGULATION.—As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 328(a).

"(n) Other Provisions.

"(1) ELECTRIC UTILITY STEAM GENERATING UNITS.—

"(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this

section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

"(B) The Administrator shall conduct, and transmit to the Congress not later than 4 years after the date of enactment of the Clean Air Act Amendments of 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

"(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

"(2) COKE OVEN PRODUCTION TECHNOLOGY STUDY.—

"(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a 6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities. In identifying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven operations and battery design and the availability of sources of materials for such coke ovens as well as alternatives to existing coke oven production design.

"(B) The Secretary and the Administrator are authorized to enter into agreements with persons who propose to develop, install and operate coke production emission control technologies which have the potential for significant emissions reductions of hazardous air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project assisted pursuant to this paragraph.

"(C) The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d).

"(D) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph.

"(3) PUBLICLY OWNED TREATMENT WORKS.—The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling and risk assesment methods for use in implementing this subsection.

"(4) OIL AND GAS WELLS; PIPELINE FACILITIES.—

"(A) Notwithstanding the provisions of subsection (a), emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

"(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under subsection (c), except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

"(5) HYDROGEN SULFIDE.—The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after the date of enactment of the Clean Air Act Amendments of 1990 with the findings of such assessment, together with any recommendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human health and the environment, based on the findings of such assessment, using authorities under this Act including sections 111 and this section.

"(6) HYDROFLUORIC ACID.—Not later than 2 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

"(7) RCRA FACILITIES.—In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act, the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

"(o) NATIONAL ACADEMY OF SCIENCES STUDY.—

"(1) REQUEST OF THE ACADEMY.—Within 3 months of the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

"(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

"(B) improvements in such methodology.

"(2) ELEMENTS TO BE STUDIED.—In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

"(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

"(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

"(3) OTHER HEALTH EFFECTS OF CONCERN.—To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic mutations, birth defects, and reproductive dysfunctions.

"(4) REPORT.—A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after the date of enactment of the Clean Air Act Amendments of 1990.

"(5) ASSISTANCE.—The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this Act to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

"(6) AUTHORIZATION.—Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out this subsection.

"(7) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f), and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National

Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 307.

"(p) MICKEY LELAND URBAN AIR TOXICS RESEARCH CENTER.—

"(1) ESTABLISHMENT.—The Administrator shall oversee the establishment of a National Urban Air Toxics Research Center, to be located at a university, a hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The center shall be known as the Mickey Leland National Urban Air Toxics Research Center. The geographic site of the National Urban Air Toxics Research Center should be further directed to Harris County, Texas, in order to take advantage of the well developed scientific community presence onsite at the Texas Medical Center as well as the extensive data previously compiled for the comprehensive monitoring system currently in place.

"(2) BOARD OF DIRECTORS.—The National Urban Air Toxics Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate and the President. The members of the Board of Directors shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution and industrial hygiene. The duties of the Board of Directors shall be to determine policy and research guidelines, submit views from center sponsors and the public and issue periodic reports of center findings and activities.

"(3) SCIENTIFIC ADVISORY PANEL.—The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.

"(4) FUNDING.—The center shall be established and funded with both Federal and private source funds.

"(q) SAVINGS PROVISION.—

"(1) STANDARDS PREVIOUSLY PROMULGATED.—Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 307 is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

"(2) SPECIAL RULE.—Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from such plants and stacks.

"(3) OTHER CATEGORIES.—Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from non-Department of Energy federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, brand disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

"(4) MEDICAL FACILITIES.—Notwithstanding paragraph (1), no standard promulgated under this section prior to the date of enactment of the Clean Air Act Amendments of 1990 with respect to medical research or treatment facilities shall take effect for two years following the date of enactment of the Clean Air Act Amendments of 1990, unless the Administrator makes a determination pursuant to a rulemaking under section 112(d)(9). If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of section 112 shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in section 112(d)(9).

"(r) PREVENTION OF ACCIDENTAL RELEASES.—

"(1) PURPOSE AND GENERAL DUTY.—It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 304 shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

"(2) DEFINITIONS.—

"(A) The term 'accidental release' means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

"(B) The term 'regulated substance' means a substance listed under paragraph (3).

"(C) The term 'stationary source' means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

"(3) LIST OF SUBSTANCES.—The Administrator shall promulgate not later than 24 months after enactment of the Clean Air Act Amendments of 1990 an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know Act of 1986, with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under title VI shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b).

"(4) FACTORS TO BE CONSIDERED.—In listing substances under paragraph (3), the Administrator shall consider each of the following criteria—

"(A) the severity of any acute adverse health effects associated with accidental releases of the substance;

"(B) the likelihood of accidental releases of the substance; and

"(C) the potential magnitude of human exposure to accidental releases of the substance.

"(5) THRESHOLD QUANTITY.—At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity,

volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

"(6) CHEMICAL SAFETY BOARD.—

"(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

"(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

"(C) The Board shall—

"(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

"(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

"(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

"(D) The Board may utilize the expertise and experience of other agencies.

"(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

"(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

"(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

"(H) Not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B) in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

"(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

"(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

"(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

"(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Secretary will—

"(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

"(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

"(K) Within 2 years after enactment of the Clean Air Act Amendments of 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

"(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

"(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

"(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious

injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act.

"(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this Act, including the subpoena power provided in section 307(a)(1) of this Act.

"(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 5 of title 41 of the United States Code to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

"(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 113 and 114. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 113, 114, 116, 120, 303, 304 and 307 and any other enforcement provisions of this Act, as a request made by the Administrator under section 114 and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

"(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

"(Q) Consistent with subsection (G) and section 114(c) any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this Act or when relevant under any proceeding under this Act. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

"(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this Act, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5, United States Code to officers or employees of the Board.

"(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

"(7) ACCIDENT PREVENTION.—

"(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, then size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

"(B)(i) Within 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

"(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:'

"(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

"(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

"(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

"(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or re-

sponding to accidental releases which may occur at such source, and shall be available to the public under section 114(c). The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

"(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

"(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

"(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 113, 114, 116, 120, 304, and 307 and other enforcement provisions of this Act, be treated as a standard in effect under subsection (d).

"(F) Notwithstanding the provisions of title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such title solely because such source is subject to regulations or requirements under this subsection.

"(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29 of the United States Code, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

"(8) RESEARCH ON HAZARD ASSESSMENTS.—The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

"(9) ORDER AUTHORITY.—

"(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 303 rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

"(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 303.

"(C) Within 180 days after enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act, sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, sections 1445 and 1431 of the Safe Drinking Water Act, sections 5 and 7 of the Toxic Substances Control Act, and sections 113, 114, and 303 of this Act.

"(10) PRESIDENTIAL REVIEW.—The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

"(11) STATE AUTHORITY.—Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

"(s) PERIODIC REPORT.—Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

"(1) a status report on standard-setting under subsections (d) and (f);

"(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;

"(3) development and implementation of the national urban air toxics program; and

"(4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.".

SEC. 302. CONFORMING AMENDMENTS.

(a) Section 111(d)(1) of the Clean Air Act is amended by striking "112(b)(1)(A)" and inserting in lieu thereof "112(b)".

(b) Section 111 of the Clean Air Act is amended by striking paragraphs (g)(5) and (g)(6) and redesignating the succeeding paragraphs accordingly. Such section is further amended by striking "or section 112" in paragraph (g)(5) as redesignated in the preceding sentence.

(c) Section 114(a) of the Clean Air Act is amended by striking "or" after "section 111," and by inserting ", or any regulation of solid waste combustion under section 129," after "section 112".

(d) Section 118(b) of the Clean Air Act is amended by striking "112(c)" and inserting in lieu thereof "112(i)(4)".

(e) Section 302(k) of the Clean Air Act is amended by adding before the period at the end thereof ", and any design, equipment, work practice or operational standard promulgated under this Act.".

(f) Section 304(b) of the Clean Air Act is amended by striking "112(c)(1)(B)" and inserting in lieu thereof "112(i)(3)(A) or (f)(4)".

(g) Section 307(b)(1) is amended by striking "112(c)" and inserting in lieu thereof "112".

(h) Section 307(d)(1) is amended by inserting

"(D) the promulgation of any requirement for solid waste combustion under section 129," after subparagraph (C) and redesignating the succeeding subparagraphs accordingly.

SEC. 303. RISK ASSESSMENT AND MANAGEMENT COMMISSION.

(a) ESTABLISHMENT.—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the 'Commission'), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

(b) CHARGE.—The Commission shall consider—

(1) the report of the National Academy of Sciences authorized by section 112(o) of the Clean Air Act, the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects or other chronic health effects and the suitability of risk assessment for such purposes;

(2) the most appropriate methods for measuring and describing cancer risks or risks of other chronic health effects from exposure to hazardous substances considering such alternative approaches as the lifetime risk of cancer or other effects to the individual or individuals most exposed to emissions from a source or sources on both an actual and worst case basis, the range of such risks, the total number of health effects avoided by exposure reductions, effluent standards, ambient standards, exposures standards, acceptable concentration levels, tolerances and other environmental criteria, reductions in the number of persons exposed at various levels of risk, the incidence of cancer, and other public health factors;

(3) methods to reflect uncertainties in measurement and estimation techniques, the existence of synergistic or antagonistic effects among hazardous substances, the accuracy of extrapolating human health risks from animal exposure data, and the existence of unquantified direct or indirect effects on human health in risk assessment studies;

(4) risk management policy issues including the use of lifetime cancer risks to individuals most exposed, incidence of cancer, the cost and technical feasibility of exposure reduction measures and the use of site-specific actual exposure information in setting emissions standards and other limitations applicable to sources of exposure to hazardous substances; and

(5) and comment on the degree to which it is possible or desirable to develop a consistent risk assessment methodology, or a consistent standard of acceptable risk, among various Federal programs.

(c) MEMBERSHIP.—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990.

(d) ASSISTANCE FROM AGENCIES.—The Administrator of the Environmental Protection Agency and the heads of all other departments, agencies, and instrumentalities of the executive branch of the Federal Government shall, to the maximum extent practicable, assist the Commission in gathering such information as the Commission deems necessary to carry out this section subject to other provisions of law.

(e) STAFF AND CONTRACTS.—

(1) In the conduct of the study required by this section, the Commission is authorized to contract (in accordance with Federal contract law) with nongovernmental entities that are competent to perform research or investigations within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation.

(2) The Commission may appoint and fix the pay of such staff as it deems necessary in accordance with the provisions of title 5, United States Code. The Commission may request the temporary assignment of personnel from the Environmental Protection Agency or other Federal agencies.

(3) The members of the Commission who are not officers or employes of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chair, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

(f) REPORT.—A report containing the results of all Commission studies and investigations under this section, together with any appropriate legislative recommendations or administrative recommendations, shall be made available to the public for comment not later than 42 months after the date of enactment of the Clean Air Act Amendments of 1990 and shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section.

SEC. 304. CHEMICAL PROCESS SAFETY MANAGEMENT.

(a) CHEMICAL PROCESS SAFETY STANDARD.—The Secretary of Labor shall act under the Occupational Safety and Health Act of 1970 (29 U.S.C. 653) to prevent accidental releases of chemicals which could pose a threat to employees. Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, shall promulgate, pursuant to the Occupational Safety and Health Act, a chemical process safety standard designed to protect employees from hazards associated with accidental releases of highly hazardous chemicals in the workplace.

(b) LIST OF HIGHLY HAZARDOUS CHEMICALS.—The Secretary shall include as part of such standard a list of highly hazardous chemicals, which include toxic, flammable, highly reactive and explosive substances. The list of such chemicals may include those chemicals listed by the Administrator under section 302 of the Emergency Planning and Community Right to Know Act of 1986. The Secretary may make additions to such list when a substance is found to pose a threat of serious injury or fatality in the event of an accidental release in the workplace.

(c) ELEMENTS OF SAFETY STANDARD.—Such standard shall, at minimum, require employers to—

(1) develop and maintain written safety information identifying workplace chemical and process hazards, equipment used in the processes, and technology used in the processes;

(2) perform a workplace hazard assessment, including, as appropriate, identification of potential sources of accidental releases, an identification of any previous release within the facility which had a likely potential for catastrophic consequences in the workplace, estimation of workplace effects of a range of releases, estimation of the health and safety effects of such range on employees;

(3) consult with employees and their representatives on the development and conduct of hazard assessments and the development of chemical accident prevention plans and provide access to these and other records required under the standard;

(4) establish a system to respond to the workplace hazard assessment findings, which shall address prevention, mitigation, and emergency responses;

(5) periodically review the workplace hazard assessment and response system;

(6) develop and implement written operating procedures for the chemical process including procedures for each operating phase, operating limitations, and safety and health considerations;

(7) provide written safety and operating information to employees and train employees in operating procedures, emphasizing hazards and safe practices;

(8) ensure contractors and contract employees are provided appropriate information and training;

(9) train and educate employees and contractors in emergency response in a manner as comprehensive and effective as that required by the regulation promulgated pursuant to section 126(d) of the Superfund Amendments and Reauthorization Act;

(10) establish a quality assurance program to ensure that initial process related equipment, maintenance materials, and spare parts are fabricated and installed consistent with design specifications;

(11) establish maintenance systems for critical process related equipment including written procedures, employee training, appropriate inspections, and testing of such equipment to ensure ongoing mechanical integrity;

(12) conduct pre-start-up safety reviews of all newly installed or modified equipment;

(13) establish and implement written procedures to manage change to process chemicals, technology, equipment and facilities; and

(14) investigate every incident which results in or could have resulted in a major accident in the workplace, with any findings to be reviewed by operating personnel and modifications made if appropriate.

(d) STATE AUTHORITY.—Nothing in this section may be construed to diminish the authority of the States and political subdivisions thereof as described in section 112(r)(11) of the Clean Air Act.

SEC. 305. SOLID WASTE COMBUSTION.

(a) Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"SEC. 129. SOLID WASTE COMBUSTION.

"(a) NEW SOURCE PERFORMANCE STANDARDS.—

"(1) IN GENERAL.—(A) The Administrator shall establish performance standards and other requirements pursuant to section 111 and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 111(d) and this section) and other requirements applicable to existing units.

"(B) Standards under section 111 and this section applicable to solid waste inciner-

ation units with capacity greater than 250 tons per day combusting municipal waste shall be promulgated not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990. Nothing in this subparagraph shall alter any schedule for the promulgation of standards applicable to such units under section 111 pursuant to any settlement and consent decree entered by the Administrator before the date of enactment of the Clean Air Act Amendments of 1990, provided that, such standards are subsequently modified pursuant to the schedule established in this subparagraph to include each of the requirements of this section.

"(C) Standards under section 111 and this section applicable to solid waste incineration units with capacity equal to or less than 250 tons per day combusting municipal waste and units combusting hospital waste, medical waste and infectious waste shall be promulgated not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990.

"(D) Standards under section 111 and this section applicable to solid waste incineration units combusting commercial or industrial waste shall be proposed not later than 36 months after the date of enactment of the Clean Air Act Amendments of 1990 and promulgated not later than 48 months after such date of enactment.

"(E) Not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish a schedule for the promulgation of standards under section 111 and this section applicable to other categories of solid waste incineration units.

"(2) EMISSIONS STANDARD.—Standards applicable to solid waste incineration units promulgated under section 111 and this section shall reflect the maximum degree of reduction in emissions of air pollutants listed under section (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).

"(3) CONTROL METHODS AND TECHNOLOGIES.—Standards under section 111 and this section applicable to solid waste incineration units shall be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion, and shall incorporate for new units siting requirements that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment.

"(4) NUMERICAL EMISSIONS LIMITATIONS.—The performance standards promulgated under section 111 and this section and applicable to solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The Administrator may promulgate numerical emissions limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

"(5) REVIEW AND REVISION.—Not later than 5 years following the initial promulgation of any performance standards and other requirements under this section and section 111 applicable to a category of solid waste incineration units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 111, revise such standards and requirements.

"(b) EXISTING UNITS.—

"(1) GUIDELINES.—Performance standards under this section and section 111 for solid waste incineration units shall include guidelines promulgated pursuant to section 111(d) and this section applicable to existing units. Such guidelines shall include, as provided in this section, each of the elements required by subsection (a) (emissions limitations, notwithstanding any restriction in section 111(d) regarding issuance of such limitations), subsection (c) (monitoring), subsection (d) (operator training), subsection (e) (permits), and subsection (h)(4) (residual risk).

"(2) STATE PLANS.—Not later than 1 year after the Administrator promulgates guidelines for a category of solid waste incineration units, each State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to such units. The State plan shall be at least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines were promulgated. The Administrator shall approve or disapprove any State plan within 180 days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. Any State may modify and resubmit a plan which has been disapproved by the Administrator.

"(3) FEDERAL PLAN.—The Administrator shall develop, implement and enforce a plan for existing solid waste incineration units within any category located in any State which has not submitted an approvable plan under this subsection with respect to units in such category within 2 years after the date on which the Administrator promulgated the relevant guidelines. Such plan shall assure that each unit subject to the plan is in compliance with all provisions of the guidelines not later than 5 years after the date the relevant guidelines are promulgated.

"(c) MONITORING.—The Administrator shall, as part of each performance standard promulgated pursuant to subsection (a) and section 111, promulgate regulations requiring the owner or operator of each solid waste incineration unit—

"(1) to monitor emissions from the unit at the point at which such emissions are emitted into the ambient air (or within the stack, combustion chamber or pollution control equipment, as appropriate) and at such other points as necessary to protect public health and the environment;

"(2) to monitor such other parameters relating to the operation of the unit and its pollution control technology as the Administrator determines are appropriate; and

"(3) to report the results of such monitoring.

Such regulations shall contain provisions regarding the frequency of monitoring, test methods and procedures validated on solid waste incineration units, and the form and frequency of reports containing the results of monitoring and shall require that any monitoring reports or test results indicating an exceedance of any standard under this section shall be reported separately and in a manner that facilitates review for purposes of enforcement actions. Such regulations shall require that copies of the results of such monitoring be maintained on file at the facility concerned and that copies shall be made available for inspection and copying by interested members of the public during business hours.

"(d) OPERATOR TRAINING.—Not later than 24 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators. The Administrator may authorize any State to implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators, if the State has adopted a program which is at least as effective as the model program developed by the Administrator. Beginning on the date 36 months after the date on which performance standards and guidelines are promulgated under subsection (a) and section 111 for any category of solid waste incineration units it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

"(e) PERMITS.—Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) and section 111 applicable to a category of solid waste incineration units, or (2) the effective date of a permit program under title V in the State in which the unit is located, whichever is later, each unit in the category shall operate pursuant to a permit issued under this subsection and title V. Permits required by this subsection may be renewed according to the provisions of title V. Notwithstanding any other provision of this Act, each permit for a solid waste incineration unit combusting municipal waste issued under this Act shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years,

and only after public comment and public hearing. No permit for a solid waste incineration unit may be issued under this Act by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit. Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment. The Administrator's determination under the preceding sentence is a discretionary decision.

"(f) EFFECTIVE DATE AND ENFORCEMENT.—

"(1) NEW UNITS.—Performance standards and other requirements promulgated pursuant to this section and section 111 and applicable to new solid waste incineration units shall be effective as of the date 6 months after the date of promulgation.

"(2) EXISTING UNITS.—Performance standards and other requirements promulgated pursuant to this section and section 111 and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) (or promulgation of a plan by the Administrator under subsection (b)(3)) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

"(3) PROHIBITION.—After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to this section and section 111, it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.

"(4) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections 111(e), 113, 114, 116, 120, 303, 304, 307 and other provisions for the enforcement of this Act, each performance standard, emission limitation or other requirement established pursuant to this section by the Administrator or a State or local government, shall be treated in the same manner as a standard of performance under section 111 which is an emission limitation.

"(g) DEFINITIONS.—For purposes of section 306 of the Clean Air Act Amendments of 1990 and this section only—

"(1) SOLID WASTE INCINERATION UNIT.—The term 'solid waste incineration unit' means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act. The term 'solid waste incineration unit' does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

"(2) NEW SOLID WASTE INCINERATION UNIT.—The term 'new solid waste incineration unit' means a solid waste incineration unit the construction of which is commenced after the Administrator proposes requirements under this section establishing emissions standards or other requirements which would be applicable to such unit or a modified solid waste incineration unit.

"(3) MODIFIED SOLID WASTE INCINERATION UNIT.—The term 'modified solid waste incineration unit' means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (a) if (A) the cumulative cost of the modifications, over the life of the unit, exceed 50 per centum of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or (B) the modification is a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 111.

"(4) EXISTING SOLID WASTE INCINERATION UNIT.—The term 'existing solid waste incineration unit' means a solid waste unit which is not a new or modified solid waste incineration unit.

"(5) MUNICIPAL WASTE.—The term 'municipal waste' means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and noncombustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 111 or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

"(6) OTHER TERMS.—The terms "solid waste" and "medical waste" shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act.

"(h) OTHER AUTHORITY.—

"(1) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this Act.

"(2) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no solid waste incineration unit subject to performance standards under this section and section 111 shall be subject to standards under section 112(d) of this Act.

"(3) RESIDUAL RISK.—The Administrator shall promulgate standards under section 112(f) for a category of solid waste incineration units, if promulgation of such standards is required under section 112(f). For purposes of this preceding sentence only—

"(A) the performance standards under subsection (a) and section 111 applicable to a category of solid waste incineration units shall be deemed standards under section 112(d)(2), and

"(B) the Administrator shall consider and regulate, if required, the pollutants listed under subsection (a)(4) and no others.

"(4) ACID RAIN.—A solid waste incineration unit shall not be utility unit as defined in title IV, provided that, more than 80 per centum of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

"(5) REQUIREMENTS OF PARTS C AND D.—No requirement of an applicable implementation plan under section 165 (relating to construction of facilities in regions identified pursuant to section 107(d)(1)(A)(ii) or (iii)) or under section 172(c)(5) (relating to permits for construction and operation in nonattainment areas) may be used to weaken the standards in effect under this section.".

(b) CONFORMING AMENDMENT.—Section 169(1) of the Clean Air Act is amended by striking "two hundred and" after "municipal incinerators capable of charging more than".

(c) REVIEW OF ACID GAS SCRUBBING REQUIREMENTS.—Prior to the promulgation of any performance standard for solid waste incinertion units combusting municipal waste under section 111 or section 129 of the Clean Air Act, the Administrator shall review the availability of acid gas scrubbers as a pollution control technology for small new units and for existing units (as defined in 54 FEDERAL REGISTER 52190 (December 20, 1989), taking into account the provisions of subsection (a)(2) of section 129 of the Clean Air Act.

SEC. 306. ASH MANAGEMENT AND DISPOSAL.

For a period of 2 years after the date of enactment of the Clean Air Act Amendments of 1990, ash from solid waste incineration units burning municipal waste shall not be regulated by the Administrator of the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act. Such reference and limitation shall not be construed to prejudice, endorse or otherwise affect any activity by the Administrator following the 2-year period from the date of enactment of the Clean Air Act Amendments of 1990.

TITLE IV—ACID DEPOSITION CONTROL

Sec. 401. Acid deposition control.
Sec. 402. Fossil fuel use.
Sec. 403. Repeal of percent reduction.
Sec. 404. Acid deposition standards.
Sec. 405. National acid lakes registry.
Sec. 406. Industrial SO_2 Emissions.
Sec. 407. Sense of the Congress on emission reductions costs.
Sec. 408. Monitor acid rain program in Canada.

Sec. 409. Report on clean coals technologies export programs.
Sec. 410. Acid deposition research by the United States Fish and Wildlife Service.
Sec. 411. Study of buffering and neutralizing agents.
Sec. 412. Conforming amendment.
Sec. 413. Special clean coal technology project.

SEC. 401. ACID DEPOSITION CONTROL.

The Clean Air Act is amended by adding the following new title after title III:

"TITLE IV—ACID DEPOSITION CONTROL

"Sec. 401. Findings and purpose.
"Sec. 402. Definitions.
"Sec. 403. Sulfur dioxide allowance program for existing and new units.
"Sec. 404. Phase I sulfur dioxide requirements.
"Sec. 405. Phase II sulfur dioxide requirements.
"Sec. 406. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu.
"Sec. 407. Nitrogen oxides emission reduction program.
"Sec. 408. Permits and compliance plans.
"Sec. 409. Repowered sources.
"Sec. 410. Election for additional sources.
"Sec. 411. Excess emissions penalty.
"Sec. 412. Monitoring, reporting, and recordkeeping requirements.
"Sec. 413. General compliance with other provisions.
"Sec. 414. Enforcement.
"Sec. 415. Clean coal technology regulatory incentives.".
"Sec. 416. Contingency guarantee; auctions, reserve.

"SEC. 401. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that—

"(1) the presence of acidic compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health;

"(2) the principal sources of the acidic compounds and their precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

"(3) the problem of acid deposition is of national and international significance;

"(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

"(5) current and future generations of Americans will be adversely affected by delaying measures to remedy the problem;

"(6) reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment; and

"(7) control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay.

"(b) PURPOSES.—The purpose of this title is to reduce the adverse effects of acid deposition through reductions in annual emissions of sulfur dioxide of ten million tons from 1980 emission levels, and, in combination with other provisions of this Act, of nitrogen oxides emissions of approximately two million tons from 1980 emission levels, in the forty-eight contiguous States and the District of Columbia. It is the intent of this title to effectuate such reductions by requiring compliance by affected sources with prescribed emission limitations by specified deadlines, which limitations may be met through alternative methods of compliance provided by an emission allocation and transfer system. It is also the purpose of this title to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as a long-range strategy, consistent with the provisions of this title, for reducing air pollution and other adverse impacts of energy production and use.

"SEC. 402. DEFINITIONS.

"As used in this title:

"(1) The term 'affected source' means a source that includes one or more affected units.

"(2) The term 'affected unit' means a unit that is subject to emission reduction requirements or limitations under this title.

"(3) The term 'allowance' means an authorization, allocated to an affected unit by the Administrator under this title, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

"(4) The term 'baseline' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ('mmBtu's'), calculated as follows:

"(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For non-utility units, the baseline is the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

"(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the administrator shall prescribe by regulation to be promulgated not later than eighteen months after enactment of the Clean Air Act Amendments of 1990.

"(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this title and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under the title. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

"(5) The term 'capacity factor' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

"(6) The term 'compliance plan' means, for purposes of the requirements of this title, either—

"(A) a statement that the source will comply with all applicable requirements under this title, or

"(B) where applicable, a schedule and description of the method or methods for compliance

and certification by the owner or operator that the source is in compliance with the requirements of this title.

"(7) The term 'continuous emission monitoring system' (CEMS) means the equipment as required by section 412, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 412).

"(8) The term 'existing unit' means a unit (including units subject to section 111) that commenced commercial operation before the date of enactment of the Clean Air Act Amendments of 1990. Any unit that commenced commercial operation before the date of enactment of the Clean Air Act Amendments of 1990 which is modified, reconstructed, or repowered after the date of enactment of the Clean Air Act Amendments of 1990 shall continue to be an existing unit for the purposes of this title. For the purposes of this title, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25MWe or less.

"(9) The term 'generator' means a device that produces electricity and which is reported as a generating unit pursuant to Department of Energy Form 860.

"(10) The term 'new unit' means a unit that commences commercial operation on or after the date of enactment of the Clean Air Act Amendments of 1990.

"(11) The term 'permitting authority' means the Administrator, or the State or local air pollution control agency, with an approved permitting program under part B of title III of the Act.

"(12) The term 'repowering' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of the date of enactment of the Clean Air Act Amendments of 1990. Notwithstanding the provisions of section 409(a), for the purpose of this title, the term 'repowering' shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

"(13) The term 'reserve' means any bank of allowances established by the Administrator under this title.

"(14) The term 'State' means one of the 48 contiguous States and the District of Columbia.

"(15) The term 'unit' means a fossil fuel-fired combustion device.

"(16) The term 'actual 1985 emission rate', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version 2, National Utility Reference File. For nonutility units, the term 'actual 1985 emission rate' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

"(17)(A) The term 'utility unit' means—

"(i) a unit that serves a generator in any State that produces electricity for sale, or

"(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

"(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

"(i) was in commercial operation during 1985, but

"(ii) did not, during 1985, serve a generator in any State that produced electricity for sale

shall not be a utility unit for purposes of this title.

"(C) A unit that cogenerates steam and electricity is not a 'utility unit' for purposes of this title unless the unit is constructed for the purpose of supplying, or commences construction after the date of enactment of this title and supplies, more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

"(18) The term 'allowable 1985 emissions rate' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation in pounds per million Btu to establish the allowable 1985 emissions rate.

"(19) The term 'qualifying phase I technology' means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

"(20) The term 'alternative method of compliance' means a method of compliance in accordance with one or more of the following authorities:

"(A) a substitution plan submitted and approved in accordance with subsections 404 (b) and (c);

"(B) a Phase I extension plan approved by the Administrator under section 404(d), using qualifying phase I technology as determined by the Administrator in accordance with that section; or

"(C) repowering with a qualifying clean coal technology under section 409.

"(21) The term 'commenced' as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"(22) The term 'commenced commercial operation' means to have begun to generate electricity for sale.

"(23) The term 'construction' means fabrication, erection, or installation of an affected unit.

"(24) The term 'industrial source' means a unit that does not serve a generator that produces electricity, a 'nonutility unit' as defined in this section, or a process source as defined in section 410(e).

"(25) The term 'nonutility unit' means a unit other than a utility unit.

"(26) The term 'designated representative' means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"(27) The term 'life-of-the-unit, firm power contractual arrangement' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

"(A) for the life of the unit;

"(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

"(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or re-lease some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

"(28) The term 'basic Phase II allowance allocations' means:

"(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 403 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 405.

"(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 403 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 405.

"(29) The term 'Phase II bonus allowance allocations' means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 403, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 405, and section 406.

"SEC. 403. SULFUR DIOXIDE ALLOWANCE PROGRAM FOR EXISTING AND NEW UNITS.

"(a) ALLOCATIONS OF ANNUAL ALLOWANCES FOR EXISTING AND NEW UNITS.—(1) For the emission limitation programs under this title, the Administrator shall allocate annual allowances for the unit, to be held or distributed by the designated representative of the owner or operator of each affected unit at an affected source in accordance with this title, in an amount equal to the annual tonnage emission limitation calculated under section 404, 405, 406, 409, or 410 except as otherwise specifically provided elsewhere in this title. Except as provided in sections 405(a)(2), 405(a)(3), 409 and 410, beginning January 1, 2000, the Administrator shall not allocate annual allowances to emit sulfur dioxide pursuant to section 405 in such an amount as would result in total annual emissions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 405. Subject to the provisions of section 416, the Administrator shall allocate allowances for each affected unit at an affected source annually, as provided in paragraphs (2) and (3) and section 408. Except as provided in sections 409 and 410, the removal of an existing affected unit or source from commercial operation at any time after the date of the enactment of the Clean Air Act Amendments of 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 404 or 405 to which the unit is entitled. Allowances shall be allocated by the Administrator without cost to the recipient, except for allowances sold by the Administrator pursuant to section 416. Not later than December 31, 1991, the Administrator shall publish a proposed list of the basic Phase II allowance allocations, the Phase II bonus allowance allocations and, if applicable, allocations pursuant to section 405(a)(3) for each unit subject to the emissions limitation requirements of section 405 for the year 2000 and the year 2010. After notice and opportunity for public comment, but not later than December 31, 1992, the Administrator shall publish a final list of such allocations, subject to the provisions of section 405(a)(2). Any owner or operator of an existing unit subject to the requirements of section 405(b) or (c) who is considering applying for an extension of the emission limitation requirement compliance deadline for that unit from January 1, 2000, until not later than December 31, 2000, pursuant to section 409, shall notify the Administrator no later than March 31, 1991. Such notification shall be used as the basis for estimating the basic Phase II allowances under this subsection. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 405(a)(2) and taking into account the effect of any compliance date extensions granted pursuant to section 409 on such allocations. Any person who may make an election concerning the amount of allowances to be allocated to a unit or units shall make such election and so inform the Administrator not later than March 31, 1991, in the case of an election under section 405 (or June 30, 1991, in the case of an election under section 406). If such person fails to make such election, the Administrator shall set forth for each unit owned or operated by such person, the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for the owner or operator of the unit. If such person is a Governor who may make an election under section 406 and the Governor fails to make an election, the Administrator shall set forth for each unit in the State the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for units in the State.

"(b) ALLOWANCE TRANSFER SYSTEM.—Allowances allocated under this title may be

transferred among designated representatives of the owners or operators of affected sources under this title and any other person who holds such allowances, as provided by the allowance system regulations to be promulgated by the Administrator not later than eighteen months after the date of enactment of the Clean Air Act Amendments of 1990. Such regulations shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated, and shall provide, consistent with the purposes of this title, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, including allowances allocated to units subject to Phase I requirements (as described in section 404) which are applied to emissions limitations requirements in Phase II (as described in section 405). Transfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator. Such regulations shall permit the transfer of allowances prior to the issuance of such allowances. Recorded pre-allocation transfers shall be deducted by the Administrator from the number of allowances which would otherwise be allocated to the transferor, and added to those allowances allocated to the transferee. Pre-allocation transfers shall not affect the prohibition contained in this subsection against the use of allowances prior to the year for which they are allocated.

"(c) INTERPOLLUTANT TRADING.—Not later than January 1, 1994, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this title to permit trading sulfur dioxide allowances for nitrogen oxides allowances.

"(d) ALLOWANCE TRACKING SYSTEM.—(1) The Administrator shall promulgate, not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit's permit requirements pursuant to section 408, without any further permit review and revision.

"(2) In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned.

"(e) NEW UTILITY UNITS.—After January 1, 2000, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator. Such new utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 405. New utility units may obtain allowances from any person, in accordance with this title. The owner or operator of any new utility unit in violation of this subsection shall be liable for fulfilling the obligations specified in section 411 of this title.

"(f) NATURE OF ALLOWANCES.—An allowance allocated under this title is a limited authorization to emit sulfur dioxide in accordance with the provisions of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or source, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V or section 408 with respect to the unit for which such allowance was originally allocated and recorded. Each permit under this title and each permit issued under title V for any affected unit shall provide that the affected unit may not emit an annual tonnage of sulfur dioxide in excess of the allowances held for that unit.

"(g) PROHIBITION.—It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this title, except in accordance with regulations promulgated by the Administrator. It shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit. Upon the allocation of allowances under this title, the prohibition contained in the preceding sentence shall supersede any other emission limitation applicable under this title to the units for which such allowances are allocated. Allowances may not be used prior to the calendar year for which they are allocated. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this Act, nor relieve affected sources of their requirements and liabilities under this Act.

"(h) COMPETITIVE BIDDING FOR POWER SUPPLY.—Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

"(i) APPLICABILITY OF THE ANTITRUST LAWS.—

"(1) Nothing in this section affects—

"(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

"(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

"(2) As used in this section, 'antitrust laws' means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

"(j) PUBLIC UTILITY HOLDING COMPANY ACT.—The acquisition or disposition of allowances pursuant to this title including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.

"SEC. 404. PHASE I SULFUR DIOXIDE REQUIREMENTS.

"(a) EMISSION LIMITATIONS.—(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under section 404(d)(2)) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase I, unless (A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d), or (B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 405. The owner or operator of any unit in violation of this section shall be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 411.

"(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between:

"(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

"(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000,

and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this title that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d), the Administrator shall allocate allowances from the reserve established hereinunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

"(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar

year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

"(b) SUBSTITUTIONS.—The owner or operator of an affected unit under subsection (a) may include in its section 408 permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

"(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

"(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

"(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 402(d), multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

"(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

"(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

"(6) such other information as the Administrator may require.

"(c) ADMINISTRATOR'S ACTION ON SUBSTITUTION PROPOSALS.—(1) The Administrator shall take final action on such substitution proposal in accordance with section 408(c) if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

"(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this title, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 408. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 403. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the units total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 411 of this title. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

"(d) ELIGIBLE PHASE I EXTENSION UNITS.—(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 408 for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 408, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this title.

"(2) Such extension proposal shall—

"(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

"(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

"(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

"(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

"(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

"(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 408, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the title.

"(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraphs (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

"(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

"(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

"(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

"(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

"(6) In addition to allowances specified in paragraph (5), the Administrator shall allocate for each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

"(7) After January 1, 1997, in addition to any liability under this Act, including under section 411, if any eligible phase I extension

unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (3) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

"(e)(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements: (A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and (B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 405 (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 405 for reductions in the emissions of sulfur dioxide made during the period 1995-1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

"(2) In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000, exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 405 described in subparagraph (A), the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quantity of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000, exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A) may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after the date of enactment of the Clean Air Act Amendments of 1990, including changes in the type or quality of fossil fuel consumed.

"(3) In no event shall the provisions of this paragraph be interpreted as an event of force majeur or a commercial impractibility or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before the date of enactment of the Clean Air Act Amendments of 1990.

"TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (tons)

State	Plant Name	Generator	Phase I Allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		6	20,380
	E. W. Stout	5	19,360
		5	3,880
		6	4,770
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H. T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250

"TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (tons)—Continued

State	Plant Name	Generator	Phase I Allowances
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger		3

		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/ Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

"(f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

"(1) DEFINITIONS.—As used in this subsection:

"(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term 'qualified energy conservation measure' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

"(B) QUALIFIED RENEWABLE ENERGY.—The term 'qualified renewable energy' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

"(C) ELECTRIC UTILITY.—The term 'electric utility' means any person, State agency, or Federal agency, which sells electric energy.

"(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

"(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

"(B) REQUIREMENTS FOR ISSUANCE.—The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

"(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

"(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

"(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

"(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

"(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

"(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (A) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

"(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

"(C) PERIOD OF APPLICABILITY.—Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992 and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this title (including those sources that elect to become affected by this title, pursuant to section 410).

"(D) DETERMINATION OF AVOIDED EMISSIONS.—

"(i) APPLICATION.—In order to receive allowances under this subsection, an electric utility shall make an application which—

"(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions,

"(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

"(III) demonstrates that the requirements of subparagraph (B) have been met.

Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

"(E) AVOIDED EMISSIONS FROM QUALIFIED ENERGY CONSERVATION MEASURES.—For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

"(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

"(ii) 0.004,

and dividing by 2,000.

"(F) AVOIDED EMISSIONS FROM THE USE OF QUALIFIED RENEWABLE ENERGY.—The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—

"(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by

"(ii) 0.004,

and dividing by 2,000.

"(G) PROHIBITIONS.—(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

"(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

"(3) SAVINGS PROVISION.—Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

"(4) REGULATIONS.—Not later than 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 and in conjunction with the regulations required to be promulgated under subsections (b) and (c), the Administrator shall, in consultation with the Secretary of Energy, promulgate regulations under this subsection. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility to electric utility and from State to State in accordance with the Administrator's rules.

The Administrator shall publish the findings of this review no less than annually.

"(g) CONSERVATION AND RENEWABLE ENERGY RESERVE.—The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 403. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. If allowances remain in the reserve after January 2, 2010, the Administrator shall allocate such allowances for affected units under section 405 on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 405, the term 'pro rata basis' refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

"(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

"(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—In the case of a unit subject to the emissions limitation requirements of this section which (as of the date of the enactment of the Clean Air Act Amendments of 1990)—

"(A) has an emission rate below 1.0 lbs/mmBtu,

"(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

"(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu,

at the election of the owner or operator of such unit, the unit's baseline may be calculated (i) as provided under section 402(d), or (ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

"(2) ALLOWANCE ALLOCATION.—Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 403(a)(1), this section, and section 405 (as basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 405.

"SEC. 405. PHASE II SULFUR DIOXIDE REQUIREMENTS.

"(a) APPLICABILITY.—(1) After January 1, 2000, each existing utility unit as provided below is subject tc the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this title. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this Act for fulfilling the obligations specified in section 411 of this title.

"(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 406. Not later than June 1, 1998, the Administrator shall calculate, for each unit granted an extension pursuant to section 409 the difference between (A) the number of allowances allocated for the unit in calendar year 2000, and (B) the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2000, and sum the computations. In each year, beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall deduct from each unit's basic Phase II allowance allocation its pro rata share of 10 percent of the sum calculated pursuant to the preceding sentence.

"(3) In addition to basic Phase II allowance allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 404 (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Steam). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 403(a).

"(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND 1.20 LBS/MMBTU.—(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(2) In addition to allowances allocated pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

"(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of this Act for any pollutant subject to the requirements of section 109 of this Act to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

"(c) COAL OR OIL-FIRED UNITS BELOW 75 MWE AND ABOVE 1.20 LBS/MMBTU.—(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(3) After January 1, 2000, it shall be unlawful for any existing utility unit with a

nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of the date of enactment of the Clean Air Act Amendments of 1990 to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions.

"(4) In addition to allowances allocated pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

"(5) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75Mwe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of the date of the enactment of the Clean Air Act Amendments of 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75Mwe, and (C) has large units (greater than 400 Mwe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions.

"(d) COAL-FIRED UNITS BELOW 1.20 LBS/MMBTU.—(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations.

"(B) In addition to allowances allocated pursuant to paragraph (2) and section 403(a)(1) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 403(a)(1) as basic Phase II allowance allocations.

"(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

"(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 111 of the Act in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

"(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2000, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

"(e) OIL AND GAS-FIRED UNITS EQUAL TO OR GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(f) OIL AND GAS-FIRED UNITS LESS THAN 0.60 LBS/MMBTU.—(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowable 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 403(a)(1), beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

"(g) UNITS THAT COMMENCE OPERATION BETWEEN 1986 AND DECEMBER 31, 1995.—(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at

a 65 percent capacity factor multiplied by the unit's allowable 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 403 to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, Provided that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

"(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

"(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

"(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq, repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions.

"(6)(A) Unless the Administrator has approved a designation of such facility under section 410, the provisions of this title shall not apply to a "qualifying small power production facility" or "qualifying cogeneration facility" (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a "new independent power production facility" as defined in section 416 except that clause (iii) of such definition in section 416 shall not apply for purposes of this paragraph if, as of the date of enactment,

"(i) an applicable power sales agreement has been executed; or

"(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

"(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

"(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

"(h) OIL AND GAS-FIRED UNITS LESS THAN 10 PERCENT OIL CONSUMED.—(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

"(2) In addition to allowances allocated pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

"(3) In addition to allowances allocated pursuant to paragraph (1) and section 403(a)(1), beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

"(i) UNITS IN HIGH GROWTH STATES.—(1) In addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

"(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981-1988 allocated by the United States Department of Commerce, and

"(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988, in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: Provided, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

"(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1), (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of the date of enactment of the Clean Air Act Amendments of 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatthour sales have increased by more than 20 percent between calendar year 1980 and the date of enactment of the Clean Air Act Amendments of 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 per centum or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1): Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000-allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

"(j) CERTAIN MUNICIPALLY OWNED POWER PLANTS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

"SEC. 406. ALLOWANCES FOR STATES WITH EMISSIONS RATES AT OR BELOW 0.80 LBS/MMBTU.

"(a) ELECTION OF GOVERNOR.—In addition to basic Phase II allowance allocations, upon the election of the Governor of any

State, with a 1985 state-wide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 405(a)(2) to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

"(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 403(a)(1), each Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 405.

"(c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 405.

"SEC. 407. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.

"(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 404, 405, 409, or on the date a unit subject to the provisions of section 404(d) or 409(b), must meet the SO_2 reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

"(b) EMISSION LIMITATIONS.—(1) Not later than eighteen months after enactment of the Clean Air Act Amendments of 1990, the Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: Provided, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NOx burner technology. The maximum allowable emission rates are as follows:

"(A) for tangentially fired boilers, 0.45 lb/mmBtu;

"(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu.

After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

"(2) Not later than January 1, 1997, the Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

"(A) wet bottom wall-fired boilers;

"(B) cyclones;

"(C) units applying cell burner technology.

"(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). Not later than January 1, 1997, the Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NOx burner technology is available: Provided, That, no unit that is an affected unit pursuant to section 404 and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any.

"(c) REVISED PERFORMANCE STANDARDS.—(1) Not later than January 1, 1993, the Administrator shall propose revised standards of performance to section 111 for nitrogen oxides emissions from fossil-fuel fired steam generating units, including both electric utility and nonutility units. Not later than January 1, 1994, the Administrator shall promulgate such revised standards of performance. Such revised standards of performance shall reflect improvements in methods for the reduction of emissions of oxides of nitrogen.

"(d) ALTERNATIVE EMISSION LIMITATIONS.—The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

"(1) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NOx burner technology; or

"(2) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator not later than eighteen months after enactment of the Clean Air Act Amendments of 1990, that the owner or operator—

"(1) has properly installed appropriate control equipment designed to meet the applicable emission rate;

"(2) has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

"(3) has specified an emission rate that such unit can meet on an annual average basis.

The permitting authority shall issue an operating permit for the unit in question, in accordance with section 408 and part B of title III—

"(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, to emit at a rate in excess of the applicable emission rate;

"(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (2) and (3) above.

Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NOx burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NOx control technology capable of achieving the applicable emission limitation. If the owner or operator of a unit subject to the emissions limitation requirements of subsection (b)(1) demonstrates to the satisfaction of the Administrator that the technology necessary to meet such requirements is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit by a period of 15 months. Any owner or operator may petition the Administrator to make a determination under the previous sentence. The Administrator shall grant or deny such petition within 3 months of submittal.

"(e) EMISSIONS AVERAGING.—In lieu of complying with the applicable emission limitations under subsection (b) (1), (2), or (d), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b) (1) and (2).

"If the permitting authority determines, in accordance with regulations issued by the Administrator not later than eighteen months after enactment of the Clean Air Act Amendments of 1990; that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 408 and part B of title III, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits.

"SEC. 408. PERMITS AND COMPLIANCE PLANS.

"(a) PERMIT PROGRAM.—The provisions of this title shall be implemented, subject to section 403, by permits issued to units subject to this title (and enforced) in accordance with the provisions of title V, as modified by this title. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

"(1) annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator, or the designated representative of the owners or operators, of the unit hold for the unit,

"(2) exceedances of applicable emissions rates,

"(3) the use of any allowance prior to the year for which it was allocated, and

"(4) contravention of any other provision of the permit.

Permits issued to implement this title shall be issued for a period of 5 years, notwithstanding title V. No permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable.

"(b) COMPLIANCE PLAN.—Each initial permit application shall be accompanied by a compliance plan for the source to comply with its requirements under this title. Where an affected source consists of more than one affected unit, such plan shall cover all such units, and for purposes of section 502(c), such source shall be considered a 'facility'. Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances. Except as provided under subsection (c)(1)(B), submission of a

statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 404, 405, and 407, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 404 and 405, the owners and operator will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V, except that, for any unit that will meet the requirements of this title by means of an alternative method of compliance authorized under section 404 (b), (c), (d), or (f) section 407 (d) or (e), section 409 and section 410, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under this title. Recordation by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Administrator may also require—

"(1) for a source, a demonstration of attainment of national ambient air quality standards, and

"(2) from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

"(c) FIRST PHASE PERMITS.—The Administrator shall issue permits to affected sources under sections 404 and 407.

"(1) PERMIT APPLICATION AND COMPLIANCE PLAN.—(A) Not later than 27 months after the date of the enactment of the Clean Air Act Amendments of 1990, the designated representative of the owners or operators, or the owner and operator, of each affected source under sections 404 and 407 shall submit a permit application and compliance plan for that source in accordance with regulations issued by the Administrator under paragraph (3). The permit application and the compliance plan shall be binding on the owner or operator or the designated representative of owners and operators for purposes of this title and section 402(a), and shall be enforceable in lieu of a permit until a permit is issued by the Administrator for the source.

"(B) In the case of a compliance plan for an affected source under sections 404 and 407 for which the owner or operator proposes to meet the requirements of that section by reducing utilization of the unit as compared with its baseline or by shutting down the unit, the owner or operator shall include in the proposed compliance plan a specification of the unit or units that will provide electrical generation to compensate for the reduced output at the affected source, or a demonstration that such reduced utilization will be accomplished through energy conservation or improved unit efficiency. The unit to be used for such compensating generation, which is not otherwise an affected unit under sections 404 and 407, shall be deemed an affected unit under section 404, subject to all of the requirements for such units under this title, except that allowances shall be allocated to such compensating unit in the amount of an annual limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000.

"(2) EPA ACTION ON COMPLIANCE PLANS.—The Administrator shall review each proposed compliance plan to determine whether it satisfies the requirements of this title, and shall approve or disapprove such plan within 6 months after receipt of a complete submission. If a plan is disapproved, it may be resubmitted for approval with such changes as the Administrator shall require consistent with the requirements of this title and within such period as the Administrator prescribes as part of such disapproval.

"(3) REGULATIONS; ISSUANCE OF PERMITS.—Not later than 18 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations, in accordance with title V, to implement a Federal permit program to issue permits for affected sources under this title. Following promulgation, the Administrator shall issue a permit to implement the requirements of section 404 and the allowances provided under section 403 to the owner or operator of each affected source under section 404. Such a permit shall supersede any permit application and compliance plan submitted under paragraph (1).

"(4) FEES.—During the years 1995 through 1999 inclusive, no fee shall be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under section 404.

"(d) SECOND PHASE PERMITS.—(1) To provide for permits for (A) new electric utility steam generating units required under section 403(e) to have allowances, (B) affected units or sources under section 405, and (C) existing units subject to nitrogen oxide emission reductions under section 407, each State in which one or more such units or sources are located shall submit in accordance with title V, a permit program for approval as provided by that title. Upon approval of such program, for the units or sources subject to such approved program the Administrator shall suspend the issuance of permits as provided in title V.

"(2) The owner or operator or the designated representative of each affected source under section 405 shall submit a permit application and compliance plan for that source to the permitting authority, not later than January 1, 1996.

"(3) Not later than December 31, 1997, each State with an approved permit program shall issue permits to the owner or operator, or the designated representative of the owners and operators, of affected sources under section 405 that satisfy the requirements of title V and this title and that submitted to such State a permit application and compliance plan pursuant to paragraph (2). In the case of a State without an approved permit program by July 1, 1996, the Administrator shall, not later than January 1, 1998, issue a permit to the owner or operator or the designated representative of each such affected source. In the case of affected sources for which applications and plans are timely received under paragraph (2), the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owners or operators and shall be enforceable as a permit for purposes of this title and title V until a permit is issued by the permitting authority for the affected source. The provisions of section 558(c) of title V of the United States Code (relating to renewals) shall apply to permits issued by a permitting authority under this title and title V.

"(4) The permit issued in accordance with this subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator or designated representative hold for the unit.

"(e) NEW UNITS.—The owner or operator of each source that includes a new electric utility steam generating unit shall submit a permit application and compliance plan to the permitting authority not later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the unit commences operation. The permitting authority shall issue a permit to the owner or operator, or the designated representative thereof, of the unit that satisfies the requirements of title V and this title.

"(f) UNITS SUBJECT TO CERTAIN OTHER LIMITS.—The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under section 407 shall submit a permit application and compliance plan for such unit to the permitting authority, not later than January 1, 1998. The permitting authority shall issue a permit to the owner or operator that satisfies the requirements of title V and this title, including any appropriate monitoring and reporting requirements.

"(g) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section. In considering any permit application and compliance plan under this title, the permitting authority shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

"(h) PROHIBITION.—(1) It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this title to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

"(2) It shall be unlawful for any person to operate any source subject to this title except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 504(f), with a permit issued under title V which complies with this title for sources subject to this title shall be deemed compliance with this subsection as well as section 502(a).

"(3) In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of section 113.

"(i) MULTIPLE OWNERS.—No permit shall be issued under this section to an affected unit until the designated representative of the

owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state (1) that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or (2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract. A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

"SEC. 409. REPOWERED SOURCES.

"(a) AVAILABILITY.—Not later than December 31, 1997, the owner or operator of an existing unit subject to the emissions limitation requirements of section 405 (b) and (c) may demonstrate to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to comply with the requirements under section 405. The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as the Administrator may require by regulation. The replacement of an existing utility unit with a new utility unit using a repowering technology referred to in section 402(2) which is located at a different site, shall be treated as repowering of the existing unit for purposes of this title, if—

"(1) the replacement unit is designated by the owner or operator to replace such existing unit, and

"(2) the existing unit is retired from service on or before the date on which the designated replacement unit enters commercial operation.

"(b) EXTENSION.—(1) An owner or operator satisfying the requirements of subsection (a) shall be granted an extension of the emission limitation requirement compliance date for that unit from January 1, 2000, to December 31, 2003. The extension shall be specified in the permit issued to the source under section 408, together with any compliance schedule and other requirements necessary to meet second phase requirements by the extended date. Any unit that is granted an extension under this section shall not be eligible for a waiver under section 111(j) of this Act, and shall continue to be subject to requirements under this title as if it were a unit subject to section 405.

"(2) If (A) the owner or operator of an existing unit has been granted an extension under paragraph (1) in order to repower such unit with a clean coal unit, and (B) such owner or operator demonstrates to the satisfaction of the Administrator that the repowering technology to be utilized by such unit has been properly constructed and tested on such unit, but nevertheless has been unable to achieve the emission reduction limitations and is economically or technologically infeasible, such existing unit may be retrofitted or repowered with equipment or facilities utilizing another clean coal technology or other available control technology.

"(c) ALLOWANCES.—(1) For the period of the extension under this section, the Administrator shall allocate to the owner or operator of the affected unit, annual allowances for sulfur dioxide equal to the affected unit's baseline multiplied by the lesser of the unit's federally approved State Implementation Plan emissions limitation or its actual emission rate for 1995 in lieu of any other allocation. Such allowances may not be transferred or used by any other source to meet emission requirements under this title. The source owner or operator shall notify the Administrator sixty days in advance of the date on which the affected unit for which the extension has been granted is to be removed from operation to install the repowering technology.

"(2) Effective on that date, the unit shall be subject to the requirements of section 405. Allowances for the year in which the unit is removed from operation to install the repowering technology shall be calculated as the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000, and prorated accordingly, and are transferable.

"(3) Allowances for such existing utility units for calendar years after the year the repowering is complete shall be calculated as the product of the existing unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

"(4) Notwithstanding the provisions of section 403 (a) and (e), allowances shall be allocated under this section for a designated replacement unit which replaces an existing unit (as provided in the last sentence of subsection (a)) in lieu of any further allocations of allowances for the existing unit.

"(5) For the purpose of meeting the aggregate emissions limitation requirement set forth in section 403(a)(1), the units with an extension under this subsection shall be treated in each calendar year during the extension period as holding allowances allocated under paragraph (3).

"(d) CONTROL REQUIREMENTS.—Any unit qualifying for an extension under this section that does not increase actual hourly emissions for any pollutant regulated under the Act shall not be subject to any standard of performance under section 111 of this Act. Notwithstanding the provisions of this subsection, no new unit (1) designated as a replacement for an existing unit, (2) qualifying for the extension under subsection (b), and (3) located at a different site than the existing unit shall receive an exemption from the requirements imposed under section 111.

"(e) EXPEDITED PERMITTING.—State permitting authorities and, where applicable, the Administrator, are encouraged to give expedited consideration to permit applications under parts C and D of title I of this Act for any source qualifying for an extension under this section.

"(f) PROHIBITION.—It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirement of this section, or any regulations of permit requirements to implement this section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

"SEC. 410. ELECTION FOR ADDITIONAL SOURCES.

(A) APPLICABILITY.—The owner or operator of any unit that is not, nor will become, an affected unit under section 403(e), 404, or 405, or that is a process source under subsection (d), that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this title. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 408. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit, or source, shall be allocated allowances, and be an affected unit for purposes of this title.

"(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

"(c) EMISSION LIMITATIONS.—Annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

"(d) PROCESS SOURCES.—Not later than 18 months after enactment of the Clean Air Act Amendments of 1990, the Administrator shall establish a program under which the owner or operator of a process source that emits sulfur dioxide may elect to designate that source as an affected unit for the purpose of receiving allowances under this title. The Administrator shall, by regulation, define the sources that may be designated; specify the emissions limitation; specify the operating, emission baseline, and other data requirements; prescribe CEMS or other monitoring requirements; and promulgate permit, reporting, and any other requirements necessary to implement such a program.

"(e) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c) or (d), in accordance with section 403. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 403. Affected sources under this section shall be subject to the requirements of sections 403, 408, 411, 412, 413, and 414.

"(f) LIMITATION.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated

by any other unit or units subject to the requirements of this title, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such allowances shall authorize operation of a unit in violation of any other requirements of this Act.

"(g) IMPLEMENTATION.—The Administrator shall issue regulations to implement this section not later than eighteen months after enactment of the Clean Air Act Amendments of 1990.

"(h) SMALL DIESEL REFINERIES.—The Administrator shall issue allowances to owners or operators of small diesel refineries who produce diesel fuel after October 1, 1993, meeting the requirements of subsection 211(i) of this Act.

"(1) ALLOWANCE PERIOD.—Allowances may be allocated under this subsection only for the period from October 1, 1993, through December 31, 1999.

"(2) ALLOWANCE DETERMINATION.—The number of allowances allocated pursuant to this paragraph shall equal the annual number of pounds of sulfur dioxide reduction attributable to desulfurization by a small refinery divided by 2,000. For the purposes of this calculation, the concentration of sulfur removed from diesel fuel shall be the difference between 0.274 percent (by weight) and 0.050 percent (by weight).

"(3) REFINERY ELIGIBILITY.—As used in this subsection, the term 'small refinery' shall mean a refinery or portion of a refinery—

"(A) which, as of the date of enactment of the Clean Air Act Amendments of 1990, has bona fide crude oil throughput of less than 18,250,000 barrels per year, as reported to the Department of Energy, and

"(B) which, as of the date of enactment of the Clean Air Act Amendments of 1990, is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,187,500 barrels per year, as reported to the Department of Energy.

"(4) LIMITATION PER REFINERY.—The maximum number of allowances that can be annually allocated to a small refinery pursuant to this subsection is one thousand and five hundred.

"(5) LIMITATION ON TOTAL.—In any given year, the total number of allowances allocated pursuant to this subsection shall not exceed thirty-five thousand.

"(6) REQUIRED CERTIFICATION.—The Administrator shall not allocate any allowances pursuant to this subsection unless the owner or operator of a small diesel refinery shall have certified, at a time and in a manner prescribed by the Administrator, that all motor diesel fuel produced by the refinery for which allowances are claimed, including motor diesel fuel for off-highway use, shall have met the requirements of subsection 211(i) of this Act.

"SEC. 411. EXCESS EMISSIONS PENALTY.

"(a) EXCESS EMISSIONS PENALTY.—The owner or operator of any unit or process source subject to the requirements of sections 403, 404, 405, 406, 407 or 409, or designated under section 410, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the operator holds for use for the unit for that year, multiplied by $2,000. Any such penalty shall be due and payable without demand to the Administrator as provided in regulations to be issued by the Administrator by no later than eighteen months after the date of enactment of the Clean Air Act Amendments of 1990. Any such payment shall be deposited in the United States Treasury pursuant to the Miscellaneous Receipts Act. Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this Act.

"(b) EXCESS EMISSIONS OFFSET.—The owner or operator of any affected source that emits sulfur dioxide during any calendar year in excess of the unit's emissions limitation requirement or of the allowances held for the unit for the calendar year, shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The owner or operator of the source shall, within sixty days after the end of the year in which the excess emissions occured, submit to the Administrator, and to the State in which the source is located, a proposed plan to achieve the required offsets. Upon approval of the proposed plan by the Administrator, as submitted, modified or conditioned, the plan shall be deemed at a condition of the operating permit for the unit without further review or revision of the permit. The Administrator shall also deduct allowances equal to the excess tonnage from those allocated for the source for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

"(c) PENALTY ADJUSTMENT.—The Administrator shall, by regulation, adjust the penalty specified in subsection (a) for inflation, based on the Consumer Price Index, on the date of enactment and annually thereafter.

"(d) PROHIBITION.—It shall be unlawful for the owner or operator of any source liable for a penalty and offset under this section to fail (1) to pay the penalty under subsection (a), (2) to provide, and thereafter comply with, a compliance plan as required by subsection (b), or (3) to offset excess emissions as required by subsection (b).

"(e) SAVINGS PROVISION.—Nothing in this title shall limit or otherwise affect the application of section 113, 114, 120, or 304 except as otherwise explicitly provided in this title.

"SEC. 412. MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS.

"(a) APPLICABILITY.—The owner and operator of any source subject to this title shall be required to install and operate CEMS on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit. The Administrator shall, by regulations issued not later than eighteen months after enactment of the Clean Air Act Amendments of 1990, specify the requirements for CEMS, for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations or the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

"(b) FIRST PHASE REQUIREMENTS.—Not later than thirty-six months after enactment of the Clean Air Act Amendments of 1990, the owner or operator of each affected unit under section 404, including, but not limited to, units that become affected units pursuant to subsections (b) and (c) and eligible units under subsection (d), shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a).

"(c) SECOND PHASE REQUIREMENTS.—Not later than January 1, 1995, the owner or operator of each affected unit that has not previously met the requirements of subsections (a) and (b) shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a). Upon commencement of commercial operation of each new utility unit, the unit shall comply with the requirements of subsection (a).

"(d) UNAVAILABILITY OF EMISSIONS DATA.—If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation which shall be issued not later than eighteen months after enactment of the Clean Air Act Amendments of 1990, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 411 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this Act.

"(e) PROHIBITION.—It shall be unlawful for the owner or operator of any source subject to this title to operate a source without complying with the requirements of this section, and any regulations implementing this section.

"SEC. 413. GENERAL COMPLIANCE WITH OTHER PROVISIONS.

"Except as expressly provided, compliance with the requirements of this title shall not exempt or exclude the owner or operator of any source subject to this title from compliance with any other applicable requirements of this Act.

"SEC. 414. ENFORCEMENT.

"It shall be unlawful for any person subject to this title to violate any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this

title, the operation of any affected unit to emit sulfur dioxide in excess of allowances held for such unit shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

"SEC. 415. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

"(a) DEFINITION.—For purposes of this section, 'clean coal technology' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of the date of enactment of this title.

"(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

"(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading 'Department of Energy—Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

"(3) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering as defined in section 402(l) of this title, any qualifying project shall not be subject to standards of performance under section 111 or to the review and permitting requirements of part C for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

"(4) EPA REGULATIONS.—Not later than 12 months after the date of enactment, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 111 and parts C and D, as appropriate, to facilitate projects consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

"(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 111 or part C of the Act where the unit (1) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment, (2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent, (3) is equipped with low-NOx burners prior to the time of commencement, and (4) is otherwise in compliance with the requirements of this Act.

"SEC. 416. CONTINGENCY GUARANTEE; AUCTIONS, RESERVE.

"(a) DEFINITIONS.—For purposes of this section—

"(1) The term 'independent power producer' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

"(2) The term 'new independent power production facility" means a facility that—

"(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

"(B) is nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990);

"(C) does not generate electric energy sold to any affiliate (as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935) of the facility's owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

"(D) is a new unit required to hold allowances under this title.

"(3) The term 'required allowances' means the allowances required to operate such unit for so much of the unit's useful life as occurs after January 1, 2000.

"(b) SPECIAL RESERVE OF ALLOWANCES.—Within 36 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations establishing a Special Allowance Reserve containing allowances to be sold under this section. For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

"(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

"(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

"(c) DIRECT SALE AT $1,500 PER TON.—

"(1) SUBACCOUNT FOR DIRECT SALES.—In accordance with regulations under this section, the Administrator shall establish a Direct Sale Subaccount in the Special Allowance Reserve established under this section. The Direct Sale Subaccount shall contain allowances in the amount of 50,000 tons per year for each year beginning in the year 2000.

"(2) SALES.—Allowances in the subaccount shall be offered for direct sale to any person at the times and in the amounts specified in table 1 at a price of $1,500 per allowance, adjusted by the Consumer Price Index in the same manner as provided in paragraph (3). Requests to purchase allowances from the Direct Sale Subaccount established under paragraph (1) shall be approved in the order of receipt until no allowances remain in such subaccount, except that an opportunity to purchase such allowances shall be provided to the independent power producers referred to in this subsection before such allowances are offered to any other person. Each applicant shall be required to pay 50 percent of the total purchase price of the allowances within 6 months after the approval of the request to purchase. The remainder shall be paid on or before the transfer of the allowances.

TABLE 1.—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT $1,500 PER TON

Year of Sale	Spot Sale (same year)	Advance Sale
1993-1999		25,000
2000 and after	25,000	25,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year.) Allowances sold in the advance sale in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year.)

"(3) ENTITLEMENT TO WRITTEN GUARANTEE.—Any independent power producer that submits an application to the Administrator establishing that such independent power producer—

"(A) proposes to construct a new independent power production facility for which allowances are required under this title;

"(B) will apply for financing to construct such facility after January 1, 1990, and before the date of the first auction under this section;

"(C) has submitted to each owner or operator of an affected unit listed in table A (in section 404) a written offer to purchase the required allowances for $750 per ton; and

"(D) has not received (within 180 days after submitting offers to purchase under subparagraph (C)) an acceptance of the offer to purchase the required allowances

shall, within 30 days after submission of such application, be entitled to receive the Administrator's written guarantee (subject to the eligibility requirements set forth in paragraph (4)) that such required allowances will be made available for purchase from the Direct Sale Subaccount established under this subsection and at a guaranteed price. The guaranteed price at which such allowances shall be made available for purchase shall be $1,500 per ton, adjusted by the percentage, if any, by which the Consumer Price Index (as determined under section 502(b)(3)(B)(v)) for the year in which the allowance is purchased exceeds the Consumer Price Index for the calendar year 1990.

"(4) ELIGIBILITY REQUIREMENTS.—The guarantee issued by the Administrator under paragraph (3) shall be subject to a demonstration by the independent power producer, satisfactory to the Administrator, that—

"(A) the independent power producer has—

"(i) made good faith efforts to purchase the required allowances from the owners or operators of affected units to which allow-

ances will be allocated, including efforts to purchase at annual auctions under this section, and from industrial sources that have elected to become affected units pursuant to section 410; and

"(ii) such bids and efforts were unsuccessful in obtaining the required allowances; and

"(B) the independent power producer will continue to make good faith efforts to purchase the required allowances from the owners or operators of affected units and from industrial sources.

"(5) ISSUANCE OF GUARANTEED ALLOWANCES FROM DIRECT SALE SUBACCOUNT UNDER THIS SECTION.—From the allowances available in the Direct Sale Subaccount established under this subsection, upon payment of the guaranteed price, the Administrator shall issue to any person exercising the right to purchase allowances pursuant to a guarantee under this subsection the allowances covered by such guarantee. Persons to which guarantees under this subsection have been issued shall have the opportunity to purchase allowances pursuant to such guarantee from such subaccount before the allowances in such reserve are offered for sale to any other person.

"(6) PROCEEDS.—Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, the Administrator shall require that the proceeds of any sale under this subsection be transferred, within 90 days after the sale, without charge, on a pro rata basis to the owners or operators of the affected units from whom the allowances were withheld under subsection (b) and that any unsold allowances be transferred to the Subaccount for Auction Sales established under subsection (d). No proceeds of any sale under this subsection shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or to the Administrator.

"(7) TERMINATION OF SUBACCOUNT.—If the Administrator determines that, during any period of 2 consecutive calendar years, less than 20 percent of the allowances available in the subaccount for direct sales established under this subsection have been purchased under this paragraph, the Administrator shall terminate the subaccount and transfer such allowances to the Auction Subaccount under subsection (d).

"(d) AUCTION SALES.—

"(1) SUBACCOUNT FOR AUCTIONS.—The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year beginning in the calendar year 2000.

"(2) ANNUAL AUCTIONS.—Commencing in 1993 and in each year thereafter, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator, in consultation with the Secretary of the Treasury, within 12 months of enactment of the Clean Air Act of 1990. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table 2. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this title.

TABLE 2—Number of Allowances Available for Auction

Year of Sale	Spot Auction (same year)	Advance Auction
1993	[1] 50,000	100,000
1994	[1] 50,000	100,000
1995	[1] 50,000	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000 and after	100,000	100,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year.)

[1] Available for use only in 1995 (unless banked for use in a later year.)

"(3) PROCEEDS.—(A) Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

"(B) At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

"(4) ADDITIONAL AUCTION PARTICIPANTS.—Any person holding allowances or to whom allowances are allocated by the Administrator may submit those allowances to the Administrator to be offered for sale at auction under this subsection. The proceeds of any such sale shall be transferred at the time of sale by the purchaser to the person submitting such allowances for sale. The holder of allowances offered for sale under this paragraph may specify a minimum sale price. Any person may purchase allowances offered for auction under this paragraph. Such allowances shall be allocated and sold to purchasers on the basis of bid price after the auction under paragraph (2) is complete. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

"(5) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this title.

"(e) CHANGES IN SALES, AUCTIONS, AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance sales or advance auctions) and 2005 (in the case of spot sales or spot auctions) decrease the number of allowances withheld and sold under this section.

"(f) TERMINATION OF AUCTIONS.—The Administrator may terminate the withholding of allowances and the auction sales under this section if the Administrator determines that, during any period of 3 consecutive calendar years after 2002, less than 20 percent of the allowances available in the auction subaccount have been purchased. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.".

SEC. 402. FOSSIL FUEL USE.

(a) CONTRACTS FOR HYDROELECTRIC ENERGY.—Any person who, after the date of the enactment of the Clean Air Act Amendments of 1990, enters into a contract under which such person receives hydroelectric energy in return for the provision of electric energy by such person shall use allowances held by such person as necessary to satisfy such person's obligations under such contract.

(b) FEDERAL POWER MARKETING ADMINISTRATION.—A Federal Power Marketing Administration shall not be subject to the provisions and requirements of this title with respect to electric energy generated by hydroelectric facilities and marketed by such Power Marketing Administration. Any person who sells or provides electric energy to a Federal Power Marketing Administration shall comply with the provisions and requirements of this title.

SEC. 403. REPEAL OF PERCENT REDUCTION.

(a) REPEAL.—Section 111(a)(1) of the Clean Air Act is amended to read as follows:

"(1) The term 'standard of performance' means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.".

(b) REVISED REGULATIONS.—Not later than three years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate revised regulations for standards of performance for new fossil fuel fired electric utility units commencing construction after the date on which such regulations are proposed that, at a minimum, require any source subject to such revised standards to emit sulfur dioxide at a rate not greater than would have resulted from compliance by such source with the applicable standards of performance under this section prior to such revision.

(c) APPLICABILITY.—The provisions of subsections (a) and (b) apply only so long as the provisions of section 403(e) of the Clean Air Act remain in effect.

(d) BACT DETERMINATIONS.—Section 169(3) of the Clean Air Act is amended by inserting: ", clean fuels," after "including fuel cleaning," and by adding the following at the end thereof: "Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to enactment of the Clean Air Act Amendments 1990.".

SEC. 404. ACID DEPOSITION STANDARDS.

Not later than 36 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall transmit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the feasibility and effectiveness of an acid deposition standard or standards to protect sensitive and critically sensitive aquatic and terrestrial resources. The study required by this section shall include, but not be limited to, consideration of the following matters:

(1) identification of the sensitive and critically sensitive aquatic and terrestrial resources in the United States and Canada which may be affected by the deposition of acidic compounds;

(2) description of the nature and numerical value of a deposition standard or standards that would be sufficient to protect such resources;

(3) description of the use of such standard or standards in other Nations or by any of the several States in acid deposition control programs;

(4) description of the measures that would need to be taken to integrate such standard or standards with the control program required by title IV of the Clean Air Act;

(5) description of the state of knowledge with respect to source-receptor relationships necessary to develop a control program on such standard or standards and the additional research that is on-going or would be needed to make such a control program feasible; and

(6) description of the impediments to implementation of such control program and the cost-effectiveness of deposition standards compared to other control strategies including ambient air quality standards, new source performance standards and the requirements of title IV of the Clean Air Act.

SEC. 405. NATIONAL ACID LAKES REGISTRY.

The Administrator of the Environmental Protection Agency shall create a National Acid Lakes Registry that shall list, to the extent practical, all lakes that are known to be acidified due to acid deposition, and shall publish such list within one year of the enactment of this Act. Lakes shall be added to the registry as they become acidic or as data becomes available to show they are acidic. Lakes shall be deleted from the registry as they become nonacidic.

SEC. 406. INDUSTRIAL SO_2 EMISSIONS

(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator of the Environmental Protection Agency shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in title IV of the Act), including units subject to section 405(g)(6) of the Clean Air Act, for all years for which data are available, as well as the likely trend in such emissions over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214.

(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 405(g)(5) of the Clean Air Act, may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator of the Environmental Protection Agency shall take such actions under the Clean Air Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 405(g)(5) of the Clean Air Act, under section 111(b) of the Clean Air Act, as well as promulgation of standards of performance for existing sources, including units subject to section 405(g)(5) of the Clean Air Act, under authority of this section. For an existing source regulated under this section, "standard of performance" means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

(c) ELECTION.—Regulations promulgated under section 405(b) of the Clean Air Act shall not prohibit a source from electing to become an affected unit under section 410 of the Clean Air Act.

SEC. 407. SENSE OF THE CONGRESS ON EMISSION REDUCTIONS COSTS.

It is the sense of the Congress that the Clean Air Act Amendments of 1990, through the allowance program, allocates the costs of achieving the required reductions in emissions of sulfur dioxide and oxides of nitrogen among sources in the United States. Broad based taxes and emissions fees that would provide for payment of the costs of achieving required emissions reductions by any party or parties other than the sources required to achieve the reductions are undesirable.

SEC. 408. MONITOR ACID RAIN PROGRAM IN CANADA.

(a) REPORTS TO CONGRESS.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of State, the Secretary of Energy, and other persons the Administrator deems appropriate, shall prepare and submit a report to Congress on January 1, 1994, January 1, 1999, and January 1, 2005.

(b) CONTENTS.—The report to Congress shall analyze the current emission levels of sulfur dioxide and nitrogen oxides in each of the provinces participating in Canada's acid rain control program, the amount of emission reductions of sulfur dioxide and oxides of nitrogen achieved by each province, the methods utilized by each province in making those reductions, the costs to each province and the employment impacts in each province of making and maintaining those reductions.

(c) COMPLIANCE.—Beginning on January 1, 1999, the reports shall also assess the degree to which each province is complying with its stated emissions cap.

SEC. 409. REPORT ON CLEAN COAL TECHNOLOGIES EXPORT PROGRAMS.

The Secretary of Energy in consultation with the Secretary of Commerce shall provide a report to the Congress within one year of enactment of this legislation which will identify, inventory and analyze clean coal technologies export programs within United States Government agencies including the Departments of State, Commerce, and Energy and at the Export-Import Bank and the Overseas Private Investment Corporation. The study shall address the effectiveness of interagency coordination of export promotion and determine the feasibility of establishing an interagency commission for the purpose of promoting the export and use of clean coal technologies.

SEC. 410. ACID DEPOSITION RESEARCH BY THE UNITED STATES FISH AND WILDLIFE SERVICE.

There are authorized to be appropriated to the United States Fish and Wildlife Service of the Department of the Interior an amount equal to $500,000 to fund research related to acid deposition and the monitoring of high altitude mountain lakes in the Wind River Reservation, Wyoming, to be conducted through the Management Assistance Office of the United States Fish and Wildlife Service located in Lander, Wyoming and the University of Wyoming.

SEC. 411. STUDY OF BUFFERING AND NEUTRALIZING AGENTS.

There are authorized to be appropriated to the United States Fish and Wildlife Service of the Department of the Interior an amount equal to $250,000 to fund a study to be conducted in conjunction with the University of Wyoming of the effectiveness of various buffering and neutralizing agents used to restore lakes and streams damaged by acid deposition.

SEC. 412. CONFORMING AMENDMENT.

Section 110(f)(1) of the Clean Air Act is amended by inserting "or of any requirement under section 411 (concerning excess emissions penalties or offsets) of title IV of the Act" after "implementation plan".

SEC. 413. SPECIAL CLEAN COAL TECHNOLOGY PROJECT.

(a) DEMONSTRATION PROJECT.—The Secretary of Energy shall, subject to appropriation, as part of the Secretary's activities with respect to fossil energy research and development under the Department of Energy Organization Act (Public Law 95-91) consider funding at least 50 percent of the cost of a demonstration project to design, construct, and test a technology system for a cyclone boiler that will serve as a model for sulfur dioxide and nitrogen oxide reduction technology at a combustion unit required to meet the emissions reductions prescribed in this bill. The Secretary shall expedite approval and funding to enable such project to be completed no later than January 1, 1995.

The unit selected for this project shall be in a utility plant that (1) is among the top 10 emitters of sulfur dioxide as identified on Table A of section 404; (2) has 3 or more units, 2 of which are cyclone boiler units; and (3) has no existing scrubbers.

(b) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section, to remain available until expended.

TITLE V—PERMITS

Sec. 501. Permits.

SEC. 501. PERMITS.

Add the following new title after title IV:

"TITLE V—PERMITS

"Sec. 501. Definitions.

"Sec. 502. Permit programs.

"Sec. 503. Permit applications.

"Sec. 504. Permit requirements and conditions.
"Sec. 505. Notification to Administrator and contiguous States.
"Sec. 506. Other authorities.
"Sec. 507. Small business stationary source technical and environmental compliance assistance program.

"SEC. 501. DEFINITIONS.

As used in this title—

"(1) AFFECTED SOURCE.—The term 'affected source' shall have the meaning given such term in title IV.

"(2) MAJOR SOURCE.—The term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

"(A) A major source as defined in section 112.

"(B) A major stationary source as defined in section 302 or part D of title I.

"(3) SCHEDULE OF COMPLIANCE.—The term 'schedule of compliance' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

"(4) PERMITTING AUTHORITY.—The term 'permitting authority' means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this title.

"SEC. 502. PERMIT PROGRAMS.

"(a) VIOLATIONS.—After the effective date of any permit program approved or promulgated under this title, it shall be unlawful for any person to violate any requirement of a permit issued under this title, or to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under parts C or D of title I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

"(b) REGULATIONS.—The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

"(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

"(2) Monitoring and reporting requirements.

"(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this title pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title, including section 507, including the reasonable costs of—

"(i) reviewing and acting upon any application for such a permit,

"(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

"(iii) emissions and ambient monitoring,

"(iv) preparing generally applicable regulations, or guidance,

"(v) modeling, analyses, and demonstrations, and

"(vi) preparing inventories and tracking emissions.

"(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

"(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

"(ii) As used in this subparagraph, the term 'regulated pollutant' shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

"(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

"(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

"(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause—

"(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

"(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

"(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

"(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

"(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

"(4) Requirements for adequate personnel and funding to administer the program.

"(5) A requirement that the permitting authority have adequate authority to:

"(A) issue permits and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act;

"(B) issue permits for a fixed term, not to exceed 5 years;

"(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

"(D) terminate, modify, or revoke and reissue permits for cause;

"(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

"(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this title.

"(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

"(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appro-

priate, title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

"(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

"(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this title regarding renewals.

"(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d)) without requiring a permit revision, if the changes are not modifications under any provision of title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

"(c) SINGLE PERMIT.—A single permit may be issued for a facility with multiple sources.

"(d) SUBMISSION AND APPROVAL.—(1) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

"(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of title I).

"(3) If a program meeting the requirements of this title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this title for that State.

"(e) SUSPENSION.—The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

"(f) PROHIBITION.—No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this title and each of the following:

"(1) All requirements established under title IV applicable to 'affected sources'.

"(2) All requirements established under section 112 applicable to 'major sources', 'area sources,' and 'new sources'.

"(3) All requirements of title I (other than section 112) applicable to sources required to have a permit under this title.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

"(g) INTERIM APPROVAL.—If a program (including a partial permit program) submitted under this title substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

"(h) EFFECTIVE DATE.—The effective date of a permit program, or partial or interim program, approved under this title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

"(i) ADMINISTRATION AND ENFORCEMENT.—(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

"(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this title or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

"SEC. 503. PERMIT APPLICATIONS.

"(a) APPLICABLE DATE.—Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates—

"(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

"(2) the date such source becomes subject to section 502(a).

"(b) COMPLIANCE PLAN.—(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

"(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly

report any deviations from permit requirements to the permitting authority.

"(c) DEADLINE.—Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Act.

"(d) TIMELY AND COMPLETE APPLICATIONS.—Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

"(e) COPIES; AVAILABILITY.—A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

"SEC. 504. PERMIT REQUIREMENTS AND CONDITIONS.

"(a) CONDITIONS.—Each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.

"(b) MONITORING AND ANALYSIS.—The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV, or where required elsewhere in this Act.

"(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.—Each permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this title shall be signed by a responsible corporate official, who shall certify its accuracy.

"(d) GENERAL PERMITS.—The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 503.

"(e) TEMPORARY SOURCES.—The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

"(f) PERMIT SHIELD.—Compliance with a permit issued in accordance with this title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if—

"(1) the permit includes the applicable requirements of such provisions, or

"(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section.

"SEC. 505. NOTIFICATION TO ADMINISTRATOR AND CONTIGUOUS STATES.

"(a) TRANSMISSION AND NOTICE.—(1) Each permitting authority—

"(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this Act, and

"(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

"(2) The permitting authority shall notify all States—

"(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

"(B) that are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

"(b) OBJECTION BY EPA.—(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1), or (B) within 45 days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

"(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 307. The Administrator shall include in regulations under this title provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

"(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the

Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c).

"(c) ISSUANCE OR DENIAL.—If the permitting authority fails, within 90 days after the date of an objection under subsection (b), to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this title. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

"(d) WAIVER OF NOTIFICATION REQUIREMENTS.—(1) The Administrator may waive the requirements of subsections (a) and (b) at the time of approval of a permit program under this title for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

"(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) shall not apply. The preceding sentence shall not apply to major sources.

"(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2). Any waiver granted under this subsection may be revoked or modified by the Administrator by rule.

"(e) REFUSAL OF PERMITTING AUTHORITY TO TERMINATE, MODIFY, OR REVOKE AND REISSUE.—If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this title, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b). If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

"SEC. 506. OTHER AUTHORITIES.

"(a) IN GENERAL.—Nothing in this title shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this Act.

"(b) PERMITS IMPLEMENTING ACID RAIN PROVISIONS.—The provisions of this title, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of title IV except as modified by that title.

"SEC. 507. SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

"(a) PLAN REVISIONS.—Consistent with sections 110 and 112, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 110, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall approve such program if it includes each of the following:

"(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this Act.

"(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

"(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this Act.

"(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this Act in a timely and efficient manner.

"(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this Act.

"(6) Adequate mechanisms for informing small business stationary sources of their obligations under this Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this Act.

"(7) Procedures for consideration of requests from a small business stationary source for modification of—

"(A) any work practice or technological method of compliance, or "(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date,

based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this Act, including the requirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

"(b) PROGRAM.—The Administrator shall establish within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 a small business stationary source technical and environmental compliance assistance program. Such program shall—

"(1) assist the States in the development of the program required under subsection (a) (relating to assistance for small business stationary sources);

"(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

"(3) provide for implementation of the program provisions required under subsection (a)(4) in any State that fails to submit such a program under that subsection.

"(c) ELIGIBILITY.—(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term 'small business stationary source' means a stationary source that—

"(A) is owned or operated by a person that employs 100 or fewer individuals,

"(B) is a small business concern as defined in the Small Business Act;

"(C) is not a major stationary source;

"(D) does not emit 50 tons or more per year of any regulated pollutant; and

"(E) emits less than 75 tons per year of all regulated pollutants.

"(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs (C), (D), or (E) of paragraph (1) but which does not emit more than 100 tons per year of all regulated pollutants.

"(3)(A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this Act without the application of this subsection.

"(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this Act without the application of this subsection.

"(d) MONITORING.—The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the 'Ombudsman') to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall—

"(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

"(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act;

"(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

"(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

"(e) COMPLIANCE ADVISORY PANEL.—(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the 'Panel') on the State level of not less than 7 individuals. This Panel shall—

"(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

"(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act;

"(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

"(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

"(2) The Panel shall consist of—

"(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

"(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, 2 members each shall be selected by the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

"(C) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

"(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

"(f) FEES.—The State (or the Administrator) may reduce any fee required under this Act to take into account the financial resources of small business stationary sources.

"(g) CONTINUOUS EMISSION MONITORS.—In developing regulations and CTGs under this Act that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this Act, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of title IV provisions relating to continuous emissions monitoring.

"(h) CONTROL TECHNIQUE GUIDELINES.—The Administrator shall consider, consistent with the requirements of this Act, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) to be treated as small business stationary sources) in developing CTGs applicable to such sources under this Act.".

TITLE VI—STRATOSPHERIC OZONE PROTECTION

TITLE VI—STRATOSPHERIC OZONE PROTECTION

Sec. 601. Part B repeal.
Sec. 602. Stratospheric ozone protection.
Sec. 603. Methane studies.

SEC. 601. PART B REPEAL.

Part B of title I of the Clean Air Act entitled "Ozone Protection", sections 150 through 159, is hereby repealed.

SEC. 602. STRATOSPHERIC OZONE PROTECTION.

(a) NEW TITLE VI.—The Clean Air Act is amended by adding the following new title after title V:

"TITLE VI—STRATOSPHERIC OZONE PROTECTION

"TABLE OF CONTENTS

"Sec. 601. Definitions.
"Sec. 602. Listing of class I and class II substances.
"Sec. 603. Monitoring and reporting requirements.
"Sec. 604. Phase-out of production and consumption of class I substances.
"Sec. 605. Phase-out of production and consumption of class II substances.
"Sec. 606. Accelerated schedule.
"Sec. 607. Exchanges.
"Sec. 608. National emission reduction program.
"Sec. 609. Servicing of motor vehicle air conditioners.
"Sec. 610. Nonessential products containing chlorofluorocarbons.
"Sec. 611. Labeling.
"Sec. 612. Safe alternatives policy.
"Sec. 613. Federal procurement.
"Sec. 614. Relationship to other law.
"Sec. 615. Authority of Administrator.
"Sec. 616. Transfers among Parties to the Montreal Protocol.
"Sec. 617. International cooperation.
"Sec. 618. Miscellaneous.

"SEC. 601. DEFINITIONS.

"As used in this title—

"(1) APPLIANCE.—The term 'appliance' means any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

"(2) BASELINE YEAR.—The term 'baseline year' means—

"(A) the calendar year 1986, in the case of any class I substance listed in Group I or II under section 602(a),

"(B) the calendar year 1989, in the case of any class I substance listed in Group III, IV, or V under section 602(a), and

"(C) a representative calendar year selected by the Administrator, in the case of—

"(i) any substance added to the list of class I substances after the publication of the initial list under section 602(a), and

"(ii) any class II substance.

"(3) CLASS I SUBSTANCE.—The term 'class I substance' means each of the substances listed as provided in section 602(a).

"(4) CLASS II SUBSTANCE.—The term 'class II substance' means each of the substances listed as provided in section 602(b).

"(5) COMMISSIONER.—The term 'Commissioner' means the Commissioner of the Food and Drug Administration.

"(6) CONSUMPTION.—The term 'consumption' means, with respect to any substance, the amount of that substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol. Such term shall be construed in a manner consistent with the Montreal Protocol.

"(7) IMPORT.—The term 'import' means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

"(8) MEDICAL DEVICE.—The term 'medical device' means any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

"(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and

"(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

"(9) MONTREAL PROTOCOL.—The terms 'Montreal Protocol' and 'the Protocol' mean the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

"(10) OZONE-DEPLETION POTENTIAL.—The term 'ozone-depletion potential' means a factor established by the Administrator to reflect the ozone-depletion potential of a substance, on a mass per kilogram basis, as compared to chlorofluorocarbon-11 (CFC-11). Such factor shall be based upon the substance's atmospheric lifetime, the molecular weight of bromine and chlorine, and the substance's ability to be photolytically disassociated, and upon other factors determined to be an accurate measure of relative ozone-depletion potential.

"(11) PRODUCE, PRODUCED, AND PRODUCTION.—The terms 'produce', 'produced', and 'production', refer to the manufacture of a substance from any raw material or feedstock chemical, but such terms do not include—

"(A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or

"(B) the reuse or recycling of a substance.

"SEC. 602. LISTING OF CLASS I AND CLASS II SUBSTANCES.

"(a) LIST OF CLASS I SUBSTANCES.—Within 60 days after enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish an initial list of class I substances, which list shall contain the following substances:

Group I:
chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)

Group II:
halon-1211
halon-1301
halon-2402

Group III:
chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)

chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)
Group IV: carbon tetrachloride
Group V: methyl chloroform

The initial list under this subsection shall also include the isomers of the substances listed above, other than 1,1,2-trichloroethane (an isomer of methyl chloroform). Pursuant to subsection (c), the Administrator shall add to the list of class I substances any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer. The Administrator shall, pursuant to subsection (c), add to such list all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater.

"(b) LIST OF CLASS II SUBSTANCES.—Simultaneously with publication of the initial list of class I substances, the Administrator shall publish an initial list of class II substances, which shall contain the following substances:

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
hydrochlorofluorocarbon-226 (HCFC-226)
hydrochlorofluorocarbon-231 (HCFC-231)
hydrochlorofluorocarbon-232 (HCFC-232)
hydrochlorofluorocarbon-233 (HCFC-233)
hydrochlorofluorocarbon-234 (HCFC-234)
hydrochlorofluorocarbon-235 (HCFC-235)
hydrochlorofluorocarbon-241 (HCFC-241)
hydrochlorofluorocarbon-242 (HCFC-242)
hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

The initial list under this subsection shall also include the isomers of the substances listed above. Pursuant to subsection (c), the Administrator shall add to the list of class II substances any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

"(c) ADDITIONS TO THE LISTS.—(1) The Administrator may add, by rule, in accordance with the criteria set forth in subsection (a) or (b), as the case may be, any substance to the list of class I or class II substances under subsection (a) or (b). For purposes of exchanges under section 507, whenever a substance is added to the list of class I substances the Administrator shall, to the extent consistent with the Montreal Protocol, assign such substance to existing Group I, II, III, IV, or V or place such substance in a new Group.

"(2) Periodically, but not less frequently than every 3 years after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall list, by rule, as additional class I or class II substances those substances which the Administrator finds meet the criteria of subsection (a) or (b), as the case may be.

"(3) At any time, any person may petition the Administrator to add a substance to the list of class I or class II substances. Pursuant to the criteria set forth in subsection (a) or (b) as the case may be, within 180 days after receiving such a petition, the Administrator shall either propose to add the substance to such list or publish an explanation of the petition denial. In any case where the Administrator proposes to add a substance to such list, the Administrator shall add, by rule, (or make a final determination not to add) such substance to such list within 1 year after receiving such petition. Any petition under this paragraph shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this paragraph, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

"(4) Only a class II substance which is added to the list of class I substances may be removed from the list of class II substances. No substance referred to in subsection (a), including methyl chloroform, may be removed from the list of class I substances.

"(d) NEW LISTED SUBSTANCES.—In the case of any substance added to the list of class I or class II substances after publication of the initial list of such substances under this section, the Administrator may extend any schedule or compliance deadline contained in section 604 or 605 to a later date than specified in such sections if such schedule or deadline is unattainable, considering when such substance is added to the list. No extension under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances. No extension under this subsection may extend the date for termination of production of any class II substance to a date more than 10 years after January 1 of the year after the year in which the substance is added to the list of class II substances.

"(e) OZONE-DEPLETION AND GLOBAL WARMING POTENTIAL.—Simultaneously with publication of the lists under this section and simultaneously with any addition to either of such lists, the Administrator shall assign to each listed substance a numerical value representing the substance's ozone-depletion potential. In addition, the Administrator shall publish the chlorine and bromine loading potential and the atmospheric lifetime of each listed substance. One year after enactment of the Clean Air Act Amendments of 1990 (one year after the addition of a substance to either of such lists in the case of a substance added after the publication of the initial lists of such substances), and after notice and opportunity for public comment, the Administrator shall publish the global warming potential of each listed substance. The preceding sentence shall not be construed to be the basis of any additional regulation under this Act. In the case of the substances referred to in table 1, the ozone-depletion potential shall be as specified in table 1, unless the Administrator adjusts the substance's ozone depletion potential based on criteria referred to in section 601(10):

"TABLE 1

Substance	Ozone-depletion potential
chlorofluorocarbon-11 (CFC-11)	1.0
chlorofluorocarbon-12 (CFC-12)	1.0
chlorofluorocarbon-13 (CFC-13)	1.0
chlorofluorocarbon-111 (CFC-111)	1.0
chlorofluorocarbon-112 (CFC-112)	1.0
chlorofluorocarbon-113 (CFC-113)	0.8
chlorofluorocarbon-114 (CFC-114)	1.0
chlorofluorocarbon-115 (CFC-115)	0.6
chlorofluorocarbon-211 (CFC-211)	1.0
chlorofluorocarbon-212 (CFC-212)	1.0
chlorofluorocarbon-213 (CFC-213)	1.0
chlorofluorocarbon-214 (CFC-214)	1.0
chlorofluorocarbon-215 (CFC-215)	1.0
chlorofluorocarbon-216 (CFC-216)	1.0
chlorofluorocarbon-217 (CFC-217)	1.0
halon-1211	3.0
halon-1301	10.0
halon-2402	6.0
carbon tetrachloride	1.1
methyl chloroform	0.1
hydrochlorofluorocarbon-22 (HCFC-22)	0.05
hydrochlorofluorocarbon-123 (HCFC-123)	0.02
hydrochlorofluorocarbon-124 (HCFC-124)	0.02
hydrochlorofluorocarbon-141(b) (HCFC-141(b))	0.1
hydrochlorofluorocarbon-142(b) (HCFC-142(b))	0.06

Where the ozone-depletion potential of a substance is specified in the Montreal Protocol, the ozone-depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol.

"SEC. 603. MONITORING AND REPORTING REQUIREMENTS.

"(a) REGULATIONS.—Within 270 days after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall amend the regulations of the Administrator in effect on such date regarding monitoring and reporting of class I and class II substances. Such amendments shall conform to the requirements of this section. The amended regulations shall include requirements with respect to the time and manner of monitoring and reporting as required under this section.

"(b) PRODUCTION, IMPORT, AND EXPORT LEVEL REPORTS.—On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported, or exported a class I or class II substance shall file a report with the Administrator setting forth the amount of the substance that such person produced, imported, and exported during the preceding reporting period. Each such report shall be signed and attested by a responsible officer. No such report shall be required from a person after April 1 of the calendar year after such person permanently ceases production, importation, and exportation of the substance and so notifies the Administrator in writing.

"(c) BASELINE REPORTS FOR CLASS I SUBSTANCES.—Unless such information has previously been reported to the Administrator, on the date on which the first report under subsection (b) is required to be filed, each person who produced, imported, or exported a class I substance (other than a substance added to the list of class I substances after the publication of the initial list of such substances under this section) shall file a report with the Administrator setting forth the amount of such substance that such person produced, imported, and exported during the baseline year. In the case of a substance added to the list of class I substances after publication of the initial list of such substances under this section, the regulations shall require that each person who

produced, imported, or exported such substance shall file a report with the Administrator within 180 days after the date on which such substance is added to the list, setting forth the amount of the substance that such person produced, imported, and exported in the baseline year.

"(d) MONITORING AND REPORTS TO CONGRESS.—(1) The Administrator shall monitor and, not less often than every 3 years following enactment of the Clean Air Act Amendments of 1990, submit a report to Congress on the production, use and consumption of class I and class II substances. Such report shall include data on domestic production, use and consumption, and an estimate of worldwide production, use and consumption of such substances. Not less frequently than every 6 years the Administrator shall report to Congress on the environmental and economic effects of any stratospheric ozone depletion.

"(2) The Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration shall monitor, and not less often than every 3 years following enactment of the Clean Air Act Amendments of 1990, submit a report to Congress on the current average tropospheric concentration of chlorine and bromine and on the level of stratospheric ozone depletion. Such reports shall include updated projections of—

"(A) peak chlorine loading;

"(B) the rate at which the atmospheric abundance of chlorine is projected to decrease after the year 2000; and

"(C) the date by which the atmospheric abundance of chlorine is projected to return to a level of two parts per billion.

Such updated projections shall be made on the basis of current international and domestic controls on substances covered by this title as well as on the basis of such controls supplemented by a year 2000 global phase out of all halocarbon emissions (the base case). It is the purpose of the Congress through the provisions of this section to monitor closely the production and consumption of class II substances to assure that the production and consumption of such substances will not:

"(i) increase significantly the peak chlorine loading that is projected to occur under the base case established for purposes of this section;

"(ii) reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease under the base case; or

"(iii) delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of two parts per billion.

"(e) TECHNOLOGY STATUS REPORT IN 2015.—The Administrator shall review, on a periodic basis, the progress being made in the development of alternative systems or products necessary to manufacture and operate appliances without class II substances. If the Administrator finds, after notice and opportunity for public comment, that as a result of technological development problems, the development of such alternative systems or products will not occur within the time necessary to provide for the manufacture of such equipment without such substances prior to the applicable deadlines under section 605, the Administrator shall, not later than January 1, 2015, so inform the Congress.

"(f) EMERGENCY REPORT.—If, in consultation with the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and after notice and opportunity for public comment, the Administrator determines that the global production, consumption, and use of class II substances are projected to contribute to an atmospheric chlorine loading in excess of the base case projections by more than 5/10ths parts per billion, the Administrator shall so inform the Congress immediately. The determination referred to in the preceding sentence shall be based on the monitoring under subsection (d) and updated not less often than every 3 years.

"SEC. 604. PHASE-OUT OF PRODUCTION AND CONSUMPTION OF CLASS I SUBSTANCES.

"(a) PRODUCTION PHASE-OUT.—Effective on January 1 of each year specified in Table 2, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by the person concerned in the baseline year.

"TABLE 2

[In percent]

"Date	Carbon tetrachloride	Methyl chloroform	Other class I substances
"1991	100	100	85
"1992	90	100	80
"1993	80	90	75
"1994	70	85	65
"1995	15	70	50
"1996	15	50	40
"1997	15	50	15
"1998	15	50	15
"1999	15	50	15
"2000		20	
"2001		20	

"(b) TERMINATION OF PRODUCTION OF CLASS I SUBSTANCES.—Effective January 1, 2000 (January 1, 2002 in the case of methyl chloroform), it shall be unlawful for any person to produce any amount of a class I substance.

"(c) REGULATIONS REGARDING PRODUCTION AND CONSUMPTION OF CLASS I SUBSTANCES.—The Administrator shall promulgate regulations within 10 months after the enactment of the Clean Air Act Amendments of 1990 phasing out the production of class I substances in accordance with this section and other applicable provisions of this title. The Administrator shall also promulgate regulations to insure that the consumption of class I substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class I substances under this title.

"(d) EXCEPTIONS FOR ESSENTIAL USES OF METHYL CHLOROFORM, MEDICAL DEVICES, AND AVIATION SAFETY.—

"(1) ESSENTIAL USES OF METHYL CHLOROFORM.—Notwithstanding the termination of production required by subsection (b), during the period beginning on January 1, 2002, and ending on January 1, 2005, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available. Notwithstanding this paragraph, the authority to produce methyl chloroform for use in medical devices shall be provided in accordance with paragraph (2).

"(2) MEDICAL DEVICES.—Notwithstanding the termination of production required by subsection (b), the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

"(3) AVIATION SAFETY.—(A) Notwithstanding the termination of production required by subsection (b), the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211 (bromochlorodifluoromethane), halon-1301 (bromotrifluoromethane), and halon-2402 (dibromotetrafluoroethane) solely for purposes of aviation safety if the Administrator of the Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.

"(B) The Administrator of the Federal Aviation Administration shall, in consultation with the Administrator, examine whether safe and effective substitutes for methyl chloroform or alternative techniques will be available for nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue and whether an exception for such uses of methyl chloroform under this paragraph will be necessary for purposes of airline safety after January 1, 2005 and provide a report to Congress in 1998.

"(4) CAP ON CERTAIN EXCEPTIONS.—Under no circumstances may the authority set forth in paragraphs (1), (2), and (3) of subsection (d) be applied to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

"(e) DEVELOPING COUNTRIES.—

"(1) EXCEPTION.—Notwithstanding the phase-out and termination of production required under subsections (a) and (b), the Administrator, after notice and opportunity for public comment, may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance in excess of the amounts otherwise allowable under subsection (a) or (b), or both, solely for export to, and use in, developing countries that are Parties to the Montreal Protocol and are operating under article 5 of such Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

"(2) CAP ON EXCEPTION.—(A) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year for which a production percentage is specified in Table 2 of subsection (a) in an annual quantity greater than the specified percentage, plus an amount equal to 10 percent of the amount produced by such person in the baseline year.

"(B) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I

substance in the applicable termination year referred to in subsection (b), or in any year thereafter, in an annual quantity greater than 15 percent of the baseline quantity of such substance produced by such person.

"(C) An exception authorized under this subsection shall terminate no later than January 1, 2010 (2012 in the case of methyl chloroform).

"(f) NATIONAL SECURITY.—The President may, to the extent such action is consistent with the Montreal Protocol, issue such orders regarding production and use of CFC-114 (chlorofluorocarbon-114), halon-1211, halon-1301, and halon-2402, at any specified site or facility or on any vessel as may be necessary to protect the national security interests of the United States if the President finds that adequate substitutes are not available and that the production and use of such substance are necessary to protect such national security interest. Such orders may include, where necessary to protect such interests, an exemption from any prohibition or requirement contained in this title. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph. Each such additional exemption shall be for a specified period which may not exceed one year. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(g) FIRE SUPPRESSION AND EXPLOSION PREVENTION.—(1) Notwithstanding the production phase-out set forth in subsection (a), the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in excess of the amount otherwise permitted pursuant to the schedule under subsection (a) solely for purposes of fire suppression or explosion prevention if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes. The Administrator shall not authorize production under this paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator grant an exception under this paragraph that permits production after December 31, 1999.

"(2) The Administrator shall periodically monitor and assess the status of efforts to obtain substitutes for the substances referred to in subparagraph (1) for purposes of fire suppression or explosion prevention and the probability of such substitutes being available by December 31, 1999. The Administrator, as part of such assessment, shall consider any relevant assessments under the Montreal Protocol and the actions of the Parties pursuant to Article 2B of the Montreal Protocol in identifying essential uses and in permitting a level of production or consumption that is necessary to satisfy such uses for which no adequate alternatives are available after December 31, 1999. The Administrator shall report to Congress the results of such assessment in 1994 and again in 1998.

"(3) Notwithstanding the termination of production set forth in subsection (b), the Administrator, after notice and opportunity for public comment, may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in the period after December 31, 1999, and before December 31, 2004, solely for purposes of fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression and explosion prevention purposes. The Administrator shall not authorize production under the paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator authorize under this paragraph any person to produce any such halon in an amount greater than 3 percent of that produced by such person during the baseline year.

"SEC. 605. PHASE-OUT OF PRODUCTION AND CONSUMPTION OF CLASS II SUBSTANCES.

"(a) RESTRICTION OF USE OF CLASS II SUBSTANCES.—Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance—

"(1) has been used, recovered, and recycled;

"(2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or

"(3) is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term 'refrigerant' means any class II substance used for heat transfer in a refrigerating system.

"(b) PRODUCTION PHASE-OUT.—(1) Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year.

"(2) Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.

"(c) REGULATIONS REGARDING PRODUCTION AND CONSUMPTION OF CLASS II SUBSTANCES.—By December 31, 1999, the Administrator shall promulgate regulations phasing out the production, and restricting the use, of class II substances in accordance with this section, subject to any acceleration of the phase-out of production under section 606. The Administrator shall also promulgate regulations to ensure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class II substances under this title.

"(d) EXCEPTIONS.—

"(1) MEDICAL DEVICES.—

"(A) IN GENERAL.—Notwithstanding the termination of production required under subsection (b)(2) and the restriction on use referred to in subsection (a), the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production and use of limited quantities of class II substances solely for purposes of use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

"(B) CAP ON EXCEPTION.—Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

"(2) DEVELOPING COUNTRIES.—

"(A) IN GENERAL.—Notwithstanding the provisions of subsection (a) or (b), the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator. Any production authorized under this subsection shall be solely for purposes of satisfying the basic domestic needs of such countries.

"(B) CAP ON EXCEPTION.—(i) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in any year following the effective date of subsection (b)(1) and before the year 2030 in annual quantities greater than 110 percent of the quantity of such substance produced by such person during the baseline year.

"(ii) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in the year 2030, or any year thereafter, in an annual quantity greater than 15 percent of the quantity of such substance produced by such person during the baseline year.

"(iii) Each exception authorized under this paragraph shall terminate no later than January 1, 2040.

"SEC. 606. ACCELERATED SCHEDULE.

"(a) IN GENERAL.—The Administrator shall promulgate regulations, after notice and opportunity for public comment, which establish a schedule for phasing out the production and consumption of class I and class II substances (or use of class II substances) that is more stringent than set forth in section 604 or 605, or both, if—

"(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects,

"(2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or

"(3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title.

In making any determination under paragraphs (1) and (2), the Administrator shall

consider the status of the period remaining under the applicable schedule under this title.

"(b) PETITION.—Any person may petition the Administrator to promulgate regulations under this section. The Administrator shall grant or deny the petition within 180 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition, such final regulations shall be promulgated within 1 year. Any petition under this subsection shall include a showing by the petitioner that there are data adequate to support the petition. If the Administrator determines that information is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

"SEC. 607. EXCHANGE AUTHORITY.

"(a) TRANSFERS.—The Administrator shall, within 10 months after the enactment of the Clean Air Act Amendments of 1990, promulgate rules under this title providing for the issuance of allowances for the production of class I and II substances in accordance with the requirements of this title and governing the transfer of such allowances. Such rules shall ensure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.

"(b) INTERPOLLUTANT TRANSFERS.—(1) The rules under this section shall permit a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.

"(2) Allowances for substances in each group of class I substances (as listed pursuant to section 602) may only be transferred for allowances for other substances in the same Group.

"(3) The Administrator shall, as appropriate, establish groups of class II substances for trading purposes and assign class II substances to such groups. In the case of class II substances, allowances may only be transferred for allowances for other class II substances that are in the same group.

"(c) TRADES WITH OTHER PERSONS.—The rules under this section shall permit 2 or more persons to transfer production allowances (including interpollutant transfers which meet the requirements of subsections (a) and (b)) if the transferor of such allowances will be subject, under such rules, to an enforceable and quantifiable reduction in annual production which—

"(1) exceeds the reduction otherwise applicable to the transferor under this title,

"(2) exceeds the production allowances transferred to the transferee, and

"(3) would not have occurred in the absence of such transaction.

"(d) CONSUMPTION.—The rules under this section shall also provide for the issuance of consumption allowances in accordance with the requirements of this title and for the trading of such allowances in the same manner as is applicable under this section to the trading of production allowances under this section.

"SEC. 608. NATIONAL RECYCLING AND EMISSION REDUCTION PROGRAM.

"(a) IN GENERAL.—(1) The Administrator shall, by not later than January 1, 1992, promulgate regulations establishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

"(2) The Administrator shall, within 4 years after the enactment of the Clean Air Act Amendments of 1990, promulgate regulations establishing standards and requirements regarding use and disposal of class I and II substances not covered by paragraph (1), including the use and disposal of class II substances during service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than 12 months after promulgation of the regulations.

"(3) The regulations under this subsection shall include requirements that—

"(A) reduce the use and emission of such substances to the lowest achievable level, and

"(B) maximize the recapture and recycling of such substances.

Such regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) or to minimize use of class I or class II substances, or to promote the use of safe alternatives pursuant to section 612 or any combination of the foregoing.

"(b) SAFE DISPOSAL.—The regulations under subsection (a) shall establish standards and requirements for the safe disposal of class I and II substances. Such regulations shall include each of the following—

"(1) Requirements that class I or class II substances contained in bulk in appliances, machines or other goods shall be removed from each such appliance, machine or other goods prior to the disposal of such items or their delivery for recycling.

"(2) Requirements that any appliance, machine or other goods containing a class I or class II substance in bulk shall not be manufactured, sold, or distributed in interstate commerce or offered for sale or distribution in interstate commerce unless it is equipped with a servicing aperture or an equally effective design feature which will facilitate the recapture of such substance during service and repair or disposal of such item.

"(3) Requirements that any product in which a class I or class II substance is incorporated so as to constitute an inherent element of such product shall be disposed of in a manner that reduces, to the maximum extent practicable, the release of such substance into the environment. If the Administrator determines that the application of this paragraph to any product would result in producing only insignificant environmental benefits, the Administrator shall include in such regulations an exception for such product.

"(c) PROHIBITIONS.—(1) Effective July 1, 1992, it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in the preceding sentence.

"(2) Effective 5 years after the enactment of the Clean Air Act Amendments of 1990, paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. For purposes of this paragraph, the term 'appliance' includes any device which contains and uses as a refrigerant a substitute substance and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

"SEC. 609. SERVICING OF MOTOR VEHICLE AIR CONDITIONERS.

"(a) REGULATIONS.—Within 1 year after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate regulations in accordance with this section establishing standards and requirements regarding the servicing of motor vehicle air conditioners.

"(b) DEFINITIONS.—As used in this section—

"(1) The term 'refrigerant' means any class I or class II substance used in a motor vehicle air conditioner. Effective 5 years after the enactment of the Clean Air Act Amendments of 1990, the term 'refrigerant' shall also include any substitute substance.

"(2)(A) The term 'approved refrigerant recycling equipment' means equipment certified by the Administrator (or an independent standards testing organization approved by the Administrator) to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of the date of the enactment of the Clean Air Act Amendments of 1990 and applicable to such equipment (SAE standard J-1990).

"(B) Equipment purchased before the proposal of regulations under this section shall be considered certified if it is substantially identical to equipment certified as provided in subparagraph (A).

"(3) The term 'properly using' means, with respect to approved refrigerant recycling equipment, using such equipment in conformity with standards established by the Administrator and applicable to the use of such equipment. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of the date of the enactment of the Clean Air Act Amendments of 1990 and applicable to the use of such equipment (SAE standard J-1989).

"(4) The term 'properly trained and certified' means training and certification in the proper use of approved refrigerant recycling equipment for motor vehicle air conditioners in conformity with standards established by the Administrator and applicable to the performance of service on motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as specified, as of the date of the enactment of the Clean Air Act Amendments of 1990, in SAE standard J-1989 under the certification program of the National Institute for Automotive Service Excellence (ASE) or under a similar program such as the training and certification program of the Mobile Air Conditioning Society (MACS).

"(c) SERVICING MOTOR VEHICLE AIR CONDITIONERS.—Effective January 1, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified. The requirements of the previous sentence shall not apply until January 1, 1993 in the case of a person repairing or servicing motor vehicles for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners during calendar year 1990 and if such person so certifies, pursuant to subsection (d)(2), to the Administrator by January 1, 1992.

"(d) CERTIFICATION.—(1) Effective 2 years after the enactment of the Clean Air Act Amendments of 1990, each person performing service on motor vehicle air conditioners for consideration shall certify to the Administrator either—

"(A) that such person has acquired, and is properly using, approved refrigerant recycling equipment in service on motor vehicle air conditioners involving refrigerant and that each individual authorized by such person to perform such service is properly trained and certified; or

"(B) that such person is performing such service at an entity which serviced fewer than 100 motor vehicle air conditioners in 1991.

"(2) Effective January 1, 1993, each person who certified under paragraph (1)(B) shall submit a certification under paragraph (1)(A).

"(3) Each certification under this subsection shall contain the name and address of the person certifying under this subsection and the serial number of each unit of approved recycling equipment acquired by such person and shall be signed and attested by the owner or another responsible officer. Certifications under paragraph (1)(A) may be made by submitting the required information to the Administrator on a standard form provided by the manufacturer of certified refrigerant recycling equipment.

"(e) SMALL CONTAINERS OF CLASS I OR CLASS II SUBSTANCES.—Effective 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce to any person (other than a person performing service for consideration on motor vehicle air-conditioning systems in compliance with this section) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioning system and that is in a container which contains less than 20 pounds of such refrigerant.

"SEC. 610. NONESSENTIAL PRODUCTS CONTAINING CHLOROFLUOROCARBONS.

"(a) REGULATIONS.—The Administrator shall promulgate regulations to carry out the requirements of this section within 1 year after the enactment of the Clean Air Act Amendments of 1990.

"(b) NONESSENTIAL PRODUCTS.—The regulations under this section shall identify nonessential products that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce. At a minimum, such prohibition shall apply to—

"(1) chlorofluorocarbon-propelled plastic party streamers and noise horns,

"(2) chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment, and

"(3) other consumer products that are determined by the Administrator—

"(A) to release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal), and

"(B) to be nonessential.

In determining whether a product is nonessential, the Administrator shall consider the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.

"(c) EFFECTIVE DATE.—Effective 24 months after the enactment of the Clean Air Act Amendments of 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce any nonessential product to which regulations under subsection (a) implementing subsection (b) are applicable.

"(d) OTHER PRODUCTS.—(1) Effective January 1, 1994, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—

"(A) any aerosol product or other pressurized dispenser which contains a class II substance; or

"(B) any plastic foam product which contains, or is manufactured with, a class II substance.

"(2) The Administrator is authorized to grant exceptions from the prohibition under subparagraph (A) of paragraph (1) where—

"(A) the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flamability or worker safety concerns, and

"(B) the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.

"(3) Subparagraph (B) of paragraph (1) shall not apply to—

"(A) a foam insulation product, or

"(B) an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such Standards.

"(e) MEDICAL DEVICES.—Nothing in this section shall apply to any medical device as defined in section 601(8).

"SEC. 611. LABELING.

"(a) REGULATIONS.—The Administrator shall promulgate regulations to implement the labeling requirements of this section within 18 months after enactment of the Clean Air Act Amendments of 1990, after notice and opportunity for public comment.

"(b) CONTAINERS CONTAINING CLASS I OR CLASS II SUBSTANCES AND PRODUCTS CONTAINING CLASS I SUBSTANCES.—Effective 30 months after the enactment of the Clean Air Act Amendments of 1990, no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

" 'Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere'.

"(c) PRODUCTS CONTAINING CLASS II SUBSTANCES.—(1) After 30 months after the enactment of the Clean Air Act Amendments of 1990, and before January 1, 2015, no product containing a class II substance shall be introduced into interstate commerce unless it bears the label referred to in subsection (b) if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available.

"(2) Effective January 1, 2015, the requirements of subsection (b) shall apply to all products containing a class II substance.

"(d) PRODUCTS MANUFACTURED WITH CLASS I AND CLASS II SUBSTANCES.—(1) In the case of a class II substance, after 30 months after the enactment of the Clean Air Act Amendments of 1990, and before January 1, 2015, if the Administrator, after notice and opportunity for public comment, makes the determination referred to in subsection (c) with respect to a product manufactured with a process that uses such class II substance, no such product shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

" 'Warning: Manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere'

"(2) In the case of a class I substance, effective 30 months after the enactment of the Clean Air Act Amendments of 1990, and before January 1, 2015, the labeling requirements of this subsection shall apply to all products manufactured with a process that uses such class I substance unless the Administrator determines that there are no substitute products or manufacturing processes that (A) do not rely on the use of such class I substance, (B) reduce the overall risk to human health and the environment, and (C) are currently or potentially available.

"(e) PETITIONS.—(1) Any person may, at any time after 18 months after the enactment of the Clean Air Act Amendments of 1990, petition the Administrator to apply the requirements of this section to a product containing a class II substance or a product manufactured with a class I or II substance which is not otherwise subject to such requirements. Within 180 days after receiving such petition, the Administrator shall, pursuant to the criteria set forth in subsection (c), either propose to apply the requirements of this section to such product or publish an explanation of the petition denial. If the Administrator proposes to apply such requirements to such product, the Administrator shall, by rule, render a final determination pursuant to such criteria within 1 year after receiving such petition.

"(2) Any petition under this paragraph shall include a showing by the petitioner that there are data on the product adequate to support the petition.

"(3) If the Administrator determines that information on the product is not sufficient to make the required determination the Administrator shall use any authority available to the Administrator under any law administered by the Administrator to acquire such information.

"(4) In the case of a product determined by the Administrator, upon petition or on the Administrator's own motion, to be subject to the requirements of this section, the Administrator shall establish an effective date for such requirements. The effective date shall be 1 year after such determination or 30 months after the enactment of the

Clean Air Act Amendments of 1990, whichever is later.

"(5) Effective January 1, 2015, the labeling requirements of this subsection shall apply to all products manufactured with a process that uses a class I or class II substance.

"(f) RELATIONSHIP TO OTHER LAW.—(1) The labeling requirements of this section shall not constitute, in whole or part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than a suit for failure to comply with the labeling requirements of this section.

"(2) No other approval of such label by the Administrator under any other law administered by the Administrator shall be required with respect to the labelling requirements of this section.

"SEC. 612. SAFE ALTERNATIVES POLICY.

"(a) POLICY.—To the maximum extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

"(b) REVIEWS AND REPORTS.—The Administrator shall—

"(1) in consultation and coordination with interested members of the public and the heads of relevant Federal agencies and departments, recommend Federal research programs and other activities to assist in identifying alternatives to the use of class I and class II substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications and in achieving a transition to such alternatives, and, where appropriate, seek to maximize the use of Federal research facilities and resources to assist users of class I and class II substances in identifying and developing alternatives to the use of such substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications;

"(2) examine in consultation and coordination with the Secretary of Defense and the heads of other relevant Federal agencies and departments, including the General Services Administration, Federal procurement practices with respect to class I and class II substances and recommend measures to promote the transition by the Federal Government, as expeditiously as possible, to the use of safe substitutes;

"(3) specify initiatives, including appropriate intergovernmental, international, and commercial information and technology transfers, to promote the development and use of safe substitutes for class I and class II substances, including alternative chemicals, product substitutes, and alternative manufacturing processes; and

"(4) maintain a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and class II substances.

"(c) ALTERNATIVES FOR CLASS I OR II SUBSTANCES.—Within 2 years after enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate rules under this section providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—

"(1) reduces the overall risk to human health and the environment; and

"(2) is currently or potentially available.

The Administrator shall publish a list of (A) the substitutes prohibited under this subsection for specific uses and (B) the safe alternatives identified under this subsection for specific uses.

"(d) RIGHT TO PETITION.—Any person may petition the Administrator to add a substance to the lists under subsection (c) or to remove a substance from either of such lists. The Administrator shall grant or deny the petition within 90 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition the Administrator shall publish such revised list within 6 months thereafter. Any petition under this subsection shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

"(e) STUDIES AND NOTIFICATION.—The Administrator shall require any person who produces a chemical substitute for a class I substance to provide the Administrator with such person's unpublished health and safety studies on such substitute and require producers to notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. This subsection shall be subject to section 114(c).

"SEC. 613. FEDERAL PROCUREMENT.

"Not later than 18 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this title and to maximize the substitution of safe alternatives identified under section 612 for class I and class II substances. Not later than 30 months after the enactment of the Clean Air Act Amendments of 1990, each department, agency, and instrumentality of the United States shall so conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section.

"SEC. 614. RELATIONSHIP TO OTHER LAWS.

"(a) STATE LAWS.—Notwithstanding section 116, during the 2-year period beginning on the enactment of the Clean Air Act Amendments of 1990, no State or local government may enforce any requirement concerning the design of any new or recalled appliance for the purpose of protecting the stratospheric ozone layer.

"(b) MONTREAL PROTOCOL.—This title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this title shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.

"(c) TECHNOLOGY EXPORT AND OVERSEAS INVESTMENT.—Upon enactment of this title, the President shall—

"(1) prohibit the export of technologies used to produce a class I substance;

"(2) prohibit direct or indirect investments by any person in facilities designed to produce a class I or class II substance in nations that are not parties to the Montreal Protocol; and

"(3) direct that no agency of the government provide bilateral or multilateral subsidies, aids, credits, guarantees, or insurance programs, for the purpose of producing any class I substance.

"SEC. 615. AUTHORITY OF ADMINISTRATOR.

"If, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process, or activity, and shall submit notice of the proposal and promulgation of such regulation to the Congress.

"SEC. 616. TRANSFERS AMONG PARTIES TO MONTREAL PROTOCOL.

"(a) IN GENERAL.—Consistent with the Montreal Protocol, the United States may engage in transfers with other Parties to the Protocol under the following conditions:

"(1) The United States may transfer production allowances to another Party if, at the time of such transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) the maximum production level permitted for the substance or substances concerned in the transfer year under the Protocol minus the production allowances transferred, (B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level of the substance or substances concerned for the 3 years prior to the transfer minus the production allowances transferred.

"(2) The United States may acquire production allowances from another Party if, at the time of such transfer, the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in subsection (a).

"(b) EFFECT OF TRANSFERS ON PRODUCTION LIMITS.—The Administrator is authorized to reduce the production limits established under this Act as required as a prerequisite to transfers under paragraph (1) of subsection (a) or to increase production limits established under this Act to reflect production allowances acquired under a transfer under paragraph (2) of subsection (a).

"(c) REGULATIONS.—The Administrator shall promulgate, within 2 years after the date of enactment of the Clean Air Act Amendments of 1990, regulations to implement this section.

"(d) DEFINITION.—In the case of the United States, the term 'applicable domestic law' means this Act.

"SEC. 617. INTERNATIONAL COOPERATION.

"(a) IN GENERAL.—The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this title, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

"(b) ASSISTANCE TO DEVELOPING COUNTRIES.—The Administrator, in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are Parties to the Montreal Protocol and operating under article 5 of the Protocol. There are authorized to be appropriated not more than $30,000,000 to carry out this section in fiscal years 1991, 1992 and 1993 and such sums as may be necessary in fiscal years 1994 and 1995. If China and India become Parties to the Montreal Protocol, there are authorized to be appropriated not more than an additional $30,000,000 to carry out this section in fiscal years 1991, 1992, and 1993.

"SEC. 618. MISCELLANEOUS PROVISIONS.

"For purposes of section 116, requirements concerning the areas addressed by this title for the protection of the stratosphere against ozone layer depletion shall be treated as requirements for the control and abatement of air pollution. For purposes of section 118, the requirements of this title and corresponding State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer shall be treated as requirements for the control and abatement of air pollution within the meaning of section 118.".

SEC. 603. METHANE STUDIES.

(a) ECONOMICALLY JUSTIFIED ACTIONS.—Not later than 2 years after enactment of this Act, the Administrator shall prepare and submit a report to the Congress that identifies activities, substances, processes, or combinations thereof that could reduce methane emissions and that are economically and technologically justified with and without consideration of environmental benefit.

(b) DOMESTIC METHANE SOURCE INVENTORY AND CONTROL.—Not later than 2 years after the enactment of this Act, the Administrator, in consultation and coordination with the Secretary of Energy and the Secretary of Agriculture, shall prepare and submit to the Congress reports on each of the following:

(1) Methane emissions associated with natural gas extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from natural gas and oil wells, pipelines, processing facilities, and gas burners. The report shall also include an inventory of methane generation with such activities.

(2) Methane emissions associated with coal extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from mining shafts, degasification wells, gas recovery wells and equipment, and from the processing and use of coal. The report shall also include an inventory of methane generation with such activities.

(3) Methane emissions associated with management of solid waste. Such report shall include an inventory of methane emissions associated with all forms of waste management in the United States, including storage, treatment, and disposal.

(4) Methane emissions associated with agriculture. Such report shall include an inventory of methane emissions associated with rice and livestock production in the United States.

(5) Methane emissions associated with biomass burning. Such report shall include an inventory of methane emissions associated with the intentional burning of agricultural wastes, wood, grasslands, and forests.

(6) Other methane emissions associated with human activities. Such report shall identify and inventory other domestic sources of methane emissions that are deemed by the Administrator and other such agencies to be significant.

(c) INTERNATIONAL STUDIES.—

(1) METHANE EMISSIONS.—Not later than 2 years after the enactment of this Act, the Administrator shall prepare and submit to the Congress a report on methane emissions from countries other than the United States. Such report shall include inventories of methane emissions associated with the activities listed in subsection (b).

(2) PREVENTING INCREASES IN METHANE CONCENTRATIONS.—Not later than 2 years after the enactment of this Act, the Administrator shall prepare and submit to the Congress a report that analyzes the potential for preventing an increase in atmospheric concentrations of methane from activities and sources in other countries. Such report shall identify and evaluate the technical options for reducing methane emission from each of the activities listed in subsection (b), as well as other activities or sources that are deemed by the Administrator in consultation with other relevant Federal agencies and departments to be significant and shall include an evaluation of costs. The report shall identify the emissions reductions that would need to be achieved to prevent increasing atmospheric concentrations of methane. The report shall also identify technology transfer programs that could promote methane emissions reductions in lesser developed countries.

(d) NATURAL SOURCES.—Not later than 2 years after the enactment of this Act, the Administrator shall prepare and submit to the Congress a report on—

(1) methane emissions from biogenic sources such as (A) tropical, temperate, and subarctic forests, (B) tundra, and (C) freshwater and saltwater wetlands; and

(2) the changes in methane emissions from biogenic sources that may occur as a result of potential increases in temperatures and atmospheric concentrations of carbon dioxide.

(e) STUDY OF MEASURES TO LIMIT GROWTH IN METHANE CONCENTRATIONS.—Not later than 2 years after the completion of the studies in subsections (b), (c), and (d), the Administrator shall prepare and submit to the Congress a report that presents options outlining measures that could be implemented to stop or reduce the growth in atmospheric concentrations of methane from sources within the United States referred to in paragraphs (1) through (6) of subsection (b). This study shall identify and evaluate the technical options for reducing methane emissions from each of the activities listed in subsection (b), as well as other activities or sources deemed by such agencies to be significant, and shall include an evaluation of costs, technology, safety, energy, and other factors. The study shall be based on the other studies under this section. The study shall also identify programs of the United States and international lending agencies that could be used to induce lesser developed countries to undertake measures that will reduce methane emissions and the resource needs of such programs.

(f) INFORMATION GATHERING.—In carrying out the studies under this section, the provisions and requirements of section 114 of the Clean Air Act shall be available for purposes of obtaining information to carry out such studies.

(g) CONSULTATION AND COORDINATION.—In preparing the studies under this section the Administrator shall consult and coordinate with the Secretary of Energy, the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and the heads of other relevant Federal agencies and departments. In the case of the studies under subsections (a), (b), and (e), such consultation and coordination shall include the Secretary of Agriculture.

TITLE VII—PROVISIONS RELATING TO ENFORCEMENT

Sec. 701. Section 113 enforcement.
Sec. 702. Compliance certification.
Sec. 703. Administrative enforcement subpoenas.
Sec. 704. Emergency orders.
Sec. 705. Contractor listings.
Sec. 706. Judicial review pending reconsideration of regulation.
Sec. 707. Citizen suits.
Sec. 708. Enhanced implementation and enforcement of new source review requirements.
Sec. 709. Movable stationary sources.
Sec. 710. Enforcement of new titles of the Act.
Sec. 711. Savings provisions and effects dates.

SEC. 701. SECTION 113 ENFORCEMENT.

Section 113 of the Clean Air Act is amended to read as follows:

"SEC. 113. FEDERAL ENFORCEMENT.

"(a) IN GENERAL.—

"(1) ORDER TO COMPLY WITH SIP.—Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28 of the United States Code)—

"(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

"(B) issue an administrative penalty order in accordance with subsection (d), or

"(C) bring a civil action in accordance with subsection (b).

"(2) STATE FAILURE TO ENFORCE SIP OR PERMIT PROGRAM.—Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under title V are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with title V. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as 'period of federally assumed enforcement'), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

"(A) issuing an order requiring such person to comply with such requirement or prohibition,

"(B) issuing an administrative penalty order in accordance with subsection (d), or

"(C) bringing a civil action in accordance with subsection (b).

"(3) EPA ENFORCEMENT OF OTHER REQUIREMENTS.—Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this title, section 303 of title III, title IV, title V, or title VI, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or titles, or for the payment of any fee owed to the United States under this Act (other than title II), the Administrator may—

"(A) issue an administrative penalty order in accordance with subsection (d),

"(B) issue an order requiring such person to comply with such requirement or prohibition,

"(C) bring a civil action in accordance with subsection (b) or section 305, or

"(D) request the Attorney General to commence a criminal action in accordance with subsection (c).

"(4) REQUIREMENTS FOR ORDERS.—An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any section of this Act or with a term or condition of any permit or applicable implementation plan promulgated or approved under this Act.

"(5) FAILURE TO COMPLY WITH NEW SOURCE REQUIREMENTS.—Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may—

"(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;

"(B) issue an administrative penalty order in accordance with subsection (d), or

"(C) bring a civil action under subsection (b).

Nothing in this subsection shall preclude the United States from commencing a criminal action under section 113(c) at any time for any such violation.

"(b) CIVIL JUDICIAL ENFORCEMENT.—The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

"(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) that such person has violated, or is in violation of, such requirement or prohibition.

"(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this title, section 303 of title III, title IV, title V, or title VI, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this Act, or for the payment of any fee owed the United States under this Act (other than title II).

"(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this Act (other than title II) and any noncompliance assessment and nonpayment penalty owed under section 120, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

"(c) CRIMINAL PENALTIES.—(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 111(e) of this title (relating to new source performance standards), section 112 of this title, section 114 of this title (relating to inspections, etc.), section 129 of this title (relating to solid waste combustion), section 165(a) of this title (relating to preconstruction requirements), an order under section 167 of this title (relating to preconstruction requirements), an order under section 303 of title III (relating to emergency orders), section 502(a) or 503(c) of title V (relating to permits), or any requirement or prohibition of title IV (relating to acid deposition control), or title VI (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or titles, and including any requirement for the payment of any fee owed the United States under this Act (other than title II) shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(2) Any person who knowingly—

"(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this Act to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

"(B) fails to notify or report as required under this Act; or

"(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this Act

shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(3) Any person who knowingly fails to pay any fee owed the United States under this title, title III, IV, V, or VI shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than 1 year, or both. If a conviction of any person under

this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 112 of this Act, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 of the United States Code, or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 112 of this Act, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 of the United States Code, or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under title V, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

"(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

"(i) the defendant is responsible only for actual awareness or actual belief possessed; and

"(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

"(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(i) an occupation, a business, or a profession; or

"(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

"(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

"(E) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(F) The term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(6) For the purpose of this subsection, the term 'person' includes, in addition to the entities referred to in section 302(e), any responsible corporate officer.

"(d) ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES.—(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

"(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

"(B) has violated or is violating any other requirement or prohibition of title I, III, IV, V, or VI, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this Act, or for the payment of any fee owed the United States under this Act (other than title II); or

"(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

"(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5 of the United States Code. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

"(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

"(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5 of the United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the Act, if the violation continues.

"(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

"(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

"(A) after the order or assessment has become final, or

"(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

"(e) PENALTY ASSESSMENT CRITERIA.—(1) In determining the amount of any penalty to be assessed under this section or section 304(a), the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 307(a), or actions under section 114 of this Act, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

"(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 304(a), or an assessment may be made under section 120, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

"(f) AWARDS.—The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this title or title III, IV, V, or VI of this Act enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer, or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

"(g) SETTLEMENTS; PUBLIC PARTICIPATION.—At least 30 days before a consent order or settlement agreement of any kind under this Act to which the United States is a party (other than enforcement actions under section 113, 120, or title II, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this Act. Nothing in this subsection shall apply to civil or criminal penalties under this Act.

"(h) OPERATOR.—For purposes of the provisions of this section and section 120, the term 'operator', as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term 'a person' shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term 'a person' shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.".

SEC. 702. COMPLIANCE CERTIFICATION.

(a) RECORDS, REPORTS, MONITORING, ETC.—Section 114(a) of the Clean Air Act is amended as follows:

(1) Strike "or" in the first sentence immediately before "any emission standard under section 112,".

(2) Insert "or any regulation under section 129 (relating to solid waste combustion)," before "(ii) of determining".

(3) Amend paragraph (1) to read as follows:

"(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this Act (other than a manufacturer subject to the provisions of section 206(c) or 208 with respect to a provision of title II) on a one-time, periodic or continuous basis to—

"(A) establish and maintain such records;

"(B) make such reports;

"(C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;

"(D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);

"(E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

"(F) submit compliance certifications in accordance with section 114(a)(3); and

"(G) provide such other information as the Administrator may reasonably require; and".

(b) MONITORING AND COMPLIANCE CERTIFICATIONS.—Section 114(a) of the Clean Air Act is amended by adding the following new paragraph at the end:

"(3) The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this Act. The Administrator shall promulgate rules to provide guidance and to implement this paragraph within 2 years after the enactment of the Clean Air Act Amendments of 1990.".

(c) JUDICIAL REVIEW.—Section 307(b)(1) of the Clean Air Act is amended by inserting "or revising regulations for enhanced monitoring and compliance certification programs under section 114(a)(3) of this Act," immediately before "or any other final action of the Administrator".

SEC. 703. ADMINISTRATIVE ENFORCEMENT SUBPOENAS.

Section 307(a) of the Clean Air Act is amended by striking out "(1)" after "(a)" and by striking "or section 202(b)(5)" and immediately after "section 202(b)(4) or 211(c)(3)" inserting ", any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the Act (including but not limited to section 113, section 114, section 120, section 129, section 167, section 205, section 206, section 208, section 303, or section 306),".

SEC. 704. EMERGENCY ORDERS.

Section 303 of the Clean Air Act is amended as follows:

(1) Strike "the health of persons and that appropriate State or local authorities have not acted to abate such sources" and insert "public health or welfare, or the environment".

(2) Amend the second sentence to read "If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment.".

(3) Strike the last 3 sentences of subsection (a) in their entirety.

(4) Strike "(a)" and strike out subsection (b).

(5) Insert the following at the end: "Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.".

SEC. 705. CONTRACTOR LISTINGS.

Section 306(a) of the Clean Air Act is amended as follows:

(1) Strike "113(c)(1)" and insert "113(c).

(2) Insert at the end thereof: "For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.".

SEC. 706. JUDICIAL REVIEW PENDING RECONSIDERATION OF REGULATION.

Section 307(b)(1) of the Clean Air Act is amended

(1) by adding at the end thereof: "The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action."; and

(2) striking "under section 113(d)" immediately before "under section 119" in the second sentence.

SEC. 707. CITIZEN SUITS.

(a) CIVIL PENALTIES.—Section 304(a) of the Clean Air Act is amended by inserting immediately before the period at the end thereof: ", and to apply any appropriate civil penalties (except for actions under paragraph (2))".

(b) PENALTY FUND.—Section 304 of the Clean Air Act is amended by adding the following new subsection after subsection (f):

"(g) PENALTY FUND.—(1) Penalties received under subsection (a) shall be deposited in a special fund in the United States Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.

"(2) Notwithstanding paragraph (1) the court in any action under this subsection to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this Act and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed $100,000.".

(c) INTERVENTION BY EPA.—Paragraph (2) of section 304(c) of the Clean Air Act is amended to read as follows:

"(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.".

(d) SERVICE OF COMPLAINT; CONSENT JUDGMENTS.—Section 304(c) of the Clean Air Act is amended by adding the following new paragraph after paragraph (2):

"(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.".

(e) OTHER REQUIREMENTS.—Section 304(f) of the Clean Air Act is amended by striking "any condition or requirement of section 113(d) (relating to certain enforcement orders)" in paragraph (3), by striking "part B of title I" in paragraph (3) and inserting in lieu thereof "title VI", and by striking the period at the end of paragraph (3) and inserting "; or" and by adding the following new paragraph at the end thereof:

"(4) any other standard, limitation, or schedule established under any permit issued pursuant to title V or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations.".

(f) UNREASONABLE DELAY.—Section 304(a) of the Clean Air Act is amended by adding the following at the end thereof: "The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 307(b) which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 307(b). In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) shall be provided 180 days before commencing such action.".

(g) PAST VIOLATIONS.—Section 304(a) of the Clean Air Act is amended by inserting immediately before "to be in violation" in paragraphs (1) and (3) "to have violated (if there is evidence that the alleged violation has been repeated) or". The amendment made by this subsection shall take effect with respect to actions brought after the date 2 years after the enactment of the Clean Air Act Amendments of 1990.

(h) DEFERRED ACTIONS.—Section 307(b)(2) of the Clean Air Act is amended by adding the following at the end thereof: "Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).".

SEC. 708. ENHANCED IMPLEMENTATION AND ENFORCEMENT OF NEW SOURCE REVIEW REQUIREMENTS.

Section 167 of the Clean Air Act is amended by striking "the construction of a major emitting facility" and inserting "the construction or modification of a major emitting facility".

SEC. 709. MOVABLE STATIONARY SOURCES.

Section 302 of the Clean Air Act is amended by adding the following subsection at the end thereof:

"(z) STATIONARY SOURCE.—The term 'stationary source' means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216.".

SEC. 710. ENFORCEMENT OF NEW TITLES OF THE ACT.

(a) SECTION 20.—Section 120(a)(2)(A) of the Clean Air Act is amended as follows:

(1) Insert ", 167, 303," after "111" in clause (ii).

(2) Redesignate clause (iii) as (iv) and in new clause (iv) strike "clause (i) or (ii)", and insert "clause (i), (ii), or (iii)".

(3) Insert the following new clause after clause (ii)—

"(iii) a stationary source which is not in compliance with any requirement of title IV, V, or VI of this Act, or".

(b) SECTION 307.—Section 307(d)(1)(H) of the Clean Air Act is amended by striking out "subtitle B of title I" and inserting "title VI".

SEC. 711. SAVINGS PROVISIONS AND EFFECTIVE DATES.

(a) SAVINGS PROVISIONS.—Except as otherwise expressly provided in this Act, no suit, action, or other proceeding lawfully commenced by the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, shall abate by reason of the taking effect of the amendments made by this Act.

(b) EFFECTIVE DATES.—(1) Except as otherwise expressly provided, the amendments made by this Act shall be effective on the date of enactment of this Act.

(2) The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act, as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act in effect immediately prior to the date of enactment of this Act.

(3) The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act, as amended by this Act, shall apply to violations that occur on or after the date of enactment of this Act. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act.

(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. OCS air pollution.
Sec. 802. Grants for support of air pollution planning and control programs.

Sec. 803. Annual report repeal.
Sec. 804. Emission factors.
Sec. 805. Land use authority.
Sec. 806. Virgin Islands.
Sec. 807. Hydrogen fuel cell vehicle study and test program.
Sec. 808. Renewable energy and energy conservation incentives.
Sec. 809. Clean air study of southwestern New Mexico.
Sec. 810. Impact on small communities.
Sec. 811. Equivalent air quality controls among trading nations.
Sec. 812. Analyses of costs and benefits.
Sec. 813. Combustion of contaminated used oil in ships.
Sec. 814. American made products.
Sec. 815. Establishment of program to monitor and improve air quality in regions along the border between the United States and Mexico.
Sec. 816. Visibility.
Sec. 817. Role of secondary standards.
Sec. 818. International border areas.
Sec. 819. Exemptions for stripper wells.
Sec. 820. EPA report on magnetic levitation.
Sec. 821. Information gathering on greenhouse gases contributing to global climate changes.
Sec. 822. Authorization.

SEC. 801. OCS AIR POLLUTION.

Title III of the Clean Air Act is amended by adding the following new section after section 327:

"SEC. 328. AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES.

"(a)(1) APPLICABLE REQUIREMENTS FOR CERTAIN AREAS.—Not later than 12 months after the enactment of the Clean Air Act Amendments of 1990, following consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by rule, shall establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes ('OCS sources') to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I. For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting. New OCS sources shall comply with such requirements on the date of promulgation and existing OCS sources shall comply on the date 24 months thereafter. The Administrator shall update such requirements as necessary to maintain consistency with onshore regulations. The authority of this subsection shall supersede section 5(a)(8) of the Outer Continental Shelf Lands Act but shall not repeal or modify any other Federal, State, or local authorities with respect to air quality. Each requirement established under this section shall be treated, for purposes of sections 113, 114, 116, 120, and 304, as a standard under section 111 and a violation of any such requirement shall be considered a violation of section 111(e).

"(2) EXEMPTIONS.—The Administrator may exempt an OCS source from a specific requirement in effect under regulations under this subsection if the Administrator finds that compliance with a pollution control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator shall make written findings explaining the basis of any exemption issued pursuant to this subsection and shall impose another requirement equal to or as close in stringency to the original requirement as possible. The Administrator shall ensure that any increase in emissions due to the granting of an exemption is offset by reductions in actual emissions, not otherwise required by this Act, from the same source or other sources in the area or in the corresponding onshore area. The Administrator shall establish procedures to provide for public notice and comment on exemptions proposed pursuant to this subsection.

"(3) STATE PROCEDURES.—Each State adjacent to an OCS source included under this subsection may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of this subsection. If the Administrator finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this Act to implement and enforce such requirements. Nothing in this subsection shall prohibit the Administrator from enforcing any requirement of this section.

"(4) DEFINITIONS.—For purposes of subsections (a) and (b)—

"(A) OUTER CONTINENTAL SHELF.—The term 'Outer Continental Shelf' has the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

"(B) CORRESPONDING ONSHORE AREA.—The term 'corresponding onshore area' means, with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of title I.

"(C) OUTER CONTINENTAL SHELF SOURCE.—The terms 'Outer Continental Shelf source' and 'OCS source' include any equipment, activity, or facility which—

"(i) emits or has the potential to emit any air pollutant,

"(ii) is regulated or authorized under the Outer Continental Shelf Lands Act, and

"(iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.

"(D) NEW AND EXISTING OCS SOURCES.—The term 'new OCS source' means an OCS source which is a new source within the meaning of section 111(a). The term 'existing OCS source' means any OCS source other than a new OCS source.

"(b) REQUIREMENTS FOR OTHER OFFSHORE AREAS.—For portions of the United States Gulf Coast Outer Continental Shelf that are adjacent to the States not covered by subsection (a) which are Texas, Louisiana, Mississippi, and Alabama, the Secretary shall consult with the Administrator to assure coordination of air pollution control regulation for Outer Continental Shelf emissions and emissions in adjacent onshore areas. Concurrently with this obligation, the Secretary shall complete within 3 years of enactment of this section a research study examining the impacts of emissions from Outer Continental Shelf activities in such areas that fail to meet the national ambient air quality standards for either ozone or nitrogen dioxide. Based on the results of this study, the Secretary shall consult with the Administrator and determine if any additional actions are necessary. There are authorized to be appropriated such sums as may be necessary to provide funding for the study required under this section.

"(c)(1) COASTAL WATERS.—The study report of section 112(n) of the Clean Air Act shall apply to the coastal waters of the United States to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.".

"(2) The regulatory requirements of section 112(n) of the Clean Air Act shall apply to the coastal waters of the States which are subject to subsection (a) of this section, to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.".

SEC. 802. GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS.

(a) GRANTS.—Subparagraphs (A) and (B) of section 105(a)(1) of the Clean Air Act are amended to read as follows:

"(A) The Administrator may make grants to air pollution control agencies, within the meaning of paragraph (1), (2), (3), (4), or (5) of section 302, in an amount up to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. For the purpose of this section, 'implementing' means any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.

"(B) Subject to subsections (b) and (c) of this section, an air pollution control agency which receives a grant under subparagraph (A) and which contributes less than the required two-fifths minimum shall have 3 years following the date of the enactment of the Clean Air Act Amendments of 1990 in which to contribute such amount. If such an agency fails to meet and maintain this required level, the Administrator shall reduce the amount of the Federal contribution accordingly.".

(b) CONFORMING AMENDMENT.—Section 105(a)(1)(C) of the Clean Air Act is amended by striking "(B)" and inserting "(A)".

(c) LIMITATION ON GRANTS.—Section 105(b) of the Clean Air Act is amended by—

(1) inserting "(1)" immediately after "(b)"

(2) striking all that follows "(3) the financial need of the respective agencies."; and

(3) redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C) respectively.

(d) LIMITATION.—Section 105 of the Clean Air Act is amended by redesignating subsection (c) as paragraph (2) of subsection (b) and by striking all that follows "into which such area extends." in the newly designated

paragraph (2) and inserting "Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.".

(e) MAINTENANCE OF EFFORT.—Section 105 of the Clean Air Act is amended by inserting the following new subsection after subsection (b):

"(c) MAINTENANCE OF EFFORT.—(1) No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for the Administrator to award grants under this section in a timely manner each fiscal year, the Administrator shall compare an agency's prospective expenditure level to that of its second preceding fiscal year. The Administrator shall revise the current regulations which define applicable nonrecurrent and recurrent expenditures, and in so doing, give due consideration to exempting an agency from the limitations of this paragraph and subsection (a) due to periodic increases experienced by that agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year.

"(2) The Administrator may still award a grant to an agency not meeting the requirements of paragraph (l) of this subsection if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government. No agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such a grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds. No grants shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.".

(f) COSTS.—Section 106 of the Clean Air Act is amended by striking "three-fourths of the air quality planning program costs of such agency" and inserting "three-fifths of the air quality implementation program costs of such agency".

SEC. 803. ANNUAL REPORT REPEAL.

Section 313 of the Clean Air Act is repealed.

SEC. 804. EMISSION FACTORS.

Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"SEC. 130. EMISSION FACTORS.

"Within 6 months after enactment of the Clean Air Act Amendments of 1990, and at least every 3 years thereafter, the Administrator shall review and, if necessary, revise, the methods ('emission factors') used for purposes of this Act to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants (including area sources and mobile sources). In addition, the Administrator shall establish emission factors for sources for which no such methods have previously been established by the Administrator. The Administrator shall permit any person to demonstrate improved emissions estimating techniques, and following approval of such techniques, the Administrator shall authorize the use of such techniques. Any such technique may be approved only after appropriate public participation. Until the Administrator has completed the revision required by this section, nothing in this section shall be construed to affect the validity of emission factors established by the Administrator before the date of the enactment of the Clean Air Act Amendments of 1990.".

SEC. 805. LAND USE AUTHORITY.

Part A of title I of the Clean Air Act is amended by adding the following at the end thereof:

"SEC. 131. LAND USE AUTHORITY.

"Nothing in this Act constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this Act provides or transfers authority over such land use.".

SEC. 806. VIRGIN ISLANDS.

Section 324(a)(1) of the Clean Air Act (42 U.S.C. 7625-l(a)(1)) is amended by inserting "the Virgin Islands," after "American Samoa,".

SEC. 807. HYDROGEN FUEL CELL VEHICLE STUDY AND TEST PROGRAM.

The Administrator of the Environmental Protection Agency, in conjunction with the National Aeronautics and Space Administration and the Department of Energy, shall conduct a study and test program on the development of a hydrogen fuel cell electric vehicle. The study and test program shall determine how best to transfer existing NASA hydrogen fuel cell technology into the form of a mass-producible, cost effective hydrogen fuel cell vehicle. Such study and test program shall include at a minimum a feasibility-design study, the construction of a prototype, and a demonstration. This study and test program should be completed and a report submitted to Congress within 3 years after the enactment of the Clean Air Act Amendments of 1990. This study and test program should be performed in the university or universities which are best exhibiting the facilities and expertise to develop such a fuel cell vehicle.

SEC. 808. RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES.

(a) DEFINITION.—For purposes of this section, "renewable energy" means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

(b) RATE INCENTIVES STUDY.—Within 18 months after enactment, the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall include, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment.

SEC. 809. CLEAN AIR STUDY OF SOUTHWESTERN NEW MEXICO.

The Administrator shall conduct a study of the causes of degraded visibility in southwestern New Mexico. The Administrator, in consultation with the Secretary of State, is encouraged to cooperate with the Government of Mexico, other Federal agencies, and any other appropriate organizations in conducting the study. Nothing in this section shall be construed as contravening or superseding the provisions of any international agreement in force for the United States as of the date of enactment of this section, or any relevant Federal statute.

SEC. 810. IMPACT ON SMALL COMMUNITIES.

Before implementing a provision of this Act, the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision.

SEC. 811. EQUIVALENT AIR QUALITY CONTROLS AMONG TRADING NATIONS.

(a) FINDINGS.—The Congress finds that—

(1) all nations have the responsibility to adopt and enforce effective air quality standards and requirements and the United States, in enacting this Act, is carrying out its responsibility in this regard;

(2) as a result of complying with this Act, businesses in the United States will make significant capital investments and incur incremental costs in implementing control technology standards;

(3) such compliance may impair the competitiveness of certain United States jobs, production, processes, and products if foreign goods are produced under less costly environmental standards and requirements than are United States goods; and

(4) mechanisms should be sought through which the United States and its trading partners can agree to eliminate or reduce competitive disadvantages.

(b) ACTION BY THE PRESIDENT.—

(1) IN GENERAL.—Within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990, the President shall submit to the Congress a report—

(A) identifying and evaluating the economic effects of—

(i) the significant air quality standards and controls required under this Act, and

(ii) the differences between the significant standards and controls required under this Act and similar standards and controls adopted and enforced by the major trading partners of the United States,

on the international competitiveness of United States manufacturers; and

(B) containing a strategy for addressing such economic effects through trade consultations and negotiations.

(2) ADDITIONAL REPORTING REQUIREMENTS.—(A) The evaluation required under paragraph (1)(A) shall examine the extent to which the significant air quality standards and controls required under this Act are comparable to existing internationally-agreed norms.

(B) The strategy required to be developed under paragraph (1)(B) shall include recommended options (such as the harmonization of standards and trade adjustment measures) for reducing or eliminating competitive disadvantages caused by differences in standards and controls between the United States and each of its major trading partners.

(3) PUBLIC COMMENT.—Interested parties shall be given an opportunity to submit comments regarding the evaluations and strategy required in the report under paragraph (1). The President shall take any such comment into account in preparing the report.

(4) INTERIM REPORT.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990, the President shall submit to the Congress an interim report on the progress being made in complying with paragraph (1).

SEC. 812. ANALYSES OF COSTS AND BENEFITS.

(a) ECONOMIC IMPACT ANALYSES.—Section 312 of the Clean Air Act is amended to read as follows:

"SEC. 312. ECONOMIC IMPACT ANALYSES.

"(a) The Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis (as established under subsection (f) of this section), shall conduct a comprehensive analysis of the impact of this Act on the public health, economy, and environment of the United States. In performing such analysis, the Administrator should consider the costs, benefits and other effects associated with compliance with each standard issued for—

"(1) a criteria air pollutant subject to a standard issued under section 109;

"(2) a hazardous air pollutant listed under section 112, including any technology-based standard and any risk-based standard for such pollutant;

"(3) emissions from mobile sources regulated under title II of this Act;

"(4) a limitation under this Act for emissions of sulfur dioxide or nitrogen oxides;

"(5) a limitation under title VI of this Act on the production of any ozone-depleting substance; and

"(6) any other section of this Act.

"(b) In describing the benefits of a standard described in subsection (a), the Administrator shall consider all of the economic, public health, and environmental benefits of efforts to comply with such standard. In any case where numerical values are assigned to such benefits, a default assumption of zero value shall not be assigned to such benefits unless supported by specific data. The Administrator shall assess how benefits are measured in order to assure that damage to human health and the environment is more accurately measured and taken into account.

"(c) In describing the costs of a standard described in subsection (a), the Administrator shall consider the effects of such standard on employment, productivity, cost of living, economic growth, and the overall economy of the United States.

"(d) Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that summarizes the results of the analysis described in subsection (a), which reports—

"(1) all costs incurred previous to the date of enactment of the Clean Air Act Amendments of 1990 in the effort to comply with such standards; and

"(2) all benefits that have accrued to the United States as a result of such costs.

"(e) Not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990, and every 24 months thereafter, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that updates the report issued pursuant to subsection (d), and which, in addition, makes projections into the future regarding expected costs, benefits, and other effects of compliance with standards pursuant to this Act as listed in subsection (a).

"(f) Not later than 6 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator, in consultation with the Secretary of Commerce and the Secretary of Labor, shall appoint an Advisory Council on Clean Air Compliance Analysis of not less than nine members (hereafter in this section referred to as the 'Council'.) In appointing such members, the Administrator shall appoint recognized experts in the fields of the health and environmental effects of air pollution, economic analysis, environmental sciences, and such other fields that the Administrator determines to be appropriate.

"(g) The Council shall—

"(1) review the data to be used for any analysis required under this section and make recommendations to the Administrator on the use of such data;

"(2) review the methodology used to analyze such data and make recommendations to the Administrator on the use of such methodology; and

"(3) prior to the issuance of a report required under subsection (d) or (e), review the findings of such report, and make recommendations to the Administrator concerning the validity and utility of such findings.".

(b) GAO REPORTS ON COSTS AND BENEFITS.—Commencing on the second year after the date of the enactment of the Clean Air Act Amendments of 1990 and annually thereafter, the Comptroller General of the General Accounting Office, in consultation with other agencies, such as the Environmental Protection Agency, the Department of Labor, the Department of Commerce, the United States Trade Representative, the National Academy of Sciences, the Office of Technology Assessment, the National Academy of Engineering, the Council on Environmental Quality, and the Surgeon General, shall provide a report to the Congress on the incremental human health and environmental benefits, and incremental costs beyond current clean air requirements of the new control strategies and technologies required by this Act. The report shall include, for such strategies and technologies, an analysis of the actual emissions reductions beyond existing practice, the effects on human life, human health and the environment (including both positive impacts and those that may be detrimental to jobs and communities resulting from loss of employers and employment, etc.), the energy security impacts, and the effect on United States products and industrial competitiveness in national and international markets.

SEC. 813. COMBUSTION OF CONTAMINATED USED OIL IN SHIPS.

Within 2 years after the enactment of the Clean Air Act Amendments of 1990, the Administrator of the Environmental Protection Agency shall complete a study and submit a report to Congress evaluating the health and environmental impacts of the combustion of contaminated used oil in ships, the reasons for using such oil for such purposes, the alternatives to such use, the costs of such alternatives, and other relevant factors and impacts. In preparing such study, the Administrator shall obtain the view and comments of all interested persons and shall consult with the Secretary of Transportation and the Secretary of the department in which the Coast Guard is operating.

SEC. 814. AMERICAN MADE PRODUCTS.

It is the sense of the Congress that—

(1) existing equipment and machinery retrofitted to comply with the Clean Air Act's "Best Available Control Technology" language and all other specifications within the Act be produced in the United States and purchased from American manufacturers.

(2) The construction of new industrial and utility facilities comply to the Act's specifications through the incorporation of American made equipment and technology.

(3) Individuals, groups, and organizations in the public sector strive to purchase and produce American made products that improve our nation's air quality.

SEC. 815. ESTABLISHMENT OF PROGRAM TO MONITOR AND IMPROVE AIR QUALITY IN REGIONS ALONG THE BORDER BETWEEN THE UNITED STATES AND MEXICO.

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the "Administrator") is authorized, in cooperation with the Department of State and the affected States, to negotiate with representatives of Mexico to authorize a program to monitor and improve air quality in regions along the border between the United States and Mexico. The program established under this section shall not extend beyond July 1, 1995.

(b) MONITORING AND REMEDIATION.—

(1) MONITORING.—The monitoring component of the program conducted under this section shall identify and determine sources of pollutants for which national ambient air quality standards (hereinafter referred to as "NAAQS") and other air quality goals have been established in regions along the border between the United States and Mexico. Any such monitoring component of the program shall include, but not be limited to, the collection of meteorological data, the measurement of air quality, the compilation of an emissions inventory, and shall be sufficient to the extent necessary to successfully support the use of a state-of-the-art mathematical air modeling analysis. Any such monitoring component of the program shall collect and produce data projecting the level of emission reductions necessary in both Mexico and the United States to bring about attainment of both primary and secondary NAAQS, and other air quality goals, in regions along the border in the United States. Any such monitoring component of the program shall include to the extent possible, data from monitoring programs undertaken by other parties.

(2) REMEDIATION.—The Administrator is authorized to negotiate with appropriate representatives of Mexico to develop joint remediation measures to reduce the level of airborne pollutants to achieve and maintain primary and secondary NAAQS, and other air quality goals, in regions along the border between the United States and Mexico. Such joint remediation measures may include, but not be limited to measures included in the Environmental Protection Agency's Control Techniques and Control Technology documents. Any such remediation program shall also identify those control measures implementation of which in Mexico would be expedited by the use of material and financial assistance of the United States.

(c) ANNUAL REPORTS.—The Administrator shall, each year the program authorized in this section is in operation, report to Congress on the progress of the program in bringing nonattainment areas along the border of the United States into attainment with primary and secondary NAAQS. The report issued by the Administrator under this paragraph shall include recommendations on funding mechanisms to assist in implementation of monitoring and remediation efforts.

(d) FUNDING AND PERSONNEL.—The Administrator may, where appropriate, make available, subject to the appropriations, such funds, personnel, and equipment as may be necessary to implement the provisions of this section. In those cases where direct financial assistance of the United States is provided to implement monitoring and remediation programs in Mexico, the Administrator shall develop grant agreements with appropriate representatives of Mexico to assure the accuracy and completeness of monitoring data and the performance of remediation measures which are financed by the United States. With respect to any control measures within Mexico funded by the United States, the Administrator shall, to the maximum extent practicable, utilize resources of Mexico where such utilization would reduce costs to the United States. Such funding agreements shall include authorization for the Administrator to—

(1) review and agree to plans for monitoring and remediation;

(2) inspect premises, equipment and records to insure compliance with the agreements established under and the purposes set forth in this section; and

(3) where necessary, develop grant agreements with affected States to carry out the provisions of this section.

SEC. 816. VISIBILITY.

Subpart 2 of part C of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"SEC. 169B. VISIBILITY.

"(a) STUDIES.—(1) The Administrator, in conjunction with the National Park Service and other appropriate Federal agencies, shall conduct research to identify and evaluate sources and source regions of both visibility impairment and regions that provide predominantly clean air in class I areas. A total of $8,000,000 per year for 5 years is authorized to be appropriated for the Environmental Protection Agency and the other Federal agencies to conduct this research. The research shall include—

"(A) expansion of current visibility related monitoring in class I areas;

"(B) assessment of current sources of visibility impairing pollution and clean air corridors;

"(C) adaptation of regional air quality models for the assessment of visibility;

"(D) studies of atmospheric chemistry and physics of visibility.

"(2) Based on the findings available from the research required in subsection (a)(1) as well as other available scientific and technical data, studies, and other available information pertaining to visibility source-receptor relationships, the Administrator shall conduct an assessment and evaluation that identifies, to the extent possible, sources and source regions of visibility impairment including natural sources as well as source regions of clean air for class I areas. The Administrator shall produce interim findings from this study within 3 years after enactment of the Clean Air Act Amendments of 1990.

"(b) IMPACTS OF OTHER PROVISIONS.—Within 24 months after enactment of the Clean Air Act Amendments of 1990, the Administrator shall conduct an assessment of the progress and improvements in visibility in class I areas that are likely to result from the implementation of the provisions of the Clean Air Act Amendments of 1990 other than the provisions of this section. Every 5 years thereafter the Administrator shall conduct an assessment of actual progress and improvement in visibility in class I areas. The Administrator shall prepare a written report on each assessment and transmit copies of these reports to the appropriate committees of Congress.

"(c) ESTABLISHMENT OF VISIBILITY TRANSPORT REGIONS AND COMMISSIONS.—

"(1) AUTHORITY TO ESTABLISH VISIBILITY TRANSPORT REGIONS.—Whenever, upon the Administrator's motion or by petition from the Governors of at least two affected States, the Administrator has reason to believe that the current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in class I areas located in the affected States, the Administrator may establish a transport region for such pollutants that includes such States. The Administrator, upon the Administrator's own motion or upon petition from the Governor of any affected State, or upon the recommendations of a transport commission established under subsection (b) of this section may—

"(A) add any State or portion of a State to a visibility transport region when the Administrator determines that the interstate transport of air pollutants from such State significantly contributes to visibility impairment in a class I area located within the transport region, or

"(B) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the protection or enhancement of visibility in any class I area in the region.

"(2) VISIBILITY TRANSPORT COMMISSIONS.—Whenever the Administrator establishes a transport region under subsection (c)(1), the Administrator shall establish a transport commission comprised of (as a minimum) each of the following members:

"(A) the Governor of each State in the Visibility Transport Region, or the Governor's designee;

"(B) The Administrator or the Administrator's designee; and

"(C) A representative of each Federal agency charged with the direct management of each class I area or areas within the Visibility Transport Region.

"(3) All representatives of the Federal Government shall be ex officio members.

"(4) The visibility transport commissions shall be exempt from the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix 2, Section 1).

"(d) DUTIES OF VISIBILITY TRANSPORT COMMISSIONS.—A Visibility Transport Commission—

"(1) shall assess the scientific and technical data, studies, and other currently available information, including studies conducted pursuant to subsection (a)(1), pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the Visibility Transport Region; and

"(2) shall, within 4 years of establishment, issue a report to the Administrator recommending what measures, if any, should be taken under the Clean Air Act to remedy such adverse impacts. The report required by this subsection shall address at least the following measures:

"(A) the establishment of clean air corridors, in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected class I areas;

"(B) the imposition of the requirements of part D of this title affecting the construction of new major stationary sources or major modifications to existing sources in such clean air corridors specifically including the alternative siting analysis provisions of section 173(a)(5); and

"(C) the promulgation of regulations under section 169A to address long range strategies for addressing regional haze which impairs visibility in affected class I areas.

"(e) DUTIES OF THE ADMINISTRATOR.—(1) The Administrator shall, taking into account the studies pursuant to subsection (a)(1) and the reports pursuant to subsection (d)(2) and any other relevant information, within eighteen months of receipt of the report referred to in subsection (d)(2) of this section, carry out the Administrator's regulatory responsibilities under section 169A, including criteria for measuring 'reasonable progress' toward the national goal.

"(2) Any regulations promulgated under section 169A of this title pursuant to this subsection shall require affected States to revise within 12 months their implementation plans under section 110 of this title to contain such emission limits, schedules of compliance, and other measures as may be necessary to carry out regulations promulgated pursuant to this subsection.

"(f) GRAND CANYON VISIBILITY TRANSPORT COMMISSION.—The Administrator pursuant to subsection (c)(1) shall, within 12 months, establish a visibility transport commission for the region affecting the visibility of the Grand Canyon National Park."

SEC. 817. ROLE OF SECONDARY STANDARDS.

(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 and other pollutants which may be listed;

(2) estimate welfare and environmental costs incurred as a result of such effects;

(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

(5) estimate the costs and other impacts of meeting secondary standards; and

(6) consider other means consistent with the goals and objectives of the Clean Air Act which may be more effective than secondary standards in preventing or mitigating such effects.

(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990.

(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed

report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

(3) There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 818. INTERNATIONAL BORDER AREAS.

Subpart 1 of part D of title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"SEC. 179B. INTERNATIONAL BORDER AREAS.

"(a) IMPLEMENTATION PLANS AND REVISIONS.—Notwithstanding any other provision of law, an implementation plan or plan revision required under this Act shall be approved by the Administrator if—

"(1) such plan or revision meets all the requirements applicable to it under the Act other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this Act, or in a regulation promulgated under such provision, and

"(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this Act, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

"(b) ATTAINMENT OF OZONE LEVELS.—Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 181(a) (2) or (5) or section 185.

"(c) ATTAINMENT OF CARBON MONOXIDE LEVELS.—Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 186(b) (2) or (9).

"(d) ATTAINMENT OF PM-10 LEVELS.—Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM-10 nonattainment area in such State, such State would have attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside the United States, shall not be subject to the provisions of section 188(b)(2).".

SEC. 819. EXEMPTIONS FOR STRIPPER WELLS.

Notwithstanding any other provision of law, the amendments to the Clean Air Act made by section 103 of the Clean Air Act Amendments of 1990 (relating to additional provisions for ozone nonattainment areas), by section 104 of such amendments (relating to additional provisions for carbon monoxide nonattainment areas), by section 105 of such amendments (relating to additional provisions for PM-10 nonattainment areas), and by section 106 of such amendments (relating to additional provisions for areas designated as nonattainment for sulfur oxides, nitrogen dioxide, and lead) shall not apply with respect to the production of and equipment used in the exploration, production, development, storage or processing of—

(1) oil from a stripper well property, within the meaning of the June 1979 energy regulations (within the meaning of section 4996(b)(7) of the Internal Revenue Code of 1986, as in effect before the repeal of such section); and

(2) stripper well natural gas, as defined in section 108(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3318(b)).

except to the extent that provisions of such amendments cover areas designated as Serious pursuant to part D of title I of the Clean Air Act and having a population of 350,000 or more, or areas designated as Severe or Extreme pursuant to such part D.

SEC. 820. EPA REPORT ON MAGNETIC LEVITATION.

The Administrator of the Environmental Protection Agency shall, not later than 6 months after the date of enactment of this Act, submit to the Congress and the President a report of the Administrator's activities under any agreement with the Department of Transportation entered into prior to such date of enactment providing for an analysis of the health and environmental aspects of magnetic levitation technology.

SEC. 821. INFORMATION GATHERING ON GREENHOUSE GASES CONTRIBUTING TO GLOBAL CLIMATE CHANGE.

(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after the enactment of the Clean Air Act Amendments of 1990 to require that all affected sources subject to title V of the Clean Air Act shall also monitor carbon dioxide emissions according to the same timetable as in section 511 (b) and (c). The regulations shall require that such data be reported to the Administrator. The provisions of section 511(e) of title V of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 511.

(b) PUBLIC AVAILABILITY OF CARBON DIOXIDE INFORMATION.—For each unit required to monitor and provide carbon dioxide data under subsection (a), the Administrator shall compute the unit's aggregate annual total carbon dioxide emissions, incorporate such data into a computer data base, and make such aggregate annual data available to the public.

SEC. 822. AUTHORIZATION.

Section 327 of the Clean Air Act is amended to read as follows:

"SEC. 327. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act such sums as may be necessary for the 7 fiscal years commencing after the enactment of the Clean Air Act Amendments of 1990.

"(b) GRANTS FOR PLANNING.—There are authorized to be appropriated (1) not more than $50,000,000 to carry out section 175 beginning in fiscal year 1991, to be available until expended, to develop plan revisions required by subpart 2, 3, or 4 of part D of title I, and (2) not more than $15,000,000 for each of the 7 fiscal years commencing after the enactment of the Clean Air Act Amendments of 1990 to make grants to the States to prepare implementation plans as required by subpart 2, 3, or 4 of part D of title I.".

TITLE IX—CLEAN AIR RESEARCH

SEC. 901. CLEAN AIR RESEARCH.

(a) RESEARCH AND DEVELOPMENT PROGRAM.—(1) Section 103(a)(1) of the Clean Air Act is amended by inserting after "effects" the words "(including health and welfare effects)".

(2) Section 103(b) of the Clean Air Act is amended—

(A) in paragraph (6) by striking "and" after "control thereof;";

(B) in paragraph (7) by striking the period and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new paragraph:

"(8) construct facilities, provide equipment, and employ staff as necessary to carry out this Act.".

(b) RESEARCH AMENDMENTS.—Section 103(c) through (f) of the Clean Air Act is amended to read as follows:

"(c) AIR POLLUTANT MONITORING, ANALYSIS, MODELING, AND INVENTORY RESEARCH.—In carrying out subsection (a), the Administrator shall conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. Such program shall include the following elements:

"(1) Consideration of individual, as well as complex mixtures of, air pollutants and their chemical transformations in the atmosphere.

"(2) Establishment of a national network to monitor, collect, and compile data with quantification of certainty in the status and trends of air emissions, deposition, air quality, surface water quality, forest condition, and visibility impairment, and to ensure the comparability of air quality data collected in different States and obtained from different nations.

"(3) Development of improved methods and technologies for sampling, measurement, monitoring, analysis, and modeling to increase understanding of the sources of ozone precursors, ozone formation, ozone transport, regional influences on urban ozone, regional ozone trends, and interactions of ozone with other pollutants. Emphasis shall be placed on those techniques which—

"(A) improve the ability to inventory emissions of volatile organic compounds and nitrogen oxides that contribute to urban air pollution, including anthropogenic and natural sources;

"(B) improve the understanding of the mechanism through which anthropogenic and biogenic volatile organic compounds react to form ozone and other oxidants; and

"(C) improve the ability to identify and evaluate region-specific prevention and control options for ozone pollution.

"(4) Submission of periodic reports to the Congress, not less than once every 5 years, which evaluate and assess the effectiveness of air pollution control regulations and programs using monitoring and modeling data obtained pursuant to this subsection.

"(d) ENVIRONMENTAL HEALTH EFFECTS RESEARCH.—(1) The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting such research program the Administrator—

"(A) shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

"(B) may utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers; and

"(C) shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

"(2) In conducting the research program under this subsection, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both routine and accidental exposures to individual air pollutants and combinations thereof. Such research program shall include the following elements:

"(A) The creation of an Interagency Task Force to coordinate such program. The Task Force shall include representatives of the National Institute for Environmental Health Sciences, the Environmental Protection Agency, the Agency for Toxic Substances and Disease Registry, the National Toxicology Program, the National Institute of Standards and Technology, the National Science Foundation, the Surgeon General, and the Department of Energy. This Interagency Task Force shall be chaired by a representative of the Environmental Protection Agency and shall convene its first meeting within 60 days after the date of enactment of this subparagraph.

"(B) An evaluation, within 12 months after the date of enactment of this paragraph, of each of the hazardous air pollutants listed under section 112(b) of this Act, to decide, on the basis of available information, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C). The evaluation shall be based on reasonably anticipated toxicity to humans and exposure factors such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. Such evaluation shall be reviewed by the Interagency Task Force established pursuant to subparagraph (A).

"(C) Preparation of environmental health assessments for each of the hazardous air pollutants referred to in subparagraph (B), beginning 6 months after the first meeting of the Interagency Task Force and to be completed within 96 months thereafter. No fewer than 24 assessments shall be completed and published annually. The assessments shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board of the Environmental Protection Agency. Each such assessment shall include—

"(i) an examination, summary, and evaluation of available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects;

"(ii) a determination of gaps in available information related to human health effects and exposure levels; and

"(iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.

"(e) ECOSYSTEM RESEARCH.—In carrying out subsection (a), the Administrator, in cooperation, where appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the Fish and Wildlife Service, and the Secretary of Agriculture, shall conduct a research program to improve understanding of the short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants on ecosystems. Such program shall include the following elements:

"(1) Identification of regionally representative and critical ecosystems for research.

"(2) Evaluation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.

"(3) Development of improved atmospheric dispersion models and monitoring systems and networks for evaluating and quantifying exposure to and effects of multiple environmental stresses associated with air pollution.

"(4) Evaluation of the effects of air pollution on water quality, including assessments of the short-term and long-term ecological effects of acid deposition and other atmospherically derived pollutants on surface water (including wetlands and estuaries) and groundwater.

"(5) Evaluation of the effects of air pollution on forests, materials, crops, biological diversity, soils, and other terrestrial and aquatic systems exposed to air pollutants.

"(6) Estimation of the associated economic costs of ecological damage which have occurred as a result of exposure to air pollutants.

Consistent with the purpose of this program, the Administrator may use the estuarine research reserves established pursuant to section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) to carry out this research.

"(f) LIQUEFIED GASEOUS FUELS SPILL TEST FACILITY.—(1) The Administrator, in consultation with the Secretary of Energy and the Federal Coordinating Council for Science, Engineering, and Technology, shall oversee an experimental and analytical research effort, with the experimental research to be carried out at the Liquefied Gaseous Fuels Spill Test Facility. In consultation with the Secretary of Energy, the Administrator shall develop a list of chemicals and a schedule for field testing at the Facility. Analysis of a minimum of 10 chemicals per year shall be carried out, with the selection of a minimum of 2 chemicals for field testing each year. Highest priority shall be given to those chemicals that would present the greatest potential risk to human health as a result of an accidental release—

"(A) from a fixed site; or

"(B) related to the transport of such chemicals.

"(2) The purpose of such reseqrch shall be to—

"(A) develop improved predictive models for atmospheric dispersion which at a minimum—

"(i) describe dense gas releases in complex terrain including man-made structures or obstacles with variable winds;

"(ii) improve understanding of the effects of turbulence on dispersion patterns; and

"(iii) consider realistic behavior of aerosols by including physicochemical reactions with water vapor, ground deposition, and removal by water spray;

"(B) evaluate existing and future atmospheric dispersion models by—

"(i) the development of a rigorous, standardized methodology for dense gas models; and

"(ii) the application of such methodology to current dense gas dispersion models using data generated from field experiments; and

"(C) evaluate the effectiveness of hazard mitigation and emergency response technology for fixed site and transportation related accidental releases of toxic chemicals.

Models pertaining to accidental release shall be evaluated and improved periodically for their utility in planning and implementing evacuation procedures and other mitigative strategies designed to minimize human exposure to hazardous air pollutants released accidentally.

"(3) The Secretary of Energy shall make available to interested persons (including other Federal agencies and businesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to conduct research and other activities in connection with the activities described in this subsection.".

(c) ADDITIONAL PROVISIONS.—Section 103 of the Clean Air Act is amended by inserting after subsection (f) the following:

"(g) POLLUTION PREVENTION AND EMISSIONS CONTROL.—In carrying out subsection (a), the Administrator shall conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention. Such strategies and technologies shall be developed with priority on those pollutants which pose a significant risk to human health and the environment, and with opportunities for participation by industry, public interest groups, scientists, and other interested persons in the development of such strategies and technologies. Such program shall include the following elements:

"(1) Improvements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM-10 (particulate matter), carbon monoxide, and carbon dioxide, from stationary sources, including fossil fuel power plants. Such strategies and technologies shall include improvements in the relative cost effectiveness and long-range implications of various air pollutant reduction and nonregulatory control strategies such as energy conservation, including end-use efficiency, and fuel-switching to cleaner fuels. Such strategies and technologies shall be considered for existing and new facilities.

"(2) Improvements in nonregulatory strategies and technologies for reducing air emissions from area sources.

"(3) Improvements in nonregulatory strategies and technologies for preventing, detecting, and correcting accidental releases of hazardous air pollutants.

"(4) Improvements in nonregulatory strategies and technologies that dispose of tires in ways that avoid adverse air quality impacts.

Nothing in this subsection shall be construed to authorize the imposition on any person of air pollution control requirements. The Administrator shall consult with other appropriate Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

"(h) NIEHS STUDIES.—(1) The Director of the National Institute of Environmental Health Sciences may conduct a program of basic research to identify, characterize, and quantify risks to human health from air pollutants. Such research shall be conducted primarily through a combination of university and medical school-based grants, as well as through intramural studies and contracts.

"(2) The Director of the National Institute of Environmental Health Sciences shall conduct a program for the education and training of physicians in environmental health.

"(3) The Director shall assure that such programs shall not conflict with research undertaken by the Administrator.

"(4) There are authorized to be appropriated to the National Institute of Environmental Health Sciences such sums as may be necessary to carry out the purposes of this subsection.

"(i) COORDINATION OF RESEARCH.—The Administrator shall develop and implement a plan for identifying areas in which activities authorized under this section can be carried out in conjunction with other Federal ecological and air pollution research efforts. The plan, which shall be submitted to Congress within 6 months after the date of enactment of this subsection, shall include—

"(1) an assessment of ambient monitoring stations and networks to determine cost effective ways to expand monitoring capabilities in both urban and rural environments;

"(2) a consideration of the extent of the feasibility and scientific value of conducting the research program under subsection (e) to include consideration of the effects of atmospheric processes and air pollution effects; and

"(3) a methodology for evaluating and ranking pollution prevention technologies, such as those developed under subsection (g), in terms of their ability to reduce cost effectively the emissions of air pollutants and other airborne chemicals of concern.

Not later than 2 years after the date of enactment of this subsection, and every 4 years thereafter, the Administrator shall report to Congress on the progress made in implementing the plan developed under this subsection, and shall include in such report any revisions of the plan.

"(j) CONTINUATION OF THE NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM.—

"(1) The acid precipitation research program set forth in the Acid Precipitation Act of 1980 shall be continued with modifications pursuant to this subsection.

"(2) The Acid Precipitation Task Force shall consist of the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and such additional members as the President may select. The President shall appoint a chairman for the Task Force from among its members within 30 days after the date of enactment of this subsection.

"(3) The responsibilities of the Task Force shall include the following:

"(A) Review of the status of research activities conducted to date under the comprehensive research plan developed pursuant to the Acid Precipitation Act of 1980, and development of a revised plan that identifies significant research gaps and establishes a coordinated program to address current and future research priorities. A draft of the revised plan shall be submitted by the Task Force to Congress within 6 months after the date of enactment of this subsection. The plan shall be available for public comment during the 60 day period after its submission, and a final plan shall be submitted by the President to the Congress within 45 days after the close of the comment period.

"(B) Coordination with participating Federal agencies, augmenting the agencies' research and monitoring efforts and sponsoring additional research in the scientific community as necessary to ensure the availability and quality of data and methodologies needed to evaluate the status and effectiveness of the acid deposition control program. Such research and monitoring efforts shall include, but not be limited to—

"(i) continuous monitoring of emissions of precursors of acid deposition;

"(ii) maintenance, upgrading, and application of models, such as the Regional Acid Deposition Model, that describe the interactions of emissions with the atmosphere, and models that describe the response of ecosystems to acid deposition; and

"(iii) analysis of the costs, benefits, and effectiveness of the acid deposition control program.

"(C) Publication and maintenance of a National Acid Lakes Registry that tracks the condition and change over time of a statistically representative sample of lakes in regions that are known to be sensitive to surface water acidification.

"(D) Submission every two years of a unified budget recommendation to the President for activities of the Federal Government in connection with the research program described in this subsection.

"(E) Beginning in 1992 and biennially thereafter, submission of a report to Congress describing the results of its investigations and analyses. The reporting of technical information about acid deposition shall be provided in a format that facilitates communication with policymakers and the public. The report shall include—

"(i) actual and projected emissions and acid deposition trends;

"(ii) average ambient concentrations of acid deposition percursors and their transformation products;

"(iii) the status of ecosystems (including forests and surface waters), materials, and visibility affected by acid deposition;

"(iv) the causes and effects of such deposition, including changes in surface water quality and forest and soil conditions;

"(v) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds; and

"(vi) the confidence level associated with each conclusion to aid policymakers in use of the information.

"(F) Beginning in 1996, and every 4 years thereafter, the report under subparagraph (E) shall include—

"(i) the reduction in deposition rates that must be achieved in order to prevent adverse ecological effects; and

"(ii) the costs and benefits of the acid deposition control program created by title IV of this Act.

"(k) AIR POLLUTION CONFERENCES.—If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, the Administrator may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under part A of title I, the Administrator shall send such findings, together with recommendations concerning the measures which the Administrator finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 108.".

(d) MISCELLANEOUS.—(1) Section 104 of the Clean Air Act is amended by striking "low-cost" each place it appears and inserting in lieu thereof "cost-effective".

(2) Section 104(c) of the Clean Air Act is amended to read as follows:

"(c) CLEAN ALTERNATIVE FUELS.—The Administrator shall conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuels. The Administrator shall consult with other Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.".

(e) ASSESSMENT OF INTERNATIONAL AIR POLLUTION CONTROL TECHNOLOGIES.—The Administrator of the Environmental Protection Agency shall conduct a study that compares international air pollution control technologies of selected industrialized countries to determine if there exist air pollution control technologies in countries outside the United States that may have beneficial applications to this Nation's air pollution control efforts. With respect to each country studied, the study shall include the topics of urban air quality, motor vehicle emissions, toxic air emissions, and acid deposition. The Administrator shall, within 2 years after the date of enactment of this Act, submit to the Congress a report detailing the results of such study.

(f) ADIRONDACK EFFECTS ASSESSMENT.—The Administrator of the Environmental Protection Agency shall establish a program to research the effects of acid deposition on waters where acid deposition has been most acute. The Administrator shall enter into a multi-year contract for such purposes with an independent university which has a year-round field analytical laboratory on a body of water of not less than 25,000 acres nor greater than 75,000 acres, which lies within a geographic region designated as a Biosphere Reserve by the Department of State. The facility must have demonstrated the capability to analyze relevant data on said body of water over a period of 20 years as well as extensive ecosystem modeling capabilities. There are authorized to be appropriated to carry out this subsection not less than $6,000,000.

(g) WESTERN STATES ACID DEPOSITION RESEARCH.—(1) The Administrator of the Environmental Protection Agency shall sponsor monitoring and research and submit to Congress annual and periodic assessment reports on—

(A) the occurrence and effects of acid deposition on surface waters located in that part of the United States west of the Mississippi River;

(B) the occurrence and effects of acid deposition on high elevation ecosystems (including forests, and surface waters); and

(C) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds.

(2) The Administrator of the Environmental Protection Agency shall analyze data generated from the studies conducted under paragraph (1), data from the Western Lakes Survey, and other appropriate research and utilize predictive modeling techniques that take into account the unique geographic, climatological, and atmospheric conditions which exist in the western United States to determine the potential occurrence and effects of acid deposition due to any projected increases in the emission of sulfur dioxide and nitrogen oxides in that part of the United States located west of the Mississippi River. The Administrator shall include the results of the project conducted under this paragraph in the reports issued to Congress under paragraph (1).

(h)(1) In carrying out the provisions of section 103(f) of the Clean Air Act, the Secretary of Energy is authorized to enter into contracts and cooperative agreements with, and make grants to, nonprofit entities affiliated with the University of Nevada and the University of Wyoming.

(2) Agreements, contracts, and grants described in paragraph (1) shall provide that such nonprofit entities—

(A) may provide basic technical and management personnel; and

(B) shall make available permanent research support facilities owned by the nonprofit entities.

(3) The nonprofit entities described in paragraphs (1) and (2) shall be authorized to make grants, accept contributions, and enter into agreements with other entities to carry out the provisions of this subsection.

(4) There are authorized to be appropriated to the Department of Energy $3,000,000 for fiscal year 1991 and such sums as may be necessary for each fiscal year thereafter to carry out the provisions of paragraph (1). Such amounts shall remain available until expended.

TITLE X—DISADVANTAGED BUSINESS CONCERNS

Sec. 1001. Disadvantaged business concerns.
Sec. 1002. Use of quotas prohibited.

SEC. 1001. DISADVANTAGED BUSINESS CONCERNS.

(a) IN GENERAL.—In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns.

(b) DEFINITION.—

(1)(A) For purposes of subsection (a), the term "disadvantaged business concern" means a concern—

(i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly traded company, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) the management and daily business operations of which are controlled by such individuals.

(B)(i) A for-profit business concern is presumed to be a disadvantaged business concern for purposes of subsection (a) if it is at least 51 percent owned by, or in the case of a concern which is a publicly traded company at least 51 percent of the stock of the company is owned by, one or more individuals who are members of the following groups:

(I) Black Americans.
(II) Hispanic Americans.
(III) Native Americans.
(IV) Asian Americans.
(V) Women.
(VI) Disabled Americans.

(ii) The presumption established by clause (i) may be rebutted with respect to a particular business concern if it is reasonably established that the individual or individuals referred to in that clause with respect to that business concern are not experiencing impediments to establishing or developing such concern as a result of the individual's identification as a member of a group specified in that clause.

(C) The following institutions are presumed to be disadvantaged business concerns for purposes of subsection (a):

(i) Historically black colleges and universities, and colleges and universities having a student body in which 40 percent of the students are Hispanic.

(ii) Minority institutions (as that term is defined by the Secretary of Education pursuant to the General Education Provision Act (20 U.S.C. 1221 et seq.)).

(iii) Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(D) A joint venture may be considered to be a disadvantaged business concern under subsection (a), notwithstanding the size of such joint venture, if—

(i) a party to the joint venture is a disadvantaged business concern; and

(ii) that party owns at least 51 percent of the joint venture.

A person who is not an economically disadvantaged individual or a disadvantaged business concern, as a party to a joint venture, may not be a party to more than 2 awarded contracts in a fiscal year solely by reason of this subparagraph.

(E) Nothing in this paragraph shall prohibit any member of a racial or ethnic group that is not listed in subparagraph (B)(i) from establishing that they have been impeded in establishing or developing a business concern as a result of racial or ethnic discrimination.

SEC. 1002. USE OF QUOTAS PROHIBITED.—Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility under section 1001.

TITLE XI—CLEAN AIR EMPLOYMENT TRANSITION ASSISTANCE

Sec. 1101. Clean air employment transition assistance.

SEC. 1101. CLEAN AIR EMPLOYMENT TRANSITION ASSISTANCE.

(a) AMENDMENT.—Part B of title III of the Job Training Partnership Act (29 U.S.C. 1501) is amended by adding at the end the following:

"CLEAN AIR EMPLOYMENT TRANSITION ASSISTANCE

"SEC. 326. (a) DETERMINATION OF ELIGIBILITY.—

"(1) DEFINITIONS.—For purposes of this section, the term 'eligible individual' means an individual who—

"(A) is an eligible dislocated worker, as that term is defined in section 301(a), and

"(B) has been terminated or laid off, or has received a notice of termination or lay off, as a consequence of compliance with the Clean Air Act.

"(2) DETERMINATIONS.—The determination of eligibility under paragraph (1)(B) of this subsection shall be made by the Secretary of Labor, pursuant to criteria established by the Secretary, in consultation with the Administrator of the Environmental Protection Agency.

"(b) GRANTS AUTHORIZED.—The Secretary may make grants to States, substate grantees (as defined in section 312(c)), employers, employer associations, and representatives of employees—

"(1) to provide training, adjustment assistance, and employment services to eligible individuals adversely affected by compliance with the Clean Air Act; and

"(2) to make needs-related payments to such individuals in accordance with subsection (f) of this section.

"(c) PRIORITY AND APPROVAL.—

"(1) PRIORITY.—In reviewing applications for grants under subsection (b), the Secretary shall give priority to applications proposing to provide training, adjustment assistance, and services in areas which have the greatest number of eligible individuals.

"(2) NEEDS-RELATED PAYMENTS REQUIRED.—The Secretary shall not approve an application for a grant under subsection (b) unless the application contains assurances that the applicant will use grant funds to provide needs-related payments in accordance with subsection (f).

"(d) USE OF FUNDS.—Subject to the requirements of subsections (e) and (f) of this section, grants under subsection (b) may be used for any purpose for which funds may be used under section 314.

"(e) ADJUSTMENT ASSISTANCE.—

"(1) JOB SEARCH ALLOWANCE.—

"(A) IN GENERAL.—Grants under subsection (b) for adjustment assistance may be used to provide job search allowances to eligible individuals. Such allowance, if granted, shall provide reimbursement to the individual of not more than 90 percent of the cost of necessary job search expenses, as prescribed by regulations of the Secretary, but may not exceed $800 unless the need for a greater amount is justified in the application and approved by the Secretary.

"(B) CRITERIA FOR GRANTING JOB SEARCH ALLOWANCES.—A job search allowance may be granted only—

"(i) to assist an eligible individual who has been totally separated in securing a job within the United States; and

"(ii) where the Secretary determines that such employee cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

"(2) RELOCATION ALLOWANCE.—

"(A) IN GENERAL.—Grants under subsection (b) for adjustment assistance may be used to provide relocation allowances to eligible individuals. Such an allowance may only be granted to assist an eligible individual in relocating within the United States and only if the Secretary determines that—

"(i) such employee cannot reasonably be expected to secure suitable employment in the commuting area in which the employee resides; and

"(ii) such employee—

"(I) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the employee wishes to relocate, or has obtained a bona fide offer of such employment, and

"(II) is totally separated from employment at the time relocation commences.

"(B) AMOUNT OF RELOCATION ALLOWANCE.—The amount of any relocation allowance for any eligible individual may not exceed the amount which is equal to the sum of—

"(i) 90 percent of the reasonable and necessary expenses, specified in regulations prescribed by the Secretary, incurred in transporting an individual and the individual's family, if any, and household effects, and

"(ii) a lump sum equivalent to 3 times the employee's average weekly wage, up to a maximum payment of $800, unless the need for a greater amount is justified in the application and approved by the Secretary.

"(f) NEEDS-RELATED PAYMENTS.—The Secretary shall prescribe regulations with respect to the use of funds from grants under subsection (b) for needs-related payments in order to enable eligible individuals to complete training or education programs under this section. Such regulations shall—

"(1) require that such payments shall be provided to an eligible individual only if such individual—

"(A) does not qualify or has ceased to qualify for unemployment compensation;

"(B) has been enrolled in training by the end of the 13th week of the individual's initial unemployment compensation benefit period, or, if later, the end of the 8th week after an individual is informed that a short-term layoff will in fact exceed 6 months; and

"(C) is participating in training or education programs under this section, except that such regulations shall protect an individual from being disqualified pursuant to this clause for a failure to participate that is not the fault of the individual;

"(2) provide that to qualify for such payments the individual currently receives, or is a member of a family which currently receives, a total family income (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, is not in excess of the lower living standard income level;

"(3) provide that the levels of such payments shall be equal to the higher of—

"(A) the applicable level of unemployment compensation; or

"(B) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget;

"(4) provide for the adjustment of payments to reflect changes in total family income; and

"(5) provide that the grantee shall obtain information with respect to such income, and changes therein, from the eligible individual.

"(g) ADMINISTRATIVE EXPENSES.—The Secretary of Labor may reserve not more than 5 percent of the funds appropriated under this section for the administration of activities authorized under this section, including the provision of technical assistance for the preparation of grant applications.

"(h) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated by section 3(c) of this Act, there are authorized to be appropriated $50,000,000 for fiscal year 1991, and such sums as may be necessary for each of fiscal years 1992, 1993, 1994, and 1995 to carry out this section. The total amount appropriated for all 5 such fiscal years shall not exceed $250,000,000. Amounts appropriated pursuant to this subsection shall remain available until expended.

"(i) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section not later than 180 days after the date of enactment of this section.

"(j) GAO ASSESSMENT OF EFFECTS OF CLEAN AIR ACT COMPLIANCE OF EMPLOYMENT.—The Comptroller General of the United States shall—

"(1) identify and assess, to the extent possible, the effects on employment that are attributable to compliance with the provisions of the Clean Air Act; and

"(2) submit to the Congress on the 4th anniversary of the date of the enactment of this subtitle a written report on the assessments required under paragraph (1).".

(b) CONFORMING AMENDMENTS.—

(1) The table of contents of the Job Training Partnership Act is amended by adding at the end of the items pertaining to part B of title III the following:

"Sec. 326. Clean air employment transition Assistance.".

(2) Section 3(c) of the Job Training Partnership Act is amended by inserting "(other than section 326 thereof)" after "title III".

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

From the Committee on Energy and Commerce, for consideration of the Senate bill (except that portion of section 702 adding a new section 512(a) to the Clean Air Act), and the House amendment, and modifications committed to conference:

JOHN D. DINGELL,
JIM SCHEUER,
HENRY A. WAXMAN,
PHILIP SHARP,
TOM LUKEN,
AL SWIFT,
MIKE SYNAR,
BILLY TAUZIN,
RON WYDEN,
RALPH M. HALL,
DENNIS E. ECKART,
JIM SLATTERY,
GERRY SIKORSKI,
RICK BOUCHER,
J. ROY ROWLAND,
THOMAS J. MANTON,
NORMAN F. LENT,
ED MADIGAN,
CARLOS J. MOORHEAD,
BOB WHITTAKER,
TOM BLILEY,
JACK FIELDS,
M.G. OXLEY,
HOWARD C. NIELSON,
MIKE BILIRAKIS
(except for title II of the Senate bill and title II of the House amendment).

For consideration of title II of the Senate bill and title II of the House amendment (in lieu of Mr. Bilirakis):

TOM TAUKE,

From the Committee on Public Works and Transportation, for consideration of sections 106(g) and (h) of the Senate bill, and that portion of section 101(c) adding a new section 110(m) to the Clean Air Act, sections 101(f) and 102(g) of the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
NICK RAHALL,
DOUGLAS APPLEGATE,
GUS SAVAGE,
DOUGLAS H. BOSCO,
ROBERT A. BORSKI,
JOE KOLTER,
TIM VALENTINE,
WILLIAM O. LIPINSKI,
PETER J. VISCLOSKY,
JAMES A. TRAFICANT, Jr.,
JOHN LEWIS,
JOHN PAUL HAMMERSCHMIDT,
ARLAN STANGELAND,
WILLIAM F. CLINGER, Jr.,
TOM PETRI,
RON PACKARD,
SHERWOOD L. BOEHLERT,
J. DENNIS HASTERT,

From the Committee on Public Works and Transportation, for consideration of secs. 103, 106(f), those portions of sec. 106(g) adding new secs. 108(f)(3) and (4) to the Clean Air Act, those portions of sec. 107 adding new secs. 103(b)(4)(B) and (c)(1) to the Clean Air Act, that portion of sec. 108 adding a new sec. 189(a) to the Clean Air Act, 222, 226, and that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and for sec. 102(d), those portions of sec. 103 adding new secs. 182(c)(5), (d)(1), and (e)(4) to the Clean Air Act, that portion of sec. 104 adding new sec. 187(a)(2) to the Clean Air Act, 108(a) and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE
(except for consideration of that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment),
NORMAN Y. MINETA
(except for consideration of that portion of sec. 301 adding a new sec. (112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 112(n)(1) to the Clean Air Act of the House amendment),
JOHN PAUL HAMMERSCHMIDT
(except for consideration of that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment),

For consideration of that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment:

JAMES L. OBERSTAR
(in lieu of Mr. Roe),
HENRY J. NOWAK
(in lieu of Mr. Mineta),
ARLAN STANGELAND
(in lieu of Mr. Shuster),

From the Committee on Ways and Means, for consideration of that portion of section 702 adding a new section 512(a) to the Clean Air Act of the Senate bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,

From the Committee on Ways and Means, for consideration of section 111 of the House amendment, and modifications committed to conference:

RICHARD T. SCHULZE,
WILLIS D. GRADISON, Jr.,
RAY MCGRATH,

From the Committee on Ways and Means, for consideration of those portions of section 103 adding new sections 183(e)(4), (e)(5), and 185 to the Clean Air Act, that portion of section 108 adding a new section 302(y) to the Clean Air Act, and that portion of section 401 adding a new section 402(b)(3) to the Clean Air Act, and section 802 of the House amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
J.J. PICKLE,
CHARLES B. RANGEL (except for consideration of section 802 of the House amendment),

For consideration of Sec. 802 of the House amendment (in lieu of Mr. Rangel):

SAM GIBBONS,

From the Committee on Education and Labor, for consideration of section 303 of the Senate bill, and sections 112 through 114, and section 302 of the House amendment, and modifications committed to conference:

GUS HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
BILL CLAY,
GEORGE MILLER,
AUSTIN J. MURPHY,
DALE E. KILDEE,
PAT WILLIAMS,
MATTHEW G. MARTINEZ,
MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TOM SAWYER,
DONALD M. PAYNE,
GLENN POSHARD,
JOLENE UNSOELD,
BILL GOODLING,
STEVE GUNDERSON,
PETER SMITH,
MARGE ROUKEMA,
HARRIS W. FAWELL,
CASS BALLENGER,
TOM PETRI,
FRED GRANDY,
TOMMY F. ROBINSON,

From the Committee on Interior and Insular Affairs, for consideration of section 112 of the Senate bill, and sec. 712 of the House amendment, and modifications committed to conference:

MO UDALL,
GEORGE MILLER,
MEL LEVINE,
DON YOUNG,
LARRY E. CRAIG,

From the Committee on Merchant Marine and Fisheries, for consideration of sections 112, that portion of section 301 adding a new section 112(n) to the Clean Air Act, 411, and 412 of the Senate bill, and that portion of section 103 adding a new section 183(f) to the Clean Air Act, that portion of section 301 adding a new section 112(n)(l) to the Clean Air Act, sections 712, 805, and 901(e) of the House amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
BILL HUGHES,
BOB DAVIS,

From the Committee on Science, Space, and Technology, for consideration of that portion of section 304 adding a new section 129(e)(7) to the Clean Air Act, sections 310, 408, and 1103 of the Senate bill, and titles IX and X of the House amendment, and modifications committed to conference:

ROBERT A. ROE,
GEORGE E. BROWN, Jr.,
MARILYN LLOYD,
DAN GLICKMAN,
HAROLD L. VOLKMER,
DAVE MCCURDY,
NORMAN Y. MINETA,
TIM VALENTINE,
ROBERT G. TORRICELLI,
RICHARD H. STALLINGS,
HENRY J. NOWAK,
DAVE NAGLE,
JAMES A. HAYES,
JERRY F. COSTELLO,
JOHN S. TANNER,
GLEN BROWDER,
ROBERT S. WALKER,
JIM SENSENBRENNER,
CLAUDINE SCHNEIDER,
SHERWOOD L. BOEHLERT,
TOM LEWIS,
SID MORRISON,
RON PACKARD,
PAUL B. HENRY,
CONSTANCE A. MORELLA,
TOM CAMPBELL,

From the Committee on Science, Space, and Technology, for consideration of those portions of section 301 adding new sections 112(n) and (r) to the Clean Air Act of the Senate bill, and those portions of section 301 adding new sections 112(i) and (n)(1) to the Clean Air Act of the House amendment, and modifications committed to conference:

ROBERT A. ROE,
GEORGE E. BROWN, Jr.,
MARILYN LLOYD,
ROBERT S. WALKER,
CLAUDINE SCHNEIDER,

As an additional conferee, for consideration of subtitle B of title I of the House amendment, and modifications committed to conference:

BOB WISE,

As an additional conferee, for consideration of section 715 of House amendment, and modifications committed to conference:

JIM COOPER,

Managers on Part of the House.

From the Committee on Environment and Public Works:

QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
JOHN H. CHAFEE,
ALAN K. SIMPSON,
DAVID DURENBERGER,

From the Committee on Finance for matters within their jurisdiction:

LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
GEORGE MITCHELL,
BOB PACKWOOD,
JOHN H. CHAFEE,
DAVE DURENBERGER,

Managers on Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. Certain matters agreed to in conference are noted below.

The Conference agreement on S. 1630, the Clean Air Act Amendments of 1990, includes provisions addressing attainment and maintenance of ambient air quality standards, mobile sources of air pollution, toxic air pollution, acid rain, permits, enforcement, stratospheric ozone protection, miscellaneous provisions, and clean air research. A summary of the conference agreement follows.

TITLE I—NONATTAINMENT PROVISIONS

Title I of the conference agreement, which adopts the House Title I except with respect to transportation related issues and with a change concerning the regulation of oxides of nitrogen, divides areas that fail to meet any one of the pollution standards listed above into categories, depending on the severity of the problem, and sets out requirements of different levels of stringency for each category.

Depending on the severity of the pollution problem, nonattainment areas for any of the pollutants must attain the health standard for ozone within five, ten, fifteen, or seventeen years (twenty years for Los Angeles).

In the case of ozone, areas must reduce emissions of volatile organic compounds (VOCs), a precursor of ozone, by 3 percent per year (with waivers for certain specified conditions) until the standard is attained.

Vehicle inspection and maintenance programs must be upgraded in ozone and carbon monoxide areas that already have such programs and must be instituted in most other areas that do not already have them.

The Environmental Protection Agency (EPA) is required to impose one of the following sanctions in an area that fails to prepare or implement a plan to attain an air quality standard: limited use of Federal highway funds or a requirement that new industry offset emissions at a 2 to 1 ratio.

Under the safety exemption to highway sanctions, the principal purpose of the project must be to improve highway safety, but the project may also have other important benefits.

The definition of major sources in current law is modified so that smaller sources of VOCs are required to control emissions (50 tons in moderate and serious areas; 25 tons in severe areas; 10 tons in extreme areas).

When a State fails to develop a plan that meets the requirements of the law, the EPA

is required to promulgate a Federal Implementation Plan.

The EPA is required to issue control requirements for a number of sources of pollution, including commercial and consumer products.

A new program is established to address the interstate transport of ozone air pollution.

The conferees adopt the House language on rocket testing with the agreement that the appropriate Federal agency may find that testing required for a civilian or commercial launch program is essential to the national security.

TITLE II—MOTOR VEHICLE-RELATED PROVISIONS

Title II is based on the House bill with a number of significant modifications.

Reformulated gasoline

Cleaner, reformulated gasoline would be mandated in the nine cities with the most severe ozone pollution beginning in 1995. States could elect to have the requirements apply in other cities with ozone pollution problems. In comparison with conventional gasoline, reformulated gasoline would be required to have 15 percent lower emissions of VOCs and toxic chemicals by 1995, and greater reductions by 2000. The agreement also contains additional standards for oxygen, benzene, and aromatics.

Under section 211(k)(4), a petition for the certification of a fuel formulation or slate of fuel formulations is deemed certified if the Administrator fails to act on the petition within 180 days of its receipt. Such a petition is deemed certified until the Administrator completes action on the petition. In the event that the Administrator subsequently denies such a petition, the conferees intend that the Administrator will take appropriate steps to ensure orderly and prompt compliance.

Section 219 of the bill includes a credit program to provide flexibility in meeting the bill's requirements on the oxygen, aromatic hydrocarbon, and benzene content of reformulated gasoline. A credit program is the mechanism by which persons subject to these requirements will be allowed to pool gasoline sold in a given covered area for purposes of determining compliance with these requirements.

Under this credit program, a person may earn credit for gasoline with a higher oxygen content, lower aromatic hydrocarbon content, or lower benzene content than otherwise required. Such credits, once earned, may be used in the same covered area in which they were earned to offset the sale or use of gasoline with a lower oxygen content, higher aromatic hydrocarbon content, or higher benzene content, as the case may be, than otherwise required. However, EPA regulations shall preclude the use of such credits to the extent that such use would result in an average content in a covered nonattainment area that is less stringent than would occur without a credit program.

The agreement establishes an oxygen content level of 2.7 percent in 44 cities with carbon monoxide pollution, starting in 1992. These provisions will encourage the use of oxygen-containing additives like ethanol and MTBE, a natural gas derivative.

It is the intent of the conferees that State Implementation Plans in CO areas implementing section 211(m)(2) shall have a prohibition similar to that provided in section 211(k)(5).

Tailpipe standards for cars and trucks

Auto manufacturers are required to reduce tailpipe emissions of hydrocarbons and oxides of nitrogen by 35 percent and 60 percent, respectively, beginning with 40 percent of the vehicles sold in 1994 and increasing to 100 percent of vehicles sold in 1998. Comparable reductions are required for light trucks such as vans and pickups.

An additional reduction in auto emissions—a 50 percent cut below the standards required in the mid-1990's—would be required after 2003 unless EPA finds that this new standard is not necessary, technologically feasible, or cost effective.

Other requirements

Vehicle manufacturers must install systems to alert drivers when an emission control system is malfunctioning.

The conference agreement retains the present section 177 language, which provides for adoption and enforcement of California vehicle standards by other States.

In addition, the agreement amends section 177 to make plain that States exercising this section 177 option may not, in such adoption and enforcement, create a "third vehicles" that is not a California vehicle or a 49-State Federal vehicles, because of the burden it would place on the motor vehicle manufacturers.

Fleet vehicles

A program for fleet vehicles is included in the agreement. Fleet vehicles covered by the program would be substantially cleaner than conventional vehicles. The fleet program applies in serious, severe, and extreme nonattainment areas to fleets of ten or more vehicles that are capable of being centrally fueled (but not including vehicles garaged at personal residences each night under normal circumstances).

The fleet program will mandate California's low emission vehicle (LEV) standards by 1998 for light-duty vehicles and light-duty trucks below 6,000 lbs. gross vehicle weight rating (gvwr), provided these vehicles are offered for sale in California. By 2001, these vehicles will be required without regard to availability in California.

Heavy-duty fleet vehicles from 8,500 lbs. gvwr to 26,000 lbs. gvwr will be required to meet a combined NO_x and hydrocarbon emission standard that will provide a 50% reduction below emissions from a 1994 heavy-duty diesel engine. If EPA determines this standard is not technically feasible for a clean diesel fueled engine, it can be modified to require a 30% reduction.

The agreement would shorten the warranty period for all light-duty vehicle and light-duty truck emission control components to two years or 24,000 miles starting in 1995 but extends the applicable coverage for major components costing more than $200 (such as the catalytic converter, onboard diagnostics and the electronic control system) to eight years or 80,000 miles.

Section 208(c) requires the Administrator to maintain the confidentiality of any information provided to the Administrator which, if made public, would divulge "methods or processes" entitled to protection as trade secrets. The Administrator should maintain the confidentiality of business information provided to the Administrator by covered fleet operators, provided such information is confidential within the meaning of section 1905 of Title 18 of the United States Code.

TITLE III—AIR TOXICS PROVISIONS

Routine Emissions From Major Sources

List of pollutants and source categories

The conference agreement lists 189 chemicals for regulation.

For purposes of section 112 of the Clean Air Act, a source cannot be a major source and an area source.

MACT standard

For each category of sources, EPA will promulgate a standard which requires the installation of maximum achievable control technology (MACT) by the sources in the category.

Section 112(e) requires that MACT standards for 40 source categories shall be promulgated not later than 2 years after the date of enactment. In selecting categories for standards in this group, the Administrator shall, at the Administrator's discretion, pick the priority elements of the hazardous organic NESHAP which is under development.

Existing sources must comply with MACT standards no later than 3 years after they are issued. Section 112(i)(3)(B) authorizes the Administrator or a State to grant a 1 year extension for compliance with the MACT standards and other requirements beyond the 3-year period that would otherwise apply. Only one such extension may be granted.

New section 112(d)(2) requires EPA to require the maximum degree of reduction of hazardous air pollutants that the Administrator determines is achievable. In a case where a source emits more than one hazardous air pollutant, EPA must consider each pollutant.

The conferees wish to emphasize that in promulgating standards, the EPA should devote its resources first to those pollutants which present the greatest risk to the public health and the environment. Additionally, reviewing the beryllium standard now in effect should be a lower priority unless delaying the review would result in significant risks to public health and the environment in light of data collected since the standard was adopted.

For categories and subcategories of sources of hazardous air pollutants engaged in mining, extraction, beneficiation, and processing of nonferrous ores, concentrates, minerals, metals, and related in-process materials, the Administrator shall not consider the substitution of, or other changes in, metal- or mineral-bearing raw materials that are used as feedstocks or materials inputs, or metal- or mineral-bearing materials processed or derived from such feedstocks or materials in setting emission standards, work practice standards, operating standards or other prohibitions or requirements or limitations under this section for such categories and subcategories. The prohibition of the preceding sentence shall not apply to the substitution, modification, or changes of chemicals (not including metal- or mineral-bearing materials) used in mining, extraction, beneficiation, or processing of nonferrous ores, concentrates, minerals, metals, and related in-process materials which is necessary to reduce air emissions of such chemicals and for which substitutes that are safe and effective in performing the intended function of the chemical to be substituted are reasonably available.

Residual risk

Standards to protect public health and the environment are to be set for both threshold and non-threshold pollutants

under section 112(f). Section 112(f) contains a trigger for standards for non-threshold pollutants and the subsection is also linked to the recently promulgated NESHAP for benzene which sets out the appropriate policy for regulating non-threshold pollutants. But the absence of a trigger or policy reference for threshold pollutants shall not be interpreted in any way to preclude regulation of theshold pollutants under such subsection or to suggest that non-threshold pollutants are of a higher priority for regulation.

Dual regulation

The standard to be applied by the Administrator in determining whether the regulatory program under the Atomic Energy Act provides "an ample margin of safety to protect the public health" is the same as the "ample margin of safety to protect the public health" standard in effect under section 112 in the Clean Air Act prior to the date of enactment of the Clean Air Act Amendments of 1990.

In the first step of this analysis, the Administrator must determine a safe or acceptable level of risk considering only health factors. In the second step, the Administrator may consider cost, feasibility and other relevant factors in addition to health in order to set a standard to provide an "ample margin of safety."

This approach is required under the decision of the U.S. Court of Appeals in *NRDC* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (*Vinyl Chloride*) (interpreting section 112 as in effect prior to these Amendments), and is set forth in the rulemaking on emissions standards for benzene, 54 *Fed. Reg.* 38044 (Sept. 14, 1989).

Permits

It is the conferees' intent that EPA not use the permit hammer approach (case-by-case) to avoid or delay meeting MACT requirements.

Routine Emissions From "Area" Sources

Based on the list of pollutants mentioned above, EPA can also list an area source category just as the agency would list a major source category, and can require MACT. EPA must list sufficient source categories to assure that 90% of the emissions of the 30 most serious area source pollutants are regulated.

Five years after enactment, EPA is to propose a national urban air toxics strategy to reduce cancer risks associated with urban air toxics by 75%. EPA is to report on reductions achieved in 8 and 12 years intervals.

Accidental Releases

The agreement contains provisions that are designed to prevent chemical accidents.

EPA is to publish a list of at least 100 regulated substances, of which 16 are listed in the agreement.

EPA is authorized to promulgate accident prevention regulations.

The conferees do not intend the term "stationary source" to apply to transportation, including the storage incident to such transportation, of any regulated substance or other extremely hazardous substance under the provisions of this subsection.

The prohibition on listing substances for the accident prevention program which have been listed under this section 108(a) does not preclude the listing of anhydrous sulfur dioxide which is on the initial list.

The conference agreement establishes a Chemical Safety and Hazard Investigation Board, similar to the National Transportation Safety board, to investigate chemical accidents.

The Board is authorized to investigate accidental releases which cause substantial property damage. Substantial damage would include fires, explosions, and other events which cause damages that are very costly to repair or correct, and would not include incidental damage to equipment or controls.

Hazard assessments required under this section shall include:

(1) basic data on the source, units at the source facility which contain or process regulated substances (including the longitude and latitude of such units), operating procedures, population of nearby communities, and the meteorology of the area where the source is located;

(2) an identification of the potential points of accidental releases from the source of regulated substances;

(3) an identification of any previous accidental releases from the source including the amounts released, frequencies, and durations;

(4) an identification of a range (including worst case events) of potential releases from the source, including an estimate of the size, concentration, and duration of such potential releases and a correlation of such factors with the distance from the source of the release;

(5) a determination of potential exposure (including the concentration and duration of exposure) for all persons who may be put at risk as the result of a release from the source;

(6) information on the toxicity of the regulated substances present at the facility; and

(7) a review of the efficacy of various release prevention and control measures, including process changes or substitution of materials.

The Administrator shall prepare and distribute information on the health effects and other hazards associated with each regulated substance, which shall be included in each hazard assessment prepared under this section.

The term "hazardous substances" is used to describe the substances with respect to which the Commission is to consider adverse effects and is not to be interpreted to be the same as that term is defined in section 101(14) of CERCLA or to imply that the effects of substances addressed by Superfund should be given more consideration than those substances controlled under other programs. The Commission should consider effects from a broad range of substances.

The charge to the Commission included in the conference agreement is broader than had been included in the Senate bill. The Commission should include programs to control exposure to hazardous substances under a broad range of programs, including:

(1) the regulation of hazardous air pollutants under section 112 of the Clean Air Act;

(2) effluent guidelines for priority toxic pollutants under the Clean Water Act;

(3) maximum contaminant levels for drinking water contaminants under the Safe Drinking Water Act;

(4) technology standards and other requirements for hazardous waste under the Solid Waste Disposal Act;

(5) clean-up requirements for hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act;

(6) tolerances for pesticide residues in food under the Federal Food, Drug and Cosmetic Act;

(7) label requirements and other restrictions on use under the Federal Insecticide, Fungicide and Rodenticide Act;

(8) restrictions on the use or manufacture of chemical substances under the Toxic Substances Control Act;

(9) the regulation of food additives under the Federal Food, Drug and Cosmetic Act;

(10) regulation of the transportation of hazardous materials by the Department of Transportation.

Municipal Incinerators

The conference agreement includes a provision to control the air emissions from municipal, hospital, and other commercial and industrial incinerators.

The Administrator entered into a consent decree in *New York, et al.* v. *EPA*, requiring the promulgation of new source performance standards for solid waste incineration units burning municipal waste by December 31, 1990. The provisions of section 129(a) do not disturb that schedule with respect to units with a capacity greater than 250 tons per day. To the extent that the provisions of section 129 are in conflict with the proposed standards, the proposal should be amended before promulgation. Requirements which are in addition to those already proposed, including any requirement for the use of scrubbers on existing units, shall be promulgated not later than 12 months after enactment. Proposed requirements for units smaller than 250 tons per day should be reconsidered in light of the new provisions of section 129 and shall be promulgated not later than 24 months after enactment.

In adopting the definitions of "solid waste incinerator unit" and "municipal waste" in section 129, the managers intend that the definition apply only for purposes of this section and section 306 of the Clean Air Act Amendments of 1990 and should not be interpreted to affect or apply in any manner to the Solid Waste Disposal Act.

The new section 129(g) also includes a definition of "modified solid waste incineration unit". The provisions of this definition only apply to the regulation of solid waste incineration units and shall not be carried over to other parts of the Act.

The definition of "municipal waste" excludes medical and industrial process wastes which have been segregated from other wastes. Segregated wastes would also include wastes that had not been mixed with other wastes but had always been in a separate waste stream.

The conferees do not intend to prejudice or affect in any manner ongoing litigation, including *Environmental Defense Fund* v. *Wheelabrator Inc.*, 725 F. Supp. 758 (2d Cir.) and *Environmental Defense Fund* v. *City of Chicago*, Appeal No. 90-3060 (7th Cir.), or any State activity regarding ash.

TITLE IV—ACID RAIN PROVISIONS

The agreement reduces sulfur dioxide (SO_2) emissions by at least ten million tons per year from a 1980 baseline and provides a national cap on sulfur dioxide emissions beginning in the year 2000. This title, based on the Senate bill, also reduces emissions of oxides of nitrogen (NO_x) by approximately two million tons per year.

Baseline

The 1980 through 1989 baseline shall be determined based on EIA-767 or, if the relevant EIA-767 data is not available, as reported on EIA-759, unless the Administrator determines that adequate supporting documentation can be provided that shows

that the particular unit consumed less than 90 percent natural gas even though the plant consumed more than 90 percent natural gas.

The Administrator shall adjust the baseline to account for forced and planned outages of 4 months or more between 1985 and 1987 as reported on the North American Electric Reliability Council's (NERC) Generating Availability Data System (GADS). For units not included in GADS, an adjustment shall only be made for units having only a single 4 month period with no fuel consumption between 1985 and 1987 as reported on Form EIA-767.

Marketable allowances

The conferees do not intend that any affected unit or affected source be subject to any penalty for "exceeding" its allowances for a given calendar year until that year has ended and all transfers of allowances applicable to that year have been completed within a reasonable time after the end of that year. In other words, the bill does not provide that at any given time in a calendar year a unit may emit no more than the amount that is authorized by the allowances that it holds at that time. The only time at which comparison of a unit's emissions with its allowances is relevant is the end of the calendar year.

The conferees note that section 403(d) provides that no allowance allocated to any unit for one year may be carried backward and added to allowances in an earlier year.

This subsection makes it clear that allowances are annual; temporary increases and decreases in emissions within utility systems or power pools do not require allowance transfers or recordation so long as the total tonnage emitted in any year matches allowances held for that year. Thus, utilities must "true up" at year end to ensure that allowances match emissions for each unit.

Subsection (a) provides a general direction to the Administrator to issue annual allowances to affected units. It also provides that removal of an affected unit from commercial operation, whether prior to or after the date of enactment, shall not affect the unit's entitlement to allowances, except as provided in section 410.

Phase I

Plants that use certain control technologies to meet their Phase I reduction requirements may either postpone compliance until 1997 or receive early-reduction bonus allowances for reductions they achieve between 1995 and 1997. In addition, Phase I plants that use certain control technologies will also receive 2 for 1 credit for every ton of reduction they achieve below a 1.2 lbs./mmBtu level during Phase I.

One aspect of the legislation, dealing with units having a nameplate capacity of 25 MW or less, deserves clarification. Such units are exempt from the definition of "existing unit" and therefore are not "affected units" for the purposes of the provisions permitting units to "opt in" under section 410. Although they are not affected units, they are given the opportunity to opt in, and receive allowances.

Phase II

Nationwide, plants that emit SO_2 at a rate below 1.2 will be able to increase their emissions between now and the year 2000 by roughly 20% and will then be limited to that level. This requirement is necessary to maintain the nationwide cap on SO_2 emissions.

Bonus allowances are distributed to accommodate growth by units in States with statewide average emissions below 0.8 lbs/mmBtu.

Units that use energy conservation or renewable energy will receive special incentive allowances for making early reductions in SO_2 emissions.

EPA will auction allowances to ensure their availability to utilities that may not be able to acquire them in the allowance "market".

Utility NO_x emissions

Section 407(b)(2) is intended to incorporate a portion of the Senate Environment and Public Works Committee Report of December 20, 1989, S. Report 101-228, that the NO_x emission control technology requirements for cyclone boilers, roof-fired boilers, wet-bottom boilers, stoker boilers and cell burners are to reflect the relative difficulty of controlling NO_x emissions from these boilers. Emission limitations that are promulgated under section 407(b)(2) are to be based on methods that are available for reducing emissions from such boilers that are as cost effective as the application of low nitrogen oxide burner technology to dry bottom wall-fired and tangentially-fired boilers.

The NO_x reductions from existing units mandated under section 407 are to be accomplished by use of conventional, available burner technology ("low-NO_x" burners).

Clean coal technology projects

It is the intent of the conferees that, in recognition of the significant reductions required of Phase I affected utilities, special consideration be given to those utilities if they submit proposals for funding to the Clean Coal Technology Program, within the context of the existing Clean Coal Technology Program.

It is recommended that one Clean Coal Technology Program project in Round IV of the program be the design, construction and testing of a technology system for a cyclone boiler of 500 megawatts or more that will serve as a model for sulfur dioxide and nitrogen oxide reduction technology at similarly affected units required to meet the emissions reductions prescribed in this bill.

It is recommended that the Secretary of Energy expedite approval and funding, with the Department of Energy providing no less than 50 percent of the funding for such project, to enable the project to be completed no later than January 1, 1995. It is recommended that the unit selected for this project should be in a utility plant that: is among the top 10 emitters of SO_2 as identified on Table A of section 404; has 3 or more units, two of which are cyclone boiler units; and has no existing scrubbers.

WEPCO

The deletion of most provisions relating to the WEPCO decision is not intended to affect or prejudice in any way the issues or resolution of the WEPCO matter. At the same time, the conferees urge a quick resolution of the WEPCO matter by EPA as appropriate.

The conferees intend that termination of the seasonal or temporary use of a cleaner fuel shall not be considered a modification for purposes of section 111 or part C of Title I.

TITLE V—PERMIT PROVISIONS

The conference agreement includes provisions that require various sources of air pollution to obtain operating permits which would ensure compliance with all applicable requirements of the Clean Air Act.

Permit programs

EPA is required to issue permit program regulations within one year. States are required to develop programs consistent with those regulations. The programs would be in effect within four years, and the requirement to have a permit would be phased-in over the ensuing three years.

Consistent with the general provisions of section 116 of the Clean Air Act, the conferees understand that a State may establish additional, more stringent permitting requirements, but a State may not establish permit requirements that are inconsistent with the national permitting requirements of this Act, including this title.

EPA Oversight of Permit Programs

The conference agreement provides EPA with the authority to review permits proposed to be issued by a State and to object to permits that violate the Clean Air Act. EPA would also have the opportunity to waive review of permits for small sources.

State response to EPA objections

Under the conference agreement, States would be granted 90 days to revise permits to meet any EPA objection. If the State fails to revise the permit, EPA will issue or deny the permit.

Permit shield

The agreement provides that compliance with a permit is deemed compliance with the requirements of the permit program. Permit compliance also may be deemed compliance with other applicable provisions of the Clean Air Act if the permit has been issued in accordance with Title V and includes those provisions, or if the permitting authority includes in the permit a specific determination that such provisions are not applicable.

Operational flexibility

Facilities will be authorized to make changes in operations without the necessity for a permit revision so long as: (i) the changes are not "modifications" under Title I of the Act, (ii) the changes will not result in emissions that exceed emissions allowable under the permit, and (iii) the facility provides EPA and the permitting authority with seven days written notice in advance of the changes.

Processing permit applications

Except for applications submitted within the first year of the permit program (for which a 3-year phased review is allowed), States are required to act upon permit applications within 18 months.

Small business stationary sources

The agreement provides that small business sources are eligible for technical and compliance assistance in satisfying the permitting requirements.

The agreement restrains the flexibility under section 507 to that which is consistent and in compliance with the applicable Federal regulation, including the deadlines of this Act. However, the conferees intend that the EPA, in developing regulations, give careful consideration to opportunities for flexibility, based on the technical and financial limitations of small businesses. This same principle of encouraging flexibility also applies in the case of EPA guidance documents, such as CTGs, where differentiating among the size and type of facilities is particularly important.

TITLE VI—STRATOSPHERIC OZONE PROTECTION

The conference agreement includes phase out schedules for CFCs, halons, carbon te-

trachlorides, and methyl chloroform. Key provisions include:

HCFC production freeze in 2015 and elimination in 2030, coupled with use limitations beginning in 2015 and, for use as a refrigerant in appliances, 2020;

recapture, recycling, and safe disposal regulations to be phased in beginning January 1, 1992;

a July 1, 1992 prohibition on venting during appliance service, repair, and disposal;

effective January 1, 1992, a requirement to use certified recycling equipment when servicing motor vehicle air conditioners;

restrictions on the sale of small cans of class I and class II refrigerants;

a ban on nonessential uses of ozone depleting chemicals;

labeling requirements;

a safe alternatives policy to promote the transition to safe substitutes;

a requirement for Federal agencies to modify procurement regulations in accordance with the requirements and policies of this title;

a prohibition on the export of technologies to produce class I substances and on investments to produce class I or class II substances to nations that are not Parties to the Montreal Protocol;

domestic and international trading of production allowances (industrial rationalization);

authorization for the U.S. contribution to the international fund that has been established to assist developing countries; and

studies on sources of and options for controlling emissions of methane.

The conference agreement does not include a requirement to construe the term "production" "in a manner consistent with the Protocol." The Protocol's exlcusion for manufactured substances that are subsequently destroyed is too broad and does not include adequate safeguards to preclude abuse. In the course of implementing this Act, however, EPA shall consider whether an exclusion will be allowed on a case-by-case basis for the manufacture of controlled substances that are (1) coincidental, unavoidable byproducts of a manufacturing process and (2) immediately contained and destroyed by the producer using maximum available control technologies.

TITLE VII—FEDERAL ENFORCEMENT

The conference agreement includes a number of provisions that enhance the enforcement authority of the Federal government under the Clean Air Act while at the same time providing substantive procedural safeguards. In general terms, the agreement increases the range of civil and criminal penalties for violations of the Clean Air Act.

SIP and permit violations

The conference agreement revises and strengthens EPA enforcement authority regarding violations of State Implementation Plan and permits, including authority to bring civil actions for injunctive relief and penalties, as well as new authority to issue administrative penalty orders in response to violations. These authorities can also be used by EPA when States fail to enforce SIPs or permit requirements.

Violations of other requirements

EPA is authorized to initiate a range of enforcement actions for a number of violations of specified sections and titles of the Act. Included is authority to issue administrative penalty orders, file civil actions, and initiate criminal proceedings via the Attorney General.

It is the conferees' intention to provide the Administrator with prosecutorial discretion to decide not to seek sanctions under Section 113 for de minimis or technical violations in civil and criminal matters.

Criminal penalties

Criminal fines and penalties are included for a range of violations of the Act, including negligent or knowing violations that result in the endangerment of others, knowing violations of SIPs that occur after the violator is on notice of the violation, knowing violations of certain sections in the permit title, and knowing violations of the acid rain title or the stratospheric ozone protection title. In addition, the agreement provides criminal fines and penalties for the knowing filing of false statements and other similar recordkeeping, monitoring, and reporting violations. Consistent with other recent environmental statutes, criminal violations of the Clean Air Act are upgraded from misdemeanors to felonies.

The amendments add new criminal sanctions for recordkeeping, filing and other omissions. These provisions are not meant to penalize inadvertent errors. For criminal sanctions to apply, a source owner or operator must be on notice of the recordkeeping, information or monitoring requirements in question.

Nothing in subsection 113(c) is intended to discourage owners or operators of sources subject to this Act from conducting self-evaluations or self-audits and acting to correct any problems identified. On the contrary, the environmental benefits from such review and prompt corrective action are substantial and section 113 should be read to encourage self-evaluation and self-audits.

Owners and operators of sources are in the best position to identify deficiencies and correct them, and should be encouraged to adopt procedures where internal compliance audits are performed and management is informed. Such internal audits will improve the owners' and operators' ability to identify and correct problems before, rather than after, government inspections and other enforcement actions are needed.

The criminal penalties available under subsection 113(c) should not be applied in a situation where a person, acting in good faith, promptly reports the results of an audit and promptly acts to correct any deviation. Knowledge gained by an individual solely in conducting an audit or while attempting to correct any deficiencies identified in the audit or the audit report itself should not ordinarily form the basis of the intent which results in criminal penalties.

Field citations

The conference agreement provides new authority for EPA to implement a field citation program for minor violations of the Act.

TITLE VIII—MISCELLANEOUS PROVISIONS

Outer Continental Shelf

A new program is established providing for control of air pollution from Outer Continental Shelf drilling facilities.

Visibility provisions

The conference agreement retains the Senate provisions concerning visibility. EPA and other Federal agencies are directed to conduct a study to identify and evaluate sources of visibility impairment.

Comprehensive analysis of benefits and costs

The EPA and GAO are directed to make a comprehensive analysis of the benefits and costs of the various requirements of the Clean Air Act. A council of independent experts would advise EPA on how to predict future costs and benefits of various clean air programs.

CO_2 data collection

The intent of the managers is to establish a data collection policy on carbon dioxide (CO_2) emissions in this country. For this purpose, all sources subject to Title IV will be required to monitor their (CO_2) emissions on an annual basis. This calculation can be made either through the use of emissions monitors, or other comparably precise methods such as fuel sampling coupled with unit operating data. It is not the intent of the managers to require the installation of continuous emissions monitoring systems for (CO_2) on all sources subject to Title IV.

TITLE IX—CLEAN AIR RESEARCH

The House and Senate provisions in this area were generally similar. The conference agreement adopts the House title with several changes drawn from the Senate bill.

The primary change involves adoption of the Senate's proposal to continue the acid rain research program begun under NAPAP with a Task Force composed of several agency heads. Under the agreement, the President would appoint the chairman of the Task Force. The Task Force would be responsible for reviewing the status of acid rain research conducted to date, coordinating acid rain research activities with other Federal agencies, publishing and maintaining a National Acid Lakes Registry, making budgetary recommendations to the President for the Federal government's acid rain research activities, and reporting to Congress on a variety of data. With certain modifications, the conference agreement also adopts the Senate's Western Lakes and Waters research provision.

The agreement generally follows the House provisions with respect to the various research and study programs to be conducted by the EPA. It provides for an EPA program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. In addition, EPA will be required to conduct an environmental health research program on the short-term and long-term effects of air pollution.

EPA is further directed to conduct an ecosystems research program and, in consultation with the Secretary of Energy and others, to oversee an experimental research and analytical research and field testing effort at the Liquified Gaseous Fuels Spill Test Facility in Nevada. This effort is intended to develop improved models for atmospheric dispersion of chemicals, evaluate existing and future models, and evaluate the effectiveness of certain hazard mitigation and emergency response technologies.

EPA is directed to conduct a basic engineering research and technology program to develop and demonstrate non-regulatory strategies for air pollution prevention. In addition, EPA will conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuels.

The Administrator is also required to develop and implement a plan for coordinating research with other Federal ecological and air pollution research efforts. The assessment conducted under the new "Coordination of Research" provision of section 103

may include an evaluation of the applicability, accuracy, reliability, and cost-effectiveness of an expanded stationary source network and a system that utilizes personal monitoring techniques.

A study that compares international air pollution control technologies of selected industrialized countries will also be conducted for the purpose of determining if there exist such technologies abroad that may have beneficial applications in the United States.

TITLE X—DISADVANTAGED BUSINESS CONCERNS

The conference agreement adopts the House's Title X, relating to disadvantaged business concerns, with one substantive modification. Under the bill, as modified, the Administrator shall, to the extent practicable, require that not less than 10 percent of total Federal funding for clean air research relating to the requirements of the Act will be available to disadvantaged business concerns.

TITLE XI—JOB DISPLACEMENT PROVISION

The managers encourage the Department of Labor to provide technical assistance to applicants with the preparation of grant applications.

The managers encourage the Department of Labor to make every effort to ensure the prompt approval of applications for training programs.

The conferees have adopted needs-based payments as an extension of support beyond eligibility for unemployment compensation benefits. The determination of need shall be based upon the current family income of the employee (excluding unemployment compensation, child support payments, and welfare payments). If that income in relation to family size is not in excess of the lower living standard income level, then need is established.

Under the acid rain title of the Clean Air Act, 111 coal-fired utilities will be obligated to reduce their emissions of sulfur dioxide and nitrogen oxides. Table A lists these plants and the number of tons of emissions which they will have to reduce. It is the presumption of the conferees that workers who are displaced due to a decrease in the demand for coal from the supplying mines will be deemed to have lost their jobs as a consequence of the Clean Air Act requirements.

From the Committee on Energy and Commerce, for consideration of the Senate bill (except that portion of section 702 adding a new section 512(a) to the Clean Air Act), and the House amendment, and modifications committed to conference:

JOHN D. DINGELL,
JIM SCHEUER,
HENRY A. WAXMAN,
PHILIP SHARP,
TOM LUKEN,
AL SWIFT,
MIKE SYNAR,
BILLY TAUZIN,
RON WYDEN,
RALPH M. HALL,
DENNIS E. ECKART,
JIM SLATTERY,
GERRY SIKORSKI,
RICK BOUCHER,
J. ROY ROWLAND,
THOMAS J. MANTON,
NORMAN F. LENT,
ED MADIGAN,
CARLOS J. MOORHEAD,
BOB WHITTAKER,
TOM BLILEY,
JACK FIELDS,
M.G. OXLEY,
HOWARD C. NIELSON,
MIKE BILIRAKIS
(except for title II of the Senate bill and title II of the House amendment).

For consideration of title II of the Senate bill and title II of the House amendment (in lieu of Mr. Bilirakis):

TOM TAUKE,

From the Committee on Public Works and Transportation, for consideration of sections 106 (g) and (h) of the Senate bill, and that portion of section 101(c) adding a new section 100(m) to the Clean Air Act, sections 101(f) and 102(g) of the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JAMES L. OBERSTAR,
HENRY J. NOWAK,
NICK RAHALL,
DOUGLAS APPLEGATE,
GUS SAVAGE,
DOUGLAS H. BOSCO,
ROBERT A. BORSKI,
JOE KOLTER,
TIM VALENTINE,
WILLIAM O. LIPINSKI,
PETER J. VISCLOSKY,
JAMES A. TRAFICANT, Jr.,
JOHN LEWIS,
JOHN PAUL HAMMERSCHMIDT,
ARLAN STANGELAND,
WILLIAM F. CLINGER, Jr.,
TOM PETRI,
RON PACKARD,
SHERWOOD L. BOEHLERT,
J. DENNIS HASTERT,

From the Committee on Public Works and Transportation, for consideration of secs. 103, 106(f), those portions of sec. 106(g) adding new secs. 108(f)(3) and (4) to the Clean Air Act, those portions of sec. 107 adding new secs. 103 (b)(4)(B) and (c)(1) to the Clean Air Act, that portion of sec. 108 adding a new sec. 189(a) to the Clean Air Act, 222, 226, and that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and for sec. 102(d), those portions of sec. 103 adding new secs. 182 (c)(5), (d)(1), and (e)(4) to the Clean Air Act, that portion of sec. 104 adding new sec. 187(a)(2) to the Clean Air Act, 108(a) and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE
(except for consideration of that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment),
NORMAN Y. MINETA
(except for consideration of that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment),
JOHN PAUL HAMMERSCHMIDT
(except for consideration of that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment),

For consideration of that portion of sec. 301 adding a new sec. 112(n) to the Clean Air Act of the Senate bill, and that portion of sec. 301 adding a new sec. 112(n)(1) to the Clean Air Act of the House amendment),

JAMES L. OBERSTAR,
(in lieu of Mr. Roe),
HENRY J. NOWAK,
(in lieu of Mr. Mineta),
ARLAN STANGELAND,
(in lieu of Mr. Shuster),

From the Committee on Ways and Means, for consideration of that portion of section 702 adding a new section 512(a) to the Clean Air Act of the Senate bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,

From the Committee on Ways and Means, for consideration of section 111 of the House amendment, and modifications committed to conference:

RICHARD T. SCHULZE,
WILLIS D. GRADISON, Jr.,
RAY MCGRATH,

From the Committee on Ways and Means, for consideration of those portions of section 103 adding new sections 183(e)(4), (e)(5), and 185 to the Clean Air Act, that portion of section 108 adding a new section 302(y) to the Clean Air Act, and that portion of section 401 adding a new section 402(b)(3) to the Clean Air Act, and section 802 of the House amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
J.J. PICKLE,
CHARLES B. RANGEL
(except for consideration of section 802 of the House amendment),

For consideration of sec. 802 of the House amendment (in lieu of Mr. Rangel):

SAM GIBBONS,

From the Committee on Education and Labor, for consideration of section 303 of the Senate bill, and sections 112 through 114, and section 302 of the House amendment, and modifications committed to conference:

GUS HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
BILL CLAY,
GEORGE MILLER,
AUSTIN J. MURPHY,
DALE E. KILDEE,
PAT WILLIAMS,
MATTHEW G. MARTINEZ,

MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TOM SAWYER,
DONALD M. PAYNE,
GLENN POSHARD,
JOLENE UNSOELD,
BILL GOODLING,
STEVE GUNDERSON,
PETER SMITH,
MARGE ROUKEMA,
HARRIS W. FAWELL,
CASS BALLENGER,
TOM PETRI,
FRED GRANDY,
TOMMY F. ROBINSON,

From the Committee on Interior and Insular Affairs, for consideration of section 112 of the Senate bill, and sec. 712 of the House amendment, and modifications committed to conference:

MO UDALL,
GEORGE MILLER,
MEL LEVINE,
DON YOUNG,
LARRY E. CRAIG,

From the Committee on Merchant Marine and Fisheries, for consideration of sections 112, that portion of section 301 adding a new section 112(n) to the Clean Air Act, 411, and 412 of the Senate bill, and that portion of section 103 adding a new section 183(f) to the Clean Air Act, that portion of section 301 adding a new section 112(n)(1) to the Clean Air Act, sections 712, 805, and 901(e) of the House amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
BILL HUGHES,
BOB DAVIS,

From the Committee on Science, Space, and Technology, for consideration of that portion of section 304 adding a new section 129(e)(7) to the Clean Air Act, sections 310, 408, and 1103 of the Senate bill, and titles IX and X of the House amendment, and modifications committed to conference:

ROBERT A. ROE,
GEORGE E. BROWN, Jr.,
MARILYN LLOYD,
DAN GLICKMAN,
HAROLD L. VOLKMER,
DAVE MCCURDY,
NORMAN Y. MINETA,
TIM VALENTINE,
ROBERT G. TORRICELLI,
RICHARD H. STALLINGS,
HENRY J. NOWAK,
DAVE NAGLE,
JAMES A. HAYES,
JERRY F. COSTELLO,
JOHN S. TANNER,
GLEN BROWDER,
ROBERT S. WALKER,
JIM SENSENBRENNER,
CLAUDINE SCHNEIDER,
SHERWOOD L. BOEHLERT,
TOM LEWIS,
SID MORRISON,
RON PACKARD,
PAUL B. HENRY,
CONSTANCE A. MORELLA,
TOM CAMPBELL,

From the Committee on Science, Space, and Technology, for consideration of those portions of section 301 adding new sections 112 (n) and (r) to the Clean Air Act of the Senate bill, and those portions of section 301 adding new sections 112 (i) and (n)(1) to the Clean Air Act of the House amendment, and modifications committed to conference:

ROBERT A. ROE,
GEORGE E. BROWN, Jr.,
MARILYN LLOYD,
ROBERT S. WALKER,
CLAUDINE SCHNEIDER,

As an additional conferee, for consideration of subtitle B of title I of the House amendment, and modifications committed to conference:

BOB WISE,

As an additional conferee, for consideration of section 715 of the House amendment, and modifications committed to conference:

JIM COOPER,
Managers on Part of the House.

From the Committee on Environment and Public Works:

QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
JOHN H. CHAFEE,
ALAN K. SIMPSON,
DAVID DURENBERGER,

From the Committee on Finance for matters within their jurisdiction:

LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
GEORGE MITCHELL,
BOB PACKWOOD,
JOHN H. CHAFEE,
DAVE DURENBERGER,
Managers on Part of the Senate.

Mr. BROWN of Colorado. Mr. Speaker, I would like to take this opportunity to commend the managers of S. 1630, the Clean Air Act Amendments of 1990, the leadership and my colleagues who have served endless hours on the conference committee for coming forth with a compromise package that we can all support. This bill has been nearly 10 years in the making. It is with great pride and enthusiasm that I stand here today and participate in its passage.

I would like briefly to emphasize a provision in this package that is of particular concern to my constituents in the State of Colorado, as well as to those of the Rocky Mountain region who suffer from the consequences of pollutants from vehicle emissions. The provision to which I refer is one that authorizes the EPA to establish high altitude testing centers. Research into cleaner burning engines and fuels is of paramount importance to our part of the country. Our high altitude location presents us with some unique problems. High levels of carbon monoxide and the visible particulates that produce the brown cloud are problems that cannot be solved at sea level research and testing sites. It is critical, therefore, that if we are to find solutions to these problems and meet the standards mandated in this act, that we pursue research and development of new technologies that have been tested at high altitude conditions.

In Colorado, we have been aggressively pursuing the testing of pollution control devices and tailpipe emissions in order to remove polluting vehicles from the roads and highways. We have instituted a number of fuel programs in order to provide drivers with cleaner burning vehicles. The National Center for Vehicle Emissions Safety and Control, for instance, has conducted extensive testing of pollution control devices. The Center has been the national site for training of inspection and maintenance personnel throughout the country. Initiated by the EPA and funded for the past 12 years, this Center has assumed a leadership role in the development of alternative fuels and in the construction of cleaner burning engines in light-duty trucks and passenger vehicles.

Federally supported high altitude research and testing will enable researchers, such as those at the National Center for Vehicle Emission Safety and Control, to continue their efforts on behalf of cleaner air in the Rocky Mountain region. I am delighted to see that we have before us today a bill that incorporates this extremely vital function in our campaign to clean the air along the Rocky Mountain Range.

Mr. MILLER of Washington. Mr. Speaker, I rise in strong support of the conference agreement on the Clean Air Act amendments. This bill is long overdue. Thirteen years ago, Congress passed the first Clean Air Act. Today, we are updating and improving this important law. And it's about time.

This bill will reduce acid rain by reducing emissions of NO_x and sulfur dioxide.

Urban air pollution is a problem in my district. And this bill reduces air pollution by improving the standards for gasoline production and by moving toward less polluting fuels based on renewable resources. Because of this bill, we will see more clean fuel cars and an end to leaded gasoline. And cleaner air in our cities.

Mr. Speaker, the Clean Air Act establishes a list of 189 toxic air pollutants. Within 6 years, the Environmental Protection Agency must complete work on health-based standards for controlling these chemicals. Companies will need to reduce significant emissions.

The Clean Air Act amendments we are passing today will make our environment cleaner and safer. But, wisely, Mr. Speaker, we also recognize that air pollution is an international problem too. Specifically, we all recognize the threat posed by chemicals which deplete the ozone layer. Under this new law, production of the five most destructive chlorofluorocarbons or C.F.C.S. will be phased out by the year 2000. The schedule of reductions contained in this bill is more stringent than those contained in the Montreal protocols.

Here, Mr. Speaker, the Congress has recognized our national role as a leader in environmental protection and restoration.

Mr. Speaker, I supported a tough Clean Air Act. A bill which sets real targets and a bill which will be enforced. I supported a bill that will help clear the air so my son can see the beauty of the Cascade and Olympic Mountains in Washington State. The bill we are voting on is a breath of fresh clean air for America and its provisions on C.F.C.S are a model for the world. Let's pass this bill today.

Mr. LENT. Mr. Speaker, with this legislation, Congress will have put in place a new structure for achieving significant progress in cleaning our country's air. This legislation is tough and will require major new expenditures on air pollution control. But at the same time, we have tried to ensure that the new regulatory programs will be flexible and cost-effective and will utilize market-based incentives to improve the environment. These are the hallmarks of President Bush's approach and

should be foremost in mind in the implementation of this act.

In brief, in title I—nonattainment—the conferees adopted, almost in its entirety, the House bill, which reflected the House's careful balancing of lower thresholds and tighter offset ratios with flexible implementation concepts, such as de minimis levels. In title III, we adopted a mix of House and Senate provisions, reflecting our judgment that MACT controls should be tough but should not mandate LAER retrofits and that the residual risk standard should not be based on any bright line risk number. The conferees also adopted a new set of provisions on modifications that will be more flexible and workable than the provisions in either the House or Senate bills, and we added a specific set of provisions on coke ovens, as outlined by Mr. ECKART. On the permitting issues, the conferees adopted the House provisions, although with some significant changes. For example, we added a new petition process for citizens seeking to challenge EPA's failure to object to a permit. This was added to provide citizens with some recourse for EPA's failure to object, since EPA does not have a mandatory duty to object, that would be enforceable under section 304. And in the enforcement section we also drew primarily from the House language, although we modified the citizen suit provision on past violations to conform to the Supreme Court's Gwaltney decision.

I would note one comment regarding title I and section 182(c)(4)(A) which requires States with severe ozone nonattainment areas to submit a SIP revision to include "such measures as may be necessary" to ensure the effectiveness of the Clean-Fuel Vehicle Fleet Program. The revision may include measures necessary to make the use of clean alternative fuels economic for vehicle owners. This provision does not confer new authority on the States. As is true for SIP revisions generally, a State would have to demonstrate authority under State law. Furthermore, the SIP revision is only required if it is necessary. This means that such measures are only required as a last resort after all other steps have been ruled out as ineffective. Finally, the record should reflect that at every turn where the issue arose, the conferees rejected any requirements which might impose any form of price or allocation controls for fuels.

I would like to address several specific provisions within title II of the act that concern the Clean-Fuel Vehicle Fleet Program.

With respect to transportation control measures [TCM's], my colleagues are no doubt aware that current law relies on State and local TCM's to reduce pollution emissions. These measures can involve time of day restrictions, odd-even driving plans, and similar traffic control concepts in nonattainment areas. As emissions standards become more stringent, it is likely that TCM's will be relied on in the future to a far greater extent than in the past.

Under the conference agreement, covered fleet vehicle owners are encouraged and directed to shift to clean-fuel vehicles. However, these vehicle owners risk having those clean-burning vehicles kept off the roads and streets because of TCM's imposed, in whole or in part, to regulate polluting vehicles.

The conference report resolves this difficulty by providing that clean-fuel vehicles will not be subject to vehicle use restrictions or other TCM's established by State or local authorities. The new provision would require the Administrator to promulgate regulations within 1 year of enactment of the Clean Air Act that will ensure that TCM's, including time-of-day or day-of-week restrictions and other similar measures that restrict vehicles usage, do not apply to any clean-fuel fleet vehicle that meets the emissions requirements of the new alternative fuels program. Since the authority for the TCM's covered by this provision can originate under various State and local powers, the regulations are intended to be broad in scope and not be limited by how the TCM is designated or the nature of the enabling law under which it was authorized. Thus, a TCM would be covered regardless of whether the purpose of the restriction is environmental, anticongestion, or "quality of life," except that restrictions for highway safety—such as weight restrictions and road closures—would not be covered.

The conference report provides for clear, certain, and early EPA action to ensure that relief from TCM's is available to clean-fuel vehicles they acquire or convert. This limited exception to TCM's for alternatively fueled vehicles will create a strong market incentive for use of these vehicles. It will be important that the rulemaking, and the effectiveness of the resulting rule, occur not later than a year after the effective date of the act, even though the first year model year covered by the mandate of title II isn't until late in the 1990's. There are many fleet operators that are already beginning to shift to alternative fuels. Delays in establishing the TCM exception—and necessary standards—can create a moratorium on developing and implementing clean-fuel fleets, as fleet operators hold off for fear that their early compliance will not be eligible for certification as clean vehicles. It is not Congress' intent to stop or slow down voluntary progress before 1998. EPA should ensure that the title II TCM rulemaking is prompt and has immediate effect, whether by issuing interim guidelines or standards for the conversions and acquisitions that occur after it is issued.

In another provision, the fleet program mandates California's low emission vehicle [LEV] standards by 1998 for light duty vehicles and light duty trucks below 6,000 pounds gross vehicle weight rating [gvwr], provided these vehicles are offered for sale in California. Because the decision to accelerate the LEV standards will apply to all nonattainment areas where a fleet program is required, the decision to accelerate the LEV standard is to be made by the Administrator as part of his authority to promulgate regulations under section 242 for clean-fuel vehicle standards for clean-fuel vehicles. In making such a determination, the Administrator should take into consideration whether there will be adequate numbers and types of LEV vehicles available for purchase by fleets in the nonattainment areas where a fleet program is required.

Finally, the phase-in requirements for the fleet program assumes that a covered fleet operator will be able to comply by purchasing clean-fueled vehicles from original equipment manufacturers [OEMs]. However, if vehicles are not available from OEM's, section 247(a) provides that a covered fleet operator cannot be compelled to either purchase a converted vehicle or to convert a new or existing vehicle in order to comply with section 246.

In closing, I would like to add a few words on the interpretation of this complex legislation. I know that some would prefer expansive legislative history accompanying a bill of this kind. We did not take that route. We negotiated long and hard over the language in the legislation, and it is that language that reflects the agreement of conferees. In the few instances where it was necessary, we also negotiated and agreed upon statement of managers to accompany the legislation. As a result, the authoritative legislative history is sparse. But, I believe that is appropriate given the time we spent ensuring that the legislative language adequately reflected our agreements.

Additionally, Mr. Speaker, I again want to express my appreciation to Margaret Durbin, Republican staff director, to Chuck Knauss, our chief clean air counsel, and to the rest of our clean air staff of Jessica Laverty, John Shelk, Keith Cole, Charles Ingebretson, Darlene McMullen, Freida Depe, and Anne-Whitney Powers. The fact that the bill is before us today for final consideration, and the fact that it is a good bill which warrants all of our support, is a reflection of the dedication, hard work and ability of the staff.

I do want to emphasize that two committee staff counsel deserve special recognition because without their extraordinary effort—in terms of both time and ability—we would not be here today. Dave Finnegan served as Chairman DINGELL's chief clean air negotiator and Chuck Knauss has represented House Republicans. They have worked incredible hours to keep the process moving forward, and they have been eminently fair in considering and resolving all competing interests. On behalf of the House Republicans, I want to express our sincere appreciation to these two gentlemen.

Mr. Speaker, this is a tough bill, a costly bill, but I believe it is also a fair bill. I urge all my colleagues to support this historic environmental legislation and to approve the conference report on S. 1630.

Mr. DINGELL. Mr. Speaker, as I have already said, this conference report represents a tough and effective environmental bill. If properly administered, implemented, and enforced, it will also be viewed as fair and reasonable.

As my colleagues know, I and others on the House-Senate conference have long been concerned that the legislation could have significant adverse economic effects on the Nation, its manufacturing industries, its small businesses, and most importantly the labor force upon which this Nation heavily depends. We all know it will have costs and impacts on business and labor. Our concern has been about their extent and nature. Clearly, we want to minimize them.

This has also been a concern of the President and his Council of Economic Advisers [CEA]. Indeed, last June and July, I exchanged correspondence with the CEA about this matter. In a July 24, 1990 letter, which I

shared with all the House conferees, the Chairman of the CEA said:

The President has asked CEA to coordinate the Administration's evaluation of the costs of proposed clean air legislation. Speaking on behalf of my colleagues throughout the Administration, let me state emphatically that we do not share the view that a major extension of the clean air act have low, zero, or even negative costs. Assertions in the media to the effect that expanded clean air programs would on balance create jobs, increase productivity, and make the U.S. economy more competitive in world markets are at best wishful thinking. They are as economically illiterate as other claims in the media that any clean air legislation must necessarily cripple the economy.

The President's strong clean air proposal was carefully crafted to make significant progress toward solution of important environmental problems—including acid rain, nonattainment of carbon monoxide and ozone air quality standards, and industrial air toxics—by setting sensible targets and making maximum use of flexible, incentive-based control mechanisms. It was thus designed to minimize costs and dislocations and to be compatible with strong economic growth. The President's support for this proposal was not premised on the view that its costs would be negligible; he is fully aware that any environmentally strong clean air bill will reduce real income growth and cause some temporary unemployment. Rather, the President believes that our Nation is able and should be willing to pay a reasonable price to clean its air.

But the President is not prepared to see American firms, workers, and consumers overcharged or to see economic growth slowed needlessly. From this point of view, the costs of both the House and Senate bills are too high. Fortunately, the conference has the opportunity to produce an environmentally strong bill while avoiding needless costs.

Notwithstanding their significantly higher costs, the House and Senate bills provide, at best, only very slight additional environmental benefits as compared to the President's proposal. The President's original proposal would impose annual direct, quantifiable costs in the neighborhood of $20 billion in the year 2005, when its provisions would be fully phased in. Current estimates indicate that the bills passed by the House and Senate would each impose corresponding costs of around $25 billion. Taking the most costly features from each bill, and adding the costs of the Tier II tailpipe standards, could result in a total annual phased-in cost exceeding $35 billion.

While reasonable people may differ on the appropriate balance between economic and environmental concerns, it clearly makes no sense to squander our scarce human and investment resources in programs that are not expected to yield significant additional environmental returns. For example, the Senate bill requires strict additional cold start carbon monoxide controls at an annual cost of over $2 billion at a date when EPA projects that there will be few violations of the ambient carbon monoxide standard related to vehicle emissions. This provision simply imposes needless costs on American firms, workers, and consumers.

Moreover, detailed micromanagement of the economy, such as the prescription of particular fuel formulations by statute, limits flexibility and retards innovation without improving the environment, thereby adding to both cost and dislocation. Similarly, failure to provide local areas with the necessary authority and flexibility to solve local problems adds needless costs.

Simply put, the diversion of labor and capital investment resources that would otherwise be devoted to the production of conventional economic goods and services into expanded environmental programs will decrease economic output. Thus, the direct compliance costs discussed above are manifested in and give rise to a number of adverse economic effects mentioned in your letter. The rest of this letter is devoted to a fairly detailed qualitative discussion of these effects.

First, if the Clean Air Act is significantly strengthened, future real consumption in the U.S. economy (excluding environmental benefits) will be somewhat lower than it would have been, and productivity growth will be reduced. Resources that must be devoted to reducing air pollution are simply not available to produce consumer goods and services or to make investments that would increase productivity. Growth in workers' average real income and in productivity will thus both slow.

Second, while the proposed legislation may stimulate exports related to pollution control expertise and technology, on balance our international competitiveness will be reduced. (Both effects reflect the fact that no other nation has developed an air pollution control program as sophisticated or as far-reaching as the proposals currently being considered by the conference.) The diversion of resources needed to comply with new mandates will occur in a global competitive environment in which our nation already suffers from shortages of skilled labor and a rate investment in productive capital persistently lower than that of the other major industrialized countries. Any new regulatory mandates or permitting procedures that increase the time required to bring new products or new production facilities on line will hamper the ability of American firms to compete with their foreign rivals.

Domestic industries that are required to spend intensively on pollution control will definitely become less competitive in world markets, and some jobs will move offshore as a consequence. Demand for the output of other industries will increase, but these industries will not automatically become more competitive as a consequence. Demand growth does not automatically improve productivity or induce innovation.

Third, shifts, in economic activity induced by the proposed clean air legislation will produce some temporary unemployment. If overall economic conditions are healthy and monetary and fiscal policies are sound, workers displaced by clean air legislation will find new jobs, just like the hundreds of thousands of U.S. workers who are displaced each year for other reasons, including changes in demands for particular products and advances in technology. As our flexible economy adapts to changes of all sorts, the number of jobs created every year substantially exceeds the net increase in employment, as workers who lose or leave jobs find new employment.

However, even though U.S. labor markets are generally quite flexible and efficient, and U.S. workers are generally mobile both geographically and occupationally, some displaced workers could endure substantial unemployment and suffer significant income losses. The President's proposal minimizes these impacts by avoiding needless costs and preserving flexibility wherever possible. The House and Senate proposals, as they now stand, would needlessly amplify these temporary dislocations.

On the other hand, proposed clean air legislation is not likely to have important permanent effects on the aggregate level of U.S. employment. The levels of employment and unemployment in the economy as a whole are primarily determined by overall economic conditions, which the government mainly affects by monetary and fiscal policy.

Similarly, one should be skeptical of suggestions that forced investment in pollution abatement equipment can provide a stimulus to the economy as a whole. While this effect might operate in a deep, protracted recession, such recessions are rare historically. Since the proposed legislation mandates the timing of environmental investments, it would be an extraordinary coincidence if those outlays happened to occur under such adverse economic conditions.

Major clean air legislation will impose additional costs, which are difficult to quantify, via the permitting and enforcement process. Direct administrative costs may be particularly high for smaller firms that have had little contact with this process to date. These firms will likely need to devote considerable managerial attention to this process and to hire outside consultants, particularly under the major source definitions incorporated in the House bill. Indirect costs include the carrying costs, uncertainties, reduced innovation, and lost opportunities imposed by regulatory delays.

In conclusion, let me reiterate the Administration's view that the conference has the opportunity to make significant progress toward solution of important environmental problems while avoiding needless costs. The best way to ensure the compatibility of a healthy environment and a strong economy is to enact a clean air bill that achieves the President's strong environmental goals through flexible, cost-minimizing means.

I agree with Chairman Boskin's comment that "the best way to ensure compatibility of a healthy environment and a strong economy is to enact a clean air bill that achieves the President's strong environmental goals through flexible, cost-minimizing means." I believe that the conference agreement achieves that objective, particularly with the addition of the Wise amendment. The conference committee has produced an "environmentally strong bill while avoiding needless costs."

That was and is our objective. Yet I also believe that this objective will only be realized through proper administration, implementation, and enforcement by the Environmental Protection Agency, the Secretary of Energy, the Secretary of Transportation, and others consistent with the President's goals and the enacted legislation. I want to see the law implemented fully and fairly and consistent with this objective. That will be my goal through the conduct of oversight by the Energy and Commerce Committee and by the Subcommittee on Oversight and Investigations, which I Chair.

The House and Senate conferees believe that the over 700 page conference agreement clearly and succinctly provides legislative language that needs little interpretation or explanation beyond what was already provided in the Senate on the Senate floor last spring, and in the House committee report. This language is applicable to significant portions of the conference agreement.

In this regard, I note that the Senate receded to the House on title I relating to nonattainment issues, except with respect to matters that were the subject of consideration by conferees of other House committees. Even in those cases, much of the House language prevailed, such as in the case of Federal implementation plans and sanctions. Thus, the House committee's legislative history would still be quite pertinent to title I.

In the case of title II, there were some changes to the House-passed version, which was the underlying vehicle used by the conferees. Even with those changes, significant portions such as new section 202(i)—which was formerly new section 202(g)—were adopted with little change. Thus, the legislative history of the House Committee on Energy and Commerce is applicable to these provisions.

Additionally, the conferees did not agree to a Senate provision on averaging relative to heavy-duty trucks because we did not feel the provision was necessary, given the legislative history in the House committee report on this matter and EPA's past history in regulations regarding such trucks. That legislative and administrative history is still quite pertinent and is not changed by this bill, as noted in our committee's report.

Also included in the bill is an amendment to section 177 of the Clean Air Act. This change in the law—that is, section 177—was neither in the House nor Senate bill although the House bill did make reference to section 177 in title II. The statement of managers contains the only views of all of the managers or conferees regarding this amendment or change to section 177. The managers did not in any way resurrect past legislative history of this section. The meaning of the original section 177 is a function of what its authors intended, not what members of a conference committee in the 101st Congress claim was intended.

In the case of title III, the conferees utilized the Senate bill as the vehicle for consideration but made a number of significant changes. Again, the legislative history of the House committee report is particularly important regarding the utility study, the definition of a source, residual risk, the MACT standards—particularly the new section 112(d)(3)—and other provisions.

I might add that the bill was changed to include a revised version of the Senate legislation regarding coke ovens. I want to commend particularly Congressmen ECKART and BOUCHER for their efforts in working out on behalf of the House conferees an effective coke oven provision that was adopted by the Senate and House conferees. Again, the House-Senate managers did not believe it necessary or desirable to try to interpret the new and specific coke oven provisions included in the conference agreement.

In the case of the permits title and the enforcement title, the House bill was the vehicle. While there were changes made, I think it is appropriate to recognize that the conferees did not think it necessary, except as part of the statement of managers, to expand or comment on those changes. In one area relating to fees, changes were made to accommodate the Committee on Ways and Means. The changes did not result in a wider use of fees beyond what was agreed to in the House.

It is important to stress once again that the statement of managers as printed in the conference report represents the views of all the managers or conferees from the House and Senate who signed the conference report.

The conferees made a decision several weeks ago not to engage in writing a detailed description of the House and Senate bills and the resulting conference agreement for each and every section and title of the legislation, as is often done in other conference reports. This is a very lengthy piece of legislation. It is also complex and controversial. The conferees did not believe it necessary or wise to try to anticipate future interpretations or problems as to the application of this legislation. In general, we believe that the legislation speaks for itself and, where it was necessary to make comments, the conference report includes specific statements agreed upon by all the conferees or managers.

I presume that some individual conferees in the House and in the Senate may want to express views relative to the legislation and to offer various interpretations. That is their right, and I applaud that. However, I want to make it clear that only the statement of managers, which is part of the conference report, reflects the views of all the managers or conferees in the House and Senate.

To the extent that the managers' statement is silent regarding specific provisions and titles, that is a deliberate decision on the part of all the managers who signed the conference agreement. Silence should not be given a different reading. The regulated community, the Environmental Protection Agency, environmentalists, and others may have preferred that the managers or conferees spell out in greater detail our intent and our interpretations in order to make their tasks simpler administratively and in the courts. However, the House and Senate conferees or managers did not share that view.

Efforts on our part to try to provide such interpretations or explanations could have resulted in the conference report being longer than the legislation itself, and probably would have taken a considerable amount of time. That did not seem desirable or wise, particularly in light of the lateness of this session of the 101st Congress. Further, I question whether simplicity would have resulted.

In addition, I want to observe that much of the legislation is based on the President's 1989 proposal. He was instrumental in gaining this enactment. When he proposed the bill (H.R. 3030), the House presumed that EPA and others had or would have the resources to implement it fully and fairly in a timely manner. I strongly urge that the administration provide those resources without undue reliance on outside contractors. In this regard, the Congress did not authorize the use of contractors for enforcement, as requested by the administration.

In this context, I note that the bill requires many rulemakings. Some have short deadlines. But all are subject to the new section 307(h) on public participation. Congress does not want the deadlines to shortchange such participation.

Mr. Speaker, I want to once again express my appreciation to all of the House and Senate conferees for their hard work and their resolution to complete this legislation in this session of the 101st Congress. I also express my appreciation to you, Mr. Speaker, for your support. I believe it is a milestone and one of the greatest achievements of this Congress. I urge all Members to support this legislation.

Mr. BILIRAKIS. Mr. Speaker, I believe an additional comment on the new permitting program established in title V is appropriate.

Title V creates, for the first time, a unifying permit program for facilities subject to the act's various control requirements. In the past, some provisions of the Clean Air Act—for example, the nonattainment and PSD new source requirements—were, and will continue to be, implemented through preconstruction permits. Other control requirements were effected without Federal, or in some cases, State permits—for example, NESHAPS and NSPS—although States often incorporated these requirements into their own permit programs.

The creation of the new permit program in title V provides an opportunity and an obligation for EPA to harmonize the substantive provisions of the other titles in this complex legislation. Many of the same sources and pollutants will be controlled under multiple titles—the same facilities and pollutants will often be controlled under the hazardous air pollutant, nonattainment, and acid rain programs. EPA must make every effort to harmonize and prevent unproductive duplication among those titles. The permit provisions of title V provide a focus for this harmonization, although title V does not change, and gives EPA no authority to modify, the substantive provisions of these other titles.

To the degree not expressly precluded by this act, EPA also is expected to incorporate State permit programs into this new Federal program. That is, to the degree possible, State programs should not be disrupted and compliance with State permitting requirements—augmented as necessary to be consistent with this act—should also meet Federal needs under this new title.

Title V creates no new substantive emission control requirements. Nothing in the permitting title should be read to increase the stringency of any control requirement nor to delay or accelerate the effectiveness of such requirements, except as expressly provided in titles I, III, and IV.

The administration proposed this comprehensive permit title—there was no such title in the original House and Senate bills, H.R. 3030 and the predecessors to S. 1630—to create a permit program that will serve the following three purposes: First, to provide a more comprehensive inventory of the emission sources of pollutants controlled under this act; second, to facilitate enforcement by providing a single reference for all of a major source's operating limits and requirements under the Clean Air Act; and third, to institute a system of permit fees that would support the States in carrying out the issuance and renewal of permits. To the degree these purposes can be realized without unnecessary delay and paperwork, EPA and the States are encouraged to make full use of the mechanisms provided in this and other titles of this act—such as those related to modifications and the use of general

permits. These provisions should be used to the maximum degree possible, consistent with emission control requirements, particularly to ease the burden on small businesses.

The permits required under title V are intended to provide EPA and State air pollution control authorities with a mechanism for assuring that emissions inventories are complete. This has been a serious deficiency in air pollution control programs in the past. Only with complete inventories can States formulate the most effective and efficient emissions control strategies to reduce pollution. Although an emissions inventory also contains nonpoint source emissions from transportation which are not covered by the permitting requirements, tracking emissions from historically regulated sources and unregulated smaller sources through permits will be important to the ultimate achievement of the act's goals.

Another reason for requiring permits is to enhance the enforceability of air pollution requirements at individual sources by State authorities—or by EPA as provided in titles I, "Nonattainment," and VI, "Enforcement." The permits will provide inspectors with specific information about regulated equipment, performance standards, emissions limits, and other operating parameters to facilitate their determination of the compliance status of individual units.

The third objective of the permit program is to enable States to fund air program permit responsibilities by creating an obligation on the States to impose permit fees. The Federal Government may not force States to impose fees in excess of the cap of $100,000 per facility.

SECTION 501—DEFINITIONS

The Congress is aware that there have been EPA regulatory determinations and policy interpretations, pursuant to parts C and D of title I, defining the term "contiguous" broadly. In some cases, the term was interpreted to encompass aggregate emissions of minor resources within several miles of one another if they are under common ownership. This was not the intent of the use of the term "contiguous" in this definition. In implementing title V, EPA must take care in interpreting the definition of major source as it applies to "contiguous" sources. Unless precluded by the express language of the substantive titles, "contiguous" should be given the same meaning it has in common parlance and be interpreted in a way that does not defeat the clear intent of the compromises that have been reached by the conference committee.

Nothing in section 502(a) should be construed to limit the use of general permits under section 404(d).

The EPA regulations under paragraph 502(b)(1) establishing the minimum elements of a permit program should define criteria for State determinations of "completeness" of permit applications. The completeness determination by the air pollution control authority is a critical element in streamlining the review of permit applications, and the criteria must specify what minimum information must go into the permit application. Permit applicants need to be provided with checklists of information that are straightforward and reasonably designed to facilitate decisionmaking by agencies.

Permit applicants must be given a reasonable opportunity to develop and submit applications that they can be reasonably confident are complete. Obtaining a completeness determination will be the only way for sources to avoid enforcement jeopardy if final permit actions are delayed. There inevitably will be delays in some States due to the enormous administrative burden this new permit program will place on the States and EPA. The inevitability of delays makes the regulated community's ability to operate under complete applications essential.

EPA should not use these regulations to authorize imprecise requests for additional information or "fishing expeditions" into company affairs. Neither the States nor EPA should avoid their responsibility to make decisions on permit applications promptly. In the past, permits have been delayed by deferred completeness determinations; applicants received repetitious requests for information not called for in the application, in effect changing the application's information requirements. Often the requests were for information that was not necessary for making a final decision. Unfortunately, such problems have been common aspects of the use of completeness determinations by some EPA regions and States in the title I preconstruction permit programs. EPA and the States should provide applicants with prompt completeness determinations, but this should not preclude later requests for necessary information.

The assessment of fees for operating permits is intended both to support the States' efforts to implement the formidable permitting responsibilities imposed upon them by this act and to assure timely processing of operating permits.

The conferees determined that permitting authorities are required to collect $25 per ton of each regulated from permitted sources pollutant, except that the permitting authority is not required to assess a charge in excess of $100,000. These fees can be used by the permitting agency solely to cover all reasonable costs of the permit program. Such fees will provide a tremendous reservoir of funds for the State permitting authorities to perform their permitting function.

To implement the purposes of the Clean Air Act, permitting fees should not be allowed to accumulate from year to year and may be used for any other governmental function. The permitting authority may reduce the fees charged if it demonstrates that it can successfully discharge its permit program with a lesser amount or funds from other sources.

If the $25-per-ton fee is insufficient to support the permitting program in a State using a permit term of less than 5 years, EPA and the State should consider reducing the resources needed by adopting longer permit terms—up to the 5-year limit. EPA should not disapprove permit programs because fees are insufficient if the State can realize savings by eliminating program elements that are not required by this act.

The costs to be borne by the sources will be of great consequence and will undoubtedly compel some marginally profitable firms, especially small businesses, to make difficult choices. These choices may include benefits for employees, plant modernization, expansion, and even closure. The fees assessed are in addition to the substantial costs of pollution control equipment, expenses associated with collecting the data and preparing permit applications, monitoring and facility modifications necessary to comply with permit terms. The incremental costs of doing business related to new requirements of this bill can be devastating to America's competitive position and so it is incumbent on the permitting authorities to hold down the costs of the permit process and to focus on the installation of controls to the greatest possible extent.

Although the fee provisions are designed to generate funds for administering and developing the permit program, a State can fund the program out of other moneys besides fees. There is a presumption that the minimum fee of $25 per ton of pollutants—up to $100,000 per facility—will be sufficient to provide EPA assurance that the State will have the resources to administer the program. Section 502(b)(3)(iv) makes it clear that the State has the option to use alternative revenue mechanisms to fund its permit program. There is a presumption against the rejection of a State's permit program on the basis of insufficient fees if the State either adopts the $25 minimum or certifies that equivalent funds will be made available from other revenue sources.

Section 502(b)(5)(B) should not be read to discourage 5-year—rather than 1-year—permit terms to promote efficiency in streamlining the permit system for State administrators and in fostering operating certainty for sources—especially small businesses—covered by permits. As indicated below, the States will have adequate authority to terminate, modify, or revoke and reissue permits for cause during the permit's life, so required annual renewal is unnecessary and will pointlessly increase the permitting burdens required.

States must have adequate authority to terminate, modify, or revoke and reissue permits "for cause." This provision was intended to allow the incorporation of new rules into a permit's terms or to reopen a permit for revision if a Federal Court of Appeals finds that EPA improperly failed to object to the permit pursuant to sections 502(b)(9), 502(b)(2) or 505(e).

Section 502(b)(6) directs EPA to assure that State permit processes are "streamlined," although they must provide an opportunity for public comment and, if requested, a hearing. The requirement that completeness determinations must be made promptly is critical to the operation of the State permit programs. EPA should not be passive in this matter. It should affirmatively press for State procedures that will avoid exposing facilities to unwarranted enforcement jeopardy or delay routine operational modifications.

Sections 502(b) (6) and (7) ensure that permit applicants and certain other persons are entitled to expeditious determinations of the completeness of the application and to protection from unreasonable delay by the permitting authority. Recourse for failure of the permitting authority to act consistent with these terms is an action for judicial review in State court to compel action by the permitting authority. This legal recourse is necessary so that sources which cannot operate legally in

certain circumstances without a permit have available a means to obtain the appropriate review and final action on the permit application by the State or other permitting authority.

These provisions also contemplate that States will have latitude to develop highly individualized ways of allocating resources to deal with applications for small sources and most permit modifications. Further, the provisions for reviewing operating permits for existing sources should in no way undercut the expeditious review of preconstruction permits under the nonattainment or prevention of significant deterioration programs in title I of the act.

Issuance of a single permit to a facility with multiple sources should be encouraged when deemed desirable by a permit applicant to foster operational flexibility.

EPA is required to include in the minimum elements of any permit program provisions to allow changes within a permitted facility without requiring a prior permit revision. This provision is most important to industries which must make routine changes in order to be competitive and respond to market forces. Industries which require the operational flexibility provided by this paragraph include heavy manufacturing—for example, automobilies—electronics, pharmaceuticals, and chemicals. Without such flexibility, businesses could be required to wait months or even years for permit changes which would allow facilities to produce new, modified, or better products. Also, changes that could reduce the toxicity or total amount of emissions could not be made until a new permit application was filed and the permit issued.

In addition, the provisions of this section make explicitly clear the intent of the Congress that routine operational changes must not trigger requirements to obtain a new or revised permit. Though the source is required to notify the permitting authority in advance of the change, the source does not have to wait for approval to make changes necessary for routine operational flexibility and industrial competitiveness. Provisions of prior titles that could be construed to inhibit routine operational flexibility should be read in light of the mandate of this paragraph and the terms of the operating permit issued pursuant to this title.

Section 504(f) provides that compliance with an operating permit issued pursuant to this title protects the permittee from a variety of enforcement actions, including citizens suits. The conference committee adopted a slightly modified version of the permit "shield" or safe harbor, from that contained in the House bill. The permitting authority may determine the actual scope of the safe harbor by including in the permit a determination or a concise summary that provisions of the act are not applicable to the permittee. In addition, EPA by regulation can restrict permissible shield or safe harbor protection—although we do not encourage it to exclude cases in which a source is complying with its permit in good faith.

Finally, there is no safe harbor against actions to abate an air pollution emergency. Compliance with a permit issued by the appropriate permitting authority in accordance with applicable requirements of the act and duly promulgated EPA implementing regulations or EPA delegations shall be a bar to an enforcement action by EPA or any other party against such permitted source.

In granting a program interim approval because it is not fully approvable, the administrator must be explicit in delineating the area in which the State permit regulations do not meet the statutory requirements of this title. There must be an unambiguous failure to meet statutory or duly promulgated regulatory criteria for EPA to withhold or limit approval.

SECTION 503—PERMIT APPLICATIONS

The purpose of compliance plans under this title remains consistent with their present purpose; that is, enforcement of currently applicable requirements when the source is in noncompliance or has a history of recalcitrant compliance with air pollution control requirements. The schedule of compliance, therefore, should set reasonable and enforceable conditions to accomplish timely compliance with the act, and well-defined interim compliance steps and deadlines for their accomplishment. Negotiation over a compliance schedule should in no way impede the determination of the completeness of the application. Furthermore, progress reports normally should be required no more frequently than every 6 months, unless there is some compelling historical or other reason to believe that the source will not comply with its schedule.

The provisions for periodic certification of compliance requires the responsible manager to certify as to the existence of conditions which the manager can reasonably know from operational information actually available to him, including monitoring reports. The requirements for periodic certification are not to be interpreted as justification for imposing requirements for continuous emission monitoring equipment.

The bill requires sources promptly to report known deviations from permit conditions. The adverb "promptly" is, therefore, to be interpreted with reason and good professional judgment by both the regulated community and regulators. After an apparent noncompliance is discovered, a reasonable period of time is often required to ascertain whether a permit condition is actually being violated, that there is not simply a malfunction of a control panel, pressure gauge, or monitor in the facility, or whether other defenses may apply.

A source can continue to operate without violating section 402 of the act so long as a timely and complete application has been received by the responsible authority and the determination of completeness has been made. The determination then cannot be revoked for failure of that authority to act definitively on the application, even when substantial time passes or additional information from the applicant becomes necessary. Repeated information requests should not be used by authorities to delay issuance of completeness determinations or permit decisions.

The committee is concerned that incompleteness determinations could provide a means for permitting authorities under resource pressure to avoid making final permit determinations. This concern is bolstered by some of the historical practices by EPA regions under the preconstruction permitting programs. While the ability of States to request additional information in order to carry out this title and control requirements is well recognized, this provision creates no new authority to request information which is not reasonably related to the permit program's goals and which the source is not required to submit by the applicable, duly promulgated State or Federal regulations.

While the contents of the permit are not entitled to protection pursuant to section 114(c) of the act, the contents of the compliance plan and the permit application, whether or not incorporated by reference into the permit document, are entitled to the protection afforded by section 114(c). The committee recognized in this provision the particular need to protect product reformation and process change information. Further, in the permit itself, authorities should exercise care in seeing to it that control requirements themselves are expressed in a way that protects proprietary information to the degree consistent with enforcement. This assures that the agency has the information that it needs to fulfill its responsibilities, but competitors do not have access to valuable trade secrets.

SECTION 504—PERMIT REQUIREMENTS AND CONDITIONS

Section 504(b) creates no new substantive requirements. The administrator's authority to prescribe methods for determining compliance in no way authorizes him to require continuous emissions monitors [CEM's] when they are unnecessary, infeasible, or unreasonably burdensome, as may be the case for many small- and medium-size sources. The committee was concerned that the EPA will put excessive reliance on CEM's, particularly when material inventories and operational records, and other alternative engineering calculations provide adequate emissions measurements. Worth noting is the fact that CEM's and modeling are relevant only insofar as they can be related to compliance with a standard expressed as an emissions limitation.

Monitoring certification and reports are to be signed by a responsible corporate official who shall certify compliance to the extent of his knowledge or reasonably available operational information, including monitoring reports.

SECTION 505—NOTIFICATION OF THE ADMINISTRATOR AND CONTIGUOUS STATES

Section 505(a)(1) of the conference agreement establishes procedures to assure EPA an opportunity to review proposed permits for major sources. EPA may waive such review as provided in section 505(d). Section 505(a)(2) provides for notification of States contiguous to the State of the facility subject to the application. These procedures were designed to assure that interested persons could get important issues raised prior to the issuance of a permit without allowing undue delay of most permit applications. Specific procedures were provided to assure that permits would not be held hostage to the resolution of controversies over policy between EPA and the State or between EPA or the State and third parties.

The managers designed this process to avoid delays in the processing of permits and to provide reasonable assurance that the applicant can rely on the terms of a permit once it is issued. EPA is authorized to object to per-

mits proposed by the States. To assure timely permit processing, the Agency must raise any objections within 45 days of its notification by the State of its proposal to issue the permit or within 45 days of a contiguous State's notice of objection. Section 505(b)(1) provides the exclusive process for the resolution of issues raised by EPA within 45 days of such notification.

If EPA or a contiguous State fails to object to the issuance of a permit, the conferees expect the State to proceed with the issuance of the permit. Nothing in this process is intended to delay the issuance of a permit by a State upon the expiration of 45 days from the time EPA or other States are notified.

The conference agreement provides interested persons an opportunity to challenge EPA's failure to object. The conferees provided an exclusive process for this purpose that was designed to avoid delays and to assure that the EPA and the State retain the discretion that is essential to the efficient implementation of as massive an undertaking as the permit program under this title.

If EPA fails to object, an interested party may petition the Agency for reconsideration of this discretionary failure to act. Such a petition may only be related to issues raised in the public comment period on the permit application. The petition must be denied if any new issue is raised, unless no interested party could have been aware of the issue from the permit application and public record of the permit proceeding. It was the intent of the conferees to limit such actions and to encourage EPA and the States to avoid reopening permits—until they are due for renewal or revision—in most cases.

A petition to object to an issued or proposed permit must be filed within 60 days after the expiration of the 45-day review period provided to EPA and the contiguous States. If EPA denies such a petition, the petitioner may obtain judicial review of EPA's denial under section 307, not section 304, of the act.

Section 705 of this act amends section 307(b) of the Clean Air Act to preclude delay in the implementation of actions due to the filing of petitions for reconsideration. Thus, petitions under section 505(b)(2) may not delay the State's issuance of a permit.

Further, actions challenging EPA's failure to object to a proposed permit must rest on a finding that the issuance of the permit would be a violation of an explicit requirement of the act. A system as complex as the permit process established by this act must tolerate differences of interpretation among the States that do not have significant national implications. Consequently, the denial of petitions under section 505(b)(2) may only be reviewed in the court of appeals pursuant to the criteria in section 307(d)(9).

The House managers note that decisions on such petitions cannot be delegated by the administrator. This requires that the petition process and judicial review should be used sparingly and petitions should only be entertained when the permit is in unambiguous violation of the act and there is the likelihood of significant harm to human health or the environment that requires action prior to the expiration of the permit.

Under no circumstances shall a source in compliance with a permit be found to be in violation of this act as a consequence of a petition to the administrator after the issuance of such permit or the reversal of a denial of the petition by the court. In the event the administrator or the court belatedly determines that the permit was improperly granted, the sole remedy is that available to the administrator in section 305(b)(1).

Nothing in these provisions is intended to imply that a State may accept a recommendation from another State for an operational or emissions limitation that contravenes or is not authorized by the act, the State's approved SIP, or applicable regulations. Further, objections by EPA must be stated with sufficient particularity so that they can be understood, incorporated, or rejected by the State authority in a fashion that provides a clear record for a reviewing court if judicial review is ultimately sought.

RELATIONSHIP OF PERMITS TO STATE IMPLEMENTATION PLANS

The concept behind this new permit program is to minimize—if not eliminate—the degree to which decisions relating to individual major sources—as defined in section 405(2)—require SIP actions. Individual source issues should be resolved in the permit process, consistent with the SIP. EPA must avoid duplication between the SIP and permit processes.

Mr. FIELDS. Mr. Speaker, I wish to make several additional observations about the conference report on the Clean Air Act Amendments of 1990.

TITLE I—DESIGNATION AND CLASSIFICATION

A key aspect of the amendments is the classification of ozone nonattainment areas—for example, marginal, serious, et cetera. It is the intent of the amendments that States utilize the latest, best available data so that there is little or no question about the proper factual basis for the classifications. The provisions allowing for an adjustment in the classification—plus or minus 5 percent from the design value—is meant to allow EPA and the States complete discretion in making appropriate adjustments to avoid unnecessary hardships. This adjustment may be upward or downward, without any presumption one way or the other. There is no intent that areas have more time than they need to attain the standards or that unnecessary controls be imposed to attain the standard.

TITLE I—PERCENT REDUCTION REQUIREMENTS

The percent reduction requirements operate as indicators of air quality progress and, in particular, progress in air quality planning. EPA and the States should not view them as substitutes for reducing concentrations in ambient levels of ozone or for reducing population exposure to harmful levels of ozone. Most States should have no problem achieving applicable percent reduction requirements if they properly count all of the reduction from the Federal Motor Vehicle Program as well as those from the federally mandated control measures required by title I (nonattainment), title III (air toxics) and title V (acid rain). EPA's guidance regulations for the States regarding percentage reductions should provide States and local air pollution control agencies with the maximum flexibility in meeting any applicable percent reduction requirements.

In particular, whether an area is excused from percent reduction requirements does not depend in any way upon the stringency of particular control requirements adopted in that nonattainment area or any other nonattainment area. States have the maximum flexibility to adopt control requirements at whatever level of stringency will be most effective in helping their particular nonattainment areas attain the ambient air quality standards. What is feasible, achievable, or effective in one nonattainment area has little or no relevance to what is feasible, achievable or effective in any other ozone nonattainment area.

TITLE I—NITROGEN OXIDES

The amendments require an unprecedented, sophisticated analysis of the role of NO_x in smog formation. The enhanced monitoring and modeling required by the amendments will provide the date and analytical tools needed for this analysis. At a minimum, each State containing a serious, severe or extreme ozone nonattainment area will finally have the information it needs to decide the extent of NO_x controls, if any, which are appropriate in the area.

The State should establish NO_x controls at a level, if any, which will attain the ozone standards in a cost-effective manner in the affected area. The amendments do not require the same reductions or controls for NO_x as those for VOC's. In many areas, NO_x controls may be counterproductive or inefficient in reducing ozone to the levels required by the act. In other areas, it may be appropriate to adopt or expand NO_x controls. The amendments give each State containing an ozone nonattainment area complete flexibility to adopt whatever types, combinations and degrees of NO_x controls it wishes in order to attain the ozone standard. In particular, States may wish only to apply the new source review provisions to NO_x and avoid the adverse effects of NO_x controls on existing sources of operations.

TITLE I—SIP REVISIONS OF CLEAN FUELS

There is an additional area where clarification is necessary. Section 182(c)(4)(A) in title I discussed actions to be taken by serious ozone nonattainment areas. As part of their State implementation plan, this section calls for inclusions by these areas of such measures as may be necessary to ensure the effectiveness of the Clean Fuel Vehicle Program in title II. The section 182(c)(4)(A) language also references measures to make the use of clean alternative fuels in such vehicles economic from the standpoint of vehicle owners.

Since this language may be misinterpreted as referring to some sort of preferential marketing of clean fuels, it is essential that the record be set straight. The conferees were confronted by this issue several times during the drafting of the explicit clean fuel and clean vehicle requirements in title II. In each instance, the intent of the conferees is clear—namely we chose to avoid any type of production or sales mandate.

For example, in developing the opt in procedures for the clean fuel California pilot program—section 249(f)—we specifically stated that the implementing regulations and plan re-

visions "* * * shall not include any production or sales mandate for clean alternative vehicles or clean alternative fuels." And, in this same section, we specified the type of incentives that could be used to encourage the use of clean fuel vehicles. These incentives include exemptions for these vehicles for HOV restrictions, preferential access to parking, and lower clean fuel vehicle registration fees. There is no reference to fuel marketing in this incentive section.

Further, section 250(b) explicitly denies the Administrator authority "to mandate marketing or pricing practices, policies, or strategies for fuels." This section 250(b) language was intended to override any potentially conflicting interpretation in section 182(c)(4)(A). Section 182(c)(4)(A) was designed to promote the type of incentives noted above, not to control fuel marketing or pricing policy.

Under section 182(c)(4)(A), measures which are economic from the standpoint of vehicle owners are those measures which the States include to assure smooth and equitable administration of the program. Vehicle owners should not be faced with new State bureaucratic hurdles when they purchase or use clean-fuel vehicles. Section 182(c)(4)(A) ensures that the clean-fuel vehicle owner will be neither advantaged nor disadvantaged in registering his vehicle or otherwise dealing with State vehicle or fuel programs compared to other vehicle owners.

TITLE II—CALIFORNIA PILOT PROGRAM

The fuel availability language in the California pilot program was carefully drafted to avoid creating any authority for mandatory fuel sales. The language on fuel availability in section 249(c)(2) requires that fuel be "produced and distributed by fuel suppliers and made available." This language is in stark contrast to the vehicle sales mandate in section 249(c)(1) which requires that clean fuel vehicles be "produced, sold and distributed."

Further, in discussing the State's obligations, the fuel availability section specifies that clean fuels are to be made available and "offered for sale." This section then proceeds to outline how clean alternative fuels are to be made available at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling. It should be clear that the conferees did not intend to mandate the sale of clean alternative fuels, but did intend that these fuels be available in response to consumer demand. Thus, the requirement that these fuels be made available and offered for sale was to apply to a certain portion of the service stations in proportion to the number and geographic distribution of vehicles capable of using such fuels.

TITLE II—AVERAGING/POOLING

The fuel content specifications included in the reformulated gasoline program should not be construed as per gallon requirements. The conferees provided flexibility in meeting the requirements of the program in several ways—all of which are based on the concept of averaging or pooling by individual refiners over the amount of gasoline sold in a given nonattainment area.

First, the program allows refiners to certify a slate of fuels as complying with the program's requirements—for example, a slate consisting of two grades like regular and premium. There would be no advantage or need to consider a refiner's slate of fuels if compliance were intended on a per gallon basis.

Second, the program requires EPA to design and implement a program of marketable credits for benzene, aromatics, and oxygen. These credits could be used within a company or could be traded to others to ensure that the average of all the fuel sold by all refiners and others in any covered nonattainment area is in compliance. There would be no market for credits if these requirements had to be met on a per gallon basis. The very presence of this credit trading program, which we worked long and hard on, is a clear signal of our intent that the fuel content requirements not be implemented on a per gallon basis.

Finally, in the case of aromatics we allowed not only averaging/pooling but also incorporated the concept of "equivalency" to provide additional flexibility to fuel manufacturers. The 25 percent aromatics level not only does not have to be met on a per gallon basis, it could be waived entirely provided the fuel attains equivalent emission reductions.

Given all of the above provisions, it would be a gross misinterpretation of the Clean Air Act Amendments of 1990 to state that the benzene, aromatics and oxygen requirements are to be met on anything other than a pooled average basis.

TITLE II—MOBILE SOURCE-RELATED AIR TOXICS

Section 206 of S. 1630 adds a new subsection 202(l) to the Clean Air Act, requiring a study of and standards for mobile source-related air toxics. This new provision should be read and interpreted in coordination with the reformulated gasoline provisions of new subsection 211(k) as added by section 219 of the bill. Since subsection 211(k) is a comprehensive regime for the regulation of mobile source-related air toxics as it relates to fuels, and since it was added to the bill after subsection 202(l), the more specific provisions of subsection 211(k) control over the more general provisions of subsection 202(l). In determining the need for emission controls in doing the required study, EPA must take into account that subsection 212(k) will already require major reductions in air toxics through the reformulation of gasoline. Given these reductions, EPA could, and probably should, conclude that no further standards with respect to fuels are required for those toxic air pollutants covered by subsection 211(k), notwithstanding subsection 202(l)(2) of the act as added by S. 1630.

TITLE II—ISSUANCE OF REGULATIONS

New section 211(k)(1) requires that regulations implementing the requirements of section 211(k) be promulgated within 1 year of enactment. This is important to provide refiners with adequate lead time to comply before the January 1, 1995, effective date. Thus, these regulations should include the determination EPA must make under 211(k)(3)(B) of the applicable percentage for the VOC and toxics performance standard effective in calendar year 2000.

TITLE II—HEAVY METALS

New section 211(k)(2)(D) refers to the heavy metal content of reformulated gasoline. These provisions should be read in light of the fact that all gasoline naturally has some amount of metals in it from the crude oil used to produce the gasoline. Thus, in the context of reformulated gasoline, this reference is to additional heavy metals, which is consistent with the reference to additives in the waiver provisions of this subparagraph. In short, a waiver is not required to sell gasoline with small amounts of naturally occurring heavy metals.

TITLE III—OIL AND GAS WELLS

Section 301(p) instructs the Administrator to determine if oil and gas wells and associated equipment located in SMSA/CMSA areas greater than 1 million people present greater than a negligible risk. If the Administrator determines that such wells present such a risk, the Administrator shall promulgate standards applicable to such wells.

Oil and gas wells, and associated equipment and gas processing, have generally very low emissions of air toxics. Furthermore, these operations are typically located in remote areas, with wells and equipment widely dispersed geographically, rather than concentrated in a single area. For these reasons, it is very unlikely that oil and gas sources would present a significant risk to human health and it is not expected that this source category would need to be a listed category designated for regulation. However, if any oil and gas wells are located in a SMSA/CMSA greater than 1 million people, the Administrator is instructed to determine if any of the wells—or associated equipment—present greater than a negligible risk. Since oil and gas wells—and associated equipment—can vary in terms of size, thruput, distance from residential areas, et cetera, it is critical that the exploration and production source category be divided into several subcategories, that oil and gas wells within such a SMSA/CMSA be considered in accordance with their size, thruput, distance from residential areas, et cetera, or that an equivalent approach be utilized to recognize their differing impacts. The negligible risk determination should then be made for different groups of wells according to their different impacts. If a well—or piece of associated equipment—does present greater than a negligible risk, the Administrator shall promulgate standards that are applicable to only those wells—and associated equipment—and/or subcategory that exceeds the specified risk level.

TITLE VII—CRIMES

The amendments update the criminal provisions, with minimal changes necessary to add the new options available under section 113(c). The crimes of knowing and negligent endangerment are added. Otherwise, the intent of the conferees is to neither expand nor contract the availability of criminal sanctions.

Consistently with the growing body of Federal criminal law, the scienter element in section 113(c) requires actual, specific knowledge. Specific knowledge is especially important in connection with recordkeeping, reporting, or monitoring offenses. Section 113(c) is amended to clarify that only those intentional omissions which are so pervasive, repeated, or serious that they amount to materially false representations are criminally punishable.

Mere omissions are not criminally punishable under the Clean Air Act as amended. For criminal sanctions to apply to omissions of information or other failures to act, a person must have received actual notice of the requirement in question. Actual notice can be established by competent evidence such as an agency letter, notice, or order to the person specifying the information requirement and specifically requesting the required information.

Unlike the civil and administrative sanctions amended by these amendments, the criminal sanctions do not extend to past violations. Criminal sanctions are available only for present, ongoing actions.

TITLE VII—CITIZEN SUITS

Citizen suits are generally inappropriate for past violations. The conferees narrowed the House provision which required only an allegation of repeated or continuous past violations. The conferees agreed that citizens should be required to present competent evidence of past violations and that the evidence demonstrate repeated violations.

By deleting "continuous," the conferees intend to exclude instances where violations were merely repeated on successive days. The evidence must demonstrate that the past violations were frequent, that the alleged violator habitually ignored applicable requirements and that the agency did not adequately enforce the law.

The general refusal of the conferees to adopt the Senate citizens suit provisions reflects the judgment of the conferees that the House provisions struck a far more sensible balance of the interests involved than either the Senate provisions or current law. EPA and the courts should move rapidly to implement the agreed provisions as fully as possible.

Mr. MADIGAN. Mr. Speaker, two provisions of the bill with which I have a great deal of interest, and worked vigorously in conference to resolve, are the reformulated gasoline and oxygenated gasoline provisions. I am concerned that a statement concerning these provisions made earlier, while presumably made to enhance legislative history, does not reflect my understanding of these provisions, nor, do I believe, the consensus of the conference committee.

I am specifically concerned that the statement attempts to place burdens on EPA which were not intended and should not be implied. For example, while the Administrator is to consider the costs associated with reducing VOC's and toxics in gasoline, the conference committee never considered a cost cap of 4 to 6 cents per gallon as has been suggested. There are many different means of reducing pollutants in gasoline, some far more costly than others. Imposing a cost cap would only encourage refiners to pursue the most expensive reformulating options as a means of opting out of the program entirely.

I believe that the presence of the reformulated gasoline and oxygenated gasoline provisions in the bill are a clear signal that Congress intends for the oil industry to do its part in cleaning up the air and that providing cleaner gasoline is one of the most cost-effective means of reducing air pollution.

In order that there be no misunderstanding regarding the intent of the House conferees on the use of averaging as an emissions compliance tool, I believe that it is important to add to the Record an explanation of the House's action on that subject.

On September 20, 1989, during the Health and Environment Subcommittee markup of title II—mobile, sources—of the Clean Air Act amendments—Dingell-Lent substitute—Congressman TERRY BRUCE offered an amendment to delete the expanded averaging provisions contained in the substitute. During the debate, Mr. BRUCE and Chairman DINGELL engaged in a colloquy regarding the impact of this amendment on EPA's existing authority to use averaging. Chairman DINGELL noted that a 1986 court decision in NRDC versus Thomas and previously adopted and pending EPA averaging programs all relied on existing Clean Air Act authority. Mr. BRUCE stated that his amendment was intended to retain the status quo with regard to EPA's ability under the existing Clean Air Act to use averaging and that his amendment deleting the expanded averaging proposal in the Dingell-Lent substitute was not intended to overturn the court's decision with respect to EPA's heavy-duty engine averaging program. Both Chairman DINGELL and Mr. BRUCE further agreed that the amendment was not intended to address any case that might later arise with respect to light-duty averaging programs. Thus the rejection of the Dingell-Lent expanded averaging authority by the House subcommittee was intended to maintain the status quo with regard to EPA's existing authority. Adoption of the Bruce amendment neither expanded or contracted EPA's averaging authority.

I further believe that the recent action taken by EPA in establishing an emissions banking and trading program for heavy-duty engines is consistent with the objectives of both the existing Clean Air Act and the Clean Air Act Amendments of 1990. EPA's program not only requires that credits be discounted, thereby ensuring net environmental benefits, but it also constrains the use of credits to limit localized emissions increases. EPA's program also creates an incentive to produce engines with emissions lower than the applicable standard and is structured to ensure that manufacturers maintain the same production margins as with the current emission standards. The program encourages the early use of improved emission control technologies and the development and sale of alternative fueled vehicles. The program aids manufacturers by reducing the costs of controlling emissions and by smoothing the transition to more stringent emission standards.

Mr. SHARP. Mr. Speaker, I want to clarify two provisions in the Clean Air Act amendments. The first deals with averaging for heavy-duty trucks and the second deals with the so-called WEPCO issue.

With regard to the subject of averaging, the provisions on mobile sources adopted by the House and agreed to by the conferees were not intended to either extend or curtail existing EPA authority for averaging, banking, and trading. The intention was to retain the status quo.

I was one of the authors of the 1977 heavy-duty truck Clean Air Act amendments. Under that legislative authority, EPA has promulgated regulations for averaging (50 Fed. Reg. 10606) and for banking and trading (55 Fed. Reg. 30584). Cognizant of these rules and the Court's decision in *NRDC* v. *Thomas,* 805 F.2d 410 (D.C. Cir. 1986) the House-Senate conferees chose not to amend the Clean Air Act to specifically prohibit averaging, banking and trading authority.

Averaging, banking and trading programs, in fact, have very positive impacts on air quality. Such programs preserve the requirement that each family of engines must meet or exceed a preassigned standard. Furthermore, averaging programs create an incentive to produce engines lower than the applicable standard, and encourage the development and early use of improved emission control technologies, and the development and sale of alternative-fueled vehicles. Such programs also aid manufacturers in reducing the costs of controlling emissions.

With respect to the WEPCO issue, I want to include in the RECORD correspondence from the administration, addressing the matter, along with additional correspondence from various Senators. The correspondence follows.

COUNCIL OF ECONOMIC ADVISERS,
Washington, July 23, 1990.

HON. WENDALL H. FORD,
Chairman, Subcommittee on Energy Research and Development, Committee on Energy and Natural Resources, U.S. Senate, Washington DC.

DEAR CHAIRMAN FORD: Pursuant to my testimony of May 8, 1990, legislative language that addresses the WEPCO issue is enclosed. The Administration believes that language along these lines would both protect environmental quality and remove the uncertainty surrounding the application of the modification rule to electric utility plants as the electric utility industry makes the physical and operational changes necessary to meet new pollution reduction requirements under the Clean Air Act Amendments now under conference consideration.

Answers to the specific questions raised in your letter of May 18, 1990 will be forthcoming shortly. Please do not hesitate to call on me if I can be of assistance regarding any aspect of this issue.

Sincerely,

RICHARD SCHMALENSEE.

PROPOSED WEPCO LANGUAGE

SEC. XXX. APPLICABILITY OF NEW SOURCE REVIEW TO EXISTING ELECTRIC UTILITY STEAM GENERATING UNITS.

(a) APPLICABILITY OF NEW SOURCE PERFORMANCE STANDARDS.—No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of Section 111, provided such change does not increase the maximum hourly emissions of any pollutant regulated under the section above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(b) APPLICABILITY OF PART C OF TITLE I—

(1) POLLUTION CONTROL PROJECTS.—For purposes of Part C, no physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification of the source for a specific regulated pollutant, provided that the change constitutes a pollution control project at that unit and does not increase maximum hourly emissions of

that pollutant above past maximum hourly emissions of that pollutant at that unit; or

(2) POLLUTION CONTROL PROJECTS WITH CONTEMPORANEOUS CHANGES.—For purposes of Part C, no physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification of the source for a specific regulated pollutant, provided that the change is part of a pollution control project at that unit and

(A) is accompanied by contemporaneous physical or operational changes to that unit, that do not exceed 20 percent of the total cost of the project; and

(B) the change does not increase maximum hourly emissions of that pollutant above past maximum hourly emissions of that pollutant. For a unit subject to section 407, immediately following the changes, the unit shall be required to meet the nitrogen oxide emission limitation specified for that boiler type pursuant to section 407. In the event that the change precedes the establishment of nitrogen oxides emissions limitations for that boiler type, pursuant to section 407, the unit shall be required to meet the applicable emission limitation upon the date required by the regulation; (i) for an existing electric utility steam generating unit not subject to section 407, immediately following the change, the unit shall be required to meet the nitrogen oxide limit equivalent to the limit achievable using "low-NOx burners."

(3) Except as provided in (b)(2), in the event that the maximum hourly emissions of any regulated pollutant increase, the source is subject to the requirements of subsection (c) for the pollutant.

(c) NON-POLLUTION CONTROL PROJECTS AND POLLUTION CONTROL PROJECTS IN NONATTAINMENT AREAS.—Except for a unit that is subject to the provisions of subsection (b), no physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of Part C or Part D, provided that such change does not result in a significant net increase in representative actual annual emissions of any regulated pollutant at the source in the case of Part C and of any criteria pollutant in the case of Part D.

(d) SYSTEMWIDE NETTING.—

(1) The operating company may, for purposes of subsection (c) of this section, elect to calculate its representative actual annual emissions (A) on a statewide basis, where EPA is the permit issuing authority in the state and the state agrees, or (B) on a system basis, where EPA is the permitting authority in one or more states in which the operating company owns electric generating units, provided all affected states agree.

(2) Any state permitting authority may allow actual annual emissions in both representative periods to be (A) total operating company emissions within the State, (B) with the agreement of the owners of all other electric generating units with the state, total emissions within the state, or (C) with the agreement of any other states in which the operating company owns electric generating units, total operating company emissions.

(e) MODELING REQUIREMENTS.—Nothing in this section shall authorize an increase in emissions which causes or contributes to a violation of a national ambient air quality standard, PSD increment, or visibility limitation. Any physical or operational change at a source subject to subsection (b) of this section that results in an increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purposes of Title I, if any, which the Administrator determines is reliable, may be required to perform in air quality impact analysis, whenever the Administrator has reason to believe that the increase will cause or contribute to a violation of any ambient standard, PSD increment, or visibility limitation. The Administrator shall have the authority under this section to gather any necessary information, including requiring the source to conduct modeling, if necessary.

(f) NITROGEN OXIDE CONTROL REQUIREMENTS.—

(1) Any modification, as defined in section 169(2)(C), at an existing electric utility steam generating unit subject to section 165 shall be deemed to satisfy the technology requirements of section 165(a)4 for nitrogen oxides if it meets the following:

(A) For a unit subject to a requirement promulgated pursuant to section 407, immediately following the modification, the unit shall be required to meet the nitrogen oxide emission limitation specified for that boiler type pursuant to section 407. In the event that the modification precedes the establishment of nitrogen oxides emissions limitations for that boiler type pursuant to section 407, the unit shall be required to meet the applicable emission limitation upon the date required by the regulation.

(B) For an existing electric utility steam generation unit not subject to section 407, immediately following the modification, the unit shall be required to meet the nitrogen oxide limit equivalent to the limit achievable using "low-NO_x burners."

(2) Any state or local permitting authority shall retain the right to impose more stringent limitations for control of nitrogen oxides.

(g) DEFINITIONS.—For purposes of this section,

(1) "Pollution Control Project" means any physical change, or change in the method of operation, at an existing electric utility steam generating unit for purposes of reducing emissions from such unit in order to comply with Title V. Such changes are limited to:

(A) Installation of conventional or innovation pollution control technology, including but not limited to conventional and advanced flue gas desulfurization, sorbent injection for SO_2 and NO_x controls and electrostatic precipitators; and

(B) Physical changes, or changes in the method of operation, to accommodate switching to fuel which is lower in sulfur content than the fuel used prior to the change, including natural gas or coal reburning, cofiring of natural gas and other fuels for the purpose of controlling SO_2 or NO_x emissions; and

(C) Clean coal technology demonstration projects conducted under Title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,750,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

(2) "Representative Actual Annual Emissions" means:

(A) for the period prior to a physical change or change in the method of operation of a unit, the average rate, in tons per year, at which the unit actually omitted the pollutant during the two-year period which precedes the change, provided that the Administrator shall allow use of a different consecutive two-year period within the 5 years before the change, where the Administrator determines that such a period is ore representative of normal source operations; and

(B) for the two-year period after a physical change or change in the method of operation of a unit, (or different consecutive two-year period within 10 years after that change, where the Administrator determines that such period is more representative of normal source operations), the projected average rate in tons per year at which the source is projected to emit a pollutant, and considering the effect any physical or operational changes have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future capacity utilization, the Administrator (i) may consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with State or Federal regulatory authorities, and compliance plans under the Title V of this Act, and (ii) shall exclude that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, including an increase in projected capacity utilization equal to the rate of electricity demand growth for the utility system as a whole.

(h) EPA GUIDANCE.—Within 24 months of enactment of this section, the Administrator shall, after notice and the opportunity for public comment, issue guidance for use by permitting authorities in determining criteria under which various refurbishment projects would be considered routine or nonroutine.

NOTE: References to "section 407" refer to S. 1630. Other section numbers refer to the current Clean Air Act.

COUNCIL OF ECONOMIC ADVISERS,
Washington, September 11, 1990.

Hon. WENDELL H. FORD,
Chairman, Subcommittee on Energy Research and Development, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN FORD: This is in response to your letter of May 18, 1990 regarding the WEPCO issue and my testimony of May 8, 1990. Answers to the specific queries posed in the attachment to your letter are enclosed. These answers are most usefully considered in the context of the legislative language developed in close collaboration with EPA and DOE and forwarded to you under separate cover on July 23.

One point of clarification is in order to avoid any chance of misunderstanding. Although technically the addition of a new unit to an existing source is considered a modification under Prevention of Significant Deterioration provisions of the Clean Air Act, the changes to the modification provision proposed in our July 23 language are *not* intended to apply to such projects. Such projects should still be subject to full new source review.

I apologize for the delay in replying to your questions. Please do not hesitate to call on me if I can be of further assistance regarding any aspect of this issue.

Sincerely,

RICHARD SCHMALENSEE.

RESPONSES FROM RICHARD SCHMALENSEE (CEA) TO SENATOR FORD'S QUESTIONS ON ADMINISTRATION TESTIMONY REGARDING S. 1848

1.a. While ICF's "high impact case" estimate of the additional cost of compliance under acid rain legislation due to WEPCO seems very unrealistic, would you agree that ICF's "low impact case" cost estimate of $1 billion in additional costs is reasonable? Please explain your answer.

To date, WEPCO is one of the few utility plants to trigger the modification provisions at existing units. However, given the forecasted reliance on refurbishment in the electric utility sector clearly more WEPCOs are in store. To be sure, given the case-by-case application of the PSD program, it *precise* future impact is difficult to estimate. The UARG study is based on explicit out-of-model *assumptions* about how broadly the modification rule would apply to utility boilers. The Administration believes that the low impact case assumptions concerning the types of plants that might be subject to the modification rule are plausible. This case assumes that roughly 15 gigawatts of existing coal-fired utility capacity would be subject to new source review regulations. However, while the assumptions regarding the incidence of the modification rule are plausible, the cost and emission reduction estimates in the UARG low impact case may be both too high for several reasons.

The UARG low impact scenario assumed that only those coal-fired power plants with historically poor performance and availability would trigger the modification provisions of PSD. The low impact scenario also assumed that all oil-capable units which were predicted to switch to natural gas in EPA's base case forecast, would be affected—meaning, potentially subject to PSD as a modification.

Several factors suggest that the cost estimates in the UARG study may be high. First, the UARG study assumes that all capacity that would be affected by the PSD provisions is required to meet the NSPS provisions, that is, to achieve the same emissions rates that would be required of an entirely new unit. This clearly is not the case. Apparently, the basis of this assumption was the WEPCO case in which three of the five units were subject to NSPS as well as to the PSD provisions. Some refurbishment projects may in fact lead to an increase in maximum hourly emissions, and thus an NSPS determination. Of course, the extent to which projects fall into this category would depend on the procedure for determining baseline maximum hourly emissions, an issue addressed in our legislative proposal, and the nature of a particular project involved. However, those projects that did not increase maximum hourly emissions would be subject only to the PSD provisions.

Second, the UARG study assumed that the only technology available to meet the NSPS would be wet limestone scrubbing—the most expensive of the retrofit SO_2 removal technologies available. In reality, it is likely that less expensive removal technologies might be used to "net out" of NSPS, e.g., dry scrubbing and sorbent injection. Moreover, if a plant were to install wet scrubbing to maximize SO_2 reduction in order to create allowances for use in the acid rain trading program, those incremental costs should not be attributed to the NSPS or PSD compliance requirements.

Third, since both the Senate and House bills repeal the percent reduction requirement in the NSPS provisions, no technology at all may be needed to net out of any potential increases in hourly SO_2 emissions. Units potentially subject to NSPS as modifications would be free to switch to lower sulfur coal, oil, or gas to keep hourly emissions from increasing, although not without cost.

It also appears that the UARG estimates of costs and emission reductions for NO_x controls at coal-fired plants under the modification rules are somewhat high, although the situation here is less clear than for SO_2. For NSPS purposes, the installation of low-NO_x burners, which both the Senate and House bills require at all wall-fired boilers and tangentially fired boilers, could be used to avoid an increase in hourly emissions. For cyclone and wet bottom boilers, however, it is not clear what options are available to keep hourly NO_x rates from increasing. For PSD purposes, where the relevant tests involve annual emissions, it is not clear what measures could be applied to reduce NO_x emissions at a unit where low NO_x burners are already in place and further investment in a pollution control project that would lead to greater use of the facility under an environmentally sound dispatch plan is contemplated. However, only the costs associated with netting our emissions are appropriate to a cost analysis of the modification rule.

The UARG low-impact assumption for oil-capable boilers seems to be reasonable—that is, oil-fired boilers adding the capability to burn natural gas were assumed to net out of PSD by reducing emissions at the plant to offset any potential increases in emissions.

Taking a broader perspective on your question, we can look at the situation from two perspectives. First, how does the planned acid rain program affect PSD/NSPS compliance costs and emission reductions? Inversely, how does the existing PSD/NSPS program affect the costs/operation of the planned acid rain program?

The impact of the acid rain program on new source review compliance costs reflects two conflicting forces. On the one hand, compliance actions taken to meet the requirements of the acid rain program would be likely to increase the number of existing facilities facing new source review as compared to a "business as usual" scenario. However, the salability of sulfur dioxide emissions allowances, freed up by NSR-mandated reductions in sulfur dioxide emissions, and the fact that some investments can satisfy both NSR and acid rain program requirements tend to work in the opposite direction.

Despite the problems noted above, the UARG study provides an illustration of how the presence or absence of an acid rain program might affect PSD program costs. UARG believes that the incremental cost of the PSD program without an acid rain program ranges from $1.1 billion to $9.5 billion in 2010. With an acid rain program, PSD costs range from $1.0 billion to $7.2 billion. However, the incremental NO_x and SO_2 emission reductions from the PSD program are significantly lower with the acid rain program in place than without it. For NO_x, emission reductions with PSD alone range from 0.2 to 1.3 million tons from the baseline. With an acid rain program in place, the incremental reductions from PSD are 0.1 to 0.4 million tons. Furthermore, with an acid rain program in place, PSD has no impact on aggregate SO_2 emissions.

Taking the inverse perspective, the additional costs and uncertainty imposed pursuant to any triggering of the modification provisions of the Act, as presently implemented, could easily dissuade utilities from engaging in some sound projects that otherwise would have been undertaken as part of the low-cost acid rain compliance strategy. Attempts by utilities to work around the present modification rule process would thus tend to raise the actual cost of acid rain compliance. Administration analyses of acid rain compliance costs do not account for these impacts, because they are highly dependent on case-by-case conditions.

The strong interaction between the new source review and acid rain programs suggests the advisability of revising the former, along the lines suggested in the Administration's WEPCO proposal, while enacting the latter.

1.b. The ICF study indicates that enforcement of the WEPCO policy would result in no additional sulfur dioxide (SO_2) emissions reductions over and above those that would occur under acid rain legislation and a slight reduction of 100,000 tons of nitrogen oxide (NO_x) emissions attributable to enforcement of the WEPCO policy. Do you agree with ICF's assessment?

No incremental sulfur dioxide reduction beyond the large reductions mandated under the acid rain program was forecast under the UARG study because source-specific reductions associated with triggering the modification provisions will translate into higher emissions levels at other plants, due to the operation of the national sulfur dioxide emissions trading program. The application of the modification rule can change the allocation of SO_2 emissions across plants, but not their overall quantity, which is determined by the national cap on total emissions. However, the PSD program, and the Administration's proposal regarding its application will continue to protect local air quality in all areas.

Given that most wall-fired and tangentially fired boilers are required to install low-NO_x burners under the acid rain program, we would be suspect of large NO_x control costs or emission reductions associated with the application of the modification rule on top of that program. The UARG estimate of incremental NO_x reduction estimates apparently reflects the high degree of control required under the acid rain program, which leaves few situations where further control would be necessary or possible under new source review. Indeed, the UARG study assumes more stringent and costly additional NO_x controls than would likely be installed in most cases.

The comments presented above apply specifically to the "low impact" case. A higher level of NSR incidence would, of course, tend to offset the influences tending to reduce total cost cited above.

1.c. Assuming ICF's assessment of additional NO_x emissions reductions attributable to EPA's enforcement of the WEPCO policy to be true and also assuming ICF's "low impact case" cost estimate to be true, would the additional NO_x emissions reductions be cost effective under the criteria that the President has stated for his approval of clean air legislation that might be passed by the Congress?

The UARG low-impact cost estimate is $800 million (year 2000) to $1 billion (year 2010) above the cost of the acid rain program. The incremental emissions reductions estimates for this case are 100,000 tons of NO_x. Overall SO_2 emissions would be unaffected by virtue of the acid rain program. However, as noted above, the UARG cost estimates may overstate actual costs—NSPS

will not apply in all cases, lower cost technologie may become available, and the value of sulfur dioxide allowances may provide a significant cost offset. Moreover, facilities in some cases have the ability to avoid triggering the modification rule by implementing limited controls. Such behavior may lower *both* costs and NO_x emissions reductions.

Estimated NO_x reduction costs for the Administration proposal and the House and Senate bills fall in the $200 to $400 per ton range.

1.d. Should the NO_x emissions reduction program in Section 407 of S. 1630 become law, would compliance with Section 407 achieve the NO_x emissions reductions that might be achieved by enforcement of the WEPCO policy?

The acid raid title of the proposed Clean Air Act Amendments is projected to achieve a reduction in NO_x emissions from baseline levels of approximately 2.0 million tons by the year 2000 according to the latest ICF analysis of the Senate and House bills (The House requirement for a 2.5 million ton reduction is met by substituting extra SO_2 reductions for 0.5 million tons of NO_x reductions under the SO_2 for NO_x trading provisions of the House bill.)

In the absence of the acid rain program, the UARG study estimates reductions in NO_x emissions from baseline levels of between 0.1 and 0.6 million tons by the year 2000 pursuant to the application of the current WEPCO policy. As noted above, there are several reasons why the UARG study probably overstates both the emissions reductions and costs of the modification rule.

The focus of the acid rain program is on aggregate emissions, while the PSD program is designed to protect local air quality objectives. Significantly, the Administration's proposal regarding the application of new source review to units subject to the acid rain program is designed to ensure that local air quality values are protected, while providing an appropraite degree of flexibilty and predictability to utilities in planning their compliance with our ambitious program to achieve very large reduction in emissions that contribute to acid rain.

1.e. Has the Council of Economic Advisers or any other office within the Administration performed its own analysis of: (a) the additional costs of compliance with acid rain legislation that might be attributable to EPA's enforcement of the WEPCO policy; and (b) additional emissions reductions over and above those that would occur under acid rain legislation that might be achieved as a consequence of the enforcement of the WEPCO policy? If the answer is yes, please provide copies of such analyses.

No government agency has performed an independent study of the type outlined in your question. As noted in our response to question 1.a., all Administration acid rain studies have assumed that compliance decisions are made without regard to the application of the modification rule. As our answere to question 1.b. indicates, we would not expect the application of the WEPCO policy, which focuses on emissions at the plant level, to reduce aggregate SO_2 emissions. Our answers to 1.a. and 1.b. explain why the incremental NO_x reduction identified by UARG (0.1 million tons in the low impact case) is probably an overestimate.

1.f. Has the Council of Economic Advisers or any other office within the Administration analyzed the compliance cost and emissions reduction impacts of the principles for a legislative resolution of the WEPCO issue outlined in your testimony?

No.

2. In your prepared written testimony at pages 7 and 8, you discuss the extent to which the Senate and House clean air bills address the WEPCO issue. In reference to Section 415(e)(3) of S. 1630, the Bumpers-Breaux-Bingaman Amendment, you state: "Some have suggested that this presumption [regarding capacity utilization] may be easily rebutted by either the utility's own announced plans for compliance with the acid rain program or by consideration of the likely impact of a project on utility dispatch plans." Do you view the presumption in Section 415(e)(3) as easily rebutted? Please explain.

For sources installing pollution control hardware, or switching from oil to natural gas as part of an SO_2 control program, we would expect the capacity utilization of the unit to increase after installation of the hardware, or after the conversion to gas. Our expectation is based on economics. It is reasonable to expect utilities to dispatch generating units based on lowest variable costs. With respect to scrubbers, they generally are less cost-effective at controlling SO_2 then fuel switching, but they are capable of achieving much greater SO_2 reductions at a given unit. Moreover, their *variable* costs are a small fraction of their overall costs. For example, ICF's scrubber costs used in analysis for EPA include, for a 2.5 percent sulfur coal and in 1986 dollars, capital costs of $192/kw, fixed O&M costs of 6.18 $/kwyr, and variable O&M costs of 1.37 mills/kwhr. Assuming a 65 percent capacity factor, to enable comparison, the variable costs work out to about 23 percent of total scrubber costs. In this case, scrubber costs are about $325/ton of SO_2 removed, but the variable scrubber costs are only $75/ton of SO_2 removed. This variable cost is much less than the cost of low sulfur coal, which varies by region, but generally has a cost effectiveness ratio of $200-$300/ton of SO_2 avoided (almost all of which is a variable cost). As a result, all other factors being equal, a utility with a scrubber equipped unit and a unit burning low sulfur coal will generally prefer to run the scrubbed unit more, because its variable costs are less.

Similarly, for the oil-fired generator converting to natural gas, the conversion will likely be based on economics. In other words, it will be converted only if it is cheaper, considering both fuel prices and the cost of meeting SIP's and acid rain regulations, to operate on gas, rather than on oil with emission controls. Assuming there remain some oil-fired units in the utility system, the utility would generally prefer to utilize the converted unit more, and other oil-fired units less.

The utility's dispatching intentions must be made clear to the permitting authority because of provisions in § 408 (c) and (d) of S. 1630. These provisios require owners and operators of units subject to Phase I or Phae II limitations to submit permit applications and proposed compliance plans for review and approval by the permitting authority. Because compliance is based on annual emissions of SO_2, not hourly rates of emission, it will be essential for the utility to explain not only the hourly emission rate of a unit, but also the level of expected capacity utilization of the unit. Givern that historical levels of capacity utilization are a matter of public record, any change in utilization rates before and after pollution controls are installed will be self-evident. This is the basis for the statement in my testimony suggesting that utilities will themselves rebut the constant capacity factor presumption.

3. In your prepared written testimony at page 9, you state that "the administration supports a broad, generic legislative resolution [of the WEPCO issue] that has seven basic elements."

A. Why is this a legisltive proposal? Why could you not accomplish the same result by administrative action under curent law?

As stated in my testimony, much of what the Administration seeks to accomplish through this legislative proposal could be accomplished by administrative action under current law. However, a clear statement in law will provide a firmer foundation for utilities to plan and implement cost-effective long-run strategies to achieve the very large required reductions in emissions that contribute to acid rain while continuing to maintain capacity and reliability in the electric supply system. Relying solely on administrative action will increase the uncertainty faced by the utilities that already have to implement a number of technically complex and costly revisions in their operating procedures to comply with the new Clean Air Act.

Other adjustments needed to take account of the interaction between the application of the existing modification rule and the acid rain program can ony be addressed throgh legislation. The Senate and House share this concern, as reflected in the provisions of Sections 415 and 512 of their respective bills. The Administration seeks to provide an appropriate degree of flexibility and predictability to utilities subject to the acid rain program. It recognizes that the acid rain program—with its unique emissions cap and tradable allowances provisions— creates a special set of conditions that necessitate changes in the application of the modification rule.

With reference to the proposed legislative language submitted on July 23, let me highlight the provisions that could be undertaken administratively under current law and those that would require a legislative change:

a. NSPS Emission Increase Calculations—EPA's current regulations provide for a comparison of the hourly emission rate, *just prior* to a physical or operational change, with the hourly emissions following the change to determine whether or not emissions will increase as a result of the change. The proposed legislation would use as a baseline the highest hourly emissions level achievable any time during the 5 years prior to the change. The EPA could accomplish the same result through rulemaking.

b. Pollution Control Projects—EPA could through administrative action exclude certain pollution control projects from NSPS and PSD review. Under current law, however, it would be difficult to consider for PSD purposes the change only with respect to that pollutant for which there is an increase in potential emissions. No basis for such a distinction exists in the current statutory provisions relating to PSD review. Further, EPA could through rulemaking make certain changes to the method of calculating emissions increases under PSD. Changing to a maximum hourly emissions test as set forth in our legislative proposal, or to the potential emissions test in the House bill, however, would be difficult under current law.

c. Safe Harbor Provision—Current EPA regulations exempt routine projects from new source review. EPA can issue guidance or regulations clarifying what types of

projects would be considered routine and thus not subject to new source review. The safe harbor provision, however, would broadly expand administrative exemptions to the statutory requirements in order to exclude nonroutine physical renovations that were complementary to and contemporaneous with a pollution control project, so long as their cost did not exceed 20 percent of the cost of the total project. It provides a mechanism through which utilities can themselves determine the applicability of new source review to a set of physical or operational changes intended to control pollution plus other complementary, contemporaneous renovations that would be needed to take full advantage of this pollution control investment to comply with the acid rain program. Sources wishing to use the safe harbor must also implement NO_x controls under Section 407 on an accelerated basis. Despite the importance of the safe harbor in promoting a smooth implementation of emission reduction mandates under the acid rain program, a reviewing court likely would find it to be inconsistent with the present statute if implemented through rulemaking. See *WEPCO v. Reilly*, 893 F.2d 901, 909 (7th Cir. 1990).

d. Systemwide Netting—The proposal to allow, but not require, the relevant permitting authority to use systemwide netting among various utility sources to calculate whether an emissions increase will occur for new source review purposes could not be accomplished under current law. The definition of "source" under current law cannot be construed so broadly as to encompass facilities that are not within a single plant.

e. Modeling—The modeling provision could be adopted through administrative action.

f. Generic NO_x BACT Determinations—Under current law, a BACT determination must reflect the maximum reduction in emissions achievable on a case-by-case basis, taking into account individual characteristics of the particular source and can be no less stringent than the NSPS. See CAA § 169(3). Therefore, a finding that a particular NO_x control technology or emission limit constitutes BACT for an entire source category could not be made through administrative means.

g. Nonpollution Control Projects—The Administration proposal would adopt an "actual-to-actual" methodology for calculating emissions increase for purposes of new source review under Parts C and D of Title I. It would also exclude emission increases due to demand growth and other factors unrelated to the modification, since such emissions increases would occur even if no modification were undertaken. These changes could be implemented through rulemaking.

B. Should S. 1630 as written become law, could the Administration's proposal for resolution of the WEPCO issue be implemented by administrative action? If not, do the WEPCO provisions in S. 1630 preclude administrative implementation of the Administration's proposal?

The Administration's legislative proposal differs from the Senate bill in three key respects. The Senate bill would subject a substantial group of pollution control projects to PSD and NSPS review, since it incorporates an emissiopn increase test in which the projected increased utilization of plants with new pollution controls to meet acid rain objectives would trigger new source review. The Administration proposal would exempt pollution control projects from NSPS and Part C requirements, provided that maximum hourly emissions do not increase, and would not apply new source review requirements for these pollutants for which maximum hourly emissions decrease or remain constant. This maximum hourly increase test will provide for smoother compliance with the emission reduction mandates of the acid rain program.

Also, there is nothing comparable to the Administration's "safe harbor" provision in the Senate bill. This provision ensures that whatever latitude is afforded to pollution control projects in all of the bills could not be offset due to the triggering of NSR by other complementary, contemporaneous renovations valued at up to 20 percent of the total project needed to take full advantage of a pollution control project that does not increase maximum hourly emissions. Such a provision is necessary to avoid discouraging compliance strategies designed to use clean plants with pollution control projects more intensively and dirty plants less intensively.

A third difference is that the Senate bill exempts repowering projects from NSPS-reconstruction provisions. The Administration's proposal would generally subject these projects to NSPS. Other differences also exist, such as the provision for systemwide netting of emissions in the new source review process to allow the regulatory authority, at its option, to take into account the reduction in emissions at other facilities which will occur as utilities reallocate their generation load to make greater use of units equipped with pollution control projects.

The answer to Question 3.a. already identifies the components of the Administration proposal which could be undertaken administratively under current law. The WEPCO provisions of S. 1630 would, to the extent they provide statutory guidance, preclude some actions that are administratively feasible under current law. For example, it may not be possible to exclude demand growth from the rebuttable presumption test under Section 415(e)(3). Overall, the WEPCO provisions of S. 1630 do not provide nearly as many guaranteed options for utilities to implement environmentally sound compliance and system planning options at the lowest possible cost.

C. Should H.R. 3030 as reported by the Committee on Energy and Commerce become law, could the Administration's proposal for resolution of the WEPCO issue be implemented by administrative action? If not, do the WEPCO provisions in H.R. 3030 preclude the Administration's WEPCO proposal?

[Because the House passed its version of the Clean Air Act subsequent to the issuance of these questions, we have responded to this question based on the House bill as passed.]

Section 512(b) by the House bill provides that no physical or operational change in a unit for purposes of reducing emissions in order to comply with the acid rain title shall be treated as a modification for purposes of Section 111 (NSPS) or Part C of Title I (PSD) provided potential emissions do not increase. The Administration's proposal for pollution control projects (other than CCT projects) is similar to the language contained in Section 512(b). However, because there is no safe harbor provision in the House bill, the extent of usable relief to pollution control projects may be limited.

Section 515 directs the Administrator to issue regulations to facilitate temporary and permanent CCT projects. In determining whether or not an emissions increase would occur for permanent CCT projects, Section 515(c) directs the Administrator to compare pre-project actual emissions with projected future emissions projecting a future 70 percent capacity utilization factor. Under Section 515 of the House bill, fewer CCT projects would likely be exempt from NSPS and PSD review because the emissions increase calculation is actual-to-projected actual, assuming 70 percent capacity, while the Administration's proposal uses a maximum hourly test for CCT projects.

Repowered sources are also afforded certain relief under Section 508(c) of the House bill. These sources are exempt from any NSPS. They are also exempt from the new source requirements of Part C or D if projected emissions do not increase over past actual emissions. As with CCT projects, future emissions are to be projected using a 70 percent capacity factor. (Repowering is defined in Section 502(c)(14).) In some cases, repowered projects would qualify as pollution control projects under the Administration's proposal. The Administration's proposal would not, however, exclude these projects from NSPS reconstruction rules. In other cases, they may be treated as nonpollution control projects.

These are the only House provisions that relate directly to the Administration's proposal. Since both the House and Administration proposals operate via exclusion, all or parts of these proposals could coexist if both were legislatively authorized. With respect to administrative steps, other actions identified in response to question 3.a. could be undertaken to the same extent as identified in the response to that question, provided that they were not precluded by new statutory language.

3. [Note that this is the second question labeled as "3" from the questions submitted].

In your prepared written testimony at page 11, you state: "However, units seeking to take advantage of this provision would be required to meet the NO_x reduction limits required by the applicable final rule, if any, issued under Section 407(b) as a part of the total project."

A. What if a powerplant undertakes nonroutine physcial or operational changes prior to the issuance of an applicable final rule under Section 407(b)?

If a powerplant undertakes a nonroutine physical or operational change under the "safe harbor provision" prior to the issuance of an applicable final rule under Section 407(b), the unit would be required to meet the applicable emission limit upon the date required by the rule that is ultimately issued. Until that time, the unit must meet an emission limit equivalent to that achievable using low-NO_x burners on that type of unit. This is reflected in Section (b)(2)(B) of the proposed legislative language submitted to you on July 23.

B. Under Section 407(a), an affected unit for purposes of SO_2 reduction requirements shall be an affected unit for purposes of the NO_x limitations set forth in Section 407. Does this mean that the net effect of the above-quoted sentence is to accelerate the applicability of NO_x reduction requirements for "utility pollution control projects?"

Under the legislative proposal, any unit installing a pollution control project and undergoing contemporaneous nonroutine physical or operational changes costing up to 20 percent of the total cost of project would be subject to the NO_x requirements as applicable to it at the time of the project. In some instances, this may accelerate the time

for compliance with the NO_x requirements. However, the schedule for compliance with Section 407 requirements would not be affected for projects that do not take advantage of the "safe harbor" provision.

C. What do you intend by the term "this provision" in the above-quoted sentence? Do you intend to refer only to the provision governing units that make [modifications] which are not entirely "utility pollution control projects" (i.e., the units discussed in the paragraph in which the above-quoted sentence appears)? In the alternative, do you intend to refer to the provision governing all "utility pollution control projects" including projects in which all changes are made entirely for purposes of reducing emissions in order to comply with the acid rain title of clean air legislation?

The phrase "this provision" at page 11 at my testimony refers to the "safe harbor" provision. The "safe harbor" provision (as outlined in Section (b)(2) of the legislative language) applies to projects that are pollution control projects and also include some other contemporaneous change. The cost of these other changes may not exceed 20 percent of the total cost of the project. "Pollution control projects" which incorporate no other changes, and do not need the "safe harbor" must, as in the House bill, satisfy only the emissions increase test, i.e., that maximum hourly emissions do not increase.

4. Physical or operational changes which improve power plant efficiency reduce fuel consumption per unit of energy output and correspondingly reduce emissions per unit of energy output. In view of this, would the term "utility pollution control project" include nonroutine physical or operational changes intended to improve powerplant efficiency if such changes were undertaken as part of a utility's strategy for compliance with the acid rain title of legislation to amend the Clean Air Act?

Our proposal contemplates that a "Pollution Control Project" would consist of those physical and operational changes outlined in Section (g)(1). There is no specific provision for investments in powerplant efficiency as such. Of course, under the safe harbor provision, a limited value of complementary, nonroutine physical or operational changes can be treated as part of a pollution control project.

5. From your testimony at page 11, it would appear that whether a power plant modification qualified as a "utility pollution control project" would depend on the intent of the powerplant operator.

A. How would this standard apply to powerplant modifications that reduce emissions subject to the acid rain title of clean air legislation, but which are undertaken prior to the date that emission reduction deadlines take effect? What about projects undertaken pursuant [to] emissions reduction requirements under State law?

Power plant modifications that reduce emissions subject to the acid rain title of the clean air legislation would qualify as "utility pollution control projects" and be treated as such once the legislation becomes law. This would apply to any qualifying project, as of the date the legislation becomes law, regardless of when the emission reduction is undertaken. The legislation considers a "utility pollution control project" to be those changes implemented for the purpose of complying with the acid rain title. It does not cover changes made pursuant to State law.

B. If such modification did not qualify as "utility pollution control projects," this would constitute a penalty against early emissions reductions. Would there be any legal or public policy justifications for such a result?

There is no public policy rationale for excluding projects undertaken prior to the date that emission reduction deadlines take effect from the category of "utility pollution control projects." Indeed, any such exclusion would appear to contemplate significant assistance from supernatural forces in executing pollution control projects at the instant they must be in place to meet statutory requirements.

6. In your prepared written testimony at page 10, you state that "a project that did not increase annual emissions of a source above the levels used in establishing the baseline or in determining increment consumption would be considered to meet annual PSD requirements for that source without any further showing."

A. Is this a restatement of existing policy under the PSD program or is it intended to be a new formulation of policy under the PSD program?

This is a statement of policy to accommodate the proposed change in the method of calculating emissions for pollution control projects. The legislative language of the Administration proposal provides that if the source will not increase its actual emissions over the level of emissions that was used in the most recent air quality impact analysis, the source's contribution to the consumption of PSD increment is unchanged, and no further modeling is needed, unless the Administrator determined that the earlier modeling was unreliable or otherwise concludes that an additional showing is needed to protect air quality values.

B. Under this formulation, how would an "increase in annual emissions of a source" be measured?

An increase in representative actual annual emissions would be based on a comparison of (1) the average rate in tons per year at which the source actually emitted during the two years preceding the proposed change (or some other representative 2-year time period within the previous 5 years), and (2) the projected average rate in tons per year at which the source will emit a pollutant, based on projected future capacity utilization for the 2-year period following the change (or some other 2-year period within 10 years after the change), but excluding increases in the rate of utilization due to systemwide demand growth and other factors unrelated to the physical or operational change.

7. In your prepared written testimony at page 10, you state that "part D review and permitting requirements would also be triggered by any nonroutine physical change, including pollution control projects, that resulted in a net increase of pollutants in a nonattainment area that would exacerbate exceedence of air quality standards. The net increase determination would be based on a comparison of before and after emissions across representative periods."

A. What would constitute a "net increase of pollutants . . . that would exacerbate the exceedence of air quality standards"? For example, would an increase in NO_x emissions "exacerbate the exceedence of air quality standards" in an ozone nonattainment area?

The existing new source review regulations for new and modified major sources specify certain significant levels for each of the various criteria pollutants. In a nonattainment area, an existing major source of a nonattainment pollutant proposing a nonroutine physical or operational change would exacerbate the existing violation when, as a result of the change, the net increase of that nonattainment pollutant is significant. Accordingly, in an ozone nonattainment area, a proposed project with a significant net increase of volatile organic compound emissions (i.e., 40 tons per year increase in emissions) would exacerbate the violation of the ozone air quality standard. Likewise, a significant net increase in NO_x emissions in a NO_2 nonattainment area would exacerbate the existing NO_2 violation.

The relationship between NO_x emissions and ozone formation in the individual ozone nonattainment area would be considered in determining whether or not a significant increase in NO_x emissions would exacerbate an ozone nonattainment problem. The same concern is reflected in the attainment title of the House bill, which recognizes that there should be substitutability between NO_x reductions and HC reductions in meeting progress requirements in some areas, but not in others. Where EPA determines that ozone is not sensitive to NO_x, it would not presume that NO_x emissions exacerbate an ozone nonattainment problem.

B. How would a "net increase" in emissions be measured? Would it be on the basis of a comparison of the power plant's pre-modification and post-modification potential to emit? Would it be on the basis of a comparison of the power plant's pre-modification and post-modification actual emissions?

The basis for comparison would be essentially a comparison of the power plant's pre-modification and post-modification actual emissions, with a "net increase" in emissions measured in terms of changes in a power plant's "representative actual emissions." For the pre-modification period this means the average rate, in tons per year, at which the power plant actually emitted the pollutant during the 2-year period which precedes the change or any 2-year period within the 5 years prior to the change which is more representative of normal plant operation. Post-modification emissions means the projected average rate, in tons per year, at which the power plant is projected to emit a pollutant during the 2-year period following the change (or any 2-year period up to 10 years after the change) excluding increases due to factors unrelated to the physical or operational change, such as systemwide demand growth.

C. How do you intend to define the term "representative periods?" For example, what would be the representative period for a powerplant that was shut down during the period immediately prior to its modification or a power plant whose capacity was substantially underutilized during that period due to broken or worn equipment?

The representative period is initially considered to be the 2 years prior to the change. However, the use of a different consecutive 2-year period within the 5 years before the change would be used where the Administrator determines that such a period is more representative of normal source operations. For a power plant that was shut down during the period immediately prior to its modification or a powerplant whose capacity was substantially under utilized during that period due to broken or worn parts, the most recent 2 years most likely will not be representative of normal operation. Therefore, the use of the most recent 2-year period would not apply and a different 2-year period within the last 5

years would be used to establish premodification emissions.

8. In your prepared written testimony at page 11, you state that "[n]onroutine physical or operational changes at existing steam electric generating units other than utility pollution control projects should not be deemed major modifications subject to the review and permitting requirements of part C and D of Title I unless they result in a net increase in annual emissions."

A. You appear to imply the necessity of a causal relationship between increases in annual emissions and the change made at the power plant. Is this what you intended?

Yes. The intent of the Administration's proposal is that increases in emissions which are due to growth and which are not directly related to the change being made at the power plant should not be considered in the calculation of an increase in actual annual emissions.

B. How would you treat a situation where an increase in emissions was not directly causally related to the power plant modification? For example, how would you treat a case where capacity utilization increased due to economic growth in a utility's service area? What about a situation where a utility's economic dispatch of the modified powerplant was altered due to a change in operating costs such as a new fuel contract?

If demand growth causes an increase in utilization of a unit which has undergone a physical change, or change in the method of operation, then the portion of the increase in demand which is unrelated to the change would not be considered in calculation of the increase in representative actual annual emissions. On the other hand, if the change results in: (a) removing bottlenecks, an outright increase in capacity or reliability, or (b) less expensive power production, which leads to greater dispatching, then the portion of capacity utilization attributable to these results from the change would be included in calculation of emissions increases. The provisions for systemwide netting at the option of the regulatory authority would be relevant to the latter circumstance.

9. In your prepared written testimony at page 10, you state that "[a]s in the Senate and House Committee bills, temporary CCT projects should be exempt from NSPS, PSD, and NA review provisions."

A. Would the change in emissions as a consequence of the removal of a "utility pollution control project" be treated the same as the change in emissions that resulted from the removal of a temporary CCT project?

Our proposal does not contemplate the removal of a "utility pollution control project." An issue may arise with respect to "reverse" fuel switching that may occur as a utility adjusts its compliance strategy by increasing emissions at some plants following a decrease at others. However, switching among fuels at a facility that is capable of burning multiple grades or types of fuel without undergoing a nonroutine physical change is, in our view, a routine change that does not trigger the modification rule.

B. If not, how would such a change in emissions be treated? For example, what if the pollution control technology did not perform up to expectations? What is the "utility control project" was installed in order to comply with phase I emissions reduction requirements and removed when the utility chose to control another power plant as part of its phase II compliance strategy?

Temporary emission control projects, even those that don't work as expected, are not subject to NSPS or NSR, as long as hourly emissions after the demonstration do not increase above pre-demonstration levels. As for removing a Phase I control as part of a utility's Phase II plan, the likelihood of this appears to be remote. Logically, a utility would be unlikely to invest substantial financial capital in a permanent Phase I control system and then remove the system only a few years later under Phase II. If the phase I controls were part of an unsuccessful temporary demonstration, then NSR and NSPS would not apply and only the system-wide Phase II requirements would be applicable.

10. In your prepared written testimony at page 11, you state that "[a]ny nonroutine physical change in, or change in the method of operation of, an existing steam electric generating unit for the purposes of reducing emissions at that unit in order to comply with the acid rain title of the Clean Air Act should constitute, for present purposes, a "utility pollution control project."

A. Would the term "utility pollution control project" apply to powerplant modifications made for the purposes of compliance with other provisions of amendments to the Clean Air Act? If not, please explain why.

Only modifications made to comply with acid rain provisions of the Clean Air Act Amendments would be considered a "utility pollution control project" under our legislative proposal for Title IV. Where differentiated treatment for the electric utility industry is warranted for other provisions of the bill, such as the air toxic title, appropriate provisions should be included within that title.

The acid rain program is unique in several respects. Unlike other titles affecting stationary pollution sources, it is focused on one economic sector. In contrast to other programs, where shifts in operations among plants are largely a matter of secondary interest, the emissions trading system of the acid rain program encourages utilities to adjust their dispatch to meet their obligations in a cost-effective manner. For the trading system to operate effectively, maximum flexibility and predictability must be provided to utilities, while ensuring that local air quality values are protected as the Administration's WEPCO proposal. The acid rain program is also unique in its absolute ceiling on sulfur dioxide emissions and its comprehensive retrofit requirements for NO_x. As both the House and Senate bills recognize, these distinct features necessitate legislative change governing the application of the modification rule to pollution control projects under this title. This does not necessarily hold true for projects undertaken pursuant to other title of the bill in a wide variety of sectors under a variety of conditions.

B. By the term "steam electric generating unit" did you intend to exclude from the definition of "utility pollution control project" changes to combustion turbines intended to reduce emissions? Note that Title IV of S. 1630 no longer uses the term "steam electric generating unit" and that the term "unit" is defined simply as "a fossil fuel-fired combustion device."

The acid rain program under Title IV does not apply to existing simple combustion turbines and thus, our proposed changes in the application of the modifications provisions of Title I should not apply to them either.

C. Would a modification of an non-utility unit made for purposes of reducing emissions of pollutants regulated under the acid rain title of amendments to the Clean Air Act be eligible for treatment as a "utility pollution control project?" Note that under Section 410 of S. 1630 a non-utility unit may reduce emissions and opt in to the emissions allowance under Title IV.

A non-utility unit that "elects in" under Section 410 would not be eligible for the definition of a "utility pollution control project". It would be inappropriate to extend the proposal to other industries, which are not targeted by the acid rain program or subject to its sulfur dioxide emissions cap or low-No_x technology requirements. Unlike electric utilities, other industries are not being forced to make significant physical and operational changes.

11. In your prepared written testimony at page 11, you state that "[u]tility pollution control projects would be evelauated in terms of their impacts on maximum hourly emission rates, following current policy toward NSPS reviews. Thus, a utility pollution control project that does not increase maximum hourly emissions of any criteria pollutant compared to a representative prior to the project should not be deemed to be a major modification subject to the review and permitting requirements of Part C of Title I."

A. What is "current policy toward NSPS reviews?" Does the above-quoted excerpt from your prepared testimony reflect such "current policy"? In *WEPCO v. Reilly*, the U.S. Court of Appeals for the 7th Circuit deferred to EPA's interpretation that use of a "representative" period was not required for determining baseline emissions rates under the agency's NSPS regulations. On the other hand, in its January 30, 1990, letter to the Indiana Department of Environmental Management, EPA appears to suggest that in its upcoming interpretative rule there would be some concept of a "representative" period for assessing the emissions consequences of the removal of a temporary CCT project.

The NSPS program is concerned with hourly emission rates from indivdual emissions units. Emission rates are calculated at maximum capacity before and after the physical or operational change to determine in there is an increase. Current NSPS rules for calculations to determine whether an emissions increase has occurred contemplate that the calculations be done based on conditions just prior to and after the physical or operational change. However, the Administrator has discretion to determine the "before" emission rate based on past performance, where, for example, the unit on which a project is contemplated has suffered damage, a common occurrence in the electric utility sector. To provide maximum predictability in utility planning to comply with the acid rain program, we believe that it is important to provide a system under which utilities can easily evaluate their NSPS limits for each unit without seeking an EPA decision. Therefore, as reflected in the legislative language provided to you, we propose that utility sources should be able to use the highest hourly emissions rate achieved during the 5 years prior to the change in determining whether a change will increase hourly emission rates.

The EPA's January 30, 1990 and March 7, 1990 letters to the Indiana Department of Environmental Management include discussion of how actual emissions before a change are determined for a "representative period" of operation under existing PSD regulations, not NSPS. There is no explicit

discussion of a representative period for "post demonstration emissions" for a temporary CCT project.

B. Is "current policy towards NSPS reviews" the same for pollution control projects as it is for other nonroutine changes?

If a project, whether pollution control or otherwise, does not increase maximum hourly emissions of an NSPS-regulated pollutant, then it is not subject to NSPS (unless reconstruction provisions are triggered, indicating a major construction of essentially new units). A pollution control project is subject to NSPS review if there is an increase in maximum capacity hourly emissions of any NSPS-regulated pollutant after the change. However, the EPA Administrator may determine, on a case-by-case basis, that the addition of a pollution control device to significantly reduce emissions of our pollutant may not be a modification even if there was a small increase in another NSR-regulated pollutant.

12. In your prepared written testimony at page 11, you state that utility pollution control projects "would include, among other changes, gas co-firing."

A. Would other modifications to accommodate switching to a clearner fuel also count as "utility pollution control projects?" For example, what about modifications to accommodate natural gas as fuel in a unit currently fired with oil? Or what about modifications to accommodate switching from high-sulfur coal to low-sulfur coal?

The Administration's proposed language explicitly cites, within the definition of "pollution control projects," "physical changes, or changes in the method of operation, to accommodate switching to fuel which is lower in sulfur content than the fuel used prior to the change. . . ." Such changes would include switching from oil to natural gas. However, the change must be "for purposes of reducing emissions from such unit in order to comply with Title V." Changes occurring after the enactment of the acid rain control program that met the definition established in Section (g) of the legislative proposal would generally be accepted as pollution control projects.

B. For purposes of NSPS review, would a powerplant that switched to a cleaner fuel receive credit for the reduction in its emissions rate attributable to the cleaner fuel? How does the court's holding in *WEPCO* v. *Reilly* bear on this answer?

No. Under the current NSPS for sulfur dioxide, which include a percentage reduction requirement, fuel switches are not credited when calculating emissions increases under NSPS. The method for determining emissions increases under the current NSPS directs that all operating parameters be held the same before and after the change. See 40 CFR 60.14(b)(2). Utilizing different fuels in making the determination of whether emissions would increase would be inconsistent with that directive. This issue was addressed in the *WEPCO* v. *Reilly* decision and the court deferred to EPA's discretionary authority. See 893 F.2d 901, 913–15 (7th Cir. 1990).

13. What is your understanding of when EPA intends to release its interpretative ruling in response to the court's decision in *WEPCO* v. *Reilly*?

As noted in my May 8 testimony, EPA indicated in a letter to the Indiana Department of Environmental Management that an interpretative rule addressing WEPCO issues was under development. However, for reasons outlined in my testimony, and recognized in the Senate and House versions of Clean Air legislation, there are significant advantages to addressing these issues in a statutory setting. The focus of EPA and DOE effort has therefore shifted towards development of our legislative proposal and support of the legislative process.

14. Please provide the Committee with legislative language incorporating the principles for a legislative resolution of the WEPCO issue outlined in your prepared written testimony.

Legislative language was sent to the Committee under separate cover on July 23.

U.S. SENATE,
Washington, DC, October 12, 1990.

Hon. MAX BAUCUS,
U.S. Senate, Washington, DC.

DEAR SENATOR BAUCUS: We too share the sentiments that twenty seven of our colleagues expressed to you in their September 27, 1990, letter concerning the so-called WEPCo issue. While both the Senate and House bills include provisions addressing this issue, a more comprehensive provision must be part of the conference report on the Clean Air Act Amendments of 1990.

Without a broader resolution of this issue, we believe that the cost-effective emissions reduction program that is the centerpiece of the clean air bill will be undermined. We also are concerned that, if left unchanged, EPA's WEPCo policy could adversely affect the reliable supply of electricity in certain regions of the country.

In his letter to you of September 26, 1990, the President included resolution of the WEPCo issue among the elements of the Administration's comprehensive proposal intended to break the logjam in the conference committee. Also, the Department of Energy has identified EPA's WEPCo policy as an impediment to fuel switching that could help to reduce our nation's dependence on imported oil.

In particular, we urge your support for revisions to S. 1630 that would accomplish the following:

1. Allow utilities to undertake projects that reduce emissions (*i.e.*, installation of control equipment, natural gas cofiring) without first meeting new source permitting requirments;

2. Ensure that an existing unit would not trigger new source review where there is no causal link between a change at the unit and an increase in the unit's annual emissions; and

3. Allow utilities to undertake needed repairs at an existing unit without triggering an obligation to meet stringent new source performance standards.

Two additional issues raised by EPA's WEPCo policy should be addressed by the conference report. First, the provisions in the Senate bill that specifically address "temporary" and "permanent" clean coal technology demonstration projects should be preserved. Second, the provision in the Administration proposal which equates low-NO_x burners with BACT should be part of the final bill.

We understand that draft language that would accomplish the aforementioned goals was appended to our colleagues earlier letter on this issue. We greatly appreciate your taking the time to find a solution to this complex problem.

Very truly yours,

DONALD W. RIEGLE, Jr.
PHIL GRAMM.
STROM THURMOND.
DON NICKLES.

U.S. SENATE,
Washington, DC, September 27, 1990.

DEAR SENATOR BAUCUS: We are writing to request your support for revisions in Title IV of the Clean Air Act Amendments of 1990 to address more comprehensively the so-called *WEPCo* issue. Without a broader legislative resolution of this issue, we believe that the cost-effective emissions reduction program that is the centerpiece of the clean air bill will be undermined and that a reliable supply of electricity in certain regions of the country could be jeopardized.

As you may recall, during the Senate floor debate on S. 1630, you agreed that in conference you would try to find a way to accomplish the objectives of a comprehensive legislative solution to the issues raised by EPA's *WEPCo* policy consistent with the overall thrust of both S. 1630 and the underlying Clean Air Act. In particular, you expressed concern that any legislative solution must continue to protect local air quality to the extent achieved by the current Clean Air Act and must not undermine the SO_2 emissions reduction requirements of the bill.

On July 23, 1990, the Administration transmitted to the Senate Energy Committee a comprehensive proposal for a legislative resolution of the *WEPCo* issue. We believe that a simplified version of the Administration proposal cculd address both concerns as to the adverse effets of EPA's *WEPCo* policy and your valid concerns about local air quality and SO_2 emissions reductions, which we too share.

We wish to emphasize that the legislative provision we suggest will not in any way authorize SO_2 emissions in excess of the 8.9 million ton cap. Furthermore, this provision will not authorize emissions that exceed local air quality objectives established under the ambient air quality standards, prevention of significant deterioration, or visibility provisions of the current Clean Air Act.

In particular, we urge your suppport for revisions to S. 1630 that would accomplish the following:

1. Allow utilities to undertake projects that reduce emissions (i.e., installation of control equipment, natural gas cofiring) without first meeting new source permitting requirements;

2. Ensure that an existing unit would not trigger new source review where there is no causal link between a change at the unit and an increase in the unit's annual emissions; and

3. Allow utilities to undertake needed repairs at an existing unit without triggering an obligation to meet stringent new source performance standards.

Two additional issues raised by EPA's *WEPCo* policy should be addressed by the conference report. First, the provisions in the Senate bill that specifically address "temporarly" and "permanent" clean coal technology demonstration projects should be preserved. Second, the provision in the Administration proposal which equates low-NO_x burners with BACT should be part of the final bill.

Draft language that would accomplish the aforementioned goals has been included for your consideration. We greatly appreciate your taking the time to find a solution to this complex problem and are willing to work with you and your staff in this effort.

Very truly yours,

James A. McClure, Richard C. Shelby, Jesse Helms, Dan Coats, Bennett Johnston, Jeff Bingaman, Dale Bumpers, Trent Lott, Thad Cochran, John

Heinz, Wendell H. Ford, Charles S. Robb, Arlen Specter, Howell Heflin, Rudy Boschwitz, Conrad Burns, John W. Warner, Connie Mack, David Pryor, Mitch McConnell, Kent Conrad, Sam Nunn, Lloyd Bentsen, Thomas A. Daschle, Steve Symms, Malcolm Wallop, Pete V. Domenici.

SEC. XXX. APPLICABILITY OF NEW SOURCE REVIEW TO EXISTING ELECTRIC UTILITY STEAM GENERATING UNITS.

(a) APPLICABILITY OF NEW SOURCE PERFORMANCE STANDARDS.—No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of Section 111, provided such change does not increase the maximum hourly emissions of any pollutant regulated under that section above the maximum hourly emissions achievable at that unit during the 5 operating years, prior to the change.

(b) POLLUTION CONTROL PROJECTS.—No physical change in, or change in the method of operation of, an electric utility steam generating unit which is undertaken for the purpose of pollution control, including the use of natural gas and clean coal technologies, shall be treated as a modification for a specific regulated pollutant for purposes of part C or D of title I of this Act if such change does not increase the potential emissions of the specific regulated pollutant from such source above the potential emissions before the change.

(c) OTHER PROJECTS.—No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of Part C or Part D for a pollutant, provided that such change does not result in a significant net increase in representative actual annual emissions of that regulated pollutant at the source in the case of Part C and of that criteria pollutant in the case of Part D. In determining representative actual annual emissions after a physical or operational change, the Administrator shall consider the effect any physical or operational change has on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future capacity utilization, the Administrator shall exclude that portion of the increased rate of utilization, if any, due to factors unrelated to the physical or operational change, including an increase in projected capacity utilization equal to the rate of electricity demand growth for the utility system as a whole.

(d) NITROGEN OXIDE CONTROL REQUIREMENTS.—

(1) Any modification, as defined in section 169(2)(C), at an existing electric utility steam generating unit subject to section 165 shall be deemed to satisfy the technology requirements of section 165(a) for nitrogen oxides if it meets the following:

(A) For a unit subject to a requirement promulgated pursuant to section 407, immediately following the modification, the unit shall be required to meet the nitrogen oxide emission limitation specified for that boiler type pursuant to section 407. In the event that the modification precedes the establishment of nitrogen oxides emissions limitations for that boiler type pursuant to section 407, the unit shall be required to meet the applicable limitation upon the date required by the regulation.

(B) For an existing electric utility steam generating unit not subject to section 407, immediately following the modification, the unit shall be required to meet the nitrogen oxide limit equivalent to the limit achieveable using "low-NO_x burners."

(2) Any State or local permitting authority shall retain the right to impose more stringent limitations for control of nitrogen oxides.

(e) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project or temporary project involving the use of natural gas that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project it terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

(f) Nothing in this section shall authorize an increase in emissions which causes or contributes to a violation of a national ambient air quality standard, PSD increment, or visibility limitation.

Mr. OXLEY. Mr. Speaker, I have several additional comments regarding the conference report on the Clean Air Act Amendments of 1990.

TITLE I—NO_x CONTROLS IN NONATTAINMENT AREAS

Section 182(f) requires major sources of nitrogen oxides to be regulated under provisions for major sources of volatile organic compounds for purposes of achieving the ozone standard. However, this subsection does not apply for sources for which the Administrator determines that net air quality benefits are greater in the absence of NO_x reductions from those sources.

The scientific community has recognized that, in certain instances, NO_x reduction may have the effect of increasing ozone concentrations in certain portions of a nonattainment area, even if NO_x reductions decrease ozone concentrations in other portions of the area. The "net air quality benefits" test in section 182(f) is not intended to authorize EPA or States to sacrifice the health of one subpopulation of an area in order to obtain health benefits for another subpopulation. Thus, where NO_x reduction increase ozone concentrations in any portion of a nonattainment area, the net air quality benefits of NO_x reduction are not greater than in the absence of NO_x reduction, and NO_x reduction may not be part of an ozone control strategy.

The study required by section 185B should assist EPA in discovering the conditions under which NO_x reductions may produce a net air quality benefit. Based upon the results of the section 185B study, EPA, under its general rulemaking authority, may establish regulations defining the conditions; for example, based upon NO_x-to-VOC ratios, under which NO_x control may not be considered as part of an ozone control strategy, and the conditions under which States may demonstrate—using state-of-the-art modeling techniques—that NO_x reductions will result in net air quality benefits. These regulations can govern not only determinations made under section 182(f), but also any that must be made under sections 182(b)(1)(A) and 182(c)(2)(C).

If any electric utility units are regulated as a result of section 182(f), NO_x controls, including any reasonably available control technology requirements, should not be any more stringent than the controls that may be required under the acid deposition title. We expect low NO_x burner technology to be the most stringent control technology imposed on an electric utility unit as a result of either the acid deposition title or subpart 2 of part D.

TITLE III—UTILITY AIR TOXICS REGULATION

As a member of the conference committee involved in the long negotiations over the air toxics title, I wish to address the provisions of the utility air toxics study, section 112(n) of the act as added by the conference agreement. With respect to air toxics generally, the Senate and House bills included provisions that differed substantially with respect to scientific studies, timing, and regulatory requirements. The House provision required that the EPA Administrator perform a 3-year study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units and report the results of that study to the Congress.

On the other hand, the Senate provision was the result of a complex, and ultimately unsatisfactory, set of negotiations. Unlike the House provision, scientific studies were not to serve as the basis for regulation, but simply were to be included in the docket of the regulatory process leading to regulations. Under the Senate provision, regulations for the control of particulates and mercury would have had to been promulgated no sooner or later than 5 years after enactment.

Rather than accept the Senate provision, the conference favored an approach that adopted the basic House provision. The provision did contain two constructive elements found in the Senate provision: A direction to the National Institute of Environmental Health Sciences to conduct a study on a mercury threshold below which adverse effects on human health are not expected to occur and the requirement that EPA study mercury emissions from all sources. The conferees agreed to the House provision because of the logic of basing any decision to regulate on the results of scientific study and because of the emission reductions that will be achieved and the extremely high costs that electric utilities will face under other provisions of the new Clean Air Act amendments.

As we all know, the utility industry has been singled out for regulation under the acid rain provisions. The utility industry may also face additional controls for NO_x emissions for ozone control and revised PM10 controls. These programs will result in substantial reductions in emissions of conventional and potentially hazardous air pollutants. Even without all of these reductions in air pollution, the health risks from emissions of hazardous air pollutants from powerplants are vanishingly small, as EPA has repeatedly recognized.

Under the existing section 112 of the Clean Air Act, EPA has addressed the question whether additional regulation of power plants is necessary to control air toxic emissions to protect the public health. EPA, thus far, has studied several substances for which emissions data and some indicator of toxicity exist: arsenic, beryllium, cadmium, hexavalent chromium, formaldehyde, and radionuclides. EPA found that additional regulation of emissions

of these substances from powerplants was unnecessary. For some other substances listed in S. 1630, such as mercury and other volatile substances, little scientific evidence exists about either emission rates or effects on public health or welfare. Under the conference agreement adopting the approach that the House included in its bill, these and other scientific issues will be examined, and regulations will be imposed only if warranted by the scientific evidence.

As I noted, the conferees changed only slightly the provision approved by the House. The changes to this provision, and other parts of the bill, clarified the nature of the studies to be conducted on emissions from power plants and specifically exempted utility units from the provisions of section 112(c)(6), which addresses regulation of seven specified categories of substances.

In addition, section 112(n) provides that the Administrator shall regulate electric utility steam generating units if he finds, based on the studies, that regulation is appropriate and necessary. Under the conference agreement, if the Administrator regulated fossil fuel fired electric utility steam generating units by adopting any major source standard or any area source standard under section 112 for those units, he may do so only in compliance with subsection (n).

Pursuant to section 112(n), the Administrator may regulate fossil fuel fired electric utility stream generating units only if the studies described in section 112(n) clearly establish that emissions of any pollutant, or aggregate of pollutants, from such units cause a significant risk of serious adverse effects on the public health. Thus, if the Administrator regulates any of these units, he may regulate only those units that he determines—after taking into account compliance with all provisions of the act and any other Federal, State, or local regulation and voluntary emission reductions—have been demonstrated to cause a significant threat of serious adverse effects on the public health.

In sum, I believe that the conference committee produced a utility air toxics provision that will provide ample protection of the public health while avoiding the imposition of excessive and unnecessary costs on residential, industrial, and commercial consumers of electricity.

TITLE III—RADIONUCLIDE STANDARDS UNDER SECTION 112

The conference agreement defines "major source" for the purposes of regulation under revised section 112 as any stationary source that emits at least 10 tons per year of any one listed substance or 25 tons per year of any combination of listed substances. The conferees included in the conference agreement a Senate provision giving EPA discretion to define "major source" for radionuclides based on different criteria, taking into consideration potency or other characteristics of the air pollutant, persistence, potential for bioaccumulation, or other relevant factors. The House bill would have specifically directed EPA to define "major source" for radionuclides by rule considering radiation dose.

In adopting the Senate language, the conferees opted not to specifically require EPA to set a radionuclide standard based on radiation dose, giving the agency broader latitude to consider other factors in defining "major source" for radionuclides. In retaining the Senate provision, the conferees recognize that setting a standard based on emission rate may not be appropriate for radionuclides. In fact, the Agency already has set standards under existing section 112 based on radiation dose, and nothing in the legislation should be interpreted as precluding this practice in the future. The conferees intend this provision to maintain the Agency's existing authority under section 112 to set a standard for radionuclides based on any criteria the Agency deems appropriate, including radiation dose.

TITLE IV—COMMENTS ON WEPCO

Both the House bill and the Senate bill contained provisions addressing EPA's recent WEPCo interpretations. Those interpretations could prevent utilities from undertaking needed equipment changes—including even projects to reduce emissions—at their powerplants without first meeting expensive and time consuming new source review requirements.

The House bill only addressed part of the problem—WEPCo's impact on pollution control projects—even though WEPCo threatens many other legitimate powerplant activities. The Senate bill would, in effect, have codified EPA's WEPCo policies by amending the act to establish a restrictive approach similar to that contained in a controversial EPA staff draft interpretative rule on WEPCo.

Shortly after passage of the House bill, the administration repudiated EPA's WEPCo policies and endorsed a comprehensive legislative resolution of the matter. The administration also stated, in response to questions from the Senate Energy Committee, that EPA had ample authority under current law to reverse course on WEPCo. In view of these representations that legislation was not needed to deal with WEPCo and because of concerns that the Senate WEPCo amendment could prevent EPA reversing course on WEPCo administratively, the conferees agreed to drop the limited WEPCo amendments in the bills. The conferees did not want to do anything that could be construed as restricting EPA's discretion to reconsider WEPCo.

The conferees expect that the administration will promptly address the many legitimate concerns that have been raised about EPA's WEPCo interpretations. The administration should quickly move to resolve WEPCo in a responsible manner that will promote cost-effective pollution control decisions, encourage energy efficiency projects, and assure that electric reliability will be maintained.

TITLE IV—ALLOWANCE TRANSFERS

Because of the importance of allowance trading to the success of the Acid Deposition Control Program, I would like to clarify a few points about how allowance transfer would work in practice.

Under the bill, EPA must allocate annual allowances to the owner or operator of an affected unit at an affected source in an amount equal to the tons of sulfur dioxide each unit is permitted to emit in a year. The legislation states that allowances may be transferred among the owners or operators of affected sources. However, a transfer is not effective until EPA receives and records written certification of the transfer.

This certification and recordation requirement clearly contemplates transfers of allowances between unaffiliated owners and operators of affected sources. On the other hand, transfers of allowances among affected sources under common ownership or control would not have to be recorded with EPA. Moreover, the conference agreement contains a specific provision which would exempt allowance transfers among affiliated sources from the recording requirements. Under section 403(e)(2) of the conference agreement, utilities may undertake contractual agreements to aggregate allowances into one allowance pool for common use. Once the allowance pooling agreement was filed with EPA, the participating utilities would be permitted to transfer allowances instantaneously without having to certify the transaction with EPA.

TITLE IV—CLOSING THE BOOKS ON ALLOWANCE TRANSFER

I would like to clarify a point which is essential to the efficient and orderly transfer of allowances.

The conference agreement before us provides for the issuance of annual allowances which may not be used prior to the calendar year for which they are issued but which may be carried forward to future years if unused in that calendar year. To promote maximum flexibility, the legislation also permits the transfer or trading of anticipated allowances prior to the actual issuance of such allowances. As I understand this language, an owner or operator who expected to receive certain allowances could commit to transfer them to another owner or operator before actually having received them.

The legislation does not specifically address the reverse situation—in other words, the case in which an owner or operator wishes to trade an allowance after the calendar year to which it applies has expired. However, we expect owners or operators to have comparable flexibility to trade unused allowances in this situation. Accordingly, Congress expects EPA to allow for a reasonable period—at least 90 days—after the end of the calendar year for owners and operators to carry forward allowances or to transfer them for use by another unit to authorize that unit's emissions in that calendar year.

The flexibility would allow utilities to close their books for emissions and allowances for a calendar year in an orderly fashion. It would allow utilities to make adjustments for unexpectedly high emissions that may occur near the end of the calendar year, for example. Likewise, it would allow utilities to compensate for uncertainties created by emission monitors which over- or under-calculate emissions, thereby resulting in an allowance surplus or deficit at year end.

We intend that the regulations that EPA promulgates will ensure that utilities have a reasonable period of time after the close of a calendar year to complete their allowance transactions for that year. During this period, the owner or operator of an affected unit would have the option to buy or sell the necessary allowances for that calendar year. This close-out period would contribute to electricity

reliability and would result in more cost-effective utility planning.

TITLE IV—PERMITS AND COMPLIANCE PLANS

Throughout the clean air debate of the past year, the free trading of allowances among owners and operators of affected units has been recognized as an integral component of the acid rain control program. I would like to discuss certain aspects of the allowance transfer system provided for under the conference agreement before us.

The compliance flexibility associated with the allowance trading system has been estimated to reap significant cost savings. In fact, EPA has estimated cost savings from the allowance program of 50 percent in phase I of the program, 14 to 20 percent when the program is first fully implemented at the beginning of phase II, and 20 percent in 2010.

To ensure that these cost savings are fully realized, the permits and compliance plans must be written broadly to afford the owners and operators of affected units maximum flexibility in complying with the new acid deposition control requirements. Without this flexibility, the market-based approach embodied in the conference agreement will degenerate into the command and control regulation of the past, resulting in astronomical costs to society which Congress never envisioned.

The conferees have recognized this and the conference agreement states that to meet the compliance planning requirements of title IV the owner or operator of an affected unit need only submit a statement to EPA indicating that the unit will meet the applicable emission requirements in a timely manner. For affected sources of sulfur dioxide, the owner or operator could state, in the alternative, that he or she will hold allowances for the unit's total annual emissions. Therefore, EPA, in implementing the acid deposition control program, may not use the permitting system to impose cumbersome unit-specific control requirements which would impede the free trading of allowances in any way. Under the conference agreement, the permit should only restate the statutory emission requirements applicable to the affected unit and require the owner or operator to hold the necessary allowances for the unit. Likewise, the compliance plan submitted with the permit application should outline in general terms how the owner or operator intends to comply with the new requirements, giving them the freedom to respond to changes in electricity demand and to reallocate their allowances accordingly.

Implementation of the permitting and compliance requirements in this way will ensure that the transfer of allowances—which is the cornerstone of a market-based control system—remains unencumbered by the bureaucracy associated with traditional command and control regulation.

TITLE IV—ALLOWANCES AS PROPERTY AND COMMERCIAL RIGHTS

As the conference committee on the Clean Air Act Amendments of 1990 has completed its work, I want to address a small provision in the act dealing with the nature of allowances. Allowances are defined by statutory language as a "limited authorization to emit sulfur dioxide in accordance with the provisions of this title." S. 1630, section 403(f).

While the conference agreement states that an allowance does not constitute a property right, it should be clear to all participants in the allowance transfer system that only Congress and the President, acting together through legislation, will have the authority to limit or to revoke allowances. Furthermore, private parties should recognize that we in the Congress will be extremely reluctant to do so.

We on the conference committee recognized that the decision to invest in overcontrol in most instances will have been driven by the existence of the allowance-based market that the Congress has created. While the pollution control devices installed as a result of the overcontrol project will presumably remain in the hands of private parties, it is understood that the costs involved in creating those assets will be recouped through allowance transfers. If allowances could be easily revoked or even altered by the Adminstrator, we recognize that there would be little reason for utilities to undergo the costs, effort and expense of overcontrol.

Even though the Senate provision does not provide for a property right in an allowance for purposes of receiving compensation if allowances are somehow limited by the Congress, there is no limitation on the freedom of parties to enter into fully protectable contracts respecting those allowances. Therefore, Mr. Speaker, we who served on the conference would stress to holders of allowances that allowances do have a durable economic value. As a result, allowances and transactions in allowances will be fully protectable under commercial law. Reliance on the allowance system to design a workable compliance program will not be misplaced. In short, while the Congress will not compensate holders of allowances for the loss of an individual allowance, the holders and uses of allowances will have every reason to rely upon the continued existence and value of those allowances as they design and undertake their compliance efforts.

TITLE IV—REPEAL OF PERCENT REDUCTION

Section 403 of S. 1630 amends section 111 of the Clean Air Act by repealing the 1977 amendments regarding percentage reduction. That requirement, as interpreted by the Administrator, mandated that all new fossil fuel fired stationary sources reduce emissions by a fixed percentage.

It is intended that fossil fuel fired stationary sources constructed after enactment of this title will not be subject to the percentage reduction requirement. Therefore, the Administrator must immediately revise current NSPS rules to reflect this modification of section 111. In addition, within 3 years of enactment of this title, the Administrator must promulgate revised NSPS for new fossil fuel fired electric utility units so that emissions from such sources are no greater than would have occurred in the absence of this amendment. The effect of new standards will be to give such units the flexibility to meet the emission rates established under the new standards through whatever combination of fuels and emission controls the units choose.

TITLE VI—CITIZEN SUIT PROVISIONS

The bill changes the judicial review scheme under the act by giving the district courts jurisdiction to compel Agency action that has been unreasonably delayed. The bill provides that a suit to compel Agency action referred to in section 307(b) of the act that is claimed to be unreasonably delayed may be filed only in a district court within the circuit in which the Agency action would be reviewable under section 307(b).

This provision has a broad effect because Agency action referred to in section 307(b) includes any final action taken by the Administrator under the act. Thus, for example, final Agency action in the form of a response to a petition for rulemaking would fall within this category. A suit alleging unreasonable delay by the Administrator in responding to such a petition could therefore be heard only by a district court within the circuit of the court of appeals that could review the Administrator's response to the petition for rulemaking.

This unreasonable delay jurisdiction, like the unreasonable delay jurisdiction that the circuit courts of appeals now have, authorizes the appropriate courts to enforce the provision of the Administrative Procedure Act that requires an agency, "within a reasonable time," to "proceed to conclude a matter presented to it." Thus, unreasonable delay jurisdiction is designed to allow the courts to compel the Agency to respond to a petition for rulemaking or other request for Agency action if the Agency has made no response within a reasonable time after the request has been presented to it. For example, the Agency must respond within a reasonable time to a petition for revision of a nation ambient air quality standard under section 109 of the act. If the Agency does not do so, the jurisdiction of the appropriate district court could be invoked.

The bill does not, however, change the criteria that govern a court's determination whether to issue and how to fashion an order compelling Agency action. Just as in suits under the existing section 304(a)(2)—which are limited to claims that the Administrator has failed to perform a clear-cut nondiscretionary duty to take a statutorily specified action by a statutorily specified deadline—a district court, finding that EPA has unreasonably delayed action, will have to weigh a variety of factors in deciding on a court-ordred remedy. Just as in deadline suits, the district courts in unreasonable delay cases will have broad discretion to fashion schedules that require EPA to take action within a reasonable time. On exercising this discretion, the district courts will have to consider the limitations on Agency resources and the concomitant need to establish priorities, the complexity of the Agency's task and the time needed to allow for meaningful public participation in the Agency's proceedings.

TITLE VI—STRATOSPHERIC OZONE PROTECTION

Subsection (d) of section 509 is designed to prevent the sale of small containers of class I or class II substances for use by do-it-yourselfers and untrained professionals. Effective 2 years after enactment of the amendments, such substances cannot be sold, distributed or offered for sale in containers of less than 20 pounds except for use by professionals who have obtained approved refrigerant recycling equipment and have been properly trained and certified. The subsection was not intended to prevent the sale and distribution

of refrigerant in containers of less than 20 pounds through the normal distribution system for refrigerants, that is, to warehousemen, jobbers, retailers, et cetera or to prevent sale to the owner of a service facility which performs service on motor vehicle air conditioning systems, as long as the ultimate user of the refrigerant is a professional who is in compliance with the law.

Mr. COLEMAN of Texas. Mr. Speaker, I rise today in support of the Clean Air Act Amendments of 1990 and am particularly pleased that my provision addressing the clean air problems along the border between the United States and Mexico has been included in this historic legislation.

A number of communities along the border have had difficulty attaining and maintaining national ambient air quality standards because of emissions from sources in Mexico. My proposal acknowledges this situation and would authorize the Environmental Protection Agency to cooperate with Mexico in developing a multiyear study of ambient concentrations and emissions on both sides of the international border. Additionally, it would authorized EPA to negotiate with Mexico to develop joint remediation measures and would require EPA to take into account the impact of emissions from Mexico in reviewing State implementation plans.

Establishing a program to monitor and improve air quality along the United States-Mexico border is crucial because of the area's severe health and environmental problems which are inherent to the border and not found anywhere else in the country. In my district, for example, the city of El Paso is the fifth poorest in the Nation and the largest American city—(population 533,000)—directly on the United States-Mexico border. Together with its sister city of Juarez, the largest Mexican city—(population 1.2 million)—these two cities share the largest population base along the border and people from both nations contribute to and are affected by the serious health and environmental problems in the region. For purposes of clean air, the international border between our two cities and two countries is artificial; El Paso and Ciudad Juarez residents breathe the same dirty air.

A number of factors contribute to poor air quality in my district and other border cities. These include a rapid growth in industry, foreign vehicles without tailpipe emissions controls, and long lines of vehicles at international bridges that contribute to emissions. For a number of years, the city of El Paso has been found in violation of several Clean Air Act ambient air quality standards for ozone and carbon monoxide, and is the only city in Texas listed among EPA's areas with the most serious small particulate pollution.

At present, Mexican sources contribute significantly to levels of ozone, carbon monoxide and particulate matter in violation of air quality standards, however, we cannot determine the extent of this contribution. My provision rectifies this situation because it would allow EPA to determine the volume of pollutants emanating from a foreign source and it allows the EPA to cooperate with Mexico in improving air pollution problems along the border. It is important to note that this provision will not release border States and localities from their obligation to meet Federal clean air standards. On the contrary, cities need to continue their efforts to reach air quality standards, however, it is not fair to impose sanctions on cities for nonattainment problems caused by sources located in Mexico.

My provision in the Clean Air Act Amendments of 1990 will build on monitoring studies already being conducted in El Paso and Ciudad Juarez by the EPA. These studies have included the collection of meteorological data, measuring air quality, and compiling an inventory of emissions. My provisions today will make border-wide these monitoring studies and further authorize EPA to work with Mexico in implementing remediation programs.

In view of the great benefit that citizens of our border States, as well as the rest of the Nation, would derive from improved air quality, I urge my colleagues to support this important legislation.

Mr. ROWLAND of Georgia. Mr. Speaker, everyone agrees that the main goal of environmental regulation must be to protect the public health.

But what does it mean to protect the public health? That raises both scientific and philosophical questions. That is why I feel that the National Academy of Sciences study of risk assessment and the formation of the new Risk Agreement and Management Commission are both such key elements of the Clean Air Act.

At present, we are usually forced to rely on animal studies to determine whether a chemical may give people cancer. The approach now used by regulatory agencies involves feeding a very large dose of that chemical to a few laboratory animals. If the chemical causes tumors in those animals, it is declared a carcinogen. Elaborate mathematical models are used to project the risk to humans at the much lower exposure levels that would be found in the real world. These models do not even attempt to predict the actual risk. Instead, they tell us, not what the risk is likely to be, but rather, that the risk is 95 percent certain to be lower than the number they predict. How much lower, they do not say.

Many questions remain to be answered about this approach. Are the cancer mechanisms in animals and humans the same? Does applying the chemical in very large doses create risks that simply would not be found with low-level exposure? What credence can we give to the models used to project from tumors in rats at high exposure levels to risk to humans at low exposure levels? Finally, are the models simply too conservative to be used to set regulatory levels, because of their upper bound nature?

Even if all these questions could be answered perfectly, they would not tell us how to protect the public health. Some advocates claim that we cannot protect the public health from a chemical unless we make sure that the single most exposed individual, the MEI, is protected against any additional risk of cancer greater than 1 in 10,000, or 1 in 100,000, or 1 in 1 million. These are extraordinarily tight control levels. They aim at preventing any death from chemical exposure for a period greater than the current lifetime of human civilization, or the interval between ice ages. This is not the standard of risk applied by the rest of our society. For example, the lifetime risk of dying in an automobile accident is about 1 in 100. The risk to a 50-year-old white man of dying next year is about 1 in 150.

Indeed, applying a test so focused on single individuals can divert our attention from more important environmental problems. The elaborate calculations needed to determine 1 in 10,000 or 1 in 1 million risk levels can only be performed for large industrial sources. Adopting such a test for regulation directs EPA's efforts away from the smaller sources like dry cleaners or body shops that cause much of the actual exposure to air pollution onto the big factories that have always been convenient targets for regulation.

For all these reasons, some of our most informed public health experts believe Federal regulations should focus on preventing real health effects in the whole population rather than reducing predicted risks to single individuals. Indeed, the bill adopts this approach to regulating emissions from small area sources. I am including in the RECORD after these remarks a letter from Dr. Bernard Goldstein, chairman of the Department of Environmental Medicine at Rutgers University, former chair of EPA's Clean Air Scientific Advisory Committee, and former Assistant Administrator of EPA. The letter argues quite eloquently that to protect public environmental regulations should be shifted more toward protecting the public at large, and less toward protecting particular individuals.

But even if the goal of regulation is to reduce risk to the most exposed individual the question arises "How do we measure exposure?" EPA's present methods require us to assume that the most exposed individual lives on the fenceline of the property exactly where the peak emissions are predicted, and breathes air contaminated at these levels for 24 hours a day for 70 years. The EPA also uses very conservative air quality models to actually predict those peak concentrations. Certainly one may ask whether this is a realistic approach to regulation.

Congress in the past has often allowed or even directed EPA to avoid these issues by a technology based approach that requires controls reflecting the technological state-of-the-art without any consideration of the environmental risks or benefits. Indeed, that philosophy lies behind much if not most of the policy incorporated in this new Clean Air Act. But that approach has its own critics. These critics argue that these controls often address the sources that are easy to regulate. If an environmental problem is caused by sources that are hard to regulate, such as nonpoint source of water pollution, technology based controls are not likely to correct it. And even if technology-based controls could cover all the sources they would still waste money by regulating too strictly or endanger health or the environment by not regulating enough. Indeed, very few students of environmental regulation have much of a good word to say about technology-based controls.

Buried in all these disputes is the issue of cost. Certainly we should be prepared to spend a great deal for genuine public health protection. But when the risk we are considering is predicted from tests on a few animals,

or when our best science tells us that the risk is no more than one cancer case in 500 generations, and may be zero, we should at least ask whether there is a limit beyond which other social claims might come higher on our list. Claims like reducing infant mortality or preventing AIDS or reducing the crime rate or preventing drug abuse.

Colleagues in the medical community consistently ask me why we are wiling to spend millions on protecting a theoretical 1 in 1 million people when we could spend a few thousand dollars and save hundreds of thousands of children with simple immunization and/or rehydration therapies. I have no ready answer, but I strongly suspect that if the public better understood the numbers, and the benefit ratio of a clearly defined risk management policy, they would demand better choices.

We have made great progress in this bill in focusing our efforts on real problems. Title VI on ozone depletion is aimed entirely at a real and scientifically proven threat. Similarly, the acid rain control program in title IV is based on years of scientific research.

In enacting the new program to control air toxics in title III, the Congress took a mixed approach. Because the existing law had proved unworkable, we made risk assessment largely irrelevant to the first stage of regulation. At this stage, almost all sources will have to install the maximum available control technology without regard to environmental risk or benefit. But even at this stage, EPA may exclude a source category from regulation if no source in that category presents a risk of more than 1 in 1 million to the most exposed individual.

Once MACT has been applied, the bill directs EPA to determine whether a MACT level of control will be adequate to protect the public health with an ample margin of safety. This is exactly the same language used in the existing law. It has been definitively interpreted by the courts to give EPA wide discretion in defining public health and choosing the measures necessary to create a safe environment. The court in particular admonished EPA that safe does not mean risk free and that safety must be measured with reference to the risks that are generally accepted in the world in which we live. EPA has issued regulations setting out its policy based on one possible interpretation of this language, but the final bill says quite explicitly in section 112(f)(2)(B) that it is not intended to either endorse or reject that interpretation.

Accordingly, implementing the air toxics title will require EPA to address repeatedly the scientific and philosophical issues raised by any legislative command to protect the public health. We too in the Congress will have to address those issues in overseeing the implementation of this law. Indeed, we will have to address them whenever we consider environmental legislation. It was quite clear during the consideration of this bill that many Members were uneasy both with the potential economic impact of the air toxics provisions, and with some of the assumptions behind them. It is always a good idea to reexamine your assumptions but a particularly good time for doing that may have arrived in the environmental field.

For all these reasons, the conferees included in the final bill two interlocking provisions that together will give us the benefit of a thorough, no holds-barred reexamination of the scientific, policy, and philosophical issues involved in controlling environmental pollution to protect the public health.

The first provision is section 302(o). It requires EPA to contract with the National Academy of Sciences for a study of the risk assessment methods used to evaluate the cancer danger from hazardous air pollutants. The bill expressly requires this study to address the methods that EPA uses for estimating the cancer potency of such pollutants. This will require an examination of the relative mechanisms of cancer causation in humans and in animals, of cancer causation at high exposure levels versus low exposure levels, and of risk modeling. In addition, the bill requires the NAS to address the methods used for estimating exposure to these pollutants. That will require a reexamination of whether EPA's current air quality modeling techniques, and its current assumptions about where and how people live, are really defensible. EPA must formally address the recommendations of this study either by revising its cancer assessment guidelines, or by stating expressly why revision is not appropriate.

The second, and potentially even more important study, is required by new section 303. This section establishes a Risk Assessment and Management Commission with members appointed by representatives of both parties in the Congress, the President, and the scientific community. We have deliberately given the Commission a broad and open charter. It is directed to make a "full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects." In doing this, the Commission must consider in particular the report of the NAS study of scientific issues. No such full investigation will be possible unless the Commission addresses each of the major issues that I outlined earlier, such as the relationship between animal testing and actual sickness in human beings, how best to measure exposure levels, whether regulation should be based on protecting the most exposed individual or on preventing actual harm in the general population, or some combination of these approaches, and finally, the role of costs and technical feasiblility.

But Congress did not leave to inference its intention that these topics be addressed. The bill expressly directs the Commission to study, among many other topics "the accuracy of extrapolating human health risks from animal exposure data," measurement of exposure to emissions "on both an actual and worst case basis," "risk management policy issues" specifically listing as two alternatives "the use of lifetime cancer risks to individuals most exposed" and "incidence of cancer" and "the cost and technical feasibility of exposure reduction measures."

It is clear from the face of the law, and it was the intent of the managers, that the charter of the Commission not be restricted in any way or subject to any presumption as to the right answer. In particular, there is no presumption that either a strict or a lenient measure of control should be applied in the absence of definitive scientific proof of some relevant theory. The question where to place the burden of proof, or what policy to use as a matter of prudence when the scientific issues are debatable, is an issue that we want the Commission to address just as objectively and just as free from predispositions as any other issue. Indeed, it seems highly likely that this issue cannot be considered in the abstract, but only in the context of the strength of the various competing scientific theories, together with the best available estimates of the environmental and economic risks of deciding one way or the other. It was to consider such important and complex issues that we formed the Commission in the first place.

Contrary to the implication in Senator DURENBURGER's remarks that in promoting a study of risk assessment his " * * * only goal was to curb the abuse I saw as risk assessment was used to justify emission standards for carcinogens which I thought were not sufficiently protective," we want to develop policy based on scientific fact and deliberate public debate, not on the media fad of the moment nor on what an individual or group thinks is right at any given time.

EPA BENZENE DECISION

(By Bernard D. Goldstein, M.D., professor and chairman, Department of Environmental and Community Medicine, University of Medicine and Dentistry of New Jersey, Robert Wood Johnson Medical School)

My purpose is to discuss a very limited aspect of the basis for the current benzene decision, that of the relative importance of maximum industrial risk vs. that of population risk. My basic premise is that the Administrator of EPA under the Clean Air Act is asked to act in a manner that will protect public health. I emphasize public health as I believe that the basic concepts of public health lead to a decision against using the maximum individual risk as a major basis for decision making in the present situation.

There is a classic distinction in health issues between those that are medical and those that are public health. The maximum individual risks under consideration in the present benzene decision are well within the range of what one would consider to be of public health not medical concern. These are certainly risks that are far, far lower than those which are dealt with by the average practicing physician, or which we as individuals in society use in our routine decision process concerning safe and unsafe practices. Such lower level risks are not trivial at all from the public health point of view nor are they to be ignored by public health decision makers. However, these risks are important from a public health point of view precisely because public health deals primarily with populations rather than with individuals. A lifetime risk to a population of 1 in 1 million premature deaths in a nation of 250 million people, which calculates to about 3 premature deaths yearly, is I believe of legitimate public health concern. However, I strongly question whether a risk of 1 in 1 million to an individual is a concern from a public health point of view.

Let me approach this problem numerically. Assume that there is a stable population of one nuclear family living just outside a

fence line and no one else at risk from an exposure. Further assume worst case circumstances of the family never leaving the area and always having the benzene permeate indoors to their breathing zone. Let me further describe this family as consisting of six people, 25 years apart in age; mother, father, son, daughter, and one set of grandparents; and that they all live to age seventy-five resulting in a turnover of two new individuals into this community every twenty five years.

Based on these assumptions it will require 12.5 million years to accumulate 1 premature death in the succession of nuclear families living at the site. A one in a million lifetime risk would thus result in one premature death in a period of time that is longer than the known existence of human beings on this planet let alone the history of our republic. A similar calculation for just one individual at the fenceline would result in a 75 million year period for the one premature death.

Obviously one should not ignore the risk to the individual if the risk gets into the range where rational prudent individuals would typically take precautions. In my judgment this is usually at risks in the range of 1 in 100 or 1 in 1,000, but certainly not 1 in 1,000,000. Preventive precautions for a 1 in 1 million risk would lead us to live as much time as possible in the basement because it is a safe location should a commercial or private airplane suddenly crash into our home; a risk that is in fact greater than 1 in 1 million lifetime. While it is appropriate for us to act as a society to minimize this risk which in the aggregate results in 5-20 deaths yearly, we would not do so if only one person were to die every 12.5 million years.

A further problem associated with using the highest risk to an individual is that the risk estimate contains a conservative simplifying assumption which is pertinent only to the highest individual risk number but not to the total population risk. This is the assumption that the same individual is living at that same one high risk location throughout a lifetime. It is not unreasonable to assume that a house is occupied for the usual 70 year period; but standard U.S experience is such that it is highly unreasonable to assume that this location will be occupied by the same individual during that period. Populations mobility does not impact on the total population risk as long as the total population number stays reasonably stable. However, failure to take into account usual population mobility in calculating maximum individual risk at the fenceline imposes a greater than half an order of magnitude additional degree of conservatism in the highest individual risk column.

I am not advocating ignoring the maximum lifetime risk to the individual. It is useful information in conjunction with the rest of the information, and certainly must be taken into account when it approaches medically identifiable levels of risk. But from a public health point of view, it is far less important than the aggregate risk to all individuals potentially affected. To make policy solely or even predominately on the maximum risk to the individual when the risks are in the range under consideration in the present situation is a distortion of classic public health approaches and, in my view, not appropriate under the intent of the Clean Air Act.

IMMIGRATION ACT OF 1990

Mr. BROOKS submitted the following conference report and statement on the Senate bill (S. 358), to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes.

CONFERENCE REPORT (H. REPT. 101-955)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Act of 1990".

(b) REFERENCES IN ACT.—Except as specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; references in Act; table of contents.

TITLE I—IMMIGRANTS

Subtitle A—Worldwide and Per Country Levels

Sec. 101. Worldwide levels.
Sec. 102. Per country levels.
Sec. 103. Treatment of Hong Kong under per country levels.
Sec. 104. Asylee adjustments.

Subtitle B—Preference System

PART 1—FAMILY-SPONSORED IMMIGRANTS

Sec. 111. Family-sponsored immigrants.
Sec. 112. Transition for spouses and minor children of legalized aliens.

PART 2—Employment-Based Immigrants

Sec. 121. Employment-based immigrants.
Sec. 122. Changes in labor certification process.
Sec. 123. Definitions of managerial capacity and executive capacity.
Sec. 124. Transition for employees of certain United States businesses operating in Hong Kong.

PART 3—DIVERSITY IMMIGRANTS

Sec. 131. Diversity immigrants.
Sec. 132. Diversity transition for aliens who are natives of certain adversely affected foreign states.
Sec. 133. One-year diversity transition for aliens who have been notified of availability of NP-5 visas.
Sec. 134. Transition for displaced Tibetans.

Subtitle C—Commission and Information

Sec. 141. Commission on Legal Immigration Reform.
Sec. 142. Statistical information systems.

Subtitle D—Miscellaneous

Sec. 151. Revision of special immigrant provisions relating to religious workers (C special immigrants).
Sec. 152. Special immigrant status for certain aliens employed at the United States mission in Hong Kong (D special immigrants).
Sec. 153. Special immigrant status for certain aliens declared dependent on a juvenile court (J special immigrants).
Sec. 154. Permitting extension of period of validity of immigrant visas for certain residents of Hong Kong.
Sec. 155. Expedited issuance of Lebanese second and fifth preference visas.

Subtitle E—Effective Dates; Conforming Amendments

Sec. 161. Effective dates.
Sec. 162. Conforming amendments.

TITLE II—NONIMMIGRANTS

Subtitle A—General and Permanent Provisions

Sec. 201. Revision and extension of the visa waiver pilot program for foreign tourists (B nonimmigrants).
Sec. 202. Denial of crewmember status in the case of certain labor disputes (D nonimmigrants).
Sec. 203. Limitations on performance of longshore work by alien crewmen (D nonimmigrants).
Sec. 204. Treaty traders (E nonimmigrants).
Sec. 205. Temporary workers and trainees (H nonimmigrants).
Sec. 206. Intra-company transferees (L nonimmigrants).
Sec. 207. New classification for aliens with extraordinary ability, accompanying aliens, and athletes and entertainers (O & P nonimmigrants).
Sec. 208. New classification for international cultural exchange programs (Q nonimmigrants).
Sec. 209. New classification for aliens in religious occupations (R nonimmigrants).

Subtitle B—Temporary or Limited Provisions

Sec. 221. Off-campus work authorization for students (F nonimmigrants).
Sec. 222. Admission of nonimmigrants for cooperative research, development, and coproduction projects.
Sec. 223. Establishment of special education exchange visitor program.

Subtitle C—Effective Dates

Sec. 231. Effective dates.

TITLE III—FAMILY UNITY AND TEMPORARY PROTECTED STATUS

Sec. 301. Family unity.
Sec. 302. Temporary protected status.
Sec. 303. Special temporary protected status for Salvadorans.

TITLE IV—NATURALIZATION

Sec. 401. Administrative naturalization.
Sec. 402. Substituting 3 months residence in INS district or State for 6 months residence in a State.
Sec. 403. Waiver of English language requirement for naturalization.

Sec. 404. Treatment of service in armed forces of a foreign country.
Sec. 405. Naturalization of natives of the Philippines through certain active-duty servicer during World War II.
Sec. 406. Public education regarding naturalization benefits.
Sec. 407. Conforming amendments.
Sec. 408. Effective dates and savings provisions.

TITLE V—ENFORCEMENT

Subtitle A—Criminal Aliens

Sec. 501. Aggravated felony definition.
Sec. 502. Shortening period to request judicial review.
Sec. 503. Enhancing enforcement authority of INS officers.
Sec. 504. Custody pending determination of deportability and excludability.
Sec. 505. Elimination of judicial recommendations against deportation.
Sec. 506. Clarification respecting discretionary authority in deportation proceedings for incarcerated aliens.
Sec. 507. Requiring coordination plan with INS as a condition for receipt of drug control and system improvement grants under the Omnibus Crime Control and Safe Streets Act of 1968.
Sec. 508. Deportation for attempted violations of controlled substances laws.
Sec. 509. Good moral character definition.
Sec. 510. Report on criminal aliens.
Sec. 511. Limitation on waiver of exclusion for returning permanent residents convicted of an aggravated felony.
Sec. 512. Authorization of additional immigration judges for deportation proceedings involving criminal aliens.
Sec. 513. Effect of filing petition for review.
Sec. 514. Extending bar on reentry of aliens convicted of aggravated felonies.
Sec. 515. Asylum in the case of aliens convicted of aggravated felonies.

Subtitle B—Provisions Relating to Employer Sanctions

Sec. 521. Elimination of paperwork requirement for recruiters and referrers.
Sec. 522. Pilot program on use of certain drivers' licenses as documents establishing both employment authorization and identity.

Subtitle C—Provisions Relating to Anti-Discrimination

Sec. 531. Dissemination of information concerning anti-discrimination protections under IRCA and title VII of the Civil Rights Act of 1964.
Sec. 532. Inclusion of certain seasonal agricultural workers within scope of anti-discrimination protections.
Sec. 533. Elimination of requirement that aliens file a declaration of intending to become a citizen in order to file anti-discrimination complaint.
Sec. 534. Anti-retaliation protections.
Sec. 535. Treatment of certain actions as discrimination.
Sec. 536. Conforming civil money penalties for anti-discrimination violations to those for employer sanctions.
Sec. 537. Period for filing of complaints.
Sec. 538. Special Counsel access to employment eligibility verification forms.
Sec. 539. Additional relief in orders.

Subtitle D—General Enforcement

Sec. 541. Authorizing increase by 1,000 in border patrol personnel.
Sec. 542. Application of increase in penalties to enhance enforcement activities.
Sec. 543. Increase in fine levels; authority of the INS to collect fines.
Sec. 544. Civil penalties for document fraud.
Sec. 545. Deportation procedures; required notice of deportation hearing; limitation on discretionary relief.

TITLE VI—EXCLUSION AND DEPORTATION

Sec. 601. Revision of grounds for exclusion.
Sec. 602. Revision of grounds for deportation.
Sec. 603. Conforming amendments.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Battered spouse or child waiver of the conditional residence requirement.
Sec. 702. Bona fide marriage exception to foreign residence requirement for marriages entered into during certain immigration proceedings.
Sec. 703. 1-year extension of deadline for filing applications for adjustment from temporary to permament residence for legalized aliens.
Sec. 704. Application of certain user fees.
Sec. 705. Immigration Emergency fund.

TITLE VIII—EDUCATION AND TRAINING

Sec. 801. Educational assistance and training.

TITLE I—IMMIGRANTS

Subtitle A—Worldwide and Per Country Levels

SEC. 101. WORLDWIDE LEVELS.

(a) IN GENERAL.—Section 201 (8 U.S.C. 1151) is amended to read as follows:

"WORLDWIDE LEVEL OF IMMIGRATION

"SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

"(1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year;

"(2) employment-based immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

"(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number not to exceed in any fiscal year the number specified in subsection (e) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

"(b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

"(1)(A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).

"(B) Aliens who are admitted under section 207 or whose status is adjusted under section 209.

"(C) Aliens whose status is adjusted to permanent residence under section 210, 210A, or 245A.

"(D) Aliens whose deportation is suspended under section 244(a).

"(E) Aliens provided permanent resident status under section 249.

"(2)(A)(i) Immediate relatives. For purposes of this subsection, the term 'immediate relatives' means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204(a)(1)(A) within 2 years after such date and only until the date the spouse remarries.

"(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

"(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

"(i) 480,000, minus

"(ii) the number computed under paragraph (2), plus

"(iii) the number (if any) computed under paragraph (3).

"(B)(i) For each of fiscal years 1992, 1993, and 1994, 465,000 shall be substituted for 480,000 in subparagraph (A)(i).

"(ii) In no case shall the number computed under subparagraph (A) be less than 226,000.

"(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraphs (A) and (B) of subsection (b)(2) who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

"(3) The number computed under this paragraph for a fiscal year is the difference (if any) between the maximum number of

visas which may be issued under section 203(b) (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—(1) The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to—

"(A) 140,000, plus

"(B) the number computed under paragraph (2).

"(2) The number computed under this paragraph for a fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 203(a) (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

"(e) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.".

(b) CLERICAL AMENDMENT.—The item in the table of contents relating to section 201 is amended to read as follows:

"Sec. 201. Worldwide level of immigration.".

SEC. 102. PER COUNTRY LEVELS.

Section 202 (8 U.S.C. 1152) is amended—

(1) by amending subsection (a) to read as follows:

"(a) PER COUNTRY LEVEL.—

"(1) NONDISCRIMINATION.—Except as specifically provided in paragraph (2) and in sections 101(a)(27), 201(b)(2)(A)(i), and 203, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

"(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Subject to paragraphs (3) and (4), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 203 in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

"(3) EXCEPTION IF ADDITIONAL VISAS AVAILABLE.—If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under both subsections (a) and (b) of section 203 for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

"(4) SPECIAL RULES FOR SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

"(A) 75 PERCENT OF MINIMUM 2ND PREFERENCE SET-ASIDE FOR SPOUSES AND CHILDREN NOT SUBJECT TO PER COUNTRY LIMITATION.—

"(i) IN GENERAL.—Of the visa numbers made available under section 203(a) to immigrants described in section 203(a)(2)(A) in any fiscal year, 75 percent of the 2-A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

"(ii) 2-A FLOOR DEFINED.—In this paragraph, the term '2-A floor' means, for a fiscal year, 77 percent of the total number of visas made available under section 203(a) to immigrants described in section 203(a)(2) in the fiscal year.

"(B) TREATMENT OF REMAINING 25 PERCENT FOR COUNTRIES SUBJECT TO SUBSECTION (e).—

"(i) IN GENERAL.—Of the visa numbers made available under section 203(a) to immigrants described in section 203(a)(2)(A) in any fiscal year, the remaining 25 percent of the 2-A floor shall be available in the case of a state or area that is subject to subsection (e) only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign state or area is less than the subsection (e) ceiling (as defined in clause (ii)).

"(ii) SUBSECTION (e) CEILING DEFINED.—In clause (i), the term 'subsection (e) ceiling' means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 203(a) to immigrants who are natives of the state or area under section 203(a)(2) consistent with subsection (e).

"(C) TREATMENT OF UNMARRIED SONS AND DAUGHTERS IN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, the number of immigrant visas that may be made available to natives of the state or area under section 203(a)(2)(B) may not exceed—

"(i) 23 percent of the maximum number of visas that may be made available under section 203(a) to immigrants of the state or area described in section 203(a)(2) consistent with subsection (e), or

"(ii) the number (if any) by which the maximum number of visas that may be made available under section 203(a) to immmigrants of the state or area described in section 203(a)(2) consistent with subsection (e) exceeds the number of visas issued under section 203(a)(2)(A),

whichever is greater.

"(D) LIMITING PASS DOWN FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(a)(2) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(a)(2) consistent with subsection (e) (determined without regard to this paragraph), in applying paragraphs (3) and (4) of section 203(a) under subsection (e)(2) all visas shall be deemed to have been required for the classes specified in paragraphs (1) and (2) of such section.";

(2) in subsection (b)—

(A) by inserting "RULES FOR CHARGEABILITY.—" after "(b)", and

(B) by striking "the numerical limitation set forth in the proviso to subsection (a) of this section" each place it appears and inserting "a numerical level established under subsection (a)(2)";

(3) in subsection (c)—

(A) by inserting "CHARGEABILITY FOR DEPENDENT AREAS.—" after "(c)",

(B) by striking "a special immigrant" and all that follows through "201(b)" and inserting "an alien described in section 201(b)", and

(C) by striking ", and the number" and all that follows through "one fiscal year";

(4) in subsection (d), by inserting "CHANGES IN TERRITORY.—" after "(d)"; and

(5) by amending subsection (e) to read as follows:

"(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If it is determined that the total number of immigrant visas made available under subsections (a) and (b) of section 203 to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, in determining the allotment of immigrant visa numbers to natives under subsections (a) and (b) of section 203, visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that—

"(1) the ratio of the visa numbers made available under section 203(a) to the visa numbers made available under section 203(b) is equal to the ratio of the worldwide level of immigration under section 201(c) to such level under section 201(d);

"(2) except as provided in subsection (a)(4), the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(a), and

"(3) the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 203(b) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(b).

Nothing in this subsection shall be construed as limiting the number of visas that may be issued to natives of a foreign state or dependent area under section 203(a) or 203(b) if there is insufficient demand for visas for such natives under section 203(b) or 203(a), respectively, or as limiting the number of visas that may be issued under section 203(a)(2)(A) pursuant to subsection (a)(4)(A).".

SEC. 103. TREATMENT OF HONG KONG UNDER PER COUNTRY LEVELS.

The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act shall be considered to have been granted, effective beginning with fiscal year 1991, with respect to Hong Kong as a separate foreign state, and not as a colony or other component or dependent area of another foreign state, except that the total number of immigrant visas made available to natives of Hong Kong under subsections (a) and (b) of section 203 of such Act in each of fiscal years 1991, 1992, and 1993 may not exceed 10,000.

SEC. 104. ASYLEE ADJUSTMENTS.

(a) INCREASE IN NUMERICAL LIMITATION ON ADJUSTMENT OF ASYLEES.—

(1) IN GENERAL.—Section 209(b) (8 U.S.C. 1159(b)) is amended by striking "five thousand" and inserting "10,000".

(2) EFFECTIVE DATE AND TRANSITION.—The amendment made by paragraph (1) shall apply to fiscal years beginning with fiscal year 1991 and the President is authorized, without the need for appropriate consultation, to increase the refugee determination previously made under section 207 of the Immigration and Nationality Act for fiscal year 1991 in order to make such amendment effective for such fiscal year.

(b) ANNUAL ASYLEE ENUMERATION.—Section 207(a) (8 U.S.C. 1157(a)) is amended by adding at the end the following new paragraph:

"(4) In the determination made under this subsection for each fiscal year (beginning with fiscal year 1992), the President shall enumerate, with the respective number of refugees so determined, the number of aliens who were granted asylum in the previous year.".

(c) WAIVER OF NUMERICAL LIMITATION FOR CERTAIN CURRENT ASYLEES.—The numerical limitation on the number of aliens whose

status may be adjusted under section 209(b) of the Immigration and Nationality Act shall not apply to an alien described in subsection (d) or to an alien who has applied for adjustment of status under such section on or before June 1, 1990.

(d) ADJUSTMENT OF CERTAIN FORMER ASYLEES.—

(1) IN GENERAL.—Subject to paragraph (2), the provisions of section 209(b) of the Immigration and Nationality Act shall also apply to an alien—

(A) who was granted asylum before the date of the enactment of this Act (regardless of whether or not such asylum has been terminated under section 208(b) of the Immigration and Nationality Act),

(B) who is no longer a refugee because of a change in circumstances in a foreign state, and

(C) who was (or would be) qualified for adjustment of status under section 209(b) of the Immigration and Nationality Act as of the date of the enactment of this Act but for paragraphs (2) and (3) thereof and but for any numerical limitation under such section.

(2) APPLICATION OF PER COUNTRY LIMITATIONS.—The number of aliens who are natives of any foreign state who may adjust status pursuant to paragraph (1) in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Immigration and Nationality Act and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of such Act.

Subtitle B—Preference System

PART 1—FAMILY-SPONSORED IMMIGRANTS

SEC. 111. FAMILY-SPONSORED IMMIGRANTS.

Section 203 (8 U.S.C. 1153) is amended—

(1) by redesignating subsections (b) through (e) as subsections (d) through (g), respectively, and

(2) by striking subsection (a) and inserting the following:

"(a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allotted visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants—

"(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

"(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence,

shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

"(3) MARRIED SONS AND MARRIED DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

"(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).".

SEC. 112. TRANSITION FOR SPOUSES AND MINOR CHILDREN OF LEGALIZED ALIENS.

(a) ADDITIONAL VISA NUMBERS.—

(1) IN GENERAL.—In addition to any immigrant visas otherwise available, immigrant visa numbers shall be available in each of fiscal years 1992, 1993, and 1994 for spouses and children of eligible legalized aliens (as defined in subsection (c)) in a number equal to 55,000 minus the number (if any) computed under paragraph (2) for the fiscal year.

(2) OFFSET.—The number computed under this paragraph for a fiscal year is the number (if any) by which—

(A) the sum of the number of aliens described in subparagraphs (A) and (B) of section 201(b)(2) of the Immigration and Nationality Act (or, for fiscal year 1992, section 201(6) of such Act) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year, exceeds

(B) 239,000.

(b) ORDER.—Visa numbers under this section shall be made available in the order in which a petition, in behalf of each such immigrant for classification under section 203(a)(2) of the Immigration and Nationality Act, is filed with the Attorney General under section 204 of such Act.

(c) LEGALIZED ALIEN DEFINED.—In this section, the term "legalized alien" means an alien lawfully admitted for temporary or permanent residence who was provided—

(1) temporary or permanent residence status under section 210 of the Immigration and Nationality Act,

(2) temporary or permanent residence status under section 245A of the Immigration and Nationality Act, or

(3) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986.

PART 2—EMPLOYMENT-BASED IMMIGRANTS

SEC. 121. EMPLOYMENT-BASED IMMIGRANTS.

(a) IN GENERAL.—Section 203 (8 U.S.C. 1153) is amended by inserting after subsection (a), as inserted by section 111, the following new subsection:

"(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

"(1) PRIORITY WORKERS.—Visas shall first be made available in a number not to exceed 40,000, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

"(A) ALIENS WITH EXTRAORDINARY ABILITY.—An alien is described in this subparagraph if—

"(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

"(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

"(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

"(B) OUTSTANDING PROFESSORS AND RESEARCHERS.—An alien is described in this subparagraph if—

"(i) the alien is recognized internationally as outstanding in a specific academic area,

"(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

"(iii) the alien seeks to enter the United States—

"(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

"(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

"(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

"(C) CERTAIN MULTINATIONAL EXECUTIVES AND MANAGERS.—An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

"(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—

"(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 40,000, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

"(B) WAIVER OF JOB OFFER.—The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, or business be sought by an employer in the United States.

"(C) DETERMINATION OF EXCEPTIONAL ABILITY.—In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

"(3) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—

"(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 40,000, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

"(i) SKILLED WORKERS.—Qualified immigrants who are capable, at the time of petitioning for classification under this para-

graph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

"(ii) PROFESSIONALS.—Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

"(iii) OTHER WORKERS.—Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

"(B) LIMITATION ON OTHER WORKERS.—Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).

"(C) LABOR CERTIFICATION REQUIRED.—An immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A).

"(4) CERTAIN SPECIAL IMMIGRANTS.—Visas shall be made available, in a number not to exceed 10,000, to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii).

"(5) EMPLOYMENT CREATION.—

"(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 10,000, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise—

"(i) which the alien has established,

"(ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

"(iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

"(B) SET-ASIDE FOR TARGETTED EMPLOYMENT AREAS.—

"(i) IN GENERAL.—Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who establish a new commercial enterprise described in subparagraph (A) which will create employment in a targetted employment area.

"(ii) TARGETTED EMPLOYMENT AREA DEFINED.—In this paragraph, the term 'targetted employment area' means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).

"(iii) RURAL AREA DEFINED.—In this paragraph, the term 'rural area' means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

"(C) AMOUNT OF CAPITAL REQUIRED.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be $1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.

"(ii) ADJUSTMENT FOR TARGETTED EMPLOYMENT AREAS.—The Attorney General may, in the case of investment made in a targetted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than 1/2 of) the amount specified in clause (i).

"(iii) ADJUSTMENT FOR HIGH EMPLOYMENT AREAS.—In the case of an investment made in a part of a metropolitan statistical area that at the time of the investment—

"(I) is not a targetted employment area, and

"(II) is an area with an unemployment rate significantly below the national average unemployment rate,

the Attorney General may, specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (i).".

(b) DETERRING IMMIGRATION-RELATED ENTREPRENEURSHIP FRAUD.—

(1) CONDITIONAL BASIS FOR PERMANENT RESIDENT STATUS BASED ON ESTABLISHMENT OF COMMERCIAL ENTERPRISES.—Chapter 2 of title II is amended by inserting after section 216 the following new section:

"CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

"SEC. 216A. (a) IN GENERAL.—

"(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien entrepreneur (as defined in subsection (f)(1)), alien spouse, and alien child (as defined in subsection (f)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

"(2) NOTICE OF REQUIREMENTS.—

"(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien entrepreneur, alien spouse, or alien child obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

"(B) AT TIME OF REQUIRED PETITION.—In addition, the Attorney General shall attempt to provide notice to such an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsection (c)(1).

"(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such an entrepreneur, spouse, or child.

"(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—

"(1) IN GENERAL.—In the case of an alien entrepreneur with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

"(A) the establishment of the commercial enterprise was intended solely as a means of evading the immigration laws of the United States,

"(B)(i) a commercial enterprise was not established by the alien,

"(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

"(iii) the alien was not sustaining the actions described in clause (i) or (ii) throughout the period of the alien's residence in the United States, or

"(C) the alien was otherwise not conforming to the requirements of section 203(b)(5), then the Attorney General shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) involved as of the date of the determination.

"(2) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

"(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

"(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien entrepreneur, alien spouse, or alien child to be removed—

"(A) the alien entrepreneur must submit to the Attorney General, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

"(B) in accordance with subsection (d)(3), the alien entrepreneur must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

"(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

"(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

"(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

"(ii) unless there is good cause shown, the alien entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3)),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

"(B) HEARING IN DEPORTATION PROCEEDING.—In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

"(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

"(A) IN GENERAL.—If—

"(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

"(ii) the alien entrepreneur appears at any interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of such filing or interview (whichever is later), as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying commercial enterprise.

"(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

"(C) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, alien spouse, or alien child as of the date of the determination.

"(D) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying commercial enterprise.

"(d) DETAILS OF PETITION AND INTERVIEW.—

"(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain facts and information demonstrating that—

"(A) a commercial enterprise was established by the alien;

"(B) the alien invested or was actively in the process of investing the requisite capital; and

"(C) the alien sustained the actions described in subparagraphs (A) and (B) throughout the period of the alien's residence in the United States.

"(2) PERIOD FOR FILING PETITION.—

"(A) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

"(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

"(C) FILING OF PETITIONS DURING DEPORTATION.—In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

"(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

"(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

"(f) DEFINITIONS.—In this section:

"(1) The term 'alien entrepreneur' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 203(b)(5).

"(2) The term 'alien spouse' and the term 'alien child' mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.".

(2) ADDITIONAL GROUND FOR DEPORTATION.—For additional ground of exclusion for termination of permanent residence on a conditional basis under section 216A of the Immigration and Nationality Act, see section 241(a)(1)(D) of such Act, as amended by section 602(a) of this Act.

(3) CRIMINAL PENALTY FOR IMMIGRATION-RELATED ENTREPRENEURSHIP FRAUD.—Section 275 (8 U.S.C. 1325) is amended by adding at the end the following new subsection:

"(c) Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, United States Code, or both.".

(4) LIMITATION ON ADJUSTMENT OF STATUS.—Section 245 (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

"(f) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216A.".

(5) CONFORMING AMENDMENT.—The table of contents is amended by inserting after the item relating to section 216 the following new item:

"Sec. 216A. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children.".

SEC. 122. CHANGES IN LABOR CERTIFICATION PROCESS.

(a) LABOR MARKET INFORMATION PILOT PROGRAM FOR EMPLOYMENT-BASED IMMIGRANTS.—(1) The Secretary of Labor shall establish a pilot program which provides for a determination, in accordance with section 553 of title 5, United States Code, of labor shortages or surpluses in up to 10 defined occupational classifications in the United States. In making such determinations, the Secretary shall consider certifications approved under section 212(a)(5)(A) of the Immigration and Nationality Act and labor market and other information.

(2)(A) If under the pilot program there is a determination that there is a labor shortage with respect to an occupational classification, a certification under section 212(a)(5)(A) of the Immigration and Nationality Act for petitions for that occupational classification shall be deemed to have been issued.

(B) If under the pilot program there is a determination that there is a labor surplus with respect to an occupational classification, the Secretary of Labor may nonetheless make a certification under section 212(a)(5)(A) of the Immigration and Nationality Act with regard to a specific job opportunity in the occupational classification if the employer submits evidence, based on extensive recruitment efforts (including such efforts as the Secretary may require), demonstrating that the employer meets all the requirements for certification under such section.

(3) The pilot program under this subsection shall only be effective for applications for certifications filed during the 3-fiscal-year period beginning with fiscal year 1992.

(4) By not later than April 1, 1994, the Secretary of Labor shall report to the Committees on Education and Labor and Judiciary of the House of Representatives and the Committees on Labor and Human Resources and the Judiciary of the Senate on the operation of the pilot program under this subsection and whether the program should be extended and the number of defined occupational classifications permitted under the program if it is extended.

(b) NOTICE IN LABOR CERTIFICATIONS.—The Secretary of Labor shall provide, in the labor certification process under section 212(a)(5)(A) of the Immigration and Nationality Act, that—

(1) no certification may be made unless the applicant for certification has, at the time of filing the application, provided notice of the filing (A) to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or (B) if there is no such bargaining representative, to employees employed at the facility through posting in conspicuous locations; and

(2) any person may submit documentary evidence bearing on the application for certification (such as information on available workers, information on wages and working conditions, and information on the employer's failure to meet terms and conditions with respect to the employment of alien workers and co-workers).

SEC. 123. DEFINITIONS OF MANAGERIAL CAPACITY AND EXECUTIVE CAPACITY.

Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

"(44)(A) The term 'managerial capacity' means an assignment within an organization in which the employee primarily—

"(i) manages the organization, or a department, subdivision, function, or component of the organization;

"(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

"(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

"(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

"(B) The term 'executive capacity' means an assignment within an organization in which the employee primarily—

"(i) directs the management of the organization or a major component or function of the organization;

"(ii) establishes the goals and policies of the organization, component, or function;

"(iii) exercises wide latitude in discretionary decision-making; and

"(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

"(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.".

SEC. 124. TRANSITION FOR EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG.

(a) ADDITIONAL VISA NUMBERS.—

(1) TREATMENT OF PRINCIPALS.—In the case of any alien described in paragraph (3) with respect to whom a classification petition has been filed and approved under subsection (b), there shall be made available, in addition to the immigrant visas otherwise available in each of fiscal years 1991 through 1993 and without regard to section 202(a) of the Immigration and Nationality Act, up to 12,000 additional immigrant visas.

(2) DERIVATIVE RELATIVES.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, the alien's spouse or parent.

(3) EMPLOYEES OF CERTAIN UNITED STATES BUSINESSES OPERATING IN HONG KONG.—An alien is described in this paragraph if the alien—

(A) is a resident of Hong Kong and is employed in Hong Kong (and has been so employed during the 12 previous, consecutive months) as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, by a business entity which (i) is owned and organized in the United States (or is the subsidiary or affiliate of a business owned and organized in the United States), (ii) employs at least 100 employees in the United States and at least 50 employees outside the United States, and (iii) has a gross annual income of at least $50,000,000, and

(B) has an offer of employment from such business entity in the United States as an officer or supervisor or in a capacity that is managerial, executive, or involves specialized knowledge, which offer (i) is effective from the time of filing the petition for classification under this section through and including the time of entry into the United States and (ii) provides for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company.

(b) PETITIONS.—Any employer desiring and intending to employ within the United States an alien described in subsection (a)(3) may file a petition with the Attorney General for such classification. No visa may be issued under subsection (a)(1) until such a petition has been approved.

(c) ALLOCATION.—Visa numbers made available under subsection (a) shall be made available in the order which petitions under subsection (b) are filed with the Attorney General.

(d) DEFINITIONS.—In this section:

(1) EXECUTIVE CAPACITY.—The term "executive capacity" has the meaning given such term in section 101(a)(44)(B) of the Immigration and Nationality Act, as added by section 123 of this Act.

(2) MANAGERIAL CAPACITY.—The term "managerial capacity" has the meaning given such term in section 101(a)(44)(A) of the Immigration and Nationality Act, as added by section 123 of this Act.

(3) OFFICER.—The term "officer" means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistance secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any assistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the above officers.

(4) SPECIALIZED KNOWLEDGE.—The term "specialized knowledge" has the meaning given such term in section 214(c)(2)(B) of the Immigration and Nationality Act, as amended by section 207(b)(2) of this Act.

(5) SUPERVISOR.—The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

PART 3—DIVERSITY IMMIGRANTS

SEC. 131. DIVERSITY IMMIGRANTS.

Section 203, as amended by sections 111 and 121 of this Act, is further amended by inserting after subsection (b) the following new subsection:

"(c) DIVERSITY IMMIGRANTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 201(e) for diversity immigrants shall be allotted visas each fiscal year as follows:

"(A) DETERMINATION OF PREFERENCE IMMIGRATION.—The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 201(a) (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 201(b)(2).

"(B) IDENTIFICATION OF HIGH-ADMISSION AND LOW-ADMISSION REGIONS AND HIGH-ADMISSION AND LOW-ADMISSION STATES.—The Attorney General—

"(i) shall identify—

"(I) each region (each in this paragraph referred to as a 'high-admission region') for which the total of the numbers determined under subparagraph (A) for states in the region is greater than 1/6 of the total of all such numbers, and

"(II) each other region (each in this paragraph referred to as a 'low-admission region'); and

"(ii) shall identify—

"(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a 'high-admission state'), and

"(II) each other foreign state (each such state in this paragraph referred to as a 'low-admission state').

"(C) DETERMINATION OF PERCENTAGE OF WORLDWIDE IMMIGRATION ATTRIBUTABLE TO HIGH-ADMISSION REGIONS.—The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

"(D) DETERMINATION OF REGIONAL POPULATIONS EXCLUDING HIGH-ADMISSION STATES AND RATIOS OF POPULATIONS OF REGIONS WITHIN LOW-ADMISSION REGIONS AND HIGH-ADMISSION REGIONS.—The Attorney General shall determine—

"(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

"(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

"(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

"(E) DISTRIBUTION OF VISAS.—

"(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.—The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

"(ii) FOR LOW-ADMISSION STATES IN LOW-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

"(I) the percentage determined under subparagraph (C), and

"(II) the population ratio for that region determined under subparagraph (D)(ii).

"(iii) FOR LOW-ADMISSION STATES IN HIGH-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of—

"(I) 100 percent minus the percentage determined under subparagraph (C), and

"(II) the population ratio for that region determined under subparagraph (D)(iii).

"(iv) REDISTRIBUTION OF UNUSED VISA NUMBERS.—If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

"(v) LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.—The percentage of visas made available under this paragraph

to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

"(F) REGION DEFINED.—Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

"(i) Africa.

"(ii) Asia.

"(iii) Europe.

"(iv) North America (other than Mexico).

"(v) Oceania.

"(vi) South America, Mexico, Central America, and the Caribbean.

"(2) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is not eligible for a visa under this subsection unless the alien—

"(A) has at least a high school education or its equivalent, or

"(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

"(3) MAINTENANCE OF INFORMATION.—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.".

SEC. 132. DIVERSITY TRANSITION FOR ALIENS WHO ARE NATIVES OF CERTAIN ADVERSELY AFFECTED FOREIGN STATES.

(a) IN GENERAL.—Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act, there shall be made available to qualified immigrants described in subsection (b) 40,000 immigrants visas in each of fiscal years 1992, 1993, and 1994.

(b) QUALIFIED ALIEN DESCRIBED.—An alien described in this subsection is an alien who—

(1) is a native of a foreign state that is not contiguous to the United States and that was identified as an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986,

(2) has a firm commitment for employment in the United States for a period of at least 1 year (beginning on the date of admission under this section), and

(3) except as provided in subsection (c), is admissible as an immigrant.

(c) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making immigrant visas provided under subsection (a) available in the chronological order in which aliens apply for each fiscal year, except that at least 40 percent of the number of such visas in each fiscal year shall be made available to natives of the foreign state the natives of which received the greatest number of visas issued under section 314 of the Immigration Reform and Control Act (or to aliens described in subsection (d) who are the spouses or children of such natives).

(d) DERIVATIVE STATUS FOR SPOUSES AND CHILDREN.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, his spouse or parent.

(e) WAIVERS OF GROUNDS OF EXCLUSION.—In determining the admissibility of an alien provided a visa number under this section, the grounds of exclusion specified in paragraphs (5)(B) and (7)(A) of section 212(a) of the Immigration and Nationality Act shall not apply, and the Attorney General shall waive the ground of exclusion specified in paragraph (6)(C) of such section, unless the Attorney General finds that such a waiver is not in the national interest.

(f) APPLICATION FEE.—The Secretary of State shall require payment of a reasonable fee for the filing of an application under this section in order to cover the costs of processing applications under this section.

SEC. 133. ONE-YEAR DIVERSITY TRANSITION FOR ALIENS WHO HAVE BEEN NOTIFIED OF AVAILABILITY OF NP-5 VISAS.

Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act, there shall be made available in fiscal year 1991 immigrant visa numbers for qualified immigrants who—

(1) were notified by the Secretary of State before May 1, 1990, of their selection for issuance of a visa under section 314 of the Immigration Reform and Control Act of 1986, and

(2) are qualified for the issuance of such a visa but for (A) numerical and fiscal year limitations on the issuance of such visas, (B) section 212(a)(19) or 212(e) of the Immigration and Nationality Act, or (C) the fact that the immigrant was a national, but not a native, of a foreign state described in section 314 of the Immigration Reform and Control Act of 1986.

Visas shall be made available under this section to spouses and children of qualified immigrants in the same manner as such visas were made available to such spouses and children under section 314 of the Immigration Reform and Control Act of 1986. The Attorney General may waive section 212(a)(19) of the Immigration and Nationality Act (or, on or after June 1, 1991, section 212(a)(6)(C) of such Act) in the case of qualified immigrants described in the first sentence of this section.

SEC. 134. TRANSITION FOR DISPLACED TIBETANS.

(a) IN GENERAL.—Notwithstanding the numerical limitations in sections 201 and 202 of the Immigration and Nationality Act, there shall be made available to qualified displaced Tibetans described in subsection (b) 1,000 immigrant visas in the 3-fiscal-year period beginning with fiscal year 1991.

(b) QUALIFIED DISPLACED TIBETAN DESCRIBED.—An alien described in this subsection is an alien who—

(1) is a native of Tibet, and

(2) since before date of the enactment of this Act, has been continuously residing in India or Nepal.

For purposes of paragraph (1), an alien shall be considered to be a native of Tibet if the alien was born in Tibet or is the son, daughter, grandson, or granddaughter of an individual born in Tibet.

(c) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making immigrant visas provided under subsection (a) available to displaced aliens described in subsection (b) (or described in subsection (d) as the spouse or child of such an alien) in an equitable manner, giving preference to those aliens who are not firmly resettled in India or Nepal or who are most likely to be resettled successfully in the United States.

(d) DERIVATIVE STATUS FOR SPOUSES AND CHILDREN.—A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Immigration and Nationality Act) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under this section, be entitled to the same status, and the same order of consideration, provided under this section, if accompanying, or following to join, his spouse or parent.

SUBTITLE C—COMMISSION AND INFORMATION

SEC. 141. COMMISSION ON LEGAL IMMIGRATION REFORM.

(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) Effective October 1, 1991, there is established a Commission on Legal Immigration Reform (in this section referred to as the "Commission") which shall be composed of 9 members to be appointed as follows:

(A) One member who shall serve as Chairman, to be appointed by the President.

(B) Two members to be appointed by the Speaker of the House of Representatives who shall select such members from a list of nominees provided by the Chairman of the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary of the House of Representatives.

(C) Two members to be appointed by the Minority Leader of the House of Representatives who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary of the House of Representatives.

(D) Two members to be appointed by the Majority Leader of the Senate who shall select such members from a list of nominees provided by the Chairman of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary of the Senate.

(E) Two members to be appointed by the Minority Leader of the Senate who shall select such members from a list of nominees provided by the ranking minority member of the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary of the Senate.

(2) Initial appointments to the Commission shall be made during the 45-day period beginning on October 1, 1991. A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(3) Members shall be appointed to serve for the life of the Commission, except that the term of the member described in paragraph (1)(A) shall expire at noon on January 20, 1993, and the President shall appoint an individual to serve for the remaining life of the Commission.

(b) FUNCTIONS OF COMMISSION.—The Commission shall—

(1) review and evaluate the impact of this Act and the amendments made by this Act, in accordance with subsection (c); and

(2) transmit to the Congress—

(A) not later than September 30, 1994, a first report describing the progress made in carrying out paragraph (1), and

(B) not later than September 30, 1997, a final report setting forth the Commission's findings and recommendations, including such recommendations for additional changes that should be made with respect to legal immigration into the United States as the Commission deems appropriate.

(c) CONSIDERATIONS.—

(1) PARTICULAR CONSIDERATIONS.—In particular, the Commission shall consider the following:

(A) The requirements of citizens of the United States and of aliens lawfully admit-

ted for permanent residence to be joined in the United States by immediate family members and the impact which the establishment of a national level of immigration has upon the availability and priority of family preference visas.

(B) The impact of immigration and the implementation of the employment-based and diversity programs on labor needs, employment, and other economic and domestic conditions in the United States.

(C) The social, demographic, and natural resources impact of immigration.

(D) The impact of immigration on the foreign policy and national security interests of the United States.

(E) The impact of per country immigration levels on family-sponsored immigration.

(F) The impact of the numerical limitation on the adjustment of status of aliens granted asylum.

(G) The impact of the numerical limitations on the admission of nonimmigrants under section 214(g) of the Immigration and Nationality Act.

(2) DIVERSITY PROGRAM.—The Commission shall analyze the information maintained under section 203(c)(3) of the Immigration and Nationality Act and shall report to Congress in its report under subsection (b)(2) on—

(A) the characteristics of individuals admitted under section 203(c) of the Immigration and Nationality Act, and

(B) how such characteristics compare to the characteristics of family-sponsored immigrants and employment-based immigrants.

The Commission shall include in the report an assessment of the effect of the requirement of paragraph (2) of section 203(c) of the Immigration and Nationality Act on the diversity, educational, and skill level of aliens admitted.

(d) COMPENSATION OF MEMBERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, pay at the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-18 of the General Schedule. Each member of the Commission who is such an officer or employee shall serve without additional pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(e) MEETINGS, STAFF, AND AUTHORITY OF COMMISSION.—The provisions of subsections (e) through (g) of section 304 of the Immigration Reform and Control Act of 1986 shall apply to the Commission in the same manner as they apply to the Commission established under such section, except that paragraph (2) of subsection (e) thereof shall not apply.

(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section.

(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

(g) TERMINATION DATE.—The Commission shall terminate on the date on which a final report is required to be transmitted under subsection (b)(2)(B), except that the Commission may continue to function until January 1, 1998, for the purpose of concluding its activities, including providing testimony to standing committees of Congress concerning its final report under this section and disseminating that report.

(h) CONGRESSIONAL RESPONSE.—(1) No later than 90 days after the date of receipt of each report transmitted under subsection (b)(2), the Committees on the Judiciary of the House of Representatives and of the Senate shall initiate hearings to consider the findings and recommendations of the report.

(2) No later than 180 days after the date of receipt of such a report, each such Committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

SEC. 142. STATISTICAL INFORMATION SYSTEM.

Section 103 (8 U.S.C. 1103) is amended by adding at the end the following new subsections:

"(c)(1) The Commissioner, in consultation with interested academicians, government agencies, and other parties, shall provide for a system for collection and dissemination, to Congress and the public, of information (not in individually identifiable form) useful in evaluating the social, economic, environmental, and demographic impact of immigration laws.

"(2) Such information shall include information on the alien population in the United States, on the rates of naturalization and emigration of resident aliens, on aliens who have been admitted, paroled, or granted asylum, on nonimmigrants in the United States (by occupation, basis for admission, and duration of stay), on aliens who have been excluded or deported from the United States, on the number of applications filed and granted for suspension of deportation, and on the number of aliens estimated to be present unlawfully in the United States in each fiscal year.

"(3) Such system shall provide for the collection and dissemination of such information not less often than annually.

"(d)(1) The Commissioner shall submit to Congress annually a report which contains a summary of the information collected under subsection (c) and an analysis of trends in immigration and naturalization.

"(2) Each annual report shall include information on the number, and rate of denial administratively, of applications for naturalization, for each district office of the Service and by national origin group.".

Subtitle D—Miscellaneous

SEC. 151. REVISION OF SPECIAL IMMIGRANT PROVISIONS RELATING TO RELIGIOUS WORKERS (C SPECIAL IMMIGRANTS).

(a) IN GENERAL.—Subparagraph (C) of section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended to read as follows:

"(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—

"(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

"(ii) seeks to enter the United States—

"(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

"(II) before October 1, 1994, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

"(III) before October 1, 1994, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

"(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);".

(b) REFERENCE TO NEW NONIMMIGRANT CLASSIFICATION.—For establishment of nonimmigrant classification for religious workers, see section 209.

SEC. 152. SPECIAL IMMIGRANT STATUS FOR CERTAIN ALIENS EMPLOYED AT THE UNITED STATES MISSION IN HONG KONG (D SPECIAL IMMIGRANTS).

(a) IN GENERAL.—Subject to subsection (c), an alien described in subsection (b) shall be treated as a special immigrant described in section 101(a)(27)(D) of the Immigration and Nationality Act.

(b) ALIENS COVERED.—An alien is described in this subsection if—

(1) the alien is—

(A) an employee at the United States consulate in Hong Kong under the authority of the Chief of Mission (including employment pursuant to section 5913 of title 5, United States Code) who has performed faithful service for a total of three years or more, or

(B) a member of the immediate family (as defined in 6 Foreign Affairs Manual 117k as of the date of the enactment of this Act) of an employee described in subparagraph (A) who has been living with the employee in the same household;

(2) the welfare of the employee or such an immediate family member is subject to a clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

(3) the principal officer in Hong Kong, in the officer's discretion, has recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

(c) EXPIRATION.—Subsection (a) shall only apply to aliens who file an application for special immigrant status under this section by not later than January 1, 2002.

(d) LIMITED WAIVER OF NUMERICAL LIMITATIONS.—The first 500 visas made available to aliens as special immigrants under this section shall not be counted against any numerical limitation established under section 201 or 202 of the Immigration and Nationality Act.

SEC. 153. SPECIAL IMMIGRANT STATUS FOR CERTAIN ALIENS DECLARED DEPENDENT ON A JUVENILE COURT (J SPECIAL IMMIGRANTS).

(a) IN GENERAL.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(1) by striking "or" at the end of subparagraph (H),

(2) by striking the period at the end of subparagraph (I) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(J) an immigrant (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last

habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.".

(b) WAIVER OF GROUNDS FOR DEPORTATION.—

(1) IN GENERAL.—Section 241 (8 U.S.C. 1251) is amended by adding at the end the following new subsection:

"(h) Paragraphs (1), (2), (5), (9), or (12) of subsection 241(a) (other than so much of paragraph (1) as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (29), or (33) of section 212(a)) shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that exist before the date the alien was provided such special immigrant status.".

(2) USE OF NEW GROUNDS FOR DEPORTATION.—Effective on the date that the amendments made by section 602 of this Act become effective, the subsection added by paragraph (1) is amended to read as follows:

"(h) Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), or (3)(A), of subsection 241(a) (other than so much of paragraph (1) as relates to a ground of exclusion described in paragraph (2) or (3) of section 212(a)) shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that exist before the date the alien was provided such special immigrant status.".

SEC. 154. PERMITTING EXTENSION OF PERIOD OF VALIDITY OF IMMIGRANT VISAS FOR CERTAIN RESIDENTS OF HONG KONG.

(a) EXTENDING PERIOD OF VALIDITY.—

(1) IN GENERAL.—Subject to paragraph (2), the limitation on the period of validity of an immigrant visa under section 221(c) of the Immigration and Nationality Act shall not apply in the case of an immigrant visa issued, on or after the date of the enactment of this Act and before September 1, 2001, to an alien described in subsection (b), but only if—

(A) the alien elects, within the period of validity of the immigrant visa under such section, to have this section apply, and

(B) before the date the alien seeks to be admitted to the United States for lawful permanent residence, the alien notifies the appropriate consular officer of the alien's intention to seek such admission and provides such officer with such information as the officer determines to be necessary to verify that the alien remains eligible for admission to the United States as an immigrant.

(2) LIMITATION ON EXTENSION.—In no case shall the period of validity of a visa be extended under paragraph (1) beyond January 1, 2002.

(3) TREATMENT UNDER NUMERICAL LIMITATIONS.—In applying the numerical limitations of sections 201 and 202 of the Immigration and Nationality Act in the case of aliens for whose visas the period of validity is extended under this section, such limitations shall only apply at the time of original issuance of the visas and not at the time of admission of such aliens.

(b) ALIENS COVERED.—An alien is described in this subsection if the alien—

(1)(A) is chargeable under section 202 of the Immigration and Nationality Act to Hong Kong, and

(B)(i) is residing in Hong Kong as of the date of the enactment of this Act and is issued an immigrant visa under paragraph (1), (2), (4), or (5) of section 203(a) the Immigration and Nationality Act (as in effect on the date of the enactment of this Act) or under section 203(a) or 203(b)(1) of such Act (as in effect on and after October 1, 1991), or (ii) is the spouse or child (as defined in subsection (d)) of an alien described in clause (i), if accompanying or following to join the alien in coming to the United States; or

(2) is issued a visa under section 124 of this Act.

(c) TREATMENT OF CERTAIN EMPLOYEES IN HONG KONG.—

(1) IN GENERAL.—In applying the proviso of section 7 of the Central Intelligence Agency Act of 1949, in the case of an alien described in paragraph (2), the Director may charge the entry of the alien against the numerical limitation for any fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1996) notwithstanding that the alien's entry is not made to the United States in that fiscal year so long as such entry is made before the end of fiscal year 1997.

(2) ALIENS COVERED.—An alien is described in this paragraph if the alien—

(A) is an employee of the Foreign Broadcast Information Service in Hong Kong, or

(B) is the spouse or child (as defined in subsection (d)) of an alien described in subparagraph (A), if accompanying or following to join the alien in coming to the United States.

(3) RELATION TO SIMILAR PROVISION.—The provisions of this subsection supersede section 403 of the Intelligence Authorization Act, fiscal year 1991.

(d) TREATMENT OF CHILDREN.—In this section, the term "child" has the meaning given such term in section 101(b)(1) of the Immigration and Nationality Act and also includes (for purposes of this section and the Immigration and Nationality Act as it applies to this section) an alien who was the child (as so defined) of the alien as of the date of the issuance of an immigrant visa to the alien described in subsection (b)(1) or, in the case described in subsection (c), as of the date of charging of the entry of the alien under the proviso under section 7 of the Central Intelligence Agency Act of 1949.

SEC. 155. EXPEDITED ISSUANCE OF LEBANESE SECOND AND FIFTH PREFERENCE VISAS.

(a) IN GENERAL.—In the issuance of immigrant visas to certain Lebanese immigrants described in subsection (b) in fiscal years 1991 and 1992 and notwithstanding section 203(c) of the Immigration and Nationality Act (to the extent inconsistent with this section), the Secretary of State shall provide that immigrant visas which would otherwise be made available in the fiscal year shall be made available as early as possible in the fiscal year.

(b) LEBANESE IMMIGRANTS COVERED.—Lebanese immigrants described in this subsection are aliens who—

(1) are natives of Lebanon,

(2) are not firmly resettled in any foreign country outside Lebanon, and

(3) as of the date of the enactment of this Act, are the beneficiaries of a petition approved to accord status under section 203(a)(2) or 203(a)(5) of the Immigration and Nationality Act (as in effect as of the date of the enactment of this Act),

or the child of such an alien if accompanying or following to join the alien.

Subtitle E—Effective Dates; Conforming Amendments

SEC. 161. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title shall take effect on October 1, 1991, and apply beginning with fiscal year 1992.

(b) PROVISIONS TAKING EFFECT UPON ENACTMENT.—The following sections (and amendments made by such sections) shall take effect on the date of the enactment of this Act and (unless otherwise provided) apply to fiscal year 1991:

(1) Section 103 (relating to per country limitation for Hong Kong).

(2) Section 104 (relating to asylee adjustments).

(3) Section 124 (relating to transition for employees of certain U.S. businesses in Hong Kong).

(4) Section 133 (relating to one-year diversity transition for aliens who have been notified of availability of NP-5 visas).

(5) Section 134 (relating to transition for displaced Tibetans).

(6) Section 153 (relating to special immigrants who are dependent on a juvenile court).

(7) Section 154 (permitting extension of validity of visas for certain residents of Hong Kong).

(8) Section 155 (relating to expedited issuance of Lebanese second and fifth preference visas).

(9) Section 162(b) (relating to immigrant visa petitioning process), but only insofar as such section relates to visas for fiscal years beginning with fiscal year 1992.

(c) GENERAL TRANSITIONS.—

(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section 203(a)(3) or section 203(a)(6) of such Act (as in effect before such date)—

(A) in order to maintain the priority date with respect to such a petition, the petitioner must file (by not later than October 1, 1993) a new petition for classification of the employment under paragraph (1), (2), or (3) of section 203(b) of such Act (as amended by this title), and

(B) any labor certification under section 212(a)(7)(A) of such Act required with respect to the new petition shall be deemed approved if the labor certification with respect to the previous petition was previously approved under section 212(a)(14) of such Act.

(2) Any petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section 203(a)(4) or section 203(a)(5) of such Act (as in effect before such date) shall be deemed, as of such date, to be a petition filed under such section for preference status under section 203(a)(3) or section 203(a)(4), respectively, of such Act (as amended by this title).

(d) ADMISSIBILITY STANDARDS.—When an immigrant, in possession of an unexpired immigrant visa issued before October 1, 1991, makes application for admission, the immigrant's admissibility under paragraph (7)(A) of section 212(a) of the Immigration and Nationality Act shall be determined under the provisions of law in effect on the date of the issuance of such visa.

(e) CONSTRUCTION.—Nothing in this title shall be construed as affecting the provisions of section 19 of Public Law 97-116, section 2(c)(1) of Public Law 97-271, or section 202(e) of Public Law 99-603.

SEC. 162. CONFORMING AMENDMENTS.

(a) RESTATEMENT OF DERIVATIVE STATUS, ORDER OF CONSIDERATION, ETC.—Section 203, as amended by subtitle B, is further amended by striking all that follows subsection (c) and inserting the following:

"(d) TREATMENT OF FAMILY MEMBERS.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

"(e) ORDER OF CONSIDERATION.—(1) Immigrant visas made available under subsection (a) or (b) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 101(a)(27)(D), with the Secretary of State) as provided in section 204(a).

"(2) Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.

"(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

"(f) PRESUMPTION.—Every immigrant shall be presumed not to be described in subsection (a) or (b) of this section, section 101(a)(27), or section 201(b)(2), until the immigrant establishes to the satisfaction of the consular officer and the immigration officer that the immigrant is so described. In the case of any alien claiming in his application for an immigrant visa to be described in section 201(b)(1) or in subsection (a) or (b) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

"(g) LISTS.—For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.".

(2) Nothing in this Act may be construed as continuing the availability of visas under section 203(a)(7) of the Immigration and Nationality Act, as in effect before the date of enactment of this Act.

(b) CHANGES IN PETITIONING PROCEDURE.—Section 204 (8 U.S.C. 1154) is amended—

(1) in subsection (a), by striking "(a)(1)" and all that follows through the end of paragraph (1) and inserting the following:

"(a)(1)(A) Any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

"(B) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification.

"(C) Any alien desiring to be classified under section 203(b)(1)(A), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

"(D) Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) may file a petition with the Attorney General for such classification.

"(E)(i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(4), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

"(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

"(F) Any alien desiring to be classified under section 203(b)(5) may file a petition with the Secretary of State for such classification.

"(G)(i) Any alien desiring to be provided an immigrant visa under section 203(c) may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

"(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 203(c) for the fiscal year beginning after the end of the period.

"(II) Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

"(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

"(iii) A petition or registration under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.";

(2) in subsection (b)—

(A) by striking "section 203(a) (3) or (6)" and inserting "section 203(b)(2) or 203(b)(3)", and

(B) by striking "a preference status under section 203(a)" and inserting "preference under subsection (a) or (b) of section 203";

(3) in subsection (e), by striking "preference immigrant under section 203(a)" and inserting "immigrant under subsection (a), (b), or (c) of section 203";

(4) in subsection (g)(1), by striking "203(a)(4)" and inserting "203(a)(3)";

(5) by striking subsection (f), and

(6) by redesignating subsections (g) and (h) as (f) and (g), respectively.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 212(a)(5) (8 U.S.C. 1182(a)(5)), as amended by section 601(a) of this Act, is amended—

(A) in subparagraph (A), by striking "Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor" and inserting "Any alien who seeks admission or status as an immigrant under paragraph (2) or (3) of section 203(b)",

(B) in subparagraph (B), by inserting "who seeks admission or status as an immigrant under paragraph (2) or (3) of section 203(b)" after "An alien" the first place it appears, and

(C) by striking subparagraph (C).

(2) Section 244(d) (8 U.S.C. 1254(d)) is amended by striking ", and unless" and all that follows through "then current".

(3) Section 245(b) (8 U.S.C. 1255(b)) is amended—

(A) by striking "or nonpreference",

(B) by striking "202(e) or 203(a)" and inserting "201(a)", and

(C) by striking "for the fiscal year then current" and inserting "for the succeeding fiscal year".

(4) Section 3304(a)(14)(A) of the Internal Revenue Code of 1986 is amended by striking "section 203(a)(7) or".

(5) Section 1614(a)(1)(B)(i) of the Social Security Act is amended by striking "section 203(a)(7) or".

(6) Section 2(c)(4) of the Virgin Islands Nonimmigrant Alien Adjustment Act of 1982 (Public Law 97-271) is amended by inserting before the period at the end the following: "(as in effect before October 1, 1991) or by reason of the relationship described in section 203(a)(2), 203(a)(3), or 203(a)(4), or 201(b)(2)(A)(i), respectively, of such Act (as in effect on or after such date)".

(f) TECHNICAL CORRECTIONS TO IMMIGRATION NURSING RELIEF ACT OF 1989.—

(1) Section 2(b) of the Immigration Nursing Relief Act of 1989 (Public Law 101-238) is amended—

(A) by striking "December 31, 1989" and inserting "September 1, 1989",

(B) by striking "in the lawful status" and inserting "in the status",

(C) by inserting "unauthorized employment performed before the date of the enactment of the Immigration Act of 1990 shall not be taken into account in applying section 245(c)(2) of the Immigration and Nationality Act and" after "spouse or child of such an alien,", and

(D) by striking "lawful status as such a nonimmigrant" and all that follows through "subsection (a)" and inserting "lawful status throughout his or her stay in the United States as a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out the amendments made by section 162(f)(1) of the Immigration Act of 1990".

(2)(A) Section 101(a)(15)(H)(i)(a) (8 U.S.C. 1101(a)(15)(H)(i)(a)) is amended by striking "for the facility for which the alien will perform the services, or" and inserting "for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or".

(B) Section 212(m)(2)(A) (8 U.S.C. 1182(m)(2)(A)) is amended—

(i) by striking ", with respect to a facility for which an alien will perform services,",

(ii) in clause (iii), by inserting "employed by the facility" after "The alien", and

(iii) by adding at the end the following: "In the case of an alien for whom an employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of tempo-

rary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.".

(3) The amendments made by this subsection shall apply as though included in the enactment of the Immigration Nursing Relief Act of 1989.

TITLE II—NONIMMIGRANTS

Subtitle A—General and Permanent Provisions

SEC. 201. REVISION AND EXTENSION OF THE VISA WAIVER PILOT PROGRAM FOR FOREIGN TOURISTS (B NONIMMIGRANTS).

(a) IN GENERAL.—Section 217 (8 U.S.C. 1187) is amended—

(1) in subsection (a)(2), by inserting ", and presents a passport issued by," after "is a national of";

(2) in subsection (a)(3)—

(A) by striking "ENTRY CONTROL AND WAIVER FORMS" and inserting "IMMIGRATION FORMS", and

(B) by striking all that follows "such admission" and inserting "completes such immigration form as the Attorney General shall establish.";

(3) by striking paragraph (4) of subsection (a) and inserting the following:

"(4) ENTRY BY SEA OR AIR.—If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier which has entered into an agreement with the Service to guarantee transport of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer.";

(4) by adding at the end of subsection (a) the following new paragraph:

"(7) ROUND-TRIP TICKET.—The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations).";

(5) in subsection (b)—

(A) by striking the heading and paragraphs (1) through (3), and

(B) by redesignating paragraph (4) (and subparagraphs (A) and (B) thereof) as subsection (b) (and paragraphs (1) and (2) thereof, respectively), and moving the indentation of such redesignated subsection and paragraphs 2 ems to the left;

(6) in subsection (c)—

(A) in paragraph (1)—

(i) by striking "UP TO 8 COUNTRIES" in the heading and inserting "IN GENERAL", and

(ii) by striking all that follows "may designate" and inserting "any country as a pilot program country if it meets the requirements of paragraph (2)"; and

(B) in paragraph (2)—

(i) by striking "INITIAL QUALIFICATIONS" in the heading and inserting "QUALIFICATIONS",

(ii) by striking "For the initial period described in paragraph (4), a country" and inserting "A country", and

(iii) by adding at the end the following new subparagraphs:

"(C) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readible passports to its citizens.

"(D) LAW ENFORCEMENT INTERESTS.—The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.";

(7) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) AUTHORITY.—Notwithstanding any other provision of this section, the Attorney General and the Secretary of State, acting jointly, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section.";

(8) in subsection (e)(1), as so redesignated—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting ", and", and

(C) by adding at the end the following new subparagraph:

"(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General."; and

(9) in subsection (f), as so redesignated, by striking all that follows "the period beginning" and inserting "on October 1, 1988, and ending on September 30, 1994.".

(b) PENALTY FOR TRANSPORT OF ALIENS WITHOUT VALID VISAS.—Section 273 (8 U.S.C. 1323) is amended—

(1) in subsection (a), by inserting "a valid passport and" before "an unexpired visa", and

(2) in subsection (c), by inserting "valid passport or" before "visa was required".

(c) REPORT.—By not later than January 1, 1992, the Attorney General, in consultation with the Secretary of State, shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the operation of the automated data arrival and departure control system for foreign visitors and on admission refusals and overstays for such visitors who have entered under the visa waiver program.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as of the date of the enactment of this Act.

SEC. 202. DENIAL OF CREWMEMBER STATUS IN THE CASE OF CERTAIN LABOR DISPUTES (D NONIMMIGRANTS).

(a) IN GENERAL.—Section 214 (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

"(f)(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 101(a)(15)(D) if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 2101(46) of title 46, United States Code) or on an aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

"(2) An alien described in paragraph (1)—

"(A) may not be paroled into the United States pursuant to section 212(d)(5) unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and

"(B) shall be considered not to be a bona fide crewman for purposes of section 252(b).

"(3) Paragraph (1) shall not apply to an alien if the air carrier or owner or operator of such vessel that employs the alien provides documentation that satisfies the Attorney General that the alien—

"(A) has been an employee of such employer for a period of not less than 1 year preceding the date that a strike or lawful lockout commenced;

"(B) has served as a qualified crewman for such employer at least once in each of 3 months during the 12-month period preceding such date; and

"(C) shall continue to provide the same services that such alien provided as such a crewman.".

(b) CONFORMING AMENDMENT.—Section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) is amended by inserting "or in section 214(f)" after "except as provided in subparagraph (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of the enactment of this Act.

SEC. 203. LIMITATIONS ON PERFORMANCE OF LONGSHORE WORK BY ALIEN CREWMEN (D NONIMMIGRANTS).

(a) LIMITATION ON ALIENS.—

(1) IN GENERAL.—Chapter 6 of title II is amended by adding at the end the following new section:

"LIMITATIONS ON PERFORMANCE OF LONGSHORE WORK BY ALIEN CREWMEN

"SEC. 258. (a) IN GENERAL.—For purposes of section 101(a)(15)(D)(i), the term 'normal operation and service on board a vessel' does not include any activity that is longshore work (as defined in subsection (b)), except as provided under subsection (c) or subsection (d).

"(b) LONGSHORE WORK DEFINED.—

"(1) IN GENERAL.—In this section, except as provided in paragraph (2), the term 'longshore work' means any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

"(2) EXCEPTION FOR SAFETY AND ENVIRONMENTAL PROTECTION.—The term 'longshore work' does not include the loading or unloading of any cargo for which the Secretary of Transportation has, under the authority contained in chapter 37 of title 46, United States Code (relating to Carriage of Liquid Bulk Dangerous Cargoes), section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), section 4106 of the Oil Pollution Act of 1990, or section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805) prescribed regulations which govern—

"(A) the handling or stowage of such cargo,

"(B) the manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo, and

"(C) the reduction or elimination of discharge during ballasting, tank cleaning, handling of such cargo.

"(3) CONSTRUCTION.—Nothing in this section shall be construed as broadening, limiting, or otherwise modifying the meaning or scope of longshore work for purposes of any other law, collective bargaining agreement, or international agreement.

"(c) PREVAILING PRACTICE EXCEPTION.—(1) Subsection (a) shall not apply to a particular activity of longshore work in and about a local port if—

"(A)(i) there is in effect in the local port one or more collective bargaining agreements each covering at least 30 percent of the number of individuals employed in performing longshore work and (ii) each such agreement (covering such percentage of longshore workers) permits the activity to be performed by alien crewmen under the terms of such agreement; or

"(B) there is no collective bargaining agreement in effect in the local port cover-

ing at least 30 percent of the number of individuals employed in performing longshore work, and an employer of alien crewmen (or the employer's designated agent or representative) has filed with the Secretary of Labor at least 14 days before the date of performance of the activity (or later, if necessary due to an unanticipated emergency, but not later than the date of performance of the activity) an attestation setting forth facts and evidence to show that—

"(i) the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port as of the date of filing of the attestation and that the use of alien crewmen for such activity—

"(I) is not during a strike or lockout in the course of a labor dispute, and

"(II) is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

"(ii) notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice of the attestation has been provided to longshore workers employed at the local port.

In applying subparagraph (B) in the case of a particular activity of longshore work consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel, the attestation shall be required to be filed only if the Secretary of Labor finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of such particular activity is not described in clause (i) of such subparagraph.

"(2) Subject to paragraph (4), an attestation under paragraph (1) shall—

"(A) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

"(B) apply to aliens arriving in the United States during such 1-year period if the owner, agent, consignee, master, or commanding officer states in each such list under section 251 that it continues to comply with the conditions in the attestation.

"(3) An owner, agent, consignee, master, or commanding officer may meet the requirements under this subsection with respect to more than one alien crewman in a single list.

"(4)(A) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying owners, agents, consignees, masters, or commanding officers which have filed lists for nonimmigrants described in section 101(a)(15)(D)(i) with respect to whom an attestation under paragraph (1) is made and, for each such entity, a copy of the entity's attestation under paragraph (1) (and accompanying documentation) and each such list filed by the entity.

"(B)(i) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting an entity's failure to meet conditions attested to, an entity's misrepresentation of a material fact in an attestation, or, in the case described in the last sentence of paragraph (1), whether the performance of the particular activity is or is not described in paragraph (1)(B)(i).

"(ii) Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary).

"(iii) The Secretary shall promptly conduct an investigation under this subparagraph if there is reasonable cause to believe that an entity fails to meet conditions attested to, an entity has misrepresented a material fact in the attestation, or, in the case described in the last sentence of paragraph (1), the performance of the particular activity is not described in paragraph (1)(B)(i).

"(C)(i) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to an attestation, a complaining party may request that the activities attested to by the employer cease during the hearing process described in subparagraph (D). If such a request is made, the attesting employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D).

"(ii) If the Secretary determines that reasonable cause exists to conduct an investigation with respect to a matter under the last sentence of paragraph (1), a complaining party may request that the activities of the employer cease during the hearing process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1). If such a request is made, the employer shall be issued notice of such request and shall respond within 14 days to the notice. If the Secretary makes an initial determination that the complaining party's position is supported by a preponderance of the evidence submitted, the Secretary shall require immediately that the employer cease and desist from such activities until completion of the process described in subparagraph (D) unless the employer files with the Secretary of Labor an attestation under paragraph (1).

"(D) Under the process established under subparagraph (B), the Secretary shall provide, within 180 days after the date a complaint is filed (or later for good cause shown), for a determination as to whether or not a basis exists to make a finding described in subparagraph (E). The Secretary shall provide notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

"(E)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an entity has failed to meet a condition attested to or has made a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 for each alien crewman performing unauthorized longshore work) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not permit the vessels owned or chartered by such entity to enter any port of the United States during a period of up to 1 year.

"(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, that, in the case described in the last sentence of paragraph (1), the performance of the particular activity is not described in subparagraph (B)(i), the Secretary shall notify the Attorney General of such finding and, thereafter, the attestation described in paragraph (1) shall be required of the employer for the performance of the particular activity.

"(F) A finding by the Secretary of Labor under this paragraph that the performance of an activity by alien crewmen is not permitted under the prevailing practice of a local port shall preclude for one year the filing of a subsequent attestation concerning such activity in the port under paragraph (1).

"(d) RECIPROCITY EXCEPTION.—

"(1) IN GENERAL.—Subject to the determination of the Secretary of State pursuant to paragraph (2), the Attorney General shall permit an alien crewman to perform an activity constituting longshore work if—

"(A) the vessel is registered in a country that by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels; and

"(B) nationals of a country (or countries) which by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels hold a majority of the ownership interest in the vessel.

"(2) ESTABLISHMENT OF LIST.—The Secretary of State shall, in accordance with section 553 of title 5, United States Code, compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. By not later than 90 days after the date of the enactment of this section, the Secretary shall publish a notice of proposed rulemaking to establish such list. The Secretary shall first establish such list by not later than 180 days after the date of the enactment of this section.

"(3) IN PRACTICE DEFINED.—For purposes of this subsection, the term 'in practice' refers to an activity normally performed in such country during the one-year period preceding the arrival of such vessel into the United States or coastal waters thereof.".

(2) NO APPLICATION TO CITIZENS OR NATIONALS OF THE UNITED STATES.—This section does not affect the performance of longshore work in the United States by citizens or nationals of the United States.

(3) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 257 the following new item:

"Sec. 258. Limitations on performance of longshore work by alien crewmen.".

(b) PENALTIES.—Section 251(d) (8 U.S.C. 1281(d)) is amended—

(1) in the first sentence by striking "pay to" and all that follows through "$10" and inserting "pay to the Commissioner the sum of $200"; and

(2) by inserting after the first sentence the following: "In the case that any owner, agent, consignee, master, or commanding officer of a vessel shall secure services of an alien crewman described in section 101(a)(15)(D)(i) to perform longshore work not included in the normal operation and service on board the vessel under section 258, the owner, agent, charterer, master, or commanding officer shall pay to the Commissioner the sum of $5,000, and such fine shall be a lien against the vessel.".

(c) CONFORMING AMENDMENTS.—Section 101(a)(15)(D)(i) (8 U.S.C. 1101(a)(15)(D)) is amended—

(1) by striking "any capacity" and inserting "a capacity", and

(2) by inserting ", as defined in section 258(a)" after "on board a vessel".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services performed on or after 180 days after the date of the enactment of this Act.

SEC. 204. TREATY TRADERS (E NONIMMIGRANTS).

(a) INCLUDING TRADE IN SERVICES AND TECHNOLOGY.—Section 101(a)(15)(E)(i) (8 U.S.C. 1101(a)(15)(E)(i)) is amended by inserting ", including trade in services or trade in technology" after "substantial trade".

(b) APPLICATION OF TREATY TRADER FOR CERTAIN FOREIGN STATES.—Each of the following foreign states shall be considered, for purposes of section 101(a)(15)(E) of the Immigration and Nationality Act, to be a foreign state described in such section if the foreign state extends reciprocal nonimmigrant treatment to nationals of the United States:

(1) The largest foreign state in each region (as defined in section 203(c)(2) of the Immigration and Nationality Act) which (A) has 1 or more dependent areas (as determined for purposes of section 202 of such Act) and (B) does not have a treaty of commerce and navigation with the United States.

(2) The foreign state which (A) was identified an an adversely affected foreign state for purposes of section 314 of the Immigration Reform and Control Act of 1986 and (B) does not have a treaty of commerce and navigation with the United States, but (C) had such a treaty with the United States before 1925.

(c) SUBSTANTIAL DEFINED.—Section 101(a), as amended by section 123 of this Act, is further amended by adding at the end the following new paragraph:

"(45) The term 'substantial' means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.".

SEC. 205. TEMPORARY WORKERS AND TRAINEES (H NONIMMIGRANTS).

(a) LIMITATION ON NUMBERS.—Section 214 (8 U.S.C. 1184), as amended by section 202(a), is amended by adding at the end the following new subsection:

"(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

"(A) under section 101(a)(15)(H)(i)(b) may not exceed 65,000,

"(B) under section 101(a)(15)(H)(ii)(b) may not exceed 66,000, or

"(C) under section 101(a)(15)(P)(i) or section 101(a)(15)(P)(iii) may not exceed 25,000.

"(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

"(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.

"(4) In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years.".

(b) CONSTRUCTION RESPECTING INTENT WITH RESPECT TO ABANDONMENT OF FOREIGN RESIDENCE.—Section 214, as amended by section 202(a) and by subsection (a), is further amended—

(1) in subsection (b), by inserting "(other than a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15))" after "Every alien", and

(2) by adding at the end the following new subsection:

"(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i) or (L) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.".

(c) REVISION OF H-1B CATEGORY.—

(1) IN GENERAL.—Subclause (b) of section 101(a)(15)(H)(i) (8 U.S.C. 1101(a)(15)(H)(i)) is amended by striking "who is of distinguished" and all that follows through "such institution or agency" and inserting the following: "who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1), who meets the requirements for the occupation specified in section 214(i)(2), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with, and had approved by, the Secretary an application under section 212(n)(1)".

(2) SPECIALTY OCCUPATION DEFINED.—Section 214, as amended by section 202(a) and subsections (a) and (b), is further amended by adding at the end the following new subsection:

"(i)(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph (2), the term 'specialty occupation' means an occupation that requires—

"(A) theoretical and practical application of a body of highly specialized knowledge, and

"(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

"(2) For purposes of section 101(a)(15)(H)(i)(b), the requirements of this paragraph, with respect to a specialty occupation, are—

"(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

"(B) completion of the degree described in paragraph (1)(B) for the occupation, or

"(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.".

(3) LABOR CONDITION APPLICATION FOR H-1B.—Section 212 is amended by adding at the end the following new subsection:

"(n)(1) No alien may be admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b) in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

"(A) The employer—

"(i) is offering and will offer during the period of authorized employment to aliens and to other individuals employed in the occupational classification and in the area of employment wages that are at least—

"(I) the actual wage level for the occupational classification at the place of employment, or

"(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, determined as of the time of filing the application, and

"(ii) will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed.

"(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

"(C) The employer, at the time of filing the application—

"(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer's employees in the occupational classification and area for which aliens are sought, or

"(ii) if there is no such bargaining representative, has posted notice of filing in conspicuous locations at the place of employment.

"(D) The application shall contain a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed. The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and accompanying documentation). The Secretary shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under this subsection. Such list shall include the wage rate, number of aliens sought, period of intended employment, and date of need. The Secretary shall make such list available for public examination in Washington, D.C.

"(2)(A) The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

"(B) Under such process, the Secretary shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary may consoli-

date the hearings under this subparagraph on such complaints.

"(C) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition (or a substantial failure in the case of a condition described in subparagraph (C) or (D) of paragraph (1)) or misrepresentation of material fact in an application—

"(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate, and

"(ii) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.

"(D) In addition to the sanctions provided under subparagraph (C), if the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1).".

(d) LIMITATION ON TRAINEES.—Section 101(a)(15)(H)(iii) (8 U.S.C. 1101(a)(15)(H)(iii)) is amended by inserting before the semicolon at the end the following: ", in a training program that is not designed primarily to provide productive employment".

(e) REMOVAL OF FOREIGN RESIDENCE REQUIREMENT FOR H–1 NONIMMIGRANTS.—Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended—

(1) by striking "having a residence in a foreign country which he has no intention of abandoning";

(2) in clause (ii), by striking "who is coming temporarily to the United States (a)" and inserting "(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States";

(3) in clause (ii)(b), by inserting "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States" immediately after "(b)"; and

(4) in clause (iii), by inserting "having a residence in a foreign country which he has no intention of abandoning" after "(iii)".

SEC. 206. INTRA-COMPANY TRANSFEREES (L NONIMMIGRANTS).

(a) CLARIFICATION OF TREATMENT OF CERTAIN INTERNATIONAL ACCOUNTING FIRMS.—In applying sections 101(a)(15)(L) and 203(b)(1)(C) of the Immigration and Nationality Act, in the case of a partnership that is organized in the United States to provide accounting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

(b) USE OF BLANKET PETITIONS; DEADLINES FOR PROCESSING; PERIODS OF AUTHORIZED STAY; CONSTRUCTION.—Section 214(c) (8 U.S.C. 1184(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 101(a)(15)(L) instead of filing individuals petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for entry of aliens covered under such a petition.

"(B) For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

"(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) within 30 days after the date a completed petition has been filed.

"(D) The period of authorized admission for—

"(i) a nonimmigrant admitted to render services in a managerial or executive capacity under section 101(a)(15)(L) shall not exceed 7 years, or

"(ii) a nonimmigrant admitted to render services in a capacity that involved specialized knowledge under section 101(a)(15)(L) shall not exceed 5 years.".

(c) PERIOD OF PRIOR EMPLOYMENT WITH COMPANY.—Section 101(a)(15)(L) (8 U.S.C. 1101(a)(15)(L)) is amended by striking "immediately preceding" and inserting "within 3 years preceding".

SEC. 207. NEW CLASSIFICATION FOR ALIENS WITH EXTRAORDINARY ABILITY, ACCOMPANYING ALIENS, AND ATHLETES AND ENTERTAINERS (O & P NONIMMIGRANTS).

(a) IN GENERAL.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended—

(1) by striking "or" at the end of subparagraph (M),

(2) by striking the period at the end of subparagraph (N) and inserting a semicolon, and

(3) by adding at the end the following new subparagraphs:

"(O) an alien who—

"(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability, but only if the Attorney General determines that the alien's entry into the United States will substantially benefit prospectively the United States; or

"(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

"(II) is an integral part of such actual performance,

"(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant principal photography will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

"(IV) has a foreign residence which the alien has no intention of abandoning; or

"(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien; or

"(P) an alien having a foreign residence which the alien has no intention of abandoning who—

"(i)(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or performs as part of an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time and has had a sustained and substantial relationship with that group over a period of at least 1 year and provides functions integral to the performance of the group, and

"(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete or entertainer with respect to a specific athletic competition or performance;

"(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

"(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers, between the United States and the foreign states involved;

"(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

"(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a program that is culturally unique; or

"(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien.".

(b) PERIODS OF ADMISSION, ETC.—Section 214 (8 U.S.C. 1184) is amended—

(1) in subsection (a), by inserting "(1)" after "(a)" and by adding at the end the following new paragraph:

"(2)(A) The period of authorized status as a nonimmigrant described in section 101(a)(15)(O) shall be for such period as the Attorney General may specify in order to provide for the event for which the nonimmigrant is admitted.

"(B)(i) The period of authorized status as a nonimmigrant described in section 101(a)(15)(P) shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is ad-

mitted. In the case of nonimmigrants admitted as individual athletes under section 101(a)(15)(P), the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

"(ii) An alien who is admitted as a nonimmigrant under clause (ii) or (iii) of section 101(a)(15)(P) may not be readmitted as such a nonimmigrant unless the alien has remained outside the United States for at least 3 months after the date of the most recent admission. The Attorney General may waive the application of the previous sentence in the case of individual tours in which the application would work an undue hardship."; and

(2) in subsection (c), as amended by section 206(b)—

(A) in paragraph (1), by striking "or (L)" and inserting ", (L), (O), or (P)(i)", and

(B) by adding at the end the following new paragraphs:

"(3) The Attorney General shall approve a petition—

"(A) with respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation with peer groups in the area of the alien's ability or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability, or

"(B) with respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation with labor organizations with expertise in the skill area involved.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion.

"(4)(A) A person may petition the Attorney General for classification of an alien as a nonimmigrant under clause (ii) of section 101(a)(15)(P).

"(B) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 101(a)(15)(P) only after consultation with labor organizations with expertise in the specific field of athletics or entertainment involved.

"(C) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 101(a)(15)(P)(ii) only after consultation with labor organizations representing artists and entertainers in the United States, in order to assure reciprocity in fact with foreign states.

"(5) In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

"(6) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.".

(c) WORK AUTHORIZATION DURING PENDING LABOR DISPUTES.—(1) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(ii)(a)) and who is authorized to be employed in an occupation, if nonimmigrants constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act the alien—

(A) continues to be authorized to be employed in the occupation for that employer, and

(B) is authorized to be employed in any occupation for any other employer so long as such strike or lockout continues with respect to that occupation and employer.

(2) In the case of an alien admitted as a nonimmigrant (other than under section 101(a)(15)(H)(ii)(a)) and who is authorized to be employed in an occupation, if nonimmigrants do not constitute a majority of the members of the bargaining unit in the occupation, during the period of any strike or lockout in the occupation with the employer which strike or lockout is pending on the date of the enactment of this Act the alien—

(A) is not authorized to be employed in the occupation for that employer, and

(B) is authorized to be employed in any occupation for any other employer so long as there is no strike or lockout with respect to that occupation and employer.

(3) With respect to a nonimmigrant described in paragraph (1) or (2) who does not perform unauthorized employment, any limit on the period of authorized stay shall be extended by the period of the strike or lockout, except that any such extension may not continue beyond the maximum authorized period of stay.

(4) The provisions of this subsection shall take effect on the date of the enactment of this Act.

SEC. 208. NEW CLASSIFICATION FOR INTERNATIONAL CULTURAL EXCHANGE PROGRAMS (Q NONIMMIGRANTS).

Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by section 207(a), is further amended—

(1) by striking "or" at the end of subparagraph (O),

(2) by striking the period at the end of subparagraph (P) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program designated by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers.".

SEC. 209. NEW CLASSIFICATION FOR ALIENS IN RELIGIOUS OCCUPATIONS (R NONIMMIGRANTS).

(a) IN GENERAL.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sections 207(a) and 208(a), is further amended—

(1) by striking "or" at the end of subparagraph (P),

(2) by striking the period at the end of subparagraph (Q) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

"(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

"(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).".

(b) REFERENCE TO REVISION OF SPECIAL IMMIGRANT PROVISIONS.—For provision providing special immigrant status for certain aliens in religious occupations, see section 151.

Subtitle B—Temporary or Limited Provisions

SEC. 221. OFF-CAMPUS WORK AUTHORIZATION FOR STUDENTS (F NONIMMIGRANTS).

(a) 3-Year Provision.—With respect to work authorization for aliens admitted as nonimmigrant students described in subparagraph (F) of section 101(a)(15) of the Immigration and Nationality Act during the 3-year period beginning October 1, 1991, the Attorney General shall grant such an alien work authorization to be employed in a position unrelated to the alien's field of study and off-campus if—

(1) the alien has completed 1 year as such a nonimmigrant and is maintaining good academic standing at the educational institution,

(2) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer (A) has recruited for at least 60 days for the position and (B) will provide for payment to the alien and to other similarly situated workers at a rate equal to not less than the actual wage level for the occupation at the place of employment or, if greater, the prevailing wage level for the occupation in the area of employment, and

(3) the alien will not be employed more than 20 hours each week during the academic term (but may be employed on a full-time basis during vacation periods and between academic terms).

If the Secretary of Labor determines that an employer has provided an attestation under paragraph (2) that is materially false or has failed to pay wages in accordance with the attestation, after notice and opportunity for a hearing, the employer shall be disqualified from employing an alien student under this subsection.

(b) REPORT TO CONGRESS.—Not later than April 1, 1994, the Commissioner of Immigration and Naturalization shall prepare and submit to the Congress on—

(1) whether the program of work authorization under subsection (a) should be extended, and

(2) the impact of such program on prevailing wages of workers.

SEC. 222. ADMISSION OF NONIMMIGRANTS FOR COOPERATIVE RESEARCH, DEVELOPMENT, AND COPRODUCTION PROJECTS.

(a) IN GENERAL.—Subject to the succeeding provisions of this section, the Attorney General shall provide for nonimmigrant status in the case of an alien who—

(1) has a residence in a foreign country which the alien has no intention of abandoning, and

(2) is coming to the United States, upon a basis of reciprocity, to perform services of an exceptional nature requiring such merit and ability relating to a cooperative research and development project or a coproduction project provided under a govern-

ment-to-government agreement administered by the Secretary of Defense, but not to exceed a period of more than 10 years,
or who is the spouse or minor child of such an alien if accompanying or following to join the alien.

(b) NUMERICAL LIMITATION.—The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section at any time may not exceed 100.

SEC. 223. ESTABLISHMENT OF SPECIAL EDUCATION EXCHANGE VISITOR PROGRAM.

(a) IN GENERAL.—Subject to subsection (b), the Attorney General shall provide for nonimmigrant status in the case of an alien who—

(1) has a residence in a foreign country which the alien has no intention of abandoning, and

(2) is coming temporarily to the United States (for a period not to exceed 18 months) as a participant in a special education training program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(b) NUMERICAL LIMITATION.—The number of aliens who may be admitted as (or otherwise be provided the status of) a nonimmigrant under this section in any fiscal year may not exceed 50.

Subtitle C—Effective Dates

SEC. 231. EFFECTIVE DATES.

Except as otherwise provided in this title, this title, and the amendments made by this title, shall take effect on October 1, 1991, except that sections 222 and 223 shall take effect on the date of the enactment of this Act.

TITLE III—FAMILY UNITY AND TEMPORARY PROTECTED STATUS

SEC. 301. FAMILY UNITY.

(a) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN ELIGIBLE IMMIGRANTS.—The Attorney General shall provide that in the case of an alien who is an eligible immigrant (as defined in subsection (b)(1)) as of May 5, 1988, who has entered the United States before such date, who resided in the United States on such date, and who is not lawfully admitted for permanent residence, the alien—

(1) may not be deported or otherwise required to depart from the United States on a ground specified in paragraph (1), (2), (5), (9), or (12) of section 241(a) of the Immigration and Nationality Act (other than so much of section 241(a)(1) of such Act as relates to a ground of exclusion described in paragraph (9), (10), (23), (27), (28), (29), or (33) of section 212(a) of such Act), and

(2) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(b) ELIGIBLE IMMIGRANT AND LEGALIZED ALIEN DEFINED.—In this section:

(1) The term "eligible immigrant" means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

(2) The term "legalized alien" means an alien lawfully admitted for temporary or permanent residence who was provided—

(A) temporary or permanent residence status under section 210 of the Immigration and Nationality Act,

(B) temporary or permanent residence status under section 245A of the Immigration and Nationality Act, or

(C) permanent residence status under section 202 of the Immigration Reform and Control Act of 1986.

(c) APPLICATION OF DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section.

(d) TEMPORARY DISQUALIFICATION FROM CERTAIN PUBLIC WELFARE ASSISTANCE.—Aliens provided the benefits of this section by virtue of their relation to a legalized alien described in subsection (b)(2)(A) or (b)(2)(B) shall be ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under section 245A(h) or 210(f), respectively, of the Immigration and Nationality Act.

(e) EXCEPTION FOR CERTAIN ALIENS.—An alien is not eligible for the benefits of this section if the Attorney General finds that—

(1) the alien has been convicted of a felony or 3 or more misdemeanors in the United States, or

(2) the alien is described in section 243(h)(2) of the Immigration and Nationality Act.

(f) CONSTRUCTION.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to obtain benefits under this section.

(g) EFFECTIVE DATE.—This section shall take effect on October 1, 1991; except that the delay in effectiveness of this section shall not be construed as reflecting a Congressional belief that the existing family fairness program should be modified in any way before such date.

SEC. 302. TEMPORARY PROTECTED STATUS.

(a) IN GENERAL—The Immigration and Nationality Act is amended by inserting after section 244 the following new section:

"TEMPORARY PROTECTED STATUS

"SEC. 244A. (a) GRANTING OF STATUS.—

"(1) IN GENERAL.—In the case of an alien who is a national of a foreign state designated under subsection (b) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section—

"(A) may grant the alien temporary protected status in the United States and shall not deport the alien from the United States during the period in which such status is in effect, and

"(B) shall authorize the alien to engage in employment in the United States and provide the alien with an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURATION OF WORK AUTHORIZATION.—Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

"(3) NOTICE.—

"(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

"(B) If, at the time of initiation of a deportation proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b), the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

"(C) If, at the time of designation of a foreign state under subsection (b), an alien (who is a national of such state) is in a deportation proceeding under this title, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

"(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

"(4) TEMPORARY TREATMENT FOR ELIGIBLE ALIENS.—

"(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

"(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

"(5) CLARIFICATION.—Nothing in this section shall be construed as authorizing the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this Act. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this Act.

"(b) DESIGNATIONS.—

"(1) IN GENERAL.—The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

"(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

"(B) the Attorney General finds that—

"(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

"(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

"(iii) the foreign state officially has requested designation under this subparagraph; or

"(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

"(2) EFFECTIVE PERIOD OF DESIGNATION FOR FOREIGN STATES.—The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

"(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney may specify in the notice published under such paragraph, and

"(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by Attorney General, of not less than 6 months and not more than 18 months.

"(3) PERIODIC REVIEW, TERMINATIONS, AND EXTENSIONS OF DESIGNATIONS.—

"(A) PERIODIC REVIEW.—At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

"(B) TERMINATION OF DESIGNATION.—If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

"(C) EXTENSION OF DESIGNATION.—If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

"(4) INFORMATION CONCERNING PROTECTED STATUS AT TIME OF DESIGNATIONS.—At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

"(5) REVIEW.—

"(A) DESIGNATIONS.—There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

"(B) APPLICATION TO INDIVIDUALS.—The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in deportation proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (2).

"(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.—

"(1) IN GENERAL.—

"(A) NATIONALS OF DESIGNATED FOREIGN STATES.—Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(2), meets the requirements of this paragraph only if—

"(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

"(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

"(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

"(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

"(B) REGISTRATION FEE.—The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an 'employment authorized' endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed $50.

"(2) ELIGIBILITY STANDARDS.—

"(A) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

"(i) the provisions of paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) shall not apply;

"(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

"(iii) the Attorney General may not waive—

"(I) paragraphs (9) and (10) (relating to criminals) of such section,

"(II) paragraph (23) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana,

"(III) paragraphs (27) and (29) of such section (relating to national security), or

"(IV) paragraph (33) of such section (relating to those who assisted in the Nazi persecution).

"(B) ALIENS INELIGIBLE.—An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

"(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

"(ii) the alien is described in section 243(h)(2).

"(3) WITHDRAWAL OF TEMPORARY PROTECTED STATUS.—The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

"(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

"(B) except as provided in paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or

"(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

"(4) TREATMENT OF BRIEF, CASUAL, AND INNOCENT DEPARTURES AND CERTAIN OTHER ABSENCES.—

"(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

"(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

"(5) CONSTRUCTION.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

"(6) CONFIDENTIALITY OF INFORMATION.—The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

"(d) DOCUMENTATION.—

"(1) INITIAL ISSUANCE.—Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

"(2) PERIOD OF VALIDITY.—Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

"(3) EFFECTIVE DATE OF TERMINATIONS.—If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

"(4) DETENTION OF THE ALIEN.—An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

"(e) RELATION OF PERIOD OF TEMPORARY PROTECTED STATUS TO SUSPENSION OF DEPORTATION.—With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in

the United States for purposes of section 244(a), unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

"(f) BENEFITS AND STATUS DURING PERIOD OF TEMPORARY PROTECTED STATUS.—During a period in which an alien is granted temporary protected status under this section—

"(1) the alien shall not be considered to be permanently residing in the United States under color of law;

"(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 101(a)(36)) or any political subdivision thereof which furnishes such assistance;

"(3) the alien may travel abroad with the prior consent of the Attorney General; and

"(4) for purposes of adjustment of status under section 245 and change of status under section 248, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.

"(g) EXCLUSIVE REMEDY.—Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

"(h) LIMITATION ON CONSIDERATION IN THE SENATE OF LEGISLATION ADJUSTING STATUS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

"(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

"(B) has the effect of amending this subsection or limiting the application of this subsection.

"(2) SUPERMAJORITY REQUIRED.—Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

"(3) RULES.—Paragraphs (1) and (2) are enacted—

"(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

"(i) ANNUAL REPORT AND REVIEW.—

"(1) ANNUAL REPORT.—Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

"(A) a listing of the foreign states or parts thereof designated under this section,

"(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

"(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3).

"(2) COMMITTEE REPORT.—No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.".

(b) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 244 the following new item:

"Sec. 244A. Temporary protected status."

(c) NO AFFECT ON EXECUTIVE ORDER 12711.—Notwithstanding subsection (g) of section 244A of the Immigration and Nationality Act (inserted by the amendment made by subsection (a)), such section shall not supercede or affect Executive Order 12711 (April 11, 1990, relating to policy implementation with respect to nationals of the People's Republic of China).

SEC. 303. SPECIAL TEMPORARY PROTECTED STATUS FOR SALVADORANS.

(a) DESIGNATION.—

(1) IN GENERAL.—El Salvador is hereby designated under section 244A(b) of the Immigration and Nationality Act, subject to the provisions of this section.

(2) PERIOD OF DESIGNATION.—Such designation shall take effect on the date of the enactment of this section and shall remain in effect until the end of the 18-month period beginning January 1, 1991.

(b) ALIENS ELIGIBLE.—

(1) IN GENERAL.—In applying section 244A of the Immigration and Nationality Act pursuant to the designation under this section, subject to section 244A(c)(3) of such Act, an alien who is a national of El Salvador meets the requirements of section 244A(c)(1) of such Act only if—

(A) the alien has been continuously physically present in the United States since September 19, 1990;

(B) the alien is admissible as an immigrant, except as otherwise provided under section 244A(c)(2)(A) of such Act, and is not ineligible for temporary protected status under section 244A(c)(2)(B) of such Act; and

(C) in a manner which the Attorney General shall establish, the alien registers for temporary protected status under this section during the registration period beginning January 1, 1991, and ending June 30, 1991.

(2) REGISTRATION FEE.—The Attorney General shall require payment of a reasonable fee as a condition of registering an alien under paragraph (1)(C) (including providing an alien with an "employment authorized" endorsement or other appropriate work permit under this section). The amount of the fee shall be sufficient to cover the costs of administration of this section. Notwithstanding section 3302 of title 31, United States Code, all such registration fees collected shall be credited to the appropriation to be used in carrying out this section.

(c) APPLICATION OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Except as provided in this subsection, the provisions of section 244A of the Immigration and Nationality Act (including subsection (h) thereof) shall apply to El Salvador (and aliens provided temporary protected status) under this section in the same manner as they apply to a foreign state designated (and aliens provided temporary protected status) under such section.

(2) PROVISIONS NOT APPLICABLE.—Subsections (b)(1), (b)(2), (b)(3), (c)(1), (c)(4), (d)(3), and (i) of such section 244A shall not apply under this section.

(3) 6-MONTH PERIOD OF REGISTRATION AND WORK AUTHORIZATION.—Notwithstanding section 244A(a)(2) of the Immigration and Nationality Act, the work authorization provided under this section shall be effective for periods of 6 months. In applying section 244A(c)(3)(C) of such Act under this section, "semiannually, at the end of each 6-month period" shall be substituted for "annually, at the end of each 12-month period" and, notwithstanding section 244A(d)(2) of such Act, the period of validity of documentation under this section shall be 6 months.

(4) REENTRY PERMITTED AFTER DEPARTURE FOR EMERGENCY CIRCUMSTANCES.—In applying section 244A(f)(3) of the Immigration and Nationality Act under this section, the Attorney General shall provide for advance parole in the case of an alien provided special temporary protected status under this section if the alien establishes to the satisfaction of the Attorney General that emergency and extenuating circumstances beyond the control of the alien requires the alien to departure for a brief, temporary trip abroad.

(d) ENFORCEMENT OF REQUIREMENT TO DEPART AT TIME OF TERMINATION OF DESIGNATION.—

(1) SHOW CAUSE ORDER AT TIME OF FINAL REGISTRATION.—At the registration occurring under this section closest to the date of termination of the designation of El Salvador under subsection (a), the Immigration and Naturalization Service shall serve on the alien, granted temporary protected status an order to show cause that establishes a date for deportation proceedings which is after the date of such termination of designation. If El Salvador is subsequently designated under section 244A(b) of the Immigration and Nationality Act, the Service shall cancel such orders.

(2) SANCTION FOR FAILURE TO APPEAR.—If an alien is provided an order to show cause under paragraph (1) and fails to appear at such proceedings, except for exceptional circumstances, the alien may be deported in absentia under section 242B of the Immigration and Nationality Act (inserted by section 545(a) of this Act) and certain discretionary forms of relief are no longer available to the alien pursuant to such section.

TITLE IV—NATURALIZATION

SEC. 401. ADMINISTRATIVE NATURALIZATION.

(a) NATURALIZATION AUTHORITY.—Section 310 (8 U.S.C. 1421) is amended to read as follows:

"NATURALIZATION AUTHORITY

"SEC. 310. (a) AUTHORITY IN ATTORNEY GENERAL.—The sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General.

"(b) ADMINISTRATION OF OATHS.—An applicant for naturalization may choose to have the oath of allegiance under section 337(a) administered by the Attorney General or by any District Court of the United States for any State or by any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all courts in this subsection specified to administer the oath of allegiance shall extend only to

persons resident within the respective jurisdiction of such courts.

"(c) JUDICIAL REVIEW.—A person whose application for naturalization under this title is denied, after a hearing before an immigration officer under section 336(a), may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5, United States Code. Such review shall be de novo, and the court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application.

"(d) SOLE PROCEDURE.—A person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this title and not otherwise.".

(b) FILING OF APPLICATIONS.—Section 334(a) (8 U.S.C. 1445(a)) is amended by adding at the end the following new sentence: "In the case of an applicant subject to a requirement of continuous residence under section 316(a) or 319(a), the application for naturalization may be filed up to 3 months before the date the applicant would first otherwise meet such continuous residence requirement.".

(c) NOTIFICATION.—Section 335(b) (8 U.S.C. 1446(b)) is amended by adding at the end the following new sentence: "Any such employee shall, at the examination, inform the petitioner of the remedies available to the petitioner under section 336.".

SEC. 402. SUBSTITUTING 3 MONTHS RESIDENCE IN INS DISTRICT OR STATE FOR 6 MONTHS RESIDENCE IN A STATE.

Section 316(a)(1) (8 U.S.C. 1427(a)(1)) is amended by striking "and who has resided within the State in which the petitioner filed the petition for at least six months" and inserting "and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months".

SEC. 403. WAIVER OF ENGLISH LANGUAGE REQUIREMENT FOR NATURALIZATION.

Section 312(1) (8 U.S.C. 1423(1)) is amended by striking "is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence" and inserting "either (A) is over 50 years of age and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence, or (B) is over 55 years of age and has been living in the United States for periods totaling at least 15 years subsequent to a lawful admission for permanent residence".

SEC. 404. TREATMENT OF SERVICE IN ARMED FORCES OF A FOREIGN COUNTRY.

Section 315 (8 U.S.C. 1425) is amended—

(1) in subsection (a), by inserting "but subject to subsection (c)" after "section 405(b)", and

(2) by adding at the end the following new subsection:

"(c) An alien shall not be ineligible for citizenship under this section or otherwise because of an exemption from training or service in the Armed Forces of the United States pursuant to the exercise of rights under a treaty, if before the time of the exercise of such rights the alien served in the Armed Forces of a foreign country of which the alien was a national.".

SEC. 405. NATURALIZATION OF NATIVES OF THE PHILIPPINES THROUGH CERTAIN ACTIVE-DUTY SERVICE DURING WORLD WAR II.

(a) WAIVER OF CERTAIN REQUIREMENTS.—(1) Clauses (1) and (2) of section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440(a)) shall not apply to the naturalization of any person—

(A) who was born in the Philippines and who was residing in the Philippines before the service described in subparagraph (B);

(B) who served honorably—

(i) in an active-duty status under the command of the United States Armed Forces in the Far East, or

(ii) within the Philippine Army, the Philippine Scouts, or recognized guerrilla units, at any time during the period beginning September 1, 1939, and ending December 31, 1946;

(C) who is otherwise eligible for naturalization under section 329 of such Act; and

(D) who applies for naturalization during the 2-year period beginning on the date of the enactment of this Act.

(2) Subject to subsection (c), in applying section 329 of the Immigration and Nationality Act, service described in paragraph (1)(B) is considered to be honorable service in an active-duty status in the military, air, or naval forces of the United States.

(b) WAIVER OF RESIDENCY REQUIREMENT.—Section 340(d) of the Immigration and Nationality Act (8 U.S.C. 1451(d)) shall not apply to a person who is naturalized pursuant to subsection (a).

(c) STATUTORY CONSTRUCTION.—The enactment of this section shall not be construed as affecting the rights, privileges, or benefits of a person described in subsection (a)(1) under any provision of law (other than the Immigration and Nationality Act) by reason of the service of such person or the service of any other person under the command of the United States Armed Forces.

SEC. 406. PUBLIC EDUCATION REGARDING NATURALIZATION BENEFITS.

Section 332 (8 U.S.C. 1443) is amended by adding at the end the following new subsection:

"(h) In order to promote the opportunities and responsibilities of United States citizenship, the Attorney General shall broadly distribute information concerning the benefits which persons may receive under this title and the requirements to obtain such benefits. In carrying out this subsection, the Attorney General shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations. There are authorized to be appropriated (for each fiscal year beginning with fiscal year 1991) such sums as may be necessary to carry out this subsection.".

SEC. 407. CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENTS TO SECTION 310 REVISION.—(1) The item in the table of contents relating to section 310 is amended to read as follows:

"Sec. 310. Naturalization authority.".

(2) Section 101(a)(36) (8 U.S.C. 1101(a)(36)) is amended by striking "(except as used in section 310(a) of title III)".

(b) CONFORMING AMENDMENTS TO CHANGE IN RESIDENCE REQUIREMENT.—(1) Section 319 (8 U.S.C. 1430) is amended—

(A) in subsection (a), by striking "has resided within the State in which he filed his petition for at least six months" and inserting "has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months",

(B) in subsections (b) and (d), by striking "within the jurisdiction of the naturalization court" and inserting "within a State or a district of the Service in the United States", and

(C) in subsection (c), is amended by striking "within the jurisdiction of the court" and inserting "district of the Service in the United States".

(2) Section 322(c) (8 U.S.C. 1433(c)) is amended by striking "within the jurisdiction of the naturalization court" and inserting "within a State or a district of the Service in the United States".

(3) Section 324(a)(1) (8 U.S.C. 1435(a)(1)) is amended by inserting "or district of the Service in the United States" after "State".

(4) Section 328 (8 U.S.C. 1439) is amended—

(A) in subsection (a)—

(i) by inserting "or district of the Service in the United States" after "State", and

(ii) by striking "for at least six months" and inserting "for at least three months";

(B) in subsection (b)(1), by striking "within the jurisdiction of the court" and inserting "within a State or district of the Service in the United States"; and

(C) in subsection (c), by inserting "or district of the Service in the United States" after "State".

(5) Section 329(b) (8 U.S.C. 1440(b)) is amended—

(A) in paragraph (2)—

(i) by inserting "or district of the Service in the United States" after "State", and

(ii) by inserting "and" at the end of paragraph (2);

(B) by striking paragraph (3), and

(C) by redesignating paragraph (4) as paragraph (3).

(c) SUBSTITUTION OF APPLICATION FOR NATURALIZATION FOR PETITION FOR NATURALIZATION.—The text of the following provisions is amended by striking "a petition", "petition", "petitions", "a petitioner", "petitioner", "petitioner's", "petitioning", and "petitioned" each place it appears and inserting "an application", "application", "applications" or "applies" (as the case may be), "an applicant", "applicant", "applicant's", "applying", and "applied", respectively:

(1) Section 313(c) (8 U.S.C. 1424(c)).

(2) Section 316 (8 U.S.C. 1427).

(3) Section 317 (8 U.S.C. 1428).

(4) Section 318 (8 U.S.C. 1429).

(5) Sections 319(a) and (c) (8 U.S.C. 1430(a), (c)).

(6) Section 322(a) (8 U.S.C. 1433).

(7) Section 324 (8 U.S.C. 324(a)).

(8) Section 325 (8 U.S.C. 1436).

(9) Section 326 (8 U.S.C. 1437).

(10) Section 328 (8 U.S.C. 1439).

(11) Section 329 (8 U.S.C. 1440), other than subsection (d).

(12) Section 330 (8 U.S.C. 1441).

(13) Section 331 (8 U.S.C. 1442), other than subsection (d).

(14) Section 333(a) (8 U.S.C. 1444(a)).

(15) Section 334 (8 U.S.C. 1445).

(16) Section 335 (8 U.S.C. 1446).

(17) Section 336 (8 U.S.C. 1447).

(18) Section 337 (8 U.S.C. 1448).

(19) Section 338 (8 U.S.C. 1449).

(20) Section 344 (8 U.S.C. 1455).

(21) Section 1429 of title 18, United States Code.

(d) SUBSTITUTING APPROPRIATE ADMINISTRATIVE AUTHORITY FOR NATURALIZATION COURT.—(1) Section 316 (8 U.S.C. 1427) is amended—

(A) in subsection (b), by striking "the court" each place it appears and inserting "the Attorney General",

(B) in subsection (b), by striking "date of final hearing" and inserting "date of any hearing under section 336(a)",

(C) in subsection (e), by striking "the court" and inserting "the Attorney General",

(D) in subsection (g)(1), by striking "within the jurisdiction of the court" and inserting "within a particular State or district of the Service in the United States", and

(E) in subsection (g)(2), by amending the first sentence to read as follows: "An applicant for naturalization under this subsection may be administered the oath of allegiance under section 337(a) by any district court of the United States, without regard to the residence of the applicant.".

(2) The second sentence of section 317 (8 U.S.C. 1428) is amended by striking "and the naturalization court".

(3) The third sentence of section 318 (8 U.S.C. 1429) is amended—

(A) by striking "finally heard by a naturalization court" and inserting "considered by the Attorney General", and

(B) by striking "upon the naturalization court" and inserting "upon the Attorney General".

(4) Section 319 (8 U.S.C. 1430) is amended—

(A) in subsection (b)(3), by striking "before the naturalization court" and inserting "before the Attorney General", and

(B) in subsection (c)(5), by striking "naturalization court" and inserting "Attorney General".

(5) Section 322(c)(2)(C) (8 U.S.C. 1433(c)(2)(C)) is amended by striking "naturalization court" the first place it appears and inserting "Attorney General".

(6) Section 324 (8 U.S.C. 1435) is amended—

(A) in subsection (a)—

(i) by inserting "and" at the end of paragraph (1),

(ii) by striking the semicolon at the end of paragraph (2) and inserting a period, and

(iii) by striking paragraphs (3) and (4);

(B) in subsection (b), by striking "naturalization court" and inserting "Attorney General"; and

(C) in subsection (c)—

(i) in paragraph (2), by striking "the judge or clerk of a naturalization court" and inserting "the Attorney General or the judge or clerk of a court described in section 310(b)", and

(ii) in paragraph (3), by striking "or naturalization court" each place it appears and inserting "court, or the Attorney General".

(7) Section 327(a) (8 U.S.C. 1438(a)) is amended—

(A) by striking "any naturalization court specified in section 310(a) of this title" and inserting "the Attorney General or before a court described in section 310(b)"; and

(B) by inserting "and by the Attorney General to the Secretary of State" after "Department of Justice".

(8) Section 328(c) (8 U.S.C. 1439(c)) is amended by striking "the final hearing" and inserting "any hearing".

(9) Section 331(b) (8 U.S.C. 1442(b)) is amended by striking "called for a hearing" and all that follows through "to be continued" and inserting "considered or heard except after 90 days' notice to the Attorney General to be considered at the examination or hearing, and the Attorney General's objection to such consideration shall cause the application to be continued".

(10) Section 332(a) (8 U.S.C. 1443(a)) is amended—

(A) by striking "for the purpose" and all that follows through "naturalization courts" in the first sentence, and

(B) by striking the second sentence.

(11) Section 333(a) (8 U.S.C. 1444(a)) is amended by striking "clerk of the court" and inserting "Attorney General".

(12) Section 334 (8 U.S.C. 1445) is amended—

(A) by amending the heading to read as follows:

"APPLICATION FOR NATURALIZATION; DECLARATION OF INTENTION";

(B) in subsection (a)—

(i) by striking "in the office of the clerk of a naturalization court" and inserting "with the Attorney General",

(ii) by striking "upon the hearing of such petition" and inserting "under this title";

(C) in subsection (b)—

(i) by striking "(1)",

(ii) by striking "and (2)" and all that follows through "Attorney General", and

(iii) by striking "petition for";

(D) by striking the first sentence of subsection (f) and inserting the following: "An alien over 18 years of age who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General.";

(E) by redesignating subsection (f) as subsection (g); and

(F) by striking subsections (c) through (e) and inserting the following:

"(c) Hearings under section 336(a) on applications for naturalization shall be held at regular intervals specified by the Attorney General.

"(d) Except as provided in subsection (e), an application for naturalization shall be filed in the office of the Attorney General.

"(e) A person may file an application for naturalization other than in the office of the Attorney General, and an oath of allegiance administered other than in a public ceremony before the Attorney General or a court, if the Attorney General determines that the person has an illness or other disability which—

"(1) is of a permanent nature and is sufficiently serious to prevent the person's personal appearance, or

"(2) is of a nature which so incapacitates the person as to prevent him from personally appearing.".

(13) Section 335 (8 U.S.C. 1146) is amended—

(A) by amending the heading to read as follows:

"INVESTIGATION OF APPLICANTS; EXAMINATION OF APPLICATIONS";

(B) in subsection (a), by striking "At any time" and all that follows through "336(a)" and inserting "Before a person may be naturalized";

(C) in subsection (b)—

(i) by striking "preliminary" each place it appears,

(ii) in the first sentence, by striking "to any naturalization court" and all that follows through "to such court",

(iii) by striking "any court exercising naturalization jurisdiction as specified in section 310 of this title" in the second sentence and inserting "any District Court of the United States"; and

(iv) by striking "final hearing conducted by a naturalization court designated in section 310 of this title" in the third sentence and inserting "hearing conducted by an immigration officer under section 336(a)";

(D) in subsection (c)—

(i) by striking "preliminary" each place it appears, and

(ii) by striking "recommendation" and inserting "determination"; and

(E) by amending subsections (d) through (f) to read as follows:

"(d) The employee designated to conduct any such examination shall make a determination as to whether the application should be granted or denied, with reasons therefor.

"(e) After an application for naturalization has been filed with the Attorney General, the applicant shall not be permitted to withdraw his application, except with the consent of the Attorney General. In cases where the Attorney General does not consent to the withdrawal of the application, the application shall be determined on its merits and a final order determination made accordingly. In cases where the applicant fails to prosecute his application, the application shall be decided on the merits unless the Attorney General dismisses it for lack of prosecution.

"(f) An applicant for naturalization who moves from the district of the Service in the United States in which the application is pending may, at any time thereafter, request the Service to transfer the application to any district of the Service in the United States which may act on the application. The transfer shall not be made without the consent of the Attorney General. In the case of such a transfer, the proceedings on the application shall continue as though the application had originally been filed in the district of the Service to which the application is transferred.".

(14) Section 336 (8 U.S.C. 1447) is amended—

(A) by amending the heading to read as follows:

"HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION";

(B) by amending subsections (a) and (b) to read as follows:

"(a) If, after an examination under section 335, an application for naturalization is denied, the applicant may request a hearing before an immigration officer.

"(b) If there is a failure to make a determination under section 335 before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.";

(C) in subsection (c), by striking "court" and inserting "immigration officer";

(D) in subsection (d)—

(i) by striking "clerk of the court" and all that follows through "naturalization" and inserting "immigration officer shall, if the applicant requests it at the time of filing the request for the hearing",

(ii) by striking "final" each place it appears, and

(iii) by adding at the end the following: "Such subpenas may be enforced in the same manner as subpenas under section 335(b) may be enforced."; and

(E) in subsection (e)—

(i) by striking "naturalization of any person," and inserting "administration by a

court of the oath of allegiance under section 337(a)", and

(ii) by striking "included in the petition for naturalization of such persons" and inserting "included in an appropriate petition to the court".

(15) Section 337 (8 U.S.C. 1448) is amended—

(A) in subsection (a)—

(i) in the first sentence, by striking "in open court" and inserting "in a public ceremony before the Attorney General or a court with jurisdiction under section 310(b)",

(ii) in the second and fourth sentences, by striking "naturalization court" each place it appears and inserting "Attorney General", and

(iii) in the fourth sentence, by striking "the court" and inserting "the Attorney General";

(B) in subsection (b)—

(i) by striking "in open court in the court in which the petition for naturalization is made" and inserting "in the same public ceremony in which the oath of allegiance is administered", and

(ii) by striking "in the court";

(C) in subsection (c)—

(i) by striking "being in open court" and inserting "attending a public ceremony", and

(ii) by striking "a judge of the court at such place as may be designated by the court" and inserting "at such place as the Attorney General may designate under section 334(e)"; and

(D) by adding at the end the following new subsection:

"(d) The Attorney General shall prescribe rules and procedures to ensure that the ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion.".

(16) Section 338 (8 U.S.C. 1449) is amended—

(A) by striking "by a naturalization court",

(B) by striking "the clerk of such court" and inserting "the Attorney General",

(C) by striking "title, venue, and location of the naturalization court" and inserting "location of the District office of the Service in which the application was filed and the title, authority, and location of the official or court administering the oath of allegiance",

(D) by striking "the court" and inserting "the Attorney General", and

(E) by striking "of the clerk of the naturalization court; and seal of the court" and inserting "of an immigration officer; and the seal of the Department of Justice".

(17) Section 339 (8 U.S.C. 1450) is amended to read as follows:

"FUNCTIONS AND DUTIES OF CLERKS AND RECORDS OF DECLARATIONS OF INTENTION AND APPLICATIONS FOR NATURALIZATION

"SEC. 339. (a) The clerk of each court that administers oaths of allegiance under section 337 shall—

"(1) issue to each person to whom such an oath is administered a document evidencing that such an oath was administered,

"(2) forward to the Attorney General information concerning each person to whom such an oath is administered by the court, within 30 days after the close of the month in which the oath was administered,

"(3) make and keep on file evidence for each such document issued, and

"(4) forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of the court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

"(b) Each district office of the Service in the United States shall maintain, in chronological order, indexed, and consecutively numbered, as part of its permanent records, all declarations of intention and applications for naturalization filed with the office.".

(18) Section 340 (8 U.S.C. 1451) is amended—

(A) in the first sentence of subsection (a), by striking "in any court specified in subsection (a) of section 310 of this title" and inserting "in any District Court of the United States",

(B) by amending the second sentence of subsection (g) to read as follows: "The clerk of the court shall transmit a copy of such order and judgment to the Attorney General.",

(C) by striking the third sentence of subsection (g), and

(D) in subsection (i), by striking "any naturalization court" and all that follows through "to take such action" and inserting the following: "the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person".

(19) Section 344 (8 U.S.C. 1455) is amended—

(A) in subsection (a)—

(i) by striking "The clerk of the court" and inserting "The Attorney General",

(ii) in paragraph (1), by striking "final", and

(iii) in paragraph (1), by striking "the naturalization court" and inserting "the Attorney General";

(B) by striking subsections (c), (d), (e), and (f);

(C) in subsection (g)—

(i) by striking ", and all fees paid over to the Attorney General by clerks of courts under the provisions of this title,", and

(ii) by striking "or by the clerks of the courts";

(D) in subsection (h)—

(i) by striking "no clerk of a United States court shall" and inserting "the Attorney General may not",

(ii) by striking ", and no clerk of any State court" and all that follows through "charged or collected", and

(iii) by striking the second sentence;

(E) in subsection (i), by striking "clerk of court", "from the clerk,", "such clerk", and "by the clerk" and inserting "Attorney General", "from the Attorney General,", "the Attorney General", and "by the Attorney General", respectively; and

(F) by redesignating subsections (g), (h), and (i) as subsections (c), (d), and (e), respectively.

(20) Section 348 (8 U.S.C. 1459) is repealed.

(e) STRIKING MISCELLANEOUS MATERIAL.—(1) Section 316 (8 U.S.C. 1427) is amended by striking subsection (f) and by redesignating subsection (g) as subsection (f).

(2) Section 331 (8 U.S.C. 1442) is amended by striking the second sentence of subsection (d).

(f) CORRECTIONS OF TABLE OF CONTENTS.—(1) The items in the table of contents relating to sections 334 through 336 are amended to read as follows:

"Sec. 334. Application for naturalization; declaration of intention.
"Sec. 335. Investigation of applicants; examination of applications.
"Sec. 336. Hearings on denials of applications for naturalization.".

(2) The item in the table of contents relating to section 339 is amended to read as follows:

"Sec. 339. Functions and duties of clerks and records of declarations of intention and applications for naturalization.".

(3) The item in the table of contents relating to section 348 is repealed.

SEC. 408. EFFECTIVE DATES AND SAVINGS PROVISIONS.

(a) EFFECTIVE DATE.—

(1) NO NEW COURT PETITIONS AFTER EFFECTIVE DATE.—No court shall have jurisdiction, under section 310(a) of the Immigration and Nationality Act, to naturalize a person unless a petition for naturalization with respect to that person has been filed with the court before October 1, 1991.

(2) TREATMENT OF CURRENT COURT PETITIONS.—

(A) CONTINUATION OF CURRENT RULES.—Except as provided in subparagraph (B), any petition for naturalization which may be pending in a court on October 1, 1991, shall be heard and determined in accordance with the requirements of law in effect when the petition was filed.

(B) PERMITTING WITHDRAWAL AND CONSIDERATION OF APPLICATION UNDER NEW RULES.—In the case of any petition for naturalization which may be pending in any court on the date of the enactment of this Act, the petitioner may withdraw such petition and have the petitioner's application for naturalization considered under the amendments made by this title, but only if the petition is withdrawn not later than 3 months after the effective date.

(3) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this title are effective as of the date of the enactment of this Act.

(b) INTERIM, FINAL REGULATIONS.—The Attorney General shall prescribe regulations (on an interim, final basis or otherwise) to implement the amendments made by this title on a timely basis.

(c) CONTINUING DUTIES.—The amendments to section 339 of the Immigration and Nationality Act (relating to functions and duties of clerks) shall not apply to functions and duties respecting petitions filed before October 1, 1991.

(d) GENERAL SAVINGS PROVISIONS.—(1) Nothing contained in this title, unless otherwise specifically provided, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certification of citizenship, or other document or proceeding which is valid as of the effective date; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, as of the effective date.

(2) As to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters, the provisions of law repealed by this title are, unless otherwise specifically provided, hereby continued in force and effect.

(e) TREATMENT OF SERVICE IN ARMED FORCES OF FOREIGN COUNTRY.—The amendments made by section 404 (relating to treatment of service in armed forces of a foreign country) shall take effect on the date of the enact-

ment of this Act and shall apply to exemptions from training or service obtained before, on, or after such date.

(f) FILIPINO WAR VETERANS.—Section 405 (relating to naturalization of natives of the Philippines through active-duty service under United States command during World War II) shall become effective on May 1, 1991, without regard to whether regulations to implement such section have been issued by such date.

TITLE V—ENFORCEMENT

Subtitle A—Criminal Aliens

SEC. 501. AGGRAVATED FELONY DEFINITION.

(a) IN GENERAL.—Paragraph (43) of section 101(a) (8 U.S.C. 1101(a)) is amended—

(1) by aligning its left margin with the left margin of paragraph (42),

(2) by inserting "any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including" after "murder,",

(3) by inserting after "such title," the following: "any offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments), or any crime of violence (as defined in section 16 of title 18, United States Code, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years",

(4) by striking "committed within the United States",

(5) by adding at the end the following: "Such term applies to offenses described in the previous sentence whether in violation of Federal or State law.", and

(6) by inserting before the period of the sentence added by paragraph (6) the following: "and also applies to offenses described in the previous sentence in violation of foreign law for which the term of imprisonment was completed within the previous 15 years".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to offenses committed on or after the date of the enactment of this Act, except that the amendments made by paragraphs (2) and (5) of subsection (a) shall be effective as if included in the enactment of section 7342 of the Anti-Drug Abuse Act of 1988.

SEC. 502. SHORTENING PERIOD TO REQUEST JUDICIAL REVIEW.

(a) IN GENERAL.—Section 106(a)(1) (8 U.S.C. 1152a(a)(1)) is amended by striking "60 days" and inserting "30 days".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to final deportation orders issued on or after January 1, 1991.

SEC. 503. ENHANCING ENFORCEMENT AUTHORITY OF INS OFFICERS.

(a) BROADENING AUTHORITY.—Section 287(a) (8 U.S.C. 1357(a)) is amended—

(1) by striking "and" at the end of paragraph (3), and

(2) in paragraph (4), by striking "United States" the second place it appears and all that follows and inserting the following: "United States, and

"(5) to make arrests—

"(A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

"(B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony,

if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

Under regulations prescribed by the Attorney General, an officer or employee of the Service may carry a firearm and may execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.".

(b) REQUIRING FINGERPRINTING AND PHOTOGRAPHING OF CERTAIN ALIENS.—(1) Section 287 is further amended by adding at the end the following new subsection:

"(f)(1) Under regulations of the Attorney General, the Commissioner shall provide for the fingerprinting and photographing of each alien 14 years of age or older against whom a proceeding is commenced under section 242.

"(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.".

(2) Section 264(b) (8 U.S.C. 1304(b)) is amended by inserting "(1) pursuant to section 287(f)(2), and (2)" after "only".

SEC. 504. CUSTODY PENDING DETERMINATION OF DEPORTABILITY AND EXCLUDABILITY.

(a) DEPORTABILITY.—Section 242(a)(2) (8 U.S.C. 1252(a)(2)) is amended—

(1) in the first sentence, by striking "upon completion of the alien's sentence for such conviction" and inserting "upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)",

(2) in the second sentence, by inserting "but subject to subparagraph (B)" after "Notwithstanding subsection (a)",

(3) in the second sentence, by striking "subsection (a)" and inserting "paragraph (1) or subsections (c) and (d)",

(4) by inserting "(A)" after "(2)", and

(5) by adding at the end the following new subparagraph:

"(B) The Attorney General shall release from custody an alien who is lawfully admitted for permanent residence on bond or such other conditions as the Attorney General may prescribe if the Attorney General determines that the alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.".

(b) EXCLUDABILITY.—Section 236 (8 U.S.C. 1226) is amended by adding at the end the following new subsection:

"(e)(1) Pending a determination of excludability, the Attorney General shall take into custody any alien convicted of an aggravated felony upon completion of the alien's sentence for such conviction.

"(2) Notwithstanding any other provision of this section, the Attorney General shall not release such felon from custody unless the Attorney General determines that the alien may not be deported because the condition described in section 243(g) exists.

"(3) If the determination described in paragraph (2) has been made, the Attorney General may release such alien only after—

"(A) a procedure for review of each request for relief under this subsection has been established,

"(B) such procedure includes consideration of the severity of the felony committed by the alien, and

"(C) the review concludes that the alien will not pose a danger to the safety of other persons or to property.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 505. ELIMINATION OF JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION.

(a) IN GENERAL.—Section 241(b) (8 U.S.C. 1251(b)) is amended—

(1) in the first sentence—

(A) by striking "(1)", and

(B) by striking ", or (2)" and all that follows up to the period at the end; and

(2) in the second sentence, by inserting "or who has been convicted of an aggravated felony" after "subsection (a)(11) of this section".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to convictions entered before, on, or after such date.

SEC. 506. CLARIFICATION RESPECTING DISCRETIONARY AUTHORITY IN DEPORTATION PROCEEDINGS FOR INCARCERATED ALIENS.

(a) IN GENERAL.—Section 242A(d)(2) (8 U.S.C. 1252a(d)(2)) is amended by striking ", unless" and all that follows up to the period at the end.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 507. REQUIRING COORDINATION PLAN WITH INS AS A CONDITION FOR RECEIPT OF DRUG CONTROL AND SYSTEM IMPROVEMENT GRANTS UNDER THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.

(a) IN GENERAL.—Section 503(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) is amended by adding at the end the following new paragraph:

"(11) An assurance that the State has established a plan under which the State will provide without fee to the Immigration and Naturalization Service, within 30 days of the date of their conviction, the certified records of conviction of aliens who have been convicted of violating the criminal laws of the State.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to grants for fiscal years beginning with fiscal year 1991.

SEC. 508. DEPORTATION FOR ATTEMPTED VIOLATIONS OF CONTROLLED SUBSTANCES LAWS.

(a) IN GENERAL.—Section 241(a)(11) (8 U.S.C. 1251(a)(11)) is amended by inserting "or attempt" after "conspiracy".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to convictions occurring on or after the date of the enactment of this Act.

SEC. 509. GOOD MORAL CHARACTER DEFINITION.

(a) IN GENERAL.—Section 101(f)(8) (8 U.S.C. 1101(f)(8)) is amended by striking "the crime of murder" and inserting "an aggravated felony (as defined in subsection (a)(43))".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to convictions occurring on or after such date.

SEC. 510. REPORT ON CRIMINAL ALIENS.

(a) IN GENERAL.—The Attorney General shall submit to the appropriate Committees of the Congress, by not later than December 1, 1991, a report that describes the efforts of the Immigration and Naturalization Service to identify, apprehend, detain, and remove from the United States aliens who have been convicted of crimes in the United States.

(b) CRIMINAL ALIEN CENSUS.—Such report shall include a statement of—

(1) the number of aliens in the United States who have been convicted of a criminal offense in the United States, and of such number, the number of such aliens who are not lawfully admitted to the United States;

(2) the number of aliens lawfully admitted to the United States who have been convicted of such an offense and, based on such conviction, are subject to deportation from the United States;

(3) the number of aliens in the United States who are incarcerated in a penal institution in the United States, and, of such number, the number of such aliens who are not lawfully admitted to the United States;

(4)(A) the number of aliens whose deportation hearings have been conducted pursuant to section 242A(a) of the Immigration and Nationality Act, and (B) the percentage that such number represents of the total number of deportable aliens with respect to whom a hearing under such section could have been conducted since November 18, 1988; and

(5) the number of aliens in the United States who have reentered the United States after having been convicted of a criminal offense in the United States.

Within each of the numbers of aliens specified under this subsection who have been convicted of criminal offenses, the Attorney General shall distinguish between criminal offenses that are aggravated felonies (as defined in section 101(a)(43) of the Immigration and Nationality Act, as amended by this Act) and for other criminal offenses.

(c) CRIMINAL ALIEN REMOVAL PLAN.—The Attorney General shall include in the report a plan for the prompt removal from the United States of criminal aliens who are subject to exclusion or deportation. Such plan shall also include a statement of additional funds that would be required to provide for the prompt removal from the United States of—

(1)(A) aliens who are not lawfully admitted to the United States and who, as of the date of the enactment of this Act, have committed any criminal offense in the United States, and (B) aliens who are lawfully admitted to the United States and who, as of such date, have committed a criminal offense in the United States the commission of which makes the alien subject to deportation; and

(2)(A) aliens who are not lawfully admitted to the United States and who, in the future, commit a criminal offense in the United States, and (B) aliens who are lawfully admitted to the United States and who, in the future, commit a criminal offense in the United States the commission of which makes the alien subject to deportation.

Such plan shall also include a method for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the United States and removed from the United States.

SEC. 511. LIMITATION ON WAIVER OF EXCLUSION FOR RETURNING PERMANENT RESIDENTS CONVICTED OF AN AGGRAVATED FELONY.

(a) IN GENERAL.—Section 212(c) (8 U.S.C. 1182(c)) is amended by adding at the end the following: "The first sentence of this subsection shall not apply to an alien who has been convicted of an aggravated felony and has served a term of imprisonment of at least 5 years.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to admissions occurring after the date of the enactment of this Act.

SEC. 512. AUTHORIZATION OF ADDITIONAL IMMIGRATION JUDGES FOR DEPORTATION PROCEEDINGS INVOLVING CRIMINAL ALIENS.

There are authorized to be appropriated in each of fiscal years 1991 through 1995 such sums as are necessary to provide for 20 additional immigration judges in the Department of Justice, to be used to conduct proceedings under section 242A(d) of the Immigration and Nationality Act (8 U.S.C. 1252a(d)).

SEC. 513. EFFECT OF FILING PETITION FOR REVIEW.

(a) NO STAY UNLESS COURT ORDER.—Section 106(a)(3) (8 U.S.C. 1105a(a)(3)) is amended by inserting before the semicolon at the end the following: "or unless the alien is convicted of an aggravated felony, in which case the Service shall not stay the deportation of the alien pending determination of the petition of the court unless the court otherwise directs".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to petitions to review filed more than 60 days after the date of the enactment of this Act.

SEC. 514. EXTENDING BAR ON REENTRY OF ALIENS CONVICTED OF AGGRAVATED FELONIES.

(a) IN GENERAL.—Section 212(a)(17) (8 U.S.C. 1182(a)(17)) is amended by striking "10 years" and inserting "20 years".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to admissions occurring on or after January 1, 1991.

SEC. 515. ASYLUM IN THE CASE OF ALIENS CONVICTED OF AGGRAVATED FELONIES.

(a) IN GENERAL.—(1) Section 208 (8 U.S.C. 1158) is amended by adding at the end the following new subsection:

"(d) An alien who has been convicted of an aggravated felony, notwithstanding subsection (a), may not apply for or be granted asylum.".

(2) Section 243(h)(2) (8 U.S.C. 1253(h)(2)) is amended by adding at the end the following:

"For purposes of subparagraph (B), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime.".

(b) EFFECTIVE DATES.—

(1) The amendment made by subsection (a)(1) shall apply to applications for asylum made on or after the date of the enactment of this Act.

(2) The amendment made by subsection (a)(1) shall take effect on the date of the enactment of this Act and shall apply to convictions entered before, on, or after the date of the enactment of this Act.

Subtitle B—Provisions Relating to Employer Sanctions

SEC. 521. ELIMINATION OF PAPERWORK REQUIREMENT FOR RECRUITERS AND REFERRERS.

(a) IN GENERAL.—Section 274A(a)(1) (8 U.S.C. 1324a(a)(1)) is amended—

(1) by striking "to hire, or to recruit or refer for a fee, for employment in the United States",

(2) in subparagraph (A), by inserting after "(A)" the following: "to hire, or to recruit or refer for a fee, for employment in the United States", and

(3) in subparagraph (B), by inserting after "(B)" the following: "(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States".

(b) EFFECTIVE DATE.—The amendments made by subsection (aall apply to recruiting and referring occurring on or after the date of the enactment of this Act.

SEC. 522. PILOT PROGRAM ON USE OF CERTAIN DRIVERS' LICENSES AS DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.

(a) IN GENERAL.—The Attorney General shall establish a pilot program under which, in the case of up to 3 States which provide for the issuance of drivers' licenses (and related identification documents) in accordance a system described in subsection (b), a driver's license or similar identification document issued by the State in accordance with subsection (b) shall be treated, for purposes of section 274A(b) of the Immigration and Nationality Act, as a document described in paragraph (1)(B) of such section.

(b) SYSTEM REQUIREMENTS.—The system for the issuance of licenses or documents must—

(1) be consistent with the biometric identification system developed pursuant to section 9105 of the Anti-Drug Abuse Act of 1988 (49 U.S.C. App. 2706 note), and

(2) require that an applicant for a driver's license or other form of identification be issued a temporary driver's license or other form of identification upon demonstrating qualification therefor, and that the driver's license or other form of identification be mailed to the residence address of the applicant after a waiting period of no more than 30 days in which the State has used the biometric identification system and other means to confirm the identification information presented by the applicant.

(c) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Attorney General shall report to the Congress on the performance of the pilot program under this section and on whether such program should be extended (on a voluntary or mandatory basis) to all States.

Subtitle C—Provisions Relating to Anti-Discrimination

SEC. 531. DISSEMINATION OF INFORMATION CONCERNING ANTI-DISCRIMINATION PROTECTIONS UNDER IRCA AND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

Section 274B (8 U.S.C. 1324b) is amended by adding at the end the following new subsection:

"(1) DISSEMINATION OF INFORMATION CONCERNING ANTI-DISCRIMINATION PROVISIONS.—

"(1) Not later than 3 months after the date of the enactment of this subsection, the Spe-

cial Counsel, in cooperation with the chairman of the Equal Employment Opportunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section and under title VII of the Civil Rights Act of 1964 in connection with unfair immigration-related employment practices. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section and such title.

"(2) In order to carry out the campaign under this subsection, the Special Counsel—

"(A) may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign, and

"(B) shall consult with the Secretary of Labor, the chairman of the Equal Employment Opportunity Commission, and the heads of such other agencies as may be appropriate.

"(3) There are authorized to be appropriated to carry out this subsection $10,000,000 for each fiscal year (beginning with fiscal year 1991).".

SEC. 532. INCLUSION OF CERTAIN SEASONAL AGRICULTURAL WORKERS WITHIN SCOPE OF ANTI-DISCRIMINATION PROTECTIONS.

(a) IN GENERAL.—Section 274B(a)(3)(B)(i) (8 U.S.C. 1324b(a)(3)(B)(i)) is amended by inserting "210(a), 210A(a), or" before "245A(a)(1)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions occurring on or after the date of the enactment of this Act.

SEC. 533. ELIMINATION OF REQUIREMENT THAT ALIENS FILE A DECLARATION OF INTENDING TO BECOME A CITIZEN IN ORDER TO FILE ANTI-DISCRIMINATION COMPLAINT.

(a) IN GENERAL.—Section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B)) is amended—

(1) in paragraph (1)(B), by striking "citizen or intending citizen" and inserting "protected individual";

(2) in paragraph (3), by striking "CITIZEN OR INTENDING CITIZEN" and inserting "PROTECTED INDIVIDUAL";

(3) in paragraph (3), by striking "citizen or intending citizen" and inserting "protected individual"; and

(4) in paragraph (3)(B)—

(A) by striking "is an alien" and all that follows through "but does not" and inserting "is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 210(a), 210A(a), or 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208; but does not", and

(B) by striking "(I)" and "(II)" and inserting "(i)" and "(ii)", respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to unfair immigration-related employment practices occurring before, on, or after the date of the enactment of this Act.

SEC. 534. ANTI-RETALIATION PROTECTIONS.

(a) CODIFICATION OF REGULATION.—Section 274B(a) (8 U.S.C. 1324b(a)) is amended by adding at the end the following:

"(5) PROHIBITION OF INTIMIDATION OR RETALIATION.—It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual so intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of subsections (d) and (g), to have been discriminated against.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions occurring on or after the date of the enactment of this Act.

SEC. 535. TREATMENT OF CERTAIN ACTIONS AS DISCRIMINATION.

(a) DOCUMENTATION ABUSES.—Section 274B(a) (8 U.S.C. 1324b(a)), as amended by section 534, is further amended by adding at the end the following new paragraph:

"(6) TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS EMPLOYMENT PRACTICES.—For purposes of paragraph (1), a person's or other entity's request, for purposes of satisfying the requirements of section 274A(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, but shall apply to actions occurring on or after such date.

SEC. 536. CONFORMING CIVIL MONEY PENALTIES FOR ANTI-DISCRIMINATION VIOLATIONS TO THOSE FOR EMPLOYER SANCTIONS.

(a) CIVIL MONEY PENALTIES.—Section 274B(g)(2)(B) (8 U.S.C. 1324b(g)(2)(B)) is amended by amending clause (iv) to read as follows:

"(iv)(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $250 and not more than $2,000 for each individual discriminated against,

"(II) except as provided in subclause (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual discriminated against,

"(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than $3,000 and not more than $10,000 for each individual discriminated against, and

"(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6), to pay a civil penalty of not less than $100 and not more than $1,000 for each individual discriminated against.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to unfair immigration-related employment practices occurring after the date of the enactment of this Act.

SEC. 537. PERIOD FOR FILING OF COMPLAINTS.

(a) 120-DAY PERIOD.—Section 274B(d)(2) (8 U.S.C. 1324b(d)(2)) is amended—

(1) by inserting "the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and" after "120-day period,",

(2) by inserting "within 90 days after the date of receipt of the notice" before the period at the end, and

(3) by adding at the end the following: "The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to charges received on or after the date of the enactment of this Act.

SEC. 538. SPECIAL COUNSEL ACCESS TO EMPLOYMENT ELIGIBILITY VERIFICATION FORMS.

(a) IN GENERAL.—Section 274A(b)(3) (8 U.S.C. 1324a(b)(3)) is amended by inserting ", the Special Counsel for Immigration-Related Unfair Employment Practices," after "officers of the Service,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 539. ADDITIONAL RELIEF IN ORDERS.

(a) IN GENERAL.—Section 274B(g)(2)(B) (8 U.S.C. 1324b(g)(2)(B)) is amended—

(1) by striking "and" at the end of clause (iii),

(2) by striking the period at the end of clause (iv)(II) and inserting a comma, and

(3) by adding at the end the following:

"(v) to post notices to employees about their rights under this section and employers' obligations under section 274A,

"(vi) to educate all personnel involved in hiring and complying with this section or section 274A about the requirements of this section or such section,

"(vii) to order (in an appropriate case) the removal of a false performance review or false warning from an employee's personnel file, and

"(viii) to order (in an appropriate case) the lifting of any restrictions on an employee's assignments, work shifts, or movements.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to orders with respect to unfair immigration-related employment practices occurring on or after the date of the enactment of this Act.

Subtitle D—General Enforcement

SEC. 541. AUTHORIZING INCREASE BY 1,000 IN BORDER PATROL PERSONNEL.

There are authorized to be appropriated for fiscal year 1991 such additional sums as may be necessary to provide for an increase of 1,000 in the authorized personnel level of the border patrol of the Immigration and Naturalization Service, above the authorized level of the patrol as of September 30, 1990.

SEC. 542. APPLICATION OF INCREASE IN PENALTIES TO ENHANCE ENFORCEMENT ACTIVITIES.

(a) IN GENERAL.—Section 280 (8 U.S.C. 1330) is amended—

(1) by inserting "(a)" after "280.", and

(2) by adding at the end the following new subsection:

"(b) Notwithstanding section 3302 of title 31, United States Code, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990 shall be credited to the appropriation—

"(1) for the Immigration and Naturalization Service for activities that enhance enforcement of provisions of this title, including—

"(A) the identification, investigation, and apprehension of criminal aliens,

"(B) the implementation of the system described in section 242(a)(3)(A), and

"(C) for the repair, maintainance, or construction on the United States border, in

areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and

"(2) for the Executive Office for Immigration Review in the Department of Justice for the purpose of removing the backlogs in the preparation of transcripts of deportation proceedings conducted under section 242.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to fines and penalties collected on or after January 1, 1991.

SEC. 543. INCREASE IN FINE LEVELS; AUTHORITY OF THE INS TO COLLECT FINES.

(a) CIVIL PENALTIES.—

(1) FAILURE TO DELIVER MANIFEST.—Section 231(d) (8 U.S.C. 1221(d)) is amended by striking "collector of customs at the port of arrival or departure the sum of $10" and inserting "Commissioner the sum of $300".

(2) FAILURE TO PROVIDE FOR DEPORTATION.—Section 237(b) (8 U.S.C. 1227(b)) is amended by striking "district director of customs of the district in which port of arrival is situated or in which any vessel or aircraft of the line may be found, the sum of $300" and inserting "Commissioner the sum of $2,000".

(3) IMPROPER AIRCRAFT ENTRY.—Section 239 (8 U.S.C. 1229) is amended by striking "$500" and inserting "$2,000".

(4) FAILURE TO CONTROL CREW.—Section 254(a) (8 U.S.C. 1284(a)) is amended—

(A) in the first sentence, by striking "collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs the sum of $1,000" and inserting "Commissioner the sum of $3,000", and

(B) in the third sentence by striking "$200" and inserting "$500".

(5) EMPLOYMENT OF CERTAIN CREW.—Section 255 (8 U.S.C. 1285) is amended—

(A) in the second sentence, by striking "collector of customs of the customs district in which the port of arrival is located the sum of $50" and inserting "Commissioner the sum of $1,000", and

(B) in the third sentence, by striking "collector of customs" and inserting "Commissioner".

(6) IMPROPER DISCHARGE OF CREW.—Section 256 (8 U.S.C. 1286) is amended—

(A) in the second sentence, by striking "collector of customs of the customs district in which the violation occurred the sum of $1,000" and inserting "Commissioner the sum of $3,000",

(B) in the third sentence, by striking "collector of customs" and inserting "Commissioner", and

(C) in the fourth sentence, by striking "$500" and inserting "$1,500".

(7) ASSISTING UNLAWFUL ENTRY OF CREW.—Section 257 (8 U.S.C. 1287) is amended by striking "$5,000" and inserting "$10,000".

(8) DUTY TO PREVENT UNAUTHORIZED ENTRIES.—Section 271(a) (8 U.S.C. 1321) is amended by striking "$1,000" and inserting "$3,000".

(9) BRINGING IN CERTAIN ALIENS.—Section 272 (8 U.S.C. 1322) is amended—

(A) in subsection (a)—

(i) by striking "collector of customs of the customs district in which the place of arrival is located" and inserting "Commissioner", and

(ii) by striking "$1,000" and inserting "$3,000";

(B) in subsection (b)—

(i) by striking "collector of customs of the customs district in which the place of arrival is located" and inserting "Commissioner", and

(ii) by striking "$250" and inserting "$3,000"; and

(C) in subsection (c), by striking "collector of customs" and inserting "Commissioner".

(10) UNLAWFUL BRINGING OF ALIENS.—Section 273 (8 U.S.C. 1323) is amended—

(A) in subsection (b), by striking "collector of customs of the customs district in which the port of arrival is located the sum of $1,000" and inserting "Commissioner the sum of $3,000", and

(B) in subsection (d)—

(i) in the first sentence, by striking "collector of customs of the customs district in which the port of arrival is located the sum of $1,000" and inserting "Commissioner the sum of $3,000", and

"(ii) in the second sentence, by striking "collector of customs" and inserting "Commissioner".

(b) CRIMINAL FINE LEVELS.—

(1) CREW MEMBER OVERSTAYING.—Section 252(c) (8 U.S.C. 1282(c)) is amended by striking "shall be guilty" and all that follows through "six months" and inserting "shall be fined not more than $2,000 (or, if greater, the amount provided under title 18, United States Code) or imprisoned not more than 6 months".

(2) CONCEALMENT OF ALIENS.—Section 275 (8 U.S.C. 1325) is amended—

(A) by inserting "or attempts to enter" after "(1) enters",

(B) by inserting "attempts to enter or" after "or (3)", and

(C) by striking "shall, for the first commission", and all that follows through "$1,000" and inserting "shall, for the first commission of any such offense, be fined not more than $2,000 (or, if greater, the amount provided under title 18, United States Code) or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 2 years".

(3) UNLAWFUL REENTRY.—Section 276 (8 U.S.C. 1326) is amended by striking "shall be guilty" and all that follows through "$1,000" and inserting "shall be fined under title 18, United States Code, or imprisoned not more than 2 years".

(4) AIDING IN ENTRY OF SUBVERSIVES.—Section 277 (8 U.S.C. 1327) is amended by striking "shall be guilty" and all that follows through "five years" and inserting "shall be fined under title 18, United States Code, or imprisoned not more than 10 years".

(5) IMPORTING PROSTITUTES.—Section 278 (8 U.S.C. 1328) is amended by striking "shall, in every" and all that follows through "ten years" and inserting "shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both".

(c) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) shall apply to actions taken after the date of the enactment of this Act.

SEC. 544. CIVIL PENALTIES FOR DOCUMENT FRAUD.

(a) DOCUMENT FRAUD.—Title II is amended by adding at the end the following new section:

"PENALTIES FOR DOCUMENT FRAUD

"SEC. 274C. (a) ACTIVITIES PROHIBITED.—It is unlawful for any person or entity knowingly—

"(1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this Act,

"(2) to use, attempt to use, possess, obtain, accept, or receive any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act,

"(3) to use or attempt to use any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act, or

"(4) to accept or receive any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b).

"(b) EXCEPTION.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).

"(c) CONSTRUCTION.—Nothing in this section shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in title 18, United States Code.

"(d) ENFORCEMENT.—

"(1) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

"(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

"(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(2) HEARING.—

"(A) IN GENERAL.—Before imposing an order described in paragraph (3) against a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

"(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

"(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity has violated subsection (a), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (3).

"(3) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY.—With respect to a violation of subsection (a), the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

"(A) not less than $250 and not more than $2,000 for each document used, accepted, or created and each instance of use, acceptance, or creation, or

"(B) in the case of a person or entity previously subject to an order under this paragraph, not less than $2,000 and not more than $5,000 for each document used, accepted, or created and each instance of use, acceptance, or creation.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(4) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection.

"(5) JUDICIAL REVIEW.—A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(6) ENFORCMENT OF ORDERS.—If a person or entity fails to comply with a final order issued under this section against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.".

(b) NEW GROUND OF DEPORTATION.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking "or" at the end of paragraph (19),

(2) by striking the period at the end of paragraph (20) and inserting "; or", and

(3) by adding at the end the following new paragraph:

"(21) is the subject of a final order for violation of section 274C.".

(c) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 274B the following new item:

"Sec. 274C. Penalties for document fraud.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to persons or entities that have committed violations on or after the date of the enactment of this Act.

SEC. 545. DEPORTATION PROCEDURES; REQUIRED NOTICE OF DEPORTATION HEARING; LIMITATION ON DISCRETIONARY RELIEF.

(a) IN GENERAL.—Chapter 5 of title II is amended by inserting after section 242A the following new section:

"DEPORTATION PROCEDURES

"SEC. 242B. (a) NOTICES.—

"(1) ORDER TO SHOW CAUSE.—In deportation proceedings under section 242, written notice (in this section referred to as an 'order to show cause') shall be given in person to the alien (or, if personal service is not practicable, such notice shall be given by certified mail to the alien or to the alien's counsel of record, if any) specifying the following:

"(A) The nature of the proceedings against the alien.

"(B) The legal authority under which the proceedings are conducted.

"(C) The acts or conduct alleged to be in violation of law.

"(D) The charges against the alien and the statutory provisions alleged to have been violated.

"(E) The alien may be represented by counsel and, upon request, the alien will be provided a list of counsel prepared under subsection (b)(2).

"(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 242.

"(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

"(iii) The consequences under subsection (c)(2) of failure to provide address and telephone information pursuant to this subparagraph.

"(2) NOTICE OF TIME AND PLACE OF PROCEEDINGS.—In deportation proceedings under section 242—

"(A) written notice shall be given in person to the alien (or, if personal service is not practicable, written notice shall be given by certified mail to the alien or to the alien's counsel of record, if any), in the order to show cause or otherwise, of—

"(i) the time and place at which the proceedings will be held, and

"(ii) the consequences under subsection (c) of the failure to appear at such proceedings; and

"(B) in the case of any change or postponement in the time and place of such proceedings, written notice shall be given in person to the alien (or, if personal service is not practicable, written notice shall be given by certified mail to the alien or to the alien's counsel of record, if any) of—

"(i) the new time or place of the proceedings, and

"(ii) the consequences under subsection (c) of failing, except under exceptional circumstances, to attend such proceedings.

"(3) FORM OF INFORMATION.—Each order to show cause or other notice under this subsection—

"(A) shall be in English and Spanish, and

"(B) shall specify that the alien may be represented by an attorney in deportation proceedings under section 242 and will be provided, in accordance with subsection (b)(1), a period of time in order to obtain counsel and a current list described in subsection (b)(2).

"(4) CENTRAL ADDRESS FILES.—The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

"(b) SECURING OF COUNSEL.—

"(1) IN GENERAL.—In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 242, the hearing date shall not be scheduled earlier than 14 days after the service of the order to show cause.

"(2) CURRENT LISTS OF COUNSEL.—The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent aliens in proceedings under section 242.

"(c) CONSEQUENCES OF FAILURE TO APPEAR.—

"(1) IN GENERAL.—Any alien who, after written notice required under subsection (a)(2) has been provided to the alien or the alien's counsel of record, except as provided in paragraph (2), does not attend a proceeding under section 242, shall be ordered deported under section 242(b)(1) in absentia if the Service establishes by clear, unequivocal, and convincing evidence that, except as provided in paragraph (2), the written notice was so provided and that the alien is deportable.

"(2) NO NOTICE IF FAILURE TO PROVIDE ADDRESS INFORMATION.—No written notice shall be required under paragraph (1) if the alien has failed to provide the address required under subsection (a)(1)(F). Such written notice shall be considered sufficient if provided at the most recent address provided under such subsection.

"(3) RESCISSION OF ORDER.—Such an order may be rescinded only—

"(A) upon a motion to reopen filed within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (f)(2)), or

"(B) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with subsection (a)(2) or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien.

The filing of the motion to reopen described in subparagraph (A) or (B) shall stay the deportation of the alien pending disposition of the motion.

"(4) EFFECT ON JUDICIAL REVIEW.—Any petition for review under section 106 of an order entered in absentia under this subsection shall, notwithstanding such section, be filed not later than 60 days after the date of the final order of deportation and shall (except in cases described in section 106(a)(5)) be confined to the issues of the validity of the notice provided to the alien, to the reasons for the alien's not attending the proceeding, and to whether or not clear, convincing, and unequivocal evidence of deportability has been established.

"(d) TREATMENT OF FRIVOLOUS BEHAVIOR.—The Attorney General shall, by regulation—

"(1) define in a proceeding before a special inquiry officer or before an appellate administrative body under this title, frivolous behavior for which attorneys may be sanctioned,

"(2) specify the circumstances under which an administrative appeal of a decision or ruling will be considered frivolous and will be summarily dismissed, and

"(3) impose appropriate sanctions (which may include suspension and disbarment) in the case of frivolous behavior.

Nothing in this subsection shall be construed as limiting the authority of the Board to take actions with respect to inappropriate behavior.

"(e) LIMITATION ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR.—

"(1) AT DEPORTATION PROCEEDINGS.—Any alien against whom a final order of deportation is entered in absentia under this section and who, at the time of the notice described in subsection (a)(2), was provided oral notice, either in the alien's native language or in another language the alien understands, of the time and place of the proceedings and of the consequences under this paragraph of failing, other than because of exceptional circumstances (as defined in subsection (f)(2)) to attend a proceeding under section 242, shall not be eligible for relief described in paragraph (5) for a period of 5 years after the date of the entry of the final order of deportation.

"(2) VOLUNTARY DEPARTURE.—

"(A) IN GENERAL.—Subject to subparagraph (B), any alien allowed to depart voluntarily

under section 244(e)(1) or who has agreed to depart voluntarily at his own expense under section 242(b)(1) who remains in the United States after the scheduled date of departure, other than because of exceptional circumstances, shall not be eligible for relief described in paragraph (5) for a period of 5 years after the scheduled date of departure or the date of unlawful reentry, respectively.

"(B) WRITTEN AND ORAL NOTICE REQUIRED.—Subparagraph (A) shall not apply to an alien allowed to depart voluntarily unless, before such departure, the Attorney General has provided written notice to the alien in English and Spanish and oral notice either in the alien's native language or in another language the alien understands of the consequences under subparagraph (A) of the alien's remaining in the United States after the scheduled date of departure, other than because of exceptional circumstances.

"(3) FAILURE TO APPEAR UNDER DEPORTATION ORDER.—

"(A) IN GENERAL.—Subject to subparagraph (B), any alien against whom a final order of deportation is entered under this section and who fails, other than because of exceptional circumstances, to appear for deportation at the time and place ordered shall not be eligible for relief described in paragraph (5) for a period of 5 years after the date the alien was required to appear for deportation.

"(B) WRITTEN AND ORAL NOTICE REQUIRED.—Subparagraph (A) shall not apply to an alien against whom a deportation order is entered unless the Attorney General has provided, orally in the alien's native language or in another language the alien understands and in the final order of deportation under this section of the consequences under subparagraph (A) of the alien's failure, other than because of exceptional circumstances, to appear for deportation at the time and place ordered.

"(4) FAILURE TO APPEAR FOR ASYLUM HEARING.—

"(A) IN GENERAL.—Subject to subparagraph (B), any alien who—

"(i) whose period of authorized stay (if any) has expired through the passage of time,

"(ii) who has filed an application for asylum, and

"(iii) who fails, other than because of exceptional circumstances, to appear at the time and place specified for the asylum hearing,

shall not be eligible for relief described in paragraph (5) for a period of 5 years after the date of the asylum hearing.

"(B) WRITTEN AND ORAL NOTICE REQUIRED.—Subparagraph (A) shall not apply in the case of an alien with respect to failure to be present at a hearing unless—

"(i) written notice in English and Spanish, and oral notice either in the alien's native language or in another language the alien understands, was provided to the alien of the time and place at which the asylum hearing will be held, and in the case of any change or postponement in such time or place, written notice in English and Spanish and oral notice either in the alien's native language or in another language the alien understands, was provided to the alien of the new time or place of the hearing; and

"(ii) notices under clause (i) specified the consequences under subparagraph (A) of failing, other than because of exceptional circumstances, to attend such hearing.

"(5) RELIEF COVERED.—The relief described in this paragraph is—

"(A) relief under section 212(c),

"(B) voluntary departure under section 242(b)(1),

"(C) suspension of deportation or voluntary departure under section 244, and

"(D) adjustment or change of status under section 245, 248, or 249.

"(f) DEFINITIONS.—In this section:

"(1) The term 'certified mail' means certified mail, return receipt requested.

"(2) The term 'exceptional circumstances' refers to exceptional circumstances (such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances) beyond the control of the alien.".

(b) JUDICIAL REVIEW.—Section 106(a) (8 U.S.C. 1105a) is amended—

(1) in paragraph (1), by striking "6 months" and inserting "90 days",

(2) by redesignating paragraphs (6) through (9) as paragraphs (7) through (10), respectively, and

(3) by inserting after paragraph (5) the following new paragraph:

"(6) whenever a petitioner seeks review of an order under this section, any review sought with respect to a motion to reopen or reconsider such an order shall be consolidated with the review of the order;".

(c) REPORT ON CONSOLIDATION OF REQUESTS FOR RELIEF.—The Attorney General shall submit to the Congress by not later than 6 months after the date of the enactment of this Act, a report on abuses associated with the failure of aliens to consolidate requests for discretionary relief before immigration judges at the first hearing on the merits. The Attorney General shall take into account possible exceptions appropriate in the interest of justice and shall include in the report such recommendations for changes in regulations or law as may be needed to prevent such abuses.

(d) REGULATIONS ON MOTIONS TO REOPEN AND TO RECONSIDER AND ON ADMINISTRATIVE APPEALS.—Within 6 months after the date of the enactment of this Act, the Attorney General shall issue regulations with respect to—

(1) the period of time in which motions to reopen and to reconsider may be offered in deportation proceedings, which regulations include a limitation on the number of such motions that may be filed and a maximum time period for the filing of such motions; and

(2) the time period for the filing of administrative appeals in deportation proceedings and for the filing of appellate and reply briefs, which regulations include a limitation on the number of administrative appeals that may be made, a maximum time period for the filing of such motions and briefs, the items to be included in the notice of appeal, and the consolidation of motions to reopen or to reconsider with the appeal of the order of deportation.

(e) CONFORMING AMENDMENT.—The 8th sentence of section 242(b) (8 U.S.C. 1252(b)) is amended to read as follows: "Such regulations shall include requirements consistent with section 242B.".

(f) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 242A the following new item:

"Sec. 242B. Deportation procedures.".

(g) EFFECTIVE DATES.—

(1) NOTICE-RELATED PROVISIONS.—

(A) Subsections (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)), and the amendment made by subsection (e), shall be effective on a date specified by the Attorney General in the certification described in subparagraph (B), which date may not be earlier than 6 months after the date of such certification.

(B) The Attorney General shall certify to the Congress when the central address file system (described in section 242B(a)(4) of the Immigration and Nationality Act) has been established.

(C) The Comptroller General shall submit to Congress, within 3 months after the date of the Attorney General's certification under subparagraph (B), a report on the adequacy of such system.

(2) CERTAIN LIMITS ON DISCRETIONARY RELIEF; SANCTIONS FOR FRIVOLOUS BEHAVIOR.—Subsections (d), (e)(2), and (e)(3) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on the date of the enactment of this Act.

(3) LIMITS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR IN ASYLUM HEARING.—Subsection (e)(4) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on February 1, 1991.

(4) CONSOLIDATION OF RELIEF IN JUDICIAL REVIEW.—The amendments made by subsection (b) shall apply to final orders of deportation entered on or after January 1, 1991.

TITLE VI—EXCLUSION AND DEPORTATION

SEC. 601. REVISION OF GROUNDS FOR EXCLUSION.

(a) REVISED GROUNDS FOR EXCLUSION.—Subsection (a) of section 212 (8 U.S.C. 1182) is amended to read as follows:

"(a) CLASSES OF EXCLUDABLE ALIENS.—Except as otherwise provided in this Act, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:

"(1) HEALTH-RELATED GROUNDS.—

"(A) IN GENERAL.—Any alien—

"(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance,

"(ii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

"(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

"(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior,

"(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is excludable.

"(B) WAIVER AUTHORIZED.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

"(2) CRIMINAL AND RELATED GROUNDS.—

"(A) CONVICTION OF CERTAIN CRIMES.—

"(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

"(I) a crime involving moral turpitude (other than a purely political offense), or

"(II) a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is excludable.

"(ii) EXCEPTION.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

"(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

"(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

"(B) MULTIPLE CRIMINAL CONVICTIONS.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were 5 years or more is excludable.

"(C) CONTROLLED SUBSTANCE TRAFFICKERS.—Any alien who the consular or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is excludable.

"(D) PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

"(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, entry, or adjustment of status,

"(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, entry, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

"(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is excludable.

"(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

"(i) who has committed in the United States at any time a serious criminal offense (as defined in section 101(h)),

"(ii) for whom immunity from criminal jurisdiction was exercised with respect to that offense,

"(iii) who as a consequence of the offense and exercise of immunity has departed from the United States, and

"(iv) who has not subsequently submitted fully to the jurisdiction of the court in the United States having jurisdiction with respect to that offense,

is excludable.

"(F) WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

"(3) SECURITY AND RELATED GROUNDS.—

"(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

"(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

"(ii) any other unlawful activity, or

"(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is excludable.

"(B) TERRORIST ACTIVITIES.—

"(i) IN GENERAL.—Any alien who—

"(I) has engaged in a terrorist activity, or

"(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is likely to engage after entry in any terrorist activity (as defined in clause (iii)),

is excludable.

"(ii) TERRORIST ACTIVITY DEFINED.—As used in this Act, the term 'terrorist activity' means any activity which is unlawful under the laws of the place where it is committed (or which, if committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following:

"(I) The highjacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

"(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

"(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

"(IV) An assassination.

"(V) The use of any—

"(a) biological agent, chemical agent, or nuclear weapon or device, or

"(b) explosive or firearm (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

"(VI) A threat, attempt, or conspiracy to do any of the foregoing.

"(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorist activity' means to commit, in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

"(I) The preparation or planning of a terrorist activity.

"(II) The gathering of information on potential targets for terrorist activity.

"(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit an act of terrorist activity.

"(IV) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization.

"(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorist activity.

"(C) FOREIGN POLICY.—

"(i) IN GENERAL.—An alien whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is excludable.

"(ii) EXCEPTION FOR OFFICIALS.—An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) solely because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States.

"(iii) EXCEPTION FOR OTHER ALIENS.—An alien, not described in clause (ii), shall not be excludable or subject to restrictions or conditions on entry into the United States under clause (i) because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest.

"(iv) NOTIFICATION OF DETERMINATIONS.—If a determination is made under clause (iii) with respect to an alien, the Secretary of State must notify on a timely basis the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and of the Committees on the Judiciary and Foreign Relations of the Senate of the identities of the alien and the reasons for the determination.

"(D) IMMIGRANT MEMBERSHIP IN TOTALITARIAN PARTY.—

"(i) IN GENERAL.—Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign is excludable.

"(ii) EXCEPTION FOR INVOLUNTARY MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

"(iii) EXCEPTION FOR PAST MEMBERSHIP.—Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General when applying for admission) that—

"(I) the membership or affiliation terminated at least—

"(a) 2 years before the date of such application, or

"(b) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date), and

"(II) the alien is not a threat to the security of the United States.

"(iv) EXCEPTION FOR CLOSE FAMILY MEMBERS.—The Attorney General may, in the Attorney General's discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the alien is not a threat to the security of the United States.

"(E) PARTICIPANTS IN NAZI PERSECUTIONS OR GENOCIDE.—

"(i) PARTICIPATION IN NAZI PERSECUTIONS.—Any alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

"(I) the Nazi government of Germany,

"(II) any government in any area occupied by the military forces of the Nazi government of Germany,

"(III) any government established with the assistance or cooperation of the Nazi government of Germany, or

"(IV) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion is excludable.

"(ii) PARTICIPATION IN GENOCIDE.—Any alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is excludable.

"(4) PUBLIC CHARGE.—Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is excludable.

"(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

"(A) LABOR CERTIFICATION.—

"(i) IN GENERAL.—Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is excludable, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—

"(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

"(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(ii) CERTAIN ALIENS SUBJECT TO SPECIAL RULE.—For purposes of clause (i)(I), an alien described in this clause is an alien who—

"(I) is a member of the teaching profession, or

"(II) has exceptional ability in the sciences or the arts.

"(B) UNQUALIFIED PHYSICIANS.—An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is excludable, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

"(C) APPLICATION OF GROUNDS.—The grounds for exclusion of aliens under subparagraphs (A) and (B) shall apply to preference immigrant aliens described in paragraph (3) or (6) of section 203(a) and to nonpreference immigrant aliens described in section 203(a)(7).

"(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

"(A) ALIENS PREVIOUSLY DEPORTED.—Any alien who has been excluded from admission and deported and who again seeks admission within one year of the date of such deportation is excludable, unless prior to the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory the Attorney General has consented to the alien's reapplying for admission.

"(B) CERTAIN ALIENS PREVIOUSLY REMOVED.—Any alien who—

"(i) has been arrested and deported,

"(ii) has fallen into distress and has been removed pursuant to this or any prior Act,

"(iii) has been removed as an alien enemy, or

"(iv) has been removed at Government expense in lieu of deportation pursuant to section 242(b),

and who seeks admission within 5 years of the date of such deportation or removal (or within 20 years in the case of an alien convicted of an aggravated felony) is excludable, unless before the date of the alien's embarkation or reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory the Attorney General has consented to the alien's applying or reapplying for admission.

"(C) MISREPRESENTATION.—

"(i) IN GENERAL.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit provided under this Act is excludable.

"(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (i).

"(D) STOWAWAYS.—Any alien who is a stowaway is excludable.

"(E) SMUGGLERS.—

"(i) IN GENERAL.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is excludable.

"(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(11).

"(F) SUBJECT OF CIVIL PENALTY.—An alien who is the subject of a final order for violation of section 274C is excludable.

"(7) DOCUMENTATION REQUIREMENTS.—

"(A) IMMIGRANTS.—

"(i) IN GENERAL.—Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission—

"(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a), or

"(II) whose visa has been issued without compliance with the provisions of section 203,

is excludable.

"(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (k).

"(B) NONIMMIGRANTS.—

"(i) IN GENERAL.—Any nonimmigrant who—

"(I) is not in possession of a passport valid for a minimum of six months from the date of the expiration of the initial period of the alien's admission or contemplated initial period of stay authorizing the alien to return to the country from which the alien came or to proceed to and enter some other country during such period, or

"(II) is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission,

is excludable.

"(ii) GENERAL WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (d)(4).

"(iii) GUAM VISA WAIVER.—For provision authorizing waiver of clause (i) in the case of visitors to Guam, see subsection (l).

"(iv) VISA WAIVER PILOT PROGRAM.—For authority to waive the requirement of clause (i) under a pilot program, see section 217.

"(8) INELIGIBLE FOR CITIZENSHIP.—

"(A) IN GENERAL.—Any immigrant who is permanently ineligible to citizenship is excludable.

"(B) DRAFT EVADERS.—Any alien who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is excludable, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

"(9) MISCELLANEOUS.—

"(A) PRACTICING POLYGAMISTS.—Any immigrant who is coming to the United States to practice polygamy is excludable.

"(B) GUARDIAN REQUIRED TO ACCOMPANY EXCLUDED ALIEN.—Any alien accompanying another alien ordered to be excluded and deported and certified to be helpless from sickness or mental or physical disability or infancy pursuant to section 237(e), whose protection or guardianship is required by the alien ordered excluded and deported, is excludable.

"(C) INTERNATIONAL CHILD ABDUCTION.—

"(i) IN GENERAL.—Except as provided in clause (ii), any alien who, after entry of a court order granting custody to a citizen of the United States of a child having a lawful claim to United States citizenship, detains, retains, or withholds custody of the child outside the United States from the United States citizen granted custody, is excludable

until the child is surrendered to such United States citizen.

"(ii) EXCEPTION.—Clause (i) shall not apply to an alien who is a national of a foreign state that is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction.".

(b) NOTICE OF GROUNDS FOR EXCLUSION.—Such section is amended by striking subsection (b) and inserting the following new subsection:

"(b) NOTICES OF DENIALS.—If an alien's application for a visa, for admission to the United States, or for adjustment of status is denied by an immigration or consular officer because the officer determines the alien to be excludable under subsection (a), the officer shall provide the alien with a timely written notice that—

"(1) states the determination, and

"(2) lists the specific provision or provisions of law under which the alien is excludable or ineligible for entry or adjustment of status.".

(c) REVIEW OF EXCLUSION LISTS.—The Attorney General and the Secretary of State shall develop protocols and guidelines for updating lookout books and the automated visa lookout system and similar mechanisms for the screening of aliens applying for visas for admission, or for admission, to the United States. Such protocols and guidelines shall be developed in a manner that ensures that in the case of an alien—

(1) whose name is in such system, and

(2) who either (A) applies for entry after the effective date of the amendments made by this section or (B) requests (in writing to a local consular office after such date) a review, without seeking admission, of the alien's continued excludability under the Immigration and Nationality Act,

if the alien is no longer excludable because of an amendment made by this section the alien's name shall be removed from such books and system and the alien shall be informed of such removal and if the alien continues to be excludable the alien shall be informed of such determination.

(d) CONFORMING AMENDMENTS TO SECTION 212.—

(1) Subsection (c) of section 212 (8 U.S.C. 1182) is amended by striking "paragraph (1) through (25) and paragraphs (30) and (31) of subsection (a)" and inserting "subsection (a) (other than subparagraphs (A), (B), (C), or (E) of paragraph (3))".

(2) Subsection (d) of such section is amended—

(A) by striking paragraphs (1), (2), (6), (9), and (10);

(B) in paragraph (3)—

(i) by striking "under one or more of the paragraphs enumerated in subsection (a) (other than paragraphs (27), (29), and (33))" and inserting "under subsection (a) (other than paragraphs (3)(A), (3)(C), and (3)(D) of such subsection)" each place it appears, and

(ii) by adding at the end the following new sentence: "The Attorney General shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of excludable aliens applying for temporary admission under this paragraph.";

(C) in paragraph (4), by striking "(26)" and inserting "(7)(B)(i)";

(D) in paragraph (7), by striking "of this section, except paragraphs (20), (21), and (26)," and inserting "(other than paragraph (7))";

(E) in paragraph (8), by striking "(26), (27), and (29)" and inserting "(3)(A), (3)(B), (3)(C), and (7)(B)"; and

(F) by adding at the end the following new paragraph:

"(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who is otherwise admissible to the United States as a returning resident under section 211(b) if the alien has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.".

(3) Subsection (g) of such section is amended to read as follows:

"(g) The Attorney General may waive the application of—

"(1) section (a)(1)(A)(i) in the case of any alien who—

"(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or

"(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa, or

"(2) subsection (a)(1)(A)(ii) in the case of any alien,

in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in his discretion after consultation with the Secretary of Health and Human Services, may by regulation prescribe.".

(4) Subsection (h) of such section is amended to read as follows:

"(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparay aph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or alien lawfully admitted for permanent residence if—

"(1) it is established to the satisfaction of the Attorney General that—

"(A) the alien is excludable only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is excludable occurred more than 15 years before the date of the alien's application for a visa, entry, or adjustment of status, and

"(B) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

"(C) the alien has been rehabilitated; and

"(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture.".

(5) Subsection (i) of such section is amended to read as follows:

"(i) The Attorney General may, in his discretion, waive application of clause (i) of subsection (a)(6)(C)—

"(1) in the case of an alien who is the spouse, parent, or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, or

"(2) if the fraud or misrepresentation occurred at least 10 years before the date of the alien's application for a visa, entry, or adjustment of status and it is established to the satisfaction of the Attorney General that the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States.".

(6) Subsection (k) of such section is amended by striking "paragraph (14), (20), or (21)" and inserting "paragraph (5)(A) or (7)(A)(i)".

(7) Subsection (l) of such section is amended by striking "paragraph (26)(B)" and inserting "paragraph (7)(B)(i)".

(e) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section and by section 4(a) of this Act shall apply to individuals entering the United States on or after June 1, 1991.

(2) The amendments made by paragraphs (5) and (13) of section 603(a) shall apply to applications for adjustment of status made on or after June 1, 1991.

SEC. 602. REVISION OF GROUNDS FOR DEPORTATION.

(a) REVISED GROUNDS FOR DEPORTATION.—Subsection (a) of section 241 (8 U.S.C. 1251) is amended to read as follows:

"(a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be deported if the alien is deportable as being within one or more of the following classes of aliens:

"(1) EXCLUDABLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS.—

"(A) EXCLUDABLE ALIENS.—Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens excludable by the law existing at such time is deportable.

"(B) ENTERED WITHOUT INSPECTION.—Any alien who entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or any other law of the United States is deportable.

"(C) VIOLATED NONIMMIGRANT STATUS OR CONDITION OF ENTRY.—

"(i) NONIMMIGRANT STATUS VIOLATORS.—Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status is deportable.

"(ii) VIOLATORS OF CONDITIONS OF ENTRY.—Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 212(a)(1)(B) is deportable.

"(D) TERMINATION OF CONDITIONAL PERMANENT RESIDENCE.—

"(i) IN GENERAL.—Any alien with permanent resident status on a conditional basis under section 216 (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 216A (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such section is deportable.

"(ii) EXCEPTION.—Clause (i) shall not apply in the cases described in section

216(c)(4) (relating to certain hardship waivers).

"(E) SMUGGLING.—

"(i) IN GENERAL.—Any alien who (prior to the date of entry, at the time of entry, or within 5 years of the date of entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

"(ii) WAIVER AUTHORIZED.—The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

"(F) FAILURE TO MAINTAIN EMPLOYMENT.—Any alien who obtains the status of an alien lawfully admitted for temporary residence under section 210A who fails to meet the requirement of section 210A(d)(5)(A) by the end of the applicable period is deportable.

"(G) MARRIAGE FRAUD.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(5)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if—

"(i) the alien obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such entry of the alien and which, within 2 years subsequent to any entry of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

"(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's entry as an immigrant.

"(H) WAIVER AUTHORIZED FOR CERTAIN MISREPRESENTATIONS.—The provisions of this paragraph relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens described in section 212(a)(6)(C)(i), whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (6) or (7)) who—

"(i) is the spouse, parent, or son or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

"(ii) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 212(a) which were a direct result of that fraud or misrepresentation.

A waiver of deportation for fraud or misrepresentation granted under this subparagraph shall also operate to waive deportation based on the grounds of inadmissibility at entry directly resulting from such fraud or misrepresentation.

"(2) CRIMINAL OFFENSES.—

"(A) GENERAL CRIMES.—

"(i) CRIMES OF MORAL TURPITUDE.—Any alien who—

"(I) is convicted of a crime involving moral turpitude committed within five years after the date of entry, and

"(II) either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer,

is deportable.

"(ii) MULTIPLE CRIMINAL CONVICTIONS.—Any alien who at any time after entry is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

"(iii) AGGRAVATED FELONY.—Any alien who is convicted of an aggravated felony at any time after entry is deportable.

"(iv) WAIVER AUTHORIZED.—Clauses (i), (ii), and (iii) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

"(B) CONTROLLED SUBSTANCES.—

"(i) CONVICTION.—Any alien who at any time after entry has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

"(ii) DRUG ABUSERS AND ADDICTS.—Any alien who is, or at any time after entry has been, a drug abuser or addict is deportable.

"(C) CERTAIN FIREARM OFFENSES.—Any alien who at any time after entry is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying in violation of any law, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) is deportable.

"(D) MISCELLANEOUS CRIMES.—Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy to violate—

"(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

"(ii) any offense under section 871 or 960 of title 18, United States Code;

"(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.); or

"(iv) a violation of section 215 or 278 of this Act,

is deportable.

"(3) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—

"(A) CHANGE OF ADDRESS.—An alien who has failed to comply with the provisions of section 265 is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

"(B) FAILURE TO REGISTER OR FALSIFICATION OF DOCUMENTS.—Any alien who at any time has been convicted—

"(i) under section 266(c) of this Act or under section 36(c) of the Alien Registration Act, 1940,

"(ii) of a violation of, or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

"(iii) of a violation of, or a conspiracy to violate, section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

"(4) SECURITY AND RELATED GROUNDS.—

"(A) IN GENERAL.—Any alien who has engaged, is engaged, or at any time after entry has engaged in—

"(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

"(ii) any other criminal activity which endangers public safety or national security, or

"(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

"(B) TERRORIST ACTIVITIES.—Any alien who has engaged, is engaged, or at any time after entry has engaged in any terrorist activity (as defined in section 212(a)(3)(B)(iii)), is deportable.

"(C) FOREIGN POLICY.—

"(i) IN GENERAL.—An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

"(ii) EXCEPTIONS.—The exceptions described in clauses (ii) and (iii) of section 212(a)(3)(C) shall apply to deportability under clause (i) in the same manner as they apply to excludability under section 212(a)(3)(C)(i).

"(D) ASSISTED IN NAZI PERSECUTION OR ENGAGED IN GENOCIDE.—Any alien described in clause (i) or (ii) of section 212(a)(E) is deportable.

"(5) PUBLIC CHARGE.—Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.".

(b) CONFORMING AMENDMENTS TO SECTION 241.—

(1) Subsections (b), (c), (f), and (g) of section 241 are repealed.

(2) Subsection (e) of such section is amended—

(A) by striking "subsection (a) (6) or (7) of this section" and inserting "paragraph (4) of subsection (a)", and

(B) by redesignating such subsection as subsection (b).

(c) SAVINGS PROVISION.—Notwithstanding the amendments made by this section, any alien who was deportable because of a conviction (before the date of the enactment of this Act) of an offense referred to in paragraph (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act, shall be considered to remain so deportable. Except as otherwise specifically provided in such section and subsection (d), the provisions of such section, as amended by this section, shall apply to all aliens described in subsection (a) thereof notwithstanding that (1) any such alien entered the United States before the date of the enactment of this Act, or (2) the facts, by reason of which an alien is described in such subsection, occurred before the date of the enactment of this Act.

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(d) EFFECTIVE DATE.—The amendments made by this section, and by section 603(b) of this Act, shall not apply to deportation proceedings for which notice has been provided to the alien before March 1, 1991.

SEC. 603. CONFORMING AMENDMENTS.

(a) RELATING TO GROUNDS FOR EXCLUSION.—

(1) Section 101 (8 U.S.C. 1101) is amended—

(A) in subsection (f)(3), by striking "paragraphs (11), (12), and (31)" and inserting "paragraphs (2)(D), (6)(E), and (9)(A)",

(B) in subsection (f)(3), by striking "paragraphs (9) and (10) of section 212(a) and paragraph (23)" and inserting "subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof", and

(C) in subsection (h), by striking "212(a)(34)" and inserting "212(a)(2)(E)".

(2) Section 102 (8 U.S.C. 1102) is amended—

(A) by striking "(27)" in paragraphs (1) and (2) and inserting "(3) (other than subparagraph (E))", and

(B) by striking "paragraphs (27) and (29)" in paragraph (3) and inserting "paragraph (3) (other than subparagraph (E))".

(3) Section 203(a)(7) (8 U.S.C. 1153(a)(7)) is amended by striking "section 212(a)(14)" and inserting "section 212(a)(5)".

(4) Sections 207(c)(3) and 209(c) (8 U.S.C. 1157(c)(3), 1159(c)) are each amended—

(A) by striking "(14), (15), (20), (21), (25), and (32)" and inserting "(4), (5), and (7)(A)", and

(B) by striking "(other than paragraph" and all that follows through "narcotics)" and inserting "(other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3))".

(5) Section 210 (8 U.S.C. 1160) is amended—

(A) in subsection (a)(3)(B)(i), by striking "212(a)(19)" and inserting "212(a)(6)(C)(i)",

(B) in subsection (c)(2)(A), by striking "(14), (20), (21), (25), and (32)" and inserting "(5) and (7)(A)",

(C) in subsection (c)(2)(B)(ii)(I), by striking "Paragraph (9) and (10)" and inserting "Paragraphs (2)(A) and (2)(B)",

(D) in subsection (c)(2)(B)(ii)(II), by striking "(15)" and inserting "(4)",

(E) in subsection (c)(2)(B)(ii)(III), by striking "(23)" and inserting "(2)(C)",

(F) in subsection (c)(2)(B)(ii)(IV), by striking "Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations)" and inserting "Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof",

(G) in subsection (c)(2)(B)(ii), by striking subclause (V), and

(H) in subsection (c)(2)(C), by striking "212(a)(15)" and inserting "212(a)(4)".

(6) Section 210A(e) (8 U.S.C. 1161(e)) is amended—

(A) in paragraph (1), by striking "(14), (20), (21), (25), and (32)" and inserting "(5) and (7)(A)",

(B) in paragraph (2)(B)(i), by striking "Paragraphs (9) and (10)" and inserting "Paragraphs (2)(A) and (2)(B)",

(C) in paragraph (2)(B)(ii), by striking "(23)" and inserting "(2)(C) ",

(D) in paragraph (2)(B)(iii), by striking "(27), (28), and (29) (relating to national security and members of certain organizations)" and inserting "and (3) (relating to security grounds), other than subparagraph (E) thereof",

(E) in paragraph (2)(B)(iv), by striking "(33)" and inserting "(3)(D)", and

(F) in paragraph (2)(C), by striking "212(a)(15)" and inserting "212(a)(4)".

(7) Section 211(b) (8 U.S.C. 1181(b)) is amended by striking "212(a)(20)" and inserting "212(a)(7)(A)".

(8) Section 213 (8 U.S.C. 1183) is amended—

(A) by striking "(7) or (15)" and inserting "(4)", and

(B) by inserting before the period at the end the following: ", irrespective of whether a demand for payment of public expenses has been made".

(9) Section 221(g) (8 U.S.C. 1201(g)) is amended by striking "212(a)(7), or section 212(a)(15)" and inserting "212(a)(4)".

(10) Section 234 (8 U.S.C. 1224) is amended by striking "paragraphs (1), (2), (3), (4), or (5)" and inserting "paragraph (1)" each place it appears.

(11) Section 235 (8 U.S.C 1225) is amended by striking "paragraph (27), (28), or (29) of section 212(a)" and inserting "subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3)".

(12) Section 236(d) (8 U.S.C. 1226(d)) is amended—

(A) by striking "is afflicted with a disease" and all that follows through "of section 212(a)" and inserting "has a disease, illness, or addiction which would make the alien excludable under paragraph (1) of section 212(a)", and

(B) by striking the last sentence.

(13) Section 245A(d)(2) (8 U.S.C. 1255a(d)(2)) is amended—

(A) in subparagraph (A), by striking "(14), (20), (21), (25), and (32)" and inserting "(5) and (7)(A)",

(B) in subparagraph (B)(ii)(I), by striking "Paragraphs (9) and (10)" and inserting "Paragraphs (2)(A) and (2)(B)",

(C) in subparagraph (B)(ii)(II), by striking "(15)" and inserting "(4)",

(D) in subparagraph (B)(ii)(III), by striking "(23)" and inserting "(2)(C)",

(E) in subparagraph (B)(ii)(IV), by striking "(27), (28), and (29) (relating to national security and members of certain organizations)" and inserting "(3) (relating to security and related grounds), other than subparagraph (E) thereof",

(F) in subparagraph (B)(ii), by striking subclause (V),

(G) in subparagraph (B)(ii), by striking "212(a)(15)" and inserting "212(a)(4)", and

(H) in subparagraph (B)(iii), by striking "212(a)(15)" and inserting "212(a)(4)".

(14) Section 249 (8 U.S.C. 1259) is amended by striking "212(a)(33)" and inserting "212(a)(3)(E)".

(15) Section 272 (8 U.S.C. 1322)—

(A) in subsection (a)—

(i) by striking "(1) mentally retarded" and all that follows through "(6) a narcotic drug addict" and inserting "excludable under section 212(a)(1)", and

(ii) by striking "such disease or disability" and inserting "the excluding condition";

(B) by striking subsection (b);

(C) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(D) by striking "DISABILITY OR AFFLICTED WITH DISEASE" in the heading and inserting "EXCLUSION ON A HEALTH-RELATED GROUND".

(16) Section 277 (8 U.S.C. 1327) is amended by striking "212(a)(9)" and all that follows through "(29)" and inserting "212(a)(2) (insofar as an alien excludable under such section has been convicted of an aggravated felony) or 212(a)(3) (other than subparagraph (E) thereof)".

(17) The item in the table of contents relating to section 272 is amended to read as follows:

"Sec. 272. Bringing in aliens subject to exclusion on a health-related ground.".

(18) Section 21 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2691) is repealed.

(19) Section 14 of Public Law 99-396 is repealed.

(20) Section 584(a)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202) is amended—

(A) by striking "(14), (15), (20), (21), (25), and (32)" and inserting "(4), (5), and (7)(A)", and

(B) by striking "(other than paragraph" and all that follows through "narcotics)" and inserting "(other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (D) of paragraph (3))".

(21) Section 901 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) is repealed.

(22) Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101-167) is amended by striking "(14), (15), (20), (21), (25), (28) (other than subparagraph (F)), and (32)" and inserting "(4), (5), and (7)(A)".

(23) Section 301(a)(1) of this Act is amended by striking "on a ground specified" and all that follows through "of such Act)" and inserting "on a ground specified in paragraph (1)(A), (1)(B), (1)(C), (3)(A), of section 241(a) of the Immigration and Nationality Act (other than so much of section 241(a)(1)(A) of such Act as relates to a ground of exclusion described in paragraph (2) or (3) of section 212(a) of such Act)".

(24) Section 244A(c)(2)(A), as inserted by section 302 of this Act, is amended—

(A) in clause (i), by striking "(14), (20), (21), (25), and (32)" and inserting "(5) and (7)(A)";

(B) in clause (iii)(I), by striking "Paragraphs (9) and (10)" and inserting "Paragraphs (2)(A) and (2)(B)";

(C) in clause (iii)(II), by striking "(23)" and inserting "(2)(C)" and by adding "or" at the end;

(D) in clause (iii)(III), by striking "(27) and (29) (relating to national security)" and inserting "(3) (relating to security and related grounds)" and by striking "; or" at the end and inserting a period; and

(E) by striking subclause (IV) of clause (iii).

(b) RELATING TO GROUNDS FOR DEPORTATION.—

(1) Section 210A(d)(5)(A) (8 U.S.C. 1161(d)(5)(A)) is amended by striking "241(a)(20)" and inserting "241(a)(1)(F)".

(2) Section 242 (8 U.S.C. 1252) is amended—

(A) in subsection (b), by striking "(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)" and inserting "(2), (3), or (4)", and

(B) in subsection (e), by striking "paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)" and inserting "paragraph (2), (3), or (4)".

(3) Sections 243(h)(1) and 244(a) (8 U.S.C. 1253(h)(1), 1254(a)) are each amended by striking "241(a)(19)" and inserting "241(a)(4)(D)".

(4) Section 244 (8 U.S.C. 1254) is amended—

(A) in subsection (a)(2), by striking "paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18)" and inserting "paragraph (2), (3), or (4)", and

(B) in subsection (e)(1), by striking "(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)" in paragraph (2) and inserting "(2), (3), or (4)".

(5) Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) is amended—

(A) by striking "paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a)" in paragraph (1) and inserting "under section 241(a) (other than under paragraph (1)(C) or (1)(E) thereof)", and

(B) by striking "enumerated in paragraph (1) in this subsection" in paragraph (2) and inserting "(other than under paragraph (1)(C) or (1)(E) thereof)".

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. BATTERED SPOUSE OR CHILD WAIVER OF THE CONDITIONAL RESIDENCE REQUIREMENT.

(a) IN GENERAL.—Section 216(c)(4) (8 U.S.C. 1186a(c)(4)) is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) in subparagraph (B), by striking "by the alien spouse for good cause";

(3) in subparagraph (B), by striking the period at the end and inserting ", or";

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1).";" and

(5) by adding at the end the following: "The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to marriages entered into before, on, or after the date of the enactment of this Act.

SEC. 702. BONA FIDE MARRIAGE EXCEPTION TO FOREIGN RESIDENCE REQUIREMENT FOR MARRIAGES ENTERED INTO DURING CERTAIN IMMIGRATION PROCEEDINGS.

(a) IN GENERAL.—Section 245(e) (8 U.S.C. 1255(e)) is amended—

(1) in paragraph (1), by striking "An alien" and inserting "Except as provided in paragraph (3), an alien", and

(2) by adding at the end the following new paragraph:

"(3) Paragraph (1) and section 204(h) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's entry as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.".

(b) CONFORMING AMENDMENT—Section 204(h) (8 U.S.C. 1154(h)) is amended by inserting "except as provided in section 245(e)(3)," after "Notwithstanding subsection (a),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to marriages entered into before, on, or after the date of the enactment of this Act.

SEC. 703. 1-YEAR EXTENSION OF DEADLINE FOR FILING APPLICATIONS FOR ADJUSTMENT FROM TEMPORARY TO PERMANENT RESIDENCE FOR LEGALIZED ALIENS.

(a) IN GENERAL.—Section 245A(b) (8 U.S.C. 1255a(b)) is amended—

(1) in paragraph (1)(A), by striking "one-year period" and inserting "2-year period", and

(2) in paragraph (2)(C), by striking "thirty-first" and inserting "43rd".

(b) LATE FEE.—Section 245A(c)(7)(A) (8 U.S.C. 1255a(c)(7)(A)) is amended by adding at the end the following: "The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) after the end of the first year of the 2-year period described in subsection (b)(1)(A).".

SEC. 704. COMMISSION ON AGRICULTURAL WORKERS.

(a) 1-YEAR EXTENSION.—Section 304 of the Immigration Reform and Control Act of 1986 (Public Law 99-603) is amended—

(1) in subsection (c), by striking "five" and inserting "six", and

(2) in subsection (i), by striking "63" and inserting "75".

(b) STAFF.—Subsection (f) of such section is amended by striking "competitive service" and inserting "and compensation and other conditions of service in the civil service".

SEC. 705. IMMIGRATION EMERGENCY FUND.

(a) IN GENERAL.—Section 404(b) (8 U.S.C. 1101 note) is amended—

(1) by inserting "(1)" after "(b)",

(2) by inserting "(for fiscal year 1991 and any subsequent fiscal year)" after "appropriated",

(3) by striking "$35,000,000" and inserting "an amount sufficient to provide for a balance of $35,000,000 in such fund",

(4) by inserting "to carry out paragraph (2) and" after "to be used", and

(5) by adding at the end the following new paragraph:

"(2)(A) Funds which are authorized to be appropriated by paragraph (1), subject to the dollar limitation contained in subparagraph (B), shall be available, by application for the reimbursement of States and localities providing assistance as required by the Attorney General, to States and localities whenever—

"(i) a district director of the Service certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter,

"(ii) the lives, property, safety, or welfare of the residents of a State or locality are endangered, or

"(iii) in any other circumstances as determined by the Attorney General.

"(B) Not more than $20,000,000 shall be made available for all localities under this paragraph.

"(C) For purposes of subparagraph (A), the requirement of paragraph (1) that an immigration emergency be determined shall not apply.

"(D) A decision with respect to an application for reimbursement under subparagraph (A) shall be made by the Attorney General within 15 days after the date of receipt of the application.".

(b) EFFECTIVE DATE.—Section 404(b)(2)(A)(i) of the Immigration and Nationality Act, as added by the amendment made by subsection (a)(5), shall apply with respect to increases in the number of asylum applications filed in a calendar quarter beginning on or after January 1, 1989. The Attorney General may not spend any amounts from the immigration emergency fund pursuant to the amendments made by subsection (a) before October 1, 1991.

TITLE VIII—EDUCATION AND TRAINING

SEC. 801. EDUCATIONAL ASSISTANCE AND TRAINING.

(a) USE OF FUND.—The Secretary of Labor shall provide for grants to States to provide educational assistance and training for United States workers. The Secretary shall consult with the Secretary of Education in making grants under this section.

(b) ALLOCATION OF FUNDS.—Within the purposes described in subsection (a), funds in the account used under this section shall be allocated among the States based on a formula, established jointly by the Secretaries of Labor and Education, that takes into consideration—

(1) the location of foreign workers admitted into the United States,

(2) the location of individuals in the United States requiring and desiring the educational assistance and training for which the funds can be applied, and

(3) the location of unemployed and underemployed United States workers.

(c) DISBURSEMENT TO STATES.—

(1) Within the purposes and allocations established under this section, disbursements shall be made to the States, in accordance with grant applications submitted to and approved jointly by the Secretaries of Labor and Education, to be applied in a manner consistent with the guidelines established by such Secretaries in consultation with the States. In applying such grants, the States shall consider providing funding to joint labor-management trust funds and other such non-profit organizations which have demonstrated capability and experience in directly training and educating workers.

(2) Not more than 5 percent of the funds disbursed to any State under this section may be used for administrative expenses.

(d) LIMITATION ON FEDERAL OVERHEAD.—The Secretaries shall provide that not more than 2 percent of the amount of funds disbursed to States under this section may be used by the Federal Government in the administration of this section.

(e) ANNUAL REPORT.—The Secretary of Labor shall report annually to the Congress on the grants to States provided under this section.

(f) STATE DEFINED.—In this section, the term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference.

JACK BROOKS,
BRUCE A. MORRISON,
BARNEY FRANKS,
CHARLES E. SCHUMER,
HOWARD L. BERMAN,
R.L. MAZZOLI,
HAMILTON FISH,
LAMAR SMITH,
BILL MCCOLLUM.

From the Committee on Education and Labor, for consideration of Section 113 and

title V of the Senate Bill, and sections 103, 104, 106, 112-113, 311-312, 314(e), and 315 of the House amendment, and modifications committed to conference:

WILLIAM D. FORD,
GEORGE MILLER,
TOM SAWYER.

From the Committee on Ways and Means, for consideration of section 110 of the Senate bill, and modification committed to conference:

DAN ROSTENKOWSKI,
PETE STARKS,
ANDREW JACOBS, Jr.,
BILL ARCHER,
GUY VANDER JAGT.

From the Committee on Post Office and Civil Service, for consideration of title IV of the Senate bill, and modification committed to conference:

WILLIAM D. FORD,
TOM SAWYER,
BEN GILMAN,
JOHN J. MOAKELY.

Mr. Moakley is appointed as a conferee for consideration of section 324 of the House amendment, and modification committed to conference.

Managers on the Part of the House.

EDWARD M. KENNEDY,
PAUL SIMON,
AL SIMPSON,
STROM THURMOND.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

WORLDWIDE LEVEL OF IMMIGRATION

The Senate bill set a worldwide level of 630,000 immigrant visas annually, exclusive of refugees and legalized aliens. While no numerical limit was set for the immediate relatives of U.S. citizens, the number admitted was to be subtracted from the visas available for family connection preference immigrants, except that family preference visas could not fall below 216,000.

The House amendment did not set a worldwide level of immigration or otherwise link numerically exempt immediate relatives of U.S. citizens to numerically limited visas. Exclusive of refugees, legalized aliens, and aliens to be admitted under various temporary programs, it provided for the admission of approximately 775,000 immigrants a year.

The Conference substitute provides a worldwide level of immigration of 700,000 for FY 1992 through FY 1994. Thereafter the level shall be 675,000. The number of immediate relatives admitted is to be subtracted from family preference visas and visas made available specifically for family members of legalized aliens, during FY 1992 through FY 1994) except that family preference visas shall not fall below 226,000.

ANNUAL PER-COUNTRY IMMIGRATION LEVELS

The Senate bill provided that no country could use more than 7 percent of the family connection visas, reduced by the number of immediate relatives but not to fall below 3.5 percent; and no more than 7 percent of the independent visas; and that dependent areas could not use more than 2 percent of each category.

The House amendment generally retained current law, limiting independent countries to 20,000 visas and dependent areas to 5,000 visas.

The Conference substitute provides that visas made available to natives of any single foreign state may not exceed 7% (2% for dependent areas) of the total of family preference and employment based visas. (At the level of the 226,000 floor, the per country ceiling would be 25,620).

FAMILY-SPONSORED PREFERENCE IMMIGRANTS

Both the House and Senate bill established two-track preference systems for family and independent employment-based immigrants. The House and Senate family preference categories and visa numbers are shown in Table 1. The Senate numbers are based on the subtraction of the number of immediate relatives of U.S. citizens—currently 220,000—from the overall family level of 480,000 set by the Senate bill. The House amendment did not set a comparable level.

Category	Senate	House
Unmarried adult children of citizens	23,400	55,500
Spouses and unmarried children under 26 of immigrants (Senate); unmarried adult children of immigrants (House)	148,200	35,150
Married children of citizens	23,400	29,600
Brothers and sisters of adult citizens	65,000	64,750
Total	[1] 260,000	[2] 185,000

[1] Not to fall below 216,000.
[2] Including 115,000 for spouses and unmarried children of immigrants, who have been removed from the preference system, the total would be 300,000.

The Conference substitute provides that the number of visas made available for family immigration for FY 1992 through FY 1994 is 520,000 including 55,000 specifically earmarked for the spouses and children of aliens legalized under IRCA. The number of family preference visas is reduced each fiscal year by the number of immediate relative visas issued in the previous fiscal year, subject to a floor of 226,000 commencing in FY 1992. In any fiscal year if the family preference number is 226,000 or above, any additional visas are allocated to the second preference. In fiscal years 1992 through 1994 if the immediate relatives exceed 220,000, the second preference category would be reduced to 114,200 and any additional reduction will be taken from the 55,000 slots available to the spouses and children of legalized aliens. In the years commencing with FY 1995, family sponsored immigrants will be limited to 480,000.

The second preference is divided between 2a (spouses/minor children) and 2b (adult children). Not less than 77% of the second preference visas numbers are allocated to 2a. Seventy-five percent of 2a is not subject to per country ceiling. When the floor is reached, the following numbers apply: adult children of citizens—23,400; spouses and minor children of permanent resident aliens—114,200; married children of citizens—23,400; brothers and sisters of citizens—65,000.

TRANSITION FOR SPOUSES AND MINOR CHILDREN OF LEGALIZED ALIENS

The House amendment provided 50,000 visas annually for second and fifth preference backlog reduction for fiscal years 1991 through 1995.

The Senate bill had no comparable provision.

The Conference substitute has no provision for backlog reduction other than the 55,000 visas for each of the three years FY 1992-95 for specific use by spouses and children of aliens legalized by the 1986 legalization program.

EMPLOYMENT-BASED IMMIGRANTS

The Senate bill allocated 150,000 employment-based visas annually, as follows: (1) special immigrants, 4,050, (2) medical personnel for rural areas, 4,950, (3) members of the professions with advanced degrees or of exceptional ability, 40,200, (3) skilled workers, 40,200, (4) employment creation investors, 6,750, and (5) selected immigrants, 53,850 plus any unused independent numbers, to be distributed according to a point system.

The comparable House number for employment-based immigrants was 187,500, based on 75,000 principals. The House amendment allocated 65,000 employment-based visas during FY1991-96 and 75,000 thereafter (not including numerically exempt derivative spouses and children), as follows: (1) aliens with extraordinary ability, (2) outstanding professors and researchers, (3) certain multinational executives, (4) aliens with business expertise, 2,000, and (5) shortage workers.

The Conference substitute provides (1) 40,000 visas for priority workers (extraordinary ability, managers & university professors); (2) 40,000 for exceptional ability and advanced degrees or the equivalent; (3) 40,000 visas for skilled and unskilled workers with 10,000 limit for unskilled; (4) 10,000 for investors; and (5) 10,000 special immigrants. The conferees intend that the equivalent of an advanced degree be defined to mean a bachelor's degree plus at least five years' experience in the particular profession. In considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelors degree with at least five years progressive experience in the professions.

CHANGES IN LABOR CERTIFICATION PROCESS

The House amendment provided an option for an employer who imported foreign workers to use either the current labor certification process or a streamlined attestation process. The Senate bill revised current labor certification procedures.

The Conference substitute adopts the Senate labor certification process for category (2) and (3) workers with certain additions concerning job offer notices and the right of interested parties to submit evidence relating to the application for labor certification. It creates a modified attestation process for H-1B "specialty occupation" nonimmigrants.

The notice provisions in the Conference report provide that when a labor certification is filed, the employer must notify the

bargaining representative (if any) of the employer in the occupational classification in the area. This means that, for example, if an employer has three sites situated in a particular area (as defined by the Department of Labor), the employer is required to notify the bargaining representative at each of its locations. However, if there is no bargaining representative in the area representing the particular occupational classification, the employer is required only to post the notice at the facility in conspicuous locations.

With respect to the post-entry attestation required H-1B visa petitioners, the prevailing wage to which an employer must attest is expected to be interpreted by the Department of Labor in a like manner as regulations currently guiding section 212(a)(14).

DIVERSITY IMMIGRANTS

The Senate bill provided approximately 54,000 visas annually under a point system with the following skills recognized: age, education, occupational demand, occupational training and work experience, and prearranged employment.

The House amendment established a separate diversity immigrant track providing 55,000 diversity immigrant visas annually beginning in fiscal year 1994 to natives of foreign states from which immigration was lower than 50,000 during the preceding 5 years.

The Conference substitute adopts the House provision with a change to reflect specific eligibility criteria: a high school degree or its equivalent or two year's experience in an occupation that requires at least two years of experience or training.

DIVERSITY TRANSITION

The House amendment provided 55,000 transition visas annually during fiscal years 1991 through 1993 for Eastern European displaced aliens, African immigrants, and natives of certain foreign states adversely affected by immigration quota changes enacted in 1965.

The Senate bill had no comparable provisions.

The Conference substitute adopts a modified House approach by providing 40,000 visas for each of three years to natives of adversely affected countries beginning in fiscal year 1992. In order to apply for a visa, a firm offer of employment by a U.S. employer must accompany the application. In addition, at least 40% of these visas must go to natives of the country that received the most visas under Section 314 of the Immigration Reform and Control Act of 1986. It is the intent of the Conferees that applicants may file within the United States and from an address within the United States. The Conferees expect that the application period that will commence each year, shall be for a limited period of time, and applications will be provided in advance of the availability of the visas.

NP-5 VISA NOTIFICATIONS

The House amendment provided visas for qualified applicants of the NP-5 program (natives of countries adversely affected by the 1965 Act) who had been notified by the Secretary of State before May 1, 1990 of their selection for a visa, but for whom visas were not available.

The Senate bill had no comparable provision.

The Conference substitute adopts the House provision. It is the intention of the Conferees that this provision include those immigrants who were nationals of an adversely affected country by virtue of birth or naturalization in the adversely affected country but who cannot be considered to be natives of that country due to the fact that they were either not born in that country or were born in that country but due to changes in national borders, the place of birth is now within the borders of a different country.

COMMISSION ON LEGAL IMMIGRATION REFORM

The Senate bill created a nine-member Commission on Legal Immigration Reform, to be appointed by the President and the Congress. It was charged with evaluating the Act and submitting a final report on findings and recommendations on legal immigration by February 1, 1994.

The House amendment had no comparable provision.

The Conference substitute adopts the Senate provision with minor changes regarding the appointment of Commissioners and the mandate of the Commission. The Commission should also review possible projections on labor shortages including such factors as the intensity and duration, supply and demand workers, industrial and geographic shortages, wages if decreased 20%, and the need for positive recruitment.

HONG KONG

Both the Senate bill and House amendment included provisions increasing Hong Kong's annual numerical limit from 5,000. The Senate bill, as part of its revision of the per-country limits, increased it to more than 10,000.

The House amendment increased Hong Kong's limit to 20,000, and extended the period of visa validity to January 1, 2002. It also made approximately 35,000 visas available to employees of U.S. businesses in Hong Kong and their family members.

The Conference substitute adopts the House provisions with several changes. First, Hong Kong is considered a foreign state for purposes of the per country ceilings, except in the first three years the per country level is 10,000. The Conferees wish to make it clear that Hong Kong shall continue to be treated as a foreign state after 1997. Second, the number of immigrant visas made available to employees of U.S. businesses is 12,000 for each of three years. In addition, the Conference Report provides special immigrant visas for Foreign Service Nationals at the United States Consulate in Hong Kong who have rendered faithful service for a period of three years or more.

The uncertain status of Foreign Service National Employees in Hong Kong after that colony's transfer to the People's Republic of China is of concern to the conferees. Consequently, this section expands the Department of State's statutory special immigrant authority, extending this status to Foreign Service National Employees and their families if the employee had at least three years' service and the principal officer found that the employees' welfare was clearly threatened as a result of this or her association with the U.S. Government.

LEBANON

The House amendment made 1,000 visas available annually during fiscal years 1991 through 1995 for nationals of Lebanon awaiting second and fifth preference visas.

The Senate bill had no comparable provision.

The Conference substitute provides for expedited issuance of Lebanese second and fifth preference visas.

VISA WAIVER PILOT PROGRAM

The House amendment revised the visa waiver pilot program created by the Immigration Reform and Control Act of 1986 and extended it through fiscal year 1994.

The Senate bill had no comparable provision.

The Conference substitute adopts the House provision with an amendment to require a report by INS on visa overstays.

The Department of State has obtained considerable personnel savings from the Non-Immigrant Visa Waiver Pilot Program. Extension and expansion of this program will permit the continued use of staff resources for other high priority consular services. Given the increased consular workloads caused by implementation of this act, the conferees believe that personnel savings made available from pilot program shall be made available for reprogramming exclusively within the consular function. The Department should report to the Congress at the conclusion of the pilot program both the nature and the specific disposition of resource savings realized from the program.

LONGSHORE WORK (D NONIMMIGRANTS)

The House amendment extended the application of employer sanctions to longshore work, with an exception relating to liquid bulk dangerous cargo.

The Senate bill had no comparable provision.

The Conference substitute amends the statutory definition of "normal operation and service on board a vessel" by alien crewmen to exclude longshore work, as defined, with certain exceptions. This section affects only 8 U.S.C. 1101(a)(15)(D)(i). It does not affect labor-management relations, and it does not authorize the Attorney General or the Secretary of State to take any action which would supersede or abrogate any U.S. collective bargaining agreement or any other law or agreement.

The section provides three exceptions to its definition of longshore work: for cargo regulated by the Secretary for safety purposes and environmental protection; for well-established prevailing practices of using alien crewmen to perform particular longshore activities in particular ports; and for international reciprocity between the United States and countries that do not prohibit crewmen from performing particular longshore activities aboard U.S. vessels in their respective ports.

The exception for prevailing practices is largely restricted to the provisions of local individual collective bargaining agreements covering at least 30 percent of the local U.S. longshore workforce. Where no agreement covering this percentage exists in a port, and where a prevailing practice has long been accepted by all local interests concerned, attestations of that practice may be filed.

The exception for reciprocity requires a foreign vessel to be registered in a country, and owned by nationals of a country, each of which does not prohibit by law, regulation, or general practice crewmen from performing longshore activities aboard U.S. vessels in its ports. In the case of multiple owners of a foreign vessel, a majority of the ownership interest in the vessel must be held by nationals of a country or countries meeting this statutory test. The provision would require the Secretary of State to survey foreign laws and practices annually and to compile and, after notice and comment, to compile and maintain a list by particular activity of countries where performance of such a particular activity of longshore work is prohibited by law, regulation, or in practice.

The Committee recognizes that the amendment to Chapter 6 of Title II of the Immigration and Nationality Act defines the loading and unloading of cargo in the United States. The Committee would like to clarify that the amendments made to this section will not expand longshoreman duties which are currently performed on passenger vessels engaged in foreign commerce. Where longshore labor is currently employed to load ship stores or load or discharge baggage, it is not intended that the duties performed by these workers will be expanded, unless so agreed to under collective bargaining, to include on-board loading or unloading activities which have not in the past been performed by longshore workers. With regard to the reciprocity provisions of this section, the conferees intend that Congress review this matter should the number of American citizen crewmen decline precipitously in the future.

TREATY TRADERS (E NONIMMIGRANTS)

The House amendment expanded the availability of the E visa to include trade in services and technology.

The Senate bill had no comparable provision.

The Conference substitute adopts the House provision.

TEMPORARY WORKERS AND TRAINEES (H NONIMMIGRANTS)

The House amendment applied annual admission caps to H-1(b) specialty occupation workers (25,000) and H-2(b) temporary workers (66,000). It also restricted H-3 trainees to programs not available in their native countries.

The Senate bill had no comparable provisions.

The Conference substitute provides 65,000 for specialty occupations and 66,000 for nonagricultural H-2 temporary workers. It also limits H-3's to activities not primarily for productive employment. It is noted that the bill provides timeframes for H's and L's and that in considering current 6th year extensions of the H and L visas, the Immigration and Naturalization Service should view such extensions as a means of transition. The Conferees therefore encourage favorable disposition of sixth year requests. In establishing a cap on nonimmigrant visas, the Conferees suggest continuous monitoring of all admissions.

AU PAIR CULTURAL EXCHANGE PROGRAM (J NONIMMIGRANTS)

The House amendment set up requirements for an au pair (child care) cultural exchange program to be administered primarily by the Secretary of Labor.

The Senate bill had no comparable provision.

The Conference substitute adopts the Senate position, thereby deleting the provision.

INTRACOMPANY TRANSFEREES (L NONIMMIGRANTS)

The House amendment provided for streamlined processing of intracompany transferee visas.

The Senate bill had no comparable provision.

The Conference adopts the House position. It is the intent of the managers that the "L" nonimmigrant program including international accounting firms be applied so as to include consulting services rendered by employees of such worldwide accounting organizations. This provision is to be limited exclusively to such entities which practice as part of an international accounting organization and is not to be applied to consulting and managerial service entities not so structured or related.

NEW NONIMMIGRANT VISA CATEGORIES

The House amendment established four new nonimmigrant visa categories, as follows: "O" aliens with extraordinary ability and accompanying aliens; "P" athletes and entertainers (9,000); "Q" international and cultural exchange program aliens; and "R" aliens in religious occupations.

The Senate bill had no comparable provisions.

The Conference substitute provides a cap of 25,000 on P visas and sunsets new religious visas in 3 years.

FAMILY UNITY

Both the House and Senate measures provided for a stay of deportation and the granting of work authorization for the spouses and children of legalized aliens until they are eligible for immigrant status. The Senate bill set a November 6, 1986, eligibility cut-off date for the spouses and children, and required that principal aliens be granted permanent status before petitioning.

The House amendment required residence as of January 1, 1990 and that, before petitioning, the principal alien must be granted permanent resident status and complete a declaration of intention to become a U.S. citizen. Application for naturalization within 6 months of notice of eligibility was also required.

The Conference substitute provides for a cutoff date of May 5, 1988 and the conferees intend that the family relationship be entered into before such date.

TEMPORARY PROTECTED STATUS AND PERMANENT RESIDENCE FOR CERTAIN CHINESE NATIONALS

The Senate bill provided for a temporary legal status and work authorization for Chinese students currently in the U.S., and provided for their legalization beginning in 1993 unless the President determined that conditions permit their safe return.

The House amendment created a new "temporary protected status" with work authorization for aliens in the U.S. who are nationals of countries subject to armed conflict, natural disaster, or other extraordinary and temporary conditions. It specified that certain nationals of El Salvador, Lebanon, Liberia, and Kuwait be granted temporary protected status for three years. The Senate bill contained no comparable provision.

The Conference substitute provides for the establishment of the House's temporary protected status program, but requires the Attorney General to provide such status only to Salvadorans and only for a period of 18 months. Specific rules apply to the program for Salvadorans. The Conferees strongly urge the Attorney General to consider favorably the granting of temporary protected status to nationals of Kuwait, Lebanon and Liberia. The Conferees underscore that the mandatory conferral of such status on Salvadorans for 18 months shall not be interpreted as preventing the Attorney General, in his sole discretion, of providing additional periods of protection should circumstances in the future so warrant.

The Conferees intend that the Executive Order barring the return of Chinese nationals shall remain in effect as the President has indicated until 1994.

The Conferees intend that the Attorney General shall consider administratively simple procedures for the registration of Salvadoran nationals.

RECRUITERS AND REFERRERS

The House amendment eliminated employment verification paperwork requirements for recruiters or referrers of would-be employees.

The Senate bill had no comparable provision.

The Conference substitute adopts the House provision.

LEGALIZATION APPLICANTS

The House amendment provided a one-year extension in the deadline for filing applications for adjustment from temporary to permanent residence for legalized aliens.

The Senate bill had no comparable provision.

The Conference substitute adopts the House provision with an amendment regarding late-filing fees.

BATTERED SPOUSE OR CHILD WAIVER

The House amendment permitted a waiver of the conditional basis of the alien's permanent resident status if the alien was batterred by the spouse or parent.

The Senate bill had no comparable provision.

The Conference substitute adopts the House provision.

BONA FIDE MARRIAGE EXCEPTION

The House amendment provided a "bona fide marriage" exception to the foreign residence requirement for marriages entered into during exclusion or deportatio. proceedings.

The Senate bill had no comparable provision.

The Conference substitute provides for such exception, but requires the alien applicant to demonstrate by clear and convincing evidence the bona fides of the marriage, and limits the alien to one administrative review.

EXCLUSION AND DEPORTATION GROUNDS

The House amendment repealed several outmoded grounds for exclusion based on health and replaced them with a general exclusion based on a mental or physical disorder which could endanger the alien or others and a second ground based on drug abuse or addiction.

The Senate bill had no comparable provision.

The conference substitute provides for a comprehensive revision of all the existing grounds for exclusion and deportation, including the repeal of outmoded grounds, the expansion of waivers for certain grounds, the substantial revision of security and foreign policy grounds, and the consolidation of related grounds in order to make the law more rational and easy to understand.

The term in this section has been changed from "dangerous contagious diseases" to "communicable diseases of public health significance." By substituting the words "public health significance" for "dangerous," Congress intends to insure that this exclusion will apply only to those diseases for which admission of aliens with such disease would pose a public health risk to the United States.

The Secretary of Health and Human Services shall determine the content of regulations regarding the list of communicable disease of public health significance, notwithstanding previous amendments to the law or previous regulations setting forth the list of "dangerous, contagious diseases" under section 212(a)(6). Congress intends that the

Secretary promulgate new regulations for the category of "communicable diseases of public health significance." A disease of public health significance means one in which admission of aliens with such disease would constitute a public health threat to the United States. Such determination shall be based on current epidemiological principles and medical standards.

Under current law there is some ambiguity as to the authority of the Executive Branch to exclude aliens on foreign policy grounds (this ambiguity is a result of the overlapping nature of the basic grounds for exclusion as set out in Section 212(a) of the Immigration and Nationality Act (INA), Section 901 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, as amended, and the "McGovern Amendment"). The foreign policy provision in this title would establish a single clear standard for foreign policy exclusions (which is designated as 212(a)(3)(C) of the INA). The conferees believe that granting an alien admission to the United States is not a sign of approval or agreement and the conferees therefore expect that, with the enactment of this provision, aliens will be excluded not merely because of the potential signal that might be sent because of their admission, but when there would be a clear negative foreign policy impact associated with their admission.

This provision would authorize the executive branch to exclude aliens for foreign policy reasons in certain circumstances. Specifically, under this provision, an alien could be excluded only if the Secretary of State has reasonable ground to believe an alien's entry or proposed activities within the United States would have potentially serious adverse foreign policy consequences. However, there are two exceptions to this general standard.

First, an alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office (and who is seeking entry into the United States during the period immediately prior to the election) would not be excludable under this provision solely because of any past, current or expected beliefs, statements or associations which would be lawful in the United States. The word "solely"is used in this provision to indicate that, in cases involving government officials, the committee intends that exclusions not be based merely on, for example, the possible content of an alien's speech in this country, but that there be some clear foreign policy impact beyond the mere fact of the speech or its content, that would permit exclusion.

In particular, the conferees expect that the authority to exclude aliens with a government connection would apply primarily to senior government officials (or candidates for senior government posts). While, as a general matter, admitting foreign government officials is not necessarily a signal of approval, the conferees recognize that in cases involving senior officials it may be difficult to avoid conveying that impression.

The second exception, which applies to all other aliens, would prevent exclusion on the basis of an alien's past, current or expected beliefs, statements or associations which would be lawful within the United States unless the Secretary of State personally determines that the alien's admission to the United States would compromise a compelling United States foreign policy interest, and so certifies to the relevant Congressional Committees. It is the intent of the conference committee that this authority would be used sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies.

Furthermore, the conferees intend that the "compelling foreign policy interest" standard be interpreted as a significantly higher standard than the general "potentially serious adverse foreign policy consequences standard." In particular, the conferees note that the general exclusion standard in this provision refers only to the "potential" for serious adverse foreign policy consequences, whereas exclusion under the second exception (under which an alien can be excluded because of his beliefs, statements or associations) must be linked to a "compelling" foreign policy interest. The fact that the Secretary of State personally must inform the relevant Congressional Committees when a determination of excludability is made under this provision is a further indication that the conferees intend that this provision be used only in unusual circumstances.

With regard to the second exception, the following include some of the circumstances in which exclusion might be appropriate: when an alien's mere entry into the United States could result in imminent harm to the lives or property of United States persons abroad or to property of the United States government abroad (as occurred with the former Shah of Iran), or when an alien's entry would violate a treaty or international agreement to which the United States is party.

Finally, the conferees intent that, since this legislation repeals both Section 901 and the McGovern Admendment and removes membership in or affiliation with the communist party as a ground for exclusion of nonimmigrants, the current practice under which certain nonimmigrants who are excludable under provisions of the INA, but who benefit from the reforms of Section 901, have been required to go through an "automatic" waiver process, would be discontinued. Instead, aliens who are no longer excludable would simply be able to enter the U.S. (unless any provision of this legislation specifically requires a waiver process).

TOTALITARIAN PARTY MEMBERSHIP OR AFFILIATION

This legislation includes a provision (designated section 212(a)(3)(D) which is designed to modernize the provision in existing law relating to the exclusion of aliens who are members of or affiliated with the Communist party or other totalitarian parties. This provision eliminates membership in or affiliation with such parties as a ground for exclusion of nonimmigrants (though any nonimmigrant who is a spy or terrorist, or who seeks the overthrow of the U.S., would remain excludable under other provisions in this legislation). With regard to immigrants, this provision retains the existing language exempting immigrants whose membership was involuntary, but it amends the "defector" provision under which an alien is required to demonstrate opposition to the doctrines of the party for at least five years, removes the language requiring that the admission of aliens in either category (involuntary membership or defector) be in the public interest, and establishes several new exemptions.

Specifically, under this provision an alien who has terminated his membership in or affiliation with a totalitarian party for at least two years at the time he applies for a visa or to enter the U.S. would not be excludable if such alien is determined not to be a threat to the security of the United States. This provision could apply to aliens from countries like the countries in Eastern Europe which were formerly Soviet Satellite states, but which are no longer controlled by the Communist Party.

In the case of an alien whose involvement was with a totalitarian party which still controls the government of a foreign state at the time of the application for a visa or entry, the exemption would not be available until five years had passed since the termination of membership or affiliation. This second provision could apply to aliens from countries like Cuba, Albania or the People's Republic of China, and, again, would only apply if the alien was determined not to be a security threat.

Finally, there is an exemption for current party members who are seeking to immigrate to the United States and who certain specified close family relatives in the U.S. Under this exemption, the general ground for exclusion for totalitarian party involvement would be waived, if the required family ties were present, at the discretion of the Attorney General for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, provided that the alien is not a security threat.

It is the intent of the conferees that aliens who would previously have been excludable under section 212(a)(28) because of membership in or affiliation with the Communist party, but who are no longer excludable for that reason because of the changes made in this provision, would not be excludable under the new foreign policy grounds established by this legislation merely because of such membership or affiliation.

TERRORISM

For the purposes of this legislation, the conferees consider terrorist activity to include, but not be limited to, conduct which is prohibited by international conventions relating to terrorism, such as the Convention for the Unlawful Seizure of Aircraft (the Hague, 1970), the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, 1971), the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents (New York, 1973), The Convention Against the Taking of Hostages (New York, 1979), the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

Also illustrative of the acts which should be considered terrorist acts for the purpose of this legislation are those which are encompassed within the definition of terrorism contained in Title 22 United States Code, Section 2656f(d). That statute defines terrorism as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational or clandestine agents.

For the purposes of this legislation, the conferees consider a "terrorist organization" to be one whose leadership, or whose members, with the knowledge, approval or acquiescence of the leadership, have taken part in terrorist activities. In making determinations for the purpose of establishing excludability, the Department of State (or the Immigration Service when appropriate) should take into account the best available information from the intelligence community. A

group may be considered a terrorist organization even if it has not conducted terrorist operations in the past several years, but there is reason to be believe it still has the capability and inclination to conduct such operations.

TECHNOLOGY TRANSFER

This title includes a provision (designated 212(a)(3)(A)(i)), which is aimed at preventing aliens from obtaining sensitive information or technology which could compromise the national security. In addition to permitting the exclusion or imposition of restrictions on aliens who may engage in activity which would violate any laws relating to export of sensitive material, this provision also permits the exclusion or imposition of restrictions on aliens who engage in activity to evade such laws. While this standard is clearly less strict than actual violation of such laws, the conferees intend that it be employed only in cases where such evasion would harm the national security. An example might include a case in which nationals of a hostile foreign country seek access to a university facility which conducts research which is vital to the national security, including, for example, aerospace research.

STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

The Conference report to H.R. 5257, the Fiscal Year 1991 Labor, Health and Human Services, and Education Appropriations bill, includes language directing the Secretary of Health and Human Services to allow states to use State Legalization Impact Assistance Grant (SLIAG) funds to reimburse state or local costs of medical assistance provided to eligible legalized aliens which are not otherwise reimbursed or paid by the Federal government, the alien, or other private sources. That conference report also stipulated that the directive should only be followed if authorized by law. The conferees to this bill expect that the directive be followed because it is consistent with the intent of the Immigration Reform and Control Act (IRCA) of 1986.

CRIMINAL ALIENS

The Conference substitute includes a number of provisions designed to assist INS in the identification, apprehension and deportation of criminal aliens. Additionally, the Conference report broadens the list of serious crimes, conviction of which results in various disabilities and preclusion of benefits under the Immigration and Nationality Act.

ENFORCEMENT

The Conference substitute includes several enforcement provisions designed to augment enforcement against employers who violate the anti-discrimination provision of the Immigration Reform and Control Act and to ensure that aliens properly notified of impending deportation proceedings, or other proceedings, in fact appear for such proceedings. On this latter issue, the Conferees expect the Attorney General to establish an efficient and trustworthy system to ensure that communications between INS and aliens subject to deportation are accurately recorded and that they accurately reflect whether counsel has filed notice of appearance on behalf of the alien and, if so, whether such notice has become stale through the passage of time or has been withdrawn. Additionally, the conferees expect that in determining whether an alien's failure to appear was justifiable the Attorney General will look at the totality of the circumstances to determine whether the alien could not reasonably have been expected to appear.

The Attorney General shall issue regulations on frivolous behavior by attorneys, specifying what types of behavior will be considered frivolous, the circumstances under which appeals or rulings will be summarily dismissed as frivolous, and the appropriate sanctions, including suspension and disbarment.

The Attorney General shall report on the abuses associated with the failure of aliens to consolidate requests for discretionary relief during at the first deportation hearing on the merits. The report shall make recommendations for the prevention of such abuse, if any exists.

The Attorney General shall issue regulations on the filing deadlines, including a maximum time period, for motions to reopen and to reconsider, and a limit on the number of motions which can be filed. The Attorney General, in developing these regulations, shall consider exceptions in the interest of justice. Unless the Attorney General finds reasonable evidence to the contrary, the regulations should state that such motions be made within 20 days of the date of the final determination in the proceeding and that such motions be limited to one motion to reopen and one motion to reconsider. An exception for asylum claims which arise due to a change in circumstances in the country of the alien's nationality and after the initiation of the deportation proceedings, shall be considered.

The Attorney General shall issue regulations on the filing of administrative appeals, including the deadline for filing a notice of appeal, the contents of the notice of appeal, and the deadlines for filing appellate briefs, including reply briefs.

The regulations must state the requirements for the contents of the notice of appeal, including the statement of intent to file (or not to file) a brief. The regulations must also specify the consequences of failure to file a brief (when so stated), which may include the dismissal of the appeal.

Unless the Attorney General finds reasonable evidence to the contrary, the regulations must state that administrative appeals be made within 30 days, except that the appellate body may, upon motion, extend such period to up to 90 days, if good cause is shown by the movant.

Unless the Attorney General finds reasonable evidence to the contrary, the regulations must specify that the administrative appeal of a deportation order must be consolidated with the appeal of all motions to reopen or reconsider in such deportation proceeding.

The Conference report also establishes a pilot program to evaluate the effectiveness and feasibility of using biometric drivers' licenses for purposes of meeting the requirements of sec. 274A of the INA (employer sanctions). Under that law several documents including a U.S. passport, certificate of U.S. citizenship, certificate of naturalization, an unexpired foreign passport, and an alien registration card may be used to establish both identity and authorization to work. By providing for a more secure drivers license, the intent of this provision is to (1) add an additional document to the list of documents that may be used to establish both identity and authorization to work; and (2) evaluate the relative effectiveness of all such documents. This provision is not intended to be the exclusive means by which an individual may establish the individual's identity and authorization to work. In fact, under section 535 of the Conference Report an employer who does not accept a document that reasonably appears to be genuine and that is among the list of documents that can be used to establish either identity or work authorization, or both, may be subjected to significant administrative fines. Further, no federal data base may be used to implement this program. No federal agency shall, either directly or indirectly, provide the social security number or confirm the social security number of any individual.

The report further creates a fund within INS, assets from which are to be used for criminal alien and border maintenance purposes. The fund will consist of proceeds collected as the result of administrative fines imposed by INS under various provisions of the Immigration and Nationality Act. The Conferees agree that the Immigration and Naturalization Service shall include an exhibit within its annual appropriation request to the Congress, identifying by fiscal year the actual and anticipated fines collected pursuant to section 543, and the amounts obligated pursuant to section 542. The INS should identify obligations by program and type of expense, and identify numbers and types of position and related workyears funded. The conferees further agree that any changes from estimates contained in the annual request must be made in accordance with the reprogramming procedures contained in the annual Department of Justice Appropriations Act.

APPLICATION OF CERTAIN USER FEES

The House amendment provided that the Department of State may retain immigrant visa fees without reference to fiscal year limitation to cover administrative and other expenses incurred in connection with the review of visa applications.

The Senate bill authorized an annual transfer of up to $20 million in visa fees to a State Department account to cover the costs of implementing the new point system and the increased visa volume, as well as covering the costs of other consular-related functions.

The Conference substitute adopts neither provision, retaining current law.

COURT ORDERED REMEDIES

The House amendment provided that nothing in the provisions of Immigration Reform and Control Act (IRCA) would be construed as preventing judicial review of the regulations, policies, and practices governing the adjustment of status under IRCA, or as preventing a court from ordering the Attorney to accept, reopen and readjudicate applications for such adjustment.

The Senate bill had no comparable provision.

The Conference substitute adopts the Senate provision, thereby, deleting the provision.

While receding to the Senate on excluding this provision in this Act, the managers believe that the series of court decisions overturning various INS regulations, policies and practices, warrant address of these issues in separate legislation in the next Congress. The managers believe that the language of Section 313 of H.R. 4300 should serve as a basis for the crafting of such legislation. Nothing in this statement of intent or in the conference action, however, should be construed as comment, one way or the other, on any judicial decision or pending litigation. Our expression of intent to address these issues in the future is not in-

tended to affect the course of such litigation.

LABOR SHORTAGE STUDIES

The Senate bill contained a provision to direct the Secretary of Labor to publish and widely distribute an annual list of labor shortages.

The House amendment contained no comparable provision.

The Conference substitute does not contain the Senate provision. However, the Conferees direct the Secretary of Labor to publish and widely distribute an annual list of labor shortages, including such information as the intensity of each labor shortage, the supply and demand of workers in occupations affected by the shortage industrial and geographic concentration of the shortage, in addition to wages and entry requirements and job content for occupations affected by the shortage.

The Conferees direct the Secretary of Labor to widely distribute the annual list of labor shortages and related information to parties and agencies such as students and job applicants, vocational educators, employers, labor unions, guidance counselors, administrators of programs established under the Job Training and Partnership Act, job placement agencies, and appropriate Federal and State agencies. The Conferees also direct the Secretary of Labor to make recommendations to identify labor shortages by region, State, and local areas.

At the time that the Secretary of Labor issues the annual publication of a labor shortage list, the Conferees direct the Secretary to prepare and submit to the appropriate Committees of Congress a report that describes the actions taken by the Department during the previous 12 months to reduce labor shortages, and specifies a plan of action to be taken by the Secretary to ensure that federally funded employment, education, and training agencies reduce national labor shortages that have been identified and recommendations for change.

In directing, the Conferees intend to facilitate the matching of workers to areas in which America has its most pressing labor-skill requirements and to ensure that American workers benefit from information about labor shortage occupations that is going to enable foreign workers with special skills to come to America.

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JACK BROOKS,
BRUCE A. MORRISON,
BARNEY FRANK,
CHARLES E. SCHUMER,
HOWARD L. BERMAN,
R.L. MAZZOLI,
HAMILTON FISH,
LAMAR SMITH,
BILL MCCOLLUM,

From the Committee on Education and Labor, for consideration of section 113 and title V of the Senate bill, and sections 103, 104, 106, 112-113, 311-312, 314(e), and 315 of the House amendment, and modifications committed to conference:

WILLIAM D. FORD,
GEORGE MILLER,
TOM SAWYER,

From the Committee on Ways and Means, for consideration of section 110 of the Senate bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
PETE STARK,
ANDREW JACOBS, Jr.,
BILL ARCHER,
GUY VANDER JAGT,

From the Committee on Post Office and Civil Service, for consideration of title IV of the Senate bill, and modifications committed to conference:

WILLIAM D. FORD,
TOM SAWYER,
BEN GILMAN,
JOHN J. MOAKLEY,

Mr. MOAKLEY is appointed as a conferee for consideration of section 324 of the House amendment, and modifications committed to conference.

Managers on the Part of the House.

EDWARD M. KENNEDY,
PAUL SIMON.
AL SIMPSON,
STROM THURMOND.

Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 1602, TRAUMA CARE SYSTEMS PLANNING AND DEVELOPMENT ACT OF 1990

Mr. MARKEY submitted the following conference report and statement on the bill (H.R. 1602) to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-956)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1602) to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Trauma Care Systems Planning and Development Act of 1990".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Federal Government and the governments of the States have established a history of cooperation in the development, implementation, and monitoring of integrated, comprehensive systems for the provision of emergency medical services throughout the United States;

(2) physical trauma is the leading cause of death of Americans between the ages of 1 and 44 and is the third leading cause of death in the general population of the United States;

(3) physical trauma in the United States results in an aggregate annual cost of $180,000,000,000 in medical expenses, insurance, lost wages, and property damage;

(4) barriers to the provision of prompt and appropriate emergency medical services exist in many areas of the United States;

(5) few States and communities have developed and implemented trauma care systems;

(6) many trauma centers have incurred substantial uncompensated costs in providing trauma care, and such costs have caused many such centers to cease participation in trauma care systems; and

(7) the number of incidents of physical trauma in the United States is a serious medical and social problem, and the number of deaths resulting from such incidents can be substantially reduced by improving the trauma-care components of the systems for the provision of emergency medical services in the United States.

SEC. 3. ESTABLISHMENT OF PROGRAMS WITH RESPECT TO TRAUMA CARE.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by inserting after title XI the following new title:

"TITLE XII—TRAUMA CARE

"PART A—GENERAL AUTHORITY AND DUTIES OF SECRETARY

"SEC. 1201. ESTABLISHMENT.

"(a) IN GENERAL.—The Secretary shall, with respect to trauma care—

"(1) conduct and support research, training, evaluations, and demonstration projects;

"(2) foster the development of appropriate, modern systems of such care through the sharing of information among agencies and individuals involved in the study and provision of such care;

"(3) provide to State and local agencies technical assistance; and

"(4) sponsor workshops and conferences.

"(b) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—The Secretary may make grants, and enter into cooperative agreements and contracts, for the purpose of carrying out subsection (a).

"SEC. 1202. ADVISORY COUNCIL ON TRAUMA CARE SYSTEMS.

"(a) ESTABLISHMENT.—The Secretary shall establish an advisory council to be known as the Advisory Council on Trauma Care Systems (hereafter in this section referred to as the 'Council').

"(b) DUTIES.—The Council shall—

"(1) periodically conduct assessments of the needs in the United States with respect to trauma care and the extent to which the States are responding to such needs, including special consideration of the unique needs of rural areas;

"(2) submit to the Secretary the findings made as a result of such assessments; and

"(3) advise the Secretary with respect to activities carried out under this title, including the development of the model trauma plan described in section 1213(c).

"(c) MEMBERSHIP.—

"(1) IN GENERAL.—The Secretary shall appoint to the Council 12 appropriately qualified representatives of the public who are not officers or employees of the United States. Of such members—

"(A) 3 shall be individuals experienced or specially trained in trauma surgery (including a critical care nurse);

"(B) 3 shall be individuals experienced or specially trained in emergency medicine (including a nurse who is specially trained in emergency medicine);

"(C) 1 shall be an individual experienced or specially trained in the care of injured children;

"(D) 1 shall be an individual experienced or specially trained in physical medicine and rehabilitation; and

"(E) 4 shall be individuals experienced or specially trained in the development, administration, or financing of trauma care systems.

"(2) EX OFFICIO MEMBERS.—The Secretary may designate as ex officio members of the

Council appropriately qualified representatives of the Department of Health and Human Services, the Department of Transportation, the Federal Emergency Management Agency, and such other agencies of the Federal Government as the Secretary determines to have functions affecting emergency medical services.

"(3) KNOWLEDGE CONCERNING RURAL AREAS.—Of the members described in paragraph (1), 25 percent of the members shall be knowledgeable about the unique needs of rural areas with respect to the purpose of the Council.

"(d) TERMS.—

"(1) GENERAL TERM.—Except as provided in paragraph (2), members of the Council appointed under subsection (c)(1) shall serve for a term of 4 years.

"(2) INITIAL MEMBERS.—Of the members first appointed to the Council under subsection (c)(1), the Secretary shall appoint 4 members to serve for a term of 4 years, 4 members to serve for a term of 3 years, and 4 members to serve for a term of 2 years.

"(e) VACANCIES.—

"(1) SERVICE FOR REMAINDER OF TERM.—Any member of the Council appointed under subsection (c)(1) to fill a vacancy occurring before the expiration of the term of the predecessor of the member shall be appointed for the remainder of the term of the predecessor.

"(2) CONTINUED SERVICE AFTER EXPIRATION OF TERM.—A member of the Council appointed under subsection (c)(1) may continue to serve after the expiration of the term of the member until a successor is appointed.

"(f) CHAIR.—The Secretary, or the designee of the Secretary, shall serve as the chair of the Council.

"(g) MEETINGS.—The Council shall meet at the call of the Chair and shall meet not less than once each 3 months.

"(h) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—

"(1) FEDERAL OFFICIALS.—Ex officio members of the Council under subsection (c)(2) may not receive compensation for service on the Council in addition to the compensation otherwise received for duties carried out as officers or employees of the United States.

"(2) APPOINTMENT MEMBERS.—Members of the Council appointed under subsection (c)(1) may not receive compensation for service on the Council. Such members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Council.

"(i) STAFF.—The Secretary shall provide to the Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

"(j) TERMINATION.—Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Council shall continue in existence until otherwise provided by law.

"SEC. 1203. CLEARINGHOUSE ON TRAUMA CARE AND EMERGENCY MEDICAL SERVICES.

"(a) ESTABLISHMENT.—The Secretary shall by contract provide for the establishment and operation of a National Clearinghouse on Trauma Care and Emergency Medical Services (hereafter in this section referred to as the 'Clearinghouse').

"(b) DUTIES.—The Clearinghouse shall—

"(1) foster the development of appropriate, modern trauma care and emergency medical services (including the development of policies for the notification of family members of individuals involved in medical emergencies) through the sharing of information among agencies and individuals involved in planning, furnishing, and studying such services and care;

"(2) collect, compile, and disseminate information on the achievements of, and problems experienced by, State and local agencies and private entities in providing trauma care and emergency medical services and, in so doing, give special consideration of the unique needs of rural areas;

"(3) provide technical assistance relating to trauma care and emergency medical services to State and local agencies; and

"(4) sponsor workshops and conferences on trauma care and emergency medical services.

"(c) FEES AND ASSESSMENTS.—A contract entered into by the Secretary under this section may provide that the Clearinghouse charge fees or assessments in order to defray, and beginning with fiscal year 1992, to cover the costs of operating the Clearinghouse.

"SEC. 1204. ESTABLISHMENT OF PROGRAMS FOR IMPROVING TRAUMA CARE IN RURAL AREAS.

"(a) IN GENERAL.—The Secretary may make grants to public and nonprofit private entities for the purpose of carrying out research and demonstration projects with respect to improving the availability and quality of emergency medical services in rural areas—

"(1) by developing innovative uses of communications technologies and the use of new communications technology;

"(2) by developing model curricula for training emergency medical services personnel, including first responders, emergency medical technicians, emergency nurses and physicians, and paramedics—

"(A) in the assessment, stabilization, treatment, preparation for transport, and resuscitation of seriously injured patients, with special attention to problems that arise during long transports and to methods of minimizing delays in transport to the appropriate facility; and

"(B) in the management of the operation of the emergency medical services system;

"(3) by making training for original certification, and continuing education, in the provision and management of emergency medical services more accessible to emergency medical personnel in rural areas through telecommunications, home studies, providing teachers and training at locations accessible to such personnel, and other methods;

"(4) by developing innovative protocols and agreements to increase access to prehospital care and equipment necessary for the transportation of seriously injured patients to the appropriate facilities; and

"(5) by evaluating the effectiveness of protocols with respect to emergency medical services and systems.

"(b) SPECIAL CONSIDERATION FOR CERTAIN RURAL AREAS.—In making grants under subsection (a), the Secretary shall give special consideration to any applicant for the grant that will provide services under the grant in any rural area identified by a State under section 1214(c)(1).

"(c) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under subsection (a) unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary.

"PART B—FORMULA GRANTS WITH RESPECT TO MODIFICATIONS OF STATE PLANS

"SEC. 1211. ESTABLISHMENT OF PROGRAM.

"(a) REQUIREMENT OF ALLOTMENTS FOR STATES.—The Secretary shall for each fiscal year make an allotment for each State in an amount determined in accordance with section 1218. The Secretary shall make payments, as grants, each fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 1217.

"(b) PURPOSE.—Except as provided in section 1233, the Secretary may not make payments under this part for a fiscal year unless the State involved agrees that, with respect to the trauma care component of the State plan for the provision of emergency medical services, the payments will be expended only for the purpose of developing, implementing, and monitoring the modifications to such component described in section 1213.

"SEC. 1212. REQUIREMENT OF MATCHING FUNDS FOR FISCAL YEARS SUBSEQUENT TO FIRST FISCAL YEAR OF PAYMENTS.

"(a) NON-FEDERAL CONTRIBUTIONS.—

"(1) IN GENERAL.—The Secretary may not make payments under section 1211(a) unless the State involved agrees, with respect to the costs described in paragraph (2), to make available non-Federal contributions (in cash or in kind under subsection (b)(1)) toward such costs in an amount equal to—

"(A) for the second fiscal year of such payments to the State, not less than $1 for each $1 of Federal funds provided in such payments for such fiscal year; and

"(B) for any subsequent fiscal year of such payments to the State, not less than $3 for each $1 of Federal funds provided in such payments for such fiscal year.

"(2) PROGRAM COSTS.—The costs referred to in paragraph (1) are—

"(A) the costs to be incurred by the State in carrying out the purpose described in section 1211(c); or

"(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

"(3) INITIAL YEAR OF PAYMENTS.—The Secretary may not require a State to make non-Federal contributions as a condition of receiving payments under section 1211(a) for the first fiscal year of such payments to the State.

"(b) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—With respect to compliance with subsection (a) as a condition of receiving payments under section 1211(a)—

"(1) a State may make the non-Federal contributions required in such subsection in cash or in kind, fairly evaluated, including plant, equipment, or services;

"(2) the Secretary may not, in making a determination of the amount of non-Federal contributions, include amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government; and

"(3) the Secretary shall, in making such a determination, include only non-Federal contributions in excess of the amount of non-Federal contributions made by the State during fiscal year 1990 toward—

"(A) the costs of providing trauma care in the State; and

"(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

"SEC. 1213. REQUIREMENTS WITH RESPECT TO CARRYING OUT PURPOSE OF ALLOTMENTS.

"(a) TRAUMA CARE MODIFICATIONS TO STATE PLAN FOR EMERGENCY MEDICAL SERVICES.—With respect to the trauma care component of a State plan for the provision of emergency medical services, the modifications referred to in section 1211(b) are such modifications to the State plan as may be neces-

sary for the State involved to ensure that the plan provides for access to the highest possible quality of trauma care, and that the plan—

"(1) specifies that the modifications required pursuant to paragraphs (2) through (10) will be implemented by the principal State agency with respect to emergency medical services or by the designee of such agency;

"(2) specifies any public or private entity that will designate trauma care regions and trauma centers in the State;

"(3) subject to subsection (b), contains standards and requirements for the designation of level I and level II trauma centers, and in the case of rural areas level III trauma centers, (including trauma centers with specified capabilities and expertise in the care of the pediatric trauma patient) by such entity, including standards and requirements for—

"(A) the number and types of trauma patients for whom such centers must provide care in order to ensure that such centers will have sufficient experience and expertise to be able to provide quality care for victims of injury;

"(B) the resources and equipment needed by such centers; and

"(C) the availability of rehabilitation services for trauma patients;

"(4) subject to subsection (b), contains standards and requirements for the implementation of regional trauma care systems, including standards and guidelines (consistent with the provisions of section 1867 of the Social Security Act for medically directed triage and transportation of trauma patients) (including patients injured in rural areas) prior to care in designated trauma centers;

"(5) subject to subsection (b), contains standards and requirements for medically directed triage and transport of severely injured children to designated trauma centers with specified capabilities and expertise in the care of the pediatric trauma patient;

"(6) specifies procedures for the evaluation of designated trauma centers (including trauma centers described in paragraph (5)) and trauma care systems;

"(7) provides for the establishment and collection of data from each designated trauma center in the State of a central data reporting and analysis system—

"(A) to identify the number of severely injured trauma patients within regional trauma care systems in the State;

"(B) to identify the cause of the injury and any factors contributing to the injury;

"(C) to identify the nature and severity of the injury;

"(D) to monitor trauma patient care (including prehospital care) in each designated trauma center within regional trauma care systems in the State (including relevant emergency-department discharges and rehabilitation information) for the purpose of evaluating the diagnosis, treatment and treatment outcome of such trauma patients;

"(E) to identify the total amount of uncompensated trauma care expenditures for each fiscal year by each designated trauma center in the State; and

"(F) to identify patients transferred within a regional trauma system, including reasons for such transfer;

"(8) to provide for the use of procedures by paramedics and emergency medical technicians to assess the severity of the injuries incurred by trauma patients;

"(9) to provide appropriate transportation and transfer policies to ensure the delivery of patients to designated trauma centers and other facilities within and outside of the jurisdiction of such system, including policies to ensure that only individuals appropriately identified as trauma patients are transferred to designated trauma centers, and to provide periodic reviews of the transfers and the auditing of such transfers that are determined to be appropriate;

"(10) to conduct public education activities concerning injury prevention and obtaining access to trauma care; and

"(11) with respect to the requirements established in this subsection, provides for coordination and cooperation between the State and any other State with which the State shares any standard metropolitan statistical area.

"(b) CERTAIN STANDARDS WITH RESPECT TO TRAUMA CARE CENTERS AND SYSTEMS.—

"(1) IN GENERAL.—The Secretary may not make payments under section 1211(a) for a fiscal year unless the State involved agrees that, in carrying out paragraphs (3) through (5) of subsection (a), the State will adopt standards for the designation of trauma centers, and for triage, transfer, and transportation policies, and that the State will, in adopting such standards—

"(A) take into account national standards concerning such;

"(B) consult with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services, State and local directors, concerned advocates and other interested parties;

"(C) conduct hearings on the proposed standards after providing adequate notice to the public concerning such hearing; and

"(D) beginning in fiscal year 1992, take into account the model plan described in subsection (c).

"(2) QUALITY OF TRAUMA CARE.—The highest quality of trauma care shall be the primary goal of State standards adopted under this subsection.

"(3) APPROVAL BY SECRETARY.—The Secretary may not make payments under section 1211(a) to a State if the Secretary determines that—

"(A) in the case of payments for fiscal year 1991 and subsequent fiscal years, the State has not taken into account national standards, including those of the American College of Surgeons, the American College of Emergency Physicians and the American Academy of Pediatrics, in adopting standards under this subsection; or

"(B) in the case of payments for fiscal year 1992 and subsequent fiscal years, the State has not, in adopting such standards, taken into account the model plan developed under subsection (c).

"(c) MODEL TRAUMA CARE PLAN.—Not later than 1 year after the date of the enactment of the Trauma Care Systems Planning and Development Act of 1990, the Secretary shall develop a model plan for the designation of trauma centers and for triage, transfer and transportation policies that may be adopted for guidance by the State. Such plan shall—

"(1) take into account national standards, including those of the American College of Surgeons, American College of Emergency Physicians and the American Academy of Pediatrics;

"(2) take into account existing State plans;

"(3) be developed in consultation with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services State directors and associations, and other interested parties; and

"(4) include standards for the designation of rural health facilities and hospitals best able to receive, stabilize, and transfer trauma patients to the nearest appropriate designated trauma center, and for triage, transfer, and transportation policies as they relate to rural areas.

Standards described in paragraph (4) shall be applicable to all rural areas in the State, including both non-metropolitan areas and frontier areas that have populations of less than 6,000 per square mile.

"(d) RULE OF CONSTRUCTION WITH RESPECT TO NUMBER OF DESIGNATED TRAUMA CENTERS.—With respect to compliance with subsection (a) as a condition of the receipt of a grant under section 1211(a), such subsection may not be construed to specify the number of trauma care centers designated pursuant to such subsection.

"SEC. 1214. REQUIREMENT OF SUBMISSION TO SECRETARY OF TRAUMA PLAN AND CERTAIN INFORMATION.

"(a) TRAUMA PLAN.—

"(1) IN GENERAL.—For fiscal year 1991 and subsequent fiscal years, the Secretary may not make payments under section 1211(a) unless, subject to paragraph (2), the State involved submits to the Secretary the trauma care component of the State plan for the provision of emergency medical services.

"(2) INTERIM PLAN OR DESCRIPTION OF EFFORTS.—For fiscal year 1991, if a State has not completed the trauma care component of the State plan described in paragraph (1), the State may provide, in lieu of a completed such component, an interim component or a description of efforts made toward the completion of the component.

"(b) INFORMATION RECEIVED BY STATE REPORTING AND ANALYSIS SYSTEM.—The Secretary may not make payments under section 1211(a) for a fiscal year unless the State involved agrees that the State will, not less than once each year, provide to the Secretary the information received by the State pursuant to section 1213(a)(7).

"(c) AVAILABILITY OF EMERGENCY MEDICAL SERVICES IN RURAL AREAS.—The Secretary may not make payments under section 1211(a) for a fiscal year unless—

"(1) the State involved identifies any rural area in the State for which—

"(A) there is no system of access to emergency medical services through the telephone number 911;

"(B) there is no basic life-support system; or

"(C) there is no advanced life-support system; and

"(2) the State submits to the Secretary a list of rural areas identified pursuant to paragraph (1) or, if there are no such areas, a statement that there are no such areas.

"SEC. 1215. RESTRICTIONS ON USE OF PAYMENTS.

"(a) IN GENERAL.—The Secretary may not, except as provided in subsection (b), make payments under section 1211(a) for a fiscal year unless the State involved agrees that the payments will not be expended—

"(1) subject to section 1233, for any purpose other than developing, implementing, and monitoring the modifications required by section 1211(b) to be made to the State plan for the provision of emergency medical services.

"(2) to make cash payments to intended recipients of services provided pursuant to such section;

"(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical or communication equipment, ambulances, or aircraft;

"(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

"(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

"(b) EXCEPTION.—If the Secretary finds that the purpose described in section 1211(b) cannot otherwise be carried out, the Secretary may, with respect to an otherwise qualified State, waive the restriction established in subsection (a)(3).

"SEC. 1216. REQUIREMENT OF REPORTS BY STATES.

"(a) IN GENERAL.—The Secretary may not make payments under section 1211(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General of the United States) to be necessary for—

"(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments; and

"(2) determining whether the payments were expended in accordance with the purpose of the program involved.

"(b) AVAILABILITY TO PUBLIC OF REPORTS.—The Secretary may not make payments under section 1211(a) unless the State involved agrees that the State will make copies of the report described in subsection (a) available for public inspection.

"(c) EVALUATIONS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall evaluate the expenditures by States of payments under section 1211(a) in order to assure that expenditures are consistent with the provisions of this part, and not later than December 1, 1993, prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report concerning such evaluation.

"SEC. 1217. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

"The Secretary may not make payments under section 1211(a) to a State for a fiscal year unless—

"(1) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

"(2) the agreements are made through certification from the chief executive officer of the State;

"(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

"(4) the application contains the plan provisions and the information required to be submitted to the Secretary pursuant to section 1214; and

"(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

"SEC. 1218. DETERMINATION OF AMOUNT OF ALLOTMENT.

"(a) MINIMUM ALLOTMENT.—Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 1211(a) for a State for a fiscal year shall be the greater of—

"(1) the amount determined under subsection (b)(1); and

"(2) $250,000 in the case of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 in the case of each of the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(b) DETERMINATION UNDER FORMULA.—

"(1) IN GENERAL.—The amount referred to in subsection (a)(1) for a State for a fiscal year is the sum of—

"(A) an amount determined under paragraph (2); and

"(B) an amount determined under paragraph (3).

"(2) AMOUNT RELATING TO POPULATION.—The amount referred to in subparagraph (A) of paragraph (1) for a State for a fiscal year is the product of—

"(A) an amount equal to 80 percent of the amounts appropriated under section 1232(a) for the fiscal year and available for allotment under section 1211(a); and

"(B) a percentage equal to the quotient of—

"(i) an amount equal to the population of the State; divided by

"(ii) an amount equal to the population of all States.

"(3) AMOUNT RELATING TO SQUARE MILEAGE.—The amount referred to in subparagraph (B) of paragraph (1) for a State for a fiscal year is the product of—

"(A) an amount equal to 20 percent of the amounts appropriated under section 1232(a) for the fiscal year and available for allotment under section 1211(a); and

"(B) a percentage equal to the quotient of—

"(i) an amount equal to the lesser of 266,807 and the amount of the square mileage of the State; divided by

"(ii) an amount equal to the sum of the respective amounts determined for the States under clause (i).

"(c) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

"(1) IN GENERAL.—Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 1211(a) for the fiscal year (other than any State referred to in paragraph (2)(C)).

"(2) TYPE OF AMOUNTS.—The amounts referred to in paragraph (1) are any amounts made available pursuant to 1232(b)(3) that are not paid under section 1211(a) to a State as a result of—

"(A) the failure of the State to submit an application under section 1217;

"(B) the failure, in the determination of the Secretary, of the State to prepare within a reasonable period of time such application in compliance with such section; or

"(C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made for the State.

"(3) AMOUNT.—The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

"(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

"(B) the percentage determined under subsection (b)(2) for the State.

"SEC. 1219. FAILURE TO COMPLY WITH AGREEMENTS.

"(a) REPAYMENT OF PAYMENTS.—

"(1) REQUIREMENT.—The Secretary may, in accordance with subsection (b), require a State to repay any payments received by the State pursuant to section 1211(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be made by the State as a condition of the receipt of payments under such section.

"(2) OFFSET OF AMOUNTS.—If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against any amount due to be paid to the State under section 1211(a).

"(b) OPPORTUNITY FOR A HEARING.—Before requiring repayment of payments under subsection (a)(1), the Secretary shall provide to the State an opportunity for a hearing.

"SEC. 1220. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

"(a) IN GENERAL.—

"(1) FALSE STATEMENTS OR REPRESENTATIONS.—A person may not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from amounts paid to the State under section 1211(a).

"(2) CONCEALING OR FAILING TO DISCLOSE INFORMATION.—A person with knowledge of the occurrence of any event affecting the right of the person to receive any payments from amounts paid to the State under section 1211(a) may not conceal or fail to disclose any such event with the intent of fraudulently securing such amount.

"(b) CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"SEC. 1221. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

"(a) TECHNICAL ASSISTANCE.—The Secretary shall, without charge to a State receiving payments under section 1211(a), provide to the State (or to any public or nonprofit private entity designated by the State) technical assistance with respect to the planning, development, and operation of any program carried out pursuant to section 1211(b). The Secretary may provide such technical assistance directly, through contract, or through grants.

"(b) PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) IN GENERAL.—Upon the request of a State receiving payments under section 1211(a), the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out section 1211(b) and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

"(2) REDUCTION IN PAYMENTS.—With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments to the State under section 1211(a) by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"SEC. 1222. REPORT BY SECRETARY.

"Not later than October 1, 1992, the Secretary shall report to the appropriate committees of Congress on the activities of the States carried out pursuant to section 1211. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to trauma care.

"PART C—GENERAL PROVISIONS

"SEC. 1231. DEFINITIONS.

"For purposes of this title:

"(1) DESIGNATED TRAUMA CENTER.—The term 'designated trauma center' means a trauma center designated in accordance with the modifications to the State plan described in section 1213.

"(2) STATE PLAN REGARDING EMERGENCY MEDICAL SERVICES.—The term 'State plan', with respect to the provision of emergency medical services, means a plan for a comprehensive, organized system to provide for the access, response, triage, field stabilization, transport, hospital stabilization, definitive care, and rehabilitation of patients of all ages with respect to emergency medical services.

"(3) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico; the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(4) TRAUMA.—The term 'trauma' means an injury resulting from exposure to a mechanical force.

"(5) TRAUMA CARE COMPONENT OF STATE PLAN.—The term 'trauma care component', with respect to components of the State plan for the provision of emergency medical services, means a plan for a comprehensive health care system, within rural and urban areas of the State, for the prompt recognition, prehospital care, emergency medical care, acute surgical and medical care, rehabilitation, and outcome evaluation of seriously injured patients.

"SEC. 1232. FUNDING.

"(a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this title, there are authorized to be appropriated $60,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993.

"(b) ALLOCATION OF FUNDS BY SECRETARY.—

"(1) GENERAL AUTHORITY.—For the purpose of carrying out part A, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a).

"(2) RURAL GRANTS.—For the purpose of carrying out section 1204, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a).

"(3) FORMULA GRANTS.—

"(A) For the purpose of making allotments under section 1211(a), the Secretary shall, subject to subsection (c), make available 80 percent of the amounts appropriated for a fiscal year pursuant to subsection (a).

"(B) Amounts paid to a State under section 1211(a) for a fiscal year shall, for the purposes for which the amounts were paid, remain available for obligation until the end of the fiscal year immediately following the fiscal year for which the amounts were paid.

"(c) EFFECT OF INSUFFICIENT APPROPRIATIONS FOR MINIMUM ALLOTMENTS.—

"(1) IN GENERAL.—If the amounts made available under subsection (b)(3)(A) for a fiscal year are insufficient for providing each State with an allotment under section 1211(a) of not less than the applicable amount under section 1218(a)(2), the Secretary shall, from such amounts as are made available under subsection (b)(3)(A), make grants to States described in paragraph (2) for carrying out part B.

"(2) ELIGIBLE STATES.—The States referred to in paragraph (1) are States that—

"(A) have the greatest need to develop, implement, and maintain trauma care systems; and

"(B) demonstrate in their applications under section 1217 the greatest commitment to establishing and maintaining such systems.

"(3) RULE OF CONSTRUCTION.—Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

"SEC. 1233. WAIVER OF REQUIREMENT REGARDING PURPOSE OF GRANTS.

"(a) AUTHORITY FOR REIMBURSEMENTS REGARDING UNCOMPENSATED COSTS OF TRAUMA CENTERS.—Upon the request of a State described in subsection (b), the Secretary may grant a waiver to the State of the requirement established in subsection (b) of section 1211. A State granted such a waiver may expend payments under subsection (a) of such section to provide reimbursements to 1 or more designated trauma centers described in subsection (c) for such portion of the uncompensated trauma care expenditures of such centers as the State considers appropriate. Such reimbursements may include reimbursments for expenditures for uncompensated professional services for trauma care.

"(b) ELIGIBLE STATES.—The State referred to in subsection (a) is any State that meets the requirements under part B for receiving payments under subsection (a) of section 1211 for the fiscal year involved, and that—

"(1) with respect to the State plan for the provision of emergency medical services, has fully implemented the portions of the plan developed pursuant to subsection (b) of such section; and

"(2) contains no rural area described in section 1214(c)(1).

"(c) ELIGIBLE TRAUMA CENTERS.—The designated trama center referred to in subsection (a) is such a center that—

"(A) meets the standards and requirements established under section 1213 by the State for trauma centers;

"(B) serves an area in which the trauma care system meets the standards and requirements established under such section by the State for trauma care systems; and

"(C) maintains its designation as a designated trauma center throughout the fiscal year for which reimbursement is provided under this section.".

SEC. 4. COOPERATION BETWEEN STATE AGENCIES.

Section 1905(c) of the Public Health Service Act (42 U.S.C. 300w-4(c)) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(7) agrees to provide the officer of the State government responsible for the administration of the State highway safety program with an opportunity to—

"(A) participate in the development of any plan by the State relating to emergency medical services, as such plan relates to highway safety; and

"(B) review and comment on any proposal by any State agency to use any Federal grant or Federal payment received by the State for the provision of emergency medical services as such proposal relates to highway safety.".

SEC. 5. EMERGENCY MEDICAL SERVICES FOR CHILDREN.

Section 1910 of the Public Health Service Act (42 U.S.C. 300w-9) is amended—

(1) in the first sentence of subsection (a)—

(A) by striking out "not more than four grants in any fiscal year" and inserting in lieu thereof "grants"; and

(B) by striking out "in such States"; and

(2) in subsection (d), by striking out "fiscal year 1991" and inserting in lieu thereof "each of the fiscal years 1991 and 1992".

SEC. 6. GRANT REGARDING MEDICAL FACILITIES.

(a) IN GENERAL.—The Secretary of Health and Human Services may make a grant to the George Washington University Hospital, a nonprofit private hospital located in the District of Columbia, for the purpose of constructing or modernizing a medical facility of such Hospital.

(b) REQUIREMENT OF MATCHING FUNDS.—

(1) IN GENERAL.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the costs of carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount that is not less than $1 for each $1 of Federal funds provided in the grant.

(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—In determining the amount of non-Federal contributions in cash that has been provided for purposes of paragraph (1), the Secretary may not include any amounts provided by the Federal Government.

(c) OBLIGATIONS REGARDING FREE CARE AND COMMUNITY SERVICE.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that clauses (i) and (ii) of section 1621(b)(1)(K) of the Public Health Service Act (and regulations issued under such clauses), and section 1622 of such Act (and regulations issued under such section), will apply with respect to the medical facility constructed or modernized with the grant to the same extent and in the same manner as such sections and regulations apply with respect to medical facilities constructed or modernized with funds that have been paid under title XVI of such Act.

(d) DEFINITION.—For purposes of this Act, the term "Secretary" means the Secretary of Health and Human Services.

(e) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—

(A) Subject to subparagraph (B), there is authorized to be appropriated an aggregate $50,000,000 for the fiscal years 1992 through 1995.

(B) The authorization of appropriations established in subparagraph (A) is effective only with respect to appropriations made from allocations under section 302(b) of the Congressional Budget Act of 1974—

(i) for the Subcommittee on the District of Columbia of the Committee on Appropriations of the House of Representatives, in the case of any bill, resolution, or amendment considered in the House; and

(ii) for the Subcommittee on District of Columbia of the Committee on Appropriations of the Senate, in the case of any bill, resolution, or amendment considered in the Senate.

(2) AMOUNT OF GRANT.—Subject to the extent of amounts made available in appropriations Act, the amount of a grant under subsection (a) shall be $50,000,000.

And the Senate agree to the same.

JOHN D. DINGELL,
HENRY A. WAXMAN,
JIM BATES,

NORMAN F. LENT,
Managers on the Part of the House.
EDWARD M. KENNEDY,
CLAIBORNE PELL,
ORRIN HATCH,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1602) to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The Trauma Care Systems Planning and Development Act of 1990 is the bill resulting from the conference between the House and the Senate on H.R. 1602, the Trauma Care Systems Planning and Development Act of 1989 and a Senate amendment comprising the text of S. 15, the Emergency Medical Services and Trauma Care Improvement Act of 1989. The purpose of the legislation is to assist State governments in the development, implementation, and improvement of regional systems of trauma care. By providing incentives to States and localities to establish well-coordinated regionalized systems of trauma care, severely injured individuals can receive specialized, high quality care as rapidly as possible following their injury.

The conference agreement generally follows the House bill. It establishes a formula grant to assist States in the development and implementation of all the component parts of a coordinated, comprehensive trauma care system. In order to receive allotments under the agreement, States must develop a trauma care plan that is approved by the Secretary of Health and Human Services. This plan must be developed through an open process. States shall take into account nationally recognized standards and a model plan developed by the Secretary. The plan will include provision for the designation of trauma care centers and protocols for the triage, transportation, and transfer of trauma care patients. States are also required to identify those rural areas which lack basic components of emergency medical services so important to the quality of the trauma care system. The agreement incorporates a requirement from the Senate amendment that the Secretary of Health and Human Services prepare and make available to the States model standards in the form of a Model Trauma Care Plan which will be useful in the development and approval of State plans. The Secretary will be guided in the development of the plan by an Advisory Council on Trauma Care Systems which is also established by this Act.

The Senate amendment but not the House bill provided for establishment of a National Clearinghouse to collect and compile basic data regarding the demand for, operation, effectiveness, and cost of State trauma care and emergency medical service systems. The agreement generally follows the Senate amendment and makes operation and funding of the Clearinghouse a responsibility of the Secretary under a consolidated authorization of appropriations. Ten percent of appropriations will be available for the costs of operating the Clearinghouse and supporting the Secretary's responsibility to expand trauma care research and related training activities.

The House bill and Senate amendment provided authority for the support of demonstration programs in rural areas to develop innovative means of training emergency medical service providers and delivering emergency medical and trauma care services. The agreement follows the House bill and reflects recognition that rural populations suffer a disproportionate number of deaths and disabilities due to accidental injuries. Rural EMS systems often lack adequate numbers of trained personnel, universal coverage by communications networks, and overall system development. Ten percent of appropriations will be available for the purpose of making demonstration grants in rural areas.

The Senate amendment but not the House bill permits States receiving trauma care block grant funds to use a percentage of their allotment for the purpose of reimbursing designated trauma care centers for uncompensated costs. The conference agreement limits use of federal funds for uncompensated costs to those States which have requested and been granted a waiver by the Secretary. In order to receive a waiver, the State must demonstrate to the Secretary's satisfaction that a system of trauma care is in place which meets the requirements of the Act and represents the highest quality of trauma care. No State may be granted a waiver if rural areas of the State lack those basic elements of an emergency medical services system specified in the Act.

The House bill and Senate amendment allocated State block grant funds in accordance with a formula. The House formula distributed funds on the basis of general population. The Senate formula calculated allotments on each State's relative share of population and each State's relative share of land area. The agreement generally follows the Senate approach with an amendment providing that the minimum allotment will be the greater of $250,000 or an allotment based on the agreed upon formula just described. If the funds appropriated are insufficient to provide each State with at least $250,000, funds will be distributed as part of a competitive grant program based on the commitment of States to the development of trauma care systems and the need for funding. For example, if $60 million is appropriated under this Act, 10% or $6 million would be allocated for activities conducted by the Secretary and 10% or $6 million would be allocated for the rural demonstration grant program. Of the remaining $48 million, allotments would be determined by the formula based 80% on population and 20% on land area. After these allotments were determined, if any State was allotted less than $250,000 or any territory less than $50,000, the allotments of all the remaining States would be decreased proportionately and by a sufficient amount to provide $250,000 to each State and $50,000 to each territory.

The conference agreement also contains an authorization of appropriations for the award of a grant for the limited purpose of constructing or modernizing the George Washington University Hosptial. For fiscal years 1992-1995 the appropriation of Federal funds for this purpose would be authorized subject to a dollar-for-dollar matching requirement. The maximum allowable Federal Contribution is limited to $50 million. The Conference agreement requires that the receipt of Federal Funds is contingent upon the hospital agreeing to provide a reasonable volume of services to persons unable to pay. Funds for construction of modernization are only authorized to be appropriated from allocations under section 302(b) of the Congressional Budget Act of 1974 for the House and Senate Appropriations Subcommittee on the District of Columbia. The conferees have included this provision to assure that funds for this purpose are not made available from appropriations for the activities of the Department of Health and Human Services generally or the Public Health Service in particular.

JOHN D. DINGELL,
HENRY A. WAXMAN,
JIM BATES,
NORMAN F. LENT,
Managers on the Part of the House.
EDWARD M. KENNEDY,
CLAIBORNE PELL,
ORRIN HATCH,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 5311, DISTRICT OF COLUMBIA APPROPRIATIONS, 1991

Mr. DIXON submitted the following conference report and statement on the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenue of said District for the fiscal year ending September 30, 1991, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-958)

The further Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5311) "making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenue of said District for the fiscal year ending September 30, 1991, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 3, 9, 10, 14, 17, 20, 23, 24, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 55, 56, 57, 58, 59, and 62.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 7, 13, 18, 22, and 53.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$14,080,000*; and the Senate agree to the same.

Amendment numbered 5:

That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert: , *$1,000,000 shall be for expansion of the early childhood program, and $1,000,000 shall be for the Anacostia Project in Southeast Washington.*

FIRE DEPARTMENT

For a Federal contribution to the District of Columbia for the Fire Department, $1,141,000 and the Senate agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert: , *of which $80,000 shall be available to the Social Services Division of the Superior Court of the District of Columbia for other youth screening and diversion programs*; and the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

DEPARTMENT OF HUMAN SERVICES

For a Federal contribution to the District of Columbia, $3,041,000, of which $350,000 shall be to develop a program for boarder babies and children of substance abusers, $500,000 shall be to develop a residential aftercare program for pregnant substance abusers, $1,500,000 shall be for outpatient aftercare for pregnant substance abusers and the general recovering addict population, $500,000 shall be for a program for early detection of breast and cervical cancer to be conducted by an independent organization or institution of national prominence, and $191,000 shall be for security fences and security lighting at the Oak Hill Juvenile Detention Facility and security lighting at the Cedar Knoll Facility.

DISTRICT OF COLUMBIA INSTITUTE FOR MENTAL HEALTH

For a Federal contribution to the District of Columbia Institute for Mental Health to provide professional mental health care to low-income, underinsured, and indigent children, adults, and families in the District of Columbia, $1,000,000.

And the Senate agree to the same.

Amendment numbered 11:

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$112,879,000*; and the Senate agreed to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$920,464,000*; and the Senate agreed to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$737,240,000*; and the Senate agreed to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$528,764,000*; and the Senate agreed to the same.

Amendment numbered 19:

That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert: *$876,431,000*; and the Senate agreed to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows:

Restore the matter stricken by said amendment amended to read as follows: *Provided further, That the Hurt Home located at 3050 R Street, Northwest, in the District of Columbia, shall not be occupied by residential or day patients or used as a residential treatment facility until a final decision is rendered by the District of Columbia Court of Appeals in Speyer v. Barry, Appeal No. 88-958*; and the Senate agree to the same.

Amendment numbered 25:

That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment insert: *$39,262*; and the Senate agreed to the same.

Amendment numbered 32:

That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows:

In lieu of the section number named in said amendment insert: *117* and on page 26 line 1 of the House engrossed bill, H.R. 5311, strike "Federal", and on page 26 line 1 of the House engrossed bill, H.R. 5311, strike "provided" and insert in lieu thereof "contained" and on page 26 line 4 of the House engrossed bill, H.R. 5311, strike all after "term" down to and including "pregnancy" on page 26 line 10 of the House engrossed bill, H.R. 5311; and the Senate agree to the same.

Amendment numbered 51:

That the House recede from its disagreement to the amendment of the Senate numbered 51, and agree to the same with an amendment, as follows: Restore the matter stricken amended to read as follows:

SEC. 136. (a) IN GENERAL.—

(1) ATTORNEYS.—Section 906 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (section 1-610.6, D.C. Code) is amended—

(A) in subsection (a), by striking "Notwithstanding" and inserting "Except as provided in subsection (c) and notwithstanding"; and

(B) by adding at the end the following new subsection:

"(c) Subsections (a) and (b) shall not apply to any person applying for or accepting any position in the Excepted Service as an attorney, and such person shall be covered by the provisions of section 801(e).".

(2) EMPLOYEES OF BOARDS AND COMMISSIONS.—Section 202(3) of such Act (section 1-602.2, D.C. Code) is amended by inserting after the second sentence the following: "Individuals serving as employees of boards and commissions shall be covered by the provisions of section 801(e).".

(3) CONFORMING AMENDMENT.—D.C. Law 3-36 is amended—

(A) in section 4(a)(4) (section 9-603(a)(4), D.C. Code), by striking the colon at the end of the second sentence and all that follows and inserting a semicolon; and

(B) in section 11 (section 9-610, D.C. Code), by striking "titles V and XVII" and inserting "titles V and XVII and section 801(e)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of the Residency Preference Amendment Act of 1988.

And the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 138. (a) The proviso under the heading "Public Works" in the Dire Emergency Supplemental Appropriation for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990, approved May 25, 1990 (Public Law 101-302; 104 Stat. 241), shall remain in effect until September 30, 1991.

(b) Chapter IX of title II of the Dire Emergency Supplemental Appropriations for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990, approved May 25, 1990 (Public Law 101-302; 104 Stat. 241), is amended in the items relating to "Public Safety and Justice" by striking "current operating revenues collected during fiscal year 1991 and not from".

And the Senate agree to the same.

Amendment numbered 60:

That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows:

In lieu of the section number "143" named in said amendment insert: *139*; and the Senate agree to the same.

Amendment numbered 61:

That the House recede from its disagreement to the amendment of the Senate numbered 61, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 140. Notwithstanding any other provision of law, the Task Force on Substance Abusing Pregnant Women and Infants Exposed to Maternal Substance Abuse During Pregnancy shall report no later than March 29, 1991.

And the Senate agree to the same.

JULIAN C. DIXON,
WILLIAM H. NATCHER,
LOUIS STOKES,
BERNARD J. DWYER,
STENY H. HOYER,
JAMIE L. WHITTEN,
DEAN A. GALLO,
BILL GREEN,
RALPH REGULA,
SILVIO O. CONTE,
Managers on the Part of the House.

BROCK ADAMS,
WYCHE FOWLER, JR.,
J. ROBERT KERREY,
ROBERT C. BYRD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the further conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the actions agreed upon by the managers and recommended in the accompanying conference report.

FEDERAL FUNDS

DEPARTMENT OF ADMINISTRATIVE SERVICES

Amendment No. 1. Deletes appropriation of a special Federal contribution of $1,000,000 proposed by the Senate to partially restore the department's budget to the fiscal year 1990 level.

BOARD OF EDUCATION

Amendment No. 2: Appropriates $14,080,000 as a Federal contribution to the public school system instead of $15,080,000 as proposed by the Senate and $12,080,000 as proposed by the House. The increase of $2,000,000 above the House level is discussed in amendments numbered 3 and 5.

Amendment No. 3: Earmarks $2,000,000 for renovations to public school athletic and recreational grounds and facilities as proposed by the House instead of $1,000,000 as proposed by the Senate.

Amendment No. 4: Deletes word "and" as proposed by the Senate to accommodate amendment number 5.

PUBLIC SCHOOLS AND FIRE DEPARTMENT

Amendment No. 5. Earmarks $1,000,000 to expand the early childhood program and $1,000,000 for the Anacostia Project in Southeast Washington instead of $1,000,000 to expand the early childhood program and $3,000,000 for teacher pay raises as proposed by the Senate. The deletion of $3,000,000 in the allocation for teacher pay raises reflects a base reduction in Federal funds ($1,000,000), reallocations to amendment number 3 for renovations to public school athletic and recreational grounds and facilities ($1,000,000), and amendment number 5 for the Anacostia Project ($1,000,000). Negotiations are under way on a new contract for teachers which will include pay raises that may exceed $30,000,000. While the conferees do not want to presuppose what those negotiations may include, they agree that the level of pay for the District's public school teachers is a priority and note that the Council of the District of Columbia has stated that it is committed to fully fund pay raises that are negotiated by the Board of Education.

The conferees action also inserts a new heading for the Fire Department and appropriations $1,141,000 to fund the administrative assistants to eight Battalion Fire Chiefs in the Firefighting Division on a 24-hour basis, 365 days a year. According to reports received by the conferees, the Administrative Assistants (Aides) perform duties that are essential to the orderly and efficient operations of their respective battalions, and in addition, are an integral part of the fireground command structure.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Amendment No. 6: Earmarks $80,000 for other youth screening and diversion programs instead of appropriating $860,000 for the Social Services Division and $400,000 for counsel for Child Abuse and Neglect Program fees as proposed by the Senate. This language gives the Social Services Division sole discretion to determine the use of the $80,000 within its screening and diversion program. With respect to the balance of $80,000 for the After School Kids Program, the conferees believe that these funds should cover the costs for a minimum of 50 youths completing the program and that a process/impact evaluation of the program by an outside, independent evaluator or consultant certified by the National Institute for Corrections should be conducted at a cost not to exceed 4 percent of the appropriation. At a minimum, the evaluation should include the following:

(1) A profile of program participants such as conviction charge, prior record, educational level, family structure, etc.

(2) Frequency and type of contact with program participants.

(3) Type of problem areas for which the youths were referred.

(4) Extent to which program was implemented as planned.

(5) Measure of educational gains for each youth through use of standardized tests to assess gains in academic problem areas, school advisory grades, etc.

(6) Changes in self esteem based on pretest and posttest results.

(7) Adjustment of youths at school and at home based on such measures as school attendance, school behavior, completes assigned household chores, etc.

(8) Incidence of illicit drug use by youths during the program.

(9) Incidence of youths involvement with the criminal justice system and severity of the involvement.

(10) Any other factors relevant to process/impact evaluation.

The conferees request that the evaluation be performed in a timely manner and transmitted to the House and Senate Subcommittees on District of Columbia Appropriations by May 30, 1991.

DEPARTMENT OF PUBLIC WORKS

Amendment No. 7: Deletes heading and Federal appropriation of $100,000 for the preparation of an environmental impact statement relating to the expansion of the Lorton landfill proposed by the House and stricken by the Senate. The conferees have been advised that action was taken on September 17, 1990 by elected officials of the jurisdiction where the Lorton landfill is located mandating that an environmental impact statement be prepared prior to proceeding with expansion of the landfill. The environmental impact statement is to be completed by March 1992 and will be paid for from dumping or "tipping" fees. The conferees were further advised that the environmental impact statement required by the local officials can be implemented and completed more quickly than one mandated by Congress. Amendments number 22 and 58 relate to the Lorton landfill expansion.

DEPARTMENT OF HUMAN SERVICES AND D.C. INSTITUTE FOR MENTAL HEALTH

Amendment No. 8: Appropriates $3,041,000 as a Federal contribution to the Department of Human Services and $1,000,000 as a Federal contribution to the District of Columbia Institute for Mental Health instead of $2,850,000 as a Federal contribution for the Department of Human Services as proposed by the Senate.

Department of Human Services.—The appropriation recommended by the conferees will provide (1) $350,000 to develop a program for boarder babies and children of substance abusers, (2) $500,000 to develop to a residential aftercare program for pregnant substance abusers, (3) $1,500,000 for outpatient aftercare for pregnant substance abusers and the general recovering addict population and, (4) $500,000 for an early detection program for breast and cervical cancer as proposed by the Senate. The conference action also provides a Federal contribution of $191,000 for security fences and lighting at the Oak Hill and Cedar Knoll juvenile detention facilities. See amendment number 19 for the payment of these funds from the District Treasury.

D.C. Institute for Mental Health.—In addition, the conference action inserts a new heading for the District of Columbia Institute for Mental Health and provides a direct one-time appropriation of $1,000,000 to assist the Institute in providing low-cost professional mental health care to low-income underinsured, and indigent children, adults and families in the District of Columbia. The conferees were advised that the greater part of the Institute's client population is severely disturbed and predominantly classified as indigent and working poor with combined family incomes of $10,000 or less and nearly 40 percent of the patient population being uninsured or underinsured. The conferees were further advised that with successful treatment, the Institute's clients often move from welfare and other forms of public assistance to gainful employment, increased educational achievement and greater self-sufficiency.

The conferees request a report by April 15, 1991, from the Institute concerning the use of these funds and the level of services provided to District residents.

CHILDREN'S NATIONAL MEDICAL CENTER

Amendment No. 9: Deletes language proposed by Senate which provided payment of this appropriation to the District of Columbia for subsequent payment to the Children's National Medical Center for a cost-shared National Child Protection Center. The conferees agree that the payment should be made directly to the Children's National Medical Center rather than through the District of Columbia government.

Amendment No. 10: Appropriates $3,000,000 as proposed by the House instead of $4,000,000 as proposed by the Senate for a direct Federal contribution to the Children's National Medical Center for a cost-shared center focused on child and substance abuse prevention, trauma emergency medical care, pediatrics AIDS/HIV treatment, critical care in newborn, pediatric and adolescent patients, pediatric medical research and other related specialized programs. The center is estimated to cost $50,000,000 with most of the funds provided by private and other sources.

DISTRICT OF COLUMBIA FUNDS

GOVERNMENTAL DIRECTION AND SUPPORT

Amendment No. 11: Appropriates $112,879,000 instead of $113,879,000 as proposed by the Senate and $115,279,000 as proposed by the House. The conference allowance of $112,879,000 reflects the House allowance after adjusting the House figure of $115,279,000 as printed in the bill to reflect two reductions made on the House floor in Federal funds but not reflected in the District funds appropriation.

PUBLIC SAFETY AND JUSTICE

Amendment No. 12: Appropriates $920,464,000 instead of $919,323,000 as proposed by the House and $920,583,000 as proposed by the Senate.

Fire Department.—The conference agreement provides $103,043,000 instead of $101,902,000 as proposed by the House and the Senate. The increase of $1,141,000 is provided to fund the administrative assistance to the department's battalion chiefs on a three-shift basis to the extent possible for the fiscal year. The conferees have been advised that the administrative assistants are essential to the orderly and efficient operations of their respective battalions and are an integral part of the fireground command structure.

Metropolitan Police Department.—The conference agreement appropriates $257,242,000 which is $7,201,000 above the fiscal year 1990 appropriation. Language carried in last year's Act is continued this year to allow $17,630,000 of the Department's funds to remain available until expended. District officials are directed not to use these carryover funds to replace part of the base in the department's fiscal year 1992 budget. Nor is the department to absorb a disproportionate share of mandatory increases, such as pay costs, than other District agencies.

The situation with crime in the District has worsened, and in order to provide police officials with maximum flexibility in managing the department in its efforts in the war on crime, the conferees once again direct that the drug emergency funds of $17,630,000 shall be available exclusively to the department with the first priority given to the hiring of new police officers to bring the level up to the authorized strength of 5,133. If not expended for personal services, the funds may be used to purchase goods and services in the non-personal object classes including support and other materials as well as capital items.

The conferees request that quarterly reports be provided to the House and Senate Committees on Appropriations showing the amounts obligated and expended and the purposes, in detail, for which funds were obligated and expended.

A summary of the number of sworn officers authorized and funded for fiscal year 1969-1991 follows:

METROPOLITAN POLICE DEPARTMENT—UNIFORMED (SWORN) POLICE OFFICERS

Fiscal year	Number authorized	Number funded
1969	4,100	3,341
1970	5,100	4,295
1971	5,100	5,013
1972	5,100	4,727
1973	5,100	4,974
1974	5,100	4,909
1975	4,750	4,700
1976	4,630	4,567
1977	4,470	4,333
1978	4,150	4,096
1979	4,120	4,120
1980	4,242	4,096
1981	4,025	3,880
1982	4,121	3,880
1983	3,958	3,880
1984	3,958	3,845
1985	3,958	3,845
1986	3,958	3,845
1987	3,958	3,855
1988	3,958	3,855
1989	4,133	4,055
1990	5,133	5,055
1991	5,133	5,055

District-wide contracting.—The conferees remain interested in the District's progress in fully implementing the District of Columbia Procurement Practices Act of 1985. Accordingly, the conferees request that the District provide quarterly reports on the following information regarding contracting by all agencies, boards, commissions, and entities, independent or otherwise that receive any funding, directly or indirectly, through this Act:

(1) progress in completing the regulations of the final four chapters of the Act;

(2) the number and dollar value of sole source contracts the District enters into;

(3) the number and dollar value of contracts being carried out with no written contract on file;

(4) the number and dollar value of contracts pending before the Department of Human Services which have been renewed outside of the competitive bidding process.

Superior Court.—The conference agreement provides $65,850,000 instead of $66,192,000 as proposed by the House and $67,110,000 as proposed by the Senate. The conference action reflects a technical adjustment transferring out eight court reporter positions and $342,000 to the Court System. The conferees have not approved the increase of $860,000 for the Social Services Division and the additional $400,000 for fees for counsel in child abuse and neglect cases proposed by the Senate. The conferees were advised that $2,966,000 is in the budget for the Guardianship and Protective Proceedings program which will not be fully operational in fiscal year 1991. As a result, possibly half of the budget may be unobligated and could be made available to other high priority programs such as the special probationary teams for child abuse cases.

D.C. Court System.—The conference action provides $22,600,000 as proposed by the Senate instead of $22,258,000 as proposed by the House and reflects a technical adjustment transferring in eight court reporter positions and $342,000 from the Superior Court.

Amendment No. 13: Allows the Metropolitan Police Department to make small purchases up to $500,000 without going through any other District agency including the Department of Administrative Services. The limit for the department is presently $10,000 although the limit for some agencies is up to $1,000,000. The conferees agree that the increase in purchasing authority from $10,000 up to $500,000 will insure that the Metropolitan Police Department will be able to independently and expeditiously procure the goods and services it requires to fulfill its mission. The conferees further agree that the administrative requirements for the department's increased procurement authority of up to $500,000 be those presently governing procurements made under the small purchase authority so that no new or creative bureaucratic hurdles will be imposed on the department. The Department should view this increase in direct purchasing authority as a pilot or model that will be reviewed during next year's budget hearings to determine whether the Department's procurement situation has improved.

Amendment No. 14: Deletes language proposed by the Senate which would have made funds appropriated for the Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986 available until expended rather than available only during the fiscal year in which they are appropriated.

PUBLIC EDUCATION SYSTEM

Amendment No. 15: Appropriates $737,240,000 instead of $738,240,000 as proposed by the Senate and $735,240,000 as proposed by the House. The conference action reflects an increase of $3,600,000 above the House allowance after adjusting the House figure of $735,240,000 as printed in the bill to reflect the reduction of $1,600,00 made on the House floor in the allocation to the University of the District of Columbia but not reflected in the appropriation for "Public Education System". The increase of $3,600,000 above the revised House allowance will restore the $1,600,000 for the University of the District of Columbia as proposed by the Senate and will allocate the $2,000,000 in Federal funds appropriated under amendment number 2. The $2,000,000 will provide $1,000,000 for expansion of the Early Childhood Development Program as proposed by the Senate and $1,000,000 for the Anacostia Project in Southeast Washington which will focus on the improvement and extension of mathematics, science and technology for the District's school system. This project is discussed under amendment number 16.

Amendment No. 16: Allocates $528,764,000 instead of $526,764,000 as proposed by the House and $530,764,000 as proposed by the Senate for the public schools of the District of Columbia. The increase of $2,000,000 above the House allowance will provide an additional $1,000,000 as proposed by the Senate for expansion of the Early Childhood Development Program and $1,000,000 for the Anacostia Project in Southeast Washington which is discussed later. The conference agreement deletes the $3,000,000 proposed by the Senate for the projected teacher pay raises. Negotiations are under way on a new contract for teachers which will include pay raises that may exceed $30,000,000. While the conferees do not want to presuppose what those negotiations may conclude, they agree that the level of pay for the District's public school teachers is a priority and note that the Council of the District of Columbia has stated that it is "commmitted to fully fund pay raises that are negotiated by the Board of Education. . ."

Excessive administrative costs.—The conferees are deeply concerned at the pattern of spending in the District's public schools. It is not the case that the total amount per pupil being spent is low; in fact, it is among the highest in the Nation. The problem is that the funds are being misdirected with excessive funds going to administrative overhead and all too little going to the instruction of students. The conferees hope that the new administration will address the misdirection of resources.

Anacostia Project.—The conference agreement includes $1,000,000 for the development and implementation of the renewal of the Anacostia Project in Southeast Washington. In 1974, the District established Ballou High School in Southeast Washington as the mathematics and science school for the city. A renewal of this project will focus on school-based staff development, school analysis for accountability, a new curriculum integrating technology into the classroom with staff development and training in the most up-to-date teaching techniques and strategies (including Integrative Learning) which emphasize preparing students for work, college and citizenship in the 21st century by focusing on science, mathematics and technology as well as values education and multicultural heritage and legacy.

According to many business and government leaders, the United States must devel-

op bolder visions and provide more aggressive leadership in at least three areas: economic revitalization, educational reform and community renewal. This project is an attempt to address these national needs as well as those of minority students who along with women will represent over 85 percent of the new work force by the year 2000. Programs such as those being developed by the National Science Center Foundation (NSCF) are attempting to address these priorities. The NSCF believes that the Nation's educational failures center on two issues, one of which is a decline in student test scores in mathematics and science and the second is the current shortage of well prepared teachers in the fields of mathematics and science for the Nation's schools. The Foundation is developing a computer-based system in an effort to make an impact on the teaching of mathematics. According to NSCF, the use of these technologies not only benefits the teaching of these subjects but it is necessary if we expect to overcome the current and projected shortage of qualified mathematics and science teachers.

The conferees are encouraged by these initiatives and direct that the $1,000,000 approved for this project be used to continue the planning and development of this urban demonstration model in mathematics, science and technology for the District in Southeast Washington. These funds are to be used to upgrade and expand the Ballou Mathematics and Science School and the Friendship Educational Center, which was recently renamed the Patricia Roberts Harris Educational Center, and for additional programs focused on mathematics, science and technology. Learning Logic computer laboratories are to be installed in these two schools to serve as urban demonstration sites for the Foundation's comprehensive computer-based mathematics program for all students in algebra through calculus. Model pilot programs will be established for (1) improving mathematics, science and computer learning opportunities for students in pre-kindergarten through high school including a Tech-Prep 2+2 Program; (2) extended day and year-round programs using computers with a mathematics and science focus; and (3) parent and community support programs.

Funds are also provided to begin a year-round, school-focused, research based staff development center dedicated to improving and upgrading the teaching of mathematics, science and technology in the District's public schools. This facility is to be located in the newly named Patricia Roberts Harris Educational Center and will provide for the strengthening of the relationship and collaboration of the District's public schools with the National Science Center Foundation, Howard University, the University of the District of Columbia, the Naval Research Laboratory, and other agencies and organizations.

The conferees have been advised that the necessary first step toward the implementation of this project is to air condition the Ballou High School for a year-round mathematics and science program. Accordingly, the conferees direct that the necessary funds within the public schools capital outlay program be made available to air condition the Ballou High School and modernize and improve the necessary science laboratories at Ballou for the mathematics and science school.

The conferees request comprehensive biannual reports on the implementation and progress of the Anacostia Project. The reports are to be provided on May 1, 1991, and November 1, 1991, by the Board of Education to the House and Senate Subcommittees on District of Columbia Appropriations. A time line with goals and accomplishments should be included in the annual report.

ACCORD Program.—The ACCORD Program is a 5-year model demonstration project established to provide high school students with necessary skills to obtain entry level career employment. The program is a partnership between the business and civic communities, government agencies and the public schools with job opportunities provided in both the private and public sectors to students who receive training through seminars, on-the-job training, internships, and direct assistance from volunteer mentors. This program was first funded in fiscal year 1988 at a level of $800,000 of which $200,000 was contingent upon the receipt of $200,000 in private sector contributions for a total program level of $1,000,000.

The conferees request that detailed quarterly reports be provided within 20 days after the close of each quarter directly by the Board of Education to the House and Senate Subcommittees District of Columbia Appropriations on the ACCORD Program setting out the progress made from the previous reporting period as well as a comparison of the program's goals and objectives with the accomplishments.

Options School.—The conferees have included $600,000 within the funds provided to the Board of Education for the Options School program. The program is an alternative full-day program for youths 12 to 15 who are functioning at least two years behind grade level and are drop-out risks. The students are given courses in basic skills, computers, science and technology. While in the program 86 percent of the students attended school 80 percent of the time, 37 percent had two or fewer absences, and 25 percent had perfect attendance. On standardized tests 65 percent progressed two grade levels in reading and math. Students can stay in the program for up to one year. This initiative has been a success by any measure, and the conferees encourage school officials to consider expanding its use.

The conferees request that the $180,000 increase above last year's level be used to supplement the base operations and to expand the Options School by adding such programs as a summer session, performing arts, an evaluation which may be used as a basis for national replication, and enhancement of the curriculum as well as other related program development.

Amendment No. 17: Allocates $22,000,000 as proposed by the House instead of $21,000,000 as proposed by the Senate for pay-as-you-go capital projects for the public schools. The conference action provides $2,000,000 as proposed by the House instead of $1,000,000 as proposed by the Senate for renovations to athletic and recreational grounds and facilities in the public school system.

Amendment No. 18: Allocates $76,913,000 as proposed by the Senate instead of $75,313,000 as proposed by the House for the University of the District of Columbia. The conference action restores the $1,600,000 reduction that resulted from a House floor amendment offered because $1,600,000 was proposed to be borrowed on the municipal bond market by the District government to be repaid from the District's local tax revenues to renovate the Carnegie Library to exhibit "The Dinner Party" art work. This amendment was adopted by the House even though there were no funds in the bill related to the art work. The artist subsequently withdrew her offer to donate the art work to the University.

HUMAN SUPPORT SERVICES

Amendment No. 19: Appropriates $876,431,000 instead of $873,390,000 as proposed by the House and $876,240,000 as proposed by the Senate. The increase of $3,041,000 above the House allowance includes $350,000 as proposed by the Senate to evaluate program alternatives for addressing the District's border babies and children of substance abusers. These funds will enable the District to evaluate the few existing alternatives, select the most promising strategies amenable to local conditions, educate and train necessary personnel, and begin implementation. The conferees intend that the District explore with national and local organizations, such as the District of Columbia Institute for Mental Health which was recently awarded a Federal grant for this purpose, various ways to combat this growing problem. The conferees have also included $500,000 as proposed by the Senate for a program to establish residential aftercare for new mothers and their newborn infants in a drug-free environment until they are self-sufficient. In addition, the conference agreement includes $1,500,000 as proposed by the Senate to expand outpatient aftercare for pregnant and general population substance abusers. The need for such care is so great that existing programs are overwhelmed. Aftercare is essential if the recovered substance abuser is to maintain a drug-free lifestyle and not have a relapse.

In order to expedite the delivery of services, the conferees direct that each of these programs be handled through the issuance of contracts to groups providing the services.

The conference action also provides (1) $500,000 as proposed by the Senate for grants to nationally known independent public and private non-profit entities for the purpose of screening for breast and cervical cancer by conducting a physical examination, a mammography, and a pap smear for women who are not currently receiving such services under existing District programs, private insurance, or Federal health benefits programs; and (2) $191,000 for the Youth Services Administration for perimeter fencing and security lighting at the Oak Hill and Cedar Knoll juvenile detention facilities. See amendment number 20 for a further explanation on the use of this $191,000.

Federal funds appropriated to the District in amendment number 8 are appropriated from the District's treasury by this amendment.

Amendment No. 20: Restores language proposed by the House and stricken by the Senate earmarking not less than $191,000 of the Human Support Services appropriation for the Youth Services Administration for perimeter fencing and security lighting at the Oak Hill and Cedar Knoll juvenile detention facilities located in Laurel, Maryland. The conferees direct that these funds not be released for obligation by the department until a comprehensive plan for security improvements at Oak Hill and Cedar Knoll is transmitted to the House and Senate Subcommittees on District of Columbia Appropriations. The conferees reiterate their strong interest in the Oak Hill and Cedar Knoll facilities, especially in view of the continuing security problems. The

conferees request that District officials prepare a long-term plan for resolving the outstanding security, program, staffing and other problems at the facilities and be prepared to testify during the fiscal year 1992 budget hearings on the steps the department will take to implement these plans.

Amendment No. 21: Restores language proposed by the House and stricken by the Senate which prohibits the use of the Hurt Home located at 3050 R Street, Northwest, as a treatment facility until final adjudication by the relevant courts and clarifies the proviso by citing the specific court case that was filed with the District of Columbia Court of Appeals on August 8, 1988 (*Speyer v. Barry*, Appeal No. 88-958). The conferees believe that this provision should not delay occupancy, which is scheduled for the summer of calendar year 1991, since the case should be decided soon.

The Hurt Home was purchased in 1987 and will become the city's first community-based residential center for emotionally disturbed children, youth and their families. The program is designed to serve 24 emotionally disturbed boys and girls, aged 8 to 12 years who are in need of 24 hour intensive therapeutic services in a residential setting. The facility is not intended for children and youth who present a likelihood of serious harm to others, or who have a primary diagnosis of mental retardation, developmental disability or substance abuse. Currently, more than 200 of these children are located in out-of-state treatment facilities in Colorado, Texas, Florida, and Georgia at an annual cost in excess of $24,000,000. The District government is currently renovating the facility at an estimated cost of $2.7 million which will cover work necessary to meet both programmatic and code requirements. Completion of the work is expected during the summer of 1991.

Nothing in this provision should be construed to prohibit the District from performing any activities not expressly prohibited by the order of the Superior Court of the District of Columbia dated June 23, 1988.

PUBLIC WORKS

Amendment No. 22: Deletes language proposed by the House and stricken by the Senate which would have allocated not less than $100,000 from the District treasury for an environmental impact statement for the proposed expansion of the Lorton landfill. The conferees have been advised that action was taken on September 17, 1990, by elected officials of the jurisdiction where the Lorton landfill is located mandating that an environmental impact statement be prepared prior to proceeding with expansion of the landfill. The environmental impact statement is to be completed by March 1992 and will be paid for from dumping or "tipping" fees. The conferees were further advised that the environmental impact statement required by the local officials can be implemented and completed more quickly than one mandated by Congress. Amendment numbers 7 and 58 relate to the Lorton landfill expansion.

CAPITAL OUTLAY

Amendment No. 23: Appropriates $324,322,000 as proposed by the House instead of $323,322,000 as proposed by the Senate. The increase of $1,000,000 above the Senate allowance is earmarked in amendment number 24 for the public school system.

Amendment No. 24: Provides $22,000,000 as proposed by the House instead of $21,000,000 as proposed by the Senate for pay-as-you-go maintenance improvements and emergency repairs to public school facilities. Included in the $22,000,000 allocation which will be financed from general fund operating revenues is $2,000,000 as proposed by the House instead of $1,000,000 as proposed by the Senate for renovations to public school athletic and recreational grounds and facilities.

GENERAL PROVISIONS

Amendment No. 25: Provides an employment ceiling for fiscal year 1991 of 39,262 as proposed by the Senate instead of 40,037 as proposed by the House and deletes language proposed by the Senate concerning solid waste disposal. The conferees agree that the employment ceiling of 39,262 for fiscal year 1991, which is the same as the ceiling in the fiscal year 1990 Act, applies to all departments, agencies, activities, commissions and boards funded directly or indirectly through this appropriations Act. The conferees also agree that District officials are not to use this position ceiling to restrict the hiring of personnel by the Metropolitan Police Department, the Fire Department or the Department of Corrections since the approved fiscal year 1991 level of employment in those departments was not increased above the fiscal year 1990 level.

Amendments Nos. 26 through 31: Technical renumbering of sections to provide consecutive section numbers following conference action on amendment number 25 which deleted a new section 111 proposed by the Senate. With the new section 111 deleted, the section numbers revert to those in the House-passed bill.

Amendment No. 32: Restores section 117 as proposed by the House and amends language which prohibits the use of both local and Federal funds for abortions except to save the life of the mother. This language is identical to that in Public Law 101-168, the District of Columbia Appropriations Act for fiscal year 1990.

Amendment Nos. 33 through 50: Technical renumbering of sections to provide consecutive section numbers following conference action on amendment number 25 which deleted a new section 111 proposed by the Senate. With the new section 111 deleted, the section numbers revert to those in the House-passed bill.

Amendment No. 51:

Inserts language which extends the residency preference system to attorney positions and employees of all independent agencies, boards and commissions of the District of Columbia. The language proposed by the House and stricken by the Senate extended the residency preference system to attorney positions. The residency preference system for employees of the District government was enacted in Public Law 101-168 approved November 21, 1989 (103 Stat. 1276, 1277), and was intended to apply to all persons employed by the District government except those in the Excepted and Executive Services. However, attorney positions were excluded because they were exempt from the Comprehensive Merit Personnel Act which is the act that was amended by Public Law 101-168. In addition, the conferees learned that some independent agencies, boards, and commissions likewise are not subject to the Comprehensive Merit Personnel Act and therefore not subject to the residency preference system. The conference action amends the House language as well as applicable sections and provisions of D.C. law and the D.C. Code to extend the residency preference system to all independent agencies, boards, and commissions of the District of Columbia.

The conferees believe that all employment with the District government should be covered by the residency preference system with the exception of those individuals in the Excepted Service and Executive Service hired after September 31, 1979, who will continue to be required to live in the District of Columbia for the duration of their employment in the Excepted and Executive Services as required under current law.

These amendments are permanent law and as such continue beyond this fiscal year into perpetuity.

Amendment No. 52: Restores language proposed by the House and stricken by the Senate which prohibits the District of Columbia from using funds in this Act for salaries, expenses or other costs associated with the offices of United States Senator or United States Representatives under section 4(d) of D.C. Law 3-171 (secs. 1-113(d), D.C. Code).

Amendment No. 53: Deletes language proposed by the House and stricken by the Senate which would have reduced the Federal funds in this bill by 2 percent or $10,812,360. The conferees note that the total Federal funds recommended in this bill are within the revised 302(b) allocations in both budget authority and outlays.

The conferees further note that the Federal payment has remained at the same level of $430,500,000 for four years and is $14,000,000 below the fiscal year 1987 appropriation when it reached $444,500,000. The reduction of $14,000,000 reflects a 3.1 percent cut in nominal dollars and a loss of 22 percent in real dollars since fiscal year 1987. During the same period, the Federal payment has fallen from a total of 18.3 percent of the District's total operating budget to 13.3 percent in this Act.

Amendment No. 54: Inserts language that extends to September 30, 1991, the effectiveness of a provision in Public Law 101-302 concerning the safety barriers on the Duke Ellington Memorial Bridge as proposed by the Senate and inserts language that amends a provision in Public Law 101-302 that allows the District government to repay $10,000,000 with proceeds of borrowed funds instead of from current operating revenues since the borrowings are from construction funds for the District's new Correctional Treatment Facility and were used to pay the Federal Bureau of Prisons and various state governments for housing District of Columbia code violators. The conferees do not condone this financing arrangement and call on District officials to avoid such requests in the future.

Amendment No. 55: Deletes language proposed by the Senate prohibiting the use of funds in this or any other Act for lobbying expenses related to District of Columbia Statehood or for "shadow representatives." Amendment numbers 52 and 55 both involve the same subject matter and the conferees agreed to accept amendment number 52 and delete amendment number 55.

Amendment No. 56: Deletes language proposed by the Senate relating to enhanced penalties and mandatory sentencing for certain crimes committed in the District of Columbia. The conferees agree that this matter will be the subject of forthcoming hearings.

Amendment No. 57: Deletes language proposed by the Senate which would have exempted the Perinatal Abstinence Project located at 3551 Sixteenth Street, Northwest,

from the requirement to obtain a certificate of occupancy.

Amendment No. 58: Deletes language proposed by the Senate that would have prohibited the use of any funds in this Act for expansion of the Lorton sanitary landfill until completion of an environmental impact statement and agreement to a cost-sharing arrangement for payment of the study. The Senate language would have also imposed restrictions upon the transport of any output of the municipal waste system of the District. The conferees have been advised that action was taken on September 17, 1990, by the elected officials of the jurisdiction where the Lorton landfill is located mandating that an environmental impact statement be prepared prior to proceeding with expansion of the landfill. The environmental impact statement is to be completed by March 1992 and will be paid for from dumping or "tipping" fees. The conferees were further advised that the environmental impact statement required by the local officials can be implemented and completed more quickly than one mandated by Congress. Amendment numbers 7 and 22 relate to the Lorton landfill expansion.

Amendment No. 59: Deletes language proposed by the Senate which would have amended the District of Columbia Human Rights Act with respect to participation of persons in programs or activities involving juveniles under 18 years of age.

Amendment No. 60: Changes section number to 139 instead of 143 as proposed by the Senate and inserts language as proposed by the Senate to allow for the retirement of not to exceed 75 police officers currently on extended limited duty, where the prognosis for return to full police duty is not good, and states that their retirements are to be excluded from the computation of the rate of disability retirement under subsection 145(a) of the District of Columbia Retirement Reform Act of 1979 (Public Law 96-122). This rate of disability retirements is used to determine whether to reduce the authorized Federal payment to the Police Officers and Firefighters' Retirement Fund. A number of officers are in a limited or light duty status or on extended sick leave. The police chief has stated that it is important to replace these individuals with able-bodied police officers who can perform on the street.

Prior to the enactment of subsection 145(a) of Public Law 96-122, there was concern that the District's retirement system was being abused with excessive disability retirements. In some years, disability retirements accounted for 99 percent of all police and fire retirements. In order to address the situation, the Congress approved subsection 145(a) as part of the District's Retirement Reform Act to provide some incentive to District managers to reduce the percentage of disability retirements. The conferees believe the District has responded favorably and has included this language which will allow these individuals to retire without reducing the authorized Federal payment to the retirement funds and will permit the Metropolitan Police Department to hire police officers, or civilians if the position is a civilian post, to fill the vacated positions. The conferees direct that these retirements, while exempt from the computation of the rate of disability retirements, be subject to all of the rules and regulations of the District's Board of Surgeons as well as the Policemen and Firemen's Retirement and Relief Board and meet all of the criteria for retirement.

The language agreed to by the conferees requires the Mayor to engage an enrolled actuary to determine the financial effects of this change on the retirement fund and to comply fully with sections 142(d) and 144(d) of Public Law 96-122. The language also requires that if any of the 75 positions that may become vacant because of retirements under subsection (a) are filled, a civilian employee or an officer or member of the Metropolitan Police Department shall be hired to fill that position. The objective of this section is to ensure that the objectives of the Mayor and the Metropolitan Police Chief to hire more able-bodied officers for street duty are carried out.

Subsection (d) states that the limited duty policy of the Metropolitan Police Department shall be that in effect prior to July 8, 1990, unless ordered by the relevant court. The conferees have been concerned about past abuses of the department's limited duty policy and encourage the Department to use the authority granted by this provision to modify its recent practice and retire those who will not be returning to full duty.

In Special Order 80-20, issued April 2, 1980, which implements a settlement that resulted from earlier court action, the Chief of Police stated that "Female members who become pregnant shall be eligible for limited duty assignments in accordance with policy set forth in this order."

The order also states that "Assignments to limited duty shall be for a specific period of time, depending on the prognosis for return to full duty set forth by the Board of Surgeons physician." The conferees believe that these provisions are clear and should be adhered to until the matter is either negotiated by the parties or adjudicated by the court.

Amendment No. 61: Changes section number to 140 instead of 144 as proposed by the Senate and amends language proposed by the Senate to extend the reporting and termination date of the Task Force on Substance Abusing Pregnant Women and Infants Exposed to Maternal Substance Abuse During Pregnancy by four months to March 29, 1991. The Task Force was established in last year's appropriations Act and was to submit its report and terminate within one year after the date of enactment of the Act which was signed by the President on November 21, 1989.

Amendment No. 62: Deletes language proposed by the Senate which would have amended the District of Columbia Human Rights Act with respect to the participation of adult homosexual and bisexual persons in programs or activities involving juveniles under 18 years of age.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1991 recommended by the Committee of Conference, with comparisons to the fiscal year 1990 amount, the 1991 budget estimates, and the House and Senate bills for 1991 follow:

FEDERAL FUNDS

New budget (obligational) authority, fiscal year 1990	$558,327,000
Budget estimates of new (obligational) authority fiscal year 1991	519,278,000
House bill, fiscal year 1991	529,805,640
Senate bill, fiscal year 1991	549,628,000
Conference agreement, fiscal year 1991	547,700,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1990	−10,627,000
Budget estimates of new (obligational) authority, fiscal year 1991	+28,422,000
House bill, fiscal year 1991	+17,894,360
Senate bill, fiscal year 1991	−1,928,000

DISTRICT OF COLUMBIA FUNDS

New budget (obligational) authority, fiscal year 1990	*$3,527,744,000*
Budget estimates of new (obligational) authority, Fiscal Year 1991	*3,818,652,000*
House bill, fiscal year 1991	*3,852,792,000*
Senate bill, fiscal year 1991	*3,861,502,000*
Conference agreement, fiscal year 1991	*3,860,574,000*
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1990	*+332,830,000*
Budget estimates of new (obligational) authority, fiscal year 1991	*+41,922,000*
House bill, fiscal year 1991	*+7,782,000*
Senate bill, fiscal year 1991	*−928,000*

JULIAN C. DIXON,
WILLIAM H. NATCHER,
LOUIS STOKES,
BERNARD J. DWYER,
STENY H. HOYER,
JAMIE L. WHITTEN,
DEAN A. GALLO,
BILL GREEN,
RALPH REGULA,
SILVIO O. CONTE,
Managers on the Part of the House.

BROCK ADAMS,
WYCHE FOWLER, JR.,
J. ROBERT KERREY,
ROBERT C. BYRD,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 3095, SAFE MEDICAL DEVICES ACT OF 1990

Mr. WAXMAN submitted the following conference report and statement on the bill (H.R. 3095) to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-959)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3095) to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendent of the Senate and agree to the same with an amendent as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE AND REFERENCE TO ACT.

(a) SHORT TITLE.—This Act may be cited as the "Safe Medical Devices Act of 1990".

(b) REFERENCE.—Whenever in this Act (other than in section 19) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

SEC. 2. USER REPORTS.

(a) REQUIREMENT.—Section 519 (21 U.S.C. 360i) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"User Reports

"(b)(1)(A) Whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that there is a probability that a device has caused or contributed to the death of a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the Secretary and, if the identity of the manufacturer is known, to the manufacturer of the device. In the case of deaths, the Secretary may by regulation prescribe a shorter period for the reporting of such information.

"(B) Whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that there is a probability that a device has caused or contributed to the serious illness of, or serious injury to, a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the manufacturer of the device or to the Secretary if the identity of the manufacturer is not known.

"(C) Each device user facility shall submit to the Secretary on a semi-annual basis a summary of the reports made under subparagraphs (A) and (B). Such summary shall be submitted on January 1 and July 1 of each year. The summary shall be in such form and contain such information from such reports as the Secretary may require and shall include—

"(i) sufficient information to identify the facility which made the reports for which the summary is submitted,

"(ii) in the case of any product which was the subject of a report, the product name, serial number, and model number,

"(iii) the name and the address of the manufacturer of such device, and

"(iv) a brief description of the event reported to the manufacturer.

The Secretary may by regulation alter the frequency and timing of reports required by this subparagraph.

"(D) For purposes of subparagraphs (A), (B), and (C), a device user facility shall be treated as having received or otherwise become aware of information with respect to a device of that facility when medical personnel who are employed by or otherwise formally affiliated with the facility receive or otherwise become aware of information with respect to that device in the course of their duties.

"(2) The Secretary may not disclose the identity of a device user facility which makes a report under paragraph (1) except in connection with—

"(A) an action brought to enforce section 301(q),

"(B) a communication to a manufacturer of a device which is the subject of a report under paragraph (1), or

"(C) a disclosure required under subsection (a).

This paragraph does not prohibit the Secretary from disclosing the identity of a device user facility making a report under paragraph (1) or any information in such a report to employees of the Department of Health and Human Services, to the Department of Justice, or to the duly authorized committees and subcommittees of the Congress.

"(3) No report made under paragraph (1) by—

"(A) a device user facility,

"(B) an individual who is employed by or otherwise formally affiliated with such a facility, or

"(C) a physician who is not required to make such a report,

shall be admissible into evidence or otherwise used in any civil action involving private parties unless the facility, individual, or physician who made the report had knowledge of the falsity of the information contained in the report.

"(4) A report made under paragraph (1) does not affect any obligation of a manufacturer who receives the report to file a report as required under subsection (a).

"(5) For purposes of this subsection:

"(A) The term 'device user facility' means a hospital, ambulatory surgical facility, nursing home, or outpatient treatment facility which is not a physician's office. The Secretary may by regulation include an outpatient diagnostic facility which is not a physician's office in such term.

"(B) The terms 'serious illness' and 'serious injury' mean illness or injury, respectively, that—

"(i) is life threatening,

"(ii) results in permanent impairment of a body function or permanent damage to a body structure, or

"(iii) necessitates immediate medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.".

(b) REGULATIONS.—The Secretary of Health and Human Services shall promulgate regulations to implement section 519(b) of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a) (including a definition of the summary required by paragraph (1)(C) of such section) not later than 12 months after the date of enactment of this Act. In promulgating the regulations, the Secretary shall minimize the administrative burdens on device user facilities consistent with the need to assure adequate information.

(c) EFFECTIVE DATE.—Section 519(b) of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a), shall take effect—

(1) upon the effective date of regulations promulgated under subsection (b), or

(2) upon the expiration of 12 months from the date of the enactment of this Act,

whichever occurs first.

(d) EDUCATION AND INFORMATION.—During the 18-month period beginning on the date of the enactment of this Act, the Secretary of Health and Human Services shall inform device user facilities (as defined in section 519(b)(5)(A) of the Federal Food, Drug, and Cosmetic Act) and manufacturers and distributors of devices respecting the requirements of section 519(b) of such Act. Additionally, the Secretary, to the extent practicable, shall provide persons subject to the requirements of such section assistance in the form of publications regarding such requirements.

(e) STUDY.—Not more than 36 months after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study of—

(1) the compliance by device user facilities (as defined in section 519(b)(5)(A) of the Federal Food, Drug, and Cosmetic Act) with the requirements of section 519(b) of such Act,

(2) the actions taken by the manufacturers of devices in response to reports made to them under such section,

(3) the cost effectiveness of such requirements and their implementation, and

(4) any recommendations for improvements to such requirements.

The Comptroller General shall complete the study and submit a report on the study not later than 45 months from the date of the enactment of this Act. The report shall be submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate and to the Secretary of Health and Human Services.

(f) REPORT TO CONGRESS.—Not later than 36 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report that contains an evaluation of the requirements of section 519(b) of the Federal Food, Drug, and Cosmetic Act. In preparing the report, the Secretary shall consult with individuals and organizations with an interest in health care and consumer issues. At a minimum, the report shall contain—

(1) an evaluation of the safety benefits of the requirements,

(2) an evaluation of the burdens placed on the Food and Drug Administration and on device user facilities by the requirements,

(3) an evaluation of the cost-effectiveness of the requirements, and

(4) recommendations for legislative reform.

SEC. 3. REPORTS.

(a) DISTRIBUTOR REPORTS.—

(1) Section 519(a) (21 U.S.C. 360i(a)) is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and", and by adding after paragraph (5) the following:

"(6) shall require distributors who submit such reports to submit copies of the reports to the manufacturer of the device for which the report was made.".

(2) Section 519(a)(6), as added by the amendment made by paragraph (1), shall take effect upon the effective date of final regulations under subsection (c).

(b) CERTIFICATION, DEVICE TRACKING.—

(1) Section 519 (21 U.S.C. 360i), as amended by section 2, is amended by adding at the end the following:

"Certification

"(d) Each manufacturer, importer, and distributor required to make reports under subsection (a) shall submit to the Secretary annually a statement certifying that—

"(1) the manufacturer, importer, or distributor did file a certain number of such reports, or

"(2) the manufacturer, importer, or distributor did not file any report under subsection (a).

"Device Tracking

"(e) Every person who registers under section 510 and is engaged in the manufacture of—

"(1) a device the failure of which would be reasonably likely to have serious adverse health consequences and which is (A) a permanently implantable device, or (B) a life sustaining or life supporting device used outside a device user facility, or

"(2) any other device which the Secretary may designate,

shall adopt a method of device tracking.".

(2) Section 520(j) (21 U.S.C. 360j(j)) is amended by striking out "No" and inserting in lieu thereof "Except as provided in section 519(e), no".

(3) Section 519(e), as added by the amendment made by paragraph (1), shall take effect upon the effective date of final regulations under subsection (c).

(c) REGULATIONS.—

(1)(A) Not later than 9 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue proposed regulations—

(i) to require distributors of devices to establish and maintain records and to make reports (including reports required by part 803 of title 21 of the Code of Federal Regulations) under section 519(a)(6) of the Federal Food, Drug, and Cosmetic Act, and

(ii) to implement section 519(e) of such Act.

The Secretary may exempt from regulations described in clause (i) classes of distributors of class I and class II devices from whom reports are not necessary for the protection of the public health.

(B) Regulations under subparagraph (A) shall—

(i) require appropriate methods for maintenance of records to ensure that patients who receive devices can be provided the notification required by such Act,

(ii) require that manufacturers adopt effective methods of tracking devices,

(iii) take into account the position of distributors in the device distribution process, and

(iv) include such other requirements as the Secretary deems necessary for the adoption of an effective user tracking program under section 519(e) of such Act.

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary shall issue final regulations to implement sections 519(a)(6) and 519(e) of the Federal Food, Drug, and Cosmetic Act. If the Secretary does not promulgate such final regulations upon the expiration of such 18 months, the Congress finds that there is good cause for the proposed regulations to be considered as the final regulations without response to comment because the implementation of sections 519(a)(6) and 519(e) of such Act are essential to protect the health of patients who use such devices. Consequently, in such event, the proposed regulations issued under paragraph (1) shall become final regulations as of the expiration of such 18 months. There shall be promptly published in the Federal Register notice of the new status of the proposed regulations.

SEC. 4. SUBSTANTIAL EQUIVALENCE; CLASSIFICATION REVISION.

(a) SUBSTANTIAL EQUIVALENCE.—

(3) Section 513(f) (21 U.S.C. 360c(f)) is amended by adding at the end the following:

"(3) If a manufacturer reports to the Secretary under section 510(k) that a device is substantially equivalent to another device—

"(i) which the Secretary has classified as a class III device under subsection (b),

"(ii) which was introduced or delivered for introduction into interstate commerce for commercial distribution before December 1, 1990, and

"(iii) for which no final regulation requiring premarket approval has been promulgated under section 515(b),

the manufacturer shall certify to the Secretary that the manufacturer has conducted a reasonable search of all information known or otherwise available to the manufacturer respecting such other device and has included in the report under section 510(k) a summary of and a citation to all adverse safety and effectiveness data respecting such other device and respecting the device for which the 510(k) report is being made and which has not been submitted to the Secretary under section 519. The Secretary may require the manufacturer to submit the adverse safety and effectiveness data described in the report.".

(b) REVISION OF CLASSIFICATION.—

(1) Section 515 (21 U.S.C. 360e) is amended by adding at the end the following:

"Revision

"(i)(1) Before December 1, 1995, the Secretary shall by order require manufacturers of devices, which were introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, and which are subject to revision of classification under paragraph (2), to submit to the Secretary a summary of and citation to any information known or otherwise available to the manufacturer respecting such devices, including adverse safety or effectiveness information which has not been submitted under section 519. The Secretary may require the manufacturer to submit the adverse safety or effectiveness data for which a summary and citation were submitted, if such data is available to the manufacturer.

"(2) After the issuance of an order under paragraph (1) but before December 1, 1995, the Secretary shall publish a regulation in the Federal Register for each device—

"(A) which the Secretary has classified as a class III device, and

"(B) for which no final regulation has been promulgated under section 515(b),

revising the classification of the device so that the device is classified into class I or class II, unless the regulation requires the device to remain in class III. In determining whether to revise the classification of a device or to require a device to remain in class III, the Secretary shall apply the criteria set forth in section 513(a). Before the publication of a regulation requiring a device to remain in class III or revising its classification, the Secretary shall publish a proposed regulation respecting the classification of a device under this paragraph and provide reasonable opportunity for the submission of comments on any such regulation. No regulation requiring a device to remain in class III or revising its classification may take effect before the expiration of 90 days from the date of its publication in the Federal Register as a proposed regulation.

"(3) The Secretary shall, as promptly as is reasonably achievable, but not later than 12 months after the effective date of the regulation requiring a device to remain in class III, establish a schedule for the promulgation of a section 515(b) regulation for each device which is subject to the regulation requiring the device to remain in class III.".

(2) Section 520(l) (21 U.S.C. 360j(l)) is amended by adding at the end the following:

"(5)(A) Before December 1, 1991, the Secretary shall by order require manufacturers of devices described in paragraph (1), which are subject to revision of classification under subparagraph (B), to submit to the Secretary a summary of and citation to any information known or otherwise available to the manufacturers respecting the devices, including adverse safety or effectiveness information which has not been submitted under section 519. The Secretary may require a manufacturer to submit the adverse safety or effectiveness data for which a summary and citation were submitted, if such data are available to the manufacturer.

"(B) Except as provided in subparagraph (C), after the issuance of an order under subparagraph (A) but before December 1, 1992, the Secretary shall publish a regulation in the Federal Register for each device which is classified in class III under paragraph (1) revising the classification of the device so that the device is classified into class I or class II, unless the regulation requires the device to remain in class III. In determining whether to revise the classification of a device or to require a device to remain in class III, the Secretary shall apply the criteria set forth in section 513(a). Before the publication of a regulation requiring a device to remain in class III or revising its classification, the Secretary shall publish a proposed regulation respecting the classification of a device under this subparagraph and provide an opportunity for the submission of comments on any such regulation. No regulation under this subparagraph requiring a device to remain in class III or revising its classification may take effect before the expiration of 90 days from the date of the publication in the Federal Register of the proposed regulation.

"(C) The Secretary may by notice published in the Federal Register extend the period prescribed by subparagraph (B) for a device for an additional period not to exceed 1 year.".

(3)(A) Notwithstanding section 520(l)(5) of the Federal Food, Drug, and Cosmetic Act, the Secretary of Health and Human Services shall not retain any daily wear soft or daily wear nonhydrophilic plastic contact lens in class III under such Act unless the Secretary finds that it meets the criteria set forth in section 513(a)(1)(C) of such Act. The finding and the grounds for the finding shall be published in the Federal Register. For any such lens, the Secretary shall make the determination respecting reclassification required in section 520(l)(5)(B) of such Act within 24 months of the date of the enactment of this paragraph.

(B) The Secretary of Health and Human Services may by notice published in the Federal Register extend the two-year period prescribed by subparagraph (A) for a lens for an additional period not to exceed one year.

(C)(i) Before classifying a lens in class II pursuant to subparagraph (A), the Secretary of Health and Human Services shall pursuant to section 513(a)(1)(B) of such Act assure that appropriate regulatory safeguards are in effect which provide reasonable assurance of the safety and effectiveness of such lens, including clinical and preclinical data if deemed necessary by the Secretary.

(ii) Prior to classifying a lens in class I pursuant to subparagraph (A), the Secretary shall assure that appropriate regulatory safeguards are in effect which provide reasonable assurance of the safety and effectiveness of such lens, including clinical and preclinical data if deemed necessary by the Secretary.

(D) Notwithstanding section 520(l)(5) of such Act, if the Secretary of Health and Human Services has not made the finding required by subparagraph (A) within 36 months of the date of the enactment of this subparagraph, the Secretary shall issue an order placing the lens in class II.

(E) Any person adversely affected by a final regulation under this paragraph revising the classification of a lens may challenge the revision of the classification of such lens only by filing a petition under section 513(e) for a classification change.

SEC. 5. CLASSIFICATION AND RECLASSIFICATION OF DEVICES.

(a) STANDARDS.—

(1) Section 513(a)(1)(A)(ii) (21 U.S.C. 360c(a)(1)(A)(ii)) is amended by striking out "or to establish a performance standard" and inserting in lieu thereof "or to establish special controls".

(2) Section 513(a)(1)(B) (21 U.S.C. 360c(a)(1)(B)) is amended to read as follows:

"(B) CLASS II, SPECIAL CONTROLS.—A device which cannot be classified as a class I device because the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, and for which there is sufficient information to establish special controls to provide such assurance, including the promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k)), recommendations, and other appropriate actions as the Secretary deems necessary to provide such assurance. For a device that is purported or represented to be for a use in supporting or sustaining human life, the Secretary shall examine and identify the special controls, if any, that are necessary to provide adequate assurance of safety and effectiveness and describe how such controls provide such assurance.".

(3) Clause (i) of section 513(a)(1)(C) (21 U.S.C. 360c(a)(1)(C)) is amended to read as follows:

"(i) it (I) cannot be classified as a class I device because insufficient information exists to determine that the application of general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device, and (II) cannot be classified as a class II device because insufficient information exists to determine that the special controls described in subparagraph (B) would provide reasonable assurance of its safety and effectiveness, and".

(b) CLASSIFICATION CHANGE.—Section 513(e) (21 U.S.C. 360c(e)) is amended by redesignating clauses (1) and (2) as clauses (A) and (B), respectively, and by inserting "(1)" after "(e)" and by adding at the end the following:

"(2) By regulation promulgated under paragraph (1), the Secretary may change the classification of a device from class III—

"(A) to class II if the Secretary determines that special controls would provide reasonable assurance of the safety and effectiveness of the device and that general controls would not provide reasonable assurance of the safety and effectiveness of the device, or

"(B) to class I if the Secretary determines that general controls would provide reasonable assurance of the safety and effectiveness of the device.".

(c) F.D.A. AUTHORITY TO INITIATE RECLASSIFICATION.—

(1) Section 513(f)(2)(A) (21 U.S.C. 360c(f)(2)(A)) is amended by striking out "The manufacturer" and inserting in lieu thereof "The Secretary may initiate the reclassification of a device classified into class III under paragraph (1) of this subsection or the manufacturer".

(2) Section 520(l)(2) (21 U.S.C. 360j(l)(2)) is amended by striking out "The manufacturer" and inserting in lieu thereof "The Secretary may initiate the reclassification of a device classified into class III under paragraph (1) of this subsection or the manufacturer".

(3) The heading for section 513(f) (21 U.S.C. 360c(f)) is amended by inserting "and Reclassification" before "of".

SEC. 6. ESTABLISHMENT OF PERFORMANCE STANDARDS.

(a) PROCEDURE.—Section 514 (21 U.S.C. 360d) is amended—

(1) in subsection (a), by amending the first sentence to read as follows: "The special controls required by section 513(a)(1)(B) shall include performance standards for a class II device if the Secretary determines that a performance standard is necessary to provide reasonable assurance of the safety and effectiveness of the device.",

(2) by striking out subsections (b) through (f),

(3) by redesignating subsection (g) as subsection (b),

(4) in subsection (b) (as redesignated), by amending paragraphs (1) and (2) to read as follows:

"(1)(A) The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any performance standard for a device.

"(B) A notice of proposed rulemaking for the establishment or amendment of a performance standard for a device shall—

"(i) set forth a finding with supporting justification that the performance standard is appropriate and necessary to provide reasonable assurance of the safety and effectiveness of the device,

"(ii) set forth proposed findings with respect to the risk of illness or injury that the performance standard is intended to reduce or eliminate,

"(iii) invite interested persons to submit to the Secretary, within 30 days of the publication of the notice, requests for changes in the classification of the device pursuant to section 513(e) based on new information relevant to the classification, and

"(iv) invite interested persons to submit an existing performance standard for the device, including a draft or proposed performance standard, for consideration by the Secretary.

"(C) A notice of proposed rulemaking for the revocation of a performance standard shall set forth a finding with supporting justification that the performance standard is no longer necessary to provide reasonable assurance of the safety and effectiveness of a device.

"(D) The Secretary shall provide for a comment period of not less than 60 days.

"(2) If, after publication of a notice in accordance with paragraph (1), the Secretary receives a request for a change in the classification of the device, the Secretary shall, within 60 days of the publication of the notice, after consultation with the appropriate panel under section 513, either deny the request or give notice of an intent to initiate such change under section 513(e).".

(b) CONFORMING AMENDMENTS.—

(1) Section 514(b) (as redesignated by subsection (a)(3)) is amended—

(A) in paragraph (3)(A), by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (1)", and

(B) in paragraph (4)(A), by striking out "paragraphs (2) and (3)(B)" and inserting in lieu thereof "paragraphs (1), (2), and (3)(B)".

(2) Section 520(i) (21 U.S.C. 360j(i)) is amended by striking out "514(g)(5)(B)" and inserting in lieu thereof "514(b)(5)(B)".

SEC. 7. REPORTS OF REMOVALS AND CORRECTIONS.

Section 519 (21 U.S.C. 360i), as amended by sections 2 and 3, is amended by adding at the end the following:

"Reports of Removals and Corrections

"(f)(1) Except as provided in paragraph (2), the Secretary shall by regulation require a manufacturer, importer, or distributor of a device to report promptly to the Secretary any correction or removal of a device undertaken by such manufacturer, importer, or distributor if the removal or correction was undertaken—

"(A) to reduce a risk to health posed by the device, or

"(B) to remedy a violation of this Act caused by the device which may present a risk to health.

A manufacturer, importer, or distributor of a device who undertakes a correction or removal of a device which is not required to be reported under this paragraph shall keep a record of such correction or removal.

"(2) No report of the corrective action or removal of a device may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

"(3) For purposes of paragraphs (1) and (2), the terms 'correction' and 'removal' do not include routine servicing.".

SEC. 8. RECALL AUTHORITY.

Section 518 (21 U.S.C. 360h) is amended by adding at the end the following new subsection:

"Recall Authority

"(e)(1) If the Secretary finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the device)—

"(A) to immediately cease distribution of such device, and

"(B) to immediately notify health professionals and device user facilities of the order and to instruct such professionals and facilities to cease use of such device.

The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such device. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

"(2)(A) If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the device with respect to which the order was issued, the Secretary shall, except as provided in subparagraphs (B) and (C), amend the order to require a recall. The Secretary shall specify a timetable in which the device recall will occur and shall require periodic

reports to the Secretary describing the progress of the recall.

"(B) An amended order under subparagraph (A)—

"(i) shall—

"(I) not include recall of a device from individuals, and

"(II) not include recall of a device from device user facilities if the Secretary determines that the risk of recalling such device from the facilities presents a greater health risk than the health risk of not recalling the device from use, and

"(ii) shall provide for notice to individuals subject to the risks associated with the use of such device.

In providing the notice required by clause (ii), the Secretary may use the assistance of health professionals who prescribed or used such a device for individuals. If a significant number of such individuals cannot be identified, the Secretary shall notify such individuals pursuant to section 705(b).

"(3) The remedy provided by this subsection shall be in addition to remedies provided by subsections (a), (b), and (c).".

SEC. 9. TEMPORARY SUSPENSION OF APPROVAL OF APPLICATION.

(a) SUSPENSION.—Section 515(e) (21 U.S.C. 360e(e)) is amended—

(1) by adding at the end the following:

"(3) If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a device under an approved application would cause serious, adverse health consequences or death, the Secretary shall by order temporarily suspend the approval of the application approved under this section. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.", and

(2) in the subsection heading, by inserting "and Temporary Suspension" after "Withdrawal".

(b) CONFORMING AMENDMENT.—Section 501(f) (21 U.S.C. 351(f) is amended—

(1) in subparagraph (A)(ii)(II), by striking out "or withdrawn" and inserting in lieu thereof ", suspended, or withdrawn",

(2) in subparagraph (B)(ii), by striking out "which does not have such an application in effect" and inserting in lieu thereof "which has an application which has been suspended or is otherwise not in effect", and

(3) in subparagraph (C), by striking out "which does not have such an application in effect" and inserting in lieu thereof "which has an application which has been suspended or is otherwise not in effect".

SEC. 10. POSTMARKET SURVEILLANCE.

Subchapter A of chapter 5 is amended by inserting after section 521 (21 U.S.C. 360k) the following new section:

"POSTMARKET SURVEILLANCE

"Sec. 522. (a) IN GENERAL.—

"(1) REQUIRED SURVEILLANCE.—The Secretary shall require a manufacturer to conduct postmarket surveillance for any device of the manufacturer first introduced or delivered for introduction into interstate commerce after January 1, 1991, that—

"(A) is a permanent implant the failure of which may cause serious, adverse health consequences or death,

"(B) is intended for a use in supporting or sustaining human life, or

"(C) potentially presents a serious risk to human health.

"(2) DISCRETIONARY SURVEILLANCE.—The Secretary may require a manufacturer to conduct postmarket surveillance for a device of the manufacturer if the Secretary determines that postmarket surveillance of the device is necessary to protect the public health or to provide safety or effectiveness data for the device.

"(b) SURVEILLANCE APPROVAL.—Each manufacturer required to conduct a surveillance of a device under subsection (a) shall, within 30 days of the first introduction or delivery for introduction of such device into interstate commerce submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of useful data or other information necessary to protect the public health and to provide safety and effectiveness information for the device. The Secretary may not approve such a protocol until it has been reviewed by an appropriately qualified scientific and technical review committee established by the Secretary.".

SEC. 11. USE OF PREMARKET APPROVAL DATA.

Section 520 (21 U.S.C. 360j) is amended—

(1) in subsection (c)—

(A) by striking out "under section 513 from class III to class II" and inserting in lieu thereof "from class III to class II or class I", and

(B) by inserting "(1) in accordance with subsection (h), and (2)" after "except", and

(2) in subsection (h)—

(A) in paragraph (3), by striking out "Any" and inserting in lieu thereof "Except as provided in paragraph (4), any", and

(B) by adding at the end the following new paragraph:

"(4)(A) Any information contained in an application for premarket approval filed with the Secretary pursuant to section 515(c), including clinical and preclinical tests or studies, but excluding descriptions of methods of manufacture and product composition, that demonstrates the safety and effectiveness of a device shall be available 1 year after the original application for the fourth device of a kind has been approved by the Secretary, for use by the Secretary in approving devices, or determining whether a product development protocol has been completed, under section 515, establishing a performance standard under section 514, and reclassifying devices under subsections (e) and (f) of section 513, and subsection (l)(2). The Secretary shall deem devices that incorporate the same technologies, have the same principles of operation, and are intended for the same use or uses to be within a kind of device.

"(B) The Secretary, contemporaneously with the approval of the fourth device of a kind, shall publish an order in the Federal Register identifying the four devices of a kind that have been approved under section 515 and the date on which the data contained in premarket approval applications for the devices will be available to the Secretary for use, as described in subparagraph (A).

"(C) The publicly available detailed summaries of information respecting the safety and effectiveness of devices required by paragraph (1)(A) shall be available for use by the Secretary as the evidentiary basis for the regulatory action described in subparagraph (A).

"(D)(i) This paragraph shall become effective—

"(I) on November 15, 1990, for devices for which four devices of a kind were approved on or before December 31, 1987, and

"(II) on November 15, 1991, for devices not described in subclause (I).

"(ii) For each device described in clause (i)(I), the Secretary shall publish a notice in the Federal Register setting forth the date, which shall be not earlier than 1 year after the date of the notice, that data identified in subparagraph (A) shall be available for the use of the Secretary.

"(E)(i) Except as provided in clause (ii), the approval date of a device, for purposes of this paragraph, shall be the date of the letter of the Secretary to the applicant approving a device under section 515 and permitting the applicant to commercially distribute the device.

"(ii) For each device described in subparagraph (D)(i)(II) for which the original application for a fourth device of a kind is approved by the Secretary before November 1, 1991, the approval date of the fourth device of a kind shall be deemed to be November 15, 1991.

"(F) Any challenge to an order under subparagraph (B) shall be made not later than 30 days after the date of the Federal Register notice referred to in such subparagraph.".

SEC. 12. SUBSTANTIAL EQUIVALENCE.

(a) SUBSTANTIAL EQUIVALENCE.—Section 513 (21 U.S.C. 360j) is amended by adding at the end the following new subsection:

"Substantial Equivalence

"(i)(1)(A) For purposes of determinations of substantial equivalence under subsection (f) and section 520(l), the term 'substantially equivalent' or 'substantial equivalence' means, with respect to a device being compared to a predicate device, that the device has the same intended use as the predicate device and that the Secretary by order has found that the device—

"(i) has the same technological characteristics as the predicate device, or

"(ii)(I) has different technological characteristics and the information submitted that the device is substantially equivalent to the predicate device contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that the device is as safe and effective as a legally marketed device, and (II) does not raise different questions of safety and efficacy than the predicate device.

"(B) For purposes of subparagraph (A), the term 'different technological characteristics' means, with respect to a device being compared to a predicate device, that there is a significant change in the materials, design, energy source, or other features of the device from those of the predicate device.

"(2) A device may not be found to be substantially equivalent to a predicate device that has been removed from the market at the initiative of the Secretary or that has been determined to be misbranded or adulterated by a judicial order.

"(3)(A) As part of a submission under section 510(k) respecting a device, the person required to file a premarket notification under such section shall provide an adequate summary of any information respecting safety and effectiveness or state that such information will be made available upon request by any person.

"(B) Any summary under subparagraph (A) respecting a device shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such device is substantially equivalent to another device.".

(b) REGULATIONS.—Within 12 months of the date of the enactment of this Act, the Secretary of Health and Human Services shall issue regulations establishing the requirements of the summaries under section 513(i)(3) of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a).

SEC. 13. JUDICIAL REVIEW.

Section 517(a) (21 U.S.C. 360g(a)) is amended—

(1) by striking out "or" at the end of paragraph (6), and

(2) by inserting after paragraph (7) the following new paragraphs:

"(8) an order pursuant to section 513(i),

"(9) a regulation under section 515(i)(2) or 520(l)(5)(B), or

"(10) an order under section 520(c)(4)(B),".

SEC. 14. HUMANITARIAN DEVICE EXEMPTION.

(a) EXEMPTION.—Section 520 (21 U.S.C. 360j) is amended by adding at the end the following:

"Humanitarian Device Exemption

"(m)(1) To the extent consistent with the protection of the public health and safety and with ethical standards, it is the purpose of this subsection to encourage the discovery and use of devices intended to benefit patients in the treatment and diagnosis of diseases or conditions that affect fewer than 4,000 individuals in the United States.

"(2) The Secretary may grant a request for an exemption from the effectiveness requirements of sections 514 and 515 for a device for which the Secretary finds that—

"(A) the device is designed to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States,

"(B) the device would not be available to a person with a disease or condition referred to in subparagraph (A) unless the Secretary grants such an exemption and there is no comparable device, other than under this exemption, available to treat or diagnose such disease or condition, and

"(C) the device will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

"(3) No person granted an exemption under paragraph (2) with respect to a device may sell the device for an amount that exceeds the costs of research and development, fabrication, and distribution of the device.

"(4) Devices granted an exemption under paragraph (2) may only be used—

"(A) in facilities that have established, in accordance with regulations of the Secretary, a local institutional review committee to supervise clinical testing of devices in the facilities, and

"(B) if, before the use of a device, an institutional review committee approves the use in the treatment or diagnosis of a disease or condition referred to in paragraph (2)(A).

"(5) An exemption under paragraph (2) shall be for a term of 18 months and may only be initially granted in the 5-year period beginning on the date regulations under paragraph (6) take effect. The Secretary may extend such an exemption for a period of 18 months if the Secretary is able to make the findings set forth in paragraph (2) and if the applicant supplies information demonstrating compliance with paragraph (3). An exemption may be extended more than once and may be extended after the expiration of such 5-year period.

"(6) Within one year of the date of the enactment of this subsection, the Secretary shall issue regulations to implement this subsection.".

(b) EFFECTIVE DATE.—Subsection (m) of section 520 of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a), shall take effect on the effective date of the regulations issued by the Secretary under paragraph (6) of such subsection.

(c) REPORT.—Within 4 years after the issuance of regulations under section 520(m)(6) of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a), the Secretary of Health and Human Services shall report to the Congress (1) on the types of devices exempted under such section, (2) an evaluation of the effects of such section, and (3) a recommendation on extension of the section.

SEC. 15. ESTABLISHMENT OF THE OFFICE OF INTERNATIONAL RELATIONS.

(a) OFFICE.—Title VIII is amended by adding at the end the following:

"OFFICE OF INTERNATIONAL RELATIONS

"Sec. 803. (a) There is established in the Department of Health and Human Services an Office of International Relations.

"(b) In carrying out the functions of the office under subsection (a), the Secretary may enter into agreements with foreign countries to facilitate commerce in devices between the United States and such countries consistent with the requirements of this Act. In such agreements, the Secretary shall encourage the mutual recognition of—

"(1) good manufacturing practice regulations promulgated under section 520(f), and

"(2) other regulations and testing protocols as the Secretary determines to be appropriate."

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report on the activities of the Office of International Relations under section 803 of the Federal Food, Drug, and Cosmetic Act, added by subsection (a).

SEC. 16. REVIEW OF MARKET APPLICATIONS FOR ARTICLES COMPRISING COMBINATIONS OF DRUGS, DEVICES, AND BIOLOGICS.

(a) REVIEW.—Section 503 (21 U.S.C. 353) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"EXEMPTIONS AND CONSIDERATION FOR CERTAIN DRUGS, DEVICES, AND BIOLOGICAL PRODUCTS",

and

(2) by adding at the end the following:

"(f)(1) The Secretary shall designate a component of the Food and Drug Administration to regulate products that constitute a combination of a drug, device, or biological product. The Secretary shall determine the primary mode of action of the combination product. If the Secretary determines that the primary mode of action is that of—

"(A) a drug (other than a biological product), the persons charged with premarket review of drugs shall have primary jurisdiction,

"(B) a device, the persons charged with premarket review of devices shall have primary jurisdiction, or

"(C) a biological product, the persons charged with premarket review of biological products shall have primary jurisdiction.

"(2) Nothing in this subsection shall prevent the Secretary from using any agency resources of the Food and Drug Administration necessary to ensure adequate review of the safety, effectiveness, or substantial equivalence of an article.

"(3) The Secretary shall promulgate regulations to implement market approval procedures in accordance with paragraphs (1) and (2) not later than 1 year after the date of enactment of this subsection.

"(4) As used in this subsection:

"(A) The term 'biological product' has the meaning given the term in section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)).

"(B) The term 'market clearance' includes—

"(i) approval of an application under section 505, 507, 515, or 520(g),

"(ii) a finding of substantial equivalence under this subchapter, and

"(iii) approval of a product or establishment license under subsection (a) or (d) of section 351 of the Public Health Service Act (42 U.S.C. 262).".

(b) DEFINITIONS.—Section 201 (21 U.S.C. 321) is amended—

(1) in paragraph (g)(1), by striking out "; but does not include devices or their components, parts, or accessories", and

(2) in paragraph (h)(3), by striking out "any of its principal" and inserting in lieu thereof "its primary".

SEC. 17. CIVIL PENALTIES.

(a) AMENDMENT.—Section 303 (21 U.S.C. 333) is amended by adding at the end the following:

"(f)(1)(A) Except as provided in subparagraph (B), any person who violates a requirement of this Act which relates to devices shall be liable to the United States for a civil penalty in an amount not to exceed $15,000 for each such violation, and not to exceed $1,000,000 for all such violations adjudicated adjusted in a single proceeding.

"(B) Subparagraph (A) shall not apply—

"(i) to any person who violates the requirements of section 519(a) or 520(f) unless such violation constitutes (I) a significant or knowing departure from such requirements, or (II) a risk to public health,

"(ii) to any person who commits minor violations of section 519(e) or 519(f) (only with respect to correction reports) if such person demonstrates substantial compliance with such section, or

"(iii) to violations of section 501(a)(2)(A) which involve one or more devices which are not defective.

"(2)(A) A civil penalty under paragraph (1) shall be assessed by the Secretary by an order made on the record after opportunity for a hearing provided in accordance with this subparagraph and section 554 of title 5, United States Code. Before issuing such an order, the Secretary shall give written notice to the person to be assessed a civil penalty under such order of the Secretary's proposal to issue such order and provide such person an opportunity for a hearing on the order. In the course of any investigation, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

"(B) In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"(C) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be assessed under paragraph (1). The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

"(3) Any person who requested, in accordance with paragraph (2)(A), a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 60-day period beginning on the date the order making such assessment was issued.

"(4) If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment becomes final, and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Secretary,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 60-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.".

(b) EFFECTIVE DATE OF APPLICATION TO DEVICE USER FACILITIES.—

(1) The Secretary of Health and Human Services shall conduct a study to determine whether there has been substantial compliance with the requirements of section 519(b) of the Federal Food, Drug, and Cosmetic Act by device user facilities (as defined in section 519(b)(5)(A) of such Act). The Secretary shall report the results of the study to the Congress after the expiration of 45 months after the date of the enactment of this Act.

(2)(A) If upon the expiration of 48 months after the date of the enactment of this Act the Secretary has not made the report required by paragraph (1), section 303(f) of the Federal Food, Drug, and Cosmetic Act, as added by the amendment made by subsection (a), shall take effect with respect to device user facilities (as defined in section 519(b)(5)(A) of such Act).

(B) If in the report under paragraph (1) the Secretary reports that there has been substantial compliance with the requirements of such section 519(b) by a type of device user facility and if the Secretary does not make a determination under subparagraph (C) with respect to such type of facility, such section 303(f) shall not take effect with respect to such type of facility.

(C) If the Secretary determines in the report under paragraph (1) that there is not substantial compliance with the requirements of such section 519(b) by a type of device user facility or if the Secretary makes such a determination after making the report under paragraph (1), such section 303(f) shall take effect with respect to such type of facility upon the effective date of the report.

SEC. 18. MISCELLANEOUS.

(a) SECTION 513(f).—Section 513(f)(2) (21 U.S.C. 360c(f)(2)) is amended in subparagraph (B)(i), by striking out "the Secretary shall" and inserting in lieu thereof "the Secretary may for good cause shown".

(b) SECTION 514.—Section 514(b) (21 U.S.C. 360d(b)(4)(B)) (as so redesignated) is amended—

(1) in paragraph (3)(B) (as so redesignated), by striking out ", after affording all interested persons an opportunity for an informal hearing,", and

(2) in clause (ii) of paragraph (4)(A) (as so redesignated), by striking out "unless" and all that follows in that clause and inserting in lieu thereof the following: "which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation refer such proposed regulation,".

(c) SECTION 515.—Section 515(c)(2) (21 U.S.C. 360e(c)(2)) is amended by striking out "paragraph (1), the Secretary shall refer such application" and inserting in lieu thereof "paragraph (1), the Secretary—

"(A) may on the Secretary's own initiative refer such application, or

"(B) shall, upon the request of an applicant unless the Secretary finds that the information in the application which would be reviewed by a panel substantially duplicates information which has previously been reviewed by a panel appointed under section 513,

refer such application".

(d) SECTION 516.—Section 516(a) (21 U.S.C. 360f(a)) is amended (1) by striking out "and after consultation with the appropriate panel or panels under section 513", and (2) by striking out the last sentence.

(e) SECTION 520(f).—Section 520(f)(1)(A) (21 U.S.C. 360j(f)(1)(A)) is amended by inserting "pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety or effectiveness of a device)," after "manufacture,".

(f) SECTION 520(l).—Section 520(l)(2) (21 U.S.C. 360j(l)(2)) is amended by striking out "and after affording the petitioner an opportunity for an informal hearing".

SEC. 19. ELECTRONIC PRODUCTS.

(a) IN GENERAL.—

(1) Subpart 3 of part F of title III of the Public Health Service Act is amended as follows:

(A) The heading for the subpart is amended to read as follows:

"SUBCHAPTER C—ELECTRONIC PRODUCT RADIATION CONTROL".

(B) The subpart is amended by striking out "subpart" each place it occurs and inserting in lieu thereof "subchapter".

(2)(A) Section 356 of such Act is amended—

(i) by striking out "358" each place it occurs and inserting in lieu thereof "534", and

(ii) by striking out "sections 3648 and 3709 of the Revised Statutes of the United States (31 U.S.C. 529, 41 U.S.C. 5)" and inserting in lieu thereof "section 3324 of title 31, United States Code, and section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)".

(B) Section 358(a)(1)(E) of such Act is amended by striking out "355" and inserting in lieu thereof "531".

(C) Section 359 of such Act is amended—

(i) by striking out "358" each place it occurs and inserting in lieu thereof "534", and

(ii) by striking out "360A" each place it occurs and inserting in lieu thereof "537".

(D) Section 360 of such Act is amended by striking out "358" each place it occurs and inserting in lieu thereof "534".

(E) Section 360A of such Act is amended—

(i) by striking out "358" and inserting in lieu thereof "534", and

(ii) by striking out "359" each place it occurs and inserting in lieu thereof "535".

(F) Section 360B of such Act is amended—

(i) by striking out "358" each place it occurs and inserting in lieu thereof "534",

(ii) by striking out "359" each place it occurs and inserting in lieu thereof "535", and

(iii) by striking out "360A" each place it occurs and inserting in lieu thereof "537".

(G) Section 360C of such Act is amended—

(i) by striking out "358" and inserting in lieu thereof "534",

(ii) by striking out "360B" each place it occurs and inserting in lieu thereof "538", and

(iii) by striking out "360F" and inserting in lieu thereof "542".

(H) Section 360F of such Act is amended by striking out "358" and inserting in lieu thereof "534".

(4) Section 354 of such Act is repealed and sections 355 through 360F of such Act are redesignated as sections 531 through 542, respectively.

(3) Subpart 3 of part F of title III of the Public Health Service Act, as amended by paragraphs (1) and (2) of this subsection, is transferred to chapter V of the Federal Food, Drug, and Cosmetic Act and is placed after section 528 and sections 354 through 360F of such subpart are redesignated as sections 530 through 542 of the Federal Food, Drug, and Cosmetic Act, respectively.

(b) CONFORMING AMENDMENT.—The heading for part F of title III of the Public Health Service Act is amended by striking out "AND CONTROL OF RADIATION".

(c) CONSTRUCTION.—The transfer of subpart 3 of part F of title III of the Public Health Service Act to the Federal Food, Drug, and Cosmetic Act does not change the application of the requirements of such subpart and such Act to electronic products which were in effect on the date of the enactment of this Act.

And the Senate agree to the same.

JOHN D. DINGELL,
HENRY WAXMAN,
RON WYDEN,
NORMAN F. LENT,
ED MADIGAN,
Managers on the Part of the House.

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
CHRISTOPHER J. DODD,
ORRIN G. HATCH,
DAVID DURENBERGER,
DAN COATS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3095) to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes, submit the following joint statement of the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an

amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

STATEMENT OF MANAGERS

The "Safe Medical Devices Act of 1990" is the bill resulting from the Conference between the House and the Senate on H.R. 3095, the "Safe Medical Devices Act of 1990" and a Senate amendment comprised of the text of S. 3006, the "Comprehensive Medical Device Improvement Act of 1990." The principal purpose of the legislation is to strengthen the Medical Device Amendments of 1976 which put in place a comprehensive framework to regulate medical devices and ensure their safety and effectiveness.

USER REPORTING

The House bill and the Senate amendment established a statutory requirement that medical device user facilities report serious problems with medical devices.

The conference agreement follows the House bill with several exceptions. Unlike the House bill, the definition of "device user facility" does not include outpatient diagnostic facilities unless the Secretary extends the reporting requirements by regulation. The conference agreement provides that device user facilities are obligated to report when medical personnel (including physicians with admitting privileges in the case of a hospital) become aware of information that reasonably suggests that there is a probability that a device has caused or contributed to the death or serious illness of, or serious injury to, a patient of the facility. Consistent with the House bill, when medical personnel believe that a reportable event has occurred it is appropriate, within the constraints of reasonable judgement and statutory/regulatory timeframes, that sufficient time be allowed for the information to be processed within the institution and the report filed by the appropriate person. It is not the conferees' intent, however, that device user facilities expend resources in the investigation of each event that requires a report. The filing of a report does not, by itself, constitute evidence that a device has caused a death or serious injury. It is the responsibility of the FDA or the manufacturer, not the medical device user filing the report, to make such determinations.

A report must be submitted to the FDA in the case of deaths and the manufacturer in the case of serious illness or injury, not later than 10 working days after becoming aware of the information. The agreement authorizes the Secretary to prescribe a shorter period if the Secretary determines such information would be helpful to the identification of serious device problems that may pose a risk to patients. Unlike the House bill which required device user facilities to submit quarterly summaries of reports submitted to the Secretary and manufacturers, the conference agreement provides for the submission of such summaries on January 1st and July 1st of each year. Unlike the House bill, the agreement includes a definition of serious illness and serious injury to assist user facilities in determining when a report is required.

CERTIFICATION

The House bill and the Senate amendment required that medical device manufacturers, importers and distributors submit a report annually to the Secretary certifying the number of Medical Device Reporting (MDR) reports filed during the preceding year or certifying that no reports were filed.

DISTRIBUTOR REPORTS

The House bill and the Senate amendment required the Secretary to issue regulations requiring device distributors to keep records and make reports on possible device problems. The conference agreement requires that the Secretary issue regulations requiring distributors of devices to establish and maintain records and to make reports under section 519(a). In addition, the agreement requires that distributors provide copies of the medical device reports and to manufacturers.

DEVICE TRACKING

The House bill and Senate amendment contain requirements that device manufacturers adopt methods of device tracking. The conference agreement follows the House bill with an amendment defining the scope of devices covered under the provision.

CLASSIFICATION AND RECLASSIFICATION

The House and Senate bills are generally the same, except that the Senate bill contained a provision that prohibited the classification of a device that is purported or represented to be for use in supporting or sustaining human life in class II unless sufficient information existed for the Secretary to identify and describe the provision of a performance standard.

The conference agreement adopts the Senate provision but modifies it to require the Secretary to examine and identify the special controls that are necessary to provide adequate assurance of safety and efficacy, and to describe how such controls provide such assurance for those devices which may pose a heightened potential for injury or death.

ESTABLISHMENT OF PERFORMANCE STANDARDS

The House bill and Senate amendment are essentially identical, and expand the type of special controls the Secretary could impose on class II devices and simplifies the procedures for using performance standards.

REPORTS, REMOVALS, AND CORRECTIONS

The House bill and the Senate amendment directed the Secretary to promulgate regulations requiring manufacturers, importers or distributors to report promptly on corrections or removals of devices.

The Senate version required reports to be submitted to the Secretary for any corrective action or removal undertaken to eliminate significant risks to health or to remedy violations of the Act which may present risks to health. The House version required corrections or removals to be reported if the actions were undertaken either to reduce a risk to health posed by the device or to remedy a violation of the Act caused by the device. The conference agreement modifies both the House bill and the Senate amendment by requiring reports of corrections or removals undertaken either to reduce a risk to health posed by the device or to remedy a violation of the Act which may present a risk to health.

RECALL AUTHORITY

The House bill and the Senate amendment provided the Secretary with explicit authority to order the recall of a device whenever there is a reasonable probability that the device would cause serious, adverse health consequences or death. The conference agreement generally follows the Senate amendment with modifications taken from the House bill. The conference agreement requires the Secretary, after making an appropriate finding, to issue an initial order providing for the immediate cessation and use of the device, with an informal hearing to follow within 10 days to determine whether to vacate the order or whether to amend the order to require a recall.

The conference agreement clarifies that notice must be given to all individuals subject to the risks associated with the use of a device subject to a recall. The agreement specifies that the Secretary may use the assistance of health care professionals to aid in notifying individuals at risk, but the conferees do not intend that the notification of health professionals be construed to be a substitute for direct notification of individuals. In the event that significant numbers of individuals at risk cannot be identified, the conference agreement specifies that the Secretary shall notify such individuals through the general media pursuant to section 705(b).

The House bill, but not the Senate amendment, contained a requirement that the Secretary promulgate regulations under this section. The conferees agree that this provision is self-executing and does not require the Secretary to promulgate regulations, although the Secretary would have authority to promulgate regulations under section 701(a).

TEMPORARY SUSPENSION OF APPROVAL OF APPLICATION

The House bill and Senate amendment provide the Secretary authority for the temporary suspension of applications of approval when a determination is made that there is reasonable probability that the continuation of distribution of a device would cause serious, adverse health consequences or death. The conference agreement generally follows the House bill.

POSTMARKET SURVEILLANCE

The House bill and the Senate amendment each contain provisions that require manufacturers to conduct monitoring of clinical experience with certain devices soon after they are first marketed. The conference agreement generally follows the Senate amendment and reflects a combination of both Senate and House provisions. The conference agreement requires a manufacturer to submit, for the Secretary's approval, and within a short time of the initial commercial distribution of the device, a proposed protocol for any required postmarket surveillance. The Secretary may not approve such a protocol until after it has been reviewed by an appropriately qualified review committee established by the Secretary.

USE OF PREMARKET APPROVAL DATA

The House bill and Senate amendment incuded provisions to permit the agency-wide use of previously confidential data in evaluating medical devices. The House bill and the Senate amendment contained essentially identical provisions except for the effective date. The conference agreement adopts the Senate amendment, but the delayed effective date for devices in which four of a kind were approved prior to December 31, 1987 was changed from 2 years to 1 year.

PREMARKET APPROVAL

The House bill and the Senate amendment contain essentially identical provisions concerning data required with respect to a

substantial equivalence determination under section 510(k) and revision of the classification of devices. The conference agreement generally follows the House bill. The provision concerning review of decisions under section 520(l) has been deleted, except it has been retained for contact lenses, as described below.

The Senate bill contained a provision that directed the Secretary to make a decision as to whether to reclassify certain contact lenses into class II, and the provision directed the Secretary to place the lenses into class II if the decision were not made within the required period of time. The conference agreement modifies the Senate provision, as described below.

Section 4(b)(3) requires the Secretary to evaluate the status of daily wear soft and daily wear nonhydrophilic plastic contact lenses within two years and to reclassify them into class II or class I unless the Secretary finds that a lens meets the criteria for class III in section 513(a)(1)(C). If the Secretary is unable to make a decision within two years, the Secretary may by notice published in the Federal Register extend that period for one additional year. Any person adversely affected by a final regulation revising the classification of the device under this paragraph may challenge the revision of the classification only filing a petition under section 513(e) for a classification change.

If the Secretary does not make a decision within 3 years from the date of enactment of the Safe Medical Devices Act of 1990, then the Secretary is directed to issue an order classifying daily wear soft and daily wear nonhydrophilic plastic contact lenses into class II.

Prior to placing a device into class II pursuant to paragraph (3), the Secretary must decide whether it would be appropriate to place in effect any of the special controls provided in section 513(a)(1)(B) in order to provide reasonable assurance of the safety and effectiveness of the lenses, including clinical and preclinical data if deemed necessary by the Secretary. The term "appropriate regulatory safeguards" authorizes the Secretary to rely on general controls, special controls, or any combination of the two.

Prior to placing a device in class I pursuant to paragraph (3), the Secretary is also to consider the appropriateness of additional regulatory controls, including clinical and preclinical data if deemed necessary by the Secretary. The word "appropriate" gives the Secretary the discretion to use additional controls or to rely on the general controls in section 513(a)(1).

Substantial Equivalence

The House bill and the Senate amendment contained similar provisions. The conference agreement adopts a modified version of the Senate provision concerning safety and effectiveness so that a device will not be found to be as substantially equivalent if the device raises questions of safety and effectiveness that are different from the predicate device. In addition, the conference agreement the agency to issue regulations regarding the summaries within one year of enactment.

Judicial Review

Both the House bill and the Senate amendment contained provisions for judicial review of certain decisions in the court of appeals. Under the conference agreement, it is made clear in the new section 517(a)(8) that an order pursuant to section 513(i), finding substantial equivalence under section 513(f) or section 520(l), will be reviewable in the United States court of appeals.

Humanitarian Devices

The Senate amendment gave the Secretary new authority to grant an exemption for devices used to treat diseases and conditions with small populations. The House bill contained no similar provision.

The conference committee adopted the Senate amendment, but with modifications. Under the amendment, the Secretary may grant a request for an exemption only if the Secretary makes three findings. First, the Secretary must find that the device for which the exemption is sought can be used to treat a disease or condition that affects fewer than 4,000 individuals in the United States.

Second, the Secretary must find that the device would not be available to a person with such a disease or condition unless the Secretary grants the exemption, and that there is no comparable device (other than a device which has been granted an exemption under this subsection) available to treat or diagnose the disease or condition. In other words, the Secretary must find that market and other incentives are insufficient to bring the device to market without the exemption.

Third, the Secretary must find that the device will not expose patients to an unreasonable or significant risk of illness or injury. In addition, the Secretary must find that the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use. In making this finding, the Secretary is directed to take into account the probable risks and benefits or currently available devices or alternative forms of treatment. This inquiry requires the Secretary to consider the efficacy and potential benefits of the device, and to weigh those factors against the risks of the device.

The conference report adds a provision that prohibits an exempted device from being sold for an amount that exceeds the cost of research and development, fabrication, and distribution of the device. Prices will necessarily be based on a manufacturer's estimate of the number of devices to be sold, the costs of raw material, labor costs, shipping costs, et cetera. An applicant who obtains an exemption should not be considered to be in violation of the requirement if it receives incidental profits which exceed its good faith estimates of costs.

The conference agreement contains the provision from the Senate amendment limiting the uses of devices within this exemption to facilities that have established institutional review committees.

The conference agreement provides that the exemption shall be granted for a term of 18 months. The Secretary may extend the exemption if the Secretary can make the findings described above. Before obtaining an extension of an exemption, the applicant is required to supply information demonstrating compliance with prohibitions related to the sale of the device.

This provision will not become effective until the Secretary issues final regulations, which the Secretary is directed to do within 12 months of the date of enactment.

The conference agreement requires the Secretary to report to Congress on the experience with the provision 4 years after its implementation. Five years after implementation, the exemption authority expires, but the committee anticipates that Congress will review the report and the experience with the provision and will consider legislation to extend and improve the provision, if appropriate. For devices marketed pursuant to an exemption granted prior to five years after implementation, the Secretary may continue to grant exemptions that meet the requirements of the section, even if the authority to grant new exemptions expires.

Office of International Relations

The Senate amendment but not the House bill authorized establishment of an Office of International Relations to promote uniform regulatory requirements for devices sold overseas. The conference amendment provides for the establishment of an Office of International Relations that will facilitate the mutual recognition of device regulations and testing protocols between the United States and foreign countries. The conference agreement clarifies that any agreements entered under the authority of this provision must provide for regulatory treatment of devices consistent with the requirements of the Federal Food, Drug and Cosmetic Act.

Market Applications for Combination Products

The Senate amendment but not the House bill described the general procedures for determining the appropriate component of the FDA to review premarket submissions for products that are comprised of any combination of drugs, devices, or biologicals. The conference agreement reflects the Senate provision.

Civil Penalties

Under the House bill, persons subject to the medical device provisions of the Act could be subject to civil penalties, in addition to the criminal penalties already provided by the law. The Senate amendment did not contain a civil penalties provision.

The conference agreement adopts the House bill with the modifications identified below. First, the House bill contained a schedule for civil penalty fines, ranging from $1,000 to $20,000 per violation, with a ceiling ranging from $100,000 to $1,000,000, depending on the category of violation. The conference agreement collapsed the schedule to a single limit per violation and to a single maximum.

The provision in the House bill contained an exclusion from sections 519(a), 519(e) and 519(f) of the Act where a person has committed minor violations of the Act, if that person demonstrates substantial compliance with the Act.

The conference agreement retains that exclusion for sections 519(e) and 519(f) (only with respect to correction reports). For sections 520(f) (relating to good manufacturing practices) and 519(a) (the medical device reporting requirements applicable to manufacturers), the conference agreement states that civil penalties will not apply unless the violation involves a significant departure from the requirements of the Act, a knowing departure from those requirements (even if not significant), or a risk to public health.

The conference agreement follows the approach in the House bill with respect to section 501(a)(2)(A). That section "deems" a device to be adulterated if it is manufactured under unsanitary conditions or other conditions in violation of FDA regulations. Technically, a device manufactured under such conditions is deemed to be adulterated and therefore would be in violation of the Act, even though the device itself is not defective. The civil penalty provision would

not apply to violations of section 501(a)(2)(A) of a device that is technically in violation of the Act because it is manufactured in conditions that violate these two sections, so long as the device is otherwise in compliance with the law.

On the other hand, the provision would apply where section 501(a)(2)(A) is used to address violations of other requirements of the Act, such as the prohibition on unsanitary conditions. The restrictions in subparagraph (B) would also continue to apply.

MISCELLANEOUS

The House bill contained several miscellaneous provisions that were not contained in the Senate amendment. The conference agreement retains the House provisions with an amendment which clarifies that pre-production design validation under the Food and Drug Administration's current good manufacturing practice authority includes a process to assess the performance of a device but does not include an evaluation of the safety and effectiveness of a device.

CONSTRUCTION GRANT FOR A MEDICAL FACILITY

The Senate amendment but not the House bill authorized the Secretary of Health and Human Services to award a $50 million grant for establishment of a National Emergency Care Center at George Washington University in Washington, D.C. The Senate recedes. The conferees understand that the issue of a construction grant will be considered as part of the conference on H.R. 1602, the "Trauma Care Systems Planning and Development Act."

JOHN D. DINGELL,
HENRY WAXMAN,
RON WYDEN,
ED MADIGAN,
Managers on the Part of the House.

EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
CHRISTOPHER J. DODD,
ORRIN G. HATCH,
DAVID DURENBERGER,
DAN COATS,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 3630, EMERGENCY SUBSTANCE ABUSE TREATMENT IMPROVEMENT ACT OF 1990

Mr. WAXMAN submitted the following conference report and statement on the bill (H.R. 3630) to amend the Public Health Service Act with respect to the prevention and treatment of substance abuse, including establishing separate block grants with respect to substance abuse and mental health:

CONFERENCE REPORT (H. REPT. 101-961)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3630) to amend the Public Health Service Act with respect to the prevention and treatment of substance abuse, including establishing separate block grants with respect to substance abuse and mental health, having met, after full and free conference, have agreed to recommend and do recommended to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Substance Abuse Treatment Improvement Act of 1990".

TITLE I—OFFICE FOR TREATMENT IMPROVEMENT

SEC. 101. ESTABLISHMENT, GENERAL AUTHORITIES, AND CERTAIN PROGRAMS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following new parts:

"PART F—OFFICE FOR TREATMENT IMPROVEMENT

"Subpart 1—Establishment and General Authorities

"SEC. 571. ESTABLISHMENT.

"(a) ESTABLISHMENT.—There is established in the Administration an Office for Treatment Improvement (hereafter in this part referred to as the 'Treatment Office'). The Treatment Office shall be headed by a director appointed by the Secretary. The Secretary, acting through the Director of the Treatment Office, shall carry out this section.

"(b) DUTIES.—With respect to substance abuse treatment, the Director of the Treatment Office shall—

"(1) collaborate with the Director of the Office for Substance Abuse Prevention in order to provide outreach services to identify individuals in need of treatment services, with emphasis on the provision of such services to racial and ethnic minorities, to adolescents, to pregnant and postpartum women and their infants, to individuals who abuse drugs intravenously, to homeless individuals and residents of shelters, and to residents of publicly-assisted housing;

"(2) collaborate with the Director of the National Institute on Drug Abuse, with the Director of the National Institute on Alcoholism and Alcohol Abuse, and with the States to promote the study of the outcomes of treatment services in order to identify the manner in which such treatment services can most effectively be provided;

"(3) collaborate with the Director of the National Institute on Drug Abuse, and with the Director of the National Institute on Alcoholism and Alcohol Abuse, in order to promote the dissemination and implementation of research findings that will improve the delivery and effectiveness of treatment services;

"(4) evaluate plans submitted by the States pursuant to section 1916B in order to advise the Administrator on whether the plans adequately provide for the availability, allocation, and effectiveness of treatment services;

"(5) carry out the programs established in sections 576, 577, 578, and 579;

"(6) sponsor regional workshops on improving the quality and availability of treatment services;

"(7) provide technical assistance to public and nonprofit private entities that provide treatment services, including technical assistance with respect to the process of submitting to the Director applications for any program of grants carried out by the Director;

"(8) improve coordination between treatment facilities and nonhealth care systems such as employers, labor unions, and schools, and encourage the adoption of programs such as employee assistance programs and student assistance programs; and

"(9) encourage State and Federal agencies offering treatment opportunities for individuals addicted to drugs or alcohol to utilize and establish self-run, self-supported recovery homes based on the Oxford House Model, as described in section 1916A;

"(10) in consultation with the States, carry out activities to educate communities on the need for establishing treatment facilities within such communities;

"(11) encourage public and private entities that provide health insurance to provide benefits for outpatient treatment services and other nonhospital-based treatment services; and

"(12) promote the increased integration into the mainstream of the health care system of the United States of programs for providing treatment services.

"(c) PROVISIONS REGARDING ELIGIBLE APPLICANTS.—

"(1) PUBLIC AND NONPROFIT PRIVATE ENTITIES.—Grants under this part may be made only to public and nonprofit private entities.

"(2) APPLICATION.—The Director may not provide financial assistance under this part unless—

"(A) an application for such assistance is submitted to the Secretary;

"(B) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

"(C) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"SEC. 572. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for fiscal year 1991.

"Subpart 2—Certain Programs

"SEC. 576. DEMONSTRATION PROJECTS OF NATIONAL SIGNIFICANCE.

"(a) GRANTS FOR TREATMENT IMPROVEMENT.—The Director of the Treatment Office shall provide grants to public and nonprofit private entities for the purpose of establishing demonstration projects that will improve the provision of substance abuse treatment services.

"(b) NATURE OF PROJECTS.—Grants under subsection (a) shall be awarded to—

"(1) projects that focus on providing treatment to adolescents, minorities, female addicts and their children, the residents of public housing projects, or substance abusers in rural areas;

"(2) projects that provide drug abuse treatment and vocational training in exchange for public service;

"(3) projects that provide treatment services and which are operated by public and nonprofit private entities receiving grants under section 329, 330 or 340;

"(4) 'treatment campus' projects that—

"(A) serve a significant number of individuals simultaneously;

"(B) provide residential, non-community based drug treatment;

"(C) provide patients with ancillary social services and referrals to community-based aftercare; and

"(D) provide services on a voluntary basis; or

"(5) projects to determine the long-term efficacy of the projects described in this section.

"(c) PREFERENCES IN MAKING GRANTS.—In awarding grants under subsection (a), the Director of the Treatment Office shall give preference to projects that—

"(1) demonstrate a comprehensive approach to the problems associated with drug abuse and provide evidence of broad community involvement and support; or

"(2) initiate and expand programs for the provision of treatment services (including renovation of facilities, but not construction) in localities in which, and among populations for which, there is a public health crisis as a result of the inadequate availability of such services and a substantial rate of drug abuse.

"(d) DURATION OF GRANTS.—Projects funded under subsection (a) shall be for a period of at least 3 years but in no event to exceed 5 years.

"(e) EVALUATIONS.—The Director of the Treatment Office shall require, as a condition of awarding grants under subsection (a), a systematic evaluation of the projects funded under such subsection.

"SEC. 577. DEMONSTRATION GRANTS FOR SUBSTANCE ABUSE TREATMENT IN CRIMINAL JUSTICE SYSTEM.

"(a) IN GENERAL.—The Director of the Treatment Office shall establish a program to provide grants to public and nonprofit private entities that provide drug and alcohol treatment services to individuals under criminal justice supervision.

"(b) ELIGIBILITY.—In awarding grants under subsection (a), the Director of the Treatment Office shall ensure that the grants are reasonably distributed among—

"(1) projects that provide treatment services to individuals who are incarcerated in prisons, jails, or community correctional settings; and

"(2) projects that provide treatment services to individuals who are not incarcerated, but who are under criminal justice supervision because of their status as pretrial releasees, post-trial releasees, probationers, parolees, or supervised releasees.

"(c) PRIORITY.—In awarding grants under subsection (a), the Director of the Treatment Office shall give priority to programs commensurate with the extent to which such programs provide, directly or in conjunction with other public or private nonprofit entities, some or all of the following—

"(1) a continuum of offender management services as individuals enter, proceed through, and leave the criminal justice system, including identification and assessment, drug and alcohol treatment, pre-release counseling and pre-release referrals with respect to housing, employment and treatment;

"(2) comprehensive treatment services for juvenile offenders;

"(3) comprehensive treatment services for female offenders, including related services such as violence counseling, parenting and child development classes, and perinatal care;

"(4) outreach services to identify individuals under criminal justice supervision who would benefit from drug and alcohol treatment and to encourage such individuals to seek treatment; or

"(5) treatment services that function as an alternative to incarceration for appropriate categories of offenders or that otherwise enable individuals to remain under criminal justice supervision in the least restrictive setting consistent with public safety.

"SEC. 578. TREATMENT TRAINING GRANTS.

"(a) IN GENERAL.—The Director of the Treatment Office shall develop programs to increase the number of full-time substance abuse treatment professionals and the number of health professionals providing treatment services through the awarding of grants to appropriate public and nonprofit private entities, including agencies of State and local governments, hospitals, schools of medicine, schools of osteopathic medicine, schools of nursing, schools of public health, schools of chiropractic services, schools of social work, and graduate programs in clinical psychology.

"(b) PRIORITY.—In awarding grants under subsection (a), the Director of the Treatment Office shall give priority to applicants that train full-time substance abuse treatment professionals.

"PART G—NATIONAL CAPITAL AREA DEMONSTRATION PROJECT

"SEC. 580. MODEL COMPREHENSIVE PROGRAM FOR DRUG ABUSE TREATMENT.

"(a) IN GENERAL.—In furtherance of the President's National Drug Control Strategy, the Secretary shall make a 3-year renewable demonstration grant for the establishment, within the national capital area, of a model program for providing comprehensive treatment services for drug abuse.

"(b) PURPOSES.—The Secretary may not make a grant under subsection (a) unless, with respect to the comprehensive treatment services to be offered by the program under such subsection, the applicant for the grant agrees—

"(1) to ensure, to the extent practicable, that the program has the capacity to provide the services to all individuals who seek and would benefit from the services;

"(2) as appropriate, to provide education on obtaining employment and other matters with respect to assisting the individuals in preventing any relapse with respect to drug abuse, including education on the appropriate involvement of parents and others who can assist in preventing such a relapse;

"(3) to provide services in locations accessible to drug abusers and, to the extent practicable, to provide services through mobile facilities;

"(4) to give priority to providing services to individuals who abuse drugs intravenously, to pregnant women, to homeless individuals, and to residents of publicly-assisted housing;

"(5) with respect to women with dependent children, to provide child care to such women seeking treatment services for drug abuse;

"(6) to conduct outreach activities to inform individuals of the availability of the services of the program;

"(7) to conduct appropriate activities for the prevention of the abuse of drugs;

"(8) to provide case management services, including services to determine eligibility for assistance under Federal, State, and local programs providing health services, mental health services, or social services;

"(9) to ensure the establishment of one or more offices to oversee the coordination of the activities of the program, to ensure that treatment is available to those seeking it, to ensure that the program is administered efficiently, and to ensure that the public is informed that the offices are located where individuals may make inquiries concerning the program, including the location of available treatment services within the national capital area; and

"(10) to develop and utilize standards for certifying the knowledge and training of individuals, and the quality of programs, to provide treatment services for drug abuse.

"(c) CERTAIN REQUIREMENTS.—

"(1) REGARDING ELIGIBILITY FOR GRANT.—

"(A) The Secretary may not make the grant under subsection (a) unless the applicant for the grant is an organization of the general-purpose local governments within the national capital area, or another public or nonprofit private entity, and the applicant submits to the Secretary assurances satisfactory to the Secretary that, with respect to the communities in which services will be offered, the local governments of the communities will participate in the program.

"(B) The Secretary may not make a grant under subsection (a) unless—

"(i) an application for the grant is submitted to the Secretary;

"(ii) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(iii) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(2) AUTHORITY FOR COOPERATIVE ARRANGEMENTS.—The grantee under subsection (a) may provide the services required by such subsection directly or through arrangements with public and nonprofit private entities.

"(d) REQUIREMENT OF NON-FEDERAL CONTRIBUTIONS.—

"(1) IN GENERAL.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to not less than $1 for each $2 of Federal funds provided under the grant.

"(2) DETERMINATION OF AMOUNT.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(e) EVALUATIONS.—

"(1) BY THE SECRETARY.—The Secretary shall independently evaluate the effectiveness of the program carried out under subsection (a) and determine its suitability as a model for the United States, particularly regarding the provision of high quality, patient-oriented, coordinated and accessible drug treatment services across jurisdictional lines. The Secretary shall consider the extent to which the program has improved patient retention, accessibility of services, staff retention and quality, reduced patient relapse, and provided a full range of drug treatment and related health and human services. The Secretary shall evaluate the extent to which the program has effectively utilized innovative methods for overcoming the resistance of the residents of communities to the establishment of treatment facilities with the communities.

"(2) SELF-EVALUATION.—The Secretary may require the grantee to evaluate any aspect of the program, and such self-evaluation shall, to the extent appropriate, be coordinated with the independent evaluation mandated by paragraph (1).

"(3) LIMITATION.—Funds made available under subsection (h) shall not be utilized to conduct the independent evaluation under paragraph (1).

"(f) REPORTS.—

"(1) INITIAL CRITERIA.—The Secretary shall make a determination of the appropriate criteria for carrying out the program required in subsection (a), including the anticipated need for, and range of, services under the program in the communities involved and the anticipated costs of the program. Not later than 90 days after the date of the enactment of the Emergency Substance Abuse Treatment Improvement Act of 1990, the Secretary shall submit to the appropriate committees of Congress a report describing the findings made as a result of the determination.

"(2) ANNUAL REPORTS.—Not later than 1 year after the date on which the grant is made under subsection (a), and annually thereafter, the Secretary shall submit to the appropriate committees of Congress a report describing the extent to which the program carried out under subsection (a) has been effective in carrying out the purposes of the program.

"(g) DEFINITION.—For purposes of this section, the term 'national capital area' means the metropolitan Washington area, including the District of Columbia, the cities of Alexandria, Falls Church, and Fairfax in the State of Virginia, the counties of Arlington and Fairfax in such State (and the political subdivisions located in such counties), and the counties of Montgomery and Prince George's in the State of Maryland (and the political subdivisions located in such counties).

"(h) OBLIGATION OF FUNDS.—Of the amounts appropriated for each of the fiscal years 1991 and 1992 for the programs of the Department of Health and Human Services, the Secretary shall make available $10,000,000 for carrying out this section. Of the amounts appropriated for fiscal year 1993 for the programs of such Department, the Secretary shall make available $5,000,000 for carrying out this section.".

SEC. 102. TECHNICAL AND CONFORMING AMENDMENTS.

(a) IN GENERAL.—Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

(1) in section 501(b), by adding at the end the following new paragraph:

"(5) The Office for Treatment Improvement.";

(2) in section 508(d), by striking "509F" and inserting "509E";

(3) by repealing section 509G;

(4) in subsection (a) of section 516—

(A) in paragraph (1), by striking "and" after the semicolon at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

"(3) for determining the effects of drug abuse among pregnant women and the resulting effects on the infants of such women; and

"(4) to carry out outreach activities to intravenous drug abusers with respect to preventing exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome and encouraging intravenous drug abusers to seek treatment for such abuse."; and

(5) in subsection (b) of section 516, by amending such subsection to read as follows:

"(b) In carrying out subsection (a) for fiscal year 1991, the Secretary shall make a grant under such subsection on a competitive basis to a qualified entity to support—

"(1) an epidemiological study of infants and the families of infants with fetal cocaine syndrome; and

"(2) a longitudinal study of infants and the families of infants afflicted with such syndrome.".

(b) TRANSFER OF PROVISION.—

(1) IN GENERAL.—Section 509E of the Public Health Service Act (42 U.S.C. 290aa-12) is—

(A) transferred to part F (as added by section 101) of title V;

(B) redesignated as section 579; and

(C) inserted after section 578.

(2) AVAILABILITY OF APPROPRIATIONS.—With respect to amounts made available in appropriation Acts for the purpose of carrying out the programs transferred by paragraph (1), such paragraph may not be construed to affect the availability of such funds for such purpose.

TITLE II—OFFICE FOR SUBSTANCE ABUSE PREVENTION

SEC. 201. MODEL PROJECTS FOR REDUCING THE INCIDENCE OF SUBSTANCE ABUSE AMONG PREGNANT AND POSTPARTUM WOMEN.

Section 509F of the Public Health Service Act (42 U.S.C. 290aa-13) is amended to read as follows:

"SEC. 509E. MODEL DEMONSTRATION PROJECTS FOR REDUCING THE INCIDENCE OF SUBSTANCE ABUSE AMONG PREGNANT AND POSTPARTUM WOMEN.

"(a) GRANTS.—The Secretary, acting through the Director of the Office, shall make grants to public and nonprofit private entities for the purpose of carrying out demonstration projects to provide to pregnant and postpartum women and their infants prevention, education, and treatment services regarding substance abuse.

"(b) PRIORITY.—

"(1) IN GENERAL.—In making grants under subsection (a), the Director of the Office shall give priority to any qualified applicant that agrees to provide treatment services.

"(2) FURTHER PRIORITY.—

"(A) In the case of any applicant for a grant under subsection (a) that is receiving priority under paragraph (1), the Director of the Office shall give further priority to the applicant commensurate with the number of different services described in subparagraph (B) that will be provided through the applicant and commensurate with the quality of such services. For purposes of the preceding sentence, such services may be provided directly by the applicant or through arrangements with other public or nonprofit private entities.

"(B) The services referred to in subparagraph (A) are—

"(i) outreach services in the community involved to identify women who are abusing alcohol or drugs and to encourage such women to undergo treatment for such abuse;

"(ii) prenatal and postpartum health care for women who are undergoing treatment for such abuse;

"(iii) for the infants and children of such women, pediatric health care (including screenings regarding the physical and mental development of the infants and children) and comprehensive social services;

"(iv) child care, transportation, and other support services regarding such treatment, including, as appropriate, visits to the home of such women;

"(v) as appropriate, referrals to facilities for necessary hospital services;

"(vi) employment counseling;

"(vii) appropriate follow-up services to assist in preventing relapses;

"(viii) case management services, including assistance in establishing eligibility for assistance under Federal, State, and local programs providing health services, mental health services, or social services;

"(ix) reasonable efforts to preserve and support the family unit, including promoting the appropriate involvement of parents and others, and counseling the children of women receiving services pursuant to this subsection; and

"(x) housing in the course of treatment under circumstances that permit the children of the women to reside with their mothers.

"(c) ACCESSIBILITY AND LANGUAGE CONTEXT.—The Director of the Office may not make a grant under subsection (a) unless the applicant for the grant agrees that the services provided pursuant to subsection (a)—

"(1) will be provided at locations accessible to low-income pregnant and postpartum women; and

"(2) will be provided in the language and the cultural context that is most appropriate.

"(d) HEALTH SERVICE COVERED BY STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT.—

"(1) REQUIREMENT.—Subject to paragraph (2), the Director of the Office may not make a grant under subsection (a) unless, in the case of any health service under subsection (a) that is covered by the State plan approved under title XIX of the Social Security Act for the State in which the service will be provided—

"(A) the applicant for the grant will provide the health service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

"(B) the applicant for the grant has entered into a contract with an entity under which the entity will provide the health service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

"(2) WAIVER REGARDING PARTICIPATION AGREEMENTS.—

"(A) In the case of an entity making an agreement under paragraph (1)(B) regarding the provision of health services under subsection (a), the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

"(B) A determination by the Secretary of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

"(e) IMPOSITION OF CHARGES.—The Director of the Office may not make a grant under subsection (a) unless the applicant for the grant agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

"(1) will be made according to a schedule of charges that is made available to the public;

"(2) will be adjusted to reflect the income and resources of the woman involved; and

"(3) will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office for Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"(f) DISTRIBUTION OF GRANTS.—In making grants under subsection (a), the Director of the Office shall ensure that the grants are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the grants.

"(g) REQUIREMENT OF NON-FEDERAL CONTRIBUTIONS.—

"(1) IN GENERAL.—The Director of the Office may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to not less than—

"(A) $1 for each $9 of Federal funds provided for the first year of payments under the grant; and

"(B) $1 for each $3 of Federal funds provided in any subsequent year of such payments.

"(2) TYPE OF CONTRIBUTION.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(h) LIMITATIONS AND WAIVER.—

"(1) LIMITATIONS.—The Director of the Office may not, except as provided in paragraph (2), make a grant under subsection (a) unless the applicant for the grant agrees that the grant will not be expended—

"(A) to provide inpatient services, except with respect to residential treatment for alcohol and drug abuse provided in settings other than hospitals;

"(B) to make cash payments to intended recipients of services under the program involved;

"(C) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

"(D) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(2) WAIVER.—If the Director of the Office finds that the purpose of the program involved cannot otherwise be carried out, the Director may, with respect to an otherwise qualified grantee, waive the restriction established in paragraph (1)(C).

"(i) ANNUAL REPORTS.—The Director of the Office may not make a grant under subsection (a) unless the applicant for the grant agrees—

"(1) to submit to the Secretary an annual report that describes the utilization and costs of services provided under the grant;

"(2) to include in the report the number of women served, the number of infants served, and the type and costs of services provided; and

"(3) to include in the report such other information as the Secretary determines to be appropriate; and

"(4) to prepare the report in such form, and to submit the report in such manner, as the Secretary determines to be necessary.

"(j) APPLICATION.—The Director of the Office may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(k) PAYMENTS.—The period during which payments are made by the Director of the Office under a grant under subsection (a) may not exceed 5 years, but may be renewed. Such payments shall be subject to annual approval by the Secretary and to the availability of appropriations for the fiscal year involved to make the payments.

"(l) EVALUATIONS.—The Director of the Office shall evaluate projects conducted with grants under this section.

"(m) COLLABORATION WITH OTHER FEDERAL AGENCIES AND WITH STATES.—The Director of the Office shall collaborate with all other relevant Federal agencies on issues relating to maternal substance abuse, including the Office for Treatment Improvement, the Bureau of Maternal and Child Health and Resources Development, the Indian Health Service, the Bureau of Health Care Delivery and Assistance, and the Office of Human Development Services. Such collaboration may be accomplished through the establishment of interagency task forces, as appropriate. The Director shall collaborate with the States to ensure that grants awarded under this section are coordinated with other treatment efforts undertaken within each State.

"(n) NONDISCRIMINATION.—The Secretary may not, in the awarding of grants under subsection (a), discriminate against applicants that propose or provide residential or outpatient treatment to substance abusing pregnant and postpartum women that receive treatment by order of a court or other appropriate public agency, subject to the availability of qualified applicants.

"(o) REPORT.—Not later than October 1, 1991 and every 2 years thereafter, the Director of the Office shall submit to the appropriate committees of Congress a report describing programs carried out pursuant to this section. Each such report shall include any evaluations conducted under subsection (l) during the preceding fiscal year.".

TITLE III—REVISION OF PROGRAM OF BLOCK GRANTS REGARDING ALCOHOL, DRUG ABUSE, AND OTHER MATTERS

SEC. 301. USE OF ALLOTMENTS.

(a) IN GENERAL.—Section 1915(c)(1) of the Public Health Service Act (42 U.S.C. 300x-3(c)(1)) is amended—

(1) in subparagraph (B), by striking "and" after the semicolon at the end;

(2) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) to develop, implement, and operate programs of treatment for adult and juvenile substance abusers in State and local criminal and juvenile justice systems, including treatment programs for individuals in prisons and jails and those on probation, parole, supervised release, and pretrial release.".

(b) PROHIBITION AGAINST CERTAIN PROGRAMS.—Section 1915(c)(2)(A) of the Public Health Service Act (42 U.S.C. 300x-3(c)(2)(A)) is amended to read as follows:

"(A) to carry out any program prohibited by section 256(b) of the Health Omnibus Programs Extension of 1988 (Public Law 100-607); or".

(c) ADMINISTRATIVE EXPENSES.—Section 1915(d) of the Public Health Service Act (42 U.S.C. 300x-3(d)) is amended to read as follows:

"(d) Of the amount paid to any State under section 1914 for a fiscal year, not more than 5 percent may be used for the administrative expenses of carrying out the purposes of this subpart. Reasonable expenses, as determined by the Secretary, incurred for the training of individuals as required under this subpart shall not be included in determining the level of such expenses referred to in the preceding sentence.".

SEC. 302. MAINTENANCE OF EFFORT.

Section 1916(c)(11) of the Public Health Service Act (42 U.S.C. 300x-4(c)(11)) is amended by amending subparagraph (A) to read as follows:

"(11)(A) The State agrees to maintain State expenditures for alcohol and drug abuse services at a level that is not less than the level maintained by the State for such services for the 2-year period preceding the fiscal year for which the State is applying to receive payments under section 1914.

"(B) The State agrees to maintain State expenditures for community mental health services at a level that is not less than the level maintained by the State for such services for the 2-year period preceding the fiscal year for which the State is applying to receive payments under section 1914.

"(C) Upon the request of a State, the Secretary may waive a requirement established in subparagraph (A) or (B) if the Secretary determines that extraordinary economic conditions in the State justify the waiver.".

SEC. 303. SET-ASIDE FOR WOMEN IN PROGRAM OF ALLOTMENTS WITH RESPECT TO SUBSTANCE ABUSE.

Section 1916(c)(14) of the Public Health Service Act (42 U.S.C 300x-4(c)(14)) is amended—

(1) by inserting "(A)" after the paragraph designation;

(2) in subparagraph (A) (as so designated)—

(A) by inserting after "allotted" the following: "with respect to alcohol and drug abuse"; and

(B) by striking "10 percent" and inserting "20 percent"; and

(3) by adding at the end the following new subparagraph:

"(B) The State agrees that the amounts made available under subparagraph (A) for a fiscal year will be used to supplement, and not to supplant, State funds for such programs and services, and such amounts will be expended to increase the number of treatment slots available in such fiscal year above the number of slots available in fiscal year 1990.".

SEC. 304. REQUIREMENT OF AVAILABILITY OF TREATMENT SERVICES TO PREGNANT WOMEN.

Section 1916(c)(10) of the Public Health Service Act (42 U.S.C 300x-4(c)(21)) is amended to read as follows:

"(10)(A) The State agrees—

"(i) to ensure that treatment services for the abuse of alcohol or drugs are available to each pregnant woman in the State who seeks or is referred to and would benefit from such services; and

"(ii) in carrying out clause (i)—

"(I) to identify facilities in the State that provide such treatment services to such women, to publicize the availability to the women of services from the facilities, and to provide to the Secretary a list of the facilities and an assessment of the capability of the programs to meet the treatment needs of women described in clause (i); and

"(II) to require that, in the event that a treatment facility has insufficient capacity with respect to any such woman, the facility refer the woman to the State for referral to a facility with the capacity to provide treatment services.

"(B) The State agrees that, if the State or the Secretary determines that the capacity of treatment facilities in the State is insufficient with respect to complying with subparagraph (A)(i), the State will develop and implement a program, approved by the Secretary, to establish goals, in quantitative terms, for the provision of adequate treatment capacity in order to meet the needs of all pregnant women in the State who abuse alcohol or drugs, who desire treatment services for such abuse, and who would benefit from such services. The program shall be implemented in a manner consistent with the plan required pursuant to section 1916B.".

SEC. 305. REQUIREMENT OF EARLY INTERVENTION SERVICES.

Section 1916(c)(21) of the Public Health Service Act is amended to read as follows:

"(21)(A) Solely with respect to States described in section 2617(d)(3)(A), the State agrees to identify each locality within the State in which intravenous drug use or crack use is prevalent and to designate at least one facility in each such locality at which the services described in section 2651(b)(2) will be offered and encouraged, under the circumstances described in subpart III of part C of title 26, to individuals receiving drug abuse treatment.

"(B) Such States shall—

"(i) ensure that facilities designated pursuant to subparagraph (A) are geographically accessible;

"(ii) ensure that facilities not designated pursuant to subparagraph (A) will make referrals to designated facilities, as appropriate; and

"(iii) publicize the availability of such services.

"(C) To the extent that other public or private sources of funding are unavailable with respect to particular patients, State funds shall be used to provide the services described in 2651(b)(2) to such patients at facilities designated pursuant to subparagraph (A). Funds allotted to a State pursuant to section 1912A may be used for such purpose in a manner consistent with the plan required by section 1916B.".

SEC. 306. REQUIREMENT OF STATEWIDE SUBSTANCE ABUSE TREATMENT PLANS.

Subpart 1 of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) is amended by inserting after section 1916A the following new section:

"SEC. 1916B. STATEWIDE SUBSTANCE ABUSE TREATMENT PLAN.

"(a) NATURE OF PLAN.—For fiscal year 1992 and subsequent fiscal years, to receive its allotment, in whole or in part, for a fiscal year under section 1912A, a State shall develop, implement, and submit as part of the application required by section 1916(a), an approved Statewide Substance Abuse Treatment Plan, prepared according to regulations issued by the Secretary, that shall—

"(1) contain a single, designated State agency for formulating and implementing the Statewide Substance Abuse Treatment Plan;

"(2) contain a description of the mechanism that shall be used to assess the needs for substance abuse treatment in localities throughout the State including the presentation of relevant data;

"(3) contain a description of a statewide plan that shall be implemented to expand treatment capacity and overcome obstacles that restrict the expansion of treatment capacity (such as zoning ordinances), or an explanation of why such a plan is unnecessary;

"(4) contain a description of performance-based criteria that shall be used to assist in the allocation of funds to substance abuse treatment facilities receiving assistance under this subpart;

"(5) contain a description of the mechanism that shall be used to make funding allocations under this subpart;

"(6) contain a description of the actions that shall be taken to improve the referral of substance abusers to treatment facilities that offer the most appropriate treatment modality;

"(7) contain a description of the program of training that shall be implemented for employees of treatment facilities receiving Federal funds, designed to permit such employees to stay abreast of the latest and most effective treatment techniques;

"(8) contain a description of the plan that shall be implemented to coordinate substance abuse treatment facilities with other social, health, correctional and vocational services in order to assist or properly refer those patients in need of such additional services;

"(9) with respect to female substance abusers, contain—

"(A) an unduplicated count of the number of women served with funds set aside pursuant to section 1916(c)(14), their demographic characteristics, the specific services offered to women, the average expenditure per woman for services funded under the set-aside, the numerical objectives for new substance abuse treatment services for women; and

"(B) the strategy for providing, or linking with existing service provision entities prenatal and postpartum health care for women undergoing such treatment, pediatric care for their infants, child care, transportation and other support services that facilitate treatment, case management services, including assistance in establishing eligibility for public economic support, and employment counseling and other appropriate follow-up services to help prevent a relapse of alcohol or drug abuse;

"(10) contain a description of the plan that shall be implemented to expand drug treatment opportunities for individuals under criminal justice supervision;

"(11) contain a description of the plan that shall be implemented to expand drug treatment opportunities for homeless individuals;

"(12) contain a description of the plan that shall be implemented to expand and improve specialized services for individuals with substance abuse and coexisting mental disorders and to describe what actions will be taken to improve the organization and financing of services for individuals with coexisting substance abuse and mental disorders;

"(13) contain a description of the plan that shall be implemented to assist businesses, labor unions, and schools to establish employee assistance programs and student assistance programs;

"(14) contain a description of the steps taken to assure that each recipient of financial assistance pursuant to the provisions of this subpart shall not engage in discrimination on the basis of race, religion, color, national origin, gender, reproductive status, or handicap in the course of the activities assisted in whole or in part pursuant to the provisions of this subpart;

"(15) contain a description of the manner in which the State will target funds toward areas of the greatest need in the State, using such criteria as the State may establish for determining such areas, including criteria for focusing on—

"(A) the current unmet treatment needs in the State including both the inpatient, outpatient, and long- and short-term substance abuse treatment service needs of defined populations and the availability of essential ancillary services;

"(B) the incidence of deliveries of infants who are adversely affected by maternal substance abuse;

"(C) the incidence of criminal activities related to substance abuse; and

"(D) the incidence of communicable diseases transmitted by substance abuse;

"(16) contain a description of the manner in which periodic testing of patients will be conducted, as appropriate, to determine the compliance of treatment populations with treatment regimens and the establishment of clinically appropriate policies for dealing with patients who fail such tests and provide that such testing conducted not be required to be more frequent than is necessary to achieve treatment objectives;

"(17) contain a description of the State's actions to encourage treatment facilities to provide aftercare, either directly or through arrangements with other individuals or entities, for patients who have ended a course of treatment provided by the facility, that shall include periodic contacts with the patient to monitor the patient's progress and provide services or additional treatment as needed; and

"(18) contain a description of interim assistance that is available for individuals who apply for treatment, and who must wait for the availability of treatment opportunities, such as—

"(A) education and counseling concerning drug abuse; and

"(B) the referral to, or provision of, other necessary health and social services that may include primary health care, mental health care, homeless assistance, education, and vocational services, except that the plan for the provision of interim services shall address the concern that such interim services not result in the undue loss of current treatment services.

"(b) SUBMISSION OF PLAN.—The plan required by subsection (a) shall be submitted to the Secretary annually for review and approval. The Secretary shall have the authority to review and approve or disapprove such State plans and the implementation thereof, and to propose changes to such plans.

"(c) REGULATIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the Emergency Substance Abuse Treatment Improvement Act of 1990, the Secretary, in consultation with the States, shall issue regulations to carry out this section. Such regulations shall include, at a minimum, criteria for each area to be covered by the State plan prepared under subsection (a).

"(2) APPLICABILITY.—For fiscal year 1992 and subsequent fiscal years, no payment shall be made to a State from its allotment under section 1912A unless such State has

submitted, and the Secretary has approved, a plan in accordance with the regulations issued under paragraph (1), as determined by the Secretary, except that with respect to the performance criteria for treatment facilities described in subsection (a)(4), the regulations shall apply only for such fiscal years as the Secretary determines to be appropriate.

"(3) MONITORING.—The Secretary shall monitor the compliance of the State with the plan submitted under this section and provide technical assistance to assist in achieving such compliance.

"(d) SUBMISSION OF PROGRESS REPORTS.—Each State shall submit reports, in such form, and containing such information as the Secretary may, from time to time, require, and shall comply with such additional provisions as the Secretary may from time to time find necessary to verify the accuracy of such reports.

"(e) WAIVER OF PLAN REQUIREMENT.—At the discretion of the Secretary, the Secretary may waive any or all of the requirements of this section on the written request of a State, except that such waiver shall not be granted unless the State implements an alternative treatment plan that fulfills the objectives of this section.

"(f) ADMINISTRATIVE COSTS.—Expenses incurred for the training of individuals as required under any plans submitted under this section shall not be included in determining the costs of administering funds made available under section 1914 with respect to alcohol and drug abuse.".

SEC. 307. MISCELLANEOUS AMENDMENTS.

(a) IN GENERAL.—Subpart 1 of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) is amended—

(1) in section 1916(f)—

(A) by inserting "(1)" after the subsection designation;

(B) in paragraph (1) (as so designated)—(7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a)" in paragraph (1) and inserting "under section 241(a) (other than under paragraph (1)(C) or (1)(E) thereof)", and

(i) in the first sentence, by striking "paragraphs (2), (14), and (15)" and inserting "paragraphs (2) and (15)"; and

(ii) in the second sentence, by striking "services, an assessment" and all that follows through "the mental health needs" and inserting "services in meeting the mental health needs"; and

(C) by adding at the end the following new paragraph:

"(2) Not later than October 1, 1991, and every two years thereafter, the Secretary shall report to the committees specified in paragraph (1) on the programs and services provided pursuant to section 1916(c)(14). Such report shall include a detailed description of such programs and services, an unduplicated count of the number of women served under such section, their demographic characteristics, the specific services offered to women, the average expenditure per woman for services funded under such section, and such other information as the Secretary deems appropriate."; and

(2) in section 1917(b)—

(A) by striking "1990," in paragraph (6) and inserting "1991,"; and

(B) by adding at the end the following new paragraph:

"(7) For fiscal year 1992 and subsequent fiscal years, the Secretary may not make payments under section 1914 to a State for the fiscal year involved unless the expenditures of such payments made to the State for the second fiscal year preceding such fiscal year have undergone a thorough performance review in accordance with standards established by the Comptroller General.".

Amend the title so as to read:

An Act to amend the Public Health Service Act with respect to the prevention and treatment of substance abuse.

And the Senate agree to the same.

JOHN D. DINGELL,
HENRY A. WAXMAN,
JIM SCHEUER,
NORMAN F. LENT,
ED MADIGAN,
Managers on the Part of the House.

EDWARD M. KENNEDY,
CHRISTOPHER J. DODD,
CLAIBORNE PELL,
DANIEL K. INOUYE,
JOE BIDEN,
PAUL SARBANES,
ORRIN G. HATCH,
DAN COATS,
JOHN DANFORTH,
PETE WILSON,
PHIL GRAMM,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3630) to amend the Public Health Service Act with respect to the prevention and treatment of substance abuse, including establishing separate block grants with respect to substance abuse and mental health, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. PURPOSE

The conferees agree that the purpose of the legislation is to increase the number of available substance abuse treatment slots, imporve planning and coordination of state and local efforts, and to target resources to populations with respect to which the need is especially acute, notably pregnant addicts.

2. SHORT TITLE

The House bill is entitled the "Emergency Drug Abuse Treatment Expansion Act of 1989." The Senate bill has no short title.

The Senate recedes with an amendment. The legislation reported by the committee on conference (hereafter "the conference agreement") is entitled the "Emergency Substance Abuse Treatment Improvement Act of 1990."

3. OFFICE OF TREATMENT IMPROVEMENT

The House bill establishes the Office for Treatment Improvement (OTI) within the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA). The Senate bill is silent.

The Senate recedes with an amendment. Section 101 of the conference agreement establishes OTI and sets forth its statutory responsibilities, including administration of the following four demonstration grant programs.

(1) Demonstration Projects of National Significance;

(2) Demonstration Grants for Treatment in the Criminal Justice System;

(3) Treatment Training Grants;

(4) Waiting List Reduction Grants.

For fiscal year 1991, such sums as are necessary are authorized for OTI.

The House bill also contains a provision to establish a new national model demonstration program for drug abuse treatment in the national capital area. The Senate bill is silent.

The Senate recedes with an amendment. The conference agreement establishes a three year national capital area demonstration program. It is the view of the conference that such a comprehensive regional approach will provide a model for other areas of the country.

The Secretary is directed to fund this demonstration program from currently appropriated programs. It is the conferees' understanding that the Administration intends to fulfill this directive in a manner that will have a minimal impact on any single program. In particular, the conference expects that the Secretary will avoid implementing the directive in a manner that would have a disproportionate impact on high priority health service programs such as the maternal substance abuse demonstration program administered by the Office for Substance Abuse Prevention.

STRUCTURE OF GRANT PROGRAMS

The House bill makes several technical and conforming amendments relative to the structure of grant programs within the Public Health Service Act. Some of those amendments are still necessary under the conference agreement, and additional technical changes are necessitated. The Senate is silent.

The Senate recedes with an amendment. Current section 509E is redesignated as section 579 to bring it within the subpart containing programs administered by the Office of Treatment Improvement. Current section 509F, in turn, is redesignated as section 509E.

Former Section 509G has been reorganized. The program of grants of national significance has been placed within the jurisdiction of the newly established Office for Treatment Improvement (sec. 576). The AIDS demonstration projects have been retained within the jurisdiction of the National Institute on Drug Abuse (NIDA), but placed within section 516, which contains NIDA'S general demonstration research authority.

The newly recast section 516 directs NIDA to make a grant to a qualified entity to perform certain research with respect to fetal cocaine syndrome. In the view of the conference, such research is urgently needed to inform federal policy in this area. It is the conferees' view that an accredited acute care hospital for child psychiatric care that provides inpatient, outpatient and developmental disability treatment would be a qualified entity.

MATERIAL SUBSTANCE ABUSE

The House bill proposes to revise and improve section 509F of the Public Health Service Act pertaining to model programs for pregnant substance abusers. The amend-

ment adopted by the conferees revises and improves section 509F (redesignated by the report as section 509E).

Priority for grants will be awarded commensurate with the extent that applicants provide some or all of the services enumerated in the legislation. In addition, the Director of the Office for Substance Abuse Prevention (OSAP) is required to collaborate with other agencies and with states on issues of maternal substance abuse. It is the conferees' hope that consultation with the states will better integrate federal and state treatment efforts.

MATTERS PERTAINING TO THE BLOCK GRANT

Both the House and Senate bills propose to revise the statutes governing the administration of the ADMS block grant. The conference agreement amends these statues in the following significant respects:

Use of allotments (sec. 302). The House and Senate agree to permit states to use their allotments to fund drug treatment programs within the criminal justice system, consistent with the goal of this legislation to expand treatment opportunities to populations in which substance abuse is highly prevalent. Funds may also be utilized consistent with section 256(b) of the Health Omnibus Programs Extension Act of 1988.

Maintenance of effort (sec. 303). The House and Senate agree that states that receive Federal ADMS funds must maintain state spending on both substance abuse and mental health services at a level that is not less than the level maintained by the State for the two year period preceding the fiscal year for which the State is applying as a condition for receiving ADMS block grant allotments.

Set-aside for women (sec. 304). The House bill requires that states set-aside 25% of block grant funds with respect to alcohol and drug abuse for programs and services designed for women. The Senate bill is silent. The Senate recedes with an amendment to require states to expend 20% of the substance abuse portion of their block grant allotments on services for women. The amendment clarifies that amounts made available under the set-aside are to be used to supplement, not supplant, current efforts for this population. It is the conference's intent that the set-aside be administered by the states in a manner that will significantly increase the availability of treatment services for women.

Availability of services to pregnant women (sec. 305). The conference agreement requires that states make treatment available to pregnant women who request and would benefit from it. If states have insufficient capacity to comply with this requirement, they must develop a program approved by the Secretary which establishes goals to provide adequate treatment capacity to meet the needs to all pregnant women who request and would benefit from such treatment. This program is to be coordinated with the statewide treatment plan mandated under this Act.

Requirement of early intervention services (sec. 3060). The House bill contains a requirement that individuals receive certain services with respect to Acquired Immune Deficiency Syndrome. The Senate bill is silent.

The conference agreement requires certain states to identify localities in which intravenous drug use or crack use is prevalent, and to designate at least one substance abuse treatment facility in such localities to offer and encourage acceptance of early intervention services enumerated in the Public Health Service Act.

Statewide treatment plans (sec. 307). The House and Senate bills both contain a requirement that states submit a plan for assessing and meeting substance abuse treatment needs within that state as a precondition for receiving ADMS block grant allotments.

The House recedes with an amendment. The conference agreement mandates a comprehensive statewide treatment plan to ensure accountability and to enable the Secretary to pursue federal treatment goals through the block grant program.

JOHN D. DINGELL,
HENRY A. WAXMAN,
JIM SCHEUER,
NORMAN F. LENT,
ED MADIGAN,
Managers on the Part of the House.

EDWARD M. KENNEDY,
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PAUL SARBANES,
ORRIN G. HATCH,
DAN COATS,
JOHN DANFORTH,
PETE WILSON,
PHIL GRAMM,
Managers on the Part of the Senate.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. LAFALCE, and to include therein extraneous material, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $1,726.

SENATE BILLS AND JOINT RESOLUTIONS REFERRED

Bills and joint resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1532. An act to amend the Volunteers in the National Forests Act of 1972 to permit volunteers to be considered employees under section 3721 of title 31, United States Code; to the Committee on Agriculture.

S. 2385. An act to establish the National Forest Foundation; to the Committee on Agriculture.

S. 2476. An act to amend title 18 of the United States Code to clarify and expand legal prohibitions against computer abuse; to the Committee on the Judiciary.

S. 2946. An act to amend the Public Health Service Act to revise and extend the program establishing the National Bone Marrow Donor Registry, and for other purposes; to the Committee on Energy and Commerce.

S. 3084. An act to provide for the settlement of water rights claims of the Fallon Paiute-Shoshone Indian Tribes and for other purposes; to the Committee on Interior and Insular Affairs.

S. 3180. An act to amend provisions of title 18, United States Code, relating to terms of imprisonment and supervised releases following revocation of a term of supervised release; to the Committee on the Judiciary.

S.J. Res. 375. Joint resolution to designate October 30, 1990, as "Refugee Day"; to the Committee on Post Office and Civil Service.

S.J. Res. 384. Joint resolution to designate May 17, 1991, as "High School Reserve Officer Training Corps Recognition Day"; to the Committee on Post Office and Civil Service.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 3840. An act to establish the Newberry National Volcanic Monument in the State of Oregon, and for other purposes;

H.R. 4638. An act to revise the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act and the Orphan Drug Act, and for other purposes;

H.R. 5268. An act making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1991, and for other puposes;

H.J. Res. 525. Joint resolution designating November 18 through 24, 1990, as "National Family Caregivers Week";

H.J. Res. 649. Joint resolution approving the extension of nondiscriminatory treatment (most favored nation treatment) to the products of Czechoslovakia;

H.J. Res. 667. Joint resolution to designate November 16, 1990, as "National Federation of the Blind Day"; and

H.J. Res. 682. Joint resolution waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 580. An act to require institutions of higher education receiving Federal financial assistance to provide certain information with respect to the graduation rates of student-athletes at such institutions;

S. 1756. An act to provide for the preservation and interpretation of sites associated with Acadian culture in the State of Maine. Examined and found truly enrolled October 26, 1990;

S. 1890. An act to amend title 5, United States Code, to provide relief from certain inequities remaining in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes;

S. 2516. An act to augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act by allowing that agency to share statistical establishment list information compiled by the Bureau of the Census, and for other purposes; and

S. 3062. An act to transfer the responsibility for operation and maintenance of Highway 82 Bridge at Greenville, Mississippi, to the States of Mississippi and Arkansas.

BILLS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following date, present to the President, for his approval, bills of the House of the following titles:

On October 25, 1990:

H.R. 2331. An act to amend title 39, United States Code, to designate as nonmailable matter solicitations for the purchase of goods or services, or solicitation for donations which could reasonably be construed as implying any Federal Government connection or endorsement, unless such matter contains an appropriate, conspicuous disclaimer, and for other purposes;

H.R. 3386. An act to prohibit certain food transportation practices and to provide for regulation by the Secretary of Transportation that will safeguard food and certain other products from contamination during motor or rail transportation, and for other purposes;

H.R. 3888. An act to allow a certain parcel of land in Rockingham County, VA, to be used for a child care center;

H.R. 4151. An act to authorize appropriations for fiscal years 1991 through 1994 to carry out the Head Start Act, the Follow Through Act, and the Community Services Block Grant Act; and for other purposes;

H.R. 5019. An act making appropriations for energy and water development for the fiscal year ending September 30, 1991, and for other purposes; and

H.R. 5702. An act to amend the Public Health Service Act to improve the health of individuals who are members of minority groups and who are from disadvantaged backgrounds, and for other purposes.

ADJOURNMENT

Mr. GEPHARDT. Mr. Speaker, I move the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 1 minute a.m.) under its previous order, the House adjourned until Saturday, October 27, 1990, at 3 p.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follow:

4107. A letter from the Assistant Secretary of Defense, transmitting a copy of the fiscal year 1991 base structure report, pursuant to 10 U.S.C. 115; to the Committee on Armed Services.

4108. A letter from the Inspector General, Environmental Protection Agency, transmitting the annual Superfund report from fiscal year 1989; to the Committee on Energy and Commerce.

4109. A letter from the Assistant Secretary of State Legislative Affairs, transmitting a copy of Presidential Determination No. 91-2 with supporting justification and additional information pursuant to section 151(c) of the Foreign Relations Authorization Act, fiscal years 1988 and 1989; to the Committee on Foreign Affairs.

4110. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of defense equipment sold commercially to Iceland (Transmittal No. DTC-35-90), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

4111. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of defense equipment sold commercially to Indonesia and Brunei (Transmittal No. DTC-38-90), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

4112. A letter from the Chairman, Administrative Conference of the United States, transmitting a preliminary draft of a report entitled, "Negotiating for Knowledge: Administrative Responses to Congressional Demands for Information", dated July 1, 1990; to the Committee on Government Operations.

4113. A letter from the Administrator, General Services Administration, transmitting an informational copy of a report of building project survey which evaluated the Federal space situation in Birmingham, AL; to the Committee on Public Works and Transportation.

4114. A letter from the National Adjutant, the Disabled American Veterans transmitting the report of the proceedings of the organization's 69th National Convention, including their annual audit of receipts and expenditures as of December 31, 1989, pursuant to 44 U.S.C. 1332, and section 3 of Public Law 88-504 (H. Doc. No. 101-252); to the Committee on Veterans' Affairs and ordered to be printed.

4115. A letter from the Secretary of Labor, transmitting a copy of a report entitled, "Worker Rights in Export Processing Zones," pursuant to 29 U.S.C. 565; jointly, to the Committees on Foreign Affairs and Ways and Means.

4116. A letter from the Comptroller General, General Accounting Office, transmitting a review of financial institutions known as government-sponsored enterprises [GSE's]; jointly, to the Committees on Agriculture; Banking, Finance and Urban Affairs; Education and Labor; Government Operations; and Ways and Means.

REPORT OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee of conference. Conference report on S. 1630 (Rept. 101-952). Ordered to be printed.

Mr. BONIOR: Committee on Rules. House Resolution 535. Resolution waiving certain points of order against consideration of conference report on the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, and against its consideration (Rept. 101-954). Referred to the House Calendar.

Mr. BROOKS: Committee of conference. Conference report on S. 358 (Rept. 101-955). Ordered to be printed.

Mr. DINGELL: Committee of conference. Conference report on H.R. 1602. (Rept. 101-956). Ordered to be printed.

Mr. HALL of Ohio: Committee on Rules. House Resolution 536. Resolution waiving certain points of order against consideration of the conference report on the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes, and against its consideration (Rept. 101-957). Referred to the House Calendar.

Mr. DIXON: Committee of conference. Conference report on H.R. 5311 (Rept. 101-958). Ordered to be printed.

Mr. DINGELL: Committee of conference. Conference report on H.R. 3095 (Rept. 101-959). Ordered to be printed.

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 5598. A bill to amend title 35, United States Code, to provide certain improvements to the patent law; with an amendment (Rept. 101-960, Pt. 1). Order to be printed.

[Oct. 27 (legislative day of Oct. 26), 1990]

Mr. DINGELL: Committee of conference. Conference report on H.R. 3630 (Rept. 101-961). Order to be printed.

[Oct. 27 (legislative day of Oct. 26), 1990]

Mr. DERRICK: Committee on Rules. House Resolution 537. Resolution waiving certain points of order against consideration of the conference report on the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, and against its consideration (Rept. 101-962). Referred to the House Calendar.

[Oct. 27 (legislative day of Oct. 26), 1990]

Mr. MOAKLEY: Committee on Rules. House Resolution 538. Resolution waiving certain points of order against consideration of the conference report on the bill (S. 358) to amend the Immigration and Nationality Act to change the level, and perference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes, and against its consideration (Rept. 101-963). Referred to the House Calendar.

[Oct. 27 (legislative day of Oct. 26), 1990]

Mr. PANETTA: Committee of conference. Conference report on H.R. 5835 (Rept. 101-964). Order to be printed.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. DE LA GARZA: Committee on Agriculture. H.R. 3270. A bill entitled the "Farm Animal and Research Facilities Protection Act of 1989"; with amendments; referred to the Committee on the Judiciary for a period ending not later than October 27, 1990, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(m), rule X (Rept. 101-953, Pt. 1). Order to be printed.

Under clause 5 of rule X the following action was taken by the Speaker:

H.R. 3270. Referred to the Committee on the Judiciary for a period ending not later than October 27, 1990, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(m), rule X.

DISCHARGED FROM UNION CALENDAR; SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

H.R. 5204. The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Agriculture for a period ending not later than October 27, 1990, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of the Committee on Agriculture pursuant to clause 1(a), rule X.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HAWKINS (for himself and Mr. GOODLING):

H.R. 5932. A bill to promote excellence in American education by recognizing and rewarding schools, teachers, and students for their outstanding achievements, enhancing parental choice, encouraging the study of science, mathematics, and engineering, and for other purposes; to the Committee on Education and Labor.

By Mr. GONZALEZ:

H.R. 5933. A bill to provide for the temporary extension of the certain laws relating to housing and community development; to the Committee on Banking, Finance and Urban Affairs.

By Mr. GILMAN:

H.R. 5934. A bill to provide credit for the poor in developing countries through loans for self-employment and other assistance for micro enterprises; to the Committee on Foreign Affairs.

By Mr. ACKERMAN:

H.R. 5935. A bill to amend certain Federal laws to provide the same rights and privileges to deaf or hard-of-hearing individuals who depend on hearing dogs as are provided to blind individuals who depend on guide dogs, and for other purposes; jointly, to the the Committees on Agriculture, Veterans' Affairs, and Public Works and Transportation.

By Mr. BALLENGER:

H.R. 5936. A bill to amend the Tariff Act of 1930 to require that certain revenues attributable to tariffs levied on imports of textile machinery and parts thereof be applied to support research for the modernization of the American textile machinery industry; jointly, to the Committees on Ways and Means and Banking, Finance and Urban Affairs.

By Mrs. BYRON:

H.R. 5937. A bill to amend title 5, United States Code, to allow Federal employees to take time off from duty to serve as bone marrow donors; to the Committee on Post Office and Civil Service.

By Mr. COYNE:

H.R. 5938. A bill to temporarily suspend the duty on certain lead fuel test assemblies; to the Committees on Ways and Means.

By Mr. DOUGLAS (for himself and Mr. BARNARD):

H.R. 5939. A bill to amend the Securities Exchange Act of 1934 to require disclosure of short positions of major short position holders, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ENGEL:

H.R. 5940. A bill to amend the Financial Institutions Reform, Recovery and Enforcement Act of 1989 for the purpose of protecting residential tenants from unnecessary eviction by the Resolution Trust Corporation; to the Committee on Banking, Finance and Urban Affairs.

By Mr. FRANK:

H.R. 5941. A bill to exclude from income amounts received under part A of title IV of the Social Security Act for the purposes of determining the amount of benefits to be provided under the Food Stamp Act of 1977 and the United States Housing Act of 1937; jointly, to the Committees on Agriculture and Banking, Finance and Urban Affairs.

By Mr. GEPHARDT:

H.R. 5942. A bill to provide for the establishment of industrial recapitalization funds by industries which were injured by unfair import competition, and for other purposes; to the Committee on Ways and Means.

By Mr. GEPHARDT (for himself and Mr. PRICE):

H.R. 5943. A bill to establish youth apprenticeship demonstration programs, and for other purposes; to the Committee on Education and Labor.

By Mr. HERGER:

H.R. 5944. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to operate and maintain recreation activities at the East Park and Stony Gorge Reservoirs, Orland Project, CA; to the Committee on Interior and Insular Affairs.

By Mr. HOCHBRUECKNER:

H.R. 5945. A bill to provide veterans benefits to individuals who serve in the U.S. merchant marine during a period of war; to the Committee on Veterans' Affairs.

By Mr. KOSTMAYER:

H.R. 5946. A bill to provide for the establishment of a national park program for children, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. KOSTMAYER (for himself, Mr. TOWNS, Mr. PALLONE, Mr. OWENS of New York, and Mr. ACKERMAN):

H.R. 5947. A bill to provide for the humane treatment of animals used for exhibition purposes; to the Committee on Agriculture.

By Mr. LEVINE of California (for himself, Mr. THOMAS of California, Mr. MATSUI, and Mr. MINETA):

H.R. 5948. A bill to establish the Manzanar National Historic Site in the State of California, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. McCOLLUM (for himself, Mr. YOUNG of Florida, Mr. IRELAND, Mr. SHAW, Mr. BILIRAKIS, Mr. LEWIS of Florida, Mr. GOSS, Mr. GRANT, Mr. JAMES, Ms. ROS-LEHTINEN, and Mr. STEARNS):

H.R. 5949. A bill to deem the Florida Panther to be an endangered species under the Endangered Species Act of 1973; to the Committee on Merchant Marine and Fisheries.

By Mrs. MINK:

H.R. 5950. A bill to deem the Strategic Target System Program conducted at Kauai, Hawaii, to be a major Federal action for the purposes of the National Environmental Policy Act; jointly, to the Committees on Merchant Marine and Marine and Fisheries and Armed Services.

By Mr. PEASE:

H.R. 5951. A bill to provide that a period of service on active duty by a member of a Reserve component of the Armed Forces shall not be considered as a break in service for purposes of determining eligibility to participate in a group health plan; to the Committee on Ways and Means.

By Mr. SAWYER (for himself and Mr. GOODLING):

H.R. 5952. A bill to enhance the literacy and basic skills of adults, to ensure that all adults in the United States acquire the basic skills necessary to function effectively and achieve the greatest possible opportunity in their work and in their lives, and to strengthen and coordinate adult literacy programs; to the Committee on Education and Labor.

By Mr. SKAGGS (for himself, Mr. MORRISON of Washington, Mr. STARK, Mr. ECKART, Mr. TOWNS, and Mr. FAUNTROY):

H.R. 5953. A bill to provide compensation to employees at Department of Energy defense nuclear facilities for injury or death caused by exposure to ionizing radiation; to the Committee on Education and Labor.

By Mr. SOLARZ (for himself, Mr. HAMILTON, Mr. DYMALLY, and Mr. PRICE):

H.R. 5954. A bill to provide for publication of a thorough, accurate, and reliable documentary record of major U.S. foreign policy activities through the "Foreign Relations of the United States" historical series of the Department of State; to the Committee on Foreign Affairs.

By Mrs. UNSOELD:

H.R. 5955. A bill to establish a National Fishery Conservation System administered by the United States Fish and Wildlife Service to maintain and develop self-sustaining fish populations for the continued benefit of recreational, commercial, and tribal users and the general public, educational, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. YOUNG of Alaska (for himself and Mr. STUDDS):

H.R. 5956. A bill to designate wilderness, acquire certain valuable inholdings, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. SMITH of New Jersey (for himself, Mr. MOLLOHAN, and Mr. HYDE):

H.R. 5957. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for adoption expenses for individuals adopting children; to the Committee on Ways and Means.

By Mr. WALGREN:

H.R. 5958. A bill to provide for the labeling or marking of tropical wood and tropical wood products sold in the United States; to the Committee on Energy and Commerce.

[Oct. 27 (legislative day of Oct. 26), 1990]

By Mr. STAGGERS:

H.R. 5959. A bill to establish an oil-price gouging victims fund; and for other purposes; to the Committee on the Judiciary.

By Mr GONZALEZ:

H.J. Res. 685. Joint resolution calling for the immediate removal of U.S. Armed Forces from the Middle East; to the Committee on Foreign Affairs.

By Mr. GILMAN:

H.J. Res. 686. Joint resolution to require that the U.S. Postal Service prescribe regulations under which the National League of Families POW/MIA flag may be displayed at facilities under the control of the U.S. Postal Service; to the Committee on Post Office and Civil Service.

By Mr. FASCELL:

H. Con. Res. 392. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 4653; considered and agreed to.

By Mr. ROE:

H. Con. Res. 393. Concurrent resolution to correct a technical error in the enrollment of the bill S. 459; considered and agreed to.

By Mr. MORRISON of Connecticut:

H. Con. Res. 394. Concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of the bill S. 358; jointly to the Committee on House Administration, and the Judiciary.

By Mr. GALLEGLY:

H. Con. Res. 395. Concurrent resolution expressing the sense of the Congress regarding the awarding of concessions at units of the National Park System; to the Committee on Interior and Insular Affairs.

By Mr. SOLARZ (for himself, Mr. FASCELL, Mr. BROOMFIELD, Mr. LEACH of Iowa, and Mr. DEFAZIO):

H. Con. Res. 396. Concurrent resolution recognizing the sesquicentennial of the Treaty of Waitangi, which is New Zealand's principal founding document, and the 151st anniversary of the establishment of relations between the United States and New Zealand; to the Committee on Foreign Affairs.

By Mr. TORRICELLI (for himself, Mr. SMITH of Florida, Mr. SOLARZ, Mr. LEVINE of California, Mr. ROHRABACHER, and Mr. BERMAN):

H. Con. Res. 397. Concurrent resolution expressing the sense of the Congress that the 1981 Israeli preemptive strike against the Iraqi nuclear reactor at Osirak was a legitimate and justifiable exercise of self-defense, and that the United States should seek the repeal of United Nations Security Council Resolution 487 which condemned that 1981 Israeli preemptive strike; to the Committee on Foreign Affairs.

By Mr. CARR:

H. Res. 539. Resolution amending clause 2(n) of rule XI of the rules of the House; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

[Oct. 27 (legislative day of Oct. 26), 1990]

Under clause 1 of rule XXII,

Mrs. SAIKI introduced a bill (H.R. 5960) for the relief of Masa Oshiro; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 39: Mr. TRAFFICANT.
H.R. 118: Mr. COX.
H.R. 171: Mr. COX.
H.R. 747: Mrs. PATTERSON, Mr. MCCRERY, and Mr. THOMAS of California.
H.R. 1040: Mr. GRANDY.
H.R. 1205: Mr. UPTON.
H.R. 1295: Mr. SPENCE.
H.R. 2140: Mr. LEWIS of Georgia and Mr. GALLEGLY.
H.R. 2228: Mr. UPTON.
H.R. 2383: Mr. HILER.
H.R. 2816: Mr. LEACH of Iowa.
H.R. 3017: Mr. CHAPMAN.
H.R. 3388: Mr. BUECHNER, Mr. COBLE, and Ms. LONG.
H.R. 3547: Mr. GUNDERSON, Mr. HORTON, and Mr. FIELDS.
H.R. 3934: Mrs. LLOYD.
H.R. 3936: Mrs. MINK.
H.R. 4258: Mr. IRELAND.
H.R. 4345: Mr. ERDREICH.
H.R. 4408: Mr. PURSELL, Mr. SCHUMER, Mr. DEFAZIO, Mr. UPTON, Mr. DEWINE, Mr. MILLER of Ohio, and Mr. FOGLIETTA.
H.R. 4480: Mr. OWENS of Utah and Mr. YOUNG of Alaska.
H.R. 4495: Mr. WOLPE.
H.R. 4512: Mr. COX.
H.R. 4549: Mr. DELLUMS.
H.R. 4575: Mr. FISH.
H.R. 4641: Mr. RAHALL and Mr. FAWELL.
H.R. 4818: Mr. FAZIO.
H.R. 4848: Mr. ROE.
H.R. 5026: Mr. MRAZEK.
H.R. 5049: Mr. MCEWEN, Mr. ERDREICH, Mr. HARRIS, Mr. BRUCE, and Mr. ROGERS.
H.R. 5100: Mr. PAYNE of New Jersey, Mrs. COLLINS, Mr. RAHALL, Mr. COLEMAN of Texas, Mr. EVANS, Mr. RANGEL, Mr. SERRANO, Mr. ENGEL, Mr. SAVAGE, Mr. LEVINE of California, Mr. BONIOR, Mr. SCHEUER, Mrs. SCHROEDER, Mrs. BOXER, and Mr. ROYBAL.
H.R. 5103: Mrs. VUCANOVICH.
H.R. 5104: Mrs. VUCANOVICH.
H.R. 5105: Mrs. VUCANOVICH.
H.R. 5194: Mr. MARLENEE.
H.R. 5262: Mr. MORRISON of Connecticut.
H.R. 5301: Mr. OXLEY, Mr. BEVILL, Mr. KYL, Mr. GINGRICH, Mr. NIELSON of Utah, Mr. HANCOCK, Mrs. JOHNSON of Connecticut, Mr. HUNTER, Mr. PARRIS, Mr. RAVENEL, Mr. PAXON, Mr. BLILEY, Mr. HYDE, Mr. LAGOMARSINO, and Mr. LIPINSKI.
H.R. 5373: Mr. HOLLOWAY, Mr. ROE, Mr. HERTEL, Mr. GRANDY, and Mr. EMERSON.
H.R. 5377: Ms. LONG, Mr. CONDIT, and Mr. COX.
H.R. 5416: Mr. YATRON.
H.R. 5456: Mr. GEJDENSON.
H.R. 5464: Mr. MINETA and Mr. WAXMAN.
H.R. 5484: Mr. MCGRATH, Mr. TORRICELLI, Mr. ROE, Mr. SKAGGS, Mr. LAGOMARSINO, Mrs. BYRON, Mr. BROOMFIELD, Mr. HERGER, Mr. BURTON of Indiana, and Mr. BOUCHER.
H.R. 5499: Mr. YATES, Mr. BUSTAMANTE, and Mr. TRAXLER.
H.R. 5504: Mr. ROE, Mr. BOSCO, and Mr. DICKINSON.
H.R. 5544: Mr. VALENTINE.
H.R. 5551: Mrs. BOXER, Mr. ENGEL, and Mr. ECKART.
H.R. 5568: Mr. MACHTLEY and Mr. ECKART.
H.R. 5582: Mr. ENGEL, Mr. DYSON, and Mr. AUCOIN.
H.R. 5590: Mr. LIPINSKI.
H.R. 5596: Mr. SCHEUER, Mr. LAFALCE, Mr. SMITH of Florida, Mr. JONTZ, Mr. OWENS of Utah, Mr. HERTEL, Ms. SLAUGHTER of New York, Mr. KASTENMEIER, Mr. FROST, Mr. STAGGERS, Mr. FAZIO, Mr. SANGMEISTER, Mr. DELLUMS, Mr. JOHNSON of South Dakota, Mr. MATSUI, Mrs. COLLINS, Mr. SHAYS, Mrs. MORELLA, Mr. CLAY, Mr. LEVIN of Michigan, and Mr. MOORHEAD.
H.R. 5625: Mr. PRICE, Mr. MRAZEK, Mr. CLINGER, Mr. DYMALLY, Mr. ROWLAND of Georgia, and Ms. LONG.
H.R. 5690: Mrs. VUCANOVICH, Mr. FAWELL, Mr. LANCASTER, and Mr. BARTON of Texas.
H.R. 5719: Mr. JONTZ, Mr. DE LUGO, Mr. CLINGER, and Mr. FAUNTROY.
H.R. 5724: Mr. ECKART.
H.R. 5726: Mr. JONTZ.
H.R. 5736: Mr. COSTELLO.
H.R. 5737: Mr. HORTON, Mr. ROE, Mr. ENGEL, Mr. DOUGLAS, Mr. MCDERMOTT, and Ms. KAPTUR.
H.R. 5804: Mr. SPENCE.
H.R. 5805: Mr. TOWNS, Mr. MCDERMOTT, and Mr. LIGHTFOOT.
H.R. 5816: Mr. DORNAN of California, Mr. LIPINSKI, Mr. MFUME, Mr. MCGRATH, Mr. LENT, Mr. SPENCE, and Mr. LAGOMARSINO.
H.R. 5830: Mr. RITTER, Mr. FISH, and Mr. CLINGER.
H.R. 5834: Ms. SCHNEIDER.
H.R. 5839: Mr. NEAL of Massachusetts and Mrs. COLLINS.
H.R. 5858: Mr. GOODLING.
H.R. 5862: Mr. SCHIFF.
H.R. 5878: Mr. KYL.
H.R. 5879: Mr. MRAZEK and Mr. DOWNEY.
H.R. 5881: Mr. DREIER of California.
H.R. 5896: Ms. KAPTUR.
H.R. 5921: Mr. MCCURDY, Mr. HUTTO, Mr. ROWLAND of Georgia, Mr. GEREN of Texas, Mr. BARNARD, Mr. DELAY, Mr. STUMP, Mr. SMITH of New Hampshire, and Mr. BALLENGER.
H.J. Res. 51: Mr. GINGRICH.
H.J. Res. 352: Mr. UPTON.
H.J. Res. 652: Mr. APPLEGATE, Mr. MONTGOMERY, Mr. SPENCE, Mr. HOUGHTON, Mr. FORD of Tennessee, Mr. FEIGHAN, Mr. MACHTLEY, Mr. RINALDO, Mr. EVANS, Mr. RITTER, Mr. SCHUETTE, Mr. SERRANO, Mr. SLATTERY, Mr. MURPHY, Mr. OWENS of Utah, Mr. PACKARD, Mr. DWYER of New Jersey, Mr. ROBINSON, Mr. STANGELAND, Mr. SMITH of New Hampshire, Mr. HUTTO, Mr. PARRIS, Mr. BAKER, Mr. STUMP, Mr. NEAL of North Carolina, Mr. TRAXLER, Mr. BUECHNER, Mr. BUNNING, Mr. ERDREICH, Ms. PELOSI, Mr. GORDON, Mr. MFUME, Mr. VENTO, Mr. OWENS of New York, Mr. NAGLE, Mr. CRANE, and Mr. FAUNTROY.
H. Con. Res. 355: Mr. STARK and Ms. OAKAR.
H. Con. Res. 372: Mr. OWENS of New York.
H. Con. Res. 373: Mr. YATRON, Mr. BRYANT, Mr. JENKINS, Mr. SANGMEISTER, Mr. UDALL, Mr. HOPKINS, Mr. SMITH of New Hampshire, Mr. DURBIN, and Mr. POSHARD.
H. Con. Res. 375: Mr. FUSTER, Mr. RANGEL, Mr. WALGREN, Mr. PALLONE, Mr. YATES, Mr. SERRANO, Mr. ROSE, and Mr. ENGEL.
H. Con. Res. 380: Mr. BURTON of Indiana, Mr. HYDE, Mr. WILSON, and Mr. HERGER.
H. Con. Res. 383: Mrs. LOWEY of New York, Mr. BILBRAY, Mr. DWYER of New Jersey, Mr. HERTEL, Mr. ATKINS, Mr. SCHEUER, Mr. DYMALLY, Mr. COUGHLIN, Mr. BROWN of Colorado, Mr. MCMILLEN of Maryland, Mr. MOAKLEY, Mr. NELSON of Florida, Mr. COX, Mr. BRYANT, Mr. WAXMAN, Mr. LEVIN of Michigan, Mr. KOSTMAYER, Mr. VISCLOSKY, Mr. ECKART, and Mr. THOMAS A. LUKEN.
H. Con. Res. 388: Mr. JACOBS.
H. Con. Res. 389: Ms. LONG, Mr. MAVROULES, and Mr. ENGEL.
H. Res. 121: Mr. UPTON.
H. Res. 458: Mr. SCHAEFER.
H. Res. 467: Mr. ACKERMAN, Mr. HOAGLAND, Mr. ESPY, and Mr. ECKART.
H. Res. 476: Mr. ECKART.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1023: Mr. MORRISON of Connecticut.

SENATE—*Friday, October 26, 1990*

(Legislative day of Tuesday, October 2, 1990)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

For if the trumpet give an uncertain sound, who shall prepare himself to the battle?—I Corinthians 14:8.

Eternal God, perfect in truth, the air is filled with millions of voices: controversial, conflicting, contradictory, confusing, from press, media, experts, Monday morning quarterbacks, and words without knowledge. How do the people prepare themselves for election day? Thank You for their anger, if angry they be. May they be angry enough to overcome apathy, indifference, cynicism, angry enough to sift through the confusion, to separate fact from clever public relations gimmicks, angry enough to exercise their sovereignty, go to the polls and vote, not for mere personality, but for truth, for righteousness, for justice, for integrity. Save us, Lord, from chaos. Revive the authentic American spirit.

We pray in His name who is truth incarnate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 26, 1990.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. DASCHLE thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Without objection, the time allotted to the two leaders will be reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 10 o'clock, with Senators permitted to speak therein for a period not to exceed 5 minutes.

The Senator from Idaho is recognized.

THE CLEAN AIR BILL

Mr. SYMMS. Mr. President, it is always said by people that it is really never too late to correct what is an error in a direction that someone is going in in their lives, or the direction in which a country is going; it is never too late to recover.

Throughout the course of the 101st Congress, I have heard many of my colleagues wringing their hands and talking about the fact that there is a decline in the United States, that we are no longer the great industrial Nation that we should be, that we have some of our friends and allies in Europe, and in the Pacific rim, and in other places, competing very strongly with us, and we do not seem to be competitive enough.

Frankly, Mr. President, it should surprise no one why we have problems being competitive, when you look at policies that come through the Congress of the United States—antiproductivity policies, one after another after another.

We regulate American businesses until they cannot be competitive, and then we tax what is left and wring out capital investment making the United States not the place that it has been viewed as up to now, where foreigners want to come and invest their capital. We make it a place where people begin to wonder if it would be better to invest their money in Europe, or better to invest their money in Canada or Mexico or in the Pacific rim, because it is getting too complicated and difficult to do business in the United States, with the plethora of alphabet agencies, one on top of the other, imposing forms and papers to fill out and fines to pay.

Then on top of that, Congress is preparing, and Washington, DC is preparing a new tax policy to raise taxes on all those people that are producing, working, and saving and trying to invest. It puts us in a position where I think we can expect a decline in our competitiveness. So I say that we should not be surprised, as we find ourselves becoming less and less competitive.

What I would like to speak about specifically this morning is what we are about to do, and I think that the die is cast. I am sad to report to my colleagues that this Congress is about to enact a new set of regulations called the Clean Air Act amendments, under a very noble cause. Everybody wants cleaner air.

The sad part is that the current Clean Air Act that we have operating in this country, if we would leave it alone, and continue to work under it, and let the economy continue to grow, and allow people to be able to buy new automobiles, by the mid-1990's, I believe most of the country would be in attainment. As we buy new automobiles that are 20 times cleaner than the old automobiles and, recycle the fleet of automobiles, it has an enormous impact on cleaner air.

A little over a year ago, President Bush started the debate on the year's clean air bill by introducing what I considered to be an extremely aggressive and innovative package of amendments, which would cost the Nation approximately $20 billion a year. Congress, however, ignored the President's effort, and both bodies developed their own monstrous pieces of legislation, going far beyond addressing the imminent air pollution problems faced by the Nation's largest cities.

Instead of using the bill the President sent as an opportunity to impose on the Nation a comprehensive clean air policy, Congress is preparing a bill which is going to impose on this Nation a comprehensive industrial policy, exactly what we proposed in this Chamber, during the eighties, which people were opposed to.

We pointed to the failures behind the Iron Curtain, to how those countries have industrial policies, and we have growth policies. And at the end of the decade of the eighties, the Iron Curtain starts crumbling, and the people that have industrial policies recognize that they have not only morally bankrupt systems, but economically bankrupt systems. They clamor to get what it was that we had, where we allow free people to make their own decisions through free institutions, to see an economy that grows and produces much more, and to benefit from a much more humanitarian standard of living for all.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Mr. President, in the week of October 12, three Nobel Laureate economists, a senior economist at the Brookings Institution, a former chairman of the White House Council of Economic Advisors, a former Vice Chairman of the Fed, and a former Director of the Office of Management and Budget all wrote to the President and said, "Now is not the time to enact legislation with questionable benefits but certain and serious economic costs," urging the President to "prevent enactment of the Clean Air Act of 1990."

These economists are looking at the aspects of this bill that many in Congress have yet ignored. A number of economic analysts have looked at the industrial policy that the Senate and the House clean air bills contain and have reported back astonishing costs, Mr. President. Among the groups conducting such reviews has been the prestigious Consad Research Corp. Consad has issued three separate reports on the clean air bill.

No. 1, an analysis of jobs at risk and job losses resulting from the proposed Clean Air Act amendments. This study, done in February 1990 and updated since, shows that a "moderate bill," meaning one that is less onerous than the provisions of both the Senate and House bills and what is in the coming conference report, could result in job losses in the range of 1.4 million or 1.75 percent, almost 2 percent, of all private sector nonfarm employment. I hope it will not be that bad. But it is possible.

Second, Consad produced an analysis of the small facility job impacts resulting from the permitting provisions alone. This study showed that an average permit as required by the proposed clean air bills will cost small businesses at least $15,000 and that monitoring equipment could cost as much as $250,000 per small business. These provisions impact 143,200 small facilities, with over 2 million employees. That is what we are getting ready to do. We are getting ready to pass a bill that is going to reach into the lives of thousands upon thousands and millions of Americans in a negative fashion all in the noble name that somehow we are going to have cleaner air.

The third report was on analysis of the air toxics provisions. This report looks at the substantial increases in unemployment caused by this title. Mr. President, please note that these studies do not even address the dramatic tragic impact to the West Virginia coal miners who will automatically lose their jobs as the coal markets move toward lower sulfur coal of Colorado, Wyoming, and other regions of the country. The Clean Air Conference is considering an amendment, and I think they have something in the bill to allow for some employment compensation for these individuals. But there will be no compensation provided for the hundreds of thousands of others left unemployed by the regulatory impact of this bill.

Mr. President, I do not know what it takes to penetrate the beltway. It astounds this Senator. It is like the beltway has an impermeable wall and people outside the beltway cannot penetrate through it when it comes to these excessive regulatory pieces of legislation that we pass. I think it is time for people inside the beltway to start paying attention to what the best economists in the country are saying. These economists have studied pollution control equipment costs associated with this air toxics title, for example, and, of a 10,000 plant sample universality studied, from 3,225 to 4,686 plants were "impacted," along with the 1.7 to 2.2 million people they employ. As many as 490,000 workers are expected to be "heavily impacted," meaning they would either suffer a loss of benefit, a temporary layoff, or loss of their jobs. What that means is lower wages. Lower wages is what we are talking about. The study showed that the majority of jobs impacted would be in the areas of transportation equipment, chemicals, primary metals, paper products, electronics, petroleum refining, industrial machinery, and electric and gas utilities.

This industrial policy bill that is coming before us will probably be here either tomorrow or today before the day is over. I do not know what the plans of majority and minority leader are, but it is obvious it is coming down the pike. We could, in my opinion, have a reasonable, workable, affordable clean air bill without throwing the baby out with the bath water, but that is not what the conferees have reported.

Mr. President, I might just take my remaining minute and read the letter that went to the President from these distinguished economists that I mentioned earlier.

OCTOBER 12, 1990.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: Few Americans are opposed to the concept of clean air. We laud your efforts, and those of members of Congress, to ensure that health standards in this country remain high. But we believe that the clean air bill presently being considered in Congress is an unwise, ill-advised patchwork of legislation that should not be enacted.

The cost of the bill will be very high: a report to the Business Roundtable places the cost at more than $50 billion a year, while a vice president at Resources for the Future estimates each American household could spend an additional $300 to $400 annually. Yet, there is little evidence that these new regulations would actually improve the quality of air.

Moreover, there is widespread agreement that our economy is currently in a fragile and vulnerable condition. This, added to the crisis in the Middle East, raises the prospects that Americans could face some very difficult economic times ahead. The Clean Air Act's unduly stringent and extremely costly provisions could seriously threaten this nation's economic expansion.

Mr. President, now is not the time to enact legislation with questionable benefits but certain and serious economic costs. We urge you to prevent enactment of the Clean Air Act of 1990.

Sincerely yours,

James M. Buchanan, George Mason University, Nobel Laureate, Economics; Robert W. Crandall, Senior Fellow, Economic Studies, The Brookings Institution; Milton Friedman, Hoover Institution, Nobel Laureate, Economics; Manuel H. Johnson, Former Vice Chairman, Federal Reserve Board; James C. Miller III, Former Director, Office of Management and Budget; William A. Niskanen, Former Chairman, Council of Economic Advisers; George J. Stigler, University of Chicago, Nobel Laureate, Economics.

Mr. President, I do not know what it takes. This Senator is absolutely amazed at what it takes to penetrate the beltway. It seems that we have impermeable armor here. The country is crying out for commonsense, pragmatic management of the affairs of the Federal Government. Of course, they want clean air, they would like to have jobs, they would like to have entrepreneurial activity and economic upward mobility chances. What we are doing in this Congress is passing more regulations, and when we find out we do not have enough money to fund it, we are going to raise their taxes to pay for it. It is exactly the wrong prescription for what ought to be done in the nineties. We are setting the stage to put this country in a depression and lose all that we have gained during the eighties.

Mr. President, I yield the floor, and I see the distinguished minority leader is on the floor seeking recognition.

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

AUTHORIZING THE DUPLICATE OFFICIAL PAPERS FOR H.R. 4487

Mr. DOLE. Mr. President, I have been authorized by the majority leader to send a concurrent resolution to the desk. On behalf of Mr. KENNEDY and Mr. HATCH, I send a concurrent resolution to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 157) to authorize the duplicate official papers for H.R. 4487.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 157) was agreed to, as follows:

S. CON. RES. 157

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed to prepare and sign official duplicates of the official papers of the bill H.R. 4487 to amend the Public Health Service Act to revise and extend the program for the National Health Service Corps, and to establish certain programs of grants to the States for improving health services in the States.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1991

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5311.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its disagreement to all amendments of the Senate to the bill (H.R. 5311) entitled "An Act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes", and ask a further conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Dixon, Mr. Natcher, Mr. Stokes, Mr. AuCoin, Mr. Dwyer of New Jersey, Mr. Hoyer, Mr. Whitten, Mr. Gallo, Mr. Green of New York, Mr. Regula, and Mr. Conte be the managers of the conference on the part of the House.

Mr. DOLE. Mr. President, I move that the Senate insist on its amendments and agree to the conference requested by the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint the conferees.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Kansas.

The motion was agreed to, and the Acting President pro tempore [Mr. DASCHLE] appointed Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. GRAMM, Mr. DOMENICI, and Mr. HATFIELD conferees on the part of the Senate.

THE BUDGET

Mr. DOLE. Mr. President, the budget process is still creeping along. I think it is fair to say there is no agreement as far as this Senator knows. No one has agreed to a total package.

There has been sort of a loose agreement in principle, but there are a number of issues that are yet to be resolved, major issues; not issues that might affect one State or one community, but major issues that affect, say, tax policy or other policy. These issues have not yet been resolved, as far as this Senator understands, though I know that there was a meeting that lasted for a number of hours between the distinguished chairman of the Finance Committee and the chairman of the Ways and Means Committee, Congressman ROSTENKOWSKI.

One point that, in my understanding, has not been resolved, is we have heard a lot of talk about the bubble. There has been a lot of misinformation about the bubble. There has been a lot of discussion about how it somehow advantages the rich. We will flatten out that bubble now.

That never was the case. In fact, it was one of the pillars of the tax reform bill of 1986. But, in the process, while you were in the bubble you were losing certain benefits and personal exemptions. But in any event, it was determined by, I think, Members on both sides that, rather than try to explain the bubble, why not just flatten the bubble.

So, when we flattened the bubble, the rate went up to 31 percent. Some people will get a tax cut, others will get a tax increase. But in the final efforts to compromise on how we reach more upper income Americans, how we have them pay a larger share of the tax burden, another bubble was created; what we call the personal exemption phase out, PEP for short.

Now we have a PEP bubble in the negotiations that has not been resolved, as I understand it. We ought to flatten this bubble before we have the same kind of discussion, the same kind of trouble that we have had over the past couple of years. Because bubble phaseouts are translated into marginal rates by commentators, it is important to keep this new bubble as flat as you can to avoid the perception that the rich have a significantly lower rate than those with less income. I mean it is a perception problem, but to some it is a reality.

In order to accomplish this PEP phaseout for joint returns and heads of households, you have to lower this to 1 percent, $2,500 of income. In terms of marginal rates it means that a family of four subject to PEP, face a marginal rate of just under 1 percent. In contrast, under the plan that the House Democratic caucus discussed, a 2 percent, $2,500 phaseout, the marginal rate will be almost 2 percent. This is far more likely to produce problems of perception than a lower rate. I would hope that, though it has not yet been resolved—we understand it has not been resolved—that it will be resolved.

There is another problem with the measure discussed by the House Democratic caucus and presented to Senate, or at least the Senate Finance Committee, and that is sort of a double hit on taxpayers with adjusted gross income between $100,000 and $125,000.

Under the current Democratic offer from the House, we have the Pease plan—all these things are confusing and I am simply trying to make a record here. We could explain it in detail, but I do not think anybody would be particularly interested. But what we are trying to do is make certain that some people do not end up getting hit twice in a so-called effort to tax upper income Americans.

That is precisely what will happen in the group between $100,000 and $125,000. I do not know how many are in that group. I assume they want to pay their fair share, but not take a double hit. So that matter has not yet been resolved. If we do not do something, people in that income range are going to be paying a higher rate than any other taxpayer, even those who make millions of dollars.

So it seems to me, as I suggest, the so-called Pease plan, where you lose part of your deductions, those thresholds ought to begin where the health insurance cap stops. In other words, if the health insurance cap is $125,000, then the Pease threshold should begin there.

Finally, Mr. President, I would say this: We are losing some of our savings in the last days of these budget negotiations. Some are saying, well, we cannot save as much money. We cannot reduce spending, in other words. And it is my view, if that is the case, if we are going to reduce spending in the final budget package, then we ought to reduce taxes in the final budget package by the same proportion.

We may not end up with this magic $500 billion deficit reduction package over the next 5 years, but I believe most Members would agree that if we are going to reduce the amount of spending or savings in that package, we should not load it up with more taxes on the American people.

So this Senator will insist, and I think others have the same view, OK, if we fall short on the savings side because we do not want to reduce spending, then let us also take some of the taxes out so that the American people will be faced with probably $10 or $11 billion less in overall taxes. I hope that is a goal that we can achieve and that we can take up the final compromise and have a final vote late tonight and adjourn the Congress.

Mr. President, I reserve any time I may have remaining.

NOMINATION OF CHRISTOPHER L. KOCH TO BE A COMMISSIONER OF THE FEDERAL MARITIME COMMISSION

Mr. McCAIN. Mr. President, I rise today to commend the administration for nominating a most capable, talented, and intelligent person to chair the Federal Maritime Commission.

I do so, however, with very mixed emotions because this nominee is Christopher L. Koch, the man who has served me loyally and ably as administrative assistant for the 4 years I have been here in the U.S. Senate.

As many Members of this body know, Chris has extensive experience in maritime matters which began here with his work with Senator Warren Magnuson. He continued his maritime work during his years with my good friend, Senator SLADE GORTON, as he worked to help forge the Shipping Act of 1984 and was heavily involved in many other maritime issues.

Unfortunately, Mr. President, that was not the case in Arizona, as we are not a coastal State, although we await the next earthquake which may bring us a coast on the Pacific whenever that may happen. I know that my friends from California know that I say that in jest. But I also know that if that day should come Arizonans will have an opportunity to continue a very fruitful relationship with Chris.

Chris will bring many great strengths to the Commission. His ability to work well in a bipartisan fashion was praised by all the Senators who attended his nomination hearing, and this ability will be invaluable and critical when the Congress revisits the Shipping Act of 1984 next year.

The integrity, good judgment, and hard work that have characterized Chris's service during the 4 years I have known him will be a great benefit to this country as a host of maritime issues arise in the coming years. His knowledge of Congress and his many friends in the Senate will help him serve this country with dedication that is so typical of Chris. And, he understands not just the legislative process, but the administrative process as well. Someone with such insight is a rare find. Finally, he will be sensitive to the impact on the private sector of the actions this Government takes, and therefore will work for policies that stand the private sector which the Commission oversees in good stead.

Chris is possibly the youngest Chairman the Commission has ever had, and knowing his abilities, it is clear to me that Chris is destined to positions of greater responsibilities in the future. We are lucky that he has served this institution so long and now will continue to serve the country in this new position.

This is a maritime nation, and with the end of the cold war the issues of trade and commerce are going to play a much more important role to our national economy and international relations. I can think of no other person that is better qualified to head the Commission at this very important time.

Mr. President, Chris and I have become close friends, and I will miss him very much. The rest of my staff here and in Arizona will also miss him. But, we are proud that President Bush has asked him to serve, and I am proud that so many members of the Senate Commerce Committee who have grown to know him have so wholeheartedly endorsed him. It is an indication of how well respected and liked he is on the committee that his nomination has moved with such speed.

Mr. President, if I have been able to be effective in this body on behalf the people I represent, the great majority of that credit goes to Chris Koch. I wish his wife, Lynn, and his three wonderful children all the best. I look forward to working with him in many different ways in the years ahead.

Mr. President, I yield the floor.

TRIBUTE TO CAPT. LEONARD J. SAPERA

Mr. NUNN. Mr. President, I want to take a few minutes to pay tribute to Capt. Leonard J. Sapera, who retired from the U.S. Navy on August 31, 1990.

Len Sapera, a native of New Orleans, LA, and a graduate of Tulane University with a master's degree in business administration from George Washington University, enjoyed a long and distinguished Naval career. He received his commission in 1962 as an ensign in the Naval Supply Corps through the Naval Reserve Officers Training Corps and then attended the Navy Supply Corps School at Athens, GA.

Following Supply Corps School, and in addition to numerous sea duties, Len would later complete tours of duty in Glynco, GA; Burlington, MA; Cam Ranh Bay, Republic of Vietnam; Newport, RI; Washington, DC; and Mechanicsburg, PA. It is fitting that Len's final assignment was to command the Naval Supply Corps School in Athens, where he had been both a student and teacher.

Captain Sapera's personal decorations include the Bronze Star, the Meritorious Service Medal, the Republic of Vietnam Staff Service Honor Medal First Class, and the National Defense Service Medal. He is entitled to wear the Navy Unit Commendation, Meritorious Unit Commendation, Battle Efficiency "E", Vietnam Service, Sea Service, Vietnamese Cross of Gallantry with Palm Unit Citation, Vietnamese Civil Actions, Republic of Vietnam Campaign, and Expert Pistol Shot ribbons.

While these awards are evidence of Len's distinguished career, I would like to enter into the CONGRESSIONAL RECORD President Bush's remarks on his presentation of the Legion of Merit to Captain Sapera:

For exceptionally meritorious conduct in the performance of outstanding service as Commanding Officer, Navy Supply Corps School (NSCS), Athens, Georgia, from 31 July 1987 to 31 August 1990. Recognized Navy-wide as the driving force in logistics training, Captain Sapera superbly managed and directed the training of over 3,500 Navy and Marine Corps officers and senior enlisted personnel. He kept his command on the leading edge of automated information systems and fleet policies and instilled in his graduates the highest level of pride, professionalism and customer service. So successful were his personal leadership and motivation that his "One Staff" of civilians and military officer and enlisted personnel set the standard for training excellence throughout his tenure. Captain Sapera's outstanding leadership, superb initiative, and inspiring devotion to duty reflected great credit upon himself and upheld the highest traditions of the United States Naval Service.

During the current buildup of American forces in the Persian Gulf, we have all been acutely conscious of the crucial importance of the skill, efficiency and thoroughness of logistical personnel. They perform a vital role in the effectiveness of our deployments and the readiness of our military personnel in the event action should become necessary. As David Morrision recently noted in the National Journal "amateurs talk strategy; professionals talk logistics." This underlined for me the critical role that Len Sapera has played in training the Navy and Marine officers and enlisted personnel who carried out these operations.

Mr. President, Len Sapera has made significant and long-lasting contributions to the national defense. I know the example of commitment and professionalism he set will continue far into the future through the men and women he trained and inspired.

RECENT PAKISTANI ELECTIONS

Mr. CRANSTON. Mr. President, I am deeply concerned about the charges of massive institutional rigging and fraud associated with the elections for the national assembly in Pakistan.

All of those in the United States who observed 11 years of dictatorship under General Zia Ul Haq were encouraged by the relatively fair and free elections in Pakistan in 1988 and the installation of a democratically elected government.

However, when Benazir Bhutto's government was overthrown in a military-backed coup last August, I stated my belief that that was a significant setback for the cause of democracy and elightened rule, in Pakistan and for the world.

The day after the coup, I was promised by President Ghulam Ishaq Khan that free and fair elections would take place. Based on the widespread reports from Pakistan I have received in the last 36 hours, I feel that I was willfully deceived.

Not only was the pre-election period so blatantly partisan in favor of the Government that a fair election was all but impossible. There are also credible reports that the election itself was victim of a massive fraud.

For nearly 3 months, there has been a poisoning of the political atmosphere in Pakistan. The caretaker regime has used all the power of the state to discredit and destroy Benazir Bhutto and the Pakistan People's Party.

Martial law tribunals were used exclusively against Ms. Bhutto and members of her party.

State of emergency provisions were used exclusively against hundreds of PPP officials, throwing them in prison without charge for 90 days.

The state-run media became a virtual mouthpiece for mudslingers who have sought to defame Ms. Bhutto, her family and their supporters.

And, although Pakistani law prohibits partisan political activity, the day before the election president Ghulam Ishao Khan took to the national television network, denouncing, Ms. Bhutto and urging the people of Pakistan to vote against her on Wednesday.

Not surprisingly, on election day highly unusual election returns seemed to confirm the worst suspicions.

In the populous province of Punjab, 115 seats were being contested. Despite independent projections that the PPP was comfortably ahead in 44 seats, and leading in another 43, the number of seats held by Ms. Bhutto's party decreased from 53 to just 15.

In Sindh, there were repeated reports of blatant election fraud. PPP election workers were thrown out of polling places; PPP voters turned away, and ballots stuffed in villages and hamlets throughout the rural areas.

The results from Punjab and Sindh raise very serious questions about whether free and fair elections actually took place in Pakistan on October 24. For those of us committed to democracy in Pakistan, there is cause for alarm and for anger.

Mr. President, I ask unanimous consent for the following articles to be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 26, 1990]

PAKISTAN'S CHOICES, AMERICA'S INTERESTS

Even in a fair election, Prime Minister Benazir Bhutto might have failed to win vindication in Pakistan. But her decisive defeat in Wednesday's vote also owed a good deal to her opponents' desperate tactics. A caretaker Government tried to disqualify her and poured money into swing voting districts. And she was unfairly assailed as favoring American meddling when a group of U.S. senators signed a letter urging that she be given a chance to run in a free election.

The victorious Islamic Democratic Alliance has the votes to form a government. But the unbridled nationalism of its campaign spells more trouble in Islamabad's relations with Washington—especially on the touchy issue of Pakistan's nuclear ambitions, which have already caused a suspension of U.S. aid.

When Ms. Bhutto was dismissed in August by President Ghulam Shaq Khan, she and her party were accused of massive corruption. Convincing proof was never produced, though her right to run was challenged and her husband charged with kidnapping and extortion. With reason, she and her supporters fear that a newly elected government, with military encouragement, will press for convictions by special corruption courts to settle scores and drive them from politics.

It is not America's business to take sides in this internal quarrel. But Washington has a legitimate concern about democracy in a country receiving a half-billion dollars in U.S. aid. It has an equally legitimate interest in discouraging Pakistan from developing nuclear weapons—a matter about which Pakistan has been evasive. Under law, Islamabad cannot qualify for American aid unless the President certifies that it has no nuclear arms and that continued aid will discourage their acquisition.

Pakistan's drive to match India's nuclear-weapons capability has been amply advertised. Yet successive Administrations have persuaded Congress to look the other way, first because Pakistan was aiding the Afghan resistance, then because withholding aid would have undercut Ms. Bhutto. But Soviet occupiers have left Afghanistan, and a new, nationalist-minded leadership is about to assume power in Pakistan.

Hence the recent decision by Congress to suspend aid—which Pakistan can earn back by halting its weapons program and opening its nuclear facilities to inspection. Pakistan anxiously seeks American understanding and sympathy in its ongoing troubles with India over Kashmir. It would begin powerfully to concentrate Pakistani minds if the country's new leaders learned that they cannot take American aid or sympathy for granted.

If that is deemed unwarranted meddling in Pakistan's affairs, so be it.

[The New York Times, Oct. 26, 1990]

IN PAKISTAN, A CANDIDATE FLEES

(By Kiren A. Chaudhry)

BERKELEY, CA.—Most news reports have interpreted the widespread presence of police and army units during the campaign and voting in Pakistan as evidence of generally impartial elections. According to one article, "reporters visiting a variety of polling sites in the hotly contested Punjab found few complaints of abuses or irregularities." Unfortunately, they missed Shakargarh.

The reportedly neutral police and army actually behaved in a highly partisan—and violent—fashion, as the case of my father, Chaudhry Anwar Aziz, illustrates all too well. He and my brother, Bilaal, who happens to be an American citizen, are now in hiding, pursued by Punjab police loyal to the Islamic Democratic Alliance and by heavily armed private militia.

My father was a candidate of the Pakistan People's Party, the party of Benazir Bhutto, for the National Asssembly in District 91 in the province of Punjab, he was widely favored to win. During the campaign, the president of the Islamic Democratic Alliance, Nawaz Sharif, publicly targeted my father as part of his "holy war" against secular forces in Pakistan.

On Monday, a few days before the election, forces loyal to Indris Taj, the Islamic Democratic Alliance candidate who was contesting the seat that my father held until the Government was dissolved this fall, opened fire on my father's campaign rally in Shakargarh. Six campaign workers and one bystander were killed. The next morning, Punjab police loyal to Nawaz Sharif came to my father's home and tried to arrest him for the bystander's death. They left, however, when my father told them that he would challenge their action in court as an attempt to prevent him from running in the election.

My father then telephoned Scott DeLisi, the political officer at the U.S. Embassy in Islamabad. He told Mr. DeLisi about the slayings of the campaign workers and asked him to send American election observers, then located in Lahore, to Shakargarh to thwart further election violence. Mr. DeLisi said that he had no authority to direct the observers, who were sent by the independent National Democratic Institute in Washington.

About an hour after my father hung up, approximately 40 of Nawaz Sharif's supporters, including the provincial assembly candidate for the Islamic Democratic Alliance, arrived at his home and stormed it with automatic weapons. My father and brother fled after an exchange of gunfire. The attackers had tied shrouds to the jeeps they drove, a Muslim symbol of the willingness to die in a "holy war."

Later that same day, spokespersons for the Alliance announced that Indris Taj had been murdered by gunfire. Yet the doctor who pronounced him dead at the local clinic reported that the candidate had died of a heart attack. The Provincial Government of Punjab refused to allow an independent medical examination of the body and buried it. Muslim custom forbids its exhumation.

In response to Indris Taj's death, election officials postponed elections in my father's district. On Wednesday, Nawaz Sharif's supporters persuaded Punjab criminal authorities to file murder charges against my father and brother for the death of Indris Taj. Punjab police have refused to open an investigation into the deaths of my father's party workers.

While my father and brother are now in hiding, my father's lawyer has filed a countersuit to the murder charges against them, stating that the charges and the armed attacks are intimidation tactics ordered by the Islamic Democratic Alliance.

The lower courts, however, staffed by bureaucrats loyal to the Alliance, have refused to accept the filing of my father's complaint. Instead, they claim that the six party workers were murdered by their own party as a campaign tactic. I have appealed to the U.S. Embassy in Islamabad and human rights monitors to assure that my brother receives safe passage to the United States and that my father has full access to higher courts and fair legal proceedings.

Before the media once again lose interest in Pakistan, they must dig deeply to find

the truth about conflicting reports of voter turnout, the result of the elections and the murder of campaign workers by what is now the ruling party.

[From the Washington Post, Oct. 26, 1990]

PAKISTANI ELECTION FAIRNESS IN DOUBT—OBSERVERS QUESTION OFFICIAL TURNOUT FIGURES

(By Steve Coll)

Islamabad, Pakistan, Oct. 25—One day after former prime minister Benazir Bhutto's unexpected rout in national elections, questions remain about whether Pakistan's military-backed caretaker government conducted the voting fairly.

While a multinational observer team sequestered itself to study returns before issuing a public statement Friday, Western election specialists who were stunned by the scale of Bhutto's defeat raised questions about some of the government's published results.

Members of the U.S.-led observer team also have raised questions about the conduct of the voting, according to sources, and the team appeared unlikely to issue an unqualified endorsement of the election. But the sources added that no final statement about the election had been agreed to by the observer team, and that discussions among them were continuing.

The team's verdict is important to the U.S. government because a vocal section of Congress, mainly Democrats, has said it wants to make an estimated $600 million in annual aid to Pakistan contingent on the election having been held freely and fairly. Members of the Bush administration also have expressed concerns about the future of the U.S.-Pakistani alliance if rigging is uncovered.

The U.S. concerns come amid widespread uncertainty within Pakistan about what the election result will mean for the country. Urban liberals fear that the new government, which has a strong Islamic constituency, will reverse the tentative steps toward cultural tolerance taken under the secular-minded Bhutto. Others wonder what foreign-policy agenda Pakistan's army will pursue now that a stable civilian government with hawkish views is set to take power.

The caretaker government's rightist Islamic Democratic Alliance coalition, known as IJI, its Urdu-language initials, won 105 of 207 assembly seats, according to the final results, compared to 45 for Bhutto's Pakistan People's Party (PPP). The result defied a host of predictions published by both liberal and conservative newspapers here that the PPP would win at least 70 seats and perhaps 100 or more.

At his first news conference since the election, interim Prime Minister Ghulam Mustafa Jatoi sought to assuage Western fears that Pakistan's new administration would seek aggressively to build a nuclear bomb. Jatoi repeated past denials that Pakistan has stepped up its nuclear program and said he thought he could solve strains with Washington over the issue through discussions after his government is formed.

Bhutto, with her senior advisers still recovering from the shock of Wednesday's results, pressed her charges that the vote was stolen. She and other PPP officials said that in a number of districts, party representatives who were supposed to monitor the counting had been forcibly removed, and that results tallied by their agents during Wednesday's voting did not accord with numbers later released by the government.

Jatoi dismissed Bhutto's charges. "There was no rigging at all," he said. "I expect Benazir Bhutto to accept the result and prove to the world that she is a democrat."

Many of the questions raised today focused on the reported turnout, which the government said was slightly higher than during the last election, in 1988. Independent observers reported a low turnout, however, and in any event the vote tallies released by the government indicated a considerably higher turnout than even its own estimate, raising questions about whether voter rolls were padded to influence the result.

Western reporters and other independent observers who traversed Pakistan Wednesday to check polling places found little evidence of voter intimidation, ballot-stealing or violence that might have influenced the IJI's overwhelming victory. But as final results were published today, questions focused on whether significant rigging might have occurred away from the polling stations.

The government has not yet published the total number of votes cast in each of the 203 national assembly races that were decided in Wednesday's elections. Instead, it has so far released only the votes won by the winner and runner-up in each district. In nearly every district, at least four or five candidates entered the race, and in some there were as many as 16 contenders.

An analysis of 142 districts in Pakistan's three most populous provinces for which results were available raises some questions about the government's figures. On average, the votes attributed to the winner and runner-up in those districts equaled the total number of votes cast in the 1988 election, meaning that if all the votes in Wednesday's election were tabulated, the turnout would be considerably higher than last time, not roughly the same, as the government has said.

Election specialists said the anomaly might be explained by a large surge in voter registration between 1988 and 1990. But Pakistanis and diplomats said they had received no reports of such a surge.

In districts where IJI leaders such as Jatoi and Nawaz Sharif won strong and in some cases unexpected victories over PPP rivals, the discrepancy in turnout figures was even larger. In one district, where Jatoi's son defeated Bhutto's jailed husband, the winner and runner-up garnered 35 percent more votes Wednesday than all of the ballots cast in the district two years ago.

Election specialists said that while the discrepancies raised questions about the voting, they did not necessarily indicate fraud. The discrepancies might be explained by such local factors as weather or voter attitudes that contributed to a sharp change in turnout figures. And some analysts speculated that widespread dissatisfaction in Pakistan over the conduct of Bhutto and her husband during her 20 months in power might have attracted unexpectedly large numbers to the polls in the districts of IJI leaders.

[The Washington Times, Oct. 26, 1990]

VOTE FRAUD SUSPICIONS MOUNTING IN PAKISTAN

(By Steve le Vine)

LAHORE, PAKISTAN—Many Western and Pakistani analysts yesterday said they suspected possible rigging in Benazir Bhutto's crushing election defeat, and there was a widespread feeling on the streets that massive cheating took place.

The government and some local analysts maintained that Wednesday's National Assembly elections were fair, and foreign correspondents and diplomats said they observed almost no blatant rigging.

No one was able to go far beyond suspicion in examining how the nation's premier political party, Mr. Bhutto's Pakistan People's Party (PPP), was marginalized. But analysts cited an improbably high official voter turnout and the anti-Bhutto coalition's capture of 95 of 115 seats in Punjab province as indications something was amiss. Mrs. Bhutto previously held 54 of the seats.

"These figures don't add up," one Western envoy said, perusing voting results yesterday morning. "The problem is if there was a murder, the only verdict you could return right now is the Scottish one—'not proven.'"

"Everyone is surprised," said a senior Pakistani career political officer. "Whatever has happened has happened in a very sophisticated manner."

Final election figures more than halved the PPP's National Assembly representation, from 93 seats to just 45. Meanwhile Mrs. Bhutto's bitter opponent, the Islamic Democratic Alliance, known by its Urdu initials IJI, almost doubled its previous total of 55, winning 106 seats in the 217-seat assembly.

The result catapulted the military-created IJI amalgam of 18 rightist and religious parties into a wholly unexpected towering position.

On Saturday, Pakistanis will go to the polls to fill provincial assemblies, which proved important in the last election as the staging ground from which the anti-Bhutto forces mounted their 20-month campaign against her.

On Wednesday night Mrs. Bhutto predicted that the new government would now try to destroy her. "They will go for the jugular—me, my husband, my party," she said at her ancestral home in Larkana.

The president has filed seven corruption cases against Mrs. Bhutto, and some analysts predicted that, considering her weakened position, he would move to invoke a law that could disqualify her from elective office for seven years.

Meanwhile, the defeat put Mrs. Bhutto in the position of sitting in the Assembly as leader of a relatively tiny opposition.

The reversal of the fortunes of Pakistan's political antagonists has caused widespread incredulity. It went against surveys by every respected Pakistani media organization, as well as government intelligence agencies.

Pakistan's premier intelligence agency, the army's Interservices Intelligence Directorate, forecast in its final report to senior generals Oct. 10 that Mrs. Bhutto would win 72 seats, according to two sources close to the military.

Even when Mrs. Bhutto appeared most unpopular, after her dismissal in August, the intelligence service projected that she would win 60 seats, the sources said.

The election results also appeared to contradict the common wisdom of ordinary Pakistanis.

"The People's Party was cheated," a Lahore taxi driver blurted out unprompted in a refrain heard all day on the city's streets. "This was not a straight election."

The vote came against the backdrop of an aggressive campaign backed by the military leadership and the country's landed establishment to defeat Mrs. Bhutto in the polls.

The campaign started with Mrs. Bhutto's Aug. 6 dismissal as prime minister by President Ghulam Ishaq Khan, Pakistan's most senior civil servant and one of her chief critics. He then appointed her opponents to the corruption tribunals and caretaker national and provincial governments that enjoyed the powers of incumbency in the campaign.

The announced voter turnout of around 50 percent drew the most suspicion because, the Western envoy said, in the absence of blatant cheating a padded turnout could have been used to swing some races once rough precinct results reached Islamaabad.

Election turnouts had progressively fallen, in 1988 dropping to just 43 percent. Virtually all analysts, perceiving even lower voter interest this time, predicted a smaller turnout Wednesday. Indeed Western and Pakistani observers throughout the country routinely reported turnouts between 30 and 40 percent in the election.

"I think that in the tabulation phase somebody put the monkey wrench in," the Western envoy said.

TRIBUTE TO HASSIE SEIVERS AND LASSIE DISNEY

Mr. SASSER. Mr. President, I rise today to pay tribute to two very special 89-year old twin sisters whose work ethic and down-home common sense serve as an example to us all. They are Hassie Seivers and Lassie Disney of Clinton, TN.

Mrs. Seivers and Mrs. Disney and their Twins Cafe became an institution in Clinton. Earlier this month, the cafe closed after 37 years of providing Clinton residents and visitors from as far away as Germany and Taiwan some of the best country cooking in the world. And 6 days a week for every one of those 37 years Mrs. Seivers and Mrs. Disney worked side-by-side from 4 a.m. to 4 p.m.

In 1917, at age 15, Mrs. Seivers and Mrs. Disney began working at the Magnet Hosiery Mill. They worked 10 hours a day for 50 cents an hour. At the end of the week, they each took home $3. Even then, they insisted on working together.

After opening the Twins Cafe, they soon became famous in Clinton. In recent years, that fame has spread across the country. They have appeared on "Good Morning America," CNN, and the "Tonight Show." They have been the subject of articles in Newsweek, Time, and numerous newspapers. They have delighted audiences with their humor and common sense.

The twins intend to continue contributing to their community now that the Cafe has closed. In fact, they are considering doing some work right across the street—at the Salvation Army.

Mr. President, Hassie Seivers and Lassie Disney are a shining example of the best of Tennessee and this country. Their work ethic and community spirit are an inspiration to every citizen. I wish them continued happiness and prosperity in the years ahead.

MARY ABIGAIL McCARTHY, 1949–1990

Mr. HOLLINGS. Mr. President, this past summer saw the tragic death of Mary Abigail McCarthy, the 41-year-old daughter of our friends, Senator Gene McCarthy and Abigail McCarthy. Mary was a gifted and radiant young woman, brilliantly educated, a teacher and attorney dedicated to the disadvantaged and the mentally ill. In the course of her tragically abbreviated life, she gathered around her a wide circle of devoted friends, students, colleagues, and clients. Her death is a profound loss.

Mr. President, I would like to enter into the record following my remarks the full text of the July 31 Rite of Commendation for Mary Abigail McCarthy, which took place in Woodville, VA. In addition, I request to have printed in the RECORD a tribute to Mary prepared by her family and consisting of excerpts from letters written by friends and others whose lives she touched. Both documents stand as fitting tributes to this remarkable women, who lives in our hearts and in vivid memory.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE RITE OF COMMENDATION FOR MARY ABIGAIL MCCARTHY, TUESDAY, JULY 31, 1990, WOODVILLE CEMETERY, WOODVILLE, VA

Reverend Timothy Brown, S.J., presiding; music by singer John Jackson.

"Who shall find a valiant woman? Far and from the uttermost coasts is her worth.

"She hath put out her hand to strong things . . .

"She hath opened her mouth to wisdom . . . and stretched out her hands to the poor."—Proverbs 31, Douay Version.

For Mary Abigail McCarthy April 29, 1949–July 28, 1990.

Order of service: Gathering at the gate; procession to the grave site; opening prayer, Reverend Timothy Brown; hymn: "Swing Low, Sweet Chariot," John Jackson; remarks: For the Family, Stephen T. Quigley.

"Thank you all for coming.

"I am Mary's uncle. In the name of her family—or her parents, her brother and sisters and their spouses, and her nephew, of her uncles and aunts and cousins, I want to give thanks for this bright and beautiful person who graced us by her presence for all too short a time.

"One of her friends has said that Mary made you want to be at your best. We in the family have felt this, too, from the time she was a little girl, eager to learn, reaching out to others. We are better for her fierce sense of justice, her great integrity, her gift of friendship, her luminous mind, and the sense of humor and personal dignity that were hers until the very end. We are grateful for her bravery and her generous love. We know you all share our loss.

"You all have had a special relationship with Mary. As parents we not only have a collective familial relationship with all of our children, but a very special individual relationship binds us to each child. Both Abigail and Gene had this with Mary. In this context I'd like to read a poem Gene wrote to Mary. On mastering the riding of her new two-wheel bicycle Mary exclaimed, 'All of a sudden it's sure and solid!'"

The poem is:

The Bicycle Rider

"Teeth bare to the wind
Knuckle white grip on handle bars
You push the pedals of no return,
Let loose new motion and speed.
The earth turns with the multiplied
Force of your wheels.
Do not look back.
Feet light on the brake
Ride the bicycle of your will
Down the spine of the world,
Ahead of your time, into life.
I will not say—
Go slow."

"And as we all know, Mary never accepted 'go slow,' she soared in her life!"

Hymn: "What a Friend We Have in Jesus," John Jackson.

Remarks: For her friends, Stephen B. Cohen.

"I first met Mary 23 years ago when she was a sophomore at Radcliffe. The day after Mary died I spoke to her close friend, Jean Prewitt, and to her sister, Ellen. Each said something that I'll never forget.

"Jean told me, 'First, I cried. But then I could not believe that Mary wasn't still there. I kept seeing her.' Ellen said, 'I've been thinking about what Mary would do whenever people took themselves too seriously or there was too much pretense. She would get mad, or she would laugh.'

"This reminded me that of all Mary's wonderful qualities—her loyalty, her patience, her caring, and her intelligence—what I treasured most was that uncanny talent—a singular ability—for sensing when things were too serious, too absurd, or too pretentious and then getting mad or laughing.

"And for the rest of my life—and for the rest of our lives—as we encounter situations like that, we need to imagine Mary there, getting mad or laughing.

"The picture of Mary laughing also reminded me of the years before she went to New Haven and Yale, when she was working in the Public Defender's Office as a lawyer for the mentally ill. Her clients were hostile people, highly suspicious, often unable to relate to others. But Mary had an uncommon knack for reaching them and getting them to trust her, although even she had one or two failures. I remember her earnest attempts to communicate with one client, who was locked up with only his clothes. While Mary was trying to talk to him, he proceeded to eat his T-shirt.

"This morning, her close friend Dede Ordin told me about the time that she and Mary went to the McDonald's across from St. Elizabeth's Hospital. Almost everyone there was a client of Mary's and recognized her immediately. She was the Queen of McDonald's.

"Mary has an extraordinary family, extraordinary parents and siblings. These she was given. She herself made wonderful friends, especially strong, independent women friends and loyal men friends. Their love and support over the last two years is a reflection of her own capacity for friendship.

"Mary fought her disease beyond the limits of what anyone thought possible. Through courage and stubbornness, she literally squeezed an extra year of life. She used the time to care for her clients and teach her students. At work, her greatest concern was who would take care of them

once she was no longer able. And her greatest accomplishment was living, really willing herself to live, to see her nephew Joseph born.

"Mary was a teacher. In her last year, she taught us how to die. But, more important, with courage, dignity, and humor, she taught us how to live.

"We love you Mary. We'll never forget you, Mary. God bless you, Mary. God bless your family. And God bless your friends."

Reminiscences: Eugene J. McCarthy.

Hymn: "Let the Circle be Unbroken," John Jackson.

Rite of Commendation: Reverend Timothy Brown.

First Reading: Pam Duffy.

I Corinthians, 15:51-57:

"Behold, I tell you a mystery. We shall not fall asleep, but we will all be changed, in an instant, in the blink of an eye, at the last trumpet, the dead will be raised incorruptible and we shall be changed. For that which is corruptible must clothe itself with incorruptibility, and that which is mortal must clothe itself with immortality. And when this which is corruptible clothes itself with immortality then the world that is written will come about:

Death is swallowed up in victory.
Where, O Death is your victory?
Where, O Death is your sting?
The sting of death is sin, and the power of sin is the law. But thanks be to God who gives us the victory through our Lord Jesus Christ."

Second Reading: Mary Alice Williams.

Matthew 5, 1-12:

"When he saw the crowds, he went upon the mountain, and after he had sat down, his disciples came to him. He began to teach them saying:

Blessed are the poor in spirit,
for theirs is the kingdom of heaven.
Blessed are they who mourn,
for they shall be comforted.
Blessed are the meek,
for they shall inherit the land.
Blessed are they who hunger and thirst after justice
for they will be satisfied.
Blessed are the merciful
for they will be shown mercy.
Blessed are the clean of heart
for they will see God.
Blessed are the peacemakers,
for they will be called the children of God.
Blessed are they who are persecuted for the sake of righteousness
for theirs is the kingdom of heaven."

Continuation of rite and final prayer.

Reverend Timothy Brown: "May the angels lead you into paradise; may the martyrs come to welcome you and take you to the holy city, the new and eternal Jerusalem. May the choir of angels welcome you. Where Lazarus is poor no longer, may you have eternal rest."

Final hymn: "I Shall Not Be Moved," John Jackson.

Procession of friends and family to place single blooms on casket.

Disperal.

Comments of a friend: "The service at Woodville was beautiful—very sad, very dignified, and Mary seemed to be there through it all. There was an aura about the service that brought her forcibly before us."

MARY ABIGAIL MCCARTHY, TEACHER

We in the family knew our Mary was a very special person but it was only after she was stricken that we came to know how very many other lives she had touched and how many loved and valued her. We would like to share that knowledge with you.

As one of her friends and colleagues wrote of Mary as teacher in the last year of her life:

"The representation of clients poses a particular challenge for Clinical Professors. They must provide an opportunity to learn-by-doing without sacrificing clients in the process. Needless to say, there is tension between the needs/interests of the students and those of their clients.

"Mary McCarthy inhabits that tension as skillfully and sensitively as anyone in the business. She has been uncompromising in commitment to zealous, effective representation of clients, and if students have learned nothing else from her, they learned that lawyers exist to serve others and to serve them well.

"At the same time Mary has cared deeply about teaching and has devoted an inordinate amount of time and energy to her students. She treats everyone as an individual and has generated in return deep affection and respect."

Letters to Mary from students and former students in that last year bear that out. She appreciated these letters but she abhorred clutter and, after reading them, threw them away. But quotations from those we were able to save are moving testimony:

From former students:

"I don't think I have ever told you that you have made a strong positive influence in my life. You have—to be sure—taught me about the law, about drama and the law, about litigating and about how tough and irrational the legal system can be. Back in 86, however, you taught me more about courage and integrity and conviction than about the law. You shared with me some of your indelible spirit * * *. I wish my life to have some of the effect on people that yours has had on mine * * *."

"I am working now with very talented, very hard-working attorneys. What I miss, though, is talking over cases with someone who wants desperately to win for the clients' sake rather than for ego-or-wallet-fulfillment. You have set for me an example to which I see few aspire. Having been introduced to 'practice' by you, I believe I will always have only the highest standards for our profession.

"I believe I owe my present occupation to you, or should I say it's your fault? Without your shepherding me through law school, I'd probably have dropped out to become * * * who knows what, an insurance salesman, a furrier, gangster?" (From a public interest lawyer)

"I want you to know how much I have personally benefitted from your work as a professor and a person (although I realize that the two positions are not mutually exclusive!).

Your willingness to speak up very bluntly about things that matter to you reminded me that lawyers don't always have to equivocate—that some issues require us to take a firm stand even if it's unpopular."

From current students:

"We won! * * * Thank you for all the calm support and guidance. The whole case may have been the best learning experience I've had at YLS (Yale Law School).

"We just want to communicate our love and support. We miss you." "Your are always in my thoughts."

"I guess this goes without saying, but I'm really going to miss you in the fall. You are my favorite professor and, more importantly, a great person."

From a lawyer who was a clerk to a judge when Mary was in the Public Defender Service:

"Certain experiences in our lives make an indelible impression—things we hear and see that make such an impact we can remember every detail with great clarity years later. Your representation of your clients was such an experience for me. I have vivid memories of what I have come to call the 'Mary McCarthy' school of law. I call it that because you were truly unique, bringing to each case, no matter how seemingly 'routine,' a fresh perspective on some statutory phrase, legislative history, or obscure clause in a court rule that no one had ever bothered to read before.

Your endless quest for new ways to challenge 'the system' was amazing—and sometimes, a little scary. My job, as the 'judge's clerk,' was to research all of these issues and help draft the opinions. Indeed, Truman and I quickly learned that we could measure how 'hard' it would be to 'get through' a particular calendar call by counting the number of times that your name appeared as defense counsel. Although you made my job a thousand times harder, I have admired you greatly from the start.

The zeal, the freshness, and the diligence with which you represented your clients at PDS was and always will be an inspiration to me, both at PDS and now at Williams & Connolly. Scrutinizing statutes, rules, cases, and transcripts with the proverbial fine-tooth comb was the hallmark of your representation, and I have tried very hard to make it the hallmark of mine. I am very, very grateful for the opportunity to witness such skill and dedication, and I believe that my own clients have benefitted, in turn, from the many lessons I learned as a young 'kid' who had the chance to watch a true master in action."

When Mary was gone many students and former students wrote to us reinforcing the testimony above:

"Personally I am stunned and enormously sad. Mary was a very special role model for me. She showed me how to be a loyal and thorough advocate for my client, how to maintain the highest ethical standard at all times, and how to be calm in the midst of legal chaos. She was also a friend, a faculty member whom I could call by first name, who was interested in other parts of my life, not just my legal education. I want her back for my selfish reasons, and I am also upset that this new first year class won't get to learn from her example."

"Having worked closely with Mary at Yale Legal Services over the past two years, I came to know her as a unique, special and extraordinary person. Please accept my sympathy and condolences on her passing. She was a great teacher and a true friend!"

Clients wrote as well. The most moving letter began:

"Mary touched my life as well. I was incarcerated at the time. Thanks to Mary, my incarceration came to an end several months later * * *. Over the years I have felt that Mary's sudden appearance in my life (after six years in prison and after a petition for reduced sentence has been long ignored) was rather mysterious. I believe that Mary's efforts to my benefit were greater than she ever acknowledged to me * * *. I had the sense that Mary believed she was merely doing her duty, and for that no praise or thanks was warranted * * *. However, it is not possible to think of my freedom without thinking of Mary. I sincerely

wish that I could have given to Mary as she gave to me."

His wife added:

"I still remember her quiet anger when I told her about the incompetency of my husband's lawyer. It was hard to realize that Mary was young. She approached the problem intelligently and with compassion * * *. I never knew all that she did to handle successfully what seemed to be impossible.

"Mary came to our home once after my husband's release. We sat in my living room holding hands while I tried to express my gratitude to her * * * it was hard to get her to listen to my praises * * *. She turned the conversation to her feelings about some of the wrongs she saw in the world * * *. I learned from Mary that it isn't enough to have beliefs—we need to get out on the battlefield and get our hands dirty and make the effort to bring change, to right what was wrong. Many people are gifted—but few use their gifts as Mary did. We are just plain people—Mary had nothing to gain by helping us. But she did anyway. I can never repay my debt to Mary but I think she would have been glad to know that when I found a way to give to another I said inside, That's a 'Thank you' to Mary.

"We were a little moment in Mary's life. She gave us our life. We wanted you to know."

As her friend, Professor Stephen Cohen, said at her grave side, "Mary was a teacher. In her last year she taught us how to die. But, more important, with courage, dignity, and humor, she taught us how to live."

MARY—FRIEND AND COLLEAGUE

Mary had a gift for friendship. As Stephen Cohen also said, the love and support she received from her friends was a reflection of her own gift. Her friends were faithful and constant—many traveled great distances to see and be with her in that last year—just as those among the closest flew from California, New Mexico, Ohio, and New York to be at her simple service. Her friends ranged from people of our generation to small children. And those we did not know wanted us to know how much she meant to them.

From colleagues:

"I am writing to let you know how many friends and colleagues Mary had—When she first became ill, she asked me to advise her students on immigration matters by telephone (from Boston) when she could not * * * The last time I saw her was in the early spring—we met with her seminar class. We had lunch and a long talk. She was spunky and realistic * * * I will miss more than anything Mary's dry sense of humor, no-nonsense approach to the law, and our shared commitment to providing the poor with good legal representation."

"Mary should have had many more years with us and we with her. There is a very empty place she had filled with her passion, her teaching, her wit and her insight.

We shared many projects, dinners, values, a few arguments, and a warm caring friendship. Some of my best memories center around Mary's bottomless soup pot and the lively gatherings of colleagues that she brought together in the beach cottage she so loved."

From a summer friend:

"We all loved Mary very much; her intellegence, of course, her common sense, her sense of outrage and most of all her sense of humor."

From a friend who came a few days before Mary died:

"I was surprised and enormously pleased that she was well enough to talk for a while * * * she still had her delightful sardonic sense of humor and was still able to be almost as wonderfully present as ever. The visit comforted me a lot * * *."

There have been so many letters like these and they are still coming—from contemporaries and from former neighbors and long ago convent school classmates, too. One of her high school friends wrote to say "I have such fond memories . . . you were blessed to have such a special daughter—bright, warm, funny, feisty, and loving."

Indeed we were.

ANNE WORSHAM RICHARDSON: JAMES ISLAND'S ARTIST LAUREATE

Mr. HOLLINGS. Mr. President, for decades Anne Worsham Richardson has been admired in the low country and throughout South Carolina as our own, home-grown Audubon. Her paintings of birds are of extraordinary sensitivity and quality. Anne has produced some 3,000 works over the course of her ongoing career, and they have been exhibited and acclaimed throughout the United States and in Europe. In addition, many of her paintings have been featured on National Wildlife Federation Christmas cards. Of course, her accomplishments as an artist are of a piece with her deep interest in ornithology and her dedication to the cause of conservation.

Mr. President, Anne Worsham Richardson is beloved in Charleston and, indeed, across my State. So I was especially delighted to learn recently of her election to the South Carolina Hall of Fame. This is yet one more honor, hard earned and richly deserved by this superb artist. I rise today to congratulate Anne on this latest honor, and to salute her for enriching our lives with her creative achievements.

PROGRESS ON EASTERN EUROPE

Mr. PRYOR. Mr. President, close to midnight 1 week ago, the Senate accepted by voice vote an amendment which will, hopefully, speed the sending of American volunteers to Eastern Europe as part of the Citizens Democracy Corps. Also last Friday, President Bush took action on his own to get the Citizens Democracy Corps or CDC, as it is called, off the ground.

As a result, I am happy today to observe that the CDC may finally be on its way to success.

A little history, Mr. President: Last May I introduced, along with Senators KASSEBAUM, GORTON and 15 other Senators, the Volunteer America Act. The Volunteer America bill was aimed at establishing a nonprofit, privately funded organization dedicated to sending volunteers from across America to Eastern Europe to help bring the free market and democracy to that region. We heard from citizens from all walks of life who wanted to volunteer their time, skills, and knowledge in Eastern Europe.

Most importantly, we did not want this program to be on the backs of taxpayers. We wanted it to be controlled and funded by private citizens.

In May, President Bush said he would go forward with our idea and announced the creation of what he called the Citizens Democracy Corps.

Unfortunately, during the last 5 months, the CDC languished in the bureaucracy at the State Department. It has been without leadership, it has been soaking up Government funds and raising little private funding, and, worst of all, it has frustrated the thousands of Americans who have volunteered to go to Eastern Europe to help get the free market going there.

The amendment I offered on Friday with Senators GORTON, KASSEBAUM, and REID attempts to get the CDC out of the bureaucracy and into the private sector where it belongs. Specifically it requires a report in 2 months on plans to make the CDC self financing through private donations, the amount of Government funds being spent on the CDC, and plans to send American volunteers abroad.

On Friday, with our amendment about to be offered, the White House announced the chairman and an executive committee for the CDC. I must say, it is an all-star team which includes one of our finest colleagues, Senator KASSEBAUM. I applaud President Bush for his action and his selection.

The CDC's chairman is to be Drew Lewis, the CEO of Union Pacific and former Transportation Secretary. I understand he is already gathering a group of staff to get the CDC moving.

The executive committee named Friday, includes such talent as Derek Bok, the president of Harvard, Barbara Jordan, a distinguished former Member of Congress and current professor at University of Texas, Lane Kirkland from the AFL/CIO, Bill Hewitt, the former chair of John Deere, Henry Kissinger, Robert Strauss, the former chair of the Democratic National Committee, and, of course, Senator KASSEBAUM.

I will list the names of the other distinguished committee members in the RECORD.

This is a tremendous leadership team for the CDC. They are drawn from all sections of American society and set a shining example for volunteers who head to East Europe.

The job now for these people is to quickly overcome the months of neglect of the CDC. Chairman Lewis must set in motion a plan to raise private funds to get the CDC out of Gov-

ernment and into the hands of the people.

Mr. President, today I want to pledge my support for the CDC and to applaud the many people, including President Bush, who have been involved in this volunteer effort.

In particular, I would like to acknowledge the hard work of two colleagues, Senator KASSEBAUM and Senator GORTON. Last winter these senators worked hard with me and many in the private sector to create the concept and the Volunteer America legislation on which the President's Citizens Democracy Corps is based.

On Friday night, and in the past, I have quoted President Eisenhower on this issue. What he said in 1953 still rings true today. He said:

I like to believe that people, in the long run, are going to do more to promote peace than our governments. Indeed, I think that people want peace so much that one of these days government had better get out of their way and let them have it.

Mr. President, Congress should take only one active role in the CDC from this point on and that is to ensure that the Government gets out of the way of the CDC.

We want to unleash the resources and creative energies of American free enterprise. We want to offer our best and brightest to help new and struggling democracies. We want to send American volunteers to Eastern Europe and we want to see this done by private citizens, not the Government. This is truly the American way.

The CDC is the means to this end. I wish it the best.

I ask unanimous consent that the White House release on the naming of a chairman and executive committee of the CDC be printed in the RECORD at this point.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
OFFICE OF THE PRESS SECRETARY,
October 19, 1990.

STATEMENT BY THE PRESS SECRETARY, CITIZENS DEMOCRACY CORPS

The President launched the Citizens Democracy Corps [CDC] in May as a new initiative to support the voluntary efforts of American citizens to help strengthen the emerging democratic institutions and market economies of Central and Eastern Europe. It is today being expanded to include activities in the Soviet Union as well.

The President is pleased to announce the names of the Chairman and Executive Committee of the Board of Directors of the Citizens Democracy Corps. He is gratified that these distinguished American leaders, representing a cross-section of our society, have agreed to serve. They are as follows:

CHAIRMAN OF THE BOARD

The Honorable Drew Lewis, Chairman of the Board, Union Pacific Corporation; former Secretary of Transportation.

EXECUTIVE COMMITTEE

The Honorable John R. Block, President, National American Wholesale Grocers' Association; former Secretary of Agriculture.

The Honorable Derek Bok, President, Harvard University.

Mr. Lodwrick M. Cook, Chairman and CEO, ARCO.

The Honorable William A. Hewitt, former Chairman, Deere & Company; former United States Ambassador to Jamaica.

The Honorable Barbara Jordan, The Lyndon B. Johnson Chair in National Policy, University of Texas; former Member of Congress.

The Honorable Nancy Kassebaum, United States Senate.

The Honorable Lane Kirkland, President, AFL-CIO.

The Honorable Henry A. Kissinger, Chairman, Kissinger Associates, Inc.; former Secretary of State.

Mr. Robert H. Krieble, President, Krieble Associates.

The Honorable Frederic V. Malek, Vice Chairman, Northwest Airlines; Co-Chairman, Coldwell Banker Commercial Groups.

Mr. Frank N. Piasecki, President and CEO, Piasecki Aircraft.

The Honorable Robert S. Strauss, partner, Akin, Gump, Strauss, Hauer & Feld; former Chairman, Democratic National Committee; former U.S. Trade Representative.

Mr. William T. Ylvisaker, President and CEO, Corporate Focus, Inc.

A Board of Directors will be announced later.

HONORING SENATOR JAMES McCLURE

Mr. DOMENICI. Mr. President, I rise today to pay tribute to my dear friend and long-time colleague, the senior Senator from Idaho, JAMES A. MCCLURE.

I came to the Senate with JIM MCCLURE in 1973. It has been a great pleasure to serve with him for the past 18 years.

JAMES MCCLURE was born in Payette, ID, a small farming community in the west central part of the State near the Oregon border.

From this humble beginning, has come a man of national prominence for whom I have the utmost respect and admiration.

After graduating from Payette High School, JIM entered the University of Idaho shortly before World War II broke out. When this Nation went to war, JIM enlisted in the U.S. Navy and served honorably until the end of the war.

He then returned to the University of Idaho, where he received a degree for the college of law in 1950.

As a new lawyer, JIM returned to Payette to practice law where he specialized in land, water, and reclamation cases. He was also elected Payette County Prosecuting Attorney in 1950, a post he held through 1957.

In 1960, JAMES MCCLURE was elected to the Idaho Senate. He was reelected twice, and was voted assistant majority leader in his third term.

And then in 1966, JIM successfully ran for Idaho's First District seat in the U.S. House of Representatives, beginning a career that has spanned 24 years in the Congress. He was reelected twice, during which time he served on the House Interior and Insular Affairs Committee. In 1970, he was named chairman of the House Republican Task Force on Energy Resources.

Mr. President, as I have said, JIM and I came to the U.S. Senate together in 1973.

Over these past 18 years our paths have crossed hundreds of times because of our similar concerns and interests in the challenges facing this country. I have had the distinct pleasure of serving with him on the Energy and Natural Resources, Appropriations, and Budget Committees.

During his tenure in Congress, Senator MCCLURE has become known as a true energy expert, beginning with his selection as chairman of the Republican Energy Task Force in 1970, through his service and leadership as chairman and ranking Republican member of the Senate Energy and Natural Resources Committee.

From those positions, he has advocated a strong national energy policy consisting of a balance of all energy sources, strategies, and technologies, including conservation, domestic oil and gas production, nuclear power, ethanol, and other renewable fuels, advanced and hybrid vehicle use such as electric cars, coal and clean coal technologies, and synthetic fuels.

He has been a great friend of our national laboratories. He has promoted and encouraged their research activities that have yielded breakthroughs in the energy, engineering, health, and other scientific fields.

Senator MCCLURE is known for his strong and enduring commitment to the protection and balanced use of our Nation's natural land and water resources. He is the leading champion of the multiple use concept for public lands that has benefited the people of this country. He has ensured that the Reclamation Act, which is a successful tool for providing water to the farmers of the West, retains its vitality. At the same time, he has helped to preserve millions of acres as national parks, forests, conservation areas, and wilderness.

During his service on the Energy and Natural Resources Committee, Senator MCCLURE has wrestled with important National policy questions, attempting to forge a consensus on what is best for our Nation. He often did so intently, but always with intelligence and courtesy.

He fought hard for those positions that he advocated, not because he sought partisan advantage, but because he believed that the issues were important. As he has said,

Natural resources are close to the welfare of every American, sometimes much more closely than many Americans realize. There are no resources in this country that are not fought over. They are finite, they are precious, and every one of us has a concern as citizens of this country.

But, Mr. President, my admiration for JIM MCCLURE goes far beyond his legislative accomplishments. My admiration and respect for JIM MCCLURE is based on his absolute integrity, honesty, commitment to the principles of our Constitution.

I cannot say that I am sorry that I am not leaving with him, because I have decided to stick around, but I will miss his presence and friendship in the U.S. Senate.

And so, Mr. President, as my good friend Senator JAMES MCCLURE brings to a close his long and productive career in service to the people of Idaho and this Nation, I wish him and his family nothing but the very best wishes for happiness and prosperity. My wife, Nancy, and I have the greatest love and respect for JIM and his wife, Louise. We wish them well.

Mr. GRASSLEY. Mr. President, I wish to comment on the Job Training Partnership Act Amendments which passed the Senate last night. I understand that the House of Representatives has decided not to accept these amendments and that the Senate will probably concede to the House.

Nevertheless, I would like to take this opportunity to speak to a number of older worker amendments which Senators PRYOR, HEINZ, and myself worked out with the chairman of the program's authorizing subcommittee, Senator SIMON, and which I believe will considerably improve the reauthorized program's treatment of older workers.

In the original JTPA Program, 3 percent of funds were set aside at the State level for programs focused on the needs of older workers. The legislation reported by the Committee on Labor and Human Resources earlier this year eliminated this 3-percent setaside. Many of those organizations which work with older workers were concerned that, without a specific requirement in the program that older workers receive some level of priority, older workers would more or less fall by the wayside.

Senators PRYOR, HEINZ, and myself took up this question with Senator SIMON and, with the assistance of a number of the aging organizations, developed several amendments designed to make sure that older workers do not fall by the wayside.

The changes we developed included:

A requirement that each service delivery area [SDA] ensure that 5-percent of their allocation must be spent for older workers' activities. This SDA set-aside requirement is designed to be equivilent to the 3-percent State setaside in current law.

Adding older workers to the list of groups defined as "hard to serve" in the bill.

Adding several provisions requiring the SDA's to specifically describe in their job training plans how they will serve older workers.

A requirement that agencies that serve older workers be included among the community organizations and agencies that can be represented on the private industry councils that provide over-all guidance to the SDA staff.

A stipulation that title V of the Older Americans Act is to be included among the programs with which SDA's are required to establish appropriate cooperative arrangements.

A requirement that organizations that have a good track record in providing employment services to older workers receive priority consideration by SDA's as older worker service providers.

There are a number of other changes in this set of amendments, Mr. President, and I ask unanimous consent that they be printed after my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1).

Mr. GRASSLEY. Mr. President, I presume that the Congress will return to consideration of this legislation next year. I must say that I think that, at that time, we should give serious consideration to beefing up the provisions of the law which deal with older workers. Industry and business in many parts of our country have been very seriously affected by foreign competition, as well as by the normal process of change characteristic of a dynamic economy. I think one could argue that older workers are disproportionately affected in this process of change. Perhaps it is time to begin to target these workers before they are displaced, so we can upgrade the skills they need in order to remain competitive in our labor markets.

EXHIBIT 1

SUMMARY OF LABOR COMMITTEE AMENDMENT TO S. 543 TO ADDRESS NEEDS OF OLDER WORKERS

The amendment adds older workers to the list of groups included in the bill's definition of "hard-to-serve" individuals.

The amendment adds agencies that serve older workers to the list of agencies and organizations included within the definition of "community-based organization" so that aging agencies are included within the bill's mandate that 15 percent of members of Private Industry Councils be representatives of organized labor and community-based organizations.

The amendment requires each service delivery area (SDA) to describe in its job training plan the types of services provided to older individuals and other targeted populations, in addition to a description of the SDA's goals for serving older individuals and SDA's outreach efforts to older individuals.

The amendment clarifies the bill's provisions to specify that national, State and local organizations that have a record of effectiveness in providing employment and training services to older individuals must receive priority consideration by SDA's in the selection of older worker service providers.

The amendment replaces the bill's provisions requiring each SDA to ensure that 5 percent of the participants in the Title IIA program are over age 55 with a requirement that 5 percent of each SDA's Title IIA allocation must be spent for older worker programs. The 5 percent SDA set aside for older individuals is equivalent to the current 3 percent state set aside for older individuals.

The amendment adds a new requirement that each SDA must make special efforts to meet the goals set forth for serving older individuals in the job training plan.

S. 543 requires SDAs to establish appropriate cooperative arrangements with other federal programs. The amendment adds Title V of the Older Americans Act to the list of federal programs identified in the bill.

The amendment clarifies the bill's provisions to specifically identify older individuals as an at-risk group under the Title IIC Coordination and Innovation Grant Program.

Each state must develop an innovation and coordination plan to receive a Title IIC Coordination and Innovation Grant. The plan must include a description of how activities funded under Title IIC will be coordinated with other federal programs. The amendment adds Title V of the Older Americans Act to the list of federal programs identified in the bill.

The bill authorizes a program of pilots and demonstrations to be administered by the Secretary of Labor for several purposes, including to foster the participation of groups that encounter special problems in the labor marekt. The amendment adds older workers to the list of groups indentified in the bill.

The amendment adds the state agency on aging to the list of state agencies that may be represented on the State Human Investment Council.

OLDER WORKER PROVISIONS OF THE JOB TRAINING PARTNERSHIP ACT AMENDMENTS TO H.R. 5257

Mr. PRYOR. Mr. President, last night a modified version of S. 543, the Job Training and Basic Skills Act, was attached by the distinguished minority leader to H.R. 5257, the Labor-HHS Appropriations conference report. I was not able at that time to comment on this legislation, but I would like to do so now. I hope that my remarks will be considered as a part of the legislative history of these amendments to the Job Training Partnership Act [JTPA].

I am pleased that the older worker amendments to S. 543 that Senators HEINZ, GRASSLEY, and I worked out with the Senator from Illinois, Senator SIMON, were included in the legislation passed last night. These important changes from S. 543 will insure

that disadvantaged older individuals will continue to receive much-needed employment training and placement services under JTPA. I believe that these provisions are an important victory for the most rapidly growing segment of our Nation's work force.

Due to a slowdown in the expansion of our Nation's work force, older workers are becoming increasingly important. Projections for the year 2000 indicate that the number of young workers will decrease significantly, creating the possibility of a labor shortage. Older workers are the solution to this shortage. In fact, a recent Harris survey commissioned by the Commonwealth Fund found 1.1 million nonworking Americans between the ages of 55 and 64 who are ready, willing, and able to be work force participants. As Secretary of Labor Elizabeth Dole stated in an article in the October 1989 edition of Aging News Network:

> Experience, maturity, know-how, dependability—these and other positive traits that characterize older workers have always been important to any nation that wants to build and maitain a strong, competitive economy. But as we look to the dawn of a new century, they may be especially critical to our Nation's need to complete in today's global marketplace.
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>
> All of this means that we can ill afford policies or practices that discourage skilled, experienced, productive men and women from continuing to work past retirement age if they want to to so.

Job training and placement services for older workers have been important in the past, and they will be even more important in the future. Since the enactment of the JTPA, funds under a title II provision that has become known as the "3 percent set-aside" have been used to train and place older individuals in jobs. The 3 percent money is given to the Governor, who chooses the service provider or providers for that State. While programs under the 3 percent set-aside generally started slowly in the early program years, the vast majority of these programs are now very successful.

On March 8, 1989, my good friend Senator SIMON introduced S. 543, the Job Training Partnership Act Youth Employment Amendments of 1989. As that name would suggest, it was and is a youth oriented bill which would shift title II emphasis toward employment services for inner-city youth. In keeping with this theme, the bill as introduced would have reduced the older worker set-aside from 3 percent to 2 percent. This 33 percent cut in allocation for an important program disturbed me greatly.

Still more disturbing was the fact that the 3 percent set-aside program has been branded a failure without any effort to obtain inpurt from aging advocacy groups which deal with the program daily. In my view, the 3 percent set-aside has been effective, and I believe in the old saying, "If it ain't broke, don't fix it."

When the Labor and Human Resources Committee completely removed the set-aside and lumped older individuals in with all adults under title IIA, I was determined to go to the floor of the Senate and fight for the special needs of disadvantaged seniors trying to enter or reenter the work force.

Mr. President, I am pleased that I did not have to oppose my good friend from Illinois. I want to compliment him for being willing to listen and negotiate on this very important issue. I want to thank him for working with me to reach a compromise agreement which will insure that disadvantaged older individuals will continue to receive employment training and placement services under JTPA which take into account their special problems and needs. I also want to thank the distinguished minority leader, Senator DOLE, for including these important changes in his amendment to the Labor-HHS Appropriations conference report.

The older worker provisions included in Senator DOLE's amendment last night accomplish two necessary goals: First, there should be no reduction of effort under title II on behalf of older individuals; and second, we should not lose the institutional knowledge of those organizations, such as Arkansas ABLE [Abilities Based on Long Experience] Vermont Associates, and others, which have successfully served seniors under the 3 percent set-aside.

S. 543 contains a provision which required that 5 percent of participants under title IIA, the adult title, must be older individuals. According to GAO, this participant-based set-aside represents a 62 percent reduction in effort over the 3-percent set-aside program, and it is not acceptable. The older worker provisions contained in Senator DOLE's amendment drop that provision and establish a dollar-based set-aside that is roughly equivalent to the current 3-percent set-aside. In addition, the provisions place even more emphasis on service to older workers by stating that, "Each service delivery area shall make special efforts to meet the goals identified in the job training plan * * * relating to the number of older individuals to be served."

However, unlike the current 3-percent set-aside program, where the money goes to the Governor, the older worker money under these new provisions would go to the local service delivery areas [SDA's]. Since the Governor will no longer have a role in the choice of the older worker service provider, the importance of ensuring that we do not lose the institutional knowledge of service providers which have been successful under the 3 percent set-aside program is magnified. The older worker provisions accomplish this in two ways.

First, SDA's are required, in selecting a service provider for older individuals, to "give priority to those national, State, and local agencies and organizations that have a record of demonstrated effectiveness in training and placement services for such older individuals * * *." This will ensure that organizations which were effective under the 3 percent set-aside will have a leg up on other organizations in the competition to win SDA contracts to serve older workers.

Second, the provisions enable experienced organizations to serve older workers through the Governor's 2 percent set-aside for technical assistance or through State innovation and coordination grants under part C of title II of the act. These funds are perfectly suited for organizations with valuable knowledge and experience in providing employment training and placement services to older individuals.

Besides accomplishing these two very important goals, the older worker provisions contain other changes from S. 543 which will further insure that older workers will continue to be adequately served under JTPA. Mr. President, I ask unanimous consent that a list of these changes be printed in the RECORD following my statement.

Mr. President, I am convinced that with the inclusion of these provisions in Senator DOLE's amendment, older individuals will continue to receive the employment services they deserve under JTPA.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

OTHER OLDER WORKER CHANGES FROM S. 543 INCLUDED IN THE DOLE AMENDMENT TO H.R. 5257

Inclusion of older individuals in the list of "hard to serve individuals";

Inclusion of older worker organizations in the list of community based organizations for representation on the private industry councils (PIC's);

Inclusion of specific services to be provided to older individuals in the job training plan which must be submitted by the SDA to the Governor;

Full coordination of the older worker program with the services to older workers contained in title V of the Older Americans Act.

Representation of the State aging agency among the administrative officers represented on the State Resource Investment Council.

Inclusion of older workers under "Pilots and Demonstrations" in part D of title IV of the act.

Mr. PRYOR. Mr. President, if I could have the attention of the distinguished author of S. 543, the bill that is the basis of the Dole amendment, I would like to ask him to clarify for me some issues regarding the older worker provisions of this amendment to H.R. 5257.

An excellent example of a successful service provider under the 3 percent set-aside in Arkansas ABLE. Through the hard work of its staff and the staffs of the various area agencies on aging, this fine organization has placed more than 4,866 older Arkansans in jobs and has spent nearly 100 percent of its 3 percent funds every year since 1986. For the last 2 years, ABLE has exceeded its placement goal by an average of 82 percent, cutting participant and placement costs by over 40 percent.

In addition, Arkansas ABLE has received numerous honors and awards in recognition of its older worker program. ABLE has received Department of Labor regional awards for the Outstanding Older Worker Program for 1986 and 1987, a 1988 JTPA Presidential Award, and the 1989 National Alliance of Business Distinguished Performance Award for Adult Program of the Year.

I know that I would feel much more comfortable about the older worker provisions if I knew that ABLE's experience and knowledge in this area will not be lost. I would therefore ask the distinguished Senator from Illinois, is Arkansas ABLE the type of organization that he envisions must be given priority by SDA's in the selection of service providers to older workers under this amendment?

Mr. SIMON. I would say to my good friend from Arkansas that Arkansas ABLE and a number of other fine organizations appear to have the type of successful record in serving older workers that is contemplated by the older worker provisions of the Dole amendment.

Mr. PRYOR. I thank my colleague.

Mr. President, there has been confusion under present JTPA law regarding how full-time and part-time job placements are counted for purposes of meeting performance standards. As I understand the problem, full-time placements are being emphasized for all JTPA participants because service providers do not believe that they will receive credit for part-time placements. While I agree that full-time placements are preferred for the majority of JTPA participants, many older workers need part-time employment for a numer of reasons. Is it the Senator's understanding that the Dole amendment provides for both types of placements to be counted?

Mr. SIMON. The thrust of the amendment is directed toward full-time placements, since those usually represent the most effective long-term placements. However, it is recognized that part-time work is an effective placement for many whose physical, mental, or economic condition may preclude full-time work. There are disabled individuals of all ages who can benefit from part-time employment, many of whom use it as a stepping stone to full-time employment. There are older workers who face the earnings cap or other limitations and find that part-time work fits their physical, psychological, and economic needs. Also, there are some critical occupations, such as child care and teacher assistants, which are ideal for older persons, but which generally are part-time.

I am aware of the confusion over this issue and I want to make clear that the amendment makes no distinction between full-time and part-time employment. Both constitute placements and should be counted equally.

Mr. GRASSLEY. Mr. President, I would like to comment on the Senator's response. Even though the amendment makes no distinction between full-time and part-time employment, the potential exists for the confusion to continue and for full-time employment to still be emphasized for older individuals. Does the amendment address this possibility?

Mr. SIMON. The older worker provisions of the Dole amendment provide that local SDA's report annually to the Governor on placement outcomes for older individuals, including placement in part-time jobs. Should confusion over this issue continue, I would be happy to request that the Department of Labor issue additional guidance to the field on this matter.

Mr. GRASSLEY. I thank the Senator.

TRAUMA RESEARCH AND REHABILITATION CENTER MOBILE INFIRMARY MEDICAL CENTER

Mr. HEFLIN. Mr. President, the Mobile Infirmary Medical Center, located in Mobile, AL, has developed an initiative, with national implications, to address the growing health problem of trauma injury, which both strains the medical facilities of the Nation and threatens the resources of our entire health care system. I want to bring this initiative to the attention of my colleagues in the Senate, because it addresses a growing national problem and deserves the attention of Congress and the public at large. Improvements are vital in the area of injury care and also injury prevention. The initiative at Mobile Infirmary will support these goals through the establishment of a trauma research and rehabilitation center, which will specialize in the research and development of innovative treatment techniques for trauma injuries. Mobile Infirmary also plans to establish a trauma—or data—registry to collect information about these types of injuries.

Trauma injury is a pervasive and costly health problem, both in terms of money devoted to patient care and the loss or productivity due to disability. The large number of premature deaths and disabilities due to injury and the high economy cost, including enormous Federal expenditures, highlight the need to reduce the burden of injury in the United States. The application of current knowledge and new research discoveries to implement a variety of injury control interventions can substantially reduce the incidence, severity, and accompanying cost of injury.

The Congress has recognized the pervasive impact and cost of trauma injury in this country and has strongly supported continued research in this area. In addressing this mounting public health problem, hospitals and treatment facilities must conduct research to alleviate the consequences associated with disability from trauma-related injuries. Research will allow for the development of new techniques that can alleviate the long-term effects of such injuries.

Mobile Infirmary's overall objective will be to demonstrate the benefits of a trauma registry in support of injury surveillance and prevention initiatives, while also advancing clinical developments that will alleviate the debilitating long-term effects of traumatic injury. By conducting research in these two distinct areas, this demonstration center will create a national model for the development of a system to augment injury prevention and to improve rehabilitation strategies for the injured.

Mobile Infirmary is uniquely equipped to develop and support this initiative becuse of its position of preeminence in the field of rehabilitation medicine. This preeminence is possible because of the medical center's existing medical facilities and equipment, as well as its medical staff's extensive expertise and knowledge regarding the area of physical medicine. The distinguished programs in the area of physical medicine and rehabilitation allow Mobile Infirmary to serve the most patients in the State of Alabama and the central gulf coast region. Through this initiative, Mobile Infirmary Medical Center has developed an integrated strategy to bridge the gap between research and the clinical treatment of patients. The information gained through this research will be essential for supporting injury prevention efforts.

With health care costs rising at an extremely fast pace, this and other initiatives become a means to achieve cost-savings. Additionally, they will support the development of innovative and beneficial strategies to address the diverse problems presented by trauma injury. Mobile Infirmary's initiative will be very valuable as a model for other communities around the country. I am firmly committed to supporting this initiative and working to insure its ultimate success when the Congress returns in January, and I

hope that my colleagues will join me in this effort.

TRIBUTE TO RAY LYNCH

Mr. PELL. Mr. President, I am proud today to pay tribute to a patriotic Rhode Island veteran who has dedicated his talents to honoring the brave men and women of our country. Ray Lynch, an Army veteran and resident of the Rhode Island Veterans Home in Bristol, has spent much of his free time and talents making flags and other tokens of appreciation and remembrance for members of our Armed Forces, law enforcement officials, veterans, and other brave men and women who put their lives on the line for our country.

In one example of his handiwork, Ray paid a moving tribute to the crew who died in the explosion of the space shuttle *Challenger* by hand sewing a special flag honoring the seven astronauts who died in the accident. Ray sent this flag to the family of Christa McAuliffe, the New Hampshire teacher who died in the explosion. Ray also donated the flag that hangs at the Navy base in Newport. In his presentation of this flag, Ray said, "My hope is that the present state of non-war persists and my dream is that present and future generations exist in a world in which peace and harmony prevail." Ray has also been honored to carry the American flag during the Fourth of July parade in Bristol.

Ray Lynch has received many citations, awards and special letters of thanks for his work. I would like to add my name in appreciation of his many contributions.

A SALUTE TO DEBORAH SZEKELY

Mr. DODD. Mr. President, I would like to salute a woman who has demonstrated a lasting commitment to improving the quality of life for poor people throughout this hemisphere. Deborah Szekely, who has just completed 6 years as President of the Inter-American Foundation, has been helping people help themselves for over 50 years. Among her contributions, Deborah was instrumental in helping the Save the Children Federation to establish its first program in Mexico. She has also contributed her time and energy to many other eminent institutions serving on the board of directors of the renowned Minninger Foundation, the Boy Scouts of America, the U.S. Olympic Committee, the President's Council on Physical Fitness, Partners for Livable Places, and the University of California at San Diego.

Throughout her distinguished career, Deborah has drawn upon her unshakable belief in voluntarism to create opportunities for the poor to fulfill their dreams and aspirations. As her notable record clearly underscores, she believed in "self-help" before the phrase was coined.

More recently, her exemplary leadership and efforts as President of the Inter-American Foundation deserve our special gratitude and appreciation. In 6 short years, Deborah strengthened bipartisan support for an already-respected and highly effective foreign assistance agency which works with nongovernmental organizations throughout Latin America and the Caribbean. She did so with equal doses of good will, creativity, hands-on management, and entrepreneurial spirit. Deborah and the Inter-American Foundation have not only earned our respect and admiration but that of the Latin American and Caribbean community as well.

Although Deborah's exprience and abilities will be greatly missed at the Inter-American Foundation, it is a richer and more vibrant institution for having had the benefit of such a fine public servant. I am happy to report that her talents will continue to be put to good use as she builds support for a private foundation of her own creation. The Eureka Foundation will be dedicated to supporting, training, and networking key caregivers at inner-city agencies serving the needs of young children and their families. In this way, Deborah hopes to accomplish in this country what the Inter-American Foundation has done so well throughout Latin America and the Caribbean.

As if this challenge is not sufficient, Deborah has also accepted an appointment as principal U.S. delegate to the Inter-American Commission on Women. Her goal is to promote hemispheric understanding and development on women's issues of common concern to the United States and its neighbors. I am confident that she will be an able and articulate spokesperson for this country.

Mr. President, I know that you and all my colleagues will want to join me in extending our heartfelt thanks to Deborah for her fine work as President of the Inter-American Foundation and in wishing her great success for the future.

RETIREMENT OF CONGRESSWOMAN LINDY BOGGS

Mr. BINGAMAN. Mr. President, when the Congress convenes in January, it will be the first time in 45 years that it has done so without a Boggs to answer the rollcall in the House of Representatives.

The affection and regard I have for LINDY BOGGS are not mine alone. She is widely respected as a woman of great substance and inimitable style. There is no one quite like her.

In addition to an outstanding record of public service, she is the mother of extraordinary children who have achieved success in their own fields of interest. Her pleasure in them is certainly equal to their pride in her.

I know she will be missed very much by her fellow House Members who deal with her daily, but certainly the Senate will miss her, too. She is a very special colleague who brings grace and intelligence to every effort and we are all the better for her example.

RETIREMENT OF SENATOR WILLIAM ARMSTRONG

Mr. BINGAMAN. Mr. President, many months ago when our colleague, BILL ARMSTRONG, announced that he intended to leave the Senate at the conclusion of this term, the news was met with genuine regret by all of us who value his friendship.

While it is true that BILL and I have often been on opposite sides of many issues, it is also true we have been together more times than a casual observer of the Senate might imagine.

He is a man of high principles and deep beliefs. He is an exemplar of patience and honor. I respect him and will miss him when the next Congress convenes without him. He leaves with the good wishes and affection of those of us who know just how much he has meant to the character of the Senate.

TERRENCE MURRAY, CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF FLEET-NORSTAR FINANCIAL GROUP, BEFORE THE GREATER PROVIDENCE CHAMBER OF COMMERCE ON OCTOBER 22, 1990

Mr. PELL. Mr. President, the current recession in Rhode Island and throughout New England is cause for grave concern for many of us here in Congress. In these difficult times, it is important that the leaders from this region step forward and offer real solutions to our economic problems.

We in Rhode Island are very fortunate to have a leading spokesman for the civic and business community, Terrence Murray, chairman and chief executive officer of the Providence based Fleet-Norstar Financial Group. Fleet is Rhode Island's largest financial institution, with 1,000 offices in 40 States and over 18,000 employees. Terry Murray often speaks out clearly and forcefully on issues confronting our State and our Nation.

On October 22, 1990, in an important address to the annual meeting of the Greater Providence Chamber of Commerce, he once again demonstrated his leadership on issues of importance to the State of Rhode Island. His speech identified and offered possible solutions to the economic prob-

lems of Rhode Island and New England.

In discussing the current State-wide and regional economic down turn, Terry Murray addressed four separate areas of concern. First, the growing importance in our society of private organizations, which stimulate economic growth and vitality. In this regard, he says appropriate tribute to the Providence Chamber of Commerce, one of the Nation's best under the leadership of its chairman, Tom Skala and president, Jim Hegen. Second, the need for reform of our State government, and for more vigorous and visionary leadership from our country's elected officials here in Washington. Third, the value of having the New England region band together to meet current economic challenges, in a sort of concert of New England. Finally, the urgent requirement that Congress structure and update our financial services industry, to make it more competitive in domestic and international markets.

Mr. President, I highly recommend a review of Terry Murray's speech for anyone who is interested in the economic health of New England, and I ask that it be printed in the CONGRESSIONAL RECORD. I also ask that a Providence Journal-Bulletin article describing the speech be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TERRENCE MURRAY, CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FLEET/NORSTAR FINANCIAL GROUP, REMARKS, ANNUAL DINNER MEETING, GREATER PROVIDENCE CHAMBER OF COMMERCE, MARRIOTT INN, PROVIDENCE, RI, OCTOBER 22, 1990

An active, aware and vigorous chamber of commerce is a critically important asset for any city that's fortunate enough to have one. In fact, it's more than that. It stands out as a sign, even during economic hard times, of a community's basic business health and vitality. Providence is one of those fortunate cities.

I'm impressed by the chamber's many successes during the past year. These ranged from organizing the State House rally where more than 2,500 business people demanded workers' compensation reform, to establishing a new economic development council. And I'm particularly impressed by the fact that the chamber has more than doubled in size in the past 3 years.

One of the volunteer business leaders who has done so much to make the chamber a success, and an individual in whom I take special personal pride, is Tom Skala. As you know, Tom did a remarkable job over the past year as the chamber's chairman, and was recently re-relected to that position for another year. I have to add, of course, that Tom's been an equally outstanding and effective leader at Fleet-Norstar. As I'm sure most of you already know, Tom was recently elected president of Fleet Bank, which is our company's flagship bank.

With leaders of Tom Skala's caliber, and a membership committed to improving the business climate in Rhode Island, there's no doubt in my kind, that this organization will continue throughout the 1990s to be the active, aware, and vigorous chamber that I spoke of earlier. That's why I'm honored to have this opportunity to speak once again to a Providence Chamber of Commerce audience.

I want to talk to you this evening about two subjects. The first is the economy—national, regional, and Rhode Island—and the need for cooperation among the New England States as a way to help get things back on track. In that vein, I want to discuss some reforms that are badly needed here in Rhode Island.

The second area I plan to discuss is the future of the banking industry, and the need for regulatory reform to keep U.S. banks competitive with non-regulated foreign and domestic providers of financial services.

Let me begin with the economy.

My opening remarks this evening were upbeat, and that's because the chamber is such a positive force in our community. But I'm afraid I'll have to disappoint you if you're looking for only upbeat comments about the economy. In fact, I'll be perfectly blunt: We in New England are in a recession. Not "in danger" of one, not "approaching" one, not "facing" one, but in one. There's been a lot of denial of that fact, but I think it's time everyone faced up to it.

The system of government that's in place today at the national level makes it difficult to accomplish anything, especially in the economic arena. Our political leadership, in both political parties, is so heavily influenced by polls and special interest groups that it seems incapable of making difficult decisions. The ongoing budget crisis is a good example. For months talks have been taking place, with no results. The Nation's political leaders showed themselves to be paralyzed by the fear of special interests. They were simply too afraid to act forcefully when the need to act couldn't have been more apparent.

Compare this to Germany, where Helmut Kohl, in the short space of a few months, accomplished the nearly impossible by uniting his divided nation. Don't you think Kohl faces monumental social and economic difficulties in bringing the two Germanys together? Isn't it clear that he faced major questions about how to pay for his country's reunification? The cost of bringing East Germany, both socially and economically, into the fold is a devisive issue. And yet, it was clear to Kohl that the time to act had come, and he was able to put parochial questions aside. None of the difficulties prevented him from going forward and doing what had to be done. And in the Soviet Union, as we all know, Mikhail Gorbachev has taken some incredible risks to reform his country's entire economic and political way of life. These men have been decisive, strong leaders.

America needs leaders with the courage of a Kohl or a Gorbachev, leaders who have a long-term vision of where their nations should be heading, and who aren't afraid to put special interest groups in their places and get on with the business of running the country. I don't know how many of you watched the public broadcasting series on the Civil War, but there was an episode that was not only moving emotionally, but also depicted the kind of courage we need more of today. I'm referring to the Rhode Island Civil War officer, Major Sullivan Ballou of Smithfield, who expressed the following sentiments in a letter to his wife, Sarah: "I have no misgivings about, or lack of confidence in, the cause in which I am engaged, and my courage does not halt or falter. I am willing—perfectly willing—to lay down all my joys in this life, to help maintain this government."

I couldn't help but relate the values that Major Ballou embraced to the process by which important decisions are made—or not made—in our country today. If our Nation's leaders showed Major Ballou's brand of courage, we wouldn't have been forced to watch the budget farce unfold month after month. Leadership and courage go hand in hand—a fact that our national leaders would do well to remember.

I don't intend to browbeat you with economic statistics and indicators, but a few of them may help underscore my point that we're in a recession.

Real gross national product should slow to 1 percent growth this year, the lowest since the last recession. Nationally, signs of halted economic growth are everywhere. Retail sales and consumer spending are down. Housing starts and permits have been at recessionary levels. Durable goods orders showed no sustainable increase in the past 18 months. Employment is down, and plans for capital spending have been reduced.

In New England, the "miraculous eighties" are over. Employment has been declining since early in 1989. The hard-hit finance, real estate and construction industries aren't expected to pick up until 1992. New England is in the midst of a very difficult transformation for the boom period of the mid-80s, through the current adjustment phase, to a period of underperformance relative to the Nation into the mid-1990s. Job losses are likely to continue into 1991, with New England's defense contractors being especially vulnerable to accelerated job cutbacks. Adding to New England's difficulties will be higher energy costs, tax increases, and continue real estate problems.

Furthermore, while New England's personal income growth fared better than the national experience in every year from 1982 to 1988, in 1989 our region recorded about the slowest growth in personal income of any region, and this underperformance is expected to continue right on through 1991.

New England has, however, retained its high level of per capita income, the best among all regions and 20 percent higher than the national average.

The downturn in New England's economy over the past 18 months has certainly not spared Rhode Island. In the first half of this year, the Rhode Island economy could be fairly characterized as an economy sputtering along with moderately falling employment, rising unemployment, and declines in housing starts and other general indicators.

While the uncertainty of the situation in the Middle East makes it difficult to develop economic forecasts, assessing the damage done so far suggests a recessionary decline over the next year, with 1991 growth of about one tenth of 1 percent. Before Iraq's invasion of Kuwait, inflation has been retreating since January, and we could have expected it to slow to 3 percent in 1991. Now, with oil prices in the $40 a barrel range, near-term inflation has soared, likely resulting in a six-and-a-half percent rise in consumer prices this year. However, we still expect an improvement in inflation next year, assuming oil prices retreat to $25 and there's a peaceful settlement of the Mid-East crisis.

On the brighter side, there are some positive things to be said about the United States in today's global economy. In the book "Megatrends 2000," John Naisbitt predicts that a global economic boom will begin in the 1990s, and he believes the quality and innovativeness of America's human resources will help our country maintain a leadership position. He points out: "The United States produces one-fourth of the world's gross national product, more than Japan and the Soviet Union (number two and number three) combined. It is astonishing that so many Americans think that Japan has a larger economy than the United States, when our real per capita output is actually 70 percent higher than Japan's."

There are positives in New England, too. Our aging population, high earnings, a reemerging labor shortage, and increased retirements will keep our income levels from underperforming in the early 1990s, even though income growth will be down. And, while New England won't be the leader of the pack, as we were in the 80s, our economy should perform in line with the U.S. average during the early 1990s. I would also point out, as noted in an article by Richard Syron and Lynn Brown of the Federal Reserve Bank of Boston, that New England historically has grown by fits and starts, so what we're going through now is nothing new.

While no one area seems to be the obvious choice to succeed computers as a major growth engine for our region, the potential exists for a lead industry to emerge. Syron and Brown point out several possibilities. In the services sector, the computer software and data processing industry should grow at a healthy rate. Engineering services is also a relatively large industry in New England, and our infrastructure requirements, combined with energy needs and global environmental concerns, should favor further growth in this industry. In manufacturing, the instruments industry is promising. New England is prominent in manufacturing medical instruments, measuring and controlling instruments, and sonar, navigation, and guidance instruments.

New England has many inherent strengths, including a diverse, highly skilled labor pool and industrial base. Along with an entrepreneurial culture, the New England environment favors innovation and the development of products, companies, and even new industries.

If Columbus had discovered America on the west coast instead of the east, and if the Nation had then developed from west to east, New England today very well might be a single State instead of six small ones. And you have to admit that the idea isn't all that fanciful. New England occupies an area of 66,608 square miles. California, at 158,693 square miles, is more than twice as large. From an economic development standpoint, the State of California is able to act with a singleness of purpose that New England has never been able to achieve. Whether a company settles or expands in southern, central, or northern California makes no difference—the entire State, larger than our whole region, benefits. The New England States, on the other hand, compete against each other as they work to develop their separate economies.

This is not to say that there haven't been some successful region-wide cooperative efforts to grow the New England economy. Here are just a couple of examples:

The New England Governors Conference is meeting with some success promoting regional cooperation in tourism, utilities and transportation.

And in our own State, the Rhode Island partnership for science and technology is working with the New England bio-technology cooperative to develop regional expertise and growth in the bio-tech industry.

The November elections are just around the corner, and there's a good possibility that the political landscape around New England will change. For that reason, we're approaching an ideal time for Government, business, labor and academic leaders to begin to collectively address the challenges facing our region.

Let me, therefore, put forth a proposal for consideration. I call upon New England's leadership, in all fields of endeavor, to organize a New England economic summit, to be convened as soon as possible following the upcoming elections.

I certainly don't claim to have all the answers, and this is far from being a thoroughly researched proposal, but let me suggest, as a start, that a regional economic summit—which could be organized and conducted under the auspices of a highly respected regional organization, such as the New England Governors Conference or the New England council—might well tackle an agenda including the following goals;

A thorough assessment of New England's economic strengths and weaknesses;

Develop mechanisms to initiate and continue high-level discussions on how to leverage our collective strengths, and alleviate our weaknesses, to help the region weather the current period of economic stress;

Develop common strategies to move New England forward when economic conditions improve;

Examine the feasibility of creating regional, in addition to State-by-State, investment tax credits for out-of-State companies that locate, or existing companies that expand, in any one of the six New England States;

And develop a cooperative regional lobbying effort aimed at getting Congress to consider business development tax incentives. These would include special tax breaks encouraging buyers to invest in the millions of dollars worth of foreclosed properties now being held by the Government's Resolution Trust Corp. and by the Nation's banks. I realize fully that it would be a very hard sell trying to convince Congress, in these times of enormous budget deficits, to look favorably on tax breaks. Nevertheless, I believe the idea deserves further study. If all six New England States were to come together and agree on a moderate tax incentive package—one that would help get our economy moving again—our elected officials in Washington, including our 12 United States Senators, would have to pay attention to it.

Fleet/Norstar is more than willing to lend the expertise of our people, and do its share to underwrite the cost, of a regional economic summit such as I'm proposing here this evening. I'm convinced that the future well-being of the six New England States will depend, to a greater extent than ever before, on regional trust and cooperative effort. If the countries of Europe, with distinctly different national cultures, languages and characters, can join forces in a united economic community—which they have done and which they will greatly expand upon in 1992—then surely six small States, all cut from the same cloth and with so much in common, can work together for the greater good of New England.

I'd like to spend a minute or two now to share some thoughts with you about our situation here in Rhode Island.

We've been fortunate, I believe, in having a series of good Governors in this State, so the statements I'm about to make aren't intended in any way—and shouldn't be interpreted—as negative comments directed toward any of Rhode Island's political leaders, past or present.

In fact, for years I've felt sorry for Rhode Island's Governors. They have all been forced to attempt a balancing act between the needs of the public and the realities of politics.

As far as I'm concerned, the leading contender among those realities, in terms of detracting from any Governor's effectiveness, is the 2-year term of office. How can our Governors and general officers be expected to deal with difficult problems when they are continually having to raise funds for their re-election campaigns? How can our leaders begin to come to grips with important management and strategic issues when there is no certainty of their continuing in office beyond 2 years?

There's also the issue of campaign costs. $6 million was just spent on the Democratic gubernatorial primary in Rhode Island, and more than $10 million will be spent on the entire Governor's race this year. For a State with less than 1 million people, these numbers are preposterous. If we related it to the State of New York, on a per capita basis it would total almost $200 million to elect a Governor in New York. In a soft and steadily worsening economy such as we're now experiencing, spending $10 million on a campaign, especially in a State as small as this, simply is not affordable. It just doesn't make any sense.

A 2-year term of office fosters an inability to manage with any conviction or confidence, because elected officials are always looking over their shoulders at upcoming elections, campaign fund-raising, and pressures applied by special interest groups. And the cost is intolerable, especially in today's economy.

Another problem facing our elected officials has to do with inefficiency in our State and local governments. You, as a chamber, helped lead the fight on workers' compensation reform. We may or may not have partially solved that problem. These facts remain, however: Last year, the State of Rhode Island paid out some $20 million in workers' compensation claims to State employees. At the State institutes of mental health, about one quarter of its employees are receiving workers' compensation. Clearly, given these kinds of data, something is wrong with the system.

I'd like to suggest some changes I think all of us in the business community, including the chamber and its membership, should adopt as our top priorities in the coming year.

One: The chamber and the business community should urge the general assembly to take a leadership position by putting the issue of 4-year terms of office for the Governor and the State's general officers on the ballot as soon as possible. I'm confident that the public will support 4-year terms for the Governor and general officers. On the other hand, Rhode Islanders probably will not support 4-year terms for the members of the general assembly. Therefore, if the general assembly wishes to ask voters to approve 4-year terms for its own members, I believe that issue should be placed on the ballot as a separate question. In this way, the public would have a chance to decide what the appropriate terms of office should be, first for the Governor and general offi-

cers and secondly for legislators, without having the issue confused by combining them in a single ballot question.

Two: We seriously need to consider establishing an 8-year cap on service by the State's general officers—in other words, no more than 2 consecutive 4-year terms. For some, service as an elected State official or as a State legislator has become a way of life, which it was never intended to be. I believe it should be viewed as it was intended—as a public service. Limited terms of office would bring new blood into State government on a regular basis.

At the same time, however, salary reform must be part of this equation. I believe the voters should be asked to approve an annual salary of between $6,000 and $9,000 for State legislators. For the State's general officers, the salary range should be $75,000 to $100,000, which would more properly reflect the heavy responsibilities they're asked to shoulder.

Three: Simultaneously with upgrading the salaries of the State's general officers and legislators, all pension abuses involving purchased credits must be eliminated. Pension credits should be granted only for an individual's years of service as a State employee, with no opportunity to buy credits for military or other unrelated service. Clearly, these pension abuses came about, in part, because legislators' pay in Rhode Island—$300 a year—is ridiculously low. If voters can be persuaded to increase the salary level for State legislators, it will be much easier to put an end to the pension abuse problem once and for all.

Four: Rhode Island's business and industry leaders should get together, perhaps under the auspices of this chamber, to create and underwrite the cost of an independent organization that would evaluate the effectiveness of State government on an ongoing basis and serve as a management consulting resource to government. While the Rhode Island public expenditure council does this in the area of fiscal responsibility, a group such as I'm proposing would concern itself with improving overall efficiency in the management of government. The group's mandate would be to evaluate the structure of our State government and its various agencies on an ongoing basis. In short, it would continually ask the question: "Are Rhode Island's taxpayers getting their money's worth, in terms of management effectiveness, from their State government?"

While no one can predict whether these proposals, individually or collectively, would be the "magic bullets" needed to solve our most serious problems, I believe that a discussion of these issues deserves to be raised to the highest priority we can give them. Reforms in these areas are critically important, in my view, because without them we'll continue to have a form of government in Rhode Island that we simply can't afford.

I'd like to turn now to the second subject I want to talk about tonight—the future of the financial services industry.

The recent history of banking has been traumatic. Over the past 20 years or so, tremendous changes have occurred—changes that are reshaping the ways in which banks, and other providers of financial services, do business—the kinds of business activities we engage in, where we engage in them, the prices we charge, and just about every other aspect of our business.

The principal instrument of that change has been deregulation—a legislative process which has enabled banks to operate beyond some, but not all, of the unnatural boundaries established by Congress 50 years ago. Deregulation has made it possible for us to move into new territories and markets, exercise greater flexibility in reshaping or designing products and services, and in pricing them to achieve a fair return, and it has even opened up entirely new lines of business.

In the late 1960s, banks such as Fleet were reaching their limits of growth. They were unable to expand into other States, and they were prevented by archaic regulations from entering new businesses. Deregulation changed all that, and Fleet/Norstar's history offers a good example of the positive impact that deregulation has had on the banking industry.

During this environment, Fleet diversified both functionally and geographically:

Established or acquired a number of nonbank companies in areas such as mortgage banking, consumer finance, and leasing;

In the early 80s, acquired banks in Connecticut, New Hampshire and Maine;

In 1988, Merger with Albany-based Norstar doubled the size of the company;

In 20 years, our assets went from under $1 billion to more than $34 billion;

1,000 offices in 40 States;

18,000 employees;

Among top 20 banks in the U.S.;

Nine banks throughout the northeast;

Second largest mortgage banker in the Nation.

As you know, banks in the northeast have been especially hard hit by the declining economy. Most noticeably, the decline has severely impacted the commercial real estate market. To some degree, bankers are the victims of their own over-optimism in the 1980s. Some bankers, more than others, showed poor judgment in growing certain markets too rapidly in the fast-paced expansion era of the past decade. At the same time, however, State and Federal commercial bank examiners, anxious to avoid a repeat of the S&L crisis, were cautious in their exams of loans portfolios when they swept through New England and New York earlier this year.

While not immune to these problems, we have fared better than many of our competitors. We have always stressed credit quality—we shied away from condominium lending earlier than most, for example—and to some extent the functional and geographic diversification strategy I spoke about earlier has helped insulate us from the more severe effects of the economic downturn.

The kinds of difficulties I just outlined, however, are not the difficulties that concern me the most. They are transitory, and you know as well as I do that the econmy can and will rebound. We've lived through difficult economic periods before, such as in the early '70s and again in the early '80s, and we survived. While we may be paying a price now for our prosperity in the 1980s, we will not go on paying for it indefinitely. Too much energy has been wasted already by bankers and others trying to pin the blame for their problems on something or somebody—the economy, real estate developers, the regulators—but it's a pointless exercise. Now is not the time for assessing blame. Rather, it's time to get back to basic blocking and tackling. It's time to focus our energies on what needs to be done to move the economy, and our institutions, out of the doldrums.

At Fleet, I've made it clear to our employees that this is not the time to sit back and take it easy just because we've been tested by all that's happened over the past several months. On the contrary, it is now, when many of our competitors are weakened and less able to compete, that our loan officers and our personal bankers must go on the offensive. I'm confident that longer-term results will be highly satisfactory for us as we move into the 1990s.

Today's temporary, short-term difficulties, as I said a moment ago, do not concern me as nearly as much as several longer-term problems regarding overall competition and the need to overhaul the industry through legislative reforms.

Let's look first at competition.

Forty years ago, nearly two-thirds of all U.S. financial assets were held by banks. Today, banks hold less than a third.

Twenty years ago, banks originated 90% of all short-term loans. By the mid-80s, half of this market had been captured by commerical paper, underwritten mostly by a handful of large investment banks.

Since the money market account evolved out of Merrill Lynch in the late '70s, some $400 billion has been placed in such accounts, definitely hurting the U.S banking industry as a good portion of that money came out of commercial banks.

Today, about one-fourth of commercial and industrial loans in the United States are held by foreign banks. Also, the ten largest banks in the world, in terms of dollar value of deposits, are now Japanese. Only one American bank ranks among the 20 largest.

Clearly, a whole new array of competitors, both foreign and domestic, are now active in the banking business in the United States.

Making matters worse, three competitors have an unfair advantage because they're not hampered by many of the regulations by which we have to abide. Many of our competitors don't even call themselves banks, but they provide the same kinds of products and services banks traditionally provide. Here are a few examples:

Securities firms and mutual funds—such as Merrill Lynch and Fidelity—offer direct deposit facilities.

Real estate brokers—Century 21, Coldwell Banker—offer real estate brokerage, financing and insurance.

Insurance companies—John Hancock and Prudential—own special purpose banks and compete on broad levels.

Automobile manufacturers—GMAC, Chrysler Credit—are among the largest mortgage bankers and consumer finance companies.

Travel and entertainment firms—such as American Express—are active in banking, insurance, and mutual funds.

As bankers, we have simply had to face the fact that non-regulated competition has eaten our lunch in the last 10 years. They have skimmed many of the most profitable areas without assuming any of the social and institutional responsibilities of banks.

Some of the weakness in the banking system today can be traced direclty to the unwillingness of Congress and the regulatory agencies to let banks compete on a level basis with our non-regulated competitors. Banks have been unable to get into investment banking to offset the loss of good corporate customers, or into insurance or money market funds or mutual funds to offset the loss of customers to non-regulated competitors. As a result, banks have been forced to take greater risks in order to earn a reasonable return—risks such as lending overseas to lesser developed countries, participating in highly leveraged transactions, and commercial real estate lending. The

outgrowth of such high-risk activity has been a weaker banking system. Until the regulators and Congress recognize that we've got to be able to compete reasonably well, the banking system will continue to be weak.

Reform is needed in at least two other key areas as well. First, the banking regulatory system itself is hopelessly fragmented. Too many supervisory bodies create far too many regulations, and many of the rules they create contradict each other. The multiplicity of regulatory agencies should and must be replaced with one governing authority. It would then be in a position to issue fair, sensible, unified regulations and bring about much needed changes that would strengthen rather then weaken the banking system.

Just to give you an idea of what I mean when I talk about the multiplicity of regulatory agencies, Fleet/Norstar in 1989, underwent separate examinations by the New York Federal Reserve the Boston Federal Reserve the FDIC the office of the comptroller of the currency, and the State banking commissions in New York. Connecticut New Hampshire and Maine.

The second area that cries out for reform is deposit insurance, which has gone well beyond providing basic protection. Continental Bank Corporation's chairman Thomas Theobald stated the case succinctly in a recent appearance before the U.S. House Subcommittee of Financial Institutions Supervision: "Rather than offering protection, deposit insurance actually undermines the soundness of the system. It fosters depositor apathy and encourages managers to take unnecessary risks. Certainly, we've seen ample evidence of that in the S&L crisis. What began as a legitimate social support for individual depositors has been transformed into industry protection for thousands of institutions, viable and nonviable, competenty run and incompetently run, honest and crooked."

Some of the deposit insurance reform options under consideration are:

One, reduce the insured amount from $100,000 per account to some lower amount—$50,000 for example—although politically this option appears to be unpalatable; two keep coverage at $100,000, but limit the scope of coverage to one account per family or individual. This would put an end to the situation in which depositors can have multiple accounts in different institutions, with each account insured up to the full $100,000; three, provide the first $100,000 of coverage free, as we do now, but depositors would pay premiums if they elect to insure their accounts for more than $100,000; four limit or eliminate "pass-through" treatment of deposit insurance, which would restrict the insurance coverage now received by certain types of pension fund and brokered deposits. This is an important option, because insuring brokered deposits props up weak institutions that probably should have been liquidated years ago.

Obviously, reforms such as these will not happen overnight, but they are absolutely essential for the future health of the financial services industry.

What, then, is the future of the financial services industry?

First, it's inevitable that there will be continued, rapid, massive consolidation within the banking industry, and the lines that distinguish thrift institutions from commercial banks will disappear. There are simply too many noncompetitive institutions in the United States. There are nearly 13,000 banks in the U.S., while most countries have only a handful. The S&L industry's consolidation is just the beginning. The commercial banking industry is going to experience a similar massive pruning as noncompetitive banks are absorbed by those that have learned how to be competitive.

We definitely will see more and more strong regional banking franchises develop throughout the United States. These companies will have the ability to be leaders, to be dominant players, in terms of banking industry technology and in terms of products and services. Using Fleet once again as a model, these strong regional banking franchises will be major players in mortgage banking, consumer finance, and several other niches within the financial services industry.

The reasons behind these sweeping changes are fairly obvious. There are only so many dollars of deposits available, and consolidating the number of institutions that hold those funds results in significant economies of scale. It reduces the high cost of individual delivery systems, and creates a variety of efficiencies in backroom operations, marketing and technology.

In the 1990s, the successful financial services company is going to be one that is not recognizable today, either as an investment banker, an insurance company, or as a commercial bank, because it's going to be a combination of all these types of companies.

I don't mean to imply that the successful financial services company in the coming decade will necessarily be a company that tries to be all things to all people. Rather, it will be one that has become very efficient, operating at low cost, offering high-quality service through a variety of overlapping products. As we all know, certain companies are better at some things than others. Each company will have to find the right niche—or niches—to capitalize on its particular strengths and abilities.

What else lies ahead? Here are some of the trends I think we can expect to see emerging in U.S. banking:

Successful superregional banks will continue to "fill in the spaces"—that is, they'll make a number of smaller acquisitions to fill in the markets they're not already in.

A few megamergers will take place. New York City combinations are very realistic.

Further into the 1990s, we'll see a spate of inter-regional mergers as some of the more successful regionals and superregionals combine to consolidate their gains.

Let me conclude by saying a great deal is at stake for all of us in the '90s. Whether we are discussing new initiatives in areas of economic development, political reforms, or the overhaul of the financial services industry, each of us can play some role in the process. There is a role for this chamber of commerce and for each of us. Let's get started.

[From the Providence Journal-Bulletin, Oct. 23, 1990]

MURRAY PRESCRIBES HIS CURE FOR N.E.'S WOES

(By John Kostrzewa)

PROVIDENCE.—A New England economic summit should be convened soon after the elections to guide the region out of its recession, Terrence Murray, chairman and chief executive officer of the Fleet/Norstar Financial Group, said last night at the annual dinner of the Greater Providence Chamber of Commerce.

The agenda should include consideration of tax credits to coax companies to locate here and special tax breaks to encourage buyers to invest in the millions of dollars worth of foreclosed properties.

I'm convinced that the future well-being of the six New England states will depend, to a greater extent than ever before, on regional trust and cooperative effort," he said.

In other remarks, Providence Mayor Joseph R. Paolino urged negotiations to get back on track for Johnson & Wales University to buy the former Outlet department store site and build a $30 million facility on the property. Talks broke off last week when Johnson & Wales said it was no longer interested in the downtown site.

Murray gave the keynote speech to an overflow crowd of about 600 people at the Providence Marriott Hotel.

Murray also called for the Chamber and the business community to get behind "reforms that are badly needed here in Rhode Island."

He proposed four-year terms for the governor and the state's general officers with a cap of eight years. He also proposed salary increases for state legislators, the governor and general officers.

"Reforms in these areas are critically important because without them we'll continue to have a form of government in Rhode Island that we simply can't afford," he said.

Murray spent much of his speech assessing the region's economy.

He said, "I'll be perfectly blunt: We in New England are in a recession. Not in danger of one. Not approaching one. Not facing one. But in one. There's been a lot of denial of that fact, but I think it's time everyone faced up to it.

"The downtown in New England's economy over the past 18 months has certainly not spared Rhode Island," he said, "(Our) economy could be fairly characterized as sputtering along with moderately falling employment, rising unemployment and declines in housing starts and other general indicators."

Murray noted the "paralysis of government" in Washington, D.C., during the ongoing budget crisis and said New England's government, business, labor and academic leaders could not afford to fall into the same deadlock.

It is an "ideal time," he said, to call an economic summit because the political landscape is changing. New governors will be elected next month in Massachusetts, Connecticut and Vermont. And opponents are contesting the reelection of incumbents in Maine, New Hampshire and Rhode Island.

He said the summit's agenda could include the feasibility of creating regional, in addition to state, investment tax credits for out-of-state companies that locate here or existing companies that expand in a New England state.

Consideration should also be given to developing a regional lobbying effort to get Congress to consider business development tax incentives, including special tax breaks to encourage buyers to invest in foreclosed property held by the government and banks.

Murray suggested the New England Governors Conference or the New England Council could organize the summit. And he said Fleet/Norstar, the biggest bank in Rhode Island, would land the expertise of its employees and do its share to underwrite the cost.

Turning to Rhode Island, Murray said current terms for governor and general officers have weakened the effectiveness of government.

"A two-year term of office fosters an inability to manage with any conviction or confidence because elected officials are always looking over their shoulders at upcoming elections, campaign fund-raising and pressures applied by special interest groups," he said, "and the cost is intolerable, especially in today's economy."

Murray urged the Chamber to pursue efforts to:

Raise two-year terms for the governor and state's general officers to four years and put it on the ballot as soon as possible.

Establish an eight-year limit, or two consecutive four-year terms, for terms for general officers.

Pay legislators an annual salary of $6,000 to $9,000 and general officers a salary between $75,000 and $100,000. (Legislators are now paid $300; the governor's salary is $69,900; and four other general officers are paid between $52,000 and $65,950.)

SOUTH DAKOTA TRADE LEGISLATION: SASKATCHEWAN NITROGEN PLANT

Mr. DASCHLE. Mr. President, the Senate Finance Committee conducted a hearing on September 28 to receive testimony on trade between the United States and Canada under the United States-Canada Free-Trade Agreement. Several problems were reviewed, including subsidy issues. One of the witnesses was a representative of the Ad Hoc Committee of Domestic Nitrogen Producers, whose testimony concerned the trade implications of a fertilizer plant under construction in Belle Plaine, SK.

Several Members of Congress also have expressed their concerns over this plant. As recently as last week, the United States Trade Representative raised this issue with Canadian Trade Minister Crosbie. Despite the concerns raised, the plant is still being built, and the U.S. industry is bracing itself for the likely severe impacts ahead.

The Canadian Province of Saskatchewan, in a joint venture with Cargill, Ltd., has decided to construct a world-scale nitrogen fertilizer plant in Belle Plaine, SK. The project, known as "Saferco," will cost 435 million Canadian dollars. The province will supply $64 million in equity and will guarantee all of the $305 million in debt that will be incurred for construction of the plant. Cargill will supply $65 million in equity and will receive for its 15 percent capital investment, 50 percent controlling ownership of the plant, and exclusive rights to market the plant's production. The U.S. industry is convinced, based on independent professional analyses, that the plant will create significant excess capacity, and that it would not be built without heavy financial assistance from the province. Industry analysts predict that if the plant starts producing, it will significantly harm the U.S. industry.

The plant raises serious environmental issues, as well. The Province of Saskatchewan did not require a full environmental impact assessment for this venture, a huge chemical complex that will be located close to the United States-Canada border. Given the long-standing Canadian concerns over acid rain and air and water quality, a full and official environmental impact assessment is not an unreasonable request for a venture in which the provincial government is so heavily involved.

Congress should explore all remedies available, including legislative action to clarify and strengthen U.S. trade laws. These laws are intended, in this age of global economic integration, to deal effectively with unfair practices. The laws concerning dumping and Government subsidies, including certain loan guarantees, are available only after sales or offers to sell have been made. The laws do not provide a remedy to prevent an injury, when we know, well in advance, as in this case of the nitrogen plant under construction in Belle Plaine, SK, that injury from future sales is probable.

Our trade laws should be strengthened to deal with a situation such as that facing the U.S. nitrogen industry. We should not permit a domestic industry to be at the mercy of provincial politics in another country.

The U.S. nitrogen industry is modern and efficient. It operates free from Government interference. This sector has withstood the ups and downs in agriculture through sound management and by adjusting to the demands of the marketplace. However, in an economy growing more sensitive to actions in other countries that affect trade, sound management alone is not enough to overcome subsidized production by foreign competitors.

SAFERCO FERTILIZER PLANT IN SASKATCHEWAN, CANADA

Mr. COCHRAN. Mr. President, the nitrogen fertilizer industry is important to our country, especially to our agricultural producers. In my State of Mississippi, there are two companies which produce nitrogen fertilizer. These companies are well-run, efficient, and have modern facilities. They have to be well-run in order to survive in a highly competitive industry. They must compete not only against other domestic producers, but also against the large volume of fertilizer available in the world market. While such competition is normal in today's world economy, the concerns I raise today are intended to address events which may cause this industry to face unfair competition from Canada.

For several months, I have been following the Saferco Nitrogen Project, a project that involves the construction of a $435 million world-scale nitrogen fertilizer plant in Belle Plaine, in the Province of Saskatchewan, Canada. The plant is being built with significant equity participation and large loan guarantees by the Saskatchewan government. Studies have shown that this subsidized project would cause a glut of fertilizer, driving down its price and quite possibly driving some American producers out of business—all because of government subsidies to this Canadian plant. Our producers, who are not subsidizes by any government, could not compete.

Mr. President, despite the efforts of the domestic industry, Members of Congress, and even the U.S. Trade Representative, there has been no apparent impact on Saskatchewan's intent to go forward with this project.

I think it is important for us, as a government, to find a way to provide relief for our domestic nitrogen fertilizer producers.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. KOHL). Morning business is closed.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT FISCAL YEAR 1991—CONFERENCE REPORT

The PRESIDING OFFICER. The Senate will now proceed to the conference report on H.R. 5803. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5803) making appropriations for the Department of Defense for the fiscal year ending September 30, 1991, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 24, 1990.)

There being no objection, the Senate proceeded to consider the report.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Wisconsin, suggests the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I am pleased to present to the Senate the report of the committee of conference

on Department of Defense appropriations for fiscal year 1991.

The conference committee agreement recognizes the need to curtail growth in Defense spending and to reduce expenditures for military hardware and provides $268,188,076,000 in appropriations. Mr. President, this amount compares to the $286,025,422,000 we appropriated last year; the conference agreement on fiscal year 1991 Defense spending is $17,837,346,000 below the amount appropriated in the fiscal year 1990 DOD appropriations bill.

Mr. President, I think everyone here knows how difficult this year has been—for each of the appropriations subcommittees. I would submit that it has been extraordinarily difficult for the Defense Subcommittee. While others have faced the challenge of insufficient growth, we on the Defense Subcommittee have had to cope with the largest reduction in military spending since the aftermath of the Vietnam war and I think the people of the United States should realize this. In point of fact, Mr. President, because defense spending has grown in recent years, the spending reduction put before the Senate by the Defense conferees may well be the largest reduction in military spending in our history.

Whatever point of view we may have on past growth, I think we can agree that the reductions recommended in this conference report are significant and will have to be managed very carefully, if we are to avoid the fracturing of our military forces, such as occurred after World War II, after Korea, and after Vietnam.

Mr. President, I still remember the Korean war. I was still a young man, fresh out of uniform of World War II, and I watched the Government of the United States proceed to reduce the military. In fact I recall President Truman submitting a budget of $11 billion for the Defense Department and the Congress balked and made significant reductions. That was 1949, Mr. President. Somehow that must have sent a signal to governments throughout the world because a year later the North Koreans crossed the 38th parallel and the rest is history.

For that reason, Mr. President, the House and Senate conferees were unified in thier intent to ensure that Defense spending is responsive to the needs of military commanders in the field and to the soldiers, sailors, and airmen who serve under them. The conference agreement is responsive to the needs of our military commanders in the field. We have carefully prepared funding recommendations which will provide adequate resources to ensure the defense of America. We have been challenged to do so within very tight budget constraints, and we have met that challenge.

In an effort to improve the quality of, and access to medical care for active duty military, their dependents, retirees and their dependents, the conference agreement exempts medical support personnel from the proposed force structure reductions. Last year we provided additional support personnel to relieve doctors, nurses, and other health care professionals from onerous administrative duties so that they could spend their time in providing the high quality of medical care that the military deserve.

These increases where continued in the President's budget this year. Building on these changes in medical services, the conferees provided funding for computerized registries of patients and their prescription requirements in the hope that these would help in alleviating the frustrations of long lines at hospitals and pharmacies and the difficulties in making appointments for treatment.

I should add, Mr. President, that the conference agreement provides $585,000,000 in additional funding above the budget request for Civilian Health and Medical Program of the Uniformed Services.

Mr. President, perhaps some Members of the Senate, or some public citizens, may find it objectionable that the conferees did not terminate any major procurement programs. Throughout the conference, the conferees on the Department of Defense appropriations bill kept in mind the lost jobs and personal hardships which would necessarily accompany any program terminations. We recognize that in the coming year it will become clear which programs ought to be terminated and how we can ease the impact of these terminations on the towns and communities across our country that have come to depend on defense production as their livelihood.

In the meantime, we did take action to sharply curtail funding for several significant programs, funding for the SSN-21 Submarine, the DDG-51, Aegis destroyer, the C-17 airplane, the advanced technology aircraft, as well as the armored systems modernization and missile programs of the Army were dramatically reduced. Funds are provided for the final Trident submarine. We are terminating programs. At the levels provided in the bill and the level of funding which is projected, I do not believe it will be possible to retain two shipyards capable of producing modern nuclear powered submarines. However, I do believe we should face reality and recognize that as Defense budgets decline it will become impossible to maintain multiple sources for military hardware. We must begin now to develop new ways of protecting the Government's interest in maintaining quality and curtailing cost growth in the production of equipment—ships, submarines, and aircraft needed for national defense—under what will, in effect, be monopoly conditions.

Mr. President, before presenting a summary of the bill's more important provisions, I would like to address a matter which has been of concern to the Senate in recent years, and that is the conflict between those who authorize Defense programs and those who appropriate funds for specific items and accounts in the Defense budget.

First, Mr. President, let me say that from the outset of our deliberations, as chairman of the Subcommittee on Defense Appropriations, that this Senator has pursued the goal of furthering the cooperative and constructive partnership which now exists between the Subcommittee on Defense Appropriations and the Senate Armed Service Committee. Together, we have worked to fashion the policies and fund the programs which will guide and defend our country.

Mr. President, the bill which the Defense Subcommittee presented to the Senate on October 15 did not exceed the authorization ceiling for any account totals. In conference with the House, however, we found it necessary to yield to the insistence of the House that we provide additional funding—in excess of the amounts authorized—for some of the appropriations accounts.

Mr. President, I have heard it said by many of my colleagues that this is as close together as the authorizers and appropriations have been in many years. I believe that is true and I think the credit goes to the chairman and ranking minority member of the Armed Services Committee, Senator NUNN and Senator WARNER. They have been most helpful and cooperative with our subcommittee and, for our part, we have done our best to protect their interests, particularly in presenting a common front in conferences with the House committees.

I trust that the Armed Services Committee will recognize the serious and concerted effort we have made to remain within authorized account level ceilings in the conference agreement. I hope that they will support that agreement.

Mr. President, if I may, I would like to summarize the highlights of the bill:

First, in strategic modernizaiton: the conference agreement fully supports the compromise reached between the House and Senate Armed Services Committees on the B-2, the small ICBM or Midgetman, and the MX rail garrison program.

For the B-2, we provide: R&D funds at the authorized level: $1,751,000,000.

Procurement funds at the authorized level: $2,349,000,000 for R&D of the MX rail-garrison program and the small ICBM we provide $680 million,

the authorized level. No funds are provided for rail garrision procurement.

We approved the administration's request for procurement of the Trident D-5 missile. The conference agreement provides $1.344 billion for the procurement of 52 missiles.

Second, strategic defense initiative [SDI]: Our recommendation would provide $2.890 billion in SDI funding, the authorized level. This is higher than a split between the amounts in the bills approved by the Senate—$3.570 billion—and the House—$2.3 billion.

The conference agreement recommends $35,974,792,000 for research, development, test and evaluation for the four armed services and the Defense agencies. Major funding is provided to continue engineering development on the text generations of major weapons systems which will take the field in the mid-1990's—the SSN-21 submarine, the M1A1 block II tank, and the C-17 transport. Significant amounts also are appropriated for the technology base and advanced development programs which are needed for the United States to maintain its military advantages well into the next century.

Mr. President, this bill strikes an appropriation balance between investing in the near future and investing in the far distant future. It maintains and improves one of America's principal military advantages over its adversaries—the breadth, depth, and superiority of our high technology.

OPERATION AND MAINTENANCE HIGHLIGHTS

Funding approved for the operation and maintenance appropriations in title II reflects both the changing requirements resulting from reduced tensions between major powers and the potential for more numerous conflicts with regional military powers armed with increasingly more sophisticated weapons. To this end, the administration's request for funds to operate existing forces was fully funded. This will allow U.S. forces to maintain the state of readiness required to be prepared for these situations.

Adjustments to the O&M budget request are consistent with the smaller forces and reduced overseas presence approved in the authorization bill. Civilian personnel funding is reduced to maintain a defense support establishment sized to current requirements. A major reduction is made to funding for overseas base operations in the expection that host nations will share more of these expenses.

Funding is increased by $585 million to cover higher Civilian Health and Medical Program of the Uniformed Services [CHAMPUS] costs identified by the Department of Defense. The bill also provides $200 million for assistance to communities affected by base closures and reduced Defense procurement.

In support of Operation Desert Shield, the bill appropriates $1 billion, to be transferred from the Desert Shield gift fund account for transportation, equipment repair and maintenance, base operations and troop subsistence. This appropriation is the initial approved transfer of funds provided by the countries which are benefiting from the United States troop presence in Saudi Arabia.

Mr. President, I am pleased with the outcome of this conference. The House chairman, Mr. MURTHA, and his vice chairman, Mr. MCDADE, were most cordial and cooperative. Items in disagreement were argued on substance, not personal preference. The agreement we reached is, I am confident, in the best interest of our country.

I wish to give particular recognition to and express my thanks to my vice chairman, TED STEVENS. Without the constant encouragement and support of Senator STEVENS, the subcommittee would not have been able to achieve so much this year. That the conference agreement on the fiscal year 1990 Defense appropriations bill is a balanced and thoughful response to funding of our national defense programs is due, in large measure, to the work of TED STEVENS.

Mr. President, I also wish to commend the staff of the subcommittee. These individuals worked tirelessly to contribute to good government and to ensure that the Senate would have the best information and anaylsis available to guide its decisions. Mr. President, I wish to give recognition to Richard Collins, the staff director of the subcommittee, who has been at my side now for 17 years and who contributed greatly to the work of the subcommittee this year. In addition, I wish to recognize the contributions made by Jane McMullan, Peter Lennon, Jay Kimmitt, Scott Gudes, Randy Fishbein, Mary Marshall, and Dick D'Amato. Administrative support and a sense of organization was given to the subcommittee by Mazie Mattson and Mavis Masaki. The minority staff—Keith Kennedy, Steve Cortese, and Donna Pate—contributed far beyond their number to the work of the subcommittee.

Mr. President, this year the subcommittee was particularly fortunate to have an excellent departmental support group. These individuals, who come from their parent agencies and departments to work with the subcommittee for the period of one fiscal year, bring a freshness of outlook and enthusiasm which regenerates the entire staff of the subcommittee. Warren Hall, Cynthia Davis, and Tom Smitham will soon return to their normal work place, but they leave behind a subcommittee enriched by their contribution.

Mr. President, Scott Gudes, who has been with the subcommittee for the past 4½ years, will be leaving the subcommittee to become the clerk on the commerce, justice, state appropriations bill. During his time on the subcommittee, Scott set a standard for knowledge and understanding of the Pentagon's operation and maintenance budget which will be hard to match. We shall sorely miss him.

Finally, Mr. President, I wish to pay special tribute to an outstanding member of the subcommittee staff. Mr. Charles J. Houy, the senior analyst and deputy staff director for the subcommittee embodies the full meaning of the term public servant. His dedication and commitment to good government is a beacon to all who seek to understand why educated and talented people continue to strive to improve the work of the Senate and the Government of the people. Charlie Houy is a model of responsible and enlightened public service.

Mr. President, these are the staff of the subcommittee on Defense appropriations. I thank them, one and all, for their work and their contributions.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska [Mr. STEVENS].

Mr. STEVENS. Mr. President, my friend from Hawaii is gracious as usual in his comments.

I wish to thank the distinguished chairman of the subcommittee, and I join him in presenting the 1991 Defense appropriations conference report to the Senate. This bill is true to the Senate passed bill, and consistent with the major programmatic decisions reached in the Defense authorization conference report.

The fact that this bill was reported to the Senate only 2 weeks ago, and has now returned as a conference report is genuinely a tribute to the leadership and dedication of the chairman, Senator INOUYE. This bill passed the Senate in just 1 day, and our conference with the House was expeditious and successful.

Mr. President, in my judgment, the Senate is extremely fortunate to have as the chairman of this Subcommittee of Appropriations the distinguished Senator from Hawaii. It is a matter of fact, as he stated his memory of history and of the events following World War II, the three of us now have not only participated in World War II but we have been here during the period of the review of the Korean war and the Vietnam war, and we in this report and our recommendation join Members of the House with similar experience in urging the Congress to learn from the mistakes of the past.

With our troops in the field under Desert Shield and the crises that exist around the country and the world, we believe we must have a steady hand in dealing with the funding of our Department of Defense.

That is what this bill represents, the influence of a series of men and women who have dealt with this Department of Defense for years. We recognize the trends. We have brought to the Senate a bill that does in fact reduce not only the amounts that were available last year but the President's request this year but still it represents a substantial commitment on the part of the taxpayers of the Nation to continue to support those who have volunteered to defend our Nation.

I think it is imperative that we remind each Member of the Senate and the public this is a volunteer military force that we have. It is a force that signs contracts with our Government to be prepared to defend our interests at home and abroad, and they are now involved in defending our interests abroad.

The signal that we send is a signal that while we understand the public wants to substantially reduce our defense expenditures, and we are committed to follow their will, we want to see that done in a way that will not deter future enlistment and will not represent a breach of faith with those who have undertaken to defend our country.

Again I commend the Senator from Hawaii and, as he does, commend all of the staff for what they have done. My remarks to those who are here—and I know there are those here who want to disagree with this report—is that once again we have brought our conference report to the floor of the Senate without having had first enacted an authorization bill. That is no fault of those who manage that bill. They, too, have had substantial difficulty once again this year in reaching agreement, not only between themselves and the Members of the other body but with the administration.

But this bill, this conference report, represents an agreement that had to be reached with Members of the House without the guidance of a bill to authorize these expenditures that had the approval of the President.

My only comment to the Senate is if members of the Armed Services Committee think it is difficult to get an agreement with Members of the House on an authorization bill, they ought to try to get an agreement with Members of the House on an appropriations bill without an authorization bill.

We have done it once again. I think, due to the wisdom of my good friend from Hawaii, Senator INOUYE, this bill is balanced. It represents a bill that has made some concessions to Members of the House that were necessary to get a bill that could go to the President and be accepted by the President without regard to whether that Armed Services bill finally reached an agreement. That was also acceptable to the President.

It is my hope that the Senate will be very slow in amending this conference report on the appropriations bill under the circumstances. I will have more to say about that later.

The points we raised during Senate consideration of the bill still apply: this conference report cuts defense spending by $19 billion from the President's request. This reduction represents a 6-percent reduction from the appropriation for 1990. This conference report presents the Senate, and the country, with the first installment of the peace dividend. I remain concerned that some reductions may be too deep and too fast, but overall this bill sustains the President's and Secretary Cheney's top priorities.

Several important initiatives are before the Senate in this conference report. This bill provides $900 million to expand and revitalize the military's sealift fleet, a need demonstrated dramatically in the ongoing deployment to Saudi Arabia. Military personnel are reduced by 78,000 from the current level, still a deeper cut than desired by the services, but less than provided in the Senate bill. This bill adds over $500 million for the CHAMPUS medical program for military dependents and retirees, while establishing several new initiatives to help control CHAMPUS costs.

The funding provided in this bill for SDI and the B-2 are consistent with the authorization conference report. I join Senator INOUYE in support of their resolution on these two important programs.

The Senator from Hawaii and I have also worked to respond to the requests we received from our colleagues regarding this bill. I personally received letters from 56 Senators concerned about items in this bill. Virtually all those requests have been funded in full or in part in this bill. It was no easy task meeting those requests while reducing $19 billion from the defense budget, but I wish to again thank the chairman for his support in these matters.

Consistent with the proposed budget reconciliation package, this conference report does not include funds directly for Operation Desert Shield. At the request of the Secretary of Defense, and after carefully reviewing the stated requirements and funds available, the conferees did appropriate $1 billion from contributions made to the Defense Cooperation Fund by other nations for operation and maintenance costs associated with Operation Desert Shield. None of the funds may be used to acquire major weapons systems or to pay personnel. This provision will assure that sufficient funds are available to support our forces in Saudi Arabia, and hopefully spur our allies to continue and increase their contributions for these expenses.

This bill addresses the deployment of U.S. military personnel overseas. The conference report mandates the withdrawal of 50,000 personnel from Europe over 1991, and initiates a reduction of forces stationed in Japan, unless Japan assumes more of the costs of those troops. I remain concerned that we not proceed too quickly to dismantle the forces that have secured the unification of Germany and new, freely elected governments in Poland, Hungary, and Czechoslovakia.

The same concern applies in Asia, where the certainty of our support for South Korea has led to unprecedented negotiations between the governments in Seoul and Pyongyang. Our presence in east Asia has directly contributed to the movement toward peace in Cambodia. These gains were realized at too great a price to be tossed away for relatively minor budget savings in the near term.

I hope the Congress will continue to support the plans developed by the Secretary of Defense and General Powell for our worldwide defense structure. We on this committee have worked closely with the Department in producing this bill, and I am confident that it will be endorsed by the Secretary and the President.

Finally, Mr. President, I again wish to thank my good friend from Hawaii for his courtesy and partnership in presenting this conference report to the Senate. Our work through the year has been as a team, to meet the needs of the Nation and the men and women who serve in the Armed Forces. I look forward to joining with the Senator again next year on this important bill.

Mr. President, I commend this report to the Senate and urge its approval.

Mr. NUNN. Mr. President, as I understand it, there is no time agreement on this particular bill, the conference report, at this time. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. NUNN. Mr. President, this spring the distinguished chairman of the Defense Appropriations Subcommittee, Senator INOUYE, offered a very thoughtful speech on his perspective of a changing security environment and his thoughts on how the United States should respond to that changing environment.

His speech did not receive the kind of public attention, and attention perhaps in the news media, that it should have. But I know many of my colleagues joined me in reading it very carefully. I felt it was an excellent speech with many important recommendations.

I think we are very, very fortunate in this body to have Senator INOUYE and Senator STEVENS in their key leadership positions on defense issues at

this critical time as we are going through a transition from one type threat to many other types of threats, particularly those that we witness in the Middle East.

The chairman has now brought back a conference report on the fiscal year 1991 defense appropriations bill. Overall, I think this is a good conference report under very difficult circumstances, with several exceptions, which I will mention this morning. These exceptions are of concern to me, and I think our colleagues should understand them. But overall, I emphasize I think this is a good conference report.

I commend the chairman and I commend the ranking member. I commend their staff. As the Senator from Hawaii said, I think this year has been the year where we worked with the most coordination, in a constructive way, with the appropriators, and I believe it is because of the leadership of the Senator from Hawaii and the Senator from Alaska, and also I have to add the chairman of the Appropriations Committee, Senator BYRD.

We have given the highest priority to establishing a closer working relationship between this key subcommittee and the Armed Services Committee. This is the way the authorization and appropriation process should work. I hope we can improve it further in the years ahead.

I have to say this reflects the overall philosophy also established by the chairman of the Appropriations Committee, Senator BYRD. No other Senator understands the workings of the Senate as well as Senator BYRD. No other Senator is as dedicated to ensuring that the legislative process proceeds on an orderly basis.

Senator BYRD and Senator INOUYE have been enormously helpful in diffusing the tensions that existed between our committees and restoring the pattern of collaboration that nas been a hallmark of the Senate.

Mr. President the Defense authorization bill and the Defense appropriations bill start to implement the key initiatives of the Congress in crafting a new military strategy and a new budget plan to implement that strategy, following a very careful analysis of a changing threat in the world. I will not go into detail today on that threat. I have spoken on that subject many times in this past year.

Suffice it to say there is no such thing as a logical defense budget that does not start with an assessment of the threat.

We will have our authorization bill on the floor, conference report, which has now passed the House immediately following the disposition of this conference report. But I believe that we have many common themes in both of these bills.

First, the defense authorization and the defense appropriations bills establish a stable, long-term glidepath for an orderly reduction in the size of our military.

Second, both bills clearly establish a requirement that we fly before we buy for most major weapons systems. That means test before we procure.

There is an important difference of opinion on one system, which I will discuss later. That is the advanced tactical fighter. But by and large, our bills share this basic approach to acquisition.

Both bills shift a greater share of the burden in the future on the reserve components and ensure that those components receive modern equipment in keeping with their duties today and their duties in the future.

Both bills provide for a solid and balanced strategic modernization program.

Both bills emphasize the need to improve our projection forces and shift away from a forward deployed strategy toward a reinforcement strategy.

Both bills challenge the Department of Defense to improve its management by improving management efficiencies, streamlining headquarters, and consolidating redundant activities.

Both bills contain key congressional initiatives in the area of the environment, economic conversion, military sealift, and critical technologies research.

Mr. President, in the absence of what I would call consistent and strong leadership from the administration this year in meeting these changes in the world in the defense arena, the Congress has taken the lead to forge a new strategy to meet the requirements of the far-reaching changes that are underway. I am proud to have been a part of that process.

I congratulate Senator INOUYE for his leadership role. I also want to thank Chairman JOHN MURTHA of the House Defense Appropriations Committee, for his continuing leadership in crafting this legislation.

Earlier this year, Chairman ASPIN, Chairman INOUYE, Chairman MURTHA, and I had several discussions on how to approach the defense issues this year. We pledged to work together. There are some exceptions that will be noted today. But overall, in the broadest scope, these two bills are mutually reinforcing bills.

Before I get off into areas where we differ, I want to make sure that it is clearly understood that I believe that overall these two bills reinforce and point in the same direction.

Mr. President, I want to emphasize that because I do not want my remaining remarks to be taken out of context in any way. There is not a bill or a conference report that cannot be improved. We all know that. There are items in the authorization conference agreement on which I would prefer a different outcome. I publicly identified several in my own conference report which I believe are weaknesses and are problems we will likely have to revise next year.

I plan to vote for this conference report. I urge my colleagues to vote for it. But I have several concerns. I think our body needs to understand what we are doing as we vote. There are some problems here that cannot be fixed on this bill because the appropriations conference is not amendable.

I want to put out a marker on those items which I feel must be revisited at some point either in this session or early next year. I will have an amendment, perhaps hopefully joined in by Senator DANFORTH, on a subsequent appropriations conference report to remedy, hopefully, if the Senate is agreed to it, one of those difficulties.

The foremost difficulty here that I have with this bill is the category dealing with university earmarkings. We have numerous earmarks of defense research money for specific projects and specific universities and colleges on this bill. What makes this most objectionable is the explicit direction by the conferees to waive the existing Federal statutes that require awards to be made on the basis of fair and open competition.

The conference report includes a provison that specifically exempts these university set-aside projects from Federal statutes that the Senate adopted only 2 years ago requiring fair and open competition in this area. I thought we licked the earmarking problem out several years ago after floor debate and votes in the Senate on this, but this conference report takes a giant step backwards.

These projects are of such questionable value to the Department of Defense that the bill has to exempt these projects from any form of competition or merit review in order to assure their funding. Let me just read a provision that is included in the conference report that applies to these projects. This is the section that overrules existing law, section 401—

SEC. 401. Funds appropriated in this title that are directed to be made available for a grant to, or contract with, a college or university for the performance of research and development or for construction of a research or other facility shall be made available for that purpose without regard to, and (to the extent necessary) in contravention of section 2361 of title 10, United States Code—

And I add as an aside, this is the law requiring merit reviews in competition. "* * * which is hereby modified and superseded to the extent necessary to make each such grant or award each such contract and any such grant or contract shall be made without regard to any of the conditions specified in subsection (b) of that section or sec-

tion 2304 of title X, United States Code."

Mr. COHEN. If the Senator will yield, is the last reference to title X, United States Code, the Competition in Contracting Act?

Mr. NUNN. The Senator is correct.

Mr. COHEN. It suspends or overrules the act that was passed by Congress to promote more competition specifically overrules them?

Mr. NUNN. That is correct.

Mr. President, the effect of this new general provision is to wipe competition and merit review off the books and to exempt any of these earmarkings from the process Congress established several years ago to ensure that the awards are made on the basis of merit, and that competent institutions are allowed to compete.

These competition statutes were the result of several years of floor debates and votes on these issues led by Senators DANFORTH, BINGAMAN, COHEN, and others, to ensure that all colleges and universities have an equal opportunity to compete. Yet, now these statutes are waived in order to ensure funding for a series of projects.

They may be worthy projects. They may be earmarked to be performed by universities that can do them well. I do not know. That is not my point. I am not here to criticize any university. I do not believe this process is in the best interest of the taxpayer or the Department of Defense or the U.S. Senate.

If these programs have merit, they will succeed in a fair and competent review in competition. If no other institution in the country is able to compete, there should be no fear whatever of competition. The Secretary of Defense has discretion in unique situations to make awards without other institutions competing, where there are unique capabilities available only in certain universities.

Mr. President, there are several dozen earmarked projects in this conference report. I, frankly, cannot tell my colleagues how many, because sometimes it takes a few weeks to go through and find them all. But no one else in the world is allowed to compete to work on these projects. No matter how competent any other college or university or institution might be, there is no flexibility on the part of the Government to get the most out of the investment, and there is no assurance of capability to perform.

Mr. President, I am a realist, and there is nothing that could be done on this bill to fix this problem, except defeat the conference report. And I do not urge that. I think that this problem, as significant as it is to me, does not justify defeating the conference report. I think we need to find a way to remedy that without defeating this report.

This legislative provision eliminating competition was not in the House or Senate bill when originally considered. Some of the projects were, but this provision waiving the Competition in Contract Act is a legislative provision on an appropriation conference report. It was not in the House bill or in the Senate bill.

There was no opportunity to debate this extraordinary procedure. At this point, I will have to look for an appropriation vehicle to try to amend this provision. I do want to serve notice, so no one will be surprised that I will try to do this in the next couple of days, if the situation is available.

Mr. President, there is another item in the appropriation conference report which I point out. This concerns the Air Force's advance tactical fighter. The advance tactical fighter is a $75 billion program.

I am often perplexed, sometimes amused, at—and I have to say this to our friends in the media, who do a good job reporting on most things—how we get obsessed with one weapon system. In this country there always is a weapon system of the year that everybody focuses on. This year it is the B-2. Maybe the B-2 will be the weapon system everybody focuses on for the next 2, 3 years.

But there are at least seven or eight other programs in this bill that are much larger than the B-2, in terms of cost, what we are going to be spending from now on. One of those is the ATF, a program I support, a program I think is important.

This is a $75 billion program. The Air Force has proposed this year to initiate full-scale development. Both of the Armed Services Committees conducted thorough reviews and concluded that it is not appropriate to initiate full-scale development this year, because there are too many unanswered questions to justify launching a $75 billion new aircraft.

We are not saying we are not in favor of this development; we are saying let us go slow before we commit this kind of funding, without making sure we have completed the necessary testing.

Both the House- and Senate-passed authorization bills contained a provision prohibiting the Air Force from initiating full-scale development in fiscal year 1991. This was not even a conference issue in the authorization conferences, because both bills had identical provisions. Despite this, the appropriations conference report includes the provisions overturning the bill language in the authorization conference report, and directs the Air Force to start full-scale development on the advance tactical fighter.

This is not an issue of fiscal year 1991 funding. This is an issue of policy, an issue of commitment, and an issue of timing. Based on the recommendation of the two Armed Services Committees, both the House and the Senate concluded this summer that it was unwise to commit to develop the advance tactical fighter in fiscal 1991. Now in a provision in the appropriations conference report, which was not debated in the House or Senate, overturns the actions of both the House and Senate.

The future of the ATF is going to be in the forefront next year, notwithstanding any waiver by the appropriations conference. I think I should put the Air Force and Department of Defense on notice that I believe that, notwithstanding the provisions in this conference report, a great majority in the House and the Senate do not favor the Air Force launching full-scale development of the advance tactical fighter at this time, until they have tested it, and until we are sure of what we are doing.

Mr. President, the final, but also very seriouis concern I have about this conference report is, a provision in the conference report that would double the President's current authority to call up reservists and National Guardsmen, without declaring a national emergency.

Currently, reservists and National Guardsmen may be activated by the President for 90 days, and then extended for another 90 days, under section 673(b) of the United States Code.

I was the principal author of that provision enacted in 1976. One of the principal failures of the Vietnam war is the fact that the President of the United States did not call up the Reserves and relied on the draft in that war. We had people who had been trained for years who were not called to fight in that war, and it was a real failure of leadership in this country in failing to do that.

This provision that came about in 1975 tried to restore some credibility to the Guard and Reserve by making it more likely that in short-term type contingencies and in short-term situations, less than a national emergency type situation, the President would feel he could call up guardsmen and reservists to serve the Nation.

The provision originally provided that 50,000 reservists and guardsmen would be called up short of a declaration of national emergency. This means the President can call them without declaring a national emergency. The provision was later amended to increase that number that could be called up to 100,000, and then to 200,000 in 1986.

The period of callup has always been 90 days, with authority to extend for another 90 days. So right now, those reservists that have been called by the President to serve in the Middle East are called up under this section. This is the law that has been used. It allows

them to be kept in for a period of 180 days, up to 200,000 people.

I think the President has used this law appropriately. I am not complaining about the use of it. I believe, however, that when we move from this provision to the provision in this conference report, which would double the time period and permit the President to call up combat units of the Guard and Reserve for the initial 180 days and extend another 180 days without declaring a national emergency, we should be aware of what we are doing. This provision was not in the Senate bill, nor was it in the House bill. And it was not subjected to any public review or hearings as to its implications.

I believe this is the kind of provision Senator BYRD was referring to in his remarks to the Senate last night about items that have no place in an appropriations bill. I think there are a number of difficult questions raised by the proposed increase from 6 months to nearly a year in the authorized duration of any nonemergency Reserve callup.

I raised these questions in a letter to Secretary Cheney on October 15.

First question: Would such an increase unnecessarily blur the distinction between the limited callup authority and a declaration of national emergency?

I think everyone should understand this because I think a lot of people do not, and I do not think it has been made clear in a lot of reporting. Under current law, upon declaration of national emergency, the President can activate up to 1 million National Guard and Reserve personnel up to 2 years. That is if he signs a national emergency. That does not require an act of Congress. The President has that authority.

If we get to the point in the current Persian Gulf crisis where we have to keep the National Guard and Reserve units on active duty for more than 6 months, then the President can declare a national emergency.

The American people need to understand what we are committing to in the Persian Gulf and need to know what the stakes are.

That is one of the reasons requiring a national emergency to be declared so we do not take guardsmen and reservists, for that matter any other Americans, without having the Nation understand the stakes involved and understand the seriousness of what is going on.

The question is why is the President unwilling to declare a national emergency if he needs to callup for longer than the period of 180 days.

Second, what is the basis for the proposal in terms of actual analysis of the requirements for Operation Desert Shield. We have not received either a formal proposal or a clear rationale from the Department of Defense for extending the current 180-day authority. Operation Desert Shield is the first time this authority has been used. Defense officials are reviewing the implementation of this callup authority but they have not yet developed any analysis indicating that changes are needed.

Mr. President, the third question to our colleagues today, and this is part of the questions I proposed to Secretary Cheney, are there alternatives that can be tried without changing the law? The proposed increase in the callup authority to 360 days is intended to provide for the training of Army Reserve and National Guard combat units at the National Training Center before they are deployed. The Army claims that because of this training requirement, these units could serve no more than 4 months in theater if they are activated under current callup time limits. It seems to me if this is a concern the Army can easily handle this problem by training these units under existing active duty for training authorities and then later activating them under the current 180-day callup authority as a way of getting 6 months of net effective utilization time in the theater.

I have suggested to the Secretary of Defense, because I am one of those like my colleagues in the House, Representative MONTGOMERY and Congressman MURTHA who believes the Secretary should callup some combat units if needed in the Persian Gulf and I believe based on recent headlines that they may be needed; perhaps they already were.

Finally, what would be the impact on the strength of the support for the total force concept? In reviewing any proposal to extend the authority from 180 to 360 days, we need to have an analysis; we need to determine whether changing the rules on National Guard and reservists and also on employers in the middle of the game would have an adverse effect on the total force concept.

This is the first time that the 200,000 call up authority has been exercised. We have not given this authority a chance to work yet as it was designed. Reservists and employers know the rules now and in attempting to fix a problem that I do not believe exists, we may be creating problems in this area that we do not know about.

What I cannot understand, and I said this to Secretary Cheney and to others, what is the problem? Anyone looking at the news every night knows we have an emergency situation in the Persian Gulf. Why is the President unwilling to tell the people we have an emergency if he needs to call up further reservists for the longer period of time than the existing authority?

Mr. President, I have received mixed signals from the Department of Defense on this matter. On October 9, 1990, Secretary Cheney sent a letter to Representative SONNY MONTGOMERY saying he supported the change in law doubling the President's call up authority. On October 22, 1990, which is some 2 weeks later, I received a letter from the Acting Assistant Secretary of Defense for reserve affairs on this matter saying the questions I had raised on the need for a change in law required thoughtful consideration and that Secretary Cheney would provide his best judgment on this matter as soon as possible.

So 2 weeks after the Secretary told one group he wanted this, we have a letter from the Assistant Secretary saying the Secretary is thinking it over and is going to give us his thoughts. So there is obvious confusion over this matter in the Pentagon.

My major point is if the Pentagon thinks they need this they ought to come up and ask for it, we ought to have hearings, the American people ought to be told and the people in the Reserve and Guard units ought to be told what we are doing. That is the major point.

Mr. President, the questions I have raised about the proposal do not reflect on my part any lack in confidence in our National Guard or Reserve components. I have been very impressed with the performance of our National Guard and Reserve components in Operation Desert Shield. They have proven to be well-led, ready and responsive to the call.

Although Operation Desert Shield callup does not include the calling up of ground combat units at this time, I believe the callup of these combat units is desirable and is inevitable to meet further rotation requirements, and I urge Secretary Cheney to act accordingly.

Again, there is nothing at all that would preclude the Secretary of Defense from calling them up for training and then if he needs them calling them up under this authority for a longer period. I believe they will prove to be as dedicated and responsive as the combat service support units that have been called up so far.

Mr. President, as I indicated in my earlier remarks there may be some problems associated with the length of predeployment training that National Guard and Reserve units have to go through that could reduce the net effective utilization time of these units in Operation Desert Shield because of the current 180-day call-up limit under the current order. However, if Secretary Cheney and the President believe Reserve and National Guard units are needed longer than the existing 180 day limit, in my opinion they should declare a national emergency and let the people know.

Mr. President, we are in a budget mess now that we have been struggling with for quite a while. One of the reasons we are in that mess, in my opinion, is because we have not had candid and open leadership from the White House for the last 8 or 10 years in telling the people of the United States what the budget problems were and are. We still have not had that in a complete way and I must add we have not had it from the congressional perspective either.

I hope we do not get in a mess in the Persian Gulf and erode the support of the American people by not being willing to tell them we have an emergency if we do have an emergency. I hope we do not get into that situation.

Mr. President, each of the three items in the conference report that I have talked about share one thing in common: all three were invented in a conference committee. They were never included in either the House or the Senate bills when passed. The Senate has never had an opportunity to consider these items and vote on them and that is not the way the process is supposed to work.

Last night Senator BYRD spoke to this breakdown in the legisltive process. He said and I quote Senator BYRD. "I do not want to see the legislative process perverted here. That is exactly what we are doing when we attach authorizing measures to appropriation bills."

Mr. President, Senator BYRD is right. All of us have been guilty of that. I certainly know I have in the past and I am sure my colleagues have been. We better start thinking a little bit more about what we are doing. These legislative provisions in my view should not be part of the appropriations conference reports. We must be on guard against this in the last days of the 101st Congress.

Mr. President, I want to return briefly to the point where I started. I am grateful for the leadership Senator INOUYE and Senator STEVENS have given and overall I believe this is a good solid bill. I believe it represents a solid foundation for fiscal year 1991 and for the next 5 years, in terms of our defense budget.

Mr. President, I wonder if I could engage in a brief colloquy with my friend from Hawaii about this reserve callup provision.

Mr. INOUYE. I would be very pleased to.

Mr. NUNN. May I ask the Senator a couple of questions and maybe have an observation, too, as he has his observation? Does the Senator from Hawaii share my concerns I have outlined in my remarks about extending the period of time under which a reservist could be called to active duty without a declaration of national emergency?

Mr. INOUYE. As I indicated to my friend from Georgia last evening, I am concerned that this action is being taken without a declaration of national emergency. But, I believe it would be well to note at this juncture that while technically the President has not declared a national emergency, we have at this moment in the Middle East 240,000 troops, countless numbers of naval vessels, aircraft in great numbers. There is now discussion of sending another 100,000 troops.

We have had an opportunity in this Congress to do something about the War Powers Act. We let it slide by. If my recollection is correct, in the deliberations that we have gone through on the Defense authorization bill and the Defense appropriations bill, no Member of this body made an attempt or submitted an amendment to curtail the use of funds for Operation Desert Shield.

If my recollection is correct, most of my colleagues here were rather eager to cheer on the boys and the girls, now, as they left the United States to go off to Desert Shield. So it is true, Mr. President, and my colleague is absolutely correct, that a national emergency has not been declared and I would have hoped that the President would have done that.

But I think all America recognizes that there is is an emergency. Commentators are now talking about the possibility of a fighting war between Thanksgiving and Christmas. All these experts now are making predictions. Even the President of France suggested that sometime between yesterday and December 5th shooting will begin. So, Mr. President, there is an emergency.

About the Reserves, as the distinguished chairman of the Armed Services Committee is well aware—and I commend him for articulating this policy of "total force" and round-out, one-third of our combat forces are in the Reserves and two-thirds are Active. Yet, all of our combat troops in Saudi Arabia are Active Forces; none are Reserve Forces, are they?

Mr. NUNN. I believe, with the exception of one or two units, that is basically correct. None of the major combat units on the ground are Reserve.

Mr. INOUYE. Mr. President, will the Senator permit me to make a unanimous-consent request?

Mr. NUNN. I am glad to.

VITIATION OF ACTION ON SENATE CONCURRENT RESOLUTION 157

Mr. INOUYE. Mr. President, at the request of the leader, I ask unanimous consent that Senate action on Senate Concurrent Resolution 157 be vitiated.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, FISCAL YEAR 1991—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. INOUYE. Mr. President, I must concur with my friend from Georgia that in an action of this sort it would have been extremely preferable, and I think legally preferable, if the President of the United States should take that step, to declare this a national emergency, because it is an emergency.

Mr. NUNN. I thank my friend from Hawaii.

Mr. President, I ask unanimous consent that the various letters I referred to, including a letter from Mr. George Kundahl, Assistant Secretary of Defense, and a letter I wrote to Secretary Cheney be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follow:

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, October 15, 1990.

Hon. RICHARD B. CHENEY,
Secretary of Defense, Department of Defense, The Pentagon, Washington, DC.

DEAR MR. SECRETARY: We are writing to you concerning a proposal that would extend the period of time for which the President can involuntarily activate National Guard and Reserve personnel under section 673b, title 10, United States Code. This authority currently allows the President to call up National Guard and Reserve personnel for an initial period of 90 days, and to extend the period by another 90 days. The proposal would extend current authority to cover two 180 day periods.

Section 673b was originally enacted to provide a limited call up authority short of a national emergency. It was designed to be used either to allow the President to begin to mobilize military forces as a first step toward a broader declaration of national emergency, or to allow the President to mobilize selected National Guard and Reserve units for limited operational requirements short of a national emergency.

We believe that there are ground combat units in the Army Reserve Components, particularly in the Army National Guard, that could make a valuable contribution in Operation Desert Shield. However, we understand that the current Reserve call up for Operation Desert Shield in the Army Reserve and Army National Guard has been limited to combat support and combat service support units. The reason cited by Defense Department officials for not calling ground combat units in the Army Reserve and Army National Guard was that these units would require training time before deployment that would limit their deployed time under Section 673b call up to approximately 4 months.

We would like to know your views on whether the current call-up authority of section 673b needs to be changed at this time. The proposal increasing the extension of the call-up from 6 months to a year raises a number of questions:

Would such an increase blur the distinction between the limited call-up authority and a declaration of national emergency under which the President has the authority to call-up National Guard and Reserve personnel for up to two years?

Is such a proposal supported by any analyses that establishes a requirement for such authority, such as for Operation Desert Shield?

Are there alternatives to changing the current law? For example, can National Guard or Reserve personnel be activated for training under an authority other than section 673b so that their training time would not count against the section 673b time limits?

What would be the impact on the strength of support for the Total Force concept? For example, Reservists and employers know the rules now. Would making National Guardsmen and Reservists subject to involuntary call-up of up to a year short of a national emergency undermine the support for Reserve component service among employers?

We look forward to hearing from you as soon as possible on this issue. Thank you for your attention to this matter.

Sincerely,

SAM NUNN,
Chairman.
JOHN W. WARNER,
Ranking Minority Member.

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, October 22, 1990.

Senator SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SENATOR NUNN: Thank you for your letter of October 15 to Secretary Cheney concerning a proposal to extend the period of time for which the President can involuntarily activate National Guard and Reserve personnel under 673b, title 10, United States Code. The proposal would extend the current authority to cover two 180-day periods.

As indicated by your letter, this is an extremely important and complex issue, requiring thoughtful consideration by the Department. Secretary Cheney will provide you his best judgment on this matter as soon as possible.

Sincerely,

GEORGE G. KUNDAHL,
(Acting).

THE SSN-21 ATTACK SUBMARINE

Mr. ROBB. Mr. President, I rise to say a few words about the SSN-21 attack submarine.

This is a matter of great importance to me, to my State, and to our country's nuclear attack submarine industrial base.

Right now, the Soviet Union maintains five separate submarine construction yards. As the U.S. Secretary of the Navy considers which construction yard produces the second SSN-21, I hope that he keeps this fact in mind. I strongly concur with the view that the Secretary should consider all applicable factors in making the award, and to pay particular attention to the need to maintain a viable submarine industrial base.

In this regard, I strongly urge that actions are not undertaken that would effectively preclude future competition for the third SSN-21 and beyond, which would leave our Nation with only one submarine construction yard. Having two yards capable of producing the SSN-21 will be good for our national defense, will enhance the quality of the system, and preserve our individual base.

Mr. NUNN. I thank the Chair and I thank my colleagues.

Mr. President, I yield the floor.

Mr. DANFORTH. Mr. President, I want to address very briefly just one of the points that the Senator from Georgia made, and that is the point about earmarking for university research. This is the latest in a very old war that has been going on on the floor of the Senate on a number of occasions.

We have acted on the floor of the Senate to strip from appropriations bills earmarked grants for research at universities. Indeed, we have attempted also to deal with this in a generic fashion, specifically with a provision that Senator NUNN included in a Defense authorization bill last year requiring merit review for university research grants and then, of course, the Competition in Contracting Act. As Senator NUNN pointed out, this legislation, the conference report, without any action by the House or the Senate, has vitiated these two provisions of the law and has stated that they are superseded to the extent necessary to make specific grants and awards.

It is my understanding that the various research grants in the legislation were not in the Senate bill. At least some of them, maybe all of them, were in the House bill; I do not know.

One of the problems is identifying just what the research grants are. They are tucked away in various provisions of the conference report. As Senator NUNN has pointed out, it is very difficult, unless staff spends literally weeks looking for all these items, to find them.

Just a cursory glance at the legislation indicates that there is $10 million for a Center for Technology and Applied Research at the University of Scranton; there is $6 million for the Advanced Manufacturing Institute at the Stevens Institute of Technology; there is $10 million to Drake University for a facility under the College of Pharmacy and Health Sciences; there is $3.5 million to Loyola College to complete the Center for Advanced Information and Resource Management Studies.

I was wondering, Mr. President, if the managers of the bill have a list of those university research projects which are new starts in this legislation and whether they have a list of the amounts that are earmarked for those projects and whether they could make those available to the rest of the Senate.

(Mr. GLENN assumed the chair.)

Mr. STEVENS. Mr. President, I would be happy to try to get such a list. I want to tell the Senate that if it is presented, I hope that we look at the federally funded research development centers. We call them FFRDC's. This bill contains $1.6 billion for the 10 major universities. The Senator from Missouri has looked at the additions that total about $100 million for the nonfederally funded research and development centers. MIT, Lincoln Lab, and Mitre in the Boston area each have more than $425 million.

When we look at the funds in this bill that are directed under the authorization bill to the 10 major universities, as I said, we are using $1.6 billion. The House has insisted on adding funds for some smaller universities. This is, once again, the traditional battle that we have had in terms of this bill.

If the Senator from Missouri wants to see what is tucked away in this bill, he will find that we have refused the funds for the federally funded research and development centers in our appropriations bill and used those funds for other universities which are less well-known but are equally involved in the research that is essential to the Department of Defense and to the various science projects that are ongoing for the Federal Government.

Our committee has adjusted the federally funded research and development centers back to the 1987 level. We found that there was a 37-percent increase since 1987 in these major centers and a corresponding decrease in the funds that were available to the nonpeer review centers that we have been involved with in the past.

So the Senator from Missouri has raised a subject that I hope the Senate will be interested in debating at length. We will try to get the list. I have asked to have the House send over to us the list that was prepared and available to us in the conference that demonstrated the staggering increase of money, once again to the peer review centers, where, as I have said before on the floor, the people from the "good old boy league" continue to pull one another up by their bootstraps and continue to throw Federal money at these 10 major centers. We have decreased those by approximately 10 percent.

As I have indicated, that money that has been cut has been allocated in this bill, at the request of the House, to these other universities. I think that, if the Senator from Missouri would look at it, he would find that the money dedicated to university research is less than requested, less than authorized, but, once again, there is a portion of the money that is put into smaller universities.

Mr. DANFORTH. Mr. President, I thank the Senator from Alaska for his explanation and also for his willingness to provide us with a list, hopefully, before Senator NUNN raises the question in connection with some other legislation.

The Senator from Alaska has pointed out exactly what I feared about this bill; namely, that money has been shunted from the merit selection process to what could be called the pork barrel process of academic research.

In other words, we have subtracted from the high quality research, from the research that is determined by experts in the field and we have, instead, used that money to furnish it to colleges and universities simply on the basis of the desires of the conferees in this legislation.

In order to do that, the conferees have set aside two different provisions of existing law as though they did not exist at all. They have set aside a demerit process which has been established in substantive law. They have set aside the competition in contracting act. And they have done so very openly and provided multimillion dollar grants to universities which may or may not have programs of quality. We do not know that. It would be accidental if they did because there is no process to determine whether they do or whether they do not.

I would say, Mr. President, this has been an ongoing problem. These are just guesses because earmarking is so hard to find in legislation, but in 1988, it was believed that Congress earmarked $225 million for research and facility projects at specific universities. In 1989 the figure was $289 million. As of May, in 1990, according to the Chronicle of Higher Education, it was $270 million.

When we do this, as the Senator from Alaska has just indicated, it is a matter of robbing Peter and paying Paul. It is a matter of diverting research funds from high quality research to lesser quality research. And, I would also say, it is particularly ironic that we are doing this as we are attempting to wind down the 101st Congress and deal with the extremely contentions problem of the budget.

It is clear whatever we do in reconciliation, if we do anything, if we are able to pass reconciliation, there is going to be a very significant tax hike on the American people. We will be raising their cigarette tax, their beer tax, their gasoline tax, their income tax, all kinds of taxes. One thing people point out is: Why should you raise taxes in Washington? Why you do it, you will just blow the money on something. You will just squander it; you will throw it away.

Mr. President this really is an example, in the opinion of this Senator, of consciously throwing money away, consciously, at a time when we are in this fire drill of a budget reconciliation process, consciously taking the taxpayers' money and pork barreling it in various university research projects which have had no merit review at all and which have not been subject to the competition in contracting process.

Mr. STEVENS. Will the Senator yield?

Mr. DANFORTH. Sure.

Mr. STEVENS. I want to make a statement, not ask a question, if I can do that by unamious consent, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I will yield the floor, then.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. The Senator from Missouri has indicated we have cut the competitively awarded peer review process universities. That is not true. We did not cut any planned competitively awarded projects. Rather, we cut the money from the federally funded research centers.

I would be pleased to provide this for the Senate. As a matter of fact, I ask unanimous consent this table be printed in the RECORD immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. STEVENS. This chart shows from 1985 to 1991 these centers have increased in terms of funding from $1,012 million to $1,625 million. We took a portion of that money, Mr. President. Some of these increase have been rather staggering.

For instance, the Mitre Division had $271 million in 1985. They have $458 million in this year's bill.

The Lincoln Laboratory at MIT had $322 million; they have $450 million this year.

The RAND project had $18 million in 1985; there is $25 million in this bill. The Logistics Management Institute had but $8.1 million in 1985; there is $22.5 million here.

As I indicated, if we average these out there has been a 30.9 percent increase in these funds in the period from 1985 to 1991. If we held them to the 1987 level, there would be an increase of merely—"merely," I have been here too long if I say merely—$197 million instead of the $625 million in the authorization bill.

So I want the Senator from Missouri to understand we did not take money from the competitively awarded projects. All of the designated grants that have been made to institutions under the peer review are still there. Instead, what we have done is we have taken money from the federally funded research centers which have increased by almost a third in the time the university grants to the nonpeer review projects have decreased.

I think the House has a point. Again, I point out—and my friend from Hawaii will continue, and I will be pleased to yield to him—the impact of what we have done is we have once again agreed to an amendment that was insisted upon by the House so we could get a bill. We did not know we would have an authorization bill, but we knew with troops in the field we needed an appropriations bill.

EXHIBIT 1

	Funding of DOD FFRDC's Fiscal Year 1985 to Fiscal Year 1991 (dollars in millions)							Cuts to programs when held to fiscal year 1987 level, adjusted for inflation	Cuts to programs when reduced by 12 percent each (Alternate method to hold FFRDC's to fiscal year 1987 level)	Pecentage real growth in FFRDC's from fiscal year 1985	
	1985	1986	1987	1988	1989	1990	1991			To fiscal year 1990	To fiscal year 1991
Navy: Center for Naval Analysis	25.35	30.48	33.99	36.28	38.53	40.95	43.89	4.91	5.32	38.5	41.1
OSD											
Institute for Def Analysis	44.80	60.57	71.30	77.59	88.35	96.00	98.90	16.23	11.89	83.7	78.3
RAND Nat's Def Research Inst	15.60	17.40	19.30	24.10	26.40	28.90	29.80	7.37	3.58	58.8	54.1
Logistics Management Inst	8.10	12.00	12.30	13.70	17.40	21.00	22.50	8.39	2.73	122.2	126.4
Software Engineering Inst	5.46	10.67	16.49	21.39	23.33	26.00	28.50	9.09	3.40	308.1	317.9
Air Force											
RAND Project AF	18.30	17.70	20.20	19.20	24.90	26.10	28.10	1.93	3.04	22.2	11.8
Aerospace Corporation	298.00	316.00	340.00	368.00	391.00	418.00	440.00	55.09	53.98	20.2	21.7
Mitre C31 Division	271.00	297.00	342.00	376.00	395.00	427.00	458.30	65.80	55.56	35.0	37.7
MIT Lincoln Laboratory	322.90	322.70	374.20	367.70	379.40	436.10	450.00	20.87	54.59	15.8	13.6

EXHIBIT 1—Continued

	Funding of DOD FFRDC's Fiscal Year 1985 to Fiscal Year 1991 (dollars in millions)							Cuts to programs when held to fiscal year 1987 level, adjusted for inflation	Cuts to programs when reduced by 12 percent each (Alternate method to hold FFRDC's to fiscal year 1987 level)	Pecentage real growth in FFRDC's from fiscal year 1985	
	1985	1986	1987	1988	1989	1990	1991			To fiscal year 1990	To fiscal year 1991
Army											
RAND Arroyo Center	3.20	10.90	16.10	16.70	19.60	24.60	26.00	7.54	3.15	558.9	562.2
Total	1,012.71	1,095.42	1,245.88	1,320.66	1,403.91	1,544.65	1,625.99	197.23	197.23	30.7	30.9

Mr. THURMOND. Mr. President, I want to commend the distinguished chairman, Mr. INOUYE; the distinguished ranking member, Mr. STEVENS of the Appropriations Defense Subcommittee on their good work.

However, I rise to speak against the earmarking of funds to specific institutions.

I know my colleagues in this body will agree with me that the United States and the Defense Department must encourage our academic institutions to maintain a strong research program. The university research initiatives and similar programs sponsored by the Federal Government are essential in this endeavor.

Without Federal funding our colleges and universities could not devote the resources to those multidisciplinary fields of research that are essential to our Nation in both defense and commercial applications.

To get the most benefit from the dollars we commit to these research programs, we must ensure that there is competition. Competition fosters initiative and innovation, both of which are critical to research.

Mr. President, I urge my colleagues to reject the practice of designating specific institutions as beneficiaries for research funding. This practice, although politically beneficial to some members is not in the best interest of scientific research or our Nation.

Mr. President, while I am on my feet, I would also like to associate myself with most of the remarks of the able chairman of the Armed Services Committee, Mr. NUNN. He has covered some matters I think of great importance. One is about calling up Reserve combat units. I have spoken to the Defense Department about this. I have talked to the Secretary of Defense about this. There is no excuse for not calling up combat units.

In the Vietnam war, we had Reserve units ready to go, National Guard units ready to go. President Johnson and the Defense Secretary, Mr. McNamara, did not call them up. They were trained; they were equipped; and they should have been called out. In this emergency now, it is my feeling that the Reserve and National Guard units, combat units which are ready to go, should be called up.

Mr. President, I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I join with others in commending the distinguished managers of this conference report. We have worked with them on the Armed Services Committee now for many years, and I think this year marks a high water mark in terms of cooperation, candor, frankness, and fairness. I do, however, wish to associate myself with the distinguished chairman of the Armed Services Committee, the Senator from Georgia, with respect to, I think, certain legitimate concerns that we on the Armed Services Committee have with respect to this conference report.

But on the whole, it has been a good partnership, and I think it has forged ahead another chapter in the security of our country for which we all express great pride.

Mr. President, let me quote from a document in front of me. Since I am told the conference report itself is not available, I identify it by these words: "This is to establish a commission to be known as the National Commission on Defense and National Security, hereinafter referred in this act as the Commission. In general, the Commission shall analyze and make recommendation to the President and the Congress concerning the national security and national defense policies of the United States."

Mr. President, here we go again, more Government by commission. We have seen in the past certain commissions with a stipulated life, but I am unable to determine what the life of this commission is from my brief study. It appears to me it goes on for many years. But nevertheless, more Government by commission.

We have seen commissions for the Social Security, stipulated goal, stipulated time, success. There was a Packard Commission—a commission on base closures. There was the Grace Commission created by the executive branch.

But this one is to be created by Congress, and it falls neither within the executive branch nor the legislative branch. It gives wide-ranging powers. Various Federal agencies and departments of the Government are required to comply with unlimited and undefined requests for information. There is no clarity here as to whether the information is classified or what it may be. There is no reference to executive privilege.

Mr. President, there are already, by rough count, 13 entities to perform these activities for the citizens of the United States. The Secretary of State, Secretary of Defense, Director of Central Intelligence, the Arms Control and Disarmament Agency, the National Security Adviser to the President, Joint Chiefs of Staff, the President's Foreign Intelligence Advisory Board, the Armed Services Committee of the Congress, two foreign relations committees, two Intelligence Committees—Mr. President, when do we stop? I think that this is a grave mistake.

I do not in any way impute this to the colleagues in this Chamber. I have determined the origin of it is in the other Chamber.

This Senator will endeavor in the few remaining hours of this Congress to put an amendment on some vehicle which delays for 1 year the implementation of this commission. The terms of this proposed act require the President and others to appoint the commissioners within 30 days of signature on this conference report. I think that would be a grave mistake.

This Congress should hold hearing within the appropriate committees and begin to analyze exactly what is to be created and whether or not given everything that is in existence today such a commission is required by the citizen of this country, the President, or the Congress of the United States. It would be my hope that others would join me in this effort, to at least delay implementation for 1 year within which time a careful analysis can be made of this proposal.

The Armed Services Committee went into extensive hearings on the Goldwater-Nichols Reorganization Act of the Department of Defense. As a consequence of that, we passed a law which has implemented, I think, many needed reforms in the Department of Defense and in an overall sense has enhanced our national security. That is the procedure. Those are the steps that should be taken before we embark on establishing such a commission.

Mr. President, I wish to voice my strong objections and surprise regarding the provision in the Defense appropriations conference report, which establishes a National Commission on Defense and National Security.

I am surprised that such a provision would be included in an appropriations conference report, as it is clearly legislation. The distinguished chairman of the Appropriations Committee only last night described quite eloquently why we should not be legislating on appropriations measures, and I agree with him, as I usually do.

I am surprised that such a provision would be included in the Defense appropriations conference, when such matters of policy are clearly not within the purview of these committees. Hearings were not held by these appropriations committees, nor are they staffed to address such matters. If such legislation is considered, it should be undertaken by the authorization committees.

I strongly object to the establishment of such a commission, as it undermines the Presidency in the very important areas of defense and national security. The Constitution states that the President is the Commander in Chief of the Army and Navy and, with the advice and consent of the Senate, makes treaties and appoints our ambassadors. The American people look to the President to define and articulate our foreign policy and national security strategy.

I cannot imagine that the Congress would want to establish such a commission to infringe on the powers of the Presidency as well as the prerogatives of the Congress—especially with no hearings or studies by the Congress on the establishment of such a commission.

In 1986, I introduced legislation requiring the administration to submit to the Congress each year a document describing the national security strategy. This provision was included in the Goldwater-Nichols Department of Defense Reorganization Act. This legislation was the result of years of study, numerous hearings and one of the most lengthy, complex debates in the history of the Armed Services Committee.

The provision for a National Commission for Defense and National Security has not been exposed to this process and, as a result, is an ill-conceived idea. There are a number of things wrong with this provision, in my opinion, and I will mention just a few.

Only three of the members of the Commission are appointed by the President; seven are appointed by the Congress.

Members are appointed to serve without pay—for the life of the Commission—which is not specified and, therefore, assumed to be indefinite.

Any number of members of the Commission may hold hearings.

There is no limit on staff or consultants; staff members are not subject to any of the regular General Schedule provisions except that their pay may not exceed that of a GS-18.

DOD funds may be used to finance the operation as required, with no limitations on the total amount.

The way the legislation is currently written, the Commission has unlimited access to any information in the administration. There is no provision recognizing executive privilege of the President.

Mr. President, the citizens of the United States elect the President and Members of Congress to govern the Nation, I believe they expect us to do so. They do not want a government run by commissioners.

I do not believe it helpful in these items to have individuals—who are not held responsible for their activities and judgments—in a position to infringe on the rights and powers of the Presidency and the Congress in the critical areas of defense and national security.

Therefore, I intend to introduce legislation before the Senate adjourns to delay the effects of this legislation for at least 1 year—to give the authorizing committees time to hold hearings and give this important matter the study and attention it deserves.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I want to add my comments of praise to the Senator from Hawaii and the Senator from Alaska for the hard work they have put in on this appropriations conference. But I do want to raise something which is of great concern to me and to the chairman of the Armed Services Committee as well. He has spoken briefly on the subject of the advanced tactical fighter. I would like to take a few moments to add some comments about that system.

My colleagues have heard me stand on the Senate floor in the past and talk about the B-2 bomber. In conjunction with the B-2 bomber, I have had occasion to quote from a book written by Norman Augustine called "Augustine's Laws." In one portion of that book, Norm Augustine said that by the year 2054, the entire defense budget will be spent to produce one tactical aircraft that will have to be shared 3½ days a week between the Air Force and the Navy, except on leap year, when, for half a day, the Marine Corps will be allowed to fly it. That, obviously, is tongue in cheek on the part of Norm Augustine, but taking a look at the exponential growth of the cost of the tactical aircraft that we are producing I think it becomes more real and less tongue in cheek.

I mention this in conjunction with the ATF because while the attention has been focused upon the sticker shock of the B-2 bomber, the public has not really focused upon the ATF program. In fact, the Advanced Tactical Fighter Program is going to be more expensive than the B-2 bomber.

The Senator from Georgia earlier this morning indicated this was a $75 billion program. Actually, it is slightly higher than that. The latest Air Force estimates made public would indicate that this program in then year dollars would cost approximately $79.4 billion. There have been other estimates, however, including one produced by the Cost Analysis Improvement Group, or CAIG. By the way, I would mention that the CAIG has been more accurate in their projection of the cost of weapons systems than others. The CAIG reportedly indicates the ATF would cost an additional $10.7 billion beyond the Air Force's estimate.

Even if you assume that the Air Force projections are more accurate, which I do not, the Secretary of Defense slipped this program for 2 years. The analysis of the Air Force that concludes it will only $79.4 billion did not take into account the fact the Secretary of Defense has slipped the program by 2 years and has reduced the peak buy from 72 aircraft per year to 48.

What has been our experience over the years every time there has been a slippage of a program and a reduction in the buy, what happens? The cost goes up. As a matter of fact, the Air Force has provided unclassified data that would indicate this program will cost in excess of $100 billion.

It was with that in mind that the Armed Services Committee urged some caution. The Senator from Georgia had some very pointed exchanges with the Secretary of Defense on the so-called major aircraft review. While praising the undertaking of the analysis, the chairman pointed out that there were still some deficiencies. Specifically referring to the ATF, the committee found that:

> The scope of the (Major Aircraft) Review was limited to the point where critical issues remain unanswered. For example, the ATF and Naval ATF programs were reviewed in isolation from the broad question of modernizing tactical aircraft. No work was undertaken to evaluate modernization plans for close air support or multirole aircraft. Furthermore the Committee understands that all data on upgrades for existing F-15 aircraft evaluated during the Major Aircraft Review was provided by the Air Force, despite the fact that the Air Force has long concluded that it could not accept an F-15 and had to develop an ATF. While improvements to the F-16 were examined, they were studied only in comparison to the ATF requirements criteria, and not in the context of overall modernization of tactical forces.

In short, the Committee believes that . . . the Department of Defense must conduct a more comprehensive evaluation of Air Force and Navy tactical air modernization, to include close air support and multirole aircraft, and not limit the analysis to ATF performance requirements only.

The Armed Services Committee went on to conclude:

Preliminary analysis illustrates that with the development funds earmarked for the ATF, it would be possible to develop the F-15XX for air superiority, develop a modernization program for close air support aircraft, and launch a major update program for the F-16 to modernize the multirole aircraft fleet well into the next century. While the F-15XX does not match the performance promised by the ATF candidate designs, the opportunity to modernize the entire tactical fleet for the same price as the ATF must be thoroughly examined. The committee reserves its judgment whether the ATF and Naval ATF are needed, or whether less capable alternatives might be satisfactory to meet a reduced threat.

In keeping with these conclusions, the committee—in bill language—explicitly barred the Air Force from initiating full-scale development of the ATF during fiscal year 1991 as the Air Force had planned.

Not only did we prohibit it, we also added, authorized $100 million for keeping the option open for the F-15XX. So there is $100 authorized in addition to that approved for continuing ATF pre-FSD work.

By the way, Mr. President, this view was mirrored by the House Armed Services Committee; they came to precisely the same conclusion. So you have the two major committees, the two major legislative committees, the Senate Armed Services Committee and the House Armed Services Committee, specifically following the same track, that is, do not go forward with full-scale development.

I might also say that the Senate Appropriations Committee shared that view. It was not the Senate Appropriations Committee which advocated going to full-scale development.

However, during the course of conference with the House, somehow a decision was made to reverse the Senate Armed Services Committee language, the one that was specifically adopted by this full body. So now we have a situation where we are making a mockery of the authorization process.

This, by the way, is not a new argument. I might say to my friends on the Appropriations Committee and to the chairman of the Armed Services Committee, we have had many battles on this floor before because of disagreements between the Appropriations Committee and the authorization committee. We have found, for example, that in years past, the Appropriations Committee would spend more money, appropriate more dollars than authorized. We have had that happen on many occasions.

We have even had a situation where the Appropriations Committee would actually appropriate dollars for programs that were not authorized by the Armed Services Committee and by this Senate.

I believe this may be the first time in which we have had a specific repudiation of the authorizing committee's legislation, and if ever there was a case of legislation appropriations, this is it. We have had the appropriations conference legislate, overrule, and repudiate the legislation passed by both Houses of Congress which explicitly prohibited going to FSD. So I think this makes a mockery of the authorization process.

Second, Mr. President, we have tried to introduce some program stability in the weapons acquisition process. One way we have said we will do this is to take more seriously the formal decision-making points, the so-called Milestones. Doing so would reduce the points of entry on the part of Congress and, indeed, defense officials from getting into the process and changing decisions, which only ended up causing program turbulence, thereby causing uncertainty, thereby causing on-again, off-again types of starts and stops, thereby increasing costs.

I submit to my colleagues that what has happened in this conference report is going to produce precisely that. The ATF is absolutely not ready for full-scale development. That was the judgment of the Armed Services Committee, the judgment of the House Armed Services Committee, the judgment of the Appropriations Committee in the Senate, and yet we have an effort to overturn that in this particular case. It decidedly is not ready for full-scale development, and what they have done by introducing this in the conference report is they are guaranteeing more congressional micromanagement.

As a result of this action, Congress is now going to intervene even more, because we are saying we really do not take seriously the so-called Milestone II, or FSD decision process. If we took the Milestone II decision seriously, we would not proceed when we have a situation where the ATF is not ready to go to full-scale development. Among other things, full-scale development means acceptance of the validity of the requirements for a system and its planned performance characteristics.

We have had no such acceptance of the validity of the ATF performance requirements. That was the specific reason why we mandated: Go back and do it again. Give us some other options. We may come to the conclusion that we need the ATF, but give us the full range of your evaluation of other options in view of a changing world environment.

And so what this does by saying go forward to full-scale development is simply dismiss the integrity of the Milestone system, and as such I believe it is going to wreak havoc with the congressional process and with the acquisition process. I believe that more turbulence is going to be introduced. I believe that, as a result, we are going to see costs escalate even more and we may very well find ourselves a few years from now in the same position of saying the program costs too much and as a result ought to be canceled.

Mr. President, these are some of the reasons why we should reject this approach that has been taken by the conference. In addition, if the Air Force takes this as a green light to proceed into FSD we risk finding ourselves in the situation where the Air Force will come in in the future and say we have entered into contractual arrangements under which we cannot afford not to continue.

That is precisely the argument that was made on the B-2 bomber: We have so much committed now, we are so far down the line, let us not turn back. Let us not look back into the past. We have to go forward. Too much is invested, too much in the way of sunk dollars.

That is one argument that is going to carry very little weight with this Senator when it comes time for the authorization process again next year.

My concerns were heightened, I must tell you, by a recent report in Aerospace Daily, the September 6, 1990, issue, in which an unnamed Pentagon official stated that the Air Force would study the F-15XX as an alternative to the ATF, but only as a gesture to mollify Congress. This unnamed official went on to state that the outcome of the study was rigged.

Equally troubling to me in this article was a statement attributed to Maj. Gen. Joseph Ralston, Director of Air Force Tactical Programs, who said that the Air Force:

Will look and see, "will it meet the requirement?" That's the fundamental question. And if it doesn't meet the requirement, then there is no reason to proceed with the F-15XX.

Mr. President, this is precisely in contradiction to what the Senate Armed Services Committee directed: Do not hold the F-15 or the F-15XX up against the ATF to see whether it meets its performance criteria. We know what the outcome will be if that is the case. We are saying perhaps the ATF performance requirements are incorrect. Instead, take a look at what can be done, whether we can modernize the F-15 and the F-16, and modernize other systems for the same cost as just ATF in an environment which is less hostile, not whether or not the F-15XX meets the requirements of the ATF.

With regard to the decision to provide $100 million to keep the F-15XX

alive, another unnamed Pentagon official was quoted as saying the Air Force "wants to put a stop to that kind of thinking before it gets out of hand." Think about this, my colleagues. Pentagon officials are saying they want to put a stop to this kind of thinking up on Capitol Hill before it gets out of hand. In other words, before Congress gets out of hand exercising its constitutional responsibilities. And then to add insult to injury, this Pentagon official stated that this rigged review of the F-15XX option would come out "after the money—for fiscal 1991—gets appropriated, but before they have to do anything about—the F-15XX. That way,—the Air Force—gets another $100 million to reprogram."

Now, that is truly the essence of cynicism and the abuse of this process.

Mr. President, perhaps there are some who believe that this appropriations conference report succeeds in preventing Congress from getting out of hand on the issue of the ATF. But I want to assure those individuals that, contrary to this, it is only going to ensure that this Senator—and I believe both the Armed Services Committee in the Senate and the House—going to be scrutinizing this program and the review to be conducted by the Air Force as never before.

Mr. President, I ask unanimous consent that a National Journal article which is entitled "Pentagon Charade," and the article that I mentioned that appeared in Aerospace Daily, be included at the end of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From National Journal, Oct. 20, 1990]

PENTAGON CHARADE

(By David C. Morrison)

On the surface, the presentation that Defense Secretary Dick Cheney gave in unusual back-to-back testimony to the House and Senate Armed Services Committees this spring seemed the very model of a post-Cold War cost-cutting exercise.

During a much-heralded "major aircraft review," the Pentagon had spent more than two months scrutinizing the whys, hows and wherefores of the B-2 bomber, the C-17 airliner, the Air Force's Advanced Tactical Fighter (ATF), the Navy's A-12 medium bomber and cross-service variants of the ATF and A-12. All told, these projects were slated to encompass about 3,000 planes costing more than $400 billion to build.

And now Cheney was unveiling the long-awaited results. Some critics felt that the review should have yielded a program cancellation or two. But the message still sounded reasonably sweet to Members of Congress desperate for defense savings: Thanks to decisions to forgo 450 aircraft and to delay others, Cheney announced, $34.8 billion could be saved through fiscal 1997.

"Thank you, Mr. Secretary," Senate Armed Services Committee chairman Sam Nunn, D-GA., intoned as Cheney wrapped up his April 26 briefing. "I know this reflects an awful lot of hard, long hours of work by you and everybody on your staff and the [military] services involved. This review is going to be very helpful to us."

Not very, as it turned out. In no time at all, the review came unglued in a rush of revelations that the projects that supposedly had been scrutinized at such length would cost much more, and be ready much later, than advertised. Most notoriously, it was disclosed in early June that the A-12 was running a year or so behind schedule and way over budget.

A National Journal review of the review—based on not-for-attribution interviews with a range of participants and observers—finds that the vaunted aircraft studies, in fact, amounted to little more than a prototypical Pentagon logrolling exercise.

Formal operational and technical requirements for the weapons were basically rubber-stamped by the Joint Chiefs of Staff (JCS). Contractors' assurances that programs were on track were accepted on faith, even after Pentagon examiners had waved red warning flags. Lower program cost estimates were substituted at the last minute for more credible, higher numbers. And plans for formal reports on the aircraft were jettisoned: The only paper trail left by the review is a batch of Vugraph transparencies.

"The whole thing has been a greenlight exercise from Day 1," a Pentagon official said in disgust. "There was no text, no report at any stage. It was just forwarding Vugraphs through different committees. And they massaged the Vugraphs until they got the answers they wanted."

In one case, the review even prompted a service to increase the number of aircraft it projected buying. The Air Force last spring, in drafting its "program objective memorandum" for the fiscal 1992-97 budget-building process, recognized that it could never finance all of its planned projects. So, it provisionally cut back on the total number of ATFs it wanted. But after Cheney, in the review, endorsed the original plan for 750 ATFs, the Air Force revised its spending blueprint to reflect that higher number.

As that outcome suggests, the aircraft review was something of an oddball exercise—if only because it seemed largely disconnected from the regular biannual budget process that consumes so much of the time and energy of the Defense Department.

A related anomaly: Even as the Pentagon was busily charting long-range plans for major aircraft programs in the review, Defense officials were deflecting budget cutting pressure from Capitol Hill with the assertion that they were deferring judgment on major issues until the internal 1992-97 budget planning process was done. But that won't happen until late this year.

"How can you make a policy decision to reduce the number of C-17s you want to buy while you're admitting in other rooms that you're very uncertain about the post-Cold War environment and thus uncertain about, among other things, what lift requirements would be?" a congressional analyst wondered with exasperation.

"It is kind of a strange way to go about it," House Armed Services Committee chairman Less Aspin, D-Wis., agreed in an interview. "It's an unusual process, doing this kind of thing piecemeal like this. It was weird."

Any account of how the review process went awry is thus also a story about how decisions tend to get made—or not made—in the Pentagon. As in many other agencies, bad news has a hard time getting a hearing at the Defense Department and officials and officers typically go along to get along.

Thanks to these bureaucratic phenomena, the aircraft review "was just a big contrivance to justify the programs," another Pentagon analyst charged. "They really had an opportunity to do something, to react to lower budgets. But they didn't structure any kind of reasonable program. They reduced the [planned aircraft] buys, but did they really get anything under control?"

This is also a story about the perils of stealth. The gigabuck, super-sophisticated aircraft hatched under the top-secret cloak of the "black" budget a decade ago are proving far more difficult to bring on line than blithe early assurances suggested.

"I don't think there's a full appreciation at the higher levels of [the Pentagon]—and that's true, I would think, at the higher levels of the management of these corporations," a Pentagon employee said, "of the type of technical problems that are out there ahead of us."

OPEN TO CHALLENGE

The aircraft review began unraveling only four days after Cheney's widely reported appearance on Capitol Hill. Revising his testimony, Cheney stated in a quiet memo to Congress—first reported by Defense Week—that total costs for the A-12 Avenger II were not $51.9 billion, as the data sheet had said, but $57 billion. That was simply a paperwork "mixup," a Navy spokesman said at the time.

Of far graver import, it became public knowledge on June 8 that the A-12 was in deep trouble. The planned first test flight for the stealthy, wedge-shaped bomber had slipped by more than a year, to late 1991 at the soonest. Moreover, it was revealed, the contractors teamed on the top-secret project—McDonnell Douglas Corp. and General Dynamics Corp—had overrun their $4.8 billion development contract by a least $1 billion.

"If the A-12 received the highest marks of any aircraft during the major aircraft review," House Energy and Commerce Committee chairman John D. Dingell, D-Mich., asked Cheney in an irate mid-July letter, "what is the real status of the other aircraft procurements involved?"

Not very good, as it happened. Cheney had stuck a $61.1 billion price tag on the revised B-2 program, which called for building only 75 of the bat-winged bombers instead of 132. Before lone, however, the Air Force came in with what promised to be the first of a series of price revisions: $62.8 billion. More recently, the B-2's prime contractor. Northrop Corp., has been harshly accused of sloppy management by the Air Force, the firm's usually protective customer.

The C-17 program, which Cheney cut from 210 airlifters to 120, has also been buffeted by programmatic turbulence. In July, citing management concerns, the Air Force cut off all progress payments to the C-17 prime contractor, McDonnell Douglas's subsidiary, Douglas Aircraft Co. Late last month, Dingell released an internal report from Douglas suggesting that as of last April, when the review was being completed, the company was projecting an $837 million overrun on its $4.9 billion C-17 development contract.

A Douglas spokesman said that the company should come in under a $6.6 billion aggregate cost ceiling for the development contract and the first two lots of aircraft. "There is not a financial crisis at McDonnell Douglas, and we're not going bankrupt," he insisted, responding to Dingell's charges.

A Pentagon official with knowledge of the C-17 program contended that the actual situation "is probably worse" than even that portrayed by Dingell. It can be hard for outsiders to judge such conflicting assertions. But, clearly, the picture Cheney painted in April, based on the review, was considerably out of focus—as Nunn and others came to see as the summer wore on.

"The various revelations so close upon completion of the [aircraft review] means that the staffs of the various military departments may not have taken the reviews seriously," the Senate Armed Services Committee complained in its fiscal 1991 defense authorization report, published in July.

The welter of woes that have come to light, the panel continued, "most certainly indicates that [Pentagon aides] provided inadequate support for the Secretary that calls into question many of the decisions he made."

The many problems that have cropped up with the aircraft review have also left the department's subsequent reviews of two major Navy ship projects and the Army's Light Helicopter program open to challenge.

That vulnerability underlines the broader political failing of the reviews as they were conducted. Cheney "has been embarrassed by revelations about programs after the reviews; he has not been taken seriously; his numbers have been questioned," Natalie J. Goldring, a senior analyst with the private Defense Budget Project, said. "What I think the Defense Department hoped was that the [review] would stop debate in the Congress, that they would accept the expertise of the Department of Defense and these numbers would become the starting numbers. Instead, they've become the starting point for renewed debate."

RUBBER STAMP?

The starting point for the aircraft review came early this year when the Pentagon sought the intelligence community's view on what the world and "the threat" might look like from now until 2015.

"And, with that view, we went to the war fighters," Defense undersecretary for acquisition John A. Betti, who headed up the weapons reviews, explained during a September 27 breakfast interview with a small group of reporters. "They came up with what the requirements would be to meet those threats," he said.

The uniformed "war fighters" were represented by the Joint Requirements Oversight Council, a panel of officers chaired by the JCS vice chairman, Adm. David E. Jeremiah.

But "the JCS has never been staffed with the right level of expertise to play in these games," a review participant explained. "So it does get to be a rubber-stamp type of operation. And that was pretty blatant, I can tell you candidly."

During meetings on the various aircraft, for instance, officers on the JCS requirements council tended to parrot, word for word, the views of senior officers in their service's acquisition directorate. And, when the Air Force needed the Navy to back up its views—and vice versa—a helping hand was freely forthcoming.

"The Army played nothing in this," the participant recalled. "It was run by the Air Force and the Navy, and they played it tit for tat. And this was a major part of the review."

Another major part of the review involved examining alternative approaches to satisfying the military requirements that the JCS council endorsed. Many observers and participants are also unhappy with this segment of the exercise.

A problem, a Defense official said, was that any alternative that "didn't somehow come very, very close to meeting those requirements"—which were pegged directly to the costly new aircraft under review—did not make the grade.

In its July report, therefore, the Senate Armed Services Committee rapped the "limited scope" of the review, which, it said, looked at the Air Force's ATF "in isolation from the broad question of modernizing tactical aircraft" and focused instead on acquiring entirely new planes.

While restricting the Air Force from proceeding with full-scale development of the ATF, the Senate committee urged the Defense Department to perform "a more comprehensive evaluation" of Air Force and Navy tactical aircraft that would not be limited to "ATF performance requirements only." In other words, it directed the department to repeat a central task of last spring's major review.

Another problem was the way in which consideration of alternatives—which largely involved possible changes in acquisition rates, apparently—became the be-all and end-all of the review. As a result, basic management questions about the programs fell through the cracks.

"A lot of the time was spent on alternatives, boogering them up and costing them, without looking at the focus of the [review]," a Pentagon analyst said. "Fifty people did not descend on these programs and analyze the —— out of them. What they did was run thousands of alternatives. So time and energy was just bled off doing that."

In the process, the Pentagon's cost analysis improvement group (CAIG) spent a lot of time working up total price figures under many differing buying scenarios for the programs under review.

The CAIG's mandate is to develop independent cost estimates, as a counterbalance to the military services' generally rosier estimates. But critics complain that the CAIG too often does not serve as an adequate counterweight to service optimism and that its estimates are neither sufficiently realistic nor independent. Consequently, the Pentagon inspector general's officer is currently running a management review of the department's independent cost-estimating.

Acquisition czar Betti, arguing that "no estimates are perfect," strongly defended the CAIG's work on the review. "As a matter of fact," he said, "wherever there was a difference of opinion [on cost estimates] between the CAIG and the services or the contractors, the CAIG was higher, and we always used the CAIG numbers."

When Cheney was briefed on the aircraft review, he saw a mix of CAIG and service cost figures, Betti's office confirmed. But the numbers that went up to Capitol Hill, to the amazement of many participants in the review, were not the CAIG figures. Instead, they were estimates worked up by the office of Pentagon comptroller Sean C. O'Keefe. The same cost switch occurred later when the Light Helicopter and the Navy ships were reviewed.

"Coincidentally," Betti's office said in a written response to National Journal's query about the source of the numbers presented to Congress, the comptroller's estimates "tracked more closely with the lower estimates received for each program." That "coincidence" could only ease sticker shock in Congress. The CAIG came in $7.6 billion higher than the Navy figures on the A-12, for instance, and a whopping $10.7 billion higher than the Air Force numbers on the ATF.

In that light, the aircraft review further illuminates "a generic problem" at the Pentagon, said Sen. Jeff Bingaman, D-N.M., who chairs the Armed Services Subcommittee on Defense Industry and Technology.

"They make decisions based on wildly optimistic projections that seldom turn out to be true," he said. "They're supposed to have people over there who ask the hard questions and make people be realistic about projections. But it doesn't seem to have worked."

Anyone wishing to track exactly what happened with the aircraft cost estimates will have a hard time; atypically for an exercise of this supposed rigor, there is no formal documentation, no audit trail, no "stake in the sand," as a critic put it.

"We didn't do a detailed report with a detailed recommendation," Betti explained. "What we did, we did a study, we tried to capture the essence of the results on things like Vugraphs and tried to present that to the Secretary, to say, 'Here are your viable options.' "

But Pentagon sources say that there were originally supposed to be reports. And, in fact, reports were written. Among them, the ever-controversial program analysis and evaluation office had drafted a report on the Air Force's tactical projects.

That draft report asserted that the Air Force had failed to provide sufficient technical data for the review working groups to pass realistic judgment on its projects. Unhappy about the draft, the Air Force appealed to Frank Kendall III, the deputy director for tactical warfare programs. "Some point in time after that," a participant said, "the decision was made that there would be no reports."

POLICY BOMBSHELL

This and other questionable aspects of the review process have been little noted outside the Pentagon. But, coming a little more than a month after Cheney and other officials praised the review's progress to Congress, the revelation that the A-12 was in big trouble detonated like a bombshell in Washington's defense policy community. Since then, the A-12 flap has sparked a round of investigations and embarrassed recriminations.

"The A-12 is turning into a gumshoe detective story," a congressional naval analyst joked: "Who knew what, and when did they know it?"

Numerous sources, including acquisition chief Betti, in fact, assert that Cheney was explicitly told of problems with the A-12 when he was briefed last spring on the findings of the review.

But that wasn't evident from the Secretary's testimony on Capitol Hill. "Every alternative we looked at, basically, led us back to saying, 'We think we ought to go forward to the A-12, that it's a good system, that the program appears to be reasonably well handled at this point,' " Cheney told the Senate Armed Services Committee on April 26.

That assessment was clearly reflected in the changes the Defense Secretary endorsed for the program, which were minimal compared with those for most of the other aircraft reviewed. Though Cheney cut 238 A-12s from the initially planned buy of 858, about half of that reduction resulted from the Marine Corps' having bailed out of the project (which the service had made clear

last year that it planned to do). The balance of the reduction was facilitated by an unrelated decision to cut back eventually from 14 to 12 aircraft carriers.

Cheney was not the only one to cheer on the Avenger II. "The A-12 program is on schedule," Vice Adm. Richard M. Dunleavy, the assistant chief of naval operations for air warfare, confidently told the Senate Appropriations Subcommittee on Defense on May 8. "We're very, very pleased with it. We had a review in St. Louis just a week ago this past Thursday by the program managers for both McDonnell Douglas and General Dynamics and the Navy."

When it became public a month later that the A-12 was at least a year off schedule and at least $1 billion over budget, exclamations of shock and dismay echoed along the Pentagon's E-Ring.

"I was not happy to discover that the contractors were having problems with the A-12," Cheney told reporters on June 19. "Listen!" Betti erupted during the late-September interview. "Nobody was more embarrassed than I was."

But there is little reason why anyone should have been particularly surprised.

As early as last year, an examiner in the Pentagon comptroller's office had circulated a position paper arguing that the A-12 program should be slipped by two years because the contractors were falling so far behind. That paper quickly vanished from site.

Another obvious clue that something was amiss turned up early this year, when members of the Pentagon staff working on the review toured the A-12 final assembly plant in Tulsa, Okla. "It looked like a basketball court," someone familiar with that visit said. "All there were were chalk marks on the floor where tooling was supposed to go."

Profound concern was voiced at a meeting at which Cheney was briefed on the program, officials say. "We said, 'There are concerns over the schedule, and we have reason to believe that there's some cost overruns, a little less than a billion dollars,'" a defense official said.

That apparently did not elicit an alarmed response. "But you have to understand the building," this official said. "In order to get somebody's attention at the Pentagon, you have to mention numbers in the neighborhood of $10 billion."

A PIG IN A POKE

Though that was hardly the uncertain light in which the A-12 review was presented to Congress, Betti acknowledged in the September 27 interview that his team had informed Cheney that "out of the programs we have, the one that seemed not as firm as the others is the A-12."

After that meeting with Cheney, Betti was prompted by the worries that had been vented to telephone the chief executive officers of McDonnell Douglas and General Dynamics. He asked if there were any problems that he should know about. He was reassured, he said, that if there were, they were manageable.

"The fundamental issue with the A-12 was that neither the [Navy] program manager nor the contractors knew the kind of problems that were developing at the working level," Betti contended. "There was a disconnect between what was going on at the working level and the management of the contractors, and also of our program management."

In an interview, the question was put to retired Vice Adm. Robert F. Dunn, Dunleavy's predecessor as naval air warfare chief from 1985 to mid-1989: Had he had any inkling of these programs during his tenure? "Absolutely not," Dunn said. "That was a complete surprise. Unfortunately, I think the contractors let us down; McDonnell Douglas and General Dynamics let us down."

Neither company is willing to discuss A-12 issues on the record in any detail. But General Dynamics has shaken up the management at its Fort Worth A-12 plant. And both firms have recently taken large write-offs against earnings thanks to losses on the A-12—$450 million for General Dynamics and $89 million for McDonnell Douglas.

Both companies are also preparing to file claims against the Navy to recover money lost on the project. "We have not yet announced any action, but there will be a claim filed," a General Dynamics spokesman said. The two firms are expected to file claims totaling $1 billion.

Meanwhile, the Avenger II is flying into severe down drafts over the Pentagon and Capitol Hill. The project is expected to encounter some very deep skepticism when it is reviewed next month by the high-level Defense Acquisition Board. Some believe the board may vote to put off or even terminate the A-12.

The Navy wants an estimated $1.6 billion to buy A-12s in fiscal 1991. In an illustration of congressional unhappiness with the program, the Senate Armed Services Committee wants to cut that request by $1.5 billion, and the House Armed Services Committee, by $1.15 billion.

The House committee cited "financial and technical difficulties that will result in significant delays to first-flight and operational testing." The panel added that it was "troubled that these A-12 issues have come to light just weeks after the Department of Defense concluded its major aircraft review."

The committee also cited an aspect of A-12 program management that many believe has contributed to its current woes: Its closely held status as a tightly compartmented "special-access" program, which "may have inhibited rigorous departmental review," the panel said. Cheney must declassify the A-12, the committee ordered, before any further procurement money would be considered.

"This program has been in the special security arrangement far longer than it should be," Adm. Dunn agreed. "Nothing was kept from Dunleavy, nothing was kept from Congress," he argued. "But you don't get to the full discussion" when programs are so thickly veiled under the black cloak, he said. "It makes it a little bit harder, and I think that's a problem."

In a bid to address this issue, House Armed Services Committee member John R. Kasich, R-Ohio, has introduced a bill stipulating that total costs and program schedule data must be clearly reported to Congress after outlays for a special-access project have exceeded $50 million.

Kasich does not expect action on this proposal this session, but he expects hearings to be held next year. "Nobody should be asked to buy a pig in the poke," he said. "We're being told to approve these programs. And then, if you [change your mind], we're told, 'We've put all of this money up front.'"

There is more to the matter than just money, however. The A-12's woes have broader implications for the many stealth projects under way. Constructed of novel "composite" materials, these are not the aircraft the U.S. aerospace industry has had long practice "bending metal" for.

A major A-12 snag late this spring, for instance, was the manufacturers' diffculty in producing a certain "critical-path component," a large structure to which other components are attached. That technical obstacle was eventually overcome. But new ones are sure to crop up.

"They are literally, no kidding, writing the book on how to do this as they go, because nobody has ever done it before," a Defense official said. "I'm a real skeptic now. I used to be a real believer. Then I started to see it come unraveled. There are major roadblocks to overcome along the road here before we get the first one out and fly it."

Another A-12 shortcoming sends out even wider policy ripples. Though teamed on the Avenger, McDonnell Douglas and General Dynamics are on competing teams in the impending fly-off for the high-stakes Air Force ATF. That doesn't make for the healthiest of partnerships.

A company is "not going to share with their competitor a better way to do something if they could use that same technology to compete with them on another project," a Navy officer said. "We've learned a lesson here—in the future, not letting the different corporations that are teamed on one thing compete on another, if we can help it." But, he added, "it may be too late."

SEEKING A SCAPEGOAT

Many people in Washington want to know how something like the A-12 review snafu could happen. "If we can have programs floating around that can get this kind of attention and yet have problems that don't surface," acquisition chief Betti said, "then you have to worry about what that means in the control process."

This summer, the Pentagon inspector general's office launched an investigation of the A-12 review. Just as it got started, however, Navy Secretry H. Lawrence Garrett III asked his own inspectors to look into the Navy's management of the program and its role in the review. Betti then asked Garrett to broaden that investigation into an examination of A-12 oversight in the Office of the Secretry of Defense. That Navy investigation is supposed to wind up any day now.

"We're sitting back here and waiting to see what they do," deputy Pentagon inspector general Derek J. Vander Schaaf explained. "Then we'd decide whether we want to do more work, or whether we were satisified. I want to make sure that this gets adequate and appropriate coverage."

Rampant rumors that senior officials who worked on the aircraft review will be given government cash bonuses are unfounded, according to Betti's office. But, having taken a raincheck on a ceremony originally scheduled for Oct. 9, Betti is planning to give Defense Meritorious Civilian Service awards to three review overseers: CAIG director David L. McNichol, tactical warfare deputy director Kendall and George R. Schneiter, the deputy director for strategic and theater nuclear forces.

"Something's wrong!" Rep. Andy Ireland, R-Fla., exclaimed. A member of the Armed Services Subcommittee on Investigations, Ireland filed the initial request for an inspector general's investigation of the A-12 review. He is now worried that the investigation might turn into simply a search for a uniformed scapegoat.

"Something's wrong when you're rewarding people, and when the snooping around that we've done suggests that [the A-12's

problems] were known all the way up into the office of the Secretary," Ireland said. "Their fingerprints are all over the damned thing.

"We're really afraid that they will, in another classic bureaucratic thing, slam dunk some low-level people in the Navy," he said. "And the people who should take responsibility for a foul-up like that will go on to live another bureaucratic day."

FEWER WEAPONS, HIGHER COSTS

A major flaw in the major weapons reviews that the Defense Department conducted this year is that the Pentagon simply sidestepped all of the tough choices, House Armed Services Committee member John R. Kasich, R-Ohio, has complained. "They tried to keep everything going; they cut a little and stretched a lot," he said. "When you do that, you make the classic mistake of driving up the costs." (For more on Washington's inability to cancel weapons, see NJ, 9/8/90, p. 2114.)

The table below displays the cuts made, as well as the many price and production uncertainties that remain, in the wake of the reviews. Initial production for the Advanced Tactical Fighter (ATF), for instance, was deferred from 1994 to 1996, and peak annual production was scaled back from 72 planes to 48. That will drive up the unit costs for the 750 aircraft still planned, but by how much has not been announced.

Likewise, production of a Navy version of the ATF and of an Air Force version of the Navy's A-12 medium bomber were slipped by two years. Planned annual production rates were also much reduced. But the fiscal impact of that decision has not been disclosed.

The reviews' ultimate effect on two major ship programs is also hard to guage. SSN-21 attack submarine production was cut back from the planned rate of 10 subs every three years to 3 subs every two years. Production of DDG-51 guided missile destroyers will fall from five or six to four ships every year. But final force levels are "still being considered," and the new cost totals have not been announced.

Defense Secretary Dick Cheney cited big near-term fiscal benefits from these changes. Cuts in the six projects examined in the aircraft review would save $16.8 billion from fiscal 1991-94, he said, and slower ship purchases would save $7 billion over the same period.

But these savings come at the expense of higher price tags for individual weapons. The program unit cost of the B-2 bomber has jumped from $580 million to $840 million per copy, for instance. And by dropping the planned annual purchase of Light Helicopters from 216 to 120, the estimated cost for each chopper jumps from $7.5 million to $8.9 million.

In the table, the "before-review" costs for the aircraft are as estimated by the Pentagon's "cost analysis improvement group" and are generally higher than the estimates made by the military services involved. Lifecycle operating costs for the aircraft alone would add at least another $250 billion to the total tab.

All dollar figures are for acquisition costs in billions of current dollars.

	Before review		After review	
	Number	Cost	Number	Cost
Navy A-12 attack plane	858	$81.3	620	$57.0
Air Force version of A-12	400	44.3	400	NA
Air Force ATF fighter	750	96.1	750	NA
Navy version of ATF	618	66.0	546	NA
Air Force C-17 lifter	210	48.7	120	29.9
Air Force B-2 bomber	132	76.0	75	62.8
DDG-51 destroyer	38	31.1	NA	NA
SSN-21 attack submarine	29	43.0	NA	NA
Army light helicopter	2,096	42.0	1,292	34.2

[From Aerospace Daily, Sept. 6, 1990]

385 F-15XX NOT AN INTERIM ATF SOLUTION; REVIEW TO BE A "GESTURE"

The Air Force isn't considering the F-15XX as an air superiority stopgap until the Advanced Tactical Fighter enters the inventory in 12 years, and an ongoing review of the concept is a "gesture" to mollify Congress, Pentagon and industry sources reported yesterday.

The AF leadership believes their top fighters will be eclipsed by new Soviet types toward the end of the 1990s (Daily, June 11), but pursuing a radical F-15 derivative as a stopgap until the ATF arrives would be unaffordable and threaten the latter program, Pentagon sources said.

The Air Force—and Pentagon brass—think the world political situation buys them enough time to pursue the ATF, relying on the F-15 and Advanced Medium Range Air-to-Air Missile (AMRAAM) to bridge the intervening gap, sources reported.

Developing the F-15XX—a concept solicited by the AF from McDonnell Douglas and discarded after reviews by the service and Defense Secretary Richard B. Cheney (Daily, April 27)—would cost so much that "it blows away more than half the ATF money," a Pentagon official said. "The thinking is, 'why go for F-15XX when you can wait two years and get ATF?' "

An AF review of the F-15XX now underway at Aeronautical Systems Div., Wright-Patterson AFB, Ohio, is "a gesture to Congress that every possible alternative to ATF is being considered * * * but it's rigged," another Pentagon official said.

Where It Falls Short

Because the F-15XX couldn't be made as stealthy as the ATF, and would fall considerably short of the ATF in range, maneuverability and avionics, "It's not a fair match-up * * *. Even when you consider the reduction in the Soviet threat, other threats are just as formidable," the second officials reported.

"We have asked ASD to go back and take a look at what we understand to be the F-15XX and they are doing all the analysis that goes with that," Maj. Gen. Joseph W. Ralston, AF director of tactical programs, told The Daily. ASD will "Look and see, 'will it meet the requirement?'—that's the fundamental question. And if it does not meet the requirement, then there is no reason to proceed with the F-15XX."

But Ralston said the AF will give the F-15XX a fair evaluation and "If on the other hand the results of that analysis shows that it can meet the requirement, then that is something we will look at at that time."

Ralston has asked ASD to finish the F-15XX evaluation "as quickly as they can do a credible job of it. We certainly need it in the next few months." The conclusions will be ready "just in time to clear the decks for an ATF award" in early 1991, an industry source said.

Intimidated by the escalating pricetag of the ATF, the Senate Armed Services Committee added $100 million to F-15 funding to preserve the F-15XX option through long-lead parts production (Daily, July 17). But the AF "wants to put a stop to that kind of thinking before it gets out of hand," a Pentagon official said. The F-15XX review will come out "after the money (for fiscal 1991) gets appropriated but before they have to do anything about (F-15XX). That way (the AF gets) another $100 million to reprogram," he said.

Ralston also discounted Pentagon statements that the original ATF buy of 750 aircraft will be cut (Daily, May 16).

"All of our planning in the budget assumes the Air Force will buy 750 airplanes * * * 750 is the planning number (though) * * *. We will continue to look at that number as we go through all the force structure exercises we're doing. Final figures are always tough to come up with," he said.

The AF will buy 750 ATFs no matter what the Navy decides to do about the planned carrier version, and a Navy departure from the program wouldn't make ATF unaffordable, Ralston said. "We have made that decision (to buy 750 aircraft) independent of what the Navy does * * *. The Air Force has costed its program based on 750 airplanes," and a Navy pullout wouldn't cause the ATF price to skyrocket, he said.

A final production figure isn't necessary to award an ATF full-scale development contract to either Lockheed or Northrop, Ralston added. "For the purposes of the FSD contract * * * whether you buy one airplane or 750 you still have to go through FSD," he said.

Mr. NUNN. Will the Senator from Maine yield for a brief question?

Mr. COHEN. Yes, I yield.

Mr. NUNN. Given the background the Senator has well laid out here, and the concern of the authorizing committees and the concern of both bodies about moving too fast on weapons systems, I ask the Senator from Maine if he believes the Air Force would be well advised to be very cautious on exercising any such advanced authority.

Mr. COHEN. I say to my colleague from Georgia that if the Air Force uses this conference report as a justification to go forward with full-scale development before the Senate Armed Services Committee has in fact had an opportunity to evaluate its progress, and whether or not they have, indeed, made a very careful analysis, not judging potential alternatives solely against the requirements of the ATF requirements criteria, but asking whether or not there is in fact a validated need for this system, then I would submit that the Air Force would be making a tragic miscalculation resulting in the same sort of confrontation that has developed over the B-2 bomber, and perhaps even with the same results of ultimate program termination.

Now, as the Senator from Georgia has indicated, it may very well be that we need this system. I have not passed judgment on that yet. I know the Senator from Georgia certainly has not

passed judgment. It may be that we have to have this system.

What we want is some fair evaluation, comprehensive evaluation, as to what other options we have. Unless we get that, and if they continue to express the kind of sentiments, that, well, we will make a gesture to mollify Congress, or we will rig it so there is no other alternative available, then I think the Air Force is going to find they will not have these systems, and we will be bogged down in debate year after year.

By the way, the initial operating capability of this particular aircraft was 1999 and after Secretary Cheney's delay is now scheduled, I think, for 2002. So we are talking about something into the next century. They are going to find, year after year, they will have problems on the Senate floor and I believe the House floor as well.

Mr. NUNN. I thank the Senator from Maine. I thank him for his leadership on our committee. He does a tremendous job for the Armed Services Committee and for the Senate.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Mr. President, I thank you for recognizing me.

Mr. President, today we are being asked to vote on a defense appropriations bill which is very large and about which I believe we know less than we should. As the distinguished Presiding Officer well knows, this is an extremely complex and wide-ranging piece of legislation. Yet, we are being asked to vote on a conference report which we have not yet had distributed. I realize that it is very late in the session. The distinguished Senator from Missouri asked about a list of projects for university research because we really do not know what is in this bill. We have been jammed up against the end of the session, yet I want us all to realize what it is that we are doing. This report contains a great number of provisions, some of which have been discussed this morning, some of which have not.

I myself am particularly concerned about the overall amount of funding contained in this bill. I think it is imperative that all of us once again examine what priorities are reflected here and what kind of decisions are being made here, not only about this appropriations bill, Mr. President, but about what this is going to crowd out, what we are not going to be able to do in a variety of other major national needs.

Earlier this year, Mr. President, I made several statements here on the floor about the need to reduce defense spending. We, as a nation, are running an enormous budget deficit. We are essentially broke, selling U.S. assets to foreign entities to pay a lot of our bills, running our children and grandchildren deeper and deeper into debt.

We have not taken the warning given us 2 years ago in the very eloquent book by Professor Kennedy about what has happened to other great powers when they do not realize their limitations, when they overextend themselves in a military fashion.

I call to memory most recently the lot of the Spanish Empire, the lot of the British Empire. We can see what happened in the Soviet Union. We ought to look in the mirror.

The cold war is over. We have traditionally spent, since the Second World War, at least 50 percent of our defense budget—this according to the Department of Defense and the General Accounting Office—on our mission in Europe, on the NATO mission. Fifty percent of our defense budget spent on the NATO mission. Well, that mission has almost gone away.

More than 10 percent of our defense budget has gone to the support of our nuclear arsenal, another area in which we can look to deep reduction.

So two of the major missions that have consumed about 60 percent of our defense budget since the Second World War are now in for very, very significant reductions. The cold war is over. Yet here we are appropriating over $288 billion for the national defense function, not counting the costs of Operation Desert Shield. This is the maximum amount allowed under the revised budget resolution, and we have spent it all. Not one major weapons system was terminated. As I have been able to go through the material presented to us, not one major weapons system has been terminated.

I believe, Mr. President, that we must continue to press for defense spending reductions, at least down to the pre-Reagan cold war peacetime average of $235 billion.

Let me illustrate that, if I might, with a copule of charts. The first chart depicts the peacetime cold war norm. This is the cold war budget during peacetime. The peacetime norm is $235 billion since the Second World War. We had a jump up during Korea, we had a jump up during Vietnam, and we have had the significant ramp up with the election of Ronald Reagan in the beginning of the 1980's. If you take out Korea, take out Vietnam, and you take out the Reagan ramp up, presumably times of pressure, then we are back to the cold war. That is $235 billion. I do not think there is any disagreement about these figures at all. The peacetime norm is $235 billion.

So, presumably, if we were thinking about where the world is going, how it is changing, and so on, we ought to set for ourselves, a goal, of at least getting ourselves down, to the peacetime cold war norm. The cold war is over, so let us at least get down to the cold war norm of $235 billion.

But we are not approaching that, Mr. President. The budget presented to us by President Bush would have gotten us down in a 5-year period of time to about $280 billion. The budget presented by the Senate Budget Committee would have gotten us down quite lower; the budget of the Armed Services Committee is higher than that.

The budget that we are presenting here keeps us way up above the peacetime norm. We should keep in mind that if we enact this budget and the commitments that are going to be made in the budget resolution overall, if we enact all of this into law, as we are doing here today, we are still way, way above the peacetime cold war budget. People have not focused on that reality, and we must.

What does that mean to us? This institution should be about a debate about budget priorities, where are we spending money, where are we not spending money. That is what we do. That is the stuff of what we are elected to do. That is the stuff of government, to make those difficult decisions.

If we pass this today, we are making the decision once again that what we are going to do is spend all the way up to the ceiling that is allowable, $288 billion. What would happen if we did not spend that full $288 billion? We do not have to. There have been any number of arguments made today as to why and what programs in here should not be in here and why we should be spending less.

What kinds of things might we be able to do? For example, if we were to decide not to spend $288 billion, but to cut $30 billion, that still keeps us way above the peacetime norm. If we were to cut this by $30 billion, still way above the cold war norm, what would we be able to do with that? We would be able to make about a $12 billion commitment to primary and secondary education, a significant commitment to public health service programs, absolutely imperative at a time when more and more Americans are without health insurance; a $3 billion program for retraining individuals who are being dislocated by all of the changes that are going on in our society; a $3 billion program to mass transit and alternative vehicle programs; a $1 billion program for housing and community development. We could do those things, absolutely imperative decisions, which we are not going to have the money to do; we could do those sort of things, if we at least came down toward the peacetime norm. But we are not doing that. More to the point of the current budget debate, we could also use a great deal of this money to cut the overall deficit. But we are not doing that either, Mr. President.

We have gone through this very painful exercise of cutting the budget deficit by $500 billion over 5 years, and you know and I know, and I believe everybody in this body knows that we have only gotten less than half of the way toward the overall goal toward balancing the budget. We have gone through enormous pain, enormous pain on revenues. Look at Medicare, look at other budget cuts; that pain gets us less than half of the way. We are going to be back here next year or the year after, mark my word; we are going to be back here as sure as can be, looking at this looming budget deficit, and we are not preparing ourselves for that now. This is a very shortsighted exercise.

Mr. President, I ask unanimous consent to have printed in the RECORD a listing of the alternatives that would be available to us, were we to be exercising a little more restraint on the defense side and, for example, decide to invest some of that in our own people right here at home.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PROGRAMS BENEFITING FROM A $30 BILLION SHIFT IN FEDERAL FUNDS FROM THE MILITARY BUDGET

HOUSING AND COMMUNITY DEVELOPMENT GRANTS: $5 BILLION PER YEAR

Community Development Block Grants.
Rental Housing Development.
Rental Housing Rehabilitation Grants.
Urban Development Action Grants.
Economic Development Assistance Grants.

URBAN MASS TRANSIT GRANTS: $3.1 BILLION PER YEAR

Mass Transportation Capital Improvement Grants.
Operating Assistance Grants.
Managerial and Training Grants.
Technical Assistance Grants.

PRIMARY AND SECONDARY EDUCATION GRANTS: $11.8 BILLION PER YEAR

Handicapped, Rehabilitation and Special Education Programs.
Vocational and Adult Education.
Compensatory Education Programs and Block Grants.
Impact Aid.
Magnet Schools.
Title IV Civil Rights Grants.
Title 2 Math, Science, Foreign Languages and Computer Learning Grants.
Bilingual Education.
Immigrant Refugee Education Grants and Emergency Aid.

EMPLOYMENT AND TRAINING: $3.1 BILLION PER YEAR

Job Training Partnership Act.
Aid for Dislocated Workers.
Senior Community Service Employment.
Migrant Workers Grants.
Employment and Training R&D and Demonstration Grants.
Work Incentive Programs.

SOCIAL AND COMMUNITY SERVICE GRANTS: $4.9 BILLION PER YEAR

Social Service Block Grants.
Community Service Block Grants.
Title III Special Programs for the Aging.
Head Start.

PUBLIC HEALTH GRANTS: $2 BILLION PER YEAR

Community Health Centers.
Alcohol and Drug Abuse and Mental Health Block Grants.
Area Alcohol Rehabilitation Grants.
Preventive Health Care Block Grants.
Mental Health Clinical Grants.
Family Planning Grants.
Tuberculosis Control Project Grants.
AIDS Program Grants.
Maternal and Child Health Care Block Grants.

Source: *A Shift in Military Spending to America's Cities*, A Report for the United States Conference of Mayors (Lansing, MI: Employment Research Associates, 1988), p. 5.

WHAT A SUSTAINED SHIFT OF $30 BILLION FROM THE MILITARY BUDGET TO URBAN PROGRAMS MEANS FOR THE NATION'S CITIES

195,000 more teachers hired.
$606 million worth of school books, computers and equipment purchased annually.
490,000 additional children in Head Start.
900,000 public housing units brought up to federal standards.
$2,200,000,000 for new buses, rail cars, and mass transit facilities.
6,500,000 additional people cared for at community and migrant health clinics.
Increased AIDS treatment and education.
Full immunization against childhood diseases made available for children.
1,300,000 more people enrolled in adult and youth job training programs annually.
2,300,000 more senior citizens served meals at home each year.
3,000,000 more visits to the elderly by volunteers.

Source: *A Shift in Military Spending to America's Cities*, A Report for the United States Conference of Mayors (Lansing, MI: Employment Research Associates, 1988), p. 2.

Mr. WIRTH. The reports of this conference report were circulating around yesterday. We were able to look at it only last evening. I want to discuss some of——

Mr. STEVENS. Will the Senator yield one moment?

Mr. WIRTH. Yes.

Mr. STEVENS. I would like to request the yeas and nays on this bill.

The PRESIDING OFFICER. Will the Senator from Colorado yield for that purpose?

Mr. WIRTH. Absolutely.

Mr. DIXON. Will my colleague yield for a moment?

Mr. WIRTH. Yes.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DIXON. Mr. President, I ask my distinguished friend, the senior Senator from Hawaii, a question. I have an obligation to leave the Hill to make a speech during the lunch period. I would like to vote on this appropriations bill and come back in time for the authorization bill vote. As you know, I have managed with the distinguished Senator from Georgia in the past. Is there any possibility we can accommodate this Senator?

I hesitate to ask that, but I am supposed to go off the Hill to speak to the C-SPAN people about the Persian Gulf crisis and the budget, and I would greatly appreciate it if I could vote somehow and return in time for the authorization vote. Can that be clarified for this Senator? I have been here all morning.

Mr. INOUYE. Will the Senator from Colorado yield?

Mr. WIRTH. I am happy to yield.

Mr. INOUYE. As chairman of the committee and manager of this measure, I am obligated to respond to some of the concerns expressed by my colleagues. That should take me about 10 minutes. How much more time does the Senator from Colorado need?

Mr. WIRTH. I have a variety of things I would like to discuss. There are a number of systems in here that I think people should know about. I would like to talk a little about the Reserve decision that is in this budget which is important for us to be aware of.

I do not know if other Members intend to speak. I cannot speak for anybody else who intends to speak on the bill. I appreciate the distinguished Senator from Alaska having requested the yeas and nays. I think that is appropriate. Perhaps we can get a unanimous-consent agreement to vote on the bill at some time later, at 2 o'clock perhaps. What would be the pleasure of the mangers?

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Chair announces that the yeas and nays were ordered.

Mr. STEVENS. If the Senator will yield, there are no requests for time on this side, and if the Senator from Colorado wishes to accommodate the Senator from Illinois and have a vote and proceed to make his statement—

Mr. WIRTH. Mr. President, I suggest that we can have a vote at maybe 2 o'clock, and that would accommodate the Senator from Illinois.

Mr. DIXON. Either then or at 12:30, either time.

Mr. INOUYE addressed the Chair.

Mr. WIRTH. Mr. President, 12:30 is fine with me.

Mr. STEVENS. We cannot do it at 12:30.

Mr. INOUYE. Will the Senator yield so I may make a unanimous-consent request?

Mr. WIRTH. I am happy to yield.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I ask unanimous consent that the vote on the conference report on the DOD appropriations bill be held at 2 o'clock this afternoon.

Mr. STEVENS. Reserving the right to object, and I do not object, I assume the time between now and then will be divided according to the usual rules.

Mr. NUNN. Will the Senator please clarify, Mr. President—I do not

object—will the Chair state when the authorization bill comes up, and what is the sequence of this unanimous-consent request?

The PRESIDING OFFICER. The authorization conference report was being considered upon disposition of the appropriations conference report.

Mr. NUNN. Mr. President, I suggest that if we can frame the unanimous-consent request so that debate could begin on the authorization conference report, as soon as debate is concluded on the appropriations report——

The PRESIDING OFFICER. If the Chair might suggest, matters of scheduling are nomally the province of the majority leader. We might delay for a short period of time while we check with whatever he has planned for the floor before we set a schedule. There may be other people involved besides the Senator from Illinois.

Mr. INOUYE addressed the Chair.

Mr. WIRTH. Mr. President, I believe the Senator from Colorado has the floor.

The PRESIDING OFFICER. Does the Senator withdraw his unanimous-consent request?

Mr. INOUYE. I do.

Mr. WIRTH. Mr. President, I have other comments that I wish to make. I will be about 10 more minutes. Then I know that the distinguished junior Senator from Nebraska also has comments he would like to make.

Mr. President, might it be possible to—since we have accommodated the Senator from Illinois—yield at this point to the Senator from Nebraska and then reclaim the floor? May I ask unanimous consent that the Senator from Nebraska might be recognized for his comments and then, following him, the Senator from Colorado will be recognized.

The PRESIDING OFFICER. Is there objection to that request?

Without objection, it is so ordered.

Mr. KERREY. Mr. President, I have come to the floor really to make some statements about the Reserve portion of the appropriations bill, and to ask questions of the managers, so that I can be clear as to exactly what it is that is occurring here.

I have a great deal of respect for the Senator from Alaska and for the Senator from Hawaii and for their abilities here in the Senate. And I have taken, on many occasions, their advice as to what we ought to be doing with our Nation's defense.

I also have a great deal of respect for the distinguished Senator from Georgia and have, on a number of occasions, pointed out what I think, in fact, is true, that he may be unique in Washington today, in Congress, in laying out for the Nation a new assessment of risk, a new assessment of the strategy for the defenses, and in accordance with that new risk, laying out a force structure that would accommodate that strategy, and laying out, as well, programs that would accompany that force structure. It seems to me that we have before us a fairly articulate display of what the Nation needs for defenses.

Once we have done that analysis, I am one who is prepared to say that we should spend whatever it takes to meet the risk. I do not want to provide our men and women in the Armed Forces with second-rate equipment. I do not want to tie their hands in any way and I most particularly do not want to tie the hands of the Commander in Chief once we have moved ourselves in a position where combat is necessary.

What I find myself concerned about is the absence of a direct statement to the American people that we have an emergency that requires this additional 180 days or a direct statement to the American people that we are going to hold full hearings on this to discuss it openly. I do not object to the full use of the Reserves. I like, in fact, much of the progress that has occurred over the last 14 years or so in bringing back the Reserves not only to their full strength but I think to their full credibility as well.

I would like to ask the distinguished Senator from Hawaii, was the administration concerned that somehow Congress was tying its hands? Was there some concern that the American people would not understand if they said that we have an emergency here and that the need to call up the Reserves for an additional period of time? Was there some concerns that perhaps this would send a wrong signal to Saddam Hussein if an emergency were declared? I do not quite understand why the administration is asking for this additional authority, authority that they already appear, it seems to me, to have.

Mr. INOUYE. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. LIEBERMAN). Under the previous agreement the Senator is recognized, still subject to the Senator from Colorado reclaiming the floor.

Mr. INOUYE. I wish to respond if the Senator will yield to me.

Mr. KERREY. I thank the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, in response to the Senator's inquiry, as chairman of this committee I did not receive any communication from the Secretary of Defense or from the President of the United States. This matter was brought to the conference by the Representatives of the House of Representatives.

I should point out that in a conference of this nature one is not expected to get everything he wants. It is in the nature of a conference. There is some give and take. We could have argued on the basis of principle and still be in conference at this moment. But I think the Nation demanded and my colleagues demanded that we expedite the process and get out of Washington, and that is what we did.

In the case of the Reserves, as I have indicated to the chairman of the Armed Services Committee, it would have been desirable for the President of the United States to have declared an emergency and technically, legally and officially tell the people of the United States that we have an emergency.

It would be difficult for me to suggest that there is no emergency. We have 240,000 troops out there, men and women, soldiers, sailors, Marines, and airmen. We have hundreds of tanks, hundreds of aircraft, countless numbers of naval vessels, three aircraft carriers, a battleship, and now there is a suggestion that another 100,000 may be sent there.

We have the President of France telling us that there will be a shooting war between yesterday and December 5, Why December 5, I do not know. Many commentators are saying the bloody time will come between Thanksgiving and Christmas, a horrible thought.

And at the same time when this is happening, I think we should remind ourselves that throughout this process no serious attempt was made by any Member of this body or by any Member of the other body to stop the use of appropriations to support Desert Shield. Many of us seemed to have been scrambling over each other to spend more money for Desert Shield.

This was the popular thing. We could have brought up the War Powers Act but nothing happened. There is a billion in here set aside from contributors to Desert Shield.

And so, I must suggest to my friend from Nebraska that even if the President of the United States has not declared an emergency, in the hearts and minds of all the Members here, and I believe in the hearts and minds of the majority of Americans, there is an emergency.

Why the President does not say so is beyond me. We can see it. The people of the United States can see it. But for some reason he cannot see it. We are risking the lives now of 240,000 men and women of the United States. If that is not an emergency, I do not know what is.

So, I must concur with the Senate that it would have been desirable for the President to have done that but at the same time it would be rather naive on our part to suggest that there is not an emergency existing at this moment.

Mr. KERREY. Mr. President, I quite agree with the analysis of the distinguished Senator from Hawaii. I do feel an emergency. Whether the forecasts that are being made by editorial page writers and all sorts of other people that seem to have a sense of when the balloon will go up in the Middle East will come true I do not know.

But I do feel a personal emergency and a personal concern for those troops there. I do not indeed question at all what the distinguished Senator from Hawaii is saying about an apparent emergency in the gulf.

That is not my quesion. My concern is for the credibility of the Reserves and what happens to the credibility of the Reserves if in the absence of a declaration of emergency by the President this action is taken. Again, I have a great deal of respect for the distinguished Senator from Hawaii. I listened to his response and I take that into very, very serious consideration. It may be that the action that the conference committee has taken is the correct one. Maybe that is the only one we can take in absence of a declaration of emergency by the President. Maybe that is appropriate.

I have come to the floor today to voice the concern once I have been told this action had been taken by the conference committee, again, not because I do not feel any personal emergency in the gulf but my concern for what this will do to the Reserves themselves.

Mr. INOUYE. If the Senator will yield, I concur with his concern. Because of that concern in conference, the Senate conferees insisted that if such a proposal is to be adopted certain restrictions be placed. It will be restricted for one fiscal year and for Desert Shield only.

Further, I think it should be noted that we have as part of our policy a rounded out combat unit, two-thirds active, one-third made up of reservists. At this moment, the combat troops in Saudi Arabia are made up of only Active Forces, none of the reservists have been sent there. It was felt by some of the House Members that if we are to follow this rounded concept of active and reservists forming a unit, and fighting as a unit, then the reservists should be sent out there.

Mr. NUNN. Mr. President, will the Senator yield for a brief question on this point?

The PRESIDING OFFICER. The Senator from Nebraska has the floor.

Mr. KERREY. I am glad to yield.

Mr. NUNN. I wonder if my colleagues will agree with me on a couple things so there will be no misunderstanding about this dialog?

I ask my friend from Nebraska and my friend from Hawaii if they would agree that the President has not at this stage declared an emergency.

Mr. INOUYE. Yes.

Mr. NUNN. He has not declared an emergency?

Mr. INOUYE. He has not.

Mr. NUNN. Would they also agree the President has not sent up any statement of his belief that there is a threat of imminent hostility?

Mr. KERREY. He has not.

Mr. INOUYE. The President has not, but it seems like everyone else around him has made speeches to suggest that the shooting will begin at 0900 or someday.

Mr. KERREY. The Commander in Chief has not.

Mr. NUNN. I believe the Senator from Nebraska was not on the floor when the Senator from Hawaii and I spoke on this subject and I agreed with the Senator from Georgia that it would be his belief that the President if he is going to call the units for longer than 6 months provided in this provision should utilize the national emergency provision in law by telling the American people there is an emergency and telling them why so we do not go into a situation over there without a full Presidential explanation of what we are getting into and why. I think the Senator from Hawaii agreed with me in general on that point. Is that correct?

Mr. INOUYE. The Senator is correct.

Mr. NUNN. I thank the Senator from Hawaii and my friend from Nebraska.

Mr. KERREY. I agree with the Senator from Georgia as well that that needs to occur. I quite agree that a majority of Americans support the action in the Middle East today. But I sense as well a growing concern amongst Americans as to why we are there. I think it is terribly important for the President to be as direct as possible if an emergency is felt so that the American people will not be misled about what it is we are doing.

Mr. GLENN. Mr. President, will the Senator yield briefly?

Mr. KERREY. I am glad to yield.

Mr. GLENN. I will make a longer statement later. This will take about a minute. The Senator from Hawaii in a very nice and diplomatic manner and tone in a statement stated what is the problem with all of our conference committees.

Too often, programs are set in conference by the strength of personalities and the demands of individuals rather than a well-thought-out policy or concern about the basic bottom line of combat capability. It happens in every conference we have and it happens in the defense appropriations conference, I am sure.

As the Senator stated, it happens that it was a matter of compromise of those with very strongly held views with regard to the Reserves and National Guard. In compromising, though, I think sometimes we go too far with some of these things that affect many, many millions of lives and basically affect the combat capability if we went ahead with the demands made by those individuals and their special interests.

I will have more to say about it later.

Mr. KERREY. Mr. President, before I yield the floor, I will just comment that perhaps part of my problem is I come from a culture in Nebraska that is dominated by the great former Senator George Norris, who was so angry about the conference process—and, in fact, described them as an evil—that he returned to Nebraska, amended our constitution, and eliminated the second house. And now Nebraska is the only State in the Union with a unicameral legislature.

So I have not experienced conferences before. I have experienced a fact of culture that is still dominated by the experience of one man, George Norris, who opposed the conference process.

I now yield the floor back to the distinguished Senator from Colorado.

The PRESIDING OFFICER. Under the previous order, the Senator from Colorado [Mr. WIRTH] is now recognized.

Mr. WIRTH. Mr. President, I yield to the Senator from Tennessee for a unanimous-consent request.

Mr. GORE. Mr. President, I ask unanimous consent that I might make a brief statement of a few minutes in duration on the matters that have just been the subject of a colloquy without interrupting the right of the Senator from Colorado to retain the floor.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. GORE. Mr. President, first of all, I compliment the Senator from Hawaii, Senator INOUYE, for his handling of this bill and for his long-time dedication to the subjects covered in this bill, as well as many others, of course. I specifically compliment him on the statements he has made this morning in response to the concerns expressed by the chairman of the Armed Services Committee, the senior Senator form Georgia [Mr. NUNN].

I, too, am deeply concerned about the provision which emerged from the conference relating to a rather significant enhancement of the President's authority to retain military personnel who are called up for a period after 180 days, given the circumstances we now confront.

Let me make it clear in this statement: I believe that the confrontation with Iraq is legitimate. I believe that the cause we are pursuing with the deployment of troops in Saudi Arabia is just. I believe the analogies to Vietnam are sometimes simply wrong. But I believe there are some lessons from the Vietnam experience which are ap-

plicable; there are some that are not applicable.

I am sure, Mr. President, you are familiar with the well-known saying from Mark Twain, a cat burned on a stove will not sit on a hot stove again, but he will not sit on a cold one, either. It is important that we not learn the wrong lessons from Vietnam. Because, as a great Nation, we do have interests in this still dangerous world and in the post-cold war era, it is important that we lead in the establishment of a new international order which attempts to move the kind of raw aggression exhibited by Saddam Hussein into the mist of history. That may not be possible in our lifetimes. But now is a moment when that opportunity presents itself and we would be foolish if we did not seek to establish that principle in the post-cold war world.

However, as I started to say a moment ago, there are some lessons from the Vietnam experience which I think do apply. And one of them has to do with the relationship between the legislative branch of Government and the President where the war power is concerned. The War Powers Act attempted to reconcile the natural conflict between article 1 and article 2 which respectively grant the Congress the power to declare war and the Commander in Chief the power to deploy troops. The way in which that natural conflict was resolved has been found wanting and the War Powers Act has not been invoked for reasons, some of which are valid.

But the fact the War Powers Act is flawed does not mean that article 2 now has complete and total precedence over article 1 in the Constitution. It does not mean the Congress has no role to play.

I make this point not as a jealous defense of the prerogatives of this branch of Government because I am a member of this branch of Government. I do it because I believe the Founders were wise in granting the power to declare war to the Congress of the United States, and that one of the reasons that decision was wise is that our colonial experience, and the experiences of our forebears before the establishment of the United States, was reflective of a broader range of experience in human history which speaks to the wisdom of a strong connection between the people of the country and any decision to commit the troops of that country to a war. I believe that this conflict is just—let me say that again—but I believe that it may soon become quite controversial and——

Mr. ADAMS. Will the Senator yield?

Mr. GORE. Let me complete my statement, if I may, and then I will be glad to yield. No discourtesy is intended, but I was right in the middle of a thought and I would like to complete it.

I believe this conflict may become quite controversial. And if the decision to engage in combat is made soon after the Congress leaves town and the entire venture begins during the interval between adjournment sine die and the beginning of the next Congress, the Nation's feelings about this conflict may not be as clearly understood by decisionmakers deploying the troops as they should be. There are many questions that, as yet, do not have adequate answers.

I support our deployment. Let me say that a third time. But I, too, have questions which I think should be debated within the legislative branch of Government.

What about the relative role of the United States versus the role of other members in the world community, if it is a conflict not between Iraq and the United States but between Iraq and the world?

I cite that as only one among many examples of the sorts of questions that could benefit from a debate. We spent many months debating percentage points of taxation. We have depleted all our reserves of eloquence on the issue of who shall bear the burden of shouldering the deficit. But there are members of our society who are already bearing the burden of defending the Nation's interest in the Middle East and we are about to return home to our constituencies having barely touched our responsibilities where those Americans now deployed in the Middle East are concerned.

We now know that the President may well initiate a war while we are out of session. If it comes, it will be a war without benefit of the positive consent of the Congress, whether in the form of a declaration of war or an invocation of the War Powers Act. Under these circumstances the expansion of the President's power to summon and hold the Reserves as provided for in this legislation amounts to a further deterioration of Congress' authority.

The Constitution does give Congress authority in this area precisely to defend the people against an executive with a proclivity for going to war. And it is one of the most sacred responsibilities we have.

The fact that this particular confrontation is, in my view, I say a fourth time, legitimate, does not alter the underlying problem. We are leaving Washington with the power of war and peace utterly committed into the President's hands as a result of this legislation, with this power to commit our men and women into war effectively doubled. The fact that this proposition has been committed into law without benefit of actual legislation or hearings or debate but rather through the conference process makes it even more deeply troubling as a sign of the further withering of Congress' effective ability to declare war.

So the statements made by the distinguished Senator from Hawaii assume enhanced importance and my appreciation for his words is enhanced.

I hope and trust the Commander in Chief will, likewise, understand the gravity which so many of us in this Chamber place upon the words of the Senator from Hawaii as he interprets and describes this particular provision in the conference report.

National consensus is a strategic asset. The participation of the legislative branch of Government in the use of the power to pursue a war is an essential factor in building and maintaining a national consensus. I hope this new power, coming with the conference report, will not be exercised.

Mr. WIRTH. Mr. President, I would like to echo what I said earlier. I have the greatest respect for the Senator from Alaska and for the senior Senator from Hawaii who has provided great counsel to me on this and particularly on issues related to an area where we share a lot of mutual concern, interest and background; the area of telecommunications and many, many other areas.

I should also just say we all know we do not get everything we want in a conference report. I am very aware of that as well. But I have risen today, Mr. President, because I simply do not agree with the priorities that are reflected in this piece of legislation.

As pointed out with the charts earlier, I believe we are spending, and continue to spend, far more on defense that we should. Our peacetime cold war norm is $235 billion. We at least ought to be working, Mr. President, to get down to the cold war budget. We are way above that now. We at least ought to be working to get down to that. If we did so, Mr. President, that would release welcome funds to be committed to the deficit.

We have that problem coming down the track just as sure as we are all here today. We are going to be back for a second round of deficit reduction. This round of $500 billion for 5 years gets at less than half the problem. We are going to be back here and the American people must know we are going to be back here; $500 billion against what is projected to be a deficit over that period of time of about $1.3 trillion. That is $500 billion out of $1.3 trillion—less than half of it.

We are going to be back here, Mr. President, and we will have to find programs to cut and we will have to look at all the issues that have been debated here. We have done the easy one in this $500 billion and look how contentious that has been.

I think we are spending much too much here now. We are not looking ahead at the deficit problem. Certainly, Mr. President, we are not looking ahead at the problem of commitments to those Americans who are very much looking to us.

What has really happened in many ways, Mr. President, is we have done a very good job of alienating a very large group of people in this country. There are 500,000 people in my State without any health care insurance at all; 500,000 people in a small State, Mr. President.

We have an education system which is crumbling in many places and we are increasingly uncompetitive around the world. For the first time in our Nation's history we are graduating a generation of young people less literate than their parents. For the first time in our Nation's history a generation of young people are graduating from high school less able to manipulate numbers and ideas that their parents. The commentary in there, and so is the course we must follow. Those are investments we have to make for our own common national security and defense.

If we continue with these defense expenditures at the end of the cold war, if we cannot move appropriately as we should on the deficit—which is coming back to haunt us—then we cannot make those investments which we must make.

Mr. President, there are other items in this bill that Senators are going to be voting on in a short time, where we certainly should not be spending money. Let me give some examples: The SRAM-T missile. The appropriations conference report provides the full request for short-range attack missile, $119 million.

Probably most Senators know what the SRAM-T is, but for those who do not, the SRAM-T is destined to carry a nuclear warhead from an aircraft stationed with NATO forces in Europe. After the INF Treaty was signed the Department of Defense came up and made the case that following that treaty, gaps were left in our ability to strike various targets in Europe because we no longer had the INF Treaty, we no longer had the Pershing missiles, there were gaps in our ability to strike various targets in Europe, and we ought to fill those gaps and consequently, out of that came the SRAM-T missile.

This is a tactical variation on the SRAM missile. That was designated to go on bombers to targets in the Soviet Union and it was modified to be a tactical air-launched missile to be carried by F-15's and maybe F-16's or F-4's, and to be launched at relatively short range, 600 kilometers, targets in Europe.

This is a missile designed after the INF Treaty to be used in Europe in the NATO theater.

What has happened, Mr. President, since the Department of Defense came up to make the case for the SRAM-T missile? Has the world changed? My Lord, it certainly has. The Berlin Wall is down and Germany is reunified. The Warsaw Pact does not effectively exist any more. The Soviet Union is falling apart. The United States is withdrawing our forces from Europe. And nobody would believe we ought to have an air-to-ground nuclear warhead missile in Europe for NATO purposes.

And yet, what are we doing in this legislation? We cut the SRAM-T in the Defense authorization bill, Mr. President, and yet we are coming back in this legislation, to fund it fully—a true vestige of the cold war. Here we are building cold war systems in a budget that is above even the cold war norm. Mr. President, it makes no sense whatsoever.

Speakers earlier have spoken about the advanced tactical fighter. The appropriations conference report shifts $200 million from R&D on the ATF fighter to full-scale development of the planes, while providing $764 million for R&D. It contains language permitting full-scale development of the plane.

The authorization agreement, on the other hand, prohibited funds for full-scale development after very careful hearings. After looking at this and struggling over it, the Armed Services Committee, who have looked at it and looked at it, said we prohibit funding for full-scale development of the advanced tactical fighter.

We are embarked, as the distinguished senior Senator, Senator NUNN, said, on a $70 billion program for a new tactical fighter. The Armed Services Committee said we are going to prohibit the use of those funds for moving ahead in this fashion.

Mr. President, is it appropriate, as the world is changing as rapidly as it is, in which we do not yet have a reformulated defense strategy, to meet the new needs of the world as they are evolving? Is it appropriate to commit ourselves to a $70 billion program? I think not.

Earlier, the distinguished senior Senator from Missouri talked about university earmarks, a program that we have had some very significant debate upon and which, in the Armed Services Committee, we have very carefully gone through and developed legislation to preclude this very nasty process.

We open the door to this kind of earmarking, Mr. President. I have done everything I can to resist this. There are all kinds of constituencies in my State who have come to me and asked: Would you please go to this appropriations bill; will you please go to that appropriations bill; and will you please earmark?

We have been told that this is research essential to the Department of Defense. If it is essential to the Department of Defense, presumably, Mr. President, the Department of Defense's regular process for reviewing these ought to be gone through, if it is, as advertised, "essential to the Department of Defense."

Let me move to another element that is of great concern in this legislation, and that relates to Department of Defense cleanup. While the conference report does appropriate the full amount authorized for the Defense environmental restoration account, and I welcome that and support that, the report also apparently highlights environmental cleanup priorities for a few installations.

Both the authorizing and appropriating committees have in the past resisted this kind of earmarking of cleanup activities so you would not have people who have seniority or sit on certain committees, to be able to interfere with what has been a longtime Government policy of cleaning up the "worst first." That is the policy that we presumably are following, but we see here the beginning of earmarking of where the cleanup funds are to be spent.

I appreciate the Appropriations Committee holding the line almost completely on this, but I just want to note in this legislation that we have opened the door a little bit to earmarking cleanup funds. That is absolutely wrong, and we must continue to uphold the principle of resisting earmarking of funds.

Finally, Mr. President, I would like to myself comment shortly on the Reserve callup issue that was recently debated by the distinguished Senator from Alaska, the Senator from Hawaii, the Senator from Georgia, and the Senator from Tennessee. This provision in the conference report extends the President's authority to call up reservists, short of a declaration of national emergency.

Currently, the President of the United States has standing authority to call up 200,000 reservists for a period of 90 days, which he can renew for an extra 90 days. He then has to declare a national emergency in order to have authority to call up a reservist for a longer period of time.

The conference provision, was not contained in either the House or Senate Defense appropriations bills. Normally, points of order are raised on something that falls outside the scope of the conference. But the rule on the House side waived all points of order. So no Member of the House was able to bring up a point of order against the bill because it was outside the jurisdiction of the conference report, the

boundaries of which were in those two pieces of legislation.

Normally, a point of order could be raised. Those were raised, I understand it, in the rule there. This is the last opportunity anybody has to look at this, in the debate going on on the floor today, and the vote we are going to have today. Otherwise, there is no voice, no open forum at all for any discussion of this extraordinarily important change in policy.

It is noted that the President already has broader authority to call up and retain reservists if he declares a national emergency. The provision that is this appropriations conference report allows the President to have it both ways: To continue his buildup in the Arabian peninsula without complying with the War Powers Resolution and without declaring a national emergency.

What we are doing is abdicating our responsibility, and what we are doing is letting him effectively continue to abdicate his.

The distinguished senior Senator from Hawaii gave a very good answer to this. He said: "We are acting, and the President is not. We are doing the responsible thing, and the President is not."

I think that that was a very good answer to the questions and the discussion. There is obviously, and emergency out there. We have 240,000 troops there. The Secretary of Defense has just told us we are going to add another 100,000 troops. And yet the President of the United States, who is the Commander in Chief, is unwilling to come to us and unwilling to exercise his constitutional responsibilities as Commander in Chief.

Mr. President, the Senator from Hawaii has suggested that our retrenchment in 1950 led to the Korean war, and that that was analogous to the present defense debate.

But we should also recall that President Truman at that time did not seek congressional authorization for the Korean conflict. He paid the price as the war dragged on, as there were more and more questions about what we were doing and why we were doing it. The war become known as "Truman's war." I raise that as a warning. We are getting ourselves into a situation that is going to come back and haunt us if we are not clear about what our responsibilities are and what the President's responsibilities are.

We are giving him major authority in this bill without a single hearing. I believe we are also giving it to him, Mr. President, under something of a significant cloud.

The chairman of the Armed Services Committee noted earlier that on October 9, Secretary Cheney asked Congressman MONTGOMERY if he would provide a change in the law. Concerning reservist call up authority from 180 to 360 days.

Senator NUNN had previously written to the Defense Department asking them what their position was on this. On October 22, 2 weeks after the Secretary of Defense had asked Mr. MONTGOMERY for this change in the law, 2 weeks after that, and these documents have been entered in the RECORD, 2 weeks after that, the chairman of the Armed Services Committee, the chairman of our Armed Services Committee, received a letter saying that no decision had been made on this important issue.

Mr. President, we might say that there was a bureaucratic foulup in the Pentagon, but I shudder to think about bureaucratic foulups related to something this important in correspondence between the Office of the Secretary of Defense and Senator NUNN, the chairman of the Armed Services Committee.

We can be charitable, Mr. President, and suggest that this happened by happenstance or a mistake was made or lack of coordination. I believe that what was going on is that the administration was trying to get something done without full disclosure in the light of day. That is why it is so terribly important that we have this discussion today so that the American people will at least know that this has happened, that there has not been one hearing on this issue, that this was done without coming up here to the authorizing committee; it was done really very much through the back door, and that procedurally points of order were waived on the House side related to this.

The Senator from Tennessee has very appropriately asked the question, is the cause just? This obviously is extremely complicated, something that we in the United States and we in the Senate have an obligation to look at and openly discuss. We have not done that.

Mr. President, the question is why are we in the Middle East? What is going on there? The President of the United States told us in his address on Kuwait, on September 11:

> Our objectives in the Persian Gulf are clear, our goals defined and familiar. Iraq must withdraw from Kuwait completely, immediately and without condition. Kuwait's legitimate Government must be restored. The security and stability of the Persian Gulf must be assured.

At the same time that was going on, there were significant problems in Liberia; there were incursions into Liberia from forces of surrounding countries. So we had a country, Liberia, where there were significant problems with its "legitimate Government," and the security and stability of much of that area of West Africa was presumably in question. We did not send 240,000 American troops to West Africa, Mr. President, to deal with the Liberian situation that was occurring at exactly the same time.

We are in the Middle East, Mr. President, because of oil, and we ought to be honest and straightforward about the fact that we are there because of our enormous dependence upon oil. We are also there because of problems that relate to Saddam Hussein. Where do we go from here?

Those are the questions we have to ask in the open so we understand this and we at least are registered on this before we leave. The forces of the U.S. Government are now deployed. We have made a major commitment and a major stand. The Saudis are deeply exposed, as are the Egyptians, in this.

How long are we going to stay? How long are we going to be there? We have been told that the embargo is the tool for us to surround Saddam Hussein and force him to give up his ill-gotten gains. We are told that the embargo is going to take a long period of time. At the same time, the administration has painted a growing picture of hostage mistreatment. There has been story after story about the mistreatment of hostages. Secretary Baker has spoken to that extensively, and that is becoming a real major theme coming out of the administration. There is some uncertainty, however, about the extent of hostage mistreatment, and yet this is apparently being pursued by the administration as the provocation that they are going to use for further action down the line.

Mr. Webster has said, and said only yesterday, that regional stability will require the removal of Saddam. A pretty clear statement is being made. 100,000 more troops going in yesterday, and here we are with this provision broadening the President's authority to callup reservists today.

The only handle that we have to discuss and to think about this issue, Mr. President, is a last-minute, back-door provision to provide the President with the authority to callup reservists for more than 180 days. That is the only element that we have before we leave here, Mr. President, to focus on this issue. And it is here in an appropriations bill.

Mr. ADAMS. Will the Senator yield on that?

Mr. WIRTH. I will in just a minute.

So we have to be asking ourselves, Mr. President, and thoroughly understanding the complexity of the situation we are in as we vote on this, what is our policy in the gulf? What are our objectives? Will we go to war to save the hostages? Will we invoke Article 51 of the U.N. Charter to invade Iraq? Will the President consult with Congress? Will he seek a declaration of war?

Regardless of what one thinks of the 1973 War Powers Resolution, there can be absolutely no doubt about the constitutionally conferred role of the Congress in the war power.

Yes, the President, as Commander in Chief, obviously has the authority to respond to attack and to emergencies, but the situation in the Persian Gulf offers us the luxury now of some deliberate consideration. There could be no more clear-cut case in which the Congress should be involved and has a constitutional responsibility to be involved, uncomfortable as that is for us. We cannot duck, Mr. President. But by putting authority into the bill that we were not told about, were not aware of, effectively what we are doing is precisely that.

Given the budgetary crisis in which we find ourselves and a potentially catastrophic impact of war in the gulf, we should heed the words that Jefferson wrote to Madison in 1789 on the need to—

> Check the Dog of war by transferring the power of letting him loose from the executive to the legislative body, from those who are to spend to those who are to pay.

Mr. President, this is the only vote we are going to have which in any way gives us the opportunity to talk about this. I welcome that opportunity. I know how much work has gone into this piece of legislation. I appreciate the long and extensive work that has been done here. I want to use any opportunity I have to, one, suggest that I think the dollars in here are a misplaced priority, but, second, Mr. President, to point out that in this piece of legislation we have the only opportunity to discuss what is going on in the Persian Gulf today.

Mr. President, I yield the floor.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Washington [Mr. ADAMS].

(The remarks of Mr. ADAMS pertaining to the introduction of Senate Joint Resolution 385 and Senate Joint Resolution 386 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. I yield to the distinguished floor manager.

WAIVER OF ENROLLMENT REQUIREMENTS WITH RESPECT TO RECONCILIATION BILLS, APPROPRIATION BILLS, AND CONTINUING RESOLUTIONS

Mr. INOUYE. I thank my friend from Ohio.

Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 682, a joint resolution waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the 101st Congress, that the resolution be deemed read a third time and passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So House Joint Resolution 862 was passed.

DEPARTMENT OF DEFENSE APPROPRIATION ACT—FISCAL YEAR 1991—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. GLENN. Mr. President, I have listened with great interest this morning to the items discussed on this appropriations bill. I think one of the most appropriate comments of the morning was made by the distinguished Senator from Hawaii in responding to comments of Senator KERREY of Nebraska about the bill, in which Senator INOUYE pointed out that this is a matter in conference in which there is a lot of give and take. No one person's views prevail.

Mr. President, I think maybe that is at the heart of some of our problems in areas of disagreement here, because we are all aware, having been in innumerable conferences through the years, that the tone of some of these conferences are quite often set by the strength of particular personalities, the vehemence, or the stick-to-itiveness, or whatever you want to call it, for their demands, for their particular interests, or their particular State, or their particular district. And sometimes I feel those demands prevail over the well-thought-out policies or concerns about what should be our very basic concern, and that is the combat capabilities that we are providing for the United States of America to meet our worldwide commitments.

Maybe it is too idealistic to say that just the good of the Nation should be paramount, and we should not consider some of these other personal matters, important though they may be to individual Members of the House of Representatives or individual Members of the Senate and that our purpose here is not to just be a distribution system for Federal dollars. Our system here is supposed to work to provide the finest combat capability we can for this country and do it with the least expenditure of funds.

I am aware that many of the things brought up here this morning are things championed by people with a particular interest in a particular area, and I know that happens. I would like to revisit a couple of these items briefly here. I will not take a lot of time.

Having said what I said about the conference, I would like to know if there is any particular new bit of information that we did not have on the Senate Armed Services Committee involving the advance tactical fighter. We are starting off now to commit billions, and billions, and billions of dollars. This is not a small decision, to go to full-scale development with the ATF.

The Defense Department itself, in its major aircraft review, MAR, conducted earlier this year concluded that changes in Eastern Europe and economic changes in the Soviet Union have, "reduced the urgency of beginning ATF procurement." That review further recommended that in order to solve some of the problems that are apparently inherent in that ATF program at this point, they recommended—this was the Department—that procurement be delayed for at least 2 years.

I cannot help but wonder that in this time of austerity—when we are quibbling over amounts of hundreds of thousands of dollars in the budget reconciliation process, when we are worried about going to sequester in this time of such austerity—we are moving beyond the Defense Department's own recommendations in the best study that the Armed Services Committee can put to this problem and are willing to start committing billions and billions of dollars, which this starts the toe in the door process of accomplishing.

Are there new facts that we did not have? I do not know what they are. Is there a new need? To return to my first theme, is there a combat requirement? Is there a threat declaration that says we need this airplane on a priority basis? Or did some of these other matters creep in to that decisionmaking?

I do not understand the move in this direction. If there was new information, or a new analysis for a combat requirement, then I would understand that, but if there is, then I think that should be shared with the Armed Services Committee, because we did not have that information, and we put a considerable amount of study in on this particular problem.

Mr. President, addressing another area that is covered. I share the concerns of Chairman NUNN on the provision in the conference report that doubles the period the President may call up the Reserves, short of declaring a national emergency.

I chair the Manpower Subcommittee on the Armed Services Committee, so I deal with these matters of Reserve and National Guard problems on a near daily basis. At the present time, of course, the law permits the President to call up, as has been stated earlier this morning, an initial 90-day

period, and he can extend that for another 90 days.

What is proposed in the conference report would double that to make it possible for him to call them up for a year. Well, I just do not feel that is necessary at this time. I know that there are those of very strong persuasion over in the House, and some in this body, but mainly over in the House, who are adamant, locked in, that wherever Reserves and National Guard can be used, they will be used. Some people have made a near career out of advocacy out of Reserve and the National Guard issues. I understand that, and that is fine. I, too, am a big supporter of the National Guard and Reserve concept.

(Mr. KERREY assumed the chair.)

Mr. GLENN. The total force concept has been in effect since 1973 in which we spelled out the roles and missions of the Regulars and the Guard and Reserve.

Mr. President, the current law was designed to be a limited callup authority. We were supposed to have a national emergency declared if it was to go far beyond that. It was deemed to be a more serious matter than just a temporary commitment, and the law is very specific with regard to that. It requires a declaration of emergency.

And with that, under current law, upon declaration of a national emergency, the President can activate up to 1 million Reserve and National Guard personnel for up to 2 years.

So I hate to see us just sort of sneaking around current law without this being duly considered as to what all implications of it are.

No one has really given any good reason for extending this limited callup authority. I would submit that this is a matter of policy that I do not really feel has a place on the appropriations bill.

We get called to task around here all the time for trying to legislate on appropriations bills but here we are setting policy on the appropriations bill out of the appropriations process itself.

So I think if we are to keep this appropriations process as an appropriations process, policy matters like this that do not involve money—this is not an appropriations matter; it is not a money matter, basically—I feel should not have been dealt with on this particular piece of legislation. If we go ahead and change this, we, in effect, are changing the rules of the game for reservists in the middle of the game. I do not believe that is right, either.

My one concern I keep coming back to is combat capability. And whether the proponents over in the House, or wherever they may be, who advocate the use of Reserves and want to make certain that combat Reserve unit is called up no matter how well-trained those Reserves may be, I think even the reservists themselves recognize that they will not be as combat ready as the Regulars who train day in, day out; week in, week out; year in, year out; and are supposed to be backed up in an emergency time by the reservists as it should be, and that is what our policy is.

There are those who want to push the Reserves into this above all, but I can guarantee them that if Reserves are put in and are not adequately trained, are not up to the task without additional training, we wind up taking a lot of additional casualties just because of insistence that a Guard unit or a Reserve unit had been called up and placed in a combat position. If they take additional casualties, it will not be very popular to see those additional coffins with flags on them lining up at Dover, DE, coming back from a combat situation in the Mideast.

I come back to my original statement. I repeated several times we should be guided by the combat capability that we are providing and putting into a given situation and stop all the political nonsense with regard to whether it is Guard or Reserve or whose district it is in or whose State it is in, we should be providing combat capability. That is what will keep the casualties down if we really get into a conflict in the Mideast. Some want to call up Reserves because it is going to hurt Reserve morale somehow if they are not called up.

Well, I can assure this body, as well as can many other Members of the body, that there is no great honor in getting shot at. Bullets are very impersonal.

The distinguished floor manager on our side of the aisle, who is floor managing this bill, can attest only too well to the fact that combat is not all thrills, it is not all a vacation from home, it is not all a vacation over in the Mideast to be present because someone in Washington who is not going to have to get shot at wants to send them over there when the Pentagon itself has deemed they are not as combat capable without additional training as the Regulars who they sent over there first. That is the reason the Pentagon made some of the decisions they made.

If it is needed to disturb the Reserves, disturb their lives, disturb their families, to take them away from their children, and send them over there for a need because there is a combat requirement for them to be there, then I support that and they can take their lumps right along with everybody else in that kind of situation.

But this is not a vacation in the desert. When you are over there, it means that the Regulars over there who are going to be fighting side-by-side with these Reserves better have full confidence in their capability to do what has to be done.

So, Mr. President, extending the callup authority without just changing the rules in the middle of the game for Reserves I think is not right and I would hope that that might be changed in this legislation.

I would make only one other statement. We ask at the start, some 4 years ago, for the Pentagon to better define the total force policy, which is the policy put into effect back in 1973 in which we tried to define the roles and missions of the Reserves and Regulars and who would do what, who would be deployed rapidly, who would back that up.

We did such things as assigning 70 percent of the combat support and combat service support roles to the Reserves. That is the backup, the engineering functions, intelligence functions, transportation functions, and a whole host of things that are not normally done by the front line troops. We assigned those to the Reserves with the idea if we got into a shooting conflict, the Regulars would be able to operate for 2 or 3 weeks on existing supplies after they moved in. At the end of this time, they needed support. Seventy percent of that combat service support role was assigned to the Reserves in the Army.

Some of those Reserve units are excellent, but about 45 percent of them were rated not combat ready this past year. Would you want to throw them in there without additional training? I think not.

I would submit, just as an aside here, the President is really concerned about this and, my colleagues are concerned about this. But there is nothing that says that the President or the Defense Department cannot activate individual Reserve units now for training and send them out to the desert training center, let them get training, come back home again, and then they can be activated and the 6-month assignment will work. Then they are already trained. They are ready to go. In effect, that means they would probably be away from home maybe 9 months, but it is a way of getting around this idea that we have to have a full year's commitment out of them to make this whole system work.

Let me continue. Another thing that is assigned to the Reserves is 80 percent of combat medical. We have had horrible shortages in that area, terrible shortages, because we are about 71 percent short of doctors; that is, about 7,000 short for the whole Department of Defense. We are 31,000 nurses short; that is, 66 percent short.

I only point these out because what we asked for 4 years ago was a restudy of the whole total force policy so we would better define this mission between the Regulars and the Reserves,

who gets called in what status, who has the best mobility, who can fit into a mobile combat situation. We wanted it better defined. We received no response from the Pentagon.

We finally, last year, wrote it into legislation that required the Pentagon to study the whole program. The interim report came to us in the middle of September, as required, only a couple days late—that is fine—but the report did not tell us anything; it was not the study we needed or asked for.

I bring it up in this context because we are supposed to get the final report of the total force policy study by the end of this year, by the end of December. I sincerely hope and ask the people who may be monitoring our remarks over at the Pentagon that they give us some guidance in this matter so we are not in a quagmire as to what the Reserves will do, what the Regulars will do. Now here in this bill we, in effect, legislate on an appropriation bill by bringing up this kind of policy matter that should be considered very, very, very carefully in light of what the Reserves are going to do and in light of all the study we have given this on the Armed Services Committee.

So, Mr. President, I will yield the floor in just a moment here. Eut I come back to my original statement that, much as I know how we have to negotiate in conference, I hope that our bottom line on this, that guides us, is the combat capability for the United States. That is what we are about. It is not what is in whose district, as important as that may be, or what strengths of personality there may be over on the other side or here that insist on certain things for the Reserve or Guard that might not even be in the Guard or Reserve's best interest.

So, Mr. President, I share the concerns of our distinguished committee chairman, Senator NUNN, and with that I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

A NEW WORLD ORDER: THE FIRST QUESTION

Mr. MOYNIHAN. Mr. President, we are hourly reminded that Congress is adjourning at a later date this year than at any previous time since World War II. This ought not to puzzle us, for there have not been 2 such years as 1989 and 1990 since the end of World War II. We have seen the end of the cold war; in many ways the end of the era that first began with the First World War.

As our most eminent political philosopher Judith Shklar writes, "1914 is, after all, when it all began." The age of industrial war, the age of ideology, the age of totalitarian ideologies waging industrial war, the age of democracies wracked with institutional torment of an unavoidable but seemingly unavailing because unending, response.

Well, it is over. But instead of saying we won, might we not settle, as Faulkner might, for the simple proposition that we prevailed. Faulkner's seems the better term simply because the cost to free societies of the age of totalitarianism has been so great, the losses in some sense irreparable or, at any event, likely to persist indefinitely. It occurs to me that only as we accept this truth shall we find it possible to summon the sense of good cheer and larger expectations that seem missing in the capital at this moment.

That seems missing, Mr. President, as we set about a National Defense Authorization Act which would lead you to suppose that the cold war was commencing, not over and done. For the opportunity to embrace the event will pass soon enough. And it is, accordingly, all the more to be seized. Carpe diem, as the New Testment has it. And all the more to be put to the good use of good spirits of the moment to keep with the discomfort of thinking anew as Lincoln once summoned us to do.

The largest event of this moment is the tentative reappearance of international law in the pronouncements of our leaders and indeed of statesmen throughout the world. I do not speak metaphorically. There was a moment last summer when President Bush seemed to speak of little else. Thus, on August 20, he urged Iraq to "adhere to international law." In a press conference on August 23, he acclaimed that "the occupation of Kuwait is illegal under international law." "International law must be enforced," he said. Iraq is an "outrageous violator of international law." "International law has condemned" the Iraqi attack. Iraq should agree to comply "with international law" and cannot make demands "that are unacceptable under international law."

That surely breaks the Presidential record for citations of international law in a four-day period. Indeed this was a language not heard in any such sustained manner since the end of World War II. And not insignificantly, not accidentially, the subject arises at the end of a protracted stalemate that seems to have resolved itself. Now one looks for new arrangements.

More recently, President Bush has invoked international law at its most advanced or, if you wish, its most extreme imperative. That is to say the application to individuals of the law of war. Thus, in his remarks in Texas on October 15, speaking of the standoff in the Gulf, he went further than any President in history, so far as I am aware, in pronouncing this imperative, itself product of the age of totalitarian ideology. Here is the President statement:

> What is at stake is whether the nations of the world can take a common stand against aggression or whether Iraq's aggression will go unanswered; whether we will live in a world governed by the rule of law or by the law of the jungle. And that is why America and the world cannot allow this outlaw act to stand. That is why Saddam Hussein will fail. Every day now, new word filters out about the ghastly atrocities perpetrated by Saddam's forces, eyewitnesses accounts of a systematic assault on the soul of a nation, summary executions, routine torture. Under the forces of Iraqi occupation, we are told that mere possession of the Kuwaiti flag or a photograph of Kuwait's emir are crimes punishable by death.

He continued:

> Last month at the White House, I met with the emir of Kuwait. I heard horrible tales: newborn babies thrown out of incubators and the incubators then shipped off to Baghdad. . . . Dialysis machines sent off to Baghdad.
>
> The story of two young kids passing out leaflets: Iraqi troops rounded up their parents and made them watch while those two kids were shot to death—executed before their eyes.

Then the President said this:

> Hitler revisted. But remember, when Hitler's war ended, there were the Nuremberg trials.

On August 23, the day after I returned from a congressional trip to the gulf, I noted on "Good Morning America" that international law endorses hanging war criminals:

> [Saddam Hussein] had better watch himself. . . . If he touches one of those civilians they're now . . . calling "hostages"—if he touches one, he is liable under the Geneva Convention of 1949, which put into international treaty * * * the Nuremberg Tribunal decisions, that means he hangs and his commanders hang.

Some felt that this was hyperbole. Surely international law does not sanction hanging individual commanders and, even if this improbability should be the case, the United Nations will not have the backbone to enforce it. Yet, two months later President Bush was speaking of war crimes trials. And a New York Times headline reported last Sunday: "U.N. Council to Weigh Iraqi War Crimes Inquiry."

All this is quite striking. It has about it the air of revelation, as if—Lord forgive me for what I am about to say—the President had a momentous encounter on the road to Damascus.

Momentous or not, it was sufficient to bring the incomparable James "Scotty" Reston back to the pages of the New York Times which he embued with a necessary Calvinist rectitude for the better part of half a century. Indeed, from those days in 1944 when international law, the United Nations and the Nuremberg trails were at the center of American pronouncements on foreign policy. Reston nicely captures the hesitant, backsliding, impulsive sequence by which Mr. Bush attained to this epiphanic proclamation of "a New World Order" in his address to our joint session in August.

This is what Reston wrote this past Sunday, speaking of the President:

One of his major foreign policy objectives was to persuade Mikhail Gorbachev not to use military force to achieve political objectives in the Baltic states and Eastern Europe, but he invaded Panama against his treaty commitments to the United Nations in order to capture a two-bit dictator, and did not know what to do with him when he caught him. Having defied the U.N. in Panama he then relied on it in Iraq.

Which brings me, Mr. President, to a series of three questions as the 101st Congress comes to a close and the affairs of state are left to an unencumbered President. I will speak to the first of those questions today.

This first has to do with this New World Order, of which we have been informed. It is not, perhaps, the happiest phrase, giving memories to someone of my age of the "New Order" of the Third Reich; but it will do. The question is, Are we ever going to be told what it means? Presidents just cannot go around announcing the advent of New World Orders and leaving it at that. They are not sending out for pizza, Mr. President.

We are trying to redefine the most precious of all institutions, which is to say the structure of the relations of armed states in a world capable of destroying itself through armaments, and by no means at peace.

It would be one thing if the nation and the world had been observing a steady movement of American policy in a clearly perceived direction. But this was, and is, not the case. Indeed. References to international law virtually disappeared from the pronouncements of the American Presidency during the long Cold War. Mistakenly, but emphatically, international law came to be seen as a form of self-imposed restraint which no American President dared accept.

Stanley Kober writes:

The fears generated by the Cold War gave virtually unlimited discretion for the use of force to the President * * *.

President Bush, in Panama this year, exercised just that "unlimited discretion." On no grounds that this Senator can perceive, all of a sudden he sent the Army, the Navy, the Air Force—and the CIA, I do not doubt—off to invade a small country, kill a fair number of people—civilians for the most part—destroy a fair amount of property, and violate the diplomatic immunity of a foreign embassy, simply because he got mad at some thug who had been on our payroll for all of those years but was not delivering any more—something like that.

The only thing he did not do was to bring Mr. Noriega back in a cage in the manner of the sultans of olden time. Still, Mr. Noriega is now behind bars, and that comes to pretty much the same thing.

So, Mr. President, there was something missing from the President's pronouncements after the invasion of Kuwait by Iraq. The words were right, but there was no acknowledgment that the words were new. No one was told:

Look, I have thought this over. I think we should behave and henceforth in a way that cleaves to the rules we laid down—with the British and the Soviets—in 1944 and 1945.

There was not a word to that effect. Just the sudden appearance of international law, rules, tribunals, charters, and the "New World Order," undefined, but repeatedly invoked.

Unease on this score can have any number of sources. One example which struck me, occurred 9 days ago when our able Secretary of State, James A. Baker III came before the Foreign Relations Committee to outline American policy in the Gulf. Just as suddenly as the term "international law" had appeared in the pronouncements of our President, it now disappeared. I called this to the Secretary's attention. If the Senate would indulge me, I will read the exchange. I said:

Mr. Secretary, first of all, congratulations on having gotten through the morning. You have been very cheerful and accommodating.

Let me see if I cannot give another perspective on the subject that all of us have returned to over and again.

I was referring to the question of whether we were going to be surprised by unilateral U.S. military action in the gulf? The press was filled with obviously planted statements that, yes, we might be. My colleagues on the committee had asked about consultation, authorization, and those matters. I continued, saying:

I was struck by your written testimony and the fact that in all of 10 pages, at no point did you use the term "international law." At no point in your subsequent testimony have you used it. I was struck because there was no more distinct fact of President Bush's reaction to the Iraq invasion than the sudden appearance of this term in his language. On the day after the invasion he said that what Iraq had done violates every norm of international law.

I went on to recount the citations of the international law which I mentioned earlier.

I then said:

Now, there has not been such a litany of invocations since Harry S. Truman. The term almost disappeared from the vocabulary of American Presidents and Secretaries of State.

But then it reappeared and we wondered if things had changed; if we had changed our mind.

There has been a good deal of comment, and it not nearly as acerbic as it might be, about how we changed our policy toward Iraq. We let Iraq go forward with the most egregious violations of international law for a full decade and never said a word. We were if anything supportive. I said to the Secretary of State on this occasion:

To give you an example, when your assistant secretary for this region came up here and I asked him, "Wasn't the Iraqi use of poison gas a violation of the Geneva Protocol of 1925? He said, "I am not a lawyer." As if you have to be a lawyer to recognize poison gas.

I went on, Mr. President, to cite the resolution which we adopted in this body on August 20, a concurrent resolution which says:

Whereas, on August 2, the Armed Forces of Iraq invaded Kuwait in clear violation of the United Nations charter and the fundamental principles of international law. . . .

Just as at that time it was reassuring to us that the President would use force under procedures anticipated and provided for by the U.N. Charter, suddenly we had to ask, was this an aberration? This rationale now disappears from the pronouncements of the Secretary of State when he spends a morning with the Foreign Relations Committee discussing this event.

Secretary Baker replied:

There is no change of view at all, Senator Moynihan. I have to dig in here through my prior statement to the Committee when I was up here about a month ago. I may not have made a reference to international law there, but I would be surprised if I did not. Maybe I did not. . . .

But let me say this. I have never suggested today, nor have I implied action in violation of international law.

That subject was not being debated. Fine.

I talked of the rape of Kuwait. Those [events] are all violations, as are what is happening to our hostages and our diplomats.

Violations of international law such as violating the diplomatic privileges of embassies; such as, I may say, we did in Panama. Then I said to Secretary Baker:

Let me ask you this: Does the President have a constitutional right to violate international treaties?

Secretary Baker answered: "My off-the-top-of-the head response to that, Senator, would be, no."

And there ends that exchange.

What this comes to, or so it seems to me, is that the administration has not really thought through the subject of our situation in the gulf. In one sense, we acted entirely as it was anticipated we would act when the U.N. Charter was drafted and when Congress ratified that treaty. The United Nations Participation Act of 1945 actually provides for agreements to be entered with the Security Council to make American forces available for its use. Obviously, its use requires our vote, but still, the anticipation was that specific units—the 6th Fleet, the 82d Airborne—would be made available. No such agreement was ever negotiated, but not for lack of our trying. It just turned out that Stalin had changed his mind, if, indeed, he ever had such arrangements in mind.

But there is another sense in which we merely nodded to the U.N. Charter in the gulf and went ahead on our

own, just as we had done in Panama. It is all there in this morning's headline in the New York Times. This is the major headline: "U.S. Decides to Add as Many as 100,000 to Its Gulf Forces." Not the Security Council mind, the United States.

This is fair enough, Mr. President, if the President wishes to go it alone. But if he wishes to go it alone, where is that "New World Order" he was talking about not 10 weeks ago in a Joint Session of Congress, giving us the term, but none of the content. Where is it? When things go badly, as things have a way of doing—it is called Murphy's law—how will it feel to be alone? For the simple fact—the central fact—is that the 101st Congress is closing down without having been asked to endorse the President's policy and without having done so.

If I were in the White House, I would be worried. For more than a month, in September, Members of the Senate took to the floor to ask, to encourage, to cajole, and almost to plead with the administration to work with the Congress in crafting a resolution on U.S. policy in the Persian Gulf. There was little doubt that such a resolution would support the President's actions to date. The Congress and the country support forceful steps to deter further aggression by Iraq. There has been broad bipartisan support for the President's use of the U.N. to reverse Iraq's violations of the Charter. But this may not last; indeed, it almost certainly will not last. As sanctions grind inexorably on many will become impatient for swifter action. Others will call for U.S. troops to leave the region altogether. We begin to hear some Arab diplomats whispering "accommodation" around town. There are suggestions from within the executive branch that a swift strike will become inevitable. More troops are announced today. This was from Secretary Cheney, not a rumor. Allies will look for half measures to resolve the crisis. Others will object to the suffering caused by the sanctions.

Mr. President, I have asked, I have pleaded on the floor of the Senate for the President to tell the Nation that economic sanctions are not a "kinder, gentler" form of diplomacy. They are a form of force, a form of violence different from and preferable to actual warfare, but intended to have the same results. They are intended to cause genuine hurt, deprivation, and dislocation to the point of forcing a nation to comply with the wishes of its adversaries. Do not expect any nation to give up what it considers vital national interests simply because its supplies of orange Pekoe tea run low.

I think of, and will revert to, an image used in a report on sanctions written in 1932 by a group convened by the 20th Century Fund, headed by Nicholas Murray Butler, John Foster Dulles was a member. The authors said that you should not expect that those imposing sanctions will have nothing on their conscience. In one of the discussions of food embargoes, the suggestion was made that, on a moral basis, they rank somewhere between torpedoing a hospital ship and gassing a maternity ward. Do not think that we have gotten into something gentle.

But the President has not said a word. He spends his time campaigning for local officials, which is fine if you are not trying to create a New World Order. He has not prepared the American people one bit for what they will witness if the present policy persists and succeeds.

I will put it this way. I am of the age to remember the pictures of liberated Europe in 1945—I was in the Navy at the time—with their scenes of half-starved peoples, some of them still actively resisting. One thing we learned from the strategic bombing survey was that Nazi Germany's war production peaked on the day it surrendered.

Starve as many as you will, I will make this bold prediction: The last people to starve in Iraq will be the Republican Guards. Have we been prepared for that? This is economic warfare. It is in response to military warfare. Not a word; not a word. Which means, if we persist, that the American people will not have been prepared.

Sanctions have been a subject of discussion in this country for generations, but this is the first time we have tried them. This is the first situation where we are determined and where the economics are such that we have reason to think that we might prevail. And the world is with us.

Support will be even harder to find if shooting starts. The abstract—although vitally important—goal of enforcing the rule of law, will seem pale and insubstantial to the families of dead American servicemen. Woodrow Wilson knew this. He went to war with Imperial Germany on the basis of its violation of international law, but when the did, he said, "Once set this people to war and you will not recognize us." Indeed, war brought to us savage outbursts of bigotry against German-Americans. We practically abolished the German language from our high school curriculum. I think it does not exist there any more. It used to be the first foreign language an American student learned. No one knows it is missing. No one even remembers when it was expunged. But it happened, and Wilson saw it happening. And we will see it happen here.

International law is not the kind of passion that sustains a people in arms bearing the agony of war. We are not prepared for that either. Ninety percent of the forces engaged will be ours. So, presumably, will be the casualties. Congress will question the President's constitutional authority to send troops to the gulf in the first place, and we will be standing on the floor saying, when was he told he could do any of these things? What gave him the rights?

We pleaded with him to sit down with us so we could give him some measure of authorization to work within the United Nations. Please be clear: the United Nations is a frail vessel. To work within the United Nations Security Council gives the People's Republic of China a veto over our actions. But we never even received a response. And I say that it can be a very lonely pinnacle for a President who insists on going it alone. There may be a more lonely environment, thousands of miles from here in some of the Artic tundra possibly, but not necessarily.

And so, Mr. President, we are again at the kind of undefined impasse or potential impasse we have lived through all these years.

I do not wish to continue longer in this regard. I mean to resume this commentary in two other parts, but I will say simply in summation these things:

The President has proclaimed a New World Order which he has not defined. The President has of a sudden invoked standards of international law by which we have not, within this very year, abided ourselves. The President has set in motion a set of actions, to wit, economic sanctions in the Gulf, without any effort to explain to the American people how long it will take to make them successful; how painful will be the actions there and here in consequences, and above all he has not sought to obtain from this Congress, this Senate, a statement of cooperation, consultation and support with definitions, limits, terms. They have decided to go it alone.

Mr. President, before this is over they likely find themselves very lonely. More. An enormous, a precious opportunity will have been lost, which was, in fact, the opportunity to define a New World Order and move toward such.

Mr. President, with great appreciation to the patient and attentive managers of the legislation, the senior Senator from Hawaii, our revered manager of this and so much else, and the Senator from Alaska, with thanks to the Senate, I yield the floor.

CALLUP OF THE SELECTED RESERVE

Mr. INOUYE. Mr. President, amendment 377 of this conference report provides an extension of the callup authority from 180 days to 360 days for National Guard and Reserve combat units for Operation Desert Shield. It is a modification to statute, but: First, pertains only for this fiscal year; second, is only for Operation Desert Shield; and third, is limited to combat

units. I should point out that the Senate significantly modified the scope of the House conferees' original proposal.

This amendment was accepted during the 11th hour of our Defense appropriations conference. It was an issue raided by the House conferees and a policy issue of quite some importance to them. I think some explanation of why this amendment was included is in order.

The House conferees pointed out that, while the President had called up Reserve units for Operation Desert Shield—none of the Army Guard and Reserve units are combat units. The House noted that approximately 40 percent of the Army's combat units are manned by selected reservists—yet, the burden of defending against Iraqi aggression is being borne solely by active duty soldiers.

Under the Roundout Program we have Army divisions with one-third of their combat power in the Reserve components. These Active and Reserve units are supposed to be deployed together and, if need be, go into combat together. That is how these divisions are organized, are equipped and are trained to fight. But, in Saudi Arabia we now have active brigades from "roundout" divisions on the front lines while their reserve units have been left behind stateside.

The House noted that, if the Department of Defense is serious—that, if the Congress is serious—about the total force policy, then the President should be calling up National Guard and Reserve combat units and sending them to Saudi Arabia as well.

The House conferees stated that Secretary of Defense Dick Cheney would like to callup more Guard combat units, but he has pointed to limitations in callup authority under section 673B of title 10, United States Code. The House argued that the President would need a doubling of that callup authority to enable the deployment of National Guard combat units. The House proposed a blanket waiver and such change to section 673B.

The Senate conferees took stock of House conferees' arguments. We considered the indepth hearings that we have had with the Reserve components, as well as specific hearings regarding the "roundout" issue. We noted that both the authorizing and Appropriations Committees of the House of Representatives and the Senate have significantly "beefed up" the personnel, operations, and equipment appropriations for the Guard and Reserve. In this conference report alone before us today, for example, almost $2.5 billion is provided for procurement of dedicated equipment for the National Guard and Reserve, a $2 billion increase above the President's budget request.

We decided that the House proposal had merit. But, we made several modifications to their original proposal. First, we restricted the amendment to fiscal year 1991. Second, we limited it to forces required for Operation Desert Shield. Third, we restricted the measure to combat units.

We now understand that this action is not welcomed by the chairman of the Senate Armed Services Committee. He has noted that the President has the authority to call up Guard and Reserve units for a longer period of time if the President were to determine that Operation Desert Shield is a national emergency.

I can assure the Senator from Georgia that our only intent was to allow the National Guard and Reserve to play its full role in the current crisis in the gulf. Our position in that regard, I am sure he will agree, is consistent with a number of Guard and Reserve initiatives that were contained in his bill. It was not our intent to in some way "let the administration off the hook" and not have the President declare a national emergency when exercising the authority that amendment 377 provides for Operation Desert Shield.

Let me say to my friend the distinguished chairman of the Senate Armed Services Committee that we are prepared to work with him in ensuring that the administration does not abuse the flexibility that the conferees have provided.

CHAIRMAN, SENATE COMMITTEE ON THE BUDGET

Mr. SASSER. Mr. President, the Senate Budget Committee has examined the conference report for H.R. 5803, the fiscal year 1991, Department of Defense appropriations bill, and has found that the bill is under its 302(b) allocation by $53.5 million in budget authority and $135.0 million in outlays.

I compliment Senator DANIEL INOUYE, the distinguished manager of the bill, Senator TED STEVENS, the distinguished ranking minority member, and their staff for their fine work in bringing this bill to the floor slightly under its 302(b) allocation.

Mr. President, I have attached a table prepared by the Budget Committee that shows the official scoring of the conference report on the Defense appropriations bill and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

SENATE BUDGET COMMITTEE SCORING OF H.R. 5803—DEFENSE SUBCOMMITTEE—SPENDING TOTALS (Conference)

[Fiscal year 1991, in billions of dollars]

302(b) bill summary	Budget authority	Outlays
H.R. 5803, Conference (New Budget Authority and outlays)	268.2	170.7
Enacted to date	0.0	107.0
Adjustment to conform mandatory programs to resolutions assumptions	0.0	0.0
Scorekeeping adjustments	0.0	0.0
Bill total	268.2	277.6
Senate 302(b) allocation	268.2	277.8
Total difference	−0.1	−0.1
Discretionary:		
Defense discretionary spending	268.0	277.5
Defense discretionary allocation	268.1	277.6
Defense discretionary difference	−0.1	−0.1
Mandatory spending	0.2	0.2
Mandatory Allocation	0.2	0.2
Mandatory difference	0.0	0.0
Bill total above (+) or below (−):		
President's request	−19.1	−7.0
Senate-passed bill	−0.2	−0.4
House-passed bill	0.4	0.2
House 302(b) allocation	−0.1	−0.1
Baseline	−27.3	−10.7

DEFENSE

[In millions of dollars]

	President's request		House-passed		Senate-reported		Senate-passed		Conference	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
302(b) bill summary:										
Total enacted to date	0	106,972,957	0	106,972,957	0	106,972,957	0	106,972,957	0	106,972,957
Total new budget authority	287,282,674	177,661,736	267,824,339	170,446,849	268,240,850	170,784,949	268,377,975	171,051,074	268,188,076	170,650,623
Adjustments:										
Discretionary programs	0	0	0	0	0	0	0	0	0	0
Mandatory programs	400	400	400	400	400	400	400	400	400	400
Adjusted bill total	287,283,074	284,635,093	267,824,739	277,420,206	268,241,250	277,758,306	268,378,375	278,024,431	268,188,476	277,623,980
Total 302(b) allocation (Point of Order)			268,242,000	277,759,000	268,242,000	277,759,000	268,242,000	277,759,000	268,242,000	277,759,000
Domestic Discretionary allocation			0	0	0	0	0	0	0	0

DEFENSE—Continued

[In millions of dollars]

	President's request		House-passed		Senate-reported		Senate-passed		Conference	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
International Discretionary allocation			0	0	0	0	0	0	0	0
Defense Discretionary allocation			268,077,000	277,594,000	268,077,000	277,594,000	268,077,000	277,594,000	268,077,000	277,594,000
Mandatory Allocation			165,000	165,000	165,000	165,000	165,000	165,000	165,000	165,000
Baseline			295,511,620	288,275,783	295,5111,620	288,275,783	295,511,620	288,275,783	295,511,620	288,275,783
Adjusted bill above (+) or below (−):										
Total 302(b) allocation (Point of Order)			−417,261	−338,794	−750	−694	136,375	265,431	−53,524	−135,020
Domestic Discretionary allocation			0	0	0	0	0	0	0	0
International Discretionary allocation			0	0	0	0	0	0	0	0
Defense Discretionary allocation			−417,261	−338,794	−750	−694	136,375	265,4311	−53,524	−135,020
Mandatory Allocation			0	0	0	0	0	0	0	0
Basleline			−27,686,881	−10,855,577	−27,270,370	−10,517,477	−27,133,245	−10,251,352	−27,323,144	−10,651,803
President's request			−19,458,335	−7,214,887	−19,041,824	−6,876,787	−18,904,699	−6,610,662	−19,094,598	−7,011,113
House adjusted bill			NA	NA	416,511	338,100	553,636	604,225	363,737	203,774
Senate adjusted bill			NA	NA	NA	NA	NA	NA	−189,899	−400,451
Previously enacted:										
DISCRETIONARY										
Previously enacted:										
Permanent appropriations										
Advance appropriations										
Outlays from prior year apprns		107,411,341		107,411,341		107,411,341		107,411,341		107,411,341
Other action to date		−438,384		−438,384		−438,384		−438,384		−438,384
Total enacted to date	0	106,972,957	0	106,972,957	0	106,972,957	0	106,972,957	0	106,972,957
New budget authority: S. 3189	287,118,074	177,497,136	267,659,739	170,282,249	268,076,250	170,620,349	268,213,375	170,886,474	268,023,476	170,486,023
Adjustments:										
Possible later requirements: examples										
Total PLRs										
Scorekeeping adjustments:										
Adjustment										
Total discretionary adjustments	0	0	0	0	0	0	0	0	0	0
Discretionary total	287,118,074	284,470,093	267,659,739	277,255,206	268,076,250	277,593,306	268,213,375	277,859,431	268,023,476	277,458,980
MANDATORIES										
Previously enacted:										
Permanent appropriations										
Advance appropriations										
Outlays from prior year apprns										
Other action to date										
Total enacted to date	0	0	0	0	0	0	0	0	0	0
New budget authority: S. 3189	164,600	164,600	164,600	164,600	164,600	164,600	164,600	164,600	164,600	164,600
Adjustements for mandatories:										
Mandatories in bill	0									
Resolution assumptions	400	400	4004	400	400	400	400	400	400	400
Mandatory adjustment	400	400	400	400	400	400	400	400	400	400
Adjustment for prior year outlays not assumed in resolution										
Total mandatory ajustment	400	400	400	400	400	400	400	400	400	400
Mandatory total	165,000	165,000	165,000	165,000	165,000	165,000	165,000	165,000	165,000	165,000

CONCERNING THE AVAILABILITY OF FEDERAL PROPERTIES TO BE PURCHASED THROUGH SPECIAL ACCOUNTS ESTABLISHED FOR THE COOK INLET REGION, INC., AND HAWAIIAN HOMELANDERS

Mr. STEVENS. Mr. President, the Senate is now considering the conference report on the Department of Defense appropriations bill, 1991. Included in that bill is a technical provision that reiterates the original intent of the Congress concerning special accounts established for the Hawaiian Homelanders and the Cook Inlet Region, Inc. The technical provision would more precisely codify in law definitions of "property" and "agency" to permit these special accounts, established for Hawaiian and Alaskan Natives unable to fulfill their land entitlement, to participate in all public sales of all Federal property, as was the original intent of the Congress under the Department of Defense Appropriations Act, 1990.

The 1990 Act was very clear; it states at section 9102 that:

Notwithstanding any other law, in addition to the purposes for which they are now available, amounts in the accounts * * * shall * * * be available for use in any fiscal year for all purposes (including use for purchase) involving any public sale of property by an agency of the United States.

Moreover, the conference report on the act states:

* * * the groups will be able to acquire property from agencies (for example the Departments of Defense and Housing and Urban Development) and instrumentalities (for example, the Resolution Trust Corporation) other than the General Services Administration, as provided previously.

Based upon the clear language of the 1990 act, one of the special account owners entered bids or offers in sales of property conducted by the FDIC and RTC. In several of these instances the bids or offers were accepted and closings on the sales were scheduled by the sales agencies. Nevertheless, despite clear intent of Congress, the Department of the Interior declined to authorize the issuance of checks from the special accounts for the agreed upon purchase price, having determined that the special accounts are available only to purchase "surplus" or "excess" property.

The definitions and other language contained in the technical provision, will reaffirm our intent to permit the special accounts to be used to purchase the broadest range of properties and, further, I wish to state it was not our intent last year to limit the properties available for purchase to those covered by the definitions of "property," "surplus property," "excess property," or other limiting term of the Federal Property and Administrative Services Act of 1949, as amended.

Mr. INOUYE. I agree with my colleague from Alaska. It was the original intent of Congress' to allow the special accounts to be used to purchase all property, of any kind, offered for sale by an agency of the United States and that this technical provision will accomplish our goal and directs the Department of the Interior to take all actions necessary to allow full and

timely utilization of the special accounts.

The technical provision reaffirms Congress' intent that the special accounts can be used to purchase any property—real, personal, mixed, intangible, and so forth—owned by the United States—again, without regard to whether such property is "surplus" or "excess"—property sold by an agency, including a wholly owned or mixed owned U.S. Government corporation in either a corporate or fiduciary capacity, or public domain lands of the United States. In simple terms, these special accounts can be used to purchase anything sold by the United States.

Mr. STEVENS. I thank my colleague from Hawaii for confirming Congress' intent of the language in the 1990 Act and for confirming Congress' intent of what will be accomplished by this technical provision. I look forward to hearing from the Department of the Interior that it has removed all administrative obstacles to meeting these long-lingering obligations of the United States.

Mr. President, I ask unanimous consent that a factsheet on this matter be inserted in the RECORD.

There being no objection, the factsheet was ordered to be printed in the RECORD, as follows:

THE AVAILABILITY OF FEDERAL PROPERTIES TO BE PURCHASED THROUGH SPECIAL ACCOUNTS ESTABLISHED FOR THE COOK INLET REGION, INC. AND HAWAIIAN HOMELANDERS

Since the passage in 1971 of the Alaska Native Claims Settlement Act ("ANCSA", Pub. L. No. 92-203), Congress has enacted no less than ten different statutes or amendments that create or modify certain property rights for the Cook Inlet Region, Inc. ("CIRI"). In 1980, the Congress first established the Cook Inlet Region Incorporated Property Account ("Property Account"), to permit CIRI to purchase, among other things, "surplus" property sold by the General Services Administration ("GSA"), pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

In 1983, the Congress created "surplus property accounts" in the name of Hawaiian Homelanders. These accounts, like the CIRI Property Account, were made available originally, among other things, for purchases of "surplus" property sold by GSA, pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

Starting in 1987 it became apparent that the majority of valuable Federal properties were no longer being sold by the GSA; rather, they were being sold by different agencies (DOD, FDIC, RTC, etc.), under various unique statutory arrangements. Two laws were enacted to permit CIRI to participate in these sales; the second of these statutes (§ 9102), permitted the Hawaiian Homelanders similarly to participate in nonsurplus property sales:

1. Section 127 of the Military Construction Appropriations Act, 1988 (Pub. L. No. 100-202) states:

"In addition to the purposes for which it is now available, the Property Account . . . shall be available hereafter for purposes involving any public sale of property by any agency of the United States, including the Department of Defense."

2. Section 9102 of the Department of Defense Appropriations Act, 1990 (Pub. L. No. 100-165) states:

"Notwithstanding any other law, in addition to the purposes for which they are now available, amounts in the accounts * * * shall * * * be available for use in any fiscal year for all purposes (including use for purchase) involving any public sale of property by an agency of the United States."

The Conference Report on section 9102 states:

"* * * the groups will be able to acquire property from agencies (for example the Departments of Defense and Housing and Urban Development) and instrumentalities (for example, the Resolution Trust Corporation) other than the General Services Administration, as provided previously." *Cong. Rec.* H. 8689, November 13, 1989.

Notwithstanding this very clear language, the DOI Solicitor's Office issued an opinion that, as a practical matter, restricts the types of property available for purchase with the use of the Property Accounts; DOI concludes, that without clarification of section 9102, the Property Accounts are available only to purchase "surplus" property, and not RTC or FDIC properties or public lands even if sold by DOI.

The primary purpose of the technical provision is to clarify the definition of the word "property" included in section 9102. That goal will be accomplished by inserting in section 9102 a definitiion of "property" and by deleting or amending other potential impediments in Pub. L. No. 94-204 identified by the DOI. In fact, the bulk of the technical provision amending Pub. L. No. 94-204 consists of language drafted by the DOI Solicitor's Office in response to a request for a drafting service from Senator Stevens and Senator Murkowski. Other portions of the technical provision were based upon input from the Office of the General Counsel, RTC, and the Department of Interior.

The technical provision reaffirms the intent of the Congress to permit the accounts to be used to purchase the broadest range of properties. Clearly, Congress did not intend to limit the properties available for purchase to those covered by the definitions of "surplus property", "excess property", or other limiting term of the Federal Property and Administrative Services Act of 1949, as amended.

The technical provision will permit the special accounts to be used to purchase any properties (real, personal, mixed, intangible, etc.) owned by the United States (again, without regard to whether such property is "surplus" or "excess"), property sold by an agency (including a wholly owned or mixed owned United States Government corporation in either a corporate or fiduciary capacity), or public domain lands of the United States. In simple terms, these special accounts can be used to purchase anything sold by the United States.

DEFENSIVE ASSETS AND PERSONNEL IN TIMES OF EMERGENCY

Mr. PRYOR. Mr. President, I wish to congratulate the chairman and other members of the Senate Defense Appropriations Subcommittee on the bill that they have presented to us here today. As we are on the subject of Defense, I would like to call the Senate's attention to the U.S. capability of mobilizing defensive assets and personnel in times of emergency.

Mr. President, if anyone doubts the importance of this subject, I would ask them to consider the recent and ongoing experience of Operation Desert Shield.

A very substantial transportation role was and is being performed by the Civil Reserve Air Fleet [CRAF] under the longstanding CRAF Program. More than 500 Desert Shield missions, carrying more than 66,000 passengers and 22,000 tons of cargo were flown by CRAF carriers through the end of September. Further missions, of course, have been flown throughout October as well. The CRAF planes have provided such reliable support that they have allowed us to give much needed rests to our military planes and personnel from otherwise continuous surge operations. Clearly, civil aviation and military airlift have been an effective team, providing quick deployment of our combat forces.

Fortunately, this program was around long before Desert Shield. Mr. President, as you know, the CRAF Program puts voluntarily enrolled, privately owned aircraft with suitable specifications on call for emergency and nonemergency utilization by the Department of Defense. These planes augment our military airlift capabilities without imposing upon the taxpayers full operational and maintenance expenditures, let alone the procurement expenditures associated with organic planes.

Mr. President, I think it is noteworthy that in fiscal year 1989, a relatively quite year, CRAF carriers moved about 30 percent of DOD cargo and about 80 percent of DOD passengers. It is anticipated that, in a full mobilization, CRAF planes would provide about 30 percent of DOD's total cargo capacity and about 95 percent of its total passenger lift!

An integral part of the CRAF Program is the CRAF Enhancement Program which, among other things, supports the conversion of large passenger planes, such as 747-100's and 747-200's, into cargo capable aircraft. These planes are "enhanced" with reinforced cargo decks, large cargo doors, container moving mechanisms, and other equipment which make them suitable for military airlift missions.

The program has enabled participants to provide over 16 million ton miles per day (MTM/DAY), or approximately one-third of DOD's total airlift capability for full mobilization. It has been estimated that it would cost over $10 billion—not including aircrew and annual operating costs—to replace this commercial cargo capability with military aircraft. As we struggle to find ways to reduce the costs associated with national security, it is

evident that a strong CRAF Program is essential.

I understand that an ongoing study of civil mobility support programs and other assessments of Operation Desert Shield will likely result in further enhancements to both CRAF and military airlift programs alike.

Therefore, Mr. President, I urge my colleagues to be prepared to support the continued funding of the CRAF Program and the CRAF Enhancement Program as further requirments become known. I trust that the appropriate committees of the Congress will hold hearings early next year in order that we might learn more about the CRAF performance in Desert Shield and about what further miltiary airlift requirements the cost effective CRAF Enhancement Program can help us meet.

TACTICAL AND THEATER MISSILE DEFENSE ISSUES

Mr. BINGAMAN. I would like to engage the distinguished Defense subcommittee chairman in a short colloquy about the conference report recommendations regarding tactical and theater ballistic missile defense funding included in, and separate from, the Strategic Defense Initiative Program.

As I understand it, the conferees agreed to the authorized total amount for SDI—$2.89 billion—without dividing those funds among either the old program elements contained in the budget request or the new program elements recommended in the National Defense Authorization Act for Fiscal Year 1991.

The conferees also created a new program under the Office of the Secretary of Defense, to centralize management of tactical missile defense activities. The $218 million provided for this consolidated effort included $145 million earmarked for two projects usually funded in SDI—$103 million for the extended range interceptor [ERINT] missile and $42 million for the United States-Israel ARROW system. Another $45.4 million was earmarked for a program usually funded in the Army—the Patriot system.

Does the chairman agree with my understanding?

Mr. INOUYE. My colleague is correct.

Mr. BINGAMAN. Is it also true that, theoretically, the ERINT and ARROW earmarks release for other work the $90 million in SDI funds which were to be allocated for the two projects within the total SDI Program? This is because the SDI budget request contained $48 million for ERINT, and Congress already had agreed to earmark at least $42 million for ARROW out of SDI's theater missile defense research funds in fiscal year 1991.

Mr. INOUYE. Yes, my colleague is correct. However, in anticipation of my colleague's next question, let me assure him that the conferees do not intend for this money to be an SDI discretionary fund.

The conferees created a new program under OSD to centralize management of tactical missile defense activities. We agreed to accelerate these efforts due to the increasing importance of developing tactical missile defense. The confrontation with Iraq underscores this importance.

In fact, the conferees do not wish to preclude additional amounts being made available for ERINT, Patriot, and ARROW by the components of the Defense Department, including the SDI Program. I would suggest that additional funds for other tactical and theater missile defense efforts also might be productive. The SDI Program could devote more funds to those efforts due to the funding of ERINT and ARROW in the centrally managed program.

Mr. BINGAMAN. I agree with the importance of tactical and theater missile defense research and development and I commend the Senator's initiative in this area. However, would the chairman further agree that the Defense appropriations conference recommendations also leave intact the SDI funding allocations, limits and one-time 10 percent reprogramming flexibility contained in the conference report on the Defense Authorization Act?

Mr. INOUYE. I would agree. The authorization dollar limits on the five new SDI Program elements—and the limits on reallocating funds among those categories—still apply. In addition, our conference report statement of managers urges the Secretary of Defense and the Director of the Strategic Defense Initiative Organization to comply with these authorization requirements.

Mr. BINGAMAN. Would the chairman agree with me that reallocation to other program elements of any of the theoretically available $90 million in the SDI Program for theater missile defense activities also should be subject to prior approval through established reprogramming procedures? This prior approval reprogramming requirement would pertain only after the 10 percent reprogramming flexibility in the authorization act is used, if at all, for the new theater and antitactical missile defense program element in SDI.

Mr. INOUYE. Yes, I would agree further with my colleague. Such a prior approval reprogramming requirement would be useful for continued congressional oversight of both the SDI Program and tactical missile defense activities. I expect the Defense Department to comply fully with this requirement as established in this colloquy.

Mr. COCHRAN. Mr. President, I rise today as a member of the Defense Appropriations Subcommittee to express my support for the conference report to accompany the fiscal year 1991 Department of Defense appropriations bill. This bill represents the culmination of a great deal of effort on the part of many individuals, both Members and staff, working within several sets of constraints, including authorization and budget ceilings.

Under the leadership of our chairman, Senator INOUYE, and our ranking member, and former chairman, Senator STEVENS, the committee has attempted to provide a bill that satisfies the defense needs of our Nation, while reflecting what our chairman has called one of the largest defense spending reductions in history. Each of the Commanders in Chief testified before our subcommittee this year, and the bill we reported to the Senate, and this conference report, reflect the needs of our operating forces.

In past years, there have been significant differences between the Defense appropriations bills and the authorizing legislation. This year, our bill, as reported to the floor, was in agreement with the Senate version of the Defense authorization bill, not only complying with the totals authorized by account, but also reflecting the decisions of the Senate Armed Services Committee concerning program terminations.

As many of our Nation's military men and women are deployed to the Persian Gulf region, I feel fully confident that this bill will provide our armed services the equipment and other resources necessary to carry out the many missions that make up their role in the defense of our Nation, and indeed, the free world. I am concerned, however, that the simplistic view that a reduced threat from the Soviet Union mandates huge and excessive reductions in our Defense budget may have caused planning future defense funding to become dangerously inadequate.

Given the constraints within which we were working, I again congratulate our chairman and ranking member for leading the subcommittee to the development of an excellent bill, and I appreciate having had the opportunity to work with them this year. I urge the support of all Senators for this conference report.

Mr. LEAHY. Mr. President, I will vote for the Defense appropriations conference report but not without reservations.

This bill fails to acknowledge the sweeping changes that have occurred in the world over the past year. I am deeply concerned that the committee failed to halt a single major weapon system. Several programs are bled but none are killed.

The Defense appropriations bill the Senate passed on October 15 terminated MILSTAR, ADATS, and the na-

tional aerospace plane. The bill postponed full scale development of the advanced tactical fighter and included restrictive language on the strategic defense initiative. All these decisions were reversed in our conference with the House.

I am also disappointed in the conference provisions on the B-2 bomber. The House voted to kill this program. During the floor debate in the Senate, I offered a similar amendment but my effort failed by six votes. The conferees agreed to spend over $4 billion for the B-2 next year. Incredibly, $4 billion will buy no planes. The Air Force will use the money to cover cost overruns in the program.

Mr. President, the Defense Authorization and Appropriations Committees should have made some tough choices this year. We are only postponing these decisions. The Defense budget is declining and cuts are inevitable. Failing to end programs today is wasting money.

Congressional leaders and White House officials are close to a budget agreement that will reduce the Federal deficit by $500 billion over the next 5 years. We are making painful cuts in domestic programs that will be felt at every single level of our society, from a child on a nutrition program to a senior citizen on Medicare. I strongly feel these cuts did not reach the doors of the Pentagon and I will continue to fight to reduce defense spending next year.

Mr. President, I will vote in favor of the conference report despite these reservations. There are important parts of the Defense appropriations bill that I support. Congress needs to support our troops with adequate pay, training and equipment. I also strongly support the decision to increase funding for our sealift capability. During the recent deployment of our troops to the Persian Gulf, major deficiencies in our sealift were revealed.

Finally, I would like to express my concern about a provision on Guard and Reserves that was not in the Senate bill before conference. The conference report permits the President to send combat Guard and Reserve units to the Persian Gulf for up to 360 days. Under current law, the President cannot call up these units for more than 180 days without declaring an emergency.

Mr. President, this provision was included because the Secretary of Defense claims Guard units must receive training before they are adequately prepared for deployment to Saudi Arabia. Congress has appropriated billions of dollars to improve training for these units. I find it hard to believe that the Secretary needs this extra discretion.

Congress should not provide the President with this blanket extension. The President should formally notify Congress if he needs to extend the duty of our Reserve forces. Congress should not waive this notification for him.

I commend Chairman INOUYE for his hard work on the bill. He had a daunting task during these times of sweeping change.

Mr. LEVIN. Mr. President, I am concerned about some of the provisions in this conference report.

One concern that I have is over the expansion of the authority of the President to call up National Guard and Reserve personnel for use in Operation Desert Shield. Under current law, the President has the authority to call up to 200,000 reservists for 90 days of active duty without a formal declaration of war or declaration of a national emergency. This authority can be extended by another 90 days. This conference report revises the existing law by allowing the President to call up reservists for 180 days and then extend their service by an additional 180 days.

The expansion of the President's reserve call-up authority that is contained in this conference report concerns me for three reasons.

First, the President has not yet fully exercised his existing authority. The Department of Defense has stated its intention to call up only about 50,000 reserve personnel to date, and we have not yet reached the 90-day mark. I question whether it is necessary to provide the President additional authority at this time. However, should the President decide to exercise the expanded reserve call-up authority, I urge that he consult with the Congress.

Second, this provision was not included in either the House or Senate Defense appropriations bills. It was a product of the conference. The expanded provision in the conference report has not been subjected to any systematic review in the Congress. None of the relevent committees of jurisdiction have heard from administration or other witnesses on the need for this increased authority or its implications. I do not think that the Congress should do business this way.

Third, our Guard and Reserve forces have come to expect that, if called, their time on active duty would be limited to 6 months. These forces are well trained and very ready. They are equipped to meet military challenges. But, they have volunteered to be part-time soldiers and they have jobs, homes, and families for which they are responsible. I am concerned that if we change the rules on these dedicated people in the middle of the game that we can do irreparable harm to the high morale and quality of the reserve force.

In addition to the Reserve call-up provision, I question the funding increases that have been provided for some programs that are in excess of the level provided for in the defense authorization bill. I am most concerned about the inclusion of $200 million for full scale development of the Advanced Tactical Fighter aircraft. In the Armed Services Committee, members had extensive testimony and debate on this issue. It was decided that full scale development was not warranted at this time.

On balance this bill has so many important items that we needed at this time that I will vote "yes" despite these reservations.

SEAWOLF SUBMARINE

Mr. LIEBERMAN. Mr. President, I would like to address one of the most important defense issues facing us today: the need for competition to keep down cost. This is an issue that will increasingly preoccupy Congress because of the pressures on the defense budget. We have to squeeze every drop of price savings out of the budget to avoid having major weapons systems stretched out or even cancelled.

I am particularly concerned about how this issue affects the future of the Seawolf, the Navy's new submarine. Electric Boat of Groton, CT, and Quonset, RI, won the contract for the first Seawolf in January 1989. The award for the second Seawolf will be made within the next 9 months. I strongly believe that the Navy must make a competitive choice. But I am deeply concerned that the Navy apparently has been considering awarding the next Seawolf without a competition.

Such a decision would cost the taxpayers a fortune for several reasons. First, Electric Boat has almost always submitted lower construction bids in the past because of certain organizational advantages. Specifically, Electric Boat has more engineers dedicated to submarine design and construction and has gained additional expertise because it only builds submarines. These advantages allow for specialization and faster production rates, thereby driving down costs.

Electric Boat's greater expertise is demonstrated by its mastery of the new modular system of construction. The modular system, which EB used when constructing Trident submarines, involves building a submarine in intact sections, which are then welded together. The traditional, more costly method, involves building the submarine keel up in one entire piece. The modular system is a much more cost-effective approach.

Second, Electric Boat would also enjoy certain cost savings because it has already borne basic costs such as setting up a new vendor base, training employees in the new Seawolf modular construction techniques, and hiring more employees.

Overall, for these first two reasons competitors probably would have to spend about $150 million more than Electric Boat on constructing the second Seawolf.

Third, not awarding the next Seawolf to Electric Boat would lead to a production break cost of about $335 million, according to figures developed by the company and the Navy. If Electric Boat were forced to wait for fiscal year 1992 to be awarded another Seawolf, it—and the U.S. taxpayer—would face the following additional costs: $140 million due to a lost learning curve; lessons learned from the fiscal year 1989 Seawolf would have to be in part relearned; $120 million due to unabsorbed overhead; $40 million due to increased costs of vendor supplied materials; and $35 million due to rehiring laid-off employees.

Overall, these three additional production and construction factors create costs that total close to half a billion dollars. These are huge costs for the taxpayer to bear. The only way to get a decent return for the taxpayer is through a competition to get costs down from all bidders.

Despite these striking additional costs to the taxpayer, Mr. President, the political pressures surrounding the construction of the second Seawolf are fierce. But political pressures should not be the determining factor. Taxpayers are not concerned about political pressure; they care about cost savings, in addition to good workmanship. The award of the second Seawolf should be competed on the basis of cost and quality. The competition should be hard, but fair.

To ensure that a competition will occur with corresponding taxpayer savings, the defense appropriations report and final conference legislation, I understand, contains language mandating a competition. The bill language directs that the Secretary of the Navy shall compete the award for the next SSN-21 and that he consider all applicable factors in making an award, including the competition acquisition strategy for the entire SSN-21 program. As a Member involved in the discussions about this language, I want to indicate this means that the second Seawolf will be awarded through a competition, based on standard competitive procurement factors, which are, of course, principally cost and quality, and that the Navy will in addition evaluate the need for a competitive acqusition strategy for all future Seawolf awards following the competition for the second Seawolf. I want to compliment the senior Senator from Hawaii for insisting on this approach—the taxpayers owe him a vote of thanks.

I intend to remain vigilant in order to assure that these competition directives are complied with. I expect that the taxpayers will insist that all of us in Congress be vigilant as well.

A BATTLE WON ON A TROUBLED JAMMER

Mr. PRYOR. Mr. President, I want to applaud the conference committees on defense authorization and appropriations for action that essentially stops new production of the troubled Airborne Self-Protection Jammer, or ASPJ, until further operational tests are passed.

Conference members enforced a fly-before-you-buy policy that the Pentagon has only given lip service to regarding this $4 billion program.

As many people have read, the ASPJ, a radar jammer for fighter aircraft, went into production a year ago despite clear failure in preproduction tests and evaluation. At the time, the Pentagon gave a go-ahead for spending almost half a billion dollars on this program this year.

Since then, memos by the Deputy Secretary of Defense and other top military officials have surfaced, indicating that the test failures were well known when production funds were released. In fact, some memos said tests were so bad that the ASPJ probably ought to be terminated.

Terminating the ASPJ was exactly what Secretary Cheney did last December. Oddly, however, days after his termination the ASPJ was brought back to life.

The ASPJ is a case study of military leaders not disciplining the procurement system. When the system told them the ASPJ did not work, when the system told them to fix the ASPJ before spending hundreds of millions to produce it, when the system's warning sirens were screaming in their ears, good men waffled and let the ASPJ go.

Today, Mr. President, the Congress is disciplining the procurement system where the Pentagon has failed.

The authorization and appropriations bills state that no futher funds can be used to produce the ASPJ until the Director of Operational Test and Evaluation certifies to Congress that the ASPJ has undergone further and complete operational tests and that the ASPJ has passed those tests.

Mr. President, operational tests will not be completed until late 1991. Practically speaking, this will prohibit the production of lots two and three that were planned for next year and should force a stretch out of current production, as was recommended by the Defense Inspector General. Practically speaking, this should also preclude another decision by the Pentagon in which further production is allowed despite failed tests.

This puts an enormous amount of pressure on the Director of Operational Testing at DOD. Fortunately, the man at the head of that office, the Honorable Robert C. Duncan, is a man of integrity and strength. He will need every ounce of these qualities during the coming year to hold forth again the lobbying that will be targeted at his office to sway his judgement.

Dr. Duncan spoke candidly at a hearing I held last spring on the ASPJ. He explained that in previous operational tests the ASPJ was rated marginally effective reliable and that this translated into failure of many test criteria.

I plan to stay in touch with Dr. Duncan during the coming year to let him know of our support for his mission and to let others know that Congress will conduct rigorous oversight of test plans, criteria, and results for the ASPJ.

Mr. President, the ASPJ is just one troubled program, albeit a $4 billion program. There are others. But my intention has been to use tough oversight of this one program that had run afoul to send a message of discipline and accountability to the faceless, unelected procurement bureaucracy—a bureaucracy that does not have to answer to the taxpayers and that, at its worst, can put political expence before true national defense needs.

I intend to continue to follow the ASPJ and hope to make examples of other programs spinning out of control.

Mr. President, I would venture that the forces for a better run government have won one battle today. I would also say that without dogged vigilance, any small advance made here today will be quickly negated by the bad influences that rage in our huge Government.

Again, I compliment the conferees for their responsible action.

Mr. AKAKA. Mr. President, I rise in strong support of the conference report on the fiscal 1991 transportation appropriations measure.

Along with my senior colleague, Senator INOUYE, I am particularly pleased that $11 million for the proposed Honolulu Rapid Transit Project [HRTP] is included in the measure. This money will be used for preliminary engineering, environmental impact studies, and initial right-of-way acquisition for the long-planned light rail project.

The city and county of Honolulu has already selected and approved a locally preferred alternative route, which stretches 17.3 miles from Waiawa in western Oahu through downtown Honolulu and back out to the University of Hawaii in southeastern Oahu. A request-for-proposal is expected to be issued by November 1, with responses due back next spring. If all goes well, a construction contract is expected to be awarded by the summer of 1991.

Mr. President, this is a model project in several ways. In the first place, it is very high on the Urban Mass Transit Administration's so-called 304 list, which denotes projects that are most

deserving of funding. Second, the level of Federal-local cooperation and communication in developing the Honolulu initiative has been extraordinary, perhaps unprecented. Third, the innovative turnkey approach embodied in the latest HRTP plan will attract private investment and encourage competition among different transit technologies, resulting in significant cost savings. Finally, the project breaks new ground for future transit projects in that fully 70 percent of the financing will derive from local sources, private and/or public. While we hope that the bulk of the 70 percent will come from private funding, legislation has been approved that guarantees that any shortfalls will be made up through public financing means.

Mr. President, light rail transit is needed by the people of my State. Eighty percent of the State's population lives and works on the island of Oahu, placing an enormous strain on the island's transportation infrastructure. We are rapidly approaching the day when commuters on our few highways will experience gridlock during rushhour. Given the inherent geographic limitations of our island State, a rail transit system is the only viable solution to our current and anticipated traffic problems. Last, the ongoing Persian Gulf crisis only underscores the fact that Hawaii, more so than any other State, is wholly dependent on imported oil; construction of an energy-efficient rail transit system is an absolute necessity if Hawaii is to limit its dependence on foreign energy sources.

In closing, Mr. President, I wish to express my gratitude to Senator LAUTENBERG and Congressman LEHMAN, the distinguished chairmen of the respective Senate and House Transportation Appropriation Subcommittees, without whose assistance initial funding for the Honolulu Rapid Transit Project would not have been possible. I also wish to recognize the outstanding efforts of my senior colleague, Senator INOUYE, who has exercised extraordinary leadership on this issue; the people of the Aloha State are indeed blessed to have such an advocate in the U.S. Senate.

Thank you, Mr. President. I yield the floor.

Mr. LAUTENBERG. Mr. President, I am very pleased that $15 million for the Liberty Science Center in New Jersey is included in the conference report on the fiscal year 1991 Department of Defense appropriations bill.

The Liberty Science Center is the largest science center currently under construction in the United States. It will serve the most densely populated and ethnically diverse region in the United States, with a population of some 20 million. For the millions of Americans who visit the museum, it will be an invaluable education resource. The center's exhibits and programs will represent the state-of-the-art in science education. Young Americans will receive hands-on experience with science and technology.

Funding for this project was included in the House version of the Department of Defense appropriations bill for fiscal year 1991, through the efforts of my colleagues from New Jersey, Congressmen ROE, DWYER, and GUARINI. It was also included, at my request, in the Senate version of the fiscal year 1991 Department of the Interior appropriations bill.

Mr. President, I am grateful to the chairman of the Senate Appropriations Committee, Senator BYRD, for including funding for the project in the Senate version of the fiscal year 1991 Interior appropriations bill. Because the Defense appropriations bill conference took place before the conference on the Interior appropriations bill, funding for the project was not included by the conferees in the final version of the Interior appropriations bill.

As a member of the Defense Appropriations Subcommittee, I fought hard to preserve funding for this project during conference on the bill. I thank the subcommittee chairman, Senator INOUYE, for his cooperation and support for this project during the conference.

I deeply appreciate the assistance of the chairman of the Senate Appropriations Committee in ensuring that funding is appropriated for the Liberty Science Center in fiscal year 1991. I also appreciate his interest in ensuring that the Department of Defense make this funding available without delay so this project can move forward.

Mr. President, I urge my colleagues to approve the conference report on the fiscal year 1991 Department of Defense appropriations bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. INOUYE. Mr. President, I ask unanimous consent that upon completion of my remarks, the Defense appropriations conference report be laid aside, and that the Senate proceed to the consideration of the Defense authorization conference report; that when debate is completed on the authorization conference report, the Senate without any intervening action proceed to vote on the adoption of the Defense appropriations conference report, H.R. 5803, to be followed immediately by a vote on the Defense authorization conference report, H.R. 4739.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, it is my understanding there is a time agreement on the authorization bill of an hour and a half. Is that correct?

The PRESIDING OFFICER. One hour and forty-five minutes.

Mr. STEVENS. One hour and forty-five minutes. As I understand it then, if we went on the authorization bill at 2:15, we would vote at 4 o'clock?

The PRESIDING OFFICER. That is correct. Is there objection?

Mr. STEVENS. I suggest the absence of a quorum for a moment.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I want to thank my good friend from Georgia for acceding to this request, but I urge the Senator from Hawaii to amend the request so that the vote on the appropriations bill would start at 3:50 and the vote on the Defense authorization bill would start immediately after the vote on the Defense appropriations bill.

The PRESIDING OFFICER. That is 3:50 on the authorization?

Mr. STEVENS. The vote on the appropriations is first at 3:50, the vote on the authorization bill to follow immediately after that. Let me see if I am interfering with somebody.

Let me explain to the Senate, Mr. President, that I expected to be in Alaska, in Fairbanks today, and obviously I am not there. But I have a satellite appearance at a luncheon there and I would not want to miss the vote on the Defense appropriations bill, nor would I want to miss that satellite connection.

Mr. INOUYE. I will speak for 5 minutes.

Mr. STEVENS. May we have an agreement that the vote will start no later than 4 on the appropriations bill?

The PRESIDING OFFICER. Does the Senator from Hawaii modify the unanimous-consent request?

Mr. INOUYE. Yes, I will.

The PRESIDING OFFICER. Is there objection?

Mr. NUNN. Mr. President, I suggest that we go ahead to the authorization bill now and then I will immediately yield such time as the Senator from Hawaii may need out of our time, and that would expedite it.

Mr. STEVENS. I thank the Senator.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request. Without objection, it is so ordered.

NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1991—CONFERENCE REPORT

Mr. NUNN. Mr. President, I submit a report of the committee of conference

on H.R. 4739 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4739) to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 23, 1990.)

Mr. NUNN. Mr. President, could the Presiding Officer outline the time agreement now?

The PRESIDING OFFICER. Debate on the conference report on H.R. 4739, the Defense Authorization Act, is limited as follows: 70 minutes equally divided between the Senator from Georgia [Mr. NUNN] and the Senator from Virginia [Mr. WARNER], with an additional 20 minutes controlled by the Senator from Maine [Mr. COHEN], and 15 minutes controlled by the Senator from Ohio [Mr. GLENN].

Mr. NUNN. I thank the Chair. Mr. President, I yield the Senator from Hawaii 10 minutes.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, FISCAL YEAR 1991—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I thank the Senator.

Mr. President, the managers of this bill have sat here for 4 hours listening to the concerns, the criticisms, and questions issued by our colleagues. And though I wish to just sit here and now proceed to the vote, I believe I am obligated as chairman of the Defense Subcommittee to respond to some of their concerns.

First, on a concern expressed by my colleague from Colorado, to wit: that this subcommittee should have gone further in reducing defense expenditures. As I indicated in my opening remarks, this bill is $17.2 billion less than what we appropriated last fiscal year. It is a reduction of over $17 billion, the largest defense reduction since the Vietnam war. Furthermore, this may be the largest defense expenditure reduction in the history of the United States. We were able to do this notwithstanding some unexpected events such as Desert Shield, which obviously caused us to spend more money. But in view of all of this, we have been able to reduce our spending.

Second, Mr. President, all Americans have been expecting peace dividends. We have tried to accommodate America by reducing defense spending and providing these peace dividends. But may I point out the following: suggestions have been made that now that the wall has crumbled, Eastern Europe has been stabilized, that the Soviets are in economic turmoil, that we could return our forces from Europe and reduce our military by that number.

This bill calls for the reduction of European forces by 50,000, and total forces of the defense structure by 79,000. There are certain costs involved that none of us have touched upon. When we return 50,000 men and women from Europe and place them into the communities of the United States, several things will happen. First, since they are being involuntarily separated, we will have to provide them with separation pay. We have no idea what that cost will be, but it can be easily assumed that it could be as much as $1 billion. These people are volunteers. All of our men and women in uniform are volunteers. They were not drafted. When they volunteered they anticipated being in the service for a given period of time. They had a contract with the people of the United States.

Now we are breaking their contracts by telling them you have served us well for 4 years, now we want you to leave. What if a soldier's wife is pregnant? He had anticipated serving 4 years and receiving medical benefits for his family for 4 years. Instead, he finds himself in a situation where he is told to leave, and where medical benefits are cut off precisely on the day of departure. Who is going to insure that wife of his? No one will insure that wife of his. To help him and others like him, the authorization bill contains a provision that extends health benefits for the involuntarily separated. How much will this cost? Hundreds of millions of dollars. Then you have the cost of transporting people back here, providing housing, unemployment compensation. You do not expect these men and women to immediately find themselves on the employment rolls in these communities, so we may find ourselves paying unemployment compensation or even welfare.

Sadly, social workers tell us that there is a correlation between unemployment and crime. So I suppose the cost of crime will go up.

Mr. President, I have no idea what the savings will be, what the peace dividends will be, but we are trying our best.

The second concern expressed was on the advanced tactical fighter. It was not our proposal. It was the House proposal to begin full scale development in fiscal year 1991.

The authorizers wanted us to delay this by 3 months. This is speeding up the process by 3 months. We appropriated $200 million toward this end; not $75 billion—$200 million. By this action, we did not commit ourselves to spend $75 billion.

Only a few moments ago we debated the B-2 Stealth bomber.

We previously had committed ourselves to build 12 B-2's. The Secretary of Defense said the program will be cut down to 75 aircraft. That is breaking the contract. Who knows, the Congress of the United States may one day decide to terminate the program. Contracts can be broken, and we have been doing this every day.

Finally, Mr. President, much time was spent on the matter of universities. I would like to pick just one university as an example, because I think this is descriptive of all the others involved in this package.

The University of Scranton, in Pennsylvania, will receive $10 million from this bill. Out of this bill of $268 billion, it will get $10 million. This small university is at the foothills of the Pocono Mountains and is doing its best and striving for excellence. It is attempting to expand the range of American academic disciplines, which it can now offer its students. I do not think this is an extravagance.

Is it a misuse of our moneys to assist the broadening of universities, which can offer a range of studies to the sons and daughters of coal miners? That is what they are. Or the sons and daughters of small town America? That is what the Pocono Mountains are.

I know that many of us in this Chamber, Mr. President, benefited from the use of defense appropriations in the form of the GI bill. Mr. President, the senior Senator from Hawaii stands before you because of the GI bill. The GI bill sent me through law school and gave me my undergraduate degree. Without that, I think I would be working in the cane fields of Hawaii.

How many are now in college because of benefits we provide under the Army's College Fund? I note that many of my colleagues find it objectionable that the conference agreement would award a relatively small grant to the University of Scranton and to other universities, and that it would do so without competition.

Well, what about the grants that we and the Pentagon have been providing to the federally funded research and development centers without competition?

In the conference agreement, we provide $10 million to Scranton Uni-

versity in the Pocono Mountains. We provide $430 million to the Lincoln Laboratory of MIT. The average pay and support of a staff researcher at the Lincoln Laboratory is $165,000 a year. That is just the average pay and support. And I am certain that the president of the University of Scranton or the senior professor at Scranton receives half of that.

Competition? How can Scranton compete with MIT with all its facilities and Nobel laureates? This is the eternal question of the "haves" and "have nots," the rich and the poor. Do we make a big university bigger and a small university smaller, or do we provide the family farmer, the sons and daughters of coal miners, farmers, an equal break? Should it always be the universities and colleges in New York and Boston and Chicago which benefit? What about those institutions in Iowa, Nebraska and the Dakotas, and Alaska?

Well, if they must compete, I can assure you that the competition will not be fair, because it will be against one of the giants. But my colleagues are saying that they must compete.

Mr. President, I cannot support that. I believe that the conference report that we have provided is sound, if fair, and I urge the Senate to support our agreement.

The PRESIDING OFFICER. Who yields time?

NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1991—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. NUNN. Mr. President, we are now on the defense authorization bill, and I will address my remarks to that bill and invite our colleagues who want to speak on that bill, to come over. I would like very much so to cut the time down on this if we could. So we are not seeking unlimited amount of time here. I hope we can cut it down for the benefit of all Senators.

Mr. President, I am pleased to bring before the Senate the conference report on H.R. 4739, the National Defense Authorization Act for fiscal year 1991. This conference report authorizes programs for the Department of Defense, the national security programs of the Department of Energy, and civil defense programs for fiscal year 1991.

First, I want to thank Chairman ASPIN and Congressman DICKINSON for their cooperation in this conference. I also thank my friend and colleague, Senator WARNER, the ranking minority member of our committee, for his splendid cooperation and support throughout the conference and throughout the year. And the same goes for his excellent staff.

CONFERENCE PROCESS

Mr. President, as chairman of the conference this year, I want to comment briefly on the process which the conference followed.

The Senate conferees were organized into panels following our subcommittee lines, with one additional panel for general provisions. These panels met numerous times with the House panels and resolved the vast majority of the 600 language and 1,000 funding issues in the conference.

Toward the end of the conference, the panels reported that they had made all of the progress they could. At that time, the House and Senate conferees agreed to exchange package offers on the remaining unresolved issues. Our Senate conferees met and developed the first written package offer on the 60 remaining open issues. Several package offers were exchanged, and the House finally responded with a written counteroffer which resolved all but about 15 items. These 15 items were completed in a final package offer between the House and Senate conferees.

This year, more items in the conference were resolved by the individual panels than in the past, and those issues not resolved by the panels were eventually handled by each side developing package offers.

BUDGET BLANKS

Earlier this year, Mr. President, I outlined these five major blanks in the administration's fiscal year 1991 Defense budget and the 5-year Defense plan:

A threat blank, because the basic assessment of the overall threats to our national security on which this year's budget was based was rooted in the past; a strategy blank, because the Defense Department had not developed a new military strategy that responds to the changes in the threat; a dollar blank, because the Defense Department had identified only $70 billion of the $167 billion necessary to bring the Pentagon's 5-year defense plan down to the 5-year targets for national defense contained in President Bush's own fiscal year 1991 budget; a force structure blank, because the Defense Department had not told us what the size and structure of our military forces will be over the next 5 years at their own budget levels; and a program blank, because Secretary Cheney had initiated top-to-bottom reviews of major weapons programs for which he was requesting tens of billions of dollars in the fiscal year 1991 budget.

From my perspective, Mr. President, for the most part these blanks in the administration's Defense program have still not been filled in by the administration. We come to the conclusion of the Defense authorization process this year without having had a lot of constructive assistance from the Defense Department in the difficult task of restructuring our national defense programs.

One of the most frustrating aspects of our conference has been the fact that the Defense Department this year never went through the fiscal discipline of meeting realistic budget targets. The Pentagon never submitted a complete 5-year defense plan to the Congress that conforms to the spending targets of the fiscal year 1991 budget as the law requires.

The Defense Department also never gave us their views on how to make the $19 billion in reductions in the 1991 Defense budget, which President Bush himself agreed to in the budget summit agreement. In other words, we had no guidance from the Department of Defense—and still do not—on how to get down to the levels that the President agreed to in the budget summit.

The Defense Department also never gave us their views on how to make the $19 billion in reductions in the fiscal year 1991 Defense budget which the President agreed to in the budget summit agreement.

The only major changes which the Defense Department proposed in the fiscal year 1991 budget were a reduction of $4 billion based on the major aircraft review. But this review turned out to be seriously flawed. Within weeks after it was completed, the Air Force announced new delays in the C-17 program and funding increases required for the B-2 program. The Navy announced serious managerial and performance problems in the A-12 aircraft program. These problems were not anticipated in the Department's major aircraft review, which had just been completed.

It was very frustrating in the conference to have the Defense Department tell us not to cut a long laundry list of programs when the Department had never gone through the process of meeting the budget targets that we were forced to meet and that the President had agreed to.

Congress, therefore, has been forced to fill in the blanks in this year's Defense budget. This Defense authorization conference report begins the process of implementing a new military strategy in response to the dramatic changes in the threats to our security and in response to a very tough and austere fiscal environment. It puts the Defense Department on a manageable glide path toward a smaller and restructured Defense establishment over the next 5 years.

I want to take a few moments to highlight some of the major features of this conference report for our colleagues.

THE DEFENSE BUDGET AND DEFICIT REDUCTION

This conference report authorizes $288.3 billion in budget authority and $297 billion in outlays for fiscal year

1991. This level represents a same level of funding agreed to in the Senate passed version of this bill and the same level contained in the budget summit agreement and the fiscal year 1991 budget resolution. This level was recommended by the Armed Services Committee last spring based on the changes in the threat and a revised military strategy to meet this new threat. It is not an arbitrary figure.

This authorization level also represents the same level of funding agreed to in the Senate-passed version of this bill, and the same level contained in the budget summit agreement and the fiscal year 1991 budget resolution. These levels represent a $28 billion budget authority reduction and a $10 billion outlay reduction from the Congressional Budget Office baseline for fiscal year 1991, and a $19 billion budget authority reduction and a $7 billion outlay reduction from the administration's budget request.

There have been some comments recently that the Defense budget has not made enough of a contribution to deficit reduction under the budget summit agreement. I think that point needs to be put in perspective.

Defense spending cuts represent 36 percent of the reductions in the budget summit target of $500 billion in deficit reduction over the next 5 years. My understanding is that $500 billion is no longer $500 billion but somewhat lower than that so this percentage would go up accordingly. Since Defense spending cuts are also responsible for one-third of the interest savings, the defense cuts in terms of contributing to the overall deficit package, represent 40 percent of the deficit reduction package. That includes both spending cuts and revenue, 40 percent of the total.

By comparison, the entitlement budget is over twice the size of the Defense budget, and the revenue base is four times the size of the Defense budget. But defense outlays are cut 11 percent below the CBO baseline over the next 5 years, while entitlements are cut by about 3 percent and revenues increased by 2 percent.

Over the next 5 years, Defense outlays will be cut by $182 billion from the CBO baseline. In real terms, the Defense budget will be reduced by 20 percent over the next 5 years. As a share of gross national product, Defense spending will drop from 5.5 percent of GNP in 1990 to 4 percent in 1995, the lowest level since 1948.

Clearly, Mr. President, the Defense budget is making a substantial contribution to the deficit reduction effort. The reductions required by the budget summit agreement to the current 5-year defense plan will require some very tough decisions by Congress and the Defense Department.

Deficit reduction, however, is not the primary goal of our national security budget. This budget that we have before us has as its primary goal to help protect our Nation against the threats that we face in a dangerous world.

Last March, I outlined in detail my views on the changed threat environment of the 1990's. In those remarks I gave a very detailed overall assessment of the changes in the threats to our national security. I do not intend to repeat my earlier comments, but I want to mention briefly my views on the changes in the threat, and they have been very considerable changes.

At the level of strategic forces, there have been no significant changes from the trends I outlined in March of this year. The Soviets continue an across-the-board modernization of their strategic forces, and Soviet strategic forces remain the paramount threat to United States national security interests.

At the conventional level, the most profound change has been the virtual elimination of the threat of a large-scale Warsaw Pact attack against Western Europe and the NATO alliance. At the same time—as recent events in the Persian Gulf demonstrate—we face significant threats to the security of the United States and our allies in other regions of the world which we must remain capable of addressing.

MINIMIZE THE EFFECTS OF DEFENSE TRANSITION ON PEOPLE

Mr. President, one of the committee's highest priorities this year has been to sustain and, where possible, enhance the well-being and combat effectiveness of military personnel as the military force structure shrinks over the next 5 years. The committee wanted to set a gradual, predictable, and stable glidepath so our men and women in uniform would know where they stand and so the personnel managers in DOD could plan accordingly.

With personnel in mind as our most important priority, the conference agreement follows Senate lead in authorizing military strengths for fiscal year 1991 and fiscal year 1995. Authorizing a 5-year strength for the military services is part of our effort to ensure that the reduction in the size of our military forces is carried out in an orderly, phased fashion over the next 5 years.

For fiscal year 1991, the conference agreement authorizes an active military strength that is 100,000 below the current fiscal year 1990 level. The military services began fiscal year 1991 20,000 personnel below their authorized level, so 20 percent of this 100,000 reduction has already occurred. The conferees gave the Secretary of Defense the authority to exceed the authorized end strengths by up to 1 percent because of the uncertainties surrounding Operation Desert Shield. Next year will be the first time in 40 years, Mr. President, that the number of active duty military personnel will drop below 2 million.

The fiscal year 1995 military end strengths in the bill are consistent with the Pentagon's long-term plans, and represent a 22-percent reduction from current strength levels. This is important because for the first time, Congress has provided a long-term statutory goal for each military service to program against.

The conference agreement approves a 4.1 percent pay raise for military personnel effective January 1, 1991; requires the military services to slow the recruitment of new personnel and to encourage the early release of first-term and retirement-eligible personnel before reducing career personnel; and authorizes a generous safety net package of benefits for military personnel who are involuntarily separated from service. We hope there will not be many involuntarily separated but where they are we have a safety net that will be in effect for them. This package includes medical transition coverage, higher involuntary separation pay, limited commissary and exchange privileges, limited housing and dependent education assistance, vesting in educational benefits, transition and job search assistance, and enhanced travel and transportation benefits.

The conference agreement also contains a package of benefits for military personnel deployed in Operation Desert Shield. These benefits include funding for free postal services; authority for imminent danger pay from the start of Operation Desert Shield; authority for a savings program that would yield interest of up to 10 percent; authority for reimbursement for accrued leave for activated reservists; and authority to pay medical special pays and variable housing allowances to activated reservists.

STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT COUNCIL

I am pleased that the conferees agreed with the initiative in the Senate bill to apply the resources and talents of the Defense and Energy Departments and the intelligence community to environmental problems. The conference agreement establishes a new Strategic Environmental Research and Development Council, and authorizes $200 million for this Council in fiscal year 1991. The activities of this council will make a significant contribution to environmental research, particularly in the areas of climate change and environmental restoration and cleanup of DOD and DOE installations.

COMMITTEE THEMES ENDORSED BY THE CONFERENCE AGREEMENT

Mr. President, the committee's recommendations to the Senate in this

Defense authorization bill were grouped under five major themes:

First, maintaining nuclear deterrence at lower and more stable force levels;

Second, shifting to a reinforcement strategy in which the United States would reduce its forward-deployed forces, encourage specialization with its allies, and emphasize a reinforcement capability, including the use of Reserves to augment the remaining forward-deployed forces;

Third, making greater and more innovative use of National Guard and Reserves Forces;

And here I would like to call particular attention to the Navy and the fact that the Navy has gone to a new concept, a dramatic new concept for the Navy of better utilization of reserves and placing more ships into the reserves. I congratulate the Chief of Naval Operations and the Secretary of Navy for taking that step which has just been announced, and I will have more to say about that later in this discussion.

Fourth, adjusting the readiness of certain forces to reflect the threat; the amount of warning time; the likelihood that the forces will go into action; and the availability of airlift and sealift to transport the forces to the battle; and

Finally, developing a stable, effective resource strategy around the theme suggested by former Ambassador David Abshire: "think smarter, not richer." This resource strategy includes an emphasis on "fly before buy" for new weapons systems; improving existing platforms and reducing new starts; encouraging innovative research to preserve our technological superiority; and simplifying and streamlining the defense acquisition process.

The agreements reached in this conference report are very consistent with and reinforced by these five themes.

I want to mention briefly here the agreement in the area of strategy programs because this was one of our most contentious issues in conference

NUCLEAR DETERRENCE

The conference agreement maintains our essential policy of nuclear deterrence, but at lower force levels and with greater stability.

For the ICBM leg of our stategic triad, the conference authorized $680 million for research and development of the rail garrison MX and the small ICBM; denied the procurement request of $1.3 billion for rail garrison MX trains but recommended that the R&D program be completed to preserve a deployment option; and recommended that the Department plan to deploy the Small ICBM in silos initially, while preserving an option for subsequent deployment in a mobile basing mode if future strategic or arms control developments so require.

For the bomber leg of the triad, the conferees approved $2.35 billion in procurement funds and $1.75 billion in R&D to continue the B-2 bomber program. Although the House conferees insisted that we drop all of the fences on new B-2 aircraft that were included in the Senate bill, I have received assurances from Secretary of the Air Force Don Rice that the Air Force will observe all of the fences that were adopted in the Senate bill for all new B-2 aircraft procured with fiscal year 1991 procurement funds. This means that the procurement of additional B-2's will be contingent on continued favorable results from the B-2 flight test program. The Senate conferees hope that these flight tests will be successful which will permit additional B-2 aircraft to be procured with fiscal year 1991 funds.

The conferees also authorized $1.15 billion for construction of the 18th Trident submarine, and $1.34 billion for Trident-II missiles. The conference deleted the provision precluding any advance procurement for additional Trident submarines.

Funding for the strategic defense initiative was authorized at $2.89 billion. The conferees agreed to institute new budget and reporting procedures for the SDI Program in fiscal year 1991 which are tied to functional missions for missile defenses. Funds would be allocated to five separate program elements, each related to a separate and distinct mission. Funds can be transferred among these new program elements only through the formal reprogramming procedures.

After considerable debate, the conferees agreed to limit expenditures for the Milstar communications satellite to $600 million in fiscal year 1991, a reduction of $500 million from the budget request. The conferees gave strong direction to the Secretary of Defense to restructure this program or propose an alternative in order to reduce the total program costs and to refocus the program priorities from strategic warfighting to tactical uses. Deputy Secretary of Defense Don Atwood and Pentagon Comptroller Sean O'Keefe assured me and the committee that they would not exceed the $600 million limit without congressional approval. As a result, the conference agreement would permit the Secretary of Defense to request additional funding for this program through the formal reprogramming process once the Secretary reports to Congress on a restructured program. I will have more to say on the Milstar program later.

Finally, the conference agreement authorizes $35 million for the tactical air-to-surface missile, and $126 million for the Asat Program.

EMPHASIS ON A REINFORCEMENT STRATEGY

The conference agreement endorses the emphasis in the Senate-passed bill on a reinforcement strategy in which the United States would reduce its forward-deployed forces, encourage specialization with its allies, and emphasize a reinforcement capability, including the use of reserves to augment the remaining forward-deployed forces.

The conferees agreed to the Senate provision reducing the ceiling on United States troops in Europe by 50,000 during fiscal year 1991. This puts us on an orderly course for what I believe will be reductions down to a level of 75,000 to 100,000 United States troops in Europe within 5 years.

The conferees agreed to a number of items to increase the mobility of our military forces. Construction of an amphibious assault ship for carrying Marine Corps forces was authorized; $250 million was added to the budget for strategic sealift construction; $31 million was added to the budget to enhance naval ship-to-shore fire support capability; and the Defense Department was directed to update the 1981 congressionally mandated mobility study.

The conferees also recommended a number of R&D and procurement programs for lighter, more lethal forces. The conference report directs the Army to procure an off-the-shelf light armored gun system, and initiates full-scale development of the Stingray electronic target identification system to enhance the combat effectiveness of existing tracked Army vehicles; $113 million was added to the budget request for specific programs to improve the capability of special operations forces, including better ammunition for the AC-130 gunship aircraft and a refueling capability for HC-130 tanker aircraft.

GREATER UTILIZATION OF THE RESERVE COMPONENTS

Mr. President, I believe that placing greater emphasis on our Reserve and National Guard Forces should be a key element of our military strategy in light of the changes in the threats to our national security and in light of the fiscal constraints we face. This conference agreement endorses this concept.

A total of $1.9 billion is authorized for new equipment for National Guard and Reserve Forces, $1.4 billion above the amount requested in the budget. The conferees maintained the force structure and personnel strength of the Reserve components at the current levels for fiscal year 1991, rather than making the reductions called for in the budget request. The conferees directed increased Reserve participation in several mission areas, including antisubmarine warfare and tactical airlift. Finally the conferees instituted a program to integrate more active duty personnel into the day-to-day training and management of Reserve

component forces beginning in fiscal year 1992.

FLEXIBLE READINESS

Last spring, Mr. President, I outlined a concept of flexible readiness. Under this concept, the military services would adjust the readiness of certain forces to reflect the threat; the amount of warning time; the likelihood that the forces will go into action; and the availability of airlift and sealift to transport the forces into battle. Those military forces that are best suited for the kinds of threats that are most likely in coming year would be kept at high readiness levels. Those forces oriented to counter less likely threats could be retained in the force structure but at readiness levels tailored to the substantially longer warning time of any increase in the threat.

I believe this flexible readiness concept will allow the military services to retain a larger force structure in the future than would otherwise be possible if all military units are kept at the highest readiness levels.

The conference agreement directs the Defense Department to examine this concept of flexible readiness and report to the Armed Services Committees on this subject by March 15 of next year. The conference report also reduces the budget request for training, operating tempo, and spare parts by approximately $1.5 billion because of the diminished threat, increased warning times, and reduced force structure.

THINK SMARTER, NOT RICHER

Mr. President, the Senate-passed bill contained a comprehensive resource strategy designed to improve the management of defense resources. This strategy included an emphasis on "fly before buy" for new weapons systems, improving existing platforms and reducing new starts, encouraging innovative research to improve our technological superiority, and simplifying and streamlining the defense acquisition process. All of these initiatives are endorsed by this conference report.

The conferees applied the "fly before buy" approach to a number of major weapons systems currently under development or approaching the early stages of production:

Procurement funds were approved for the V-22 tiltrotor aircraft, but these funds can be used only to procure production-representative aircraft to complete operational testing of the aircraft.

On the LH helicopter and the advanced tactical fighter, the conferees directed the Army and the Air Force not to enter full-scale development, but instead to develop and fly a prototype first.

Procurement funds for the A-12 were eliminated because of excessive concurrency between development and procurement.

Procurement funds for the C-17 were cut back and made subject to progress in meeting performance milestones.

Procurement funding for the Tacit Rainbow missile was deferred until successful completion of operational testing.

There are a number of areas where the conference endorsed the need to improve existing weapon systems where possible before committing to replace them with new and more expensive weapons. The conference agreement:

Protects an option to proceed with upgraded an F-15 fighter as alternative to the ATF;

Directs the Navy and Air Force to begin a joint program to modernize the inventory of AIM-9 Sidewinder missiles;

Requires the Army to upgrade first generation M-1 tanks with options for additional funding if block II design testing is successful;

Initiates a block upgrade program for C-30 tactical airlift aircraft; and

Initiates an evaluation of a service life extension program for Army trucks.

As part of a comprehensive effort to support technology base programs which help maintain the Nation's technological superiority, the conferees agreed to:

Add $363 million to the administration's $3.4 billion request for technology base funding. This represents a 10 percent real increase in funding over the fiscal year 1990 level;

Add $30 million to the budget for high computing technology;

Add $30 million to the budget for high definition display technology;

Approve $100 million for SEMATECH, a consortium of semiconductor manufacturers;

Add $95 million to the budget request to develop advanced submarine technologies;

Add over $50 million to the budget for advanced materials technology research;

Increase the scope for reimbursement of independent research and development;

Provide $100 million to establish a manufacturing technology program for the Department of Defense which will complement the work of the services; and

Authorize $50 million for DARPA to participate in consortia in order to foster critical technologies.

In an effort to simplify and strengthen the defense acquisition process, the conference agreement creates a pilot program to test flexible procurement procedures on six defense programs. The laws to be waived and the programs would be selected by the Department of Defense and approved by Congress. The conferees also expanded the opportunities for using multiyear procurements by eliminating the requirement that projected savings exceed a rigid threshold.

The conferees also agreed to require the Department of Defense to create an Acquisition Corps to provide improved training, education, and career advancement opportunities for the defense acquisition work force. New personnel benefits were established to recruit and retain acquisition personnel, including special pay for 800 persons in critical positions; authority to waive the dual compensation penalty for critical employees, a scholarship program and a student loan forgiveness authority to recruit talented students into the acquisition work force, and authority to pay for educational programs necessary for career advancement. Finally, the conferees extended for 6 months the current suspension of certain statutory post-employment rules to provide an adequate opportunity for congressional hearings and revision of these laws.

In an effort to streamline the personnel and management structure of the military services, the conferees directed DOD to reduce the acquisition work force by 20 percent over the next 5 years, mandated a similar 20-percent reduction in all DOD management headquarters over the same 5-year period, and required a 25-percent reduction in DOD intelligence-related organizations over a 5-year period beginning in fiscal year 1992.

There has been some concern expressed, Mr. President, about these intelligence reductions within the Defense intelligence establishment. I believe these reductions are necessary and long overdue. They should not be difficult to make, given the changes in force structure that will occur as a result of the changing nature of the international security environment, the reductions in overseas troop levels from upcoming arms control agreements, and DOD's own internal management reviews. I support the efforts of U.S. intelligence to keep our policymakers informed and to meet the challenges of a changing world. However, DOD intelligence organizations cannot be exempt from the overall restructuring that is taking place within the Defense Department. I expect the administration to carry out the reductions called for in this conference agreement.

BASE CLOSURE COMMISSION

In light of the pending reductions in the size of our military forces and the need to reduce overhead and infrastructure, the conferees agreed to a new procedure for base closings and realignments which reduces many of the current barriers to closing unneeded military bases in the United States and opens the base closing process to greater public accountability. The

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House bill had, in fact, barred any U.S. base closings until at least January 1, 1992.

The heart of this new process is the establishment of a bipartisan Commission to review base closure proposals submitted by the Secretary of Defense. This Commission would act during the first year of each of the next three Congresses.

Under the conference agreement, there would be a period for public comment and congressional approval of the criteria used to select U.S. military bases for closure or realignment. The Commission would then review the base closure recommendations of the Secretary of Defense, including holding public hearings. The Commission would assess whether the Secretary's recommendations were consistent with the agreed upon criteria and a long-term force structure plan which the Secretary would provide. The GAO would have complete access to the work of the Commission while it performs its work.

The Commission would then make its recommendations to the President and Congress on the Secretary of Defense's proposals. Both the President and the Congress have the option to accept or reject the Commission's recommendations in toto.

I believe this process will give the Department of Defense an opportunity to close unneeded military bases while assuring Congress and the affected communities that base closure proposals will receive a fair and open review.

PENTAGON TRANSFER

The conferees agreed to the Senate provision transferring control of the Pentagon Reservation from the General Services Administration to the Department of Defense. This provision was requested by the administration in light of the extremely deteriorated state of the Pentagon and other facilities on the Pentagon Reservation. Transfer of the facility to the Department of Defense means that the important effort to renovate and upgrade the working conditions of Defense Department employees working in the Pentagon can get underway promptly.

CONFERENCE AGREEMENT ON CLASSIFIED PROGRAMS

A final matter I want to bring to the attention of the Senate is the matter in which the conference committee has dealt with classified and special access programs. Section 1409 of this conference report provides that the classified annex to this conference report, which contains the conferees' decisions and direction involving certain classified programs in the Defense budget, will have the force and effect of law. Access to this classified annex is carefully controlled in both the Congress and the executive branch. The classified annex is available to any Senator during our floor deliberations on this conference report and will be included when the enrolled bill is sent to the President.

Mr. President, in conclusion, I want to thank all the members of the Armed Services Committee for their diligent work throughout the year on this bill. I want to convey a special debt of thanks to the chairmen and ranking minority members of the subcommittees who performed the lion's share of the work of the conference.

I want to thank the staffs of both the House and Senate Armed Services Committees for their untiring and professional efforts on this bill. The staffs of the Armed Services Committees provide superb support year round.

I also want to add a special note of thanks to Hugh Evans and Greg Scott of the Senate Legislative Counsel and Bob Cover, Sherry Howman, Greg Kostka, and Joe Womack of the House Legislative Counsel for their work on this bill.

Mr. President, this conference report represents the culmination of a great deal of hard work by many Senators. I particularly again note the tremendous job done by our ranking minority member, Senator WARNER.

This is a good bill which begins the process of reducing and restructuring our defense establishment in an orderly process to meet the challenges of the next 10 years.

I urge my colleagues to support this conference report.

Mr. President, I yield the floor. Does the Senator from Delaware desire time?

Mr. ROTH. Yes.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. I yield myself 5 minutes from the time of the distinguished Senator from Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, today I intend to vote against the Defense authorization conference report, as I did against the original Senate authorization bill and the subsequent appropriations bill. I regret having to do so, as I am a believer in a strong defense. In doing so, I want to make clear that I appreciate the leadership provided by the distinguished senior Senator from Georgia [Mr. NUNN], and the distinguished senior Senator from Virginia [Mr. WARNER], two of the most able Senators in Congress. I know they are concerned about closing unneeded bases and terminating unnecessary conventional weapons procurement programs. I also knew the pressure put upon them in order to get legislation enacted.

My reason for opposing this legislation is that it fails to reflect the momentous changes taking place in the world around us. For years, we have dedicated more than 50 percent of our defense resources, directly and indirectly, to the defense of North American and European security interests from attack by the Warsaw Pact. Now, the Warsaw Pact exists in name only. The likelihood of a Soviet assault across Europe, while still existing, has waned dramatically.

Mr. President, these developments constitute the most startling political developments in the Western World since the end of World War II. What reflection of these developments do we see in our national defense budget? Very little, I regret to say. We continue to spend huge amounts of taxpayer money on weaponry and military bases which we know perfectly well meet past, rather than future, needs.

The problem is within the Congress. Congress has talked loud and long about the need to reduce the defense budget but, as usual, when push came to shove, Congress proved incapable of terminating one major nonnuclear weapons systems or closing an unneeded base.

In short, Mr. President, Congress was quite happy when all it had to do was talk, talk, and talk. But when it came time to terminate weapons systems and to close military bases—that is, weapons made in Members' States and bases in Members' districts—the shoe was on the other foot. Suddenly, Congress was no longer a new breed of budget cutters, but cold war warriors demanding more and more money for the systems which held our constituency's interest.

Consequently, we labored loud and long and, after months of bipartisan wangling, a mouse was born. This conference report should have three words written across it in bold type—"business as usual." Forget the decay of the Warsaw Pact, the crumbling of Moscow's military capability, and the overall changed political situation. We are going to overlook all of these developments in order to keep everyone happy.

Let me make two salient points in this regard. First, this defense debacle has not been a fight between pro- and anti-defense groups. It has been a fight between those who genuinely wish to change the defense budget in line with world events and those who loudly declare their desire to cut that budget but who then fight tooth and nail to preserve useless defense spending in their own States. This latter group has proved so potent as to minimize defense savings. I feal we will do no better next year.

Second, I should point out that I am not naive as to the true state of the world. Developments in the Soviet Union have not left us with a perfect world. We still face a threat, though a reduced threat from the East. Saddam Hussein still stands ready to threaten U.S. interests. Doubtless, future

threats to our interests will be posed by gangs of fanatics, terrorists, and dictators of the right and left. We will need to protect ourselves against these threats. We cannot contemplate dismantling our Armed Forces; they must adapt to today's capability needs. But I regret to say that I do not see the reallocation of effort necessary to address fully this changed threat scenario. Rather, our budget, being procurement-driven, continues to make our Armed Forces ready for a war in Europe which they will not be called upon to fight in the foreseeable future.

Congress did not adapt the defense budget to the current international environment. Instead, Congress stretched old programs, added some money for sealift, and deferred many decisions and much spending until the end of the fiscal year. We are buying fewer numbers of some systems at much higher unit costs because of such actions.

Mr. President, this year presented us with a first-rate opportunity to restructure our defense forces and, in the process to make major economies in our defense budget. Many Members of Congress were willing to go on national television and demand these reductions but, when it came time to vote, they turned their backs on the American people and voted for their most narrow parochial interests. Once again Congress has failed to take the action in the best interests of America.

Mr. President, tough decisions we avoided this year will not go away. But, neither will the political pressures that prevent Members from making decisions that take Federal funds away from their constituents. We must develop and apply innovative win-win approaches for satisfying the constituency's that are affected by cuts in unnecessary weapons programs and unneeded bases.

An example of such an approach is my base conversion bill, which returns the title for the base to the affected community. An unneeded base that stays in the Government's hands has only theoretical value, it only really gains value when it is put to some productive use. While keeping an unneeded base open is a drain on all taxpayers, returning the land to the local community generates a value asset for those affected—at no additional cost to the average taxpayer. This approach to implementing cuts in the defense budget is the most cost-effective conversion technique for the average American taxpayer, the most valuable help for the affected communities, and the most feasible means for overcoming the political constraint of local opposition to base closings. The fact that this approach was unanimously endorsed by the U.S. Conference of Mayors earlier this year is evidence of its value of in diminishing local opposition and turning base closings into economic opportunities for those affected. Mr. President, I would hope that the Base Closing Commission established in this bill would consider such an approach in formulating its recommendations.

The PRESIDING OFFICER. Who yields time?

The Senator from Virginia.

Mr. WARNER. Mr. President, I yield to myself such time as may be required.

Mr. WARNER. Mr. President, Senate-House conference report on the fiscal year 1991 National Defense Authorization Act is a result of extended and difficult negotiations, perhaps, if I may say, some of the most difficult I have ever encountered in the 12 years I have been privileged to serve as a Member of this body. Yet we have attempted to lay down a blueprint to provide guidance to the Department of Defense in structuring our military forces to meet the immediate challenges we face and those which we anticipate in the future.

I believe we have produced a bill that provides a solid framework for our defense programs in an era of constrained resources and a rapidly changing world. We have examined closely the situation in the Persian Gulf and provided the resources required for our Armed Forces to carry out the missions currently assigned to them. Of course, if hostilities should commence—and in no way do I indicate that that is about to happen—if they should commence, additional resources will be required and Congress should be prepared to address this issue at the appropriate time.

Mr. President, I may have remarks later on the role I foresee for Congress in the unfolding events in the gulf. But, continuing this opening statement:

With respect to strategic programs, the conference agreement provides the minimum accepted level of funding for the modernization of our deterrent forces. The conferees agreed to fund continued research and development for the land-based leg of the triad, both the rail garrison peacekeeper program and developing of the small ICBM. The B-2 bomber is authorized, and procurement will continue in fiscal year 1991. That program was a major goal of our President, and it was met largely through the efforts of the Senate Armed Services Committee.

The conferees also agreed to authorize procurement of the 18th Trident submarine and to fully fund the administration's request for the D-5 Trident missile.

Mr. President, both the SDI program and the Milstar program are funded at levels lower than this Senator would have liked to have seen and lower than, indeed, the President would have liked to have seen. I am convinced, however, that the statutory restructuring of the SDI program, as mandated in the conference report, may well result in the expenditure of billions of dollars in taxpayers' money for esoteric research while at the same time denying ourselves any real near-term capability against ballistic missiles.

Likewise, I am concerned that the dramatically reduced funding and the mandated restructuring of the Milstar program could result in a loss of nearly $6 billion investment in this program and, ultimately, the expenditure of even more money to further delay the fulfillment of critical—I underline critical—validated Joint Chiefs of Staff's requirements for secure satellite communications.

At the same time, Mr. President, when I count the votes in the Senate and in the other body, I have conclude that this conference report respresents the best possible outcome in these programs that could be obtained. The language of the Bingaman-Shelby amendment restructuring the SDI program has, to some extent, been revised to make it somewhat—and I underline just somewhat—more acceptable. I still regret the major thrust of that amendment. I am still hopeful, however, the Department of Defense may find a way to restructure the Milstar program to satisfy both military requirements and congressional concerns. Therefore, I am prepared to recommend that my colleagues support the conference report, even though the outcomes of these programs are not ideal.

In saying that this is the minimum acceptable funding level for strategic modernization, I do so not to be critical of this particular conference outcome. Rather, I am most concerned about the continuing decline in support for these programs at a time when the Soviet strategic modernization continues unabated. The Soviets are continuing with another round of modernization, particularly in the area of mobility at a time when they cannot even put food on the tables of their citizens. We must resist any further efforts to reduce funding for the modernization of our deterrent forces. The very events taking place today in the Soviet Union and Eastern Europe are the direct result of the tenacity of the American people, of a succession of American Presidents to maintain a credible U.S. deterrent available. Moreover, if we are serious about future efforts to negotiate additional reductions in United States-Soviet strategic forces, we must have a modern and stabilizing triad of determinated forces for the 1990's. We must never permit unilateral deterioration of our deterrent forces to be viewed as an acceptable form of arms control.

Mr. President, another issue of critical importance, particularly in this time of crisis in the Persian Gulf, is the provision in the pending conference report which allows NATO to continue construction of a new fighter air base at Crotone, Italy, for the United States 401st Tactical Fighter Wing. The conferees agreed to allow construction at Crotone to process, following reaffirmation of the need for the air base at Crotone by NATO.

Maintaining a United States fighter presence on NATO's southern flank is vital for meeting threats in both the European threats and the surrounding Mediterranean and Middle East region. Gen. John Galvin, Commander in Chief, U.S. European Command and Supreme Allied Commander has stated that if only two United States air wings were to remain in Europe, we would place one of them at Crotone. The current Persian Gulf crisis has underscored the importance of the 401st for Middle East contingencies. Currently, two of the three squadrons of the 401st are forward deployed from their present base in Spain in support of Operation Desert Shield.

I am pleased that the conference resolution will permit continued construction of this important air base.

Mr. President, in response to the changing events in Eastern Europe and the Soviet Union, the conferees agreed to reduce Department of Defense end-strength by 100,000 personnel, with a 5-year goal of reducing Active Force size to a level approximately 22 percent below fiscal year 1990 levels. The drawdown anticipated over the next 5 years will be the largest reduction of our military forces since the end of the Vietnam conflict. At the same time, the conferees recognize that the demands of Operation Desert Shield could alter the advisability of these personnel reductions in the short-term. Therefore, the conferees agreed to provisions giving the Secretary of Defense authority to increase the active end strengths by up to 1 percent above the levels authorized in the conference report. This amounts to approximately 20,000 active duty personnel.

In a further effort to lessen the impact of these personnel cuts, the conferees authorized a series of compensation measures for military personnel who are involuntarily separated, including increased separation payments for officers and enlisted personnel, transition medical coverage, commissary and exchange privileges, job search assistance, and enhanced travel and transportation benefits.

In addition, the conferees increased the requested pay raise to 4.1 percent for basic pay and allowances. This action was taken out of concern for the increasing gap between military compensation and private sector wages.

The conference report authorizes a series of benefits for personnel deployed to the Mideast in support of Operation Desert Shield. Included in this package of benefits are free postal services, retroactive authority for imminent danger pay, a special savings program that would yield up to 10 percent interest, reimbursement for accrued leave for activated reservists and authority to pay variable housing allowance and medical special pays for reservists activated for Operation Desert Shield.

I would take note here that the Presiding Officer at this time of the Senate, the Senator from Alabama, was very active in seeking those additional personnel benefits for the men and women of the Armed Forces serving in the Persian Gulf.

The total funding level recommended by the conferees for the national defense function (050) for fiscal year 1991 is $288.3 billion in budget authority and $297 billion in outlays—a reduction of over $18 billion from the President's budget request. This conference agreement is consistent with the budget summit agreement.

With respect to the incremental costs of personnel and benefits directly related to Operation Desert Shield, the budget summit agreement provides that these amounts are to be treated as additions to the budget resolution ceilings for the defense function. However, if these amounts and the spending in fiscal year 1991 resulting from previously appropriated amounts for Persian Gulf operations are included, the total funding authorized in the bill is $288.5 billion in budget authority and $297.4 billion in outlays.

As I indicated earlier, Mr. President, these have been long and difficult negotiations. I would like to take the opportunity to commend our chairman, the senior Senator from Georgia for his leadership, guidance, patience, and fairness during these deliberations.

I was by his side throughout and saw first hand his leadership.

In addition, I would like to commend our staff, under the very able leadership of Pat Tucker and Arnold Punaro. They are all true professionals who have labored skillfully and diligently throughout this entire year. We are fortunate to have such wise counsel and dedicated public servants.

Mr. President, we have done our very best to fashion a Defense bill which will meet our country's needs as we are able to see those needs as of this day. But we cannot, as the events of the past years indicate, predict the future. Mr. President, we must remain ready, we must remain strong, and we must remain vigilant. Certainly the events of this year have taught us that.

I hope and I believe that we have provided the minimum resources necessary to meet all contingencies with which our great Nation may be faced in the coming years. We must now rely on those in uniform, men and women, and their civilian leadership to execute these programs effectively. I am confident they will do so.

Mr. President, I urge my colleagues to vote in favor of this conference report.

Mr. COHEN. Mr. President, earlier today I took the floor to offer a few comments about the advanced tactical fighter, the so-called ATF, and pointed out it was a program that would probably even exceed in price that of the B-2 bomber. Yet very little attention has been focused upon the ATF Program to date, other than through the Armed Services Committees.

The Senate Armed Services Committee had recommended a go-slow approach, recognizing that this potentially was a program that could well exceed our ability to pay for it and, indeed, cause us to have to cancel many other programs that have equal merit. So we urged a go-slow approach and barred the Air Force from initiating full-scale development.

We found out, however, that notwithstanding the explicit prohibition of going to full-scale development, the appropriations conference report seeks to reverse the legislative committees and explicitly provides full-scale development money. That is a battle which will have to be fought in the months and years to come, but it is one that ought to command the attention of all of us who are concerned as to whether there has been an erosion of the authority of the Senate Armed Services Committee and other authorizing committees. There have been moments when I have suggested—and, indeed, I might reiterate it today—it may be it makes no sense to have an authorizing committee and an appropriations committee. Perhaps the two should be merged. But I must say I find it very frustrating to spend most of the year listening to witnesses, examining witnesses, reading documents, making judgments, only to find that those judgments are indeed reversed by another committee which does not have legislative jurisdiction. Perhaps we should consider some reorganization proposal that would merge the two committees, streamline the process, and perhaps even save the country money in the process.

I would like for the next few moments, however, to focus upon the B-2 bomber. There have been various approaches taken toward the B-2 bomber. Last year, my colleagues recall, the Department of Defense had proposed some $70 billion funding to produce 132 B-2 aircraft. This year there was a change. The Secretary of Defense looked at the handwriting on the wall. He saw it was not a forgery

and said, "We are going to have far fewer dollars to deal with in the future, and I know I cannot afford to come up with $70 billion for 132 aircraft. In fact we have done some recalculation. The numbers are not quite right, but let me propose you a better deal. I propose to reduce the 132 aircraft to 75, and I will cut the purchase price down from last year's $70 billion price tag to this year's $65 billion.

That is not quite a deal that most Americans would find to be a good deal. We have cut the B-2 purchase in half, virtually, and saved about $5 billion, based upon the numbers that were given to us by the Air Force and the Congressional Budget Office.

That is one approach. Now the Department of Defense has said we would like to have ultimately 75 B-2 aircraft and we are indicating to you it will only cost $65 billion. I use that "only" very tentatively.

There is the approach taken by the House of Representatives and its Armed Services Committee. LES ASPIN, as the chairman, said let us cut the program down to 15 aircraft. Let us just have 15 aircraft that will be our B-2 bomber force.

Of course, the Air Force has indicated that is not really a practical solution. It will not serve a strategic need. We will be spending billions of dollars to produce and deploy 15 aircraft and I think, frankly, termination of the program will be a much better alternative. Nonetheless, Chairman ASPIN has indicated he can support a complement of 15 B-2 aircraft.

There was the Leahy-Cohen approach which simply said, let us just complete 6 aircraft for research and development/testing purposes but no procurement for actual operational capability. That was rejected by the Senate. We fell about 6 or 7 votes short this year, but the Senate concluded, no, it wished to go forward with the program.

I mention this all by way of background because the conference report provides for $2.3 billion for B-2 procurement, not making any distinction between procurement and advance procurement. This is something that is technical but fairly important.

The Air Force's request, as amended after the major aircraft review, was $1.9 billion for procurement of two aircraft for the next fiscal year, fiscal 1991, and $767 million for advance procurement of five aircraft for a total of $2.7 billion.

The conference report does not spell out exactly what the $2.3 billion in procurement is going to be used for. Indeed, the statement of the managers contains an unusual, if not an unprecedented, formula in which a majority of the Senate conferees assert one interpretation of the conference outcome, while a majority of the House conferees assert a very different interpretation.

I recall reading one of Henry Kissinger's books in which he indicated that a successful negotiation is one in which both parties to the negotiation can walk out of the room and each claim success. The difficulty I have with this, however, is that we are not dealing with the Soviet Union; we are not dealing with China; we are not dealing even with North Vietnam; we are not debating about what the shape of the negotiating table ought to look like, be it rectangular or oval. We are talking about a conference report in which we have reached some kind of agreement with our counterparts in the House of Representatives.

Needless to say, this has created a good deal of confusion. Why do we have one interpretation in the House and another interpretation in the Senate?

First, let me say that it is regrettable that we have arrived at this particular posture for two reasons. Number one, it is poor legislative practice to produce conference reports that seem to be deliberately ambiguous. The purpose of the conference is to resolve differences, not to sanctify them. Secondly, in my view, there is really no conflict between the Senate and the House conferees' interpretation. The appearance of a conflict seems to have been deliberately created and unnecessarily created for purely political reasons.

In order to understand why this has been done, why there is really no conflict between the Senate and the House, I think we have to have a bit of background on the B-2's program management.

After the enactment of last year's authorization and appropriations bills, the Air Force had authority to procure 15 B-2 aircraft. But back in July of this year, the Air Force announced that it had a large unfunded liability of roughly $1.4 billion on the B-2 program which came about from a a variety of causes.

In order to deal with this unfunded liability, the Air Force decided, in essence, it was going to cancel two B-2 aircraft that had previously been authorized. As a result, now the Air Force would only have 13 aircraft in the pipeline. The Senate conferees' interpretation of the conference outcome is that the Air Force is going to carry through this plan, cancel two of those previously authorized aircraft, and then take the new money in this particular report and procure two more aircraft. That will bring it up from 13 to 15. As Senator WARNER just said a moment ago, thus, the B-2 program will continue.

The House interpretation is that the Air Force has not yet executed its plan and, therefore, it still has 15 in the pipeline. In the view of the House conferees, the Air Force should use the fiscal 1991 procurement fund to pay off that unfunded liability, thereby leaving the Air Force with 15 aircraft in the pipeline. So, according to the House interpretation, the program has been stopped right where it is. All the new money is going to go to pay for the unfunded liability on previously authorized aircraft.

The Senate's interpretation is that the previously authorized aircraft have been or will be cut out, and we are bringing it back up to 15 and we are going forward.

So we have the momentum forward on the B-2 program in the Senate, while the House says we have stopped the program in its tracks. Everybody is happy, only 15 aircraft are going to be authorized to date after all.

In my view, this entire issue has been deliberately generated so as to leave unclear who won in the conference. Let me simply state my own position. Proponents of procuring more B-2's have won for the moment. I simply note this issue is not dead. The B-2 opponents are gaining momentum.

We went from a year ago having 29 votes against the B-2 to as many as 44 this year. By the time next year comes around, I would expect that we would have a majority in order to terminate the program. But I do want to at least take the floor today to make sure that in the battle of the press releases regarding this matter we do not leave the impression that the Senate did not carry out its responsibilities in the conference. The fact is that there is an unambiguous outcome. The Air Force has authority for the 15 aircraft and what we hope to be adequate funding to pay off the so-called unfunded liability. It has the discretion to decide which year's aircraft will be canceled in order to pay off that unfunded liability.

Mr. President, I reserve the remainder of my time.

Mr. President, I ask unanimous consent to print a letter from the Secretary of the Air Force in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SECRETARY OF THE AIR FORCE,
Washington, July 11, 1990.

HON. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This provides you with the best current information on the B-2 program as a follow-up to our discussions with your staff earlier this week. At the completion of the Major Aircraft Review, Secretary Cheney decided to reduce the number of B-2 aircraft purchased in FY 91 from 5 to 2 and reduce the outyear annual buys to a more affordable level as part of an overall reduction from 132 to 75 aircraft for the total program. At that time, he provided the estimate of $4.140 billion as the funding requirement for FY 91, while explicitly reserving the option to provide you modified

estimates based on a more complete evaluation of this major change in schedule and quantities procured.

Since that time, we have conducted a more thorough review of the detailed ramifications of the many recent changes made by the Congress and the Department to the B-2 program. We now estimate the FY 91 funding requirement for the proposed procurement profile to be $4.648 billion based on a restructured program, as described below. The difference is due primarily to three areas: increased overhead and fixed costs in FSD arising from the reduced production rate, the production rate changes and additional advance procurement to hold open previously approved advantageous fixed priced options with subcontractors.

Because of the Congressional decision to cut the number of aircraft procured in FY 90 and the subsequent reassessment of the overall requirement and procurement schedule for FY 91 and beyond, a second funding matter has reached significant proportions and must be recognized. The Secretary's June 1989 Report to the Congress on the B-2 Total Program Costs estimated an unsourced funding requirement potential of $311 million to the FY 87/88 LRIP contract due to procurement schedule changes. This was included in the total program cost for 132 aircraft. The report also noted the potential for significant cost impacts should further changes be made to the schedule. With the Congressional reduction from 5 to 2 aircraft in FY 90, this unsourced funding requirement increased to an estimated $600 million. The 5 to 2 aircraft reduction in FY 91 and the overall reduction from 132 to 75 aircraft resulted in an additional requirement for FY 90 and prior of approximately $800 million, for a total estimate of $1.4 billion. These estimated unsourced requirements will become a liability when the contracts are definitized and executed. We estimate the FY 89/90 contracts will be definitized in December 1990 while the FY 87/88 contract will be redefinitized to adjust for schedule and other changes in the summer of 1991.

The repeated reductions in the numbers of aircraft funded in each year subsequent to FY 87/88 (attachment 1) has meant that each of the funded aircraft remaining in the fiscal years prior to FY 90 has had to absorb a larger slice of the overhead and other fixed costs of the contractors during the years in which they are actually produced. Specifically, three areas have contributed to this shortfall: the business base erosion, sustaining labor redistribution and a capital idemnification clause to cover the contractor team's investment in required facilities. The B-2 is not unique to this type of shortfall as program costs react to changes in quantity or schedule. Under the full funding rules accepted by both the Congress and the Department of Defense, these costs must be reflected retroactively into the years when the affected aircraft were ordered.

We have examined various options to source this estimated FY 87 through 90 unfunded requirement of $1.4 billion. First, we could have examined the possibilities for using expired or lapsed appropriated funds to cover this shortfall. Another source would be reprogramming from unobligated balances of prior years. A third option would be supplemental appropriations for those prior years. In consultation with your staff, all three options were rejected, leaving only the option of covering the short fall from within the B-2 program. The Air Force has developed a way to do this by restructing the earlier year buys. This restructure would involve moving two aircraft to FY 97, one from FY 88, which is already on contract and definitized, and one from FY 89, for which long lead procurement has been released. This would allow us to use these appropriations to cover the estimated unfunded requirement in FY90 and prior at the time it becomes a true liability in the fiscal year it must be recognized. The requested budget of $4.648 billion of FY91 includes the restructure and the impact of the various schedule/quantity changes on the fiscal 91 buy.

In seeking your support for these revisions to the B-2 program, I would like to emphasize our continuing commitment to informing the Congress promptly of impacts resulting from programmatic changes. At the same time, continual schedule perturbations in large complex programs necessarily leave significant uncertainty about their full effects until modified proposals can be solicited, received and negotiated with the contractors. Stability of schedule and commitment from this point forward are key to realizing a successful B-2 program.

Sincerely

DONALD B. RICE,
Secretary of the Air Force.

Mr. WARNER. Mr. President, would you advise the Senator from Virginia as to the time remaining under his control?

The PRESIDING OFFICER. The Senator from Ohio has 20 minutes time that he controls. The Senator from Virginia has 22 minutes remaining.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield such time to the distinguished Senator from South Carolina as he requires.

The PRESIDING OFFICER (Mr. ROBB). The distinguished Senator from South Carolina is recognized for as much time as he may use, up to 15 minutes and 1 second.

Mr. THURMOND. Mr. President, I rise in support of the conference report on the National Defense Authorization Act for fiscal year 1991. The report represents 2 weeks of intensive negotiations and compromise. Although I do not agree with all the compromises, the conference bill reflects to a large extent the Senate's position and will continue to provide a strong defense for our Nation.

Mr. President, during the past month, the conference resolved more than a thousand funding and language differences. In my over 30 years on the Armed Services Committee, I have never seen so great a divergence between the Senate and House on major issues. It was only through the able leadership of the conference chairman, Senator NUNN, and the ranking member, Senator WARNER, that the conference was able to reach a satisfactory conclusion.

I support this conference report despite the fact that it provides only minimum acceptable funding for strategic programs. As the ranking member of the Subcommittee on Strategic Forces and Nuclear Deterrence, I have concerns regarding the $2 billion cut to the President's request for the SDI Program, and the fact that the report provides only $600 million for the Milstar Program.

Both these programs have near- and far-term implications for our Nation's defense. Not only is the funding level for these programs questionable, but the report contains language which drastically limits the Defense Department's flexibility in managing the programs. In fact, congressional micromanagement of the Defense Department is evident throughout the bill and is the principal reason the bill is 900 pages long.

Mr. President, the fiscal year 1991 Defense authorization bill is a transition bill. It is the initial step toward refocusing our defense programs from the era of the cold war to one that must focus more on Third World conflict. I believe the current events in the Middle East foresee the type of crises we will be facing in the coming century. This conference report begins the process of molding our forces to meet the new challenge.

The bill is also a big step toward reducing our defense expenditures and revamping the Department's procurement process. In that regard, the "fly before buy" provisions of the bill will provide us more capable equipment at less cost. The provisions to establish an Acquisition Corps will give us a professional management team to administer the procurement process. In my judgment, both provisions will enhance the credibility of the procurement process and give us more "bang for the buck."

Mr. President, the conference report reduces our Nation's volunteer military force by 100,000 during this fiscal year. I regret that we had to make these cuts; however, I am confident that the compensation package in the bill will cushion the blow on any soldier who might be involuntarily separated. We need to remember that our Nation's most important assets are the men and women who wear the uniform. We must provide for their welfare. This legislation does that.

Finally, Mr. President, I want to make a comment about the process that got us to this point. We have to be more timely. It is now almost a month into the fiscal year and the Congress is still working on the Defense budget.

How can we expect the Defense Department to effectively manage its programs when the Congress does not provide the guidance or funding in a timely manner? I urge the Senate leadership to review the legislative process and make the necessary

changes to bring about timeliness and credibility to the process.

Mr. President, I urge the adoption of the conference report and congratulate both Senator NUNN and Senator WARNER for their superb leadership of the Armed Services Committee.

Thank you, Mr. President.

Mr. WARNER. Mr. President, I thank our distinguished colleague from South Carolina. I have had the privilege of serving with him now for 12 years. He has served the Nation well as a Member of the Senate Armed Services Committee. He brings a unique background to that committee, which in turn provides us a very special wisdom and a foresight. We thank him this year, as we have in previous years, for his leaderhsip, particularly in the field of strategic weapons. In his capacity as the ranking member of that subcommittee, he makes some of the most important decisions that guide the full committee in its determinations.

I thank the Chair.

The PRESIDING OFFICER. Who yields time? The Chair recognizes the Senator from Ohio [Mr. GLENN].

Mr. GLENN. Mr. President, how much time do I have?

The PRESIDING OFFICER. Under the pervious order, the Senator controls 20 minutes independent of the managers.

Mr. GLENN. I thank the Chair.

Mr. President, I feel we have before us an excellent product, the fiscal year 1991 Defense authorization conference bill, which I strongly support. It addresses in a highly competent way many diverse national defense matters that are so important to the well-being of this Nation.

First some comments as chairman of the Manpower and Personnel Subcommittee. Senator JOHN MCCAIN of Arizona, the subcommittee's ranking minority member, and I jointly approach the work of the Manpower Subcommittee in a pragmatic, nonpartisan manner, and I feel the subcommittee product reflects that effort. My earnest thanks and appreciation to Senator MCCAIN for his continuing stalwart and invaluable service on the subcommittee.

Mr. President, one of the highest priorities of both the House and the Senate Armed Services Committees in this bill was to sustain and, where possible, to enhance the well-being and combat effectiveness of military personnel as the military services build down over the next 5 years.

With these objectives in mind, the conferees approved active duty end strengths for each of the military services in fiscal year 1995 based on force structure adjustments that the military services are expected to make over the next 5 years in reaction to the reduced threat. For fiscal year 1991, the conferees approved active duty end strengths for each of the military services that put each service on a rational glide path to achieve its fiscal year 1995 target.

ACTIVE DUTY END STRENGTHS

	Fiscal year 1991	(+/− Fiscal year 1990)	Fiscal year 1995
Army	702,170	(−42,000)	520,000
Navy	570,500	(−20,000)	501,000
Marine Corps	193,735	(−3,000)	177,000
Air Force	510,000	(−35,000)	415,000
Totals	1,976,405	(−100,000)	1,613,000

In order to preserve mid-career experience as the military services draw down, the conferees approved an end strength reduction process that requires the military services to: First limit accessions to the minimum number required to sustain the smaller fiscal year 1995 force; second, reduce the retirement eligible segment of the personnel inventory to match requirements for the smaller fiscal year 1995 force; third, reduce the first term segment of the personnel inventory to match requirements for the smaller fiscal year 1995 force; and fourth, take the first three steps before taking any action to reduce the mid-career force.

The conferees also approved a generous safety net of transition benefits to aid military personnel who may be involuntarily separated as a result of force reductions over the next 5 years. These transition benefits include lump sum involuntary separation pay, medical coverage, vesting in the GI bill, transition and job assistance, limited commissary and exchange privileges, and limited housing and dependent education assistance.

With regard to military compensation, I am pleased to report that the conferees approved a 4.1-percent cost-of-living pay raise for military personnel effective January 1, 1991. This keeps the military pay raise consistent with the action taken by the Appropriations Conference Committee in funding a 4.1-percent raise for Federal civil service employees. These raises are notably better than the 3.5-percent pay raise advocated by some, and should keep both the military and Federal civilians essentially abreast of inflation.

In other manpower actions, the conference approved the selective reenlistment bonus levels requested by the military services, and approved targeted incentive pays for medical personnel. It also restored proposed substantial cuts in morale, welfare, and recreation funds in order to more realistically address these essential services. Importantly, also, the conference restored some of the deep dollar reductions in the Department of Defense Dependent School [DODDS] System overseas, funding reductions which had been predicated on troop reductions overseas even more substantial than the sizable cuts of 50,000 in Europe contained in the conference bill.

In the area of reserve personnel benefits the conferees approved commissary privileges for retired reservists who are awaiting eligibility for retired pay and for ready reservists who perform training; and approved the use of revenue generating morale, welfare, and recreation activities by individual ready reservists in good standing.

Finally, the conferees approved a package of benefits for military personnel deployed in Operation Desert Shield. These benefits include funding for free postal services; authority to pay imminent danger pay from the start of Operation Desert Shield; authority for a savings program to be implemented that would yield interest of up to 10 percent; authority for reimbursement for accrued leave for activated reservists; authority to pay medical special pays to activated reservists; and authority to pay variable housing allowances to activiated reservists.

Mr. President, there is another element in the conference bill committee report that I originally initiated in the Manpower Subcommittee several years ago, and which we formally addressed in last year's Defense authorization bill, and that is a reassessment of our total force policy.

I know of nothing that is more important in defining how the U.S. military establishment is supposed to operate than the total force policy which was first implemented in 1973. The policy defines the relationships and the roles and missions of the active duty forces in relation to the Reserve and National Guard forces. This policy has not been fully reviewed or substantially changed in the some 17 years of its existence, this despite clear and compelling evidence, especially in recent years, that the policy is not working effectively. Consequently, last year section 1101 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 required the Secretary of Defense to conduct a comprehensive review of the operation, effectiveness, and soundness of the total force policy; the section gave highly specific directions as to what the Congress expected the Department of Defense to address in the report.

I'm frustrated to report that the interim, Department of Defense report on the total force policy submitted on September 17, 1990, essentially on schedule, is virtually worthless. Ten months, and I assume many thousands of man hours of effort, were wasted because nowhere in the interim report is there any indication of a substantive response to Congressional guidelines. In a word, the report is all fluff and filler.

The final total force policy report from the Secretary of Defense is due to the Congress on December 31, 1990. I cannot over emphasize how important this report will be in providing Department of Defense analysis and recommendations to Congress as to how the Department feels our military forces should be structured and should operate.

I put the Pentagon on notice that if the December 1990 final total force policy report is as worthless as the interim report submitted last month, the Congress will be forced to take drastic action to enforce accountability. I note to all concerned that the Conference Report accompanying the fiscal year 1991 defense authorization bill comments in some detail on this matter, and I commend it to everyone involved in this issue.

I have already talked to officials in the Pentagon about this. And the final report that we get at the end of December I am assured will be a very substantive report, or so I was told as late as yesterday. They said that they will provide us the kind of guidance that we requested. But if that is to be accomplished, there is going to have to be a lot of material pulled together and analyzed by the Department of Defense between now and the end of this year.

Mr. President, I also would like to highlight for my colleagues several of the provisions in the bill concerning the ongoing modernization of our conventional and strategic forces, to include funding for several important procurement and development programs. Procurement programs authorized in the bill for fiscal year 1991 include the M-1 tank, the C-17 transport aircraft, the SSN-21 attack submarine, the KC-135 tanker upgrade, and the air-launched, advanced cruise missile. Development programs authorized for 1991 include the Navy's A-12 medium attack aircraft, and the National Aerospace Plane [NASP].

I would particularly like to call my colleagues' attention to the conferees' action regarding the V-22 tiltrotor aircraft program. I am extremely pleased to report that the bill contains both R&D and procurement funds for the V-22 program in fiscal year 1991.

Mr. President, the conferees have taken a significant step by choosing to continue R&D funding and also to authorize procurement funds for the V-22. This action sends a clear message to DOD that the authorizing committees believe that the V-22 is the kind of versatile, joint service weapons system that will be required to implement our newly evolving military strategy.

My personal support for the V-22 program is certainly not new or a surprise to my colleagues. I, along with many others from both sides of the aisle, have spoken on this floor many times about the tremendous potential that tiltrotor technology has for both military and civilian applications.

I think it is unfortunate that last year when the Secretary of Defense decided not to include funds for the V-22, that the way it has been presented to him was that the aircraft was to provide only an enhanced movement, ship to shore, just for the Marine Corps. If I thought that was the only purpose for this airplane, I too would have trouble voting the money, the kind of expenses involved in this program to do just that, to have just that limited purpose.

Mr. President, If you think of every single function that helicopters perform, not only in the military, not just the Marine Corps, but in the Army, Navy, Marine Corps, Coast Guard, all the roles the helicopters perform, then think of all the roles helicopters perform in civilian life, if you had already developed the capability to perform all of those missions, military and civilian, and do those missions twice as far, twice as fast, and carrying a third more payload, we would be rushing to introduce legislation to do that. That's what the V-22 gives us.

I firmly believe that after 10 years of solid congressional support, after an investment of $2.5 billion, and after the recent revalidation of the operational and cost effectiveness of the V-22, the time has come to go forward with the V-22 program.

I assure my colleagues that the conference action on the V-22 is consistent with the mark-up philosophy followed by the Senate Armed Services Committee in all issues that came before us this year.

First, a revised military strategy: Earlier this year Senator NUNN, in a series of excellent strategy speeches, emphasized the need for forces that are inherently mobile and rapidly deployable, the need for flexible readiness, and the need for systems with breakthrough or leapfrogging potential. The V-22 meets these criteria and more.

Second, the need to fly-before-buy: The V-22 flight test program is proceeding smoothly, with four of six R&D aircraft flying. Through October 22, the four test aircraft have completed 226 flights and accumulated 227 flight test hours. Clearly, the V-22 in this regard has come a long way toward establishing its suitability for full scale production.

In fact, the V-22 was preceded over the past 8 or 9 years with a two-thirds scale model called the V-15. That aircraft has flown 600 to 800 hours, something like that. So even before building the first V-22 they had worked out most of the bugs on tiltrotor technology with the two-thirds test model that has flown many hundreds of hours. So this certainly adds greatly in fulfilling the fly-before-buy dictum that we put down for buying of our equipment from now on.

On another matter, Mr. President, I would like to express my deep concern with one very unfortunate action taken by the conferees—the final termination of the SR-71 airborne reconnaissance program. Earlier this year I was successful in getting adoption of a provision in the Senate Armed Services Committee's markup of the fiscal year 1991 DOD authorization bill that authorized $10.3 million to preserve the option to reestablish an SR-71 contingency capability. Unfortunately, even this modest amount did not survive the conference.

The SR-71, for those who are not aware of it, is a high altitude, high speed—Mach 3, as a matter of fact—long-range reconnaissance platform that has served our Nation well. It flies high enough to be out of the range of surface-to-air missiles, and it can fly with impugnity anywhere it wants to go.

We do not have a replacement for it yet. That will be years in coming. We are, in effect, as I see it, throwing away the capability that is there; it is operational and we need it now.

Unlike other reconnaissance platforms, it is able to penetrate hostile territory with little vulnerability to attack. This makes it particularly useful in crisis situations such as the Persian Gulf.

We know in the gulf, when we send our satellites over for imaginery or monitoring of what is going on, trying to keep up with what Saddam Hussein is doing with his divisions, or where the Scud missiles may be in western Iraq that are aimed at Israel. When we try to keep up with those things, there are too many missions for the satellites to do. Plus, Saddam Hussein, like anybody else around the world who monitors these things, can predict when the satellite is coming over. If you want to hide something, put it in the barn or in the hangar or under a tarpaulin. They can tell whether they are going to be photographed or not. They know the orbits of our satellites as well as we do. But we can send the SR-71 over at any time we want to send it over. For that reason, it is particularly useful in a crisis situation, such as in the Persian Gulf.

I know there have been proposed replacement systems for the future, but they are years into the future. The SR-71 is a capability we have right now. And I am sorry that the Air Force and CIA and the others, who argued over who was going to pay for this, out of whose budget pot, prevailed in killing the whole program. I am sorry that was the case. I think it was a big mistake.

We sent a letter to the President just yesterday asking this be reconsidered and, once again, I spoke to the

Secretary of Defense personally about it just a couple of days ago.

Mr. President, the cost of maintaining and operating the SR-71 was cited as a major reason for its termination, especially in view of the high cost of other Air Force programs.

I do not think that makes any sense at all. After all, good intelligence is the first multiplier for everything else you want to do in the military. Knowing what is there and what your opposition may be, that is the important thing. We get that only by reconnaisance and by intelligence information.

Here we are taking the finest, most flexible intelligence-gathering platform ever developed, and we are throwing it away, with nothing to replace it. We are saying we will rely on satellites, but the satellites are predictable as to when they go around and come over, and they know when they are coming as well as we do, if there is something they wish to hide from them.

So I hope that the administration would, even at this late date, come back and rescue the SR-71, not for me, not just because of piloted aircraft, but because we need that flexible intelligence-gathering capability in the Persian Gulf, and we need it now. It is available now, if we just reactivate that program.

Mr. President, there is another matter of great concern to me. Buried deep in the conference bill is perhaps the most significant Government management reform measure to pass Congress in many years. This measure abolishes both the M accounts and the merged surplus accounts. These are little known, but decades-old, appropriations accounts that are awash with unused funds, accounts which are subject to little control, and accounts which are teeming with the potential for fiscal mischief. It is one of those items that even here in Congress we might call a MEGO item. My eyes glaze over when we try to look at it; it is so complicated, and you just cannot understand the thing until you get into it and study it.

Last year, I uncovered a notorious use of these accounts in an Armed Services subcommittee hearing on the Air Force's B-1 bomber program. I was questioning an Air Force officer who had just testified that they had spent $500 million to fix up a certain item on the B-1. I questioned if we approved that in appropriations, and he said, "No, we took it out of the M account."

I thought I must be pretty stupid, because everybody else obviously must understand what an M account was. So I sat there and didn't say anything for a few minutes. Then I finally said, "Would you explain M account to me, because I don't understand what an M account is, and I may be the only one in the room who doesn't." Then I saw all the other heads nod; other people wanting to know what it was, too.

What it is, they had paid $500 million out off the merged surplus account to pay for extra work to correct deficiencies on the B-1B's electronic countermeasures system. Since the extra work was in the scope of the existing contract. Once that claim was made, the Air Force could spend the money without even telling Congress about it—a half billion dollars going out. They did not even have to tell us about it.

But this isn't just a DOD problem; every agency of the Federal Government has these accounts. The Education Department has $1.25 billion in its M account; Labor, $1.22 billion; Transportation, $571 million; and HUD, $474 million, to list only a few.

The genesis of sections 1405 and 1406 in the fiscal year 1990 Defense authorization bill is S. 2951, a bill I introduced with Senator ROTH last August, and one that I also introduced as an amendment to the Senate fiscal year 1991 Defense authorization bill. Implementation of sections 1405 and 1406 will eventually eliminate more than $60 billion in old, unused spending authority Governmentwide. At the same time this legislation will create new accounts to allow agencies to satisfy valid obligations of the U.S. Government on multiyear contracts. Unlike these current accounts, however, these new accounts will be subject to rigorous financial controls, and will expire after a specified period.

In summary on this, abolishing existing M and merged surplus accounts is an important reform. These accounts have been a Government management disaster; the current lack of any rigorous financial controls presents an unacceptable risk of waste, fraud, and abuse in our systems. It is a bane to the efficient operation of the multibillion-dollar procurement programs.

In recognition of this, the conference bill provides a Governmentwide reform of these accounts across the board. That is the way it should be.

Mr. President, I must say that on balance, the fiscal year 1991 Defense authorization bill is an excellent product. Upon its passage and signature by the President, the Nation will embark on the first step of a new defense strategy attuned to both the dramatic events in the Soviet Union and in Eastern Europe, and to the budgetary realities that this Nation is finally facing.

Before I conclude, Mr. President, I would be remiss if I failed to recognize the outstanding competence and leadership displayed by both the chairman and the ranking minority member of the Senate Armed Services Committee: Senator SAM NUNN of Georgia and Senator JOHN WARNER of Virginia. The Senate, indeed the Nation, is most fortunate in having persons of such consummate ability directing our efforts in addressing national security matters of the magnitude that the Nation currently faces.

Mr. President, I also would like to recognize the outstanding skill of the staff of the Armed Services Committee in handling myriad and complex substantive and support matters that go into making good legislation. Led by Mr. Arnold Punaro, the majority staff director, and Pat Tucker, the minority staff director, this staff is among the best on Capitol Hill.

Last, with particular personal feelings, my very sincere thanks to Fred Pang, the extremely accomplished, articulate staff member who staffs the Manpower Subcommittee for the majority. I am glad to have him in the Chamber with me and pleased to recognize him personally. I appreciate his service, and also the service of Mr. Ken Johnson, who so ably staffs the minority side.

In summary, Mr. President, regarding our close to year-long effort on this bill, I say to all "we have done our job in a responsible fashion." I urge adoption of the bill.

Mr. WARNER. I yield myself such time as may be required.

Mr. President, I want to express our appreciation on behalf of the chairman and myself for the work performed this year by our distinguished colleague from Ohio and his ranking member, Mr. MCCAIN.

We lean on these two men with extraordinary knowledge, both of them. We lean on them a great deal for their expertise. We are fortunate that they have selected the area of personnel to which they devote their primary attention in our committee, because they bring to that assignment a long history of personal experience, which is clearly exhibited in the action taken by our committee. I thank the Senator from Ohio.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I am awaiting the chairman of the committee who will be joining me on the floor momentarily.

At this time, I yield such time as may be required to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for up to 8 minutes and 25 seconds.

Mr. GORTON. Mr. President, I thank the distinguished Senator from Virginia. I simply wish to say that the ultimate result of our year-long debates on the national defense have reached a highly satisfactory conclusion. That conclusion is more balanced and more thoughtful than this Senator had hoped for, not only at the beginning of the year, but at the begin-

ning of the conference committee on the Defense authorization bill.

The leadership provided by the distinguished Senator from Georgia and his close friend and ally in these matters, the ranking minority member, my friend from Virginia, was outstanding. It had seemed to me that by the end of the debate over this bill in the Senate that we had reached an adequate, but in some respects barely adequate, result in dealing with all of the problems of a defense bill, in the attempt to look forward down the course of the next 3, 4, or 5 years, to create a new balance between the need for strategic and tactical weapons, to deal with all of the problems of base closure and of the force structure.

But given the high degree of irresponsibility on the part of the House in passing a defense budget which combined a highly dovish sentiment with an insatiable desire for pork, it would be difficult indeed to come up with a responsible and balanced Defense authorization bill.

Due to the skill of the two Senators whom I have already mentioned, we not only came up with a good positive set of proposals, but if anything, they might amount to a marginal improvement in defense theory over even what was passed by the Senate.

I believe that at a time of great controversy and great criticism of the way in which the Congress of the United States operates, this kind of detailed, dedicated work, often lasting into the early hours of the morning, does indicate the ability of thoughtful men and women, even though they sometimes differ, to come up with appropriate answers.

So for the quality of that leadership, I particularly thank the Senators from Georgia and from Virginia.

I also wish to make mention of my close colleague, the Senator from Illinois [Mr. DIXON] who is the chairman of the Subcommittee on Readiness, of which I am the ranking Republican member. His work, his ability to deal tolerantly, even on issues in which he took a different view from those of the majority, also contributed greatly to our success, particularly in coming up with a thoughtful and balanced approach toward base closure and solving the difficult problem, in this bill at least, of the proposed new base at Crotone in Italy.

In summary, without going into details of any of the specifics with respect to weapons systems, personnel, or otherwise, this Congress, I believe, has taken a firm and steady step into a future which is likely to see a leaner armed services, one more oriented toward the solution to tactical problems, but one which does not forget the proposition that the strategic defense of this country is of vital importance.

As a consequence, I enthusiastically endorse the work of this conference report and urge its adoption.

Mr. President, I must admit that when the Senate and House Armed Services Committees sent to conference the fiscal year 1991 Defense authorization bill, I was not sanguine about the prospects for success. In addition to hundreds of funding and language differences, the House and Senate seemed fundamentally divided on the issue of strategic modernization. While the Senate position reflected, to a large extent, the administration's request, the House bill sought to terminate, or at least severely restrain, the administration's two most important strategic progams: the B-2 bomber and SDI.

To the great credit of our chairman, Senator NUNN, and ranking Republican member, JOHN WARNER, we were able to resolve those differences in a way that, while not perfect, will be acceptable to the administration. Without their tireless dedication to the task this conference report would not now be before us. They deserve our respect and admiration.

It is not an easy task, during a period of fiscal retrenchment, to forge a consensus on an appropriate level of defense effort that reduces defense spending, but is also consistent with continuing U.S. security interests. But this, the able chairman and ranking member have been able to accomplish.

Rather than yield to the convenient notion that the end of the cold war prescribes the wholesale drawdown of our Defense establishment, this Defense bill supports an orderly military build-down consistent with the new strategic environment brought about by the collapse of the Warsaw Pact.

The decisions made this year with respect to the armed services are especially important, for they set the tone and pace for what is necessarily a defense build-down. The bill's $288.3 billion in budget authority represents a $19 billion reduction from this year's request and a reduction of $27 billion from last year's level. In terms of outlays, the $297 billion figure represents a reduction of $10 billion from last year's spending level. Let no one doubt that the reduction in Defense spending, which commenced in 1985, has gained momentum.

These funding reductions are joined by force structure cuts that are part of a plan to reduce the size of the military in an orderly, phased fashion over the next 5 years. By 1995, the force will be reduced by almost half a million men and women to a level just above 1.6 million. In order to ease the transition, the bill authorizes a generous safety net package of involuntary separation benefits. Other personnel provisions include a 4.1-percent pay raise and a package of benefits for military personnel deployed in Operation Desert Shield.

Mr. President, I commend the superlative work of the chairman of the Subcommittee on Readiness, Sustainability and Support. As ranking Republican member of the subcommittee, I witnessed first hand the tireless efforts of Senator DIXON to accommodate the many disparate views that existed between the House and Senate on issued pertaining to the Readiness Subcommittee. Two major stumbling blocks—base closure and Crotone—were overcome by Senator DIXON's adroit skills of compromise. I also recognize and applaud the work of the subcommittee staff, Ron Kelly, Ken Johns, David Lyles, and Bob Bayer—for theirs' was an arduous task, indeed.

With respect to our strategic forces, the compromise contained in this bill is the best that could be achieved under the circumstances. Research and procurement funding for the B-2 was sustained-albeit at a lower level than the administration had requested. Research and development funding for the two ICBM programs—Peacekeeper rail garrison and small ICBM—was reduced and combined in an attempt to force the administration to choose between the two. The Trident D-5 missile was funded without restrictions initially imposed by the House. The strategic defense initiative suffered the worst outcome with a funding cut of some $1.8 billion from the administration's request, as well as restrictive language that will make it difficult for the President to make an informed deployment decision by 1993 as planned.

In the aggregate, I believe the fiscal year 1991 Defense authorization bill accomplishes what the Armed Services Committee set out to do at the beginning of the year. This bill responds to changes in the political situation in the Soviet Union and Warsaw Pact, takes into account the domestic fiscal situation, and preserves America's defensive capability in an ever-changing world.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Virginia.

Mr. WARNER. Mr. President, I thank the distinguished colleague from Washington. I thank him not only on my behalf, but for the distinguished chairman. Both of us have enjoyed working with him.

Just a small index of his dedication: We did a little check the other day, and the Senator has the highest attendance record of any member of the committee that we know of at all subcommittee meetings. For that, we are grateful, because it shows how diligently the Senator pursues his assignments. It is my hope that upon the

Senator's return to the new Congress, he continues to serve his Nation as a member of the Armed Services Committee of the United States.

Mr. GORTON. Mr. President, that is a form of public propagandizing which I am not sure I entirely welcome, but I am certainly grateful for the thought behind it.

Mr. GORE. Mr. President, in the midst of the many controversies that have been solved in order to complete conference on the Defense authorization bill, I would like to draw attention to two new features of the legislation which appear to draw considerable support on both sides of the aisle in the Armed Services Committees of both Houses: legislation on missile technology control and on the establishment of the Strategic Environmental Research and Development Council [SERDC].

This bill contains legislation on ballistic missile technology control that reflects the concerted efforts of the Armed Services, Foreign Affairs and Banking Committees of both Houses. We are presenting by common agreement language that provides unified and harmonized provisions concerning ballistic missile technology, affecting both the Export Administration Act and the Arms Export Control Act. As a result, the President acquires a powerful new tool to use in the struggle to block the spread of the means to deliver weapons of mass destruction over long distance by missile.

This legislation is the outcome of a long period of collaboration between Senators BINGAMAN and MCCAIN and myself, along with Congressman HOWARD BERMAN. We believe that the outcome is a measure which will create genuine disincentives for firms—be they American or foreign—to traffic illegally in equipment and technologies resulting in ballistic missiles. Those who ignore this warning may expect to find their corporate names and activities reported in black and white for the world to see, and also discover that their ability to do business with the United States has been drastically curtailed. To the extent that unscrupulous deals are made in technology and hardware for profit, these provisions may well change the cost/benefit ratio for those who may be tempted to join in for a quick buck.

At the same time, we think that this measure is very well balanced to respect the sovereign rights of those governments that are working alongside ours in the missile technology control regime. We think that the interests of exporters in having a speedy and accurate process have also been respected. Not least by any measure, we believe the President's need for flexibility is well protected. At the same time, the United States ability to compel some respectful attention to our struggle against proliferation is substantially enhanced.

With respect to the SERDC, formerly referred to in an earlier version as the Strategic Environment Research Program but now the Strategic Environment Research and Development Council, we owe a great deal to the initiative of our chairman Senator NUNN for his initiative in calling for the design of such a provision and in placing his personal prestige on the line in order to get it. The Strategic Environmental Research and Development Council has been created to respond to a new perception of national security, which has been expanded to recognize an environmental component.

The Council will have extremely important responsibilities in aid of that perception. It will be charged with promoting the declassification and release of data that may be of use to climatological science and to other branches of the scientific community engaged in work on the environment. It will be responsible for promoting the use of spare super-computer time within the military system, by those at the forefront of the civilian effort to improve climate modeling.

The Council will, working through the Department of Defense and the Department of Energy, seek to find energy technologies that have been invested in by the military and to make information about such systems available to those who may transfer it to important new applications in the civilian sector.

Finally, the Council will establish and manage a creative program designed to increase the store of new science and technology bearing on environmental restoration and cleanup problems that are peculiar to the Department of Defense and to the defense activities of the Department of Energy. We expect a mobilization of effort in the national labs including both the weapons and multipurpose facilities, in the academic community and in the private sector.

These two measures are creative and solid accomplishments. I would like to congratulate the chairman and thank him for his encouragement in their development.

Mr. BINGAMAN. Mr. President, I rise in support of the conference report on the fiscal year 1991 Defense Authorization Act. I want to commend the chairman fo the Armed Services Committee, Senator NUNN, and the ranking minority member, Senator WARNER, for their work throughout the long and increasingly arduous authorization process. It was no easy task to frame an authorization bill which would respond to the epochal events of the past 2 years around the globe and lay out a coherent plan for a defense build-down in the years ahead. While we have not totally succeeded in that task, we are taking long strides toward it in this bill. It deserves our strong support.

I also want to commend the tireless work of the Armed Services Committee staff on this massive bill. Under the direction of Arnold Punaro and Pat Tucker they have labored for months to frame the issues for the committee, for the Senate as a whole, and for the conference committee and then to reflect our decisions in the document before us. There is no more dedicated group of individuals supporting any committee in the Congress. I particularly want to thank Bill Smith, Andy Effron, Geary Burton, Rick Finn, David Lyles, Jon Etherton, Les Brownlee, Judy Freedman, and Missy Ramsey who support the work of the subcommittee on defense industry and technology.

Mr. President, I would now like to briefly highlight a few of the more significant provisions in this bill from my own perspective.

First, this bill for the first time provides policy guidance to the Defense Department on the strategic defense initiative. It does so through a modified version of a provision Senator SHELBY and I offered when the Senate debated this bill in August. That provision divides the SDI budget into five mission-oriented program elements, phase I defenses, limited protection systems, theater defenses, followon systems, and research, and support activities. Through the allocations we have made to those program elements, we are making a clear statement that we want the Secretary of Defense to adjust the SDI Program to focus more on theater defense and treaty-compliant limited protection systems. We are saying that we want to preserve research on longer term options. And we are saying that the stratetgic defense initiative organization should move back from the single-minded push to develop Brilliant Pebbles space-based interceptors in anticipation of a projected 1993 Presidential deployment decision, which had become the central element of the administration's SDI Program. I believe that we have defined in this bill a more balanced and sustainable SDI Program. I hope it will lay the basis for a consensus on this program in the future.

This bill also contains landmark legislation aimed at restraining the proliferation of missile technology around the globe. Title XVII on missile technology controls lays out a clear and comprehensive strategy for missile nonproliferation. It is the product of a massive effort over the past 2 years on which I have worked with Senators GORE and MCCAIN on the Armed Services Committee and Congressman HOWARD BERMAN on the House Foreign Affairs Committee. We have had tremendous cooperation from Senators PELL and Helms on the Foreign Rela-

tions Committees, Senators REIGLE, GARN, SARBANES, and HEINZ on the Senate Banking Committee, and Congressmen FASCELL and GEJDENSON on the House Foreign Affairs Committee. I believe that the legislation, which amends both the Arms Export Control Act and Export Administration Act to provide a system of controls and sanctions aimed to buttress the multilateral missile technology control regime, will stand the test of time, just as the Nuclear Non-Proliferation Act of 1978 established our policy on nuclear proliferation.

One of the more important elements in title XVII from may perspective is the requirement that the State, Commerce, and Defense Departments and the intelligence community share information widely on missile proliferation and consult with each other on missile technology licenses. We need these agencies to pull together and end their endless bickering over turf.

We also need to be clear about what we are trying to control. There are some in the executive branch who would draw distinctions between space launch vehicles and other missiles, a distinction which has no basis in technology, but is merely a matter of intentions. A glance at the names of our own expendable launch vehicles—such as Titan and Atlas—shows the military origins of these systems. Our legislation is aimed at controlling these technologies regardless of intentions, just as the Nuclear Non-Proliferation Act of 1978 was aimed at controlling such key nuclear technologies as enrichment and reprocessing capabilities, regardless of intentions. We should not be aiding the allegedly peaceful space launch vehicle programs of non-MTCR countries. Instead, we should be offering affordable launch services in this country and in other MTCR countries.

Mr. President, the proliferation of missile technology around the globe, coupled with chemical, biological, and nuclear proliferation will be a central national and global security challenge for the foreseeable future, as the events in recent months is the Middle East so amply demonstrate. The title XVII missile technology controls coupled with the emphasis in the SDI restructuring provisions, section 221, on theater missile defenses, such as ERINT and Arrow, provide the basis for a strategy to meet this challenge. It is part of the overall emphasis in this bill on reorienting our policy to face new challenges.

Mr. President, I would like now to turn to the work of my own subcommittee on defense industry and technology which is reflected in this conference report.

I particularly want to thank Senator WALLOP, the ranking minority member, for his significant contributions to the work of the subcommittee.

One of the core elements of the national security strategy defined in this bill, on which Senator WALLOP and I are in complete agreement, is the need to maintain U.S. technological superiority in a world where technology is increasingly the measure of national power. In a world where the near-term threat posed by the Warsaw Pact has greatly diminished, but long-term threats remain and may well grow in the next decade, we need to buttress our support for our technology base.

This bill does this. We have increased funding for research and exploratory development by $335 million from the requested level to a total of $3,770,233,000. We have also increased funding for manufacturing technology programs by almost $100 million above the request in our effort to shore up one of the obvious weaknesses in our Nation's industrial capabilities.

I would call particular attention to the following provisions in the bill. Section 822 would establish a critical technologies institute as a federally funded research and development center under the White House Office of Science and Technology Policy to help rationalize our Government's critical technology efforts and put together Government-industry strategies for maintaining U.S. strength in these technologies. Section 244 would provide DARPA with $50 million to support precompetitive, generic research projects on dual-use critical technologies. This program will leverage the resources of private-sector consortia and is totally consistent with the U.S. Technology Policy statement issued by the White House on September 26. Section 247 encourages the Department of Defense to make its tremendous resources available to address the crisis in science, math, and engineering education in this country and sections 3161-3168 do the same with the Department of Energy and its laboratories. I commend my colleague from New Mexico, Senator DOMENICI, for his work in this area which shared a common approach with the work of the Armed Service Committee and my subcommittee. I believe in conference we have melded the best features of the two approaches.

The bill also provides $138 million, $30 million more than the request, for high performance computing. This will support DARPA's role in the Government wide high-performance computing initiative in which NASA, NSF, and DOE are also participating. I commend Senator GORE's work in this critical technology area and have been pleased to cosponsor and support his efforts.

Section 823 of this bill incorporates legislation I introduced to rationalize DOD's manufacturig technology efforts. Combined with the increased funding provided in the bill for manufacturing technology, I believe this legislation gives DOD an opportunity for a real initiative in this area where U.S. industry's problems are all too evident.

Section 824 of the bill broadens the reimbursement of independent research and development costs of defense contractors. Payment would be authorized for any work of potential interest to the Defense Department. This section responds to the testimony the committee received from such individuals as William Perry and Jacques Gansler that existing IR&D regulations were ham-stringing industry and building artificial barriers between military and civilian applications of often identical technology.

Section 1454 of the bill establishes a framework for technology cooperation with Japan on dual-use technologies in which both nations are world leaders. Section 248 requires the Department to establish a technology office in Japan to identify opportunities for cooperation and to facilitate cooperative projects. And included in the OSD research budget is $10 million for 10 university-based programs in this country to train United States scientists, engineers, and managers in the Japanese language and to place them in research and management positions in Japan. This comprehensive set of initiatives toward Japan recognizes its status as the second technological superpower with a national R&D budget exceeding $80 billion annually at the current exchange rate of 128 yen to the dollar. It is crucial that the Defense Department and the Energy Department's defense laboratories build stronger ties with Japanese Government and industry labs if they are to stay abreast of advances in the growing list of dual-use technologies in which Japan's technology rivals or even surpasses our own.

All of these technology initiatives, and others in areas such as x-ray lithography, high resolution displays and display processors, and advanced materials, reflect the strong desire of both the House and the Senate Armed Services Committees to insure a strong technology base underpinning our national security. I want to commend Congressman DELLUMS for his work in support of DOD's long-term research programs, and I look forward to continuing to work with him in future years to sustain these programs.

Finally, Mr. President, I would like to address the efforts in this bill to improve the management of defense resources, specifically the defense acquisition system. I want to commend Congressman MAVROULES for his efforts in this area, specifically with regard to the acquisition work force. He and I both believe that the key to an effective acquisition system is the people who run it. I have worked for several years to strengthen the civilian acqui-

sition work force. I was delighted to see governmentwide civilian personnel reform legislation included, at Senator GLENN's initiative, in the fiscal year 1991 Treasury, Postal appropriations bill. This was long overdue. In title XII of the defense authorization bill before us, there are several provisions which overlap with the Treasury, Postal bill, including special pay for 800 persons in critical executive branch positions and authority to waive the dual compensation penalty for critical executive branch employees, in which the Senate Armed Services Committee has taken a special interest because of the need to address critical problems in the Department of Defense and Energy.

But title XII goes well beyond this, and that is due to the efforts of Congressman MAVROULES and his colleagues on the House Armed Services Committee. Title XII will require DOD to create an acquisition corps to provide improved training, education, and career advancement opportunities for the defense acquisition work force. This is a major piece of legislation, in which Congressman MAVROULES can justifiably take pride. Properly implemented it will make the Defense Department a much smarter buyer of defense services and equipment.

The authorization bill also took a series of measures, contained in title VIII of the bill to simplify the defense acquisition system. These include provisions which simplified the data submission requirements on contracts under $500,000, streamlined procedures for negotiated procurements to minimize use of multiple best and final offers, established a uniform small purchase threshold for various requirements applicable to Government contractors, although not for all such requirements, established a mentor-protege pilot program encouraging defense contractors to assist small disadvantaged businesses participating in defense contracting opportunities, and authorized simplified procedures for overseas purchases under $100,000 in connection with Operation Desert Shield. We have also set up an advisory panel on streamlining and codifying acquisition laws under the sponsorship of the Defense Systems Management College to help us in the future to simplify the defense acquisition process. Much obviously remains to be done, and we need expert nonpartisan advice on how to do this. I hope this panel will provide that advice.

Mr. President, I have outlined just a few of the provisions which I believe make this bill worthy of our support. I want to conclude by again commending Senators NUNN and WARNER for their leadership in fashioning this legislation. Without that leadership, I doubt we would have a bill today. They must balance many competing pressures from their colleagues here in the Senate and in the House and from the executive branch. Finding a middle ground among all those pressures and competing views that a majority of both Houses and the administration can live with, is no small feat.

Mr. President, I urge my colleagues to support this legislation. It is a good bill and it puts us on the path toward defining a national security strategy appropriate for the year 2000. It deserves our overwhelming support.

Mr. DIXON. Mr. President, the Armed Services Committees of both Houses have completed work on the fiscal year 1991 Defense authorization bill, and the full Senate will soon begin debate on this important legislation. Under the leadership of our able and distinguished chairman, the conference has exhaustively examined the Nation's defense needs in light of the breathtaking changes that have occurred in the national security environment over the past year. The Defense authorization conference report represents the outcome of this tremendous effort.

The transformation we are witnessing in the Soviet Union and Eastern Europe provides the United States and its allies an opportunity to achieve real, longlasting stability in the world. However, the pace and sheer magnitude of these changes also present a special challenge to those of us charged with making U.S. defense policy. On the one hand, we must immediately begin reformulating U.S. defense strategy and the Defense budget to reflect the newly emerging national security situation. If we do not, we risk wasting the American taxpayers' money.

Yet on the other hand, we must directly link this reformulation to the needs of our national defense—not simply to the demands of the budget process. Moreover, we must proceed in a fashion that alows us to preserve healthy Armed Forces. Otherwise, we risk jeopardizing the peace and stability that we have worked so long and hard to achieve.

I believe that this Defense authorization conference report strikes a reasonable balance between these two objectives. The measure authorizes $288.3 billion in budget authority for fiscal year 1991—which is a $19 billion cut from the President's original request in January.

Mr. President, I believe that we can and must take more decisive action than is now planned on reducing U.S. troops stationed abroad. Overseas troop cuts would not necessarily save substantial funds in the fiscal year 1991 budget, but moving in this direction now would pay significant dividends in the future. Already, during the recent conference, the conferees retained an amendment—sponsored by myself and Senator LEVIN—which requires the removal of 50,000 U.S. troops from Europe by the end of fiscal year 1991. This measure also suggests that the United States should begin planning for a lower level of troops in Europe than the 225,000 called for in the conventional forces in Europe [CFE] talks. Our amendment in no way seeks to supplant these important negotiations, but rather is designed to put the United States on an orderly course toward the deep troop reductions that will ultimately result from the CFE talks and likely subsequent actions.

I would also like to highlight a few aspects of the conference report that I have been particularly interested in throughout this year's defense budget debate. In a floor speech back in March, I argued that—in order to respond to the changes that have been occurring—the United States should take actions such as the following: We should begin cutting strategic nuclear modernizaton programs; we should place more reliance on the Reserves and National Guard; we should proceed cautiously on committing to costly next generaton weapons programs—especially if we can improve and continue to use systems that we already have; and finally we must return to the principle of developing and testing a weapon system prior to production. The conference report that the Senate will soon be considering reflects all of these priorities.

Finally, Mr. President, as chairman of the Armed Services Readiness, Sustainability and Support Subcommittee, I would like to focus on this area of the conference report for a moment. In total, approximately 35 percent of the administration's defense budget request for fiscal year 1991—or $107 billion—falls under the jurisdiction of this subcommittee. In order to reflect the changed threat and the constrained Defense budget, the bill incorporates the concept of flexible readiness. Essentially, we insure that highpriority forces—the ones that we are most likely to use first—are maintained at appropriate readiness levels. I am confident that careful implementation of this type of aproach will insure that we do not return to the days of hollow military forces that we experienced in the 1970's. Another major thrust of the bill in this area is to make massive reductions in U.S. spending on military construction overseas. I believe that these provisions and others will allow the United States to maintain strong, healthy defenses while adapting to a changing world.

Mr. President, I urge my colleagues to support this conference report.

Thank you, Mr. President.

BRILLIANT PEBBLES INTERCEPTORS

Mr. HEFLIN. Mr. President, while I support this year's Defense authorizations conference report, I still have

deep concerns over the low funding of the Strategic Defense Initiative Program. I feel that the $2.89 billion conference number is entirely too low considering the growing ballistic missile threat. It is estimated that 20 countries will soon have these missiles. The Iraqis now have missiles that can reach our troops and analysts have recently determined Iraq does have the technology to equip these missiles with chemical warheads. Worse still, many predict that Iraq will soon have the ability to construct nuclear warheads.

Mr. President, I also have grave concerns about the management of the Strategic Defense Initiative Office. During recent meetings with Ambassador Cooper, I was surprised to discover that regardless of congressional guidance, he was still determined to proceed with the early deployment of a space-based system. This system, which makes use of Brilliant Pebbles interceptors, would mean abandoning the ABM Treaty. Now that we are finally entering into meaningful arms reduction treaties with the Soviets, this is certainly not the time for us to start breaking existing ones. I hope the language included in this report is strong enough to redirect the program to a more balanced position, one that does not overemphasize Brilliant Pebbles, but I fear we may have to take even stronger measures in the future to achieve this goal.

I recently sent letters to Secretary Cheney and Ambassador Cooper conveying my concern over the direction the SDIO appears to be heading. I ask unanimous consent that two letters be printed in the RECORD at the conclusion of my remarks. In these letters I urge them to fashion the most responsible program possible given the current budget constraints, and to maintain a balance between the more mature ground based systems, and the administration's Brilliant Pebbles scheme.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 18, 1990.

Hon. HENRY F. COOPER,
Director, Strategic Defense Initiative Organization, The Pentagon, Washington, DC.

DEAR AMBASSADOR COOPER: In a letter congratulating President Reagan on his SDI announcement dated May 3, 1983, I noted my earlier advocacy for strategic defense and committed my support to see this worthy venture through to success. I have not wavered in that support through the intervening seven years, a period which has seen many changes in the direction of the program and a regrettable decline in the base of support in the United States Congress. In the face of that declining support, I have played an active role in preserving a bipartisan coalition to sustain the program and to protect its budget. As a recent example, I introduced an amendment on the floor of the Senate last year which resulted in restoration of $600 million to the SDI budget. I have come to the point now, based in large measure on the inflexible and defiant position you took in our meetings last week, that I believe the conditions imposed for continuing the program are justifiably unacceptable to the Congress.

For the past three years, the main conflict between the Administration and the Congress on the SDI program has been centered on the Administration proposal for early development and deployment of the Phase I system, featuring space-based weapons, to protect against a large scale Soviet attack. Congressional opposition to this proposal has been based largely on the fact that such a system violates the ABM Treaty, and this opposition has intensified as the credibility of a large scale Soviet attack has diminished. What has been repeatedly advocated by the Congress, and uniformly ignored by the Administration, is a Treaty-compliant defense system to protect against accidental launches and third world threats. It appears that you are now swinging around to being in support of a defense system for third world threats, rather than the more elaborate and costly Phase I system, but you persist in including space-based weapons which violate the ABM Treaty. The conflict has now become more sharply focused on the issue of early deployment of space-based weapons, now called Brilliant Pebbles, with a disproportionate share of the SDI budget allocated to the development and testing of these weapons.

It is perplexing that you have taken such an uncompromising stand on early deployment of Brilliant Pebbles, in violation of the ABM Treaty and requiring a large fraction of a shrinking budget, when there is an alternative which does not incur such heavy penalties. An all ground-based system could be deployed within the provisions of the ABM Treaty to defend the Continental United States, and a Theater Missile Defense System could be developed to protect our allies and forward deployed U.S. forces against tactical ballistic missiles. The ABM Treaty does not proscribe the development of defense systems for tactical ballistic missiles. While it is true that this approach would not result in the type of robust defense we would all prefer in the long run, your approach is also limited in its effectiveness and it provokes a congressional confrontation which can bring nothing but harm to the long term prospects for the program. I do not sense strong Congressional opposition to the further development of Brilliant Pebbles as long as the strict interpretation of the ABM Treaty is observed and the funding is not escalated to a level corresponding to early deployment.

The Brilliant Pebbles concept does embody impressive improvements in miniaturization and operational effectiveness over the earlier space-based kinetic energy weapons concepts, and there are sound reasons to continue its development. However, it does have limitations, and there are no compelling reasons to persist in deploying it now at the cost of a major set-back in the arms control process and a severe distortion of the SDI budget. In addition to the fact that the deployment of Brilliant Pebbles would violate the ABM Treaty, other limitations of the concept have been cited in Congressional debate on the SDI program, particularly as they pertain to defense against third world threats. These limitations include effectiveness against short range, geographically dispersed tactical missiles. Is it not true that the effectiveness of Brilliant Pebbles, deployed in low earth orbit in the smaller quantities now estimated, is relatively less effective against third world tactical missiles than the Soviet long range strategic missiles which they were originally designed to engage? The issues surrounding this question, such as the absentee ratio, short booster burn times, and short times-of-flight, have simmered behind the debate and led many to conclude that ground-based theater missile defense systems are more appropriate for this class of ballistic missiles.

Another issue which has clouded the debate on the SDI program is that of the declining emphasis on long term research. As one who repeatedly called for more near term emphasis during the first four years of the SDI program, I now find myself in sympathy with those who are concerned about the shrinkage of the budget allocation to far term research. As an example, we have seen a steady decline in the share of the budget allocation to Directed Energy Weapons (DEW) research over the past several years. In my 1983 letter to President Reagan, I specifically endorsed the effort on DEW, and I continue to feel that the key to a fully effective SDI system lies in the perfection of this class of weapons.

The Ground-Based Free Electron Laser program, which has sunk costs of $800 million, is one promising element that has suffered from a declining SDI budget and the priorities of the budget allocation process. The Starlab laser pointing and tracking experiment is another mature and essential component in the development of any space-based laser/relay weapon system. Since $700 million has already been spent on Starlab, and it approaches readiness for launch, curtailment does not improve your technical position for Brilliant Pebbles. I would urge you to rethink the severe reduction in these programs, particularly as they relate to trade-offs between them and the heavy investment you are now proposing for Brilliant Pebbles.

During the Senate debate and vote on the Bingaman/Shelby amendment to the FY91 Senate Authorization Bill on August 4, 1990, we witnessed a lengthy, comprehensive exchange of views on the SDI program and a repudiation of the current direction of the program. The change in direction signaled by passage of this amendment has a broad base of support in the House of Representatives, and it now appears to be approved in a meaningful way by the joint conference. Based on our conversations last week, you are disdainful of this majority view and threatened to recommend a Presidential veto if the provisions of this amendment are voted into law. I find it distressing that we have come to this kind of impasse based on a set of rigid conditions laid down by the Administration. It is my strong opinion that these conditions are not worthy of the resulting program disruption and the lost opportunity to forge a consensus of program support.

I believe that the sense of the Congress on SDI, which has been expressed on numerous occasions over the past three years, is a sound and prudent course for the program, and it should not be rejected by the Administration. I share your disappointment that the total budget levels have been so severely reduced by the Congress, but it remains for us now to fashion the most responsible program possible under these budget constraints. If you can moderate your approach

to this task, I stand ready to cooperate in any way possible.

Sincerely,

HOWELL HEFLIN.

U.S. SENATE,
Washington, DC, October 18, 1990.

Hon. RICHARD B. CHENEY,
Secretary, Department of Defense, The Pentagon, Washington, DC.

DEAR SECRETARY CHENEY: Having reflected further upon my recent meetings with Ambassador Cooper, I am persuaded that SDIO must alter its present plans for FY91. The key issue is program balance.

I was very disappointed with his adamant adherence to, and rush to the deployment of Brilliant Pebbles, even in the face of the clear sense of the Senate that the SDI program must be carried out in full compliance with the ABM Treaty. His highly distorted budget allocation to Brilliant Pebbles, at the expense of other very promising programs and more mature technologies in which SDI has made considerable investment, completely destroys the program balance which has been the bedrock of support in the Senate. While Brilliant Pebbles technology may be promising for the future, its maturity and operational utility remain to be proven. Clearly, the technology cannot be fully and convincingly demonstrated without deploying a system which would be in violation of the ABM Treaty.

The SDIO response to essential Congressional budget cuts has been to depart from the traditional balanced SDIO research effort which had been focused on determining the best and most cost-effective path to a truly robust strategic defense system. The proposed SDIO program revisions place a dangerously large emphasis on space-based assets that can be shown to be extremely vulnerable to ground based systems and are unaffordable in these years of tightly constrained budgets. For example, SDIO would trade the Ground-Based Free Electron Laser for technologies which would ultimately be deployed in low-earth orbit. These technologies, including Brilliant Pebbles, space-based Chemical Lasers, and Neutral Particle Beams, once weaponized, deployed, and even proliferated, would be extremely vulnerable to ground-based ASAT lasers operating at one-tenth of the power level needed for strategic defense. Hardening our space-based assets would add enormous cost, and still they would not be effective against prolonged exposure to ground-based laser attack. If this approach is pursued, SDIO will be structuring a program to deploy space-based assets which will provide a target-rich environment for precisely the advanced ground-based laser systems that we are abandoning, despite significant laboratory breakthroughs achieved during the past 2 years. Meanwhile, I am told that the Soviets are aggressively completing just such a ground-based laser system.

It is particularly inconsistent that SDIO has cancelled the STARLAB program in favor of continuing work on the space-based chemical laser and neutral particle beam programs. Without essential technologies derived from STARLAB and without a space demonstration of these technologies, space-based laser and neutral particle beam weapons can neither be pointed at the target nor track the target. To mothball and/or reconfigure STARLAB, as proposed, would cost more, take longer, and not achieve the same levels of experimental sophistication as will completion of the existing program. Moreover, although some argue that the chemical laser is a mature system, press reports indicate that the Alpha laser has never worked at the intended power and beam quality, even after hundreds of millions of dollars have been spent on it. Even if the Zenith Star system were built, deployed, and tested perfectly at the intended power levels, it would still be more than a factor of one thousand short of the required performance for robust ABM defense, and it would still be extremely vulnerable to ground-based ASAT systems.

It is noted that SDIO is also abandoning the recent breakthroughs in ground-based Free Electron Laser and adaptive optics technologies that can make possible an ASAT system having requisite, robust capabilities in the near term and which could be deployed as a first step toward developing a truly effective strategic defense in the longer term. To survive in the future, SDIO would do well to review these possibilities immediately and consider whether or not this country should determine the ultimate potential of these ground based laser ASAT systems prior to making any decision on whether to deploy strategic defense weapons in space.

For the reasons noted above, I am persuaded that the recently revised FY 1991 SDIO plans must be significantly restructured to achieve a balanced program. This nation cannot afford a premature rush to a deployment decision for a limited Brilliant Pebbles defense, or any other largely space-based defense that does not satisfy the Nitze criteria and does not serve the best interest of the United States or the Arms Control process.

In addition, we would be abandoning nearly $2 billion already invested in a balanced technology program to allow spending of $400-$500 million to pursue a high risk and unacceptable strategy that will ultimately cost more than $6 billion per year. As it stands, I would be unable to support Brilliant Pebbles as an early deployment option and believe an unyielding insistence will do great damage to the future of SDIO.

Sincerely,

HOWELL HEFLIN.

MILSTAR: THE MYTHS AND THE REALITIES

Mr. NUNN. Mr. President, the Senate's time is short, but I want to make some brief comments to clear up what I would call the myths and realities of the Milstar Satellite Program.

CONFERENCE OUTCOME

The first issue I want to clarify is the status of this program in the authorization conference report. Milstar clearly will not continue as the Pentagon designed, planned, and requested it. The conference outcome requires that the program be significantly restructured, or an alternative must be pursued. But the conference did not terminate advanced satellite communications for DOD. The conferees continue to support the inherent advantage of extremely high frequency for advanced communications capabilities, and continue to support improved satellite survivability. The conferees have authorized $600 million for such a program. As I noted in my opening statement, Deputy Secretary of Defense Don Atwood and Pentagon Comptroller Sean O'Keefe have assured me both verbally and in writing, that they would not exceed this authorized amount without further congressional approval. As a result of this assurance, the conference agreement would permit the Secretary of Defense to request additional funding for this program above the $600 million ceiling through the formal reprogramming process once the Secretary reports to Congress on a restructured program.

The conferees' willingness to support more funding, however, hinges on the progress the Secretary of Defense makes in restructuring the Milstar Program to satisfy key concerns. These concerns include the exorbitantly high cost of the program, its limited utility for tactical forces, and the system's unnecessary capabilities for supporting protracted nuclear war fighting.

These concerns bear directly on several issues about Milstar and I intend to address each: the cost of Milstar, its utilization by our tactical combat forces, and its role in enhancing deterrence of nuclear war.

COSTS

One criticism we have heard is that the Armed Services Committee has inflated or exaggerated the costs of the Milstar Program. This charge is based on the fact that our estimates of the program costs were far higher than those that DOD has been providing to Congress.

The reason for that difference is that we calculated all of Milstar's costs and we did so over a 20-year life cycle—the standard basis for comparing costs of weapons programs. DOD claims they have never done this before for any of its satellite programs. But why shouldn't we ask how much it will cost to have Milstar over the next 20 years?

The committee estimated Milstar's life-cycle cost at $35 to $40 billion. Now DOD has accepted our methodology for computing costs. DOD's estimate for the 20-year cost of Milstar is now almost $40 billion.

Thus, rather than the committee exaggerating costs, we have now led DOD to estimate the cost of a satellite program correctly—and in a way that permits us to compare the cost of satellites to, say, the cost of ships or aircraft.

The cost figure of about $40 billion puts Milstar up there with the most expensive programs DOD is pursuing—the C-17, Small ICBM, A-12, V-22, you name it.

More important, each of these Milstar satellites would cost about $1 billion—as much as a capital ship. The conferees on the authorization bill could not accept these costs—not for what we would be getting, not in this increasingly austere budget environment, and not for unnecessary capabilities. Milstar, as currently structured, is a gold-plated Cadillac limou-

sine when what is needed is a compact Chevrolet.

USE OF MILSTAR BY TACTICAL FORCES

Another assertion is that Milstar would be extremely important to our tactical fighting forces.

We've heard the claim that our forces in Saudi Arabia have a pressing need for better satellite communications. Some have suggested that Iraq might be able to jam our current ultrahigh frequency satellites. We have also been told that so many of our fighting forces are relying on these satellites that they are jamming each other. Finally, we are told that Milstar would solve these problems.

The facts are entirely otherwise. First, under the planned schedule, the initial four satellites needed for initial operational capability wouldn't have been on orbit until the last half of this decade. Even then, Milstar wouldn't solve any of the communication problems faced by Army and Marine Corps fighting units in future contingencies. The simple reason is that DOD did not and does not have plans to buy any terminals for them. In other words, DOD planned to buy a $1 billion nuclear telephone set without a reciever for tactical forces. The Marine Corps has budgeted for zero Milstar terminals. The Army, which once planned to buy several thousand terminals, now has budgeted for only about 200—more than a tenfold reduction—and these are for nuclear forces and for commanders at the highest echelons. In the Air Force, not a single tactical fighter will be equipped with Milstar—not even the Stealth fighter—and it is doubtful that even Air Force squadrons will have terminals for access to Milstar.

Milstar could have had substantial potential to support our tactical fighting forces, but without proper terminals, that potential is worth nothing.

Why aren't we buying terminals for tactical forces? If this capability is as important as some claim, why have the Army, the Air Force, and the Marines decided by and large not to buy Milstar terminals.

The answers are obvious. Milstar terminals each cost between $2 and $12 million. It cost millions more to put them on aircraft, and the weight and space penalties are enormous.

In the case of the Army, the best they could come up with is a Milstar terminal that has to be hauled around in a large truck. It also takes at least 30 minutes to set up and 30 minutes more to take down. All the while, the tactical commander is stuck in place. Moreover, every single Milstar terminal is hardened against nuclear blast and radiation. If our forces would be attacked with nuclear weapons by a country like Iraq, they would die, but their Milstar satellite terminals would survive. Large, heavy, expensive, nuclear hardened, and inflexible terminals are not useful to our tactical fighting forces.

Originally, Milstar was supposed to provide extensive service to tactical forces. There were going to be thousands and thousands of terminals for these forces. The capacity of each Milstar satellite was sized with this level of use in mind. The number of satellites planned to be on orbit also was calculated to provide service to this large number of users.

Now, most of these terminals have disappeared from the military services' budgets. But nothing has changed on the satellite side. They plan the same number of satellites as before, each with the same capacity. What sense is there in proliferating billion-dollar satellites around the globe that can't be fully used by the vast majority of our conventional military forces?

I think we have succeeded in convincing DOD that we aren't buying the myth of Milstar support to tactical forces. DOD knows it is going to have to provide less expensive and more useful terminals to tactical forces, and in far higher numbers, to transform this assertion into reality. Then and only then would Milstar make a difference to operations such as Desert Shield.

USE OF MILSTAR BY STRATEGIC FORCES

Another claim the committee has heard is that Milstar is the only satellite system capable of providing assured, survivable communications to our strategic forces. The clear implications of this claim are that we somehow are deficient in our capability to communicate with our strategic forces and that we are and must be dependent on satellites to provide such capabilities.

This is another myth. We already have assured, survivable communications to all of our strategic forces today that do not depend on satellites. Satellites are used to communicate with strategic forces, to be sure, but they are not the most survivable, wartime backbone of our deterrent. That backbone is provided by communications systems on airborne command posts and relay aircraft.

A related but broader myth is that the Milstar satellite, as currently designed, is critical to maintaining nuclear deterrence.

Since 1980 alone, we have spent some $40 billion improving strategic command and control. This investment has yielded capabilities to ensure the U.S. ability to retaliate under the most stressing conditions of nuclear war. The conferees on the Defense authorization bill are not opposed to paying for additional redundancy, if that can be shown to be affordable and useful for deterrence.

The problem is that Milstar, as currently designed, is not affordable and it provides capabilities that go well beyond the needs for deterrence of nuclear war.

In the early 1980's, senior officials in the Reagan administration started talking publicly about protracted nuclear war fighting. Proponents of protracted nuclear war fighting envisioned nuclear wars lasting weeks and months. Wave after wave of missiles and bombers would be sent against each other, even after the initial laydown of several thousand weapons on both sides. Such a concept of war would require a complex command and control capability of enormous sophistication and resilience. Milstar was a product of this conception.

I want to make it clear we are not talking about Milstar as a system that fits in the traditional framework of deterrence. DOD agrees that we have today a command and control system that would allow us to survive and then command the forces engaged in nuclear retaliation. That is an essential prerequisite of deterrence. We have now and must always have that capability. But Milstar would not merely add redundancy to our existing capabilities. Planners instead professed a need for a satellite communications system that would permit senior military commanders to conduct electronic conferences and make on-the-spot decisions about prosecuting nuclear changes after a major nuclear attack by both sides—to continue fighting a nuclear war for weeks and months after a laydown of thousands and thousands of nuclear weapons.

The Air Force envisioned the need to monitor the success of a missile attack on the Soviet Union, evaluate additional requirements, and assign new targets to United States bombers while they were en route to the Soviet Union over the North Pole.

All of this would have had to occur while the Soviet Union was raining down thousands of nuclear warheads on the United States. If this were not enough, the planners envisioned these exchanges going on for weeks and months. No one has yet explained how those pilots, their aircraft, and other elements of the strategic equation are going to survive and continue to function for weeks and months into a nuclear war. Even so, every Milstar satellite would be built not only to withstand, but to endure for months after, repeated direct assaults by the most robust Soviet antisatellite weapons imaginable.

Reliable command, control, and communications are a necessary prerequisite for deterrence. But I do not believe that deterrence depends on the ability to wage a protraced nuclear war over a period of months.

If we have an all-out exchange between the United States and the Soviet Union, our policy of deterrence has failed. The United States would

lose, the Soviet Union would lose, and the world would lose. I think our basic policy has to remain deterrence of war rather than spending billions to prepare for an extended nuclear war and a continued conventional war after 10,000 nuclear weapons have exploded.

It is a myth that Milstar merely adds redundancy to strategic communications for enhanced deterrence. It is a myth that we must spend nearly $40 billion to provide such redundancy.

CONCLUSION

Mr. President, the conferees on the Defense authorization bill believe that the Department of Defense needs advanced satellite communications capabilities. They also believe, however, that the Milstar Program as it exists today is not the answer to those needs. We can't afford it. It won't provide nearly enough support to our tactical forces. And it has been designed to support a concept of protracted nuclear war fighting that is not required for deterrence. I might add that the Appropriations Committees came to very similar conclusions on the Defense appropriations bill as stated in their conference report.

The conferees on both Defense authorization and appropriations bills have directed the Secretary of Defense to correct these problems by restructuring the Milstar Program or by proposing an alternative. The authorization conferees authorized $600 million for this purpose. We will await the outcome of the Secretary's review but any restructured program will have to be affordable, useful to tactical forces, and with protracted nuclear war fighting features removed to be a viable program in the upcoming years.

Mr. DOMENICI. Mr. President, I support the conference report on the fiscal year 1991 Defense authorization bill. This is a prudent, responsible bill, and the Congress owes a great debt to the Senate Armed Services Commitee Chairman NUNN and ranking Member WARNER for their leadership in writing it.

THE NUMBERS IN THE BIG PICTURE

The conference report provides budget authority of $288.5 billion and outlays of $297.4 billion for national defense in fiscal year 1991. That is $18.2 billion and $7.4 billion less than what the President requested—CBO summer scoring. Adjusted for inflation, those figures are $25.5 billion and $9.5 billion below the budget authority and outlay figures for fiscal year 1990.

The conference report figures are consistent with the budget summit agreement—as described in House Concurrent Resolution 310—for defense discretionary spending of $288.3 and $297.0 in budget authority and outlays in fiscal year 1991. The difference between the report's figures and the budget summit agreement is attributable to Operation Desert Shield. The costs of Operation Desert Shield are held harmless against the defense discretionary spending caps.

The budget summit agreement set spending caps for defense spending for 3 years. There were those of us who wanted 5 years and others who wanted 1 year. I think 3 is as good a number as we could get under the circumstances. The agreement also provides that the defense budget will not be a "cash cow" for other programs. That is, if events make it possible to realize additional defense savings, those savings will go toward deficit reduction and not to fund other discretionary programs.

To those who ask about the source of the defense numbers I would point them to Chairman NUNN and the Senate Armed Services Committee. When we were on the floor debating the 1991 budget resolution, Chairman NUNN asked what level of spending we thought the Armed Services Committee should mark to. My reply was that he should mark to the level he deemed necessary to provide for an adequate defense. Without additional budget guidance, that is what he did—and that is what the budget summit adopted and what is in the conference report. To quote from the Armed Services Committee report:

> The committee believes that the level of funding authorized in the bill is appropriate based on changes in the threat, a revised military strategy, and a responsible and manageable glide path to a smaller defense establishment over the next 5 years.

The budget summit agreement followed Chairman NUNN's advice and set defense spending caps for 3 years that were consistent with that advice. If we assume Chairman NUNN's spending path in through 1995 then defensive savings over the next 5 years total $238 billion in budget authority and $176 billion in outlays. The following table provides the details of these calculations:

	1991	1992	1993	1994	1995	1991–95
CBO Baseline						
Budget authority	313.8	326.0	338.5	351.5	364.9	1694.8
Outlays	306.5	315.9	325.8	341.7	351.5	1641.3
Defense Spending Path						
Budget authority	288.3	290.9	291.1	292.0	295.0	1457.3
Outlays	297.0	295.0	292.0	290.0	291.0	1465.0
Savings						
Budget authority	25.5	35.1	47.4	59.5	69.9	237.5
Outlays	9.5	20.9	33.8	51.7	60.5	176.3

THE DEFENSE BUDGET IN 1991

The 1991 budget authority and outlay numbers in this bill continue, at a steeper rate of descent, the decline in defense spending that began in 1986. To those who see the 3 percent outlay reductions in this bill as inadequate I ask them to take notice of the 8 percent reduction in budget authority and to examine the numbers in detail at the account level.

About 96 percent of the National Defense budget is in five accounts—Personnel, Operations and Maintenance, Procurement, Research and Development, and Department of Energy defense programs. Ranked in order of the real reduction in budget authority:

Procurement falls 21.2 percent (to $67 billion),

O&M falls 5.4 percent (to $85 billion),

R&D falls 4.8 percent (to $36 billion), and

Personnel falls 4.1 percent (to $78 billion).

DOE defense increases 8.5 percent (to $11 billion).

PROCUREMENT

The 21.1 percent reduction in budget authority for procurement provides the clearest indication that defense spending under this bill will not only decline in 1991, but will continue to fall in the years to come. Procurement spends out slowly—16 percent in the first year, 26 percent in the second year, 30 percent in the third year. By the end of the fifth year, 92 percent of the authorization has been spent. The procurement savings in this bill—$18 billion below the CBO baseline—translate into real outlay savings for years to come.

OPERATIONS AND MAINTENANCE

The 5.4 percent—$5 billion—reduction in budget authority for O&M (operations and maintenance) is to be expected from fewer people in the active Armed Forces, and is commensurate with a smaller force structure. How the services implement the flexible readiness concept will also be a factor in determining the size of future savings.

RESEARCH AND DEVELOPMENT

The 4.8 percent—$2 billion—reduction in R&D is a change I hope is only temporary. Research and development funding maintains our technological edge over potential adversaries. It provides a hedge against the potential breakthroughs that might provide them with an edge against us.

I would remind the Senate that Defense R&D is a key element of our overall national competitiveness. Over time, a greater percentage of our R&D will move into the civilian sector, but that will take several years. During the transition, stability in Defense R&D will be needed to sustain our national high technology, engineering, and technology transfer capacities.

PERSONNEL

The 4.1 percent reduction in budget authority for personnel provides another clear indication that significant defense savings would be realized under this legislation. The nearly $3 billion in savings—compared with the CBO baseline—results from reducing the active Armed Forces by 100,000 in 1991—62,000 more than the Presi-

dent's request. Far greater savings will occur in later years when additional personnel are reduced from the rolls of the Armed Forces, and the full effects of previous year reductions are realized.

I would like to dwell on this point for a moment. One of the things I find most appealing about this bill is that it protects the men and women of the Armed Forces, men and women who chose a career in service to their country. Through no fault of their own—in fact, partly because they have done their job so well—they are faced with the prospect of being involuntarily separated, fired, from national service.

For those persons involuntary separated, this bill provides a generous package of benefits, including: expanded separation pay, medical transition coverage, expanded unemployment compensation, vesting in educational benefits, transition and job assistance, and enhanced travel and transportation benefits. Because of this package, first year personnel account savings are just 4.1 percent. Our servicemen deserve these benefits.

DEPARTMENT OF ENERGY

Almost all of the 8.5 percent—$1 billion—increase in the atomic energy defense authorization is to provide additional funds to cleanup nuclear waste and for environmental restoration. There are also increases for verification and control technology. There is no real increase in this bill for nuclear weapons production.

I strongly support continued efforts to clean up nuclear wastes. I also strongly support research and development of new technologies that will help us verify the successful conclusion of our arms control efforts.

The national labs are probably the best technical resource to develop the necessary technologies to cleanup nuclear waste and to develop verification technologies. The labs remain a critical component in the modernization of nuclear weapons. I am pleased that this authorization bill includes funds for important new modernization of the national labs as part of the overall modernization of our defense complex.

Mr. President I am also pleased that the conferees dropped section 1218 of the Senate passed bill. Section 1218 would have repealed section 1631 of the 1985 Defense Authorization Act, which is known as the Warner Amendment.

Repeal of the Warner amendment would have had drastic consequences for our Nation's nuclear weapons program and the National Laboratories.

The Warner amendment substitutes the United States as the proper defendant in suits against the Government contractors for injuries resulting from the Federal Government's weapons testing program and treats the cause of action exactly the same as other suits against the Federal Government. In doing so, it embodies the long-standing policy that the Federal Government, and not government contractors, was solely responsible for the conduct of the atmospheric nuclear weapons testing program.

The repeal of the Warner amendment would have allowed participants in the atomic weapons testing program of the United States to sue the government contractors that assisted the Federal Government in the conduct of these tests, including Los Alamos and Sandia National Laboratories, in order to recover damages for exposure to ionizing radiation. This is a misguided approach for four reasons.

First, it is the Federal Government, and not the government contractors, that bears responsibility for the nuclear weapons testing program. The testing program was developed at the highest levels of the American Government. The government contractors took no part in the formation of that policy and were used solely to implement the policy of the government in this area of vital national interest.

Second, the courts are an unpredictable, costly, time-consuming, and inefficient avenue of relief. The atomic test participants would have been embroiled in court battles for years, and they would have not been assured of receiving compensation. They deserve to be treated better than that.

Third, repeal of the Warner amendment would have jeopardized the participation of the contractors in highly technical defense-related projects in the future. The government contractors, including our national laboratories, would be loathe to contribute their expertise to the Federal Government if they would be subject to lawsuits over the Federal Government's use of their expertise.

Finally, for many of the individuals injured as a result of the weapons testing program, there already exists effective administrative programs to provide compensation.

The Atomic Veterans Compensation Act of 1988 provides disability payments through the VA to atomic veterans and survivors' benefits to their families. The Radiation Exposure Compensation Act of 1990, Public Law 101-426, which was signed into law by the President earlier this month, provides compensation to civilians who lived downwind of the testsites and individuals who worked in the uranium mines.

I am pleased that, rather than repealing the Warner amendment, the conferees decided to amend the Radiation Exposure Compensation Act to compensate those who participated in the nuclear testing program but who are not yet entitled to compensation, most notably civilians who worked at the Nevada testsite.

With this action, I believe the U.S. Government has finally fulfilled its obligation to all individuals who may have been injured as a result of the atomic weapons testing program. Nothing our Government can do can ever heal these individuals, but I am glad that the Government is owning up to its responsibility and compensating these people.

Finally, I would like to note that, although section 3140 technically repeals the Warner amendment, section 3141 recodifies the Warner amendment word for word in all relevant particulars. This is a simple housekeeping action, and I want to make clear, Mr. President, that this action should not be interpreted in any way as weakening, tolling, or amending the Warner amendment or as affecting past or pending cases involving the Warner amendment. Effectively, the Warner amendment remains in force as if no action had been taken.

Mr. President, I am also very pleased to see included in the conference report provisions to be known as The Department of Energy Science and Education Enhancement Act. This act will help enable the Department of Energy to use its facilities and resources to enhance American science and mathematics education.

These provisions are a modified form of the amendment I had added to this bill during the Senate consideration, and is similar to S. 2856 which I introduced earlier this year. The principle intention of the amendment was to give the Department of Energy the clear authority to develop and administer innovative programs that would help improve mathematics and science education opportunities for American students and teachers.

The Department of Energy employs the world's largest collection of scientists and engineers, and conducts world leading research in a wide range of science endeavors. The future of American scientific education is of tremendous importance to the Department, since the Department future really depends upon there being a large number of first-rate scientists available in the future.

But not only does the Department of Energy need American scientific education to be strong, American education could benefit much as well from the tremendous resources and talent of the Department, its facilities, and its personnel.

The new legislation, included as section 313B of this Defense bill, contains two significant parts. First, it expands upon the basic mission of the Department of Energy to make clear that the Department is allowed to use its resources, personnel—

Second, this bill authorizes $40 millon for a wide range of science education programs to be operated by the Department and its facilities. This program will enable laboratories, like

Sandia and Los Alamos National Laboratories in New Mexico, to operate programs for students and teachers that offer such things as research appointments, pre-college math and science programs, and scientist volunteer programs for local schools.

I would like to thank the members of the Armed Services Committee and of the conference for their work on this compromise. I was very disappointed that an important provision in my original amendment to authorize a technology development program at DOE was not retained. However, I believe we have taken an important step here, and we can pursue the technology development program in future legislation.

I would also like to commend Representatives MARILYN LLOYD and STEVE SCHIFF for their efforts to expand math and science education programs of the Department. Provisions of a bill they have proposed were included with my provisions.

This will be a very important bill for the schools in my State and throughout the country. We desperately need to pay greater attention to improving the math and science competency of this Nation. One way we can do this is to take greater advantage of our scientific resources, and use that talent and capability to invigorate and expand upon scientific educational opportunities.

The facilities of the Department of Energy represent a great, and greatly untapped, resource in this regard. Yet, with this bill, and with the tremendous leadership being provided by Secretary of Energy James Watkins, we will start to change that.

Mr. President, the fiscal year 1991 defense authorization bill also authorizes funding for many vital projects that are taking place in New Mexico. The bill authorizes $75 million in MILCON over the next 2 years for the bedding down of the 37th Tactical Fighter Wing at Holloman Air Force Base. Thirty-six million dollars of this authorization will come in fiscal year 1991.

The Air Force decided to transfer the 37th TFW Tonopah to Holloman. This transfer is in no way associated with any base closure as some had originally assumed.

Tonopah was never intended to be the permanent home for the F-117 stealth fighter. Tonopah is for top secret programs only, and the F-117 had been classified until recently. As a result of the program's declassification, the Air Force decided to plan a search for a permanent home for the 37th Tactical Fighter Wing.

The Air Force chose both Holloman AFB in New Mexico, and Nellis AFB in Nevada as the potential homes for the 37th. They conducted indepth studies on the merits of moving the wing to either of the two facilities, based on economic and operational criteria. Based on these criteria, the Air Force found that it was both economically and operationally more beneficial to move the wing to Holloman.

Several questions were raised about the validity of the Air Force numbers, estimates and conclusions. The GAO was commissioned to do a study on the Air Force conclusions. On September 27, 1990 we received a preliminary briefing from the GAO on its conclusions. While the Air Force and the GAO figures differed slightly, the GAO was in agreement that there were substantial savings to be gained by the transfer of the F-117 to Holloman. The GAO found that at least $130 million could be achieved by the transfer of the F-117 to Holloman.

This bill authorizes $75 million, $36 in fiscal year 1991 for the construction of the facilities needed to beddown the 37th at Holloman. This is a $25 million increase in authorization in fiscal year 1991 above the President's original request. This increase will ensure that the Air Force remains on schedule with the transfer, and in the process ensure that the savings associated with the move are achieved.

When the Air Force and the President originally submitted their budget request to Congress, Air Force officials were under the impression that hangars to house the fighter would not be necessary. Since that time they have found that in order to protect the F-117 from heat, and allow maintenance crews to work on them when needed, 40 operational hangars will be necessary regardless of where the F-117 would have been transferred.

This bill provides the authorization for the funds the Air Force needs for the construction of the hangars in order to keep the transfer on schedule, and to ensure the cost benefits to be derived from the transfer are fully achieved.

Mr. President, the conferees also agreed to authorize $45 million for the construction of the large blast thermal simulator [LBTS] which will be located at the White Sands Missile Range [WSMR] in southern New Mexico.

The LBTS will be a large facility that simulates certain aspects of the blast wave and the thermal pulse generated by a nuclear detonation. The greatest attribute of the LBTS is that no nuclear radiation processes would be involved.

Compressed gas is released at one end of a 20 meter tube. It travels throughout the chamber and exposes a test object, such as a vehicle, to specific dynamic and overpressure conditions. A thermal radiation source would be installed just upstream of the test chamber and would expose selected test items to thermal pulse in addition to the blast wave. The data obtained would be used to evaluate the survivability of U.S. military equipment.

The LBTS will provide valuable information about the needs and strengths of our military hardware, and it will do it in a safe way. I commend the conferees for supporting this vital initiative.

Before closing Mr. President, I want to just make a few comments about the strategic defense initiative [SDI]. Frankly, I was disappointed at the final figure of $2.89 billion that was authorized for this important program. I would have like to see a figure much closer to the original Senate mark of $3.7 billion.

Nonetheless, Mr. President, I was very encouraged by the fact that the conferees agreed to the essential concept of congressional oversight adopted in the original amendment sponsored by Senators BINGAMAN and SHELBY; and cosponsored by myself.

The original Bingaman/Shelby language encompassed 11 line items. The Conferees reduced this to five new program elements. These elements will be the only program elements from now on to be used in the program and budget information concerning SDI. Mr. President, I believe that some balance needs to be restored to this program, and I think that agreement the conferees reached on this subject will ensure that phase I and phase II systems are developed with this balance.

I was also encouraged by the fact that the conferees included provisions that would enable Secretary Cheney to maintain some flexibility in the allocation of funding for SDI. Secretary Cheney may make a one-time adjustment of up to plus or minus 10 percent of the funding levels appropriated in accordance with this authorization. He may do this to any of the program elements provided that the total of the five accounts so adjusted does not exceed the total $2.89 billion authorized. No program element may be increased or decreased by more than 10 percent.

Finally, Mr. President, in conclusion I want to thank the members of the defense authorization conference for reporting out this historic bill at a level that is consistent with the budget summit agreement. It provides a balance between the promise of a changed world and those changes that remain to be seen.

Mr. BINGAMAN. Mr. President, I would like to thank Senator NUNN for his assistance and cooperation in securing adoption of the Missile Technology Control Act as part of the fiscal year 1991 National Defense Authorization Act. I believe that this legislation establishes an important legislative basis for the U.S. missile nonproliferation policy.

I would just like to clarify the reporting requirement in section 1704 on

U.S. policy on the licensing of exports and services for space launch vehicle programs. I am very concerned that recent administration decisions have called into question the United States' current policy of treating these licenses as restrictively as those for missile technology and missiles. My intention, or perhaps I should say hope, in calling for this report is that the administration will reaffirm its existing policy. I would ask if Senator NUNN shares my view on this.

Mr. NUNN. I do. Mr. President, we have only to look at our own country's space program to realize that the booster for our ICBM's, and shorter range missiles, are identical to space launch vehicles. Certainly then any licensing of exports or services for SLV's must be treated in the same manner as an export to a missile program.

I share the Senator's hope that the administration is not proposing to move toward a more lenient licensing policy on transfers to SLV programs than on transfers of missile technology and missiles.

I would also like to commend Senators BINGMAN, GORE, and MCCAIN for their work in this area, and I look forward to continuing our efforts in this area in the next session of Congress.

Mr. GORE. I would like to draw the attention of my colleagues, Senators BINGAMAN, MCCAIN and NUNN to an exchange that occured on October 23 between Congressmen BERMAN and ASPIN, in connection with the House consideration of missile technology control legislation.

In that exchange, Congressman BERMAN asked Chairman ASPIN if he shared a particular understanding of one feature of the legislation. Specifically, that it would give the Secretary of Commerce, in consultation with various other members of the Cabinet, the ability to unilaterally control U.S. goods and technologies that would "provide a direct and immediate impact on the development of missile delivery system." To be more exact, Mr. BERMAN wanted to know if this can be understood to mean that included "would be items which have not been added to the MTCR annex, but which the United States is seeking to have added to that list, whether or not they have been rejected for inclusion on that list in the past."

Mr. MCCAIN. This provides clarity as to the intent of the legislation at this point. New U.S. products and technologies may come to light that ought to be subject to unilateral control by the United States, so long as we are trying to get these items into the MTCR. It is essential, however, that the administration adopt proper procedures to insure there is no unnecessary delay in licensing or interference with legitimate U.S. exports.

Mr. BINGAMAN. I believe that this would be a useful qualification for our own version of the legislation. Although it seems to me that the legislative language is already clear, this exchange makes the intent explicit and a part of the history of the legislation.

Mr. NUNN. I understand that Mr. ASPIN's response was to confirm that it was the "intent of the conference that goods and technology can be controlled" under the circumstances described by Senator GORE. I will confirm that this was in fact the conference's intent.

PROVISIONS RELATED TO VETERANS PROGRAMS

Mr. CRANSTON. Mr. President, notwithstanding my views on other provisions of the pending measure—the conference report on the proposed National Defense Authorization Act of Fiscal Year 1991—as chairman of the Committee on Veterans' Affairs, I wish to comment on provisions that are designed to assist members of the Armed Forces in making the transition from military service to civilian life. Certain of these provisions—which I will note in particular detail—relate directly to programs within the jurisdiction of the Veterans' Affairs Committee, and are the product of a collaborative effort among leaders of the Armed Services and Veterans' Affairs Committees of the two bodies.

DEMOBILIZATION AND THE TRANSITION NEEDS OF SERVICEMEMBERS

Mr. President, events in Eastern Europe and elsewhere that unfolded in 1989 and have continued on into this year, brought the cold war to an end and dramatically changed our Nation's long-term military requirements. One very significant consequence of the resulting planned reductions in our overall military forces will be the involuntary separation of large numbers of individuals who volunteered for active duty, many of whom planned on long-term or career service. Thus, we are faced with planning for a unique situation in our Nation's history: a substantial demobilization of an all-volunteer military force.

To carry this out as fairly as possible, we must address the special needs of the many persons who entered the service as a result of their own career choices, and will soon be faced with replanning their lives as civilians. These individuals made invaluable contributions to our Nation's strength and security. We now owe them special consideration as, in the years ahead, they must confront the often difficult challenge of returning to the civilian work force. In this measure we seek to meet our obligations to these most deserving servicemembers and their families.

Thus, Mr. President, title V, "Military Personnel," provides a generous package of separation benefits that includes medical transition coverage—through the Department of Defense—higher involuntary separation pay, limited commissary and exchange privileges, limited housing and dependent education assistance, and enhanced travel and transportation benefits. The provisions of specific jurisdictional relevance to the Veterans' Affairs Committees—and to which I have devoted particular efforts—are section 502, transition benefits and services, and section 561, Montgomery GI bill amendments.

TRANSITION SERVICES

Section 502 would provide for a permanent transition assistance program for members of the Armed Forces who are within 180 days of separation from active duty.

Mr. President, this legislation would build upon the experience of various programs conducted at the State and regional level, including a pilot program that I authored last year, which have sought to address the needs of servicemembers making the transition from military to civilian life.

Mr. President, I am particularly pleased to note the successes achieved by the Rehabilitation Foundation of the California Department of the Disabled American Veterans Foundation and the California Economic Development Department, which began providing a pre-separation Career Awareness Program [CAP] to servicemembers at the Lemoore Naval Air Station in California in 1978. From 1985 to the present, the CAP has expanded its services to 13 Navy, Marine Corps, Army, and Air Force bases in California. Over the years, the CAP program has produced many benefits, including increased retention in active duty and reserve components, reduced unemployment costs associated with post-separation job referral and placement, higher starting salaries, and reduced military retraining costs.

The Army, in cooperation with the Assistant Secretary of Labor for Veterans' Employment and Training, initiated in 1985, a transition management test program at Fort Bragg, NC, to assist servicemembers there in the transition to civilian life. The transition management program was designed to meet the demographic and economic challenges of the 1990's, and to bring about increased Army active duty and National Guard and Reserve retention and reduced unemployment compensation costs for former soldiers.

In 1989, I authored legislation—enacted as section 408 of Public Law 101-237—which required the Secretary of Labor, in conjunction with the Secretaries of Veterans Affairs and Defense, to conduct a 3-year pilot transition assistance program [TAP] of employment and training information and assistance for servicemembers nearing separation. TAP is required to be carried out in not less than 5 nor more than 10 States. This pilot program was

designed to use the experience of the Army Transition Management project at Fort Bragg while making various improvements based on the CAP in California. The pilot program began in May 1990, and is operating currently at 22 military facilities in 7 States.

This limited program is providing valuable services to many departing servicemembers and, very importantly, is yielding vital experience and program materials that can be put to good use in the planned demobilization.

However, Mr. President, we recognize that this pilot-program legislation was fashioned before it became so clear, in the fall of 1989, that our military personnel needs will likely decrease so substantially in the coming years. In the pending measure, we developed the design for an expanded program of transition services for the many thousands of men and women and their families who will need such assistance.

Thus, section 502 would require the Secretary of Defense to provide preseparation counseling, including informaiton on educational assistance programs, selected reserve employment options, and job search and placement for members and spouses. For each member being medically separated or retired, the Secretary of Defense would be required to forward a copy of the member's service medical record to the Secretary of Veterans Affairs within 60 days of their separation or retirement. This provision should greatly reduce the amount of time a disabled veteran must wait after separating from the military before receiving VA compensation or benefits to which he or she is entitled.

This section of the conference agreement would also require the Secretary of Labor to work with the Secretaries of Veterans Affairs and Defense to establish and maintain a program to furnish transition counseling, job-search training and information, placement assistance, and other information and services to servicemembers who are within 180 days of separation from active duty as well as to their spouses. In providing these services, the Secretary of Labor would use the experience obtained from the implementation of the pilot transition assistance program we enacted last year in Public Law 101-237.

MONTGOMERY GI BILL ASSISTANCE

Mr. President, in addition to the transition assistance program provision, section 561 of the conference agreement would provide servicemembers who are being involuntarily separated from the military with an opportunity to enroll in the Montgomery GI Bill educational assistance program under chapter 30 of title 38, United States Code. I am concerned that some servicemembers may have aspired to a career in the military and, therefore, elected not to enroll in the educational assistance program. Changing U.S. military needs could leave such persons with neither a military career nor an opportunity to improve their civilian employment prospects through continuing education. This provision would give servicemembers a valuable chance to reconsider their educational goals before being involuntarily separated.

CONCLUSION

Mr. President, these provisions represent a thoughtful effort to combine various resources and programs of the Departments of Defense, Veterans Affairs, and Labor in order to address the needs of servicemembers in the transition from active duty to civilian life. The legislation focuses particularly on the needs of those persons who are faced with unexpected career changes, but includes transition services of value to others as well.

Before concluding, I congratulate and thank the Chairman of the Armed Services Committee, Mr. NUNN, and of the Subcommittee on Manpower and Personnel, Mr. GLENN, whose extremely cooperative spirit made this collaborative effort possible, as well as the ranking minority members of the committee, Mr. WARNER, and of the subcommittee, Mr. MCCAIN, and the Veterans' Affairs Committee, Mr. MURKOWSKI, for their fine efforts. Special thanks and recognition are also due to the chairman of the House Veterans' Affairs Committee, Mr. MONTGOMERY, with whom I worked very closely in the design and refinement of the provisions of sections 502 and 561, and who is also a strong member of the House Armed Services Committee, as well other leaders of the House Committees, including the chair and ranking minority member of the Armed Services Subcommittee on Military Personnel and Compensation, Mrs. BYRON and Mr. BATEMAN, and the ranking minority member of the Veterans' Affairs Committee, Mr. STUMP. I also extend thanks for their excellent work to Senate Armed Services Committee staff member Fred Pang, House Armed Service Committee staff member Karen Heath, House Veterans' Affairs Committee staff members Mack Fleming and Jill Cochran, and Bob Ketels of the Department of Veterans Affairs, as well as to Chris Yoder, and Alan Ptak of our committee's minority staff and to committee staff who assisted me on this legislation—Shannon Phillips, Chuck Lee, Bill Brew, and Ed Scott.

NAVY DECISION TO "NEST" RESERVE SHIPS

Mr. NUNN. Mr. President, while the legislative and executive branches work to conclude the budget deliberations, and while we on the Armed Services Committee were completing our authorization conference, the Department of the Navy has quietly announced a far-reaching plan to expand the use of the Navy Reserve.

On October 16, 1990, the Navy announced it was initiating a plan to shift nearly a quarter of its surface combatants into the Navy Reserve. Specifically, the Navy plans to transfer 40 frigates of the *Knox* class to the Navy Reserve. One has to understand the Navy's starting point, and its traditional reliance on an all-active fleet to realize how important this decision is. It is clear that Secretary of the Navy Larry Garrett, and Chief of Naval Operations Admiral Frank Kelso are providing positive leadership in bringing this initiative up.

Under this Navy initiative, the *Knox* class frigates would be organized into two categories. The first category would consist of eight training frigates, fully manned and operated exclusively as selected reserve training ships. These ships would shoulder the responsibility for training 40 selected reserve units, who would serve on the ship, but the training crews would also provide the nucleus crews for the remaining 32 frigates. The mobilization frigates would be preserved in a status to be ready for sea within 180 days, which, according to the Navy, is well within the current assesssment of available warning time for their particular mission.

Mr. President, this action by the Navy is a major concrete step in recognizing the changed security situation facing the Navy. Last spring I delivered a series of speeches on the change in the threat. I also noted that the substantially longer warning times let us adopt a different strategy, one that emphasized mobilization and reinforcement over forward deployment.

I pointed out in my speeches that the Soviet Navy appears to have adopted a more defensive posture, and that the threat of conflict with the Soviet Navy stemming from a conventional war in Europe, was much diminished. These conditions led me to argue for a new policy that would shift more of the burden to reserve forces, especially for ships that were primarily oriented on the Soviet threat, such as antisubmarine warfare and sea lane protection.

While I was preparing my speeches, I learned of this unique new concept for Naval reserve ships—called "nested ships." When I outlined my new strategy and outlined the budgetary implications of that strategy, I encouraged the Navy to seriously examine the nested ship concept. I suggested that it be given serious consideration by the new leadership within the Navy.

That is precisely what Admiral Kelso did when he became the Chief of Naval Operations in July. He pledged to look into this idea during his confirmation hearing, and has brought the Navy bureaucracy along

to understand it is precisely the kind of innovative response we need at this time. Admiral Kelso is clearly looking down the road in terms of what needs to be changed today in order to have a strong effective Navy tomorrow. I commend him for his efforts.

The Navy's *Knox* class frigates are appropriate for the nesting concept. I pointed out in my speeches that this concept was well-suited to ships that are primarily assigned missions tied to a major conflict with the Soviet Navy, such as antisubmarine warfare or sea lane protection. The *Knox* class frigates fit this category well, because these ships are primarily used to protect convoys and resupply missions.

Now that the Navy has announced this new policy of reserve mobilization ships, it is critical that this concept be properly implemented. Placing ships in such a status does not mean they can be ignored, and thus effectively be mothballed. It will be critical that the Navy continues to maintain these vessels and outfits them with cost-effective improvements. These ships will be kept in this mobilization status in case we need them for a major conflict at sea. These ships cannot be forgotten, neglected, nor left to rust.

In this respect, the Navy Reserve will bear special responsibilities for ensuring that these ships remain effective warships, not only in terms of day-to-day readiness, but also as special advocates for long-term modernization.

Despite these challenges, this is a very constructive and positive development that expands the use of Navy Reserve forces in a balanced and appropriate way, in light of changes in the threat. If the world security picture becomes more menacing, these ships will be available to augment the active fleet.

I congratulate Secretary Garrett and Admiral Kelso for their leadership in this area. I have worked with the Navy for years, and I know how important a departure from the status quo this represents. I intend to work closely with them to ensure that this concept is fully and fairly implemented as part of our budget deliberations in the next several years. I urge them to continue to look for ways to expand the use of the Naval Reserves.

CIVIL RESERVE AIR FLEET

Mr. BOREN. I congratulate the chairman, the ranking minority member, and other members of the Senate Armed Services Committee for their diligence in bringing this conference bill to the floor today. I believe you have produced a good bill to meet our changing national security challenges in this constrained budgetary environment.

Mr. President, I would like to comment on the very important role the Civil Reserve Air Fleet [CRAF] is playing in augmenting the airlift in Operation Desert Shield.

Under this program, previously enrolled, privately owned aircraft are called forward in stage I for emergency utilization by the Department of Defense. These planes augment the airlift capabilities well beyond that which can be provided by military planes alone and at a substantial savings to the taxpayer.

Mr. Robert H. Moore, Director of Transporation Policy, Office of the Assistant Secretary of Defense—Productions and Logistics—appeared before the Subcommittee on Investigation and Oversight, House Committee on Public Works and Transportation, on Wednesday, October 10, 1990. He testified that in fiscal year 1989, the CRAF carriers moved about 30 percent of DOD cargo and 80 percent of DOD passengers. He further reported that, in a full mobilization, CRAF planes would provide an estimated 30 percent of DOD's cargo capacity and 95 percent of its passenger lift.

As part of this system, the CRAF Enhancement Program supports the conversions of large passenger planes, such as 747-100's and 747-200's, into cargo capable aircraft. These planes are "enhanced" with reinforced decks, cargo doors, pallet movers, military communications electronics, and other equipment which make the aircraft capable of military airlifts.

Mr. Moore testified that the CRAF Program has enabled the commercial contribution to the military airlift cargo capability to grow to over 16 million ton miles per day [MRTM/Day] which is about one-third of the DOD total airlift cargo capability. To quote Mr. Moore:

> It would cost over $10 billion to replace this commercial cargo capability with military aircraft, and this does not include air crew and annual operating cost. * * * It is easy to see that from a national security standpoint, a strong CRAF Program is essential and one of the Nation's most cost-effective defense programs.

Mr. Moore closed his statement summarizing that the civil and military airlift has proven to be an effective team in a rapid deployment of our troops. He stated that:

> The commercial airlift has also allowed our military aircraft a much-needed reprieve from continuous surge operation as well as additional time for crew rest and necessary maintenance. I am certain that the ongoing study of civil mobility support programs and other assessments of Operation Desert Shield will result in further enhancements to both CRAF and military airlift programs alike.

Maj. Gen. Vernon J. Kondra, Deputy Chief of Staff of Operations, Headquarters Military Command, also reported to the House subcommittee in a written statement dated October 4, 1990, that in Operation Desert Shield CRAF has performed more than 500 missions, carrying more than 66,000 passengers and 22,000 tons of cargo.

Mr. President, this pace continues. It is clear that the partnership is working, not only from an operational point of view, but also from an economical point of view. Therefore, I urge my colleagues to continue to support the CRAF Program and to increase the funding of the CRAF Enhancement Program if further requirements become known.

Mr. NUNN. I thank my friend from Oklahoma and assure him that the committee is well aware of the contributions of the CRAF Program to the overall mobilization requirements. I expect that we shall learn a great deal from the Desert Shield mobilization effort, and I look forward to reviewing this in the next Congress.

Mr. BOREN. Thank you, Mr. President.

Mr. KENNEDY. Mr. President, the Defense Authorization Act, as reported by the conference committee, contains a division D devoted to the extremely important issue of facilitating adjustment to reductions in defense spending. As one of the principal sponsors of this Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act, I believe it can significantly aid individuals, communities, and companies in the transition from the defense to the civilian economy.

Notwithstanding the military buildup in the Persian Gulf, it is evident that the end of the cold war will permit continued, substantial cutbacks in defense spending throughout the 1990's, and we need to do what we can to ease the impact of these cuts on communities, businesses, and individuals.

Throughout the cold war, men and women of the Armed Forces, civilian employees of the Defense Department, and employees of defense contractors and subcontractors have labored long and hard to sustain the Nation's defense effort. Now we are able to reduce our defense programs, it is essential that we provide necessary adjustment assistance to those on whom the Nation has relied for so many years.

Moreover, these individuals possess a wealth of talent and knowhow that can be put to highly productive uses in the civilian economy. Offering a helping hand in their career transition is a wise investment in economic stability and strength. It is also the humane and decent thing to do. The Federal Government has an obligation to provide appropriate assistance to impacted regions, communities, companies, and affected individuals.

Rather than create new Federal bureaucracies, however, the aid should be channeled through existing institutions and programs, and should be

structured in such a way that it does not create unfair privileges for displaced defense workers over displaced workers in other sectors.

The Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 is designed to accomplish these goals. With a fiscal year 1991 authorization of $200 million, to be drawn from Department of Defense appropriations, the act ensures advance warning to States, communities, and workers of impending base closures and contract terminations. It offers planning grants to communities and small businesses to plan for adjustment, conversion, and diversification. It provides export financing aid to companies impacted by defense cutbacks, and priority consideration for the special needs of small businesses. And it channels retraining, placement, and adjustment assistance to individual employees who are adversely affected by defense cutbacks.

Planning assistance is provided through the Defense Department's Office of Economic Adjustment. Assistance to communities is channeled through the Department of Commerce's Economic Development Administration. Assistance to individuals is provided by the Department of Labor's Job Training Partnership Act Program. Export financing assistance to companies comes from the Export-Import Bank. And special assistance to small businesses is made available through the Small Business Administration.

The act provides a statutory foundation for the existing Economic Adjustment Committee, which is chaired, on an annually rotating basis, by the Secretary of Defense, the Secretary of Commerce, and the Secretary of Labor. The committee has the responsibility for serving as an information clearinghouse, coordinating all of the agencies and programs involved in the act, and submitting an annual report on these programs to the President and the Congress.

The act authorizes $200 million from Department of Defense appropriations in fiscal year 1991 for these programs; $150 million is to be used for the Labor Department programs, and $50 million for the programs of the Economic Development Administration. In addition, the Export-Import Bank is to increase its annual direct lending authority by at least 150 percent over a 5-year period starting October 1, 1990.

These programs are essential to ensure an effective and equitable transition to the civilian sector for the communities, companies, and individuals affected by defense cutbacks. This assistance will also help stimulate the economy in depressed areas of the country. And through its export provisions, the act will aid in strengthening America's international competitive position.

The individuals and resources now committed to defense programs have enormous potential for conversion to civilian activities. Once they make the transition, they will be able to make substantial new contributions to the Nation.

This act is designed to provide them with advance warning, the opportunity to plan for diversification, and necessary assistance to make the transition in an effective and equitable fashion. As a nation, we owe them no less. There are few investments from which the country can gain so much.

Mr. JOHNSTON. Mr. President, today the Senate is considering the conference report to accompany H.R. 4739, the Department of Defense authorization. Included in the conference report is a provision authorizing a Strategic Environmental Research Program to be established within the Department of Defense.

This program is being initiated in fiscal year 1991 to address environmental matters of mutual concern to the Department of Defense and the Department of Energy through support of basic and applied research and development of technologies. The program is structured to utilize the expertise and resources of the Department of Energy national laboratories to the maximum extent possible in addressing these matters.

I must say at the outset that the provision contained in the conference report is not fully satisfactory to either the Committee on Energy and Natural Resources or the Department of Energy. Members of our committee—in particular myself, Senator MCCLURE, the ranking minority member, and Senator DOMENICI—attempted for several months to work out our differences on this with the Committee on Armed Services. I regret that the many discussions between our two committees did not produce a result that fully addressed the concerns raised by the Committee on Energy and National Resources.

Let me emphasize that our committee supports very strongly the idea of using the considerable assets of the Department of Defense and the expertise of the Department of Energy national laboratories to help in the effort to clean up the environment. The proposal advanced by the Committee on Armed Services correctly recognized that the resources and expertise of the Federal laboratory system could contribute significantly to our understanding of global climate change, to our development of advanced technologies for environmental cleanup, and to our overall energy security and technological competitiveness. There are significant resources within the Federal laboratory system, and we must ensure that they are utilized to their full potential.

Therefore, it is not the goal of the Strategic Environmental Research Program that was of concern to the Committee on Energy and Natural Resources. Rather, our concerns related to the proposed structure and management of the program. The program, as included in the conference report, would be established within the Department of Defense and would be implemented by a council made up of representatives of the Department of Defense, the Department of Energy, and the Environmental Protection Agency.

Our committee would have liked to see this program established instead as a joint program of the two Departments. Under our proposal, the program would have been established jointly by the Secretary of Defense and the Secretary of Energy, the membership of the implementing council would have had equal representation from the two Departments, and the council would have been under the joint direction and control of the two Departments. We believe that these changes would have made this program more effective and more balanced.

Our committee also proposed that in authorizing this program the Congress provide greater statutory direction on the scope and types of activities to be carried out. I am pleased that some of our suggestions in this regard were incorporated in the final conference agreement. I believe that these changes will make for a stronger and more effective program.

I believe that there is still room for improvement in this program. To that end, I hope that we will revisit this issue next year when Congress considers reauthorization of the program. In the meantime, I expect that the Committee on Energy and Natural Resources and the Committee on Appropriations will monitor carefully the progress of this program.

It is important to emphasize that this program is not intended to redirect or interfere in any way with existing programs of the Department of Energy or the manner in which DOE currently does its business. The Department of Energy is developing an aggressive program of its own to address environmental cleanup at its facilities. It is important, therefore, that any new initiatives authorized by this conference report be developed in tandem but not in conflict with the Department's existing programs.

THE SUPPORT FOR MEMBERS OF THE NATIONAL GUARD AND RESERVES

Mr. DOLE. Mr. President, I rise today to praise the American people's quiet acts of support for our citizen-soldiers of the National Guard and Reserve that are selflessly serving in the

Middle East. This support is in the highest traditions of America. It is neighbors lending a hand without fanfare, parades, or fireworks. This kind of community support rarely makes the news wire, but that support is there, and I believe that it should get the credit it deserves.

On August 13, the 190th Air Refueling Squadron of the Kansas Air National Guard was, without warning, called to active duty. More than 200 National Guard members left their families and jobs to report for immediate departure to an unknown destination in the Middle East. Despite the understandable strain and hardship endured by each of these men and women and their families, Kansas communities and employers pitched in to make the transition easier for them all.

Last week, at a small ceremony in Kansas, several of those employers and their companies were honored by the Kansas Committee for Employer Support of the Guard and Reserve. I would like to take this opportunity to bring these outstanding Kansans to the attention of the Senate: Roger Roe of King Construction in Hesston; Walter Underwood of Central Electric in Great Bend; Carol Elliott of the University of Kansas Medical Center; Rex Johnson of Eudora; Harold Hundel of Big A Auto Parts in Great Bend; Hugo Becker of AT&T in Kansas City; and finally, the whole city of Olathe.

This kind of community support is by no means an isolated incident. Take, for example, the American Legion's fam'ly support network. Families of those presently deployed in the Desert Shield Operation can call a toll-free number 24 hours a day and be routed to local American Legion volunteers in the callers' communities for help in everything from mailing instructions to child care and home repares. This kind of service by the American Legion is a reminder to all Americans that patriotism doesn't end when the uniform is taken off.

I congratulate those citizens, communities, and the American Legion for their spirit of patriotism and support for our Nation's soldiers, sailors, marines, and airmen. It is that spirit and support that contributes to the true strength of our Nation.

Mr. McCAIN. Mr. President, this year's conference report has many strengths. I am grateful that this year's conference report contains virtually all of the transition plan that I set forth to protect the men and women who will be involuntarily separated from the military. I am grateful for the support of Senator GLENN and my colleagues in the Senate and House Armed Services Committees in incorporating my legislation in the fiscal year 1991 Defense Authorization Act.

However, I deeply regret that the Authorization Act does not include the portions of my plan that would have provided the same unemployment benefits to men and women that are involuntarily separated from the military that are provided to men and women in civilian life.

There is no real reason for this failure to provide such compensation, except jurisdictional debates within the Congress. At present, the men and women who leave military service receive only half the unemployment compensation of civilians and must wait twice as long to be eligible for that compensation.

This lack of adequate compensation has never had any real rationale, although in a different era it was excused on the grounds that few were involuntarily separated from the service and military personnel chose to leave the service or were discharged for lack of performance.

Today it penalizes men and women who will be forced out of a career they have planned to make their life's work, and under conditions where separation will be a matter of rank, age, and special skills and not the result of talent, dedication, or part service. Men and women who volunteered to risk their lives, who often will be separated far from the location where they must find a job in civil life, and who have little past experience in seeking civilian employment, will get only half the unemployment protection of civilians.

I do not believe that the need to correct this situation should have been deferred for jurisdictional reasons, regardless of the promises made by the Senate Finance and House Ways and Mean Committees to take up this issue as soon as possible. I am also concerned that this failure to provide equitable treatment to the men and women in uniform is part of a broad pattern that badly needs to be addressed in future years.

Military pay now lags equivalent civilian pay by as much as 12 percent, and by up to 30 percent in some categories. This year, the Defense Authorization Act only asks for a 4.1-percent pay raise for the military, although current projections of inflation exceed 6 percent. In the midst of Operation Desert Shield, we will make things worse for our service people, and their families, although some have already been forced to obtain food stamps.

Deficit or no deficit, we must not penalize those who risk their lives by taking advantage of the fact they have little real recourse to inadequate pay. We also must not disguise the failure to develop and fund an adequate total force policy to provide proper payment to both Active and Reserve personnel by layering minor privileges or special pay categories over inadequate pay. Every man and woman deserves an honest day's pay for an honest day's work. Men and women who lay their lives on the line should not continue to be the victims of false economies and pawns of congressional convenience.

Mr. EXON. Mr. President, the Senate and House conferees have reported out a fiscal year 1991 national Defense authorization bill which represents nothing short of a revolutionary break with past legislation. Since the Congress actions on last year's authorization bill, a wave of democratic self-determination has swept Eastern Europe dissolving the Warsaw Pact as a military alliance.

These and other profound changes in world events have forced the Congress to reassess what type of Armed Forces is necessary to maintain our national security. This welcomed reduction in military threat has come at a time when the administration and Congress face a budgetary crisis of mounting debt and growing demand for services, yielding a reality that all parts of the Federal Government, defense in particular, must do with less funding.

The task of redefining the size and structure of our military was made more difficult by an administration fiscal year 1991 Defense budget with little vision. Though the requested budget marked the sixth consecutive year of real decline in spending, the funding levels were out of step with reality. The Defense budget submission was rife with inflated funding requests, obsolete systems and unaffordable programs.

Compounding the inadequacy of the administration's budget request was the absence of the Defense Department's 5-year plan and the often delayed total force policy study.

The conference report includes a series of major initiatives in the crafting of the national Defense authorization bill which correct the inadequacies of the administration's request and brings defense spending and policy in line with political and budgetary realities.

In the area of strategic forces and nuclear deterrence, the Senate subcommittee which I chair, a strategic environmental research and development council is established to apply the resources and talents of the Defense and Energy Departments and the intelligence community to environmental problems. Much-needed funding increases are made in the areas of environmental restoration and waste removal for cleanup activities at Department of Energy and Department of Defense facilities.

Perhaps no greater threat exists to our national security than the cost and potential health problems associated with the cleanup of the dangerous materials which have accumulated

at hundreds of these sites over the past 40 years.

One of the most sweeping and important of the conference report initiatives is in the area of manpower and personnel.

Contained in the report is a drawdown in active duty military personnel of 100,000 and civilian personnel of 47,100 over the next year. This first-year reduction places the armed services on a glide path to achieve a 5-year cut in personnel of 25 percent, a goal which I endorse in light of the demilitarization of Eastern Europe and the ongoing Conventional Forces in Europe [CFE] Treaty negotiations.

Linked to this drawdown in troop strengths is an innovative package of compensation benefits for men and women who may be involuntarily separated.

The philosophy of "fly before buy" has been strongly embraced by the conferees in the evaluation of conventional and strategic weapons systems as a way to slow down high-risk programs and avoid expensive fixes and repairs to systems which are unnecessarily rushed into production.

By denying, reducing, or deferring procurement funds for programs such as the B-2 bomber, the A-12 attack plane, the advanced tactical fighter, and the rail garrison MX missile, the conferees have taken a strong stand against business as usual. We can no longer afford to hurry expensive and sophisticated weapons into production which no longer have a valid mission or which have not been properly tested.

In total, this conference report is a revolutionary step toward coming to grips with a new age. Through the themes of maintaining nuclear deterrence at lower force levels, emphasizing greater use of Reserve and Guard Forces and applying flexible readiness, the conferees have provided for a strong national defense and still realized significant budget cuts.

I urge my colleagues to support the conference report.

Mr. President, I yield the floor.

Mr. KERRY. Mr. President, I am opposing the Department of Defense authorization and appropriations conference reports on the grounds that they do not represent sound budgetary policy.

At this time of extreme budget austerity and with the dramatic changes in the Soviet Union and Eastern Europe that have occurred, we can, and should, make larger reductions in defense. Larger reductions can be made without jeopardizing our Nation's security.

These bills afforded the Congress an opportunity to do more than just talk about reducing the deficit over the next 5 years. Unfortunately, we have failed that test, particularly since we have continued funding for wasteful programs and programs for which there is not any rational justification from a national security standpoint.

The B-2 Stealth Bomber Program is a case in point. This is one of the most costly, waste-ridden programs in a long history of waste, fraud and abuse scandals that have plagued Pentagon spending, particularly over the past decade.

The primary contractor for the B-2's, Northrop Corp., is currently the subject of 7 grand jury probes and 11 criminal investigations stemming from problems associated with defense contracts it has received in recent years.

Even top U.S. Air Force officials have taken the unprecedented step of charging publicly that Northrop is so poorly managed that it cannot account for the cost of many programs, and has suffered major breakdowns in the production of every weapon the Pentagon reviewed. Yet, we are still funding this program to the tune of nearly $900 million per plane.

The bills also contain funds for the continuation of the strategic defense initiative. Along with the B-2, the SDI is a product of the cold war era. And as the crisis in the Persian Gulf should demonstrate, we need to spend money on defense requirements to meet real threats, rather theoretical threats of the past. We can only undermine our legitimate defense needs.

But most of all, these bills undermine our ability to come to grips, in a meaningful way, with the serious deficit problem facing this country. The deficit-reduction package with which we have been struggling has to be fair. It is time for the Pentagon to take its fair share of cuts, rather than pressing for billions of dollars for programs that are fraught with waste, fraud, and abuse and which do nothing to contribute to the strong defense of our Nation. The time is long overdue for us to end the military-industrial corporate welfare complex that has relentlessly chewed up taxpayers' dollars for far too long.

I support strongly our critical military mission in the Persian Gulf. And I will continue to support all reasonable costs necessary to maintain the effectiveness of this effort. However, it is a bit much to ask the American taxpayers to continue investing their hard-earned dollars in wasteful program that only serve to undermine our legitimate defense needs.

THE DEPARTMENT OF DEFENSE ENERGY SAVINGS PROGRAM

Mr. CHAFEE. Mr. President, I would like to thank the conferees of the fiscal year 1991 Defense authorization bill for including in the conference report the important Department of Defense Energy Savings Program. This important provision will help encourage energy conservation at military installations.

Last June, my Rhode Island colleague Representative MACHTLEY, joined by Representative MARKEY, introduced H.R. 5163, the Military Energy Conservation Act. This measure would establish a comprehensive program for reducing energy consumption in Department of Defense facilities, and also establish incentives within the Department to save costs through energy conservation. It served as the basis for the energy program provisions that we have just approved in the 1991 DOD authorization bill.

At an Energy and Commerce Joint Subcommittee hearing last summer, Representative MACHTLEY pointed out that the Department of Defense is the single largest energy consumer in the Federal Government, with its consumption accounting for more than two-thirds of the Government's energy costs for buildings and facilities. He went on to state that a House Armed Services Committee report revealed that $540 million could be saved annually by instituting a DOD energy conservation program. Yet last year, the Department spent only $2 million on energy conservation efforts—a tiny fraction of the amount it spends buying energy.

I wholeheartedly applaud Representative MACHTLEY's words. Today, with thousands of American troops in the gulf, the need for increased efforts in energy conservation at all levels—government, commercial, residential, and so on—is clearer than ever. The Department of Defense is a good place to start.

In September, Representative MACHTLEY, ASPIN, MARKEY, and SHARP successfully offered a version of the Machtley bill as an amendment to the Defense authorization bill. On October 1 of this year, I joined 9 of my Senate colleagues in writing the Armed Services to urge support for the Machtley energy provisions. I am delighted that both committees did so.

In my view, this bill is a major step forward in terms of making an investment in energy conservation—and making it in a Department where the return on that investment could be substantial. I commend my colleague from Rhode Island, and also the members of the two Armed Services Committees, for their work on this issue.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I am about to propound a unanimous-consent request which I understand has been cleared by the Republican leader.

I ask unanimous consent that the majority leader, after consultation with the Republican leader, may proceed at any time to consideration of

the conference report to accompany S. 358, the immigration bill; that time for the debate on adoption of the conference report be limited to 30 minutes equally divided and controlled between Senators KENNEDY and SIMPSON, and 10 minutes under the control of Senator GORTON; that no motions to recommit be in order, and that at the conclusion or yielding back of time, the Senate proceed to vote without any intervening action or debate on adoption of the conference report.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the majority leader?

Mr. GORTON. This side of the aisle agrees fully with the request, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. I thank my colleagues.

NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1991—CONFERENCE REPORT

The Senate continued with consideration of the conference report.

The PRESIDING OFFICER. Who yields time?

The Chair recognizes the Senator from Georgia.

Mr. NUNN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator controls 4 minutes even.

Mr. WARNER. Mr. President, the Senator from Virginia inquires as to the amount of time.

The PRESIDING OFFICER. There is 2 minutes and 52 seconds controlled by the Senator.

Mr. WARNER. I suggest the time be pooled and we use it accordingly.

Mr. NUNN. I thank the Chair, and friend from Virginia.

COMMENDING HUGH C. EVANS, DEPUTY LEGISLATIVE COUNSEL, FOR HIS SERVICE TO THE SENATE

Mr. NUNN, Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 345, honoring Hugh C. Evans, and, upon disposition of the resolution, the Senate return to the defense conference report, and that the time used on the resolution be charged to the conference report in the usual manner.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 345) expressing the gratitude of the United States Senate for the service of Hugh C. Evans, Deputy Legislative Counsel of the United States Senate, and commending the said Hugh C. Evans for the superlative quality of his service.

The Senate proceeded to consider the resolution.

Mr. NUNN. Mr. President, this resolution is supported by all members of the Senate Armed Services Committee, the majority leader, Senator MITCHELL; the minority leader, Senator DOLE; Senator BYRD, in his capacity as President pro tempore and as the chairman of the Appropriations Committee; and Senator HATFIELD, as ranking minority member.

Mr. MITCHELL. Mr. President, the retirement of Hugh C. Evans as Deputy Legislative Counsel of the Senate will leave a great void in the Senate. As Deputy Legislative Counsel for the past 11 years, and for 25 years prior to that, Hugh Evans has served the Senate in the Office of Legislative Counsel in a superb manner. His imprint is on all of the national security legislation adopted by the Senate during that time.

Hugh Evans has been more than a superb legislative counsel. He has also provided advice and assistance on countless issues to Senators and to Senate staff. He has been unfailingly professional and courteous, a competent and dedicated public servant. These qualities have made Hugh Evans not only invaluable, but a pleasure to work with as well.

Hugh Evans will be missed by his colleagues and by Senators. He is, in the truest sense of the term, irreplaceable. He leaves behind a true contribution, the body of law that he helped write. We wish him well in his future endeavors, and we thank him for his invaluable service to the Senate of the United States.

Mr. DOLE. Mr. President, I rise to commend Hugh Evans, the retiring Deputy Legislative Counsel of the U.S. Senate.

Hugh has loyally served this body for over 36 years. He has been a friend to the U.S. Senate, the Nation, and to me.

Hugh Evans has skillfully drafted the many historic pieces of legislation that have become the law of our land. He has turned the thoughts and ideas of this body into the working documents that have protected and assisted farmers, civil servants, and veterans. Hugh's work raised armies, built fleets of ships, and have become the vehicle through which we secured and protected our freedoms.

I am proud to be a cosponsor of this resolution and I am proud to have known and worked with Hugh. I know that I speak for all the Members of the Senate—both past and present—when I wish Hugh Evans the very best for the future, and offer a profound thank you for his dedication and outstanding work. Hugh, we will miss you.

Mr. NUNN. Mr. President, the conclusion of the conference report on the fiscal year 1991 National Defense Authorization Act marks another step toward sine die adjournment, but it also brings us closer to another milestone that none of us look forward to reaching.

Early next year, Deputy Legislative Counsel of the Senate Hugh Evans will retire.

Hugh has served in the U.S. Senate for 36 years in the Office of Legislative Counsel, the last 12 as Deputy Legislative Counsel of the Senate. He has been involved in drafting national security legislation for his entire career. His keen intellect and unsurpassed knowledge of national security law have made him indispensable to the work of the Committee on Armed Services.

I first worked closely with Hugh during the 1970's as chairman of the Manpower and Personnel Subcommittee on a major revision of officer personnel management laws. The Defense Officer Personnel Management Act was truly landmark legislation to modernize and streamline the officer personnel management laws, and this legislation could never have been enacted without Hugh Evans' careful attention to detail and thorough knowledge of title 10 of the United States Code.

Since then, Hugh's legislative drafting skills have helped us enact legislation to reform the military retirement system; to reorganize the Department of Defense; and, of course, to authorize national defense programs in the annual defense authorization bills.

Hugh is not only a skilled draftsman, but he has a deep knowledge of national security affairs. This combination has made Hugh indispensable to the legislative process. In recent years, the defense authorization bill has become a major focus of the Senate's legislative activity. The process of finding agreement within the Senate on major issues such as SDI, MX, the B-2, and SDI has required carefully crafted legislation. We have frequently turned to Hugh to assist us in developing proposed legislation, and I have never failed to be impressed by his detailed knowledge of the policy issues and his ability to take our generalized concerns and turn them into finely crafted legislative language.

Mr. President, Hugh Evans has given us much more than his skillful assistance. He has devoted a major portion of his life, including what should have been his leisure time, to our service. As difficult as it is for us as Senators to resolve difficult national security issues, we often lose sight of the fact that our decisions often represent only the beginning of the work that must be done by our staff and the Legislative Counsel's Office to transform our general ideas into specific legislation. For Hugh Evans, whose interests range from tennis to opera, we cannot

give him back the nights—too often until dawn—that he has devoted to us. But we can tell him how much we appreciate the quite, selfless devotion that he has shown to the Senate, and that has made him an exemplary public servant.

As Hugh prepares to retire from the Senate, I want to express my deep personal appreciation to him for his dedication to the work of the U.S. Senate. In future debates in the Armed Services Committee, on the Senate floor, and in conference with the House, we will miss the skill and professionalism, the quiet dignity, and the unflappable demeanor which have been the hallmarks of Hugh Evans' approach to his work for 36 years.

Mr. President, as the Armed Services Committee concluded its work on the conference report on the Defense authorization bill, we unanimously reported a resolution to the Senate expressing the Senate's gratitude to Hugh Evans for his career of faithful and exemplary service to the U.S. Senate and commending him for the superlative quality of his service.

RETIREMENT OF HUGH EVANS

Mr. BYRD. Mr. President, I join with the other members of the Armed Services Committee, and with all the members of this body, in expressing our deepest gratitude to Mr. Hugh Evans for his long years of service to the U.S. Senate. for 36 years. Mr. Evans has been a part of the Office of Legislative Counsel, including the last 11 as Deputy Legislative Counsel. He began his career here before I came to the Senate, and over these many years he has provided valuable assistance to me and my staff.

Upon becoming President pro tempore in 1989, I was privileged to assume responsibility for the Office of Legislative Counsel, and I know that his departure will leave a void that will be difficult to fill. In passing this resolution we recognize his years of commitment to the Senate. His presence will be missed and his contribution will not be forgotten.

Mr. WARNER. Mr. President, I rise today to express and join others in my sincere appreciation for the outstanding service rendered by this extraordinary public servant, Hugh C. Evans, the Deputy Legislative Counsel of the Senate.

I think of him as being the backstop of distinguished Senators, Senator Russell, who was chairman of the committee when he first initiated his service, followed by Senator Stennis. Then for a period of time Senator Jackson was the ranking member of the committee, followed by Senators Tower, Goldwater, and now the distinguished Senator from Georgia [Mr. NUNN]. Each of these men, were they present here today on the floor, would add their tribute to that expressed by those of us who are present today to honor this distinguished gentleman.

Throughout his 36 years of service, Hugh Evans has been responsible for providing advice, counsel, and legislative drafting services to the Committee on Armed Services. During my 12 years in the Senate and on the Senate Armed Services Committee, the committee has undertaken reviews of major portions of the law relating to the Armed Forces of the United States. Throughout this time, Hugh Evans has supported and guided these efforts. Let me review just a few of the occasions where I have had the opportunity to observe Hugh's significant contributions to the committee's work.

Beginning in 1978, the Armed Services Committee undertook a comprehensive review of officer personnel policies of the Armed Services. Hugh played the pivotal role in drafting the Defense Officer Personnel Management Act, a landmark piece of legislation which finally consolidated and made uniform the various laws relating to the management of active duty military officers.

During the 99th Congress, the committee undertook a review and reform of the military retirement system. Again, Hugh was responsible for drafting the legislation which made sweeping reforms in this system.

Also during the 99th Congress, the committee began a study of the management of the Department of Defense, resulting in the legislation which has become known as the Goldwater-Nichols Act. Hugh worked diligently to put together a legislative package which resulted in the most comprehensive reorganization affecting the entire Department of Defense since the creation of the unified Department in 1949.

More recently, a major portion of the committee's legislative activity has been devoted to reform of the acquisition process at the Department of Defense. Hugh's expertise in fashioning legislation affecting all areas of the procurement process has been invaluable to the committee's work.

In the past several years, the primary work of the committee—the annual defense authorization bill—has grown dramatically in size and scope. This year alone, Hugh was responsible for drafting the entire 537-page bill passed by the Senate in August. His efforts have continued throughout the difficult conference process which yielded a conference bill of 911 pages. That conference report, just adopted by the Senate, includes provisions relating to numerous activities of the Federal Government—ranging from defense funding provisions, to provisions relating to small business activities, foreign policy, financial management, and many other areas. Hugh's road range of experience has served the committee well in all of these areas.

Hugh has served this body for more than 36 years. He has worked long days and nights in order to meet the oftentimes unpredictable legislative schedule. He has always put aside his personal schedule in order to get the job done, without a complaint.

Mr. President, upon the occasion of his retirement from the Senate, I join with my colleagues in thanking and commending Hugh C. Evans for his dedicated public service to the U.S. Senate and in wishing him all the best in all of his future endeavors.

Mr. GLENN. Mr. President, it is indeed a pleasure to join my fellow members of the Senate Armed Services Committee in commending Hugh Evans as he retires from a distinguished career of some 36 years in the Office of the Legislative Counsel of the U.S. Senate.

My staff and I have been particularly appreciative of Hugh's expertise over these past 6 years in which I have served on the Armed Services Committee. I have found that no matter the complexity of the issue, no matter the time pressure, no matter the rush of Senators insisting on his immediate services, Hugh Evans consistently has responded with alacrity, and with the highest degree of both professional competence and good humor, in crafting complex legislative products.

All of us will miss his candid yet diplomatic counsel, and his unfailing willingness to give every effort his best. Hugh, you have served the Senate and your country well. May you have a fair wind and a following sea in your well-deserved retirement.

Mr. KENNEDY. Mr. President, I join in expressing my gratitude and appreciation to Hugh Evans for his 36 years of dedicated service to the U.S. Senate. Throughout his career, he has skillfully and tirelessly served the Senate in the Office of the Legislative Counsel. His legal expertise and experience has provided valuable assistance to all of us in developing numerous measures in the areas of national security, civil service, agriculture, and veterans affairs.

I join Members of the Senate in saluting Hugh Evans' distinguished record of service to the Senate. Hugh Evans will be greatly missed, and I wish him a long and happy retirement.

Mr. DIXON. Mr. President, I rise today to honor a great man of the Senate. Hugh Evans, Deputy Legislative Counsel of the U.S. Senate, is retiring after more than 36 years of service in the Office of the Legislative Counsel. I cannot begin to express how much he will be missed.

Hugh has spent his entire career drafting national security legislation. As a member of the Armed Services Committee, my staff and I would go to

Hugh with a few scattered notes and a vague idea of what we wanted to accomplish. He would take those bits of information and mold them into effective, comprehensive legislation. Crafting these bills seemed to come so easily to him, yet it was a job that we all know is nothing but difficult.

In addition to national security legislation, Hugh was also responsible for the drafting of civil service, agriculture, and veterans' benefits legislation. Of course, the list of all the legislation which he touched in some way would be far too long to list here.

Mr. President, I think all of my colleagues realize that the U.S. Senate is losing a valuable, highly skilled public servant. His professionalism and dedication will be greatly missed, but I congratulate him on a well-deserved retirement and extend my best wishes to him in the future.

Thank you, Mr. President.

Mr. McCAIN. Mr. President, the Senate owes a debt of gratitude to Hugh Evans. We will undoubtedly miss his services upon his retirement. For 36 years Hugh has worked in the Office of the Legislative Counsel for the Senate, and his services have become invaluable.

Hugh has provided me and my staff with excellent advice. Time after time, in spite of impossible deadlines, he has responded with alacrity to the numerous requests I have made of him. I am particularly obligated to Hugh for his outstanding work on manpower issues and on legislation to fight weapons proliferation.

Mr. President, I want to offer my personal thanks to Hugh for all he has done, the superlative quality of his work, and his dedication. This Senator, for one, is grateful for his efforts, and I wish him the very best in the future.

Mr. BINGAMAN. Mr. President, I join my colleagues in expressing deep gratitude to Hugh Evans for his contributions to the work of the Senate Armed Services Committee and in wishing him all the best in his retirement.

I have been through eight defense authorization bill cycles with Hugh Evans and I honestly don't know how we will do without his assistance in the coming years. Every year he patiently takes the tremendous number of ideas generated in markup, on the floor, and in conference, and translates them into clear, understandable legal language. Often we find as he translates, that we have not thought a matter through and Hugh helps us fill in the gaps to make a provision comprehensible and implementable. He is without peer in that regard.

Hugh does this for 100 Senators, not just the 20 who serve on the Armed Services Committee. This means that he is here at all hours through much of the defense authorization process. We all lean heavily on him. We all will miss him, but if anyone has earned a long and fruitful retirement, it is Hugh Evans. We all appreciate his devoted work and enormous contributions to the Senate. We all wish him godspeed in his retirement, even as we wonder how we will make it through the next defense authorization bill without him.

The PRESIDING OFFICER. Without objection, the resolution and the preamble are agreed to.

The resolution (S. Res. 345), with its preamble, reads as follows:

S. RES. 345

Whereas Hugh C. Evans, the Deputy Legislative Counsel of the United States Senate, is retiring after more than 36 years of service in the Office of the Legislative Counsel of the Senate;

Whereas Hugh C. Evans has served as the Deputy Legislative Counsel of the Senate for the last 11 years;

Whereas Hugh C. Evans has been responsible for the drafting of national security legislation for the Office of the Legislative Counsel for his entire career;

Whereas Hugh C. Evans was responsible for many years for the drafting of civil service legislation, agriculture legislation, and veterans' benefits legislation for the Office of the Legislative Counsel; and

Whereas Hugh C. Evans has unfailingly served the legislative drafting needs of the United States Senate with exemplary professionalism, skill, and dedication for the entire span of his career: Now, therefore, be it

Resolved, That the United States Senate—

(1) expresses its gratitude to Hugh C. Evans for his over 36 years of faithful and exemplary service as a counsel in the Office of the Legislative Counsel of the Senate, including his more than 11 years of service as Deputy Legislative Counsel; and

(2) commends Hugh C. Evans for the superlative quality of his service.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Hugh C. Evans.

Mr. WARNER. Mr. President, I ask unanimous consent that the record may remain open on this resolution until the close of business so that other Senators who may desire to include their statements may do so as if read in full.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT—FISCAL YEAR 1991—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. All time has expired that was controlled by the Senators from Georgia, Virginia, and Ohio. There are 5 minutes remaining controlled by the Senator from Maine.

Mr. WARNER. Mr. President, seeing no Senator desiring recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The time will be charged against the Senator from Maine.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WARNER. Would the Chair advise the Senator from Virginia as to the parliamentary situation.

The PRESIDING OFFICER. There are approximately 2½ minutes remaining under the control of the Senator from Maine. All other time has expired. At the expiration of that time, the Senate will take up consideration of the adoption of the conference report on the Department of Defense Appropriations Act.

Mr. WARNER. Mr. President, on behalf of the Senator from Maine I yield back the remainder of my time.

The PRESIDING OFFICER. The question recurs on agreeing to the conference report on H.R. 5803, the Department of Defense Appropriations Act. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] is absent because of an illness in the family.

I further announce that, if present and voting, the Senator from Oklahoma [Mr. BOREN] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "nay."

The PRESIDING OFFICER (Mr. GRAHAM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 80, nays 17, as follows:

[Rollcall Vote No. 319 Leg.]

YEAS—80

Adams	Cohen	Gorton
Akaka	D'Amato	Graham
Baucus	Danforth	Gramm
Bentsen	Daschle	Hatch
Biden	DeConcini	Heflin
Bingaman	Dixon	Heinz
Bond	Dodd	Helms
Breaux	Dole	Hollings
Bryan	Domenici	Inouye
Bumpers	Durenberger	Jeffords
Burdick	Exon	Johnston
Burns	Ford	Kassebaum
Byrd	Fowler	Kasten
Chafee	Garn	Kennedy
Coats	Glenn	Kerrey
Cochran	Gore	Lautenberg

Leahy	Murkowski	Sarbanes
Levin	Nickles	Shelby
Lieberman	Nunn	Simon
Lott	Packwood	Simpson
Lugar	Pell	Specter
Mack	Pryor	Stevens
McCain	Reid	Symms
McClure	Riegle	Thurmond
McConnell	Robb	Warner
Mikulski	Rudman	Wilson
Mitchell	Sanford	

NAYS—17

Armstrong	Humphrey	Rockefeller
Bradley	Kerry	Roth
Conrad	Kohl	Sasser
Cranston	Metzenbaum	Wallop
Grassley	Moynihan	Wirth
Harkin	Pressler	

NOT VOTING—3

Boren	Boschwitz	Hatfield

So the conference report was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL DEFENSE AUTHORIZATION ACT, FISCAL YEAR 1991—CONFERENCE REPORT

The PRESIDING OFFICER. The question is on agreeing to the conference report on H.R. 4739. The yeas and nays have not been requested.

Mr. NUNN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Oklahoma [Mr. BOREN] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 80, nays 17, as follows:

[Rollcall Vote No. 320 Leg.]

YEAS—80

Adams	Coats	Fowler
Akaka	Cochran	Garn
Baucus	Cohen	Glenn
Bentsen	D'Amato	Gore
Biden	Danforth	Gorton
Bingaman	Daschle	Graham
Bond	DeConcini	Gramm
Breaux	Dixon	Hatch
Bryan	Dodd	Heflin
Bumpers	Dole	Heinz
Burdick	Domenici	Helms
Burns	Durenberger	Hollings
Byrd	Exon	Inouye
Chafee	Ford	Jeffords
Johnston	McClure	Sanford
Kassebaum	McConnell	Sarbanes
Kasten	Mikulski	Shelby
Kennedy	Mitchell	Simon
Kerrey	Murkowski	Simpson
Lautenberg	Nickles	Specter
Leahy	Nunn	Stevens
Levin	Packwood	Symms
Lieberman	Pell	Thurmond
Lott	Pryor	Warner
Lugar	Reid	Wilson
Mack	Robb	Wirth
McCain	Rudman	

NAYS—17

Armstrong	Humphrey	Riegle
Bradley	Kerry	Rockefeller
Conrad	Kohl	Roth
Cranston	Metzenbaum	Sasser
Grassley	Moynihan	Wallop
Harkin	Pressler	

NOT VOTING—3

Boren	Boschwitz	Hatfield

So the conference report was agreed to.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DIRECTING THE CLERK OF THE HOUSE OF REPRESENTATIVES TO MAKE TECHNICAL CORRECTIONS IN THE ENROLLMENT OF THE BILL H.R. 4739

Mr. NUNN. Mr. President, the conference report on H.R. 4739, the National Defense Authorization Act for fiscal year 1991 which we just approved was filed in the Senate on Tuesday, October 23. In the days between the filing and our consideration of the conference report, further review of the bill has disclosed the need for a number of technical and conforming amendments.

I now send to the desk a concurrent resolution directing the House Enrolling Clerk to make certain technical and conforming changes in the conference report on H.R. 4739.

I ask unanimous consent that the Senate proceed to the immediate consideration of the concurrent resolution, there be no time for debate, no amendments to the concurrent resolution be in order, the concurrent resolution be agreed to, and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 158) directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 4739.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution.

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 158) was agreed to as follows:

S. CON. RES. 158

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 4739) to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 101(e)—

(A) strike out "$2,526,884,000" and insert in lieu thereof "$2,541,884,000"; and

(B) strike out "$1,103,747,000" and insert in lieu thereof "$1,118,747,000".

(2) In sections 151(a), 152(a), and 211(a), insert "authorized to be" before "appropriated".

(3) In section 217(d)—

(A) insert "(1)" before "The Secretary of Defense"; and

(B) at the end of subsection (d)(1) add the following: "The amount of the limitation in subsection (c) shall be increased by any amount so transferred.".

(4) In section 242(a), strike out "by the Secretary of Defense" and insert in lieu thereof "to the Secretary of Defense".

(5) In section 1405(a)—

(A) insert "(1)" before "Subchapter IV";

(B) insert "(other than section 1558)" after "United States Code"; and

(C) in paragraph (2), strike out "the sections of that subchapter" and insert in lieu thereof "sections 1551 through 1557"; and

(6) In section 1405(b)(7), insert "or paragraph (6)" after "under paragraph (4)".

(7) In section 1408, strike out "$300,000" and insert in lieu thereof "$1,000,300,000".

(8) In section 1519(d)(2)—.

(A) strike out "the Naval Home and "; and

(B) add at the end the following new sentence: "Beginning on October 1, 1991, funds required for the operation of the Naval Home shall be drawn from the account of the Naval Home.".

(9) In section 6 of the Export Administration Act of 1979 (as proposed to be added by section 1702(a) of the bill)—

(A) strike out "5(a)(4)(D)" in paragraphs (1), (2), and (3) and insert in lieu thereof "5(b)(2)(C)"; and

(B) strike out "which the Secretary of State has determined under subsection (j) has in subsection (l)(3)(B) and insert in lieu thereof "the government which has been determined under subsection (j) to have".

(10) In section 10B(c) of the Export Administration Act of 1979 (as proposed to be added by section 1702(b) of the bill), insert " and subsections (k) and (l) of section 6" after "For purposes of this section".

(11) In section 4303(a)(2), strike out "September 30, 1990" and insert in lieu thereof "September 30, 1991".

Mr. NUNN. Has that action been reconsidered and laid on the table as part of the unanimous-consent request?

The PRESIDING OFFICER. Pursuant to the previous order, that has been reconsidered, and the motion to

reconsider has been laid upon the table.

Mr. NUNN. Mr. President, I thank my colleagues and I thank the staff for their extraordinary job.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk preceeded to call the roll.

Mr. FOWLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FOWLER. Mr. President, I ask unanimous consent that the Senator from Connecticut [Mr. DODD], be permitted to speak as in morning business, and that I retain the floor to do a litte substantive business, and then my intention is to put the Senate back into morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, the Senator from Connecticut is recognized.

Mr. DODD. Mr. President, let me thank my colleague from Georgia for his courtesy.

PROTECTION OF OUR FINANCIAL MARKETS

Mr. President, today, I rise to express my disappointment and deep regret that, in view of the events that precipitated Senator LEAHY's statements on the floor Tuesday, the Senate will not have opportunity to vote on two measures I believe are essential for the protection of our financial markets.

The first is S. 1729, the Futures Trading Practices Act, which was reported by the Committee on Agriculture, Nutrition, and Forestry last November. That legislation, crafted by the distinguished chairman of the Committee, Senator LEAHY, together with Senator LUGAR and their colleagues on the committee, was a tough and courageous response to the indictments in Chicago and the serious problems in the existing system of oversight of the futures market. It is the most sweeping futures reform package in decades.

The bill expands the statutory authority and the resources of the CFTC and imposes industry services fees. It requires exchanges to deploy tamperproof computerized audit trails within 3 years. It curbs dual trading. It also increases penalties against traders who engage in unlawful activity and allows victimized customers to sue for punitive civil damages from floor traders and brokerage firms. In addition, it tightens rules against exchange conflicts of interests. These and other provisions of the legislation are critically needed to strengthen and improve America's futures markets, which for many years have served the broad interests of America's farmers, industrial corporations and other users of financial services. Our futures markets have been the most innovative, dynamic futures markets in the world, and there is a strong public interest in ensuring their continued vitality and integrity.

The second, and equally important, measure is an amendment to S. 1712, filed last week by Chairman LEAHY. I joined him as a cosponsor, together with Senators LUGAR, BOND, and HEINZ. The amendment represents a serious effort by the leadership of the Committee on Agriculture and the Banking Committee's Subcommittee on Securities to resolve a bitter and protracted battle over the regulation of stock index futures and related issues. We believed it offered our best chance to break the logjam that had prevented Senate consideration of S. 1729. At the same time, it addressed serious policy issues related to leverage in the futures market, competition and innovation in the futures and securities industries, and the coordination of regulation over the markets for stocks, options, and futures.

The amendment contained provisions to protect investors and protect the U.S. financial markets from potential liquidity crisis and other systemic risks generated by rapid and extreme price movements in the stock and stock index futures markets. It accomplished these goals by assigning authority for the regulation of margins for stock index futures to the Federal Reserve, which now has margin authority for stocks and options and is the agency charged with protecting the liquidity and stability of our financial system as a whole. It also was designed to foster competition and financial innovation, so that the U.S. financial markets can remain the world leader in financial services. It accomplished this by modifying the exclusivity clause of the Commodity Exchange Act to permit certain new innovative hybrid securities products to trade in either the securities or futures markets. In addition, the amendment would promote coordination between the Commodity Futures Trading Commission and the Securities and Exchange Commission with respect to critical issues affecting the stability and integrity of the interconnected markets for stocks, options, and futures. Efforts of these two agencies would be directed at the detection and prevention of intermarket frontrunning, coordination of circuit breakers, coordination of clearance and settlement systems and other matters.

As most of my colleagues know, Senate consideration of S. 1729 has been delayed since last November, pending resolution of a proposal to transfer jurisdiction over stock index futures from the CFTC to the SEC. The proposal originally was filed as an amendment to S. 1729 by Senator GORTON. A somewhat broader proposal was suggested by the administration last spring, and legislative language was submitted to Congress in June. Senators GORTON and WIRTH later filed the administration proposal as an amendment to S. 1729.

The administration proposal sought to address gaps in regulation and inadequate coordination between the CFTC and the SEC by transfering jurisdiction over stock index futures from the CFTC to the SEC. It also sought to reduce systemic risk by providing for Federal regulation of stock index futures margins, giving that authority to the SEC. It addressed competitive concerns and recent jurisdictional disputes between the SEC and CFTC by amending the exclusivity clause of the Commodity Exchange Act.

Supporters of the proposal argued that transferring jurisdiction over stock index futures from the CFTC to the SEC was necessary in order to place the stock, options and futures markets under one regulator. However, opponents argued that this would bifurcate regulation of the futures market by placing stock index futures under one regulator and futures on other financial instruments and physical commodities under another.

Opponents effectively prevented Senate debate on this issue from November 1989 until June of this year, when holds were lifted for a period of time when it appeared there were sufficient votes to defeat Senator GORTON's amendment. However, immediately after the administration's proposal was submitted, holds were imposed by other Senators, who wanted to defer consideration of the measure until hearings had been held and there was sufficient additional time to build support for the measure.

Late in the summer, it became clear to a number of us that failure to resolve these and other related issues had derailed any chance of passage of S. 1729. At the same time, while it appeared that there were insufficient votes to pass the administration's proposal, we believed an alternative measure could be drafted to meet the major concerns that proposal sought to address: First, inadequate coordination between the CFTC and the SEC on critical issues affecting the stock, options and stock index futures markets; second, lack of Federal oversight of stock index futures margins; and third, uncertainty and the anticompetitive effects of the exclusivity clause of the CEA. Just as these concerns cut across the individual jurisdiction of the CFTC and the SEC, they also cut across the individual jurisdictions of the Committee on Agriculture and the Committee on Banking. Therefore, Senators LEAHY, LUGAR, BOND, HEINZ, and myself worked together to develop the com-

promise measure filed last week. We wrote the leadership asking for a time agreement to take up S. 1729, with time alloted for consideration of the compromise amendment, as well as for the amendment Senator GORTON had sought an opportunity to offer for more than 10 months.

But, opponents decided they did not want to let the Senate vote on the compromise. They also decided they did not want a vote on the amendment proposed by Senator GORTON, even though a number of individuals in the futures industry repeatedly had boasted that they had the votes to defeat it. And those on the other side who argued that, at the very least, there should be an opportunity for the Senate to vote on the two amendments, would not agree to see S. 1729 brought to the floor without providing for consideration of those amendments.

Mr. President, Wednesday's New York Times carried the headline "Futures Traders Win in Regulatory Battle." Let me disagree with that characterization. I would say, instead, that nobody won as a result of this outcome, and the futures industry was perhaps the biggest loser. Without the reforms in S. 1729 and in the compromise amendment we sought to offer, the futures markets will be less fair and less sound in the short run. And, they will leave themselves open to perhaps a heavier hand of regulation in the long run.

From the outset, the issues raised by the administration proposal, and later by our compromise amendment, were regrettably characterized as just a turf battle: a turf battle between the securities industry and the futures industry; a turf battle between New York and Chicago; a turf battle between the SEC and CFTC; and a turf battle between the Banking and the Agriculture Committees of the Senate. Unfortunately, this characterization diverted attention from the important policy issues raised by the debate.

However, at least one aspect of that turf battle should have been put to rest by the events of the past several months. No one can say there exists a turf battle beween the relevant committees of the Senate. From the beginning of our debate on these issues, when my friend Senator LEAHY testified before the Securities Subcommittee in March of this year, it was clear to me that his concerns were broader than merely protecting the turf of his committee. And, in our discussions over the past several months, Senators LEAHY and LUGAR clearly and fairly weighed all sides of the serious policy issues raised in an effort to find an equitable compromise. I deeply appreciate their efforts, and assure them that I will come back to this issue next year. I look forward, again, to working with them.

I also want to say that no one worked harder on developing the compromise proposal than Senator BOND, and he will be a strong ally for those of us who seek to raise these issues again next year, and a formidable opponent for those who seek to block them. He serves on both the Committee on Agriculture and the Banking Committee. He has a major futures exchange in his backyard, but he also has a deep understanding of the securities industry and the broader financial markets. Over the past several months, he spent countless hours working in meetings not only with his colleagues, but with Secretary Brady, Chairman Greenspan, the chairman of the SEC and CFTC and others, in an effort to develop legislation that would address the major concerns in the least intrusive manner.

And, my colleague and ranking minority member of the Securities Subcommittee, Senator HEINZ, who has such strongly held views on what is necessary for effective market regulation in today's global markets, was willing to go the last step in an attempt to address legitimate concerns and to develop a package that could be brought to the floor for a vote. I regret that those opposed to any legislation in this area were able to undercut the serious efforts of Senators HEINZ and BOND, as well as those of Senators LEAHY and LUGAR.

Mr. President, my colleague, Senator LEAHY, has spoken eloquently in this Chamber about the need for passage of the Futures Trading Practices Act, and he has assured us that he will return to that legislation, as well as to the compromise filed as an amendment to the bill. At this point, since we did not have the opportunity to debate the amendment on the floor, I would like to take a few minutes to discuss the policy concerns which led, first, to the administration's proposal to shift jurisdiction over stock index futures, and, finally, to the compromise amendment.

These proposals have been the subject of extensive hearings in the Securities Subcommittee and full Banking Committee, with witnesses including Secretary Brady, Federal Reserve Chairman Gramm, SEC Chairman Breeden, and numerous other witnesses from the securities and futures industries. Chairman LEAHY also has held thorough hearings on these issues.

It is important to recognize that the administration's proposal evolved from almost 2 years of study and debate over the causes of the October 1987 market crash and the regulatory weaknesses revealed by that event. Since that time, numerous reforms have been undertaken by the private sector, the self-regulatory organizations and the regulators, and these reforms appear to have reduced panic in the markets and perhaps lessened the severity of the market turbulence. In addition, the Market Reform Act, which was signed by the President on Tuesday of last week, will provide further authority for the SEC to take action during a market emergency, to identify large traders in the securities markets, and to assess the risks to broker-dealers that may be posed by their unregulated affiliates. It also directs the SEC to work with the CFTC and the Federal Reserve to address the weakest link in the system: The fragmented clearance and settlement systems for stocks, options, and futures.

However, even in light of the reforms since 1987 and the provisions of the Market Reform Act, Secretary Brady and others have warned that the potential threat to the financial system of a severe market drop and related liquidity crisis is as real today as it was in 1987. Secretary Brady has been the key proponent of legislation to put in place the tools to prevent a market drop from developing into a systemic crisis. In a March 2, 1990 letter to Senator HEINZ and me, he highlighted what he believed were major problems in the current system. He wrote:

> Two years ago the Presidential Task Force on Market Mechanisms, which I chaired, concluded that stocks, options and stock index futures really constitute one market—a conclusion that is now widely shared by the financial community. This suggests that the regulation of these instruments should be unified, as is the case in all other countries with major securities markets. Nevertheless, regulation continues to be fragmented in the United States, where responsibility is divided between the SEC, which oversees stocks and options, and the CFTC, which has responsibility for stock index futures.
>
> The cost of this fragmentation is (1) conflicting market mechanisms—uncoordinated circuit breakers, inconsistent short selling rules, and unharrmonized margin requirements; (2) ineffective enforcement against certain manipulative practices, including intermarket frontrunning; and (3) roadblocks to innovation arising from jurisdictional disputes.

Secretary Brady's letter listed a range of possible solutions to the problems he identified, including merging the SEC and CFTC, or, in what he believed would be a less disruptive alternative, shifting stock index futures jurisdiction from the CFTC to the SEC.

The Secretary raised specific concerns about the different treatment of margins for stocks, which are established by the Federal Reserve, and margins for stock index futures, which are established by the individual futures exchanges. He said:

> Because the futures and stock markets are in reality linked as one market, futures margins have a direct and material impact on trading in the stock market. Low futures margins indirectly permit high leveraging in stocks. This leverage creates the potential for extreme volatility, starting in the fu-

tures market and washing back to the stock market. The resulting financial exposure cannot be confined to a single market, and can spread quickly to affect the entire financial system.

In view of the concerns raised by Secretary Brady, Senator HEINZ and I scheduled a Securities Subcommittee hearing for March 29, at which all four members of the President's Working Group on Financial Markets testified.

At the hearing, three of the four members—Treasury Under Secretary Glauber, Federal Reserve Chairman Greenspan, and SEC Chairman Breeden—stressed the need for Federal regulation of futures margin. There are substantial differences in the level of margins set for stocks and the level of margins for stock index futures. Under Secretary Glauber observed that, just prior to the October 13, 1989, market break, a professional trader in the futures market with $50,000 in cash could control almost $2,000,000 in stock, which is nearly 10 times more than the $200,000 that a professional trader in the stock market could control with the same amount of cash. In fact, margins on stock index futures were lower in October 1989 than they were in October 1987.

Of course, margins for stock index futures should not be equivalent to those for stocks; there are different settlement periods and other factors which result in different risks for stocks and for stock index futures. However, at the subcommittee hearing, Chairman Breeden testified that because stock index futures margins were so low in October 1987 and in October 1989:

> * * * at the first sign of serious market stress stock index futures margins were sharply raised, resulting in hundreds of millions of dollars in margin calls. This removed liquidity from the markets at the worse possible time. It also exposed the market to the risk that firms unable to meet margin calls might have to dump portfolios on the market. This created the risk of massive selling at the very time the danger of a further fall in the market was greatest. This is not theory. It happened, and it happened not once but twice.

The Department of the Treasury, the SEC and the Federal Reserve all have testified that low margins on futures can drain liquidity from the payments system in times of crisis when it is most needed. The Federal Reserve expressed concerns about the tendency of futures exchanges "to lower margins on stock index futures to such a degree in periods of price stability that they feel compelled to raise them during periods of extraordinary price volatility." Chairman Greenspan, who in the past believed that the Government should not be involved in margin-setting, tesified, "I regret to say that the behavior of margin-setting in the last couple of years has shaken my confidence in that view." He pointed out that the futures exchanges raised margins following the 190-point market drop on October 13, 1989, during a very unstable period. Chairman Greenspan told the subcommittee, "I was shaken by that event." The Federal Reserve, therefore, supported Federal oversight of margins on stock index futures, as well as stocks, to ensure that margin levels are adequate under a range of market conditions.

However, the same events that caused alarm to Treasury, the Federal Reserve and the SEC, were viewed differently by the CFTC, which has argued that there is no need for Federal oversight in this area. CFTC Chairman Gramm said, "the proof that the futures margining system works well is unequivocal. No clearing member firm defaulted in either October 1987 or October 1989."

Mr. President, I have been persuaded that this issue needs to be addressed by Congress in some fashion. We came too close to a financial systems breakdown in October 1987 and October 1989 to find comfort in the fact that a financial catastrophe was, thankfully, avoided. I would note that margins for the most widely traded stock index futures contract are now substantially higher than they were in October 1989. Futures margins also were raised during the spring of 1988, at a time of congressional scrutiny, after being set at very low levels prior to the October 1987 market break. Options on stock indexes, while not as big a factor as futures contracts, also have been subject to criticism. The futures exchanges clearly can live with margins levels higher than the levels of October 1989, but the specific level should not be a subject of congressional debate. Given the linkage between the stock, options, and stock index futures markets, one regulator should have overall responsibility in this area. Let me underscore that this is not an issue of turf, but a problem that, if unresolved, could ultimately threaten the stability of the Nation's financial payments system.

For that reason, the compromise proposal developed by Senators LEAHY, LUGAR, BOND, HEINZ, and myself, gave authority to regulate stock index futures margins to the Federal Reserve, which currently has margin authority for stocks and options. Although the administration's bill would have given this authority to the SEC, we believed that, given the level of distrust between the futures and securities industries on this issue, a more neutral regulator, particularly one with the experience and credibility of the Federal Reserve, would be appropriate. We believed, and still believe, our proposal to give this authority to the Federal Reserve would receive the support of the vast majority of our colleagues.

A second major concern has been the anticompetitive effect of the exclusivity clause of the Commodity Exchange Act. This clause has been interpreted recently by the courts to mean that, if a financial instrument is a security but has elements of a futures contract, then the instrument may be traded only on a registered futures exchange, even if the element of "futurity" is only a minor characteristic of the instrument. As Federal Reserve Chairman Greenspan explained in testimony before the Securities Subcommittee:

> Under the Commodity Exchange Act, any commodity contract with an element of futurity cannot be entered into except on a CFTC-regulated exchange. Moreover, this act defines the term "commodity" broadly to include not only physical commodities, like corn and wheat, but intangible contractual interests, including financial instruments. This restriction when interpreted broadly serves to discourage the development of new financial products that might be offered outside of the futures exchanges and tends to stifle the innovation process.

In fact, the Seventh Circuit Court of Appeals in a case decided last year, Chicago Mercantile Exchange versus Securities and Exchange Commission, noted that the exclusivity clause "gives the futures markets the opportunity to block competition from an innovative financial product."

Surely, this anti-competitive result was not intended by Congress when it adopted the Commodity Exchange Act in 1974. The exclusivity clause of the CEA was designed to prevent the trading of unregulated futures products off-exchange; not to prevent the trading of securities products on securities exchanges. If this provision is not corrected, futures exchanges could have a virtual monopoly on the development of new products, preventing innovative and useful instruments from trading on securities and options exchanges. This happened in the Seventh Circuit case I referred to. An instrument called an "index participation," was developed by the Philadelphia Stock Exchange. The futures exchanges filed a lawsuit and effectively prevented the Philadelphia Stock Exchange from trading the instrument, even after a market had developed and there was a clear demonstration of investor demand for product. A similar product now trades in Canada, but not in the United States.

The Treasury Department has testified that jurisdictional squabbles over new products can strangle innovation and result in the loss of innovative new products to foreign markets. In testimony before the Securities Subcommittee, Treasury, the Federal Reserve and the SEC urged modification of the exclusivity clause, in order to permit the kind of competition that rewards innovation in our financial

markets. However, the CFTC has not supported change in this area.

It has become clear to a number of us that neither the respective agencies nor the President's Working Group on Financial Markets have been able to settle this issue by agreement. The testimony of Treasury, the Federal Reserve and the SEC suggests that, if Congress does not act, new products will continue to be subject to litigation, and the U.S. capital markets will see innovative products and market share leave our national boundaries. As a result of the vast majority of testimony in the hearings on this issue, I was persuaded that we must address this issue and modify the exclusivity clause of the CEA, to permit certain new hybrid securities products to trade under either the securities or futures regulatory systems. Our compromise proposal does that. I would add that the futures exchanges have been breeding grounds for financial innovation for more than a decade. I believe they will be made stronger by competition and they should welcome it; not erect roadblocks to competition.

There are other concerns raised by the split jurisdiction over stocks and stock index futures. In testimony before the Banking Committee, Treasury Secretary Brady warned, "with our current system, it is simply too easy for intermarket abuses to slip through the cracks because of the dispersion of regulatory responsibility." SEC Chairman Breeden said, "both agencies [the SEC and CFTC] only see one-half of what is in fact a coordinated trade that begins in one market and ends in the other." These officials, therefore, urged consolidated jurisdiction over stocks and stock index futures in order to police the markets for fraud and manipulation. Both Treasury and the SEC also have said that "circuit breakers" for the stock and futures markets are not coordinated, and that major problems remain in the clearance and settlement area that would be better addressed by a single regulator over stocks and stock index futures.

To address these concerns, Treasury Secretary Brady has said that a minimum approach would be to shift stock index futures jurisdiction to the SEC. Federal Reserve Chairman Greenspan has testified that he slightly favors this approach, because he believes it is important to have the same regulator set margins for stocks and stock derivatives and because he believes the SEC should be that regulator. However, CFTC Chairman Gramm has argued that we should permit more time for coordinating efforts between the SEC and CFTC to work in the areas of enforcement, circuit breakers and clearance and settlement.

Many of us in Congress had hoped that the President's Working Group on Financial Markets could resolve these key issues as a group, without the need for new legislation. However, it is clear that, while many issues have been resolved in a collegial manner by members of the group, a number of major issues cannot be resolved in that manner. Indeed, even when three out of the four members agree on what should be done, as in the case of margins and the exclusivity clause of the CEA, there is no means of forging a consensus, or even taking action based on the views of the majority.

Following the release of the Brady report on the October 1987 market crash and the other reports on that event, the vast majority of studies, as well as the market regulators and private market participants, agreed with the fundamental premise of the Brady task force, that stocks, options and stock index futures really constitute one market. In my view, that conclusion was simple, and unrefutable. In addition, it was and remains clear that regulatory oversight over that one market remains fragmented among regulators with different statutory missions. However, the difficulty in 1987 and today is in determining what are the specific costs and benefits of regulatory fragmentation and, to the extent the costs outweigh the benefits, what new regulatory framework is appropriate. Our compromise proposal doesn't solve this problem entirely, but it does set forth directives to the SEC and CFTC to coordinate on key intermarket issues and to report to Congress on their efforts.

Mr. President, I would say again that I regret that this proposal could not be debated by the full Senate and acted upon this year. I have no doubt that the vast majority of my colleagues would have strongly supported it. Absent passage of S. 1729 and the compromise measure to address stock index futures margin and related issues, I believe the U.S. financial markets remain at substantial risk from market manipulators and other participants whose illegal activity would be curbed by the measures, as well as from unforeseen events, which in recent years have sent stock prices cascading and placed tremendous strains on the Nation's financial system. I know my colleagues, Senators LEAHY, LUGAR, BOND, and HEINZ, share my disappointment that we were unable to move this critical legislation in this Congress.

I believe they also share my confidence that, in light of the groundwork we laid this year, we will see action on these important issues in the next Congress.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Georgia controls the time and the floor.

Mr. RIEGLE. Mr. President, I wonder if the Senator from Georgia might yield so I might engage the Senator from Connecticut?

Mr. FOWLER. I would be glad to. I yield.

Mr. RIEGLE. I thank the Senator from Georgia.

I just want to acknowledge the tremendous leadership that the Senator from Connecticut has given as the chairman of the Securities Subcommittee. He has talked about the issues that he has worked so hard on in conjunction with others of us on other committees.

But there have been some very notable achievements by that committee this year, and I think the Senator from Connecticut is probably as busy as any Senator here. He has done remarkable work on child care issues, and children issues generally, and foreign policy issues.

He has really done an extraordinary job on the Banking Committee as the chairman. I am grateful for that.

The unfinished business that we have taken as far as we can this year will be next year's business.

Mr. DODD. If the Senator will yield, I want to note that I inherited the Securities Subcommittee from the distinguished Senator from Michigan, who laid the groundwork for much of the legislation we were able to pass this year. Much of the work began under his stewardship. I commend him for his leadership over the years on that subcommittee, and I thank him for the stewardship of the Banking Committee as a whole.

We were able to get a great deal of that legislation adopted, not only because of Senator HEINZ, but because we had a chairman who cared about it. I appreciate his support.

Mr. RIEGLE. I thank the chair.

FALLON PAIUTE SHOSHONE INDIAN TRIBES WATER RIGHTS SETTLEMENT ACT

Mr. FOWLER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1023, S. 3084, a bill to provide for the settlement of Indian water rights claims.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3084) to provide for the settlement of water rights claims of the Fallon Paiute-Shoshone Indian Tribes, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Select Committee on Indian Affairs, with an amendment to strike all after the en-

acting clause and inserting in lieu thereof the following:

TITLE I—FALLON PAIUTE SHOSHONE TRIBAL SETTLEMENT ACT

SECTION 101. SHORT TITLE.

This Act may be cited as the "Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990".

SEC. 102. SETTLEMENT FUND.

(A) There is hereby established within the Treasury of the United States, the "Fallon Paiute Shoshone Tribal Settlement Fund", hereinafter referred to in the Act as the "Fund".

(B) There is authorized to be appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund $3,000,000 in fiscal year 1992, and $8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996 and 1997 for a total sum of $43,000,000.

(C)(1) The income of the Fund may be obligated and expended only for the following purposes:

(a) Tribal economic development, including development of long-term, profit-making opportunities for the Fallon Paiute Shoshone Tribes (hereinafter referred to in the Act as "Tribes") and its tribal members, and the development of employment opportunities for tribal members;

(b) Tribal governmental services and facilities;

(c) Per capita distributions to tribal members;

(d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation, (hereinafter referred to in the Act as "Reservation)

(E) Upon the request of the Tribes, the Secretary shall invest the sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(F)(1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use their best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the Fund to service any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provisions of section 7 of Public Law 93-134, 87 Stat. 468, as amemded by section 4 of Public Law 97-458, 96 Stat. 2513, 25 U.S.C. 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section.

SEC. 103. ACQUISITION AND USE OF LANDS AND WATER RIGHTS.

(A) Title to all lands, water rights and related property interests acquired under section 102(C)(1)(e) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribes as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and no more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

((B) Any lands acquired under section 102(C)(1)(e) or (f) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

(C)(1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(a) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(b) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

(2) The requirements of section 103(C)(1) shall not take effect until the Tribes agree to the limitations on annual use of water rights set forth in subsection (1) of this section.

(D) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights to the Reservation under subsection (A) of this section, and to enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(E) Subject to the limitation on the quantum of use set forth in subsection (C) of this section, and applicable state law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada. Nothing in this subsection is intended to affect the jurisdiction of the Tribes or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(F)(1) The Tribes are authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribes, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

(a) Consolidating Reservation landholdings or water rights, including those held in trust;

(b) Eliminating fractionated heirship interests in Reservation lands or water rights, including those held in trust;

(c) Providing land or water rights for any tribal program;

(d) Improving the economy of the Tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and

(e) General rehabilitation and enhancement of the total resource potential of the Reservation; Provided that any water rights shall be transferred in compliance with applicable state law.

(2) Title to any lands or water rights or interests therein, acquired by the Tribes within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribes.

SEC. 104. RELEASE OF CLAIMS.

(a)(1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met:

(a) the Tribes have released any and all claims they may have against the United States resulting from any failure of the United States to comply with section 7 of Public Law 95-337, 92 Stat. 457;

(b) the Tribes have dismissed with prejudice their claims in Northern Paiute Nation v. United States, Docket No., 87-A, United States Claims Court;

(c) The Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in section 103(C);

(d) the Tribes have dismissed, without prejudice, their claims in Pyramid Lake Paiute Tribe of Indians v. Lujan, No. R-85-197 (D. Nev.) and their objections to the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988, provided that such dismissal shall not prejudice in any respect the Tribes' right to object in any administrative or judicial proceeding to such Operation Criteria and Procedures, or any revisions, thereto, or to assert that any Operating Criteria and Procedures should be changed due to new information, changes in environmental circumstance, changes in project descriptions or other relevant considerations, in accordance with the requirements of applicable court decrees and applicable statutory requirements; and

(e) the Tribes agree to be bound by a plan developed and implemented by the Secretary in accordance with section 106 of this Title.

(2) If the appropriations authorized in section 102(B) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this Act have not been satisfied, and the Tribes may rescind their release of claims under this section and its agreement under subsection (c) of this section.

(3) Upon the appropriation of monies authorized in section 102(B) of this Act, and the allocation of such monies to the Fund, Section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed.

SEC. 105. LIABILITY OF THE UNITED STATES.

(A) Except with regard to the responsibilities assumed by the United States under section 102(E), and those set forth in section

1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, 25 U.S.C. 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribes.

(B) Except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1), and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of this Act.

SEC. 106. PLAN FOR THE CLOSURE OF TJ DRAIN.

(A) The Secretary, in consultation with the Tribes and in accordance with applicable law, shall develop and implement a plan for the closure, including if appropriate, modification of components, of the TJ drain system, including the main TJ drain, the TJ-1, drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

(B) The plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation season that are served by that system, unless the Tribes and the Secretary agree otherwise.

(C) Implementation of the plan shall not interfere with ongoing agricultural operations.

(D) The United States shall bear all costs for developing and implementing the plan.

(E) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 107. DEFINITIONS.

For purposes of this Title, and for no other purposes—

(A) The term "Fallon Paiute Shoshone Tribal Settlement Fund" or "Fund" means the Fund established under section 102(A) of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this Title.

(B) The term "income" means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income.

(C) The term "principal" means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B) of this Act.

(D) The term "Reservation" means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457.

(E) The term "Secretary" means the Secretar of the Department of the Interior.

(F) The term "tribal members" means the enrolled members of the Fallon Paiute Shoshone Tribes.

(G) The term "Tribe" means the Fallon Paiute-Shoshone Tribe.

TITLE II—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT

SECTION 201. SHORT TITLE.

This title may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

SEC. 202. PURPOSES.

The purposes of this title shall be to:

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 203. DEFINITIONS.

For purposes of this title:

(a) the term "Alpine court" means the court having continuing jurisdiction over the Alpine decree;

(b) the term "Alpine decree" means the final decree of the United States District Court for the District of Nevada in United States of America v. Alpine Land and Reservoir Company, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

(c) the term "Carson River basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" menas the Fallon Paiute-Shoshone Tribe;

(c) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, incluidng the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 205 of this title;

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al.—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including Exhibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report of the Committee on Energy and Natural Resources as Appendix 1 to the Committee's report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means two fish species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in United States of America v. Truckee River General Electric Co., No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 204. INTERSTATE ALLOCATION.

(a) CARSON RIVER.—

(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Apline decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increas-

ing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cummulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph; Provided, that, the augmentation authorized by such paragraph shall be used only on lands having appurtenant Alpine decree rights. Use of effluent for the irrigation of lands with appurtenant Alpine decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State laws.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

(b) LAKE TAHOE.—

(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) The provisions of paragraph 204(b)(1) notwithstanding, critria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1) of this title.

(B) Unmetered diversion of extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(i) an evaluation of changes in pricing, rate structure, and regulations; and

(j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe in use in Nevada as set firth in Nevada Permit to Ap-

propriate Water No. 23017, except that such diversion shall count against the allocation to the Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraphs (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use by conveyance of the right, to the extent to which the right is vested or has been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.—

(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000 acre-feet of water per year from all natural sources, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provideds in Claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge to Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 204(c)(1)(B) and (D) and shall not be deemed use of Truckee River basin groundwater within the State of Nevada within the meaning of subparagraph 204(c)(1)(D); and

(b) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1,000 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under raparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provisions of subparagraph 204(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1).

(J) Unmetered diversactions of water by residences shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgement.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraphs 204(c)(1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

(d) COMPLIANCE.—

(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be

assured by each State. Within the third quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) FORFEITURE OR ABANDONMENT.—The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—

(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 205. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

(a) OPERATING AGREEMENT.—

(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Opening Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the State of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operation Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation on the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provisions of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for the District of Nevada. A request for review must be filed not later than 90 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. 706(2)(A)-(D); Provided that the limits on judicial review in this paragraph shall not apply to any claim based on the

provisions of the Endangered Species Act, as amended.

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effect of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—

(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of nonproject water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 205(a)(6) shall be created annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund credited pursuant to subsection 206(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an interim agreement with the Sierra Pacific Power Company and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Resevoir, except that the amount of such storage shall not exceed 5,000 acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the Operating Agreement upon the entry into effect of those agreements.

(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—The Secretary is released from any obligation to secure payment for the costs of constructing Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made nonreimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 206. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—

(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 209(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interest pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lohontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consulations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands, Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 206(c). This study may be conducted in coordination with the studies authorized by paragraph 207(c)(5) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE—

(1) Notwithstanding any other provision of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such addi-

tional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 206(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for this disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA—

(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station and Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in section 206 and 207 of the title; Provided, that:

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) STATE COST-SHARING.—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than $9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary's authority under subsection 206(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

(e) TRANSFER OF CARSON LAKE AND PASTURE.—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the "Carson Lake and Pasture," as depicted on the map entitled "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(f) LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.—

(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsections 205(a) and (b), 206(d), and subparagraph 208(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 207(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 208(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) INDIAN LAKES AREA.—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 207. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) RECOVERY PLANS.—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.—

(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitat for the cui-ui;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in that paragraph.

(c) ACQUISITION OF WATER RIGHTS.—

(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 206(a)(4) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—

(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS.—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 206(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 204 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

SEC. 208. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS

(a) FUNDS ESTABLISHED.—

(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund $25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with and the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at $25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 206(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund $40,000,000 in five equal annual installments in the 1993, 1994, 1995, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 207 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the

principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Pub. L. 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 210(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 208(a)(2) is appropriated after fiscal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Paiute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Paiute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 208(a)(2) been appropriated in full for fiscal year 1992.

(6) If and to the extent that any portion of the sums authorized to be appropriated in paragraph 208(a)(3) are appropriated after fiscal years 1993, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 208(a)(3), there shall be deposited in the Pyramid Lake Paiute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Paiute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 208(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997.

SEC. 209. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPANSION OF AUTHORIZED PURPOSES.—

(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) TRUCKEE RIVER DIVERSIONS.—The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedure; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.—

(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) WATER BANK.—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) RECREATION STUDY.—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) EFFLUENT REUSE STUDY.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

(g) REPAYMENT CANCELLATION.—Notwithstanding any other provision of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such unpaid repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 209(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Derby Dam.

(h) SETTLEMENT OF CLAIMS.—

(1) The provisions of subsections 209 (d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 209(g) of this section shall not become effective unless and until the State of Nevada provides not less than $4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) FISH AND WILDLIFE.—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

(j) OPERATING CRITERIA AND PROCEDURES.—

(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D. DC. 1973).

(1) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1998, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands

Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any order in such a proceeding that will result in the expenditure of any funds out of the United States Treasury.

SEC. 210. MISCELLANEOUS PROVISIONS

(a) CLAIMS SETTLEMENT.—

(1) The effectiveness of section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 208(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, of the following outstanding litigation and proceedings:

(A) Pyramid Lake Paiute Tribe v. California, Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California;

(B) United States v. Truckee-Carson Irrigation District, Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) Pyramid Lake Paiute Tribe v. Lujan, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) Pyramid Lake Paiute Tribe v. Department of the Navy, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 204, subsections 206(c), 207 (c) and (d), subparagraph 208(a)(3)(D), and paragraph 210(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 205 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 210(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 207(d) shall not take effect until the funds authorized in paragraph 208(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 204 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 204 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 205 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

(b) GENERAL PROVISIONS.—

(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administration Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truchee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washo County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotition and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Set-

tlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement;

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsiblities of the Secretary under section 7 of the Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approval by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Alpine court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 204, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935, and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended: Provided, That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works: And provided further, That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the shortage charge referred to in paragraph 205(a)(6).

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation.

(c) APPROPRIATIONS AUTHORIZED.—

There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

AMENDMENT NO. 3176

(Purpose: To provide for the indemnification of the United States from claims asserted by landowners who hold water rights on the Fallon Paiute Shoshone Indian Reservation on the date of enactment of the Act)

Mr. FOWLER. Mr. President, I send an amendment to the desk on behalf of Senator REID.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. FOWLER], for Mr. REID, proposes an amendment numbered 3176.

Mr. FOWLER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 17, line 19, insert the following new subsection (f):

"(f)(1) the Tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this Title effect an unlawful taking of their rights. Provided that:

"(i) the United States shall defend and resist any such claims at its own expense;

"(ii) the Tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

"(iii) the United States shall not compromise or settle any such claims without the consent of the Tribes.

"(2) The provisions of this section shall not be construed as:

"(i) implying that section 103(C) unlawfully takes any water rights;

"(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

"(iii) waiving any immunities of the United States or the Tribes; or

"(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights".

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. INOUYE. The Senator will yield.

Mr. REID. Mr. President, I would like to engage Chairman INOUYE in a colloquy.

Section 705(b)(3) of the bill states:

The Secretary is authorized to enter into an interim agreement with Sierra Pacific Power Co. and the Pyramid Lake Tribe to store water owned by Sierra Pacific Power Co. in Stampede Reservoir except that the amount of such storage shall not exceed 5,000 acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating agreement upon the entry into effect of those agreements.

Is my understanding correct that the term "interim agreement" is intended to mean the same thing as "a long-term agreement" which will be superseded by the preliminary settlement agreement and the operating agreement if those agreements should go into effect?

Sierra Pacific must rely on a water supply created by such an agreement so long as new customers are connected to its system. We therefore believe that the term interim was referring to the supersedure that would occur if the preliminary settlement agreement and operating agreement because effective and not the term of the agreement.

Mr. INOUYE. The Senator's understanding is correct.

The PRESIDING OFFICER. Is there further debate on the amendment?

If there be no further debate, the question is on agreeing to the amendment of the Senator from Nevada.

The amendment (No. 3176) was agreed to.

Mr. FOWLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 3084) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S 3084

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FALLON PAIUTE SHOSHONE TRIBAL SETTLEMENT ACT

SECTION 101. SHORT TITLE.

This Act may be cited as the "Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990".

SEC. 102. SETTLEMENT FUND.

(A) There is hereby established within the Treasury of the United States, the "Fallon Paiute Shoshone Tribal Settlement Fund", hereinafter referred to in the Act as the "Fund".

(B) There is authorized to be appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund $3,000,000 in fiscal year 1992, and $8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996 and 1997 for a total sum of $43,000,000.

(C)(1) The income of the Fund may be obligated and expended only for the following purposes:

(a) Tribal economic development, including development of long-term, profit-making opportunities for the Fallon Paiute Shoshone Tribes (hereinafter referred to in the Act as "Tribes") and its tribal members, and the development of employment opportunities for tribal members;

(b) Tribal governmental services and facilities;

(c) Per capita distributions to tribal members;

(d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation (hereinafter reffered to in the Act as "Reservation") Paiute Shoshone Indian Reservation, (hereinafter referred to in the Act as "Reservation") not including lands added to the Reservation pursuant to the provisions of Public Law 95-337, 92 Stat. 455;

(e) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers, and improvement of such lands;

(f) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers, including those held in trust by the United States.

(2) Except as provided in subsection (C)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subsections (C)(1)(d), (C)(1)(e) and (C)(1)(f) of this section, the Tribes may obligate and expend no more than 20 percent of the principal of the Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subsection, or from income earned on the remaining principal.

(4) In obligating and expending funds for the purpose set forth in subsection (C)(1)(c), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.

(D) The Tribes shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (F) of this section.

(E) Upon the request of the Tribes, the Secretary shall invest sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(F)(1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project from the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use their best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the Fund to serve any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provisions of section 7 of Public Law 93-134, 87 Stat. 468, as amended by section 4 of Public Law 97-458, 96 Stat. 2513, U.S.C. 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section.

SEC. 103. ACQUISITION AND USE OF LANDS AND WATER RIGHTS.

(A) Title to all lands, water rights and related property interests acquired under section 102(C)(1)(e) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribes as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and no more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

(B) Any lands acquired under section 102(C)(1) (e) or (f) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

(C)(1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(a) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(b) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

(2) The requirements of section 103(C)(1) shall not take effect until the Tribes agree to the limitations on annual use of water rights set forth in subsection (1) of this section.

(D) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Reservation under subsection (A) of this section, and to enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(E) Subject to the limitation on the quantum of use set forth in subsection (C) of this section, and applicable state law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada. Nothing in this subsection is intended to affect the jurisdiction of the Tribes or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(F)(1) The Tribes are authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribes, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

(a) Consolidating Reservation landholdings or water rights, including those held in trust;

(b) Eliminating fractionated heirship interests in Reservation lands or water rights, including those held in trust;

(c) Providing land or water rights for any tribal program;

(d) Improving the economy of the Tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and

(e) General rehabilitation and enhancement of the total resource potential of the Reservation; Provided that any water rights shall be transferred in compliance with applicable state law.

(2) Title to any lands or water rights, or interests therein, acquired by the Tribes within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribes.

SEC. 104. RELEASE OF CLAIMS.

(A)(1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met:

(a) the Tribes have released any and all claims they may have against the United

States resulting from any failure of the United States to comply with section 7 of Public Law 95-337, 92 Stat. 457;

(b) the Tribes have dismissed with prejudice their claims in Northern Paiute Nation v. United States, Docket No. 87-A, United States Claims Court;

(c) the Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in section 103(C);

(d) the Tribes have dismissed, without prejudice, their claims in Pyramid Lake Paiute Tribe of Indians v. Lujan, No. R-85-197 (D. Nev.) and their objections to the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988, provided that such dismissal shall not prejudice in any respect the Tribes' right to object in any administrative or judicial proceeding to such Operating Criteria and Procedures, or any revisions thereto, or to assert that any Operating Criteria and Procedures should be changed due to new information, changes in environmental circumstance, changes in project descriptions or other relevant considerations, in accordance with the requirements of all applicable court decrees and applicable statutory requirements; and

(e) the Tribes agree to be bound by a plan developed and implemented by the Secretary in accordance with section 106 of this Title.

"(f)(1) the Tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this Title effect an unlawful taking of their rights. Provided that:

(i) the United States shall defend and resist any such claims at its own expense;

(ii) the Tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

(iii) the United States shall not compromise or settle any such claims without the consent of the Tribes.

(2) The provisions of this section shall not be construed as:

(i) implying that section 103(C) unlawfully takes any water rights;

(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

(iii) waiving any immunities of the United States or the Tribes; or

(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights."

(2) If the appropriations authorized in section 102(B) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this Act have not been satisfied, and the Tribes may rescind their release of claims under this section and its agreement under subsection (c) of this section.

(3) Upon the appropriation of monies authorized in section 102(B) of this Act, and the allocation of such monies to the Fund, Section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed.

SEC. 105. LIABILITY OF THE UNITED STATES.

(A) Except with regard to the responsibilities assumed by the United States under section 102(e), and those set forth in section 1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, 25 U.S.C. 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribes.

(B) Except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1), and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of this Act.

SEC. 106. PLAN FOR THE CLOSURE OF TJ DRAIN.

(A) The Secretary, in consultation with the Tribes and in accordance with applicable law, shall develop and implement a plan for the closure, including if appropriate, modification of components, of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

(B) The plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation seaon that are served by that system, unless the Tribes and the Secretary agree otherwise.

(C) Implementation of the plan shall not interfere with ongoing agricultural operations.

(D) The United States shall bear all costs for developing and implementing the plan.

(E) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 107. DEFINITIONS.

For purposes of this Title, and for no other purposes—

(A) The term "Fallon Paiute Shoshone Tribal Settlement Fund" or "Fund" means the Fund established under section 102(A) of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this Title.

(B) The term "income" means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income.

(C) The term "principal" means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B) of this Act.

(D) The term "Reservation" means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457.

(E) The term "Secretary" means the Secretary of the Department of the Interior.

(F) The term "tribal members" means the enrolled members of the Fallon Paiute-Shoshone Tribes.

(G) The term "Tribe" means the Fallon Paiute-Shoshone Tribe.

TITLE II—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

SEC. 202. PURPOSES.

The purposes of this title shall be to:

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 203. DEFINITIONS.

For the purposes of this title:

(a) the term "Alpine court" means the court having continuing jurisdiction over the Alpine decree;

(b) the term "Alpine decree" means the final decree of the United States District Court for the District of Nevada in United States of America v. Alpine Land and Reservoir Company, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

(c) the term "Carson River basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribe;

(e) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 205 of this title;

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in *United States of America* v. *Orr Water Ditch Company, et al.*—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including Exhibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report of the Committee on Energy and Natural Resources as Appen-

dix 1 to the Committee's report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means two fish species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in *United States of America* v. *Truckee River General Electric Co.*, No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 204. INTERSTATE ALLOCATION.

(a) CARSON RIVER.—

(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per-year by depletion for use in the State of California and 2,131 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph: *Provided*, That, the augmentation authorized by such paragraph shall be used only on lands having appurtenant Alpine decree rights. Use of effluent for the irrigation of lands with appurtenant Alpine decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State laws.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

(b) LAKE TAHOE.—

(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) The provisions of paragraph 204(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at this point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and

found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(i) an evaluation of changes in pricing, rate structure, and regulations; and

(j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purposes of this subsection, water inflow and infiltration of sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this pargraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversions of a maximum of 3,000-acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561-acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count againt the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropration of Water No. 4217.

The transbasin diversions identified in subparagraph (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or had been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be changed against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.—

(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000-acre-feet of water per year from all natural sources including both surface and ground water, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000-acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface steamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin ground water with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exeeed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of ground water pursuant to this subsection shall be subject to all term and conditions of California law;

(E) determination of safe yield of any ground water basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of it treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing or return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 204(c)(1)(B) and (D) and shall not be deemed use of Truckee River basin ground water within the State of Nevada within the meaning of subparagraph 204(c)(1)(D); and

(b) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of ground water discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000-acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1,000-acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged ground water. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000-acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of ground water to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewaters within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal

and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225-acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provisions of subparagraph 204(c)(1)(F) notwithstanding criteria for charging incidential runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1).

(J) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one-acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraphs 204(c) (1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

(d) COMPLIANCE.—

(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. Within the third quarter following the end of each calendar year, each State shall publish a report of water use poroviding information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) FORFEITURE OR ABANDONMENT.—The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—

(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 205. TRUCKEE RIVER WATER SUPPLY MANAGEMENT

(a) OPERATING AGREEMENT.

(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the State of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee

River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be excuted by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provision of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and impelent a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judical review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court of the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 90 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. 706(2)(A)-(D); Provided that the limits on judicial review in this paragraph shall not apply to any claim based on the provisions of the Endangered Species Act, as amended.

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Power Company of appropriate amount for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500-acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—

(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of nonproject water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 205(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lehontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 206(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an interim agreement with the Sierra Pacific Power Company and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Reservoir, except that the amount of such storage shall not exceed 5,000-acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the operating Agreement upon the entry into effect of those agreements.

(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—The Secretary is released from any obligation to secure payment for the costs of constructing Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 206. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—

(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 209(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may

target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 206(c). This study may be conducted in coordination with the studies authorized by paragraph 207(c)(5) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.—

(1) Notwithstanding any other provision of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 206(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.—

(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promply select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 206 and 207 of this title: *Provided*, That:

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) STATE COST-SHARING.—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than $9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahonton Valley wetlands. The Secretary's authority under subsection 206(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referred in this subsection.

(e) TRANSFER OF CARSON LAKE AND PASTURE.—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the "Carson Lake and Pasture," as depicted on the map entitled "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consulation with effected local interests, including the operator of the Newlands project, ensuring that the Carson Lake and Pasture

shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(f) LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.—

(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsection 205 (a) and (b), 206(d), and subparagraph 208(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 207(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 208(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) INDIAN LAKES AREAS.—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in th area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 207. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) RECOVERY PLANS.—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 204 of this tile, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Opportunity Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.—

(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitat for the cui-ui;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in this paragraph.

(c) ACQUISITION OF WATER RIGHTS.—

(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 206(a)(4) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—

(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washore Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS.—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 206(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 204 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settle-

ment Agreement as modified by the Ratification Agreement.

SEC. 208. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.

(a) FUNDS ESTABLISHED.—

(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund" and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund $25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with and the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at $25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 206(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund $40,000,000 in five equal annual installments in the 1993, 1994, 1995, 1996, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 207 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Pub. L. 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such fund that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-being deposits and securities in accordance with the Act on June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 210(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 208(a)(2) is appropriated after fisal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Paiute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Paiute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 208(a)(2) been appropriated in full for fiscal year 1992.

(6) If and to the extent that any portion of the sums authorized to be appropriated in paragraph 208(a)(3) are appropriated after fiscal year 1983, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 208(a)(3), there shall be deposited in the Pyramid Lake Paiute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Paiute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 208(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997.

SEC. 209. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPANSION OF AUTHORIZED PURPOSES.—

(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) TRUCKEE RIVER DIVERSIONS.—The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.—

(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) WATER BANK.—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) RECREATION STUDY.—The Secretary, in consultation with the State of Nevada, is au-

thorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) EFFULENT REUSE STUDY.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other benefical purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

(g) REPAYMENT CANCELLATION.—Notwithstanding any other provision of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such unpaid repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 209(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Derby Dam.

(h) SETTLEMENT OF CLAIMS.—

(1) The provisions of subsection 209(d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 209(g) of this section shall not become effective unless and until the State of Nevada provides not less than $4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) FISH AND WILDLIFE.—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

(J) OPERATING CRITERIA AND PROCEDURES.—

(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F. Supp. 252 (D. D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any order in such a proceeding that will result in the expenditure of any funds out of the United States Treasury.

SEC. 210. MISCELLANEOUS PROVISIONS.

(a) CLAIMS SETTLEMENT.—

(1) The effectiveness of section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 208(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, of the following outstanding litigation and proceedings:

(A) *Pyramid Lake Paiute Tribe* v. *California*, Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California;

(B) *United States* v. *Truckee-Carson Irrigation District*, Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) *Pyramid Lake Paiute Tribe* v. *Lujan*, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) *Pyramid Lake Paiute Tribe* v. *Department of the Navy*, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 204, subsection 206(c), 207(c) and (d), subparagraph 208(a)(3)(D), and paragraph 210(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 205 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 210(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 204 of this title, the Preliminary Settlement Agreement as modifed by the Ratification Agreement, the Operating Agreement, and subsection 207(d) shall not take effect until the funds authorized in paragaph 208(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 204 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United State its offices and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 204 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 205 of this title. No person or entity who does not become a party to the preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider such claims by such persons or entities.

(b) GENERAL PROVISIONS.—

(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reserva-

tion shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administrastion Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement agreement as modified by the Ratification Agreement;

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 of the Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the *Orr Ditch* court or the *Alpine* court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the *Orr Ditch* decree or the *Alpine* decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the *Orr Ditch* decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 204, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935 and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended: *Provided,* That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works; *And provided further,* That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 205(a)(6).

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights, or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation.

(c) APPROPRIATIONS AUTHORIZED.—

There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

SPARK M. MATSUNAGA HYDROGEN RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT

Mr. FOWLER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 709, H.R. 4521, the Hydrogen Research and Development Act.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4521) to establish a hydrogen research and development program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SEC. 101. SHORT TITLE.

This Act may be referred to as the "Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990".

SEC. 102. FINDING, PURPOSES, AND DEFINITION.

(a) FINDING.—Congress finds that it is in the national interest to accelerate efforts to develop a domestic capability to economically produce hydrogen in quantities that will make a significant contribution toward reducing the Nation's dependence on conventional fuels.

(b) PURPOSES.—The purposes of this Act are—

(1) to direct the Secretary to prepare a comprehensive 5-year comprehensive program management plan that will identify and resolve critical technical issues necessary for the realization of a domestic capability to produce, distribute, and use hydrogen economically within the shortest time practicable;

(2) to direct the Secretary to develop a technology assessment and information transfer program among the Federal agencies and aerospace, transportation, energy, and other entities; and

(3) to develop renewable energy resources as a primary source of energy for the production of hydrogen.

(c) DEFINITION.—As used in this Act, the term:

(1) "critical technology" (or "critical technical issue") means a technology (or issue) that, in the opinion of the Secretary, requires understanding and development in order to take the next needed step in the development of hydrogen as an economic fuel or storage medium; and

(2) "Secretary" means the Secretary of Energy.

SEC. 103. COMPREHENSIVE MANAGEMENT PLAN.

(a) PLAN.—The Secretary shall prepare a comprehensive 5-year program management plan for research and development activities, which shall be conducted over a period of no less than 5 years and shall be consistent with the provisions of sections 104 and 105. In the preparation of such plan, the Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, the Hydrogen Technical Advisory Panel established under section 108, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate. The plan shall be structured to identify and address areas of research critical to the realization of a domestic hydrogen production capability within the shortest time practicable.

(b) CONTENTS OF PLAN.—Within 180 days after the date of the enactment of this Act, the Secretary shall transmit the comprehensive program management plan to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Subsequent plans shall be incorporated in the management plan under this section. The plan shall include—

(1) a prioritization of research areas critical to the economic use of hydrogen as a fuel and energy storage medium;

(2) the program elements, management structure, and activities, including program responsibilities of individual agencies and individual institution elements;

(3) the program strategies including technical milestones to be achieved toward specific goals during each fiscal year for all major activities and projects;

(4) the estimated costs of individual program items, including current as well as proposed funding levels for each of the 5 years of the plan for each of the participating agencies;

(5) a description of the methodology of coordination and technology transfer; and

(6) the proposed participation by industry and academia in the planning and implementation of the program.

(c) DEMONSTRATION PLAN.—The Secretary shall, in consultation with the Secretary of Transportation, the Administrator of the National Aeronautics and Space Administration, and the Hydrogen Technical Advisory Panel established under section 108, also prepare a comprehensive large-scale hydrogen demonstration plan with respect to demonstrations carried out pursuant to section 105. Subsequent plans shall be incorporated in the management plan under this section. Such plan shall include—

(1) a description of the necessary research and development activities that must be completed before initiation of a large-scale hydrogen production and storage demonstration program;

(2) an assessment of the appropriateness of a large-scale demonstration immediately upon completion of the necessary research and development activities;

(3) an implementation schedule with associated budget and program management resources requirements; and

(4) a description of the role of the private sector in carrying out the demonstration program.

SEC. 104. RESEARCH AND DEVELOPMENT.

(a) PROGRAM.—The Secretary shall conduct a research and development program, consistent with the comprehensive 5-year program management plan under section 103, to ensure the development of a domestic hydrogen fuel production capability within the shortest time practicable consistent with market conditions.

(b) RESEARCH.—(1) Particular attention shall be given to developing an understanding and resolution of all critical technical issues preventing the introduction of hydrogen into the marketplace.

(2) The Secretary shall initiate research or accelerate existing research in critical technical issues that will contribute to the development of more economic hydrogen production and use, including, but not limited to, critical technical issues with respect to production, liquefaction, transmissions, distribution, storage, and use (including use of hydrogen in surface transportation).

(c) RENEWABLE ENERGY PRIORITY.—The Secretary shall give priority to those production techniques that use renewable energy resources as their primary source of energy for hydrogen production.

(d) NEW TECHNOLOGIES.—The Secretary shall, for the purpose of performing his responsibilities pursuant to this Act, solicit proposals for and evaluate any reasonable new or improved technology that could lead or contribute to the development of economic hydrogen production storage and utilization.

(e) INFORMATION.—The Secretary shall conduct evaluations, arrange for tests and demonstrations, and disseminate to developers information, data, and materials necessary to support efforts undertaken pursuant to this section, consistent with section 106.

SEC. 105. DEMONSTRATIONS.

(a) REQUIREMENT.—The Secretary shall conduct demonstrations of critical technologies, preferably in self-contained locations, so that technical and non-technical parameters can be evaluated to best determine commercial applicability of the technology.

(b) SMALL-SCALE DEMONSTRATIONS.—concurrently with activities conducted pursuant to section 104, the Secretary shall conduct small-scale demonstrations of hydrogen technology at self-contained sites.

SEC. 106. TECHNOLOGY TRANSFER PROGRAM.

(a) PROGRAM.—The Secretary shall conduct a program designed to acclerate wider application of hydrogen production, storage, utilization, and other technologies available in near term as a result of aerospace experience as well as other research progress by transferring critical technologies to the private sector. The Secretary shall direct the program with the advice and assistance of the Hydrogen Technical Advisory Panel established under section 108. The objective in seeking this advice is to increase participation of private industry in the demonstration of near commercial applications through cooperative research and development arrangements, joint ventures or other appropriate arrangements involving the private sector.

(b) INFORMATION.—The Secretary, in carrying out the program authorized by subsection (a), shall—

(1) undertake an inventory and assessment of hydrogen technologies and their commercial capability to economically produce, store, or utilize hydrogen in aerospace, transportation, electric utilities, petrochemical, chemical, merchant hydrogen, and other industrial sectors; and

(2) develop a National Aeronautics Space Administration, Department of Energy, and industry information exchange program to improve technology transfer for—

(A) application of aerospace experience by industry;

(B) application of research progress by industry and aerospace;

(C) application of commercial capability of industry by aerospace; and

(D) expression of industrial needs to research organizations.

The information exchange program may consist of workshops, publications, conferences, and a data base for the use by the public and private sectors.

SEC. 107. COORDINATION AND CONSULTATION.

(a) SECRETARY'S RESPONSIBILITY.—The Secretary shall have overall management responsibility for carrying out programs

under this Act. In carrying out such programs, the Secretary, consistent with such overall management responsibility—

(1) shall use the expertise of the National Aeronautics and Space Administration and the Department of Transportation; and

(2) may use the expertise of any other Federal agency in accordance with subsection (b) in carrying out any activities under this title, to the extent that the Secretary determines that any such agency has capabilities which would allow such agency to contribute to the purpose of this Act.

(b) ASSISTANCE.—The Secretary may, in accordance with subsection (a), obtain the assistance of any department, agency, or instrumentality of the Executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary deems necessary to carry out any duty under this Act.

(c) CONSULTATION.—The Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, and the Hydrogen Technical Advisory Panel established under section 108 in carrying out his authorities pursuant to this Act.

SEC. 108. TECHNICAL PANEL.

(a) ESTABLISHMENT.—There is hereby established the Hydrogen Technical Advisory Panel (the "technical panel"), to advise the Secretary on the programs under this Act.

(b) MEMBERSHIP.—The technical panel shall be appointed by the Secretary and shall be comprised of such representatives from domestic industry, universities, professional societies, Government laboratories, financial, environmental, and other organizations as the Secretary deems appropriate based on his assessment of the technical and other qualifications of such representatives. Appointments to the technical panel shall be made within 90 days after the enactment of this Act. The technical panel shall have a chairman, who shall be elected by the members from among their number.

(c) COOPERATION.—The heads of the departments, agencies, and instrumentalities of the Executive branch of the Federal Government shall cooperate with the technical panel in carrying out the requirements of this section and shall furnish to the technical panel such information as the technical panel deems necessary to carry out this section.

(d) REVIEW.—The technical panel shall review and make any necessary recommendations to the Secretary on the following items—

(1) the implementation and conduct of programs under this Act;

(2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems; and

(3) comments on and recommendations for improvements in the comprehensive 5-year program management plan required under section 103.

(g) SUPPORT.—The Secretary shall provide such staff, funds and other support as may be necessary to enable the technical panel to carry out the functions described in this section.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated to carry out the purposes of this Act (in addition to any amounts made available for such purposes pursuant to other Acts)—

(1) $3,000,000 for the fiscal year 1992;
(2) $7,000,000 for the fiscal year 1993;
(3) $10,000,000 for the fiscal year 1994;

AMENDMENT NO. 3177

Mr. FOWLER. Mr. President, I send a substitute amendment to the desk on behalf of Senators WIRTH, ROCKEFELLER, and MCCLURE.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. FOWLER] for Mr. WIRTH [for himself, Mr. ROCKEFELLER, and Mr. MCCLURE] proposes an amendment numbered 3177.

Mr. FOWLER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE.—This Act, together with the following table of contents, may be cited as the "Electric Vehicle Technology Development and Demonstration Act of 1990".

SEC. 2. TABLE OF CONENTS.—

Sec. 1. Short Title.
Sec. 2. Table of Contnes.
Sec. 3. Findings.
Sec. 4. Definitions.
Sec. 5. Identification of Nonattainment Areas.
Sec. 6. Applications From Manufacturers.
Sec. 7. Selection of Manufacturers.
Sec. 8. Discounts to Purchasers.
Sec. 9. Reports to Congress.
Sec. 10. Authorization.

SEC. 3. FINDINGS.—The Congress finds that:

(1) electric vehicles may be recharged primarily during times of nonpeak use of electricity, which will permit the most efficient utilization of electrical generating producers of electricity, and improve the quality of air;

(2) the development, demonstration, and commercialization of electric vehicles in the United States will enhance the energy security of the United States and will encourage electric vehicle production in the United States;

(3) the use of electric vehicles rather than vehicles powered by conventionally fueled internal combustion engines could significantly improve the quality of air by allowing areas of the country that have not attained a quality of air that meets minimum health standards to meet such standards;

(4) because initial production of electric vehicles will not have economies of scale associated with mass production, the price to a user or owner may be so high as to discourage vehicle purchase and use; and

(5) because the substantial potential environmental and domestic energy security benefits that will result from the commercialization of electric vehicles are so great for the United States, it is in the public interest for the United States Government to assist in the development, demonstration, and commercialization of domestically produced, cost competitive, electric vehicles.

SEC. 4. DEFINITIONS.—For purposes of this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "conventionally fueled vehicle" means a vehicle powered by an internal combustion engine that utilizes gasoline or diesel fuel as its fuel source;

(3) "electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and that may include a nonelectrical source of power designed to charge batteries and components;

(4) "eligible nonattainment area" means a nonattainment area that the Secretary designates as an eligible nonattainment area under section 5(b);

(5) "life cycle costs" means all costs associated with the purchase, operation, maintenance, and disposal of a vehicle' and

(6) "nonattainment area" means a nonattainment area identified by the Administrator pursuant to section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

SEC. 5. IDENTIFICATION OF NONATTAINMENT AREAS.—(a) The Secretary, in consultation with the Administrator, shall identify, not later than thirty days after the date of the enactment of this Act, the nonattainment area in the United States in which the use of conventionally fueled vehicles contributes significantly to that nonattainment and in which the use of electric vehicles could contribute to attainment of applicable National Ambient Air Quality Standards.

(b) The Secretary, after consultation with the Administrator and not later than thirty days after notification of the nonattainment areas identified under subsection (a), shall designate nonattainment areas eligible to participate in the program authorized by this Act. Geographical diversity shall be among the factors to be considered by the Secretary in making such designations.

SEC. 6. APPLICATIONS FROM MANUFACTURERS.—(a) Not later than thirty days after the Secretary designated the eligible nonattainment areas under section 5(b), the Secretary shall make an initial request for applications from manufacturers to develop, demonstrate, certify, manufacture, sell, warranty, and service electric vehicles in one or more eligible nonattainment areas. Additional requests for applications may be made if the Secretary determines that the responses to the initial request are inadequate.

(b) The request for applications shall require a manufacturer to identify the following:

(1) Sales Area—Any eligible nonattainment area in which the electric vehicles will be sold;

(2) Quantity—The quantity of vehicles that will be available for sale in each area;

(3) Distribution—The dealership network or other means to be used by a manufacturer to distribute, market, and sell vehicles;

(4) Type—The type of vehicle (which may include light to medium duty cargo or passenger vehicles);

(5) Characteristics—The specifications and performance characteristics of each vehicle;

(6) Service—The maintenance and other support services that will be available to a purchaser;

(7) Price—The selling price of a manufacturer for varying volumes of production of each type of vehicle;

(8) Life Cycle Costs—Information regarding the life cycle costs, including projected costs of operating and maintaining an electric vehicle in comparison with operating and maintaining a conventionally fueled vehicle;

(9) State and Local Involvement—The level of involvement (cost-sharing or other-

wise), if any, that state or local government entities will have in the manufacturer's proposal, and how that involvement will affect the level of Federal cost-sharing required; and

(10) Other—Other information that the Secretary deems necessary.

SEC. 7. SELECTION OF MANUFACTURERS.—(a) After consulting with the Secretary of Commerce, the Secretary of Transportation, and the Administrator, and not later than one hundred eighty days after the initial request for applications is made under section 6, the Secretary may select one or more manufacturers eligible to receive reimbursement payments for the development, demonstration, manufacture, and sale of electric vehicles.

(b) The Secretary shall select a manufacturer based upon the overall quality of the proposal, including the following:

(1) Capability—The ability of a manufacturer, directly or indirectly, to develop, demonstrate, manufacture, distribute, sell and service a significant number of electric vehicles;

(2) Geographic Diversity—The commitment of the manufacturer to distribute, sell and service electric vehicles in various regions of the country;

(3) Suitability—The suitability of the vehicles for use as a cargo or passenger vehicle;

(4) Safety and Environmental Benefit—The quality of the vehicle with respect to safety and environmental considerations;

(5) Viability—The long-term technical viability of the vehicle, and the ability of the manufacturer to incorporate subsequent advancements, modifications, and technology;

(6) Life Cycle Cost Reduction—The ability and commitment of a manufacturer to reduce the life cycle costs of electric vehicles over a period of five years or less after selection to a level at least equal to comparable conventionally fueled vehicles;

(7) Price—The selling price of a manufacturer for varying volumes of production of vehicles, the proposed discount (as defined in section 8), and life cycle costs of the electric vehicles;

(8) State and Local Support—The extent to which the involvement of state or local government in the program will permit the reduction of the Federal cost share per vehicle to be supported or will otherwise be used to leverage the Federal cost-sharing to be provided among a greater number of vehicles; and

(9) Other—Other criteria that the Secretary deems necessary.

SEC. 8. DISCOUNTS TO PURCHASERS.—(a) A manufacturer selected by the Secretary shall offer a purchaser a discount equal to either:

(1) Life Cycle Cost Differential—An amount which represents the excess of the estimated life cycle costs of the electric vehicle over the life cycle costs of a conventionally fueled vehicle of comparable type; or

(2) Purchase Price Cost Differential—An amount by which the selling price of the electric vehicle exceeds the suggested retail price of a conventionally fueled vehicle of comparable type.

In no case shall the discount be greater than 50 per centum of the selling price by varying volumes of production.

(b) The Secretary, not later than thirty days after a manufacturer has provided notice in the form and manner specified by the Secretary of the sale of an electric vehicle, shall pay a manufacturer a payment not to exceed the discount for each electric vehicle sold.

(c) To be eligible for payment under subsection (b), a manufacturer shall certify to the Secretary the following:

(1) Purchaser Discount Limitation—The discount to the purchaser does not lower the selling price of each electric vehicle below the suggested retail price of a conventionally fueled vehicle of comparable type;

(2) Discount Passthrough—The actual selling price of the vehicle is equal to the selling price specified in the manufacturer's proposal to the Secretary reduced by the full amount of the discount received, calculated as specified above, unless the Secretary agrees to a request by the manufacturer to adjust the selling price as specified in the contract to reflect higher costs actually incurred in production;

(3) Nonattainment Area Use—The vehicle will be used primarily in the eligible nonattainment area in which the vehicle will be purchased;

(4) Information From Purchaser—The purchaser has agreed to provide the manufacturer with information regarding operation, maintenance, and usability of the vehicle for five years after purchase; and

(5) Information From Manufacturer—The manufacturer will provide such information regarding the development, demonstration, manufacture, sale, and maintenance of electric vehicles that the Secretary requests for a period of five years, beginning in fiscal year 1992.

(d) The Secretary may enter into contracts with manufacturers of electric vehicles for purposes of carrying out this Act.

SEC. 9. REPORTS TO CONGRESS.—The Secretary shall report to Congress in fiscal years 1992 and 1994 on the programs and projects supported under this Act and the progress being made toward accomplishing the goals of this Act.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of this Act $10,000,000 for each of the five fiscal years following the date of enactment of this Act.

Amend the title so as to read: "Electric Vehicle Technology Development and Demonstration Act of 1990.".

Mr. JOHNSTON. Mr. President, I rise today in support of the amendment in the nature of a substitute to H.R. 4521. The substitute amendmnt, the Electric Vehicle Technology Development and Demonstration Act of 1990, originally included as sections 371 through 379 of S. 324, the "National Energy Policy Act of 1990", would create a 5-year research, development and demonstration program designed to overcome the technical and economic impediments to the widespread use of electric vehicles. The purposes of this program are twofold: to increase consumer awareness of the economic and environmental benefits of electric vehicles thereby increasing market demand, and to reduce the initial purchase price of electric vehicles in order that they may be cost competitive with conventionally fueled vehicles.

There are sound environmental and energy policy reasons for adopting this substitute amendment which authorizes Federal cost-sharing program for the demonstration of electric vehicles. During the long months of arduous negotiations over the Clean Air Act, clean fueled vehicles were seen as one part of a solution to the Nation's air quality problem. Electric vehicles present one of the best opportunities for long-term improvements in the air quality of our country's urban areas. Moreover, the cost-sharing feature of the proposed demonstration program will enable us to reap the benefits of electric vehicles on a much broader scale that previously realized.

In addition to the environmental benefits of electric vehicles, there is an important energy security component to this amendment. Since the Iraqi invasion of Kuwait, energy security issues have risen to the forefront of evey energy policy debate. A partial solution to this Nation's current overdependence on foreign petroleum imports may be found in the development of alternative forms of transportation such as electric vehicles.

The Senate has previously gone on record in support of this exact electric vehicles demonstration program language when it passed S. 324, the "National Energy Policy Act of 1990" by unanimous consent. The substitute amendment before us today serves the same worthy goals as did the language in S. 324. I believe we should once again lend our unanimous support to this program which promises to make an important contribution to both the quality of this Nation's environment as well as its national energy security.

Mr. ROCKEFELLER. Mr. President, I am very glad that the Senate is considering my bill to establish a new program to promote electric vehicles. My amendment setting up this program was approved by the Energy Committee earlier this year as part of other legislation.

I have long advocated a vigorous program to develop alternative fuel vehicles to help reduce our dependence on imported oil, clean up our air, and help our economy. This is why I authored the Alternative Motor Fuels Act of 1988, which provides incentives for production of motor vehicles that can run on such fuels as methanol, ethanol, and natural gas.

In the last few months, we have had a dramatic demonstration of the mortal threat of energy dependence to our national security. The need for action to reduce our energy dependence is more obvious and urgent than ever. The enormous gasoline appetite of our transportation sector is one of the main causes of our dependence. Electric vehicles and other alternative fuel vehicles must be a key element in any serious strategy to regain our energy independence.

This program builds on and complements other Federal research on electric vehicle technology, but the new departure here is to focus on getting

electric vehicles on the road. The legislation contemplates selection of manufacturers on a competitive basis to participate in a demonstration program. Incentives designed to drive down the cost of electric vehicles to be cost competitive with conventional vehicles. However, the program is one of cost sharing with the private sector. Limited government support will go hand in hand with commitment from manufacturers and consumers so that the program will be oriented toward the realities of the marketplace.

The program will provide the on-the-road experience with electric vehicles that is needed to lower costs and familiarize consumers with the technology. In this way, we can overcome the impediments to wider use of electric vehicles. With a jump start from this program, the goal is to reap the great potential of electric vehicles: reduced dependence on imported oil, increased domestic economic development, and super clean vehicles to help clean up our air.

Finally, I would like to commend Congressman GEORGE BROWN, who has authored similar legislation in the House and who has provided superb leadership on this as on so many other issues. I also commend Senator MCCLURE, Senator WIRTH, and the many others of my Senate colleagues who have helped lead the way on this important legislation.

Mr. MCCLURE. Mr. President, I rise in support of the amendment to H.R. 4521, to establish a nationwide electric vehicle demonstration program. The text of the amendment is identical to sections 371 through 379 of S. 324, the National Energy Policy Act of 1990, as passed by the Senate of August 4, 1990.

Mr. President, I have long advocated the use of electric vehicles to enhance our Nation's energy security as well as environmental quality. It is good economic, very good foreign policy because it reduces dependence upon imported oil. I wish we could legislate more positively and affirmatively in this field, but this amendment is a start.

In the mid-1970's I drove a test electric vehicle. Since then there has been substantial improvement in the technology and today's electric vehicles are capable of being used as fleet vehicles by American industry as well as millions of consumers. But the full potential of this technology is not being realized.

The constraint is insufficient demand to support its commercial production. These vehicles are not on the roads in great numbers today, largely because American consumers are not aware of their existence. In order to correct this situation the amendment authorizes a limited demonstration program designed to provide an incentive to begin production of electric vehicles. Such a demonstration program will increase understanding of the potential of electric vehicles among consumers and among the auto manufacturers.

Either we can continue with the present piecemeal, federally funded research and development efforts and hope the day will come when the time is right for electric vehicles. Or we can say that now is the time to begin the production of electric vehicles so as to improve our energy security and environmental quality. My experience with the Federal electric vehicle research and development program throughout the past decades convinces me that the technology is ready for commercial production, and we cannot wait.

The costs to our Nation of Operation Desert Shield—the human costs to families separated, loved ones threatened, the financial cost of $1 billion a month to the overburdened U.S. Treasury—are truly the costs of over reliance on imported oil. Cutting the use of petroleum in the transportation sector must be one of our paramount national priorities. Electric vehicles can help us to do that.

The overriding issue of this Congress has of course been reinvigorating the Clean Air Act. One of the toughest issues we have faced during the Clean Air Act debate is how to restore air quality in our Nation's cities. Emissions from roadway vehicles are a primary contributor to pollution across this Nation. Electric vehicles offer the greatest improvement in vehicle emissions of all the alternatively fueled vehicles under consideration. We would leave our job in the Clean Air Act unfinished if we do not take this opportunity to begin to move electric vehicle technology off the drawing boards and onto the Nation's roads.

This amendment offers us an important opportunity to do something positive about oil demand in this country and set the direction for national energy policy as it deals with transportation. Energy policy ought to be directed toward reducing our vulnerability, reducing the enormous economic outflow of money for energy, as we have too great a dependence upon foreign oil. This amendment does that; it is good energy policy. It is good environmental policy, and I urge its adoption.

The PRESIDING OFFICER. Is there any further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3177) was agreed to.

The PRESIDING OFFICER. Is there any further debate?

Without objection, the substitute, as amended, is agreed to.

Without objection, the bill is read a third time and passed.

So the bill (H.R. 4521), as amended, was passed.

The title was amended so as to read "An Act 'Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990'.".

Mr. FOWLER. Mr. President, I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXCELLENCE IN MATHEMATICS SCIENCE, AND ENGINEERING EDUCATION ACT—CONFERENCE REPORT

Mr. FOWLER. Mr. President, I submit a report of the committee of conference on H.R. 996 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 996) to establish the Congressional Scholarships for Science, Mathematics, and Engineering, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 24, 1990.)

Mr. METZENBAUM. I rise to ask a question of the distinguished Senator from Massachusetts.

The fiscal year 1991 Labor, HHS, Education appropriations conference report includes my amendment providing that a local educational agency shall not change impact aid payment categories as a result of families moving off the base due to a landfill concern or environmental hazard. The local education agency would therefore remain in the sub-super A category during fiscal year 1991 and receive payments on that basis.

The conference report we are considering to accompany H.R. 996 includes my amendment providing that the local education agency will remain in the sub-super A category for fiscal years 1991, 1992, and 1993.

My amendments are intended to assist the Fairborn City School District in Ohio by ensuring that it does not change categories due to families moving off base because of concerns about environmental problems on the Wright-Patterson Air Force Base.

It is my understanding that nothing in the conference report on H.R. 996—including the effective date and the sunset provision in section 722(c)—is

intended to affect the provisions of the fiscal year 1991 appropriations measure which provide that the LEA shall be deemed to belong to the sub-super A category for the entire fiscal year 1991, and that the LEA shall receive its payment for the entire fiscal year on that basis. Is that the Senator's understanding?

Mr. KENNEDY. Yes, that is correct. Nothing in this legislation is intended to affect the provisions of the appropriations measure, providing that the LEA shall be considered a sub-super A district for the entire fiscal year 1991, and receive its entire fiscal year 1991 payment on that basis.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. FOWLER. Mr. President, I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FASTENER QUALITY ACT

Mr. FOWLER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 711, H.R. 3000, the Fastener Quality Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3000) to require that certain fasteners sold in commerce conform to the specification to which they are represented to be manufactured, to provide for accreditation of laboratories engaged in fastener testing, to require inspection, testing and certification, in accordance with standardized methods of fasteners used in critical applications to increase fastener quality and reduce the danger of fastener failure, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fastener Quality Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the American economy uses billions of fasteners each year;

(2) millions of mismarked, substandard, counterfeit, and other nonconforming fasteners have been sold in commerce to end-users in the United States, and their use has dramatically increased the risk of equipment and infrastructure failures;

(3) both the military and civilian sectors of the economy have encountered unnecessary, unwarranted, and dangerous equipment and construction failures, as well as extraordinary expenses, as a result of the use of nonconforming fasteners;

(4) the sale in commerce of nonconforming fasteners and the use of nonconforming fasteners in numerous critical applications have reduced the combat readiness of the Nation's military forces, endangered the safety of other Federal projects and activities, and cost both the public and private sectors large sums in connection with the retesting and purging of fastener inventories;

(5) the purchase and use of nonconforming fasteners stem from material misrepresentations about such fasteners made by certain manufacturers, importers, and distributors engaged in commerce;

(6) current fastener standards of measurement evaluate bolts and other fasteners according to multiple criteria, including strength, hardness, and composition, and provide grade identification markings on fasteners to make the characteristics of individual fasteners clear to purchasers and users;

(7) current tests required by consensus standards, designed to ensure that fasteners are of standard measure, are adequate and appropriate for use as standards in a program of high-strength fastener testing;

(8) the lack of traceability by lot number of fasteners sold in commerce is a serious impediment to effective quality control efforts; and

(9) the health and safety of Americans is threatened by the widespread sale in commerce of mismarked, substandard, and counterfeit fasteners, a practice which also harms American manufacturers, importers, and distributors of safe and conforming fasteners, and workers in the American fastener industry.

(b) PURPOSE.—In order to protect public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the traceability of fasteners used in critical applications, and generally to provide commercial and governmental customers with greater assurance that fasteners meet stated specifications, it is the purpose of this Act to create procedures for the testing, certification, and distribution of certain fasteners used in commerce within the United States.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) "alter" means to alter—

(A) by through-hardening,

(B) by electroplating of fasteners having a minimum tensile strength of 150,000 pounds per square inch, or

(C) by machining;

(2) "consensus standards organization" means the American Society for Testing and Materials, American National Standards Institute, American Society of Mechanical Engineers, Society of Automotive Engineers, or any other standard-setting organization determined by the Secretary to have comparable knowledge, expertise, and concern for health and safety in the field for which such organization purports to set standards;

(3) "container" means any package of fasteners traded in commerce;

(4) "Director" means the Director of the National Institute of Standards and Technology;

(5) "fastener" means—

(A) a—

(i) screw, nut, bolt, or stud having internal or external threads, or

(ii) a load-indicating washer,

with a nominal diameter of 5 millimeters or greater, in the case of such items described in metric terms, or ¼ inch or greater, in the case of such items described in terms of the English system of measurement, which contains any quantity of metal and is held out as meeting a standard or specification which requires through-hardening,

(B) a screw, nut, bolt, or stud having internal or external threads which bears a grade identification marking required by a standard or specification,

(C) a washer to the extent that it is subject to a standard or specification applicable to a screw, nut, bolt, or stud described in subparagraph (B), or

(D) any item within a category added by the Secretary in accordance with section 4(b),

except that such term does not include any screw, nut, bolt, or stud that is produced and marked as ASTM A 307 Grade A;

(6) "grade identification marking" means any symbol appearing on a fastener purporting to indicate that the fastener's base material, strength properties, or performance capabilities conform to a specific standard of a consensus standards organization or other person;

(7) "importer" means a person located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States for resale or such person's use within the United States;

(8) "Institute" means the National Institute of Standard and Technology;

(9) "lot" means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer and submitted for inspection and testing at one time;

(10) "manufacturer" means a person who fabricates fasteners, or who alters any item so that it becomes a fastener;

(11) "original equipment manufacturer" means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products;

(12) "private label distributor" means a person who contracts with a manufacturer for the fabrication of fasteners bearing the distributor's distinguishing insignia;

(13) "Secretary" means the Secretary of Commerce;

(14) "standards and specifications" means the provisions of a document published by a consensus standards organization, a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener; and

(15) "through-harden" means heating above the transformation temperature followed by quenching and tempering.

SEC. 4. SPECIAL RULES FOR FASTENERS.

(a) WAIVER REQUIREMENT.—If the Secretary determines that any category of fastener is not used in critical applications, the Secretary shall waive the requirements of this Act with respect to such category.

(b) ADDITIONAL ITEMS.—If the Secretary determines that—

(1) a category of screw, nut, bolt, or stud which is not described in section 3(5)(A)(i) or (B),

(2) a category of item which is associated with a fastener described in section 3(5)(A), (B), or (C), or

(3) a category of item which serves a function comparable to that served by a fastener so described

is used in critical applications, the Secretary may include such category under section 3(5)(D) and therefore within the definition of fasteners under this Act.

(c) NOTICE AND OPPORTUNITY FOR COMMENTS.—The Secretary shall provide advance notice and the opportunity for public comments prior to making any determination under subsections (a) and (b) and shall act through the Director in making any such determination.

SEC. 5. TESTING AND CERTIFICATION OF FASTENERS.

(a) REQUIREMENT.—(1) No fastener shall be offered for sale or sold in commerce unless it is part of a lot which—

(A) conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and

(B) has been inspected, tested, and certified as provided in subsections (b) and (c) of this section.

(2)(A) Paragraph (1)(B) of this subsection shall not apply to fasteners which are part of a lot of 50 fasteners or less if, within 10 working days after the delivery of such fasteners, or as soon as practicable thereafter—

(i) inspection, testing, and certification as provided in subsections (b) and (c) is carried out; and

(ii) written notice detailing the results of such inspection, testing, and certification is sent (I) to all purchasers of such fasteners, except retail sellers and retail consumers, and (II) to any retail seller or retail consumer who, prior to delivery, requests such written notice.

(B) If a fastener is sold under this paragraph, each purchaser of such fastener, except for retail sellers and retail consumers unless such retail sellers and retail consumers request such notice in advance, shall be provided, contemporaneously with each sale and delivery, written notice stating that such fastener has not yet been inspected, tested, and certified as required by this Act.

(b) INSPECTION AND TESTING.—(1) The manufacturer of a lot of fasteners shall cause to be inspected and tested a representative sample, as provided in paragraph (2) of this subsection, of the fasteners in such lot to determine whether the lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured. Such inspection and testing shall be performed by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6. The standards and specifications to which the manufacturer represents such lot has been manufactured shall be disclosed by the manufacturer to the laboratory at the time the lot is submitted for inspection and testing under this paragraph. The manufacturer of a lot may perform the inspection and testing required by this paragraph in a laboratory which it owns or with which it is otherwise affiliated, if such laboratory is accredited in accordance with the procedures and conditions specified by the Secretary under section 6.

(2) The size, selection, and integrity of the sample to be inspected and tested under paragraph (1) shall be governed—

(A) by the standards and specifications to which the manufacturer represents the fasteners in the sample have been manufactured; or

(B) if such standards and specifications do not provide for the size, selection, or integrity of the sample, by sampling procedures prescribed by the Secretary, who shall to the extent practicable use consensus testing standards and related materials.

Nothing in this paragraph shall prohibit a purchaser from requiring the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards and specifications or in the applicable sampling procedures prescribed by the Secretary.

(c) LABORATORY REPORT OF TESTING.—If a laboratory performing the inspection and testing under subsection (b)(1) determines, as to the characteristics selected under the sampling procedures prescribed by the Secretary and based on the sample examined, that a lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured, the laboratory shall provide to the manufacturer a written inspection and testing report with respect to such lot. The report, which shall be in a form prescribed by the Secretary by regulation, shall—

(1) state the manufacturer's name, the part description, and the lot number and note the grade identification mark and insigna found on the fastener;

(2) reference the standards and specifications disclosed by the manufacturer with respect to such lot under subsection (b)(1) or, where applicable, certified by the manufacturer under section 7(c)(1);

(3) list the markings and characteristics selected under the Secretary's procedures for testing, such as the chemical, dimensional, physical, mechanical, and any other significant characteristics required by the standards and specifications described in paragraph (2) and specify the results of the inspection and testing under subsection (b)(1);

(4) state whether, based on the samples provided as representative of the lot, such lot has been found after such inspection and testing to conform to such standards and specifications; and

(5) bear the original signature of a laboratory employee or officer determined by the Secretary to be responsible for the accuracy of the report and of the inspection and testing to which .t relates.

SEC. 6. LABORATORY ACCREDITATION.

(a) ESTABLISHMENT OF ACCREDITATION PROGRAM.—(1) Within 180 days after the date of enactment of this Act, the Secretary, acting through the Director, shall issue regulations which shall include—

(A) procedures and conditions, including sampling procedures referred to in section 5, for the accreditation by the Institute of laboratories engaged in the inspection and testing of fasteners under section 5;

(B) procedures and conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), using to the extent practicable the requirements of national or international consensus documents intended to govern the operation of accreditation bodies, under which private entities may apply for approval by the Secretary to engage directly in the accreditation of laboratories in accordance with the requirements of this Act; and

(C) conditions (which shall be consistent with the procedures and conditions established under subparagraph (A)), under which the accreditation of foreign laboratories by their governments or organizations recognized by the Director shall be deemed to satisfy the laboratory accreditation requirements of this section.

(2) Upon establishing a laboratory accreditation program under paragraph (1), the Secretary shall publish a notice in the Federal Register stating that the Secretary is prepared to accept applications for accreditation of such laboratories.

(3) No accreditation provided under the terms of this subsection shall be effective for a period of greater than 3 years.

(b) LABORATORY ACCREDITATION PROCEDURES.—Existing Institute accreditation procedures stated in part 7 of title 15, Code of Federal Regulations, as in effect on the date of enactment of this Act, supplemented as the Secretary considers necessary, shall be used to accredit laboratories under the accreditation program established under subsection (a).

(c) ENSURING COMPLIANCE.—(1) The Secretary shall ensure that—

(A) private entities accrediting laboratories under procedures and conditions established under subsection (a)(1)(B) comply with such procedures and conditions, and

(B) laboratories accredited by such private entities, or by foreign governments pursuant to subsection (a)(1)(C), comply with the requirements for such accreditation.

(2) The Secretary may require any such private entity or laboratory to provide all records and materials that may be necessary to allow the Secretary to carry out this subsection.

(d) OPERATION OF LABORATORY ACCREDITATION PROGRAM.—(1) The Director may hire such contractors as are necessary to carry out the accreditation program established under subsection (a).

(2) Costs to the Institute and to the Secretary for the establishment and operation of the accreditation program under this section shall be fully reimbursable to the Institute or to the Secretary, as appropriate, through fees or other charges for accreditation services under such program.

(e) RECOMMENDATIONS TO CONSENSUS STANDARDS ORGANIZATIONS.—The Director shall periodically transmit to appropriate consensus standards organizations any information or recommendations that may be useful in the establishment or application by such organizations of standards and specifications for fasteners.

SEC. 7. SALE OF FASTENERS SUBSEQUENT TO MANUFACTURE.

(a) DOMESTICALLY PRODUCED FASTENERS.—It shall be unlawful for a manufacturer to sell any shipment of fasteners (except fasteners for which the Secretary has waived the requirements of this Act pursuant to section 4) which are manufactured in the United States unless the fasteners are accompanied, at the time of delivery, by a written certificate by the manufacturer certifying that—

(1) the fasteners have been manufactured according to the requirements of the applicable standards and specifications and have been inspected and tested by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6; and

(2) an original laboratory testing report described in section 5(c) is on file with the manufacturer, or under such custody as may be prescribed by the Secretary, and available for inspection.

(b) FASTENERS OF FOREIGN ORIGIN.—(1) Except as provided in paragraph (2) of this subsection, it shall be unlawful—

(A) for any person to sell to any importer, and

(B) for any importer to purchase,

any shipment of fasteners which are manufactured outside the United States unless delivery of such shipment to such importer is accompanied by a manufacturer's certifi-

cate as described in subsection (a), an original laboratory testing report described in section 5(c), with respect to each lot from which such fasteners were taken, and any other relevant lot identification information.

(2) The requirement under paragraph (1) of this subsection that the delivery of such a shipment to such importer be accompanied by an original laboratory testing report shall not apply in the case of fasteners imported into the United States—

(A) as products manufactured within a nation which is party to a congressionally-approved free trade agreement with the United States that is in effect, so long as the Secretary certifies that satisfactory arrangements have been reached by which purchasers within the United States can readily gain access to an original laboratory testing report for such fasteners; or

(B) as Canadian-origin products under the United States-Canada Automobile Pact for use as original equipment in the manufacture of motor vehicles.

(c) OPTION FOR IMPORTERS AND PRIVATE LABEL DISTRIBUTORS.—(1) Notwithstanding section 5(a) and subsections (a) and (b) of this section, delivery of a lot, or portion of a lot, of fasteners may be made to an importer or private label distributor without the required original copy of the laboratory testing report if—

(A) the manufacturer provides to the importer or private label distributor a manufacturer's certificate certifying that the fasteners have been manufactured according to the requirements of the applicable standards and specifications; and

(B) the importer or private label distributor assumes responsibility in writing for the inspection and testing of such lot or portion by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6.

(2) If the importer or private distributor assumes the responsibility in writing for the inspection and testing of such lot or portion, the provisions of section 5(a) and subsections (a) and (b) of this section shall apply to the importer or private label distributor in the same manner and extent as to a manufacturer; except that the importer or private label distributor shall provide to the testing laboratory the manufacturer's certificate described under paragraph (1) of this subsection.

(d) ALTERATIONS SUBSEQUENT TO MANUFACTURE.—(1) Any person who significantly alters a fastener so that such fastener no longer conforms to the description in the relevant certificate issued under section 5(c), and who thereafter offers for sale or sells such altered fastener, shall be treated as a manufacturer for purposes of this Act and shall cause such altered fastener to be inspected and tested under section 5 or this section as though it were newly manufactured, unless delivery of such fastener to the purchaser is accompanied by a written statement noting the original lot number, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

(2) Any person who knowingly sells an altered fastener and who did not alter such fastener shall provide to the purchaser a copy of the statement required by paragraph (1).

(e) COMMINGLING PROHIBITED.—It shall be unlawful for any manufacturer or any person who purchases any quantity of fasteners for resale at wholesale to commingle like fasteners from different lots in the same container, except that this requirement shall not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer.

(f) SUBSEQUENT PURCHASER.—(1) It shall be unlawful for any person to sell fasteners, of any quantity, to any person who purchases such fasteners—

(A) for sale at wholesale, or

(B) for assembling components of a product or structure for sale,

unless the container of fasteners sold is conspicously marked with the number of the lot from which such fasteners were taken, except that this requirement shall not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer.

(2) If a person who purchases fasteners for purposes other than those described in paragraph (1) (A) and (B) so requests either prior to the sale or at the time of sale, the seller shall conspicously mark the container of fasteners with the lot number from which such fasteners were taken.

(g) REGULATIONS.—The Secretary may issue such regulations as may be necessary to ensure compliance with the provisions of this section.

SEC. 8. MANUFACTURERS' INSIGNIAS.

(a) GENERAL RULE.—No fastener which is required by the standards and specifications to which it was manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor shall be offered for sale or sold in commerce unless the manufacturer or private label distributor of such fastener has complied with the requirements prescribed by the Secretary in connection with the program established under subsection (b) of this section.

(b) RECORDATION.—The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers and private label distributors described in subsection (a), to ensure the traceability of a fastener to its manufacturer or private label distributor.

SEC. 9. REMEDIES AND PENALTIES.

(a) CIVIL REMEDIES.—(1) The Attorney General may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any person who violates this Act or any regulation under this Act.

(2) An action under paragraph (1) may not be brought more than 10 years after the date on which the cause of action accrues.

(b) CIVIL PENALTIES.—(1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or any regulation under this Act shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (4).

(4) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States.

(c) CRIMINAL PENALTIES.—(1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

SEC. 10. RECORDKEEPING REQUIREMENTS.

(a) LABORATORIES.—Laboratories which perform inspections and testing under section 5(b) shall retain for 10 years all records concerning the inspection and testing, and certification, of fasteners under section 5.

(b) MANUFACTURERS, IMPORTERS, PRIVATE LABEL DISTRIBUTORS, AND PERSONS WHO MAKE SIGNIFICANT ALTERATIONS.—Manufacturers, importers, private label distributors, and persons who make significant alterations shall retain for 10 years all records concerning the inspection and testing, and certification, of fasteners under section 5, and shall provide copies of any applicable laboratory testing report or manufacturer's certificate upon request to any subsequent purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate relates.

SEC. 11. RELATIONSHIP TO STATE LAWS.

Nothing in this Act shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of this Act are in conflict with such State law.

SEC. 12. CONSTRUCTION.

Nothing in this Act shall be construed to limit or otherwise affect the authority of any consensus standards organization to establish, modify, or withdraw any standards and specifications under any other law or authority in effect on the date of enactment of this Act.

SEC. 13. REGULATIONS.

The Secretary shall within 180 days after the date of enactment of this Act issue such regulations as may be necessary to implement this Act.

SEC. 14. ADVISORY COMMITTEE.

Within 90 days after the date of enactment of this Act, the Secretary shall appoint an advisory committee consisting of representatives of fastener manufacturers, importers, distributors, end-users, independent laboratories, and standards organizations. The Secretary and Director shall consult with the advisory committee—

(1) prior to promulgating any regulations under this Act; and

(2) in such other matters related to fasteners as the Secretary may determine.

SEC. 15. APPLICABILITY.

The requirements of this Act shall be applicable only to fasteners fabricated 180 days or more after the Secretary issues final regulations required under sections 5, 6, and 8, except that the Secretary may extend such time period if the Secretary determines that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required. Upon any such extension, and every 6 months thereafter during such extension, the Secretary shall submit a report to the Congress explaining the reasons for such extension and the steps being taken to ensure the accreditation of a sufficient number of laboratories.

Mr. GORE. Mr. President, on behalf of the Commerce Committee and its chairman, I am pleased to bring to the floor H.R. 3000, the Fastener Quality Act. This bill represents more than 3 years of Congressional effort by both the House and Senate. This legislation provides a fair and effective way to deal with a serious public safety problem—the deliberate sale of substandard bolts and other fasteners that could threaten the safety of aircraft, the space shuttle, military equipment, motor vehicles, buildings, and highway bridges.

The legislative package before the Senate today contains H.R. 3000 as reported by the Commerce Committee, plus an amendment that I want to offer on behalf of myself, Senator LUGAR, and Senator WILSON. That amendment has three parts, one of which is authored by the Senator from Indiana, one authored by the Senator from California, and a third which contains some technical changes recommended by the Department of Commerce [DOC]. I believe the amendment has been cleared on both sides.

In the remainder of my statement, I would like briefly to do three things: summarize the need for this important legislation, list the bill's main provisions, and discuss the proposed amendment.

NEED FOR THE LEGISLATION

Mr. President, every year approximately 200 billion bolts, screws, and other fasteners are sold in the United States. Of these, a little more than 1 percent are high-strength fasteners which carry "grade marks"—special markings to indicate that they conform with particular fastener specifications set by voluntary standards organizations.

These grade-marked fasteners are designed for and used in, critical applications where the failure of a fastener could jeoparidze public safety. As I mentioned earlier, examples of critical application include aircraft, the space shuttle, motor vehicles of all kinds, military equipment, highway bridges, and buildings.

Despite the fact these grade-marked fasteners are used in applications involving public safety, a major investigation by Congressman DINGELL's House Energy and Commerce Committee found that in recent years far too many substandard and counterfeit fasteners have been sold and used in the United States. Outright fraud is often the cause. Some unethical companies will sell low-strength bolts which look like genuine high-strength fasteners. They sell the substandard fasteners because these products are cheaper to produce, and inflate their profit margin larger with sales to unsuspecing customers. Other companies have falsified laboratory testing reports and sold fasteners that they know do not meet the required specifications.

The substitution of bogus bolts has led to serious accidents and costly repairs for both Government agencies and the private sector. Congressman DINGELL's 18-month investigation concluded that "the failure of substandards and often counterfeit fasteners has killed people, reduced our defense readiness, and cost both the American taxpayer and the American industry untold millions in breakdowns, downtime, reconstruction, and other unnecessary inefficiencies."

The Dingell report, entitled "The Threat from Substandard Fasteners: Is America losing Its Grip?" documented the following problems, amcng others:

During the 1980's more than 30 million counterfeit fasteners fraudulently designated grade 8.0 were found in inventories of the Defense Industrial Supply Center [DISC] and will be disposed of at great cost to the taxpayers.

Widespread counterfeiting and failures of high-strength fasteners have been reported in building and construction sites, coal mines, helicopters, highway bridges and guard rails, nuclear and fossil fuel power plants, military vehicles and weapons, grain storage sites, and commercial trucks and buses.

Bad fasteners have been found in space shuttle equipment, and six of the shuttle's fastener vendors have been discovered to have inadequate quality control systems.

Peterbilt Trucks narrowly averted disaster by a quick recall when substandard foreign fasteners were found to cause failures in the steering mechanisms of some of its trucks.

The National Transportation Safety Board [NSTB] reports that 61 aviation accidents during a 3-year period in the 1980's involved fastener failures. Several deaths resulted. At least some of the problems relate to material failure.

On December 2, 1987, Calvin Davis, an ironworker employed to help build the Saturn automobile factory in Maury County, TN, suffered a fatal fall from a girder when an apparently substandard bolt snapped while he was tightening it.

In addition to the problems cited in the July 1988 House report, other problems also have been documented. They include:

According to the Los Angeles Times January 27, 1989, U.S. Postal Service Officials found that 20,000 of the nuts and bolts in a new headquarters building under construction in Los Angeles were counterfeit. The Postal Service ordered them removed, but on October 1, 1987, the moderate Whittier earthquake struck. Five of the buildings concrete walls collapsed. No one was injured, but had the quake occurred just a few hours later 400 construction workers would have been on the site.

On December 5, 1987, an engine fell off a U.S. Air 737 airliner during takeoff from Philadelphia. Bad bolts were the cause. On January 20, 1989, an engine fell off during takeoff from a Piedmont Airlines 737 airliner. Again, faulty fasteners were cited as the cause. Fortunately, no injuries were reported in either case.

The U.S. Attorney in Wyoming is now investigating the alleged use of bogus bolts of the silos and communications system for the MX strategic missile.

Mr. President, investigations and audits by Federal agencies also have shown that the problem of substandard fasteners is widespread. Some of these investigations and audits have led to criminal indictments and convictions.

In recent years, the U.S. Customs Service and other agencies have stepped up their investigations of fraud in the importation and sale of fasteners. For example, on June 28, 1989, Customs and the Defense Criminal Investigation Service [DCIS] executed search warrants in 4 States against 11 distributors and importers of fasteners alleged to be counterfeit and mismarked. The agents seized 87 tons of bolts. Customs executed other search warrants in April 1989, March 1990, and June 1990.

In addition, audits by the inspectors general at the National Aeronautics and Space Administration [NASA] and the Department of Defense [DOD] have uncovered problems with high strength fasteners bought by both agencies. NASA spent $11 million to remove suspect bolts from the agency's space shuttles.

These investigations and audits have led to a number of Federal indictments and convictions. Since January 1987, at least 23 companies or officials of those companies have been convicted of fraud and related charges. One of the most recent guilty pleas came from a manufacturer of aerospace bolts, MacHaffie, Inc. MacHaffie fraudulently sold bolts which had failed required tests. Those bolts, in turn, were used in the engines of some of DOD's most advanced aircraft, including the B-1 bomber, the Navy's F-14 and F-18 aircraft, and the Air

Force's F-16 fighter and A-7 II Corsair attack jet.

As of June 30, 1990, total criminal fines and civil penalties and restitution levied against guilty persons exceeded $20 million.

Given these documented problems and the serious safety problems posed by substandard fasteners, a clear need exists for new procedures that will assure customers that the high-strength fasteners they buy are genuine and safe rather than bogus and dangerous. There is no need to regulate which fasteners customers use in particular applications; both the Government and the private sector have developed detailed guidelines on which bolts to use in specific situations. The need today is to ensure that the bolts purchased are genuine and not counterfeit or substandard.

Current laws and regulations are not sufficient to achieve this goal. While audits by Government purchasers and private customers can detect some substandard fasteners, and while criminal proceedings can punish when fraud is discovered, additional procedures are required to help prevent bad fasteners from being offered for sale in the first place. The Nation needs a way to prevent the sale of bad product in the first place and to prevent the related accidents, injuries, deaths, and property damage.

Additional procedures also are needed to help investigators trace the origin of those fasteners which still slip through the system. Traceability is important both to discover who made and sold bad product and to notify other purchasers of these fasteners. It also deters unscrupulous manufacturers, importers, and distributors from faking test reports, since end-users can more easily check on the origin and testing of particular fasteners.

Mr. Bill Colvin, the NASA inspector general, discussed the importance of traceability when he testified at the Commerce Committee hearing I chaired:

> Another major concern included in the audit report was the nontraceability of fastener products in NASA and contractor inventories. Our audit showed that additional procedures and controls were needed to trace fastener products by production lot from the manufacturer to end use in NASA hardware. * * * Without lot traceability, product integrity cannot be established because original manufacturer test data cannot be obtained. * * * More important is the inability of NASA and contractors to trace fasteners by lot number and to end use products when problems are detected through alert or problem reporting systems.

Also, any new procedures to meet these twin goals of prevention and traceability must apply to both the manufacturing stage of the fastener industry and the distribution stage.

First, steps must be taken to ensure that newly-manufactured fasteners are in fact what they claim to be. The best way to ensure this quality is to require that each lot—production run—of high-strength bolts be tested by an accredited laboratory and that these test reports be available to customers. Moreover, these requirements should apply equally to domestically manufactured fasteners and those made overseas.

Second, steps also must be taken to ensure the quality of the product being sold by distributors. Most of the Nation's 5,000 distributors are honest and sell only quality product, but the record of the past several years shows that some distributors will deliberately substitute counterfeit fasteners for genuine product. Requiring testing at the manufacturing stage helps little if unethical distributors are able to substitute cheap bogus parts during the sales stage.

A requirement that lot identification numbers be placed on containers of fasteners during the distribution process would help deter substitutions, provide customers with greater assurance that containers indeed contain genuine product, and improve traceability in the event a problem develops with a fastener. Even if the end-user commingles fasteners from different lots, a system of strict lot control will provide that customer with much greater assurance than now available that fake or untested material has not been introduced into the distribution system, and will enable the end-user to check the authenticity of the product before it is put into general inventory.

A system for first, testing at the manufacturing stage and second, preserving lot identification at the distribution stage will go a long way toward deterring fraud and improving traceability, which will significantly improve the quality of the high-strength bolts and other fasteners used in this country. H.R. 3000 will create that system.

HISTORY OF THE BILL AND MAIN PROVISIONS

Mr. President, H.R. 3000 was introduced in the House of Representatives on July 25, 1989, by Congressman JOHN DINGELL and Congressman ROBERT ROE. The bill passed the House of Representatives on September 19, 1989.

I chaired the Senate Commerce Committee's hearing on November 20, 1989. We heard testimony from the Department of Commerce [DOC], from NASA, and from outside witnesses representing the major parts of the fastener industry.

On May 22, 1990, the Commerce Committee considered a revised version of H.R. 3000 in the form of an amendment in the nature of a substitute. The amendment was ordered reported without objection. The report on H.R. 3000 was filed on July 23.

Mr. President, the bill as reported has several major provisions.

Section 3 provides definitions, including the definition of which types of fasteners are covered by the bill's requirements. The bill applies to fasteners which bear grade identification markings and to certain other fasteners which are through-hardened or designated by the Secretary of Commerce, pursuant to authority under section 4, as being used in critical applications. Section 4 also authorizes the Secretary to exempt fasterners which otherwise would be included but which are not used in critical applications.

Section 5 requires that both domestically manufactured and imported grade-marked fasteners be tested by accredited laboratories before the fasteners can be sold.

Section 6 requires the Secretary of Commerce, acting through the National Institute of Standards and Technology [NIST] Director, to establish a program for accrediting U.S. and foreign laboratories. Within the United States, NIST is to establish both a program of its own to accredit laboratories and an alternative arrangement under which private entities may apply to NIST for approval to accredit laboratories directly. All costs to NIST are fully reimbursable.

Section 7 requires distributors who sell these high-strength fasteners to mark boxes of these fasteners in certain cases with the number of each lot—production run.

Section 8 provides for civil remedies, civil penalties, and criminal penalties.

Other sections include provisions regarding recordkeeping, manufacturers' insignias, and an industrial advisory committee.

THE PROPOSED AMENDMENT

The legislative package now pending before the Senate contains an amendment which I want to offer on behalf of myself, Senator LUGAR, and Senator WILSON. The amendment has three parts. As I mentioned earlier, I believe that the amendment has been cleared by all concerned parties.

COMMINGLING

Senator LUGAR has authored the first part of the amendment. It deals with the commingling of fasteners and addresses a concern raised by some distributors who repackage or plate bolts and other fasteners.

The bill, as reported, prohibits any commingling of fasteners from different production lots at the manufacturing or wholesale levels. The purpose is to ensure traceability. However, Senator LUGAR proposes to allow a limited form of commingling when manufacturers or wholesale distributors are operating repackaging or plating machines.

Specifically, the Lugar amendment would change section 7(e) of the bill as reported, the subsection dealing with commingling. The revised subsection

(e) would state that it shall be unlawful for any manufacturer or any person who purchases any quantity of fasteners for resale at wholesale to commingle like fasteners from more than two lots in the same container. The subsection would still exempt original equipment manufacturers who sell fasteners to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer.

I want to state what we intend the Lugar amendment to mean in practice.

We intend that in most cases a manufacturer or person who purchases fasteners for resale at wholesale will ensure that fasteners from only one lot will be included in a given container. This approach improves traceability and provides greater assurance to subsequent purchasers that untested and counterfeit fasteners have not been mixed with legitimate product.

During many repackaging or plating and packaging operations conducted by manufacturers and distributors, however, some fasteners from one lot may be left over, with not enough of them to fill a new container. Under the terms of the Lugar amendment, the manufacturer or wholesaler would not be forced to throw away those fasteners or to stop machinery in order to purge them. Instead, the amended version of subsection (e) allows the manufacturer or wholesaler to place like fasteners from a second lot into the few containers which hold leftover product from the first lot, providing that first, both lots are like items, second, both lots have been tested and certified as provided in section 5 of this bill and third, both lot numbers must be conspicuously marked on these few containers.

We intend that the Secretary of Commerce, in consultation with the industry advisory committee established in section 14 of the bill, set regulations on what is a reasonable number of containers in which to allow this limited commingling. We intend that it be kept to a low number but sufficient to allow repackaging and plating machinery to keep operating without being stopped and purged.

After those few containers are filled, the manufacturer or wholesaler should place only product from the second lot into subsequent containers. If there are leftover fasteners from the second lot, a few like and certified fasteners from a third lot may be used to fill those particular containers. The process may continue, so long as no container contains like fasteners from more than two lots so long as all the fasteners involved come from tested and certified lots and so long as both lot numbers are placed on the relevant containers.

As used in this amendment, the term "container" in the phrase "in the same container during repackaging and plating operations" means a container that is created specifically for the purpose of packaging these fasteners for resale to a subsequent purchaser. The term does not include general storage bins, and we intend that the prohibition on commingling applies in all cases other than first, repackaging and plating operations and second, sales by original equipment manufacturers to their authorized dealers for the purposes stated in the bill language. That is, the amended subsection does not allow a manufacturer or wholesaler to commingle fasteners from different lots in a single warehouse storage bin.

We recognize that in some cases a manufacturer, under the provisions of this amended subsection, will sell a container of fasteners which contains product from two lots. However, the wholesaler who buys such a container and runs those fasteners through a repackaging machine may not mix any of this product with a third lot. If product is left over from the manufacturer's container, that product can only be mixed in a smaller package with product from one of the two lots from which the material in the manufacturer's container came. At no time may either a manufacturer or a wholesaler commingle fasteners from more than two lots in the same container.

We recognize that some fasteners are sold in kits, such as a nut, bolt, and washer together, and are intended to be used as a unit. We do not wish to prohibit or hinder this practice. Unlike fasteners may be commingled in the same package or container.

The Lugar portion of the amendment would not amend subsection (f), which deals with subsequent purchasers. However, I want to make clear what implications the revised subsection (e) has for how subsection (f) should be interpreted.

Under subsection (f), as reported, it shall be unlawful for any person to sell any quantity of fasteners to any person who purchases such fasteners first, for sale at wholesale, or second, for assembling components of a product or structure for sale, unless the container is conspicuously marked with the number of the lot from which such fasteners were taken. We on the Commerce Committee intend that if a container holds items from two lots, as permitted in certain cases under Senator LUGAR'S amendment to subsection (e), then subsection (f) should be read as requiring that each lot number be conspicuously marked on that container. In short, if the container holds fasteners from two lots, then both lot numbers should be on the container.

Subsection (f) continues to exempt sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer. In addition, containers of fasteners being bought for purposes other than for resale at wholesale shall be marked with lot numbers if customers so request either prior to or at the time of sale.

The Lugar portion of the amendment does not affect the reported bill's provisions concerning retail sales. The bill still directs that at the retail level the lot identification requirement be limited to containers of fasteners that will be used to make components for products or structures that will be sold to Government, industry, or other customers. Fasteners sold at the retail level for the purpose of maintenance, repair, or the customer's personal use are exempt from the lot identification requirement, unless the retail customer requests such lot identification. Bolts used purely to decorate existing products also are exempt.

The number or numbers marked on containers should be the original lot numbers specified by the manufacturer, unless the person selling the fasteners believes that similar numbers by different manufacturers will cause confusion. In that case, the importer, wholesaler, or retail seller is free to use his or her own inventory or purchase information numbers, provided that each number on each container of fasteners is readily traceable back to the manufacturer's original lot identification number or numbers.

I believe that Senator LUGAR'S language is a limited, tightly written exemption to the bill's commingling requirements and provides a sound answer to a concern that has been raised by many distributors. Therefore, I am pleased to support the Senator's proposal and thank him for his help in addressing this important issue. Of course, we will monitor compliance with this provision and hopes that this limited exemption to the bill's requirements regarding commingling will not be abused.

TESTING LABORATORIES

Mr. President, the second part of the amendment has been drafted in response to concerns raised by the Senator from California [Mr. WILSON].

The Senator has expressed concern about letting fastener manufacturers test fasteners in their own in-house laboratories, even if those laboratories have been accredited. The amendment we have worked out would continue to allow testing by in-house laboratories, but would add the clause "unless the Secretary finds that, as to a specific type of fastener and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with the accredited laboratory would increase the protection of health and safety of the public or industrial workers."

TECHNICAL CHANGES

Mr. President, the third part of the proposed amendment contains techni-

cal suggestions recommended by the Commerce Department regarding section 9(b), the civil penalties provision.

The bill as reported provides that any person who is determined by the Secretary, after notice and an opportunity for hearing, to have violated this act or any regulation under this act shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

The DOC revisions would not change the intent of this section. Instead, they would bring the subsection's language into conformance with a similar civil penalties provision in the Magnuson Fishery Conservation and Management Act, which DOC already administers. For example, the amendment adds a paragraph explicitly giving the Secretary the authority to issue subpoenas.

CONCLUSION

In conclusion, Mr. President, I want to say that H.R. 3000 is a well-designed and fair bill that will provide customers and the public with much greater assurance that the bolts installed on everything from aircraft to school buses are genuine and safe. Our citizens deserve and require that assurance.

I also want to commend Chairman DINGELL, Chairman ROE of the House Science Committee, Chairman HOLLINGS, and Senator DANFORTH for their leadership on this important issue. I know that Chairman DINGELL in particular has spent a great deal of time on this subject over the years, and I want to say that I have been pleased to work with him and our colleagues to fashion the bill before us today. I want to compliment the House staff who drafted the original version of the bill and provided much-appreciated information and technical advice to the Senate.

I also want to thank Senator LUGAR, the Commerce Department, and the various interested parties for their assistance and cooperation in fashioning this bill. The fastener issue, as I soon discovered, can be exceptionally technical, and while not everyone will be happy with every aspect of this bill I appreciate the many comments and technical suggestions that the committee received while working on this legislation.

I particularly want to thank the National Fastener Distributors Association, the Industrial Fasteners Institute, and the American Association of Fastener Importers, as well as others in the industry who helped as craft a sound bill. I also want to thank the Federal investigators from the U.S. Customs Service, NASA, the Defense Department, and the Department of Transportation who took so much time and effort to explain to us the problems in this industry. These Federal agents deserve our appreciation for their great efforts to uncover defective fasteners and to help prosecute those irresponsible industry people who would endanger the public's safety.

Mr. President, this is a good bill on an important subject, and I urge our colleagues to support it.

Mr. President, I also ask unanimous consent that the factsheet attached to my statement be printed in the RECORD at the conclusion of my remarks. The factsheet summarizes the requirements of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF H.R. 3000, THE FASTENER QUALITY ACT

(As reported by the Commerce Committee and amended by the Gore-Lugar-Wilson amendment)

Purpose. The bill has this purpose: "In order to protect public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the traceability of fasteners used in critical applications, and generally to provide commercial and government customers with greater assurance that fasteners meet stated specifications, it is the purpose of this Act to create procedures for the testing, certification, and distribution of certain fasteners used in commerce within the United States."

Which fasteners are covered. Only certain fasteners used in critical applications are covered by the bill's requirements. Four categories are covered, the largest of which is the second—fasteners which carry grade identification markings (grade marks).

High-strength fasteners which do not carry grade marks. A screw, nut, bolt, or stud having internal or external threads, or a load-indicating washer, with a nominal diameter of 5 millimeters or greater, or ¼ inch or greater, which contains any quantity of metal and is held out as meeting a standard or specification which requires through-hardening.

Fasteners with grade marks. A screw, nut, bolt, or stud having internal or external threads which bears a grade identification marking required by a standard or specification. (A 307A fasteners are exempt.)

Washers. A washer to the extent to that it is subject to a standard or specification applicable to a screw, nut, bolt, or stud described in the second category.

Other items. Any item added by the Secretary of Commerce because it is used in critical applications. (The Secretary also may exempt fasteners not used in critical applications.)

Requirements pertaining to manufacturers. Under the bill, manufacturers of those fasteners covered by the bill must do the following:

Testing by accredited laboratories. For each "lot" (production run) of fasteners, the manufacturer shall have a representative sample inspected and tested by an accredited laboratory to determine whether the lot conforms to the standards and specifications to which the manufacturer represents it has been manufactured.

Use of in-house laboratories. A manufacturer may perform the required inspection and testing in a laboratory it owns or with which it is affiliated, if such laboratory is accredited, unless the Secretary finds that, as to a specific type of fastener and as to specific type of inspection or testing, a ban on manufacturer ownership or affiliation with the accredited laboratory would increase the protection of health and safety.

Domestically produced fasteners. In the case of domestically produced fasteners, it shall be unlawful for a manufacturer to sell any shipment of fasteners which are manufactured in the United States unless the fasteners are accompanied, at the time of delivery, by a written certificate certifying that (1) the fasteners have been manufactured according to applicable standards and have been inspected and tested by an accredited laboratory and (2) an original laboratory testing report is on file with the manufacturer.

Foreign made fasteners. In the case of fasteners of foreign origin, it shall be unlawful for any person to sell to any importer, and for any importer to purchase, any shipment of fasteners manufactured outside the United States unless delivery of such shipment to such importer is accompanied by a manufacturer's certificate (the same as required for shipments of domestically made fasteners) and an original laboratory testing report. The requirement for an original laboratory testing report does not apply to fasteners which are manufactured within a nation with which the U.S. has a free trade agreement or which come under the U.S.-Canada Automobile Pact.

Importers and private label distributors. Importers and private label distributors have the option of importing untested fasteners, if (1) the manufacturer certifies the product meets applicable standards and (2) the importer or private label distributor assumes responsibility in writing for the inspection and testing of the fasteners.

Commingling (mixing loss). It shall be unlawful for any manufacturer to commingle like fasteners from different lots in the same container, except such manufacturer may commingle like fasteners from not more than two tested and certified lots in the same container during repackaging and plating operations.

Laboratory accreditation. The Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), will establish procedures for accrediting testing laboratories both in the United States and overseas. NIST will establish three sets of procedures:

Procedures under which NIST directly accredits laboratories.

Procedures under which private accreditation entities may apply to NIST for approval to accredit laboratories.

Procedures under which foreign laboratories may be accredited by their governments or by organizations recognized by the NIST Director. (That is, NIST will establish procedures under which foreign manufacturers can have their fasteners tested within their own countries.)

Requirements that apply to persons who alter fasteners. Any person who significantly alters a fasterner and then offers it for sale shall be treated as a manufacturer and shall cause such altered fastener to be inspected and tested.

Wholesale and retail sales. The "subsequent purchaser" provision of the bill covers wholesale and retail sales.

Wholesale level. The same commingling requirements that apply to manufacturers also apply to wholesalers: It shall be unlawful for any person who purchases any quantity of fasterners for resale at wholesale to commingle like fasteners from different lots in the same container, except such person may commingle like fasteners from not more than two tested and certified lots in

the same container during repacking and plating operations. Lot identification numbers must be placed on containers. Sale by original equipment manufacturers to their authorized dealers are exempt from the lot identification requirement.

Retail sales. Fasteners cannot be sold to any person for assembling components of a product or structure for sale unless the container of fasteners carries the lot identification number. That is, fastener containers must carry lot identification numbers if the fasteners are sold to a retail customer who will use them to make a product or structure that he or she will in turn sell to others. Again, sales by original equipment manufacturers to their authorized dealers are exempt. Fasteners sold to purchases (retail sales) solely for private use or for repairs and maintenance are not required to carry lot identification numbers on their containers.

Remedies and penalties. The bill provides for both civil fines (up to $25,000 for each violation) and civil and criminal actions in U.S. courts.

Other major provisions. The Secretary shall establish a program for recording the insignias (manufacturer marks) of manufacturers and private label distributors. Laboratories, manufactuers, importers, private label distributors, and persons who make significant alterations are all required to keep certain records. The Secretary shall appoint an advisory committee of industry representatives.

Mr. HOLLINGS. Mr. President, I am pleased that the Senate is now considering H.R. 3000, the proposed Fastener Quality Act. The bill before the Senate will establish new procedures to ensure the quality and safety of the high-strength bolts and other fasteners used in such critical applications as aircraft, motor vehicles, military equipment, and buildings.

Investigations by the House of Representatives and executive agencies have demonstrated the need for this legislation. The investigations found many cases where substandard or counterfeit bolts were sold to unsuspecting customers, and then installed in a wide range of vehicles and structures.

The safety implications are enormous. The National Transportation Safety Board now suspects that bogus bolts may have contributed to as many as 70 light plane crashes during the second half of the 1980s. Engines have fallen off commercial airliners. Large trucks have crashed because substandard bolts have failed in steering mechanisms. The military has found that it has literally millions of bolts whose quality is questionable. A Post Service building under construction in Los Angeles collapsed during a 1987 earthquake; investigators had found but not yet removed 20,000 bogus bolts in that building. NASA's inspector general found that untested and undertested fasteners had been installed in what NASA calls "flight hardware," that is, the space shuttle.

The problem is that the Nation lacks a system of quality control to ensure the the high-strength bolts the customer buys are indeed the genuine article and not cheap, weaker counterfeits. To be sure, customers in both government and private industry must be vigilant when they buy high-strength fasteners, but in many cases the bogus bolts look identical to the real thing. Increased prosecutions of deliberate fraud also help, but all too often under current law the fraud is discovered only after a tragic accident. Because current law has these shortcomings and because the public's safety is at stake, we need a system to prevent bad bolts from being sold in the first place.

I support the two-step procedure that the bill will use to meet this important goal.

First, manufacturers will be required to have a sample from each lot—production run—of high-strength fasteners tested by an accredited laboratory to ensure that those fasteners meet stated specifications. Both domestic-made fasteners and imports must be tested. The laboratories will be accredited under procedures established by the Commerce Department's National Institution of Standards and Technology [NIST], which already accredits laboratories which work in such areas as asbestos removal. Laboratories in both the United States and foreign countries can apply for accreditation.

Second, the distributors who sell high-strength fasteners must maintain certain inventory controls. In particular, they must keep track of which lot a given group of fasteners comes from. Lot identification ensures that bolts can be traced back to their source and also deters efforts to mix substandard bolts in with genuine product.

Let me emphasize that the bill does not tell customers which bolts they have to buy. It simply establishes procedures that will help ensure that the customer actually gets the high-quality fasteners that he or she pays for. Also, this bill applies only to a very small percentage of the fasteners sold each year in this country. It does not apply to the ordinary bolts and screws that we buy at the local hardware store. It applies only to high-strength fasteners, particularly the ones that carry so-called grade marks which indicate that they claim to be manufactured to exact specifications set forth by the Nation's voluntary consensus standards organizations. The bill contains a precise definition of which fasteners are covered. I should add that the bill also allows the Secretary of Commerce to add other products to the list covered by the bill when public safety is involved.

The Commerce Committee approved its version of H.R. 3000 without objection. The bill before us today is that version reported by the Commerce Committee, plus a three-part amendment. One part has been suggested by Senator LUGAR and makes a small change in the bill's requirements as they apply to fastener distributors. A second part responds to concerns that Senator WILSON has about testing laboratories. The third part contains technical changes that the Commerce Department suggested regarding a provision concerning civil fines. I believe that the amendment has been cleared on both sides of the aisle.

A great many people have helped to shape this legislation, and I express my appreciation for their efforts. Of course, Congressman JOHN DINGELL conducted the main investigations in this area and then sponsored this legislation, with the active support of Congressman BOB ROE and others in the House. Agency officials helped our committee a great deal, especially experts from the Commerce Department and investigators from NASA, the Customs Service, the Defense Department, and the Department of Transportation. Groups and individuals from the fastener industry helped a great deal, as well. The Senate Judiciary Committee assisted the Commerce Committee to review the civil and criminal penalties provisions of the bill. Senator LUGAR worked with us to write the first of the pair of amendments that we are considering today. I also want to thank my colleagues on the Commerce Committee, particularly the ranking member, Senator DANFORTH, and Science Subcommittee Chairman Senator GORE.

We have a good bill before us today because of the fine work of all of these individuals. It is also a vitally necessary bill. Fasteners affect every aspect of our lives. They affect the safety of our buildings and our bridges. They affect the performance of our automobiles, trucks, and schoolbuses. They affect the effectiveness of our tanks and military aircraft in the Middle East. We simply cannot continue to accept a situation which allows a few unscrupulous individuals to sell millions of counterfeit and substandard fasteners to government and industry and thereby jeopardize the public's safety.

This bill will provide a sound and fair way to ensure that customers who buy high-strength bolts and other fasteners used in critical applications will get authentic products, not cheap and dangerous counterfeits. The public interest demands no less.

Mr. LAUTENBERG. Mr. President, will the distinguished Senator from South Carolina, the chairman of the Commerce Committee, yield for the purpose of engaging in a brief colloquy?

Mr. HOLLINGS. I am happy to yield to the Senator from New Jersey.

Mr. LAUTENBERG. It has come to my attention that the bill's definition of the term "fastener" does not include a product known as a retaining

ring. I understand that the Commerce Committee considered including retaining rings in the definition, but that they were not included for technical reasons. However, report language accompanying the bill urges the Secretary of Commerce to consider the retaining ring as a fastener, which, if so classified, would make it subject to the inspection and certification standards mandated by the bill.

It is my understanding that, within the engineering community, retaining rings are indeed considered fasteners. They are designed to take the place of screws, nuts, bolts, studs and flat washers, by snapping into a groove machined on a shaft or in a housing.

Retaining rings are critical components of several products on which citizens' lives may depend. For example, they are used in seat buckles, in triggering devices on air bags, and in some antilock braking systems on automobiles. If retaining rings in such products fail, the consequences can be very severe.

Given the role played by retaining rings in American manufacturing and the risks to citizens' health and safety if they are defective, does the distinguished Senator from South Carolina agree that the Secretary of Commerce should seriously consider requiring inspection and certification of retaining rings immediately after the effective date of this legislation?

Mr. HOLLINGS. Yes, I would urge the Secretary to seriously consider requiring inspection and certification of retaining rings as soon as possible after the effective date of this legislation.

Mr. LAUTENBERG. I thank the distinguished chairman of the Commerce Committee.

Mr. GORE. Mr. President, before proceeding to a vote on the pending amendment and the bill itself, I would like to speak briefly about one other matter.

Senator BURNS has brought a potential problem to our attention. A key definition in the bill says that the bill's requirements will apply to all fasteners which carry grade identification markings, grade marks. A grade mark, which is usually stamped on the head of a high-strength bolt or screw, is a code which identifies the type of fastener and, therefore, what specifications it meets. Grade marks and associated specifications are defined by voluntary consensus standards organizations. Regardless of who makes a particular bolt, if it carries a specific grade mark it is supposed to meet the specifications set for that particular grade of fastener. These grade marks differ from manufacturers insignias, head marks, which also often are stamped on the bolt or screw to identify the manufacturer.

I mention these points because up until now virtually all fasteners which carry grade marks have been high-strength fasteners designed for safety-critical applications. That is why the bill's requirements apply to grade-marked fasteners. In fact, while writing H.R. 3000 the House and Senate committees could find only one type of grade-marked fastener that is not used in critical applications—so-called ASTM A 307A fasteners. We exempted this fastener from the bill's requirements.

However, Senator BURNS has pointed out to me that one U.S. standards organization may soon place grade marks on a wide variety of previously unmarked fasteners which generally are not used in critical applications. Since the bill's requirements apply to any fastener which carries a grade mark, the Senator from Montana is understandably concerned that manufacturers and distributors may be required to apply the bill's procedures to a large number of fasteners which are not used in ways which affect public safety. This would be an unnecessary and expensive burden for the fastener industry.

Mr. BURNS. Mr. President, the Senator from Tennessee is correct about my concerns, and I thank him for bringing this problem to the Senate's attention. A company which sells fasteners in Montana has expressed great concern that if this particular standards organization does increase the number of fasteners which carry its grade marks, then H.R. 3000 may very well lead to large and unnecessary costs for the fastener industry and do so without any corresponding benefit to the public. I share the company's concerns.

Mr. GORE. Mr. President, H.R. 3000 has a provision—section 4(a)—which states if the Secretary of Commerce determines that any category of fastener is not used in critical applications, the Secretary shall waive the requirements of this act with respect to such category. In short, there is a provision which requires the Secretary to exempt any category of fastener which normally would be covered by the bill but which the Secretary determines is not used in safety-critical situations.

Because the standards organization in question has not yet broadened the number of fasteners covered by its grade marks, I do not think we need to change H.R. 3000's basic definition of fasteners—the provision which says that grade mark fasteners are covered by the bill's requirements.

However, I want to state emphatically that if any standards organization broadens its rules and places grade marks on fasteners which are not used in critical applications, then we will encourage the Secretary of Commerce to move expeditiously to use section 4(a) and exempt those categories. Fasteners should be exempted if they are low-grade items that have not been through-hardened as well as used in noncritical applications. If appropriate, blanket waivers should be used to exempt entire groups of fasteners.

I want to assure Senator Burns and the fastener industry that the bill is intended to apply only to fasteners genuinely used in critical applications. We expect the Secretary to exempt other fasteners and will urge the Secretary, both today and in the future, to monitor the issue that Senator BURNS has identified and to take appropriate action. I also want to give my personal assurances to the Senator that I will work with him to ensure that this situation does not become a problem.

To repeat, this bill applies primarily to fasteners that are required to bear grade identification markings because under current industry standards these are the fasteners used in critical applications. If industry standards were to be broadened so that grade identification markings were required for fasteners used in noncritical applications, we would not intend that these fasteners come under the requirements of the legislation.

Mr. BURNS. Mr. President, I thank the Senator from Tennessee for both his interpretation of the bill's purpose and his personal help with this matter. The Senator's statement greatly reassures me about the legislation's intent, and I think will reassure my constituents, as well. I thank the Senator.

Mr. GORE. Mr. President, I appreciate my colleague's help in this matter. Senator BURNS played an active role in both our committee's hearing on H.R. 3000 and our subsequent work, and I look forward to continuing to work with him on these issues.

Mr. President, I believe that we are now ready to consider the pending amendment, which contains both Senator LUGAR's language on commingling and the Commerce Department's technical changes. We then can proceed to considering the full bill, as amended. I thank the Chair and our colleagues for their help in bringing this bill before the Senate.

The PRESIDING OFFICER. Are there amendments?

Mr. FOWLER. Yes.

AMENDMENT NO. 3178

Mr. FOWLER. Mr. President. I send an amendment to the desk on behalf of Senators GORE, LUGAR, and WILSON and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. FOWLER] (for Mr. GORE) (for himself, Mr. LUGAR, and Mr. WILSON), proposes an amendment numbered 3178.

Mr. FOWLER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 27, immediately before the period on line 25, insert "; unless the Secretary finds that, as to a specific type of fastener and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with the accredited laboratory would increase the protection of health and safety of the public or industrial workers". On page 36, lines 4 through 11, strike all and insert in lieu thereof the following:

(e) COMMINGLING.—(1) Subject to paragraph (2), it shall be unlawful for any manufacturer of any person who purchases any quantity of fasteners for resale at wholesale to commingle like fasteners from different lots in the same container; except that such manufacturer or such person may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations, provided that any container which contains like fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

(2) Paragraph (1) does not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturers.

On page 38, line 6, through page 39, line 4, strike all and insert in lieu thereof the following:

(b) CIVIL PENALTIES.—(1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or any regulation under this Act shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Mr. WILSON. Mr. President, I am pleased to join with my colleague, the Senator from Tennessee [Mr. GORE], in submitting a significant amendment to H.R. 3000, the Fastener Quality Act.

Industrial fasteners have a great variety of applications, and in one way or another, each of us depends on them every day. They hold our bridges together and they are used in nuclear powerplants, coal mines, and high-rise buildings. They serve as critical components in the cars we drive and in the buses that take our kids to school each morning. And, if they do not meet specifications, our tanks and planes in the Middle East will not function as they are designed to do.

In short, we depend on industrial fasteners, and if they fail, sometimes people die.

I strongly support enactment of H.R. 3000. It is critical that we provide protection from faulty fasteners for the public, industrial workers, and our military personnel.

While the fastener manufacturers have endorsed the legislation as it is presently drafted, the bill is not yet enough to adequately protect the public. It should be tougher, and the Gore-Wilson amendment will make it tougher by providing that the most critical fasteners—those whose failure would likely cause serious bodily injury or death—may be subjected to mandatory testing by independent laboratories.

As made clear in a page 1 article in the Los Angeles Times on September 25—which I ask be printed in the RECORD at the end of my remarks—life-threatening deficiencies exist in the quality control systems of the fastener industry and other critical manufacturing sectors—especially aerospace. The major problem has been fraud, which has been forcefully prosecuted by the U.S. attorney in the central district of California, as well as elsewhere. Nevertheless, we need more comprehensive regulatory and criminal laws to address the situation.

Unfortunately, H.R. 3000 does not fully respond to the problems that exist in the fastener industry. After a review of the record, it is clear that outside testing of fasteners—and other critical components—is essential.

As indicated in the report filed in the House by the Committee on Energy and Commerce, there is evidence of "widespread counterfeiting" in the industrial fastener marketplace:

One scofflaw company, for example, is known to have supplied substandard and/or misrepresented fasteners to an energy cogeneration plant, the U.S. Postal Service, several Corps of Engineers projects, the General Motors' Saturn plant (where a death was caused, in part, by the failure of a substandard fastener), power companies in Virginia and Alabama, the United Airlines terminal at O'Hare Airport, and the Louisiana Department of Transportation for use in an interstate highway bridge.

The public would not be adequately protected from such a rogue company by enactment of H.R. 3000 as it is presently written. All that the present bill would do is merely require that his lab be accredited as capable of properly testing fasteners. It appears clear that even with an accredited lab on his premises, he would not test his fasteners before selling them. And, it is just as clear that a mere accreditation requirement that allowed him to self-test would result in more people dying. This is simply not good enough in my view.

Most fastener fraud is already a criminal act. Therefore, the key to a good fastener bill—one that will save lives—is a comprehensive regulatory scheme. Yet, H.R. 3000 would only make marginal improvements in existing law. I want it to do more so that we will truly protect the public, not simply assuage some limited interests.

Those are my broad concerns, and following is a more detailed description of why H.R. 3000 needs to be strengthened and how the Gore-Wilson amendment would accomplish that goal.

In the field of commercial testing there are two primary areas in which problems can occur: competence and honesty.

The competence problem is best illustrated by the numerous press reports on drug testing labs. In many instances tests are performed on urine samples to determine if individuals are using illicit drugs, but the tests yield false-positives and false-negatives. If the testing apparatus is not up to snuff, and if the testers are not properly trained, even the best intentions are inadequate to do the job well.

The proper solution to the problems in the drugs testing field is to require that labs be certified—to ensure that the lab and its employees are capable of performing accurate tests.

Compare this situation to the problems in the fastener industry, which

have generally not involved competence. Rather, they have involved honesty—or lack of it.

Unfortunately, H.R. 3000 as it is presently drafted only addresses the competence of the industry to test. The bill does not adequately address the most significant problem as shown by the record—namely, claims that tests have been performed and passed when, in fact, tests were not performed or they were failed.

The bill does contain criminal and civil penalties for misrepresentation of fasteners, but such penalties are only part of an effective program for ensuring fastener quality. I say this in light of the fact, as I have noted, that Federal law already criminalizes most fastener fraud—as is clear to those who have been convicted for selling substandard fasteners. To simply provide some additional penalties does not offer the comprehensive solution to which the public is entitled.

Though the bill in its present form would allow manufacturers to voluntarily submit to independent testing, in no instance would the Secretary of Commerce be authorized to require it. At a minimum, fasteners used in the most critical types of applications should be subject to a requirement that they be independently tested.

That is what would be accomplished by the Gore-Wilson amendment.

The Gore-Wilson amendment will give the Secretary of Commerce authority to require independent testing of certain industrial fasteners. The Secretary will be authorized to levy such a requirement for fasteners whose failure would cause serious bodily injury or death if he or she finds that independent testing will provide increased protection for the public or industrial workers.

It should be noted that the Gore-Wilson amendment does not modify section 15 of the bill. This section provides that the bill applies only to fasteners manufactured 180 days after final regulations are issued. The section further provides that this time period may be extended "if the Secretary determines that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required."

I point this out in response to concerns I have heard expressed that in certain areas of the country the capacity of the testing industry would not be able to immediately meet the increased demand that would result if the Secretary required outside testing of certain fasteners. The bottom line is that no company will be disadvantaged by a present lack of accredited independent labs, as the Secretary would likely allow continued inside testing until independent testing was available.

Contrary to a recent press report regarding claims of a Washington lobbyist for a national fastener association, I listened to and considered carefully the arguments raised by fastener manufacturers, fastener testers, and fastener associations, including the Los Angeles Fasteners Association, operating in my State of California and elsewhere. Some have accepted my proposal, while others remain unhappy. However, our overeaching responsibility must be to the general public.

I urge adoption of the Gore-Wilson amendment so that H.R. 3000 can become a truly comprehensive solution to the fastener quality problem. That is what the public deserves. What we must address is all of the public's legitimate concerns, not just the concerns of a few. After all, it is neither the manufacturers nor users who pay the real costs of failure of critical fasteners—it is the people who are seriously injured or killed.

Mr. President, I ask unanimous consent to have printed in the RECORD a newspaper article by Ralph Vartebedian entitled "Jet Parts: Cracks in the System."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times, Sept. 25, 1990]

JET PARTS: CRACKS IN THE SYSTEM

(By Ralph Vartabedian)

The crash of a DC-10 jetliner last summer in Sioux City, Iowa, which killed 112 people and miraculously spared 184, was ordained 18 years earlier.

In 1971, a titanium disk was installed in a General Electric jet engine, which was later mounted onto the DC-10. But the disk had a flaw, one that would go undetected in one inspection test after another.

On July 19, 1989, the disk disintegrated, knocked out most of the jet's control system and sent the plane cartwheeling down the runway—earning the accident a grim distinction as one the most deadly failures of quality control testing in U.S. aircraft history.

Although there is no evidence of wrongdoing, a federal investigation has revealed that GE and its subcontractors had concerns from the beginning about whether its quality control tests were adequate.

The disclosure comes amid growing concerns that the system for testing commercial and military aircraft components is deeply flawed and can have tragic consequences.

Industry experts point to basic deficiencies. There are no mandatory standards for individuals or companies that conduct tests. And the testing process turns on an honor system, leaving manufacturers free to pass judgment on the quality of their own parts.

"The need for improvement is . . . obvious," said Desmond D. Dewey, executive director of the American Society for Nondestructive Testing, the leading technical organization for U.S. testing standards.

At its worst, the system appears wide open to fraud. In dozens of felony cases, aerospace contractors have been convicted of falsifying tests on such products as aircraft castings, missile welds, cockpit instruments, engine bolts and missile guidance systems—parts that can cost anywhere from 50 cents to $10,000 apiece. In some cases, federal officials don't know where the defective parts have ended up.

Owners of aerospace subcontractors describe a system where financial pressures have had a corrosive effect. If parts are rejected as substandard, suppliers can lose bonuses for prompt deliveries; so suppliers cover up their quality problems.

Suppliers often threaten to take business away from independent labs if they don't certify their parts. Although most labs resist the pressure to certify bad parts, some in Southern California are known as "Certs R Us" shops, as one machine shop owner describes them. Inspectors who stand their ground are often fired.

"I suppose government authorities will address this subject when we slam a 747 into an office building and it is attributed to falsified tests and certification on a component of the airplane," said Ron Cedillos, owner of Cedillos Testing Co., a Long Beach lab.

There is some movement toward reform. The testing society is seeking to establish national standards for inspectors. And Rep. Dana Rohrabacher (R-Lomita) instructed the Federal Aviation Administration in a House report this year to look into a system that would require independent lab testing on aircraft parts.

Future legislation is likely to require not only that independent labs conduct tests, but also that tests be paid for by prime contractors rather than their suppliers. Prime contractors presumably would insist that parts be top-quality and suppliers wouldn't be able to shop for accommodating labs. Very few aerospace contractors have such a system today. One exception is Southern California is General Dynamics' Pomona Division.

Although aircraft are made of several hundred tons of aluminum, as a general rule their structures are supposed to have no defect larger than the head of a pin—more precisely, 3/64ths of an inch.

TESTING EXPENSIVE

Much of a plane's critical primary structure—the ribs, spars and frames whose loss could cause an accident—must be free of any detectable defect. That means no voids, cracks or contamination of the metal or composite plastics.

Assuring those standards depends on nondestructive testing, a procedure in which a part is not cut apart or otherwise destroyed to determine quality. By some estimates, 5% or more of an aircraft's cost can be attributed to the expense of testing parts. With jetliners costing up to $125 million apiece, testing can cost $6.25 million.

At the heart of quality control testing is the quality of those who do the tests. An estimated 80% of the nation's 12,000 top inspectors—so called Level III test technicians—have been qualified only by their own employers and have never passed tests administered by technical societies.

Level III inspectors are the most capable, supervising Level II inspectors and writing procedures for them to follow. Level I inspectors, often considered trainees, have limited responsibilities.

There are no rules about what must be covered in written exams for inspectors, and parts suppliers are able to hire anyone they want to administer exams to inspectors and certify them.

"There are . . . unethical people out there" who will administer examinations of any degree of difficulty that a company wants, said Ron Seiner, manager of technical services at the American Society of Non-

destructive Testing. "We have even seen documents that . . . say if a guy fails a Level II exam and gets 60% of the answers correct, then he is a Level I . . . You ought to go back and give him a Level I test. He may not be any better on a Level I."

The current system of quality control testing gives enormous responsibility to inspectors. They face enormous pressures as well. Honest disagreements over the quality of parts can turn into heated confrontations. If inspectors stand up for what they believe, they risk getting fired.

Consider Michael Lee Meadows. The veteran aerospace inspector refused to certify a Navy missile casing based on his evaluation that it had signs of a crack. His boss at El Segundo-based Airite Division of Dover Sargent Co., a forging house, disagreed with the conclusion. "He asked me if my opinion would be any different if I were standing in an unemployment line," Meadows recalled.

Meadows, 38, refused to certify the part and was fired last year as a Level III non-destructive test technician. He now lives in Mojave and works for the Air Force.

Richard La Chance, Airite's general manager, said the $10,000 missile casing that Meadows wanted to reject was good and that Airite's metallurgist sided against Meadows. La Chance said the company had earlier destroyed another missile casing in a special destructive test to satisfy an assertion by Meadows that it was bad. La Chance said the destructive tests showed the unit was good, but Meadows said that the test proved that casing to be defective.

"The question was, when I have a referee—and then another referee—and I still can't get parts moved, what do I do at that point?" La Chance said. "He refused to be a part of the team."

A HIGH PRICE

Leading quality-control experts say such incidents are not uncommon. "I lost my own boy three jobs in quality control simply because I taught him don't take anything that is second best and don't stand for any unethical practices by management," said Selner, the executive at the American Society of Nondestructive Testing. "Because he wouldn't sign off for [defective] things, he got ditched. Now that was not the purported reason that he got laid off or fired, but that's why he lost his job."

There are a range of quality-control tests. The most widely used include: fluorescent penetrant inspections, in which parts are dipped into a dye that exposes cracks under a black light; magnetic particle inspections, in which magnetic fields combined with a dye help to expose cracks; radiography, in which parts are X-rayed; and ultrasonic tests, in which sound waves detect flaws in the grain of the metal.

The tests are sophisticated, but the coverups are simple.

One inspection process requires that only a sample of parts be tested, but if any one part in the sample fails, then the whole batch must be tested. Getting around that requirement is easy. When a bad part shows up, throw it back into the batch, pick out another part and keep testing until you have all the good test parts you need. In one variation of the scheme, the same good parts are used over and over in X-ray examinations.

Cases of outright fraud are increasing. VSI Inc., a leading supplier of aerospace rivets and other fasteners, pleaded guilty in May to four counts of falsifying test results. Two former quality control supervisors at the firm's Voi-Shan unit in Chatsworth also pleaded guilty.

Voi-Shan possessed an approval stamp for "Inspector 11," but there was no Inspector 11. Rather, the stamp was used to approve defective parts, said Tom Runion, one of two Voi-Shan inspectors whose allegations led to the criminal probe. An estimated 37,000 certifications were made using the Inspector 11 stamp, according to Runion's attorney, Will Ramsey.

Los Angeles-based Northrop paid a record $17-million fine earlier this year when it pleaded guilty to criminal charges that it falsified tests of guidance systems for nuclear-armed cruise missiles.

In Tampa, Fla., Aerodyne Investment Castings pleaded guilty last year to criminal charges that it certified castings for warplanes and tanks made with scrap metal rather than the required virgin alloy.

Derek J. Vander Schaaf, the Pentagon's deputy inspector general, says phony testing is one of his top priorities in investigating defense fraud. "We have had dozens and dozens of cases that have been pressed over the years," he said.

But many Pentagon officials in the field view fraudulent testing as a minor problem.

"We like to think of [fraud] as more of an exception than the rule," said Robert Gibson, a branch chief for quality assurance at the Pentagon's Defense Contract Management Region office in Los Angeles. "We deal with 5,000 [firms in the Southern California] region. If we thought they were all fraudulent, we would need an organization as large as the industry to police it."

THE PENTAGON'S STAFF

The Pentagon has a local staff of 636 quality assurance representatives and specialists, who receive eight weeks of formal job training and then go on to audit contractors and conduct actual inspections of parts in some cases.

Fearful of fraud and sloppiness, some private firms are getting tougher on suppliers. Boeing, the world's leading aircraft producer, has tightened surveillance of suppliers in recent months, though it asserts that Boeing aircraft are safe. The company has recently assigned six workers to a special unit for investigating allegations of flawed products and improper testing.

"The industry has had a lot of problems with fraud cases, and we felt that was an untenable situation," said Bob Bogash, Boeing's director of quality surveillance. In addition to the fraud unit, Boeing has a contingent of several dozen quality-control representatives in Southern California.

Warren Rose, owner of Bell Gardens-based V&W Castings, discovered the hard way about the Boeing quality-control representatives. On a routine inspection several weeks ago, a Boeing man spotted an unauthorized welding repair being performed on a V&W casting. As a result, Boeing disqualified V&W as a supplier, Rose said.

Boeing will permit such welding repairs, Rose said, but only if it gives authorization—something he didn't get. "They saw the welded casting, and at that point they blew the whistle," Rose said. Despite the problem, he asserted, "I have integrity. I fly on airplanes myself. I don't want to go down because of a defective part."

Although faulty parts won't necessarily cause an aircraft to crash, the failure of some critical parts poses major safety risks. The jet engine disk that ruptured in the Sioux City DC-10 accident was one such part.

The disk started as a billet of titanium cast at the Titanium Metals Corp. of America in New Jersey and then was forged into a 27-inch disk at Alcoa Corp. in Cleveland. The last stop was at GE's jet engine plant in Kentucky. It was apparently inspected at each factory, but the flaw was never detected.

When the disk failed, metal fragments disabled three hydraulic systems on the DC-10, leaving the jumbo jet with virtually no controls.

Since the disk was made 19 years ago, General Electric and its vendors have changed their processors, and company officials testified in a government hearing that a flaw such as the one at issue in the Sioux city crash is now less likely to occur. General Electric officials declined to be interviewed.

The accident hearings, however, have raised questions about whether tests were capable of detecting the flaw even if performed correctly. Memorandums uncovered by federal investigators indicate that GE and Alcoa officials had questions about the adequacy of the tests dating back to 1972.

Moreover, serious discrepancies were found in GE's quality control records. Six so-called "sister disks" from the same batch of titanium were still operating in other engines at the time of the crash, according to production records. But when federal investigators recalled those disks, chemical analysis showed that they could not have been from the same batch, a spokesman for the National Transportation Safety Board said. The mystery remains unsolved.

Meanwhile, the FAA is concerned about what the Sioux City accident says about shortcomings in the system of parts testing. Leading outside experts are dismayed. Says Dewey, the testing society official, "We cringe when we see those kinds of things."

The PRESIDING OFFICER. Is there debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 3178) was agreed to.

Mr. FOWLER. Mr. President, I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read the third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 3000), as amended, was passed.

Mr. FOWLER. Mr. President, I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Georgia.

AUTHORITY FOR PRODUCTION OF SENATE RECORDS

Mr. FOWLER. Mr. President, I send to the desk a resolution on behalf of the majority leader and the distinguished Republican leader, Mr. DOLE, to authorize the production of Senate records and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 346) to authorize production of records by the Senate Permanent Subcommittee on Investigations.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into allegations of fraud and other wrongdoing in Federal student loan programs. In aid of an audit that it is conducting, the Office of the Auditor General of the State of California has asked the subcommittee for access to records of the subcommittee's investigation.

Senators NUNN and ROTH, the chairman and ranking minority member of the subcommittee, would like to be able to respond to authorized requests for pertinent subcommittee records. This resolution would authorize the chairman and ranking minority member, acting jointly, to provide access to, and release of, records of the subcommittee's investigation, as well as to determine the mode of any disclosure. Earlier this session, the Senate agreed to a similar resolution, Senate Resolution 266, to authorize the subcommittee to provide the Inspector General of the U.S. Department of Education with access to records of this investigation.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 346) was agreed to.

The preamble was agreed to.

The resolution with its preamble is as follows:

S. RES. 346

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into allegations of fraud and other wrongdoing in federal student loan programs;

Whereas, the Office of the Auditor General of the State of California has requested access to records of the Subcommittee's investigation for use in an audit that it is conducting;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate are needful for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the chairman and ranking minority member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide to the Office of the Auditor General of the State of California records of the Subcommittee's investigation of allegations of fraud and other wrongdoing in federal student loan programs.

NATIONAL FOREST FOUNDATION ACT

Mr. FOWLER. Mr. President, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of S. 2385, the National Forest Foundation Act, and that the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2385) to establish the National Forest Foundation.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DOMENICI. Mr. President, much of America's environmental greatness lies within our national forests and grasslands.

Vast stretches of our land—8 percent, in fact, of America—is land within the jurisdiction of the Forest Service. These lands are found in 44 of our 50 States, and in Puerto Rico and the Virgin Islands.

These lands are spectacular areas of rugged mountains, prairies, trout streams, wilderness. They are lands providing resources for America's economic greatness.

Some of my most cherished memories come from a special place in my home State of New Mexico, the Cibola National Forest. When my children were younger, we often visited Las Huertas Canyon.

We enjoyed the drive, spending afternoons together in the mountains. I still carry fond memories of the shaded stream, picnics, and the drive around the north end of the mountain with a car full of children.

The American people not only want the Federal Government to protect this resource, but I am convinced they want to participate personally in protecting and improving our forests.

As a result, Mr. President, I have introduced S. 2385 to establish the National Forest Foundation. This bill will bring together the talents and resources of the private sector with those in the Forest Service to enhance the multiple-use management of our national forests and grasslands.

This bill will establish a charitable, nonprofit corporation to raise and direct money and other resources into our national forests and grasslands. Specifically, the Foundation will funnel private donations for projects to rehabilitate and enhance the natural and cultural resources on the national forests.

These donations will be used to complement ongoing Federal efforts. For instance, they could be used to protect and interpret archaeological sites, clean up visitor areas, develop and maintain trails, and plant trees,

Specifically, the Foundation would: First, encourage, accept, and administer private gifts of money and property to benefit the services and activities of the U.S. Forest Service; second, undertake and conduct activities to enhance the on-the-ground management and enjoyment of lands in our National Forest System; third, conduct and encourage educational, technical, and other activities that support multiple-use management, research, cooperative forestry, and other Forest Service programs; and fourth, promote cooperation among the Forest Service, the private sector, conservation organizations, educational institutions, and the general public.

Mr. President, I see this bill as a perfect complement to the President's "America the Beautiful" initiative. The President's initiative proposes, among other things, a reforestation program to plant more than 1 billion trees per year on private lands and in communities across America.

My bill shares many of the same goals. What "America the Beautiful" would do for private forested lands and communities, the National Forest Foundation would accomplish for our national forests and grasslands, using the assistance and resources of the private sector.

Achieving balanced management of America's resources requires cooperation. It requires comprehensive planning as well as sensitive administration and wise use.

The Foundation would provide a means for the private sector to actively participate in numerous projects such as buying and developing habitat for improvement, recreation development, restoring and understanding our cultural heritage, returning a riparian area to health, management, research, reforestation, and educational programs.

Mr. President, this concept first came to me from a former legislative fellow on my staff, a man who had served as a district ranger in New Mexico. Like most public land managers, he was faced with the difficult task of meeting public demands for enjoyment of the national forests, while working within limited budgets.

In seeking to reconcile these differences, he discovered the willingness of individuals and private organizations to provide their talent and resources to accomplish worthwhile projects that never were founded.

In seeking to reconcile these differences, he discovered the willingness of individuals and private organizations to provide their talent and resources to accomplish worthwhile projects that never were funded.

So the National Forest Foundation will provide a vehicle to facilitate that kind of cooperation, cooperation between the private sector and the Forest Service.

Under my bill, the Foundation would be governed by a 15-member Board of Directors appointed by the Secretary of Agriculture. The chief of the Forest Service would serve as an ex officio, nonvoting member.

Through its Board of Directors—consisting of trained and experienced professionals in natural resource management, law, or research—The National Forest Foundation would provide a broad and diverse multiple-use focus to a great variety of projects of interest to all Americans. Board members would serve without pay, but could be reimbursed for expenses.

Under this bill, the Secretary of Agriculture is authorized to provide the Foundation $500,000 per year during the initial 2 years of the Act. This would be startup money.

Further, the Secretary is authorized to provide up to $1 million per year for 5 years in funds, on a 1 for 1 basis, to match private contributions.

Finally, Mr. President, I would note that two other foundations have been successful in accomplishing very specific and, in many ways, similar goals to the National Forest Foundation. These are the National Parks Foundation and the National Fish and Wildlife Foundation.

The foundations have been very successful in bringing the private sector together with the public land managers to protect and enhance our pubic resources.

While developing this bill, I had the pleasure of talking with numerous conservation organizations, recreation associations, industry, and concerned citizens. Many are already forming partnerships with the Forest Service to further the cause of natural resources conservation. Thousands of Americans stand ready to share their talents and resources for the benefit of our national forests.

I see the Foundation as the catalyst for developing these cooperative relationships with private conservation organizations, industry, the academic community, and the philantropic community to meet the multiple-use objectives of our national forests and grasslands.

Mr. President, the time has come for all Americans to get involved in the management and enjoyment of our national forests. We can begin that process by passing my bill to establish the National Forest Foundation.

AMENDMENT NO. 3179

(Purpose: To establish the National Forest Foundation)

Mr. GRASSLEY. Mr. President, I send an amendment to the desk for Senator DOMENICI and ask that it be considered on his behalf at this point.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] for Mr. DOMENICI, proposes an amendment numbered 3179.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Forest foundation Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia.

(b) PURPOSES.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;

(2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and

(3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

(c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to natural and cultural resource issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this title, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individual employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subtitle, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subtitle.

(h) OFFICERS AND EMPLOYEES.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the

competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. 4. CORPORATE POWERS AND OBLIGATIONS.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) POWERS.—To carry out its purposes, the Foundation shall have, in addition to powers otherwise authorized under this title, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(3) PROPERTY.—(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exchange. For the purposes of this title, an interest in real property shall include, but not be limited to, mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or request may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests or private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this title shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

SEC. 5. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) STARTUP FUNDS.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative and other startup expenses, the Secretary is authorized to provide to the Foundation $500,000, from funds appropriated pursuant to section 10(a), per year for the two years following the date of enactment of this title. Such funds shall remain available to the Foundation until they are expended for authorized purposes.

(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this title, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section 10(b) of this title including reimbursement of expenses under section 3, not to exceed then current Federal Government per diem rates.

(c) ADMINISTRATIVE EXPENSES.—At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations on and such terms and conditions as the Secretary shall establish.

SEC. 6. VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147).

SEC. 7. AUDITS AND REPORTS REQUIREMENTS.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) ANNUAL REPORTS.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. 8. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, act or omissions of the Foundation or shall the full faith and credit of the United States extend to any obligations of the Foundation.

SEC. 9. ACTIVITIES OF THE FOUNDATION AND UNITED STATES FOREST SERVICE.

The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section 5(a) of this title, there are authorized to be appropriated $1,000,000.

(b) MATCHING FUNDS.—For the purposes of section 5(b) of this title, during the five-year period following the date of the enactment of this title, there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amentment.

The amendment (No. 3179) was agreed to.

The PRESIDING OFFICER. Are there further amendments?

If not, without objection, the bill is considered read a third time and passed.

So the bill (S. 2385), as amended, was passed, as follows:

S. 2385

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Forest Foundation Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) Establishment.—There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia.

(b) PURPOSES.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture:

(2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and

(3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

(c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public Office.

(2) No director, officer, or employee of the Foundation shall participate, directly, or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, employee; or

(B) the interests of any corporation partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to natural and cultural resource

issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this title, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorizsed under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The Board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subtitle, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subtitle.

(h) OFFICERS AND EMPLOYEES.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. 4. CORPORATE POWERS AND OBLIGATIONS.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

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(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(e) PROPERTY.—(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exchange. For the purposes of this title, an interest in real property shall include, but not be limited to, mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this title shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

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(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this title, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section 10(b) of this title including reimbursement of expenses under section 3, not to exceed then current Federal Government per diem rates.

(c) ADMINISTRATIVE EXPENSES.—At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish.

SEC. 6. VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunter for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147).

SEC. 7. AUDITS AND REPORTS REQUIREMENTS.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) ANNUAL REPORTS.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. 8. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts of omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation.

SEC. 9. ACTIVITIES OF THE FOUNDATION AND UNITED STATES FOREST SERVICE.

The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section 5(a) of this title, there are authorized to be appropriated $1,000,000

(b) MATCHING FUNDS.—For the purposes of section 5(b) of this title, during the five-year period following the date of the enactment of this title, there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

Mr. FOWLER. Mr. President, I move to reconsider the vote.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOLUNTEERS IN THE NATIONAL FORESTS ACT AMENDMENTS

Mr. FOWLER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1017, S. 1532, a

bill to amend the Volunteers in the National Forests Act of 1972.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1532) to amend the Volunteers in the National Forests Act of 1972 to permit volunteers to be considered employees under section 3721 of title 31, United States Code.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Without objection, the bill will be considered read a third time and passed.

So the bill (S. 1532) was passed as follows:

S. 1532

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Volunteers in the National Forests Act of 1972 (Public Law 92-300; 86 Stat. 147) is amended by adding at the end thereof the following new subsection:

"(d) For the purposes of claims relating to damage to, or loss of, personal property of a volunteer incident to volunteer service, a volunteer under this Act shall be considered a Federal employee, and the provisions of section 3721 of title 31, United States Code, shall apply.".

Mr. FOWLER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLARIFICATION OF THE AUTHORIZATION TO PAY THE EXPENSES OF THE CAMPAIGN FINANCE REFORM PANEL

Mr. FOWLER. Mr. President, on behalf of Senators MITCHELL and DOLE I send a resolution to the desk and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 347) to amend Senate Resolution 248 to clarify the authorization to pay the expenses of the Campaign Finance Reform Panel.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

So the resolution (S. Res. 347) was agreed to as follows:

S. RES. 347

Resolved, That the first sentence of section 2 of Senate Resolution 248, agreed to February 22, 1990 (101st Congress, 2nd Session), is amended by inserting before the period the following: "and any reasonable and necessary expenses for official reception and representation and any reasonable and necessary administrative expenses incurred by the Campaign Finance Reform Panel in carrying out its responsibilities under this resolution".

Mr. FOWLER. Mr. President, I move to reconsider the vote by which the resolution was agreed to

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELATING TO TERMS OF IMPRISONMENT AND SUPERVISED RELEASE

Mr. FOWLER. Mr. President, on behalf of Senators BIDEN and THURMOND, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 3180, a bill to amend the provisions of title 18 U.S. Code, relating to terms in imprisonment and supervised release following revocation of a term of supervised release; that the Senate proceed to its immediate consideration; that the bill be deemed read for the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 3180), was passed, as follows:

S. 3180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IMPOSITION OF SENTENCE.

Section 3553(a)(4) of title 18, United States Code, is amended to read as follows:

"(4) the kinds of sentence and the sentencing rage established for—

"(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines issued by the Sentencing Commissionpursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the dcefendant is sentenced; or

"(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code;".

SEC. 2. REVOCATION OF PROBATION.

Section 3565(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "of" and inserting "or"; and

(2) in paragraph (2) by striking "impose any other sentence that was available under subchapter A at the time of the initial sentencing" and inserting "resentence the defendant under subchapter A".

SEC. 3. SUPERVISED RELEASE AFTER IMPRISONMENT.

Section 3583 of title 18, United States Code, is amended—

(1) in subsection (e)—

(A) in paragraph (3) by striking "supervised release without credit" and inserting "supervised release authorized by statute for the offense of which the defendant was convicted without credit"; and

(B) by redesignating paragraph (5) as paragraph (4); and

(2) by striking subsection (g) and inserting the following:

"(g) POSSESSION OF CONTROLLED SUBSTANCES.—If the defendant is found by the court to be in the unlawful possession of a controlled substance, the court shasll revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

"(h) SUPERVISED RELEASE FOLLOWING REVOCATION.—When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense of which the defendant was convicted, less any term of imprisonment that was imposed upon revocation of supervised release.".

Mr. FOWLER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTERNATIONAL NARCOTICS CONTROL ACT OF 1990

Mr. FOWLER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5567, the International Narcotics Control Act of 1990, which we have just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5567) to authorize international narcotics control activities for fiscal year 1991, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3180

Mr. GRASSLEY. Mr. President, I send to the desk an amendment on behalf of Senator HELMS and ask for it is immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. HELMS, proposes an amendment numbered 3180.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

SEC. 17(b) is amended by striking "strongly".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3180) was agreed to.

AMENDMENT NO. 3181

(Purpose: To strike section 8(b) of the bill)

Mr. GRASSLEY. Mr. President, I send an amendment to the desk on behalf of Senator HATCH, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. HATCH, proposes an amendment numbered 3181.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 14, strike beginning with line 23 through line 13 on page 15.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3181) was agreed to.

Mr. PELL. Mr. President, the International Narcotics Control Act of 1990 authorizes appropriations for fiscal year 1991 to carry out the administration's Andean strategy to reduce the supply of drugs coming into this country from the three major coca-producing nations.

As my colleagues known, for fiscal year 1990, the administration requested and Congress approved $125 million in regular military assistance to Colombia, Bolivia, and Peru to be used for antinarcotics activities. Due to a variety of delays, none of the $125 million in military assistance has yet been delivered, so we do not know the impact of this form of assistance.

The bill before us this evening represents a far more balanced approach to our assistance to these three countries, one which more nearly comports with ONDCP's statement that "[T]he long-term success of the counternarcotics strategy is dependent on strengthening democratic processes and economic growth to compliment [sic] law enforcement actions."

The International Narcotics Control Act authorizes $300 million in addition to amounts otherwise authorized for economic support fund assistance and development assistance. The administration has requested $175 million in economic assistance for fiscal year 1991, an amount I believe is far from adequate to provide a meaningful incentive for the Andean Governments to sustain an attack against the cocaine industry that generates billions of dollars for local economies. The authorized funds are conditioned on these Governments meeting narcotics control performance targets and on respect for basic human rights.

The bill also limits the aggregate amount of military and law enforcement assistance to Colombia, Bolivia, and Peru to $250 million, of which not more than $175 million may be used for military assistance and not more than $175 million may be used for assistance to law enforcement units or agencies. Military and law enforcement assistance to an Andean country is available only so long as that country has a democratic government and the armed forces and law enforcement agencies of that country do not engage in a consistent pattern of gross violations of internationally recognized human rights.

Imposition of an aggregate ceiling on military assistance is necessary because there are five different authorities in law under which narcotics-related military assistance may be provided.

Mr. President, as I mentioned earlier, the basic thrust of the administration's Andean strategy has been that narcotics control efforts are primarily a law enforcement responsibility, with host country armed forces playing a supporting role. Yet under the current projections of the Office of National Drug Control Policy, military aid to the Andean countries in fiscal years 1990 to 1994 will total $675.7 million, more than twice the amount projected for law enforcement assistance. The bill before us seeks to redress this projected imbalance by placing the armed forces and the police on a par.

Our fight against the scourge of illegal drugs in this country will not be won in the mountains of the Andean countries alone, but our efforts to assist the Governments of the Andean countries are an important component of the war on drugs. Over the last 2 years, we have seen some progress. Some of the most notorious drug lords have been captured or killed; the price of cocaine has soared in this country; the price for coca leaf has dropped dramatically. It is in our interest to provide the wherewithal to the Andean Governments to continue to pressure the drug cartels in their region to reduce supply flowing into our streets. I urge my colleagues to support the International Narcotics Control Act of 1990.

Mr. BIDEN. Mr. President, I strongly support the International Narcotics Control Act of 1990. This legislation greatly improves the President's international drug bill, and implements several ideas that I have proposed to wage the drug war overseas.

I would like to briefly discuss a number of provisions in the bill. First, the bill authorizes $300 million in economic and development assistance for the Andean nations, nearly $100 million more than the administration requested. Since the President's drug strategy was unveiled, I have argued—along with many of my colleagues—that greater emphasis is needed on economic assistance to the Andes.

Without increased economic aid, the nations of the Andes will be unable to provide viable, legal alternatives to peasants hoping to get out of the coca trade. We saw an example of this in Bolivia earlier this year, when the price of the coca leaf plummeted, and many farmers began voluntarily eradicating their fields. To take advantage of this opportunity, I proposed—in March of this year—adding $125 million in economic assistance for the Andean nations to the supplemental appropriation for Panama and Nicaragua.

Unfortunately, the administration opposed the idea. No official explanation was given, other than that a drug strategy was in place, and there was no reason to alter it. Moreover, I was assured by administration officials that sufficient funds were available in fiscal 1990 to meet changing developments in the Andes.

We learned later that this was not the case. The State Department's mid-year International Narcotics Control Strategy Report says that the Government of Bolivia "did not have the funds to make timely compensation to farmers" participating in a program of voluntary coca eradication. In April 1990, the U.S. Embassy in La Paz reported that 1,033 of 1,093 hectares eradicated during the month went uncompensated because of insufficient funds. Had the administration not been short-sighted in the spring, these funds could have been available from the United States to fill the gap.

Second, the bill places an overall cap on military and law enforcement assistance to the Andes of $250 million, with a subceiling of $175 million each for military and police aid. This provision makes clear that the Congress believes there should be an equal balance between police and military aid in the drug war in the Andes.

It also sends a signal—both to the administration and to the Andean countries—that Congress is opposed to an open spigot of enforcement aid to the Andes.

I do not deny that enforcement assistance is needed. Nor do I deny that a military role is necessary to assist law enforcement in the Andean drug war. We have made a similar choice with respect to the use of the U.S. military in the drug war in this country. I am concerned, however, that too much emphasis will be placed on the enforcement side, to the detriment of programs, like alternative development, designed to promote the legal economies of the Andean region.

In particular, overemphasizing a military solution to the drug war in the Andes could undermine democrat-

ic institutions and lead to increased abuse of human rights. Greater participation by the armed forces in antinarcotics enforcement is especially worrisome in Bolivia, which has no active insurgency, and where the last military dictatorship was deeply involved in drug trafficking.

Third, the bill before us urges the President to use the authority provided in section 10 of the International Narcotics Control Act of 1989, Public Law 101-231, to give relief on official debt owed by Bolivia, Colombia, and Peru. This authority, which took effect on October 1, 1990, allows the President to provide relief on debt owed by these nations to the U.S. Treasury, provided they are implementing programs to reduce the flow of cocaine to the United States.

This provision is based on a comprehensive debt-for-drugs proposal I made in August 1989. To date, the administration has opposed my proposal, but I am hoping the President will review his position in the coming weeks, and take advantage of this weapon.

In my view, such debt-for-drugs exchanges would bring important benefits to U.S. drug policy in South America. The economies of the Andeans countries have, in varying degrees, become dependent on the revenues generated by the drug trade. Plagued by declining economic conditions for most of the 1980's, and burdened with large debt payments, the nations of the region have, without malice of forethought, come to rely on drug revenues for a significant percentage of foreign exchange.

A crackdown on the drug trade carries an obvious risk for the Andean nations, a loss of revenues needed to service the foreign debt. Moreover, it is counterproductive for the United States to insist that these nations remain current on their debt payments to the U.S. Treasury while also requesting them to launch a full-scale war on drugs. Therefore, it is essential that any U.S. drug strategy address the debt issue.

Recent initiatives by President Bush suggest that he is open to relieving government-to-government debt, known as official debt. In June of this year, he announced his "Enterprise for the Americas" initiative, which endorsed the concept of official debt relief for all of Latin America. More recently, the President proposed—without preconditions—the cancelation of the military sales debt incurred by the Government of Egypt, worth $7 billion. Surely he can give the same treatment to the Andean nations fighting the scourge of drug trafficking.

Unlike these two proposals, the President need not wait for congressional authority to relieve the debt of the Andean coca-producing nations. He already has it, and I urge him to use it.

Two other important provisions are in this bill which were contained in both S. 2650—national drug strategy legislation I introduced in May of this year—and in S. 2652, the administration's drug strategy bill.

First, this legislation provides a permanent waiver of laws that prohibit the use of U.S. foreign aid for crop substitution programs. This will give the administration maximum flexibility in promoting alternative crops in the Andes. Second, the bill provides a 1-year waiver of section 620(q) of the Foreign Assistance Act, the so-called Brooke-Alexander provision, which requires the suspension of aid to any country more than 1 year behind in its repayment of debts to the United States.

Mr. President, in the last 14 months, since the President's first national drug strategy was drafted—and my subsequent release of an alternate drug strategy—we have made important progress in the war on drugs. The bill before use will help us to build on that progress, particularly in the Andean region of South America.

We must do more to reduce the supply of drugs coming into the United States, just as we must do more here at home to reduce our demand for these narcotics. I urge my colleagues to support this legislation, which will help us take another step toward this goal.

The PRESIDING OFFICER. Is there further debate?

Without objection, the bill is considered read a third time and passed.

So the bill (H.R. 5567), as amended, was passed.

Mr. FOWLER. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRANSFERRING JURISDICTION OF THE BIG SOUTH FORK NATIONAL RIVER AND RECREATION AREA

Mr. FOWLER. Mr. President, I ask unanimous consent that the Environment Committee be discharged from further consideration of H.R. 5667, an act to transfer jurisdiction of the Big South Fork National River and Recreation Area; that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5667) was ordered to a third reading, read the third time, and passed.

Mr. DODD. Mr. President, I ask unanimous consent I be allowed to proceed for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE HUMAN SERVICES REAUTHORIZATION ACT OF 1990

Mr. DODD. Mr. President, recently the cover of Time magazine asked a question that we should never have to ask the wealthiest nation in the world: "Do we care about our kids?" Today, we have legislation on the President's desk affirming that, yes, we do care and are willing to invest in our children. The programs in the Augustus F. Hawkins Human Services Reauthorization Act of 1990 are the heart of our efforts to overcome the poverty that threatens to rob many children of their future. This bill represents a truly bipartisan consensus that the support these programs provide for children and families should be extended and strengthened.

The centerpiece of the legislation is the reauthorization of Head Start. The Time article points out that a year of preschool costs one-fifth as much as a year in prison. Research has shown that high quality early childhood programs pay for themselves many times over in fewer dropouts, lower welfare costs, and less involvement in crime. Yet, to borrow the article's words, we have lacked the wisdom, the decency, or even the economic foresight to make it possible for more than a fraction of disadvantaged children to receive the benefits of Head Start.

Now, through this legislation, the full promise of Head Start will finally be realized after 25 years. By 1995, the authorization levels will give every eligible child a chance for a brighter future through attending Head Start. The bill includes funds for quality, so these children will get the most effective services. You have only to spend some time, as I have, in a Head Start center filled with bright eager youngsters to know expanding Head Start is the wise and decent thing to do. Yes, it will be costly. But it will be costlier still to find, 20 years from now, that the adults these children will become cannot fill the jobs that would make our Nation competitive. So, I think we are being economically foresighted as well.

Other programs in the Human Services bill address problems as pressing as the need for early childhood education. The bill authorizes $2.1 billion in 1991 for the Low-Income Home Energy Assistance Program, which is often a lifeline for low-income families. For these families, the approach of the cold winter months and the skyrocketing fuel prices in the wake of

the Persian Gulf crisis do not mean just putting on another sweater and turning down the thermostat. They mean choosing between food and warmth, between a home and a homeless shelter, and in some cases, between life and death. If $2.1 billion seems like a lot of money, consider this: The increases in the price of oil since July mean that poor families will have to pay an additional $1.8 billion this winter for oil, propane, and kerosene. That increase alone is more than the current LIHEAP appropriation.

In putting together this bill, one theme echoed over and over: the most effective approaches to helping disadvantaged families are community-based, comprehensive, and focused on self-sufficiency. This theme is exemplified in the programs funded through the community services block grant. The legislation strengthens this program by adding protections to ensure the preservation of its central principle—community-based programs run with the input of the low-income persons they serve. The legislation also expands the Community Food and Nutrition Program, which coordinates and promotes nutrition programs for hungry children, so that it approaches the funding levels it received in the 1970's.

Many of these programs began in the 1960's as part of the war on poverty. Just as their creators had to respond to the problems of their time, so we have to respond to the problems of deepening poverty and fragmented families of our own time. The final legislation contains several new initiatives that originated in the Senate. I am particularly proud of a group of programs which I sponsored to coordinate services for children, youth, and families. These programs encompass what will now be known as the Claude Pepper Young Americans Act, as well as grants for family resource and support programs. Another important initiative, developed by Senator KENNEDY, is the Head Start Transition Project Act. This program will transfer the keys to Head Start's success—social services and parental involvement—to elementary schools serving these same children and families.

Finally, the legislation contains a small grant program, which I sponsored, to help communities find ways to build leadership and promote community service among minority youth. Nowhere is the need for such programs greater than in my own State of Connecticut. A recent series in the New Yorker magazine chronicled the lure of the drug trade for young black males in inner-city New Haven, where few other opportunities beckon. Those adults in the community who are willing and able to help these youth find an alternative report it is an uphill battle.

Mr. President, the conference on this bill reflected the widespread support for human services programs such as Head Start and Low-Income Home Energy Assistance. Of course there were differences over individual provisions or how best to meet a particular objective. But underneath it all was a wealth of good intentions and support for children and families. Unlike other times, however, when the rhetoric was there but the actions did not follow, this time we acted on our good intentions. The Human Services Reauthorization Act sends a clear message that we do care about the children and families in our Nation. This is truly a landmark bill, coming as it does in the 25th anniversary year of the creation of Head Start. I urge the President to sign the bill into law as quickly as possible and join the Congress in sending this message.

Mr. BURDICK. I want to thank the distinguished chairman of the subcommittee, Senator DODD, for his work in incorporating the small State minimum into the amendments for the community services block grant [CSBG]. I first introduced this legislation, S. 2725, in 1988, and have worked hard for its enactment.

Under the small State minimum formula, a total of 12 States, including North Dakota, will each receive an increase in its CSBG funding to a minimum of 0.5 percent. These extra funds will be of great benefit to low-income people in my State and to those residing in other small States.

The small State minimum formula goes into effect when funding for the CSBG and the discretionary fund exceeds $345 million. I thank the Chairman DODD and the full Labor and Human Resources Committee chairman, Senator KENNEDY, for receding to the House in conference report. In my capacity as a member of the Appropriations Committee, I have been successful, thus far, in ensuring that the appropriations level for CSBG will exceed the $345 million trigger.

When my original bill was introduced, I stressed that it was my intention that changing the small State minimum formula would not result in any reduction of funding for any other State or for the important programs of the discretionary fund. That is still my intention. Mr. President, is that the intention of this conference report?

Mr. DODD. The Senator is correct. We certainly did not intend to jeopardize any of the current State programs or the discretionary fund as a result of this amendment. It is our strong hope that the appropriations will provide sufficient additional funding to accommodate the small State minimum.

I thank my good friend from North Dakota for his important contribution to this legislation.

Mr. KENNEDY. Mr. President, the President now has on his desk the Augustus F. Hawkins Human Services Reauthorization Act of 1990. This legislation includes a landmark expansion of the Head Start Program and reauthorizes other key antipoverty programs. Enactment of this proposal will enable us to make a substantial down payment on the future of America's poorest children and families.

Over the past decade, poor children have suffered, while the rich have profited from Federal policies.

We have seen the consequencies of our misplaced priorities—this year one of every six American children dropped out of school. Two million children went hungry each day. Five million children in need of mental health services did not receive them, and one in five was medically uninsured. The 13 million children in poverty today are the largest group of poor Americans,

This legislation reverses this trend, by reinvesting in the programs that we know work, and creating new solutions to the age-old problem of poverty in America.

I am particularly pleased with this legislation's enhancement of our most notable program in the war on poverty—Head Start. By preventing school failure before it happens, Head Start improves children's chances of becoming literate, completing school, going to college, and obtaining a job.

Under this legislation, Head Start services will be expanded to reach all eligible 3- to 5-year-old children by fiscal year 1994. If the program is fully funded, my own State would receive an additional $12 million in Head Start funds next year Ten percent of these funds would be used to improve program quality, through higher salaries for Head Start teachers and training to meet the special needs of children affected by increasing violence and substance abuse.

The agreement also authorizes Head Start Transition projects, which will provide for a smooth transition of children from Head Start to elementary school and enable schools to adopt the time-tested Head Start model for providing comprehensive services and encouraging parental involvement.

Another important part of this agreement is the low Income Home Energy Assistance Program. The crisis in the Persian Gulf has exacerbated home heating fuel prices. Too many families will be forced to choose between food and fuel this winter.

Under this bill, the LIHEAP program will receive additional funds in order to serve more families—for my own State, this could mean an additional $24 million, if the legislation is fully funded. In order to make LIHEAP dollars go further, the legislation also authorizes a new leveraging

incentive fund that will reward States that develop and implement creative methods for making the most of their energy resources.

Many individuals have worked hard on the Human Services Reauthorization Act of 1990. In particular, Senator DODD and his excellent staff—Rich Tarplin, Patty Cole, Jackie Ruff, Courtney Pastorfield, Molly Guth, and Wendy Coughlin—have logged many hours on behalf of poor children and their families. Senator COATS, HATCH, and KASSEBAUM and their staff worked hard to ensure broad support for the proposal. In the House, Representative DALE KILDEE and his able staff—Susan Wihelm, Damian Thorman, Margaret Kajeckas, Tom Kelley, and Jeff McFarland—should be commended for their fine work on the legislation. Representative AUGUSTUS HAWKINS and his staff person, Carole Stinger, as always provided leadership on this issue of importance to children. Bill Baird from legislative counsel provided expert work on a short deadline in drafting the bill. Finally, I would like to thank my own staff—Shirley Sagawa, Sarah von der Lippe, Adele Robinson, Amy Lowrey, David Stark, Juliet Wurr, Rusty Barbour, and Nick Littlefield—for their dedication to this landmark legislation.

I urge my colleagues to support the conference agreement.

Mr. DURENBERGER. Mr. President, I rise in support of H.R. 4151, the Conference Report on the Reauthorization of the Human Services Act of 1990.

The bill before us today contains some of the most important and most successful Federal human service programs in the country, including Head Start, LIHEAP, the Community Service Block Grant Program, the State dependent care development grants, and others.

Mr. President, no issue stands a higher priority than the care and nuturing of America's youngest citizens. Because an important opportunity for affirming that priority lies within the reauthorization of the Head Start program, I recently convened a 30-member working group to advise me on the reauthorization. This group began by establishing a set of principles to be followed during the reauthorization process. It also reviewed and analyzed the bill and came up with several recommendations which it outlined in a report called Investing in America's Future.

The group found that, despite society's growing awareness of the importance of comprehensive early childhood programs, we have continued to grossly underfund Head Start. In Minnesota, for example, fewer than one eligible child in four was served through the State's 27 Head Start agencies. If you look more closely at individual agencies, you also see a wide disparity between programs. In Hennepin County, for example, only 14.5 percent of the eligible children were served. Outside the Minneapolis-Saint Paul metro area, the percentage of eligible children served ranged from 11.3 percent to 60.2 percent. I am pleased that the legislation before us today addresses both the overall cost issue by increasing authorization levels to fully serve all eligible children and, the geographical disparity issue, by including language to study this problem within the biennial study.

Another very important aspect of this reauthorization is the increased focus on improving the quality of care within Head Start programs. For many years the sole focus has been on expanding the number of children served. While this is an important goal, we should not let it diminish the success of the program by threatening the quality of service provided. I am pleased that this bill takes several important steps to ensuring quality programs for our children.

It is not often these days that a Federal program acts as the model for States. But that is exactly what has happened in my State. The State of Minnesota recently debated how best to expand early childhood programs. In the end, it concluded that the best use of State dollars would be piggyback onto the Head Start Program. In 1988, the state legislature began making State grants to Head Start agencies. The program began with a modest appropriation of $400,000 and has since increased to $5.1 million.

The changes in this legislation will help build on the success of this already impressive program. Again, I want to thank all of those who participated in the working group back in Minnesota for all their help on this legislation for their continued dedication to improving the lives of children in this country.

Mr. President, I would also like to mention another part of this legislation that is very important to my State, and that is the LIHEAP transfer program. The LIHEAP is particularly critical in a State like Minnesota, where the winters can last from October to April, and can go weeks without getting above the zero degree mark. So I understand the efforts within this bill to try and stretch the LIHEAP dollar by eliminating the current authority to transfer out up to 10 percent of the LIHEAP money for other low-income and support services. However the elimination of the 10 percent transfer could have had potentially devastating effects on the lives of thousands of Minnesotans. Twenty-eight States, including Minnesota take advantage of the ten percent transfer. Over the last decade, Minnesota has vigorously carried out the intent of the Congress by using transfer funds to establish a number of successful antipoverty programs. Immediate elimination of this program, without proper time to allow States to pick up and adjust services, would have meant an immediate elimination or reduction in services to over 100,000 low-income Minnesotans.

So I want to thank my friend from Connecticut and the Congressman from Michigan for recognizing the problems an immediate elimination of this program would have caused and for including a 3-year phasedown to allow states—including those with biennial budget cycles—to go back to their State legislatures and make up the lost money at the State level.

Again, Mr. President, I want to commend the work of my good friend from Connecticut for his untiring devotion to children and families, and for the many hours of work he has spent in bringing this legislation before us today. I also want to thank Senators KENNEDY, HATCH and COATS, and Representatives KILDE, HAWKINS, GOODLINE, and TAUKE for their efforts. I urge my colleagues to support this important legislation. Mr. President, I ask unanimous consent that a listing of the members of the Head Start working group be printed in the RECORD following the text of my remarks.

There being no objection, the material was ordered to be printed in the Record, as follows:

MEMBERS OF THE AD HOC WORKING GROUP ON HEAD START

Mary Anderson, mayor of Golen Valley;
Brad Becker, Minneapolis Way to Grow Program;
Becky Beetsch, Ramsey Action Program (Ramsey County Head Start agency);
Connie Bell, Greater Minneapolis Day Care Association;
Robert Bradshaw, Osseo Public Schools;
Boberta Brainard, Minnesota Department of Jobs and Training;
Dianne Brennan, Pillsbury Company Foundation;
Dennis DeMers, Tri-Valley Opportunity Council, Crookston (NW Minnesota Head Start agency);
Alyce Dillon, Parents in Community Action (Hennepin County Head Start agency);
Connie Greer, Minnesota Department of Jobs and Training;
Tony Hannah, Minneapolis Urban League;
Benneta E. Harrington, Minneapolis Urban League;
Susan Helget, Hennepin County Commissioners' office;
Pat Hoven, Honeywell, Inc.;
Carol Johnson, Minneapolis Public Schools High Five project;
Tad Jude, Hennepin County Commissioner;
Larry O. Ketchum, Reach-Up, Inc. (St. Cloud area Head Start agency);
Carol Miller, Hennepin County Community Service;
Colleen Moriarty-Walker, Minneapolis Youth Coordinating Board;
Luanne Nyberg, Minnesota Children's Defense Fund;
State Senator Randy Peterson, Wyoming;

Beverly Propes, Minneapolis United Way Success by Six Program;
Elaine Salinas, Minneapolis Urban Coalition;
Connie Schilling, General Mills, Inc;
Sharon Shapiro, Minnesota Head State interagency specialist;
Mary Taylor, Way to Grow Program;
Joy Tierney, West Hennepin Human Services Board;
Lisa Veneble, Minneapolis United Way Success by Six Program;
Mike Weber, Hennepin County Community Services; and
Patty Wilder, Northwest Hennepin Human Service Council.

Mr. DODD. Mr. President, I also want to take note, before terminating here, there are always people who deserve some special credit. Patty Cole, who is on loan to my staff from the General Accounting Office, has done a remarkable job as a staff person, putting together this legislation.

I make note to my colleagues, they may have even missed the fact we adopted this bill because it was done on the consent calendar without a recorded vote. In fact we came out of the Labor Committee with a unanimous vote of Republicans and Democrats supporting this comprehensive package, and it passed the floor of the Senate without a dissenting voice. That will be unique. I think most people would have anticipated this legislation would have provoked some lengthy debate but because there is such strong bipartisan support, such unique and unanimous recognition of the success of Head Start, this legislation went through with the unanimous support of the U.S. Senate. I am deeply proud to be a part of this Chamber and this body in this year that took cognizance of the success of this program and sent it to the President with that backing and that strong, strong support.

I will be glad to yield to my colleague from California.

Mr. WILSON. Mr. President, I rise first to commend my friend from Connecticut. I think he has been eloquent in the best of causes, that of America's children. I particularly commend him for what has been his persistence in fighting for an adequate Head Start Program.

His pride is understandable and it is shared by, I think, everyone on this floor.

There has been a splendid accomplishment achieved this year.

There was one disappointment which I think goes very much to the root of what he has been talking about. I make the observation with the hope that in future sessions we can improve even upon what I agree has been a very good performance in this regard.

One of the things that was in the Senate bill as it left this Chamber, which did not survive the conference, was an amendment called a healthy start amendment, that in fact had wide backing from schools all across the Nation, and had the official endorsement of the National School Boards Association.

As the name would imply, it was a program that sought to give children a healthy start in schools by providing the kind of coordination at county level between those agencies of county government which, as agencies really of the State, provide the sort of early mental health counseling, the kind of nutritional aid, the kind of health services to children in the schools that can eliminate later the kind or problem that we see in a 40-percent-plus high school dropout rate in all too many of our school districts.

I would say those problems begin literally before birth itself and perhaps the best antidote to high school dropout problems might be a universal prenatal care program.

But, without elaborating in greater detail, I join my friend in hoping that on this very good foundation, in which he has expressed justifiable pride, we can build further, and in future sessions we can add that healthy start program because I am convinced, Mr. President, that if we are to have kids who will be adequate to meet the challenges of the 21st century, they are going to have to come to the classroom healthy enough so they can concentrate and learn as well as be motivated to learn, to stay and to learn, and see they can actually be prepared to cope in what is a very, very increasingly competitive and demanding job market; a global marketplace.

So with that, my thanks to my friend. I do not know that I will have the opportunity to say that too many more times. If luck holds, I may be changing jobs. But I do think he has every right to express the kind of pride that he has, and I wish him well in continued efforts to build upon that fine foundation.

Mr. DODD. Let me, first of all, thank my colleague from California for his kind comments and say to him that his healthy start program is one I thought had some merit to it. We ran into a problem, he should know, in the other body where there was reluctance to take a new program like this. What we tried to do is to take some of the important elements of the healthy start program and fold them into the legislation which we were able to achieve, but there were elements we did not get in.

May I say to my good friend from California, who I wish nothing but the brightest of success, that I hope he is back here next year to help us work on a healthy start program. Nonetheless, if he is not, we will continue his efforts as well and remember his efforts in this regard. Mr. President, I yield the floor.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991—CONFERENCE REPORT

Mr. FOWLER. Mr. President, I submit a report of the committee of conference on H.R. 5229 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5229) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1991, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 16, 1990.)

Mr. LAUTENBERG. Madam President, what is the pending business?

The PRESIDING OFFICER (Ms. MIKULSKI). The conference report on H.R. 5229.

Mr. LAUTENBERG. I thank the Chair.

Madam President, I bring before the Senate the conference report on H.R. 5229. It is the Department of Transportation and related agencies appropriations bill for fiscal year 1991.

Madam President, I will take a moment, if I may, to summarize the funding levels in this appropriations measure. The conference agreement contains a total of $12,988,000,000 in new budget authority and $17,902,000,000 in obligation limitations.

The conference report is within the subcommittee's 302(b) allocation and it is consistent with the budget summit agreement.

The major increases over fiscal year 1991 are for the Federal Railroad Administration, the Federal Highway Administration, which is an increase of 11 percent over last year; the Federal Aviation Administration, an increase of 14 percent, which will help ensure that we continue to develop our aviation system to protect the safety and convenience of our air travelers; the marine environmental protection activities in the Coast Guard, an increase of 24 percent to enable them to do all of the things that we ask of the Coast Guard. That includes not only drug interdiction, but also pollution patrol, Marpol enforcement, oil spill prevention, and search and rescue operations. It is a hefty increase in spite of very tight budgetary constraints.

The agreement provides for a total program of $893.8 million for the Federal Railroad Administration. That represents an increase of $187 million over the current level. The agreement provides initial funding for the full electrification of the Northeast corridor and provides $10 million for research and development on the promising technology of magnetic levitation trains. The interest here, obviously, is to improve rail travel in this country, to continue to improve its speed and efficiency so that we can reduce pollution and make inter-city travel more rapid and more convenient.

For the Federal Aviation Administration, the conference agreement includes an increase of $1 billion over last year. As I earlier said, these funds will improve safety by allowing the continuing rebuilding of the controller workforce, enhance aviation security, add safety inspectors and maintenance inspectors, and boost the technician work force. There is also a substantial increase in the obligation ceiling for the Airport Improvement Program to the fully authorized level. This will release more funds for improving our aviation infrastructure and building new airports.

Other highlights of the conference agreement include $238 million for the National Highway Traffic Safety Administration; $3.27 billion for the Urban Mass Transportation Administration; and $3.23 billion for the Coast Guard.

The Federal Highway Administration's obligation ceiling for Federal aid to highways grants was raised by almost $2.3 billion. The conference agreement provides an increase for important motor carrier safety programs and highway demonstration construction projects throughout the country.

Madam President, this is a broad-based transportation bill with significant increases over last year's budget, despite the overall budgetary constraints. I am pleased we have an opportunity to offer this bill at this time and move to pass it expeditiously, have it done with because this represents a conference agreement resulting from our discussions with the House.

Madam President, I ask unanimous consent that a letter on the subject of radar detectors from Secretary Skinner to me be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF TRANSPORTATION,
Washington, DC, October 15, 1990.

Hon. FRANK R. LAUTENBERG,
U.S. Senate,
Washington, DC.

DEAR SENATOR LAUTENBERG: Thank you for your recent inquiry about the status of the Federal Highway Administration (FHWA) rulemaking concerning a possible ban on use of radar detectors by commercial motor vehicles (CMVs). FHWA is considering publishing a Notice of Proposed Rulemaking, which I expect to review shortly.

If a Notice is published, it will be in response to a July 18, 1990 petition to ban radar detectors in CMVs, jointly filed by the insurance institute for Highway Safety and seven other organizations. There are, however, several issues about which FHWA may need more information, including: (1) the extent of the use of radar detectors in CMVs; (2) whether possession should be grounds for an out-of-service order; (3) whether radar detector bans reduce radar detector use, speeding, accidents, injuries, and fatalities; (4) whether cost-effective technology exists to detect radar detectors accurately; (5) whether cost-effective counter devices would be available to drivers; and (6) constitutional and enforcement issues.

At this stage, I am unable to provide you with further details. I will, however, keep you apprised of future developments. I hope this information is helpful.

Sincerely,

SAMUEL K. SKINNER.

Mr. LAUTENBERG. Madam President, the joint explanatory statement of the committee of conference for this Transportation appropriations bill includes a carefully worded compromise concerning the possible need for an alternative engine for the Coast Guard's fleet of HH-65 helicopters. This is a matter of considerable importance, since it affects the Coast Guard's search and rescue mission. The Senate Transportation Subcommittee has been concerned for some time with the performance that the Coast Guard have the equipment that best suits the needs of its critical search and rescue activities.

In that spirit, Madam President, the conferees directed in the statement of managers that the Director of Operational Test and Evaluation in the Department of Defense conduct its own independent research on the options available to the Coast Guard to address problems with the HH-65 helicopter. The Director is expected to submit an independent and impartial report with recommendations to the Commandant. Should the Director, after looking at all the options available to the Coast Guard, recommend that the Commandant proceed with a proof of concept on a commercial helicopter engine, the report is expected to indicate which of the available commercial engines would be most suitable for a proof of concept.

I had hoped that the language in the statement of managers would stand on its own. I am concerned, however, that some colloquies on the House floor and other statements by Members regarding this issue may serve to cloud matters more than clarify them. For that reason, I wish to make the following three points regarding the intent of the compromise language. I do so in my capacity as chairman of the conference on the part of the Senate, chairman of the subcommittee, and author of the compromise language.

First, we expect the Director of Operational Test and Evaluation to conduct his own independent research on this matter. While we expect the Coast Guard to cooperate and communicate with the Director on issues such as mission requirements, the Director is expected to review the most up-to-date information available on this issue from all sources—not simply information provided by the Coast Guard or collected by Coast Guard contractors for earlier reports.

Second, the conferees have established a deadline for the report of 90 days. While the Director may submit his report sooner than 90 days, we expect him to submit the most thorough and independent report possible within the time allowed. Under no circumstances should the Director feel compelled to alter the scope or thoroughness of his inquiry in order to supply the report any sooner than 90 days. Given the important public safety ramifications of this inquiry, it is critical that the Director submit the most accurate and comprehensive report possible.

Third, the Commandant is authorized to expend $2 million of funds previously made available for HH-65 engine improvements, only if the Director recommends that a proof of concept be executed for one of the two commercial engines. Should the Director not recommend this course of action, the funds will remain available in the fiscal year 1990 HH-65 engine improvements account and be available for other purposes subject to the normal reprogramming procedures.

Madam President, we had 143 amendments in conference. The conferees have agreed to a resolution of all of these amendments. The result is a package that I believe preserves a balanced transportation program for the entire Nation despite severe funding constraints.

Madam President, I believe that this summary statement accurately and fairly summarizes the overall contents of our agreement.

Madam President, we will soon be hearing from the ranking member, Senator D'AMATO. I want to extent my deepest thanks to my friend and ranking member, Senator D'AMATO, from New York, for his help in getting this very difficult bill through the conference with the House and to the floor.

Given the many hurdles we faced, it was very hard to develop a balanced transportation program.

I am pleased to see my colleague and friend, Senator D'AMATO, on the floor. Without his assistance, the processing of this bill would have been impossible.

I will in a moment yield to my distinguished colleague for his remarks.

I also want to pay tribute to our House counterparts, Chairman BILL

LEHMAN and his ranking member, LARRY COUGHLIN, from Pennsylvania. They and their colleagues worked very hard to produce a good, solid transportation program and were unfailingly courteous and cooperative in working out a reasonable accommodation between the two Houses.

Madam President, I am also indebted to colleagues who serve with me on the Transportation Committee, Senator BYRD, Senator HARKIN, Senator SASSER, the occupant of the chair, Senator MIKULSKI, Senator KASTEN, Senator DOMENICI, Senator GRASSLEY, as well as Senator INOUYE, and Senator HATFIELD was joined us in conference and who have been a constant source of good counsel and steadfast support.

I also at this moment, Madam President, would like to acknowledge the outstanding cooperation, support, hard work, and skillful development of the staff: Pat McCann, Peter Rogoff, and Joyce Rose. We are particularly pleased to have the Republican clerk from the subcommittee on the floor, Anne Miano. It was a race with time and with the obstetrician. People were concerned as to whether or not Anne could be here. So we are pleased to have her here, and I assume that we will not have a spectacular event take place on the Senate floor. We hope that Anne can wait a few minutes.

Madam President, I bring before the Senate the conference report on H.R. 5229, the Department of Transportation and related agencies appropriations bill for fiscal year 1991.

Madam President, I would like to take a moment to summarize the funding levels in this appropriations measure.

The conference agreement contains a total of $12,988 million in new budget authority and $17,902 million in obligation limitations. The conference report is within the subcommittee's 302(b) allocation and is consistent with the budget summit agreement.

The major increases over fiscal year 1991 are for the Federal Railroad Administration, an increase of 26 percent over the fiscal year 1990 allocation, the Federal Highway Administration, an increase of 11 percent, the Federal Aviation Administration, an increase of 14 percent, and marine environmental protection activities in the Coast Guard, an increase of 24 percent.

The agreement provides a total program of $893.8 million for the Federal Railroad Administration. This represents an increase of over the current level. The agreement provides initial funding for the full electrification of the Northeast corridor and provides $10 million for research and development on the promising technology of magnetic levitation trains.

For the Federal Aviation Administration, the conference agreement includes an increase of $1 billion over last year. These funds will provide for the continued rebuilding of the controller, aviation security, safety inspector, and maintenance technician work forces. There is also a substantial increase in the obligations ceiling for airport improvement program grants, which will release more funds for improving our aviation infrastructure and building new airports.

Other major highlights of the conference agreement include: First, $238.4 million for the National Highway Traffic Safety Administration; second, $3.27 billion for the Urban Mass Transportation Administration; and third, $3.23 billion for the Coast Guard.

Of this amount provided to the Coast Guard, $300 million will be derived from the Department of Defense in support of the Coast Guard's defense readiness and drug interdiction missions. On that point, I want to say a special word of thanks to my friends Chairman INOUYE of the Defense Subcommittee and Senator STEVENS, the ranking member. The conference agreement for the Coast Guard includes a $47 million enhancement for implementation of the oilspill bill recently passed by the Congress. This level represents an increase of $37 million above the level requested by the administration. The levels provided for the Coast Guard also includes a $3 million enhancement for 90 new positions for pollution prevention in our harbors and along our coasts.

The Federal Highway Administration's obligations ceiling for Federal-aid highway grants was raised by almost $2.3 billion. The conference agreement provides an increase for important motor carrier safety programs and highway demonstration construction projects throughout the country.

On a related highway matter, Madam President, the Senate bill included a provision directing the Secretary of Transportation to initiate a rulemaking to ban the use of radar detectors in commercial motor vehicles. The conference agreement does not contain this provision. As its sponsor, I agreed to omit the provision from the conference agreement after receiving assurances from the Department of Transportation that this issue will receive prompt and thorough consideration by the Department. This is an important safety concern, and I am pleased by the Department's commitment to address it. I ask unanimous consent that a letter on the subject of radar detectors from Secretary Skinner to me be included in the RECORD. Madam President, I also ask unanimous consent that a statement of mine concerning a separate issue in the Coast Guard be inserted in the RECORD as if read.

Madam President, we had 143 amendments in conference. The conferees have agreed to a resolution of all of these amendments. The result is a package that I believe preserve a balanced transportation program for the Nation, despite our severe funding constraints.

Madam President, I believe this accurately and fairly summarizes the overall contents of our agreement. Before I yield, however, I want to thank my friend and ranking member, Senator D'AMATO from New York for his help in getting this bill through the committee, the floor, and the conference with the House. Given the many hurdles we faced, it was very hard to develop a balanced transportation program. Without Senator D'AMATO's assistance and cooperation, it would have been impossible.

I also want to pay tribute to my House counterparts, Chairman BILL LEHMAN and his ranking member, LARRY COUGHLIN. They and their colleagues worked hard to produce a good, solid transportation program and were unfailingly courteous and cooperative in working out a reasonable accommodation between the two Houses.

I am also indebted to my friends who serve with me on the Transportation Subcommittee. Senators BYRD, HARKIN, SASSER, MIKULSKI, D'AMATO, KASTEN, DOMENICI, and GRASSLEY, as well as Senators INOUYE and HATFIELD, who joined us in conference, have been a constant source of sensible counsel and steadfast support.

Madam President, I believe Senator D'AMATO has some remarks he would like to offer at this time, and I yield the floor.

Mr. D'AMATO. Madam President, I rise in support of the conference report on the fiscal 1991 appropriations bill for the Department of Transportation and related agencies.

Let me congratulate Chairman LAUTENBERG for his work and his good will on this bill. It was no easy task to balance the competing needs of highways, mass transportation, aviation, Coast Guard, and railroads, but I believe this bill has achieved a balanced goal without sacrificing one mode for the other.

So let me congratulate again my colleague because, Madam President, there were all kinds of pressures and many requests—and they were good requests, but you could not meet them all. We had to do it under the 302(b) allocation of $29.2 billion in outlays and under our allocation of $12.5 billion in budget authority.

This measure will continue our vital support of aviation safety and capital needs as well as provide essential funds for the Coast Guard to perform its multimission duties.

Mass transit programs have been safeguarded and highway obligation limits have been increased to provide $14.5 billion, and that is an increase of $2.29 billion over fiscal year 1990.

Certainly our Nation's tremendous needs for highway infrastructure repair and construction are something that no one can deny.

I appreciate the hard work of our subcommittee staff including Pat McCann, Pete Rogoff, Joyce Rose, Anne Miano, who, as Senator LAUTENBERG indicated, we are delighted to see is still here. I do not know if she is delighted. The stork has been promising any day, any hour. Dorothy Pastis and Bruce Russell were also of invaluable assistance.

Madam President, I urge my colleagues to support this conference report.

I thank the Chair. I yield the floor.

Mr. LAUTENBERG. I thank the ranking Republican member and once again acknowledge how we worked together on these issues. I know of no further statements, Madam President, or debate on the conference report.

Mr. SPECTER. Parliamentary inquiry, Madam President.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, parliamentary inquiry. My parliamentary inquiry relates to two amendments which my colleague from Pennsylvania, Senator HEINZ, and I intend to offer. We want to be sure that the record will be preserved. I have consulted with the Parliamentarian preliminarily and expect to offer these two amendments to House amendment No. 4 and House amendment No. 7 and wish to inquire whether any action on the conference report at this time would preclude the offering of those two amendments.

The PRESIDING OFFICER. Adoption of the conference report would not affect the right of the Senator to offer his amendments. This is also based upon the advice of the Parliamentarian.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote by which the conference report was adopted.

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Madam President, I ask unanimous consent that the Senate concur, en bloc, in the amendments of the House to the amendments of the Senate with the exception of amendments numbered 4 and 7.

Mr. SPECTER. Reserving the right to object, Madam President, I just want to be absolutely certain, although I think it is clear, that Senator HEINZ and I will be able to offer two amendments, one to amendment No. 4 and one to amendment No. 7.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. Has the Senator from Pennsylvania posed that as a question or is that a declaratory statement?

Mr. SPECTER. That is a parliamentary inquiry, Madam President.

The PRESIDING OFFICER. There is language from both the House and Senate pertaining to amendments No. 4 and No. 7. Therefore, amendments would be in order.

Mr. SPECTER. I thank the Chair.

Mr. WARNER. Madam President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, does the Senator from Virginia likewise have an opportunity to offer an amendment to amendment No. 4?

The PRESIDING OFFICER. Until action has concluded on amendments 4 or 7, amendments would be in order following the ordinary rules of the Senate in terms of offering amendments.

Mr. WARNER. Madam President, I thank the Chair.

Mr. LAUTENBERG. Madam President, I urge adoption of all of the amendments with the exception of those amendments numbered 4 and 7.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered. Those amendments are adopted.

The amendments of the House to the amendments of the Senate agreed to en bloc are as follows:

Resolved, That the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5229) entitled "An Act making appropriations for the Department of Transporation and related agencies for the fiscal year ending September 30, 1991 and for other purposes.".

Resolved, That the House recede from its disagreement to the amendments of the Senate numbered 15, 45, 69, 71, 93, 96, 97, 117, 135, 136, and 138 to the aforesaid bill, and concur therein.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 10 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

OFFICE OF COMMERCIAL SPACE TRANSPORTATION

OPERATIONS AND RESEARCH

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for operations and research activities related to commercial space transportation, $3,386,000, of which $1,600,000 shall remain available until expended: Provided, That the unexpended balances of the appropriation "Transportation Planning, Research, and Development" associated with commercial space activities shall be transferred to and merged with this appropriation: Provided further, That notwithstanding any other provision of law, there may be credited up to $300,000 to this account funds received from user fees established for regulatory services.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 13 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$2,339,839,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 14 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$2,039,839,000, of which $41,489,000 shall be derived from the Oil Spill Liability Trust Fund*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 18 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $90,010,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 19 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $15,000,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 22 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows: *: Provided further, That if necessary the Department of Transportation may transfer funds into the personnel, survey and design, and related costs subaccount from other subaccounts of the Acquisition, Construction and Improvements appropriation to cover personnel compensation and benefits for not to exceed five hundred eighty-six full time equivalent staff years during fiscal year 1991, provided that such transfer shall be subject to the established guidelines for prior approval reprogrammings as stated in House Report 101-315*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 29 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$2,002,749,000*

Resolved, that the House recede from its disagreement to the amendment of the Senate numbered 32 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$2,095,407,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 33 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

Provided further, That with appropriations made for the Airway Science Program, as authorized below in this section, the Federal Aviation Administration may hereafter enter into competitive grant agreements with institutions of higher education having airway science curricula, for the Federal share of the allowable direct costs of the following categories of items, to the extent that such items are in support of airway science curricula: (a) the construction, purchase, or

lease with option to purchase, of buildings and associated facilities, and (b) instructional materials and equipment. Such funds are hereby authorized to be appropriated and may remain available until expended, as provided in such Acts. The Federal Aviation Administration shall establish guidelines for determining the direct costs allowable under grants to be made pursuant to this section. The maximum Federal share of the allowable cost of any project assisted by such grants shall be fifty percent

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 67 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$71,365,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 68 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment insert: *$48,293,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 70 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

CORRIDOR G IMPROVEMENT PROGRAM

For the purpose of carrying out a demonstration of methods of eliminating traffic congestion, and to promote economic benefits for the area affected by the construction of the Corridor G segment of the Appalachian Highway System, there is hereby appropriated $33,275,000 to remain available until expended: Provided, That all funds appropriated under this head shall be exempted from any limitation on obligations for Federal-aid highways and highway safety construction programs.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 72 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$42,500,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 73 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$17,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 74 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$4,684,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 75 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$10,625,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 76 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$8,500,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 77 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$1,488,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 78 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$2,550,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 80 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$10,200,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 81 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the first sum named in said amendment, insert: *$9,265,000*

In lieu of the second sum named in said amendment, insert: *$200,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 84 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$42,365,900*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 98 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$179,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 104 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

MANDATORY PASSENGER RAIL SERVICE PAYMENTS

Notwithstanding any other provision of law, funds provided under this head are available to enable the Secretary of Transportation to pay obligations of the National Railroad Passenger Corporation for repayment taxes due under section 3321 of the Internal Revenue Code of 1986.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 110 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: *$13,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 118 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$15,833,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 129 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

SEC. 325. (a) INTERMODAL URBAN DEMONSTRATION PROJECT.—Funds appropriated in this Act for "Intermodal Urban Demonstration Project" shall remain available until expended.

(b) WESTSIDE CONNECTOR RAIL LINE PROJECT.—Notwithstanding any other provision of law, of the discretionary funds available to New York State under the Interstate Transfer Grants-Transit account of this Act, $11,000,000 shall be transferred to the Federal Railroad Administration, which shall make such funds available to Amtrak for the Westside Connector Rail Line Project in New York City.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 130 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

SEC. 327. (a) MAXI-CUBE VEHICLES.—Section 411(d) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. 2311(d)), relating to length limitations on federally assisted highways, is amended by inserting after "boat transporters" the following: "and maxi-cube vehicles".

(b) INTERNATIONAL FLIGHT SERVICE TRANSMITTING FACILITY.—(1) Notwithstanding any other provision of law, and subject to the provisions of subsection (b)(2) below, title to a certain 102 acres of property located at West Sayville, town of Islip, Suffolk County, New York, as described in a deed dated November 4, 1918, from the Atlantic Communication Company, recorded in the office of the County Clerk of Suffolk County, New York on February 2, 1921, in Deed Liber 1016, page 433; a quit claim deed dated January 20, 1920, from Mary E. Shell; Executrix of the Estate of Edward Shell, recorded in the office of the County Clerk of Suffolk County, New York in Deed Liber 1016, page 438; and a deed dated September 2, 1920, from Atlantic Communication Company, recorded in the office of the County Clerk of Suffolk County, New York in Deed Liber 1016, page 443, and known as the Federal Aviation Administration's International Flight Service Transmitting Facility, shall be conveyed to the Fish and Wildlife Service of the United States Department of the Interior in order to ensure the continued protection of the sandplain gerardia (Agalinis acuta) a federally listed endangered plant species.

(2) The conveyance of property identified in subsection (b)(1) shall become effective upon certification by the administrator of the Federal Aviation Administration that the International Flight Service Transmitting Facility currently located on such property has been completely relocated to an alternate site in Barnegat, New Jersey, and that the relocated International Flight Service Transmitting Facility is fully functional.

(3) Pursuant to the provisions of 40 U.S.C. 484(k)(2), a certain 19.2 acres of property located on the west side of Cherry Avenue in West Sayville, town of Islip, County of Suffolk, New York, as described in a Declaration of Taking, Civil Number 60-CD-853, filed in United States District Court for the Eastern District of New York, dated September 9, 1960, shall be transferred, as a public benefit transfer and without cost, to said town of Islip for recreational purposes.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 132 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 330. (a) AUXILIARY FLIGHT SERVICE STATION PROGRAM.—The Administrator of the Federal Aviation Administration shall develop and implement a system of manned auxiliary flight service stations. The auxil-

iary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be loated in areas of unique weather or operational conditions which are critical to the safety of flight. Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall report to Congress with the plan and schedule for implementation of this section.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 137 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 335. Notwithstanding section 127 of title 23, United States Code, the State of Wyoming may permit the use of the National System of Interstate and Defense Highways located in Wyoming by vehicles in excess of 80,000 pounds gross weight, but meeting axle and bridge formula specifications in section 127 of title 23, United States Code: Provided, That this section shall remain in effect until December 31, 1991.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 139 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 337. Within 180 days of the effective date of this Act, the Federal Aviation Administration shall undertake and complete a study on the classification of air traffic controllers at level IV limited radar approach facilities which includes airspace complexity as a factor in determining grade classification. The results of this study, along with an implementation plan, shall be provided to the House and Senate Committees on Appropriations.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 140 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 338. Notwithstanding any provision of the Urban Mass Transportation Act of 1964, as amended, the Urban Mass Transportation shall not withhold fiscal year 1989, 1990 or 1991 funds for any section 3 and section 9 operating and capital assistance grants for the City of Phoenix, Arizona, based on the inclusion of a "preference in hiring" provision in the employee protective arrangements developed pursuant to 49 U.S.C. 1609(c).

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 141 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 339. Notwithstanding subsection (d) of section 402 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424, 96 Stat. 2155, 2156) for States which have received only a development grant for fiscal year 1989 under such section 402 and which have participated in the Commercial Motor Carrier Safety Inspection and Weighing Demonstration Program, the Secretary shall only approve a plan under such section 402 for fiscal year 1991 which provides that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs will be maintained at a level which does not fall below the average level of such expenditure for the last two full fiscal years preceding fiscal year 1990.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 143 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the section number "341", insert: *340*

Mr. LAUTENBERG. I now ask unanimous consent that the vote by which the amendments were adopted be reconsidered and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT IN DISAGREEMENT NO. 4

Mr. LAUTENBERG. Madam President, what is the pending business?

The PRESIDING OFFICER. The clerk will now report the pending amendment in disagreement.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 4 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert "$26,745,000 of which $5,000,000 shall remain available until expended".

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 3182

(Purpose: An amendment to an amendment reported in technical disagreement to H.R. 5229, to insist on the position of the Senate with respect to House amendment number 131)

Mr. SPECTER. Madam President, I move to concur in the House amendment to amendment No. 4 reported in disagreement with an amendment, which I now send to the desk on behalf of myself and my colleague, Senator HEINZ.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from Pennsylvania.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. HEINZ, proposes an amendment numbered 3182:

At the end of amendment No. 4 reported in technical disagreement, insert the following:

"Notwithstanding any other provision of this Act, except section 333 of this Act, the Secretary of Transportation shall not reduce the obligation limitation allocated to Pennsylvania for Federal-aid highways and highway safety construction programs for fiscal year 1991.".

Mr. SPECTER. Madam President, this amendment is being offered because the conference report on transportation appropriations for fiscal year 1991 contains a provision which would deny to the Commonwealth of Pennsylvania $144 million in highway funds unless the Commonwealth of Pennsylvania dedicates a source of revenue or a tax for mass transit in Pennsylvania, principally directed to the city of Philadelpia.

Madam President, while my colleague, Senator HEINZ, and I believe that it would be useful to have a dedicated source of revenue for mass transit in Pennsylvania, we strenuously object to the provision in the conference report which was unanimously deleted when this matter was before the Senate and the Department of Transportation appropriation bill was adopted initially.

We strenuously object to this provision contained in the conference report because this is an unprecedented and unreasonable provision which tampers with the fundamental principle of federalism. We take that position, Madam President, because it is unprecedented for the Federal Government to compel a decision by a State government on a matter of tax and fiscal policy and revenue allocation on the condition that it would lose the enormous sum of $144 million in highway funds.

In the direct vernacular, Madam President, this is blackmail and a gun at the head of Pennsylvania to compel Pennsylvania to accede to the wishes of the Federal Government.

Madam President, the city of Philadelphia, among the other transit authorities, is in need of assistance on transit. Nobody knows the problems of the SEPTA system, Southeastern Pennsylvania Transit Authority, better than this Senator. I have used it for some 42 years since the time it was the Philadelphia Transportation Co., and have at times represented the old PTC and know it well and continue to ride it.

Nothing would make this Senator happier than to see this matter resolved by the State Legislature of Pennsylvania and by the Governor of Pennsylvania, but it is impossible to stand by and see this kind of a measure adopted by the Congress which, as I say, constitutes blackmail and a blackjack and a gun at the head of a State in our federated system.

Madam President, this issue has received very considerable attention as an attack on the fundamental principles of federalism. The American Legislative Exchange Council has taken the step of commenting on this amendment in a letter dated October 26, 1980, which I ask unanimous consent be printed in full at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. I shall cite, Madam President, only the key provision here.

It is unprecedented for the Congress to mandate the very nature of State and local tax policy.

A similar indictment of this provision in the conference report was stated by the National Conference of State Legislatures. In a letter dated October 26 to this Senator—and again I ask unanimous consent that the text appear in full at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SPECTER. Madam President, the thrust of both of the letters from these very respected agencies is that if this provision remains in the conference report there will be an unprecedented and unreasonable incursion on States rights.

The matter was the subject, Madam President, of comment by the Wall Street Journal on Thursday, September 20. It is not very often that a lead editorial in the Wall Street Journal would pick up a provision of transit as it affects a single State, but this is what the Wall Street Journal had to say. The provision "would create a dangerous pecedent for the preemption of State tax policy by Congress."

The hour is late, Madam President. I had done some extensive research on the subject with the Founding Fathers and the Constitutional Convention and I will not read at length from the debates on the convention except to make reference to comments by Mr. Randolf at page 36 of the debates of the Federal Convention of 1787, the comments of Mr. Madison, which go to the very fundamental point, and comments of Mr. Pinckney on page 74 that the basic structure of federalism—and this is too axiomatic to dwell on at any length—leaves to the State determination of matters such as the one addressed here by the pending provision in the conference report.

There would, realistically viewed, Madam President, be really nothing left of federalism if a matter of this sort is going to be subject to a determination by the Federal Government.

I press this matter, Madam President, and I am sorry to see the time of the Senate taken up on this measure, because I believe that had this matter been discussed and considered by the conference committee it would not be in this report. Toward that end, this Senator attended the conference between the House and the Senate in an effort to explain what was going on and to explain the position of the Governor of Pennsylvania as reported in strong opposition and the position of the leaders of the legislature because this involves a matter of the delicate relationship between the Commonwealth of Pennsylvania and the city of Philadelphia.

It is a matter well-known, Madam President. The city of Philadelphia is undergoing very severe financial problems. The Governor and the State Assembly have acted as they have as a matter of their own judgment and their own discretion.

Again, to repeat, and I try not to repeat but I will here——

The PRESIDING OFFICER. Will the Senator withhold. There are lots of conversations going on. It is difficult to hear the Senator. We want the Senator to have a chance to be able to state his position.

Mr. SPECTER. I thank the Chair very much for that because if the Chair cannot hear, I am extremely distressed because the Chair has a very important vote to cast on this matter. I want the Chair to hear. I want all prospective voters to hear.

As I was starting to outline, Madam President, something which is well-known to you as a Senator from the State of Maryland with a big city like Baltimore, the needs of a city, notwithstanding what the Chair may think of the needs of Baltimore, or what Senator HEINZ or I may think the needs of Philadelphia, it has to be a matter for determination by the Commonwealth of Pennsylvania by the Governor and by the assembly to deal with many, many, many matters involving the city of Philadelphia.

As I had started to say, Madam President, I attended the conference between the House and the Senate in an effort to explain this position because I understood the chances would have been excellent that the conference would not have included this provision in the conference report.

Remarkably, Madam President, I was denied an opportunity to speak at that conference, which again I believe is unprecedented, on the assertion by the chairman of the subcommittee, the Senator from New Jersey, Senator LAUTENBERG, that unanimous consent was required before a Senator—although a member of the full committee of the Appropriations Committee, not a member of the conference, not a designated conferee, unanimous consent is required for the Member, myself, to make a statement.

I have since checked, and have found that no such rule exists. The only rule of the Senate relating to conferences is that a majority of the conferees must sign the report. In the face of the assertion, however invalid, I made a formal application for unanimous consent, and the Senator from New Jersey objected. Notwithstanding many things running through my mind, I rose politely and left the room, and since conferred with the senior Members of this body. No one knows of a precedent where a Member sought to speak at a conference on a matter of importance to the State that was denied an opportunity to speak.

A hearing, Madam President, is one of the most fundamental points of due process of law. I did not appear there as an individual. I appeared there as a Senator from the Commonwealth of Pennsylvania. We have had a long history of States rights, and there has been a period in our Nation's history where, on the disagreement of a Senator, action would not be taken by the Federal Government. Senators have extensive rights to filibuster, to block legislation entirely.

But it is an extraordinary act to deny a Senator an opportunity to speak and express a view on a matter of this fundamental importance, involving $144 million for the State.

So I say, Madam President, had we had a fair opportunity to make this presentation, we might have avoided the issue which now confronts us on the Senate floor.

EXHIBIT 1

AMERICAN LEGISLATIVE EXCHANGE COUNCIL,
Washington, DC, October 26, 1990.

DEAR SENATOR: I am writing you on behalf of the American Legislative Exchange Council (ALEC), the nation's largest bipartisan membership organization of state legislators, concerning the provision in the Transportation Appropriations bill that would require the establishment of a dedicated transit tax in Pennsylvania, and other states as well.

This provision requires the withholding of 25 percent of federal highway funds when a state fails to establish a dedicated revenue source for mass transit. While it is not unprecidented for Congress to mandate certain policies as a precondition to the receipt of federal funds, it is unprecedented for the Congress to mandate the very nature of state and local tax policy.

The issue has much broader implications than the field of public transit and the state of Pennsylvania. Under the Constitution, the states have considerable authority and an important role. The nature of state policy is the province of state legislatures, and our members throughout the nation are concerned that this matter violates important principles to our federal system of government.

Sincerely,

SAMUEL A. BRUNELLI,
Executive Director.

EXHIBIT 2

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, October 26, 1990.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: On behalf of the National Conference of State Legislatures, I wish to convey our strong opposition to the imposition of yet another federal-aid highway funding sanction.

The Conference Agreement on H.R. 5229, Appropriations for the Department of Transportation, includes an amendment which would mandate that the State of Pennsylvania direct certain revenues for a specific purpose. While this provision may be well-intended, all states must retain fiscal autonomy without the threat of federal sanctions.

NCSL has been a consistent advocate of states' rights in this regard and has resisted other efforts to impose highway funding

sanctions as a means to enforce a federal mandate. The fact that this particular language would have an effect in only one state, does not minimize the harm it poses to the state legislative process. Furthermore, the precedent that could be set for similar sanctions to be imposed on selective states through the use of unique criteria is simply an unacceptable departure from uniform federal-aid grant requirements.

NCSL urges you to take necessary action to neutralize the amendment pertaining to Pennsylvania's federal-aid highway funding. While it would be all too easy to relegate this matter to a parochial concern, the ramifications of perverting the federal-aid highway grant program will be felt by all states. I urge the Senate to consider this matter solely on the basis of equity for all states.

Sincerely,

WILLIAM T. POUND,
Executive Director.

Mr. HEINZ. Madam President, I join my distinguished colleague from Pennsylvania, Senator SPECTER, in offering this amendment. Before I speak to this amendment, I want to indicate that because the language we seek to address is contained in the conference report, and because we just had the vote on the conference report that I voted against, we must offer this amendment to an amendment in technical disagreement. I have never voted against a transportation appropriations bill before.

I did so because this particular conference report takes an unprecedented step, that the Senate takes at its peril, contains a provision which is mischievous, is counterproductive, and is harmful to my State and my State alone. Worst of all, it sets a precedent for the Senate of the United States which, if established, I predict will end up setting State against State, region against region, and destroy what there is left of the ability of this body, and the Congress generally, to function; a situation we should be particularly sensitive to with all the difficulty we have had simply trying to solve a budget problem that we have been familiar with for more than just 3 or more months. We have been familiar with it for a minimum of 5 or 6 years.

The provision I am referring to is one that is already withholding, because it took effect October 1 of this month, 25 percent of the very taxes the constituents of Senator SPECTER and myself in Pennsylvania had paid into the highway trust fund. That revenue will total $144 million this year, and will continue to be withheld unless our State government authorizes a dedicated source of revenue for mass transit in Pennsylvania.

Madam President, I am on record repeatedly over many years as favoring our State establishing a dedicated source of revenue for mass transit in Pennsylvania. The citizens of our State, throughout our State, benefit from mass transit, whether they use it or not. There are many areas of our State, some large ones, some small, that would be afflicted with serious traffic congestion if we did not have the literally nearly 2 dozen mass transit authorities which move people out of their automobiles and into collective transportation systems and networks.

We need mass transit. We need more of it. We need mass transit not only because it enables those who use it to move efficiently, cheaply and quickly, but because it enables those who do not use it to move in their automobiles or other vehicles to and from their jobs, in and around their communities, to and from areas where they shop or engage in other commercial activities.

We need mass transit because it saves on energy. We need mass transit because it is good for our environment. We need mass transit because it reduces our dependence on foreign oil.

But having said all that, it would be unprecedented for the Congress to say that we are going to single out one State and have that State paying for mass transit in a way that satisfies some Federal bureaucrat that we are about to anoint with the responsibility for administering this amendment.

I want to give a little background to this legislation. It did not originate here in the Senate. It originated in the House of Representatives, in the House verision of the appropriations bill for transportation. When that legislation came over here, the Senate very wisely struck that language that I have just described from the transportation appropriations.

I thank our colleagues in the Senate, and the Senators on both sides of the aisle, Republicans and Democrats, who spoke up against that provision and had it stricken from the Senate version of the transporation appropriations because those Senators of both parties did the right thing. They recognized that were we to try to impose an unjustifiable Federal requirement on just one State, and largely for the perceived benefit—I say perceived by many people in my State—for just one region of our State; that if that was done, particularly over the wishes of the two Senators representing that State, Senator SPECTER and I, having strongly, even vociferously, opposed this from the beginning, it would represent not only the destruction of States rights, but it would represent the worse imposition of the will of a majority on the representative tiny minority.

That is, of course, the ultimate tyranny.

I thank our colleagues, Republicans and Democrats, who spoke against this provision that we now seek to strike because they did the right thing. Senator SPECTER and I will be asking them in a moment to stand with the Senate a second time.

I know that the argument the junior Senator from New Jersey made before, will say that this provision does not just affect Pennsylvania; that it effects his constituents in New Jersey, and maybe it does.

But that does not necessarily make it an issue of national policy. If something that happens here in the District of Columbia affects Virginia, that does not make it an issue of national policy, even if it is the Nation's Capital.

Many of us have been very involved recently in an issue that, frankly, was local, the question of whether or not the Washington Metropolitan Transit Authority would receive an authorization and continue to build the transportation system here in Washington. There were people on both sides of that issue. I am, obviously, not from Virginia, and I am not from Washington; I am obviously from Pennsylvania, and I felt it was important for us to work a solution out that respected the wishes of the people in Virginia, Maryland, and the District, because that is what we are supposed to do as legislators. We are supposed to try to work with the people in their districts, in their States, in their regions, not to work against them.

I believe that while it is true that the Senator from New Jersey is acting within his rights in rejecting the position which the Senate took, despite his obligation, to fight for that view in conference, nonetheless does not make this a national issue.

Furthermore, I believe there are great dangers attendant with any of us exerting the considerable authority of this body on behalf of a narrow interest, or a partisan interest, or a parochial interest, or a very regionally focused interest. I would be the first to say that there is nothing in the Constitution to prevent Congress from imposing the kinds of restrictions I have just described on a particular State, but at the very same time, I think it needs to be made clear that the issue of Congress doing so was of great concern to the founders of our republic. And there was, at the Constitutional Convention—both before and after, as Senator SPECTER has cited—a great debate in Philadelphia, between the Federalists and anti-Federalists over the adoption of the Constitution. I am almost tempted to read the Federalist Papers here today. The Federalists believed that Congress would be adverse to legislate State-specific matters, and they believed we would be adverse to do so.

They have been right up to this point, for two principal reasons: First, the Federalists believed that decisions on local levels would be deemed by national legislators best to be left to other units of government, State and local government, rather than the na-

tional legislature. And as a matter of rational policymaking, the Federalists believed that the Congress would refrain from acting on purely local or State issues, because Congress would realize, that the Congress itself is too far removed from the varying and subtle interests in a State, or region, or in a locality to evaluate the concerns at stake and to therefore be able to take appropriate action. The Federalists assumed Congress would exercise self-restraint.

Second, the Federalists were idealists, but for all their idealism, they were men of supreme practicality. They believed that the whole of Congress would be reluctant, extremely reluctant, to engage in State-specific legislation, because that legislation would precipitate reprisal.

Simply put, the Federalists argued that Members of Congress would not initiate legislation affecting only one State for fear that the action would open an endless round of reprisals, a tit-for-tat kind of action, that would engage Congress in shifting priorities, bogging down, as this legislation tonight, I am sorry to say, is bogging down in State-against-State warfare.

I recollect that not so long ago there was legislation here on the Senate floor that the Senators from New Jersey took strong exception. It was an amendment, offered by Senator COATS of Indiana. That legislation basically said that States do not have to accept from other States an unlimited amount of trash. The Senators from New Jersey were quite vociferous and took strong exception to that, because although that legislation was not aimed specifically at the State of New Jersey, it was felt by them that it would have a disproportionately impact in New Jersey's trash disposal policy. That policy has been characterized by some less charitable people as "create the garbage and ship outside of New Jersey." And Senator BRADLEY said, "Remember, what goes around, comes around." What goes around comes around. So it does.

And we should remember that. The Founding Fathers, who warned us about States being set against States, against reprisals taking place against what were perceived slights, probably knew what they were talking about. What I fear they were talking about is exactly what has been happening here with this legislation over the last 2 or 3 months, and what happened, I might add, in the appropriation that is before us.

I do not know what was going on in the Appropriations Committee, but I still find it odd that, since it was Senator SPECTER and I, as Pennsylvania Senators, who have taken the lead of arguing against this, that among a large number of mass transit new start projects that were in either the House or the Senate version of the transportation bill, that were earmarked for specific areas, there was only one project that was dropped out in conference.

Strangely enough, it was an appropriation of some $2 million for a study for a busway in Pittsburgh, PA. It was in the Senate version. It was the only one that got dropped out.

That may be just coincidence. Nevertheless, I want you to know, Madam President, I noticed it and so did the people in Pennsylvania. I cannot tell you what they think, but they certainly did not like it and, obviously, it is hard for me to like it.

I do not know what the story of that is. But I think the conclusion people come to, whether they are right or wrong, is that simply because Senator SPECTER and I stood up for the legitimate interests of our State, standing up with most of our State legislature and the Governor about this imposition of Federal will, without our being asked and certainly without our consent, the project was dropped. It creates the impression that Congress is engaged in some kind of tit for tat warfare of the very type that our Founding Fathers urged us to avoid and from which they asked us to restrain ourselves.

I know that because he argued it before, the distinguished chairman of the subcommittee, Senator LAUTENBERG, argues that the provision in this transportation appropriation conference report creates no new precedent.

It is true that Congress has threatened on previous occasions, to withhold a portion of Federal highway funds, for States that did not raise the drinking age or lower the speed limit to 55 miles an hour, or to comply with the Clean Air Act.

That is true. But you do not have to be a genius to figure out when it came to having a policy to discipline nonattainment areas it was important to have some kind of credible sanction that was national and that did not single out Los Angeles. It could have. Los Angeles is the dirtiest city in the country. It could have been singled out just as some of the Rocky Mountain cities. It did not do that. These are national standards, applied to a lot of places, and the punishment was irrespective of where you were.

With respect to the 55 miles an hour speed limit, we were in an energy crisis, a clear crisis. The price of oil had gone up again 300 percent, and the argument was this will save energy. We were then, very dependent on imported oil, particularly oil from the Middle East.

One uses less gasoline at 55 rather than 65, and because many roads in States are not Federal highways, not interstate highways, but are posted by the State, there had to be a means of forcing a national policy to conserve energy on all the States. And this was the policy that was adopted. Yes, highway funds were the potential sanction for States that did not lower their speed limit. With respect to the drinking age, there was a crazy quilt of states; some had 18 years, some had 21, some had different ages, but there was not just one State that had an 18-year-old drinking age, there were many. And it was argued, with great justification that, if there was a State adjacent to another State with a difference in drinking ages, many of the kids and some of the adults too, I presume, would simply drive across the State line, from one State to another, to take advantage of the lower drinking age. And that was a genuine national policy goal and objective.

The point is that those prior laws affected all States equally. None of them, had anything to do with taxation, not a single one. We really do believe in taxation with representation in this country. That is what the Boston Tea Party was all about. And for the Senate, the House, the Congress, to say to a State, you have to adopt a tax-based source of revenues—is entirely different.

Whatever one believes about this country, I hope that we are not going to junk the notion of taxation dependent upon representation. Senator SPECTER and I are here to represent to our colleagues that the only State that is being affected by this is Pennsylvania. It will affect, if the conference report is adhered to, and the Senate position is not returned to as we asked, it represents the Senate and the House meddling in the tax affairs as well as the internal affairs of the Commonwealth of Pennsylvania.

Madam President, I want you to know that I do not believe that the original sponsor of this legislation intended to do anything wrong. The sponsor of this legislation has a very great interest in mass transit and particularly in the well-being, as do we all, of the Southeastern Pennsylvania Transit Authority, [SEPTA]. And out of frustration, with both the region and the State, he decided that this would be a good amendment to put on over on the House side.

Ironically, I share his goal which is getting our State to act. But I disagree with the means, and at the time I said when this first became an issue here in the Senate, this approach, however well-intentioned, was going to have adverse and unintended counterproductive consequences.

I am here today in the Senate to report sadly, because I did not want to be right, but nonetheless the facts have borne me out that, that is exactly what has happened. Newspapers throughout our State have editorialized against what the Federal Government is attempting to do. That happens all the time, of course, about

what the Federal Government is trying to do. We do good things but they often do not get favorable press. When we do something bad like raise taxes, we get the kind of blame or credit that we deserve.

But, of course, what these editorials are objecting to is not only the notion of having a Federal gun to the head of our Governor and the legislature of our Commonwealth, they are viewing this as an effort by a small area of our State to impose its will on the rest. And that perception, whether accurate or not, is a very deadly and disastrous public attitude, because it means that our State legislature is going to be going in the opposite direction than many of us would like it to go.

Some of the headlines—I will not read the editorials. This is just a few of them. I have about 3 inches of them.

But one is called "Bad Idea"; another, "Torpedo Strong-Arm Bill"; another says, "Mass Transit Controversy Misses Mark"; another headline, "Good Intentions, Lousy Law"; another "Mischief On Mass Transit"; and another is entitled, "Transit Travesty."

Madam President, I do not wish to take a great deal of additional time of the Senate at this point. But maybe I might ask one question of the Senator from New Jersey, if he would care to respond to a question involving the general principle involved here.

I would ask him, for the purpose of answering this question, to assume that Congress decided that a certain State had grossly violated the good neighbor policy by dumping too much of its municipal garbage in the backyards of neighboring States. In response, Congress passed a law requiring that States dispose of at least 80 percent of their municipal garbage within their own borders.

Based on the principle of the provision in this legislation—which I know the junior Senator from New Jersey advocates and supports—my question is, is it the position of the junior Senator from New Jersey that Congress has the right to withhold highway funds based on a State's failure to meet the garbage mandate I just outlined, even if the provision applied to only one State?

Mr. LAUTENBERG. In response to my distinguished colleague, we are not dealing with that matter. I am not going to hypothesize. When the Senator yields the floor, I will be pleased to discuss the other side of this issue.

I yield the floor back to my colleague.

Mr. HEINZ. Would the Senator be willing to comment on the general principle? Is it a good idea for the Federal Government to set a standard, in a way that only applies to one State, whether it is support for mass transit or interstate transport of garbage, and then withhold highway money? Is that a good principle?

Mr. LAUTENBERG. Once again, if we want to deal in hypotheses or analogies, it is going to require more than a one-word answer.

Mr. HEINZ. I would be prepared to yield to the Senator.

Mr. LAUTENBERG. The Senator asked a question and I want to respond.

I would again say that in many cases there is justification. In many cases our neighboring State has been part of that kind of imposition and I would therefore defer going any further until the floor is mine.

Mr. HEINZ. Mr. President, I am prepared to yield as much time to the Senator from New Jersey to answer the question as he would like, if he cares to address the question now. Because it is pertinent to some of the things I would like to discuss in the remainder of my remarks. I do not think it is a hypothetical question. It is a general principle.

I phrased the question putting both the dumping of trash and the question of the imposition of a specific mass transit mandate on an individual State in the same context. The context was: is it, as a general principle, a good thing for us to do that in a way when it affects only one State, and we decide to enforce that Federal will using what is a very effective sanction, the withholding of a lot of highway funds which people need to keep their roads and bridges and highways safe?

Mr. LAUTENBERG. When a State violates a national policy, then my answer is, yes, it has been determined to be quite appropriate.

Mr. HEINZ. Well, Mr. President, if the Senator would yield further, I know of no national policy on the subject of the legislation that has been attached to this appropriations bill. I know of no hearings that have been held on it in the authorizing committees. I know of no administration position on it except I would imagine the administration position would not favor it. I know of no vote in the Congress.

Mr. LAUTENBERG. If the Senator will yield, I would advise him that the administration supports this proposal. We have a letter from the Secretary of Transportation.

Mr. HEINZ. I said policy.

I know of no vote that has ever been taken on the policy other than the one we specifically rejected here in the Senate by a vote. I do not know of any other statement of policy other than the Senate rejecting this policy.

Mr. LAUTENBERG. If I may correct the record, the letter in reference refers to another matter. I apologize to the Senator for misquoting.

(Mr. SIMON assumed the chair.)

Mr. HEINZ. So the record should say that the administration does not support the position of the Senator from New Jersey or this policy, is that correct?

Mr. LAUTENBERG. We have not heard from the administration in opposition to this matter at all.

Mr. HEINZ. But you do not have a letter of support?

Mr. LAUTENBERG. No; I said that. There is no administration position.

Mr. HEINZ. Mr. President, I really just want to make clear that if a national policy is involved here, it requires national consideration. Over in the House, there was no vote—no vote—on this provision. It was, however, given consideration here by the Senate. It was debated. People on both sides of the issue spoke; certainly more people spoke against it than were for it. And if this is national policy, then it is national policy that at least one of the two people's bodies is on record about in rejecting this as the national policy.

Mr. President, there is more I could say. I may reconsider and say it later. But I just want to conclude by saying that there are things about the way this has been handled that cause me some concern. I have mentioned that this would be the first time that the Senate has ever imposed on a State, where both Senators were adamantly opposed to the measure, something that applies to only one State and which has no national policy tangency.

But what bothered me just as much was that when my colleague from Pennsylvania and I requested permission—because we are from the affected State—to address the conference committee that was considering this issue, I was told that my presence was not welcome. Senator SPECTER, who is a member of the Appropriations Committee as a whole—he is not a member of the Transportation Appropriations Subcommittee; he probably did not make the same mistake I did; he probably did not ask ahead of time—went and asked permission to speak to discuss this proposal and, in spite of the fact that it affects only our State, he was denied that request.

Maybe that is the way the Senate wants to act. I do not know the precedent on that matter. But I think whether it is precedented or unprecedented, it is a very dangerous way for the Senate to act. The Senate works best when we have an understanding of each others' concerns, and the reasons for those concerns. It strikes me as the beginning of a serious folly by this body, to begin to say that we simply do not want to listen to anybody else, and that is what happened, in my judgment, in that conference. They may have had every precedent and legal right to do it but they did not have to do it. And it was not smart.

If this legislation survives, not only will it contravene every principle of States rights that we believe in but as blackmail, as the gross coercion and abuse of power by the Federal Government. This legislation if it survives will not only set, as it has begun to already, one area of my State, Philadelphia, which needs all the help it can get, against all the rest of the State, at a time when the rest of the State needs to be understanding. It establishes the precedent of setting State against State, here in Congress. And it invites a response I do not think we should be taking the time of the Senate to have to engage in.

Mr. President, I ask unanimous consent that the editorials entitled: "Gray's transit travesty," "A political Gray area," "Gray's transit tax push puzzling," "Casey won't knuckle under," "Bad idea," "Torpedo strong-arm bill," "Highways—our mass transit" "Mass transit controversy misses mark" "Good Intentions, Lousy Law," "Mischief on mass transit," and "Pushing a transit tax," I referred to earlier be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Pittsburgh Post-Gazette, Oct. 20, 1990]

GRAY'S TRANSIT TRAVESTY

We hope William Gray is happy. Now that the Philadelphia congressman has had his way with a House-Senate conference committee on federal transportation funding, the transit agency serving the Philadelphia area will get a phony assurance that more money is in the works while Port Authority Transit will lose a very real $2 million earmarked for part of the proposed busway to the airport.

Let's see Philadelphia's state legislators get sympathy for their transit woes from their Pittsburgh colleagues after that one.

In a bid to force Pennsylvania to adopt a dedicated funding source for mass transit, including the Southeastern Pennsylvania Transportation Authority (SEPTA), Rep. Gray offered an amendment to the U.S. transportation package that threatened to deny the state $143 million, a quarter of its federal highway funds. Despite stiff opposition to the measure from Sen. John Heinz, Sen. Arlen Specter and Gov. Casey, the conference committee adopted the package, including the Gray provision. The Post-Gazette has supported setting up a dedicated source of funds for mass transit, but not by pointing a gun to the state's head.

In short, for all his trouble, Rep. Gray has won for Pennsylvania mass transit a special revenue source that exists only on paper and provides no additional tax revenue for systems like Port Authority Transit and SEPTA. The governor's office said as much Wednesday.

What is curious now is how after the public feud between Rep. Gray and Sen. Heinz, PAT came to lose $2 million once members of the conference committee emerged from behind closed doors. Sen. Heinz was not part of the conference, Rep. Gray was.

The Philadelphia congressman denies that he orchestrated removal of the money for the busway's design and engineering work. Perhaps so. Yet it's hard to believe that someone else on the committee could have done it without Rep. Gray's knowledge, especially since the busway was the only new Pennsylvania project eliminated.

The loss of federal aid is a setback to PAT, but it's not fatal, the transit system will just have to rely more heavily on the state. Given the Philadelphia congressman's mischief, it's hard to see how SEPTA can say the same.

[From the Pittsburgh Press, Oct. 23, 1990]

A POLITICAL GRAY AREA

Most times, when a politician does something—anything—it's not difficult to detect the motive. Transparency is the one quality shared by those who live by the ballot.

But try as we might, we can't understand the recent actions of U.S. Rep. Bill Gray, D-Philadelphia, who last week cost Allegheny County a $1.9 million jump on the proposed busway between Downtown and Greater Pittsburgh International Airport.

The background is typically Washington and typicall transparent:

Rep. Gray, trying to assure a predictable source of income for Philadelphia's mass transit agency, decided that a designated state transportation tax is needed. He offered an amendment to a federal transportation funding bill that would deprive Pennsylvania of one-fourth of its federal highway aid if such a tax isn't enacted.

Rep. Gray last week got his amendment through a transportation funding conference committee, of which he is a member.

At the same time, the committee gave the Port Authority the back of its money hand, refusing a request for $1.9 million to help pay for design and engineering costs for the airport busway.

To emphasize the rejection, the conference committee approved, at least to some extent, the projects of 18 other cities.

Clarity ends there and a quetion arises: Why would Rep. Gray take such an antagonistic position? We, along with PAT and Sens. John Heinz and Arlen Specter, wish we knew.

Rep. Gray's primary premise is valid—a dedicated transit tax is desirable. And in the past we have supported initiatives for a levy that would give mass transportation agencies a predictable income source. So have Sens. Heinz and Specter and so has PAT.

But not by Rep. Gray's method of attack malevolent coercion. To even threaten the cutoff of highway funds is bad enough to actually pursue the idea is worse. And to engineer—he claims innocence on this count—the busway grant refusal is unconscionable.

Fortunately, Rep. Gray's gun will not be the last one fired. Sens. Heinz and Specter said they will battle the cutoff provision on the Senate floor and there's a good chance they will prevail. We hope so.

[From the Harrisburg Patriot-News, Oct. 24, 1990]

GRAY'S TRANSIT TAX PUSH PUZZLING

It's hard to fathom why one of Pennsylvania's leading congressmen, House Majority Whip William H. Gray III, has been pushing so relentlessly for a federal mandate to force the state to adopt a dedicated tax for mass transit.

If the Legislature did not comply, Pennsylvania could lose $145 million in federal funding for mass transit, the bulk of which would go to the SEPTA system serving the Philadelphia area.

The mandate would apply to the six states with major mass-transit systems. All have dedicated taxes except Pennsylvania.

While we don't disagree that a dedicated tax is desirable, the point is well made by Gov. Robert Casey's spokesman, Vincent Carocci, that the means or source of mass-transit funding is not so important as its reliability and predictability. In the regard Pennsylvania has been no slouch, tripling funds in the last 10 years while federal money declined by two-thirds.

Gray's prominent role in the issue would be more understandable if it meant significant increases in funding for SEPTA, which like virtually every mass-transit system is contending with inadequate revenues. But that won't be the case, because the Legislature could simply designate an existing tax—such as a penny of the gas tax—while reducing funding from other sources by an equal amount.

The real danger, however, is that the Legislature could respond to Gray's stridency by refusing to go along. We would not want to see one such folly committed on top of another, but it wouldn't be the first time.

That would leave Gray—who is said to have aspirations to become governor—with the task of explaining to his Philadelphia constituency why he created a situation that deprived SEPTA of $145 million of much-needed funding.

[From the Delaware County Daily Times, Oct. 18, 1990]

CASEY WON'T KNUCKLE UNDER

Gov. Casey, who visited the Daily Times yesterday, told editorial board members that they were looking at the best friend SEPTA has.

He might be right. But we're afraid of just how far he will go to prove it.

At risk is roughly $142 million in highway funding that the states will lose if it fails to come up with a permanent funding base for mass-transit by June.

The strong-arm tactic is the brainchild of Philly Democrat Bill Gray and cosponsored by Delaware County's Curt Weldon, no less. It's part of the overall federal transportation appropriations package that was accepted by the conference committee on Tuesday.

From here, it's a certainty to become law.

Yesterday, Casey refused to tip his hand on what might happen once the state begins to lose highway money. But one thing for certain—he doesn't look like he'll flinch.

And for good reason.

Casey says Pennsylvania has done its part in funding mass transit, pointing to the facts that it ranks second in the United States in mass transit funding and that the state gave SEPTA some $300 million last year.

Casey wants to know what the federal government has done for SEPTA lately—other than cut the beleaguered mass transit system by $20 million in its current budget.

There are others who also feel the federal government has not done its part and that the Gray amendment is bad policy.

Our own U.S. senators, Arlen Specter and John Heinz, who aren't members of the Transportation Appropriations conference committee, are dead-set against Gray's measure.

Heinz is especially upset with Rep. Gray, who is a member of the committee. Gray claims that Pennsylvania isn't doing enough, but can't put federal money where his mouth is, Heinz says.

The committee only earmarked a modest five tenths of 1 percent ($2.5 million) to SEPTA.

To put that in perspective, consider that the federal government can appropriate roughly $1 billion per year to mass transit. (The money comes from one cent of the 9 cents motorists pay in federal gasoline tax.)

Now, consider that SEPTA is the fourth largest mass transit system in the country and that Houston's mass transit system—which is still on the drawing board—was given $32 million in federal funds.

Something isn't right here.

The federal government needs to ante up, and Rep. Gray should have done his part to make sure that it did, rather than point a gun to Pennsylvania's head.

But it's too late for that.

Nevertheless, we can't blame Casey for his persistence in this matter—although the almost-for-certain enacting battle may take its toll on all of us.

[From the Milton Standard, Sept. 13, 1990]

BAD IDEA

If all goes according to the way Rep. William Gray, D-Pa., believes it should, the state will come up with a dedicated source of money for mass transit systems by October or lose 25 percent of its federal highway aid.

That portion of the aid is estimated at $142 million.

Why Gray thinks it's desirable for Pennsylvania to lose $142 million in federal aid is something no one, including the congressman, has made clear.

Senators John HEINZ and Arlen SPECTER say the legislation is closely akin to blackmail. We concur.

While a dedicated tax may be a good idea, another good idea is for the federal government to use some of its $6 billion mass transit fund to help The Southeast Pennsylvania Transit Authority and other transit systems.

The sad fact is that Pennsylvania motorists are already paying a tax that is not being used for its intended purpose, which is mass transit.

Until there is some assurance that the tax already levied is going where it should go, Mr. Gray would do well to keep in mind that motorists' pockets are only so deep.

Mr. Gray would do better to introduce a bill requiring the government to do with our tax money what it says it will do or, failing that, members of Congress will have to pay 25 percent of their salaries into a fund to aid the homeless.

[From the Delaware County Daily Times, Oct. 5, 1990]

TORPEDO STRONG-ARM BILL

The time is ripe to put the kabosh to Representative William Gray's (D-Phila.) foolish bill aimed at helping SEPTA.

The legislation is currently before a Senate and House conference committee.

Gray's House-passed bill attempts to strong-arm Pennsylvania into coming up with some sort of dedicated funding base for mass transportation. If it doesn't, the state stands to lose 25 percent of its federal highway funds—roughly $143 million.

A similar version of the bill never made it through the Senate, thanks in part to Senators John Heinz and Arlen Specter who had the measure erased from the overall transportation bill.

Ironically, the idea of a dedicated funding base seems to be the best, very possibly the only way to keep SEPTA afloat. A proposal on this order would at least allow SEPTA to better plan an agenda because it would enable it to know exactly how much money it has to work with. Right now, it's a crap shoot.

The problem is none of our lawmakers in Harrisburg can seem to agree on how to create such a base.

A statewide tax of any sort is out of the question. Pennsylvania is largely a rural state and SEPTA is of little concern to a majority of state lawmakers and their constituents.

And, the prospect of a regional tax has created generated opposition among local lawmakers.

In Washington, lawmakers concede little or nothing can be done. Even if the government were to dedicate the entire unobligated portion of the nation's highway trust fund to SEPTA—roughly $2.5 billion—that still would not be enough. SEPTA's capital needs are expected to be twice that much in the next decade.

But that's no excuse for the type of arm-twisting consistent with Rep. Gray's bill.

Senator Heinz points out that the whole thing could backfire if passed and public safety and economic development in Pennsylvania could pay the price.

What if Harrisburg were to ignore the mandate? It did ignore a similar strong-arm tactic back in the early 80s when Philadelphia failed to meet Clean Air Act standards. State lawmakers balked for months as highway funds were withheld. If this happened again, hundreds of highway projects would be halted and thousands of workers would be laid off, putting economic development on the line.

What if the state were to enact some sort of token tax that complied with the law but raised only a few pennies? Gray's bill does not stipulate how much revenue must be raised by the dedicated funding base.

Everyone agrees that SEPTA is in need of dire aid, but no one knows how or how much city, state, regional and federal governments should help.

Perhaps it's high time for SEPTA officials, Governor Casey, Wilson Goode, Senator Heinz, Senator Specter, and the regional representatives in both the state and U.S. houses to get together and hash this out.

In the meantime, we don't need a federal law that could create a rift between Harrisburg and Washington.

Representative Gray's bill would only make things worse.

[From the Somerset (PA) Daily American, Sept. 27, 1990]

HIGHWAYS OUR MASS TRANSIT

Rep. William Gray wants to force Pennsylvania to dedicate a certain amount of its revenue to mass transit.

His proposal to deny Pennsylvania 25 percent of its highway funds unless it enacts a special tax for transit, was approved as part of the House transportation bill. The proposal was dropped from the Senate version, thanks to Sen. Arlen Specter and Sen. John Heinz. Its fate will be decided by a conference committee.

Since Pennsylvania is the only state so-designated, Sen. Specter's labeling of the proposal as blackmail sounds pretty good to us.

One would presume that Gray's proposal is linked to the problems of the virtually bankrupt City of Philadelphia. Gray is apparently trying to squeeze more money for the Southeastern Pennsylvania Transit Authority at the risk of costing the state $143 million in highway funds.

For Somerset and other rural counties, this could be a crippling loss. We don't question the need for mass transportation funds in the metropolitan areas, but highways serve as the mass transportation systems for rural counties. We depend on highways to carry commodities to and from the smaller communities that do not have rail service. As a consequence, our very livelihoods depend on adequate roads.

Currently, the highways in Somerset County range from less than adequate to adequate. We cannot afford a reduction in highway funds that Rep. Gray's proposal would cause.

[From the Chambersburg (PA) Public Opinion, Sept. 12, 1990]

MASS TRANSIT CONTROVERSY MISSES MARK

Sometimes, opposite sides in a political controversy can both be correct. Such is the case involving a steady source of funding for the Southeastern Pennsylvania Transportation Authority (SEPTA), the mass transit system serving the Philadelphia region.

Legislation approved in the U.S. House would give the state until October to approve a dedicated source of money for all mass transit systems.

Otherwise, the state would risk losing 25% of its federal highway aid, estimated at $142 million.

The proposal was drafted by U.S. Rep. William Gray, a Philadelphia Democrat who is trying to end the transit system's hand-to-mouth existence. (Numerous critics blame SEPTA's own poor management, not lack of a reliable and steady funding source, for its problems.)

The problem with Gray's proposal, however, is that it holds a gun to the state's head to provide those funds, a tactic that is self-defeating.

That's also the view of our two senators, John Heinz and Arlen Specter, who say the legislation is tantamount to blackmail. Heinz has called on Gov. Robert P. Casey to help derail this amendment to the federal transit bill.

Heinz's appeal, contained in a letter released Monday, was also made to state Senate President Pro Tem Robert Jubelirer, R-Blair, who said he agrees.

But the Casey administration is playing coy, saying through a spokesman that the governor did not intend to intervene because the legislation is a "federal matter."

That's a peculiar reason. Since when does any governor decline to intervene when a "federal matter" has a direct impact on his state?

Enter the politics factor. Casey and Gray are Democrats, while Heinz, Specter and Jubelier are Republicans.

We agree with the Republicans on this issue. Gray's bill is an act of desperation to coerce the state—with doubtful benefit to SEPTA and potentially great harm to the state's highway construction program.

But the Democrats are equally correct in their stance that the federal government should dip into its $6 billion mass transit fund, generated from the federal gas tax, to help fund not only SEPTA but all public transit systems.

Heinz and Specter both support a dedicated tax, but say correctly that this is the wrong tactic to get it.

At the heart of the issue is the federal government's seeming inclination to short-

change mass transit—a major factor in any blueprint for energy independence.

Somehow, mass transit has been reduced to a parochial issue, pitting urban and rural legislators against each other. That's why only the federal government can take the lead.

Heinz and Specter are correct in trying to block the Gray proposal, but that's only a holding action.

If successful, they should use their power in Washington to push for meaningful energy and transportation programs that eventually wean the nation away from more highways, more cars and more oil consumption.

[From the Philadelphia Daily News, Aug. 8, 1990]

GOOD INTENTIONS, LOUSY LAW

They make hefty headlines, but the pressure tactics of Bill Gray and Frank Lautenberg for a dedicated transit tax for SEPTA would make lousy law.

Rep. Gray, D-Pa., and Sen. Lautenberg, D-N.J., are pushing legislation which, if approved by Congress, could mean withholding about $142 million in federal highway funds from Pennsylvania unless a dedicated source of state, regional or local funding is established for mass transit.

No matter how you feel about SEPTA's needs for dedicated revenues—and this paper has strongly endorsed that idea many times—this proposed legislation is not a good idea.

If Congress feels strongly about mass transit funding, it can put its federal money where its federal mouth is. But Congress should not try to blackmail any state by threatening to withhold hundredes of millions of dollars unless that state enacts a new tax structure.

Ironically, this legislation could backfire on Gray and Lautenberg. If the law is passed as written, opponents of Philadelphia in the Legislature could comply with the letter of the law by passing or authorizing a dedicated tax—say, one penny on every candy bar sold in Pennsylvania—for mass transit purposes. That would be all the Legislature would have to do to trigger release of the $142 million for highways.

The candy bar tax might get SEPTA enough to buy one bus—maybe—but the damage would have been done.

Congress would have tried heavy-handed tactics, and failed.

The Legislature would have passed another nuisance tax that provides paltry sums for mass transit.

And SEPTA—still in desperate financial straits—would still be considering shutting the transit system down.

[From the Pittsburgh (PA) Post-Gazette, Oct. 3, 1990]

MISCHIEF ON MASS TRANSIT

Rep. William Gray did a funny thing the other day on the way to the bus stop. Because the state has no dedicated tax to provide his bus with good maintenance, an adequate salary for its driver and enough fuel to cover all stops on its route, he shut down the road crews working on nearby bridges and highways, tying up car and truck traffic for miles.

Make sense? That, in a nutshell, is what the Phildelphia congressman would do through an amendment to the 1991 transportation appropriations bill, Mr. Gray's measure, now before a House-Senate conference committee, would strip Pennsylvania of $143 million—25 percent of its federal highway funds—unless it creates a specific mass-transit tax.

Although we agree with the need for a dedicated state source of mass-transit money, we fail to see what will be gained by Mr. Gray's shotgun approach.

For one thing, Gov. Casey and most members of the Legislature are running for election this fall. Naturally, any questions about the need for new taxes will be resisted by candidates until after Nov. 6.

There are other problems with this strategy:

Even though his proposal is federal legislation, it would not be applied as federal policy since it covers only Pennsylvania and no other state. That makes it unfair and even intrusive—federal lawmakers exercising their power to force one state's lawmakers to approve particular legislation.

There is no guarantee that transit systems in Pennsylvania, under a hastily inaugurated special tax, would receive more money from the state. The governor and the Legislature could set up a token tax—on candy bars, on radial tires, on anything—that simply would provide part of the revenue the state already appropriates.

The linkage of federal highway funds, which cover projects across the state, to greater support for mass transit, which primarily serves urban areas, is likely to increase the animosity that already exists among some rural legislators who resist the notion of more money for Philadelphia, even through the Southeastern Pennsylvania Transit Authority. Yet it is these lawmakers who must be won over if Philadelphia is to secure additional state aid of any sort.

Mr. Gray, who has a reputation as a coalition-builder in the House, would do better trying to build support for a mass-transit tax that is produced in Harrisburg rather than dictated from Washington.

And here's where Gov. Casey should pay attention even if it fails. Mr. Gray's gambit shows the damaging extremes to which one House member will go in forcing the state to provide more aid to buses and subways. Auditor General Barbara Hafer already has offered a worthwhile proposal—a 6-cent increase in the state gasoline tax with 2 cents earmarked for mass transit.

For his part, Mr. Gray only makes mischief on a sensitive subject for his city and state.

[From the Pittsburgh (PA) Sept. 26, 1990]

PUSHING A TRANSIT TAX

Republican legislative leaders this week sought to hold a high-level meeting to discuss the threatened loss of $143 million in federal highway monies. Their invited Democratic counterparts, however, failed to show up.

The Democrats boycott wasn't explained, but it could be fairly assumed that they suspected a political motive behind the meeting. And it could be fairly assumed they were right about that.

Without question, the possible loss of so much federal aid is serious business. But there's also little question that there are a lot of politics—mostly involving Philadelphia's financial crisis and the state's gubernatorial campaign—involved here.

In an effort to pump up state support for the Southeasern Pennsylvania Transportation Authority, Rep. William Gray, D-Philadelphia, earlier this year proposed withholding 25 percent of the federal highway funds earmarked for this state unless it enacted a special tax for transit.

Pennsylvania would be the only state so threatened.

Despite the unusual—and singular—nature of Rep. Gray's proposal, it was kept in the House-approved transportation bill. It was dropped from the Senate version, however, and its fate now will be determined by a conference committee. With Rep. Gray's support, there is believed to be a good chance that this controversal proviso will remain in the final funding legislation.

Republican leaders of the state Legislature, believing a strategy session was called for, invited top legislative Democratic along with Democratic Gov. Robert P. Casey. None showed up, although a spokesman said the Casey administration was working on options to deal with worst-cease scenarios.

"We will not lose our eligibility for federal funds," he said.

U.S. Sen. Arlen Specter, R-Philadelphia, an opponent of the Gray amendment, took part in the Republican powwow and said the issue would "come to a head" on the Senate floor this week. If so, the state won't have long to wait to find out if it will have a deal with the federal squeeze or not.

In the past, the Legislature has been disinclined to enact a specially-designated transit tax, although it has been fairly generous in its support of the transit operations in Philadelphia, Pittsburgh and elsewhere from general tax revenues.

It doesn't seem any more inclined toward such a tax at this point and Gov. Casey, now in the midst of a re-election campaign, has been conspicuously avoiding any talk of new taxes or emergency aid to financially troubled Philadelphia.

The reality is that the state has been commendably supportive of public transit and attempts by Rep. Gray to extract even more money for SEPTA, by forcing the Legislature to impose a new state tax for that purpose, amounts to indefensible federal intrusion.

As some crities in Pennsylvania have described it, the Gray threat amounts to blackmail via Congress, and the Senate should emphatically reject it.

Mr. LAUTENBERG. Mr. President, I was hoping that we would not get into the kind of prolonged debate we are entering into, because of the lateness of the hour, as well as the fullness of this bill. We have run into what I think is an unpleasant difference between neighbors, States where a lot of work is done jointly.

The two Senators from Pennsylvania and I have worked on many issues, many that we considered important for our region, dealing with the economy, dealing with the work force, dealing with the harbor, dealing with the airport—in Philadelphia in particular—and the other airports in the State as well.

I extend an apology for any misunderstanding the junior Senator from Pennsylvania and I might have had in the referred to conference committee meeting that we had. I am forced by the volume of response to take a few minutes to deal with some of the issues.

I would like to start by calling attention to the fact that this issue was not

dreamed up by the Senator from New Jersey. It was from two distinguished Pennsylvania Congressmen who sat at that conference committee one authoring and another one supporting it. I talk about Congressman BILL GRAY, former chairman of the Budget Committee, now Democratic whip, and I talk about Congressman LARRY COUGHLIN from the same area, a Republican Member of the Pennsylvania delegation. Not one Member of the Pennsylvania House delegation spoke against this amendment. So when we start off by talking about things like blackjacks and blackmail and so forth, let us keep in mind, Mr. President, where it is that this issue developed.

I would like to recall to both disinguished Senators from Pennsylvania, once again with whom I worked very closely on many issues, let me recall complimentarily, to Senator SPECTER his work supporting the Philadelphia Naval Yard's functioning when it was likely that that yard might be brought to a close—one of the most efficient, perhaps the most efficient Navy Yard in the United States. It was ready to fall to the ax.

Senator SPECTER's involvement just a few days ago helped to remind the Defense Department and the Senate about the vital contribution that the Navy yard made. And I worked with him on that. And we worked together on Conrail, making sure the headquarters stayed right where they were; making sure Amtrak's improvements included Philadelphia; making sure we cleaned the harbor together when there was an oilspill; making sure we worked together to keep the market open so we could import grapes and fruits from other parts of the world so that we could keep people working and keep the marketplace filled with products that could be purchased at a reasonable price. I might also remind them about the fact that I also was one of those very interested in keeping the Philadelphia Eagles located in Philadelphia—making sure that we worked together supporting regional interests.

There are lots of Jersey fans going to see the 76'ers and the Philadelphia Flyers and there is constant commerce between Philadelphia and the surrounding area. They use SEPTA, and I worry about my people, too; whether the Senator from Pennsylvania thinks it is a matter of trivia that people are riding on a subway in which there have been fires, accidents, inefficiency—the thing runs like a Toonerville Trolley.

Mr. President, to make the record clear, I was not the creator of this amendment that is part of the bill. I support it. I certainly do. And it is not unique to have the kind of restriction that accompanies this amendment used in legislation. Senator HEINZ himself mentioned it. He recalled that highway funds were withheld where States permitted lax supervision of the speed limit. He recalled that we had highway funds withheld from States that did not raise their drinking age. By the way, one of the latest to come aboard was Pennsylvania. Jersey kids were driving there and not able to make it home often. But it helped achieve our goal to take away highway funds to raise the drinking age. As a condition of receiving Federal aid a State or local education agency must adopt and implement a program to prevent drug abuse by students and employees. There is a penalty involved. There is reduced Federal support for food stamp programs in States that do not control their error rate. And the list goes on and on and on.

The Senator from Pennsylvania, Senator HEINZ, referred to the particular decline of a project called for in Pittsburgh. There are four projects already committed for Pittsburgh. The busway project would be the fifth corridor under consideration in that area for Federal funding. There are very few communities that can talk about getting that kind of support.

And it is alleged, Mr. President, that somehow or other this is State against State, that we will all be picking on one another. But I want to point out to both Senators from the State of Pennsylvania that there are eight individual highway demo projects totaling over $14 million for the State of Pennsylvania.

The bill designates landing systems for Reading, Philadelphia, and Pittsburgh airports; that funding for transit rail modernization programs will generate over $60 million for Pennsylvania; and the bill contains a Conrail commuter rail provision costing $5 million.

Once again, the list continues with projects designated, deservedly, for the State of Pennsylvania.

So, Mr. President, what we face here is a problem within the family. This bill contains language that assures riders, whether they come from New Jersey or other areas, or Philadelphia, that there will be a designated funding source to help rehabilitate and develop that transit system.

It is unique, Mr. President. The State of Pennsylvania is the only one among States in this country that has a metropolitan area with over 3 million persons that does not have a dedicated tax.

So, Mr. President, we come upon the time when Congressmen, Members of the other House, decided that they wanted to get that help going. They came from both parties. I repeat myself: there was not one spokesman in the Pennsylvania House delegation against this.

What we are discussing is very clear and simple: The Senators from Pennsylvania and the Representatives from Pennsylvania have a disagreement, and the conferees agreed with the House conclusion. We could not hold this in the conference. The House insisted. The chairman of the conference was Congressman BILL LEHMAN from Florida. He was the one who said when, prior to the conference, the request came to address the conference that it was not to be permitted. That was his choice. I had no choice but to support that.

Mr. President, I will close, but I want to just mention the fact that we had a lot of time for discussion on this amendment and this part of the bill. The House passed this July 12 of this year. That is a long time ago. We had a Senate subcommittee, which I chair, the Transportation Subcommittee on Appropriations, in which there was no comment made. We had the Senate full committee meet. One of the Senators from Pennsylvania who is a full-fledged member had no comment. It was reserved for the floor. It did come on the floor. There was a voice vote and we took it to conference and the conferees on the other side said no.

So, Mr. President, we are at the stage where the hour grows late. We are closing a session. We can play ping-pong, send this amendment over to the House, have them vote it down in disagreement, have it come back here, we can disagree again. If the vote carries the way I expect it will, we'll send it back to them, and we can watch as the bill flies back and forth and we'll gain nothing.

All of us have too much in this transportation appropriations bill to want to see it delayed. We all have abundant requests to bring our infrastructure up to date, to take care of the safety issues, to take care of the transportation pollution issues, and conservation of energy. There is just too much in it.

Amending the conference report is not going to help the transit system in Pennsylvania or anywhere else. The House has dug in. As I said, not one Member of the Pennsylvania House delegation spoke against this provision when the House adopted the conference report.

So, Mr. President, I make a motion to table the amendment and ask for the yeas and nays.

Mr. HEINZ. Will the Senator withhold his motion for a moment?

The PRESIDING OFFICER. Will the Senator withhold his motion at the request of the Senator from Pennsylvania?

Mr. LAUTENBERG. The motion has been made.

The PRESIDING OFFICER. The motion has been made.

Mr. LAUTENBERG. I withhold the motion.

Mr. HEINZ. Mr. President, I will not detain the Senator very long.

The PRESIDING OFFICER. Senator HEINZ is recognized.

Mr. HEINZ. Mr. President, I just want to make clear to our colleagues if anyone is disposed to look at this on the narrow question of mass transit and the support of the State of Pennsylvania for mass transmit, as opposed to the other issues I have raised, I just want the record to be clear on one fact: that every analysis, whether it is done by the American Public Transit Association, by the Southeastern Pennsylvania Authority, by the Commonwealth of Pennsylvania or the Department of Transportation, has shown one fact consistently. The State of Pennsylvania provides more revenue for mass transit than 49 out of 50 States.

So if we really want to talk about a national policy, maybe what we ought to have is a national policy that requires every State to come up to the same level as New York State for its support. That would force Pennsylvania to go up and, by the way, it would force 48 States to go up.

Finally, Mr. President, I ask unanimous consent to print in the RECORD a letter that was addressed to Senator LAUTENBERG from the majority and minority chairmen of both the House and the Senate—in Pennsylvania—transportation committees. These are the Republicans and Democrats in the House and Senate who chair the two transportation committees.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SENATE OF PENNSYLVANIA,
September 25, 1990.

HON. FRANK R. LAUTENBERG,
Chairman, U.S. Senate Transportation Appropriations Subcommittee, Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: In the next few weeks you will be considering an issue, the resolution of which holds great consequence for the Commonwealth of Pennsylvania, and the nation as a whole.

Specifically, we speak to Congressman Gray's proposal that mandates the withholding of 25 percent of Pennsylvania's 1991 federal highway monies unless and until a dedicated mass transit revenue source is enacted.

As elected officials of the state being singled out by this matter, we would like to be on record in opposition to the inclusion of such language in the final conference committee report.

Our opposition is not based on the belief that providing for mass transit services is not paramount to Pennsylvania's economic success; to the contrary, we believe that the availability of reliable, reasonably-priced mass transit service is something we cannot afford to lose. Whether this takes the form of a dedicated revenue source and/or the adoption of cost-saving measures like competitive contracting, the decision should be left to those of us who were elected to do that very job.

Pennsylvania's public officials, like other public officials around the country, have been debating the extent of public transit funding needed and the nature of that funding for years. We have not chosen to authorize dedicated mass transit funding although Pennsylvania has instituted one of the largest state-funded mass transportation programs in the United States.

It is not up to the Federal Government to pass judgment on our efforts; that is the province of the Pennsylvania voters.

If enacted, Congressman Gray's proposal clearly abrogates the concept of states' rights and subjects the Commonwealth of Pennsylvania, alone, to an additional requirement in order to receive a share of highway funding that has, in fact, already been paid by its citizens. This loss would have a devastating effect on a highway program that currently has many unmet needs.

We trust that you and the other members of the conference committee will give the consequences of inclusion of this language serious consideration and hope that you will see fit to preserve the right of a state to determine its own destiny.

Very truly yours,

Sen. J. Doyle Corman, Majority Chairman, Senate Transportation Committee; Sen. J. Barry Stout, Minority Chairman, Senate Transportation Committee; Rep. Joseph A. Petrarca, Majority Chairman, House Transportation Committee; Rep. Rudolph Dininni, Minority Chairman, House Transportation Committee.

Mr. HEINZ. Mr. President, I just want to indicate that they not only point out that Pennsylvania has chosen to authorize dedicated mass transit funding at a level that is as I described, but "if enacted" they say "this proposal clearly abrogates the concept of States rights and subjects the Commonwealth of Pennsylvania alone to an additional requirement in order to receive a share of highway funding that has, in fact, already been paid by its citizens. This loss would have a devastating effect on a highway program that currently has many unmet needs."

Mr. President, this is the committee that has to appropriate money to mass transit authorities in our State. The effect of persisting in this amendment—well intentioned, yes, but madness also—is to turn the people in our State, in the State legislature, totally against what we are really trying to achieve.

How is that going to help the riders in the State of New Jersey if the SEPTA trains are dangerous in Pennsylvania or New Jersey? How is it going to help turn the very people who can help around, no, instead they will say, "Hell, no; we will not help"?

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania, Senator SPECTER.

Mr. SPECTER. Mr. President, before I make a comment on what I believe I heard the Senator from New Jersey say—and I had not addressed any questions to him because I decided not to do that—but on what he said—I have not honestly been able to get a transcript, but I wrote down when the request came, apparently referring to my request to speak in conference—BILL LEHMAN, chairman of the conference bill, said no one should speak and I, referring to Senator LAUTENBERG, went along.

I would like to direct that question to the Chair to the Senator from New Jersey if I have gotten the substance of what he said.

The PRESIDING OFFICER. The Senator from Pennsylvania directs through the Chair a question to the Senator from New Jersey.

Mr. LAUTENBERG. If the Senator would repeat it, I would be pleased to answer.

Mr. SPECTER. What I heard the Senator from New Jersey say when the request came, referring to my request, BILL LEHMAN, the chairman of the conference, said that no one should speak, as I wrote down. "I" referring to the Senator from New Jersey, went along.

My question, Mr. President, that I direct through the Chair to the Senator from New Jersey is whether that was the substance of what the Senator from New Jersey said. I have not had the chance to get the transcript yet.

Mr. LAUTENBERG. Mr. President, for clarification, prior to our meeting, the request to speak before the conference committee came from Senator HEINZ. When I put the question to Congressman LEHMAN, the chairman this year of the conference committee, the answer was negative, that he would not permit a nonconferee to address the conference. That was our operating principle, as established by Chairman LEHMAN.

Mr. SPECTER. Mr. President, I shall not repeat the question but will comment on the answer.

When the Senator from New Jersey said initially when the request came, Chairman BILL LEHMAN said no one should speak, I went along. I concluded that referred to this Senator. There has been no reference earlier to any effort by my colleague, Senator HEINZ, to make a request.

I asked the Senator from New Jersey whether I had accurately stated what he said, and he did not answer. Instead, he diverted to some other subject about a request from Senator HEINZ, not my request but the request from Senator HEINZ. I do not believe, Mr. President, that any fair reading of what the Senator from New Jersey said, after I had made quite a point of my effort to speak at the conference, could be interpreted any other way than he was referring to what I had said.

Mr. President, the facts were that I appeared and made a request specifically for unanimous consent after the Senator from New Jersey asserted a rule, a rule which we have since found does not exist, and an alleged rule that

he apparently abandoned. There is no reference made to that today. But he asserted such a rule, even though no rule existed. And I made the unanimous-consent request, and the Senator from New Jersey objected.

The chairman of the conference, Congressman LEHMAN, did not take any initiative in rejecting this Senator's request to speak. I spoke with the Congressman from Florida, Congressman BILL LEHMAN, the following day, and he expressed surprise as to what had happened and regret as to what had happened. So I do not think it was Chairman LEHMAN's doing at all. It was the doing of the Senator from New Jersey.

When the Senator from New Jersey says that no Members of the Pennsylvania delegation spoke, this Member of the Pennsylvania delegation was not permitted to speak. When the Senator from New Jersey talks about the fact he is not the creator of this amendment, it sounds to me like a full retreat, talking about House Members, talking about House Members who have districts which are limited to the region affected.

Mr. President, I live in Philadelphia, and I said earlier that I would like to see a dedicated tax. I just think it is unprecedented, unreasonable, and unconstitutional for the Federal Government to impose its will on the State of Pennsylvania to insist on that tax.

It may be easy for someone who lives in that region who does not have the responsibility to represent the full State to take that position. I do not take the position lightly, considering the fact that I am a Philadelphian.

But, Mr. President, I think it is well-established protocol in this body that if two Senators unite on a State issue, that is that for the U.S. Senate. It does not have any weight as far as this Senator is concerned to hear about Members from the other body, whose districts have a special interest, have a stake contrary to the interests of the State. And the State is represented by Senator HEINZ and myself.

There has been a lot of lobbying on this matter, Mr. President. It is unprecedented for Members of the House to call as many Senators as have been called on this matter. That italicizes, underscores the point here that where two Senators stand up representing a State, the practice of this body is to honor the request of those Senators because we speak for Pennsylvania.

Mr. President, I do not understand all the talk of the Senator from New Jersey about the navy yard, the Philadelphia Port, and the Eagles, except that he does not have a case on the matter which is now before the Senate. I do not understand the talk about he is not the creator of this amendment, except that he does not have a case with it.

This is a flagrant circumstance, Mr. President, of the Federal Government seeking to impose its will on a matter uniquely within the province of the State government on complex relationships between the State government and the city of Philadelphia because of many, many problems and many, many issues on virtual insolvency and grave difficulties.

This body ought not to be a party to having the Federal Government tell Pennsylvania what it ought to do.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. LAUTENBERG. I have a motion to table which I suspended, Mr. President, on behalf of the interests of the Senators from Pennsylvania.

I agreed to that. I now move to table the amendment. I ask for yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The motion is to table the motion to concur in the House amendment to Senate amendment No. 4, with an amendment numbered 3182, offered by the Senator from Pennsylvania [Mr. SPECTER]. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

I also announce that the Senator from Oklahoma [Mr. BOREN] is absent because of illness in the family.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

The PRESIDING OFFICER (Mr. HARKIN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 54, nays 42, as follows:

[Rollcall Vote No. 321 Leg.]

YEAS—54

Adams	Ford	Lieberman
Akaka	Fowler	Metzenbaum
Baucus	Glenn	Mikulski
Bentsen	Gore	Mitchell
Biden	Graham	Moynihan
Bradley	Harkin	Nunn
Breaux	Heflin	Pell
Bryan	Heinz	Pryor
Bumpers	Hollings	Reid
Burdick	Inouye	Riegle
Byrd	Johnston	Robb
Conrad	Kennedy	Rockefeller
Cranston	Kerrey	Sanford
Daschle	Kerry	Sarbanes
DeConcini	Kohl	Sasser
Dixon	Lautenberg	Shelby
Dodd	Leahy	Simon
Exon	Levin	Wirth

NAYS—42

Armstrong	Coats	Danforth
Bond	Cochran	Dole
Burns	Cohen	Domenici
Chafee	D'Amato	Durenberger
Garn	Lott	Roth
Gorton	Lugar	Rudman
Gramm	Mack	Simpson
Grassley	McCain	Specter
Hatch	McClure	Stevens
Helms	McConnell	Symms
Humphrey	Murkowski	Thurmond
Jeffords	Nickles	Wallop
Kassebaum	Packwood	Warner
Kasten	Pressler	Wilson

NOT VOTING—4

Bingaman	Boschwitz
Boren	Hatfield

So the motion to table was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote.

Mr. ADAMS. I move to lay that motion on the table.

Mr. HEINZ. Mr. President, I ask to be heard on the motion to reconsider.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. HEINZ. Mr. President, I have been down in the well of the Senate as my colleague, Senator SPECTER, discussing this vote with many Members of Congress. I think it is fair to say that if this had been voted on the merits, rather than on a procedural vote, the vote would have been different. I state for the RECORD that I changed my vote at the end so I could move to reconsider, or I could speak on the motion to reconsider; that this was not voted on the merits. I have no doubt that were it to be voted on the merits there is scarcely a Member of this Chamber who would cast the vote they did on the merits.

There is a good deal I intend to say about this issue on the merits, and I would like our colleagues to reconsider hteir position on the merits of this issue because if it is going to be done along straight party lines, we are going to be here all night and into the next morning. This is an issue that affects only one State, and for my friends and colleagues who were not here during debate, I remind them what the Founding Fathers of this Constitution warned us about.

The Federalist Papers argued that we in Congress would be averse to exactly this attempt to legislate State specific matters for two reasons: The first was that they could not believe, they did not believe that a group of people whose job it was to represent the Nation, and who were thinking about the great national issues of the day, whether it was the various questions that the new republic was going to face: should there be a Bank of the United States? How should the new republic handle its currency? How might the new government regulate interstate and foreign commerce? Whether there should be a national highway built out across the United States, reaching out toward the West? What might eventually be the fate of the electorate? How the franchise might be expanded?

They never believed that a national legislature would be sufficiently sensitive to be able to make intelligent decisions that were inherently, totally and clearly local and State in their application, both with respect to the resources and with respect to policy. Of course, the amendment we are opposing stipulates that exactly one State, the State that Senator SPECTER and I represent, must not only apply resources of a certain type but must apply them in a certain way.

In spite of the fact our State on a per capita basis does more for mass transit than any other State, except the State of New York, and——

Mr. LAUTENBERG. Mr. President, the floor is vacant as I see it.

THE PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. HEINZ. Mr. President, I thank the Chair.

Mr. LAUTENBERG. Mr. President, I point out that if the floor is held there is a responsibility to be communicating to the Senate.

Mr. HEINZ. I am well aware of that and I certainly do intend to hold the floor and I thank my colleague for pointing that out.

The PRESIDING OFFICER. The Senator will withhold. The Chair is informed at this time that this motion to reconsider is a nondebatable motion and the Senator will need consent to continue.

Mr. HEINZ. Since I was not able to speak to the conference committee, I will not press my luck.

The PRESIDING OFFICER. The question is on the motion.

Mr. LAUTENBERG. Mr. President, I move to table the motion by the distinguished Senator.

Mr. HEINZ. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Jersey to lay on the table the motion of the Senator from Pennsylvania to reconsider. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] is absent because of illness in family.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Oregon [Mr. HATFIELD], and the Senator from Vermont [Mr. JEFFORDS] are necessarily absent.

The result was announced—yeas 52, nays 44, as follows:

[Rollcall Vote No. 322 Leg.]

YEAS—52

Adams	Exon	Metzenbaum
Akaka	Ford	Mikulski
Baucus	Fowler	Mitchell
Bentsen	Gore	Moynihan
Biden	Graham	Pell
Bingaman	Harkin	Pryor
Bradley	Heflin	Reid
Breaux	Hollings	Riegle
Bryan	Inouye	Robb
Bumpers	Johnston	Rockefeller
Burdick	Kennedy	Sanford
Byrd	Kerrey	Sarbanes
Conrad	Kerry	Sasser
Cranston	Kohl	Shelby
Daschle	Lautenberg	Simon
DeConcini	Leahy	Wirth
Dixon	Levin	
Dodd	Lieberman	

NAYS—44

Armstrong	Gramm	Nickles
Bond	Grassley	Nunn
Burns	Hatch	Packwood
Chafee	Heinz	Pressler
Coats	Helms	Roth
Cochran	Humphrey	Rudman
Cohen	Kassebaum	Simpson
D'Amato	Kasten	Specter
Danforth	Lott	Stevens
Dole	Lugar	Symms
Domenici	Mack	Thurmond
Durenberger	McCain	Wallop
Garn	McClure	Warner
Glenn	McConnell	Wilson
Gorton	Murkowski	

NOT VOTING—4

Boren	Hatfield
Boschwitz	Jeffords

So the motion was agreed to.

The PRESIDING OFFICER. The pending question is the amendment of the House to the Senate amendment No. 4.

The question is on agreeing to the amendment.

Mr. HEINZ. The Senator from New Hampshire is seeking recognition.

Mr. RUDMAN. Is it improper for me to seek recognition at this time before this vote was taken? If it is improper, I will wait.

The PRESIDING OFFICER. The Senator may seek recognition.

Mr. RUDMAN. I thank the Chair.

Mr. President, I will be very brief.

To quote a great former majority leader of this body, Howard Baker, I got no dog in this fight. But, Mr. President, I wanted to speak very briefly. I have only been here 10 years, but I am a little surprised at what is happening on this floor tonight.

We have two Senators from the Commonwealth of Pennsylvania, representing the entire State. When a vote in this body prevailed on the very issue we are considering, the matter was never considered by the other body. It was put into a conference report at the conference, and now we have the wishes and desires of those two Senators being thwarted, frankly, on a partisan basis. I can say that, Mr. President. That is the way it is.

I do not think we ought to be doing this to ourselves. Anyone who has any knowledge of the history of this body knows about the comity that we show each other as it comes to our States, whether we are from the same party representing a State, or, as is often the case, from different parties, with one Democrat and one Republican. We always respect those wishes if those two Senators agree, and we should not depart from that here this evening.

It is not worth it to this body to leave the kind of scars that this will leave with this Senator from New Hampshire, who tries to always deal fairly with Members on the other side of the aisle. I thank the Chair.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. What is the pending business?

The PRESIDING OFFICER. The pending question is the amendment of the House to Senate amendment No. 4.

Mr. HEINZ. Mr. President, I want to speak for a moment about the issue that has been before the Senate. I want to say it very clearly because I know that there were Senators who were otherwise engaged who did not hear the debate on the issue that was before us just a minute ago, and on which we have had two votes, both procedural votes, both motions to table.

I regret that both those votes appear to have been—the first one, anyway, was along straight party lines. This one was a little less so. I hope that we will get to the point where this issue will simply be decided not on the basis of party but on the basis of the merits.

As the Senator from New Hampshire was kind enough to state a moment ago, this is an issue that had the following genesis. It was an issue that was never voted on in the House of Representatives. It is an issue that was voted on in the Senate, and the Senate said we do not like this provision, the one that Senator SPECTER and I have been objecting to.

We took a vote and the Senate said we will strike this provision from the transportation appropriations, and we did. It was sent back to the House, and in conference, again without any vote of the House, it was put back in.

Mr. President, a democracy is about the expression of the people's will. The people's will is expressed through our votes. The only vote taken in either body on behalf of the people, not just of Pennsylvania, but on behalf of the people of the United States of America, was to reject this amendment.

A fundamental democratic principle is involved if we continue to attempt to settle this issue along what has been almost up to now pure party lines. It is a bad idea to settle it that way, not only because of the merits of the case but for the precedent it sets. The precedent that would be set, if Senator SPECTER and I do not persist in pressing our case on the merits

before the Senate, is that this body will, for the first time in our history—and it is a very long and a very proud history—go on record as saying that when a State is minding its own business, is doing more or less as good a job as any other State, when it is not causing any national problems, when it is contributing, by the way, a good deal more of its tax revenue to solving national problems than it gets back, as happens to be the case with Pennsylvania, that no matter that a State is a good citizen of this Nation of 50 States, it is all right for 49 other States, or 25 other States plus 1 vote, to come along and concoct a requirement and impose it on that State simply because the numbers of Senators from that State that represent it are 2 and the rest of the Senate, being 98 in number and a majority 51 deciding to the contrary, decide to impose its will on that one State.

Mr. President, I do not know if that is constitutional or not, but it certainly has never been done. Yes, we have had issues that impact other States. The State of Alaska has on many occasions had legislation before this Senate which impacted the State of Alaska, but those were issues that impacted Federal lands in the State of Alaska, which is 80 percent owned by the Federal Government, and where those issues can only be settled by national legislation.

Nevertheless, on the great issues of this past decade and the decade before—the Alaska pipeline legislation, the Alaska Native Claims Act, and others—we always attempted to work out something with which the Senators from that one State which was affected, the State of Alaska, at least could live. They may or may not have supported the final proposal, but we always listened to them. We allowed their counsel to be heard both in committee and on the floor. We attempted to make changes to accommodate their legitimate concerns. Where there was no national concern, we did not attempt to impose our will.

There is not a single person in this body who can define what the national interest is in the amendment that the Senator from Pennsylvania, my colleague, Senator SPECTER, and I were discussing. Not a single Member of this body has come to the floor to define what the national interest is in this amendment.

When I asked the Senator from New Jersey a question in an effort to define the national interest, and I asked him as a general principle would it be appropriate policy for the Federal Government to sanction highway funds to a State on the issue of the amount of trash that that State exported to other States against the will of other States, that any State, for example, that exported more than 20 percent of its trash and garbage because they had closed all their landfills—we all are familiar with the "not in my backyard syndrome" in our own States—and proceeded to ship that trash to other States, to other landfills, fill them up, fill up the highways of the people in those States with large dumpsters running to and from one State, scattering at times not only trash but dangerous and toxic and hazardous waste along the way because those trucks were not adequately covered or contained, when I asked the Senator from New Jersey, as a general principle, would the Senator from New Jersey think that it is just as legitimate to sanction a State because they do not recycle or dispose of or have a waste minimization policy such that it impacts on other States, the answer that I recollect getting was, "Well, that's a hypothetical question."

Why is it a hypothetical question if that is what we are about to do with my State, which is not dumping trash in New Jersey or any other State to any considerable extent that I know of? What is so important about a State that appropriates more money for mass transit on a per capita basis than any other State in the Union, save one, coming under the hand of the Federal Government and the Federal Government through this legislation telling the sovereign and independently elected legislature of Pennsylvania—we have a House of Representatives and a Senate, the same as the United States of America—that know, what you are doing is not good enough. What you have to do is do it our way; you have to enact a tax base source of revenues, and we are not only going to do that to you, we are not going to give you any time, no time at all to do it.

Mr. President, I totally disagree with the principle. But let us just look at how ridiculous the specifics are. The specific is that as of October 1, 1990, 26 days ago, if this amendment becomes law, the Secretary of Transportation is required to start withholding a portion of our highway funds. Talk about ex post facto laws. We do not like them. We try not to enact them. The last thing we should be doing is, in this instance, tying up the Senate because somebody wants to enact an ex post facto law.

We are not talking about nickels and dimes here. We are talking about $43 million, equivalent to 25 percent of all our highway funds, and to lose that amount of money—excuse me, $144 million, I stand corrected—puts what you might call more than a pothole in our highway program. It devastates all the people who depend on safe transportation, who are going to get a lot less of it. People who would like to have their bridges repaired are not going to get those bridges repaired. Improvements that we need to make are going to be stymied.

Even if the amendment was a good idea, and it is not, it is a terrible idea. The effect of it is to land on our State literally in the middle of our Federal Government's fiscal year to try and attempt to do something that on the merits there is absolutely no case for. There is not a single Member of this body—I have not heard one, I do not expect to hear one—who can make a case that Pennsylvania deserves this kind of treatment, that Pennsylvania is not already doing everything it ought to do for mass transit.

It may not be as much as the people would like it to do. It may not be as much as certain areas of the State would like to have done. It may not be as much as some of our mass transit authorities need. But nobody can contend that Pennsylvania is not, by any objective measure, doing a reasonable job for which we are being singled out for punishment by the U.S. Senate.

Mr. SPECTER. Mr. President, will the Senator yield for a question?

Mr. HEINZ. I am pleased to yield for a question.

Mr. SPECTER. The thought occurs to this Senator that there are some very important questions which might be propounded, to give the Senator from Pennsylvania a chance to have a drink of water.

Mr. HEINZ. The Senator from Pennsylvania had his drink of water. I appreciate it very much.

Mr. SPECTER. In the course of the 14 years that the Senator has been in the U.S. Senate, and the preceding 6 years, approximately, in the House of Representatives, has my distinguished colleague ever seen a measure which was directed against a single State with the intent to blackjack that State into compliance for fear of losing such an enormous sum of money, $144 million?

Mr. HEINZ. Mr. President, in answer to the——

Mr. LAUTENBERG. Will the Senator yield for a question?

Mr. HEINZ. I yield without losing my right to the floor.

Mr. LAUTENBERG. I wonder whether the Pennsylvania Senators who pose the argument that says whenever there are two Senators from one State sticking up for the States rights, wanting to protect their State's interests—did the Senators recall the vote that was taken here when New Jersey, burgeoning with garbage, legitimately, through interstate commerce, was shipping its trash to another State, and both Senators stood up here and voted to impose an added hardship on New Jersey?

This is not a question of getting even. I am just reminding the Senators that there has been an occasion in which they made the statement, and I

ask the Senator, the distinguished Senator from Pennsylvania, whether he remembers voting to keep New Jersey's unmanageable trash within New Jersey's borders, presenting us with a terrible problem.

Mr. HEINZ. I am pleased to respond to the Senator from New Jersey.

As the Senator from New Jersey knows, I think, the amendment to which he refers did not apply as a matter of fact, just to New Jersey. The amendment that he is referring to, I believe, is the Coats amendment. My recollection of the Coats amendment is that, it said in sum and substance, one State does not have to accept the trash of another State unless it wants to.

My State of Pennsylvania receives trash from many States. And we ship some trash to other States.

So if the Senator from New Jersey thinks that amendment applies disproportionately to New Jersey, let me tell him that it would apply to some people, particularly in the western part of Pennsylvania.

It is true that I supported the Coats amendment but it is, in my judgment, a gross inaccuracy to portray the Coats amendment as aimed at New Jersey and, most important of all, having application only to New Jersey. The Coats amendment had application, and if it becomes law, will have application, will change the way trash is handled not just in New Jersey, but in Pennsylvania and many other States.

But I find it interesting that the Senator from New Jersey should raise that issue, because at no time, Mr. President, in the consideration of the Coats amendment, did either Senator of New Jersey—and I have read the record with care—ever contend that that amendment was aimed at New Jersey. Every single argument made by the Senators from New Jersey was on the matter of a general principle. No Senator from New Jersey—and there are only two, the junior Senator who is here on the floor, and the senior Senator from New Jersey, neither of whom liked it. Neither of them said that amendment only affected New Jersey, or was aimed at New Jersey. They did not say that.

So my answer to the Senator from New Jersey is, I do not know what he is talking about.

In answer to my colleague from Pennsylvania, who asked do I know of any similar circumstance where a State would be sanctioned by the Federal Government to the tune of $144 million for having not complied with an arbitrary mandate imposed by Washington only on that State, the answer is to my friend and colleague, I have done my best to research this, and there is not a hint anywhere in the legislative record of the House or of the Senate that this has ever been done.

Mr. SPECTER. Mr. President, will my colleague yield for an additional question?

Mr. HEINZ. I am pleased to yield.

Mr. SPECTER. When the Senator from New Jersey raises an issue about New Jersey garbage being sent out of New Jersey, and tries to analogize it to the current issue where Pennsylvania would be deprived of $144 million on the apparent theory advanced by the Senator from New Jersey that the Coats amendment was directed to New Jersey, did the circumstances there analogize themselves to those here? Or, was it not a matter where there was very great harm and damage to other States like Pennsylvania, like Scranton, PA, which was the recipient of that garbage at a time when New Jersey had declared a moratorium and had no landfills, but instead was sending their garbage to other States?

So that it was not the amendment directed at New Jersey, but it was an amendment which sought to protect other States like Pennsylvania and others against the policy of New Jersey where New Jersey simply refused to have any responsibility for landfills and instead sought to impose that obligation on other States like Pennsylvania.

Mr. HEINZ. I say to my colleague from Pennylvania that there is a vast difference, and not just the one he mentioned, but two vast differences between the issue of cutting off highway funds for just one State, Pennsylvania, and the Coats amendment.

The first difference, which he correctly points out, is that the Coats amendment was aimed at preventing what was perceived to be a beggar-thy-neighbor policy by one State against another, or several other States. A beggar-thy-neighbor policy in the sense that, in an effort to prevent an unpleasantness, the disposition of garbage in one State, it simply transferred that unpleasantness, that hazard, that risk to another State, even though that State might not be willing to do so.

In that sense, what the Coats amendment, I believe, was aimed at, is giving individual States a way of regulating the harm that they perceive, to the extent that they perceive it, done to them by another State. Clearly, the way Pennsylvania goes about dedicating, or not, a source of revenue for mass transit is not a public safety issue.

I know you can contend that if more money ends up going to SEPTA, that maybe that will make it safer. But our State has nearly two dozen mass transit agencies, and if we ever do get any money for mass transit, it is going to be spread around the State. Indeed, I am going to talk in a little bit about how that is going to be made much more difficult if the Senate persists in the position that it has so far taken.

But the second major difference, I say to my friend from Pennsylvania, has to do with an even more important issue, and that is the extent to which there was a national issue involved. So it was not just a question of doing harm, which is one difference. We do not do any harm to anybody by running mass transit in Pennsylvania. Even if the State of Pennsylvania funded it at a lower level, we would not be doing harm to other people. The safety of mass transit is regulated by inspectors, the same as the Federal Railroad Administration regulates the safety of railroads.

The other issue is, is there some kind of national purpose that can be justified? Certainly, the way we dispose of trash, the way we utilize resources in disposing of it, the way we consume resources in creating it, elevate garbage, trash, its creation, our failure to recycle it in an era of scarce resources to an issue that is, I think, of genuine national concern.

So I say to my colleague from Pennsylvania that his question is well taken, and I think the answer is clear. What we are talking about, too, if it was a national issue, it should not be debated as legislation on an appropriations bill.

I think we all know what this is all about. This is a rider that was snuck in in the House and did not receive any scrutiny or consideration until it got here. But not only was it a stealth rider, but if we are to truly have a consideration of a national issue, as I guess the proponents of doing this contend, then we ought to do it where we consider national issues; that is, on the mass transit authorization, which we are going to be taking up next year, or on the highway bill, which we are going to be taking up next year.

If this is such an important national issue, why have hearings not been held on it? It it is such an important national issue, why did the House never debate it? If it is such an important national issue, why were hearings not held anyplace in the Senate? If it is such an important national issue, why should we not use the forum for this kind of national issue that reauthorization of transportation legislation, the highway bill, the mass transit authorization provides? The answer, Mr. President, is that we are about to do something utterly irrational, as well as pernicious.

I also believe that it is not only irrtional and pernicious; I believe it is counterproductive to a cause that, ironically, the Senator from New Jersey and both of us Senators from Pennsylvania share, and that cause is furthering the creation within the Commonwealth of Pennsylvania by the Commonwealth of Pennsylvania,

and only the Commonwealth can do it, the creation of a dedicated source of funding for mass transit in our State.

Indeed, almost 3 hours ago, I opened the debate for my part by indicating that for many years I had strongly felt that it was important for our State to have just such a dedicated source of revenues. And what has happened throughout Pennsylvania in the some 2½ months that this issue has been under consideration visibly, from the time the transportation appropriation came to the Senate floor back in the very beginning of August, is that there has been an outpouring of resentment from every quarter of our State, the sum and substance of which means that any solution to this problem is in the process of receiving a setback from which it will not soon recover.

Let me read an editorial from the Bucks County Courier Times in Levittown, PA. For my colleagues here to understand the geography of our State, the largest mass transit authority in our State, the Southeastern Pennsylvania Transit Authority, serves a five-county area in southeastern Pennsylvania. The counties are: Philadelphia, Bucks, Delaware, Montgomery, and Chester.

The Bucks County Courier Times is in one of those five counties, Bucks County, and it is importantly served by the Southeastern Pennsylvania Transit Authority. So if you would expect a bedroom county, which depends on this kind of mass transit for service to the citizens of that county as they commute to and from Philadelphia, you would think that this working class community, Levittown—of course it was made famous by Sinclair Lewis, as I recollect, and it is a community of working people, many of whom have been employed at one time or another in such occupations as making steel at the Fairless Works in Bucks County.

What does this newspaper, which should be looking out for mass transit in southeastern Pennsylvania that this proposal purports to help, say? Let me read you what they say:

No question, SEPTA needs a dedicated source of funding to survive. So what's wrong with Philadelphia Congressman William Gray threatening Pennsylvania with losing a quarter of its Federal highway funds—$142 million—unless it dedicates funding for SEPTA?

Everything.

Gray's amendment to a massive Federal transportation bill is raw political extortion. It may be well-intentioned, but it is a blatant misuse of Federal power—and it won't work.

It will not help Pennsylvania.

It will not help Philadelphia.

And it will not help SEPTA.

Gray may feel he is forcing the State to accept its responsibilities, but his tactics are as counterproductive as they are distasteful. There is no justification for Congress strong-arming State government, no matter what the need. And because the amendment is attached to a transportation bill for the entire country, it cannot be voted on separately; the only way to remove it is to defeat the whole bill, which isn't going to happen.

I would say editorially that they were wrong on that one point.

Compounding the crude extortion is the fact that neither Senators John Heinz nor Arlen Specter was allowed to address the conference committee, even though it is their state with a gun to its head.

The hypocrisy of Congress is blatant, too. It cannot meet its own budget responsibilities. And as Heinz laments, the Federal Government had an opportunity here to put its money where its mouth is—and failed. While SEPTA is the fourth largest transit system in the country, it got less than three-tenths of one percent of the money available from the Federal Government's dedicated revenue source for mass transit.

The worst part of Gray's tactic, however, is that it won't work. The state just will find a way to earmark funds it already provides to SEPTA, giving lip service to dedicated funding without addressing the need for new revenue. And the bullying only will inflame resentment against Philadelphia, which desperately needs all the support it can get in the Legislature.

SEPTA and the region are not going to be any better off for all this—unless the Legislature is willing to rise above the example set by Gray and his cohorts and address the real needs of mass transit.

Mr. President, that comes from, as I mentioned, an area of the State that would supposedly be helped by this amendment.

If the opinions of the people who are supposed to be the recipient of the help are any indication, the Senate is embarking on a perverse course of action because the very people that the proponents of this amendment would advance something that the people who are supposed to be helped is going to hurt. What logic is there in that?

You might say, well, that is a bedroom county, probably a lot of Republicans are out there, maybe they are stingy. In case anyone wants to know the Congressman that represents that so-called Republican county is a Democrat, Congressman KOSTMAYER who we all know.

So those are not a bunch of stingy old Republicans out there. This is a very progressive county, this is a very progressive newspaper. It is very difficult for a Republican to get an endorsement out of Bucks County's Courier Times. You really have to have earned it. That is their opinion.

But I suppose you could say, well, they are still a bedroom community. They are not in downtown Philadelphia.

Let us go to the one newspaper that publishes in downtown Philadelphia and only sells in downtown Philadelphia. For people who are not familiar with the newspaper lay of the land in Philadelphia, it would appear there are two newspapers that are Philadelphia newspapers. One is the Philadelphia Inquirer; the other is the Philadelphia Daily News.

But, there is a difference between them in spite of the fact that they share common ownership and that is that the Philadelphia Inquirer, which is a paper that has a national reputation, sells its newspapers throughout the Philadelphia region. Some get sold in New Jersey, I am sure. Some get sold in Delaware. Some certainly get sold not only in the five-county area but beyond it. I read my Inquirer every morning here in Washington, DC.

The other paper I refer to, the Philadelphia Daily News, because of the common ownership policy that exists, only sells its newspapers in the city of Philadelphia. It is not allowed to be sold in Montgomery County, Bucks County, Chester County, or Delaware County. It cannot sell them in New Jersey. This is a newspaper that represents the views of Philadelphians, the city, the core. As a matter of fact, it happens to be the area of which the original author of the amendment, Congressman GRAY, represents.

What does the Philadelphia Daily News say? Their editorial is entitled "Transit Arm-Twisting," "Good Intentions, Lousy Law."

I think that about sums it up. But let me quote this editorial.

They make hefty headlines, but the pressure tactics of Bill Gray and Frank Lautenberg for a dedicated transit tax for SEPTA would make lousy law.

Rep. Gray, D-Pa., and Sen. Lautenberg, D-N.J., are pushing legislation which, if approved by Congress, could mean withholding about $142 million in federal highway funds from Pennsylvania unless a dedicated source of state, regional or local funding is established for mass transit.

No matter how you feel about SEPTA's needs for dedicated revenues—and this paper has strongly endorsed that idea many times—this proposed legislation is not a good idea.

If Congress feels strongly about mass transit funding, it can put its federal money where its federal mouth is. But Congress should not try to blackmail any state by threatening to withhold hundreds of millions of dollars unless that state enacts a new tax structure.

Ironically, this legislation could backfire on Gray and Lautenberg. If the law is passed as written opponents of Philadelphia in the Legislature could comply with the letter of the law by passing or authorizing a dedicated tax—say, one penny on every candy bar sold in Pennsylvania—for mass transit purposes. That would be all the Legislature would have to do to trigger release of the $142 million for highways.

The candy bar tax might get SEPTA enough to buy one bus—maybe—but the damage would have been done.

Congress would have tried heavy-handed tactics, and failed.

The Legislature would have passed another nuisance tax that provides paltry sums for mass transit.

And SEPTA—still in desperate financial straits—would still be considering shutting the transit system down.

I am going to repeat those last few sentences. "Congress would have tried heavyhanded tactics, and failed.

"The legislature would have passed another nuisance tax, that provides paltry sums for mass transit.

"And SEPTA"—the Southeastern Pennsylvania Transit Authority—still in desperate financial straits—would still be considering shutting the transit system down."

Mr. President, the truth of the matter is that this is about as counterproductive an effort that I can remember anybody ever attempting to take. For those of us who support mass transit, who have made every effort to work with our State legislature and our Governor to try to get a solution to this problem, this could not be worse.

About 2 weeks ago—because I hoped we could resolve this situation in a better way—I called Governor Casey on the phone to discuss this amendment and indicated to him that he should redouble his efforts to get this amendment dropped from this legislation. And I told him that both Senator SPECTER, and I do not think I misspoke at all, although I was the only person on the phone with him, and I would be more than willing, he as a Democrat, we as Republicans, to go to our State legislature and work with them, reason with them, try and persuade them to find a solution that advances a cause that we all believe in.

I am not going to be able, Mr. President, I must tell you, not because I do not want to, but because this amendment is so poisonous to our State legislature, I am not going to be able and I do not think Senator SPECTER is going to be able to reason, to sit down with our colleagues in the Pennsylvania State Legislature in both parties and have a rational conversation with them about mass transit.

I think they are going to dig in their heels no matter what Governor Casey, Senator SPECTER, and I might do. I read into the RECORD earlier today a letter from the Republican and Democratic chairmen, minority and majority, of both the Pennsylvania House and State Senate, Republicans and Democrats, saying that in effect if this legislation was passed they had no intention of ever doing anything to comply with the spirit of this amendment.

Mr. SPECTER. Would my colleague yield for a question?

Mr. HEINZ. Mr. President I would be pleased to yield to my colleague from Pennsylvania.

Mr. SPECTER. Mr. President, I note my colleague referred to a letter from certain of the members of the Pennsylvania Legislature. But I am wondering—not that I do not know the answer to this question but I think it is an important question which people of C-SPAN II would be interested in knowing, as well as those in the Chamber—whether the distinguished Senator has had conversations with other members of the general assembly in addition to those who wrote the letter, and whether my colleague would be in a position to amplify about the intensity of feeling which he noted in the conversations with these other members of the Pennsylvania General Assembly.

Mr. HEINZ. Mr. President, I thank my colleague from Pennsylvania for his question. I think I can testify to what I can only describe as outrage—and it is bipartisan outrage—that has been expressed in our State by very respected members of the legislature on both sides of the aisle.

I will read into the RECORD a letter that I referred to a moment ago because I think it lays out the issue very, very clearly for all to see. It is addressed to the chairman of the Transportation Appropriation Subcommittee. It says:

DEAR SENATOR LAUTENBERG: In the next few weeks you will be considering an issue, the resolution of which holds great consequence for the Commonwealth of Pennsylvania, and the nation as a whole.

Specifically, we speak to Congressman Gray's proposal that mandates the withholding of 25 percent of Pennsylvania's 1991 federal highway monies unless and until a dedicated mass transit revenue source is enacted.

As elected officials of the state being singled out by this matter, we would like to be on record in opposition to the inclusion of such language in the final conference committee report.

Our opposition is not based on the belief that providing for mass transit services is not paramount to Pennsylvania's economic success; to the contrary, we believe that the availability of reliable, reasonably-priced mass transit service is something we cannot afford to lose. Whether this takes the form of a dedicated revenue source and/or the adoption of cost-saving measures like competitive contracting, the decision should be left to those of us who were elected to do that very job.

Pennsylvania's public officials, like other public officials around the country, have been debating the extent of public transit funding needed and the nature of that funding for years. We have not chosen to authorize dedicated mass transit funding although Pennsylvania has instituted one of the largest state-funded mass transportation programs in the United States.

And I would say parenthetically on a per capita basis the second highest in the Nation.

To continue:

It is not up to the Federal Government to pass judgment on our efforts; that is the province of the Pennsylvania voters.

If enacted, Congressman Gray's proposal clearly abrogates the concept of states' rights and subjects the Commonwealth of Pennsylvania, alone, to an additional requirement in order to receive a share of highway funding that has, in fact, already been paid by its citizens. This loss would have a devastating effect on a highway program that currently has many unmet needs.

We trust that you and the other members of the conference committee will give the consequences of inclusion of this language serious consideration and hope that you will see fit to preserve the right of a state to determine its own destiny.

Very truly yours,

Sen. J. Doyle Corman, Majority Chairman, Senate Transportation Committee; Sen. J. Barry Stout, Minority Chairman, Senate Transportation Committee; Rep. Joseph A. Petrarca, Majority Chairman, House Transportation Committee; Rep. Rudolph Dininni, Minority Chairman, House Transportation Committee.

Mr. President, that is strong opposition. But I must tell you that it is only the tip of the iceberg. The more the Senate attempts to twist Pennsylvania's arm for no good reason, the more we will end up hurting the cause of mass transit in Pennsylvania.

I want to share with my colleagues an article that recently appeared in one of our leading newspapers in Pittsburgh PA, the Pittsburgh Post-Gazette, on the other side of the State. But it is an article that is datelined from our State capital, Harrisburg, PA. It is entitled "Casey: No tax for transit."

For those people who are not familiar with who Governor Bob Casey is, he is the Governor of Pennsylvania. He has served as Governor of our State for nearly 4 years. He is up for reelection this year. He happens to be of the Democratic Party. But, irrespective, I want to share his point of view, as the senior elected Democratic official in Pennsylvania, with my colleagues. Again, "Casey: No tax for transit." Subtitle: "Action by Congress won't force new levy, he says."

The Casey administration said yesterday that the state could meet proposed federal requirements for mass transit support without raising taxes.

A transportation-funding bill approved by a House-Senate conference committee in Washington Tuesday contains a provision that would require all states to have a dedicated source of funding for mass transit in order to receive federal highway dollars.

The measure, inserted into the bill by U.S. Rep. William Gray III, D-Philadelphia, is aimed solely at Pennsylvania and could cost the state $142 million if it did not comply.

But Vincent Carocci a spokesman for Gov. Casey, promised that the state would not forfeit the money. "We will conform to federal law so that we do not lose our eligibility for highway funding, but it would be wrong to translate a requirement for a dedicated tax to mean new or additional tax revenue," he said.

While Carocci would not discuss specific alternatives, Casey in recent weeks has suggested that the state might simply designate a percentage of an existing tax to mass transit, thus complying with the letter of the law, without changing the size of the appropriation.

The so-called Gray amendment is widely seen as a move by the congressman to boost funding for the financially troubled South-

east Pennsylvania Transit Authority that serves the Philadelphia region.

The state is contributing $239.7 million to mass transit from the General Fund this year, of which SEPTA receives $167.9 million and the Allegheny County Port Authority Transit $60 million. Another $86 million flows from the state Lottery Fund to mass transit systems for senior citizen ridership.

Thirty million of that, by the way, goes to SEPTA.

Carocci said Casey was sticking to his belief that the solution to SEPTA's financial problem was the release of the nearly $7 billion that is in the federal mass transit fund.

"We as a state have consistently increased our level of support for mass transit in the last 10 years. We are the only level of government that can make that claim," Carocci said.

The federal transportation bill delivered a setback to PAT—

The port authority transit in Allegheny County—

The deletion of $2 million earmarked for a portion of a proposed downtown-to-airport busway.

Mr. SPECTER. Will my colleague yield for a question?

Mr. HEINZ. Yes, I will be pleased to.

Mr. SPECTER. I note the majority leader is ready to move on to other business. I know that will come as a great disappointment to all of us.

But the final question I think those of us in the Chamber might be interested in, and the viewers on C-SPAN, to relate this situation to the position which you have articulated, and I have, also, about our interest in seeing to it that there is adequate funding for urban mass transit in our State, although not by this method.

Mr. HEINZ. Mr. President, I thank my colleague for his question.

I think there is no doubt that our State is one of the leaders in the Nation when it comes to supplying funds from the State Treasury for mass transit. Maybe it is not as much as we would all like. Maybe it is not as much as mass transit needs. That is our personal view. But it is literally second only to one when it comes to the per capita amount of money that is dedicated by appropriation to that process.

And I would further say to the Senator, my colleague from Pennsylvania, that people who are watching this debate in their offices, our colleagues who are watching this debate, or people nationally who are watching this debate, people who may read about this debate tomorrow—it may be continuing tomorrow—I ask them all to consider, Mr. President, what is going on here.

And if they believe that this is an outrageous abuse of Federal power, if the people who are watching and are informed of this believe that there is no justification for this kind of bullying tactic by the Federal Government, if the people who are aware of what is taking place here will let their Senators, particularly those who voted against Senator SPECTER's and my effort to remove this outrage from the mass transit bill—if those people who believe that enough is enough from Washington, DC, will tell representatives by calling their U.S. Senators tonight on the phone—we all have answering machines—that they do not want this kind of outrageous abuse of Federal power to continue, then I think we will begin to make some progress on this issue.

Because there is no doubt in my mind that if this question were posed—as it has been posed to the citizens of southeastern Pennsylvania, who are allegedly the beneficiaries of it and who have all said, "We do not want that kind of help from Big Brother in Washington, DC"—that the people of this country do not want in their own neighborhoods, in their own cities, in their own States, this kind of help by Big Brother from Washington, DC. They do not want the heavy hand of Washington reaching into Louisiana or to Georgia or to Ohio or to California or to Arizona, or to any of our 50 sovereign States, saying, "No matter how good a job you are doing, we, the rest of the United States, have decided it is time for your State to do something different. Not because we have any particular good reason to do so; not because the people of your State want us to do it; but because we just feel like doing it."

Mr. President, that is the worst kind of arbitrary abuse of power that this body or any popularly elected body could be capable of. And it is my hope, and I mean this sincerely, that people who are watching this debate or who will read about this debate tomorrow, call right now, tonight, immediately, their U.S. Senators. There are two in every State. Look it up. I hope they will look that number up in the phone book and they will let the U.S. Senators know just how bad an idea this is.

Mr. MITCHELL. Will the Senator yield?

Mr. HEINZ. I will be pleased to yield for a question only, without losing my right to the floor.

The PRESIDING OFFICER. Is there objection?

Mr. MITCHELL. I do not have a question. I asked the Senator if the Senator might yield.

Mr. HEINZ. I yield to the majority leader without losing my right to the floor.

Mr. MITCHELL. My purpose for asking the Senator to yield is to permit the Senate to move to other business.

Mr. HEINZ. I have no objection to that.

IMMIGRATION ACT OF 1990—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on S. 358 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 358) to amend the Immigration and Nationality Act to change the land, and preference system for admission, of immigrants to the United States, and to provide for administrative natualization, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1990.)

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5257.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 14 to the bill (H.R. 5257) entitled "An Act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1991, and for other purposes.".

Resolved, That the House disagree to the amendments of the Senate to the amendments of the House to the amendments of the Senate numbered 31, 163, and to the aforesaid bill.

Mr. MITCHELL. I ask unanimous consent the Senate recede from the Senate amendments numbered 31 and 163-164.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

IMMIGRATION ACT OF 1990—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. MITCHELL. Mr. President, is the immigration conference report

now the pending business before the Senate?

The PRESIDING OFFICER. The majority leader is correct. That is the pending business.

Mr. MITCHELL. It is my understanding pursuant to a previous order there is a time limitation on debate on that report?

The PRESIDING OFFICER. The Senator is correct; there is a time limitation of 30 minutes equally divided.

ORDER OF PROCEDURE

Mr. LAUTENBERG. Will the majority leader yield for a question? What is the pending business when we have concluded the next matter?

Mr. MITCHELL. It is my intention to call up the conference report on the clean air bill immediately following completion of the immigration conference report.

Mr. LAUTENBERG. And if we are still operating after that, I ask the majority leader whether or not we are going to be able to return to the transportation appropriations bill?

Mr. MITCHELL. I will be pleased to discuss that with the distinguished Senator and manager of the bill.

Mr. LAUTENBERG. I thank the majority leader.

Mr. MITCHELL. I see the manager of the immigration bill, Senator KENNEDY, is present. Therefore, since the Senate is now considering that matter, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. What is the time allocation?

The PRESIDING OFFICER. The Chair will state for the Senator from Massachusetts the bill is governed by 30 minutes time, equally divided, with 10 minutes to the Senator from Washington, Mr. GORTON.

Mr. KENNEDY. I thank the Chair.

For the benefit of the Members, there is a 40-minute timeframe for debate. It is the desire of the managers of the legislation to request a rollcall vote, which I will do on behalf of myself and Senator SIMPSON when Senator SIMPSON is on the floor.

So for the information of the membership, that is our intention. I expect the full time will be utilized.

Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I am pleased to join with my colleagues on the Immigration Subcommittee—Senator SIMPSON and Senator SIMON—in bringing before the Senate the conference report on S. 358, The Immigration Act of 1990.

This bill, like all major legislation, represents many years of work and many efforts at compromise. This measure is the culmination of a decade-long effort which began in 1979 with the Select Commission on Immigration and Refugee Policy.

The Commission's report laid the basis for the most comprehensive reforms of the Nation's immigration laws in our history. That effort has been a two-step process.

In 1986, we enacted a far-reaching measure to deal with illegal immigration. In this bill, an equally far-reaching reform of legal immigration will be achieved.

This legislation represents a compromise. Each of us would have written this bill differently if we could.

The issues surrounding legal immigration stir deep emotions and strong political passions. They touch the heart of what America is, how we all became Americans, and who the future Americans will be.

Over the past several years, we have worked closely with our colleagues in the House to fashion a compromise immigration bill that we believe reflects a consensus on what needs to be done to bring long over due improvements in our immigration laws.

Our goal has been to reform the current immigration system—which has not changed in 25 years—so that it will more faithfully serve the national interest, and be more flexible and open to immigrants from nations which are now short-changed by current law.

The provisions of this bill will accomplish these objectives, while also maintaining the priority we have traditionally given to those with family connections to the United States—and without departing from any of the basic goals of fairness established in the 1965 reforms.

This compromise creates two separate preference systems for immigration visas—one for close family members, another for independent immigrants. This two-track system was first recommended by the Select Commission.

By redressing the imbalances which have inadvertently developed in recent years, we will again open our doors to those who no longer have immediate family ties to the United States.

By placing more emphasis on the particular skills and qualities that independent immigrants possess, we will bring our present laws more in line with the Nation's economic needs.

These reforms will be achieved without reducing our traditional priority for family reunification.

The visas currently reserved for family members of recent immigrants, as established in the 1965 reforms, will not be reduced. This compromise bill will add visas; it does not subtract visas.

In fact, this bill represents the first major expansion of our immigration system in a quarter century. It is a careful and balanced expansion that protects the national interest while promoting the goal of family reunification.

Under the terms of this legislation, during the first 3 years, beginnng in 1992, legal immigration will increase from current levels of approximately 490,000 to 700,000. Beginning in 1995, a permanent level of 675,000 will be set—a 38 percent increase in legal immigration to the United States.

The admission of immediate relatives of U.S. citizens will remain unrestricted, despite the establishment of a worldwide ceiling. Although a new national level of immigration of 675,000 will be established for the first time, the spouses, minor children and parents of U.S. citizens will remain unrestricted. If their admission levels increase during the coming years, any squeeze under the cap will be shared equitably by other categories of immigrants. But if the projected growth of immediate relatives continues and the squeeze becomes too great in some future year, the cap will automatically be increased accordingly.

In addition, the bill increases by nearly fourfold the number of skilled workers and so-called diversity immigrants. The admission of persons on the basis of their skills and talents will go from 54,000 each year to 195,000.

The current limitation of 216,000 on other family preferences will be increased permanently to 260,000—a 20-percent increase. This will double the visa numbers for second preference relatives—the spouses and minor children of permanent residents—thus reducing the backlogs in Mexico and other high demand countries, as well as the worldwide backlog for this category.

The bill establishes a family fairness policy to protect immediate family members of beneficiaries of the amnesty under the 1986 act. Those family members are here illegally, and they are now protected only by administrative stay of deportation, with no legal status, and with a cutoff date of 1986. The bill gives them a permanent legal status, with a cutoff date for eligibility of May 5, 1988.

The bill also provides for a waiver of the application deadline for the second stage of the 1986 amnesty program, to allow those who were eligible for the amnesty in the first stage—but did not meet the second stage reapplication deadline—to apply now. This will benefit several thousand amnesty applicants now unable to do so.

This legislation will bring many other reforms to our immigration laws. Among the most important of these changes are the following provisions:

Transitional visas—40,000 a year for the next 3 years—will be made available to applicants from adversely affected countries, including Ireland, Italy, Poland, and 30 other nations. Beginning in 1995, this program will be expanded into a diversity program with 55,000 visas a year available to these nations and the much larger group of nations that do not currently use their full allotments of visas because of the restrictions of present law.

A new independent commission is established to require Congress to review our immigration laws and policies at least every 3 years.

Controls on the issuance of H-1 temporary professional visas are strengthened by tightening the definition of "professions of exceptional merit and ability" and by placing a cap of 65,000 visas anually on this category.

The bill provides significant reforms in non-immigrant visa procedures, and strengthens and simplifies the current labor certification process.

Mr. President, 10,000 employment generating visas are provided for investors who invest in enterprises, especially in depressed rural or urban areas, which create a minimum of 10 new jobs for Americans.

Visa numbers for Hong Kong are doubled to 20,000, and delayed visas are provided for those Hong Kong residents working for the United States Government or United States businesses, so that they will be able to obtain visas if they wish to leave after Hong Kong returns to Chinese control.

A clear policy is established for granting temporary safe haven to foreign nationals unable to return safely to their native countries because of violence or upheaval.

The annual number of asylum applicants who can adjust their status to permanent residence is increased to 10,000, and the current backlog of applicants is removed.

Administrative naturalization procedures are created, to reduce naturalization backlogs, while preserving the right for court citizenship ceremonies.

Reforms are achieved in the areas of deportation and criminal aliens.

The exclusion categories are reformed and updated to end outdated ideological, medical and communicable disease provisions.

In closing, I want to emphasize again what this bill does not do.

It does not cut family reunification. Additional visas are provided for this purpose. The number of visas available for spouses and children of permanent residents is doubled, and the number for brothers and sisters of U.S. citizens is not changed.

The imposition of the cap does not arbitrarily restrict future growth of immigration.

Procedures are established to review and adjust the level every 3 years. The President and a specially created independent commission must review the effects of immigration, and recommend changes in the national level of immigration. Congress is required to act expeditiously to deal with those recommendations.

It does not reduce our ability to meet changing immigration requirements. Under the regular review procedures, no number, no level, and no category of immigration will be permitted to become frozen into law, unchanged from decade-to-decade, as has been the case with past legislation.

This bill preserves the immigration rights of those who have close family connections in this country, while opening up opportunities at long last for immigration from countries who have contributed so much to America in the past, but which have been shut out almost entirely in recent years.

From the earliest days of our history, America has been a beacon of hope and opportunity to peoples in other lands. All of us are proud of our immigrant heritage. We honor it best by doing all we can to preserve that heritage, to build upon it, and to strengthen it for the future. This legislation advances these goals, and I urge the Senate to approve it.

Mr. President, I wish to commend the able leadership the chief sponsor of the legislation in the House, Congressman BRUCE MORRISON, who chairs the Immigration Subcommittee. And I wish to acknowledge the tireless efforts of Chairman JACK BROOKS, who not only leads the House Judiciary Committee, but also played an indispensible role as chairman of our conference committee on this bill. Their leadership and insight on this issue has been extraordinary.

I ask unanimous consent that a table summarizing the new levels of immigration be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

LEVELS OF IMMIGRATION

	Current level	1992–94	1995 and subsequent years
Family	436,000	465,000	480,000
Employment	54,000	140,000	140,000
Transition/diversity	0	40,000	55,000
Cap	0	645,000	
Outside cap	0	[1] 55,000	
Total	490,000	700,000	675,000

[1] Special 3-year adjustment for spouses and children of legalized aliens.

Mr. KENNEDY. Mr. President, I want once again to express a great deal of appreciation to my colleague, the Senator from Wyoming, who is the ranking minority member of our Immigration Committee, and my colleague from Illinois, Senator SIMON. We have a small Immigration Committee, but it has taken immigration policy seriously over a very considerable period of time.

We welcome the opportunity to bring back to the Senate what we believe is a very balanced and fair immigration conference report. We urge our colleagues to support this legislation.

Like many pieces of legislation, this legislation has really been evolving over the period of the last 11 years, since 1979, when the Select Commission on Immigration and Refugee Policy was established. Three of the members of our Judiciary Committee, Senator SIMPSON, myself, and Senator DECONCINI, were members of that panel, that was chaired by Father Hesburgh.

During the Commission's considerations, we addressed a variety of immigration questions, but primarily we were concerned with how this commission should best deal with illegal immigration policy and legal immigration policy.

The legislation we are recommending tonight basically follows the recommendation of that select commission, which overwhelmingly endorsed the path that we are recommending here this evening, which puts the greatest emphasis and stress on the issue of family reunification. That has been an element, in terms of American immigration policy, since our beginning as a nation. It is one which I wholeheartedly support.

And we also have a second path which would permit the entry of individuals who had some special skills, as well as individuals who come from countries who basically, for a variety of different reasons that I will not take the time to describe tonight, have no longer been a part of the immigration stream.

When we talk about immigration policy, we talk about a policy that draws out great emotions and great passions, because what we are really talking about is how all of us basically arrived here. Whether it was 300 years ago or 100 years ago, it was immigration and immigration policy that really defined how America became America.

The other aspect of this legislation which is so important is that we are providing a charter of how future Americans will become future Americans. This obviously draws on great passion. It draws on great interest from so many Americans today and, obviously, from many families across this country.

Mr. President, I want to thank again my colleagues, Senator SIMPSON, with whom I have had the good opportunity to work over a long period of time at a time when he was chairman of the Immigration Committee and I was

the minority member and now when those roles have been reversed.

We have worked closely together. We have differences, but I must say I pay a great tribute to Senator SIMPSON for being willing to consider alternative policy questions and issues and to be an enormously constructive and positive force in the fashioning and shaping of immigration policy. I can, quite frankly, say that this legislation would not be here this evening, this country would not be considering the legal immigration issue if Senator SIMPSON had not been willing to come to grips with many of these questions and be the constructive and positive force that he has been on this question and on so many others.

Finally, Mr. President, I want to thank some very important individuals, and those are the members of our staff. On my staff, Jerry Tinker and Michael Myers, who have been working on immigration policy, Jerry Tinker for over 20 years now—almost as long as I have been a Member of this body. Michael Myers looks like he has been working almost that long on this matter.

I also thank three special Pearson Fellows from the Department of State: Heather Hodges, Kay Anske, and Toni Marwitz, who have been absolutely invaluable. This is a program which we benefited from, and they have been enormously constructive in the fashioning of the legislation.

I thank as well Senator SIMPSON's chief counsel, Dick Day, a counsel Carl Hampe, and Senator SIMON's chief counsel, John Trasvina. We may have had differences, but in the end we all worked very closely together, and, quite frankly, this body is enormously indebted to their absolutely excellent work.

Mr. DECONCINI. Will the Senator from Massachusetts yield me 2 minutes?

Mr. KENNEDY. I yield 2 minutes to the Senator.

Mr. DECONCINI. Mr. President, I rise in support of the conference report on legal immigration reform. This compromise legislation revises the basic system for allowing immigrants into the United States. America is a great country because of the diverse contributions made by the many ethnic groups who have come to our shores seeking freedom, hope, and opportunity. While we cannot absorb an unending stream of immigrants who wish to enter the United States, our immigration policy must be flexible and balance this country's economic needs with its humanitarian traditions.

Although there are some provisions in this comprehensive bill that concern me, I am thankful that this conference report provides protection for nationals from El Salvador. Congressman MOAKLEY and I have worked for almost a decade on behalf of thousands of Salvadorans who have been the innocent victims of war, random violence, and civil strife in their homeland.

I have introduced legislation to protect Salvadorans in this and the last three Congresses. During that time, the Senate Judiciary Committee has held several hearings on this issue and has spent several days debating this issue. In 1988, my bill passed the committee by a vote of 10 to 3. In 1989, my bill passed the committee by a vote of 11 to 3. A majority of my colleagues on the Judiciary Committee support this legislation and it is clear that full Senate action on this important measure is long overdue.

The legislation before us today ensures that those Salvadoran nationals seeking refuge in this country are given a fair hearing rather than being turned away from America to face an unknown fate. Since 1980, we have provided El Salvador with millions of dollars in military aid. Along with our involvement in El Salvador, there come certain responsibilities. One of these responsibilities is humanitarian concern toward the Salvadorans whose lives have been violently disrupted and endangered by war. I do not believe that we should return these individuals to a country immersed in a civil war in which we are actively involved.

Since 1979, continuous violence and civil war has plagued tiny El Salvador, a country about the size of Massachusetts. Over that time, over 1 million, or at least 20 percent, of the country's 5 million inhabitants have been uprooted by conflict as government forces clash with those of the opposition Farabundo Marti Front for national Liberation [FMLN]. In contrast, even at the height of the Vietnam war the number of inhabitants displaced never exceeded 8 percent of the population. (S. Rept. 101-241).

I have visited El Salvador several times. I have spoken with the leaders of that country. I have remained in contact with El Salvador's Ambassador to the United States. I have visited with Salvadoran President Alfredo Cristiani. He supports my legislation, as President Duarte did in the past. Christiani understands that the continuing civil strife in El Salvador has displaced thousands of his countrymen and that they need protection until the war ends.

I have also had the opportunity to visit Salvadorans and the social workers, attorneys, religious leaders, and other volunteers who are working with them. The stories that many of these people tell of the violence and persecution in El Salvador are terrifying and heartbreaking. I am sure many of my colleagues in the Congress have also gone into their communities and have talked to these Salvadoran refugees about their reasons for fleeing El Salvador and their fears of returning. This legislation ensures that these scared, desperate people are protected.

The crisis facing Salvadoran refugees is a real one. Under current administration policies, the odds of a Salvadoran refugee being granted asylum are extremely low. For example, between June 1983 and September 1989, only 1,004 Salvadoran asylum requests were approved compared to 37,666 denials. This translates to an approval rate of 2.5 percent. In fiscal year 1989, only 337 Salvadoran asylum requests were approved compared to 13,861 denials and 19,929 cases pending. This translates to an approval rate of 2.3 percent.

Section 303 of the bill before us specifies that nationals of El Salvador who have been continuously present in the United States since September 19, 1990, would be granted temporary protected status [TPS] for 18 months and given work authorizations, provided the alien registers within a 180-day registration period beginning January 1, 1991.

Such a registration system provides a means by which the United States can maintain accurate records of Salvadorans in this country while at the same time provide them with safe haven. In addition, it will facilitate the return of Salvadorans when the period of temporary protected status expires.

This bill also establishes a statutory framework under which the Attorney General may designate other foreign states whose nationals may be eligible for TPS. These guidelines include: First, ongoing armed conflict which poses substantial threat to personal safety; second, an earthquake, drought, or other environmental disasters resulting in substantial, but temporary, disruption in living conditions; third, a foreign state is unable to handle, temporarily, the return of aliens who are nationals of that state and the foreign state officially requests TPS; and fourth, extraordinary and temporary conditions in a foreign state that prevent nationals from returning safely, unless permitting the aliens to remain in the United States is contrary to the national interest of the United States.

In addition, the Attorney General must submit an annual report to Congress on the operation of TPS. Following the submission of each report, the Congress will hold hearings to consider the findings of the Attorney General and recommend any legislation it deems appropriate.

I would like to point out that this legislation is not a substitute for political asylum. This bill would not grant permanent resident alien status. Aliens would not be eligible for any program of cash assistance under Federal law, except for treatment of an emergency medical condition. Aliens may also be deemed ineligible for public assistance by a State or any political subdivision of a State which fur-

nishes such assistance. All Salvadorans would remain subject to Federal and State laws, and subject to deportation for violations. Because the bill is limited to refugees currently residing in this country, it offers no incentive to those who are not here.

What this bill will provide is a temporary safe haven in the United States until conditions in El Salvador are such that refugees may return to their home country safely. At this same time, it will allow for better management of those refugees who choose to remain in this country while peace initiatives continue in El Salvador. Salvadorans are in need of and deserve our help and protection. I am pleased passage of this legislation provides a positive resolution to this issue.

I would like to thank Cele Swensen and Karen Robb of my staff for their hard work and determination in getting this bill passed. I would also like to thank Ed Baxter, a former staffer who helped write the original bill with Michael Myers of Senator KENNEDY's staff, Jim McGovern and Jack Dooling of Congressman Moakley's office, Wade Henderson, Morton Halperin Amit Pandya and Susan Hansen of the American Civil Liberties Union, Carol Wolchok of the American Bar Association, and noted civil rights advocate Rick Schwartz.

The following Arizonans were most helpful to me on this issue: Jim Corbett, John Fife, Ed Pastor, Rev. James Oines, Friendly House, and Mary Rose Wilcox.

The following individuals and groups have also worked with me throughout the years to protect Salvadorans: John Frederickson and Sandra Edwards of the Lutheran council, Warren Leiden and Jennifer Eisen of the American Immigration Lawyers Association, Michael Hill and Jeanette Carter of the United States Catholic Conference, Judy Golub and Gary Rubin of the American Jewish Committee, Evelyn Dubrow, Barbara Warden and Mussaffar Chisti of the ILGWU, Jane O'Grady of the AFL-CIO, Cecilia Munoz of the National Council of La Raza, Mario Moreno of Maldef, Alexia Kelley and Ruth Flowers of the Friends Committee on National Legislation, Pat Pengel of Amnesty International, Cindy Buhl of PAX Americas, Robert Tiller of American Baptist Churches, Carols Neuschwander of the Mennonite Immigrant and Refugee Service, Sylvia Rosales and Danny Katz of CARCEN, Dan Kesselbrenner of the National Lawyers Guild, Frank Sharry and Maurice Belander of the National Forum, Janet Fishman of CPPAX, John Griswold of the Lutheran Immigration and Refugee Service, Pat Taran of Church World Service, Christina DeConcini formerly with Centro Presente in Cambridge, MA, and many, many others who I may not have named, but have not forgotten.

Of course, I acknowledge that this conference report would not have provisions dealing with El Salvador without Senator SIMPSON's willingness to find a compromise so that we could deal with this very pressing problem. I would also like to thank Senator KENNEDY and Senator SIMON for their longstanding support and determination.

Mr. SIMPSON. Mr. President, as with all legislation, this is certainly not a perfect bill. Few there are that we consider in this body that meet that standard, but it is a good bill. As with all good bills, it is the product of much study and long negotiations and thoughtful and sometimes anguishing compromise of good faith and spirited discussion, and it was sometimes quite acrimonious, a time or two. But, nevertheless, from those things come compromise. That is what legislating is all about, especially as we get toward the end of a session.

But the purpose of the legislation which Senator KENNEDY and I first introduced in the 100th Congress and which the Senate twice passed by a large majority is to reform our system of receiving immigrants. It is reform intended to serve the national interest. That was the charge of the Select Commission on Immigration Refugee Policy on which Senator KENNEDY, Senator DECONCINI, and Senator Mathias served. That has been our blueprint for both this legal immigration bill and legislation we passed in the 99th Congress to address illegal immigration.

So, Mr. President, this bill, we believe, does protect the cornerstone of our immigration policy. It provides for the unrestricted admission, and this has always been the case, the unrestricted admission of the immediate family of U.S. citizens, and it increases the visas available for the closest family members of citizens and residents of the United States.

The bill also provides additional visas to help reduce the backlog in the closest family preferences and guarantees a modest increase in all family immigration.

A very important provision in this legislation, Mr. President, is the new visas which it provides for skilled immigration. This bill also restructures our procedures and requirements for admitting skilled workers to fill temporary jobs in this country, and we have reserved a limited number of visas for unskilled workers.

Another very important provision in this legislation is a new diversity program which will make 55,000 visas available to persons from those areas of the world who have been denied immigration opportunities for so long. Under this new provision, every country that has been shortchanged in the past will now receive a certain number of visas for their nationals, provided they have certain minimal skills that will help to ensure their successful integration into our economy.

This bill also contains some very important provisions to address our continuing problem with illegal immigration. We have included provisions to address the widespread use of fraudulent documents in the employer sanctions program and to provide for the deportation of criminal aliens. The bill restructures our deportation procedures to bring them more in line with our Nation's rules of civil procedure. We were in a situation in deportation where the deportees had more due process than did an American citizen.

The bill also revises and updates our exclusion provisions, which were written nearly 40 years ago, which, in many respects, have become archaic in language and anachronistic in substance. This bill will increase overall legal immigration from a current flow of about 500,000 persons a year to 675,000 immigrants. This is a generous increase. It shows our compassion, our good will.

But the bill provides, for the very first time, a mechanism through which the national level of immigration in the United States will be reviewed by the President and by the Congress every 3 years. So never again will we go 25 or 30 years without carefully reviewing immigration levels, how they should be adjusted to bring our immigration policy more into line with our national interests.

I do commend the legislation to my colleagues. Following the mandate of the Select Commission on Immigration Refugee Policy and our chairman, Father Ted Hesburgh, we are very diligently working to close the back door through provisions in the bill for border patrol and improve verification procedures while we open the front door wider to skilled immigrants of a more diverse range of nationalities.

So I want to commend my friend, Senator KENNEDY, my fine friend, who stood staunchly at my side throughout this vigorous conference. It is always a great pleasure to work with him. He is a very fine and able legislator. I do not always agree with him on many points, but still a very fine legislator.

It has been a long and arduous effort, but if there was anything that has been done that ties in with a package that started with the select commission, as chaired by Father Ted Hesburgh, and to see that continuity take place, which is difficult to do in a congressional setting, I would say we are right on course with what our good Father Hesburgh had to do when he chaired our efforts.

I believe that this bill is, indeed, in the national interest, and that is what we should be about.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I will be glad to yield 3 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank my colleague from Massachusetts.

I begin by commending the distinguished senior Senator from Massachusetts and the distinguished Senator from Wyoming for crafting a masterful piece of legislation. I know from my conversations with both of these colleagues that this was a very difficult, long and arduous process which has brought us to this point this evening. It is the culmination of months of work to craft a complicated and very thoughtful immigration bill. I am delighted to stand this evening, Mr. President, in support of this conference report on the Immigration Act of 1990.

This bill, as I said a moment ago, is a skillful combination of certain fundamental ideas that have always governed our immigration policy. One idea is the sanctity and unity of the family. This bill renews and extends that part of our immigration system that supports family unity.

Another concept, Mr. President, is support for our economic well-being and competitiveness. This bill streamlines and extends the employment base part of the immigration system. I commend Senator SIMPSON and Senator KENNEDY for pursuing that idea.

Another concept included in this legislation is the maintenance and support of America's ethnic diversity. Most Americans, as we all know, are descendents of immigrants. This Senator, Mr. President, happens to come from an Irish ancestry. In recent years certain traditional sources of American immigration have been disadvantaged by not having enough immediate family ties to support a large number of immigrants. In order to revive our strong ties to traditional sources such as Ireland, Italy, and Poland, this bill goes a long way to address that imbalance—just for the Irish this bill provides 48,000 permanent visas just for the Irish, this bill provides 48,000 permanent visas over 3 years.

It also, of course, takes into consideration the value of new American citizens coming from the Pacific Rim as well as Latin America.

Mr. President, many of my colleagues deserve credit for this splendid accomplishment. I mentioned Senator SIMPSON and Senator KENNEDY being the principal architects in the Senate. They deserve our gratitude and admiration for their work. I also give credit to my good friend and colleague from Connecticut, Congressman BRUCE MORRISON, the chairman of the Subcommittee on Immigration in the House Judiciary Committee. I think both of my colleagues from Wyoming and Massachusetts agree that without his leadership there would not have been a bill that emerged from the House.

BRUCE MORRISON has been a longtime advocate of broader immigration policy, of fair immigration policy. His work as an attorney for the Legal Aid Society in Connecticut goes back many, many years. So I want to pay a special tribute to him as well for his fine leadership in this legislation.

I have known BRUCE a long time. I know why BRUCE wanted to chair the Immigration Subcommittee. BRUCE MORRISON remembers being a legal aid attorney trying to work with an outdated immigration law, to try to avert the pain and suffering it caused, the opportunities it missed.

Now, that we have a major reform law that opens the door for thousands of newcomers from Ireland, from Italy, from Poland, these ethnic communities will know that no one championed their cause with greater vigor and determination than BRUCE MORRISON.

This bill, that could rightly be called the Morrison bill, will enter history as a major accomplishment of the 101st Congress.

Mr. President, once again let me conclude by commending the Senator from Massachusetts, the Senator from Wyoming and others—Senator SIMON of Illinois, Senator GORTON—for making sure that this legislation, at this late date in this process reached the point where I hope we all can support it in this body and send it to the President; a very fine, a very thoughtful, a very progressive, fair piece of legislation that not only serves the new population that is arriving in our country but also serves our Nation and its future wisely and well.

Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized for 10 minutes.

Mr. GORTON. Mr. President, when viewing in retrospect the astounding year of 1989, it is difficult to say which of its many images was the most profound. Certainly the fall of the Berlin Wall vies for that honor, as does the ascension of a once-imprisoned playwright to govern a newly freed Czechoslovakia. The crowds half-crazed with joy in Romania; long-separated families and loved ones greeting one another with hesitancy turned to elation across the crumbling wall between the Germanies: All these and more will remain etched on the souls of those of us fortunate enough to have witnessed them.

But, Mr. President, I would suggest that there is one image that transcended party and national lines beyond all others, and brought us together in what may be remembered as the most poignant, but least complete, moment of that remarkable year. It illustrated courage born of hope, trust born of faith, humanity transcendent over tyranny.

A young Chinese student, steadfast in his devotion to justice and democracy, challenging—stopping—a tank during the bloody days of genocide in and around Tiananmen Square in Beijing in June 1989. This image, this bittersweet embodiment of the power of ideas, is the single most vivid image I will remember as I look back on that astounding year. Because, Mr. President, while that young student triumphed momentarily in the battle of wills between himself and the driver of that instrument of repression, his side—our side—did not succeed in the larger struggle. That student now is almost certainly dead.

Yet I remember that image because it clearly and urgently reminds us of work yet to be done. My fear, Mr. President, is that we will allow that image to fade and tarnish, that it will not be enough to urge us on to a task not yet accomplished.

Just 15 short months ago, this Senate seized an opportunity and exercised the resolve to assist—and in assisting, to honor—that young man and his peers by an extraordinarily simple action. We adopted without dissent provisions that would have granted Chinese students in this country the right to apply for temporary residency unless the President certified by June 1992 the safety of their return to China.

Nor did the President stand idle when action was crucial. In April he issued an Executive order which deferred until January 1994, the departure of all Chinese nationals and their dependents who were in the United States during or after the massacre of their standard bearers.

But it is to our shame, Mr. President, that we, the Congress of these United States, now show ourselves unwilling to honor the pledge which we initiated. We are about to pass a noble immigration bill, a bill whose terms offer hope to thousands of families yearning for freedom and opportunity. But we have stripped from it protections for the Chinese students whose cause, in part, motivated its original consideration. We have dropped the provisions which would have assured those students of our commitment to their futures and their dreams, which were, once upon a short while ago, our own.

This simple but essential step could have accomplished far more than its technical, legal consequences. It would have joined us in their battle, a battle that echoes our own turbulent, insistent, successful demand for freedom from tyranny 200 years ago. We could have served notice to the students, to

the Chinese Government, perhaps most importantly to ourselves, that we would not rest until their great goal was achieved.

We could have done so easily, Mr. President.

There was no major objection to doing so. All with whom I discussed the matter agreed with its intent, with its message.

But, it just "did not fit."

It did not fit, Mr. President, and we left it out. We were tired. We were embroiled in the longest, perhaps most difficult session of the Congress since World War II, and we deserved a rest.

It did not fit, but I am assured by my colleagues that I should just wait until next year, and then when we are no longer tired, Mr. President, then perhaps it will fit.

But ideas and resolve, like images, fade with time and distance. The sense of urgency and exhilaration we felt in 1989 is already fading. The sharp and riveting image of a young man facing his Goliath armed only with dreams has begun to lose its power to move us.

We are tired, Mr. President, and the young man's compatriots in this country of freedom and opportunity can, indeed, keep their lives on hold until next year. After all, what choice do they have? Employers may balk, Mr. President, at hiring these magnificently talented young people because of the uncertainty about their futures. Families may suffer, lives may change, but we are tired, so they must wait until next year.

Let us pray, Mr. President, that hope and resolve do not fade as easily as do images of courage.

Mr. President, I would like to direct an inquiry to the distinguished chairman, Senator KENNEDY, of the Immigration Subcommittee. I have received assurances that in the next Congress we will consider the issue of permitting the Chinese students to apply for temporary residency. Would the subcommittee be willing to pursue this matter early next year?

Mr. KENNEDY. I assure my colleague from Washington, that I intend to pursue this matter early next year.

Mr. GORTON. I thank the Senator.

Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator yields back the remainder of his time.

The proponents control 4 minutes and the Senator from Wyoming controls 8½ minutes. Who yields time?

Mr. SIMON. Mr. President, I think I can, on this side, yield myself 4 minutes.

Mr. SIMPSON. I will yield the Senator 4 minutes.

The PRESIDING OFFICER. The Senator from Illinois claims the time for the proponents. The Senator is recognized for 3 minutes 50 seconds.

Mr. SIMON. Mr. President, I am pleased to join my colleagues on the Subcommittee on Immigration and Refugee Affairs in support of the conference agreement on legal immigration reform.

The reforms we make today are the most far-reaching reforms in immigration reform since the 1924 act. And they are far more positive, generous and forward-looking than any legal immigration reform bill we have passed previously.

My colleagues on the subcommittee began this process in the 1970's as part of the select commission on immigration reform chaired by Father Ted Hesburgh. I entered the immigration fray after that and have enjoyed working with my colleagues to help shape this bill.

I am most pleased that we have kept family reunification as a cornerstone of our overall legal immigration policy and created new opportunities for employer-sponsored and business visas.

Some people feel that immigrants are a drain on our economy and our society. How wrong they are! I look around at the city of Chicago, my State of Illinois and throughout the Nation to see the contributions immigrants have made.

I have long felt that family reunification should be a cornerstone to our legal immigration policy. I am very pleased that the conference agreement substantially increases the visas available for second preference for the spouses and children of permanent residents. The current wait from Mexico of 11 years keeps a first grader from her parent until she is a senior in high school.

This bill fully protects the fifth immigration preference. In the original version of this legislation, the fifth preference was set for extinction. The original version would have cut off future eligibility for married brothers and married sisters and reduced available visas by 67 percent. Under the original plan, people would have had to wait up to 75 years. Asian-American U.S. citizens in Illinois and around the Nation would have suffered the most. Now the bill fully protects 5th preference.

I am also pleased the conference agreement includes a provision initially introduced as an amendment by Representative WILLIAM LIPINSKI and DAN ROSTENKOWSKI. This amendment keeps 13,000 Poles, Hungarians, Nicaraguans and Panamanians from being sent home. It also doubles the number of asylees who can adjust to premanent resident status in any one year. I fought for this provision in conference and am glad it was added to the final bill.

Another historic part of the bill grants the eligibility for citizenship to Filipino veterans of World War II. These veterans came to our aid during World War II but for reasons out of their control have been denied naturalization for 45 years even though Congress first granted them naturalization rights in the 1940's. The Supreme Court turned them down in 1988. I am glad this long fight for equality is now over successfully.

This bill also contains a comprehensive provision dealing with Hong Kong. This bill completes a process, a mission if you will, commended by my friend, colleague and senior Senator from the State of Illinois, ALAN DIXON and me in 1986. I was able to add to the Immigration Reform and Control Act of 1986 the first provision to increase the Hong Kong quota. Prior to 1986, we permitted only 600 immigrants per year from Hong Kong. Under the Simon-Dixon amendment in 1986, we increased the Hong Kong immigration quota to 5,000. Today, this bill, effective upon enactment, phases in a new Hong Kong quota at the level of a full country. Specifically, we immediately double the Hong Kong quota to 10,000 for people currently waiting for a visa. That will be the case for the next 3 years. At the same time, we are providing 12,000 extra visas in addition to the 10,000 for Hong Kong residents who are the executives, managers and supervisors of U.S. companies doing business on the island.

Taken together, Hong Kong residents will have available to them 22,000 for each of the next 3 years under this bill. In fiscal year 1994, Hong Kong will get the same number of visas as other countries. Other provisions of this bill increase the per country ceiling to 7 percent of family and employment visas—estimated to range from 25,000 to 27,000 in the first few years. So we complete the process today at a pivotal time for the people of Hong Kong. The blood and tragedy of Tiananmen Square were felt around the world but particularly in Hong Kong. The fears of 1997 engulf Hong Kong. I introduced a Hong Kong quota bill last year shortly after Tiananamen Square. By the action we take today, America says that we care about the people of Hong Kong. The Hong Kong amendment because of language added by Representative BARNEY FRANK extends the validity of the Hong Kong visas to about the year 2001. We do this so as not to force Hong Kong residents to flee the island prematurely. Indeed, if Hong Kong residents know they can leave in the future, they will not feel compelled to do so at the first opportunity. By staying in Hong Kong, they can provide the stability the island will need to stay afloat after 1997.

Let me also commend the untiring efforts of Senator DENNIS DECONCINI on behalf of Salvadoran refugees. I have cosponsored his efforts every

year I have been in the Senate for the protection of these individuals. In the last hour of the conference, the conferees accepted by suggested compromise of an 18-month temporary stay for Salvadorans. I hope the Department of Justice implements this provision speedily.

On the temporary protected status provision, the Attorney General should pay special attention to the situation of Liberians here in the United States. Approximately 10,000 Liberians are stranded in the United States, separated from loved ones at home. They cannot be expected to return home; Liberia has been overtaken by war and devastation, and is without leadership; 5,000 to 10,000 people have been killed in the conflict, and 40 percent of the population—about 1 million people—have either been displaced or have fled the country. The situation is so bad that U.S. Marines have been stationed off-shore and at the United States Embassy in Monrovia to protect our diplomats and assist in evacuation of Americans. We cannot ask Liberians here to return to that situation.

The United States has a unique historical relationship with Liberia; in 1847 freed American slaves established that nation. Today there is chaos and devastation. We need to be sensitive to the needs of Liberians here and recognize that they cannot return home to such conditions.

The continuing troubled situation in Lebanon also merits mention in a discussion of this provision for temporary protected status. Earlier this month, I heard our Ambassador-designate to Lebanon express to the Foreign Relations Committee his hope that the Taif agreement provides a framework for bringing an end to the suffering and violence there. Subsequent events, including the report of a massacre by Syrian troops after the routing of the Maronite Christian forces, are very discouraging. As long as the violence continues, and certainly as long as our own diplomats remain outside the country, we should open our arms to Lebanese already in this country who fear for their lives if they should return.

One section of the bill that I am particularly pleased to have had included from my original bill is the employment generating investor visa provision. Following the recommendation of the Select Commission, the bill establishes a new visa category for entrepeneurs who are willing to contribute to America's economic growth and provide new jobs for Americans by investing in new American enterprises. This one provision will generate over $8 billion annually in new investment in small and independent U.S. businesses and provide up to 100,000 new jobs for Americans—two goals which we need to pursue as quickly as possible.

This provision in the overall compromise bill is one for which there are no currently applicable INS procedures. It is a step into the future for immigration. Accordingly, I encourage the Department of Justice in promulgating regulations expeditiously and administering this provision to work closely with the State Department and the Commerce Department who have familiarity with international and commercial considerations that the Immigration Service has not traditionally had the occasion to have full familiarity or expertise. Similarly, although this provision is not completely parallel to foreign investor visa programs, I hope we can learn from and build upon the track record and experiences of the Governments of Canada and Australia who have had great success in attracting talented people through their investor visa programs.

In enacting the investor visa program, we want to attract entrepeneurs and job-creators into the U.S. economy, and as long as their investment is legitimate, we do not want or need excessive or arbitrary industrial policy tests about what constitutes a worthwhile investment. For example, the bill requires investor immigrants to start new firms. But this should not be intended to preclude an investor starting that new company from utilizing the existing assets of a failed enterprise. We should encourage and not cripple the creativity of these enterprising immigrants.

Our bill distinguishes among investors in only one way. The general rule—and the vast majority of the investor immigrants will fit in this category—is that the investor must invest $1 million and create 10 U.S. jobs. However, we are mindful of the need to target investments to rural America and areas with particularly high unemployment—areas that can use the job creation the most. For this group, we make available at least 3,000 visas annually. America's urban core and rural areas have special job creation needs and this visa program is sensitive to that in this way. Investments in this area must still create 10 jobs but require an investment less than $1 million. The Attorney General is authorized to set the required investment at a lower amount but at least $500,000. Clearly, the closer the Attorney General sets this to $500,000, the more we can encourage investments in these critical areas. The third circumstance the bill envisions is for areas that have significantly lower unemployment levels than the national average. For these areas that are not rural and do not have pockets of high unemployment within them, the Attorney General can set a higher required investment amount.

Neither the Senate nor the House bill established any sort of criteria about the type of business investment. The only guideline is that the investment minimums must be satisfied and the venture must employ at least 10 people for 2 years. This makes good sense. As long as the employment goal is met, it is unnecessary to needlessly regulate the type of business—manufacturing, service, retail or the like—nor the character of the investment. Corporations, partnerships, proprietors—all legal types of business entities—are appropriate as long as the immigrant invests at least $1 million and creates 10 U.S. jobs. If two or more investor immigrants, each investing $1 million, want to join together to establish a business, that should be permitted. The million-dollar requirement or lesser amounts in rural and high unemployment areas should apply to the entire investment, including reserves, and need not be applied only to the operational costs of the enterprise.

As is true for other visa categories, valid applications should be granted based upon the date they were filed. If this category is oversubscribed, it might then be appropriate to favor investments already made over future investments but only when comparing applications received on the same day. Investments, to qualify for this provision, must be made after the date of the enactment of this bill.

Finally, I just want to thank the many people and organizations in Illinois and around the country who helped on my original bill and in the compromise bill we have agreed to today. It is not a perfect bill. Few ever are. But it takes a major step forward in our legal immigration reform policy.

In particular, I want to thank the Asian-American community throughout the state of Illinois; and, nationally, the Pacific Leadership Council and the Chinese American Citizens Alliance; the Irish Community led by the Irish Immigration Reform Movement; Hispanic groups such as the Mexican American Legal Defense and Educational Fund and the National Association of Latino Elected Officials and the National Council of La Raza; the Polish American Congress and Polish National Alliance; the Lutheran Immigration and Refugee Services; and the Chicago Committee on Immigrant and Refugee Protection.

This effort would have been impossible without the leadership of my colleagues on the Immigration Subcommittee, Senator KENNEDY and Senator SIMPSON, and the good work of BRUCE MORRISON, JACK BROOKS, HOWARD BERMAN, and other Members of the House.

This is the smallest subcommittee in the U.S. Senate because it is the subcommittee that deals with a complex very controversial area. I am a junior

not only in terms of years on that subcommittee, I am a junior to Senator KENNEDY and Senator SIMPSON in knowledge on this subcommittee. I am gradually acquiring knowledge but I am nowhere near the master that they are.

More than any other nation on the face of the Earth, we are a nation of nations. We have diversity and this bill celebrates our diversity. There are those in our country who want to stop all immigration. There are those in our country who want to keep Asians and Hispanics out. This bill leaves the door open for people no matter what your background is, not an unlimited amount. We have a cap on it here. But it also permits a greater diversity in Irish and some others are permitted in a little more than they have been these last few years.

Family reunification is once again a priority including the controversial fifth preference. We have given a waiver to the Department of Justice on marriage fraud that we had to tighten up. I was pleased to be the chief sponsor, and Senator SIMPSON cosponsored.

We have an investor program that will permit up to 10,000 people to make investments here, to come to this country and create jobs. It is particularly targeted to areas of high unemployment. I think that will be of great help.

The Hong Kong quota, here I would add my colleague, Senator DIXON, from Illinois has been helpful—the Hong Kong quota which went from 600 to 5,000 now goes to 10,000, and after 1994 Hong Kong will be treated as any nation, and will have up to 27,000.

Mr. President, political asylees under an amendment offered by Congressman LIPINSKI in the House are given protection. That includes 9,000 Nicaraguans, 4,000 Poles, 1,000 Hungarians, and 1,000 Panamanians.

Finally, Mr. President, this bill is I think more sensitive than the current law in the area of civil liberties. This bill has been 3 years in the making. It is a tribute primarily to Senator KENNEDY, and Senator SIMPSON on this side, and Congressman MORRISON and others on the House side that we are where we are. I think it is a significant step forward for this Nation. I am very pleased to support it.

Mr. SIMPSON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Wyoming controls 8 minutes and 50 seconds; the Senator from Massachusetts controls 40 seconds.

Mr. SIMPSON. I will give him an additional 3 minutes.

Mr. KENNEDY. Mr. President, just in the way of wrap-up of the discussion and debate, again I thank all of my colleagues for their involvement and their participation.

I remember back in 1952 when President Truman vetoed the McCarran-Walter Immigration Act, and at that time Congress overrode that veto. Included in that legislation was a national origin quota system that said you could not come to the United States if you were from certain regions of the world. There was an Asian Pacific triangle in effect which excluded all Asians from coming into the United States, the numbers were less than 125.

We changed that in the 1965 act and eliminated those aspects of racist policies that had existed. But we realized at that particular time we had a further way to go.

So really this evening is really part of a continuum of the efforts that have been made over the period of the last 35 of 40 years.

I can remember the second book that my brother wrote—he wrote the first, "Why England Slept," when he was in college, and the next book he wrote was "A Nation of Immigrants" that spelled out the historical patterns of the United States immigration policy, and also the guidelines as to future immigration policy.

I cannot help but think this evening that a number of those ideas, recommendations, and suggestions were picked up and incorporated in the select commission's proposals, and now have been included in this excellent conference report.

Again, I thank my colleague from Wyoming and my friend from Illinois for all of their work, the Senator from Arizona, Senator DECONCINI.

I hope the Senate will agree to this by an overwhelming margin.

Mr. SIMPSON. Mr. President, I want to say a word about my friend PAUL SIMON, Senator SIMON. We have known each other for some 20 years and we were State legislators at the same time, different States.

He is the third member of the smallest subcommittee in the U.S. Senate. When Senator KENNEDY and I saw him coming, we welcomed him with open arms; swallowed him like a Venus flytrap and took him into our work.

He has learned the issue. He has a fine staff person, John Trasvina—the two of them in a limited time on the subcommittee. And I have been dealing with it for 12 years, Senator KENNEDY since 1962.

So it is an issue that people really do not like to spend too much time in. It is the greatest political no-win turkey I have ever been in in my whole life. It has no good results except the national interest. That is difficult sometimes when you represent a State with a smaller population. It gives you a bit more ability to deal with something that is this contentious, especially illegal immigration and legal immigration, and pressures of family reunification, and trying to get the essence of our immigration flow back into what it was in the classic immigrant stream which is more special skills, special abilities, employer-based, immigration.

I want to pay special tribute to Congressman JACK BROOKS who chaired the conference; very steady man, a very patient, firm, man, a man of extraordinary good humor. It is a great pleasure to work with him.

I pay tribute to the ranking member, HAM FISH, who was on the select commission, steady thoughtful gentleman in every respect; and to LAMAR SMITH, the ranking member of the subcommittee in the House, who learned that issue and pursues it with great vigor, great interest, and enthusiasm; and to BRUCE MORRISON, very sturdy and energetic person with some very deeply held views. He did a splendid job; HOWARD BERMAN, very tenacious in his cause, and indeed many of his provisions were carried here and are here; CHUCK SCHUMER, of Brooklyn, Congressman, and he, too, a very steady patient person; to Dick Day, Carl Hampe, my sidekicks through 12 years of this activity. I could not do these things in this contentious issue if it were not for them.

Dear friend for many years ago, Dick Day, and Carl Hampe, a splendid, spendid young lawyer to be; to Jerry Tinker, has an institutional memory of this issue more than anyone in any staff in the United States; to Mike Myers, and as I say, John Trasvina.

Finally for my friend from Washington, if I may say to Senator GORTON, if I might have the Senator's attention, because he gave a very eloquent statement on the Chinese students. I understand his concerns so well. He has worked tirelessly on this issue.

Let me assure him this evening that we did not willingly accede to the House's request to drop the Chinese student provisions of the Senate bill; however, the President's Executive order protects these Chinese students until 1994.

Between now and then I want to assure the Senator from Washington that I will work, and I think the Senator from Massachusetts, the chairman, will work to address this important issue of how we should resolve the immigration status of these Chinese students.

I commend him for keeping that continually in our focus throughout the Senate debate.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SIMPSON. Mr. President, section 522 of the conference report pro-

vides for a pilot program on the use of certain drivers' licenses as documents establishing both employment authorization and identity under section 274A(b) of the Immigration and Nationality Act.

I want to make clear with the cosponsor of the bill, the chairman of the Immigration Subcommittee, the Senator from Massachusetts, that there is nothing in this bill to prohibit the States in the pilot program from confirming with the Social Security Administration [SSA] the Social Security account number of applicants for drivers' licenses. There is nothing in this bill to prohibit such voluntary cooperation on the part of SSA with the States.

Similarly, there is nothing in this conference report prohibiting the use of the National Drivers Registry—a clearing house for information on bad drivers—by license issuing agencies, including those participating in the pilot program created by this bill. Further, there is nothing in the conference report to prohibit other States and agencies from participating in the pilot program as observers, if they wish.

Does my colleague share in my understanding of this provision?

Mr. KENNEDY. I fully share that interpretation of congressional intent on this provision. There is nothing in the statutory language prohibiting any Federal agency, including the Social Security Administration, from cooperating with participants in the pilot program. In fact, it encourages such participation.

CHINESE STUDENTS

Mr. KENNEDY. Mr. President, in making the necessary compromises in conference to complete this major immigration reform bill, it was regrettably necessary to put aside for another day the issue of providing permanent residence to Chinese students.

As a result of the leadership of Senator GORTON and so many others in the Senate, the President earlier this year granted immigration protections to Chinese students until 1994. I am confident that the President does not intend to go back on his word on this Executive order. But if he does, I am certain that a majority in this body would immediately act to defend the students.

Mr. President, the cause of the students will continue. It is my intention, early in the next Congress, to continue to pursue this matter—to provide these students with the immigration security they need in order to continue their efforts in pursuit of democracy in China.

CHANGES IN MC CARREN-WALTER FOREIGN POLICY PROVISION

Mrs. KASSEBAUM. Mr. President, I rise today to express concern about a provision in the 1990 immigration legislation, giving the Secretary of State expanded authority to prohibit aliens from entering the United States.

Three years ago, the Congress enacted legislation to prohibit the exclusion of aliens on the basis of their "beliefs, statements, or associations which, if engaged in by a United States citizen in the United States, would be protected under the Constitution * * *." This carefully crafted proposal took into consideration the concerns of the administration as well as those of us in Congress.

Indeed, this February, after a 3-year trial period, this proposal was made into permanent law by the Congress as part of the State Department authorization bill.

Yet despite the strong consensus behind this approach, the immigration legislation now before the Congress significantly changes this law. It expands considerably the discretion of the Secretary of State to exclude aliens if the "alien's admission would compromise a compelling United States foreign policy interest."

Mr. President, I am very concerned about expanding the Secretary's authority in this regard. Without any evidence demonstrating the need for new authority, we are altering the established procedure for admitting aliens.

I am also concerned about the procedure used to adopt this proposal. This expansion of the Secretary's discretion was not part of either the Senate or House versions of this legislation. It was not debated or discussed by either body or by the committees of jurisdiction.

Yet, we are presented today with a fait accompli—as part of a backroom deal we are making significant changes in U.S. immigration policy. The right of free speech should not be used as a bargaining chip. Yet, we are now in a position where we must either accept this change or risk killing the entire immigration legislation.

Mr. President, I do not believe that this is a responsible way to conduct business in the U.S. Senate. I hope that in the future, we will be more careful in how we consider legislation—conferencing the provisions in the respective bills, not bringing new issues—which have not been discussed or debated—into the legislative process.

Over the next few months, I will closely follow how the Secretary of State makes use of this new authority. This is an issue of great concern to me, and next session I intend to promptly revisit this issue.

CONCERNING IDEOLOGICAL EXCLUSIONS

Mr. MOYHIHAN. Mr. President, I would like to take this opportunity to ask my distinguished colleague from Massachusetts, the chairman of the Immigration Subcommittee, some questions about the provisions in the bill concerning foreign policy exclusions. As you know, section 901 of the Foreign Relations Authorization Act currently prohibits the administration from excluding aliens on the basis of their past, current, or expected beliefs if they would be protected by the U.S. Constitution.

It is my understanding of the new section entitled "Foreign Policy" that this will still be the general rule which will apply in the overwhelming majority of cases. This section still states that—with certain exceptions which I will come to in a moment—"An alien * * * shall not be excludable or subject to restrictions or conditions on entry into the United States * * * because of the alien's past, current, or expected beliefs, statements, or associations * * *." Is it the Senator's understanding that—as under section 901—the basic rule, applicable in the overwhelming majority of cases, will be that aliens may not be excluded on the basis of their ideology.

Mr. KENNEDY. That is indeed my understanding. Where that not the case, I would not have agreed to these revisions.

Mr. MOYNIHAN. In fact, the new language actually expands the protection of section 901 in that it protects all speech which is lawful. The old language only prohibits excluding an alien on the basis of speech which is constitutionally protected. Under the new language, alien's statements would have to be unlawful under U.S. law in order for the administration to take them into account. Do you agree with me that the term "lawful" provides all the protection to speech which, although not necessarily protected by the Constitution, is "lawful."

Mr. KENNEDY. I fully agree with that interpretation. In fact, it is in the statement of managers

Mr. MOYNIHAN. There are two exceptions in the new "Foreign Policy" section. The first has to do with officials of foreign governments. Is it the Senator's understanding that this section may be used routinely to exclude any government official?

Mr. KENNEDY. On the contrary, the intention of this section, as I understand it, is to allow the administration in rare cases to exclude a senior government official where his or her admission would prejudice an important foreign policy interest of the United States, such as implying recognition of a government which the United States does not in fact recognize. I would be very disturbed if this language were used other than in extraordinary cases or to exclude other than senior officials.

Mr. MOYNIHAN. I thank the Senator. That is my understanding also. I note that even senior government officials cannot be excluded solely on the basis of their statements or beliefs. I

understand this provision to mean that there must be some concrete basis to exclude a senior government official which is not related to his or her statements or beliefs to justify the exclusion. Is that your understanding?

Mr. KENNEDY. It is my understanding of this provision.

Mr. MOYNIHAN. Finally, I am concerned by the authority granted to the Secretary of State to exclude an alien if the alien's admission would "compromise a compelling United States foreign policy interest." Could the Senator explain to me his understanding of this provision?

Mr. KENNEDY. I share the Senator's concern about this provision and have agreed to it only because it has been narrowly circumscribed. To begin with, only the Secretary of State—acting personally—can exercise this authority. This power may not be delegated. The clear intention of the conferees in requiring this extraordinary, personal action by the Secretary is to emphasize in the strongest possible terms that this provision must be used only in the most extreme and unusual cases. Any exercise of this authority must be reported promptly to the relevant congressional committees.

Moreover, the Secretary cannot act unless he personally determines that admission of the alien would actually cause injury to a compelling foreign policy interest. The authority cannot be exercised based on the possibility of injury. The Secretary must satisfy himself that injury would actually occur.

I would repeat, however, that I share the Senator's concern about this provision. I will be watching closely to see how this authority is exercised. I would note that section 901 had a 3-year trial period before the Congress made it a permanent part of law. This new authority should also be considered to be an experiment. If it is abused, the Congress should revisit the issue. Allowing Congress to monitor the application of this authority is one of the main reasons for insisting that the Secretary notify the Congress of his use of this authority and provide a statement of his reasons for doing so.

Mr. MOYNIHAN. Can this provision be used to exclude aliens simply because they are vocal or even vociferous critics of American policy as has been the case in the past?

Mr. KENNEDY. I do not believe that this provision grants the authority to the Secretary to exclude a person on that basis. The right to engage in critical speech—even sharply critical speech—is the essence of the first amendment. The administration cannot use this provision to protect itself from criticism. Criticism alone cannot compromise a U.S. interest.

Mr. MOYNIHAN. I thank my colleague for that explanation. I must state that I believe that granting the Secretary of State this authority is unnecessary and constitutes a deeply regrettable retreat from our efforts to expunge the cold war from our statutes. Nonetheless, I am glad to hear that the Senator shares my concern and is willing to work with me in monitoring the Secretary's use of this provision.

LONGSHORE SECTION

Mr. ADAMS. Mr. President, concerning the international reciprocity provision in section 203, the bill's section on longshore work, I want to confirm the conference committee's agreement on the degree of protection this provision provides for U.S. longshoremen. It is my understanding that another country's "prohibition in practice" of U.S. or other foreign crewmen performing longshore work is to consist of any effective restriction imposed or sanctioned by the other country's government. Such a restriction could take the form of a collective bargaining agreement protecting longshore work for domestic longshoremen or an industry contract or agreement that effectively imposes any restriction on U.S. crewmen performing longshore work in that country. Any such prohibition by the other country on any particular longshore activity would be listed by the Secretary of State for the purpose of limiting the rights of alien crewmen to perform longshore work in U.S. ports.

Mr. KENNEDY. The Senator is correct. A "prohibition in practice" could include any type of restriction you described. The list of countries imposing such prohibitions, compiled by the Secretary of State, is to record every such prohibition wherever it may be found, so that vessels owned and registered in other countries will only be allowed to have their crewmen do longshore work in the United States to the actual extent that those countries allow U.S. crewmen to do exactly the same work in those countries.

Mr. ADAMS. My understanding of section 203 of this bill is that the section would not authorize the Attorney General or the Secretary of State to take any action in the name of international reciprocity which would abrogate a U.S. collective bargaining agreement covering U.S workers. That is, if a U.S. Union has a collective bargaining agreement with a stevedore employer providing that specified longshore work will be done by the union's longshore workers, who will all be American citizens, even if under this legislation the Secretary of State finds that another country allows U.S. crewmen to perform particular longshore work in its ports and is entitled to reciprocity here for the purposes of this immigration law, that collective bargaining agreement would continue to prevent alien crewmen from doing the work that contract protects for those U.S. longshoreman. Is this the case?

Mr. KENNEDY. The Senator from Washington is correct. This section only has the effect of defining what immigration law, by itself, permits and prohibits. It does not extent into the area of labor law, and it would not disturb any U.S. longshore collective bargaining agreements that reserve work for U.S. workers.

SECTION 311

Mr. HEFLIN. Mr. President, under section 311 of the immigration bill and the prevailing practice exception therein, it is my understanding that it is the intent of the conferees that with regard to vessels which operate automated self-unloading conveyor belt or vacuum-actuated systems, the Secretary must find that the complaining party has submitted a preponderance of evidence that it is not a common practice in that port for alien crew to load and unload cargo. Im making such determination, the Secretary shall not rely on hearsay, speculation, or any other evidence which is not admissible under the Federal Rules of Civil Procedure.

Mr. KENNEDY. That is correct.

A COLD WAR RELIC REVIVED

Mr. MOYNIHAN. Mr. President, 3 years ago the Congress took an important step toward expunging the cold war from our statutes. It adopted a provision—section 901 of the Foreign Relations Authorization Act—which prohibited the administration from excluding aliens from the United States on the basis of their past, current, or expected beliefs, statements, or associations. The law did not become a permanent provision of law at that time, but, after a 3-year trial period, the Congress voted to make section 901 permanent last February.

During the 3 years that section 901 was the law of the land the administration had ample opportunity to state its case for revisions. It failed to do. No hearings have been held on section 901 before any committee of either the House or the Senate. There is simply no case on the record for rolling back the application of section 901.

And, yet, that is exactly what the House and Senate conferees on S. 358, the Immigration Act of 1990, have done. They have added a wholly new provision—absent from both the Senate and the House immigration bills—which broadens the authority of the President to exclude aliens on the basis of their beliefs.

It is both ironic and profoundly disappointing that the conferees would choose to revive this McCarthy-era relic in the very year that the cold war came to an end. Indeed. In the same year that the Congress decided to make section 901 a permanent provision of law.

Proponents of this legislation claim that its application will be strictly limited and I recognize that there are restraints built into the law. I will watch closely to see how the law is administered. Nonetheless, the new provision represents a retreat in the fight to remove the cold war from our statutes. It is unnecessary and deeply regrettable.

More. This decision illustrates the powerful grip of the cold war mentality. The cold war has insinuated itself throughout our institutions. It has champions in both the Congress and the administration. Several generations of Americans have known nothing else. It will take years of sustained effort to exercise the cold war from American life. I plan to continue that effort with renewed vigor and I look forward to the day when we reverse today's unfortunate step and then move beyond section 901 to completely remove ideological exclusions from our laws.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter concerning this issue sent to the distinguished chairman of the Immigration Subcommittee, Senator KENNEDY, by Senator KASSEBAUM, myself and four of our colleagues on the Committee on Foreign Relations. I would also like to recognize the very great contribution that Senator KASSEBAUM has made on this issue. She has been at the forefront of those battling to restore our commitment to free speech to our immigration statutes and I look forward to working with her on this issue in the coming months.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 24, 1990.

DEAR SENATOR KENNEDY: In February—after a three-year trial period—the Congress permanently prohibited excluding visitors to the United States on the basis of their opinions. Section 901 of [the Foreign Relations Authorization Act] forbids excluding an alien "because of any past, current, or expected beliefs, statements, or associations which, if engaged in by a United States citizen in the United States, would be protected under the Constitution of the United States." The New York Times said "An Advance for Free Speech". The Washington Post said "Good Riddance to Bad Law". Newsday simply said "Finally!" This provision had the bipartisan backing of the Committee on Foreign Relations.

We are concerned that certain provisions of proposed legislation now being considered by the Judiciary Committee dealing expressly with "Foreign Policy" grounds for excluding aliens would alter Section 901.

In particular, we would be concerned by any provision that expanded the discretionary authority of the Administration to exclude aliens on foreign policy grounds. Section 901 was a temporary provision for three years before being made permanent. We are not aware of any problems caused by Section 901 during that period which would justify limiting its application. Indeed, modifying Section 901 seems inconsistent with the very recent decision—supported by the Committee on Foreign Relations—to make it a permanent law. If there have been problems with Section 901, we would welcome hearings to explore them. In the absence of compelling evidence, however, it would seem unnecessary to retreat on such a recently adopted and important provision.

Thank you for your consideration of our views on this matter.

Sincerely,

Daniel Patrick Moynihan, Nancy Kassebaum, John Kerry, Alan Cranston, Terry Sanford, Paul Sarbanes.

S. 358, THE "IMMIGRATION ACT OF 1990"

Mr. MOYNIHAN. Mr. President, the Immigration Act of 1990 is an important step forward on many important issues. It contains major improvements in the fairness and openness of our immigration system. It will promote diversity, attract skilled labor and end the nightmare of illegal status for many hard-working persons who have already come to the United States seeking a better life.

Immigrants do not come to our shore to get a free ride. They come here for the same reasons that our forefathers did—to work, to build a new life, to contribute to America. The contributions of American immigrants to American prosperity and the richness of American life have been enormous.

It is most unfortunate that the House and Senate conferees chose to attach extraneous provisions to this important measure, provisions that were absent from both the House and the Senate immigration bills. Some provisions in this bill are deeply regrettable and, standing alone, would deserve strong oppositions. Indeed, the provisions relating to ideological exclusions and other provisions relating to due process rights, to name just two subject areas, are profoundly disturbing. I will continue to work to improve these areas of the law.

Nonetheless, this legislation represents such a dramatic step in the right direction on the issues of family unification, diversity and bringing skilled labor to the United States, among others, that I believe that it deserves support. I urge my colleagues to join me in voting to approve this legislation. Finally, I would like to acknowledge the most important role that the Irish Immigration Reform Movement has played in bringing this legislation to fruition. Probably no organization has been as diligent, or played such a helpful role in moving the Congress forward, as the IIRM and they deserve great thanks and hearty congratulations.

Mr. LIEBERMAN, Mr. President, I am pleased to support S. 358, the Immigration Act of 1990. This legislation is not only one of the most important accomplishments of the 101st Congress; it is one of the most significant laws to be created in the past decade. And it will have a major, positive impact on the character of our nation in the years head.

Among the features of this legislation that I believe are particularly significant are these:

The opening of America's doors to greater numbers of immigrants who are skilled workers. In meeting the economic challenges of the 1990's, and facing strong competitors in Europe and Asia, we need to dramatically improve the abilities of our business and workers to produce quality products and services. By allowing more skilled workers—scientists, engineers, doctors, and managers—into America, we can provide an immediate boost to our economic competitive posture.

The granting of amnesty of some 30,000 Irish citizens who are now residing in the United States. These are, by and large, extremely hard-working young people who have come to America for the simple reason that many of our forebears traveled here—opportunity. The Irish have, in the past, contributed greatly to making America what it is today; this legislation couples compassion with common sense in offering the new Irish immigrants the chance to make new lives on our shores.

The elimination of political and medical restrictions that date back to the McCarthy era.

Mr. President, I would like to commend the Senate sponsors of this bill, Senators KENNEDY, SIMPSON, and SIMON, for their hard work and perseverance in making this bill a reality. I would also like to make special reference to a colleague from the other body, my good friend and fellow Connecticut resident, Congressman BRUCE MORRISON. We would not have immigration reform without BRUCE MORRISON. We would not have immigration reform without BRUCE MORRISON's months of skilled negotiations in the Congress. As chair of the Immigration Subcommittee in the House, he put to good use his years of experience—not only as a legislator—but as a legal aid attorney who knew what it was like to struggle with outdated immigration laws firsthand.

Thanks to people like BRUCE MORRISON, we have before us a bill that will encourage the unity of immigrant families, promote the diversity of America's ethnic identity, and strengthen our ability to compete in an increasingly global economic marketplace. I am proud to give it my full support.

Mr. CHAFEE. Mr. President I would like to congratulate the distinguished members of the Judiciary Subcommittee on Immigration, Mr. KENNEDY, Mr. SIMPSON, and Mr. SIMON, for their outstanding efforts in reaching an agreement on the Immigration Act of 1990. I am especially pleased that the con-

ference report to this bill contains the provisions on family unity which are similar to those I originally introduced as an amendment to this bill when it was considered in the Senate.

I am proud to have been able to contribute on one issue that is of great concern to all Americans—family unity. During debate on the Immigration Reform and Control Act of 1986, it became apparent that some members of families would qualify for amnesty while others would not. This troubled me because the integrity of the family is the very foundation of American society. There can be no loftier objective than to keep husband and wife, and parents and children together. It is clear to me that many of the problems faced by society at large, such as drug and alcohol abuse, teenage pregnancy, rising school dropout rates, and crime are caused, in part, by the weakening of the traditional family structure.

As such, I felt is was extremely unfortunate that we might force people to choose between staying in this country; where their future lies, or keeping their families together. Therefore, in 1987 I introduced a bill to extend amnesty to spouses and children of those aliens eligible for amnesty under the 1986 legislation.

The first effort fell short. However, I came back again in 1989 with an amendment to the current bill to stay the deportation of spouses and unmarried children of legalized aliens who were in the United States prior to November 6, 1986. This time, my amendment passed by a vote of 61-38. The House passed similar language in its own version of the immigration bill, H.R. 4300 this fall.

Largely as a result of the easy passage of my amendment, the Immigration and Naturalization Service announced a policy in February of 1990 that essentially accomplishes the goal of my amendment. The INS agreed to grant voluntary departure status and work authorization administratively until aliens' family members become eligible for visas on their own.

The conference report we are considering today would grant permanent residence status to spouses and children of amnesty beneficiaries who were in the United States illegally prior to May 5, 1988. This is even more generous than my amendment in 1989; but is clearly consistent with my efforts in 1987. I applaud the efforts of the conferees for embracing the notion that families should be allowed to live together.

Mr. KOHL. Mr. President, I wonder if I could pose to the managers of the conference report a question concerning the statement of managers on section 203 of the report relating to longshore work—D nonimmigrants.

I believe that the statement of managers would better reflect the intent of this section if the following paragraph was inserted after the fifth paragraph of the section:

In addition, a special exception to the filing of an attestation is applicable to vessels using automated self-unloading conveyor belt or vacuum-actuated systems. In the case of these types of systems, only the Secretary of Labor, after an evidentiary finding, can require the filing of an attestation.

I ask the managers of the bill whether they share my view that this additional paragraph helps to clarify the exception provided for these types of systems in section 203 of the conference report.

Mr. KENNEDY. I would agree that the paragraph reflects the intent of the conferees with regards to the procedure for attestation of these types of systems.

Mr. SIMPSON. I would concur that the paragraph suggested by the Senator from Wisconsin does correctly reflect the bill's provisions with regards to the exception provided for these types of systems.

Mr. KOHL. I wonder if I might also ask the managers of the bill a question regarding the prevailing practice exception for vessels and systems other than the ones above. It is my understanding that the prevailing practice exception covers two distinct categories:

A category where a collective bargaining agreement covering at least 30 percent of the local U.S. longshore work force is in effect and that agreement permits the activity to be performed by alien crewmen; and

A category where no agreement covering this percentage exists in a port, and, where a prevailing practice exists, that an attestation has been filed—subject to the procedures stipulated in the bill—that demonstrates that:

The use of alien crewmen for such activity is not during a strike or lockout in the course of a labor dispute;

Is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

Notice of that attestation has been provided to the bargaining representative of longshore workers at the port or, if there is no bargaining representative, to longshore workers employed at the port.

Is that the understanding of the managers?

Mr. KENNEDY. Yes, your understanding is correct with regards to the prevailing practice exceptions.

Mr. SIMPSON. I would agree that your comments reflect the intent of the conferees with regards to the exceptions for prevailing practices included in section 203 of the bill.

Mr. BYRD. Mr. President, I will cast my vote against the conference report on the Immigration Act of 1990. I have made this decision only after deep reflection. All of us in this Chamber are the descendants of immigrants. I know that immigrants have a very special place in the history of our country. America has prospered and thrived on the strength and diversity of the immigrants who have come to our shores in pursuit of the promise of freedom. The culture of our society is made up of the varied traditions and values of the many who have shared their native languages and customs, contributing to our unique American heritage.

This bill encourages the continued sharing and prosperity for those thousands of individuals who dream daily of migrating to these shores. I am not opposed to that, Mr. President. I support the limited opening of our borders and shores to accommodate immigrants who wish to enter this land. I recognize the unique contribution that immigrants can add to this country.

However, I am opposed to the further erosion and draining of the limited resources that are available for our own citizens. We have serious problems in this country today. American citizens are unemployed. Many citizens are homeless. Our citizens lack adequate medical care and other basic necessities such as food and clothing. With such serious needs for our citizens, I cannot, Mr. President, in good conscience, vote to allow 700,000 additional individuals into this country every year. I cannot support the immigration of additional people who will compete with our own citizens for jobs, and already limited public resources.

Mr. President, let me be clear. I understand the foundation upon which this country was formed. And I certainly understand the many contributions that certain future immigrants are sure to provide. I do not oppose immigration, per se. I do oppose increasing our immigration to the level that this legislation provides.

When this bill was first adopted by the Senate, the immigration level was much higher—900,000. I voted against the bill at that time. This bill is better—setting an immigration level at 700,000 for the next 3 years, and a cap of 675,000 for years 1995 and onward. However, in my opinion, this increase and the accompanying drain on jobs, housing, food, medical care, and other necessary resources is just too great a burden to place on our own citizens.

I believe that we must focus on our own national interests at this time. We must seriously ask ourselves just how many more people our country will be able to accommodate. We cannot be so generous that we stretch our own resources to the breaking point. It is time for us to think of the people of America and their children and grandchildren, and not let the generosity of our hearts rule our heads on this matter.

I shall vote against this conference report.

Mr. GRAHAM. Mr. President, I am pleased that a package of criminal alien amendments I have long sought will be included as part of Immigration Act of 1990. Most of these provisions were passed last year in the Senate as part of the bill to implement the President's 1989 drug strategy and earlier this year as part of the omnibus crime bill.

These amendments tighten existing laws regarding the categorization and deportation of aliens who commit serious crimes—crimes defined in the Anti-Drug Abuse Act of 1988 as "aggravated felonies." The aggravated felony aliens' provisions in the 1988 act were important steps toward solving a major problem faced by Federal and State criminal justice systems—the problem of how to expeditiously remove from our streets those aliens who are convicted of murder, or trafficking in drugs or weapons.

There are thousands of such aliens in our criminal justice system, and countless others who have somehow escaped justice or deportation. The 1988 act gave the Immigration and Naturalization Service and the Department of Justice new tools to close the loopholes through which criminal aliens were escaping. I would like now to reiterate the specific provisions we passed in 1988 and explain how my amendments would improve them.

In 1988, Congress defined aggravated felony aliens and wrote specific guidelines for the INS to detain and deport these aliens. We told INS that these serious criminals had to be held accountable for their crimes, serve their full sentence, and, once their sentence was complete, they must be taken into immediate custody by the INS in order to prevent them from disappearing prior to deportation. The 1988 act requires that the INS process these criminals as quickly as possible to effectuate their deportation. And finally, Congress mandated tough penalties if the criminal alien returns to the United States.

The amendments I am proposing will:

Extend the definition of aggravated felony to include aliens convicted of like State crimes, codifying a recent ruling of the Immigration Board of Appeals. If enacted, this provision will allow States to turn over criminal aliens directly into INS custody, and require the INS to implement expedited deportation proceedings;

Require the Attorney General to make information about deportable aliens available to Federal, State, and local law enforcement agencies;

Remove aggravated felony aliens from the category of aliens eligible for suspended deportation or automatic stays of deportation;

Apply aggravated felony procedures to "excludable" aliens;

Make technical amendments to the Immigration and Nationality Act consistent with the provisions of the 1988 act.

Of the 2,840 criminal aliens the Florida statewide prosecutor's office could provide me information on, 657 were convicted on cocaine trafficking—over 25 percent. This number indicates the magnitude of the problem and the urgency of the need to provide States with relief. It is the Federal Government's responsibility to protect our borders. If the Government fails to prevent dangerous aliens from crossing our borders, it then becomes the responsibility of the Federal Government to help the States cope with the crimes and the costs of prosecuting criminal aliens. Finally, the Federal Government must make sure that dangerous aliens are not on the streets, not allowed to commit new crimes, and not caught in a lengthy deportation process.

In my opinion, the Federal Government has not been successful in any of these areas. I question particularly the Department of Justice's commitment in carrying out the provisions of the 1988 Anti-Drug Abuse Act relating to aggravated felony aliens. I hope that passage of my amendments will not only bring the serious problem of criminal aliens back into the focus of Congress and the administration, but will also remind the administration of the tools we have given them to help deal with aggravated felony aliens.

The PRESIDING OFFICER. Is all time yielded back?

Mr. KENNEDY. I yield back what time remains.

Mr. SIMPSON. I yield the remaining time.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The yeas and nays were ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR], is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Oregon [Mr. HATFIELD], are necessarily absent.

I further announce that, if present and voting the Senator from Oregon [Mr. HATFIELD], would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 8, as follows:

[Rollcall Vote No. 323 Leg.]

YEAS—89

Adams	Bingaman	Bryan
Akaka	Bond	Burdick
Baucus	Boren	Burns
Bentsen	Bradley	Chafee
Biden	Breaux	Coats
Cochran	Heinz	Murkowski
Cohen	Hollings	Nickles
Conrad	Humphrey	Nunn
Cranston	Inouye	Packwood
D'Amato	Jeffords	Pell
Danforth	Johnston	Pressler
Daschle	Kassebaum	Reid
DeConcini	Kasten	Riegle
Dixon	Kennedy	Robb
Dodd	Kerrey	Rockefeller
Dole	Kerry	Sanford
Domenici	Kohl	Sarbanes
Durenberger	Lautenberg	Sasser
Ford	Leahy	Shelby
Fowler	Levin	Simon
Garn	Lieberman	Simpson
Glenn	Lugar	Specter
Gore	Mack	Stevens
Gorton	McCain	Symms
Graham	McClure	Thurmond
Gramm	McConnell	Wallop
Grassley	Metzenbaum	Warner
Harkin	Mikulski	Wilson
Hatch	Mitchell	Wirth
Heflin	Moynihan	

NAYS—8

Armstrong	Exon	Roth
Bumpers	Helms	Rudman
Byrd	Lott	

NOT VOTING—3

Boschwitz	Hatfield	Pryor

So the conference report was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLEAN AIR ACT AMENDMENTS—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I ask the Chair to lay before the Senate the conference report to accompany S. 1630, the Clean Air Act Amendments of 1990.

The PRESIDING OFFICER. The clerk will read the report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, we have reached agreement with the Senator from Idaho on time for him tomorrow. I am about to propound a unanimous consent request in that regard, in accordance with my discussion with the Senator from Idaho.

Mr. SIMPSON. Mr. President, our leader is involved deeply in the budget negotiations. If the majority leader will be good enough to perhaps tell us what the schedule would be for to-

night, that would be helpful to those on this side of the aisle.

Mr. MITCHELL. I will be pleased to do that. It had been my hope that we could complete action on the clean air conference report this evening. However, the Senator from Idaho expressed objection to that, and expressed a desire to have time to speak in opposition to the conference report tomorrow morning.

I am agreeable to that, providing we can get a unanimous-consent agreement that will permit a vote at a certain time. And the Senator from Idaho and I have an understanding that he would have 2 hours under his control in opposition between the hours of 9 and 11 a.m.; following which there would be a vote.

The Senator from Montana, the proponent, has asked, since the debate will be bifurcated, with the proponents going tonight and the opposition tomorrow, that we permit a brief period, following time of the Senator from Idaho, for any rebuttal that may be necessary.

I assume that would be agreeable to the Senator from Idaho.

Mr. SYMMS. Fine.

Mr. MITCHELL. So what I am about to propose Mr. President, and Members of the Senate, is that we begin the debate this evening, with the understanding that the proponents will take 90 minutes this evening. Then we will go on to other business this evening. We will return to this at 9 a.m. tomorrow, with the Senator from Idaho having control of 2 hours. Following that, the proponents will have 30 minutes and then there will be a vote on the conference report.

Is that agreeable to the Senator from Idaho?

Mr. SYMMS. Mr. President, I might just say to all of my colleagues that might find themselves in opposition to that, that is agreeable to me, with the understanding that my colleagues realize that it will probably take this Senator at least an hour and a half of that time. So if there are other Senators who wish to speak on that, they might request that time at this point, or plan to speak on it tonight.

Mr. MITCHELL. Not hearing any expression of——

Mr. HEINZ. Will the majority leader yield?

Mr. MITCHELL. Certainly.

Mr. HEINZ. Mr. Leader, in that unanimous consent, do I understand that the leader would not call up any other business until the conclusion of the debate and the vote on the Clean Air Act and that it would not be in order to call up the transportation conference report, if the request of the majority leader is agreed to?

Mr. MITCHELL. During the debate this evening?

Mr. HEINZ. I am sorry. I did not make myself clear. If the request of the leader is agreed to, would it also be correct that it would not be in order to call up other business, specifically the transportation appropriation conference report, until the debate, which carries through tonight and into tomorrow, and the vote on the Clean Air Act, has been completed?

Mr. MITCHELL. No. My intention is just the opposite. When we complete the debate, the time of the proponents this evening, it is my intention to proceed to another conference report, not the transportation conference report.

I just say to my colleagues, over the last 2 days, I am estimating now, two-thirds of the Senators have come to me and said we have to get out of here by Saturday. We demand that we get out of here by Saturday. And many have sported the button saying "Free the 101st Senate." At least 25 Senators have given me buttons. I have about 25 of them in my desk to make the point.

The same Senators who make this urgent demand say, "We do not want to have a vote during this period of time. We do not want to take this bill up then," and then come down and give 30-, 40-, 50-, 60-minute speeches on various subjects.

The Senate will decide whether or not we leave sometime tomorrow. If the Senate wishes to stay and debate and have long hours and go home early tonight and come in late tomorrow morning, why, we can stay here until next week if that is the choice of the Senate. I do not have any plans for Monday. If that is what the Senators choose, they will be making their decision.

I am trying very hard to accommodate what I have understood to be the wishes of the overwhelming majority of Senators, that we complete our business before this week is out. That means by midnight tomorrow night. The only way we can do that is to get these agreements and proceed to take these bills up, and that means we have to be here tonight.

The PRESIDING OFFICER. The Senator from Wyoming, the acting minority leader.

Mr. SIMPSON. Mr. President, I do understand this problem. You were speaking of buttons. We did not want you to lose your buttons in this process.

Mr. MITCHELL. I have not yet.

Mr. SIMPSON. And you shall not, because you have great patience. But what we have here is a brooding intensity with regard to the transportation conference report which is not going to be resolved. So you want to judge that that is something coming from two U.S. Senators of a single State. I think in this small body we want to remember what happens when two Senators in a single State are joined together as they are on this. I am not in this one, I can assure my colleagues, but the intensity of it is very clear. It will lead to prolonged delay—I do not know how long that will be—to be resolved.

I ask the majority leader, if we have the 90-minute time agreement tonight, what conference committee report then will he immediately address?

Mr. MITCHELL. The housing bill.

Mr. SIMPSON. Mr. President, is there a proposed unanimous-consent request on the time for that?

Mr. MITCHELL. We do not have one yet. I hope we can get one in the meantime but if we cannot, we will just proceed to the conference report. If there is to be a lengthy delay, there is to be a lengthy delay. We will just not complete our action in time. That is not within my authority to make a decision. I am trying to proceed to get these conference reports up and get action on them. We have tried to get the time agreements wherever possible, and we will do so wherever possible.

I thank the Senator from Idaho for his willingness to give a time agreement on the clean air bill. But if we cannot get a time agreement, we obviously have no choice but to proceed to take the bill up.

I have no intention of bringing up the transportation conference report, if that was the question that was asked. That was not the question asked me. I was asked whether I will bring up any other business, and the answer was yes. I will try to bring up the housing conference report and proceed with that because we have to adopt that, too, before the time is up.

Mr. LAUTENBERG. Will the majority leader yield for a question?

Mr. MITCHELL. Yes.

Mr. LAUTENBERG. While the leader has not proposed that we take the transportation appropriations bill next, failing to have other things to work on, would it be the majority leader's intent at some point to bring up the transportation appropriations bill again? Or is the majority leader saying that for tonight there will be no further business on the transportation appropriations bill?

Mr. MITCHELL. I did not say either of those things.

Mr. LAUTENBERG. Right.

Mr. MITCHELL. What I said was when we finished with the clean air debate, if we can ever get it started, we will then proceed to the housing conference report. At this moment, there is no time agreement on that. I do not have any idea how long that will take. We are going to proceed and do the best we can and make what progress we can on that.

I do not have any intention at this time to bring up the transportation conference report tonight. Indeed, I expressly disclaim that I do not have any intention to bring it up at any

point. Obviously, we have to deal with it, and we will try to do that as best we can, but I do not have any intention to bring it up tonight.

Mr. LAUTENBERG. I do not have any intention of doing so.

Mr. SARBANES. Will the majority leader yield for a question?

Mr. MITCHELL. Certainly.

Mr. SARBANES. Is it the majority leader's intention, following the 90 minutes of debate on the Clean Air Act conference report, and we then go to the housing conference report, hopefully, we will stay with that until we finish it this evening?

Mr. MITCHELL. Yes. That is my hope.

The PRESIDING OFFICER. Is there objection to the unanimous consent?

The Senator from Montana.

Mr. BAUCUS. Reserving the right to object, will the leader or Chair please restate the request?

Mr. MITCHELL. I was about to propound it.

The PRESIDING OFFICER. The Senate will be in order.

The distinguished majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a time limitation of 4 hours on the conference report on clean air, S. 1630, divided as follows: That Senator SYMMS control 2 hours for debate on Saturday, October 27, from 9 a.m. to 11 a.m.; that Senator BAUCUS control 90 minutes of time for debate immediately following the approval of this unanimous-consent request, if approved.

Mr. President, I modify that request that the 90 minutes be equally divided between Senators BAUCUS and CHAFEE this evening. From 11 a.m. to 11:15, there be 15 minutes under the control of Senator MOYNIHAN; and that from 11:15 until 11:45 there be 30 additional minutes under the control of Senators BAUCUS and CHAFEE.

Mr. President, going over that, I assume Senator MOYNIHAN will be speaking as a proponent? Is the Senator aware of that?

Mr. SIMPSON. Yes.

Mr. MITCHELL. That leaves 2 hours and 15 minutes for the proponents and 2 hours for the opponents. So I ask the Senator from Idaho whether he would want an additional 15 minutes to make the time equal? I ask the Senator from Idaho, through the Chair, as proposed, this would provide 2 hours and 15 minutes for the proponents and only 2 hours to the opponents. I think in fairness, if the Senator wishes, there should be equal time.

Does the Senator wish 2 hours and 15 minutes?

Mr. SYMMS. Mr. President, I would think there may be Senators by that late time who would like to make some brief rebuttal, so I think in all fairness, the 15 more minutes in that last mix would probably make it easier to get the agreement.

Mr. MITCHELL. Then, Mr. President, I modify my request to provide that Senator SYMMS control 2 hours and 15 minutes from 9 a.m. to 11:15 a.m.

Mr. SYMMS. I would like it so that within that last hour, if some Senator wishes to rebut what the proponents said, that last 15 minutes could be in that last time—after all the proponents speak, is what I am saying to the leader. The opponents are going to speak from 9 to 11, the proponents for growth and opportunity will speak from 9 to 11 and then from 11 to 12, you have people who are for this bill who will be speaking. It seems that there may be some Senator who is an opponent that, after he hears all that talk, would like to make a response.

Mr. MITCHELL. Mr. President, we are going to spend all night deciding on who goes last. I have acceded to the Senator's request.

Mr. SYMMS. I accept it.

Mr. MITCHELL. I do not think a lot of minds are going to be changed in this debate, with all due respect to the participants.

I would like to ask, Mr. President, if we could agree that there be 2 hours and 15 minutes for the opponents under Senator SYMMS' control from 9 to 11:15; from 11:15 to 11:30 there be 15 minutes under Senator MOYNIHAN'S control; from 11:30 to 12 noon, there be 30 minutes under the control of Senators BAUCUS and CHAFEE; that the Senate then, without any intervening action or debate, vote on the conference report at 12 noon, Saturday, October 27.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MITCHELL. I thank my colleagues. I merely want to remind Senators that we have several conference reports remaining uncompleted. We have the budget reconciliation conference report which remains uncompleted. Obviously, any Senator may speak as long as he or she wishes, but understand that is inconsistent with the desire to complete action by midnight tomorrow night, which so many Senators have expressed to me.

Mr. SYMMS. Will the Chair yield for one last request?

Mr. MITCHELL. Yes.

Mr. SYMMS. Will the distinguished leader be so kind as to ask for the yeas and nays tomorrow?

The PRESIDING OFFICER. The Chair would advise the Senator that a vote was ordered at the hour of 12 noon.

Mr. MITCHELL. Is it in order to now?

Mr. SYMMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Before the majority leader leaves the floor, if we were to obtain a unanimous-consent request on the time for the housing conference measure tonight, would the majority leader be amenable to stacking that vote until after the Clean Air Act conference vote tomorrow?

Mr. MITCHELL. Yes, indeed, if we can get an agreement on it.

Mr. SIMPSON. I hope that would energize Members.

I inquire if there are those on our side of the aisle who would have any difficulty entering into a time agreement on housing conference?

Mr. President, just so there is no misunderstanding, there is not yet an agreement with respect to the housing bill, so there may still be votes this evening. Senators should be aware of that. If we get an agreement which permits action on that by a time certain tomorrow, immediately following the clean air bill, then Senators will be free to leave. But Senators should understand no agreement yet exists. Unless one does exist we will simply have to proceed with the bill.

I thank my colleagues.

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order.

Mr. MITCHELL. Mr. President, I am advised by the acting Republican leader that it may be possible to get such an agreement now. I inquire of the distinguished Senator from Wyoming whether he wishes me to propound such an agreement at this time or to defer?

Mr. SIMPSON. Mr. President, I have one more name to clear, but I would say that I am ready to agree to that within the next 5 to 10 minutes.

Mr. MITCHELL. Mr. President, we have some wrap-up business to do, so might I suggest we proceed to that for a few minutes, and then I will be pleased to take that.

Mr. President, I ask unanimous consent that the time now to be used for the wrap-up business not be charged against the time for the clean air bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BRYAN). Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—HOUSING BILL CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate considers the conference report on the housing bill, there be 30 minutes for debate equally divided and controlled in the usual form; and that the vote on the housing bill conference report occur immediately following the vote on the clean air conference report tomorrow.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, so that Senators should be aware if they have an interest in addressing the subject, Mr. President, is it in order now to request the yeas and nays on the vote on the Housing Act conference report?

The PRESIDING OFFICER. That would require unanimous consent.

Mr. MITCHELL. I ask unanimous consent that it now be in order to request the yeas and nays.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, Senators should be aware then, there will be no further rollcall votes this evening. There will be 90 minutes of debate on the clean air bill by the proponents, then there will be 30 minutes of debate equally divided on the Housing Act conference report. Those 2 votes will be stacked to begin at noon tomorrow.

Tomorrow morning the debate, as outlined in the prior order on clean air, will occur beginning at 9 and extending until noon. And therefore, after we act on the housing bill, there will be several other conference reports and the budget reconciliation conference report which will require Senate action. So Senators should be prepared for a lengthy evening tomorrow.

Mr. DIXON. Will the majority leader yield?

Mr. MITCHELL. Yes.

Mr. DIXON. Did the majority leader say the clean air debate would be strictly the proponents tonight? I understood him to say.

Mr. MITCHELL. It is 90 minutes by the proponents this evening.

Mr. DIXON. And the opponents in the morning?

Mr. MITCHELL. Opponents 2 hours and 15 minutes, followed by 45 more minutes by the proponents between 11:15 and noon.

Mr. DIXON. But the opponents will be heard in the morning?

Mr. MITCHELL. Between 9 a.m. and 11:15 a.m.

Mr. DIXON. I thank the majority leader.

Mr. MITCHELL. The time to be controlled by Senator SYMMS.

Mr. D'AMATO. I ask the majority leader if I might put forth a request. It seems to this Senator that our bill is not going to be very contentious. It is 30 minutes. If we could start it off right now, I am ready to yield back 15 of my minutes. So you are talking about 15 minutes. I know the clean air conference will want to take the whole hour-and-a-half.

Mr. MITCHELL. Mr. President, I might add that the clean air bill managers have been waiting here for quite a while to proceed. It is up to them.

Mr. D'AMATO. In the interest of time, and maybe comity, I would be willing to yield back out of the 15 minutes that we have——

Mr. MITCHELL. The Senator has already yielded back all 15.

Mr. D'AMATO. I will yield back all 15. I do not think the majority leader can do any better than that.

Mr. GRAMM. That is the best speech the Senator has given in weeks.

Mr. D'AMATO. Is the Senator willing to yield back some time?

Mr. BAUCUS. Will there be any time at all for debate?

Mr. D'AMATO. I mean tonight. And we will still have the vote tomorrow.

Mr. MITCHELL. Then, Mr. President, I modify the respect to the Housing Act. I ask unanimous consent that there be 10 minutes of debate on the Housing Act under the control of Senator Cranston.

Mr. D'AMATO. Wonderful.

Mr. MITCHELL. Is there objection?

The PRESIDING OFFICER. Is there objection? The Chair hears none. The modification proposed by the majority leader is granted.

Mr. MITCHELL. Might I ask that we proceed to the Housing Act next. That will take 10 minutes.

Mr. BAUCUS. No vote.

Mr. MITCHELL. No vote tonight.

Mr. SIMPSON. On behalf of the minority leader, I want to thank Senator MITCHELL for his accommodation and patience to those on this side of the aisle. We are appreciative of that.

Mr. COHEN. Mr. President, I want to express my strong support for passage of the conference report on S. 1630, the Clean Air Act amendments. It almost defies belief that the Congress is about to give its final approval to legislation that imposes strict new regulations on air pollution after 13 years of legislative deadlock. This is truly an historic moment, and I hope that the changes we are making today will lead us toward cleaner air in the 21st century. I am pleased to have been a supporter of this legislation from its inception.

The person most responsible for bringing us to this point is my colleague from Maine, Senator MITCHELL. The amount of time the Congress has spent trying to resolve the many controversial and difficult issues addressed in the bill reflects just how difficult his task was in pressing forward with clean air legislation. Senator MITCHELL has devoted much of his career in the Senate to this issue, and in the past year alone has personally worked endless hours to bring a good bill to fruition. I believe he has succeeded in this task, and he should be proud of his achievements.

It is not possible to comment on the passage of this important legislation without also recognizing the strong leadership and commitment to clean air that Senator DOLE has demonstrated throughout the legislative process. The Senate could not have passed a bill without the minority leader's support and dedication to this issue. The part he has played in ensuring cleaner air for this Nation's citizens deserves praise.

Also, my colleague from Rhode Island, Senator CHAFEE, deserves a great deal of credit in keeping the focus on clean air legislation this year, as does the Senator from Montana, Senator BAUCUS. Their hard work has clearly been beneficial to the country as a whole as it searches for solutions to air pollution problems.

The conferees have recommended stringent new requirements on automobile pollution, including the development of clean fuels and clean-fueled cars. These provisions should lead to a reduction in the harmful air pollutants that cause unhealthful smog. Of equal significance in the conference report are provisions that establish for the first time regulations to control acid rain and to eliminate the production of pollutants that damage the ozone layer. The bill also immensely improves the existing Federal program to regulate air pollution that causes cancer.

Since we last enacted Clean Air Act legislation in 1977, we have witnessed the deterioration of our Nation's air, mostly as a result of the pollution we allow to spill from our cars, factories and powerplants. More than 100 areas in our country now violate Federal standards for ozone; 40 areas violate the standards for carbon monoxide, and 58 areas violate the standards for particulate matter. The result is a serious, unavoidable health threat to millions of American citizens. In addition to the threat to human health, our air pollution problems have had adverse effects on our lakes, streams, and forests, and they have caused the degra-

dation of our national parks, to the detriment of all citizens.

The need for clean air has long been on the minds of Maine residents as they have witnessed the deterioration of their lakes and streams due to acid rain. And no matter how much the State worked at reducing the level of pollution causing acid rain, it was not enough. We have been forced to turn to those polluters in distant States whose emissions travel with the prevailing winds to the northeastern States like Maine and to Canada. This bill's requirements for a 10 million ton reduction in sulfur dioxide emission and a 2-to-4-million ton reduction in nitrous oxide emissions over the next 10 years will take us a long way toward seeing the improved health of our natural resources. In achieving these significant reductions, we have been able to hold fast to the important principle of polluter pays.

We have been seeking acid rain controls for 10 years now, and the issue is a very familiar one to Mainers. During that 10 year span, however, an equally pervasive threat has drifted into Maine in the form of smog. During the summer of 1988, Acadia National Park, located many miles up the Maine coast, posted its first-ever health warning because the ozone level exceeded acceptable standards. This announcement came as a great shock to many who have enjoyed the beauty of Acaddia and other parts of Maine. But the fact was that heavy smog, caused by the mix of auto pollution with heat and sunlight, and crept along the coast with increasing intensity until it seriously affected one of the Nation's most beautiful parks, As a result of that incident, many citizens in Maine now have even deeper concerns about the effect of other cities' pollution on Maine.

The requirements in this bill for cities and other nonattainment areas to come into compliance with accepted health standards are meaningful, and I hope they will more successful than previous requirements have been. By imposing tighter tailpipe standards for cars, trucks and other vehicles, by requiring the use of clean fuels and clean-fueled cars in our dirtiest cities, and by getting a better handle on the number and type of pollution sources that exist, polluted areas, including those in Maine, should be able to come into compliance within the time frames specified.

One of the most health-threatening forms of air pollution comes in the form of toxic air emissions from a wide variety of sources. Some emissions occur on an everyday basis, while some are a result of accidents that often have drastic consequences. The EPA has done a woefully inadequate job of establishing emissions standards for the hundreds of toxic pollutants that exist. In 18 years, the agency has regulated only some sources of seven chemical pollutants. Several hundred chemicals remain unregulated, to the detriment of human health.

The bill requires the EPA to set standards for approximately 200 hazardous air pollutants, and then define sources of those pollutants for the purpose of implementing the standards. All sources must install the strongest technology available. After this occurs, the EPA must then review emission levels to determine whether a significant health risk continues to exist despite the application of the best technology. If that health risk does exist, the source must achieve further reductions so that the risk to human health is reduced.

This new air toxics control program is a very significant step forward in the effort to control air pollution. I believe it will result in significant improvements in the protection of human health from cancer risks and other threats.

Another important problem tackled by the bill is the pollution that has caused the deterioration of the ozone layer in our upper atmosphere. The bill mandates the phase out of the user of chlorofluorocarbons [CFC's] by the year 2000, freezes the production levels of hydrochlorofluorocarbons [HCFC's] by the year 2015 and prohibits production of HCFC's after 2030. While this sets the United States on a unilateral course toward eliminating the use of these chemicals, it is a necessary course because we generate a significant amount of the world's total. International negotiations to eliminate this global threat will proceed, with the United States in the lead.

Mr. President, last spring I sponsored an Earth Day contest for Maine students, and the response I received was overwhelming. It is obvious that our young people are very concerned about the future of this planet should we continue our current polluting ways. I look forward to having the opportunity to tell them about the Clean Air Act Amendments of 1990, because I believe it is legislation that addresses many of our most pressing pollution problems.

We should do what we can to ensure that our children and grandchildren will live in a clean environment. The bill being considered by the Senate today takes us in that direction, and I believe it holds promise for the future. I hope that enactment of this legislation will enable us to show our children that we adults can make an effort to improve the environment. The challenge is a great one, but the time is at hand. Passage of this bill is in all our interests, but particularly because of our children. They deserve no less.

Mr. LAUTENBERG. Mr. President, I rise in support of the conference report on the Clean Air Act. Whether we approve this conference report will have as much impact on the public health of our citizens as any action the Senate takes during this Congress.

Mr. President, I feel that the agreement before us could have been stronger. But this bill gives us the tools to start the job to rid our air of urban smog, carbon monoxide, air toxics, and acid rain.

Mr. President, we must pass this conference report. To do otherwise would be to reject significant revisions of existing law. To do otherwise would adversely affect the health and welfare of Americans, now and in the future. To do otherwise would continue the deadlock in cleaning up the Nation's air which we have had for over a decade.

It has been 13 years since the Congress last addressed the Clean Air Act; 13 years of attempts to do better, to remove the poisons from our air, have been stalemated and blocked. People have suffered from polluted air and will continue to suffer unless we act.

Mr. President, this bill helps the state of our Nation's air in important ways. It includes provisions to address ozone and carbon monoxide nonattainment, airborne air toxics, acid rain, and depletion of our ozone layer.

The clean air amendments contain requirements to help reduce levels of smog and carbon monoxide. Areas which have not yet attained health standards for ozone and carbon monoxide must achieve measurable progress until the standards for these pollutants are achieved.

Service stations in ozone nonattainment areas will be required to install equipment on gasoline pumps to reduce emissions of ozone forming hydrocarbons. Areas in violation of ozone and carbon monoxide standards must also put into place vehicle inspection and maintenance programs to identify cars with faulty equipment that fails to do the job. Pollution emitting factories will have to install reasonably available controls. And EPA will have to take action to control pollution that currently goes unchecked and to ensure that States are achieving the pollution reductions required by the act.

Of particular importance to New Jersey is a provision I sponsored with others in the Northeast region to stop other States from sending their pollution into our States, harming the health of our residents and putting an impossible burden on our industries. This program would regulate pollutants transported from upwind States which make it impossible to achieve health standards.

In New Jersey, the Department of Environmental Protection says that on some days even if we shut down the entire State, we would be in violation

of some health standards because of pollution coming over from other States. These provisions would insist that even areas which are achieving health standards within the Northeast Transport Region would be required to adopt reasonably available and cost-effective controls.

The Clean Air Act amendments establish programs to reduce emissions of pollutants from cars. They require the production of clearner cars and cleaner fuels, although cars will not be as clean as they should or could be and cleaner cars will not be produced as rapidly as they could be. Vehicle manufacturers must install systems to alert drivers when an emissions control system is malfunctioning. Centrally fueled and maintained fleet vehicles in urban areas will have to use cleaner fuels such as natural gas to reduce emissions. Urban buses using diesel fuel will have to significantly reduce their emissions of toxic particulate emissions.

And EPA must establish requirments to reduce hazardous air pollutants from motor vehicles and gasoline reflecting the greatest degree of emission reduction achievable. This requirement is similar to the amendment I offered on the Senate floor to require EPA to regulate emissions of air toxics from motor vehicles. These emissions are responsible for over 50 percent of the cancer deaths caused by air toxics.

Mr. President, on an issue on which I have worked long and hard, and which is of particular importance to New Jersey, with its concentration of industrial sources, the amendments also retain large parts of the air toxics bill I sponsored, along with Senator DURENBERGER, and significantly improve current law.

In this area, Mr. President, we are starting from ground zero. EPA regulates virtually no airborne toxic pollutants. The agreement retains the provisions of the Durenberger-Lautenberg legislation and will require significant reductions in 189 toxic airborne pollutants. It sets up an ambitious schedule over 10 years to require industrial facilities to install the maximum achievable control technology for stopping these toxics from entering the air we breathe. Ad if a significant risk remains after the installation of maximum achievable control technology, industry must reduce emissions to protect public health with an ample margin of safety unless a more stringent control is necessary to protect the environment. To date, EPA has failed to use existing law to require controls on most of these facilities.

The conference agreement also requires EPA to regulate smaller sources of air toxics. And it requires EPA to establish a program to monitor atmospheric deposition of toxics into the Great Lakes and, of special concern to New Jersey, into coastal waters.

In another important step, the amendments build on the Emergency Planning and Community Right-To-Know Program enacted in 1986 by establishing a program to reduce the threat of chemical accidents. This was also part of the legislation I originally introduced with Senator DURENBERGER. The bill creates an independent Chemical Safety Board, like the National Transportation Safety Board, to ensure that chemical accidents will be subject to thorough investigations. In time, I am hopeful that this innovation will play as significant a role in preventing chemical catastrophes as the NTSB does in presenting airplane crashes or train wrecks.

Further, under this section of the bill, companies using certain amounts of 100 acutely hazardous substances would have to prepare an engineering analysis of the facility to identify possible hazards to public health. And EPA is charged with issuing regulations to actively prevent accidents.

Mr. President, in a real tribute to the Senate majority leader, GEORGE MITCHELL, who has been working to control acid rain since he entered the Senate, the amendments require controls on utilities and other sources to reduce acid rain significantly and protect the environment. And it includes the Environment and Public Works Committee provisions to phase out the use and production of chloroflourocarbons and halons which destroy the ozone layer and contribute to global warming.

Mr. President, if I had my way, we would be approving a tougher bill, particularly one that would require more of our automobile manufacturers. But, Mr. President, this is not the kind of program where we can come back in a year or two and tinker with the provisions and requirements. This is an air program that will take us into the next century. For that reason, I felt it was imperative that we have a strongest, most forward-looking bill we could write.

To this end, I offered and supported a number of amendments on the Senate floor which I felt more adequately addressed the environmental challenges we face as we enter the 21st century. I believe that the improvements made by the conferees over the Senate bill in addressing urban smog and air toxics from automobiles are attributable to the considerable support for the amendments demonstrated on the Senate floor.

Mr. President, we would have been stopped dead in our tracks months ago if it were not for the commitment, patience, and perserverance of the Senate majority leader, Senator MITCHELL, and the efforts of other conferees, particularly Senators BAUCUS and CHAFEE. The citizens of our Nation owe them their gratitude.

I urge my colleagues to support the conference agreement.

Mr. DOLE. Mr. President, the impact of clean air legislation on farmers and argi-businesses who rely on certain chemicals and practices is of great concern to me. Under the air toxics provision of the bill, it is important that the EPA concentrate its regulatory efforts on those situations that pose a real problem and avoid imposing any unwarranted and costly burdens on our Nation's farmers. I ask the distinguished Senator from Wyoming if that is his understanding.

Mr. SIMPSON. The distinguished Senator from Kansas is correct. The intent of the bill is to take a responsible and reasonable approach toward regulating the use of these chemicals. Any use of chemicals by our Nation's farmers and agri-businesses would be fairly evaluated, and where possible, past and future practices will be part of any recommendation for change.

Mr. DOLE. I thank the distinguished Senator.

Mr. COCHRAN. Mr. President, I rise today in support of the Clean Air Act of 1990, and I congratulate the conferees. There are a few issues I would like to mention.

First, I would like to bring to the Senate's attention the results of the National Acid Precipitation Assessment Program [NAPAP]. This $900 million program, authorized by Congress in 1980, directed a comprehensive 10-year Federal interagency investigation of the causes and effects of acid deposition. It requires that a report be submitted to the Congress to assist us in formulating national policy decisions.

The NAPAP report which was submitted to Congress earlier this year concluded that at present sulfur dioxide and nitrogen oxide emission rates—acid rain—will have little or no effect on our environment. Nevertheless, the Clean Air Act of 1990 imposes over $5 billion dollars per year in acid rain controls. Mississippi citizens will be forced to pay $200 million per year, more than 4 percent of the total costs.

While I share the concerns of my colleagues regarding the importance of protecting our environment, I believe that any legislation passed by the Congress should ensure that the scientific evidence on which air quality assessments are made is sound. I urge my colleagues to review the NAPAP study and take its recommendations into account.

Mr. President, I would also like to thank the Senate conferees for agreeing to classify oil and gas units fuel usage based on the time period of 1980 to 1989. Utilities in my State will now have the allowances it needs to operate and expand. I also thank them for

ensuring that utilities will be allowed to comply with nitrogen oxide reduction requirements through the application of low-NOx burner technology. This technology is a reasonable, cost-effective method which has proven to be successful in achieving significant NOx reductions.

I thank the Chair.

Mr. GORE. Mr. President, I rise to commend our majority leader, Senator MITCHELL, and my colleagues Senators BAUCUS, CHAFEE, and DURENBERGER for their tireless efforts in crafting the 1990 Clean Air Act amendments. Recognizing we must act now—to protect our environment, to ensure the health and well-being of our children—our colleagues have met the challenge and provided critical leadership on issues essential to our future. Thirteen years of failed attempts to amend the Clean Air Act are truly a testimony to the magnitude of their accomplishment today.

Mr. President, since the passage of the first Clean Air Act Amendments in 1970, much progress has been made. Urban air quality in the United States has improved in many respects—sulfur dioxide and particulate concentrations have declined in most cities, and the United States can take great pride in having reduced airborne lead concentrations.

However, as those who worked to improve the Clean Air legislation recognized, many challenges remain. Twenty years after the first Clean Air Act amendments, more than 100 cities still are polluted with unhealthy concentrations of ground-level ozone and carbon monoxide. Concern over the health impacts of urban ozone grows with every new study released—we now know for example, that children playing outside in the summer are among those most at risk. There's work to be done in controlling chemicals that deplete "good"—stratospheric—ozone and acid rain—problems that were not even recognized when the 1970 Clean Air Act amendments were passed. And, we have just started to grapple with the health and environmental hazards posed by the soup of hundreds of toxic chemicals that our industrial society continuously generates.

Mr. President, I believe that the 1990 Amendments to the Clean Air Act will take us far in dealing with these persistent problems. Recognizing that the loss of our protective ozone shield poses a terrible threat to all life on Earth, these amendments will phase out and eventually ban many ozone destroying chemicals. I am proud to have been able to contribute to this effort. Together with my distinguished colleague from Vermont, Senator LEAHY, we worked to ensure that HCFC's—hydrochlorofluorocarbons—are used only temporarily as we develop refrigerants and solvents that are not destructive to the ozone layer, and that, in replacing ozone-eaters, we choose substances that offer maximum environmental and health benefits. The United States can be very proud in having taken the lead in this area. I am told that our actions greatly impressed negotiators at the latest working sessions on the Montreal Protocol and catalyzed the passage of an international resolution to phaseout HCFC's.

These amendments will also bring under control some of our most toxic air pollutants. Large industries, small businesses, and a myriad of our own daily activities contribute to the emission of hundreds of tons of air toxics every year. The toll these chemicals take on our health and well-being cannot be overestimated. In cancer incidence alone, air toxics are responsible for some three thousand cases each year. Industry wanted to solve this problem by moving people away instead of stopping or reducing the pollution. They wanted to be allowed to pollute, and in the process, create "dead zones" surrounding industrial plants. I thank my colleagues for standing firm with me in rejecting the arguments of industry; in demanding that industry use the technology it can and must use; and in protecting and preserving our neighborhoods and communities.

The Clean Air Act amendments also attempt to address the air quality problems caused by our collective addiction to driving. In setting minimum oxygen content requirements for gasoline, the amendments will help areas that have failed to meet health and safety standards for carbon monoxide; by limiting the amount of volatile organic compounds that can be used in gasoline, the problem of urban smog and the incidence of cancers caused by auto emissions will be reduced.

But, we need to keep in mind that reformulated gasoline will not solve all our problems. As with earlier amendments to the Clean Air Act, progress achieved by cleaning up gasoline can and will be overwhelmed by the ever increasing number of cars on the road and by the increasing distances we travel. Moreover, while some of the gas additives that meet the requirements of the amendments are effective in combatting some air quality problems, their widespread use can cause or worsen other problems. Methanol, for example, is effective against carbon monoxide, but the jury is still out on the question of its effectiveness against smog—some studies say that it could worsen the problem. And, should methanol be derived from coal, it will significantly enhance the greenhouse effect and the problem of global warming. Ethanol also is not a complete solution. Although it, too, will help to control carbon monoxide, ethanol production is quite costly, and often is dependent on farm products that are particularly chemical-intensive and erosive. And we need to remember that, in merely reformulating gasoline, we will never free ourselves from the petroleum dependence that increasingly threatens our security and jeopardizes world peace.

To effectively combat the health and environmental problems caused by automobiles, and to achieve for ourselves some degree of energy security, our campaign must be twofold. First and foremost, we must decrease the amount we drive by breaking our habit of "going it alone," and second, we must work toward the development of a whole new generation of energy sources—biomass, photovoltaics, wind, geothermal. In so doing, we will not only preserve and protect our environment and improve air quality, but we may also free ourselves from our crippling dependence on petroleum. The Clean Air Act amendments start us on that course, and we must take advantage of the opportunity to continue our move forward.

Mr. President, these amendments chart a new and exciting course for our country, and I congratulate my colleagues who have worked so long and hard to bring us this truly historic legislation.

Mr. DOMENICI. Mr. President, today is an important day for the American public. Today, after 10 years of consideration, the Congress is finally sending a new Clean Air Act to the President for his signature.

The Clean Air Act has not been reauthorized since 1977. In early 1981, the Environment and Public Works Committee began hearings on a new Clean Air Act. Ten years later, we are finally completing the task.

The conference report before us represents a significant strengthening of current law. It aggressively tackles the problems that have emerged since 1977 when we last amended the law.

Most significantly, Mr. President, this conference report establishes a new acid rain control program which requires that 10 million tons of sulfur dioxide be removed from our skies by the year 2000. Never before have we undertaken such an aggressive cleanup program.

And the acid rain program that we authorize here is fair to all regions of the country. It is essentially what the Senate passed back in March of this year—a compromise worked out and supported by every region of the country. For my region of the country—it recognizes the fact that we already have extremely clean powerplants.

In New Mexico, all 10 of our coal-fired powerplants have scrubbers. Our statewide emissions rate is around 0.6 pounds per million Btu's. Compare that average, Mr. President, with the acid rain requirement that all plants

in the country by 2000 meet a 1.2-pound standard. New Mexico is today at half the rate where America will be in a decade. I'm proud of that.

Because New Mexican ratepayers are already paying high utility bills in order to have clean air, this conference report rewards them—and other clean States—with a modest number of bonus allowances, a provision that I authored here in the Senate. These allowances are available to all States with a 0.8 statewide average and will ensure that our clean plants will not at an early date face the need to purchase allowances in order to grow.

We already know that growth that will occur in New Mexico and other Western States will be superclean because under the Prevention of Significant Deterioration Program [PSD], best available control technology [BACT] must be used, and BACT will become increasingly more stringent.

That means our Western skies will remain clean. But under this acid rain title, our ratepayers will not confront even higher utility bills.

Western skies will also benefit from the major research proposal initiated under the visibility section of this conference report. Polls in New Mexico and national polls have shown that the American people place a high value on their ability to see for long distances. The research proposal contained in this conference report will provide us with valuable information on how to proceed to tackle this important matter.

Another extremely important initiative in this bill relates to how we address hazardous air pollutants. For 10 years, we have been grappling with the question of how best to regulate these pollutants. While everyone agreed that the existing program under section 112 has not worked, there was no agreement on how to change the program to make it more effective.

After protracted discussions this bill offers a compromise. The basic structure of the air toxics title is to require an initial level of tight controls on all major sources of toxic air release. This level of controls is determined strictly on the basis of the availability of technology, not on any defined risk to the public.

It was agreed that these technology requirements were a necessary first help to assure the public that measures are being taken to address this serious public health threat.

Once the technology is in place, however, further reductions could occur, based on a determination that risks still remain; this is the so-called residual risk determination. Because the determination of risk is so difficult to evaluate, two provisions that I and others pushed in the Senate bill, have been retained in this conference report.

One provision calls for a National Academy of Sciences comprehensive review of current risk assessment methodology used by EPA and alternative approaches and the preparation of a report with recommendations on how the process can be strengthened. As a result of these recommendations, EPA would revise its guidelines for carcinogenic risk assessment as appropriate.

The second provision establishes a Risk Assessment and Management Commission to review the NAS study and other relative information to help provide Congress with guidance on how to refine the "residual risk" process.

It is my hope that these two studies will provide EPA and the Congress with the necessary information so that when residual risk determinations are made in the coming years, they will be based on the best scientific and policy information available.

Other important provisions of this conference report include: First, an aggressive program to bring the nonattainment areas of this country into compliance with health standards; and second, new automobile tailpipe standards and provisions for new, cleaner fuels.

All combined, Mr. President, this conference report represents an incredible undertaking to resolve the remaining air pollution problems that plague this Nation.

In closing, let me say that this bill is not perfect. There will be some who will say that we have not done enough. There will be others who argue that the bill is too expensive. Both sides may be right.

However, Mr. President, the American people deserve a new Clean Air Act. And this conference report represents a major, important undertaking. My congratulations go to all of the Conferees, who have labored long and hard to produce this product—especially the conference chairman, Senator BAUCUS and ranking member, Senator CHAFEE. And I would be remiss if I didn't recognize the staff who spent even longer hours to make this bill a reality. The American people thank the members and staff for their perseverance.

Mr. LAUTENBERG. Mr. President, one of the differences between the House and Senate air toxics provisions was their treatment of modifications to existing sources. The House bill included modified existing major sources in its definition of new source, while the Senate bill had limited the new source definition to new and reconstructed sources.

As the author of the Senate provision, I was concerned that the House definition would have unduly hampered routine operations of many manufacturing facilities that may make frequent operational or physical changes which may result in increased and different mixes of air pollutants. For example, many pharmaceutical and electronic manufacturing facilities in my State make frequent changes in their operations which result in variation in their air emissions. Simply substituting one hazardous air pollutant for another more hazardous air pollutant in a process could have caused the source to be considered a new source. Or, simply initiating the manufacturing of new or different products causing certain alterations and increases in the emissions, could have triggered the new source definition.

The implications of the new source definition in the House bill would have been substantial for an existing major source. The source could not have gone forward with the modification without having obtained a predetermination that the modification would have complied with the applicable new source MACT requirements. This could have caused time-consuming delays as well as imposing the unreasonable burden of retrofitting the modification to bring it into compliance with new source MACT.

The Senate bill did not pose these problems because modifications were not included in the definition of new source.

I have worked with the Senate conferees on this provision, and I am pleased that the conference report rejects the House provision. Instead, the Conferees crafted an alternative provision on modification that reflects the concerns in the Senate bill.

Under the conference report, modifications are not included in the definition of new source and hence will not be subject to the same preconstruction approval requirements as new sources. Instead, modifications are treated separately. Moreover, requirements for modifications do not apply to a source until there is an approved permit program in that State. This should ensure that there is a permit program in place that is designed to expeditiously deal with modifications.

A modification is defined as a physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant. However, a source which offsets the increase with an equal or greater decrease in other more hazardous emissions will not be considered as having made a modification. The source simply needs to submit a showing to the permitting authority of such offset to avoid being considered as having made a modification. EPA is required to publish guidance which should help facilitate such showings by identifying the relative hazards of emissions of the hazardous air pollutants. The conferees imposed one limitation on the offset; that is, if

the source will be increasing emissions of a carcinogen, then the emissions which are decreased must also be of a carcinogen.

With the exception of the allowance for a de minimis increase in emissions, the definition is identical to the definition of modifications in section 111 of existing law. Under this provision, EPA has issued regulations specifying certain kinds of activities which would not constitute a modification. Clearly it is intended that such kinds of activities would also be excluded from triggering the modification definition in new section 112.

A major source which does make a modification without any offset must obtain a determination from its permitting authority that the existing source MACT standard applicable to the modification will be met. In instances where there is no applicable MACT standard, this determination is to be made on a case-by-case basis. Obviously, in either case, if the source has satisfied the requirements of subsection (i) regarding alternative emission limitations and has a permit reflecting the alternative limitation, this would serve as the basis for the requirements relating to the modification.

The conference report requires the permitting authority to establish reasonable procedures to assure that the requirements for modifications are reflected in the permit. This is one of the most important elements of the conference agreement on this issue. It was included to assure that sources making modifications are not caught in the delays that can frequently occur with permitting and amendments to permits. Instead, the conferees expect the permitting authority to establish procedures that allow sources to anticipate and provide for modifications in their permit, and to the extent such modifications are not anticipated, to quickly notify the permitting authority so that changes can be appended to the permit. As long as the permit provides that the existing source MACT standard will be complied with in the event of a modification, the objectives of the modification provision in the law will have been satisfied. If there is no existing source MACT standard, then the Congress expects an expeditious determination of what emission limitations the modification must meet.

Again, let me stress that the objective of the provision on modifications is to assure that any such modifications are made in conformance with existing source MACT standard. At the same time, the Congress did not want to see modification requirements impose delays on batch processing operations or delays for manufacturers who want to change or improve manufacturing processes or who want to initiate the manufacture of new products. The competitive posture of the country cannot afford such delays. And equally important, we can satisfy our environmental objectives without such preapproval delays.

I want to commend the conferees from both the House and Senate for bearing in mind these important considerations and for adopting a provision on modifications which is consistent with the Senate bill's concern to avoid unnecessary red tape and delays.

CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on S. 566 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 566) to authorize a new Housing Opportunities Partnerships Program to support State and local strategies for achieving more affordable housing; to increase homeownership; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 22, 1990.)

The PRESIDING OFFICER. Under the previous order, the time is controlled by the Senator from California [Mr. CRANSTON].

Mr. CRANSTON. Mr. President, I am delighted that the Senate is at long last able to take final action on the Cranston-Gonzalez National Affordable Housing Act.

The bill consolidates Federal housing assistance, making it more understandable and adaptable to changing local needs.

This bill gives us a historic opportunity to unleash enormous resources and energies across the country to bring good, affordable homes within the reach of young families, of working people, of families with low-incomes, of elderly Americans, and of people with special needs.

After a decade of neglect, the Federal Government at long last is taking up its responsibility to make decent homes more affordable for all Americans—for middle-income families as well as the poor.

This is landmark legislation. It charts a new course for national action on affordable housing for the 1990's. It is the most important action that Congress has taken on housing in more than 20 years. I am confident it is a bill the President will sign.

Work on this bill began almost four years ago when the Senate Housing Subcommittee embarked on a thorough review of Federal housing policy. We were determined to build a tough-minded, effective new housing policy. And we were determined to do so with the broadest possible involvement of experienced national leaders who are committed to affordable housing for American families.

We invited recommendations from all of the leading housing organizations. MIT brought together the Nation's top housing researchers to define the housing challenge of the next decade. And the blue-ribbon National Housing Task Force recommended a fresh, new direction for national housing policy.

Senators turned those ideas into comprehensive legislation. Some thirty days of hearings were held here in Washington and around the country. Thousands of additional hours were spent by subcommittee members and staff in meetings with leading groups and individuals to refine the structure and details of the Senate bill.

During the past 2 months, House and Senate conferees took on the difficult task of merging the Senate and House bills into one, coherent piece of legislation. We incorporated administration suggestions. We resolved many very tough and controversial issues.

I particularly appreciate the assistance of Senators DON RIEGLE, PAUL SARBANES, CHRIS DODD and ALAN DIXON on my side of the aisle, as well as the assistance of Senators AL D'AMATO, JOHN HEINZ, KIT BOND and CONNIE MACK on the other side of the aisle.

HENRY GONZALEZ, chairman of the House Banking Committee, and ranking minority member, CHALMERS WYLIE deserve great credit for their hard work and cooperation in achieving conference agreement.

I also want to commend HUD Secretary Jack Kemp without whose help the conference agreement could not have been reached.

We now have an excellent bill. The Cranston-Gonzalez National Affordable Housing Act provides 2-year authorization to provide an additional 360,000 units of affordable housing, to continue rental assistance, and to extend community development programs.

The bill's centerpiece is the new HOME Investment Partnerships, which is a sweeping reform of the way Federal housing assistance is provided. It will distribute funds by formula to States and local governments to carry out comprehensive housing strategies designed for local housing conditions. It will build vibrant partnerships for

housing among government, nonprofit organizations and private industry.

HOME funds will be matched by State and local resources and used to leverage private financing. They will strengthen the network of nonprofit community housing organizations that have done such excellent work in recent years.

States and localities would be responsible for developing a 5-year housing strategy and for choosing the most appropriate ways to expand the supply of affordable housing. A special one-stop office in HUD would be responsible for developing effective model programs and for establishing strict program accountability and funding control.

The conference agreement provides $1 billion in funding for fiscal year 1991, which permits an orderly phase-in of the program starting in the latter part of this fiscal year. As soon as funds are appropriated, formula allocations will be available for all States and a large number of local jurisdictions.

The $2.1 billion funding level for the next year would permit the remainder of the local jurisdictions to become eligible shortly after the first group is up and underway. Those funds will quickly make a positive impact in local communities across the country.

Second, the conference agreement establishes a new National Homeownership Trust within HUD to help low-income and moderate-income families buy their first home. The fund would enable eligible home buyers to finance a mortgage at low interest rates. The fund would also help eligible homebuyers cover their downpayment or closing costs.

Third, the conference agreement authorizes the Administration's HOPE Grant program to enable low-income and moderate-income tenants of public housing and other housing owned by HUD to buy their housing. This is a major priority of Secretary Kemp. The conference report includes the Secretary's request with refinements to provide protections for tenants and protections against fraud and abuse within the program.

Fourth, the conference agreement provides a sound solution to the most contentious problem before the conferees: the need for a long-term solution to avoid eviction of as many as 250,000 low-income and moderate-income families from federally-assisted housing. This could occur over the next several years as contractual obligations of private owners begin to expire. The conference agreement on this contentious issue was an enormously important achievement.

The conference agreement provides full, fair compensation to owners, and keeps the emphasis where it ought to be: on preserving scarce affordable housing wherever we can and on protecting low-income tenants.

Fifth, the conference agreement will rebuild the financial health of the FHA mortgage insurance fund and correct damage done by mismanagement and adverse economic conditions during the past decade. The conference agreement reforms the FHA premium to reduce losses and increase revenues.

Of course, the solution cannot satisfy everyone. But I believe the conferees found a way to strengthen FHA that serves many more first-time homebuyers than the administration's original proposals. For a typical $65,000 home, the administration's proposal would have increased the cash required at closing by about $1,400. The conferees agreed on a solution that will require about $800 more than under current law.

The conference report will lower the up-front premium on FHA and require an annual risk-based premium. And the FHA will be required to achieve capital reserves of 1.25 percent within 2 years and reserves of 2 percent by the end of the decade.

The conference agreement provides for additional consumer reforms to mortgage lending practices. Mortgage lenders will be required to provide annual notice of interest due on the outstanding mortgage. This assures that consumers will know their outstanding mortgage indebtedness each year.

Discount points and loan origination fees on low-cost housing will not vary more than 2 percent from those charged for higher cost housing in an area. Consumers will also have access to HUD data on defaults by individual lenders. The reserve equity mortgage program for older homeowners is reauthorized through 1994 and will be expanded to achieve wider availability.

Other key elements of the conference agreement would continue public housing development, improve management of public housing, reform the financing of housing for the elderly, provide housing for persons with AIDS, expand rural housing assistance, and improve other HUD programs.

The conference agreement will reauthorize the Community Development Block Grant program and ensure that communities will have funding to meet community and economic development needs.

The section 108 loan guarantee program will be expanded to give big cities and small towns more flexibility in providing funding for large community and economic development projects. Communities will also have flexibility to receive their CDBG allocation in one lump sum payment to meet community revitalization needs.

The conference agreement would make a number of modifications to rural housing programs, focusing resources on families most in need. Housing for farm workers would be expanded to address the increasing problem of housing for seasonal farm workers and homeless people in rural areas.

Rural housing assistance will be set aside each year for 100 counties that have some of the worst housing conditions in the country but have not received a fair share of Federal assistance. Farmers Home would begin to address the housing needs of tens of thousands of Mexican immigrants now living in squalid conditions near the Mexican border in California, Arizona, New Mexico, and Texas.

The bill increases funding and makes revisions to the Drug Elimination Program that Congress established in 1988. It provides public housing agencies with greater authority to evict tenants involved in drug activity while also preserving the tenants' right to due process.

Mr. President, this bill is a bold, fresh, and comprehensive way to provide the affordable housing the country will need in the decade ahead. It is urgently needed. It is long overdue.

I urge my colleagues to pass this legislation and send it to the President's desk for his signature.

I want to thank the members of the Senate housing staff on the majority side, led by staff director Don Campbell, who did magnificent, painstaking, very difficult, and detailed work.

Bruce Katz, the Housing Subcommittee senior counsel made a truly brilliant contribution to some of the most difficult elements of the bill, including the titles on prepayment and low-income housing assistance. Subcommittee counsel Larry Parks performed outstanding work related to FHA and community development.

Eileen Gallagher deserves special commendation for the remarkable quality of her work on many provisions of this bill.

Dan Potash did a first rate job on a number of privisions, particularly on rural housing. Also deserving great credit are Kevin Chavers and Jeannine Jacokes of the Banking Committee staff.

I give my heartfelt appreciation to all of them and the many other staff people whose long hours of dedicated work have made possible the achievement of this bill.

I know that the ranking member from the Republican side, my partner in this enterprise, AL D'AMATO will thank his staff people for their great help.

I understand the Senator yielded back all time. I would yield him time in a moment. I want to say a couple more things, and I will do that.

I now yield 2 minutes to my friend from New York, Senator AL D'AMATO.

Mr. D'AMATO. Mr. President, I rise in order to give my colleagues some insight into the Cranston-Gonzalez National Affordable Housing Act conference report which is now before the Senate.

The bill which emerged from conference includes many innovative new programs for the elderly, victims of AIDS, homeless Americans, and those who are truly needy.

No one has been more committed to assisting these individuals than the Secretary of the Department of Housing and Urban Development, Jack Kemp. Without his leadership, we would not be here today.

In addition, I must thank and commend my colleague, ALAN CRANSTON, chairman of the Senate Housing Subcommittee, for his dedication and hard work in getting a housing bill. Chairman CRANSTON and I have spent 3 years developing this legislation. I know that we are both pleased to have our efforts, and those of people like Jim Rouse and David Maxwell, come to fruition.

Lastly, let me recognize my friends in the House who made this bill possible—Chairman HENRY GONZALEZ, Congressman CHALMERS WYLIE, and Congresswoman MARGE ROUKEMA. Without the strong leadership of Chairman GONZALEZ, we would not have a housing bill. He, in particular, is to be commended for his longtime dedication to addressing urban and rural housing problems around the country.

And, of course, the guidance and direction of the Republican leadership on the House Banking Committee has been essential to energize this process. As I recall, it was just over a year and a half ago that CHALMERS WYLIE called a meeting between the President and the leadership of the House Banking Committee. That meeting helped to spur the movement of housing legislation. Congressman WYLIE must be credited for taking the initiative to make housing an issue for 1990.

FHA REFORM

The bill contains a major overhaul of a bleeding insurance fund. It is because of the urgency of this reform, in particular, that I stand before you today in support of this legislation.

Let me begin by reassuring my colleagues about the FHA reforms contained in this conference report. As many of you may recall, earlier this year we learned that the FHA fund was in trouble. It had lost $5 billion in net worth since 1980. It was losing almost $3 million a day. Many of us feared that another savings and loan debacle was on the horizon. Once again, the taxpayer was at risk.

As ranking member of the Housing Subcommittee, I made sure that we responded to this problem. The Senate housing bill took a tough step toward preventing another financial debacle.

That bill, the housing legislation which passed on the Senate floor by a vote of 96 to 1, contained a modified form of my own FHA proposal and that of the administration. It ensured that a home buyer would have more equity in his/her home as a means of preventing default. It provided that over two-thirds of all closing costs would be paid upfront. It established a risk-based premium, which links the premium to the downpayment.

I am pleased to report that the FHA reforms which came out in the conference only slightly modify the FHA provisions in the Senate bill. And while I may prefer that the Congress take even tougher action in regard to FHA, I believe that the final conference agreement on FHA is a step in the right direction.

The FHA reforms in the conference report include lowering the default rate in the program from the current 11.27 to 10.65 percent—alleviating about 4,500 defaults, and requiring the fund to meet a capital standard of 1.25 percent by 1992 and 2 percent by the year 2000. These capital requirements are being implemented to ensure that the FHA fund will be available for our children and grandchildren. They are also being implemented so that the taxpayer won't be left holding the bag for another Federal insurance catastrophe.

I truly am pleased that the conferees realized the significance of the FHA problem and that they acted in a responsible manner.

HOPE

The Cranston-Gonzalez National Affordable Housing Act marks a major shift in direction for the Nation's housing policy. Instead of giving developers funds to construct housing, this bill gives assistance directly to the poor, the homeless, and the needy.

Perhaps the best example of this is the HOPE Program, an innovative proposal created by Secretary Kemp. This program, funded at almost $2 billion over 3 years, provides the essential tools for public housing residents to manage their own project and, if they desire, to purchase their project and become homeowners.

Through management or homeownership, HOPE becomes a means of allowing the poor to control their own lives. Instead of telling the poor how they should live their lives, this program gives them the resources to take charge of their homes, to get the drug dealers out of their neighborhoods, and to establish a safe environment for the families and senior citizens who seek serenity and peace.

THE HOMELESS, THE MENTALLY ILL, AND THE ELDERLY

S. 566 also takes a comprehensive approach to problems affecting the homeless, the mentally ill, and the frail elderly. This bill ensures that all needs of these special populations are met, not just housing.

Housing is usually just one of the concerns of persons with special needs. Take the homeless, for example. We know that homelessness is more than just a housing problem. It has serious social and health care components. A homeless person needs much more than just a roof over his/her head.

The same is true of the elderly. As our senior citizens age, many need comprehensive assistance. They need help with transportation, health care, and even some assistance with simple chores like getting groceries. A strategy to assist our senior must take into account the broad array of needs that the elderly have.

This bill marks a fresher and broader view of these problems. "Shelter Plus Care," an initiative introduced by the administration, requires localities to ensure that new recipients of rental assistance receive social services. By linking Federal housing assistance with social services, a senior citizen will not have to go to five different Federal, State, and local agencies to find assistance. Instead he/she will go to one place—and will be assured of getting all needs met—housing, health care, counseling, or whatever.

THE HOME PROGRAM—A HOUSING BLOCK GRANT

There is one other initiative in the bill which must be mentioned—the HOME Program. This program is a modified version of the Senate-passed HOP Program. This housing block grant gets the housing dollars to those who need it the most, while providing for the maximum amount of flexibility for local officials to tailor programs to local problems, whether it's rental assistance, rehabilitation, some new construction, or other eligible activities. The bill provides $1 billion for fiscal year 1991 and $2 billion for fiscal year 1992 for HOME.

HOME represents the culmination of 3 years of hard work sponsored by Senator CRANSTON and myself, which involved the Rouse/Maxwell task force, MIT, and interest groups from around the Nation.

This program is a significant departure from the Washington-based, developer-dominated programs of the past. This program will provide funding to State and localities to address their affordable housing problems. This funding is flexible. It can be used to help a homeless person with a deposit for an apartment. It can be used as seed money to help a nonprofit make housing affordable to those who are most in need.

Ultimately, this program acknowledges that housing problems are going to require a Federal-State-local partnership with the private sector. The Federal Government cannot solve our Nation's problems by itself. And mostly, problems are best solved from

the bottom up—where citizens of a community devise their own solutions to their own problems. I think we could all agree that we would rather have Catholic charities heading up our homeless effort instead of a bureaucrat in Washington.

HOUSING FOR PERSONS WITH AIDS

The conference committee also addressed the special problems of people afflicted with AIDS, since the debilitating nature of their disease puts them at specific risk of becoming homeless; $75 million will be available for persons with AIDS in fiscal year 1991, and $150 million in fiscal year 1992.

HELPING FIRST-TIME HOME BUYERS PURCHASE A HOME

The conferees also focused on first-time home buyers. The bill creates a program, the National Housing Trust, that provides an interest rate subsidy to help prospective home buyers get into the their dream house. This should be especially effective in many areas of the country with prohibitively high housing cost; $250 million is provided for fiscal year 1991 and $512 million is provided for fiscal year 1992 for this purpose.

THE REPAYMENT PROBLEM

Finally, the conferees addressed the very thorny and complicated problem of the repayment of HUD mortgages affecting approximately 350,000 units of low-income housing nationwide. I am particularly pleased with the compromise that the conferees have agreed to. The final bill provides a fair and balanced approach to respecting obligations and tenant protections. It provides fair incentives to owners to preserve low-income housing, it allows owners to prepay if they so choose, and it provides substantial protections to tenants so that they will not be forced out of their housing.

Mr. President, many of us have worked for over 4 years on this broad housing legislation. The final product is before us today. HUD is in favor of this bill and is pleased that a number of its own initiatives are contained in this final conference agreement. I urge my colleagues to approve the conference report.

Mr. President, I commend Senator CRANSTON for his perspicacity. Many others would have given up in the face of the obstacles that have been presented but he has persevered. I take the opportunity to commend our staffs. They have been absolutely diligent.

They have gone above and beyond. Let me take particular note of Grace Morgan, who has just done an outstanding job on behalf of the minority staff. Without her, there would have been no bill.

Mr. President, the bill empowers home ownership for people who had no opportunity before. It embarks upon a bold new course of action. It embarks upon giving the flexibility to local communities to do with these dollars what heretofore they have not had the ability to do.

More importantly, it embarks upon very necessary reform—the FHA program which is bleeding. It stops the hemorrhaging of that fund. It is important. It is landmark legislation. I am pleased to be supportive of it.

I yield my time.

I thank the chairman for his graciousness.

Mr. CRANSTON. I yield 1 minute to Senator RIEGLE.

Mr. RIEGLE. I thank the Senator from California.

I want to commend him for his outstanding leadership in helping to move this legislation forward to the point where we are tonight. I rise in strong support of the Cranston-Gonzalez National Affordable Housing Act.

It was actually about 3 years ago that Senator CRANSTON, chairman of the Housing Subcommittee on our Banking Committee, and Representative GONZALEZ, who is chairman of the Housing Subcommittee in the House, really began the process to shape a new Federal housing policy. That process includes representation from every major segment of the housing community, low-income advocates, industry groups, States and localities, nonprofit segments, housing financiers, and individual citizens.

This is a tremendous achievement. It has taken us many, many years to get to this point tonight. As has been said, there has been an enormous cooperative effort by many people to make this happen, but this is a good day for America. This is important legislation. My hat is off particularly to ALAN CRANSTON and AL D'AMATO.

Mr. CRANSTON. I thank Senator RIEGLE very, very much, and I yield all the remaining time to Senator SARBANES of Maryland, who has been a tremendous help in working this bill along its way to enactment.

Mr. SARBANES. Mr. President, I thank the very distinguished chairman of the Housing Subcommittee for his kind remarks.

Mr. President, this is landmark legislation. I first want to thank the chairman of the full committee, Senator RIEGLE of Michigan, who made this housing legislation a major project of this committee. We have been at it a long time trying to develop this legislation. The chairman has been behind that effort from the very beginning, has moved it at every important step of the way.

I also want to acknowledge the tremendous contribution of Senator CRANSTON, who joining with Senator D'AMATO, created a bipartisan effort to shape the housing legislation. It is important to understand what went into producing this legislation. We have been working on it for more than 3 years.

Senator CRANSTON, as well as James Rouse of my State, a very distinguished public citizen, and David Maxwell joined together in heading up a housing task force that worked for months in developing a proposal much of which is encompassed within this legislation. The committee held extensive hearings on that. We had the benefit of the observations of State and local government, of housing advocates, of nonprofit housing groups, of the people that are in the business, the mortgage bankers, the realtors, the homeowners—everyone has had an input into this legislation.

This is the first major Federal initiative in housing in over a decade. It sets up a framework for a cooperative effort between the Federal, State, and local governments, and the private sector, both the nonprofit and the profit elements of the private sector, to launch a major effort to address the Nation's housing needs. It is not going to be accomplished overnight. But this provides the framework to move forward.

I close by expressing again my gratitude to the very able and distinguished Senator from California, Senator CRANSTON, for his tremendous contribution to framing this housing legislation.

This legislation in fact is named for Senator CRANSTON, and Representative HENRY GONZALEZ as a Cranston-Gonzalez national affordable housing legislation. It is a major accomplishment.

I am delighted that the Senate is tonight taking up the conference agreement on S. 566, the National Affordable Housing Act, legislation to deal with the serious affordable housing crisis facing this country.

This is the final step in the long legislative process that began over 3 years ago. This legislation represents a significant new beginning that will renew the Federal role in the national effort to provide affordable, decent housing for American families.

This legislation includes a comprehensive set of specific proposals that will reverse the decline in Federal support for housing and will begin to overcome a decade of neglect, fraud, and favoritism. It follows closely the legislation that passed the Senate last June and includes important provisions from the bill that passed the House in early August. This legislation recognizes that merely cleaning up the mess at HUD will not solve our housing crisis. It includes new and expanded programs proposed by the administration as well as new initiatives from the House and Senate bills. It restructures a number of existing programs and establishes significant new approaches to reverse the recent decline in home ownership and to increase the

supply of affordable rental housing and housing for people with special needs.

It includes the new HOME Program that closely follows the HOPE Program in the Senate-passed bill. This innovative new approach will provide Federal support to be used in connection with matching funds from State and local governments to increase the supply of affordable housing.

It includes important provisions that will significantly decrease the risk of loss of affordable rental housing through prepayment of HUD-assisted mortgages. This is a fair resolution of a very difficult issue that recognizes the need to preserve scarce rental housing, protect tenants threatened by displacement and that will provide a fair return for the owners of this housing.

It restructures the FHA Mortgage Insurance Program to restore the financial health of this important program that has assisted homebuyers for over 50 years.

This is well-balanced, reasonable legislation that builds on the solid foundation established over the past 3 years under Senator CRANSTON's leadership. A broad coalition of groups and individuals has been working to address the worsening housing situation. Two years ago the Rouse-Maxwell report, chaired by one of Maryland's and the Nation's most distinguished citizens, James Rouse, made many worthwhile recommendations that are reflected in this legislation.

Also included in the bill are major elements of the administration's housing proposals, including the HOPE proposal. It is encouraging that this administration recognizes the need for legislative action. This represents a reversal of the trend during the Reagan years and a return to our proud history before 1981 when, for over 40 years, Federal programs and policies developed under eight Presidents—Democrat and Republican—made steady progress by encouraging home ownership, providing affordable public and private housing for the poor, and addressing the housing needs of special populations.

The National Affordable Housing Act was introduced with over 40 bipartisan cosponsors in the Senate, and the Senate Banking Committee reported it with a solid bipartisan majority. It passed the Senate in June with an overwhelming 96 to 1 vote. Although the bill does not include all of the elements that are needed to solve our national housing crisis, we are compelled to recognize the limits on Federal resources available for this important task. This is a carefully crafted measure that will establish the framework within which Federal resources will be used in partnership with State and local efforts, with the private sector, both nonprofit and for profit, with community groups and with the efforts of tenants and others in need of housing. It will provide a significant new opportunity for all those individuals and groups who care about our serious housing problems to come together with a national housing approach for dealing with this problem.

I am convinced that the comprehensive approach that is included in this legislation is essential if we are to meet our Nation's housing needs. The renewed Federal commitment represented by this legislation will trigger a tremendous effort not only at the Federal level but at all levels, not only by government but also by the private sector.

I want to particularly compliment Senator ALAN CRANSTON, chairman of the Housing Subcommittee, for his leadership in this important endeavor. In tribute to his efforts and the efforts and hard work of the chairman of the House Banking Committee, the conferees agreed unanimously to rename this legislation as the Cranston-Gonzalez National Affordable Housing Act.

I also want to thank those many groups and individuals from State and local government, nonprofit groups, and private individuals from the housing industry and the academic community who have contributed so much to this effort.

This is a significant legislative accomplishment and I urge all Members to approve the conference report.

I urge all of my colleagues to support this legislation.

Mr. President, I yield what ever time is remaining to the distinguished Senator from California.

The PRESIDING OFFICER. The Chair informs the Senate that the time allocated for debate on the conference report has expired.

Mr. CRANSTON. Mr. President, I thank all Senators. I thank my friend from Maryland very much for his great work and great remarks.

CLARIFICATION OF CONGREGATE HOUSING

Mr. MITCHELL. Mr. President, I am pleased that the conferees during deliberation of the National Affordable Housing Act agreed to integrate housing and supportive services to enable many of this Nation's elderly to live independently.

As you know, I have been a very strong supporter of the existing Congregate Housing Services Program [CHSP]. I have visited the CHSP facilities in Maine and continue to be impressed with their effectiveness and operation. I have seen first-hand the importance of CHSP to Maine's elderly. For a modest amount of money, the CHSP has prevented the unnecessary institutionalization of thousands of senior citizens, enabling them to live out their lives in dignity and independence.

As we move on to the new congregate housing program under the conference report, I would like to clarify the transition process with you by which existing CHSP sites will be incorporated into the new funding structure and program.

Under section 802(i)(1)(B)(i) of the legislation, it appears that existing CHSP programs are exempt from the matching requirements under the new congregate program for 3 years. The language also says that "The Secretary concerned shall require each such program to maintain, for such 3-year period, the same dollar amount of annual contributions in support of the services eligible for assistance under this section as were contributed to such program during the year preceding the date of the enactment of this act."

In addition, under section 802(j)(3) of the legislation, it appears that existing CHSP programs are to be funded for the remainder of the term of their contract and then are to receive priority for assistance upon the expiration of such contract.

My concern about the transition stems from the fact that many of the existing CHSP contracts are for 1 year. Therefore, when these contracts expire, for example in February or March of 1991, was it the intent of the managers to ensure that existing CHSP contracts, upon availability of funding for CHSP, are renewed for 3 years? I am concerned that upon the expiration of existing CHSP contracts, the current CHSP sites may receive priority for funding only, but not necessarily an extension of their existing contracts.

Mr. CRANSTON. Yes, I want to assure the majority leader, that the intent of the managers was to renew existing CHSP contracts and to allow a 3-year phase-in for these programs to the new federal funding matching rules. Existing CHSP facilities, in good standing, would continue to be funded under the current rules as long as funds are available.

Mr. MITCHELL. The Senator's comments about current rules are important. As I mentioned, the legislation says that the Secretary will require the same dollar amount in contributions in support of services. I am unclear as to the intent of the managers with regard to this language. Did the managers intend to hold existing congregate housing programs harmless, but yet allow for inflation increases for CHSP programs? I am concerned that some may interpret this language as a freeze on funding for existing contracts.

Mr. CRANSTON. The majority leader has raised an important point. It was not the intent of the managers to freeze existing contracts. Our intent was solely to ensure that existing pro-

grams be renewed and that existing programs would not be subject to the new matching requirements for, as I said before, 3 years. The specific language that the majority Leader has cited was intended to ensure that CHSP recipients do not reduce contributions they are currently making to the program.

Mr. MITCHELL. Can my colleague from California clarify the intent of the managers concerning the treatment of existing CHSP programs with regard to priority funding?

Mr. CRANSTON. It was the intent of the managers to allow 3 years for existing programs to find sources for matching funds that are required for the new congregate program. We sought to give existing programs priority in funding decisions to ensure that when current contracts expire, that these programs would not fall by the wayside, unable to immediately come up with their matching funds thus terminating existing services and forcing the frail elderly onto the streets or into nursing homes.

Ultimately, the managers expect that other funding streams from the Department of Health and Human Services will be created to fund the services component of CHSP. Hopefully, legislation will be enacted in the near future to provide much needed services funding to housing facilities which are already playing a critical role in providing assistance to the elderly.

In short, eventually we would like to see a program in which retrofitting capital grants and management costs from HUD resources are matched by services dollars coming primarily from HHS resources targeted to assisted housing. In the meantime, it is our intention to move ahead with this modest program to increase the number of frail elderly in federally assisted housing projects being served. During the transition, it is our intention to provide the resources necessary for existing CHSP sites to continue the vital services they provide to some of our most vulnerable citizens.

Mr. MITCHELL. I thank the Senator. I appreciate him taking the time to clarify the transition for existing CHSP sites.

FAMILY SELF-SUFFICIENCY PROGRAM

Mr. CRANSTON. Mr. President, I would like to clarify the intent of the conferees with respect to the new Family Self-Sufficiency Program. That program, authorized under section 23 of the U.S. Housing Act of 1937, is designed to link housing assistance with supportive services.

Section 23(c) provides that a public housing agency [PHA] may withdraw section 8 vouchers or certificates from a noncooperating family. The conferees expect the Secretary to issue regulations setting forth the circumstances under which a PHA may do so. The conferees further expect that the regulations will provide that a voucher or certificate may not be withdrawn when there is good cause for failure to cooperate, or when the PHA has failed to provide appropriate services to the family. Finally, the conferees expect that the regulations will provide that there must be a conciliation process and an opportunity for a fair hearing before denial or termination of the rental assistance.

SECTION 8 OPT OUTS

Mr. CRANSTON. Mr. President, I would like to make a few comments about the issue of section 8 opt outs. The conference report permanently authorizes and expands upon the 1987 notice requirements for section 8 opt outs. These provisions are a vital tool in the Federal Government's efforts to either induce owners not to opt out of this subsidy program or to prepare tenants for a smooth transition to alternative rental assistance. If an owner terminates such a contract lawfully, HUD should provide section 8 assistance for the full number of units authorized by the contract, not just the number utilized. In addition, we reaffirm that the original provision governing section 8 opt outs—section 262 of the Housing and Community Development Act of 1987—was intended to provide a 90-day notice for owner terminations of tenancy based on business reasons under the certificate and voucher programs.

Mr. KOHL. Mr. President, I rise today in strong support of S. 566, the National Affordable Housing Act of 1990. Interest groups and individuals have put aside longstanding differences to put together this vital legislation. Producers of housing, advocates for the homeless, local government officials, middle-income homeowners can all find something to rejoice about in the passage of this bill.

Let me elaborate for a moment. S. 566 consolidates many existing and original housing programs and provides their services to State and local governments. This HOME initiative gives flexibility to local governments to use Federal housing resources in a way that best suits local needs.

S. 566 reauthorizes and improves several housing grant programs that have proved successful in the past and deserve our continued support: Programs serving the elderly and the handicapped, the Community Development Block Grants, rural housing programs, McKinney Act homeless programs, and public and Indian housing.

I offered two amendments to S. 566 when it was considered in the Senate, and I am pleased that they both are in the final version before us today.

One of these provisions is designed to prevent the unnecessary separation of children from their families. This amendment is drawn from legislation introduced earlier this year by Senators SPECTER, DODD, BRADLEY, DECONCINI, LEIBERMAN, SIMON, BINGAMAN, and myself, S. 2559.

In communities around the country, children are placed in foster care, or delayed in returning home from foster care because their parents are homeless or lack adequate housing. At the same time, when a child is placed temporarily in foster care, local housing authorities may actually discount that child when determining family size and composition. That action can result in the termination of a family's eligibility for housing assistance. It's quite a treadmill, and in most communities, there are simply no resources available to prevent the unnecessary placement to begin with.

The conference report includes two provisions to address these barriers.

Section 574 asserts that the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family size and composition. It is the intent of Congress that that technical barrier to housing access be removed.

Second, the bill includes a $35 million addition to the section 8 program, a provision that originated in my bill, S. 2559. That family unification money will enable housing authorities, working in conjunction with appropriate child welfare agencies, to apply for and provide section 8 certificates to families whose children are at risk of placement, or delayed in returning home from placement in foster care.

Mr. President, I regret that budget constraints prevented the conference from adopting House language which would have created an entitlement to this assistance. I support Representative SCHUMER's proposal; it would have assured that all families in need of help receive it immediately. The provisions contained within this bill are important steps in that direction and I hope that we will be able to build on them in the near future.

The second provision of S. 566 that I offered as an amendment requires the Farmers Home Administration [FmHA] to pay interest on escrow accounts established under its single family homeownership program, section 502, in those States where escrow accounts draw interest by State law.

This provision is an effort to provide fair treatment for FmHA borrowers. They deserve to get the same rate of interest on their escrow accounts that other borrowers in their State get from other lending institutions.

Wisconsin law stipulates a 5.25-percent interest rate on escrow accounts. Twelve other States require some rate of interest on escrow accounts.

The FmHA chose Wisconsin last year as the pilot State for developing the escrow program. The pilot program, initially scheduled to go into

effect in the Janesville and Portage FmHA offices in February 1990, has been postponed indefinitely, partly because of concerns about the lack of interest payments on escrow accounts. This program was not intended to penalize FmHA borrowers, especially those who have not been delinquent in their tax and insurance payments. My provision in S. 566 is meant to remove the concerns blocking implementation of this new program and to assure Wisconsin FmHA borrowers that their money will be put to good use in their FmHA and escrow account.

One other element of S. 566 deserves special notice. S. 566 makes some important reforms in the way the FHA operates. These changes are absolutely essential. The Federal Housing Administration mortgage insurance program—a program which has played a critical role in helping millions of Americans achieve the dream of homeownership—is in serious trouble.

No one wants to see FHA fail. But unless basic reforms are made in the structure of the program, it will. As my colleagues know, a Price Waterhouse study has found that FHA is not financially sound. The net worth of the FHA fund that guarantees the mortgages of low-income homebuyers has plunged from $8 billion in 1979 to $2.6 billion today. Under current practices, this fund stands to lose over $200 million a year.

If we do not deal with this problem—and deal with it soon and decisively—we are going to lose this program. Delay will not serve low-income homebuyers: if FHA fails, many of them would not be able to borrow the money to buy a home. Delay will not serve the taxpayers: if FHA fails, the Government has to find a new way to cover its $300 billion in liabilities.

The S&L disaster taught us something we should never have needed to learn: we should not gamble with taxpayer's money. If we do not reform FHA, now we will not just be rolling the dice: we will roll them even though we know they are shaved, the table is crooked, and the odds are 100 to 1 against us.

S. 566 makes reforms in FHA that, I hope, will allow us to get out of this precarious situation. The reforms are not as strong as those contained in the Senate-passed bill, and that is a shame. They will, however, certainly leave FHA in a more financially solid position than it is in today, and that is truly good news.

Mr. President, in the budget debates we have engaged in the last few weeks, we have talked a lot about protecting entitlements—those programs that eat up almost 50 percent of our budget right now. I am afraid that in our zeal to protect established Federal commitments—to health care, retirement security, unemployment relief, et cetera—we have neglected those national needs that have not been made legislative entitlements. We are a rich Nation, and it is unacceptable that we allow our citizens to go without homes or live in substandard housing. I would like to see housing made a Federal commitment as lasting and compelling as our commitment to the Social Security Program and Medicare. S. 566 is a solid beginning. But there is much more work ahead.

SERVICE COORDINATORS IN SECTION 202 HOUSING

Mr. HEINZ. Mr. President, I am concerned about a provision in the bill that relates to employment of service coordinators in section 202 housing. As my colleague knows both Houses of Congress included specific authorization of service coordinators in section 202 projects which demonstrate the need to serve a significant number of frail older residents. This provision was included because of evidence from research and testimony presented at numerous hearings about the tremendous need to serve those who are aging in place in our federally assisted housing projects. Secretary Kemp has also launched a frail elderly initiative at HUD, the core of which was announced earlier this month in proposed regulations that would authorize service coordinators in section 202 housing.

In light of this clear movement legislatively and administratively, I was confused by the statutory language that emerged from the conference committee. Sections 801 and 808 of the Cranston-Gonzalez National Affordable Housing Act contain provisions that would seemingly restrict the authorized service coordinators to "housing principally serving frail older people." This would appear to have two possible readings that I would to clarify. If the implication is that only facilities in which most older residents and frail—defined elsewhere in the statute as having problems with three or more activities of daily living—then no section 202 facility in the country would qualify. Indeed, only nursing homes would have a majority of residents with that level of disability.

On the other hand, this language could be read to intend that services be targeted principally to those who are frail. Any elderly facility will serve residents with a range of frailty, but the primary focus of the authorized service coordinators would be on serving those most in need in an effort to delay or prevent the loss of independence through institutionalization.

I say to the Chairman, I would suggest that the letter reading is most consistent with the will of Congress and the progress that has already been made at HUD. It would also be consistent with the tremendous need I have seen in my State and across the Nation. Could you clarify the intention of the conferees on this issue?

Mr. CRANSTON. I would like to thank my esteemed colleague for raising this issue for clarification. I would like to confirm your reading of the legislative language. The intention of the National Affordable Housing Act was to recognize that housing policy must address not only bricks and mortar issues, but also the human needs of the residents of federally assisted housing.

We were trying to address the services needs of the increasingly frail population in many of our elderly housing facilities, especially in older projects where the average age is often 80 years or more. Residents, who moved into new facilities when they were in their sixties and in good health, have aged in place and often require supportive services when they reach their eighties and nineties and experience disabilities.

During the course of our discussions, however, OMB was concerned that service coordinators might be placed in buildings where there were relatively few people in need of supportive social services. Such a situation would be especially likely in newly constructed buildings which have relatively young average ages. Accordingly, we included the language to which you referred. As we explained in the statement of managers accompanying the conference report, "For projects developed under the new 202 financing mechanism, the conference report limits the availability of service coordinators to projects principally serving frail elderly persons." Our judgment was that, unless newly constructed projects made a special attempt to target their admissions to the frail elderly, they were unlikely to have significant numbers of frail older residents requiring services.

It was our intention to ensure that service coordinators were placed in existing facilities that established a need for such assistance based on the numbers of frail older residents they served. It was also our intention that the duties of these coordinators be to focus "principally" on those with the greatest functional disabilities.

Under no circumstances was it our intention to foreclose the option of employing service coordinators by placing unrealistic restrictions on the levels of frailty served in housing facilities. Neither was it our intention to force housing facilities to essentially become nursing homes in order to qualify for this assistance. Our intention was to promote a dignified and independent old age for current and future residents of federally assisted housing.

Mr. HEINZ. I thank my colleague for that clarification.

Mr. President, I rise in support of the omnibus housing bill of 1990 and to commend our colleagues Senators

D'AMATO and CRANSTON who deserve praise for their tireless and effective work on this legislation. And I would also like to commend HUD Secretary Jack Kemp for his strong leadership, without which we might not have arrived at this point.

Mr. President I want to emphasize that this bill is a bipartisan effort; some of the best ideas from both sides of the aisle have been melded into it. This conference bill is the culmination of 3 years of work, on both sides of the aisle, particularly, by my colleagues from California and New York.

This bill does two important things: First, it reenergizes this Nation's comitment to affordable housing; and second, it at long last targets scarce Federal dollars directly to the poor, the homeless, and the needy.

Mr. President, the bill we reported out of conference is not perfect, it is not a panacea, and it will not solve all of our nation's housing concerns. But it is, Mr. President, a good working start and a commitment to work toward decent, safe and affordable housing for all Americans.

There is much work to be done if we are to meet this goal. Estimates have placed the number of homeless in our country between 700,000 and 2 million. There are more than 1 million families on our public housing waiting lists—20,000 in the city of Philadelphia alone. And our housing needs are not confined just to those who currently lack decent shelter. More than 4 million Americans pay more than 30 percent of their income for housing. For millions of other Americans, the lack of affordable housing means they are in constant jeopardy of lapsing into homelessness or substandard housing. In my home State the Pennsylvania Housing Finance Agency reports that more than half of all households living in the Pittsburgh area pay more than 30 percent of their income for housing.

Mr. President, these pressing housing issues have been discussed and debated in great detail in committee, on the Senate floor and in conference. I believe that this bill reflects the depth of those discussions and begins the arduous task of solving some of those concerns.

I would now just like to take a few moments to outline some of this bill's highlights:

Among the most notable of the bill's initiatives is the President's homeownership through HOPE Act, or HOPE proposal. This innovative and unique attack on urban poverty will help the homeless find decent permanent housing if it works as we hope it will. It will also assist low and moderate income and families that are trying to afford their first home through Federal inducements and incentives like the low-income housing tax credit.

HOPE encourages States, cities, and towns to solve many of our Nation's housing problems through assisting tenant purchase of public housing, FHA-insured single family and multifamily housing. HOPE ensures that tenants are active in the homeownership process by providing resources for planning and implementation of homeownership.

I believe that it is these types of initiatives which not only create housing opportunities but also create the sense of community which must exist if these programs are to have an ongoing positive effect on the lives of the persons they touch.

Mr. President, instead of simply ameliorating the symptoms of poverty, HOPE will build a ladder of opportunity. Instead of telling the poor how they should live their lives, this program empowers families by giving the resources to pull themselves out of the poverty trap so they can live in dignity, independence, and self-sufficiency. I believe that this new program will offer "HOPE" for economic opportunity and advancement, as well as better housing, and therefore the HOPE of a better life for many thousands of Americans.

Mr. President, from our initial meeting, members of the conference committee agreed that solving the FHA's financial problems was of paramount importance. As we have all learned, in spite of an annual volume for FHA-insured mortgages of $53 billion, the FHA is losing $600 to $700 million per year. Defaults have climbed to more than 11 percent per year, a default rate that translates into a depletion of FHA reserves that would bankrupt this vital agency as soon as 1995, creating another financial catastrophe similar to the S&L mess we have. Reforming FHA and putting its financial house in order required some painful decisionmaking.

FHA was founded in order to provide homeowners who do not qualify for conventional mortgages another alternative—additional hope of realizing the American dream. And Mr. President FHA has succeeded. It is one of the few Federal programs that has lived up to—even exceeded—expectations. Since its creation in 1934, FHA mortgage insurance programs have enabled nearly 40 million American families to enter the ranks of homeowners. In the process, it has transformed mortgage underwriting and pioneered new mortgage instruments that have helped millions of other homeowners.

The conference committee worked long and hard to find a compromise that will stave off FHA insolvency, preserve it for the 800,000 families that take advantage of its lower interest rates, closing costs, and availability, and maintain it as a lender of last resort for moderate-income families who cannot qualify for conventional loans.

Mr. President, all of us were reluctant to support a plan that raised the upfront costs to home buyers. For many low income and first time home buyers, the FHA is often the only alternative. But I believe the modest amount in increased upfront costs included in this bill is more than offset by the good—the preservation of the FHA solvency now and for the foreseeable future, thus enabling FHA to continue to meet its charge to assist American families who want to buy a home.

Mr. President, I take special pride in section 5 of this conference bill which contains provisions I authored which ensure that drug dealers and criminals who prey on the senior citizens and honest citizens who live in the Nation's public housing will no longer be able to find safe haven behind a cumbersome and unnecessarily prolonged administrative grievance process.

These provisions which originated in the Senate ensure that public housing authorities will be able to evict criminals in real time, not months and years later after a lengthy administrative procedure first and then when a series of civil court steps have been completed. This new policy will ensure that families who live in and near public housing can get drug dealers out of their communities with maximum dispatch, and it will ensure taxpayers that criminals hiding behind cumbersome and outdated laws are not living in taxpayer supported housing.

I am also happy to report that the bill contains my provisions which require the Secretary of HUD to study the feasibility of a prospective payments system for PHA's. Several years ago Congress commissioned a study of how the Medicare reimbursement system could be reformed, and the result was DRG's. Hospitals now know in advance what Medicare will allow for a medical procedure. Inefficient hospitals lose under this system, but hospitals that provide medical care efficiently are rewarded. By providing an incentive for hospitals to operate efficiently, DRG's save money for Medicare and patients alike.

Mr. President, this study by HUD of a capitated system of subsidy to housing authorities aims at reforming public housing assistance in the same way that DRG's forced fiscal discipline and efficient management on hospitals.

Currently, there is no incentive for PHA's to become more efficient. Operating subsidies are calculated by formula. We need to find a better way, a way that doesn't penalize good FHA's, an approach that doesn't hold out a virtual blank check to local governments that exercise no responsibility

over their PHA and pad PHA payrolls with patronage, sweetheart contracts, and waste.

A capitated system would force housing authorities and the local governments that control PHA boards of directors to discipline themselves.

There should be a financial penalty for waste and incompetence. Payrolls swollen by decades of political patronage should be slashed. Outside contracts should be subjected to the rigors of competitive bidding. Local elected officials and housing authority managers should be accountable to public housing tenants and local taxpayers for providing decent housing and for living within a budget.

Mr. President, I believe if we could find a way to reform something as complex as the way the Federal Government pays for health care, we can certainly do the same for public housing. We can do better for the tenants, we can do better for the communities in which they live, and we can do better for the taxpayers. And I believe that commissioning this study of capitated payments—of DRG's for public housing, if you will—will set us on the right track, and allow us as soon as next year to impart some reason and accountability to a Federal program vital to hundreds of communities and millions of families.

Mr. President, there is one more initiative in this bill that deserves mention—the HOME Program. This program is a modified version of the HOPE Program passed by the Senate as part of its housing bill. This housing block grant will provide money directly to the communities who need it the most, and who know best how to use it to meet local needs.

The HOME Program represents a significant departure from the past. It acknowledges that housing problems require a Federal-State-local partnership with the private sector. We will not solve housing problems in our communities by passing down scores of edicts and million of words in regulations from Washington, DC.

Mr. President, local problems are best solved when communities devise their own solutions. In my own State, public-private partnerships, like that of north Philadelphia's National Temple Non-Profit Corp. with the Pennsylvania Housing Finance Agency, have created new resources to provide low income housing for thousands of Pennsylvanians. These initiatives must be encouraged, and I believe that this bill and the HOME Program moves us in that direction.

Finally, the conferees addressed the vital issue of prepayment and the possibility that tens of thousands of housing units could be removed from the Nation's assisted housing stock in the coming years. As many as 350,000 units nationwide may be lost as a result of the owners of section 236 and other assisted housing exercising their right of prepayment. Preserving the stock of assisted housing and protecting owners rights was a difficult but crucial challenge in this bill.

Our solution recognizes the contractual rights of owners while ensuring that the maximum numbers of assisted housing units will be maintained. The solution is not perfect one; it will cost $7 billion more to implement the conference prepayment plan than the original Senate prepayment plan. But his plan will: First, provide fair incentives to owners to preserve low income housing; second, allow owners the option of prepayment; and third, provide substantial protections to tenants so that they will not be forced out of their housing.

While I am not completely happy with the conference prepayment plan, especially with its costs, I believe that under the circumstances and the impending deadline this is the best plan we could get.

Mr. President, this bill is not a panacea for the Nation's housing problems, but it is a good start. But this bill, does include provisions which begin to simplify programs and eliminate the bureaucratic delay that threatens the viability of assisted housing communities and prevents badly needed housing assistance from reaching families and communities.

Mr. President, Before I yield the floor I'd just like to take a few more minutes to discuss public-private partnership. We have tried to encourage public-private partnership. HOME and HOPE are examples of our commitment to these public and private type partnerships.

It is in that spirit that I would like to take a few moments to discuss what I believe should be a model for public-private partnerships. That project is called HOMESTART.

Mr. President, this unique public-private partnership will provide homeownership opportunities for an estimate 1,500 low- and moderate-income Pennsylvanians. This type of innovative partnership should be viewed as a model for other States in their attempts to provide affordable housing for their citizens.

Mr. President, in this time of limited Federal resources, we must recognize and commend such public-private partnerships and their ability to expand the availability of affordable housing for our hard-working citizens. HOMESTART combines the resources and expertise of the office of the State Treasurer of Pennsylvania, the Pennsylvania Housing Finance Agency, and Fannie Mae—Federal National Mortgage Association—to make homeownership a reality for Pennsylvanians who might otherwise be priced out of today's marketplace.

Mr. President, HOMESTART was developed to help meet the need of first-time home buyers with incomes below 150 percent of their area's median income; single parent families with dependent children; and veterans who have not been served by VA programs. HOMESTART will provide interests rates as much as three-quarters of one percent below market rate and reduced closing costs for qualified borrows.

Under the program, which is being administered for the Treasurer by the Pennsylvania Housing Finance Agency [PHFA], lenders throughout the Commonwealth will originate mortgage loans for qualified low- and moderate-income homebuyers. PHFA will exchange the mortgages for Fannie Mae mortgage-backed securities [MBS] that will be purchased by the office of the State treasurer. Fannie Mae has agreed to securitize $100 million in mortgage loans originated under the program.

Mr. President, Fannie Mae is just one of a number of private companies ready, willing, and able to assist our citizens in obtaining affordable housing. These types of partnerships offer unique opportunities to our citizens and will enable thousands of Americans to achieve the American dream of homeownership which is the intent and purpose of the omnibus housing bill of 1990.

PUT OPTIONS UNDER SECTION 221(g)(4)

Mr. D'AMATO. Mr. President, I would like to clarify the intent of the conferees with respect to section 336 of the National Affordable Housing Act. That section requires the HUD Secretary to conduct auctions of certain subsidized mortgages. To facilitate the conduct of such auctions, the provision requires a mortgagee that elects to assign an insured loan to provide certain types of information to the Secretary and other bidders.

In specific, the provision requires mortgagees to submit information on tenant characteristics and the level and duration of applicable Federal subsidies. A number of mortgagees have contended that this requirement would put an undue burden on them since they do not have this information and cannot readily collect it.

I believe that the provision gives HUD sufficient discretion, in the promulgation of regulations, to determine what types of information are generally available to mortgagees in the normal course of business. Where mortgagees do not have access to certain types of information—like tenant characteristics and the level and duration of applicable Federal subsidies—the provision would require HUD, rather than the mortgagees, to supply such information.

Mr. CRANSTON. The Senator's understanding is correct. It is the intent of the conferees that HUD promulgate sensible rules to implement these pro-

visions. In particular, the Secretary should identify the types of information that HUD, rather than the mortgagee, is more capable of providing to persons bidding at auction. It would appear that information regarding tenant characteristics and subsidy duration and level would fall into that category.

Mr. KERRY. Mr. President, today marks a watershed for housing—for people who need housing and for those responsible for meeting that need. As we vote on final passage of the conference report on the National Affordable Housing Act, we begin to chart a new course in housing policy—one that is long overdue and one that can carry us well into the next decade.

I am proud and pleased to have been an original cosponsor of the Senate passed version of the National Affordable Housing Act, the legislation that formed the basis for the conference report we are considering today. This legislation represents the fruition of a tremendous amount of labor and effort by many people over the last 3 years. In that regard, Senator CRANSTON, the distinguished Senator from California, who chairs the subcommittee on which I am privileged to serve, deserves enormous credit for the fact that this bill is here at this moment in time. I would also like to acknowledge the effort of my colleagues who served as conferees with the House on this measure. The task given them was far from easy, but the proof of their efforts is before us today.

Mr. President, some would argue that we do not need a housing policy, that we don't need to build new housing, that everything in the housing world is fine and dandy. These assertions could not be further from the truth.

Over the last decade, billions of dollars in housing programs for the poor were eliminated, which, according to CBO, meant that up to 1.8 million fewer families were served. This 80-percent cut in funding for housing programs inevitably translated into a decline in overall housing production, a decline in our ability to rehabilitate existing housing and a serious decline in our ability to serve those most in need.

The reasons for this legislation are as tragic as they are clear. We have a crisis in housing, one brought about by a decade of decimation and neglect and we need not look very far to see the effects.

Cities and towns throughout this great Nation are filled with the homeless—individuals, families with children, veterans, even elderly. Millions more who do manage to find shelter are paying huge amounts of their income for rent, living in substandard housing or both.

Young people who grew up with knowledge of the American dream of homeownership find it increasingly difficult if not impossible to fulfill that dream.

Our public and federally assisted housing—places where decent people are attempting to lead productive lives and raise their children to become productive members of society—are being overrun by drugs.

In Massachusetts, approximately 150,000 low- and moderate-income renters pay more than 50 percent of their income toward rent and utilities, living in housing with severe physical deficiencies; another 39,000 families and close to 10,000 elderly persons are waiting to be placed in State-aided public housing and about 23,000 Massachusetts individuals and families are homeless.

We have a housing crisis in America and it is about time that Washington, working with State and local governments, the private sector and nonprofit organizations, began to solve it, not cause it or contribute to it as it has so negligently done in these past years.

The legislation we have before us today begins to reverse this situation. The bill authorizes $17.9 billion in spending for 1991, about $3.3 billion over current spending levels and $20.6 billion in 1992, about $5.5 billion above current spending. Although I am pleased that these figures reflect an increase in funding over the Senate passed bill, I would have preferred the 3-year authorization contained in the original Senate bill did, instead of the 2-year authorization contained in the conference report.

Nevertheless, the funding authorized is a legitimate start in the right direction and it represents an increase in housing investment instead of continued decline.

It goes a long way to fulfilling our objectives of providing affordable housing, of alleviating homelessness, of assisting first-time homebuyers and of protecting the stock of housing threatened with loss as a result of the expiring use issue. I am convinced that this legislation can mobilize a sustained national effort to provide more affordable housing. The foundation of this act is its attempt to guide and strengthen the existing cooperation among States, local government, private industry, and nonprofit organizations and more importantly, reestablishes the Federal Government as a viable partner in that cooperation—all with the goal of preserving and expanding the supply of affordable housing.

Mr. President, this bill is not a perfect document, but on balance, it is a good bill. As with virtually any piece of legislation, we had to compromise to get where we are today.

There are things left out of this bill that I believe would have made it a better bill. I am disappointed that we were unable to reach consensus in conference on the homeless supportive services amendment. During the Senate debate we included in this provision language which would have given priority to homeless veterans and to those organizations that have demonstrated effectiveness in serving homeless veterans. The situation of homeless veterans is a disgrace to our country. It is unfortunate that we will not, in this bill, take the important step forward to ensure that those who have served their country in its time of need are not left homeless, without shelter and abandoned in their time of need.

By the same token, there are things included that might have been better left to be taken up another day. But by and large, Mr. President, this is a bill that we can live with and more importantly, one we can work with. For the first time in a very long time, we have a comprehensive housing policy that can take us well into the next decade.

Although there is much in this bill to be proud of, there are several provisions that are of particular interest and concern to me and to the people of Massachusetts.

First, I think we have made a bold effort under difficult circumstances to come up with a permanent solution to the issue of preservation and the threatened loss of hundreds of thousands of affordable housing units.

I believe that the preservation section of this bill carefully balances the rights of tenants threatened with displacement and the rights of owners to receive a fair return on their investment. Instead of losing thousands of units—30,000 in my State of Massachusetts alone—we will be protecting and preserving low-income housing for the future. The preservation solution includes a clear, five-step process that can withstand constitutional muster.

In addition, the preservation section includes language to assist States in preserving State-subsidized affordable housing that is subject to loss through mortgage prepayments.

In Massachusetts, 6,800 units were built under the State 13(a) program and within the next 4 to 5 years, 1,500 of these affordable units could be lost and tenants displaced as owners have the option to prepay their mortgages and convert to luxury rate rentals or condominiums. The language in this bill will help to retain these properties as affordable in the same way that we do in the Federal preservation program.

Second, I am pleased that we were able to include reauthorization of the 1988 Public Housing Drug Elimination Act and to expand it to include federally assisted housing as well. Too much of our public and federally assisted housing have become warehouses for the sale of drugs and too

many childen living in these areas have been exposed to extraordinary amounts of violence and drug-related crime. I have always believed that we must attack the drug problem in a wholesale way—a piecemeal approach is just not effective—and the same holds true for eliminating drugs in our housing. The grants provided by this program—$160 million authorized in 1991, $10 million of which will be set-aside for privately owned, federally assisted housing—will provide yet another tool in our efforts to rid this housing of drugs and to provide a decent place for people to live.

Finally, I would like to mention inclusion of a study that will be conducted by the Department of Housing and Urban Development. This study will examine the feasibility of providing incentives for companies to invest in areas with high incidence of drug use and drug related crime. It builds on the concept of enterprise zones which are designed to encourage business investment in economically distressed areas in the expectation that this will lead to job growth and economic development. It seems to me that our drug infested areas present us with that very special challenge and I look forward to the results of the study.

Mr. President, the National Affordable Housing Act authorizes funding for 2 years to support existing low-income housing programs and to provide an additional 360,000 units of affordable housing. The Housing Opportunity Partnership [HOP] Program included in the Senate passed version of the bill is now the HOME investment partnerships, but the mission remains essentially the same. The HOME Program will provide State and local governments with the financial and technical resources necessary for them to respond to local housing needs and to expand affordable housing supply.

I am pleased that the HOME Program also includes the Community Housing Partnership Program and provides a set-aside of 15 percent of HOME investment partnership funds for investment in housing to be developed, sponsored or owned by nonprofit community housing development organizations. Nonprofit organizations are often a successful and innovative source for affordable housing. Several nonprofit organizations in Massachusetts have successfully helped our State expand and preserve its supply of affordable housing. The set-aside contained in this legislation will support and encourage their effort in this regard.

Mr. President, our Nation's elders require housing too and they present us with unique challenges that go beyond bricks and mortar. Twenty to twenty-eight percent of older tenants living in assisted housing experience some frailty and 12 to 23 percent of these tenants are at risk of being institutionalized within 2 years. The National Affordable Housing Act contains some important policy changes that reflect the unique needs of our seniors.

The bill revises the existing Congregate Housing Services Program to include funds for capital improvement, management and services to enable frail elderly to live independently in federally assisted housing.

In the same vein, the National Affordable Housing Act recognizes the special needs of persons with disabilities, including persons with AIDS. The bill requires that the HUD Secretary ensure that assistance be provided through a range of housing options, including group homes, independent living facilities, multifamily housing, condos and co-ops and that the housing not only include the appropriate supportive services for the residents, but also provide opportunities for optimal independent living and facilitate the disabled residents' participation in the community at large.

Mr. President, we have come a very long way in redefining our national priorities in housing. The bold step we are taking today will mean a great deal to millions of people throughout this country who look to us for leadership, compassion and concern and who expect us to live up to the goals we set for ourselves back in 1949.

I am convinced that this legislation can mobilize a sustained national effort to provide more affordable housing. I am pleased to cast my vote in support of this legislation. It is time for a change—and this bill will move us in the right direction.

Mr. MITCHELL. Mr. President, an important part of the American dream for our families is a decent and affordable home. Too many American families today have no home. Too many live in substandard housing. Too many struggle each month paying a large part of their modest incomes for rent.

As part of the Democratic agenda announced last year, we sought enactment of a major housing bill—legislation to address the availability and affordability of housing, a basic necessity for all American families.

I commend Senators CRANSTON and D'AMATO for their work over the last several years in putting the National Affordable Housing Act together. I also thank Senator SARBANES who played a critical role in keeping this legislation on track, both during passage of the Senate bill last June and during conference committee deliberations this fall. Without the continued devotion and dedication of these Members, we would not be here today.

In Maine and throughout the Nation, the lack of affordable housing is a serious problem.

Despite several years of economic growth, the percentage of Americans owning their own home has fallen to its lowest level in 15 years.

In many areas of the Nation, young families are simply priced out of the market. Home ownership is becoming a distant dream for this generation of young Americans.

For low income renters, the situation is worse. Funds for HUD assisted housing were slashed by 80 percent during the last decade. Waiting lists are long and often closed. The ranks of the homeless are growing. A national embarrassment has grown into a national disgrace, now that families with children are the fastest growing group among the homeless.

As majority leader, I recognize the difficult budget dilemma we face; the many unmet needs in our society that must be reconciled with budget restraint. But I also recognize the importance of an affordable housing program for this Nation and I am proud that a comprehensive housing bill has been a priority for the 101st Congress.

But the last decade we repeatedly heard that the Nation's housing problem was one of affordability, not availability. It is both.

In too many communities throughout the country, rental housing for low-income people is simply not available.

The National Affordable Housing Act will give States and local governments more flexibility in designing strategies to expand the supply of affordable housing.

Through HOME Investment Partnerships under this legislation, cities and States will receive new funds for the rehabilitation, acquisition or new construction of affordable housing.

We have had a decade with almost no new construction or substantial rehabilitation. While 36.2 million households are currently eligible for Federal housing assistance, fewer than 5 million receive housing assistance.

It is time we assist cities and States with providing the tools necessary to rebuild this Nation. It makes little sense to wait for families to become homeless before we begin to care whether or not they have a home.

Another major aspect of the National Affordable Housing Act is the section pertaining to prepayments.

According to the Congressional Budget Office, mortgages on more than 360,000 units, about 60 percent of the older HUD assisted low income housing stock, will become eligible for prepayment during the 1990's.

Of the tenants in these projects, about 70 percent are very low income—having income less than 50 percent of the area median. Many of these households are elderly.

While an interim response to this problem was initiated in the 1987 Housing Act, that is scheduled to expire at the end of October. The National Affordable Housing Act includes a permanent solution.

I believe the prepayment provisions maintain a balance between providing the owners with a return on their investment and preserving the housing so that hundreds of thousands of people aren't forced on to the streets.

The legislation also provides for new initiatives and increased funding for rural housing provided by the Farmers Home Administration [FmHA]. This is particularly important since three out of every four rural households spend more than 30 percent of their income on housing.

The backlog of approved applications for FmHA rural rental housing is nearly four times the amount appropriated in fiscal year 1990. And for FmHA home ownership, only 1 in 3 applications can currently be funded. An increase in funding for rural housing is critical for States like Maine where a large number of families are in dire need of housing assistance.

I am also pleased that the legislation extends the existing Congregate Housing Services Program for another 3 years. There are 60 CHSP projects throughout the Nation, 3 of them are in Maine. This program enables elderly residents to live independently by providing a few light services, such as meals, transportation, housekeeping, and counseling. Often it is the provision of these services alone that help the elderly avoid the costs of living in a nursing home.

There are 21.7 million American households classified as very low income. Another 14.5 million American households are classified as low income. Most of these families are working families. They are doing everything they can to make ends meet. But the costs of housing, health care, and basic necessities like food and utilities are all increasing much more rapidly than their incomes.

It was for these families that this legislation was designed. The private sector can't provide for these families. There is little incentive. The cost of construction and maintenance is high, and the income of these families is low. Without Federal assistance, they will be forced to pay an enormous amount of their income in rent or live in substandard and unsafe housing.

I believe that the National Affordable Housing Act is a sound bill. Compared to the need, it makes a modest attempt to recognize that we ought to set a priority to provide housing—one of the most basic of necessities—to those families who are struggling to make ends meet.

A national housing policy that restores the reality of the American dream for ordinary working people is both a defense against disrupted communities and one of our best ways to restore hope to all Americans.

FUNDING OF THE VACANCY REDUCTION PROGRAM

Mr. D'AMATO. Mr. President, I would like to clarify with my chairman, the distinguished Senator from California, the source of funding for the Vacancy Reduction Program, authorized in this legislation.

For the benefit of my colleagues, the Vacancy Reduction Program is designed to reduce long-term public housing vacancies at high vacancy public housing authorities [PHA's] during a 5-year period.

PHA's eligible to participate are: First, those whose vacancy rate is twice the average vacancy rate for PHA's nationwide, or second, PHA's designated as troubled pursuant to the Public Housing Agency Reform provisions of this bill.

One hundred and five million dollars is authorized for this initiative in fiscal year 1991 and $220 million is authorized in fiscal year 1992 from amounts authorized in the bill for the Public Housing Modernization Program.

The bill provides, and what I want to make clear, is that funds for this vacancy reduction effort are to be deducted off the top of the amount of those funds—authorized/appropriated—for public housing modernization to be allocated to PHA's with more than 500 public housing units.

Is that the understanding of the chairman of the Subcommittee on Housing and Urban Affairs?

Mr. CRANSTON. The able ranking member of the Housing Subcommittee is correct. It was the understanding of the conferees that the funds for the Vacancy Reduction Program would be set aside solely from those modernization funds made available for those PHA's with more than 500 units, regardless of whether the program is competitive or allocated by formula. In fiscal year 1992, that will mean that the Vacancy Reduction Program will be a set-aside of funds from the formula allocation.

Mr. D'AMATO. I thank my colleague for that clarification. The bottom line is that the Vacancy Reduction Program funding will come off the top of the modernization formula allocation in 1992. In fiscal year 1993, we will have to review how these programs are working and what the funding needs are in the course of another reauthorization bill.

ENFORCEABILITY

Mr. KERRY. Mr. President, I have a question concerning the issue of judicial review of the various substantive provisions of the conference report. In at least one place, in title VI, the preservation provisions, the statutory language expressly creates a right on behalf of owners to sue HUD to force it to provide the financial incentives required within the timeframe specified by the law. This is a fairly unusual provision, in light of the fact that Congress usually intends that those adversely affected by statutory violations have the right to seek redress for those violations in the courts. I just wanted to make sure that the conferees share my understanding that one isolated provision expressly allowing owners to sue HUD for noncompliance does not limit the ordinary congressional intent on enforceability. Tenants, applicants, and other beneficiaries of the statutory provisions of the conference report can sue to enforce their Federal rights under the section 1983, implied right of action and third party beneficiary doctrines, and under the Administrative Procedure Act, is that not correct?

Mr. CRANSTON. Yes, the Senator is correct that these statutory provisions are generally intended to be judicially enforceable, except as review is expressly precluded by the language of the conference report. In the rare instance that we did not intend courts to review alleged violations of our laws, the conference report uses statutory language that expressly precludes judicial review, such as in the provisions governing the local planning strategies submitted for HUD approval under the HOME Program.

Mr. KERRY. I thank the chairman for his clarification of this matter.

CORRECTION OF STATEMENT OF MANAGERS

Mr. CRANSTON. Mr. President, it appears that the House filing of the statement of managers for S. 566 failed to include certain agreed-upon language regarding qualifications-based selection procedures for architectural and engineering services. I, therefore, have decided to reprint the entire statement of managers' language regarding this important issue.

CONFEREES COMMENT ON QUALIFICATIONS-BASED SELECTION PROCEDURES

Because of HUD's conflicting guidance, architectural and engineering [A/E] firms competing for contracts financed through the public housing and community development block grants [CDBG] programs are not being selected according to the procedure, the qualifications-based selection or QBC procedure, that assures the selection of the best qualified firm. Under QBS, A/E firms compete based on their professional qualifications and quality of services. A contracting officer selects the most qualified firm based on the capacity, technical qualifications, timely performance, accomplishments, reputation, and references and then negotiates a fair and reasonable price for the service. If a fair price cannot be agreed to with the most highly qualified firm, negotiations as to price begin with the second best qualified firm.

QBS is the preferred system for selecting A/E services because the precise scope and range of the design services which are the basis for any contract price cannot be accurately determined until specific negotiations begin. Innovative approaches and al-

ternative designs or methods arise when a client and a design professional develop the precise scope of a project together. Too often when a scope of work is developed as part of a price bidding system prior to the selection of an A/E firm, it is so vague that inaccurate assumptions are made by the A/E firm responding to the solicitation. Even when a public housing agency or CDBG grantee has inhouse professional design staff sufficiently skilled to develop a detailed scope of work upon which an A/E's price bid can be based, the complexity of the contract cannot be anticipated and the bids often do not accurately reflect the cost. QBS requires A/E firms to compete based on skills, experience and ability to perform the required services—not on the illusory economy that a low bid may seem to provide. Low bids requiring substantial change orders or resulting in high construction or high life-cycle operating or maintenance costs are not cost effective.

While HUD's regulations permit the use of QBS in selecting A/E services, they also cite two procedures that are less appropriate for the selection of such services: Qualifications-plus-price or small purchase procedures for contracts under $25,000. In an attempt to clarify its procedures, HUD has issued conflicting notices, handbooks and letters that have confused public housing authorities and CDBG grantees. Some grantees tell A/E firms that base their selection solely on the lowest bid; others believe they must use small purchase procedures that stress price, not quality; while others explain that notwithstanding State or local requirements requiring the use of QBS, HUD requires competition based on qualifications-plus-price.

The Department should eliminate this confusion immediately by issuing regulations applicable to the CDBG and public housing programs clarifying that: QBS is the preferred procurement process for the selection of A/E services; a simplified QBS should be used in small purchase procedures; and whenever State or local law requires the use of QBS for government-funded A/E services, QBS should be used for CDBG and public housing contracts that solicit such services.

RELATED PARTY RULE

Mr. KERRY. Mr. President, I have a question about the scope of section 231(c) of the conference report. My concern pertains to the so-called related party rule that would exclude certain organizations from the definition of "priority" and "qualified" purchasers. First, let me say quite clearly that I am very pleased that one thrust of the prepayment solution is to transfer this housing to new ownership. I think the "related party" limitation is prescient and will assure the integrity of the system that has been created. As I understand the limitation, it was designed to assure that legitimate, independent nonprofits and others would have special purchase rights. The central purpose was to prevent for-profit owners from setting up sham nonprofits for the purpose of buying back their own properties in a pre-arranged sale transaction between affiliated entities. Or to prevent for-profit entities from selling the housing to related for-profit entities. Have I understood correctly, Mr. President, the purpose and spirit of the related party rule?

Mr. CRANSTON. The Senator is correct in his understanding of the related party exclusion and the mischief it was designed to forestall.

Mr. KERRY. The concern that I have, Mr. President, is about a situation that might not have been contemplated at all when the rule was being drafted. I want to be sure that the situation I have in mind would not be covered by the related party rule, which is written quite broadly, and I can well appreciate the reason for this. There are certain nonprofits who were involved in developing this housing many years ago, either directly or through for-profit subsidiaries. And these nonprofits, or their affiliates, now serve as general partners or co-general partners in partnerships that own these projects. The nonprofit sponsor joined arms with the builder or some other entrepreneur to get the housing built. But the intention was always that some day, when the tax benefits had been depleted and the limited partners wanted to sell, that the nonprofit sponsor would be able to buy the project from the partnership and own it outright. Maybe the nonprofit has been saving up its capital through the years in preparation to buy the project from the partnership. And maybe it intended to use part of the proceeds that would flow to it at the time of sale, to buy the project from the partnership. The question is how the related party rule would apply in this type of transaction.

I can tell the Chairman, that these circumstances are quite real. In Boston's South End, for example, one of our most successful community development corporations, Inquilinos Boricuas en Accion [IBA], sponsored the development of a section 236 project many years ago. In order to cover the costs, it was necessary to syndicate the project. So today, a for-profit subsidiary of IBA is one general partner and the other is the builder, and there are several passive investors. Over the last year, IBA has been working very hard with the tenants to prepare for an acquisition of the project from the partnership. The prepayment eligibility date for the project is drawing near. My concern is that this "related party" rule is susceptible to an interpretation that since IBA's subsidiary is part of the ownership entity that is selling the project, that IBA as buyer of the project would be disqualified because of the related party definition.

Mr. CRANSTON. I am glad that my colleague from Massachusetts has raised this concern because it has been raised by several nonprofits throughout the country who are participants in public/private partnerships. Many of these nonprofits are part of religious organizations. The related party disqualification was not intended to cover the circumstances you have described. The managers have asked HUD to develop sensible rules to implement the related party provision. If there is any remaining question about the issue you have raised, I hope that it is addressed clearly by the department in regulations. If an organization that is affiliated with the nonprofit sponsor of the housing does not pocket any money from the sale, but rather uses its share of the sale proceeds for project purposes there should not be any question whatsoever. I take it that in the situation the Senator is describing in Boston, the nonprofit affiliate might use its share of the sale proceeds to cover part of the acquisition costs (such as the 5% equity requirement for a 241(f) acquisition loan) or would otherwise reinvest the proceeds back into the project for rehabilitation or some other purpose?

Mr. KERRY. Yes, this is the type of transaction that is contemplated.

Mr. CRANSTON. Well, rest assured that it is not the intention of the managers to preclude this type of transaction under the related party rules.

Mr. BRADLEY. Mr. President, I rise in support of the conference report on the National Affordable Housing Act. Congress long ago mandated the Department of Housing and Urban Development to create conditions under which every family will have decent and affordable housing. We have a long way to go to reach that goal, but I believe this legislation is an overdue step in the right direction. I commend my colleagues in the Subcommittee on Housing and Urban Affairs for bringing this legislation to the floor.

I am pleased to have included in this bill a provision which I have introduced in the Senate, the SPORT [Special Program of Recreational Training] Act of 1990. This authorizes the Department of Housing and Urban Development [HUD] to provide grants for organized sports activities for young residents of public housing.

As a former professional athlete, I know firsthand the importance of sports for young people. Organized sports build discipline, self-confidence, and help young people through the difficult process of growing up. They instill values that last a lifetime. They also provide structure and positive

models for people growing up in public housing where the pressures are particularly intense.

The SPORT Program provides a useful weapon in the war on drugs. Illegal drugs are everywhere but their impact is intense on kids in public housing. Sports can mean the difference between a life of drugs and crime and being a productive member of society.

The National Affordable Housing Act points us in the right direction in housing policy—toward a day when we bring together housing vouchers and new construction to stop the slow burn of affordable housing stock in our cities. Vouchers are a key component of sound housing policy, but vouchers are not homes. We need balanced programs. We have to create more housing at the same time we make that housing affordable by giving people vouchers. New construction programs and vouchers should reinforce one another in every community. If we continue to see them only as alternatives—construction or vouchers—we will not meet this country's increasingly severe housing needs.

The condition of housing for many Americans is deplorable. Millions of Americans are without shelter, and New Jersey is no exception. The shortage of rental housing is so extreme that in 1987 over 1,000 New Jersey families were not able to use their Section 8 rental subsidy certificates because they could not find standard rental housing.

This bill contains important provisions that will expand the supply of affordable housing and make housing more affordable for low-income families. I am glad that this provision allocates housing assistance to States and local governments through an open, objective process. This process gives more flexibility to those who are best able to provide low income housing.

I am pleased to see that the proposal put forth from Secretary Kemp regarding tenants owning their homes has been incorporated into this bill. The Homeownership and Opportunity for People Everywhere [HOPE] proposal will give many low-income families the economic empowerment that they so desperately need. More opportunities to own a home and broader support services will provide a critical stepping stone for many low income Americans.

I am particularly pleased to see that this bill addresses the issue of prepayment in an equitable manner. The Congressional Budget Office has determined that during the 1990's, over 280,000 federally assisted housing units will become eligible for prepayment and could easily be lost to low and moderate income families if they are converted to market prices. In New Jersey, the effect could be staggering, with 1,334 low-income units at risk this year, and 8,839 units by the year 2000—2,210 of these units are senior housing. We owe our most vulnerable citizens special protection.

In addition to prepayments, I am especially pleased that the bill directly addresses the problems of homelessness. This legislation consolidates existing McKinney housing programs with control given to the States and local governments who are best able to assess the extent of their homeless problems and devise long-term comprehensive strategies for addressing them. The existing programs are too rigid and many small, community-based nonprofit groups find them difficult and cumbersome. It is necessary that states and localities be given the flexibility to use formula funds under the consolidated program as they see fit to address honelessness in their area.

Mr. President, the eighties have been a decade of neglect for many Americans when it comes to basic human needs like shelter. I urge my colleagues to reverse this trend and make the nineties a decade of hope when all citizens will be able to experience the American dream and have a decent home to call their own.

CLARIFICATIONS IN MORTGAGE SERVICING

Mr. CRANSTON. Mr. President, there were several technical amendments that the Senate had requested and the conferees agreed to incorporate in section 941 of the conference report. The technical amendments were intended to provide a transition period for mortgage lenders and servicers to amend forms and institute procedures to comply with the provisions contained in this act.

The statement of managers language references agreement to a 60-day period delaying the effectiveness of the provisions contained in section 941. The statutory language, however, inadvertently does not contain the agreed upon language. It is the intention of the conferees that certain mortgage servicing requirements become effective 60 days after enactment of this act. Specifically the amendments made in section 941 of this act to RESPA sections 6(b), 6(c), 6(d), and 6(e).

The conferees also agreed to include in section 941, an amendment to RESPA section 6(e)(2)(A) which would include "or" at the end of the clause. This clarifies that a servicer has complied with the duty to respond to inquiries regarding the mortgagor's account if any one of the following actions are taken: First, the account has been corrected; or second, after conducting an investigation the servicer believers the account is accurate and notifies the borrower; or third, after conducting an investigation the servicer explains to the borrower that the information is unavailable or cannot be obtained by the servicer.

Mr. DIXON. Mr. President, I rise today in support of the conference report on S. 566, the National Affordable Housing Act.

First, please permit me to commend the chairman of the Housing Subcommittee, Senator CRANSTON, and the ranking minority member, Senator D'AMATO, on their leadership during the last 3 years in developing what has now become the foundation of this important piece of legislation.

Mr. President, housing programs have steadily declined as a national priority. Federally assisted programs have been slashed by about 80 percent during the last 10 years. S. 566 will begin to reverse this housing trend.

This is a comprehensive 2-year Housing authorization bill which will establish a firm national housing policy. When implemented, it will provide approximately 360,000 additional units of affordable housing for low- and moderate-income American families.

In fiscal year 1991, the conference agreement will authorize $17.9 billion in housing programs, about $3.4 billion above current spending levels. It will authorize $20.6 billion in fiscal year 1992, about $5.5 billion above current spending.

I support the new programs in the agreement. Although I am very concerned about the size of the Federal budget deficit, I am troubled with the disproportionate share of cuts in our housing programs. This country cannot continue to turn its back on the housing needs of its citizens.

Mr. President, there are many provisions in this conference agreement which I feel are very significant to our national housing goals. These include the Homeless, Elderly, and Handicapped Housing Programs; the Public Housing Development Program; the administration's HOPE proposal; rural housing programs; expiring section 8 contracts; the Community Development Block Grant Program; a Public Housing Mixed Income Demonstration Program; and Reauthorization of the Public Resident Management Program, which I initially sponsored.

I call to the attention of my colleagues three additonal provisions in the agreement which I believe should be highlighted.

First, the bill creates a new housing initiative, the HOME Program which will consolidate most existing housing programs. HOME will provide flexibility and autonomy to State and local governments so that they may determine how best to meet their housing needs.

Mr. President, as a conferee, I supported a compromise provision in the HOME Program where the matching Federal funding to State and local governments creates a disincentive to new housing construction and to substantial rehabilitation of housing. The bill

requires States and localities that use Federal dollars for new construction to put up $1 in local money for every $2 of Federal funds, and $1 for every $3 for substantial housing rehabilitation, compared with $1 for every $4 for housing rehabilitation.

This is a provision which I would like to have seen deleted from the conference report. However, it is strongly advocated by the administration. The provision is one which the administration stated must be included in order to obtain its support for S. 566.

The funding disincentive can be detrimental to my own State of Illinois which has a considerable aged housing stock that would require substantial rehabilitation. Additionally, my State has areas which are experiencing an acute shortage of available and affordable decent housing and would require some new construction.

Rather than the match imposed in this conference agreement, my preference is to have an adequate but uniform local and State requirement of jurisdictions to qualify for Federal resources.

Mr. President, I commend Senator CRANSTON, however, for his acceptance of other recommendations which I proposed and I believe made improvements in the HOME Program.

The second provision which I wish to call to the attention of my colleagues is the Federal Housing Administration [FHA] reform. S. 566 will replenish the FHA Mutual Mortgage Insurance Fund, which provides loans to home buyers, while continuing to achieve the goal of providing home ownership opportunities to low- and moderate-income firsttime home buyers.

The conference agreement no longer permits FHA to insure vacation homes, and it makes permanent the current FHA maximum loan limit of $124,875. The up-front premium will be reduced from 3.8 percent of the amount of the original insured principal obligation of the mortgage, to 2.25 percent, and periodic payments will be based upon the amount owed after the initial payment.

The third provision which I will highlight offers a permanent solution to one of our most troubling housing problems—the need to avoid the displacement of thousands of low-income families, while honoring contractual mortgage prepayment commitments made to present landlords.

Experts estimate that more than 350,000 housing units could be lost through prepayment in the next 15 years. According to the Chicago rehab network, more than 21,000 units in 138 buildings around the State of Illinois fall under the Government insured program which affects these units. Mortgages could be prepaid on 89 of these mortgage-subsidized buildings in Illinois.

Essentially, the conference agreement will provide fair market compensation to owners who wish to continue their project as low-income rental units. Alternatively, owners could sell the project to new owners who wish to continue the income composition of the units.

The agreement would permit owners to prepay their mortgage loan if the value of the project exceeds the ability of the buyer to purchase the project while utilizing Federal, State, or local subsidies.

Mr. President, I believe that S. 566 is a good bill. It places housing programs back on our national agenda. I urge my colleagues to support the conference report on S. 566.

Mr. DODD. Mr. President, I am happy this evening to rise in support of the conference report on S. 566, the Cranston-Gonzalez National Affordable Housing Act. At a time when many Americans are suggesting that our Federal Government cannot govern, this bill is evidence that Congress and the administration can make progress on the pressing problems of the day through hard work and compromise.

This bill represents a sea change in Federal housing policy. During the 1980's Federal spending on housing programs was slashed by more than two-thirds, even as the number of families living in poverty and in need of affordable rental housing grew. The fact that a decent place to live is integral to an individual's dignity and sense of self-worth was ignored, and Americans with the economic deck already stacked against them found themselves living on the edge, or worse, in the streets. Our fellow citizens most in need not of a handout, but a hand up, were shortsightedly told that our Nation could not afford a safety net that would ensure their access to basic necessities required to allow them to better their station in life.

Today, fortunately, is a different day. The National Affordable Housing Act reaffirms what has never been in doubt—that homeownership is one of the cornerstones of our republic, and that the Government should assist Americans in becoming full shareholders in the American dream by acquiring their own homes. But the bill also recognizes that some Americans cannot yet afford to purchase a home. Through a combination of innovative and time-tested approaches, this bill will aid economically disadvantaged citizens in climbing the first few rungs of the ladder that leads to housing self-sufficiency.

We have arrived at this historic moment in large part due to the vigorous and sustained leadership of Senators CRANSTON and D'AMATO, the chairman and the ranking member of the Senate Housing Subcommittee. For more than 3 years, they have spearheaded efforts to arrive at a consensus on a national housing policy. Throughout, they have been painstaking and inclusive—soliciting proposals from groups involved in the production, provision, and occupancy of housing, forming a task force to gather recommendations, and holding countless hearings to ensure that all interested parties were heard. They have consistently recognized what I take to be basic truth about housing legislation: That enactment of workable laws is only possible through bipartisan cooperation. The widespread support for this conference report is a tribute to their persistence is forging compromise a variety of disparate views.

Mr. President, I am pleased that the central provision of the Cranston-Gonzalez Act is the HOME Investment Partnership Block Grant Program. Two years ago, Senator D'AMATO and I introduced the Housing Grant Action Program, or Housing GAP Act, to establish a similar block grant to encourage partnerships between Federal, State, and local governments and the private sector for the provision of low- and moderate-income housing. Our approach was based upon the realization that as the Federal commitment to the provision of low- and moderate-income housing diminished during the 1980's, innovative State and local programs sprang up to fill the breach. The HOME Program embraces the principles of Dodd-D'Amato approach by requiring scarce Federal housing dollars to be leveraged with State, local, and private funds, and by allowing States and localities greater flexibility in the use of their housing funds to respond to local housing needs.

Mr. President, I would also like to address the public housing provisions of this bill. As approved by the Banking Committee and passed by the Senate, funding for public housing development would have been included within the block grant component now known as the HOME Investment Partnership Program. This arrangement reflected the belief of Senator D'AMATO and myself that public housing development in local communities should be elements of coordinated strategies to meet the housing needs of low- and moderate-income citizens of those communities.

Mr. President, I believe that, with respect to public housing, it is now time to begin to develop approaches that promote greater accountability and flexibility—so that the housing needs of Americans currently served by public housing are most adequately and creatively addressed. I believe that, in the long run, the dollars that fund public housing must be brought closer to the local units of Government that are accountable to voters for decisions with respect to public

housing. In my judgment, local officials in partnership with public housing authorities best understand the needs for low-income housing in particular communities—and are in the best position to craft appropriate responses to these needs. I also believe that discussion of ways to meet the housing needs of the Americans presently housed by PHA's should not be limited by rigid insistence on maintenance of the current methods of housing those citizens.

Nevertheless, I understand the altruistic motives of those who have expressed concerns about the approach to public housing I have advocated. Most of these concerns have been raised by public housing advocates, who have spent the past decade on the defensive, fending off attacks against one of the only programs that serves the housing needs of those on the very bottom of the economic ladder. Given that the interests of public housing residents were often overlooked by the Federal Government during the 1980's, it is only natural that alarm bells sound in the heads and hearts of public housing advocates when someone proposes to change the status quo with respect to public housing.

As I have noted, however, my goal all along has been to strengthen the political underpinnings of public housing and to engender innovative new ways of responding to the housing development needs of public housing residents. When it became apparent that the House of Representatives would not agree to the approach to public housing development that I supported, I gladly accepted a provision requiring the General Accounting Office to assess alternatives to current public housing development programs, and to investigate ideas for coordinating such efforts with local housing strategies and the low-income housing tax credit program. I am hopeful that this provision will point the way toward greater future flexibility in strategies for meeting the housing needs of the residents of public housing.

As a conferee, I am pleased that the spirit of compromise that typified consideration of this bill allowed for agreement on two of the toughest issues addressed by this legislation: mortgage prepayments and FHA insurance. On the prepayment issue, we agreed that owners of units located in areas with high vacancy rates for low-income housing will be allowed to prepay their mortgages. Other owners will be compensated at fair market rates for preserving the low-income nature of their buildings. I think that this is a sensible solution. It would be shortsighted to throw hundreds of thousands of low-income occupants of units eligible for prepayment out into the cold, but it would also make little sense to engender lengthy litigation by inadequately compensating building owners for preserving the low-income character of their tenancy.

On the FHA issue, the final compromise—permitting 57 percent of closing costs to be financed over the life of the mortgage and requiring annual premiums based on the percentage downpayment—will admittedly put FHA loans out of reach for some Americans who need them. Nevertheless, other proposed solutions were even more severe, and the conference agreement should achieve the vital goal of restoring the long-term solvency of the FHA Mortgage Insurance Program. While our Nation's home ownership rate remains one of the highest in the world, in excess of 60 percent of all households, the difficulties young families are having buying a first home are well-documented—and thus it is more important than ever to ensure that FHA mortgage insurance remains available for many first-time home buyers.

I am also pleased that the conference report is somewhat more flexible than the Senate-passed bill on the issue of the use of Federal funds for new construction. As is well known, this was one of the issues on which there were philosophical differences between Democrats and Republicans. For my part, I believe that ideological opposition to new construction ignores the reality that the supply of low-income rental housing units continues to shrink even as the number of families living in poverty continues to increase. I also believe that it unnecessarily limits the flexibility of local units of government in responding to the housing needs of local communities—which in many cases may include new construction of affordable housing. I am, therefore, pleased that the conference agreement allows localities leeway to choose new construction if that is what best suits their housing needs.

Mr. President, our Nation is no longer the Nation of yeoman farmers that Thomas Jefferson envisioned. We are a nation more than anything else of homeowners, and the stability of our society depends upon the continuing ability of citizens to become full shareholders in the system by owning the roofs over their heads. With the Cranston-Gonzalez National Affordable Housing Act, Congress and the President are recognizing once more that empowering Americans to ascend to the rung of home ownership also involves steadying the ladder for those just beginning their climb toward housing self-sufficiency. This measure will steady that ladder by promoting solutions to our housing problems that are both national in scope and local in design, and that allow for necessary innovation and flexibility. As we move toward a new century, this bill will help ensure that Americans at all economic levels can continue to climb toward the better life that is the hallmark of the American dream.

I urge my colleagues to adopt this conference report.

Mr. AKAKA. Mr. President, I rise today in support of the National Affordable Housing Act, and I commend the conferees in reaching a fair and equitable agreement.

However, because the housing needs of each State are diverse and unique, flexibility is a crucial component to properly addressing the particular housing concerns of each State.

Lack of Federal funding for new construction has always been a source of concern for me. In Hawaii, we have a vacancy rate of 1 percent and an incredible demand for housing. At the current rate of construction, it will take 42 years to make up the current housing deficit in Hawaii.

Mr. President, this act provides these funds for the construction of new housing through the HOME Program. The HOME Program incorporates flexible funding for a variety of programs to increase the housing stock in each State.

More importantly, this measure would preserve a valuable and scarce resource; namely, affordable rental housing. A myriad of procedural protections contained in this legislation would preserve the overwhelming majority of units—about 350,000 of 357,000 by HUD's estimates—for low-income use.

In the unlikely event owners of HUD subsidized buildings prepay their mortgages, tenants are provided greater assurance against displacement or eviction. These residents would receive rental assistance and their low-income housing rent would be maintained for 3 years. No person would be summarily evicted or displaced. Although this agreement is not as stringent as the original Senate language, it is fair and it works.

Mr. President, as you know, many first-time home buyers have difficulty in accumulating enough money for a down payment. In the past, the FHA Mortgage Program has helped millions of families afford the American Dream of owning a home. Recently, the FHA fund has been hanging precariously by its purse strings.

In order to restore actuarial soundness to the fund, this bill would decrease the upfront premium and assess an annual premium on the loan amount. However, the bill would also increase the upfront closing costs to be financed by the buyer. I am concerned that many potential home buyers will be unable to come up with this additional cash.

FHA was designed for the people. There are better ways to ensure that the benefits of this program will be available for our children and grand-

children. And I hope that in time the virtures of the FHA Mortgage Program will be restored and returned to the working men and women of America.

Lastly, this bill will uphold the U.S. trust responsibility to native Hawaiians by repealing existing law which makes native Hawaiians ineligible to receive community development block grant funding. As a result of this inequity, Senator INOUYE and I had to secure, through the appropriations process, $1.22 million for fiscal year 1989 and $1.2 million for fiscal year 1990 for infrastructure development of native Hawaiian homelands. Adoption of this provision would obviate the need for special earmarks in the future.

Mr. President, I support this bipartisan conference report language. It receives several housing programs in addition to establishing innovative approaches to assist first-time home buyers, such as encouraging construction of affordable housing and preserving low-income rental apartment units.

Thank you, Mr. President. I urge my colleagues to support this comprehensive approach to affordable housing.

Mr. BOND. Mr. President, I rise in support of the conference report on the housing bill. This is the culmination of a long process and the amalgam of many different ideas about how national housing policy should be conducted. Although I am not pleased with every provision in the bill—there is still too much emphasis on complex categorical programs run out of Washington—this legislation is a definite improvement over current law.

I have spent a lot of time talking to people back in my State about housing policy, and from these discussions several general principles which have emerged.

Housing programs need to be flexible at the State and local level, so that the policies chosen reflect local economic conditions. St. Louis and Boston have very different housing problems and it is nonsense to think that bureaucrats in Washington can make good decisions about local markets.

The decisionmaking for policies and programs needs to be streamlined so that the responsibility for policy is clearly in one place. Authority and responsibility need to go together. All of the different pieces of the housing puzzle need to fit together—the low-income housing tax credit, rental assistance, public housing, State and local programs all need to be coordinated locally as part of an overall housing strategy for the community. Federal money should be used to leverage other resources so that we can get the most housing for our dollars spent.

The HOME Program meets the principles outlined above and will give cities and States a chance to carry out innovative housing strategies that meet local needs. While there is not as much of a consolidation of existing housing programs as I would have liked, this bill does move in the right direction.

In addition, in my meetings back in Missouri, we discussed how housing policies need to work hand in hand with social service programs to encourage empowerment and self-help, and thus help lift people out of poverty. Secretary Kemp has made a tremendous contribution with his HOPE initiative, and I am pleased that his proposals have been included in this legislation.

I am particularly interested in the problems of public housing and am pleased that the public housing management reforms that I sponsored were included in the conference report.

The vast majority of public housing agencies are well run, but there is a small minority of agencies that give the whole program a black eye. Public housing is run by local officials spending Federal money, and this division of responsibility gives everyone an out when problems arise. Local officials can blame the Federal Government for squalid conditions, and the Federal Government can shrug its shoulders and say, "We can't control them." The only people who lose are the tenants, who are forced to remain in public housing units that are a disgrace to this country.

This system must change. This legislation sets up a system of performance indicators for HUD to use in evaluating how well public housing agencies are managing the public housing under their control. These objective indicators are important because in the past HUD has withheld modernization money and put PHA's on the troubled list without clear reasons why. A system of objective performance indicators will ensure better decisionmaking at HUD and will show the PHA's how to improve their performance. This should make it easier to hold a local government accountable for the condition of its public housing.

The legislation require HUD to report back to Congress annually about what progress it is making in working with local governments to improve the performance of the most severely troubled PHA's. HUD is given the ability to contract out the management of some or all of the housing projects in a jurisdiction if the PHA is troubled. This legislation also clarifies HUD's authority to petition the courts for the appointment of a receiver to manage a severally troubled agency.

These tools are important because they give HUD an alternative to that of simply cutting the modernization money, which in the past was the most common HUD response to troubled housing authorities. Unfortunately, cutting a city's modernization funding punishes the tenants for the failings of the PHA because needed repairs of the public housing are not made.

The new formula funding system for CIAP that was originally in the House bill fits in with these management reform provisions. It is a more rational approach to the modernization needs of public housing because it will ensure a steady, predictable stream of funding so that PHA's can plan ahead. There are special provisions in the conference report for troubled PHA's so that these agencies receive less than their full formula amount of modernization money, but they receive credits for the money lost which can be redeemed when they are removed from the troubled list. There were long discussions about how these provisions should be structured because, with a system of formula funding, it is important not to give troubled PHA's more money than they can responsibly spend. I hope that the balance which was struck in this provision will work to give troubled PHA's an incentive to improve their performance while ensuring that the tenants are not punished for the mismanagement of the PHA.

Another provision in this legislation that I sponsored adds some flexibility to the public housing demolition standards in current law. The regidities of the one-for-one replacement requirement prevent cities from dealing with troubled projects that have been vacant for years. I agree the city governments should not be allowed to destroy low-income housing to make way for shopping centers and office buildings, but the current law does not make sense with empty high-rise public housing that never provided a decent living environment for families and now sit boarded up. The legislation allows HUD to do a 2-year demonstration project in St. Louis using section 8 assistance to meet the one-for-one replacement requirements for public housing demolitions. I think that this is a reasonable provision which puts some much-needed flexibility in an overly rigid statute.

This bill contains some innovative, creative new housing programs and makes some improvements in existing programs. In general, the bill reflects lessons learned in the past 10 years about how the Federal Government can best provide affordable housing for low-income Americans.

I certainly could not support more money for the crazy quilt of inefficient categorical programs now in place, but this bill is an improvement and thus more funding is justified. I do think that, on balance, passage of this bill will help us get housing policy back on track. The conference report deserves the support of the Senate,

and I encourage my colleagues to vote for it.

Mr. RIEGLE. Mr. President, I rise in support of the Cranston-Gonzalez National Affordable Housing Act. About 3 years ago under the able leadership of Senator CRANSTON, chairman of the Housing Subcommittee here in the Senate, and Representative GONZALEZ, chairman of the Housing Subcommittee in the House, we began a process to shape new Federal housing policy. That process included representation from every major segment of the housing community—low income advocates, industry groups, States and localities, non-profits, housing financiers and individual citizens. Today, I urge the passage of the legislation which resulted from that process—the Cranston-Gonzalez National Affordable Housing Act.

The bill establishes an effective new direction in providing affordable housing for all Americans. The Banking Committee approved the National Affordable Housing Act on May 2, 1990, in a 16 to 4 rollcall vote. The Senate passed the bill on June 27, 1990 in a 96 to 1 rollcall vote. Since the Senate floor action on the bill, the legislation has been further strengthened and refined through the efforts of the conference committee to combine the best provisions of the respective Senate and House passed bills.

"A decent home in a suitable living environment for every American"—This goal first articulated by Congress in 1949 continues to elude this Nation.

The Nation's affordable housing dilemma has reached chronic proportions. We are confronted daily with our country's failure to achieve the goal of a decent home in a suitable living environment for all Americans. This is illustrated in many forms. Throughout the Nation we witness the human tragedy and plight of millions of Americans who are:

Homeless;

Living in deplorable conditions;

Paying greater than 50 percent of their income in monthly rent; and

Unable to realize the American dream of homeownership.

Perhaps the most visible of these ills is homelessness. Homelessness is no longer the fate of an unfortunate few. Instead, it is a harsh reality for many Americans. It is a harsh reality that has reached such chronic proportions that this year, for the first time in history, we conducted a special census to count the homeless. One cannot walk around our Nation's Capital in the winter months and not notice the masses of homeless people huddled on hot air grates and crowded under bridges. Estimates of the number of homeless persons in my home State of Michigan are as high as 90,000 in a given year—with the fastest growing segment of that population being women with children. Nationally, our best estimates indicate that some 730,000 Americans on any given night, and between 1.3 million and 2.0 million persons experience homelessness each year.

Millions of other Americans are at risk of becoming homeless because their housing costs are too high. A recent study in Michigan found that half of all renter households needed a 2-bedroom unit or larger, but 48 percent of Michigan renters could not afford a 2-bedroom unit. Furthermore, the study concluded that in the State, a full-time worker needs to make $7.88 an hour to afford a 1-bedroom unit, and $9.23 an hour for a 2-bedroom unit—more than twice the minimum wage.

Four million American families live in substandard housing or pay more than 50 percent of their monthly income for rent.

The high rent burden not only places families at risk of homelessness but also hinders their ability to provide for other basic necessities.

Over 1 million low income families are currently on waiting lists for assisted housing. Yet, even the waiting lists do not reflect all who are seeking decent low income shelter. Waiting lists in many cities are so long they have been closed to new families and the prospect for assisting these families is very bleak.

The Congressional Budget Office estimates that two-thirds of all the households that are poor enough to qualify for Federal housing aid receive no housing aid whatsoever.

We also see that over 1.5 million units of privately owned low-cost, housing have been lost this decade due to decay, abandonment, gentrification and conversion. According to the National Low Income Housing Preservation Commission another one-half million will be lost in the next 15 years.

Another threat to low cost housing is the pending expiration of section 8 rental assistance contracts. Over the next 5 years, contracts covering nearly 1 million units are due to expire.

An MIT report projects that if present patterns persist, by the year 2003 nearly 19 million Americans will be unable to find affordable housing.

The affordable housing crisis has hit young families who are trying to get started. The American dream of homeownership has been priced beyond their reach. The U.S. homeownership rate, after rising for 35 years, has fallen consistently since 1980.

The Cranston-Gonzalez National Affordable Housing Act addresses the impending housing crisis. The bill is comprehensive and addresses the spectrum of housing needs faced by homeless people, low income families and first-time home buyers.

The bill authorizes funding for 2 years to support existing low-income housing and to provide an additional 360,000 units of affordable housing. The authorization for fiscal 1991 is $17.9 billion in budget authority, approximately $3.36 billion over current levels. For fiscal 1992, the bill would authorize $20.6 billion, an increase of about $5.5 billion over current levels.

The Cranston-Gonzalez National Affordable Housing Act provides the necessary infrastructure for us to begin to address the urgent need for affordable housing. It indeed is an important step to make a decent home in a suitable living environment for all Americans a reality.

The bill would achieve its goal through several mechanisms.

First, the bill would bring State and local governments into a new partnerships with the Federal Government and the private sector, including nonprofit corporations. These partnerships would be committed to meeting the housing needs of our communities throughout the entire Nation.

State and local governments would be given the flexibility to design housing strategies which expand the supply of affordable housing and which are tailored to the needs of their particular housing problems. The bill recognizes that housing strategies must be crafted to local housing needs since they differ greatly throughout the country.

The Federal Government would ensure the success of these strategies by providing adequate resources to facilitate the development of affordable housing. This would be accomplished through the creation of the HOME Program. HOME is designed to make the Federal Government a partner in developing affordable housing. HOME will provide funding to rehabilitate dilapidated housing owned by the Government—Federal, State, or local—and make them available to low-income people. HOME will also provide funding for new construction, where appropriate, of affordable housing.

Second, the bill would make affordable rental housing more available by providing a permanent solution to the preservation of the Nation's existing affordable rental housing stock. It provides the most cost-effective means of preserving the older HUD subsidized inventory through a combination of incentives to the owners while maintaining the low income use of the projects. The bill balances the need to maintain the low-income stock and the owners valid interest in receiving an adequate return on their investment.

Third, the bill will expand the supply of supportive housing that meets the special physical needs of the frail elderly, persons with disabilities and the homeless.

Fourth, the bill reforms and reauthorizes the McKinney homeless programs with increased funding levels.

Fifth, the bill will improve public housing through the eradication of the deplorable living conditions in severely distressed public housing. It will fund modernization and provide additional moneys for capital improvement and preservation of this vital source of housing. And it will create a new program, to help public housing residents gain greater access to employment, day care, and educational opportunities.

Sixth, the bill establishes the National Homeownership Trust to assist low- and moderate-income first-time homebuyers purchase a home. The Trust will subsidize interest rates so that homebuyers would pay a maximum interest rate of no more than 6 percent. The Trust will also provide for downpayment and closing costs assistance.

The bill reforms the FHA program in order to return the fund to actuarial soundness. FHA is an essential tool for the low- and moderate-income homebuyer which must be maintained on a sound financial basis if it is to perform its mission.

The bill also incorporated the administration's homeownership through HOPE initiatives to provide homeownership and empowerment opportunities for tenants of public housing.

Finally, the bill reforms several existing programs. It also reauthorizes existing programs, like the Community Development Block Grant, which have proven effective in meeting needs of the Nation's cities and rural areas.

As a Nation, we have the responsibility to see that all Americans are given a safe, decent, and affordable place to live. After almost a decade of the abandonment of the Federal commitment to low income housing, this housing bill reaffirms our commitment to ensuring that every American family is able to afford a decent home in a suitable living environment.

The grave state of the affordable housing problem in our country compelled me, as chairman of the Committee on Banking, Housing and Urban Affairs, to designate an effective housing bill as the top legislative priority of the committee this session. The housing crisis confronting millions of Americans makes passage of the Cranston-Gonzalez National Affordable Housing Act a necessity for this Congress. I urge my colleagues to vote for its enactment.

The PRESIDING OFFICER. Under the previous order, this matter will be set aside until tomorrow.

THE CALENDAR

The PRESIDING OFFICER. The junior Senator from Louisiana [Mr. BREAUX] is recognized.

MORNING BUSINESS

Mr. BREAUX. I ask unanimous consent there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

COASTAL BARRIER IMPROVEMENT ACT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 909, H.R. 2840, the Coastal Barrier Improvement Act of 1990.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2840) to reauthorize the Coastal Barriers Resources Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Are there amendments to be proposed?

AMENDMENT NO. 3183

(Purpose: To reauthorize the Coastal Barrier Resources Act, and for other purposes)

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for himself, and Mr. BURDICK, proposes an amendment numbered 3183.

Mr. CHAFEE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

H.R. 2840, as amended, is amended as follows:

On page 2, strike lines 9-13 and insert in lieu thereof the following new paragraph:

"(2) CONFORMING AMENDMENTS.—Section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) is amended—

"(A) in subsection (a), by striking "Coastal Barrier Resources".

"(B) in subsection (b)(1), by striking "of the enactment of this Act" and inserting in lieu thereof "on which the relevant System unit or portion of the System unit was included within the System under this Act or the Coastal Barrier Improvement Act of 1990".

"(C) at the end of subsection (b)(2), by striking "of enactment".

At the end of Section 2, add the following new subsection:

"(c) OTHERWISE PROTECTED AREAS.—Section 3(1) of the Act (16 U.S.C. 3502(1)) is amended—

(1) by striking "(i)" immediately before "contain few"; and

(2) by inserting a period immediately following "ecological processes" and striking the balance of the sentence.".

On page two, line 24, strike "June 20" and insert in lieu thereof "October 24".

On page 4, line 16, insert "(1)" before "Not".

On page 4, line 18, strike "(1)" and insert in lieu thereof "(A)".

On page 4, line 23, strike "(2)" and insert in lieu thereof "(B)".

On page 5, at the end of subsection 4(b), add the following new paragraph:

"(2) If, in the case of any minor and technical modification to the boundaries of System units made under the authority of subsection (d) of this section, an appropriate chief executive officer of a State, county or equivalent jurisdiction, or State coastal zone management agency to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, or if the Secretary fails to adopt a modification pursuant to a proposal submitted by an appropriate State coastal zone management agency under paragraph (1) of this subsection, the Secretary shall submit to the chief executive officer a written justification for the failure to make modifications consistent with such comments or proposals.".

On page 5, line 10, strike "area of qualified" and insert in lieu thereof "undeveloped", and insert "not included within the System;" after "barrier" and before "and".

On page 5, strike lines 11-14.

On page 5, line 15, strike "coastal zone management agency" and insert in lieu thereof "Governor".

On page 5, lines 16 and 17, strike everything after "located" and before the semicolon.

On page 5, line 18, strike "the area of qualified coastal barrier" and insert in lieu thereof "those undeveloped coastal barriers not included within the System".

On page 5, line 22, strike "a State coastal zone management agency" and insert in lieu thereof "the Governor of any State".

On page 5, line 20, strike "1 year" and insert in lieu thereof "18 months".

On page 6, lines 16 and 17, strike "State coastal zone management agency" and insert in lieu thereof "Governor of a State".

On page 6, line 21, strike "(d)" and insert in lieu thereof "(e)".

On page 6, line 22, add the following new subsection-

"(d) ADDITION OF EXCESS FEDERAL PROPERTY.—

(1) CONSULTATION AND DETERMINATION.—Prior to transfer or disposal of excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.S 471 et seq.) that may be an undeveloped coastal barrier, the Administrator of General Services shall consult with and obtain from the Secretary a determination as to whether and what portion of the property constitutes an undeveloped coastal barrier. Not later than one hundred and eighty days after the initiation of such consultation, the Secretary shall make and publish notice of such determination. Immediately upon issuance of a positive determination, the Secretary shall—

(A) prepare a map depicting the undeveloped coastal barrier portion of such property; and

(B) shall publish in the Federal Register notice of the addition of such property to the System.

(2) EFFECTIVE DATE OF INCLUSION.—An area to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under subsection (d)(1)(B) with respect to that area.

(3) REVISION OF MAPS.—As soon as practicable after the date on which a unit is added to the System under subsection (d)(2), the Secretary shall revise the maps referred to in section 4(a) of the Act (as amended by section 3 of this Act) to reflect each such addition.".

On page 6, line 22, strike "(d)" and insert in lieu thereof "(e)".

On page 6, line 24, strike "18 months" and insert in lieu thereof "2 years".

On page 7, lines 15 and 16, strike "State coastal zone management agency" and insert in lieu thereof "Governor of a State".

On page 8, line 3, strike "(e)" and insert in lieu thereof "(f)".

On page 8, line 7, strike "State coastal zone management" and insert in lieu thereof "Governor of a State".

On page 8, line 9, insert "or of an addition to the System pursuant to subsection (d)," after "(c)," and before "the Secretary".

On page 11, lines 14 and 15, strike "of the enactment of the Coastal Barrier Improvement Act of 1990" and insert in lieu thereof "on which the relevant System unit or portion of the System unit was included within the System".

On page 14, strike lines 16-25, and on page 15, strike lines 1-10, and insert in lieu thereof the following new paragraph:

"(2) PREPARATION AND SUBMISSION OF MAPS.—

(A) As soon as practicably after the date of the enactment of this Act, the Secretary shall prepare maps identifying the boundaries of those undeveloped coastal barriers (as that term is defined in section 3(1) of the Coastal Barrier Resources Act) (16 U.S.C. 3502(1)) of the United States bordering the Pacific Ocean south of 49 degrees north latitude.

(B) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Environment and Public Works of the Senate maps identifying the boundaries of those undeveloped coastal barriers of the United States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System."

On page 20, line 8, insert "an" after "is" and before "oth-", and on line 9, insert "area" after "protected" and before the period.

On page 24, strike lines 24 and 25, and on page 25, strike lines 1-2, and insert the following:

"(1) the term "undeveloped coastal barrier" means—

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that—

(i) is subject to wave, tidal, and wind energies, and

(ii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and near shore waters;

but only if such features and associated habitats contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes.

(2) the term "otherwise protected area" means an undeveloped coastal barrier within the".

On page 25, line 7, strike "(2)" and insert in lieu thereof "(3)".

On page 25, line 10, strike "(3)" and insert in lieu thereof "(4)".

On page 25, line 12, strike "(4)" and insert in lieu thereof "(5)".

At the end of the H.R. 2840, add the following new sections:

"SEC. . CERTIFICATION OF COMPLIANCE.

Section 7 of the Coastal Barrier Resources Act (16 U.S.C. 3506) is amended to read as follows:

"SEC. 7. CERTIFICATION OF COMPLIANCE.

"(a) REGULATIONS.—Not later than twelve months after the date of enactment of the Coastal Barrier Improvement Act of 1990, the head of each Federal agency affected by this Act shall promulgate regulations to assure compliance with the provisions of this Act.

"(b)" CERTIFICATION.—The head of each Federal agency affected by this Act shall report and certify that each such agency is in compliance with the provisions of this Act. Such reports and certifications shall be submitted annually to the Committees and the Secretary.".

"SEC. . DARE COUNTY, NORTH CAROLINA TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina all rights, title, and interest of the United States in Coast Guard property and improvements located on the northern end of Pea Island east side of State road 1257, 0.3 miles north of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.".

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment (No. 3183) was agreed to.

Mr. CHAFEE. Mr. President, I am extremely pleased that the Senate is considering H.R. 2840, legislation to expand the Coastal Barrier Resources System. This legislation and the Senate companion bill, S. 2729, enjoy broad, bipartisan support. That is because the Coastal Barrier Resources Act makes sense—it gets the Federal Government out of the business of subsidizing high-risk development on fragile coastal barriers.

Barrier islands and beaches are areas which are uniquely important when it comes to protecting aquatic habitat and uniquely dangerous when it comes to bearing the brunt of hurricanes and major storms. The 1982 Coastal Barrier Resources Act was designed to ensure that Federal resources would not be used to subsidize development in undeveloped coastal barriers. By prohibiting most Federal expenditures in these fragile areas, this bill removes the numerous Federal incentives for developments which increase risk to humans and to fish and wildlife habitat, while saving the Federal Treasury hundreds of millions of dollars.

According to the Interior Department, an estimated $800 million in Federal dollars have been saved since establishment of the Coastal Barrier Resources System in 1982.

H.R. 2840 builds on the 1982 act doubling the reach of the Coastal Barrier Resources System. The bill would add to the System new areas recommended by the Department of the Interior in their "Report to Congress," including acreage in the Florida Keys, Puerto Rico, and the Virgin Islands, and undeveloped coastal barriers along the coasts of the Great Lakes. The maps depicting the areas included in the system reflect the addition of these new undeveloped coastal barriers, as well as qualifying areas along the Atlantic and gulf coasts which were not previously included in the System, secondary coastal barriers, and aquatic habitat associated with existing system units.

It is important to note that neither current law nor the legislation under consideration today imposes any new regulations on landowners. Private property owners are free to do what they will on their land, but they do so at their own financial risk—not at the expense of the Federal taxpayer.

H.R. 2840 contains many important provisions beyond those adding new coastal barrier units to the Coastal Barrier Resources System.

The bill includes a provision requiring the Department of the Interior to map the undeveloped coastal barriers along the Pacific coast of the United States south of 49 degrees north latitude. Thus, the bill requires studies and maps for qualifying areas in Washington, Oregon, and California, Hawaii, American Samoa, Guam, the Northern Marianas, and all other territories and possessions of the United States in the Pacific Ocean. The Senate amendments add a requirement that the Governor of the affected State or territory must concur with the Interior Department's recommendations to Congress regarding which undeveloped coastal barriers are appropriate for inclusion in the Coastal Barrier Resources System. Thus, the consultation process required under this legislation is essential to facilitate development of joint recommendations from the Department of the Interior and the affected States and territories as to appropriate additions to the System along the Pacific.

For undeveloped coastal barriers which are owned and protected at the State or local level or by private organizations, H.R. 2840 establishes a mechanism which allows States and localities to elect to have these areas

included within the Coastal Barrier Resources System. I hope that States, communities, and private groups will take advantage of this opportunity to incorporate these unique areas into the system thereby providing permanent assurance that they will not receive Federal funds for unwise development in the future.

Further, 1 year after enactment of H.R. 2840, no new Federal flood insurance would be allowed for any new construction in these so-called otherwise protected areas if that construction is inconsistent with the purposes for which those areas are protected. This provides a significant disincentive for inappropriate development on coastal barriers that are protected at the State and local level and by private organizations.

H.R. 2840 would establish a Coastal Barriers Task Force composed of several Federal agencies. Consisent with the Department of the Interior's recommendations, this committee will consider the need for new Federal policies to protect all coastal barrier, developed and undeveloped. Within 2 years, a report will be submitted to the Congress.

In addition, this legislation requires the Resolution Trust Corporation and the Federal Deposit Insurance Corporation to publish notice in the Federal Register of the availability of any property within the Coastal Barrier Resources System and any undeveloped property greater than 50 acres in size. This provision is designed to facilitate preservation of these areas by providing Federal agencies and conservation organizations a 90-day period in which to submit a notice of serious interest to purchase the covered property.

The Senate amendments add several provisions from S. 2729 to this legislation. New Senate language requires that Federal excess properties which qualify as undeveloped coastal barriers would be automatically included in the Coastal Barrier Resources System before disposal. Also, Federal agencies are required to promulgate regulations to assure compliance with the act and to submit annual reports to Congress certifying such compliance. This provision is intended to force Federal agencies to tighten up their processes for implementing and adhering to the Coastal Barrier Resources Act.

A provision to transfer the rights, title, and interest of the United States Coast Guard property and improvements on the northern end of Pea Island to Dare County, NC, is also included in the Senate amendments. This new section, identical to legislation passed by the House, has been cleared with the Senate Committee on Commerce.

Mr. President, over 100 environmental and public interest groups, including the National Wildlife Federation, the Sport Fishing Institute, the American Red Cross, and the National Taxpayers Union, have endorsed this bill. That is because the Coastal Barrier Resources Act is a law which makes good economic and environmental sense.

The Department of the Interior and the States, towns, and individuals with whom they consulted have put years of effort into developing the maps of the undeveloped coastal barriers which will be included in the system through enactment of this legislation. Property owners deserve to have this legislation enacted into law in order to clear up uncertainties over the effect of the Department of the Interior's recommendations.

I applaud the leadership of Representative STUDDS in moving this bill through the House of Representatives and hope that the House will approve the Senate amendments so that we can send H.R. 2840 to the President. I urge my colleagues to approve this important legislation.

Mr. President, I ask unanimous consent that a list clarifying which maps depict the Coastal Barrier Resources System, as established by this legislation, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The Coastal Barrier Resources System, as established in H.R. 2840, as amended by the Senate, contains the House maps (with the addition of the listed Senate units) for the following states and territories:

Maine, Massachusetts, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, Michigan—(add MI-17 Senate map), Wisconsin, Ohio—(add OH-07 Senate map), Virgin Islands.

The Coastal Barrier Resources System, as established in H.R. 2840, as amended by the Senate, contains the Senate maps (except that no Federal areas with unit designations ending in "P" are included in the System) for the following states:

Rhode Island, Connecticut, South Carolina, Minnesota.

The Coastal Barrier Resources System, as established in H.R. 2840, as amended by the Senate, contains the House maps for units to be included in the Commonwealth of Puerto Rico with the exception of the Senate map for PR-87, and PR00 which is not included in the System.

The Coastal Barrier Resources System, as established in H.R. 2840, as amended by the Senate, contains the House maps for units to be included in the Commonwealth of Puerto Rico with the exception of the Senate map for PR-87, and PR00 which is not included in the System.

The Coastal Barrier Resources System, as established in H.R. 2840, as amended byt the Senate, contains the House maps for the State of Florida, except as follows: (1) P02 Talbot Island Complex—Senate map; (2) P05 Conch Island—Senate map; (3) P08 Ponce Inlet—Senate map; (4) P10 Vero Beach—Senate map; (5) FL-15 Blowing Rocks—Senate map; (6) P14A North Beach—Senate map; (7) FL-35 Key Largo—Senate map; (8) FL-45 Long Point Key Complex—Senate map; (9) FL-50 No Name Key—Senate map; (10) FL-52 Little Knockemdown/Torch Key Complex—Senate map; (11) FL-54 Sugarloaf Key—Senate map; (12) P21A Manasota Key—Senate map; (13) P23 Longboard Key—Senate map; (14) FL-89 Peninsula Point—Senate map; (15) P30 Cape San Blas—Senate map; (16) P31A Four Mile Village—Senate map; and (17) FL-98 Gulf Islands—Senate map.

The PRESIDING OFFICER. Are there further amendments? Without objection, the bill is considered read a third time and passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. CHAFEE. I move to lay that motion on the table.

NONINDIGENOUS AQUATIC NUISANCE ACT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 1013, S. 2244, the Nonindigenous Aquatic Nuisance Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2244) to prevent and control infestations of the coastal and inland waters of the United States by the zebra mussel, and other nonindigenous aquatic nuisance species.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 2244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nonindigenous Aquatic Nuisance Act of 1990".

SEC. 2. DEFINITIONS.

As used in this Act, the term—

(1) "ballast" **[**water"**]** means any water *and associated sediments or other materials* **[**taken aboard to be**]** used **[**for ballasting purposes**]** to manipulate the trim and stability of a vessel;

(2) "nonindigenous species" means any species that **[**is not native to**]** *enters* an ecosystem *beyond its historic range*, including any such organism transferred from one country into another;

(3) "high seas" means waters **[**outside of**]** *beyond* the exclusive economic zone of any nation;

[(4) "environmentally sound" methods or techniques means methods or techniques that have a minimal impact on the natural ecology of an ecosystem, including integrated pest management techniques with an emphasis on nonchemical measures; and**]**

(4) "environmentally sound" methods, efforts, actions, or programs means methods, efforts, actions, or programs to prevent introductions or control infestations of aquatic nuisance species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures; and

(5) "aquatic nuisance *species*" means a nonindigenous species which threatens the [biodiversity, environmental] *abundance of native species or the ecological* stability *of infested waters,* or the [economic] *commercial, agricultural, aquacultural,* or recreational development [of an infested water resource] *dependent on such waters.*

(A) documented under the laws of the United States or a foreign nation; or

(B) numbered in accordance with chapter 123 of title 46 of the United States Code and which measures less than five net tons or is used exclusively for pleasure;

(6) "waters of the United States" means the internal waters and territorial seas of the United States, and the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983;

(7) "unintentional introduction" means an introduction of nonindigenous species that occurs as the result of activities other than the purposeful or intentional introduction of the species involved, such as the transport of nonindigenous species in ballast or in water used to transport fish, mollusks or crustaceans for aquaculture or other purposes;

(8) "Task Force" means the Aquatic Nuisance Species Task Force established under section 201 of this Act;

(9) "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 12 miles;

(10) "appropriate Committees" means the Committee on Merchant Marine and Fisheries in the House of Representatives and the Committee on Environment and Public Works and Committee on Commerce, Science, and Transportation in the Senate; and

(11) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

SEC. 3. FINDINGS.

The Congress finds that—

(1) the transport of untreated water between ports in the ballast tanks of ships results in unintentional introductions of nonindigenous species to fresh, brackish, and saltwater environments;

(2) when environmental conditions are favorable, nonindigenous species become established, successfully reproduce, and may disrupt the ecology and industry of an area;

(3) several nonindigenous species which could be transported into the waters of the United States in ballast tanks are known to be actual or potential threats to saltwater or freshwater ecosystems;

(4) the zebra mussel (Dreissena polymorpha) was unintentionally introduced into the Great Lakes in Lake St. Clair through ballast water exchange, and the species became established and rapidly spread downstream throughout Lake Erie and into Lake Ontario;

(5) if left uncontrolled, through downstream transportation of larvae and unintentional transport via boats and water transfers among drainage basins, the zebra mussel is expected to infest over two-thirds of the continental United States;

(6) the zebra mussel colonizes water inlet pipes (which causes reduced water flow), boat hulls (which causes increased drag), and other hard surfaces;

(7) the potential disruption of aquatic ecosystems by the zebra mussel, including adverse effects on biodiversity of lakes and reductions in fish populations (including sport and commercial fisheries, and other fish populations), could be severe;

(8) a coordinated research, control, and education effort is needed to attenuate the spread of the zebra mussel and other aquatic nuisance species throughout the United States;

(9) specifically, research is needed to explore environmentally sound approaches to control such nuisance species; and

(10) research is also needed on the basic biology of aquatic nuisance species, particularly the zebra mussel, and the environmental impacts of such aquatic nuisance species, including impacts on biodiversity.

SEC. 4. PURPOSES.

The purposes of this Act are—

(1) to prevent unintentional introduction of nonindigenous species into waters of the United States; [through ballast water management and other requirements;]

(2) to coordinate *federally conducted, funded, or authorized* research, *prevention,* control [activities, and] information *dissemination and other activities* regarding aquatic nuisance species; [and reduce the burden of these tasks from already overburdened State and local agencies;]

(3) to contain the spread of the zebra mussel and other aquatic nuisance species *that become established* in the waters of the United States; [through educational programs geared to early identification and control methods;]

(4) [to establish aquatic nuisance species research programs] to develop environmentally sound control methods, monitor distribution, study the basic biology; [of such species,] and investigate potential *economic environmental, and* human health impacts of [such] *aquatic nuisance* species; [as well as potential environmental and economic impacts;]

(5) to *understand and* minimize economic and ecological impacts of nonindigenous aquatic nuisance species [if any such species] *that* become established. [(as has the zebra mussel); and]

[(6) to declare the zebra mussel an injurious species and to provide for further declarations of injurious species status as needed to prevent the intentional transport of aquatic nuisance species (other than for permitted research purposes).

[TITLE I—UNITED STATES COAST GUARD REGULATIONS

[SEC. 101. REGULATIONS TO PREVENT UNINTENTIONAL INTRODUCTION OF NONINDIGENOUS SPECIES INTO AND WITHIN THE WATERS OF THE UNITED STATES.

[(a) IN GENERAL.—(1) The Secretary of the department under which the Coast Guard is operating (hereafter in this Act referred to as the "Secretary"), acting through the Commandant of the United States Coast Guard, and in consultation with—

[(A) the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration;

[(B) the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service;

[(C) the Administrator of the Environmental Protection Agency; and

[(D) the heads of other relevant departments or agencies (as determined by the Secretary);

shall, not later than 6 months after the date of the enactment of this Act, promulgate such regulations as may be necessary for the prevention and control of the transportation into the waters of the United States of viable biological materials in the ballast waters of ships.

[(2) Except as provided in subsections (b) and (c), the regulations promulgated under this subsection shall—

[(A) require a vessel to carry out a high sea exchange of ballast water prior to releasing ballast water into any of the waters of the United States; and

[(B) allow for the use of alternative ballast water management methods in lieu of the method described in subsection (A) as such alternative methods are developed and recommended by the Secretary pursuant to paragraph (5) of subsection (d).

[(b) REGULATIONS TO PREVENT UNINTENTIONAL TRANSFERS.—The Secretary, in consultation with the officials described in subparagraphs (A) through (D) of subsection (a)(1), shall promulgate such regulations as the Secretary determines to be necessary to prevent the unintentional transfer or introduction of nonindigenous species by ships operating exclusively within the territorial waters of the United States or contiguous coastal waters of North America (as defined by the Secretary). A ship described in this subsection shall not be subject to high seas ballast water exchange requirement described in subsection (a)(2).

[(c) EXEMPTION FOR SHIPS THAT TREAT WATER.—A ship that is subject to requirements that prescribe the treatment of ballast water for the removal of chemical contaminants shall not be subject to the high seas ballast water exchange requirement described in subsection (a)(2).

[(d) REQUIREMENTS FOR REGULATIONS.—The regulations promulgated under subsections (a) and (b) shall—

[(1) ensure the right of any captain of a ship to protect the safety of his ship and the crew and passengers of such ship;

[(2) apply to all foreign flag ships and United States flag ships; and

[(3) for the purpose of reflecting the principle that the ballast water from one ship is sufficient for the introduction and establishment of an aquatic nuisance species, include an enforcement mechanism such as—

[(A) mandatory return to deep sea ballast exchange areas;

[(B) fines; and

[(C) application of other environmentally sound ballast water treatment methods;

[(4) provide for random sampling procedures to monitor compliance and for sampling for the biological content of ballast water (in cooperation with the appropriate officials of the United States Fish and Wildlife Service); and

[(5) be revised as more methods are developed and recommended by the Secretary (in consultation with the officials described in subparagraphs (A) through (D) of subsec-

tion (a)(1)), on the basis of the findings of the report required under section 207 of the Coast Guard Authorization Act of 1989, or on the basis of other reports that the Secretary determines to be appropriate.

[(e) CIVIL PENALTY.—The Secretary of Transportation is authorized to assess a civil penalty in an amount not to exceed $25,000 against the owner or operator, or both, of any ship in violation of regulations promulgated pursuant to this Act. All civil penalties assessed pursuant to this Act shall be available, as provided by appropriation Acts, to endow research on the control of nonindigenous species.

[TITLE II—ZEBRA MUSSEL AND AQUATIC NUISANCE SPECIES RESEARCH, CONTROL, AND EDUCATIONAL PROGRAM

[SEC. 201. COORDINATION OF RESEARCH.

[(a) NATIONAL COOPERATIVE ACTION GROUP.—(1) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, and the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration (hereinafter referred to as the "National Cooperative Action Group"), shall jointly take such action as may be necessary to coordinate national research, control, and educational efforts associated with the infestation of the zebra mussel and other aquatic nuisance species in the waters of the United States.

[(2)(A) The National Cooperative Action Group is authorized to establish such regional commissions as the National Cooperative Active Group determines to be necessary to assist in carrying out the purposes of this Act.

[(B) A regional commission described in subparagraph (A) shall be—

[(i) established along the boundaries of one or more adjacent, similarly infested (with aquatic nuisance species) water resource region, as defined in the United States Geological Survey 1982 map of surface water and related land resource development in the United States and Puerto Rico; and

[(ii) composed of not more than 15 members appointed by the National Cooperative Action Group as follows:

[(I) 1 regional representative of the Department of the Interior;

[(II) 1 regional representative of the Department of Commerce;

[(III) 1 regional representative from the Environmental Protection Agency;

[(IV) 1 representative from the raw water users industry (as defined by the National Cooperative Action Group), or an association of such raw water users industry;

[(V) 1 representative from the recreational and sport fishing industry (as defined by the National Cooperative Action Group);

[(VI) not more than 8 representatives of State governments and the governments of political subdivisions of States; and

[(VII) not more than 2 representatives of regional organizations or authorities selected by the National Cooperative Action Group.

[(3) The National Cooperative Action Group shall coordinate the regional commissions established under this section and facilitate the transfer of information among such regional commissions.

[(4) Upon the request of the chairman of any regional commission, and after consultation with the National Cooperative Action Group, the head of any Federal department or agency is authorized to detail to such regional commission any of the personnel of such department or agency to assist the regional commission in the performance of the functions of such regional commission under this Act.

[(5) The Secretary of the Interior and the Secretary of Commerce may provide to each regional commission such administrative and technical support services as the Secretary of the Interior and the Secretary of Commerce determine to be necessary for the effective functioning of such regional commissions.

[(6) The Administrator of General Services is authorized to furnish each regional commission under this Act with such offices, equipment, supplies, and services as the Administrator is authorized to furnish to any other agency or instrumentality of the United States.

[(7) The National Cooperative Action Group shall provide timely advice to the Secretary of State concerning aquatic nuisance species that infest water resources shared with other countries.

[(b) ROLE OF REGIONAL COMMISSIONS.—Regional commissions established pursuant to this section shall—

[(1) identify regional priorities with respect to aquatic nuisance species;

[(2) make recommendations to the National Cooperative Action Group concerning aquatic nuisance species;

[(3) coordinate programs established to carry out the purposes of the Act; and

[(4) issue, on at least an annual basis, a report on regional research and education concerning aquatic nuisance species to the National Cooperative Action Group on regional research and education.

[(c) ADMINISTRATIVE PROVISIONS RELATING TO REGIONAL COMMISSIONS.—(1) Members of a regional commission established pursuant to this section shall serve at the pleasure of the National Cooperative Action Group.

[(2) Members of a regional commission shall receive no additional pay, allowances, or benefits by reason of service to the regional commission. Members who are not full-time Federal employees may be allowed travel expenses and per diem, in lieu of subsistence, at rates authorized for persons serving intermittently in the Government service under subchapter I of chapter 57 of title 5, United States Code, to the extent funds are available for such expenses.

[(3) A majority of the members of a regional commission shall constitute a quorum, but one or more members designated by the regional commission may hold hearings.

[(4) Members of a regional commission shall select a chairman from among the members of the regional commission.

[(5) Each regional commission shall meet in the geographical area of the regional commission at the call of the chairman of the regional commission or upon the request of a majority of the members of the regional commission.

[(6) Each regional commission may establish committees or work groups of technical representatives of members of the regional commission to advise the regional commission on specific matters relating to the functions of the commission authorized under this Act.

[(7) Each regional commission may nominate, and assign duties to, a coordinator and such other full-time and part-time employees as the National Cooperative Action Group determines to be necessary for the performance of the functions of the regional commission.

[(d) EFFECT OF FEDERAL ADVISORY COMMITTEE ACT.—Except as otherwise provided by this Act, each regional commission shall operate pursuant to the Federal Advisory Committee Act (5 U.S.C. App).

[(e)(1) REGIONAL COMMISSION FOR THE GREAT LAKES.—Not later than 30 days after the date of the enactment of this Act, the National Cooperative Action Group shall establish a regional commission for the Great Lakes region described in paragraph (2).

[(2) For the purposes of this subsection, the Great Lakes Region shall encompass the following regions (as designated in the United States Geological Survey 1982 map of surface water and related land resource development in the United States and Puerto Rico):

[(A) Great Lakes Region 4;

[(B) Ohio Region 5; and

[(C) Upper Mississippi Region 7.

[(3) The National Cooperative Action Group shall request that the Great Lakes Fishery Commission (established under the Great Lakes Fishery Act of 1956)—

[(A) designate a representative to serve on the regional commission described in this subsection;

[(B) advise, coordinate, and provide secretarial services on matters related to Great Lakes fisheries, related environmental concerns, and interactions with the Government of Canada; and

[(C) provide technical services for any technical committee established by the National Cooperative Action Group to address matters described in subparagraph (B).

[(4) The National Cooperative Action Group shall request that the Great Lakes Commission (established under article IV of the Great Lakes Basin Compact to which the Congress granted consent in the Act entitled "Granting the consent of the Congress to a Great Lakes Basin Compact, and for other purposes", approved July 24, 1968)—

[(A) designate a representative to serve on the regional commission described in this subsection;

[(B) advise, coordinate, and provide secretarial services on matters related to the economic impacts of the zebra mussel on the geographic area of the Great Lakes region (including impacts on industry), and interactions with the Government of Canada; and

[(C) provide technical services for any technical committee established by the National Cooperative Action Group to address matters related to the economic impacts of the zebra mussel on the geographic area of the Great Lakes region (including impacts on industry).

[SEC. 202. LEAD AGENCIES.

[(a) ROLE OF THE SECRETARY OF COMMERCE.—As part of the regional effort to address aquatic nuisance species infestations in the United States, the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration (who shall consult the head of the National Sea Grant College Program) shall, in response to the recommendations of the regional commissions established under section 201, serve as the head of the lead agency in connection with programs to—

[(1) carry out administrative activities related to the regional commissions;

[(2) investigate the basic biology of aquatic nuisance species;

[(3) research, propose, and evaluate aquatic nuisance species control methods (with an emphasis on environmentally sound methods of control for industrial,

commercial, and recreational users of infested waters);

[(4) provide timely advice to the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the chairmen of the regional commissions established under section 201, concerning aquatic nuisance species control methods proposed or in use;

[(5) develop and implement educational programs through Sea Grant Marine Advisory Services, and any other available resources that the Secretary of Commerce determines to be appropriate to inform the general public, State governments, governments of political subdivisions of States, and industrial and recreational users of aquatic resources in connection with matters concerning the identification of aquatic nuisance species, and control methods for such species, including the prevention of the further distribution of such species;

[(6) notify State governments and the governments of political subdivisions of States, private raw water users (as defined by the Secretary of Commerce), and other interested or affected entities that the Secretary of Commerce determines to be appropriate, of projected rates and directions of spread of the zebra mussel and other aquatic nuisance species in a manner that will facilitate timely planning to avoid, prevent, or compensate for likely impacts of such aquatic nuisance species;

[(7) investigate methods for minimizing the economic impacts of the zebra mussel and other aquatic nuisance species on public, commercial, and private waters;

[(8) assist in efforts in the public and private sector to control economic impacts of the zebra mussel and other aquatic nuisance species; and

[(9) maintain a current list of control methods in use within the region served by such regional commission and and make the list available upon request.

[(b) ROLE OF SECRETARY OF THE INTERIOR.—As part of the regional effort to address aquatic nuisance species infestations in the United States, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall, in response to the recommendations of the regional commissions established under section 201, serve as the head of the lead agency in connection with programs to—

[(1) investigate the basic biology of the zebra mussel and other nonindigenous species;

[(2) research, and evaluate aquatic nuisance species control methods to protect biodiversity and the fisheries of infested waters (with emphasis on environmentally sound methods) and make recommendations concerning such methods;

[(3) establish a program with the assistance of the United States Coast Guard for the random sampling of ballast tanks;

[(4) monitor the distribution and spread of the zebra mussel and other aquatic nuisance species, generate projections on the rate and direction of spread of such infestations, and, with the assistance of personnel of Sea Grant Marine Advisory Services, notify regions where infestations are pending for the purposes of advanced planning;

[(5) monitor the effects on human health of the zebra mussel and other aquatic nuisance species;

[(6) research and monitor effects of the zebra mussel and other aquatic nuisance species on biodiversity of the infested regions; and

[(7) advise the Administrator of the Environmental Protection Agency, the Administrator of National Oceanic and Atmospheric Administration, and the chairmen of the regional commissions concerning current aquatic nuisance species control methods proposed or in use.

[(c) MEMORANDA OF AGREEMENT CONCERNING LEAD AGENCY STATUS.—To maximize use of existing facilities, lead agency status within the boundaries of a given regional commission designation may be altered or shared by a mutual agreement between the departments or agencies described in subsections (a) and (b) through a memorandum of agreement filed not later than 60 days after the formation of the regional commission that is the subject of the memorandum of agreement. Such memorandum of agreement shall specify the activities for which the signatories to the agreement shall be responsible, and shall contain such provisions as are necessary to ensure the coordinated implementation of such activity. In the absence of a memorandum of agreement, lead agency status shall be determined pursuant to subsections (a) and (b).

[(d) In regions for which inland waters (except for the Great Lakes) comprise the majority of the affected waterways (as in water resource regions 10, 11, 13, 14, 15, and 16 of the United States Geological Survey 1982 map of surface water and related land resource development in the United States and Puerto Rico) the United States Fish and Wildlife Service shall cooperate with Federal departments and agencies that implement other related programs in effect on the date of the enactment of this Act to fulfill all lead agency roles (as described in subsections (a) and (b)).

[SEC. 203. RESEARCH RESTRICTIONS.

[(a) LOCATION OF RESEARCH ACTIVITIES.—The research activities authorized under this Act concerning an aquatic nuisance species shall be carried out only within drainage basins infested with such aquatic nuisance species.

[(b) ALLOCATION OF FUNDING.—To the extent possible, funds for research authorized under this Act shall be allocated to existing facilities within the areas infested by the aquatic nuisance species subject to study.

[(c) RESEARCH PRIORITIES.—In funding research related to the basic biology of aquatic nuisance species, priority shall be given to research to advance the development of applied techniques of aquatic nuisance species prevention and control, and the funding of such research efforts should be carried out as soon as is possible.

[SEC. 204. INTERACTIONS WITH FOREIGN COUNTRIES.

[(a) The Secretary of State, in consultation with the National Cooperative Action Group and the Secretary, shall, to the extent allowable by law, initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, research, education, and control programs related to aquatic nuisance species infesting shared water resources.

[(b) In the case of the Great Lakes, the activities of the National Cooperative Action Group, the National Oceanic and Atmospheric Administration, the United States Fish and Wildlife Service, and the regional commission for the Great Lakes established under section 201(e) of this Act, shall conform with the goals of the Boundary Waters Treaty of 1909 and the Great Lakes Water Quality Agreement as amended in 1987 and such agencies shall cooperate with the Great Lakes Fishery Commission in all matters affecting Great Lakes fisheries.

[SEC. 205. REPORTS.

[Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Cooperative Action Group shall submit a report to the appropriate committees of the Congress that—

[(1) summarizes reports of the regional commissions established under this Act and includes a summary of the progress of the regional commissions in meeting the goals established for such commissions under this Act; and

[(2) makes recommendations concerning prevention and control of aquatic nuisance species that the Cooperative Action Group determines to be appropriate.

[SEC. 206. INJURIOUS SPECIES.

[In accordance with section 42 of title 18, United States Code, the Secretary of the Interior shall declare the zebra mussel (Dreissena polymorpha) an injurious species.

[SEC. 207. SEA GRANT SERVICES AND GRANTS TO UNIVERSITIES.

[(a) GRANTS FOR UNIVERSITY RESEARCH.—The appropriate lead agency, as determined under this Act, shall allocate funds authorized under this Act for competitive university research grants to be administered through the Sea Grant College program to study aquatic nuisance species.

[(b) EDUCATION AND ASSISTANCE SERVICES.—In addition to the education and assistance services described under this Act provided by Sea Grant Marine Advisory Services, the appropriate Sea Grant College Program is authorized conduct education and assistance services related to the prevention and control of aquatic nuisance species.]

TITLE I—PREVENTION OF UNINTENTIONAL INTRODUCTIONS OF AQUATIC NUISANCE SPECIES

SEC. 101. AQUATIC NUISANCE SPECIES IN THE GREAT LAKES.

(a) GUIDELINES.—(1) Not later than 6 months after the date of enactment of the Act, the Secretary of the department in which the Coast Guard is operating (hereafter in this title referred to as the "Secretary") shall issue voluntary guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels.

(2) The guidelines issued under this subsection shall—

(A) protect the safety of each vessel, its crew, and passengers;

(B) take into consideration different vessel operating conditions; and

(C) be based on the best scientific information available.

(b) REGULATIONS.—(1) Within 24 months after the date of enactment of the Act, the Secretary in consultation with the Secretary of Commerce, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and the heads of other relevant departments of agencies (as determined by the Secretary) shall issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great lakes through the ballast water of vessels.

(2) The regulations issued under the subsection shall—

(A) apply to all United States-flag and foreign-flag vessels which carry ballast water and that enter a United States port on the

Great Lakes after operating on the high seas;

(B) require a vessel to—

(i) carry out high seas exchange of ballast water prior to entry into any port within the Great Lakes; or

(ii) allow for the use of alternative ballast water management methods if the Secretary determines alternative methods are as effective as high seas exchange in preventing and controlling infestations of aquatic nuisance species;

(C) exempt from the regulations vessels that are subject to requirements under Federal law that prescribe the treatment of ballast water for the removal of chemical contaminants;

(D) provide for sampling procedures to monitor compliance with the requirements of the regulations;

(E) prohibit the operation of a vessel in the Great Lakes if the master of the vessel has not certified to the Secretary that the vessel has complied with the requirements of the regulations by not later than the departure of that vessel from the first lock in the St. Lawrence Seaway;

(F) provide for denial of access to United States ports for vessels in violation of the regulations;

(G) protect the safety each the vessel, its crew, and passengers;

(H) take into consideration different vessel operating conditions; and

(I) be based on the best scientific information available.

(c) CIVIL PENALTIES.—Any person who violates the regulations issued under subsection (b) shall be liable for a civil penalty in an amount not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subsection for that violation.

(d) CRIMINAL PENALTIES.—Any person who knowingly violates the regulations issued under subsection (b) is guilty of a class C felony.

(e) CONSULTATION WITH CANADA.—In developing the guidelines and regulations, the Secretary is encouraged to consult with the Government of Canada to develop an effective international program for preventing the introduction and spread of aquatic nuisance species in the Great Lakes from the ballast water of vessels.

(f) NEGOTIATIONS.—The Secretary, working through the International Maritime Organization, is encouraged to enter into negotiations with the governments of foreign countries concerning the planning and implementation of measures aimed at the prevention and control of unintentional introductions of aquatic nuisance species in coastal waters.

SEC. 102. STUDY ON INTRODUCTION OF NONINDIGENOUS SPECIES BY VESSELS.

(a) BIOLOGICAL STUDY.—The Task Force established under title II of this Act shall conduct a study to determine whether aquatic nuisance species are a problem in waters of the United States other than the Great Lakes.

(b) SHIPPING STUDY.—The Secretary shall conduct a study to determine the need for controls on vessels entering United States waters to minimize the risk of unwanted introduction and dispersal of aquatic nuisance species in those waters. The study shall include an examination of—

(1) the degree to which shipping may be a major pathway of transmission of aquatic nuisance species in those waters;

(2) possible alternatives for controlling introduction of those species through shipping; and

(3) the feasibility of implementing regional versus national control measures.

(c) CONSULTATION.—The Secretary and the Task Force shall cooperate in conducting their respective studies under this section.

(d) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary and the Task force shall each submit to the appropriate committees of Congress a report on the results of their respective studies.

TITLE II—PREVENTION AND CONTROL OF AQUATIC NUISANCE SPECIES

SEC. 201. ESTABLISHMENT OF TASK FORCE.

(a) MEMBERSHIP.—There is hereby established an Aquatic Nuisance Species Task Force (hereinafter referred to as "the Task Force") which shall consist of—

(1) the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service (hereinafter referred to as the "Director");

(2) the Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere (hereinafter referred to as the "Under Secretary");

(3) the Administrator of the Environmental Protection Agency;

(4) the Secretary of Agriculture;

(5) the Secretary of the Army; and

(6) the Secretary of the Department in which the Coast Guard is operating, acting through the Commandant of the United States Coast Guard.

(b) CHAIRPERSONS.—The Director and the Under Secretary shall serve as co-chairpersons of the Task Force and shall be jointly responsible for carrying out this title in consultation and cooperation with the other members of the Task Force.

(c) MEMORANDUM OF UNDERSTANDING.—Within six months of the date of enactment of this Act, the Director and the Under Secretary shall develop a memorandum of understanding that describes the role of each in jointly carrying out this title.

(d) COORDINATION.—Each Task Force member shall coordinate any action to carry out this title with any such action by other members of the Task Force.

SEC. 202. PREVENTION OF AQUATIC NUISANCE SPECIES INTRODUCTIONS.

(a) IN GENERAL.—The Task Force shall establish and implement a program to minimize the risk of introduction of aquatic nuisance species to North American ecosystems, including—

(1) identification of vectors by which aquatic organisms are introduced to North American waters;

(2) monitoring of identified vectors to determine the aquatic organisms carried by such vectors;

(3) assessment of the risk that an aquatic organism carried by an identified vector may become established and the risk that such an established organism may become an aquatic nuisance species; and

(4) evaluation of whether programs to prevent introduction of aquatic nuisance species by an identified vector are effective and environmentally sound.

(b) IMPLEMENTATION OF PREVENTIVE MEASURES.—Whenever the Task Force determines that there is a substantial risk of unintentional introduction of an aquatic nuisance species by an identified vector and that the adverse consequences of such an introduction are likely to be substantial, the Task Force shall, after an opportunity for public comment, carry out cooperative, environmentally sound efforts with regional, State and local entities to minimize the risk that such species organisms will be introduced via that vector.

(c) INTENTIONAL INTRODUCTIONS POLICY REVIEW.—Within one year of the date of enactment of this Act, the Task Force shall, in consultation with State fish and wildlife agencies, other regional, State and local entities, potentially affected industries and other interested parties, identify and evaluate approaches for reducing the risk of adverse consequences associated with intentional introduction of aquatic organisms and submit a report of their findings, conclusions and recommendations to the appropriate Committees.

SEC. 203. MONITORING INTRODUCTIONS OF AQUATIC NUISANCE SPECIES.

The Task Force shall establish monitoring programs to identify introductions of nonindigenous organisms and track the movement of such organisms in a timely manner to provide early warning information to regional, State and local entities and the public concerning the direction and rate of dispersal and potential adverse impacts of infestations.

SEC. 204. CONTROL OF AQUATIC NUISANCE SPECIES.

(a) IN GENERAL.—The Task Force is authorized to control established aquatic nuisance species to minimize risk of harm to the environment and the public health and welfare, including eradication of infestations, reduction of populations, development of means of adapting human activities and infrastructure to infestations, and prevention of the spread of aquatic nuisance species from infested populations.

(b) CONTROL DECISION CRITERIA.—In determining whether to initiate control of an aquatic nuisance species, the Task Force shall consider the technical and biological feasibility of the action and its cost-effectiveness in minimizing risks of harm to the environment and public health and welfare. Control actions authorized by this section shall be based on the best available scientific information and shall be environmentally sound.

(c) ECONOMIC IMPACTS.—The Task Force shall assist in efforts in the public and private sector to control economic impacts of aquatic nuisance species.

SEC. 205. COORDINATION AND TECNHICAL ASSISTANCE.

(a) COORDINATION.—In carrying out prevention, monitoring and control activities under this title, the Task Force shall coordinate such activities with regional, State and local entities.

(b) TECHNICAL ASSISTANCE.—The Task Force shall provide technical assistance to assist regional, State and local entities in carrying out environmentally sound actions to prevent, monitor and control introductions of aquatic nuisance species and to minimize adverse effects to the environment and public health and welfare from such species.

SEC. 206. INTERNATIONAL COOPERATION.

(a) The Task Force shall provide timely advice to the Secretary of State concerning aquatic nuisance species that infest water resources shared with other countries.

(b) The Secretary of State, in consultation with the Task Force, shall, to the extent allowable by law, initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, monitoring, research, education, and control programs related to aquatic nuisance species infesting shared water resources.

SEC. 207. EDUCATION AND RESEARCH.

(a) EDUCATION.—The Task Force shall develop and implement educational programs through Sea Grant Marine Advisory Services and any other available resources that it determines to be appropriate to inform the general public, State governments, governments of political subdivisions of States, and industrial and recreational users of aquatic resources in connection with matters concerning the identification of aquatic nuisance species, and control methods for such species, including the prevention of the further distribution of such species.

(b) RESEARCH PROGRAM ELEMENTS.—The Task Force shall investigate environmentally sound methods—

(1) to minimize the risk of introduction of aquatic nuisance species;

(2) to control established infestations of aquatic nuisance species;

(3) to protect the diversity and abundance of native species, including the fisheries of infested waters;

(4) to minimize the economic impacts of aquatic nuisance species on public, commercial, and private waters; and

(5) to randomly sample, in cooperation with the United States Coast Guard, the ballast of vessels.

(c) BALLAST EXCHANGE STUDY.—Upon enactment of this Act, the Task Force shall conduct a study to assess the environmental effects of high seas ballast exchange on the diversity and abundance of native species in receiving estuarine, marine and fresh waters of the United States.

(d) RESEARCH PRIORITIES.—In funding research related to the basic biology of aquatic nuisance species, the Task Force shall give priority to research to advance the development of applied techniques of aquatic nuisance species prevention and control.

(e) RESEARCH RESTRICTIONS.—(1) The Task Force shall establish a protocol to ensure that research activities carried out under this title do not result in the infestation of uninfested waters of the United States by nonindigenous species.

(2) ALLOCATION OF FUNDING.—To the extent practicable, funds for research required by this title shall be allocated to existing facilities within the areas infested by the aquatic nuisance species subject to study.

(e) GRANTS FOR UNIVERSITY RESEARCH.—The Task Force shall allocate funds authorized under this Act for competitive research grants to any university to study all aspects of aquatic nuisance species, which shall be administered through the Sea Grant College Program and the Cooperative Fishery and Wildlife Research Units.

(f) EDUCATION AND ASSISTANCE SERVICES.—In addition to the educational programs required under subsection (a) of this section, the appropriate Sea Grant College Program and Cooperative Fishery and Wildlife Research Units are authorized to conduct education and assistance services related to the prevention and control of aquatic nuisance species.

SEC. 208. REPORTS.

(a) PREVENTION AND CONTROL RECOMMENDATIONS.—Not later than one year after the date of enactment of this Act, and annually thereafter, the Task Force shall submit a report to the appropriate committees of the Congress that makes recommendations concerning prevention and control of aquatic nuisance species that the Task Force determines to be appropriate.

(b) BALLAST WATER EXCHANGE.—Not later than 18 months after the date of enactment of this Act and prior to the effective date of any ballast exchange regulations promulgated under title I of this Act, the Task Force shall submit a report to the appropriate committees of Congress that presents the results of the study required under section 207(c) of this Act and makes recommendations to minimize any adverse environmental effects of ballast water exchange.

SEC. 209. INJURIOUS SPECIES.

In accordance with section 42 of title 18, United States Code, the Secretary of the Interior shall declare the zebra mussel (Dreissena polymorpha) an injurious species.

SEC. 210. ZEBRA MUSSEL CONTROL PROGRAM.

The Task Force shall undertake a comprehensive, environmentally sound program in coordination with regional, State and local entities to control infestations of the zebra mussel (Dreissena polymorpha) in the Great Lakes and other waters of the United States, including—

(1) research and development concerning the species' life history, environmental tolerances and impacts on fisheries and other ecosystem components, and the efficacy of control mechanisms and means of avoiding or minimizing impacts;

(2) tracking the dispersal of the species and establishment of an early warning system to alert likely areas of future infestation;

(3) development of control plans in coordination with regional, State and local entities; and

(4) provision of technical assistance to regional, State and local entities to carry out this section.

SEC. 211. BROWN TREE SNAKE CONTROL PROGRAM.

The Task Force shall undertake a comprehensive, environmentally sound program in coordination with regional, territorial, State and local entities to control the brown tree snake (Boiga irregularis) in Guam and other areas where the species is established outside of its historic range.

TITLE III—GREAT LAKES AQUATIC NUISANCE SPECIES PREVENTION AND CONTROL PROGRAM

SEC. 301. ESTABLISHMENT OF GREAT LAKES AQUATIC NUISANCE COMMISSION.

(a) GEOGRAPHIC AREA COVERED.—Not later than 30 days after the date of enactment of this Act, a commission shall be established for the Great Lakes.

(b) MEMBERSHIP.—The Great Lakes Aquatic Nuisance Commission established under this title shall be composed of not more than 20 members from the Great Lakes appointed by the Task Force as follows:

(1) one representative designated by the Director;

(2) one representative designated by the Under Secretary;

(3) one representative designated by the Administrator of the Environmental Protection Agency;

(4) one representative designated by the Assistant Secretary of the Army for Civil Works;

(5) one representative from the raw water users industry or an association of such raw water users industry;

(6) one representative from the recreational and sport fishing industry;

(7) one representative from the maritime industry;

(8) one representative of an environmental organization;

(9) not more than eight representatives of State governments;

(10) not more than two representatives from the governments of political subdivisions of States; and

(11) not more than two representatives of regional organizations or authorities.

(c) OBSERVERS.—The Great Lakes Aquatic Nuisance Commission shall invite two representatives of the Government of Canada to participate as observers.

SEC. 302. FUNCTIONS OF GREAT LAKES REGIONAL COMMISSION.

(a) COMMISSION ROLE.—The Great Lakes Aquatic Nuisance Commission shall—

(1) identify priorities for the Great Lakes with respect to aquatic nuisance species;

(2) make recommendations to the Task Force concerning programs to carry out this Act in the Great Lakes;

(3) work with the Task Force to coordinate aquatic nuisance activities within the Great Lakes;

(4) issue, on at least an annual basis, a report to the Task Force on regional control, research and education activities concerning aquatic nuisance species; and

(5) maintain a current list of control methods in use within the Great Lakes and make the list available upon request.

(b) COORDINATION.—The Great Lakes Aquatic Nuisance Commission shall coordinate its activities and facilitate the transfer of information with the Task Force.

SEC. 303. ADMINISTRATION OF GREAT LAKES REGIONAL COMMISSION.

(a) COMMISSION PROCEDURES.—(1) Members of the Great Lakes Aquatic Nuisance Commission shall receive no additional pay, allowances, or benefits by reason of service to the regional commission. Members who are not full-time Federal employees may be allowed travel expenses and per diem, in lieu of subsistence, at rates authorized for persons serving intermittently in the Government service under subchapter I of chapter 57 of title 5, United States Code, to the extent funds are available for such expenses.

(2) A majority of the commission members shall constitute a quorum, but one or more members designated by the commission may hold hearings.

(3) The commission shall be chaired jointly by the Great Lakes representatives appointed by the Director and the Under Secretary.

(4) Members of the commission shall select two vice chairpersons from among the members of the commission.

(5) The commission shall meet in the Great Lakes at the call of the chairman of the commission or upon the request of a majority of the commission members.

(6) The commission may establish committees or work groups of technical representatives of members of the commission to advise on specific matters relating to the functions of the commission authorized under this title.

(7) The commission may nominate, and assign duties to, a coordinator and such other full-time and part-time employees as the Task Force determines to be necessary for the performance of the commission's functions.

(b) EFFECT OF FEDERAL ADVISORY COMMITTEE ACT.—Except as otherwise provided by this title, each regional commission shall operate pursuant to the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 304. GREAT LAKES FISHERY COMMISSION.

The Task Force shall request that the Great Lakes Fishery Commission (established under the Great Lakes Fishery Act of 1956)—

(1) designate a representative to serve on the regional commission described in this subsection;

(2) advise on matters related to Great Lakes fisheries, related environmental concerns, and interactions with the Government of Canada; and

(3) provide technical services to address matters described in paragraph (2).

SEC. 305. GREAT LAKES COMMISSION.

The Task Force shall request that the Great Lakes Commission (established under article IV of the Great Lakes Basin Compact to which the Congress granted consent in the Act entitled "Granting the consent of the Congress to a Great Lakes Basin Compact, and for other purposes", approved July 24, 1968)—

(1) designate a representative to serve on the Great Lakes Regional Commission established under this title;

(2) advise, coordinate, and provide secretarial services to the Great Lakes Aquatic Nuisance Commission; and

(3) provide technical services to address matters related to the economic impacts of the zebra mussel on the Great Lakes (including impacts on industry).

SEC. 306. LIMITATION ON ACTIVITIES.

Activities conducted with respect to the Great Lakes by the Task Force or the Great Lakes Regional Commission shall conform with the goals of the Boundary Waters Treaty of 1909 and the Great Lakes Water Quality Agreement as amended in 1987 and such agencies shall cooperate with the Great Lakes Fishery Commission in all matters affecting Great Lakes fisheries.

TITLE IV—OF APPROPRIATIONS

SEC. [208.] 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years 1991, 1992, 1993, 1994, and 1995, in addition to any other amounts that may be authorized—

(1) $850,000 to fund research at the Great Lakes Environmental Research Laboratory and other laboratories of the National Oceanic and Atmospheric Administration (of which not more than $100,000 shall be used to fund administrative services by the Great Lakes Commission);

[(3)] *(2)* $1,650,000 to fund [Sea Grant] *the* competitive university research grants described in section 207 *of this Act* [which] *that* are conducted in the Great Lakes; [Region (as defined in paragraph (2) of section 201(e) of this Act);]

[(4)] *(3)* $500,000 to fund [Sea Grant College Program] *the* education [and extension services] *programs* described in section 207 which are conducted in the Great Lakes; [Region;]

[(5)] *(4)* $100,000 to fund administrative services of the Great Lakes Fishery Commission;

[(6)] *(5)* $1,000,000 to fund research authorized under this Act conducted through the United States Fish and Wildlife Service in the Great Lakes; [Region;]

[(7)] *(6)* $3,300,000 to fund regulatory activities of the United States Coast Guard [authorized under] *required under title I of* this Act;

[(8)] *(7)* $500,000 to fund [Sea Grant Marine Advisory Service national education and extension services;] *the education programs required under section 207 of this Act on a nationwide basis;*

[(9)] *(8)* $500,000 to fund nationwide monitoring activities by the United States Fish and Wildlife Service; and

[(10)] *(9)* such other sums as may be necessary to carry out the purposes of this Act.

TITLE V—ZEBRA MUSSEL CONTROL ACT

SECTION 501. SHORT TITLE.

This title may be cited as the "Zebra Mussel Control Act of 1990".

SEC. 502. DEFINITIONS.

For the purposes of this Act—(a) The term "Secretary" means the Assistant Secretary of the Army for Civil Works.

(b) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(c) The term "Zebra Mussel" means the species Dreissena polymorpha.

(d) The term "environmentally sound" means minimal adverse impacts to nontarget organisms and the structure and function of ecosystems.

SEC. 503. FINDINGS.

The Congress finds that—

(1) the Zebra Mussel is a filter feeding mollusk that reproduces rapidly, and can attach itself in large numbers to fixed objects including ships, pipes, buoys, and canals;

(2) the Zebra Mussel is native to temperate freshwater habitats of the Black, Caspian, and Azov Seas in Southern Asia; canals built during the late 18th century allowed the species to expand in to Western Europe, covering much of Western Europe by the 1830's;

(3) the Zebra Mussel is believed to have arrived in North America in the ballast water of a ship arriving from Europe in the summer of 1986, and the first sightings were in Lake St. Clair and the St. Clair River which connects Lake Erie and Lake Huron;

(4) By 1990 the infestation had spread eastward through Lakes Erie and Ontario and into the St. Lawrence River, and westward into Green Bay and Lake Michigan;

(5) it is likely that within the coming two decades, the Zebra Mussel will have infested the entire surface water system of the United States and Canada; and that this migration is irreversible and cannot be quarantined;

(6) the initial effect of the Zebra Mussel will be on fisheries, and its larger impact will be on water supply systems and power generating plants;

(7) new facility designs and new maintenance practices will be required to limit Zebra Mussels and prevent the species from reducing the performance of many types of public and private facilities; and

(8) the United States Fish and Wildlife Service has estimated that the Zebra Mussels in the Great Lakes will cost $5 billion over the next ten years.

SEC. 504. PURPOSE.

The purpose of this Act is to establish a program of research and technology development for the management and removal of Zebra Mussels from public infrastructure facilities.

SEC. 505. RESEARCH AND DEVELOPMENT.

(a) The Secretary, in consultation with the Director of the United States Fish and Wildlife Service, and the Administrator of the Environmental Protection Agency, shall develop a program of research and technology development for the control of Zebra Mussels in and around public infrastructure facilities.

(1) Such research and development program shall be directed at environmentally sound management and control techniques with an emphasis on nonchemical approaches.

(b) The Secretary shall collect and make available, through publications and other appropriate means, information pertaining to environmentally sound management practices and implementation methods for reducing Zebra Mussel accumulation and infestation in public infrastructure facilities.

(c) The Secretary shall report as necessary to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate on work undertaken pursuant to this subsection. The Secretary shall submit to such Committees a final report on the results of such research and design, along with recommendations for further measures.

SEC. 506. ZEBRA MUSSEL MANAGEMENT PROGRAM.

(a) The Governor of each State may, after notice and opportunity for public comment, prepare and submit to the Secretary for approval a management plan which identifies those public infrastructure facilities which need financial and technical assistance in order to maintain operations.

(b) Each such plan shall, to the extent possible, identify the environmentally sound management practices and measures which will be undertaken to reduce Zebra Mussel infestation and shall include—

(1) a description of the process, including intergovernmental coordination and public participation, for identifying best management practices and measures;

(2) an identification and description of State and local programs for controlling and eradicating Zebra Mussels; and

(3) a schedule containing annual milestones for utilization of the program.

(c) In developing and implementing a management plan pursuant to this Act, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of Zebra Mussels.

(d) Upon request of a State, the Secretary may provide technical assistance to such State in developing a management plan.

SEC. 507. GRANT PROGRAM.

(a) Upon application of a State for which a plan submitted under subsection 406 has been approved by the Secretary, the Secretary may make grants to such State for the purpose of assisting the State in implementing such management program.

(b) An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such information as the Secretary may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

(c) The Federal share of the cost of each management program implemented with Federal assistance under this section in any fiscal year shall not exceed 50 per centum of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

(d) For purposes of this Act, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this Act shall not exceed in any fiscal year 5 per centum of the amount of the grant in such year.

SEC. 508. AUTHORIZATION OF APPROPRIATIONS.

(a) For the purposes of carrying out section 405 of this Act, there is authorized to be appropriated to the Secretary of the Army $2,500,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995. Such sums shall remain available until expended.

(b) For the purpose of carrying out section 507 of this Act, there is authorized to be appropriated to the Secretary of the Army $5,000,000 for each fiscal years 1991, 1992, 1993, 1994, and 1995. Such sums shall remain available until expended.

TITLE VI—GREAT LAKES FISH AND WILDLIFE RESTORATION ACT OF 1990

SECTION 601. SHORT TITLE.

This Act may be cited as the "Great Lakes Fish and Wildlife Restoration Act of 1990".

SEC. 602. FINDINGS.

The Congress finds and declares the following:

(1) As the human population of the Great Lakes System has expanded to over 35,000,000 people, great demands have been placed on the lakes for use for boating and other recreation, navigation, municipal and industrial water supply, waste disposal, power production, and other purposes. These growing and often conflicting demands exert pressure on the fish and wildlife resources of the Great Lakes System, including in the form of contaminants, invasion by nonidigenous species, habitat degradation and destruction, legal and illegal fishery resource harvest levels, and sea lamprey predation.

(2) The fishery resources of the Great Lakes support recreational fisheries enjoyed by more than 5,000,000 people annually and commercial fisheries providing approximately 9,000 jobs. Together, these fisheries generate economic activity worth more than $4,400,000,000 annually to the United States.

(3) The availability of a suitable forage base is essential to lake trout, walleye, yellow perch, and other recreational and commercially valuable fishery resources of the Great Lakes System. Protecting and restoring productive fish habitat, including by protecting water quality, is essential to the successful recovery of Great Lakes System fishery resources.

(4) The Great Lakes System contains important breeding and migration habitat for all types of migratory birds. Many migratory bird species dependent on deteriorating Great Lakes System habitat have suffered serious population declines in recent years.

(5) Over 80 percent of the original wetlands in the Great Lakes System have been destroyed and such losses continue at a rate of 20,000 acres annually.

(6) Contaminant burdens in the fish and wildlife resources of the Great Lakes System are substantial and the impacts of those contaminants on the life functions of important fish and wildlife resources are poorly understood. Concern over the effects of those contaminants on human health have resulted in numerous public health advisories recommending restricted or no consumption of Great Lakes fish.

(7) The lower Great Lakes are uniquely different from the other Great Lakes biologically, physically, and in the degree of human use and shoreline development, and special fishery resource assessments and management activities are necessary to respond effectively to these special circumstances.

SEC. 603. PURPOSE.

The purposes of this Act are—

(1) to carry out a comprehensive study of the status, and the assessment, management, and restoration needs, of the fishery resources of the Great Lakes System;

(2) to carry out activities to implement recommendations resulting from that study, and

(3) to provide assistance to the States and other interested persons to encourage cooperative conservation, restoration and management of the fish and wildlife resources of the Great Lakes System.

SEC. 604. DEFINITIONS.

In this Act—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "Director" means the Director of the United States Fish and Wildlife Service;

(3) the term "fish stock" means—

(A) a taxonomically distinct species or subspecies of fish; or

(B) any other aggregation of fish that are geographically, ecologically, behaviorally, or otherwise limited from breeding with individuals from other groups of fish and are capable of management as a unit;

(4) each of the terms "Great Lakes" and "Great Lakes System" has the meaning that term has in section 118 of the Federal Water Pollution Control Act (33 U.S.C. 1268);

(5) the term "lower Great Lakes region" means the region in which is located that portion of the Great Lakes System which is downstream from the confluence of the Saint Clair River and Lake Huron near Port Huron, Michigan;

(6) the term "nonindigenous species" means a species of plant or animal that did not occur in the Great Lakes System before European colonization of North America;

(7) the term "Secretary" means the Secretary of the Army; and

(8) the term "State Director" means the head of the agency, department, board, commission, or other governmental entity of each of the States of New York, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, and the Commonwealth of Pennsylvania which is responsible for the management and conservation of the fish and wildlife resources of that State.

SEC. 605. GREAT LAKES FISHERY RESOURCES RESTORATION STUDY.

(a) IN GENERAL.—The Director, in consultation with the Secretary, the Administrator, State directors, Indian tribes, and appropriate Canadian Government entities, shall conduct a comprehensive study of the status of, and the assessment, management, and restoration needs of, the fishery resources of the Great Lakes. The Director shall complete the study by October 1, 1993.

(b) CONTENT OF STUDY.—A study under this section shall include, but not be limited to—

(1) identifying and describing the component drainages of the Great Lakes System (including the drainage for each of the Great Lakes), analyzing how the characteristics and current or planned land and water uses of those drainages have affected, and can be expected to affect in the future, the fishery resources and fish habitats of the Great Lakes System;

(2) analyzing historical fishery resource data for the Great Lakes System;

(3) evaluating the adequacy, effectiveness, and consistency of current Great Lakes interagency fisheries management plans and Federal and State water quality programs, with respect to their effects on Great Lakes fishery resources;

(4) analyzing the impacts of, and management control alternatives for, recently introduced nonindigenous species, including the zebra mussel, the river ruffe, and the spiny water flea;

(5) identifying the causes of past and continuing declines of the fishery resources of the Great Lakes System and the impediments to restoring those resources;

(6) developing recommendations regarding—

(A) an action plan to analyze the effects of contaminant levels on fishery resources;

(B) an action plan for the restoration and enhancement of depleted, nationally significant fish stocks, including lake trout, yellow perch, lake sturgeon, walleye, forage fish, and Atlantic salmon;

(C) planning and technical assistance that should be provided to the States and Indian tribes to assist their restoration efforts;

(D) mitigation measures to restore and enhance fishery resources adversely affected by past Federal (including federally assisted or approved) water resource development projects;

(E) increasing United States Fish and Wildlife Service involvement in and coordination with the International Joint Commission and the Great Lakes Fishery Commission regarding fishery resources management;

(F) research projects and data gathering initiatives regarding population trends of fish stocks, including population abundance and structure, interspecific competition, survival rates, and behavioral patterns;

(G) important fisheries habitat and other areas that should be protected, restored, or enhanced for the benefit of Great Lakes fishery resources;

(H) how private conservation organizations, recreational and commercial fishing interests, the aquaculture industry, and the general public could contribute to the implementation of the recommendations and to fishery resource restoration and enhancement activities undertaken pursuant to this Act; and

(I) appropriate contributions that should be made by States and other non-Federal entities to the cost of activities undertaken to implement the recommendations, including a description of—

(i) the activities that shall be cost-shared;

(ii) the entities or individuals which shall share the costs of those activities;

(iii) the proportion of appropriate project and activity costs that shall be borne by non-Federal interests; and

(iv) how the entities or individuals who share costs should finance their contribution.

SEC. 606. IMPLEMENTING ACTIVITIES.

(a) IN GENERAL.—The Director shall carry out such activities as may be appropriate to implement recommendations developed under the study under section 605.

(b) MEMORANDUM OF UNDERSTANDING.—To ensure the coordinated implementation of the study recommendations, the Director shall enter into a memorandum of understanding with the Secretary and the Administrator regarding their respective responsibilities for activities under this section. The Director shall invite the State directors and other interested parties to become active participants in the implementation of the memorandum of understanding.

(c) COST SHARING.—

(1) IN GENERAL.—As a condition of conducting any activity under this section, the Director shall require appropriate non-Federal interest to contribute to the cost of such activity in accordance with recommendations developed under section 605(b)(6).

(2) FEDERAL SHARE.—The total amount contributed by the Federal Government for any activity under this section shall not exceed 80 percent of the total cost of that activity.

(3) IN-KIND CONTRIBUTIONS.—In addition to cash outlays and payments, the Director may apply in-kind contributions of property or personnel services by non-Federal inter-

ests for activities under this section for purposes of the non-Federal share of the cost of those activities.

(d) RELATIONSHIP TO EXISTING REQUIREMENTS.—The Director shall carry out activities under this section in accordance with the goals of the Great Lakes Water Quality Agreement of 1978, as revised in 1987, and consistent with the jurisdictional authorities of the State directors over Great Lakes fishery resources.

SEC. 607. GOALS OF UNITED STATES FISH AND WILDLIFE SERVICE PROGRAMS RELATED TO GREAT LAKES FISHERY RESOURCES.

In administering programs of the United States Fish and Wildlife Service related to the Great Lakes, the Director shall seek to achieve the following goals:

(1) Restoring and maintaining self-sustaining fishery resource populations.

(2) Minimizing the impacts of contaminants on fishery and wildlife resources.

(3) Protecting, maintaining, and, where degraded and destroyed, restoring fish and wildlife habitat, including the enhancement and creation of wetlands that result in a net gain in the amount of those habitats.

(4) Stopping illegal activities adversely impacting fishery and wildlife resources.

(5) Restoring threatened and endangered species to viable, self-sustaining levels.

(6) Protecting, managing, and conserving migratory birds.

SEC. 608. ESTABLISHMENT OF OFFICES.

(a) GREAT LAKES COORDINATION OFFICE.—The Director shall establish a centrally located facility for the coordination of all United States Fish and Wildlife Service activities in the Great Lakes System, to be known as the "Great Lakes Coordination Office". The functional responsibilities of the Great Lakes Coordination Office shall include intra- and interagency coordination, information distribution, and public awareness outreach. The Great Lakes Coordination Office shall include all administrative and technical support necessary to carry out its responsibilities.

(b) LOWER GREAT LAKES FISHERIES ASSISTANCE OFFICE.—The Director shall establish an office with necessary administrative and technical support services for the implementation of fishery restoration and enhancement projects in the lower Great Lakes, to be known as the "Lower Great Lakes Fisheries Assistance Office". The office shall be centrally located in the lower Great Lakes region so as to facilitate fisheries restoration and enhancement activities relating to Lakes Erie and Ontario.

SEC. 609. REPORTS.

(a) ANNUAL REPORTS.—Not later than 1 year after the date of the enactment of this Act and annually thereafter, the Director shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Director of the Great Lakes National Program Office in the Environmental Protection Agency. Each such report shall describe—

(1) the progress and findings of the studies conducted under section 605, including recommendations of implementing activities, where appropriate, that would contribute to the restoration or improvement of one or more fish stocks of the Great Lakes System; and

(2) the status of activities undertaken pursuant to the implementation of those recommendations; and

(3) activities undertaken to accomplish the goals stated in section 607.

(b) FINAL REPORT.—Not later than October 1, 1995, the Director shall submit a final report to the Committees referred to in subsection (a), describing—

(1) the findings, conclusions, and final recommendations of the study conducted under section 605; and

(2) the results of all activities under section 606.

SEC. 610. AUTHORIZATION OF APPROPRIATIONS.

(a) UNITED STATES FISH AND WILDLIFE SERVICE.—There are authorized to be appropriated to the Director—

(1) for conducting a study under section 605 and carrying out activities under section 606, not more than $4,000,000 for each of the fiscal years 1991 through 1995;

(2) to establish and operate the Great Lakes Coordination Office under section 608(a), not more than $4,000,000 for each of the fiscal years 1991 through 1995; and

(3) to establish and operate the Lower Great Lakes Fisheries Assistance Office under section 608(b), not more than $2,000,000 for each of the fiscal years 1991 through 1995.

(b) ENVIRONMENTAL PROTECTION AGENCY.—There are authorized to be appropriated to the Administrator to carry out this Act not more than $1,500,000 for each of the fiscal years 1991 through 1995.

(c) DEPARTMENT OF ARMY.—There are authorized to be appropriated to the Secretary to carry out this Act not more than $1,500,000 for each of the fiscal years 1991 through 1995.

The PRESIDING OFFICER. Without objection, the committee amendments are agreed to en bloc.

AMENDMENT NO. 3184

(Purpose: To amend S. 2244 to prevent and control infestations of the coastal and inland waters of the United States by aquatic nuisance species, and for other purposes)

Mr. BREAUX. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], (for himself, Mr. BURDICK, Mr. GLENN, Mr. CHAFEE, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. DURENBERGER, Mr. LEVIN, Mr. SIMON, Mr. KASTEN, Mr. KOHL, Mr. RIEGLE, Mr. BOSCHWITZ, Mr. INOUYE, Mr. DIXON, and Mr. HEINZ), proposes an amendment numbered 3184.

Mr. BREAUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. BURDICK. Mr. President, title I of this amendment to S. 2244, the Aquatic Nuisance Act of 1990, as reported by the Committee on Environment and Public Works, reconciles differences between titles I through V of S. 2244 with title I of similar legislation (H.R. 5390) passed by the House.

Title II of the amendment reconciles differences between title VI of S. 2244, as reported by the committee, and H.R. 4299, the Great Lakes Fish and Wildlife Restoration Act, which has been passed by the House.

Finally, the amendment also includes provisions that reconcile differences between S. 1731, the Coastal Wetlands Planning, Protection and Restoration Act, which has been passed previously by the Senate, and nearly identical legislation passed by the House.

I want to thank Senators GLENN, MOYNIHAN, and METZENBAUM and the leadership of the Committee on Commerce, Science, and Transportation for their assistance and cooperation in developing title I of the amendment.

With respect to title III, the Coastal Wetlands Planning, Protection and Restoration Act, I wish to note that the Committee on Environment and Public Works will revisit the percentage of funds allocated from the Wallop-Breaux sport fish restoration account to carry out this act to ensure that it accurately captures any new funds deposited to the sport fish restoration account which are earmarked for that purpose.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3184) was agreed to.

Mr. BURDICK. Mr. President, S. 2244, as reported with amendments by the Committee on Environment and Public Works, establishes a Federal task force, chaired by the Under Secretary of Commerce for Oceans and Atmosphere and the Director of the U.S. Fish and Wildlife Service.

The Director and the Under Secretary are charged with carrying out programs to minimize the risk of unintentional introduction and spread of nonindigenous aquatic species in waters of the United States; monitoring nonindigenous species that are introduced to U.S. waters; controlling nonindigenous species that become established and that threaten the ecological characteristics of U.S. waters or the development dependent upon such waters; and carrying out research and education related to these efforts.

Specific Federal programs are established to control the zebra mussel and the brown tree snake. Provisions are made for coordination of regional, State and local efforts related to nonindigenous aquatic nuisance species in the Great Lakes. Grants are authorized to States for management of zebra mussels at public facilities. The Coast Guard is required to establish a program to prevent introduction of aquatic nuisance species to the Great Lakes through exchange of ballast water by ships.

NONINDIGENOUS AQUATIC NUISANCE ACT OF 1990

Mr. SPECTER. Mr. President, today I urge my colleagues to support pas-

sage of the Nonindigenous Aquatic Nuisance Act of 1990. Through research, education, and control measure, this legislation addresses the economic and ecological threat posed by foreign aquatic organisms transplanted to the United States.

At this point, many of my colleagues are familiar with perhaps the most extreme example of the problem posed by these aquatic organisms, the zebra mussel, a creature which can be found in my home State, Pennsylvania. This creature was first discovered in 1988 and in only 2 years, spread over a 10,000 square mile area, infesting the Lake Erie shoreline from Detroit to Buffalo. Experts anticipate that within 10 years this creature is likely to be found in two-thirds of the United States.

The rapidly reproducing zebra mussel, though only the size of a quarter, is already causing problems which far exceed its size. Because the mussels are able to grow on nearly any surface, including each other, they are able to block water intake pipes that are several meters in diameter. The resulting blockages pose a serious threat to industry and muncipal water supplies. The city of Buffalo has proposed a 15-percent increase in water rates to provide funds to deal with the mussel. Company officials at a Detroit Edison plant in Munroe, MI, estimate the cost of removing the creatures from their water intake system at $100,000 per treatment.

The zebra mussel poses further economic problems for the tourism and fishing industries. Given the concentrations in which the mussel is found—up to 700,000 per square meter in Lake Erie—officials at the Presque Isle State Park in Erie, PA, fear the possible negative impact of sharp shells littering the beach, as well as obnoxious smells from decomposing mussels.

Experts fear that the prolific zebra mussel could endanger fish populations by competing with newly spawed fish for nutrients essential to their development. The fishing industry in Lake Erie generates $600 million annually, and according to the U.S. Fish and Wildlife Service, the zebra mussel may cost the industry a third of that each year, or $2 billion over the next decade.

Projections of the economic damage caused by the zebra mussel are $500 million each year in Lake Erie alone and $3 to $4 billion for all areas impacted by the mussels in the next 10 years.

The zebra mussel is but one of many current and potential nonindigenous aquatic nuisances. This legislation establishes a framework to deal with all the nonindigenous species which threaten our waters. In the past, the Great Lakes have been invaded by foreign organisms, such as the lamprey eel. Other areas of the country also are troubled by nonindigenous organisms—shellfish off the northeast coast face the threat of a Japanese seaweed, and the ecology of the San Francisco Bay may be significantly disturbed by foreign fish and shellfish.

The Nonindigenous Aquatic Nuisance Act of 1990 prevents the importation of such nuisances by establishing a ballast exchange program. In addition, this legislation establishes an interagency task force including representatives from the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, the Coast Guard, and the Army Corps of Engineers. The task force is charged with developing and implementing a national program to deal with aquatic nuisances.

Mr. President, the Nonindigenous Aquatic Nuisance Act of 1990 represents a sound and sensible approach to a growing problem that threatens not only the Great Lakes region but large portions of the rest of the country as well. Accordingly, I urge my colleagues to join me in supporting this important legislation.

Mr. GLENN. Mr. President, I rise today to urge an affirmative vote by the Senate for S. 2244, the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, which I authored and introduced with nine of my Great Lakes colleagues last spring. The bill now has 16 cosponsors from in and outside the Great Lakes region. Congressman NOWAK introduced a companion bill—H.R. 4214—in the House with 42 cosponsors. Both bills received hearings. The House Committee on Merchant Marine and Fisheries revised the Glenn/Nowak language during its deliberations and renumbered the bill as H.R. 5390. The House passed this version on October 1, 1990.

My bill, S. 2244, was also revised in committee, and ordered reported on September 25, 1990. The Environment and Public Works Committee also amended my bill with the Great Lakes Fish and Wildlife Restoration Act of 1990 and the Zebra Mussel Control Act, which authorizes the Army Corps of Engineers to research, develop, and implement measures to remove zebra mussels from public infrastructure facilities. I will defer to the original sponsors of these amendments to describe them, as desired. The package before us today reflects negotiations between the House and the Senate committees of jurisdiction to achieve compromise language to which both can agree.

Before beginning my remarks on the portion of the bill which I originated, I would like to take this opportunity to recognize the invaluable resources, expertise, and good will of the individuals and organizations that helped in the formulation of S. 2244. These include the Ohio Sea Grant College Program, the Great Lakes Fishery Commission, regional and national representatives of the Fish and Wildlife Service and National Oceanic and Atmospheric Administration, Dr. James Carlton of Williams College, and the Great Lakes Commission. I would also like to thank my colleagues on the Senate Great Lakes Task Force and their staff, who provided valuable sponsorship, input, and assistance, and my colleagues in the House, especially Congressmen NOWAK, HERTEL, and DAVIS. And I most wholeheartedly thank the members of the Senate Environment and Public Works and Senate Commerce Committees and their staff for working cooperatively to produce a version of the bill which is acceptable to the constituencies they represent. These committees recognized the importance to the nation as well as the Great Lakes region of the legislation before us, and worked rapidly to ensure enactment this year.

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 provides a formula for protection for the whole country against a problem of particular concern right now in the Great Lakes: The unintentional transfer of nonindigenous—so-called exotic—species from foreign lands into our domestic waters by ships and other carriers. This transfer is a problem because, invariably, some of these exotic species find the conditions in their new environment just right, and in the absence of their natural predators, they overpopulate to seriously harm the ecology and economy of the receiving system.

As some of you are aware, the zebra mussel—Dreissena polymorpha—is an example of an exotic species that has seriously injured the Great Lakes. It looks harmless enough, but it is as damaging to our environment as a toxic chemical, or worse. The zebra mussel is native to Eastern Europe and is believed to have been unintentionally transferred to Lake St. Clair in 1986 in the ballast water of incoming saltwater ships. Since 1986, the zebra mussel spread over a 10,000-square mile area and established itself in all five Great Lakes.

The nonindigenous mussel is outcompeting native mollusks and other aquatic species for food and habitat. As a result, we can expect the biological diversity of the lakes to go down—forever. In addition, the mollusk is colonizing valuable infrastructural features, such as water intake pipes for powerplants and municipal water systems, to such an extent that reengineering may be required. As you know, this is not cheap. Some estimate that the combined costs of the damage to infrastructure and fishery of the Lakes could climb to $5 billion over the next 10 years. It is already costing

public and private facilities millions just to figure out what to do about the problem.

Aquatic nuisances are not just a problem of the Great Lakes, however. It is only a matter of time before the zebra mussel infestation spreads to two-thirds of the Nation's freshwater system unless we work to control it. In addition, other nuisance species plague the Atlantic, Pacific, and gulf coasts.

S. 2244 is a direct response to the zebra mussel invasion of the Great Lakes. However, it was drafted to accommodate the national need for a coherent program to address nuisance species. The bill before us retains this comprehensiveness, authorizing zebra mussel management as part of a national effort to manage the wide array of aquatic nuisance species. However, a special Great Lakes Aquatic Nuisance Commission will allow for an ecosystem approach to management of the zebra mussel and the other Great Lakes aquatic nuisance species.

The bill mandates the two most important objectives of a national program: prevention and coordination. Prevention is important nationally because once established, nonindigenous species are next to impossible to eliminate. As a result, control may have to be carried out in perpetuity. In the Great Lakes, for example, the nonindigenous sea lamprey is kept in check at a cost to the Federal Governments of the United States and Canada of $5 to $10 million per year. Since the control program was initiated in 1958, the two nations have spent over $116 million in sea lamprey control. If the control efforts were to cease, the sea lamprey population would resurge. To make matters worse, the price of the chemical lampicide has been rising rapidly over the last few years. If nothing else, the zebra mussel and the sea lamprey are good lessons in the school of hard knocks. We need to "catch on" and start preventing these unnecessary costs, as well as the unnecessary stresses upon the ecology of our natural systems.

Coordination among Government agencies and affected parties is equally important from an environmental and economic standpoint. Once again, the zebra mussel situation illustrates this need. Since 1988, municipalities, public utilities, marina operators, private recreational boat owners, States, Federal agencies, and shippers have all become involved in managing aspects of the zebra mussel infestation. Federal leadership is needed to promote the use of effective and environmentally sound abatement and control measures by this broad array of involved parties.

The bill first establishes a program of prevention through ballast managment. Scientists believe that saltwater shipping is the single most important cause of unintentional transfers of exotic species. Fortunately, this vector is a controllable one, and with the good will of the shipping industry, we can make great environmental strides just by carrying out relatively simple ballast management precautions. The requirement of precautionary measures is not asking too much considering the serious damage that a single exotic species can cause to an entire region. In addition, we must consider that special precautions to protect our agricultural resources from nonindigenous biological pests have been required for years.

As introduced, title I of S. 2244 established a mandatory ballast management program for incoming saltwater ships to all U.S. waters. The Coast Guard testified at hearings in favor of a phase-in for this program with a national mandatory program in place within 3 years of enactment.

The revised version of my bill, now before us, contains a mandatory program only for the Great Lakes. A study of the need for national ballast water management replaces the national program that I recommended. I am disappointed by this outcome because I believe that there is ample evidence of a need for national ballast management. I am also concerned that the bill will do nothing in the near term to reduce the risk in other regions of infestation by ballast-transported nuisance species. However, a Great Lakes-only program takes care of Ohio and the Great Lakes region's key concerns, and I am sure that the study that is provided for in the bill will demonstrate a solid need for a national effort.

As for concerns within the Great Lakes shipping industry regarding the cost of ballast management, I anticipate that in the final analysis, ballast management will save money. The zebra mussel is an example of how an aquatic pest can cost the maritime industry money in maintenance and equipment right along with other raw water users. Prevention practices could have averted these costs and will certainly avert yet untold costs in the future.

The bill also establishes a framework for a coordinated national program to prevent and manage unintentional introductions of aquatic nuisance species through a task force of Federal agencies. However, while many Federal agencies will need to work in cooperation to achieve effective management, there also needs to be someone in charge with a definite job to do. This bill places the national aquatic nuisance program under the leadership of the Departments of Interior's Fish and Wildlife Service, and the Department of Commerce's National Oceanic and Atmospheric Administration. The program is to be heavily consultative, and to the greatest extent possible, cooperative among relevant Federal agencies using their existing authorities. The program consists of prevention, research, control, education, technical assistance, and coordination.

The bill sets up a regional coordinating body for the Great Lakes. This Great Lakes-specific Commission is needed given the multijurisdictional and even bilateral nature of the Great Lakes basin and the multiple uses of the Lakes. As introduced, my bill required the national program leadership to establish this coordinating committee. The House-Senate compromise version requests that the Great Lakes Commission convene the panel.

The bill also addresses other probable pathways of zebra mussel spread. In particular, it amends the Lacey Act to prevent the interstate transportation of the zebra mussel in commerce. Research is another potential accidental pathway of transmission. The bill requires that the program leadership establish and follow a protocol for researchers to assure that studies carried out under the act will not contaminate uninfested drainage basins.

In conclusion, I wish to reiterate my thanks to the numerous parties involved in developing this final version of the legislation, and stress that the bill before us represents over a year of research and discussion. It is the product of congressional hearings and markups and is a sound approach to addressing the national problem of nonindigenous aquatic nuisances. I urge an affirmative vote of the Senate.

Mr. LEVINE. Mr. President, I am proud to be a cosponsor of this amendment to H.R. 5390, the Aquatic Nuisance Prevention and Control Act of 1990. This amendment will prevent, monitor, and control exotic species, especially the zebra mussel, that attempt to firmly entrench themselves in the North American and the Great Lakes ecosystem.

This amendment includes the most important parts of S. 2244, the Nonindigenous Acquatic Nuisance Species Act, which I cosponsored and which was directed specifically at the threat of zebra mussels in the Great Lakes. However, the programs in S. 2244 have been made national in scope in the amendment since the Great Lakes is not the only water resources being affected by injurious species.

The amendment also includes two other pieces of legislation that are very important to the Great Lakes—the Zebra Mussel Control Act and the Great Lakes Fish and Wildlife Restoration Act. The former authorizes the Army Corps to make grants to States for zebra mussel removal from public facilities. The latter requires a comprehensive study of Great Lakes fishery resources.

It is important that a concerted Federal, State, and local, effort get underway as soon as possible to fight the

zebra mussel on all fronts. This bill will speed that process along. I am hopeful that the House will act quickly on this measure and the President will sign and implement it immediately.

I would like to thank Senators GLENN and MOYNIHAN, and Congressman DENNIS HERTEL, chairman of the House Oceanography and Great Lakes Subcommittee for their attention to the zebra mussel problem. Also, I would like to thank the staff of the Senate Great Lakes Task Force for their efforts in moving this legislation so speedily.

Mr. METZENBAUM. Mr. President, I rise as a cosponsor of the aquatic nuisance legislation currently before us.

This measure goes a long way in helping to address the critical problems associated with exotic species like the zebra mussel which have invaded our waters.

I know first hand about the damage the zebra mussel is causing in Lake Erie and its tributaries.

Clumps of this fast-breeding mollusk have clogged water intake pipes and reduced the flow of water to municipalities and powerplants.

Indeed, not long ago, the Cleveland City Council voted to spend $50,000 to hire divers to inspect and clear the city's water intake pipes in Lake Erie. The Fish and Wildlife Service estimates that the mussel could cause $2 billion in damages to the commercial fishing industry over the next decade.

Mr. President, this is a terrible situation. It is going to cost billions of dollars to clean up and eradicate the zebra mussel problem.

The legislation before us will be a tremendous help in this battle.

Right now, zebra mussels and other exotic species are introduced into the Great Lakes via ship ballast water. This legislation will stop this path of entry by encouraging ships entering Great Lakes ports to first exchange their ballast water in the high seas.

And, while the legislation does establish a program specifically targeting the zebra mussel and the Great Lakes, it doesn't stop there. It also creates a national program to help combat and control unwanted aquatic species in all U.S. waters.

Mr. President, as a member of the Environment and Public Works Committee, I chaired a hearing on this legislation authored by my friend and colleague from Ohio, Senator GLENN. That hearing helped underscore what many of us already knew—the zebra mussel invasion is a serious, immediate problem, which deserves a swift, yet comprehensive, response.

I urge my colleagues to act favorably on this very important measure.

Mr. KOHL. Mr. President, I am very pleased that the Senate is prepared to move forward today on the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. More commonly referred to in the Great Lakes region as the "zebra mussel bill," this legislation will help our States, communities, and private industry to combat the spread of the zebra mussel and other exotic species in domestic waters.

Two years ago, when people began to talk about the invasion of the zebra mussel in the Great Lakes, most of us thought they were referring a a new science fiction film at the theaters. But in a very short time, we have become all too familiar with this miniscule creature which poses an enormous threat to our region, and potentially, the entire Nation.

Last August, I met with a group of people in Kaukauna, WI, to learn more about the zebra mussel threat. The city of Kaukauna—located on the Fox River, a tributary of Green Bay—is bracing for a potential zebra mussel invasion. Residents of Kaukauna and other Fox River communities are justifiably worried about the damage the zebra mussel could inflict on their utilities, their paper companies, and their recreation tourism industries.

At the meeting, and in numerous other discussions with my constituents, the message from home has been loud and clear: The Federal Government must help in the fight against zebra mussels. Individually, public utilities and State and local governments do not have the necessary resources to fight this battle.

Therefore, I have worked with Senator GLENN to craft this critical legislation, which establishes a national program aimed at eradication and control of the zebra mussel and other exotic species. The bill seeks to coordinate and streamline the research and control efforts of various Federal agencies, in order to eliminate duplication and reduce costs. In addition, the bill authorizes the Army Corps of Engineers and the U.S. Fish and Wildlife Service to help local governments and public utilities with the physical removal of zebra mussels from water intake pipes, beaches, and other facilities. This will help protect local drinking water and electricity supplies, as well as recreational and fishery resources.

And perhaps most importantly, the bill will help prevent future introductions of exotic species—which may be equally or more injurious than the zebra mussel. Foreign-traveling vessels will be prohibited from exchanging their ballast water in the Great Lakes, thereby reducing the possibility that the other exotic species will be introduced.

I commend Senator GLENN for his hard work on this measure, and I am hopeful that the bill will soon be enacted into law.

Mr. BREAUX. Mr. President, title III of the committee's substitute amendment combines two nearly identical Senate and House passed provisions: S. 1731 which unanimously passed the Senate on August 2, 1990; and an amendment to H.R. 5314 which was unanimously adopted by the House of Representatives on September 26, 1990.

Enactment of this title, the Coastal Wetlands Planning, Protection, and Restoration Act, is long overdue. Each and every day valuable wetlands resources are lost, and with them, fish and wildlife habitat, water quality benefits, hurricane and flood protection, and other important functions served by wetlands.

The bill is very simple. It focuses Federal expertise and resources on protecting and restoring the Nation's coastal wetlands. The bill establishes three very important programs. Each of the three programs is tailored to address particular needs, since the causes and magnitude of coastal wetlands losses throughout the country are varied.

One of the programs establishes a task force and planning process for protecting and restoring coastal wetlands in Louisiana. Louisiana contains 40 percent of the Nation's coastal wetlands, yet is experiencing 80 percent of the Nation's coastal wetlands loss. This amounts to an annual estimated loss of 40 to 60 square miles a year. Clearly, an aggressive and directed program is needed to help reduce the rate of loss of these wetlands, and the program contained in this legislation should be an important step forward.

In addition, the provision provides a new coastal wetlands restoration program for which all States will be eligible. Projects that will receive priority consideration under this program would be those that are consistent with the National Wetlands Priority Conservation Plan and to States that have set up dedicated funding for programs to acquire coastal wetlands, natural areas, and open spaces.

Third, title III authorizes additional resources for North American Waterfowl Management projects to be conducted in coastal States. The North American Waterfowl Management Plan is intended to assist in the restoration and protection of valuable migratory bird habitat throughout the country. Implementation of this important program through the North American Wetlands Conservation Act would be strengthened through the enactment of this provision.

I would like to take a moment to specifically address the content of section 308. This section directs that 18 percent of each annual appropriation made in accordance with 16 U.S.C. 777b shall be distributed as provided in title III of this act. This provision

recognizes the important role of wetlands restoration and conservation in supporting the objectives of improving and restoring sport fishery resources. The percentage referenced in section 308 reflects a preliminary estimate of certain amounts which are anticipated to be made available to the sport fish restoration account of the aquatic resources trust fund under provisions expected to be contained in any conference agreement on H.R. 5835, the Omnibus Budget Reconciliation Act. Because this percentage reflects only a preliminary estimate, it may require further refinement. Any future adjustment in this percentage figure must take into account the expected needs of the programs embodied in title III and must reflect the wisest usage of the sport fish restoration account funds, as well as taking into account the magnitude of the additional resources made available to the sport fish account.

Mr. President, the combination of the three programs I have outlined here will provide real and lasting coastal wetlands conservation benefits. It is a program of which I am proud, and which has benefited greatly from the suggestions and assistance of many individuals. I want to especially express my appreciation to the chairman of the Environment and Public Works Committee, Senator BURDICK, the ranking member, Senator CHAFEE, Senator JOHNSTON, Senator BENTSEN, and Senator MITCHELL for all of their support and assistance. In addition, the leadership of the Merchant Marine and Fisheries Committee and the Public Works and Transportation Committee of the other body have been most cooperative and helpful in moving these important programs forward.

Mr. RIEGLE. Mr. President, I rise today in support of the Nonindigenous Aquatic Nuisance Prevention and Control Act. I am a cosponsor of this bill because it is vitally important for Michigan and will prevent the problems we have witnessed in my State from spreading throughout the Nation.

The Great Lakes are the most dominant features of Michigan. We rely on the Great Lakes system for drinking water, for recreation and for transportation. But over the last several years, the Great Lakes have been invaded by an aquatic nuisance foreign to this region of the world. The zebra mussel has created serious problems for coastal communities and if left unchecked could spread to every part of my State. These tenacious creatures attach themselves to anything solid causing problems for water systems, shipping facilities and recreational harbors. They have no natural predators and we currently know of no effective control other than removing them manually. If the zebra mussel is left uncontrolled, it is expected to infest two-thirds of the U.S. waterways. In Michigan we know all too well how damaging the mussel can be and that the time to tackle this problem is now.

This bill will go a long way toward dealing with this problem in a coordinated fashion. First, we will be authorizing funds so communities can eradicate their current problems. In Michigan the zebra mussel has spread to such an extent that many cities and towns do not have the resources to protect their public facilities. Second, new shipping regulations will prevent the spread of the mussel. We must contain the zebra mussel until we develop an effective and environmentally safe control agent. Finally, we have to learn as much about this nuisance species as soon as we can. The bill's research component will provide the best minds in the country with the resources necessary to find the answers. We need a strong, systematic approach to controlling the mussel now before the situation becomes critical.

This bill helps eradicate the zebra mussel and will provide us with information vital to protect our fresh water resources from other foreign acquatic species. It is my hope that over the next several years, the zebra mussel will be effectively eliminated from the Great Lakes system. Furthermore, the steps taken in this bill will prevent the transportation of new dangerous species in the future.

Mr. MOYNIHAN. Mr. President, the Senate Committee on Environment and Public Works held three hearings this year concerning zebra mussels and the potential for their effects on water resource infrastructure and fishery habitats. Unfortunately, the picture is rather grim. The U.S. Fish and Wildlife Service has estimated that in the Great Lakes, the zebra mussel will cost $5 billion over the next 10 years in environmental and economic losses. As the zebra mussel moves throughout the surface water system of the United States this figure will surely rise dramatically.

The zebra mussel is truly a dangerous infestation. It presents a threat to our entire surface water system and ultimately will affect the way we live and work.

The zebra mussel—the scientific name is Dreissena polymorpha—is not indigenous to North America. It is native to the Black, Caspian, and Azov Seas of Soviet Central Asia. It has been in Europe for more than 150 years, and now it is here.

Unlike other infestations, this one is irreversible. The zebra mussel is here to stay. It cannot be quarantined or eradicated. Within 20 years time it will have spread through the entire surface water system of North America. How this occurred and what it will mean is worthy of our attention.

The zebra mussel is native to the fresh waters of southern Asia. It was first identified there in 1771. Canals built during the late 18th century allowed the species to expand its range. It took less than a century for the mussel to spread over much of Europe—by the 1830's, zebra mussels had reached the British Isles.

Infestations of Dreissena created difficulties for the water supplies in Hamburg in 1886 and in Rotterdam in 1887 by clogging intake pipes. In 1895, Berlin's waterworks were closed for 27 days due to fouling of pipes by thousands of decaying mussels. In 1921, a hydroelectric plant in northern Germany closed because 1.5 meter thickness of mussels severely restricted water flow.

But still, as of only 5 years ago, the zebra mussel had not reached North America. Or perhaps it had, but if so, it had not survived.

Nonetheless, it is believed that in the summer of 1986, zebra mussels arrived in North America in the ballast water of a ship arriving from Europe, and that this event or series of similar events has led to the infestation we now face. It is thought that ballast water taken on in a European port contained immature zebra mussels, that these mussels survived the 5 to 7 day trip that is now commonplace, and that this water was released into Lake St. Clair, which lies north of Detroit between Lake Huron and Lake Erie.

The first confirmed sighting of the zebra mussel in the Great Lakes was in the Canadian waters of Lake St. Clair on June 1, 1988. Zebra mussels now have been found throughout the entire Great Lakes system. As far west as Duluth, MN, and as far east as the St. Lawrence River in New York.

The mussel can move between different bodies of water in several ways. The larvae—called veligers—can be transported downstream or downwind by water currents. Mussels attach to the hulls of boats, and larvae can survive for up to a week in the cooling water of boat engines. They can be carried by the feet of water birds and other wildlife.

Some advocate using natural predators of the zebra mussel to control its population. Diving ducks prey upon the mussel. In Lake Erie, where the zebra mussel is abundant, observers are reporting an increase in the diving duck population. Unfortunately, there are limits to the ability of the duck to control this organism. Wetland habitat in the Great Lakes may be too small support the duck population needed to control this infestation.

Mr. President several legislative initiatives have been developed to aid in the fight against the zebra mussel. That we have combined them into one comprehensive package, spanning the jurisdiction of two Senate committees

and three House committees, was no small task in itself. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 will go a long way in protecting the Nation's public infrastructure facilities and the biological integrity of our waters.

The bill contains a provision I introduced which directs the Corps of Engineers to develop and design a program of research and technology development for the control of zebra mussels around public infrastructure facilities. We will provide $2 million a year for 5 years for this effort.

The bill also provides $25 million over the next 5 years for assistance to facilities, identified by their State, which, without additional assistance cannot control mussel infestation around its public facilities. Such assistance would be provided with a 50-percent cost share from non-Federal interests.

That we control the zebra mussel must be paramount. I am not sure we can stop other nonindigenous species from entering our waters. Nonetheless we must try. And so, our bill proposes to take on this problem.

We will establish guidelines for ballast water exchange and, eventually, fine those who do not take our efforts seriously. We will study the effects of ballast water exchange and its impacts on the environment. We will establish a national task force. States will submit plans to stop the spread of nonindigenous species.

Mr. President, it is rather like a war. Not a conflict we would choose, but rather an engagement by necessity. I'm fearful that it is a battle we cannot win. Attrition is most likely our best hope. This is just one step in the inevitable process of global homogenization. We can slow it down, but we cannot stop it. I suspect in time, like our friends in Europe, we will learn to live with zebra mussels, but we will not rid ourselves of them. Let the learning process begin. This legislation is that first step.

Mr. President, Senator BREAUX has attached a modified version of S. 1731, the Coastal Wetlands Planning, Protection, and Restoration Act. This bill unanimously passed the Senate on August 2, 1990.

Coastal wetlands are a national resource, they are being lost at an alarming rate. This amendment presents a comprehenisive program to address wetlands loss nationwide. It is a good program and I support it.

Mr. LIEBERMAN. Mr. President, I rise in support of H.R. 3338. Title II of the bill incorporates provisions of S. 2176, the Pollution Prosecution Act, which I introduced along with Senators LAUTENBERG, CHAFEE, DURENBERGER, JEFFORDS, WILSON, and SIMON. I am pleased that the House of Representatives has passed a companion bill as part of the EPA cabinet bill and that the House sponsor indicated during the floor debate that the administration supports the bill. We saw that support in the Senate as well, when EPA's Assistant Administrator for Enforcement testified on April 24, 1990, concerning S. 2176 that, "EPA believes that the bill is timely and important to improving environmental enforcement and compliance in our Nation."

Mr. President, during my experience as attorney general of Connecticut, I became acutely aware that having tough laws and regulations in place is only half the battle toward achieving compliance with our environmental laws. Ensuring that the laws are enforced is the second critical part of any truly effective system of environmental laws.

One especially important and relatively new approach to environmental enforcement is the use of criminal penalties and imprisonment of individuals who violate our environmental laws.

Those who violate such laws have been called green collar criminals, and I believe people who pollute should face the possibility of doing time in jail. Monetary penalties against a company often do not represent enough of a deterrent to prevent environmental crimes; they can be too easily written off as another cost of doing business.

Mr. President, Attorney General Dick Thornburgh has stressed the importance of criminal prosecution as a means of deterring deliberate noncompliance with our environmental laws. He stated:

> With callous disregard for our actions and an almost hostile view toward the environment, for nearly 200 years we seemed not to care and American took a very long journey down the road of indiscriminate pollution.

The laws we have enacted are tough. Under the Clean Water Act, the new oilspill legislation, the Clean Air Act provisions we are about to pass, the Resource Conservation and Recovery Act and other environmental laws, a violator can to to jail and face large civil and criminal penalties for each violation.

But, while the Attorney General's words are tough, the program at EPA does not provide enough tools to follow up on these words. The backbone of EPA's criminal enforcement program is its investigators, who provide EPA with the ability to collect evidence about environmental violations. Yet, unbelievably, EPA only has approximately 50 criminal investigators throughout the Nation—in essence, less than one investigator for each State. Some individual States have devoted almost that many investigators to enforcement of State criminal environmental laws.

Some of the impetus for this bill resulted from the testimony we heard last November before the Environment and Public Works Committee. EPA Deputy Administrator Habicht, EPA inspector general, John Martin, and district attorney, Donald Mielke, chairman of the environment protection committee of the National District Attorneys Association, emphasized the need to improve training opportunities for investigators, inspectors, lawyers, and technical staff. Other witnesses stressed the importance of an increase in criminal investigators.

I am especially pleased that the National District Attorneys Association, in a resolution to the President, has supported the enforcement provisions contained in this bill and that the National Association of Attorneys General has strongly endorsed the legislation. The provisions of the bill are in accord with portions of NAAG's recent report, "Environmental Protection in the 1990's," which recommended that EPA hire additional criminal investigators to assist in interstate investigations and increase the opportunities for State attorneys, inspectors and investigators to receive training on the handling of environmental enforcement. As the principal sponsor of this legislation, it is my intent that EPA work in closely with State and local law enforcement officials in implementing the provisions.

Judson Starr, who is the former head of the Justice Department's environmental crimes section pointed out during the committee's hearings the weaknesses in EPA's program created by the inadequate number of investigators. Currently, he testified, cases are investigated by EPA only after the violations are discovered and the harm is done. This means that EPA is always in a reactive posture and that few cases are the product of reasoned or targeted focus on suspected wrongdoing. He testified that, "as a consequence, EPA's limited resources are not directed toward uncovering practices which would provide the greatest public exposure and deterrence." However, with more criminal investigators, EPA would be able to bring cases that would have greater deterrent value than those currently being brought.

With the proposed increase in the number of criminal and civil investigators and an increased emphasis on training of law enforcement personnel, I am hopeful that the enforcement of our environmental laws will be strengthened and greater compliance with the laws will occur.

Finally, I believe the proposal to authorize EPA to hire 50 civil investigators will not only strengthen compliance with our laws, but will do so in a cost-effective manner. Investigators are used to track down witnesses; they also provide critical support for court cases. Currently, however, EPA is too often required to rely on outside con-

sultants to help develop cases. As a member of the Governmental Affairs Committee, I have heard extensive testimony that EPA's reliance on contractors is not cost effective. This legislation will help ensure that EPA's reliance on outside consultants is decreased.

Mr. President, I wish to thank Senators BURDICK, BAUCUS, and CHAFEE of the Environment and Public Works Committee and their staffs for their assistance in advancing this legislation.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no futher amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time.

AQUATIC NUISANCE PREVENTION AND CONTROL ACT

Mr. BREAUX. I ask unanimous consent that the Senate proceed to Calendar No. 922, H.R. 5390, the House companion and that all after the enacting clause be stricken and the text of S. 2244 be inserted in lieu thereof, that the bill be deemed read for the third time and passed; that the motion to reconsider be laid upon the table. And I ask that S. 2244 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL ENVIRONMENTAL EDUCATION ACT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Environment Committee be discharged from further consideration of S. 3176, the National Environmental Education Act, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 3176) to promote environmental education, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3185

(Purpose: To provide a substitute for the bill)

Mr. BREAUX. I send a substitute amendment by Senator Burdick to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. BURDICK, proposes an amendment numbered 3185.

Mr. BREAUX. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3185) was agreed to.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BURDICK. Mr. President, I rise in strong support of the National Environmental Education Act.

This is legislation that I introduced to renew the Federal Government's commitment to environmental education and to teaching young people about the environment.

The Senate passed the bill I originally introduced (S. 1076) earlier this year. The House of Representatives passed similar legislation in late September.

Since then, House and Senate have worked to reconcile minor differences between the two bills. I am very pleased that we have agreed on a final version of the legislation.

The final version is similar to the bill originally passed by the Senate. It supports and encourages better understanding of the environment and environmental problems in our educational system.

The bill directs the Federal Government to work with States, schools, and nonprofit groups to promote environmental education. It establishes an Office of Environmental Education at the EPA. It also provides for environmental education training, and authorizes grants for environmental education programs and projects.

An important goal of this bill is to attract young people into careers in environmental protection. The bill provides internships for college students in a range of Federal agencies.

In discussions with the House of Representatives, we agreed to several changes to the bill.

The agreed-upon version of the bill includes authority for an Environmental Education Foundation, a provision included in the House passed bill, but not the Senate bill. This Foundation supports and assists the environmental education efforts of the Environmental Protection Agency and is eligible to receive gifts and other donations from private parties.

Language in the bill concerning the Foundation has been revised to clarify the scope of the Foundation's work and assure accountability for its operations.

I have been especially concerned that a privately funded foundation might not be able to present environmental issues in an objective light. The final bill includes important new prohibitions on the acceptance of gifts, if such gift would in any way require that an education program represent a point of view favorable to the economic interests of the giver.

As chairman of the authorizing committee for this legislation in the Senate, I expect to oversee closely the operations and activities of the Foundation to assure that all its programs are operated in an objective manner.

I am disappointed that the final bill does not include an authorization for a trust fund made up of environmental fines and penalties as provided for in the Senate bill. Previous environmental education programs have been badly underfunded by the Congress. I hope that all my colleagues will join in working with me to assure that this program is adequately funded.

In my work on this legislation, I have become convinced that educating our children about the environment is the best investment we can make in saving the planet. I hope that all my colleagues will join me in supporting this important legislation.

Thank you.

Mr. CHAFEE. Mr. President, I rise in strong support of S. 3176, the National Environmental Education Act. This bill will help instill in our population, especially the younger generation, an understanding that everyday actions such as garbage disposal and the burning of fossil fuels have a direct impact on our life-sustaining ecosystem.

I would like to take a moment to discuss one provision of the bill. This provision would establish a Presidential program, administered by the Council on Environmental Quality within the Executive Office of the President, to recognize and stimulate excellence in environmental education in elementary and secondary schools. Specifically, the amendment would establish Presidential Awards for Excellence in Environmental Education to be given to a teacher from each State and from the District of Columbia and the Commonwealth of Puerto Rico. These awards would provide up to $2,500 to each award recipient to be used for that recipient's professional development. An additional award of up to $2,500 would be given to the local education agency employing the award recipient, to be used to fund environmental educational activities and programs.

The education of our youth, and through them their parents, can foster greater understanding of the need for

environmental protection and can bring about the modifications in behavior which will be necessary to improve the future health of our natural resources and environment. Recognition should be given to those teachers who foster an enviromental ethic in elementary and secondary school students through innovative and effective teaching methods.

The awards program would be administered by the President's Council on Environmental Quality. CEQ would be responsible for developing an awards selection process and for establishing a timetable for the process. The selection criteria should include, but not be limited to the creativity of the teaching method or project; the transferability of the teaching method or project to other teachers; the effectiveness of the teacher in increasing students' understanding and appreciation of the environment; and the positive impact of the teacher on students, parents, and other teachers.

CEQ should work with the Environmental Protection Agency, the Department of Education, the Department of Health and Human Services, the National Science Foundation, and other Federal agencies and existing national, State, and local environmental and education organizations to the maximum extent possible to identify potential award recipients.

This provision establishes a high-level awards program which emphasizes the importance of teachers who can educate our youth to prevent pollution and protect the environment. To ensure a cleaner environment for future generations, we must begin to educate children today. The National Environmental Education Act is a positive step in this direction.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3176

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) TITLE.—This Act may be cited as the "National Environmental Education Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Findings and policy.
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Sec. 11. Authorization.

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) Threats to human health and environmental quality are increasingly complex, involving a wide range of conventional and toxic contaminants in the air and water and on the land.

(2) There is growing evidence of international environmental problems, such as global warming, ocean pollution, and declines in species diversity, and that these problems pose serious threats to human health and the environment on a global scale.

(3) Environmental problems represent as significant a threat to the quality of life and the economic vitality of urban areas as they do the natural balance of rural areas.

(4) Effective response to complex environmental problems requires understanding of the natural and built environment, awareness of environmental problems and their origins (including those in urban areas), and the skills to solve these problems.

(5) Development of effective solutions to environmental problems and effective implementation of environmental programs requires a well educated and trained, professional work force.

(6) Current Federal efforts to inform and educate the public concerning the natural and built environment and environmental problems are not adequate.

(7) Existing Federal support for development and training of professionals in environmental fields is not sufficient.

(8) The Federal Government, acting through the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to support development of curricula, special projects, and other activities, to increase understanding of the natural and built environment and to improve awareness of environmental problems.

(9) The Federal Government, acting through the coordinated efforts of its agencies and with the leadership of the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to develop programs to provide increased emphasis and financial resources for the purpose of attracting students into environmental engineering and assisting them in pursuing the programs to complete the advanced technical education required to provide effective problem solving capabilities for complex environmental issues.

(10) Federal natural resource agencies such as the United States Forest Service have a wide range of environmental expertise and a long history of cooperation with educational institutions and technology transfer that can assist in furthering the purposes of the Act.

(b) POLICY.—It is the policy of the United States to establish and support a program of education on the environment, for students and personnel working with students, through activities in schools, institutions of higher education, and related educational activities, and to encourage postsecondary students to pursue careers related to the environment.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Agency" means the United States Environmental Protection Agency;

(3) "Federal agency" or "agency of the United States" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation;

(4) "Secretary" means the Secretary of the Department of Education;

(5) "local education agency" means any education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381) and shall include any tribal education agency;

(6) "not-for-profit" organization means an organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation pursuant to the provisions of section 501(a) of such Code;

(7) "noncommercial education broadcasting entities" means any noncommercial educational broadcasting station (and/or its legal nonprofit affiliates) as defined and licensed by the Federal Communications Commission;

(8) "tribal education agency" means a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs;

(9) "Federal natural resource management agencies" means the United States Forest Service, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service;

(10) "environmental engineering" means the discipline within engineering and science concerned with the development and application of scientific and technical solutions to protecting the aquatic and atmospheric environment, including, but not limited to, all phases of water resources planning, water supply, water treatment, air pollution characterization and control, remediation of hazardous substances, environmental transport of contaminants in surface and ground water and atmosphere, and methods for assessment and control of pollution;

(11) "environmental education" and "environmental education and training" mean educational activities and training activities involving elementary, secondary, and postsecondary students, as such terms are defined in the State in which they reside, and environmental education personnel, but does not include technical training activities directed toward environmental management professionals or activities primarily directed toward the support of noneducational research and development;

(12) "Foundation" means the National Environmental Education and Training Foundation established pursuant to section 10 of this Act; and

(13) "Board of Directors" means the Board of Directors of the National Environmental Education and Training Foundation.

SEC. 4. OFFICE OF ENVIRONMENTAL EDUCATION.

(a) The Administrator shall establish an Office of Environmental Education within the Environmental Protection Agency.

(b) The Office of Environmental Education shall—

(1) develop and support programs and related efforts, in consultation and coordination with other Federal agencies, to improve understanding of the natural and built environment, and the relationships between humans and their environment, including the global aspects of environmental problems;

(2) support development and the widest possible dissemination of model curricula, educational materials, and training programs for elementary and secondary students and other interested groups, including senior Americans;

(3) develop and disseminate, in cooperation with other Federal agencies, not-for-profit educational and environmental organizations, State agencies, and noncommercial educational broadcasting entities, environmental education publications and audio/visual and other media materials;

(4) develop and support environmental education seminars, training programs, teleconferences, and workshops for environmental education professionals, as provided for in section 5 of this Act;

(5) manage Federal grant assistance provided to local education agencies, institutions of higher education, other not-for-profit organizations, and noncommercial education broadcasting entities, under section 6 of this Act;

(6) administer the environmental internship and fellowship programs provided for in section 7 of this Act;

(7) administer the environmental awards program provided for in section 8 of this Act;

(8) provide staff support to the Advisory Council and Task Force provided for in section 9 of this Act;

(9) assess, in coordination with other Federal agencies, the demand for professional skills and training needed to respond to current and anticipated environmental problems and cooperate with appropriate institutions, organizations, and agencies to develop training programs, curricula, and continuing education programs for teachers, school administrators, and related professionals;

(10) assure the coordination of Federal statutes and programs administered by the Agency relating to environmental education, consistent with the provisions and purposes of those programs, and work to reduce duplication or inconsistencies within these programs;

(11) work with the Department of Education, the Federal Interagency Committee on Education, and with other Federal agencies, including Federal natural resource management agencies, to assure the effective coordination of programs related to environmental education, including environmental education programs relating to national parks, national forests, and wildlife refuges;

(12) provide information on environmental education and training programs to local education agencies, State education and natural resource agencies, and others; and

(13) otherwise provide for the implementation of this Act.

(c) The Office of Environmental Education shall—

(1) be directed by a Director who shall be a member of the Senior Executive Service;

(2) include a headquarters staff of not less than six and not more than ten full-time equivalent employees; and

(3) be supported by one full-time equivalent employee in each Agency regional office.

SEC. 5. ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM.

(a) There is hereby established an Environmental Education and Training Program. The purpose of the program shall be to train educational professionals in the development and delivery of environmental education and training programs and studies.

(b) The functions and activities of the program shall include, at a minimum—

(1) classroom training in environmental education and studies including environmental sciences and theory, educational methods and practices, environmental career or occupational education, and topical environmental issues and problems;

(2) demonstration of the design and conduct of environmental field studies and assessments;

(3) development of environmental education programs and curriculum, including programs and curriculum to meet the needs of diverse ethnic and cultural groups;

(4) sponsorship and management of international exchanges of teachers and other educational professionals between the United States, Canada, and Mexico involved in environmental programs and issues;

(5) maintenance or support of a library of environmental education materials, information, literature, and technologies, with electronic as well as hard copy accessibility;

(6) evaluation and dissemination of environmental education materials, training methods, and related programs;

(7) sponsorship of conferences, seminars, and related forums for the advancement and development of environmental education and training curricula and materials, including international conferences, seminars, and forums;

(8) supporting effective partnerships and networks and the use of distant learning technologies; and

(9) such other activities as the Administrator determines to be consistent with the policies of this Act. Special emphasis should be placed on developing environmental education programs, workshops, and training tools that are portable and can be broadly disseminated.

(c)(1) The Administrator shall make a grant on an annual basis to an institution of higher education or other institution which is a not-for-profit institution (or consortia of such institutions) to operate the environmental education and training program required by this section.

(2) Any institution of higher education or other institution (or consortia of such institutions) which is a not-for-profit organization and is interested in receiving a grant under this section may submit to the Administrator an application in such form and containing such information as the Administrator may require.

(3) The Administrator shall award grants under this section on the basis of—

(A) the capability to develop environmental education and training programs;

(B) the capability to deliver training to a range of participants and in a range of settings;

(C) the expertise of the staff in a range of appropriate disciplines;

(D) the relative economic effectiveness of the program in terms of the ratio of overhead costs to direct services;

(E) the capability to make effective use of existing national environmental education resources and programs;

(F) the results of any evaluation under paragraph (5) of this subsection; and

(G) such other factors as the Administrator deems appropriate.

(4) No funds made available to carry out this section shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building.

(5) The Administrator shall establish procedures for a careful and detailed review and evaluation of the environmental education and training program to determine whether the quality of the program being operated by the grantee warrants continued support under this section.

(d)(1) Individuals eligible for participation in the program are teachers, faculty, administrators and related support staff associated with local education agencies, colleges, and universities, employees of State education, environmental protection, and natural resource departments, and employees of not-for-profit organizations involved in environmental education activities and issues.

(2) Individuals shall be selected for participation in the program based on applications which shall be in such form as the Administrator determines to be appropriate.

(3) In selecting individuals to participate in the program, the Administrator shall provide for a wide geographic representation and a mix of individuals, including minorities, working at primary, secondary, postsecondary levels, and with appropriate other agencies and departments.

(4) Individuals selected for participation in the program may be provided with a stipend to cover travel and accommodations from grant funds awarded pursuant to this section in such amounts as the Administrator determines to be appropriate.

SEC. 6. ENVIRONMENTAL EDUCATION GRANTS.

(a) The Administrator may enter into a cooperative agreement or contract, or provide financial assistance in the form of a grant, to support projects to design, demonstrate, or disseminate practices, methods, or techniques related to environmental education and training.

(b) Activities eligible for grant support pursuant to this section shall include, but not be limited to, environmental education and training programs for—

(1) design, demonstration, or dissemination of environmental curricula, including development of educational tools and materials;

(2) design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;

(3) projects to understand and assess a specific environmental issue or a specific environmental problem;

(4) provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and

(5) design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States, and Canada or Mexico.

(c) In making grants pursuant to this section, the Administrator shall give priority to those proposed projects which will develop—

(1) a new or significantly improved environmental education practice, method, or technique;

(2) an environmental education practice, method, or technique which may have wide application;

(3) an environmental education practice, method, or technique which addresses a skill or scientific field identified as a priority in the report developed pursuant to section 9(d) of this Act; and

(4) an environmental education practice, method or technique which addresses an environmental issue which, in the judgment of the Administrator, is of a high priority.

(d) The program established by this section shall include solicitations for projects, selection of suitable projects from among those proposed, supervision of such projects, evaluation of the results of projects, and dissemination of information on the effectiveness and feasibility of the practices, methods, techniques and processes. Within one year of the date of enactment of this Act, the Administrator shall publish regulations to assure satisfactory implementation of each element of the program authorized by this section.

(e) Within 90 days after the date on which amounts are first appropriated for carrying out this Act, and each year thereafter, the Administrator shall publish a solicitation for environmental education grants. The solicitation notice shall prescribe the information to be included in the proposal and other information sufficient to permit the Administrator to assess the project.

(f) Any local education agency, college or university, State education agency or environmental agency, not-for-profit organization, or noncommercial educational broadcasting entity may submit an application to the Administrator in response to the solicitations required by subsection (e) of this section.

(g) Each project under this section shall be performed by the applicant, or by a person satisfactory to the applicant and the Administrator.

(h) Federal funds for any demonstration project under this section shall not exceed 75 percent of the total cost of such project. For the purposes of this section, the non-Federal share of project costs may be provided by inkind contributions and other noncash support. In cases where the Administrator determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, the Administrator may approve grants under this section with a matching requirement other than that specified in this subsection, including full Federal funding.

(i) Grants under this section shall not exceed $250,000. In addition, 25 percent of all funds obligated under this section in a fiscal year shall be for grants of not more than $5,000.

SEC. 7. ENVIRONMENTAL INTERNSHIPS AND FELLOWSHIPS.

(a) The Administrator shall, in consultation with the Office of Personnel Management and other appropriate Federal agencies, provide for internships by postsecondary level students and fellowships for in-service teachers with agencies of the Federal Government.

(b) The purpose of internships and fellowships pursuant to this section shall be to provide college level students and in-service teachers with an opportunity to work with professional staff of Federal agencies involved in environmental issues and thereby gain an understanding and appreciation of such issues and the skills and abilities appropriate to such professions.

(c) The Administrator shall, to the extent practicable, support not less than 250 internships each year and not less than 50 fellowships each year.

(d) The internship and fellowship programs shall be managed by the Office of Environmental Education. Interns and fellows may serve in appropriate agencies of the Federal Government including, but not limited to, the Environmental Protection Agency, the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Council on Environmental Quality, Federal natural resource management agencies, the Department of Agriculture, and the National Science Foundation.

(e) Interns shall be hired on a temporary, full-time basis for not to exceed 6 months and shall be compensated appropriately. Fellows shall be hired on a temporary full-time basis for not to exceed 12 months and shall be compensated appropriately. Federal agencies hiring interns shall provide the funds necessary to support salaries and related costs.

(f)(1) Individuals eligible for participation in the internship program are students enrolled at accredited colleges or universities who have successfully completed not less than four courses or the equivalent in environmental sciences or studies, as determined by the Administrator.

(2) Individuals eligible for participation in the fellowship program are in-service teachers who are currently employed by a local education agency and have not less than 2 years experience in teaching environmental education, environmental sciences, or related courses.

(g) Individuals shall be selected for internships and fellowships based on applications which shall be in such form as the Administrator considers appropriate.

(h) In selecting individuals for internships and fellowships, the Administrator shall provide for wide geographic, cultural, and minority representation.

SEC. 8. ENVIRONMENTAL EDUCATION AWARDS.

(a) The Administrator shall provide for a series of national awards recognizing outstanding contributions to environmental education.

(b) In addition to such other awards as the Administrator may provide for, national environmental awards shall include—

(1) The "Theodore Roosevelt Award" to be given in recognition of an outstanding career in environmental education, teaching, or administration;

(2) The "Henry David Thoreau Award" to be given in recognition of an outstanding contribution to literature on the natural environment and environmental pollution problems;

(3) The "Rachael Carson Award" to be given in recognition of an outstanding contribution in print, film, or broadcast media to public education and information on environmental issues or problems; and

(4) The "Gifford Pinchot Award" to be given in recognition of an outstanding contribution to education and training concerning forestry and natural resource management, including multiple use and sustained yield land management.

(c) Recipients of education awards provided for in subsection (b) shall be nominated by the Environmental Education Advisory Council provided for in section 9 of this Act.

(d) The Administrator may provide for the "President's Environmental Youth Awards" to be given to young people in grades kindergarten through twelfth for an outstanding project to promote local environmental awareness.

(e)(1) The Chairman of the Council on Environmental Quality, on behalf of the President, is authorized to develop and administer an awards program to recognize elementary and secondary education teachers and their local educational agencies who demonstrate excellence in advancing environmental education through innovative approaches. One teacher, and the local education agency employing such teacher, from each State, including the District of Columbia and the Commonwealth of Puerto Rico, are eligible to be selected for an award pursuant to this subsection.

(2) The Chairman is authorized to provide a cash award of up to $2,500 to each teacher selected to receive an award pursuant to this section, which shall be used to further the recipient's professional development in environmental education.

(3) The Chairman is also authorized to provide a cash award of up to $2,500 to the local education agency employing any teacher selected to receive an award pursuant to this section, which shall be used to fund environmental educational activities and programs. Such awards may not be used for construction costs, general expenses, salaries, bonuses, or other administrative expenses.

SEC. 9. ENVIRONMENTAL EDUCATION ADVISORY COUNCIL AND TASK FORCE.

(a) There is hereby established a National Environmental Education Advisory Council and a Federal Task Force on Environmental Education.

(b)(1) The Advisory Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this Act. With respect to such matters, the Council shall be the exclusive advisory entity for the Administrator. The Council may exchange information with other Advisory Councils established by the Administrator. The Office of Environmental Education shall provide staff support to the Council.

(2) The Advisory Council shall consist of 11 members appointed by the Administrator after consultation with the Secretary. Two members shall be appointed to represent primary and secondary education (one of whom shall be a classroom teacher); two members shall be appointed to represent colleges and universities; two members shall be appointed to represent not-for-profit organizations involved in environmental education; two members shall be appointed to represent State departments of education and natural resources; two representatives shall be appointed to represent business and industry; and one representative shall be appointed to represent senior Americans. A representative of the Secretary shall serve as an ex officio member of the Advisory Council. The conflict of interest provision at section 208(a) of title 18, United States Code, shall not apply to members' participation in particular matters which affect the financial interests of employers which they represent pursuant to this subsection.

(3) The Administrator shall provide that members of the Council represent the various geographic regions of the country, has minority representation, and that the professional backgrounds of the members include scientific, policy, and other appropriate disciplines.

(4) Each member of the Advisory Council shall hold office for a term of 3 years, except that—

(A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appoint-

ed shall be appointed for the remainder of such term; and

(B) the terms of the members first taking office shall expire as follows: four shall expire 3 years after the date of enactment of this Act, four shall expire 2 years after such date, and three shall expire 1 year after such date, as designated by the Administrator at the time of appointment.

(5) Members of the Advisory Council appointed under this section shall, while attending meetings of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(6) Section 14(a) of the Federal Advisory Committee Act relating to termination, shall not apply to the Advisory Council.

(c)(1) The Federal Task Force on Environmental Education shall advise, consult with and make recommendations to the Administrator on matters relating to implementation of this Act and assure the coordination of such implementation activities with related activities of other Federal agencies.

(2) Membership of the Task Force shall include the—

(A) Department of Education,

(B) Department of the Interior,

(C) Department of Agriculture,

(D) the Environmental Protection Agency,

(E) National Oceanic and Atmospheric Administration,

(F) Council on Environmental Quality,

(G) Tennessee Valley Authority, and

(H) National Science Foundation.

(3) The Environmental Protection Agency shall chair the Task Force.

(4) The Administrator may ask other Federal agencies to participate in the meetings and activities of the Task Force where the Administrator finds it appropriate in carrying out the requirements of this Act.

(d)(1) The Advisory Council shall, after providing for public review and comment, submit to the Congress, within 24 months of enactment of this Act and biennially thereafter, a report which shall—

(A) describe and assess the extent and quality of environmental education in the Nation;

(B) provide a general description of the activities conducted pursuant to this Act and related authorities over the previous 2-year period;

(C) summarize major obstacles to improving environmental education (including environmental education programs relating to national parks and wildlife refuges) and make recommendations for addressing such obstacles;

(D) identify personnel skills, education, and training needed to respond to current and anticipated environmental problems and make recommendations for actions to assure sufficient educational and training opportunities in these professions; and

(E) describe and assess the extent and quality of environmental education programs available to senior Americans and make recommendations thereon; describe the various Federal agency programs to further senior environmental education; and evaluate and make recommendations as to how such educational apparatuses could best be coordinated with non-profit senior organizations across the Nation, and environmental education institutions and organizations now in existence.

(2) The Federal Task Force on Environmental Education shall review and comment on a draft of the report to Congress.

SEC. 10. THE NATIONAL ENVIRONMENTAL EDUCATION AND TRAINING FOUNDATION.

(a) ESTABLISHMENT AND PURPOSES.—

(1) ESTABLISHMENT.—(A) There is hereby established the National Environmental Education and Training Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

(B) The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States.

(2) PURPOSES.—The purposes of the Foundation are—

(A) subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

(3) PROGRAMS.—The Foundation will develop, support, and/or operate programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

(b) BOARD OF DIRECTORS.—

(1) ESTABLISHMENT AND MEMBERSHIP.—(A) The Foundation shall have a governing Board of Directors (hereafter referred to in this section as "the Board"), which shall consist of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board shall oversee the activities of the Foundation and shall assure that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to environmental education and training.

(B) The Administrator of the Environmental Protection Agency shall, pursuant to paragraph (2), appoint the Director of the Office of Environmental Education established pursuant to section 3 of this Act as an ex-officio member of the Board. Ex officio membership shall also be offered to other Federal agencies or departments with an interest and/or experience in environmental education and training.

(C) Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(2) APPOINTMENT AND TERMS.—(A) Members of the Board shall be appointed by the Administrator of the Environmental Protection Agency.

(B) Within 90 days of the date of the enactment of this Act, and as appropriate thereafter, the Administrator shall publish in the Federal Register an announcement of appointments of Directors of the Board. At the same time, the Administrator shall transmit a copy of such announcement to the Education and Labor Committee and the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate. Such appointments shall become final and effective 90 days after publication in the Federal Register.

(C) The directors shall be appointed for terms of 4 years, except that the Administrator, in making the initial appointments to the Board, shall appoint 5 directors to a term of 2 years, 4 directors to a term of 3 years, and 4 directors to a term of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

(3) CHAIR.—The Chair shall be elected by the Board from its members for a 2-year term.

(4) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(5) MEETINGS.—The Board shall meet at the call of the Chair at least twice a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with this subsection.

(6) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(7) GENERAL POWERS.—(A) The Board may complete the organization of the Foundation by—

(i) appointing officers and employees;

(ii) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this section; and

(iii) undertaking such other acts as may be necessary to carry out the provisions of this section.

(B) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(i) Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, of the United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(ii) The first officer or employee appointed by the Board shall be the Executive Director of the Foundation who (I) shall serve, at the direction of the Board, as the Secretary of the Board and the Foundation's chief executive officer, and (II) shall be experienced in matters relating to environmental education and training.

(c) RIGHTS AND OBLIGATIONS OF THE FOUNDATION.—

(1) IN GENERAL.—The Foundation—

(A) shall have perpetual succession;

(B) may conduct business throughout the several States, territories, and possessions of the United States and abroad;

(C) shall have its principal offices in the District of Columbia or in the greater metropolitan area; and

(D) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The service of notice to, or service of notice upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(2) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(3) POWERS.—To carry out its purposes under section 10(a) of this Act, the Foundation shall have, in addition to the powers otherwise given it under this section, the usual powers of a corporation acting as a trustee, including the power—

(A) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(B) to acquire by purchase or exchange any real or personal property or interest therein;

(C) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(D) to sue, or to be sued, and complain or defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(E) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(F) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

(d) CONDITIONS ON DONATIONS.—

(1) For the purposes of this section, a gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current future interest therein is for the benefit of the Foundation.

(2) No donation, gift, devise, bequest, property (either real or personal), voluntary services, or any other thing of value may be accepted by the Foundation if it—

(A) is contingent upon the transmission by the Foundation of materials or information prepared by the donor or a third party in such a fashion as to convey a particular point of view favorable to the economic interests of the donor or its constituents or associates; or

(B) in the judgment of the Board carries with it an explicit or implied requirement on the part of the Foundation to do a specific act or make general representations which are to the benefit of the donor and which are not consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act.

(3) No materials bearing "logos", letterhead or other means of identification associated with a donor or third party may be transmitted by the Foundation for use in environmental education and training, except as required pursuant to subsection (f).

(e) ADMINISTRATIVE SERVICES AND SUPPORT.—Subject to the requirements of this subsection, the Administrator may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under subsection (b)(6) of this section, not to exceed then current Federal Government per diem rates, for a period of up to 4 years from the date of enactment of this Act, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the costs of providing such services. With respect to personnel, the Administrator may provide no more than 1 full-time employee to serve the Foundation in a policy capacity, and may provide clerical and other support staff at a level equivalent to 2 full-time equivalent employees to the Foundation, for a period not to exceed 2 years from the date of initial assignment of any personnel for this purpose.

(f) REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress a report of its proceedings and activities during the year, including a full and complete statement of its receipts, expenditures, and investments.

(g) VOLUNTEER STATUS.—The Administrator may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Environmental Protection Agency, as volunteers in the performance of the functions authorized herein, in the manner provided for under this section.

(h) AUDITS AND PETITION OF THE ATTORNEY GENERAL FOR EQUITABLE RELIEF.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (Public Law 88-504; 36 U.S.C. 1101-1103), the Foundation shall be treated as a private corporation established under Federal law.

(i) UNITED STATES RELEASE FROM LIABILITY.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

(j) AMENDMENT AND REPEAL.—The Congress expressly reserves the right to repeal or amend this section at any time.

SEC. 11. AUTHORIZATION.

(a) There is hereby authorized to be appropriated to the Environmental Protection Agency to carry out this Act not to exceed $12,000,000 for each fiscal year 1992 and 1993, not to exceed $13,000,000 for fiscal year 1994, and not to exceed $14,000,000 for each fiscal year 1995, and 1996.

(b) Of such sums appropriated in a fiscal year, 25 percent shall be available for the activities of the Office of Environmental Education, 25 percent shall be available for the operation of the environmental education and training program, 38 percent shall be available for environmental education grants, 10 percent shall be available for support of the National Environmental Education and Training Foundation, and 2 percent shall be available to support awards pursuant to section 8(e) of this Act.

(c) Funds appropriated pursuant to this section may be made available to the National Environmental Education and Training Foundation to—

(1) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local governments; and

(2) provide administrative services under section 10(d) of this Act

provided that the Administrator determines that such funds will be used to carry out the statutory purposes of the Foundation in a manner consistent with the goals, objectives and programs of this Act.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONVEYANCE OF FISH HATCHERY IN SOUTH CAROLINA

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 970, H.R. 3338, regarding a fish hatchery in South Carolina.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3338) to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3186

(Purpose: To amend the National Fish and Wildlife Foundation Establishment Act, and for other purposes)

Mr. BREAUX. Mr. President, I send an amendment to the desk on behalf of Senators BURDICK and CHAFEE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. BURDICK (for himself and

Mr. CHAFEE), proposes an amendment numbered 3186.

Mr. BREAUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. BURDICK. Mr. President, this amendment to H.R. 3338 by myself and Senator CHAFEE contains a number of provisions.

First, it largely incorporates the text of H.R. 5255, as passed by the House of Representatives. These provisions increase the amounts authorized to be appropriated to the National Fish and Wildlife Foundation for matching grants. The provisions also provide for the restoration of New England fishery resources through implementation of restoration plans, study of impediments to fish passage and fish and wildlife inventory of riverine basins.

Second, the amendment clarifies the relationship of the National Environmental Policy Act to the North American Wetlands Conservation Act.

Third, the amendment removes certain restrictions on condemnation with respect to the Tensas National Wildlife Refuge in Louisiana.

Fourth, the amendment establishes regional marine research programs to set priorities for regional marine and coastal research in support of efforts to safeguard the water quality and ecosystem health of each region.

Mr. LIEBERMAN. Mr. President, I am pleased to support the conference report on the 1990 omnibus housing legislation. We must address the myriad of housing problems—homelessness, lack of affordable housing, the inability of working Americans to purchase homes—currently facing this country. This comprehensive legislation is an important step toward confronting these problems. I applaud the work done by the Senate conferees.

I am particularly pleased that an amendment I sponsored was retained in the conference report. My amendment establishing the Advanced Building Technology Council, based on S. 1479, was supported and accepted by both the distinguished chairman of the Housing Subcommittee, Senator CRANSTON, and the distinguished ranking member, Senator D'AMATO, during the Senate debate on the National Affordable Housing Act. With some minor changes it has been included in the conference report. As its principal author and sponsor, I am making this statement to clarify the legislative intent of the provision.

The Advanced Building Technolgy Council, which will be nonprofit and nongovernmental, is directed to evaluate and review new low-cost housing technologies. If the Council finds that the proposed new technology offers significant cost savings and meets quality requirements, it will recommend to participating Federal agencies that the technology be included in federally funded construction projects and will then work with the Federal agencies responsible for the construction to implement the new technologies. In collaboration with the participating Federal agencies, the Council will monitor and evaluate the performance of the new technology and prepare reports on the technologies for dissemination to Federal agencies and the private sector. The widespread distribution of these reports to the building industry is an important aspect of the program because it will enable builders around the country to make use of these innovative technologies. The National Institute of Building Sciences should cooperate with the Council so that the Council can ensure the widest possible distribution of the information on these tested cost-saving technologies.

The Council will analyze and evaluate innovative building technologies applicable to building systems, components and materials, design and construction processes, civil construction technologies, and other relevant areas. The Council should examine the cost, usefulness, security, conservation, and environmental impacts of the new technologies. Before recommending a technology the Council should determine whether it complies with or is equivalent to the relevant health, safety, and welfare standards or regulations.

The goal of this proposal is to significantly reduce the 15 to 20 years it now takes to gain acceptance for and begin production of new construction technologies and products. The highly diversified nature of the building industry makes it difficult for any individual participant to assume the risks associated with the development and implementation of new building products or technologies. The use of new technologies, approved and recommended by the expert Council, in Federal construction projects will facilitate the acceptance of these new products and technologies by State and local agencies and the private sector.

This provision will enable the Federal Government to put into place new cost-savings technologies that both the expert Council and the involved agency consider worthwhile. The development of less expensive ways to construct homes is a critical component of any Federal effort to enable more Americans to purchase homes. Unless we can improve our ability to put lower cost products and technologies into place in the construction industry, housing affordability will become more and more elusive. Only by making housing less expensive to build and to live in can we effectively make housing in America more affordable.

In order for this program to be effective, it is very important that those Federal agencies which construct, rehabilitate, and operate buildings are able and willing to participate in the implementation of the new technologies. Although we dropped from the original proposal a requirement that agency participation be mandatory in order to enable the Council to select those agencies best suited to participate, it is intended that upon a decision by the Council regarding which agencies are most appropriate, the agencies so chosen should participate.

We will follow this process closely to ensure that Federal agencies participate in implementing new technologies. At a minimum, it is intended that those Federal agencies most involved in construction, including the Department of Housing and Urban Development, the Department of Defense, the Department of Agriculture, the Department of Energy, and the General Services Administration, participate in the program. All Federal agencies selected for participation should place a priority on the inclusion of new technologies.

While the original proposal adopted by the Senate contained a procurement waiver to enable new technologies certified by the Council to be speedily implemented in Federal construction projects, upon advice of Government attorneys expert in procurement, we concluded that this provision was unnecessary because the existing sole source and related procurement regulations will enable agencies to use these new technologies many of which will be available from only one manufacturer. Accordingly, it is the intent of this legislation that in order to encourage the utilization of the new technologies in Federal projects, existing procurement regulation waivers, exemptions, and sole source provisions should be applied by participating agencies.

The Council is being established within the National Institute of Building Sciences so that the support and assistance of the Institute will be available to the Council to enable it to operate most effectively. It is important to note, however, that the Council has a distinct mission; its members are to be appointed separately and cannot overlap with membership on the National Institute of Building Sciences Advisory Council, and its recommendations and program cannot be reviewed or altered by the National Institute of Building Sciences. The Council's focus, which distinguishes it from other Government projects which have conducted research on building technology without implementing the technologies in actual construction, will be on approving new

technologies for use and assisting Federal agencies in including them in construction projects so that they can be evaluated by the Council and then implemented on a more widespread basis.

The members of the Council shall be named by the Secretary of Housing and Urban Development and shall be representatives of the nationwide building community with extensive experience in the building industry. The Council membership should include but not be limited to product manufacturers, health, safety, and fire hazard experts, architects, professional engineers, and representatives of consumer groups. The Secretary shall ensure that they are persons of exceptional talent, who are committed to the development and implementation of new technologies.

The cooperation between the Council and those Federal agencies involved in building construction and rehabilitation is the key to the success of this program. The results of this cooperation can be significant cost-savings for the Federal Government and a substantial improvement in our ability to construct affordable housing. I believe the Advanced Building Technology Council will make a significant contribution to our national search for a way to make housing more affordable. I look forward to seeing the work of the Council implemented by the participating Federal agencies.

In addition to developing more affordable housing for the future, we must confront the homelessness problem which exists in this country today. Too many Americans do not have a safe, clean, affordable place to live; too many Americans are living in overcrowded shelters, in cars, and on the streets. The amendments to the McKinney Act included in this bill are vitally important to our war against homelessness. I am particularly pleased with emphasis in this bill on assisting homeless persons and families to make the transition from shelters to permanent housing.

Last year, I introduced the Homelessness Prevention and Housing Rehabilitation Act, S. 772. I am pleased that key concepts behind that legislation have been included in the homelessness provisions of this bill. One of the new available transition programs, which I am particularly pleased was included in this 1990 Housing legislation, is a Security Deposit Grant Assistance Program which pays the security deposit and first month's rent for those homeless people who can pay a monthly rent but do not have the savings necessary to make the required "down payment" on a permanent place to live.

This Security Deposit Assistance Program is modeled on a program which has been very successful in Connecticut. In its first 2 years, the Connecticut program has enabled more than 2,000 homeless persons and families to move into permanent housing. Using only a small amount of money, security deposit assistance grants can make a critical difference in enabling many homeless families to leave shelters forever and find permanent homes.

I am pleased also that this bill recognizes the importance of rehabilitation and the opportunity it provides to develop permanent affordable housing, in many cases more quickly and at less cost than new construction. Rehabilitation is not only an effective way to create affordable housing, it is very important to the revitalization of neighborhoods now filled with abandoned buildings.

I commend my colleagues, Senators CRANSTON and D'AMATO, for their dedication to enacting this legislation this year. It is a great stride forward in American housing policy.

Mr. HOLLINGS. Mr. President, in addition to the fisheries and wildlife provisions in title I and the Pollution Prosecution Act in title II, H.R. 3338 establishes a marine environmental research program. The Commerce, Science, and Transportation Committee and the Environment and Public Works Committee have worked together to develop this program which will address issues from a regional perspective.

In the provisions creating this research program, the oversight responsibilities for NOAA and EPA are clearly delineated, with NOAA responsible for administering the grant effort. NOAA will administer grants to each region to fund projects aimed at increasing our understanding of the marine environment. NOAA is experienced in administering such grants, having for the past 24 years run the National Sea Grant College Program.

Mr. President, as you know, as chairman of the Commerce Committee and the Senate's National Ocean Policy Study, I have a keen interest in the activities of NOAA.

Mr. BURDICK. I share my colleague's view that this program will be an important step forward for our marine environmental research efforts. I am pleased that our committees have cooperated in writing this legislation and developing this much-needed program. The language as agreed to in this amendment is an important step toward coordinating the activities of EPA and NOAA in marine and coastal environmental research.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3186) was agreed to.

The PRESIDING OFFICER. Are there further amendments?

AMENDMENT NO. 3187

(Purpose: To establish the National Forest Foundation)

Mr. CHAFEE. Mr. President, I send an amendment to the desk on behalf of Senator DOMENICI and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. DOMENICI, proposes an amendment numbered 3187.

Mr. BREAUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following:

SECTION . SHORT TITLE.

This Act may be cited as the "National Forest Foundation Act".

SEC. . ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia.

(b) PURPOSES.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;

(2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and

(3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

(c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. . BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view

relating to natural and cultural resource issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this title, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The Board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subtitle, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subtitle.

(h) OFFICERS AND EMPLOYEES.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. . CORPORATE POWERS AND OBLIGATIONS.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) POWERS.—To carry out its purposes, the Foundation shall have, in addition to powers otherwise authorized under this title, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(e) PROPERTY.—(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exchange. For the purposes of this title, an interest in real property shall include, but not be limited to, mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subjected to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this title shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

SEC. . ADMINISTRATIVE SERVICES AND SUPPORT.

(a) STARTUP FUNDS.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative and other startup expenses, the Secretary is authorized to provide to the Foundation $500,000, from funds appropriated pursuant to section 10a, per year for the two years following the date of enactment of this title. Such funds shall remain available to the Foundation until they are expended for authorized purposes.

(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this title, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section , of this title including reimbursement of expneses under section , not to exceed then current Federal Government per diem rates.

(c) ADMINISTRATIVE EXPENSES.—At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish.

SEC. . VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147).

SEC. . AUDITS AND REPORT REQUIREMENTS.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) ANNUAL REPORTS.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. . UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation.

SEC. . ACTIVITIES OF THE FOUNDATION AND UNITED STATES FOREST SERVICE.

The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law.

SEC. . AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section of this title, there are authorized to be appropriated $1,000,000.

(b) MATCHING FUNDS.—For the purposes of section of this title, during the five-year period following the date of the enactment of this rule, there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

Mr. DOMENICI. Mr. President, much of America's environmental greatness lies within our National forests and grasslands. I rise to offer an amendment to enhance the management of these national treasures.

Vast stretches of our land—8 percent, in fact, of America—is land within the jurisdiction of the Forest Service. These lands are found in 44 of

our 50 States, and in Puerto Rico and the Virgin Islands.

These lands are spectacular areas of rugged mountains, prairies, trout streams, wilderness. They are lands providing resources for America's economic greatness.

Some of my most cherished memories come for a special place in my home State of New Mexico, the Cibola National Forest. When my children were younger, we often visited Las Huertas Canyon.

We enjoyed the drive, spending afternoons together in the mountains. I still carry fond memories of the shaded stream, picnics, and the drive around the north end of the mountain with a car full of children.

The American people not only want the Federal Government to protect this resource, but I am convinced they want to participate personally in protecting and improving our forests.

As a result, Mr. President, I am today offering an amendment to establish the National Forest Foundation. This amendment will bring together the talents and resources of the private sector with those in the Forest Service to enhance the multiple-use management of our national forest and grasslands.

This amendment will establish a charitable, nonprofit corporation to raise and direct money and other resources into our national forests and grasslands. Specifically, the foundation will funnel private donations for projects to rehabilitate and enhance the natural and cultural resources on the national forests.

These donations will be used to complement ongoing Federal efforts. For instance, they could be used to protect and interpret archaeological sites, clean up visitor areas, develop and maintain trails, and plant trees.

Specifically, the foundation would:

First, encourage, accept, and administer private gifts of money and property to benefit the services and activities of the U.S. Forest Service;

Second, undertake and conduct activities to enhance the on-the-ground management and enjoyment of lands in our National Forest System;

Third, conduct and encourage educational, technical, and other activities that support multiple-use management, research, cooperative forestry, and other Forest Service programs; and

Fourth, promote cooperation among the Forest Service, the private sector, conservation organizations, educational institutions, and the general public.

Mr. President, I see this amendment as a perfect complement to the President's "America the Beautiful" initiative. The President's initiative proposes, among other things, a reforestation program to plant more than 1 billion trees per year on private lands and in communities across America.

My amendment shares many of the same goals. What "America the Beautiful" would do for private forested lands and communities, the National Forest Foundation would accomplish for our national forests and grasslands, using the assistance and resources of the private sector.

Achieving balanced management of America's resources requires cooperation. It requires comprehensive planning as well as sensitive administration and wise use.

The foundation would provide a means for the private sector to actively participate in numerous projects such as buying and developing habitat for improvement, recreation development, restoring and understanding our cultural heritage, returning a riparian area to health, management research, reforestation, and educational programs.

Mr. President, this concept first came to me from a former legislative fellow on my staff, a man who had served as a district ranger in New Mexico. Like most public land managers, he was faced with the difficult task of meeting public demands for enjoyment of the national forests, while working within limited budgets.

In seeking to reconcile these differences, he discovered the willingness of individuals and private organizations to provide their talent and resources to accomplish worthwhile projects that never were funded.

So the National Forest Foundation will provide a vehicle to facilitate that kind of cooperation, cooperation between the private sector and the Forest Service.

Under my amendment, the Foundation would be governed by a 15-member board of directors appointed by the Secretary of Agriculture. The Chief of the Forest Service would serve as an ex officio, nonvoting member.

Through its board of directors—consisting of trained and experienced professionals in natural resource management, law, or research—the National Forest Foundation would provide a broad and diverse multiple-use focus to a great variety of projects of interest to all Americans. Board members would serve without pay, but could be reimbursed for expenses.

Under this amendment, the Secretary of Agriculture is authorized to provide the Foundation $500,000 per year during the initial 2 years of the act. This would be startup money.

Further, the Secretary is authorized to provide up to $1 million per year for 5 years in funds, on a 1-for-1 basis, to match private contributions.

Finally, Mr. President, I would note that two other foundations have been successful in accomplishing very specific and, in many ways, similar goals to the National Forest Foundation. These are the National Parks Foundation and the National Fish and Wildlife Foundation.

These foundations have been very successful in bringing the private sector together with the public land managers to protect and enhance our public resources.

While developing this amendment, I had the pleasure of talking with numerous conservation organizations, recreation associations, industry, and concerned citizens. Many are already forming partnerships with the Forest Service to further the cause of natural resources conservation. Thousands of Americans stand ready to share their talents and resources for the benefit of our national forests.

I see the Foundation as the catalyst for developing these cooperative relationships with private conservation organizations, industry, the academic community, and the philantropic community to meet the multiple-use objectives of our national forests and grasslands.

Mr. President, the time has come for all Americans to get involved in the management and enjoyment of our national forests. We can begin that process by adopting my amendment to establish the National Forest Foundation.

Mr. LEAHY. Mr. President, I would like to ask the sponsor of the bill, the distinguished senior Senator from New Mexico [Mr. DOMENICI], if he would clarify the purposes of this bill for me.

Mr. DOMENICI. I would gladly yield to my friend, the chairman of the Senate Agriculture Committee, Mr. LEAHY, for a question.

Mr. LEAHY. Thank you. Your bill establishes a foundation for the benefit of Forest Service lands and programs. Would you please elaborate on the purposes of your bill and how the Foundation would operate?

Mr. DOMENICI. I welcome the opportunity to discuss this matter with my friend and colleague, the senior Senator from Vermont.

The Foundation would be established to bring together the talents and resources of the private sector and the U.S. Forest Service and funnel those resources into worthwhile activities for the benefit of our national forests and grasslands and the millions of Americans who care about them.

The Foundation would be a charitable, nonprofit corporation, patterned after the successful National Fish and Wildlife Foundation established in 1984 by Public Law 98-244. Its purpose would be to raise and direct money and other resources into our national forests and associated programs. Specifically, my bill would:

First, encourage, accept, and administer private gifts of money and property to benefit the lands and programs of the U.S. Forest Service;

Second, undertake and conduct activities to enhance the on-the-ground management and enjoyment of lands in our National Forest System;

Third, conduct and encourage educational, technical, and other activities that increase understanding of conservation, multiple-use management, research, cooperative programs, and other Forest Service programs; and

Fourth, promote cooperation among the Forest Service, the private sector, conservation organizations, educational institutions, State and local governments, and the general public.

The Foundation would be governed by a 15-member board of directors appointed by the Secretary of Agriculture. Members would be educated or experienced in the field of natural resources. The Chief of the Forest Service would serve in an advisory role as an ex officio, nonvoting member of the board.

The Foundation and board would have broad powers to operate and function in a manner equivalent to that of the National Fish and Wildlife Foundation.

In developing this bill I had the opportunity to talk with many enthusiastic conservation organizations, recreation associations, industry, and concerned citizens. Some are already forming partnerships with the Forest Service to further the cause of natural resource conservation and education. Thousands of Americans stand ready to share their talents and resources for the benefit of our National Forests.

I see this Foundation as the catalyst for developing cooperative relationships with the private conservation organizations, industry, the academic community, and the philanthropic community to meet the multiple-use objectives of our national forests and grasslands.

Mr. LEAHY. I thank my friend and colleague, Senator DOMENICI for his sponsorship of this bill and for explaining its most important provisions. I support the bill, however, I would not intend for funds raised by the Foundation to be used as a reason for the administration or Congress to make budgets or appropriations that are inconsistent with the balance called for in forest plans.

Mr. DOMENICI. I thank Senator LEAHY for his thoughts and his support. I concur with his statement. Funds raised by the Foundation are not intended to be used as a reason for funding that is not consistent with the balance called for in forest plans.

I want to acknowledge my appreciation to the chairman and the ranking Republican member of the Senate Agriculture Committee for working with me on this important legislation.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3187) was agreed to.

Mr. BURDICK. Mr. President, H.R. 3338, as amended by the Committee on Environment and Public Works, transfers a Federal fish hatchery from the U.S. Fish and Wildlife Service to the State of South Carolina to use for fisheries resources management; renames a U.S. Fish and Wildlife Service research laboratory in Massachusetts; directs the U.S. Fish and Wildlife Service to conduct a feasibility study on the establishment of a Federal fish hatchery in West Virginia; reauthorizes the Fish and Wildlife Conservation Act of 1980; authorizes establishment of the Wallkill River National Wildlife Refuge in New Jersey; authorizes establishment of the Bayou Cocodrie National Wildlife Refuge in Louisiana; transfers Federal lands within the National Wildlife Refugee System to the State of South Carolina; and provides the Environmental Protection Agency with resources needed to enforce environmental laws and to ensure that those engaged in enforcement receive consistent and excellent training.

Sections 101 and 102 of H.R. 3338, as reported by the committee, would require the Secretary of the Interior to convey the Cheraw National Fish Hatchery to the State of South Carolina without reimbursement and would require the South Carolina Wildlife and Marine Resources Department to use the facility, and any receipts from the sale of timber or other products from the fish hatchery lands, for the South Carolina fisheries resources management program. If used for any other purpose, the facility would revert to ownership by the United States.

Section 103 would provide that the Northeast Fish Research Laboratory located at Turners Falls, MA be known and designated as the "Silvio O. Conte Anadromous Fish Research Center." The center was dedicated on June 9, 1990.

Section 104 would authorize and direct the Secretary of the Interior to conduct a feasibility study on establishing a Federal fish hatchery in McDowell County, WV. Upon completion of the feasibility study and location of a suitable site and water supply, the Secretary would be authorized to construct the hatchery.

Section 105 would rename the U.S. Fish and Wildlife Service's National Fish and Wildlife Forensics Laboratory located in Ashland, OR, as the "Clark R. Bavin National Fish and Wildlife Forensics Laboratory." Mr. Bavin served as the chief of the Service's law enforcement division for 18 years.

Section 106 would extend the authorization of appropriations to carry out the Fish and Wildlife Conservation Act of 1980 through fiscal year 1992. The act authorizes $5 million annually to assist States in the development of comprehensive management plans to benefit fish and wildlife species that are not ordinarily subject to hunting, so-called nongame species.

Section 107 is an amended version of S. 1985, the Wallkill River National Wildlife Refuge Act. This section would authorize the Secretary of the Interior to acquire approximately 7,500 acres of land and water to establish the Wallkill River National Wildlife Refuge.

Section 108 is an amended version of S. 2447, a bill to establish the Bayou Cocodrie National Wildlife Refuge. It would require the Secretary of the Interior to acquire approximately 18,000 acres of land and water in Louisiana for a new Bayou Cocodrie National Wildlife Refuge.

Section 109 is the text of S. 164, a bill to transfer certain lands to the South Carolina Commission of Forestry, an agency of the State of South Carolina. It would direct the Secretary of the Interior to transfer fee simple title to approximately 45,550 acres of land included within the National Wildlife Refuge System and designated the Carolina Sandhills Wildlife Management Area to the State of South Carolina to be administered by the South Carolina Commission of Forestry as the Sand Hills State Forest. The land would revert back to the U.S. Fish and Wildlife Service if the South Carolina Commission of Forestry does not comply with the terms of the transfer, ceases to use the land for public purposes, or no longer desires to own or manage the land.

Title II of H.R. 3338, as reported by the committee, is the text of S. 2176, which was reported by the Committee on July 13, 1990 and passed by the Senate, with one technical addition.

The legislation would provide for an increase in EPA criminal investigators, also known as special agents, over a 5-year period to ensure that EPA has adequate resources and the number of investigators needed to enforce the criminal provisions of our environmental laws.

Mr. CHAFEE. Mr. President, the Committee on Environment and Public Works has consistently sought to enact legislation to improve and protect precious habitats. H.R. 3338, a bill which includes several provisions related to fish and wildlife conservation, and also provides for critical research on our marine environment, deserves the support of the Senate.

I wish to make mention of a few of the key provisions in this legislation.

I am particularly pleased to endorse the establishment of two new wildlife refuges. The Wallkill River National Wildlife Refuge will protect 7,500 acres of floodplain along the Wallkill River in New Jersey, and the Bayou

Cocodrie National Wildlife Refuge will protect over 17,000 acres of bottomland in Louisiana. Whether wetlands are lost due to development, as is usually the case in New Jersey, or due to conversion to agriculture, which is the case with so many bottomland hardwood areas in Louisiana—the fish and wildlife that depend on these wetland areas are disappearing. The Fish and Wildlife Service has enthusiastically supported establishment of both refuges through enactment of H.R. 3338.

This legislation contains a provision to reauthorize the Fish and Wildlife Conservation Act. While this law, the so-called Nongame Act, was intended to encourage Federal-State partnerships through development of comprehensive wildlife management programs, the programs have languished due to lack of funding. With so many competing priorities for limited Federal funds, it is difficult to be optimistic about funding prospects for this bill, especially as previous efforts to develop new funding sources—from excise taxes on birdseeds to backpacks—never seem to engender much support.

Two Federal properties in South Carolina are affected by this legislation. Section 101 requires the Secretary of the Interior to convey the Cheraw National Fish Hatchery to the State of South Carolina without reimbursement. This provision is consistent with other laws, enacted in recent years, to transfer Federal hatcheries to States when those hatcheries no longer serve Federal fish production priorities.

Section 109 of this bill transfers certain lands owned by the Fish and Wildlife Service to the State of South Carolina. This provision is identical to legislation introduced by Senators THURMOND and HOLLINGS to implement a land-transfer negotiated between the Fish and Wildlife Service and the South Carolina Forestry Commission. The property in question, adjacent to the Carolina Sandhills National Wildlife Refuge, has been managed and improved by the State of South Carolina since 1939, the year it was acquired by the Federal Government.

Under this legislation, the Carolina Sandhills Wildlife Management Area will be transferred to the State forestry commission pursuant to certain requirements for provision of services by the State to benefit the National Wildlife Refuge property. As this property contains habitat for the endangered red cockaded woodpecker, the legislation spells out the State's responsibility to manage the land for the benefit of this and other endangered and threatened species. In fact, the transfer is conditioned upon the South Carolina Forestry Commission managing the lands in accordance with the recovery plan for the red cockaded woodpecker. Section 109 contains a reversion clause so that the Federal Government may be assured by regaining title to the property if it is not managed in compliance with this legislation.

The Senate has already passed legislation encompassing the provisions of Title II of this bill. These provisions are identical to S. 2176 and are intended to increase and improve the Environmental Protection Agency's enforcement efforts.

Chairman BURDICK and myself are offering a package of amendments to H.R. 3338.

New provisions making amendments to the law establishing the National Fish and Wildlife Foundation will be added to H.R. 3338. The Foundation, created in 1984, has had remarkable success in soliciting private donations for the benefit of the conservation of fish, wildlife and plants. By leveraging Federal funds with private resources, the Foundation has played an important role in achieving Federal conservation goals. Primarily by increasing the authorization for the Foundation, these amendments will serve to further the Foundation's ability to achieve these goals.

The provisions relating to New England fishery resources will contribute to Federal, State, and local efforts to restore Atlantic salmon and other fish to the rivers of New England. I look forward to the recommendations, which will be provided by the Director of the Fish and Wildlife Service within 2 years, regarding the need for additional restoration and preservation efforts along some of New England's important rivers and tributaries.

The committee amendments also make some minor changes to the North American Wetlands Conservation Act including a provision clarifying that recommendations by the North American Wetlands Conservation Council for wetlands conservation projects in the United States are subject to the requirements of the National Environmental Policy Act.

Another important provision of this legislation is designed to expand and strengthen research of our marine and coastal waters.

The marine and coastal waters of this country are a natural resource of tremendous value and importance. Unfortunately, there is growing evidence of serious threats to the quality of this resource. The Congressional Office of Technology Assessment has reported that the overall health of our coastal waters is declining or threatened.

This assessment was confirmed during the summer of 1989, when beaches throughout the Northeast were closed after discovery of medical waste and other pollution problems. Serious threats to coastal waters are not limited to the Northeast. Scientists have identified a large dead zone in the Gulf of Mexico, and important estuaries of the west coast have high levels of toxic pollutants.

It is essential that we develop a thorough scientific understanding of our marine resources and that we identify threats to those resources. This knowledge is vital if we are to protect the marine environment and act to prevent problems before they become unmanageable.

We can take a significant step toward protection of the marine environment by expanding and strengthening our marine and coastal research program. Our legislation is intended to accomplish this objective.

There are several key elements in this legislation—

Regional focus. The bill authorizes establishment of nine, multi-State marine research regions. In each region, existing marine research agencies and institutions have the option of forming a regional research program. This regional approach focuses on issues common to a specific marine ecosystem and provides an essential complement to research conducted at the national level.

Long-term planning. Each regional program is to prepare a long-term research plan for the region. This long-range planning will help avoid duplication of research, provide a process for focusing limited funds on the most important projects, and generally improve the efficiency of our marine research programs.

Public information. As part of the research effort, each regional program will prepare periodic public reports summarizing the status of marine environmental quality in the region and the findings of the research program. These reports will help build public awareness of the marine environment and threats to the quality of the marine resource.

Strengthening and expanding research of the marine environment is essential, if we are to keep pace with the growing threats to marine environmental quality and assure that this resource is protected for future generations.

Mr. President, this bill contains many necessary and important provisions. I hope the Senate will vote to approve H.R. 3338.

Mr. HOLLINGS. Mr. President, I rise today urging my colleagues to pass H.R. 3338, as amended by the Committee on Environment and Public Works. This bill, among other things, directs the Secretary of the Interior to convey all interest of the United States in the Cheraw National Fish Hatchery to the State of South Carolina. The State, which currently leases the facility, intends to expand the hatchery, and in order to justify the large expenditure for this expansion, the State desires title to all of the hatchery property.

The fish hatchery is located less than 2 miles southwest of Cheraw, SC, and it has been in operation since 1933. During the past administration, fish hatcheries across the Nation were closed as the U.S. Fish and Wildlife Service [USFWS] experienced budget cuts. This facility remained open, however, and was operated by the South Carolina Wildlife and Marine Resources Department [SCWMRD]. In 1983, through a memorandum of agreement, the USFWS loaned the hatchery to the State for a period of 25 years.

The SCWMRD uses the facility to supply fish for stocking of farm ponds, public lakes, and rivers across the State. Game fish such as catfish, largemouth bass, bream, bluegill, and redear sunfish are provided free of charge to areas statewide. Some of the best recreational fishing in South Carolina is generated from the fish reared by this facility. It serves our best interest to keep the facility operational and, now, expand its capabilities. It is a means by which the State furthers its commitment to the citizenry and to the protection and management of its natural resources.

With the closure of some Federal hatcheries in the early 1980's, other States have obtained title from USFWS through congressional action. USFWS has supported those transfers because the hatcheries benefited State fishery programs and contributed to the Nation's fishery resources. Additionally, each transfer provided for the reversion of the title to the United States if the facilities or property were used for any other purpose. H.R. 3338 is similar to such legislation which transferred hatcheries in other States. In title I, section 101 simply conveys title, without reimbursement, to the State of South Carolina, and section 102 contains a reversion provision.

H.R. 3338, as amended, requires another action of particular interest to South Carolina. Section 109 removes the Carolina Sandhills Wildlife Management Area, known as the Sand Hills State Forest, from the National Wildlife Refuge System, and transfers those lands to the South Carolina Commission of Forestry, an agency of the State. Approximately 44,550 acres of land are included in this transfer, including a critical habitat for the red cockaded woodpecker, which is listed as an endangered species. This land will be managed as a multiple use State forest providing sustained yield production of forest products, public recreation, wildlife benefits, and demonstration and education projects by the South Carolina Commission of Forestry. H.R. 3338 contains terms and conditions which must be followed by the South Carolina Forestry Commission, or the lands will revert to the United States and the management of the USFWS.

There are additional sections of H.R. 3338 which should be of some interest to other Members here. Section 103 renames the Northeast Fish Research Laboratory located at Turners Falls, MA, and designates it as the "Silvio O. Conte Anadromous Fish Research Center."

Section 104 authorizes the Secretary of the Interior to conduct a feasibility study on establishing a Federal fish hatchery in McDowell County, WV. Upon completion of this feasibility study, the Secretary is authorized to construct a Federal fish hatchery which shall be known as the "Carl R. Sullivan National Fish Hatchery."

Section 105 redesignates the U.S. Fish and Wildlife Service facility located in Ashland, OR, and known as the National Fish and Wildlife Forensics Laboratory, as the "Clark R. Bavin National Fish and Wildlife Forensics Laboratory."

Section 106 reauthorizes the Fish and Wildlife Conservation Act of 1980 for the fiscal years 1990, 1991, and 1992.

Section 107 authorizes the acquisition of 7,500 acres of lands and waters in the State of New Jersey for the establishment of Wallkill River National Wildlife Refuge.

Finally, section 108 authorizes and directs the Secretary of the Interior to acquire approximately 18,000 acres of lands and waters in the Mississippi River Delta to establish the "Bayou Cocordie National Wildlife Refuge."

Title II of H.R. 3338 is the Pollution Prosecution Act of 1990. This title would: increase the number of criminal investigations assigned to the Office of Criminal Investigations in the Environmental Protection Agency [EPA]; add 50 new civil investigators to the staff of the EPA Office of Enforcement; establish within the Office of Enforcement the National Enforcement Training Institute; and create the pollution prosecution fund in the U.S. Treasury to carry out the provisions of this title.

Again, I urge my colleagues to join me in support of H.R. 3338, as amended.

Mr. MITCHELL. Mr. President, I rise in strong support of H.R. 3338 and the amendment to the bill providing for expanded research of marine waters around the Nation, including the Gulf of Maine.

I want to express my sincere appreciation to Senators CHAFEE and HOLLINGS for their support and assistance in developing and improving this important legislation.

The marine and coastal waters of this country are a natural resource of tremendous value and importance. Unfortunately, our coastal and ocean waters face an unprecedented range of environmental threats and the health of some of these waters are in sharp decline.

Beaches were closed throughout the Northeast after the discovery of medical wastes and other pollutants. There is a large dead zone in the Gulf of Mexico. Boston Harbor and other estuaries face significant pollution problems. Sediments in many coastal bays are contaminated with toxic materials, including heavy metals, pesticides, and toxics.

The concern for a growing trend of marine pollution is confirmed by recent scientific studies. In April 1987, the Congressional Office of Technology Assessment [OTA] issued a report which concluded that the overall health of many of our estuaries and coastal waters "is declining or threatened."

During the last Congress, as chairman of the Subcommittee on Environmental Protection, I chaired a series of hearings on coastal pollution problems.

I held the first of these hearings in my home State of Maine to learn about the environmental conditions in the Gulf of Maine. The general conclusion of the hearing was that the Gulf of Maine is still very clean and does not now face the serious pollution problems present in other parts of the country. There also was agreement, however, that prevention of problems will require a first-rate marine research and monitoring program.

Witnesses at that hearing included research scientists and representatives of the fishing industry and the environmental community. Former Gov. Ken Curtis summed up many concerns when he said:

> What is needed most of all is a planned, well-coordinated approach to the research effort * * * which is * * * committed to studying and preserving the Gulf of Maine in a whole ecosystem approach.

The Environment and Public Works Committee has held several additional hearings on coastal protection issues since the first hearing in Maine. A major theme of these hearings was that a high quality research program is an essential prerequisite for protection of the marine environment.

A witness from the Congressional Office of Technology Assessment cited their report on this issue which states—

> Monitoring, research, and enforcement are currently inadequate, and funding levels for these activities are being reduced in some instances.

Dr. Donald Boesch of the Louisiana Marine Consortium testified that—

> Reversing the trend of deteriorating coastal environmental quality will require a much improved understanding of environmental processes and the effects of changing conditions on ecosystem productivity and integrity.

In addition to concern for expanding and better directing research efforts, witnesses at the hearings supported

focusing research on the various multistate, regional marine ecosystems, such as the Gulf of Maine.

The Congressional Office of Technology Report concluded—

More research needs to be conducted on changes over relatively large scales—for long periods of time and for entire ecological communities.

Mr. Ken Coons of the New England Fisheries Development Foundation stated—

A coordinated regional approach to focus existing research capabilities on estuarine and marine pollution problems is clearly needed.

The marine research program provided for in this legislation establishes nine regional marine research programs. The goal of the program is to better understand critical marine areas, such as the Gulf of Maine. Better understanding of this reource is critical if we are to identify and prevent threats to the quality of the marine environment before they grow to be unmanageable and costly problems.

The regional programs provided for in the bill will be managed by regional boards appointed by the Governors of area States and including representatives from the Environmental Protection Agency and the National Oceanic and Atmospheric Administration. Board members will represent universities, State agencies, marine laboratories and other interested groups. The bill includes specific provisions to assure effective coordination with existing programs, such as the Sea Grant Program.

These research programs will provide a regional focus for planning, coordinating, and conducting marine scientific research and monitoring. Each regional program will develop multiyear research plans, setting goals and priorities for research and monitoring in the marine and coastal waters of the region. This long-range planning will help avoid duplication of research, provide a process for focusing limited funds on the most important projects, and generally improve the efficiency and effectiveness of our marine research programs.

Regional level research is an essential complement to research conducted at the national level. Regional research can address issues common to a specific marine ecosystem, which often includes the marine waters of several States. Regional research can be better tied to the State and local agencies which can respond to a pollution or related problem. Regional research can develop badly needed baseline data concerning the marine environment.

Regional marine research will be especially valuable in understanding and protecting the waters of the Gulf of Maine. There is a strong interest in the State in improving and expanding basic research of the Gulf of Maine. An improved understanding of the Gulf is essential if we are to protect the quality of this resource and prevent the development of environmental problems which plague other marine waters in the Nation.

The bill provides a total of $18 million each year for 5 years to support development of regional research programs and implementation of research projects.

In conclusion, Mr. President, the research program in the bill will help us improve our understanding of marine waters and establish the scientific foundation for protecting these waters in the long term. I urge my colleagues to support this important legislation.

Mr. LAUTENBERG. Mr. President, I rise to support H.R. 3338 which contains a provision similar to S. 1985, legislation I introduced with Senator BRADLEY last year to establish in law the Wallkill National Wildlife Refuge in Sussex County, NJ.

Mr. President, New Jersey is one of our Nation's most densely populated, highly developed States. For that reason our remaining natural areas and wildlife habitat are all the more precious. We need to preserve them before they are all lost forever to development. The loss of open space diminishes the quality of life for State residents. The creation of the Wallkill National Wildlife Refuge will protect valuable natural resources, enhance recreational opportunities, and serve to maintain a unique area of my State.

The Wallkill River corridor is one of the last remaining high-quality waterfowl concentration areas in the northwestern portion of the State, and provide migration and nesting habitat for black duck populations. This refuge would help preserve existing wetlands and a diversity of wildlife, including sixteen species regarded as endangered by the State of New Jersey.

The Wallkill Refuge has widespread support. The New Jersey Department of Environmental Protection, the U.S. Department of Interior, and the U.S. Environmental Protection Agency have recognized the value of the Wallkill River area and the need for its preservation. Many private citizens, conservation groups and recreation associations from my State have strongly endorsed the protection of this pristine area.

Mr. President, I urge my colleagues to support this legislation.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3338), as amended, was passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WATER RESOURCES DEVELOPMENT ACT

Mr. BREAUX. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2740.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendment to the bill (S. 2740) entitled "An Act to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes," and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following Members be the managers of the conference on the part of the House:

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference: Mr. Anderson, Mr. Roe, Mr. Mineta, Mr. Oberstar, Mr. Nowak, Mr. Hammerschmidt, Mr. Shuster, and Mr. Stangeland: Except that for consideration of section 309 of the Senate bill, Mr. Rahall is appointed in lieu of Mr. Roe, and Mr. Applegate is appointed in lieu of Mr. Mineta.

From the Committee on Merchant Marine and Fisheries, for consideration of matters within the jurisdiction of that committee contained in the Senate bill, and in the House amendment, and modifications committed to conference: Mr. Jones of North Carolina, Mr. Studds, Mr. Hertel, Mr. Davis, and Mr. Young of Alaska.

From the Committee on Energy and Commerce, for consideration of section 309 of the Senate bill, and modifications committed to conference: Mr. Dingell, Mr. Thomas A. Luken, Mr. Swift, Mr. Slattery, Mr. Walgren, Mr. Lent, Mr. Whittaker, and Mr. Rinaldo.

From the Committee on Science, Space, and Technology, for consideration of section 309 of the Senate bill, and section 13 of the House amendment, and modifications committed to conference: Mr. Roe, Mr. Mineta, Mr. Torricelli, Mr. Valentine, Mr. Hayes of Louisiana, Mr. Walker, Mr. Lewis of Florida, and Mr. Packard.

Mr. BREAUX. Mr. President, I move that the Senate disagree to the House amendments and agree to the request for a conference and the Chair be authorized to appoint the conferees.

The motion was agreed to, and the Presiding Officer [Mr. BRYAN] appointed Mr. BURDICK, Mr. MOYNIHAN, Mr. LAUTENBERG, Mr. REID, Mr. CHAFEE, Mr. SYMMS, and Mr. WARNER; and from the Committee on Com-

merce, Science, and Transportation, for the purposes of section 309 of the Senate, Mr. HOLLINGS, Mr. EXON, and Mr. DANFORTH.

NATIVE AMERICAN GRAVE PROTECTION AND REPATRIATION ACT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 5237, the Native American Grave Protection and Repatriation Act now at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5237) to provide for the protection of Native American graves, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I would like to thank my colleagues for giving this legislation their full consideration and support. H.R. 5237, the Native American Grave Protection and Repatriation Act is a House companion to S. 1980 a bill sponsored by the chairman of the Select Committee on Indian Affairs, my good friend, Senator INOUYE. The passage of this legislation marks the end of a long process for many Indian tribes and museums. The subject of repatriation is charged with high emotions in both the Native American community and the museum community. I believe this bill represents a true compromise. Many parties interested in this legislation did not receive everything they wanted in H.R. 5237. The amendments I am offering to H.R. 5237 reflect a further compromise in the development of this legislation. I believe these amendments will serve to improve and enhance the provisions of H.R. 5237. In the end, each party had to give a little in order to strike a true balance and to resolve these very difficult and emotional issues.

On October 17, 1990, I joined Senator INOUYE in sponsoring S. 3217, amendments to the National Museum of the American Indian Act. This bill was introduced by Senator INOUYE when it became apparent that to include the Smithsonian in the provisions of H.R. 5237 would not be possible. I strongly support this legislation and I am committed to join my good friend Senator INOUYE in advancing legislation that will apply the same standards for the repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in H.R. 5237 to the Smithsonian Institution. While the Senate considers S. 3217, the current provisions of the National Museum of the American Indian Act will require the Smithsonian Institution to inventory their collections of Native American Human remains and funerary objects and to return those culturally affiliated remains or objects to the appropriate Indian tribe or Native Hawaiian organization. I believe this process is already well underway.

For several years, the Congress has considered the difficult issue of the repatriation of Native American human remains and funerary objects from museum collections to Indian tribes. Our committee has heard hours of testimony from persons representing Indian tribes, Native Hawaiian organizations, the American Association of Museums, the Society of American Archaeology, and a variety of other interested groups. The Select Committee on Indian Affairs, under the leadership of my good friend from Hawaii, Senator INOUYE, has been very active in efforts to bring both sides closer to agreement on these very difficult issues.

For 2 years, representatives of the museum community, including archaeologists and anthropologists, met with tribal representatives to discuss the repatriation of human remains and other objects of cultural and religious significance from museum collections. H.R. 5237, reflects the thoughtful deliberations of these discussions. I believe this legislation effectively balances the interest of Native Americans in the rightful and respectful return of their ancestors with the interest of our Nation's museums in maintaining our rich cultural heritage, the heritage of all American peoples. Above all, I believe this legislation establishes a process that provides the dignity and respect that our Nation's first citizens deserve.

I would like to recognize the contributions of the trustees of the Heard Museum and the personal commitment of Michael Fox, the former director of the Heard Museum, to facilitate and coordinate the discussions between museum professionals and Native American leaders. These discussions have formed the basis of the report of the panel for a National Dialog on Museum/Native American Relations which provided a framework for the legislation we are considering today. I would also like to recognize the substantial contributions made by Philip Thompson the director of the Museum of Northern Arizona and Martin Sullivan, the new director of the Heard Museum to this process. Finally, I would like to recognize the diligent efforts of the representatives of the American Association of Museums, the Society of American Archaeology, the Native American Rights Fund, the National Congress of American Indians and the many other representatives of Native Americans to develop the consensus which is reflected in this legislation. Again, I want to express my deep gratitude to our chairman, Senator INOUYE, for once again providing the patient and diligent leadership which has enabled us all to make substantial progress in this area. Thank you.

The PRESIDING OFFICER. Are there amendments?

AMENDMENT NO. 3171

(Purpose: To amend certain definitions)

Mr. BREAUX. Mr. President, there is an amendment at the desk I ask to be reported.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. FORD, proposes an amendment numbered 3171.

Mr. BREAUX. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 8, beginning with "and", strike out all through "Institution" on line 10 and insert in lieu thereof a period and the following: "Such term does not include the Smithsonian Institution".

On page 3, line 25, beginning with the second comma, strike out all through "agency" on line 26 and insert in lieu thereof a period and the following: "Such term does not include the Smithsonian Institution or any other Federal agency".

Mr. FORD. Mr. President, I rise to offer an amendment to H.R. 5237 to strike the references to the Smithsonian Institution from the provisions of this bill. I do so for two reasons: First, the Committee on Rules and Administration has not had the opportunity to review the provisions of H.R. 5237 as they affect the Smithsonian Institution. Appreciating the fact that this legislation has been 3 years in the making, I do not wish to delay Senate action on this measure. However, because matters affecting the Smithsonian Institution come within the jurisdiction of the Committee on Rules and Administration, I must insist that provisions of the bill which relate to the Smithsonian be stricken from the bill.

Second, Mr. President, as you know, there has recently been introduced in the Senate, a separate bill that would extend the provisions of the repatriation policy contained in H.R. 5237 to the Smithsonian Institution. This bill, S. 3217, has been jointly referred to the Committee on Rules and Administration and the Select Committee on Indian Affairs, and I look forward to a hearing and the development of a full record on this matter.

I very much appreciate the willingness of the managers of this legislation to accommodate the concerns of the Committee on Rules and Administration.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3171) was agreed to.

Mr. INOUYE. Mr. President, I am pleased to rise in support of H.R. 5237, the Native American Grave Protection and Repatriation Act. Native Americans have waited a long time for this restoration of their rights and I urge the Senate to not delay any longer in undoing this injustice that began so long ago.

Mr. President, the Smithsonian Institution set a national precedent for museums last year when it agreed to the repatriation provisions contained in the legislation to create a National Museum of the American Indian. That legislation was the result of many hearings and meetings of the Select Committee on Indian Affairs and tireless negotiations between Smithsonian officials and native Americans. The Smithsonian was courageous in its action and set a standard which is, I believe, appropriate for other museums and institutions in this country to follow.

When the Army Surgeon General ordered the collection of Indian osteological remains during the second half of the 19th century, his demands were enthusiastically met not only by Army medical personnel, but by collectors who made money from selling Indian skulls to the Army Medical Museum. The desires of Indians to bury their dead were ignored. In fact, correspondence from individuals engaged in robbing graves often speaks of the dangers these collectors faced when Indians caught them digging up burial grounds.

When human remains are displayed in museums or historical societies, it is never the bones of white soldiers or the first European settlers that came to this continent that are lying in glass cases. It is Indian remains. The message that this sends to the rest of the world is that Indians are culturally and physically different from and inferior to non-Indians. This is racism.

In light of the important role that death and burial rites play in native American cultures, it is all the more offensive that the civil rights of America's first citizens have been so flagrantly violated for the past century. Even today, when supposedly great strides have been made to recognize the rights of Indians to recover the skeletal remains of their ancestors and to repossess items of sacred value or cultural patrimony, the wishes of native Americans are often ignored by the scientific community. In cases where native Americans have attempted to regain items that were inappropriately alienated from the tribe, they have often met with resistance from museums and have not had the legal ability or financial resources to pursue the return of the goods. It is virtually only in instances where a museum has agreed for moral or political reasons to return the goods that tribes have had success in retrieving property. Tribes have had similar difficulties in preventing the excavation and sale of goods that unscrupulous collectors have acquired.

The legislation before us today is the product of a great deal of dialog and compromise and I believe it is a good bill and is fair to all sides. In 1987, the Select Committee on Indian Affairs held a hearing on legislation to provide a process for the repatriation of native American human remains and cultural patrimony. At that time, the representative of the American Association of Museums asked the committee if it would consider delaying action on the measure for 1 year, while the museum community attempted to fashion a dialog with representatives of the Indian community to see whether they could develop a policy together to guide the repatriation of native American remains and cutural patrimony. The committee agreed, and that dialog proceeded. Their final report was submitted to the committee in February of this year.

I believe we all recognize the value of the work carried out by museums. When we visit museums and look at remnants of past civilizations, we are really learning about ourselves, and how our societies and civilizations have evolved. Museums enhance our quality of life. As enlightened people, we welcome scientific inquiry and the opportunity to know more about ourselves. Accordingly, we welcome the preservation and scientific purposes that museums fulfill.

Mr. President, the bill before us today is not about the validity of museums or the value of scientific inquiry. Rather, it is about human rights. I do not anticipate that this legislation will result in a wholesale raid on museum collections, as I have heard previous versions of this bill characterized. I do not believe the rights of antique collectors will be taken away. It is ironic to note that the greatest opposition to this proposal has come from those who have most strongly ignored native Americans in their efforts to retrieve items that were improperly alienated from their tribes or who are trying to prevent inappropriate and insensitive display of their ancestors' goods and remains. This legislation is designed to facilitate a more open and cooperative relationship between native Americans and museums. For museums that have dealt honestly and in good faith with native Americans, this legislation will have little effect. For museums and institutions which have consistently ignored the requests of native Americans, this legislation will give native Americans greater ability to negotiate.

Mr. President, I believe this bill represents a major step in correcting an injustice that started over 100 years ago. It is appropriate that Congress take an active role in helping to restore these rights to native Americans and I urge the adoption of this measure by the Senate.

Mr. AKAKA. Mr. President, I rise in support of H.R. 5237, the Native American Grave Protection and Repatriation Act.

I testified in July before the House Committee on Interior and Insular Affairs in support of this measure for several reasons.

Native Hawaiians have always considered the burial of their kupuna, or ancestors, the epitome of cultural respect. It is understood that once the kupuna leaves this world to journey on to the spiritual world, their remains should never be disturbed. Their bones are the only connection between the spirit world and the physical world. However, over the decades, native Hawaiian remains and objects, uncovered accidentally or during scientific excavations, have been placed in museums such as the Smithsonian Institution.

Mr. President, the National Museum of the American Indian Act of 1989 has set a precedent for the return of native Hawaiian and native American remains and funerary objects from the Smithsonian Institution to their rightful resting places. I am proud to say that a native Hawaiian organization, Hui Malama I Na Kupuna o Hawai'i Nei, received the first repatriated Hawaiian remains under the act this July. Native Hawaiian remains still at the Smithsonian will be repatriated next year when land set-aside to receive the remains is properly prepared.

H.R. 5237 is the next step in returning remains and objects still in the possession of other federally funded museums and Government agencies to the native homeland. The bill is a comprehensive effort to repatriate native American, Native Alaskan, and native Hawaiian remains, prohibit the trafficking and profiting from the sale of native American human remains without the right of possession, and eliminate the longstanding policy of scientific research on future remains found. I also strongly support a provision that would name the Office of Hawaiian Affairs and Hui Malama I Na Kupuna o Hawai'i Nei as the native Hawaiian organizations responsible for receiving the repatriated remains and objects.

Mr. President, I am pleased that the Hawaii State Legislature, and other State legislatures, have also taken strides in providing for the protection of native remains and burial grounds. With this gesture, they have reaf-

firmed their recognition of cultural sensitivity and respect toward their native American and native Hawaiian populations.

It is long overdue that the remains of native Hawaiians and native Americans be accorded proper dignity and respect, and not allowed to be treated as objects of curiosity.

Mr. MOYNIHAN. Mr. President, first let me say that this is hugely important legislation. The treatment of native Americans has been one of our Nation's greatest failures. It is due to the distinguished chairman of the Select Committee of Indian Affairs that we shall now rightfully move to restore tens of thousands of remains to the families and tribes to whom these remains ought most appropriately be entrusted.

It is also my understanding that many museums, including the American Museums of Natural History, the Field Museum of Natural History, Harvard University, and others, have now, because of the efforts of the chairman, changed their policy relating to native American remains by agreeing to return these remains to the tribes that request them.

Many museums have recognized the rights and concerns of native Americans. As well, the museums want to deal fairly with the funerary objects.

Is it not the view of the chairman of the Select Committee on Indian Affairs that the museums have changed their position on the return of native American remains and funerary objects?

Mr. INOUYE. Yes; the senior Senator of New York is correct.

Mr. MOYNIHAN. Would it not be possible to encourage the museums and native Americans to resolve in a similar manner the return of artifacts, such as sacred objects and objects of cultural patrimony? The distinguished chairman of the select committee, of course, has been much more involved than I. And I would accept his view.

Mr. INOUYE. This legislation does nothing to prevent voluntary agreements from being negotiated between museums and native Americans with respect to the return of remains or any other items.

Mr. MOYNIHAN. I thank the distinguished senior Senator from Hawaii.

The PRESIDING OFFICER. Are there further amendments to the bill?

AMENDMENT NO. 3172

(Purpose: To make certain amendments to the bill)

Mr. CHAFEE. Mr. President, I ask that an amendment at the desk be called up on behalf of Senator McCAIN.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. McCAIN, proposes an amendment numbered 3172.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, strike out lines 19 through 21 and insert in lieu thereof the following:

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On page 3, line 12, immediately before the period insert a comma and the following: "including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971".

On page 5, strike out lines 15 through 17 and reletter the succeeding paragraph accordingly.

On page 6, line 19, strike out "judgement" and insert in lieu thereof "judgment".

On page 8, line 16, immediately before the period insert a comma and the following: "and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group".

On page 8, line 22, beginning with "The', strike out all through the period on line 24 and insert in lieu thereof the following: "Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.".

On page 19, strike out lines 20 and 21 and insert in lieu thereof the following:

(3) upon the request of any affected party, reviewing and making findings related to—

On page 20, between lines 17 and 18, insert the following and reletter succeeding subsections accordingly:

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissable in any action brought under section 15 of this Act.

On page 25, after line 8, add the following:

SEC. 15. ENFORCEMENT.

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

The PRESIDING OFFICER. If there be no debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 3172) was agreed to.

Mr. SIMPSON. Mr. President, I have a few brief questions for my colleague Mr. McCAIN. As a legal matter, I would like to clarify for the purposes of legislative intent, some potential ambiguities in the language of this bill.

As my colleague knows, a sizeable portion of Wyoming is federally owned land. Wyoming is also very proud to have the Wind River Indian Reservation within its borders, home of the Shoshone and Arapaho Tribes. Wyoming is also fortunate to have vast mineral resources under our public lands and much of the mining in our state is surface mining.

As you can well understand, if a permitted mining development could be halted on the assertion that it included a "sacred site," that could be potentially devastating to the coal industry in Wyoming and the uranium mining industry as well. I fully appreciate the need to be carefully sensitive in our respect to objects which are sacred to native Americans. However, what legal balance is achieved in this legislation in order to protect the interests of industries that are critical to the economy of States like Wyoming in situations such as the one I have described?

Mr. McCAIN. I thank the Senator from Wyoming [Mr. SIMPSON] for his interest in this legislation. Let me assure my good friend from Wyoming that there is nothing in this bill that would result in a permanent interruption of development activity on Federal lands. I think it is important to note that the provisions of this bill only apply to Federal and tribal lands. State and private lands are not covered by the bill. In considering the potential impact of H.R. 5237 on the development of Federal lands, both the House and Senate Committees gave significant consideration to the interest in the development of Federal lands. Under this bill if a sacred object, as defined in the bill, has been found on Federal land during the excavation stage of mineral development, the party uncovering such object would be required to notify the Secretary of the particular Federal department with authority over those lands. In this situation, an object must be determined to fall within the limited definition of sacred object as set out in the bill. H.R. 5237 is intended to provide an opportunity for culturally affiliated Indian tribes to make the appropriate disposition of objects found on Federal lands. The bill would require the party uncovering the object to take reasonable steps to safeguard the cultural items. Development of the site could continue 30 days after such notice has been received by the Secretary. This section of the bill is not intended as a bar to the development of Federal or tribal lands on which cultural items are found. Nor is this bill intended to significantly interrupt or impair development activities on Federal or tribal lands. In addition, any activity on Federal lands which would impact archaeological sites would still

be governed by the provisions of the Archaeological Resources Protection Act.

Mr. SIMPSON. I thank my colleague. I also have concerns about property rights that this bill seems to create and whether lawful owners such as museums will be fairly compensated upon the transfer of property to parties asserting rights under this bill?

Mr. McCAIN. H.R. 5237 includes a definition of the term "right of possession", which refers to the manner by which a museum or Federal agency comes into possession of any native American cultural item. During the consideration of this legislation both the House and Senate committees received testimony from tribal leaders regarding situations where important ceremonial objects have been stolen from the Indian tribe only to reappear later in the collections of a museum. This term will provide a clear standard for determining whether an item was originally acquired with the voluntary consent of the individual or Indian tribe which had the authority to alienate the item. Review of the right of possession to a native American cultural item is very similar to the transfer of title to other forms of property. This definition is intended to operate in a manner that is consistent with general property law. As you know, under the common law, an individual may only acquire the title to property that is held by the transferor. In addition, the bill provides that an individual may seek redress in the U.S. Court of Claims and the Court of Claims may award compensation in a fifth amendment taking by the United States is found to have occurred. Finally, H.R. 5237 would require an Indian tribe or native Hawaiian organization to establish a prima facie case that a museum or Federal agency did not have the right of possession to a cultural item before it could be subject to the repatriation provisions of the act. I believe that this bill has been crafted in such a way as to avoid any problems with unconstitutional takings under the fifth amendment.

Mr. SIMPSON. Again, I thank my colleague. I have only a few more questions, relating to the notice provisions in this bill.

As I understand it, anyone who discovers an object covered under this bill is to give notice to the agency in charge of the Federal land in question. The Indian tribes, Alaska Natives or native Hawaiian organizations then have 30 days to respond. The 30 day time limit begins running when the Federal Government is notified by the discoverer. My first question is, who is charged with determining which native American group has the right to the objects and, second, whether or not the 30-day time limitation will begin to run from time of notice to the Government or whether it only begins to run from the time the determination is made with respect to which native American group is the rightful owner?

Mr. McCAIN. H.R. 5237 provides that if the ownership of cultural items discovered on Federal lands is known or readily ascertainable then the appropriate Indian tribe or native Hawaiian organizational shall receive notice of the discovery. The bill requires the party discovering a native American cultural item to provide notice to the Secretary of this particular Federal department with authority over those Federal lands. The Secretary of the Interior will have responsibility to determine the ownership of cultural items discovered on Federal lands. This section of H.R. 5237 is intended to provide a process whereby Indian tribes and native Hawaiian organizations have an opportunity to intervene in development activity on Federal lands in order to safeguard and to provide for the appropriate disposition of culturally affiliated items found on Federal lands. This process allows 30 days from the time notice is received by the Secretary, for Indian tribes and native Hawaiian organizations to provide for the appropriate disposition of cultural items found on Federal lands.

Mr. SIMPSON. Many good people in Wyoming enjoy walking and hiking our public lands and some have some small but quite important collections of various artifacts. So these are my questions: Will this bill affect the private collector and if so, what are the private collector's potential liabilities?

Mr. McCAIN. H.R. 5237 will only cover those objects which are described in the definition of cultural items. The definition of cultural items in the bill only applies to those objects discovered after enactment on Federal or tribal lands. Private collectors will still be able to pursue their hobbies on state or private lands. In addition, the bill has been carefully crafted to ensure that its provisions provide adequate protections to prevent the illegal excavation of graves on tribal and Federal lands. Testimony received by both the House and Senate committees indicated that there is a flourishing trade in funerary and sacred objects that have been obtained from burials located on tribal and Federal lands. This testimony also indicated that tribal and Federal officials have been unable to prevent the continued looting of native American graves and the sale of these objects by unscrupulous collectors. H.R. 5237 provides that any person who knowingly sells, purchases, uses for profit or transports for sale or profit any native American cultural items obtained in violation of this act shall be subject to criminal penalties. The definitions of cultural items in H.R. 5237 are limited to application. These definitions do not include objects which were created for a purely secular purpose, such as for sale or trade as Indian art. The definitions include objects which are necessary for the continuing practice of native American religions, funerary objects and objects that are of central cultural importance to the tribe such that they cannot be owned, alienated or conveyed by any individual. The scope of these definitions is a very limited one. In this way the bill provides adequate protections to native American grave sites while still allowing private collectors to pursue their pastimes.

Mr. DOMENICI. Mr. President, I support this legislation to accomplish a noteworthy goal for the Indian people of America. Many museums hold sacred objects important to Indian tribes. This bill provides a mechanism whereby Indian tribes will be able to reclaim ceremonial and other objects important to present day rituals and practices.

The legislation also addresses human remains, funerary objects, and cultural patrimony. In simple terms we are providing for the return of Indian burial items and other religious items that properly belong with Indian tribes rather than storage rooms in museum collections.

If enacted, this bill will promote the return of these items to their true owners and users.

A famous modern day case involves the Zuni War Gods, carved from wood and used as a shrine to protect the tribe. For at least 100 years, more than 50 of these wooden statues were in 21 museums and 5 private collections.

The New York Times reported on August 13, 1990, that the—

> Zunis were moved to try to reclaim their idols not out of ambition to change laws or policies, but out of a desire for these blessings and the need to fill a gap in a complex structure of ritual and belief.
>
> Each Ahayuda serves as guardian for the tribe until he is relieved by a new one, and then the older ones must remain there, contributing their strength until they go back to the earth, Pesancio Lasiloo was quoted as saying.

Pesancio is the Zuni Tribe's Lieutenant Governor and a good friend of mine.

The Zuni war gods do not function in a climate controlled museum case. The Zunis want them in the rain and elements so they can do their work as religious objects. Disintegration is actually essential to their function.

Mr. President, the legislation before us today will make it easier for proper tribal claimants to regain possession of items sacred to tribal beliefs and rituals.

I would like to add that the Museum of New Mexico in Santa Fe, NM has been a leader in the repatriation of cultural patrimony. This bill will gen-

erally enact many of the practices pioneered at the Museum of New Mexico.

Unfortunately, not all museums adhere to the principles of returning valuable and needed objects to the tribes, as practiced by the Museum of New Mexico. This legislation will support Indian tribes in their efforts to regain vital items like the Zuni war gods. On the other hand, the burdens on museums to inventory their collections have been sensibly modified to promote these ends with a minimal financial impact on those museums with Indian collections.

The Smithsonian Institutions' vast collections are subject to repatriation under the terms of the act establishing a National Museum of the American Indian, enacted last year. Those conditions for repatriation, however, are not as thorough as the conditions in this bill.

My good friends, Senator INOUYE and Senator MCCAIN, have introduced separate legislation to bring the Smithsonian up to these more rigorous standards. I applaud this effort and will support it in the Senate.

I believe the House provisions we are passing today reflect the agreement reached between scientists, museums, and Indian tribes.

I commend Chairman INOUYE and Vice Chairman MCCAIN for their 3-year effort to create a national policy of repatriation of Indian cultural items. The policies embodied in this bill are fair and will promote a just return of important religious and cultural items as well as human remains and related funerary objects.

The PRESIDING OFFICER. Are there any further amendments? The Chair hearing none, the bill is considered having been read the third time and passed.

So the bill (H.R. 5237), as amended, was passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXCHANGE OF CERTAIN LANDS IN SOUTH DAKOTA AND COLORADO

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 995, H.R. 4567, a bill to authorize the exchange of lands in South Dakota and Colorado.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4567) to authorize an exchange of lands in South Dakota and Colorado.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Are there amendments to the bill?

Mr. PRESSLER. Mr. President, I urge the Senate to give its approval to H.R. 4567. I have cleared this bill on our side of the aisle. Our bill authorizes an exchange of lands in South Dakota and Colorado between the U.S. Forest Service and Homestake Mining Co. This includes Spearfish Canyon—one of nature's real treasures—in the heart of the Black Hills National Forest.

The Senate Energy Committee has held hearings on this legislation and favorably reported it to the full Senate. The House of Representatives already has passed it. I urge my colleagues in the Senate to do the same.

Under this land trade, the U.S. Forest Service would acquire approximately 12,274 acres of land in exchange for 868 acres of land in Summit County, CO. The 12,274 acres include 1,250 acres in the Spearfish Canyon area, one of the Black Hills' most scenic areas and 8,125 acres in the Piedmont area, located northwest of Rapid City.

Mr. President, the overwhelming majority of South Dakotans support this land swap. This land exchange is an excellent opportunity for us to preserve some of the most beautiful land in the Nation for wildlife and for the enjoyment of the public. I hope my colleagues will act quickly to approve this legislation.

Mr. DASCHLE. Mr. President, I rise today to urge adoption of H.R. 4567, a bill to exchange lands between South Dakota and Colorado. This legislation was introduced in the House of Representatives by Representatives TIM JOHNSON, and I introduced the Senate bill, S. 2474, with my distinguished colleagues, Senator TIM WIRTH and Senator LARRY PRESSLER. Differences between the House and Senate bills have been reconciled, and the amended bill has passed the House.

The purpose of this bill is to transfer 12,274 acres of scenic and environmentally significant land in the Black Hills of South Dakota owned by Homestake Mining Co. to the U.S. Forest Service in return for 868 Government-owned acres in Colorado. The lands to be provided by Homestake Mining Co. are considered among the crown jewels of South Dakota's Black Hills. They include some 20 miles and 1,250 acres of land along Spearfish Canyon and 8,125 highly accessible acres near Piedmont, SD. Among other things, the exchange will protect important winter wildlife habitat for elk, white-tailed deer, and other animals in the Black Hills.

Among those supporting the exchange are the local chapters of the Sierra Club, and South Dakota Wildlife Federation, the Spearfish Canyon Homeowners Association, the Natural Resource Users Coalition, and the mayors of Lead, Deadwood, Belle Fourche and Spearfish, among many others. Hearings have been held in the House Agriculture and Interior Committees, in the Senate Energy Committee, and local informational meetings have been held in the Black Hills.

The land exchange proposal was developed in February 1989, and formally announced at the opening of Homestake Mining Co.'s Visitors' Center in Savoy, SD. We have worked closely with Homestake Mining Co. officials as they developed the details of this proposal, and Homestake should be commended for its good faith efforts to bring this special area into the public domain.

The purpose of the bill before us is simple—it is to increase the protections afforded to Spearfish Canyon and Spearfish Creek. To paraphrase the bill, the goals of the legislation are to protect and improve public access and recreational opportunities; fish and wildlife habitat; the serenity, environmental integrity, and scenic beauty of the area; and the Forest Service's ability to manage the area for these purposes.

Currently, the land in Spearfish Canyon is owned by Homestake Mining, and the management and protection of the area is currently subject to the good graces of Homestake. While Homestake has been an excellent steward of the canyon, there is little long-term security in the present arrangement. Mining, housing development or other land uses that may be incompatible with the values of the Canyon could occur tomorrow. If the land exchange is implemented, the lands will be put into public ownership and managed by the Black Hills National Forest for the public good. Citizens will gain a voice in land use decisions affecting Spearfish Canyon that they now do not enjoy, and the area will be afforded the protections of the National Forest Management Act, the National Environmental Policy Act, and other Federal statutes designed to protect Federal land values.

Concerns have been expressed regarding Homestake Mining Co.'s retention of mineral rights in the lands it exchanges, particularly the lands in Spearfish Canyon. I would have preferred that the mineral rights be transferred to the U.S. Forest Service and permanently withdrawn from mineral entry. However, this was not possible, and, as a compromise, the bill includes a "no surface occupancy" provision that prohibits surface disturbance on the 1,250 acres in the Canyon. The environmental values of the Canyon are further protected through

language to prevent the impairment of values in this scenic area.

Other concerns have been raised regarding water quantity in Spearfish Creek. Many users rely on that water, including the cities of Deadwood, Lead and Spearfish, the Homestake Mining Co., local homeowners, recreation enthusiasts and anglers. I have long felt that the supply, need and demand for water in the Black Hills should be closely examined. However, in this case the State government of South Dakota is a better venue to determine water rights than is the Congress of the United States.

Therefore, the legislation does not attempt to settle the water rights issue in Spearfish Canyon. Yet, in an effort to ensure that adequate water flows in Spearfish Creek will continue to be maintained, the bill requires Homestake to exercise its water rights, without making judgment about these rights, in "accordance with applicable Federal, State and local law * * * for the protection and enhancement of the values of Spearfish Canyon." This language, combined with Homestake's excellent history of water use and management in the Canyon and its repeated assurances to maintain viable stream flows in Spearfish Creek, should help portect the creek. Furthermore, recent State of South Dakota legislation allows the State to give the Canyon special protection as a designated special and unique area and I hope that this will be seriously considered by the State.

The legislation before us today has been the result of much effort on all sides. Some wish that the bill could have gone further in guaranteeing that the resources will be protected. I share their concerns, but I am convinced that this bill does afford significant protection to the resource. Whether completely satisfied or not, I believe that almost everyone familiar with this process agrees that the protections afforded by this bill are better than no protections at all. I would hope that the Forest Service will expedite implementation of the provisions of this bill so that the benefits of the resource can be made avialable as soon as possible.

I wish to thank Homestake Mining Co. for its willingness to place these prized lands into public ownership and for the tremendous amount of work they did to see this bill through. I also want to thank the Spearfish Canyon Owner's Association for their support, and, in particular, Association President Gerald Fort, who made the trip there to Washington to testify on behalf of this bill. I also wish to acknowledge the efforts of Jack Cole of the Canyon Echo, who pointed out weaknesses in the bill, but still worked for its passage. His vigilance has made the bill stronger. Paul Riis and Darrel Kenops of the Forest Service also deserve much credit for their fair treatment of the proposal. Finally, Rich Harr and his colleagues at Homestake have made excellent contributions to the overall concept of the land exchange, and to the legislative language we have before us.

In summary, Mr. President, today Congress has the opportunity to provide for long-term protection of the scenic beauty and natural values of Spearfish Canyon. This is a good bill, and this land exchange is truly a good deal for citizens of South Dakota and the Nation.

LAKE ANDES/WAGNER/MARTY II PROJECTS

Mr. PRESSLER. Mr. President, I strongly support the Irrigation Drainage Demonstration Program and Lake Andes-Wagner/Marty II projects in South Dakota. These are included in title of IX H.R. 2567. This proposed research demonstration and irrigation projects is the result of more then 20 years of hard work by many people.

The Lake Andes-Wagner/Marty II Demonstration Program plan of study outlines the procedures for evaluation of subsurface drainage requirements determining return flow quantity and quality. Management practices will be developed to assure compliance with applicable water quality standards.

The information gained from the demonstration program will provide currently unavailable data necessary to construct and operate irrigation units in the Upper Missouri Basin and other areas of the country with similar concerns.

The benefits derived from a successful demonstration program with these objectives go far beyond the advancement of the Lake Andes-Wagner/Marty II units.

The proposed project provides a unique opportunity for the Bureau of Reclamation, Bureau of Indian Affairs, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Survey, South Dakota Department of Game Fish and Parks, South Dakota Department of Water and Natural Resources, Yankton Sioux tribe, and the Lake Andes-Wagner Water Systems, Inc., to contribute and participate in the 5-year study and to exchange and transfer information.

The project will provide data on agricultural non-point source pollution for sound management planning which protects soil and water resources. Study findings may substantially reduce project development and operating costs.

The Lake Andes-Wagner/Marty II area agricultural economy and future growth depend heavily on the development of irrigation, pending the completion of the demonstration program.

South Dakota has lost over 500,000 acres of land to the Pick-Sloan Reservoir. The promise to South Dakota of Pick-Sloan irrigation has not been kept. Lake Andes-Wagner and Marty II would partially fulfill the commitments made to South Dakota.

Mr. President, the area around the Lake Andes-Marty II projects is largely oriented to livestock production. Eighty percent of the the personal income in the area comes from livestock. Crops are grown mainly for livestock feed. Precipitation is erratic. In most years rainfall is neither adequate nor timely. Over the last 3 years this area has experienced drought conditions resulting in feed shortages and movement of livestock out of the area. Many producers have been forced to sell off breeding stock.

Since 1950, the population of Charles Mix County has declined 57 percent to about 9,500. Indian unemployment is 85 percent, with many of those employed working in Government support programs. Outmigration includes mostly people under 40 years of age. The average age of the South Dakota farmer is 57 years. This trend must be stopped. The proposed project could reverse this trend and be the salvation of this area's economy.

Mr. President, I could elaborate for hours on the need for this proposed irrigation project. I have seen crops in South Dakota wither and die because of the shortage of rainfall at crucial times. Rural development is crucial to the survival of our small towns, businesses, farmers and ranchers. This proposed project could bring new industries and processing plants to the area. It is rural development in its finest form. Hundreds of additional jobs would be created in an area that has lost hundreds of people over the last 30 years.

The proposed project has received the strong support of the State of South Dakota, the electrical power community, including East River Electric and Mid-West Consumers Association, the South Dakota Department of Game Fish and Parks, the Industry and Commerce Association of South Dakota, and the National Water Resources Association, to name a few.

Mr. President, I urge my colleagues to support this bill.

The PRESIDING OFFICER. Are there further amendments? The Chair, hearing none, without objection, the bill is deemed having been read the third time and passed.

So the bill (H.R. 4567) was passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

OMNIBUS EXPORT AMENDMENTS ACT—CONFERENCE REPORT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the conference report to accompany H.R. 4653, the Export Administration Act.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4653) to reauthorize the Export Administration Act of 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 25, 1990.)

Mr. PELL. Mr. President, I and many of my fellow Senators are pleased that in these final moments of this Congress we will be passing the Export Facilitation Act of 1990. This bill includes legislation of particular importance to the Committee on Foreign Relations dealing with chemical and biological weapons control, sanctions against Iraq and controls on transfers of missile technology.

The conference bill before the Senate now is the result of extensive and detailed discussions between the two Houses. Of particular significance are the Chemical and Biological Weapons Control and Warfare Elimination Act of 1990, the missile technology control legislation and the Iraq sanctions legislation. I think it fair to say that the final legislation before us now is some of the most important of this Congress.

MISSILE TECHNOLOGY

In the Persian Gulf, United States soldiers are threatened by Iraqi missiles that may have chemical weapon warheads. This is a sobering specter, indeed, and, unfortunately, a situation that we may see repeated. Already, 20 nations outside the NATO alliance possess their own ballistic missiles. In testimony before the Foreign Relations Committee, CIA Director William Webster disclosed that, by the year 2000, 15 nations may be manufacturing their own ballistic missiles. Clearly, the dangers posed by missile proliferation are increasing.

The EAA conference bill establishes a legislative framework for improving the U.S. missile proliferation control efforts. The legislation strengthens procedures for the licensing of U.S. missile related exports. This should help prevent recurrence of the regrettable incidents we have seen where the U.S. Government has licensed the export of items that will assist countries in developing their own missiles.

The legislation mandates that the U.S. Government reduce or eliminate its contracting with firms that transfer missiles or missile technology. There is absolutely no reason why the U.S. Government should contract with companies, be they foreign or domestic, that are transferring equipment and technology which threatens our national security.

The legislation also establishes reporting requirements on missile proliferation. Equally important, the legislation requires a statement of U.S. policy on the transfer of equipment or technology to foreign missile programs. This provision is motivated by concern that the administration may be moving to loosen licensing restrictions on transfers of missile equipment, technology, or services, to ostensibly peaceful space launch vehicle programs. In my view, this would be a grave mistake. We have only to look at our own country's space program to realize that boosters for ICBM's or shorter-range missiles, are identical to those in space launch vehicles. Certainly then any licensing of exports or services for SLV's must be treated in the same manner as an export to a missile program.

Mr. President, I would like to take a moment to commend the Senators from New Mexico, Tennessee, North Carolina, and Arizona, Messrs. BINGAMAN, GORE, HELMS, and MCCAIN, for the outstanding contributions they have made to the development of this legislation. I believe that working together, we have crafted legislation that will enhance the U.S. missile nonproliferation efforts. I look forward to working with my colleagues on this issue in the future.

IRAQ SANCTIONS

This bill includes as a separate title "The Iraq International Law Compliance Act of 1990." It imposes comprehensive trade and financial sanctions against Iraq for its long-standing violations of international law. These violations precede the invasion of Kuwait and include the illegal use of poison gas in the Iran-Iraq war and against its own defenseless Kurdish citizens; the apparent development of biological weapons in violation of the convention banning such weapons; the ongoing effort to acquire nuclear weapons in violation of its obligations under the Nuclear Non-Proliferation Treaty; and numerous human rights violations, including extensive use of torture and murder against children. Such conduct places Iraq outside the pale of civilized nations.

Mr. President, the provisions of the Iraq International Law Compliance Act are similar to those of "The Prevention of Genocide Act of 1988." With my distinguished ranking minority member, I introduced that legislation on September 8, 1988. It was intended as a dramatic response to Iraq's ongoing use of poison gas against defenseless Kurdish men, women, and children. It was intended to stop a crime of almost unspeakable proportions, the destruction of a people by use of poison gas. The Senate unanimously adopted the Prevention of Genocide Act on September 9, 1988.

Unfortunately, the Reagan administration vehemently opposed taking any action against Iraq because of its use of poison gas on the Kurds. The special interests also got into the act and the bill died on the last day of the session.

Neither the Reagan administration nor the Bush administration were willing to take any action whatsoever to punish Iraq for its numerous violations of international law. Even a week before the invasion of Kuwait the Bush administration strongly opposed the Iraq International Law Compliance Act as it passed the Senate.

I firmly believe that had we enacted the Prevention of Genocide Act as it passed the U.S. Senate 2 years ago Iraq would have understood that crime does not pay. It would have understood that the world community is prepared to defend international law and human decency. It would have understood that it cannot get away with aggression. Had we enacted that bill, our servicemen and women might not today be facing Iraqi forces on the Saudi-Kuwaiti border.

This legislation is a long overdue response to Iraqi contempt for international law and the rules of civilized people. I am glad we are today giving this legislation final approval. I only wish it had been done it sooner.

CHEMICAL AND BIOLOGICAL WEAPONS

The underlying and simple message of the chemical and biological weapons bill is that the United States, which has forsworn the use of chemical and biological weapons, will do its utmost to erect effective barriers against the illegal use of chemical and biological weapons and against illicit commerce that contributes to the development of these weapons.

The chemical weapons title has two major purposes:

To establish sanctions against countries that use chemical or biological weapons in violation of international law or use lethal chemical or biological weapons against their own citizens.

To establish sanctions against foreign companies that assist certain countries in acquiring a chemical or biological weapons capability.

These are the principal provisions of the chemical weapons title:

Whenever information becomes available that a country may have used chemical or biological weapons, the President shall, within 60 days,

make a determination as to whether such weapons have been used by a nation in violation of international law or against its own citizens.

Not later than 60 days after receipt of a request by the chairmen of the Senate Foreign Relations Committee or the House Foreign Affairs Committee, acting after consultation with the ranking minority members, the President must report back to the committees as to whether a country has used such weapons.

If the President determines that a country has used chemical or biological weapons in violation of international law or has used lethal chemical weapons or biological weapons against its own citizens, the President shall impose specific sanctions.

A country sanctioned for chemical or biological weapons use would automatically face immediate imposition of at least 6 of these 11 sanctions and subsequent imposition of a seventh sanction if the illegal behavior continues:

Termination of U.S. assistance under the Foreign Assistance Act of 1961;

Termination of U.S. Government or commercial arms sales;

Termination of arms sales financing;

U.S. opposition to loans by international financial institutions;

Denial of U.S. Government credit including credit through the U.S. Eximbank;

Prohibition of loans or credit from U.S. banks;

Prohibition of the export of controlled dual-use goods and technology;

Other export restriction;

Downgrading or suspension of diplomatic relations;

Termination of landing rights in the United States.

There are appropriate exceptions for humanitarian assistance, food and agricultural products. Provision in made for contract sanctity.

The sanctions must remain in effect for at least 1 year before being waived or removed unless there has been a fundamental change in leadership and policy in the country that used chemical weapons.

Sanctions would be imposed on foreign companies which knowingly and materially contribute to efforts to use, develop, produce, stockpile or otherwise acquire chemical weapons by any country that the President has determined has since January 1, 1980—

Used chemical or biological weapons in violation of international law;

Used lethal chemical or biological weapons against its own nationals;

Made substantial preparations to do the described activities; and

Been designated pursuant to section 6(j) of the Export Administration Act of 1979 as a country which supports international terrorism.

Sanctions would include:

A prohibition on U.S. Government procurement of goods and services from sanctioned company.

A prohibition on imports of that company's products.

The President may waive these sanctions if he determines that the government with jurisdiction over the company involved has taken specific and effective actions, including appropriate penalties, to terminate involvement.

The sanctions could be terminated by the President after 1 year if all proscribed activities have ceased. A presidential waiver is allowed after sanctions have been in effect for a year.

The President may in several exceptions to applying sanctions in the cases where there are existing contracts to procure defense articles or services, or, if the company is the sole source supplier of defense articles or services, or of other essential products.

Mr. President, chemical weapons were used to revolting effect in World War I. In its aftermath, the 1925 Geneva protocol was agreed upon to establish a ban on the use of chemical weapons in war. In 1972, the Biological Weapons Convention was negotiated to ban the production, acquisition and stockpiling of biological weapons. The United States ratified that Convention and the General Protocol in 1975. In the 1980's, international focus had been on negotiation of a multilateral agreement in Geneva to apply controls on chemical weapons comparable to the 1972 biological weapons convention, but with strong verification provisions.

Mr. President, the chemical and biological weapons bill now before the Senate is an integral step in the progress toward meaningful and comprehensive barriers to chemical and biological warfare. It puts the United States back in the forefront of those nations willing to take a strong stand against these vile means of warfare. The bill gives muscle to the President's own efforts to banish chemical and biological warfare.

Mr. President, the fields of France are verdant now and the agonized cries of those attacked by gas have long since been carrier off by the winds of change.

In Iran, the gas warfare waged by Iraq in the 1980's is a poignant and continuing reality for those affected. Iraq's own Kurds know of the genocidal violence of Saddam Hussein.

If we had to pressure to pass this legislation early in the last decade, Saddam Hussein might have been deterred from the use of chemical weapons. If he had not been deterred, he would have faced severe sanctions for the use of chemical relations and Iraq would not be the threat it is today. Indeed if this bill had been in place, the firms in Germany, Japan and elsewhere that helped Saddam Hussein and his loathsome soulmate, Libya's Mu'ammar Qadhafi might have been denied their present chemical weapons capabilities.

We can recall the wisdom of John Donne who warned, "never send to know for whom the bell tolls; it tolls for thee." It does indeed.

We are accountable for what we do today, and our approval of this bill will be a major achievement on the positive side of the ledger. I regret deeply that we have the sons and daughters of tens of thousands of Americans facing the threat of chemical attack in Saudi Arabia. Each gas mask issued there is a grim reminder of the failure of the United States to act effectively in the past to stop Saddam Hussein and his horrific practices.

We should be proud that we are acting now. The Senate acted decisively and resoundingly earlier this year in passing chemical and biological weapons sanctions in a 92-to-0 vote. Today, we will show similar resolve in passing a tough conference bill. The next step is up to the President.

Mr. President, last year when this legislation was being developed, a number of meetings were held at the staff level with executive branch representatives with the goal of a bill that would enjoy bipartisan Senate support and have administration acceptance. Frankly, although much progress was made in meeting dozens of concerns, the administration withheld support in the desire of gaining Presidential flexibility to the point at which the bill would have no teeth. Fortunately, Senators on both sides of the aisle, realizing the intrinsic importance of this legislation followed an independent course and gave the bill a unanimous 92 to 0 endorsement despite the lack of administration endorsement.

In the course of the conference, further attention was paid to administration concerns and further changes were made. For example, the one provision which was objected to on constitutional grounds in an October 16, 1900, letter to me from Secretary of State Baker was changed to meet the Secretary's concerns. This was done in the interest of comity without regard to whether the concern was correct or not.

Despite our generous attempts to deal with concerns, some of the President's advisers are still suggesting veto. Speaking as one Senator, I believe without question that a veto would be wrong for the President and for the Nation.

I would like to draw the Senate's attention to a well-reasoned editorial on this point which appeared in the October 25, 1990, *New York Time*. The editorial concludes:

Mr. Baker says the bill limits administrative flexibility to impose or waive sanctions.

But the President could waive sanctions after a year if he determined that was important for national security. In the mean time, the mandatory sanctions would send a strong message that the U.S. is serious about curbing the spread of chemical weapons. This is a very good time to send such a message, and a very good cause to get serious about.

Mr. President, I ask unanimous consent that the full text of the editorial be printed in the RECORD following my remarkes.

Mr. President, Republicans and Democrats alike join in imploring the President to see beyond the pettifoggery of some so his advisers, who would have him veto this legislation. The President of the United States must not be diverted from the right course for petty reasons. He was elected to lead us all, and his obligation is not to the executive bureaucracy but to the Nation.

The importance of this legislation cannot be overstated. Lives and principle are at stake. The President must see that this bill is completely consistent with his own objectives of banning chemical weapons. There is no valid reason for him to fail to now keep faith with those he has committed to the front lines in the Saudi Arabian desert, to their loved ones waiting for them at home and to others who could face chemical attacks in years ahead. The press should join with the Congress in putting this bill into law.

Mr. President, in connection with this bill, I would like to thank in particular the Senator from Maryland [Mr. SARBANES], who served as conferee for both the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs and skillfully protected the interests of both committees. The Senator from California [Mr. CRANSTON] and the Senator from Michigan [Mr. RIEGLE] have also been very helpful in this endeavor while the bill was in the Senate as as conferees. The strength of the bill is also a reflection of the commitment of my colleagues on the other side of the aisle, the distinguished ranking member of the Committee on Foreign Relations, [Mr. HELMS] and the Senators from Utah and Pennsylvania, Mr. GARN and Mr. HEINZ.

I would also like to express my deep appreciation to the distinguished chairman of the House Committee on Foreign Affairs, Representative DANTE B. FASCELL, who has worked tirelessly and effectively to help bring about the passage of this legislation. Chairman FASCELL and his fellow members of the committee deserve much of the credit for producing this excellent legislation.

Finally, I would like to commend the staff members who have played significant roles in crafting this legislation and bringing it to fruition, including Jerry Christianson, staff director of the committee; Bill Ashworth and George Pickart for the Chemical and Biological Weapons Control and Warfare Elimination Act of 1990; Peter Galbraith for the Iraq sanctions legislation; and Steven Polansky for the Missile Technology Control legislation.

Mr. SARBANES. Mr. President, I rise in support of the conference report to accompany H.R. 4653, the Omnibus Export Amendments Act of 1990.

I would like to begin by commending the chairman of the Banking Committee, Senator RIEGLE, for the outstanding leadership he has provided on this issue and for putting it at the top of the committee's agenda this year. I would also like to thank the ranking Republicans on the committee, Senator GARN and Senator HEINZ, for their exceptional cooperation in moving this bill through the committee, the Senate floor, conference, and now to final passage. I am particularly grateful to Senator HEINZ for his active participation in the enactment of this legislation.

I would also like to say a word of thanks to the chairman of the Foreign Relations Committee, Senator PELL, for the outstanding leadership he has provided on the issue of chemical and biological weapons proliferation. The chemical weapons bill that is included in this conference report is in large part the product of his efforts.

In addition, I would like to commend Representative FASCELL, the chairman of the House Foreign Affairs Committee and Representative GEJDENSON, the chairman of that committee's Subcommittee on International Trade and Economic Policy, who were the leading sponsors of the House version of this legislation, for the completion of a successful conference on this bill.

Mr. President, the centerpiece of this conference report is the reauthorization of the Export Administration Act. The act provides the President authority to control the export of high technology commercial goods with possible military applications.

Just 2 years ago the Banking Committee undertook a major revision of the EAA as part of the Omnibus Trade and Competitiveness Act of 1988. The 1988 trade bill extended the President's authority to control exports under the EAA until September 1990. The Congress therefore has the responsibility this year to reauthorize the law.

Congressional consideration of this reauthorization has taken place in the context of the extraordinary changes in East-West relations over the past year. A special meeting of the Executive Committee of Cocom occurred in February of this year at which agreement was reached to undertake a major review and revision of Cocom's export control regime in light of the changes taking place in the East bloc. That review culminated in the High Level meeting of Cocom that took place on June 6-7, at which agreement was reached on an extensive revision of the West's system of export control.

The conference report attempts to strike a careful balance between the need of U.S. exporters to compete effectively in international markets and the genuine security requirements of the United States in controlling the sale of high technology commercial goods with military applications. The starting point for the conference report is a recognition of the importance of the agreement reached at the Cocom high-level meeting of June 6-7. The bill incorporates the decontrol provisions of the agreement into the Export Administration Act, in effect setting a new floor for the imposition of export controls and in particular expanding the availability to Eastern Europe of computers, machine tools, and telecommuncations equipment for economic development.

The conference report goes beyond the Cocom agreement in two important respects. It directs the Secretary of State to propose to Cocom that exports of telecommunications equipment to Eastern European countries which qualify as lesser strategic threats under the Cocom agreement—Poland, Hungary, and Czechoslovakia—to be permitted to purchase telecommunications equipment under Cocom's least restrictive control procedures. The report would also require the Secretary to propose to Cocom that computers at a technology level below the so-called China green line be decontrolled. My understanding is that both of these provisions are consistent with current administration policy.

A key issue over the next year will be how the Cocom agreement is implemented. A principal concern of the business community is that our Government will be slower to implement the provisions of the agreement, thereby putting U.S. exporters at a competitive disadvantage with exporters from the other Cocom countries. In response to this concern, the conference report explicitly directs the Commerce Secretary to consider the actions of other members of Cocom in approving or denying licenses that are subject to such procedures and seek to ensure that U.S. exporters are not placed at a competitive disadvantage. The conference report also sets strict time limits for processing licenses subject to the national discretion and favorable consideration procedures provided by the agreement.

Other important changes made by the conference report include a requirement that all licensing of exports and reexports to or from Cocom countries be eliminated by December 31, 1991, as part of the creation of a so-

called license free zone; the establishment of a dispute resolution procedure between the Commerce and State Departments over whether commodities should be controlled as defense articles under the munitions list of the Arms Export Control Act or dual use commercial goods on the commodity control list under the EAA; and the requirement of an indexing procedure to ensure a regular review of the performance levels of technology subject to controls.

The conference report provides for a limited form of judicial review for implementation of procedural requirements as contained in the express terms of the Export Administration Act. These provisions are intended to be prospective and not to overturn or reopen any previously decided court decisions.

The conference report contains several other important provisions. Title II of the Report reauthorizes the export promotion programs of the Commerce Department for an additional year. It also increases the number of minister counselor level positions for members of the U.S. and Foreign Commercial Service from 8 to 12, and requires an annual report and testimony from the Commerce Secretary on the international economic competitive position of the United States.

Title III of the bill deals with the problem of the proliferation of missile technology. It authorizes the Secretary of State to conduct negotiations with foreign countries to restrict the proliferation of goods and technology used in the development of missiles. It would formally place the requirement to license dual use missile technology in section 6 of the EAA and require sanctions against U.S. and foreign persons who, after the date of enactment, are determined by the President to have assisted missile proliferation through shipment of dual use of commercial goods or defense articles.

Title V of the conference report imposes a series of economic sanctions on Iraq including a ban on the export of items contained on the U.S. munitions list or controlled for national security purposes under the Export Administration Act, Eximbank and Commodity Credit Corporation loans or guarantees, and all forms of assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act.

Finally, title IV of the conference report would place sanctions on foreign countries that use chemical and biological weapons and on foreign companies which assist in the proliferation of chemical or biological weapons. The chemical weapons provisions are carefully constructed to provide a significant measure of Presidential discretion. The President must make the determination that a foreign company has knowingly assisted proliferation and not been punished, or that a country has actually used chemical weapons. Once a determination is made, sanctions are imposed for 1 year following which there is Presidential discretion to waive sanctions in the national security interest or if remedial action is taken. This is not unlimited discretion, but sufficient to leave the President significant maneuvering room.

Despite the balanced nature of the conference report provisions on chemical and biological weapons, there have been indications that the administration is seriously considering a veto of the entire conference report because of what is seen as excessively limited Presidential discretion to waive sanctions. While the provisions do not leave the President unlimited discretion, a fair reading would indicate that they give him substantial flexibility.

A recent New York Times editorial, makes a strong case for why sanctions are necessary and I ask unanimous consent that the editorial be printed in the RECORD at the conclusion of my remark.

In conclusion, I strongly urge my colleagues to support the Conference Report. This is important, carefully developed legislation which will significantly enhance our national interests.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 25, 1990]

STANDING ON CEREMONY ON POISION GAS

For years the United States did nothing while Saddam Hussein used chemical weapons, first in his war with Iran and then against Iraq's Kurdish citizens. Now U.S. troops face a chemically armed Iraq in the desert and Congress is about to vote to impose mandatory sanctions on countries that produce, acquire or use chemical weapons. How can President Bush, of all people, be threatening to veto the bill?

Mr. Bush has pledged to rid the world of the scourge of chemical weapons. And he's negotiationg a global treaty to do just that. But Secretary of State Baker says mandatory sanctions limit the President's discretion. What a bizarre time to stand on ceremony. Congress is right to enact the legislation, and the President would be wrong to veto it.

Sanctions legislation has long bogged down in jurisdictional disputes between committees of Congress. Finally a House-Senate conference has agreed to appropriately tough sanctions in the Export Administration Act.

The act bars foreign companies that help countries develop chemical weapons from selling goods in the United States. Further, once the President determines that a country has used chemical or biological weapons, he must apply sanctions. The list of sanctions includes a cutoff of foreign and military aid, export and import restrictions and suspension of U.S. arms sales.

Mr. Baker says the bill limits administrative flexibility to impose or waive sanctions. But the President could waive sanctions after a year if he determined that was important for national security. In the meantime, mandatory sanctions would send a strong message that the U.S. is serious about curbing the spread of chemical weapons. This is a very good time to send such a message, and a very good cause to get serious about.

Mr. RIEGLE. Mr. President, I rise in support of H.R. 4653, the conference agreement on the Export Administration Act Amendments of 1990. The bill before us makes major changes to the Export Administration Act [EAA] to update our export control regime to take account of current international realities. It also enhances our Nation's export promotion activities and includes a report that is designed to force the Commerce Department to focus its technology development and trade promotion activities on products deemed important for industrial leadership.

The conference to reconcile S. 2927 and H.R. 4653 was a particularly complex one because we were actually conferencing subject matter addressed in four different bills, not just those in the Export Administration Act. This was because when we were on the Senate floor with S. 2927, Senators PELL and HELMS added to it the previously passed Chemical and Biological Weapons Control Act as an amendment. In addition although the Senate EAA bill had Iraq sanctions provisions, and a regime to control missile technology exports in it, the House bill did not so other House bills addressing these subjects were brought before conferees as well. The conference agreement thus has separate titles dealing with Export Administration Act amendments, missile technology controls, controls on chemical and biological weapons proliferation, and Iraq sactions. Let me briefly address these matters.

Since we last renewed the Export Administration Act in 1988, fast developing events in Eastern Europe and the Soviet Union have raised serious questions about what type of national security export control regime makes sense in a new era of East-West relations. We have also come to better understand that in the post cold war era of global economic competition, we cannot hamper our exporters with controls that no longer make sense. In fact overburdensome export controls that harm the ability of our industries to compete for sales in this new era, could hamper, rather than help, our national security goals. It was within this context that I decided reforming the Export Administration Act had to be a major priority for our committee in this session of Congress.

The conference agreement does an excellent job of melding the bills passed by each House and it does so in a manner that is acceptable to the administration. It makes it possible for the newly emerging democracies of Eastern Europe to obtain the U.S. technologies they need to modernize

their economies. The bill differentiates in the level of decontrol that will be granted to the Eastern European countries as opposed to the Soviet Union. That differentiation is justified as the strategic threat posed by the Soviet Union still differs greatly from that posed by its former client states in Eastern Europe.

The conference report also deals with a new and growing area of concern to us all that is the need to better control the export of chemical and biological agents or missile parts to countries that would use such items to make chemical or biological weapons and the means to deliver them. Iraq's invasion of Kuwait and the arsenal of weapons it possesses make dramatically clear that as we pare our controls on exports to the Soviet Union and its allies, we must also fashion a new export control regime to deal with the problem of proliferation of new and dangerous chemical and biological weapons. We were very fortunate that our colleagues from the Foreign Relations and Finance Committees worked with us as conferees to help fashion comprehensive legislation that deals with the new danger proliferation of such weapons poses to the civilized community of nations and our own national security.

Reconciling the differences between our bills was not easy as there were many tough issues that had to be resolved. I want to thank Chairman FASCELL and Congressman GEJDENSON along with Representatives BROOMFIELD and ROTH of the House Foreign Affairs Committee for their cooperation in achieving a resolution of our differences that truly serves the national interest. I also want to salute Senators CRANSTON, GARN, and HEINZ who all played major roles in fashioning the legislation that is now before us. Let me also pay a particular thank you to my good friend and colleague Senator PAUL SARBANES, the chairman of the Banking Committee's International Finance Subcommittee. He played the major role in putting together the Senate's bill and then worked tirelessly in conference to make sure we produced a bill that reformed our present export control system and put new controls on chemical and biological exports. I believe his efforts made it possible for the Congress to produce a bill that serves our national interests well but in a manner that the President and administration can accept.

I also want to thank the staff who worked on this legislation particularly Martin Gruenberg, Patrick Mulloy, John Walsh, and Mark Menefee of the Banking Committee staff, Carmen Lowrey of Senator CRANSTON's staff, Bill Reinsch of Senator HEINZ' staff and David Loevinger, a PMI fellow working with the committee. Their professional assistance enabled us to achieve a conference bill that will serve the American people well.

Mr. CRANSTON. Mr. President, I wish to express my support for the Omnibus Export Amendments Act of 1990 and compliment my House and Senate colleagues for a job well done.

This legislation contains numerous necessary reforms in U.S. trade and foreign policy. Many long hours were spent in negotiating a workable compromise among competing needs and priorities. The missile technology and chemical and biological weapon provisions move U.S. policy in a positive direction. The Export Administration section begins to recognize the end of the cold war and changes trade policy accordingly.

This bill is not perfect by any means. Given the opportunity, this Senator would have crafted a different bill but the need for reform is greater than any one Senator's desires.

Because this legislation successfully balances divergent interests and satisfies the need for reform, I urge President Bush to sign it upon receipt. I am told that the President would like waiver authority in the area of chemical weapon sanctions and has therefore threatened a pocket veto. It is my sincere hope, however, that the President will look favorably upon the bill's many other provisions and be persuaded to sign the package. As I stated above, this is not a perfect bill but we should all recognize that it is better than the alternative, which is nothing.

In closing, Mr. President, I wish to declare a partial victory for those who find our trade deficit worrisome and U.S. competitiveness lagging. This legislation, if enacted, will generally help the United States to be more competitive and hopefully improve the balance of trade.

Mr. GARN. Mr. President, I rise in support of the Conference report on H.R. 4653, the Omnibus Export Amendments Act of 1990. When we started on this legislation early this year, our principal focus was on the rapid changes taking place in Eastern Europe and the need to update our policy to reflect a new national security environment. Our task became much more complicated, however, as a result of growing tensions in the Middle East.

Even before the invasion of Kuwait by Iraq, Senator KASSEBAUM added Iraq sanctions to the bill in committee in response to her concerns about Iraq's access to and use of chemical weapons. Senator HEINZ and I added a new control regime to the statute to address the growing problem of missile proliferation. And Senator HELMS added chemical weapons sanctions legislation that had passed the Senate but never gone to conference. The result is a very large and comprehensive bill addressing the declining threat in Eastern Europe and the rising challenge of proliferation and instability in the Middle East.

Taken together, it is an important piece of legislation that responds to many of the key foreign policy and technology security challenges facing our country in the 1990's. We worked hard with the White House to ensure that the export policy changes in the conference report would be consistent with U.S. policy in Cocom. We labored to ensure that new nonproliferation regimes being put into law would be workable and effective, relying on current multilateral mechanisms to the extent possible but using a variety of economic sanctions as a last resort. We made the Iraq policy and gave him the flexibility to amend it as necessary.

Despite our efforts in these areas, the State Department is giving strong indications that they will recommend a veto over several provisions of the bill. The principal objection arises over the chemical and biological weapons title of the bill. This is very troubling to me since the President himself has made eradication of chemical weapons a national priority and his respresentatives came to the Banking Committee asking for sanctions authority.

State's complaint is that the President would have no bottom line discretion to waive sanctions, which State considers necessary for effective management of our foreign policy. I disagree with their assessment. The conference report leaves it to the President to determine whether a foreign company has knowingly and materially assisted CBW proliferation, or a country has used chemical weapons. If the President were to make the determination, mandatory sanctions would be imposed for 1 year. In the case of a company, the President need not impose sanctions if the government of primary jurisdiction would take appropriate enforcement action. In the case of a country, the President could choose from a menu of sanctions options to tailor the sanctions to the situation. In the case of both companies and countries, the President could waive the sanctions after 1 year in the national security interest or if remedial action has been taken.

This is broad discretionary authority. It is, in my view, more discretionary than the Toshiba sanctions language I added to the trade bill in 1988 which also faced a veto threat. The only reason that I can see for a broader waiver is so that the State Department can find some diplomatic excuse for the United States to let a company selling chemical weapons to Iraq, or a country like Iraq that gasses its own people, get off scot free.

I believe a pocket-veto of this bill would be a terrible mistake. It would be a repudiation of the U.S. commitment to eliminate chemical weapons.

It would wipe out 2 years' work in the Congress to develop sensible legislation, starting with introduction of S. 8 by Senator DOLE at the beginning of the 101st Congress and culminating in the passage of the EAA bill.

I hope that the President will not listen to the State Department but will instead accept this authority, which is more discretionary than current law and was specifically requested by his administration. I certainly intend to let the President know as forcefully as I can that I believe he should accept this legislation. I hope my colleagues will join with me in passing this conference report overwhelmingly and sending the strongest possible message to the President that now is the time to take action on the chemical weapons issue.

Mr. HELMS. Mr. President, I support this conference report. Although it is intended to reauthorize the Export Administration Act, this bill in fact does a great deal more: It includes legislation addressing some of the most significant threats to world peace today.

Specifically, included in this conference report are:

First, provisions of S. 238, Helms-Pell legislation originally introduced by this Senator In January 1989 to impose sanctions on foreign companies which trade in chemical and biological weapons technology;

Second, provisions of S. 195, Pell-Helms legislation also originally introduced in January 1989. It imposes sanctions on foreign countries which use chemical weapons;

Third, wide-ranging sanctions on Iraq, many of which were included in the Pell-Helms legislation passed three times by the Senate in 1988, but effectively killed each time in the House at that time.

Fourth, provisions of the Helms amendment to the Export Administration Act, passed by the Senate in September, to require that the Pentagon review all exports of sensitive materials and technology to Iraq, Iran, Syria, and Libya.

Fifth, restrictions on the export of U.S. satellites for the purpose of being launched on Chinese missiles. Helms amendments to restrict such exports passed in 1988 and 1989, only to be dropped both times in conference at the insistence of the House.

In combination, these particular provisions create strong disincentives for foreign countries to use chemical weapons and for companies to assist countries like Iraq to obtain chemical or biological weapons.

Mr. President, for the past couple of years, I have tracked the numerous, mostly foreign, companies which have provided Saddam Hussein with just about everything he needed to build his war machine. I cannot imagine what could have driven companies to help this madman—except greed. I call these companies Saddam's Foreign Legion, and I ask unanimous consent that a list of these companies be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, the fact of the matter is that unless we move today to put a halt to the action of these and other companies, some of the most brutal regimes in the Middle East—Iraq, Syria, Iran and Libya—will obtain the capability to independently produce chemical weapons, biological weapons, and nuclear weapons. That is what is at stake.

Beyond this imperative, it is simply unfair that while the American taxpayer must spend literally millions of dollars to provide our troops with proetction against Iraqi chemical weapons, the foreign companies which helped Iraq build these weapons have gotten away scot-free with their profits safely in their pockets.

Fortunately, as I mentioned earlier, the conference report includes provisions which will hit these foreign companies where it hurts—in their pockets. Specifically, the conference report includes provisions of S. 238 introducted by this Senator prohibit any company which supports, aids or abets the chemical or biological weapons programs of Iraq, Iran, Syria and Libya from selling products in the United States and from receiving contracts from the United States Government.

Under the compromise agreed to in conference, the sanctions would be imposed on the offending company for at least 1 year. After that time, the sanctions would remain as long as the company continues its involvement with the chemical or biological weapons programs of these countries. However, also after a year, the President is provided the authority to waive the sanctions.

Mr. President, I wish that the sanctions were stronger—as was the case with the legislation originally passed by the Senate. But, conferences by nature produce compromises, and reducing the term of the sanctions was one such compromise. We are still, however, much better off than had the conferees taken the House language providing for no minimum term of sanctions.

It is unfortunate that on the day before the conference discussed the chemical weapons legislation, conferees received a letter from the Secretary of State James A. Baker III, indicating that the administration may veto the conference report if it were to include the Senate chemical weapons language. I remain baffled by the reasons which the administration has put forth to support a veto. After all, we are talking about legislation which has passed the Senate twice—once by a rollcall vote of 92 to 0.

Mr. President, I ask unanimous consent that the letter from Secretary of State Baker be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington, October 16, 1990.

Hon. JESSE HELMS,
U.S. Senate.

DEAR JESSE: You and your colleagues will soon address differing House and Senate chemical weapons (CW) sanctions legislation (H.R. 3033 and S. 195) in the context of a conference on the Export Administration Act. I want to take this opportunity to convey directly to you the Administration's position on these bills; we have conveyed specific comments to your staff on the differences in the two bills.

The President has taken the lead in seeking multilateral agreement on a global and comprehensive ban on CW and on stemming their proliferation in the meantime. We have already achieved a high degree of international cooperation in this effort. Further strengthening of this cooperation, including achieving a CW convention containing provisions for sanctions, presents a difficult challenge. The Administration welcomes strong bipartisan congressional support for this important national objective and believes that the Congress can help by enacting legislation that strengthens our diplomatic hand. This requires legislation based on international cooperation rather than unilateral fiat.

The House version of H.R. 3033 is supportive of our multilateral objectives; its endorsement by the conference committee would reinforce international multilateral efforts and demonstrate unified, bipartisan support. The House bill provides for meaningful sanctions on CW users and against companies that support CW programs, yet enables the President to target these sanctions for maximum effectiveness, taking into account the entire range of our national security and foreign policy interests.

The Senate version, which provides for mandatory sanctions, does not give the President sufficient flexibility to impose or waive sanctions based on a consideration of the nation's security interests. In addition, one provision of the Senate bill requires certain determinations and, in some cases, follow-on actions by the President in response to requests from relevant committee chairmen. As formulated, this provision is unconstitutional, as it is inconsistent with INS v. Chadha.

The Administration is prepared to endorse a conference report that supports multilateral cooperation in stemming the use and proliferation of CW and provides adequate discretion to the President in determining whether and which sanctions to impose. However, the President's senior advisors will recommend that he veto a CW sanctions bill that does not take account of these concerns.

We urge the conferees to agree on a bill that the President can sign. Such a bill would bolster the President's authority to apply sanctions, while providing the flexibility to do so in a manner consistent with overall U.S. national interests.

OMB advises there is no objection to submission of this report to Congress. Enact-

ment of CW sanction legislation (e.g., Senate-passed S. 195) that does not provide adequate Presidential discretion would not be in accord with the President's program.

With best personal regards,

Sincerely yours,

JAMES A. BAKER III.

Mr. HELMS. Mr. President, the Secretary's letter indicates a preference for the House bill—which was a much weaker version of the Senate passed language. But the fact is that the House version is full of loopholes which will enable companies who wish to continue to trade in chemical and biological weapons technology to avoid all effective sanctions. Fortunately, the conferees for the most part took the Senate language and avoided creating these loopholes.

Under both the House and Senate bills, before sanctions can be imposed upon a foreign company, the President must first determine that the company had knowingly and either materially or substantially assisted the chemical or biological weapons program of Iraq or certain other outlaw nations. This is not an easy standard, and whether a company has met this standard is left to the discretion and judgment of the President.

Yet, despite this provision of authority to the President, the House bill goes on to include two additional provisions which companies assisting the chemical weapons program of Iraq could count on to avoid sanctions. Section 103(f) of the House bill gives the President the additional authority to "waive the imposition of any sanction * * * if the President determines that such waiver is important to the national security interests of the United States."

With all due respect to the President, everyone knows that the State Department will invoke a waiver any chance it gets. In 1988, the Senate on three occasions passed legislation to impose sanctions on Iraq for its use of chemical weapons. On all three occasions the State Department saw to it that these bills were killed by the House.

In 1988 and again in 1989, and again this year, the Senate passed Helms provisions to prohibit assistance to China's missile program until China stopped providing assistance to Iraq's missile and chemical weapons program. The State Department saw to it that the 1988 and 1989 provisions were killed in conference, and over their opposition, a form of the 1990 provision is included in this conference report.

Last year, Congress passed a law prohibiting Exim Bank subsidies for Iraq unless the President issued a waiver. Earlier this year, the President issued such a waiver allowing over $200 million in credits to be provided to the Iraqis.

In May of this year, the Senate considered the D'Amato-Pell-Helms Iraqi sanctions bill, and of course, the State Department opposed the language at that time.

In fact, at no time prior to the invasion of Kuwait by Iraq, did the administration support congressional efforts to impose sanctions on Iraq.

To those who insist that the corporate sanctions section of the bill must have waiver authority available for the President to exercise immediately, all I can say is that we have had our waiver—for the past 2 years. The State Department has waived or opposed every single effort from this Congress to hold Iraq accountable for its actions.

May I remind the Senate that more than 100 German firms subsequently found to be assisting the Libyan chemical weapons programs claimed to have no knowledge of their involvement at Rabta. This tough and certain penalty is absolutely necessary to establish some kind of deterrent to foreign companies who would entertain the idea of assisting the chemical weapons program of countries like Iraq.

In addition, there is a glaring loophole in the House bill which would allow a foreign company which desires to trade with Iraq but avoid sanctions to do so, simply by arranging their corporate structure in a manner designed to skirt the requirements of this language.

Under the House bill, only the foreign company which assists the chemical weapons program of countries like Iraq is subject to sanctions. Not the parent company, not its subsidiaries nor its affiliates, nor the other subsidiaries of the parent would be sanctioned.

Large international conglomerates often set up their subsidiaries or affiliates to serve different and specific markets. Any clever corporate executive could set up five subsidiaries that sell principally to the United States and another, separate subsidiary the sole purpose of which is to sell chemical weapons to Iraq, and which does not now, nor intend in the future, to sell to the United States.

Under the Senate version, not only the parent corporation, but also five subsidiaries selling to the United States would become prohibited corporations because of the poison gas sales of the sixth subsidiary to Iraq. The House version would have been meaningless, because only the poison gas subsidiary would have been proscribed. The other five subsidiaries could keep on selling to the United States, thereby benefiting the parent corporation, which establishes and benefits from the policies of its poison gas subsidiary.

A couple of weeks back, the Los Angeles Times ran an editorial which serves a vivid reminder of why it is so necessary that loopholes not be created in this legislation which would allow foreign companies to participate in the chemical and biological weapons and technology trade, without effective penalty.

Mr. President, I ask unanimous consent that a copy of the Los Angeles Times editorial be printed in the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times, Oct. 5, 1990]

GERMANY NEEDS TO FACE THIS HONESTLY

Foreigners from many countries are desperately seeking permission to leave Iraq, but one group of Germans is in no hurry to be repatriated. As Times correspondent Mark Fineman reported from Baghdad, a number of businessmen and scientists fear that if they return to the Federal Republic they will be indicted for contributing to Iraq's development of weapons of mass destruction.

The extent of involvement by German companies and citizens in Saddam Hussein's crash program to acquire advanced weapons is only now starting to emerge. In August, according to the Wall Street Journal, German Economics Minister Helmut Haussmann secretly briefed members of the Bundestag about aid provided by German companies to Iraq's armaments industries. The activities of at least 170 companies are being looked into, and criminal proceedings have so far been launched against about 25.

Germany's postwar constitution consciously reflects the bleakly cautionary lessons of modern German history. Among other things it bans weapons transfers to areas of international tension. That prohibition seems to have been evaded determinedly by various German firms.

Among the findings of the secret Haussmann report are that three German companies supplied Iraq with the components to build the gas centrifuges needed to separate uranium-238 from uranium-235, a key step in producing weapons-grade nuclear material.

At least one German company sold Iraq deadly mycotoxins for research to develop biological weapons. U.S. officials have revealed that Iraq will have such weapons operational within a few months.

Five German companies have helped Iraq upgrade its Soviet-supplied Scud-B missiles to carry conventional or chemical warheads greater distances.

A German firm was the major supplier for plants that make nerve and mustard gases. And now comes news that the German arms industry may have indirectly helped Iraq develop a new fuel-air explosive of enormous destructive power.

The greed of German companies—and the laxity of German officials in suppressing this deadly illicit trade—has helped give Saddam Hussein access to powerful weapons that not only threaten Iraq's neighbors but now imperil the lives of American and other forces sent to stand against his aggression.

Germans, of course, were not the only villains in building up Iraq's war-making capability. The Soviet Union and France especially, though not exclusively, contributed to Iraq's potent arsenal. Americans may also have helped. The embargo has presumably put a stop to this trade for now, though what harm may yet result from what has gone before no one can say. The compelling lesson for the future is at any rate clear and unmistakable: Never again can civilized countries afford to permit such cynical and

greed-driven trafficking in these appalling weapons. That is the lesson; the world can only pray now that it won't take a hideous experience on a Persian Gulf battlefield to assure that it will be heeded.

Mr. HELMS. Mr. President, the German companies are not alone in this irresponsible conduct. Corporations from other countries were involved as well. But as this editorial explains, the current system is not working. And the American taxpayer and our soldiers over in the gulf are paying the price.

That is why it is necessary to penalize companies involved in the chemical weapons trade, and the subsidiaries for which such companies are responsible.

If we do not hold parent companies responsible for the actions of the subsidiary and vice versa, then we would be creating a loophole whereby greedy companies could escape responsibility by setting up subsidiaries.

And if the goal is to discourage foreign companies from participating in the chemical weapons trade, we must let foreign executives know that not only their company, but all other companies for which they are responsible, and which share in the dirty profits, will pay the price.

That is why the conferees decided upon a compromise that should prevent corporate executives from using corporate structure to avoid accountability for assisting the chemical or biological weapons programs of countries like Iraq, Iran, Syria, and Libya. Specifically, sanctions would be applied to the specific company participating in the chemical weapons trade, any successor entity to that company, any parent or subsidiary if that entity "knowingly assisted" in the activities of the sanctioned company, and any affiliate of the sanctioned company if it too knowingly assisted in the activities of that company and was effectively controlled by that company.

Under domestic U.S. law, knowledge of a company's activities is commonly imputed to that company's parent, subsidiaries, and affiliates. From the discussions through which the conference language was developed, it was clear that the conferees intended that this common practice of imputing knowledge to other entities in the corporate structure be followed in imposing sanctions provided for in this legislation.

It is to be hoped that the State Department will administer this legislation in accordance with these wishes of the conferees. Those involved in the drafting of this legislation will be closely monitoring implementation of the corporate sanction provisions to determine whether it is being implemented in such a way that corporations intending to trade in chemical or biological weapons technology are not able to effectively avoid sanctions through creative corporate structuring.

Mr. President, regarding the letter I received from Secretary Baker, I hope these are not the reasons why the Secretary thinks the Senate version is too rigid. In fact, the Senate version is very tightly drawn so that it applies sanctions only to violators who meet specific norms. I cannot imagine why my good friend, the Secretary, or the President, would ever want the flexibility to exempt a corporation that is guilty of proliferation of chemical and biological weapons and technology.

Also, Mr. President, the Secretary mentions in his letter some problems in the Senate bill that he believes might arise from the so-called legislative veto issue decided in the case of INS versus Chadha. However, I am pleased that the conference agreed upon language that would cure this defect to whatever it existed—which was minimal at most.

Therefore, Mr. President, I urge the Secretary of State to reconsider his opposition. Yesterday, the New York Times published an editorial which similarly urges the Secretary to do the same. I rarely agree with the editors of the New York Times, but in this case, they hit the mark. Mr. President, I ask unanimous consent that this editorial be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 25, 1990]

STANDING ON CEREMONY ON POISON GAS

For years the United States did nothing while Saddam Hussein used chemical weapons, first in his war with Iran and then against Iraq's Kurdish citizens. Now U.S. troops face a chemically armed Iraq in the desert and Congress is about to vote to impose mandatory sanctions on countries that produce, acquire or use chemical weapons. How can President Bush, of all people, be threatening to veto the bill?

Mr. Bush has pledged to rid the world of the scourge of chemical weapons. And he's negotiating a global treaty to do just that. But Secretary of State Baker says mandatory sanctions limit the President's discretion. What a bizarre time to stand on ceremony. Congress is right to enact the legislation, and the President would be wrong to veto it.

Sanctions legislation has long bogged down in jurisdictional disputes between committees of Congress. Finally a House-Senate conference has agreed to appropriately tough sanctions in the Export Administration Act.

The act bars foreign companies that help countries develop chemical weapons from selling goods in the United States. Further, once the President determines that a country has used chemical or biological weapons, he must apply sanctions. The list of sanctions includes a cutoff of foreign and military aid, export and import restrictions and suspension of U.S. arms sales.

Mr. Baker says the bill limits administrative flexibility to impose or waive sanctions. But the President could waive sanctions after a year if he determined that was important for national security. In the meantime, mandatory sanctions would send a strong message that the U.S. is serious about curbing the spread of chemical weapons. This is a very good time to send such a message, and a very good cause to get serious about.

Mr. HELMS. Mr. President, on another, but equally important issue, I was also pleased to see that the conferees agreed to retain the substance of an amendment I offered to the Export Administration Act reauthorization when it was considered on the Senate floor last month, to require review by the Pentagon of exports of sensitive materials and technology to Iraq, Iran, Libya, and Syria. The provision is now part of section 120 of the conference report.

Senators may recall that shortly before the Iraqi invasion of Kuwait, President Bush wisely intervened to halt the sale of a state-of-the-art titanium processing furance to Iraq. But the President's last minute intervention was required, because the bureaucratic procedures for reviewing such sales had failed.

The problem is, Mr. President, that under current law, the Department of Commerce has nearly total say over exports to these countries. Although the law specifies that the Commerce Department may consult with the Department of Defense, they generally consult only in cases where Commerce itself has determined that an export could benefit missile technology or chemical, biological, and nuclear weapons development. But it is up to the Commerce Department—which does not have the expertise of the Department of Defense—to make that determination.

In such cases, even if the Department of Defense advises against an export, they can be overruled by the Commerce Department. This is precisely what has occurred over and over again. In the case of Iraq alone, between 1985 and 1989, the Department of Commerce reversed at least 14 Department of Defense recommendations of denials. The Defense Department had recommended the denials because they believed that the items would be exported to end-users known to be involved with missile development, and nuclear and chemical weapons development.

The Helms provision will remedy this problem by providing for automatic Department of Defense review of licenses proposed to be issued for exports to Iran, Iraq, Syria, and Libya. If the Pentagon disagrees with the Department of Commerce on whether a particular license should be issued, the two Departments will bring their respective cases to the President for him to make the final decision.

Mr. President, on September 27, 1990, more than 1 week after the Helms amendment passed the Senate, the House Subcommittee on Commerce, Consumer, and Monetary Af-

fairs held a hearing on this very topic. At that hearing, the former Deputy Under Secretary of Defense, Dr. Stephen D. Bryen, provided the following testimony:

The first ounce of prevention is to assure that goods that are militarily critical and of national Security importance are rigorously reviewed by the Department of Defense. As we speak today, this is far from the case. Most military sensitive exports are handled solely by the Commerce Department and the Defense Department is not consulted * * * if the Defense Department provides a negative opinion about an export, then the White House and the National Security Council should be the sole arbitrator of any interagency dispute over whether the export should go.

Mr. President, that is what the Helms provision is all about. I am encouraged and gratified that the conferees chose to include it in his legislation being sent off to the President for his signature.

Mr. President, 2 years ago, the chairman of the Foreign Relations Committee, Mr. PELL, and I undertook to secure legislation imposing sanctions on Iraq for its use of chemical weapons, and aiming to cut off the flow of advanced technology to Iraq.

These legislative efforts failed, as each time, the House killed our legislation. And today we find our President compelled to dispatch to Saudi Arabia literally hundreds of thousands of young American men and women to meet the threat posed by Saddam Hussein.

Mr. President, there is nothing we can do to change the past. However, there is a great deal we can do to change the future, and assure that some of the mistakes which helped lead us to the gulf do not occur again. We can send off to the President this legislation including tough chemical weapons legislation, tough sanctions on Iraq, and new procedures to assure that the Pentagon reviews exports to Iran, Iraq, Syria, and Libya of sensitive United States technology and materials.

EXHIBIT 1

Saddam's Foreign Legion—Foreign Firms' Military Related Sales to Iraq[1]

Foreign country:	*Number of firms named*
West Germany	87
Austria	18
France	17
United States	16
United Kingdom	15
Spain	12
Switzerland	12
Italy	10
Belgium	8
India	6
Brazil	4
Argentina	3
Netherlands	3
Japan	2
Chile	1
Greece	1
Poland	1
Kuwait	1
Sweden	1

[1] All information from open sources. Chart—Senate Foreign Relations Committee, Republican Staff.

WEAPONS SALES TO IRAQ

WEST GERMANY

Siemens:

[Precision lathes and computer control equipment—Der Spiegel, August 6, 1990]

[Programming instruments for cannon factory—Der Spiegel, August 6, 1990]

[Non-echoing room for missile research—Der Spiegel, March 27, 1989]

Daimler Benz: [Security Vehicles—Der Spiegel, March 27, 1989

Messerschimdt-Boelkow-Blohm (MBB):

[Fuel air explosive technology—BBC Panorama, September 3, 1990]

[Subcontractor on SAAD-16 chemical weapons plant—Der Spiegel, August 20, 1990]

[Combat helicopters—Der Spiegel, August 13, 1990]

[Parent of Euromissile—Der Spiegel, August 10, 1990]

["Hot" and "Roland" anti-tank rocket—Stern, August 9, 1990]

[Electronics and testing for Condor 2 missile—Stern, August 9, 1990]

[Lab Equipment—Stern, January 26, 1989]

[Parent Firm of Transtecnics—Profil, March 6, 1990]

Carl Zeiss: [Unspecified equipment at chemical weapons facility—Der Spiegel, March 27, 1989]

Thyssen: [Weapon and ammunition facilities at Taji—Der Spiegel, August 13, 1990]

AEG: [Weapon and ammunition facilities—Der Spiegel, August 13, 1990]

Preussag: [Buildings for chemical weapons facility—Der Spiegel, August 13, 1990]

Degussa: [Unspecified equipment at chemical weapons plant—Der Spiegel, March 27, 1989]

Dornier: [Co-development of "Alphajet" ground-attack jet—Stern, August 23, 1990]

Philips: [Night vision equipment—ARD-TV Monitor September 11, 1990]

Anlagen Bau Contor (ABC):

[Acquisition of high capacity missile drives—Der Spiegel, August 15, 1990]

[Owned by Dr. Holger Beaujean—Der Spiegel, October 15, 1990]

Graeser: [Mediated deal for factory to produce cannon factory—Der Spiegel, October 15, 1990]

CBV Blumhardt: [Tank transportation trucks—Der Spiegel, October 15, 1990]

Beaujean Consulting Engineers: [Dr. Holger Beaujean's main engineering firm—Der Spiegel, October 15, 1990]

Labsco GmbH: [Assorted biological equipment—Der Spiegel, October 8, 1990]

Rhema-Labortechnik: [Inhalation system for chemical weapons research plant—Simon Wiesenthal Center/Mednews, October 1990]

Waldrich-Siegen: [Machine tools at missile plant—Simon Wiesenthal Center/Mednews, October 1990]

Rotexchemie International Handels-GmbH and Co.: [Sodium cyanide—used for prussic acid and tabun—DPA, September 29, 1990]

Wolfgang Denzel: [Radar, radio and navigation equipment for helicopters—Frankfurter Rundschau, September 14, 1990]

Havert Handelsgesellschaft GmbH: [Technical improvements on SCUD-B missile—Der Spiegel, September 10, 1990]

Heinrich Mueller Maschinenfabrik GmbH: [Technical improvements on SCUD-B missile—Der Spiegel, September 10, 1990]

Inwako GmbH: [Technical improvements on SCUD-B missile—Der Spiegel, August 20, 1990]

[Magnets for uranium enrichment processing plant—Der Spiegel, August 20, 1990]

Water Engineering Trading GmbH (W.E.T.): [Chemical substances for manufacture of nerve gases—Der Spiegel, August 13, 1990]

H and H Metalform, Ltd.: [Computer controlled facility for material checks and the hardening of cannon barrels and cartridge cases—Der Spiegel, August 13, 1990]

[Missile bodies—Der Spiegel, July, 9, 1990]

Machinery for production of gas, ultracentrifuges (used for uranium enrichment and missile casings)—Der Spiegel, December 18, 1989]

Heberger Bau: [Buildings for chemical weapons facilities—Der Spiegel, August 13, 1990]

Export-Union GmbH: [Metal for production of components for gas centrifuge for uranium enrichment—Der Spiegel, August 13, 1990]

Saarstahl: [Metal for production of components for gas centrifuge for uranium enrichment—Der Spiegel, August 13, 1990]

Schirmer-Plate-Siempelkamp: [Weapon and ammunition facilities—Der Spiegel, August 13, 1990]

Marposs: [Weapon and ammunition facilities—Der Spiegel, August 13, 1990]

Mannesmann Demag: [Weapon and ammunition facilities—Der Spiegel, August 13, 1990]

Lasco Metal Forming Technology: [Forging presses for artillery shells—Der Spiegel, August 13, 1990]

Ravensburg Machine Factory: [Boring equipment for cannon—Der Spiegel, August 13, 1990]

Dynamit Nobel: [Weapon and ammunition facilities—Der Spiegel, August 13, 1990]

Faun: [Transportation equipment for tanks—Der Spiegel, August 13, 1990]

MAN: [Transportation equipment—Der Spiegel, August 13, 1990]

[Owner of Ferrostaal—Der Spiegel, August 13, 1990]

Schmidt, Kranz and Company: [Computer controlled facility for material checks—Der Spiegel, August 13, 1990]

MAN-Roland: [Transportation equipment—Der Spiegel, August 13, 1990]

Rhein-Bayern Vehicle Construction: [Mobile toxicological lab—Der Spiegel, August 13, 1990]

Deutsche BP: [Unspecified military research equipment—Der Spiegel, August 13, 1990]

Gildemeister Projecta GmbH (Gipro): [General contractor at SAAD-16 chemical weapons plant—Stern, August 9, 1990]

[General Contractor for missile programs—Der Spiegel, March 27, 1990]

[Computer Programs—Stern, January 26, 1989]

Aviatest: [Contractor at SAAD-16 chemical weapons plant—Stern, August 9, 1990]

[Wind tunnel facilities for missile research—Profil, March 6, 1989]

Kloeckner Industrial Facilities Company: [Compressors and machine parts—Der Spiegel, August 6, 1990]

[Steel manufacturing for cannon factory—Der Spiegel, August 6, 1990]

Ferrostaal:

[Cannon factory general contractor—Der Spiegel, August 6, 1990]

[Universal smithy—Der Spiegel, July 11, 1990]

Machinenfabrick Ravensburg: [Machine tools—Der Spiegel, August 6, 1990]

TBT Deep Well Drilling Technology: [Boring equipment for cannon factory—Der Spiegel, August 6, 1990]

Leybold: [Three recasting plants for cannon factory—Der Spiegel, August 6, 1990]

LOI Industrual Furnace Facilities: [Furnaces for cannon installation—Der Spiegel, August 6, 1990]

Ruhrgras: [Parent of LOI—Der Spiegel, August 6, 1990]

SMS Hasenclever: [Forging press for cannon factory—Der Spiegel, August 6, 1990]

Demag—Huettentechnik: [Casting equipment for cannon factory—Der Spiegel, July 9, 1990]

Hochtief: [Construction of foundation of cannon factory—Der Spiegel, July 9, 1990]

Leifeld and Company (Leico): [High-capacity driving nozzles for missiles—Der Spiegel, July 9, 1990]

[Engineering for Dr. Bull's gun—Der Spiegel, July 9, 1990]

Matuschka: [Parent of Leico—Der Spiegel, July 9, 1990]

Buderus: [Casting technology for cannon factory—Der Spiegel, July 9, 1990]

Zueblin: [Construction of steel plant at gun factory—Der Spiegel, July 9, 1990]

ABB: [Electrical equipment for furnaces at gun factory—Der Spiegel, July 9, 1989]

Dango and Dienenthal: [Equipment for treating melting masses—Der Spiegel, July 9, 1990]

Mannesmann-Rexroth: [Components for Dr. Bull's gun—Groot Bijgaarden De Standaard (Belgium), May 18, 1990]

Promex Explorations GmbH: [Missile technology—Mednews, April 12, 1990]

Wegmann: [Tractor rocket launch system—Financial Times, November 20, 1989]

PBG: [Missile technology—Financial Times, November 20, 1989]

I.B.I. [Construction at chemical weapons plant—Stern, June 26, 1989]

Industriewerke Karlsruhe (IWKA): [Machine tools—Der Spiegel, June 26, 1989]

Infraplan: [Facilities for precursor chemical production—Document obtained by NBC News]

Weiss Technik: [Hot and cold chambers—Profil, May 8, 1989]

Nickel GmbH: [Climate control at missile plant—Profil, May 8, 1989]

Brown Boveri: [Missile technology electronic—Profil, May 8, 1989]

Projecta: [Affiliate of Gildemeister—Stern, April 6, 1989]

KWU: [Nuclear technologies—Mednews, April 2, 1990]

Blohm Machine Building: [Computer controlled grinding facilities at missile research plant—Der Spiegel, March 27, 1989]

Fritz Werner Industrial Equipment, Ltd; [Universal Drilling Equipment at chemical weapons plant—Der Spiegel, March 27, 1989]

Karl Kolb:

[Chemical warfare plant—Christian Science Monitor, December 13, 1988]

Laboratory Equipment for material testing—Stern, March 27, 1989

[Biological agent equipment—Der Spiegel, January 23, 1989]

Koerber AG: [Parent firm of Blohm—Der Spiegel, March 27, 1989]

Mauser-Werke: [Unspecified equipment for missile research—Der Spiegel, March 27, 1989]

Tesa: [Unspecified equipment—Der Spiegel, March 27, 1989]

Transtechnica: [Calibration Equipment for missile research—Der Spiegel, March 27, 1989]

Rheinmetall: [Equipment for cannon factory—Der Spiegel, July 9, 1990]

[Parent firm of Aviatest—Profil, March 6, 1989]

Sigma Chemie: [Chemical precursors-biological—The Washington Times, January 31, 1989]

Plato-Kuehn: [Toxins—Der Spiegel, January 30, 1989]

Anton Eyerle: [Mobile toxicological labs—Der Spiegel, January 23, 1989]

Iveco Magirus Deutz: [Vehicles for mobile toxicological labs—Der Spiegel, January 23, 1989]

Integral/Sauerinformatic/ICME: [Computer programs—Stern, January 26, 1989]

WTB Walter Thosti Boswau: [Construction of four nerve gas plants—Stern, January 26, 1989]

Krauss-Kopf: [Unspecified equipment at weapons plant—International Herald Tribune, January 7-8, 1989]

Ludwig Hammer: [Unspecified equipment at weapons plant—International Herald Tribune, January 7-8, 1989]

Pilot Plant: [Chemical warfare plant—Christian Science Monitor, December 13, 1988]

Quast: [Corrosion-resistant alloy parts—Christian Science Monitor, December 13, 1988]

ARGENTINA

Aerotech: [Missile technology—Financial Times, November 20, 1990]

Conseltech SA: [Missile technology—Financial Times, November 20, 1990]

Intesa S. A.: [Missile technology—Financial Times, November 20, 1990]

AUSTRIA

LIM Kunststoff Technology: [HTPB used in solid rocket propellants—Der Kurrier, October 3, 1990]

Andritz Machine Factory: [Supplies for Iraqi ammunition facility—Der Standard, August 31, 1990]

Illbau: [Supplies for Iraqi ammunition facility—Der Standard, August 31, 1990]

BBC: [Subcontractor at Iraqi weapons laboratory—Der Standard, August 31, 1990]

Voest-Alpine: [GC-45 Howitzers—The New York Times Magazine, August 26, 1990]

Hirtenberger: [Percussion caps and traction machines—Profil, August 13, 1990]

Steyr-Daimler-Puch: [Nonferrous-metal cartridge case facility—Profil, August 13, 1990]

Delta Consult Studien GesmbH: [Electronic construction missile plans—Kurier, May 13, 1990]

[Detailed estimates for missile plant—Profil, April 24, 1990]

Feneberg: [Construction planning—Profil, April 24, 1990]

Lenhardt Metal Construction and Roofing: [Steel construction for chemical weapons plant—Kurier, January 13, 1990]

Delta System GmbH: [Missile technology—Financial Times, November 20, 1989]

AST Consult Co: [Weaons laboratory construction—Profil, March 6, 1989]

Emmerich-Assman: [Parent firm of Hutter and Schrantz—Profil, March 6, 1989]

Girozentrale Bank: [Financing of weapons laboratory—Profil, March 6, 1990]

Hutter and Schrantz: [Iron and steel construction at weapons laboratory—Profil, March 6, 1989]

Swatek and Cerny: [Sanitary equipment—Profil, March 6, 1989]

Consultco: [Building blueprints and general planning weapons laboratory—Stern, January 26, 1989]

Neuberger Wood and Plastics Industry, LTD.: [Precursor chemicals—Austria State Radio, January 4, 1989]

BELGIUM

Cockerill: [Parts for Dr. Bull's gun—Simon Wienthal Center/Mednews, October 1990]

Forges de Zeebrugge Herstal: [Parts for Dr. Bull's gun—Simon Wienthal Center/Mednews, October 1990]

Six Construct: [Air base construction—Mednews, August 27, 1990]

Sebata: [Built Iraqi chemical plant—The Washington Post, August 25, 1990]

Amalgamated Trading Industries (ATI):

[Components for Dr. Bull's gun—Groot Bijgaarden De Standaard, May 18, 1990]

Poudrieres Reunies de Belgique (PRB):

[Solid fuel for self-propelling ammunition—Groot Bijgaarden De Standaard, May 17, 1990]

Space Research Corporation:

[Dr. Bull's Corporation—AFP, May 5, 1990]

Philips Petroleum:

[Thiodiglycol, a precursor chemical—BBC Panorama, February 2, 1987]

BRAZIL

Hugo de Oliveira Piva Consultants Co. (HOP):

[Provided engineers for lengthening range of SCUD-D missiles, developments of an AWACS early warning radar and air to air missile—O Globo, August 25, 1990]

Avibras Aerospace Industry Inc:

[Unguided rockets—O Estado De Sao Paulo, August 23, 1990]

Embraer:

[Services in the area of aerodynamics, structural and flight testing, trajectory control, on-board electronics, propellants and enhancements of SCUD missiles—O Globo, May 17, 1990]

Orbita Aerospace Systems:

[Services in the area of aerodynamics, structural and flight testing, trajectory control, on-board electronics, propellants and enhancements of SCUD missiles—O Globo, May 17, 1990]

CHILE

Industrias Cardoen:

[Fuel air explosives technology—The Independent, October 14, 1990]

EGYPT

WTB International AG:

[Construction of chemical weapons plant—Mednews, April 2, 1990]

FRANCE

Usinor-Sacilor:

[Special steels for centrifuges—Simon Wiesnethal Center/Mednews, October, 1990]

Protec SA:

[Intermediary for transfer of chemicals—The New York Times, September 21, 1990]

Le Vide:

[Equipment for chemical weapons plant—The New York Times, September 21, 1990]

Carbone Loraine:

[Equipment for chemical weapons plant—The New York Times, September 21, 1990]

De Dietrich France:

[Equipment for chemical weapons plant—The New York Times, September 21, 1990]

SVCM:

[Equipment for chemical weapons plant—The New York Times, September 21, 1990]

Pirep:

[Equipment for chemical weapons plant—The New York Times, September 21, 1990]

Provost:

[Equipment for chemical weapons plant—The New York Times, September 21, 1990]

Euromissile:

["Hot" "Roland" and "Milan" missile systems—Die Zeit, August 10, 1990]

Aerospatiale:

[Parent of Euromissile—Die Zeit, August 10, 1990]

Sagem:

[Missile Guidance Equipment—The New York Times, May 24, 1990]

[Inertial guidance kits—Mednews, April 2, 1990]

SNPE:

[Solid rocket fuel—Mednews, April 12, 1990]

SEP: [Rocket motor nozzles—Mednews, April 2, 1990]

St. Gobain: [Nuclear technologies—Mednews, April 2, 1990]

Intespace: [High-resolution infrared cameras—Mednews, April 2, 1990]

Thomson-CSF:

[Radar jamming equipment—Financial Times, September 12, 1990]

[Engineers for development of Iraqi indigenous military electronics industry—Mednews, May 8, 1988]

Atochem: [Sarin precursors—BBC Panorama, February 2, 1987]

GREECE

Advance Technology Institute: [Engineering for Dr. Bull's gun—The New Yorks Magazine, August 26, 1990]

INDIA

Exomet Chemicals: [Precursor chemicals—Far Eastern Economic Review, September 6, 1990]

Khaleej Pte: [Financed sale of precursor chemicals—Far Eastern Economic Review, September 6, 1990]

United Phosperous of Baroda and Bombay: [Precursor Chemicals—Far Eastern Economic Review, September 6, 1990]

Oriental Shipping Agency: [Arranged shipping of precursor chemicals—Far Eastern Economic Review, September 6, 1990]

Cyanide and Chemical Co.: [Precursor chemicals—Far Eastern Economic Review, September 6, 1990]

Transpek India Ltd.: [Trionyl chloride, a precursor chemical—Far Eastern Economic Review, August 30, 1990]

ITALY

Technipetrole: [Construction of nerve gas plant—Simon Wiesenthal Center/Mednews, October, 1990]

European Manufacturer Center (Euromac):

[Organized construction of Dr. Bull's gun—Der Spiegel, July 9, 1990]

[Nuclear Detonators—Der Spiegel, July 9, 1990]

Danieli: [Steel rolling mill at Iraqui gun factory—Der Siegel, July 9, 1990]

Ilva:

[Parent of Le Fucine—Financial Times, May 15, 1990]

[Parts for Dr. Bull's gun—Reuters, May 14, 1990]

Societa della Fucine Steelworks: [Components for Dr. Bull's gun—Corriene Della Sera (Milan), May 14, 1990]

Banco National del Lavaro: [Atlanta branch financed exports ($3 billion) to Iraq—Financial Times, November 21, 1989]

Snia BpD: [Iraqi missile project—Mednews, April 2, 1990]

Snia Tech Int: [Nuclear technology and chemical weapons lab—Mednews, April 2, 1990]

Ausidet: [Precursor chemicals—BBC Panorama, February 2, 1987]

Montedison: [Precursor chemicals—BBC Panorama, February 2, 1987]

JAPAN

Nissho Shoji: [Precursor chemicals shipped through India—Far Eastern Economic Review, September 6, 1990]

Minolta: [Duplicating Equipment—Document obtained by NBC News]

KUWAIT

Rio Tinto Explosives (ERT):

[Precursor chemicals—Cambo, August 27, 1990]

[Parent of Expal, Space Research Corporation Espanola, and FOREX—Cambo, August 27, 1990]

NETHERLANDS

Melchemie: [Chemical precursors—Christian Science Monitor, December 13, 1988]

Eurometal: [Indicted on illegal arms exports—AFP. September 7, 1990]

KBS: [Thiodiglycol—BBC Panorama, February 2, 1987]

POLAND

Chemadex: [Repair work on Iraqi uranium processing plant—The Washington Post, August 25, 1990]

SPAIN

MS Systems: [Fuel air explosive technology—The Independent, October 14, 1990]

Expal: [Fuel air explosive technology—The Independent, October 14, 1990]

[Unspecified weapons—The Independent, October 14, 1990]

[Fuses for poison gas bombs used against Kurds—Cambo, August 27, 1990]

Forjas Extruidas (FOREX): [Machinery for production of Al Fao gun—International Defense Review #9, 1990]

Construcciones Aeronauticas (CASA): [Assembly of combat helicopters—Frankfurter Rundschau, September 14, 1990]

National Truck Company, Inc. (ENASA): [200 BMR armored vehicles—Campo, August 27, 1990]

Rio Tinto Explosives (ERT):

[Precursor chemicals—Cambo, August 27, 1990]

[Parent of Expal, Space Research Corporation Espanola, and FOREX—Cambo, August 27, 1990]

Space Research Corporation Espanola: [Design and construction of Dr. Bull's gun—Cambo. August 27, 1990]

Esperenza: [Various weapons shipments—Cambo, August 27, 1990]

Santa Barbara: [Various weapons shipments—Cambo, August 27, 1990]

Martec: [Construction of Dr. Bull's gun—Cambo, August 27, 1990]

Trebelan: [Ammunition cases for Al Fao gun—International Defense Review #9, 1990]

["Supertrucks" for transport of Dr. Bull's gun—Cambo, August 27, 1990]

[Steel cradles for Dr. Bull's gun—Financial Times, May 26, 1990]

International Trade Consulting: [Missile technology middleman—Mednews, April 12, 1990]

SWEDEN

Bofors: [Missile Equipment—Financial Times, January 8, 1990]

SWITZERLAND

Von Roll Steelworks: [Components for Dr. Bull's gun—The New York Times Magazine, August 26, 1990]

Schmiedemeccania S.A.: [Gas centrifuge for nuclear material enrichment—Berliner Tagesspiegel, August 22, 1990]

Schaeublin: [Tools for nuclear facility—Berliner Tagesspiegel, August 22, 1990]

Georg Fischer: [Casting molds and machinery for cannon plant—Der Spiegel, July 11, 1990]

Consen: [Development of Condor 2 missile including dispatch of 150 electronic and computer specialists to Iraq—Kurier (Austria), May 13, 1990]

[Missile Production Plant—Stern, April 6, 1989]

Vufvaltunt and Financierung (VUF) AG: [Organizer of Iraqi front companies and main Iraqi covert arms purchaser—Mednews, April 2, 1990]

Condor Projekt AG: [Missile project development—Financial Times, November 21, 1989]

Ifat Corporation Ltd.: [Missile project development—Financial Times, November 21, 1989]

Desintec: [Missile technology—Financial Times, November 21, 1989]

Consen S.A.: [Missile technology—Financial Times, November 21, 1990]

[150 electronics and computer engineers—NBC News, June 30, 1989]

Institute for Advanced Technology: [Major Contractor—Profil, April 24, 1989]

Companies Inc.: [Chemical precursors—New York Times, January 31, 1989]

UNITED KINGDOM

Canira Technical Corp.: [Iraqi controlled front company—Simon Wiesenthal Center/Mednews, October, 1990]

TMG Engineering: [Iraqi controlled front company—Simon Wiesenthal Center/Mednews, October, 1990]

Mivan Overseas: [Project 304X construction project with possible military use—Financial Times, September 7, 1990]

Meed International: [Iraqi-front company involved in purchase of military capable machine tools—BBC Panorama, September 3, 1990]

Astra Holdings: [Owner of PRB of Belgium—Dr. Bull's gun—AFP, May 5, 1990]

International Highway Transport: [Dr. bull's gun—Ankara TRT-TV, April 29, 1990]

Walter Somers LTD: [Hydraulic equipment for Dr. Bull's gun—Wall Street Journal, April 23, 1990]

SRC Composites: [Iraq controlled front company—Financial Times, April 17, 1990]

Eagle Trust: [Owner of Halesowen—London Press Association, April 17, 1990]

Halesowen: [Parts for Dr. Bull's gun—London Press Association, April 17, 1990]

Sheffield Forgemasters: [Barrel for Dr. Bull's gun—London Press Association, April 12, 1990]

Trade and Development Group (TDG): [Finance carbon-tipped machine tool plant in Iraq—Mednews, April 2, 1990]

Global Technical and Management Internat'l: [Acoustic detonators for sea mines—London Press Association, March 30 1990]

Matrix Churchill: [Precision lathes (company owned by Iraq)—Financial Times, September 21, 1989]

[Owner of Matrix Projects—Financial Times, September 21, 1989]

Matrix Projects: [Turnkey project for a die forging plant—Financial Times, September 21, 1989]

UNITED STATES

International Imaging Systems: [Electronic imaging and photographic equipment—Los Angeles Times, September 18, 1990]

Product Ingredient Technology: [Hydrogen cyanide and production equipment—Dallas Morning News, September 16, 1990]

EAI: [Supercomputer for Iraqi research center via West Germany—ABC News, September 7, 1990]

Consarc: [High temperature ovens—New York Times, July 16, 1990]

Alcolac International: [Chemical precursors—US News and World Report, June 4, 1990]

Lummus Crest: [Ethylene oxide—possible mustard gas precursor—The Washington Times, April 27, 1990]

Sitico: [Iraqi financed front company for VUF AG—Mednews, April 2, 1990]

Nu Kraft Mercantile Co.: [Precursor chemicals—The New York Times, January 31, 1990]

Banco National del Lavoro: [Atlanta branch financed exports (3 billion) to Iraq—Financial Times, November 21, 1989]

Glass Incorporated International: [Glass-fiber manufacturing plant—Financial Times, September 21, 1989]

Hewlett-Packard, Inc.: [Electronic equipment—Washington Post, May 3, 1989]

Scientific—Atlanta: [Telecommunications—Washington Post, May 3, 1989]

Tektronix, Inc.: [Computers for missile research—Mednews, April 2, 1990]

[Computer graphic terminal—Washington Post, May 3, 1989]

Wiltron Co.: [Scalar analyzer system—Washington Post, May 3, 1989]

United Steel and Strip Corporation: [Precursor chemicals—New York Times, January 31, 1989]

Al Haddad Trading: [Sarin precursor chemicals—BBC Panorama, February 2, 1987]

All information comes from published sources.

Mr. HEINZ. Mr. President, I am pleased to add my support for this conference report on amendments to the Export Administration Act. As Senators know, I have been intimately involved in the last three major rewrites of our basic export control law—in 1979, 1983-85, and 1987-88, either as chairman or ranking member of the subcommittee of jurisdiction. This year, while no longer holding either position, I have nonetheless been directly involved in crafting this final product, and I want to commend the Senator from Maryland [Mr. SARBANES], the Senator from Utah [Mr. GARN], and the Senator from Michigan [Mr. RIEGLE], for all their hard work in working out with the House a balanced bill that both advances the cause of American exports and retains controls over those critical goods and technologies that our adversaries could use against us.

One of the most significant developments in this bill is its broadening of control regimes to include missile technology and chemical and biological weapons within a framework consistent with that already in operation for exports of critical technology.

These additions to our control regime are an effort to deal in a consistent manner with the new political and military realities in Eastern Europe and the Persian Gulf. The former events—the literal disappearance of the Communist bloc—have forced us to redefine who the enemy is and have enabled us to permit substantial liberalization of controls to those Eastern European countries that are lesser strategic threats.

The latter events—the Iraqi invasion of Kuwait and the past use and threatened future use of chemical weapons—have forced us to reappraise both the identity and nature of the enemy and to broaden the base of our control structure to include these other kinds of means of destruction.

With respect to Eastern Europe, the bill reflects the recently achieved great success for U.S. national security export control policy and the American exporting community at the Cocom high level meeting last June, and it directs the administration to propose in Cocom certain further liberalizations in the computer and telecommunications areas.

At the June Cocom meeting, the 17 nations that participate announced that they had agreed to a significant reduction of controls to the emerging democracies of Central and Eastern Europe. Poland, Hungary, and Czechoslovakia, along, obviously, with the former German Democratic Republic, stand to benefit immediately from this historic agreement. Substantial liberalization is occurring, particularly in the critical categories of machine tools, computers, and telecommunications. In the latter case, we will now permit the export of exactly the kind of sophisticated common channel switching equipment and other technology that will permit these countries to move their telephone systems into the 20th century, not to mention the 21st—the most basic requirement for a modern economy.

With respect to computers, we will now be able to export to Eastern Europe at a level substantially higher than what has previously been permitted to go to China.

The Cocom agreement and the further steps authorized by this bill affirm what so many of us in the Senate have been saying since the political revolutions of 1989 rocked Eastern Europe: the cold war is over and United States policy should reflect that fact.

In particular, this liberalization will play a critical role in modernizing the Eastern European economies. That is of great interest to me, because last spring I led a Senate delegation there. During our visit, the four of us—Senators GARN, CHAFEE, BOND, and myself—were deeply impressed with the prevalance of the word "democracy" in the region and the rapid movement toward adopting such Western values and principles as freedoms of speech, thought, worship, free elections, and the free enterprise system, and we were convinced of the irreversibility of those changes.

At the same time, we were well aware of the fragility of these new governments because of the economic crises they face. While the ultimate burden of economic progress and reorganization must be on those governments themselves, there is a great deal the West can do to help out. We have begun that process in the SEED legislation enacted last year, and I hope in future SEED II legislation as well, but the most useful form of Western assistance will come from our private sector in the form of investment and joint ventures.

Making such investment, however, inevitably depends on our ability to sell and transfer the sophisticated technology needed to modernize these creaky economies. This legislation opens the door to this opportunity.

The deepest meaning of this bill, therefore, Mr. President, is that the elusive level playing field has been achieved. U.S. firms, particularly those in the most advanced technologies I mentioned—telecommunications, computers, and machine tools—will now be able to compete without the unilateral restrictions that had inhibited not only the transfer of technology to Eastern Europe, but more importantly, our ability to compete in seeking markets for private direct investment.

This bill, as well as the June Cocom agreement, also reflects the wisdom of those in the U.S. Congress who have disagreed with the administration's initial impulse to extend the benefits of the relaxation of controls to the Soviet Union. The Soviet Union will benefit by the agreement of Cocom; once an item is decontrolled, it is gone, and approximately one-third of the categories on the list should have been decontrolled by the end of last summer. The completion of negotiations on a smaller core list that will form the basis for future controls will also mean further decontrol for the Soviet Union.

Even under the core list, however, there will still be many sensitive items controlled by Cocom, thereby attesting for the need for the continued existence of the organization. These sensitive technologies, be they supercomputers, laser technologies, advanced telecommunications, navigation and avionics systems, marine technology, and propulsion systems, to name but a few, should not be made available to the Soviet Union at this time, and they continue to be protected in this bill.

I will grant that the remarkable changes in Eastern Europe have been made possible in no small measure by Mikhail Gorbachev's new policies. But they have not been matched in the Soviet Union. For all that it means in concept, perestroika has so far brought little gain to Soviet citizens. Both the Cocom high level meeting in

June and this legislation reflect the difference in status between the Soviet Union and its former satellites in Eastern Europe by permitting substantially greater liberalization with respect to the latter.

As I mentioned initially, Mr. President, the other important element of this bill is its recognition of the growing complexity and diversity of the political landscape made evident by the Iraqi invasion of Kuwait. As the security threat from the Communist bloc recedes, it is apparent that the threat from other sources is increasing as other nations seek to acquire chemical, biological, or nuclear weapons and the means to deliver them. This is a profoundly destabilizing development, and we have already seen its consequences in such nations as Libya and Iraq.

For that reason, this bill contains provisions on missile technology and chemical and biological weapons that would set up both a clear licensing regime and a set of sanctions on countries and companies that do not cooperate in limiting proliferation. With respect to companies, both these titles, which are based on bills Senator DOLE and I introduced earlier in this Congress, track closely the language we have already enacted into law in the 1988 trade bill providing sanctions for companies that violate Cocom controls.

Taken together, all these provisions provide a complete, symmetrical control and sanctions regime for goods and technology that would have a profoundly destabilizing effect were they to fall into the hands of irresponsible parties in the world. This will represent a marked improvement over the patchwork control structure under which we presently operate. This picture is further augmented by the presence of a title on Iraqi sanctions, which largely affirm steps the President has already taken.

Finally, Mr. President, when I spoke on the floor at the time the Senate initially considered this legislation, I noted the general perception that the House version of the bill went further with respect to decontrol and cautioned the exporting community to concentrate on a bill that could be enacted rather than one which made a meaningless gesture. I am pleased to observe that, by and large, that has happened. Compromises were made on both sides—I can certainly testify to the Senate having compromised—with the result that we have a better bill and one which certainly deserves enactment.

In that regard, Mr. President, I ask unanimous consent that an editorial that appeared in the New York Times on October 25 be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

STANDING ON CEREMONY ON POISON GAS

For years the United States did nothing while Saddam Hussein used chemical weapons, first in his war with Iran and then against Iraq's Kurdish citizens. Now U.S. troops face a chemically armed Iraq in the desert and Congress is about to vote to impose mandatory sanctions on countries that produce, acquire or use chemical weapons. How can President Bush, of all people, be threatening to veto the bill?

Mr. Bush has pledged to rid the world of the scourge of chemical weapons. And he's negotiating a global treaty to do just that. But Secretary of State Baker says mandatory sanctions limit the President's discretion. What a bizarre time to stand on ceremony. Congress is right to enact the legislation, and the President would be wrong to veto it.

Sanctions legislation has long bogged down in jurisdictional disputes between committees of Congress. Finally a House-Senate conference has agreed to appropriate tough sanctions in the Export Administration Act.

The act bars foreign companies that help countries develop chemical weapons from selling goods in the United States. Further, once the President determines that a country has used chemical or biological weapons, he must apply sanctions. The list of sanctions includes a cutoff of foreign and military aid, export and import restrictions and suspension of U.S. arms sales.

Mr. Baker says the bill limits administrative flexibility to impose or waive sanctions. But the President could waive sanctions after a year if he determined that was important for national security. In the meantime, mandatory sanctions would send a strong message that the U.S. is serious about curbing the spread of chemical weapons. This is a very good time to send such a message, and a very good cause to get serious about.

Mr. HEINZ. Mr. President, this editorial addresses the provision of the bill that has been most controversial—the 1-year period of mandatory sanctions for countries that assist in the production, development, or delivery of chemical weapons—and explains why the President should approve it.

In that regard, I want to close with another cautionary note, this time to President Bush. The conferees have heard a great deal in the past few weeks about this bill's unconstitutional limitations on the President's authority to conduct foreign policy. In most cases, those claims go far beyond anything I have heard from the other four Presidents who have held office since I came to Congress.

Most of this bill deals with foreign trade—exports and imports—and the Constitution is explicit in reserving authority to regulate interstate and foreign commerce to the Congress. I have for years resisted various administrations' efforts to redefine trade policy issue as foreign policy issues in order to expand the range of the President's authority, and I object to that tactic with respect to this bill as well. The bill already recognizes that this line can be difficult to draw, and we have done our very best in trying to work out with the administration and the House a fair resolution of these differences.

In our business, of course, Mr. President, nobody gets a whole loaf, and this bill is no exception. It certainly does not contain everything I want, and I have no doubt it does not contain everything the President wants. It is, however, a fair compromise, and I would suggest to the President that he is unlikely to get a better one if he forces us to do it again next year.

On that note, Mr. President, I will close by commending this bill both to my colleagues and to the President. It is a sound bill and a balanced one. It deserves our support.

Mr. BREAUX. Mr. President, I ask that the conference report be agreed to.

The PRESIDING OFFICER. The question is on an agreeing to the conference report.

The conference report was agreed to.

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE JESSE OWENS BUILDING OF THE UNITED STATES POSTAL SERVICE

Mr. BREAUX. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 5235, designating the Jesse Owens Building in Ohio and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5235) to designate the Owens Finance Station of the United States Postal Service in Cleveland, Ohio, as the "Jesse Owens Building of the United States Postal Service".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3188

Mr. BREAUX. Mr. President, on behalf of Senator CRANSTON, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. CRANSTON, proposes an amendment numbered 3188.

Mr. BREAUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE —COIN DESIGN

SEC. . DENOMINATIONS, SPECIFICATIONS, AND DESIGN OF COINS.

Subsection (d)(1) of section 5112 of title 31, United States Code, is amended by striking the fourth sentence.

SEC. . DESIGN CHANGES REQUIRED FOR CERTAIN COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(3) The design on the reverse side of the half dollar, quarter dollar, dime coin, 5-cent coin and one-cent coin shall be selected for redesigning. One or more coins may be selected for redesign at the same time, but the first redesigned coin shall have a design commemorating the two hundredth anniversary of the United States Constitution for a period of 2 years after issuance. After that 2-year period, the bicentennial coin shall have its design changed in accordance with the provisions of this subsection. Such selection, and the minting and issuance of the first selected coin shall be made not later than 1-year after the date of the enactment of this paragraph. All such redesigned coins shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. . DESIGN ON OBVERSE SIDE OF COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) Subject to paragraph (2), the design on the obverse side of the half dollar, quarter dollar, dime coin, 5-cent coin, and one-cent coin shall contain the likenesses of those currently displayed and shall be considered for redesign. All such coin obverse redesigns shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. . SELECTION OF DESIGNS.

The design changes for each coin authorized by the amendments made by this title shall take place at the discretion of the Secretary and shall be done at the rate of one or more coins per year, to be phased in over 6 years after the date of the enactment of this Act. In selecting new designs, the Secretary shall consider, among other factors, thematic representations of the following constitutional concepts: freedom of speech and assembly; freedom of the press; right to due process of law; right to a trial by jury; right to equal protection under the law; right to vote; themes from the Bill of Rights; and separation of powers, including the independence of the judiciary. The designs shall be selected by the Secretary upon consultation with the United States Commission on Fine Arts.

SEC. . REDUCTION OF THE NATIONAL DEBT.

Subsection (a)(1) of section 5132 of title 31, United States Code, is amended by inserting after the third sentence the following: "Any profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3188) was agreed to.

The PRESIDING OFFICER. Are their further amendments? The Chair hearing none, the bill be deemed read a third time and passed.

So the bill (H.R. 5235), as amended, was passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONDUCTING CERTAIN STUDIES IN THE STATE OF NEW MEXICO

Mr. BREAUX. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of the bill H.R. 5796, a bill to conduct certain studies in the State of New Mexico; that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements appear in the RECORD at the appropriate place as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5796) was passed.

J.E. "EDDIE" RUSSELL POST OFFICE

Mr. BREAUX. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged further consideration of S. 1888, designating the J.E. "Eddie" Russell Post Office in Tennessee and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1888) to designate the United States Post Office located in Monterey, Tennessee, as the "J.E. 'Eddie' Russell Post Office."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3189

Mr. BREAUX. Mr. President, I send to the desk a technical amendment on behalf of Senator GLENN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. GLENN, proposes an amendment numbered 3189.

On page 1, line 5, after "Office", insert "presently".

On page 1, line 7, after "Office", insert "Building".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3189) was agreed to.

The PRESIDING OFFICER. Are there further amendments? The Chair hearing none, the bill will be deemed read a third time and passed.

So the bill (S. 1888) as amended, was passed, as follows:

S. 1888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF THE "J.E. 'EDDIE' RUSSELL POST OFFICE."

The United States Post Office presently located at 304 West Commercial Avenue in Monterey, Tennessee, is designated as the "J.E. 'Eddie' Russell Post Office Building." Any reference to such post office in a law, rule, map, document, record, or other paper of the United States shall be considered to be a reference to the "J.E. 'Eddie' Russell Post Office".

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURE PLACED ON CALENDAR—H.R. 2921

Mr. BREAUX. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 2921, the Telephone Advertising Regulation Act, and that it be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

EARLY WINTERS RESORT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 5507, a bill regarding the Early Winters Resort and that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; that the motion to reconsider be tabled and any statements appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ADAMS. Mr. President, this bill was developed by the Washington delegation with the assistance of several key House authorizing committees. I would also like to thank the Senate Energy and Natural Resources Committee for their work on this legislation. In particular, I appreciate the assistance of Senator BUMPERS, chairman of the Public Lands, National

Parks and Forests Subcommittee and ranking member of that subcommittee, Senator WALLOP, for their cooperation in bringing this bill to the floor.

Mr. President, this bill is intended to facilitate timely completion of a proposed land exchange and ongoing environmental analysis, both in connection with plans for the development of a resort complex in the State of Washington. H.R. 5507 incorporates provisions intended to expedite completion of the supplemental environmental impact statement—and conclusion of decisionmaking based thereon and administration and judicial review thereof—and also to facilitate an exchange of lands between the developers of the resort complex and the Forest Service. The bill is not intended to override existing Federal environmental protections, but is instead designed to expedite the Federal process. Nothing in the bill is to be construed as amending NEPA or the Endangered Species Act, or as modifying the applicability of those acts or any other provisions of law that are otherwise applicable to any activities occurring on or proposed for any of the lands affected by the bill.

I would also like to make another clarification regarding the bill's language. In the section of the bill describing Forest Service action on the land exchange and related environmental analysis and the language describing the events that lead to administrative and judicial actions, the bill refers to the Forest Service "record of decision." Let me make it clear that technically, a Forest Service record of decision is only one type of decision document that the Forest Service issues. Again, this legislation is not intended to direct the Forest Service to issue any particular decision document. On the contrary, the term "record of decision" in this bill is merely intended to apply to any decision document that the Forest Service issues in connection with the land exchange and the related environmental analysis.

Finally, I also want to make clear that, pursuant to section 1(b)(4), the land exchange is conditioned on the occurrence of three events: issuance by the Forest Service of a permit for use of Sandy Butte for ski facilities; approval by the local county of a zoning application for lands associated with the resort development; and securing by Early Winters all required water rights—under applicable law of the State of Washington—for approval of that application. Regarding the first precondition, I understand that the Forest Service has issued such a permit, but its effectiveness is in abeyance because of work on a supplemental environmental impact statement; either the ending of that abeyance or issuance of a new permit—and resolution of any challenges thereof—would be necessary to meet this precondition. The bill is shaped to avoid any conflict with the requirements of State law concerning maintenance of water flows in the Methow and other streams, and to assure that the proposed exchange will not go forward should the resort not obtain the requisite permit; county decision; and water rights needed for development of the first phase of the resort complex and for operation and use of the ski facilities.

Thank you, Mr. President.

Mr. WALLOP. Mr. President, we are today passing a bill regarding the Early Winters Resort, a proposed four seasons destination ski resort in Washington State. The bill is designed to speed completion of the Forest Service's environmental analysis of the proposed ski mountain, and to direct the Forest Service to perform the necessary work in preparation for a land exchange between the Forest Service and the resort. I understand that the bill has the support of the Washington State delegation, and I would like to ask the Senator from Washington [Mr. GORTON] to address one of the aspects of the legislation. Regarding the land exchange portions of the bill, would the Senator explain how the appraisal standards work?

Mr. GORTON. Mr. President, I appreciate the Senator's support for this bill, which is of prime importance to our State. As he well knows, the Northwest's timber supply problems have caused widespread hardship in rural areas of my State, and jobs in those areas are simply evaporating at an alarming rate. The Early Winters Resort represents an attempt to diversify the economy of central Washington, and to keep tourist dollars in the State rather than going north to Canada. Unfortunately, the project has been mired in controversy and litigation for many years, and the economic potential of the resort has not been realized. This bill represents an effort to expedite the Federal process which has engulfed the resort, but I want to make it clear that the bill does not run roughshod over Federal environmental protection guarantees. The bill is merely intended to give some certainty and reasonable timeframes to the Federal process.

Mr. President, to address the Senator's questions on appraisals, let me say that section 1(b)(3) of the bill contains an appraisal standard based on the highest and best use, including use as part of the proposed resort complex. The intent of this language is to ensure that the Federal lands will be valued based on sales of comparable lands in the same vicinity. Current land values in the area reflect the potential of a resort development if all necessary permits are obtained, and the valuation of Federal lands also should reflect this possibility. Such an appraisal is consistent with Federal law and existing Forest Service practices for appraising Federal lands in a land exchange. As with the other portions of this bill relating to Federal environmental statutes, we are not intending to modify existing Federal law or Forest Service practices with respect to land exchange appraisals.

Mr. President, let me add one other technical point about the bill. The language coming over from the House refers in various locations to a record of decision. I would like to state that this term is not meant to circumscribe the Chief of the Forest Service's ability to take action using any form of decisionmaking he might choose regarding the ski mountain or the land exchange.

Mr. President, I thank you for the opportunity to speak on this matter, and on behalf of the Washington State delegation, I thank both Senator MCCLURE and Senator WALLOP for their assistance in this matter.

So the bill (H.R. 5507) was passed.

FARM POUNDAGE QUOTA PROVISIONS

Mr. BREAUX. I ask unanimous consent the Agriculture Committee be discharged from further consideration of H.R. 5871, a bill dealing with farm poundage quota provisions and that the Senate proceed to its immediate consideration; that the bill be read a third time and passed; and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LUGAR. Mr. President, I have a question regarding subsection (a) of the bill regarding the transfer of burley tobacco quotas less than 1,000 pounds. Does this provision mean that despite the reconstitution of farmland, if the tobacco poundage quota which transfers with the divided land would be less than 1,000 pounds—except when within family members or through probate estates—such quota shall not be transferred?

Mr. LEAHY. That is my understanding.

So the bill (H.R. 5871) was passed.

ENVIRONMENTAL RESEARCH GEOGRAPHIC LOCATION INFORMATION ACT

Mr. BREAUX. Mr. President, I ask unanimous consent the Senate proceed to immediate consideration of Calendar No. 1003, S. 3069, the Environmental Research Geographic Location Information Act.

There being no objection, the bill (S. 3069) to provide a method of locating private and Government research on environmental issues by geographic lo-

cation, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 3069

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Environmental Research Geographic Location Information Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) at present, there is no reliable method of locating private or Government research on environmental issues by geographic location; and

(2) a means of identifying environmental research conducted at specific geographic locations is needed for purposes such as detecting trends in environmental quality, assisting the public in learning about the quality and issues of their local environment, and providing a data base for identifying areas of critical environmental concern.

SEC. 3. PURPOSE.

The purpose of this Act is to develop a data base of environmental research articles indexed by geographic location.

SEC. 4. ENVIRONMENTAL PROTECTION AGENCY.

(a) RESEARCH JOURNALS.—Within 6 months following the date of the enactment of this Act, and from time to time thereafter, the Environmental Protection Agency shall identify not less than 25 important environmental research journals, conference proceedings or other reference sources in which scientific research or engineering studies related to air, water, or soil quality or pollution or other environmental issues are routinely published. In carrying out the requirements of this subsection, at least 50 journals or proceedings shall be reviewed.

(b) INDEX.—(1) Within 12 months following the date of the enactment of this Act, and annually thereafter, the Environmental Protection Agency shall review the journals and other materials identified in subsection (a) and compile, maintain and publish an index of the articles contained therein during the preceding calendar year by geographic location. A copy of such index shall be made available to the Service for distribution to the public, and a copy shall be submitted to the Congress not less than 30 days prior to the date on which it is made available to the Service.

(2) Beginning 12 months after the date of the enactment of this Act, the Agency shall identify not less than 20 materials identified in subsection (a) which were published during the time period from 1970 to the year preceding enactment, and shall compile and publish a series of indices of articles contained therein by geographic location. The time frame which each index contains should not exceed 5 years.

(c) PURCHASE OF INFORMATION.—The Environmental Protection Agency is authorized to enter into contracts or other arrangements for the acquisition of data and other information necessary for purposes of this Act.

(d) REVISING LIST.—The Environmental Protection Agency shall review the list of references developed under this section at least biennially and shall revise the list of sources as appropriate.

(e) SPECIFIC LOCATION OF RESEARCH PROJECTS.—Unless exempted by the Administrator of the Environmental Protection Agency, all reports resulting from research projects sponsored by the Environmental Protection Agency and initiated after the expiration of the 36-month period following the date of enactment of this Act shall indicate the specific locations to which the research pertains.

SEC. 5. NATIONAL TECHNICAL INFORMATION SERVICE.

(a) KEYWORDS.—Within 12 months following the date of the enactment of this Act, all documents of the Federal Government relating to the environment or environmental quality submitted to the National Technical Information Service (hereinafter referred to as the "Service") shall contain among the abstract keywords, geographic descriptors to identify the location or locations to which the document pertains. The Service shall include such keywords in its computer data base.

(b) NATIONAL SECURITY.—The provisions of subsection (a) shall not apply to documents determined by the President to contain information sensitive to national security.

(c) BIBLIOGRAPHY.—The Service shall prepare and submit to Congress an annual bibiography of publications by geographic location. The Service shall make copies of such bibliography available to the public on request.

SEC. 6. AUHTORIZATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 7. EXPIRATION OF ACT.

This Act shall expire 10 years after the date of its enactment.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BENJAMIN FRANKLIN MEMORIAL FIRE SERVICE BILL OF RIGHTS ACT

Mr. BREAUX. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 795, S. 1933, the Benjamin Franklin Memorial Fire Service Bill of Rights Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1933) to proivde for the minting of coins in commemoration of the bicentennial of the death of Benjamin Franklin, and to enact a fire service bill of rights and programs to fulfill those rights.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 1933

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Benjamin Franklin Memorial Fire Service Bill of Rights Act".

TITLE I—MINTING OF BENJAMIN FRANKLIN NATIONAL MEMORIAL COMMEMORATIVE COIN

SEC. 101. SHORT TITLE.

This title may be cited as the "Benjamin Franklin National Memorial Commemorative Coin Act".

SEC. 102. COIN SPECIFICATIONS.

(a) FIVE DOLLAR GOLD COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereinafter in this title referred to as the "Secretary") shall issue not more than 1,000,000 five dollar coins each of which shall—

(A) weigh 8.359 grams;

(B) have a diameter of 0.850 inches; and

(C) contain 90 percent gold and 10 percent alloy.

(2) DESIGN.—The design of the five dollar coins shall be emblematic of the bicentennial of the death of Benjamin Franklin. On each five dollar coin there shall be a designation of the value of the coin, an inscription of the year **["1990"]** *"1990"*, and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall issue not more than 10,000,000 one dollar **[coins]** *coins*, each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of the one dollar coins shall be emblematic of the role Benjamin Franklin played as the founder of the fire service in the United States. On each one dollar coin there shall be a designation of the value of the coin, an inscription of the year **["1990"]** *"1990"*, and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(c) HALF DOLLAR CLAD COINS.—

(1) ISSUANCE.—The Secretary shall issue not more than 10,000,000 half dollar coins which shall—

(A) weigh 11.34 grams;

(B) have a diameter of 1.205 inches; and

(C) be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.

(2) DESIGN.—The design of the half dollar coins shall be emblematic of the contributions of Benjamin Franklin to the United States. On each half dollar coin there shall be a designation of the value of the coin, an inscription of the year "1990", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(d) LEGAL TENDER.—The coins issued under this title shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. 103. SOURCES OF BULLION.

(a) SILVER.—The Secretary shall obtain silver for the coins minted under this title from stocks of silver held by the Secretary or from any other federally owned stocks of silver.

(b) GOLD.—The Secretary shall obtain gold for the coins minted under this title

pursuant to the authority of the Secretary under existing law.

SEC. 104. DESIGN OF THE COINS.

The design for each coin authorized by this title shall be selected by the Secretary after consultation with the Chairman of the Benjamin Franklin National Memorial at the Franklin Institute, the Chairman of the Congressional Fire Services Institute, and the Chairman of the Commission of Fine Arts.

SEC. 105. SALE OF THE COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the coins issued under this title shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, and overhead expenses) and the surcharge provided for in subsection (d).

(b) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount to reflect the lower costs of such sales.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins prior to the issuance of such coins. Sales under this subsection shall be at a reasonable discount to reflect the benefit of prepayment.

(d) SURCHARGES.—All sales shall include a surcharge of $35 per coin for the five dollar coins, $7 per coin for the one dollar coins, and $2 for the half dollar coins.

SEC. 106. ISSUANCE OF THE COINS.

(a) FIVE DOLLAR COINS.—The gold coins authorized by this title shall be issued in uncirculated and proof quality and shall be struck at no more than one facility of the United States Mint.

(b) ONE DOLLAR AND HALF DOLLAR COINS.—The one dollar and half dollar coins authorized under this title may be issued in uncirculated and proof qualities, except that not more than one facility of the United States Mint may be used to strike any particular combination of denomination and quality.

(c) COMMENCEMENT OF ISSUANCE.—The Secretary may issue the coins minted under this title beginning on January 1, 1990.

(d) TERMINATION OF AUTHORITY.—No coins shall be minted under this title after December 31, 1991.

SEC. 107. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this title.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity.

SEC. 108. DISTRIBUTION OF SURCHARGES.

All surcharges which are received by the Secretary from the sale of coins issued under this title shall be promptly paid by the Secretary as follows:

(1) AMOUNTS PAID TO THE BENJAMIN FRANKLIN NATIONAL MEMORIAL.—Subject to section 109, the Secretary shall pay to the Benjamin Franklin National Memorial (hereafter in this section referred to as the "Franklin Institute") 25 percent of the amount of such surcharges so received. Such amounts shall be used—

(A) to restore and renovate the Benjamin Franklin National Memorial;

(B) to construct or renovate adjoining areas of the Franklin Institute relating to the various interests of Benjamin Franklin, such as science, education, and government;

(C) for exhibits in the Memorial or in the adjoining areas of the Franklin Institute relating to *Benjamin* Franklin or to science and education;

(D) for capital funds for construction of access, parking, and related facilities at the Franklin Institute;

(E) for funds for the acquisition and preservation by the Franklin Institute of artifacts relating to Benjamin Franklin; and

(F) to establish an endowment in an amount determined sufficient by the [Memorial,] *Franklin Institute,* in consultation with the Secretary of the Interior, to ensure the continued upkeep and maintenance of the Memorial.

(2) AMOUNTS PAID UNDER TITLE II.—

(A) FIRST YEAR OF SALES.—In the first year beginning on the date on which coins are first issued under this title, the Secretary shall pay, of the amount of the surcharges so received—

(i) 25 percent to the National Fire Center and Museum Account of the [Firefighters] *Firefighter* Assistance Trust Fund established pursuant to section 207;

(ii) 7 percent to the National Hero Scholarship Account of that Trust Fund;

(iii) 3 percent to the Firefighter's Tuition Assistance Account of that Trust Fund;

(iv) 30 percent to the Hazardous Materials Response Computer Account of that Trust Fund;

(v) 8 percent to the In Search of Excellence Research and Education Account of that Trust Fund; and

(vi) 2 percent to the Burn Research Grant Account of that Trust Fund.

(B) SUCCEEDING YEARS.—In each year after the year following the date on which coins are first issued under this title, the Secretary shall pay, of the amount of the surcharges so received—

(i) 25 percent to the National Fire Center and Museum Account of the [Firefighters] *Firefighter* Assistance Trust Fund established pursuant to section 207;

(ii) 39 percent to the National Hero Scholarship Account of that Trust Fund;

(iii) 3 percent to the Firefighter's Tuition Assistance Account of that Trust Fund; and

(iv) 8 percent to the In Search of Excellence Research and Education Account of that Trust Fund.

SEC. 109. AUDITS.

As a condition for receiving the proceeds of the surcharges pursuant to section 108(1), the Benjamin Franklin National Memorial shall allow the Comptroller General to examine such books, records, documents, and other data of the Memorial as may be related to the expenditure of amounts paid, and the management and expenditures of the endowment established, under paragraph (1)(F) of section 108.

SEC. 110. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take all actions necessary to ensure that the issuance of the coins authorized by this title shall result in no net cost to the United States Government.

(b) PAYMENT FOR COINS.—No coin shall be issued under this title unless the Secretary has received—

(1) full payment therefor;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

TITLE II—FIRE SERVICE BILL OF RIGHTS

SEC. 201. SHORT TITLE.

This title may be referred to as the "Fire Service Bill of Rights Act".

SEC. 202. FIRE SERVICE BILL OF RIGHTS.

Section 2 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201) is amended—

(1) by inserting "(a) IN GENERAL.—" before ["The";] *"The Congress";* and

(2) by adding at the end the following:

"(b) FIRE SERVICE BILL OF RIGHTS.—

["(12)] *"(1)* The fire [service has] *services have* the right to be recognized as America's first responder to all domestic emergencies.

["(13)] *"(2)* The fire [service has] *services have* the right to be adequately protected from the dangers associated with emergency response.

["(14)] *"(3)* The fire [service has] *services have* the right to have [their families] *the families of their personnel* provided for in the event of tragic death.

["(15)] *"(4)* The fire [service has] *services have* the right to be educated in the latest fire and life safety sciences.

["(16)] *"(5)* The fire [service has] *services have* the right to be provided with state-of-the-art equipment and apparatus to better handle all emergency situations.

["(17)] *"(6)* The fire [service has] *services have* the right to share innovative fire and life safety programs that have proven successful across the Nation.

["(18)] *"(7)* The fire [service has] *services have* the right to fully understand and be able to effectively respond to incidents involving the transportation, storage, and use of hazardous materials.

["(19)] *"(8)* The fire [service has] *services have* the right to be fully informed of the threat of contracting infectious diseases during the course of life safety activities.

["(20)] *"(9)* The fire [service has] *services have* the right to expect that the American people will become full partners in the struggle to preserve life and property from the ravages of fire and other disasters.

["(21)] *"(10)* The fire [service has] *services have* the right to celebrate the proud history of the American fire and emergency services personnel and the sacrifices they have made for communities across the Nation.".

SEC. 203. ESTABLISHMENT OF NATIONAL FIRE CENTER AND MUSEUM.

The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 [and following)] *et seq.)* is amended by adding at the end the following:

"SEC. 28. NATIONAL FIRE CENTER AND MUSEUM.

"(a) IN GENERAL.—There is established the National Fire Center and Museum. The Museum shall be operated by the Board of Directors appointed pursuant to subsection (b).

"(b) BOARD OF DIRECTORS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator shall appoint the Board of Directors. The term of each Director appointed by the Administrator shall be 4 years. In making appointments to the Board, the Administrator shall ensure that representatives from national fire service organizations and businesses associated with fire protection and safety are included on the Board. The Administrator shall determine the number of Directors and that number shall not thereafter be subject to change.

"(2) EX OFFICIO MEMBERS.—The Chairman of the Congressional Fire Services Institute

shall serve as the Chairman of the Board of Directors. The Administrator shall serve as an ex officio member of the Board.

"(c) CURATOR.—The Board of Directors shall appoint, and fix the pay of, a Curator. The Curator shall—

"(1) be responsible for the administration of the Museum; and

"(2) make an annual report to the Board regarding the administration and operation of the Museum.

"(d) FUNCTIONS OF THE MUSEUM.—The Board of Directors shall ensure that the Museum provides—

"(1) a depiction of the history of firefighting and related emergency services in the United States;

"(2) information to fire services and the public relating to the responsibilities of and technology used by the fire [service;] *services;*

"(3) a library of technical and general information about the fire [service] *services* and safety; and

"(4) other services or displays the Board determines is beneficial to the operation of the Museum.

"(e) LOCATION OF MUSEUM.—The Museum shall be located in the District of Columbia.

"(f) FUNDING.—The Fund shall be the only source of funding for the establishment and operation of the Museum.".

SEC. 204. ESTABLISHMENT OF NATIONAL HERO SCHOLARSHIP.

The Federal Fire Prevention and Control Act of 1974, as amended by the preceding section of this title, is further amended by adding at the end the following:

"SEC. 29. ESTABLISHMENT OF NATIONAL HERO SCHOLARSHIP.

"(a) IN GENERAL.—In any case in which a benefit is paid pursuant to section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796(a)) to the children or spouse of a deceased firefighter, the Administrator may grant scholarships to the children and spouse of that firefighter in accordance with this section. Such scholarships shall be for study and training at institutions of higher education. All scholarships shall be paid from the Fund.

"(b) LIMITATIONS ON SCHOLARSHIPS.—

"(1) IN GENERAL.—The limitations on paying benefits contained in section 1202 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796a) shall apply with respect to the granting of scholarships under this section.

"(2) AMOUNT OF SCHOLARSHIP.—The Administrator shall determine the amount of each scholarship awarded under this section, except that no individual may receive a scholarship for more than 4 years.

"(c) AMOUNTS PAID AS SCHOLARSHIPS NOT COUNTED AS INCOME.—Any amount paid under this section shall not be counted as income for the purpose of any need-based scholarship or tuition assistance program provided by the United States.

"(d) DEFINITION OF CHILD.—As used in this section, the term 'child' means any natural or adopted child or stepchild of a deceased firefighter who, at the time of the death of the firefighter, was substantially dependent on the income of that firefighter for support.".

SEC. 205. ESTABLISHMENT OF TUITION ASSISTANCE RELATING TO THE STUDY OF FIRE PROTECTION AND [SCIENCE.] SAFETY.

The Federal Fire Prevention and Control Act of 1974, as amended by preceding sections of this title, is further amended by adding at the end the following:

"SEC. 30. ESTABLISHMENT OF SCHOLARSHIPS FOR FIREFIGHTERS.

"(a) IN GENERAL.—The Administrator may award scholarships to firefighters for the study of and training in a field relating to fire safety or protection at an institution of higher education.

"(b) APPLICATION AND NOMINATION.—A scholarship may not be made under this section unless an application or nomination is made to the Administrator at such time and in such manner as the Administrator may require. An application shall be submitted by an individual firefighter desiring a scholarship under this section and a nomination shall be submitted by an organization listed in subsection (e).

"(c) ELIGIBILITY.—Scholarships awarded under this section shall be made only to firefighters at the beginning of a program of study and training referred to in subsection (a) and shall continue during the time the firefighter remains in academic standing satisfactory to the Administrator. The Administrator shall determine—

"(1) the type and content of the programs in which a firefighter must be enrolled in order to qualify for a scholarship; and

"(2) the standards relating to satisfactory academic standing.

"(d) AMOUNT OF ASSISTANCE.—The Administrator shall determine the amount of each scholarship that can be granted to firefighters under this section.

"(e) NOMINATING ORGANIZATIONS.—The organizations referred to in subsection (b) are—

"(1) the International Association of Fire Chiefs;

"(2) the International Association of Fire Fighters;

"(3) the International Society of Fire Service Instructors;

"(4) the International Association of Black Professional Fire Fighters;

"(5) the National Volunteer Fire Council;

"(6) the National Fire Protection Association; and

"(7) other organizations concerned with fire protection and safety as determined by the Administrator.

"(f) SOURCE OF FUNDS.—All amounts provided to firefighters under this section shall be paid from the Fund.".

SEC. 206. IN SEARCH OF EXCELLENCE RESEARCH AND EDUCATION ACCOUNT.

The Federal Fire Prevention and Control Act of 1974, as amended by preceding sections of this title, is further amended by adding at the end the following:

"SEC. 31. IN SEARCH OF EXCELLENCE RESEARCH AND EDUCATION ACCOUNT.

"The Administrator may use amounts in the In Search of Excellence Research and Education Account of the Fund to fund activities under sections 6, [8 through] *8, 9,* 10, 12, 18, and 24.".

SEC. 207. ESTABLISHMENT OF FIREFIGHTER ASSISTANCE TRUST FUND.

The Federal Fire Prevention and Control Act of 1974, as amended by preceding sections of this title, is further amended by adding at the end the following:

"SEC. 32. ESTABLISHMENT OF FIREFIGHTER ASSISTANCE TRUST FUND.

"(a) CREATION OF TRUST FUND.—

"(1) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the 'Firefighter Assistance Trust Fund'.

"(2) ACCOUNTS IN TRUST FUND.—The Fund shall consist of—

"(A) a National Fire Center and Museum Account;

"(B) a National Hero Scholarship Account;

"(C) a [Firefighter] *Firefighter's* Tuition Assistance Account;

"(D) an In Search of Excellence Research and Education Account;

"(E) a Hazardous Materials Response Computer Account; and

"(F) a Burn Research Grant Account.

"(b) PROVISION OF FUNDS TO ACCOUNTS.—Each such account shall consist of such amounts as may be—

"(1) appropriated to it in appropriation Acts;

"(2) deposited in it from amounts made as donations;

"(3) deposited in it as provided in paragraph (2) of section 108 of the Benjamin Franklin National Memorial Commemorative Coin Act; or

"(4) paid to it as provided by subsection (c).

"(c) MANAGEMENT OF TRUST FUND.—Section 9602(b) of the Internal Revenue Code of 1986 (relating to the management of trust funds) shall apply with respect to the Fund.

"(d) EXPENDITURES FROM ACCOUNTS.—

"(1) INITIAL EXPENDITURES.—In the year following the date specified in section 106(c) of the Bejamin Franklin National Memorial Commemorative Coin Act, an amount not to exceed—

"(A) the principle and interest from the accounts established by—

"(i) subparagraph (A) of subsection (a)(2) shall be available, as provided by appropriation Acts, to establish the Museum; and

"(ii) subparagraphs (E) and (F) of that subsection shall be available, as provided by appropriation Acts, to carry out sections 209 and 210 of the Fire Service Bill of Rights Act, respectively;

"(B) the interest earned from the accounts established by paragraphs (B), (C), and (D) of subsection (a)(2) shall be available, as provided by appropriation Acts, to carry out sections 29 through 31, respectively, of this Act.

"(2) SUCCEEDING YEARS EXPENDITURES.—In the years after the year following the date specified in section 106(c) of that Act, an amount equal to the interest earned from the accounts contained in subparagraphs (A) through (D) of subsection (a)(2) shall be available, as provided by appropriation Acts, to carry out sections 28 through 31, respectively, of this Act.".

SEC. 208. PLACING NATIONAL FIRE ACADEMY WITHIN THE FIRE ADMINISTRATION.

Section 7(a) of the Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(a)) is amended by inserting "within the Administration" after "establish".

SEC. 209. CONTRACT FOR HAZARDOUS MATERIALS ACCIDENT RESPONSE EQUIPMENT.

(a) DETERMINATION OF EQUIPMENT NEEDS.—Within 6 months after the date of the enactment of this Act, the Administrator shall issue specifications regarding the type and configuration of computer equipment that will be provided to the fire [service] *services* pursuant to this section.

(b) REQUIREMENT TO ENTER INTO CONTRACT.—Within 18 months after the date that coins are first issued under title I, the Administrator shall enter into a contract using competitive procedures to procure computer equipment meeting the specifications issued under subsection (a). The contract shall require that all equipment purchased under the contract must be delivered within 6 months after the date that the contract is entered into.

(c) FIRE DEPARTMENTS TO RECEIVE EQUIPMENT.—Each State desiring to obtain equipment under this section shall, within 6 months after the date of the enactment of this Act, submit a list containing the address and chief officer of each fire service in that State that wants to obtain equipment under this section. The Administrator shall compile the lists received from the States into a single list for use as described in subsection (b).

(d) SOURCE OF FUNDS.—Amounts made available to carry out the contract under subsection (b) shall be derived from the Hazardous Materials Response Computer Account of the Fund.

(e) BUDGET ACT COMPLIANCE.—The Administrator may enter in a contract under this section for any fiscal year only to such extent or in such amounts as are provided in advance *by* appropriation Acts.

SEC. 210. BURN RESEARCH AND EDUCATION GRANT.

(a) IN GENERAL.—The Administrator shall make a grant to a national firefighter's burn foundation that the Administrator determines is deserving of such a grant. The foundation must be dedicated to reducing burn injuries in order to be eligible to receive a grant. Any such foundation may apply for the grant, but a grant may be made to only one foundation. The grant may be made under this subsection only in the fiscal year beginning October 1, 1990.

(b) APPLICATION.—The grant referred to subsection (a) may not be made unless an application is made to the Administrator at such time and in such manner as the Administrator may require. The Administrator shall establish requirements, other than those specified in subsection (a), necessary for the awarding of the grant.

(c) SOURCE OF FUNDS.—Amounts made available for the grant under subsection (a) shall be derived from the Burn Research Grant Account of the Fund.

SEC. 211. INFORMATION CONCERNING PROCEDURES FOR THE ACQUISITION OF SURPLUS FEDERAL PROPERTY.

(a) PREPARATION OF MANUAL.—The [Administrator,] *Administrator* in consultation with the Administrator of General Services shall prepare, and make available to State fire marshals upon their request, a manual describing the procedures through which the Federal Government disposes of surplus [property] *property* under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 [and following).] *et seq.).* The manual should highlight how such fire services could obtain surplus property.

(b) DATE OF AVAILABILITY.—The Administrator shall make the manual referred to in subsection (a) available within 12 months after the date of the enactment of this [title] *Act* and shall update the manual at such times thereafter as is necessary to reflect changes in the procedures described in the manual.

SEC. 212. INFORMATION ON INFECTIOUS DISEASES.

The Administrator shall distribute information to each State fire marshal relating to the infectious diseases to which firefighters are particularly vulnerable. The Administrator shall distribute this information within 12 months after the date of the enactment of this [title] *Act* and shall update the information at such times thereafter as is necessary.

SEC. 213. USE OF DONATIONS.

Section 21 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218) is amended by adding at the end the following:

"(f) USE OF DONATED FUNDS.—The Administrator may accept a donation under subsection (b)(2) that is conditioned on its being used to fund activities under section 28, 29, 30, or 31. Such a donation shall be deposited in the Trust Fund account funding the respective section.".

SEC. 214. DEFINITIONS.

(a) DEFINITIONS RELATING TO THE FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974.—Section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) is amended by—

(1) redesignating paragraph (4) as paragraph (5), paragraph (5) as paragraph (8), and paragraphs (6) and (7) as paragraphs (10) and (11), respectively;

(2) adding after paragraph (3) the following:

"(4) 'firefighter' has the meaning that term is given in paragraph (2) of section [1203] *1204* of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(2));"

(3) adding after paragraph (5), as redesignated, the following:

"(6) 'Fund' means the Firefighter Assistance Trust [Fund;]" *Fund established by section 32;"*

"(7) 'institution of higher education' has the meaning that term is given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));" and

(4) adding after paragraph (8), as redesignated, the following:

"(9) 'Museum' means the National Fire Center and Museum;".

(b) DEFINITIONS RELATING TO TITLE II.—As used in this title—

(1) the terms contained in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. [2203)] *2203), as amended by this Act,* apply with respect to this Act; and

(2) the term "fire marshal" means an individual who is the head of a State agency responsible for the regulation of fire services in that State.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

Mr. BYRAN. Mr. President, as chairman of the Consumer Subcommittee, and vice chairman of the congressional fire services caucus, I am pleased that the full Senate is considering S. 1933, the Benjamin Franklin Memorial Fire Service Bill of Rights Act. This bill is designed to recognize and pay tribute to the outstanding contributions of the members of our Nation's fire service.

The bill provides for the striking and sale of three commemorative coins in honor of the founder of our Nation's fire service, Benjamin Franklin. The coins will be used for the establishment of several programs for the benefit of the members of the fire service and their families. The bill also provides for the establishment of a national fire service bill of rights to promote the goals and aspirations of the fire service.

The programs that will be established under the bill include a national hero scholarship fund for the children and spouses of deceased firefighters; a special educational fund for the training of firefighters; and a research fund to assist in the study of burn injuries to firefighters. The bill also provides for the establishment of a national fire center and museum here in the District of Columbia. The museum will function as a data collection and research center for the fire service, and as a national educational and resource center for the general public.

This legislation, in my opinion, serves a valuable purpose. The 1 million men and women who serve in our Nation's fire force are dedicated and heroic individuals. They serve in a very dangerous profession, and are called upon each day to risk their lives to save the lives of their fellow citizens. These individuals are deserving of the national recognition and support that this legislation provides. I urge my colleagues to join me in supporting the passage of this legislation.

Mr. HOLLINGS. Mr. President, today, the Senate is considering S. 1933, legislation which I have cosponsored and which provides for the striking and sale of three special coins in honor of our Nation's first fire chief, Benjamin Franklin. The coins will be used for the establishment of several programs for the benefit of the members of our Nation's fire service and their families, in recognition of their outstanding contributions to our Nation.

I am sure that the Members of this body are well aware of the commitment and dedication of the members of our Nation's fire service. The fire service is a very dangerous profession, and one that requires great courage and determination. Today's firefighters are required to respond not only to dangers involving fire, but also to other disasters, such as earthquakes, floods, and hazardous materials spills. Each year over 50,000 firefighters are injured, and hundreds are killed in the course of carrying out their duties.

Notwithstanding the enormous risks they face, the members of our Nation's fire service, most of whom are volunteers, continue to dedicate themselves to saving and protecting the lives of other citizens. Additionally, unlike most of the measures that are presented before this body, this legislation is self-financing through the sale of commemorative coins, and will be of no cost to the Federal Government. I believe that this is a good bill, now and one that is deserving of the support of the Members of this body. Therefore, I urge my colleagues to join with me in paying honor to our Nation's fire service by giving them full support to the passage of this legislation.

AMENDMENT NO. 3190

(Purpose: To change the commencement of issuance and the termination of authority)

Mr. CHAFEE. Mr. President, I send a technical amendment for Mr. HEINZ to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. HEINZ, proposes an amendment numbered 3190.

Mr. CHAFEE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, line 3, strike "January 1, 1990", and insert in lieu thereof, "January 1, 1991".

On page 6, line 5, strike "December 31, 1991", and insert in lieu thereof, "December 31, 1992".

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment (No. 3190) was agreed to.

Mr. HEINZ. Mr. President, I am pleased to speak today in support of the passage of S. 1933, the Benjamin Franklin Memorial Fire Service Bill of Rights Act. This legislation which I introduced in the Senate is cosponsored by 42 Members of the Senate and supported by 250 House Members and over 3 million members of the American fire service community.

S. 1933 will authorize the minting of three commemorative coins—a $5 gold coin, $1 silver coin and a half dollar. The purpose of this legislation is to honor the legacy of Ben Franklin. The proceeds from the sale of these coins will accomplish this purpose by funding two important programs: First, 25 percent of the proceeds will go to the Benjamin Franklin Memorial which was designated by Congress in 1972 as the official memorial to Ben Franklin; second, and perhaps more importantly, the bill will honor Ben Franklin as the father of the first volunteer fire company by distributing the remaining 75 percent of the proceeds to several programs to benefit the fire service community.

As George Washington is remembered as the Father of our great Nation, Ben Franklin might well be the grandfather. He was a scholar and statesman of the highest order, and although he called himself nothing more than a printer, Franklin was the only one of America's Founding Father's who signed all four of the principal documents that led to the establishment of this great Nation—the Declaration of Independence, the Constitution, the Treaty of Alliance with France, and the Treaty with England at the end of the Revolutionary War.

A quick look into history shows that Ben Franklin was the epitome of all that America was to become. Among other things, he explored the secrets of electricity and the plotting of the gulf stream; penned "Poor Richard's Almanac" and an autobiography considered one of the greatest ever written; founded the University of Pennsylvania and the American Philosophical Society; published a variety of sage and popular periodicals; invented bifocals and the Franklin Stove; served as America's first Ambassador, initially to England and then with our first ally, France; acted as the president of Pennsylvania and America's first Postmaster, and created America's first insurance company.

Mr. President, this legislation, S. 1933, seeks to recognize the important contributions the fire service has made to America. The legacy which began when Ben Franklin formed the first volunteer fire company in Philadelphia, is carried on everyday by 3 million fire service professionals across the country. It is these courageous individuals to whom we seek to pay tribute. During his campaign for the Oval Office, President Bush spoke of "a thousand points of light." That phrase holds true with firefighters more than any other group, why? Because 85 percent of the firefighters in America are volunteers.

Let me explain some of the programs which the fire service bill of rights will help to initiate. Seventy-five percent of the surcharges from the sale of the commemorative coins will be used to assist the fire service. S. 1933 will expand the Public Safety Officers Death Benefit Program by providing educational scholarships to the children and surviving spouses of fallen firefighters. It will establish a scholarship fund for students wishing to pursue degrees in the fire sciences, initiate a matching grant program to permit fire departments to purchase computers and other communications equipment, grant funds to institutions commited to burn injury research and treatment, and help construct a fire museum here in the District of Columbia.

In addition, this legislation will direct that 25 percent of the proceeds from the sale of the commemorative coins will go to the Benjamin Franklin National Memorial. These moneys would be used for the restoration and renovation of the memorial, acquisition and archiving of Franklin artifacts and memorabilia, and for charitable and equitable purposes. The three coins shall be issued in uncirculated, proof qualities and will be emblematic of the bicentennial of Franklin's death, the Franklin Memorial, and the contributions of Mr. Franklin.

In keeping with the Franklin tradition of entrepreneurship, the Franklin National Memorial is the only official national memorial that does not receive taxpayer funds and is cared for with the funds generated by a private, nonprofit institution. The Franklin Institute which administers the memorial has developed a comprehensive plan that not only provides for the renovation and restoration of the memorial, but which also includes the establishment of a new world-class awards programs similar to the Nobel Prize in scope that will reward individuals who excel in business leadership and science.

Finally, Mr. President, I would like to thank my friend and colleague, Senator FRITZ HOLLINGS, the able and distinguished chairman of the Senate Commerce Committee, and Senator RICHARD BRYAN, chairman of the Commerce Subcommittee on Consumer Affairs for their tireless efforts on behalf of America's fire service community and making it possible to enact this bill into law the Benjamin Franklin Memorial Fire Service Bill of Rights Act.

The PRESIDING OFFICER. If there be no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1933

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Benjamin Franklin Memorial Fire Service Bill of Rights Act".

TITLE I—MINTING OF BENJAMIN FRANKLIN NATIONAL MEMORIAL COMMEMORATIVE COIN

SEC. 101. SHORT TITLE.

This title may be cited as the "Benjamin Franklin National Memorial Commemorative Coin Act".

SEC. 102. COIN SPECIFICATIONS.

(a) FIVE DOLLAR GOLD COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereinafter in this title referred to as the "Secretary") shall issue not more than 1,000,000 five dollar coins each of which shall—

(A) weigh 8.359 grams;

(B) have a diameter of 0.850 inches; and

(C) contain 90 percent gold and 10 percent alloy.

(2) DESIGN.—The design of the five dollar coins shall be emblematic of the bicentennial of the death of Benjamin Franklin. On each five dollar coin there shall be a designation of the value of the coin, an inscription of the year "1990", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall issue not more than 10,000,000 one dollar coins, each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of the one dollar coins shall be emblematic of the role Benjamin Franklin played as the founder of the fire service in the United States. On each one dollar coin there shall be a designation of the value of the coin, an inscription of the year "1990", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(c) HALF DOLLAR CLAD COINS.—

(1) ISSUANCE.—The Secretary shall issue not more than 10,000,000 half dollar coins which shall—

(A) weigh 11.34 grams;

(B) have a diameter of 1.205 inches; and

(C) be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.

(2) DESIGN.—The design of the half dollar coins shall be emblematic of the contributions of Benjamin Franklin to the United States. On each half dollar coin there shall be a designation of the value of the coin, an inscription of the year "1990", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(d) LEGAL TENDER.—The coins issued under this title shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. 103. SOURCES OF BULLION.

(a) SILVER.—The Secretary shall obtain silver for the coins minted under this title from stocks of silver held by the Secretary or from any other federally owned stocks of silver.

(b) GOLD.—The Secretary shall obtain gold for the coins minted under this title pursuant to the authority of the Secretary under existing law.

SEC. 104. DESIGN OF THE COINS.

The design for each coin authorized by this title shall be selected by the Secretary after consultation with the Chairman of the Benjamin Franklin National Memorial at the Franklin Institute, the Chairman of the Congressional Fire Services Institute, and the Chairman of the Commission of Fine Arts.

SEC. 105. SALE OF THE COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the coins issued under this title shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, and overhead expenses) and the surcharge provided for in subsection (d).

(b) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount to reflect the lower costs of such sales.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins prior to the issuance of such coins. Sales under this subsection shall be at a reasonable discount to reflect the benefit of prepayment.

(d) SURCHARGES.—All sales shall include a surcharge of $35 per coin for the five dollar coins, $7 per coin for the one dollar coins, and $2 for the half dollar coins.

SEC. 106. ISSUANCE OF THE COINS.

(a) FIVE DOLLAR COINS.—The gold coins authorized by this title shall be issued in uncirculated and proof quality and shall be struck at no more than one facility of the United States Mint.

(b) ONE DOLLAR AND HALF DOLLAR COINS.—The one dollar and half dollar coins authorized under this title may be issued in uncirculated and proof qualities, except that not more than one facility of the United States Mint may be used to strike any particular combination of denomination and quality.

(c) COMMENCEMENT OF ISSUANCE.—The Secretary may issue the coins minted under this title beginning on January 1, 1991.

(d) TERMINATION OF AUTHORITY.—No coins shall be minted under this title after December 31, 1992.

SEC. 107. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this title.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity.

SEC. 108. DISTRIBUTION OF SURCHARGES.

All surcharges which are received by the Secretary from the sale of coins issued under this title shall be promptly paid by the Secretary as follows:

(1) AMOUNTS PAID TO THE BENJAMIN FRANKLIN NATIONAL MEMORIAL.—Subject to section 109, the Secretary shall pay to the Benjamin Franklin National Memorial (hereafter in this section referred to as the "Franklin Institute") 25 percent of the amount of such surcharges so received. Such amounts shall be used—

(A) to restore and renovate the Benjamin Franklin National Memorial;

(B) to construct or renovate adjoining areas of the Franklin Institute relating to the various interests of Benjamin Franklin, such as science, education, and government;

(C) for exhibits in the Memorial or in the adjoining areas of the Franklin Institute relating to Benjamin Franklin or to science and education;

(D) for capital funds for construction of access, parking, and related facilities at the Franklin Institute;

(E) for funds for the acquisition and preservation by the Franklin Institute of artifacts relating to Benjamin Franklin; and

(F) to establish an endowment in an amount determined sufficient by the Franklin Institute, in consultation with the Secretary of the Interior, to ensure the continued upkeep and maintenance of the Memorial.

(2) AMOUNTS PAID UNDER TITLE II.—

(A) FIRST YEAR OF SALES.—In the first year beginning on the date on which coins are first issued under this title, the Secretary shall pay, of the amount of the surcharges so received—

(i) 25 percent to the National Fire Center and Museum Account of the Firefighter Assistance Trust Fund established pursuant to section 207;

(ii) 7 percent to the National Hero Scholarship Account of that Trust Fund;

(iii) 3 percent to the Firefighter's Tuition Assistance Account of that Trust Fund;

(iv) 30 percent to the Hazardous Materials Response Computer Account of that Trust Fund;

(v) 8 percent to the In Search of Excellence Research and Education Account of that Trust Fund; and

(vi) 2 percent to the Burn Research Grant Account of that Trust Fund.

(B) SUCCEEDING YEARS.—In each year after the year following the date on which coins are first issued under this title, the Secretary shall pay, of the amount of the surcharges so received—

(i) 25 percent to the National Fire Center and Museum Account of the Firefighter Assistance Trust Fund established pursuant to section 207;

(ii) 39 percent to the National Hero Scholarship Account of that Trust Fund;

(iii) 3 percent to the Firefighter's Tuition Assistance Account of that Trust Fund; and

(iv) 8 percent to the In Search of Excellence Research and Education Account of that Trust Fund.

SEC. 109. AUDITS.

As a condition for receiving the proceeds of the surcharges pursuant to section 108(1), the Benjamin Franklin National Memorial shall allow the Comptroller General to examine such books, records, documents, and other data of the Memorial as may be related to the expenditure of amounts paid, and the management and expenditures of the endowment established, under paragraph (1)(F) of section 108.

SEC. 110. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take all actions necessary to ensure that the issuance of the coins authorized by this title shall result in no net cost to the United States Government.

(b) PAYMENT FOR COINS.—No coin shall be issued under this title unless the Secretary has received—

(1) full payment therefor;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

TITLE II—FIRE SERVICE BILL OF RIGHTS

SEC. 201. SHORT TITLE.

This title may be referred to as the "Fire Service Bill of Rights Act".

SEC. 202. FIRE SERVICE BILL OF RIGHTS.

Section 2 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201) is amended—

(1) by inserting "(a) IN GENERAL.—" before "The Congress"; and

(2) by adding at the end the following:

"(b) FIRE SERVICE BILL OF RIGHTS.—

"(1) The fire services have the right to be recognized as America's first responder to all domestic emergencies.

"(2) The fire services have the right to be adequately protected from the dangers associated with emergency response.

"(3) The fire services have the right to have the families of their personnel provided for in the event of tragic death.

"(4) The fire services have the right to be educated in the latest fire and life safety sciences.

"(5) The fire services have the right to be provided with state-of-the-art equipment and apparatus to better handle all emergency situations.

"(6) The fire services have the right to share innovative fire and life safety programs that have proven successful across the Nation.

"(7) The fire services have the right to fully understand and be able to effectively respond to incidents involving the transportation, storage, and use of hazardous materials.

"(8) The fire services have the right to be fully informed of the threat of contracting infectious diseases during the course of life safety activities.

"(9) The fire services have the right to expect that the American people will become full partners in the struggle to preserve life and property from the ravages of fire and other disasters.

"(10) The fire services have the right to celebrate the proud history of the American fire and emergency services personnel and the sacrifices they have made for communities across the Nation.".

SEC. 203. ESTABLISHMENT OF NATIONAL FIRE CENTER AND MUSEUM.

The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) is amended by adding at the end the following:

"SEC. 28. NATIONAL FIRE CENTER AND MUSEUM.

"(a) IN GENERAL.—There is established the National Fire Center and Museum. The Museum shall be operated by the Board of Directors appointed pursuant to subsection (b).

"(b) BOARD OF DIRECTORS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator shall appoint the Board of Directors. The term of each Director appointed by the Administrator shall be 4 years. In making appointments to the Board, the Administrator shall ensure that representatives from national fire service organizations and businesses associated with fire protection and safety are included on the Board. The Administrator shall determine the number of Directors and that number shall not thereafter be subject to change.

"(2) EX OFFICIO MEMBERS.—The Chairman of the Congressional Fire Services Institute shall serve as the Chairman of the Board of Directors. The Administrator shall serve as an ex officio member of the Board.

"(c) CURATOR.—The Board of Directors shall appoint, and fix the pay of, a Curator. The Curator shall—

"(1) be responsible for the administration of the Museum; and

"(2) make an annual report to the Board regarding the administration and operation of the Museum.

"(d) FUNCTIONS OF THE MUSEUM.—The Board of Directors shall ensure that the Museum provides—

"(1) a depiction of the history of firefighting and related emergency services in the United States;

"(2) information to fire services and the public relating to the responsibilities of and technology used by the fire services;

"(3) a library of technical and general information about the fire services and safety; and

"(4) other services or displays the Board determines is beneficial to the operation of the Museum.

"(e) LOCATION OF MUSEUM.—The Museum shall be located in the District of Columbia.

"(f) FUNDING.—The Fund shall be the only source of funding for the establishment and operation of the Museum.".

SEC. 204. ESTABLISHMENT OF NATIONAL HERO SCHOLARSHIP.

The Federal Fire Prevention and Control Act of 1974, as amended by the preceding section of this title, is further amended by adding at the end the following:

"SEC. 29. ESTABLISHMENT OF NATIONAL HERO SCHOLARSHIP.

"(a) IN GENERAL.—In any case in which a benefit is paid pursuant to section 1201(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796(a)) to the children or spouse of a deceased firefighter, the Administrator may grant scholarships to the children and spouse of that firefighter in accordance with this section. Such scholarships shall be for study and training at institutions of higher education. All scholarships shall be paid from the Fund.

"(b) LIMITATIONS ON SCHOLARSHIPS.—

"(1) IN GENERAL.—The limitations on paying benefits contained in section 1202 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796a) shall apply with respect to the granting of scholarships under this section.

"(2) AMOUNT OF SCHOLARSHIP.—The Administrator shall determine the amount of each scholarship awarded under this section, except that no individual may receive a scholarship for more than 4 years.

"(c) AMOUNTS PAID AS SCHOLARSHIPS NOT COUNTED AS INCOME.—Any amount paid under this section shall not be counted as income for the purpose of any need-based scholarship or tuition assistance program provided by the United States.

"(d) DEFINITION OF CHILD.—As used in this section, the term 'child' means any natural or adopted child or stepchild of a deceased firefighter who, at the time of the death of the firefighter, was substantially dependent on the income of that firefighter for support.".

SEC. 205. ESTABLISHMENT OF TUITION ASSISTANCE RELATING TO THE STUDY OF FIRE PROTECTION AND SAFETY.

The Federal Fire Prevention and Control Act of 1974, as amended by preceding sections of this title, is further amended by adding at the end the following:

"SEC. 30. ESTABLISHMENT OF SCHOLARSHIPS FOR FIREFIGHTERS.

"(a) IN GENERAL.—The Administrator may award scholarships to firefighters for the study of and training in a field relating to fire safety or protection at an institution of higher education.

"(b) APPLICATION AND NOMINATION.—A scholarship may not be made under this section unless an application or nomination is made to the Administrator at such time and in such manner as the Administrator may require. An application shall be submitted by an individual firefighter desiring a scholarship under this section and a nomination shall be submitted by an organization listed in subsection (e).

"(c) ELIGIBILITY.—Scholarships awarded under this section shall be made only to firefighters at the beginning of a program of study and training referred to in subsection (a) and shall continue during the time the firefighter remains in academic standing satisfactory to the Administrator. The Administrator shall determine—

"(1) the type and content of the programs in which a firefighter must be enrolled in order to qualify for a scholarship; and

"(2) the standards relating to satisfactory academic standing.

"(d) AMOUNT OF ASSISTANCE.—The Administrator shall determine the amount of each scholarship that can be granted to firefighters under this section.

"(e) NOMINATING ORGANIZATIONS.—The organizations referred to in subsection (b) are—

"(1) the International Association of Fire Chiefs;

"(2) the International Association of Fire Fighters;

"(3) the International Society of Fire Service Instructors;

"(4) the International Association of Black Professional Fire Fighters;

"(5) the National Volunteer Fire Council;

"(6) the National Fire Protection Association; and

"(7) other organizations concerned with fire protection and safety as determined by the Administrator.

"(f) SOURCE OF FUNDS.—All amounts provided to firefighters under this section shall be paid from the Fund.".

SEC. 206. IN SEARCH OF EXCELLENCE RESEARCH AND EDUCATION ACCOUNT.

The Federal Fire Prevention and Control Act of 1974, as amended by preceding sections of this title, is further amended by adding at the end the following:

"SEC. 31. IN SEARCH OF EXCELLENCE RESEARCH AND EDUCATION ACCOUNT.

"The Administrator may use amounts in the In Search of Excellence Research and Education Account of the Fund to fund activities under sections 6, 8, 9, 10, 12, 18, and 24.".

SEC. 207. ESTABLISHMENT OF FIREFIGHTER ASSISTANCE TRUST FUND.

The Federal Fire Prevention and Control Act of 1974, as amended by preceding sections of this title, is further amended by adding at the end the following:

"SEC. 32. ESTABLISHMENT OF FIREFIGHTER ASSISTANCE TRUST FUND.

"(a) CREATION OF TRUST FUND.—

"(1) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the 'Firefighter Assistance Trust Fund'.

"(2) ACCOUNTS IN TRUST FUND.—The Fund shall consist of—

"(A) a National Fire Center and Museum Account;

"(B) a National Hero Scholarship Account;

"(C) a Firefighter's Tuition Assistance Account;

"(D) an In Search of Excellence Research and Education Account;

"(E) a Hazardous Materials Response Computer Account; and

"(F) a Burn Research Grant Account.

"(b) PROVISION OF FUNDS TO ACCOUNTS.—Each such account shall consist of such amounts as may be—

"(1) appropriated to it in appropriation Acts;

"(2) deposited in it from amounts made as donations;

"(3) deposited in it as provided in paragraph (2) of section 108 of the Benjamin Franklin National Memorial Commemorative Coin Act; or

"(4) paid to it as provided by subsection (c).

"(c) MANAGEMENT OF TRUST FUND.—Section 9602(b) of the Internal Revenue Code of 1986 (relating to the management of trust funds) shall apply with respect to the Fund.

"(d) EXPENDITURES FROM ACCOUNTS.—

"(1) INITIAL EXPENDITURES.—In the year following the date specified in section 106(c) of the Benjamin Franklin National Memorial Commemorative Coin Act, an amount not to exceed—

"(A) the principle and interest from the accounts established by—

"(i) subparagraph (A) of subsection (a)(2) shall be available, as provided by appropriation Acts, to establish the Museum; and

"(ii) subparagraphs (E) and (F) of that subsection shall be available, as provided by appropriation Acts, to carry out sections 209 and 210 of the Fire Service Bill of Rights Act, respectively;

"(B) the interest earned from the accounts established by paragraphs (B), (C), and (D) of subsection (a)(2) shall be available, as provided by appropriation Acts, to

carry out sections 29 through 31, respectively, of this Act.

"(2) SUCCEEDING YEARS EXPENDITURES.—In the years after the year following the date specified in section 106(c) of that Act, an amount equal to the interest earned from the accounts contained in subparagraphs (A) through (D) of subsection (a)(2) shall be available, as provided by appropriation Acts, to carry out sections 28 through 31, respectively, of this Act.".

SEC. 208. PLACING NATIONAL FIRE ACADEMY WITHIN THE FIRE ADMINISTRATION.

Section 7(a) of the Fire Prevention and Control Act of 1974 (15 U.S.C. 2206(a)) is amended by inserting "within the Administration" after "establish".

SEC. 209. CONTRACT FOR HAZARDOUS MATERIALS ACCIDENT RESPONSE EQUIPMENT.

(a) DETERMINATION OF EQUIPMENT NEEDS.—Within 6 months after the date of the enactment of this Act, the Administrator shall issue specifications regarding the type and configuration of computer equipment that will be provided to the fire services pursuant to this section.

(b) REQUIREMENT TO ENTER INTO CONTRACT.—Within 18 months after the date that coins are first issued under title I, the Administrator shall enter into a contract using competitive procedures to procure computer equipment meeting the specifications issued under subsection (a). The contract shall require that all equipment purchased under the contract must be delivered within 6 months after the date that the contract is entered into.

(c) FIRE DEPARTMENTS TO RECEIVE EQUIPMENT.—Each State desiring to obtain equipment under this section shall, within 6 months after the date of the enactment of this Act, submit a list containing the address and chief officer of each fire service in that State that wants to obtain equipment under this section. The Administrator shall compile the lists received from the States into a single list for use as described in subsection (b).

(d) SOURCE OF FUNDS.—Amounts made available to carry out the contract under subsection (b) shall be derived from the Hazardous Materials Response Computer Account of the Fund.

(e) BUDGET ACT COMPLIANCE.—The Administrator may enter in a contract under this section for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

SEC. 210. BURN RESEARCH AND EDUCATION GRANT.

(a) IN GENERAL.—The Administrator shall make a grant to a national firefighter's burn foundation that the Administrator determines is deserving of such a grant. The foundation must be dedicated to reducing burn injuries in order to be eligible to receive a grant. Any such foundation may apply for the grant, but a grant may be made to only one foundation. The grant may be made under this subsection only in the fiscal year beginning October 1, 1990.

(b) APPLICATION.—The grant referred to subsection (a) may not be made unless an application is made to the Administrator at such time and in such manner as the Administrator may require. The Administrator shall establish requirements, other than those specified in subsection (a), necessary for the awarding of the grant.

(c) SOURCE OF FUNDS.—Amounts made available for the grant under subsection (a) shall be derived from the Burn Research Grant Account of the Fund.

SEC. 211. INFORMATION CONCERNING PROCEDURES FOR THE ACQUISITION OF SURPLUS FEDERAL PROPERTY.

(a) PREPARATION OF MANUAL.—The Administrator in consultation with the Administrator of General Services shall prepare, and make available to State fire marshals upon their request, a manual describing the procedures through which the Federal Government disposes of surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). The manual should highlight how such fire services could obtain surplus property.

(b) DATE OF AVAILABILITY.—The Administrator shall make the manual referred to in subsection (a) available within 12 months after the date of the enactment of this Act and shall update the manual at such times thereafter as is necessary to reflect changes in the procedures described in the manual.

SEC. 212. INFORMATION ON INFECTIOUS DISEASES.

The Administrator shall distribute information to each State fire marshal relating to the infectious diseases to which firefighters are particularly vulnerable. The Administrator shall distribute this information within 12 months after the date of the enactment of this Act and shall update the information at such times thereafter as is necessary.

SEC. 213. USE OF DONATIONS.

Section 21 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2218) is amended by adding at the end the following:

"(f) USE OF DONATED FUNDS.—The Administrator may accept a donation under subsection (b)(2) that is conditioned on its being used to fund activities under section 28, 29, 30, or 31. Such a donation shall be deposited in the Trust Fund account funding the respective section.".

SEC. 214. DEFINITIONS.

(a) DEFINITIONS RELATING TO THE FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974.—Section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203) is amended by—

(1) redesignating paragraph (4) as paragraph (5), paragraph (5) as paragraph (8), and paragraphs (6) and (7) as paragraphs (10) and (11), respectively;

(2) adding after paragraph (3) the following:

"(4) 'firefighter' has the meaning that term is given in paragraph (2) of section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(2));"

(3) adding after paragraph (5), as redesignated, the following:

"(6) 'Fund' means the Firefighter Assistance Trust Fund established by section 32;"

"(7) 'institution of higher education' has the meaning that term is given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));" and

(4) adding after paragraph (8), as redesignated, the following:

"(9) 'Museum' means the National Fire Center and Museum;".

(b) DEFINITIONS RELATING TO TITLE II.—As used in this title—

(1) the terms contained in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203), as amended by this Act, apply with respect to this Act; and

(2) the term "fire marshal" means an individual who is the head of a State agency responsible for the regulation of fire services in that State.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 934, H.R. 2567, a reclamation projects authorization and adjustment bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2567) entitled the "Reclamation Projects Authorization and Adjustment Act of 1990".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This act may be cited as the "Reclamation Projects Authorization and Adjustment Act of 1990".

SEC. 2. DEFINITION.

For purposes of this Act, the term "Secretary" means the Secretary of the Interior.

TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

SEC. 101. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

Title I of Public Law 97-293 (96 Stat. 1261) is amended as follows:

(a) In the second sentence of section 101, by striking "replacing the existing Shoshone Powerplant," and inserting "constructing power generating facilities with a total installed capacity of 25.5 megawatts,".

(b) In section 102, amend the heading to read "recreational facilities, conservation, and fish and wildlife", and add at the end "The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act.".

(c) In section 106(a), strike "for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels)" and insert "for the Federal share of the construction of the Buffalo Bill Dam and Reservior modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels)", and strike "modifications" and all that follows and insert "modfications." in lieu thereof.

TITLE II—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

SEC. 201. AUTHORIZATION.

The Secretary is authorized to construct, operate, and maintain a water treatment plant, including the disposal of sludge produced by said treatment plant as appropriate, and to install concrete lining on the re-

habilitated portion of the Leadville Mine Drainage Tunnel, in order that water flowing from the Leadville Tunnel may meet water quality standards.

SEC. 202. COSTS NON-REIMBURSABLE.

Construction, operation, and maintenance costs of the works authorized by this title shall be non-reimbursable.

SEC. 203. OPERATION AND MAINTENANCE.

The Secretary shall be responsible for operation and maintenance of the water treatment plant, including sludge disposal authorized by this title. The Secretary may contract for these services.

SEC. 204. APPROPRIATIONS AUTHORIZED.

There is hereby authorized to be appropriated beginning October 1, 1989, for construction of a water treatment plant for water flowing from the Leadville Mine Drainage Tunnel, including sludge disposal, and concrete lining the rehabilitated portion of the tunnel, the sum of $10,700,000 (October 1988 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation and maintenance of the works authorized by this title.

SEC. 205. LIMITATION.

The treatment plant authorized by this title shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.

TITLE III—LAKE MEREDITH SALINITY CONTROL PROJECT, TEXAS AND NEW MEXICO

SEC. 301. AUTHORIZATION.

The Secretary is authorized to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in this June 1985 Technical Report of the Bureau of Reclamation on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purpose of improving the quality of water delivered to the Canadian River downstream of Ute Reservoir, New Mexico, and entering Lake Meredith, Texas. The principal features of the project shall consist of production wells, observation wells, pipelines, pumping plants, brine disposal facilities, and other appurtenant facilities.

SEC. 302. CONSTRUCTION CONTRACT.

(a) The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas (hereafter in this title the "Authority") for the design and construction management of project facilities by the Bureau of Reclamation and for the payment of construction costs by the Authority. Operation and maintenance of project facilities upon completion of construction and testing shall be the responsibility of the Authority.

(b) Construction of the project shall not be commenced until a contract has been executed by the Secretary with the Authority, and the State of New Mexico has granted the necessary permits for the project facilities.

SEC. 303. PROJECT COSTS.

(a) All costs of construction of project facilities shall be advanced by the Authority as the non-Federal contribution toward implementation of this title. Pursuant to the terms of the contract authorized by section 302 of this title, these funds shall be advanced on a schedule mutually acceptable to the Authority and the Secretary, as necessary to meet the expense of carrying out construction and land acqusition activities.

(b) All project costs for verification, design preparation, and construction management (estimated to be approximately 33 percent of the total project cost) shall be nonreimbursable as the Federal contribution for environmental enhancement by water quality improvement.

SEC. 304. CONSTRUCTION AND CONTROL.

(a) The Secretary shall, upon entering into a mutually acceptable agreement with the Authority, proceed with preconstruction planning, preparation of designs and specifications, acquiring permits, acquisition of land and rights, and award of construction contracts pending availability of appropriated funds.

(b) At any time following the first advance of funds by the Authority, the Authority may request that the Secretary terminate activities then in progress, and such request shall be binding upon the Secretary, except that, upon termination of construction pursuant to this section, the Authority shall reimburse to the Secretary a sum equal to 67 per cemtum of all costs incurred by the Secretary in project verification, design and construction management, reduced by any sums previously paid by the Authority to the Secretary for such purposes. Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development.

(c) Upon completion of construction and testing of the project, or upon termination of activities at the request of the Authority, and reimbursement of Federal costs pursuant to subsection 302(b) of this title, the Secretary shall transfer the care, operation, and maintenance of the project works to the Authority or to a bona fide entity mutually agreeable to the States of New Mexico and Texas. As part of such transfer, the Secretary shall return unexpended balances of the funds advanced, assign to the Authority or the bona fide entity the rights to any contract in force, convey to the Authority or the bona fide entity any real estate, easements, or personal property acquired by the advanced funds, and provide any data, drawings, or other items of value procured with advanced funds.

SEC. 305. APPROPRIATIONS AUTHORIZED.

There are hereby authorized to be appropriated to carry out the provisions of this title the sum of $3,000,000 (October 1989 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuation in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

SEC. 306. WETLANDS INVENTORY AND REPORT.

(a) The Secretary of the Interior is directed to inventory all wetlands on Federal lands or interests therein owned by or withdrawn for the use of the Bureau of Reclamation and, to the extent practicable, other Federal lands associated with reclamation projects. As part of the inventory, the Secretary shall make an initial determination of the value of such wetlands for purposes such as, but not limited to, recruitment and survival of waterfowl and other wetland dependent species, flood control, water quality, and sedimentation control.

(b) In assessing the value of wetlands for recruitment and survival of waterfowl and other wetland dependent species, the Secretary shall consider, amount other things, the presence of factors supporting abundant and diverse wetland ecosystems, including, but not limited to:

(1) high primary productivity and functioning food chains;

(2) seasonal values for waterfowl breeding, nesting, staging and wintering; and

(3) protection from predation and disease.

(c) The Secretary shall indicate those wetland areas identified pursuant to subsection (a) of this section which also have been identified for protection or restoration pursuant to the North American Waterfowl Management Plan or by such entities as the Secretary deems appropriate.

(d) In fulfillment of this section, the Secretary is encouraged to consult with appropriate State and private entities.

(e) Not later than February 1, 1991, the Secretary shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Appropriations of the Senate, the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Appropriations of the House of Representatives a plan for implementation of this section, including identification of any reprogramming of funds required in fiscal year 1991 and such other resources as may be required.

(f) The Secretary shall report the results of the inventory authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than December 31, 1992.

TITLE IV—CEDAR BLUFF UNIT, KANSAS

SEC. 401. AUTHORIZATION.

The Secretary, pursuant to the provisions of the Memorandum of Understanding between the Bureau of Reclamation and the Fish and Wildlife Service of the Department of the Interior, the State of Kansas, and the Cedar Bluff Irrigation District No. 6, dated December 17, 1987, is authorized to reformulate the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, including reallocation of the conservation capacity of the Cedar Bluff Reservoir, to create:

(a) a designated operating pool, as defined in such Memorandum of Understanding, for fish, wildlife, and recreation purposes, for groundwater recharge for environmental, domestic, municipal and industrial uses, and for other purposes; and

(b) a joint-use pool, as defined in such Memorandum of Understanding, for flood control, for water sales, for fish, wildlife, and recreation purposes, and for other purposes.

SEC. 402. CONTRACT.

The Secretary is authorized to enter into a contract with the State of Kansas for the sale, use, and control of the designated operating pool, with the exception of water reserved for the city of Russell, Kansas, and to allow the State of Kansas to acquire use and control of water in the joint-use pool, except that, the State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to its confluence with Big Creek.

SEC. 403. CONTRACT.

(a) The Secretary is authorized to enter into a contract with the State of Kansas, accepting a payment of $365,424, and the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the Cedar Bluff Dam and Reservoir, as full satisfaction or reimbursable costs associated with irriga-

tion of the Cedar Bluff Unit, including the Cedar Bluff Irrigation District's obligations under Contract No. 0-7-70-W0064. After the reformation of the Cedar Bluff Unit authorized by this title, any revenues in excess of operating and maintenance expenses received by the State of Kansas from the sale of water from the Cedar Bluff Unit shall be paid to the United States and covered into the Reclamation Fund to the extent that an operation, maintenance and replacement charge or reimbursable capital obligation exists for the Cedar Bluff Unit under Reclamation law. Once all such operation, maintenance and replacement charges or reimbursable obligations are satisfied, any additional revenues shall be retained by the State of Kansas.

(b) The Secretary is authorized to transfer title of the buildings, fixtures, and equipment of the United States Fish and Wildlife Service fish hatchery facility at Cedar Bluff Dam, and the related water rights, to the State of Kansas for its use and operation for fish, wildlife, and related purposes. If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

SEC. 404. TRANSFER OF DISTRICT HEADQUARTERS.

The Secretary is authorized to transfer title to all interests in real property, buildings, fixtures, equipment, and tools associated with the Cedar Bluff Irrigation District headquarters located near Hays, Kansas, contingent upon the District's agreement to close down the irrigation system to the satisfaction of the Secretary at no additional cost to the United States, after which all easement rights shall revert to the owners of the lands to which the easements are attached.

SEC. 405. LIABILITY AND INDEMNIFICATION.

The transferee of any interest conveyed pursuant to this title shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

SEC. 406. ADDITIONAL ACTIONS.

The Secretary is authorized to take all other actions consistent with the provisions of the Memorandum of Understanding referred to in section 401 that the Secretary deems necessary to accomplish the reformulation of the Cedar Bluff Unit.

TITLE V—SALT-GILA AQUEDUCT, ARIZONA

SEC. 501. DESIGNATION.

The Salt-Gila Aqueduct of the Central Arizona Project, constructed, operated, and maintained under section 301(a)(7) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(7)), hereafter shall be known and designated as the "Fannin-McFarland Aqueduct".

SEC. 502. REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in Sec. 501 hereby is deemed to be a reference to the "Fannin-McFarland Aqueduct".

TITLE VI—WARREN ACT SUPPLEMENT

SEC. 601. EXCESS STORAGE AND CARRYING CAPACITY.

The Secretary is authorized to enter into contracts, pursuant to the Act of February 21, 1911 (36 Stat. 925), with political subdivisions of the State of California for the impounding, storage, and carriage of water for domestic, municipal, fish and wildlife, and other beneficial purposes from any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California.

TITLE VII—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT, NEVADA AND CALIFORNIA

SEC. 701. SHORT TITLE.

This title may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

SEC. 702. PURPOSES.

The purposes of this title shall be to:

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 703. DEFINITIONS.

For purposes of this title:

(a) the term "Alpine court" means the court having continuing jurisdiction over the Alpine decree;

(b) the term "Alpine decree" means the final decree of the United States District Court for the District of Nevada in United States of America v. Alpine Land and Reservoir Company, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

(c) the term "Carson River basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribe;

(e) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 705 of this title.

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in United States of America; v. Orr Water Ditch Company, et al.—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including Exibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report accompanying this title and as Appendix 1 to the report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means to fish species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including the lake, but excluding the Lake Tahoe basin;

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in the United States of America v. Truckee River General Electric Co., No 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martin Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 704. INTERSTATE ALLOCATION.

(a) CARSON RIVER.—

(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional

rights, if established, shall be administered in accordance with the terms of Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per-year by depletion for use in the State of California and 2,131 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributraries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsectiion shall compensate the State of California for any such discontinuance as referred to in such paragraph: Provided, That, the augmentation authorized by such shall be used only on lands having appurtenant Alpine decree rights. Use of effluent for the irrigation of lands with appurtenant Alpine decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the benefical use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State laws.

(8) Interbasin transfers for Carson River water shall be allowed only as provided by applicable State law. (b) LAKE TAHOE.—

(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) The provisions of paragraph 704(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 704(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(i) an evaluation of changes in pricing, rate structure, and regulations; and

(j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency crossties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream

beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraphs (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or has been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.—

(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in Califorina the gross amount of 32,000 acre-feet of water per year from all natural source, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acre-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future use in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of diposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 704(c)(1)(B) and (D) and shall not be deemed use of Truckee River basin groundwater within the State of Nevada within the meaning of subparagraph 704(c)(1)(D); and

(b) California's Truckee River Basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1000 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicutural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and.

(iii) the provisions of subparagraph 704(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 704(d)(1).

(J) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations

made in paragraphs 704(c) (1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

(d) COMPLIANCE.—

(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. Within the third quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) FORFEITURE OR ABANDONMENT.—The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—

(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning is inconsistent with fulfillment of the Secretary's responsibilities under the Endangered Species Act, as amended, the fish and wildlife protection measures set forth in this title, or any clear statutory directive concerning such transfer.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 705. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

(a) OPERATING AGREEMENT.

(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoir and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under exteme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provisions of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which

affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 60 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. 706(2)(A)-(D).

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Power Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs, if any; the Western Area Power Administration and Sierra Pacific Power Company have executed mutually satisfactory agreement to market power from the Stampede Powerplant to qualifying power customers of the Washoe Project and to provide power at reasonable costs to qualifying project use loads, subject to the approval of appropriate local regulatory agencies; and all applicable requirements of State law shall have been met.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—

(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of nonproject water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 705(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 706(f) of this title, with funds not needed for those purposes, if any credited to the Reclamation Fund.

(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—The Secretary and the Secretary of Energy are released from their obligations to secure payment for the costs of constructing Washoe Project facilities and power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 706. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—

(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 709(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 706(c). This study may be conducted in coordination with the studies authorized by paragraph 707(c)(5) and subsection 709(c) of this title, and shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.

(1) Notwithstanding any other provision of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 706(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.

(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 706 and 707 of this title; Provided, that:

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the benefit of the Pyramid Lake fishery subject to the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) STATE COST-SHARING.—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than $9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary's authority under subsection 706(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

(e) TRANSFER OF CARSON LAKE AND PASTURE.—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the "Carson Lake and Pasture," as depicted on the map entitled "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(f) LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.

(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsections 705 (a) and (b), 706(d), and subparagraph 709(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 707(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 708(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) INDIAN LAKES AREA. The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 707. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) RECOVERY PLANS. Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 704 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.

(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing

reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitat for the cui-ui;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in that paragraph.

(c) ACQUISITION OF WATER RIGHTS.

(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchange, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects on the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 706(a)(4) and subsection 709(c) of this title, and shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.

(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the benefit of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 705(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 705(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS. Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 706(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 704 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

SEC. 708. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.

(a) FUNDS ESTABLISHED.

(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund" and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund $25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for restoration, maintenance, and management of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at $25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 706(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund $50,000,000.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 707 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Public Law 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Tribe Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 710(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

SEC. 709. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPANSION OF AUTHORIZED PURPOSES.

(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if tranferred, shall be transferred in accordance with State law.

(b) TRUCKEE RIVER DIVERSIONS. The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.

(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effect of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committee on Energy and Natural Resources of the House of Representatives not later than three years after the date of enactment of this title.

(d) WATER BANK. The Secretary, in consultation with the State and Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage or irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) RECREATION STUDY.—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Insular Affairs of the House of Representatives.

(f) EFFLUENT REUSE STUDY.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the area of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(g) REPAYMENT CANCELLATION.—Notwithstanding any other provision of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such unpaid repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 709(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Derby Dam.

(h) SETTLEMENT OF CLAIMS.—

(1) The provisions of subsections 709 (d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 709(g) of this section shall not become effective unless and until the State of Nevada provides not less than $4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) FISH AND WILDLIFE.—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purposes of fish and wildlife.

(j) OPERATING CRITERIA AND PROCEDURES.—

(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D. D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken by the Secretary heretofore under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment to any water diverted from the Truckee River in excess to the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party withstanding to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter.

SEC. 710. MISCELLANEOUS PROVISIONS.

(a) CLAIMS SETTLEMENT.—

(1) The effectiveness of section 704 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 708(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, or the following outstanding litigation and proceedings:

(A) Pyramid Lake Paiute Tribe v. CALIFORNIA, Civ. S-181-378-RAR-RCB, United States

District Court, Eastern District of California;

(B) United States v. Truckee-Carson Irrigation District, Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) Pyramid Lake Paiute Tribe v. Lujan, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) Pyramid Lake Paiute Tribe v. Department of the Navy, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 704, subsections 706(c), 707(c) and (d), subparagraph 708(a)(3)(D), and paragraph 710(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 705 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 710(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 707(d) shall not take effect until the funds authorized in paragraph 708(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 704 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or repayments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 704 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 705 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

(b) GENERAL PROVISIONS.

(1) Subject to the provisons of paragraph (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pryramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. The Secretary is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding the management and administration of the Anaho Island National Wildlife Refuge.

(3) Subject to the relinguishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affecte any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) or this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreatioin on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement;

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, and the National Environmental Policy Act of 1989.

(10) Nothing in this title shall be construed to create an express or implied federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approval by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Apline court to ensure that the owners of vested and perfected Truckee River water rights received the amount of water to which they are entitited under the Orr Ditch decree or the alpine decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 704, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935 and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended; Provided, That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works; And provided further, That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 705(a)(6).

(c) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

TITLE VIII—VERMEJO PROJECT RELIEF, NEW MEXICO

Section 401 of the Act of December 19, 1980, (94 Stat. 3227) is amended by striking the text that begins: "Transfer of project facilities to the district shall be without . . ." and ends with ". . . shall be maintained consistently with existing arrangements" and inserting in lieu thereof "Effective as of the date of the written consent of the Vermejo Conservancy District to amend Contract 178r-458, all facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract No. 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1990, and expiring January 17, 1992, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting through the United States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract No. 14-06-500-1713 and in a manner that does not interfere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project."

TITLE IX—TRANSFER TO ELEPHANT BUTTE IRRIGATION DISTRICT, NEW MEXICO

SEC. 901. TRANSFER.

The Secretary is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, without cost to the district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purpose of serving Elephant Butte Irrigation District lands and which the Secretary determines are necessary to enable the Elephant Butte Irrigation District to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the Elephant Butte Irrigation District assumes the responsibility for operating and maintaining that portion of such project.

SEC. 902. LIMITATION.

Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams and the works necessary for their protection and operation shall be unaffected by this title.

TITLE X—GRAND CANYON PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the "Grand Canyon Protection Act of 1990".

SEC. 1002. PROTECTION OF GRAND CANYON NATIONAL PARK.

The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1004(c) of this title and exercise other authorities under existing law in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to, natural and cultural resources, and visitor use. The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado River Basin Compact, the Water Treaty of 1944 with Mexico, the decree of the Supreme Court in Arizona v. California, and provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 governing allocation, appropriation, development, or exportation of the waters of the Colorado River basin. Nothing in this title alters or may be construed to alter the purposes for which the Grand Canyon National Park or the Glen Canyon National Recreation Area were established or to affect in any manner the authority and responsibility of the Secretary with respect to the management and administration of such areas, including natural and cultural resources, and visitor use, as provided by laws applicable to such areas, including, but not limited to, the Act of August 26, 1916 (39 Stat. 535), as amended and supplemented.

SEC. 1003. INTERIM OPERATION OF GLEN CANYON DAM.

(a) The Secretary shall promptly develop a plan for operating Glen Canyon Dam on an interim basis to protect, mitigate adverse effects to, and improve the condition of the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area, and shall implement such plan no later than September 1, 1991 or upon cessation of research flows used for preparing the environmental impact statement ordered by the Secretary on July 27, 1989, whichever is sooner.

(b) The interim plan described in subsection (a) of this section shall be designed to:

(1) not interfere with the water storage and delivery functions of Glen Canyon Dam pursuant to the Colorado River Compact, the Upper Colorado River Basin Compact, and other laws relating to allocation of the Colorado River;

(2) minimize, to the extent reasonably possible, the adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam;

(3) adjust fluctuating water releases used for the production of peaking hydroelectric power and adjust rates of flow changes for fluctuating flows that will minimize, to the extent reasonably possible, adverse downstream impacts;

(4) minimize flood releases, consistent with section 1002;

(5) maintain sufficient minimum flow releases from Glen Canyon Dam to minimize, to the extent reasonably possible, adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreational Area downstream of Glen Canyon Dam, and protect fishery resources; and

(6) limit maximum flows released during normal operations to minimize, to the extent reasonably possible, the adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam, and protect fishery resources.

(c) The Secretary shall develop and implement the interim plan described in this section in consultation with:

(1) appropriate agencies of the Department of the Interior, including the Bureau of Reclamation, United States Fish and Wildlife Service, and the National Park Service;

(2) the Secretary of Energy;

(3) the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(4) Indian tribes; and

(5) the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(d) The Secretary shall develop and implement the interim plan referred to in this section using the best and most recent scientific data available.

(e) The interim plan described in this section shall terminate upon compliance by the Secretary with section 1004.

(f) The Secretary may deviate from the interim plan referred to in this section upon a finding that such deviation is necessary and in the public interest in order to:

(1) comply with the requirements of subsection 1004(a);

(2) respond to hydrologic extremes or power system operating emergencies; or

(3) further reduce adverse impacts on downstream Colorado River natural, recreational, or cultural resources.

SEC. 1004. GLEN CANYON DAM ENVIRONMENTAL IMPACT STATEMENT; LONG-TERM OPERATION OF GLEN CANYON DAM.

(a) Not later than 3 years after the date of enactment of this title, the Secretary shall complete a final Glen Canyon Dam environmental impact statement, in accordance with the National Environmental Policy Act of 1969 and regulations issued to implement the provisions thereof.

(b) The Comptroller General shall audit the costs and benefits to water and power users and to natural, recreational, and cultural resources resulting from management policies and dam operations identified pursuant to the environmental impact statement referred to in subsection (a) of this section and shall report the results of the audit to the Secretary and the Congress.

(c) Based on the findings, conclusions, and recommendations made in the environmental impact statement prepared pursuant to subsection (a) and the audit performed pursuant to subsection (b), the Secretary shall adopt criteria and operating plans separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968 and shall exercise other authorities under existing law, which shall ensure that Glen Canyon Dam is operated in a manner consistent with section 1002 of this title. Yearly thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report, separate from and in addition to the report specified in section 602(b) of the Colorado River Basin Project Act of 1968, on the preceding year and the projected year operations undertaken pursuant to this title. In the process of preparing the criteria and annual plans of operation described in said section 602(b) and in this section, the Secretary shall consult with the Governors of the Colorado River Basin States and with the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(d) Upon implementation of long-term operations under subsection (c) of this section, the Secretary shall submit to the Congress the environmental impact statement described in subsection (a) and a report describing the long-term operations and other reasonable mitigation measures taken to protect, mitigate adverse impacts to, and improve the condition of the natural, recreational, and cultural resources of the Colorado River downstream of Glen Canyon Dam.

SEC. 1005. LONG-TERM MONITORING.

The Secretary shall establish and implement long-term monitoring programs and activities that will ensure that Glen Canyon Dam is operated in a manner consistent with the requirements of section 1002. Such long-term monitoring shall include any necessary research and studies to determine the effect of the Secretary's actions under subsection 1004(c) of this title upon the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area. These monitoring programs and activities shall be established and implemented in consultation with the Secretary of Energy; the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming; Indian tribes, and the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry and the contractors for the purchase of Federal power produced at Glen Canyon Dam.

SEC. 1006. SAVINGS.

Nothing in this title is intended to affect in any way the allocations of water secured to the Colorado Basin States by any compact, law, or decree. Nothing in this title is intended to affect any Federal environmental law, including, but not limited to the Endangered Species Act, as amended.

SEC. 1007. STUDIES NONREIMBURSABLE.

All costs of preparing the environmental impact statement described in section 1004, including supporting studies, and the long-term monitoring programs and activities described in section 1005 shall be non-reimbursable. The Secretary is authorized to use funds received from the sale of electric power and energy from the Colorado River Storage Project to prepare the environmental impact statement described in section 1004, including supporting studies, and the long-term monitoring programs and activities described in section 1005, except that such funds will be treated as having been repaid and returned to the general fund of the Treasury as costs assigned to power for repayment under section 5 of the Act of April 11, 1956 (70 Stat. 107).

SEC. 1008. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

TITLE XI—IRRIGATION DRAINAGE DEMONSTRATION PROGRAM AND LAKE ANDES-WAGNER/MARTY II PROJECTS, SOUTH DAKOTA

SEC. 1101. DRAINAGE DEMONSTRATION PROGRAM.

(a) The Secretary, acting pursuant to existing authority under the Federal reclamation laws, shall, through the Bureau of Reclamation, and with the assistance and cooperation of an oversight committee (hereafter "Oversight Committee") consisting of representatives of the Bureau of Indian Affairs, Environmental Protection Agency, United States Fish and Wildlife Service, United States Geological Survey, South Dakota Department of Game, Fish and Parks, South Dakota Department of Water and Natural Resources, Yankton Sioux Tribe, and the Lake Andes-Wagner Water System, Inc., carry out a demonstration program (hereafter the "Demonstration Program") in substantial accordance with the "Lake Andes-Wagner-Marty II Demonstration Program Plan of Study," dated May 1990, a copy of which is on file with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(b) The objectives of the Demonstration Program shall include:

(1) development of accurate and definitive means of quantifying projected irrigation and drainage requirements, and providing reliable estimates of drainage return flow quality and quantity, with respect to glacial till and other soils found in the specific areas to be served with irrigation water by the planned Lake Andes-Wagner Unit and Marty II Unit and which may also have application to the irrigation and drainage of similar soils found in other areas of the United States;

(2) development of best management practices for the purpose of improving the efficiency of irrigation water use and developing and demonstrating management techniques and technologies for glacial till soils which will prevent or otherwise ameliorate the degradation of water quality by irrigation practices;

(3) investigation and demonstration of the potential for development and enhancement of wetlands and fish and wildlife within and adjacent to the service areas of the planned Lake Andes-Wagner Unit and the Marty II Unit through the application of water, and other management practices;

(4) investigation and demonstration of the suitability of glacial till soils for crop production under irrigation, giving preference to crops that are not eligible for assistance under programs covered by title V of the Agricultural Act of 1949 (7 U.S.C. 1462 et seq.) or by any successor programs established for crop years subsequent to 1990.

(c) Study sites shall be obtained through leases from landowners who voluntarily agree to participate in the Demonstration Program under the following conditions:

(1) rentals paid under a lease shall be based on the fair rental market value prevailing for dry land farming of lands of similar quantity and quality plus a payment representing reasonable compensation for incoveniences to be encountered by the lessor;

(2) the Secretary will:

(A) supply all water, delivery systems, pivot systems and drains;

(B) operate and maintain the irrigation system;

(C) supply all seed, fertilizers and pesticides and make standardized equipment available;

(D) determine crop rotations and cultural practices;

(E) have unrestricted access to leased lands;

(3) the Secretary may contract with the lessor and-or custom operators to accomplish agricultural work, which work shall be performed as prescribed by the Secretary;

(4) no grazing may be performed on a study site;

(5) crops grown shall be the property of the United States; and

(6) at the conclusion of the lease, the lands involved will, to the extent practicable, be restored by the Secretary to their pre-leased condition at no expense to the lessor.

(d) The Secretary shall offer crops grown under the Demonstration Program for sale to the highest bidder under terms and conditions to be prescribed by the Secretary. Any crops not sold shall be disposed of as the Secretary determines to be appropriate, except that no crop may be given away to any for-profit entity or farm operator. All receipts from crop sales shall be covered into the Treasury to the credit of the fund from which appropriations for the conduct of the Demonstration Program are derived.

(e) The land from each ownership in a study site shall be established by the Secretary as a separate farm. Each such study site farm will, during the demonstration phase of the Demonstration Program, annually receive planted and considered planting credit equal to the crop acreage base established for the farm by use of crop land ratios when it became a separate farm without regard to the acreage actually planted on the farm. Establishment of such study site farms shall not entitle the Secretary to participate in farm programs or to build program base.

(f) The Secretary shall periodically, but not less often than once a year, report to the Committee on Interior and Insular Affairs

of the House of Representatives, to the Committee on Energy and Natural Resources of the Senate, and to the Governor of South Dakota concerning the activities undertaken pursuant to this section. The Secretary's reports and other information and data developed pursuant to this section shall be available to the public without charge. Each Demonstration Program report, including the report referred to in paragraph (3) of this subsection, shall evaluate data covering the results of the Demonstration Program as carried out on the six study sites during the period covered by the report together with data developed under the wetlands enhancement aspect during that period. The demonstration phase of the Demonstration Program shall terminate at the conclusion of the fifth full irrigation season. Promptly thereafter, the Secretary shall:

(1) remove temporary facilities and equipment and restore the study sites as nearly as practicable to their pre-lease condition. The Secretary may transfer the pumping plant and/or distribution lines to public agencies for uses other than commercial irrigation if so doing would be less costly than removing such equipment;

(2) otherwise wind up the Demonstration Program; and

(3) prepare a concluding report and recommendations covering the entire demonstration phase, which report shall be transmitted by the Secretary to the Congress and to the Governor of South Dakota not later than April 1 of the calendar year following the calendar year in which the demonstration phase of the Demonstration Program terminates. The Secretary's concluding report, together with other information and data developed in the course of the Demonstration Program, shall be available to the public without charge.

(g) Costs of the Demonstration Program funded by Congressional appropriations shall be accounted for pursuant to the Act of October 29, 1971 (85 Stat. 416). Costs incurred by the State of South Dakota and any agencies thereof arising out of consultation and participation in the Demonstration Program shall not be reimbursed by the United States.

(h) Funding to cover expenses of the Federal agencies participating in the Demonstration Program shall be included in the budget submittals for the Bureau of Reclamation. The Secretary, using only funds appropriated for the Demonstration Program, shall transfer to the other Federal agencies funds appropriated for their expenses.

SEC. 1102. PLANNING REPORTS—ENVIRONMENTAL IMPACT STATEMENTS.

(a) On the basis of the concluding report and recommendations of the Demonstration Program provided for in section 1101, the Secretary shall comply with the study and reporting requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof with respect to the Lake Andes-Wagner Unit and Marty II Unit. The final reports prepared under this subsection shall be transmitted to the Congress simultaneously with their filing with the Environmental Protection Agency.

(b) Each report prepared under subsection (a) shall include a detailed plan providing for the prevention, correction, or mitigation of adverse water quality conditions attributable to agricultural drainage water originating from lands to be irrigated by the Unit to which the report pertains and shall be accompanied by findings by the Secretary and the Administrator of the Environmental Protection Agency that the Unit to which the report pertains can be constructed, operated and maintained so as to comply with all applicable water quality standards.

(c) The construction of a Unit may not be undertaken until the final report pertaining to that Unit, and the findings referred to in subsection (b) of this section, have lain before the Congress for not less than 120 days and the Congress has appropriated funds for the initiation of construction.

SEC. 1103. AUTHORIZATION OF THE LAKE ANDES-WAGNER UNIT AND THE MARTY II UNIT, SOUTH DAKOTA.

Subject to the requirements of section 1102 of this title, the Secretary is authorized to construct, operate, and maintain the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota, as Units of the South Dakota Pumping Division, Pick-Sloan Missouri Basin Program. The Units shall be integrated physically and financially with other Federal works constructed under the Pick-Sloan Missouri Basin Program.

SEC. 1104. CONDITIONS.

(a) The Lake Andes-Wagner Unit shall be constructed, operated, and maintained to irrigate not more than approximately forty-five thousand acres substantially as provided in the Lake Andes-Wagner Unit Planning Report-Final Environmental Impact Statement filed September 17, 1985, supplemented as provided in section 1102 of this title. The Lake Andes-Wagner Unit shall include on-farm pumps, irrigation sprinkler systems, and other on-farm facilities necessary for the irrigation of not to exceed approximately one thousand seven hundred acres of Indian-owned lands. The use of electric power and energy required to operate the facilities for the irrigation of such Indian-owned lands and to provide pressurization for such Indian-owned lands shall be considered to be a project use.

(b) The Marty II Unit shall include a river pump, irrigation distribution system, booster pumps, irrigation sprinkler systems, farm and project drains, electrical distribution facilities, and the pressurization to irrigate not more than approximately three thousand acres of Indian-owned land in the Yankton-Sioux Indian Reservation, substantially as provided in the Marty II Unit Planning Report-Final Environmental Impact Statement referred to in section 1102 of this title.

(c) The construction costs of the Lake Andes-Wagner Unit allocated to irrigation (both those assigned for return by the water users and those assigned for return from power revenues of the Pick-Sloan Missouri Basin Program) shall be repaid no later than forty years following the development period. Repayment of the construction costs of the Marty II Unit allocated to irrigation shall be governed by the Act of July 1, 1932 (47 Stat. 564 Chapter 369; U.S.C. 386a).

(d) Indian-owned lands, or interests therein, required for the Lake Andes-Wagner Unit or the Marty II Unit may, as an alternative to their acquisition pursuant to existing authority under the Federal reclamation laws, be acquired by exchange for lands or interests therein of equal or greater value which are owned by the United States and administered by the Secretary or which may be acquired for that purpose by the Secretary.

(e) For purposes of participation of lands in the Lake Andes-Wagner Unit and the Marty II Unit in programs covered by title 5 of the Agricultural Act of 1949 (7 U.S.C. 1461 et seq.) the crop acreage base determined under section 504 of such Act (7 U.S.C. 1464) and the program payment yield determined under section 506 of such Act (7 U.S.C. 1466) shall be the crop acreage base and program payment yield established for the crop year immediately preceding the crop year in which the development period for each Unit is initiated. For any successor programs established for crop years subsequent to 1990, the acreage and yield on which any program payments are based shall be determined without taking into consideration any increase in acreage or yield resulting from the construction and operation of the Units.

(f) Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the facilities authorized by this section shall be concurrent with construction of the Unit involved and shall be on an acre-for-acre basis, based on ecological equivalency. In addition to the fish and wildlife enhancement to be provided by the fish rearing pond of the Lake Andes Unit, other facilities of that Unit may be utilized to provide fish and wildlife benefits beyond the mitigation required to the extent that such benefits may be provided without increasing costs of construction, operation, maintenance or replacement allocable to irrigation or impairing the efficiency of that Unit for irrigation purposes.

SEC. 1105. INDIAN EMPLOYMENT.

In carrying out sections 1101, 1103 and 1104 of this title, preference shall be given to the employment of members of the Yankton-Sioux Tribe who can perform the work required regardless of age (subject to existing laws and regulations), sex, or religion, and to the extent feasible in connection with the efficient performance of such functions training and employment opportunities shall be provided members of the Yankton-Sioux Tribe regardless of age (subject to existing laws and regulations), sex, or religion who are not fully qualified to perform such functions.

SEC. 1106. FEDERAL RECLAMATION LAWS GOVERN.

This title is a supplement to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts supplemental thereto and amendatory thereof). The Federal reclamation laws shall govern all functions undertaken pursuant to this title, except section 1110, and as otherwise provided herein.

SEC. 1107. COST SHARING.

(a) In General. The Proposal dated September 29, 1987, supplemented October 30, 1987 (on file with the Committee on Interior and Insular Affairs of the House of Representatives and with the Committee on Energy and Natural Resources of the Senate), pursuant to which the State of South Dakota (hereafter in this section referred to as the "State") and the Lake Andes-Wagner Irrigation District (hereafter in this section referred to as the "District") would provide funding for certain costs of the Lake Andes-Wagner Unit, and the District would also assume certain responsibilities with respect thereto, is approved subject to the provisions of subsection (b) of this section. The Secretary shall promptly enter into negotiations with the State and the District to conclude an agreement between the United States, the State, and the District implementing the proposal.

(b) The agreement shall include provisions for:

(1) the establishment and capitalization of the non-Federal fund, including, subject to the Secretary's approval, investment policies and selection of the administering financial institution, and including also provisions dealing with withdrawals of moneys in the fund for construction purposes;

(2) the District to administer the design and construction, which shall be subject to the approval of the Secretary, of the distribution and drainage systems for the Lake Andes-Wagner Unit;

(3) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the ring dike, not exceeding $3,500,000, the construction cost, if any, of such dike in excess of that amount being the responsibility of the United States but any such excess cost remains reimbursable, subject to the condition that construction of the ring dike shall not commence earlier than the sixth year of full operation; and

(4) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the Unit's closed drainage system, not exceeding $36,000,000, the construction cost, if any, of the closed drainage system in excess of that amount being the responsibility of the United States but any such excess cost remains reimbursable, subject to the conditions that:

(A) construction of the closed drainage system shall commence not earlier than the sixth year of full operation of the Unit and shall continue over a period of thirty-five years as required by the Secretary subject to such modifications in the commencement date and the construction period as the Secretary determines to be required on the basis of physical conditions; and

(B) the District, in addition to such annual assessments as may be required to meet its expenses (including operation and maintenance costs and any annual repayment installments to the United States) shall, commencing three years after construction of the Unit (other than drainage facilities) has been completed, levee assessments annually of not less than $1.00 per irrigable acre calculated to provide moneys sufficient, together with other moneys in the fund, including anticipated accruals, referred to in paragraph (1), to finance not to exceed $36,000,000 of the construction costs of the closed drainage system.

(C) In the event the detailed plan for the Lake Andes-Wagner Unit referred to in subsection (b) of section 1104 reduces the irrigated acreage of the Lake Andes-Wagner Unit to less than forty-five thousand, the District's maximum obligation hereunder shall be reduced in the ratio that the reduction in acreage bears to forty-five thousand.

SEC. 1108. AUTHORIZATION OF APPROPRIATIONS

(a) Lake Andes-Wagner Unit. There are authorized to be appropriated

(1) The $175,000,000 (October 1989 price levels) for construction of the Lake Andes-Wagner Unit (other than the facilities described in the second sentence of subsection (a) of section 1104 of this title) less the non-Federal contributions as provided in paragraphs (3) and (4) of subsection (b) of section 7 of this title; and

(2) $1,350,000 (October 1989 price levels) for construction of the facilities described in the second sentence of subsection (a) of section 1104 of this title, which amounts include costs of the Lake Andes-Wagner Irrigation District in administering design and construction of the irrigation distribution and drainage systems.

(b) Marty II Unit. There are authorized to be appropriated $24,000,000 (January 1989 price levels) for construction by the Bureau of Reclamation in consultation with the Bureau of Indian Affairs of the Marty II Unit.

(c) Demonstration Program. There are authorized to be appropriated such amounts as may be necessary to carry out the Demonstration Program.

(d) Operation and Maintenance. There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of each Unit.

SEC. 1109. INDIAN WATER RIGHTS.

Nothing in this title shall be construed as affecting any water rights or claims thereto of the Yankton-Sioux tribe.

SEC. 1110. SOUTH DAKOTA BIOLOGICAL DIVERSITY TRUST.

(a) From the sums appropriated under section 1108 of this title for the irrigation drainage demonstration program and the Lake Andes-Wagner Unit and Marty II Unit, if any, the Secretary shall make an annual Federal contribution to a South Dakota Biological Diversity Trust established in accordance with subsection (b) of this section and operated in accordance with subsection (c) of this section. The amount of each such annual contribution shall be for each fiscal year after 1990, 8 percent of the total amount appropriated under section 1108, or 10 percent of the total amount appropriated under section 1108 of this title if a contribution to the Trust equal to 10 percent of all Federal contributions is provided or contracted for by the State of South Dakota from non-Federal funds. Contributions from the State of South Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary. The total Federal contribution pursuant to this title shall not exceed $12,000,000.

(b) A South Dakota Biological Diversity Trust shall be eligible to receive federal contributions pursuant to subsection (a) of this section if it complies with each of the following requirements:

(1) The Trust is established by non-Federal interests as a non-profit corporation under the laws of South Dakota with its principal office in South Dakota.

(2) The Trust is under the direction of a Board of Trustees which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board is comprised of five persons appointed as follows, each for a term of five years:

(A) 1 person appointed by the Governor of South Dakota;

(B) 1 person appointed by each United States Senator from South Dakota;

(C) 1 person appointed by the United States Representative from South Dakota; and

(D) 1 person appointed by the South Dakota Academy of Science.

(4) Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the Board is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occuring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office. Members of the Board shall serve without compensation.

(5) The corporate purposes of the Trust are to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity, its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems.

(c) A South Dakota Biological Diversity Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) the Trust is operated to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity: its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems in accordance with its corporate purpose; and

(2) the Trust is managed in a fiscally responsible fashion by investing in private and public financial vehicles with the goal of producing income and preserving principal. The principal will be inviolate, but income will be used to accomplish the goals of the trust.

(3) Proceeds from the Trust are used for the following purposes:

(A) $10,000 per year or five percent of the total funds expended by the Trust (whichever is larger) will be provided to the South Dakota Natural Heritage Program (currently part of the South Dakota Game, Fish, and Parks Department), to:

(i) Maintain and update the South Dakota Biodiversity Priority Site List.

(ii) Conduct inventory to discover and survey new sites for the Priority Site List.

(iii) Manage data to maintain the Natural Heritage Databases needed to produce and document the Priority Site List.

(B) Up to five percent of the costs of each project are used for preserve design or site planning to ensure that sites are selected for funding which are well-designed to maintain the long-term viability of the significant species and communities found at the site.

(C) Proceeds from the Trust may be used to complete land protection projects designed to protect biological diversity.

(D) Projects may include acquisition of land, water rights or other partial interest from willing sellers only, or arranging management agreements, registry and other techniques to protect significant sites.

(E) Ownership of land acquired with Trust proceeds will be held by the public agency or private non-profit organization which proposed and completed the project, or another conservation owner with the approval by the Board. The land will be managed and used for the protection of biological diversity. If the property is used or managed otherwise, title will revert to the Trust for disposition.

(F) Projects eligible for funding must be included on the South Dakota Biodiversity Priority List and located within the borders of South Dakota.

(G) At the discretion of the Board, Trust proceeds may be used for direct projects costs including direct expenses incurred during project completion. Land project funding may also include the creation of a stewardship endowment subject to the following terms:

(i) Up to 25% of the total fair market value of the project may be placed in a separate endowment.

(ii) The proceeds from the endowment will be used for the ongoing management costs of maintaining the biological integrity and viability of the significant biological features of the site.

(iii) Endowment funds may not be used for activities which primarily promote recreational and economic uses of the site.

(iv) The endowment for each site will be held in a separate account from the body of the Trust and other endowments. The endowments will be managed by the Trust

Board but the owner or manager of the site may draw upon the proceeds of the stewardship endowment to fund management activities with approval of the board. Additional management funds may be secured from other public and private sources.

(H) Should the biological significance of a site be destroyed or greatly reduced, the land may be disposed of but the proceeds and any stewardship endowment will revert to the Trust for use in other projects.

(I) Proceeds from the Trust may be used for management of public or private lands, including but not restricted to lands purchased with Trust funds, except that only those management projects that result in the maintenance or restoration of statewide biological diversity are eligible for consideration.

TITLE XII—FORT HALL INDIAN WATER RIGHTS SETTLEMENT, IDAHO

SEC. 1201. SHORT TITLE.

This title may be referred to as the "Fort Hall Indian Water Rights Act of 1990".

SEC. 1202. DEFINITIONS.

For the purposes of this title, and for no other purposes

(a) The term "Agreement" means the "1990 Fort Hall Indian Water Rights Agreement" between the State of Idaho, the Shoshone-Bannock Tribes, the United States, and other participating parties.

(b) The term "Committee of Nine" means the advisory committee of Water District 01, which is the instrumentality created by the Director of the Idaho Department of Water Resources pursuant to Idaho Code section 42-604.

(c) The term "Final Decree" means the partial decree confirming the Tribal water rights described and quantified in article 7 of the Agreement to be entered after the date of enactment of this title and following submission of the Agreement as provided for in article 10 of the Agreement in Civil Case Numbered 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System.

(d) The term "Fort Hall Indian Irrigation Project" means the Federal project constructed to provide water for the irrigation of Reservation lands and certain ceded lands.

(e) The term "Idaho Water Resource Board" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. article XV, section 7, or any successor agency.

(f) The term "Indian" means any person who is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; is recognized as an Indian under Tribal law; or holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.

(g) The term "Indian lands" means (i) all lands within the exterior boundaries of the Reservation that are held in trust for or owned by the Shoshone-Bannock Tribes or an Indian and (ii) those lands outside the exterior boundaries of the Reservation held in trust for or owned by the Shoshone-Bannock Tribes or held in trust for or owned subject to a restriction on alienation by a member of the Shoshone-Bannock Tribes.

(h) The term "Michaud Act" means the Act of August 31, 1954, chapter 1159, (68 Stat. 1026).

(i) The term "Michaud Contract" means that Memorandum Agreement of April 25, 1957, between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the water supply for the Michaud Division.

(j) The term "Michaud Division" means that division of the Fort Hall Indian Irrigation Project authorized by the Act of August 31, 1954, chapter 1159, Stat. 1026.

(k) The term "Party" or "Parties" means any entity or entities that are party to the Agreement.

(l) The term "Reservation" means the Fort Hall Indian Reservation.

(m) The term "Tribes" or "Tribal" means the Shoshone-Bannock Tribes, its members and its allottees.

(n) The term "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the three dams authorized as Federal Energy Regulatory Commission Project Numbered 1971.

SEC. 1203. FINDINGS.

The purpose of the Fort Hall Indian Water Rights Settlement Act of 1990 is to achieve a fair, equitable and final settlement of all claims of the Shoshone-Bannock Tribes, its members and its allottees and the United States on behalf of the Shoshone-Bannock Tribes, its members and its allottees to water rights in the Upper Snake River Basin.

SEC. 1204. RATIFICATION OF AGREEMENT.

The Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to implement the Agreement on behalf of the United States.

SEC. 1205. PROTECTION OF EXISTING USES.

(a) Contract for Storage Space. The Secretary is authorized and directed to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Committee of Nine for 18,900 acre feet (hereinafter referred to as "AF") of storage space in the Palisades Reservoir and the 80,500 AF of storage space in the Ririe Reservoir: Provided, That the contracting entity makes application for the noncontracted storage space within one year of the date of this title and the contracting party agrees to pay all operation and maintenance costs associated with the space. The repayment obligation associated with the construction costs for such noncontracted storage space is hereby deemed repaid by this title. All exemptions that result from such a repayment shall be deemed to be applicable without further qualification on the part of such contracting entity and: Provided, further, That with respect to subsequent users of this water, the reclamation laws shall apply only to the extent such laws would have applied to such subsequent users prior to the date of this title.

(b) Limitation on Setting Aside Final Decree. Neither the Committee of Nine nor the State shall have the right to set aside the Final Decree because either fails to make application for the storage space referred to in subsection (a) of this section within one year of the date of this title.

SEC. 1206. USE, TRANSFER, AND LEASE OF TRIBAL WATER RIGHTS.

(a) Transfer and Lease of Tribal Water Rights Within the Reservation. The Tribes shall have the right to transfer or lease within the Reservation all or any part of the Tribal water right confirmed in the Final Decree on the terms and conditions set forth in article 7 of the Agreement.

(b) Rental of the Tribes Federal Contract Storage Water. The Tribes shall have the right to rent, pursuant to Idaho Code sections 42-1761 through 42-1765 as specified in article 7 of the Agreement, the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act.

(c) Instream Flows. The Tribes shall have the right to use any or all of the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act for instream flows for river reaches on or adjacent to the Reservation and up to 15,000 AF per year of the storage water rights described in articles 7.1.19 and 7.1.20 of the Agreement for instream flows in reaches of the Blackfoot River on the terms and conditions set forth in article 7.4 of the Agreement.

(d) Requisite Congressional Approval. Ratification of the Agreement as provided for by section 1204 of this title shall constitute the congressional approval, to the extent it is required by Federal law, of the uses described in subsections (a), (b), and (c) of this section.

(e) Amendment of Michaud Act and Contract. The Michaud Act and the Michaud Contract are hereby amended to the extent necessary to authorize the uses described in subsections (a), (b), and (c) of the proprietary rights described in article 7 of the Agreement.

(f) No Alienation or Taxation of Proceeds. The proceeds from leasing water pursuant to subsection (a) of this section or from renting all or any part of the water accruing to the Federal contract storage space pursuant to subsection (b) of this section shall not be subject to any form of taxation or alienation by either the State or the United States.

(g) No Forfeiture, Abandonment, Loss or Constraints on Income. The Tribes' exercise of the rights described in subsections (a), (b), and (c) of this section or nonuse of the Tribal water rights shall in no event be construed or interpreted as any forfeiture, abandonment, relinquishment, or other loss of all or any part of the Tribal water rights. Nor shall the exercise of the rights described in subsections (a) and (b) of this section be subject to any constraints on the amount of income or other compensation received by the Tribes.

(h) Limitation on Off-Reservation Use. Except as authorized by this section, no Tribal water rights or water described in the Agreement may be sold, leased, rented, transferred, or otherwise used off the Fort Hall Indian Reservation.

SEC. 1207. CONTRIBUTION TO SETTLEMENT.

(a) Tribal Development Fund. There is hereby authorized to be appropriated to the United States Department of the Interior Bureau of Indian Affairs $4,000,000 in the first, $3,000,000 in the second, and $3,000,000 in the third fiscal years following the effective date of this title for payment to the Tribal Development Fund, which the Secretary is authorized and directed to establish for the Shoshone-Bannock Tribes. Within sixty days of appropriation of moneys for the Tribal Development Fund, the Secretary shall allocate and make payment to the fund. Once the funds are deposited into the Tribal Development Fund, the Secretary shall disburse the funds to the Tribes upon request.

(b) Reservation Water Management System. There is hereby authorized to be appropriated to the United States Department of the Interior Bureau of Indian Affairs the sum of $3,000,000 in the first, $2,000,000 in the second, and $2,000,000 in the third fiscal years following the effective date of this title for use by the Tribes for development of a

Reservation water management system. Within sixty days of appropriation of moneys for the Reservation water management system, the Secretary shall allocate and make payment to the Tribes for the purposes described in this section.

(c) Acquisition of Lands, Grazing Rights, and Improvements. There is hereby authorized to be appropriated to the United States Department of the Interior, Bureau of Indian Affairs, $5,000,000 for the acquisition of up to 9,800 acres of lands, grazing rights, and related improvements to enhance the operation and management of the Fort Hall Indian Irrigation Project, particularly through increased storage capacity and retention period of the reservoir, and the operation of the National Wildlife Refuge at Grays Lake.

(d) Limitation on Per-Capita Distributions. Under no circumstances may any appropriated funds authorized by subsections (a), (b), and (c) of this section be distributed on a per capita basis to members of the Tribes.

(e) Limitation on Setting Aside Final Decree. Neither the Tribes nor the United States shall have the right to set aside the Final Decree because Congress fails to appropriate the funds authorized by subsections (a), (b) or (c) of this section or because the United States fails to acquire the grazing allotments adjacent to Grays Lake.

(f) Trust Responsibility. Nothing in this title shall be construed or interpreted to alter the future trust responsibility of the United States to the Tribes nor to prohibit the Tribes from seeking additional authorization or appropriation of funds for Tribal programs or purposes.

SEC. 1208. WAIVER OF CLAIMS.

(a) General Authority. Upon the effective date of the Agreement, the Tribes and the United States shall be deemed to have waived and released any and all water rights or claims to water rights of the Tribes, its members and its allottees from any source within the Upper Snake River Basin other than those set forth in article 7 of the Agreement. This release shall not apply to water right claims under state law of Tribal members for lands not defined as Indian lands for purposes of this title nor to any other Indian tribe or to any Federal agency other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(b) Waiver of Claims Against the United States. In consideration of performance by the United States of all actions required by the Agreement and this title, including the congressional authorization, appropriation, and payment of all funds authorized in section 1207 of this title, the Tribes shall be deemed to have executed in return a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by the Agreement and for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir. In the event funds are not paid as set forth in section 1207, the Tribes are authorized to bring an action in the United States Claims Court for such funds plus applicable interest. The United States hereby waives any defense in sovereign immunity to such action.

(c) Waiver of Claims Against Non-Federal Persons. Upon entry of the Final Decree confirming the Tribal water rights, the United States and the Tribes agree not to make any claims against, or seek compensation from, any non-Federal person for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

SEC. 1209. INDIVIDUAL MEMBERS AND ALLOTTEES OF THE TRIBES.

The water rights described in the Agreement and confirmed in the Final Decree are in full satisfaction of all water right claims of members of the Tribes and allottees for Indian lands in the Upper Snake River Basin. If any Tribal member or allottee is decreed a water right for Indian lands in Civil Case Numbered 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, there shall be a corresponding reduction made in the Tribal water rights set forth in the Agreement and the Final Decree.

SEC. 1210. EFFECTIVE DATE.

(a) Disbursement of Funds Upon Effective Date. The monies appropriated pursuant to the authorization in section 1207 of this title shall not be disbursed until such time as the Agreement becomes effective. If the Agreement does not become effective, the monies shall be returned to the General Fund of the Treasury, and the Agreement may be voided by any party to the Agreement.

(b) No provision of this title shall be of any force unless the Agreement becomes effective as provided by article 18 of the Agreement.

SEC. 1211. DISCLAIMER.

(a) General Disclaimer. Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise affect the water rights or water right claims of the city of Pocatello, Idaho or of any Indian tribe, band, or community, other than the Shoshone-Bannock Tribes.

(b) Reservation of Tribal Claims. Nothing in this title shall be construed to waive any water rights or water right claims of the Tribe or the United States on behalf of the Tribes except as set forth in the Agreement. Nor shall anything in the Agreement or this title affect the water rights or water right claims of any Federal agency, other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(c) Reservation of Rights. The parties expressly reserve all rights not granted, recognized or settled by the Agreement or this title.

(d) Disclaimer Regarding Other Agreements. Except as expressly provided in this title, nothing herein shall be considered to amend, construe, supersede or preempt any State law, Federal law, tribal law or interstate compact that pertains to the Snake River or its tributaries.

SEC. 1212. PROTECTION OF TRIBAL WATER RIGHTS.

The Tribal water rights confirmed by the Final Decree shall bind and inure to the benefit of the Tribes and shall not be taken from them absent their consent and payment of just compensation.

AMENDMENT NO. 3191

Mr. BREAUX. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. BRADLEY, proposes an amendment numbered 3191.

Mr. BREAUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. DOMENICI. Mr. President, I rise today in support of titles VIII and IX of H.R. 2567.

Title VIII incorporates the text of S. 1932, which I introduced. It will allow the Bureau of Reclamation to transfer a lake known as Lake 13 to the Vermejo Conservancy District.

Title VIII would clarify a law that I authored in 1980. That law, Public Law 96-550, was designed to defer payments and transfer certain facilities of the Vermejo project from the Bureau of Reclamation to the Vermejo Conservancy District.

In the 1950's the Vermejo Conservancy District and the Bureau of Reclamation entered into a repayment contract that obligated the district to pay the Government $2.1 million for facilities that the Bureau constructed for the Vermejo project. Over the years, the district was unable to make substantial repayments.

Title IV of Public Law 96-550 allowed the district to defer repayment and to obtain the project facilities. Under the law, the Bureau and the district were required to develop an amendatory contract on the repayment and transfer question. In order to protect the interests of the Maxwell National Wildlife Refuge, title IV included language added at the Bureau's request that excluded fish and wildlife lands and any attendant water rights from the transfer to the district. This allowed title to those lands and waters to remain with the United States.

The amendatory contract required under title IV has never reached final approval because an Interior Solicitor's opinion has interpreted the fish and wildlife exception to prevent a transfer of Lake 13 to the district.

Despite the fact that Lake 13 has been a part of the Vermejo project since 1954 and the Maxwell National Wildlife Refuge was not established until 1966, the Solicitor's opinion argues that the use since 1969 of Lake 13 by the Maxwell Refuge under certain contractual arrangements means that the United States "holds" Lake 13 within the meaning of the transfer exception.

While the district does not dispute, and will honor, the contractual right of the United States to use Lake 13 for fish and wildlife purposes, Lake 13 should not fall within the transfer exception to title IV.

Instead, the transfer exception refers to approximately 2,800 acres acquired by the United States from individual landowners for the Maxwell

Refuge, and not to any project facilities acquired by the United States for the Vermejo project.

Lake 13 is an important component of the district's water supply and delivery system. Releases from the lake are used to irrigate much of the 7,400 acres in the Vermejo project.

Control of this integral part of the district's water system should rest with the district. Transferring Lake 13 to the district would permit more efficient operation of the Vermejo Conservancy District. In addition, this transfer is justified because the district has made a significant investment in Lake 13 by undertaking costly improvements and repairs to the lake.

Mr. President, title VIII is needed to correct the erroneous interpretation by the Department of the Interior of title IV of Public Law 96-550. It clarifies that Lake 13 should be transferred to the district under title IV and also requires that the district continue to honor its contractual agreements with the Maxwell National Wildlife Refuge.

Title IX of H.R. 2567, which incorporates the text of S. 1590, would transfer certain rights-of-way of the Rio Grande project to the Elephant Butte Irrigation District.

The Elephant Butte Irrigation District made its final payment for its portion of the construction of the Rio Grande project in 1971 and has operated the New Mexico component of the Rio Grande project since 1979.

The Bureau of Reclamation has transferred some of the facilities of the New Mexico component of the Rio Grande project to the district. Title IX would transfer all the remaining project facilities, consisting of rights-of-way back to the district. These rights-of-way were either paid for by the local users or donated by them to the United States.

The transfer proposed by title IX would promote more efficient operation and maintenance of the district. It is consistent with the directives of the 1902 Reclamation Act and a contract entered into by the Bureau and the district in 1979.

Mr. McCAIN. Mr. President, I want to express my strong support for the legislation now before the Senate. The bill contains a number of provisions which are vital to our Nation and the State of Arizona. In particular, H.R. 2567, includes the Grand Canyon Protection Act, a bill I introduced earlier this summer along with my colleagues Senator DECONCINI and Senator BRADLEY.

This legislation seeks to remedy a critical environmental problem facing our Nation's most precious natural treasure—the Grand Canyon. The problem I refer to is the continued degradation of natural resources within the canyon due to current operational practices at Glen Canyon Dam—a structure located on the Colorado River, 30 miles upstream from Grand Canyon National Park.

In a report released in January 1988, the Department of the Interior, determined that certain aspects of dam operations, particularly irregular water releases used to produce hydro-electric peaking power, are having a substantial adverse impact on a variety of downstream environmental and recreational resources, including resources within Grand Canyon National Park. The affected resources include Colorado River beaches, endangered fish species, a blue-ribbon trout fishery and white water river rafting. The scientific bases for the Department's findings are well a part of the record and are described in detail in the technical reports and executive summaries published by the Department of the Interior. Therefore, I will not reiterate those findings here. I recommend the documents to anyone would like to acquaint themselves further with the impacts of dam operations.

The question is what are we going to do to solve the problem? The Grand Canyon Protection Act includes four primary objectives in the effort to remedy these adverse impacts, and to preserve the park's resources for the enjoyment of this and future generations. First, the bill requires the Secretary of the Interior, as manager of the dam, to ensure that dam operations protect, mitigate damages to and, if possible, improve the condition of the natural resources of the Grand Canyon.

Second, the bill provides for the timely completion of an environmental impact statement of the dam operations. This study will provide the Secretary with the scientific data he needs to make responsible operational decisions and to fulfill his duty to protect the canyon.

Third, because the EIS process is expected to take up to 3 years to complete, the bill calls on the Secretary to implement protective interim-flows to mitigate adverse environmental impacts while the search for long-term solutions is underway. Finally, the bill requires the Secretary to develop and implement a long-term monitoring program to ensure we continue to meet our stewardship responsibilities in the future.

Mr. President, I know many of my colleagues have been to the Grand Canyon and understand just what a special place it is. I will refrain from trying to describe its inspiring beauty and its timeless significance as the crown jewel of our Nation's natural heritage. As I've said before, I find such an endeavor an impossible task and doubt whether there are words in the English language to accomplish it. Anyone who has beheld a sunrise at Navajo Point, hiked the backcountry on the Tanner Trail or run the rapids at Lava Falls understands the frustration of trying to describe the indescribable, so I shall not try.

Suffice it to say the Grand Canyon is a unique and irreplaceable gift, not just to Arizonans or Americans, but to all the people of the world—past, present, and future. Passage of this legislation is vital if we are to meet our obligations to the canyon and to those for whom we hold it in trust.

Let there be no mistake, Glen Canyon Dam has provided and will continue to provide many benefits—clean and dependable energy to light countless homes and to help power the region's tribal, municipal, and industrial growth; water for people to survive and for our crops to grow, and recreational opportunities for millions. The mighty Colorado and the Glen Canyon Dam have provided us with very special gifts indeed—supporting a wide array of interests and uses. This legislation does not suggest that we forego these innumerable benefits. In fact, the bill states categorically that the dam's water storage and delivery functions shall not be interefered with. This legislation merely ensures that we put our priorities back into perspective. It will see that we do not allow our constructive use of one important resource to become an abuse of another—particularly the Grand Canyon.

The legislation now before the Senate is somewhat different than the bill Senator DECONCINI had offered earlier this year. Following the introduction of Senate bill 2807, we heard from a variety of interest groups who expressed concerns and suggested changes to the legislation. In response, last August, I convened a meeting in my Phoenix office with representatives of the various interest groups including environmental organizations, and representatives of public power and water interests.

At the meeting all parties had the opportunity to express their views about the virtues and shortcomings of the legislation as they perceived it. Many valid points were made and I challenged these groups to work together in an attempt to achieve a consensus bill which would ensure the highest standards of protection for the Grand Canyon, in a manner which would be fair and reasonable to all. I am, indeed, very proud to say that these groups including the Grand Canyon Trust, the Sierra Club, the National Wildlife Federation, the Colorado River Energy Distributors Association, the American Public Power Association, and water representatives from the upper and lower basin met that formidable challenge. Together they worked out an agreement which the Energy Committee incorporated into the bill now before the Senate.

Their task was not an easy one. Many diverse and sometimes contra-

dictory interests were at stake. But through resolve, cooperation, and commitment, they succeeded. Those who participated deserve our gratitude and congratulations. As I said, the bill upholds the highest standards of canyon protection, but ensures that decisions on how to accomplish that end will be made in a manner which is equitable and fair.

In conclusion, I would like to remember Theodore Roosevelt, one of the first and most dedicated supporters of the Grand Canyon. It was almost 90 years ago, that President Roosevelt stood at the edge of the Grand Canyon and marvelled at the magnificence he beheld. Moved by its grandeur, the President admonished those assembled. "Leave the Canyon as it is," he said, "You cannot improve on it, the ages have been at work on it, and man can only mar it. What you can do is to keep it for your children, your children's children, and for all who come after you."

Those simple words articulate the responsibility with which we—the present day stewards of the Grand Canyon—have been vested. Passage of this legislation will enable us to fulfill that responsibility faithfully.

FANNIN-MCFARLAND AQUEDUCT

Mr. President, as I said, H.R. 2567 includes a number of provisions of particular and compelling interest to Arizona. The first is legislation originally introduced in the Senate by Senator DECONCINI and I to rename the Salt-Gila Aqueduct of the central Arizona project the Fannin-McFarland Aqueduct, in honor or Arizona's own Paul Fannin and Ernest McFarland.

The renaming of the 58-mile Salt-Gila Aqueduct of the central Arizona project is a proper tribute to these great Arizonans and Americans who devoted most of their lives to public service. Their contribution to the CAP and to the welfare of Arizona will never be forgotten.

Over a span of more than 20 years these two statesmen and visionaries worked tirelessly at home and in the halls of Congress to make the dream of the central Arizona project a reality. Without their leadership, expertise and unfailing commitment to service, the CAP simply would not be.

Ernest McFarland was elected to the Senate in 1940 and served as majority leader from 1949 to 1953. He jointed the late distinguished Senator Carl Hayden in 1947 in introducing the first CAP authorization bill on which hearings were held. In the following Congress, the two Senators reintroduced the legislation which subsequently passed the Senate. It would be almost two decades, however, before the fight for the CAP finally would be won.

After his distinguished Senate career, Senator Ernest McFarland returned to Arizona and became Governor McFarland, and then later Chief Justice McFarland of the State supreme court.

Life long leadership and service are the trademarks of Ernest McFarland and Paul Fannin both as public figures and as human beings. Paul Fannin served as Governor of Arizona from 1958 to 1964. During his tenure in the State capitol, Governor Fannin was instrumental in water resource planning and development always keeping in mind the needs of the future. From his first day in the U.S. Senate in January 1965, Senator Paul Fannin dedicated himself to winning congressional approval of the CAP—the largest reclamation project in history. After 3 years of ceaseless work and advocacy for the project, the CAP was authorized and became law on September 30, 1968. With the retirement of Carl Hayden in 1968, Senator Fannin became a key figure in securing the annual funding needed to build the CAP. He retired from the Senate in 1977.

I would like to remember the words of Senator Mike Mansfield who said of Paul Fannin—

> During his two terms in the Senate he has been known to all of us here as the rare kind of man that it is always a pleasure to work with: He is that anomaly among politicians—a self-effacing man, never one to seek the limelight. He is a man who will work quietly and tirelessly to enact his legislation. A dynamic man, he is also one who cooperates, who listens and whose word is his bond. His sense of honor and integrity is an integral part of his personality. In fact, the name, Paul Fannin, and the word, integrity, are almost synonymous.

What more honorable legacy can one leave.

After his retirement from the Senate, his interest in water resources development never diminished. Shortly after returning to Arizona, he was elected to the board of the Central Arizona Water Conservation District, the State entity responsible for operating the CAP and repaying to the U.S. Treasury the costs of the project. Senator Fannin recently retired from the CAWCD board where his selfless leadership has left its mark for many generations to come.

Paul Fannin and Ernest McFarland have brought life to more than the engineering miracle known as the CAP, they have brought life to Arizona and to the dreams of countless Arizonans. What a gift these statesmen and gentlemen have left to this and the future generations. This humble tribute of naming a leg of the CAP in their honor will ensure that their contribution will never be forgotten.

While memorializing the fruits of their labor in the concrete of the Fannin-McFarland aqueduct is a fitting gesture, it can never equal the truest symbol of their devotion: the happiness of those whose lives they have touched.

Arizona is proud of you, Paul Fannin and Ernest McFarland, and we thank you.

WASTEWATER RECLAMATION

Finally, Mr. President, I would like to thank the Senate Energy Committee, particularly Senator BRADLEY, for their assistance in incorporating an important wastewater reclamation program in H.R. 2567. Wastewater is a precious and valuable resource which we must learn to use to its fullest potential, particularly in the desert southwest where water supplies are quickly dwindling and demand continues to grow.

The bill authorizes Federal participation in feasibility studies for projects in Phoenix and Tucson, AZ. These studies will lay the groundwork to demonstrate creative means of reclaiming and transporting wastewater for beneficial uses.

Again, I thank the Senate Energy Committee and all Senators. I urge the Senate to approve the legislation.

Mr. BRADLEY. Mr. President, I rise today in support of H.R. 2567, the Reclamation Projects Authorization and Adjustment Act of 1990. This bill, as amended by the Committee on Energy and Natural Resources, and with certain other related amendments, offers the Congress the opportunity to ratify fundamental improvements in Federal water policy and the program of the Bureau of Reclamation.

H.R. 2567 significantly improves the Reclamation Program's responsiveness to the environment. Virtually every title of this bill seeks to prevent or remedy environmental problems caused by or associated with Federal irrigation and water storage projects.

H.R. 2567 would authorize several settlements with Indian tribes whose interests have, over the years, been damaged or ill-served by reclamation facilities.

Finally, H.R. 2567 directs the Bureau of Reclamation to apply its skills and ingenuity to meeting the pressing water supply and water quality needs to the West's growing cities through water reuse programs—a means of serving new needs without taking more water from our precious rivers and streams.

Mr. President, I would like to single out several elements of this bill which are of national significance and mark true milestones in Federal water policy.

Title VII of the bill, which is known as the Truckee-Carson-Pyramid Lake Water Settlement, establishes the framework for resolving almost a century of conflict over the use of the Truckee and Carson Rivers. Title VII will address a situation on the Truckee and Carson which is all too common throughout the West: there are simply too many demands for too little water.

And in this case, the situation is aggravated by the fact that the United States has, over the years, promised the same water over and over to different, competing groups. Title VII aims to unscramble the mess.

Under this title, the waters of Truckee and Carson will be apportioned permanently between Nevada and California; the growing communities of Reno and Sparks will be ensured a drought year water supply; 25,000 acres of vital Pacific flyway wetlands will be protected; endangered and threatened fish species at Pyramid Lake will have new hope for restoration; the Pyramid Lake Paiute and Fallon Paiute-Shoshone Tribes' claims will be resolved; and the beneficiaries of the Newlands Reclamation project will be granted the means to rehabilitate and update their project to serve contemporary needs.

I am particulary pleased that this settlement relies extensively on the use of market transfers and other voluntary exchanges of water rights. Such exchanges will serve as the basic tool to improve the region's water use efficiency and meet emerging needs without drawing more water away from the environment. I want to compliment the settlement's negotiators for using market principles to solve natural resource and environmental problems. This is a relatively new element in water resource management and its use here shows creativity and foresight. In this regard, I want to single out the contributions of Mr. David Yardas of the Environmental Defense Fund, and Mr. Robert Wigington of the Nature Conservancy, both of whom applied their professional skills in the areas of, respectively, economics and law to the effort to reach this settlement.

Mr. President, the text of title VII is complex, but this complexity pales next to the problem that Nevada's senior Senator, HARRY REID, set out to resolve when he began the negotiations 2 years ago that ultimately produced title VII. This landmark settlement was made possible only by Senator REID's unflinching leadership and willingness to take substantial political risks. Passage of this bill will reward Senator REID's determined efforts to achieve an innovative, equitable, and forward looking solution to western Nevada's water problems. Our colleague deserves our respect and the gratitude of the people of Nevada for his hard work, courage, and fair-mindedness.

I would also like to draw my colleagues' attention of title X of H.R. 2567, the Grand Canyon Protection Act. Title X responds directly to reports of environmental damage in the Grand Canyon which has been attributed to Glen Canyon Dam, a Bureau of Reclamation facility located on the Colorado River near the Arizona-Utah border, just upstream of Grand Canyon National Park. Title X directs the Secretary of the Interior to operate Glen Canyon Dam, and exercise other authorities, to remedy the dam's harmful effects on the Grand Canyon, while preserving the dam's interstate and international water storage, allocation, and delivery functions. Title X will send an unequivocal message to the Secretary of the Interior as to the importance that we in the Congress and the American people attach to protection of the Grand Canyon.

Mr. President, title XIV of H.R. 2567 provides the Bureau of Reclamation with new authority to investigate opportunities for wastewater reclamation and reuse. This title is meant to encourage the Bureau to pursue its traditional mission—supplying water in arid regions—through new means. Wastewater reclamation and reuse is a sensible way of making the most efficient use of our already developed water supplies. In many cases, I expect that wastewater reuse programs, while meeting growing human needs, will also aid efforts to restore the environment and protect instream flows.

Passage of H.R. 2567 will shape the direction of western water policy and the program of the Bureau of Reclamation for years to come. Our new direction recognizes the critical importance of protecting the environment, fulfilling long-ignored promises to Indian tribes, restoring the integrity of the Federal Reclamation Program, and meeting the water supply needs of our growing western cities. Mr. President, I am pleased to sponsor this legislation and hope it will win the support of the Congress.

I would like to note that this version of H.R. 2567 faces a very uncertain future in the House. The chairman of the House Subcommittee on Water and Power, Mr. MILLER, has made it clear that western water legislation would not receive the approval of that body unless accompanied by legislation to close loopholes in Federal reclamation law which have permitted some of this Nation's largest landowners to take unfair advantage of taxpayer subsidized irrigation water.

The issue of abuse of the Federal reclamation program has been before this body on numerous occasions over the years. I introduced legislation on this matter, S. 2659, over 6 months ago, and held a hearing on that bill in July. The House passed similar legislation in early June.

Mr. President, due to the objections from the junior Senator from California, Senator WILSON, we are not able to include legislation dealing with these abuses in this package of legislation. The Senator's objection puts in jeopardy legislation containing matters of significant interest to more than a quarter of the Members of this body.

I should note that this package contains many matters of interest and benefit to California. H.R. 2567 would authorize studies leading toward water reclamation and reuse projects for cities such a San Diego, San Jose, Los Angeles and the entire south coast area. These provisions, if passed, should help to alleviate the need for water rationing in those communities. The bill would also provide specific drought relief measures for Santa Barbara, Ventura, and Santa Clara County. This bill contains the terms of an interstate water settlement with Nevada which is vital to migratory waterfowl and endangered fish species. And, while it is not a California issue, per se, the letters I have received as Chairman of the Water and Power Subcommittee indicate that many Californians strongly support the provisions of this bill which would protect the Grand Canyon from the damaging impacts of Glen Canyon Dam.

Mr. President, I hope for the best regarding the future of this legislation, but am concerned that the removal of its reclamation reform provisions, which are themselves vital and reasonable policy improvements, has severely compromised the future of some of the most progressive and environmentally sound water policy legislation every considered by the Congress.

Mr. REID. Mr. President, I am pleased to see H.R. 2567 pass the Senate today. Title VII of H.R. 2567 provides the legislative framework for settling 80 years of water wars surrounding the Truckee and Carson Rivers and Pyramid Lake in western Nevada. This legislation which is the result of 4 years of negotiations between the affected parties, will—

Equitably allocate waters of the Carson River, Truckee River, and Lake Tahoe, between Nevada, California, and the Pyramid Lake Paiute Tribe;

Implement water supply agreements that will provide 40 years of drought protection for the western Nevada cities of Reno and Sparks;

Improve water supplies and enhance recovery efforts for endangered and threatened species in the Truckee River and Pyramid Lake;

Provide fresh water for disappearing but valuable wetlands in the Lahontan Valley in Nevada, and

Settle outstanding claims by various parties against the Federal Government and State governments thus terminating 80 years of turmoil and decades of litigation.

The agreements contained in this legislation are the product of thousands of hours of negotiations, and represent an effort to solve water wars that have been raging in western Nevada since the turn of the century.

Mr. President, prior to 1902, the mighty but small Truckee River cascaded out of Lake Tahoe and ended in

its natural terminus at Pyramid Lake. Pyramid Lake also occasionally overflowed creating, forming shallow Lake Winnemucca and its associated wetlands which were home to millions of waterfowl. Likewise, the Carson River flowed from its origins in the Sierra Nevadas and terminated in the Carson Sink.

Then in 1902 came the Newlands Project, named after Senator Francis Griffith Newlands, son-in-law of one of the original owners of the Comstock. This project, the first ever of the Bureau of Reclamation, altered radically the basic structure of these two-river systems. The change came with the construction of a canal which diverted water from the Truckee River to reservoir called Lahontan which had originally been constructed to store the waters of the Carson River for use in agricultural irrigation in the Lahontan Valley. By drastically reducing the flows of the lower Truckee River, this diversion resulted in Lake Winnemucca and its wetlands disappearing from the face of the Earth. Also, the level of Pyramid Lake dropped by 70 feet in just four decades, making it impossible for natural spawning runs of the cui ui and Lahontan Cutthroat trout to take place in the Truckee River. This nearly destroyed these two species of fish indigenous to Pyramid Lake. Because the Newlands Project—which benefits from the diversion of water from the Truckee—was a Federal project, the United States has been intimately involved in the battle over Truckee River waters for many years.

As growth naturally came to the fragile high desert of the Reno area, the Truckee's problem spread to include many other water users on the river. In the late 1960's, Stampede Reservoir was constructed by the Federal Government to supply water for Reno and Sparks and other upstream users. However, almost simultaneously with the construction of Stampede, the Federal courts ordered that under the Endangered Species Act all water from Stampede must be used to benefit the endangered species in the Truckee River. Because the remainder of the available storage space on the Truckee system is already fully utilized, Reno and Sparks are without adequate drought protection for their water supply. As I speak, Reno/Sparks is currently in the middle of a major drought, as, of course, are many other areas of western Nevada. Droughts are a common occurrence in the Western United States.

In recent years, the Federal courts have ordered the Interior Department to develop operational plans for the Newlands Project that have significantly reduced the amount of water diverted from the Truckee River. The unintended result of this plan has been to nearly destroy the Stillwater Wildlife Refuge. Stillwater, one of the most important links in the Pacific Flyway and part of the National Shorebird Refuge System, has shrunk from over 50,000 acres of wetlands to scarcely 4,000 acres.

It was against this background of turmoil, agitation, confusion, and discord that I began work on this water settlement.

Of primary interest was the ability to negotiate an agreement allocating the waters of the Carson River, Lake Tahoe, and Truckee River basins between California and Nevada. Efforts to accomplish this date back to the 1880's. Most recently, California and Nevada negotiated an interstate compact which was ratified by the respective state legislatures in 1969. However, this compact was never ratified by Congress. The participants in these negotiations reached back to many of the provisions of the compact and tried to build on foundations originated in the compact. This legislation at long last contains and agreement on the major allocations to California from the three basins. The agreement sets an annual 32,000-acre foot diversion for California from the Truckee with a set of conditions for that diversion; a 23,000-acre foot diversion in the Lake Tahoe basin, and confirms the California allocations under the Supreme Court's Alpine Decree in the Carson River, with some minor modifications.

Two other major goals we had were to assist the endangered species in the Truckee River and the wildlife at Stillwater. The bill contains language directing that improvements be made to the lower Truckee River that improve the chances of successful spawning runs, that provide some additional water supplies, and that directs the Fish and Wildlife Service to complete and implement a recovery program for the species in accordance with the Endangered Species Act.

Title VII of H.R. 2567 also proposes to establish a Federal water purchase program to benefit the wildlife at Stillwater. The direction of the Nevada Department of Wildlife stated during a hearing I conducted on Stillwater that, "losing these wetlands would be the greatest natural resource disaster in Nevada in this century." Under this legislation, the Secretary of the Interior is directed to take such actions as are required to maintain a viable Lahontan Valley wetlands of 25,000 acres. To accomplish this we propose a program to purchase agricultural water from willing sellers for the benefit of the wetlands. The legislation also provides for $9 million of additional purchases with funds provided by the State of Nevada. While these efforts won't return Stillwater to its former stature, it will be enough to maintain a viable refuge, and save nature's original like between Canada and southern areas on the great North American flyway.

One of the key elements to a successful solution to the water problems was to provide some drought year protection for the people living in Reno and Sparks. This turned out to be the most creative part of the settlement. It was discovered that 80 years of court decrees had imposed a totally rigid and inflexible operating structure on the Truckee River that was also very inefficient. The discovery was also made that if we put some efficiency back into the river's operation, we could improve conditions for the cui ui while establiishing a drought reserve for the municipalities. This would be accomplished by making better use of the river's available storage facilities through the exchange of credit waters for both municipal and fishery use and also more timely release of river flows. Importantly, these changes will be made without impairing any water right holder's ability to get the water that they are entitled.

One of the other benefits of this legislation is that it will settle several outstanding claims that are currently in litigation, and will result in an agreement by the parties prohibiting new litigation on the issues solved by this settlement. Mr. President, one of the lawsuits over these water problems took more than 50 years to decide.

In connection with claims settlements, I also want to mention that this legislation settles claims of the Fallon Paiute-Shoshone Tribe against the Federal Government that date from the turn of the century. This is long overdue.

Finally, the legislation provides benefits and incentives to the water right holders in the Newlands project should they choose to settle outstanding differences that they have with the Federal Government over the Government's regulations governing the operation of the project's irrigation system.

Mr. President, the bottom line in this settlement is that it accomplishes a great deal of good for all parties involved without taking one drop of water from anyone on the system. I am convinced that it is the best settlement package that can be put together at this time, and it is the only settlement that has a chance of succeeding. The Senate's action is a major step toward ending the water wars that have plagued western Nevada for the last century.

As a final note I would like to make it clear that the intent of paragraph 710(b)(3) is to require action by the Nevada Legislature to finally resolve the longstanding claims of both the tribe and the State of Nevada to ownership of the beds and banks of Pyramid Lake and the lower Truckee River. I have been assured by both the

tribe and the Nevada attorney general that this is their understanding.

Mr. DASCHLE. Mr. President, I rise today to discuss one provision of the Reclamation Projects Authorization and Adjustment Act of 1990, and to urge adoption of this important bill. The prime sponsor of the bill, Senator BRADLEY, is to be commended for putting together this package and for holding together the fragile alliance of those with very different views of the proper role of reclamation.

There are a variety of aspects of this bill that are extremely important for moving Federal water policy in a direction I think we all want to see it go, and there are several titles in this bill that also address extermely important regional and local needs. The title that I will discuss fits both of these categories.

Title XI of H.R. 2567 authorizes the Irrigation Drainage Demonstration Program and Lake Andes-Wagner/Marty II projects in South Dakota. This title was introduced in the House of Representatives by Representative TIM JOHNSON, and I introduced the Senate bill (S. 2710) with my distinguished colleague from South Dakota, Senator LARRY PRESSLER.

I am proud to say the the Lake Andes-Wagner/Marty II proposal sets a precedent for future water development projects to follow. It represents a concerted effort by the project sponsors, the State of South Dakota, and the Bureau of Reclamation, among others, to develop a much needed and environmentally sound water project. Only through their tireless efforts and with the cooperation of all those involved have we reached the climactic point we find ourselves at today.

In my remarks, I will discuss the genesis of the Lake Andes-Wagner project and the Irrigation Drainage Demonstration Program, and address some of the concerns that have been raised about the projects.

To fully appreciate this moment, it is necessary to go back in time to 1944, when Congress authorized the Pick-Sloan Missouri River Basin Program. The Pick-Sloan Program was designed to provide storage for flood control and navigational benefits to the downstream Missouri River Basin States through construction of mainstream dams in the Upper Missouri River Basin States.

To help compensate the Upper Basin States for the loss of bottomlands resulting from construction of the dams, mainstream water was to be made available for irrigation development of substantial acreage in the Upper Basin States, including South Dakota. For decades now, the downstream states have reaped the flood control, energy, and navigational benefits of the program, while the Upper Basin States have received virtually none of the promised irrigation development.

Several Upper Basin States have been negatively impacted to some degree by mainstream dam construction under the Pick-Sloan Program. The State of South Dakota lost 508,000 acres of Missouri River bottomland as a result of Pick-Sloan dam construction in the State. More than 58,000 acres of these "lost" bottomlands were sacrified by Charles Mix County, host to the Lake Andes-Wagner project. As many of my colleagues are aware, South Dakota has seen very little of the promised development from the 1944 act. The Lake Andes-Wagner/Marty II project would provide partial compensation to the State of South Dakota for loss of the the prime Missouri River bottomlands.

We in South Dakota known that much of what was envisioned in Pick-Sloan is no longer feasible nor even desirable. Priorities change, both locally and nationally. But at the heart of Pick-Sloan, and at the heart of the reclamation system, is a simple goal of bringing help to the small farmers of the arid regions of rural America. These goals have changed little.

Since Pick-Sloan, the people of Charles Mix County, SD, have watched their economic base wither. The population of the project area has declined by 58 percent since 1950. Most of this exodus has been by the young people in the region. Where the were 100 school district, there are now 4. Unemployment in the Yankton Sioux tribe may be as high as 80 percent. Despite fertile soils, farmers in the region find themselves tied to cycle of livestock production and growing programmed crops. All to frequently droughts and crop failures are a painful reality, with 1990 marking the third year of a prolonged drought for the area.

Under these circumstances, it would have been easy for people to give up and leave the area, but they did not. Instead, they decided to figure out how to improve their lot. The Lake Andes-Wagner/Marty II project is a testament to those dedicated and resourceful individuals who have now worked for more than 20 years to turn their their dream into reality. Later in my statement I will try to do more service to these efforts.

The Lake Andes-Wagner/Marty II project was designed with several objectives in mind:

To bring reliable water to the small farmers of the region, including the Yankton Sioux tribe, so they could diversify into higher value specialty crops;

To make the project as cost effective as possible both to local and state interests, and to the federal government;

To protect and enhance the environment; and

To return the reclamation system to its original ideals of helping the family farmer in a cost effective and environmentally sound manner.

The Lake Andes-Wagner/Marty II project is a riverside irrigation project located in southeastern South Dakota. The project does not need large and expensive lifts to get the water to the fields. The reservoir, Lake Francis Case, already exists. It is a small, manageable project irrigating approximately 45,000 acres. The Marty II component would irrigate approximately 3,000 acres belonging to the Yankton Sioux Tribe, whose members are very much in need of economic development. The local sponsors and the State of South Dakota have presented a generous cost-share agreement amounting to more than 25 percent of the $181 million project. Contrary to irresponsible claims by some who have never bothered to read the full bill, $6,974,000 is made available up front when construction begins.

I would like to say more about the economics of the project, as some have made unfair representations about its economic feasibility. Allegations that this project provides a million dollars for every farmer in the region are comparable to saying that the cost of a new school should be divided by its number of students on the first day of class. Everyone from an agricultural state knows that there are far more people involved in a farming operation than the owner of the farm, from dependants to hired workers to service industries that support the agricultural economy. Costs attributed to the project are primarily fixed, one-time costs, that will then be repaid by the project beneficiaries.

According to the Bureau of Reclamation, the repayment capability for the project is $137.40 per acre. Therefore, the project will pay for itself in 34 years, which means that the project will need no assistance from Federal hydropower revenues. There are few projects, either existing or planned, that have numbers this good. Moreover, the project has a favorable cost-benefit ratio—notwithstanding claims to the contrary.

Many question the wisdom of authorizing a water project when agricultural production is not a problem in most parts of the Nation. The question of surplus crops and the so-called double subsidy is a legitimate concern that is addressed in the bill. The bill contains an innovative section limiting farm subsidy payments to the dry land value of the crops. I agree that the goal of the project is to provide opportunities outside traditional agricultural practices in the region. But without reliable water, only surplus crops will be grown in the region. With reliable water, farmers can diversify into high-value crops, which local farmers are

already successfully growing in small quantities. There has already been significant economic interest in the area by agricultural processors, and a variety of incentives are in place to promote infrastructure investment.

Finally, the proposed legislation before us today provides not only environmental protection, but also an opportunity for environmental enhancement in South Dakota. All of the parties involved with this proposed project have gone to great lengths to ensure that project development does not significantly disrupt the delicate environmental balance that currently exists within the area. Not only is mitigation for fish and wildlife losses resulting from construction and operation of the project required on an ecologically equivalent acre-for-acre basis, but this legislation goes one step further.

If the project is approved, the South Dakota Biological Diversity Trust would be established. It would include a guaranteed funding source from project appropriations. Up to $12 million would eventually be available for the trust. The purpose of this trust is to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity. The Trust has no condemnation authority, and will work with the State and Federal officials to identify and help protect unique wild places in the State. Clearly, this is an unprecedented step in water development legislation.

Mr. President, almost a year ago, it looked as if the Lake Andes-Wagner/Marty II project would never be built. No sooner had high selenium levels been verified in the Marty II portion of the project than a re-analysis of the Lake Andes-Wagner portion of the project also turned up areas of unacceptably high selenium. No one in South Dakota wants another Kesterson situation in our State.

Through examination of the problem by the Bureau of Reclamation, the U.S. Geological Survey, the Environmental Protection Agency, the U.S. Fish and Wildlife Service and the State of South Dakota, it quickly became evident that no consensus exists about the management of irrigation drainage in varying soil conditions where selenium is present. Because there has been irrigation—from ground water—in the region for more than 30 years with no apparent adverse environmental impacts, the sponsors asked for more research into the issue. The Bureau and others proposed making Lake Andes-Wagner/Marty II a guinea pig. For the first time, a full-scale research program could monitor drainage patterns and manage return flows in a controlled environment.

In addition to the knowledge gained from the research, there will be very tangible benefits for the local environment. Fresh water, not return flows, will be pumped directly into the Lake Andes National Wildlife Refuge, which will greatly enhance the viability of the refuge. Water will also be provided to several areas that were once wildlife havens, but are now waterless depressions in the prairie, including Owens Bay and Red Lake. These enhanced wetland areas will significantly improve wildlife populations throughout the region.

There can be little question that the proposed research is needed. Drainage and return flow management is a problem not only in South Dakota and California, but also in North Dakota, Wyoming, Colorado, and other States with existing irrigation systems or proposed ones, especially those occurring in glacial till or loose soils. Those who trivialize the importance of the program fail to appreciate the growing awareness of protecting the environment in our agricultural regions. Instead of looking for solutions to the problems that face us in the Great Plains, they are, I am afraid, intent upon the region simply becoming a buffalo preserve devoid of any viable economic backbone.

Concern has been expressed that the findings of the study will show environmental problems that should prevent the project from being built but that the momentum of the moment makes us fund a project that should never be built. Such things can happen in Washington, and I appreciate this concern. But it cannot happen with Lakes Andes-Wagner/Marty II. I will explain.

One of the reasons that the project will take several years and almost $30 million to complete is that this is a complicated subject. By definition, it will take time to collect and interpret the data. Because the Bureau of Reclamation, the EPA, the USGS, the Fish and Wildlife Service, and the State of South Dakota must all participate in, and sign off on, the report, it is a near certainty that the final product will be of the highest possible caliber. After reviewing the demonstration report, the Bureau of Reclamation must prepare a new feasibility report for the project, and the project must pass review by the Secretary of the Interior, the Administrator of the EPA, and both Houses of the Congress of the United States before it can move forward.

These are real tests that guarantee that the environment in the region will be protected, and that the costs associated with protecting the environment will not make the project economically infeasible. The role of the EPA was inserted to make sure that all applicable water quality standards will be met. As the agency plays a key role in the design and implementation of the demonstration program, they will be well familiar with the technical aspects of the study and their review of the water quality portions of the project is appropriate and important.

To the project sponsors, the research project comes at a cost. Under the revised bill, the soonest that the full project can start to be built is in 10 years. By the time Leo Holzbauer and other farmers of the region actually start putting Missouri River water on their crops they will have waited at least 35 years for their dream to come true.

Obviously, this goes beyond merely providing South Dakota with a specific water project. As we have been saying all along, the issue at stake is the long-term viability of large portions of rural America.

Agriculture will remain the backbone of the South Dakota economy, and the economy of most of the Great Plains States, for generations to come. For the economic infrastructure to develop in parts of rural America, agriprocessing often require certainties beyond increasingly fluctuating weather cycles. Without appreciable irrigation development, South Dakota, and in particular Charles Mix County, has seen its young people leave their homes on the farm in search of some sort of certainty for the future. This project is not a handout; it is an investment in the future.

Congressional consideration of the Lake Andes-Wagner project is consideration of commitment to rural America. If the Congress favors making the Great Plains a buffalo preserve, as some suggest, then we should forget Lake Andes-Wagner/Marty II and have everyone more into the cities.

If there is to be a future in rural America, as I believe there is, then we must find ways to promote economic development in a cost-effective and environmentally sustainable fashion. That is what Lake Andes-Wagner is all about. This project is what irrigation should be: real need, good economics, small farmers, and innovative solutions to questions like the selenium and double subsidy issues.

Before I conclude, Mr. President, I would like to recognize many people who have been instrumental in navigating the Lakes Andes-Wagner/Marty II down the long and difficult road that has led it to the Senate floor today. My first recognition goes to the distinguished chairman of the Water and Power Subcommittee, Senate BRADLEY, for his willingness to listen and learn about the Lakes Andes-Wagner project, and for his sincere efforts to revitalize the reclamation system.

I would be remiss if I did not also commend the superior staff work of Tom Jensen of Senator BRADLEY's subcommittee staff. Tom Jensen has been the glue that has held this bill togeth-

er, and his willingness to find solutions to seemingly impossible problems has been invaluable.

The technical assistance that was provided to the project from the Bureau of Reclamation is also noteworthy. Roger Patterson, the Bureau's Great Plans regional director, has consistently made a good faith effort to ensure an economical and environmentally-sound irrigation project. The entire Billings regional office is a credit to the Bureau of Reclamation.

Several people in South Dakota deserve special recognition. From the State government to the East River Rural Electric Cooperative, many have rallied to show their support for the Lake Andex-Wagner project. In Charles Mix County, the legions who traveled year after year to Washington in support of the project kept the fire burning when many were tyring to blow it out. Among these foot soldiers were Marc Goldhammer, Gerrit Juffer, Chuck Eitemiller, Dan Svatos, John Uecker, Pat Cerny, Louie Archambeau, Ray Cournoyer, and many others.

Steve Cournoyer, chairman of the Yankton Sioux tribe, has been instrumental in developing the Marty II portion of the project and in finding new ways to help the people of his tribe. He and the non-Indian sponsors have worked well together, and I hope that this spirit of cooperation can continue as the project moves along.

Finally, I must commend Leo Holzbauer, chairman of the Lake Andes-Wagner Irrigation District. A turning point in the legislative history of this project occurred when Leo made a poignant appeal to Senator BRADLEY before the Senate Energy Committee. Leo succeeded in putting a human face on an obscure irrigation project. He was able to demonstrate the need for the project, and the sponsors' commitment to bettering their way of life. Finally, Leo was able to convince people that this project is about people and not water and crops. In showing the tenacity of a pit bull but the sincerity of a Wagner farmer and family man, Leo Holzbauer can take a great deal of the credit for bringing the project to where it is today.

Mr. President, I hope my colleagues will support H.R. 2567.

Mr. WIRTH. Mr. President, H.R. 2567 includes a provision, section 207, which authorizes investigations and the development of corrective action demonstration project plans in the Upper Arkansas Basin in Colorado. It further authorizes the implementation of corrective action demonstration projects which could be initiated in areas which are not listed or proposed to be listed on the National Priorities List [NPL] under the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA].

Mr. President, the Bureau of Reclamation currently has authority to conduct investigations in the Upper Arkansas Basin and is currently proceeding under a memorandum of understanding with the EPA, the Colorado Department of Health, and the Colorado Department of Natural Resources, signed May 14, 1990. Section 207 provides focus to that authority and allows the Bureau to proceed with one or more demonstration projects. Of course, demonstration project plans which would affect a site on the NPL can be developed but would need additional authorization before being implemented.

Mr. President, there may be no higher priority, or better opportunity, to address the insidious drainage that flows from abandoned mines throughout an entire drainage basin. The first and greatest advantage to this approach is that it looks at the whole Upper Arkansas Basin as one hydrologic unit. Second, it brings together the resources and expertise of a number of Federal and State agencies—the Bureau of Reclamation, the EPA, and other Federal agencies, such as the Bureau of Mines, the Geological Service, and the Colorado Department of Health, and the Department of Natural Resources—to develop new technologies and procedures to stop the flow of heavy metals from mining sites that date back over 100 years. The bill, through its cost sharing provision, also encourages the participation of the private sector and I would hope that the agencies will aggressively work to involve the private sector and others with resources and expertise.

Mr. President, the Upper Arkansas Basin is certainly not the only watershed in need of a comprehensive study and plan, but is an ideal place to start. I am pleased that we are able to initiate this program.

I would like to thank the distinguished floor manager, the distinguished ranking member, and their hardworking staff for including this provision in the bill.

Mr. BAUCUS. Mr. President, as the chairman of the subcommittee with jurisdiction over matters relating to endangered species of fish and wildlife, I would like to ask the distinguished chairman of the Subcommittee on Water and Power whether there is anything in title VII of this bill that eliminates or restricts in any way the Endangered Species Act section 7 consultation and re-initiation of consultation responsibilities of the Secretary of the Interior as applied to the Pyramid Lake fishery?

Mr. BRADLEY. Mr. President, I would like to reasure the distinguished chairman of the Environmental Protection Subcommittee that there is nothing in title VII that restricts or diminishes in any way the consultation and re-initiation of consultation responsibilities of Federal agencies with regard to matters contained in that title. This fact is expressly stated in section 710(b)(9) of title VII. Thus, for example, in the case of the Interior Secretary's approval of the operating agreement under section 705(a)(9), the Secretary is first required to find that the agreement is consistent with his consultation responsibilities under section 7(a)(2) of the Endangered Species Act. It is also intended that the operating agreement contain sufficient language to allow the Secretary of the Interior to re-initiate section 7 consultation when required to do so under the provisions of the Endangered Species Act.

Mr. CHAFEE. Mr. President, as the ranking Republican member of the subcommittee with jurisdiction over matters relating to endangered species of fish and wildlife, I also would like to direct a question to the chairman of the Water and Power Subcommittee. In various sections of title VII referene is made to actions undertaken to promote the conservation of the Pyramid Lake fishery. The terms "conserve" and "conservation" are carefully defined terms under section 3 of the Endangered Species Act. Is it your intent that the word "conservation" be given the same meaning in title VII of H.R. 2567 as that term is defined under the Endangered Species Act?

Mr. BRADLEY. Mr. President, if I may respond to the distinguished ranking Republican member of the Environmental Protection Subcommittee, yes, it is my intention that the term "conservation," when applied to the Pyramid Lake fishery, be given the same meaning as that term has been defined under the Endangered Species Act.

Mr. BAUCUS. Mr. President, I would like to ask the distinguished senior Senator from New Jersey whether there is anything in title VII that alters or amends in any way the congressional policy set forth in section 2(c)(2) of the Endangered Species Act?

Mr. BRADLEY. Mr. President, if I may respond, consistent with the disclaimer in section 710(b)(9) of title VII, there is nothing in title VII that amends or modifies the congressional policy set forth in section 2(c)(2) of the Endangered Species Act.

Mr. CHAFEE. Finally, Mr. President, I would like to ask the Senator from New Jersey whether there is anything in title XI of the bill that exempts the demonstration program authorized in that title from compliance with the requirements of the National Environmental Policy Act prior to the initiation of the program?

Mr. BRADLEY. Mr. President, there is nothing in title XI that exempts the demonstration program from complying with the requirements of the Na-

tional Environmental Policy Act prior to its initiation. Although it is anticipated that the requirements of that act would be satisfied with the preparation of an environmental assessment for the program, that decision must ultimately be based upon an objective analysis of the environmental impacts of the proposed demonstration program.

AMENDMENT NO. 3192 TO AMENDMENT NO. 3191

(Purpose: To authorize the Secretary of Agriculture to construct buildings and related facilities on Federally owned land in Skagit County, Washington for plant materials purposes.)

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. GORTON proposes an amendment numbered 3192 to amendment No. 3191.

Mr. CHAFEE. Mr. President, I ask unanimous consent that reading of the amendent be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . (a) The Secretary of Agriculture is authorized to construct buildings and related facilities on Federally owned land in Skagit County, Washington for plant materials purposes.

(b) The total amount of expenditures for the buildings and facilities on the site shall be derived from, and shall not exceed, the amount of money received by the Secretary as cash equilization payments resulting from the exchange of lands in Skagit County and Bellingham, Washington.

Mr. GORTON. Mr. President, the amendment I am offering today addresses research in agriculture. It does not require any appropriations, but nonetheless will play a significant role in allowing the important research our agricultural scientists perform to continue.

The 1982 Supplemental Appropriations Act authorized the Soil Conservation Service in Washington State to exchange land which was becoming increasingly urban at the Bellingham Plant Materials Center for more rural land in Skagit County. The land for land exchange clearly was in the best interest of the SCS as the rural land was better suited for plant materials purposes.

In addition to new land, SCS also received $451,300 as part of the exchange. These funds SCS intended to use to construct a new plant materials center on the acquired land. Unfortunately, while the 1982 supplemental appropriations bill allowed SCS to receive these funds, it did not provide the Soil Conservation Service with the authority to expend them. This was simply an oversight. As a result, these funds have been sitting idle while necessary research is unattended.

My amendment will provide the Soil Conservation Service with authority to expend funds which were acquired as part of the land exchange and thereby will allow for the construction of a new plant materials center in Skagit County, Washington.

I hope my colleagues will join me in supporting this amendment. It has the approval of the Senate Agriculture Committee and the Agriculture Appropriations Subcommittee. This amendment is important to agriculture, not only for Washington State, but for the Nation as a whole.

The PRESIDING OFFICER. If there be no further debate the question is on agreeing to the amendment of the Senator from Washington,

The amendment (No. 3192) was agreed to.

The PRESIDING OFFICER. Is there further debate on amendment 3191, as amended by 3192?

Mr. BREAUX. Mr. President, I have an amendment to the substitute amendment.

AMENDMENT NO. 3193 TO AMENDMENT NO. 3191

Mr. BREAUX. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. CONRAD (for himself and Mr. BURDICK) proposes an amendment numbered 3193.

Mr. BREAUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 403(6) of Public Law 81-874 is amended—

(1) in the third sentence thereof—

(a) in subparagraph (A), by inserting "or" at the end thereof;

(b) in subparagraph (B), by striking the semicolon and "or" inserting in lieu thereof a period; and

(c) by deleting subparagraph (C); and

(2) by striking the fourth sentence thereof and inserting in lieu thereof the following two sentences: "Notwithstanding the previous sentence and solely for the purpose of making payments to local educational agencies described in section 3(h), such term includes any otherwise eligible school authority that was constituted after January 1, 1989 or before January 16, 1990. Section 3(d)(2)(B) shall not apply to agency or authority that benefits from the preceding sentence."

The PRESIDING OFFICER. If there be no further debate the question is on agreeing to the amendment of the Senators from North Dakota.

The amendment (No. 3193) was agreed to.

The PRESIDING OFFICER. Are there further amendments? The Chair hearing none, the substitute amendment (No. 3191) as amended is agreed to.

Mr. HEINZ. Mr. President, the Senate—at long last—is considering H.R. 2567, the Reclamation Projects Authorization and Adjustment Act of 1990. I have been involved in lengthy negotiations to ensure that the bill includes significant reclamation reform measures. We desperately need reclamation reform—to restore fiscal integrity to the reclamation program, foster environmental protection, and promote equity among farmers. This bill contains some reforms—modest reforms—but, frankly, it is a disappointment.

The bill includes two reform measures the junior Senator from Wisconsin and I authored, but it falls short on the most significant reclamation reform, closing the loopholes some farmers have used since passage of the Reclamation Reform Act of 1982 to circumvent restrictions on the delivery of subsidized irrigation water to farms exceeding 960 acres. One 12,345-acre California cotton farm the General Accounting office [GAO] investigated, for instance, reorganized 15 separate landholdings, involving an elaborate network of partnerships, corporations, and trusts, to continue receiving subsidized irrigation water on its excess acreage following passage of the 1982 act. GAO determined that the owners continued to operate the landholdings as a single farm, and cheated the Federal Government of over half a million dollars—$551,000—just in 1987. Nor is this an isolated instance.

Mr. President, some 150,000 farmers depend on irrigation water from Federal reclamation projects. The overwhelming majority are honest, hardworking farmers. They are not ripping off the system. But a handful—such as the one I just mentioned—are. Convoluted schemes to rob the taxpayers blind jeopardize public support for the entire reclamation program. They jeopardize benefits accruing to true family farms that legitimately require Federal assistance.

Another problem with H.R. 2567 is that it does not include any provision to require farmers to pay full-cost rates for their irrigation water if they use it to grow surplus crops. Reclamation farmers grow surplus crops on roughly 37 percent of the 10 million federally irrigated acres in the West. We have to reconcile contradictory reclamation and agriculture policies. The first encourages production; the second discourages it.

Nonetheless, I will support the measure—reluctantly—because it contains some reform, and I am optimistic the bill will be improved in conference.

The first reclamation reform provision the junior Senator from Wisconsin and I authored—section 1506 of title XV—provides that henceforth, cost-benefit analyses of future reclamation projects or additions to current projects include calculations using prices for agricultural commodities free of the effects of various Federal subsidies. In other words, we will be able to determine whether proposed projects or additions really make economic sense.

The other reclamation reform the junior Senator from Wisconsin and I authored—section 1507 of title XV—ensures that water contract terms guarantee repayment of some capital—construction—costs as well as current operation and maintenance [O&M] costs. Under reclamation law, construction costs associated with the irrigation feature of a reclamation project are apportioned to farmers based on their "ability to pay". The balance of the irrigators' construction costs is charged to power users. Of course, the Federal Government borrows money to build the project, and pays interest on that debt. Taxpayers pick up all of the foregone interest, a subsidy CBO estimates at between $33 billion and $70 billion since reclamation construction began at the turn of the century.

Mr. President, the vast majority of irrigation districts do pay their negotiated share of construction costs. But some do not. This is not fair—either to the conscientious districts or to the Nation's taxpayers. I find it galling that some contractors fail to pay any capital costs, such as the Rapid Valley Water Conservancy District in South Dakota. Some even fail to pay O&M costs. And then there is the Vermejo Conservancy District in New Mexico, which has not paid anything since 1975! Those who "game the system" jeopardize funding for the districts attempting to meet their obligations. My amendment would correct such abuses.

These reform provisions are significant, but there are others to adopt, too. First and foremost, title XVI of the version of H.R. 2567 the House of Representatives passed on June 14 has much stricter provisions regarding 960-acre loopholes. And it addresses the "double subsidy" issue I addressed a moment ago. The Department of Agriculture estimates that in 1986, certain reclamation farmers received $66.5 million in water subsidies to grow surplus crops for which they received $378.8 million in price and income supports. The House-passed bill requires that farmers must pay full-cost rates for their Federal irrigation water if they use it to grow surplus crops and they receive price and income supports on those crops. I urge the Senate conferees on H.R. 2567 to recede to the House on its title XVI provisions.

Two other reforms, which are not contained in this measure and which I will pursue next year, pertain to water service—section 9(e)—contract renewals and excess land sales.

In the aggregate, reclamation reform amendments are designed to direct reclamation policy back to its original—and laudable—mission: to provide the benefits of subsidized irrigation to family farms—not to millionaires or large corporations. The Reclamation Act of 1902 was passed, according to F.H. Newell, the Bureau of Reclamation's first commissioner, "not to irrigate the lands which now belong to large corporations * * * not to make these men wealthy; but * * * to bring about a condition whereby that land shall be put into the hands of the smaller owner."

The amount of irrigated acreage continues to grow, but the number of irrigated farms peaked 35 years ago and has declined ever since. The concentration of farmers receiving ever-larger irrigation benefits has attendant social consequences. Prof. Walter Goldschmidt's pioneering work in the 1940's delineated the correlation between farm size and community well-being in California. Communities surrounded by large farms had poorer social conditions than communities surrounded by smaller farms.

Prof. Dean MacCannell refined and extended the study throughout the Sunbelt in the 1980's. He confirmed the inverse relationship between farm size and community well-being.

More recently, a study by Don Villarejo and Judith Redmond on the California Central Valley reported that "while agriculture flourishes, much of the populace in the Central Valley live in poverty." "Missed Opportunities—Squandered Resources: Why Prosperity Brought by Water Doesn't Trickle Down in the California Central Valley," California Institute for Rural Studies, 1988. Villarejo and Redmond uncovered "a pervasive pattern involving considerable effort on the part of large operations—to circumvent—the Reclamation Reform Act of 1982 goal of assisting family-scale farms."

Mr. President, Federal reclamation benefits accrue to just 5 percent of the Nation's farmers, in 17 States. If Federal reclamation policy is to enjoy the support of the Senate—particularly in an era of crippling budget deficits—it must be fiscally responsible, it must foster environmental protection, and it must be true to its original social purposes. Resistance to incremental reform all but guaranteed more drastic measures as the costs—and abuses—of reclamation become more and more apparent. The reform measures we are about to adopt modestly move reclamation policy toward fiscal, environmental, and social soundness. But we need to do more. Next year, I hope we will do more.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment, as amended, and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 2567), as amended, was passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. BRADLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I want to thank the distinguished Senator from Idaho for his work on this piece of legislation. I also want to thank all the Senators involved. The legislation affects matters of interest for over a quarter of the U.S. Senate.

Due to the objections of the junior Senator from California [Mr. WILSON], we were not able to include in this package legislation dealing with abuses of the reclamation reform program. I think that endangers the prospect of the package in the conference. But we had to abide by the Senator's wish because one Senator at this stage of the year can block any piece of legislation.

I decided that the overall interest of one-quarter of the Senate requires to move ahead with this legislation at this time. I thank all Senators who have been helpful. In particular, I want to thank the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho [Mr. MCCLURE] is recognized.

Mr. MCCLURE. Mr. President, I thank the distinguished Senator from New Jersey for the comments he just made. It has been perhaps as tough an effort as I have undertaken in the long while in the last 10 days to come to some kind of closure on the reclamation reform aspect of this legislation. I think the Senator from New Jersey has taken the only course that could be taken at this stage in the session in order to try to get something passed.

For those who believe that somehow the House will act without reclamation reform we can, indeed, hope that

they will because I think it is obvious that if anything is done with respect to this legislation in the House dealing with reclamation reform and it is sent back to us, it is almost certainly dead here. I hope that all parties having done their very best to move this legislation can now recognize that this is our very best effort.

I thank the Senator from New Jersey. It is a tremendously complex package that has, as he said, the interest of I think more than a quarter of this Senate in trying to get it done. I hope, indeed, we can get the House of Representatives to accept the results of the work that has been done here. They, of course, are the judges of what they must do, just as we are the judges of what we must do. But if there is to be any legislation, this is it, I think.

I thank the Senator from New Jersey, and I thank all those who worked so hard in trying to find a compromise.

A MEMORIAL OF THE CUSTER BATTLEFIELD NATIONAL MONUMENT

Mr. BREAUX. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 4660, a bill to authorize the establishment of a memorial of the Custer Battlefield National Monument to honor the Indians who fought in the Battle of Little Big Horn and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4660) to authorize the establishment of a memorial at Custer Battlefield National Monument to honor the Indians who fought in the Battle of Little Big Horn, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3194

Mr. BREAUX. Mr. President, I send an amendment to the desk on behalf of Senators BAUCUS and BURNS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX], for Mr. BAUCUS (for himself and Mr. BURNS) proposes an amendment numbered 3194.

Mr. BREAUX. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

1. On page 2, line 21, strike the word "Secretary", and insert the following: "Secretary, in consultation with the advisory commission established pursuant to section 4,".

2. On page 3, line 4, strike the word "Secretary", and insert the following: "Secretary, in consultation with the advisory commission established pursuant to section 4,".

3. On page 3, line 6, strike "section 2.", and insert the following: "section 2 that is compatible with the existing and planned structures in the area.".

4. On page 3, beginning on line 8, strike subsection (c) in its entirety, renumber subsequent sections accordingly, and insert in lieu thereof the following:

SEC. 4. ADVISORY COMMISSION.

(a) COMMISSION.—There is hereby established an advisory commission to be known as the "Battle of the Little Bighorn Indian Memorial Advisory Commission" (hereinafter referred to as the "Advisory Commission"). The Commission shall be comprised of 10 members to be appointed by the Secretary who shall advise the Secretary with respect to the design, siting and planning for the memorial authorized pursuant to section 2 of this Act.

(b) MEMBERSHIP.—The Secretary shall appoint as members of the Commission, persons who have demonstrated an interest in and knowledge of the events of the Battle of the Little Bighorn and efforts to commemorate the Indian people who fought and died in such battle.

(c) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Except with respect to any requirement for reissuance of a charter and except as otherwise provided in this Act, the provisions of the Federal Advisory Committee Act shall apply to the Advisory Commission established by section 4.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3194) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 4660), as amended, was passed.

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the bill as amended, was passed.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONGRATULATIONS TO NEW ZEALAND ON OCCASION OF SESQUICENTENNIAL

Mr. BREAUX. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of Senate Concurrent Resolution 155, expressing the congratulations of Congress to the people of New Zealand on their Sesquicentennial Year; that the Senate proceed to its immediate consideration; that the concurrent resolution be agreed to, and motion to reconsider be laid upon the table.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, this year is the sesquicentennial of New Zealand's principal founding document, the Treaty of Waitangi. It is also the 151st anniversary of United States-New Zealand relations.

For this reason, Senator MURKOWSKI and I are introducing this Senate Concurrent Resolution, "Expressing the Congratulations of Congress to the People of New Zealand on their Sesquicentennial Year." With this resolution we also pay tribute to our deep, and longlasting, relationship with New Zealand.

Since 1839, successive administrations in the United States and New Zealand have shared a wide range of interests and commitments, including respect for human rights, democracy, and the rule of law.

The United States and New Zealand fought together in four wars during this century in defense of common values and beliefs, including in Korea and Vietnam. Many remember the bravery of the Kiwi troops. We can look forward to continued growth and development of American-New Zealand relations as we work toward liberalization of international trade and cooperation on environmental protection.

The treaty of Waitangi was signed on February 6, 1840, by Lt. Gov. Capt. William Hobson and local Maori chiefs. As with many such documents, it became the subject of much future controversy as the Maoris were probably as unclear as the Manhattan Indians in their fabled sale to the Dutch concerning what was being sacrificed on their part. In neither case, none of the parties could foresee what the future held. Therefore, for both, the settlers and the natives, the Treaty of Waitangi represents the beginning of the modern New Zealand state.

Important national elections are about to be held in New Zealand. After the elections, I hope that whatever party forms a new government an effort will be made by both the United States and New Zealand to improve further our relations. This resolution signals Congress' desire for better cooperation on the range of issues—trade, environemnt, and security—which concern us.

I urge adoption of this concurrent resolution.

Mr. MURKOWSKI. Mr. President, I join my distinguished colleague from California, Mr. CRANSTON, as members of the Foreign Relations Subcommittee on East Asian and Pacific Affairs,

in commemorating the 151st anniversary of United States-New Zealand relations, and the sesquicentennial of New Zealand's founding document, the Treaty of Waitangi.

As my colleague from California has clearly pointed out, the United States and New Zealand have a long history of mutual interests and shared goals. In our commitments to democracy, we stand together in the search for freedom and human rights for all nations and peoples of the globe.

The United States and New Zealand have shared the benefits of free market economies, widespread trade opportunities, and a deep concern for protection of the environment. Through these pursuits the entire Pacific rim has grown and prospered.

This concurrent resolution recognizes the history of our nations as friends with shrared concerns and interests and anticipates continued growth and development of United States-New Zealand relations in areas of mutual concern.

Mr. President, I urge my colleagues to adopt this concurrent resolution.

The concurrent resolution (S. Con. Res. 155) was agreed to.

The preamble was agreed to.

The concurrent resolution and its preamble are as follows:

S. CON. RES. 155

Whereas the people of New Zealand are this year commemorating the sesquicentennial of the Treaty of Waitangi, an agreement between the Maori people and British Crown which is modern New Zealand's principal founding document;

Whereas in 1839, one year after the conclusion of the Treaty of Waitangi, the United States appointed Mr. James Clendon to serve as Consul to New Zealand, the first United States diplomatic representative to that country;

Whereas the bilateral relationship established in 1839 has been developed and nurtured by successive administrations in the United States and New Zealand and has been characterized by steady growth in commercial, cultural, and academic contacts between the two countries;

Whereas the United States and New Zealand are friends, with shared history, culture, and values, and a common belief in the fundamental concepts underlying the democratic process;

Whereas the United States and New Zealand have fought together in four wars during this century in defense of common values and beliefs, including two world wars and the conflicts in Korea and Vietnam; and

Whereas the United States and New Zealand continue to have a wide range of common interests and commitments, including respect for human rights, democracy, and the rule of law; growth and liberalization of international trade through the current round of negotiations under the General Agreement on Tariffs and Trade; and regional and international cooperation on issues such as economic development and environmental protection: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That during the sesquicentennial of the Treaty of Waitangi and the 151st anniversary of United States-New Zealand relations, the Congress hereby offers its congratulations to the Government and the people of New Zealand; pays tribute to the United States-New Zealand relationship, which has been characterized by shared history, culture, values, and beliefs; and looks forward to the continued growth and development United States-New Zealand relations on issues of mutual interest, such as trade and the environment.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President and requests that he further transmit such copy to the Government of New Zealand.

SALT LAKE CITY WATERSHED IMPROVEMENT ACT

Mr. BREAUX. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 319.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 319) entitled "An Act to effect an exchange of lands between the United States Forest Service and the Salt Lake City Corporation within the State of Utah, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Salt Lake City Watershed Improvement Act of 1990".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) current land ownership patterns in the Northern Canyons of the Wasatch Mountains east of Salt Lake City, Utah, unnecessaryily impede efficient land and water resource management activities by the Forest Service and Salt Lake City on their respective lands;

(2) the Act of September 19, 1914, reserved Federal lands in the canyons from mineral entry and set them aside as a municipal water supply reserve; or the use and benefit of Salt Lake City;

(3) the 1914 Act futher provides for cooperation between the Forest Service and Salt Lake City in managing the lands for municipal water supply purposes; and

(4) a consolidation of National Forest lands and Salt Lake City lands in the canyon vicinities would be in the public interest and would enhance land management and water resources protection opportunities for both Salt Lake City and the Forest Service.

(b) PURPOSES.—The purposes of this Act are to authorize an exchange of National Forest and Salt Lake City lands and interests to consolidate ownership and facilitate management to adjust boundaries of the Wasatch National Forest accordingly, and to protect vaild existing rights appurtenant to lands and interests subject to conveyance under this Act.

SEC. 3. CONVEYANCE OF LANDS.

(a) IN GENERAL.—The Secretary of Agriculture (hereinafter referrd to as the "Secretary") is authorized and directed to convey certain Federal lands and interests managed by the Forest Service within the State of Utah, and generally as depicted on the map entitled "Salt Lake City—Wasatch National Forest Land Exchange" and dated November 1989, for certain lands and interests owned by the Salt Lake City Corporation (hereinafter referred to as the "City") as generally depicted on such map, along with a legal description of all lands and interests to be conveyed, shall be on file and available for public inspection in the office of the Forest Service, United States Department of Agriculture. The Secretary shall convey such Federal lands and interests to the City only upon the occurrence of all the following:

(1) Publication by the Secretary in the Federal Register of a legal description of all Federal lands and interests to be conveyed to the City pursuant to this Act.

(2) Publication by the Secretary in the Federal Register of a legal description of all Federal lands and interests to be conveyed to the United States pursuant to this Act.

(3) Written notification by the City to the Secretary that the City accepts the provisions of this Act, including subsection (e)(2) and subsection (f).

(4) Delivery to the Secretary by the City of documents of conveyance of the lands and interests to be conveyed by the City.

(5) Delivery to the City and the Secretary of written approval by the Attorney General of the United States of the title to the lands and interests described in documents of conveyance submitted by the City within six months of their receipt by the Secretary.

(b) CONFLICTS.—Conveyance of Federal lands and interests under this Act shall be completed notwithstanding—

(1) the reservations of the Act of September 19, 1914;

(2) withdrawals of lands for the Fort Douglas Military Reservation under the Executive orders dated September 3, 1867, and June 8, 1896, and under the Pickett Act of June 25, 1910 (36 Stat. 847); and

(3) section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(c) ADMINISTRATION.—Lands and interests acquired by the United States pursuant to this Act shall be added to, and administered as part of, the National Forest System under principles of multiple use and sustained yield.

(d) ADJUSTMENT OF BOUNDARIES.—The boundaries of the Wasatch National Forest shall be adjusted as depicted on the map referred to in subsection (a) to reflect the conveyance and acquisition of lands pursuant to this Act.

(e) INTERIM RECOGNITION OF EXISTING RIGHTS.—Valid existing rights appurtenant to lands and interests acquired by the Secretary or acquired by the City pursuant to this Act shall be recognized, protected, and managed by the acquiring government in accordance with the terms and authorities under which such rights were issued until new, similar rights can be issued by the acquiring government—

(1) in the case of lands and interests acquired by the Federal Government, the Secretary shall negotiate with holders of valid existing rights appurtenant to such lands and interests issued by the City and provide such holders of rights new, similar rights under the authority of the Federal Government; and

(2) in the case of lands and interests acquired by the City, the City will negotiate with holders of grazing permits, special use permits (to include easements and rights-of-way), or other valid existing rights appurtenant to such lands and interests issued by the Federal Government and will provide such holders of rights with similar new rights under the authority of the City.

(f) RECOGNITION OF MORMON TRAIL.—The City will recognize the designation of the Mormon Pioneer National Historic Trail over lands which it acquires pursuant to this Act and will manage its lands in a manner consistent with such designation.

SEC. 4. RESTRICTIONS.

(a) RESTRICTIONS ON ADDITIONAL TRANSFER.—The lands and interests transferred to the City or the United States under this Act shall not be conveyed or otherwise transferred to any person or entity other than the United States.

(b) RESTRICTIONS ON EXPLORATION OR DEVELOPMENT.—The lands and interests transferred to the City or the United States under this Act shall not be subject to any form of mineral, energy, or geothermal exploration or development, and shall be used only for purposes consistent with and conforming to the reservations and purposes of the Act of September 19, 1914, and this Act, except for valid existing rights protected under section 3(e).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Mr. BREAUX. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STEWART B. McKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT—CONFERENCE REPORT

Mr. BREAUX. Mr. President, I submit a report of the committee of conference on H.R. 3789 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3789) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the confereees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1990.)

Mr. KENNEDY. Mr. President, today the Senate is considering the conference report of the Stewart B. McKinney Homeless Assistance Act of 1990. The amendments will extend the McKinney Act programs for 3 years and enhance their effectiveness as well as add new initiatives aimed at homelessness prevention. I believe that this piece of legislation is one of the most important ones that we will pass this session.

Homelessness is a scourge on this country. Families with children are the fastest growing segment of the homeless population. There are estimates that place the number of homeless in the United States between a half million and several million. They are families with children, single parents with children, the mentally ill, substance abusers, and runaway youths. The difference between a homeless person and a nonhomeless person is a matter of economic and social support networks. This is a crisis that we can change and that we must change.

The Congress enacted the McKinney Homeless Assistance Act 4 years ago to provide emergency food, shelter, mental health and health care, job training, and education for adults, youth and children. Over the past 4 years, the number of homeless has increased dramatically. It is to our great discredit that this rich Nation should have individuals and families living on its streets. Now more than ever we must pursue efforts to help them out of homelessness and for those at risk of homelessness, avert a tragic situation.

This conference agreement includes several provisions, new and reauthorized, which further current assistance to this population. The education portion of the bill includes a literacy program for adults to aid them in efforts to become employable and self-sufficient. It also includes important changes to educational access for children and youth. Homeless children have been denied the education promised to all young people because they do not have a stable address or cannot afford the transportation to the nearest school. This bill attempts to remove the barriers placed before those children and requires teachers to be aware of, and respect, the specific educational needs of homeless children and youth. If we are to ensure that homeless children do not remain in the cycle of homelessness through adulthood, we must dedicate ourselves to giving them an education equal to those of nonhomeless children.

I am especially pleased to see included in the agreement a new program, the family support centers. Many families live on the edge between housing and homelessness. This program will provide comprehensive support services to enhance the social, physical, educational, and emotional development of low-income families. These services will be provided through family case managers who can address their specific needs so that families can become self-sufficient.

We have also included Senator MIKULSKI's Gateway Program to provide education and training assistance onsite or near to those families living in public housing.

The health needs of homeless individuals also receive important assistance in this bill. The conference report provides housing-based health services to the physically and mentally ill. It includes Senator DOMENICI's PATH provision on projects to aid the transition from homelessness. This provision, cosponsored by Senator DURENBERGER, is especially needed for homeless individuals suffering from mental illness or substance abuse.

Homelessness is our national shame. But it is a problem that we can end if we are willing to help individuals and families by providing the educational, employment, health, and other supportive tools they need. We have waited too long. Now is the time to take meaningful action.

In closing, I want to commend the Senators and their staff members who have worked many hours on this legislation. I would like to extend my appreciation to Senator HATCH and Laurie Chivers, Judy Lewis and Steve Settle of his staff; to Senator DODD and Jacki Ruff and Molly Guth of his staff; to Senator MIKULSKI and Karen Calmeise of her staff; and to Senator DURENBERGER and Carolyn Boos of his staff. I also commend the work of Sarah von der Lippe, Mike Iskowitz, Amanda Brown, Adele Robinson, and Deborah von Zinkernagel of the Labor Committee staff, who have spent a great deal of energy and time on this bill. I would like to thank as well the House Education and Labor Committee members and staff who worked diligently to reach this agreement: in particular, Congressman HAWKINS, Congressman GOODLING, and Gene Sofer and Beth Buehlmann.

I urge the Senate to give their strong support to this conference report.

Mr. GLENN. Mr. President, I would like to take this opportunity to applaud the Senate's pending passage of the conference report on H.R. 3789, the Stewart B. McKinney Homeless Assistance Amendments of 1990. This legislation, which contains in its entirety S. 2886, the Committee on Governmental Affairs' portion of the McKinney Act, will do much to improve the lot of homeless individuals across the country.

I am particularly pleased that the final legislation addresses three programs in my committee's jurisdiction—the Interagency Council on the Homeless, the FEMA Emergency Food and Shelter Program, and the Federal Surplus Real Property Program. H.R. 3789 reauthorizes the Interagency Council for 2 years at $1.2 million and $1.3 million respectively. It also reau-

thorizes the FEMA Emergency Food and Shelter Program for 2 years at a level of $150 million in each of those years. Finally, the conference report makes important changes in what was formerly the Title V Federal Surplus Real Property Program.

Specifically, the agreement mandates deadlines for agency action in the process of making surplus property available for uses to assist the homeless. It also places a hold on property for 2 months during which nothing can be done with the property to ensure its availability for application by representatives of the homeless. Last, H.R. 3789 will allow for surplus property to be deeded to successful applicants under the provisions of the Public Health Benefit Discount Program in section 203(k) of the Federal Property Act. This change ensures that providers who apply for a property can have a reasonable expection of gaining title to it if their application is successful.

Mr. President, once again let me congratulate the Senate for its action on this bill. It is my hope the President will sign this important legislation into law as soon as possible.

Mr. DODD. Mr. President, I wish to urge strong support for the conference report on H.R. 3789, the reauthorization of the Stewart B. McKinney Homeless Assistance Act. This legislation moves Federal policy beyond an emergency response to homelessness. Instead of stopgap measures, the emphasis is on prevention and long-term solutions. I commend Senator KENNEDY, the chairman of the Committee on Labor and Human Resources for his strong leadership in addressing the national tragedy of rising homelessness.

Every night, 100,000 American children go to bed without a place to call home. The fastest growing subgroup among homeless Americans is the family. In my home State of Connecticut, children represent 65 percent of the homeless in affluent Fairfield County. For children in particular, it is more than a home that is missing. They lack health care, stability, security, privacy, joy, dignity—the essential elements of a normal childhood. And without a normal childhood, there will likely be no normal adulthood.

Mr. President, I wish to highlight several provisions in the conference report that focus on children and families.

First, this legislation establishes demonstration grants to prevent the inappropriate separation of children from their families on the basis of homelessness. Last month, I conducted a hearing before the Subcommittee on Children, Family, Drugs and Alcoholism on the subject of child abuse and neglect. A young mother from Connecticut told of almost putting her two children up for adoption, simply because she could not pay rent or otherwise make ends meet, and she desperately wanted her children to have a home. She found the assistance she needed, and the family stayed together. Too many other children are not so fortunate. Experts estimate that 20 to 40 percent of children today enter foster care because of homelessness or housing problems. Child welfare and housing assistance will be more closely linked as a result of this legislation. No child should be placed in out-of-home care simply because the family cannot find housing assistance.

Another provision in the conference report also focuses on helping families stay together. Family resource centers will be funded through a newly established grant program. Families at risk of homelessness will be able to go to these neighborhood centers to obtain supportive, onsite services. Too often, families must travel across cities for assistance such as health and mental health services, family crisis and domestic violence counseling, parenting classes and child care, job training and education. This program would make such services immediately available and would provide the entire range of services to the family as a whole. Such early intervention could prevent many families from becoming homeless. If the difficulties of family violence, substance abuse, unemployment, or inadequate child care can be overcome, then retaining a home will likely be much easier.

Finally, I am very pleased that the conference report includes a provision to improve health care for homeless children, which I introduced as S. 2054 earlier this year. This provision amends the Public Health Service Act to authorize grants to initiate health care outreach programs for homeless children and children at risk of homelessness. These children lack access to health care and are at increased risk of serious health problems as a result of delayed immunizations and undiagnosed or poorly controlled illnesses. Even a common ear infection can result in lasting and severe damage for a homeless child who lacks treatment.

This legislation is modeled on the New York Children's Health project, an exciting program that uses mobile vans to reach the most vulnerable children of New York City and to respond to their particular needs. The principal features of this program could be applied in other cities and rural areas throughout the country where children are at risk. The New York model of mobile outreach is adaptable to virtually any community where children are in need and unable to receive basic health care.

Like the New York project, and other similar comprehensive pediatric outreach and care programs, programs receiving grants will conduct outreach, provide primary health care, and link children and their families to other appropriate services. The programs should be active, preferably mobile, outreach arms of established health systems including hospitals and community health centers. In order to provide the greatest possible assistance to these underserved children, I hope that programs will include in their comprehensive services extensive followup systems, prenatal care, substance abuse prevention and counseling, mental health services, health services for children in foster care and for runaway and homeless youth, and comprehensive care for children with special, disabling, or chronic illness.

One of the strengths of the New York program is its computerized data collection. I hope that grantees will replicate this method of data collection to the extent feasible, in order to ensure consistency in care and to facilitate the tracking of transient families. In addition, I am particularly interested in the evaluation of the efficacy of using mobile medical units to find children and families who otherwise have little or no access to health care. Therefore, I urge the Secretary to collect such data as may be necessary for a thorough evaluation of such outreach.

I appreciate the support of many of my colleagues, especially Senator KENNEDY, chairman of the Committee on Labor and Human Resources, Senator COATS, ranking minority member of the Subcommittee on Children, Family, Drugs and Alcoholism, and Senator BRADLEY who have been particularly helpful around this. I also appreciate the support and consultation from the American Academy of Pediatrics, the National Association of Children's Hosptials and Related Institutions, the Children's Defense Fund, and the National Network of Runaway and Youth Services. Dr. Irwin Redlener, director of the New York Children's Health Project and singer Paul Simon, a long-time supporter of the project, provided valuable advice. Finally, incorporation of this legislation reflects the hard work my staff at the Subcommittee on Children, Family, Drugs and Alcoholism—staff director, Rich Tarplin, Courtney Pastorfield, who first drew my attention to the potential of the mobile van approach, Jackie Ruff, and Molly Guth. I also appreciate the assistance during conference of Nick Littlefield, Michael Iskowitz and Amanda Broun of the Committee on Labor and Human Resources.

Mr. BRADLEY. Mr. President, the legislation before us provides important funding for the homeless. I am particularly pleased that a provision Senator DODD and I introduced is included that funds demonstration outreach projects to provide children with basic health care services. I want to

thank Senator DODD for his tireless efforts to get this legislation enacted.

Today, nearly 1 in 5 children under the age of 18 lives in poverty. This rate is 50 percent higher than in 1969. For many of these children, significant barriers exist for obtaining basic services that would allow them the hope of escaping the chains of poverty. Some are homeless, others neglected and abused. All are deserving of the opportunities that this land of plenty has to offer. But the grim facts show that we're not meeting their needs very well. A country that invented the polio vaccine should not lag behind 14 other countries in the rate of immunization of our children. A country that has one of the highest standards of living in the world should not lag behind 19 countries in preventing infant mortality. A country that can take people to the moon ought to be able to get children to a doctor or doctors to children.

This program will provide up to $5 million a year for demonstration projects to reach children who are at risk, and to provide basic pediatric health services and access to a range of health services. I expect that some of the projects funded will rely upon the use of mobile medical units.

Mr. President, this demonstration program grew out of a remarkable and unique program developed by Paul Simon and run by Dr. Irwin Redlener at the New York Children's Health Project. This remarkable project delivers health care to homeless children through mobile medical vans that reach into the community. It provides children basic care for illnesses, immunizations, health screenings, and assessments as well as an important link for referrals to other medical and support services. In reaching squarely beyond the barriers with early and preventive interventions, programs like this one can make a difference to these innocent victims of poverty and neglect. And with the emphasis on tracking the children who are served, the program conveys the message to these children that they will not be lost again.

Mr. President, earlier this year I met with Paul Simon and Dr. Redlener to discuss this special program and its applicability for other areas. It is my belief that the program could be replicated in other parts of the country if sufficient financial resources can be marshaled.

It is my belief that demonstration programs such as this one could have a major impact in urban areas in New Jersey. Almost half of all poor children in my home State have no public or private health insurance. Many poor children, even those with coverage, do not have access to quality and timely health services. Less than 3 children in 10 under the age of 5 in Newark have received the full recommended course of childhood immunization.

Mr. President, we simply must find better ways to reach out to very poor children to make sure that they receive basic services such as health care. As a nation, we cannot tolerate losing an entire generation of children to neglect and indifference.

Mr. DOMENICI. Mr. President, I am very pleased to report to my colleagues that the conferees on H.R. 3789, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990, have agreed to accept the PATH grants for the homeless mentally ill approved by the Senate as part of the Kennedy-Domenici amendment to the National Affordable Housing Act of 1990.

In PATH grants, we expand the definition of eligible individuals to include homeless individuals with a serious mental illness who are also alcohol and/or drug abusers—dually diagnosed.

The dually diagnosed homeless people are too often left out of mental health treatment programs because they are referred to alcohol or drug treatment programs and then rejected because they also have a serious mental illness. Conversely many are referred to mental health treatment and rejected because they are also substance abusers.

To address this problem in treatment, PATH grants require special conditions to solve this problem. To obtain a PATH grant, a service provider cannot have a policy of excluding mental health services due to the existence or suspicion of substance abuse. Conversely, a provider cannot have a policy of excluding individuals from substance abuse services due to th existence or suspicion of mental illness.

PATH [Projects to Aid the Transition from Homelessness] Grants replace the Stewart B. McKinney Homeless Assistance Act Block Grant Program for Services to Homeless Individuals Who Are Chronically Mentally Ill, part C of title V of the Public Health Service Act.

The treatment and outreach services for the homeless mentally ill and substance abusers in the PATH grant program are expanded compared to those in the current McKinney block grant program.

The fiscal year 1990 authorization level for the Mental Health Block Grants, title VI-B of the McKinney Act is $35 million.

PATH grants, as accepted by the conferees, would authorize $75 million each year for the next 3 years, beginning in fiscal year 1991. Each eligible entity must contribute a local share of 25 percent to match the 75 percent Federal share.

We hope to see more mental health treatment, better housing coordination, and, substance abuse treatment for those homeless people who are also mentally ill. Services included in PATH grants are: Outreach and engagement services; screening and diagnostic treatment services; habilitation and rehabilitation; community mental health services; alcohol or drug treatment services; staff training; case management services; residential support services; referrals to health, job, education and housing services, and minor renovation, expansion, and repair of housing.

The homeless mentally ill can be the most fragile and victimized people in our country. A few are volatile. We know that most who are mentally ill have schizophrenia in its many forms. Some are depressed. Yet others try to hide their mental illnesses by becoming alcoholic or addicted to drugs.

In Albuquerque, Santa Fe, and Las Cruces, NM, the homeless have become more visible and more numerous. The Albuquerque Emergency Care Alliance reports that 29 percent of the homeless individuals that are treated are mentally ill. A third or more are substance abusers.

PATH grants are intended to make a major difference in the lives of the homeless who are mentally ill or those who are mentally ill and are also substance abusers. We truly hope to create pathways from homelessness for these most needy Americans.

A U.S. News & World Report story on January 15, 1990, reports that substance abuse among the homeless is increasing dramatically. The story cites the U.S. Conference of Mayors 27-city survey released in December 1989.

Local officials reporting to the Conference of Mayors are now saying that 44 percent of the homeless are substance abusers.

According to the article, the mayors are also reporting that "since 1986, the numbers of alcoholics and drug addicts have grown faster than other segments of the homeless, with their ranks increasing by almost a third in the last year alone."

One of the most difficult assessments to make when dealing with a homeless person who is an alcoholic or a drug addict is the determination of whether or not there is also an underlying mental illness. In many cases both illnesses are present. These are homeless persons with a dual diagnosis.

Recent studies show that among the general population, drug abusers have the highest likelihood of also having a severe mental disorder—about one-half of drug addicts are thus afflicted.

Among alcoholics in the general population, about a third have a comorbid mental disorder.

Explained in another way, these findings say that an alcoholic is 2.7

times more likely than a nonalcoholic to have a severe mental disorder. A drug addict is 4.5 times as likely as a non-abuser to have an underlying mental disorder.

This type of research finding, while not specifically about the homeless, certainly lends credibility to expanding this source of Federal funds to address these often related and difficult to treat ailments.

HOUSING ASSISTANCE IN PATH GRANTS

To help house PATH grant beneficiaries, funds may be used for minor renovation, expansion, and repair of housing units. An upper limit of 20 percent of any PATH grant can be used for any or all of the following housing activities:

Minor renovation, expansion, and repair;

Planning for better housing;

Security deposits;

One time rental payments to prevent eviction; and

Technical assistance in applying for housing assistance.

Major housing services, like transitional housing, group housing, and single room occupancy housing will be closely coordinated with homeless housing programs of the U.S. Department of Housing and Urban Development.

The larger share of housing assistance for this target group—the homeless mentally ill and substance abusers—will be made available from the Housing titles of the McKinney Act, reenacted in a separate conference report on housing and community development.

As I stated in my colloquy with Senator CRANSTON in the Senate debate on S. 566, the Senate fully intends that the U.S. Department of Health and Human Services and the U.S. Department of Housing and Urban Development make every effort to coordinate the service provisions of the McKinney Act with the housing provisions of the same act, especially for the homeless who are mentally ill.

REQUIRED APPLICATIONS

The intended local uses of PATH grants must be submitted by each of the 50 States and territories in an application to the Department of Health and Human Services' National Institute of Mental Health. This application will define the geographic areas where the greatest numbers of intended beneficiaries are located.

It will describe the programs and activities to be supported, including coordination with other agencies and non-profit organizations.

Intended mental health activities must be consistent with the State comprehensive mental health services plan.

Assurances that housing will be available to eligible participants will also be required.

PATH grants, Mr. President, will expand the Stewart B. McKinney Homeless Assistance Act to add some new housing activities and service funds for the homeless who are mentally ill and who are mentally ill substance abusers.

We are replacing a fiscal year 1990 authorization level of $35 million with a new authorization of $75 million per year. The significant increase in reported substance abuse and the seriousness of mental disorders among the homeless warrants such an increase.

PATH grants are supported by the U.S. Conference of Mayors, the National Governors' Association, the National Alliance for the Mentally Ill, the National Mental Health Association, the American Psychiatric Association, the American Psychological Association, the National Association of State Mental Health Program Directors, and the Mental Health Law Project.

I thank the conferees for accepting PATH grants in this McKinney Act reauthorization bill.

SURPLUS FEDERAL PROPERTY FOR THE HOMELESS

Mr. President, the Senate Committee on Governmental Affairs has been very attentive to the property needs of homeless shelter sponsors. I commend the committee for its excellent work in improving the Stewart B. McKinney Homeless Assistance Act in the area of surplus Federal property for the homeless.

The conference report on H.R. 3789 before us today, incorporates the provisions of S. 2886, and will allow homeless program sponsors to own Federal property suitable for the homeless. Rather than lease these facilities, as they do now, deeds of ownership will be readily available to nonprofit groups for surplus Federal property that is deemed appropriate and available for the homeless.

In addition to the new provisions allowing for ownership, the surplus property provisions of this bill also make other needed changes. This legislation also clarifies the priority status of the homeless. The committee report states, "* * * it is the clear purpose of this legislation that homeless use be given priority status but only insofar as other needs, presumably compelling needs, are satisfied first." Thus, in addition to meeting the needs of the homeless, this bill clearly allows Federal agencies with surplus property to uphold "the legitimate property needs of the Federal Government and other public entities."

This is an important balance, Mr. President. It reestablishes the importance of other priorities in the Property Act, like education, health, and economic development, while maintaining the top priority for the homeless. A homeless shelter provider can only lose out to competition from a "meritorious and compelling" public need if that determination is made by the Administrator of GSA or the Secretary of Health and Human Services.

In addition to this major change in homeless surplus property policy, the conference report also reauthorizes the Interagency Council on the Homeless and the Emergency Food and Shelter Program run by the Federal Emergency Management Agency [FEMA].

INTERAGENCY COUNCIL ON THE HOMELESS

The Interagency Council on the Homeless is vital to the day-to-day operation of the McKinney Act because this act contains 18 different programs in need of coordination. These programs are run by the Departments of Housing and Urban Development [HUD], Health and Human Services [HHS], Labor, Education, and other agencies like FEMA, Community Services, and the Veterans' Administration, to name the major responsible Federal agencies. This bill authorizes $1.2 million for fiscal year 1991, and $1.3 million for fiscal years 1992 and 1993 for the Interagency Council on the Homeless.

Perhaps the least recognized Federal program and one of the most effective for helping the homeless is the Emergency Food and Shelter Program [EFSP] run by FEMA. S. 2886 also reauthorizes EFSP.

EMERGENCY FOOD AND SHELTER PROGRAM

The Emergency Food and Shelter Program was the first national effort to tackle hunger and homelessness. It remains vital for meeting many daily needs of nonprofit groups working with the homeless.

EFSP has a unique public-private partnership governed by a national board. The board comprises representatives of six national charitable organizations: United Way of America, American Red Cross, the Salvation Army, Catholic Charities USA, Council of Jewish Federations, and National Council of Churches of Christ in the USA. FEMA chairs the national board and United Way of America fiscally manages the program.

Funds are distributed on a formula basis, a formula that is closely monitored and adjusted by the board. These vital funds pay for many key items for the homeless. These include hot meals, groceries, fuel costs for transportation, small equipment and supplies like pots and pans, toasters, blankets, linens, detergent, and drinking cups. Some utility costs are allowed as are some large appliances under $300.

Many New Mexico cities have received EFSP funds. In 1983, the first year of EFSP, New Mexico received over $86,000. In fiscal year 1984, this amount jumped up to $229,000, and our State allotment climbed to $842,000 by 1987. The fiscal year 1990 allocation was $988,000.

Mr. President, the Senate Government Affairs Committee has done some good work for the homeless on these provisions of the conference report. The FEMA Emergency Food and Shelter Program and the Interagency Council on the Homeless both expired in authority on September 30, 1990.

In closing, I commend the conferees on the Stewart B. McKinney Homeless Assistance Amendments Act of 1990, and I urge my colleagues to vote in favor of the conference report on H.R. 3789.

Mr. ROTH. The Committee on Governmental Affairs, on which I serve as the ranking Republican member, has jurisdiction over three sections of the McKinney Act; the Interagency Council on the Homeless, the Federal Emergency Management Agency Emergency Food and Shelter Program, and the Surplus Property Program.

The Interagency Council on the Homeless, which operates out of the Department of Housing and Urban Development [HUD], provides information and advice to homeless providers about the various aid programs offered under the McKinney Act. In addition, the council has been holding a series of regional workshops to disseminate information, coordinate local and regional efforts, and gather information to develop recommendations and program ideas based on regional specific issues in serving the homeless population.

The Emergency Food and Shelter Program was set up to provide aid to areas which qualify based on a formula considering regional population, unemployment and poverty levels. The program is directed with supplementing ongoing efforts in the form of providing temporary housing facilities, soup kitchens, and funding other support groups across the country.

In addition to the reauthorization, included in this conference report are new statutory provisions addressing the dissemination of information regarding Federal surplus property available for possible use by homeless providers. It is in this portion of the conference report that I feel the attempts to get information about properties to the public may include requirements that are unnecessary extensive and burdensome. I believe the HUD program managers should have flexibility in determining the most appropriate means of satisfying the mandate of increasing the public's access to information regarding available and suitable properties. My concern is that some of the requirements and expectations called for may not realistically be the most effective way of correcting past shortcomings.

I do recognize that the process of getting information on surplus property into the hands of providers in the past has been a slow and largely ineffective one, which required improvement. However, HUD has recently made positive efforts in this area; and it would be most unfortunate if congressional desire to improve the process resulted in forcing the Federal Government to implement measures of reporting and publication which are not the most efficient and effective way of achieving the desired goal.

Specially, the quarterly requirement to list all properties reviewed could be wasteful in light of the fact that a majority of the properties listed more than likely would be determined as unsuitable or unavailable. The main purpose of publishing information on the properties should be to make homeless providers of properties they can use. If the property is unsuitable or unavailable, information related to that property is of little value. Let me point out that properties suitable and available, as well as those suitable but not currently available, will be published annually as a separate requirement. It is my home that the information regarding properties determined suitable would be made available as soon as possible in coordination with the efforts of the Interagency Council as they work through the regions and local offices that keep regular communication with homeless providers.

Along these same lines, I question the value of disseminating information to "ensure the widest possible dissemination," which would prove extremely costly. I would encourage the program managers to focus their resources in targeting those constituencies that could best utilize the information.

The requirement for HUD to operate a toll-free 800 number to provide information "generally about properties" again imposes further burdens which are neither efficient nor cost-effective in providing useful information. It is not reasonable to expect HUD to have full knowledge of all properties if they have not been given these properties to review under the title V process.

Increasing HUD's administrative burdens with no apparent benefit is not the best use of taxpayers dollars and takes resources away from alternative approaches that may more directly target the information where it is most needed.

In closing I would like to take this opportunity to applaud and commend the efforts of the many providers across the Nation that unselfishly volunteer their time and energy to help others less fortunate. The individuals and organizations at the local level are the greatest resource this Nation has in combating the homeless problem.

Mr. BREAUX. I urge adoption of the conference report.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BREAUX. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, at this time I would like to thank all those who helped in expediting this legislation. I know some were considering holds and, indeed, had holds and removed them. There were many measures I had in here. Particularly, I thank the senior Senator from Utah who was involved with some of this legislation and was very considerate in seeing that the legislation passed expeditiously.

Mr. BREAUX. Mr. President, I also add my compliments not only to those members who saw the reasonableness of removing their holds on the legislation at this time and coopertion. We thank them for that, but also particularly the staffs who worked so hard on many of these measures that have been around here for 2 years. We are delighted at the work that has gone into making possible the passage of these measures tonight.

Mr. DURENBERGER. Mr. President, are we still in morning business?

The PRESIDING OFFICER. Senator is correct.

Mr. DURENBERGER. Mr. President, I rise today to urge my colleagues to consider cosponsoring S. 3042, the Comprehensive Health Care Act of 1990, introduced by our distinguished colleague, Senator WILLIAM COHEN of Maine.

Mr. President, Senator COHEN and I share a deep concern about the serious shortcomings of the American health care system. We are agreed that it is capable of delivering the finest, most advanced medical care in the world. However, we also agreed that it fails to make that care reasonably accessible to all of our citizens. To that end, S. 3042 embodies provisions that I have long supported:

Preemption of State mandated benefit laws combined with the development of a low-cost model benefit package;

Incentives for State risk-pools for the medically uninsurable;

Incentives to encourage physicians and other health professionals to practice in rural areas through scholarship and loan repayment assistance;

Granting self-employed individuals and unincorporated businesses the same 100-percent Federal tax deduction granted to incorporated businesses; and

Provisions to increase the availability of private long-term care insurance.

Mr. President, I have introduced individual bills of my own in many of these areas during this legislative ses-

sion and will be reintroducing them next session. In addition, I will be introducing a new bill, the Small Employer Health Benefit Reform Act, intended to create a fairer and more stable private health insurance market for small businesses trying to provide health benefits to their employees.

Mr. President, I applaud Senator COHEN's efforts to introduce greater equity and improve access to financial protection in our health care system. I urge other Senators to join me in supporting these proposals and ask unanimous consent that a brief summary of S. 3042 appear in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF S. 3042, THE COMPREHENSIVE HEALTH CARE ACT

I. PROVISON TO MAKE HEALTH INSURANCE COVERAGE MORE ACCESSIBLE AND AFFORDABLE FOR INDIVIDUALS AND SMALL BUSINESSES

Pre-emption of State-mandated benefit laws. A recent study estimated that as many as one quarter of the uninsured lacked coverage because they had been priced out of the market by increases in State-mandated benefit laws. More than 640 specific State mandates now require insurers to include particular benefits in health plans. While many of these services are desirable, the proliferation of so many requirements has priced insurance out of reach for many individuals and small businesses. Self-insured plans are currently exempt from these requirements. S. 3042 would extend that exemption to all purchasers of group health insurance.

Provides for the development of low-cost minimum benefit package that could be made available for purchase by individuals and businesses nationwide. This package would include basic hospital, physician, primary, and preventive care services such as pap smears and mammograms. Individuals choosing to pay more for comprehensive coverage could certainly continue to do so. However, the availability of a minimum benefit package would help ensure universal access to affordable basic health care services.

Provides incentives to states to develop risk pools for those who are medically uninsurable.

Provides equal treatment for self-employed persons and unincorporated businesses by granting them the same 100 per cent deduction for health costs granted to incorporated businesses.

Provides refundable tax credit to help make insurance affordable for low and moderate-income individuals and families not covered by employer plan.

Authorizes two State demonstration projects to test the feasibility of expanding medicaid coverage to enable poor and near-poor individuals not currently eligible for benefits to "buy-in" to the program, with premiums set on a sliding scale based upon income.

II. PROVISIONS TO MAKE HEALTH CARE SERVICES MORE AVAILABLE IN RURAL AMERICA

One of the most critical problem facing Americans in rural areas is the scarcity of doctors and other health professionals. S. 3042 would increase scholarship and loan repayment opportunities to help relieve the critical shortage of health care practitioners in rural areas and also would provide a special tax credit for physicians serving in rural areas.

III. PROVISIONS TO REDUCE COSTS

Health insurance alone will not ensure good health. Americans must be encouraged to engage in healthy behavior and to accept more responsibility for their physical well-being. S. 3042 will encourage participation in health promotion and prevention programs by clarifying that expenditures for these programs are considered amounts paid for medical care for tax purposes.

Provides federal support for State cost-sharing programs to encourage neigboring hospitals to band together to share costly high-tech equipment or services to eliminate unnecessary duplication.

IV. MEDICAL LIABILITY REFORM AND DEVELOPMENT OF NATIONAL STANDARDS OF CARE

Encourages states to institute pre-litigation screening panels, which have had great success in a number of states in reducing medical malpractice costs.

Provides for the development of national practice guidelines and standards of care in order to ensure appropriate and effective care. Development of such guidelines and standards will also help to reduce the practice of defensive medicine, which is costing the American public as much as $121 billion a year. S. 3042 will also allow health care providers to use the practice guidelines as a "rebuttable presumption' in medical liability cases.

V. PROVISIONS TO INCREASE ACCESS TO COVERAGE FOR LONG-TERM CARE

Reclassifies long-term care insurance as health insurance rather than disability insurance for tax purposes. This would enable individuals to deduct long-term care expenses and would ensure that long-term care benefits would not be subject to income tax.

Allows for inclusion of long-term care insurance in cafeteria benefit plans.

Allows individuals to roll over funds held in IRAs to long-term care insurance without penalty.

Allows individuals who are terminally ill, who have a "dread" disease, or who have been permanently confined to a nursing home to use their life insurance benefits to pay for their care without penalty.

CLEAN AIR ACT AMENDMENTS—CONFERENCE REPORT

The Senate continued with the consideration of the bill.

Mr. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The conference report on the Clean Air Act is the pending business.

Mr. BAUCUS. Mr. President, I thank the Chair.

Mr. President, I am proud to present to the Senate the conference report on S. 1630, the Clean Air Act Amendments of 1990, and urge its adoption.

This will be the most comprehensive bill passed by the Congress in a decade. It will be the most comprehensive environmental bill of the last quarter century.

This legislation touches every American, and will be felt by every American in two ways:

First, by cleaning up the Nation's air.

Second, in its economic consequences as our Nation adjusts to the many provisions in this bill.

THE COSTS OF STALEMATE

By adopting this conference report we will end a decade-long stalemate

The work of cleaning America's air began when Senator Muskie sponsored the Air Quality Act of 1967. In 1970 and then again 1977, Congress passed further, tougher, more comprehensive laws. Slowly, but steadily, we were clearing the air.

In the eighties, that changed. Many cities failed to meet the attainment levels established by the 1977 act. Further legislation was necessary, and Congress began considering a new Clean Air Act in 1981. But the administration dug in, dead-set against the bill. A stalemate developed, pitting regions, parties and ideologies one against another.

Nobody won. But the public lost. For example, during the past decade: 96 of our Nation's cities still had excessive levels of smog; 41 areas exceeded safe levels for carbon monoxide; more than 50 areas were in nonattainment for fine particulate pollution; more than 400 million tons of acid rain-causing-emissions spilled out of our Nation's utility power plants; 30 billion pounds of toxic chemicals were emitted, just from the largest factories and plants.

These are not just idle statistics. Listen to what they have caused: hundreds of thousands of preventable illnesses and premature deaths; tens of thousands of preventable cancers; billions upon billions of dollars in lost worker productivity, health care expenses, resource losses, agriculture losses and other economic costs; billions of pounds of ozone destroying CFC emissions, even as scientists where identifying the damage and reasons for the hole in the ozone layer.

These have been the costs of stalemate.

With this conference report compromise, the stalemate, finally, is broken. The competing interests, finally, are balanced. And the nation, finally, can get on with the job of reducing air pollution to levels that will protect public health and the natural environment.

A CAREFUL BALANCE

Mr. President, the key to this bill is balance.

Some will argue that we have gone too far. That our bill costs too much. That the requirements are unreasonable.

They are wrong.

The health consequences of air pollution are an urgent national priority. We have delayed too long already. We must renew our commitment to clean air.

We know there will be costs to cleaning up our air. But we know the economic costs of this cleanup are reasonable.

We must remember the costs of not cleaning up. The cost to children who must stay indoors on smoggy days or the costs to elderly who must use special ventilation in their homes. And what about the higher hospital and doctor bills and lost worker days from dirty air. These costs—the cost inaction—are much greater than the costs of compliance.

That is not to mention the lives cut short or disabled from unhealthy air. When compared to the benefits of clean air, the compliance costs are definitely reasonable.

Others will argue that cleaning our Nation's air is so urgent that we should ignore cost and technical feasibility. That we should establish more ambitious deadlines and cleanup requirements.

They, too, are wrong.

As a practical matter, it is not physically or economically possible to do everything at once. Establishing unreachable deadlines and setting unachievable control requirements will only lead to disillusionment and failure.

As I said, Mr. President, the key to this conference report is balance. That does not mean all interests are treated equally. It does mean they are treated fairly.

The public interest in healthy air quality was of paramount consideration, and rightly so. But where economics could be balanced against control requirements, it was.

The result is a bill that should draw support from all the major interests—environmentalists, health and civic organizations, labor unions, major industries, and State and local air pollution officials.

In terms of specifics and range of coverage, it is without doubt the most comprehensive and sweeping environmental law ever enacted.

Its impact will be global as other nations follow our lead in eliminating CFC's, and in controlling pollution from motor vehicles and factories.

Its impact will be national, as Federal control programs reduce pollution from motor vehicles, consumer products, toxic chemical emitters and sources of acid rain pollution.

Its impact will be regional, as the Northeastern States will finally have the tools they need to work cooperatively on regional smog programs—and the Midwestern and Western States will have the tools to work cooperatively to reduce acid rain.

Its impact will be local, as cities across the Nation face new deadlines and must develop and implement new plans for reaching healthy air quality goals.

Its impact will be social, as we ask commuters to change their habits, and consumers to change their choice of products to less polluting alternatives.

And its impact will be personal, as pollution will scar fewer and fewer children's lungs, and shorten fewer and fewer lives of the elderly and chronically ill.

Mr. President, the conference report before us today will give the American people what we've promised them since 1967—clean, healthy air.

It offers us a reasonable, responsible and fair way to protect public health.

It tightens up various provisions of the existing act that no longer work. And it will help us achieve our goal, of clean air for all, by early next century.

If we do the job this bill requires, by the first 5 years of the 21st century, Mr. President, the Nation will drive motor vehicles that will be at least 50 to 70 percent cleaner than today's cars;

We will live in cities—with a handful of exceptions—that meet the Federal definition of healthy air quality;

We will enjoy skies free of the majority of today's airborne toxins, with health-protective residual cleanup well underway;

We will see an acid rain control program that will improve visibility, preserve natural resources, and protect public health;

We will begin to enjoy the full benefit of a cap on national acid rain causing emissions at a level sufficient to protect the environment;

We will use alternatives to CFC chemicals, and alternative consumer products that yield an environmental benefit; and

We will in dozens of other ways, enjoy the benefits of clean air.

Could we have gone faster? Perhaps, in a perfect world. But make no mistake about it—this is an ambitious, forward-looking, health-oriented bill that will change the life of every American for the better.

Mr. President, at this time, I would like to briefly describe the provisions of the conference report.

NONATTAINMENT: THE CORNERSTONE OF CLEAN AIR

Title I covers nonattainment. It is the cornerstone of our Nation's air pollution program. Almost every metropolitan area in the Nation exceeds the health-based standards for at least one of the criteria pollutants—ozone, carbon monoxide, sulfur dioxide, nitrogen oxides, lead, and particulates.

Title I sets in motion a series of actions by the EPA and State and local air pollution agencies that impose tough but fair control measures on large sources, and on small sources that emit fewer than 100 tons per year.

These provisions reflect real progress. The bill requires all cities to be classified according to the severity of their pollution. The bill establishes five classes—marginal, moderate, serious, severe, and extreme. Then, depending on the classification, cities are required to meet different deadlines for cleaning up their air—ranging from 3 years in moderate areas to 20 years in extreme areas. And, depending on their classification, cities are required to apply different controls to meet these deadlines.

The emphasis in the bill, however, is not on the deadlines. The emphasis is on achieving steady progress before the deadlines. So the bill requires specific incremental progress to reduce ozone, carbon monoxide, and particulates emissions.

And to ensure progress, the bill requires controls that can include vehicle inspection and maintenance programs, stage II vapor controls, and transportation controls measures.

Finally, if progress is not made, sanctions will be imposed.

MOBILE SOURCES: CONTINUING OUR PROGRESS

But these title I requirements alone will not guarantee clean air. That's why the bill also includes tighter controls on motor vehicles and fuels in title II.

It is true that there have been significant reductions in volatile organic compounds and carbon monoxide emissions since 1970. However, motor vehicles are still the single largest source of ozone and carbon monoxide emissions.

In fact, cars, buses, and other transportation sources are still responsible for 34 percent of nationwide lead emissions, 67 percent of carbon monoxide, 41 percent of the nitrogen oxides, 20 percent of the particulates, and 33 percent of the volatile organic emissions. When running losses are included, volatile organic emissions are about 50 percent of motor vehicle emissions.

In many cities, the mobile sources contribute even more. Compared to other sources, motor vehicle emissions are clearly dominant and expected to grow. Unless new standards are adopted, the progress that comes from cleaner vehicles will be more than offset by more cars and more driving miles. In fact, by mid to late 1990's, motor vehicle emissions will begin to increase.

Let's look at some of the facts. Vehicle miles traveled in the United States are growing at approximately 25 billion miles per year, mostly from more vehicles on the road. Approximately 50 million more cars are on our highways than in 1970 and the total is expected to grow another 75 percent by the year 2010.

To address these likely increases, the conference report adopts sweeping amendments to the mobile source provisions of the Clean Air Act.

Not only does it require significant advances in motor vehicle technology, it also requires dramatic changes in fuels.

The new car standards for hydrocarbons, carbon monoxide, and nitrogen

oxides must be maintained over a larger portion of the vehicle's actual life. And the new standards will apply to a wider temperature range than current requirements.

Requirements for trucks and buses are strengthened.

What's more, gasoline will be improved. Lead will be completely banned and certain gasoline additives will be mandatory. In many of the most polluted cities, for example, fuels must contain at least 2 percent oxygenates and no more than 1 percent benzene.

As a result of these mobile source provisions, the conference report puts the country back on the road toward cleaner vehicles.

AIR TOXICS: A NEW APPROACH

Mr. President, title III covers toxic air pollutants. These pollutants are one of today's most serious health and environmental problems. Billions of pounds of toxic pollutants are released into the environment every year, both routinely and in accidents. Chemical plants, oil refineries, sewage treatment plants, incinerators and hundreds of different sources release hazardous pollutants into the air.

It is true that many pollutants are released in trace amounts. However, even at low concentrations, toxic pollutants may have serious, acute, and chronic effects.

The existing Clean Air Act—current law—contains provisions for controlling these toxic air pollutants. Section 112 of the act, adopted in 1970, requires EPA to list hazardous air pollutants.

However, in the 18 years of administering section 112, EPA has listed only eight substances for regulation—mercury, beryllium, asbestos, vinyl chloride, benzene, radionuclides, inorganic arsenic, and coke oven emissions.

Current law has worked poorly, in part, because it requires EPA to regulate every pollutant likely to pose a risk, regardless of the cost. As a result, EPA has been reluctant to promulgate standards.

In light of this, the bill restructures existing law. EPA will regulate sources of pollution rather than individual pollutants. And, for the first time, cost can be considered.

This new approach relies on technology-based standards rather than risk-based standards. It requires that major sources—emitting any of the 189 pollutants listed in the bill—must control their emissions with maximum achievable control technology, MACT. And if significant risk remains after MACT, tighter standards would be required.

This new approach is desperately needed to overcome the inertia that plagued the health-based standards in current law.

ACID RAIN: A REGIONALLY BALANCED APPROACH

Mr. President, title IV covers acid rain. When fully implemented, the acid rain provisions will reduce sulfur dioxide emissions by 10 million tons below 1980 levels and cap it at these levels by the year 2000.

The acid rain provisions are a major accomplishment. For years, acid rain has been one of the most heated environmental debates, pitting the Northeast against the Midwest, and the Midwest against the West.

After long discussions, the acid rain provisions will reduce sulfur dioxide and nitrogen oxides in a way that balances—and treats fairly—the interests of all States and regions.

And I am happy to say, it does so without cost sharing and without mandated scrubbers. It provides flexibility and freedom of choice, so that utilities can find the cheapest and most effective way to reduce sulfur dioxide emissions. Utilities can scrub, switch fuels, install clean coal technology, or use other methods to reduce sulfur dioxide emissions.

The bill also recognizes that some utilities already have low sulfur-dioxide emissions which make it very difficult to find offsets for future growth.

That is why the bill provides bonus allowances to clean utilities, like the kind we have in Montana. This provides room for growth in clean States.

The bill recognizes that clean utilities in some States have already made large capital investments on pollution control technology. So it does not require additional sulfur dioxide reductions during phase I or II, at such utilities.

The bill also recognizes that utilities with high rates of emissions otherwise known as dirty utilities will face costly expenditures. And some coal markets may be disrupted.

That is why the bill provides incentives that help dirty utilities reduce their emissions.

And that is why the bill provides bonus allowances to utilities that use technology to reduce their emissions ahead of schedule.

Mr. President, this title strikes a healthy balance among regional interests. And it will substantially reduce sulfur dioxide and nitrogen oxide emissions over the next decade.

PERMITS AND ENFORCEMENT: ENSURING CLEAN AIR

The conference report also establishes a comprehensive permit program. For the first time, every major pollution source must obtain an operating permit. This will ensure better enforcement and faster implementation of control requirements.

The conference report also includes new enforcement provisions that broaden the scope of activities that can be the subject of civil or criminal sanctions and penalties.

Under these provisions, States will be required to adopt permit programs. These programs must include requirements for permit applications, monitoring and reporting requirements, a permit fee program, requirements ensuring adequate resources, and authority to review, issue, and enforce permits.

In addition, the conferees recognized that, while these provisions may work well for large businesses, small businesses may need some help. That is why the bill includes a technical assistance program for small businesses. And that is why States will be able to develop flexible programs tailored to the needs of small business.

CFC'S: PROTECTING OUR GLOBAL ENVIRONMENT

This conference report, Mr. President, also addresses a very important global environmental problem—the destruction of the stratosphere ozone layer. Chlorofluorocarbons and other similar chemicals which have been released into the atmosphere have caused a hole in the ozone layer about 9 to 12 miles above the Earth. This ozone hole now covers 10 million square miles. Cancer causing ultraviolet rays once blocked by the ozone layer now reach the Earth.

Title VII will help to restore the ozone shield by phasing out the production of ozone depleting chemicals. It phases out the production of methyl chloroform by the year 2002, and the production of CFC's, Halons, and carbon tetrachloride by the year 2000.

WORKER PROTECTION

Finally, Mr. President, the bill includes a worker protection provision. Workers that lose their jobs because of the new clean air requirements will be eligible for compensation. This compensation would be available to all workers in all industries—auto workers, chemical workers, steel workers—workers from every industry in any part of the country. And over a 5-year period, some $250 million in compensation would be available to workers who lose their jobs because of the requirements in this bill.

SPECIAL THANKS

Mr. President, before concluding, I would like to acknowledge those responsible for this bill.

First, President Bush. He got the ball rolling by proposing a comprehensive bill. His leadership should be applauded.

All of the Senate conferees worked hard and hung together.

The majority leader, Senator MITCHELL, my predecessor as subcommittee chairman. He fought for years to pass a new clean air bill. And his leadership was critical in steering this bill through the Senate floor and helping to break the conference deadlock.

Senator CHAFEE, one of the Nation's true environmental leaders.

Our chairman, Senator BURDICK, who marshaled the committee.

Senator MOYNIHAN, who got the ball rolling years ago with NAPAP, and has followed through.

Senator SIMPSON, who's also been at it for years. He fought hard for the West, while working to break the stalemate. Those last few nights, I was glad to have him at my side.

Senator DURENBERGER, the primary author of the critical air toxics provisions.

And of course the many other Senators who spent long hours working on this bill in committee, in deliberations in S-224, and on the floor not too many months ago.

I also should acknowledge the House conferees. My friend JOHN DINGELL, who always looked for a way to solve the problem. Congressman LENT, WAXMAN, MADIGAN, SHARP, and many others worked diligently to produce this conference report.

CONCLUSION

This conference report, as I said, is an ending. The bitter stalemate is over.

It also is a beginning. If the conference report is enacted, we can turn our energy, our creativity, and our commitment to a new set of environmental problems. The problems of the 21st century. Solid waste. Hazardous waste. Biodiversity. And the vexing problems of global climate change.

In each case, our obligation will be the same. As the Bible says, "one generation passes and another comes. But the world forever stays."

The members of our generation are merely trustees of our children's future. We must bequeath them a better, safer, more prosperous, and cleaner world. Dr. Rene Dubos, one of the fathers of modern environmental science, put it this way:

> Concern for the future is the mark and the glory of the human condition. Men come and go, but, however limited their individual strength, shall their contribution, and short their lifespan, their efforts are never in vain because, like the runners in a race, they hand on the torch of life.

Mr. President, by voting to adopt this conference report, each of us in this Chamber can, in a small but important way, hand that torch on to the next generation. I thank all Senators for their consideration and urge their support of this conference report.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, we have arrived at really a memorable point in our careers, especially those of us who have been deeply interested in the environment, because we are now considering for the first time the clean air conference report.

As has been mentioned, it has been 13 years since we first passed clean air legislation in this Chamber. We have worked at achieving clean air amendments, in other words bringing the law up to date, for 10 years since then. It has been a very frustrating and difficult, challenging and frustrating task, I might say.

But now we are here. We have achieved this. And I think everybody is entitled to a sense of well-being at what has been accomplished.

I would like to particularly congratulate several of those who have been deeply involved with this and who I think can claim primary responsibility for the successes we have achieved.

First, I would like to congratulate my counterpart, Senator BAUCUS, who is the chairman of not only our efforts in the Senate in connection with this matter, but also is chairman of the House and Senate conference. Senator BAUCUS has labored for all forms of environmental protection. He has been involved with, for instance, coastal barrier legislation which is hardly a burning issue in his home State. But it has demonstrated that his concern is worldwide, if you would, certainly national, and I think it is fair to say worldwide, for the environment.

So it is a particular pleasure for me to congratulate him for the leadership he gave us. We especially saw that during the conference Senator BAUCUS was challenged by the difficulties facing us, as sometimes the problems seem intractable, incapable of being solved, but he stayed at it with persistence, I might say constant good humor. So we are very grateful to Senator BAUCUS.

I also want to congratulate, of course, the majority leader who is the person who has been wrestling with this problem, paying closer attention to it I think than any other Senator that I have known. Because of his persistence, we have arrived at this point.

Along with GEORGE MITCHELL I think we have to give the President of the United States a tremendous amount of credit because I can say this: others of us in the Senate, or in the House, might have brought this bill along, but without President George Bush we would not be here today because he made it a prime part of his legislative program that we achieve a good clean air bill. So I salute our President for the leadership he gave us here.

Also, the conferees who were so important: Senator SIMPSON, Senator DURENBERGER on our side, and of course the Senator that the chairman of our committee, Senator BAUCUS, previously mentioned, Senator BURDICK.

I particularly salute both Senator SIMPSON, who was there the whole time, slogging away with us, and Senator DURENBERGER, who was particularly effective in connection with those issues that he was the lead on. Of course I refer to the toxic air provisions.

Mr. President, sometimes we forget those who have gone before. The individual who had a great mark on this legislation, who is not in the Senate any longer, chose to retire, Senator Stafford, was one of the leaders in the clean air effort. Senator Stafford served on the committee, served as chairman, served as ranking member, and it was his greatest interest, the work of this committee, and especially he was active in the clean air effort.

Mr. President, I think it is important to stress that this is a health bill.

It is important also to realize when people talk about costs, the costs have been bandied around, individuals get up and say why, when this bill gets rolling it will cost the citizens of the United States of America $25 billion a year. Well, I am not sloughing off that $25 billion is a lot of money. But we should put it in context.

The health bill in the United States of America today, all health care costs, aggregate, Government, individuals, business, total $660 billion. So when we make a $25 billion effort to bring down those health costs, it is a good investment.

While we are on the health provisions of this bill, I will like to mention that health studies estimate that polluted air is responsible in our country for between 50,000 and 100,000 deaths a year.

Toxic air pollutants are estimated to cause up to 2,500 cancer cases each year. It is estimated that over 4 million people become ill in our Nation every year because of dirty air.

A study by the American Lung Association produced estimates that the health costs associated with air pollution run at least $25 billion annually. So they talk about the cost of this being $25 billion. That is what this dirty air does, costs us $25 billion. If we can clean it up, we will see the results in a healthier population.

In addition to being a health bill, this is an environment bill, Mr. President. What we are trying to do is prevent dirty air. We are trying to prevent the destruction of the ozone layer. We are trying to prevent pollution of our buildings, our crops, our forests, and of course everyone has seen the effect of acid rain on our lakes and rivers.

So, Mr. President, I think it is important as we proceed in this debate to remember that this is primarily a health bill, but it is a strong environment bill as well.

Mr. President, there is no question but what this is complicated. I will briefly touch on some of the areas that are covered by the legislation. We talk about nonattainment. What does nonattainment mean? Nonattainment means that that particular area, a

State or a community, for example, or a city, has not achieved satisfactory health levels, and it has not achieved those because of the dirty air.

In other words, they have not obtained the proper clean air standards from a health point of view.

Currently, there are over 100 areas in the United States that do not meet health standards under the Clean Air Act for ozone, which is smog. More than 40 areas failed to attain the proper health standards because of excess carbon monoxide; 58 areas exceed the health standards for particular matters. So we estimate that over half of the population of our Nation lives in nonattainment areas, areas that have not achieved the proper safety standards from a health point of view due to dirty air.

So efforts are to first redesignate which sections of the Nation are either moderate, severe, serious, or extreme, as far as nonattainment goes. And then, depending upon those areas, we apply different standards of cleanup upon them.

It is important to note that some of these cleanup efforts to reduce the amount of ozone involve service stations being required to equip themselves with dispensers on their pumps to reduce VOC's [volatile organic compounds], which causes ozone. And there are vehicle inspection maintenance programs, so they can update the quality of care of the engines within these and reduce the amount of emissions of carbon monoxide and volatile organic compounds.

EPA is required to impose sanctions on those areas that fail to come up with proper plans to clean themselves up. In addition, we have provisions related to motor vehicles, cars and trucks, currently. It is important to remember this. People say when do you pick on the automobile industry? Well, it is like Willie Sutton said, "Why do you rob banks?" "I rob banks because that is where the money is." Why do we go after the automobiles? Because they cause the smog.

Here are the statistics: 50 percent of the smog pollution is caused by automobiles and trucks, and 90 percent of the carbon monoxide pollution in our country, our urban areas, is caused by automobiles. So that is why we go after the automobiles.

But not only do we have the automobiles come with engines that emit fewer pollutants—in other words, clean up what we call the tailpipe emissions—but also we provide that the gasoline or the fuel that goes within those vehicles has to be cleaned up. We provide for cleaner reformulated gasoline in nine cities in our country with the severest ozone pollution problems.

Reformulated gasoline would be required to have 15 percent lower emissions of VOC's and toxic chemicals by the year 1995, and 20 to 25 percent lower by the year 2000. As I mentioned, these efforts with the engines and fuel will result in better tailpipe standards.

We provide for fleet vehicles of a cleaner nature. We have a special program for California. There is only one city in the country that is listed as extreme in its failure to achieve attainment; that is Los Angeles.

We deal with air toxics, a subject of great concern to Senator DURENBERGER, and he became the expert in that area. We look forward to hearing his remarks in connection with that.

We provide for municipal incinerators and deal solely with the air emissions from those incinerators. We deal with acid rain. Of course, that comes from the sulfur dioxide emissions usually generated by coal, high-sulfur coal.

Finally, Mr. President, there is a section that I am particularly interested in in this legislation, which is concerned with stratospheric ozone protection. The chief culprits in the destruction of the stratospheric ozone layer are the chemicals known as chlorofluorocarbons [CFC's]. And so they are controlled under this legislation as are the halons, carbon tetrachloride methyl chloroform, and HCFC's.

So, Mr. President, this is good legislation. I am pleased to have been part of it. I thank all who are associated with it, and that includes not only the Senators, but I especially want to mention the staff.

On our side, those who were particularly active were Bob Hurley, Katy Cudipp Jimmie Powell, Steve Shimberg, Steve Roady, Brent Erickson, and Karen Field.

I am sure that later on the distinguished floor manager across the aisle will cover those staff members who were of particular assistance to him. I especially want to commend Mike Shields and others.

Mr. President, without those staff members, we would never have been able to achieve what we have in connection with this legislation.

So, Mr. President, I think all can look back, and every Senator here has made a contribution. Some were not so favorable toward it. Some had very constructive suggestions which we incorporated, and I believe all who were associated with it can look back with considerable pride.

I would also like to mention, as did Senator BAUCUS, those from the House that we worked with: Representatives DINGELL, WAXMAN, LENT, and others. They were worthy opponents, and I put that in the highest form of compliment. They were not being obstructive, but they came with a different point of view, in many instances. And their efforts, combined with ours, I think, produced a better bill in the end.

I thank the Chair.

DIESEL MOTOR FUEL DESULFURIZATION COLLOQUY

Mr. MURKOWSKI. I wonder if I might engage my colleagues from Rhode Island, Senator CHAFEE, and Montana, Senator BAUCUS, in a colloquy regarding the new subsection 211(i)(4) of the clean air legislation before us today.

Mr. CHAFEE. I'd be happy to discuss this subsection with the Senator from Alaska.

Mr. MURKOWSKI. This new subsection allows the States of Alaska and Hawaii to petition the Administrator of the EPA for an exemption from the diesel desulfurization requirements in the same manner as provided in section 324 of the existing Clean Air Act.

The exemption can be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological or economic factors or such other local factors as the Administrator deems significant.

It is my understanding that it is the intent of the conferees to direct the Administrator to consider circumstances that are unique to Alaska and Hawaii and to give particular weight to the effect of these unique circumstances on cost effectiveness in determining whether compliance is feasible. The Administrator ought to consider such factors as what the cost would be, relative to other States, of per ton removal of particulates, of installing segregated fuel storage facilities in rural areas, of removal of sulfur from diesel fuel and of the disposal of sulfur once it has been removed. And he also ought to consider whether any area in Alaska or Hawaii is in nonattainment for particulate National Ambient Air Quality Standards or if there is a reasonable likelihood that any area will be in nonattainment in the future. Do the Senators from Rhode Island and Montana concur with my understanding of this subsection?

Mr. CHAFEE. Yes, I do.

Mr. BAUCUS. Yes, I do, as well.

Mr. MURKOWSKI. I thank my colleagues for their time.

Mr. NICKLES. I would like to ask the distinguished ranking member of the Environment and Public Works Committee and the chairman of the Environmental Protection Subcommittee—and chairman of the conference on the Clean Air Act amendments—a question about the ozone nonattainment provisions of the legislation.

How will the new rules for ozone nonattainment areas contained in the conference agreement affect an area that as of the date of enactment is designated nonattainment but has completed all the requirements for redesignation to attainment?

Specifically, what requirements will apply to an area that did not violate the ozone ambient air quality standard between January 1, 1987, and December 31, 1989; has met all of the requirements under existing law related to reasonably available control measures, reasonably available control technology, and vehicle inspection and maintenance; and have received proposed approval from the Environmental Protection Agency for redesignation to attainment?

Mr. CHAFEE. The managers of the legislation expect that areas which have met conditions described by the Senator from Oklahoma will continue to be subject to the nonattainment requirements of part D of the Clean Air Act as were in effect prior to these amendments. The legislation does not subject such an area to any new requirements. In the case where there is no evidence of new violations, where a State has a request for designation pending before EPA, and the Agency has proposed to approve this request, the Agency should proceed to complete its action using the existing criteria for review and approval of such requests.

I would note that Tulsa is a prime example of this situation. It is also my understanding the EPA is about to redesignate Tulsa as an attainment area.

Mr. NICKLES. The Senator is correct, and I thank him for that clarification. I would like to ask if the distinguished chairman of the conference agrees?

Mr. BAUCUS. I do, indeed, agree with the explanation of the distinguished ranking member of the Environment and Public Works Committee.

Mr. NICKLES. I thank the Senator from Montana.

Mr. WILSON. I have several issues of concern on the conference compromise which I would like to discuss with my good friend and distinguished colleague, the ranking minority member of the Senate Committee on Environment and Public Works, Senator CHAFEE.

Mr. CHAFEE. I will be happy to discuss the Senator's issues.

Mr. WILSON. As the Senator knows, I am very concerned about the impact of the preemption of State authority to reduce emissions from nonengines. This preemption severely limits the ability of a State to control a major source of pollution and directly impacts at least three regulatory proposals scheduled for adoption by California regulatory agencies by the end of 1991. Regulatory actions were set for April 1991 for construction and farm equipment and the fall 1991 for locomotives. If these sources are not effectively controlled in a timely manner, portions of my State will not be able to comply with the planning provisions, progress requirements, and attainment deadlines contained in the act. In addition, other sources in California will face much more expensive controls to make up for the shortfalls the nonroad preemption has created. Because the bill puts total control of many of these resources in the hands of the EPA, I want to know what assurances do we have that EPA will act responsibly to implement its new authority?

Mr. CHAFEE. The Senator from California knows that I and other members of the Senate conference committee shared his same concerns. It was the intent of the committee to craft a compromise that significantly strengthens and clarifies EPA's responsibility to control the source categories that will be removed from State jurisdiction. The agency will be required to study and establish regulations on these sources if they are needed for an area to attain standards in accordance with the act.

Mr. WILSON. I also understand that the compromise significantly limits the scope of the preemption that was in the House bill, and that it now affects fewer source categories. Would the Senator explain what the preemption now includes and what it excludes?

Mr. CHAFEE. The Senator from California is correct in that we have limited the preemption that was included in the House bill. Only three categories of new sources, locomotives, farm equipment, and construction equipment, are currently included in the preemption. Furthermore, large farm equipment and construction equipment, those rated at more than 175 horsepower, still remain subject to State control. States retain their existing authority to regulate all remaining new nonroad engines or vehicles. In addition, because the preemption is limited to new engine standards only, States can continue to require existing and in-use nonroad engines to reduce emissions by setting fuel requirements, operational conditions or limits on the use of such equipment.

Mr. WILSON. I have another concern regarding the "General Savings Clause" which was section 193 of title I of the House bill, and the effect that it could have on California's flexibility to develop its own plan to meet the new requirements of the act. EPA, pursuant to a court settlement, has proposed a Federal implementation plan, or FIP, for the Los Angeles area, and has agreed to do similar plans for four other areas of California. The proposed FIP for Los Angeles is a complete plan which includes some questionable federally imposed control measures, such as a 90-percent across the board reduction to all sources regardless of technological or economical feasibility. I am concerned, and I know officials at EPA are concerned, that some might interpret the savings clause as a requirement that EPA finalize its Federal plan and preempt ongoing State and regional air quality planning which would otherwise be required under this bill.

I want to make sure that this bill does not lock us into a virtual Federal takeover of air quality planning in most of the urban areas of California. A takeover that might occur before State and local agencies even have the opportunity to implement the provisions of this act. I am sure that the Senator will agree with me that this was not the intent of the conference committee agreement on this point?

Mr. CHAFEE. The savings provision was intended to ensure that there is no backsliding on the implementation of adopted and currently feasible measures that EPA has approved as part of a State implementation plan in the past, or that EPA has added to State plans on its own initiative or pursuant to a court order or settlement. The situation you describe goes beyond that intent and would, I agree, create an unfair situation. If EPA were to promulgate complete new plans based on requirements of the old act, the areas subject to those Federal plans would be deprived of the opportunity to utilize the significantly revised and clearly more workable requirements of the revised act. This would be unreasonable, and clearly not our intent.

EPA has been provided significant discretion in applying the savings provision as it relates to FIP's in California. EPA has the obligation, as I discussed earlier, to adopt control measure for sources which it exclusively controls when these controls are necessary to attain national standards and meet other requirements of this act. Beyond that, EPA should complete ongoing FIP processes only for the purposes I have stated above.

Mr. WILSON. And finally, section 182(e) of the conference bill requires that net emissions increases of volatile organic compounds from the installation or modification of stationary sources in extreme areas be offset by emission reductions of at least 1.5 to 1 ratio, unless best available control technologies [BACT] are required for all major sources in the area, than the ratio must be at least 1.2 to 1.

Now I am sure that draftees of this section intended that when we take one step backward by creating new sources of pollution, we take at least one and one-half steps forward in reducing emissions from existing sources. I support that concept but reserve comment on its workability. The South Coast Air Quality Management District in California has adopted a new source review rule that appears to meet these ratios on an area-wide basis. It is my understanding that in accordance with this provision, a State

implementation plan for an extreme area may provide alternative methods for meeting the specified source-by-source offset ratios as long as, in the aggregate, the overall emission reductions are achieved. It is my belief that this legislation allows the Administrator of the EPA to approve the approach being proposed by the south coast district.

Mr. CHAFEE. I would say that this legislation will allow EPA to approve the South Coast Air Quality Management District's proposed new source review rule so long as it achieves the overall emissions reductions required by section 182(e).

NITROGEN OXIDES EMISSIONS CONTROL UNDER ACID RAIN

Mr. LOTT. When the Senate had under consideration its clean air bill, I offered an amendment dealing with the control of nitrogen oxides from electric utility units. My purpose was to gain the most cost-efficient reductions, in NO_x possible by requiring utilities to install low-nitrogen oxide burners, or its equivalent. With one important change in the conference committee, my amendment is now embodied in the final acid rain title, I would now like to enter into a colloquy with, the manager of the bill concerning the nitrogen oxides emission reduction program. In the regard, I would first ask the distinguished Republican manager if the bill is designed to accomplish the required NO_x reductions by the use of low-nitrogen oxides burner [LNB] technology on wall-fired and tangentially fired steam electric coal fired utility boilers?

Mr. CHAFEE. Yes, that is the case. If an owner or operator that installs such technology cannot then meet the emission rate established for a given type of boiler, the owner or operator has the right to seek and obtain either an alternative emission rate or average emissions between two or more units within its electric system.

Mr. LOTT. It is my understanding that the conference committee reached the conclusion that the installation of LNB technology on all phase I units by 1995 might be unachievable for some utilities. This, in part, could be because of the projected inability of domestic manufacturers to provide an adequate supply of LNB equipment. In addition, there are concerns about the length of the time a unit could be offline due to installing the NO_x control equipment. As a result, the final language creates a provision that will allow an owner or operator to request an extension of 15 months for any unit or units in which they are uable to install, test or operate low-NO_x burners by January 1, 1995. Under the bill, in determining whether to grant the 15 month extension, is it intended that the Administrator may take into account the effect that scheduling of outages for installation of low-NO_x burners may have on electric system operations and reliability?

Mr. CHAFEE. Yes. Outages for the installation of control technology may have to be phased, planned, and coordinated within power pools because of the impact those outages could have on the availability of electricity. For that reason, the conferees crafted a provision that should lead the Administrator to take into account: First, the possible unavailability of equipment at the time the unit would need to be scheduled for its outage; second, the time necessary to install, test, and operate that equipment; and third, implicity, the effect on an electric system of scheduling outages. It is our view that the Administrator should carefully consider the judgment of individual utilities in order to ensure adequate supplies of electricity and the opportunity for domestic vendors to meet the demand for low-NO_x burners.

WASTE COMBUSTION

Mr. DOLE. I wish to explore several issues relating to the waste combustion provisions of bill with my colleague from Minnesota, Senator DURENBERGER. The first relates to the revised technology requirement. When the Senate passed this bill, these provisions revised the new source performance standard process. As it returns from conference, these provisions are similar to the air toxics requirements including a maximum achievable control technology requirements that replaces the earlier provisions. Among the changes that were deleted is a requirement that the standards required be nationally applicable. The nationally applicable provision was part of the committee reported bill to make the technology test more closely approximate the role of the NSPS, setting a minimum national floor of control. The MACT requirement as a technology test is not unreasonable. MACT includes consideration of key factors such as cost and energy consumption or savings in developing the required level of control. We need standards that are safe and environmentally sound. We do not need standards that artificially raise costs or consume excessive energy for little or no additional environmental protection. As a stated technological test, MACT includes such a balance.

However, I am concerned about that portion of the MACT standard that mandates that new systems must be no less stringent than the emissions control that is achieved in practice by the best controlled similar unit. While I am supportive of the requirement that similar units must be judged, I am concerned about two aspects of this test. First, I am aware that there have been some research systems built to assess emerging technology, perhaps by the Federal Government. While these systems may have achieved certain emissions rates, there are no indications that they have been economically viable for widespread use. Even though they have achieved an emission rate, it has been under circumstances where the cost of the technology has been subsidized for research purposes. It would be my assumption that MACT would not be using such systems as the basis of the MACT determinations.

In developing the MACT concept, it would appear that the conferees intended, in part, to use the phrase "achieved in practice" to capture the distinction between research type systems and commercially viable operations. In reviewing the technologies, EPA should be looking at systems that were built for ongoing operation as real world systems. Research must be done and encouraged to improve technologies. But, if research type systems were used to set technology requirements, it could produce requirements that would not be consistent with real world operations, technology that could not stand the rigors of day to day operations. Also research systems take many forms. While many may associate research with laboratories and small scale operations, research also encompasses prototypes of full scale systems and early versions of technology which are modified to make them viable for full commercial application. Is this an accurate assessment of the rationale adopted by the conferees?

Mr. DURENBERGER. The Senator is correct. The Administrator should not consider research units which are being operated for the principal purpose of developing and testing new technologies as units that are in practice. However, in considering units that are achieving standards in practice, the Administrator may consider technologies used at similar units or units operating in other nations under similar circumstances.

Mr. DOLE. This section also requires the development of standards for a variety of pollutants. It is entirely possible that different technologies may reduce one pollutant better than another. For example, technology A may reduce heavy metals better than technology B while technology B may reduce particulates better than technology A; yet, one would not be compatible with the other. I would assume that EPA would have adequate discretion to balance environmental benefits to determine which technology on the whole represents a better MACT. I would appreciate some discussion on this point as well from my distinguished colleague from Minnesota.

Mr. DURENBERGER. The Senator is correct. Where differing air pollution control technologies result in one technology producing better control of some pollutants and another producing better control of different pollutants but it is technically infeasible ac-

cording to the MACT definition to use both, EPA should judge MACT to be the technology which best benefits human health and the environment on the whole.

Mr. DOLE. When the Senate passed this measure, it required EPA to distinguish between types, classes, and sizes of units. This provision was included to assure that similar units would be judged against one another. Technology developed for one system would not be imposed on dissimilar systems merely because they were similar in size but not in class. However, as the provisions return from conference, EPA now has discretion to provide such distinctions.

This change concerns me because it could result in the loss of a key component to the Nation's waste management options. Combustion is not the only component of waste management. However, with source separation, recyling, treatment and land filling, combustion fills an important role. If EPA fails to adequately categorize solid waste combustion units, it can prevent systems from being constructed. As an example, I have reviewed several State regulations and found that Kansas and other States experience has resulted in extensive categorization. In Kansas for example, one class encompasses combustors that will be used to burn less than 2 tons of medical waste per day, another class from 2 tons to 5 tons, the next class from 5 tons to 50 tons, with the next class capturing those burning more than 50 tons per day. What's also interesting to note is that for the smaller classes, States have found that good combustion practices alone achieve sufficient protection.

Clearly, the conferences maintained the initial categorization in the Senate bill. Changing the language within the technology definition subsection of the bill should not be construed to diminish the need for subcategorization within these categories. It would appear that the conferees believed that within the categories, EPA needed some level of discretion to prevent frivolous litigation over minor subcategories. While EPA may choose subcategories as the Administrator determines to be appropriate, it would appear that the intent of these provisions on the whole is to assure that as combustion fills its proper role in national waste management, it is well controlled.

Congress needs to give effective guidance to EPA on this matter. Does the Senator from Minnesota agree with this assessment of the language regarding distinctions among types, classes and sizes of combustor units?

Mr. DURENBERGER. The Senator is correct. I want to assure my colleague from Kansas that this change in the provision in no way is intended to diminish either the role combustion should play in national waste management or the intent of the legislation that EPA needs to categorize these systems to assure that combustion can fill its role. The conferees agree that combustion serves a vital purpose but want to assure the general public that the days of inefficient incinerators are over. Combustors built under these provisions will be sound environmental units.

Mr. DOLE. One of the issues that we were unable to fully resolve when the Senate considered these provisions related to the list of standards that EPA must establish and the implications of such standards on the operational requirements of the units. In particular, I want to discuss the relationship between setting standards and monitoring. Another portion of the bill requires EPA to develop appropriate monitoring provisions to determine whether standards are being met. It is my understanding that EPA would have flexibility in developing such monitoring provisions as long as the monitoring is adequate to assure compliance. These monitoring requirements could differ between categories and subcategories based on the nature of the units in operation.

A specific example which concerns me relates to the use of continuous monitoring of carbon monoxide. It is my understanding that continuous carbon monoxide monitoring is used on the large water wall mass burn systems typical of large urban areas. However, because the bill covers all solid waste combustors, monitoring will also apply to small systems as well. For small modular combustors the cost of continuous carbon monoxide monitoring can equal or exceed the cost of the combustor. However, because modular technology produces relatively low carbon monoxide emissions, continuous monitoring is not essential for compliance. Rather, it really monitors the operating consistency of the unit. Continuous monitoring of other parameters such as unburned hydrocarbons can monitor the efficiency of combustion equally well at much lower cost. I would hope that these provisions give EPA adequate flexibility to select the mix of continuous and periodic monitoring that makes the most sense for each category and subcategory of combustor to balance compliance needs and costs of compliance.

Mr. DURENBERGER. I recognize my colleague's concern in this matter. It is not the intent of the conferees that the language in this subsection inappropriately burden the choice of waste management technology. Where EPA can make reasonable allowances to reduce control costs without sacrificing control, it should be flexible. But, I want to make clear that numerical standards are to be established and enforced for each of the pollutants listed in section 129(a)(4) with the exception of opacity as appropriate.

Mr. DOLE. I thank my colleague for providing clarification on these key matters. If EPA properly implements these provisions in a manner consistent with the discussion we have had here, these provisions will permit us to strike a balance—a balance that continues to protect the public and the environment—while at the same time continuing to use an important technology without unnecessary and unneeded costs to fill a critical role in national waste management.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I was asked earlier today which of the provisions in this bill, the Clean Air Act amendment of 1990, is my personal favorite. One of the sections has been already generously referred to by my colleagues. I appreciate that very much.

Frankly, I had not thought of the bill quite that way before. Frankly, also, I do not think I can pick just one.

This bill caps sulfur dioxide emissions as the principal cause of acid rain at 10 million tons below 1980 levels.

This bill requires that gasoline be reformulated to achieve a 25-percent reduction in smog forming pollution from cars and trucks by the end of this decade. This bill cuts toxic emissions from cars and trucks by 25 percent as well. Over that same 10-year period this bill eliminates the use of the production of the CFC's which are destroying the ozone shield which protects the fragile planet from radiation.

Tucked in the pages of the conference report of this bill is a provision which will clean up urban buses so that we will never again experience the blast of foul-smelling, cancer-causing diesel soot that billows from the bus as it pulls away from the curb.

Under this bill 30,000 to 50,000 sources of industrial toxics will be required to install maximum achievable control technology to reduce by 90 percent their emissions of hazardous air pollutants. Cancer cases attributable to air pollution will decline by 75 to 90 percent.

Oxygenerated fuels including ethanol from American grain will be required in the 40 cities which violate air quality standards for carbon monoxide during winter months. Oxygenated fuels alone can reduce carbon monoxide levels by 20 percent.

Large employers will be encouraged to organize ride-sharing and transit programs for their workers to cut down on urban congestion and rush-hour trips that contribute so much to the smog problem.

For the first time this bill provides an annual target for pollution reductions in cities which are not meeting smog standards. A firm 3-percent reduction every year until attainment will be required. This new, percent reduction requirement is our best bet to fix the State planning process and attain the air quality standards by the lawful deadlines.

And there is the so-called cold start carbon monoxide standard in this bill. This is of interest to our colleagues from the West. It requires new technology on cars and trucks to prevent excessive levels of CO pollution on those cold winter mornings in cities like Minneapolis, Denver, and Anchorage. Combined with oxygenated fuels, we will surely conquer carbon monoxide as an urban pollution problem under this bill.

This bill for the first time recognizes the environmental effects of toxic air pollutants and includes a program to protect the fish and wildlife of the Great Lakes, the Chesapeake Bay, and our most valuable estuaries from mercury, PCB's and the pesticides which are being deposited from the atmosphere. Eighty percent of the toxic pollution in Lake Superior comes from the air, a problem addressed for the first time in this bill.

In a few short months there will be a Chemical Safety Board to investigate these dreadful chemical accidents, explosions, and fires which too often fill the headlines of the morning papers. Experts dedicated to investigating the cause of these accidents will recommend corrective steps to EPA and OSHA. Facilities handling extremely hazardous substances will be required to take stock, identify unsafe conditions and tighten up. Many of these accidents can be prevented and will be under this bill.

This bill sets air emission standards for solid waste incinerators including the municipal and hospital incinerators that are springing up all across the Nation. We did not get an ash management program from the conference. We did not get recycling. But we do have an air emissions program that will do that part of the job thoroughly.

That's an even dozen. That's just a beginning of my list. All my favorites. I could list a dozen more. Two dozen maybe.

As proud as I am of each of those provisions, what fills my heart more this evening is the pride I feel for this institution and for the men and women who made this legislative achievement possible. The Senate was well represented in this conference. Senator BAUCUS and Senator CHAFEE led a group of conferees that were united in their purpose and determined to get a bill this year that would serve the Nation well for years to come.

The commitment of the majority leader, Senator MITCHELL, to clean air legislation is known to all. His legislation effort has virtually defined the subject for the past 10 years. He was the critical factor at many points in this process, especially during the weeks of February in our negotiations with the administration.

Senator BAUCUS and Senator CHAFEE have been magnificent in their commitment to this bill. Legislation this complex takes a superhuman effort. Their commitment and legislative skill has been needed every day of every week of every month for months on end, now. And they prevailed over the numbing detail, the late nights, the splintered interests, the frayed nerves, and the institutional roadblocks which have so long frustrated others who have attempted to pass a new Clean Air Act.

Their counterparts in the House, Chairman JOHN DINGELL, ranking member NORM LENT and Congressmen HENRY WAXMAN, and ED MADIGAN have also earned the gratitude of the American people for their tireless dedication to this task.

And finally, as I have on other occasions here on the floor, I would say that President Bush deserves a great portion of the credit for this legislation. It was a bill from the President that broke the deadlock on clean air and laid the foundation for the accomplishment we share in this evening.

Mr. President, I am also proud for my State of Minnesota. Lots of interests are going to push back from the table with something in their pocket tonight. Reading newspaper summaries of the bill one could get the impression that its just a collection of exemptions for this industry or that trade association. But all of that squabbling is on the edges. At the core of this bill is the public interest, clean air, public health, a safe environment.

That is something that the people of my State have fought for and have paid for over the past 20 years. The people of Minnesota were there right at the beginning. I was the chief of staff to the Governor of Minnesota in the late 1960's just before the Clean Air Act was first written. Governor LeVander was called here to Washington to testify in clean air hearings for a principle which is deeply cherished in the Senate and which was raised more than once in this conference. He came to tell the Congress that the States should have authority to set more stringent standards than apply nationally. No Federal preexemption of State authority. He felt it passionately. And we've been taking advantage of the principle regularly over the past 20 years.

Minnesota had the second utility scrubber in the Nation in 1976. We had the first dry scrubber a few years later. We have the first commercial fluidized bed combustion unit. We have our own acid rain control program. Clean air is the highest priority in a State like Minnesota where so much of the quality of life is taken from the quality and bounty of the natural environment.

My colleague in the Congress from the Sixth District of Minnesota was a key player on Energy and Commerce on acid rain and a variety of other issues. My Senate colleague, RUDY BOSCHWITZ, carried a key provision on permits to facilitate small business compliance.

And a young man who was educated at Minnesota's Macalester College and who has been associated professionally with me since 1974 was one of the key staff authors and contributors to the success of this bill. Jimmie Powell is a unique Minnesota contribution to the historic new provisions in this act.

Tonight the Nation takes a giant step along a path that Minnesota has already traveled. And so, I am proud for my State and the example that it has set and the contribution its government, businesses, utilities, public interest groups, and citizens have made in bringing us to this point.

Mr. President, I would like to describe in some detail four or five of the provisions on which I have been most directly involved. These are complicated programs and some few words of explanation seem appropriate. I would start with reformulated gasoline.

REFORMULATED GASOLINE AND OXYGENATED FUELS

Gasoline is a complicated mixture of about 200 different compounds. The exact mixture of these compounds varies over a wide range by brand and grade of gasoline. The variation in the mixture of gasoline can have an impact on air quality. Some gasoline is cleaner from an air quality perspective than other gasoline.

Motor vehicles contribute a substantial portion of the air pollution in the United States. They emit 40 to 70 percent of the pollutants contributing to ozone nonattainment and 90 percent of the carbon monoxide. I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 7 minutes to the distinguished Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 7 minutes.

Mr. JEFFORDS. Mr. President, I certainly rise in support of this very excellent conference report. I must say that I certainly admire the fortitude of our conferees, but I must say I was disappointed not to be on the conference committee to start, but as it dragged on not only weeks but months I was, to say the least, relieved that I was not on it. But the conferees did a

fantastic amount of work and they did so with incredible hours. Usually in conference committees we are used to having odds 2 to 1 or 3 to 1 or 4 to 1. This conference with 142 Members of the House and 7 of the Senate was a 20 to 1 ratio and how they were able to do what they did I am not sure.

Mr. President, I am in strong support of the Clean Air Act Amendments of 1990, and I urge my colleagues to approve this important conference report.

S. 1630, the Clean Air Act Amendments of 1990, is possibly the most important and probably the most complex piece of environmental legislation ever considered by the U.S. Congress. This bill reflects the work of Republicans and Democrats, the Congress and the administration, legislators and regulators, environmentalists and industrialists.

While not a perfect bill, this is a very good bill. Acid rain pollution, which is of primary concern to my State of Vermont, will be cut in half. Equally significant, emissions of sulfur dioxide, the principal cause of acid rain, are permanently capped at the reduced levels.

The second of the major causes of acid rain, oxides of nitrogen, will also be reduced by approximately 2 million tons annually. During Senate consideration of the bill, I fought to tighten the NO_x provisions to compensate for the slight sulfur concessions made to coal-burning States. The conference report reflects this tightening of NO_x standards.

The acid rain program is good news to anyone who has seen the dead and dying spruce trees atop Vermont's Camel's Hump. It's good news for the lifeless lakes of the Northeast. It means that coal-burning powerplants can no longer rely on their tall stacks to ship pollution out of their backyards and into ours. The new Clean Air Act calls for real and significant reductions, and these dirtiest plants are given incentives to clean up early.

Acid rain has killed more than lakes in the Northeast. For a decade the issue has killed all hopes of passing a new clean air bill. The solution to both problems has been an innovative, market-based approach to acid rain controls; a system that allows the goal of a 10-million-ton reduction to be reached while letting industries choose the most cost-effective approach to getting there. Much credit goes to the President for having introduced such a concept, and to affected legislators for having crafted provisions to make it work.

The provisions related to mobile sources of pollution—mainly automobiles and their fuel—have been a very contentious part of this package. While I am fairly comfortable that the first round of tailpipe controls for new automobiles and trucks will effectively reduce emissions of hydrocarbons, nitrous oxide and carbon monoxide, I fear that the second round may never be implemented under the conditions stipulated by the conference report. I had hoped that the Senate provision, a trigger based on the progress made after implementation, would prevail, but it did not.

A key method of reducing emissions from automobiles is limiting harmful constituents in the fuel. Throughout the development of this bill, I have stressed the importance of recognizing the "garbage-in, garbage-out" theory of gasoline. That is, to reduce the amount of pollution coming out of the tailpipe, we must force reductions in the amount of pollution that is contained in the fuel.

I am pleased that the conference report contains fuel quality provisions that I had introduced and supported through the course of Environment Committee and Senate floor action on this bill. The legislation we are approving today will require a cleaner generation of reformulated gasoline, first in the dirtiest cities but eventually nationwide, that may prove to be the most effective tool in reducing urban smog and limiting toxic emissions from gasoline.

Mr. President, the junior Senator from Rhode Island and I worked hard to get a sound alternative fuels provision in the Senate version. Unfortunately, these provisions were watered down in the conference. Much work needs to be done here.

The Senate reconciliation bill contains my amendment outlining a comprehensive program to coordinate the development of alternative fuels. Tomorrow, I will be introducing the bill to implement that program.

Title VI of the conference report is an important section phasing out chlorofluorocarbons by the year 2000, methyl chloroform by the year 2002, and most forms of manmade chlorine-based molecules by the year 2030.

While the effect of this family of compounds on global warming is still subject to debate, the fact that they destroy the ozone layer is not. The conference report recognizes this grave problem.

I am especially pleased that the conferees were able to include provisions I had supported phasing-out CFC's without preempting State and local authority to enact stricter regulations. My State of Vermont has enacted a law banning CFC-depedent air-conditoners in automobiles, and nothing in this conference report will prevent it from enforcing that statute.

A most significant title of this bill is that which establishes a new regulatory regime to reduce emissions of toxic air pollution. All major sources of toxic pollution will be required to install "maximum achievable control technologies," followed by a review and imposition of additional, stricter controls if warranted. This title will assure a 70- to 80-percent reduction in toxic emissions from industrial plants nationwide.

The State of Vermont is already ahead of these new Federal standards, but the national controls will benefit my State by reducing the levels of interstate airborne toxics. I appreciate the conferees' willingness to retain the toxic monitoring network, including my language requiring a monitoring station to be established in Lake Champlain, as part of a system to improve our understanding of the extent to which toxic pollution is carried by wind currents to be deposited at downwind locations.

Mr. President, it's been a long and tumultuous process that has brought us to this point today. I want to recognize the leadership of Senators BURDICK, CHAFEE, and BAUCUS in moving the bill from the Environment Committee through the conference. The leadership of Senators DOLE and MITCHELL, especially during the course of Senate floor debate, proved invaluable. Senator DURENBURGER's work on the toxics title, Senator CHAFEE's on CFC's, and Senator MITCHELL's on acid rain deserve mention.

From the beginning, President Bush has been behind this package. It was his acid rain proposal that broke the legisliative logjam last year. His participation during Senate consideration helped ensure passage from this body, and the technical assistance of his Federal agencies was critical throughout the process.

This bill will take a substantial bite out of air pollution proportional to its costs. While we will not have solved all our air problems with the passage of this bill, we have turned the corner on air pollution as well as on environmental control methodology. The bill contains important new innovative methods to regulate with a carrot rather than a stick, signaling a shift toward a greater reliance on economic incentives.

Mr. President, I commend the conferees on their ability to resolve very difficult and contentious issues. I am grateful that the fruits of our labors this Congress will be realized at last, and look forward to using the lessons learned as we turn to other environmentally critical measures, including the transportation bill, the solid waste law, and our National Clean Water Act.

I urge my colleagues to support and pass this conference report without delay. A Clean Air Act reauthorization is long overdue.

I also want to commend my own staff member Brian Keefe for his incredible good work in helping me face this very difficult task, Mr. President.

I yield back the reminder of my time.

EMISSION STANDARDS FOR MUNICIPAL INCINERATORS

Mr. GRAHAM. Mr. President, the provision of this bill establishing emission standards for municipal incinerators is of particular importance to my State. Several cities and counties in Florida operate incinerators as part of their waste management program and a few of those units represent substantial investments by local governments. The bill passed by the Senate contained a special provision which I offered on the Senate floor to recognize the efforts that Florida has made to protect the environment, especially our sensitive ground water resources, with a sound solid waste management policy. Because that provision was deleted by the conference, I wish to ask the distinguished manager of the conference report two questions.

First, EPA has proposed a rule that would require some existing municipal incinerators to install scrubbers. Am I correct in saying that the conference review requires EPA to review that proposal in light of the new legislation?

Mr. BAUCUS. Yes, EPA is to review its proposal with respect to the acid gas scrubber requirement for all existing units. This legislation contains a standard for control which is not present in current law. EPA proposed a scrubber requirement for some very large existing units and no requirement for smaller units. Whether that determination properly implements this new standard is in doubt and we are asking EPA to review the data to see how the new standard should be written. We do not have a predetermined answer to that question. The legislative standard is appropriate. It is one that will be applied across-the-board to other existing sources of toxic pollutants. How it applies in the case of municipal incinerators is the question we are asking EPA to answer.

Mr. GRAHAM. The standard the Senator has mentioned authorizes EPA to consider costs in determining the level of control that will be required. One of the costs that Florida incinerators face is the cost of disposing of waste during the time that the scrubbers are being installed. Is that one of the costs that should be considered by EPA in setting this standard?

Mr. BAUCUS. I think that is a factor that might appropriately be raised during the development of a standard. It would be one element of the cost equation. But cost considerations are constrained by the level of control that is achieved by the best performing similar sources under the legislation. The bill also allows the agency to create subcategories to recognize real differences in the operating circumstances faced by facilities, so that the question of cost as a basis for standard-setting can be fairly applied.

Mr. GRAHAM. Mr. President, I rise today to congratulate all of the conferees on the clean air bill for their truly outstanding work in fashioning what will prove to be the most important and far sweeping piece of environmental legislation this Congress has ever produced.

A special debt of gratitude is owed to the leaders of the Senate team: our majority leader, who has worked ceaselessly for over a decade on this legislation; the leader of the conference, my good friend from the State of Montana, who as chairman of the Environmental Protection Subcommittee brought this bill to life; and the ranking member of our committee, my esteemed colleague from Rhode Island.

If I may, I would like to ask my distinguished friend from Montana to clarify a technical point in the acid rain title relating to units below a 1.2 pounds per million Btu emission rate.

Mr. BAUCUS. Surely.

Mr. GRAHAM. First, am I correct in understanding that "allowable emissions" includes the term "allowable 1985 emissions rate" and the term "allowable sulfur dioxide emission rate"?

Mr. BAUCUS. That is correct.

Mr. GRAHAM. Do the conferees intend that both of those terms shall mean the emissions limitations reflected in the affected unit's federally enforceable permit?

Mr. BAUCUS. Yes.

Mr. GRAHAM. Given the Senator's stated intent, is there any reason to believe that the conferees intended to give the EPA the discretion to substitute the unit's actual emissions rate during 1985 or subsequent years?

Mr. BAUCUS. Absolutely not. The phrases mean what they say. When the drafters wanted EPA to apply the actual emissions rate, we used the word "actual." When we meant "allowable" we used "allowable." This is clearly reflected in section 402 of the act as amended in the definition of "allowable 1985 emissions rate".

Now keep in mind that emissions limitations listed in permits are often not expressed in annual terms. Because the whole acid rain allowance system is based on limiting annual SO_2 emissions, we included in the calculation of these two allowable emissions rates an "annualization" requirement. Quite simply, to do this the EPA starts by using the numerical rate listed in the unit's permit. However, if this rate is not expressed in pounds per million Btu, the EPA shall calculate an equivalent rate in pounds per million Btu based on the permitted heat input rate.

Then the EPA will annualize this rate by using the design of the unit, fuel type and maximum sulphur content of the fuels allowed under the unit's permit to establish the allowable emissions rate.

For example, in the case of a utility unit subject to the requirements of section 111 and which commenced construction after September 18, 1978, the unit's federally enforceable limitation shall be the unit's federally enforceable 30-day emissions limitation for the highest sulphur content fuel that the unit is permitted to consumer. To apply this limitation to the terms of title IV—which require that the limitation be expressed in terms of pounds per million Btu on an annual basis—the EPA simply has to calculate the annual equivalent of the limitation and convert it to pounds per million Btu.

Mr. GRAHAM. As a member of the Environment and Public Works Committee, am I correct in recalling that the Senator's explanation reflects the committee's intent on the meaning of these terms as well?

Mr. BAUCUS. Yes the Senator is correct. We have endeavored long and hard to preserve our committee's original intentions.

Mr. GRAHAM. For that, and for all his efforts to make this landmark bill a reality, I wish to thank the Senator from Montana.

TOXIC CONTROL PROVISIONS

Mr. GORTON. For purposes of clarification, may I ask the able manager of the conference report a question with respect to the toxic control provisions of title III?

It is my understanding that in identifying categories and subcategories of major sources of hazardous air pollutants as required under section 112(c), the Administrator is directed to be consistent with the industry categorizations and subcategories already promulgated for new sources of performance under section III of the act. This is a very important provision which will help to minimize possible confusions that might develop within a specific industry, and also will avoid unnecessary costs and dislocations to that industry.

For example, Mr. President, the primary aluminum reduction industry in the United States is separated into two distinctly different types of technologies—the Soderberg process and the prebaked anode process. These two processes are now recognized by EPA as distinctly different technologies for the purposes of the new source performance standards. Am I correct in assuming that in implementing this new provision, the EPA should maintain the same distinction with respect to the aluminum industry subcategorization?

Mr. BAUCUS. My distinguished colleague from Washington is correct in his interpretation.

CLEANING UTILITY UNITS

Mr. BUMPERS. Mr. President, I would like to congratulate the distinguished Senator from Montana on his hard and successful work on the Clean Air Act amendments. Without his diligent efforts we almost certainly would not be on the verge of enacting this historical legislation. I would like to ask the distinguished Senator a few questions about the act to clarify an issue that only recently arose. I note that Senator PRYOR also is on the floor and I am sure he too would like clarification.

One of the principal reasons I strongly supported the Clean Air Act amendments during debate in the Senate is because of the equitable manner in which the clean utility units were treated by the bill. In particular, I was pleased that the coal units in Arkansas were not penalized for already operating at emissions levels far below the levels required of much dirtier units by this act.

Under this act, the clean coal units will receive allowances based in part on the lesser of the units' actual 1985 emission rate or the units' allowable 1985 emissions rate. At the time we agreed to the provisions that provide allowances for clean units, my understanding was that the allowable 1985 emission rate under subsection 402(r) of the Senate-passed bill was intended to be the emission rate set forth in the units' permits or State implementation plan. If that were not the case, then the provisions affecting the Arkansas coal units, as well as many other clean units, would not reflect our agreement.

I would like to ask the distinguished Senator from Montana whether it is the intent of the managers and the conferees that the allowable 1985 emission rate be reflective of the emission rate set forth in the units' permits or State implementation plans.

Mr. PRYOR. I concur with Senator BUMPERS' comments and strongly agree that the question of what is intended by the term "allowable 1985 emissions" rate should be made clear.

Mr. BAUCUS. I thank the Senators from Arkansas for their kind remarks and for raising this question. That issue has been brought to my attention by several other Senators as well. I want to confirm that we intended the allowable 1985 emission rate, the Senate definition of which the conferees retained, to be based on the emission rate set forth in the units' permits or State implementation plans, although expressed on an annualized basis. Of course, not all units' permits and State implementation plans contain such specific emissions rates. In those instances, we expect the Administrator of EPA to develop an emission rate based on fuel use, variability of sulfur content, use of scrubbers and other appropriate factors.

ESCALANTE GENERATING PLANT

Mr. DOMENICI. Mr. President, prior to a final vote on the clean air conference report, I would ask the floor manager if he would be willing to take a few moments to clarify two points for me.

Mr. BAUCUS. I would be pleased to do so.

Mr. DOMENICI. My first question relates to a discussion that you and I had during consideration by this body of S. 1630, the Senate's clean air bill.

At that time, we discussed the calculation of allowances under the acid rain title for a one-unit plant in New Mexico—the Escalante generating plant operated by Plains Electric.

This super-clean plant has an emissions limit of 0.2, and the plant often operates well below that limit. You and I discussed the fact that for the sole purpose of calculating Plains allowances, EPA should rely on NURF data, as it stood at the time of our previous colloquy of 2,353 tons—2,823 tons with the 120 percent "class of 85" calculation.

As we discussed at that time, this is important because the form 767 which Plains filed in 1985 was for financing purposes only.

By way of clarification, would the floor manager confirm this point.

Mr. BAUCUS. The Senator from New Mexico's understanding is correct. We agreed that the Escalante plant's allowances would be calculated, using NURF data.

Mr. DOMENICI. My second question also relates to how allowances are calculated. It is my understanding that the way the Senate bill is drafted, calculations are made based on unit-by-unit emissions standards.

By way of example, let me focus on the four-unit San Juan generating plant in New Mexico. As provided in the legislative language, EPA will calculate that plant's overall allowances by computing unit-by-unit allowances based on the emissions limits set for each unit and then adding up the totals for all four units.

Would the floor manager be so kind as to confirm that that is, indeed, how the San Juan plant's allowances will be calculated?

Mr. BAUCUS. The Senator from New Mexico is correct. Given the fact that the Administrator will be allocating allowances for over 2,000 units, scores of which offer unique situations, I can only address the specifics of the San Juan plant. Speaking only of that plant, San Juan's overall allowances will be based on a calculation of each individual unit's totals as determined by the individual emissions limits for each unit.

Mr. EXON. Senator KERREY and I would like to compliment the chairman of the Environmental Protection Subcommittee for his contributions to the Clean Air Act amendments, and ask for his clarification on two issues in the acid deposition title. These regard how EPA should exclude shutdown periods when calculating the "baseline" fuel use and when making appropriate adjustments to the fuel use in calculation. My concern is solely about an oil and gas-fired unit in Nebraska that represents a very unique situation. This unit has low-sulfur dioxide emissions; it operated at uncustomarily low levels during the baseline period; and it has no opportunity for systemwide transfers of unused allowances. It seems to me that this clean unit's future use as an intermediate or baseload unit.

The unit is the Canaday steam plant, a 108-megawatt powerplant in Nebraska that is fired mostly—but less than 90 percent—by gas and supplemented by oil. Canaday is the sole steam generating unit in the Central Nebraska Public Power and irrigation district system. Consequently, there are no other units in the system from which unused allowances can be transferred to Canaday. The plant is a clean unit with average annual SO_2 emissions over its operating history of less than 0.2 lb/mmBtu. This is less than one-third of the 0.6 lb/mmBtu allowable emission level under both bills for oil and gas-fired units. Throughout the seventies and early eighties, the unit was operated as a baseload unit. During the baseline period of 1985, 1986, and 1987, it operated as a peaking unit, and had five shutdown periods in excesss of 4 months. These shutdowns occurred primarily because the sole customer of the Canaday steam plant had recently brought online another generating unit which reduced the need during the early and mid-1980's for Canaday's electric generation. The power needs are now increasing and will continue to increase to the point where Canaday will again be operating as an intermediate or baseload unit. If EPA decides not to exclude Canaday's shutdown periods, Canaday would receive less than 200 tons of SO_2 allowances per year. These are insufficient allowances for the unit to operate as an intermediate or baseload unit after the year 2000.

As a result, other units with higher emissions per mmBtu will probably be used to meet the electricity needs of central Nebraska. If EPA is directed to exclude the shutdown periods, however, Canaday would receive SO_2 allowances of about 710 tons per year. Canaday could then operate as a clean baseload unit.

Obviously, Mr. President, this predicament presents a difficult problem for Canaday and we want to be sure that Nebraska ratepayers are treated fairly. The chairman has been very fair to Nebraska throughout these deliberations.

As a further point of clarification, is it his understanding that the Administrator should exclude Canaday's shutdown periods of four months or longer?

Mr. BAUCUS. Yes, that is my understanding, based on the fact that I would deem the Senator's plant's situation is absolutely unique. This says nothing about the EPA's excercise of its discretion in any other situation. I would expect that this situation would not establish a precedent.

Mr. EXON. Is it also his understanding that after excluding these shutdown periods, the administrator should divide the actual fuel use during the baseline period by the remaining days in the baseline period to obtain an average daily fuel use amount, and then multiply that amount by 365 to obtain an average annual fuel use amount, which would then be used to compute the unit's Phase 2 emission allowances?

Mr. BAUCUS. That is correct.

Mr. EXON. Mr. President, I would like to thank the Senator from Montana for all his hard work on the Clean Air Act. He has gone the extra mile to accommodate this Senator's concerns. He has been fair and even-handed with what has obviously been one of the most difficult issues in the 101st Congress.

Mr. KERREY. Mr. President, the Senator from Montana, Mr. BAUCUS, has done an excellent job on guiding the Clean Air Act through the Senate and I appreciate his willingness to accommodate the concerns of the Senators from Nebraska. I thank him for taking the time to give his attention to resolving the problem faced by the Candaday plant.

Mr. BAUCUS. Mr. President, it has been said, and it bears repeating, that this is probably the most comprehensive, complex and sweeping bill that this Congress will pass not only this year but most likely in this decade. It certainly is the most comprehensive, most sweeping, most significant environmental bill that this Congress will pass in this quarter century.

This bill touches every American in two ways. First, it will help clean up the air, will affect the air that every American breathes or sees. In addition, this bill has significant economic implications. Every American will be affected by the economic consequences of this bill either in the cars that they drive or in the plants in which they may work at, or the coal they may mine or other jobs they may have in coal mines. This bill will affect virtually every American one way or another. Again, on the economic side, through utility rates. It is incredible, if one stops to think how comprehensive and sweeping this bill is. Any one title of this bill is complex. And all titles together, it makes this bill even more complex.

I mention all of this so that we realize why it has taken us this long to come this far. It will take about a decade to pass a bill of this complexity, and it has. There will also be many ramifications, many consequences that we do not yet forsee. Many of the provisions in this bill are new ideas.

Allowance trading in the acid rain title. We think it will work. We thought it through as well as we could. We are not sure it will work as well as we had intended. Therefore, there will be many adjustments, modifications and refinements as we work with and experiment with the acid rain portion of this bill.

The same applies to the other titles; the air toxic provision with MACT and the residual risk provision of that bill. The same with nonattainment provisions as the Nation dirtiest cities attempt to meet the deadline prescribed in this bill.

So I urge Americans to appreciate the complexity of this for its intent, that is to help clean up the air; also the intent of legislators to strike a reasonable balance between the need to clean up the air and the need to have economic consequences that are not too severe; and also to urge Americans to work with us in the Congress over the next several years as we work on refinements to help make sure this bill works.

Mr. President, this bill is also remarkable in that there is virtually no partisanship. This is a bipartisan effort. The President, the Republican President, and the Democratic Congress have worked together to pass this legislation. The House and the Senate worked together to pass this legislation. It is remarkable that there has been virtually no partisanship. In fact, I cannot think of any as we worked on this bill. As I think back upon the many days and hours and the many late nights, 3, 4, 5 in the morning, they were all efforts of Senators and staff to try to help make this work, to try to fit the pieces together in a way that makes sense.

I am very heartened, frankly, by the lack of partisanship because it was put together in a way with just the best purposes and the best interests in mind, and that is the public interest—what is the best way to make this work and the very best way for the most and for the best very best reason?

I would also like to commend the staff. I cannot find the words to adequately describe my sense of inspiration and of awe for the time and intensity and intelligence of the staff that went into this bill. I do not know how they are able to stand up, they have worked so long. I do not know where they kept finding all these new ideas as we met one problem after another.

I would like now to indicate the staff who I think have been most helpful on this bill, and they begin with, on the majority side, the staff director of the Environment and Public Works Committee, Mr. David Strauss.

Following Mr. Strauss, Kate Kimball. Kate Kimball has more ideas, she is more energetic and has more life in her than any 10 people I have ever met.

Mike Shields. Mike Shields is sitting next to me at this moment. Mike Shields has been the firm, resolute, cautious, patient, guiding hand. When tempers would flare, when people would go awry, when one would come up with a crazy idea, Mike Shields was there to keep this process on the right track and keep us all focused on the bull's eye; that is, getting a good Clean Air Act.

Joe Goffman, who works with the acid rain title; Jennifer Hess, who was particularly helpful with the mobile sources fight; Cliff Rothenstein, Lynn Scholoesser, Zack Church, Dan Berkovitz, Roy Kienitz, Larry Cupitt, Janice Nace, Ingrid Utech, Karen Spence, Judy Campbell, Elizabeth Thompson, Emily Berman, Margie Wright, Paul Chimes; and Jean Brodshaug of Senator BURDICK's staff. Those are the ones who did the hard work.

And, as Senator CHAFEE mentioned, on the minority side, Bob Hurley, Kathy Cudlipp, Jimmie Powell, Steve Shimberg, Steve Roady, Brent Erickson, Karen Field, Donna Campbell, Irene Sarate, Marie Balderson, and Carolyn Streeter.

I would like to, at this point, mention some of the House staff whom I have got to know better. One is David Finnegan, who is chief staff person for the majority side and Chuck Knauss, who is the chief staff on the minority side. Also, John Orlando, Phil Schiliro, Greg Wetstone, Phil Barnett and Pope Barrow. And on my personal staff, Mike Evans and Tracy Crabtree.

I guess, Mr. President, you can tell from my comments that I am particularly impressed with the teamwork. We all worked together, most particularly on the Senate side. We, as Senate conferees, Republican and Democrats, were all a team. There was no party label. We were just working together to get the bill to work. The same on the staff side. Often minority staff would be primary assistants on a certain title of the bill. Often majority staff would be my primary assistants on another title of the bill. We were all working together.

I would very much like to tell Senators how much I appreciate that teamwork, because I think it is one of the main reasons we have produced a bill that is heralded by both the environmentalists and by industry groups as a whole. I did not think that would happen, but it has, and I think it is primarily because of the teamwork

with which we have approached this bill.

I see the distinguished Senator from Missouri on the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 3 minutes.

Mr. BOND. Mr. President, I want to express my sincere thanks to the distinguished floor manager. He said many things with which I agree. This was a bipartisan bill. We had fights and spats in which we fought with our own party or the other party. We split on regional lines. We had different views on different subjects. But in the end, as he said, we came together and produced a package. I think it is a very forwardlooking package.

I want to commend the floor manager on the minority side, Senator CHAFEE, and the leaders in the conference deserve a great deal of thanks.

Passage of this conference report on clean air is a very noteworthy event. It will be the first time in 13 years that Congress will finally get down to doing something on a new clean air bill. It is a far-ranging bill which will affect many different aspects of our lives. It will reduce toxic emissions from manufacturing plants. It will reduce smog by tightening auto pollution standards. And it will cut acid rain emissions in half.

Our air quality will improve enormously over the next 10 years and the beneficiaries will be the American people and future generations of American people.

I am very pleased to have been a part of this important process. Together with my midwestern colleagues under the leadership of the President pro tempore, Senator BYRD, I was involved in the drafting and discussing and redrafting and rediscussing the acid rain title of the bill.

Our goal was to draft a compromise which achieved significant reductions in acid rain emissions while spreading the costs among all regions of the country. The mechanisms we devised for this was the emission allowance trading system which allows utilities to make SO_2 or sulfur dioxide reductions below their required limit and sell the difference, or credits, the additional reductions as emissions allowances to other utilities around the country.

We never tried a market-based approach to pollution control before. But I am optimistic that it will work and it will work well. It makes good commonsense that those utilities which can provide the most economical reduction, in other words achieve clean air at the lowest cost, should be able to recoup some of that cost by selling the credits it generates by cleaning up more than the required standard to other utilities which may face greater costs in making similar cleanups. The ultimate goal will be cleaner air, will be a reduction of SO_2 at, we hope, the lowest cost ultimately to the consuming public, the electricity users who are the ones who have to pay.

I want to add my thanks to the long line of thanks that have already been mentioned. I already said thanks to the conferees and to their staffs. They have worked tirelessly to see this bill come to completion.

Senator BAUCUS and Senator CHAFEE deserve particular mention for their hard work. I have never seen a Herculean task before but I believe I saw one in crafting this acid rain bill, and they deserve thanks for undertaking it.

The majority leader and the minority leader deserve our appreciation, particularly for the effective leadership of the special Senate negotiating groups last spring; a novel way to make sure that everybody who had an interest had a say. I thank them for giving us the opportunity to participate when we had vital interests at stake, even though many of us did not happen to serve on the committees.

I have some thanks, also, that go to staff in particular. I believe I should note the outstanding work of Kate Kimball and Joe Goffman on the acid rain title. They consistently demonstrated grace under pressure and managed to maintain the regional balance so necessary to make the program work.

I also reiterate my special and heartfelt thanks to the President pro tempore, Senator BYRD. He brought us together as the Midwest. He helped us come to agreement on the goals we sought to achieve and I and all of us in the Midwest owe him a special debt of gratitude for his excellent leadership and guidance.

I personally am particularly grateful to Jon Wood and Rusty Mathews who continue to attempt to educate me on the important environmental issues at hand.

I, finally, would say I would not have been able to do it without my own staff on this measure, Claire Heffernan, who faced the very real challenge of working with someone who is not a committee Member to bring him up to speed so we could accomplish what I believe we have for the Midwest and for the acid rain provision.

It has been a great privilege to work with all of the people on this legislation. I commend it to my colleagues. I urge them to support this important piece of legislation.

Mr. SIMPSON. Mr. President, I know the hour is late. I do not like to transgress, not on ourselves but on this fine staff that continues to remain right there at their posts. But as this has been about 12 years of hacking around on something, I thought I would take about 12 minutes, 1 minute per year and watch the clock and time myself.

I want to indicate that this has been a remarkable thing. Of course, I support the conference report. It is finally going to do something, something real, to reduce acid rain-causing emissions by 10 million tons per year while providing flexibility to utilities meeting this requirement. It is a great victory for the environment and for those of us who come from the so-called clean States.

Several years ago Senator Bill Proxmire and I started up a Proxmire-Simpson acid rain control bill. Since that time we have been working with others, Senator MITCHELL and I worked on one, Senator BAUCUS and I. Senator MITCHELL and I were very close at one time and there were former Governors involved: Tony Earl, I remember, Governor Sununu, who were members of the alliance for acid rain control. I want to thank them for what they did.

We know what this is going to do. I will not go further into that. But it is going to reduce the air pollutants that cause cancer and reduce the amount of ozone-destroying CFC's in the upper atmosphere.

It is a compromise. No one got everything they wanted and you would have to believe that if you had been there at 4:30 in the morning last Monday when Senator BAUCUS and I were the last two survivors of the great struggle on the Senate side. We stated our position on the final issue in the crispness that was unmistakable. It was very clear that we all wanted a bill. No one got what they wanted. Some were bruised. I have my own scars. Senator BAUCUS, Congressman JOHN DINGELL, Congressman HENRY WAXMAN, JOHN CAHFEE—he did a splendid job.

There are several provisions I very much wanted that are not in this bill but I am going to support it and would urge my colleagues to do the same. It has been a long, tortuous proceeding. The thing that so disturbed me all those years was to watch the extremists on both sides prevent us from getting a bill for 12 years and then prattle on about how it was not quite pure enough for the purest, and it was too heavy for those who were going to destroy American industry and not good enough for the environment. Meanwhile we belched 10 million tons of the stuff into the air every year for 12 years.

As they all rest in their beds tonight they can have the blame for it. We were trying to do the work but it was never good enough for them.

So here we are, after a decade or more of effort. We gathered enough momentum to overcome the strident whining and complaining of the groups on both sides of the issue and finally produced a very effective final

product. I understand the intensity of those people who tried so hard to kill it all those years. But I also am going to lay that blame right there with them.

I want to pay tribute to two people. As someone said at the press conference the other day, two people named George—George Bush had the guts and integrity to come up with a good bill to present us. He sent that up last summer. His decisive act helped us to cut through the hoorah and set up a solid bipartisan effort to craft this legislation. And then GEORGE MITCHELL. He deserves special tribute. Our majority leader exhibits his skills as a fine legislator, a member of the committee. I am on two committees with him and it has been a great pleasure to produce a moderate bill.

After the bill was reported from committee, and that was a good process—he convened the negotiations between the White House and Senators in his personal office off of this floor during February, and many sat in that room for weeks on end in order to work out a compromise bill that could actually pass on the Senate floor. We would always send one out of committee that would never pass.

After compromise was reached, GEORGE MITCHELL helped keep it intact and the Senate overwhelmingly supported the bill. I commend him. He is a superb legislator and he has ultimate patience.

There were many other players, but my colleague from Montana certainly was one of the principal ones. Senator MAX BAUCUS worked doggedly. He and I came to this Senate the same year, the same time. I have enjoyed working with him. I realize fully it is a partisan year. He is running for reelection. I am running for reelection. Sometimes things get distorted in that process.

There was no distortion in the promise made and the work we did together for our Western States. I want to say it was a great pleasure to work with him. I say it in the sincerest way I know. I watched him grow in leaps and bounds through that process, as he mastered that issue. It was a very impressive thing to see.

JOHN CHAFEE, Mr. steady. He keeps us on course. He is a splendid man and he did a very patient and vigorous job protecting his interests and protecting the interests of the minority. But really there was no partisanship in the issue.

And Senator DOLE, our fine minority leader; continually there, always present, always urging us on and assisting in so many ways.

Senator DURENBERGER, also with his splendid work with his staff person, Jimmie Powell, who is one of the brightest gentlemen you want to get to know. He knows the issue and is nonpareil, what he can do and did, in this work.

So, all of them were tireless in their efforts and we have done this. We will do it without bankrupting America and we have seen hundreds and thousands of hours in this legislative process; many nights until 3 or 4 in the morning in order to grapple with the extremely technical issues of clean air. I have never seen a process quite like it. It was tough, grueling, spirited, grinding and at times profane. At other times very rewarding and I was very pleased to be part of it.

Let me conclude and say those who know me understand at times I have been a bit critical of the Environment and Public Works Committee staff. I was particularly critical of one gentleman, but he is gone so I have shaped up. But let me say, watching them in action these last few months, I have seen this committee and personal staff work tirelessly on this legislation and I want to just thank them all for their tremendous efforts and personal sacrifice that was necessary to complete the legislation.

Jimmie Powell, Bob Hurley, Steve Shimberg, Kathy Cudlipp—a very talented lady, I watched her for years, Kate Kimball, Joe Hoffman, Mike Shields, Roy Kienitz, David Strauss, Larry Lupitt, Zach Church, Dan Berkovitz, Lyn Schloser, Cliff Rothenstein, and on the House side, Pope Barrow.

Let me say that on my own staff, let me commend Karen Field who recently joined the staff. She certainly recieved baptism by fire. She has risen to the occasion. She is a very bright and articulate lady, has a great grasp in nuclear technical issues, superb with radionuclide issues. She came to me from the U.S. Council for Energy Awareness. She is an experienced negotiator with a decade of experience, an invaluable member of the team.

Finally, I would like to recognize Brent Erickson, who is at my side at this moment, a member of my personal staff for 9 years who has worked tirelessly—and I have overused that word but this is the way this negotiation went. With the Environment Committee staff on this legislation, he has been totally involved in all aspects of it. He has used his remarkable technical expertise to great effect. He has been at my side through thick and thin, during all hours of the day and night, and has been particularly helpful with regard to the formulation of the acid rain title of this bill and protecting Western interests.

Brent has provided me that excellent technical support. He has a remarkable political sense, and throughout the clean air process, he has proven to be a most dedicated and creative, determined assistant. We have been through many battles together over the years. This has been his finest hour. I have seen this fine young man grow and mature in the process.

So I again commend Senator BAUCUS and Senator CHAFEE for their extroaordinary work, and Senator MOYNIHAN and his excellent efforts with regard to some of the research and development aspects, and so many others who contributed to this.

The bill is lengthy and complex. We might have to come back in a year and adopt a package of technical amendments. My hunch is we probably will because there are some overglandular active staff members on the House side who might provide us with a lot of reasons why we might have to do some technical amendments. Or it may be the fears of all the anxious lobbyists will not come true and EPA will actually administer the program propertly. I think Bill Reilly will make every effort to do that and it will work well in the real world and maybe we will not have to revisit for 10 more years.

We have heard a great deal of criticism from the media and the public about how Congress works. With the passage of this new Clean Air Act, this is a positive example of how the process works for the betterment of the American people. It is an example of the White House working closely with the Congress—Democrats and Republicans—to develop landmark legislation which will serve us well into the next decade. I trust the media and the American people have come to understand and appreciate that.

Mr. President, I rise in support of the conference report on the Clean Air Act Amendments of 1990. Passage of this legislation, and more particularly the acid rain control title, is a great victory for the environment and for those of us who come from the so-called clean States. Several years ago, former Senator Proxmire and I drafted the Proxmire-Simpson acid rain control bill. Since that time I have been working with others in the Senate to pass acid rain legislation. Also involved in that effort were former Govs. John Sununu and Tony Earl who were members of the Alliance for Acid Rain Control. I would take this opportunity to thank those gentlemen for their astute assistance in helping to develop a common sense acid rain control bill.

There are several provisions in the acid rain title that are very important for my home State of Wyoming. One of these is the definition of "allowable 1985 emissions rate" found in section 402(r). While such a provision may seem at first glance to be a very arcane, in fact it bears great import, and I am very pleased with the conferees resolution on this subject. The Senate passed bill contained the definition of allowable 1985 emission rate making clear that the allowable 1985 rate is the federally enforceable emis-

sions limitation for sulfur dioxide and nitrogen oxides applicable to a particular unit in a year 1985. The reason this definition is so important is that the allowable emission rate is a key factor in determining the allocation of allowances under this bill to each of the clean and new units. While the federally enforceable emissions limitations are expressed in a variety of different ways in State implementation plans, the bottom line is that the allowable rate is virtually always higher than the actual emissions rate achieved by the unit in question—for instance in Wyoming the federally enforceable rate would be 1.2 pounds of SO_2 per million Btu's. This is because coal and other fuels vary in sulfur content within a given coal seam or energy source. Thus, utilities routinely burn coal or other fuels that are rated below their allowable emission rate in order to provide a margin of safety so violations of the allowable rate do not occur.

Over the past month, the Energy Information Administration [EIA] has conducted several analyses of the allocation of allowances to each utility and State under both the House and Senate bills. Unfortunately, one of the many errors that EIA made in interpreting these bills centered on the Senate definition of allowable emission rate. EIA mistakenly assumed that the allowable emission rate was synonymous with the maximum actual emission rate achieved at each unit during the base line. This error resulted in EIA's estimates of allowance allocation to the clean units being understated by the more than 200,000 tons and opened up disagreements among the House conferees.

To base the allocation of allowances on a unit's actual emission rate, as EIA did, would in effect reduce its allowable emission rate and require utilities to switch to either lower sulfur fuels or to add further technology controls or even to buy allowances from other sources. This clearly was not the Senate's intent, and the conferees clarified this by electing to use the Senate definition of allowable emission rate, rather than asserting actual emission rate for the relevant subsections of section 405. It should be crystal clear to those officials of the Environmental Protection Agency who will be drafting the regulations to implement this act that the conferees intended the definition of allowable 1985 emission rate shall not be interpreted to mean the maximum actual emission rate achieved by the unit in question during 1985.

Several other provisions in the bill are very important for the Western States. I am so very pleased that we have finally repealed the onerous percentage reduction requirement that was placed in the act during the 1977 conference. This provision was placed in the law by Members representing high-sulfur coal States and was meant to give high-sulfur coal a market place advantage. Both the House and the Senate have rejected the concept of percentage reduction and have directed EPA to come up with an alternative standard that would allow utilities to meet it in the most flexible manner possible. The new standard could be met by fuel switching, the use of technology and fuel switching, by technology alone, and by intermittent controls or intermittent operation. The percentage reduction repeal language is clear on its face. The way the language is constructed, intermittent controls can be allowed to comply with this section of the act. The effect of this language was pointed out by several House conferees and a move to change the language was rejected by the conferees. So for the first time in 13 years we will have EPA setting an emission levels for SO_2 that will not require the use of the scrubbers for compliance.

The second part of the percentage reduction repeal involves a change in the definition of best available control technology [BACT] under the prevention of significant deterioration [PSD] provisions in the law. The Senate and the conferees agreed to change the definition of best available control technology in the law by including the use of the term clean fuels in the definition section. For the first time Congress has made it clear that not only technology can be considered, but the use of low-sulfur fuels may be considered as a best available control technology under the law. The EPA will set emission rates on individual plants on a case-by-case basis and then these plants can meet these requirements by using a clean fuel alone without any other technology. This could be a boon for coal, coal-gas cofiring, or the use of natural gas or any other low polluting fuel. This provision is part of and works hand in glove with the percentage reduction repeal to insure that the use of scrubbers will not be automatically mandated in any case.

Although the conference committee agreed to leave solution of the important and troubling Wepco issue for another day, one key aspect of the Wepco problem is solved by the repeal of percent reduction adopted by the conference committee. By adoption of this language, the Administrator of EPA is now authorized to consider fuel switching as an acceptable means for modified units to avoid new source review and technology requirements for SO_2.

In its January 19, 1990 decision *Wisconsin Electric Power Company,* v. *Reilly,* 893 F.2d 901 (7th Cir. 1990), the Court rules that Wepco's replacement project at the Port Washington Plant could not incorporate an enforceable fuel switch to low sulfur coal to avoid an increase in sulfur emissions and, therefore, new source requirements for that pollutant. In other words, under its current policy, EPA will not permit fuel switching as a way for modified powerplants to avoid the increase in emissions that would trigger new source review. In supporting EPA's position, the seventh circuit pointed to the CONGRESSIONAL RECORD from 1977 reflecting "Congress' refusal to allow stationary sources to substitute low-sulfur fuel to avoid a requirement of pollution control technology—at 919—emphasis added. The action of the conference committee in agreeing to percent reduction repeal reverses this aspect of EPA's Wepco policy and the seventh circuit's holding."

Another provision of the bill that affects the west is a requirement that EPA revise its model for surface mines under the fugitive dust provision. The current model EPA is using is unsatisfactory for surface mines because it is based on a stationery point sources. The operations in surface mines are constantly moving and are below the actual surface of the Earth and EPA's model does not accurately reflect the real world in this instance. The EPA is to revise this model within 3 years and while the revision is taking place, the States may continue to use monitoring to comply with the requirements under the act. In such case that EPA does not complete the model revision within 3 years, the States may continue to use monitoring until such time that the model is revised by EPA.

One portion of the fugitive dust increment exemption amendment was removed at the last minute because of a technical complication and a lack of time to deal with it. The removal of this portion of the amendment should not be construed as agreement that the amendment was not needed.

The conference committee tentatively agreed to a modified version of the Senate amendment (section 114(c) of S. 1630). However, differences of view about the final language on the modified version could not be resolved in a timely manner. The basic thrust of the original amendment, which was also included in the administration's bill, would allow a Governor to exempt fugitive dust emissions from surface coal mines, noncoal and hardrock mines from increment consumption under PSD reviews, except in class I areas.

In negotiations with House conferees, the provision was modified to require that mines exempted from PSD increment consumption must employ best available control technology [BT]. Moreover, the State implement plans, or SIP's, in the States in which the exemption was granted would have to be modified within 2 years of the granting of the exemption to reflect the BACT requirement.

The crux of the compromise was the quid pro quo in which the BACT requirement would be imposed only to mines for which the increment exemption was granted.

Unfortunately, the draft legislative language would have required that all mines employ BACT for emissions of all criteria pollutants, regardless of whether they are exempted from PSD increment consumption. This language would have imposed great hardship on all mining activities, most of which are neither in nonattainment areas nor have problems associated with increment consumption.

Most large coal mines in the west already employ BACT for particulates, but smaller surface coal mines, as well as noncoal and hardrock mines do not. There is a simple reason for this. The vast majority of these mines are not in areas of the country in which there are increment consumption problems associated with emissions of particulates or any other criteria pollutant.

In some States, including my own, the failure to include a provision dealing with PSD increment consumption will become a major constraint against development of new or modified mining operations. It is ironic that much of the impact of our failure to resolve this issue will occur in the very regions of the country which produce the Nation's lowest sulfur coal—coal which will be urgently needed to help meet the requirements of the important acid rain provisions of this bill.

Mr. President, the issue of an exemption for PSD increment consumption for surface mining activities must be dealt with in the next Congress. The fact remains there was in the course of the conference on the Clean Air Act Amendments of 1990 a compromise on the substance of the issue. Unfortunately, the managers could not come to a final agreement over the specific language of that compromise in time to complete the drafting of the conference report.

Senator BAUCUS, the able chairman of the Senate conference committee on the Clean Air Act, and I have agreed to pursue an appropriate amendment at the earliest opportunity now or in the next Congress.

I also have a brief comment about the air toxics title. In receding to the House provision on utility emissions, the Senate acted in part to recede from its conference proposal that would have created the discretionary authority to require scrubbing of utility emissions. The Senate recognized that the House provision includes the directive that EPA examine alternative control strategies. This provision contains the appropriate flexibility so that, in the event EPA finds it appropriate to regulate certain utility emissions, EPA could avoid any scrubbing requirement. In receding, the Senate is consistent with the intent of the Senate-passed subparagraph (e)(5)(E) that prohibited imposition of utility scrubber requirements. It is the sense of the conferees that EPA's ultimate decision avoid any conflict with title V implementation, including the compliance flexibility and cost-effectiveness goals which are central to the acid rain program.

Overall the acid rain title of this bill will go a long way in cleaning up the environment. The emissions cap will insure that pollutions levels are kept constant while the allowance system will insure that the clean States are able to grow in the future. I believe passage of this bill is a great victory for the American people and it represents a regionally balanced approach that will serve us well into the next century.

TARGETING OF FUNDS/CLEAN COAL MULTIPOLLUTANT CONTROL TECHNOLOGIES

With respect to provisions dealing with clean coal technology incentives I am pleased to note that the conference did not accept a House provision that would have limited clean coal technology demonstration funds to only the owners or operators of phase I affected units.

I have not been an advocate of the clean coal program, in general because, in my judgment, the program has been tilted toward high sulfur eastern coal projects. Most assuredly, the House provision simply would have codified this bias and further limited available clean coal funds to the Midwest. We should be utilizing this program to benefit coals from all regions of the country. By not including the House provision I believe we have retained a national program and prevented a regional subsidy. In this regard, I also encourage the administrator to use his discretionary authority to choose multipollutant clean coal technologies to receive the same clean coal time extension incentives now granted to certain clean coal repowering technologies. I am particularly interested in those precombustion clean coal technologies that are relatively inexpensive and that will assist in expanding the markets of western coal while meeting the new emission requirements of this legislation. The Administrator should take note that these precombustion technologies do not require boiler replacement and he should interpret the definition of repowering accordingly.

RADIONUCLIDE EMISSION PROVISIONS

Mr. SIMPSON. Mr. President, as author of the compromise amendment that would help resolve the problem of dual regulation of radionuclides by the Nuclear Regulatory Commission [NRC] and the Environmental Protection Agency [EPA], I am pleased that in conference we were able to reach an accord that would preserve, with slight changes, the radionuclide amendment approved by the Senate this spring. The new provision contained in the air toxics title of the Clean Air Act Amendments of 1990 provides as follows:

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission or an agreement State, is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 111 of this section.

The original Senate language provided that the EPA could forego issuing its own radionuclide standards, if after consultation with the Nuclear Regulatory Commission, it found that NRC emission standards provided an ample margin of safety to protect the public health. In conference, we included a requirement that the EPA Administrator make this finding by an informal rulemaking. The purpose of the provision is clear: EPA has the authority to defer to the NRC if EPA finds that NRC emission standards provide an ample margin of safety to protect the public health. Further, in my opinion, the purpose of this section 112(d)(9) is to instruct the Administrator to conclude the determination that the regulatory program established by the NRC pursuant to the Atomic Energy Act provides an ample margin of safety to protect the public health under the ongoing rulemaking proceeding which is stayed for reconsideration for all NRC licensees. This, of course, is the driving force behind section 112(d)(9), that public funds are not wasted in yet another informal rulemaking when the EPA has already stated under the ongoing rulemaking that the NRC regulatory program protects the public health with an ample margin. At a time when we are all seeking to reduce the budget deficit, and have labored long, hard hours to accomplish this goal, it is inconceivable that this section 112(d)(9) would require another EPA rule. To conclude this point, the current, ongoing rulemaking is sufficient to make the determination required under this section 112(d)(9).

As my colleagues know, the current NRC regulatory program includes research and test reactors, hospitals, clinics, the radiopharmaceutical industry, low-level nuclear waste disposal facilities, uranium mills and tailings, uranium hexafluoride conversion plants, commercial light-water uranium fuel fabrication plants, commercial

light-water nuclear powerplants, and other NRC licensees who are subject to the NRC regulatory program. The NRC has imposed emissions regulations on the nuclear industry that are ten times more stringent than those suggested by the national council on radiation protection, and two and a half times more stringent than those adopted by EPA under the powers granted them under the Atomic Energy Act. In addition, each utility, in its license issued by the NRC, is required to restrict emissions to levels that are as low as reasonably achievable. This is known as the Alara principle. With this provision in their licenses, many utilities cut their emissions to one-tenth of the NRC license requirement. This explains why the EPA has found that the regulatory program under the Atomic Energy Act protects the public with an ample margin of safety and therefore should make the determination that there is no need to promulgate any standard for NRC licensees under the Clean Air Act.

On a related matter, section 112(q) of the conference agreement contains a savings clause. In essence, this savings clause provides that nothing in the new subsection (d)(9) of section 112 would alter section 116. Section 116 of the act governs State authority under the Clean Air Act. When a standard or limitation is in effect under a State implementation plan or under section 111 (NSPS) or section 112 (NESHAPS), a State or political subdivision cannot adopt an emission standard or limitation which is less stringent than the applicable S.I.P. or Federal standard.

The savings clause was in the Senate bill, while the House bill contained no comparable provision. The conference agreement retained the intent of the Senate provision to signal that the elimination of dual regulation by the NRC and the EPA will not affect any retained authority the State may have under existing section 116 of the Clean Air Act. Strong support for this provision was evident in the April 3 Senate debate leading to passage of the amendment. Many of my colleagues and I emphasized that our efforts to end dual Federal regulation would in no way affect any authority a State may have under section 116. The savings clause, while in no way an affirmative grant of power to the States, simply addressed the concern that my amendment would somehow impinge upon section 116.

I would also mention that section 112(m) of the Senate bill provided that nothing in section 112 would preclude, deny or limit any right that a State may have to adopt or enforce more stringent standards than the standard in effect under that section. Section 112(m) also provided that nothing in section 112 authorized any State to impose any standard on the emissions of radionuclides from facilities licensed by the NRC where such standard would be barred by other Federal law. The House bill contained no comparable provisions. The conference agreement retains section 112(d)(9), the dual regulation provision, but deletes section 112(m), the State authority provision, which was simply duplicative of existing law and the savings provision of section 112(q).

Finally, I must reaffirm the meaning of section 112(r)(7)(D) pertaining to accident prevention which States:

Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate, including requirements for hazard assessment, the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

This provision expressly precludes any agency, other than the NRC, the authority to regulate or investigate accidental releases of radionuclides from NRC licensed facilities. Any attempt to do so would obviously be in violation of this section 112(r)(7)(D) of the Clean Air Act Amendments of 1990.

In summary, I think that the conference committee has done a good job of leading us out of a thicket on these issues, elimination of costly and inefficient dual regulation at the Federal level for no improved benefit to protect the public health and continuing the States authority which they now have under section 116 of the Clean Air Act.

Mr. President, I ask unanimous consent that a letter by me to EPA administrator Reilly, dated today, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
Washington, DC, October 26, 1990.

Hon. WILLIAM K. REILLY,
Administrator, U.S. Environmental Protection Agency, Washington, DC.

DEAR BILL: As you know, we have just concluded extensive work by the Congress to amend the Clean Air Act. The result of this effort is a law and legislative history which reflects the views of Congress. There is an action pending in your agency which I believe should be decided consistent with the clear expression of the will of Congress. This matter includes the ongoing reconsideration of Subpart I and review of pending petitions for reconsideration of Subparts T and W for the NESHAP on radionuclides.

I request your early personal attention to these issues since the rulemaking process for the affected industries has been ongoing since February 28, 1989 and deserves to be brought to completion promptly. In the absence of your attention, I am concerned that an ineffective and wasteful rule may go into effect. Your attention and understanding of the will of Congress, I believe, can help avoid such an outcome.

The Clean Air Act Amendments of 1990 states that complying standards pending review under Section 307 shall remain in effect. For example, the current reconsideration of the radionuclide NESHAP for NRC licensees is such a standard. Through your rulemaking process, EPA evaluated, and the public has commented upon, the health risks associated with the Uranium Fuel Cycle source category. In that proceeding, "EPA has determined that the current emission level provides an ample margin of safety." 54 FED. REG. at 51669. This margin of safety was found by EPA to be the result of the regulatory program established by the Nuclear Regulatory Commission pursuant to its statutory authority under the Atomic Energy Act. During this rulemaking process, your agency consulted with the NRC regarding the nature and scope of the regulation of all Uranium Fuel Cycle facilities,including uranium producers and processors, fuel fabrication facilities, and nuclear power plants. As Congress clearly indicated in the CAA Amendments (Title III, Section 112(d)(9)), EPA is not required to promulgate a CAA standard in such cases.

You stated in your letter of November 15, 1989, to Senator Burdick that unnecessary and duplicative authority to regulate radionuclide emissions from NRC licensed facilities should be eliminated. This is also consistent with EPA's position as stated in William G. Rosenberg's letter to Representative Phillip R. Sharp in response to Representatives Sharp's letter of February 2, 1990. The CAA Amendments now provide such clear direction and are completely consistent with the *NRDC* v. *EPA* decision. What we have provided is for you to continue the current reconsideration process (consistent with Section 112(q)(1)) and, if you determine, as I believe you will, that no EPA regulation is necessary because an ample margin of safety exists for uranium producers and processors, fuel fabrication facilities, nuclear power plants and other NRC licensees, Title III, Section 112(d)(9) clarifies that no EPA regulation is either necessary or appropriate. For the same reasons, I urge your immediate attention to the petitions for reconsideration on subparts T and W.

I hope this clarifies any questions of interpretation on this subject that you might have and trust that you will proceed accordingly.

Sincerely,

ALAN K. SIMPSON,
United States Senator.

REFORMULATED AND OXYGENATED GASOLINE

Mr. SIMPSON. Mr. President, title II adds new subsections 211 (k) and (m) to establish a reformulated gasoline program for nine ozone non-attainment cities, and an oxygenated gasoline program for carbon monoxide nonattainment cities at or above 9.5 ppm. The former program begins on January 1, 1995. The latter begins in the winter of 1992, unless waived by EPA.

I believe that both programs could bring health benefits to the large populations in these areas and will open new markets to farmers and natural gas producers, at some cost to motorists and with minimal disruptions in the supply of this critical fuel. But to achieve this balance, the Administra-

tor must adhere to the following important interpretations of and qualifications to the legislative language.

Many features of these programs were not included in the original House or Senate committee-reported versions of the bill, but were added subsequently, during floor debate. A clear legislative history for the House- and Senate-passed versions of these programs is thus not fully available. In addition, the final version of these programs set out in the conference report differs significantly from the House- and Senate-passed versions. The following statement explains these differences and provides my understanding of the legislative intent of the final version.

1. COST AND ENERGY REQUIREMENTS

The Administrator must, in shaping the reformulated gas program, consider in new 211(k)(1) the overall "cost" of the program's emission reductions and its effects on the nation's "energy requirements." In particular:

The Administrator has claimed this program will only cost motorists about 4 to 6 cents per gallon extra, and the conferees have relied upon this prediction. In addition, one of the Nation's major energy requirements is an adequate supply of transportation fuels at a reasonable cost. Reformulated gasoline thus is not an "at any cost" program, and is not to be administered in a way that results in pump price increases that are significantly in excess of this estimate.

Furthermore, cost is not limited simply to the financial cost of new refinery investments and oxygenate producing and handling facilities, presumably spread smoothly over all gallons of the new gas that is produced and sold over a long period of time. Such a "total original cost" approach might be approximate for a regulated utility industry, but it is not true for gasoline. Instead, the Administrator must recognize that gasoline demand is inelastic, and is traded in a deregulated commodity market where supply and demand set retail prices.

Crude oil and fuel markets have repeatedly experienced very large price increases and declines because of very small shortages or gluts. For example, 2 or 3 percent crude oil shortages in the two major disruptions of the 1970's doubled and tripled world oil prices. Today's worldwide crude shortage is reportedly only about 1 percent, yet crude prices doubled in 2 months. Similar large, rapid, up-and-down prices movements occurred in January and February of this year, due to very modest weather-related shortages and gluts of heating oil, diesel fuel, and propane. In sum, modest physical shortages can easily double consumer fuel prices; worse increases would result from larger shortages.

Gasoline prices in and out of the affected areas are an obvious, unmistakable index of this program's cost. In contrast, estimates of possible future supply or even current physical supply are often uncertain or disputed, and may or may not be correct. Accordingly, this program shall not be carried out in a manner that permits even modest physical shortages of refining and oxygenate capacity, or modest disruptions in deliveries to the nine large ozone areas, if those shortages or disruptions result in unacceptable price hikes to ultimate consumers at the retail pump. This applies to all cost considerations in new 211 (k) and (m).

It is critical for the Administrator to expedite the process of defining acceptable parameters for the new fuel, testing, it, and permitting the construction of new refinery capacity to produce it well before the 1992 and 1995 deadlines. Both the development and the enforcement of this program must recognize that lengthy or repeated refinery reconfigurations or shutdowns can spell unacceptable shortages of both conventional and reformulated gasoline, especially in view of the current record lack of spare refining capacity, as specified in recent reports from the Congressional Research Service. To avoid the potential for disastrous effects to the economy, jobs, transportation fuel supplies, availability, costs, and refineries' energy requirements, these formula standards and phase-in schedules must be considered as goals, subject to extensions or modifications. Similar implemention extensions are found in various other provisions throughout the Clean Air Act, such as in sections 110, 112, and 118.

Similarly, in moving from the phase I 1995 standards for VOC's and toxic pollutants to the phase II 2000 standards, refiners may be compelled to make additional major modifications in their manufacturing processes. Typically, such modifications require as many as five years to complete. In recognition of this timing factor, the feasibility test and any consequent adjustment in the performance standards under 211(k)(3)(B) should be completed by the Administrator no later than January 1, 1995.

Import dependency is part of the consideration of energy requirements set by 211(k)(1). This program is premised upon domestic refining capacity. Imported reformulated—if it exists at all in 1995 or thereafter—is certainly not banned by 211(k); but EPA should ensure that reliance upon imports for early implementation does not jeopardize the development of adequate domestic facilities.

2. MOBILE TOXICS

The provisions of section 206, mobile source related air toxics, requiring EPA rules barring hazardous air pollutants from motor vehicle fuels, effective May 1995, are not intended to create a second reformulation in addition to that required under 211(k). Nor may such rules conflict with, or nullify the antidumping rules under 211(k)(8).

3. COVERAGE

The regulations under 211(k)(2) apply to refiners, blenders, importers, and marketers. Some of these terms overlap: For example, some refiners also market their gasoline, and some marketers splash blend ethanol into gasoline, and thus are also blenders.

4. BASELINE VEHICLES

New 211(k)(2)(A) and other provisions on VOC's, air toxics, and antidumping, require the use of "baseline vehicles" to fairly compare the emissions of different fuels.

These comparisons will occur at different times and will involve different fuels. For example, the VOC comparison may occur early, in 1992 or 1993, and will examine: First, VOC emissions from the industry's 1990 baseline gasoline; and second, VOC emissions from a specific refiner's proposed reformulated gasoline. The antidumping comparison may occur later, in 1994 for example, and will examine emissions from a specific refiner's 1990 gasoline, and from that same refiner's 1995 conventional gasoline. Enforcement comparisons may occur even later, in the late 1990's.

In all four provisions, the baseline vehicles are intended to be the same: representative model year 1990 vehicles.

Three variables will influence the comparisons: The different fuels; the test cars that burn these fuels; and the varying, and in fact declining emissions performance of each test car over time.

The intent is that the latter two of these variables always be held constant by EPA, so that for each required comparison, only the two compared fuels vary. This prevents an improper comparison of apples and oranges.

For example, a VOC emissions test may occur in 1991, using 1-year-old 1990 vehicles. This may show the required reductions have been achieved and be the basis for huge investments in new refineries to produce the new gasoline. But years later, in 1994, for example, when the 1990 cars are older and dirtier emitters, the new gasoline may fail the test it passed three years earlier: Even though it is chemically identical to its successful predecessor, the aging 1990 cars may have changed in unexpected ways—and show only a failing 13-percent reduction in VOC emissions, compared to a successful 16-percent reduction that occurred 3 years earlier in the younger 1990 cars.

Indeed, the use of a mass basis test that compares the percentage difference between emissions from baseline gasoline and from the proposed reformulated gas, may guarantee failure in subsequent tests using older, dirtier

cars. Suppose baseline gas yields 100 mass units of VOC emissions on the young baseline car in 1991, and the reformulated yields 85. This 15-percent gain passes the 211(k) test. But 3 years later, the same absolute difference at a higher level would fail: 120 and 105 units—solely from the dirtier car—are still 15 units apart, and the reformulated gas is still better, but it is only about 13 percent better.

Accordingly, the baseline vehicle provisions must be read together with new 211(k)(4)(C) as follows:

Comparing results derived in 1 year from young baseline vehicles with those derived in later years from old baseline cars is unfair. EPA cannot do this.

Each refiner, blender, and importer shall be allowed to lock in on tests successfully performed at one point in time with the baseline vehicles, and cannot thereafter have their investments imperiled by different and worse results apparently owing to an aging baseline vehicle fleet.

Chemical identity within reasonable tolerances to a successfully tested fuel is the key; containing successful tests on an aging and increasingly unpredictable fleet are not.

Representative 1990 MY vehicles are chosen so that EPA need not assemble and maintain, through the 1990's, a much larger fleet of cars somehow representative of all cars, of all model years and makes on the highways in 1990.

5. TECHNICALLY INFEASIBLE

As used in the nitrogen oxide "cap" provision in new 211(k)(2)(A) and elsewhere, this phrase must be interpreted in a commonsense fashion that considers all aspects of this complex new program. For example, a certain chemical process to limit NOx may in principle be available; but if it costs $10 billion, or if it requires physical conditions like those on the surface of the Sun, it is not technically feasible within the meaning of new 211(k).

Similarly, a cost-effective chemical process may exist on a laboratory or pilot plant scale, but there may not be enough time to scale it up to the full, industrial-scale level that will supply all the needs of the affected cities without a shortage. Or scientific data may be lacking, and may require years to compile. Again, in such a case, compliance would be technically infeasible.

The phrase "technological feasibility" in 211(k)(3)(B) refers to the same commonsense concerns about workability at a reasonable cost and on schedule in the real world. Again, the standards must be viewed as goals, and as such cannot override consideration of cost to the public, availability of fuels, and energy security.

6. AN "APPROPRIATE ADJUSTMENT"

An appropriate adjustment to the NO_x cap under new 211(k)(2)(A) does not allow the costlier of two different alternatives, because that would not accord with the cost consideration requirement of 211(k)(1). Nor does this adjustment authority allow EPA to in effect rewrite the formula in 211(k)(3)(A) by, for example, an adjustment that completely prohibits any benzene or aromatics. "Adjust" as used in subparagraph (K)(2)(A) means instead a partial waiver.

Thus, there are several ways to prevent any breach of the NO_x cap, which EPA and refiners may use separately or in combination:

An adjustment, that is, a partial waiver under (k)(2)(A);

An "entire waiver" under (k)(2)(A);

A waiver under (k)(2)(B), if there is interference with a NAAQ standard; or

A waiver under new 211(m)(3)(A), if the area in question is an "overlap" area that is subject to both the reformulated and the oxygenated gasoline programs.

7. OTHER NO_x CAP ISSUES

The NO_x cap in 211(k)(2)(A) does not require reductions of NO_x.

NO_x cap results on baseline cars may be averaged by EPA. For example, if there are five baseline cars, and three show slight reductions, one shows no change, and one shows a slight increase, EPA may find 211(k)(2)(A) is satisfied. Requiring no increase from any of the vehicles under all operating conditions is a perfect example of how EPA, by extremely demanding test protocols, could in effect convert the NO_x cap into a NO_x reduction requirement. This is not intended.

No rewriting of the minimum performance standards in (3)(B), in any way that makes them more stringent, is allowed under the aegis of NO_x cap adjustments. Only the specified elements of the (3)(A) formula are within EPA's purview here.

Large VOC reductions gained through an oxygen content that also "breaks" the NO_x cap, cannot subsequently be used as the marker that must be equaled or exceeded under the "more stringent of" test in 211(k)(3).

8. A TESTING TOLERANCE

A testing tolerance is expressly provided for oxygen in new 211(k)(2)(B). Under 211(k)(4)(C), EPA must establish reasonable testing tolerances for all other aspects of this program, to minimize cost and make it workable and verifiable in the real world. EPA is specifically expected to promptly establish such tolerance limits. Similar tolerances for the CO program are also intended.

9. NO EQUIVALENCY FOR BENZENE OR OXYGEN

New 211(k)(2) sets forth the hard and fast features of reformulated gasoline. To be certified under new 211(k)(4)(B), each of the NO_x, oxygen, benzene, and heavy metal provisions in new paragraph (2) must always be satisfied (or waived by their own terms, as in the NO_x, oxygen, and heavy metal provisions).

In addition to these latter three waivers, flexibility is also provided by new paragraph (3), which gives refiners the choice between a formula, in (3)(A), or a performance standard, in (3)(B). The more stringent air toxic provision controls, as does the more stringent VOC provision. More stringent means the one achieving greater emissions reductions.

A reformulated gasoline may still qualify under (3)(B) even if it has some VOC's and some toxics that increase, compared to baseline gasoline. Aggregate decreases on a mass basis of all toxics and all VOC's are the standard; so a small decline or even a rise in one or two is not disqualifying, if other declines offset them and yield a sufficiently large aggregate decline in emissions.

10. EQUIVALENCY FOR AROMATICS

Read together, paragraphs 211(k)(2), (3), and (4) leave open the possibility that a reformulated gasoline may have an aromatics content exceeding 25 percent by volume. But its composition would have to be such, that both its VOC and toxic emissions were equal to or lower than those of a gasoline meeting the formula in (3)(A) or the performance standards in (3)(B).

EPA cannot take advantage of significant variations in physical and chemical properties of the many different kinds of aromatics, to rig a formula gasoline under (3)(A) containing an unrepresentative selection of aromatics of unusually low volatility or toxicity.

11. MULTIPLE CATEGORIES

Many compounds or types of chemicals noted in new 211(k) are subsets of each other. For example, benzene is an aromatic hydrocarbon, so reductions in benzene—to satisfy the benzene cap—will also count towards required reductions in aromatics and toxics as appropriate.

Benzene is also a VOC and a toxic air pollutant, so benzene reductions in the new gasoline should, for example, to some degree yield lower toxics in evaporative, running, and refueling emissions from baseline cars. Like tailpipe emission reductions, any of these three types of emission reductions (from lower benzene) would all count toward the percentage reductions for VOC's and toxics set by new 211(k)(3)(B).

12. HEAVY METALS

Reformulated gasoline may not include a heavy metal additive.

However, under 211(k)(2)(D), the Administrator may waive this prohibition if he determines that a reformulated market-grade gasoline containing the heavy metal additive will not have when tested on a basis consistent with

that originally applied to the certification of reformulated fuel not containing the metal, total emissions of toxic air pollutants, on an aggregate mass or cancer risk basis above those which would be emitted from a reformulated, market-grade gasoline of equivalent octane which did not contain the heavy metal additive. Toxic air pollutants are defined in new 211(k)(11)(B): benzene, 1,3-butadiene, POM, acetaldehyde, and formaldehyde.

It would not be proper for EPA, under 211(k)(2)(D), to determine whether a heavy metal additive can be granted a waiver by simply taking a reformulated gasoline and splash-blending the heavy metal additive into it; and it would be erroneous, if the five toxic air pollutant emissions increased in such a test, to then conclude that the heavy metal additive must be prohibited.

Instead, the heavy metal additive is a part of a whole reformulated fuel. It is the fuel in its entirety, not the additives, which must meet the performance standards set by 211(k). Thus, if the heavy metal additive were also an octane enhancer, and backed out aromatics, it might—when added to a regular-grade reformulated fuel—make that fuel a midgrade reformulated fuel. Accordingly, the proper course for EPA is to compare apples with apples, by comparing emissions from a market-grade reformulated fuel containing the heavy metal additive with a reformulated market grade fuel of equivalent octane that does not contain it.

This provision does not provide a substitute test for approval of fuels or fuel additives: The new tests regarding aggregate mass or cancer risk are in addition to other tests set by existing law and the new amendments to the Clean Air Act.

The existing provisions of section 211 of the Clean Air Act which require EPA to find that a fuel or a fuel additive will not cause or contribute to a failure of any emissions control device or system, will continue to be applicable to fuels and fuel additives, including additives containing heavy metals. EPA's establishment of reasonable testing tolerances do not set up a new ban against mere trace amounts of metals at or below levels now in baseline 1990 gasoline, and which originated in the crude oil.

13. PERFORMANCE STANDARDS

New 211(k)(3)(B) directs the Administrator, in performing the feasibility test, to consider the cost of achieving the prescribed reductions in VOC and toxic pollutant emissions.

In making this determination, the Administrator must assess whether the tighter phase II performance standards are cost-effective, compared to alternatives that are also available to achieve the needed reductions in emissions if the standards are not tightened. Effects of compliance with the tightened phase II standards on retail gasoline prices and fuels availability in the covered areas, and energy penalties at refineries to produce the phase II fuels must be taken into account.

14. CERTIFICATION

EPA must act on a petition for approval of a reformulated gasoline within 180 days, in order that large investments in new facilities are not delayed by uncertainty over the proposed fuel's legality. If EPA does not act in that period, the fuel or slate of fuels is deemed certified.

Slate of fuels refers to a combination of multiple grades or octanes of gasolines—premium, midgrade, and regular—and perhaps some specified proportion or relative volumes of them.

The conferees expect that procedures comparable to those under existing 211(f)(4) will apply to certifications under 211(k)(4). Any automatic approval, as a technical matter, can subsequently be nullified by an actual EPA disapproval of the petition.

Such a subsequent reversal could render worthless large sunk investments that were presumptively legal when made, and could create severe fuel shortages and economic hardships in affected covered areas. Accordingly, such reversals should be rare or nonexistent, and based only on extraordinarily compelling reasons that result from facts unavailable during the 180-day waiver period which, if known, would have justified the disapproval. The procedure, of course, should be section 211(c) of the Clean Air Act.

With regard to enforcement, any such disapproval can operate only prospectively. A reasonable time period for new compliance measures—new permits, new investment, new construction—must be granted by EPA. Nor can civil penalties under section 211 be assessed in such cases, for sales after the automatic approval and before the new compliance date set after the disapproval.

15. ENFORCEMENT

The intent of new 211(k)(5) is to penalize only the refiner, blender, importer, or marketer who knew or reasonably should have known that:

Its conventional gasoline has been wrongfully represented as reformulated gasoline, and is illegally being sold or will be illegally sold for ultimate consumption in a covered ozone nonattainment zone, or

Its reformulated gasoline which, after appropriate crediting or pooling adjustments, does not meet certification standards, is being wrongfully represented as certified reformulated gasoline and is being sold for ultimate consumption in a covered ozone nonattainment zone.

No penalties are intended for any gasoline refiner, blender, importer, or marketer under section 211(d), providing $25,000 per day civil penalties, if the wrongful conduct is taken by another entity beyond their control, or if the conduct at issue involves only wholesales of conventional gasoline intended for ultimate consumption outside of covered areas.

For example, the following conduct is not a violation:

Refiner A wholesales both conventional and reformulated gasoline to large marketer B, who maintains large terminals in Philadelphia, a covered area. Both A and B are located in Philadelphia, and the wholesales occur there. The two kinds of gas are clearly segregated and separately and accurately marked as certified reformulated and uncertified conventional. B then sells the reformulated gas in the Philadelphia area, and resells the conventional gas outside the covered Philadelphia area.

Though A has sold some uncertified gasoline to B in a covered area, no violation occurs.

Assume the same location and wholesales between refiner A and marketer B, and the same clear marking and branding of shipments. However, B then changes the markings on the uncertified gas, and sells both shipments to jobber C, who B knows makes most of his resales in the Philadelphia area.

A has not here violated this provision. B has in effect smuggled conventional gas into Philadelphia, and has violated this provision. C has not. But if the markings were amateurish and the switch was obvious, or if C failed to make reasonable advance checks of quality specified by EPA, then C may also have violated this provision.

A similar interpretation applies to the analogous enforcement provisions of new 211(m), which are to be adapted into SIP's so that enforcement standards similar to 211(h)(5) also apply to the CO Program.

16. OPT-INS

The basic prupose of new 211 (k)(6) is to extend the reformulated gas program to additional areas beyond the nine original covered areas, so long as the Administrator—prior to the effective date of the program in the opt-in cities—is fully assured on three points:

That new demand from the new areas will not stretch limited domestic capacity already dedicated to the 211 (k) and (m) areas, so that those areas experience even slight physical shortages and commensurate price hikes;

That domestic supplies will also be adequate to fully handle the new demand in the opt-in areas; and

That refiners have adequate advance notice of increased demand created by opt-in areas, to efficiently plan, finance, gain offsets for, gain permits for, and construct the required new capacity.

17. CREDITS IN GENERAL

Three different crediting programs—also referred to as "pooling" or "trading" programs) are established under new subsections 211 (k) and (m):

One for oxygen, aromatics, and benzene in reformulated gasoline, under 211(k)(7);

One for antidumping rules covering non-reformulated gasoline, under 211(k)(8);

One for oxygen in oxygenated gasoline, in 211(m)(5).

The first and the third crediting programs operate only within a specific ozone or carbon monoxide non-attainment area. The second one applies outside of those areas and covers all of a given company's output nationwide.

To the maximum practicable extent, the Administrator should operate them in a similar fashion to minimize complexities and costs.

The overall goal, as with other trading programs in the Clean Air Act Amendments of 1990, is to permit an aggregate least-cost solution that, for example, allows the cheapest oxygen suppliers or the cheapest aromatics reducers to overachieve and handle a disproportionate share of the total burden. Less efficient competitors can buy credits and thus contract out some of the work to their more efficient brethren. Lower consumer prices will result.

Similarly, low octane grades of one refiner's gasoline may overachieve on aromatics reductions, to offset excesses from other grades; or one of a company's three refineries may overachieve with respect to benzene or oxygen. In each case, pooling is allowed.

18. AVERAGING OVER TIME

In each of the three crediting/pooling programs, EPA must set a reasonable time period over which average specifications can be met. It could be the winter season in the oxygenated program, or a 3-month quarterly period in the reformulated program. It should not be so short; for example, a single day, hour, or minute, that averaging over time becomes impossible for mechanical or measuring reasons, or that unreasonable limits on supply flexibility and cost savings are forced on refiners, blenders, or importers.

19. AVERAGING WITHIN A COMPANY, OR POOLING

In view of the recognized chemical differences among different grades and octanes of gasoline, from premium to regular, EPA is also directed to give refiners, blenders, and importers maximum reasonable flexibility to "pool" under 211(k)(7) on an intra-company basis. It would be impermissible for EPA to deny pooling rights to refiner in the following case:

Refiner A has a premium reformulated with 2 percent benzene, a midgrade with 0.6 percent benzene, and a regular with 0.4 percent benzene. Each grade made up one-third of A's volume of sales in the same period last year, and is projected to do the same again in the coming year. Pooled together, A's gasoline meets 211(k)'s requirements. But if sales of premium turn out to be larger than expected, EPA can require greater offsetting reductions in the immediately following period.

To ease enforcement burdens, EPA could insist on checking credited volumes and weights for each company at the refinery gate, the point of importation, or the point of blending.

Continuous, universal physical testing by EPA to determine that pooling complies with 211 (k) or (m) is not contemplated. Instead, refiners, blenders, and importers are expected to conduct appropriate compliance tests periodically, and maintain records suitable for EPA to fully enforce compliance. And EPA may of course go behind these records, and engage in fuller audits if it chooses.

Intra-company pooling procedures established under the certification process—for example, to allow high aromatic levels for premium with lower offsetting levels for regular—would supersede any more formal crediting procedures set up by EPA.

Many refiners may properly prefer the more informal, intracompany pooling approach. In part, this results from the obstacles that may hamper larger, EPA-regulated intercompany credit programs, which may well entail greater bureaucratic and logistic difficulties. That is why the credit programs are not mandatory, and cannot be imposed on unwilling companies. In contrast, intracompany pooling shall be allowed by EPA to any company affirmatively seeking it.

20. AVERAGING

Averaging between or among companies is nevertheless permissible, and could allow variations on the following example: Refiners A and B each supply half the reformulated gasoline in a covered area. A's weighted average benzene content in the second quarter of 1996 is 1.5 percent, and B's is 0.5 percent. With trading, that area's benzene content meets 211(k)'s requirement.

However, only a joint certification of both refiner's gasolines together could render legal the 1.5 percent benzene content of A's gasoline. In such a case, EPA's certification could require guarantees that B continue to supply the same covered area as A; and both companies' fuels together would be viewed as the "slate of fuel" certified under 211(k)(5).

21. CREDIT STANDARD

The phrase "that would occur in the absence of such credits" as used in the three clauses of 211(k)(7)(C), refers to the aromatic, oxygen, or benzene content specified for a non-attainment area under 211(k). It means the use of pooling or credits is not allowed to change the aggregate levels of these three components of gasoline in a given area, from what they would be in that area if each single gallon exactly met 211(k)'s requirements. It does not require or allow EPA to guess what each company might do if no pooling or crediting were allowed.

22. ANTI-DUMPING CREDITS AND RULES

By nature, this program is company specific. Averaging over a certain time, quarterly, for example and within a given company, among a single company's three different refineries, for example is allowed.

The purpose of new 211(k)(8) is to prevent a specific company's actual post-1994 conventional gasoline from having greater emissions than that same company's actual 1990 gasoline or the equivalent, subject to reasonable test tolerances.

Each refiner, blender, and importer is allowed to collect and compile data regarding its 1990 gasoline, and commercial data used by each such company in the ordinary course of business, and showing the identity of its suppliers, the grades of products purchased or sold, and related volumes and dates, would satisfy this provision.

In the event of inadequate and unreliable data, a substitution of baseline gasoline for actual 1990 gasoline would occur only for the specific refiner, blender, or importer with a data deficiency.

Fair tests in baseline cars are required.

This provision does not require or provide authority for EPA to require the reformulation of any gasoline sold outside of covered areas, and 211(k)(8)(C) is not to be construed in a way that would require such a reformulation.

There are several dilemmas in the bill that must be equitably addressed by EPA in implementation of these provisions, taking into account costs, fuels, availability and energy penalties to refiners.

Example 1: A refiner/blender's 1990 actual baseline gasoline does not contain oxgenates, so it need not add oxygen if it cannot economically procure sufficient oxygen in 1995. But this is an incentive for refiners/blenders to move away from oxygen in conventional gas by 1995.

Example 2: A refiner/blender's produces 1990 gasoline with MTBE or ethanol, so that a higher 1990 oxygen baseline applies in 1995. But if that refiner cannot procure sufficient oxygen because it has been bid away, the refiner is in violation.

Yet a refiner can always get oxygen at some price. That's the deregulated market. Letting refiners off if the price for oxygen is unjust and unreasonable just starts a FERC style rate case at EPA which is not contemplated in the bill.

Finally, small oxygen blenders will be on the hook if the oxygen they blend today is ethanol, yet their refiners/suppliers will be exempt. Refiners will be on the hook for MTBE, but their unaffiliated marketers will not be, and their affiliates presumably will be.

23. SUMMERTIME BASELINE GASOLINE

Summertime baseline gasoline as defined in the bill does not indicate precisely which of the many different aromatics, olefins, and saturates are to be included in the baseline. EPA must not rig or game the resulting baseline gasoline by selecting unrepresentative sets of these different comppounds that are of unusually low volatility or toxicity.

24. WINTERTIME BASELINE GASOLINE

Wintertime baseline gasoline means the average 1990 wintertime gasoline. This means gasoline sold during the first few months of 1990, winter 1989-90 and during the last month or two of 1990, winter 1990-91. If split up data of this sort is unavailable, EPA can use either 1989-90 or 1990-91 data. Expedition favors the former. A nationally representative sample is required.

25. HARMONIZATION

Title II does not allow a proliferation of new or different reformulated gasolines in the same State or the same ozone nonattainment area. Thus, if California, under section 249(c)(2), prescribes a more stringent or different reformulated gasoline, and requires it to be produced, distributed, and made available in California, then that prescription and requirement shall apply in California instead of the 211(k) program.

In section 177 opt-in states, the intent is that EPA shall by rule ensure that any control or prohibition respecting reformulated gasoline shall be consistent with the 211(k) requirements, the section 246 requirements respecting fleet programs, and the section 249 requirements respecting the California pilot program. Clearly, EPA must adequately consider fuel distribution, storage, dispensing, and availability factors. Costs to consumers, fuel availability, and other serious adverse effects on domestic energy supplies must be considered adequately.

Such regulations must ensure that no more than one prohibition or requirement respecting reformulated gasoline will apply in any area, and shall provide maximum air quality benefit consistent with technical feasibility, cost, flexibility, and domestic supply and distribution capacity.

27. OXYGENATED GASOLINE—COVERED AREAS

Approximately 40 areas are covered by new 211(m)(1), ranging from Los Angeles and Denver with 1988-89 carbon monoxide design values of 23.4 and 16.2, down to the cleaner, but still covered areas with 1988-89 design values of 9.5 ppm or more. the 1988-89 design values should use 1988-89 monitoring data to establish which areas are included in the program. Waivers under 211(m) may however reduce this total number of areas.

28. ENFORCEMENT

As in 211(k)(5), new 211(m)(2) does not ban perfectly lawful and routine wholesales of unoxygenated gasoline—where the selling refiner, the sale, or the buyer are within a covered area—so long as that gasoline is intended for, and does move to areas outside of the covered area, where retail sales of oxygenated gasoline are routine and perfectly legal.

Broader literal readings of the word any in the phrases any gasoline sold, or the word indirectly in the phrase sold or dispensed directly or indirectly are impermissible.

Such a reading would only cut off the wholesale fuels trade in major American port cities such as Houston, New York, Los Angeles, and Philadelphia, since many fuel dealers in these cities will supply both these cities and many other areas farther inland. A ban on any handling of unoxygenated fuel by these dealers would, by reason of their status as dual suppliers to both types of areas, impose a de facto embargo on fuel shipments to uncovered inland areas where unoxygenated gasoline remains perfectly legal after late 1992. No such result is allowed.

29. OVERLAPS, TYPES OF OXYGENATES

The winter oxygenate requirement of 2.7 percent in 211(m)(2) overrides the lower 2 percent requirement under 211(k), in those cities which are subject to overlapping reformulated and oxygenated programs. But in such overlaps, all oxygen waivers under 211(k) remain available and effective, since the oxygenated gasoline in these cities is technically "reformulated" gasoline.

The level of 2.7 percent was chosen in part to provide more even opportunities for competition between the two major oxygenates, methyl tertiary butyl ether, or MTBE, and ethyl alcohol, or ethanol.

Both of these oxygenates have been shown to be effective in lowering CO emissions from older motor vehicles. Precisely how this occurs is complex, but is primarily related to the enleanment of the air-to-fuel ratio caused by the oxygen content of the fuel. Other factors affecting the potential reduction of carbon monoxide involve the process by which the oxygenate is added to the finished fuel, which differs for the two major oxygenates:

MTBE is added exclusively at gasoline refining facilities, where the finished fuel may be adjusted to accomodate the blending properties of this ether. This process may result in a reduction in the finished gasoline of aromatic components, which may contribute to incomplete combustion.

Ethanol is instead usually added to regular unleaded 87 octane "oxygenless" gasoline at a gasoline terminal facility in the market area, possibly far downstream from the refinery area. The addition may occur directly in the tank wagon as gasoline is being loaded. This method may not gain the additive benefits of extra CO emission reductions achieved when oxygenate is blended in a refinery facility where further adjustments are also made to the other components of the gasoline. It also wastes octane, because sub-87 octane gasoline cannot be blended with ethanol to take advantage of ethanol's octane enhancement properties to save refinery energy requirements.

Ethyl tertiary butyl ether, or ETBE, is another oxygenate that may meet the requirements of 211 (k) and (m). Others may be developed.

The Administrator may not discriminate among these different oxygenates, and should encourage fair competition among them. As long as the percentage of weight requirement is met, and other requirements of new 211 (k) and (m) are satisfied, any oxygenate should be allowed to satisfy new United States needs.

However, EPA must consider the different handling and transportation needs of different oxygenates, and the problems that can result if they are commingled, because these factors will bear on the adequacy of distribution capacity to, and supply in end user markets.

Commingling of MTBE gasoline with oxygenless gasoline intended to be blended with ethanol can, for example, create excessive levels of oxygen, if and when ethanol is erroneously added to the already oxygen-rich MTBE gas, and produce a fuel that may violate specifications and cause driveability problems. Ethanol, which, unlike gasoline, has an affinity for water, may be introduced erroneously into gasoline pipelines or storage tanks containing some water at the botton, as is the case in the existing infrastructure. Such tanks and pipes are adequate for MTBE blended gasoline, but will need dewatering before they can hold gasohol or ethanol.

These potential problems may require segregation of these two oxygenates and the gasolines containing them, but of course do not disqualify either oxygenate. However, the Administrator must consider costs, fuel availability, and infrastructure capacity in promulgating regulations.

30. DURATION OF WINTER

The legal effect of three phrases in the language of 211(m)(2)—the portion of the year, not less than 4 months, and may reduce the period—is to give EPA discretionary authority to set variable winter periods for different cities, during which oxygenated gasoline is required. Health hazards

from CO, weather effects, and CO emissions with and without the required oxygenated gasoline all bear on EPA's decision here. For example, Los Angeles can have many warm, sunny winter days, resulting in increases in evaporative VOC emissions and smog, owing to the higher Reid vapor pressure of gasoline blended with 10% ethanol. The EPA must consider weather-related factors such as this.

31. STATIONARY SOURCE WAIVER

The word significantly was added because mobile sources of CO will always contribute to some extent to nonattainment. But if the major cause of CO in a given area is stationary sources, the oxygenated gasoline program shall be waived.

32. WAIVERS FOR LACK OF DISTRIBUTION OR SUPPLY CAPACITY

EPA shall consider all relevant factors, including current and projected gasoline prices within and without covered CO areas in granting waivers under 211(m)(3)(C).

Though this provision refers to inadequate supply or capacity, estimating the logistics and thus the ultimate capacity of a complex and interconnected system of oxygenate plants, refineries, railroad tank cars for ethanol and ethers, pipelines for blended gasolines, storage tanks, and blending facilities may be difficult. Moreover, a given capacity may be adequate in a period of low demand, but inadequate during higher demand.

To illustrate, there is disagreement today between two expert Government agencies, the Energy Information Administration and the International Energy Agency, on the fundamental question of whether there is any shortage of crude oil worldwide at present, with one of the agencies inexplicably contending there is "no shortage" even though crude oil prices have doubled in 2 months. The fungibility of oil, an inability to track movement of specific shipments through the distribution system, lack of real-time data on all levels of storage, and the constant influence of price on volumes supplied, all complicate this process. Moreover, as noted earlier, a tiny error of overestimation by EPA can result in very large price increases, as was experienced in home heating oil and propane markets during winter 1989-90.

Accordingly, EPA should make its best advance estimate on this issue; but it should also carefully watch cash and futures oxygenated gasoline prices, and be ready to reverse an earlier estimate of adequate capacity that proves, in the real world of market prices, to be inaccurate. As a technical matter, there is never a shortage in a decontrolled commodity market. EPA is directed to disregard this technical reality, and focus instead on a real world meaning that includes fuel availability shortages and high prices.

34. COMPREHENSIVE EPA APPROACH

When considering waiver petitions under 211(m)(3)(C), EPA shall:

A. Determine the expected demand for oxygenates in each covered area.

B. Determine the expected domestic production capacity for oxygenates likely to be available at least three months prior to the effective date of this provision.

C. Determine the logistics necessary to supply oxygenates to and within the covered areas.

D. Determine the minimum time requirements for the necessary supply and distribution infrastructure to be made available for each covered area.

E. Evaluate the demand for oxygenates outside of the covered area, and determine any effects that requiring oxygen in the covered areas will have on areas currently served by oxygenates seeking to avoid reallocation of existing supplies of oxygenate to the greatest possible extent.

F. Evaluate competition among covered and non-covered areas for available supplies of oxygenates, and competition's likely effect on the availability and cost of oxygenates in these areas.

G. Provide for a reasonable margin of safety in its estimates of supply to minimize the chances of supply shortages and price shortages in covered areas.

H. Evaluate and seek to prevent any economically wasteful or irrational actions which may be associated with an early effective date in any covered area, such as, for example, the construction of oxygenate storage tanks that will be used only for one or two years because rising future oxygenate production could satisfy area demands without any storage.

I. Consider how much savings could be effected by delaying the early effective date in the case of such wasteful construction.

J. Establish a list of priority covered areas based upon their severity of nonattainment and the role of motor vehicles in contributing to the area's nonattainment status.

K. Publish a list of areas to be covered each year in sufficient time to assure the availability of necessary infrastructure by the effective date.

L. Provide for reconsideration on an area wide basis if supply shortages or infrastructure delays are likely to prevent compliance by the effective date.

35. NO PARTIAL WAIVERS

Too many logistic and refinery reconfiguration problems may arise if partial waivers allowing weaker oxygenate concentrations, partial geographic areas, or shorter periods are granted. Section 211(m)(3)(C)(ii) bans such partial waivers to retain a balance between workability and advance certainty for suppliers.

In particular, new 211 (k) and (m) already create several new kinds of gasoline, and different oxygen concentrations may already exist under the various NO_x cap provisions of these two subsections. Further balkanizing of the gasoline industry—with different oxygenate concentrations in different east coast cities, for example—potentially risks further disruptions and precision from refiners that may not be possible. Segregating a great many individually-tailored blends will also create substantial difficulties for the pipeline and terminal segments of the industry. For example, the Colonial Pipeline, which serves six of the 40 areas, would be more prone to bottlenecks, for any given shipment might be legal in only some or one of those cities.

EPA is not bound to continue a misestimate of adequate capacity by this clause. If, for example, a price spike in mid-winter indicates a shortage, a waiver under clause (i) can then be granted. Such a waiver is not an impermissible partial delay or lesser waiver under clause (ii).

36. OTHER OXYGEN WAIVERS

Analogously, EPA should also avoid a proliferation of too many different oxygen levels when it grants partial oxygen content waivers, to solve NO_x cap or NAAQS problems under other provisions of 211 (k) and (m).

37. "DISTRIBUTION CAPACITY"

Distribution capacity as used in 211(m)(3)(C), includes everything needed to get the fuel into the motor vehicle, including interstate transportation, local distribution, storage, trucks, blending facilities, and pumps.

38. OTHER EXEMPTIONS

Neither 211(k) nor 211(m) allows EPA to grant waivers or exemptions to only a specified subset or class of refiner, blender, importer, or marketer. Rules or orders of general or particular applicability that in effect return to a scheme of preferential regulatory status for small or large refiners, for example, are not allowed.

39. NO RETURN TO OIL PRICE AND ALLOCATION CONTROLS

EPA must not, in administering the oxygenated and reformulated gasoline programs, reinvent oil price and allocation controls like those administered by the Department of Energy in the 1970's.

By its decisions on permits for MTBE plants and new refinery units and related offsets, capacity waivers, technical feasibility determinations, enforcement interpretations, etc., EPA could cause costly, lengthy compliance efforts on all segments of the gasoline refining and marketing industry.

Ill-considered regulatory decisions can create delays, and in turn, restrict supplies of certified reformulated and certified oxygenated gasoline for ultimate consumption. Delays for any reason could thus give EPA restrictive

control over gasoline supplies to many of the largest American markets.

Control over supply means control over price. EPA must be sensitive to this danger: New 211 (k) and (m) are in no way intended to resurrect a 1970's DOE-type scheme of detailed government intervention in U.S. gasoline markets. An approach of this sort would be especially unacceptable, in view of the fact that DOE's restrictions artificially lowered prices, whereas EPA restrictions on supply would artificially raise them.

40. IMPORTS

New 211(m)(3) refers to domestic supply because imports may be unavailable, unreliable, or highly priced. While world supplies are growing, so is world demand. Foreign suppliers may not wish to disrupt existing contract relationships with foreign buyers by making spot sales to the United States. Higher world prices may boost domestic prices, as routinely happens with crude oil.

In any event, reliance on imported oxygenates or reformulated gasoline may simply trade one type of fuel import dependency for another. New 211 (k) and (m) do not prohibit such imports or raise their price; but EPA, in making planning and waiver decisions, must not rely on imports to fill apparent domestic gaps.

41. ATTAINMENT AREAS

Under 211(m)(6), EPA has authority to adjust the scope, extent, oxygen concentration, duration, and geographic coverage of a 211(m) program in a previously covered area that reaches attainment. The phrase to the extent has been added at the end of paragraph (6) to indicate that attainment does not end completely the need for an oxygenated fuels program since that might push the area back into non-attainment. However, attainment may mean that the oxygenated fuels program can be eased, or made smaller or of shorter duration in some sensible fashion.

42. REPORTS

EPA is to report to Congress well in advance of deadlines if perceived problems develop in either the 211 (k) or (m) programs.

I thank the occupant of the chair. I believe I have not exceeded my time.

Mr. BAUCUS. Mr. President, first before yielding to the Senator from Nebraska, I would like to say it has been an honor of mine to serve with the Senator from Wyoming. We have not worked closely together on any legislation. We worked very closely on this legislation. As the days passed by, as we became closer to a final conclusion, we worked even more closely yet.

I would say probably the crowning moment was when we wrapped up the conference report about 5 o'clock on Monday morning. There was no one else left but the Senator from Wyoming and I on the Senate side and a few very intense adversaries on the House side. I do not know that we would have wrapped it up or we would have prevailed without the able assistance of the Senator from Wyoming. He and I from the West, Wyoming and Montana, stood there and we prevailed.

We are here today, I think, as a consequence of that teamwork. Were we not there together, I do not know that we would be here tonight with this conference report because there is a good chance this conference report would be filibustered had we not prevailed.

I just wanted to let everyone know how much I appreciate and respect and admire the work of the Senator from Wyoming. He is just a great person to work with. As a westerner, I am proud to be associated with him.

Mr. President, I yield 1 minute to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator fro Nebraska is recognized.

Mr. EXON. Mr. President, the Clean Air Act before us has been a very difficult piece of legislation to shepherd through the Congress and I want to express my thanks to Senator BAUCUS and the other members of the committee, as well as the staff, for all their hard work. They have gone the extra mile to listen to my concerns and accommodate my suggestions. I appreciate all their hard work. This bill protects Nebraska ratepayers whose energy supply is already extremely clean.

I intend to support the conference report on the Clean Air Act. Aside from providing the tools we need to improve the Nation's air quality, it will provide a significant boost to ethanol which is good for not only air quality, but for our farm economy and our energy independence as well.

This bill does not require clean States to subsidize clean up costs of dirty utilities. Nebraska utilities, like those in other clean States, have already spent a great deal to control air emissions through purchasing low-sulfur coal. Under this legislation, clean utilities will hopefully be provided with enough emission allowances to meet future power needs without purchasing offsets from dirty utilities in other States.

Amidst the many complexities of the acid rain title, there is one provision of particular importance to clean States—the definition of "allowable 1985 emissions rate" found in section 402(r).

The Senate-passed bill contained a defintion of allowable emissions rate making clear that the allowable 1985 emission rate is the federally enforceable emissions rate limitation applicable to a particular unit under its permit in 1985. The allowable emission rate is a key factor in determining the allocation of allowances to clean utility units under section 405(d)(4) of the bill which I worked on with the distinguished Senator from Montana.

Federally enforceable emission limitations are expressed in a variety of different ways in State implementation plans. Under Nebraska's air pollution control rules, this is the emissions rate specified as a federally enforceable permit condition. Unfortunately, an Energy Information Administration [EIA] analysis of allowance allocations under the Senate bill erroneously assumes that the allowable emission rate is synonymous with the maximum actual emission rate.

Basing allowance allocations on a unit's actual emission rate, as EIA did, would significantly reduce allowances intended for the cleanest coal-fired units in the country under section 405(d)(4). The utilities that own clean coal units could be forced to find coal that is even lower in sulfur content, to add additional technological controls like scrubbers, or buy allowances from other generators. I do not believe that was the Senate's intent and the conferees have clarified this by electing to use the Senate definition of allowable emission rate, rather than inserting actual emission rate in section 405(d)(4). The conferees also separately define actual 1985 emissions rate to further clarify this matter.

It should now be completely clear to the EPA that the Senate and House intend that the definition of allowable 1985 emission rate shall not be interpreted to mean the maximum actual emission rate achieved by clean units in question during 1985.

I appreciate the opportunity to clarify that point and urge adoption of the conference report.

I yield the floor.

Mr. BAUCUS. Mr. President, I yield 3 minutes to the distinguished Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I wish to add my voice to the very well deserved statements of praise for the Senator from Montana, the Senator from Wyoming, and the other Members of this body and the House of Representatives, and the President of the United States and his representatives whose close cooperation was in the highest standard of the legislative process, and the legislative and executive branches working together in our special form of Government.

Mr. President, I have had the opportunity to be actively involved in a number of environmental issues over my political career. It was, therefore, with great pleasure that I was able to assume a position on the Environment and Public Works Committee.

One the first hearings as a new Member of the Senate, a new member

of that committee, was on the Clean Air Act. It has been, without question, one of the most complicated, scientific as well as political, issues that this Congress has dealt with in recent years. Just the very mass of this legislation is indicative of the variety of interest, the variety of technical concerns that had to be accommodated.

In that regard, I would like to make three comments:

First, this is not the happiest time in the history of our country for those of us who are in this business, who are politicians, who are statesmen. I want to commend those who had the most to do with this legislation who truly deserve the title "statesman." This is in the finest tradition of statescraft.

Second, I would like to commend some of the philosophies which are in this bill. This bill is a market-oriented piece of legislation. It uses some old principles and some new principles. An old principle is that if you pollute, you should pay for the cost of cleaning up that pollution. That is a very fundamental free market, capitalist principle. If there is a cost that you are imposing as part of your production activity; that you should incorporate within the pricing structure of your ultimate product that which is necessary to clean up what you have polluted.

The alternative to that is a Socialist principle; that you pass that cost on to the general public and they have to pay the price, either pay the price in direct economic terms or in a reduction in the quality of life.

I believe that this bill incorporates that old principle of personal responsibility.

It also incorporates some new principles, frankly, some principles that are going to be closely watched because they have never been applied as extensively or as with great a novelty as they are in this legislation. Principal among these is the concept of credits that will be generated by utility plants which go beyond their standard in terms of reducing pollution; therefore, create a credit that can either be used in their own operations or sold to other concerns. This is a novel and potentially very powerful new concept in using the market in pollution control. It is one that we will be watching from my State with a special interest.

My State has several characteristics:

One, it is a peninsula State and, therefore, relatively unaffected by activities of other States in the continental United States.

It is also a State that has grown very rapidly in the last three or four decades.

Finally, it is a State which has made a substantial investment in cleaning up its utility plants. Most of the utility plants in our State meet the standards that this act requires for the year 2000. Therefore, we are likely to be one of the States that will be purchasing these credits that will be generated by other States.

It is, as I said, a novel economic and environmental principle, one that we hope will work as intended and we will be watching closely.

Finally, Mr. President, I believe that this is a good example of the application of science to law. This legislation represents years of the development of scientific understanding of the consequences of polluted air on, first, environmental qualities, such as lakes and rivers, and more recently on human health.

At some of those early hearings I alluded to a few moments ago, Mr. President, we had physicians who talked about the consequences of air with certain pollutants on two groups of Americans.

One group was the elderly, particularly vulnerable to diseases and adverse health circumstances as a result of polluted air, and, second, the very young. I was struck that one of the largest causes of death and causes of adverse health conditions among young Americans are causes related to air quality.

Mr. President, I ask unanimous consent for an additional 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. I thank the Chair.

On that final point, I wish to commend Senator BAUCUS and especially say how happy I am that this legislation is being voted on today for what it will mean to millions of the youngest of our citizens.

At 8:15 a.m. yesterday, October 26, I became a grandfather for the first time. My oldest daughter had a beautiful baby girl, Sarah Glynn Logan. I had a chance to pick up my little grandchild a few hours ago, to look into her face, and feel that sense of generational bonding. It gave me a great sense of gratification to know that she is going to grow up in a country and in a world that will be better because of the efforts of the Senator from Montana and so many others who have brought us to the point where we can approve this act to improve the quality of our air.

So, my colleague and friend, I express my personal appreciation. On behalf of Sarah Glynn, I say "thank you."

Mr. BAUCUS. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The Senator has 1 minute and 10 seconds remaining.

Mr. BAUCUS. Mr. President, I thank the Senator from Florida. All of the citizens of the State of Florida should know, as I am sure they already do, what a valuable asset they have in their Senator. Senator GRAHAM has worked very diligently on this bill, and as a new member of the Environment and Public Works Committee I am hard pressed to think of anyone who has worked so hard and has impressed us so much as he has on issues that are important to Florida.

I know how proud the Senator from Florida is as a grandfather. I know that Sarah Glynn will grow up to be a young lady who is exceedingly proud of her grandfather, Senator GRAHAM. He is one of the finest Members of this body. He has worked very hard on this legislation.

Mr. President, the citizens of Florida should know from this Senator's perspective how strongly he has worked and how much he has worked for the passage of this bill.

Mr. President, I can hear the clock ticking. There are only a few seconds remaining. There are not many times when we pass legislation that will leave an imprint on America. I think all Senators, when they leave this body, will be proud of this bill.

We pass some legislation that is more in the nature of the process. It does not make much difference in the sense that others will come by and change the process after we have left. But this is one bill that will have a very lasting and positive effect on America, and on the world for that matter. It is a bill that we are all going to be very proud of as we look back to the day when we passed this legislation.

Mr. President, I see no other Senators wishing to speak. Even if there were Senators who wished to speak, there would be no time remaining. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 93-29, as amended by Public Law 98-459, appoints Robert Goodman, of Oklahoma, to the Federal Council on the Aged.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the Senate proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 3262 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRAHAM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

39-059 O—92-41 (Pt. 24)

The assistant legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1991—CONFERENCE REPORT

Mr. GRAHAM. Mr. President, I submit a report of the committee of conference on H.R. 5311 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1990.)

Mr. ADAMS. Mr. President, presenting the conference report on the District of Columbia appropriations bill is often a bittersweet experience. This year is no exception. We are recommending some very important initiatives in some very important areas. Areas such as drug abuse and cancer prevention.

Mr. President, the conference report before the Senate contains a total Federal appropriation of $568 million. This amount is within our new 302(b) allocation. The bill also includes total District of Columbia funds of $3.8 billion.

The Federal funds portion of the bill includes $430.5 million for the Federal payment. This amount represents 13 percent of the District's general fund revenue, 4 years ago it exceeded 18 percent of local revenues.

The District's drug emergency and the street violence that it breeds remain at the forefront of the conferees recommendations. Last year we focused mostly on the police and criminal justice system in an attempt to assist the District with resources to be allocated to the streets. Over the last 2 years we have increased the police budget by 24 percent, while total city budget has increased by only 4 percent.

This year our recommendations continue support in those areas and give greater support to the more human side of the drug crisis.

Mr. President, the conferees are recommending $350,000 to begin a program for boarder babies and the children of drug abusers. These funds will only begin to address the problems faced by the youngest and most innocent victims of our drug crisis. These funds will provide the necessary resources to develop a program that meets the unique needs of these children.

As a follow-on to the treatment on demand for pregnant drug abusers program established last year we are recommending $500,000 for a Residential Aftercare Program in this year's bill. This program is designed to maintain mother and newborn in a drug free environment until they can become self-sufficient.

Related to this program is the recommendation of $1.5 million for outpatient aftercare for drug addicts who were pregnant and for the general population of drug abusers. According to District officials existing out-patient treatment programs are overwhelmed and simply cannot handle the variety of support services required by these individuals.

The conferees are also recommending $500,000, included by the Senate, for a program of early detection of breast and cervical cancer. Breast and cervical cancer take 46,000 American lives every year, and the tragedy is that one in five of the breast cancer deaths is preventable by early detection with a mammogram. One thing that is needed is to make quality mammography more accessible. With early detection through regular pap smears cervical cancer has an 88 percent survival rate. Therefore, a key aspect of this initiative will be the outreach and education to make sure that women who are not Medicaid eligible and who are not able to pay for these procedures know that they are available and that there are funds to help them pay for them.

For the D.C. Public Schools the conference agreement includes an additional $1 million for the early childhood program recommended by the Senate. These funds will expand the Montessori program and increase the number of prekindergarten classes, and the number of instructional aides.

Mr. President, amendments 15 and 16 include funds for the renewal of the Anacostia project in southeast Washington. In the 1960's and 1970's another Senator from the State of Washington was the champion of this project, our late friend and colleague, Warren G. Magnuson. For years Maggie, as he was known to us, funded this program through his chairmanship of the Labor-Health and Human Services Subcommittee, and I am delighted to play a role in reinvigorating the Anacostia project.

The funds provided will be used to upgrade and expand the Ballou Mathematics and Science High School programs by introducing computer laboratories for all students in algebra through calculus.

Section 117 of this conference report provides that no funds may be used to perform abortions unless the life of the mother is in danger. This is a provision which the President has insisted upon and the Senate has historically rejected for most of the past decade.

The Director of the Office of Management and Budget informed the Congress that he and other senior advisers would recommend to the President of the United States that he veto the bill if it contained language that passed both Houses of Congress that limited the restriction to Federal funds provided in the bill and provided an exception for victims of rape and incest.

Mr. President, I wish that this outcome were different, however the President has been adament on this matter. I hope that in the future the President will permit District citizens the same rights as other citizens have and allow their local elected officials to decide how local tax dollars are spent.

Mr. GRAHAM. Mr. President, I urge adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I Move to lay that motion on the table.

The motion to lay on the table was agreed to.

CARL O. HYDE GENERAL MAIL FACILITY

Mr. GRAHAM. Mr. President, I ask unaniomous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 2431, a bill to redesignate the Midland General Mail Facility in Midland, TX, as the "Carl O. Hyde General Mail Facility" and ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2431) to redesignate the Midland General Mail Facility in Midland, Texas, as the "Carl O. Hyde General Mail Facility".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3195

(Purpose: To amend section 501(b) of the Ethics in Government Act of 1978)

Mr. GRAHAM. Mr. President, I send an amendment to the desk on behalf of Senators GLENN and ROTH.

The PRESIDING OFFICER. The clerk will report.

The assistant leglislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM], for Mr. GLENN (for himself and Mr. ROTH), proposes an amendment numbered 3195.

Mr. GRAHAM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.

Section 501(b) of the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989 (Public Law 101-280), is amended—

(1) by striking "An individual" and inserting "(1) Except as provided in paragraph (2), an individual", and

(2) by adding at the end the following new paragraph:

"(2)(A) In the case of an officer or employee described in subparagraph (B), paragraph (1) shall not apply to an honorarium paid to such individual for an appearance, a speech, or an article published in a bona fide publication if—

"(i) the subject of the appearance, speech, or article and the reason for which the honorarium is paid is unrelated to that individual's official duties or status as such officer or employee; and

"(ii) the party offering the honorarium has no interests that may be substantially affected by the performance or nonperformance of that individual's official duties.

"(B) The officers and employees to whom subparagraph (A) applies are any officer or employee other than a Member and other than a noncareer officer or employee whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code.

"(C) A report on the acceptance of any honorarium under subparagraph (A) shall be filed in accordance with rules and regulations established by each supervising ethics office under section 107 of this Act.

"(D) The amount of any honorarium accepted under subparagraph (A) shall not exceed the usual and customary fee for the services for which the honorarium is paid, up to a maxium of $2,000.".

Mr. GLENN. Mr. President, this amendment, sponsored by Senator ROTH and myself, modifies the Ethics Reform Act of 1989 with respect to the receipt of honoraria by the great majority of career Federal employees who are at the mid and lower levels on the pay scale. This amendment will not modify the absolute ban on honoraria for Members of the House of Representatives, top level executive branch officials, or judges, which is scheduled to take effect on January 1, 1991.

Under current Federal law, employees in all three branches of the government can receive honoraria for speeches, articles, or appearances that are not related to their official duties or status. The scope of these activities is limited by the conflict of interest laws, Executive order, and regulations. The Ethics Reform Act that was passed last year, however, changes the rule on honoraria beginning January 1, 1991. Unless amended, the new rule will be that all House Members and all other Federal officials and employees—with the exception of Senators and Senate staff—are prohibited from accepting any hororaria for any purpose.

My office and many other congressional offices, as well as the Office of Government Ethics, have received many phone calls and letters from Government employees and organizations representing them who think this new rule is unnecessarily restrictive and, therefore, unfair. For example, many Government workers pursue avocations that have nothing to do with their Government duties. They write newspaper articles on gardening or antique automobiles, or they sing or lecture on stamp collecting or some other hobby. In addition, there are part-time Federal employees, like the VA doctors with joint appointments to medical school faculties, for whom writing and lecturing on matters unrelated to their official duties or status is an integral part of their profession. This is also true for full-time scientists working at Federal agencies like NIH.

These employees get paid for these outside activities. Sometimes it's strictly for pleasure or professional development, and any compensation just pays their expenses; other times, these outside activities supplement the family income. These Federal workers are concerned and angry that they won't be able to accept honoraria for these activities—unrelated to their official duties or status—beginning January 1.

This amendment will correct the situation. First, senior people in each branch of Government—defined as noncareer employees whose rate of basic pay is above GS-15—will be subject to an absolute ban on the receipt of honoraria. However, all other Federal employees will be allowed to accept honoraria as long as certain coditions are met: the subject for which the honorarium is offered cannot be related to the individual's official Government duties, and the honorarium cannot be offered because of the individual's status as a Government employee. In addition, the party offering the honorarium cannot have any interests that might be "substantially affected" by the performance or nonperformance of the recipient's official duties. Finally, the amount of the honorarium may not exceed the usual and customary fee for such services, up to $2,000, and confidential financial disclosure rules will apply. I repeat that nothing in this amendment affects the rules applicable to Members of the House of Representatives, Senators and Senate staff.

Essentially, this amendment serves the public interest by maximizing the freedom of Federal employees to pursue outside activities while guarding against potential conflicts of interest.

Senator Roth and I have received a letter from the Director of the Office of Government Ethics stating OGE's strong support for enactment of this legislation into law. This amendment was drafted in the House of Representatives, after consultation by Members and their staffs with Common Cause. This legislation represents the last best chance before sine die adjournment for Congress to mitigate the harshness of the impending honoraria ban. I urge my colleagues to support this amendment to the Ethics Reform Act.

I ask unanimous consent that the letter from the OGE director be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF GOVERNMENT ETHICS,
Washington, DC, October 24, 1990.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

Hon. WILLIAM V. ROTH, Jr.,
Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR ROTH: As I mentioned to you in my letter of October 15, 1990, this Office is very concerned with the application of the honoraria ban enacted as a part of the Ethics Reform Act. At that time, we indicated we would be happy to review any proposals initiated in Congress that would narrow the provision's application so that employees would be free to engage in otherwise nonconflicting activities unrelated to their government work.

To that end, this Office has reviewed the attached language which we understand was developed by relevant committee staff. We believe that an amendment of this nature will substantially meet our concerns about the effect of the ban on executive branch employees, and we strongly support its introduction and enactment.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the submission of this report.

Sincerely,

STEPHEN D. POTTS,
Director.

Attachment.

( ) Section 501(b) of the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989 and Public Law 101-260, is amended—

(1) by striking "An individual" and inserting "(1) Except as provided in paragraph (2), an individual" ; and

(2) by adding at the end the following new paragraph:

"(2)(A) In the case of an officer or employee described in subparagraph (B), paragraph (1) shall not apply to an honorarium paid to such individual for an appearance, a speech, or an article published in a bona fide publication if—

"(i) the subject of the appearance, speech, or article and the reason for which the honorarium is paid is unrelated to that individual's official duties or status as such officer or employee; and

"(ii) the party offering the honorarium has no interests that may be substantially affected by the performance or nonperformance of that individual's official duties.

"(B) The officers and employees to whom subparagraph (A) applies are any officer or employee other than a Member and other than a noncareer officer or employee whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5222 of title 5, United States Code.

"(C) A report on the acceptance of any honorarium under subparagraph (A) shall be filed in accordance with rules and regulations established by each supervising ethics office under section 107 of this Act.

"(D) The amount of any honorarium accepted under subparagraph (A) shall not exceed the usual and customary fee for the services for which the honorarium is paid, up to maximum of $2,000.".

Mr. ROTH. Mr. President, I rise in support of the amendment sponsored by Chairman GLENN and myself regarding the receipt of fees for articles, speeches, or appearances by mid-level and low-level Federal employees. This amendment in no way affects the honoraria rules that apply to Members of Congress, political appointees, or Federal judges.

On Janurary 1, 1991, an honorarium ban of considerable overbreadth is scheduled to take effect unless we act. The proposed amendment is designed to cure that overbreadth.

In order to fall with in exception of the amendment, three conditions would have to be met:

First, the subject of the appearance, speech, or article and the reason for which the honorarium is paid must be unrelated to that individual's official duties or status as such officer or employee;

Second, the party offering the honorarium must be no interests that may be substantially affected by the performance or nonperformance of that individual's official duties; and

Third, the individual must be someone other than a Member or noncareer employee whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule.

Mr. President, the problem of this overbreadth is one that has been brought to my attention by constituents and Federal employees. It is hard to see why an employee cannot write a paid article on his or her hobby or some area of expertise so long as he or she fulfulls the above conditions. Doctors at NIH and lawyers at CRS ought to be able to advance their careers as experts without violating the law.

This amendment is strongly supported by the Office of Government Ethics. The language before us was drafted as the result of negotiations between Common Cause and Representative FRANK. Common Cause has no objection to enactment of this language. It is anticipated that the House, as the source of this amendment, will accept it. I concur in Chairman GLENN's conclusion that if the amendment is not accepted, as is, the last and best chance to cure the overbreadth will fail.

Mr. President, I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3195) was agreed to.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments, without objection, the bill is considered read a third time and passed.

So the bill (H.R. 2431), as amended, was passed.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHIEF FINANCIAL OFFICERS

Mr. GRAHAM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5687, the chief financial officers bill now at the desk.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5687) to amend title 31, United States Code, to improve the financial management of the Federal Government.".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Are there amendments?

AMENDMENT NO. 3196

(Purpose: To amend title 31, United States Code, to improve the general and financial management of the Federal Government)

Mr. GRAHAM. Mr. President, I send an amendment to the desk on behalf of Senators GLENN and ROTH.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

[The Senator from Florida [Mr. GRAHAM], for Mr. GLENN (for himself and Mr. ROTH), proposes an amendment numbered 3196.

Mr. GRAHAM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—GENERAL PROVISIONS

SEC. 101 SHORT TITLE.

This Act may be cited as the "Chief Financial Officers Act of 1990".

Mr. GLENN. Mr. President, I am pleased to bring before the Senate an amendment in the nature of a substitute for H.R. 5687, a bill recently passed by the House and entitled the "Chief Financial Officers Act of 1990."

The Senate companion to the House bill is S. 2840, a bill I and Senator ROTH introduced last July. The amendment he and I am proposing today represents the culmination of 6 years of work by the Committee on Governmental Affairs. For the past three Congresses we have proposed and deliberated upon comprehensive legislation to reform the financial management practices of the Federal Government. To a large extent, the task has been to develop an organizational structure and plan of action that gets the job done and has the consensus of the Federal financial management community. We wanted legislation to which the executive branch, the General Accounting Office, the House Committee on Government Operations and our committee could agree and commit to enthusiastically.

The amendment I am proposing today amounts to just that kind of agreement. It is my expectation that the House will accept the bill as we propose to amend it today. The administration has informed me they warmly endorse it. It is time we had legislation to reform the financial management practices of government. This reform legislation has been a major objective of mine since becoming the chairman of the Governmental Affairs Committee. With this bill today, I think we will finally bring about significant changes in the financial management of the Federal Government.

Let me point to the work of the Committee on Governmental Affairs this Congress and to recent events in the last month which have heightened the recognition of the need for this legislation and enabled the agreement this amendment represents to come about.

Recall that the year 1989 left the public and Congress wondering, how many more HUD type problems were looming out there? When the administration came on board in early 1989 they and the new Congress knew there were huge billion dollar costs which had not yet been adequately budgeted

for in cleaning up nuclear facilities, in the savings and loan disaster, in the infrastructure of the Nation's transportation system and in the DOD bow wave for major weapon systems. But the revelation in mid-1989 by an audit of HUD by the General Accounting Office that the taxpayer would have to cough up $4.2 billion to remedy that agency's problems came as a surprise.

In September of last year my committee heard from seven of the Inspectors General of the major departments. They described to us a fresh set of warning signals about problems in their agencies. The EPA IG described his agency's programs as "forceless enforcement," and EPA as a paper tiger with no deterrent effect on those who would violate environmental laws. The Labor Department IG stated flatly that Labor had failed to establish a viable criminal deterrence program and was not meeting its mission to enforce labor laws. The testimony of the other IG's was similar.

Shortly after the Inspectors General testified, in October and November of last year, both the Comptroller General of the General Accounting Office and the Director of OMB predicted in testimony before us that there were more HUD's to come. Director Darman released a high-risk list of programs that the agencies and OMB had developed to identify the top 3 to 5 problems in each agency. Comptroller Bowsher released a GAO high-risk list which reinforced OMB's and indicated further that $150 billion program were at risk due to inadequate financial controls. In the absence of controls, fraud and waste were inescapable. He called for the measures included in the legislation before us.

In brief, the conclusion of two of the highest officials with fiduciary responsibility for the Federal Government, the Director of OMB and the Comptroller General, was that the treasury was bleeding and the Government did not have the capacity to know where. I find that notion absolutely unacceptable. During the past year I, Senator ROTH and the others on our committee redoubled our efforts to get an agreement on a plan for reform of the Government's financial management practices.

The committee used the identified high-risk programs to focus its attention on the management problems in Government. We held hearings on DOE's program for cleaning up nuclear waste, asset forfeitures, student loans, RTC contracting, health benefit programs, civil service reform, and guaranteed loan programs.

Let me note that our hearing on loan guarantee programs revealed that the face amount of federally assisted credit and insurance outstanding at the end of 1989 was $5.8 trillion—2½ times the value of Federal debt held by the public. Some 96 percent of this amount represents contingent liabilities. If the assisted party defaults, the taxpayer is left holding the bag. Needless to say, adequate information and controls are essential if these programs are to be kept blowing up in our face.

Two events in recent weeks have contributed significantly to the bill before us today. First, in testimony before the committee October 11, Director Darman presented for the first time a single administration position on what organizational structure for chief financial officers the President could support. For the past 4 years there has been a disagreement between the Treasury Department and OMB. We now have an agreement. The chief official responsible for the financial management of the executive branch will be in OMB.

Second, Chairman CONYERS and Congressman HORTON, the ranking member of the House Government Operations Committee, completed their 2-year study of this legislation and reported a bill which the House passed October 15. Senator ROTH and I have worked closely with the House committee and the administration in developing the amendment before us. I want to particularly compliment Chairman CONYERS and Congressman HORTON for their persistence and good will in this matter. I believe we have a good bill. Oversight of the important program of reform contained in the bill will require a commitment to sustained attention on executive branch progress and continued cooperation between the committees.

Mr. President, the legislation we are proposing today is the single most important step we can take to reduce the risk in the high-risk programs. It will be a major step toward complementing and reinforcing the Inspectors General program to prevent and eliminate fraud, waste, and abuse in Government programs.

The key features of the bill are it:

Establishes a Deputy Director for Management at an executive level 2 within the Office of Management and Budget. This high level official, appointed by the President, with the advice and consent of the Senate, will be responsible for the "M" in OMB and for integrating and coordinating important financial management functions with other management and budget functions of OMB.

Establishes an Office of Federal Financial Management within OMB which shall be headed by a controller appointed by the President, with the advice and consent of the Senate. The Controller will be at an executive level 3, shall possess demonstrated ability in financial management, and shall be the principal deputy to the Deputy Director for Management in carrying out the chief financial management responsibilities of the government.

Requires chief financial officers, and deputy chief financial officers for the major departments and agencies of the Government. Chief financial officers shall be appointed by the President, with the advice and consent of the Senate. Deputy chief financial officers shall hold career reserved positions in the Senior Executive Service.

Requires the Director of the Office of Management and Budget to prepare, implement, and update annually a Government-wide 5-year financial management plan. The Director shall submit a report on the status of the plan to the appropriate committees of Congress annually.

Establishes a Chief Financial Officers Council to coordinate the Government-wide 5-year financial management plan. The Council shall be chaired by the Deputy Director for Management. The Controller of the Office of Federal Financial Management, the fiscal Assistant Secretary of the Treasury, and each of the agency chief financial officers shall serve on the Council.

Creates a graduated schedule for covered agencies and activities to develop, use and report upon audited financial statements. Revolving funds, trust funds, and commercial functions are to be covered. A mechanism requiring congressional approval by resolution of any financial statements of other activities is also provided for.

Requires the financial statements of Government corporations be audited by respective inspectors general and that annual management reports by corporations be submitted to Congress annually.

Requires a wait-and-see period of 45 days of continuous session of the Congress before any capital accounting standard or principle can be adopted for us in the executive branch.

Mr. President, I want to make two additional comments about the bill we will pass today. First, section 902(a)(6) of title 31 as amended, will require agency chief financial officers to prepare an annual report to their agency head and the Director of OMB which is to include an analysis of the status of the financial management of the agency. My understanding of this provision is that it mandates a discussion by the Chief Financial Officer of when the agency will be in a position to prepare auditable financial statements for the accounts of all of the offices, bureaus, and activities of the agency if it has not done so. Any actions the agency has taken during the year to facilitate the preparation of auditable financial statements should also be mentioned. In this way, we in the Congress will be better able to provide oversight of agency activities to move forward on the use of financial statements. We do not want to encourage any footdragging. I also do not

want agencies to think the Congress will permit them to hide any problems a financial statement might disclose by claiming they cannot be done or are not in shape to be audited.

Second, I want to comment on an issue raised by the administration during deliberations on the House bill and this amendment. The Office of Legal Counsel of the Justice Department provided the General Counsel of OMB a letter opinion concerning the impact of section 3515(e) of title 31 as amended by this bill to the existing authorities of the President and the Office of Management and Budget. The point I want to emphasize in this discussion among lawyers is that regardless of the legal issue involved, this legislation is intended to create an organizational structure and provide an important oversight mechanism for the Congress to insure the executive branch adopts adequate financial controls. This bill is a clear expression that Congress wants better accounting and more clear accountability lines within the executive branch of Government.

Mr. ROTH. Mr. President, today we are considering legislation to affect change and improvement to a fundamental problem in the structure and operation of the Federal Government. Attention to the management of Federal agencies, and the issuance of accurate and timely financial data regarding the status of the Federal Government has not been a reality. The Chief Financial Officers Act is an effort to correct this problem.

Financial management systems throughout the Federal Government supply the President, Congress, and the American people information that is unreliable, inconsistent, untimely, and incomplete. A fact that has been highlighted most recently by the situation at HUD. Currently, there are hundreds of different accounting systems in the Government, and few comply with generally accepted Government accounting standards. These current practices do not show the actual costs of running the Federal Government. They are not comparable one to another, so that agencies cannot be judged side by side. There is no way that we in the Senate can fully determine the programmatic impacts of the legislative decisions we make on the basis of information reported. To make matters worse, often the information is reported in such an untimely manner, that the decisions must be and are regularly made with dated, inaccurate information.

It is time that the Federal Government had a position, a Deputy Director for Management at OMB, that could be held accountable for these shortcomings. Someone who would be responsible for supplying the executive branch and the Congress with reliable, consistent, timely, and complete financial information, while focusing attention to the management of Government, which is often lost in our battles over the budget.

Mr. President, I have a long history of concern and work in this area. In the 99th Congress, as the chairman of the Governmental Affairs Committee, I introduced S. 2230, the Federal Management Reorganization and Cost Control Act of 1986, which called for just such a position to be created with the Office of Management and Budget. At that time I referred to the position as the Chief Financial Officer. This bill was well received in the committee and in the financial management community, but never had a floor vote in the Congress. In the 100th Congress, Senator GLENN and I took a slightly different approach and introduced legislation calling for a Chief Financial Officer to be an Under Secretary in the Treasury Department. This bill, although never receiving a vote in Congress, spurred the administration to designate an OMB official as CFO at the same level at which this bill before us will create a Controller, administering the Office of Federal Financial Management. The appointment was not enough, but it was at least a start.

The bill before us today, takes into consideration the problems raised by various parties throughout discussions of this issue. The proposal creates a Deputy Director for Management at OMB to focus more attention on the management of the Federal Government. The functions of a Chief Financial Officer will be the responsibility of this position. A Controller will head the Office of Federal Financial Management at OMB and will act as principle adviser to the Deputy Director for Management in carrying out CFO functions.

I believe that these positions are needed to develop and implement the building and the maintaining of an effective financial structure including development and implementation of a financial plan; maintenance of quality, skilled personnel to carry out the plan, and; the establishment of systems to bring about the necessary accountability.

There is also in this bill, the creation of agency CFO's similar in scope to those established by the legislation creating the Department of Veterans' Affairs, and at HUD by last year's reform package. A senior position at sufficient level within an agency to be responsible for the development, direction, and maintenance of the financial management system within the Department, and compliance with the President's CFO's plan.

Annually audited financial statements will be required from agencies where adequate systems are in place, starting with credit programs, trust funds, and other agency functions of this type. A report attesting to the level of compliance of agency financial and accounting systems, and estimates as to the time before full compliance is achieved will be issued regarding those agencies unable to produce financial statements by prescribed years. In addition, audits, in accordance with generally accepted Government auditing standards, will be performed on these financial statements.

It is, in my opinion, very important that all agencies issue financial statements on their activities, regardless of program type. Whether defense or school loan, social or credit program, we in Congress and the President need accurate information on which to base decisions. It is frustrating that these annual audited financial statements cannot be produced today. To wait until 1994 at the earliest for a complete overview of the Government is a tragedy.

Mr. President, some question has been raised by the House-passed language which establishes a procedure in section 3515(e) of title 31 for additional audits from those provided in section 3515(a). The latter provision directs various executive agencies to prepare and submit financial statements regarding certain commercial functions. The former provision allows executive agencies to prepare and submit financial statements covering additional activities, except that this authority is conditioned upon the enactment of a joint resolution of Congress consenting to such additional coverage.

The question is whether the failure of Congress to enact such a joint resolution would have the effect of precluding the executive branch from preparing and submitting financial statements on noncommercial activities. House Report 101-818, part 1, submitted by the chairman of the Committee on Government Operations, states on page 26 that, absent a joint resolution:

> The Committee intends this Act to prohibit the President from unilaterally requiring offices, bureaus, and activities of agencies, other than those explicity detailed in section 3515 (a) and (b), from preparing financial statements.

When the House passed this legislation on October 15, 1990, the ranking minority member took the opposite view. During the debate Representative HORTON made the argument that the executive branch—

> Can administratively do what it wants in internal executive branch management and the legislation does not, and can not, change that.

Chairman GLENN of the Senate Committee on Governmental Affairs has placed in the record a copy of a letter reflecting the Justice Department's view on this question, which is that this legislation does not alter preexisting authority, both statutory and

nonstatutory, for the executive branch to prepare and submit financial statements. The letter notes that the legislation makes no effort to confront such authority and that, as a matter of legal construction, implied repealers are disfavored.

However, the statutory authorities relied on by the Justice Department are not specific to this question. There are countervailing canons of construction: that the specific governs the general, and that the later in time governs the earlier. Moreover, it is difficult to read any significant meaning into the language in question other than a Congressional attempt to limit or manage executive authority.

The circumstances where Congress may limit or manage executive authority is a vast and complex subject. It by no means follows that if the executive branch may claim an authority in the absence of legislation, no legislation may limit or manage that authority.

We are all familiar with the fact that President Roosevelt used executive authority to seize a factory during World War II. However, when President Truman followed his example during the Korean war, the Supreme Court found his action unlawful because of the intervening enactment by Congress of the Taft-Hartly Act with which President Truman had not complied. A more recent example of Congress' asserted power to limit and manage executive authority is found in the War Powers Act—an issue of continuous turmoil since its enactment. No President has ever acquiesced in its validity.

In my opinion, there are certain core powers of the executive branch that may not be limited or managed by Congress without compromising the constitutional mission of article II. Which powers are core powers and which are the twilight powers Justice Jackson referred to in the Steel Seizure Case will take, I suspect, the remainder of history to establish.

But the question before us is not all that perplexing. The President has an express constitutional duty to take care that the laws be faithfully executed. That, in fact, is the core function of the executive. The laws that Congress enacts for him to execute grant him the responsibility for administering billions of dollars for the legislated functions of government. How does a President determine whether he has fulfilled his responsibility to take care that the laws be faithfully executed without requiring an accounting of how the money is spent? The power to require financial statements and audits lies at the core of executive authority. Nothing in article II makes any distinction that I can see between commercial functions and noncommercial. The notion that Congress, upon enactment of this legislation, might through inaction limit or manage the executive authority to prepare and submit financial statements on noncommercial activities is misguided.

This legislation does not treat with the seizure of a steel mill or the engagement of hostilities. Rather, it deals with the executive branch's authority to manage its internal affairs and its ability to fulfill its express constitutional responsibility.

Therefore, Mr. President, this legislation must be viewed as a nonexclusive means for ordering executive branch financial statements. While nonexecutive, it is still most important. Any effort by the executive branch to require financial statements of executive agencies will have a chance of succeeding which is proportional to its congressional support. While the Constitution commits this function to the executive branch, practicalities require cooperation between the political branches. I hope this effort is a beginning of the cooperation which is so necessary for success. Whatever inherent power the executive branch may have, I would hope that it would reserve its prerogatives and seek to make this legislation work.

With the emphasis on the current fiscal situation facing the country at a peak, the time is ripe for the creation of a CFO position, the reforming of our accounting and financial management systems and heightened attention paid to the management of the Federal Government. These changes are as essential to the repairing of the country's financial woes as is the work being done regarding the budget. What good is a financial plan when agencies and programs are poorly managed, mismanaged and laden with fraud and abuse? How can we write the fiscal plan for the future if agencies don't have the systems in place to judge performance or even give us the needed date to prepare the plan?

Mr. President, we must continue to do all we can to bring financial management systems up to par and to provide for better reporting of the Government's financial situation—to encourage a responsible, accountable Government. Congress has avoided this task long enough, let us rebuild public confidence in the Federal Government with the establishment of the mechanisms needed to ensure an effective, responsive and accountable government.

The PRESIDING OFFICER. Are there amendments to the substitute? If not, without objection, the substitute is agreed to.

Without objection, the bill is considered read a third time and passed.

So the bill (H.R. 5687), as amended was passed.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL HEALTH SERVICE CORPS ACT—CONFERENCE REPORT

Mr. GRAHAM. Mr. President, I submit a report of the committee of conference on H.R. 4487 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4487) to amend the Public Health Service Act to revise and extend the program for the National Health Service Corps, and to establish certain programs of grants to the States for improving health services in the States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1990.)

Mr. KENNEDY. Mr. President, I am pleased to send to the desk for immediate consideration the conference report on the National Health Service Corps Revitalization Act of 1990. This legislation will revitalize this vital public health program and extend its authority until the year 2000.

This bill will place top priority on the provision of primary care services. To achieve this goal it will add new categories of health professionals to the ranks of the Corps. Physicians are desperately needed in many communities. But there is also a great need for trained nurse practitioners, certified nurse midwives, and physicians' assistants. By adding such providers to the programs of the National Health Servicce Corps, we can increase access to health care and guarantee a mix of providers that responds to the wide range of needs in every community.

New emphasis is placed in this bill on improved recruitment and retention of these providers. With the innovations contained in this measure, we hope to stop the revolving door phenomena that has often characterized service in underserved areas. The retention incentives are designed to reduce the isolation and burn-out experienced by many of the dedicated individuals who serve in the Corps. They should contribute to long-term service and a long-term solution to the geographic maldistribution of health professionals.

For 20 years, the mission of the National Health Service Corps has been

the same, to improve the health status of medically underserved populations. During this time, the Corps has served as a major source of medical help—in many cases, the only source of medical help—for communities which were unable to recruit and retain physicians, nurses, and other health providers. Many rural and urban areas alike have depended on the Corps. The Corps has placed more than 16,500 providers since it was established, with the peak field of over 3,000 physicians occurring in 1986.

The Scholarship Program of the National Health Service Corps, in which students receive scholarships to medical school in exchange for a minimum of 2 years of service in designated shortage areas, has been the principal source of physicians who have served in these areas. The Scholarship Program has also enabled many minority and disadvantaged students to attend medical schools who otherwise would not have had that opportunity. Two other programs of the Corps, the Field Program and, since 1987, the Loan Repayment Program have also placed physicians and other health professionals around the country where they were in the least supply and needed most.

Despite its success in providing access to care for millions of medically underserved people, the National Health Service Corps was one of the social programs targeted for elimination during the Reagan years. It was thought that a physician surplus would force physicians to migrate to isolated rural communities and inner city underserved areas. The number of new Corps scholarship awards were sharply reduced and the program was scheduled for termination. The total field strength of health physicians declined from 3,127 in 1986 to 1,920 in 1989.

The shrinking of the National Health Service Corps Scholarship Program could hardly have come at a worse time. The anticipated overflow of physicians into underserved areas never occurred. Instead, we are faced with a major shortage of primary care physicians and obstetrician/gynecologists. The Public Health Service estimates that 4,000 physicians are needed to provide primary care services in 1,955 health professional shortage areas.

The bill places a priority on the award of scholarships and loan repayments to those individuals who are most likely to remain in underserved areas. It also places a priority on awards to the disadvantaged of both scholarships and loan repayments.

In anticipation of this proposed revitalization of the National Health Service Corps, some administrative adjustments must be made to assure successful implementation of the bill's provisions. In the 1970's, the Corps expanded too quickly, without a corresponding increase in programming staff, and the administration of the program, was undermined. Our bill requires the Secretary to provide adequate staffing levels to effectively carry out this new expansion of the Corps.

This reauthorization bill is the culmination of 2 years of effort which has not only produced the conference report we are now considering but has also succeeded in stopping the phaseout of the Corps Scholarship Program and in essentially doubling the appropriations for the program. Mr. President, I am pleased that my office has played a key role in this effort. And I want to thank the many organizations and individuals who made it possible. I would like to mention in particular Dr. Mona Sarfaty on my staff, Donna Denno and May Kennedy who worked on the early development of this legislation, Sue Whittaker on Senator HATCH's staff, and Peter Reineke on Senator HARKIN's staff.

The mission and purpose for which Congress established the National Health Service Corps are as relevant today as they were in 1970. No new bureaucracy is needed, just a rejuvenation of existing mechanisms and a tailoring of the program to the needs of the 1990's. This bill represents a worthwhile effort to help the National Health Service Corps fulfill its mission and provide new sources of urgently needed health care providers to populations and communities across the Nation. I urge my colleagues to join in supporting this essential legislation.

Mr. HARKIN. Mr. President, I rise in support of the conference report on H.R. 4487, the National Health Service Corps Revitalization Amendments of 1990. Passage of this important bill, along with the significant increase in appropriations won this year, represent a major step toward addressing the crisis in rural health care. A revitalized National Health Service Corps will bring doctors and other needed health professionals to many areas where today there are none. It will bring quality health care to millions of Americans in rural and other underserved areas across the Nation.

Nearly 2,000 communities, home to over 33 million Americans, face a shortage of health personnel and have been designated as shortage areas by the Federal Government. These communities, including at least 23 in my State of Iowa, are literally starving for access to basic medical care. Small town after small town have no doctor or other basic health care provider, such as a nurse practitioner, nurse midwife, or physician assistant. Over 150 towns in Iowa are actively seeking family doctors and many more face similar problems as health care providers retire and replacements must be found.

Mr. President, the National Health Service Corps has done much good since its establishment in 1970. Medical and other professional students are given scholarships and offered loan repayments in exchange for practicing in medically underserved areas. Over 30,000 doctors, nurses, and other health professionals have received scholarships under the program. In 1980, at the height of the Corps, 6,409 scholarships were awarded, and as a result, in 1986, the National Health Service Corps had 3,127 health personnel repaying their scholarships by providing care to over 5 million Americans in underserved areas.

However, under the Reagan administration, this critical program was all but gutted. Based largely on a report which has proven to be inaccurate, the need for the National Health Service Corps [NHSC] was questioned and the number of new students and providers brought into the program was slashed. As a result, the Corps now has less than 900 members providing health care services across the country.

I am pleased to say, in the 2 years that I have served as chairman of the Appropriations Subcommittee which funds the NHSC, we have reversed the downward spiral of support for this program. Last year, we were able to increase funding for the program to $33 million over the administration's request. This year, we were able to more than quadruple funding for scholarships and loan repayments, from $11.4 to $48.8 million. We increased total funding for the Corps, including the field placement program, from $50.7 to $91.7 million.

I am proud that we were able to provide for these greatly needed increases. These increases breathe new life into the Corps and will bring needed health care to millions of rural and other underserved Americans around the Nation. They also demonstrate the strong bipartisan support, including that of the administration, which exists for a strong NHSC.

Mr. President, the conference report we are adopting today builds on the success we have had with appropriations, to fully revitalize the National Health Service Corps. The reauthorization greatly improves incentives to recruit students and graduates into the Corps and to have them remain in underserved communities once their service obligation has been completed. The bill also requires that the Corps provide a greater role for midlevel and other health professional providers. In addition, the bill authorizes grants to the States for the establishment and operation of State Offices of Rural Health.

The conference agreement authorizes the National Health Service Corps for 10 years. I hope that it will not be necessary to make changes to the act

prior to then. I must express my strong concern that the authorization for the scholarship program not be interpreted by the Department of Health and Human Services as requiring multiyear funding of scholarships. This would severely reduce the number of scholarships offered each year and therefore increase the amount of time before many rural areas get the services of Corps personnel. The Department should award scholarships and loan repayments in a manner which maximizes the number of Corps providers and minimizes the time before their availability to provide services.

One of the shortcomings of the Corps over time has been the poor retention rate of providers in the communities to which they were assigned. It has been common for doctors to leave underserved communities as soon as or shortly after their service obligation has been completed. This has led to instability and loss of confidence in the program in many communities. The conference agreement, while not as strong as the Senate passed bill, makes significant improvements in the program's retention efforts, including: The appointment of career advisers to assist Corps members, the creation of a graduate fellowship program, more flexible work options to help meet the needs of couples, and the creation of special respite squads to provide temporary relief to Corps members. Another important retention feature included in the bill is the requirement that individuals with the characteristics which would make them more likely to remain in an underserved area be given priority in the awarding of scholarships and loan repayments. The Senate bill gave preference to the residents of rural and other underserved areas, and I would expect that the Department of Health and Human Services would include this high among the characteristics it will develop. Obviously, people are much more likely to remain in a community with which they have ties than one which is very different from the place of their upbringing.

I am very pleased that a principle component of the revitalization of the Corps contained in this bill is the expansion of support for midlevel providers. This critical expansion will greatly improve access to basic health care services in our rural communities. It properly reflects the increasingly important role in these quality, cost-effective providers are playing in the care provided Americans, especially in rural areas. Since 1973, an average of only 1.2 percent of all NHSC funds have been used to support midlevel providers. The conference agreement requires that at least 10 percent of all appropriated funds for scholarship and loan repayments go toward scholarships for first year students seeking certification as nurse practitioners, nurse midwives and physician assistants. The Senate bill included a provision that I offered to provide at least 10 percent of funds for scholarships or loan repayments for nurses, midlevel practitioners, social workers, psychologists and other health professionals. I was very discouraged that some of these health providers were not incorporated in the final conference report. Mental health professionals were, however, in the list of providers eligible to provide services in the Corps.

Mr. President, it is the expectation of many Senators that those administering the Corps will assure that midlevel practitioners are actively recruited into the loan repayment program. We will be carefully following progress made in increasing the number of midlevel providers in the loan repayment program and the field program. If there is not an appropriate increase in this area, I will pursue further legislative changes to require increased support for these providers in the two programs.

I am also very pleased that the conference agreement contains provisions which I offered along with my distinguished colleague from Mississippi, Senator COCHRAN, to provide support for State Offices of Rural Health. This new effort, which we have funded for this fiscal year, will greatly assist the states in improving care provided in rural areas. The State of Iowa's Office of Rural Health, which will be eligible for assistance under this program, has provided leadership and advocacy for rural health care in our State. The additional financial support will enable them to expand their important efforts.

Mr. President, I want to thank Chairman KENNEDY and his staff for their strong effort on this bill as well as that of Senators PELL and HATCH and others who worked diligently to bring us to this point. I also want to pay tribute to the senior Senator from North Dakota [Mr. BURDICK] and his staff for their leadership and assistance throughout the process on this bill. I urge adoption of the conference report and look forward to continuing our efforts to strengthen this vital health program.

Mr. ADAMS. To the distinguished chairman of the Labor and Human Resources and the ranking minority member, I would like to thank you for your hard work on the National Health Service Corps Revitalization Act. The final agreement between the House and the Senate achieves our most important objectives—to continue the National Health Service Corps and to strengthen the current program. The changes this bill makes will improve the program in three important areas: the number of health professionals able to participate in the program; the range of health professionals eligible to participate in the program; and the Corps' recruitment and retention rate of providers.

During the committee's consideration of the program, I became convinced of the need to find a way to increase the participation of disadvantaged minorities. The committee language providing that disadvantaged miniorities be given priority succeeded in doing just that. Although the conference made some changes in this language, I was very pleased that we were able to reach agreement on this point. The conference language does make it clear that individuals from disadvantaged backgrounds will be given priority in the scholarship and loan repayment program.

It is my strong belief, however, that we need to clarify our intent in this regard. While the conference agreement does give priority to disadvantaged individuals who are likely to remain in an understanding area, it should be made clear that we intend for special consideration to be given to disadvantaged minorities who fulfill the other criteria set forth in the bill. In my home State, special consideration for disadvantaged minorities should be particularly helpful in improving access to health care for native Americans, Asian Americans, and Hispanics living in underserved areas.

Mr. KENNEDY. the Senator from Washington is correct and I would like to say that Senator ADAMS has provided important leadership on this issue throughout reauthorization. The Committee found that minority health professionals frequently have special interest in and commitment to practicing in underserved areas that face a shortage of health professionals. They may also be more likely to continue their practice in that area when their Corps work is complete.

Mr. HATCH. I concur and I thank my colleague from Washington for his kind remarks. This bill is a strong renewal of our commitment to the National Health Services Corps. I believe that the Corps will make a significant contribution to increasing the numbers of individuals providing primary health care services to underserved areas. Part of that success rests on the program recognizing the special needs of individuals from disadvantaged minority backgrounds and the contribution they will make during their service and in the years that follow.

Mr. ADAMS. I appreciate your strong support and committee's position on this important aspect of the Corps' reauthorization. Needless to say, it is much easier when both sides of the aisle agree on these things. I know that the priority for the participation of disadvantaged individuals, including racial and ethnic minorities, will greatly increase the effectiveness

of the National Service Corps in my State. I will also improve the program's ability to meet the health care needs of the underserved across the country.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT

Mr. GRAHAM. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2936.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2936) entitled "To amend the Hazardous Materials Transportation Act to authorized appropriations for fiscal year 1990, 1991, and 1992, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Hazardous Materials Transportation Uniform Safety Act of 1990".

(b) REFERENCE.—Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Hazardous Materials Transportation Act.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; reference; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
Sec. 4. Federal regulations governing transportation of hazardous materials.
Sec. 5. Representation and tampering.
Sec. 6. Disclosure.
Sec. 7. Handling of hazardous materials.
Sec. 8. Hazardous materials transportation registration; motor carrier safety permits.
Sec. 9. Exemptions.
Sec. 10. Definition of certain materials.
Sec. 11. Secretary's powers.
Sec. 12. Penalties.
Sec. 13. Relationship to other laws.
Sec. 14. Funding.
Sec. 15. Transportation of certain highly radioactive materials.
Sec. 16. Inspectors.
Sec. 17. Public sector training and planning.
Sec. 18. Hazmat employee training grant pro-gram.
Sec. 19. Railroad tank cars.
Sec. 20. Application of Federal, State, and lo-cal law to Federal contractors.
Sec. 21. Railroad tank car study.
Sec. 22. Uniformity of State motor carrier registration and permitting forms and procedures.
Sec. 23. Financial responsibility.
Sec. 24. Federally leased commercial motor vehicles.
Sec. 25. Improvements to hazardous materials identification systems.
Sec. 26. Continually monitored telephone systems.
Sec. 27. Shipper responsibility report.
Sec. 28. State participation in investigations and surveillance.
Sec. 29. Retention of markings and placards.
Sec. 30. Relationship to Federal Railroad Safety Act of 1970.
Sec. 31. Effective date.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Department of Transportation estimates that approximately 4 billion tons of regulated hazardous materials are transported each year and that approximately 500,000 movements of hazardous materials occur each day,

(2) accidents involving the release of hazardous materials are a serious threat to public health and safety,

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable,

(6) in order to provide reasonable, adequate, and cost-effective protection from the risks posed by the transportation of hazardous materials, a network of adequately trained State and local emergency response personnel is required,

(7) the Office of Technology Assessment has estimated that approximately 1,500,000 emergency response personnel need better basic or advanced training for responding to the unintentional release of hazardous materials at fixed facilities and in transportation, and

(8) the movement of hazardous materials in commerce is necessary and desirable to maintain economic vitality and meet consumer demands, and shall be conducted in a safe and efficient manner.

SEC. 3. DEFINITIONS.

(a) DEFINITIONS.—Section 103 (49 U.S.C. App. 1802) is amended to read as follows:

"SEC. 103. DEFINITIONS.

"For purposes of this title, the following definitions apply:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) COMMERCE.—The term 'commerce' means trade, traffic, commerce, or transportation within the jurisdiction of the United States (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

"(3) DIRECTOR.—The term 'Director' means the Director of the Federal Emergency Management Agency.

"(4) HAZARDOUS MATERIAL.—The term 'hazardous material' means a substance or material designated by the Secretary under section 104.

"(5) HAZMAT EMPLOYEE.—The term 'hazmat employee' means an individual who is employed by a hazmat employer and who in the course of the individual's employment directly affects hazardous materials transportation safety as determined by the Secretary by regulation. Such term includes an owner-operator of a motor vehicle which transports in commerce hazardous materials. Such term includes, at a minimum, an individual who is employed by a hazmat employer and who in the course of the individual's employment—

"(A) loads, unloads, or handles hazardous materials;

"(B) reconditions or tests containers, drums, and packages represented for use in the transportation of hazardous materials;

"(C) prepares hazardous materials for transportation;

"(D) is responsible for the safety of the transportation of hazardous materials; or

"(E) operates a vehicle used to transport hazardous materials.

"(6) HAZMAT EMPLOYER.—The term 'hazmat employer' means a person—

"(A)(i) who transports in commerce hazardous materials,

"(ii) who causes to be transported or shipped in commerce hazardous materials, or

"(iii) who reconditions or tests containers, drums, and packages represented for use in the transportation of hazardous materials; and

"(B) who utilizes 1 or more of its employees in connection with such activity.

Such term includes an owner-operator of a motor vehicle which transports in commerce hazardous materials. Such term includes any department, agency, or instrumentality of the United States, a State, a political subdivision of a State, or an Indian tribe engaged in an activity described in subparagraph (A)(i), (A)(ii), or (A)(iii).

"(7) IMMINENT HAZARD.—The term 'imminent hazard' means the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

"(8) INDIAN TRIBE.—The term 'Indian tribe' shall have the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

"(9) MOTOR CARRIER.—The term 'motor carrier' means a motor common carrier, motor contract carrier, motor private carrier, and freight forwarder as those terms are defined in section 10102 of title 49, United States Code.

"(10) NATIONAL RESPONSE TEAM.—The term 'National Response Team' means the national response team established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(11) PERSON.—The term 'person' means an individual, firm, copartnership, corpora-

tion, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include (A) the United States Postal Service, or (B) for the purposes of sections 110 and 111 of this title, any agency or instrumentality of the Federal Government.

"(12) PUBLIC SECTOR EMPLOYEE.—The term 'public sector employee' means an individual who is employed by a State or a political subdivision thereof or an Indian tribe and who in the course of the individual's employment has responsibilities relating to responding to accidents and incidents involving the transportation of hazardous materials. Such term includes, at a minimum, a person employed by a State or political subdivision thereof or an Indian tribe as a firefighter or law enforcement officer. Such term also includes a person who volunteers to serve as a firefighter for a State or political subdivision thereof or an Indian tribe.

"(13) SECRETARY.—The term 'Secretary' means the Secretary of Transportation or the Secretary's delegate.

"(14) STATE.—The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in section 121, relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

"(15) TRANSPORTS OR TRANSPORTATION.—The term 'transports' or 'transportation' means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

"(16) UNITED STATES.—The term 'United States' means all of the States.".

(b) CONFORMING AMENDMENT.—Section 111(b) (49 U.S.C. App. 1810(b)) is amended by striking the second sentence.

SEC. 4. FEDERAL REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS.

Section 105 (49 U.S.C. App. 1804) is amended to read as follows:

"SEC. 105. REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS.

"(a) GENERAL.—

"(1) ISSUANCE.—The Secretary shall issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The regulations issued under this section shall govern any aspect of hazardous materials transportation safety which the Secretary deems necessary or appropriate.

"(2) PROCEDURES.—Regulations issued under paragraph (1) shall be issued in accordance with section 553 of title 5, United States Code, including an opportunity for informal oral presentation.

"(3) APPLICABILITY.—Regulations issued under paragraph (1) shall be applicable to any person who transports, ships, causes to be transported or shipped, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation in commerce of hazardous materials.

"(4) PREEMPTION.—

"(A) GENERAL RULE.—Except as provided in subsection (b) and unless otherwise authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe, which concerns a subject listed in subparagraph (B) and which is not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is preempted.

"(B) COVERED SUBJECTS.—The subjects referred to in subparagraph (A) are the following:

"(i) The designation, description, and classification of hazardous materials.

"(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

"(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

"(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

"(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

"(C) LIMITATION ON FINES AND PENALTIES.—If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in subparagraph (B), no additional fine or penalty may be assessed for such violation by any other authority.

"(5) STATE LAWS WHICH ARE SUBSTANTIVELY THE SAME AS FEDERAL LAW.—

"(A) CONTINUATION.—If the Secretary issues under this section before, on, or after the date of the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990, a regulation, rule, or standard concerning any subject set forth in paragraph (4), a State, political subdivision of a State, or Indian tribe may only establish, maintain, and enforce a law, regulation, rule, standard, or order concerning such subject which is substantively the same as any provision of this Act or any regulation, rule, or order issued under such provision.

"(B) EFFECTIVE DATE OF FEDERAL PREEMPTION.—The Secretary shall determine and publish in the Federal Register the effective date of paragraph (1) with respect to any regulation, rule, or standard described in subparagraph (A) and which is issued after such date of enactment by the Secretary; except that such effective date may not be earlier than the 90th day following the date of such issuance and may not be later than the last day of the 2-year period beginning on the date of such issuance.

"(b) HIGHWAY ROUTING.—

"(1) STATE AUTHORITY.—Subject to paragraphs (4) and (5), each State and Indian tribe may establish, maintain, and enforce (A) specific highway routes over which hazardous materials may and may not be transported by motor vehicles in the area which is subject to the jurisdiction of such State or Indian tribe, and (B) limitations and requirements with respect to highway routing.

"(2) ISSUANCE OF FEDERAL STANDARDS.—Not later than 18 months after the date of the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990, the Secretary, in consultation with the States, shall establish by regulation standards for States and Indian tribes to use in establishing, maintaining, and enforcing (A) specific highway routes over which hazardous materials may and may not be transported by motor vehicles, and (B) limitations and requirements with respect to highway routing.

"(3) CONTENTS OF STANDARDS.—The Federal standards established pursuant to paragraph (2) shall include the following:

"(A) ENHANCEMENT OF PUBLIC SAFETY.—A requirement that highway routing designations, limitations, and requirements established, maintained, and enforced by a State or Indian tribe shall enhance public safety (i) in the area subject to the jurisdiction of the State or Indian tribe, and (ii) in areas of the United States not subject to such jurisdiction which are directly affected by such designations, limitations, and requirements.

"(B) PUBLIC PARTICIPATION.—Minimum procedural requirements for ensuring public participation in the establishment by a State or Indian tribe of highway routing designations, limitations, and requirements.

"(C) CONSULTATION WITH OTHER GOVERNMENTS.—A requirement that, in establishing highway routing designations, limitations, and requirements, the State or Indian tribe shall consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of the establishing State or Indian tribe and affected industries.

"(D) THROUGH ROUTING.—A requirement that highway routing designations, limitations, and requirements established, maintained, and enforced by a State or Indian tribe shall assure through highway routing for the transportation of hazardous materials between adjacent areas.

"(E) AGREEMENT OF OTHER STATES; BURDEN ON COMMERCE.—A requirement that a highway routing designation, limitation, or requirement which affects the transportation of hazardous materials in another State or Indian tribe may only be established, maintained, and enforced by a State or Indian tribe if (i) it is agreed to by the other State or Indian tribe within a reasonable period or has been approved by the Secretary under paragraph (5), and (ii) does not unreasonably burden commerce.

"(F) TIMELINESS.—A requirement that the establishment of highway routing designations, limitations, and requirements by a State or Indian tribe shall be completed in a timely manner.

"(G) REASONABLE ROUTES TO TERMINALS.—A requirement that highway routing designations, limitations, and requirements established, maintained, and enforced by a State or Indian tribe shall provide reasonable routes for motor vehicles transporting hazardous materials to reach terminals, facilities for food, fuel, repairs, and rest, and points for the loading and unloading of hazardous materials.

"(H) STATE RESPONSIBILITY FOR LOCAL COMPLIANCE.—A requirement that the State shall be responsible (i) for ensuring that political subdivisions of the State comply with the Federal standards in establishing, maintaining, and enforcing highway routing designations, limitations, and requirements, and (ii) for resolving disputes between or among such political subdivisions.

"(I) FACTORS TO CONSIDER.—A requirement that, in establishing, maintaining, and enforcing highway routing designations, limitations, and requirements, a State or Indian tribe consider—

"(i) population density,

"(ii) type of highways,
"(iii) type and quantities of hazardous materials,
"(iv) emergency response capabilities,
"(v) results of consultations with affected persons,
"(vi) exposure and other risk factors,
"(vii) terrain considerations,
"(viii) continuity of routes,
"(ix) alternative routes,
"(x) effects on commerce,
"(xi) delays in transportation, and
"(xii) such other factors as the Secretary considers appropriate

"(4) PREEMPTION.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, after the last day of the 2-year period beginning on the date of the issuance of the regulations establishing the Federal standards pursuant to paragraph (2), no State or Indian tribe may establish, maintain, or enforce—

"(i) any highway route designation over which hazardous materials may or may not be transported by motor vehicles, or

"(ii) any limitation or requirement with respect to such routing,

unless such designation, limitation, or requirement is made in accordance with the procedural requirements of the Federal standards and complies with the substantive requirements of the Federal standards.

"(B) GRANDFATHER CLAUSE.—Designations, limitations, and requirements established before the date of issuance referred to in subparagraph (A) do not have to be in accordance with procedural requirements of the Federal standards established pursuant to paragraphs (3)(B), (3)(C), and (3)(F).

"(C) LIMITATION WITH RESPECT TO CONSIDERATION OF FACTORS.—Nothing in this subsection shall be construed as requiring a State or Indian tribe to comply with paragraph (3)(I) with respect to designations, limitations, and requirements established before the date of the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990.

"(D) CONTINUATION OF EFFECTIVENESS DURING DISPUTE RESOLUTION.—The Secretary may permit a highway route designation or limitation or requirement of a State or Indian tribe to continue in effect pending the resolution of a dispute under paragraph (5) relating to such designation, limitation, or requirement.

"(5) DISPUTE RESOLUTION.—

"(A) PETITION OF SECRETARY.—If a dispute over a matter relating to through highway routing or a dispute relating to agreement with a proposed highway route designation, limitation, or requirement arises between or among States, political subdivisions of different States, or Indian tribes, 1 or more of such States or Indian tribes may petition the Secretary to resolve the dispute.

"(B) PROCEDURE.—The Secretary shall, within 18 months of the date of the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990, issue regulations for resolving disputes under this paragraph.

"(C) TIME PERIOD.—The Secretary shall resolve a dispute under this paragraph within 1 year after the date the Secretary receives the petition for resolution of such dispute.

"(D) STANDARD.—Resolution of a dispute under this paragraph shall provide the greatest level of highway safety without unreasonably burdening commerce and shall ensure compliance with the Federal standards established pursuant to paragraph (2).

"(E) LIMITATION ON JUDICIAL REVIEW.—After a petition is filed under this paragraph to resolve a dispute, no court action may be brought with respect to the subject matter of such dispute until a final decision of the Secretary is issued under this paragraph or the last day of the 1-year period beginning on the day the Secretary receives such petition, whichever occurs first.

"(F) JUDICIAL REVIEW.—Any State or Indian tribe which is adversely affected by a decision of the Secretary under this paragraph may, at any time before the 90th day following the date such decision becomes final, bring an action for judicial review in an appropriate district court of the United States.

"(6) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection and the regulations issued under this subsection shall be construed as superseding or otherwise affecting application of section 127 of title 23, United States Code, relating to vehicle weight limitations, or section 411 or 416 of the Surface Transportation Assistance Act of 1982, relating to vehicle length and vehicle width limitations, respectively.

"(7) LIMITATION ON APPLICABILITY.—

"(A) PLACARDED MOTOR VEHICLES.—Subject to subparagraph (B), this subsection only applies to a motor vehicle if the vehicle is transporting in commerce a hazardous material for which placarding of the vehicle is required in accordance with the regulations issued under this title.

"(B) AUTHORITY TO EXTEND APPLICABILITY.—The Secretary may, by regulation, extend application of this subsection or any Federal standard established pursuant to paragraph (2)—

"(i) to any use of a vehicle described in subparagraph (A) to provide transportation in commerce of any hazardous material; and

"(ii) to any motor vehicle used to transport in commerce hazardous materials.

"(8) EXISTING REGULATIONS RELATING TO RADIOACTIVE MATERIALS.—Nothing in this subsection shall be construed to require the Secretary to amend, modify, or reissue regulations issued by the Department of Transportation before the date of the enactment of this paragraph and in effect on such date with respect to highway route designations over which radioactive materials may and may not be transported by motor vehicles and limitations and requirements with respect to such routing.

"(9) LIMITATION ON AUTHORITY OF SECRETARY.—The Secretary may not assign any specific weight to be given by the States and Indian tribes in considering factors pursuant to paragraph (3)(I).

"(c) LIST OF ROUTE DESIGNATIONS.—The Secretary, in coordination with the States, shall periodically update and publish a list of currently effective hazardous materials highway route designations.

"(d) INTERNATIONAL UNIFORMITY.—

"(1) DOT PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and direction from the Secretary of State, the Secretary shall participate in international forums that establish or recommend mandatory standards and requirements for the transportation of hazardous materials in international commerce.

"(2) CONSULTATION.—The Secretary may consult with interested agencies to assure that, to the extent practicable, regulations issued by the Secretary pursuant to this section shall be consistent with standards adopted by international bodies applicable to the transportation of hazardous materials. Nothing in this subsection shall require the Secretary to issue a standard identical to a standard adopted by an international body, if the Secretary determines the standard to be unnecessary or unsafe, nor shall the Secretary be prohibited from establishing safety requirements that are more stringent than those included in a standard adopted by an international body, if the Secretary determines that such requirements are necessary in the public interest.".

SEC. 5. REPRESENTATION AND TAMPERING.

Section 105 (49 U.S.C. App. 1804), as amended by section 4, is amended by adding at the end the following new subsections:

"(e) UNLAWFUL REPRESENTATION.—No person shall, by marking or otherwise, represent that—

"(1) a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this title unless it meets the requirements of all applicable regulations issued under this title; or

"(2) a hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if the hazardous material is not present.

"(f) UNLAWFUL TAMPERING.—No person shall unlawfully alter, remove, deface, destroy, or otherwise tamper with—

"(1) any marking, label, placard, or description on a document required by this title or a regulation issued under this title; or

"(2) any package, container, motor vehicle, rail freight car, aircraft, or vessel used for the transportation of hazardous materials.

SEC. 6. DISCLOSURE.

Section 105 (49 U.S.C. App. 1804), as amended by section 5, is amended by adding at the end the following new subsection:

"(g) DISCLOSURE.—

"(1) MAINTENANCE OF SHIPPING PAPER.—Each person who offers for transportation in commerce a hazardous material that is subject to the shipping paper requirements of the Secretary shall provide the carrier who is providing such transportation any shipping paper that makes the disclosure established by the Secretary under paragraph (2) for the carrier to maintain on the vehicle to be used to provide such transportation. If the person offering such material for transportation is also a private motor carrier, such person shall maintain such shipping paper on the vehicle.

"(2) CONSIDERATIONS AND CONTENTS.—In carrying out paragraph (1), the Secretary shall consider and may require the following:

"(A) a description of the hazardous material, including the proper shipping name of the material,

"(B) the hazard class of the hazardous material,

"(C) the identification number (UN/NA) of the material,

"(D) immediate first action emergency response information or a means for appropriate reference to such information which must be immediately available, and

"(E) a telephone number for the purpose of obtaining more specific handling and mitigation information concerning the hazardous material at any time during its transportation.

"(3) SPECIFICATION OF LOCATION.—The shipping paper referred to in paragraph (1) shall be kept in a location, to be specified by the Secretary, in the motor vehicle, train, vessel, aircraft, or facility until the hazardous material is no longer in transportation or the documents have been made available to a representative of a Federal, State, or

local government agency responding to an accident or incident involving the motor vehicle, train, vessel, aircraft, or facility.

"(4) DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES.—Any person who transports a hazardous material in commerce shall, in the event of an incident involving such material, immediately disclose to appropriate emergency response authorities, upon their request, information on the hazardous material being transported.".

SEC. 7. HANDLING OF HAZARDOUS MATERIALS.

Section 106 (49 U.S.C. App. 1805) is amended—

(1) by redesignating subsections (b) and (c), and any reference thereto, as subsections (e) and (f), respectively;

(2) in subsection (e), as so redesignated, by striking "(b)" and inserting "(c)"; and

(3) by inserting after subsection (a) the following new subsection:

"(b) TRAINING CRITERIA FOR SAFE HANDLING AND TRANSPORTATION.—

"(1) FEDERAL REQUIREMENTS.—Within 18 months after the date of the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990, the Secretary shall issue, by regulation, requirements for training to be given by all hazmat employers to their hazmat employees regarding the safe loading, unloading, handling, storing, and transporting of hazardous materials and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials.

"(2) DIFFERENT TRAINING REQUIREMENTS.—The regulations issued under paragraph (1) may provide for different training for different classes or categories of hazardous materials and hazmat employees.

"(3) COORDINATION OF EMERGENCY RESPONSE TRAINING REGULATIONS.—In consultation with the Administrator and the Secretary of Labor, the Secretary shall take such actions as may be necessary to ensure that the training requirements established under this subsection do not conflict with the requirements of the regulations issued by the Occupational Safety and Health Administration of the Department of Labor relating to hazardous waste operations and emergency response contained in part 1910 of title 29 of the Code of Federal Regulations (and amendments thereto) and the regulations issued by the Environmental Protection Agency relating to worker protection standards for hazardous waste operations contained in part 311 of title 40 of such Code (and amendments thereto). For purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), no action taken by the Secretary pursuant to this section shall be deemed to be an exercise of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

"(4) COMMENCEMENT OF TRAINING.—Within 6 months after the date on which the Secretary issues regulations under this subsection, each hazmat employer shall have commenced training of its hazmat employees in accordance with the requirements established by such regulations.

"(5) COMPLETION OF TRAINING.—Regulations issued under this subsection shall establish the date by which training of hazmat employees shall be completed in order to comply with requirements established by such regulations. Such date shall be within a reasonable period of time after (A) 6 months following the date of the issuance of such regulations, or (B) in the case of an individual employed as a hazmat employee after such 6-month period, the date on which the individual is to begin carrying out a duty of a hazmat employee.

"(6) CERTIFICATION.—After completion of training of its hazmat employees in accordance with the requirements established under this subsection, each hazmat employer shall certify, with such appropriate documentation as may be required by regulation by the Secretary, that the employer's hazmat employees have received training and have been tested on appropriate transportation areas of responsibility, including one or more of the following areas:

"(A) Recognition and understanding of the Department of Transportation hazardous materials classification system.

"(B) Use and limitations of the Department of Transportation hazardous materials placarding, labeling, and marking systems.

"(C) General handling procedures, loading and unloading techniques, and strategies to reduce the probability of release or damage during or incidental to transportation of hazardous materials.

"(D) Health, safety, and risk factors associated with hazardous materials and their transportation.

"(E) Appropriate emergency response and communication procedures for dealing with accidents and incidents involving hazardous materials transportation.

"(F) Use of the Department of Transportation Emergency Response Guidebook and recognition of its limitations or use of equivalent documents and recognition of the limitations of such documents.

"(G) Applicable hazardous materials transportation regulations.

"(H) Personal protection techniques.

"(I) Preparation of shipping documents for transportation of hazardous materials.

"(7) APPLICABILITY OF INFORMATION MANAGEMENT REQUIREMENTS.—Chapter 35 of title 44, United States Code (relating to coordination of Federal information policy) shall not apply to activities of the Secretary under this subsection.".

SEC. 8. HAZARDOUS MATERIALS TRANSPORTATION REGISTRATION; MOTOR CARRIER SAFETY PERMITS.

Section 106 (49 U.S.C. App. 1805), as amended by section 7, is amended by inserting after subsection (b) the following new subsections:

"(c) REGISTRATION.—

"(1) MANDATORY FILINGS.—Each person who carries out one or more of the following activities shall file with the Secretary a registration statement in accordance with the provisions of this subsection:

"(A) Transporting or causing to be transported or shipped in commerce highway-route controlled quantities of radioactive materials, more than 25 kilograms of class A or class B explosives in a motor vehicle, rail car, or transport container, or more than 1 liter per package of a hazardous material which has been designated by the Secretary as extremely toxic by inhalation.

"(B) Transporting or causing to be transported or shipped in commerce a hazardous material in a bulk package, container, or tank as defined by the Secretary if the package, container, or tank has a capacity of 3,500 or more gallons or more than 468 cubic feet.

"(C) Transporting or causing to be transported or shipped in commerce a shipment of 5,000 pounds or more of a class of a hazardous material for which placarding of a vehicle, rail car, or freight container is required in accordance with the regulations issued under this title.

"(2) COOPERATION OF EPA.—The Administrator shall assist the Secretary in carrying out this subsection by furnishing the Secretary with such information as the Secretary may request in order to carry out the objectives of this section.

"(3) DISCRETIONARY FILINGS.—The Secretary may require each person who carries out one or more of the following activities to file a registration statement with the Secretary in accordance with the provisions of this subsection:

"(A) Transporting or causing to be transported or shipped in commerce hazardous materials and who is not required to file a registration statement under paragraph (1).

"(B) Manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials designated by the Secretary.

"(4) REQUIREMENT.—No person required to file a registration statement by or under this subsection may transport or cause to be transported or shipped hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of hazardous materials, unless such person has on file a registration statement in accordance with this subsection.

"(5) FILING DEADLINES.—

"(A) INITIAL FILINGS.—Each person who is required to file a registration statement by or under this subsection shall file an initial registration statement by March 31, 1992. The Secretary may extend such date to September 30, 1992, with respect to the requirements of paragraph (1).

"(B) RENEWALS.—Subject to the provisions of this subsection, each person who is required to file a registration statement by or under this section shall renew such registration statement periodically in accordance with regulations issued by the Secretary, but no less frequently than every 5 years and no more frequently than annually.

"(6) AMENDMENTS.—The Secretary shall by regulation determine when and under what circumstances a registration statement filed under this subsection with the Secretary must be amended and the procedures to be followed in amending such statement.

"(7) CONTENTS.—A registration statement under this subsection shall be in such form and contain such information as the Secretary may require by regulation. The Secretary may utilize existing forms of the Department of Transportation and the Environmental Protection Agency in carrying out this subsection. At a minimum, such statement shall include—

"(A) the registrant's name and principal place of business;

"(B) a description of each activity the registrant carries out for which filing of a registration statement is required by or under this section; and

"(C) the State or States in which such person carries out each such activity.

"(8) LIMITATION ON NUMBER OF FILINGS.—A person who carries out more than one activity for which filing of a registration statement is required by or under this subsection only needs to file one registration statement in order to comply with this subsection.

"(9) STREAMLINED PROCESS.—The Secretary may take such action as may be necessary to streamline and simplify the registration process under this subsection and to minimize with respect to a person who is required to file a registration statement under this subsection the number of applications, documents, and other information which

such person is required to file with the Department of Transportation under this title and any other laws of the United States.

"(10) DISCLOSURE.—The Secretary shall make a registration statement filed under this subsection available for inspection by any person, for a fee to be established by the Secretary; except that nothing in this sentence shall be considered to require the release of any information described in section 552(f) of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

"(11) FEES.—The Secretary may establish, assess, and collect such fees from persons required to file registration statements by or under this subsection as may be necessary to cover the costs of the Department of Transportation in processing such registration statements.

"(12) PROOF OF REGISTRATION AND PAYMENT OF FEES.—The Secretary may issue regulations requiring a person required to file a registration statement by or under this subsection to maintain proof of the filing of such statement and the payment of any fees assessed under this subsection and section 117(h).

"(13) APPLICABILITY OF INFORMATION MANAGEMENT REQUIREMENTS.—Chapter 35 of title 44, United States Code (relating to coordination of Federal information policy) shall not apply to activities of the Secretary under this subsection.

"(14) NONAPPLICABILITY TO EMPLOYEES.—Notwithstanding any other provisions of this subsection, an employee of a hazmat employer is not required to file a registration statement by or under this section.

"(15) EXEMPTION OF GOVERNMENT AGENCIES AND EMPLOYEES.—Agencies of the Federal Government, agencies of States, and agencies of political subdivisions of States, and employees of such agencies with respect to their official duties do not have to file registration statements under this subsection.

"(d) MOTOR CARRIER SAFETY PERMITS.—

"(1) REQUIREMENT.—Except as provided in this subsection, a motor carrier may transport or cause to be transported by motor vehicle in commerce a hazardous material only if the motor carrier holds a safety permit issued by the Secretary under this section authorizing the transportation and keeps a copy of such permit, or other proof establishing the existence of such permit, in the motor vehicle used to provide such transportation.

"(2) ISSUANCE.—Except as provided in this subsection, the Secretary shall issue a safety permit to a motor carrier authorizing that carrier to transport or cause to be transported by motor vehicle in commerce a hazardous material if the Secretary finds that the carrier is fit, willing, and able—

"(A) to provide the transportation to be authorized by the permit;

"(B) to comply with this title and the regulations issued by the Secretary to carry out this title; and

"(C) to comply with any applicable Federal motor carrier safety laws and regulations and any applicable Federal minimum financial responsibility laws and regulations.

"(3) SHIPPER'S RESPONSIBILITY.—Each person who offers a hazardous material for motor vehicle transportation in commerce may offer that material to a motor carrier only if the carrier has a safety permit issued under this subsection authorizing such transportation.

"(4) AMENDMENT, SUSPENSION, AND REVOCATION.—A safety permit issued to a motor carrier under this subsection may, after notice and an opportunity for hearing, be amended, suspended, or revoked by the Secretary in accordance with procedures established under paragraph (6) whenever the Secretary determines that such carrier has failed to comply with a requirement of this title, any regulation issued under this title, any applicable Federal motor carrier safety law or regulation, or any applicable Federal minimum financial responsibility law or regulation. If the Secretary determines that an imminent hazard exists, the Secretary may amend, suspend, or revoke the safety permit before scheduling a hearing thereon.

"(5) COVERED TRANSPORTATION.—The Secretary shall establish by regulation the hazardous materials and quantities thereof to which this subsection applies; except that this section shall apply, at a minimum, to all transportation by a motor carrier of a class A or B explosive, a liquefied natural gas, a hazardous material which has been designated by the Secretary as extremely toxic by inhalation, or a highway route controlled quantity of radioactive materials as defined by the Secretary.

"(6) PROCEDURES.—The Secretary shall establish by regulation—

"(A) application procedures, including form, content, and fees necessary to recover the full costs of administering this subsection;

"(B) standards for determining the duration, terms, conditions, or limitations of a safety permit;

"(C) procedures for the amendment, suspension, or revocation of a safety permit issued under this section; and

"(D) any other procedures the Secretary deems appropriate to implement this subsection.

"(7) APPLICATION.—A motor carrier shall file an application with the Secretary for a safety permit to provide transportation under this subsection. The Secretary may approve any part of the application or deny the application. The application shall—

"(A) be under oath; and

"(B) contain such information as the Secretary may require by regulation.

"(8) CONDITIONS.—A motor carrier may provide transportation under a safety permit issued under this subsection only if the carrier complies with such conditions as the Secretary finds are required to protect public safety.".

(b) SAFETY PERMITS.—Section 106(d) of the Hazardous Materials Transportation Act, relating to motor carrier safety permits, shall take effect 2 years after the date of the enactment of this Act; except that the Secretary shall issue regulations necessary to carry out such section not later than 1 year after such date of enactment.

(c) REPEAL OF EXISTING PROGRAM.—Subsections (e) and (f) of section 106 of the Hazardous Materials Transportation Act (49 U.S.C. 1805), as redesignated by section 7 of this Act, are repealed effective March 31, 1992.

SEC. 9. EXEMPTIONS.

Section 107(a) (49 U.S.C. App. 1806(a)) is amended by striking "or renewal" in the fourth sentence.

SEC. 10. DEFINITION OF CERTAIN MATERIALS.

The second sentence of section 108(b) (49 U.S.C. App. 1807(b)) is amended to read as follows: "The term does not include any material which the Secretary determines is of such low order of radioactivity that when transported does not pose a significant hazard to health or safety.".

SEC. 11. SECRETARY'S POWERS.

Section 109(d)(1)(C) (49 U.S.C. App. 1808(d)(1)(C)) is amended by striking "recommend" and inserting "take".

SEC. 12. PENALTIES.

(a) CIVIL PENALTIES.—Section 110(a) (49 App. U.S.C. 1809(a)) is amended—

(1) in paragraph (1)—

(A) by striking "(except an employee who acts without knowledge)" in the first sentence;

(B) by striking "title or of a" in the first sentence and inserting "title, an order, or";

(C) by inserting "order or" after "violation of any" in each of the second and third sentences; and

(D) by striking "$10,000" in each of the second and third sentences and inserting "$25,000 and not less than $250"; and

(2) by adding at the end the following:

"(3) ACTING KNOWINGLY.—For purposes of this section, a person shall be considered to have acted knowingly if—

"(A) such person has actual knowledge of the facts giving rise to the violation, or

"(B) a reasonable person acting in the circumstances and exercising due care would have such knowledge.".

(b) CRIMINAL PENALTIES.—Subsection (b) of section 110 (49 App. U.S.C. 1809) is amended to read as follows:

"(b) CRIMINAL.—A person who knowingly violates section 105(f) of this title or willfully violates a provision of this title or an order or regulation issued under this title shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.".

SEC. 13. RELATIONSHIP TO OTHER LAWS.

Section 112 (49 U.S.C. App. 1811) is amended to read as follows:

"SEC. 112. RELATIONSHIP TO OTHER LAWS.

"(a) IN GENERAL.—Except as provided in subsection (d) and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or Indian tribe is preempted if—

"(1) compliance with both the State or political subdivision or Indian tribe requirement and any requirement of this title or of a regulation issued under this title is not possible,

"(2) the State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of this title or the regulations issued under this title, or

"(3) it is preempted under section 105(a)(4) or section 105(b).

"(b) FEES.—A State or political subdivision thereof or Indian tribe may not levy any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response.

"(c) DETERMINATION OF PREEMPTION.—

"(1) ADMINISTRATIVE DETERMINATION.—Any person, including a State or political subdivision thereof or Indian tribe, directly affected by any requirement of a State or political subdivision or Indian tribe, may apply to the Secretary, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by section 105(a)(4) or 105(b) or subsection (a). The Secretary shall publish notice of the application in the Federal Register. Once the Secretary has published such notice, no applicant for such determination by the Secretary may seek relief

with respect to the same or substantially the same issue in any court until the Secretary has taken final action on the application or until 180 days after filing of the application, whichever occurs first. The Secretary, in consultation with States, political subdivisions, and Indian tribes, shall issue regulations which set forth procedures for carrying out this paragraph.

"(2) JUDICIAL DETERMINATION.—Nothing in subsection (a) prohibits a State or political subdivision thereof or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Secretary under paragraph (1).

"(d) WAIVER OF PREEMPTION.—Any State or political subdivision or Indian tribe may apply to the Secretary for a waiver of preemption with respect to any requirement that the State or political subdivision or Indian tribe acknowledges to be preempted by section 105(a)(4) or 105(b) or subsection (a). The Secretary, in accordance with procedures prescribed by regulation, may waive preemption with respect to such requirement upon a determination that such requirement—

"(1) affords an equal or greater level of protection to the public than is afforded by the requirements of this title or regulations issued under this title, and

"(2) does not unreasonably burden commerce.

"(e) JUDICIAL REVIEW.—A party to a proceeding under subsection (c) or (d) may seek review by the appropriate district court of the United States of a decision of the Secretary under such proceeding only by filing a petition with such court within 60 days after such decision becomes final.

"(f) OTHER FEDERAL LAWS.—This title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.), to pipelines which are subject to regulation under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 et seq.), or to any matter which is subject to the Federal postal laws or regulations under this title or under title 18 or title 39 of the United States Code.".

SEC. 14. FUNDING.

Section 115 (49 U.S.C. App. 1812) is amended to read as follows:

"SEC. 115. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There is authorized to be appropriated for carrying out this title (other than sections 117 and 121) not to exceed $13,000,000 for fiscal year 1991, $16,000,000 for fiscal year 1992, and $18,000,000 for fiscal year 1993.

"(b) CREDITS.—The Secretary may credit to any appropriation to carry out this title funds received from States, Indian tribes, or other public authorities and private entities for expenses incurred by the Secretary in providing training to such States, public authorities, and private entities.".

SEC. 15. TRANSPORTATION OF CERTAIN HIGHLY RADIOACTIVE MATERIALS.

Section 116 (49 U.S.C. App. 1813) is amended to read as follows:

"SEC. 116. TRANSPORTATION OF CERTAIN HIGHLY RADIOACTIVE MATERIALS.

"(a) RAILROAD TRANSPORTATION STUDY.—The Secretary, in consultation with the Department of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the railroad transportation industry and shippers of high-level radioactive waste and spent nuclear fuel, shall undertake a study comparing the safety of using trains operated exclusively for transporting high-level radioactive waste and spent nuclear fuel (hereinafter in this section referred to as 'dedicated trains') with the safety of using other methods of rail transportation for such purposes. The Secretary shall report the results of the study to Congress not later than one year after the date of enactment of this section.

"(b) SAFE RAIL TRANSPORT OF CERTAIN RADIOACTIVE MATERIALS.—Within 24 months after the date of enactment of this section, taking into consideration the findings of the study conducted pursuant to subsection (a), the Secretary shall amend existing regulations as the Secretary deems appropriate to provide for the safe transportation by rail of high-level radioactive waste and spent nuclear fuel by various methods of rail transportation, including by dedicated train.

"(c) MODE AND ROUTE STUDY.—The Secretary shall, within 12 months after the date of enactment of this section, undertake a study to determine which factors, if any, should be taken into consideration by shippers and carriers in order to select routes and modes which, in combination, would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. Such study shall include notice and opportunity for public comment, and shall include assessing the degree to which various factors, including population densities, types and conditions of modal infrastructures (such as highways, railbeds, and waterways), quantities of high-level radioactive waste and spent nuclear fuel, emergency response capabilities, exposure and other risk factors, terrain considerations, continuity of routes, available alternative routes, environmental impact factors, affect the overall public safety of such shipments.

"(d) INSPECTIONS OF VEHICLES TRANSPORTING HIGHWAY ROUTE CONTROLLED QUANTITY RADIOACTIVE MATERIALS.—

"(1) REQUIREMENT.—Not later than one year after the date of the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990, the Secretary shall require by regulation that, before each use of a motor vehicle to transport in commerce any highway route controlled quantity radioactive material, such vehicle shall be inspected and certified to be in compliance with this title and applicable Federal motor carrier safety laws and regulations.

"(2) USE OF FEDERAL AND STATE INSPECTORS.—The Secretary may require that inspections under this subsection be carried out by duly authorized inspectors of the United States or in accordance with appropriate State procedures.

"(3) SELF-CERTIFICATION.—The Secretary may permit a person who transports or causes to be transported or shipped any highway route controlled quantity radioactive material to inspect the motor vehicle to be used to provide such transportation and to certify that the motor vehicle is in compliance with this title. The inspector qualification requirements for individuals performing inspections of motor vehicles issued by the Secretary shall apply to individuals conducting inspections under this paragraph.".

SEC. 16. INSPECTORS.

(a) IN GENERAL.—The Secretary of Transportation, in fiscal year 1991, shall employ and maintain thereafter an additional 30 hazardous materials safety inspectors above the number of safety inspectors authorized for fiscal year 1990, in the aggregate, for the Federal Railroad Administration, the Federal Highway Administration, and the Research and Special Programs Administration. The Secretary shall take such action as may be necessary to assure that the activities of 10 such additional inspectors focus on promoting safety in the transportation of radioactive materials, as defined by the Secretary. Such activities shall include—

(1) the inspection at the point of origin of shipments of high-level radioactive waste or nuclear spent fuel, as those terms are defined in section 116 of the Hazardous Materials Transportation Act, as added by section 15 of this Act; and

(2) the inspection, to the maximum extent practicable, of shipments of radioactive materials that are not high-level radioactive waste or nuclear spent fuel.

(b) COOPERATION.—In carrying out their duties, the 10 additional inspectors authorized by this section to focus on promoting safety in the transportation of radioactive materials shall, to the maximum extent possible, cooperate with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.

(c) ALLOCATION OF INSPECTORS OF RADIOACTIVE MATERIALS.—Of the 10 additional inspectors authorized by subsection (a) to focus on promoting safety in the transportation of radioactive materials—

(1) not less than 1 shall be allocated to the Research and Special Programs Administration;

(2) not less than 3 shall be allocated to the Federal Railroad Administration;

(3) not less than 3 shall be allocated to the Federal Highway Administration; and

(4) the remainder shall be allocated, at the discretion of the Secretary, among the agencies referred to in paragraphs (1), (2), and (3).

(d) ALLOCATION OF OTHER SAFETY INSPECTORS.—The 20 additional inspectors authorized by subsection (a) not referred to in subsection (c) shall be allocated, at the discretion of the Secretary, among the agencies referred to in paragraphs (1), (2), and (3).

(e) DEFINITIONS.—As used in this section—

(1) HIGH-LEVEL RADIOACTIVE WASTE.—The term "high-level radioactive waste" has the meaning given such term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)).

(2) SPENT NUCLEAR FUEL.—The term "spent nuclear fuel" has the meaning given such term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)).

SEC. 17. PUBLIC SECTOR TRAINING AND PLANNING.

The Act (49 U.S.C. App. 1801-1813) is amended by adding at the end the following new section:

"SEC. 117A. PUBLIC SECTOR TRAINING AND PLANNING.

"(a) PLANNING GRANT PROGRAM.—

"(1) IN GENERAL.—The Secretary shall make grants to States—

"(A) for developing, improving, and implementing emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986, including determination of flow patterns of hazardous materials within a State and between a State and another State; and

"(B) for determining the need for regional hazardous materials emergency response teams.

"(2) MAINTENANCE OF EFFORT.—The Secretary may not make a grant to a State under this subsection in a fiscal year unless such State certifies that the aggregate expendi-

ture of funds of the State, exclusive of Federal funds, for developing, improving, and implementing emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 will be maintained at a level which does not fall below the average level of such expenditure for its last 2 fiscal years.

"(3) FUNDING OF PLANNING BY LOCAL EMERGENCY PLANNING COMMITTEES.—The Secretary may not make a grant to a State under this subsection in a fiscal year unless such State agrees to make available not less than 75 percent of the funds granted to the State under this subsection in the fiscal year to local emergency planning committees established pursuant to section 301(c) of the Emergency Planning and Community Right-To-Know Act of 1986 by the State emergency response commission. Such funds shall be made available to the local committees for developing emergency plans under such Act.

"(b) TRAINING GRANT PROGRAM.—

"(1) IN GENERAL.—The Secretary shall make grants to States and Indian tribes for training public sector employees to respond to accidents and incidents involving hazardous materials.

"(2) MAINTENANCE OF EFFORT.—The Secretary may not make a grant to a State or Indian tribe under this subsection in a fiscal year unless the State or Indian tribe certifies that the aggregate expenditure of funds of the State or Indian tribe, exclusive of Federal funds, for training public sector employees to respond to accidents and incidents involving hazardous materials will be maintained at a level which does not fall below the average level of such expenditure for its last 2 fiscal years.

"(3) FUNDING OF TRAINING BY POLITICAL SUBDIVISIONS.—The Secretary may not make a grant to a State under this subsection in a fiscal year unless such State agrees to make available at least 75 percent of the funds granted to the State under this subsection in the fiscal year for the purposes of training public sector employees employed or used by the political subdivisions.

"(4) USE OF TRAINING COURSES.—The Secretary may only make a grant to a State or Indian tribe under this subsection in a fiscal year if the State or Indian tribe enters into an agreement with the Secretary to use in such fiscal year—

"(A) a course or courses developed or identified under subsection (g); or

"(B) other courses which the Secretary determines are consistent with the objectives of this section;

for training public sector employees to respond to accidents and incidents involving hazardous materials.

"(5) USE OF TRAINING FUNDS.—Funds granted to a State or Indian tribe for training public sector employees under this subsection may be used to pay tuition costs of such employees for such training, travel expenses of such employees to and from the training facility, room and board of such employees while they are at the training facility, and travel expenses of persons who are to provide such training.

"(6) TRAINING BY OTHERS.—Funds granted to a State or Indian tribe for training public sector employees under this subsection—

"(A) may be used by the State or a political subdivision thereof or the Indian tribe to provide such training; or

"(B) may be used to enter into an agreement, approved by the Secretary, to authorize a person (including a department, agency, or instrumentality of a State or political subdivision thereof or an Indian tribe) to provide such training—

"(i) if the agreement allows the Secretary and the State or Indian tribe to conduct random examinations, inspections, and audits of such training without prior notification; and

"(ii) if the State or Indian tribe conducts at least annually 1 on-site observation of such training.

"(7) ALLOCATION OF TRAINING FUNDS.—The Secretary shall allocate funds made available for grants under this subsection for a fiscal year among States and Indian tribes which are eligible to receive such grants in such fiscal year based upon the needs of such States and Indian tribes for emergency response training. In determining such needs, the Secretary shall consider the number of hazardous materials facilities in the State or on lands under the jurisdiction of the Indian tribe, the types and amounts of hazardous materials transported in the State or on such lands, whether or not the State or Indian tribe assesses and collects fees on the transportation of hazardous materials, whether or not such fees are used solely to carry out purposes related to the transportation of hazardous materials, and such other factors as the Secretary determines are appropriate to carry out the objectives of this subsection.

"(c) ADOPTION OF FEDERAL STANDARDS AND COMPLIANCE WITH EMERGENCY PLANNING REQUIREMENTS.—The Secretary may only make a grant to a State under this section in a fiscal year if the State certifies that the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986, including compliance with such sections with respect to accidents and incidents involving the transportation of hazardous materials.

"(d) FEDERAL SHARE.—By a grant under this section, the Secretary shall reimburse any State or Indian tribe an amount not to exceed 80 percent of the cost incurred by the State or Indian tribe in the fiscal year for carrying out the activities for which the grant is made. The funds of the State or Indian tribe which are required to be expended under subsections (a)(2) and (b)(2) shall not be considered to be part of the non-Federal share.

"(e) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary for such grant. Such applications shall be submitted at such times and contain such information as the Secretary may require by regulation to carry out the objectives of this subsection.

"(f) DELEGATION OF AUTHORITY.—For the purpose of minimizing administrative costs and for coordinating Federal grant programs for emergency response training and planning, the Secretary may delegate to the Director, Chairman of the Nuclear Regulatory Commission, Administrator, Secretary of Labor, Secretary of Energy, and Director of the National Institute of Environmental Health Sciences of the Department of Health and Human Services one or more of the following functions:

"(1) Authority to receive applications for grants under this section.

"(2) Authority to review applications for technical compliance with this section.

"(3) Authority to review applications for the purpose of making recommendation on approval or disapproval of such applications.

"(4) Any other ministerial function associated with the grant programs under this section.

"(g) TRAINING CURRICULUM.—

"(1) CURRICULUM COMMITTEE.—Not later than 24 months after the date of the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990, the Secretary, in coordination with the Director, Chairman of the Nuclear Regulatory Commission, Administrator, Secretary of Labor, Secretary of Energy, Secretary of Health and Human Services, and Director of the National Institute of Environmental Health Sciences and using the existing coordinating mechanisms of the National Response Team and, for radioactive materials, the Federal Radiological Preparedness Coordinating Committee, shall develop and update periodically a curriculum which consists of a list of courses necessary to train public sector emergency response and preparedness teams.

"(2) MANDATORY CURRICULUM RECOMMENDATIONS.—The curriculum to be developed under this subsection shall include—

"(A) a recommended course of study—

"(i) for training public sector employees to respond to accidents and incidents involving the transportation of hazardous materials,

"(ii) for planning such responses;

"(B) recommended basic courses and minimum numbers of hours of instruction necessary for public sector employees to be able—

"(i) to respond safely and efficiently to accidents and incidents involving the transportation of hazardous materials, and

"(ii) to plan for such responses; and

"(C) appropriate emergency response training and planning programs for public sector employees developed under other Federal grant programs, including those developed with grants made under section 126 of the Superfund Amendments and Reauthorization Act of 1986.

"(3) OPTIONAL CURRICULUM RECOMMENDATIONS.—The curriculum to be developed under this subsection may include recommendations concerning materials appropriate for use in the recommended courses described in paragraph (2)(B).

"(4) COMPLIANCE WITH OSHA AND EPA REGULATIONS AND NFPA STANDARDS.—The recommended courses described in paragraph (2)(B) shall provide such training to public sector employees as may be necessary to comply—

"(A) with the regulations issued by the Occupational Safety and Health Administration of the Department of Labor relating to hazardous waste operations and emergency response contained in part 1910 of title 29 of the Code of Federal Regulations, and any amendments thereto;

"(B) with the regulations issued by the Environmental Protection Agency relating to worker protection standards for hazardous waste operations contained in part 311 of title 40 of the Code of Federal Regulations, and any amendments thereto; and

"(C) with standards issued by the National Fire Protection Association, relating to emergency response training, including standards 471 and 472.

"(5) CONSULTATION REQUIREMENT.—In developing the curriculum under this subsection, the Secretary shall consult the regional response teams established pursuant to the National Contingency Plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, representatives of commissions established pursuant to section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) who provide training for re-

sponding to accidents and incidents involving the transportation of hazardous materials, and representatives of persons who respond to such accidents and incidents.

"(6) DISSEMINATION.—The Director, in conjunction with the National Response Team, shall disseminate the curriculum developed under this section and any amendments thereto to the regional response teams established pursuant to the National Contingency Plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to all committees and commissions established pursuant to section 301 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001).

"(7) MONITORING AND TECHNICAL ASSISTANCE.—

"(A) MONITORING.—The Director, in coordination with the Secretary, Administrator, Secretary of Energy, and Director of the National Institute of Environmental Health Sciences, shall monitor public sector emergency response training and planning for accidents and incidents involving hazardous materials.

"(B) TECHNICAL ASSISTANCE.—Taking into account the results of monitoring under subparagraph (A), the Secretary, Director, Administrator, Secretary of Energy, and Director of the National Institute of Environmental Health Sciences shall each provide technical assistance to States and political subdivisions thereof and Indian tribes for carrying out emergency response training and planning for accidents and incidents involving hazardous materials and shall coordinate the provision of such technical assistance using the existing coordinating mechanisms of the national response team and, for radioactive materials, the Federal Radiological Preparedness Coordinating Committee.

"(8) PUBLICATION OF LIST OF TRAINING PROGRAMS.—The Secretary, in conjunction with the national response team, may publish a list of programs for training public sector employees to respond to accidents and incidents involving the transportation of hazardous materials which utilize one or more of the courses developed under this subsection.

"(9) MINIMIZATION OF DUPLICATION OF EFFORT.—The Secretary, Director, Chairman of the Nuclear Regulatory Commission, Administrator, Secretary of Labor, Secretary of Energy, and the Director of the National Institute of Environmental Health Sciences, in conjunction with the heads of other Federal departments, agencies, and instrumentalities, shall review periodically all emergency response and preparedness training programs of the Federal department, agency, or instrumentality which such person heads for the purpose of minimizing duplication of effort and expense of such departments, agencies, and instrumentalities in carrying out such training programs and shall take such actions, including coordination of training programs, as may be necessary to minimize such duplication of effort and expense.

"(h) FEES FOR TRAINING AND PLANNING.—

"(1) ESTABLISHMENT AND COLLECTION.—Not later than [September 30, 1992,] the Secretary shall establish and assess by regulation and collect an annual fee from each person who is required by or under section 106 to file a registration statement.

"(2) FACTORS FOR DETERMINING AMOUNT OF FEES.—Subject to paragraph (3), the amount of annual fees to be collected under this subsection shall be determined by the Secretary based on 1 or more of the following factors:

"(A) The gross revenues from transportation of hazardous materials.

"(B) The types of hazardous materials transported or caused to be transported.

"(C) The quantities of hazardous material transported or caused to be transported.

"(D) The number of shipments of hazardous materials.

"(E) The number of activities which the person carries out and for which filing of a registration statement is required by or under section 106.

"(F) The threat to property, persons, and the environment from an accident or incident involving the hazardous materials transported or caused to be transported.

"(G) The percentage of gross revenues which are derived from the transportation of hazardous materials.

"(H) The amount of funds which are to be made available to carry out this section and section 118.

"(I) Such other factors as the Secretary considers appropriate.

"(3) LIMITATIONS ON FEE AMOUNTS.—

"(A) MAXIMUM AND MINIMUM AMOUNT.—Subject to subparagraph (B), the amount of a fee which may be collected from a person under this section in a year may not be less than $250 and may not exceed $5,000.

"(B) ADJUSTMENTS.—The Secretary shall adjust the amount of fees being collected from persons under this section to reflect any unspent balances in the account established under paragraph (6); except that nothing in this subsection shall be construed as requiring the Secretary to refund any fees collected under this subsection.

"(4) TREATMENT OF FEES.—Fees collected under this subsection shall be in addition to any fees which the Secretary may collect under section 106.

"(5) TRANSFER TO SECRETARY OF TREASURY.—The Secretary shall transfer to the Secretary of the Treasury amounts collected under this subsection for deposit in the account established under paragraph (6).

"(6) USE OF AMOUNTS.—

"(A) ESTABLISHMENT OF ACCOUNT.—The Secretary of the Treasury shall establish in the Treasury an account into which the Secretary of the Treasury shall deposit amounts transferred by the Secretary of Transportation under paragraph (5).

"(B) PURPOSES.—Amounts in the account established under subparagraph (A) shall be available, without further appropriation—

"(i) for making grants under this section and section 118,

"(ii) for monitoring and providing technical assistance under subsection (g)(7), and

"(iii) for paying the administrative costs of carrying out this section and section 118, but not to exceed 10 percent of the amounts made available from the account in any fiscal year.

"(i) FUNDING.—

"(1) PLANNING GRANTS.—There shall be available to the Secretary for carrying out subsection (a), from amounts in the account established pursuant to subsection (h), $5,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

"(2) TRAINING GRANTS.—There shall be available to the Secretary for carrying out subsection (b), from amounts in the account established pursuant to subsection (h), $7,800,000 per fiscal year for each of fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

"(3) CURRICULUM.—

"(A) FROM GENERAL REVENUES.—There is authorized to be appropriated to the Secretary to carry out subsection (g) (other than paragraph (7)) $1,000,000 per fiscal year for each of fiscal years 1991 and 1992.

"(B) FROM FEE ACCOUNT.—There shall be available to the Secretary to carry out subsection (g) (other than paragraph (7)), from amounts in the account established pursuant to subsection (h), $1,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

"(C) TRANSFERS.—The Secretary may transfer from amounts made available under this paragraph such amounts as may be necessary to the Director to carry out subsection (g)(6), relating to dissemination of the curriculum.

"(4) MONITORING AND TECHNICAL ASSISTANCE.—There shall be available for carrying out subsection (g)(7), from amounts in the account established pursuant to subsection (h)—

"(A) to each of the Secretary, Director, Administrator, and Secretary of Energy $750,000; and

"(B) to the Director of the National Institute of Environmental Health Sciences $200,000;

per fiscal year for each of fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

"(5) AVAILABILITY.—Funds made available pursuant to this subsection shall remain available until expended.".

SEC. 18. HAZMAT EMPLOYEE TRAINING GRANT PROGRAM.

The Act (49 U.S.C. App. 1801-1813), as amended by section 17 of this Act, is further amended by adding at the end the following new section:

"SEC. 118. HAZMAT EMPLOYEE TRAINING GRANT PROGRAM.

"(a) GRANT PURPOSES.—Grants for training and education of hazmat employees regarding the safe loading, unloading, handling, storage, and transportation of hazardous materials and emergency preparedness for responding to accidents or incidents involving the transportation of hazardous materials in order to meet the requirements issued under section 106(b) may be made under this section.

"(b) ADMINISTRATION.—Grants under this section shall be administered by the National Institute of Environmental Health Sciences in consultation with the Secretary, the Administrator, and the Secretary of Labor.

"(c) GRANT RECIPIENTS.—Grants under this section shall be awarded to nonprofit organizations which demonstrate expertise in implementing and operating training and education programs for hazmat employees and demonstrate the ability to reach and involve in training programs target populations of hazmat employees.

"(d) FUNDING.—There shall be available to the Director of the National Institute of Environmental Health Sciences to carry out this section, from amounts in the account established pursuant to section 117(h), $250,000 per fiscal year for each of fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.".

SEC. 19. RAILROAD TANK CARS.

The Act (49 U.S.C. App. 1801 et seq.), as amended by section 18 of this Act, is further amended by adding at the end the following new section:

"SEC. 119. RAILROAD TANK CARS.

"(a) PROHIBITIONS FOR CERTAIN MATERIALS.—No railroad tank car constructed before January 1, 1971, may be used for the transportation in commerce of any class A or B explosives, any hazardous material

which has been designated by the Secretary as toxic by inhalation, or any other hazardous material the Secretary determines should be subject to such requirement, unless the air brake equipment support attachments of such tank car at a minimum comply with the standards for attachments set forth in part 179.100-16 and part 179.200-19 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

"(b) APPLICABILITY TO OTHER MATERIALS.—No railroad tank car constructed before January 1, 1971, may be used for the transportation in commerce of any hazardous material after July 1, 1991, unless the air brake equipment support attachments of such tank car comply with the standards for attachments set forth in part 179.100-16 and part 179.200-19 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.".

SEC. 20. APPLICATION OF FEDERAL, STATE, AND LOCAL LAW TO FEDERAL CONTRACTORS.

The Act (49 U.S.C. App. 1801-1813), as amended by section 19 of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 120. APPLICATION OF FEDERAL, STATE, AND LOCAL LAW TO FEDERAL CONTRACTORS.

"Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government, transports, or causes to be transported or shipped, a hazardous material or manufacturers, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials shall be subject to and comply with all provisions of this title, all orders and regulations issued under this title, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by this title or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.".

SEC. 21. RAILROAD TANK CAR STUDY.

(a) STUDY.—The Secretary of Transportation shall enter into a contract with an appropriate disinterested expert body for a study of—

(1) the railroad tank car design process, including specifications development, design approval, repair process approval, repair accountability, and the process by which designs and repairs are presented, weighted, and evaluated, and

(2) railroad tank car design criteria, including whether headshields should be installed on all tank cars which carry hazardous materials.

In carrying out the study described in paragraph (1), such expert body shall also make recommendations as to whether public safety considerations require greater control by and input from the Secretary with respect to the railroad tank car design process, especially in the early stages, and such other recommendations as such expert body considers appropriate.

(b) REPORT.—The Secretary of Transportation shall report the results of such study and such recommendations to the Congress within 1 year after the date of enactment of this Act.

SEC. 22. UNIFORMITY OF STATE MOTOR CARRIER REGISTRATION AND PERMITTING FORMS AND PROCEDURES.

The Act (49 U.S.C. App. 1801-1813), as amended by section 20 of this Act, is further amended by adding at the end the following new section:

"SEC. 121. UNIFORMITY OF STATE MOTOR CARRIER REGISTRATION AND PERMITTING FORMS AND PROCEDURES.

"(a) WORKING GROUP.—As soon as practicable after the date of the enactment of this section, the Secretary shall establish a working group comprised of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislatures, for the purpose of—

"(1) establishing uniform forms and procedures for States that register persons who transport, cause to be transported, or ship a hazardous material, by motor vehicle; and

"(2) determining whether or not to limit the filing of any State registration forms and collection of fees therefor to the State in which a person resides or has its principal place of business.

"(b) CONSULTATION REQUIREMENT.—The working group established under this section shall consult with persons who are subject to the registration requirements described in subsection (a) in establishing uniform forms and procedures and making the determination described in subsection (a).

"(c) REPORT.—The working group established under this section shall transmit a final report to the Secretary and to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives not later than 36 months after the date of the enactment of this section. The final report shall contain a detailed statement of the findings and conclusions of the working group, together with its joint recommendations concerning the matters referred to in subsection (a).

"(d) REGULATIONS.—

"(1) GENERAL RULE.—Subject to the provisions of this subsection, the Secretary shall issue regulations implementing those recommendations contained in the report transmitted to the Secretary under subsection (c) with which the Secretary agrees.

"(2) DEADLINE.—Regulations required to be issued by this subsection shall be issued by the later of the following dates:

"(A) The last day of the 3-year period beginning on the date the organizations referred to in subsection (a) transmit their final joint report to the Secretary.

"(B) The last day of the 90-day period beginning on the date on which 26 or more States adopt all of such recommendations.

"(3) NO LIMIT OF AMOUNT OF FEES.—Regulations issued under this section shall not define or limit the amounts of any fees which may be imposed or collected by any State.

"(e) UNIFORMITY.—A regulation issued pursuant to this section shall take effect 1 year after the date of its issuance; except that the Secretary may extend such 1-year period for an additional 1-year period for good cause. After the effective date of such regulation, no State shall establish, maintain, or enforce any requirement which relates to the subject matter of such regulation unless such requirement is the same as such regulation.

"(f) IMPLEMENTATION EFFICIENCY.—The Secretary, in consultation with the working group established under this section, shall develop a procedure to eliminate any differences in State implementation of regulations issued pursuant to this section.

"(g) APPLICABILITY OF ADVISORY COMMITTEE ACT.—The working group established under this section shall not be subject to the Federal Advisory Committee Act.

"(h) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated for carrying out this section $400,000 per fiscal year for each of fiscal years 1991, 1992, and 1993. Such sums shall remain available until expended.".

SEC. 23. FINANCIAL RESPONSIBILITY.

Section 30(b)(2) of the Motor Carrier Act of 1980 (49 U.S.C. 10927 note) is amended to read as follows:

"(2) HAZARDOUS MATERIALS TRANSPORTATION.—

"(A) GENERAL RULE.—Except as provided in subparagraphs (B) and (C), the minimal level of financial responsibility established by the Secretary under paragraph (1) of this subsection for any vehicle transporting in interstate or intrastate commerce—

"(i) hazardous substances (as defined by the Administrator of the Environmental Protection Agency) in cargo tanks, portable tanks, or hopper-type vehicles, with capacities in excess of 3,500 water gallons,

"(ii) in bulk class A explosives, poison gas, liquefied gas, or compressed gas, or

"(iii) large quantities of radioactive materials,

shall not be less than $5,000,000.

"(B) PHASE-IN REDUCTION.—The Secretary, by regulation, may reduce the $5,000,000 amount under subparagraph (A) (but not to an amount less than $1,000,000) for any class of vehicles or operations for the 3 ½-year period beginning on the effective date of the regulations issued under this subsection or any part of such period if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation service.

"(C) TERRITORY REDUCTION.—The Secretary, by regulation, may reduce the $5,000,000 amount under subparagraph (A) (but not to an amount less than $1,000,000) for transportation described in subparagraph (A) in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands if the chief executive officer of such territory requests the reduction and if the reduction will not adversely affect public safety, will prevent a serious disruption in transportation service, and insurance at the $5,000,000 level is not readily available.".

SEC. 24. FEDERALLY LEASED COMMERCIAL MOTOR VEHICLES.

Section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. App. 2509) is amended by adding at the end the following new subsection:

"(g) FEDERALLY LEASED COMMERCIAL MOTOR VEHICLES.—Any State which receives Federal financial assistance under section 402 of the Surface Transportation Assistance Act of 1982 in a fiscal year may apply and enforce in such fiscal year any regulations pertaining to commercial motor vehicle safety adopted by such State with respect to commercial motor vehicles and operators leased to the United States.".

SEC. 25. IMPROVEMENTS TO HAZARDOUS MATERIALS IDENTIFICATION SYSTEMS.

(a) RULEMAKING PROCEEDING.—

(1) INITIATION.—In order to develop methods of improving the current system of identifying hazardous materials being transported in vehicles for safeguarding the health and safety of persons responding to emergencies involving such hazardous materials and the public and to facilitate the review and reporting process required by subsection (d), the Secretary of Transportation shall initiate a rulemaking proceeding not later than 30 days after the date of the enactment of this Act.

(2) PRIMARY PURPOSES.—The primary purposes of the rulemaking proceeding initiated under this subsection are—

(A) to determine methods of improving the current system of placarding vehicles transporting hazardous materials; and

(B) to determine methods for establishing and operating a central reporting system and computerized telecommunications data center described in subsection (b)(1).

(3) METHODS OF IMPROVING PLACARDING SYSTEM.—The methods of improving the current system of placarding to be considered under the rulemaking proceeding initiated under this subsection shall include methods to make such placards more visible, methods to reduce the number of improper and missing placards, alternative methods of marking vehicles for the purpose of identifying the hazardous materials being transported, methods of modifying the composition of placards in order to ensure their resistance to flammability, methods of improving the coding system used with respect to such placards, identification of appropriate emergency response procedures through symbols on placards, and whether or not telephone numbers of any continually monitored telephone systems which are established under the Hazardous Materials Transportation Act are displayed on vehicles transporting hazardous materials.

(4) COMPLETION OF RULEMAKING PROCEEDING WITH RESPECT TO REPORTING SYSTEM AND DATA CENTER.—Not later than 19 months after the date of the enactment of this Act, the Secretary of Transportation shall complete the rulemaking proceeding initiated with respect to the central reporting system and computerized telecommunications data center described in subsection (b).

(5) FINAL RULE WITH RESPECT TO PLACARDING.—Not later than 30 months after the date of the enactment of this Act, the Secretary of Transportation shall issue a final rule relating to improving the current system for placarding vehicles transporting hazardous materials.

(b) CENTRAL REPORTING SYSTEM AND COMPUTERIZED TELECOMMUNICATIONS DATA CENTER STUDY.—

(1) ARRANGEMENTS WITH NATIONAL ACADEMY OF SCIENCES.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the feasibility and necessity of establishing and operating a central reporting system and computerized telecommunications data center that is capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials, that can identify hazardous materials being transported by any mode of transportation, and that can provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials.

(2) CONSULTATION AND REPORT.—In entering into any arrangements with the National Academy of Sciences for conducting the study under this section, the Secretary of Transportation shall request the National Academy of Sciences—

(A) to consult with the Department of Transportation, the Department of Health and Human Services, the Environmental Protection Agency, the Federal Emergency Management Agency, and the Occupational Safety and Health Administration, shippers and carriers of hazardous materials, manufacturers of computerized telecommunications systems, State and local emergency preparedness organizations (including law enforcement and firefighting organizations), and appropriate international organizations in conducting such study; and

(B) to submit, not later than 19 months after the date of the enactment of this Act, to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committees on Energy and Commerce and Public Works and Transportation of the House of Representatives a report on the results of such study.

Such report shall include recommendations of the National Academy of Sciences with respect to establishment and operation of a central reporting system and computerized telecommunications data center described in paragraph (1).

(3) AUTHORIZATION OF APPROPRIATION.—In addition to amounts authorized under section 115 of the Hazardous Materials Transportation Act, there is authorized to be appropriated to the Secretary of Transportation to carry out this subsection $350,000.

(c) ADDITIONAL PURPOSES OF RULEMAKING PROCEEDING AND STUDY.—Additional purposes of the rulemaking proceeding initiated under subsection (a) with respect to a central reporting system and computerized telecommunications data center described in subsection (b) and the study conducted under subsection (b) are—

(1) to determine whether such a system and center should be established and operated by the United States Government or by a private entity, either on its own initiative or under contract with the United States;

(2) to determine, on an annualized basis, the estimated cost for establishing, operating, and maintaining such a system and center and for carrier and shipper compliance with such a system;

(3) to determine methods for financing the cost of establishing, operating, and maintaining such a system and center;

(4) to determine projected safety benefits of establishing and operating such a system and center;

(5) to determine whether or not shippers, carriers, and handlers of hazardous materials, in addition to law enforcement officials and persons responsible for responding to emergencies involving hazardous materials, should have access to such system for obtaining information concerning shipments of hazardous materials and technical and other information and advice with respect to such emergencies;

(6) to determine methods for ensuring the security of the information and data stored in such a system;

(7) to determine types of hazardous materials and types of shipments for which information and data should be stored in such a system;

(8) to determine the degree of liability of the operator of such a system and center for providing incorrect, false, or misleading information;

(9) to determine deadlines by which shippers, carriers, and handlers of hazardous materials should be required to submit information to the operator of such a system and center and minimum standards relating to the form and contents of such information;

(10) to determine measures (including the imposition of civil and criminal penalties) for ensuring compliance with the deadlines and standards referred to in paragraph (9); and

(11) to determine methods for accessing such a system through mobile satellite service or other technologies having the capability to provide 2-way voice, data, or facsimile services.

(d) REVIEW AND REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 25 months after the date of the enactment of this Act, the Secretary of Transportation shall review the report of the National Academy of Sciences submitted under subsection (b) and the results of rulemaking proceeding initiated under subsection (a) with respect to a central reporting system and computerized telecommunications data center and shall prepare and submit to Congress a report summarizing the report of the National Academy of Sciences and the results of such rulemaking proceeding, together with the Secretary's recommendations concerning the establishment and operation of such a system and center and the Secretary's recommendations concerning implementation of the recommendations contained in the report of the National Academy of Sciences.

(2) WEIGHT TO BE GIVEN TO RECOMMENDATIONS OF NAS.—In conducting the review and preparing the report under this subsection, the Secretary shall give substantial weight to the recommendations contained in the report of the National Academy of Sciences submitted under subsection (b).

(3) INCLUSION OF REASONS FOR NOT FOLLOWING RECOMMENDATIONS.—If the Secretary does not include in the report prepared for submission to Congress under this subsection a recommendation for implementation of a recommendation contained in the report of the National Academy of Sciences submitted under subsection (b), the Secretary shall include in the report to Congress under this subsection the Secretary's reasons for not recommending implementation of the recommendation of the National Academy of Sciences.

SEC. 26. CONTINUALLY MONITORED TELEPHONE SYSTEMS.

(a) RULEMAKING PROCEEDING.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding on the feasibility, necessity, and safety benefits of requiring carriers involved in the hazardous materials transportation industry to establish continually monitored telephone systems equipped to provide emergency response information and assistance with respect to accidents and incidents involving hazardous materials. Additional objectives of such proceeding shall be to determine which hazardous materials, if any, should be covered by such a requirement and which segments of such industry (including persons who own and operate motor vehicles, trains, vessels, aircraft, and in-transit storage facilities) should be covered by such a requirement.

(b) COMPLETION OF PROCEEDING.—Not later than 30 months after the date of the enactment of this Act, the Secretary of Transportation shall complete the proceeding under this section and may issue a final rule relating to establishment of continually monitored telephone systems described in subsection (a).

SEC. 27. SHIPPER RESPONSIBILITY REPORT.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Transportation shall transmit to Congress a report on—

(1) the safety benefits of a law which provides that if a person causes a hazardous material to be transported in bulk in commerce by a motor carrier, which is involved in a hazardous material incident and which has an unsatisfactory safety rating issued by the Secretary or which has a conditional safety rating issued by the Secretary which has been in effect for a period of more than 12 months, such person shall be liable for at least 50 percent of the costs, damages, and attorney's fees assessed against the motor carrier for any hazardous material incident involving such transportation;

(2) such other systems as the Secretary of Transportation may determine would assure responsible actions by a person who causes the transportation of hazardous material in bulk in commerce; and

(3) the safety benefits of a law which provides that the liability of the person or persons who caused such a shipment of hazardous materials may not be transferred by indemnification, hold harmless, or similar agreements.

SEC. 28. STATE PARTICIPATION IN INVESTIGATIONS AND SURVEILLANCE.

(a) AMENDMENT OF SECTION 206(a) OF FRSA.—Section 206(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435(a)) is amended—

(1) by inserting "related to railroad safety" after "standard prescribed";

(2) by striking "under this title" the first place it appears;

(3) by striking "established under this title" in paragraph (2); and

(4) by striking "prescribed by the Secretary under section 202(a) of this title" and inserting "relating to railroad safety prescribed by the Secretary".

(b) AMENDMENT OF SECTION 206(b) OF FRSA.—Section 206(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435(b)) is amended by striking "prescribed by him under section 202(a) of this title" and inserting "relating to railroad safety prescribed by the Secretary".

(c) AMENDMENT OF SECTION 206(f) OF FRSA.—Section 206(f) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435(f)) is amended by striking "under this title".

(d) AMENDMENT TO SECTION 206 OF FRSA.—Section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C .435) is amended by adding at the end the following:

"(h) There is authorized to be appropriated for carrying out this section $5,000,000 per fiscal year for each of fiscal years 1991, 1992, and 1993.".

(e) AMENDMENT OF SECTION 207(a)(1) OF FRSA.—Section 207(a)(1) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 436(a)(1)) is amended—

(1) by striking "under section 209 of this title with respect"; and

(2) by striking "issued under this title or under any law transferred by section 6(e)(1), (e)(2), or (e)(6)(A) of the Department of Transportation Act".

(f) AMENDMENT OF SECTION 210(a) OF FRSA.—Section 210(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 439(a)) is amended by striking "this title or to enforce rules, regulations, orders, or standards established under this title" and inserting "or to enforce rules, regulations, orders, or standards relating to railroad safety".

SEC. 29. RETENTION OF MARKINGS AND PLACARDS.

Not later than 18 months after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of Transportation and the Secretary of the Treasury, shall issue under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or vessel, until the hazardous materials have been removed therefrom.

SEC. 30. RELATIONSHIP TO FEDERAL RAILROAD SAFETY ACT OF 1970.

Nothing in this Act, including the amendments made by this Act, shall be construed to alter, amend, modify, or otherwise affect the scope of section 205 of the Federal Railroad Safety Act of 1970.

SEC. 31. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in this Act, this Act (including the amendments made by this Act) shall take effect on the date of the enactment of this Act.

(b) CONTINUATION OF EXISTING REGULATIONS.—Any regulation or ruling issued before the date of the enactment of this Act pursuant to the Hazardous Materials Transportation Act and any authority granted under such a regulation shall continue in effect according to its terms until repealed, terminated, amended, or modified by the Secretary of Transportation or a court of competent jurisdiction.

Mr. EXON. Mr. President, earlier this week, the Senate, without objection, gave approval to legislation I introduced to amend and strengthen the Federal Hazardous Materials Transportation Act. Since that time, we have worked with Members of the House to resolve differences between the Senate bill and two versions of hazardous materials transportation legislation approved in committee in the House. Thursday evening, the House approved the compromise legislation by voice vote. The measure is now before the Senate and I urge its final passage.

The Federal Hazardous Materials Transportation Act [HMTA] governs the transportation of all hazardous materials—ranging from radioactive waste to gasoline to chemicals to fireworks. All hazardous materials shippers, carriers and container manufacturers fall within the act's reach.

There have been no substantial revisions of the HMTA from its enactment in 1974 to the present time. Fortunately, the act generally has worked well. Yet, a growing consensus has developed among States, localities, and the Federal Government, and within the regulated and response communities in favor of doing more than a simple reauthorization of the existing program. The strongly held view is that it is time to look at the act anew, to endorse it in areas where it has worked, and to strengthen the act in areas where it can be improved.

The bill before the Senate is the result of a long and comprehensive multiyear reevaluation of the HMTA. This process began with a request by the Senate Commerce Committee for a report on the Federal program by the Office of Technology Assessment [OTA], it continued in a series of hearings held before the Surface Transportation Subcommittee during the 100th and 101st Congresses, and finds its culmination in the measure before the Senate today. It would be hard to find another subject that has been more thoroughly reviewed and debated. That this process should result in the development of a bill with such widespread bipartisan support—as this one has received from State and local government organizations, labor, shippers, and carriers—is particularly encouraging.

The measure before us incorporates the principal provisions that were included within S. 2936 when it was introduced, as it was approved in committee and previously in the Senate. Among others, these provisions would increase the Federal safety-inspection force by 30 additional inspectors; require safety permits for those hazardous materials posing the greatest risk during transit; impose a minimum civil penalty of $250 for safety violations and increase the maximum penalty to $25,000 per violation per day; establish routing criteria and a dispute resolution process for highway shipments of hazardous materials; establish disclosure requirements for shippers and vehicles carrying hazardous materials to ensure accurate information is made available to emergency responders; require a study and rulemaking on dedicated trains for the transportation of high-level radioactive waste and spent nuclear fuel; require the Secretary of Transportation to make planning and training grants for emergency responders, and extend the Federal participation program for state rail safety inspectors to include hazardous materials.

To the original Senate measure were added a number of other provisions sought by the House. These include a clarification of Federal, State, and local responsibilities in the areas of classification, packaging, handling, marking, documentation and notification of the release of hazardous materials; requirements for training of handlers of hazardous materials; a study and rulemaking on means to improve

the identification of hazardous materials shipments; and the adoption of registration requirements to target enforcement and establish a secure funding source to support public sector planning and training for emergency responders. The need for training assistance was identified by OTA as the largest unmet need in the area of hazardous materials transportation. The original version of S. 2936 authorized the appropriation of funding for this purpose. The legislation before the Senate secures this funding through inclusion of a dedicated funding source.

I would like to address one final area in which questions have been raised, that is the area of highway routing. The bill would create a new process to ensure that specific highways that are designated for use by vehicles carrying placarded loads of hazardous materials—and any general and specific hazardous materials routing limitations and requirements—consider public safety, but also ensure that interstate commerce is maintained.

The new language added to section 105(b) of the HMTA is not intended to require State and local governments to go through this process except to the extent that specific highway routes are designated—of limitations or requirements on hazardous materials routing are imposed—by the State and local governments.

Many States have not found it necessary to impose any type of hazardous materials routing designations, limitations or requirements. Under the language of the bill, States could maintain this type of status quo without being subject to the provisions of the bill. The language in section 105(b)(2) that limits the Federal standards to specific highway routes and to any type of limitation or restriction limits the scope of all the other paragraphs of section 105(b).

In summary, the provisions of this legislation represent years of hard work by many individuals in the public and private sector. Among those who worked particularly hard in the development of this legislation are Robert Holleyman and Sheryl Webber Washington of the Commerce Committee majority staff and Gerri Hall of the minority staff. They have worked tirelessly in helping to craft this legislation.

Also to be commended in this process are the representatives of the many public and private sector organizations and agencies that have worked with us in this effort. With their input we have been able to reach a consensus on this issue after many years of debate.

I am pleased that S 2936 is once again before the Senate. It is a good, strong prosafety bill which has received widespread bipartisan support. It has been approved by the House and I urge its final approval by the Senate and its signing by the President.

Mr. HOLLINGS. Mr. President, I am delighted to be here today in support of final passage of S. 2936, the Hazardous Materials Transportation Uniform Safety Act of 1990. For more than 5 years, Congress has sought to pass legislation that would both reauthorize and strengthen the Federal hazardous materials program. The legislation under consideration today is a result of considerable work to resolve the differences between two differing versions of the hazardous materials transportation legislation approved by two committees in the House and the original version of S. 2936 passed by the Senate. We have now reached an overall consensus on S. 2936 which strengthens the Federal hazardous materials transportation program and which allows this long sought after and vital legislation to become law.

This measure authorizes funding for training of State and local emergency responders, increases fines for violations, and requires safety permits for transportation of certain hazardous materials, just to name a few of the provisions. This legislation, the result of many hearings held by the Senate Commerce Committee, was originally passed by the Senate on October 23, 1990. After many meetings and much deliberation with Members, committees, and staff of both the House and Senate, we reached a consensus on this bill. It is the first time in a decade that we have been able to garner such broad-based support from those groups most affected by this legislation. The House has just passed S. 2936, and we now have an opportunity to send it on to the President for his signature.

Mr. President, I believe this bill is a good one, and a necessary one. I am delighted that the Senate and House have resolved their differences and that the Senate is prepared to pass the compromise text. Clearly, this issue is an important one to the many interested parties, and I believe this landmark bill is one from which everyone can benefit. In closing, I strongly urge all my colleagues to suport S. 2936.

Mr. JOHNSTON. Mr. President, I would like to inquire of the sponsor of the bill, the chairman of the Surface Transportation Subcommittee, regarding his interpretation of a provision in the bill before the Senate regarding inspections of vehicles transporting highway route controlled quantities of radioactive materials. The provision to which I am referring is contained within section 15 of the House amendment. It would add a new section 116(d) to the Hazard Materials Transportation Act [HMTA] to provide that the Secretary of Transportation shall require by regulation that "before each use of a motor vehicle to transport in commerce any highway route controlled quantity radioactive material, such vehicle shall be inspected and certified to be in compliance" with the HMTA and "applicable Federal motor carrier safety laws and regulations."

Mr. EXON. I am familiar with the provision of concern to the Senator from Louisiana.

Mr. JOHNSTON. I would like to ask the Senator a few questions about the provision in order to clarify the record regarding its interpretation. It is my understanding that the practical effect of this provision is to codify existing regulations, which now require pretrip safety inspections of all commercial motor vehicles. Is that correct?

Mr. EXON. The Senator is correct. Existing Federal regulations require pretrip inspections of all commercial motor vehicles, at the point of the shipment origin, to ensure their compliance with the Federal Motor Carrier Safety Regulations and, where such vehicles are carrying hazardous materials, their compliance with the Federal Hazardous Materials Transportation Act.

Mr. JOHNSTON. Do I understand correctly that it is the Senator's interpretation that the inspection "before each use" called for in this provision refers to a one-time inspection, at the point of origin, prior to each shipment? It does not require reinspection after each stop or at other intermediate points outside the requirements of current law?

Mr. EXON. That is correct. I think it is worth noting that the self-certification provision contained in this legislation provides that the Secretary of Transportation "may permit a person who transports or causes to be transported or shipped" any such material "to inspect the motor vehicle to be used to provide such transportation and to certify that the motor vehicle is in compliance" with the HMTA.

Mr. JOHNSTON. Is it the Senator's expectation that the inspection requirements would be accomplished principally through self-certification?

Mr. EXON. That is my understanding of the purpose behind the inclusion of a self-certification provision.

Mr. JOHNSTON. I take it, therefore, that section 116(d) is not intended to establish a statutory requirement that Federal or State inspectors perform such preshipment inspections?

Mr. EXON. That is correct. Similarly, this section does not restrict any current discretion in this area provided to the Secretary.

Mr. JOHNSTON. I would like to thank the Senator from Nebraska for his clarification of these provisions.

Mr. BREAUX. Mr. President, today we have before us a compromise measure which is a positive first step

toward preventing catastrophes resulting from the transportation of hazardous materials over our highways and railways. For several years attempts have been made to provide for adequate inspection, surveillance, and enforcement of the transportation of hazardous materials. During these years, many States have been enduring the risk of serious safety and environmental accidents due to the lack of resources of the Department of Transportation.

In the absence of sufficient Federal resources, many States have enacted regulations seeking to control the transportation of hazardous materials within their borders and have set up response teams. Some States, such as Louisiana, having enacted regulations identical to Federal law, have allocated precious limited resources on surveillance, inspection, and response yet are prevented from enforcing their regulations and assessing penalties for the safety and welfare of their citizens.

Mr. President, I feel strongly that a State should be able to inspect and enforce its regulations of hazardous materials transportation within its borders if they are uniform with the promulgated Federal standard. Since such an amendment permitting State enforcement to this bill, however, would doom any hazardous materials transportation legislation this Congress, I am content, at this time, to support this compromise measure.

Under the provisions of this bill, as amended by the House, uniform regulations would be maintained and State inspection authority would be expanded. Under this expansion, States would be able to participate in the inspection of hazardous materials transportation by rail. State inspectors would be able to bring an enforcement action in U.S. district court for violations if the Federal Railroad Administration does not act within 60 days of violation notification.

States also would be eligible to participate in a planning grant program to develop emergency plans and determine the need for regional response teams. A training grant program would be available for the States to train public sector employees to respond to hazardous materials accidents. Additionally, within 2 years, a curriculum of courses for response and preparedness teams would be developed and disseminated by the Department of Transportation and the National Response Team.

Finally, while the bill does not authorize the States to enforce their own regulations, the bill does make it clear that such legislation is not intended to affect the pending litigation on the question of whether a State has enforcement authority against the railroads for hazardous materials violations. Thus, a reviewing court may conclude that the State is authorized to enforce State hazardous materials regulations against the railroads.

Mr. President, I urge unanimous consent to this much needed compromise legislation.

Mr. GRAHAM. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The motion is agreed to.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DR. ALUSH GASHI

Mr. D'AMATO. Mr. President, how many times must we relearn the lesson that waffling on our support for human rights invites abuses? We have seen it with China, with the Soviet Union, with Iraq, and now with Yugoslavia.

Until the crack of dawn this morning, the foreign operations appropriations conference committee labored to produce this year's foreign operations appropriations bill. One of the more contentious issues addressed was an amendment offered by Senator NICKLES that I cosponsored restricting assistance to Yugoslavia.

The human rights situation in Yugoslavia is appalling. The State Department's "Country Reports on Human Rights Practices for 1989" provided a stinging assessment of rampant human rights abuses in Yugoslavia, particularly in Kosovo Province. Senator NICKLES, wisely attempting to avoid choosing sides, crafted an amendment that sought to tie the provision of aid to the various Yugoslavian republics to their human rights record.

This careful approach still managed to raise the ire of many Americans of Yugoslavian extraction who felt that, indeed, sides were being taken. Through careful negotiations that stretched over several hours, Senator NICKLES, Congresswoman BENTLEY, and representatives of their staffs and the staff of Senator DOLE hammered out an agreement that proved acceptable to the conference.

I relate this story, because this morning Dr. Alush Gashi, head of the Human Rights Committee in Kosovo, was accosted on the street in Pristina, the capitol of Kosova Province, violently beaten, and jailed at an unknown location. I met this young man, both in Kosovo and in New York. He is bright, gutsy, and determined to improve the quality of life for all Yugoslavians. Clearly, the central government in Belgrade sought to silence this champion of human rights.

Could the timing have been more ironic? The administration has staunchly opposed the Yugoslavian amendment. Industrial giants like McDonnell Douglas bemoaned its effect on exports. The House Foreign Affairs Committee and Foreign Operations Subcommittee had grave reservations. Could the lesson be any clearer?

While I cannot prove that there is a link between the weakness of our own stand in support of human rights in Yugoslavia and the boldness of the Communist authorities in crushing dissent, the abduction of Dr. Gashi merits the closest attention of the President and the State Department.

The United States is perceived as the leading proponent of human rights in the world. When we wink at human rights abuses, the fury of those who would inflict cruelty upon their helpless people only intensifies. We cannot, we must not, waver on the absolute need to champion the rights of man whenever, wherever the opportunity avails itself.

AMERICA'S CHOICE: HIGH SKILLS OR LOW WAGES

Mr. DOLE. Mr. President, the recently released study, "America's Choice: High Skills or Low Wages," provides an indepth and insightful analysis of the relationship between America's productivity and prosperity and the quality and training of her work force.

Prepared by the 34-member bipartisan Commission on the Skills of the American Work Force whose members include prominent leaders from business, labor, education, government, and the advocacy community, the report issues a bold challenge to Americans: A shift to high skill, high-productivity strategies must be made or else a lower standard of living will become the rule and not the exception.

In order to achieve its goal, the Commission makes a number of recommendations designed to encourage government and the business community to assume greater responsibility for the education and training of the work force to meet the challenge of the future. In many respects, these recommendations would force a restructuring and reorientation of the way America looks at and trains its workers.

Mr. President, I hope that all Members will carefully review this report for the quality and preparedness of this Nation's work force will become an issue of even greater importance in the years ahead. The last decade has witnessed dramatic changes in the world economic system and greater competitive pressures can only be expected.

We know the goals we want to achieve; it is the solutions that we

must agree upon. This report has helped to promote the important debate that will help us reach those important conclusions for the next generation of Americans.

Mr. President, I ask unanimous consent that an executive summary of the foregoing report and the op-ed piece entitled "Building a Better Work Force" which appeared in the Washington Post on September 3, 1990, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post
Monday, Sept. 3, 1990]

BUILDING A BETTER WORK FORCE

(By William E. Brock and Ray Marshall)

Labor Day, a recognition of the accomplishments of our nation's work force, also signals the return to school for millions of students. Unfortunately, these two events have little in common other than their placement on the calendar. The world of work and what one learns in school are more disconnected than ever in the United States.

This September, we have little to celebrate in this country. We continue to lose ground in many international markets, our real earnings and productivity growth have declined, our students rank at the bottom on international achievement tests and we all but ignore the one million high school dropouts we "lose" every year.

Why?

Part of the problem is the American workplace, which is still based on a system of mass manufacture pioneered during the early 1960s. Under this system, complex jobs are broken into simple rote tasks that workers can repeat with machine/like efficiency; for many workers, an eighth-grade education is about all they need to do their jobs. For employers, financial success depends on keeping labor costs down; therefore, workers with high-level skills do not necessarily receive higher wages. Further, only 8 percent of America's front-line workers receive any formal on-the-job training.

The other part of the problem is our education system. It serves the needs of only 30 percent of our young people—those who proceed to college. The other 70 percent receive the worst job preparation in the developed world, even though it is they who will make or break our economic future.

To ensure a more prosperous future for all Americans, we need to make some fundamental changes in the workplace and in the schools. By the year 2000, more than 70 percent of American jobs will not require a college education—building a relationship between school and work is nothing short of an economic necessity.

As two former labor secretaries, we recently co-chaired the National Center on Education and the Economy's Commission on the Skill of the American Workforce, a group of leaders from business, labor, education and government gathered to study the future skills needs of our nations non-college work force.

After months of research in businesses and in schools in the United States and in six foreign countries, the commission offered some ideas for change.

First, to meet global competition, the commission believes the United States must create an education performance standard—bench-marked to the highest in the world—to be met by all American students at age 16, the age at which young people can legally leave school in most states. Students who meet the standard would qualify to enroll in a college-preparatory program, to begin studying for a skilled noncollege occupation or even to enter the work force. However, those who did not meet the standard would be required to continue their education toward the performance standard as a condition for being allowed to work part-time before age 18.

Certain young people, for a variety of personal or societal reasons, do not do well in the present public school environment. Therefore, the commission also proposed alternative learning programs to recover nearly all of our dropouts and help them meet this new educational standard. The programs would provide counseling and job-experience services, would combine work with studies and would interact closely with the business community.

At present, there is no consensus about how to prepare students for the world of work if they are not college bound. To accomplish this goal, the commission recommended a comprehensive system of technical training and certification for noncollege professions. We used the word "professions" deliberately, because these certificate programs would set higher standards and reward higher skills in a range of occupations. This would be an opportunity for business and labor to work together to create anew the skilled crafts on which America was built.

These recommendations, together with those which would provide incentives for greater investment in the training of front-line workers by all employers, have the potential to once again build the world's premier work force.

This September, as our workers celebrate Labor Day and our students return to the classroom, we ought to be conscious of the choices we are making. Only when we begin to insist on a high-skills, high-wage economy—in our schools and in our companies—will our workers and students have cause of celebration.

AMERICA'S CHOICE: HIGH SKILLS OR LOW WAGES!

[The Report of the Commission on the Skills of the American Workforce June 1990]

THE PROBLEM

Since 1969, real average weekly earnings in the United States have fallen by more than 12 percent. This burden has been shared unequally. The incomes of our top 30 percent of earners increased while those of the other 70 percent spiraled downward.

In many families, it now takes two people working to make ends meet, where one was sufficient in the past.

The United States is in the midst of the second longest economic expansion in its history. But that expansion is built largely on the fact that 50 percent of our population is employed compared with 40 percent in 1973. Forty million new jobs were created as the 'baby boom' generation reached working age, and more women entered the workforce. More of us have been working so we produced more.

However, workforce growth will slow dramatically in the 1990's. We can no longer grow substantially just by adding new workers.

The key to maintaining, to say nothing of improving, our standard of living is productivity growth—more products and services from every member of the workforce.

But, during the past two decades, our productivity growth has slowed to a crawl. It now takes nearly three years to achieve the same productivity improvement we used to achieve in one year.

If productivity continues to falter, we can expect one of two futures. Either the top 30 percent of our population will grow wealthier while the bottom 70 percent becomes progressively poorer or we all slide into relative poverty together.

THE TASK

To ensure a more prosperous future, we must improve productivity and our competitive position. We cannot simply do this by using better machinery, because low wage countries can now use the same machines and can still sell their products more cheaply than we can.

The key to productivity improvement for a high wage nation lies in the third industrial revolution now taking place in the world. The steam engine and electric motor drove the first two industrial revolutions, causing profound changes in work organization. This boosted productivity, quality and living standards dramatically. The creation of the modern factory in the 1800's and mass production in the 1990's followed these technology breakthroughs.

The advent of the computer, high speed communication and universal education are heralding a third industrial revolution, a revolution key feature of which is high performance work organization.

THE ORGANIZATION OF WORK IN AMERICA

The organization of America's workplaces today is largely modeled after the system of mass manufacture pioneered during the early 1900's. The premise is simple: Break complex jobs into a myriad of simple rote tasks, which the worker then repeats with machine-like efficiency.

The system is managed by a small group of educated planners and supervisors who do the thinking for the organization. They plan strategy, implement changes, motivate the workers and solve problems. Extensive administrative procedures allow managers to keep control of a large number of workers. This form of work organization is often referred to as the "Taylor" model.

Most employees under this model need not be educated. It is far more important that they be reliable, steady and willing to follow directions.

But in the world's best companies, new high performance work organizations are replacing this "Taylor" method. These companies are using a new approach to unleash major advances in productivity, quality, variety and speed of new product introductions.

Mass production methods will continue to produce high volume, inexpensive goods and services for a long time to come. But what the world is prepared to pay high prices and high wages for now is quality, variety and responsiveness to changing consumer tastes, the very qualities that the new methods of organizing work make possible.

"Tayloristic" methods are not well suited to these goals. Firms struggling to apply the traditional methods of work organization to more complex technologies, more frequent product introductions, increased quality requirements and proliferating product variety often create cumbersome and inefficient bureaucracies.

The new high performance forms of work organization operate very differently.

Rather than increasing bureaucracy, they reduce it by giving front-line workers more responsibility. Workers are asked to use judgment and make decisions. Management layers disappear as front-line workers assume responsibility for many of the tasks—from quality control to production scheduling—that others used to do.

Work organizations like these require large investments in training. Workers' pay levels often rise to reflect their greater qualifications and responsibilities. But the productivity and quality gains more than offset the costs to the company of higher wages and skills development.

Despite these advantages, 95 percent of American companies still cling to old forms of work organization.

IS THERE A SKILLS SHORTAGE IN THE UNITED STATES?

Because most American employers organize work in a way that does not require high skills, they report no shortage of people who have such skills and foresee no such shortage. With some exceptions, the education and skill levels of American workers roughly match the demands of their jobs.

Our research did reveal a wide range of concerns covered under the blanket term of 'skills.' While businesses everywhere complained about the quality of their applicants, few talked about the kinds of skills acquired in school. The primary concern of more than 80 percent of employers was finding workers with a good work ethic and appropriate social behavior: "reliable," "a good attitude," "a pleasant appearance," "a good personality."

Most employers we interviewed do not expect their skill requirements to change. Despite the widespread presumption that advancing technology and the evolving service economy will create jobs demanding higher skills, only five percent of employers were concerned about a skills shortage. These were mainly large manufacturers, financial service organizations and communications companies.

The reason we have no skills shortage today is that we are using a turn-of-the-century work organization. If we want to compete more effectively in the global economy, we will have to move to a high productivity work organization.

HOW WE PREPARE OUR FRONT-LINE WORKERS FOR WORK

More than 70 percent of the jobs in America will not require a college education by the year 2000. These jobs are the backbone of our economy, and the productivity of workers in these jobs will make or break our economic future.

No nation has produced a highly qualified technical workforce without first providing its workers with a strong general education. But our children rank at the bottom on most international tests—behind children in Europe and East Asia, even behind children in some newly industrialized countries.

More than any other country in the world, the United States believes that natural ability, rather than effort, explains achievement. The tragedy is that we communicate to millions of students every year, especially to low-income and minority students, that we do not believe that they have what it takes to learn. They then live up to our expectations, despite the evidence that they can meet very high performance standards under the right conditions.

Unlike virtually all of our leading competitors, we have no national system capable of setting high academic standards for the non-college bound or of assessing their achievement aganst those standards.

America may have the worst school-to-work transition system of any advanced industrial country. Students who know few adults to help them get their first job are left to sink or swim.

Only eight percent of our front-line workers receive any formal training once on the job, and this is usually limited to orientation for new hires or short courses on team building or safety.

The American post-secondary education and training system was never designed to meet the needs of our front-line workers. The system is a combination of education programs for full-time college students and short term training for the severely disadvantaged, and can be difficult to access. Because employers have not set training standards, few students can be sure that there is a market for the courses they pursue. Education is rarely connected to training and both are rarely connected to an effective job service function.

ANOTHER WAY

While the foreign nations we studied differ in economy and culture, they share an approach to the education and training of their workers and to high productivity work organization.

They insist that virtually all of their students reach a high educational standard. We do not.

They provide 'professionalized' education to non-college bound students to prepare them for their trades and to ease their school-to-work transition. We do not.

They operate comprehensive labor market systems which combine training, labor market information, job search and income maintenance for the unemployed. We do not.

They support company based training through general revenue or payroll tax based financing schemes. We do not.

They have national consensus on the importance of moving to high productivity forms of work organization and building high wage economies. We do not.

Our approaches have served us well in the past. They will not serve us well in the future.

THE CHOICE

Americans are unwittingly making a choice. It is a choice that most of us would probably not make were we aware of its consequences. Yet every day, that choice is becoming more difficult to reverse. It is a choice which undermines the American dream of economic opportunity for all. It is a choice that will lead to an America where 30 percent of our people may do well—at least for awhile—but the other 70 percent will see their dreams slip away.

The choice that America faces is a choice between high skills and low wages. Gradually, silently, we are choosing low wages.

We still have time to make the other choice—one that will lead us to a more prosperous future. To make this choice, we must fundamentally change our approach to work and education.

1. Problem: Two factors stand in the way of producing a highly educated workforce: We lack a clear standard of achievement and few students are motivated to work hard in school. One reason that students going right to work after school have little motivation to study hard is that they see little or no relationship between how well they do in school and what kind of job they can get after school. Other advanced industrial nations have stringent performance standards that virtually all students must meet at about age 16 and that directly affect their employment prospects.

Recommendation: A new educational performance standard should be set for all students, to be met by age 16. This standard should be established nationally and benchmarked to the highest in the world.

We propose that all American students meet a national standard of educational excellence by age 16, or soon thereafter. Students passing a series of performance based assessments that incorporate the standard would be awarded a Certificate of Initial Mastery.

Possession of the Certificate of Initial Mastery would qualify the student to choose among going to work, entering a college preparatory program or studying for a Technical and Professional Certificate, described below.

Creation of the Certificate of Initial Mastery standard would require a new approach to student performance assessment. We recommend the creation of new performance based examinations for which students can explicitly prepare. The assessment system would provide multiple opportunities for success rather than a single high stakes moment of possible failure. Most important, the examination, though set at a very high standard, is not intended as a sorting mechanism on the pattern of virtually all the major tests now in use. Our goal is to set a tough standard that almost everyone will reach, although not all at the same time.

Once created, this system would establish objective standards for students and educators, motivate students and give employers an objective means to evaluate the accomplishments of students.

2. Problem: More than 20 percent of our students drop out of high school—almost 50 percent in many of our inner cities. These dropouts go on to make up more than a third of our front-line workforce. Turning our backs on those dropouts, as we do now, is tantamount to turning our backs on our future workforce.

Recommendation: The states should take responsibility for assuring that virtually all students achieve the Certificate of Initial Mastery. Through the new local Employment and Training Boards, states, with federal assistance, should create and fund alternative learning environments for those who cannot attain the Certificate of Initial Mastery in regular schools.

All students should be guaranteed the educational attention necessary to attain the Certificate of Initial Mastery by age 16, or as soon as possible thereafter. Youth Centers should be established to enroll school dropouts and help them reach that standard. Federal, state and local funds should be raised or relocated to finance these dropout recovery programs. Once the Youth Centers are created, children should not be permitted to work before the age of 18 unless they have attained the Certificate of Initial Mastery or are enrolled in a program to attain it.

3. Problem: Other industrial nations have multi-year career-oriented educational programs that prepare students to operate at a professional level in the workplace. Graduates of these programs have the skills to hit the ground running when they get their first full-time job at age 19 or 20. America prepares only a tiny fraction of its non-college bound students for work. As a result, most flounder in the labor market, moving

from low paying job to low paying job until their mid-twenties, never being seriously trained.

Recommendation: A comprehensive system of Technical and Professional Certificates and associate's degrees should be created for the majority of our students and adult workers who do not pursue a baccalaureate degree.

Technical and Professional Certificates would be offered across the entire range of service and manufacturing occupations. A student could earn the entry-level occupation specific certificate after completing a two- to four-year program of combined work and study, depending upon the field. A sequence of advanced certificates, attesting to mastery of more complex skills, would be available and could be obtained throughout one's career.

The Secretary of Labor should convene national committees of business, labor, education and public representatives to define certification standards for two- to four-year programs of professional preparation in a broad range of occupations. These programs should combine general education with specific occupational skills and should include a significant work component.

Students could pursue these programs at a wide variety of institutions accredited to offer them, including high schools, community colleges and proprietary schools. The system should be designed to make it possible for students to move easily between the Certificate programs and college.

A means should be established to ensure that all students can receive financing to pursue these programs.

4. Problem. The vast majority of American employers are not moving to high performance work organizations, nor are they investing to train their non-managerial employees for these new work organizations. The movement to high performance work organizations is more widespread in other nations, and training of front-line workers, funded in part by national assessments on employers or general public revenues, is commonplace.

Recommendation: All employers should be given incentives and assistance to invest in the further education and training of their workers and to pursue high productivity forms of work organization.

We propose a system whereby all employers will invest at least one percent of their payroll for the education and training of their workers. Those who do not wish to participate would contribute the one percent to a general training fund, to be used by states to upgrade worker skills. We further recommend that public technical assistance be provided to companies, particularly small businesses, to assist them in moving to higher performance work organizations.

5. Problem: The United States is not well organized to provide the highly skilled workers needed to support the emerging high performance work organizations. Public policy on worker training has been largely passive, except for the needs of a small portion of the severely disadvantaged population. The training system is fragmented with respect to policies, administration and service delivery.

Recommendation: A system of Employment and Training Boards should be established by Federal and state governments, together with local leadership, to organize and oversee the new school-to-work transition programs and training systems we propose.

We envision a new, more comprehensive system where skills development and upgrading for the majority of our workers becomes a central aim of public policy.

The key to accomplishing these goals is finding a way to enable the leaders of our communities to take responsibility for building a comprehensive system that meets their needs. The local Employment and Training Boards for each major labor market would:

Take responsibility for the school-to-work and Youth Center-to-work transition for young people.

Manage and oversee the Youth Centers.

Manage and oversee a 'second chance' system for adults seeking the Certificate of Initial Mastery.

Manage and oversee the system for awarding Technical and Professional Certificates at the local level.

Manage a labor market information system.

Manage and oversee the job service.

Coordinate existing programs.

The states would need to create a parallel structure to support the local Boards, coordinate statewide functions and establish state standards for their operation.

IN CONCLUSION

America is headed toward an economic cliff. We will no longer be able to put a higher proportion of our people to work to generate economic growth. If basic changes are not made, real wages will continue to fall, especially for the majority who do not graduate from four-year colleges. The gap between economic 'haves' and 'have nots' will widen still further and social tensions will deepen.

Our recommendations provide an alternative for America. We do not pretend that this vision will be easily accepted or quickly implemented. But we also cannot pretend that the status quo is an option. It is no longer possible to be a high wage, low skill nation. We have choices to make:

Do we continue to define educational success as 'time in the seat,' or choose a new system that focuses on the demonstrated achievement of high standards?

Do we continue to provide little incentive for non-college bound students to study hard and take tough subjects, or choose a system that will reward real effort with better pay and better jobs?

Do we continue to turn our backs on America's school dropouts, or choose to take responsibility for educating them?

Do we continue to provide unskilled workers for unskilled jobs, or train skilled workers and give companies incentives to deploy them in high performance work organizations?

Do we continue in most companies to limit training to a select handful of managers and professionals, or choose to provide training to front-line workers as well?

Do we cling to a public employment and training system fragmented by institutional barriers, muddled by overlapping bureaucracies and operating at the margins of the labor market, or do we choose a unified system that addresses itself to a majority of workers?

Do we continue to remain indifferent to the low wage path being chosen by many companies, or do we provide incentives for high productivity choices?

Taken together, the Commission's recommendations provide the framework for developing a high quality American education and training system, closely linked to high performance work organizations. The system we propose provides a uniquely America solution. Boldly executed, it has the potential not simply to put us on an equal footing with our competitors, but to allow us to leap ahead, to build the world's premier workforce. In so doing, we will create a formidable competitive advantage.

The status quo is not an option. The choice we have is to become a nation of high skills or one of low wages.

The choice is ours. It should be clear. It must be made.

COMMENTS ON THE REPORT

"This report challenges all Americans to confront the specific educational needs of the American workforce. Without doubt, it is one of the most significant analyses to emerge in the debate over our international competitive position. I have asked the National Center on Education and the Economy to prepare immediately a blueprint for the application of the Commission's recommendations in New York State."—Mario M. Cuomo, Governor, State of New York.

". . . a landmark report [that provides] a comprehensive plan to address the nation's economic needs as well as to prepare American youth to be full participants in an evolving global economy. The recommendations in America's Choice deserve the serious attention of every American concerned about our economic future.

"We must now create a national imperative to set a course for educational change that will realize the goals of this report."—David T. Kearns, Chairman and Chief Executive Officer, Xerox Corporation.

"This timely report vividly describes the crisis in the nation's work force. More importantly, it presents provocative proposals that, taken together, surely will contribute richly to the debate about how to smooth the transition from school to work and strengthen the economic vitality of the nation."—Ernest I. Boyer, President, The Carnegie Foundation for the Advancement of Teaching.

"This is a unique and valuable study, it offers new information and new solutions that will raise America's consciousness level, spur public debate, and increase our national will to solve this crisis. Public officials and private citizens, leaders from business, labor and education can—and will—all benefit from the Commission's work . . . a most important contribution."—Elizabeth Dole, Secretary, United States Department of Labor.

". . . the most significant report of the whole reform movement. In terms of breadth, accuracy and complexity, it has no match."—Albert Shanker, President, American Foundation of Teachers.

"America's Choice: high skills or low wages! is one of the most significant reports which has been given on the educational and economic needs of the United States. It does not simply sound the alarm over failed institutional practices, but makes bold recommendations for dealing with these failures. This report is indeed a major building block needed in the construction of a solution to some of the nation's greatest problems."—Ray Mabus, Governor, State of Mississippi.

"America's Choice is not just another report. Its analysis leading to the conclusion that we cannot maintain high wages and low skills is crisp. The private and public sectors at all levels should promptly move toward embracing the thoughtful solutions proposed or toward designing equally thoughtful and comprehensive alternatives."—Florretta D. McKenzie, President,

The McKenzie Group, Former Superintendent, District of Columbia Public Schools.

"This report should be the national blueprint that business and education follow to help those high school students who make the transition directly from school to work. In California, we will be working closely with our corporations to make this a reality—our future depends upon it."—Bill Honig, Superintendent, California Public Instruction.

"Today, there exists a general agreement not only in the State of Maine but in the nation that a profound restructuring of our educational system is required by the demands of the 21st century. This report outlines a strategy and a concept for such perfound change. It is visionary; it will be hotly debated, yet it cannot help but inform the discussion about what is required in our schools, our universities, and in the work place of the 21st century."—John R. McKernan, Jr., Governor, State of Maine.

COMMISSION ON THE SKILLS OF THE AMERICAN WORKFORCE

Ira C. Magaziner, Chair, President, SJS, Inc.

William E. Brock, Co-Chair, Senior Partner, The Brock Group, Former Secretary, U.S. Department of Labor.

Ray Marshall, Co-Chair, Chair in Economics and Public Affairs, L.B.J. School of Public Affairs, University of Texas at Austin, Former Secretary, U.S. Department of Labor.

Robert M. Atkinson, Director of Academic Programs, School of Business and Industry, Florida A & M University.

Owen Bieber, General President, United Automobile Workers.

Edward J. Carlough, President, Sheet Metal Workers International Association.

Anthony P. Carnevale, Vice President of National Affaris and Chief Economist, American Society for Training and Development.

Paul J. Choquette, Jr., President and Chief Exeuctive Officer, Gilbane Building Company.

Richard Cohon, President, C.N. Burman Company.

Badi G. Foster, President, AEtna Institute for Corporate Education.

Thomas Gonzales, Chancellor, Seattle Community College District VI.

Rear Admiral W.J. Holland, Jr., USN (Retired), President, Educational Foundation, Armed Forces Communications and Education Association.

James R. Houghton, Chairman of the Board and Chief Executive Officer, Corning Incorporated.

James B. Hunt, Jr., Partner, Poyner & Spruill, Former Governor, State of North Carolina.

John R. Hurley, Vice President and Director, Corporate Training and Educational Resources, The Chase Manhattan Bank.

John E. Jacob, President and Chief Executive Officer, National Urban League, Inc.

Thomas H. Kean, President, Drew University, Former Governor, State of New Jersey.

William H. Kolberg, President, National Alliance of Business.

William Lucy, International Secretary/Treasurer, American Federation of State, County and Municipal Employees, AFL-CIO.

Margaret L.A. MacVicar, Dean for Undergraduate Education and Professor, Massachusetts Institute of Technology.

Eleanor Holmes Norton, Professor of Law, Georgetown University Law Center, Former Chairwoman of the Equal Employment Opportunity Commission.

Karen Nussbaum, Exeuctive Director. 9 to 5, National Association of Working Women.

Peter J. Pestillo. Vice President, Corporate Relations and Diversified Businesses, Ford Motor Company.

Philip H. Power, Chairman, Suburban Communications Corporation.

Lauren B. Resnick, Director, Learning Research and Development Center, University of Pittsburgh.

Kjell-Jon Rye, Teacher, Bellevue (WA) Public Schools.

Howard D. Samuel, President, Industrial Union Department, AFL-CIO.

John Sculley, Chairman, President and Chief Executive Officer, Apple Computer Inc.

William J. Spring, Vice President, District Community Affairs, Federal Reserve Bank of Boston.

Anthony J. Trujillo, Superintendent, Sweetwater Union (CA) High School District.

Marc S. Tucker, President, National Center on Education and the Economy.

Laura D'Andrea Tyson, Director of Research, Berkeley Roundtable on the International Economy, University of California at Berkeley,

Kay R. Whitmore, Chairman, President, and Chief Executive Officer, Eastman Kodak Company.

Alan L. Wurtzel, Chairman of the Board, Circuit City Stores, Inc.

THE RECENT DEPARTMENT OF AGRICULTURE STUDY ON THE WIC PROGRAM

Mr. CHAFEE. Mr. President, on Tuesday, the Senate approved the conference report on H.R. 5268, the fiscal year 1991 Agriculture appropriations bill. I would like to extend my appreciations to the members of the conference for including $2.35 billion for the Special Supplemental Food Program for Women, Infants, and Children, or WIC. Their action literally will help millions of women and children avoid nutritional deficiencies and stay healthy.

The conference committee's action is particularly timely given the recent news about WIC. On October 1, the U.S. Department of Agriculture transmitted to Congress an important new study that shows conclusively that WIC is one of the smartest and most cost-effective programs we have.

The USDA study confirmed what we have long known to be true: that in providing nutritious foods and prenatal care to low-income mothers and children who are at risk of nutritional deficiencies, the WIC Program has proven ability to greatly reduce the risk of low birthweight and other health problems.

Futhermore, the report revealed that for every dollar spent on the prenatal WIC program, the associated savings in Medicaid costs during the first 60 days after birth ranged from $1.77 to $3.13. For each pregnant woman who participated in WIC, the Government saved between $277 and $598 more in Medicaid costs in the first 60 days after birth than for a pregnant woman who did not participate.

A program that successfully promotes better nutrition and better use of preventative health care—thus saving our society considerable social and economic costs in the long run—deserves strong support.

In July, as we do every year, my colleague Senator DECONCINI and I spearheaded an effort to increase WIC funding. More than 80 Senators joined us in urging $2.36 billion in WIC funding—a remarkable showing of widespread, bipartisam support. I was pleased that this year, the Appropriations Committee allocated $2.35 billion for WIC—nearly everything we asked for and the single largest increase in WIC since 1982. The conference committee followed the Senate's lead and adopted the Senate-approved allocation.

I commend the members of the Agriculture Appropriations Committee and the conference committee for their leadership regarding the WIC Program. Increasing funding for WIC is the right thing to do from both a humanitarian point of view, and from a cost/benefit point of view. WIC is one Federal program that saves more than it spends, and deserves every bit of support we can give it.

I ask unanimous consent that a letter from USDA summarizing the results of the report and a copy of an article from the October 19, 1990, Washington Post be placed in the RECORD following my remarks.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC.

Hon. PATRICK J. LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed for your information are exciting results of a major report "The Savings in Medicaid Costs for Newborns and Their Mothers from Prenatal Participation in the WIC Program."

The report discusses the results of a study mandated by P.L. 100-237, the Commodity Reform Act and WIC amendments of 1987 (signed January 1988). The study used 1987-1988 data from five States to investigate the relationship between prenatal WIC participation and Medicaid costs from birth through the first 60 days of life. The five States were: Florida, Minnesota, North Carolina, South Carolina, and Texas.

I am sure you will share our satisfaction in its positive results that ratify the importance of WIC to pregnant women and infants.

State-specific estimates across the five States show that:

Medicaid savings associated with prenatal WIC participation ranged from $277 to $598 per participant.

For every dollar spent on prenatal WIC participation in the five States studied, Medicaid program savings ranged from $1.77 to $3.13 for newborns and their mothers.

Prenatal WIC participation by Medicaid recipients was associated with increased birth weight (from 51 grams to 117 grams) especially for preterm births (ranging from 138 grams to 259 grams).

Receipt of adequate and intermediate prenatal care was associated with addition savings in Medicaid costs independent of WIC participation.

This report is the fruit of thorough consideration and consensus among the Technical Advisory Committee and the researchers, Mathematica Policy Research.

If you have any questions regarding this report, please contact Frank Ippolito, Director of the Office of Governmental Affairs, 756-3010.

Sincerely,

CATHERINE BERTINI,
Assistant Secretary for Food and Consumer Services.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wahington Post, Oct. 19, 1990]

MOTHERS' NUTRITION PROGRAM IS EFFECTIVE, U.S. STUDY FINDS

LATER MEDICAID OUTLAYS SHARPLY REDUCED

(By Spencer Rich)

The government's special nutrition program for low-income women, infants and children (WIC) sharply reduces later Medicaid health outlays for the mother and child and also results in improved birthweights, according to an Agriculture Department study.

The long-awaited study has special significance because of a protracted dispute over a study four years ago that came to the same basic conclusion—that WIC enhances the health of the mother and child. Despite its findings, and for reasons never made clear, the Agriculture Department altered the summary statement of the 1986 findings to play down the beneficial health effects.

The new study, in contrast, was hailed by the current agriculture secretary, Clayton Yeutter, as showing that "Medicaid-eligible pregnant women who participate in the WIC program have healthier babies who require less Medicaid assistance after birth than those of low-income pregnant women who don't participate."

Catherine Bertini, assistant secrtary for food and consumer services, called the findings "exciting." Robert Greenstein, director of the department's Food and Nutrition Service in the Carter administration and now head of the nonprofit Center on Budget and Policy Priorities, said, "This reinforces the earlier study."

Senate Agriculture Committee Chairman Patrick J. Leahy (D-Vt.) said that the new study "is solid proof that WIC works in providing essential food and nutrition to hungry mothers and children."

The study was released as Congress moved toward a final decision, possibly this week, on funding for fiscal 1991—expected to be set at $2.35 billion, about $200 million over fiscal 1990. The funds are estimated to allow about 52 percent of eligible low-income pregnant women and children to participate. In 1990 about 4.5 million women and children received special food supplements when found to have nutritional deficiencies that could affect the health of the mother and child.

The study, conducted by Mathematica policy Research Inc., found that in five states, when mothers received program foods before birth, the government's Medicaid spending averaged between $277 and $598 less for health care of the mother and child in the first 60 days after birth than in cases where the mothers did not receive special prenatal foods.

Looking at program cost-effectiveness, the study found that "for every dollar spent on the pre-natal WIC program, the associated savings in Medicaid costs during the first 60 days after birth ranged from $1.77 to $3.13."

MAINE'S ASPIRE PROGRAM

Mr. COHEN. Mr. President, I want to pay tribute today to a woman who with the help of Maine's ASPIRE Program was able to pursue her education and achieve financial security for herself and her two children. Earlier this month, Kathie Young, a young single parent, received an award for outstanding commitment and achievement in pursuit of education, training and career advancement from the Penobscot Consortium Private Industry Council. Ms. Young's achievements illustrate how employment and training programs generally, and Maine's ASPIRE Program in particular, can change the lives of disadvantaged individuals by providing them with the skills, training and education they need to find challenging work and achieve economic self-sufficiency.

Mr. President, I ask unanimous consent that an article entitled "Single Mom ASPIRE'S to More" from the Bangor Daily News be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Bangor Daily News, Oct. 24, 1990]

SINGLE MOM ASPIRE'S TO MORE

(By Doug Kessell)

At times over the past three years, Kathie Young considered giving up. The single parent of two children, Young was stretched thin between trying to make ends meet, taking care of her extended family and trying to make a better future for herself and her two boys.

For three years before her divorce in July 1987, Young was a zigzag stitcher for Dexter Shoe Co., stitching the heels of shoes. She wanted more for herself and her family. What she wanted to do was go back to school.

"It's not that it's beneath me," Young said of her Dexter job. "It's just that it was fine when I had no choice but to do it. But having a choice, it's not what I wanted to do the rest of my life."

Divorcing after nine years of marriage was an emotional and physical strain, but for Young it was also the beginning of a new life. On July 7, 1987, one day after the divorce was final, Young enrolled at Beal College.

At Dexter, she worked 5:30 a.m. to 4:30 p.m. four days a week, and half a day on Fridays. After work, she would pick up her children from one baby sitter, take them home, then leave them with another sitter so that she could go to classes until 10:30 p.m.

While her ex-husband later took care of the children for the evening, Young continued to care for his grandfather, traveling to Hartland and later to Pittsfield for the elderly relative.

In February 1988, Young re-injured her shoulder at work. Unlike the first time in 1987, Young and her doctors decided that she should take time off from work. Workers' Compensation, however, didn't kick in until August.

That month, Young decided to move back to Massachusetts to start over again. But she and her family didn't like it there, and came back to Maine in November.

She enrolled her older boy, Jeremy, now 10, in public schools and Greg, now 6, in Head Start. Young began working part time at Downeast Pharmacy on Harlow Street through a temporary placement service. Initially, she worked 20 hours a week, then cut back to eight-12 hours a week.

It wasn't until a meeting at the Head Start program in April that she found the additional support she had been looking for, but never knew was out there. Representatives of the Additional Support for People in Retraining and Education, a federal and state-funded program run through the departments of Human Services and Labor, told her about what was available for her.

Through the ASPIRE Welfare Employment Education and Training program, funds are available to qualified people to provide such necessities as child care, transportation, hearing aids and eyeglasses. Through the Training and Development Corp., those qualified also can receive funding for tuition, books and supplies, and help in finding a job.

At first there were snags with DHS, whose representatives were concerned that she would be working while she still had a 5-year-old at home. Young wouldn't take no for an answer.

She had changed. Young, who was once told as a psychology student at Salem State College in Massachusetts that she wasn't tough enough to work with juvenile delinquents, found that she had an inner strength to go with the support she received from her two boys and parents.

"I was determined I was going to do it, one way or the other," she said of getting into the ASPIRE program.

The ASPIRE program is the tip of the iceberg of what is offered by TDC, a Bucksport-based company which administers federal and state-funded programs for the Penobscot Consortium—Hancock, Penobscot and Piscataquis counties.

TDC programs reach out to displaced homemakers and workers, the handicapped, dropouts and elderly workers. The mainstay of the TDC's program is its Career Advancement Centers, which work to assess clients' needs and abilities and helps place them in jobs. Seven career centers are located throughout the consortium, and these programs and others offered by the TDC have a high placement rate, 80 percent or more.

Three years after she began her trek, Young holds degrees in accounting, business management and data processing from Beal College. Three months after graduating from Beal in May, Young began working full time at Downeast Pharmacy as an accounts-payable manager.

At an Oct. 11 banquet of the Penobscot Consortium Private Industry Council, Young received an award for outstanding commitment and achievement in pursuit of education, training and career advancement.

"The way I look at it is, I've done what I needed to do in order to make a better life for me and my children." Young said, "In order to tell my kids to strive for the high-

est goals that they can make for themselves. . . I have to do it myself.

"And I found that by working in a shoe shop, and wanting more and not doing it, I was not a very good role model for them. I do feel like I have been a good role model since."

SITUATION IN LEBANON

Mr. PELL. Mr. President, for nearly a decade and a half, we have anguished over the savaging of what was arguably the most progressive and tolerant Arab country in the Middle East. In Lebanon, hundreds of thousands of people have been killed or wounded, and much of the country now lies in ruins. Countless cease-fires were imposed, only to be shattered as the various factions vied for supremacy.

While the world is monitoring the situation in the Persian Gulf with deep concern, important developments are also underway in Lebanon. Slightly more than a week ago, Gen. Michel Aoun surrendered his stronghold at the presidential palace in Baabda, Lebanon. Many hope that this change will lead to a breakthrough in one of the world's most protracted and deadly stalemates.

Despite the seeming intractibility of the conflict, the world clung to the hope that Lebanon could be reunited. Building upon an Arab League-sponsored agreement reached in Taif, Saudi Arabia in September 1989, Lebanese President Elias Hrawi worked unrelentingly with the Lebanese Parliament to secure the Taif agreement's constitutional reforms. The reforms delved into the very heart of Lebanon's political crisis: Balancing the representation of Christians and Moslems in the Lebanese Government. Late last month, nearly a year after the agreement had been struck at Taif, Hrawi signed the reforms.

Notwithstanding Hrawi's efforts, some believe that the ethnic, religious and political rifts in Lebanon are too deep to repair. By refusing to recognize Hrawi or accept the Taif agreement, General Aoun had become an obstacle in the path toward reconciliation. The stalemate between Aoun and Hrawi reached a turning point when, at Hrwai's request, Syrian forces assisted in an attack on Aoun's stronghold during the weekend of October 13. Aoun finally ceded his hold over the presidential palace and sought asylum at the French Embassy in Lebanon.

Mr. President, many Lebanese and Lebanese-American supported General Aoun's quest to oust the Syrian presence from Lebanon, and most observers agree that Syrian forces ultimately must leave if there is to be true reconciliation. However, Aoun's gamble for a Syrian withdrawal was costly, and in my view, his objective might have been achieved through peaceful means. The United States, for it part, has continually supported the withdrawal of all foreign forces from lebanon, and we can and should promote that goal to the fullest possible extent.

We must also recognize that the conflict could easily erupt again. I am especially disturbed by reports and Syrian forces are still occupying the presidential palace and are terrorizing and brutalizing the Lebanese people. Furthermore, the international community must investigate the possibility that Syrian troops executed many of their Maronite Christian adversaries after Aoun had capitulated and his army had surrendered its arms. If true, such behavior is reprehensible, counterproductive, and must be dealt with appropriately. As the brutal murder of Dany Chamoun, the son of Lebanon's former president, and his family attests, the Syrian army and the Lebanese Government have not yet restored order in Beirut. Finally, the question of General Aoun's future status must be answered responsibly, fairly and within the dictates of international law. On this issue, we should expect the participation and full cooperation of our French allies.

Mr. President, in view of Lebanon's past, it would be easy for the civilized world to adopt a wait and see attitude about the present situation. Yet I believe there is now an opportunity to work toward a real and lasting peace. It is clearly time for the United States and the international community to become reengaged in the drive to restore order and stability in Lebanon.

President Hrawi has stated that his objective is: "to end the civil war, dissolve the various militias, reestablish state authority over Lebanon's entire territory and shore up the battered economy." President Hrawi's remarks reaffirm the fact that, in the end, Lebanon's salvation will be found in the resolve of the Lebanese to unite in an effort to preserve their country and national identity. It is my fervent hope that, with our help, they will be able to do so.

Mr. President, I ask unanimous consent that two statements about the current situation in Lebanon drafted by the American Task Force for Lebanon be included in the RECORD at the conclusion of my remarks.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

STATEMENT OF THE AMERICAN TASK FORCE FOR LEBANON

Although we regret that General Aoun's rebellion had to be terminated militarily, including the unfortunate use of Syrian ground and air forces, we hope that the end of the rebellion portends the long awaited reunification of the country. Nonetheless, our cautious optimism has been dampened by reports of looting, kidnapping, expropriation of property and other misdeeds by a variety of thugs who have entered into East Beirut. Clearly, the most urgent priority for the Lebanese government is to put an immediate end to the unforgivable and sickening atrocities being perpetrated on the Lebanese people. Now is the time for reconciliation and reunification in Lebanon, not a continuation of the endless cycle of violence.

We call on the government of Lebanon to establish its authority over the area as quickly as possible in order to allow for the removal of Syrian troops. In the meantime, we urgently call on the U.S. government to forcefully request of the government of Syria that their military forces ensure the safety of the Lebanese in the affected areas. We also urge the United States to reopen the U.S. Embassy and dispatch the new U.S. Ambassador to Lebanon as a sign of our confidence in the future of Lebanon.

The rule of Law and Order must finally return to Lebanon. We ask the government to promulgate its resolve to protect its citizens' rights in terms so clear that anyone who violates it will not be surprised by the heavy consequences. We ask all Lebanese citizens to support their government and the Taif accord whose provisions call for, and must lead to, the total withdrawal of all foreign forces from Lebanon so that the country may be free at last.

The sickening violence in Lebanon reached new heights of ignominy with the murder Sunday of Dany Chamoun, his wife, and his children. It is impossible to find words to convey the revulsion and disgust that we feel at this brutal and senseless act. We wonder in our sorrow what kind of human beings could plan and execute an act of such despicable cowardice and for what reason. How does any individual or group justify the cold blooded slaying of a man, his wife, and his young children?

We cannot bring Dany Chamoun and his family back. Nor do we know who perpetrated this horrible deed. But the message intended may be as sickening as the deed itself. Are the communities in East Beirut, which had previously been under the control of General Aoun, being threatened into submission? Does this ignominy represent yet another battle for turf in the lawlessness that is Lebanon? Or is this yet another insidious attempt to keep the people of Lebanon from uniting in peace. We do not know. What we do know is that this violence must stop or Lebanon will be finished as a country. The Lebanese have endured all they can endure. They can no longer solve their problems on their own. They must have help.

The government of Lebanon, and the Syrian forces that helped them defeat General Aoun, must assume responsibility for the safety of the civilians in the area which had previously been under General Aoun's control. The fact that they were unable to stop a band of assassins from killing an entire family, and then escape, is a black eye for those who had the responsibility for protecting law and order.

We are today writing to President Bush and Secretary of State Baker asking them to heed our call for immediate help. We ask others to do so as well. As Americans, we demand of our government that its voice be heard loud and clear on this senseless, abominable murder. Let the word go out from the United States that we will not tolerate the continued violence in Lebanon, that the United States abhors and condemns this outrageous act, that we will back the government of Lebanon in an immediate disarming of all militia in Lebanon. Let the United States also declare our strong and

firm insistence on the withdrawal of Syrian and Israeli and all other foreign forces from Lebanon as provided for in the Taif Accord, as soon as the government of Lebanon has assumed control of its territory. The Lebanese need to know that the United States backs their independence and sovereignty. If there is to be any light at the end of this horrible tunnel, it must be that the Lebanese will have their country back.

For our part, let there be no mistake nor misunderstanding as to our objective. The American Task Force for Lebanon will tolerate nothing less than the complete independence and sovereignty a unified and democratic Lebanon, free of all foreign forces. We will energetically use our influence and efforts as Americans to pursue this goal and to enlist the active support of the United States in implementing it. We will not waiver from this objective and we invite all Lebanese Americans of all faiths and backgrounds to join us in its pursuit.

CAMP MEADE—GUS AND CLARA GOSSELIN

Mr. LEAHY. Mr. President, many Members of this body have served in the military and today, I would like to introduce our veterans to Gaston "Gus" Gosselin and his wife Clara, of Barre, VT.

A few miles from my tree farm in Middlesex, Gus and Clara have developed Camp Meade, a nostalgic flashback to your days on the base or at boot camp. The beds are far more confortable and the famous cuisine that served a steady clientele of granite workers when Gus' Restaurant was "The" place to eat in downtown Barre will banish any thoughts of sleeping through the morning mess call.

As you drive along route 2, you will see the guardhouse—although the battle tank, amphibious vehicle or military ambulance might catch your eye first.

Camp Meade is not home to the Vermont National Guard. But the Gosselin's have made it a place where veterans and their wives can visit with old friends and reminisce about military life.

The renovation of Camp Meade began 6 years ago when the Gosselin's purchased the resort. The idea of a military theme was a natural—Gus is a veteran of 4 years in the Navy, and he and Clara are veterans of years of success in the service business.

At Camp Meade, you are awakened by reveille and serenaded at the end of the day by taps. If you think it is a part of life veterans would rather forget—they keep coming back every season for more.

The mannequins in the bunkers depict wounded and dying Gi's, a reminder of the grim realism of war. Veterans are reminded of former buddies who could not make the reunion—many buried on foreign soil

Camp Meade is filled with history. Each cabin bears the title of some military hero whose history is recounted in word and pictures. Cabins are named for General Patton and Admiral Nimitz among others. Lt. Col. Oliver North is enshrined here along with our own Michael "Red Mike" Edson, a war hero and first commander of the Vermont State Police.

The collection of war memorabilia steadily grows and now includes an F-86 bomber from the Korean war, a World War II era Stuart tank that served in Northern Africa and the 1942 ambulance that is used to transport linen to the cabins.

Gus and Clara have recreated an important part of the lives of many veterans, from the barracks atmosphere, to the mess hall and grounds. They help veterans relive and remember in an atmosphere that is authentic in both detail and spirit.

Gus has an old command jeep, and noticed one guest spending a great deal of time inspecting the vehicle. The gentleman told Gus it was exactly like the one he rode in during his period of service near the front lines.

Gus presented the keys to the old solider and suggested he take a spin into town—all Gus' vehicles, with the exception of the tank, are licenses for operation on Vermont highways. Gus recalls the vet returned a few hours later—a few years younger for reliving that experience.

Gus and Clara Gosselin. Camp Meade in my town of Middlesex, VT. If you are a veteran and get up our way, drop in at the Gosselins and tell them I sent you.

THE UNITED NATIONS AND THE DEVELOPING NATIONS

Mr. PELL. Mr. President, several days ago, the Senate gave its final approval to the bill appropriating funds for the U.S. contribution to the United Nations. I am delighted that that bill provides full funding for our assessed contributions to the United Nations, makes a significant downpayment toward paying back our past arrearages, and provides the full amount authorized for United Nations peacekeeping forces. Finally, we are on the road to ending our deadbeat status at the United Nations.

Our renewed commitment to the United Nations is due in large measure to the reemergence of the United Nations Security Council as an indispensable organization in the maintenance of peace and security in the world. After all, the first purpose of the United Nations, as stated in article I of its Charter, is the maintenance of international peace and security. But the United Nations, through the Charter Declaration on International Economic and Social Cooperation, also enjoins its members to cooperate in promoting higher standards of living, full employment, and conditions of economic and social progress and development.

When the United Nations was established in 1945, there was no sharp dichotomy between rich and poor nations. Only the United States was perceived as a wealthy nation, and with the memory of the Great Depression still fresh, that perception was not strong. However, by 1960, it was clear that an ever-increasing gap had developed between the industrialized and the developing nations, one that began to be characterized as a leading long-term threat to world peace. That gap has continued to widen.

Former Deputy Secretary of State John C. Whitehead and vice chairman of the United Nations Association of the USA Arthur Ross recently addressed themselves to this topic in an article in the Boston Globe entitled "Another UN Test: The Needs of the Have-Not Nations." In this article Messrs. Whitehead and Ross argue persuasively for the need for the United Nations to "seek some common ground between the agendas of the have and have-not nations."

Mr. President, I ask unanimous consent that the text of the entire article be printed in the RECORD at the conclusion of my remarks, and I commend to my colleagues the thoughts expressed therein.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Boston Globe, Oct. 1, 1990]

ANOTHER UN TEST: THE NEEDS OF HAVE-NOT NATIONS

(By John C. Whitehead and Arthur Ross)

As the representatives of 160 nations descend on United Nations Headquarters in New York today, journalists and diplomats alike are heralding the 45th UN General Assembly as the dawn of a new age in multilateral cooperation. Indeed, the UN's key roles in uniting opposition to Iraqi aggression and in working to bring peace to the killing fields of Cambodia, on top of peacemaking and peacekeeping successes in Namibia, Nicaragua, Afghanistan and the Persian Gulf, suggest that we have entered a new era of collective security. Nevertheless, for all the justified good feeling, the list of challenges on the United Nations' agenda is growing as fast as its record of successes. And trouble could lie ahead.

Even if the combination of UN authority and US power manages to put a halt to Saddam Hussein's immediate ambitions, it is likely that a UN presence will be needed in the region for years to come. The crisis has served to underline the need for broad multilateral constraints on all weaponry, particularly on the spread of nuclear and chemical weapons, to contain regional military ambitions. As experience has demonstrated, preventing conflicts can be a much more difficult task for the world body than helping to wind down crises.

The Gulf, moreover, is hardly the only trouble spot facing the UN. The secretary general is close to brokering a peace between the Polisario and Morocco in Western Sahara, and the multilateral negotiations on the future of Cambodia are close to fruition. Both agreements would entail multiple UN roles as mediator, elections monitor, and

peacekeeper. UN forces remain in explosive Kashmir, as well as in Cyprus, the Golan Heights and southern Lebanon. The biggest challenge of all—the Arab-Israeli conflict—could well be added to the UN peacemaking agenda in the future.

To most Americans, helping to bring peace and stability to a dangerous and unpredictable world is the central purpose of the UN. But to many of the rest of the world's people and many of the representatives to the General Assembly, this is not enough. In their eyes, the most conspicuous failure of the international community over the years has been its inability to narrow the growing gap between rich and poor, both within individual nations and between countries of the North and South.

Africa is in shambles, Latin America is overwhelmed with debt and its consequences. Over-population and environmental degradation are everywhere.

If the end of the Cold War is to produce a lasting peace, then the problems of the developing world must be tackled with the intensity and resources which characterized the Cold War competition. It is too early to start counting our peace dividend, for the easing of the East-West rivalry may foreshadow a surge in North-South tensions.

Even as ideological barriers fall, religious and ethnic tensions and the lack of access to natural resources are sowing the seeds of conflict in many regions. While the major powers gingerly test their newfound spirit of cooperation, those unhappy with the status quo—from terrorists to zealots to aggressors—seek ways to upset the apple cart.

For several years now, the General Assembly has reflected a more upbeat spirit, while serving as an unusually workmanlike and civilized forum for debating global priorities. Consensus and compromise have largely replaced bloc voting and name-calling.

But there will be trouble down the road. Many poorer countries are beginning to complain that their needs are being ignored as the big powers seek to turn the clock back to a UN which emphasized collective security rather than the development and humanitarian issues which dominated the UN agenda in the 1960s and 1970s. They worry that the rising status of the Security Council could bring a further diminution of the role of the General Assembly. They worry that the goal of development may have to take a back seat to issues of environment, human rights and democracy.

In the short run, pragmatism and moderation are likely to prevail in the General Assembly. But to prevent a return to the bad old days at the UN, it is time to seek some common ground between the agendas of the have and have-not nations. President Bush, who is working with the UN skillfully and creatively in the Iraqi crisis, can sound the keynote for a broader and more dynamic agenda when he speaks to the General Assembly today. By building on the cooperative momentum generated through this crisis, the international community can lay the groundwork for an even more effective United Nations in the years ahead.

THE MEMORY AND INSPIRATION OF CARL MARCY

Mr. PELL. Mr. President, I rise today to express my admiration for a man who, as much as any other in modern times, embodies all that is constructive and fine in the Senate as an institution of American Government.

I refer to Carl Marcy, who served for a quarter century as a valued staff adviser to the Senate Foreign Relations Committee—from 1950, as the Korean war began, to 1974, as the Vietnam war ended. In 1955, shortly before Senator J. William Fulbright began his historic chairmanship, Carl Marcy became the committee's chief of staff, a capacity in which he distinguished himself for nearly two decades. Later, Carl went on to play an instrumental role in founding the American Committee on United States-Soviet Relations.

Late last month, Carl Marcy died. But his legacy in the Senate will be preserved, not only in the hearts of those of us who knew him but also in the expectations of those many thousands of Americans who did not know Carl but, in good part because of Carl's efforts, now look to the Senate to play a positive role in shaping American foreign policy.

Certainly such hopeful expectations are often disappointed; no one doubts—surely Carl never did—that the Senate can be parochial and sometimes negative in its foreign policy effect. But, before Carl's time, a passive or negative Senate in the realm of foreign policy was closer to the rule rather than the exception. What Carl helped to introduce, during the Fulbright years, was the then-innovative idea that the Senate, and more specifically its Foreign Relations Committee, might contribute actively and integrally to the foreign policy of the United States—first, by seeking to educate itself and the American people, and, where possible, by guiding and prodding an executive branch of Government that, however large, and partly because it is so large, is far from infallible.

To some, this notion now sounds unexceptionable if not obvious. But it is neither. In the years immediately following World War II, as the Truman administration laid the building blocks of postwar American foreign policy—the United Nations, multilateral institutions for finance and development, the North Atlantic Treaty Organization and other international commitments—congressional support was assiduously cultivated by the executive branch. But among those who supported an activist American role in the world, the view remained widespread that Congress was a bastion of myopia and reaction on matters of foreign policy, to be coaxed and mollified when necessary but to be ignored or systematically by-passed wherever possible.

It was this guiding belief that underlay the Truman administration's assertion in 1950, just as Carl joined the Senate staff, of an autonomous warmaking power on the part of the President. And it was the same premise—of superior Presidential wisdom in matters of foreign policy—that has been a central motif of American Government for the past 40 years.

This "cult of executive expertise," as the Foreign Relations Committee would later label the monarchist premise, was not strongly challenged during the 1950's by any in Congress other than isolationist conservatives. Only later, in the 1960's did those who might be called foreign policy progressives come to accept the foresight of the framers in allocating considerable foreign policy powers to the Congress. Not until then, with Senator Fulbright in the forefront and Carl Marcy at his side, did Congress begin the effort to assert such powers in a responsible fashion. This struggle, waged against persistent executive denunciations of congressional meddling and micromanagement, has been a dominant theme of relations between the branches for the past quarter century and continues today.

We will remember Carl for his constructive role in helping to revive the continuing constitutional struggle over foreign policy that is perhaps best viewed not as an anomaly but as the very essence of the Framers' intent. But we will remember Carl for his personal traits with even greater admiration.

Carl masked his activism with a genuine humility. Behind that quiet facade, he was a fount of ideas and clever thoughts on how to implement them. He was never less than a keen observer of the foibles of those of us who are elected to this body, but always charitable in his interpretation of those foibles. He was a devout believer in civil but spirited discourse as the lifeblood of democracy.

Carl knew well that each of us, in every walk of life and all branches of government, is fallible. Harboring no illusions about human virtue or motivation, he felt passionately that the best hope for this nation lay in the institutions bequeathed to us by the Founding Fathers. He labored to see us use those institutions to bring our strengths to bear and to guard each citizen, and the national welfare, against our common weaknesses.

Carl Marcy hid his passion behind a calm demeanor. But seen in the perspective of his full career, his light burns brightly. He was a Democrat in the fullest sense of the word, a visionary but practical internationalist, and a devoted public servant of a quality we see only rarely. His passing leaves a void in the lives of his wonderful wife Mildred, his son Eric, and four grandchildren: Jessica, Erica, Mark, and Scott. But for us Carl leaves not a void but a legacy, for Carl Marcy's is an in-

spirational memory that will shine in the annals of the U.S. Senate.

TRIBUTE TO COL. DAVID H. KENNEDY

Mr. THURMOND. Mr. President, I rise today to mourn the passing of Col. David H. Kennedy USAF (ret.) of Williston, SC. Colonel Kennedy was a man of character, capacity, compassion and courage. I knew him for many years, and am saddened by his loss.

Colonel Kennedy was born and raised in Williston. He graduated from the U.S. Military Academy at West Point in 1932 and later received a master's degree in meteorology from the California Institute of Technology. He served as a pilot and weather officer in World War II, primarily in the Pacific Theatre.

For his honorable service to our Nation, he received the Legion of Merit and other medals. Even after his retirement from the Air Force, he remembered his flying days with great affection.

Upon leaving the service, Colonel Kennedy returned home to Williston, where he married the lovely sister of my first wife. He was a licensed land surveyor, and was also active in community affairs in his native county, working with young people and raising money for charity. In addition, he was a member of the American Legion and board of directors of a bank. He was a member of the First Baptist Church of Williston, and taught Sunday school there for some years.

Colonel Kennedy was a brilliant man, whose many talents were a constant source of surprise and delight to those who knew him. His quest for knowledge led him from skills such as electrical wiring and calculus to music and art. He built his own house, and he painted and drew caricatures for pleasure. He was extremely interested in genealogy and researched the roots of his family extensively.

He was a man of dry wit and great gentility, a true southern gentleman, and was known for his devotion to his family. I was fortunate to have him as my executive secretary for part of my term as Governor of South Carolina, and he did an outstanding job.

Colonel Kennedy was a loving husband and father and a loyal friend. His many exceptional traits greatly endeared him to his family and friends, and he will be sorely missed. My wife, Nancy, and I would like to extend our deepest sympathy during this time of bereavement to his wife, Frances Crough Kennedy, and his three daughters, Mrs. John M. Killey, Mrs. Beacham O. Brooker, Jr., and Mrs. Robert J. Bundy.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,050th day that Terry Anderson has been held captive in Lebanon.

Today—on the eve of Terry Anderson's 43d birthday—the Associated Press records a chronology of his captivity. I ask unanimous consent that this chronology be printed in the RECORD.

There being no objection, the chronology was ordered to be printed in the RECORD, as follows:

CHRONOLOGY OF ANDERSON'S CAPTIVITY

NICOSIA, CYPRUS.—Here is a chronology of Terry Anderson's captivity:

1985

March 16—Anderson abducted in Beirut. Telephone caller says Islamic Jihad seized him as part of "continuing operations against America and its agents."

May 16—First photo of Anderson in captivity released. Islamic Jihad warns of "catastrophic consequences" if Kuwait does not free convicted terrorists.

June 7—Anderson's daughter, Sulome, is born.

September 9—The Rev. Benjamin Weir, another Islamic Jihad captive, is freed after 16 months in captivity.

November 8—In an open letter, Anderson and three other American captives urge President Reagan to "have mercy" and negotiate. The hostages write letters to their families. Another to Archbishop of Canterbury appeals for Terry Waite to mediate with Islamic Jihad.

1986

February 15—Anderson's father, Glenn R. Anderson, dies of cancer at age 69.

June 7—Anderson's 46-year-old brother, Glenn Richard Jr., dies of cancer.

July 26—The Rev. Lawrence Martin Jenco is freed after 19 months as a hostage. He says he was held with Anderson for a year.

October 3—In a videotaped appeal, Anderson and American hostage David Jacobsen urge Reagan to work hard for their release.

November 2—Jacobsen, freed after 17 months in captivity, says hostages "are in hell."

1987

December 24—Islamic Jihad releases a videotape of Anderson. Appearing to read from a prepared text, he criticizes Reagan administration for failing to secure the Americans' release.

1988

March 16—Anderson's third year in captivity.

April 10—Islamic Jihad threatens in statement, accompanied by a photo of Anderson, that it will kill captives if any attempt is made to storm a Kuwaiti jetliner hijacked by Shiite extremists.

August 18—Islamic Jihad issues a photo of Anderson with a statement containing new demands: Israeli withdrawal from south Lebanon and compensation for reconstruction of south Lebanon and south Beirut.

October 31—Islamic Jihad issues a videotape of Anderson to mark his 41st birthday. He says: "I find it difficult to keep my hope and courage high."

1989

August 1—Iran says it will help free Western hostages in return for help in freeing four Iranians seized by a Christian militia in July 1982. The four were believed killed.

October 27—Anderson's fifth birthday in captivity.

1990

February—Anderson's sister, Peggy Say, visits Europe and Mideast for talks with Pope John Paul II, Yasser Arafat, Syrian and other leaders on her brother's plight.

April 22—American hostage Robert Polhill is released in west Beirut but says he can shed no light on Anderson's fate.

April 30—Pro-Iranian kidnappers free American educator Frank Reed in Beirut. He says he spent many months with Anderson, but had not seen him since early 1989.

August 24—Irishman Brian Keenan is freed and says he spent more than four years in captivity with Anderson.

THE STATE OF THE WORLD'S CHILDREN

Mr. KENNEDY. Mr. President, last month, the leaders of 71 nations came together for a historic meeting on the state of the world's children. A tragic picture emerged—a portrait of starvation and disease, of illiteracy and abuse, of children victimized by war.

This landmark international gathering underscored the importance of the U.N. Convention on the Rights of the Child, which calls upon all nations to provide children with the basic necessities of life. That summons is a long-overdue response to the neglect of children around the globe, and it should be adopted by every member of the United Nations, beginning with the United States.

Too often, however, Americans look upon hunger, disease, and lack of shelter and education as problems of other nations. Yet an American baby is less likely to be immunized against polio than a baby in Botswana. Black children born in Boston have less chance to live to their first birthday than a child born in Uruguay.

Within the boundaries of the United States, 2 million children go hungry each day; 3 million risk injury in unsafe day care; 2 million spend time alone and unsupervised. Two million children are abused or neglected each year, and over 5 million children in need of mental health care fail to receive it. Children are more likely to be hungry, homeless, or poor than any other segment of the American population.

Two out of three uninsured pregnant women do not get the prenatal care they need. It is no wonder that American babies die at rates that are higher than 19 other industrial countries. Forty percent of American children do not even receive the basic childhood vaccines that are the first line of defense against serious illness. One in five American children is not covered by health insurance—a total of 12 million children. And a quarter of American children go a whole year without seeing a physician. For too

many, the only family doctor they know is the hospital emergency room.

Teenage pregnancy is another immensely serious American problem. Almost 2 million teenagers become pregnant every year, and the vast majority of these pregnancies are unintended. When children have children, the frequent result is a cycle of welfare dependency that blights the prospects of two generations. The Nation spends an astounding total of $22 billion annually on welfare-related costs from teenage pregnancy.

During the 1980's, the Federal Government retreated on its responsibility to children and their families. Federal help for elementary and secondary education fell 22 percent. Federal housing assistance was cut 80 percent; 100,000 American children went without shelter. Food stamps, the largest Federal food program for the poor, was cut by $6.8 billion from 1982 through 1985. At the same time, the Government slashed child nutrition programs by 29 percent—a cut of $5 billion. Despite the growing number of poor families, the Social Services block grant providing essential services for children was reduced in real dollars by half.

If the 1990's are to be a kinder, gentler decade, children must gain a higher place in our priorities. This year, we have the opportunity to make important downpayments on their future health and welfare. Legislation to make Head Start available to every eligible child will soon be on the President's desk. The most comprehensive child care legislation in over two decades is in the final stages of conference. Legislation to improve teacher training, literacy, and math and science education is moving through Congress. An expansion of education services for children with disabilities was enacted this year, as was crucial legislation to assist children with AIDS.

Congress will soon complete action on title XIII of the National Affordable Housing Act to provide comprehensive health and social services for low-income families at risk of homelessness. The proposed National Health Service Corps Revitalization Act will send physicians and allied health professions into underserved rural and urban areas. The Senate has passed legislation to support health promotion and disease prevention activities to reduce the occurrence of illnesses prevalent among disadvantaged minorities and to establish immunization demonstration projects serving children.

These efforts are part of a three-pronged affront to end child poverty and its tragic consequences.

First, we must invest in cost-effective preventive measures. We have all heard the figures—$1 spent on prenatal care saves $3 in short-term hospital costs; $1 spent on early education saves $7 in lower costs of special education, public assistance and crime; $1 spent on childhood immunization saves $10 in later medical costs. At a time of scarce resources, these are investments we cannot afford to ignore.

Second, we must invest in families. We must support parents in their roles as the first teachers and principal providers for children. That means ensuring that the working parents of America are paid a living wage; that they have access to adequate health insurance for themselves and their families; and that they do not have to choose between the job they need and the children they love because of lack of child care, or because their employers refuse to provide reasonable family and medical leave.

Finally, we must mend the holes in the safety net for families with young children. Too many have already slipped beyond reach—we cannot afford to risk losing a second generation of young citizens.

The United States should move quickly to ratify the U.N. Convention on the Rights of the Child. We should make the commitment to abide by the convention, so that no child in America should be hungry, homeless, or unable to read. No child in America should suffer from preventable disease. No child in America should live without hope.

A TRIBUTE TO MR. JOHN KOUTSOUMPAS

Mr. THURMOND. Mr. President, I rise today to pay tribute to Mr. John Koutsoumpas, the assistant director of the Senate food service, who will be retiring at the end of this month. Mr. Koutsoumpas is a man of capacity, talent and kindness, and we will miss him very much.

Mr. Koutsoumpas, known fondly as "Mr. K," is a well-known and highly regarded individual here in the Senate. It is said that an Army runs on its stomach, and the Army of Senate Members and staff are no exception. Mr. K. has ensured that we are all treated to well-cooked, plentiful, and nutritious meals on a day-to-day basis. He has also imparted his special touch to the banquets and receptions which are hosted for more formal occasions.

Mr. K. is a native of Terre Haute, IN. He has always been closely associated with the food service business. His father, who emigrated from Greece in 1916, owned and operated a restaurant.

Mr. Koutsoumpas followed in his father's footsteps, first running the family restaurant with his brother, and then opening several restaurants of his own. His other experience includes service with the Marriott Corp. and Emerson restaurants, and his training includes study at the Cornell School of Restaurant Management.

Mr. Koutsoumpas is renowned for his good nature and his boundless energy. He is on familiar terms with everyone from the elavator operators to the Members, and can usually be seen in transit from one event to another. In fact, I do not believe I have ever seen him sitting down.

Mr. Koutsoumpas has not only shared with us his expertise in the food service area, he has shared his family as well. His lovely wife, Alice, is a cheerful presence in one of the doorkeepers' chairs, and his daughter Melinda is a valued member of the staff of the Senate Judiciary Committee. His son, Tom is in charge of Federal relations for the State of Indiana.

I learned of Mr. K.'s retirement with great regret, which I know is shared by his many friends and admirers here on Capitol Hill. We shall miss his skill, his pleasant personality and his flair for hospitality. His retirement leaves a niche which will be hard to fill.

ENERGY AND WATER APPROPRIATIONS BILL

Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 5019, the energy and water development appropriations bill, and has found that the bill is under its 302(b) allocation budget authority allocation by $774 million and under its 302(b) outlay allocation by $712 million.

I compliment the distinguished manager of the bill, Senator JOHNSTON, and the distinguished ranking member of the Energy and Water Subcommittee, Senator HATFIELD, on all of their hard work.

Mr. President, I have tables from the Budget Committee showing the official scoring of the energy and water development appropriations bill and I ask unanimous consent that they be inserted in the RECORD at the appropriate point.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

SENATE BUDGET COMMITTEE SCORING OF H.R. 5019—ENERGY-WATER SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)

[In billions of dollars]

302(b) bill summary	Fiscal year 1991	
	Budget authority	Outlays
H.R. 5019, Conference (new budget authority and outlays)	20.3	12.5
Enacted to date	0	6.9
Adjustment to conform mandatory programs to resolution assumptions	0	0
Scorekeeping adjustments	0	0
Bill total	20.3	19.4
Senate 302(b) allocation	21.1	20.2
Total difference	−.8	−.7
Domestic discretionary spending	9.4	9.1

SENATE BUDGET COMMITTEE SCORING OF H.R. 5019—ENERGY-WATER SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)—Continued

[In billions of dollars]

302(b) bill summary	Fiscal year 1991	
	Budget authority	Outlays
Domestic discretionary allocation	9.4	9.4
Domestic discretionary difference	0	−.3
Defense discretionary spending	10.9	10.4

SENATE BUDGET COMMITTEE SCORING OF H.R. 5019—ENERGY-WATER SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)—Continued

[In billions of dollars]

302(b) bill summary	Fiscal year 1991	
	Budget authority	Outlays
Defense discretionary allocation	11.7	10.8
Defense discretionary difference	−.8	−.4
Bill total above (+) or below (−): President's request	−.1	

SENATE BUDGET COMMITTEE SCORING OF H.R. 5019—ENERGY-WATER SUBCOMMITTEE—SPENDING TOTALS (CONFERENCE)—Continued

[In billions of dollars]

302(b) bill summary	Fiscal year 1991	
	Budget authority	Outlays
Senate-passed bill	−.6	−.3
House-passed bill	−.6	−.4
House 302(b) allocation	−.8	−.7
Baseline	.9	.5

ENERGY-WATER

[In thousands of dollars]

	President's request		House-passed		Senate-reported		Senate-passed		Conference	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
302(b) bill summary:										
Total enacted to date	0	6,917,241	0	6,917,241	0	6,917,241	0	6,917,241	0	6,917,241
Total new budget authority	20,346,020	12,553,094	20,900,000	12,865,880	20,892,787	12,774,289	20,892,787	12,842,895	20,275,014	12,531,253
Adjustments:										
Discretionary programs	0	0	0	59,000	0	59,100	0	0	0	0
Mandatory programs	0	0	0	0	0	0	0	0	0	0
Adjusted bill total	20,346,020	19,470,335	20,900,000	19,842,21	20,892,787	19,750,632	20,892,787	19,760,136	20,275,014	19,448,494
Total 302(b) allocation (point of order)			21,050,000	20,160,000	21,050,000	20,160,000	21,050,000	20,160,000	21,050,000	20,160,000
Domestic discretionary allocation			9,360,000	9,350,000	8,360,000	9,350,000	9,360,000	9,350,000	91,360,000	9,360,000
International discretionary allocation			0	0	0	0	0	0	0	0
Defense discretionary allocation			11,700,000	10,800,000	11,700,000	10,800,000	11,700,000	10,800,000	11,700,000	10,800,000
Mandatory allocation			0	0	0	0	0	0	0	0
House appropriations 302(b) allocation			NA	NA	NA	NA	NA	NA	NA	NA
Baseline			19,337,223	18,922,131	19,337,223	18,922,131	19,337,223	18,922,131	19,337,223	18,992,131
Adjusted bill above (+) or below (−):										
Total 302(b) allocation (point of order)			−150,000	−317,779	−157,213	−409,370	−157,213	−399,864	−774,986	−711,506
Domestic discretionary allocation			623,852	107,642	NA	NA	551,529	−16,765	0	−285,348
International discretionary allocation			0	0	0	0	0	0	0	0
Defense discretionary allocation			−773,852	−425,421	NA	NA	−708,742	−383,099	−774,986	−426,158
Mandatory allocation			0	0	0	0	0	0	0	0
Baseline			1,562,777	920,090	1,555,564	828,499	1,555,564	838,005	937,791	526,363
President's request			553,980	371,886	546,767	280,295	546,767	289,801	−74,006	−21,841
House adjusted bill			7,213	91,591	−7,213	−91,591	−7,213	−82,085	−624,986	−393,727
Senate adjusted bill			NA	NA	NA	NA	NA	NA	−617,773	−311,642
DISCRETIONARY										
Previously enacted:										
Permanent appropriations	0	0	0	0	0	0	0	0	0	0
Advance appropriations	0	0	0	0	0	0	0	0	0	0
Outlays from prior year apprns	0	6,897,412	0	6,987,412	0	6,987,412	0	6,897,412	0	6,897,412
Other action to date	0	19,829	0	19,829	0	19,829	0	19,829	0	19,829
Total enacted to date	0	6,917,241	0	6,917,241	0	6,917,241	0	6,917,241	0	6,917,241
New budget authority: H.R. 5019	20,346,020	12,553,094	20,900,000	12,865,880	20,892,787	12,774,299	20,892,787	12,842,895	20,275,014	12,531,253
Adjustments:										
Possible later requirements: Examples										
Total PLRs	0									
Scorekeeping adjustments: Adjustment	0			59,100		59,100	0	0		
Total discretionary adjustments	0	0	0	59,100	0	59,100	0	0	0	0
Discretionary total	20,346,020	19,470,335	20,900,000	19,842,221	20,892,787	19,750,630	20,892,787	19,760,136	20,275,014	19,448,494
MANDATORIES										
Previously enacted:										
Permanent appropriations	0									
Advance appropriations	0									
Outlays from prior year apprns	0									
Other action to date	0									1
Total enacted to date	0	0	0	0	0	0	0	0	0	0
New budget authority: H.R. 5019	0									
Adjustments for mandatories:										
Mandatories in bill	0									
Resolution assumptions	0									
Mandatory adjustment	0	0	0	0	0	0	0	0	0	0
Adjustment for prior year outlays not assumed in resolution										
Total mandatory adjustment	0	0	0	0	0	0	0	0	0	0
Mandatory total	0	0	0	0	0	0	0	0	0	0

IN TRIBUTE TO SENATOR WILLIAM L. ARMSTRONG

Mr. CONRAD. Mr. President, I rise to pay tribute to my friend and colleague, Senator WILLIAM L. ARMSTRONG, the senior Senator from Colorado who has decided to retire from the Senate at the end of the 101st Congress. I have had the pleasure of serving with Senator ARMSTRONG on the Senate Committee on the Budget, and was very pleased that he chose to be a founding member of the Senate deficit reduction caucus.

BILL ARMSTRONG's career in public service has been a distinguished one. After spending 10 years in the State legislature, he came to Washington in 1972 as the first Representative of the Fifth Congressional District of Colorado. The U.S. Senate has had the privilege of his service since 1978.

BILL ARMSTRONG is a very sincere, dedicated public servant. His legislative goals are always straightforward and his steps to achieve those goals are always clear. I believe this direct approach to his work is appreciated by all in this chamber.

I have always admired Senator ARMSTRONG's candor and his knowledge of the process and parliamentary procedure. He has diligently pursued his priorities within the rules of the Senate, and his persistence has paid off, most notably the implementation of income tax indexing.

On the Senate Budget Committee, he has consistently worked for significant deficit reduction. While he and I don't always agree on how to accomplish deficit reduction, Senator ARMSTRONG has been determined in his pursuit of what he believes, not settling for less. I have appreciated his support when our ideas do coincide.

I am glad to have had the privilege to know Senator ARMSTRONG and will miss his friendship here in the U.S. Senate, when he returns to private life. I wish him, his wife, and their family all the best in the years ahead, and I thank him for his friendship and counsel during my tenure in the U.S. Senate.

TRIBUTE TO THE LATE BARBARA BOGGS SIGMUND

Mr. DODD. Mr. President, it is with profound sadness that I rise today to pay tribute to a gifted and courageous woman, Barbara Boggs Sigmund, whose life of great service to her community and her family prematurely ended with her death on October 10.

Yet while I mourn the loss of Barbara Boggs Sigmund, I am deeply grateful for the privilege of having known her. Her commitment to her constituents as mayor of Princeton, NJ, was an inspiration to all public servants, for town councilmen and U.S. Senators alike. Although she was also a poet, the way she lived her life was more eloquent than any verse I know.

Barbara, a daughter of our friend and colleague LINDY BOGGS, Representative of Louisiana, and the late Representative Hale Boggs, leaves behind a legacy of good government, compassion, and integrity. By all those who knew her and have known her extraordinary family, and by all who share her ideals and convictions, she will be missed.

Mr. President, I ask unanimous consent that the following article, which appeared last Sunday in the Washington Post, be printed in the RECORD following my remarks.

There being no objection, the article was ordered to be printed in the RECORD, AS FOLLOWS:

[From the Washington Post, Oct. 21, 1990]

BARBARA BOGGS SIGMUND AND HER GIFT OF LIVING WELL

(By Phyllis Theroux)

Ten days ago, Barbara Boggs Sigmund, mayor of Princeton, N.J., died of cancer at the age of 51. If politicians can be divided into mutts and purebreds, Barbara had "papers." She was the daughter of the late House majority leader, Hale Boggs, and Rep. Lindy Boggs, and her family's political roots extend far beyond her own parents into the soil of Louisiana.

But while her sister, Cokie Roberts, is a political reporter with National Public Radio and ABC News on Capitol Hill and her brother, Tommy, is a Washington lawyer-lobbyist who works the same turf, Barbara was the only one of the Boggs children to enter politics directly. There were those of us who thought that, given her background and gifts, she should have risen higher than she did.

This thought did not stem from some *droit de roi* conviction that to whom much has been given, more should be supplied. From her childhood, Barbara exhibited a quicksilver mind, a compassionate heart and a tolerant spirit that probably came from growing up knee-deep in eccentric New Orleans relatives who bounced checks, wore opera capes to breakfast and reputedly gave Tennessee Williams some of his best material.

All the right ingredients for public service ran in Barbara's veins and early indications pointed to easy success. Even in school—from first grade through college—she was always elected class president. Yet despite her drive and intellectual commitment, she never successfully rose above the local level in politics. Having just returned from her funeral, however, I am reminded that to lay a ladder against a person's life and measure its success by rungs climbed is to confuse height with influence. In fact, she did seek to rise higher. But she never lost the understanding that public service, at every level, is a privilege and, for someone of Barbara's temperament, a necessity.

In 1982, the same year she lost a race for Congress, Barbara discovered a melanoma behind her left eye, which was removed to prevent further spreading. In 1983, she was elected mayor of Princeton by a large majority and put the cancer behind her. Then, in 1989, the year she ran unsuccessfully for governor, the cancer returned, claiming her entire body, including the area behind her remaining eye.

During her last year, Barbara continued serving as mayor and astonished even her closest friends by publishing a book of poetry that was both polished and profound. "Whether I go into eternal darkness/ or into unrelenting light/I shall miss the interplay between the two/that, except on endless flat gray days/makes our earth a joyful, bouncing place." She feared blindness more than dying and called her remaining seeing eye "a glutton, a lecher, and a drunk" that could not get enough of what it saw.

Barbara planned her own funeral in Churchillian detail, down to the parking—which she wanted to be free. Then she put a double asterisk by that and wrote, "I've changed my mind about this. The borough needs the money." That was the only request her family reversed. Parking was free. But on the day of her funeral, there were too many people to park anywhere. Mourners walked through the town toward Princeton University Chapel, which holds 2,000 people but was not quite large enough to hold us all.

An impressive phalanx of senators, congressmen, judges and other high officials attended the service. But it was love, not obligation, that drew the vast majority of mourners. Among them were her children's former babysitters, a large contingent of battered women for whom Barbara had founded a shelter and almost every couple she had married—one of her favorite mayoral tasks. An American Legionnaire sat next to a physics professor who sat next to some children who helped decorate the town parking meters with funny hats the day Barbara decided to throw a birthday party on their 50th year of installation.

Old, young, rich, poor, black and white, we all arrived at the funeral feeling smug in the knowledge that Barbara viewed us as a person apart and special from everybody else she knew and viewed. Egos were being silently adjusted in every pew.

The casket was borne by Barbara's three sons and various nephews toward a row of priests, ministers and rabbis who took part in the service. Behind it came the family and then the special guests wearing purple armbands. (Purple was her favorite color and local merchants had tacked a purple ribbon on every tree from her house to Borough Hall.) The Princeton volunteer firemen were first, hats tucked stiffly under their arms, then the borough employees, road crews, janitors, secretaries, sewer workers, police officers. If Barbara was trying to make a political point posthumously, it was to let the mourners teach each other that this is what we should strive to be: a political body at peace. That afternoon everybody was.

At first glance, Princeton looks like an affluent, exquisitely tasteful town that could run itself quite well without any mayor, let anyone one of Barbara's talents. But in fact there are many factions: descendants of Italian stonecutters who were brought over to build Princeton University, a large black community and a deep pool of New York commuters, government employees, professors and writers. To govern the town well took a brilliant mind and a populist heart. Barbara got the people to redesign the center of the city, tear out 200-year-old pipes, pave roads, install bike paths and—her pride—create beautiful low-income housing. She used to bring children into her office and tell them how much fun it was to be in government, not how much work.

Many people spoke at her funeral, including her son Paul, who read a letter written to him by his mother before he was born. "As surely as I am introducing you to life," she wrote, "I am introducing you to death, and against this knowledge you will shape your life."

A candlelight procession through silent Princeton followed the casket to its burial place. Then the family left, and five of Barbara's oldest friends remained behind. We surrounded the coffin as it descended, place our hands upon the top and, reclaiming the hymn "Tantum Ergo" from our memories, we sang our old friend into the earth.

"In each class," wrote Matthew Arnold in his book "Culture and Anarchy," "there are born a certain number of natures with a cu-

riosity about their best self, with a bent for seeing things as they are, for disentangling themselves from machinery, for simply concerning themselves with reason and the will of God, and doing their best to make these prevail . . . and this bent always tends to take them out of their class and to make their distinguishing characteristic their 'humanity.' They have, in general, a rough time of it in their lives."

Barbara would have disagreed. She loved her life until the end.

PUBLIC TELEVISION AND MUST CARRY

Mr. BENTSEN. Mr. President, I was disappointed that we were unable to debate cable legislation this year on the floor of the Senate. I have heard from many people regarding the problems in the cable industry and the need for congressional action to address them. As well, I have heard from the industry itself. It would appear, however, that cable legislation this year is a dead letter. I think that is unfortunate for cable subscriber and operator alike. It simply means that next year we have to engage in another protracted, acrimonious struggle to get a balanced cable bill. I do not look forward to it, but it is inevitable.

If the administration had not raised objections to our consideration of cable legislation, I had planned to offer an amendment to the bill dealing with public television and must carry rules. The amendment would have required cable systems to carry, upon request, all local substantially unduplicated public television services. The purpose of the amendment was to preserve and promote public access to the wide variety of educational, informational, cultural, and instructional programming available on local public television stations. For this reason, the amendment served the Government's interest, which I regard as substantial, of furthering the educational development of its citizens, especially its children.

Fortunately, Mr. President, the provision was supported by both the cable industry and the Association of Public Broadcasting, and it was supported strongly by the committee. Pity it now has to wait until next year.

For nearly 40 years, Mr. President, the Federal Government has recognized the need for noncommercial broadcasting. As early as 1952, the FCC set aside 242 channels in the spectrum for the exclusive use of public television. Since that time, Congress and the executive branch have cooperated in efforts to fund public television. We saw the need for it in many of our local communities.

Over $3 billion has been invested in public television, which is only a small portion of the total public investment in the system. State and local governments have made significant contributions to public television. Over two-thirds of public television stations are licensed to State and local government agencies, colleges and universities, school districts and other public groups. Private investment has been significant as well.

As we can tell from the recently aired public television series on the Civil War, a series not too long ago on the civil rights movement, National Geographic specials, and a host of other educational and entertainment jewels, the programming options afforded to us by public television enrich our lives. In addition to these acclaimed programs, public television stations devote a considerable block of their daytime schedules to instructional programming. More than 29 million children attend schools that employ public television's instructional programming everyday.

Local stations also provide a variety of news and public affairs programming. This programming ranges the full gamut of our lives. Cultural and artistic groups, often those located within the very communities where a station is located, are supported through public television. It brings such cultural entertainment to people who might not otherwise be able to see it. I can think of few other areas where the Government gets as much benefit from its small, though wise, investment.

In my own State, Mr. President, public television is making significant contributions. In some of the poorest areas of my State, public television has taken a front and center role in trying to enhance the quality of life for our people. In the Rio Grande Valley, reading and language skills, as measured by standardized national tests, are far below the national average. One public television station in Harlingen, TX, KMBH-TV, went to the local school board to offer its assistance to do something about the problem. It is a partnership with local school districts in the area to serve about 80,000 students in south Texas. The station airs an Instructional Television Service 6 days per week. Is is used by teachers and students in the valley. This year, for example, I understand that the service broadcasts 31 series and over 660 individual programs, including those to improve reading skills, drug abuse prevention, and unemployment counseling. The same station also produces a 21-part series in Spanish on parenting skills for teenagers and young adults.

As a way of furthering its involvement to develop the skill of children in its service area, the station suggested that it do a daily afterschool program targeted initially at fourth and fifth graders to improve their reading skills. This afterschool program will benefit a number of so-called latchkey kids, many of whom come home early from school and await the arrival of their parents.

This program is a useful way to keep their attention on educational pursuits until their parents arrive. Because public TV can reach virtually every home, the impact of its program is obvious.

School children would be encouraged to view the programming by the partnership with the schools. Public TV would ask a series of questions; the kids would bring their answers to schools or their local libraries during the summer. The potential for this program is enormous. That's just one community. There are many other examples in Texas. Project Crossroads is a major initiative of KERA-TV in Dallas to improve relations among ethnic groups. That station is also sponsoring an outreach program to instruct child care providers on the use of "Sesame Street" to teach preschool-aged children. KLRN in Austin produces particularly useful public affairs programming.

KLRN in San Antonio produced a "Heritage" series. It explored the contributions of Hispanics to our national life. These are just snippets of public television's proud boast in Texas. I am sure they are duplicated throughout the United States. Each and every week of the year, public stations make 30 to 40 hours of programming available to elementary and secondary school students.

All of these programs are the essence of community involvement, Mr. President. I applaud this visionary usage of public TV. That's what Congress intended when it got into the public TV funding business. All of this is hitched to other national goals of educational excellence and economic competitiveness. The better we are able to educate our children and the more resources we deploy to do that, the richer the fabric of our national life for generations to come. My must carry amendment is needed to ensure that local communities like the one in Harlingen, TX, can continue to participate in enterprising adventures.

The FCC recognized the importance of must carry. The Association for Public Television knows the amendment is needed now. The cable industry understands why this amendment is necessary, and endorses it. With all of this support, the failure to address this issue this year is tragic.

But, of course, Mr. President, there may be some in the cable industry who fail to recognize the value of public television. Unable to see the economic benefit public television viewing may bring to its cable system, some cable operators may drop or refuse to carry public television. We know this is possible. It has happened before. The FCC has found that a substantial number of cable systems dropped or denied coverage to a significant

number of noncommercial television stations.

Too many of those dropped were stations licensed to public colleges and universities. These same stations were among those most likely to carry high quality instructional and educational programming.

I disapprove of the practice of dropping or refusing to carry public television stations. That is not part of the bargain we struck with the cable industry when we passed the Cable Act in 1984. I don't believe that is the practice supported by the vast majority of cable operators. Yet, there are always those who seek the fast buck and would do injury to the public interest to make it.

The amendment I planned to offer—limited in its application, narrowly tailored to achieve the goals we seek, and endorsed by both the cable and public television sectors—was an appropriate response to the problem. If it imposed any burden at all, that burden was minimal.

I understand from data compiled by the Association for Public Broadcasting that if mandatory carriage of all qualified local public stations were required, 84 percent of the Nation's cable systems would only be required to carry one station; 13 percent might have to carry two stations; and 3 percent of all systems might be required to carry two or more stations—and these are found in seven of the largest television markets.

The burden on cable systems may be even less. Remember, the amendment required that cable systems carry only qualified local public stations that request it. It imposed a cap on the number of stations in a local market which must be carried; and it did not require that systems carry duplicative programming services. This minimal regulation surely is justified given the problems we have witnessed in the cable industry. The investment of Congress, local governments, and the public writ large with its private contributions, and the educational contributions of public television are too substantial to tolerate any longer the flat refusal of cable systems to carry public television stations.

The hope had been that cable subscribers—now over half of the television homes in our Nation, and that number is growing—would be able to get public television stations through over-the-air broadcasting. That hope has been dashed. The evidence produced by the FCC and the information Congress has received since the cable bill has been under consideration, demonstrate that over-the-air broadcasting is not a workable substitute for cable subscribers. The combination of this discovery with the fact that an increasing number of cable operators drop or flatly refuse to carry local public stations persuade this Senator that this amendment is vitally important. I believe the whole Senate shares my view.

On the whole, Mr. President, my amendment would have ensured that public television remain a basic staple in the programming mix. Public television is a handmaiden of other national goals.

It helps to improve the quality of instructional programming for school-age children; it assists in the dissemination of useful public affairs information; it serves as one of the many civilizing influences on the body politic.

We do not want to see these contributions lost at the same time Americans are getting increased access to more diverse programming in their homes. My amendment would have protected us from such a tragedy. When the Senate next considers cable legislation, this amendment will be part of the bill.

RETIREMENT OF DOUGLAS B. HESTER, SENATE LEGISLATIVE COUNSEL

Mr. INOUYE. Mr. President, after almost 39 years of service as an attorney in the Office of Legislative Counsel of the Senate, Douglas B. Hester, who has been the Legislative Counsel of the Senate since March 1, 1980, will be retiring at the end of the 101st Congress.

I wish to take this opportunity to recognize and commend Mr. Hester and the excellent group of attorneys and support staff of his office, for the outstanding service which they and their predecessors have provided to the Senate over the years.

The Legislative Counsel's Office is noted not only for the excellence of its work from a technical and legal standpoint, but also for the promptness and cheerfulness with which the service is provided. The office regularly comes up with drafts within unbelievably short time constraints. Every attorney and support staff member in the office is not only highly proficient in his or her work but has a genuine desire to be of service and is always willing to do anything he or she reasonably can to accommodate a client.

Mr. Justice Harlan F. Stone most aptly stated that—

> The drafting of a legislative act requires exceptional training, experience and skill. No legislation can be enacted which does not have its effect, and oftentimes a serious effect, upon the existing law, written or unwritten, or both. He who thus undertakes to interfere with our complex legal systems should not only know the exact legal situation to be affected by the proposed legislation, both historically and as a matter of existing law, but he must know how the desired change can be accomplished by correct legal methods without the enactment of provisions which conflict with or do not harmonize with existing law intended to be preserved.

Mr. Hester and the lawyers on his staff well understand and agree with Justice Stone's statement, and they are all highly trained and proficient at the legal specialty of legislative drafting. The term "a lawyer's lawyer" could not be more fittingly applied to anyone than to Mr. Hester and the highly skilled attorneys on his staff.

The Office of the Legislative Counsel of the Senate is a unique institution in the Senate in that it is a strictly apolitical professional career-oriented office, in which personnel are selected solely on the basis of fitness to discharge the duties of their position, and are encouraged to make a career working in the office.

From its inception in 1919, with a staff of only three attorneys, the Office has been applauded for the high-quality legal and drafting services which it provides. It is noteworthy that when President Reagan wanted his major tax bill drafted, he made arrangements for it to be drafted in the Senate Legislative Counsel's Office.

When Mr. Hester commenced his employment back in 1952, the Legislative Counsel's Office was filling 3,201 drafting requests each Congress with a complement of 11 attorneys. By the time Mr. Hester was appointed Legislative Counsel of the Senate on March 1, 1980, his office was filling around 9,199 drafting requests with a complement of 15 attorneys. So far, during the 101st Congress, the office has already filled more than 17,000 drafting requests with a staff of 21 attorneys.

It has often been said that it is the staff which enables the Senate to do its work. The Senate is fortunate to have so many good staffers, and Mr. Hester is exemplary of the qualities which are most sought and admired among the staff: professionalism, dedication, competence, affirmative attitude, pride in his work, and loyalty to the Senate as an institution.

Mr. Robert J. Donovan, in his book, "Tumultous Years," referred to the Office of the Legislative Counsel of the Senate as "* * * a school, if there ever was one, for learning the interplay between politics and legislation." Mr. Hester who has served in that office longer than any individual, is not only a graduate of that school, but a teacher in the school as well. He has made his imprint on the Nation's laws in uncountable ways and in innumerable instances—always contributing to their improvement. His long experience and "institutional memory" has enabled him to offer unique guidance to his clients. He and his services will be sorely missed.

So, I wish to take this opportunity to thank and applaud Mr. Hester for his long and faithful career in the Senate, and the many invaluable contributions which he has made to the Senate and its Members.

I extend my very best wishes to him, to his wife, Melissa, and to his children, Carlotta and Benjamin.

ARIZONA DESERT WILDERNESS ACT

Mr. ARMSTRONG. Mr. President, I wanted to thank Senators MCCAIN and DECONCINI as well as the members of the Senate Energy Committee for responding to the concerns raised by Colorado with respect to wilderness water rights in Arizona wilderness areas.

Some might ask what interest Colorado could possibly have in the designation of wilderness in Arizona, and I want to make clear to my colleagues that Colorado would not have gotten involved in the designation of wilderness in another State had it not been extremely important to our communities. I am a strong supporter of the concept that States should make their own decisions with respect to wilderness areas and in no way did the Colorado delegation, or Coloradans take any part in the boundary negotiations, or determining management prescriptions or acreage for Arizona's wilderness lands. Colorado's interests in the issue are very narrow, but extremely important to the State. I do not exaggerate when I tell my colleagues that at the core of the issue is the ability of the State to continue to grow and prosper.

Mr. President, prior to becoming a State in 1876, Colorado submitted its State constitution to the Congress to be ratified. It was in that important document that the leaders of Colorado laid the foundation on which to build our great State. Part of that foundation dealt with the precious and scarce resource in the West—water. The Colorado Constitution states:

> The right to divert the unappropriated waters of any natural stream to beneficial use shall never be denied.* * *

Since that time, the citizens of Colorado have fought to protect their water resources from intrusion by the Federal Government. It has not always been an easy battle. There are few outside the West who understand the importance that water resource management has on the Western way of life, and fewer still who understand the technical intricacies involved in that management. In recent years it seems to have become more difficult, because emotional rhetoric is too often based on a flawed understanding of Colorado water law.

So when the Federal water rights proposed to be granted to the wilderness areas in Arizona raised questions about the supremacy of the interstate water compacts and threatened to impact the ability of Colorado to maintain State control over her water decisions, I was pleased the Arizona delegation recognized those concerns and moved to correct them.

Mr. President, the Arizona wilderness bill, in its original form and as reported out of the Energy Committee did threaten Colorado. The legislation created wilderness areas on the Colorado River and granted those areas a Federal reserved water right for wilderness purposes. This Federal reserved water right could prohibited the State of Colorado, and the other Upper Basin States, from protecting their interests under the interstate compacts.

The Arizona delegation recognized this threat and changed their language so Arizona could designate wilderness and the Upper Basin could protect their water rights. I commend them for addressing this issue head on. This Arizona bill now denies a wilderness water right in the areas impacted and reaffirms the view of Congress that State water law, and the interstate compacts should not be disrupted by the designation of wilderness areas.

I would also have printed in the RECORD three letters I have received on this issue and so ask unanimous consent. These letters outline the position of the water community in Colorado on this legislation. I find them informative and enlightening and commend them to my colleagues.

Again, I would like to thank the Arizona delegation for recognizing the importance of this issue, by giving statutory protection to Colorado's most precious resource—water.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

COLORADO RIVER WATER CONSERVATION DISTRICT,
Glenwood Springs, CO, October 19, 1990.

Re H.R. 2570. Arizona Wilderness Act of 1990.

Hon. WILLIAM L. ARMSTRONG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR ARMSTRONG: The Colorado River Water Conservation District was very pleased to receive a copy of your letter to Senator McCain dated October 15, 1990, that set forth the amendment required to protect the ability of the State of Colorado to develop the water resources to which it is entitled under the compacts. As President, I want to thank you for what you have accomplished in amending the Arizona Wilderness Act of 1990. Needless to say, the water users of Colorado would be severely damaged were it not for your vigilant efforts to make certain that they are protected.

We have also reviewed the letter of October 17, 1990 by the Colorado Commissoner to the Upper Colorado River Commission, James S. Lochheed, and concur in his enumaration of what we understand the Bill accomplishes in protecting Colorado's water users. Briefly, these items are: (1) the Bill expressely provides that no water rights are reserved; (2) the Bill will not affect, modify, supplement or add to water rights which were decreed to the Havasu Lake National Wildlife Refuge and the Imperial National Wildlife Refuge in the Decree of the Supreme Court in Arizona v. California; (3) the boundaries of the wilderness areas have been drawn at the Colorado River's 1983 high water line; (4) the Bill will not affect the operations of any existing or future reservoirs on the Colorado River in the Upper or Lower Basins; and (5) the Bill language agreed to by Senator McCain, protects not only operations and permitting decisions in the Upper Basin, but also the allocations and compact entitlements of the Upper Division States.

Thank you again for your continued support, If there is anything we can do to be of assistance to you in this matter, please feel free to contact me.

Very truly yours,

THEODORE L. BROOKS,
President.

LEAVENWORTH & LOCKHEAD, P.C.,
ATTORNEYS AT LAW,
October 17, 1990.

Re H.R. 2570: Arizona Wilderness Act of 1990.

Senator WILLIAM L. ARMSTRONG,
U.S. Senate,
Washington, DC.

DEAR SENATOR ARMSTRONG: I am writing to you in my capacity as the Colorado Commissioner to the Upper Colorado River Commission, the Governor's interim appointee to the Bureau of Reclamation Seven Basin State Task Force on Colorado River Reservoir Operations, and as a member of the Colorado Water Conservation Board, concerning certain provisions of the proposed Arizona Wilderness Bill. I believe the language you have worked out with Senator McCain, together with other language in the Bill and in the legislative history, offers to Colorado protection of the development of its compact-entitled water, while allowing Arizona to designate additional wilderness areas.

First, I understand the Bill expressly provides that no water rights are reserved, impliedly or otherwise, to the water of the Colorado River. This express denial of reserved rights is critical to the protection of the water interests of Colorado.

Second, I understand this Bill will not affect, modify, supplement, or add to the water rights which were decreed to the Havasu Lake National Wildlife Refuge and the Imperial National Wildlife Refuge in the Decree of the Supreme Court in *Arizona v. California.* It is important that this Decree is unaffected by this Bill and that no water or water rights over and above these amounts are reserved to these areas from the Colorado River as a result of this Bill.

Third, I understand that the boundaries of the wilderness areas have been drawn at the Colorado River's 1983 high water line. In this manner, the River is excluded from the wilderness areas, and the wilderness areas are not appurtenant to the River. Moreover, this configuration of the wilderness boundaries further clarifies the intent of this Bill that the operations of Colorado River Reservoirs, and in particular the operations at Hoover Dam and Glen Canyon Dam, are unaffected by this Bill.

Fourth, I understand this Bill will not affect the operations of any existing reservoir on the Colorado River in the Lower Basin, or of any existing or future reservoir on the Colorado River and its tributaries in the Upper Basin. Specifically, all operations under the 1956 Colorado River Storage Project Act, the 1968 Colorado River Basin

Project Act, the Boulder Canyon Project Act, the Boulder Conyon Project Adjustment Act, and any criteria or operating plans promulgated thereunder, will remain unaffected. Additionally, this Bill will not affect any permitting or operational decision on any existing or future dam or water facility in the Upper Basin, in the Colorado River or its tributaries.

Finally, the Bill language you have worked out with Senator McCain further protects not only operations and permitting decisions in the Upper Basin, but also the allocations and compact entitlements of the Upper Division States.

Again, these provisions and understandings, taken together, clarify the intent and purposes of these wilderness designations. Please let me express my appreciation for your continued efforts on this legislation to protect the interests of Colorado water users.

Very truly yours,

JAMES S. LOCHHEAD.

NWRA,
Arlington, VA, October 20, 1990.

Hon. WILLIAM L. ARMSTRONG,
U.S. Senate,
Washington, DC.

DEAR SENATOR ARMSTRONG: On behalf of the National Water Resources Association (NWRA), I am writing concerning the provisions of the proposed Arizona wilderness legisaltion. We know that you, along with Senators Wallop and Garn, have been very concerned that designation of wilderness in Arizona, without the proper protective language, might affect the operations of existing reservoirs on the Colorado River system, and might jeopardize the ability of the Upper Basin states to exercise their Compact entitlements. NWRA shares these same concerns, and it is very pleased that you and Senator McCain have worked out language to be included which resolves these particular concerns.

We understand that the legislation now clearly provides that no water of the Colorado River is reserved to the United States, be it expressly, by implication or otherwise, within the Havasu and Imperial Wilderness Areas. The dangers of allowing federal reserved water rights in downstream locations have been a serious concern of the water providers and users across the West. You and Senator McCain are to be commended for facing this sensitive issue head-on, and for showing the nation that the denial of federal water rights in downstream locations will in fact allow the designation of wilderness to proceed.

We further understand that language now has been inserted which makes clear that this legislation will not affect the operations of any existing or future reservoirs on the Colorado River and its tributaries. Also, we understand that the legislation now specifically reaffirms river compact allocations and entitlements, and preserves the rights granted by past Congressional Acts for the states within the Colorado River system. We appreciate the care with which you and Senator McCain have protected the rights which are so vital to the seven Basin states.

While NWRA is still troubled with the provision in the legisaltion which grants federal reserved water rights to other wilderness areas in Arizona, i.e. those not situated on the mainstream of the Colorado River, we understand that granting such rights is the prerogative of the Arizona Congressional delegation. We respect that perogative, however, we believe that doing so will serve to disrupt Arizona's water rights administration system and will seriously inhibit future development and management of water resources within the State.

NWRA appeciates the commitment that you and Senator McCain have shown in resolving many of our concerns and in protecting the interests of western water users. We look forward to your continued support in the future to assure that the principle established with the Havasu and Imperial Wilderness Areas is applied in wilderness designations in other western states.

Sincerely,

THOMAS F. DONNELLY,
Executive Vice President.

INNOVATIONS OF THE SOUTH DAKOTA CORN GROWERS

Mr. DASCHLE. Mr. President, I rise today, to pay tribute to the South Dakota Corn Growers, who continue to help lead the way in agricultural policy and in finding new outlets for our bountiful crops.

One area where the South Dakota Corn Growers continue to forge new ground is in the development of alcohol fuels.

Many of my colleagues may have seen the Corn Growers 1988 Chevy Corsica on the grounds of the Capitol during the Clean Air Act debate. It is the goal of the South Dakota Corn Growers to launch the first commercial fleet of E-85 vehicles in the country, and we are all very excited about this prospect.

I hope my colleagues will read the article about the South Dakota Corn Growers, and consider what a few innovative and persistent farmers can accomplish. This may dispeal some of the myths that float around this place that the ethanol industry is just a few fat cats getting rich off the taxpayers' money. As can be seen, the ethanol industry features many dedicated individuals who are genuinely committed to improving ethanol as a fuel and to helping America meet its energy, environmental, and agricultural challenges.

I ask unanimous consent that I be permitted to insert for the RECORD an article from the October 15, 1990, issue of the trade journal New Fuels Report that describes the organization's recent efforts to develop E-85, an 85-percent ethanol/15-percent gasoline mixture. Preliminary tests conducted for the South Dakota Corn Growers show that this fuel gives huge reductions in emissions as well as excellent performance.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SD CORN GROWERS PLAN FEASIBILITY TESTS ON E-85, MAJOR STEP TO COMMERCIAL USE

The South Dakota Corn Growers Assn, plans to start the first certified and documented feasibility tests of an 85 percent ethanol-15 percent gasoline (E85) blend, in what it hopes will be a major step toward laying the technical groundwork to spur consumer acceptance of E85 blends. Success of these tests would ensure that the SDCG would launch the nation's first E85 fleet test.

A few weeks ago, the association delivered a 2.5-liter 1990 Pontiact 2000, which was converted to run on E85, to the Lake Vocational Technical Institute of Watertown, SD for a one-year test of vehicle dependency, performance and driveability. Over 10,000 miles are expected to be logged under a range of conditions. Informed sources expect the results to be promising enough to substantiate a larger scale test.

Preliminary results indicate that the E85 in the Pontiac 2000 produce few hydrocarbon, carbon dioxide, and carbon monoxide emissions and slightly more nitrogen dioxide emissions than gasoline during cold-start conditions. The bulk of carbon monoxide and hydrocarbon emissions arise when vehicles are started at cold temperatures (cold-start), informed sources say. In the current testing both the Pontiac 2000 and a Chevrolet Corsica, which was the first vehicle that SDCG converted to run on E85, will most likely be used.

Preliminary emissions tests carried out by the U.S. Environmental Protection Agency on the 2-liter engine 1988 Chevrolet Corsica show that the amount of hydrocarbons, carbon monoxide and carbon dioxides emitted during cold-start are less for E85 than for standard unleaded gasoline. But nitrogen dioxide tailpipe emissions are substantially higher for E85 than gasoline.

According to results for cold-start emissions, E85 emits 0.142 grams/mile of hydrocarbons, 1.826 of carbon monoxide, and 285.055 carbon dioxide. Originally, engine out nitrogen dioxide emissions were lower for E85 than for gasoline (7.87 g/mile and 8.11 g/mile, respectively), but tail-pipe emissions for E85 were roughtly double those of gasoline (0.801 g/mile compared with 0.394 g/mile.) Informed sources blamed the discrepancy on the inability of the catalytic converter to handle ethanol exhaust gas, which is cooler than gasoline's. Modifications have yielded substantial improvement in NO_x emissions, according to sources.

Both vehicles contain the Webster-Heise valve, which is mounted between the carburetor and the intate manifold. The valve improves the air-to-fuel ratio and vaporizes the fuel mechanically without heat. The valve allows more air to be added to the fuel mixture, resulting in energy gain which enhances performance and fuel economy. Conventional devices of this type as used in Brazil heats the mixture, resulting in some removal of air which subsequently lowers the fuel economy.

H.R. 996, THE EXCELLENCE IN MATHEMATICS, SCIENCE, AND ENGINEERING EDUCATION ACT

Mr. KENNEDY. Mr. President, I urge the Senate to approve the conference report on H.R. 996, the Excellence in Mathematics, Science, and Engineering Education Act. This is a revised version of a bill that I introduced in February with 15 cosponsors.

Science and mathematics are vital to America's economic growth and social progress. Medical research, environmental challenges, telecommunications, information technology, de-

fense, space exploration, and global competitiveness rest on the accomplishments of our scientists and our commitment to scientific excellence.

We all know that America must do more in science, mathematics, and engineering. The declining quality of science and math education in our public schools has been well documented. So has the declining number of science and math majors in our colleges. By the year 2006, we will face a projected shortage of as many as 675,000 scientists and engineers. These unsettling trends make it urgent that we address our national needs in this area.

In recent weeks, science and mathematics have been in the news again. This time the headlines told us that U.S.-trained researchers swept the Nobel prizes in physics and chemistry. Eight out of nine academic winners were U.S.-born, and all were U.S.-trained. America's record in garnering Nobel prizes is enviable; in the last 40 years the United States has won more academic Nobel prizes than the rest of the world combined.

While winning these prizes is important and should be a source of pride to all Americans, the Nobel prizes are an imperfect indicator of a nation's scientific achievement. They are often given for work done decades earlier. They tell us nothing about the scientific potential of the next generation of Americans.

In recent interviews of our Nation's top scientists, many are openly pessimistic about America's scientific future. As Harvard biologist Walter Gilbert, a 1980 Nobel laureate, says, "We no longer have a government that believes it has a responsibility to create new knowledge for the benefit of society."

Historically, the American system of research support has encouraged creativity and pathbreaking investigation. It was this commitment that produced the unsurpassed excellence of our current scientists and the recent golden age of U.S. scientific creativity. But, we must now turn our attention to tomorrow's scientists and engineers.

The Excellence in Math, Science, and Engineering Education Act of 1990 demonstrates our commitment to bringing about a new golden age of American science, by giving high priority to investing in math and science education.

This bill has three central themes. First, it seeks to enhance the quality of math and science teaching, especially in elementary schools. Second, it contains provisions to encourage young Americans to pursue graduate degrees in mathematics, science, and engineering. Finally, the bill aims to increase the participation of women and minorities in math and science careers.

Improving math and science teaching at the elementary and secondary level is the vitally important first objective. If we do not do this, our chances of continued scientific excellence are nil.

The bill has several important provisions to address this need. It authorizes regional science education consortia, establishes a national clearinghouse of math and science curriculum materials, and expands computer curriculum programs. Taken together, these initiatives will make high quality resources available to teachers.

In addition, the Robert Noyce Scholarships give talented students majoring in math and science a college scholarship in exchange for teaching in the Nations' schools.

Second, at the graduate and undergraduate levels, we must encourage more students to study mathematics, science, and engineering. This legislation expands the very successful graduate fellowship program of the National Science Foundation. In addition, the bill establishes a graduate traineeship program to encourage more students to pursue careers in science.

The bill also authorizes two scholarship programs to encourage the Nation's best students to major in math and science. One of these programs—National Science Scholars—was proposed by the Bush administration as part of its Educational Excellence Act. I am delighted that it is included here.

The third objective is also vital. In order to promote the competitiveness in American science, we must begin with the largest possible pool of talent. Minorities and women are severely underrepresented in science and math careers. We are wasting much of our potential for strengthening our scientific competitiveness. Equally important, simple equity demands that we take effective steps to encourage underrepresented groups to pursue careers in these fields.

This bill reflects our dedication to achieving the greatest possible participation by minorities and women in mathematics, science, and engineering. It supports alliances between institutions with high-quality research programs and those with predominantly minority enrollment. In many of the bill's programs, such as the fellowships, traineeships, and elementary and secondary education programs, special consideration will be given to encouraging women and minority participation in math and science.

I would like to recognize several important people and thank them for their efforts on behalf of this legislation, including Senator HATCH and Laurie Chivers of his staff, Senator PELL and Ann Young of his staff, Senator KASSEBAUM and Becky Voslow and Lydia Spencer of her staff, Senator DODD and Joan Gilman of his staff, Senator COCHRAN and Doris Dixon of his staff, and Senator HATFIELD and Sue Hildick of his staff. Terry Hartle, Rusty Barbour, Michael Epp, and Amy Lowrey, of my staff, spent many long hours on this bill, and I greatly appreciate their skillful efforts.

Mr. President, this is vitally important legislation that enjoys widespread bipartisan support, and I urge my colleagues to join me in supporting it.

Mr. President, I ask unanimous consent that Senator COHEN be added as a cosponsor to H.R. 996.

S. 321, THE BUY INDIAN ACT AMENDMENTS OF 1989

Mr. McCAIN. Mr. President, I rise today to express my strong support for S. 321, the Buy Indian Act Amendments of 1989. I would like to express my appreciation to all of my colleagues in the Senate who have supported this very important legislation. I would also like to express my deep appreciation for the leadership of my good friend, Senator INOUYE, in advancing this legislation. Finally, I would like to recognize the important contributions from my colleagues in the House to improve this legislation. In particular, I would like to thank Congressman UDALL and Congressman RHODES for their leadership on this issue. I believe this bill will help ensure that the procurement of goods and services for the benefit of Indians shall be carried out in a manner that achieves the maximum benefit for Indian Employment and Economic Development. In hearings before the Select Committee on Indian Affairs, I heard testimony from many Indian contractors who have been frustrated in their attempts to compete for the $200 million in Federal contracts let each year for the benefit of Indians. These legitimate Indian businessmen have been edged out of many contract opportunities by sham operations and front businesses which are organized as Indian-owned enterprises but are, in fact, nothing more than shells formed by ineligible non-Indian corporations and individuals. These front operations take advantage of Indian preference laws to defraud the Federal Government in the award of millions of dollars of Indian preference contracts.

Mr. President, S. 321 will provide for uniform standards for certification of Indian-owned enterprises which are qualified for Indian preferences. These standards will apply to all Federal and tribal contracting agencies. These amendments will clarify the application of Indian preference by consolidating existing Indian preference laws under one law which applies to all Federal and tribal agencies. I believe this legislation will eliminate the front operators and provide increased opportunities for legitimate Indian-

owned firms. I urge my colleagues to support S. 321.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination which was referred to the Committee on Commerce, Science, and Transportation.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT ON HAZARDOUS MATERIALS TRANSPORTATION—MESSAGE FROM THE PRESIDENT—PM 154

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

In accordance with the requirements of section 109(e) of the Hazardous Materials Transportation Act (Public Law 96-633; 49 U.S.C. 1808(e)), I transmit herewith the Annual Report on Hazardous Materials Transportation for calendar year 1989.

GEORGE BUSH.

THE WHITE HOUSE, *October 26, 1990.*

LONG-TERM AGRICULTURAL TRADE GOALS AND STRATEGY—MESSAGE FROM THE PRESIDENT—PM 155

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Agriculture, Nutrition, and Forestry.

To the Congress of the United States:

In accordance with section 4201 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; 7 U.S.C. 5211), I herewith transmit the second annual U.S. Long-Term Agricultural Trade Goals and Strategy Report for Fiscal Year 1991. This report provides recommended policy goals for U.S. agricultural trade and exports, and recommended levels of spending on international activities of the Department of Agriculture, for 1-, 5-, and 10-fiscal year periods.

GEORGE BUSH.

THE WHITE HOUSE, *October 26, 1990.*

MESSAGES FROM THE HOUSE

ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

At 11:28 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 4638. An act to revise the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act and the Orphan Drug Act, and for other purposes;

H.J. Res. 525. Joint resolution designating November 18 through 24, 1990, as "National Family Caregivers Week";

H.J. Res. 649. Joint resolution approving the extension of nondiscriminatory treatment (most favored nation treatment) to the products of Czechoslovakia; and

H.J. Res. 667. Joint resolution to designate November 16, 1990, as "National Federation of the Blind Day".

The enrolled bill and joint resolutions were subsequently signed by the acting President pro tempore [Mr. DASCHLE].

At 4:05 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 1893) to reauthorize the Asbestos School Hazard Abatement Act of 1984; without amendment.

The message also announced that the House has agreed to the concurrent resolution (S. Con. Res. 156) making corrections in the enrollment of S. 2834, to authorize appropriations for fiscal year 1991 for intelligence and intelligence-related activities for the U.S. Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes; without amendment.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 1463) to amend the National Capital Transportation Act of 1969 relating to the Washington Metrorail System.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3789) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 14 to the bill (H.R. 5257) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1991, and for other purposes; and that the House disagrees to the amendments of the Senate to the amendments of the House to the amendments of the Senate numbered 31 and 163 to the bill.

The message also announced that the House agrees to the amendments of the Senate to the amendments of the House to the amendments of the Senate numbered 18 and 120 to the bill (H.R. 5158) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1991, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4653) to reauthorize the Export Administration Act of 1979, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2065. An act to provide for studies and planning activities for improvement of tropical forest management, including forest management of insular areas and jurisdictions and public lands of the United States, and for other purposes; and

H.R. 5932. An act to promote excellence in American education by recognizing and rewarding schools, teachers, and students for their outstanding achievements, enhancing parental choice, encouraging the study of science, mathematics, and engineering, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolution;

S. 580. An act to require institutes of higher education receiving Federal financial assistance to provide certain information with respect to the graduation rates of student-athletes at such institutions;

S. 1756. An act to provide for the preservation and interpretation of sites associated with Acadian culture in the State of Maine;

S. 1890. An act to amend title 5, United States Code, to provide relief from certain inequities remaining in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes;

S. 2516. An act to augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Sevices Survey Act by allowing that agency to share statistical establishment list information compiled by the Bureau of the Census, and for other purposes;

S. 3062. An act to transfer the responsibility for operation and maintenance of Highway 82 Bridge at Greenville, Mississippi, to the States of Mississippi and Arkansas;

H.R. 3840. An act to establish the Newberry National Volcanic Monument in the State of Oregon, and for other purposes;

H.R. 5268. An act making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1991, and for other purposes; and

H.J. Res. 682. Joint resolution waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress.

The enrolled bills and joint resolution, except H.R. 5268, were subsequently signed by the Acting President pro tempore [Mr. DASCHLE].

The enrolled bill H.R. 5268 was subsequently signed by the President pro tempore [Mr. BYRD].

At 6.06 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 677) to amend the Arctic Research and Policy Act of 1984 to improve and clarify its provisions.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 4559) to establish the Red Rock Canyon National Conservation Area; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 987) to amend the Alaska National Interest Lands Conservation Act, to designate certain lands in the Tongass National Forest as wilderness, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3703) to authorize the Rumsey Indian Rancheria to convey a certain parcel of land.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4115. An act to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration, and for other purposes;

H.R. 4796. An act to allow legal aliens to work as masters and pilots aboard commercial fishing vessels and to allow United States' businesses owned by legal aliens to operate such vessels;

H.R. 5889. An act to require the Federal depository institution regulatory agencies to take additional enforcement actions against depository institutions engaging in money laundering, and for other purposes;

H.R. 5909. An act to establish the Florida Keys National Marine Sanctuary, and for other purposes; and

H.R. 5922. An act to authorize the Secretary of Commerce to conduct a marine biotechnology research, training, and technology transfer study and program.

At 7:43 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.

At 11 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 1602) to amend the Public Health Service Act to improve emergency medical services and trauma care, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. WAXMAN, Mr. BATES, Mr. LENT, and Mr. MADIGAN as managers of the conference on the part of the House.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4487) to amend the Public Health Service Act to revise and extend the program for the National Health Service Corps, and to establish certain programs of grants to the States for improving health services in the States.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5311) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1991, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 2065. An act to provide for studies and planning activities for improvement of tropical forest management, including forest management of insular areas and jurisdictions and public lands of the United States, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 4115. An act to authorize appropriations for certain ocean and coastal programs of the National Oceanic and Atmospheric Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 4796. An act to allow legal aliens to work as masters and pilots aboard commercial fishing vessels and to allow United States' businesses owned by legal aliens to operate such vessels; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5932. An act to promote excellence in American education by recognizing and rewarding schools, teachers, and students for their outstanding achievements, enhancing parental choice, encouraging the study of science, mathematics, and engineering, and for other purposes.

The Committee on Commerce, Science, and Transportation was discharged from the further consideration of the following bill, which was placed on the calendar:

H.R. 2921. An act to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate together with accompanying papers and documents which were referred as indicated:

EC-3754. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, a report on contract award dates for the period November 1 to December 31, 1990; to the Committee on Armed Services.

EC-3755. A communication from the Acting Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on the Department of the Navy's proposed letter of offer to Turkey for defense articles estimated to cost in excess of $50 million; to the Committee on Armed Services.

EC-3756. A communication from the Chief of the Special Operations Branch, Office of Legislative Liaison, Department of the Army, transmitting, pursuant to law, a report on the decision to convert the visual information services function at Tripler Army Medical Center, Hawaii, to performance under contract; to the Committee on Armed Services.

EC-3757. A communication from the Assistant Secretary of Defense (Production and Logistics), transmitting, pursuant to law, the Strategic and Critical Materials Report for the period October 1989 through March 1990; to the Committee on Armed Services.

EC-3758. A communication from the Secretary of Energy, transmitting, pursuant to law, the quarterly report on the Strategic Petroleum Reserve for the period April 1 to June 30, 1990; to the Committee on Energy and Natural Resources.

EC-3759. A communication from the Secretary of Agriculture and the Secretary of the Interior, transmitting jointly, pursuant to law, the biennial report on the administration of the Wild Free Roaming Horse and Burro Act; to the Committee on Energy and Natural Resources.

EC-3760. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to

the Committee on Energy and Natural Resources.

EC-3761. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3762. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3763. A communication from the Assistant General Counsel of the Department of Energy, transmitting, pursuant to law, notices of meetings related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-3764. A communication from the Secretary of the Interior, transmitting, for the information of the Senate, the views of the Department on the enactment of H.R. 3977, the proposed "Antarctic Protection Act of 1990"; to the Committee on Foreign Relations.

EC-3765. A communication from the Executive Director of the National Commission on Libraries and Information Science, transmitting, pursuant to law, the report of the Commission under the Inspector General Act Amendments of 1988; to the Committee on Governmental Affairs.

EC-3766. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports issued by the General Accounting Office for the month of September 1990; to the Committee on Governmental Affairs.

EC-3767. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 8 253 adopted by the Council on October 9, 1990; to the Committee on Governmental Affairs.

EC-3768. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 8 254 adopted by the Council on September 25, 1990; to the Committee on Governmental Affairs.

EC-3769. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 8 255 adopted October 9, 1990; to the Committee on Governmental Affairs.

EC-3770. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 8 256 adopted by the Council on September 25, 1990; to the Committee on Governmental Affairs.

EC-3771. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 8 257 adopted by the Council on September 25, 1990; to the Committee on Governmental Affairs.

EC-3772. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 8 258 adopted by the Council on September 25, 1990; to the Committee on Governmental Affairs.

EC-3773. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 8 259 adopted by the Council on September 25, 1990; to the Committee on Governmental Affairs.

EC-3774. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, a report entitled "Senior Executive Service Pay Setting and Reassignments: Expectations vs. Reality"; to the Committee on Governmental Affairs.

EC-3775. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled "Managing Information Resources: Eighth Annual Report under the Paperwork Reduction Act of 1980"; to the Committee on Governmental Affairs.

EC-3776. A communication from the Assistant Secretary of the Interior (Indian Affairs), transmitting, pursuant to law, a report on the relative costs and benefits of the Tribal Self Governance Project; to the Select Committee on Indian Affairs.

EC-3777. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on State responses to the recommendations of the Task Force on Long Term Health Care Policies; to the Committee on Labor and Human Resources.

EC-3778. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation to repeal the Federal Employers' Liability Act, to provide for coverage of railroad employees' injury claims under individual State workers compensation programs, and for other purposes; to the Committee on Labor and Human Resources.

EC-3779. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the fiscal year 1992 budget request of the Commission; to the Committee on Rules and Administration.

EC-3780. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, the annual report of the Small Business Administration for fiscal year 1989; to the Committee on Small Business.

EC-3781. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to amend the Soldier's and Sailor's Civil Relief Act of 1940; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 2645. A bill to improve the health status of the urban Indian population and to enhance the quality and scope of health care services, disease prevention activities, and health promotion initiatives targeted at the urban American Indian population (Rept. No. 101-557).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. AKAKA:

S. 3249. A bill to deem the Strategic Target System program conducted at Kauai, Hawaii, to be a major Federal action for the purposes of the National Environmental Policy Act; to the Committee on Environment and Public Works.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 3250. A bill to provide for clarification of certain land and conveyance statutes in the State of Alaska; to the Committee on Energy and Natural Resources.

By Mr. BOREN (for himself and Mr. COHEN):

S. 3251. A bill to amend the National Security Act of 1947 to improve counterintelligence measures through enhanced security for classified information, and for other purposes; to the Select Committee on Intelligence.

By Mr. BREAUX:

S. 3252. A bill to provide for the creation, restoration, protection, enhancement and conservation of coastal wetlands, and to conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend upon such habitats, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LIEBERMAN:

S. 3253. A bill to provide for the establishment of industrial recapitalization funds by industries which were injured by unfair import competition, and for other purposes; to the Committee on Finance.

By Mr. BIDEN (for himself, Mr. HATCH, Mr. KENNEDY, Mr. SPECTER, Mr. INOUYE, Mr. LIEBERMAN, Mr. METZENBAUM, and Mr. MOYNIHAN):

S. 3254. A bill to protect the free exercise of religion; to the Committee on the Judiciary.

By Mr. WARNER:

S. 3255. A bill to amend the Solid Waste Disposal Act to encourage greater recycling; to the Committee on Environment and Public Works.

By Mr. JEFFORDS (for himself and Mr. SYMMS):

S. 3256. A bill to amend the Internal Revenue Code of 1986 to provide a special valuation of sensitive environmental areas for estate tax purposes, and for other purposes; to the Committee on Finance.

By Mr. NUNN (for himself, Mr. BOREN, and Mr. PRYOR):

S. 3257. A bill to establish youth apprenticeship demonstration programs, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. THURMOND:

S. 3258. A bill to amend chapter 3 of title 11, United States Code, to modify the compensation for private bankruptcy trustees; to the Committee on the Judiciary.

By Mr. D'AMATO:

S. 3259. A bill to amend title 38, United States Code, to revise the formula for payments to States for care furnished to veterans in State homes; to the Committee on Veterans' Affairs.

By Mr. DURENBERGER:

S. 3260. A bill to amend the Internal Revenue Code of 1986 to impose an excise tax on insurance companies not meeting certain coverage and rating standards with respect to health insurance provided to small employers; to the Committee on Finance.

By Mr. BURNS:

S. 3261. A bill to amend title 23, United States Code, to assist in the development of travel and tourism as a multipurpose land use of public lands for travel and tourism purposes, and for other purposes; to the

Committee on Environment and Public Works.

By Mr. GRAHAM (for himself and Mr. MACK):

S. 3262. A bill to modify the authorities for a flood control project on the Kissimmee River, Florida, and for other purposes; ordered held at the desk by unanimous consent.

By Mr. ADAMS:

S.J. Res. 385. Joint resolution providing statutory authorization for United States participation in multilateral efforts to restore the sovereignty of Kuwait and to deter and, if necessary, defend against further Iraqi aggression, and for other purposes; to the Committee on Foreign Relations.

S.J. Res. 386. Joint resolution providing statutory authorization for United States participation in multilateral efforts to restore the sovereignty of Kuwait and to deter and, if necessary, defend against further Iraqi aggression, and for other purposes; to the Committee on Foreign Relations.

By Mr. GORE:

S.J. Res. 387. Joint resolution calling on the Government of Malaysia to preserve the tropical rainforests and the indigenous tribal culture of Sarawak, Malaysia; and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. NUNN:

S. Res. 345. An original resolution expressing the gratitude of the United States Senate for the service of Hugh C. Evans, Deputy Legislative Counsel of the U.S. Senate, and commending the said Hugh C. Evans for the superlative quality of his service; considered and agreed to.

By Mr. FOWLER (for Mr. MITCHELL) (for himself and Mr. DOLE):

S. Res. 346. Resolution to authorize production of records by the Senate Permanent Subcommittee on Investigations; considered and agreed to.

S. Res. 347. Resolution to amend Senate Resolution 248 to clarify the authorization to pay the expenses of the Campaign Finance Reform Panel; considered and agreed to.

By Mr. DOLE (for Mr. KENNEDY) (for himself and Mr. HATCH):

S. Con. Res. 157. Concurrent resolution to authorize the duplicate official papers for H.R. 4487; considered and agreed to.

By Mr. NUNN (for himself and Mr. WARNER):

S. Con. Res. 158. Concurrent resolution directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 4739; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA:

S. 3249. A bill to deem the Strategic Target System program conducted at Kauai, HI, to be a major Federal action for the purposes of the National Environmental Policy Act; to the Committee on Environment and Public Works.

ENVIRONMENTAL IMPACT STATEMENT FOR THE STRATEGIC TARGET SYSTEM

● Mr. AKAKA. Mr. President, on September 27 and October 12, I contacted Defense Secretary Dick Cheney to request his support on an environmental impact statement for the proposed Strategic Target Systems Program, commonly referred to as STARS.

As part of the strategic defense initiative, the U.S. Army Strategic Defense Command is proposing to conduct a series of launches aimed at improving antimissile technology. The launches would originate from the Kauai test facility passing over the northern point of Niihau—a populated island in the Hawaiian chain—and land near the Kwajalein Atoll.

I have asked for an environmental impact statement. A less rigorus environmental assessment determined that STARS had no significant impact on the surrounding communities. The assessment was inadequate. The potentially devastating effect the proposed program could have on the people and the pristine environment on Kauai and Niihau certainly warrants a detailed EIS.

Mr. President, no matter how well-intentioned the military may be, accidents do occur. We cannot predict when and where misfortune may strike, but we can evaluate a situation and ensure that the potential for a disaster is minimized.

There is no imminent threat facing our Nation that requires us to rush forward with this strategic defense program. The magnitude of the STARS Program and its effects on our fragile ecosystem cannot be taken lightly.

That is why, Mr. President, I am today introducing legislation which will require the Defense Department to conduct and EIS before proceeding with the STARS Program. At this time, I recognize that the possibility of this legislation passing before adjournment is slim. However, I feel that introducing this bill will send a clear message to the Defense Department of the grave concerns held by the people of Hawaii, as well as put it on notice that we intend to pursue this matter further.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3248

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STRATEGIC TARGET SYSTEM PROGRAM UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT.

Notwithstanding any other provision of law, the Strategic Target System program conducted by the Sandia National Laboratories of the Department of Energy at the Kauai Test Facility of the Pacific Missile Range Facility, Kauai, Hawaii, shall be deemed to be a major Federal action significantly affecting the quality of the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).●

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 3250. A bill to provide for clarification of certain land and conveyance statutes in the State of Alaska; to the Committee on Energy and Natural Resources.

ALASKA LAND STATUS TECHNICAL CORRECTIONS ACT

Mr. MURKOWSKI. Mr. President, the 101st Congress has been an important one for Alaska Natives and Alaska land issues. Many important issues have been addressed, but many remain. The Alaska Land Status Technical Corrections Act of 1990 will address some of these issues. With this statement I intend to provide notice and make clear my intention to address these noncontroversial technical corrections to the Alaska Native Claims Settlement Act of 1971.

The Alaska Native Claims Settlement Act [ANCSA] resolved land claims issues raised by Alaska Natives in 1971. ANCSA also instructed the Secretary of the Interior to begin the process of granting land allotments to Alaska Native allotment applicants for lands traditionally used by the applicants.

This bill focuses on clarification of several land status statutes in Alaska. Specifically, section 2 of this bill would amend the Alaska National Interest Lands Conservation Act [ANILCA] to allow relief for specifically named allottees near Nome, AK, to obtain approval of their allotments at Fort Davis, AK. Fort Davis was previously listed as military land in the 1900's. It was returned to the Department of the Interior in 1921, but withdrawal was not modified to show restoration to public land use. These lands were not valid in ANILCA because the withdrawals were not identified as a bar to conveyance until 1979, too late to make the ANILCA title and conference report. This section of my bill will legislatively approve the 18 Fort Davis allotment applications near Nome, AK.

Section 3 of this bill will amend section 18 of ANCSA by adding language to allow amended land descriptions for lands selected by the State of Alaska, if equal in acreage and the State of Alaska agrees to reconvey or relinquish the land described in the amendment. This section also includes language to assure that the State entitlement is not increased or reduced. It allows relocation of allotments out of State parks and other legislatively designated areas to more usable land without the cost and time of reconveyance. This section will allow Na-

tives, whose land was mistakenly conveyed to the State, to relocate their allotments on other State lands.

Section 4 amends section 12(b) of ANCSA by adding a subsection 12 to relieve the Secretary of the Interior's obligation to fulfill entitlements under ANCSA to two native groups, Montana Creek Native Association and Caswell Native Assocition. In February 1976, Cook Inlet Region, Inc. [CIRI], entered into an agreement with the two native groups, in which CIRI agreed to convey 11,520 acres of land to each group in satisfaction of their group land entitlement. In 1982 CIRI conveyed the land to the groups as required by the 1976 agreement; however, the Secretary of the Interior was not a party to the agreement.

Section 5 amends section 19(b) of ANCSA to allow conveyance to the Elim Native Corp. of approximately 45,726 acres which they included in their land selections pursuant to the Alaska Native Claims Settlement Act. These particular lands are in dispute because when BLM conveyed the Norton Bay Reserve to the Elim Native Corp., it conveyed land within the 1929 boundaries of 300,000 acres rather than the original 1917 boundaries of 350,000 acres. The difference is due to a 1929 Executive Order No. 5207, signed by President Hoover, reducing the original Norton Bay Reserve, which is thought to have been unlawful in light of a 1927 statute enacted by Congress precluding the President from altering the boundaries of Executive Order Reserves.

Section 6 amends section 7(h)(C)(ii) of ANCSA by adding language to include brothers and sisters in allowing an adult holder to transfer settlement common stock to his or her brothers and sisters.

Section 7 amends ANCSA section 21(j) to allow a native corporation to establish a shareholder homesite program after 1991, so long as the alienability of the corporation's settlements common stock has not been terminated.

Section 8 amends the patent to the State of Alaska to instruct the Secretary of the Interior to remove the reverter clause for lands patented to the State of Alaska for airport purposes.

Section 9 modifies the boundary of the Chugach National Forest to include 9,300 acres of earthquake-slumped lowlands, which the BLM feels could be more efficiently and effectively managed by the Forest Service. The State of Alaska has indicated that it does not wish to select these lands, and the Forest Service is willing to incorporate them within the Chugach National Forest.

Finally, section 10 of this bill will provide for the relief of the Rabbit Creek Lions Club. The Secretary of the Interior is authorized and directed, under current fair market value less 20 percent, to convey 0.93 acres of land to the Rabbit Creek Lions Club. This conveyance shall reserve all minerals to the United States.

Mr. President, I have worked with the rest of the Alaska delegation, the State of Alaska, the Alaska Federation of Natives, the Bureau of Land Management and all those affected by the legislation in resolving some of the issues addressed in this bill. Although the changes envisioned by the legislation are technical in nature, they are necessary clarifications of existing law.

Mr. President, I intend to pursue considerations of this legislation after an opportunity for a congressional hearing early in the 102d Congress. I look forward to the input of all parties and the expeditious consideration of these important measures this year.

By Mr. BOREN (for himself and Mr. COHEN):

S. 3251. A bill to amend the National Security Act of 1947 to improve counterintelligence measures through enhanced security for classified information, and for other purposes; to the Select Committee on Intelligence.

COUNTERINTELLIGENCE IMPROVEMENTS ACT

● Mr. BOREN. Mr. President, today the distinguished vice chairman of the Select Committee on Intelligence and I am pleased to introduce a bill, S. 3251, which represents a revision of a bill we had introduced earlier in this session, S. 2726, which was also entitled "The Counterintelligence Improvements Act of 1990."

We had hoped that the Select Committee on Intelligence would have been able to report this bill during this session of Congress, however, the press of business at the end of this session has precluded us from doing so.

We felt it was important, nonetheless, to provide for the public record where the committee has thus far progressed in terms of its consideration of this bill. The committee held two public hearings on this bill during this session, as well as consulted with a number of professionals in this area. We received a number of suggestions for improvement, which are reflected in the revised bill we are introducing today. It will provide the basis for further discussions during the congressional adjournment with committees whose jurisdiction overlaps our own on some of these issues, as well as provide the starting point for consideration of this measure next session.

As I stated at the time the original version of this bill was introduced, it is our belief that enactment of this legislation would significantly improve the counterintelligence posture of the United States. It incorporates the recommendations made earlier this year to the Select Committee on Intelligence by a distinguished panel of private citizens which Senator COHEN and I asked to look at this area.

In transmitting these recommendations to the committee, the chairman of the panel, Eli S. Jacobs, wrote that "[w]hile these proposals can be refined and improved, [the panel] believes that the enactment of this or similar legislation would significantly strengthen the ability of the United States to deter, detect, and prosecute persons who turn to espionage."

These recommendations are the product of a 6-month review of the existing statutory framework governing the detection and prosecution of espionage. This effort was led, as I mentioned, by Eli S. Jacobs, a well-regarded industrialist, who served as a counterintelligence officer in the Army and serves on a variety of boards and committees in the defense and foreign policy area, including the Defense Policy Board, the General Advisory Committee on Arms Control and Disarmament, and the Carnegie Endowment for International Peace.

Serving on the panel with Mr. Jacobs was a singular group of private citizens with impressive accomplishments both within the Government and on the outside. These included Adm. Bobby Inman, who had previously served as Director of the National Security Agency, Deputy Director of Central Intelligence, and Director of Naval Intelligence; Warren Christopher, an attorney, who formerly served as Deputy Secretary of State and Deputy Attorney General; Lloyd Cutler, an attorney, who served as counsel to President Carter; Arthur B. Culvahouse, an attorney, who served as counsel to President Reagan; Sol Linowitz, a lawyer and diplomat, who served as Ambassador to the Organization of American States and as negotiator of the Panama Canal Treaty; Richard Helms, former Director of Central Intelligence and Ambassador to Iran; Seymour Weiss, former State Department official, Ambassador to the Bahamas, and Chairman of the Defense Policy Board; and Harold Edgar, professor of law at Columbia University.

The panel was motivated largely by the large number of espionage cases we have had over the last 15 years, many of which have resulted in catastrophic damage to the Nation's security. Indeed, the Select Committee on Intelligence has documented 57 cases since 1975 where U.S. citizens have been arrested for espionage, attempted espionage, or for activities that appeared related to espionage, such as "stockpiling" classified documents at home for that "rainy day." The vast majority of these cases have involved U.S. citizens taking the initiative, either to contact foreign governments or to hedge against future setbacks.

The panel did an indepth study of these cases, and attempted to craft legislative solutions that would deal

with the problems evident from the cases. We believe they did an excellent job.

Some may say, Mr. President, that this is all well and good, but the cold war is over and we do not need to worry about espionage any longer.

We are certainly witness to extraordinary events in the Soviet Union and Eastern Europe. No one can dispute that. But are our worries over further losses through espionage at an end? Clearly, they are not. First of all, improved relations do not necessarily translate into less espionage. U.S. counterintelligence agencies report no diminution in recent months in the collection efforts of the Soviet intelligence services, for example. Indeed, with improved relations will likely come an improved operating environment for foreign intelligence services no longer viewed as so threatening by Americans and no longer so constrained by personnel ceilings and travel limitations.

Second, as I have mentioned, the largest part of the espionage problem is largely impervious to political change in the Soviet Union and Eastern Europe, and that is the phenomenon of the United States citizen with access to highly classified information who volunteers his services to a foreign intelligence service for money. No foreign government is going to turn down an opportunity to acquire information in its own national interests; the market for United States classified information is hardly about to dry up.

Third, the Soviet and East European services are not the only ones we have to worry about. There are numerous countries out there, ranging from those who publicly and routinely berate us to countries who are ostensibly our friends, who are eager to obtain information that will improve their economic competitiveness, their military prowess, or give them an advantage in terms anticipating world events. Espionage has been a problem since the early days of the Republic, and is hardly about to vanish in this era of good feelings.

The Jacobs panel told the committee that it had considered a number of proposals to deal with the problem of espionage that it rejected as being too intrusive in terms of the rights and privacy of Americans. The panel attempted to craft proposals that did not impose an undue burden on civil liberties. We believe they succeeded.

Mr. President, the bill we are introducing today makes refinements to most of the panel's recommendations, but it retains the thrust of each of them. One of the sections of the original bill, giving the NSA Director authority to assist former employees who may pose a security problem, has been dropped from the bill since this provision was enacted as part of the Intelligence Authorization Act for fiscal year 1991. In another case we have added a related proposal recommended by the Justice Department which was not considered by the Jacobs panel. This recommendation is explained in the section-by-section analysis which is included here.

Mr. President, I believe the Jacobs panel has performed a real public service in developing these proposals. The committee is certainly appreciative, as should be all of our colleagues that these very busy and talented people should take the time without remuneration to look at ways we can improve the statutory framework for dealing with this serious and intractable problem. We have made refinements in these proposals and, I think, have improved them. But it was the Jacobs panel who did the basic spadework.

Mr. President, I ask unanimous consent that the text of the bill and an accompanying section-by-section analysis be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3251

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Counterintelligence Improvements Act of 1990".

SEC. 2. AMENDMENT TO THE NATIONAL SECURITY ACT OF 1947.

The National Security Act of 1947 (50 U.S.C. 401 et. seq.) is amended by inserting at the end thereof the following new title:

"TITLE VIII—ACCESS TO TOP SECRET INFORMATION"

SEC. 801. ELIGIBILITY FOR ACCESS TO TOP SECRET INFORMATION.—

(a) The President and Vice President, Members of the Congress, Justices of the Supreme Court and judges of other courts of the United States established pursuant to Article III of the Constitution, shall, by virtue of their elected or appointed positions, be entitled to access to Top Secret information needed for the performance of their governmental functions without regard to the other provisions of this title.

(b) Among employees of the United States Government, access to Top Secret information shall be limited to employees:

(1) who have been granted access to such information pursuant to this title;

(2) who are citizens of the United States who require routine access to such information for the performance of official governmental functions; and

(3) who have been determined to be trustworthy based upon a background investigation and appropriate reinvestigations and have otherwise satisfied the requirements of section 802, below.

(c) Access to Top Secret information by persons other than those identified in subsections (a) and (b) shall be permitted only in accordance with the regulations issued by the President pursuant to section 802 below.

SEC. 802. IMPLEMENTING REGULATIONS.—The President shall, within 180 days of enactment of this title, issue regulations to implement this title which shall be binding upon all departments, agencies, and offices of the Executive branch. These regulations shall, be a minimum, provide that—

(A) no employee of the United States Government shall be given access to Top Secret information owned, originated or possessed by the United States, after the effective date of this title, by any department, agency, or entity of the United States Government unless such person has been subject of an appropriate background investigation and has—

(1) provided consent to the investigative agency responsible for conducting the security investigation of such person, during the initial background investigation and for such time as access to such information is maintained, and for 5 years thereafter, permitting access to—

(a) financial records concerning the subject pursuant to section 1104 of the Right to Financial Privacy Act of 1978;

(b) consumer reports concerning the subject pursuant to section 1681b of the Consumer Credit Protection Act; and

(c) records maintained by commercial entities within the United States pertaining to any travel by the subject outside the United States;

Provided, That—

(i) no information may be requested by an authorized investigative agency pursuant to this section for any purpose other than making a security determination;

(ii) where the person concerned no longer has access to Top Secret information, no information may be requested by an authorized investigative agency pursuant to this section unless such agency has reasonable grounds to believe, based upon specific and articulable facts available to it, that such person may pose a threat to the continued security of the information to which he or she had previously had access; and

(iii) any information obtained by an authorized investigative agency pursuant to this section shall not be disseminated to any other department, agency, or entity for any purpose other than for making a security determination, or for foreign counterintelligence or law enforcement purposes.

(2) agreed, during the period of his or her access, to report to the department, agency, or entity granting such access in accordance with applicable regulations, any travel to foreign countries which has not been authorized as part of the subject's official duties;

(3) agreed to report to the Federal Bureau of Investigation, or to appropriate investigative authorities of the department, agency, or entity concerned, any unauthorized contacts with persons known to be foreign nationals or persons representing foreign nationals, where an effort to acquire classified information is made by the foreign national, or where such contacts appear intended for this purpose. For purposes of this subsection, the term "unauthorized contacts" does not include contacts made within the context of an authorized diplomatic relationship.

Failure by the employee to comply with any of the requirements of this subsection shall constitute grounds for denial or termination of access to the Top Secret information concerned.

(B) all employees granted access to Top Secret information pursuant to this subsection shall also be subject to—

(1) additional background investigations by appropriate governmental authorities during the period of access at no less frequent interval than every 5 years, except

that any failure to satisfy this requirement that is not solely attributable to the subject of the investigation shall not result in a loss or denial of access; and

(2) investigation by appropriate governmental authority at any time during the period of access to ascertain whether such persons continue to meet the requirements for access.

(C) access to Top Secret information by categories of persons who do not meet the requirements of subsections (A) and (B) of this section may be permitted only where the President, or officials designated by the President for this purpose, determine that such access is essential to protect or further the national security interests of the United States.

(D) a single office within the Executive branch shall be designated to monitoring the implementation and operation of this title within the Executive branch. This office shall submit an annual report to the President and appropriate committees of the Congress, describing the operation of this title and recommending needed improvements.

A copy of the regulations implementing this title shall be provided to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives thirty days prior to their effective date.

SEC. 803. WAIVERS FOR INDIVIDUAL CASES.—In extraordinary circumstances, when essential to protect or further the national security interests of the United States, the President (or officials designated by the President for this purpose) may waive the provisions of this title, or the provisions of the regulations issued pursuant to section 802, above, in individual cases involving persons who are citizens of the United States or are persons admitted into the United States for permanent residence; *Provided* that all such waivers shall be made a matter of record and reported to the office designated pursuant to section 802(D), above, and shall be available for review by the Select Committee on Intelligence of the Senate and the Permanent Select Committee of the House of Representatives.

SEC. 804. DEFINITIONS.—For purposes of this title—

(a) the term "national security" refers to the national defense and foreign relations of the United States;

(b) the phrases "information classified in the interest of national security" or "classified information" mean any information originated by or on behalf of the United States Government, the unauthorized disclosure of which would cause damage to the national security, which has been marked and is controlled pursuant to the Executive Order 12356 of April 2, 1982, or successor orders, or the Atomic Energy Act of 1954;

(c) the term "Top Secret information" means information classified in the interests of national security, the unauthorized disclosure of which would cause exceptionally grave damage to the national security;

(d) the term "employee" includes any person who recieves a salary or compensation of any kind from the United States Government, is a contractor of the United States Government, is an unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, but does not include the President or Vice President of the United States, Members of the Congress of the United States, Justices of the Supreme Court or judges of other federal courts established pursuant to Article III of the Constitution; and

(e) the term "authorized investigative agency" means an agency authorized by law or regulation to conduct investigations of persons who are proposed for access to Top Secret information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

SEC. 805. EFFECTIVE DATE.—This title shall take effect 180 days after the date of its enactment.

SEC. 3. PROTECTION OF CRYPTOGRAPHIC INFORMATION.

The National Security Act of 1947 (50 U.S.C. 401 et seq.), as amended by section 2, is further amended by inserting at the end the following new title:

"TITLE IX—PROTECTION OF CRYPTOGRAHPHIC INFORMATION

"SEC. 901. (a) REQUIREMENTS FOR ACCESS TO CRYPTOGRAPHIC INFORMATION.—(1) Any employee of a department or agency within the Executive branch who is granted access to classified cryptographic information or routine, recurring access to any space in which classified cryptographic key is produced or processed, or is assigned responsibilities as a custodian of classified crypotgraphic key, shall, as a condition of receiving such access, or being assigned such responsibilities, and at a minimum:

(A) meet the requirements applicable to persons having access to Top Secret information, as defined in subsection 804(c) of this Act, [as added by Section 2 of this Act]; and

(B) be subject to periodic polygraph examinations conducted by appropriate governmental authorities, limited in scope to questions of a counterintelligence nature, during the period of access.

(2) Failure to submit to an examination required under paragraph (1) shall be grounds for removal from access to cryptographic information or spaces; *Provided, however,* that no person shall be removed from access to cryptographic information or spaces based solely upon the interpretation of the results produced by a polygraph instrument, measuring physiological responses, unless, after further investigation, the head of the department or agency concerned determines the risk to the national security in permitting such access to be so potentially grave that access must nonetheless be denied.

(b) DEFINITIONS.—For purpose of this section—

(1) the term 'classified cryptographic information' means any information classified by the United States Government pursuant to law or Executive order concerning the details of (A) the nature, preparation, or use of any code, cipher, or cryptographic system of the United States; or (B) the design, construction, use, maintenance, or repair of any cryptographic equipment; *Provided, however,* the term does not include information concerning the use of cryptographic systems or equipment required for personal or office use;

(2) the phrase 'custodian of classified cryptographic key' means positions that require access to classified cryptographic key beyond that required to use or operate cryptographic equipment for personal or office use, future editions of classified cryptographic key, or classified cryptographic key used for multiple devices;

(3) the term 'classified cryptographic key' means any information (usually a sequence of random binary digits), in any form, classified by the United States Government pursuant to law or Executive order that is used to set up and periodically change the operations performed by any cryptographic equipment.

(4) the term 'cryptographic equipment' means any device, apparatus or appliances used, or prepared, or planned for use by the United States for the purpose of authenticating communications or disguising or concealing the contents, significance, or meanings of communications;

(5) the term 'employee' includes any person who receives a salary or compensation of any kind from a department or agency of the Executive branch, or is a contractor or unpaid consultant of such department or agency;

(6) the term 'head of a department or agency' refers to the highest official who exercises supervisory control over the employee concerned, and does not include any intermediate supervisory officials who may otherwise qualify as heads of agencies within departments; and

(7) the phrase 'questions of a counterintelligence nature' means questions specified to the subject in advance of a polygraph examination solely to ascertain whether the subject is engaged in, or planning, espionage against the United States on behalf of a foreign government or knows persons who are so engaged.

SEC. 902. IMPLEMENTING REGULATIONS.—The President shall, within 180 days of the date of enactment of this title, promulage regulations to implement the provisions of this title. The President shall provide copies of such regulations to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.".

SEC. 4. AMENDMENT TO RIGHT TO FINANCIAL PRIVACY ACT.

Section 1104 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3404) is amended by adding at the end thereof the following new subsection:

"(d)(1) Notwithstanding the provisions of subsection (a), a customer who is the subject of a personnel security investigation conducted by an authorized investigative agency of the U.S. Government as a condition of being granted or maintaining access to Top Secret information, as defined by section 804(c) of the National Security Act of 1947, [as added by section 2 of this Act], may authorize nonrevokable disclosure of all financial records maintained by financial institutions for the period of the customer's access to such information and for up to 5 years after access to such information has been terminated, by the investigative agency responsible for the conduct of such investigation, for an authorized security purpose.

(2) Such authority shall be contained in a signed and dated statement of the customer which identifies the financial records which are authorized to be disclosed. Such statement may also authorize the disclosure of financial records of accounts opened during the period covered by the consent agreement which are not identifiable at the time such consent is provided. A copy of such statement shall be provided by the investigative agency concerned to the financial institution from which disclosure is sought, together with the certification required pursuant to section 1103(b) (12 U.S.C. 3403(b)).

(3) The rights of the customer established by subsection (c), above, shall pertain to any

disclosures made pursuant to this subsection.

(4) On an annual basis, the office designated by President pursuant to section 802(D) of the National Security Act of 1947, [as added by section 2 of this Act], shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning the number of requests for financial records made pursuant to this section.

SEC. 5. NEW CRIMINAL OFFENSE FOR THE POSSESSION OF ESPIONAGE DEVICES.

(a) IN GENERAL.—Chapter 37 of title 18, United States Code, is amended by inserting at the end thereof the following new section:

"Sec. 799a. POSSESSION OF ESPIONAGE DEVICES.—Whoever knowingly maintains possession of any electronic, mechanical, or other device or equipment the design and capability of which renders it primarily useful for the purpose of surreptitiously collecting or communicating information, with the intent of utilizing such device or equipment to undertake actions which would violate section 793, 794, 794a [as added by section 6 of this Act], or 798 of this title, or section 783(b) of title 50, United States Code, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

(b) AMENDMENTS TO TABLE OF SECTIONS.—The table of sections of chapter 37 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"799a. Possession of espionage devices.".

SEC. 6. NEW OFFENSE FOR SALE OR TRANSFER TO FOREIGN GOVERNMENTS DOCUMENTS AND OTHER MATERIALS DESIGNATED AS TOP SECRET.

(a) IN GENERAL.—Chapter 37 of title 18, United States Code, is amended by inserting after section 794 the following new section:

"SEC. 794a. Sale or transfer of documents or materials marked as 'Top Secret'.

(a)(1) No person shall knowingly sell or otherwise transfer for any valuable consideration to any other person whom he knows or has reason to believe to be an agent or representative of a foreign government—

(A) any document, writing, code book, sketch, photograph, map, model, instrument, equipment, electronic storage media, or other material, or portion thereof, knowing that it is marked or otherwise designated in any manner, pursuant to applicable law and Executive order, as 'Top Secret', or

(B) any such document, writing, code book, sketch, photograph, map, model, instrument, equipment, electronic storage media, or other material, or portion thereof, which has had such marking or designation removed without authority and the person making the sale or transfer is aware of such removal.

(2) Paragraph (1) shall not be deemed to be violated by a person who makes such transfer pursuant to applicable law or executive branch authority.

(b) In any prosecution under this section, whether or not the information or material in question has been properly marked or designated as "TOP SECRET" pursuant to applicable law or Executive order shall not be an element of the offense: *Provided, however,* it shall be a defense to any prosecution under this section that the information or document in question has been officially released to the public by an authorized representative of the United States prior to the sale or transfer in question.

(c) Violation of this section shall be punishable by imprisonment for a maximum of 15 years.".

(b) AMENDMENTS TO TABLE OF SECTIONS.—The table of sections for chapter 37 of title 18, United States Code, is amended by inserting after the item relating to section 794 the following new item:

"794a. Sale or transfer of documents or materials marked as 'Top Secret'."

SEC. 7. LESSER CRIMINAL OFFENSE FOR THE REMOVAL OF TOP SECRET DOCUMENTS BY GOVERNMENT EMPLOYEES AND CONTRACTORS

(a) IN GENERAL.—Chaper 93 of title 18, United States Code, is amended by inserting at the end thereof the following new section:

"SEC. 1924. Removal and Retention of 'Top Secret' documents or material.

Whoever, being an officer, employee, contractor or consultant, of the United States, and having, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials classified at the level of 'Top Secret' pursuant to applicable law or Executive order, knowingly removes such documents or materials at an unauthorized location shall be fined not more than $1,000, or imprisoned for not more than one year, or both.".

(b) AMENDMENTS TO TABLE OF SECTIONS.—The table of sections for chapter 93 of title 18, United States Code, is amended by adding at the end thereof following new item:

"1924. Removal of 'Top Secret' documents or material."

SEC. 8. JURISDICTION OF U.S. COURTS TO TRY CASES INVOLVING ESPIONAGE OUTSIDE THE UNITED STATES.

(a) Chapter 211 of title 18 of the United States Code is amended by adding a new section 3239 as follow:

"S 3239. Jurisdiction for espionage and related offenses

The trial for offense involving a violation of—

(a) section 793, 794, 794a [as added by section 6 of this Act], 798, 798a [as added by section 5 of this Act,] or subsection 1030(a)(1) of this title;

(b) section 601 of the National Security Act of 1947 as added by the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421); or

(c) subsections 4(b) or 4(c) of the Subversive Activities Control Act of 1950 (U.S.C. 783(b) or 783(c));

begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, may be prosecuted in the District of Columbia, or in the Eastern District of Virginia, or in any other district authorized by law."

(b) The chapter analysis for chapter 211 of title 18 of the United States Code is amended by striking out

"[3239. Repealed.]"

and inserting in lieu thereof:

"3239. Jurisdiction for espionage and related offenses."

SEC. 9. EXPANSION OF EXISTING STATUTE REGARDING FORFEITURE OF COLLATERAL PROFITS OF CRIME TO ADDITIONAL ESPIONAGE OFFENSES.

Section 3681 of title 18, United States Code, is amended—

(1) in subsection (a), by striking out "section 794 of this title" and inserting in lieu thereof "sections 793, 794, 794a [as added by section 6 of this Act], 798, and 799a [as added by section 5 of this Act] of this title and section 783 of title 50, United States Code"; and

(2) by adding at the end thereof the following new subsection:

"(e) For purposes of this section, convictions pursuant to military courts-martial for offenses comparable to violations of sections 793, 794, 794a [as added by section 6 of this Act], 798, and 799a [as added by section 5 of this Act] of this title, or a violation of section 783 of title 50, or convictions by foreign courts for offenses which, if perpetrated within the United States Code, would constitute offenses under sections 793, 794, 794a [as added by section 6 of this Act], 798, and 799a [as added by section 5 of this Act] of this title, or a violation of section 783 of title 50 shall be considered as convictions for which actions may be ordered pursuant to this section.".

SEC. 10. DENIAL OF ANNUITIES OR RETIRED PAY TO PERSONS CONVICTED OF ESPIONAGE IN FOREIGN COURTS INVOLVING UNITED STATES INFORMATION.

Section 8312 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) For purposes of subsections (b)(1) and (c)(1), an offense within the meaning of such subsections is established if the Attorney General certifies to the agency employing or formerly employing the person concerned—

(1) that an individual subject to this chapter has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances in which the conduct violates the provisions of law enumerated in subsections (b)(1) and (c)(1), or would violate such provisions, had such conduct taken place within the United States Code, and that such conviction is not being appealed or that final action has been taken on such appeal;

(2) that such conviction was obtained in accordance with procedures that provided the defendant due process rights comparable to such rights provided by the United States Constitution, and such conviction was based upon evidence which would have been admissible in the courts of the United States; and

(3) that such conviction occurred after the date of enactment of this subsection,

Provided, that any certification made pursuant to this paragraph shall be subject to review by the U.S. Court of Claims based upon the application of the individual concerned, or his or her attorney, alleging that any of the conditions set forth in subsections (1), (2), (3), herein, as certified by the Attorney General, have not been satisfied in his or her particular circumstances. Should the court determine that any of these conditions has not been satisfied in such case, the court shall order any annuity or retirement benefit to which the person concerned is entitled to be restored and shall order that any payments which may have been previously denied or withheld to be paid by the department or agency concerned.

SEC. 11. AUTHORIZING THE FBI TO OBTAIN CONSUMER REPORTS ON PERSONS BELIEVED TO BE AGENTS OF FOREIGN POWERS.

Section 608 of the Consumer Credit Protection Act (15 U.S.C. 1681f) is amended—

(1) by inserting "(a)" before "Notwithstanding"; and

(2) by inserting at the end thereof the following new subsections:

"(b) Notwithstanding the provisions of section 604, a consumer reporting agency shall, upon request, furnish a consumer

report to the Federal Bureau of Investigation, if the Director of the Federal Bureau of Investigation, or the Director's designee, certifies in writing to the consumer reporting agency that such records are sought in connection with an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe that the person to whom the requested consumer report relates is an agent of a foreign power, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(c) Notwithstanding the provisions of section 604, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to name, address, former addresses, places of employment, or former places of employment, to a representative of the Federal Bureau of Investigation when presented with a written request signed by the Director of the Director of the Federal Bureau of Investigation, or the Director's designee, stating that the information is necessary to the conduct of an authorized foreign counterintelligence investigation.

(d) No consumer reporting agency, or officer, employee, or agent of such institution shall disclose to any person that the Federal Bureau of Investigation has sought or obtained a consumer report or identifying information respecting any consumer under this section.

(e) On an annual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsections (b) and (c)."

SEC. 12. AUTHORIZING FBI ACCESS TO CERTAIN TELEPHONE SUBSCRIBER INFORMATION.

(a) Section 2709 of title 18 of the United States Code is amended by striking out subsection (b) and inserting the following subsection:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

(1) request subscriber information, toll billing records information, or electronic communication transactional records if the Director (or the Director's designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

(A) the information sought is relevent to an authorized foreign counterintelligence investigation; and

(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

(2) request the name, address, and length of service of a person or entity that has subscribed to an electronic communication service if the Director, or his designee in a position not lower than Deputy Assistant Director, certifies in writing to the wire or electronic communication service provider to which the request is made that—

(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

(B) if the information is not publishable, there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with:

(i) a foreign power, as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978, which engages in clandestine intelligence activities or international terrorism;

(ii) a foreign diplomatic establishment;

(iii) an agent of a foreign power, as defined in section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978, who engages or has engaged in clandestine intelligence activities or acts as a member of a foreign power as defined in section 101(a)(4) of the Foreign Intelligence Surveillance Act; or

(iv) an agent of a foreign power, as defined in section 101(b)(2) of the Foreign Intelligence Surveillance Act of 1978.

(3)(A) Except for the limited inquiry provided in subparagraph (B), the FBI may not conduct any investigation of a person or entity on the basis of nonpublishable information received pursuant to paragraph (2)(B) unless there are specific and articulable facts giving reason to believe that such person or entity is involved, or is seeking to become involved, in clandestine intelligence activities or international terrorism activities on behalf of a foreign power or an agent of a foreign power, or is in a position to provide assistance to the Federal Bureau of Investigation in countering such activities.

(B) The Federal Bureau of Investigation may conduct an inquiry, limited in duration and using the least intrusive means possible, to determine whether there is a basis for an investigation under subparagraph (A). Such inquiry shall be conducted in accordance with guidelines issued by the Attorney General and submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate."

(b) Section 2709 of title 18 of the United States Code is amended by striking out subsection (d) and inserting the following subsection:

"(d) *Dissemination by Bureau.* The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency. Information concerning a communication of a United States person obtained under this section may not be disseminated outside the Federal Bureau of Investigation except for authorized counterintelligence or law enforcement purposes."

SEC. 13. TO PROVIDE FOR REWARDS FOR INFORMATION CONCERNING ESPIONAGE.

(a) IN GENERAL—Chapter 204 of title 18, United States Code, is amended—

(1) by inserting at the end of the chapter heading "AND ESPIONAGE";

(2) in section 3071, by inserting "(a)" immediately before "With respect to";

(3) in section 3071, adding at the end thereof the following new subsection:

"(b) With respect to acts of espionage involving or directed at United States information classified in the interests of national security, the Attorney General may reward any individual who furnishes information—

(1) leading to the arrest or conviction, in any country, of any individual or individuals for commission of an act of espionage against the United States;

(2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of espionage against the United States; or

(3) leading to the prevention or frustration of an act of espionage against the United States.".

(b) AMOUNT OF REWARDS.—Section 3072 of title 18, United States Code, is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000".

(c) DEFINITIONS.—Section 3077 of title 18, United States Code, is amended by inserting at the end thereof the following new paragraphs:

"(8) 'act of espionage' means an activity that is a violation of section 794, 794a [as added by section 6 of this Act], 798, or 799a [as added by section 5 of this Act] of this title or section 783 of title 50, United States Code.

(9) 'United States information classified in the interests of national security' means information originated, owned, or possessed by the United States Government concerning the national defense and foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure and that has been so designated."

SEC. 14. TO PROVIDE A COURT ORDER PROCESS FOR PHYSICAL SEARCHES UNDERTAKEN FOR FOREIGN INTELLIGENCE PURPOSES

The Foreign Intelligence Surveillance Act of 1978 is amended by inserting at the end thereof the following new title:

"TITLE IV—PHYSICAL SEARCHES WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

AUTHORIZATION OF PHYSICAL SEARCHES FOR FOREIGN INTELLIGENCE PURPOSES

Sec. 401(a). Applications for a court order under this title are authorized if the President has, in writing, empowered the Attorney General to approve applications to the Foreign Intelligence Surveillance Court, and a judge of that court to whom application is made may, notwithstanding any other law, grant an order, in conformity with section 403, approving a physical search in the United States, for the purpose of collecting foreign intelligence information of—

(1) the property, information or material of a foreign power as defined in section 101(a)(1), (2), and (3) of this Act, or

(2) the premises, property, information or material of an agent of a foreign power or a foreign power as defined in section 101(a)(4), (5), and (6) of this Act.

(b) The Foreign Intelligence Surveillance Court shall have jurisdiction to hear applications for and grant orders approving a physical search for the purpose of obtaining foreign intelligence information anywhere within the United States under the procedures set forth in this title, except that no judge shall hear the same application which has been denied previously by another judge. If any judge denies an application for an order authorizing a physical search under this title, such judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the Court of Review.

(c) The Court of Review shall have jurisdiction to review the denial of any application made under this title. If such court determines that the application was properly denied, the Court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(d) Judicial proceedings under this title shall be concluded as expeditiously as possible. The record of proceedings under this title, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of Central Intelligence.

APPLICATION FOR AN ORDER

SEC. 402 (a). Each application for an order approving a physical search under this title shall be made by a Federal officer in writing upon oath or affirmation to a judge of the Foreign Intelligence Surveillance Court. Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfied the criteria and requirements for such application as set forth in this title. It shall include—

(1) the identity, if known, or a description of the target of the search;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity of the federal officer making the application and a detailed description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered;

(4) a statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that—

(A) the target of the physical search is a foreign power or an agent of a foreign power;

(B) the premises or property to be searched contains foreign intelligence information;

(C) the premises or property to be searched is owned, used possessed by, or is in transit to or from a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a statement of the manner in which the physical search is to be conducted;

(7) a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, premises, or property specified in the application, and the action taken on each previous applications;

(8) a statement of the facts concerning any search described in section 406(b), below, which involves any of the persons, premises, or property specified in the application; and

(9) a statement that the purpose of the physical search is to obtain foreign intelligence information.

(b) The judge many require the applicant to furnish such other information as may be necessary to make the determinations required by section 403.

ISSUANCE OF AN ORDER

Sec. 403 (a). Upon an application made pursuant to section 402, the judge shall enter an ex parte order as requested or as modified approving the physical search if the judge finds that—

(1) the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the physical search is a foreign power or an agent of a foreign power: Provided, That no United States person may be considered an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States;

(B) the premises or property to be searched are owned, used, possessed by, or is in transit to or from an agent of a foreign power or a foreign power; and

(C) physical search of such premises or property can reasonably be expected to yield foreign intelligence information which cannot reasonably be obtained by normal investigative means; and

(4) the proposed minimization procedures meet the definition of minimization contained in this title; and

(5) the application which has been filed contains all statements required by section 402.

(b) An order approving a physical search under this section shall—

(1) specify—

(A) the Federal officer or officers authorized to conduct the physical search and the identity, if known, or a description of the target of the physical search;

(B) the premises or property to be searched and the information, material or property to be seized, altered, or reproduced;

(C) the type of foreign intelligence information sought to be acquired; and

(D) a statement of the manner in which the physical search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search;

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the activities of the landlord, custodian, or other person; and that such landlord, custodian or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the search or the aid furnished that such person wishes to retain;

(C) that the physical search be undertaken within 30 days of the date of the order, or, if the physical search is of the property, information or material of a foreign power as defined in section 101(a)(1), (2), or (3) of this Act, that such search be undertaken within one year of the order; and

(D) that the federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search.

(c) At any time after a physical search has been carried out, the judge to whom the return has been made may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(d) Application made and orders granted under this title shall be retained for a period of at least ten years from the date of the application.

(e) Not more than 60 days after a physical search of the residence of a United States person authorized by this title, or such a search in the circumstances described in section 406(b), has been conducted, the Attorney General shall provide the United States person with an inventory which shall include—

(1) existence or not of a court order authorizing the physical search and the date of the order;

(2) the date of the physical search and an identification of the premises or property searched; and

(3) a list of any information, material, or property seized, altered, or reproduced.

(f) On an ex parte showing of good cause by the Attorney General to a judge of the Foreign Intelligence Surveillance Court the provision of the inventory required by subsection (e) may be postponed for a period not to exceed 90 days. At the end of such period the provisions of the inventory may, upon a similar showing, be postponed indefinitely. The denial of a request for such postponements may be reviewed as provided in section 401.

USE OF INFORMATION

Sec. 404. (a) Information acquired from a physical search conducted pursuant to this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this title. No information acquired from a physical search pursuant to this title may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceedings in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from a physical search of the premises or property of that aggrieved person pursuant to the authority of this title, the United States shall, prior to the trial, hearing, or the other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

(d) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use of disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained

or derived from a physical search of the premises or property of that aggrieved person pursuant to the authority of this title, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Any person against whom evidence obtained or derived from a physical search to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such search on the grounds that—

(1) the information was unlawfully acquired; or

(2) the physical search was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) Whenever a court of other authority is notified pursuant to subsection (c) or (d), or whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to a physical search authorized by this title or to discover, obtain, or suppress evidence or information obtained or derived from a physical search authorized by this title, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the physical search as may be necessary to determine whether the physical search of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the physical search only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

(g) If the United States district court pursuant to subsection (f) determines that the physical search was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the physical search of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the physical search was lawfuly authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Orders granting motions or requests under subsection (g), decisions under this section that a physical search was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) The provisions of this section regarding the use or disclosure of information obtained or derived from a physical search shall apply to information obtained or derived from a search conducted without a court order to obtain foreign intelligence information which is not a physical search as defined in this title solely because the existence of exigent circumstances would not require a warrant for law enforcement purposes.

OVERSIGHT

SEC. 405. (a) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Commiteee on Intelligence concerning all physical searches conducted pursuant to this title, and all other searches, except those reported under section 108 of this Act, conducted in the United States for foreign intelligence purposes. On an annual basis the Attorney General shall also provide to those committees a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders approving physical searches under this title; and

(b) the total number of such orders either granted, modified, or denied.

(b) Whenever a search is conducted without a court order to obtain foreign intelligence information which is not a physical search as defined in this title solely because the existence of exigent circumstances would not require a warrant for law enforcement purposes, a full report of such search, including a description of the exigent circumstances, shall be maintained by the Attorney General. Each such report shall be transmitted to the Foreign Intelligence Surveillance Court promptly after the search is conducted.

AUTHORITY FOR INTELLIGENCE SEARCHES

SEC. 406. (a) The procedures contained in this title shall be the exclusive means by which a physical search, as defined in this title, may be conducted in the United States for foreign intelligence purposes, and an order issued under this title authorizing a physical search shall constitute a search warrant authorized by law for purposes of any other law.

(b) Searches conducted in the United States to collect foreign intelligence information, other than physical searches as defined in this title and electronic surveillance as defined in this Act, and physical searches conducted in the United States without a court order to collect foreign intelligence information may be conducted only pursuant to regulations issued by the Attorney General. Such regulations, and any changes thereto, shall be provided to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives at least 14 days prior to the taking effect. Any regulations issued by the Attorney General regarding such searches which were in effect as of June 1, 1990, shall be deemed to be regulations required by this subsection.

PENALTIES

SEC. 407. (a) OFFENSE.—A person is guilty of an offense if he intentionally—

"(1) under color of law for the purpose of obtaining foreign intelligence information, engages in physical search within the United States except as authorized by statute; or

"(2) discloses or uses information obtained under color of law by physical search within the United States, knowing or having reason to know that the information was obtained through physical search not authorized by statute, for the purpose of obtaining intelligence information.

"(b) DEFENSE.—It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the physical search was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

"(c) PENALTY.—An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

"(d) JURISDICTION.—There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

CIVIL LIABILITY

SEC. 408. CIVIL ACTION.—An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 101 (a) or (b)(1)(A), respectively, of this Act, whose premises, property, information, or material has been subjected to a physical search within the United States or about whom information obtained by such a physical search has been disclosed or used in violation of section 407 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

"(a) actual damages;

"(b) punitive damages; and

"(c) reasonable attorney's fees and other investigative and litigation costs reasonable incurred.

DEFINITIONS

SEC. 409. As used in this title:

"(a) The terms 'foreign power,' 'agent of a foreign power,' 'international terrorism,' 'sabotage,' 'foreign intelligence information,' 'Attorney General,' 'United States person,' 'United States',' 'person,' and 'State' shall have the same meaning as in Section 101 of this Act.

"(b) 'Physical search' means any physical intrusion into premises or property (including examination of the interior of property by technical means) or any seizure, reproduction or alternation of information, material or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include 'electronic surveillance' as defined in subsection 101(f) of this Act.

"(c) 'Minimization procedures,' with respect to physical search, means—

"(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and technique of the particular physical search, to minimize the acquisition and retention, and prohibit the dissemination, of non-publicly available information concerning unconsenting United States person consistent with the need of the United States

persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

"(2) procedures that require that non-publicly available information, which is not foreign intelligence information, as defined in subsection 101(e)(1) of this Act, shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand such foreign intelligence information or assess its importance; and

"(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to retained or disseminated for law enforcement purposes."

"(d) 'Aggrieved person' means a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search.

"(e) 'Foreign Intelligence Surveillance Court' means the court established by section 103(a) of this Act.

"(f) 'Court of Review' means the court established by section 103(b) of this Act.

EFFECTIVE DATE

SEC. 410. The provisions of this title shall become effective 90 days after the date of enactment of this title, except that any physical search approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this title, if that search is conducted witin 180 days following the date of enactment of this title pursuant to regulations issued by the Attorney General, which are in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives prior to the date of enactment."

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 contains the title of the Act, "The Counterintelligence Improvements Act of 1990."

SECTION 2

Section 2 adds a new title VIII to the National Security Act of 1947 (50 U.S.C. 401 et seq.) to govern access to particularly sensitive classified information.

Section 801 establishes the requirements for eligibility to access particularly sensitive classified information.

Subsection (a) specifies that the President and Vice President, Members of Congress, Justices of the Supreme Court and judges of other federal courts established pursuant to Article III of the Constitution are eligible, by virtue of their elected and appointed positions, for access to particularly sensitive classified information needed for the performance of their governmental functions without regard to other provisions of this title. This means that the incumbents of such positions are not required to meet the security requirements of other sections of the bill (e.g. submit to background investigations or reinvestigations) applicable to government employees.

Subsection (b) provides that with respect to government employees, access to particularly sensitive classified information shall be limited to employees who have been granted access pursuant to this title, who are citizens of the United States, who require routine access to such information in the performance of official governmental functions, and who have been determined to be trustworthy based upon a background investigation and other reinvestigations undertaken pursuant to section 802, below, and have otherwise satisfied the requirements of that section.

Subsection (c) provides that the President may by regulation permit access to particularly sensitive classified information by persons other than those listed in subsections (a) and (b). The Committee intends that such regulations cover access to particularly sensitive classified information by government employees who are not citizens of the United States or who do not require routine access to such information for the performance of official functions. It is also contemplated that there will be limited circumstances where it will be in the best interest of the United States to share such information with persons who are not government employees (including contractors). Such persons may, indeed, include foreign nationals in rare circumstances. The Committee expects the President to make appropriate allowances for such access in the regulations required by section 802.

Section 802 requires the President to issue, within 180 days of enactment of this title, regulations binding upon all elements of the Executive branch. Such regulations are required, at a minimum, to establish certain requirements enumerated in this section.

Subsection (A) sets forth the minimum requirements to be met as a condition of access to particularly sensitive classified information, to include the requirements for initial and periodic background investigations, requirements to consent to the Government's access to certain types of personal records, and requirements to report certian types of information to the Government.

Subsection (A)(1) provides that no employee of the United States Government shall be given access to particularly sensitive classified information unless such person has been the subject of a background investigation and has provided consent to the investigative agency responsible for conducting the investigation permitting access to certain types of records during the period of access and for five years thereafter. Such records include financial records covered by the Right to Financial Privacy Act of 1978; consumer credit reports covered by the Consumer Credit Protection Act; and records maintained by commercial entities within the United States pertaining to travel by the subject outside the United States. (Access by government investigative agencies to this category of records does not appear to be restricted under existing law, however, private commercial concerns may be reluctant to provide such information without the consent of the consumer.)

The three provisos at the end of the subsection (A)(1) place general limitations on the authority of the investigating agency to request or disseminate such information.

Proviso (i) states that an authorized investigative agency may not request information pursuant to this section for any purpose other than making a security clearance determination. Thus, this subsection does not provide authority to request information concerning any person who is not being contemplated for access to particularly sensitive classified information or who has such access presently or within the last five years.

Proviso (ii) states that where the individual concerned no longer has access to particularly sensitive classified information, no information may be requested by an authorized investigative agency unless such agency has reasonable grounds to believe, based upon specific and articulable facts available to it, that such persons may pose a threat to the continued security of the information to which he or she had previously had access. This means that information could not be requested concerning any person who had left government service, or who remained in government service after access had been terminated, unless the investigative agency had reasonable grounds to believe such person may pose a security concern. The Committee believes that where persons who no longer have access to highly classified information are concerned, there should be a specific basis to justify Government inquiries into their personal records.

Proviso (iii) prohibits any authorized investigative agency which obtains information pursuant to this section from disseminating it to any other department, agency, or entity for any purpose other than making a security clearance determination, or for a law enforcement or foreign counterintelligence purpose. Inasmuch as such information may be highly personal, its dissemination is justified only by the most compelling needs.

Subsection (A)(2) also requires persons being given access to particularly sensitive classified information to agree, as a condition of such access, to report, in accordance with applicable regulations, any travel to foreign countries during the period of access which has not been authorized as part of the subject's official duties. The Committee recognizes there will be cases, due to geographical location of the U.S. employee concerned, where foreign travel for personal reasons could be a routine, perhaps even daily, occurrence. By providing that reports of such travel be made in accordance with applicable regulations is intended to provide flexibility to accommodate such situations.

Subsection (A)(3) requires that persons being given access to particularly sensitive classified information also report to the Federal Bureau of Investigation or to appropriate investigative authorities of the employing department, agency, or entity, any unauthorized contacts with persons known to be foreign nationals or persons representing foreign nationals, where an effort to acquire U.S. classified information is made or is apparent. For this latter purpose, unauthorized contacts do not include contacts made within the context of an authorized diplomatic relationship. In other words, where the employee is authorized to cultivate a diplomatic relationship, and in the course of such relationship, a foreign diplomat poses a question within the scope of such relationship, the answer to which would require classified information to be revealed, such an inquiry would not be required to be reported to investigative agencies. If, on the other hand, the foreign diplomat attempted to solicit classified information outside the scope of an authorized relationship, or attempted to recruit the U.S. diplomat to collect information in the future, such approach would be reportable under this section.

The final paragraph of subsection (A) provides that a failure by the subject to grant consent as required by this subsection, or make the reports required by this subsection, constitute ground for denial or termination of access to particularly sensitive

classified information. The Committee does not intend that such failure will automatically result in such denial or termination, but rather that the department, agency, or entity concerned will evaluate all relevant information related to such failure and determine whether such action is appropriate.

Subsection (B) deals with requirements for reinvestigations of persons granted access to particularly sensitive classified information. Subsection (B)(1) provides that such persons will be subject to additional background investigations no less frequently than every 5 years. Although any failure to satisfy this requirement that is not solely attributable to the subject of the investigation shall not result in a loss or denial of access. The Committee recognizes that there may be practical reasons why reinvestigations are not accomplished within the five-year time frame. Where these are not solely attributable to subject, they should not result in any unfavorable action regarding his continued access. Subsection (B)(2) provides that such persons are subject to investigation at any time to ascertain whether they continue to meet the requirements for access. Thus, should an authorized investigative agency receive information at any time which may suggest such person may no longer meet the security requirements for access, an investigation may be undertaken.

Subsection (C) requires that the regulations address the matter of access to particularly sensitive classified information by persons other than the officials lists in section 801(A) above, or government employees eligible for access to such information as provided in section 801(B). The subsection provides that the President or other officials designated by the President for this purpose, may authorize access to such information by such persons only where such access is essential to protect or further the national security interests of the United States.

Subsection (D) requires that the President designate a single office within the Executive branch to monitor the implementation and operation of this title within the Executive branch, and provide an annual report to the President and appropriate congressional committees describing the operation of this title and recommending any needed improvements.

The bill requires that a copy of the implementing regulations required by this section be provided to the two intelligence committees 30 days prior to their effective date.

Section 803 provides authority for the President, or officials designated by the President for this purpose, to waive the provisions of this title and the regulations implementing this title for individual cases involving U.S. citizens or persons admitted to the United States for permanent residence, when essential to protect or further the national security interests of the United States, provided all such waives are made a matter of record, reported to the oversight office established pursuant to section 802, and are available for review by the intelligence committees.

The Committee recognizes there will be extraordinary circumstances when the President (or other senior officials) could be justified in waiving the investigative requirements or the consent requirements for particular persons as a condition of their receiving access to particularly sensitive classified information. The Committee believes, however, that such waiver authority ought to be limited to specific individuals who are either citizens of the United States or persons who are admitted to the United States for permanent residence. Such waiver authority is not granted to permit the exemption of entire classes of persons, or the employees of a particular department or agency, or to provide access for particular purposes (e.g., diplomatic exchanges). Should the President wish to exempt classes of persons or entire departments or agencies from the requirements of this title, or provide for access by foreign nationals under limited circumstances, such exemptions should be made in the regulations issued pursuant to section 802, which are reported to the intelligence committees, rather than made subject to individual waives pursuant to section 803.

Section 804 contains the definitions of terms used in this title.

Subsection (a) defines the term "national security" as referring to the national defense and foreign relations of the United States.

Subsection (b) defines the term "information classified in the interest of national security" or "classified information" as meaning any information originated by or on behalf of the United States Government, the unauthorized disclosure of which would cause damage to the national security, and which has been marked and is controlled pursuant to Executive order 12356, dated April 2, 1992, or successor orders, or the Atomic Energy Act of 1954.

Subsection (c) define the term "particularly sensitive classified information" as information that is classified in the interests of national security at the "Top Secret" level, the unauthorized disclosure of which would cause exceptionlly grave damage to the national security, and which is protected within a special access program created pursuant to section 4.2 of Executive order 12356, dated April 2, 1982, or successor orders, to control access, distribution, and protection of information of extraordinary importance to national security.

The Committee intends, therefore, that to qualify for coverage by this title, a person must have a "Top Secret" clearance and have access, or be proposed for access, to a special access program. Persons who hold a "Secret" clearance and have access to a special access program would not qualify as having access to "particularly sensitive classified information."

Subsection (d) defines the term "employee" for purposes of this title as including any persons who receives a salary or compensation of any kind from the United States Government, is a contractor or unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, but does not include the President or Vice President, Members of Congress, Justices of the Supreme Court or judges of federal courts established pursuant to Article III of the Constitution.

Subsection (e) defines the term "authorized investigative agency" means an agency authorized by law or regulation to conduct investigations of persons who are proposed for access to particularly sensitive classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining a security clearance. Such agencies would include the Federal Bureau of Investigation, the Defense Investigative Service, and other departments and agencies who are authorized to conduct such investigations.

Section 805 provides that this title shall take effect 180 days from its enactment. This period is necessary in order to allow time for the President to issue the implementing regulations required by section 802 prior to the effective date of this title.

SECTION 3

Section 3 of the bill adds a new title IX to the National Security Act of 1947 (50 U.S.C. 401 et seq.) to provide special requirements for the protection of cryptographic information. Persons with access to such information necessarily have the capability of inflicting grave damage upon the national security by enabling unauthorized persons to read or understand an unlimited number of U.S. communications at all levels of classification. In view of the peculiar sensitivity of such information, the Committee believes that special security measures should be imposed on persons who have access to this information.

It is the intent of the Committee, however, that only those Executive branch employees or contractors who have extensive involvement with, or in-depth knowledge of, classified cryptographic information need to be covered by the proposed title. This would include persons who develop U.S. codes or ciphers, persons who build or install devices or equipment which contain such codes or ciphers, and persons who are employed in locations where large volumes of classified information are processed by such devices or equipment, such as communications centers. It is not intended that persons who have access to cryptographic devices or equipment designed for personal use or office use should be covered by this title.

Section 901 establishes minimum uniform security requirements for Executive branch employees who are granted access to classified cryptographic information or routine, recurring access to any space in which classified cryptographic key is produced or processed, or is assigned responsibilities as a custodian of classified cryptographic key. The President may provide latitude in the regulations implementing this title for departments and agencies to impose additional, more stringent security measures upon such persons where circumstances may warrant.

Two basic requirements are imposed upon persons covered by the title. Subsection (a)(1)(A) requires that they meet the security requirements established by section 802 of the Act, as persons with access to particularly sensitive information. Thus, persons covered by this title would also be subject to initial background investigations, reinvestigations not less than every five years, and unscheduled investigations as appropriate, to ensure they continue to meet the standards for access to classified cryptographic information, regardless of the level of security clearance such persons may otherwise have. They would also be required to provide their consent to the authorized governmental investigative authorities having access to the categories of records set forth in section 802.

Subsection (a)(1)(B) requires that persons covered by this title also be subject to periodic polygraph examinations conducted by appropriate governmental authorities, limited in scope to questions of a counterintelligence nature, during the period of their access to classified cryptographic information. This provision does not require such polygraph examinations for all such persons, but it does make such persons, regardless of the department or agency where they may be employed, subject to such examinations on an unscheduled basis while such access is maintained. In accordance

with the implementing regulations required by section 902, it is anticipated that departments and agencies with employees or contractors covered by this title would establish or acquire a sufficient capability to conduct such examinations to maintain a credible deterrent to persons with access to such information.

The Committee also reemphasizes that this section provides for minimum standards. It is not the intent of the provision to restrict the use of the polygraph at the Central Intelligence Agency and National Security Agency, where polygraph examinations are routinely required of all employees and are not limited to questions of a counterintelligence nature.

Subsection 901(a)(2) provides that any refusal to submit to a counterintelligence-scope polygraph examination shall constitute grounds to remove such person from access to classified cryptographic information. It is not intended, however, that such person be subjected to any additional personnel or adminstrative action, including any adverse action on his or her security clearance, as a result of such refusal.

Moreover, subsection 901(a)(2) goes on to provide that no person shall be removed from access to classified cryptographic information or spaces based solely upon the interpretation of the machine results of a polygraph examination, which measure physiological responses, unless the head of the department or agency concerned determines, after further investigation, that the risk to the national security under the circumstances is so potentially grave that access cannot safely be permitted.

The Committee recognizes that a polygraph examination in essence measures certain physiological responses produced by answers to questions posed to the subject. Such responses might reflect deception on the part of the subject, but they might also reflect other, wholly innocent stimuli, both mental and physical. Indeed, while expert opinion varies in terms of how often the interpretation of polygraph results can be relied upon to show lying or deception, the Committee is aware of no expert who contends that interpretation of polygraph results provides an infallible indication of lying or deception. Accordingly, the Committee believes that an interpretation of polygraph results should not be the sole basis for denial of access to classified cryptographic information or spaces. It intends that where the results of such examinations do indicate lying or deception to key counterintelligence questions, that these discrepancies be resolved, where possible, through interviews with the subject and such further investigation as may be warranted. If such further investigation does not provide an independent basis for removal from access, such access should be granted or maintained unless the head of the department or agency concerned determines, in view of all the circumstances involved and the potentially grave risk to the national security, that access should not be permitted.

Subsection 901(b) sets forth the definitions of the terms used in this section.

Subsection (b)(1) defines the term "classified cryptographic information" as any information classified pursuant to law or Executive order which concerns the details of (A) the nature, preparation, or use of any code, cipher, or cryptographic system of the United States; or (B) the design, construction, use, maintenance, or repair of any cryptographic equipment. The provisio to this definition specifically excludes information concerning the use of cryptographic systems or equipment required for personal or office use.

This term is thus intended to cover classified information which reveals or contains detailed information concerning U.S. codes and cryptographic equipment, to include information concerning the nature and development of such codes or equipment, and the design, construction, use, maintenance or repair of such equipment. ("Cryptographic equipment" is defined in subsection (b)(4) as any device, apparatus, or appliance used by the United States for authenticating communications, or disguising or concealing communications or their meaning.) The definition of "classified cryptographic information" is not intended, however, to cover persons who use cryptographic equipment that has been developed for personal or office use, such as a secure telephone, where such person is not also exposed to detailed information concerning the design, construction, use, maintenance or repair of such equipment. The term is intended to cover individuals, however, who require access to detailed information concerning the use of encoding equipment for other than personal or office use. For example, persons employed at government communications centers which process large volumes of classified information would be persons who fall within this definition.

Subsection b(2) defines the term "custodian of classified crytographic key" as meaning positions that require access to classified cryptologic key beyond that required to use or operate cryptographic equipment for personal or office use, future editions of such key, or such key used for multiple cryptographic devices. The term "classified cryptographic key", as defined in subsection (b)(3), refers to the information, which may take several forms, needed to set up and periodically change the operations of cryptographic equipment or devices to enable them to communicate in a secure manner.

Similar to the definition of "classified cryptographic information," it is not the intent of the Committee to cover by this definition persons who are custodians of, or otherwise have access to, "classified cryptographic key" for personal or office use. Thus, persons who have access to such key in order to operate a secure telephone located in a single office are not covered by this definition. On the other hand, it is intended that persons who have access to such key in order to operate multiple cryptographic devices or who operate cryptographic devices which are used to process large volumes of classified information originating in multiple locations, such as government communications centers, would be covered by this definition.

Subsection (b)(5) defines the term "employee" to mean any person who receives a salary or compensation of any kind from a department or agency of the Executive branch, or is a contractor or unpaid consultant of such department or agency.

Subsection (b)(6) makes clear that the term "head of a department or agency" refers to the highest official who exercises supervisory control of the employee concerned, and does not include any intermediate supervisory officials who may otherwise qualify as heads of agencies within departments. For example, the Secretary of Defense would constitute the "head of the department" for all employees of the Department of Defense, and not the secretary of a military department or the director of a Defense agency.

Subsection (b)(7) defines the phrase "questions of a counterintelligence nature" as meaning questions specified to the subject of a polygraph examination in advance limited solely to ascertain whether such person is engaged in, or planning, espionage against the United States or knows persons who are so engaged. It is not intended that this definition encompass any question relating to the life-style of the subject, such as his or her sexual orientation, prior or present use of drugs or alcohol, etc. The sole thrust of such questions must be to ascertain whether the subject is acting on behalf of a foreign government, is involved in planning such activities, or knows others who are so engaged.

Section 902 of the bill requires the President to issue regulations to implement this title within 180 days of its enactment, and to provide copies of such regulations to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

SECTION 4

Section 4 of the bill would amend section 1104 of the Right to Financial Privacy Act of 1978 by adding a new subsection (d) to this section. The purpose of the amendment is to permit a person who is being considered for access to particularly sensitive classified information, as that term is defined in section 2 of the bill, to provide his or her consent to authorized investigative agencies of the U.S. Government obtaining access to his or her financial records, as defined by the Right to Financial Privacy Act, as a condition of receiving and maintaining access to such information.

This provision is required because subsection 1104(a) limits the period a person may provide consent to a Government authority having access to his or her financial records to ninety days.

This section is also necessary to supplement and provide legal effect to subsection 803 [as added by section 2 of the bill] which requires that all persons who are granted access to particularly sensitive classified information provide their consent for authorized investigative agencies to be able to obtain access to their financial records pursuant to the Right to Financial Privacy Act of 1978.

The new subsection (d)(1) provides that notwithstanding the provisions of subsection 1104(a) (which limits the period a person may consent to access by government authority to his or her financial records to 90 days), a "customer", as defined in section 1101(5) of the Right to Financial Privacy Act of 1978, who is the subject of a personnel security investigation conducted by an authorized investigative agency of the U.S. Government as a condition of being granted access or maintaining access to particularly sensitive classified information, as defined by section 803(b) of the National Security Act of 1947, may authorize nonrevocable disclosure of all financial records maintained by financial institutions for the period of the customer's access to such information and for up to five years of such access to such information has been terminated, by such investigative agency, for an authorized security purpose.

Subsection (d)(2) provides that the consent given under subsection (1) must be contained in a signed and dated statement which identifies the financial records which are authorized to be disclosed. Such statement may also authorize the disclosure of

financial records of accounts opened during the period covered by the consent agreement which are not identifiable at the time the account is opened. It is anticipated that such accounts would be covered by a general statement, identifying by category the types of accounts for which access is authorized, e.g. bank accounts, credit card accounts, etc. At the time of periodic reinvestigations of the subject, the investigating agency authorized to conduct the investigation concerned may request the subject to identify any accounts which had been opened since the date the consent agreement was signed as part of the investigative process.

In addition, subsection (d)(2) requires the investigating agency concerned to provide a copy of the consent agreement to any financial institution from which disclosure is sought, together with the certification required pursuant to section 1103((b) of the Right to Financial Privacy Act of 1978, that the Government authority concerned has complied with the applicable provisions of the Act. In the circumstances contemplated, such certification would encompass the following elements: (1) that the customer of the financial institution is the subject of a background investigation required by law for access to particularly sensitive classified information pursuant to this title; (2) that the Government authority concerned is the authorized investigating agency responsible for such investigation; (3) that the request is being made during the period in which the customer has authorized access pursuant to the consent agreement provided the financial institution; and (4) that, if the accounts were not specifically identified by the consent agreement, that the financial records being sought are, in fact, records covered by such consent agreement.

Subsection (d)(3) makes clear that the right of the customer, established pursuant to subsection 1104(c) of this section, pertains to any disclosures made pursuant to subsection (d). This means that the right of the customer to obtain a copy of the record required to be made by the financial institution of any disclosure to a Government authority, (unless the Government authority has obtained a court order pursuant to section 1109 of Act), is preserved in the circumstances contemplated by subsection (d).

Subsection (d)(4) requires an annual report to the two intelligence committees by the office established pursuant to section 802(D) of the National Security Act of 1947 [as added by section 2 of the bill] to monitor the implementation of these policies, which fully informs the committees concerning all requests for financial records made pursuant to this section. It is contemplated that such reports shall, at a minimum, identify the investigative agencies making such requests, provide the number of requests each such agency has made during the reporting period, and describe by appropriate category the uses made of such information.

SECTION 5

Section 5 amends chapter 37 of title 18, United States Code, to add a new section, creating a new criminal offense for the possession of espionage devices where the intent to use such devices to violate the espionage statutes can be shown.

It is the Committee's intent to permit the Government to prosecute the mere possession of espionage devices where intent to commit espionage can be shown, without having to prove that information relating to the national defense had, in fact, been transmitted to a foreign government, and without having to prove a conspiracy to commit espionage involving a second person and an overt act in furtherance of the conspiracy by either of the two parties, as required by existing law.

Subsection (a) adds a new section 799a at the end of chapter 37 of title 18, United States Code, which provides that any person who knowingly maintains possession of any electronic, mechanical, or other device or equipment, the design and capability of which renders it primarily useful for the purpose of surreptitiously collecting or communicating information, with the intent to utilize such device or equipment to undertake actions which would violate sections 793, 794, 794a [as added by section 6, below] or 798 of title 18, or section 783(b) of title 50, United States Code, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

SECTION 6

Section 6 also amends chapter 37 of title 18, United States Code, to create a new criminal offense for any person who knowingly sells or transfers for any valuable consideration to a person whom he knows or has reason to believe to be an agent or representative of a foreign government, any classified document or material that such person knows to be marked or designated as "Top Secret," or which such person knows to have had such marking or designation removed. Subsection (b) also provides that in any prosecution under this section, whether or not the document or material has been properly marked or designated pursuant to applicable law or Executive order is not an element of the offense. This subsection specifically provides, however, that it shall be a defense to any prosecution under this section that the information or document in question had been officially released to the public by an authorized representative of the United States Government prior to the sale or transfer in question.

SECTION 7

Section 7 amends title 93 of title 18, United States Code, relating to the responsibilities of public officers and employees, to provide that any officer or employee of the United States, or person acting for or on behalf of the United States, who becomes possessed of "Top Secret" documents or materials, who knowingly removes such documents or materials without authority and retains them at an unauthorized location, shall be fined not more than $1,000, or imprisoned for not more than one year, or both.

SECTION 8

Section 8 amends chapter 211 of title 18 of the United States Code by adding a new section 3239 to establish jurisdiction in certain U.S. federal courts to try cases involving violations of the espionage laws where the alleged misconduct takes place outside the United States.

Specifically, the U.S. District Court for the District of Columbia and the U.S. District Court for the Eastern District of Virginia are granted jurisdiction over any offense involving a violation of the U.S. statutes enumerated in the section which were begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district.

SECTION 9

Section 9 amends section 3681 of title 18, United States Code, to provide for expansion of the forfeiture provision to certain espionage offenses that are not enumerated in the existing law. These include violations of 18 U.S.C. 793 (gathering defense information with the intent to damage the United States); 18 U.S.C. 798 (disclosure of communications intelligence); 50 U.S.C. 783(b) (communication of classified information by a government employee to a foreign government); and the new criminal offenses which are created by this Act (18 U.S.C. 799a possession of espionage devices, added by section 5, and 18 U.S.C. 794a the sale or tansfer of "Top Secret" documents added by section 6).

The amendment to section 3681 also covers crimes of espionage that may be prosecuted under the Uniform Code of Military Justice, (Chapter 47 of Title 10, United States Code) or convictions in foreign courts which, if they occurred in the United States, would constitute offenses under the provisions of the United States Code enumerated above.

SECTION 10

Section 10 amends 5 U.S.C. 8312 to provide that an individual may be denied an annuity or retired pay by the United States, to which he or she may otherwise have been entitled, if he or she is convicted in a foreign country of offenses involving espionage against the United States for which such annuity or retired pay could have been denied had such offenses occurred within the United States.

A new subsection (d) is added to section 8312 which provides that for purposes of section 8312 an offense is established if the Attorney General certifies to the agency employing or formerly employing the person concerned that—

(1) the individual has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances that would violate the provisions of law enumerated in subsections (b) and (c) of section 8312, had such conduct occurred within the United States, and that such conviction was not being appealed or that final action had been taken on such appeal within the foreign country concerned;

(2) that such conviction was obtained in accordance with procedures that afforded the defendant due process rights comparable to those provided by the U.S. Constitution, and such conviction was based upon evidence that would have been admissible in U.S. courts; and

(3) that such conviction occurred after the effective date of subsection (d).

The proviso to subsection (d) also provides that any such certification made by the Attorney General is subject to review by the United States Court of Claims based upon the application of the person concerned, or his or her attorney, alleging that the conditions certified by the Attorney General have not be satisfied in this particular case. If the court determines, after appropriate review, that the conditions established by the statute have not been met, it shall order the annuity or retirement benefit restored and shall order any payments which may have been withheld or denied to be paid.

SECTION 11

Section 11 would amend the Consumer Credit Protection Act by inserting "(a)" before the existing paragraph of section 608 (15 U.S.C. 1681f.) and by adding four new subsections.

Subsection (b) would provide that, notwithstanding the provisions of section 604 of the Act of this Title, a consumer reporting agency shall furnish a consumer report to the FBI when presented with a request

for a consumer report made pursuant to this subsection by the FBI provided that the FBI Director, or the Director's designee, certifies in writing to the consumer reporting agency that such records are sought in connection with an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

It is the intent of the Committee that, if the Director delegates his function under subsections (b) and (c) to a designee, he will delegate it no further down the FBI chain of command than the level of Deputy Assistant Director. The Committee also recognizes that the Director may delegate to the head of acting head of an FBI field office the authority to make the required certification in exigent circumstances where time is of the essence, provided that the Director is notified as soon as possible for the circumstances involved.

The Committee also accepts the FBI's assurance that it will not under any circumstances rely upon the substantive financial information from consumer reports obtained under this section without verifying such information with the institution concerned. As reflected in other provisions of the Consumer Credit Protection Act, Congress has long been concenred that credit reports may be inaccurate. The FBI has advised that to rely solely upon such information as the basis for further investigative inquiry without verifying its accuracy would constitute poor investigative practice. The Committee recognizes it could lead to unjustified intrusions upon the privacy of innocent Americans. The best evidence would be contained in the records of the financial institutions located through the use of consumer credit reports. The Committee expects that in its internal regulations implementing this provision the FBI will permit use of unverified credit bureau ratings or financial information only to locate actual financial transaction records on record with financial or commercial entities.

Subsection (c) would provide that, notwithstanding the provisions of section 604 of the Act, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to name, address, former addresses, places of employment, or former places of employment, to a representative of the FBI when presented with a written request signed by the FBI Director, or the Director's designee, stating that the information is necessary to the conduct of an authorized foreign counterintelligence investigation."

Under current law (50 U.S.C. 1681f.) the FBI may obtain such identifying information upon request, but there is no requirement that a consumer reporting agency comply with the FBI's request and no limitation on disclosure of the request to the consumer. It is the intent of the Committee that any FBI request for information under this provision must meet the standards of applicable Attorney General's guidelines for obtaining identifying information. In addition, there should be reason to believe that the person has been in communication with a foreign power or an agent of a foreign power. The Committee understands and expects that the FBI would continue to request identifying information under the provision of existing law, but in such case the consumer reporting agency would not be compelled to comply with the FBI's request and would be permitted to disclose the request to the consumer. The Committee intends that the FBI should continue to compensate consumer credit reporting companies only for providing identifying information voluntarily as under existing law.

Subsection (d) would provide that no consumer reporting agency, or officer, employee, or agent of such institution, shall disclose to any person that the FBI has sought or obtained a consumer report or identifying information respecting any consumer under this section. Congress has enacted similar provisions to protect the security of foreign counterintelligence investigations in the Right to Financial Privacy Act and the Electronic Communications Privacy Act. The purpose is to prevent premature disclosure of a pending investigation and to enable the FBI, rather than the consumer reporting agency, to make whatever disclosures of the FBI's inquiries may be appropriate under existing Attorney General Guidelines. The language is not intended to preclude appropriate disclosure related to requests by relevant Congressional oversight committees.

Finally, subsection (e) would require that on an annual basis the FBI Director shall fully inform the House and Senate Intelligence Committees concerning the FBI's exercise of its authority under these provisions. As part of this report, the Committee intends that the FBI should inform the House or Senate Intelligence Committee of the facts and circumstances that are the basis for obtaining information concerning any domestic or group substantially composed of United States persons. It is not intended, however, that the report identify particular individuals whose consumer credit records were obtained pursuant to this section.

SECTION 12

Section 12 would make two amendments to section 2709 of title 18, U.S. Code. Subsection (a) would strike subsection 2709(b) and insert in lieu thereof a new subsection containing three paragraphs.

Paragraph (1) would re-enact with one modification the existing ECPA provision for FBI access to "subscriber information and toll billing records information, or electronic communications transactional records" when the Director (or the Director's designee in a position not lower than the rank of Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act.

The amendment adds the requirement that the Director's designee be of at least the rank of Deputy Assistant Director, and it is also intended that the authority delegated to that level be confined to the Intelligence and Criminal Investigative Divisions. This amendment is due, in part, to the finding in the Intelligence Committee's 1989 report on the FBI investigation of CISPES that critical decisions were made at low levels at FBI Headquarters.

Paragraph (2) would add a new provision specifically designed to meet legitimate needs for access to names, addresses, and length of service of subscribers without having to satisfy the more stringent requirements for access to toll billing records information or other electronic communication transactional records. Under this provision, the FBI Director or the Director's designee would be authorized to request the name, address, and terms of service of a person or entity if the Director or the Director's designee certifies in writing to the wire or electronic communications service provider to which the request is made that the information sought is relevant to an authorized foreign counterintelligence investigation.

In addition, if the request is for information that is "not publishable" (as explained below) the Director or a designee must certify that there are specific and articulable facts giving reason to believe that communications facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with a party who falls into one of four categories—(i) a foreign power, as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978 (FISA), which engages in clandestine intelligence activities or international terrorism; (ii) a foreign diplomatic establishment; (iii) an agent of a foreign power, as defined in section 101(b)(1) of FISA, who engages or has engaged in clandestine intelligence activities or acts as a member of a foreign power as defined in section 101(a)(4) of the Foreign Intelligence Surveillance Act (i.e., a group engaged in international terrorism or activities in preparation therefor); or (iv) an agent of a foreign power as defined in section 101(b)(2) of FISA.

If the Director delegates his function under paragraph (b)(2) to a designee, the requirement is the same as with the delegation permitted under paragraph (b)(1) as amended, that is, that he will delegate it no further down the FBI chain of command than the level of Deputy Assistant Director. As in paragraph (b)(1), delegation to that level should be confined to the Intelligence and Criminal Investigative Divisions.

Paragraph (b)(2) authorizes requests for names, addresses, and length of service. Requests would normally be limited to the name, address, telephone number, and length of service of a person or entity to whom service is provided by the wire or electronic communications service provider. It is intended that requests may also include the name and address of another person or entity who pays for the service. The substitution of "name, address, and length of service" for the term "subscriber information" makes clear that the information covered by paragraph (b)(2) shall not include the kind of information which is referred to in ECPA as "toll billing records information." The latter is described by the FBI as "that record information maintained by a communication service provider which identifies the telelphone number dialed from a particular phone or the identification of a number dialed and attributable to a particular telephone line for which a communication service provider charges a service fee."

Moreover, the Committee specifically intends that the authority to obtain information under paragraph (b)(2) shall not require communications service providers to create records which they do not maintain in the ordinary course of business.

The amendment distinguishes between information that is publishable and information that is "not publishable." The FBI may obtain the former if the Director or a designee at no lower rank than Deputy Assistant Director certifies that the information

sought is relevant to an authorized foreign counterintelligence investigation.

The term "not publishable" in subparagraph (2)(B) refers to information that has not been published and will not be published in a directory or similar publicly available form. Information is "not publishable" if the service provider would not provide that information to members of the general public upon request. Information that is "not publishable" includes so-called "unlisted" phone numbers that are not published in a directory or provided to the general public, normally as a result of a payment by the subscriber for a service affording greater privacy protection. Because of the greater expectation of privacy for information that is "not publishable," the amendment imposes a higher standard for FBI access under subparagraph (2)(B).

The "specific and articulable facts giving reason to believe" standard in subparagraph (2)(B) applies both to the question of whether communications facilities have been used in communication with a particular party and to the question of whether that party fits one of the three statutory criteria. In terms of the degree of evidence required, the "specific and articulable facts giving reason to believe" standard in subparagraph (2)(B) has the same meaning as the standard in paragraph (1)(B), which reflects existing law and the legislative history of the Electronic Communications Privacy Act. The standard is less than the probable cause standard required for the most intrusive techniques such as electronic surveillance.

With respect to the standard for showing communication with a particular party, the listing of a telephone number on the toll billing records of the party would be sufficient to justify a request for the specified information associated with that number. Other facts and circumstances may also meet this standard. For example, if a notebook of a suspected foreign agent contains a list of phone numbers, the facts and circumstances may be sufficient to meet the "specific and articulable facts giving reason to believe" standard and justify a request for information associated with those numbers. There could also be circumstances in which the FBI would have the name of an individual suspected of communicating with a foreign power through communications facilities registered in the individual's name, and it would be reasonable under this provision for the FBI to obtain the telephone number and/or address of that individual.

As stated earlier, there must also be "specific and articulable facts giving reason to believe" that the known party to the communication is (i) a foreign power, as defined in the Foreign Intelligence Surveillance Act of 1978 (FISA), which engages in clandestine intelligence activities or international terrorism; (ii) a foreign diplomatic establishment; (iii) an agent of a foreign power, as defined in section 101(b)(1) of FISA, who engages or has engaged in clandestine intelligence activities or acts as a member of a foreign power, as defined in section 101(a)(4) of the Foreign Intelligence Surveillance Act, or (iv) an agent of a foreign power, as defined in section 101(b)(2) FISA. The effect of this language is to impose a higher standard than would apply if the FISA definition of "agent of a foreign power" were used in its entirety. The impact is to provide greater protection for the privacy of persons who associate with foreign nationals in the United States.

The FISA provision was designed to meet positive foreign intelligence as well as foreign counterintelligence requirements and to cover visitors from foreign countries which had a record of using particular types of visitors for intelligence assignments. Given the primary foreign counterintelligence purpose of this amendment and the great expansion of international visits and delegations, the need to identify the contacts of foreign nationals who are not suspected of clandestine intelligence activities or involvement with international terrorism is outweighed by the interest in the privacy of telephone communications between such foreign nationals and persons in the United States who have unlisted telephone numbers.

The FBI would also have the authority to investigate certain contacts with foreign diplomatic establishments, as determined by reference to the appropriate publications and records of the Department of State which identify premises having diplomatic immunity.

A new paragraph (3) is added to restrict FBI investigations of a person or entity whose communication with a suspected foreign power or agent of a foreign power is identified on the basis of nonpublishable information obtained under paragraph (2)(B). Paragraph (3)(A) states that, except for the limited inquiry provided in subparagraph (B), the FBI may not investigate a person or entity solely on the basis of nonpublishable information obtained pursuant to paragraph (2)(B) unless the FBI determines that there are specific and articulable facts giving reason to believe that such person or entity is involved, or is seeking to become involved, in clandestine intelligence activities or international terrorism activities, or is in a position to provide assistance to the Federal Bureau of Investigation in countering such activities. This standard is intended to require more than the bare fact of the occurrence of a communication. The contents of the communication, if intercepted or otherwise known, may be used to provide the specific and articulable facts giving reason to believe the threshold standard is met.

Subparagraph (3)(B) provides that, in order to determine whether there is a basis for an investigation under subparagraph (3)(A), the FBI may conduct an inquiry that is limited in duration and that uses the least intrusive means possible. Such inquiry shall be conducted in accordance with guidelines issued by the Attorney General and submitted to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence. It is intended that this requirement for guidelines may be met by the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations currently in effect.

The techniques normally used in such inquiries are examination of FBI indices and files; examination of publicly available records; examination of federal, state, and local law enforcement records; inquiries of law enforcement, intelligence, or security agencies of foreign governments, and inquiries of use of previously established assets. Other techniques permitted in Attorney General guidelines may be used only if they are the least intrusive means possible and only if their use is confined to determining whether there is a basis for an investigation under subparagraph (3)(A).

Paragraph (3) applies only to investigations and inquiries concerning persons or entities if the fact of their communication is identified solely on the basis of nonpublishable information obtained pursuant to paragraph (2)(B). Paragraph (3) reflects the need for careful controls on the uses the FBI will make of the names and addresses obtained in this manner. It is the intent that, after identifying persons believed to have communicated with a foreign power or foreign agent, the FBI should carefully assess its investigative needs and the intrusiveness of particular techniques before making inquiries about such persons. Particularly in the case of communications with foreign diplomatic establishments, most contacts are likely to be innocuous. If a communication has been monitored pursuant to the Foreign Intelligence Surveillance Act, the FBI should evaluate the contents to determine whether they indicate that further inquiry regarding the outside party might be expected to produce useful results.

Paragraph (3) also recognizes that FBI counterintelligence investigations are not confined to persons suspected of collaborating with foreign agents. The FBI has a legitimate interest in determining whether persons who have contacts with foreign agents might be suitable to become cooperating sources in the FBI's foreign counterintelligence investigations of those agents. For example, the FBI could be justified in interviewing a person whose contacts with foreign officials may be entirely innocent, if those contacts may be of value in providing information to the FBI for its investigations of foreign intelligence officers working under official cover at a diplomatic establishment. Such FBI interviews have no negative implications for the person interviewed. To the contrary, the FBI seeks to interview people with such contacts cased on the Bureau's experience that many Americans are positively disposed toward assisting the FBI in protecting the national security.

Subsection (b) of Section 12 amends section 2709 of Title 18, U.S. Code, by striking out subsection 2709(d) and inserting a new subsection which adds an additional sentence to the existing provisions on dissemination by the Bureau.

One result of the FBI practices discussed above is the creation of records in FBI files whose contacts with foreign agents do not involve any suspicious activity. Subsection 2709(d) of ECPA currently allows dissemination to other U.S. government agencies "only if such information is clearly relevant to the authorized responsibilities of such agency." Personally identifiable information in FBI files on apparently innocuous contacts with foreign officials should not be disseminated to another agency under this provision without a determination by a supervisory official that the clear relevance standard has been met.

To further emphasize this point, the amendment would modify subsection 2709(d) to provide that information concerning a communication of a United States person obtained under this section may be disseminated outside the FBI only for authorized foreign counterintelligence or law enforcement purposes. "United States person" means a citizen, permanent resident alien, or domestic organization as specified in the statutory definition used in the Foreign Intelligence Surveillance Act.

With respect to security background investigations, the intent is that such information may be disseminated if it is clearly relevant to a foreign counterintelligence issue that has arisen in a specific case and that is material to a determination of eligibility for a clearance. For example, if a member of the armed services who is re-

quired to report contacts with certain foreign nationals has not reported any such contact, but an associate interviewed in his security background investigation states that such contacts have occurred, the FBI could be requested to review its files for any information relevant to and necessary for a disposition of that issue as a foreign counterintelligence matter. The fact of a particular telephone communication could be clearly relevant to that foreign counterintelligence concern.

SECTION 13

Section 13 amends Chapter 204 of title 18, United States Code, to provide the Attorney General with discretionary authority to pay rewards for information leading to the arrest or conviction of espionage against the United States or leading to the prevention or frustration of such acts.

Subsection (a) renumbers the existing provisions of section 3071, which provides discretionary authority for the Attorney General to pay rewards for information leading to the arrest or conviction of persons for acts of terrorism against the United States, as subsection (a) of subsection 3071, and adds a new subsection (b) to this section.

The new subsection (b) provides that, with respect to acts of espionage involving or directed at United States information classified in the interests of national security, the Attorney General may reward any individual who furnishes information in either of three categories: (1) information leading to the arrest or conviction in any country of an individual or individuals for commission of an act of espionage against the United States; (2) information leading to the arrest or conviction of individuals in similar circumstances for conspiring to commit an act of espionage against the United States; and (3) information leading to the prevention or frustration of an act of espionage against the United States.

Subsection (b) of section 13 changes the maximum amount the Attorney General can pay as a reward for information provided under section 3071 from $500,000 to $1 million.

Subsection (c) amends the list of definitions in 18 U.S.C. 3077 to add definitions for two terms used in the amendments to section 3071. The term "act of espionage" is defined as an activity that is a violation of section 794, 794a [as added by section 6 of this Act], 798, or 799a [as added by section 5 of this Act] of title 18, or section 783 of title 50, United States Code. The term "United States information classified in the interest of national security" is defined as information owned or possessed by the United States Government concerning the national defense and foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure and that has been so designated.

SECTION 14

Sec. 14. To provide a court order process for physical searches undertaken for foreign intelligence purposes

Sec. 14 amends the Foreign Intelligence Surveillance Act of 1978 to add a new Title IV establishing statutory procedures for the approval and conduct of physical searches within the United States for foreign intelligence purposes. To the extent that the provisions of this title are the same as the provisions for electronic surveillance under FISA, the following section-by-section analysis restates in full the applicable FISA legislative history.

Authorization of physical searches for foreign intelligence purposes

Section 401(a) authorizes submission of applications to the Foreign Intelligence Surveillance Court for an order approving a physical search in the United States, for the purpose of collecting foreign intelligence information, of the property, information or material of a foreign power as defined in section 101(a) (1), (2), and (3) of the Foreign Intelligence Surveillance Act (FISA), or the premises, property, information or material of an agent of a foreign power or a foreign power as defined in section 101(a) (4), (5), and (6) of FISA. Applications may be submitted only if the President has, by prior written authorization, empowered the Attorney general to approve the submission. This section does not require the President to authorize each specific application. He may authorize the Attorney General generally to seek applications under this title or upon such terms and conditions as the President wishes, so long as the terms and conditions are consistent with this title.

The reference to Presidential authorization does not mean that the President has independent, or "inherent," authority to authorize physical search in the United States for the purpose of collecting foreign intelligence in any way contrary to the provisions of this title. As stated in section 406(a), the procedures of this bill are the exclusive means by which physical search, as defined in section 409(b), may be conducted in the United States for the purpose of collecting foreign intelligence.

Subsection (a) also authorizes a judge to whom an application is made to grant an order for physical search in the United States, for the purpose of collecting foreign intelligence information, of the specified premises, property, information or material, "notwithstanding any other law." The "notwithstanding any other law" language is intended to make clear that, notwithstanding the Vienna Convention on Diplomatic Relations, the activities authorized by this bill may be conducted. The "notwithstanding any other law" wording also deals with the contention that 28 U.S.C. 1251, which grants the Supreme Court exclusive original jurisdiction over all actions against ambassadors of foreign states, would prevent a lower court from approving a physical search directed at a foreign ambassador.

It is noted, however, that the applications and orders authorized by this subsection do not apply to physical search of the premises of an "official" foreign power, as defined in section 101(a) (1), (2), or (3) of FISA. The Committee has determined that the balance between security and civil liberties does not require prior judicial involvement in physical search of premises of this category of targets. The physical search of premises of an "official" foreign power without a court order may be conducted only pursuant to regulations issued by the Attorney General, as provided in section 406(b). The physical search of premises of an "official" foreign power without a court order may include the search of property, information, or material that is located on those premises and is owned, used, or possessed by, or in transit from, that foreign power. However, the Committee does not intend that searches of premises of "official" foreign powers without court orders include searches of property "in transit to" such a foreign power that may be located on those premises, but has not yet come into full possession or use by that foreign power. For example, sealed packages delivered to an "official" foreign power from a person other than an officer or employee of that foreign power may not be searched without a court order, even if they are located on the premises of an "official" foreign power. In that circumstance, the court order is required because of the privacy interest of the person who is transmitting the package which has not yet been opened by the intended recipient.

Section 401(b) provides that the Foreign Intelligence Surveillance Court, as defined in section 409(e), shall have jurisdiction to hear applications for and grant orders approving physical search for the purpose of obtaining foreign intelligence anywhere within the United States under the procedures set forth in this Act. No judge shall hear the same application which has been denied previously by another judge. Subsection (b) also provides that, if any judge denies an application for an order authorizing a physical search under this Act, such judge shall provide immediately for the record a written statement of each reason for his decision. On motion of the United States, the record shall be transmitted, under seal, to the Court of Review, as defined in section 409(f). As under FISA, this provision is intended to make clear that if the Government desires to pursue an application after a denial, it must seek review in the special court of review; it cannot apply to another judge of the Foreign Intelligence Surveillance Court. Obviously, where one judge has asked for additional information before approving an application, and that judge is unavailable when the Government comes forward with such additional information, the Government may seek approval from another judge. It would, however, have to inform the second judge about the first application.

The Committee intends that, as under FISA, the judges of the Foreign Intelligence Surveillance Court should have an opportunity to examine, when appropriate, the applications, orders, and statements of reasons for decisions in other cases.

Subsection (c) provides that the Court of Review shall have jurisdiction to review the denial of any application made under this title. If such court determines that the application was properly denied, the Court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

Subsection (d) provides that judicial proceedings under this title shall be concluded as expeditiously as possible. The record of proceedings under this title, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of Central Intelligence. The Committee intends that such measures shall be the same as those established pursuant to FISA and thus shall include such document, physical, personnel, or communications security measures as are necessary to protect information concerning proceedings under this title from unauthorized disclosure. As under FISA, such measures may also include the use of secure premises provided by the executive branch to hear an application and the employment of executive branch personnel to provide clerical and administrative assistance.

Application for an order

Section 402(a) specifies what information must be included in the application for a court order. Applications must be made by a Federal officer in writing under oath or affirmation. If the officer making the application is unable to verify the accuracy of the information or representations upon which the application is based, the application should include affidavits by other officers who are able to provide such personal verification. Thus, for example, if the applicant was an attorney in the Department of Justice who had not personally gathered the information contained in the application, it would be necessary that the application also contain an affidavit by an officer personally attesting to the status and reliability of any informants or other covert sources of information. By this means the source of all information contained in the application and its accuracy will have been sworn to by a named official of the U.S. Government and a chain of responsibility established for judicial review.

Each application must be approved by the Attorney General, who may grant such approval if he finds that the appropriate procedures have been followed. The Attorney General's written approval must indicate his belief that the facts and circumstances relied upon for the application would justify a judicial finding of probable cause to believe that the target is a foreign power or an agent of a foreign power, that the premises or property to be searched contains foreign intelligence information, and that the premises or property to be searched is owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power as well as his belief that all other statutory criteria have been met.

Paragraph (1) of subsection (a) requires that the application include the identity, if know, or a description of the target of the search. If the Government knows the identity of the target of the search, it is required to identify him. The target may be an individual or an entity.

The word "target" is nowhere defined in this title, although it is a key term because the standards to be applied differ depending on whom or what is targeted. The committee intends that the target of a physical search is the individual or entity about whom or from whom information is sought. In most cases this would be the individual or entity who owns, uses, or possesses the premises or property to be searched. In some cases, however, it would be the individual or entity to or from whom property is in transit. See section 402(a)(4)(C).

Generally, under this title, targeting foreign powers may be accomplished on a less strict basis than targeting of agents of foreign powers. An individual, of course, cannot be a foreign power, only an agent of a foreign power. Therefore, if the search is to be directed at an individual about whom information is sought, that individual is the target and must be shown to be an "agent of a foreign power." Where two or three individuals are associated with one another, it might be argued that they are an "association" or an "entity," which, if the proper showing is made, could be considered a "foreign power." (This would especially be true if the individuals engaged in "international terrorism" and thereby might be a group engaged in international terrorism which is a defined "foreign power.") This does not mean, however, that property of each of these individuals can then be individually searched merely upon a showing that together they are a "foreign power." Rather, to search the property of each individual would require a showing that each was an "agent of a foreign power," with its higher standard.

Often, however, associations or entities will act in a "corporate" capacity, as distinguished from the acts of an individual in the association or entity. For example, corporations own or lease property, enter into contracts, and otherwise act as an entity distinct from the individuals therein. The fact that an individual officer or employee, acting in his official capacity, may sign the deed, lease, or contract on behalf of the corporation does not vitiate the fact that it is the corporation rather than the individual who is acting. Thus, it is possible to target a "foreign power" in such circumstances. In addition, it will be possible under this title to target a "foreign power" in certain rare cases, where the facility targeted, while owned, used, or possessed by the entity, is in fact dedicated to the use of one particular member of the entity, for instance, where each officer is assigned his own office. However, in order to justify the target as a "foreign power" rather than as an "agent of a foreign power," the information sought must be concerning the entity, not the individual.

The judge in considering the application, wherever the Government claims the target is a "foreign power," and especially where U.S. persons are officers or employees of the "foreign power," must scrutinize the description of the information sought, and the property or premises to be searched, see section 402(a)(3), *infra*, to determine whether the target is really the "foreign power" rather than an "agent of a foreign power." The judge must also closely scrutinize the minimization procedures to assure that where the target is a "foreign power," the individual U.S. persons who may be members or employees of the power are properly protected.

Paragraph (2) requires that the application contain evidence of the authority to make this application. This would consist of the Presidential authorization to the Attorney general and the Attorney General's approval of the particular application.

Paragraph (3) requires that the application identify the Federal officer making the application; that is, the name of the person who actually presents the application to the judge. In addition, paragraph (3) requires that the application contain a detailed description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered. The description should be as specific as possible and should detail what type of premises or property are likely to be searched and what types of information, material, or property are likely to be seized, reproduced, or altered. Such specifics are necessary if the judge is meaningfully to assess the sufficiency and appropriateness of the minimization procedures.

Paragraph (4) requires a statement of the facts and circumstances justifying the applicant's belief that the target of the physical search is a foreign power or an agent of a foreign power, that the premises or property to be searched contains foreign intelligence information, and that the premises or property to be searched is owned, used, processed by, or is transit to or from a foreign power or an agent of a foreign power.

Paragraph (5) requires a statement of the proposed minimization procedures. The statement of procedures required under this paragraph should be full and complete and normally subject to close judicial review. It is the intention of the committee that minimization procedures be as uniform as possible for similar physical searches. The application of uniform procedures to identical searches will result in a more consistent implementation of the procedures, will result in improved capability to assure compliance with the procedures, and ultimately means a higher level of protection for the rights of U.S. persons.

Paragraph (6) requires the application to contain a statement of the manner in which the physical search is to be conducted. The statement should be as detailed and specific as possible in light of the need for the judge in his order to specifiy the manner in which the physical search is to be conducted. For instance, where physical entry will be required, the application should so state indicating generally the circumstances involved.

Paragraph (7) requires a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, premises, or property specified in the application, and the action taken on each previous application.

Paragraph (8) requires a statement of the facts concerning any search that did not require a warrant due to exigent circumstances, as described in section 406(b), which involves any of the persons, premises, or property specified in the application. Pursuant to section 406(b), the court will already have received a full report from the Attorney General on any such search, including a description of the exigent circumstances.

Paragraph (9) requires that the application contain a statement that the purpose of the physical search is to obtain foreign intelligence information. This statement should be sufficiently detailed so as to state clearly what sorts of information the Government seeks. A simple designation of which subdefinition of "foreign intelligence information" is involved will not suffice. There must be an explanation of the determination approved by the Attorney General that the information sought is in fact foreign intelligence information. The requirement that this judgment be explained is to ensure that cases are considered carefully and to avoid statements that consist largely of boilerplate language. The committee does not intend that the explanations be vague generalizations or standardized assertions. The applicant must similarly explain that the purpose of the physical search is to obtain the described foreign intelligence information. This requirement is designed to prevent physical searches of one target when the true purpose of the search is to gather information about another individual for other than foreign intelligence purposes. It is also designed to make explicit that the sole purpose of such physical search is to secure "foreign intelligence information," as defined, and not to obtain some other type of information. The applicant must similarly explain why the information cannot be obtained through less intrusive techniques, see section 403(a)(1)(C). This requirement is particularly important in those cases when U.S. citizens or resident aliens are the target of the physical search.

Section 402(b) provides that the judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 403. Such additional proffers would, of course, be made part of the record and

would be subject to the security safeguards applied to the application and order.

Issuance of an order

Section 403(a) specifies the findings the judge must make before he grants an order approving physical search under this title. While the issuance of an order is mandatory if the judge finds that all the requirements of this section are met, the judge has the discretionary power to modify the order sought, such as with regard to the period of authorization or the minimization procedures to be followed. Modifications in the minimization procedures should take into account the impact of inconsistent procedures on successful implementation.

Paragraph (1) of this subsection requires the judge to find that the President has authorized the Attorney general to approve such applications.

Paragraph (2) requires the judge to find that the application has been made by a Federal officer and that the Attorney General has approved the application being submitted.

Paragraph (3) requires a finding that there is "probable cause" to believe that the target of the physical search is a foreign power or an agent of a foreign power, that the premises or property to be searched are owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power, and that physical search of such premises or property can reasonably be expected to yield foreign intelligence information which cannot reasonably be obtained by normal investigative means.

In determining whether "probable cause" exist under this section, the court should keep in mind that this standard is not the ordinary "probable cause" that a crime is being committed, applicable to searches and seizures for law enforcement purposes. Where a U.S. person is believed to be an "agent of a foreign power," for example, there must be "probable cause" to believe that he is engaged in certain activities, but the criminality of these activities need not always be demonstrated to the same degree. The key words—"involve or may involve"—indicate that the ordinary criminal probable cause standard does not apply with respect to the showing of criminality. For example, the activity identified by the Government may not yet involve the criminality, but if a reasonable person would believe that such activity is likely to lead to illegal activities, this would suffice. It is not intended that the Government show probable cause as to each and every element of the crime likely to be committed.

The determination by the court as to probable cause whether the person is engaging in certain activities or, for example, whether an entity is directed and controlled by a foreign government or governments, should include consideration of the same aspects of the reliability of the Government's information as is made in the ordinary criminal context—for example, the reliability of any informant, the circumstances of the informant's knowledge, the age of the information relied upon. On the other hand, all of the same strictures with respect to these matters which have developed in the criminal context may not be appropriate in the foreign intelligence context. That is, in the criminal context certain "rules" have developed or may develop for judging reliability of information. See, for example, *Spinelli* v. *United States*, 393 U.S. 410 (1969). It is not the Committee's intention that these "rules" necessarily be applied to consideration of probable cause under this title. Rather it is the Committee's intent that in judging the reliability of the information presented by the Government, the court look to the totality of the information and consider its reliability on a case-by-case basis.

In addition, in order to find "probable cause" to believe the subject of the surveillance is an "agent of a foreign power, as defined in section 101(b) of FISA, the judge must, of course, find that each and every element of that status exists. For example, if a U.S. citizen or resident alien is alleged to be acting on behalf of a foreign entity, the judge must first find probable cause to believe that the entity is a "foreign power" as defined in section 101(a) of FISA. There must also be probable cause to believe the person is acting for or on behalf of that foreign power and probable cause to believe that the efforts undertaken by the person on behalf of the foreign power constitute sabotage, international terrorism, or clandestine intelligence activities.

Similar findings of probable cause are required for each element necessary to establish that a U.S. citizen is conspiring with or aiding and abetting someone engaged in sabotage, international terrorism, or clandestine intelligence activities.

The proviso in paragraph (3)(A) states that no U.S. person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States. This provision is intended to reinforce the intent of the committee that lawful political activities should never be the sole basis for a finding of probable cause to believe that a U.S. person is a foreign power or an agent of a foreign power. For example, the advocacy of violence falling short of incitement is protected by the first amendment, under the Supreme Court's decision in *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969). Therefore, the pure advocacy of the commission of terrorist acts would not, in and of itself, by sufficient to establish probable cause that an individual or group is preparing for the commission of such acts. However, one cannot cloak himself in first amendment immunity by advocacy where he is engaged in clandestine intelligence activities, terrorism, or sabotage.

Paragraph (3) (B) and (C) require the judge to find probable cause to believe that the premises or property to be searched are owned, used, possessed, by or in transit to or from a foreign power or an agent of a foreign power and that physical search of such premises or property can reasonably be expected to yield foreign intelligence information which cannot reasonably be obtained by normal investigative means.

Paragraph (4) requires the judge to find that the procedures described in the application to minimize the acquisition and retention, and prohibit dissemination, of certain information relating to U.S. persons fit the definition of minimization procedures in this title. The Committee contemplates that the court would give these procedures most careful consideration. If it is not of the opinion that they will be effective, the procedures should be modified.

Paragraph (5) requires that the judge find that the application contains the statements required by section 402. If the statements do not conform to the requirements of section 402, they can and must be rejected by the court.

Subsection (b) specifies what the order approving the physical search must contain. Paragraph (1) requires that it must specify the Federal officer or officers authorized to conduct the physical search and the identity, if known, or a description of the target of the physical search. It must also specify the premises or property to be searched and the information, material or property to be seized, altered, or reproduced, as well as the type of foreign intelligence information sought to be acquired. The order must include a statement of the manner in which the search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search. These requirements are designed in light of the Fourth Amendment's requirements that warrants describe with particularity and specificity the person, place, and objects to be searched and seized.

Paragraph (2) of subsection (b) details what the court directs in the order. The order shall direct that minimization procedures will be followed. The order may also direct that a landlord, custodian, or other specified person furnish information, facilities or assistance necessary to accomplish the search successfully and in secrecy and with a minimum of interference to the services provided by such person to the target of the search. If this is done, the court shall direct that the person rendering the assistance maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the search or the aid furnished that such person wishes to retain. The order presented to the person rendering assistance need not be the entire order approved by the judge under this title. Rather only that portion of the order described in section 403(b)(2) (B)-(C), signed by the judge need be given to the specified person. This portion of the order should specify the person directed to give assistance, the nature of the assistance required, and the period of time during which such assistance is authorized.

Paragraph (2)(C) requires that the order direct that the physical search be undertaken within 30 days of the date of the order, or, if the physical search is of the property, information or material of a foreign power as defined in section 101(a) (1), (2), or (3) of FISA, that such search be undertaken within one year of the order. The comparable periods in FISA are 90 days for most targets and one year for "official" foreign powers.

Paragraph (2)(D) requires that the order direct that the federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search. This report may be made to a judge other than the judge who granted the order approving the search.

Subsection 403(c) provides that at any time after a physical search has been carried out, the judge to whom the return has been made may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated. This provision is not intended to require that the judge assess such compliance, nor is it intended to limit such assessments to any particular intervals. However, it is useful to spell out the judge's authority explicitly so that there will be no doubt when a judge may review the manner in which information about U.S. persons is being handled.

Subsection 403(d) provides that applications made and orders granted under this title shall be retained for a period of at least ten years from the date of the application. This is identical to the FISA requirements, and the purpose is to assure accountability.

Subsection 403 (e) and (f) establish a special notice procedure for those rare cases where a physical search of the residence of a United States person is conducted under this title. This provision reflects the court opinions which describe the search of the home as being at the "core" of the fourth amendment. In *Payton* v. *New York*, 445 U.S. 573 (1980), the Supreme Court declared:

"The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: 'The right of the people to be secure in their . . . houses . . . shall not be violated.' That language unequivocally establishes the proposition that '[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' " Id. at 589-90 (quoting *Silverman* v. *United States*, 365 U.S. 505, 511 (1961)).

Special protection for homes is also consistent with other legislation which imposes criminal penalties for searches of private dwellings. (See 18 U.S.C. 2236).

Subsection (e) provides that not more than 60 days after a physical search of the residence of a United States person authorized by this title, or such a search in the "exigent circumstances" described in section 406(b), has been conducted, the Attorney General shall provide the United States person with an inventory which shall include (1) the existence or not of a court order authorizing the physical search and the date of the order; (2) the date of the physical search and an identification of the premises or property searched; and (3) a list of any information, material, or property seized, altered, or reproduced. Subsection (f) provides that on an ex parte showing of good cause by the Attorney General to a judge of the Foreign Intelligence Surveillance Court the provision of the inventory required by subsection (e) may be postponed for a period not to exceed 90 days. At the end of such period the provision of the inventory may, upon a similar showing, be postponed indefinitely. The denial of a request for such postponement may be reviewed as provided in section 401.

The Committee anticipates that searches of the residence of U.S. persons under this title will be infrequent. The "good cause" which may be grounds for postponement of notice is intended to include national security and practical considerations. Notice may harm national security by, for example, exposing an important ongoing espionage or international terrorism investigation. An illustration of practical grounds for postponement of notice would be a situation where the target was a permanent resident alien who returned after the search to his country of origin. It should be noted that the procedures for use of information under section 404, below, also require notice to any target against whom information acquired by a physical search under this title is to be used in legal proceedings.

Use of information

Section 404 places additional constraints on Government use of information obtained from physical search under this title and establishes detailed procedures under which information may be received in evidence, suppressed, or discovered. With respect to the use of information in legal proceedings, notice should be given to the aggrieved person as soon as possible, so as to allow for the disposition of any motions concerning evidence derived from physical search. In addition, the Attorney General should at all times be able to assess whether and to what extent the use of information made available by the Government to a State or local authority will be used.

Subsection (a) requires that information concerning U.S. persons acquired from physical search pursuant to this title may be used and disclosed by Federal officers and employees, without the consent of the U.S. person, only in accordance with the minimization procedures defined in section 409(c). This provision ensures that the use of such information is carefully restricted to actual foreign intelligence or law enforcement purposes. No information (whether or not it concerns a U.S. person) acquired from a physical search pursuant to this title may be used or disclosed except for lawful purposes. This is to ensure that information concerning foreign visitors and other non-U.S. persons, the use of which is not restricted to foreign intelligence or law enforcement purposes, is not used for illegal purposes.

There is no specific restriction in this title regarding to whom Federal officers may disclose information concerning U.S. persons acquired pursuant to this title although specific minimization procedures might require specific restrictions in particular cases. First, the committee believes that dissemination should be permitted to State and local law enforcement officials. If Federal agents conducting a physical search authorized under this title were to acquire information relating to a violation of State criminal law, such as homicide, the agents could hardly be expected to conceal such information from the appropriate local officials. There will be an appropriate weighing of criminal law enforcement needs against possible harm to national security from the disclosure. Second, the committee can conceive of situations where disclosure should be made outside of Government channels. For example, Federal agents may learn of a terrorist plot to kidnap a business executive. Certainly in such cases they should be permitted to disclose such information to the executive and his company in order to provide for the executive's security.

Finally, the committee believes that foreign intelligence information relating to crimes, espionage activities, or the acts and intentions of foreign powers may, in some circumstances, be appropriately disseminated to cooperating intelligence services of other nations. So long as all the procedures of this title are followed by the Federal officers, including minimization and the limitations on dissemination, this cooperative relationship should not be terminated by a blanket prohibition on dissemination to foreign intelligence services. The Committee wishes to stress, however, that any such dissemination be reviewed carefully to ensure that there is a sufficient reason why disclosure of information to foreign intelligence services is in the interests of the United States.

Disclosure, in compelling circumstances, to local officials for the purpose of enforcing the criminal law, to the targets of clandestine intelligence activity or planned violence, and to foreign intelligence services under the circumstances described above are generally the only exceptions to the rule that dissemination should be limited to Federal officials.

Subsection (b) requires that any disclosure of information for law enforcement purposes must be accompanied by a statement that such evidence, or any information derived therefrom, may be used in a criminal proceeding only with the advance authorization of the Attorney General. This provision is designed to eliminate circumstances in which a local prosecutor has no knowledge that evidence was obtained through a foreign intelligence search. In granting approval of the use of evidence the Attorney General would alert the prosecutor to the search and he, in turn, could alert the court in accordance with subsection (c) or (d).

Subsections (c) through (i) set forth the procedures under which information acquired by means of physical search under this title may be received in evidence or otherwise used or disclosed in any trial, hearing or other Federal or State proceeding. Although the primary purpose of physical search conducted pursuant to this title is not likely to be the gathering of criminal evidence, it is contemplated that such evidence will be acquired and these subsections establish the procedural mechanisms by which such information may be used in formal proceedings. Notice should be given to the aggrieved person as soon as possible, so as to allow for the disposition of any motions concerning evidence derived from physical search under this title.

At the outset the committee recognizes that nothing in these subsections abrogates the rights afforded a criminal defendant under *Brady* v. *Maryland*, 373 U.S. 83 (1963), and the Jencks Act, 18 United States Code, Section 3500 *et seq.* These legal principles inhere in any such proceedings and are wholly consistent with the procedures detailed here. Furthermore, nothing contained in this section is intended to alter the traditional principle that the Government cannot use material at trial against a criminal defendant, and then withhold from him such material at trial. *United States* v. *Andolschek*, 142 F. 2d 503 (2nd. Cir. 1944).

Subsection (c) states that whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from a physical search of the premises or property of that aggrieved person pursuant to the authority of this title, the United States shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information. This provision applies to information acquired from a physical search under this title or any fruits thereof.

Subsection (d) places the same requirements upon the States and their political subdivisions, and also requires notice to the Attorney General. The Attorney General should at all times be able to assess whether and to what extent the use of information made available by the Government to a State or local authority may be used.

Subsection (e) provides a separate statutory vehicle by which an aggrieved person against whom evidence derived or obtained from a physical search under this title is to be or has been introduced or otherwise used or disclosed in any trial, hearing or proceeding may move to suppress the information acquired by physical search or evidence derived therefrom. The grounds for such motion would be that (1) the information was unlawfully acquired, or (2) the search was not made in conformity with the order of authorization or approval. A motion under this subsection must be made before the trial, hearing, or proceeding unless there was no opportunity to make such a motion or the movant was not aware of the grounds for the motion. It should be noted that the term "aggrieved person," as defined in section 409(d) does not include those who are mentioned in documents obtained or copied in a physical search.

Subsection (f) states in detail the procedure the court shall follow when it receives a notification under subsection (c) or (d) or a suppression motion is fined under subsection (e). This procedure applies, for example, whenever an individual makes a motion pursuant to subsection (d) or any other statute or rule of the United States to discover, obtain or suppress evidence or information obtained or derived from physical search conducted pursuant to this title (for example, Rule 12 of the Federal Rules of Criminal Procedure). Although a number of different procedures might be used to attack the legality of the search, it is this procedure "notwithstanding any other law" that must be used to resolve the question. The procedures set out in subsection (f) apply whatever the underlying rule or statute referred to in the motion. This is necessary to prevent the carefully drawn procedures in subsection (f) from being bypassed by the inventive litigant using a new statute, rule or judicial construction.

The special procedures in subsection (f) cannot be invoked until they are triggered by a Government affidavit that disclosure of an adversary hearing would harm the national security of the United States. If no such assertion is made, it is envisioned that mandatory disclosure of the application and order, and discretionary disclosure of other surveillance materials, would be available to the defendant. When the procedure is so triggered, however, the Government must make available to the court a copy of the court order and accompanying application upon which the physical search was based.

The court must then conduct an ex parte, in camera inspection of these materials as well as any other documents relating to the search which the Government may be ordered to provide, to determine whether the physical search of the aggrieved person was lawfully authorized and conducted. The subsection further provides that in making such a determination, the court may order disclosed to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the physical search only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

The procedures set forth in subsection (f) are intended to strike a reasonable balance between an entirely in camera proceeding which might adversely affect the defendant's ability to defend himself, and mandatory disclosure, which might occasionally result in the revelation of sensitive foreign intelligence information. The decision whether it is necessary to order disclosure to a person is for the Court to make after reviewing the underlying documentation and determining its volume, scope, and complexity. Note the discussion of these matters in *United States* v. *Butenko, supra.* There, the Court of Appeals, faced with the difficult problem of determining what standard to follow in balancing national security interests with the right to a fair trial, stated with respect to electronic surveillance:

"The distinguished district court judge reviewed in camera the records of the wiretaps at issue here before holding the surveillance to be legal. . . . Since the question confronting the district court as to the second set of interceptions was the legality of the taps, not the existence of tainted evidence, it was within his discretion to grant or to deny Ivanov's request for disclosure and a hearing. The exercise of this discretion is to be guided by an evaluation of the complexity of the factors to be considered by the court and by the likelihood that adversary presentation would substantially promote a more accurate decision." (494 F. 2d at 607.)

Thus, in some cases, the Court will likely be able to determine the legality of the search without any disclosure to the defendant. In other cases, however, the question may be more complex because of, for example, indications of possible misrepresentation of fact, vague identification of the persons to be targeted or search records which include a significant amount of nonforeign intelligence information, calling into question compliance with the minimization standards contained in the order. In such cases, it is contemplated that the court will likely decide to order disclosure to the defendant, in whole or in part, since such disclosure "is necessary to make an accurate determination of the legality of the physical search."

Cases may arise, of course, where the Court believes that disclosure is necessary to make an accurate determination of legality, but the Government argues that to do so, even given the Court's broad discretionary power to excise certain sensitive portions, would damage the national security. In such situations the Government must choose—either disclose the material or forgo the use of the search-based evidence. Indeed, if the Government objects to the disclosure, thus preventing a proper adjudication of legality, the prosecution would probably have to be dismissed.

Subsection (g) states that if the United States district court pursuant to subsection (f) determines that the physical search was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the physical search of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the physical search was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

The general phrase "in accordance with the requirements of law" has been chosen to deal with the problem of what procedures are to be followed in those cases where the trial court determines that the surveillance was unlawfully authorized or conducted. The evidence obtained would not, of course, be admissible during the trial. But beyond this, in the case of an illegal surveillance, the Government is constitutionally mandated to surrender to the defendant all the records of the surveillance in its possession in order for the defendant to make an intelligent motion on the question of taint. The Supreme Court in *Alderman* v. *United States,* 394 U.S. 165 (1968) held that, once a defendant claiming evidence against him was the fruit of unconstitutional electronic surveillance has established the illegality of such surveillance (and his "standing" to object), he must be given confidential materials in the Government's files to assist him in establishing the existence of "taint." The Court rejected the Government's contention that the trial court could be permitted to screen the files in camera and give the defendant only material which was "arguably relevant" to his claim, saying such screening would be sufficiently subject to error to interfere with the effectiveness of adversary litigation of the question of "taint." The Supreme Court refused to reconsider the *Alderman* rule and, in fact reasserted its validity in its *Keith* decision. (*United States* v. *Alderman,* supra, at 393.)

When the court determines that the surveillance was lawfully authorized and conducted, it would, of course, deny any motion to suppress. In addition, once a judicial determination is made that the surveillance was lawful, a motion for discovery of evidence must be denied unless disclosure or discovery is required by due process.

Subsection (h) states that orders granting motions or requests under subsection (g), decisions under this section that a physical search was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Surpeme Court. It is intended that all orders regarding legality and disclosure shall be final and binding only where the rulings are against the Government.

Subsection (i) states that the provisions of this section regarding the use or disclosure of information obtained or derived from a search shall apply to information obtained or derived from a search conducted without a court order to obtain foreign intelligence information which is not a physical search as defined in this title solely because the existence of exigent circumstances would not require a warrant for law enforcement purposes. As discussed with respect to section 406(b), below, a search may be conducted without a court order to obtain foreign intelligence information in exigent circumstances. This subsection makes clear that the use or disclosure of information obtained or derived from such a search must be governed by the provisions of this section.

OVERSIGHT

Section 405(a) provides that on a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all physical searches conducted pursuant to this title, and all other searches, except those reported under section 108 of FISA relating to electronic surveillance, conducted in the United States for foreign intelligence purposes. The reference to "all other searches" is intended to include those searches which would require a judicial warrant for law enforcement purposes absent exigent circumstances. Also included are any other searches which may not fall

within the definitions of "physical search" and "electronic surveillance" under this Act, but which may be conducted in the United States to collect foreign intelligence information.

In addition, on an annual basis the Attorney General shall provide to those committees a report setting forth with respect to the preceding calendar year (a) the total number of applications made for orders approving physical searches under this title; and (b) the total number of such orders either granted, modified, or denied. The comparable provision of FISA requires a public report to the Administrative Office of the United States Courts. The reports concerning physical searches are to be submitted to the committees, and may be classified, because the Justice Department has advised that the numbers may be so few as to reveal sensitive information concerning U.S. foreign counterintelligence activities.

Subsection (b) of section 405 provides that whenever a search is conducted without a court order to obtain foreign intelligence information which is not a physical search as defined in this title solely because the existence of exigent circumstances would not require a warrant for law enforcement purposes, a full report of such search, including a description of the exigent circumstances, shall be maintained by the Attorney General. Each such report shall be transmitted to the Foreign Intelligence Surveillance Court promptly after the search is conducted.

The term "exigent circumstances" means circumstances in which it is impossible, for practical reasons, to apply for a court order authorizing the search before the opportunity to conduct the search would be lost due to the delay. As discussed below with respect to section 406(b), such searches may be conducted only pursuant to regulations issued by the Attorney General and reported to the intelligence committees. The exigent circumstances that may justify a search without a court order must relate solely to the time required to apply for a court order. Whenever the circumstances allow time to apply for a court order, such an order must be obtained. If a search is approved without a court order due to exigent circumstances and then is postponed, the process of application for a court order must being at once and every reasonable effort must be made to apply for an order. If the opportunity for the search reappears before the application is submitted, the search may be conducted only if that opportunity is so limited in duration and so unlikely to recur that further delay to obtain the court order would preclude the search.

An example is the search of a package entrusted to a courier in an espionage network. The courier may receive the package without warning and be instructed to deliver it with a tight deadline. If the courier is a U.S. intelligence source, the package may be accessible to Federal officers for a brief time, and Federal officers may have no advance knowledge that the courier will receive the package. If all the conditions that would justify a court order are met, the search may be approved. If the courier is unable to make the package available at the expected time and the search is postponed with the possibility of a later opportunity, the process of application for an order must begin as soon as possible so that every reasonable effort is made to obtain a court order prior to the next opportunity for a search. If more than one search is contemplated, the application process should also begin as soon as possible and every reasonably effort must be made to obtain a court order prior to the next search or searches.

AUTHORITY FOR INTELLIGENCE SEARCHES

Section 406(a) provides that the procedures contained in this title shall be the exclusive means by which a physical search, as defined in this title, may be conducted in the United States for foreign intelligence purposes, and an order issued under this title authorizing a physical search shall constitute a search warrant authorized by law for purposes of any law.

The intent of the "exclusive means" provision is the same as the comparable FISA provision, as reflected in the statement of managers accompanying the Conference Report on FISA. The establishment by this title of exclusive means by which the President may conduct physical searches within the United States to collect foreign intelligence information does not foreclose a different decision by the Supreme Court. The intent is to apply the standard set forth in Joshes Jackson's concurring opinion in the Steel Seizure Case: "When a President takes measures incompatible with the express or implied will of Congress, his power is at the lowest ebb, for then he can rely only upon his own Constitutional power minus any Constitutional power of Congress over the matter." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 673 (1952).

Subsection (a) of section 406 also provides that an order issued under this title authorizing a physical search shall constitute a search warrant authorized by law for purposes of any other law. For example, a federal statute makes it a crime for a federal law enforcement officer to search a private dwelling without a judicial warrant, except incident to an arrest or with the consent of the occupant. 18 United States Code, Section 2236. While a Justice Department opinion has concluded that this statute does not bar "properly authorized warrantless physical searches for national security purposes," the opinion states that "the issue is not free from doubt." See S. Rept. 98-660, p. 18. This provision resolves that issue by making clear that a court order under this title meets the statutory warrant requirement for dwelling searches. Similar federal statutes prohibit the opening of mail in United States postal channels without a judicial warrant. See 18 United States Code, Sections 1701-1702, 1703(b) and 39 United States Code, Section 3623(d). This title is not intended to modify or supersede those federal statutes which authorize FBI access without a warrant to financial or telephone records or similar information in foreign counterintelligence investigations.

Subsection (b) of section 406 provides that searches conducted in the United States to collect foreign intelligence information, other than physical searches as defined in this title and electronic surveillance as defined in FISA, and physical searches conducted in the United States without a court order to collect foreign intelligence information, may be conducted only pursuant to regulations issued by the Attorney General. This provision is intended to apply primarily to two types of activitiy—first, searches conducted in exigent circumstances without a warrant which, absent exigent circumstances, would require a warrant for law enforcement purposes; and second, physical searches of the premises of "official" foreign powers which do not come within the jurisdiction of the Court under section 401(a) of this title. This provision also would apply to any other searches which may not fall within the definitions of "physical search" and "electronic surveillance" in this Act, but which may be conducted in the United States to collect foreign intelligence information.

The regulations issued by the Attorney General for these activities, and any changes to those regulations, are to be provided to the intelligence committees at least 14 days prior to taking effect. Any regulations issued by the Attorney General regarding such activities which were in effect as of June 1, 1990, shall be deemed to be regulations required by this subsection.

PENALTIES

Section 407(a)(1) makes it a criminal offense for officers or employees of the United States to intentionally engage in physical search within the United States under color of law for the purpose of obtaining foreign intelligence information except as authorized by statute. Section 407(a)(2) makes it a criminal offense for officers or employees of the United States to intentionally disclose or use information obtained under color of law by physical search, knowing or having reason to know that the information was obtained through physical search not authorized by statute and conducted in the United States for the purpose of obtaining foreign intelligence information. Section 407(b) provides an affirmative defense to a law enforcement or investigative officer who engages in such an activity for law enforcement purposes in the course of this official duties, and the physical search was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction. The penalty is a fine of not more than $10,000 or imprisonment for not more than five years, or both. Section 407(d) makes clear that there is Federal jurisdiction over an offense under this section of the person committing the offense was an officer or employee of the United States when the offense was committed.

One of the important purposes of this title is to afford security to intelligence personnel so that if they act in accordance with the statute, they will be insulated from liability; it is not to afford them immunity when they intentionally violate the law. The word "intentionally" was carefully chosen. It is intended to reflect the most strict standard for criminal culpability. The Government would have to prove beyond a reasonable doubt both that the conduct engaged in was in fact a violation, and that it was engaged in with a conscious objective or desire to commit a violation.

CIVIL LIABILITY

Section 408 imposes civil liability for violations of section 407, and authorizes an "aggrieved person," as defined in section 409(d), to recover actual damages, punitive damages, and reasonable attorney's fees and other investigative and litigation costs reasonably incurred. Since the civil cause of action only arises in connection with a violation of the criminal provision, the statutory defense does not have to be restated. Although included in the definition of "aggrieved person," foreign powers and non-U.S. persons who act in the United States as officers or employees of foreign powers or as members of international terrorist groups would be prohibited from bringing actions under section 407. Other foreign visitors, including those covered by section 101(b)(1)(B) of the definition of "agent of a foreign power," would have a cause of action under this provision. Those barred from the civil remedy will be primarily

those persons who are themselves immune from criminal or civil liability because of their diplomatic status.

DEFINITIONS

Section 409(a) provides that the terms "foreign power," "agent of a foreign power," "international terrorism," "sabotage," "foreign intelligence information," "Attorney General," "United States person," "United States," "person," and "State" shall have the same meaning as in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (FISA). The legislative history of these FISA definitions is applied to physical search below. Because many of the substantive aspects of this title derive from the FISA definitions of particular terms, this subsection is critical to understanding this title as a whole.

"Foreign power"

The definition of "foreign power" in section 101(a) of FISA reads as follows:

(a) "Foreign power" means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

"Foreign power" is defined in section 101(a) of FISA in six separte ways. These definitions are crucial because physical searches may only be targeted against foreign powers or agents of foreign powers.

It is expected that certain of the defined "foreign powers" will be found in the United States and targeted directly; others are not likely to be found in the United States but are included in the definition more to enable certain persons who are their agents, and who may be in the United States, to be targeted as "agents of a foreign power," as defined. As will appear below, the six categories may well overlap, and an entity may well be found to a "foreign power" under more than one category. This is not improper. These categories are intended to be all-encompassing, and clear lines cannot always be drawn between different descriptions of the types of entities which justify targeting physical search. The six categories are:

(1) "A foreign government or any component thereof, whether or not recognized by the United States." This category would include foreign embassies and consulates and similar "official" foreign government establishments that are located in the United States.

(2) "A faction of a foreign nation or nations, not substantially composed of United States persons." This category is intended to include factions of a foreign nation or nations which are in a contest for power over, or control of the territory of, a foreign nation or nations. An example of such a faction might be the PLO, the Eritrean Liberation Front, or similar organizations. Specifically excluded from this category is any faction of a foreign nation or nations which is substantially composed of permanent resident aliens or citizens of the United States. The word "substantially" means a signficant proportion, but it may be less than a majority.

(3) "An entity, which is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments." This category is specifically delineated in order to treat entities of this type in the same manner as the government they serve by including them within those "official" foreign powers whose premises may be subject to a physical search without a court order. Only entities "openly acknowledged" by a foreign government to be both directed and controlled by it are subject to this provision.

Those entities which are clearly arms of a government or governments meet this definition. This category would include, for example, a legitimate commercial establishment which is directed and controlled by a foreign government. Such a legitimate commercial establishment might be a foreign government's airline, even though it was incorporated in the United States. Also included in this definition would be international organizations of states such as the Organization of Petroleum Exporting Countries or the Organization for African Unity. Where such organizations are involved, it is not necessary to show that one or two countries control the organization. Rather, it is sufficient to show that the organization is made up of governmental entities which collectively direct and control the organization.

It is recognized that this type of foreign power includes corporations or organizations present in the United States which may have many United States citizens as employees or even officers. Nevertheless, this fact does not detract from the fact that the organization acts as an arm of a foreign government or governments and as such may engage in activities directly affecting our national interests or security. In such circumstances a physical search targeted against such an entity should focus on the premises, property, information, or material of the organization, not of its employees or members who are United States citizens. A search of the premises, property, information, or material of an individual employee could be justified only by obtaining a separate court order for the individual target.

A law firm, public relations firm, or other legitimate concern that merely represents a foreign government or its interests does not mean it is an entity in this category. The question whether a group, commercial enterprise, or organization comes within the scope of this definition is one for the court to answer on the basis of a probable cause standard.

(4) "A group engaged in international terrorism or activities in preparation therefor." The term "international terrorism" is a defined term, see below, and includes within it a criminal standard. A group under this category must be engaged in "international terrorism," as defined, or be in preparation therefor. Such groups would include Black September, the Red Army Faction, the Red Brigades, and the Japanese Red Army. It would not include groups engaged in terrorism of a purely domestic nature. The citizenship of the terrorist group or its members while relevant to the determination of whether it is a "foreign power," is not determinative. It is not required that the group be "foreign-based," because in the world of international terrorism a group often does not have a particular "base," or if it does, it may be impossible to determine. Perhaps more importantly, where its base is located is often irrelevant to the foreign intelligence interest or concern with respect to the group. There have been domestically based international terrorist groups, which have engaged in acts overseas which have resulted in deaths. The group must be engaged in criminal terrorist activities, which are international in scope or manner of execution. See the discussion of "international terrorism," below.

Generally, such groups will not be targeted in the United States as "foreign powers," if only because such a group is not likely to maintain an official presence here. Rather, members of the group may be in the United States either singly or in bunches, and they will be targeted as "agents of a foreign power," to wit, agents of a group engaged in international terrorism.

(5) "A foreign-based political organization, not substantially composed of United States persons." This category would include foreign political parties. In some countries, both totalitarian and parliamentary, ruling parties effectively control the government. Thus, information concerning the activities and intentions of these parties can directly relate to the activities and intentions of their government. Moreover, the intentions and positions of minority parties can also be of great importance to this nation, because, although minorities, they may affect the course of their government or they may come to power, in which case it would be important to have prior knowledge of their positions and intentions. Finally, this category is not limited to political parties; their are other foreign political organizations which exercise or have potential political power in a foreign country or internationally. Because it can be important to this nation to have intelligence concerning any organization which exercises or has potential political power in a foreign country or internationally targeting such organizations can be proper. On the other hand, where a political organization is domestically based or is substantially composed of U.S. persons and does not otherwise fall within the other definitions of "foreign power" or "agent of a foreign power," the gathering of political information concerning that organization by physical search—even though desired or even important to this Government—is improper and raises grave First Amendment questions. This definition clearly does not include organizations comprised of Americans of Greek, Irish, Jewish, Chinese, or other extractions who have joined together out of interest or concern for the country of their ethnic origin.

(6) An entity, which is directed and controlled by a foreign government or "governments." This category is similar to category (3) above, except that the entity need not be openly acknowledged to be directed and controlled by a foreign government or governments. Such an entity must be acting as an arm of the government with respect to activities that are of foreign intelligence or counterintelligence significance. An example would be an entity which appears to be a legitimate commercial establishment, but which is being utilized by a foreign government as a cover for espionage activities. The concerns set forth with respect to openly controlled entities apply to this category as well. There is the added danger that targeting of a covertly controlled entity, substantially composed of U.S. persons, would potentially offer a means for evading the requirements for targeting of individual U.S. persons. Therefore, it is important to emphasize that the judge must find probable cause the the entity is both "directed" and

"controlled" by a foreign government or governments. Merely following the directions of a foreign government which wants a group to lobby or speak out publicly on behalf of the government's interests, is not in itself sufficient to place the group in this category. While direction and control are separate elements to be established, the same evidence can demonstrate both.

Again, a law firm, public relations firm, etc. that merely represents a foreign government or its interests does not mean it is an entity in this category. The entity which sees its own interests as parallel to those of a foreign government and acts accordingly is not by this directed and controlled by that government. It is only when the foreign government or its agents influence the entity to the extent that the entity yields its independent judgments that an entity become directed and controlled by a foreign government. In particular cases, obviously, it may be difficult to discern the actual direction and control, and, of course, circumstantial evidence may suffice in establishing probable cause, but no entity which purports to be a U.S. person should be considered directed and controlled by a foreign government *solely* on the basis that its activities are consistent with the desires of a foreign government.

"Agent of a foreign power"

The term "agent of a foreign power" is defined in section 101(b) of FISA as follows:

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4);

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities it the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(1) *Non-resident aliens in the United States.*—There are two separate categories of the definition of "agent of a foreign power" in section 101(b) of FISA. The first cannot be applied to United States citizens and permanent resident aliens; it is, therefore, limited to aliens in the United States who are tourists, visiting businessmen, exchange visitors, foreign seamen, diplomatic and consular personnel, illegal aliens, etc.

Most of the persons in this category are protected by the fourth amendment when they are in the United States. By requiring a judicial warrant on the basis of statutory criteria, such persons' fourth amendment protections would be increased from their status under current operating procedures of the executive branch. On the other hand, the protections afforded such persons are not as great as those afforded United States persons. The standard for targeting nonresident aliens does not have a criminal standard; and there is no requirement to minimize the acquisition, retention, and dissemination of information with respect to such persons. The committee is convinced that the protections afforded nonresident aliens in this title fully satisfy the Constitution.

The basic test under the fourth amendment is that a search be reasonable. Reasonableness itself is determined by weighing the Government's legitimate need for the information sought against the invasion of privacy the search entails. The findings of probable cause required to be made by the judge as to nonresident aliens directly relate to the likelihood of obtaining foreign intelligence from physical search of their premises, property, information, or material. Such information must by definition directly and substantially relate to important foreign policy or national security concerns, and the Attorney General must find that the purpose of the search is to obtain such information.

As to the "equal protection" question, the committee notes that the Supreme Court has held that where there are compelling considerations of national security, alienage distinctions are constitutional. See e.g., *Hampton* v. *Mow Sun Wong*, 426 U.S. 88, 116 (1976). Those distinctions must, however, be reasonable in light of the demonstrated need and not be overly broad. With respect to those non-resident aliens who fit within the two categories of agents of foreign powers in section 101(b)(1) of FISA, that need was demonstrated during the congressional consideration of FISA. It should be noted that, in light of the particular requirements for physical search as compared to electronic surveillance, there are fewer procedural differences between U.S. persons and non-resident aliens under this title than under FISA.

Subsection (b)(1)(A) includes in its definition of "agent of a foreign power" those persons, who are not U.S. persons, who act in the United States as officers or employees of a foreign power, or as members of a foreign power as defined in subsection (a)(4), i.e., groups engaged in international terrorist activities or activities in preparation therefor.

Non-resident aliens who act in the United States as officers or employees of a foreign power are likely sources of foreign intelligence or counterintelligence information. The definition excludes persons who serve as officers or employers of a foreign power in their home country, but do not act in that capacity in the United States. The reference to employees of a foreign power is meant to include those persons who have a normal employee-employer relationship. It is not intended to encompass such foreign visitors as professors, lecturers, exchange students, performer or athletes, even if they are receiving remuneration or expenses from their home government in such capacity.

Groups engaged in international terrorism would not likely have "officers" or "employees." A member of an international terrorist group will most likely not identify himself as such upon entering the United States, as would an officer or employee of a foreign power. In the latter instance, a copy of the person's visa application will usually suffice to show that he is acting in the United States as an officer or employee of a foreign power. However, in the case of a member of an international terrorist group, the government will most likely have to rely on more circumstantial evidence, such as concealment of one's true identity or affiliation with the group, or other facts and circumstances indicating that that such person is in the United States for the purpose of furthering terrorist activities. The term "member" means an active, knowing member of the group or organization which is engaged in international terrorism or activities in preparation therefor. It does not include mere sympathizers, fellow-travelers, or persons who may have merely attended members of the group. On the other hand, if a person has received terrorist training from such a group, this would be substantial evidence that he was a member of the group.

Subsection (b)(1)(B) defines an "agent of a foreign power" as a person who is not a U.S. person and who acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities.

This provision reflects two concerns. The first is the counterintelligence interest in certain foreign visitors as to whom it could be shown with a high degree of probability that they would engage in clandestine intelligence activities, but before sufficient information can be established showing that they are so engaged. As a practical matter, less intrusive techniques may not enable the Government to obtain sufficient information about persons visiting the United States for only a limited time and who do not have a history of activities in the United States to show that they are indeed engaged in clandestine intelligence activities. A second concern, however, is that this noncriminal standard should not be used as a basis for targeting foreign visitors from any nation, but should be limited to foreign visitors acting on behalf of certain foreign powers as to which it could be shown systematically engaged in clandestine intelligence activities threatening the security of the United States.

In light of these two legitimate concerns, this provision does not require a showing that the individual foreign visitors is himself currently engaged in clandestine intelligence activities, but rather that the circumstances of his presence here indicate that he may engage in such activities which are contrary to this nation's interests. In addition, it must be shown that he is acting for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States which are contrary to the interests of the United States. It is intended that the Government show that the foreign power has demonstrated some pattern or practice of engaging in clandestine intelligence activities in the United States contrary to the interests of the United States.

The phrase, "acts for or on behalf of a foreign power," is here intended to require the Government to show a nexus between the individual and the foreign power that suggests that the person is likely to do the bidding of a foreign power. For example, visitors from totalitarian countries present in the United States under the auspices, sponsorship, or direction of their government would satisfy this standard.

The term "interests" refers to important concerns or long-term goals of the United States, including interests embodied in law. It might be said that any country which engages in clandestine intelligence activities in the U.S. *ipso facto* acts contrary to this Nation's interests. This is clearly not intended here.

Once the requisite facts with regard to the foreign power are established, the question is whether the circumstances of the person's presence in the United States indicate that the person may engage in clandestine intelligence activities for that foreign power contrary to the interests of the United States. The answer to this question will vary according to what is known about the intelligence operations of the particular foreign power. Among the factors that might be taken into account are whether the foreign visitor engages in activities with respect to which there is evidence that other visitors who engage in similar activities are officers, agents, or acting on behalf of the intelligence service of that foreign power. If the Government can show from experience that a particular foreign power uses a certain class of visitors to this country for carrying out secret intelligence assignments, this too would indicate that a visitor in this class may engage in clandestine intelligence activities.

The standard "may engage in such activities" means that a physical search can be conducted to anticipate clandestine intelligence activities by such persons, rather than waiting until after they have taken place. The additional standards for aiding or abetting, and conspiracy, require probable cause that the foreign visitor is knowingly assisting persons who are already engaged in clandestine intelligence activities. The "knowingly" requirements are the same as in the aiding or abetting and conspiracy standards for U.S. persons, discussed regarding subsection (b)(2)(A) and (B) below.

This provision does not treat nationals of certain countries differently from others solely on the basis of their nationality. Instead, targeting of the nationals of other countries depends on the activities of the governments of those countries and whether the individual is acting on behalf of the foreign government. There must also be probable cause to believe that the physical search of the premises or property of the individual can reasonably be expected to yield foreign intelligence information which cannot reasonably be obtained by normal investigative means.

The term "clandestine intelligence activities" is intended to have the same meaning as in subsection (b)(2)(A) and (B), discussed below.

(2) *"Any person"*—The second part of the FISA definition of "agent of a foreign power" requires that whenever a United States person is to be the target of a physical search there must be a showing that his activities at least may involve a violation of law. As a matter of principle, no United States citizen in the United States should be targeted for a physical search by his government absent some showing that he at least may violate the laws of our society. A citizen in the United States should be able to know that his government cannot invade his privacy with the most intrusive techniques if he conducts himself lawfully.

On the other hand, the physical searches under this title are not primarly for the purpose of gathering evidence of a crime. They are to obtain foreign intelligence information, which when it concerns United States persons must be necessary to important national concerns. Combating espionage and covert actions of other nations in this country is an extremely important national concern. Prosecution is one way, but only one way and not always the best way, to combat such activities. "Doubling" an agent or feeding him false or useless information are other ways. Monitoring him to discover other spies, their tradecraft and equipment can be vitally useful. Prosecution, while disabling one known agent, may only mean that the foreign power replaces him with one whom it may take years to find or who may never be found.

(A) CLANDESTINE INTELLIGENCE GATHERING

Paragraph (2)(A) allows physical search of property of any person who is knowingly engaged in clandestine intelligence gathering activities, which activities involve or may involve a violation of the criminal statutes of the United States.

The first aspect of this definition is that the person is engaging in such acts "knowingly." This does not mean that he must know, or that the Government must show that he knows, that he may be violating a Federal criminal law. It does mean that he must known that he is engaging in clandestine intelligence gathering activities and that he knows that he is doing so on behalf of a foreign power. It is often difficult to prove what a person knows and what he does not know. The committee intends that circumstantial evidence should be sufficient to show the requisite knowledge. If, for example, a person is transmitting classified defense secrets to the military attache of a foreign embassy, this should be sufficient to show that he knows he is acting for or on behalf of a foreign power. Similarly, if a person has received training in or equipment for espionage, for example a microdot camera or disguised radio device, this too should be sufficient to show that he knows what he is doing. While this, and the other provisions under paragraph (2), are not intended to reach one who in fact is ignorant as to the nature of what he is doing, the knowing requirement is not intended to force the Government to disprove his ignorance when a person engaged in such activities would reasonably suspect that he was acting for or on behalf of a foreign power.

Next, the person must be "engaged" in the proscribed activities. Unlike the standard for foreign visitors, the fact that he "may engage" in these activities some time in the future is not sufficient. For example, if evidence shows that a person has recently engaged in the activities, this would normally suffice to show probable cause that he is "engaged" in such activities now.

On the other hand, evidence that a person engaged in the proscribed activities six months or longer ago might well, depending on the circumstances and other evidence, be sufficient to show probable cause that he is still engaged in the activities. For instance, evidence that a U.S. person was for years a spy for a power currently hostile to the United States, but who has dropped out of sight for a few years, would probably be sufficient to show "probable cause" that he was, having now reappeared, continuing to engage in the clandestine intelligence activities.

Probably the most critical term in this provision is "clandestine intelligence gathering activities." It is anticipated that most clandestine intelligence gathering activities will constitute a violation of the various criminal laws aimed at espionage, either directly or by failure to register, see e.g., 18 U.S. Sections 792-799, 951; 42 U.S.C. Sections 2272-2278b; and 50 U.S.C. Section 855. The term "clandestine intelligence gathering activities" is intended to have the same meaning as the word espionage in normal parlance, rather than as a legal term denoting a particular offense. The term also includes those activities directly supportive of espionage such as maintaining a "safehouse," servicing "letter drops," running an "accommodation address," laundering funds, recruiting new agents, infiltrating or exfiltrating agents under cover, creating false documents for an agent's "cover," or utilizing a radio to receive or transmit instructions or information by "burst transmission." "Clandestine intelligence gathering activities" are intended to be activities which no reasonable person would engage in without knowing that society would not condone it. As the words indicate, the activities must be "clandestine," that is, efforts have ben taken to conceal the activities.

This does not necessarily mean that the information gathered by the agent must itself be secret or nonpublic, although that would usually be the case. It is possible that a spy may be asked to obtain information which is technically available to the public, but which a foreign power would not like it known that it was seeking. If a spy, for instance, used false identification or a ruse to obtain the information and then delivered the information by means of a microdot hidden in a magazine left at a "dead drop," both the means by which he gathered and the means by which he transmitted the information would be "clandestine," even though the information itself might not be secret. It can be proper for the Government to monitor such a person, even if the information he is collecting at that moment is not secret, because his activities identify him as a spy. On the one hand, having done his job successfully he may be given a new assignment to collect secret information. On the other hand, by monitoring his contacts in this enterprise, the Government can learn valuable information concerning the tactics, capabilities, and personnel of the foreign intelligence service.

Obviously, gathering classified defense information, information about intelligence sources and methods, and classified diplomatic information qualifies as clandestine intelligence gathering activities if it is done in a clandestine manner. In addition, the committee is aware that foreign powers also target their intelligence apparatus against American technology and trade secrets, economic developments, political information, and even personal information for purposes of blackmail or coercion. The gathering of any such information may be within the term "clandestine intelligence gathering activities."

As noted above, "clandestine intelligence gathering activities" are intended to be conduct of the nature associated with spies and espionage in its generic sense, but the term is supposed to be flexible with respect to what is being gathered because the intelligence priorities and requirements differ between nations over time, and this title is in-

tended to allow physical search in counter-intelligence investigations of different foreign powers' intelligence activities well into the future.

It is possible, although unlikely, that certain groups of Americans might indeed come close to using espionage techniques for otherwise lawful purposes. Thus, the provisions requires as a separate element of proof that the person be engaged in clandestine intelligence gathering activities "for or on behalf of a foreign power." This means that the Government will have to show probable cause to believe that the person is not only engaged in clandestine intelligence gathering activities, but also that those activities are for or on behalf of a foreign power. Thus, if all that can be shows is that a person is stealing defense secrets and using a "dead drop" to pass them on, the Government will have to show more, that is, probable cause to believe that he is doing this for a foreign power.

Similarly, the fact that a person gathers information and transmits it for a foreign power by itself does not satisfy the standard of this definition. Americans for personal or commercial reasons may legitimately gather information for foreign powers, as indeed registered lobbyists often do, but their activity, if legitimate, does not utilize the tradecraft of espionage. (The Committee does not intend that "clandestine intelligence gathering activities" must necessarily include the use of espionage tradecraft, but its use is significant.) Thus, there seems little likelihood that a person would be engaged in clandestine intelligence gathering activities for or on behalf of a foreign power and not in fact be engaged in reprehensible conduct of substantial concern to this Nation's security.

As an added safeguard, however, the Government must also show that there is probable cause to believe that the person is engaged in activities that at least may violate the Federal criminal law. As noted above, it is expected that most persons under this definition would be likely to violate laws directed against espionage. In addition, there are other laws which might be violated, for example, 18 U.S.C. section 2514 which proscribes interstate transportation of stolen property; and 50 U.S.C. section 2021-2032, the Export Administration Act.

The words "may involve" as used in this subparagraph are not intended to encompass individuals whose activities clearly do not violate Federal law. They are intended to encompass individuals engaged in clandestine gathering activities which may, as an integral part of those activities, involve a violation of Federal law. They cover the situation where the Government cannot establish probable cause that the foreign agent's activities involve a specific criminal act, but where there are sufficient specific and articulable facts to indicate that a crime may be involved.

This "may involve" stanard is necessary in order to permit the Government to investigate adequately in cases such as those where Federal agents have witnesses "meets" or "drops" between a foreign intelligence officer and a citizen who might have access to highly classified or similarly sensitive information; information is being passed, but the Federal agents have been unable to determine precisely what information is being transmitted. Such a lack of knowledge would of course disable the Government from establishing that a crime was involved or what specific crime was being committed. Nevertheless, the circumstances might be such as to indicate that the activity may involve a crime. The crime involved might be one of several violations depending, for example, upon the nature of the information being gathered.

In applying this standard, the judge is expected to take all known relevant circumstances into account—for example, who the persons is, where he is employed, whether he has access to classified or other sensitive information, the nature of the clandestine meetings or other clandestine activity, the method of transmission, and whether there are any other likely innocent explanations for the behavior. It is intended, moreover, that the circumstances must not merely be suspicious, but must be of such a nature as to lead a reasonable man to conclude that there is probable cause to believe the activity may involve a Federal criminal violation.

The term "may involve" not only requires less information regarding the crime involved, but also permits a physical search at some point prior to the time when a crime sought to be prevented, as for example, the transfer of classified documents, actually occurs. There need not be a current or imminent violation if there is probable cause that criminal acts may be committed. However, upon an assertion by the Government that an informant has claimed that someone has been instructed by a foreign power to go into "deep cover" for several years before actually commencing espionage activities, such facts would not necessarily be encompassed by the phrase "may involve." A physical search cannot be justified unless there is probable cause to believe that the person is engaged in such activities, even though the relationship of those acivities to a specific violation of law may be more uncertain or likely to occur in the future.

It should be made perfectly clear that a physical search would not be authorized under this, or any other definition of agent of a foreign power, against an American reporter merely because he gathers information for publication in a newspaper, even if the information was classified by the Government. Nor would it be authorized against a Government employee or former employee who reveals secrets to a reporter or in a book for the purpose of informing the American people. The definition would not authorize searches of the property of ethnic Americans who lawfully gather political information and perhaps even lawfully share it with the foreign government of their national origin. It obviously would not apply to lawful activities to lobby, influence, or inform Members of Congress or the administration to take certain positions with respect to foreign or domestic concerns. Nor would it apply to lawful gathering of information preparatory to such lawful activities.

In the case of an organization whose leaders are engaged in clandestine intelligence gathering activities, such activity cannot be attributed to every member of the group. There must be probable cause that a particular member is himself engaged in such activity before a search of his property may be authorized under this subparagraph.

In short, for a person to be an agent of a foreign power under this definition he must be knowingly engaged in clandestine intelligence gathering activities, like espionage, for or on behalf of a foreign power, and those activities must be such that they at least "may involve" a violation of Federal criminal law.

A particularly difficult problem may arise where a person is "turned" or "doubled;" that is, having started as an agent for a foreign power, he is persuaded instead to work for this Government. The standard under this paragraph requires that a person knowingly engage in activities for or on behalf of a foreign power. If the person is in fact working for this Government and not for the foreign power, this standard is obviously not met and his property could not be searched under this paragraph. Often, however, there may be substantial doubt whether he is acting under this Government's control or under the control of a foreign power. It may well be unclear which side is deceiving which. The committee recognizes that the fact that a supposedly "doubled" agent indeed does carry out his assignments and instructions from this Government does not mean that he has stopped carrying out his assignments and instructions from the foreign power contrary to this Government's interest. It is the committee's intent that, until such time as the "doubled" agent is trusted enough to seek his consent to a search, his property may be subject to an unconsented search on the basis of his acting for or on behalf of a foreign power.

(B) "OTHER CLANDESTINE INTELLIGENCE ACTIVITIES"

Paragraph (2)(B) defines agent of a foreign power as a person who pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States.

The term "any other clandestine intelligence activities" is intended to refer to covert actions by intelligence services of foreign powers. Not only do foreign powers engage in spying in the United States to obtain information, they also engage in activities which are intended to harm the Nation's security by affecting the course of our Government, the course of public opinion, or the activities of individuals. Such activities may include political action (recruiting, bribery or influencing of public officials to act in favor of the foreign power), disguised propaganda (including the planting of false or misleading articles or stories), and harassment, intimidation, or even assassination of individuals who oppose the foreign power. Such activity can undermine our democratic institutions as well as directly threaten the peace and safety or our citizens.

On the other hand, there may often be a narrow line between covert action and lawful activities undertaken by Americans in the exercise of their first amendment rights. Because of this, a stricter standard has been created—stricter than that applicable to "clandestine intelligence gathering activities"—which must be satisfied before a person may be targeted as an agent of a foreign power under this definition.

First, the person must be shown to be acting "purusant to the direction of an intelligence service or network of a foreign power." No such showing is required for any of the other definitions of agent of a foreign power. Americans may well communicate with non-intelligence personnel from the government of a country about which they have an interest to gain information or engage in efforts on behalf of that country, but this is not covert action and it is not intended to be covered by this definition.

Second, the activities engaged in must presently involve or be about to involve a violation of Federal criminal law. Again,

this is a higher standard than is found in the other definitions, where the activities "may" involve a violation of law. In this area where there is a close line between protected First Amendment activity and the activity giving rise to a search, it is most important that where a search does occur the activity be such that it involves or is about to involve a violation of a Federal criminal statute.

There are a number of crimes that might be involved in covert actions, for example, bribery of public officials, campaign law violations, foreign agent registration requirements, denial of civil rights, et cetera. It is important to note, however, that the fact of a criminal violation does not establish or even necessarily suggest, that a person is engaged in "any other clandestine intelligence activity." Americans through ignorance or inadvertence may well technically violate campaign law requirements or foreign agent registration requirements, and such violations do not even justify electronic surveillance for law enforcement purposes, see 18 U.S.C. section 2516. Under this definition it is necessary to show separately from the criminal violation that the facts support a probable cause to believe that the person is, pursuant to the direction of an intelligence service or network of a foreign power, knowingly engaged in any other clandestine intelligence activities for or on behalf of such foreign power.

The intent of this provision is to enable search of the property of those hard-core agents who are writing as to what they are doing and who are intentionally carrying out the bidding of a foreign power's intelligence service to engage in covert action in the United States.

(C) SABOTAGE OR TERRORISM

Paragraph (2)(C) allows physical search of the property of any person, including a U.S., person, who knowingly engages in sabotage or international terrorism, or activities which are in preparation therefor, for or on behalf of a foreign power. The terms "sabotage" and "international terrorism" are defined separately and require a showing of criminal activity. Again, in no event is mere sympathy for, identity of interest with, or vocal support for the goals of a foreign group, even a foreign-based terrorist group, sufficient to justify surveillance under this subparagraph.

[The "preparation" standard does not mean preparation for a specific violent act, but for activities that involve violent acts. It may reasonably be interpreted to cover providing the personnel, training, funding or other means for the commission of acts of international terrorism. It also permits physical search at some point before the dangers sought to be prevented actually occur.]

The term "activities which are in preparation" for sabotage or international terrorism is intended to encompass activities supportive of acts of serious violence—for example, purchase or surreptitious importation into the United States of explosives, planning for assassinations or financing or training for such activities. Of course, other activities supportive of terrorist acts could in other circumstances likewise satisfy this standard. The circumstances must be such as would lead a reasonable man to conclude that there is probable cause to believe the person is knowingly engaged in activities which are in preparation for sabotage or terrorism.

The term "preparation" does not require evidence of preparation for one specific terrorist act, because the definition of "international terrorism" speaks of "activities that involve violent acts" and means a range of acts, not just a single act. Here, the term, "preparation" acquires its meaning in the context of the special definition of "international terrorism," which could reasonably be interpreted to cover, for example, providing the personnel, training, funding, or other means for the commission of acts of terrorism, rather than one particular bombing. The "preparation" provision permits physical search at some point before the danger sought to be prevented—for example, a kidnaping, bombing, or hijacking—actually occurs. This standard is in no way intended to dilute the requirement of knowledge, or the requisite connection with a "foreign power" as defined in FISA.

It is clearly not the intent to permit physical search solely on the basis of information that someone might commit acts of international terrorism or sabotage in the distant future. There must be a showing that the person is currently engaged in activities which are in preparation for the commission of such acts.

The "preparation" standard would allow physical search where the Government cannot establish probable cause that an individual has already knowingly engaged in sabotage or terrorism, but where there are specific and articulable facts to indicate that the individual's activities are in preparation for sabotage or international terrorism. The judge is expected to take all the known circumstances into account. The circumstances must be such as would lead a reasonable man to conclude that there is probable cause to believe the person is knowingly engaged in activities which are in preparation for sabotage or terrorism.

It should be noted that the "preparation" standard only need apply where there is insufficient evidence to show that the person is in fact a terrorism. Where the Government can show that the person is a known international terrorist, like the notorious "Carlos," or that the person has been engaging in international terrorism for or on behalf of a group engaged in international terrorism, there is no need to show that the person is in the act of preparing for further terrorist acts. One might wonder why the Government would not immediately arrest such persons. In some cases they may not have violated U.S. law, even though they may have nurdered hundreds of persons abroad. In other cases it may be more fruitful in terms of combating international terrorism to monitor the activities of such persons in the United States to identify otherwise unknown terrorists here, their international support structure, and the location of their weapons or explosives. If a person who has engaged in international terrorism visits the United States or resides in the United States, the Government would be able to conduct a search to determine his activities, whether or not there is evidence to show he is presently planning some particular violent act.

Finally, any person targeted for search under this paragraph must be shown to have a knowing connection with the "foreign power" for whom he is working. In the case of international terrorism, it is anticipated that in most cases this connection will be shown to exist with a group engaged in international terrorism. The case may arise where a U.S. person is acting for or on behalf of such a group that is substantially composed of U.S. persons. In such a case, the judge must examine the circumstances carefully to determine whether the organization is "a group engaged in international terrorism," as defined, and not a purely domestic group engaged in domestic terrorism.

(D) AIDING, ABETTING AND CONSPIRACY

Paragraph 2(D) allows physical search of the property of any person, including a U.S. person, who knowingly aids or abets any person in the conduct of activities described in subparagraphs (2)(A)-(C) above, or knowingly conspires with any person to engage in such activities. The knowledge requirement is applicable to both the status of the person being aided by the proposed target of the search and the nature of the activity being promoted. This standard requires the Government to establish probable cause that the prospective target knows both that the person with whom he is conspiring or whom he is aiding or abetting is engaged in the described activities as an agent of a foreign power and that his own conduct is assisting or furthering such activities. The innocent dupe who unwittingly aids a foreign intelligence officer cannot be targeted under this provision. In the case of a person alleged to be knowingly aiding or abetting those engaged in international terrorism on behalf of a foreign power, such a person might be assisting a group engaged in both lawful political activity and unlawful terrorist acts. In such a case, it would be necessary to establish probable cause that the individual was aware of the terrorist activities undertaken by the group and was knowingly furthering them, and not merely that he was aware of and furthering the group's lawful activity.

An illustration of the "knowing" requirement is provided by the case of Dr. Martin Luther King, Jr. Dr. King was subjected to electronic surveillance on "national security grounds" when he continued to associate with two advisors whom the Government had apprised him were suspected of being American Communist Party members and by implication, agents of a foreign power. Dr. King's mere continued association and consultation with those advisers, despite the Government's warnings, would clearly not have been a sufficient basis under this title to target Dr. King's property for physical search.

Indeed, even if there had been probable cause to believe that the advisers alleged to be Communists were engaged in criminal clandestine intelligence activity for a foreign power within the meaning of this section, and even if there were probable cause to believe Dr. King was aware they were acting for a foreign power, it would also have been necessary under this title to establish probable cause that Dr. King was knowingly engaged in furthering his advisers' criminal clandestine intelligence activities. Absent one or more of these required showings, Dr. King could not have been found to be one who knowingly aids or abets a foreign agent.

As was noted above, however, the "Knowing" requirement can be satisfied by circumstantial evidence, and there is no requirement for the Government to disprove lack of knowledge where the circumstances were such that a reasonable man would know what he was doing.

"International terrorism"

The term "international terrorism" is defined in section 101(c) of FISA as follows:

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the

criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnaping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locate in which their perpetrators operate or seek asylum.

Subsection 101(c) of FISA defines the term "international terrorism" by requiring three separate aspects of activities to be shown. The first aspect describes the nature of the acts involved in the activity: the activities must involve "violent acts or acts dangerous to human life" which are a violation of either State or Federal law, or which, if committed in the United States, would violate either State or Federal law. The violent acts covered by the definition mean both violence to persons and grave or serious violence to property.

The committee intends that the property of terrorists and saboteurs acting for foreign powers should be subject to search under this title when they are in the United States, even if the target of their violent acts has been within a foreign country and therefore outside actual Federal or State jurisdiction. This departure from a strict criminal standard is justified by the international responsibility of governments to prevent their territory from being used as a base for launching terrorist attacks against other countries as well as to aid in the apprehension of those who commit such crimes of violence. We demand that other countries live up to this responsibility and it is important that in our legislation we demonstrate a will to do so ourselves.

The second aspect of this definition relates to the purpose to which the activities are directed. The purpose of the terrorist activities must be either intimidation of the civilian population, the intimidation of national leaders in order to force a significant change in government policy, or the affecting of government conduct by assassination or kidnaping. Examples of activities which in and of themselves would meet these requirements would be: the detonation of bombs in a metropolitan area, the kidnaping of a high-ranking government official, the hijacking of an airplane in a deliberate and articulated effort to force the government to release a certain class of prisoners or to suspend aid to a particular country, the deliberate assassination of persons to strike fear into others to deter them from exercising their rights or the destruction of vital governmental facilities. Of course other violent acts might also satisfy these requirements in the requisite purpose is demonstrated.

The third aspect of this definition relates to the requirement that the activities be international or foreign in scope. The terrorist activities must occur totally outside the United States or otherwise be international in character. Thus, if a member of the Baader-Meinhof Group or the Japanese Red Army, who has engaged in terrorist acts abroad, comes to the United States, he or she may be immediately placed under surveillance. If the activities have not occurred totally outside the United States, then it must be shown that the activities transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locate in which their perpetrators operate or seek asylum. Remembering that this is a definition of "international terrorism," there must be a substantial international character with respect to these considerations. The fact that an airplane is hijacked while flying over Canada between Alaska and Chicago does not itself make the activity international terrorism. A domestic terrorist group which explodes a bomb in the international arrivals area of a U.S. airport, does not by this alone become engaged in international terrorism. However, if a domestic group kidnaps foreign officials in the United States or abroad to affect the conduct of that foreign government this would be international terrorism. Finally, if a domestic terrorist group receives direction or substantial support from a foreign government or a foreign terrorist group, its terrorist activities made possible by that support or conducted in response to that direction could be international terrorism. It is important, however, to recognize that this substantial support or direction must already have been established before a search could be authorized. This definition does not allow search of the property of Americans merely to determine if they are receiving foreign support or direction. Moreover, support is not intended to include moral or vocal support. It must be material, technical, training, or other substantive support, and the support must be of the activities involving terrorist acts, not just general support to a group which may engage in both terrorist activities as well as other lawful activities. Direction means direction and does not mean suggestions.

Activities parallel to or consistent with the desires of a foreign power do not by themselves satisfy the requirement that the foreign power is directing the group.

Finally, the fact that particular members of a domestic group engage in international terrorism does not mean that all members of that group are similarly engaged.

"Sabotage"

The term "sabotage" is defined in section 101(d) of FISA as follows:

(d) "Sabotage" means activities that involve a violation of chapter 105 of title 18, United States Code, or that would involve such a violation if committed against the United States.

Subsection (d) defines sabotage as activities which involve crimes under chapter 105 of title 18, United States Code, if conducted against the United States. By its terms, chapter 105 makes criminal only acts of sabotage against U.S. Government facilities. The definition of sabotage in this title is expanded to include similar acts when committed against a State or another nation's facilities and materials relating to defense. Thus, sabotage directed against state and local police facilities and equipment, or against the defense facilities of foreign nations, would constitute sabotage under this definition. Of course, a physical search under this title could be undertaken only if such sabotage was knowingly conducted for or on behalf of a "foreign power" as defined and the information sought constituted foreign intelligence information as defined. Where persons have knowingly engaged in sabotage of State or foreign facilities for or on behalf of a foreign power, the property of such persons should be subject to physical search in this country for foreign intelligence purposes even in the absence of probable cause to believe that they will engage in sabotage against Federal facilities.

"Foreign intelligence information"

The primary thrust of this bill is to protect Americans both from improper activities by our intelligence agencies as well as from hostile acts by foreign powers and their agents. Any information which relates to these general security and foreign relations concerns can help protect Americans and their interests from hostile activities of foreign powers. Where this information does not concern U.S. persons, the countervailing privacy considerations militating against seeking such information through physical search are outweighed by the need for the information. Therefore, the definition of foreign intelligence information includes any information relating to these broad security or foreign relations concerns, so long as the information does not concern U.S. persons. Where U.S. persons are involved, the definition is much stricter; it requires that the information be "necessary" to these security or foreign relations concerns.

Where the term "necessary" is used, the committee intends to require more than a showing that the information would be useful or convenient. The committee intends to require a showing that the information is both important and required. The use of this standard is intended to mandate that a significant need be demonstrated by those seeking the search. For example, it is often contended that a counterintelligence officer or intelligence analyst, if not the policymaker himself, must have every possible bit of information about a subject because it might provide an important piece of the larger picture. In that sense, any information related to the specified purposes might be called "necessary" but such a reading is clearly not intended.

Subparagraph (e)(1)(A) of the FISA definition defines foreign intelligence information as information which relates to, and if concerning a U.S. person, is necessary to, the ability of the United States to protect against actual or potential attack or other grave hostile acts of foreign power or its agents. This category is intended to encompass information which relates to foreign military capabilities and intentions, as well as acts of force or aggression which would have serious adverse consequences to the national security of the United States. The term "hostile acts" must be read in the context of the subparagraph which is keyed to actual or potential attack. Thus, only grave types of hostile acts would be envisioned as falling within this provision.

Subparagraph (e)(1)(B) of the FISA definition includes information which relates to, and if concerning a U.S. person, is necessary to, the ability of the United States to protect itself against sabotage or terrorism by a foreign power or foreign target. It is anticipated that the type of information described in this subparagraph will be the type sought when a physical search is targeted against the type of foreign power defined in section 101(a)(4) of FISA, or against the type of foreign agent defined in section 101(b)(2)(C) of FISA.

Subparagraph (e)(1)(C) of the FISA definition includes information which relates to, and if concerning a U.S. person, is necessary to, the ability of the United States to protect against the clandestine intelligence activities by an intelligence service or net-

work of a foreign power or by a foreign agent. This subparagraph encompasses classic counterintelligence information.

This subsection is not intended to encompass information sought about political activity by U.S. citizens allegedly necessary to determine the nature and extent of any possible involvement in those activities by the intelligence services of foreign powers. Such a dragnet approach to counterintelligence has been the basis for improper investigations of citizens prior to the enactment of FISA and is not intended to be a permissible avenue of "foreign intelligence" collection under this subparagraph. Nor does this subparagraph include efforts to prevent "newsleaks" or to prevent publication of such leaked information in the American press, unless there is reason to believe that such leaking or publication is itself being done by an agent of a foreign intelligence service to harm the national security.

Information about a U.S. person's private affairs is not intended to be included in the meaning of "foreign intelligence information" unless it may relate to his activities on behalf of a foreign power. For example, the Government should not seek purely personal information about a U.S. citizen or permanent resident alien, who is a suspected spy, merely to learn something that would be "compromising." This restriction might not be applicable to agents of foreign powers as defined in section 101(b)(1) of FISA, because compromising information about their private lives may itself be foreign intelligence information.

It should be noted that under paragraph (e)(1) of the FISA definition there is no requirement that the attack, grave hostile act, sabotage, terrorism, or clandestine intelligence activities be directed against the United States in order for information to constitute "foreign intelligence information," as defined. Obviously, armed attacks and similar grave hostile acts against any nation in this interdependent world more often than not directly affect the security and foreign relations of all countries. War in the Mid East or in the Horn of Africa, for example, inevitably involves this nation's security and foreign relations. Sabotage and international terrorism also, even if confined to one foreign country, may indeed affect the interests and security of the United States. The kidnaping of a high official of an allied nation can affect the course of government and security of that nation, thereby affecting this nation's security and foreign relations. Finally, clandestine intelligence activities of one nation directed against another can easily affect this nation. This occurred in West Germany where Soviet spies in the German Defense Ministry compromised NATOP secrets, which included American secrets. It can also occur when other nations engage in clandestine intelligence activities against one another in the United States.

Finally, the term "foreign intelligence information," especially as defined in subparagraphs (e)(1)(B) and (e)(1)(C) of FISA, can include evidence of certain crimes relating to sabotage, international terrorism, or clandestine intelligence activities. With respect to information concerning U.S. persons, foreign intelligence information includes information necessary to protect against clandestine intelligence activities of foreign powers or their agents. Information about a spy's espionage activities obviously is within this definition, and it is most likely at the same time evidence of criminal activities. How this information may be used "to protect" against clandestine intelligence activities is not prescribed by the definition of foreign intelligence information, although, of course, how it is used may be affected by minimization procedures, see section 410(c) of this title, infra. And no information acquired pursuant to this title could be used for other than lawful purposes, see section 404(a) of this title. Obviously, use of "foreign intelligence information" as evidence in a criminal trial is one way the Government can lawfully protect against clandestine intelligence activities, sabotage, and international terrorism. This title, explicitly recognizes that information which is evidence of crimes involving clandestine intelligence activities, sabotage, and international terrorism can be sought, retained, and used pursuant to this title.

Paragraph (e)(2) of the FISA definition includes information which relates to, and if concerning a U.S. person, is necessary to, (A) the national defense or the security of the Nation or (B) the conduct of the foreign affairs of the United States. This also requires that the information sought involve information with respect to foreign powers or territories, and would therefore not include information about the views or planned statements or activities of Members of Congress, executive branch officials, or private citizens concerning the foreign affairs or national defense of the United States. The information must pertain to a foreign power or foreign territory; and thus it cannot simply be information about a citizen of a foreign country who is visiting the United States unless the information would contribute to meeting intelligence requirements with respect to a foreign power or territory. With these limitations, the committee believes that the adoption of a "relates to" standard would not authorize improper treatment. In this regard, the committee fully intends that the vigorous exercise of its oversight authority will provide another valuable check.

"Attorney General"

Subsection 101(g) of FISA defines "Attorney General" to mean the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General. The Deputy Attorney General is appropriate because, as the second-ranking official in the Justice Department, he would most often be the Acting Attorney General in the Attorney General's absence.

"United States person"

The definition of "United States person" in section 101(i) of FISA reads as follows:

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

This title is designed to afford primary protection to "United States persons." Thus, minimization is only required with respect to information concerning U.S. persons; the definition of "foreign intelligence information" is much broader where non-U.S. persons are involved; and the definition of "agent of a foreign power" is broader for non-U.S. persons. Associations or corporations which would otherwise be United States persons are excluded from the definition if they are also within the first three subdefinitions of "foreign power," see section 101(a)(1)-(3) of FISA, no matter what their membership or place of incorporation.

The definition treats as "United States persons" groups allegedly engaged in international terrorism, see section 101(a)(4) of FISA, and entities allegedly covertly controlled and directed by a foreign government or governments, see section 101(a)(6) of FISA, if they are substantially composed of U.S. citizens or permanent resident aliens or incorporated in the United States, and foreign-based political organizations if they are incorporated in the United States. This does *not* in any way prohibit searches targeted against such associations or corporations if they meet the definition of "foreign power." Where the definition of "foreign intelligence information" applies to information concerning such entities, the information must be "necessary" to the national security or foreign relations concerns. This is critical where the target of a search is "an entity directed and controlled by a foreign government or governments," see section 101(a)(6) of FISA. Such an entity may be entirely composed of U.S. citizens; it may also be engaged in totally lawful and proper activities. There may be a legitimate need for a search targeted at such an entity where it is directed and controlled by a foreign government or governments, but this non-criminal standard can only be supported so long as such entities, which are either incorporated in the United States or substantially composed of U.S. citizens or permanent resident aliens, are treated as United States persons. The added scrutiny that results from a determination that the information is "necessary" is the minimum which can justify such a broad targeting standard with respect to an entity composed of Americans or incorporated in the United States.

In addition, information concerning entities which are incorporated in the U.S. or which are substantially composed of Americans is subject to minimization even if the entities also might be foreign powers, as defined in section 101(a)(4)-(6) FISA. Where a judge has approved the targeting of such an entity and the information sought is necessary, it is not expected that much minimization would be required as to the entity. For instance, if a group of Americans is a group engaged in international terrorism, it is expected that almost all information about the group would be "necessary" to the United States to protect against international terrorism. However, a domestic political group might be found by a judge to be covertly directed and controlled by a foreign government, and information concerning that direction and control might be found necessary to protect the United States against clandestine intelligence activities. But that entity might also engage in legitimate political activities not relating to the foreign government's direction and control. In such a circumstance, minimization is both appropriate and important.

The special protections afforded U.S. persons are not appropriate where an association or corporation is a "foreign power" as defined in section 101(a)(1)-(3) of FISA. The entities covered by these subdefinitions are not subject to much doubt. They are all "official" foreign powers more likely than not flying a foreign flag outside their door. Thus, there is little opportunity for error or abuse by intelligence agencies.

The term "unincorporated association" in the definition of "United States person" is meant to include any group, entity, or organization which is not incorporated under the laws of the United States or of any State. The term "members" here, as opposed to its use in section 101(b)(1)(A) of FISA, is not intended, of course, to be limited to formal, card-carrying members. For instance, an unincorporated commercial establishment's employees would be members under this definition. The committee intends the reference to "a substantial number of members" to be equivalent to the term "substantially composed of" used in parts (2) and (5) of the FISA definition of "foreign power." In both contexts the words "substantial" or "substantially" require that there be a significant proportion, but less than a majority. The judge is expected to take all the known circumstances into account in determining whether an association is a "United States person."

"United States"

The term "United States" is a defined as follows in section 101(j) of FISA:

(j) "United States," when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

As defined, the United States includes all areas under the territorial sovereignty of the United States whether incorporated or not, e.g., Puerto Rico, Guam, the Virgin Islands, and American Samoa. The Trust Territory of the Pacific Islands is not, at this time, under the territorial sovereignty of the United States. It is, however, included in the term "United States" for the purposes of this title, so long as it is under the trusteeship of the United States. At such time as all or part of the Trust Territory enters into as Commonwealth relationship with the United States, it is intended that any such part be considered under the territorial sovereignty of the United States. If the trusteeship is ended with parts or all of those islands becoming independent, this title would not apply to those parts.

The term "territorial sovereignty" in the definition does not include U.S. embassies, consulates, military or other U.S. flag vessels outside the United States, etc.; it does include land in the United States occupied by foreign embassies, consulates, missions, etc. Despite the fact that foreign missions are sometimes referred to as being "extraterritorial," all national maintain territorial soverignty over foreign missions and may expel, as persona non grata, persons therein and condemn the property by right of eminent domain. Military bases and areas under military occupation abroad (e.g., the United States sector in West Berlin) are not under the territorial sovereignty of the United States.

In this title terms such as "foreign-based" and "foreign territory" refer to places outside the "United States," as defined here.

"Person"

The term person is defined in section 101(m) of FISA to mean any individual, including any officer or employee of the Federal Government, or any group, entity, association corporation, or foreign power. "Person" is defined in the broadest sense possible. It is intended to make explicit that entities can be persons, where the term "person" is used. For example, while it is expected that most entities would be targeted under the "foreign power" standard (which cannot be applied to individuals), it is possible that entities could be targeted under certain of the "agent of a foreign power" standards, see section 101(b)(2)(A)-(D) of FISA. Where it is intended that only natural persons are referred to, the term "individual" U.S. person or "individual" person is used.

"State"

The term "State" is defined in section 101(o) of FISA to mean any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"Physical search"

Section 409(b) of this title defines "physical search" to mean any physical intrusion into premises or property (including examination of the interior of property by technical means) or any seizure, reproduction or alteration of information, material or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include "electronic surveillance" as defined in subsection 101(f) of FISA. The definition expressly includes "altering" property so as to ensure that the court is informed and approves of any planned physical alteration of property incidental to a search, e.g., the replacement of a lock so as to conceal the fact of the search.

This definition is meant to be broadly inclusive, because the effect of including a particular means of search is not to prohibit it but to subject it to the statutory procedures. It is not means, however, to require a court order in any case where a search warrant would not be required in an ordinary criminal context. The provision that "a warrant would be required for law enforcement purposes" does not mean that a court must previously have required a warrant for the particular type of search carried out under this title. The techniques involved may not have come before a court for determination as to whether a warrant is required. Nevertheless, the search activity is intended to be covered if a warrant would be required for law enforcement purposes, as determined on the basis of an assessment of the similarity with other activities which the courts have ruled upon, and the reasonableness of the expectation of privacy that a U.S. person would have with respect to such activity.

In response to questions during the deliberations on FISA, the Department of Justice opined that foreign governments—and in some circumstances their diplomatic agents have no fourth amendment rights under the Constitution. By latter of April 19, 1978, from John Harmon, Assistant Attorney General, Office of Legal Counsel, to Chairman Boland of the House Intelligence Committee, the Department of Justice opined that foreign states and their official agents, to the extent that they are not subject to our laws, are not protected by the fourth amendment. Whether the Department of Justice is correct in its opinion, on an issue which has never been addressed by any court, the coverage of the definition of "physical search" is not intended—by the use of the words "a warrant would be required for law enforcement purposes"—to exclude searches merely because they are targeted against an entity or person not entitled to protection under the fourth amendment. Rather, the phrase is intended to exclude only those search activities which would not require a warrant even if a U.S. person were the target. The committee expects that, if an agency wishes to use a new technique in the United States affecting private information, material or property without consent, it will seek a ruling from the Attorney General as to whether the technique requires a court order. The intelligence committee should be advised of such rulings.

Law enforcement officials may, if they wish, continue to obtain an ordinary search warrant if the facts and circumstances justify it.

"Minimization procedures"

The minimization procedures of this title provide vital safeguards because they regulate the acquisition, retention, and dissemination of information about U.S. persons, including persons who are not the authorized targets of a physical search. For example, a document written by an entirely innocent American may be seized in a search targeted for someone else. Or an American may be the sender or recipient of property that is searched because it is in transit to or from an agent of a foreign power or a foreign power. The procedures also protect Americans who are referred to in documents or other information seized or reproduced in a physical search.

Section 409(C) of this title defines "minimization procedures," with respect to physical search, in three paragraphs that are similar to the definitions of this term in section 101(h) of FISA.

Paragraph (c)(1) defines "minimization procedures" as specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and techniques of the particular physical search, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information.

The definition begins by stating that the minimization procedures must be specific procedures. This is intended to demonstrate that the definition is not itself a statement of the minimization procedures but rather a general statement of principle which will be given content by the specific procedures which will govern the actual searches. It is also intended to suggest that the actual procedures be as specific as practicable in light of the search technique and its purposes.

The definition that states that the procedures must be "reasonably designed in light of the purposes and technique of the particular physical search." It is recognized that minimization procedures may have to differ depending on the search technique. For instance, minimization with respect to searches of packages entrusted to couriers would not be comparable to searches involving entry of residential premises.

The definition of minimization speaks in terms of minimizing acquisition and retention and prohibiting dissemination.

The committee recognizes that in some cases it may not be possible or reasonable to avoid acquiring irrelevant information in a physical search. It is recognized that given the nature of intelligence gathering minimizing acquisition should not be as strict as for law enforcement searches. By minimizing retention the committee intends that information acquired, which is not necessary for obtaining, producing, or disseminating foreign intelligence information, be destroyed where feasible and appropriate, as with copies of photographed or reproduced

documents. In certain cases destruction might take place almost immediately, while in other cases the information might be retained for a reason in order to determine whether it did indeed relate to one of the approved purposes. Procedures governing minimization—particularly how long information should be retained and how it should be destroyed once it is deemed irrelevant—are normally approved by the court and subject to judicial supervision.

The committee recognizes that it may not be feasible to cut and paste documents or other materials where some information is relevant and some is not. Therefore, minimizing retention can also include other measures designed to limit retenion of such irrelevant material to an essentially nonusable form.

The standard for dissemination is higher than for acquisition and retention, but the prohibition on dissemination should be designed to be consistent with the need of the United States to obtain, produce, and disseminate until that determination was made (or would only be disseminated to those who could determine its usefulness). Even with respect to information needed for an approved purpose, dissemination should be restricted to those officials with a need for such information. And, again, the judge, in approving the minimization procedures, could require specific restrictions on the retrieval of such information.

There are a number of means and techniques which the minimization procedures may require to achieve the purpose set out in the definition. These may include, where appropriate, but are not limited to:

(A) destruction of unnecessary information acquired;

(B) provision with respect to what may be filed and on what basis, what may be retrieved and on what basis, and what may be disseminated, to whom and on what basis;

(C) provision for the deletion of the identity of United States persons where not necessary to assess the importance or understand the information;

(D) provision relating to the proper authority in particular cases to approve the retention or dissemination of the identity of United States persons;

(E) provision relating to internal review of the minimization process; and

(F) provision relating to adequate accounting information concerning United States person used or disseminated.

Minimization, however, is not required with respect to all information which may be acquired by physical search. First, publicly available information need not be minimized. By publicly available, the Committee means information which in fact is generally available to the public. Such information can include generally published information or information in the public record which is generally available to the public, e.g., statements of incorporation on file in state offices. Also included would be trade names such as a Xerox copier, a Boeing 747, etc. Second, where a person has consented to waive minimization with respect to the acquisition, retention, or dissemination of information about him through physical search, no minimization is required. The committee intends that this consent be explicit and informed. A general authorization to obtain information about him, such as may be made by a person seeking Government employment, is not sufficient. As here used, consent to waive minimization must be specific with respect to the acquisition, retention, and dissemination of information concerning the person acquired by physical search. There is not, however, any requirement that the person know the time, manner, purpose or target of any particular search. It is expected that this allowance will be used rarely and then with respect to high ranking Government officials. Obviously, a refusal to consent should not in any sense be held against a person.

Finally, only information concerning a United States person need be minimized. This includes both documents written by a United States person as well as documents which he has not prepared but which mention him. The Supreme Court has held that persons have no constitutionally protected right of privacy with respect to what others say about them. See *Alderman* v. *United States*, 394 U.S. 195 (1968). Nevertheless, the Executive Branch in its own procedures has demonstrated that it can minimize retention and prohibit dissemination of such information consistent with legitimate foreign intelligence needs. Recognizing the less substantial privacy interest in such information, however, the "reasonably designed" procedures may take account of the differences between information in which persons have a constitutionally protected interest and that in which they do not. Therefore, more flexibility in the procedures may be afforded with respect to information concerning U.S. persons obtained from documents written by others. Of course, information concerning U.S. persons may come in other circumstances where their privacy is invaded; in such situations the person whose property is searched has had his privacy interests invaded and minimization procedures are required.

Because minimization is only required with respect to information concerning U.S. persons, where materials seized or reproduced are encoded or otherwise not processed, so that the contents are unknown, there is no requirement to minimize the acquisiton and retention, or to prohibit the dissemination, of such materials until their contents are known. Nevertheless, the minimization procedures can be structured to apply to other agencies of Government, so that if any agency different from the searching agency decodes or processes the materials, it could be required to minimize the retention and dissemination of information therein concerning U.S. persons.

It is recognized that writers of documents are unlikely to state that they are or are not U.S. persons. Intelligence officers and analysts therefore must use their judgment as to when the procedures apply. While not suggesting that the procedures require the following, as a general rule, persons in the United States might be presumed to be U.S. persons unless there is some reason to believe otherwise. The committee does not intend or expect, however, that intelligence officers will destroy possibly meaningful information merely because there is a question whether a person is a U.S. person.

The definition states that minimization procedures must minimize acquisition and retention, and prohibit dissemination, of information subject to minimization "consistent with the need of the United States to obtain produce, and disseminate foreign intelligence information."

"Foreign intelligence information" is, of course, a defined term, with respect to U.S. persons, it must be "necessary" to the listed security and foreign relations purposes. However, the definition of "minimization procedures" does not state that only "foreign intelligence information" can be acquired, retained, or disseminated. The committee recognizes full well that bits and pieces of information, which taken together could not possibly be considered "necessary," may together or over time take on significance and become "necessary." Nothing in this definition is intended to forbid the retention or even limited dissemination of such bits and pieces before their full significance becomes apparent.

An example would be where the Government conducts a surreptitious entry to photograph papers and effects of a known spy, who is a U.S. person. It is "necessary" to identify anyone working with him in his network, feeding him his information, or to whom he reports. Therefore, it is necessary to acquire, retain and disseminate information concerning all his contacts and acquaintances and movements. Among his contacts and acquaintances, however, there are likely to be a large number of innocent persons. Yet, information concerning these persons must be retained at least until it is determined that they are not involved in the clandestine intelligence activities and may have to be disseminated in order to determine their innocence. Where after a reasonable period of time, which may in fact be an extended period of time, there is no reason to believe such persons are involved in the clandestine intelligence activities, there should be some effort, for example, either to destroy the information concerning such persons, or seal the file so that it is not normally available, or to make the file not retrievable by the name of the innocent person. It is recognized that the failure to gather further incriminating information concerning the contacts or acquaintances of the spy does not necessarily mean they are in fact innocent—instead, they may merely be very sophisticated and well-versed in their espionage tradecraft. Therefore, for an extended period it may be necessary to have information concerning such acquaintances, for an investigation of another spy may indicate the same acquaintance, which may justify more intensive scrutiny of him, which then may result in breaking his cover. (It bears repeating that physical search could not be targeted against such acquaintances until it could be shown that they were in fact agents of foreign powers, as defined.)

It is disconcerting to some that mere association with an alleged spy may be enough to cast suspicion on a person such that his innocence must be established. It seems contradictory to one of our basic tenets that a person is presumed innocent in the eyes of the law until proven guilty. However, in intelligence as in law enforcement, leads must be followed. Especially in counterintelligence cases where often trained professional foreign intelligence personnel are involved, a lead which initially ends in a "dry hole" can hardly be considered a dead issue, although it may be temporarily shelved to divert limited resources to other leads. Therefore, this committee intends that a significant degree of latitude be given in counterintelligence and counterterrorism cases with respect to the retention of information and the dissemination of information between and among counterintelligence components of the Government.

On the other hand, given this degree of latitude the committee believes it imperative that with respect to information concerning U.S. persons which is retained as necessary for counterintelligence or counterterrorism purposes, rigorous and strict controls be placed on the retrieval of such

identifiable information and its dissemination or use for purposes other than counterintelligence of counterterrorism.

In this regard, it is important to note two points governing dissemination. First, the procedures should recognize that use within an agency may be subject to minimization. Many agencies have widely disparate functions themselves, or are subordinate elements of departments which have functions totally unrelated to intelligence. It is the intent of the commit that use within an agency is potentially subject to minimization. While restrictions on use within an agency need not necessarily be the same as the restrictions on interagency dissemination, it is clear that some controls on interagency use are appropriate.

Second, some might consider that any derogatory information concerning a person holding a security clearance or concerning a person who in the future might be considered for a security clearance would be information disseminable as being for "counterintelligence" purposes. This is not intended. The latitude the committee intends to afford counterintelligence components with respect to retention and dissemination between them of information for counterintelligence and counterterrorism purposes is not designed or intended to allow the same latitude for general personnel security purposes.

Where the purpose of a search is not counterintelligence or counterterrorism, there is not the same compelling need for latitude in the retention of information concerning U.S. persons.

One of the results of minimizing retention and dissemination under this title is that some information will be destroyed, retained in a non-identifiable manner, or sealed in a manner to prevent dissemination. Although there may be cases in which information acquired from a physical search for foreign intelligence purposes will be used as evidence of a crime, these cases are expected to be relatively few in number, unlike searches in criminal investigations the very purpose of which is to obtain evidence of criminal activity. In light of the relatively few cases in which information acquired under this title may be used as evidence, the better practice is to allow the destruction of information that is not foreign intelligence information or evidence of criminal activity. This course will safeguard the privacy of individuals more effectively, insuring that irrelevant information will not be filed. The committee believes that existing criminal statutes relating to obstruction of justice will deter any efforts to tamper with evidence acquired under this chapter. Such destruction should occur, of course, only pursuant to the minimization procedures.

Destruction insures that the information cannot be used to "taint" a civil or criminal proceeding; accordingly, there is no requirement to index information which is destroyed or otherwise not used or disseminated.

The definition of minimization procedures states that the Attorney General shall adopt appropriate procedures. In most cases, of course, these procedures will be reviewed and approved, modified, or disapproved by the judge approving the physical search. In those cases where no warrant is required, no judge will review the procedures, and it is important that it is the Attorney general, as the chief law enforcement officer, who ultimately approves them. It is expected that the procedures adopted by the Attorney general will have been thoroughly coordinated with the affected agencies in the executive branch.

On the basis of the experience under FISA, the Committee recognizes that administrative need for minimization procedures to be as uniform as possible. This does not mean, however, that judges should not fully scrutinize proposed minimization procedures just because the same procedures have been approved by another judge in another case. Not only might the earlier judge have overlooked something, but also it is critical to determine at least that factors militating in favor of uniformity are not outweighed by other considerations. For instance, the committee expects that minimization procedures for searches of the property individuals would be more strict than those for searches of the property of foreign powers. If the judge believes a modification is called for, he should require it. If the Government finds the change unacceptable, it may, of course, appeal the decision to the special Court of Review.

Paragraph (2) of the definition requires that all minimization procedures contain a requirement that any information which is not foreign intelligence information as defined in section 101(e)(1) of FISA not be disseminated in a manner which identifies an individual United States person, without his consent, unless the identity is necessary to understand such foreign intelligence information or assess its importance. The purpose of this special dissemination standard is to protect United States persons from dissemination of information which identifies them in those areas where the Government's need for their identity is least established. The adjectival use of the name of a United States person entity, such as the brand name of a product, is not restricted by this provision because such information is publicly available.

Two exceptions are allowed to the prohibition on dissemination in paragraph (2). The first allows dissemination where a U.S. person's identity is "necessary to understand" foreign intelligence information. The person's identity must be needed to make the information fully intelligible. If the information can be understood without identifying the U.S. person, it should be disseminated that way. However, sometimes it might be difficult or impossible to make sense out of the information without a U.S. person's identity. The second exception allows dissemination where a U.S. person's identity is necessary to "assess [the] importance" of foreign intelligence information. The word "importance" means important in terms of the interests set out in the definition of foreign intelligence information. "Necessary" does not mean that the identity must be essential to understand the information or assess its importance. The word necessary requires that a knowledgeable intelligence analyst make a determination that the identity will contribute in a meaningful way to the ability of the recipient of the information to understand the information or assess its importance.

Paragraph (3) of the definition allows retention and dissemination information which is evidence of a crime which has been, or is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes. As noted above, see section 101(e) of FISA, evidence of certain crimes like espionage would itself constitute "foreign intelligence information," as defined, because it is necessary to protect against clandestine intelligence activities by foreign powers or their agents. Similarly, much information concerning international terrorism would likewise constitute evidence of crimes and also be "foreign intelligence information," as defined. This paragraph does not relate to information, even though it constitutes evidence of a crime, which is also needed by the United States in order to obtain, produce or disseminate foreign intelligence information. Rather, this paragraph applies to evidence of crimes which otherwise would have to be minimized because it was not needed to obtain, produce, or disseminate foreign intelligence information. For example, in the course of a search evidence of a serious crime totally unrelated to intelligence matters might be incidentally acquired. Such evidence should not be required to be destroyed. Where the information is not foreign intelligence information, however, retention and dissemination of such evidence is allowed only for law enforcement purposes. Such purposes include arrest, prosecution, and other law enforcement measures taken for the purpose of preventing the crime. Thus, this paragraph is not a loophole by which the Government can generally keep and disseminate derogatory information about individuals which may be a technical violation of law, where there is no intent actually to enforce the criminal law. On the other hand, where the evidence also constitutes "foreign intelligence information," as defined, this paragraph does not apply, and the information may be disseminated and used for purposes other than enforcing the criminal law.

"Aggrieved person"

Section 409(d) of this title defines "aggrieved person" to mean a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search. As defined, the term is intended to be coextensive, but no broader than, those persons who have standing to raise claims under the Fourth Amendment with respect to physical search.

"Foreign Intelligence Surveillance Court"

Section 409(e) of this title defines "Foreign Intelligence Surveillance Court" to mean the court established by section 103(a) of FISA, which provides that the Chief Justice of the United States shall publicly designate seven district court judges from seven of the United States judicial circuits who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this Act. Pursuant to section 103(d) of FISA, each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the first judges designated under subsection (a) were to be designated for terms of from one to seven years so that one term expired each year. As a result, there has been a regular annual rotation of at least one new judge onto the Foreign Intelligence Surveillance Court since 1979.

The legislative history of FISA established the intent of Congress that the court shall sit continuously in the District of Columbia, that the designated judges shall serve by rotation determined by the Chief Justice, that they may be assigned to other judicial duties in the District of Columbia which are not inconsistent with their duties under this Act, and that more than one judge shall be available at all times to per-

form the duties required by this Act. The Chief Justice is expected to consult with the chief of judges of the judicial circuits in making designations of judges under section 103 of FISA.

The FISA legislative history also stated that staffing of the court with at least one judge from each circuit would provide geographical diversity, and bringing the chief judges into the selection process would promote ideological balance. Requiring the special court to sit continuously in the District of Columbia would facilitate necessary security procedures and, by ensuring that at least one judge is always available, would ensure speedy access to it by the Attorney general when timeliness is essential for intelligence purposes. It was anticipated that only one or two judges would be in Washington, on a rotating basis, at any given time. Such a procedure would minimize judge shopping and would make it unlikely that an application for an order for the same target would be heard by the same judge who granted the earlier order for that target.

"Court of Review"

Section 409(f) defines "Court of Review" to mean the court established by section 103(b) of FISA, which provides that the Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this Act. Pursuant to section 103(d) of FISA, judges designated under subsection (b) shall so serve for a maximum of seven years and shall not be eligible for redesignation. The judges first designated under subsection (b) were to be designated for terms of three, five, and seven years.

The FISA legislative history stated that the Chief Justice is expected to consult with the chief judges of the judicial circuits in making these designations. There is no requirement that the special court of review sit continuously as it is anticipated that the exercise of its functions will be rare.

EFFECTIVE DATE

Section 410 of this title states that the provisions of this title shall become effective 90 days after the date of enactment of this title, except that any physical search approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this title, if that search is conducted within 180 days following the date of enactment of this title pursuant to regulations issued by the Attorney general, which are in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives prior to the date of enactment.

This provision allows some flexibility in the timing of implementation of the statutory physical search procedures. The Committee intends that the Attorney General shall begin making applications for orders under this title and the court may grant such orders as soon as practicable after the effective date of this title. Prior to the first application, U.S. intelligence officers may conduct physical searches under the Executive branch procedures previously in effect. The Committee intends that after the Attorney General makes the first application to the court under this title, no subsequent physical search which requires a court order under this title shall be approved by the Attorney General without a court order. Searches approved by the Attorney General prior to that date, but not yet conducted, may be carried out so long as they occur within 180 days of enactment.●

● Mr. COHEN. Mr. President, I am very pleased to join with Senator BOREN, the distinguished chairman of the Select Committee on Intelligence in sponsoring this bill, which incorporates revisions to S. 2726, legislation which he and I introduced last June to improve the counterintelligence posture of the United States.

I, too, would join him in commending the panel of distinguished private citizens whose work this bill represents. For people the likes of Eli Jacobs, Bobby Inman, Warren Christopher, Lloyd Cutler, A.B. Culvahouse, Sol Linowitz, Richard Helms, Seymour Weiss, and Harold Edgar to give of their time and talents, without remuneration, to develop these proposals is an example of selfless public service in the best tradition of that concept. This effort demonstrates to me that it is still possible to draw upon knowledgeable private citizens, unencumbered by bureaucracies or partisanship, and produce results that I doubt we could ever see emerge from the Government itself.

What this panel has done for us is make clear that the real espionage problem lies not on the outside, but on the inside. It is Americans who have access to sensitive classified information, who at their own initiative provide such information to other countries, not out of ideological zeal or because they are being blackmailed, but because they can get money for it.

The activities of these traitors have cost us dearly: We have had to replace communications systems and codes; we have lost military technologies that cost us billions to develop; we have lost war plans that could have cost American lives had we gone to war; and we have lost intelligence operations and capabilities that were providing significant benefits. The costs of espionage are not precisely quantifiable, but it is clear that they have been substantial.

Although the extent of damage perpetrated by the American volunteer has been apparent for several years now, the Jacobs panel reports that not enough has been done to cope with it. This is the essential thrust of the panel's recommendations.

As the Jacobs panel so aptly pointed out to us, this part of the problem, the American volunteer, is not likely to be discouraged by the political changes in the Soviet Union or the democratic reforms in eastern Europe. Indeed, some Americans may feel even more comfortable selling secrets to countries which no longer appear to threaten us. I recall that the convicted spy John Walker compared himself to certain Wall Street traders, equating espionage to passing a little inside information. In an era of improving relationships, it will become increasingly easy for the would-be spy to rationalize such conduct. And, indeed, the opportunities for contacts to occur are likely to multiply as bilateral relationships warm. As I mentioned at the Intelligence Committee's hearing with the Jacobs panel, the ERA of the cloak and dagger may be over, but the cloaks are likely to multiply and become even more pervasive in their effort to procure military, industrial, and commercial secrets. The head of the KGB, Vladimir Kryuchkov, stated several months ago that the KGB plans to collect information to enhance the Soviet Union's competitive position commercially.

What more warning do we need? Do we wait for the next disaster to occur? If there are things we might do to improve the ability of the government to deal with this problem, should we not do them?

This is basically what the Jacobs panel recommended to us. No one is under any illusion that these proposals will eliminate espionage. But they should give the Government an improved ability to deter U.S. citizens from spying, to detect those who are not deterred, and to help prosecute those who trade our security for their enrichment.

Inevitably, recommendations such as these raise civil liberties concerns to which I am especially sensitive. Surely, we do not want to "stalinize" the intelligence community in the name of national security. While I think the panel was very sensitive itself to this concern, perhaps there are ways we can improve these proposals in this regard without doing injury to their purpose. But we must realize that access to our Nation's secrets is a privilege, one that must be more carefully granted and more carefully guarded. If we are going to give a person the capability of doing grave damage to the security of this country, it seems to me that we can ask that person to give up a measure of his or her privacy in return.

In conclusion, Mr. President, let me say that I too had hoped the Select Committee on Intelligence would have been able to report this legislation this session. We simply ran out of time. My term on the committee expires this session, but I intend, to the extent I am able, to continue encouraging and working for this process, as a member of the Senate as a whole. It behooves all of us to pursue this to its conclusion. If there are measures we can enact to improve our ability to deal with this intractable threat to the Nation's security, then why should we not enact them?●

By Mr. LIEBERMAN:

S. 3253. A bill to provide for the establishment of industrial recapitalization funds by industries which were injured by unfair import competition, and for other purposes; to the Committee on Finance.

INDUSTRIAL RECAPITALIZATION FUNDS

● Mr. LIEBERMAN. Mr. President, today, House Majority Leader DICK GEPHARDT and I are introducing legislation that would create an Industrial Recapitalization Fund [IRF] for companies essential to national defense and security interests that have won an antidumping or countervailing duty case. The IRF would be a "business IRA," which would permit firms that have won a dumping suit to put income from sales of the merchandise or a competitive line of merchandise, which gave rise to the action, in the fund for a period of 5 years.

Income deposited in the fund is not subject to taxation but is available only for withdrawal into qualified investments in capital plant and equipment. Withdrawals may be made for a period up to 12 years from the date of the fund's formation. For tax basis and depreciation purposes, investments in plant and equipment using fund moneys are discounted by the amount of fund moneys applied. Unqualified withdrawals are taxed on a specific recapture basis.

This proposal is not a replacement for vigorous enforcement of our antidumping laws. It is a tool for firms to create a level playing field against foreign competitors. Two prominent Connecticut companies, Torrington Co., a leading manufacturer of ballbearings, and Smith Corona have both been injured by the dumping practices of their foreign competitors. Torrington won a major dumping case a couple of years ago, but that victory did nothing to redress the financial damage that Torrington suffered as a result of the dumping practices that gave rise to the case in the first place.

It is important to note that when a company wins an antidumping case, it does not receive any compensation. The only action taken is the imposition of tariffs on the company guilty of the dumping violation. The injured company, as a result of the dumping violation, has already lost its market share.

The IRF attempts to right this wrong by giving our manufacturers an opportunity to pick up lost ground. But it does so in a way that encourages firms to make investments in future productive capacity. This is not a tax shelter. Companies are penalized if they withdraw funds deposited in the IRF for purposes other than investments in new plant and equipment. It is in our interest to encourage firms to make this type of investment since it will ultimately make them more competitive.

We need to help America's manufacturers if we are to turn around our Nation's economic slowdown. One important way to do this is to cut the cost of capital for manufacturing firms. This is particularly important for firms that have suffered as a result of the dumping practices of foreign competitors. The IRF makes capital less expensive for such companies, keeping them competitive in the international marketplace.

In addition, we can no longer afford to permit our companies to be victimized by unfair trade practices. Free trade only works if it is reciprocal. I support free trade, but I also support programs such as this one that will strengthen American companies and the American economy. Our antidumping laws are written to promote fairness in trade, but they do nothing to address problems that have arisen as a result of the loss of a market share. We can't afford to permit American companies to cede domestic markets to their foreign competitors, particularly if the loss of market share is the result of unfair trade practices. If we stand aside and let these companies sink, we are not promoting free trade, we are killing off American manufacturing.

A healthy American manufacturing sector is not only important for the United States, it is better for the world economy. We need more programs like the IRF to help American businesses to compete. We should not close our markets to foreign products or competition, but we should make certain that American firms are not a disadvantage when it comes to head to head competition against their foreign counterparts. The IRF is an important step in the process of making America more competitive.

I want to take a moment to commend House Majority Leader DICK GEPHARDT and his fine staff for all their hard work on this issue. Our offices have worked closely together on this bill. I look forward to working with him in the next Congress trying to get IRF legislation enacted.

I also want to mention the fine work that my colleague from Connecticut, Representative NANCY JOHNSON, has done on this issue. She introduced similar legislation earlier this year.

I ask unanimous consent to include a copy of the bill and a bill summary as part of my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF INDUSTRIAL RECAPITALIZATION FUNDS.

(a) IN GENERAL.—Subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to exempt organizations) is amended by adding at the end thereof the following new part:

"PART VIII—INDUSTRIAL RECAPITALIZATION FUNDS

"Sec. 530. Establishment of industrial recapitalization funds.
"Sec. 530A. Industrialization recapitalization agreements.
"Sec. 530B. Fund requirements.
"Sec. 530C. Taxability of fund.
"Sec. 530D. Definitions; records and reports.

"SEC. 530. ESTABLISHMENT OF INDUSTRIAL RECAPITALIZATION FUNDS.

"(a) ESTABLISHMENT OF FUNDS.—If an eligible corporation enters into an agreement with the Secretary of Commerce described in section 530A, such corporation may establish an industrial recapitalization fund (hereinafter in this part referred to as a 'fund').

"(b) ELIGIBLE CORPORATION.—For purposes of this part, the term 'eligible corporation' means any corporation—

"(1) engaged in the active conduct of a trade or business in an essential industry, and

"(2) which has filed a petition under section 702 or 732 of the Tariff Act as an interested party described in section 771(9)(C) of the Tariff Act which resulted in the commencement of an investigation leading to the imposition of additional duties under section 701 or 731 of the Tariff Act, or a suspension agreement.

"(c) ESSENTIAL INDUSTRY.—For purposes of this part, the term 'essential industry' means a domestic industry which produces component products classified under Standard Industrial Classification Code 36741 or without which machine tools necessary to support the national defense could not be produced.

"SEC. 530A. INDUSTRIALIZATION RECAPITALIZATION AGREEMENTS.

"(a) IN GENERAL.—An agreement is described in this section if—

"(1) the Secretary of Commerce determines that such agreement will assist in acquiring new, or modernizing, plant and equipment in the United States for an essential industry which—

"(A) the International Trade Commission, through a final determination of material injury, found had been injured by subsidized (or less than fair value) sales of imported merchandise, or

"(B) the Secretary of Commerce, through a final determination, found forced sales of less than fair value where the difference between foreign market value and the United States price exceeded 50 percent ad valorem from 1 or more countries; and

"(2) subject to the provisions of this part, the agreement provides criteria for deposits into, investment of amounts in, and withdrawals from, a fund.

"(b) SECRETARIAL AUTHORITY.—The Secretary of Commerce may set such other terms and conditions with respect to any agreement as are necessary to carry out the purposes of this part. Such terms and conditions may be set by regulation or included in an agreement.

"SEC. 530B. FUND REQUIREMENTS.

"(a) DEPOSIT REQUIREMENTS.—

"(1) Amounts may be deposited into a fund during each of the 5 taxable years immediately following the taxable year in which an agreement described in section 530A is entered into.

"(2) The amount deposited for any taxable year shall not exceed the lesser of—

"(A) the amount provided in the agreement, or

"(B) the amount determined under paragraph (3).

"(3) The amount determined under this paragraph is the sum of—

"(A) that portion of the taxable income of the corporation maintaining a fund for such year (computed as provided in chapter 1 but without regard to the carryback or carryover of any net operating loss or net capital loss and without regard to this section) which is attributable to the production and sale by an essential industry in the United States of a product classified in the same 5-digit Standard Industrial Classification as the imported merchandise which has been determined to be subject to the imposition of duties under section 701 or 731 of the Tariff Act, or the suspension agreement, in a case in which such person was a petitioner,

"(B) amounts allowable as a deduction to the taxpayer under section 167 (or as amortization in lieu of depreciation under any other provision) for such taxable year with respect to eligible plant and equipment,

"(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from the sale or other disposition of any such eligible plant and equipment, or insurance or indemnity attributable to any such eligible plant and equipment, plus

"(D) the receipts from the investment or reinvestment of amounts held in such fund.

"(4) The amount deposited into a fund for any taxable year following the 5 taxable-year period referred to in paragraph (1) shall not exceed the amount specified in paragraph (3)(D).

"(5) The Secretary may not require in an agreement described in section 530A deposits in any taxable year in excess of 50 percent of the amount described in paragraph (3)(A).

"(b) REQUIREMENTS AS TO INVESTMENTS.—

"(1) Except as provided in this subsection, amounts in a fund shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary of Commerce.

"(2) Assets in a fund may be invested only in interest-bearing securities issued by the United States Government.

"(c) WITHDRAWALS.—

"(1) The agreement under section 530A shall provide that only qualified withdrawals may be made from a fund.

"(2) For purposes of this part, the term 'qualified withdrawal' means a withdrawal made in accordance with the terms of the agreement, but only if it is for—

"(A) the acquisition, construction, reconstruction, modernization or refurbishment of qualified plant and equipment, or

"(B) the payment of the principal on indebtedness incurred in connection with the acquisition, construction, reconstruction, modernization, or refurbishment of qualified plant and equipment.

"(3) Under joint regulations, if the Secretary of Commerce determines that any substantial obligation under any agreement under section 530A is not being fulfilled, the Secretary may, after notice and opportunity to be heard, treat the entire fund (or any portion thereof) as an amount withdrawn from the fund in a withdrawal which is not a qualified withdrawal.

"SEC. 530C. TAXABILITY OF FUND.

"(a) NONTAXABILITY FOR DEPOSITS.—

"(1) For purposes of this title—

"(A) taxable income (determined without regard to this section) for any taxable year shall be reduced by an amount equal to the amount deposited into a fund for the taxable year out of amounts described in section 530B(a)(3)(A),

"(B) gain from a transaction referred to in section 530B(a)(3)(C) shall not be taken into account in computing taxable income if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

"(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account in computing taxable income,

"(D) the earnings and profits of any corporation (within the meaning of section 316) shall be determined without regard to this section,

"(E) in applying the tax imposed by section 531 (relating to the accumulated earnings tax), amounts held in the fund shall not be taken into account,

"(F) all allowable deductions under this section are also allowed as deductions for the determination of adjusted current earnings in the computation of the alternative minimum tax, and

"(G) for purpose of computing the commission payable to a foreign sales corporation such commission shall be determined without regard to this section.

"(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

"(b) ESTABLISHMENT OF ACCOUNTS.—

"(1) Within a fund established pursuant to this part, 3 accounts shall be maintained—

"(A) the capital account,

"(B) the capital gain account, and

"(C) the ordinary income account.

"(2) The capital account shall consist of—

"(A) amounts referred to in section 530B(a)(3)(B),

"(B) amounts referred to in section 530B(a)(3)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (a)(1)(B),

"(C) the percentage applicable under section 243(a)(1) of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (a)(1)(C)) be allowed a deduction under section 243, and

"(D) interest income exempt from taxation under section 103.

"(3) The capital gain account shall consist of—

"(A) amounts representing capital gains on assets held for more than 1 year and referred to in subparagraph (C) or (D) of section 530B(a)(3), reduced by

"(B) amounts representing capital losses on assets held in the fund for more than 1 year.

"(4) The ordinary income account shall consist of—

"(A) amounts referred to in section 530B(a)(3)(A),

"(B)(i) amounts representing capital gains on assets held for 1 year or less and referred to in subparagraph (C) or (D) of section 530B(a)(3), reduced by

"(ii) amounts representing capital losses on assets held in the fund for 1 year or less,

"(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

"(D) ordinary income from a transaction described in section 530B(a)(3)(C) other than amounts to which paragraph (2)(B) applies, and

"(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

"(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

"(c) TAX TREATMENT OF QUALIFIED WITHDRAWALS.—

"(1) Any qualified withdrawal from a fund shall be treated—

"(A) first as made out of the capital account,

"(B) second as made out of the capital gain account, and

"(C) third as made out of the ordinary income account.

"(2) If any portion of a qualified withdrawal for qualified plant and equipment is made out of the ordinary income account, the basis of such plant and equipment shall be reduced by an amount equal to such portion.

"(3) If any portion of a qualified withdrawal for qualified plant and equipment is made out of the capital gain account, the basis of such plant and equipment shall be reduced by an amount equal to such portion.

"(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness described in section 530B(c)(2)(B) is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) shall be applied, in the order provided in joint regulations, to reduce the basis of plant and equipment owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

"(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (d)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under such joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

"(d) TAX TREATMENT OF NONQUALIFIED WITHDRAWALS.—

"(1) Except as provided in subsection (e), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

"(2) Any nonqualified withdrawal from a fund shall be treated—

"(A) first as made out of the ordinary income account,

"(B) second as made out of the capital gain account, and

"(C) third as made out of the capital account.

For purposes of this subsection, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced qualified plant and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (c)(4), shall be treated as withdrawn on a last-in-first-out basis.

"(3) For purposes of this title—

"(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

"(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 1 year, and

"(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which the withdrawal is made—

"(i) no interest shall be payable under section 6601 and no addition to the tax shall be payable under section 6651,

"(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

"(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2).

"(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal shall be the rate established in section 6621(a)(2).

"(5) The applicable percentage of any amount which remains in a fund as of the close of the 10th, 11th, or 12th taxable year following the taxable year in which an agreement was entered into shall be treated as a nonqualified withdrawal in accordance with the following table:

If the amount remains in the fund at the close of the—	The applicable percentage is:
10th taxable year.....	20 percent
11th taxable year.....	60 percent
12th taxable year.....	100 percent.

"(B) The earnings of a fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount remaining in the fund for such taxable year.

"(C) For purposes of subparagraph (A), an amount shall not be treated as remaining in a fund as of the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

"(D) If the Secretary determines that the balance in a fund exceeds the amount which is appropriate to meet the fund's program objectives, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

"(6)(A) In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 shall be determined—

"(i) by excluding such withdrawal from gross income, and

"(ii) by increasing the tax imposed by chapter 1 by the product of the amount of such withdrawal and the highest rate of tax specified in section 11.

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1201(a) applies, the rate of tax taken into account under the preceding sentence shall not exceed 34 percent.

"(B) If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

"(i) such portion shall not be taken into account under subparagraph (A), and

"(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 for the taxable year in which such withdrawal occurs.

"(C) Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2).

"(e) CORPORATE REORGANIZATIONS.—Under joint regulations, if a transfer of a fund occurs from one person to another person in a transaction to which section 381 applies, such transfer shall not constitute a nonqualified withdrawal.

"SEC. 530D. DEFINITIONS; RECORDS AND REPORTS.

"(a) DEFINITIONS.—For purposes of this part—

"(1) The term 'Tariff Act' means the Tariff Act of 1930, as amended.

"(2) The term 'eligible plant and equipment' means any plant and equipment which is used by an industry (as defined in section 771(4) of the Tariff Act) for the production of a like product (as defined in section 771(10) of the Tariff Act).

"(3) The term 'joint regulations' means regulations prescribed under subsection (b)(2).

"(4) The term 'qualified plant and equipment' means new or modernized plant and equipment which will be used by an industry (as defined in section 771(4) of the Tariff Act) for the production of a like product (as defined in section 771(10) of the Tariff Act) or a product determined by the Secretary of Commerce to be competitive with such like product.

"(5) The term 'United States' means, when used in a geographical sense, each of the 50 States, the District of Columbia, and Puerto Rico.

"(b) RECORDS; REPORTS; CHANGES IN REGULATIONS.—

"(1) Each person maintaining a fund under this part shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require.

"(2) The Secretary of the Treasury and the Secretary of Commerce shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this part, as may be necessary or appropriate to the determination of tax liability under this section.

"(3) If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary of Commerce under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

"(c) DEPARTMENTAL REPORTS AND CERTIFICATION.—

"(1) For each calendar year, the Secretary of Commerce shall provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to the funds under the Secretary's jurisdiction.

"(2) Each report under paragraph (1) shall set forth the name and taxpayer identification number of each person—

"(A) establishing a fund during such calendar year;

"(B) maintaining a fund as of the last day of such calendar year;

"(C) terminating a fund during such calendar year;

"(D) making any withdrawal from or deposit into (and the amounts thereof) a fund during such calendar year; or

"(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any fund agreement to which such person is a party.".

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter F is amended by adding at the end thereof the following new item:

"Part VIII—Industrial recapitalization funds."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2. COORDINATION AND COLLECTION OF ANTIDUMPING AND COUNTERVAILING DUTIES.

(a) REPORTING REQUIREMENTS.—Section 736 of the Tariff Act of 1930 (19 U.S.C. 1673(e)) is amended by adding the following subsections:

"(d) REPORTING REQUIREMENTS.—

"(1) SEMIANNUAL REPORTS TO CONGRESS.—The Secretary of Commerce shall submit semiannual reports to Congress identifying the total volume (and value) of imports subject to antidumping and/or countervailing duties, the total cash deposits collected and shall contain an attested statement from the Secretary confirming that the correct amount of cash deposits have been collected. The report shall confirm that any entries subject to antidumping and countervailing duty orders which have been liquidated without assessment of such duties have been reliquidated pursuant to section 520(e) or returned to an unliquidated state pending completion of an administrative review.

"(2) QUARTERLY REPORTS.—The Customs Service, after consulting with the Department of Commerce as to the accuracy and completeness of the data, shall send quarterly reports to importers of record. The quarterly report shall list by antidumping and countervailing duty order and by foreign producer the entries made, including:

"(A) the value of the entries,

"(B) the duty deposit rates, and

"(C) the estimated duty paid.

The list is to be updated quarterly.

"(e) TRANSMITTAL OF QUARTERLY REPORT TO THE SECRETARY.—The Quarterly Report is to be transmitted to the Department of Commerce and made part of the appropriate administrative record. The parties shall be provided access to the confidential portions of the quarterly list under administrative protective order pursuant to section 777. The data contained in the Quarterly Report is to be compared to the Department of Commerce statistics. In the event there are any discrepancies between the data reported in the foreign producers question-

naire responses and the Customs data, the matter is to be referred to the Customs investigations unit. The Customs investigation unit shall issue a report within 90 days indicating the reasons for any discrepancies. Entries determined to be made at the wrong cash deposit rates and entries incorrectly liquidated without assessment of estimated duties, shall be referred to Customs for reliquidation pursuant to section 520(e). In addition, the Customs investigations unit shall report any instance or occurrence in which said discrepancy may have resulted from a violation of section 592 for appropriate action by the Customs Service."

(b) RELIQUIDATION OF ENTRIES.—Section 520 of the Tariff Act of 1930 (19 U.S.C. 1520) is amended by adding at the end the following new subsection:

"(e) RELIQUIDATION OF ENTRIES TO ASSESS ANTIDUMPING OR COUNTERVAILING DUTIES.—Notwithstanding section 514(a), the appropriate Customs officer shall reliquidate any entry necessary to correct the failure of the Customs Service to assess and collect an antidumping or countervailing duty that was properly assessed on such entry pursuant to section 736(a) but not assessed and collected in the initial liquidation. Any reliquidation required under the preceding sentence must occur within 18 months of the liquidation coming to the attention of the Commerce Department and an assessment rate pursuant to section 751 being established."

SECTION-BY-SECTION ANALYSIS

SECTION (1). ESTABLISHMENT OF INDUSTRIAL RECAPITALIZATION FUNDS

Present law

There are currently no provisions of U.S. law which establish an industrial recapitalization fund or allow tax deferral for new investment by a U.S. industry that has been injured by unfair import competition.

Explanation of provision

Subsection (a) outlines the provisions of an eligible corporation to establish an industrial recapitalization fund. Subsection (b) sets the requirements for an said corporation to enter into an agreement with the Secretary of Commerce. Subsection (c) outlines said criteria for which such corporation may establish an industrial recapitalization fund.

SECTION (2). INDUSTRIALIZATION RECAPITALIZATION AGREEMENTS

Explanation of provision

Section (2) establishes, of the first time, a fund for the purpose of assisting an essential industry harmed by unfair import competition with capital expansion in an effort to regain industrial base and consequent lost market share. Subsection (a) sets out the requirements for entering into an agreement with the Secretary of Commerce to establish an industrial recapitalization fund, a statement of the purpose of such a fund, and the Secretary's responsibilities in connection with the fund. Deposits and withdrawals from the fund would be subject to conditions and requirements established by the Secretary by agreement or regulation. Subsection (b) outlines the Secretrary's authority with respect to the setting of other terms and conditions to any agreement. Subsection (c) provides a definition of "essential industry" for purposes of this Act and conformity with the Canadian Free Trade Agreement.

SECTION (3). FUND REQUIREMENTS

Explanation of provision

Subsection (a), Deposit Requirements, limits the amount deposited in the fund for any of the first five taxable years after an agreement has been entered into to a sum not exceeding the total of:

(a) that portion of taxable income which is attributable to the production and sale by an essential industry in the U.S. of a like product to a class or kind of imported merchandise which has been determined to be subject to the imposition of duties under section 701 or 731 of the Tariff Act of 1930, as amended,

(b) the amount allowable as a deduction under section 167 of Internal Revnue Code of 1986, with respect to eligible plant and equipment,

(c) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds from the sale or other disposition of any such eligible plant and equipment, or insurance or indemnity attributable to any such eligible plant and equipment, and

(d) the receipts from the investment or reinvestment of amounts held in such fund.

The subsection also limits the deposit in any taxable year following the 5th taxable-year period referred to in subparagraph (D) above.

Subsection (b), Requirements as to Investments, requires the segregation of amounts in the fund to be subject to certain requirements imposed by the Secretary. Investment of fund assets must be made in interest-bearing securities issued by the United States Government.

Subsection (c), Withdrawals, sets out the purposes for which a withdrawal may qualify as a "qualified withdrawal" and also provides that the Secretary may treat the entire fund or portion thereof as a nonqualified withdrawal upon determining that a substantial obligation under the agreement is not being fulfilled. A withdrawal is qualified if it is for the acquisition, construction, reconstruction, modernization or refurbishment of qualified plant and equipment or for the payment of the principal on indebtedness incurred in connection with the acquisition, etc. of qualified plant and equipment.

SECTION (4). TAXABILITY OF FUND

Explanation of provision

Subsection (a), Nontaxability for Deposits, provides for the nontaxability of deposits into the fund by subtracting the amount deposited from taxable income, not realizing gain on certain transactions if an amount equal to the net proceeds from the transaction is deposited, not considering the earnings from the investment of amounts in the fund, and not considering the amounts in the fund when determining the earnings and profits of the corporation for tax purposes.

Subsection (b), Establishment of Accounts, requires that three accounts be maintained within the fund including a capital account, a capital gain account and an ordinary income account. The capital account is to consist, for example, of an amount equal to the depreciation of eligible plants and equipment and amounts of gain realized on the sale of such eligible plants and equipment. The capital gain account consists of amounts representing long-term capital gains reduced by long-term capital losses. The ordinary income account shall consist of an amount of taxable income attributable to the production and sale of products of a like kind to imported merchandise subject to the payment of dumping duties [determined to be subject to duties under section 701 or 731 of the Tariff Act of 1930] short-term capital gain, and interest and other ordinary income received on assets held in the fund.

Subsection (c), Tax Treatment of Qualified Withdrawals establishes a priority rule requiring that qualified withdrawals be treated as first made out of the capital account, then out of the capital gains account, and lastly out of the ordinary income account. Additionally, it provides for the adjustment of basis of plant and equipment purchased with funds withdrawn from the capital gain or ordinary income account. The section provides that if any portion of a qualified withdrawal is used to pay principal on any indebtedness and is made from either the ordinary income or the capital gain account, then the money shall be applied to reduce the basis of plant and equipment owned by the person maintaining the fund.

The section also sets out the method in which any gains realized on property sold, the basis of which was reduced under the section, should be treated.

Subsection (d), Tax Treatment of Nonqualified Withdrawals. Nonqualified withdrawals do not receive the favorable tax treatment of qualified withdrawals. This subsection provides that nonqualified withdrawals are not to be treated as withdrawn first out of the ordinary income account, second out of the capital gain account, and third as out of the capital account and treated as withdrawn on a first-in-first-out basis, with certain exceptions. Nonqualified withdrawals are treated as ordinary income, or ordinary gain realized during the taxable year in which withdrawal was made, depending on which account was credited with the withdrawal. The subsection also details the various kinds of tax treatment these withdrawals receive.

A time limit for the maintenance of a fund is also established. Starting in the tenth year after the agreement, a percentage of the amount remaining in the fund is taxed as a nonqualified withdrawal. Twenty percent of the amount remaining in the fund after 10 years is treated as a nonqualified withdrawal, then 60 percent is taxed in the eleventh year, and finally, 100 percent of the amount left in the fund after 12 years is treated as a nonqualified withdrawal. However, if an amount has been committed through a binding contract as a qualified withdrawal, but is remaining in the fund at the end of the taxable year, that amount will be treated as withdrawn. Furthermore, any excess funds which the Secretary has determined exceed the amount appropriate to meet the fund's program objectives will be treated as a nonqualified withdrawal, unless appropriate program objectives are developed within 3 years to dissipate such excess.

Nonqualified withdrawals are to be taxed at the highest marginal rate. However, if any portion of a nonqualified withdrawal is attributable to deposits made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax for any taxable year preceding the taxable year in which such withdrawal occurs, such portion will not be subject to taxation.

Subsection (e), Corporate Reorganizations, provides that a transfer of a fund from one person to another person as a result of a corporate reorganization, such transfer shall not constitute a nonqualified

withdrawal. If the transaction results in the transfer of an eligible corporation, a majority of whose shares are held by non-U.S. persons, any and all withdrawals will be treated as having been nonqualified and the resultant tax liability must be paid at the time of the transaction.

SECTION (5). DEFINITIONS; RECORDS AND REPORTS.

Explanation of provision

Subsection (a), Definitions, provides the definition of certain key terms used in the section. Most importantly, an "eligible corporation" must first be certified as a member of a domestic industry essential to the national security interests of the U.S. and have filed a petition under section 702 or 732 of the Tariff Act as an interested party described in section 771(9)(C) of the Tariff Act of 1930 which has resulted in the commencement of an investigation leading to the imposition of additional duties under 701 or 731 of the Tariff Act.

Subsection (b), Records; Report; Changes in Regulations, requires each person maintaining a fund to keep such records as the Secretary or the Secretary of the Treasury may require. The Secretary of Commerce and the Secretary of the Treasury are required to jointly prescribe rules and regulations appropriate to determine tax liability under the section. The section also provides that a person may terminate an agreement if a change is made in the joint regulations which could have a substantial effect on the rights or obligations of that person.

Subsection (c), Departmental Reports and Certification, requires the Secretary of Commerce to provide an annual report to the Secretary of the Treasury identifying each person who established a fund during the taxable year, maintained a fund at the end of the taxable year, terminated a fund during a taxable year, made withdrawals or deposits during the taxable year, or who has been determined to have failed to fulfill a substantial obligation under a fund agreement.●

By Mr. BIDEN (for himself, Mr. HATCH, Mr. KENNEDY, Mr. SPECTER, Mr. INOUYE, Mr. LIEBERMAN, Mr. METZENBAUM, and Mr. MOYNIHAN):

S. 3254. A bill to protect the free exercise of religion; to the Committee on the Judiciary.

RELIGIOUS FREEDOM RESTORATION ACT

Mr. BIDEN. Mr. President, the first amendment of our Constitution protects the free exercise of religion. Our country is committed to religious freedom.

A rule announced in a recent Supreme Court opinion, Employment Division versus Smith, could lead to unnecessary restrictions on religious freedom. Under this new rule, a State can enforce a general criminal law that restricts religious practices, without demonstrating a compelling State interest in enforcing that law.

Today I am introducing legislation to restore the previous rule of law, which required the Government to justify restrictions on religious freedom. The Religious Freedom Restoration Act of 1990 would allow Government to restrict religious freedom only if the restriction is a general law that does not intentionally discriminate against religion. The Government will also have to show a compelling State interest in enforcing the law and that it has chosen the least restrictive way to further its interest.

Mr. President, let me make one thing clear: Under this legislation, as I see it, Oregon could still keep native Americans from using peyote during religious ceremonies. In my view, Oregon has a significant interest in preventing the physical harm caused by using drugs like peyote. Oregon could show that it had a compelling State interest in regulating peyote use and that creating an exception for native Americans would interfere too much with that interest.

Justice O'Connor, in an opinion concurring only in the judgment in Employment Division versus Smith, concluded that Oregon has a compelling interest in regulating peyote use and "that accommodating religiously motivated conduct will unduly interfere with fulfillment of the governmental interest."

I agree with Justice O'Connor. We can protect religious freedom and still prevent the use of peyote. This legislation is concerned with the former, and not the latter.

During Justice Souter's confirmation hearing, I asked him about the Employment Division versus Smith decision. Justice Souter endorsed Justice O'Connor's opinion and stated that he had no reason to question the requirement that Government show a compelling State interest in enforcing laws that restrict religious practice. I believe Justice Souter's comments reflect an emerging trend among legal scholars to embrace Justice O'Connor's opinion in the Employment Division versus Smith free exercise decision.

The Court has, in the past, concluded that the first amendment forbids the application of general prohibitions to religious practices. The Court has respected both the first amendment and the Government's interest in regulating conduct by requiring the Government to justify placing a substantial burden on religious practices by showing a compelling State interest.

Making a religious practice a crime is a substantial burden on religious freedom. It forces a person to choose between abandoning religious principles or facing prosecution. Before we permit such a burden on religious freedom to stand, the Court should engage in a case-by-case analysis of such restrictions to determine if the Government's prohibition is justified. The legislation I hope to introduce will require such a case-by-case analysis.

This bill is needed because even neutral, general laws can unnecessarily restrict religious freedom. The new rule, announced by the Supreme Court in Employment Division versus Smith, will affect virtually every religion in this country. It will erode religious freedom.

For example, a few years ago, New Mexico prohibited the use of alcohol for minors; the law failed to provide an exemption for sacramental wine used for religious purposes. A court, following the old rule, overturned the prohibition. Under the Court's new rule, use of sacramental wine by minors in New Mexico might be illegal. Such a result must be prevented.

As chairman of the Judiciary Committee, which will consider this religious freedom bill, I will work with my colleagues to ensure prompt review of this important legislation. This bill is not perfect and I am not suggesting that it should be passed without change. I have discussed the bill with constitutional scholars. I will continue to consult with those scholars and my colleagues about this legislation. I intend to schedule Judiciary Committee hearings to review the legislation and look forward to full Senate action on the bill next year.

Mr. HATCH. Mr. President, I am pleased today to cosponsor the Religious Freedom Restoration Act [RFRA] of 1990. This legislation responds to the Supreme Court's April 17, 1990, decision in *Employment Division* v. *Smith* (110 S.Ct. 1595 (1990)). There, the Supreme Court indicated that "an individual's religious beliefs (do not) excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." (110 S.Ct. at 1600.) This is the lowest level of protection the Court could have afforded religious conduct.

In my view, this standard is insufficiently protective of a person's first amendment right to the free exercise of religion. Freedom of religious practice is the first freedom mentioned in the Bill of Rights. It deserves stronger protection than the Supreme Court has given it in Smith. I will mention just one example that illustrates the concern engendered by this decision. If a State raises its legal drinking age to 21, it would be illegal for a minor to use sacramental wine in taking communion in that State. I believe the free exercise of religion needs protection, even when legislative majorities are unresponsive to religious liberty concerns in a particular instance. I do not believe that a person's right to take communion should turn on the whim of legislative majorities.

A tough standard is necessary to protect religious liberty. This bill imposes a "compelling interest" test on State and Federal Government when a governmental rule or law infringes on someone's free exercise of religion.

I fully expect that the Judiciary Committee will conduct several comprehensive hearings on this bill next year. It may be that refinements in

the bill will be necessary after this review. It is clear to me that a legislative response to the Smith decision is important for the preservation of the full range of religious freedom the first amendment guarantees to the American people, especially for those whose religious beliefs and practices differ from the majority in a State or in the country.

Some of the areas that I believe need to be explored when the bill is reviewed next year include:

First, the precise language of the compelling interest test;

Second, whether this legislation needs to address the burden of persuasion at all, and if so, how to do so; and

Third, whether the compelling interest test has been applied in all areas of American life prior to Smith. Some Supreme Court decisions suggest that a different standard may be applicable in some areas. For example:

A. MILITARY

The Supreme Court has said:

Our review of military regulations challenged on first amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society. *Goldman* v. *Weinberger*, 475 U.S. 503, 507 (1986).

B. PRISONS

To ensure that courts afford appropriate deference to prison officials, we have determined that prison regulations alleged to infringe constitutional rights are judged under a "reasonableness" test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights * * * "[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." (citing *Turner* v. *Safley*, 107 S.Ct. 2254, 2261 (1989)). *O'Lone* v. *Shabazz*, 107 S.Ct. 2400, 2404 (1987).

C. INCIDENTAL IMPACT OF GOVERNMENT PROGRAMS

In one case, the Federal Government sought to permit timber harvesting in, and the construction of a road through, a portion of a national forest traditionally used for religious purposes by members of three Indian tribes. *Lyng* v. *Northwest Indian Cemetery Protective Association*, (485 U.S. 439, 450–451 (1988)). The Court ruled 5 to 3 for the Government and against the Indians:

It is true that this Court has repeatedly held that indirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to scrutiny under the first amendment. Thus, for example, ineligibility for unemployment benefits, based solely on a refusal to violate the Sabbath, has been analogized to a fine imposed on Sabbath worship, see *Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963). This does not and cannot imply that incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, require government to bring forward a compelling justification for its otherwise lawful actions. The crucial word in the Constitutional text is "prohibit": "For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government," citing *Sherbert* v. *Verner*, 374 U.S. 398, 412 (Douglas, J., concurring), 485 U.S. 439, 450–451.

Of course, even if the compelling interest test did not apply in particular areas prior to the Smith decision, I and others in Congress may still feel it is desirable to extend it to some or all such areas.

I mention these matters of interest to me as an indication of where I believe part of the committee's focus should be when it examines the bill next year.

I believe it is imperative for Congress to act expeditiously in response to the Smith decision, and I look forward to working with the distinguished chairman of the Judiciary Committee, Senator BIDEN, in achieving this result.

By Mr. WARNER:

S. 3255. A bill to amend the Solid Waste Disposal Act to encourage greater recycling; to the Committee on Environment and Public Works.

RECYCLING OF SOLID WASTE

● Mr. WARNER. Mr. President, I rise today to introduce legislation to address one element of the solution to our current solid waste crisis.

Mr. President, every year this country disposes of 170 million tons of municipal solid waste and hundreds of millions of tons of industrial wastes. Americans are now beginning to realize that we are running out of safe places to dispose of this waste.

Mr. President, we must take advantage of recycling to the full extent possible to address this problem. It is not a new phenomenon, but an established business. The recycling of paper, glass, plastic, and metals amounts to over 90 million tons per year, not including materials that are generated by and reused within manufacturing. There are markets available to those who will seek them out and engage in this remarkable business.

One of the barriers to enhanced recycling is our own inability to establish a national recycling policy. While the principal law on the subject has a good title, the "Resource Conservation and Recovery Act," its actual provisions have little to do with either conservation or recovery.

Disposal and recycling are treated as comparable processes under the current solid waste statutory and regulatory regime. As a result, legislation and regulations designed to address disposal problems also have an effect on recycling and vice-versa. Because we have no explicit policy on recycling, we have no control over who is and who is not a recycler. Some who engage in waste disposal and treatment can claim the title of recycler, even though they do not engage in that activity.

Mr. President, the safe disposal of hazardous and solid wastes is critically important to human health. But we cannot allow justifiable concern about disposal to continually, inadvertently, block safe recycling.

So, today, I am proposing legislation to define recycling, and to regulate and encourage it based on what is being accomplished. Those who are engaged in the processing and manufacture of goods using non-hazardous commodities, or who are legitimate recyclers utilizing secondary input materials in new products, will be encouraged and aided by this legislation.

Those who are seeking to avoid hazardous waste regulation by calling themselves recyclers when in truth they are storing and treating hazardous waste will get no comfort from this proposal. These entities will be required to justify their "recycling" activity to the Environmental Protection Agency, and if they cannot, will be subject to subtitle C of RCRA.

Mr. President, this legislation does not simply authorize regulation. It also creates incentives for resource recovery. The legislation I propose today gives EPA the authority to collect information on recycling activities, and to determine the best methods to promote and regulate the different varieties of recycling now underway. First, it authorizes EPA to conduct a thorough research effort to determine the types and quantities of recycling taking place, and the most appropriate means of encouraging and regulating the activities of each segment of the industry.

Thereafter, EPA is authorized to regulate recyclers and recycling as an industrial process under RCRA. Those engaged in municipal collection and processing would need only file a notification of their activity with EPA. Requiring these recyclers to provide notice will allow EPA to determine the degree of recycling activity without interfering with the safe collection of nonhazardous articles.

Other recyclers must apply for a class permit and provide for reasonable controls in order to ensure that the recycling activity in question is done in sound and safe manner. EPA has full authority to expel dangerous or unsafe recycling activities from this regime, and to compel the implementation of hazardous waste treatment, storage, and disposal requirements at these facilities. Anyone seeking a loophole in RCRA will be sorely disappointed.

Mr. President, we have a unique opportunity to give meaning to the words resource conservation and recovery. We can do it by creating a specific subtitle within RCRA geared to

recovered materials. That is exactly what my legislation proposes to do.

Mr. President, I am introducing this legislation at this time so that my colleagues will have the next few months to review and comment on it. I welcome any and all comments on this legislation from all interested parties before I re-introduce it in the 102d Congress.

Mr. President, I ask unanimous consent that the full text of the bill as introduced be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3255

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

(a) Congress finds that—

(1) Recycling of secondary materials not only reduces the volume or quantity of material which ultimately becomes waste, but also prevents pollution, reduces energy consumption, and conserves irreplaceable resources;

(2) There is a need to encourage greater recycling, in light of the 80 percent increase in the generation of waste requiring disposal during the years between 1960 and 1989;

(3) Recycling can be most safely and economically pursued if toxic and non-recyclable materials are not used in the manufacturing process;

(4) Increased consumption of products with recycled content is essential to successful recycling;

(5) The stimulation of demand for goods containing recycled material is required in order to promote an increase in the volume or quantity of materials recycled;

(6) It is more likely that high volumes of material will be diverted from the waste stream for recycling if the mechanisms established by law to encourage recycling rely on market mechanisms rather than regulatory command and control;

(7) It is necessary to create a statutory and regulatory distinction between materials in the recycling process, destined for reuse, and waste materials, destined for disposal, in order to ensure that private sector recycling will succeed.

(b) The Congress declares it to be the national policy of the United States to:

(1) recognize and promote the environmental, economic, employment, trade, and strategic benefits of utilizing, in manufacturing processes, materials diverted from the wastestream;

(2) encourage the recycling of such materials consistent with the protection of human health and the environment; and

(3) provide that, to the maximum extent possible, such recycling be accomplished by market-based economic mechanisms and incentives.

SEC. 2. Amendments to the Solid Waste Disposal Act—

(A) The Solid Waste Disposal Act is amended by inserting the following new subtitle:

"SUBTITLE K

"RECYCLING

"SEC. 12001. Study Of The Recycling Industry—

"(a) The Administrator shall conduct a series of detailed and comprehensive studies of the management and utilization of materials in the recycling process. Each study shall focus on one general type of such material, including:

"(1) metallics;

"(2) paper;

"(3) plastics;

"(4) glass;

"(5) lead-acid batteries;

"(6) tires; and

"(7) other materials utilized in the recycling process.

"(b) Each study shall:

"(1) evaluate the impact of current and future recycling of such material in reducing the volume of waste material that requires disposal;

"(2) evaluate the adverse environmental impacts, if any, of management and continued utilization of such material;

"(3) evaluate the environmental benefits and risks posed by the collection, separation, processing and storage of such material, as well as the disposal of recycling residues;

"(4) take into account the distinction between bona fide materials in the recycling process and materials considered to be solid waste;

"(5) utilize, to the maximum extent possible, information provided by persons who currently manage or utilize such materials; and

"(6) include recommendations for effective regulation that appropriately balances environmental benefits and risks.

"(c) Within six months after the date of enactment of this section, the Administrator shall identify each such material that the Administrator proposes to study and a schedule for completion of the studies, commencing with the materials representing the largest quantities, by weight, of materials currently recycled. The Administrator shall provide for completion of at least two such studies within 2 years after enactment of this subsection, and of at least two such reports during each year thereafter.

(d) Upon completion, each study shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the U.S. House of Representatives.

SEC. 12002. REGULATION OF RECYCLING.—

"(a) Not later than 12 months after submission of the study pursuant to section 12001, the Administrator shall, after notice and opportunity for public hearings and after consultation with appropriate Federal and state agencies, promulgate a three-tier permitting system designed to promote the environmentally safe recycling of the material addressed in that study.

"(b) The Administrator shall establish permitting requirements for recyclers in the following three categories:

"(1) RECYCLING WITH MINIMAL IMPACTS ON THE ENVIRONMENT.—Recyclers conducting recycling activities with minimal impacts on the environment shall notify the Administrator of the scope and nature of their recycling activities in such form as the Administrator shall designate. Recycling activities within this category include:

"(i) municipal source separation facilities;

"(ii) municipal curbside collection operations;

"(iii) paper packing and recycling operations;

"(iv) secondary glass or plastic processing facilities; and

"(v) industries which reuse, in a production process, materials discarded in another production process.

"(2) RECYCLING ACTIVITIES WITH MODERATE IMPACTS ON THE ENVIRONMENT.—Recyclers conducting activities with moderate impacts on the environment shall obtain a class permit, unless the recycler otherwise holds a permit under the Solid Waste Disposal Act. All applicants for such class permits shall meet the requirements of this paragraph (2) and all regulations promulgated pursuant thereto.

"(A) PERCENTAGE RECYCLED.—The Administrator shall establish for each affected commodity, that percentage of the material (by weight) that must be processed for incorporation into a new product in order to meet the "Substantial amount" requirement set out in Section 1004 (40) of the Solid Waste Disposal Act, as amended by this Act. Such percentage shall be set based on the technological and economic feasibility of recovering the largest amount of material possible. For the purpose of determining compliance, the Administrator may require the holder of a permit to certify to the percentage of the material taken in to process and sold for recycling.

"(B) OPERATING STANDARDS.—The Administrator shall set criteria for: (i) the proper handling of input materials, processing wastes and end products, (ii) the collection, separation and processing of such input materials, (iii) the storage of input materials, and product and residues of the recycling process, and (iv) the disposal of recycling residues. These criteria shall, to the extent necessary, distinguish between the various recycling processes and operations in use for different commodities, as well as the manner in which recycling operations differ based on local circumstances.

"(C) STORAGE.—Such criteria as are promulgated under paragraph (B)(iii) above shall take into account the fact that the value of materials in the recycling process fluctuate subject to market conditions and that such fluctuations could interfere with the expectation for marketing the end product.

"(D) RECORDKEEPING.—The Administrator shall require the holder of a permit under this paragraph (2) to maintain records of the total tonnage of materials taken in for processing and shipped out for use in the manufacture of a new product, so that the Administrator may ascertain whether the holder of a permit is meeting the percentage recycling requirement for subparagraph (A) of this paragraph (2). The Administrator may require that the holder of a permit under this paragraph demonstrate that his output of material destined for use in the manufacture of new goods contains at least that percentage of his input material set by the Administrator in subparagraph (A) of paragraph (2). The Administrator shall protect the confidentiality of information kept pursaunt to this paragraph in such manner that only the information necessary for enforcement or compliance purposes may be made available for public disclosure.

"(E) INSPECTION AUTHORITY.—The Administrator shall have the authority to inspect any facilities and/or any records of any recycler:

"(i) who has submitted notification pursuant to paragraph (1); or

"(ii) who is required to hold a permit under paragraph (2), in order to ascertain whether such person has met and is meeting the requirements of this section and all regulations promulgated pursuant thereto.

"(3) RECYCLING ACTIVITIES WITH SUBSTANTIAL IMPACTS ON THE ENVIRONMENT.—Recyclers conducting activities with substantial

impacts on the environment shall meet the requirements of paragraph (2) of this section and demonstrate, in a manner to be established by the Administrator, that the environmental benefit to be derived from their operations outweighs the potential environmental risk that such operations may pose. Recycling activities within this category include:

"(A) recycling through burning for energy recovery,

"(B) seeking to apply a residue of the recycling process to the land; and

"(C) generating a recycling residue that exhibits a hazardous characteristic established pursuant to section 3001 of the Solid Waste Disposal Act and

"(D) any other recycling activity that the Administrator determines, after notice and opportunity for comment could pose a substantial potential risk to human health or the environment.

"SEC. 12003. REDUCTION OF TOXIC MATERIALS IN WASTE.—

"(a) Notwithstanding Section 9(c) of the Toxic Substances Control Act, where the Administrator finds that a substance or practice used in manufacturing could constitute a threat to human health or the environment when the finding shall be construed to establish that such substance or practice constitutes an unreasonable risk of injury to human health or the environment for purposes of the Toxic Substances Control Act.

"(b) Three years following the date of enactment of this Act, and after notice and opportunity for public hearings, the Administrator shall promulgate regulations to enhance the recyclability of manufactured articles by eliminating toxic materials from the manufacturing process that could be released during recycling. Such regulations may include but shall not be limited to: product redesign, limitations on toxics in manufacturing and the mandatory take back of the affected items.

"SEC. 12004. ENFORCEMENT.—

"(a) REVOCATION OF RECYCLER STATUS.—Whenever the Administrator, on the basis of any information, determines that any person is in violation or has violated the provisions of this subtitle, he may issue an order revoking such person's designation as a recycler, retroactive to the date of infringement. Materials handled by that person shall be considered as solid waste as of that date. Such person may be liable for penalties under such other subtitles of the Solid Waste Disposal Act as were applicable to that material at the time of the infringement.

"(b) PUBLIC HEARING.—Any order issued under this section shall become final unless, no later than 30 days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly hold a public hearing. In connection with any such hearing the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may promulgate rules for discovery procedures."

(b) Section 1004(27) of the Solid Waste Disposal Act is amended by striking the period after the word "amended" and inserting in lieu thereof "or materials in the recycling process."

(c) Section 1004 of the Solid Waste Disposal Act is amended by adding a new paragraph (40 to read as follows:

"(40) The term 'materials in the recycling process' means materials diverted from the solid waste stream so that a substantial amount of them is consistently utilized to manufacture a product that otherwise would have been produced using virgin material."●

By Mr. JEFFORDS (for himself and Mr. SYMMS):

S. 3256. A bill to amend the Internal Revenue Code of 1986 to provide a special valuation of sensitive environmental areas for estate tax purposes, and for other purposes; to the Committee on Finance.

WETLANDS AND GREEN SPACE PRESERVATION ASSISTANCE ACT

● Mr. JEFFORDS. Mr. President, we are currently in the midst of major tax changes in an effort to balance the budget. In our attempts to raise more revenues, however, we must be careful not to set counterproductive policies by taxation. For example, our current inheritance tax system encourages destruction of environmentally-sensitive areas. Property is typically assessed at its highest and best use when calculating inheritance taxes. Often, this means that the land is assessed as developable land, not as land in its natural state. The beneficiaries may thus be forced to sell the land for development to pay the taxes.

The bill I am introducing today with my colleague Senator SYMMS is designed to remove some of the tax incentives which encourage destruction of environmentally-sensitive areas. This bill is modeled after the family-farm exemption already codified in our Tax Code. This exemption is a special valuation which allows farm land to be assessed as agricultural land if the family continues farming the land for 10 years. If the family stops farming the land, then the estate taxes are recaptured.

In this bill, beneficiaries are granted a special valuation for environmentally-sensitive lands, such as wetlands, if they agree to keep the lands in their natural state for 10 years. In this bill, green space is taxed as green space if the land remains as green space.

I introduce the bill today in hopes of receiving comments before the 102d Congress begins in January. We, as Representatives of our citizens, must make our policies consistent. Wetlands are important as are other environmentally-sensitive areas. Our Tax Code must recognize this. I welcome the comments of my colleagues and others on this bill. I hope we can work together in the coming Congress to develop additional legislation which is both protective of the environment and economically sound.●

By Mr. THURMOND:

S. 3248. A bill to amend chapter 3 of title 11, United States Code, to modify the compensation for private bankruptcy trustees; to the Committee on the Judiciary.

BANKRUPTCY ADMINISTRATION IMPROVEMENTS ACT OF 1990

● Mr. THURMOND. Today I am introducing a bill to amend the compensation method for private bankruptcy trustees.

Under current law, private trustees in a chapter 7 bankruptcy proceedings are paid $45 out of the debtors case filing fee and are also paid a commission from the estate funds based on the amount of money disbursed to creditors. Unfortunately, in the vast majority of chapter 7 cases there are no assets of sufficient value to warrant liquidation. Therefore, the trustee receives only $45.

The Justice Department strongly believes that enhancing the compensation for bankruptcy trustees will provide them with the "increased resources and incentive to recover assets concealed by unscrupulous debtors and to liquidate them for the benefit of creditors." By improving the compensation method, the trustees will be motivated to carefully consider each bankruptcy case, and ensure that the system is not being abused.

This legislation will require that a portion of the payment for bankruptcy trustees be mandatory, and an additional discretionary compensation may be awarded in certain cases. It is important to note that the cost of this enhancement will not be borne by the Treasury, but rather by the users of the bankruptcy system.

I believe this bill will be very helpful in improving the administration of bankruptcy cases and providing for competent trustees.●

By Mr. D'AMATO:

S. 3259. A bill to amend title 38, United States Code, to revise the formula for payments to States for care furnished to veterans in State homes; to the Committee on Veterans' Affairs.

EQUITY IN THE STATE VETERANS HOME PROGRAM

● Mr. D'AMATO. Mr. President, I rise today to introduce legislation that will promote regional fairness in the DVA's State Home Program. This legislation, identical to H.R. 5879 introduced last week by Congressman HOCHBRUECKNER, would provide an equitable increase in the per diem reimbursement rate to State veterans nursing homes and domiciliaries in high cost-of-living areas.

Under the State Home Program, DVA provides funds to States for the construction and operation of long-term care facilities. States compete for grants that provide up to 65 percent of the cost of construction, provided DVA standards are followed. In addition, the DVA provides a per diem payment for each veteran under care in a designated State home. The per diem rate for 1990 is $21.83 for nursing

home care and $9.33 for domiciliary care.

Historically, these payments represented a meaningfull share of the cost of care. However, in the recent past they have failed to keep pace with the skyrocketing costs of medical care. While the DVA intended that these payments would finance 25 percent of the operating costs of the State homes nationally, the reality is that a growing share of the costs have been shifted to the States.

Not all of the States have been affected equally by this shifting of costs. In States where the total cost of care—including salaries, medical supplies, electricity and construction costs—have increased most rapidly, the per diem payment covers a much smaller share of costs than in low cost States.

New York's one operating State home in Oxford is a prime example. According to the DVA's 1990 third quarter statistics, the per diem reimbursement for nursing home care in the Oxford home represented 14.5 percent of the cost of care; for domiciliary care, the per diem payment covered only 7.6 percent of the cost.

It is important to note that the Oxford home is located in upstate New York where medical care and electricity costs are lower than on Long Island and in New York City. Consequently, when the Stony Brook, Long Island State home opens in the spring 1991, its per diem payments will represent an even lower percentage of the cost of care. It's no wonder that the State of New York, which would like to build two to three more State homes to serve its aging veteran population, is more than a little hesitant to do so.

The State homes have a reputation for providing quality care in a cost-effective manner. The DVA will like to have 30 percent of long-term care beds for veterans provided by the State homes. However, without an increase in the per diem rates for high cost areas, it's a sure bet that many States will think twice before moving forward with plans for building these cost-effective new facilities.

My legislation would address the inequities affecting high cost areas by reimbursing individual State homes 30 percent of their costs of providing care, or the current national per diem rate, whichever is greater. At the same time this bill would not adversely affect State home facilities for which the current national per diem rate equals more than 30 percent of the cost of care. However the current requirement that these payments not exceed 50 percent of the total cost of care would remain in effect.

A reasonable per diem payment must come closer to the actual cost of care, particularly if the DVA wishes to encourage States to build and operate State homes in an era of spiraling health care cost.

Providing this incentive to develop high-quality, cost-effective health care services is the least we can do for those who fought for our country.●

By Mr. NUNN (for himself, Mr. BOREN, and Mr. PRYOR):

S. 3257. A bill to establish youth apprenticeship demonstration programs, and for other purposes; to the Committee on Labor and Human Resources.

YOUTH APPRENTICESHIP ACT

● Mr. NUNN. Mr. President, I rise today to introduce legislation designed to help prepare the youth of today for the jobs of tomorrow. I am pleased to be joined by Senators BOREN and PRYOR as well as majority leader, DICK GEPHARDT, who is introducing companion legislation in the House today.

Our legislation authorizes the establishment of an Institute for Youth Apprenticeship. The Institute will administer a number of demonstration program site partnerships between business, education and labor. These partnerships will provide apprentices with firsthand workplace experience and training. Our aim is to bridge the growing gap in skills, income and opportunity between college and noncollege bound youth and to establish a systematic transition for students from school to work.

Today—more than ever—education plays a vital role in our Nation's competitiveness. I believe that if we are to succeed in the international market place, it is critical that we strive for the most highly skilled and fully employed work force.

Several foreign countries have national policies aimed at effective employment preparation of noncollege bound youth. These programs smooth the transition from school to work by giving students occupational information, work experience and on-the-job training.

Many recent reports and studies here in the United States herald the need for a new national policy of our own. I believe that this legislation—which is a demonstration program—can provide us with the kind of information we need to develop a bold, new approach to work force training.

In the spring of this year, the General Accounting Office [GAO] issued a report entitled "Training Strategies: Preparing Noncollege Youth for Employment in the U.S. and Foreign Countries." This May 1990 report examined four countries—England, West Germany, Japan, and Sweden—which have in place national policies to develop a well-qualified noncollege youth work force.

GAO identified several strengths of these systems which point out weaknesses in our own system. GAO found that:

Foreign countries expect all students to do well in school while some schools in the United States expect students to lag behind;

Foreign schools and the employment community guide students' transition from school to work and noncollege youth leaving school receive more directed assistance in finding jobs than their U.S. counterparts;

Competitor nations establish competency-based national training standards that they use to certify skill competency while the common U.S. practice is to certify program completion; and,

These countries invest heavily in unemployed out-of-school youth to assure them a job or further education and training while U.S. employment and training programs reach only a modest proportion of youth in need.

At my request, GAO will continue its work in this area to determine how similar youth apprenticeship programs may best be established in the United States.

Another recent study by the Commission on the Skills of the American Work Force echoed the GAO findings. The Commission, headed by businessman Ira Magaziner and former Secretaries of Labor Bill Brock and Ray Marshall, found that "we must work more productively and be more competitive." The Commission, which made a number of provocative and important recommendations, urged that we train skilled workers and give our companies incentives to deploy the workers in high performance positions.

In fact, former Labor Secretary Brock wrote on Labor Day this year that:

> This September, we have little to celebrate in this country. We are losing ground in many international markets. Real earnings and productivity have declined. Our students rank at the bottom on international achievement tests, and we all but ignore the 1 million high school dropouts we will lose this year.

The congressional Office of Technology Assessment [OTA] has also just released a comprehensive report on worker training. The OTA found that good training pays off—for the individual worker whose skills are upgraded, for the company seeking a competitive edge, and for the Nation in overall productivity and competitiveness. Conversely, inadequate training costs firms and workers—in downtime, defective parts or equipment, wasted material, health and safety risks, late deliveries, and poor customer service. Poor training also can delay the implementation of new technology or work reorganization.

I also want to note that Secretary of Labor Elizabeth Dole has shown a real interest in this area and has convened the Secretary's Commission on Achieving Necessary Skills [SCANS]. I ap-

plaud her efforts and the efforts of the Department's Office of Work-Based Learning.

Mr. President, I think the case for a special effort in skills training in America is made every day as statistics continue to show our Nation to be less competitive in the world. It is time to move forward with steps toward systematic change. We must prepare our Nation's work force today for the workplace demands of tomorrow.

American workers' skills have not kept pace with today's increasingly complex jobs. GAO indicates that approximately 9 million of the Nation's 33 million youth aged 16 to 24 will not have the needed skills to meet employer requirements for entry-level positions. American business people continually tell me that they do have jobs to offer, but our high school graduates simply do not have the skills to fill them.

Our noncollege bound youth, commonly referred to as the "forgotten half," often spend their first years after school unemployed or job hopping with consequent loss of training and productivity. Through a well-designed, local job apprenticeship program, supervised work experience during high school could promote desirable work habits and workwise knowledge and skills.

The U.S. international competitiveness is being eroded because many jobs are requiring greater skills. Japan and West Germany have enjoyed substantial economic growth and international competitiveness gains, in part, because of the quality of their work force. Clearly, there are opportunities for learning in workplaces that cannot be matched in classrooms alone. Our bill identifies how additional opportunities can be created in this country by establishing a joint employer/student relationship through youth apprenticeship Programs.

The purpose of this bill is to develop and evaluate a range of youth apprenticeship programs. Each program will establish a partnership between secondary and postsecondary schools and employers.

The focus of the demonstration programs will be on youth apprenticeship programs beginning at the secondary school level; however, two demonstration programs will strictly involve students in postsecondary education at the technical institute level.

In the 10th grade, students will sign contracts with employers to begin apprenticeship programs in the 11th grade. These programs will last for 3 years—1 year after graduation from high school. In the first 2 years, high school courses will be combined with training at worksites. In the third year, youth apprentices will supplement on-the-job training with academic courses at technical institutes.

Postsecondary school programs will allow current workers to further develop academic skills in the classroom, and will provide on-the-job training on modern machinery for those already enrolled in technical institutes. Through this effort, our technical institutes would graduate students better prepared to meet the technical needs of the business community.

In addition, we establish an Institute for Youth Apprenticeship, an independent public/private institute managed by a board of directors comprised of representatives of education, labor, employers, trade associations, and Government. The Institute for Youth Apprenticeship will be responsible for research and program development and serve as a clearinghouse, working directly with the local partnerships.

Upon completion of the 5-year demonstration programs, the Institute will make policy recommendations on establishing a nationwide Youth Apprenticeship Program. The final report will address program effectiveness in terms of student preparedness for the technical workplace, corporate advantage, and the ability of these programs to increase the overall competency and competitiveness of the work force.

Other countries have long used school-based apprenticeship systems to help their noncollege youth obtain the skills they need for rewarding jobs and careers. But while U.S. high schools typically have close connections to colleges, they usually have weak links to employers. A wide gap exists between the world of knowledge and learning and the world of skilled and rewarding work.

I believe that if we are serious about improving education and the quality of our work force, we must try new approaches and challenge the private sector to become involved. The public-private partnership represented by this legislation is a unique investment by both the Government and employers in our human capital, our international competitiveness, and the economic future of this country.

Mr. President, I want to thank the Progressive Policy Institute for its research and work in this area, specifically Profs. Bob Lerman, Hillard Pouncey, and Will Marshall. I also want to thank Prof. Stephen Hamilton of Cornell for his many helpful suggestions to me and my staff. There are also many other business, education, and labor leaders who have provided very useful input. Congressman GEPHARDT and I introduce this legislation today to facilitate even more public input and discussion. We welcome input and suggestions as we finalize the details of this important demonstration program.

I am convinced that we do need to move forward. In today's highly competitive global economy, we must place our limited resources where we will reap the greatest benefit—we must invest wisely in our human capital to close the growing skills gap between college-bound and non-college-bound youth.

It is my hope that this bill will show us how to facilitate the school-to-work transition to ensure a higher educated and more skilled work force. I urge my colleagues to review this measure and join me in discovering how best to prepare America for the technical and competitive world of the future.●

By Mr. DURENBERGER:

S. 3260. A bill to amend the Internal Revenue Code of 1986 to impose an excise tax on insurance companies not meeting certain coverage and rating standards with respect to health insurance provided to small employers; to the Committee on Finance.

SMALL EMPLOYER HEALTH BENEFIT REFORM ACT

Mr. DURENBERGER. Mr. President, I am today introducing S. 3260, the Small Employer Health Benefit Reform Act.

This legislation takes a number of steps to reform benefit content, pricing practices and coverage restrictions that currently make it costly and difficult for small employers to offer private health insurance benefits to their employees.

HEALTH CARE IRONIES

Mr. President, I had the privilege of serving over the past 2 years as a vice-chairman of the U.S. Bipartisan Commission on Comprehensive Health Care—the Pepper Commission. Along with 11 of my House and Senate colleagues—and 3 private citizens—I was reminded again of the frustrating complexities and ironies in America's health care system.

I was reminded that, by one set of definitions, America has a health care system that is unparalleled anywhere in the world.

We have, without question, the most doctors, the most specialists, the most hospital beds, the most access points per capita of any nation on earth.

And, without question, we have the most innovation—new technology, new procedures, newly funded outcomes research—even compared to those nations who have become our peers in other fields of economic or technological competition.

One indication of the unparalleled nature of America's health care system is the degree to which it is sought out by those sick and injured who come here from all over the world—and by the export of technology and other expertise to wherever it can be afforded.

TOO MUCH, YET TOO LITTLE

At the same time, Mr. President, health care in this country suffers from serious and fundamental shortcomings. Put simply, health care in

America costs too much and, for millions of Americans, it delivers too little. With the high cost of health care in America, widespread availability does not translate into universal access.

The hard, cold reality, Mr. President, is that, without private health insurance or enrollment in public programs like Medicare or Medicaid, financial access to health care is outside the reach of all but the most affluent Americans. A simple illustration highlights this dramatically. In 1970, the average cost of a hospital admission equaled 12 weeks of work for a minimum wage worker. In 1988, it equaled 43 weeks of work for a minimum wage worker. Now this says a little something about the levels of the minimum wages. But the fact is, the rising costs of health care have, for the last decade, far outstripped growth in workers' earnings, even for those above the minimum wage.

And, another unfortunate reality is that more than 30 million of our citizens have neither health insurance or meet the restrictive age or income eligibility requirements for our public programs.

It is another sad truth, Mr. President, that health care financing in this country has evolved in ways that often ignores sound insurance principles, that fails to reward individual health and wellness, and the provides serious disincentives to hold down costs.

Rather than insuring against financial catastrophe in cases of serious accidents or illness, for example, health insurance has largely become a heavily subsidized payment mechanism for a broad range of health-related benefits.

In the process, both consumers and providers have become insulated from financial responsibility—eliminating normal legitimate market forces that help contain costs.

Meanwhile, Federal tax policies that provide unlimited deductions to both employers and employees have further reduced the role that a properly functioning market might play.

NEEDED: SYSTEMWIDE REFORM

Mr. President, these failings in America's health care system won't recede without fundamental, systemwide reform. In particular, assuring universal access to quality health care will not be possible without a fundamental attack on the primary barrier to access—cost. To restate my earlier generalization, Mr. President, health care in America simply costs too much and, for millions of Americans, delivers too little.

To address that concern, health care reformers have historically split into two camps—heading in two different directions.

One set of reformers—including the Pepper Commission majority—is pointed to the Northeast, toward Massachusetts. Their solution is largely based on mandating health insurance coverage as a fringe benefit provided by employers.

The second set of reformers is headed due North toward Canada. Their solution is a single payer system—simplistically, expanding Medicare or Medicaid to cover the entire population.

For reasons I won't detail here, both these solutions are flawed because they serve ultimately to rearrange payment responsibility without containing costs. They may even prove so inflationary that they worsen access to health care services because of unsupportable cost pressures.

A THIRD COURSE FOR REFORM

My response to this dilemma has been to chart a third course—premised on accepting that we have a diverse and partly privately financed health care system, but with personal determination to incite fundamental changes in the way it performs.

I should emphasize, Mr. President, that this third course ought not be viewed as a defense of the status quo. And, it ought not be viewed as being deferential to any of the principle actors in our current health care system—consumers, providers, employers, insurers, or Government.

This third course, for example, assumes much greater consumer, provider, and employer responsibility. It assumes future fundamental reforms in governmental programs like Medicare and Medicaid. And, it assumes a vastly different role for the Federal Tax Code—to reverse incentives and create a truer and more properly functioning market.

To initiate the fundamental reforms we so desperately need, Mr. President, I intend to introduce legislative initiatives in each of these areas: Private health insurance reform, Medicare reform, Medicaid reform, long-term care financing reform, and tax reform. The initiative I am introducing today—involving small group private health insurance reform—is the first in this series of proposals.

ENHANCED ROLE FOR THIRD-PARTY PAYERS

At the heart of the private insurance proposals—and at the heart of this third course I have chosen in health care reform—is an improved and more socially responsible role for insurers, or for what we have come to call third-party payers.

Traditionally, these intermediaries between health care consumers and providers were limited primarily to health insurance companies. But, in more recent years, they have also been joined by Health Maintenance Organizations, preferred provider organizations, and others who administer self-insurance programs, manage care, broker services, and perform other intermediary functions in the health care delivery system.

Mr. President, my third course in health system reform may be our last opportunity to salvage a significant role for competing third-party payers in America's health care system.

This large sector of America's health care system has come under increasing attack in recent years for taking too big a share of America's health care dollar and delivering too little in return.

Many Americans find it unconscionable, for example, that 20 cents or more of every dollar spent on health insurance goes to advertising, agent commissions, design of competing benefit packages, and other administrative functions that have very little to do with either keeping people well, curing their illnesses, or healing their injuries. One recent study suggested these administrative costs go as high as 33 percent.

NOT DEFENSE OF STATUS QUO

So, Mr. President, my previously stated reservations about a single payer system of health care in this country ought not be characterized as a defense of the status quo—and, particularly, not characterized as a defense of the current role of America's health insurance industry.

If third-party payers, in other words, continue to be nothing more than collectors of premiums and payers of claims nothing more than agents to facilitate the transfer of large amounts of money, then I would agree with those who would collapse their role into a single payer system like Medicare.

Medicare, after all, has very low overhead—very little is spent on administration' nothing is spent on advertising; there are no agents collecting commissions. About 97 percent of what we spent on Medicare actually goes to providing health care. Only 2 to 3 cents on every benefit dollar gets spent on administration and other nonhealth related services.

NEW FUNCTIONS FOR INSURERS

In my view, if private health insurers are to survive the next decade, they must invest in and adopt new, enhanced roles. What functions would justify the expense of continuing to pay for competing intermediaries between consumers and providers of health care? In my mind, the functions are those that make those intermediaries positive, contributing partners in our efforts to address the systemic problems of cost, access, and failures in the health care market. They include functions such as serious claims management, monitoring the utilization and quality of medical services, containing unnecessary expenditures, and other value enhancements.

MISPLACED INCENTIVES AND DIRECTIVES

Unfortunately, Mr. President, the current incentives, directives, and rewards in the health care system won't

move any but the most progressive private insurers to adopt new and enhanced roles.

So, fundamental changes will be needed, Mr. President, in how third party payers are viewed, the roles they are required to perform, and the incentives and rewards they are offered.

In the process, it will be essential that we leave room for a healthy State of competition among these newly defined third-party payers. Our experience—under Medicare and CHAMPUS—has been that Government may not be the best place to direct the kind of true reform and changes in roles for third-party payers that is needed. But, Government can stimulate market conditions to help make sure that competition is for quality and value, rather than simply price.

I am not prepared at this moment, Mr. President, to prescribe the exact means by which all those changes should occur. But, through the various public programs we administer, through Federal and State regulation of third-party payers, and through the tax treatment of insurers and employer-based fringe benefits, we do have the means to get that job done.

SMALL GROUP REFORM PROPOSAL

Finally, Mr. President, I want to comment briefly on the first in the series of health reform proposals I intend to offer over the next year.

I am introducing today S. 3260, The Small Employer Health Benefit Reform Act of 1990. Its primary objectives can be summed up in two words, "fairness" and "stability" in what has been a highly unfair and volatile small group health insurance market.

Recently, the National Journal ran an excellent article titled "Sick About Health." On reflection, a more apt title, which would also have captured my own views, would have been "Sick About Health Insurance." It captured almost perfectly the litany of problems and inequities in the small-group insurance market that we were exposed to in numerous hearings conducted by the Pepper Commission, and that I personally am resolved to try and do something about.

The American work force looks to the private health insurance market for essential protection from the spiraling cost of getting sick in America. And increasingly, despite enormous Federal tax subsidies—approaching $48 billion a year for employer-based health benefits alone—the industry fails to deliver services to the very segment of the labor market that is growing most rapidly—people who work in companies that employ 50 or fewer individuals.

Or, to be more pointed, it does deliver some things. It can deliver reasonably affordable coverage if you are fortunate enough to work in a company that employs mainly younger, healthier, more highly paid employees. Or, if you are not any of those things, you can usually obtain coverage if you are hidden in a large employer group. The latter, however, may not even help you if the large group happens to consist of health care workers, a construction crew, restaurant employees, or other occupations judged to be higher risk, and therefore viewed by insurers with a jaundiced eye.

All too often, employers seeking to provide benefits are faced with a bewildering array of product choices. The choices offer distinctions without differences, except that because of the 700-plus mandates on policy contents enacted by State legislatures, all of the products are likely to be so elaborate and expensive they are beyond the financial reach of most small firms.

Unfortunately, the other elements these products frequently have in common are high administrative costs relative to benefits paid out, and minimal control of provider payments, assurances of quality care or consumer education. These latter areas present the greatest opportunity for insurers to provide truly valuable services, but they have yet to fulfill their potential

Further, insurers engage in certain rating and coverage practices that introduce great inequities and instability into the health benefits market for small employers. Under the patchwork quilt of current State laws, most are permitted to refuse to sell policies without recourse and to cancel them unilaterally. They can selectively deny or restrict coverage for specific employees or an employee's dependent child—with preexisting medical conditions—or charge a prohibitive risk premium.

In addition, insurers often low-ball the premiums offered to an employer in the first year, and once they've hooked the account, raise the premiums abruptly in later periods by 20, 30, 40 percent or more. They also market carefully to attract primarily lower risk groups. Selecting low-risks is known as creaming or cherry-picking. This practice, in concert with these other practices, fosters enormous instability and turnover, or churning among small employers who try to buy benefits, and discourages even more employers from even trying.

Mr. President, these are not just run-of-the-mill sharp business practices that we can deplore, but shrug our shoulders over. They have important and negative societal consequences. There are over 31.5 million Americans lacking protection against health care costs, and 75 percent of those are workers or live in the families of workers. Over one-half of uninsured workers and their dependents are affiliated with firms of fewer than 25 employees.

If we want to facilitate the expansion through the workplace of private insurance coverage to these men, women, and children, then we must act to stabilize this market. And in order to achieve greater stability, we must have at least some minimum level of standards that are clear and effective, that we know insurers can reasonably comply with, and whose fairness all small businesses can rely upon.

To that end, my bill "The Small Employer Health Benefit Reform Act," would amend the Internal Revenue Code and make insurers who sell any contracts to employers who employ 50 or fewer employees, liable for a 20-percent excise tax penalty on gross accident health and premium income if they fail to abide by certain product offering, rating and coverage requirements. These standards require: Guaranteed issue of policies; limits on insurers' ability to impose coverage restrictions due to preexisting conditions. Guaranteed renewability of policies; restrictions on experience rating; and limits on annual increases in premiums on existing contracts, accomplished by drawing a link between those rates and rates charged to new business accounts.

Mr. President, these standards were carefully crafted in consultation with numerous experts in insurance and in small business problems. I believe they are achievable by the industry and will go a long way toward enabling small companies to voluntarily offer health benefits to their employees. I think many small firms want to offer benefits in order to complete for and attract workers. This legislation will help them to do so. Early next session, I will be offering a separate bill to address the complex problems of state mandates on health policies and to offer a core benefit package designed expressly for the small business market.

In closing, Mr. President, this will not solve the problems of financial access to health care for all of the 30 million-plus people who we know currently lack protection. But this bill is a long stride in the right direction. As I stated earlier, other solutions are needed as well and I plan to offer additional legislation next session reforming the design of our major public health financing programs.

In the meantime, I urge my colleagues to consider cosponsoring the Small Employer Health Benefit Reform Act, and I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3260

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Employer Health Benefit Reform Act of 1990".

This Act may be cited as the "Small Employer Health Benefit Reform Act of 1990".

SEC. 2. FAILURE TO SATISFY COVERAGE AND RATING STANDARDS ON HEALTH INSURANCE PROVIDED TO SMALL EMPLOYERS.

(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to excise taxes on qualified pension, etc. plans) is amended by adding at the end thereof the following new section:

"SEC. 4980C. FAILURE TO SATISFY COVERAGE AND RATING STANDARDS OF HEALTH INSURANCE OF SMALL EMPLOYERS.

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of any person to meet at any time during any taxable year—

"(1) the coverage requirements of subsection (e), or

"(2) the rating requirement of subsection (f), or

"(3) the disclosure and recordkeeping requirements of subsection (h), or

with respect to any applicable accident and health insurance contract.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 20 percent of the gross premiums received during such taxable year with respect to all accident and health insurance contracts issued by the person on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any accident and health contract.

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, or exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons on whom the tax is imposed knew, on excercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a).

"(d) LIABILITY FOR TAX.—

"(1) IN GENERAL.—The person issuing the applicable accident and health contract with respect to which a failure occurs shall be liable for the tax imposed by subsection (a).

"(e) COVERAGE REQUIREMENTS.—

"(1) IN GENERAL.—The requirements of this subsection are met with respect to any applicable accident and health contract if, under the terms and operation of the contract, the following requirements are met:

"(A) GUARANTEED ELIGIBILITY.—No eligible employee (and the spouse or any dependent child of the employee eligible for coverage) may be excluded from coverage under the contract.

"(B) LIMITATIONS ON COVERAGE OF PREEXISTING CONDITIONS.—Any limitation under the contract on any preexisiting condition—

"(i) may not extend beyond the 12-month period beginning with the date an insured is first covered by the contract, and

"(ii) may only apply to preexisting conditions which manifested themselves, or for which medical care or advice was sought or recommended, during the 6-month period preceding the date an insured is first covered by the contract.

"(C) GUARANTEED RENEWABILITY.—The contract must be renewed at the election of the eligible small employer unless the contract is terminated for cause.

"(2) WAITING PERIODS.—(1)(A) shall not apply to any period an eligible employee is excluded from coverage under the contract solely by reason of a requirement applicable to all employees that a minimum period of service with the employer is required before the employee is eligible for such coverage.

"(3) DETERMINATION OF PERIODS FOR RULES RELATING TO PREEXISTING CONDITIONS.—For purposes of paragraph (1)(B), the date on which an insured is first covered by a contract shall be the earlier of—

"(A) the date on which coverage under such contract begins, or

"(B) the first day of any continuous period—

"(i) during which the insured was covered under 1 or more other health insurance arrangements of the employer, and

"(ii) which does not end more than 120 days before the date under subparagraph (A),

For purposes of this paragraph, coverage shall not be treated as beginning before the close of any period described in paragraph (2).

"(4) CESSATION OF SMALL EMPLOYER HEALTH INSURANCE BUSINESS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a person shall not be treated as failing to meet the requirements of paragraph (1)(C) if such person terminates the class of business which includes the applicable accident and health insurance contract.

"(B) NOTICE REQUIREMENT.—Subparagraph (A) shall apply only if the person gives notice of the decision to terminate at least 90 days before the expiration of the contract.

"(C) 5-YEAR MORATORIUM.—If, within 5 years of the year in which a person terminates a class of business under subparagraph (A), such person establishes a new class of business which includes contracts within the class of business so terminated, the issuance of such contracts in that year shall be treated as a failure to which this section applies.

"(D) TRANSFERS.—If, upon a failure to renew a contract to which subparagraph (A) applies, a person transfers such contract to another class of business, such transfer must be made without regard to any risk characteristic.

"(f) RATING REQUIREMENTS.—

"(1) IN GENERAL.—The requirements of this subsection are met with respect to any applicable accident and health insurance contract if—

"(A) the premium rate or rates under the contract are within the acceptable premium range, and

"(B) any increase in any premium rate under the renewal contract over the corresponding rate under the contract being renewed does not exceed the applicable annual adjusted increase.

"(2) ACCEPTABLE PREMIUM RANGE.—For purposes of paragraph (1)(A)—

"(A) IN GENERAL.—The acceptable premium range includes premium rates which are not more than 120 percent, or less than 80 percent, of the average rate.

"(B) AVERAGE RATE.—For purposes of subparagraph (A), the term 'average rate' means 50 percent of the sum of—

"(i) the lowest premium rate, determined under the rating system for the rating period which covers the contract, which may be charged by the person issuing the contract for substantially similar coverage to employers with similar case characteristics (other than risk characteristics), plus

"(ii) the highest premium rate which may be so charged.

"(C) RANGE MAY BE DETERMINED BY SECRETARY.—In the case of any class of business covering applicable accident and health insurance contracts—

"(i) with respect to which employers who are eligible are not, and have never been, rejected for coverage on the basis of risk characteristics as defined under section (j)(2)(B),

"(ii) to which business may not be involuntarily transferred from another class of business, and

"(iii) which is currently available for purchase,

the acceptable premium range with respect to such contracts shall be the range (determined in accordance with this subsection), if any, established by the Secretary.

"(3) APPLICABLE ANNUAL ADJUSTED INCREASE.—

For purposes of paragraph (1)(B)—

"(A) IN GENERAL.—The applicable annual adjusted increase is an amount equal to the sum of—

"(i) the applicable percentage of the premium rate under the contract being renewed, plus

"(ii) any increase in the rate under the renewal contract due to any change in coverage or to any change of case characteristics (other than risk characteristics).

"(B) APPLICABLE PERCENTAGE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage is the percentage (if any) by which the premium rate for newly issued contracts for substantially similar coverage for an employer with similar case characteristics (other than risk characteristics) as the employer under the applicable accident and health contract (determined on the 1st day of the rating period applicable to such contracts) exceeds such rate on the 1st day of the rating period applicable to the contract being renewed.

"(ii) CASES WHERE NO NEW BUSINESS.—If no new contracts are being issued for a class of business during any rating period, the applicable percentage shall be the percentage (if any) by which the lowest premium rate determined under paragraph (2)(B)(i) with respect to the renewal contract exceeds such rate for the contract to be renewed.

"(g) DISCLOSURE AND RECORDKEEPING, ETC. REQUIREMENTS.—The requirements of this subsection are met if—

"(1) DISCLOSURE.—Any person issuing an applicable accident and health insurance contract shall include in any sales materials the following:

"(A) The extent to which premium rates are based on risk characteristics and on factors other than risk characteristics.

"(B) The extent to which the person may change the premium rates.

"(C) The class of business within which the contract falls, including a description of the grouping of contracts within a class of business.

"(D) Provisions relating to renewability.

"(2) RECORDKEEPING, ETC.—Any person issuing an applicable accident and health insurance contract shall—

"(A) maintain at its principal place of business a complete and detailed description of its rating and renewal underwriting practices, and the information on which such practices are based, and

"(B) file with the Secretary each year an opinion of a qualified health actuary, based on a review of appropriate records, that the rating practices of such person for the preceding year are based upon commonly accepted actuarial assumptions and in accordance with the provisions of this section and sound actuarial principles.

For purposes of paragraph (2), the term 'qualified health actuary' means a member of the American Academy of Actuaries who is qualified by reason of prior and continuing education and relevant experience to render the actuarial opinion.

"(h) APPLICABLE ACCIDENT AND HEALTH INSURANCE CONTRACT.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable accident and health insurance contract' means a contract under which a person authorized under applicable State insurance law provides a health insurance plan or arrangement to an eligible small employer. Such term does not include any self-insured plan of an employer.

"(2) CERTAIN CONTRACTS NOT COVERED.—The term 'applicable accident and health insurance contract' does not include any contract—

"(A) which provides for accident only, dental only, or disability only coverage,

"(B) which provides coverage as a supplement to liabiliity insurance,

"(C) which provides insurance arising out of a workmens' compensation or similar law, or automobile medical-payment insurance, or

"(D) which provides insurance which is required by law to be contained under any self-insured plan of an employer.

"(3) EXCEPTION FOR SMALL ISSUERS.—The term 'applicable accident and health insurance contract' shall not include any contract issued during a taxable year by a person which had less than $1,000,000 in gross premiums from accident and health contracts during the preceding taxable year. For purposes of the preceding sentence, the aggregation rules of section 448(c) shall apply.

"(i) OTHER DEFINITIONS.—For purposes of this section—

"(1) CLASS OF BUSINESS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'class of business' means, with respect to accident and health insurance provided to eligible small employers, all accident and health insurance provided to such employers.

"(B) ESTABLISHMENT OF GROUPINGS.—An insurer may establish separate classes of business with respect to accident and health insurance provided to eligible small employers but only if such classes are based on 1 or more of the following:

"(i) Business marketed and sold through persons not participating in the marketing and sale of such insurance to other eligible small employers.

"(ii) Business acquired from other insurers as a distinct grouping.

"(iii) Business provided through an association of not less than 20 eligible small employers which was established for purposes other than obtaining insurance.

"(iv) Business related to managed health care arrangements.

"(v) Business within groupings under clauses (i) through (iv) which is based on risk selection or underwriting criteria expected to produce substantial variations in claims costs.

"(vi) Any other business which the Secretary [a] determines needs to be separately grouped to prevent a substantial threat to the solvency of the insurer.

"(2) CHARACTERISTICS.—

"(A) IN GENERAL.—The term 'characteristics' means, with respect to any insurance rating system, the factors used in determining rates.

"(B) RISK CHARACTERISTICS.—The term 'risk characteristics' means factors related to the health risks of individuals, including health status, prior claims experience, the duration since the date of issue of a health insurance plan or arrangement, industry, and occupation.

"(C) GEOGRAPHIC FACTORS.—In applying geographic location as a characteristic, an insurer may not use for purposes of this section areas smaller than Census Bureau designations of metropolitan statistical areas and nonmetropolitan statistical areas.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means any employee other than an employee who works less than 30 hours per week. For purposes of this paragraph, the term 'employee' includes a self-employed individual as defined in section 401(c)(1).

"(4) ELIGIBLE SMALL EMPLOYER.—The term 'eligible small employer' means an employer who normally employed 50 or fewer employees on a normal business day. [For purposes of the preceding sentence, all employees covered under the same health insurance plan or arrangement covered by a contract shall be treated as 1 employer].

"(b) CONFORMING AMENDMENT.—The table of sections for chapter 43 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

"Sec. 4980C. Failure to satisfy coverage and rating standards of health insurance of small employers."

"(C) EFFECTIVE DATE.—

"(1) IN GENERAL.—The amendments made by this section shall apply to contracts issued, or renewed, after the date of the enactment of this Act.

"(2) TRANSITION RULE.—In the case of any contract in effect on the date of the enactment of this Act, the provisions of section 4980C(f)(1)(A) shall not apply to the first renewal of such contract.

By Mr. BURNS:

S. 3261. A bill to amend title 23, United States Code, to assist in the development of travel and tourism as a multi-purpose land use of public lands for travel and tourism purposes, and for other purposes; to the Committee on Environment and Public Works.

FEDERAL RURAL TOURISM AND RECREATIONAL DEVELOPMENT INITIATIVE ACT

Mr. BURNS. Mr. President, this session the Senate passed several bills that contained rural economic development initiatives based on amenity resources. These resources can include historical attributes, cultural events, outdoor recreational opportunities, wildlife, scenery, and other natural or manmade resources and activities.

The bill I am introducing today complements those initiatives. It will also complement S. 1791, the Rural Tourism Export Promotion Act, a bill sponsored by Senator ROCKEFELLER and I which passed the Senate earlier this year. S. 1791 amends the International Travel Act of 1981 and creates a nonprofit Rural Tourism Foundation to develop and implement a plan to increase international awareness of Federal scenic and recreational lands through cooperative programs with the private sector.

In 1989, Federal agencies recorded 1.8 billion visits to recreational sites, parks, parkways, and historic sites. Because of their sheer size and natural attractions, the Federal lands in Western States play an important role in establishing a sustainable tourism and recreational industry.

President Bush and Secretary Mosbacher have both made their commitment to the development of rural tourism in America. This is good news to States that rely heavily on the fly-drive traffic of domestic and foreign travelers.

Now more than ever the tourism industry needs our support. In 1989, tourism outranked all other exports in the United States. It is important that we continue to develop ways to keep this clean, positive industry stable and growing. It is the third largest retail-service business in this country providing 5.8 million jobs in 1989. Not a surprising fact, given that the tourism industry employment has risen every year since 1958, despite five economic recessions.

Clearly tourism plays an important role in the economies of Western States. If we are going to promote the Federal sites in any State, we need to ensure their accessibility to visitors.

The bill I am introducing today provides each region of the country money for planning, design and construction of roads and trails that support tourism and recreational travel on forest highways in 41 States, U.S. Park Service roads, access roads to man-made lakes, Indian reservation roads and other recreational sites. These improvements would be authorized from the Federal highway trust fund.

Existing law authorizes grants for forest highways, roads on U.S. Park Service lands, Indian reservation roads and a public lands discretionary ac-

count. Road improvements which are bound on each side by Federal land ownership are eligible for discretionary funds.

This bill increases the funding level for each category, keeps the State-Federal project selection and grant allocation process, and directly authorizes the use of road grants for tourism and recreational travel. States are encouraged to nominate road improvements for programs such as the National Forest Scenic Byways Program, Bureau of Land Management [BLM] Back Country Byways Program and other similar programs that are based on a multiple land use concept.

In addition, up to 10 percent of the money for forest highways and the public land discretionary account is authorized for development roads and trails open to public travel. Roads and trails that are open only to logging trucks or closed for the protection of natural resources are excluded. Project examples are those that provide access to fishable streams and river corridors, protect fragile areas by spreading visitors over a wilder area to relieve overcrowding, and provide scenic and wildlife viewing points. It is my intention that the selection of these projects will require Federal-State consultation.

In prior years, grants for access roads to man-made lakes were authorized and available through the appropriations process. This bill provides money and contract authority from the Federal highway trust fund so grants can be provided on an administrative basis through national competition. Report language will be requested so States will be able to nominate project in this areas as well.

Access roads to man-made lakes built by the Corps of Engineers, Bureau of Reclamation, Departments of the Interior and Agriculture or the Tennessee Valley Authority are also eligible. These agencies provide a sizeable opportunity for increased recreational use and site development.

For all categories, the Secretary of Transportation is authorized to expand the use of Federal grants for pedestrian and bicycle facilities for tourism and recreational purposes. Motorized use of trails and walkways authorized under this section shall be determined by State and local regulations.

Under this legislation, States would be required to have a statewide driving and recreation plan as part of their regular transportation planning process. To facilitate the development of these statewide plans, the bill adds a tourism and recreational travel component for areas under 50,000 in population to the existing Rural Technical Assistance Program [RTAP] operated by the Federal Highway Administration for 3 million miles of local roads.

While the bill represents national interests, it is especially important to Western States because Federal lands account for about half the total land areas of the region and are major tourist attractions. This bill, when coupled with S. 1791, provides a cornerstone for implementing an improved Federal-State relationship that allows for the use of public lands as an income source for small communities and encourages natural resource conservation through multiple land use practices.

Conservation of our natural resources is integral to any government initiative in building a long-term sustainable economy based on rural tourism and recreational development. This concept is not meant to promote building large highways capable of carrying traffic at high speeds, but rather to conserve the archeological, cultural and scenic interests that provide a unique quality of location for the traveling public.

In report language to the 1982 highway program, the Senate Public Works Committee encouraged Federal agencies to provide road design exceptions for projects constructed on the Federal estate. They said, "Roads through areas administered by Federal land managing agencies must be carefully designed to protect important natural and cultural resources under the jurisdiction of those agencies. Such roads must be designed to blend in with the natural landscape. Because of the resources preserved in the Federal land management areas, and the type of tourist uses in such areas, the roads in certain circumstances do not have to be constructed to normal highway standards." This standard is preserved in my bill.

Next year, I intend to offer this bill as an amendment to the Federal-aid Highway Program which is up for reauthorization during the 102d Congress. I would encourage my colleagues to study this legislation over the break and to offer comments on how the bill my be improved to accommodate other national concerns. I would then urge them to join me as original cosponsors next Congress.

I would also recommend that interested colleagues obtain a copy of a background report entitled "Western Roadways and Rural Tourism Development." This report was used as a basis in preparing this bill and is available without charge from the Center for the New West, 600 World Trade Center, 1625 Broadway, Denver, Colorado, 80202, (303) 592-5310.

I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3261

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Rural Tourism and Recreational Development Initiative Act of 1990."

SEC. 2. FINDINGS.

The Congress finds that:

(a) the travel and tourism industry is a significant economic factor in the overall gross national product providing 6 million jobs directly and 2.5 million jobs indirectly in 1988, it was the largest United States export in 1989 ($44.5 billion spent in the United States), it generated $350 billion in expenditures in 1989, and was the largest retail or service industry in the United States with receipts making up over 6.7 percent of the Gross National Product.

(b) the public lands administered for travel and tourism purposes by the Department of Agriculture, Defense, and the Interior amount to 647 million acres and constitute 30 percent of the total land within the boundaries of the United States.

(c) these lands contain many of the major natural attractions in the United States and are major destinations for the travel and tourism industry.

(d) there are significant numbers of rural communities and States that are dependent upon the travel and tourism trade for their economic well being or see this trade as a way of improving their economic situation.

(e) over the last 10 years, about 70 million acres of private lands have been closed to public access for recreation, and demands for all types of recreation are expected to increase over the next 50 years placing a larger demand on the Federal estate which in 1989 recorded 1.8 billion visitors to recreational, parks, parkways and historical sites.

(f) good road access in well maintained and safe condition is essential to meeting and expanding needs of the traveling public to and from the federal estate.

(g) traffic growth is 4 percent annually, and today 17 percent of the trillion miles of traffic is related to pleasure driving; increased international and domestic travel within the United States will require improved, safe public roads; a state recreational and driving component as part of the overall Federal aid planning process along with a tourism technical assistance program would benefit all governments in identifying specific transportation needs and solutions to benefit the development of a national rural tourism development policy.

SEC. 3. NATIONAL GOAL.

It shall be the national goal under this Act to improve and provide safe access to public lands to encourage the development of travel and tourism opportunities in support of rural area development.

SEC. 4. FEDERAL LANDS HIGHWAY PROGRAM.

Section 204 of title 23, United States Code, is amended by striking subsection (h) and inserting instead:

"(h) Funds available for each class of Federal Lands Highways may be made available for the following:

"(1) transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program and other similar Federal programs that benefit recreational development.

"(2) adjacent vehicular parking areas.

"(3) interpretive signage and development of public road facilities for areas of histori-

cal, archeological, cultural and scenic interests.

"(4) acquisition of necessary scenic easements.

"(5) construction and reconstruction of roadside rest areas including sanitary and water facilities.

"(6) other appropriate facilities as determined by the Secretary.".

"(i) The Secretary shall transfer to the Secretary of the Interior from the appropriations for public lands highways amounts as may be needed to cover necessary administrative costs of the Bureau of Land Management in connection with public lands highways."

SEC. 5. FOREST DEVELOPMENT ROADS AND TRAILS.

Section 205 of title 23, United States Code, is amended by Bill adding subsection (e) as follows:

"(e) Funds available for forest development roads and trails may be made available for:

"(1) transportaiton planning for tourism and recreational travel including the National Forest Scenic Byways Program and other similar Federal programs that benefit recreational development.

"(2) adjacent vehicular parking areas.

"(3) interpretive signage and development of public road facilities for areas of historical, archeological, cultural and scenic interests.

"(4) acquisition of necessary scenic easements.

"(5) construction and reconstruction of roadside rest areas including sanitary and water facilities.

"(6) other appropriate facilities as determined by the Secretary of Agriculture.".

SEC. 6. PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.

Section 214 of title 23, United States Code, is amended by adding a new subsection (c) as follows:

"(c) Funds available for public lands development roads and trails may be made available for:

"(1) transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program and other similar Federal programs that benefit recreational development.

"(2) adjacent vehicular parking areas.

"(3) interpretive signage and development of public road facilities for areas of historical, archeological, cultural and scenic interests.

"(4) acquisition of necessary scenic easements.

"(5) construction and reconstruction of roadside rest areas including sanitary and water facilities.

"(6) other appropriate facilities as determined by the Secretary of Interior.".

SEC. 7. BICYCLE AND PEDESTRIAN FACILITIES FOR TOURISM.

(a) Section 217(b) of title 23, United States Code, is amended by adding a new paragraph (4) as follows:

"(4) Notwithstanding the provisions of (b)(3), Federal-aid highway projects for pedestrian and bicycle facilities shall be authorized by the Secretary to encourage alternative modes of transportation for tourism and recreation purposes."

(b) Section 217 of title 23, United States Code, is amended by striking paragraph "(g)" and inserting instead as follows:

"(g) Motorized use of trails and walkways authorized under this section shall be determined by State and local regulations."

SEC. 8. ACCESS HIGHWAYS TO PUBLIC RECREATION AREAS AND CERTAIN LAKES.

Section 155(a) of title 23, United States Code, is amended by adding a new paragraph (3) as follows:

"(3) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for that fiscal year for access highways to public recreation areas on certain lakes according to the relative needs the various public recreation areas serving certain lakes taking into consideration the need for access as identified through recreation and land use planning and the impacts of planning on existing transportation facilities."

SEC. 9. TECHNICAL ASSISTANCE PROGRAM.

The Secretary shall establish and carry out a tourism and recreational travel technical assistance program in non-urbanized areas. In carrying out this program, the Secretary shall administer the program in cooperation with other rural technical assistance programs to the extent that those programs for transportation assistance exist including assistance to American Indian tribal governments.

SEC. 10. STATEWIDE DRIVING AND RECREATION PLAN.

Each state using funds provided in this Act shall have a multi-purpose land use statewide driving and recreation travel plan to identify and find solutions to problems related to driving and tourism. This plan shall be coordinated with appropriate State and local agencies and Federal Land Management Agencies.

SEC. 11. AUTHORIZATIONS.

The following sums are authorized to be appropriated out of the Highway Account of the Highway Trust Fund:

(a) For Indian Reservation Roads $105 million per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995 and 1996.

(b) For Forest Highways $100 million per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995 and 1996, *Provided* that up to 10 percent of the sum may be expended for recreational travel and tourism projects on Forest Development Roads and Trails that are open to public travel.

(c) For Public Lands Highways $60 million per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995 and 1996, *Provided* that up to 10 percent of the sums may be expended for recreational travel and tourism projects on Public Lands Development Roads and Trails that are open to public travel.

(d) For Parkways and Park Roads $100 million per fiscal year for each of fiscal years 1992, 1993, 1994, 1995 and 1996.

(e) For Access Highways to Public Recreation Areas and Certain Lakes $15 per fiscal year for each year of the fiscal years 1992, 1993, 1994, 1995 and 1996, *Provided* that these sums shall be available for obligation as if apportioned under chapter 1 of title 23, United States Code.

(f) For the Technical Assistance Program established under section 9 of this Act $5 million to remain available until expanded, *Provided* that the $5 million shall be available for obligation as if apportioned under chapter 1, of title 23, United States Code.

SECTION-BY-SECTION ANALYSIS

SEC. 1. TITLE.

SEC. 2. FINDINGS.

This section explains the purpose of the act to improve the economy through a planned recreational travel and tourism program to address increased recreational travel demands for road facilities serving or within federal lands.

SEC. 3. NATIONAL GOAL.

This section establishes a goal to encourage the development of tourism for rural economic development.

SEC. 4. FEDERAL LANDS HIGHWAY PROGRAM.

This section amends 23 U.S.C. 204(h) and adds 23 U.S.C. 204(i). Section 204(h) is amended by providing that Federal Lands Highway Program funds may be used for planning, design and construction projects that support recreational travel and tourism in rural areas in addition to the current adjacent and vehicular parking areas and scenic easements.

Section 204(i) is added and provides for funds from the Federal Lands Highway Program to be made available to cover the Bureau of Land Management administrative costs associated with the recreational travel and tourism activities connected with projects under this section.

SEC. 5. FOREST DEVELOPMENT ROADS AND TRAILS.

This section adds a subsection to 23 U.S.C. 205. The new subsection provides that the funds made available for constructing forest development roads and trials may also be used for planning, design and construction projects that support recreational travel and tourism in rural areas.

SEC. 6. PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.

This section adds a subsection to 23 U.S.C. 214. The new subsection provides that the funds made available for constructing public lands development roads and trails may also be used for planning, design and construction projects that support recreational travel and tourism in rural areas.

SEC. 7. BICYCLE AND PEDESTRIAN FACILITIES FOR TOURISM.

This section amends 23 U.S. 217(b) and (g). Section 217(b), as amended, will allow the funds made available for section 217 to be used for projects that encourage constructing bicycle and pedestrian facilities for advancement of tourism and recreational purposes.

Section 217(g), amended, eliminates the restriction that motorized vehicles cannot be used on trails and walkways.

SEC. 8. ACCESS HIGHWAYS TO PUBLIC RECREATION AREAS AND CERTAIN LAKES.

This section amends 23 U.S.C. 155(a). Section 155(a) is amended to provide a method of allocating funds for activities and projects funded under Section 155 based on relative road condition and access needs data. The data shall be developed throughout recreation and land use planning.

SEC. 9. TECHNICAL ASSISTANCE PROGRAM.

This section creates a tourism and recreation travel technical assistance program in areas of under 50,000 population. The section is intended to provide supplemental technical assistance directed at tourism and recreational travel. Also, it is intended to build on the existing rural technical assistance program.

SEC. 10. STATEWIDE DRIVING AND RECREATION PLAN.

This section requires each State to have a Statewide Driving and Recreation Plan. States and local governments should develop recreation travel and tourism plan as part of a regular transportation planning process and the planning process should be coordinated with respective Federal land management planning activities.

SEC. 11. AUTHORIZATIONS.

This section provides for continuing multi-year Highway Trust Fund authorizations at an increased funding level, for Indian reservation roads, forest highways, public land highways, and park roads and parkways. Up to 10 percent of forest highway funds may be used for recreational travel and tourism projects on forest development roads and trails. The section also provides for multi-year funding of projects for access highways to Federally owned or constructed lakes and provides a one-time funding from the Highway Trust Fund for a technical assistance program that addresses recreation travel and tourism.

By Mr. GRAHAM (for himself and Mr. MACK):

S. 3262. A bill to modify the authorities for a flood control project on the Kissimmee River, FL, and for other purposes; ordered held at the desk by unanimous consent.

KISSIMMEE RIVER FLOOD CONTROL PROJECT

Mr. GRAHAM. Mr. President, the legislation which I will send to the desk and ask to be held there relates to the restoration of the Kissimmee River. The hour is late. I will not give the full history of this enterprise. But let me say that it is one of the most significant components of the complex environmental system known as the Florida Everglades. It is a part of that system like, unfortunately, many other parts which has been subject to major change over the past century.

In the case of the Kissimmee River, it was a 102-mile river that ran from somewhat south of Orlando into lake Okeechobee. In the 1950's and 1960's it was channelized and the 102-mile serpentine river was converted into a 50-mile straight canal. That has caused a whole series of very adverse consequences to the Everglades system.

This legislation is an important part of a multiyear effort to save the Everglades with the restoration of the environmental qualities of the Kissimmee River being an integral part of that effort.

This legislation, Mr. President, was incorporated in the Water Resources Act which passed this Senate earlier in the year. It was also incorporated in the Water Resources Act which passed the House of Representatives. However, due to some concern expressed by the executive branch, the decision has been made by the managers on behalf of the Senate and the House and concurred in by this Senator to carve this particular section out of the Water Resources Act, introduce it as a separate bill as we do tonight, hold it at the desk and anticipate that it will be considered before this Congress adjourns.

Mr. President, I am extremely appreciative of the cooperation which particularly the Senator who chairs the Environment and Public Works Committee, Senator BURDICK, as well as Senator MOYNIHAN and Senator CHAFEE, the respective Chair and ranking member on the Water Resources Subcommittee of the Environment and Public Works Committee, have given to this legislation.

I commend it to the attention of my colleagues and hope that in the remaining hours of this session of Congress this important contribution to what is one of the unique environmental areas not only of the United States but also of the world can be accorded the additional recognition and protection which the restoration of the Kissimmee River will provide.

Thank you, Mr. President.

I send the bill to the desk and ask that it be held at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

By Mr. ADAMS:

S.J. Res. 385. Joint resolution providing statutory authorization for United States participation in multilateral efforts to restore the sovereignty of Kuwait and to deter and, if necessary, defend against further Iraqi aggression, and for other purposes; to the Committee on Foreign Relations.

S.J. Res. 386. Joint resolution providing statutory authorization for United States participation in multilateral efforts to restore the sovereignty of Kuwait and to deter and, if necessary, defend against further Iraqi aggression, and for other purposes; to the Committee on Foreign Relations.

COLLECTIVE SECURITY IN THE PERSIAN GULF

Mr. ADAMS. Mr. President, I want to follow directly on with the Senator from Colorado, and I compliment him on his presentation and particularly upon the fact that this is the key point in time where the discussion of what must be done in the Persian Gulf needs to be held. I was going to take time later today under a morning business request to present what has been done with the War Powers Act, what has been done with the alternative to the War Powers Act involving the Arabian area. And I say Arabian area, not just Persian Gulf. The debate started with the fine Senator from Hawaii indicating that the War Powers Act had not been invoked, with the Senator from Tennessee and the Senator from Colorado both indicating the necessity for it.

Since I was deeply involved with the attempt under the War Powers Act, trying several times when we were in the Persian Gulf reflagging Kuwaiti tankers, to exercise the War Powers Act, along with our former colleague, Senator Weicker; have been working on this with Senator NUNN, Senator BYRD, Senator FOWLER, with all of the various parties, to set up a mechanism for what I fear—which is exactly what is feared by the Senators who have spoken before me—that the Congress will adjourn sine die, and during that period there will be a major escalation in hostilities.

I have taken the two resolutions that were prepared—an excellent one by Senator NUNN, Senator BYRD, Senator WARNER, and many others, that have been prepared by myself, one that had been prepared by Mr. BIDEN. I have combined these into two separate resolutions. One is a prehostilities resolution, the second is a posthostilities resolution, which I will file at the end of my statement. They cover the point that has been so well raised and about which we are all so concerned.

That is, that the President has not recognized the fundamental division of power which occurs under our Constitution separating those who would declare war from those who would wage war. It is very, very clearly separated under article 1 section 7 that the Congress declares war. In other words, the dogs of war are released by the Congress, the dogs of war are run by the executive. And far too often in our history those who would run the dogs of war have also unleashed them. That we are trying to prevent.

I have deliberately worked with all of the various parties. I want to compliment the majority leader. I will explain in a minute what we have tried to set up for this particular situation.

I have avoided the War Powers Act and so has the Speaker and so has the majority leader, because each time it has been filibustered. We could not get by a process of expedited proceedings, which could mean it would go on and on forever on the floor. In fact, it did go on forever and forever. We never got a vote. We have gone to the courts four times. They said you cannot have the court settle this. A finding of imminent hostilities has to be triggered either by a Presidential letter or by a congressional action. Neither of those have happened. It is a political matter. We could not get a resolution established.

Now, Senator NUNN and a number of others have done magnificent work on this. So has Senator BYRD. I, therefore, do not want these resolutions I am going to introduce to be thought of as something that I have thought up. This is a result of months and months of work by many people. The only reason I file them today, the only reason I am taking the floor at this moment, was that the subject came up here and that we may very well put another 100,000 troops in there.

Those of us that know the Middle East, know the cloud covers occur in Iraq in the middle of November. We are going to leave here in the middle of October, and we are scared that there may be another escalation of the war. We have not filed a war powers resolution for the reason that when we could not establish and have this Senate vote that there were imminent

hostilities—we were taking body bags off ships in the middle of the Persian Gulf—we did not figure we could pass another war powers resolution. So this does not go to the war powers resolution. It does this:

First, the majority leader and the Speaker have announced that they will form a consultative group between them to talk with the President while we are adjourned. Second, I will be voting for, and I hope it will be passed, that in sine die adjournment the majority leader and the Speaker have the right to call us back in the event of hostilities, because in the event of hostilities in this case is going to be well set forth by the Senator from Colorado, and the Senator from Tennessee, and by all the rest of us who have ever been involved in the service during a period of time of conflict. This period of time is a very dangerous period of time. We may very well have an increase in hostilities.

We pray to God it does not happen, but we have 200,000 troops sitting in very hot sand under very bad conditions. This will go on and on—faced by another force of equal size—if all of us have supported the Senator from Hawaii and others in saying that this was an appropriate thing for the President to do. There have been no hostilities as yet. There have been casualties.

What we have proposed is in addition to the consulting group, and in addition to a sine die resolution which would provide for calling back, I have two resolutions here. They are the product of many people's work. I placed only my name on them because I have not had the time. I just got them today after many days of going back and forth and many days of work. Other Senators are involved. I do not want them to feel this is an Adams resolution. It is just that I cannot clear it with everybody at this time.

The first is a prehostilities resolution. It basically sets forth an expedited proceeding and a statement of our goals as the Senator from Colorado mentioned. They are the goals basically that have been set forth by the President and by others.

It sets forth a consultative procedure during this period of time when we are sitting with no hostilities but we are building up these forces. It provides for authorization and for appropriations so that the Congress is taking its constitutional responsibility, which is either to declare war or some lesser authorization of it and, second, to raise armies. In other words, who pays for them, who raises armies? It is not the President. It is the Congress of the United States.

This has come up in this bill and will be part of it.

So I am sending at this point, Mr. President, the prehostilities joint resolution which is for the period of time—I want it to have an earlier number—which will provide for the period of time which we are in now, and the Congress has to pass it. The President has to sign it. But I do not want us to arrive back in here on 1 day, and have nothing before us and nobody ever having looked at it.

So I hope my colleagues will look at it, comment on it, be prepared and know what they have.

The PRESIDING OFFICER. Without objection, the resolution is received and will be appropriately referred.

Mr. ADAMS. The second resolution which will have the second number, is the posthostilities joint resolution. What this basically provides for again, is these are the policies, that we are following, these are the goals that we hope to achieve, this is the consultative process we want to have followed by the President. And consultation does not mean telling you after the fact. It means talking with you before you do something.

Then it provides for an expedited proceeding so that the Congress itself can file a resolution, not the President. It does not provide for any 60-day snap back of troops out. But it says, as did the Byrd-Warner-Nunn original resolution, that there must be a resolution from Congress that authorizes what it is we are doing, what we intend to so, how long we intend to do it, or you can leave it open ended.

But I felt strongly we had to have this. It has expedited proceedings in it, which was drawn based on what Senator BYRD had drawn in his resolution. I know it is well done. It provides that money cannot be spent unless it is appropriated by the Congress to do it.

I hope my colleagues will look at this also so that it we have to come back and authorize something, we are not going to be involved with a Gulf of Tonkin resolution or with some other resolution that the President, as Commander in Chief seizes upon to carry out some action.

Mr. President, I am very concerned about the separation of powers between the Congress and the President, not because of jealousy of what the Congress gets to do or what the President gets to do. But I have seen three Presidents break their Presidency, and ruin the financial situation of this country, and destroy morale in this country by not bringing the Congress, and with the Congress the public, into a conflict.

When you have 200,000 about to be 300,000 troops in an area, everyone in the military will tell you—and even those of us who were lowly sailors will tell you—you have the potential for a real conflict. This is not just picking somebody up off an embassy rooftop. This is a formidable force, and we have other nations that are going to be demanding of our President to move in this area. And I can understand that. You are going to have your troops saying that it is hot. This country is a hostile country to us in terms of the way we conduct our lifestyles. The sand is in the gears. Our equipment is built for a war against the Soviets, not a war in the desert against a smaller but well armed country.

This is the beginning of a whole new era of American defense posture. I know the Senate Armed Services Committee recognizes this. I know Senator INOUYE recognizes this. I know all of my colleagues recognize this. So we should be prepared for it. We should take our part, our part.

In other words, do not hide behind a President and say it is his war, or that you would have done something different. Have him come here and say what he wants, vote what it is, and put the country together, and then we conduct it like we did World War II, where we did declare war and everyone stuck through it all the way.

We have had a very bad experience after that with these incursions, police actions, or whatever you want to call them. I do not put a name on this. I am trying to put up some joint resolutions which I hope my colleagues will look at. They have been referred.

I am prayerful that if there is going to be an increase in hostilities—I call that a war, or some part of it over there—that the Congress, the President and the people are all with it.

I can assure this President, and he should know also, because he was in World War II, that after a period of time, war and the use of troops is very popular in the first weeks and months, but after days and weeks and months, you begin to get a splitting of feeling. Let us try to unite that feeling and that feeling of support and have our goals in mind and have the necessary processes and then we will expedite them.

I thank Senator INOUYE, the chairman, who is very experienced at this for this time, and I thank the Senator from Ohio. I did not intend to take quite this long.

I ask unanimous consent that these two joint resolutions be printed in the RECORD.

There being no objection, the joint resolutions were ordered to be printed in the RECORD, as follows:

S.J. RES. 385

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Collective Security in the Persian Gulf Resolution".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that, in response to the act of aggression by Iraq against Kuwait, which began on August 2, 1990, the United States has—

(1) participated in unanimous decisions of the United Nations Security Council, as follows:

(A) UN Resolution 660, demanding immediate and unconditional withdrawal of Iraqi forces from Kuwait and restoration of the sovereignty, independence, and territorial integrity of that nation;

(B) UN Resolution 661, imposing economic sanctions against Iraq;

(C) UN Resolution 662, declaring null and void Iraq's annexation of Kuwait;

(D) UN Resolution 664, the release and safe passage of innocent civilians;

(E) UN Resolution 665, authorizing appropriate measures to halt maritime shipping to and from Iraq and Kuwait as necessary to enforce economic sanctions;

(F) UN Resolution 667, regarding the treatment by Iraq of diplomatic and consular personnel;

(G) UN Resolution 669, regarding requests for assistance under Article 50 of the Charter of the United Nations; and

(H) UN Resolution 670, regarding an embargo on air transportation to Iraq and Kuwait; and

(2) acting in response to the request of threatened nations, deployed United States Armed Forces in Saudi Arabia and elsewhere in the Persian Gulf region, in accordance with the United Nations Charter and in conjunction with military deployments by other United Nations member-states, in order to—

(A) deter and, if necessary, defend against further Iraqi aggression; and

(B) assist in enforcing economic sanctions against Iraq pursuant to United Nations Resolution 665.

(b) PURPOSE.—Congress intends this joint resolution to constitute specific statutory authorization for continued United States military participation in collective security actions in the Persian Gulf region.

SEC. 3. GOALS OF UNITED STATES POLICY.

(a) IMMEDIATE GOALS.—The immediate goals of United States policy in the Persian Gulf region shall be—

(1) unconditional withdrawal of Iraqi forces from Kuwait;

(2) restoration of the sovereignty of Kuwait; and

(3) protection of the lives of American citizens held hostage in Iraq and Kuwait.

(b) LONG-TERM GOALS.—Over the long-term, United States policy in the Persian Gulf region shall seek to achieve:

(1) the security and stability of the region; and

(2) by unprecedented and effective use of the mechanisms of collective security action, the promotion of a new world order.

SEC. 4. PRINCIPLES GOVERNING UNITED STATES POLICY.

(a) IN GENERAL.—United States participation in collective security actions relating to the Persian Gulf region shall be governed by the following principles:

(1) COLLECTIVE RESPONSIBILITY.—The United States shall continue to emphasize, and take all necessary steps to secure, adequate sharing by countries of the region and of the industrialized world, of the responsibilities, associated with collective security actions in the Persian Gulf region, including the costs of military deployments and participation in economic sanctions.

(2) EMPHASIS ON UNITED NATIONS.—The United States shall continue to emphasize and rely upon the procedures and instrumentalities of the United Nations system in order to sustain effective multilateral support for collective security actions in the Persian Gulf region.

(3) ROLE OF REGIONAL AND OTHER FORCES.—The United States, having taken urgent measures to lead a collective security action in the Persian Gulf region, shall seek to promote—

(A) greater participation in ground-force defense by countries of the region; and

(B) adequately-shared responsibilities, among countries with vital interests in the region, for the deployment and support of armed forces needed for regional stability.

(4) COMPLIANCE WITH THE LAW OF NATIONS.—The United States shall seek to achieve substantial compliance by Iraq with international law, including—

(A) the United Nations Charter;

(B) the International Covenant on Civil and Political Rights;

(C) the Convention on the Prevention and Punishment of the Crime of Genocide;

(D) the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare;

(E) the Treaty on the Non-Proliferation of Nuclear Weapons; and

(F) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

(b) MULTILATERAL PARTICIPATION.—Accordingly, the United States shall seek effective multilateral participation in such restrictions on trade with the Government of Iraq as may be necessary to ensure a cessation of transfers to that regime of military technology and equipment, including all material and technical assistance that could contribute to the development or employment of ballistic missiles and nuclear, biological, and chemical weapons.

SEC. 5. AUTHORIZATION FOR PARTICIPATION IN COLLECTIVE SECURITY ACTIONS.

(a) AUTHORIZATION.—The President is authorized to continue to deploy United States Armed Forces in the Persian Gulf region—

(1) for purposes of United States participation in collective security actions—

(A) to implement United Nations Security Council resolutions intended to restore the sovereignty of Kuwait; or

(B) to deter and, if necessary, to defend against further Iraqi aggression; and

(2) to respond as may be necessary, proportionate, and effective to any acts of intended harm to American citizens or nationals.

(b) FURTHER AUTHORIZATION.—(1) In the event of significant hostilities in the Persian Gulf region which involve or may involve United States Armed Forces, the President shall seek a declaration of war or other statutory authorization, in accordance with sections 8 and 10 of this joint resolution and shall request funds of the Appropriations Committees of the Congress to carry out such declaration of war or other statutory authorization.

(2) In light of further evolving developments in and relating to the Persian Gulf, Congress shall, from time to time, consider further measures of authorization and appropriation.

SEC. 6. REPORTS TO CONGRESS.

Not later than January 31, 1991, and every 3 months thereafter for so long as United States Armed Forces continue to participate in collective security actions in the Persian Gulf region, the President shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report providing a detailed description of such participation, the circumstances requiring the continuation of such participation, and the results of United States efforts undertaken in accordance with the goals and principles set forth in sections 3 and 4.

SEC. 7. CONGRESSIONAL LEADERSHIP GROUP.

(a) ESTABLISHMENT AND COMPOSITION.—To facilitate congressional deliberation and Executive-Legislative consultation on critical decisions relating to United States participation in collective security actions pursuant to this joint resolution, there are established, in each respective House of Congress, the Senate Leadership Group and the House Leadership Group, which shall be composed as follows:

(1) In the case of the Senate Leadership Group:

(A) The Majority Leader of the Senate, who shall serve as chairman.

(B) The President pro tempore of the Senate and the Minority Leader.

(C) The chairmen and ranking minority members of the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence.

(D) Not less than two or more than four other Members of the Senate as the chairman of the Group may designate.

(2) In the case of the House Leadership Group:

(A) The Speaker of the House of Representatives, who shall serve as chairman.

(B) The Majority Leader and the Minority Leader.

(C) The chairmen and ranking minority members of the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence.

(D) Not less than two or more than four other Members of the House of Representatives as the chairman of the Group may designate.

(b) COMBINED MEETINGS.—Whenever the chairmen of the two Leadership Groups established under subsection (a) determine that it would be appropriate and practical for purposes of congressional deliberation or Executive-Legislative consultation, the chairmen shall arrange for the two Leadership Groups to assemble as a Combined Congressional Leadership Group, of which the two chairmen shall act as cochairmen.

(c) REPORTS ON DEVELOPMENTS IN THE PERSIAN GULF REGION.—In the event of developments in the Persian Gulf region that involve or appear likely to involve the United States Armed Forces in hostilities, the President shall consult fully and promptly with the Senate Leadership Group and the House Leadership Group on the circumstances and the implications thereof.

(d) CONSULTATION REGARDING THE USE OF FORCE.—The President shall, unless urgent circumstances do not permit, consult and seek the advice of the Congressional Leadership Groups or the Combined Congressional Leadership Group described in this section before committing United States Armed Forces to hostilities in the Persian Gulf region and, in any event, shall consult with, and seek advice from, such Groups within 24 hours after hostilities occur regardless of urgent conditions.

(e) EXERCISE OF CONGRESSIONAL RULEMAKING POWERS.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, and

it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 8. CONGRESSIONAL ACTION.

(a) INTRODUCTION OF LEGISLATION.—Within 48 hours of the first occurrence of hostilities in which United States Armed Forces are involved, the chairmen of the Senate Leadership Group and the House Leadership Group shall, on the same calendar day, introduce a joint resolution described in paragraph (2) in their respective Houses of Congress or, if Congress has adjourned sine die or has adjourned for any period in excess of 3 calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the joint resolutions to be introduced by the chairmen of the two Leadership Groups and take appropriate action.

(2) A joint resolution referred to in paragraph (1) is a joint resolution which—

(1) declares war and makes appropriations as necessary to support such war;

(2) provides specific authorization for the use of the United States Armed Forces and makes appropriations as are appropriate for such use of United States Armed Forces; or

(3) orders the withdrawal of such troops.

(b) CONSTRUCTION.—Nothing in this section alters or modifies the right of any Member of Congress to introduce a joint resolution or bill in a House of Congress which—

(1) would require that the President disengage such forces from such hostilities or remove them from such situations, as the case may be; or

(2) would provide specific authorization for the continued engagement of such forces in such hostilities or for the continued use of such forces in such situations, as the case may be.

SEC. 9. PROHIBITION ON USE OF FUNDS.

(a) COMPLIANCE WITH LAW.—No funds appropriated or otherwise made available under any law may be obligated or expended for any activity which would have the purpose or effect of violating any provision of law enacted pursuant to sections 8 and 10.

(b) TERMINATION OF FUNDING.—On or after the date which is 30 days after a joint resolution is submitted or is required to be submitted to the Congress, in accordance with section 8, if Congress has not enacted a specific authorization for the use of United States Armed Forces in hostilities, then no funds may be obligated or expended for such purpose.

(c) CONSTRUCTION.—Nothing in this section prohibits the use of funds to remove the United States Armed Forces from hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances.

SEC. 10. CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTIONS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "joint resolution" means a joint resolution described in section 8(a); and

(2) the term "session days" means days on which the respective House of Congress is in session.

(b) REFERRAL OF RESOLUTIONS.—A joint resolution introduced in the House of Representatives shall be referred to the Committee on Foreign Affairs of the House of Representatives. A joint resolution introduced in the Senate shall be referred to the Committee on Foreign Relations of the Senate.

(c) COMMITTEE ACTION.—(1) If the committee to which is referred a joint resolution has not reported such joint resolution (or an identical joint resolution) at the end of 7 calendar days after its introduction, such committee shall be discharged from further consideration of such joint resolution, and such joint resolution shall be placed on the appropriate calendar of the House involved.

(2) After a committee reports or is discharged from a joint resolution described in section 8(a), no other joint resolution under such section with respect to the same hostilities, or the same situation in which imminent involvement in hostilities is clearly indicated by the circumstances, may be reported by or be discharged from such committee while the first joint resolution is before the respective House of Congress (including remaining on the calendar), a committee of conference, or the President.

(d) CONSIDERATION OF RESOLUTIONS.—(1)(A) When the committee to which a joint resolution is referred has reported, or has been discharged under subsection (c) from further consideration of such joint resolution, notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution and, except as provided in subparagraph (B) of this paragraph or paragraph (2) of this subsection (insofar as it relates to germaneness and relevancy of amendments), all points of order against the joint resolution and consideration of the joint resolution are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall be in order, except that such motion may not be entered for future disposition. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the respective House, to the exclusion of all other business, until disposed of, except as otherwise provided in subsection (e)(1).

(B) Whenever a point of order is raised in the Senate against the privileged status of a joint resolution that has been laid before the Senate and been initially identified as privileged for consideration under this section upon its introduction pursuant to section 8(a), such point of order shall be submitted directly to the Senate. The point of order, "The joint resolution is not privileged under the Collective Security in the Persian Gulf Resolution," shall be decided by the yeas and the nays after four hours of debate, equally divided between, and controlled by, the Member raising the point of order and the manager of the joint resolution, except that in the event the manager is in favor of such point of order, the time in opposition thereto shall be controlled by the Minority Leader or his designee. Such point of order shall not be considered to establish precedent for determination of future cases.

(2)(A) Consideration in a House of Congress of the joint resolution, and all amendments and debatable motions in connection therewith, shall be limited to not more than 12 hours, which, except as otherwise provided in this section, shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader, or by their designees. The Majority Leader or the Minority Leader or their designees may, from the time under their control on the joint resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(B) Only amendments which are germane and relevant to the joint resolution are in order. Debate on any amendment to the joint resolution shall be limited to 2 hours, except that debate on any amendment to an amendment shall be limited to 1 hour. The time of debate for each amendment shall be equally divided between, and controlled by, the mover of the amendment and the manager of the joint resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(C) One amendment by the Minority Leader is in order to be offered under a one-hour time limitation immediately following the expiration of the 12-hour time limitation if the Minority Leader has had no opportunity to offer an amendment to the joint resolution prior thereto. One amendment may be offered to the amendment of the Minority Leader under the preceding sentence, and debate shall be limited on such amendment to one-half hour which shall be equally divided between, and controlled by, the mover of the amendment and the manager of the joint resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(D) A motion to postpone or a motion to recommit the joint resolution is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is in order, except that such motion may not be entered for future disposition, and debate on such motion shall be limited to 1 hour.

(3) Whenever all the time for debate on a joint resolution has been used or yielded back, no further amendments may be proposed, except as provided in paragraph (2)(C), and the vote on the adoption of the joint resolution shall occur without any intervening motion or amendment, except that a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House may occur immediately before such vote.

(4) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution shall be limited to one-half hour of debate, equally divided between, and controlled by, the Member making the appeal and the manager of the joint resolution, except that in the event the manager is in favor of any such appeal, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(e) TREATMENT OF OTHER HOUSE'S RESOLUTION.—(1) Except as provided in paragraph (2), if, before the passage by one House of a

joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(A) The joint resolution of the other House shall not be referred to a committee.

(B) With respect to a joint resolution of the House receiving the joint resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii)(I) the joint resolution of the other House shall be considered to have been read for the third time; and

(II) the vote on final passage shall be on the joint resolution of the other House, if such joint resolutions are identical, or on the joint resolution of the other House if not identical, with the text of the joint resolution of the first House inserted in lieu of the text of the joint resolution of the second House, and such vote on final passage shall occur without debate or any intervening action.

(C) Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution originated in the receiving House.

(2) If one House receives from the other House a joint resolution before any such joint resolution is introduced in the first House, then the joint resolution received shall be referred, in the case of the House of Representatives, to the Committee on Foreign Affairs and, in the case of the Senate, to the Committee on Foreign Relations, and the procedures in that House with respect to that joint resolution shall be the same under this section as if the joint resolution received had been introduced in that House.

(f) TREATMENT OF IDENTICAL RESOLUTIONS.—If one House receives from the other House a joint resolution after the first House has disposed of an identical joint resolution, it shall be in order to proceed by nondebatable motion to consideration of the joint resolution received by the first House, and that received joint resolution shall be disposed of without debate and without amendment.

(g) RESOLVING DIFFERENCES BETWEEN HOUSES OF CONGRESS.—(1)(A) The time for debate in a House of Congress on all motions required for the disposition of amendments between the Houses shall not exceed 2 hours, equally divided between, and controlled by, the mover of the motion and the manager of the joint resolution at each stage of the proceedings between the two Houses, except that in the event the manager is in favor of any such motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee. In the case of any disagreement between the two Houses of Congress with respect to a joint resolution which is not resolved, any Member of Congress may make any motion or motions referred to in this subparagraph within 2 session days after action by the second House or before the appointment of conferees, whichever comes first. In the event the conferees are unable to agree within 72 hours after the second House is notified that the first House has agreed to conference, they shall report back to their respective House in disagreement.

(B) Notwithstanding any rule in either House of Congress concerning the printing of conference reports in the Congressional Record or concerning any delay in the consideration of such reports, such report, including a report filed or returned in disagreement, shall be acted on in the House of Representatives and the Senate not later than 2 session days after the first House files the report or, in the case of the Senate acting first, the report is first made available on the desks of the Senators. Debate in a House of Congress on a conference report or a report filed or returned in disagreement on any such joint resolution shall be limited to 3 hours, equally divided between, and controlled by, the Majority Leader and the Minority Leader, and their designees.

(2) If a joint resolution is vetoed by the President, the time for debate in consideration of the veto message on such measure shall be limited to 20 hours in each House of Congress, equally divided between, and controlled by, the Majority Leader and the Minority Leader, and their designees.

(h) EXERCISE OF CONGRESSIONAL RULEMAKING POWERS.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(i) SUPERSEDING EXISTING LAW.—The congressional priority procedures of this section shall apply, in lieu of section 1013 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (50 U.S.C. 1546a), with respect to the removal of United States Armed forces from hostilities in the Persian Gulf region.

SEC. 11. DEFINITION.

For purposes of this joint resolution, the term "Persian Gulf region" shall be considered to include areas in or around the Arabian Peninsula.

S.J. RES. 386

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Collective Security in the Persian Gulf Resolution".

SEC. 2. GOALS OF UNITED STATES POLICY.

(a) IMMEDIATE GOALS.—The immediate goals of United States policy in the Persian Gulf region are—

(1) unconditional withdrawal of Iraqi forces from Kuwait;

(2) restoration of the sovereignty of Kuwait; and

(3) protection of the lives of American citizens held hostage in Iraq and Kuwait.

(b) LONG-TERM GOALS.—Over the long-term, United States policy in the Persian Gulf region shall seek to achieve:

(1) the security and stability of the region; and

(2) by unprecedented and effective use of the mechanisms of collective security action, the promotion of a new world order.

SEC. 3. AUTHORIZATION FOR PARTICIPATION IN COLLECTIVE SECURITY ACTIONS.

(a) AUTHORIZATION.—The President is authorized to use United States Armed Forces in hostilities in the Persian Gulf region—

(1) for purposes of United States participation in collective security actions—

(A) to implement United Nations Security Council resolutions intended to restore the sovereignty of Kuwait; or

(B) to deter and, if necessary, to defend against further Iraqi aggression; and

(2) to respond as may be necessary, proportionate, and effective to any acts of intended harm to American citizens or nationals.

(b) PURPOSE.—Congress intends this joint resolution to constitute specific statutory authorization for continued United States military participation in collective security actions in the Persian Gulf region.

(c) REFERENCE TO UNITED NATIONS SECURITY COUNCIL RESOLUTIONS.—The United Nations Security Council Resolutions referred to in subsection (a) include—

(1) UN Resolution 660, demanding immediate and unconditional withdrawal of Iraqi forces from Kuwait and restoration of the sovereignty, independence, and territorial integrity of that nation;

(2) UN Resolution 661, imposing economic sanctions against Iraq;

(3) UN Resolution 662, declaring null and void Iraq's annexation of Kuwait;

(4) UN Resolution 664, the release and safe passage of innocent civilians;

(5) UN Resolution 665, authorizing appropriate measures to halt maritime shipping to and from Iraq and Kuwait as necessary to enforce economic sanctions;

(6) UN Resolution 667, regarding the treatment by Iraq of diplomatic and consular personnel;

(7) UN Resolution 669, regarding requests for assistance under Article 50 of the Charter of the United Nations; and

(8) UN Resolution 670, regarding an embargo on air transportation to Iraq and Kuwait.

(d) COLLECTIVE RESPONSIBILITY.—The United States shall continue to emphasize, and take all necessary steps to secure, adequate sharing by countries of the region and of the industrialized world, of the responsibilities, associated with collective security actions in the Persian Gulf region, including the costs of military deployments and participation in economic sanctions.

(e) EMPHASIS ON UNITED NATIONS.—The United States shall continue to emphasize and rely upon the procedures and instrumentalities of the United Nations system in order to sustain effective multilateral support for collective security actions in the Persian Gulf region.

SEC. 4. REPORTS TO CONGRESS.

Not later than January 31, 1991, and every 3 months thereafter for so long as United States Armed Forces continue to participate in collective security actions in the Persian Gulf region, the President shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report providing a detailed description of such participation, the circumstances requiring the continuation of such participation, and the results of United States efforts undertaken in accordance with the goals set forth in section 2.

SEC. 5. CONGRESSIONAL LEADERSHIP GROUP.

(a) ESTABLISHMENT AND COMPOSITION.—To facilitate congressional deliberation and Executive-Legislative consultation on critical decisions relating to United States participation in collective security actions pursuant to this joint resolution, there are established, in each respective House of Congress, the Senate Leadership Group and the House Leadership Group, which shall be composed as follows:

(1) In the case of the Senate Leadership Group:

(A) The Majority Leader of the Senate, who shall serve as chairman.

(B) The President pro tempore of the Senate and the Minority Leader.

(C) The chairmen and ranking minority members of the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence.

(D) Not less than two or more than four other Members of the Senate as the chairman of the Group may designate.

(2) In the case of the House Leadership Group:

(A) The Speaker of the House of Representatives, who shall serve as chairman.

(B) The Majority Leader and the Minority Leader.

(C) The chairmen and ranking minority members of the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence.

(D) Not less than two or more than four other Members of the House of Representatives as the chairman of the Group may designate.

(b) COMBINED MEETINGS.—Whenever the chairmen of the two Leadership Groups established under subsection (a) determine that it would be appropriate and practical for purposes of congressional deliberation or Executive-Legislative consultation, the chairmen shall arrange for the two Leadership Groups to assemble as a Combined Congressional Leadership Group, of which the two chairmen shall act as cochairmen.

(c) CONSULTATION REGARDING THE USE OF FORCE.—The President shall, unless urgent circumstances do not permit, consult with, and seek advice from, the Congressional Leadership Groups or the Combined Congressional Leadership Group described in this section regarding developments in the involvement of United States Armed Forces in hostilities in the Persian Gulf region.

(d) EXERCISE OF CONGRESSIONAL RULEMAKING POWERS.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 6. CONGRESSIONAL ACTION.

(a) INTRODUCTION OF LEGISLATION.—(1) Joint resolutions described in paragraph (2) and introduced in a House of Congress in accordance with paragraph (3) shall be entitled to the congressional priority procedures described in section 8.

(2) A joint resolution referred to in paragraph (1) is a joint resolution which would require that the President disengage such forces from such hostilities within _____days after the date of enactment of that joint reesolution.

(3) The chairmen of the Senate Leadership Group and the House Leadership Group may, on the same calendar day, introduce a joint resolution described in paragraph (2) in their respective Houses of Congress or, if Congress has adjourned sine die or has adjourned for any period in excess of 3 calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the joint resolutions to be introduced by the chairmen of the two Leadership Groups and take appropriate action.

(b) CONSTRUCTION.—Nothing in this section alters or modifies the right of any Member of Congress to introduce a joint resolution or bill in a House of Congress which would require that the President disengage such forces from such hostilities.

SEC. 7. PROHIBITION ON USE OF FUNDS.

(a) COMPLIANCE WITH LAW.—No funds appropriated or otherwise made available under any law may be obligated or expended for any activity which would have the purpose or effect of violating any provision of law enacted pursuant to sections 6 and 8.

(b) CONSTRUCTION.—Nothing in this section prohibits the use of funds to remove the United States Armed Forces from hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances.

SEC. 8. CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTIONS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "joint resolution" means a joint resolution described in section 6(a); and

(2) the term "session days" means days on which the respective House of Congress is in session.

(b) REFERRAL OF RESOLUTIONS.—A joint resolution introduced in the House of Representatives shall be referred to the Committee on Foreign Affairs of the House of Representatives. A joint resolution introduced in the Senate shall be referred to the Committee on Foreign Relations of the Senate.

(c) COMMITTEE ACTION.—(1) If the committee to which is referred a joint resolution has not reported such joint resolution (or an identical joint resolution) at the end of 7 calendar days after its introduction, such committee shall be discharged from further consideration of such joint resolution, and such joint resolution shall be placed on the appropriate calendar of the House involved.

(2) After a committee reports or is discharged from a joint resolution described in section 6(a), no other joint resolution under such section with respect to the same hostilities, or the same situation in which imminent involvement in hostilities is clearly indicated by the circumstances, may be reported by or be discharged from such committee while the first joint resolution is before the respective House of Congress (including remaining on the calendar), a committee of conference, or the President.

(d) CONSIDERATION OF RESOLUTIONS.—(1)(A) When the committee to which a joint resolution is referred has reported, or has been discharged under subsection (c) from further consideration of such joint resolution, notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution and, except as provided in subparagraph (B) of this paragraph or paragraph (2) of this subsection (insofar as it relates to germaneness and relevancy of amendments), all points of order against the joint resolution and consideration of the joint resolution are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall be in order, except that such motion may not be entered for future disposition. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the respective House, to the exclusion of all other business, until disposed of, except as otherwise provided in subsection (e)(1).

(B) Whenever a point of order is raised in the Senate against the privileged status of a joint resolution that has been laid before the Senate and been initially identified as privileged for consideration under this section upon its introduction pursuant to section 6(a), such point of order shall be submitted directly to the Senate. The point of order, "The joint resolution is not privileged under the Collective Security in the Persian Gulf Resolution", shall be decided by the yeas and the nays after four hours of debate, equally divided between, and controlled by, the Member raising the point of order and the manager of the joint resolution, except that in the event the manager is in favor of such point of order, the time in opposition thereto shall be controlled by the Minority Leader or his designee. Such point of order shall not be considered to establish precedent for determination of future cases.

(2)(A) Consideration in a House of Congress of the joint resolution, and all amendments and debatable motions in connection therewith, shall be limited to not more than 12 hours, which, except as otherwise provided in this section, shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader, or by their designees. The Majority Leader or the Minority Leader or their designees may, from the time under their control on the joint resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(B) Only amendments which are germane and relevant to the joint resolution are in order. Debate on any amendment to the joint resolution shall be limited to 2 hours, except that debate on any amendment to an amendment shall be limited to 1 hour. The time of debate for each amendment shall be equally divided between, and controlled by, the mover of the amendment and the manager of the joint resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(C) One amendment by the Minority Leader is in order to be offered under a one-hour time limitation immediately following the expiration of the 12-hour time limitation if the Minority Leader has had no opportunity to offer an amendment to the joint resolution prior thereto. One amendment may be offered to the amendment of the Minority Leader under the preceding sentence, and debate shall be limited on such amendment to one-half hour which shall be equally divided between, and controlled by, the mover of the amendment and the manager of the joint resolution, except that in the event the manager is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(D) A motion to postpone or a motion to recommit the joint resolution is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is in order, except that such motion may not be entered for future disposition, and debate on such motion shall be limited to 1 hour.

(3) Whenever all the time for debate on a joint resolution has been used or yielded back, no further amendments may be proposed, except as provided in paragraph (2)(C), and the vote on the adoption of the joint resolution shall occur without any intervening motion or amendment, except that a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House may occur immediately before such vote.

(4) Appeals from the decisions of the Chair relating to the application of the Rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution shall be limited to one-half hour of debate, equally divided between, and controlled by, the Member making the appeal and the manager of the joint resolution, except that in the event the manager is in favor of any such appeal, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

(e) TREATMENT OF OTHER HOUSE'S RESOLUTION.—(1) Except as provided in paragraph (2), if, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(A) The joint resolution of the other House shall not be referred to a committee.

(B) With respect to a joint resolution of the House receiving the joint resolution—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii)(I) the joint resolution of the other House shall be considered to have been read for the third time; and

(II) the vote on final passage shall be on the joint resolution of the other House, if such joint resolutions are identical, or on the joint resolution of the other House if not identical, with the text of the joint resolution of the first House inserted in lieu of the text of the joint resolution of the second House, and such vote on final passage shall occur without debate or any intervening action.

(C) Upon disposition of the joint resolution received from the other House, it shall no longer be in order to consider the joint resolution originated in the receiving House.

(2) If one House receives from the other House a joint resolution before any such joint resolution is introduced in the first House, then the joint resolution received shall be referred, in the case of the House of Representatives, to the Committee on Foreign Affairs and, in the case of the Senate, to the Committee on Foreign Relations, and the procedures in that House with respect to that joint resolution shall be the same under this section as if the joint resolution received had been introduced in that House.

(f) TREATMENT OF IDENTICAL RESOLUTIONS.—If one House receives from the other House a joint resolution after the first House has disposed of an identical joint resolution, it shall be in order to proceed by nondebatable motion to consideration of the joint resolution received by the first House, and that received joint resolution shall be disposed of without debate and without amendment.

(g) RESOLVING DIFFERENCES BETWEEN HOUSES OF CONGRESS.—(1)(A) The time for debate in a House of Congress on all motions required for the disposition of amendments between the Houses shall not exceed 2 hours, equally divided between, and controlled by, the mover of the motion and the manager of the joint resolution at each stage of the proceedings between the two Houses, except that in the event the manager is in favor of any such motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee. In the case of any disagreement between the two Houses of Congress with respect to a joint resolution which is not resolved, any Member of Congress may make any motion or motions referred to in this subparagraph within 2 session days after action by the second House or before the appointment of conferees, whichever comes first. In the event the conferees are unable to agree within 72 hours after the second House is notified that the first House has agreed to conference, they shall report back to their respective House in disagreement.

(B) Notwithstanding any rule in either House of Congress concerning the printing of conference reports in the Congressional Record or concerning any delay in the consideration of such reports, such report, including a report filed or returned in disagreement, shall be acted on in the House of Representatives and the Senate not later than 2 session days after the first House files the report or, in the case of the Senate acting first, the report is first made available on the desks of the Senators. Debate in a House of Congress on a conference report or a report filed or returned in disagreement on any such joint resolution shall be limited to 3 hours, equally divided between, and controlled by, the Majority Leader and the Minority Leader, and their designees.

(2) If a joint resolution is vetoed by the President, the time for debate in consideration of the veto message on such measure shall be limited to 20 hours in each House of Congress, equally divided between, and controlled by, the Majority Leader and the Minority Leader, and their designees.

(h) EXERCISE OF CONGRESSIONAL RULEMAKING POWERS.—This section is enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(i) SUPERSEDING EXISTING LAW.—The congressional priority procedures of this section shall apply, in lieu of section 1013 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (50 U.S.C. 1546a), with respect to the removal of United States Armed forces from hostilities in the Persian Gulf region.

SEC. 9. DEFINITION.

For purposes of this joint resolution, the term "Persian Gulf region" shall be considered to include areas in or around the Arabian Peninsula.

By Mr. GORE:

S.J. Res. 387. Joint resolution calling on the Government of Malaysia to preserve the tropical rainforests and the indigenous tribal culture of Sarawak, Malaysia, and for other purposes; to the Committee on Foreign Relations.

PRESERVATION OF RAINFORESTS AND TRIBAL CULTURE OF MALAYSIA

Mr. GORE. Mr. President, on the first day of the 101st Congress, I introduced the World Environment Policy Act of 1989, a comprehensive legislative package to protect the world's environment. Earlier this year, the U.S. Senate sponsored the first Interparliamentary Conference on the Global Environment, attended by parliamentarians from 42 nations, which I was proud to Chair.

Today, on what is one of the final days of the 101st Congress, I would like to draw the Senate's attention to a struggle that is going on in the East Malaysian State of Sarawak. It is a struggle that is symbolic of the struggles all around the world, which are being waged to preserve the Earth's environment for the generations to come.

The Penan people of Sarawak, Malaysia, are nomadic hunter-gatherers who have been living self-sufficiently within the Malaysian rainforests for tens of thousands of years.

According to experts, the deforestation rate in Malaysia is perhaps the most rapid in the world—as much as 2 million acres per year. Malaysia currently supplies over 60 percent of the world's raw tropical logs, most of which are exported to Japan.

The heaviest logging is in Sarawak, and the neighboring East Malaysian State of Sabah. Sarawak alone currently supplies about 35 percent of the entire world's raw log exports. Timber companies have been working so fast that they have logged in heavy rains, and in some cases have even used floodlights to conduct logging operations 24 hours-a-day.

The impact of selective logging on the natives and their land is catastrophic, causing a depletion of the resources from which the Penan depend, including wild game, fish, and clean water. In many cases, logging companies have shown great disrespect to these people by bulldozing land used as sacred burial sites.

Despite these and other gross violations, the Penan have responded peacefully by physically blocking bulldozers from entering into their settlement lands. Many have been arrested for their peaceful protests.

They have succeeded in bringing the plight of Sarawak's rainforests and indigenous peoples to world attention.

In recognition of their heroic efforts, the Congressional Human Rights Caucus in cooperation with the Sierra Club and the Congressional

Human Rights Foundation this week has honored them with the Sierra Club's Chico Mendes Award. Like Chico Mendes, who gave his life in an effort to protect the Brazilian rainforests, these individuals have exhibited courage and leadership in the struggle to protect the environment.

The rainforests which are home to the Penan, and which are considered some of the most biologically diverse terrestrial ecosystems on the planet, include remnants of ecosystems which have been continuously evolving over 180 million years.

I commend the bravery of the Penan people in protecting this natural treasure, and I am introducing today a resolution, calling on the Government of Malaysia to preserve the tropical rainforests and the indigenous tribal culture of Sarawak, Malaysia.

Mr. President, I ask that the full text of the resolution be printed in the RECORD.

S.J. RES. 387

Whereas tropical rainforests are disappearing at a rate of 40-50 million acres per year;

Whereas the tropical rainforests of the East Malaysian state of Sarawak, some of the most biologically and culturally diverse rainforests, are being logged at the fastest rate in the world;

Whereas this rate of logging will lead to the disappearance of virtually all primary tropical rainforests in Sarawak within a decade;

Whereas the effects of this logging on the indigenous peoples of Sarawak are causing hunger and suffering, and will lead to the destruction of their traditional cultures if it is not stopped immediately;

Whereas many of these populations face severe discrimination, denial of human rights, loss of cultural and religious freedoms, and in the worst case, cultural or physical destruction;

Whereas one of the most severely impacted tribal groups in Sarawak are the Penan, the last intact nomadic hunting and gathering culture in Southeast Asia;

Whereas commercial logging backed by foreign capital is the driving force behind deforestation in Sarawak;

Whereas most of the logging concessions in Sarawak are distributed in a politically motivated and arbitrary manner, without regard to the socio-ecological consequences;

Whereas most of the timber logged in Sarawak is exported in raw form to Japan and other Asian countries for secondary processing, concentrating wealth from the exports in the hands of a few individuals, and providing no additional income or employment for the people of Sarawak; and

Whereas it is incumbent upon the world community to create an environment favorable to the survival of the rainforests and the cultures dependent upon them. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That it should be the policy of the United States to call upon the government of Malaysia to act immediately in defense of the environment of Sarawak by ending the uncontrolled exploitation of the rainforests of Sarawak, and to formally recognize and uphold the customary land rights and the internationally established human rights of all its indigenous peoples; and

That it should be the policy of the United States to call upon the government of Japan to investigate the activities of certain of that country's private corporations in causing the destruction of the last remaining primary rainforests, and therefore in bringing to an end the culture and ultimately threatening the physical survival of the indigenous peoples of Sarawak.

ADDITIONAL COSPONSORS

S. 1140

At the request of Mr. MITCHELL, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1140, a bill to provide that Federal facilities meet Federal and State environmental laws and requirements and to clarify that such facilities must comply with such environmental laws and requirements.

S. 1355

At the request of Mr. BUMPERS, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1355, a bill to assist private industry in establishing a uniform residential energy efficiency rating system, and for other purposes.

S. 2112

At the request of Mr. METZENBAUM, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 2112, a bill to amend the National Labor Relations Act to prevent discrimination based on participation in labor disputes.

S. 2114

At the request of Mr. KENNEDY, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 2114, a bill to promote excellence in American mathematics, science, and engineering education; enhance the scientific and technical literacy of the American public; stimulate the professional development of scientists and engineers; provide for education, training, and retraining of the Nation's technologists; increase the participation of women and minorities in careers in mathematics, science, and engineering; and for other purposes.

S. 2128

At the request of Mr. KERRY, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 2128, a bill to direct the Secretary of Veterans Affairs to establish and maintain a comprehensive services program for homeless veterans.

S. 2729

At the request of Mr. CHAFEE, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 2729, a bill to amend the Coastal Barrier Resources Act, and for other purposes.

S. 2885

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 2885, a bill to amend the Federal Deposit Insurance Act to require States in which the failure of State chartered savings associations has involved a disproportionately large share of the thrift resolution costs to pay a State thrift deposit insurance premium as a condition of future Federal deposit insurance.

S. 2904

At the request of Mr. INOUYE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2904, a bill to require the Secretary of Commerce to make additional frequencies available for commercial assignment in order to promote the development and use of new telecommunications technologies, and for other purposes.

S. 2979

At the request of Mr. MITCHELL, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 2979, a bill to protect the public from health risks from radiation exposure from low-level radioactive waste, and for other purposes.

S. 3114

At the request of Mr. MACK, the names of the Senator from Montana [Mr. BURNS], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 3114, a bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for qualified cancer screening tests.

S. 3150

At the request of Mr. CHAFEE, his name was added as a cosponsor of S. 3150, a bill to amend the Merchant Marine Act, 1936.

S. 3161

At the request of Mr. BOREN, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 3161, a bill to amend the Internal Revenue Code of 1986 to prohibit the retroactive application of Treasury Department regulations and rulings.

S. 3179

At the request of Mr. SHELBY, the names of the Senator from Alabama [Mr. HEFLIN], the Senator from Montana [Mr. BURNS], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 3179, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

S. 3223

At the request of Mr. BUMPERS, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 3223, a bill to provide for the payment of certain mass transit costs of employees under contracts with the Federal Government, and for other purposes.

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SENATE JOINT RESOLUTION 366

At the request of Mr. COCHRAN, the names of the Senator from Hawaii [Mr. INOUYE] and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of Senate Joint Resolution 366, a joint resolution to designate March 30, 1991, as "National Doctors Day".

SENATE JOINT RESOLUTION 381

At the request of Mr. BURNS, the names of the Senator from Tennessee [Mr. SASSER] and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of Senate Joint Resolution 381, a joint resolution to designate November 2, 1990, as a national day of prayer for members of American military forces and American citizens stationed or held hostage in the Middle East, and for their families.

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. CRANSTON, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Concurrent Resolution 154, a concurrent resolution expressing the sense of the Congress that the crisis created by Iraq's invasion and occupation of Kuwait must be addressed and resolved on its own terms separately from other conflicts in the region.

SENATE RESOLUTION 296

At the request of Mr. ROTH, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Arkansas [Mr. BUMPERS], and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of Senate Resolution 296, a resolution to express the sense of the Senate the support of Taiwan's membership in the General Agreement on Tariffs and Trade.

SENATE RESOLUTION 338

At the request of Mr. SASSER, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of Senate Resolution 338, a resolution expressing the sense of the Senate that the Department of Commerce should utilize the statistical correction methodology to achieve a fair and accurate 1990 Census.

SENATE RESOLUTION 342

At the request of Mr. HOLLINGS, the names of the Senator from Tennessee [Mr. SASSER] and the Senator from Nevada [Mr. REID] were added as cosponsors of Senate Resolution 342, a resolution to change the fast track procedure applicable to an implementing bill for the Uruguay round.

SENATE CONCURRENT RESOLUTION 157—AUTHORIZING DUPLICATE OFFICIAL PAPERS FOR H.R. 4487.

Mr. DOLE (for Mr. KENNEDY, for himself and Mr. HATCH) submitted the following concurrent resolution; which was considered and agreed to (action on agreeing to this concurrent resolution subsequently initiated):

S. CON. RES. 157

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed to prepare and sign official duplicates of the official papers of the bill H.R. 4487 to amend the Public Health Service Act to revise and extend the program for the National Health Service Corps, and to establish certain programs of grants to the States for improving health services in the States.

SENATE CONCURRENT RESOLUTION 158—DIRECTING CORRECTIONS IN THE ENROLLMENT OF H.R. 4739

Mr. NUNN (for himself and Mr. WARNER) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 158

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 4739) to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 101(e)—

(A) strike out "$2,526,884,000" and insert in lieu thereof "$2,541,884,000"; and

(B) strike out "$1,103,747,000" and insert in lieu thereof "$1,118,747,000".

(2) In sections 151(a), 152(a), and 211(a), insert "authorized to be" before "appropriated".

(3) In section 217(d)—

(A) insert "(1)" before "The Secretary of Defense"; and

(B) at the end of subsection (d)(1) add the following: "The amount of the limitation in subsection (c) shall be increased by any amount so transferred.".

(4) In section 242(a), strike out "by the Secretary of Defense" and insert in lieu thereof "to the Secretary of Defense".

(5) In section 1405(a)—

(A) insert "(1)" before "Subchapter IV";

(B) insert "(other than section 1558)" after "United States Code"; and

(C) in paragraph (2), strike out "the sections of that subchapter" and insert in lieu thereof "sections 1551 through 1557"; and

(6) In section 1405(b)(7), insert "or paragraph (6)" after "under paragraph (4)".

(7) In section 1408, strike out "$300,000" and insert in lieu therof "$1,000,300,000".

(8) In section 1519(d)(2)—

(A) strike out "the Naval Home and"; and

(B) add at the end the following new sentence: "Beginning on October 1, 1991, funds required for the operation of the Naval Home shall be drawn from the account of the Naval Home.".

(9) In section 6 of the Export Administration Act of 1979 (as proposed to be added by section 1702(a) of the bill)—

(A) strike out "5(a)(4)(D)" in paragraphs (1), (2), and (3) and insert in lieu thereof "5(b)(2)(C)"; and

(B) strike out "which the Secretary of State has determined under subsection (j) has" in subsection (1)(3)(B) and insert in lieu thereof "the government of which has been determined under subsection (j) to have".

(10) In section 11B(c) of the Export Administration Act of 1979 (as proposed to be added by section 1702(b) of the bill), insert "and subsection (k) and (l) of section 6" after "For purposes of this section".

(11) In section 4303(a)(2), strike out "September 30, 1990" and insert in lieu thereof "September 30, 1991".

SENATE RESOLUTION 345—ORIGINAL RESOLUTION REPORTED COMMENDING HUGH C. EVANS FOR HIS SERVICE TO THE SENATE

Mr. NUNN, from the Committee on Armed Services, reported the following original resolution; which was considered and agreed to:

S. RES. 345

Whereas Hugh C. Evans, the Deputy Legislative Counsel of the United States Senate, is retiring after more than 36 years of service in the Office of the Legislative Counsel of the Senate;

Whereas Hugh C. Evans has served as the Deputy Legislative Counsel of the Senate for the last 11 years;

Whereas Hugh C. Evans has been responsible for the drafting of national security legislation for the Office of the Legislative Counsel for his entire career;

Whereas Hugh C. Evans was responsible for many years for the drafting of civil service legislation, agriculture legislation, and veterans' benefits legislation for the Office of the Legislative Counsel; and

Whereas Hugh C. Evans has unfailingly served the legislative drafting needs of the United States Senate withe xemplary professionalism, skill, and dedication for the entire span of his career: Now, therefore, be it

Resolved, That the United States Senate—

(1) expresses its gratitude to Hugh C. Evans for his over 36 years of faithful and exemplary service as a counsel in the Office of the Legislative Counsel of the Senate, including his more than 11 years of service as Deputy Legislative Counsel; and

(2) commends Hugh C. Evans for the superlative quality of his service.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Hugh C. Evans.

SENATE RESOLUTION 346—AUTHORIZING PRODUCTION OF DOCUMENTS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. FOWLER (for Mr. MITCHELL, for himself, and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 346

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation into allegations of fraud and other wrongdoing in federal student loan programs;

Whereas, the Office of the Auditor General of the State of California has requested access to records of the Subcommittee's in-

vestigation for use in an audit that it is conducting;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate are needful for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide to the Office of the Auditor General of the State of California records of the Subcommittee's investigation of allegations of fraud and other wrongdoing in federal student loan programs.

SENATE RESOLUTION 347—AUTHORIZATION TO PAY THE EXPENSES OF THE CAMPAIGN FINANCE REFORM PANEL

Mr. FOWLER (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 347

Resolved, That the first sentence of section 2 of Senate Resolution 248, agreed to February 22, 1990 (101st Congress, 2nd Session), is amended by inserting before the period the following: "and any reasonable and necessary expenses for official reception and representation and any reasonable and necessary administrative expenses incurred by the Campaign Finance Reform Panel in carrying out its responsibilities under this resolution".

AMENDMENTS SUBMITTED

FALLON PAIUTE SHOSHONE INDIAN TRIBES WATER RIGHTS SETTLEMENT ACT

REID AMENDMENT NO. 3176

Mr. FOWLER (for Mr. REID) proposed an amendment to the bill (S. 3084) to provide for the settlement of water rights claims of the Fallon Paiute Shoshone Indian Tribes, and for other purposes, as follows:

On page 17, line 19, insert the following new subsection (f):

"(f)(1) the tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this title effect an unlawful taking of their rights. Provided that:

(i) the United States shall defend and resist any such claims at its own expense;

(ii) the tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

(iii) the United States shall not compromise or settle any such claims without the consent of the tribes.

(2) The provisions of this section shall not be construed as:

(i) implying that section 103(C) unlawfully takes any water rights;

(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

(iii) waiving any immunities of the United States or the tribes; or

(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights".

HYDROGEN RESEARCH AND DEVELOPMENT PROGRAM

WIRTH (AND OTHERS) AMENDMENT NO. 3177

Mr. FOWLER (for Mr. WIRTH, for himself, Mr. ROCKEFELLER, and Mr. MCCLURE) proposed an amendment to the bill (H.R. 4521) to establish a hydrogen research and development program, as follows:

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE.—This Act, together with the following table of contents, may be cited as the "Electric Vehicle Technology Development and Demonstration Act of 1990".

SEC. 2. TABLE OF CONTENTS.—

Sec. 1. Short Title.
Sec. 2. Table of Contents.
Sec. 3. Findings.
Sec. 4. Definitions.
Sec. 5. Identification of Nonattainment Areas.
Sec. 6. Applications From Manufacturers.
Sec. 7. Selection of Manufacturers.
Sec. 8. Discounts to Purchasers.
Sec. 9. Reports to Congress.
Sec. 10. Authorization.

SEC. 3. FINDINGS.—The Congress finds that:

(1) electric vehicles may be recharged primarily during times of nonpeak use of electricity, which will permit the most efficient utilization of electrical generating producers of electricity, and improve the quality of air;

(2) the development, demonstration, and commercialization of electric vehicles in the United States will enhance the energy security of the United States and will encourage electric vehicle production in the United States;

(3) the use of electric vehicles rather than vehicles powered by conventionally fueled internal combustion engines could significantly improve the quality of air by allowing areas of the country that have not attained a quality of air that meets minimum health standards to meet such standards;

(4) because initial production of electric vehicles will not have economies of scale associated with mass production, the price to a user or owner may be so high as to discourage vehicle purchase and use; and

(5) because the substantial potential environmental and domestic energy security benefits that will result from the commercialization of electric vehicles are so great for the United States, it is in the public interest for the United States Government to assist in the development, demonstration, and commercialization of domestically produced, cost competitive, electric vehicles.

SEC. 4. DEFINITIONS.—For purposes of this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "conventionally fueled vehicle" means a vehicle powered by an internal combustion engine that utilizes gasoline or diesel fuel as its fuel source;

(3) "electric vehicle" means a vehicle powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and that may include a nonelectrical source of power designed to charge batteries and components;

(4) "eligible nonattainment area" means a nonattainment area that the Secretary designates as an eligible nonattainment area under section 5(b);

(5) "life cycle costs" means all costs associated with the purchase, operation, maintenance, and disposal of a vehicle; and

(6) "nonattainment area" means a nonattainment area identified by the Administrator pursuant to section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

SEC. 5. IDENTIFICATION OF NONATTAINMENT AREAS.—(a) The Secretary, in consultation with the Administrator, shall identify, not later than thirty days after the date of the enactment of this Act, the nonattainment area in the United States in which the use of conventionally fueled vehicles contributes significantly to that nonattainment and in which the use of electric vehicles could contribute to attainment of applicable National Ambient Air Quality Standards.

(b) The Secretary, after consultation with the Administrator and not later than thirty days after notification of the nonattainment areas identified under subsection (a), shall designate nonattainment areas eligible to participate in the program authorized by this Act. Geographical diversity shall be among the factors to be considered by the Secretary in making such designations.

SEC. 6. APPLICATIONS FROM MANUFACTURERS.—(a) Not later than thirty days after the Secretary designated the eligible nonattainment areas under section 5(b), the Secretary shall make an initial request for applications from manufacturers to develop, demonstrate, certify, manufacture, sell, warranty, and service electric vehicles in one or more eligible nonattainment areas. Additional requests for applications may be made if the Secretary determines that the responses to the initial request are inadequate.

(b) The request for applications shall require a manufacturer to identify the following:

(1) Sales Area—Any eligible nonattainment area in which the electric vehicles will be sold;

(2) Quantity—The quantity of vehicles that will be available for sale in each area;

(3) Distribution—The dealership network or other means to be used by a manufacturer to distribute, market, and sell vehicles;

(4) Type—The type of vehicle (which may include light to medium duty cargo or passenger vehicles);

(5) Characteristics—The specifications and performance characteristics of each vehicle;

(6) Service—The maintenance and other support services that will be available to a purchaser;

(7) Price—The selling price of a manufacturer for varying volumes of production of each type of vehicle;

(8) Life Cycle Costs—Information regarding the life cycle costs, including projected costs of operating and maintaining an electric vehicle in comparison with operating and maintaining a conventionally fueled vehicle;

(9) State and Local Involvement—The level of involvement (cost-sharing or otherwise), if any, that state or local government entities will have in the manufacturer's proposal, and how that involvement will affect the level of Federal cost-sharing required; and

(10) Other—Other information that the Secretary deems necessary.

SEC. 7. SELECTION OF MANUFACTURERS.—(a) After consulting with the Secretary of Commerce, the Secretary of Transportation, and the Administrator, and not later than one hundred eighty days after the initial request for applications is made under section 6, the Secretary may select one or more manufacturers eligible to receive reimbursement payments for the development, demonstration, manufacture, and sale of electric vehicles.

(b) The Secretary shall select a manufacturer based upon the overall quality of the proposal, including the following:

(1) Capability—The ability of a manufacturer, directly or indirectly, to develop, demonstrate, manufacture, distribute, sell and service a significant number of electric vehicles;

(2) Geographic Diversity—The commitment of the manufacturer to distribute, sell and service electric vehicles in various regions of the country;

(3) Suitability—The suitability of the vehicles for use as a cargo or passenger vehicle;

(4) Safety and Environmental Benefit—The quality of the vehicle with respect to safety and environmental considerations;

(5) Viability—The long-term technical viability of the vehicle, and the ability of the manufacturer to incorporate subsequent advancements, modifications, and technology;

(6) Life Cycle Cost Reduction—The ability and commitment of a manufacturer to reduce the life cycle costs of electric vehicles over a period of five years or less after selection to a level at least equal to comparable conventionally fueled vehicles;

(7) Price—The selling price of a manufacturer for varying volumes of production of vehicles, the proposed discount (as defined in section 8), and life cycle costs of the electric vehicles;

(8) State and Local Support—The extent to which the involvement of state or local government in the program will permit the reduction of the Federal cost share per vehicle to be supported or will otherwise be used to leverage the Federal cost-sharing to be provided among a greater number of vehicles; and

(9) Other—Other criteria that the Secretary deems necessary.

SEC. 8. DISCOUNTS TO PURCHASERS.—(a) A manufacturer selected by the Secretary shall offer a purchaser a discount equal to either:

(1) Life Cycle Cost Differential—An amount which represents the excess of the estimated life cycle costs of the electric vehicle over the life cycle costs of a conventionally fueled vehicle of comparable type; or

(2) Purchase Price Cost Differential—An amount by which the selling price of the electric vehicle exceeds the suggested retail price of a conventionally fueled vehicle of comparable type.

In no case shall the discount be greater than 50 per centum of the selling price by varying volumes of production.

(b) The Secretary, not later than thirty days after a manufacturer has provided notice in the form and manner specified by the Secretary of the sale of an electric vehicle, shall pay a manufacturer a payment not to exceed the discount for each electric vehicle sold.

(c) To be eligible for payment under subsection (b), a manufacturer shall certify to the Secretary the following:

(1) Purchaser Discount Limitation—The discount to the purchaser does not lower the selling price of each electric vehicle below the suggested retail price of a conventionally fueled vehicle of comparable type;

(2) Discount Passthrough—The actual selling price of the vehicle is equal to the selling price specified in the manufacturer's proposal to the Secretary reduced by the full amount of the discount received, calculated as specified above, unless the Secretary agrees to a request by the manufacturer to adjust the selling price as specified in the contract to reflect higher costs actually incurred in production;

(3) Nonattainment Area Use—The vehicle will be used primarily in the eligible nonattainment area in which the vehicle will be purchased;

(4) Information From Purchaser—The purchaser has agreed to provide the manufacturer with information regarding operation, maintenance, and usability of the vehicle for five years after purchase; and

(5) Information From Manufacturer—The manufacturer will provide such information regarding the development, demonstration, manufacture, sale, and maintenance of electric vehicles that the Secretary requests for a period of five years, beginning in fiscal year 1992.

(d) The Secretary may enter into contracts with manufacturers of electric vehicles for purposes of carrying out this Act.

SEC. 9. REPORTS TO CONGRESS.—The Secretary shall report to Congress in fiscal years 1992 and 1994 on the programs and projects supported under this Act and the progress being made toward accomplishing the goals of this Act.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of this Act $10,000,000 for each of the five fiscal years following the date of enactment of this Act.

Amend the title so as to read: "Electric Vehicle Technology Development and Demonstration Act of 1990.".

FASTENER QUALITY ACT

GORE (AND OTHERS) AMENDMENT NO. 3178

Mr. FOWLER (for Mr. GORE, for himself, Mr. LUGAR, and Mr. WILSON) proposed an amendment to the bill (H.R. 3000) to require that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured, to provide for accreditation of laboratories engaged in fastener testing, to require inspection, testing, and certification, in accordance with standardized methods, of fasteners used in critical applications to increase fastener quality and reduce the danger of fastener failure, and for other purposes, as follows:

On page 27, immediately before the period on line 25, insert "; unless the Secretary finds that, as to a specific type of fastener and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with the accredited laboratory would increase the protection of health and safety of the public or industrial workers".

On page 36, lines 4 through 11, strike all and insert in lieu thereof the following:

(e) COMMINGLING.—(1) Subject to paragraph (2), it shall be unlawful for any manufacturer of any person who purchases any quantity of fasteners for resale at wholesale to commingle like fasteners from different lots in the same container; except that such manufacturer or such person may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations, provided that any container which contains like fasteners from two lots shall be conspicuously marked with the lot identification numbers of both lots.

(2) Paragraph (1) does not apply to sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturers.

On page 38, line 6, through page 39, line 4, strike all and insert in lieu thereof the following:

(b) CIVIL PENALTIES.—(1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or any regulation under this Act shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary

may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

NATIONAL FOREST FOUNDATION ACT

DOMENICI AMENDMENT NO. 3179

Mr. GRASSLEY (for Mr. DOMENICI) proposed an amendment to the bill (S. 2385) to establish the National Forest Foundation, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Forest Foundation Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia.

(b) PURPOSES.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;

(2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and

(3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

(c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. 3. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to natural and cultural resource issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this title, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individual employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subtitle, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subtitle.

(h) OFFICERS AND EMPLOYEES.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. 4. CORPORATE POWERS AND OBLIGATIONS.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) POWERS.—To carry out its purposes, the Foundation shall have, in addition to powers otherwise authorized under this title, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(3) PROPERTY.—(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exchange. For the purposes of this title, an interest in real property shall include, but not be limited to, mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or request may be accepted by the Foundation even through it is encumbered, restricted, or subject to beneficial interests or private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this title shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

SEC. 5. ADMINISTRATIVE SERVICES AND SUPPORT.

(a) STARTUP FUNDS.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative and other startup expenses, the Secretary is authorized to provide to the Foundation $500,000, from funds appropriated pursuant to section 10(a), per year for the two years following the date of enactment of this title. Such funds shall remain available to the Foundation until they are expended for authorized purposes.

(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this title, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section 10(b) of this title including reimbursement of expenses under section 3, not to exceed then current Federal Government per diem rates.

(c) ADMINISTRATIVE EXPENSES.—At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations on such terms and conditions as the Secretary shall establish.

SEC. 6. VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147).

SEC. 7. AUDITS AND REPORTS REQUIREMENTS.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) ANNUAL REPORTS.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. 8. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, act or omissions of the Foundation or shall the full faith and credit of the United States extend to any obligations of the Foundation.

SEC. 9. ACTIVITIES OF THE FOUNDATION AND UNITED STATES FOREST SERVICE.

The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section 5(a) of this title, there are authorized to be appropriated $1,000,000.

(b) MATCHING FUNDS.—For the purposes of section 5(b) of this title, during the five-year period following the date of the enactment of this title, there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

INTERNATIONAL NARCOTICS CONTROL ACT

HELMS AMENDMENT NO. 3180

Mr. GRASSLEY (for Mr. HELMS) proposed an amendment to the bill (H.R. 5567) to authorize international narcotics control activities for fiscal year 1991, and for other purposes, as follows:

Sec. 17(b) is amended by striking "strongly".

HATCH AMENDMENT NO. 3181

Mr. GRASSLEY (for Mr. HATCH) proposed an amendment to the bill H.R. 5567, supra, as follows:

On page 14, strike beginning with line 23 through line 13 on page 15.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

SPECTER (AND HEINZ) AMENDMENT NO. 3182

Mr. SPECTER (for himself and Mr. HEINZ) made a motion that the Senate concur in the amendment of the House to the amendment of the Senate numbered 4 to the bill (H.R. 5229) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1991, and for other purposes, as follows:

At the end of amendment numbered 4 reported in technical disagreement, insert the following:

"Notwithstanding any other provision of this Act, except section 333 of this Act, the Secretary of Transportation shall not reduce the obligation limitation allocated to Pennsylvania for Federal-aid highways and highway safety construction programs for fiscal year 1991.".

COASTAL BARRIERS RESOURCES ACT AUTHORIZATION

CHAFEE (AND BURDICK) AMENDMENT NO. 3183

Mr. CHAFEE (for himself and Mr. BURDICK) proposed an amendment to the bill (H.R. 2840) to reauthorize the Coastal Barriers Resources Act, and for other purposes, as follows:

H.R. 2840, as amended, is amended as follows:

On page 2, strike lines 9-13 and insert in lieu thereof the following new paragraph:

"(2) CONFORMING AMENDMENTS.—Section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) is amended—

"(A) in subsection (a), by striking "Coastal Barrier Resources".

"(B) in subsection (b)(1), by striking "of the enactment of this Act" and inserting in lieu thereof "on which the relevant System unit or portion of the System unit was included within the System under this Act or the Coastal Barrier Improvement Act of 1990".

"(C) at the end of subsection (b)(2), by striking "of enactment".

At the end of Section 2, add the following new subsection:

"(c) OTHERWISE PROTECTED AREAS.—Section 3(1) of the Act (16 U.S.C. 3502(1)) is amended—

(1) by striking "(i)" immediately before "contain few"; and

(2) by inserting a period immediately following "ecological processes" and striking the balance of the sentence.".

On page two, line 24, strike "June 20" and insert in lieu thereof "October 24".

On page 4, line 16, insert "(1)" before "Not".

On page 4, line 18, strike "(1)" and insert in lieu thereof "(A)".

On page 4, line 23, strike "(2)" and insert in lieu thereof "(B)".

On page 5, at the end of subsection 4(b), add the following new paragraph:

"(2) If, in the case of any minor and technical modification to the boundaries of System units made under the authority of subsection (d) of this section, an appropriate chief executive officer of a State, county or equivalent jurisdiction, or State coastal zone management agency to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, or if the Secretary fails to adopt a modification pursuant to a proposal submitted by an appropriate State coastal zone management agency under paragraph (1) of this subsection, the Secretary shall submit to the chief executive officer a written justification for the failure to make modifications consistent with such comments or proposals.".

On page 5, line 10, strike "area of qualified" and insert in lieu thereof "undeveloped", and insert "not included within the System;" after "barrier" and before "and".

On page 5, strike lines 11-14.

On page 5, line 15, strike "coastal zone management agency" and insert in lieu thereof "Governor".

On page 5, lines 16 and 17, strike everything after "located" and before the semicolon.

On page 5, line 18, strike "the area of qualified coastal barrier" and insert in lieu thereof "those undeveloped coastal barriers not included within the System".

On page 5, line 22, strike "a State coastal zone management agency" and insert in lieu thereof "the Governor of any State".

On page 5, line 20, strike "1 year" and insert in lieu thereof "18 months".

On page 6, lines 16 and 17, strike "State coastal zone management agency" and insert in lieu thereof "Governor of a State".

On page 6, line 21, strike "(d)" and insert in lieu thereof "(e)".

On page 6, line 22, add the following new subsection:

"(d) ADDITION OF EXCESS FEDERAL PROPERTY.—

(1) CONSULTATION AND DETERMINATION.—Prior to transfer or disposal of excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.S 471 et seq.) that may be an undeveloped coastal barrier, the Administrator of General Services shall consult with and obtain from the Secretary a determination as to whether and what portion of the property constitutes an undeveloped coastal barrier. Not later than one hundred and eighty days

after the initiation of such consultation, the Secretary shall make and publish notice of such determination. Immediately upon issuance of a positive determination, the Secretary shall—

(A) prepare a map depicting the undeveloped coastal barrier portion of such property; and

(B) shall publish in the Federal Register notice of the addition of such property to the System.

(2) EFFECTIVE DATE OF INCLUSION.—An area to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under subsection (d)(1)(B) with respect to that area.

(3) REVISION OF MAPS.—As soon as practicable after the date on which a unit is added to the System under subsection (d)(2), the Secretary shall revise the maps referred to in section 4(a) of the Act (as amended by section 3 of this Act) to reflect each such addition.".

On page 6, line 22, strike "(d)" and insert in lieu thereof "(e)".

On page 6, line 24, strike "18 months" and insert in lieu thereof "2 years".

On page 7, lines 15 and 16, strike "State coastal zone management agency" and insert in lieu thereof "Governor of a State".

On page 8, line 3, strike "(e)" and insert in lieu thereof "(f)".

On page 8, line 7, strike "State coastal zone management" and insert in lieu thereof "Governor of a State".

On page 8, line 9, insert "or of an addition to the System pursuant to subsection (d)," after "(c)," and before "the Secretary".

On page 11, lines 14 and 15, strike "of the enactment of the Coastal Barrier Improvement Act of 1990" and insert in lieu thereof "on which the relevant System unit or portion of the System unit was included within the System".

On page 14, strike lines 16-25, and on page 15, strike lines 1-10, and insert in lieu thereof the following new paragraph:

"(2) PREPARATION AND SUBMISSION OF MAPS.—

(A) As soon as practicably after the date of the enactment of this Act, the Secretary shall prepare maps identifying the boundaries of those undeveloped coastal barriers (as that term is defined in section 3(1) of the Coastal Barrier Resources Act) (16 U.S.C. 3502(1)) of the United States bordering the Pacific Ocean south of 49 degrees north latitude.

(B) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Environment and Public Works of the Senate maps identifying the boundaries of those undeveloped coastal barriers of the United States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System."

On page 20, line 8, insert "an" after "is" and before "oth-", and on line 9, insert "area" after "protected" and before the period.

On page 24, strike lines 24 and 25, and on page 25, strike lines 1-2, and insert the following:

"(1) the term "undeveloped coastal barrier" means—

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that—

(i) is subject to wave, tidal, and wind energies, and

(ii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and near shore waters;

but only if such features and associated habitats contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes.

(2) the term "otherwise protected area" means an undeveloped coastal barrier within the".

On page 25, line 7, strike "(2)" and insert in lieu thereof "(3)".

On page 25, line 10, strike "(3)" and insert in lieu thereof "(4)".

On page 25, line 12, strike "(4)" and insert in lieu thereof "(5)".

At the end of the H.R. 2840, add the following new sections:

"SEC. . CERTIFICATION OF COMPLIANCE.

Section 7 of the Coastal Barrier Resources Act (16 U.S.C. 3506) is amended to read as follows:

"SEC. 7. CERTIFICATION OF COMPLIANCE.

"(a) REGULATIONS.—Not later than twelve months after the date of enactment of the Coastal Barrier Improvement Act of 1990, the head of each Federal agency affected by this Act shall promulgate regulations to assure compliance with the provisions of this Act.

"(b)" CERTIFICATION.—The head of each Federal agency affected by this Act shall report and certify that each such agency is in compliance with the provisions of this Act. Such reports and certifications shall be submitted annually to the Committees and the Secretary.".

"SEC. . DARE COUNTY, NORTH CAROLINA TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina all rights, title, and interest of the United States in Coast Guard property and improvements located on the northern end of Pea Island east side of State road 1257, 0.3 miles north of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.".

NONINDIGENOUS AQUATIC NUISANCE SPECIES ACT

BURDICK AMENDMENT NO. 3184

Mr. BREAUX (for Mr. BURDICK) proposed an amendment to the bill (S. 2244) to prevent and control infestations of the coastal and inland waters of the United States by the zebra mussel, and other nonindigenous aquatic nuisance species, as follows:

Strike all after the enacting clause and insert the following:

"TITLE I—AQUATIC NUISANCE PREVENTION AND CONTROL

"Subtitle A—General Provisions

"SECTION 1001. SHORT TITLE.

"This title may be cited as the "Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990".

"SEC. 1002. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that—

"(1) the discharge of untreated water in the ballast tanks of vessels and through other means results in unintentional introductions of nonindigenous species to fresh, brackish, and saltwater environments;

"(2) when environmental conditions are favorable, nonindigenous species, such as the zebra mussel (*Dreissena polymorpha*), become established and may disrupt the aquatic environment and economy of affected coastal areas;

"(3) the zebra mussel was unintentionally introduced into the Great Lakes and, if left uncontrolled, is expected to infest over two-thirds of the continental United States through the unintentional transportation of larvae and adults by vessels operating in inland waters; and

"(4) the potential economic disruption to communities affected by the zebra mussel due to its colonization of water pipes, boat hulls and other hard surfaces has been estimated at $5,000,000,000 by the year 2000, and the potential disruption to the diversity and abundance of native fish and other species could be severe.

"(b) PURPOSES.—The purposes of this Act are—

"(1) to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements;

"(2) to coordinate federally conducted, funded or authorized research, prevention, control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species;

"(3) to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange;

"(4) to understand and minimize economic and ecological impacts of nonindigenous aquatic nuisance species that become established, including the zebra mussel; and

"(5) to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels.

"SEC. 1003. DEFINITIONS.

"As used in this Act, the term—

"(1) "appropriate Committees" means the Committee on Merchant Marine and Fisheries in the House of Representatives and the Committee on Environment and Public Works and Committee on Commerce, Science, and Transportation in the Senate; and

"(2) "aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters;

"(3) "Assistant Secretary" means the Assistant Secretary of the Army (Civil Works);

"(4) "ballast water" means any water and associated sediments used to manipulate the trim and stability of a vessel;

"(5) "Director" means the Director of the United States Fish and Wildlife Service;

"(6) "exclusive economic zone" means the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983, and the equivalent zone of Canada;

"(7) "environmentally sound" methods, efforts, actions or programs means methods, efforts, actions or programs to prevent introductions or control infestations of aquat-

ic nuisance species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on non-target organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures;

"(8) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

"(9) "nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another;

"(10) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

"(11) "Task Force" means the Aquatic Nuisance Species Task Force established under section 1201 of this Act;

"(12) "territorial sea" means the belt of the sea measured from the baseline of the United States determined in accordance with international law, as set forth in Presidential Proclamation Number 5928, dated December 27, 1988;

"(13) "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere;

"(14) "waters of the United States" means the navigable waters and the territorial sea of the United States; and

"(15) "unintentional introduction" means an introduction of nonindigenous species that occurs as the result of activities other than the purposeful or intentional introduction of the species involved, such as the transport of nonindigenous species in ballast or in water used to transport fish, mollusks or crustaceans for aquaculture or other purposes.

"Subtitle B—Prevention of Unintentional Introductions of Aquatic Nuisance Species

"SEC. 1101. AQUATIC NUISANCE SPECIES IN THE GREAT LAKES.

"(a) GUIDELINES.—(1) Not later than 6 months after the date of enactment of the Act, the Secretary shall issue voluntary guidelines to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ballast water of vessels prior to entering those waters.

"(2) The guidelines issued under this subsection shall—

"(A) ensure to the maximum extent practicable that ballast water containing aquatic nuisance species is not discharged into the Great Lakes;

"(B) protect the safety of each vessel, its crew, and passengers;

"(C) take into consideration different vessel operating conditions; and

"(D) be based on the best scientific information available.

"(3) Within 12 months after the date of enactment of this Act, the Secretary shall carry out education and technical assistance programs and other measures to encourage compliance with the guidelines issued under this subsection.

"(b) AUTHORITY OF SECRETARY.—(1) Within 24 months after the date of enactment of this Act, the Secretary, in consultation with the Task Force, shall issue regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels.

"(2) The regulations issued under this subsection shall—

(A) require all vessels that carry ballast water and enter a United States port on the Great Lakes after operating on the waters beyond the exclusive economic zone;

"(B) require a vessel to—

"(i) carry out exchange of ballast water on the waters beyond the exclusive economic zone prior to entry into any port within the Great Lakes;

"(ii) carry out an exchange of ballast water in other waters where the exchange does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States, as recommended by the Task Force under section 1102(a)(1); or

"(iii) use environmentally sound alternative ballast water management methods if the Secretary determines that such alternative methods are as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species.

"(C) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) provide for sampling procedures to monitor compliance with the requirements of the regulations;

"(E) prohibit the operation of a vessel in the Great Lakes if the master of the vessel has not certified to the Secretary or the Secretary's designee by not later than the departure of that vessel from the first lock in the St. Lawrence Seaway that the vessel has complied with the requirements of the regulations;

"(F) request the Secretary of the Treasury to withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) of a vessel, the owner or operator of which is in violation of the regulations;

"(G) protect the safety of each vessel, its crew, and passengers;

"(H) take into consideration different vessel operating conditions; and

"(I) be based on the best scientific information available.

"(c) CIVIL PENALTIES.—Any person who violates the regulations issued under subsection (b) shall be liable for a civil penalty in an amount not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable for any civil penalty assessed under this subsection for that violation.

"(d) CRIMINAL PENALTIES.—Any person who knowingly violates the regulations issued under subsection (b) is guilty of a class C felony.

"(e) CONSULTATION WITH CANADA.—In developing the guidelines and regulations, the Secretary is encouraged to consult with the Government of Canada to develop an effective international program for preventing the introduction and spread of aquatic nuisance species in the Great Lakes from the ballast water of vessels.

"SEC. 1102. NATIONAL BALLAST WATER CONTROL PROGRAM.

"(a) STUDIES ON INTRODUCTION OF AQUATIC NUISANCE SPECIES BY VESSELS.—

"(1) BALLAST EXCHANGE STUDY.—The Task Force shall conduct a study—

"(A) to assess the environmental effects of ballast water exchange on the diversity and abundance of native species in receiving estuarine, marine and fresh waters of the United States; and

"(B) to identify areas within the waters of the United States and the exclusive economic zone, if any, where the exchange of ballast water does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States.

"(2) BIOLOGICAL STUDY.—The Task Force shall conduct a study to determine whether aquatic nuisance species threaten the ecological characteristics and economic uses of waters of the United States other than the Great Lakes.

"(3) SHIPPING STUDY.—The Secretary shall conduct a study to determine the need for controls on vessels entering waters of the United States, other than the Great Lakes, to minimize the risk of unintentional introduction and dispersal of aquatic nuisance species in those waters. The study shall include an examination of—

"(A) the degree to which shipping may be a major pathway of transmission of aquatic nuisance species in those waters;

"(B) possible alternatives for controlling introduction of those species through shipping; and

"(C) the feasibility of implementing regional versus national control measures.

"(b) CONSULTATION.—The Secretary and the Task Force shall cooperate in conducting their respective studies under this section.

"(c) REPORTS.—

"(1) BALLAST EXCHANGE.—Not later than 18 months after the date of enactment of this Act and prior to the effective date of the regulations issued under section 1101(b), the Task Force shall submit a report to the appropriate Committees that presents the results of the study required under subsection (a)(1) and makes recommendations with respect to such regulations.

"(2) BIOLOGICAL AND SHIPPING STUDIES.—Not later than 18 months after the date of enactment of this Act, the Secretary and the Task Force shall each submit to the appropriate Committees a report on the results of their respective studies under paragraphs (2) and (3) of subsection (a).

"(d) NEGOTIATIONS.—The Secretary, working through the International Maritime Organization, is encouraged to enter into negotiations with the governments of foreign countries concerning the planning and implementation of measures aimed at the prevention and control of unintentional introductions of aquatic nuisance species in coastal waters.

"Subtitle C—Prevention and Control of Aquatic Nuisance Species

"SEC. 1201. ESTABLISHMENT OF TASK FORCE.

"(a) TASK FORCE.—There is hereby established an "Aquatic Nuisance Species Task Force".

"(b) MEMBERSHIP.—Membership of the Task Force shall consist of—

"(1) the Director;

"(2) the Under Secretary;

"(3) the Administrator of the Environmental Protection Agency;

"(4) the Commandant of the United States Coast Guard;

"(5) the Assistant Secretary; and

"(6) the head of any other Federal agency that the chairpersons designated under subsection (d) deem appropriate.

"(c) EX OFFICIO MEMBERS.—The chairpersons designated under subsection (d) shall invite representatives of the Great Lakes Commission and State agencies and other

governmental entities to participate as ex officio members of the Task Force.

"(d) CHAIRPERSONS.—The Director and the Under Secretary shall serve as co-chairpersons of the Task Force and shall be jointly responsible, and are authorized to undertake such activities as may be necessary, for carrying out this subtitle in consultation and cooperation with the other members of the Task Force.

"(e) MEMORANDUM OF UNDERSTANDING.—Within six months of the date of enactment of this Act, the Director and the Under Secretary shall develop a memorandum of understanding that describes the role of each in jointly carrying out this subtitle.

"(f) COORDINATION.—Each Task Force member shall coordinate any action to carry out this subtitle with any such action by other members of the Task Force, and regional, State and local entities.

"SEC. 1202. AQUATIC NUISANCE SPECIES PROGRAM.

"(a) IN GENERAL.—The Task Force shall develop and implement a program for waters of the United States to prevent introduction and dispersal of aquatic nuisance species; to monitor, control and study such species; and to disseminate related information.

"(b) CONTENT.—The program developed under subsection (a) shall—

"(1) identify the goals, priorities, and approaches for aquatic nuisance species prevention, monitoring, control, education and research to be conducted or funded by the Federal Government;

"(2) describe the specific prevention, monitoring, control, education and research activities to be conducted by each Task Force member;

"(3) coordinate aquatic nuisance species programs and activities of Task Force members and affected State agencies;

"(4) describe the role of each Task Force member in implementing the elements of the program as set forth in this subtitle.

"(5) include recommendations for funding to implement elements of the program; and

"(6) develop a demonstration program of prevention, monitoring, control, education and research for the zebra mussel, to be implemented in the Great Lakes and any other waters infested, or likely to become infested in the near future, by the zebra mussel.

"(c) PREVENTION.—

"(1) IN GENERAL.—The Task Force shall establish and implement measures, within the program developed under subsection (a), to minimize the risk of introduction of aquatic nuisance species to waters of the United States, including—

"(A) identification of pathways by which aquatic organisms are introduced to waters of the United States;

"(B) assessment of the risk that an aquatic organism carried by an identified pathway may become an aquatic nuisance species; and

"(C) evaluation of whether measures to prevent introductions of aquatic nuisance species are effective and environmentally sound.

"(2) IMPLEMENTATION.—Whenever the Task Force determines that there is a substantial risk of unintentional introduction of an aquatic nuisance species by an identified pathway and that the adverse consequences of such an introduction are likely to be substantial, the Task Force shall, acting through the appropriate Federal agency, and after an opportunity for public comment, carry out cooperative, environmentally sound efforts with regional, State and local entities to minimize the risk of such an introduction.

"(d) MONITORING.—The Task Force shall establish and implement monitoring measures, within the programs developed under subsection (a), to—

"(1) detect unintentional introductions of aquatic nuisance species;

"(2) determine the dispersal of aquatic nuisance species after introduction; and

"(3) provide for the early detection and prevention of infestations of aquatic nuisance species in unaffected drainage basins.

"(e) CONTROL.—

"(1) IN GENERAL.—The Task Force may develop cooperative efforts, within the program established under subsection (a), to control established aquatic nuisance species to minimize the risk of harm to the environment and the public health and welfare. For purposes of this Act, control efforts include eradication of infestations, reductions of populations, development of means of adapting human activities and public facilities to accommodate infestations, and prevention of the spread of aquatic nuisance species from infested areas. Such control efforts shall be developed in consultation with affected Federal agencies, States, Indian Tribes, local governments, interjurisdictional organizations, and other appropriate entities. Control actions authorized by this section shall be based on the best available scientific information and shall be conducted in an environmentally sound manner.

"(2) DECISIONS.—The Task Force or any other affected agency or entity may recommend that the Task Force initiate a control effort. In determining whether a control program is warranted, the Task Force shall evaluate the need for control (including the projected consequences of no control and less than full control); the technical and biological feasibility and cost-effectiveness of alternative control strategies and actions; whether the benefits of control, including costs avoided, exceed the costs of the program; the risk of harm to non-target organisms and ecosystems, public health and welfare; and such other considerations the Task Force determines appropriate. The Task Force shall also determine the nature and extent of control of target aquatic nuisance species that is feasible and desirable.

"(3) PROGRAMS.—If the Task Force determines in accordance with paragraph (2) that control of an aquatic nuisance species is warranted, the Task Force shall develop a proposed control program to achieve the target level of control. A notice summarizing the proposed action and soliciting comments shall be published in the Federal Register, in major newspapers in the region affected, and in principal trade publications of the industries affected. Within 180 days of proposing a control program, and after consultation with affected governmental and other appropriate entities and taking into consideration other comments received, the Task Force shall complete development of the proposed control program.

"(f) RESEARCH.—

"(1) PRIORITIES.—The Task Force shall, within the program developed under subsection (a), conduct research concerning—

"(A) the environmental and economic risks associated with the introduction of aquatic nuisance species into the waters of the United States;

"(B) the principal pathways by which aquatic nuisance species are introduced and dispersed;

"(C) possible methods for the prevention, monitoring and control of aquatic nuisance species; and

"(D) the assessment of the effectiveness of prevention, monitoring and control methods.

"(2) PROTOCOL.—Within 90 days of the date of enactment of this Act, the Task Force shall establish and follow a protocol to ensure that research activities carried out under this subtitle do not result in the introduction of aquatic nuisance species to waters of the United States.

"(3) GRANTS FOR RESEARCH.—The Task Force shall allocate funds authorized under this Act for competitive research grants to study all aspects of aquatic nuisance species, which shall be administered through the National Sea Grant College Program and the Cooperative Fishery and Wildlife Research Units. Grants shall be conditioned to ensure that any receipient of funds follows the protocol established under paragraph (2) of this subsection.

"(g) TECHNICAL ASSISTANCE.—The Task Force shall, within the program developed under subsection (a), provide technical assistance to State and local governments and persons to minimize the environmental, public health, and safety risks associated with aquatic nuisance species, including an early warning system for advance notice of possible infestations and appropriate responses.

"(h) EDUCATION.—The Task Force shall, with the program developed under subsection (a), establish and implement educational programs through Sea Grant Marine Advisory Services and any other available resources that it determines to be appropriate to inform the general public, State governments, governments of political subdivisions of States, and industrial and recreational users of aquatic resources in connection with matters concerning the identification of aquatic nuisance species, and control methods for such species, including the prevention of the further distribution of such species.

"(i) ZEBRA MUSSEL DEMONSTRATION PROGRAM.—

"(1) IN GENERAL.—The Task Force shall, within the program developed under subsection (a), undertake a program of prevention, monitoring, control, education and research for the zebra mussel to be implemented in the Great Lakes and any other waters of the United States infested or likely to become infested by the zebra mussel, including—

"(A) research and development concerning the species life history, environmental tolerances and impacts on fisheries and other ecosystem components, and the efficacy of control mechanisms and means of avoiding or minimizing impacts;

"(B) tracking the dispersal of the species and establishment of an early warning system to alert likely areas of future infestation;

"(C) development of control plans in coordination with regional, State and local entities; and

"(D) provision of technical assistance to regional, State and local entities to carry out this section.

"(2) PUBLIC FACILITY RESEARCH AND DEVELOPMENT.—The Assistant Secretary, in consultation with the Task Force, shall develop a program of research and technology development for the environmentally sound control of zebra mussels in and around public facilities. The Assistant Secretary shall collect and make available, through publications and other appropriate means, information pertaining to such control methods.

"(j) IMPLEMENTATION.—

"(1) REGULATIONS.—Not later than 18 months after the date of the enactment of this Act, the Director and the Under Secretary may issue such rules and regulations as may be necessary to implement this section.

"(2) PARTICIPATION OF OTHERS.—The Task Force shall provide opportunities for affected Federal agencies which are not part of the Task Force, State and local government agencies, and regional and other entities with the necessary expertise to participate in control programs. If these other agencies or entities have sufficient authority or jurisdiction and expertise and where this will be more efficient or effective, responsibility for implementing all or a portion of a control program may be delegated to such agencies or entities.

"(l) REPORTS.—

"(1) Not later than 12 months after the date of enactment of this Act, the Task Force shall submit a report describing the program developed under subsection (a), including the research protocol required under subsection (f)(2), to the appropriate Committees.

"(2) On an annual basis after the submission of the report under paragraph (1), the Task Force shall submit a report to the appropriate Committees detailing progress in carrying out this section.

"SEC. 1203. GREAT LAKES REGIONAL COORDINATION.

"(a) IN GENERAL. —Not later than 30 days following the date of enactment of this Act, the Task Force shall request that the Great Lakes Commission (established under Article IV of the Great Lakes Compact to which the Congress granted consent in the Act of July 24, 1968, P.L. 90-419) convene a panel of Great Lakes representatives from Federal, State and local agencies and from private environmental and commercial interests to—

"(1) identify priorities for the Great Lakes with respect to aquatic nuisance species;

"(2) make recommendations to the Task Force regarding programs to carry out section 1202(i) of this Act;

"(3) assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes;

"(4) coordinate, where possible, aquatic nuisance species program activities in the Great Lakes that are not conducted pursuant to this Act;

"(5) provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

"(6) submit annually a report to the Task Force describing activities within the Great Lakes related to aquatic nuisance species prevention, research, control.

"(b) CONSULTATION.—The Task Force shall request that the Great Lakes Fishery Commission provide information to the panel convened under this section on technical and policy matters related to the international fishery resources of the Great Lakes.

"(c) CANADIAN PARTICIPATION.—The panel convened under this section is encourage to invite representatives from the federal, provincial or territorial governments of Canada to participate as observers.

"SEC. 1204. STATE AQUATIC NUISANCE SPECIES MANAGEMENT PLANS.

"(a) STATE PLAN.—

"(1) IN GENERAL.—The Governor of each State may, after notice and opportunity for public comment, prepare and submit—

"(A) a comprehensive management plan to the Task Force for approval which identifies those areas or activities within the State, other than those related to public facilities, for which technical and financial assistance is needed to eliminate or reduce the environmental, public health, and safety risks associated with aquatic nuisance species, particularly the zebra mussel; and

"(B) a public facility management plan to the Assistant Secretary for approval which is limited solely to identifying those public facilities within the State for which technical and financial assistance is needed to reduce infestations of zebra mussels.

"(2) CONTENT.—Each plan shall, to the extent possible, identify the management practices and measures that will be undertaken to reduce infestations of aquatic nuisance species. Each plan shall—

"(A) identify and describe State and local programs for environmentally sound prevention and control of the target aquatic nuisance species;

"(B) identify Federal activities that may be needed for environmentally sound prevention and control of aquatic nuisance species and a description of the manner in which those activities should be coordinated with State and local government activities; and

"(C) a schedule of implementing the plan, including a schedule of annual objectives.

"(3) CONSULTATION.—

"(A) In developing and implementing a management plan, the State should, to the maximum extent practicable, involve local governments and regional entities, and public and private organizations that have expertise in the control of aquatic nuisance species.

"(B) Upon the request of a State, the Task Force or the Assistant Secretary, as appropriate under paragraph (1), may provide technical assistance in developing and implementing a management plan.

"(4) PLAN APPROVAL.—Within 90 days after the submission of a management plan, the Task Force or the Assistant Secretary in consultation with the Task Force, as appropriate under paragraph (1), shall review the proposed plan and approve it if it meets the requirements of this subsection or return the plan to the Governor with recommended modifications.

"(b) GRANT PROGRAM.—

"(1) STATE GRANTS.—The Director or the Assistant Secretary, as appropriate under subsection (a), may, at the recommendation of the Task Force, make grants to States with approved management plans for the implementation of those plans.

"(2) APPLICATION.—An application for a grant under this subsection shall include an identification and description of the best management practices and measures which the State proposes to utilize in implementing an approved management plan with any Federal assistance to be provided under the grant.

"(3) FEDERAL SHARE.—

"(A) The Federal share of the cost of each comprehensive management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

"(B) The Federal share of the cost of each public facility management plan implemented with Federal assistance under this section in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such management program and the non-Federal share of such costs shall be provided from non-Federal sources.

"(4) ADMINISTRATIVE COSTS.—For the purposes of this section, administrative costs for activities and programs carried out with a grant in any fiscal year shall not exceed 5 percent of the amount of the grant in that year.

"(5) IN-KIND CONTRIBUTIONS.—In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

"SEC. 1205. RELATIONSHIP TO OTHER LAWS.

"All actions taken by Federal agencies in implementing the provisions of section 1202 shall be consistent with all applicable Federal, State, and local environmental laws. Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife. Compliance with the control and eradication measures of any State or political subdivision thereof regarding aquatic nuisance species shall not relieve any person of the obligation to comply with the provisions of this subtitle.

"SEC. 1206. INTERNATIONAL COOPERATION.

"(a) ADVICE.—The Task Force shall provide timely advice to the Secretary of State concerning aquatic nuisance species that infest waters shared with other countries.

"(b) NEGOTIATIONS.—The Secretary of State, in consultation with the Task Force, is encouraged to initiate negotiations with the governments of foreign countries concerning the planning and implementation of prevention, monitoring, research, education, and control programs related to aquatic nuisance species infesting shared water resources.

"SEC. 1207. INTENTIONAL INTRODUCTION POLICY REVIEW.

"Within one year of the date of enactment of this Act, the Task Force shall, in consultation with State fish and wildlife agencies, other regional, State and local entities, potentially affected industries and other interested parties, identify and evaluate approaches for reducing the risk of adverse consequences associated with intentional introduction of aquatic organisms and submit a report of their findings, conclusions and recommendations to the appropriate Committees.

"SEC. 1208. INJURIOUS SEPCIES.

"Section 42(a) of Title 18, United States Code is amended by inserting "of the zebra mussel of the species Dreissena polymorpha;" after "Pteropus;".

"SEC. 1209. BROWN TREE SNAKE CONTROL PROGRAM.

"The Task Force shall, within the program developed under subsection (a), undertake a comprehensive, environmentally sound program in coordination with regional, territorial, State and local entities to control the brown tree snake (*Boiga irregularis*) in Guam and other areas where the species is established outside of its historic range.

"Subtitle D—Authorizations of Appropriation

"SEC. 1301. AUTHORIZATIONS.

"(a) PREVENTION OF UNINTENTIONAL INTRODUCTIONS.—There are authorized to be appropriated to develop and implement the provisions of subtitle B—

"(1) $500,000 until the end of fiscal year 1992 to the Secretary to carry out sections 1101 and 1102(a)(3);

"(2) $2,000,000 until the end of fiscal year 1992 to the Director and Under Secretary to

carry out the studies under sections 1102(a)(1) and 1102(a)(2); and

"(3) $1,000,000 for each of fiscal years 1993, 1994, and 1995 to the Secretary for implementation and enforcement of the regulations promulgated under section 1101.

"(b) TASK FORCE AND AQUATIC NUISANCE SPECIES PROGRAM.—There are authorized to be appropriated for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to develop and implement the provisions of subtitle C—

"(1) $7,000,000 to the Director to carry out sections 1202 and 1209;

"(2) $5,000,000 to the Under Secretary to carry out section 1202;

"(3) $1,125,000 to fund aquatic nuisance species prevention and control research under section 1202(i) at the Great Lakes Environmental Research Laboratory of the National Oceanic and Atmospheric Administration;

"(4) $5,000,000 for competitive grants for university research on aquatic nuisance species under section 1202(f)(3) as follows:

"(A) $3,375,000 to fund grants under section 206 of the National Sea Grant College Program Act (33 U.S.C. 1125), and of this amount, $2,500,000 to fund grants in the Great Lakes region; and

"(B) $1,675,000 to fund grants through the Cooperative Fisheries and Wildlife Research Unit Program of the United States Fish and Wildlife Service;

"(5) $500,000 to fund Sea Grant Marine Advisory Services education and technical assistance related to infestations of zebra mussels under sections 1202(g) and (h);

"(6) $200,000 to fund aquatic nuisance species prevention and control activities of the Great Lakes Commission; and

"(7) $2,000,000 to the Assistant Secretary to carry out section 1202(i)(2).

"(c) GRANTS FOR STATE MANAGEMENT PROGRAMS.—There are authorized to be appropriated for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to make grants under section 1204—

"(1) $2,500,000 to the Director; and

"(2) $5,000,000 to the Assistant Secretary.

"(d) INTENTIONAL INTRODUCTIONS POLICY REVIEW.—There are authorized to be appropriated for fiscal year 1991, $500,000 to the Director and the Under Secretary to conduct the intentional introduction policy review under section 1207.

"Subtitle E—Cooperative Environmental Analyses

"SEC. 1401. ENVIRONMENTAL IMPACT ANALYSIS.

"The Secretary of State, in consultation with the Council on Environmental Quality, is encouraged to enter into negotiations with the governments of Canada and Mexico to provide for reciprocal cooperative environmental impact analysis of major Federal actions which have significant transboundary effects on the quality of the human environment in the United States, Canada, and Mexico.

"TITLE II—GREAT LAKES FISH AND WILDLIFE RESTORATION

SEC. 2001. SHORT TITLE.

"This title may be cited as the 'Great Lakes Fish and Wildlife Restoration Act of 1990'".

SEC. 2002. FINDINGS.

"The Congress finds and declares the following:

"(1) As the human population of the Great Lakes Basin has expanded to over 35,000,000 people, great demands have been placed on the lakes for use for boating and other recreation, navigation, municipal and industrial water supply, waste disposal, power production, and other purposes. These growing and often conflicting demands exert pressure on the fish and wildlife resources of the Great Lakes Basin, including in the form of contaminants, invasion by nonindigenous species, habitat degradation and destruction, legal and illegal fisher resource harvest levels, and sea lamprey predation.

"(2) The fishery resources of the Great Lakes support recreational fisheries enjoyed by more than 5,000,000 people annually and commercial fisheries providing approximately 9,000 jobs. Together, these fisheries generate economic activity worth more than $4,400,000,000 annually to the United States.

"(3) The availability of a suitable forage base is essential to lake trout, walleye, yellow perch, and other recreational and commercially valuable fishery resources of the Great Lakes Basin. Protecting and restoring productive fish habitat, including by protecting water quality, is essential to the successful recovery of Great Lakes Basin fishery resources.

"(4) The Great Lakes Basin contains important breeding and migration habitat for all types of migratory birds. Many migratory bird species dependent on deteriorating Great Lakes Basin habitat have suffered serious population declines in recent years.

"(5) Over 80 percent of the original wetlands in the Great Lakes Basin have been destroyed and such losses continue at a rate of 20,000 acres annually.

"(6) Contaminant burdens in the fish and wildlife resources of the Great Lakes Basin are substantial and the impacts of those contaminants on the life functions of important fish and wildlife resources are poorly understood. Concern over the effects of those contaminants on human health have resulted in numerous public health advisories recommending restricted or no consumption of Great Lakes fish.

"(7) The lower Great Lakes are uniquely different from the upper Great Lakes biologically, physically, and in the degree of human use and shoreline development, and special fishery resource assessments and management activities are necessary to respond effectively to these special circumstances.

"SEC. 2003. PURPOSE.

"The purposes of this Act are—

"(1) to carry out a comprehensive study of the status, and the assessment, management, and restoration needs, of the fishery resources of the Great Lakes Basin;

"(2) to develop proposals to implement recommendations resulting from that study; and

"(3) to provide assistance to the Great Lakes Fisheries Commission, States, Indian Tribes, and other interested entities to encourage cooperative conservation, restoration and management of the fish and wildlife resources and their habitat of the Great Lakes Basin.

"SEC. 2004. DEFINITIONS.

"In this Act—

"(1) the term 'Administrator' means the Administrator of the Environmental Protection Agency;

"(2) the term 'Director' means the Director of the United States Fish and Wildlife Service;

"(3) the term 'fish stock' means—

"(A) a taxonomically distinct species or subspecies of fish; or

"(B) any other aggregation of fish that are geographically, ecologically, behaviorally, or otherwise limited from breeding with individuals from other groups of fish and are capable of management as a unit;

"(4) the term 'Great Lakes Basin' means the air, land, water, and living organisms within the drainage basin of the Saint Lawrence River at or upstream from the point at which the river becomes the international boundary between Canada and the United States;

"(5) the term 'Indian Tribe' means any Indian tribe, band, village, nation, or other organized group or community that is recognized by the Bureau of Indian Affairs as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

"(6) the term 'lower Great Lakes' means the region in which is located that portion of the Great Lakes Basin which is downstream from the confluence of the Saint Clair River and Lake Huron near Port Huron, Michigan;

"(7) the term 'upper Great Lakes' means that portion of the Great Lakes Basin which is upstream from the confluence of the Saint Clair River and Lake Huron near Port Huron, Michigan;

"(8) the term 'nonindigenous species' means a species of plant or animal that did not occur in the Great Lakes Basin before European colonization of North America;

"(9) the term 'Secretary' means the Secretary of the Army; and

"(10) the term 'State Director' means the head of the agency, department, board, commission, or other governmental entity of each of the States of New York, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, and the Commonwealth of Pennsylvania which is responsible for the management and conservation of the fish and wildlife resources of that State.

"SEC. 2005. GREAT LAKES FISHERY RESOURCES RESTORATION STUDY.

"(a) IN GENERAL.—The Director shall conduct a comprehensive study of the status of, and the assessment, management, and restoration needs of, the fishery resources of the Great Lakes Basin and shall provide the opportunity for the Secretary, the Administrator, State Directors, Indian Tribes, the Great Lakes Fishery Commission, appropriate Canadian Government entities, and other appropriate entities to participate in the study. The Director shall complete the study by October 1, 1994.

"(b) MEMORANDUM OF UNDERSTANDING.—To provide opportunities for the full participation of all affected entities in the planning and conduct of the study, the Director shall invite the entities identified in subsection (a) to enter into a memorandum of understanding regarding the scope and focus of the study and the responsibilities of each participant for conducting the study.

"(c) CONTENT OF STUDY.—A study under this section shall include, but not be limited to—

"(1) identifying and describing the component drainages of the Great Lakes Basin (including the drainage for each of the Great Lakes), analyzing how the characteristics and current or expected land and water uses of those drainages have affected, and can be expected to affect in the future, the fishery resources and fish habitats of the Great Lakes Basin;

"(2) analyzing historical fishery resource data for the Great Lakes Basin to identify the causes of past and continuing declines of the fishery resources and the impediments to restoring those resources;

"(3) evaluating the adequacy, effectiveness, and consistency of current Great Lakes interagency fisheries management plans and Federal and State water quality programs, with respect to their effects on Great Lakes fishery resources;

"(4) analyzing the impacts of, and management control alternatives for, recently introduced nonindigenous species, including the zebra mussel, the ruffe, and the spiny water flea in accordance with the Aquatic Nuisance Prevention and Control Act of 1990;

"(5) developing recommendations regarding—

"(A) an action plan to analyze the effects of contaminant levels on fishery resources;

"(B) an action plan for the cooperative restoration and enhancement of depleted, nationally significant fish stocks, including lake trout, yellow perch, lake sturgeon, walleye, forage fish, and Atlantic salmon;

"(C) planning and technical assistance that should be provided to the, Great Lakes Fisheries Commission, States, and Indian Tribes to assist their fishery resource restoration efforts;

"(D) mitigation measures to restore and enhance fishery resources adversely affected by past Federal (including federally assisted or approved) water resource development projects and other activities;

"(E) Increasing the involvement of the International Joint Commission, the Great Lakes Commission, the Great Lakes Fishery Commission, and other interjurisdictional entities regarding fishery resources protection, restoration, and enhancement;

"(F) Research projects and data gathering initiatives regarding population trends of fish stocks, including population abundance and structure, interspecific competition, survival rates, and behavioral patterns;

"(G) important fishery resource habitat and other areas that should be protected, restored, or enhanced for the benefit of Great Lakes fishery resources;

"(H) how private conservation organizations, recreational and commercial fishing interests, the aquaculture industry, and the general public could contribute to the implementation of the fishery resource restoration and enhancement recommendations developed pursuant to this Act; and

"(I) appropriate contributions that should be made by States and other non-Federal entities to the cost of activities undertaken to implement the recommendations, including a description of—

"(i) the activities that shall be cost-shared;

"(ii) the entities or individuals which shall share the costs of those activities;

"(iii) the proportion of appropriate project and activity costs that shall be borne by non-Federal interests; and

"(iv) how the entities or individuals who share costs should finance their contribution.

"(d) PROPOSALS FOR IMPLEMENTING RECOMMENDATIONS.—The Director shall develop proposals for implementing the recommendations of the study developed under subsection (c)(5). The proposals shall be consistent with the goals of the Great Lakes Water Quality Agreement, as revised in 1987, the 1954 Great Lakes Fisheries Convention, State and tribal fishery management jurisdiction, and the 1980 Joint Strategic Plan for the management of Great Lakes fishery resources.

"SEC. 2006. GOALS OF UNITED STATES FISH AND WILDLIFE SERVICE PROGRAMS RELATED TO GREAT LAKES FISH AND WILDLIFE RESOURCES.

"In administering programs of the United States Fish and Wildlife Service related to the Great Lakes Basin, the Director shall seek to achieve the following goals:

"(1) Restoring and maintaining self-sustaining fishery resource populations.

"(2) Minimizing the impacts of contaminants on fishery and wildlife resources.

"(3) Protecting, maintaining, and, where degraded and destroyed, restoring fish and wildlife habitat, including the enhancement and creation of wetlands that result in a net gain in the amount of those habitats.

"(4) Stopping illegal activities adversely impacting fishery and wildlife resources.

"(5) Restoring threatened and endangered species to viable, self-sustaining levels.

"(6) Protecting, managing, and conserving migratory birds.

"SEC. 2007. ESTABLISHMENT OF OFFICES.

"(a) Great Lakes Coordination Office.—The Director shall establish a centrally located facility for the coordination of all United States Fish and Wildlife Service activities in the Great Lakes Basin, to be known as the "Great Lakes Coordination Office". The functional responsibilities of the Great Lakes Coordination Office shall include intra- and interagency coordination, information distribution, and public awareness outreach. The Great lakes Coordination Office shall include all administrative and technical support necessary to carry out its responsbilities.

"(b) LOWER GREAT LAKES FISHERY RESOURCES OFFICE.—The Director shall establish an office with necessary administrative and technical support services to carry out all United States Fish and Wildlife Service operational activities related to fishery resource protection, restoration, maintenance, and enhancement in the lower Great Lakes. The office shall be known as the "Lower Great Lakes Fishery Resources Office", and shall be centrally located in the lower Great Lakes so as to facilitate fishery resource restoration and enhancement activities relating to the lower Great Lakes.

"(c) UPPER GREAT LAKES FISHERY RESOURCES OFFICES.—The Director shall establish one or more offices with necessary administrative and technical support services to carry out United States Fish and Wildlife Service operational activities related to fishery resource protection, restoration, maintenance, and enhancement in the upper Great Lakes. Each of the offices shall be known as an "Upper Great Lakes Fishery Resources Office", and shall be appropriately located so as to facilitate fishery resource activities in the upper Great Lakes.

"SEC. 2008. ANNUAL REPORTS.

"Not later than 1 year after the date of the enactment of this Act and annually thereafter, the Director shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate. Each such report shall describe—

"(1) the progress and findings of the studies conducted under section 2005, including recommendations of implementing activities, where appropriate, that would contribute to the restoration or improvement of one or more fish stocks of the Great Lakes Basin; and

"(2) activities undertaken to accomplish the goals stated in section 2006.

"SEC. 2009. AUTHORIZATION OF APPROPRIATIONS.

"(a) There are authorized to be appropriated to the Director—

"(1) for conducting a study under section 2005 not more than $4,000,000 for each of fiscal years 1991 through 1994;

"(2) to establish and operate the Great Lakes Coordination Office under section 2008(a) and Upper Great Lakes Fishery Resources Offices under section 2008(c), not more than $4,000,000 for each of fiscal years 1991 through 1995; and

"(3) to establish and operate the Lower Great Lakes Fishery Resources Offices under section 2008(b), not more than $2,000,000 for each of fiscal years 1991 through 1995.

"(b) There are authorized to be appropriated to the Secretary to carry out this Act, not more than $1,500,000 for each of fiscal years 1991 through 1995.".

TITLE III—WETLANDS

SEC. 301. SHORT TITLE.

This title may be cited as the "Coastal Wetlands Planning Protection and Restoration Act.".

SEC. 302. DEFINITIONS.

As used in this title, the term—

(1) "Secretary" means the Secretary of the Army;

(2) "Administrator" means the Administrator of the Environmental Protection Agency;

(3) "development activities" means any activity, including the discharge of dredged or fill material, which results directly in a more than de minimus change in the hydrologic regime, bottom contour, or the type, distribution or diversity of hydrophytic vegetation, or which impairs the flow, reach, or circulation of surface water within wetlands or other waters;

(4) "State" means the State of Louisiana;

(5) "coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes; for the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa;

(6) "coastal wetlands Restoration project" means any technically feasible activity to create, restore, protect, or enhance coastal wetlands through sediment and freshwater diversion, water management, or other measures that the Task Force finds will significantly contribute to the long-term restoration or protection of the physical, chemical and biological integrity of coastal wetlands in the State of Louisiana, and includes any such activity authorized under this title or under any other provision of law, including, but not limited to, new projects, completion or expansion of existing or on-going projects, individual phases, portions, or components of projects and operation, maintenance and rehabilitation of completed projects; the primary purpose of a "coastal wetlands restoration project" shall not be to provide navigation, irrigation or flood control benefits;

(7) "coastal wetlands conservation project" means—

(A) the obtaining of a real property interest in coastal lands or waters, if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters

and the hydrology, water quality and fish and wildlife dependent thereon; and

(B) the restoration, management, or enhancement of coastal wetlands ecosystems if such restoration, management, or enhancement is conducted on coastal lands and waters that are administered for the long-term conservation of such lands and waters and the hydrology, water quality and fish and wildlife dependent thereon;

(8) "Governor" means the Governor of Louisiana;

(9) "Task Force" means the Louisiana Coastal Wetlands Conservation and Restoration Task Force which shall consist of the Secretary, who shall serve as chairman, the Administrator, the Governor, the Secretary of the Interior, the Secretary of Agriculture and the Secretary of Commerce; and

(10) "Director" means the Director of the United States Fish and Wildlife Service.

SEC. 303. PRIORITY LOUISIANA COASTAL WETLANDS RESTORATION PROJECTS.

(a) PRIORITY PROJECT LIST.—

(1) PREPARATION OF LIST.—Within forty-five days after the date of enactment of this title, the Secretary shall convene the Task Force to initiate a process to identify and prepare a list of coastal wetlands restoration projects in Louisiana to provide for the long-term conservation of such wetlands and dependent fish and wildlife populations in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new techniques or materials for coastal wetlands restoration.

(2) TASK FORCE PROCEDURES.—The Secretary shall convene meetings of the Task Force as appropriate to ensure that the list is produced and transmitted annually to the Congress as required by this subsection. If necessary to ensure transmittal of the list on a timely basis, the Task Force shall produce the list by a majority vote of those Task Force members who are present and voting; except that no coastal wetlands restoration project shall be placed on the list without the concurrence of the lead Task Force member that the project is cost effective and sound from an engineering perspective. Those projects which potentially impact navigation or flood control on the lower Mississippi River System shall be constructed consistent with section 304 of this Act.

(3) TRANSMITTAL OF LIST.—No later than one year after the date of enactment of this title, the Secretary shall transmit to the Congress the list of priority coastal wetlands restoration projects required by paragraph (1) of this subsection. Thereafter, the list shall be updated annually by the Task Force members and transmitted by the Secretary to the Congress as part of the President's annual budget submission. Annual transmittals of the list to the Congress shall include a status report on each project and a statement from the Secretary of the Treasury indicating the amounts available for expenditure to carry out this title.

(4) LIST CONTENTS.—

(A) AREA IDENTIFICATION; PROJECT DESCRIPTION.—The list of priority coastal wetlands restoration projects shall include, but not be limited to—

(i) identification, by map or other means, of the coastal area to be covered by the coastal wetlands restoration project; and

(ii) a detailed description of each proposed coastal wetlands restoration project including a justification for including such project on the list, the proposed activities to be carried out pursuant to each coastal wetlands restoration project, the benefits to be realized by such project, the identification of a lead Task Force member to undertake each proposed coastal wetlands restoration project and the responsibilities of each other participating Task Force member, an estimated timetable for the completion of each coastal wetlands restoration project, and the estimated cost of each project.

(B) PRE-PLAN.—Prior to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that can be substantially completed during a five-year period commencing on the date the project is placed on the list.

(C) Subsequent to the date on which the plan required by subsection (b) of this section becomes effective, such list shall include only those coastal wetlands restoration projects that have been identified in such plan.

(5) FUNDING.—The Secretary shall, with the funds made available in accordance with section 306 of this title, allocate funds among the members of the Task Force based on the need for such funds and such other factors as the Task Force deems appropriate to carry out the purposes of this subsection.

(b) FEDERAL AND STATE PROJECT PLANNING.—

(1) PLAN PREPARATION.—The Task Force shall prepare a plan to identify coastal wetlands restoration projects, in order of priority, based on the cost-effectiveness of such projects in creating, restoring, protecting, or enhancing the long-term conservation of coastal wetlands, taking into account the quality of such coastal wetlands, with due allowance for small-scale projects necessary to demonstrate the use of new tehniques or materials for coastal wetlands restoration. Such restoration plan shall be completed within three years from the date of enactment of this title.

(2) PURPOSE OF THE PLAN.—The purpose of the restoration plan is to develop a comprehensive approach to restore and prevent the loss of, coastal wetlands in Louisiana. Such plan shall coordinate and integrate coastal wetlands restoration projects in a manner that will ensure the long-term conservation of the coastal wetlands of Louisiana.

(3) INTEGRATION OF EXISTING PLANS.—In developing the restoration plan, the Task Force shall seek to integrate the "Louisiana Comprehensive Coastal Wetlands Feasibility Study" conducted by the Secretary of the Army and the "Coastal Wetlands Conservation and Restoration Plan" prepared by the State of Louisiana's Wetlands Conservation and Restoration Task Force.

(4) ELEMENTS OF THE PLAN.—The restoration plan developed pursuant to this subsection shall include—

(A) identification of the entire area in the State that contains coastal wetlands;

(B) identification, by map or other means, of coastal areas in Louisiana in need of coastal wetlands restoration projects;

(C) identification of high priority coastal wetlands restoration projects in Louisiana needed to address the areas identified in subparagraph (B) and that would provide for the long-term conservation of restored wetlands and dependent fish and wildlife populations;

(D) a listing of such coastal wetlands restoration projects, in order of priority, to be submitted annually, incorporating any project identified previously in lists produced and submitted under subsection (a) of this section;

(E) a detailed description of each proposed coastal wetlands restoration project, including a justification for including such project on the list;

(F) the proposed activities to be carried out pursuant to each coastal wetlands restoration project;

(G) the benefits to be realized by each such project;

(H) an estimated timetable for completion of each coastal wetlands restoration project;

(I) An estimate of the cost of each coastal wetlands restoration project;

(J) identification of a lead Task Force member to undertake each proposed coastal wetlands restoration project listed in the plan;

(K) consultation with the public and provision for public review during development of the plan; and

(L) evaluation of the effectiveness of each coastal wetlands restoration project in achieving long-term solutions to arresting coastal wetlands loss in Louisiana.

(5) PLAN MODIFICATION.—The Task Force may modify the restoration plan from time to time as necessary to carry out the purposes of this section.

(6) PLAN SUBMISSION.—Upon completion of the restoration plan, the Secretary shall submit the plan to the Congress. The restoration plan shall become effective ninety days after the date of its submission to the Congress.

(7) PLAN EVALUATION.—Not less than three years after the completion and submission of the restoration plan required by this subsection and at least every three years thereafter, the Task Force shall provide a report to the Congress containing a scientific evaluation of the effectiveness of the coastal wetlands restoration project carried out under the plan in creating, restoring, protecting and enhancing coastal wetlands in Louisiana.

(c) COASTAL WETLANDS RESTORATION PROJECT BENEFITS.—Where such a determination is required under applicable law, the net ecological, aesthetic, and cultural benefits, together with the economic benefits, shall be deemed to exceed the costs of any coastal wetlands restoration project within the State which the Task Force finds to contribute significantly to wetlands restoration.

(d) CONSISTENCY.—(1) In implementing, maintaining, modifying, or rehabilitating navigation, flood control or irrigation projects, other than emergency actions, under other authorities, the Secretary, in consultation with the Director and the Administrator, shall ensure that such actions are consistent with the purposes of the restoration plan submitted pursuant to this section.

(2) At the request of the Governor of the State of Louisiana, the Secretary of Commerce shall approve the plan as an amendment to the State's coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

(e) FUNDING OF WETLANDS RESTORATION PROJECTS.—The Secretary shall, with the funds made available in accordance with this title, allocate such funds among the members of the Task Force to carry out coastal wetlands restoration projects in accordance with the priorities set forth in the list transmitted in accordance with this section. The Secretary shall not fund a coastal

wetlands restoration project unless that project is subject to such terms and conditions as necessary to ensure that wetlands restored, enhanced or managed through that project will be administered for the long-term conservation of such lands and waters and dependent fish and wildlife populations.

(f) COST-SHARING.—

(1) FEDERAL SHARE.—Amounts made available in accordance with section 306 of this title to carry out coastal wetlands restoration projects under this title shall provide 75 percent of the cost of such projects.

(2) FEDERAL SHARE UPON CONSERVATION PLAN APPROVAL.—Notwithstanding the previous paragraph, if the State develops a Coastal Wetlands Conservation Plan pursuant to this title, and such conservation plan is approved pursuant to section 304 of this title amounts made available in accordance with section 306 of this title for any coastal wetlands restoration project under this section shall be 85 percent of the cost of the project. In the event that the Secretary, the Director, and the Administrator jointly determine that the State is not taking reasonable steps to implement and administer a conservation plan developed and approved pursuant to this title, amounts made available in accordance with sec. 306 of this title for any coastal wetlands restoration project shall revert to 75 percent of the cost of the project: *Provided, however,* That such reversion to the lower cost share level shall not occur until the Governor has been provided notice of, and opportunity for hearing on, any such determination by the Secretary, the Director, and Administrator, and the State has been given ninety days from such notice or hearing to take corrective action.

(3) FORM OF STATE SHARE.—The share of the cost required of the State shall be from a non-Federal source. Such State share shall consist of a cash contribution of not less than 5 percent of the cost of the project. The balance of such State share may take the form of lands, easements, or right-of-way, or any other form of in-kind contribution determined to be appropriate by the lead Task Force member.

(4) Paragraphs (1), (2), and (3) of this subsection shall not affect the existing cost-sharing agreements for the following projects: Caernarvon Freshwater Diversion, Davis Pond Freshwater Diversion, and Bonnet Carre Freshwater Diversion.

SEC. 304. LOUISIANA COASTAL WETLANDS CONSERVATION PLANNING.

(a) DEVELOPMENT OF CONSERVATION PLAN.—

(1) AGREEMENT.—The Secretary, the Director, and the Administrator are directed to enter into an agreement with the Governor, as set forth in paragraph (2) of this subsection, upon notification of the Governor's willingness to enter into such agreement.

(2) TERMS OF AGREEMENT.—

(A) Upon receiving notification pursuant to paragraph (1) of this subsection, the Secretary, the Director, and the Administrator shall promptly enter into an agreement (hereafter in this section referred to as the "agreement") with the State under the terms set forth in subparagraph (B) of this paragraph.

(B) The agreement shall—

(i) set forth a process by which the State agrees to develop, in accordance with this section, a coastal wetlands conservation plan (hereafter in this section referred to as the "conservation plan");

(ii) designate a single agency of the State to develop the conservation plan;

(iii) assure an opportunity for participation in the development of the conservation plan, during the planning period, by the public and by Federal and State agencies;

(iv) obligate the State, not later than three years after the date of signing the agreement, unless extended by the parties thereto, to submit the conservation plan to the Secretary, the Director, and the Administrator for their approval; and

(v) upon approval of the conservation plan, obligate the State to implement the conservation plan.

(3) GRANTS AND ASSISTANCE.—Upon the date of signing the agreement—

(A) The Administrator shall, in consultation with the Director, with the funds made available in accordance with sec. 306 of this title, make grants during the development of the conservation plan to assist the designated State agency in developing such plan. Such grants shall not exceed 75 percent of the cost of developing the plan; and

(B) The Secretary, the Director, and the Administrator shall provide technical assistance to the State to assist it in the development of the plan.

(b) CONSERVATION PLAN GOAL.—If a conservation plan is developed pursuant to this section, it shall have a goal of achieving no net loss of wetlands in the coastal areas of Louisiana as a result of development activities initiated subsequent to approval of the plan, exclusive of any wetlands gains achieved through implementation of the preceding section of this title.

(c) ELEMENTS OF CONSERVATION PLAN.—The conservation plan authorized by this section shall include—

(1) identification of the entire coastal area in the State that contains coastal wetlands;

(2) designation of a single State agency with the responsibility for implementing and enforcing the plan;

(3) idenfification of measures that the State shall take in addition to existing Federal authority to achieve a goal of net loss of wetlands as result of development activities, exclusive of any wetlands gains achieved through implementation of the preceding section of this title;

(4) a system that the State shall implement to account for gains and losses of coastal wetlands within coastal areas of purposes of evaluating the degree to which the goal of no net loss of wetlands as a result of development activities in such wetlands or other waters has been attained;

(5) satisfactory assurances that the State will have adequate personnel, funding, and authority to implement the plan;

(6) a program to be carried out by the State for the purpose of educating the public concerning the necessity to conserve wetlands;

(7) a program to encourage the use of technology by persons engaged in development activities that will result in negligible impact on wetlands; and

(8) a program for the review, evaluation, and identification of regulatory and nonregulatory options that will be adopted by the State to encourage and assist private owners of wetlands to continue to maintain those lands as wetlands.

(d) APPROVAL OF CONSERVATION PLAN.—

(1) IN GENERAL.—If the Governor submits a conservation plan to the Secretary, the Director, and the Administrator for their approval, the Secretary, the Director, and the Administrator shall, within one hundred and eighty days following receipt of such plan, approve or disapprove it.

(2) APPROVAL CRITERIA.—The Secretary, the Director, and the Administrator shall approve a conservation plan submitted by the Governor, if they determine that—

(A) the State has adequate authority to fully implement all provisions of such a plan;

(B) such a plan is adequate to attain the goal of no net loss of coastal wetlands as a result of development activities and complies with the other requirements of this section; and

(C) the plan was developed in accordance with the terms of the agreement set forth in subsection (a) of this section.

(e) MODIFICATION OF CONSERVATION PLAN.—

(1) NONCOMPLIANCE.—If the Secretary, the Director, and the Administrator determine that a conservation plan submitted by the Governor does not comply with the requirements of subsection (d) of this section, they shall submit to the Governor a statement explaining why the plan is not in compliance and how the plan should be changed to be in compliance.

(2) RECONSIDERATION.—If the Governor submits a modified conservation plan to the Secretary, the Director, and the Administrator for their reconsideration, the Secretary, the Director, and Administrator shall have ninety days to determine whether the modifications are sufficient to bring the plan into compliance with the requirements of subsection (d) of this section.

(3) APPROVAL OF MODIFIED PLAN.—If the Secretary, the Director, and the Administrator fail to approve or disapprove the conservation plan, as modified, within the ninety-day period following the date on which it was submitted to them by the Governor, such plan, as modified, shall be deemed to be approved effective upon the expiration of such ninety-day period.

(f) AMENDMENTS TO CONSERVATION PLAN.—If the Governor amends the conservation plan approved under this section, any such amended plan shall be considered a new plan and shall be subject to the requirements of this section; except that minor changes to such plan shall not be subject to the requirements of this section.

(g) IMPLEMENTATION OF CONSERVATION PLAN.—A conservation plan approved under this section shall be implemented as provided therein.

(h) FEDERAL OVERSIGHT.—

(1) INITIAL REPORT TO CONGRESS.—Within one hundred and eighty days after entering into the agreement required under subsection (a) of this section, the Secretary, the Director, and the Administrator shall report to the Congress as to the status of a conservation plan approved under this section and the progress of the State in carrying out such a plan, including an accounting, as required under subsection (c) of this section, of the gains and losses of coastal wetlands as a result of development activities.

(2) REPORTS TO CONGRESS.—Twenty-four months after the initial one hundred and eighty day period set forth in paragraph (1), and at the end of each twenty-four-month period thereafter, the Secretary, the Director, and the Administrator shall, report to the Congress on the status of the conservation plan and provide an evaluation of the effectiveness of the plan in meeting the goal of this section.

SEC. 305 NATIONAL COASTAL WETLAND CONSERVATION GRANTS.

(a) MATCHING GRANTS.—The Director shall, with the funds made available in accordance with the next following section of this title, making matching grants to any

coastal State to carry out coastal wetlands conservation projects from funds made available for that purpose.

(b) PRIORITY.—Subject to the cost-sharing requirements of this section, the Director may grant or otherwise provide any matching moneys to any coastal State which submits a proposal substantial in character and design to carry out a coastal wetlands conservation project. In awarding such matching grants, the Director shall give priority to coastal wetlands conservation projects that are—

(1) consistent with the National Wetlands Priority Conservation Plan developed under section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921); and

(2) in coastal States that have established dedicated funding for programs to acquire coastal wetlands, natural areas and open spaces. In addition, priority consideration shall be given to coastal wetlands conservation projects in maritime forests on coastal barrier islands.

(c) CONDITIONS.—The Director may only grant or otherwise provide matching moneys to a coastal State for purposes of carrying out a coastal wetlands conservation project if the grant or provision is subject to terms and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such moneys will be administered for the long-term conservation of such lands and waters and the fish and wildlife dependent thereon.

(d) COST-SHARING.—

(1) FEDERAL SHARE.—Grants to coastal States of matching moneys by the Director for any fiscal year to carry out coastal wetlands conservation projects shall be used for the payment of not to exceed 50 percent of the total costs of such projects: except that such matching moneys may be used for payment of not to exceed 75 percent of the costs of such projects if a coastal State has established a trust fund, from which the principal is not spent, for the purpose of acquiring coastal wetlands, other natural area or open spaces.

(2) FORM OF STATE SHARE.—The matching moneys required of a coastal State to carry out a coastal wetlands conservation project shall be derived from a non-Federal source.

(3) IN-KIND CONTRIBUTIONS.—In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

(e) PARTIAL PAYMENTS.—

(1) The Director may from time to time make matching payments to carry out coastal wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (d) of this section.

(2) The Director may enter into agreements to make matching payments on an initial portion of a coastal wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent moneys if and when they become available. The liability of the United States under such an agreement is contingent upon the continued availability of funds for the purpose of this section.

(f) WETLANDS ASSESSMENT.—The Director shall, with the funds made available in accordance with the next following section of this title, direct the U.S. Fish and Wildlife Service's National Wetland Inventory to update and digitize wetlands maps in the State of Texas and to conduct an assessment of the status, condition, and trends of wetlands in that State.

SEC. 306. DISTRIBUTION OF APPROPRIATIONS.

(a) PRIORITY PROJECT AND CONSERVATION PLANNING EXPENDITURES.—Of the total amount appropriated during a given fiscal year to carry out this title, 70 percent, not to exceed $70,000,000, shall be available, and shall remain available until expended, for the purposes of making expenditures—

(1) not to exceed the aggregate amount of $5,000,000 annually to assist the Task Force in the preparation of the list required under this title and the plan required under this title, including preparation of—

(A) preliminary assessments;

(B) general or site-specific inventories;

(C) reconnaissance, engineering or other studies;

(D) preliminary design work; and

(E) such other studies as may be necessary to identify and evaluate the feasibility of coastal wetlands restoration projects;

(2) to carry our coastal wetlands restoration projects in accordance with the priorities set forth on the list prepared under this title;

(3) to carry out wetlands restoration projects in accordance with the priorities set forth in the restoration plan prepared under this title;

(4) to make grants not to exceed $2,500,000 annualy or $10,000,000 in total, to assist the agency designated by the State in development of the Coastal Wetlands Conservation Plan pursuant to this title.

(b) COASTAL WETLANDS CONSERVATION GRANTS.—Of the total amount appropriated during a given fiscal year to carry out this Title 15 percent, not to exceed $15,000,000 shall be available and shall remain available to the Director for purposes of making grants—

(1) to any coastal State, except States eligible to receive funding under section 306(a), to carry out coastal wetlands conservation projects in accordance with section 305 of this title; and

(2) in the amount of $2,500,000 in total for an assessment of the status, condition, and trends of wetlands in the State of Texas.

(c) NORTH AMERICAN WETLANDS CONSERVATION.—Of the total amount appropriated during a given fiscal year to carry out this title, 15 percent, not to exceed $15,000,000, shall be available to, and shall remain available until expended by, the Secretary of the Interior for allocation to carry out wetlands conservation projects in any coastal State under section 8 of the North American Wetlands Conservation Act (Public Law 101-233, 103 Stat. 1968, December 13, 1989).

SEC. 307 GENERAL PROVISIONS.

(a) ADDITIONAL AUTHORITY FOR THE CORPS OF ENGINEERS.—The Secretary is authorized to carry out projects for the protection, restoration, or enhancement of aquatic and associated ecosystems, including projects for the protection, restoration, or creation of wetlands and coastal ecosystems. In carrying out such projects, the Secretary shall give such projects equal consideration with projects relating to irrigation, navigation, or flood control.

(b) STUDY.—The Secretary is hereby authorized and directed to study the feasibility of modifying the operation of existing navigation and flood control projects to allow for an increase in the share of the Mississippi River flows and sediment sent down the Atchafalaya River for purposes of land building and wetlands nourishment.

SEC. 308. CONFORMING AMENDMENT.

16 U.S.C. 777c is amended by adding the following after the first sentence:

"The Secretary shall distribute 18 per centum of each annual appropriations made in accordance with the provisions of section 777b of this title as provided in the Coastal Wetlands Planning, Protection and Restoration Act; *Provided*, That notwithstanding the provisions of section 777b, such sums shall remain available to carry out such Act through fiscal year 1999.".

"TITLE IV—GREAT LAKES OIL POLLUTION RESEARCH AND DEVELOPMENT

"SEC. 4001. SHORT TITLE.

"This title may be cited as the "Great Lakes Oil Pollution Research and Development Act".

"SEC. 4002. GREAT LAKES OIL POLLUTION RESEARCH AND DEVELOPMENT.

"Section 7001 of the Oil Pollution Act of 1990 (Public Law 101-380) is amended as follows:

"(1) GREAT LAKES DEMONSTRATION PROJECT.—In subsection (c)(6), strike "3" and insert "4", strike "and" after "California,", and insert "and (D) ports on the Great Lakes," after "Louisiana,".

"(2) FUNDING.—In subsection (f) strike "21,250,000" and insert "22,000,000" and in subsection (f)(2) strike "2,250,000" and insert "3,000,000".".

NATIONAL ENVIRONMENTAL EDUCATION ACT

BURDICK AMENDMENT NO. 3185

Mr. BREAUX (for Mr. BURDICK) proposed an amendnent to the bill (S. 3176) to promote environmental education, and for other purposes, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) TITLE.—This Act may be cited as the "National Environmental Education Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Findings and policy.
Sec. 3. Definitions.
Sec. 4. Office of Environmental Education.
Sec. 5. Environmental education and training program.
Sec. 6. Environmental education grants.
Sec. 7. Environmental internships and fellowships.
Sec. 8. Environmental education awards.
Sec. 9. Environmental Education Advisory Council and Task Force.
Sec. 10. National Environmental Education and Training Foundation.
Sec. 11 Authorization.

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) Threats to human health and environmental quality are increasingly complex, involving a wide range of conventional and toxic contaminants in the air and water and on the land.

(2) There is growing evidence of international environmental problems, such as global warming, ocean pollution, and de-

clines in species diversity, and that these problems pose serious threats to human health and the environment on a global scale.

(3) Environmental problems represent as significant a threat to the quality of life and the economic vitality of urban areas as they do the natural balance of rural areas.

(4) Effective response to complex environmental problems requires understanding of the natural and built environment, awareness of environmental problems and their origins (including those in urban areas), and the skills to solve these problems.

(5) Development of effective solutions to environmental problems and effective implementation of environmental programs requires a well educated and trained, professional work force.

(6) Current Federal efforts to inform and educate the public concerning the natural and built environment and environmental problems are not adequate.

(7) Existing Federal support for development and training of professionals in environmental fields is not sufficient.

(8) The Federal Government, acting through the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to support development of curricula, special projects, and other activities, to increase understanding of the natural and built environment and to improve awareness of environmental problems.

(9) The Federal Government, acting through the coordinated efforts of its agencies and with the leadership of the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to develop programs to provide increased emphasis and financial resources for the purpose of attracting students into environmental engineering and assisting them in pursuing the programs to complete the advanced technical education required to provide effective problem solving capabilities for complex environmental issues.

(10) Federal natural resource agencies such as the United States Forest Service have a wide range of environmental expertise and a long history of cooperation with educational institutions and technology transfer that can assist in furthering the purposes of the Act.

(b) POLICY.—It is the policy of the United States to establish and support a program of education on the environment, for students and personnel working with students, through activities in schools, institutions of higher education, and related educational activities, and to encourage postsecondary students to pursue careers related to the environment.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Agency" means the United States Environmental Protection Agency;

(3) "Federal agency" or "agency of the United States" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation;

(4) "Secretary" means the Secretary of the Department of Education;

(5) "local education agency" means any education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381) and shall include any tribal education agency;

(6) "not-for-profit" organization means an organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation pursuant to the provisions of section 501(a) of such Code;

(7) "noncommercial education broadcasting entities" means any noncommercial educational broadcasting station (and/or its legal nonprofit affiliates) as defined and licensed by the Federal Communications Commission;

(8) "tribal education agency" means a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs;

(9) "Federal natural resource management agencies" means the United States Forest Service, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service;

(10) "environmental engineering" means the discipline within engineering and science concerned with the development and application of scientific and technical solutions to protecting the aquatic and atmospheric environment, including, but not limited to, all phases of water resources planning, water supply, water treatment, air pollution characterization and control, remediation of hazardous substances, environmental transport of contaminants in surface and ground water and atmosphere, and methods for assessment and control of pollution;

(11) "environmental education" and "environmental education and training" mean educational activities and training activities involving elementary, secondary, and postsecondary students, as such terms are defined in the State in which they reside, and environmental education personnel, but does not include technical training activities directed toward environmental management professionals or activities primarily directed toward the support of noneducational research and development;

(12) "Foundation" means the National Environmental Education and Training Foundation established pursuant to section 10 of this Act; and

(13) "Board of Directors" means the Board of Directors of the National Environmental Education and Training Foundation.

SEC. 4. OFFICE OF ENVIRONMENTAL EDUCATION.

(a) The Administrator shall establish an Office of Environmental Education within the Environmental Protection Agency.

(b) The Office of Environmental Education shall—

(1) develop and support programs and related efforts, in consultation and coordination with other Federal agencies, to improve understanding of the natural and built environment, and the relationships between humans and their environment, including the global aspects of environmental problems;

(2) support development and the widest possible dissemination of model curricula, educational materials, and training programs for elementary and secondary students and other interested groups, including senior Americans;

(3) develop and disseminate, in cooperation with other Federal agencies, not-for-profit educational and environmental organizations, State agencies, and noncommercial educational broadcasting entities, environmental education publications and audio/visual and other media materials;

(4) develop and support environmental education seminars, training programs, teleconferences, and workshops for environmental education professionals, as provided for in section 5 of this Act;

(5) manage Federal grant assistance provided to local education agencies, institutions of higher education, other not-for-profit organizations, and noncommercial education broadcasting entities, under section 6 of this Act;

(6) administer the environmental internship and fellowship programs provided for in section 7 of this Act;

(7) administer the environmental awards program provided for in section 8 of this Act;

(8) provide staff support to the Advisory Council and Task Force provided for in section 9 of this Act;

(9) assess, in coordination with other Federal agencies, the demand for professional skills and training needed to respond to current and anticipated environmental problems and cooperate with appropriate institutions, organizations, and agencies to develop training programs, curricula, and continuing education programs for teachers, school administrators, and related professionals;

(10) assure the coordination of Federal statutes and programs administered by the Agency relating to environmental education, consistent with the provisions and purposes of those programs, and work to reduce duplication or inconsistencies within these programs;

(11) work with the Department of Education, the Federal Interagency Committee on Education, and with other Federal agencies, including Federal natural resource management agencies, to assure the effective coordination of programs related to environmental education, including environmental education programs relating to national parks, national forests, and wildlife refuges;

(12) provide information on environmental education and training programs to local education agencies, State education and natural resource agencies, and others; and

(13) otherwise provide for the implementation of this Act.

(c) The Office of Environmental Education shall—

(1) be directed by a Director who shall be a member of the Senior Executive Service;

(2) include a headquarters staff of not less than six and not more than ten full-time equivalent employees; and

(3) be supported by one full-time equivalent employee in each Agency regional office.

SEC. 5. ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM.

(a) There is hereby established an Environmental Education and Training Program. The purpose of the program shall be to train educational professionals in the development and delivery of environmental education and training programs and studies.

(b) The functions and activities of the program shall include, at a minimum—

(1) classroom training in environmental education and studies including environmental sciences and theory, educational methods and practices, environmental career or occupational education, and topical environmental issues and problems;

(2) demonstration of the design and conduct of environmental field studies and assessments;

(3) development of environmental education programs and curriculum, including programs and curriculum to meet the needs of diverse ethnic and cultural groups;

(4) sponsorship and management of international exchanges of teachers and other educational professionals between the United States, Canada, and Mexico, involved in environmental programs and issues;

(5) maintenance or support of a library of environmental education materials, information, literature, and technologies, with electronic as well as hard copy accessibility;

(6) evaluation and dissemination of environmental education materials, training methods, and related programs;

(7) sponsorship of conferences, seminars, and related forums for the advancement and development of environmental education and training curricula and materials, including international conferences, seminars, and forums;

(8) supporting effective partnerships and networks and the use of distant learning technologies; and

(9) such other activities as the Administrator determines to be consistent with the policies of this Act.

Special emphasis should be placed on developing environmental education programs, workshops, and training tools that are portable and can be broadly disseminated.

(c)(1) The Administrator shall make a grant on an annual basis to an institution of higher education or other institution which is a not-for-profit institution (or consortia of such institutions) to operate the environmental education and training program required by this section.

(2) Any institution of higher education or other institution (or consortia of such institutions) which is a not-for-profit organization and is interested in receiving a grant under this section may submit to the Administrator an application in such form and containing such information as the Administrator may require.

(3) The Administrator shall award grants under this section on the basis of—

(A) the capability to develop environmental education and training programs;

(B) the capability to deliver training to a range of participants and in a range of settings;

(C) the expertise of the staff in a range of appropriate disciplines;

(D) the relative economic effectiveness of the program in terms of the ratio of overhead costs to direct services;

(E) the capability to make effective use of existing national environmental education resources and programs;

(F) the results of any evaluation under paragraph (5) of this subsection; and

(G) such other factors as the Administrator deems appropriate.

(4) No funds made available to carry out this section shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building.

(5) The Administrator shall establish procedures for a careful and detailed review and evaluation of the environmental education and training program to determine whether the quality of the program being operated by the grantee warrants continued support under this section.

(d)(1) Individuals eligible for participation in the program are teachers, faculty, administrators and related support staff associated with local education agencies, colleges, and universities, employees of State education, environmental protection, and natural resource departments, and employees of not-for-profit organizations involved in environmental education activities and issues.

(2) Individuals shall be selected for participation in the program based on applications which shall be in such form as the Administrator determines to be appropriate.

(3) In selecting individuals to participate in the program, the Administrator shall provide for a wide geographic representation and a mix of individuals, including minorities, working at primary, secondary, postsecondary levels, and with appropriate other agencies and departments.

(4) Individuals selected for participation in the program may be provided with a stipend to cover travel and accommodations from grant funds awarded pursuant to this section in such amounts as the Administrator determines to be appropriate.

SEC. 6. ENVIRONMENTAL EDUCATION GRANTS.

(a) The Administrator may enter into a cooperative agreement or contract, or provide financial assistance in the form of a grant, to support projects to design, demonstrate, or disseminate practices, methods, or techniques related to environmental education and training.

(b) Activities eligible for grant support pursuant to this section shall include, but not be limited to, environmental education and training programs for—

(1) design, demonstration, or dissemination of environmental curricula, including development of educational tools and materials;

(2) design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;

(3) projects to understand and assess a specific environmental issue or a specific environmental problem;

(4) provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and

(5) design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.

(c) In making grants pursuant to this section, the Administrator shall give priority to those proposed projects which will develop—

(1) a new or significantly improved environmental education practice, method, or technique;

(2) an environmental education practice, method, or technique which may have wide application;

(3) an environmental education practice, method, or technique which addresses a skill or scientific field identified as a priority in the report developed pursuant to section 9(d) of this Act; and

(4) an environmental education practice, method or technique which addresses an environmental issue which, in the judgment of the Administrator, is of a high priority.

(d) The program established by this section shall include solicitations for projects, selection of suitable projects from among those proposed, supervision of such projects, evaluation of the results of projects, and dissemination of information on the effectiveness and feasibility of the practices, methods, techniques and processes. Within one year of the date of enactment of this Act, the Administrator shall publish regulations to assure satisfactory implementation of each element of the program authorized by this section.

(e) Within 90 days after the date on which amounts are first appropriated for carrying out this Act, and each year thereafter, the Administrator shall publish a solicitation for environmental education grants. The solicitation notice shall prescribe the information to be included in the proposal and other information sufficient to permit the Administrator to assess the project.

(f) Any local education agency, college or university, State education agency or environmental agency, not-for-profit organization, or noncommercial educational broadcasting entity may submit an application to the Administrator in response to the solicitations required by subsection (e) of this section.

(g) Each project under this section shall be performed by the applicant, or by a person satisfactory to the applicant and the Administrator.

(h) Federal funds for any demonstration project under this section shall not exceed 75 percent of the total cost of such project. For the purposes of this section, the non-Federal share of project costs may be provided by inkind contributions and other noncash support. In cases where the Administrator determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, the Administrator may approve grants under this section with a matching requirement other than that specified in this subsection, including full Federal funding.

(i) Grants under this section shall not exceed $250,000. In addition, 25 percent of all funds obligated under this section in a fiscal year shall be for grants of not more than $5,000.

SEC. 7. ENVIRONMENTAL INTERNSHIPS AND FELLOWSHIPS.

(a) The Administrator shall, in consultation with the Office of Personnel Management and other appropriate Federal agencies, provide for internships by postsecondary level students and fellowships for in-service teachers with agencies of the Federal Government.

(b) The purpose of internships and fellowships pursuant to this section shall be to provide college level students and in-service teachers with an opportunity to work with professional staff of Federal agencies involved in environmental issues and thereby gain an understanding and appreciation of such issues and the skills and abilities appropriate to such professions.

(c) The Administrator shall, to the extent practicable, support not less than 250 internships each year and not less than 50 fellowships each year.

(d) The internship and fellowship programs shall be managed by the Office of Environmental Education. Interns and fellows may serve in appropriate agencies of the Federal Government including, but not limited to, the Environmental Protection Agency, the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Council on Environmental Quality, Federal natural resource manage-

ment agencies, the Department of Agriculture, and the National Science Foundation.

(e) Interns shall be hired on a temporary, full-time basis for not to exceed 6 months and shall be compensated appropriately. Fellows shall be hired on a temporary full-time basis for not to exceed 12 months and shall be compensated appropriately. Federal agencies hiring interns shall provide the funds necessary to support salaries and related costs.

(f)(1) Individuals eligible for participation in the internship program are students enrolled at accredited colleges or universities who have successfully completed not less than four courses or the equivalent in environmental sciences or studies, as determined by the Administrator.

(2) Individuals eligible for participation in the fellowship program are in-service teachers who are currently employed by a local education agency and have not less than 2 years experience in teaching environmental education, environmental sciences, or related courses.

(g) Individuals shall be selected for internships and fellowships based on applications which shall be in such form as the Administrator considers appropriate.

(h) In selecting individuals for internships and fellowships, the Administrator shall provide for wide geographic, cultural, and minority representation.

SEC. 8. ENVIRONMENTAL EDUCATION AWARDS.

(a) The Administrator shall provide for a series of national awards recognizing outstanding contributions to environmental education.

(b) In addition to such other awards as the Administrator may provide for, national environmental awards shall include—

(1) The "Theodore Roosevelt Award" to be given in recognition of an outstanding career in environmental education, teaching, or administration;

(2) The "Henry David Thoreau Award" to be given in recognition of an outstanding contribution to literature on the natural environment and environmental pollution problems;

(3) The "Rachael Carson Award" to be given in recognition of an outstanding contribution in print, film, or broadcast media to public education and information on environmental issues or problems; and

(4) The "Gifford Pinchot Award" to be given in recognition of an outstanding contribution to education and training concerning forestry and natural resource management, including multiple use and sustained yield land management.

(c) Recipients of education awards provided for in subsection (b) shall be nominated by the Environmental Education Advisory Council provided for in section 9 of this Act.

(d) The Administrator may provide for the "President's Environmental Youth Awards" to be given to young people in grades kindergarten through twelfth for an outstanding project to promote local environmental awareness.

(e)(1) The Chairman of the Council on Environmental Quality, on behalf of the President, is authorized to develop and administer an awards program to recognize elementary and secondary education teachers and their local educational agencies who demonstrate excellence in advancing environmental education through innovative approaches. One teacher, and the local education agency employing such teacher, from each State, including the District of Columbia and the Commonwealth of Puerto Rico, are eligible to be selected for an award pursuant to this subsection.

(2) The Chairman is authorized to provide a cash award of up to $2,500 to each teacher selected to receive an award pursuant to this section, which shall be used to further the recipient's professional development in environmental education.

(3) The Chairman is also authorized to provide a cash award of up to $2,500 to the local education agency employing any teacher selected to receive an award pursuant to this section, which shall be used to fund environmental educational activities and programs. Such awards may not be used for construction costs, general expenses, salaries, bonuses, or other administrative expenses.

SEC. 9. ENVIRONMENTAL EDUCATION ADVISORY COUNCIL AND TASK FORCE.

(a) There is hereby established a National Environmental Education Advisory Council and a Federal Task Force on Environmental Education.

(b)(1) The Advisory Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this Act. With respect to such matters, the Council shall be the exclusive advisory entity for the Administrator. The Council may exchange information with other Advisory Councils established by the Administrator. The Office of Environmental Education shall provide staff support to the Council.

(2) The Advisory Council shall consist of 11 members appointed by the Administrator after consultation with the Secretary. Two members shall be appointed to represent primary and secondary education (one of whom shall be a classroom teacher); two members shall be appointed to represent colleges and universities; two members shall be appointed to represent not-for-profit organizations involved in environmental education; two members shall be appointed to represent State departments of education and natural resources; two representatives shall be appointed to represent business and industry; and one representative shall be appointed to represent senior Americans. A representative of the Secretary shall serve as an ex officio member of the Advisory Council. The conflict of interest provision at section 208(a) of title 18, United States Code, shall not apply to members' participation in particular matters which affect the financial interests of employers which they represent pursuant to this subsection.

(3) The Administrator shall provide that members of the Council represent the various geographic regions of the country, has minority representation, and that the professional backgrounds of the members include scientific, policy, and other appropriate disciplines.

(4) Each member of the Advisory Council shall hold office for a term of 3 years, except that—

(A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of the members first taking office shall expire as follows: four shall expire 3 years after the date of enactment of this Act, four shall expire 2 years after such date, and three shall expire 1 year after such date, as designated by the Administrator at the time of appointment.

(5) Members of the Advisory Council appointed under this section shall, while attending meetings of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(6) Section 14(a) of the Federal Advisory Committee Act relating to termination, shall not apply to the Advisory Council.

(c)(1) The Federal Task Force on Environmental Education shall advise, consult with and make recommendations to the Administrator on matters relating to implementation of this Act and assure the coordination of such implementation activities with related activities of other Federal agencies.

(2) Membership of the Task Force shall include the—

(A) Department of Education,

(B) Department of the Interior,

(C) Department of Agriculture,

(D) the Environmental Protection Agency,

(E) National Oceanic and Atmospheric Administration,

(F) Council on Environmental Quality,

(G) Tennessee Valley Authority, and

(H) National Science Foundation.

(3) The Environmental Protection Agency shall chair the Task Force.

(4) The Administrator may ask other Federal agencies to participate in the meetings and activities of the Task Force where the Administrator finds it appropriate in carrying out the requirements of this Act.

(d)(1) The Advisory Council shall, after providing for public review and comment, submit to the Congress, within 24 months of enactment of this Act and biennially thereafter, a report which shall—

(A) describe and assess the extent and quality of environmental education in the Nation;

(B) provide a general description of the activities conducted pursuant to this Act and related authorities over the previous 2-year period;

(C) summarize major obstacles to improving environmental education (including environmental education programs relating to national parks and wildlife refuges) and make recommendations for addressing such obstacles;

(D) identify personnel skills, education, and training needed to respond to current and anticipated environmental problems and make recommendations for actions to assure sufficient educational and training opportunities in these professions; and

(E) describe and assess the extent and quality of environmental education programs available to senior Americans and make recommendations thereon; describe the various Federal agency programs to further senior environmental education, and evaluate and make recommendations as to how such educational apparatuses could best be coordinated with nonprofit senior organizations across the Nation, and environmental education institutions and organizations now in existence.

(2) The Federal Task Force on Environmental Education shall review and comment on a draft of the report to Congress.

SEC. 10. THE NATIONAL ENVIRONMENTAL EDUCATION AND TRAINING FOUNDATION.

(a) ESTABLISHMENT AND PURPOSES.—

(1) ESTABLISHMENT.—(A) There is hereby established the National Environmental Education and Training Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

(B) The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States.

(2) PURPOSES.—The purposes of the Foundation are—

(A) subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States, and Canada or Mexico.

(3) PROGRAMS.—The Foundation will develop, support, and/or operate programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

(b) BOARD OF DIRECTORS.—

(1) ESTABLISHMENT AND MEMBERSHIP.—(A) The Foundation shall have a governing Board of Directors (hereafter referred to in this section as "the Board"), which shall consist of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board shall oversee the activities of the Foundation and shall assure that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to environmental education and training.

(B) The Administrator of the Environmental Protection Agency shall, pursuant to paragraph (2), appoint the Director of the Office of Environmental Education established pursuant to section 3 of this Act as an ex-officio member of the Board. Ex officio membership shall also be offered to other Federal agencies or departments with an interest and/or experience in environmental education and training.

(C) Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(2) APPOINTMENT AND TERMS.—(A) Members of the Board shall be appointed by the Administrator of the Environmental Protection Agency.

(B) Within 90 days of the date of the enactment of this Act, and as appropriate thereafter, the Administrator shall publish in the Federal Register an announcement of appointments of Directors of the Board. At the same time, the Administrator shall transmit a copy of such announcement to the Education and Labor Committee and the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate. Such appointments shall become final and effective 90 days after publication in the Federal Register.

(C) The directors shall be appointed for terms of 4 years, except that the Administrator, in making the initial appointments to the Board, shall appoint 5 directors to a term of 2 years, 4 directors to a term of 3 years, and 4 directors to a term of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

(3) CHAIR.—The Chair shall be elected by the Board from its members for a 2-year term.

(4) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(5) MEETINGS.—The Board shall meet at the call of the Chair at least twice a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with this subsection.

(6) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(7) GENERAL POWERS.—(A) The Board may complete the organization of the Foundation by—

(i) appointing officers and employees;

(ii) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this section; and

(iii) undertaking such other acts as may be necessary to carry out the provisions of this section.

(B) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(i) Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, of the United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(ii) The first officer or employee appointed by the Board shall be the Executive Director of the Foundation who (I) shall serve, at the direction of the Board, as the Secretary of the Board and the Foundation's chief executive officer, and (II) shall be experienced in matters relating to environmental education and training.

(c) RIGHTS AND OBLIGATIONS OF THE FOUNDATION.—

(1) IN GENERAL.—The Foundation—

(A) shall have perpetual succession;

(B) may conduct business throughout the several States, territories, and possessions of the United States and abroad;

(C) shall have its principal offices in the District of Columbia or in the greater metropolitan area; and

(D) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The service of notice to, or service of notice upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(2) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(3) POWERS.—To carry out its purposes under section 10(a) of this Act, the Foundation shall have, in addition to the powers otherwise given it under this section, the usual powers of a corporation acting as a trustee, including the power—

(A) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(B) to acquire by purchase or exchange any real or personal property or interest therein;

(C) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(D) to sue, or to be sued, and complain or defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(E) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(F) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

(d) CONDITIONS ON DONATIONS.—

(1) For the purposes of this section, a gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current future interest therein is for the benefit of the Foundation.

(2) No donation, gift, devise, bequest, property (either real or personal), voluntary services, or any other thing of value may be accepted by the Foundation if it—

(A) is contingent upon the transmission by the Foundation of materials or information prepared by the donor or a third party in such a fashion as to convey a particular point of view favorable to the economic interests of the donor or its constituents or associates; or

(B) in the judgment of the Board carries with it an explicit or implied requirement on the part of the Foundation to do a specific act or make general representations which are to the benefit of the donor and which are not consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act.

(3) No materials bearing "logos", letterhead or other means of identification associated with a donor or third party may be transmitted by the Foundation for use in environmental education and training, except as required pursuant to subsection (f).

(e) ADMINISTRATIVE SERVICES AND SUPPORT.—Subject to the requirements of this subsection, the Administrator may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under subsection (b)(6) of this section, not to exceed then current Federal Government per diem rates, for a period of up to 4 years from the date of enactment of this Act, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the costs of providing such services. With respect to personnel, the Administrator may provide no more than 1 full-time employee to serve the Foundation in a policy capacity, and may provide clerical and other support staff at a level equivalent to 2 full-time equivalent employees to the Foundation, for a period not to exceed 2 years from the date of initial assignment of any personnel for this purpose.

(f) REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress a report of its proceedings and activities during the year, including a full and complete statement of its receipts, expenditures, and investments.

(g) VOLUNTEER STATUS.—The Administrator may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Environmental Protection Agency, as volunteers in the performance of the functions authorized herein, in the manner provided for under this section.

(h) AUDITS AND PETITION OF THE ATTORNEY GENERAL FOR EQUITABLE RELIEF.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (Public Law 88-504; 36 U.S.C. 1101-1103), the Foundation shall be treated as a private corporation established under Federal law.

(i) UNITED STATES RELEASE FROM LIABILITY.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

(j) AMENDMENT AND REPEAL.—The Congress expressly reserves the right to repeal or amend this section at any time.

SEC. 11. AUTHORIZATION.

(a) There is hereby authorized to be appropriated to the Environmental Protection Agency to carry out this Act not to exceed $12,000,000 for each fiscal year 1992 and 1993, not to exceed $13,000,000 for fiscal year 1994, and not to exceed $14,000,000 for each fiscal year 1995 and 1996.

(b) Of such sums appropriated in a fiscal year, 25 percent shall be available for the activities of the Office of Environmental Education, 25 percent shall be available for the operation of the environmental education and training program, 38 percent shall be available for environmental education grants, 10 percent shall be available for support of the National Environmental Education and Training Foundation, and 2 percent shall be available to support awards pursuant to section 8(e) of this Act.

(c) Funds appropriated pursuant to this section may be made available to the National Environmental Education and Training Foundation to—

(1) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local governments; and

(2) provide administrative services under section 10(d) of this Act

provided that the Administrator determines that such funds will be used to carry out the statutory purposes of the Foundation in a manner consistent with the goals, objectives and programs of this Act.

CONVEYANCE OF A FISH HATCHERY TO THE STATE OF SOUTH CAROLINA

BURDICK (AND CHAFEE) AMENDMENT NO. 3186

Mr. BREAUX (for Mr. BURDICK, for himself and Mr. CHAFEE) proposed an amendment to the bill (H.R. 3338) to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes, as follows:

H.R. 3338, as amended, is amended—

(1) on page 15, line 2 of H.R. 3338, after the words "transferred lands", by inserting "under the provisions of section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 et seq.), as if the South Carolina Commission of Forestry were a Federal agency.";

(2) by adding at the end of title I the following new sections:

"SEC. . NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT AMENDMENTS OF 1990.

"(a) SHORT TITLE.—This section may be cited as the "National Fish and Wildlife Foundation Establishment Act Amendments of 1990".

"(b) ELIMINATION OF CAP ON SALARIES.—Section 3(g)(2)(A) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702(g)(2)(A)) is amended by striking "rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.", and inserting "rates.".

"(c) AUTHORIZATION OF APPROPRIATIONS.—Section 10 of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3709) is amended to read as follows:

"SEC. 10 AUTHORIZATION OF APPROPRIATIONS.

"(a) AUTHORIZATION.—There are authorized to be appropriated to the Department of the Interior not to exceed $15,000,000 for fiscal year 1991, not to exceed $20,000,000 for fiscal year 1992, and not to exceed $25,000,000 for fiscal year 1993.

"(b) USE OF AMOUNTS APPROPRIATED.—(1) Subject to paragraphs (2) and (3), amounts appropriated under this section shall be made available to the Foundation for use for matching, in whole or in part, contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local government agencies.

"(2) No Federal funds authorized under this section shall be used by the Foundation for administrative expenses of the Foundation, including for salaries, travel and transportation expenses, and other overhead expenses.".

"SEC. . NEW ENGLAND FISHERY RESOURCES RESTORATION ACT OF 1990.

"(a) SHORT TITLE.—This section may be cited as the "New England Fishery Resources Restoration Act of 1990".

"(b) PURPOSES.—The purposes of this Act are to—

"(1) ensure timely and effective implementation of restoration plans and programs for Atlantic salmon and other fishery resources of selected river systems in New England;

"(2) complete a study of fish passage impediments and requirements on small streams and rivers in New England; and

"(3) develop an inventory of important fish and wildlife habitat and other natural areas of river basins in New England.

"(c) IMPLEMENTATION OF FISHERY RESOURCE RESTORATION PLANS.—The Director of the United States Fish and Wildlife Service, hereinafter referred to as the Director, in consultation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration shall formulate, establish and implement programs to restore and maintain nationally significant, interjurisdictional fishery resources originating in New England river systems, including the Connecticut, Thames, Pawcatuck, Merimack, Saco, Androscoggin, Kennebec, Sheepscot, Duck Trap, St. George, Penobscot, Union, Narraguagus, Pleasant, Machias, Dennys, St. Croix, Meduxnekeag and Aroostock and their tributaries. These programs shall be in accordance with the schedule and responsibilities established in comprehensive basin-wide restoration plans prepared by the Director in cooperation with State, local, and other entities involved and interested in the conservation and management of the affected fishery resources. Preparation and periodic revision of restoration plans, and their implementation, shall be based on a Memorandum of Agreement for each restoration program which shall be entered into by the Director and cooperating entities. The Director shall prepare and submit to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works an annual report documenting activities undertaken and accomplishment achieved in fulfillment of this section, including an assessment of the prognosis for restoration of each of the stocks and species involved.

"(d) FISH PASSAGE STUDY.—The Director shall conduct a study to identify impediments to upstream and downstream passage of fish in rivers and streams in the New England States due to dams that are not licensed by the Federal Energy Regulatory Commission or other human-caused obstructions. In addition, the study shall identify actions needed to alleviate those impediments where desirable and feasible. The study shall include, but not be limited to, identifying—

"(1) all dams not licensed by the Federal Energy Regulatory Commission and other

human-caused obstructions on New England rivers and streams where construction of upstream or downstream fish passage facilities or their removal would benefit fishery resources, including an estimate of the degree of benefits expected; and

"(2) the proposed nature and size and estimated cost of appropriate fish passage facilities or other actions determined to be necessary and feasible or each dam or other obstruction identified in response to paragraph (1).

The Director shall provide notice to the public of the extent and nature of the study by publication of such information in major newspapers in the region and by other appropriate means. Within three years of the date of enactment of this Act, the Director shall submit a report containing the findings, conclusions and recommendations of the study to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works.

"(e) NEW ENGLAND RIVERS FISH AND WILDLIFE INVENTORY.—The Director shall inventory the natural values of river basins in New England, including the Connecticut, Pawcatuck, Acushnet, North and South (in Plymouth County, Massachusetts), Charles, Merrimack, Saco, Androscoggin, Kennebec, Penobscot, Union, St. Croix, and Aroostock Rivers and their tributaries, and identify fish and wildlife habitat in most need of protection or where public access to the rivers should be provided. In addition, the Director shall, in cooperation with appropriate State agencies and local governments and after providing notice and opportunity for public comment, identify appropriate public or private measures for providing the necessary protection or access for each area included in the inventory. Within two years of the date of enactment of this Act, the Director shall submit a report containing the findings, conclusions, and recommendations of the inventory and assessment to the House Committee on Merchant Marine and Fisheries and the Senate Committee on Environment and Public Works.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director—

"(1) $5,000,000 per year for fiscal years 1991, 1992, 1993, 1994, and 1995 to implement fishery resource restoration plans and programs, except for activities related to the design and construction of fish passage facilities, as directed by subsection (c);

"(2) $500,000 per year for fiscal years 1991, 1992, and 1993 to conduct the study required under subsection (d); and

"(3) $500,000 to conduct the inventory and assessment required under section (e).

"SEC. . NORTH AMERICAN WETLANDS CONSERVATION ACT AMENDMENTS.

"The North American Wetlands Conservation Act (P.L. 101-233) is amended—

"(1) in section 4(a)(1)(A) by inserting after "Service" and before the period ", who shall be the responsible Federal official for ensuring Council compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.)";

"(2) in section 4(a)(1) by adding at the end thereof the following sentence: "The provisions of P.L. 92-463, as amended, shall not apply to the Council.";

"(3) in section 4(f) by inserting after "public" and before the period ", and the Chairman shall take appropriate steps to provide adequate notice to the public of the time and place of such meetings"; and

"(4) in section 5(b) by adding at the end thereof the following new sentence: "Solely for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.), recommendations by the council for carrying out wetlands conservation projects under section 6(a) of this Act shall be considered Federal actions requiring the preparation of environmental assessments or, where appropriate, environmental impact statements.".

"SEC. . TENSAS RIVER NATIONAL WILDLIFE REFUGE.

"The final paragraph of the portion of Chapter IV providing supplemental appropriations for the Corps of Engineers, Department of the Army, of Public Law 98-63, (97 Stat. 314) is amended by inserting at the end thereof: ", or acquired by any person since June 28, 1980.".";

(3) by striking sections 205 and 206 and inserting in lieu thereof the following:

"SEC. 205. AUTHORIZATION.

"For the purposes of carrying out the provisions of this Act, there is authorized to be appropriated to the Environmental Protection Agency $13,000,000 for fiscal year 1991, $18,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, $26,000,000 for fiscal year 1994, and $33,000,000 for fiscal year 1995."; and

(4) by adding the following new title at the appropriate place in the bill:

"TITLE —REGIONAL MARINE RESEARCH PROGRAMS

"SEC. . REGIONAL MARINE RESEARCH PROGRAMS.

"The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 et seq.) is amended by adding at the end thereof the following new title:

"TITLE IV—REGIONAL MARINE RESEARCH PROGRAMS

"PURPOSES

"SEC. 401. The purpose of this title is to establish regional research programs, under effective Federal oversight, to—

"(1) set priorities for regional marine and coastal research in support of efforts to safeguard the water quality and ecosystem health of each region; and

"(2) carry out such research through grants and improved coordination.

"DEFINITIONS

"SEC. 402. As used in this title, the term—

"(1) 'Board' means any Regional Marine Research board established pursuant to sectikon 403(a);

"(2) 'Federal agency' means any department, agency, or other instrumentality of the Federal Government, including any independent agency or establishment of the Federal Government and any government corporation;

"(13) 'local government' means any city, town, borough, county, parish, district, or other public body which is a political subdivision of a State and which is created pursuant to State law;

"(4) 'marine and coastal waters' means estuaries, waters of the estuarine zone, including wetlands, any other waters seaward of the historic height of tidal influence, the territortial seas, the contigous zone, and the ocean.

"(5) 'nonprofit organization' means any organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation pursuant to section 501(a) of such Code;

"(6) 'region' means 1 of the 9 regions described in section 403(a); and

"(7) 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"REGIONAL MARINE RESEARCH BOARDS

"SEC. 403. (a) ESTABLISHMENT.—A Regional Marine Research Board shall be established for each of the following regions:

"(1) the Gulf of Maine region, comprised of the marine and coastal waters off the States of Maine, New Hampshire, and Massachusetts (north of Cape Code);

"(2) the greater New York bight region, comprised of the marine and coastal waters off the States of Massachusetts (south of Cape Cod), Rhode Island, Connecticut, New York, and New Jersey, from Cape Cod to Cape May;

"(3) the mid-Atlantic region, comprised of the marine and coastal waters off the States of New Jersey, Delaware, Maryland, Virginia, and North Carolina, from Cape May to Cape Fear;

"(4) the South Atlantic region, comprised of the marine and coastal waters off the States of North Carolina, South Carolina, Georgia, and Florida, from Cape Fear to the Florida Keys, including the marine and coastal waters off Puerto Rico and the United States Virgin Islands;

"(5) the Gulf of Mexico region, comprised of the marine and coastal waters off the States of Florida, Alabama, Mississippi, Lousiana, and Texas, along the Gulf coast from the Florida Keys to the Mexican border;

"(6) the California region, comprised of the marine and coastal waters off the State of California, from Point Reyes to the Mexican border;

"(7) the North Pacific region, comprised of the marine and coastal waters off the States of California, Oregon, and Washington, from Point Reyes to the Canadian border;

"(8) the Alaska region, comprised of the marine and coastal waters off the State of Alaska; and

"(9) insular Pacific region, comprised of the marine and coastal waters off the State of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

The Great Lakes Research Office authorized under section 118(d) of the Federal Water Pollution Control Act (33 U.S.C. 1268(d)) shall be responsible for research in the Great Lakes region and shall be considered the Great Lakes counterpart to the research program established pursuant to this title.

"(b) MEMBERSHIP.—

"(1) COMPOSITION.—Each Board shall be comprised of 11 members of which—

"(A) 3 members shall be appointed by the Administrator of the National Oceanic and Atmospheric Administration, including 1 member who shall be a Sea Grant Program Director from a State within such region, who shall serve as chairman of the board;

"(B) 2 members shall be appointed by the Administrator of the Environmental Protection Agency; and

"(C) 6 members shall be appointed by Governors of States located within the region.

"(2) QUALIFICATIONS.—Each individual appointed as a member of a Board shall possess expertise, pertinent to the region concerned, in scientific research, coastal zone management, fishery management, water

quality management, State or local government, or any other area which is directly relevant to the functions of the Board. A majority of the members of each Board shall be trained in a field of marine or acquatic science and shall be currently engaged in research or research administration.

"(3) TERMS.—Each appointed member of a Board shall serve for a term of 4 years.

"(4) VACANCIES.—In the event of a vacancy, a replacement member shall be appointed in the same manner and in accordance with the same requirements as the member being replaced and shall serve the remainder of the term of the replaced member.

"(5) REIMBURSEMENT OF EXPENSES.—Each appointed member of a Board may be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the member's usual place of residence, in accordance with section 5703 of title 5, United States Code, when engaged in the actual performance of Board duties.

"(c) FUNCTIONS.—Each Board shall, in accordance with the provisions of this title—

"(1) develop and submit to the Administrators of the National Oceanic and Atmospheric Administration and the Environmental Protection Agency a marine research plan, including periodic amendments thereto, that meets the requirements of section 404;

"(2) provide a forum for coordinating research among research institutions and agencies;

"(3) provide for review and comment on research plans by affected users and interests, such as the commercial and recreational fishing industries, other marine industries, State and local government entities, and environmental organizations;

"(4) ensure that the highest quality of research projects will be conducted to carry out the comprehensive plans; and

"(5) prepare, for submisison to Congress, a periodic report on the marine environmental research issues and activities within the region in accordance with section 406 of this title.

"(d) POWERS.—Each Board shall be authorized to—

"(1) cooperate with Federal agencies, with States and with local government entities, interstate and regional agencies, other public agencies and authorities, nonprofit institutions, laboratories, and organizations, or other appropriate persons, in the preparation and support of marine research in the region;

"(2) enter into contracts, cooperative agreements or grants to State and local governmental entities, other public agencies or institutions, and nonprofit institutions and organizations for purposes of carrying out the provisions of this title;

"(3) collect and make available through publications and other appropriate means, the results of, and other information pertaining to, the research conducted in the region;

"(4) call conferences on regional marine research and assessment issues, giving opportunity for interested persons to be heard and present papers at such conferences;

"(5) develop and stimulate, in consultation with the Department of State, joint marine research projects with foreign nations;

"(6) utilize facilities and personnel of existing Federal agencies, including scientific laboratories and research facilities;

"(7) accept, and for all general purposes of this Act, utilize funds from other sources, including but not limited to State and local funds, university funds, and donations; and

"(8) acquire secret processes, inventions, patent applications, patents, licenses, and property rights, by purchase, license, leasee, or donation.

"(e) ADMINISTRATION.—

"(1) PRACTICES AND PROCEDURES.—Each Board shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this title. Each Board should use existing research administrative capability to the extent practicable.

"(2) COMMITTEES AND SUBCOMMITTEES.—Each Board shall establish such committees and subcommittees as are appropriate in the performance of its functions.

"(3) STAFF AND SUPPORT.—Each Board is authorized to hire such staff as are necessary to carry out the functions of the Board.

"(f) TERMINATION.—Each Board shall cease to exist on October 1, 1999, unless extended by Congress.

"REGIONAL RESEARCH PLANS

"SEC. 404. (a) DEVELOPMENT AND AMENDMENT OF REGIONAL PLANS.—

"(1) IN GENERAL.—Each Board shall develop a comprehensive 4-year marine research plan for the region for which the Board is responsible, and shall amend the plan at such times as the Board considers necessary to reflect changing conditions, but no less frequently than once every 4 years.

"(2) REVIEW AND CONSIDERATION OF NATIONAL PLAN.—In the development and amendment of its research plan, the Board shall consider findings and recommendations of the national plan developed pursuant to the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.).

"(b) CONTENT OF PLAN.—Such marine research plan shall include—

"(1) an overview of the environmental quality conditions in the coastal and marine waters of the region and expected trends in these conditions;

"(2) a comprehensive inventory and description of all marine research related to water quality and ecosystem health expected to be conducted in the region during the 4-year term of the research plan;

"(3) a statement and explanation of the marine research needs and priorities applicable to the marine and coastal waters of the region over the upcoming 10-year period with emphasis on the upcoming 3-to-5 year period;

"(4) an assessment of how the plan will incorporate existing marine, coastal, and estuarine research and management in the region, including activities pursuant to section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330) and section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461); and

"(5) a general description of marine research and monitoring objectives and timetables for achievement through the funding of projects under this title during the 4-year period covered by the plan so as to meet the priorities specified in the plan in accordance with paragraph (3).

"(c) PLAN REVIEW AND APPROVAL.—

"(1) IN GENERAL.—When a Board has developed a marine research plan, including amendments thereto, the Board shall submit the plan to the Administrator of the National Oceanic and Atmospheric Administration and the Administration of the Environmental Protection Agency, who shall jointly determined whether the plan meets the requirements of subsection (b).

"(2) TIME FOR APPROVAL OR DISAPPROVAL.—The Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency, shall jointly approve or disapprove such research plan within 120 days after receiving the plan.

"(3) ACTION AFTER DISAPPROVAL.—In the case of disapproval of such research plan, the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency shall jointly notify the appropriate Board in writing, stating in detail the revisions necessary to obtain approval of the plan. Such Administrators shall approve or disapprove the revised plan within 90 days after receiving the revised plan from the Board.

"RESEARCH GRANT PROGRAM

"SEC. 405. (a) PROGRAM ADMINISTRATION.—The Administrator of the National Oceanic and Atmospheric Administration shall administer a grant program to support the administrative functions of each Board.

"(b) RESEARCH GRANTS.—(1) Each Board may annually submit a grant application to the Administrator of the National Oceanic and Atmospheric Administration to fund projects aimed at achieving the research priorities set forth in each research plan, including amendments thereto, developed and approved pursuant to section 404.

"(2) Projects eligible for funding under this section shall include research, investigations, studies, surveys, or demonstrations with respect to—

"(A) baseline assessment of marine environmental quality, including chemical, physical, and biological indicators of environmental quality;

"(B) effects or potential effects of contaminants, including nutrients, toxic chemicals and heavy metals, on the environment, includng marine and aquatic organisms;

"(C) effects of modification of habitats, including coastal wetlands, seagrass beds and reefs, on the environment, including marine organisms;

"(D) assessment of impacts of pollutant sources and pollutant discharges into the coastal environment;

"(E) transport, dispersion, transformation, and fate and effect of contaminants in the marine environment;

"(F) marine and estuarine habitat assessment and restoration;

"(G) methods and techniques for modeling environmental quality conditions and trends;

"(H) methods and techniques for sampling of water, sediment, marine and aquatic organisms, and demonstration of such methods and techniques;

"(I) the effects on human health and the environment of contaminants or combinations of contaminants at various levels, whether natural or anthropogenic, that are found in the marine environment;

"(J) environmental assessment of potential effects of major coastal and offshore development projects in the region;

"(K) assessment of the effects of climate change on marine resources in the region; and

"(L) analysis and interpretation of research data for the benefit of State and local environmental protection and resource management agencies in the region.

"(3) Grant applications submitted pursuant to this subsection shall include—

"(A) a description of the specific research projects to be conducted;

"(B) identification of the organization responsible for each project and the principal investigator directing the project;

"(C) a budget statement for each project;

"(D) a schedule of milestones and interim products for each research project;

"(E) a description of the relationship of the proposed project to the goals, objectives, and priorities of the research plan for the region and to other research projects; and

"(F) any other information which may be required by the Administrator.

"(c) REVIEW AND APPROVAL OF PROJECT PROPOSALS.—(1) The Administrator of the National Oceanic and Atmospheric Administration shall review the annual grant application and, with the concurrence of the Administrator of the Environmental Protection Agency, approve such grant application with such conditions as are determined to be appropriate based on peer reviews conducted pursuant to paragraph (2).

"(2) The Administrator of the National Oceanic and Atmospheric Administration shall develop a system of peer review of grant applications which shall ensure that only the highest quality research is approved for funding and that each project is reviewed by research scientists outside the region concerned.

"(d) REPORTING.—Any recipient of a grant under this section shall report to the appropriate Board, not later than 18 months after award of the grant, on the activities of such recipient conducted pursuant to this subsection. Such report shall include narrative summaries and technical data in such form as the Administrator of the National Oceanic and Atmospheric Administration may require.

"REPORT ON RESEARCH PROGRAM

"SEC. 406. (a) PREPARATION AND SUBMISSION OF REPORT.—Each Board receiving a grant under section 405 shall, not later than 2 years after the approval of its comprehensive plan under section 405 and at 2-year intervals thereafter, prepare and submit to the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency a report describing—

"(1) the findings and conclusions of research projects conducted in the region;

"(2) recommendations for improvements in the design or implementation of programs for the protection of the marine environment; and

"(3) available data and information concerning ecosystem health within the region.

"(b) TRANSMITTAL TO CONGRESS.—Upon receipt of a report prepared by a Board under subsection (a), the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Enviromental Protection Agency shall tansmit a copy of such report to the Committees on Commerce, Science, and Transportation and on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 407. (a) IN GENERAL.—For purposes of carrying out the provisions of this title, there are authorized to be appropriated $18,000,000 for each of the fiscal years 1992 through 1996.

"(b) ALLOCATION.—(1) Of funds appropriated in any fiscal year, not more than $500,000 shall be reserved for administration of this title by the National Oceanic and Atmospheric Administration and the Environmental Protection Agency.

"(2) Funds appropriated in a fiscal year which are available after allocation pursuant to paragraph (1), shall be used to support the administrative costs of Boards established pursuant to subsection 403(a), provided that such funding does not exceed $300,000 for each research Board in each fiscal year.

"(3) Seventy-five percent of funds appropriated in a fiscal year available after allocation pursuant to paragraphs (1) and (2), shall be allocated equally among Boards located in regions submitting research project grant applications pursuant to section 405(b).

"(4) Twenty-five percent of funds appropriated in a fiscal year available after allocation pursuant to paragraphs (1) and (2), shall be allocated among Boards located in regions submitting research project grant applications pursuant to section 405(b) which, in the judgment of the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator of the Environmental Protection Agency, propose the most needed and highest quality research.".

DOMENICI AMENDMENT NO. 3187

Mr. CHAFEE (for Mr. DOMENICI) proposed an amendment to the bill H.R. 3338, supra, as follows:

At the appropriate place in the bill insert the following:

SECTION . SHORT TITLE.

This Act may be cited as the "National Forest Foundation Act".

SEC. . ESTABLISHMENT AND PURPOSES OF FOUNDATION.

(a) ESTABLISHMENT.—There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia.

(b) PURPOSES.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;

(2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and

(3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

(c) LIMITATION AND CONFLICTS OF INTERESTS.—(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

SEC. . BOARD OF DIRECTORS OF THE FOUNDATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to natural and cultural resource issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) APPOINTMENT AND TERMS.—Within one year from the date of enactment of this title, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) CHAIRMAN.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) QUORUM.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) REIMBURSEMENT OF EXPENSES.—Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) GENERAL POWERS.—The Board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subtitle, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subtitle.

(h) OFFICERS AND EMPLOYEES.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. . CORPORATE POWERS AND OBLIGATIONS.

(a) IN GENERAL.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States and in foreign countries;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) NOTICE AND SERVICE OF PROCESS.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(c) SEAL.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) POWERS.—To carry out its purposes, the Foundation shall have, in addition to powers otherwise authorized under this title, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(e) PROPERTY.—(1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exchange. For the purposes of this title, an interest in real property shall include, but not be limited to, mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subjected to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this title shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

SEC. . ADMINISTRATIVE SERVICES AND SUPPORT.

(a) STARTUP FUNDS.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative and other startup expenses, the Secretary is authorized to provide to the Foundation $500,000, from funds appropriated pursuant to section 10a, per year for the two years following the date of enactment of this title. Such funds shall remain available to the Foundation until they are expended for authorized purposes.

(b) MATCHING FUNDS.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this title, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section of this title including reimbursement of expneses under section , not to exceed then current Federal Government per diem rates.

(c) ADMINISTRATIVE EXPENSES.—At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish.

SEC. . VOLUNTEERS.

The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147).

SEC. . AUDITS AND REPORT REQUIREMENTS.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) ANNUAL REPORTS.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments.

SEC. . UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation.

SEC. . ACTIVITIES OF THE FOUNDATION AND UNITED STATES FOREST SERVICE.

The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law.

SEC. . AUTHORIZATION OF APPROPRIATIONS.

(a) START-UP FUNDS.—For the purposes of section of this title, there are authorized to be appropriated $1,000,000.

(b) MATCHING FUNDS.—For the purposes of section of this title, during the five-year period following the date of the enactment of this rule, there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation.

JESSE OWENS BUILDING OF THE UNITED STATES POSTAL SERVICE

CRANSTON AMENDMENT NO. 3188

Mr. BREAUX (for Mr. CRANSTON) proposed an amendment to the bill (H.R. 5235) to designate the Owens Finance Station of the U.S. Postal Service in Cleveland, OH, as the "Jesse Owens Building of the United States Postal Service," as follows:

At the end of the bill, add the following new title:

TITLE —COIN DESIGN

SEC. . DENOMINATIONS, SPECIFICATIONS, AND DESIGN OF COINS.

Subsection (d)(1) of section 5112 of title 31, United States Code, is amended by striking the fourth sentence.

SEC. . DESIGN CHANGES REQUIRED FOR CERTAIN COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

(3) The design on the reverse side of the half dollar, quarter dollar, dime coin, 5-cent coin and one-cent coin shall be selected for redesigning. One or more coins may be selected for redesign at the same time, but the first redesigned coin shall have a design commemorating the two hundredth anniversary of the United States Constitution for a period of 2 years after issuance. After that 2-year period, the bicentennial coin shall have its design changed in accordance with the provisions of this subsection. Such selection, and the minting and issuance of the first selected coin shall be made not later than 1-year after the date of the enactment of this paragraph. All such redesigned coins shall confirm with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. . DESIGN ON OBVERSE SIDE OF COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) Subject to paragraph (2), the design on the obverse side of the half dollar, quarter dollar, dime coin, 5-cent coin, and one-cent coin shall contain the likenesses of those currently displayed and shall be considered for redesign. All such coin obverse redesigns shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. . SELECTION OF DESIGNS.

The design changes for each coin authorized by the amendments made by this title shall take place at the discretion of the Secretary and shall be done at the rate of one or more coins per year, to be phased in over 6 years after the date of the enactment of this Act. In selecting new designs, the Secretary shall consider, among other factors, thematic representations of the following constitutional concepts: freedom of speech and assembly; freedom of the press; right to due process of law; right to a trial by jury; right to equal protection under the law; right to vote; themes from the Bill of Rights; and separation of powers, including the independence of the judiciary. The designs shall be selected by the Secretary upon consultation with the United States Commission on Fine Arts.

SEC. . REDUCTION OF THE NATIONAL DEBT.

Subsection (a)(1) of section 5132 of title 31, United States Code, is amended by inserting after the third sentence the following: "Any profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

J.E. "EDDIE" RUSSELL POST OFFICE

GLENN AMENDMENT NO. 3189

Mr. BREAUX (for Mr. GLENN) proposed an amendment to the bill (S. 1888) to designate the U.S. Post Office located in Monterey, TN, as the J.E. "Eddie" Russell Post Office, as follows:

On page 1, line 5, after "office", insert "presently".

On page 1, line 7, after "office", insert "Building".

BENJAMIN FRANKLIN MEMORIAL FIRE SERVICE

HEINZ AMENDMENT NO. 3190

Mr. CHAFEE (for Mr. HEINZ) proposed an amendment to the bill (S. 1933) to provide for the minting of coins in commemoration of the bicentennial of the death of Benjamin Franklin and to enact a fire service bill of rights and programs to fulfill those rights, as follows:

On page 6, line 3, strike "January 1, 1990", and insert in lieu thereof, "January 1, 1991".

On page 6, line, 5, strike "December 31, 1991", and insert in lieu thereof "December 31, 1992".

RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT

BRADLEY AMENDMENT NO. 3191

Mr. BREAUX (for Mr. BRADLEY) proposed an amendment to the bill (H.R. 2567) entitled Reclamation Projects Authorization and Adjustment Act of 1990, as follows:

Delete all after the enacting clause and substitute the following:

SECTION 1. SHORT TITLE.—This Act may be cited as the "Reclamation Projects Authorization and Adjustment Act of 1990".

SEC. 2. DEFINITION.—For purposes of this Act, the term "Secretary" means the Secretary of the Interior.

TITLE I—BUFFALO BILL DAM AND RESERVOIR, WYOMING

SEC. 101. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—Title I of Public Law 97-293 (96 Stat. 1261) is amended as follows:

(a) In the second sentence of section 101, by striking "replacing the existing Shoshone Powerplant," and inserting "constructing power generating facilities with a total installed capacity of 25.5 megawatts,".

(b) In section 102, amend the heading to read "recreational facilities, conservation, and fish and wildlife", and add at the end "The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreational Act.".

(c) In section 106(a), strike "for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels)" and insert "for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels)", and strike "modifications" and all that follows and insert "modifications." in lieu thereof.

TITLE II—LEADVILLE MINE DRAINAGE TUNNEL, COLORADO

SEC. 201. AUTHORIZATION.—The Secretary is authorized to construct, operate, and maintain a water treatment plant, including the disposal of sludge produced by said treatment plant as appropriate, and to install concrete lining on the rehabilitated portion of the Leadville Mine Drainage Tunnel, in order that water flowing from the Leadville Tunnel may meet water quality standards.

SEC. 202. COSTS NON-REIMBURSABLE.—Construction, operation, and maintenance costs of the works authorized by this title shall be non-reimbursable.

SEC. 203. OPERATION AND MAINTENANCE.—The Secretary shall be responsible for operation and maintenance of the water treatment plant, including sludge disposal authorized by this title. The Secretary may contract for these services.

SEC. 204. APPROPRIATIONS AUTHORIZED.—There is hereby authorized to be appropriated beginning October 1, 1989, for construction of a water treatment plant for water flowing from the Leadville Mine Drainage Tunnel, including sludge disposal, and concrete lining the rehabilitated portion of the Tunnel, the sum of $10,700,000 (October 1988 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation and maintenance of the works authorized by this title.

SEC. 205. LIMITATION.—The treatment plant authorized by this title shall be designated and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.

SEC. 206. DESIGN AND OPERATION NOTIFICATION.—Prior to the initiation of construction and during construction of the works authorized by section 201, the Secretary shall submit the plans for design and operation of the works to the Administrator of the Environmental Protection Agency and the State of Colorado to obtain their views on the design and operation plans. After such review and consultation, the Secretary shall notify the President Pro Tempore of the Senate and the Speaker of the House of Representatives that the discharge from the works to be constructed will meet the requirements set forth in Federal Facilities Compliance Agreement No. FFCA 89-1, entered into by the Bureau of Reclamation and the Environmental Protection Agency on February 7, 1989, and in National Pollutant Discharge Elimination System permit No. CO 0021717 issued to the Bureau of Reclamation in 1975 and reissued in 1979 and 1981.

SEC. 207. FISH AND WILDLIFE RESTORATION.—(a) The Secretary is authorized, in consultation with the State of Colorado, to formulate and implement, subject to the terms of subsection (b) of this section, a program for the restoration of fish and wildlife resources of those portions of the Arkansas River basin impacted by the effluent discharged from the Leadville Mine Drainage Tunnel. The formulation of the program shall be undertaken with appropriate public consultation.

(b) Prior to implementing the fish and wildlife restoration program, the Secretary shall submit a copy of the proposed restoration program to the President Pro Tempore of the Senate and the Speaker of the House of Representatives for a period of not less than sixty days.

SEC. 208. WATER QUALITY RESTORATION.—(a) The Secretary is authorized, in consultation with the State of Colorado, the Administrator of the Environmental Protection Agency, and other Federal entities, to conduct investigations of water pollution sources and impacts attributed to mining-related and other development in the Upper Arkansas River basin, to develop corrective action plans, and to implement corrective action demonstration projects. Neither the Secretary nor any person participating in a corrective action demonstration project shall be liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act for costs or damages as a result of actions taken or omitted in the course of implementing an approved work plan developed under this section; *Provided*, That this subsection shall not preclude liability for costs or damages which result from negligence on the part of such persons. The Secretary shall have no authority under this section at facilities which have been listed or proposed for listing on the National Priorities List, or are subject to or covered by the Resource Conservation and Recovery Act. For the purpose of this section, the term "Upper Arkansas River basin" means the Arkansas river hydrologic basin in Colorado extending from Pueblo Dam upstream to its headwaters.

(b) The development of all corrective action plans and subsequent corrective action demonstration projects shall be undertaken with appropriate public involvement pursuant to a public participation plan, consistent with regulations promulgated under the Federal Water Pollution Control Act, developed by the Secretary in consultation with the State of Colorado and the Administrator of the Environmental Protection Agency.

(c) The Secretary shall arrange for cost sharing with the State of Colorado and for the use of non-Federal funds and inkind services where possible. The Secretary is authorized to fund all State costs required to conduct investigations and develop corrective action plans. The Federal share of costs associated with corrective action plans shall not exceed 60 percent.

(d) Prior to implementing any corrective action demonstration project, the Secretary shall submit a copy of the proposed project plans to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(e) Nothing in this title shall affect or modify in any way the obligations or liabil-

ities of any person under other Federal or State law, including common law, with respect to the discharge or release of hazardous substances, pollutants, or contaminants, as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act.

(f) There is authorized to be appropriated such sums as may be required to fulfill the provisions of sections 207 and 208 of this title.

TITLE III—LAKE MEREDITH SALINITY CONTROL PROJECT, TEXAS AND NEW MEXICO

SEC. 301. AUTHORIZATION.—The Secretary is authorized to construct and test the Lake Meredith Salinity Control Project, New Mexico and Texas, in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 788, and Acts amendatory thereof or supplementary thereto) and the provisions of this title and the plan set out in the June 1985 Technical Report of the Bureau of Reclamation on this project with such modification of, omissions from, or additions to the works, as the Secretary may find proper and necessary for the purpose of improving the quality of water delivered to the Canadian River downstream of Ute Reservoir, New Mexico, and entering Lake Meredith, Texas. The principal features of the project shall consist of production wells, observation wells, pipelines, pumping plants, brine disposal facilities, and other appurtenant facilities.

SEC. 302. CONSTRUCTION CONTRACT.—

(a) The Secretary is authorized to enter into a contract with the Canadian River Municipal Water Authority of Texas (hereafter in this title the "Authority") for the design and construction management of project facilities by the Bureau of Reclamation and for the payment of construction costs by the Authority. Operation and maintenance of project facilities upon completion of construction and testing shall be the responsibility of the Authority.

(b) Construction of the project shall not be commenced until a contract has been executed by the Secretary with the Authority, and the State of New Mexico has granted the necessary permits for the project facilities.

SEC. 303. PROJECT COSTS.

(a) All costs of construction of project facilities shall be advanced by the Authority as the non-Federal contribution toward implementation of this title. Pursuant to the terms of the contract authorized by section 302 of this title, these funds shall be advanced on a schedule mutually acceptable to the Authority and the Secretary, as necessary to meet the expense of carrying out construction and land acquisition activities.

(b) All project costs for verification, design preparation, and construction management (estimated to be approximately 33 percent of the total project cost) shall be nonreimbursable as the Federal contribution for environmental enhancement by water quality improvement.

SEC. 304. CONSTRUCTION AND CONTROL.

(a) The Secretary shall, upon entering into a mutually acceptable agreement with the Authority, proceed with preconstruction planning, preparation of designs and specifications, acquiring permits, acquisition of land and rights, and award of construction contracts pending availability of appropriated funds.

(b) At any time following the first advance of funds by the Authority, the Authority may request that the Secretary terminate activities then in progress, and such request shall be binding upon the Secretary, except that, upon termination of construction pursuant to this section, the Authority shall reimburse to the Secretary a sum equal to 67 per centum of all costs incurred by the Secretary in project verification, design and construction management, reduced by any sums previously paid by the Authority to the Secretary for such purposes. Upon such termination, the United States is under no obligation to complete the project as a nonreimbursable development.

(c) Upon completion of construction and testing of the project, or upon termination of activities at the request of the Authority, and reimbursement of Federal costs pursuant to subsection 302(b) of this title, the Secretary shall transfer the care, operation, and maintenance of the project works to the Authority or to a bona fide entity mutually agreeable to the States of New Mexico and Texas. As part of such transfer, the Secretary shall return unexpended balances of the funds advanced, assign to the Authority or the bona fide entity the rights to any contract in force, convey to the Authority or the bona fide entity any real estate, easements, or personal property acquired by the advanced funds, and provide any data, drawings, or other items of value procured with advanced funds. Title to any facilities constructed under the authority of this title shall remain with the United States.

SEC. 305. APPROPRIATIONS AUTHORIZED.—There are hereby authorized to be appropriated to carry out the provisions of this title the sum of $3,000,000 (October 1989 price levels), plus or minus such amounts, if any, as may be required by reason of ordinary fluctuation in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

SEC. 306. WETLANDS INVENTORY AND REPORT.—(a) The Secretary of the Interior is directed to inventory all wetlands on Federal lands or interests therein owned by or withdrawn for the use of the Bureau of Reclamation and, to the extent practicable, other Federal lands associated with reclamation projects. As part of the inventory, the Secretary shall make an initial determination of the value of such wetlands for purposes such as, but not limited to, recruitment and survival of waterfowl and other wetland dependent species, flood control, water quality, and sedimentation control.

(b) In assessing the value of wetlands for recruitment and survival of waterfowl and other wetland dependent species, the Secretary shall consider, among other things, the presence of factors supporting abundant and diverse wetland ecosystems, including, but not limited to:

(1) high primary productivity and functioning food chains;

(2) seasonal values for waterfowl breeding, nesting, staging and wintering; and

(3) protection from predation and disease.

(c) The Secretary shall indicate those wetland areas identified pursuant to subsection (a) of this section which also have been identified for protection or restoration pursuant to the North American Waterfowl Management Plan or by such entities as the Secretary deems appropriate.

(d) In fulfillment of this section, the Secretary is encouraged to consult with appropriate State and private entities.

(e) Not later than February 1, 1991, the Secretary shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Appropriations of the Senate, the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Appropriations of the House of Representatives a plan for implementation of this section, including identification of any reprogramming of funds required in fiscal year 1991 and such other resources as may be required.

(f) The Secretary shall report the results of the inventory authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than December 31, 1992.

TITLE IV—CEDAR BLUFF UNIT, KANSAS

SEC. 401. AUTHORIZATION.—The Secretary, pursuant to the provisions of the Memorandum of Understanding between the Bureau of Reclamation and the Fish and Wildlife Service of the Department of the Interior, the State of Kansas, and the Cedar Bluff Irrigation District No. 6, dated December 17, 1987, is authorized to reformulate the Cedar Bluff Unit of the Pick-Sloan Missouri Basin Program, Kansas, including reallocation of the conservation capacity of the Cedar Bluff Reservoir, to create:

(a) a designated operating pool, as defined in such Memorandum of Understanding, for fish, wildlife, and recreation purposes, for groundwater recharge for environmental, domestic, municipal and industrial uses, and for other purposes; and

(b) a joint-use pool, as defined in such Memorandum of Understanding, for flood control, for water sales, for fish, wildlife, and recreation purposes, and for other purposes.

SEC. 402. CONTRACT.—The Secretary is authorized to enter into a contract with the State of Kansas for the sale, use, and control of the designated operating pool, with the exception of water reserved for the city of Russell, Kansas, and to allow the State of Kansas to acquire use and control of water in the joint-use pool, except that, the State of Kansas shall not permit utilization of water from Cedar Bluff Reservoir to irrigate lands in the Smoky Hill River Basin from Cedar Bluff Reservoir to its confluence with Big Creek.

SEC. 403. CONTRACT.—(a) The Secretary is authorized to enter into a contract with the State of Kansas, accepting a payment of $365,424, and the State's commitment to pay a proportionate share of the annual operation, maintenance, and replacement charges for the Cedar Bluff Dam and Reservoir, as full satisfaction of reimbursable costs associated with irrigation of the Cedar Bluff Unit, including the Cedar Bluff Irrigation District's obligations under Contract No. 0-7-70-W0064. After the reformulation of the Cedar Bluff Unit authorized by this title, any revenues in excess of operating and maintenance expenses received by the State of Kansas from the sale of water from the Cedar Bluff Unit shall be paid to the United States and covered into the Reclamation Fund to the extent that an operation, maintenance and replacement charge or reimbursable capital obligation exists for the Cedar Bluff Unit under Reclamation law. Once all such operation, maintenance and replacement charges or reimbursable obligations are satisfied, any additional revenues shall be retained by the State of Kansas.

(b) The Secretary is authorized to transfer title of the buildings, fixtures, and equipment of the United States Fish and Wildlife Service fish hatchery facility at Cedar Bluff Dam, and the related water rights, to the

State of Kansas for its use and operation for fish, wildlife, and related purposes. If any of the property transferred by this subsection to the State of Kansas is subsequently transferred from State ownership or used for any purpose other than those provided for in this subsection, title to such property shall revert to the United States.

SEC. 404. TRANSFER OF DISTRICT HEADQUARTERS.—The Secretary is authorized to transfer title to all interests in real property, buildings, fixtures, equipment, and tools associated with the Cedar Bluff Irrigation District headquarters located near Hays, Kansas, contingent upon the District's agreement to close down the irrigation system to the satisfaction of the Secretary at no additional cost to the United States, after which all easement rights shall revert to the owners of the lands to which the easements are attached.

SEC. 405. LIABILITY AND INDEMNIFICATION.—The transferee of any interest conveyed pursuant to this title shall assume all liability with respect to such interests and shall indemnify the United States against all such liability.

SEC. 406. ADDITIONAL ACTIONS.—The Secretary is authorized to take all other actions consistent with the provisions of the Memorandum of Understanding referred to in section 401 that the Secretary deems necessary to accomplish the reformulation of the Cedar Bluff Unit.

TITLE V—SALT-GILA AQUEDUCT, ARIZONA

SEC. 501. DESIGNATION.—The Salt-Gila Aqueduct of the Central Arizona Project, constructed, operated, and maintained under section 301(a)(7) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(7)), hereafter shall be known and designated as the "Fannin-McFarland Aqueduct".

SEC. 502. REFERENCES.—Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in Sec. 501 hereby is deemed to be a reference to the "Fannin-McFarland Aqueduct".

TITLE VI—WARREN ACT SUPPLEMENT

SEC. 601. EXCESS STORAGE AND CARRYING CAPACITY.—The Secretary is authorized to enter into contracts, pursuant to the Act of February 21, 1911 (36 Stat. 925), with political subdivisions of the State of California for the impounding, storage, and carriage of water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes from any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California.

TITLE VII—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT, NEVADA AND CALIFORNIA

SEC. 701. SHORT TITLE.—This title may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

SEC. 702. PURPOSES.—

The purposes of this title shall be to:

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 703. DEFINITIONS.—

For purposes of this title:

(a) the term "*Alpine* court" means the court having continuing jurisdiction over the *Alpine* decree;

(b) the term "*Alpine* decree" means the final decree of the United States District Court for the District of Nevada in *United States of America* v. *Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1980, and any supplements thereto;

(c) the term "Carson River basin" means the area which naturally drains into the Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribe;

(e) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 705 of this title;

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in United States of America v. Orr Water Ditch Company, et al.—in Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including exhibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1990, as may be amended under the terms thereof. A copy of this agreement is included in the report accompanying this title and as Appendix 1 to the report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means two fish species found in Pyramid Lake, the cui-ui (Chasmistes cujus) and the Lahontan cutthroat trout (Salmo clarki henshawi);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in United States of America v. Truckee River General Electric Co., No. 14861, which case was transferred to the United States District Court for the Eastern District of California on February 9, 1968, and is now designated No. S-643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 704. INTERSTATE ALLOCATION.

(a) CARSON RIVER.

(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if estalished, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per-year by depletion for use in the State of California and 2,131 acre-feet per-year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation of California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water

which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storge specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph; *Provided, that,* the augmentation authorized by such paragraph shall be used only on lands having appurtenant *Alpine* decree rights. Use of effluent for the irrigation of lands with appurtenant *Alpine* decree rights shall not result in the forfeiture or abandonment of all or any part of such appurtenant *Alpine* decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the *Orr Ditch* decree or, as appropriate, to augment inflows to Pyramid Lake.

((5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the *Alpine* decree and applicable State laws.

(8) Interbasin transfer of Carson River water shall be allowed only as provided by applicable State law.

(b) LAKE TAHOE.

(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused:

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) The provisions of paragraph 704(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 704(d)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at the point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(i) an evaluation of changes in pricing, rate structure, and regulations; and

(j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municpal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purpose of this subsection, water inflow and infiltration to sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving of enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversion of a maximum of 3,000 acre-feet per year from Marlette Lake for use in Nevada;

(B) diversion of a maximum of 561 acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allcoation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certifiate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraphs (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or has been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagrap (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.

(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000 acre-feet of water per year from all natural sources, including both surface and groundwater, in the Truckee River basin subject to the following terms and conditons:

(A) maximum annual diversion of surface supplies shall not exceed 10,000 acer-feet; except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 of the *Orr Ditch* decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal, industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface streamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin groundwater with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of groundwater pursuant to this subsection shall be subject to all terms and conditions of California law;

(E) determination of safe yield of any groundwater basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTSA") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing of return flows to the Truckee River of the treated wastewater, TTSA shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(*a*) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 704(c)(1)(B) and (D) and shall not be deemed use of Truckee River basin groundwater within the State of Nevada within the meaning of subparagraph 704(c)(1)(D); and

(*b*) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of groundwater discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000 acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 100 acre-feet, whichever occurs first, the California Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged groundwater. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000 acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of groundwater to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewater within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225 acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provisions of subparagraph 704(c)(1)(F) notwithstanding, criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 704(d)(1).

(J) Unmetered diversion or extraction of water by residents shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and such water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of *United States of America* v. *Sierra Valley Water Company*, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraphs 704(c)(1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the *Orr Ditch* decree is recognized and confirmed. In accordance with and subject to the terms of the *Orr Ditch* decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decree on the reservation.

(d) COMPLIANCE.

(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. Within the third

quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) FORFEITURE OR ABANDONMENT.—The provisions of this section shall not be interpreted to alter or affect the applicability of law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—

(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may, to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the *Alpine* court to administer, *inter alia*, interstate transfers of water or water rights on the Carson River under the *Alpine* decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the *Alpine* court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 705. TRUCKEE RIVER WATER SUPPLY MANAGEMENT.

(a) OPERATING AGREEMENT.—

(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement and the appropriate agencies of the States of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the *Orr Ditch* decree and *Truckee River General Electric* decree, except for those rights that are voluntarily relinguished by the parties to the Preliminary Settlement Agreement as modified by the Ratification agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the *Orr Ditch* court and the *Truckee River General Electric* court for approval of any necessary modifications in the provisions of the *Orr Ditch* decree or the *Truckee River General Electric* decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agreement. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court for the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 90 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed

in section 706(2)(A)-(D) of title 5, United States Code; *Provided,* That the limits on judicial review in this paragraph shall not apply to any claim based on the provisions of the Endangered Species Act, as amended.

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Power Company of appropriate amounts for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500 acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.—

(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe Dam and Reservoir for the storage of non-project water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 705(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 706(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an agreement with the Sierra Pacific Power Compay and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Reservoir, except that the amount of such storage shall not exceed 5,000 acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the Operating Agreement upon the entry into effect of those agreements.

(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—The Secretary is released from any obligation to secure payment for the costs of constructing Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheamu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 706. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—

(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 709(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however, unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affects interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 706(c). This study may be conducted in coordination with the studies authorized by paragraph 707(c)(5) and subsection 709(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.—

(1) Notwithstanding any other provision of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferring under this title in accordance with the provisions of the National Wildlife Refuge

System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and nutural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 26, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 706(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.—

(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Air Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 706 and 707 of this title; *Provided*, That:

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill the Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) STATE COST-SHARING.—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than $9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary's authority under subsection 706(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referenced in this subsection.

(e) TRANSFER OF CARSON LAKE AND PASTURE.—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the "Carson Lake and Pasture," as depicted on the map entitled "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands Project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newland Project facilities.

(f) LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.—

(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsections 705(a) and (b), 706(d), and subparagraph 708(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 707(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 708(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) INDIAN LAKES AREA.—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 707. CUI-UI AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) RECOVERY PLANS.—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cui-ui and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 704 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.—

(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secretary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including

the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitat for the cui-ui;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cui-ui and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance levels study, referenced in paragraph (1), to address and report on the activities and facilities described in that paragraph.

(c) ACQUISITION OF WATER RIGHTS.—

(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 706(a)(4) and subsection 709(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—

(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 705(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 705(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS.—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 706(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 704 of this title or to the waivers in sections 3 and 21 of Article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

SEC. 708. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.

(a) FUNDS ESTABLISHED.—

(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Paiute Fisheries Fund" and "Pyramid Lake Paiute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Paiute Fisheries Fund $25,000,000.

(A) The principal of the Pyramid Lake Paiute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Paiute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake Fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with and with the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at $25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 706(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Paiute Fishery Fund until such time as the following conditions have been met:

(i) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(ii) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the conservation of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishery.

(3) There is authorized to be appropriated to the Pyramid Lake Paiute Economic Development Fund $40,000,000 in five equally annual installments in the 1993, 1994, 1995, 1996, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Paiute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high

quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 707 of this title. The plan may be revised and updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Paiute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act. Pub. L. 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such funds that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Paiute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Paiute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement entered into effect in accordance with the terms of subsection 710(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 708(a)(2) is appropriated after fiscal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Paiute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Paiute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 708(a)(2) been appropriated in full for fiscal year 1992.

(6) If and to the extent that any portion of the sums authorized to be appropriated in paragraph 708(a)(3) are appropriated after fiscal years 1993, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 708(a)(3), there shall be deposited in the Pyramid Lake Paiute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Paiute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 708(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997.

SEC. 709. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPANSION OF AUTHORIZED PURPOSES.—

(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) TRUCKEE RIVER DIVERSIONS.—The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to the Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.—

(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) WATER BANK.—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) RECREATION STUDY.—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) EFFLUENT REUSE STUDY.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality. Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

(g) REPAYMENT CANCELLATION.—Notwithstanding any other provision of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such unpaid repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 709(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Derby Dam.

(h) SETTLEMENT OF CLAIMS.—

(1) The provisions of subsections 709 (d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 709(g) of this section shall not become effective unless and until the State of Nevada provides not less than $4,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) FISH AND WILDLIFE.—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

(j) OPERATING CRITERIA AND PROCEDURES.—

(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians* v. *Morton*, 354 F. Supp. 252 (D. D.C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to

order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection. The Secretary shall modify the 1988 OCAP if the Secretary decides that modifications are required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended. Each year after the date of enactment of this title, up to December 31, 1997, the Secretary shall report to the Committees on Energy and Natural Resources, and Environment and Public Works of the Senate, and the Committees on Interior and Insular Affairs, and Merchant Marine and Fisheries of the House of Representatives as to the conservation and recovery status of the Pyramid Lake fishery and the Secretary's actions in fullfillment of the Secretary's responsibilities under the Endangered Species Act, as amended, with respect to the Pyramid Lake fishery. The Secretary shall immediately notify such Committees of the Congress upon receipt of information from the Pyramid Lake Tribe or the State of Nevada which indicates that continued imposition of the 1988 OCAP may be in any manner inconsistent with fulfillment of the Secretary's responsibilities under the Endangered Species Act, as amended.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection 709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amount permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any order in such a proceeding that will result in the expenditure of any funds out of the United States Treasury.

SEC. 710. MISCELLANEOUS PROVISIONS.

(a) CLAIMS SETTLEMENT.—

(1) The effectiveness of section 704 of this title, the Preliminary Settlement Agreement as modified by the Ratification agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 708(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, of the following outstanding litigation and proceedings:

(A) *Pyramid Lake Paiute Tribe* v. *California,* Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California;

(B) *United States* v. *Truckee-Carson Irrigation District,* Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) *Pyramid Lake Paiute Tribe* v. *Lujan,* Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) *Pyramid Lake Paiute Tribe* v. *Department of the Navy,* Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 704, subsections 706(c), 707 (c) and (d), subparagraph 708(a)(3)(D), and paragraph 710(a)(3) of this title shall not take effect until:

(i) the agreements and regulations required under section 705 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 710(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 704, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 707(d) shall not take effect until the funds authorized in paragraph 708(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 704 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States and its officers and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 704 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 705 of this title. No person or entity who does not become a party to the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider any such claims by such persons or entities.

(b) GENERAL PROVISIONS.—

(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all exisiting property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by he United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administration Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Region.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the

Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement;

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to, the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 of that Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Alpine court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree of the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 704, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefits of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935 and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended: *Provided,* That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works; *And provided further,* That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 705(a)(6).

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights, or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation.

(c) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

TITLE VIII—VERMEJO PROJECT RELIEF, NEW MEXICO

Section 401 of the Act of December 19, 1980 (94 Stat. 3227) is amended by striking the text that begins: "Transfer of project facilities to the district shall be without . . ." and ends with ". . . shall be maintained consistently with existing arrangements" and inserting in lieu thereof "Effective as of the date of the written consent of the Vermejo Conservancy District to amend Contract 178r-458, all facilities are hereby transferred to the District. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract No. 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1990, and expiring January 17, 1992, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting through the United States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract No. 14-06-500-1713 and in a manner that does not interefere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project."

TITLE IX—TRANSFER TO ELEPHANT BUTTE IRRIGATION DISTRICT, NEW MEXICO

Sec. 901. TRANSFER.—The Secretary is authorized to transfer to the Elephant Butte Irrigation District, New Mexico, without cost to the district, title to such easements, ditches, laterals, canals, drains, and other rights-of-way, which the United States has acquired on behalf of the project, that are used solely for the purpose of serving Elephant Butte Irrigation District lands and which the Secretary determines are necessary to enable the Elephant Butte Irrigation District to carry out operation and maintenance with respect to that portion of the Rio Grande project to be transferred. The transfer of the title to such easements, ditches, laterals, canals, drains, and other rights-of-way located in New Mexico, which the Secretary has, that are used for the purpose of jointly serving Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1, may be transferred to Elephant Butte Irrigation District upon agreement by the Secretary and both districts. Any transfer under this section shall be subject to the condition that the Elephant Butte Irrigation District assumes the responsibility for operating and maintaining that portion of such project.

SEC. 902. LIMITATION.—Title to and responsibility for operation and maintenance of Elephant Butte and Caballo dams, and Percha, Leasburg, and Mesilla diversion dams and the works necessary for their protection and operation shall be unaffected by this title.

TITLE X—GRAND CANYON PROTECTION

SEC. 1001. SHORT TITLE.—This title may be cited as the "Grand Canyon Protection Act of 1990".

SEC. 1002. PROTECTION OF GRAND CANYON NATIONAL PARK.—The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1004(c) of the title and exercise other authorities under existing law in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to, natural and cultural resources, and visitor use. The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado River Basin Compact, the Water Treaty of 1944 with Mexico, the decree of the Supreme Court in Arizona v. California, and provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 governing allocation, appropriation, development, or exportation of the waters of the Colorado River Basin. Nothing in this title alters or may be construed to alter the purposes for which the Grand Canyon National Park or the Glen Canyon National Recreation Area were established or to affect in any manner the authority and responsibility of the Secretary with respect to the management and administration of such areas, including natural and cultural resources, and visitor use, as provided by laws applicable to such areas, including, but not limited to, the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented.

SEC. 1003. INTERIM OPERATION OF GLEN CANYON DAM.—(a) The Secretary shall promptly develop a plan for operating Glen Canyon Dam on an interim basis to protect, mitigate adverse effects to, and improve the condition of the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area, and shall implement such plan no later than September 1, 1991 or upon cessation of research flows used for preparing the environmental impact statement ordered by the Secretary of July 27, 1989, whichever is sooner.

(b) The interim plan described in subsection (a) of this section shall be designed to:

(1) not interfere with the water storage and delivery functions of Glen Canyon Dam pursuant to the Colorado River Compact, the Upper Colorado River Basin Compact, and other laws relating to allocation of the Colorado River;

(2) minimize, to the extent reasonably possible, the adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam;

(3) adjust fluctuating water releases used for the production of peaking hydroelectric power and adjust rates of flow changes for fluctuating flows that will minimize, to the extent reasonably possible, adverse downstream impacts;

(4) minimize flood releases, consistent with section 1002;

(5) maintain sufficient minimum flow releases from Glen Canyon Dam to minimize, to the extent reasonably possible, adverse environmental impact of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreational Area downstream of Glen Canyon Dam, and protect fishery resources; and

(6) limit maximum flows released during normal operations to minimize, to the extent reasonably possible, the adverse environmental impacts of Glen Canyon Dam operations on Grand Canyon National Park and Glen Canyon National Recreation Area downstream of Glen Canyon Dam, and protect fishery resources.

(c) The Secretary shall develop and implement the interim plan described in this section in consultation with:

(1) appropriate agencies of the Department of the Interior, including the Bureau of Reclamation, United States Fish and Wildlife Service, and the National Park Service;

(2) the Secretary of Energy;

(3) the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(4) Indian tribes; and

(5) the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(d) The Secretary shall develop and implement the interim plan referred to in this section using the best and most recent scientific data available.

(e) The interim plan described in this section shall terminate upon compliance by the Secretary with section 1004.

(f) The Secretary may deviate from the interim plan referred to in this section upon a finding that such deviation is necessary and in the public interest in order to:

(1) comply with the requirements of subsection 1004(a);

(2) respond to hydrologic extremes or power system operating emergencies; or

(3) further reduce adverse impacts on downstream Colorado River natural, recreational, or cultural resources.

SEC. 1004. GLEN CANYON DAM ENVIRONMENTAL IMPACT STATEMENT; LONG-TERM OPERATION OF GLEN CANYON DAM.—(a) Not later than 3 years after the date of enactment of this title, the Secretary shall complete a final Glen Canyon Dam environmental impact statement, in accordance with the National Environmental Policy Act of 1969 and regulations issued to implement the provisions thereof.

(b) The Comptroller General shall audit the costs and benefits to water and power users and to natural, recreational, and cultural resources resulting from management policies and dam operations identified pursuant to the environmental impact statement referred to in subsection (a) of this section and shall report the results of the audit to the Secretary and the Congress.

(c) Based on the findings, conclusions, and recommendations made in the environmental impact statement prepared pursuant to subsection (a) and the audit performed pursuant to subsection (b), the Secretary shall adopt criteria and operating plans separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968 and shall exercise other authorities under existing law, which shall ensure that Glen Canyon Dam is operated in a manner consistent with section 1002 of this title. Yearly thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report, separate from and in addition to the report specified in section 602(b) of the Colorado River Basin Project Act of 1968, on the preceding year and the projected year operations undertaken pursuant to this title. In the process of preparing the criteria and annual plans of operation described in said section 602(b) and in this section, the Secretary shall consult with the Governors of the Colorado River Basin States and with the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(d) Upon implementation of long-term operations under subsection (c) of this section, the Secretary shall submit to the Congress the environmental impact statement described in subsection (a) and a report describing the long-term operations and other reasonable mitigation measures taken to protect, mitigate adverse impacts to, and improve the condition of the natural, recreational, and cultural resources of the Colorado River downstream of Glen Canyon Dam.

SEC. 1005. LONG-TERM MONITORING.—The Secretary shall establish and implement long-term monitoring programs and activities that will ensure that Glen Canyon Dam is operated in a manner consistent with the requirements of section 1002. Such long-term monitoring shall include any necessary research and studies to determine the effect of the Secretary's actions under subsection 1004(c) of this title upon the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area. These monitoring programs and activities shall be established and implemented in consultation with the Secretary of Energy; the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming; Indian tribes, and the general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry and the contractors for the purchase of Federal power produced at Glen Canyon Dam.

SEC. 1006. SAVINGS.—Nothing in this title is intended to affect in any way the allocations of water secured to the Colorado Basin States by any contract, law, or decree. Nothing in this title is intended to affect any Federal environmental law, including, but not limited to the Endangered Species Act, as amended.

SEC. 1007. STUDIES NONREIMBURSABLE.—All costs of preparing the environmental impact statement described in section 1004, including supporting studies, and the long-term monitoring programs and activities described in section 1005 shall be non-reimbursable. The Secretary is authorized to use funds received from the sale of electric power and energy from the Colorado River Storage Project to prepare the environmental impact statement described in section 1004, including supporting studies, and the long-term monitoring programs and activities described in section 1005, except that such funds will be treated as having been repaid and returned to the general fund of the Treasury as costs assigned to power for repayment under section 5 of the Act of April 11, 1956 (70 Stat. 107).

SEC. 1008. AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

TITLE XI—IRRIGATION DRAINAGE DEMONSTRATION PROGRAM AND LAKE ANDES-WAGNER/MARTY II PROJECTS, SOUTH DAKOTA

SEC. 1101. DRAINAGE DEMONSTRATION PROGRAMS.—(a) The Secretary, acting pursuant to existing authority under the Federal reclamation laws, shall, through the Bureau of Reclamation, and with the assistance and cooperation of an oversight committee (hereafter "Oversight Committee") consisting of representatives of the Bureau of Indian Affairs, Environmental Protection Agency, United States Fish and Wildlife Service, United States Geological Survey, South Dakota Department of Game, Fish and Parks, South Dakota Department of Water and Natural Resources, Yankton Sioux Tribe, and the Lake Andes-Wagner Water System, Inc., carry out a demonstration program (hereafter the "Demonstration Program") in substantial accordance with the "Lake Andes-Wagner-Marty II Demonstration Program Plan of Study," dated May 1990, a copy of which is on file with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(b) The objectives of the Demonstration Program shall include:

(1) development of accurate and definitive means of quantifying projected irrigation and drainage requirements, and providing reliable estimates of drainage return flow quality and quantity, with respect to glacial till and other soils found in the specific areas to be served with irrigation water by the planned Lake Andes-Wagner Unit and Marty II Unit and which may also have application to the irrigation and drainage of similar soils found in other areas of the United States;

(2) development of best management practices for the purpose of improving the efficiency of irrigation water use and developing and demonstrating management techniques and technologies for glacial till soils which will prevent or otherwise ameliorate the degradation of water quality by irrigation practices;

(3) investigation and demonstration of the potential for development and enhancement of wetlands and fish and wildlife within and adjacent to the service areas of the planned Lake Andes-Wagner Unit and the Marty II Unit through the application of water, and other management practices;

(4) investigation and demonstration of the suitability of glacial till soils for crop production under irrigation, giving preference to crops that are not eligible for assistance under programs covered by title V of the Agriculture Act of 1949 (7 U.S.C. 1462 et seq.) or by any successor programs established for crop years subsequent to 1990.

(c) Study sites shall be obtained through leases from landowners who voluntarily agree to participate in the Demonstration Program under the following conditions:

(1) rentals paid under a lease shall be based on the fair rental market value prevailing for dry land farming of lands of similar quantity and quality plus a payment representing reasonable compensation for inconveniences to be encountered by the lessor;

(2) the Secretary will:

(A) supply all water, delivery system, pivot systems and drains;

(B) operate and maintain the irrigation system;

(C) supply all seed, fertilizers and pesticides and make standardized equipment available;

(D) determine crop rotations and cultural practices;

(E) have unrestricted access to leased lands;

(3) the Secretary may contract with the lessor and-or custom operators to accomplish agricultural work, which work shall be performed as prescribed by the Secretary;

(4) no grazing may be performed on a study site;

(5) crops grown shall be the property of the United States; and

(6) at the conclusion of the lease, the lands involved will, to the extent practicable, be restored by the Secretary to their pre-leased condition at no expense to the lessor.

(d) The Secretary shall offer crops grown under the Demonstration Program for sale to the highest bidder under terms and conditions to be prescribed by the Secretary. Any crops not sold shall be disposed of as the Secretary determines to be appropriate, except that no crop may be given away to any for-profit entity or farm operator. All receipts from crop sales shall be covered into the Treasury to the credit of the fund from which appropriations for the conduct of the Demonstration Program are derived.

(e) The land from each ownership in a study site shall be established by the Secretary as a separate farm. Each such study site farm will, during the demonstration phase of the Demonstration Program, annually receive planted and considered planting credit equal to the crop acreage base established for the farm by use of crop land ratios when it became a separate farm without regard to the acreage actually planted on the farm. Establishment of such study site farms shall not entitle the Secretary to participate in farm programs or to build program base.

(f) The Secretary shall periodically, but not less often than once a year, report to the Committee on Interior and Insular Affairs of the House of Representatives, to the Committee on Energy and Natural Resources of the Senate, and to the Governor of South Dakota concerning the activities undertaken pursuant to this section. The Secretary's reports and other information and data developed pursuant to this section shall be available to the public without charge. Each Demonstration Program report, including the report referred to in paragraph (3) of this subsection, shall evaluate data covering the results of the Demonstration Program as carried out on the six study sites during the period covered by the report together with data developed under the wetlands enhancement aspect during that period. The demonstration phase of the Demonstration Program shall terminate at the conclusion of the fifth full irrigation season. Promptly thereafter, the Secretary shall:

(1) remove temporary facilities and equipment and restore the study sites as nearly as practicable to their pre-lease condition. The Secretary may transfer the pumping plant and/or distribution lines to public agencies for uses other than commercial irrigation if so doing would be less costly than removing such equipment;

(2) otherwise wind up the Demonstration Program; and

(3) prepare a concluding report and recommendations covering the entire demonstration phase, which report shall be transmitted by the Secretary to the Congress and to the Governor of South Dakota not later than April 1 of the calendar year following the calendar year in which the demonstration phase of the Demonstration Program terminates. The Secretary's concluding report, together with other information and data developed in the course of the Demonstration Program, shall be available to the public without charge.

(g) Costs of the Demonstration Program funded by Congressional appropriations shall be accounted for pursuant to the Act of October 29, 1971 (85 Stat. 416). Costs incurred by the State of South Dakota and any agencies thereof arising out of consultation and participation in the Demonstration Program shall not be reimbursed by the United States.

(h) Funding to cover expenses of the Federal agencies participating in the Demonstration Program shall be included in the budget submittals for the Bureau of Reclamation. The Secretary, using only funds appropriated for the Demonstration Program, shall transfer to the other Federal agencies funds appropriated for their expenses.

SEC. 1102. PLANNING REPORTS-ENVIRONMENTAL IMPACT STATEMENTS.—(a) On the basis of the concluding report and recommendations of the Demonstration Program provided for in section 1101, the Secretary shall comply with the study and reporting requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof with respect to the Lake Andes-Wagner Unit and Marty II Unit. Using feasibility methodologies consistent with those employed in the Lake Andes-Wagner Unit Planning Report Final Environmental Impact Statement, filed September 17, 1985, the final reports prepared under this subsection shall be transmitted to the Congress simultaneously with their filing with the Environmental Protection Agency.

(b) Each report prepared under subsection (a) shall include a detailed plan providing for the prevention, correction, or mitigation of adverse water quality conditions attributable to agricultural drainage water originating from lands to be irrigated by the Unit to which the report pertains and shall be accompanied by findings by the Secretary and the Administrator of the Environmental Protection Agency that the Unit to which the report pertains can be constructed, operated and maintained so as to comply with all applicable water quality standards.

(c) The construction of a Unit may not be undertaken until the final report pertaining to that Unit, and the findings referred to in subsection (b) of this section, have lain before the Congress for not less than 120 days and the Congress has appropriated funds for the initiation of construction.

SEC. 1103. AUTHORIZATION OF THE LAKE ANDES-WAGNER UNIT AND THE MARTY II UNIT, SOUTH DAKOTA.—Subject to the requirements of section 1102 of this title, the Secretary is authorized to construct, operate, and maintain the Lake Andes-Wagner Unit and the Marty II Unit, South Dakota, as units of the South Dakota Pumping Division, Pick-Sloan Missouri Basin Program. The units shall be integrated physically and financially with other Federal works constructed under the Pick-Sloan Missouri Basin Program.

SEC. 1104. CONDITIONS.—(a) The Lake Andes-Wagner Unit shall be constructed, operated, and maintained to irrigate not more than approximately forty-five thou-

sand acres substantially as provided in the Lake Andes-Wagner Unit Planning Report-Final Environmental Impact Statement filed September 17, 1985, supplemented as provided in section 1102 of this title. The Lake Andes-Wagner Unit shall include on-farm pumps, irrigation sprinkler systems, and other on-farm facilities necessary for the irrigation of not to exceed approximately one thousand seven hundred acres of Indian-owned lands. The use of electric power and energy required to operate the facilities for the irrigation of such Indian-owned lands and to provide pressurization for such Indian-owned lands shall be considered to be a project use.

(b) The Marty II Unit shall include a river pump, irrigation distribution system, booster pumps, irrigation sprinkler systems, farm and project drains, electrical distribution facilities, and the pressurization to irrigate not more than approximately three thousand acres of Indian-owned land in the Yankton-Sioux Indian Reservation, substantially as provided in the Marty II Unit Planning Report-Final Environmental Impact Statement referred to in section 1102 of this title.

(c) The construction costs of the Lake Andes-Wagner Unit allocated to irrigation of non-Indian owned lands (both those assigned for return by the water users and those assigned for return from power revenues of the Pick-Sloan Missouri Basin Program) shall be repaid no later than forty years following the development period. Repayment of the construction costs of the Lake Andes-Wagner Unit apportioned to serving Indian-owned lands and of the Marty II Unit allocated to irrigation shall be governed by the Act of July 1, 1932 (47 Stat. 564 Chapter 369; U.S.C. 386a).

(d) Indian-owned lands, or interests therein, required for the Lake Andes-Wagner Unit or the Marty II Unit may, as an alternative to their acquisition pursuant to existing authority under the Federal reclamation laws, be acquired by exchange for lands or interests therein of equal or greater value which are owned by the United States and administered by the Secretary or which may be acquired for that purpose by the Secretary.

(e) For purposes of participation of lands in the Lake Andes-Wagner Unit and the Marty II Unit in programs covered by title 5 of the Agricultural Act of 1949 (7 U.S.C. 1461 et seq.) the crop acreage base determined under section 504 of such Act (7 U.S.C. 1464) and the program payment yield determined under section 506 of such Act (7 U.S.C. 1466) shall be the crop acreage base and program payment yield established for the crop year immediately preceding the crop year in which the development period for each Unit is initiated. For any successor programs established for crop years subsequent to 1990, the acreage and yield on which any program payments are based shall be determined without taking into consideration any increase in acreage or yield resulting from the construction and operation of the Units.

(f) Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the facilities authorized by this section shall be concurrent with construction of the Unit involved and shall be on an acre-for-acre basis, based on ecological equivalency. In addition to the fish and wildlife enhancement to be provided by the fish rearing pond of the Lake Andes Unit, other facilities of that Unit may be utilized to provide fish and wildlife benefits beyond the mitigation required to the extent that such benefits may be provided without increasing costs of construction, operation, maintenance or replacement allocable to irrigation or impairing the efficiency of that Unit for irrigation purposes.

SEC. 1105. INDIAN EMPLOYMENT.—In carrying out sections 1101, 1103 and 1104 of this title, preference shall be given to the employment of members of the

Yankton-Sioux Tribe who can perform the work required regardless of age (subject to existing laws and regulations), sex, or religion, and to the extent feasible in connection with the efficient performance of such functions training and employment opportunities shall be provided members of the Yankton-Sioux Tribe regardless of age (subject to existing laws and regulations), sex, or religion who are not fully qualified to perform such functions.

SEC. 1106. FEDERAL RECLAMATION LAWS GOVERN.—This title is a supplement to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts supplemental thereto and amendatory thereof). The Federal reclamation laws shall govern all functions undertaken pursuant to this title, except section 1110, and as otherwise provided herein.

SEC. 1107. COST SHARING.—

(a) IN GENERAL.—The Proposal dated September 29, 1987, supplemented October 30, 1987 (on file with the Committee on Interior and Insular Affairs of the House of representatives and with the Committee on Energy and Natural Resources of the Senate), pursuant to which the State of South Dakota (hereafter in this section referred to as the "State") and the Lake Andes-Wagner Irrigation District (hereafter in this section referred to as the "District") would provide funding for certain costs of the Lake Andes-Wagner Unit, and the District would also assume certain responsibilities with respect thereto, is approved subject to the provisions of subsection (b) of this section. The Secretary shall promptly enter into negotiations with the State and the District to conclude an agreement between the United States, the State, and the District implementing the proposal.

(b) The agreement shall include provisions for:

(1) the establishment and capitalization of the non-Federal fund, including, subject to the Secretary's approval, investment policies and selection of the administering financial institution, and including also provisions dealing with withdrawals of moneys in the fund for construction purposes;

(2) the District to administer the design and construction, which shall be subject to the approval of the Secretary, of the distribution and drainage systems for the Lake-Andes-Wager Unit;

(3) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the ring dike, not exceeding $3,500,000, the construction cost, if any, of such dike in excess of that amount being the responsibility of the United States but any such excess cost remains reimbursable, subject to the condition that construction of the ring dike shall not commence earlier than the sixth year of full operation; and

(4) financing, from moneys in the fund referred to in paragraph (1), the construction cost of the Unit's closed drainage system, not exceeding $36,000,000, the construction cost, if any, of the closed drainage system in excess of that amount being the responsibility of the United States but any such excess cost remains reimbursable, subject to the conditions that:

(A) construction of the closed drainage system shall commence not earlier than the sixth year of full operation of the Unit and shall continue over a period of thirty-five years as required by the Secretary9 subject to such modifications in the commencement date and the construction period as the Secretary determines to be required on the basis of physical conditions; and

(B) the District, in addition to such annual assessments as may be required to meet its expenses (including operation and maintenance costs and any annual repayment installments to the United States) shall, commencing three years after construction of the Unit (other than drainage facilities) has been completed, levee assessments annually of not less than $1.00 per irrigable acre calculated to provide moneys sufficient, together with other moneys in the fund, including anticipated accruals, referred to in paragraph (1), to finance not to exceed $36,000,000 of the construction costs of the closed drainage system.

(C) In the event the detailed plan for the Lake Andes-Wagner Unit referred to in subsection (b) of section 1104 reduces the irrigated acreage of the Lake Andes-Wagner Unit to less than forty-five thousand, the District's maximum obligation hereunder shall be reduced in the ratio that the reduction in acreage bears to forty-five thousand.

(c) Notwithstanding any other requirements of this section, the Secretary shall require that the agreement to be negotiated pursuant to this section shall provide that the total non-Federal share of the costs of construction allocable to irrigation of the facilities of the Lake Andes-Wagner Unit to be constructed pursuant to subsection (a) of section 1104 of this title (other than the costs apportionable to serving Indian-owned lands and the facilities described in the second sentence of that subsection) shall be 30 percent. The 30 percent non-Federal share shall include:

(1) funds to be deposited in the non-Federal fund referred to in paragraph (1) of subsection (b) of this section and interest earned thereon;

(2) savings to the United States by reason of paragraph (2) of subsection (b) of this section;

(3) savings to the United States by reason of administering the design and construction of any other feature or features of the Lake Andes-Wagner Unit, and of any feature or features of the Marty II Unit, the design and construction of which is administered by the District pursuant to an agreement with the Secretary;

(4) all funds heretofore or hereafter made available to the United States by non-Federal interests, or expended by such interests, for planning or advance planning assistance for the Lake Andes-Wagner Unit or for the Marty II Unit; and

(5) such additional funds as may be paid to the Secretary so that the total of the payments made is equal to but does not exceed 30 percent.

(d) Any feature to which this section applies shall not be initiated until after the District and the State have entered into the cost-share agreement with the United States required by this section.

SEC. 1108. AUTHORIZATION OF APPROPRIATIONS.—(a) Lake Andes-Wagner Unit. There are authorized to be appropriated—

(1) $175,000,000 (October 1989 price levels) for construction of the Lake Andes-Wagner Unit (other than the facilities described in the second sentence of subsection (a) of section 1104 of this title) less the non-Federal

contributions as provided in paragraphs (3) and (4) of subsection (b) of section 7 of this title; and

(2) $1,350,000 (October 1989 price levels) for construction of the facilities described in the second sentence of subsection (a) of section 1104 of this title, which amounts include costs of the Lake Andes-Wagner Irrigation District in administering design and construction of the irrigation distribution and drainage systems.

(b) MARTY II UNIT. There are authorized to be appropriated $24,000,000 (January 1989 price levels) for construction by the Bureau of Reclamation in consultation with the Bureau of Indian Affairs of the Marty II Unit.

(c) DEMONSTRATION PROGRAM. There are authorized to be appropriated such amounts as may be necessary to carry out the Demonstration Program.

(d) OPERATION AND MAINTENANCE. There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of each Unit.

SEC. 1109. INDIAN WATER RIGHTS.—Nothing in this title shall be construed as affecting any water rights or claims thereto of the Yankton-Sioux tribe.

SEC. 1110. SOUTH DAKOTA BIOLOGICAL DIVERSITY TRUST.—(a) From the sums appropriated under section 1108 of this title for the irrigation drainage demonstration program and the Lake Andes-Wagner Unit and Marty II Unit, if any, the Secretary shall make an annual Federal contribution to a South Dakota Biological Diversity Trust established in accordance with subsection (b) of the section and operated in accordance with subsection (c) of this section. The amount of each such annual contribution shall be for each fiscal year after 1990, 8 percent of the total amount appropriated under section 1108, or 10 percent of the total amount appropriated under section 1108 of this title if a contribution to the Trust equal to 10 percent of all Federal contributions is provided or contracted for by the State of South Dakota from non-Federal funds. Contributions from the State of South Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary. The total Federal contribution pursuant to this title shall not exceed $12,000,000.

(b) A South Dakota Biological Diversity Trust shall be eligibile to receive Federal contributions pursuant to subsection (a) of this section if it complies with each of the following requirements.

(1) The Trust is established by non-Federal interests as a non-profit corporation under the laws of South Dakota with its principal office in South Dakota.

(2) The Trust is under the direction of a Board of Trustees which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board is comprised of five persons appointed as follows, each for a term of five years:

(A) 1 person appointed by the Governor of South Dakota;

(B) 1 person appointed by each United States Senator from South Dakota; and

(C) 1 person appointed by the United States Representative from South Dakota; and

(D) 1 person appointed by the South Dakota Academy of Science.

(4) Vacancies on the Board are filled in the manner in which the original appointments were made. Any member of the Board is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office. Members of the Board shall serve without compensation.

(5) The corporate purposes of the Trust are to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity, its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems.

(c) A South Dakota Biological Diversity Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) the Trust is operated to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity: its rare species, exemplary examples of plant and animal communities and large-scale natural ecosystems in accordance with its corporate purpose; and

(2) the Trust is managed in a fiscally responsible fashion by investing in private and public financial vehicles with the goal of producing income and preserving principal. The principal will be inviolate, but income will be used to accomplish the goals of the trust.

(3) Proceeds from the Trust are used for the following purposes:

(A) $10,000 per year or five percent of the total funds expended by the Trust (whichever is larger) will be provided to the South Dakota Natural Heritage Program (currently part of the South Dakota Game, Fish, and Parks Department), to:

(i) Maintain and update the South Dakota Biodiversity Priority Site List.

(ii) Conduct inventory to discover and survey new sites for the Priority Site List.

(iii) Manage data to maintain the Natural Heritage Databases needed to produce and document the Priority Site List.

(B) Up to five percent of the costs of each project are used for preserve design or site planning to ensure that sites are selected for funding which are well-designed to maintain the long-term viability of the significant species and communities found at the site.

(C) Proceeds from the Trust may be used to complete land protection projects designed to protect biological diversity.

(D) Projects may include acquisition of land, water rights or other partial interests from willing sellers only, or arranging management agreements, registry and other techniques to protect significant sites.

(E) Ownership of land acquired with Trust proceeds will be held by the public agency or private non-profit organization which proposed and completed the project, or another conservation owner with the approval by the Board. The land will be managed and used for the protection of biological diversity. If the property is used or managed otherwise, title will revert to the Trust for disposition.

(F) Projects eligible for funding must be included on the South Dakota Biodiversity Priority List and located within the borders of South Dakota.

(G) At the discretion of the Board, Trust proceeds may be used for direct project costs including direct expenses incurred during project completion. Land project funding may also include the creation of a stewardship endowment subject to the following terms:

(i) up to 25 percent of the total fair market value of the project may be placed in a separate endowment.

(ii) The proceeds from the endowment will be used for the ongoing management costs of maintaining the biological integrity and viability of the significant biological features of the site.

(iii) Endowment funds may not be used for activities which primarily promote recreational or economic use of the site.

(iv) The endowment for each site will be held in a separate account from the body of the Trust and other endowments. The endowments will be managed by the Trust Board but the owner or manager of the site may draw upon the proceeds of the stewardship endowment to fund management activities with approval of the board. Additional management funds may be secured from other public and private sources.

(H) Should the biological significance of a site be destroyed or greatly reduced, the land may be disposed of but the proceeds and any stewardship endowment will revert to the Trust for use in other projects.

(I) Proceeds from the Trust may be used for management of public or private lands, including but not restricted to lands purchased with Trust funds, except that only those management projects that result in the maintenance or restoration of statewide biological diversity are eligible for consideration.

(d) For each fiscal year after 1990, 2 percent of the total amount appropriated under section 1108 shall be used by the Secretary to:

(1) restore damaged natural ecosystems on public lands and waterways affected by the Reclamation program outside South Dakota;

(2) acquire from willing sellers only other lands and properties or appropriate interests therein outside South Dakota with restorable damaged natural ecosystems and restore such ecosystems;

(3) provide jobs and suitable economic development in a manner that carries out the other purposes of this subsection;

(4) provide expanded recreational opportunities, and

(5) support and encourage research, training and education in methods and technologies of ecosystem restoration.

(e) In implementing subsection (d), the Secretary shall give priority to restoration and acquisition of lands and properties (or appropriate interests therein) where repair of compositional, structural and functional values will:

(1) reconstitute natural biological diversity that has been diminished;

(2) assist the recovery of species populations, communities and ecosystems that are unable to survive on-site without intervention;

(3) allow reintroduction and reoccupation by native flora and fauna;

(4) control or eliminate exotic flora and fauna which are damaging natural ecosystems;

(5) restore natural habitat for the recruitment and survival of fish, waterfowl and other wildlife;

(6) provide additional conservation values to state and local government lands;

(7) add to structural and compositional values of existing preserves or enhance the

viability, defensibility and manageability of preserves, and

(8) restore natural hydrological effects including sediment and erosion control, drainage, percolation and other water quality improvement capacity.

(f) The Secretary shall annually report on its activities under this section to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Interior and Insular Affairs and the Committee on Appropriations of the House of Representatives.

TITLE XII—FORT HALL INDIAN WATER RIGHTS SETTLEMENT, IDAHO

SEC. 1201. SHORT TITLE.

This title may be referred to as the "Fort Hall Indian Water Rights Act of 1990".

SEC. 1202. DEFINITIONS.

For the purposes of this title, and for no other purposes:

(a) The term "Agreement" means the "1990 Fort Hall Indian Water Rights Agreement" between the State of Idaho, the Shoshone-Bannock Tribes, the United States, and other participating parties.

(b) The term "Committee of Nine" means the advisory committee of Water District 01, which is the instrumentality created by the Director of the Idaho Department of Water Resources pursuant to Idaho Code section 42-604.

(c) The term "Final Decree" means the partial decree confirming the Tribal water rights described and quantified in article 7 of the Agreement to be entered after the date of enactment of this title and following submission of the Agreement as provided for in article 10 of the Agreement in Civil Case Numbered 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System.

(d) The term "Fort Hall Indian Irrigation Project" means the Federal project constructed to provide water for the irrigation of Reservation lands and certain ceded lands.

(e) The term "Idaho Water Resource Board" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. article XV, section 7, or any successor agency.

(f) The term "Indian" means any person who is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; is recognized as an Indian under Tribal law; or holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.

(g) The term "Indian lands" means (i) all lands within the exterior boundaries of the Reservation that are held in trust for or owned by the Shoshone-Bannock Tribes or an Indian and (ii) those lands outside the exterior boundaries of the Reservation held in trust for or owned by the Shoshone-Bannock Tribes or held in trust for or owned subject to a restriction on alienation by a member of the Shoshone-Bannock Tribes.

(h) The term "Michaud Act" means the Act of August 31, 1954, chapter 1159 (68 Stat. 1026).

(i) The term "Michaud Contract" means that Memorandum Agreement of April 25, 1957, between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the water supply for the Michaud Division.

(j) The term "Michaud Division" means that division of the Fort Hall Indian Irrigatio Project authorized by the Act of August 31, 1954, chapter 1159, Stat. 1026.

(k) The term "Party" or "Parties" means any entity or entities that are party to the Agreement.

(l) The term "Reservation" means the Fort Hall Indian Reservation.

(m) The term "Tribes" or "Tribal" means the Shoshone-Bannock Tribes, its members and its allottees.

(n) The term "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the three dams authorized as Federal Energy Regulatory Commission Project Numbered 1971.

SEC. 1203. FINDINGS.

The purpose of the Fort Hall Indian Water Rights Settlement Act of 1990 is to achieve a fair, equitable and final settlement of all claims of the Shoshone-Bannock Tribes, its members and its allottees and the United States on behalf of the Shoshone-Bannock Tribes, its members and its allottees to water rights in the Upper Snake River Basin.

SEC. 1204. RATIFICATION OF AGREEMENT.

The Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to implement the Agreement on behalf of the United States.

SEC. 1205. PROTECTION OF EXISTING USES.

(a) CONTRACT FOR STORAGE SPACE.—The Secretary is authorized and directed to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Committee of Nine for 18,900 acre feet (hereinafter referred to as "AF") of storage space in the Palisades Reservoir and the 80,500 AF of storage space in the Ririe Reservoir: Provided, That the contracting entity makes application for the noncontracted storage space within one year of the date of this title and the contracting party agrees to pay all operation and maintenance costs associated with the space. The repayment obligation associated with the construction costs for such noncontracted storage space is hereby deemed repaid by this title. All exemptions that result from such a repayment shall be deemed to be applicable without further qualification on the part of such contracting entity and: Provided, further, That with respect to subsequent users of this water, the reclamation laws shall apply only to the extent such laws would have applied to such subsequent users prior to the date of this title.

(b) LIMITATION ON SETTING ASIDE FINAL DECREE.—Neither the Committee on Nine nor the State shall have the right to set aside the Final Decree because either fails to make application for the storage space referred to in subsection (a) of this section within one year of the date of this title.

SEC. 1206. USE, TRANSFER, AND LEASE OF TRIBAL WATER RIGHTS.

(a) TRANSFER AND LEASE OF TRIBAL WATER RIGHTS WITHIN THE RESERVATION.—The Tribes shall have the right to transfer or lease within the Reservation all or any part of the Tribal water right confirmed in the Final Decree on the terms and conditions set forth in article 7 of the Agreement.

(b) RENTAL OF THE TRIBES FEDERAL CONTRACT STORAGE WATER.—The Tribes shall have the right to rent, pursuant to Idaho Code sections 42-1761 through 42-1765 as specified in article 7 of the Agreement, the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act.

(c) INSTREAM FLOWS.—The Tribes shall have the right to use any or all of the water accruing to Federal storage space held in trust for the Tribes under the Michaud Act for instream flows for river reaches on or adjacent to the Reservation and up to 15,000 AF per year of the storage water rights described in articles 7.1.19 and 7.1.20 of the Agreement for instream flows in reaches of the Blackfoot River on the terms and conditions set forth in article 7.4 of the Agreement.

(d) REQUISITE CONGRESSIONAL APPROVAL.—Ratification of the agreement as provided for by section 1204 of this title shall constitute the congressional approval, to the extent it is required by Federal law, of the uses described in subsections (a), (b), and (c) of this section.

(e) AMENDMENT OF MICHAUD ACT AND CONTRACT.—The Michaud Act and the Michaud Contract are hereby amended to the extent necessary to authorize the uses described in subsections (a), (b), and (c) of the proprietary rights described in article 7 of the Agreement.

(f) NO ALIENATION OR TAXATION OF PROCEEDS.—The proceeds from leasing water pursuant to subsection (a) of this section or from renting all or any part of the water accruing to the Federal contract storage space pursuant to subsection (b) of this section shall not be subject to any form of taxation or alienation by the State.

(g) NO FORFEITURE, ABANDONMENT, LOSS OR CONSTRAINTS ON INCOME.—The Tribes' exercise of the rights described in subsections (a), (b), and (c) of this section or nonuse of the Tribal water rights shall in no event be construed or interpreted as any forfeiture, abandonment, relinquishment, or other loss of all or any part of the Tribal water rights. Nor shall the exercise of the rights described in subsections (a) and (b) of this section be subject to any constraints on the amount of income or other compensation received by the Tribes.

(h) LIMITATION ON OFF-RESERVATION USE.—Except as authorized by this section, no Tribal water rights or water described in the Agreement may be sold, leased, rented, transferred, or otherwise used off the Fort Hall Indian Reservation.

SEC. 1207. CONTRIBUTION OF SETTLEMENT.

(a) TRIBAL DEVELOPMENT FUND.—There is hereby authorized to be appropriated to the United States Department of the Interior Bureau of Indian Affairs $4,000,000 in the first, $3,000,000 in the second, and $3,000,000 in the third fiscal years following the effective date of this title for payment to the Tribal Development Fund, which the Secretary is authorized and directed to establish for the Shoshone-Bannock Tribes. Within sixty days of appropriation of moneys for the Tribal Development Fund, the Secretary shall allocate and make payment to the fund. Once the funds are deposited into the Tribal Development Fund, the Secretary shall disburse the funds to the Tribes upon request.

(b) RESERVATION WATER MANAGEMENT SYSTEMS.—There is hereby authorized to be appropriated to the United States Department of the Interior Bureau of Indian Affairs the sum of $3,000,000 in the first, $2,000,000 in the second, and $2,000,000 in the third fiscal years following the effective date of this title for use by the Tribes for development of a Reservation water management system. Within sixty days of appropriation of

moneys for the Reservation water management system, the Secretary shall allocate and make payment to the Tribes for the purposes described in this section.

(c) ACQUISITION OF LANDS, GRAZING RIGHTS, AND IMPROVEMENTS.—There is hereby authorized to be appropriated to the United States Department of the Interior, Bureau of Indian Affairs, $5,000,000 for the acquisition of up to 9,800 acres of lands, grazing rights, and related improvements to enhance the operation and management of the Fort Hall Indian Irrigation Project, particularly through increased storage capacity and retention period of the reservoir, and the operation of the National Wildlife Refuge at Grays Lake.

(d) LIMITATION ON PER-CAPITA DISTRIBUTIONS.—Under no circumstances may any appropriated funds authorized by subsections (a), (b), and (c) of this section be distributed on a per capita basis to members of the Tribes.

(e) LIMITATION ON SETTING ASIDE FINAL DECREE.—Neither the Tribes nor the United States shall have the right to set aside the Final Decree because Congress fails to appropriate the funds authorized by subsections (a), (b) or (c) of this section or because the United States fails to acquire the grazing allotments adjacent to Grays Lake.

(f) TRUST RESPONSIBILITY.—Nothing in this title shall be construed or interpreted to alter the future trust responsibility of the United States to the Tribes nor to prohibit the Tribes from seeking additional authorization or appropriation of funds for Tribal programs or purposes.

SEC. 1208. WAIVER OF CLAIMS.

(a) GENERAL AUTHORITY.—Upon the effective date of the Agreement, the Tribes and the United States shall be deemed to have waived and released any and all water rights or claims to water rights of the Tribes, its members and its allottees from any source within the Upper Snake River Basin other than those set forth in article 7 of the Agreement. This release shall not apply to water right claims under state law of Tribal members for lands not defined as Indian lands for purposes of this title nor to any other Indian tribe or to any Federal agency other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(b) WAIVER OF CLAIMS AGAINST THE UNITED STATES.—In consideration of performance by the United States of all actions required by the Agreement and this title, including the congressional authorization, appropriation, and payment of all funds authorized in section 1207 of this title, the Tribes shall be deemed to have executed in return a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by the Agreement and for lands or waters that have been inundated by the past construction or enlargement of American Falls Reservoir. In the event funds are not paid as set forth in section 1207, the Tribes are authorized to bring an action in the United States Claims Court for such funds plus applicable interest. The United States hereby waives any defense of sovereign immunity to such action.

(c) WAIVER OF CLAIMS AGAINST NON-FEDERAL PERSONS.—Upon entry of the Final Decree confirming the Tribal water rights, the United States and the Tribes agree not to make any claims against, or seek compensation from, any non-Federal person for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

SEC. 1209. INDIVIDUAL MEMBERS AND ALLOTTEES OF THE TRIBES.

The water rights described in the Agreement and confirmed in the Final Decree are in full satisfaction of all water right claims of members of the Tribes and allottees for Indian lands in the Upper Snake River Basin. If any Tribal member or allottee is decreed a water right for Indian lands in Civil Case Numbered 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987, entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, there shall be a corresponding reduction made in the Tribal water rights set forth in the Agreement and the Final Decree.

SEC. 1210. EFFECTIVE DATE.

(a) DISBURSEMENT OF FUNDS UPON EFFECTIVE DATE.—The monies appropriated pursuant to the authorization in section 1207 of this title shall not be disbursed until such time as the Agreement becomes effective. If the Agreement does not become effective, the monies shall be returned to the General Fund of the Treasury, and the Agreement may be voided by any party to the Agreement.

(b) No provision of this title shall be of any force unless the Agreement becomes effective as provided by article 18 of the Agreement.

SEC. 1211. DISCLAIMER.

(a) GENERAL DISCLAIMER.—Nothing in the Agreement or this title shall be construed in any way to quantify or otherwise affect the water rights or water right claims of the city of Pocatello, Idaho or of any Indian tribe, band, or community, other than the Shoshone-Bannock Tribes.

(b) RESERVATION OF TRIBAL CLAIMS.—Nothing in this title shall be construed to waive any water rights or water right claims of the Tribe or the United States on behalf of the Tribes except as set forth in the Agreement. Nor shall anything in the Agreement or this title affect the water rights or water right claims of any Federal agency, other than the Bureau of Indian Affairs, Fort Hall Indian Agency.

(c) RESERVATION OF RIGHTS.—The parties expressly reserve all rights not granted, recognized or settled by the Agreement or this title.

(d) DISCLAIMER REGARDING OTHER AGREEMENTS.—Except as expressly provided in this title, nothing herein shall be considered to amend, construe, supersede or preempt any State law, Federal law, tribal law or interstate compact that pertains to the Snake River or its tributaries.

SEC. 1212. PROTECTION OF TRIBAL WATER RIGHTS.

The Tribal water rights confirmed by the Final Decree shall bind and inure to the benefit of the Tribes and shall not be taken from them absent their consent and payment of just compensation.

TITLE XIII—FALLON PAIUTE-SHOSHONE TRIBE SETTLEMENT

SEC. 1301.—SHORT TITLE.

This title may be cited as the "Fallon Paiute-Shoshone Indian Tribe Water Rights Settlement Act of 1990".

SEC. 1302. SETTLEMENT FUND.

(a) There is hereby established within the Treasury of the United States, the "Fallon Paiute-Shoshone Tribal Settlement Fund", hereinafter referred to in this title as the "Fund".

(b) There is authorized to be appropriated to the Fallon Paiute-Shoshone Tribal Settlement Fund $3,000,000 in fiscal year 1992, and $8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996, and 1997 for a total sum of $43,000,000.

(c)(1) The income of the Fund may be obligated and expended only for the following purposes:

(A) Tribal economic development, including development of long-term, profit-making opportunities for the Fallon Paiute-Shoshone Tribe (hereinafter referred to in this title as "Tribe" and its tribal members, and the development of employment opportunities for tribal members;

(B) Tribal governmental services and facilities;

(C) Per capita distributions to tribal members;

(D) Rehabilitation and betterment of the irrigation system on the Fallon Paiute-Shoshone Indian Reservation, (hereinafter referred to in this title as "Reservation") not including lands added to the Reservation pursuant to the provisions of Public Law 95-337, 92 Stat. 455;

(E) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers only, and improvement of such lands;

(F) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers only, including those held in trust by the United States.

(2) Except as provided in paragraph (c)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subparagraphs (c)(1)(D), (c)(1)(E) and (c)(1)(F) of this section, the Tribe may obligate and expend no more than 20 percent of the principal of the Settlement Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subparagraph, or from income earned on the remaining principal.

(4) In obligating and expending funds for the purpose set forth in subparagraph (c)(1)(C), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.

(d) The Tribe shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (f) of this section.

(e) Upon the request of the Tribe, the Secretary shall invest the sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(f)(1) The Tribe shall develop a plan, in consultation with the Secretary, for the investment, management, administration and expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in paragraph (c)(1) of this section. Such plan may be revised and updated by the Tribe in consultation with the Secretary.

(2) The plan shall include a description of a project for the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and bet-

terment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribe shall use its best efforts to implement the project within four years of the time when appropriations authorized in subsection (b) of this section become available.

(3) Upon the request of the Tribe, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribe, monies from the Fund to serve any of the purposes set forth in paragraph (c)(1) of this section, except that no disbursement shall be made to the Tribe unless and until it adopts the plan required under this section.

(g) The provisions of section 7 of Public Law 93-134, 87 Stat. 468, as amended by section 4 of Public Law 97-458, 96 Stat. 2513, 25 U.S.C. 1407, shall apply to any funds which may be distributed per capita under subparagraph (c)(1)(C) of this Section.

SEC. 1303. ACQUISITION AND USE OF LANDS AND WATER RIGHTS.

(a) Title to all lands, water rights and related property interests acquired under subparagraph 1302(c)(1)(E) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribe as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and not more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

(b) Any lands acquired under subparagraph 1302(c)(1) (E) or (F) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

(c)(1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation project water rights added to the Reservation under subsection (a) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(A) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute-Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(B) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

(2) The requirements of paragraph 1303(c)(1) shall not take effect until the Tribe agrees to the limitations on annual use of water rights set forth in subsection (1) of this section.

(d) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Reservation under subsection (a) of this section, and to enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(e) Subject to the limitation on the quantum of use set forth in subsection (c) of this section, and applicable State law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (a) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use. Nothing in this subsection is intended to affect the jurisdiction of the Tribe or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(f)(1) The Tribe is authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribe, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

(A) Consolidating reservation landholdings or water rights, including those held in trust;

(B) Eliminating fractionated heirship interests in reservation lands or water rights, including those held in trust;

(C) Providing land or water rights for any tribal program;

(D) Improving the economy of the Tribe and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and

(E) General rehabilitation and enhancement of the total resources potential of the Reservation: *Provided*, That, water rights shall be transferred in compliance with applicable State law.

(2) Title to any lands or water rights, or interests therein, acquired by the tribe within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribe.

SEC. 1304. RELEASE OF CLAIMS.

(a)(1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met:

(A) the Tribe has released any and all claims it may have against the United States resulting from any failure of the United States to comply with section 7 of the Public Law 95-337, 92 Stat. 457;

(B) the Tribe has dismissed with prejudice its claims in Northern Paiute Nation v. United States, Docket No. 87-A, United States Claims Court;

(C) the Tribe has agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in subsection 1303(c);

(D) the Tribe agrees to be bound by a plan developed and implemented by the Secretary in accordance with section 1306 of this title; and,

(E) the Tribe agrees to indemnify the United States against monetary claims by landowners, who may hold water rights on the Reservation as of the date of enactment of this Act, that the provisions of section 1303 of this Act unlawfully take such rights, provided that the United States shall defend and resist any such claims of its own expense, the Tribe shall be entitled to intervene in any administrative or judicial proceeding on such claims, and the United States shall not compromise or settle any such claim without the Tribe's consent. This provision shall not be construed to imply that section 1303 takes any such water rights, confer jurisdiction on any court or other tribunal to adjudicate any such takings claims, waive any immunities of the United States or the Tribe, or otherwise establish or enhance any claims to water rights or for the taking thereof.

(2) If the appropriations authorized in subsection 1302(b) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this title have not been satisfied, and the Tribe may rescind its release of claims under this section and its agreements under subparagraphs (C), (D), and (E) of this section.

(3) Upon the appropriation of monies authorized in subsection 1302(b) of this title, and the allocation of such monies to the Fund, Section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed.

SEC. 1305. LIABILITY OF THE UNITED STATES.

(a) Except with regard to the responsibilities assumed by the United States under subsection 1302(e), and those set forth in section 1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, 25 U.S.C. 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribe.

(b) Except with regard to the responsibilities assumed by the United States under subsection 1302(b), paragraph 1302(f)(3), subsection 1303(a), subsection 1303(d), paragraph 1303(f)(2) and paragraph 1304(a)(1), the United States shall not bear any obligation or liability for the implementation of the provisions of this Act.

SEC. 1306.

The Secretary, in consultation with the Tribe and in accordance with applicable law, shall develop and implement a plan for closure (including, if appropriate, modification of some components) of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure. The United States shall bear all costs for developing and implementing the plan, which shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation Standards for Reservation lands in agricultural production as of the 1990 irrigation season that are served by that system, unless the Tribe and the Secretary agree otherwise. Implementation of the plan shall not interfere with on-going agricultural operations. There is hereby authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 1307. DEFINITIONS.

For purposes of this title, and for no other purposes—

(a) The term "Fallon Paiute-Shoshone Tribal Settlement Fund" or "Fund" means the Fund established under subsection 1302(a) of this Act to enable the Fallon Paiute-Shoshone Tribe to carry out the purposes set forth in paragraph 1302(c)(1) of this title.

(b) The term "Income" means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute-Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income.

(c) The term "principal" means the total sum of monies appropriated to the Fallon Paiute-Shoshone Tribal Settlement Fund under subsectin 1302(b) of this title.

(d) The term "Reservation" means the lands set aside for the benefit of the Fallon Paiute-Shoshone Tribe by the orders of the Department of the Interior of April 20,

1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457.

(e) The term "Secretary" means the Secretary of the Department of the Interior.

(f) The term "tribal members" means the enrolled members of the Fallon Paiute-Shoshone Tribe.

(g) The term "Tribe" means the Fallon Paiute-Shoshone Tribe.

TITLE XIV—RECLAMATION WASTEWATER AND GROUNDWATER STUDIES

SEC. 1401. SHORT TITLE.

This title may be referred to as the "Reclamation Wastewater and Groundwater Study Act."

SEC. 1402. GENERAL AUTHORITY.

(a) The Secretary of the Interior (hereafter "Secretary"), acting pursuant to the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and Acts amendatory thereof and supplementary thereto (hereafter "Federal Reclamation laws"), is directed to undertake a program to investigate and identify opportunities for reclamation and reuse of municipal, industrial, domestic, and agricultural wastewater, and naturally impaired ground and surface waters.

(b) Such program shall be limited to the States and areas referred to in section 1 of the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) as amended.

(c) The Secretary is authorized to enter into such agreements and promulgate such regulations as may be necessary to carry out the purposes and provisions of this title.

(d) The Secretary shall not investigate, promote or implement, pursuant to this title, any wastewater reclamation and reuse project intended to treat agricultural wastewater generated in the service areas of the San Luis Unit of the Central Valley Project.

SEC. 1403. APPRAISAL INVESTIGATIONS.

(a) The Secretary shall undertake appraisal investigations to identify opportunities for wastewater reclamation and reuse. Each such investigation shall take into account environmental considerations as provided by the National Environmental Policy Act (Act of January 1, 1970, 83 Stat. 852) and regulations issued to implement the provisions thereof, and shall include recommendations as to the preparation of a feasibility study of the potential reclamation and reuse measures.

(b) Appraisal investigations undertaken pursuant to this title shall consider, among other things:

(1) all potential uses of reclaimed wastewater, including, but not limited to, environmental restoration, fish and wildlife, groundwater recharge, municipal, domestic, industrial, agricultural, power generation, and recreation;

(2) the current status of wastewater reclamation technology and opportunities for development of improved technologies, and

(3) measures to stimulate demand for and eliminate obstacles to use of reclaimed wastewater, including pricing.

(c) The Secretary shall consult and cooperate with appropriate State, regional and local authorities during the conduct of each appraisal investigation conducted pursuant to this title.

(d) Costs of such appraisal investigations shall be nonreimbursable.

SEC. 1404. FEASIBILITY STUDIES.

(a) The Secretary is authorized to participate with appropriate Federal, State, regional, and local authorities in studies to determine the feasibility of wastewater reclamation and reuse projects recommended for such study pursuant to section 1403 of this title. The Federal share of the costs of such feasibility studies shall not exceed fifty percent of the total, except that the Secretary may increase the Federal share of the costs of such feasibility study if the Secretary determines, based upon a demonstration of financial hardship on the part of the non-Federal participant, that the non-Federal participant is unable to contribute at least fifty percent of the costs of such study. The Secretary may accept as part of the non-Federal cost share the contribution of such in-kind services by the non-Federal participant that the Secretary determines will contribute substantially toward the conduct and completion of the study.

(b) The Federal share of feasibility studies, including those described in sections 1405 through 1410 of this title, shall be considered as project costs and shall be reimbursed in accordance with the Federal reclamation laws, if the project studied is implemented.

(c) In addition to the requirements of other Federal laws, feasibility studies authorized under this title shall consider, among other things:

(1) near- and long-term water demand and supplies in the study area;

(2) all potential uses for reclaimed wastewater;

(3) measures and technologies available for wastewater reclamation, distribution and reuse;

(4) public health and environmental quality issues associated with use of reclaimed wastewater, and

(5) whether development of the wastewater reclamation and reuse measures under study would

(A) reduce, postpone, or eliminate development of new or expanded water supplies, or

(B) reduce or eliminate the use of existing diversions from natural watercourses or withdrawals from aquifers.

SEC. 1405. SOUTHERN CALIFORNIA COMPREHENSIVE WASTEWATER RECLAMATION AND REUSE STUDY.

(a) The Secretary is authorized to conduct a study to assess the feasibility of a comprehensive wastewater reclamation and reuse system for Southern California. For the purpose of this Act, the term "Southern California" means those portions of the counties of Imperial, Los Angeles, Orange, San Bernardino, Riverside, San Diego and Ventura within the South Coast and Colorado River hydrologic regions as defined by the California Department of Water Resources.

(b) The Secretary shall conduct the study authorized by this Section in cooperation with the State of California and appropriate local and regional entities. The Federal share of the costs associated with this study shall not exceed fifty percent of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than six years after appropriation of funds authorized by this title.

SEC. 1406. SAN DIEGO AREA WASTEWATER RECLAMATION PROGRAM.

(a) The Secretary, in cooperation with the City of San Diego, California, shall conduct a feasibility study of the potential for development of demonstration and permanent facilities to reclaim and reuse wastewater in the San Diego Metropolitan service area.

(b) The Federal share of the costs of the study authorized by this section shall not exceed fifty percent of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than four years of appropriation of funds authorized by this title.

SEC. 1407. SAN JOSE AREA WASTEWATER RECLAMATION STUDY.

(a) The Secretary, in cooperation with the City of San Jose, California, and the Santa Clara Valley Water District, and local water suppliers, shall conduct a feasibility study of the potential for development of demonstration and permanent facilities and related programs to reclaim and reuse wastewater in the San Jose metropolitan service area.

(b) The Federal share of the costs of the study authorized by this section shall not exceed fifty percent of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than two years after appropriation of funds authorized by this title.

SEC. 1408. PHOENIX METROPOLITAN WASTEWATER RECLAMATION STUDY.

(a) The Secretary, in cooperation with the City of Phoenix, Arizona, shall conduct a feasibility study of the potential for development of facilities to utilize fully wastewater from the regional wastewater treatment plant for direct municipal, industrial, agricultural, and environmental purposes, groundwater recharge and direct potable reuse in the Phoenix metropolitan area.

(b) The Federal share of the costs of the study authorized by this section shall not exceed fifty percent of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than two years after appropriation of funds authorized by this title.

SEC. 1409. TUCSON AREA WASTEWATER RECLAMATION STUDY.

(a) The Secretary, in cooperation with the State of Arizona and appropriate local and regional entities, shall conduct a feasibility study of comprehensive wastewater reclamation and reuse system for Southern Arizona. For the purpose of this section, the term "southern Arizona" means those portions of the counties of Pima, Santa Cruz, and Pinal within the Tucson Active Management hydrologic area as defined by the Arizona Department of Water Resources.

(b) The Federal share of the costs of the study authorized by this section shall not exceed fifty percent of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than four years after appropriation of funds authorized by this title.

SEC. 1410. HYPERION SERVICE AREA WASTEWATER RECLAMATION AND REUSE PROJECT.

(a) The Secretary is authorized to participate with the City of Los Angeles, State of California, West Basin Municipal Water District, and other appropriate authorities, in the design, planning, and construction of

wastewater reclamation and reuse projects to treat approximately 120,000 acre-feet per year of effluent from the Hyperion Service Area, City of Los Angeles, in order to provide new water supplies for industrial, environmental, and other beneficial purposes, to reduce the demand for imported water, and to reduce sewage effluent discharged into Santa Monica Bay.

(b) The Secretary's share of costs associated with the project described in subsection (a) shall not exceed twenty-five percent of the total. The Secretary shall not provide funds for operation or maintenance of the project.

SEC. 1411. LAKE CHERAW WATER RECLAMATION AND REUSE STUDY

(a) The Secretary is authorized, in cooperation with the State of Colorado and appropriate local and regional entities, to conduct a study to assess and develop means of reclaiming the waters of Lake Cheraw, Colorado, or otherwise ameliorating, controlling and mitigating potential negative impacts of pollution in the waters of Lake Cheraw on groundwater resources or on the waters of the Arkansas River.

(b) The Federal share of the costs of the study authorized by this section shall not exceed fifty percent of the total.

(c) The Secretary shall submit the report authorized by this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives not later than two years after appropriation of funds authorized by this title.

SEC. 1412. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes and provisions of sections 1401 through 1411.

SEC. 1413. GROUNDWATER STUDY.

(a) In furtherance of the High Plains Groundwater Demonstration Program Act of 1983 (98 Stat. 1675), the Secretary of the Interior, acting through the Bureau of Reclamation and the Geological Survey, shall conduct an investigation and analysis of the impacts of existing Bureau of Reclamation projects on the quality and quantity of groundwater resources. Based on such investigation and analysis, the Secretary shall prepare a reclamation groundwater management and technical assistance report which shall include:

(1) a description of the findings of the investigation and analysis, including the methodology employed;

(2) a description of methods for optimizing Bureau of Reclamation project operations to ameliorate adverse impacts on groundwater, and

(3) the Secretary's recommendations, along with the recommendations of the Governors of the affected States, concerning the establishment of a groundwater management and technical assistance program in the Department of the Interior in order to assist Federal and non-Federal entity development and implementation of groundwater management plans and activities.

(b) In conducting the investigation and analysis, and in preparation of the report referred to in this section, the Secretary shall consult with the Governors of the affected States.

(c) The report shall be submitted to the Committees on Appropriations and Interior and Insular Affairs of the House of Representatives and the Committees on Appropriations and Energy and Natural Resources of the Senate within three years of the appropriation of funds authorized by section 1414.

SEC. 1414.

There is authorized to be appropriated for fiscal years beginning after September 30, 1990, $4,000,000 to carry out the study authorized by section 1413.

TITLE XV—RECLAMATION REFORM ACT AMENDMENTS

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TITLE XVI—CENTRAL UTAH PROJECT COMPLETION

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—Titles XVI through XX of this Act may be cited as the "Central Utah Project Completion Act".

(b) TABLE OF CONTENTS.—The table of contents for titles XVI through XX of this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Definitions.
TITLE XVI—CENTRAL UTAH PROJECT CONSTRUCTION
Sec. 1601. Authorization of additional amounts for the Colorado River Storage Project.
Sec. 1602. Bonneville Unit water development.
Sec. 1603. Uinta Basin replacement project.
Sec. 1604. Non-Federal contribution.
Sec. 1605. Definite Plan Report and environmental compliance.
Sec. 1606. Local development in lieu of irrigation and drainage.
Sec. 1607. Water management improvement.
Sec. 1608. Limitation on hydropower operations.
Sec. 1609. Operating agreements.
Sec. 1610. Jordan Aqueduct prepayment.
Sec. 1611. Audit of Central Utah Project cost allocations.
Sec. 1612. Surplus crops.
TITLE XVII—FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION
Sec. 1701. Utah Reclamation Mitigation and Conservation Commission.
Sec. 1702. Increased Central Utah Project water capability.
Sec. 1703. Central Utah Project stream flows.
Sec. 1704. Fish, wildlife, and recreation projects identified or proposed in the 1988 Definite Plan Report for the Central Utah Project.
Sec. 1705. Wildlife lands and improvements.
Sec. 1706. Wetlands acquisition, rehabilitation, and enhancement.
Sec. 1707. Fisheries acquisition, rehabilitation, and enhancement.
Sec. 1708. Stabilization of high mountain lakes in the Uinta mountains.
Sec. 1709. Stream access and riparian habitat development.
Sec. 1710. Section 8 expenses.
Sec. 1711. Jordan and Provo River Parkways and natural areas.
Sec. 1712. Recreation.
Sec. 1713. Fish and wildlife features in the Colorado River Storage Project.
Sec. 1714. Concurrent mitigation appropriations.
Sec. 1715. Fish, wildlife, and recreation mitigation schedule.
TITLE XVIII—UTAH RECLAMATION MITIGATION AND CONSERVATION ACCOUNT
Sec. 1801. Findings, purpose, operation and administration.
Sec. 1802 Utah Reclamation Mitigation and Conservation Account.
TITLE XIX—UTE INDIAN RIGHTS SETTLEMENT
Sec. 1901. Findings and purpose.
Sec. 1902. Provision for payment to the Ute Indian Tribe.
Sec. 1903. Tribal use of water.
Sec. 1904. Tribal farming operations.
Sec. 1905. Reservoir, stream, habitat, and road improvements with respect to the Ute Indian Reservation.
Sec. 1906. Tribal development funds.
Sec. 1907. Waiver of claims.
TITLE XX—ENDANGERED SPECIES ACT AND NATIONAL ENVIRONMENTAL POLICY ACT.

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) The term "Bureau" means the Bureau of Reclamation of the Department of the Interior.

(2) The term "Commission" means the Utah Reclamation Mitigation and Conservation Commission established by section 1701 of this Act.

(3) The term "conservation measure(s)" means actions taken to improve the efficiency of the storage, conveyance, distribution, or use of water, exlcusive of dams, reservoirs, or wells.

(4) The term "1988 Definite Plan Report" means the May 1988 Draft Supplement to the Definite Plan Report for the Bonneville Unit of the Central Utah Project.

(5) The term "District" means the Central Utah Water Conservancy District.

(6) The term "fish and wildlife resources" means all birds, fishes, mammals, and all other classes of wild animals and all types of habitat upon which such fish and wildlife depend.

(7) The term "Interagency Biological Assessment Team " means the team comprised of representatives from the U.S. Fish and Wildlife Service, the U.S. Forest Service, the Bureau of Reclamation, the Utah Division of Wildlife Resources, and the District.

(8) The term "administrative expenses", as used in section 1701(i) of this Act, means all expenses necessary for the Commission to administer its duties other than the cost of the contracts or other transactions provided for in section 1701(f)(3) for the implementation by public natural resource management agencies of the mitigation and conservation projects and features authorized in this Act. Such administrative expenses include but are not limited to the costs associated with the Commission's planning, reporting, and public involvement activities, as well as the salaries, travel expenses, office equipment, and other such general administrative expenses authorized in this Act.

(9) The term "petitioner(s)" means any person or entity that petitions the District for an allotment of water pursuant to the Utah Water Conservancy Act, Utah Code Ann. Sec. 17A-2-1401 et. seq.

(10) The term "project" means the Central Utah Project.

(11) The term "public involvement" means to request comments on the scope of and, subsequently, on drafts of proposed actions or plans, affirmatively soliciting comments, in writing or at public hearings, from those persons, agencies, or organizations who may be interested or affected.

(12) The term "Secretary" means the Secretary of the Interior.

(13) The term "Section 8" means section 8 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620g).

(14) The term "State" means the State of Utah, its political subdivisions, or its designee.

(15) The term "Stream Flow Agreement" means the agreement entered into by the United States through the Secretary of the Interior, the State of Utah, and the Central Utah Water Conservancy District, dated February 27, 1980, as modified by the amendment to such agreement, dated September 13, 1990.

TITLE XVI—CENTRAL UTAH PROJECT CONSTRUCTION

SEC. 1601. AUTHORIZATION OF ADDITIONAL AMOUNTS FOR THE COLORADO RIVER STORAGE PROJECT.

(a)(1) INCREASE IN CRSP AUTHORIZATION.—In order to provide for the completion of the Central Utah Project and other features described in this Act, the amount which section 12 of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620K), authorizes to be appropriated, which was increased by the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. 620k note) and the Act of October 31, 1988 (102 Stat. 2826), is hereby further increased by $895,456,000 plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indexes applicable to the type of construction involved; *Provided,* however, that of the amounts authorized to be appropriated by this section, the Secretary is not authorized to obligate or expend amounts in excess of $214,352,000 for the features specified in the FY 91 Appropriations request for the Bureau and the following features: Current Creek Road, Soldier Creek, Taylor Canal Drains, Jordanelle Dam, Upper Provo River Improvements, Syar Tunnel, Sixth Water Aqueduct, Starvation Recreation Facilities, Jordanelle Recreation Facilities, and associated Mitigation Measures. This additional sum shall be available solely for design, engineering, and construction of the facilities identified in Title XVI of this Act and for the planning and implementation of the fish and wildlife and recreation mitigation and conservation projects and studies authorized in Titles XVII and XVIII of this Act, and for the Ute Indian Settlement authorized in Title XIX of this Act.

(2) APPLICATION OF INSPECTOR GENERAL RECOMMENDATIONS.—Notwithstanding any other provision of law to the contrary, the Secretary shall implement all the recommendations contained in the report entitled "Review of the Financial Management of the Colorado River Storage Project, Bureau of Reclamation (Report No. 88-45, February, 1988)" prepared by the Inspector General of the Department of the Interior, with respect to the funds authorized to be appropriated in this section.

(b) UTAH RECLAMATION PROJECTS AND FEATURES NOT TO BE FUNDED.—Notwithstanding the Act of April 11, 1956 (70 Stat. 110; 43. U.S.C. 105), the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. 620k note), the Act of October 19, 1980 (94 Stat. 2239; 43 U.S.C. 620), and the Act of October 31, 1988 (102 Stat. 2826), funds may not be made available, obligated, or expended for the following Utah reclamation projects and features:

(1) Fish and wildlife features:

(A) The dam in Bjorkman Hollow;

(B) The Deep Creek pumping plant;

(C) The North Fork pumping plant;

(2) Water development projects and features:

(A) Mosida pumping plant, canals, and laterals;

(B) Draining of Benjamin Slough;

(C) Diking of Goshen or Provo Bays in Utah Lake;

(D) Ute Indian Unit;

(E) Leland Bench development;

(F) All features of the Central Utah Project not proposed and described in the 1988 Definite Plan Report.

Counties in which the projects and features described in this subsection were proposed to be located may participate in the local development projects provided for in section 1606.

(c) TERMINATION OF AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding any provision of the Act of April 11, 1956 (70 Stat. 110; 43 U.S.C. 620k), the Act of September 2, 1964 (78 Stat. 852), the Act of September 30, 1968 (82 Stat. 885), the Act of August 10, 1972 (86 Stat. 525; 43 U.S.C. 620k note), and the Act of October 31, 1988 (102 Stat. 2826) to the contrary, the authorization of appropriations for construction of any Colorado River Storage Project participating project located in the State of Utah shall terminate five years after the date of enactment of this Act unless: (1) the Secretary executes a cost-sharing agreement with non-Federal entities for construction of such project, and (2) the Secretary has requested construction funds for such project.

(d) USE OF APPROPRIATED FUNDS.—Funds authorized pursuant to this Act shall be appropriated to the Secretary and such appropriations shall be made available in their entirety to non-federal interests as provided for pursuant to the provisions of this Act.

(e) STATUS OF PARTICIPATING PROJECTS.—The Secretary, in consultation with the Secretary of Energy and the Governors of the Upper Colorado River Basin States, is directed to report to Congress not later than April 15, 1991, on the status of Colorado River Storage Project participating projects for which construction has not begun as of October 15, 1990. The report of the Secretary shall include, but not be limited to, the following information:

(1) a description of each project, its legislative history, and history of environmental compliance;

(2) an analysis of the economic costs and benefits of each participating project;

(3) a recommendation as to whether the authorization of appropriations for that project be amended, be terminated, or should remain unchanged, along with the reasons supporting each recommendation.

SEC. 1602. BONNEVILLE UNIT WATER DEVELOPMENT.

(a) Of the amounts authorized to be appropriated in section 1601, the following amounts shall be available only for the following features of the Bonneville Unit of the Central Utah Project:

(1) IRRIGATION AND DRAINAGE SYSTEM.—(A) $150,000,000 for the construction of an enclosed pipeline primary water conveyance system from Spanish Fork Canyon to Sevier Bridge Reservoir for the purpose of supplying new and supplemental irrigation water supplies to Utah, Juab, Millard, Sanpete, Sevier, Garfield, and Piute Counties. Construction of the facilities specified in the previous sentence shall be undertaken by the District as specified in subparagraph (D) of this paragraph. No funds are authorized to be appropriated for construction of the facilities identified in this paragraph, except as provided for in subparagraph (D) of this paragraph.

(B) The authorization to construct the features provided for in subparagraph (A) shall expire if no funds to construct such features have been obligated or expended by the Secretary in accordance with this Act, unless the Secretary determines the District has complied with sections 1602, 1604, and 1605, within five years from the date of its enactment, or such longer time as necessitated for—

(i) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act (16 U.S.C. 1533 et seq.) for any species that is or may be listed as threatened or endangered under such Act; *Provided,* however, that such extension of time for the expiration of authorization shall not exceed 12 months beyond the five year period provided in subparagraph (B) of this paragraph;

(ii) judicial review of a completed final environmental impact statement for such features if such review is initiated by parties other than the District, the State, or petitioners of project water;

(iii) a judicial challenge of the Secretary's failure to make a determination of compliance under this subparagraph; *Provided,* however, That in the event that construction is not initiated on the features provided for in subparagraph (A), $125,000,000 shall remain authorized pursuant to the provisions of this Act applicable to subparagraph (A) for the construction of alternate features to deliver irrigation water to lands in the Utah Lake drainage area, exclusive of the features identified in section 1601(b).

(C) REQUIREMENT FOR BINDING CONTRACTS.—Amounts authorized to carry out subparagraph (A) may not be obligated or expended, and may not be borrowed against, until binding contracts of the purchase for the purpose of agricultural irrigation of at least 90 percent of the irrigation water to be delivered from the features of the Central Utah Project described in subparagraph (A) have been executed.

(D) In lieu of construction by the Secretary, the Central Utah Project and features specified in section 1602(a)(1) shall be constructed by the District under the program guidelines authorized by Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. 505). Any such feature shall be operated, maintained, and repaired by the District in accordance with repayments contracts and operation and maintenance agreements entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement of the District of the features specified in section 1602(a)(1).

(2) CONJUNCTIVE USE OF SURFACE AND GROUND WATER.—$10,000,000 for a feasibility study and development, with public involvement, by the Utah Division of Water Resources of systems to allow ground water recharge, management, and the conjunctive use of surface water resources with ground water resources in Salt Lake, Utah, Davis and Weber Counties, Utah.

(3) WASATCH COUNTY IRRIGATION EFFICIENCY IMPROVEMENTS.—$500,000 for the District to conduct, within 18 months from the date of enactment of this Act, a feasibility study, with public involvement, of irrigation efficiency improvements to facilitate the acquisition of Strawberry basin water rights authorized in section 1703(b), and to increase efficiency, enhance beneficial uses, and achieve greater water conservation within

Wasatch County, to the extent practicable without interference with downstream rights.

(4) UTAH LAKE SALINITY CONTROL.—$1,000,000 for the District to conduct, with public involvement, a feasibility study to reduce the salinity of Utah Lake.

(5) STRAWBERRY-PROVO CONVEYANCE STUDY.—(A) $2,000,000 for the District to conduct a feasiblity study, with public involvement, of direct delivery of Colorado River Basin Water from the Strawberry Reservoir or elsewhere in the Strawberry Collection System to the Provo River Basin, including the Wallsburg Tunnel and other possible importation or exchange options. The study shall also evaluate the potential for changes in existing importation patterns and quantities of water from the Weber and Duchesne River Basins, and shall describe the economic and environmental consequences of each alternative identified.

(B) The cost of the study provided for in subparagraph (A) shall be treated as an expense under section 8; *Provided,* however, that the cost of such study shall be reallocated proportionate with project purposes in the event any conveyance alternative is subsequently authorized and constructed.

(6) COMPLETION OF DIAMOND FORK SYSTEM.—(A) Of the amounts authorized to be appropriated under section, 1601, $69,000,000 shall be available to complete construction of the Diamond Fork System.

(B) In lieu of construction by the Secretary, the facilities specified in paragraph (A) shall be constructed by the District under the program guidelines authorized by Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. 505). Any such feature may be operated, maintained, and repaired by the District in accordance with repayment contracts and operation and maintenance agreements entered into between the Secretary and the District. The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the district of the features specified in subparagraph (A) of this paragraph.

(b) STRAWBERRY WATER USERS ASSOCIATION.—(1) In exchange for, and as a precondition to approval of the Strawberry Water Users Association's petition for Bonneville Unit water, the Secretary, after consultation with the Secretary of Agriculture, shall impose conditions on such approval so as to ensure that the Strawberry Water Users Association shall manage and develop the lands referred to in subparagraph 4(e)(1)(A) of the Act of October 31, 1988 (102 Stat. 2826, 2828) in a manner compatible with the management and improvement of adjacent Federal lands for wildlife purposes, natural values, and recreation.

(2) The Secretary of Agriculture and the Secretary shall not permit commercial or other development of Federal lands within Sections 1 and 12, T. 3 S., R. 12 W., and Sections 6 and 7, T. 3 S., R. 11 W., Uintah Special Meridian. Such Federal lands shall be rehabilitated pursuant to subsection 4(f) of the Act of October 31, 1988 (102 Stat. 2826, 2828) and hereafter managed and approved for wildlife purposes, natural values, and recreation consistent with the Uinta National Forest Land and Natural Resource Management Plan. This restriction shall not apply to the 95 acres referred to in the first sentence of subparagraph 4(e)(1)(A) of the Act of October 31, 1988 (102 Stat. 2826, 2828), valid existing rights, or to uses of such Federal lands by the Secretary of Agriculture or the Secretary for public purposes.

SEC. 1603. UINTA BASIN REPLACEMENT PROJECT.

(a) IN GENERAL.—Of the amounts authorized to be appropriated by section 1601, $30,538,000 shall be available only to increase efficiency, enhance beneficial uses, and achieve greater water conservation within the Uinta Basin, as follows:

(1) $13,582,000 for the construction of the Pigeon Water Reservoir, together with an enclosed pipeline conveyance system to divert water from Lake Fork River to Pigeon Water Reservoir and Sandwash Reservoir.

(2) $2,987,000 for the construction of McGuire Draw Reservoir.

(3) $7,669,000 for the construction of Clay Basin Reservoir.

(4) $4,000,000 for the rehabilitation of Farnsworth Canal.

(5) $2,300,000 for the construction of permanent diversion facilities identified by the Commission on the Duchesne and Strawberry Rivers, the designs of which shall be approved by the Federal and State fish and wildlife agencies. The amount identified in paragraph (5) shall be treated as an expense under section 8.

(b) EXPIRATION OF AUTHORIZATION.—The authorization to construct any of the features provided for in paragraphs (1) through (5) of subsection (a)—

(1) shall expire if no funds for such features have been obligated or expended in accordance with this Act within five years from the date of completion of feasibility studies, or such longer time as necessitated for—

(A) completion, after the exercise of due diligence, of compliance measures outlined in a biological opinion issued pursuant to the Endangered Species Act (16 U.S.C. 1533 et seq.) for any species that is or may be listed as threatened or endangered under such Act: *Provided, however,* That such extension of time for the expiration of authorization shall not exceed 12 months beyond the five year period provided in subparagraph (B) of this paragraph; or

(B) judicial review of a completed Final Environmental Impact Statement if such review was initiated by parties other than the District, the State, or petitioners of project water;

(2) shall expire if the Secretary determines that such feature is not feasible.

(c) REQUIREMENT FOR BINDING CONTRACTS.—Amounts authorized to carry out subsection (a), paragraphs (1) through (4) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase of at least 90 percent of the irrigation water to be delivered from the features of the Central Utah Project described in subsection (a), paragraphs (1) through (4) have been executed.

(d) NON-FEDERAL OPTION.—In lieu of construction by the Secretary, the features described in subsection (a), paragraphs (1) through (5) shall be constructed by the District under the program guidelines authorized by the Drainage Facilities and Minor Construction Act (Act of June 13, 1956, 70 Stat. 274, 43 U.S.C. 505). The United States shall not be liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the features specified in subsection (a) of this section.

(e) WATER RIGHTS.—To make water rights available for any of the features constructed as authorized in this section, the Bureau shall convey to the District in accordance with State law the water rights evidenced by Water Right No. 43-3825 (Application No. A36642) and Water Right No. 43-3827 (Application No. A36644).

(f) UINTAH INDIAN IRRIGATION PROJECT.—(1) Notwithstanding any other provision of law, the Secretary is authorized and directed to enter into a contract or cooperative agreement with, or make a grant to the Uintah Indian Irrigation Project Operation and Maintenance Company, or any other organization representing the water users within the Uintah Indian Irrigation Project area, to enable such organization to—

(A) administer the Uintah Indian Irrigation Project, or part thereof, and

(B) operate, maintain, rehabilitate, and construct all or some of the irrigation project facilities using the same administrative authority and management procedures as used by water user organizations formed under State laws who administer, operate, and maintain irrigation projects.

(2) Title to Uintah Indian Irrigation Project rights-of-way and facilities shall remain in the United States. The Secretary shall retain any trust responsibilities to the Uintah Indian Irrigation Project.

(3) Notwithstanding any other provision of law, the Secretary shall use funds received from assessments, carriage agreements, leases, and all other additional sources related to the Uintah Indian Irrigation Project exclusively for Uintah Indian Irrigation Project administration, operation, maintenance, rehabilitation, and construction where appropriate. Upon receipt, the Secretary shall deposit such funds in an account in the Treasury of the United States. Amounts in the account not currently needed shall earn interest at the rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding obligations of the United States with remaining periods to maturity comparable to the period for which such funds are not currently needed. Amounts in the account shall be available without further authorization or appropriation by Congress. Such amounts shall be treated as private funds to be held in trust for landowners of the irrigation project and shall not be treated as public or appropriated funds.

(4) All noncontract costs, direct and indirect, required to administer the Uintah Indian Irrigation Project shall be nonreimbursable and paid for by the Secretary as part of his trust responsibilities, beginning on the date of enactment of this Act. Such costs shall include (but not be limited to) the noncontract cost positions of project manager or engineer and two support staff. Such costs shall be added to the funding of the Uintah and Ouray Agency of the Bureau of Indian Affairs as a line item.

(5) The Secretary is authorized to sell, lease, or otherwise make available the use of irrigation project equipment to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof.

(6) The Secretary is authorized to lease or otherwise make available the use of irrigation project facilities to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof.

(g) BRUSH CREEK AND JENSEN UNIT.—(1) The Secretary is authorized to enter into Amendatory Contract No. 6-05-01-00143, as last revised on September 18, 1988, between the United States and the Uintah Water Conservancy District, which provides,

among other things, for part of the municipal and industrial water obligation now the responsibility of the Uintah Water Conservancy District to be retained by the United States with a corresponding part of the water supply to be controlled and marketed by the United States. Such water shall be marketed and used in conformance with State law.

(2) The Secretary, through the Bureau, shall—

(A) establish a conservation pool of 4,000 acre feet in Red Fleet Reservoir for the purpose of enhancing associated fishery and recreational opportunities and for such other purposes as may be recommended by the Commission in consultation with the Utah Division of Wildlife Resources and the Utah Division of Parks and Recreation; and

(B) enter into an agreement with the Utah Division of Parks and Recreation for the management and operation of Red Fleet recreational facilities.

SEC. 1604. NON-FEDERAL CONTRIBUTION.

The non-Federal share of the cost for the design, engineering, and construction of the Central Utah Project features authorized by sections 1602 and 1603 shall be 35 percent of the total costs and shall be paid concurrently with the Federal share, except that for the facilities specified in 1602(a)(6), the cost-share shall be 35 percent of the costs allocated to irrigation beyond the ability of irrigators to repay. The non-Federal share of the cost for studies required by sections 1602 and 1603, other than the study required by sections 1602(a)(5), shall be 50 percent and shall be paid concurrently with the Federal share. Any feature or study to which this section applies shall not be initiated until after the non-Federal interests enter into binding agreements with the appropriate Federal authority to provide the share required by this section.

SEC. 1605. DEFINITE PLAN REPORT AND ENVIRONMENTAL COMPLIANCE.

(a) DEFINITE PLAN REPORT AND FEASIBILITY STUDIES.—Except for amounts required for compliance with applicable environmental laws and the purposes of this subsection, amounts may not be obligated or expended for the features authorized in section 1602(a)(1) or 1603 until—

(1) the Secretary or the District, at the option of the District completes—

(A) a Definite Plan Report for the system authorized in section 1602(a)(1), or

(B) an analysis to determine the feasibility of the separate features described in section 1603(a), paragraphs (1) through (4), or subsection (f);

(2) the requirements of the National Environmental Policy Act of 1969 have been satisfied with respect to the particular system; and

(3) a plan has been developed with and approved by the U.S. Fish and Wildlife Service to prevent any harmful contamination of waters due to concentrations of selenium or other such toxicants, if the Service determines that development of the particular system may result in such contamination.

(b) COMPLIANCE WITH ENVIRONMENTAL LAWS AND THE TERMS OF THIS ACT.—Notwithstanding any other provision of this Act, Federal funds authorized under this Title may not be provided to any non-Federal interests until any such interest enters into binding agreements with the appropriate Federal authority to be considered a "Federal Agency" for purposes of compliance with all Federal fish, wildlife, recreation, and environmental laws with respect to the use of such funds, and to comply with this Act.

(c) INITIATION OF REPAYMENT.—For purposes of repayment of costs obligated and expended prior to the date of enactment of this Act, the Definite Plan Report shall be considered as being filed and approved by the Secretary, and repayment of such costs shall be initiated by the Secretary of Energy at the earliest possible date. All the costs allocated to irrigation and associated with construction of the Strawberry Collection System, a component of the Bonneville Unit, obligated prior to the date of enactment of this Act shall be included by the Secretary of Energy in the costs specified in this subsection.

(d) Of the amounts authorized in section 1601, the Secretary is directed to make such sums as are necessary available to the district for the completion of the plans, studies, and analyses required by this section pursuant to the cost sharing provisions of section 1604.

(e) CONTENT AND APPROVAL OF THE DEFINITE PLAN REPORT.—The Definite Plan Report required under this section shall include economic analyses consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (March 10, 1983). The Secretary may withhold approval of the Definite Plan Report only on the basis of the inadequacy of the document, and specifically not on the basis of the findings of its economic analyses.

SEC. 1606. LOCAL DEVELOPMENT IN LIEU OF IRRIGATION AND DRAINAGE.

(a) OPTIONAL WITHDRAWAL BY COUNTIES.—(1) After two years from the date of enactment of this Act, the District shall, at the option of an eligible county as provided in paragraph (2), rebate to such county all of the ad valorem tax contributions paid by such county to the District, with interest but less the value of any benefits received by such county and less the administrative expenses incurred by the District to that date.

(2) Counties eligible to receive the rebate provided for in paragraph (1) include any county within the District, except for Salt Lake County and Utah County, in which the construction of Central Utah Project water storage or delivery features authorized in this Act has not commenced and

(A) in which there are no binding contracts as required under section 1602(a)(1)(C); or

(B) in which the authorization for the project or feature was repealed pursuant to section 1601 (b) or (c) or expired pursuant to section 1602(a)(1)(B) of this Act.

(b) LOCAL DEVELOPMENT OPTION.—(1) Upon the request of any eligible county that elects not to participate in the project as provided in subsection (a), the Secretary shall provide as a grant to such county an amount that, when matched with the ad valorem tax rebate received by such county, shall constitute 65 percent of the cost of the implementation of measures identified in paragraph (2).

(2)(A) The grant provided for in this subsection shall be available for the following purposes:

(i) Potable water distribution and treatment.

(ii) Wastewater collection and treatment.

(iii) Agricultural water management.

(iv) Other public infrastructure improvements as may be approved by the Secretary.

(B) Funds made available under this subsection may not be used for—

(i) draining of wetlands;

(ii) dredging of natural water courses;

(iii) planning or constructing water impoundments of greater than 5,000 acre feet, except for the proposed Hatch Town Dam on the Sevier River in southern Garfield County, Utah.

(C) All Federal environmental laws shall be applicable to any projects or features developed pursuant to this section.

(3) Of the amounts authorized to be appropriated by section 1601, not more than $40,000,000 may be available for the purposes of this subsection.

SEC. 1607. WATER MANAGEMENT IMPROVEMENT.

(a) PURPOSES.—The purposes of this section are, through such means as are cost-effective and environmentally sound, to—

(1) encourage the conservation and wise use of water;

(2) reduce the probability and duration of periods necessitating extraordinary curtailment of water use;

(3) achieve beneficial reductions in water use and system costs;

(4) prevent or eliminate unnecessary depletion of waters in order to assist in the improvement and maintenance of water quantity, quality, and streamflow conditions necessary to augment water supplies and support fish, wildlife, recreation, and other public benefits;

(5) make prudent and efficient use of currently available water prior to any importation of Bear River water into Salt Lake County, Utah; and

(6) provide a systematic approach to the accomplishment of these purposes and an objective basis for measuring their achievement.

(b) WATER MANAGEMENT IMPROVEMENT PLAN.—The District, after consultation with the State and with each petitioner of project water, shall prepare and maintain a water management improvement plan. The first plan shall be submitted to the Secretary by January 1, 1994. Every three years thereafter the District shall prepare and submit a supplement to this plan. The Secretary shall either approve or disapprove such plan or supplement thereto within six months of its submission.

(1) ELEMENTS.—The plan shall include the following elements:

(A) A water conservation goal, consisting of the greater of the following two amounts for each petitioner of project water:

(i) 25% of each petitioner's projected increase in annual water deliveries between the years 1990 and 2000, or such later ten year period as the District may find useful for planning purposes; or

(ii) the amount by which unaccounted for water or, in the case of irrigation entities, transport losses, exceeds 10% of recorded annual water deliveries.

In no case shall the goal for the District be less than twenty-five thousand acre feet per year.

(B) A water management improvement inventory, containing—

(i) conservation measures to improve the efficiency of the storage, conveyance, distribution, and use of water in a manner that contributes to the accomplishment of the purposes of this section, exclusive of any measures promulgated pursuant to subsection (f)(2)(A) through (D);

(ii) the estimated economic and financial costs of each such measure;

(iii) the estimated water yields of each such measure; and,

(iv) the socioeconomic and environmental effects of each such measure.

(C) A comparative analysis of each cost-effective and environmentally sound measure.

(D) A schedule of implementation for the following five years.

(E) An assessment of the performance of previously implemented conservation measures, if any. Not less than 90 days prior to its transmittal to the Secretary, the plan, or plan supplement, together with all supporting documentation demonstrating compliance with this section, shall be made available by the District for public review, hearing, and comment. All significant comments, and the District's response thereto, shall accompany the plan transmitted to the Secretary.

(2) EVALUATION OF CONSERVATION MEASURES.—

(A) Any conservation measure proposed to the District by the Executive Director of the Utah Department of Natural Resources shall be added to the water management improvement inventory and evaluated by the District. Any conservation measure, up to a cumulative five in number within any three year period, submitted by nonprofit sportsmen or environmental organizations shall be added to the water management improvement inventory and evaluated by the District.

(B) Each conservation measure that is found to be cost-effective, without significant adverse impact to the financial integrity of the District or a petitioner of project water or without significant adverse environmental impact, and in the public interest shall be deemed to constitute the "active inventory". For purposes of this section, the determination of benefits shall take into account:

(i) the value of saved water, to be determined, in the case of municipal water, on the basis of the project municipal and industrial repayment obligation of the District, but in no case less than $200 per acre foot, and, in the case of irrigation water, on the basis of operation, maintenance, and replacement costs plus the "full cost" rate for irrigation computed in accordance with section 202(3) of the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. 390bb), but in no case less than $50 per acre foot;

(ii) the reduced cost of wastewater treatment, if any;

(iii) net additional hydroelectric power generation, if any, valued at avoided cost;

(iv) net savings in operation, maintenance, and replacement costs; and

(v) net savings in on-farm costs.

(3) IMPLEMENTATION.—The District, and each petitioner of project water, as appropriate, shall implement and maintain, consistant with State law, conservation measures placed in the active inventory to the maximum practical extent necessary to achieve 50% of the water conservation goal within seven years after submission of the initial plan and 100% of the water conservation goal within fifteen years after submission of the initial plan. Priority shall be given to implementation of the most cost-effective measures that are—

(A) found to reduce consumptive use of water without significant adverse impact to the financial integrity of the District or the petitioner of project water;

(B) without significant adverse environmental impact; and

(C) found to be in the public interest.

(4) USE OF SAVED WATER.—All water saved by any conservation measure implemented by the District or a petitioner of project water under subsection (b)(3) may be retained by the District or the petitioner of project water which saved such water for its own use or disposition. The specific amounts of water saved by any conservation measure implemented under subsection (b)(3) shall be based upon the determination of yield under paragraph (b)(1)(B)(iii), and as may be confirmed or modified by assessment pursuant to paragraph (b)(1)(E). Each petitioner of project water may make available to the District water in an amount equivalent to the water saved, which the District may make available to the Secretary for instream flows in addition to the stream flow requirements established by section 1703. Such instream flows shall be released from project facilities, subject to space available in project conveyance systems, to at least one watercourse in the Bonneville and Uinta River Basins, respectively, to be designated by the Interagency Biological Assessment Team. Such flows shall be protected against appropriation in the same manner as the minimum streamflow requirements established by section 1703. The Secretary shall reduce the annual contractural repayment obligation of the District equal to the project rate for delivered water, including operation and maintenance expenses, for water saved and accepted by the Secretary for instream flows pursuant to this subsection. The District shall credit or rebate to each petitioner of project water its proportionate share of the District's repayment savings for reductions in deliveries of project water as a result of this subsection.

(5) STATUS REPORT ON THE PLANNING PROCESS.—Prior to January 1, 1992, the District shall establish a continuous process for the identification, evaluation, and implementation of water conservation measures to achieve the purposes of this section, and submit a report thereon to the Secretary. The report shall include a description of this process, including its financial resources, technical support, public involvement, and identification of staff responsible for its development and implementation.

(c) WATER CONSERVATION PRICING STUDY.—

(1) Within three years from the date of enactment of this Act, the District, after consultation with the State and each petitioner of project water, shall prepare and transmit to the Secretary a study of wholesale and retail pricing to encourage water conservation as described in this subsection, together with its conclusions and recommendations.

(2) The purposes of this study are:

(A) to design and evaluate potential rate designs and pricing policies for water supply and wastewater treatment within the Disrict boundary;

(B) to estimate demand elasticity for each of the principal categories of end use of water within the Disrict boundary;

(C) to quantify monthly water savings estimated to result from the various designs and policies to be evaluated; and

(D) to identify a water pricing system that reflects the incremental scarcity value of water and rewards effective water conservation programs.

(3) Pricing policies to be evaluated in the study shall include but not be limited to the following, alone and in combination:

(A) recovery of all costs, including a reasonable return on investment, through water and wastewater service charges;

(B) seasonable rate differentials:

(C) drought year surcharges;

(D) increasing block rate schedules;

(E) marginal cost pricing;

(F) rates accounting for differences in costs based upon point of delivery; and

(G) rates based on the effect of phasing out the collection of ad valorem property taxes by the District and the petitioners of project water over a five-year and ten-year period.

The District may incorporate policies developed by the study in the Water Management Improvement Plan prepared under subsection (b).

(4) Not less than 90 days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including public hearings. All significant comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

(5) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any policies or recommendations contained in the study.

(d) STUDY OF COORDINATED OPERATIONS.—

(1) Within three years from the date of enactment of this Act, the District, after consultation with the State and each petitioner of project water, shall prepare and transmit to the Secretary a study of the coordinated operation of independent municipal and industrial and irrigation water systems, together with its conclusions and recommendations. The District shall evaluate cost-effective flexible operating procedures that will:

(A) improve the availability and reliability of water supply;

(B) coordinate the timing of reservoir releases under existing water rights to improve instream flows for fisheries, wildlife, recreation, and other environmental values, is possible;

(C) assist in managing drought emergencies by making more efficient use of facilities;

(D) encourage the maintenance of existing wells and other facilities which may be placed on stand-by status when water deliveries from the project becomes available;

(E) allow for the development, protection, and sustainable use of groundwater resources in the District boundary;

(F) not reduce the benefits that would be generated in the absence of the joint operating procedures; and

(G) integrate management of surface and groundwater supplies and storage capability.

The District may incorporate measures developed by the study in the Water Management Improvement Plan prepared under subsection (b).

(2) Not less than 90 days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including public hearings. All significant comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

(3) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any operating procedures, conclusions, or recommendations contained in the study.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) For an amount not to exceed 50% of the cost of conducting the studies identified in subsections (c) and (d) and developing the

plan identified in subsection (b), $3,000,000 shall be available from the amount authorized to be appropriated by section 1601, and shall remain available until expended. Such Federal share shall be allocated among project purposes in the same proportions as the joint costs of the Strawberry Collection System, and shall be repaid in the manner of repayment for each such purpose.

(2) For an amount not to exceed 65% of the cost of implementation of the conservation measures in accordance with subsection (b), $40,000,000 shall be available from the amount authorized to be appropriated in section 1601, and shall remain available until expended. Such Federal share shall be allocated between the purposes of municipal and industrial water supply and irrigation, as appropriate, and shall be repaid in the manner of repayment for each such purpose.

(f) UTAH WATER CONSERVATION ADVISORY BOARD.—(1) Prior to March 31, 1991, the Governor of the State may establish a board consisting of nine members to be known as the Utah Water Conservation Advisory Board, with the duties described in this subsection. In the event that the Governor does not establish said board by such date, the Secretary shall establish a Utah Water Conservation Advisory Board consisting of nine members appointed by the Secretary from a list of names supplied by the Governor.

(2) The Board shall recommend water conservation standards and regulations for promulgation by State or local authorities in the service area of each petitioner of project water, including but not limited to the following:

(A) metering or measuring of water to all customers, to be accomplished within five years. (For purposes of this paragraph, residential buildings of more than four units may be considered as single customers.)

(B) elimination of declining block rate schedules from any system of water or wastewater treatment charges;

(C) a program of leak detection and repair that provides for the inspection of all conveyance and distribution mains, and the performance of repairs, at intervals of three years or less;

(D) low consumption performance standards applicable to the sale and installation of plumbing fixtures and fittings in new construction;

(E) requirements for the recycling and reuse of water by all newly constructed commercial laundries and vehicle wash facilities;

(F) requirements for soil preparation prior to the installation or seeding of turf grass in new residential and commercial construction;

(G) requirements for the insulation of hot water pipes in all new construction; and

(H) requirements for the installation of water recycling or reuse systems on any newly installed commercial and industrial water-operative air conditioning and refrigeration systems.

(3) Any water conserved by implementation of subparagraphs (A), (B), (C), or (D) shall not be credited to the conservation goal specified under subparagraph (b)(1)(A). All other water conserved shall be credited to the conservation goal specified under subparagraph (b)(1)(A).

(4) The Governor may waive the applicability of paragraphs (2)(D) through (2)(H) above to any petitioner of project water that provides water entirely for irrigation use.

(5) Prior to January 1, 1992, the Board shall transmit to the Governor and the Secretary the recommended standards and regulations referred to in subparagraph (f)(2) in such form as, in the judgement of the Board, will be most likely to be promulgated by January 1, 1993, and the failure of the board to do so shall be deemed substantial noncompliance.

(6) Nothing in this subsection shall be deemed to authorize the Secretary, or grant new authority to the District or petitioners of project water, to require the implementation of any standards or regulations recommended by the Utah Water Conservation Advisory Board.

(g) COMPLIANCE.—(1) Notwithstanding subsections (c)(5), (d)(3) or (f)(6), if the Secretary after 90 days written notice to the District, determines that the plan referred to in subsection (b) has not been developed and implemented or the studies referred to in subsections (c) and (d) have not been completed or transmitted as provided for in this section, the District shall pay a surcharge for each year of substantial noncompliance as determined by the Secretary. The amount of the surcharge shall be:

(A) for the first year of substantial noncompliance, five percent of the District's annual Bonneville Unit repayment obligation to the Secretary;

(B) for the second year of substantial noncompliance, ten percent of the District's annual Bonneville Unit repayment obligation to the Secretary; and

(C) for the third year of substantial noncompliance and any succeeding year of substantial noncompliance, fifteen percent of the District's annual Bonneville Unit repayment obligation to the Secretary.

(2) If the Secretary determines that compliance has been accomplished within 12 months after a determination of substantial noncompliance, the Secretary shall refund 100% of the surcharge levied.

(h) RECLAMATION REFORM ACT OF 1982.—Compliance with this section shall be deemed as compliance with section 210 of the Reclamation Reform Act of 1982 (96 Stat. 1268; 43 U.S.C. 390jj) by the District and each petitioner of project water.

(i) JUDICIAL REVIEW.—(1) For the purposes of sections 701 through 706 of title 5 (U.S.C.), the determinations made by the Secretary under subsection (b), (f)(1) or (g) shall be final actions subject to judicial review.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with sections 701 through 706 of title 5 (U.S.C.). Nothing in this subsection shall be construed to require a hearing pursuant to section 554, 556, or 557 of title 5 (U.S.C.).

(3) Nothing in this subsection shall be construed to preclude judicial review of other final actions and decisions by the Secretary.

(j) CITIZEN SUITS.—(1) In General.—Any person may commence a civil suit on their own behalf against only the Secretary for any determination made by the Secretary under this section which is alleged to have violated, is violating, or is about to violate any provision of this section or determination made under this section.

(2) JURISDICTION AND VENUE.—The district courts shall have jurisdiction to prohibit any violation by the Secretary of this section, to compel any action required by this section, and to issue any other order to further the purposes of this section. An action under this subsection may be brought in the judicial district where the alleged violation occurred or is about to occur, where fish, wildlife, or recreation resources are located, or in the District of Columbia.

(3) LIMITATIONS.—(A) No action may be commenced under paragraph (1) before 60 days after written notice of the violation has been given to the Secretary.

(B) Notwithstanding subparagraph (A), an action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife.

(C) Subparagraph (A) is intended to provide reasonable notice where possible and not to affect the jurisdiction of the courts.

(4) COSTS AWARDED BY THE COURT.—The court may award costs of litigation (including reasonable attorney and expert witness fees and expenses) to any party, other than the United States, whenever the court determines such award is appropriate.

(5) DISCLAIMER.—The relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief.

(k) PRESERVATION OF STATE LAW.—Nothing in this section shall be deemed to preempt or supersede State law.

SEC. 1608. LIMITATION ON HYDROPOWER OPERATIONS.

(a) LIMITATION.—Power generation facilities associated with the Central Utah Project and other features specified in Titles XVI through XIX of this Act shall be operated and developed in accordance with the Act of April 11, 1956 (70 Stat. 109; 43 U.S.C. 620f).

(b) COLORADO RIVER BASIN WATERS.—Use of Central Utah Project water diverted out of the Colorado River Basin for power purposes shall only be incidental to the delivery of water for other authorized project purposes. Diversion of such waters out of the Colorado River Basin exclusively for power purposes is prohibited.

SEC. 1609. OPERATING AGREEMENTS.

The District, in consultation with the Commission, the Utah Division of Water Rights and the Bureau, shall apply its best efforts to achieve operating agreements for the Jordanelle Reservoir, Deer Creek Reservoir, Utah Lake and Strawberry Reservoir by January 1, 1992.

SEC. 1610. JORDAN AQUEDUCT PREPAYMENT.

Under such terms as the Secretary shall prescribe, the Secretary shall allow for the prepayment, or shall otherwise dispose of, repayment contracts entered into among the United States, the District, the Metropolitan Water District of Salt Lake City, and the Salt Lake County Water Conservancy District, dated May 16, 1986, providing for repayment of the Jordan Aqueduct System. In carrying out this section, the Secretary shall take such actions as he deems appropriate to accommodate, effectuate, and otherwise protect the rights and obligations of the United States and the obligors under the contracts executed to provide for payment of such repayment contracts.

SEC. 1611. AUDIT OF CENTRAL UTAH PROJECT COST ALLOCATIONS.

Not later than one year after the date on which the Secretary declares the Central Utah Project to be substantially complete, the Comptroller General of the United States shall conduct an audit of the allocation of costs of the Central Utah Project to irrigation, municipal and industrial, and other project purposes and submit a report

of such audit to the Secretary and to the Congress. The audit shall be conducted in accordance with regulations which the Comptroller General shall prescribe not later than one year after the date of enactment of this Act. Upon a review of such report, the Secretary shall reallocate such costs as may be necessary. Any amount allocated to municipal and industrial water in excess of the total maximum repayment obligation contained in repayment contracts dated December 28, 1965, and November 26, 1985, shall be deferred for as long as the District is not found to be in substantial noncompliance with the water management improvement program provided in section 1607 and the stream flows provided in Title XVII are maintained. If at any time the Secretary finds that such program is in substantial noncompliance or that such stream flows are not being maintained, the Secretary shall, within six months of such finding and after public notice, take action to initiate repayment of all such reimbursable costs.

SEC. 1612. SURPLUS CROPS.

Notwithstanding any other provision of law relating to a charge for irrigation water supplied to surplus crops, until the construction costs of the facilities authorized by this Title are repaid, the Secretary is directed to charge a surplus crop production charge equal to 10 percent of full cost, as defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb), for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the surplus crop production charge for the succeeding year on or before July 1 of each year.

TITLE XVII—FISH, WILDLIFE, AND RECREATION MITIGATION AND CONSERVATION

SEC. 1901. UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION.

(a) PURPOSE.—(1) The purpose of this section is to provide for the prompt establishment of the Utah Reclamation Mitigation and Conservation Commission in order to coordinate the implementation of the mitigation and conservation provisions of this Act among the Federal and State fish, wildlife, and recreation agencies.

(2) This section, together with applicable environmental laws and the provisions of other laws applicable to mitigation, conservation and enhancement of fish, wildlife, and recreation resources within the State, are all intended to be construed in a consistent manner. Nothing herein is intended to limit or restrict the authorities or opportunities of Federal, State, or local governments, or political subdivisions thereof, to plan, develop, or implement mitigation, conservation, or enhancement of fish, wildlife, and recreation resources in the State in accordance with other applicable provisions of Federal or State law.

(b) ESTABLISHMENT.—(1) There is established a commission to be known as the Utah Reclamation Mitigation and Conservation Commission.

(2) The Commission shall expire twenty years from the end of the fiscal year during which the Secretary declares the Central Utah Project to be substantially complete. The secretary shall not declare the project to be substantially complete at least until such time as the mitigation and conservation projects and features provided for in section 1715 have been completed in accordance with the fish, wildlife, and recreation mitigation and conservation schedule specified therein.

(c) DUTIES.—The Commission shall—

(1) formulate the policies and objectives for the implementation of the fish, wildlife, and recreation mitigation and conservation projects and features authorized in this Act;

(2) administer in accordance with subsection (f) the expenditure of funds for the implementation of the fish, wildlife, and recreation mitigation and conservation projects and features authorized in this Act;

(3) be considered a Federal agency for purposes of compliance with the requirements of all Federal fish, wildlife, recreation, and environmental law, including (but not limited to) the Fish and Wildlife Coordination Act, the National Environmental Policy Act of 1969, and the Endangered Species Act of 1973; and

(4) develop, adopt, and submit plans and reports of its activities in accordance with subsection (g).

(d) MEMBERSHIP.—(1) The Commission shall be composed of 5 members appointed by the President within six months of the date of enactment of this Act, as follows:

(A) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish or wildlife matters or environmental conservation matters, submitted by the Speaker of the House of Representatives upon the recommendation of the members of the House of Representatives representing the State.

(B) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish or wildlife matters or environmental conservaiton matters, submitted by the majority leader of the Senate upon the recommendation of the members of the Senate representing the State.

(C) 1 from a list of residents of the State submitted by the Governor of the State composed of State wildlife resource agency personnel.

(D) 1 from a list of residents of the State submitted by the District.

(E) 1 from a list of residents of the State, who are qualified to serve on the Commission by virtue of their training or experience in fish and wildlife matters or environmental conservation matters and have been recommended by Utah nonprofit sportsmen's or environmental organizations, submitted by the Governor of the State.

(2)(A) Except as provided in subparagraph (B), members shall be appointed for terms of 4 years.

(B) Of the members first appointed—

(i) the member appointed under paragraph (1)(C) shall be appointed for a term of 3 years; and

(ii) the member appointed under paragraph (1)(D) shall be appointed for a term of 2 years.

(3) A vacancy in the Commission shall be filled within 90 days and in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(4)(A) Except as provided in subparagraph (B), members of the Commission shall each be paid at a rate equal to the daily equivalent of the maximum of the annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Commission.

(B) Members of the Commission who are full-time officers or employees of the United States or the State of Utah shall receive no additional pay by reason of their service on the Commission.

(5) Three members of the Commission shall constitute a quorum but a lesser number may hold public meetings authorized by the Commission.

(6) The Chairman of the Commission shall be elected by the members of the Commission. The term of office of the Chairman shall be 1 year.

(7) The Commission shall meet at least quarterly and may meet at the call of the Chairman or a majority of its members.

(e) DIRECTOR AND STAFF OF COMMISSION; USE OF CONSULTANTS.—(1) The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the maximum rate of basic pay payable for GS-15 of the General Schedule.

(2) With the approval of the Commission, the Director may appoint and fix the pay of such personnel as the Director considers appropriate. Such personnel may be appointed without regard to the provisions of Title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates.

(3) With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of Title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-15 of the General Schedule.

(4) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act.

(5) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(6) In times of emergency, as defined by rule by the Commission, the Director may exercise the full powers of the Commission until such times as the emergency ends or the Commission meets in formal session.

(f) IMPLEMENTATION OF MITIGATION AND CONSERVATION MEASURES.—(1) The Commission shall administer the mitigation and conservation funds available under this Act to conserve, mitigate, and enhance fish, wildlife, and recreation resources affected by the development and operation of Federal reclamation projects in the State of Utah. Such funds shall be administered in accordance with this section, the mitigation and conservation schedule in section 1715 of this Act, and, if in existence, the applicable five year plan adopted pursuant to subsection (g). Expenditures of the Commission pursuant to this section shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

(2) REALLOCATION OF SECTION 8 FUNDS.—Notwithstanding any provision of this Act

which provides that a specified amount of section 8 funds available under this Act shall be available only for a certain purpose, if the Commission determines, after public involvement and agency consultation as provided in subsection (g)(3), that the benefits to fish, wildlife, or recreation will be better served by allocating such funds in a different manner, then the Commission may reallocate any amount so specified to achieve such benefits; *Provided*, however, that the Commission shall obtain the prior approval of the U.S. Fish and Wildlife Service for any reallocation from fish or wildlife purposes to recreation purposes of any of the funds authorized in the schedule in section 1715.

(3) CONTRACTING AUTHORITY.—The Commission shall, for the purpose of carrying out this Act, enter into and perform such contracts, leases, grants, cooperative agreements, or other similar transactions, including the amendment, modification, or cancellation thereof and make the compromise or final settlement of any claim arising thereunder, with universities, non-profit organizations, and the appropriate public natural resource management agency or agencies, upon such terms and conditions and in such manner as the Commission may deem to be necessary or appropriate, for the implementation of the mitigation and conservation projects and features authorized in this Act, including actions necessary for compliance with the National Environmental Policy Act of 1969.

Planning and Reporting.—(1) Beginning with the first fiscal year after all members of the Commission are appointed initially, and every five years thereafter, the Commission shall develop and adopt by March 31 a plan for carrying out its duties during each succeeding five-year period. Each such plan shall consist of the specific objectives and measures the Commission intends to administer under subsection (f) during the plan period to implement the mitigation and conservation projects and features authorized in this Act.

(2) FINAL PLAN.—Within six months prior to the expiration of the Commission pursuant to this Act, the Commission shall develop and adopt a plan which shall—

(A) establish goals and measurable objectives for the mitigation and conservation of fish, wildlife, and recreation resources during the five year period following such expiration; and

(B) recommend specific measures for the expenditure of funds from the Account established under section 1802 of this Act.

(3) Public involvement and agency consultation.—(A) Promptly after the Commission is established under this section, and in each succeeding fiscal year, the Commission shall request in writing from the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and the public recommendations for objectives and measures to implement the mitigation and conservation projects and features authorized in this Act or amendments thereto. The Commission shall establish by rule a period of time not less than 90 days in length within which to receive such recommendations, as well as the format for and the information and supporting data that is to accompany such recommendations.

(B) The Commission shall give notice of all recommendations and shall make the recommendations and supporting documents available to the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and the public. Copies of such recommendations and supporting documents shall be made available for review at the offices of the Commission and shall be available for reproduction at reasonable cost.

(C) The Commission shall provide for public involvement regarding the recommendations and supporting documents within such reasonable time as the Commission by rule deems appropriate.

(4) The Commission shall develop and amend the plans on the basis of such recommendations, supporting documents, and views and information obtained through public involvement and agency consultation. The Commission shall include in the plans measures which it determines, on the basis set forth in paragraph (f)(1), will—

(A) restore, maintain, or enhance the biological productivity and diversity of natural ecosystems within the State and have substantial potential for providing fish, wildlife, and recreation mitigation and conservation opportunities;

(B) be based on, and supported by, the best available scientific knowledge;

(C) utilize, where equally effective alternative means of achieving the same sound biological or recreational objectives exist, the alternative that will also provide public benefits through multiple resource uses;

(D) complement the existing and future activities of the Federal and State fish, wildlife, and recreation agencies and appropriate Indian tribes;

(E) utilize, when available, cooperative agreements and partnerships with private landowners and nonprofit conservation organizations; and

(F) be consistent with the legal rights of appropriate Indian tribes.

Enhancement measures may be included in the plans to the extent such measures are designed to achieve improved conservation or mitigation of resources.

(5) REPORTING.—(A) Beginning on December 1 of the first fiscal year in which all members of the Commission are appointed initially, the Commission shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate, to the Committees on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives, to the Secretary, and to the Governor of the State. The report shall describe the actions taken and to be taken by the Commission under this section, the effectiveness of the mitigation and conservation measures implemented to date, and potential revisions or modifications to the applicable mitigation and conservation plan.

(B) At least 60 days prior to its submission of such report, the Commission shall make a draft of such report available to the Federal and State fish, wildlife, recreation, and water management agencies, the appropriate Indian tribes, and the public, and establish procedures for timely comments thereon. The Commission shall include a summary of such comments as an appendix to such report.

(h) DISCRETIONARY DUTIES AND POWERS.—In addition to any other duties and powers provided by law—

(1) The Commission may depart from the fish, wildlife, and recreation mitigation and conservation schedule specified in section 1715 whenever the Commission determines, after public involvement and agency consultation as provided for in this Act, that such departure would be of greater benefit to fish, wildlife, or recreation; *Provided*, however, that the Commission shall obtain the prior approval of the U.S. Fish and Wildlife Service for any reallocation from fish or wildlife purposes to recreation purposes of any of the funds authorized in the schedule in section 1715.

(2) The Commission may, for the purpose of carrying out this Act, (A) hold such public meetings, sit and act at such times and places, take such testimony, and receive such evidence, as a majority of the Commission considers appropriate; and

(B) meet jointly with other Federal or State authorities to consider matters of mutual interest.

(3) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Director of the Commission, the head of such department or agency shall furnish such information to the Commission. At the discretion of the department or agency, such information may be provided on a reimbursable basis.

(4) The Commission may accept, use, and dispose of appropriations, gifts or grants of money or other property, or donations of services, from whatever source, only to carry out the purposes of this Act.

(5) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(7) The Commission may acquire and dispose of personal and real property and water rights, and interests therein, through donation, purchase on a willing seller basis, sale, or lease, but not through direct exercise of the power of eminent domain, in order to carry out the purposes of this Act. This provision shall not affect any existing authorities of other agencies to carry out the purposes of this Act.

(8) The Commission may make such expenditures for offices, vehicles, furnishings, equipment, supplies, and books; for travel, training, and attendance at meetings; and for such other facilities and services as may be necessary for the administration of this Act.

(9) The Commission shall not participate in litigation, except litigation pursuant to subsection (1) or condemnation proceedings initiated by other agencies.

(i) FUNDING.—(1) Amounts appropriated to the Secretary for the Commission shall be paid to the Commission immediately upon receipt of such funds by the Secretary. The Commission shall expend such funds in accordance with this Act.

(2) For each fiscal year, the Commission is authorized to use for administrative expenses an amount equal to 10 percent of the amounts available to the Commission pursuant to this Act during such fiscal year, but not to exceed $1,000,000. Such amount shall be increased by the same proportion as the contributions to the Account under section 1802(b)(3)(C).

(j) AVAILABILITY OF UNEXPENDED AMOUNTS UPON COMPLETION OF CONSTRUCTION PROJECTS.—Notwithstanding any other provision of law, upon the completion of any project authorized under this Title, Federal funds appropriated for that project but not obligated or expended shall be deposited in the Account pursuant to section 1802(b)(4)(D) and shall be available to the Commission in accordance with section 1802(c)(2).

(k) TRANSFER OF PROPERTY AND AUTHORITY HELD BY THE COMMISSION.—Except as provided in section 1802(b)(4)(A), upon the termination of the Commission in accordance with subsection (b)—

(1) the duties of the Commission shall be performed by the Utah Division of Wildlife Resources, which shall exercise such authority in consultation with the United States Fish and Wildlife Service, the District, the Bureau, and the Forest Service; and

(2) title to any real and personal properties then held by the Commission shall be transferred to the Utah Department of Natural Resources or, for such parcels of real property as may be within the boundaries of federal land ownership, to the appropriate federal agency.

(l) REPESENTATION BY ATTORNEY GENERAL.—The Attorney General of the United States shall represent the Commission in any litigation to which the Commission is a party.

(m) CONGRESSIONAL OVERSIGHT.—The activities of the Commission shall be subject to oversight by the Congress.

(n) TERMINATION OF BUREAU ACTIVITIES.—Upon appointment of the Commission as provided in subsection (b), the responsibility for implementing section 8 funds for mitigation and conservation projects and features authorized in this Act shall be transferred from the Bureau to the Commission.

SEC. 1702. INCREASED PROJECT WATER CAPABILITY.

(a) ACQUISITION.—The District shall acquire, on an expedited basis with funds to be provided by the Commission in accordance with the schedule specified in section 1715, by purchase from willing sellers or exchange, 25,000 acre-feet of water rights in the Provo River Drainage to achieve the purposes of this section. Of the amounts authorized to be appropriated by section 1601, $15,000,000 shall be available only for the purposes of this subsection.

(b) NONCONSUMPTIVE RIGHTS.—A nonconsumptive right in perpetuity to any water acquired under this section shall be tendered in accordance with the laws of the State of Utah within 30 days of its acquisition by the District to the Utah Division of Wildlife Resources for the purposes of maintaining instream flows provided for in section 1703(c)(3) and 1703(c)(4) for fish, wildlife, and recreation in the Provo River.

(c) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated by section 1601, $4,000,000 shall be available only to modify existing or construct new diversion structures on the Provo River below the Murdock diversion to facilitate the purposes of this section.

SEC. 1703. STREAM FLOWS.

(a) STREAM FLOW AGREEMENT.—The District shall annually provide, from project water if necessary, amounts of water sufficient to sustain the minimum stream flows established pursuant to the Stream Flow Agreement.

(b) INCREASED FLOWS IN THE UPPER STRAWBERRY RIVER TRIBUTARIES.—(1) The District shall acquire, on an expedited basis with funds to be provided by the Commission in accordance with State law and the schedule specified in section 1715, all of the Strawberry basin water rights being diverted to the Heber Valley through the Daniel's Creek drainage and shall apply such rights to increase minimum stream flows—

(A) in the upper Strawberry River and other tributaries to the Strawberry Reservoir;

(B) in the lower Strawberry River from the base of Soldier Creek Dam to Starvation Reservoir; and

(C) in other streams within the Uinta basin affected by the Strawberry Collection System in such a manner as deemed by the Commission to be in the best interest of fish and wildlife.

The Commission's decision under subparagraph (C) shall not establish a statutory or otherwise mandatory minimum stream flow.

(2) The District may acquire the water rights identified in paragraph (1) prior to completion of the facilities identified in section 1602 either by purchase or lease from willing sellers or by replacement or exchange of water in kind. The District shall proceed to fulfill the purposes of this subsection on an expedited basis.

(3) Any water acquired under this subsection by the District shall be tendered in accordance with the laws of the State of Utah within 30 days of its acquisition by the District to the Utah Division of Wildlife Resources for the purposes of providing stream flows under paragraph (1).

(4) Of the amounts authorized to be appropriated by section 1601, $3,500,000 shall be available only for the acquisition of water under paragraph (1).

(5) Water made available pursuant to paragraph (1) shall be in addition to water described in subsection (a).

(c) STREAM FLOWS IN THE BONNEVILLE UNIT.—The yield and operating plan for the Bonneville Unit of the Central Utah Project shall be established or adjusted to provide for the following minimum stream flows, which flows shall be provided continuously and in perpetuity from the date first feasible, as determined by the Commission:

(1) In the Diamond Fork River drainage subsequent to completion of the Monks Hollow Dam or other structure that rediverts water from the Diamond Fork River Drainage into the Diamond Fork component of the Bonneville Unit of the Central Utah Project—

(A) in Sixth Water Creek, from the exit of Strawberry Valley tunnel to the Last Chance Powerplant and Switchyard, not less than 32 cubic feet per second during the months of May through October and not less than 25 cubic feet per second during the months of November through April, and

(B) in the Diamond Fork River, from the bottom of the Monks Hollow Dam to the Spanish Fork River, not less than 80 cubic feet per second during the months of May through September and not less than 60 cubic feet per second during the months of October through April, which flows shall be provided by the Bonneville Unit of the Central Utah Project.

(2) In the Provo River from the base of Jordanelle Dam to Deer Creek Reservoir a minimum of 125 cubic feet per second.

(3) In the Provo River from the confluence of Deer Creek and the Provo River to the Olmsted Diversion a minimum of 100 cubic feet per second.

(4) Upon the acquisition of the water rights in the Provo Drainage identified in section 1702, in the Provo River from the Olmsted Diversion to Utah Lake, a minimum of 75 cubic feet per second.

(5) In the Strawberry River, from the base of Starvation Dam to the confluence with the Duchesne River, a minimum of 15 cubic feet per second.

(d) MITIGATION OF EXCESSIVE FLOWS IN THE PROVO RIVER.—The District shall, with public involvement, prepare and conduct a study and develop a plan to mitigate the effects of peak season flows in the Provo River. Such study and plan shall be developed in consultation with the Fish and Wildlife Service, the Utah Division of Water Rights, the Utah Division of Wildlife Resources, affected water right holders and users, the Commission, and the Bureau. The study and plan shall discuss and be based upon, at a minimum, all mitigation and conservation opportunities identified through—

(1) a fishery and recreational use study that addresses anticipated peak flows;

(2) study of the mitigation and conservation opportunities possible through habitat or stream bed modification;

(3) study of the mitigation and conservation opportunities associated with the operating agreements referred to in section 1609;

(4) study of the mitigation and conservation opportunities associated with the water acquisitions contemplated by section 1702;

(5) study of the mitigation and conservation opportunities associated with section 1602(2);

(6) study of the mitigation and conservation opportunities available in connection with water right exchanges; and

(7) study of the mitigation and conservation opportunities that could be achieved by construction of a bypass flowline from the base of Deer Creek Reservoir to the Olmsted Diversion.

(e) EARMARK.—Of the amounts authorized to be appropriated by section 1601, $500,000 shall be available only for the implementation of subsection (d).

(f) STRAWBERRY VALLEY TUNNEL.—Upon completion of the Diamond Fork System, the Strawberry Tunnel shall not be used except for deliveries of water for the instream purposes specified in subsection (c). All other waters for the Bonneville Unit and Strawberry Valley Reclamation Project purposes shall be delivered through the Diamond Fork System.

(2) Paragraph (1) shall not apply during any time in which the District, in consultation with the Commission, has determined that the Syar Tunnel or the Sixth Water Aqueduct is rendered unusable or emergency circumstances require the use of the Strawberry Tunnel for the delivery of contracted Central Utah Project water and Strawberry Valley Reclamation Project water.

SEC. 1704. FISH, WILDLIFE, AND RECREATION PROJECTS IDENTIFIED OR PROPOSED IN THE 1988 DEFINITE PLAN REPORT FOR THE CENTRAL UTAH PROJECT.

The fish, wildlife, and recreation projects identified or proposed in the 1988 Definite Plan Report which have not been completed as of the date of enactment of this Act shall be completed in accordance with the 1988 Definite Plan Report and the schedule specified in section 1715, unless otherwise provided in this Act.

SEC. 1705. WILDLIFE LANDS AND IMPROVEMENTS.

(a) ACQUISITION OF RANGELANDS.—In addition to lands acquired on or before the date of enactment of this Act and in addition to the acreage to be acquired in accordance with the 1988 Definite Plan Report, the Commission shall acquire on an expedited basis from willing sellers, in accordance with the schedule specified in section 1715 and a plan to be developed by the Commission, big game winter range lands to compensate for the impacts of Federal reclamation projects in Utah. Such lands shall be transferred to the Utah Division of Wildlife Resources or, for such parcels as may be within the boundaries of federal land ownerships, to

the appropriate federal agency, for management as a big game winter range. Of the amounts authorized to be appropriated by Section 1601, $1,300,000 shall be available only for the purposes of this subsection.

(b) BIG GAME CROSSINGS AND WILDLIFE ESCAPE RAMPS.—In addition to the measures to be taken in accordance with the 1988 Definite Plan Report, the Commission shall construct big game crossings and wildlife escape ramps for the protection of big game animals along the Provo Reservoir Canal, Highline Canal, Strawberry Power Canal, and others. Of the amounts authorized to be appropriated by Section 1601, $750,000 shall be available only for the purposes of this subsection.

SEC. 1706. WETLANDS ACQUISITION, REHABILITATION, AND ENHANCEMENT.

(a) WETLANDS AROUND THE GREAT SALT LAKE.—Of the amounts authorized to be appropriated by section 1601, $14,000,000 shall be available only for the planning and implementation of projects to preserve, rehabilitate, and enhance wetland areas around the Great Salt Lake in accordance with a plan to be developed by the Commission.

(b) INVENTORY OF SENSITIVE SPECIES AND ECOSYSTEMS.—(1) The Commission shall, in cooperation with the Utah Division of Wildlife Resources and other appropriate State and Federal agencies, inventory, prioritize, and map the occurrences in Utah of sensitive nongame wildlife species and their habitats.

(2) Of the amounts authorized to be appropriated by section 1601, $750,000 shall be available only to carry out paragraph (1) of this section.

(3) The Commission shall, in cooperation with the Utah Department of Natural Resources and other appropriate State and Federal agencies, inventory, prioritize, and map the occurrences in Utah of sensitive plant species and ecosystems.

(4) Of the amounts authorized to be appropriated by section 1601, $750,000 shall be available for the Utah Natural Heritage Program only to carry out paragraph (3) of this section.

(c) UTAH LAKE WETLANDS PRESERVE.—(1) The Commission, in consultation with the Utah Division of Wildlife Resources and the United States Fish and Wildlife Service, shall, in accordance with paragraph (9), acquire private land, water rights, conservation easements, or other interests therein, necessary for the establishment of a wetlands preserve adjacent to or near the Goshen Bay and Benjamin Slough areas of Utah Lake as depicted on a map entitled "Utah Lake Wetland Preserve" and dated September, 1990. Such a map shall be on file and available for inspection in the office of the Secretary of the Interior, Washington, District of Columbia.

(2) The Secretary shall enter into an agreement under which the Wetlands Preserve acquired under subparagraph (1) shall be managed by the Utah Division of Wildlife Resources pursuant to a plan developed in consultation with the Secretary and in accordance with this Act and the substantive requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

(3) The Wetlands Preserve shall be managed for the protection of migratory birds, wildlife habitat, and wetland values in a manner compatible with the surrounding farmlands, orchards, and agricultural production area. Grazing will be allowed for wildlife habitat management purposes in accordance with the Act referenced in paragraph (2) and as determined by the Division to be compatible with the purposes stated herein.

(4) Nothing in this subsection shall restrict traditional agricultural practices (including the use of pesticides) on adjacent properties not included in the preserve by acquisition or easement.

(5) Nothing in this subsection shall affect existing water rights under Utah State law.

(6) Nothing in this subsection shall grant authority to the Secretary to introduce a Federally protected species into the wetlands preserve.

(7) The creation of this preserve shall not in any way interfere with the operation of the irrigation and drainage system authorized by section 1602(1).

(8) All water rights not appurtenant to the lands purchased for the Wetlands Preserve acquired under paragraph (1) shall be purchased from the District at an amount not to exceed the cost of the District in acquiring such rights.

(9) Of the amounts authorized to be appropriated by section 1601, $16,690,000 shall be available for acquisition of the lands, water rights, and other interests therein described in paragraph (1) of this subsection for the establishment of the Utah Lake Wetland Preserve.

(10) Lands, easements, or water rights may not be acquired pursuant to this subsection without the consent of the owner of such lands or water rights.

(11) Base property of a lessee or permittee (and the heirs of such lessee or permittee) under a Federal grazing permit or lease held on the date of enactment of this Act shall include any land of such lessee or permittee acquired by the Secretary under this subsection.

(d) PROVO BAY.—In order to protect wetland habitat, the United States shall not issue any Federal permit which allows commercial, industrial, or residential development on the southern portion of Provo Bay in Utah Lake, as described herein and depicted on a map dated October 11, 1990, except that recreational development consistent with wildlife habitat values shall be permitted. The southern portion of Provo Bay referred to in this subsection shall be that area extending 2000 feet out into the Bay from the ordinary high water line on the south shore of Provo Bay, beginning at a point at the mouth of the Spanish Fork River and extending generally eastward along the ordinary high water line to the intersection of such line with the Provo City limit, as it existed as of October 10, 1990, on the east shore of the Bay. Such a map shall be on file and available for inspection in the office of the Secretary of the Interior, Washington, District of Columbia. Nothing in this Act shall restrict present or future development of the Provo City Airport or airport access roads along the north side of Provo Bay.

SEC. 1707. FISHERIES ACQUISITION, REHABILITATION, AND ENHANCEMENT.

Of the amounts authorized to be appropriated by section 1601, the following amounts shall be in addition to amounts available under the 1988 Definite Plan Report and shall be available only for fisheries acquisition, rehabilitation, and improvement within the State:

(1) $750,000 for fish habitat restoration on the Provo River between the Jordanelle and Deer Creek Reservoirs.

(2) $4,000,000 for fish habitat restoration in streams impacted by Federal reclamation projects in Utah.

(3) $1,000,000 for the restoration of tributaries of the Strawberry Reservoir to assure trout spawning recruitment.

(4) $1,500,000 for post-treatment management and fishery development costs at the Strawberry Reservoir.

(5) $1,000,000 for (A) a study to be conducted as directed by the Commission to determine the appropriate means for improving Utah Lake as a warm watery fishery and other related issues; and

(B) development of facilities and programs to implement management objectives.

(6) $1,000,000 for fish habitat restoration and improvements in the Diamond Fork River and Sixth Water Creek drainages.

(7) $475,000 for the restoration of native cutthroat trout populations in streams and lakes in the Bonneville Unit project area.

(8) $2,500,000 for watershed restoration and improvements, erosion control, and wildlife habitat restoration and improvements in the Avintaquin, Red, and Currant Creek drainages and other Strawberry River drainages affected by the development of Federal reclamation projects in Utah.

SEC. 1708. STABILIZATION OF HIGH MOUNTAIN LAKES IN THE UINTA MOUNTAINS.

(a) REVISION OF PLAN—The project plan for the stabilization of high mountain lakes in the Upper Provo River drainage shall be revised to require that the following lakes will be stabilized at levels beneficial for fish habitat and recreation: Big Elk, Crystal, Duck, Fire, Island, Long, Wall, Marjorie, Pot, Star, Teapot, and Weir. Overland access by vehicles or equipment for stabilization and irrigation purposes under this subsection shall be minimized within the Lakes Management Area boundary, as depicted on the map in the Wasatch-Cache National Forest Plan (p. IV-166, dated 1987), to a level of practical necessity.

(b) COSTS OF REHABILITATION.—(1) The cost of rehabilitating water storage features at Trial, Washington, and Lost Lakes, which are to be used for project purposes, shall be borne by the project from amounts made available pursuant to section 1601. Existing roads may be used for overland access to carry out such rehabilitation.

(2) The costs of stabilizing each of the lakes referred to in subsection (a) which is to be used for a purpose other than irrigation shall be treated as an expense under section 8.

(c) FISH AND WILDLIFE HABITAT.—Of the amounts authorized to be appropriated by section 1601, $5,000,000 shall be available only for stabilization and fish and wildlife habitat restoration in the lakes referred to in subsection (a). This amount shall be in addition to the $7,538,000 previously authorized for appropriation under section 5 of the Act of April 11, 1956 (43 U.S.C. 620g) for the stabilization and rehabilitation of the lakes described in this section.

SEC. 1709. STREAM ACCESS AND RIPARIAN HABITAT DEVELOPMENT.

(a) IN GENERAL.—Of the amounts authorized to be appropriated by section 1601, the following amounts shall be in addition to amounts available under the 1988 Definite Plan Report and shall be available only for stream access and riparian habitat development in the State:

(1) $750,000 for rehabilitation of the Provo River riparian habitat development between Jordanelle Reservoir and Utah Lake.

(2) $250,000 for rehabilitation and development of watersheds and riparian habitats

along Diamond Fork and Sixth Water Creek.

(3) $350,000 for additional watershed stabilization, terrestrial wildlife and riparian habitat improvements, and road closures within the Central Utah Project area.

(4) $8,500,000 for the acquisition of additional recreation and angler accesses and riparian habitats, which accesses and habitats shall be acquired in accordance with the recommendation of the Commission.

(b) STUDY OF IMPACT TO WILDLIFE AND RIPARIAN HABITATS WHICH EXPERIENCE REDUCED WATER FLOWS AS A RESULT OF THE STRAWBERRY COLLECTION SYSTEM.—Of the amounts authorized to be appropriated by section 1601, $400,000 shall be available only for the Commission to conduct a study of the impacts to soils and riparian fish and wildlife habitat in drainages that will experience substantially reduced water flows resulting from the operation of the Strawberry Collection System. The study shall identify mitigation opportunities that represent alternatives to increasing stream flows and make recommendations to the Commission.

SEC. 1710. SECTION 8 EXPENSES.

(a) Unless otherwise expressly provided, all of the amounts authorized to be appropriated by this Act and listed in subsection (b) of this section shall be treated as expenses under section 8.

(b) The sections referred to in subsection (a) of this section are as follows: Title XVII, and 1802(b)(2).

SEC. 1711. JORDAN AND PROVO RIVER PARKWAYS AND NATURAL AREAS.

(a) FISHERIES.—Of the amounts authorized to be appropriated by section 1601, $1,150,000 shall be available only for fish habitat improvements to the Jordan River.

(b) RIPARIAN HABITAT REHABILITATION.—Of the amounts authorized to be appropriated by section 1601, $750,000 shall be available only for Jordan River riparian habitat rehabilitation, which amount shall be in addition to amounts available under the 1988 Definite Plan Report.

(c) WETLANDS.—Of the amounts authorized to be appropriated by section 1601, $7,000,000 shall be available only for the acquisition of wetland acreages, including those along the Jordan River identified by the multi-agency technical committee for the Jordan River Wetlands Advance Identification Study.

(d) RECREATIONAL FACILITIES.—Of the amounts authorized to be appropriated by section 1601, $1,000,000 shall be available only to construct recreational facilities proposed by the State of Utah for the "Provo/Jordan River Parkway".

(e) PROVO RIVER CORRIDOR.—Of the amounts authorized to be appropriated by section 1601, $1,000,000 shall be available only for riparian habitat acquisition and preservation, stream habitat improvements, and recreation and angler access provided on a willing seller basis along the Provo River from the Murdock diversion to Utah Lake, as determined by the Commission after consultation with local officials.

SEC. 1712. RECREATION.

Of the amounts authorized to be appropriated by section 1601, the following amounts shall be available to the Commission only for Central Utah Project recreation features:

(a) $1,000,000 for Utah Lake recreational improvements as proposed by the State and local governments.

(b) $750,000 for additional recreation improvements, which shall be made in accordance with recommendations made by the Commission, associated with Central Utah Project features and affected areas, including camping facilities, hiking trails, and signing.

SEC. 1713. FISH AND WILDLIFE FEATURES IN THE COLORADO RIVER STORAGE PROJECT.

Of the amounts authorized to be appropriated by section 1601, the following amounts shall be available only to provide mitigation and restoration of watersheds and fish and wildlife resources in Utah impacted by the Colorado River Storage Project:

(a) HABITAT IMPROVEMENTS IN CERTAIN DRAINAGES.—$1,125,000 shall be available only for watershed and fish and wildlife improvements in the Fremont River drainage, which shall be expended in accordance with a plan developed by the Commission in consultation with the Wayne County Water Conservancy District.

(b) SMALL DAMS AND WATERSHED IMPROVEMENTS.—$4,000,000 shall be available only for land acquisition for the purposes of watershed restoration and protection in the Albion Basin in the Wasatch Mountains and for restoration and conservation related improvements to small dams and watersheds on State of Utah lands and National Forest System lands within the Central Utah Project and the Colorado River Storage Project area in Utah, which amounts shall be expended in accordance with a plan developed by the Commission.

(c) FISH HATCHERY PRODUCTION.—$22,800,000 shall be available only for the planning and implementation of improvements to existing hatchery facilities or the construction and development of new fish hatcheries to increase production of warmwater and coldwater fishes for the areas affected by the Colorado River Storage Project in Utah. Such improvements and construction shall be implemented in accordance with a plan identifying the long-term needs and management objectives for hatchery production prepared by the U.S. Fish and Wildlife Resources, and adopted by the Commission. the cost of operating and maintaining such new or improved facilities shall be borne by the Secretary.

SEC. 1714. CONCURRENT MITIGATION APPROPRIATIONS.

Notwithstanding any other provision of this Act, the Secretary is directed to allocate funds appropriated for each fiscal year pursuant to Titles XVI through XVIII of this Act as follows:

(a) Deposit the Federal contribution to the Account authorized in section 1802(b)(2); then,

(b) Of any remaining funds, allocate the amounts available for implementation of the mitigation and conservation projects and features specified in the schedule in section 1715 concurrently with amounts available for implementation of Title XVI of this Act.

(c) Of the amounts allocated for implementation of the mitigation and conservation projects and features specified in the schedule in section 1715, three percent of the total shall be used by the Secretary to fulfill subsections (d) and (e) of this section.

(d) The Secretary shall use the sums identified in subsection (c) outside the State of Utah to:

(1) restore damaged natural ecosystems on public lands and waterways affected by the Federal Reclamation program;

(2) acquire, from willing sellers only, other lands and properties, including water rights, or appropriate interests therein, with restorable damaged natural ecosystems, and restore such ecosystems.

(3) provide jobs and sustainable economic development in a manner that carries out the other purposes of this subsection;

(4) provide expanded recreational opportunities; and

(5) support and encourage research, training, and education methods and technologies of ecosystem restoration.

(e) In implementing subsection (d), the Secretary shall give priority to restoration and acquisition of lands and properties or appropriate interests therein where repair of compositional, structural, and functional values will:

(1) reconstitute natural biological diversity that has been diminshed;

(2) assist the recovery of species populations, communities, and ecosystems that are unable to survive on-site without intervention;

(3) allow reintroduction and reoccupation by native flora and fauna;

(4) control or eliminate exotic flora and fauna that are damaging natural ecosystems;

(5) restore natural habitat for the recruitment and survival of fish, waterfowl, and other wildlife;

(6) provide additional conservation values to state and local government lands;

(7) add to structural and compositional values of existing ecological preserves or enhance the viability, defensibility, and manageability of ecological preserves; and

(8) restore natural hydrological effects including sediment and erosion control, drainage, percolation, and other water quality improvement capacity.

SEC. 1715. FISH, WILDLIFE, AND RECREATIONAL SCHEDULE.

The mitigation and conservation projects and features shall be implemented in accordance with the following schedule:

TITLE XVIII—UTAH RECLAMATION MITIGATION AND CONSERVATION ACCOUNT

SEC. 1801. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the State of Utah is a State in which one of the largest trans-basin water diversions occurs, dewatering important natural areas as a result of the Colorado River Storage Project;

(2) the State of Utah is one of the most ecologically significant states in the Nation, and it is therefore important to protect, mitigate, and enhance sensitive species and ecosystems through effective long term mitigation;

(3) the challenge of mitigating the environmental consequences associated with trans-basin water diversions are complex and involve many projects and measures (some of which are presently unidentifiable) and the costs for which will continue after projects of the Colorado River Storage Project in Utah are completed; and

(4) environmental mitigation associated with the development of the projects of the Colorado River Storage Project in the State of Utah are seriously in arrears.

(b) PURPOSES.—The purpose of this Title is to establish an ongoing account to ensure that—

(1) the level of environmental protection, mitigation, and enhancement achieved in connection with projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah is preserved and maintained;

(2) resources are available to manage and maintain investments in fish and wildlife and recreation features of the projects iden-

tified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah;

(3) resources are available to address known environmental impacts of the projects identified in this Act and elsewhere in the Colorado River Storage Project in the State of Utah for which no funds are being specifically authorized for appropriation and earmarked under this Act; and

(4) resources are available to address presently unknown environmental needs and opportunities for enhancement within the areas of the State of Utah affected by the projects identified in this Act and elsewhere in the Colorado River Storage Project.

SEC. 1802. UTAH RECLAMATION MITIGATION AND CONSERVATION ACCOUNT.

(a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a Utah Reclamation Mitigation and Conservation Account (hereafter in this title referred to as the "Account"). Amounts in the Account shall be available for the purposes set forth in section 1801(b).

(b) DEPOSITS INTO THE ACCOUNT.—Amounts shall be deposited into the Account as follows.

(1) STATE CONTRIBUTIONS—In each of fiscal years 1992 through 1999, or until the fiscal year in which the project is declared substantially complete, whichever occurs first, a voluntary contribution of $3,000,000 from the State of Utah.

(2) FEDERAL CONTRIBUTIONS.—In each of fiscal years 1992 through 1999, or until the fiscal year in which the project is declared substantially complete, whichever occurs first, $5,000,000 from amounts authorized to be appropriated by section 1601, which shall be treated as an expense under section 8.

(3) CONTRIBUTIONS FROM PROJECT BENEFICIARIES.—(A) In each of fiscal years 1992 through 1999, or until the fiscal year in which the project is declared substantially complete in accordance with this Act, whichever occurs first, $750,000 in non-federal funds from the District.

(B) $5,000,000 annually out of the revenues paid each year to the general fund of the Treasury from receipts from power contractors within the State of Utah for the sale of electric power and energy from the Colorado River Storage Project which amount shall be made available without further appropriation for expenditure from the Account: *Provided*, That such amount, to the extent deposited in the Account, shall be treated as having repaid and returned to the general fund of the Treasury costs assigned to power for repayment under Section 5 of the Act of April 11, 1956 (70 Stat. 107; 43 U.S.C. 620d): *Provided further*, That in the event power revenues deposited in the Basin Fund are insufficient after first meeting annual operating needs to make the payment provided for under this subsection, payment to the Account shall be deferred until sufficient funds are available to pay the deferred amount, plus interest that would have accrued on such payment as principal in the Account.

(C) The annual contributions described in subparagraphs (A) and (B) shall be increased proportionally on March 1 of each year by the same percentage increase during the previous calendar year in the Consumer Price Index for urban consumers, published by the Department of Labor.

(4) INTEREST AND UNEXPENDED FUNDS.—(A) Any amount authorized and earmarked for fish, wildlife, or recreation expenditures which is appropriated but not obligated or expended by the Commission upon its termination under section 1701.

(B) All funds annually appropriated to the Secretary for the Commission.

(C) All interest earned on amounts in the Account.

(D) Amounts not obligated or expended after the completion of a construction project and available pursuant to section 1701(j).

(c) OPERATION OF THE ACCOUNT.—(1) All funds deposited as principal in the Account shall earn interest in the amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities. Such interest shall be added to the principal of the Account until completion of the projects and features specified in the schedule in section 1715. After completion of such projects and features, all interest earned on amounts remaining in or deposited to the principal of the Account shall be available to the commission pursuant to subsection (c)(2) of this section.

(2) The Commission is authorized to administer and expend without further authorization and appropriation by Congress all sums deposited into the Account pursuant to subsections (b)(4)(D), (b)(3)(A), and (b)(3)(B), as well as interest not deposited to the principal of the Account pursuant to paragraph (1) of this subsection. The Commission may elect to deposit funds not expended under subsections (b)(4)(D), (b)(3)(A), and (b)(3)(B) into the Account as principal.

(3) All amounts deposited in the Account pursuant to subsections (b)(1) and (2), and any amount deposited as principal under paragraphs (c)(1) and (c)(2), shall constitute the principal of the Account. No part of the principal amount may be expended for any purpose.

(d) ADMINISTRATION BY THE UTAH DIVISION OF WILDLIFE RESOURCES.—(1) After the date on which the Commission terminates under section 1701, the Utah Division of Wildlife Resources or its successor shall receive:

(A) All amounts contributed annually to the Account pursuant to section 1802(b)(3)(B); and

(B) All interest on the principal of the Account, at the beginning of each year. The portion of the interest earned on the principal of the account that exceeds the amount required to increase the principal of the account proportionally on March 1 of each year by the percentage increase during the previous calendar year in the Consumer Price Index for urban consumers published by the Department of Labor, shall be available for expenditure by the Division in accordance with this section.

(2) The funds received by the Utah Division of Wildlife Resources under paragraph (1) shall be expended in a manner that fulfills the purposes of the Account established under this Act, in consultation with and pursuant to, a conservation plan and amendments thereto to be developed by the Utah Division of Wildlife Resources, in cooperation with the U.S. Forest Service, the Bureau of Land Management of the Department of the Interior, and the U.S. Fish and Wildlife Service.

(3) The funds to be distributed from the Account shall not be applied as a substitute for funding which would otherwise be provided or available to the Utah Division of Wildlife Resources.

(e) AUDIT BY INSPECTOR GENERAL.—The financial management of the Account shall be subject to audit by the Inspector General of the Department of the Interior.

TITLE XIX—UTE INDIAN RIGHTS SETTLEMENT

SEC. 1901. FINDINGS.

(a) FINDINGS.—The Congress finds the following—

(1) the unquantified Federal reserved water rights of the Ute Indian Tribe are the subject of existing claims and prospective lawsuits involving the United States, the State, and the District and numerous other water users in the Uinta Basin. The State and the Tribe negotiated, but did not implement, a compact to quantify the Tribe's reserved water rights.

(2) There are other unresolved Tribal claims arising out of an agreement dated September 20, 1965, where the Tribe deferred development of a portion of its reserved water rights for 15,242 acres of the Tribe's Group 5 Lands in order to facilitate the construction of the Bonneville Unit of the Central Utah Project. In exchange the United States undertook to develop substitute water for the benefit of the Tribe.

(3) It was intended that the Central Utah Project, through construction of the Upalco and Uintah units (Initial Phase) and the Ute Indian Unit (Ultimate Phase) would provide water for growth in the Uinta Basin and for late season irrigation for both the Indians and non-Indian water users. However, construction of the Upalco and Uintah Units has not been undertaken, in part because the Bureau was unable to find adequate and economically feasible reservoir sites. The Ute Indian unit has not been authorized by Congress, and there is no present intent to proceed with Ultimate Phase Construction.

(4) Without the implementation of the plans to construct additional storage in the Uinta Basin, the water users (both Indian and non-Indian) continue to suffer water shortages and resulting economic decline.

(b) PURPOSE.—This Act and the proposed Revised Ute Indian Compact of 1990 are intended to—

(1) quantify the Tribe's reserved water rights;

(2) allow increased beneficial use of such water; and

(3) put the Tribe in the same economic position it would have enjoyed had the features contemplated by the September 20, 1965 Agreement been constructed.

SEC. 1902. PROVISIONS FOR PAYMENT TO THE UTE INDIAN TRIBE.

(a) BONNEVILLE UNIT TRIBAL CREDITS.—(1) Commencing on July 1, 1991 and continuing for 50 years, the Tribe shall receive from the United States 26 percent of the annual Bonneville Unit municipal and industrial capital repayment obligation attributable to 35,500 acre/feet of water, which represents a portion of the Tribe's water rights that were to be supplied by storage from the Central Utah Project, but will not be supplied because the Upalco and Uintah units are not to be constructed.

(2)(A) Commencing in the year 2042, the Tribe shall collect from the District 7 percent of the then fair market value of 35,500 acre-feet of Bonneville Unit agricultural water which has been converted to municipal and industrial water. The fair market value of such water shall be recalculated every five years.

(B) In the event 35,500 acre-feet of Bonneville Unit converted agricultural water to municipal and industrial have not yet been marketed as of the year 2042, the Tribe

shall receive 7 percent of the fair market value of the first 35,000 acre-feet of such water converted to municipal and industrial water. The moneys received by the Tribe under this Title shall be utilized by the Tribe for governmental purposes, shall not be distributed per capita, and shall be used to enhance the educational, social, and economic opportunities for the Tribe.

(b) BONNEVILLE UNIT TRIBAL WATERS.—The Secretary is authorized to make any unused capacity in the Bonneville Unit Strawberry Aqueduct and Collection System diversion facilities available for use by the Tribe. Unused capacity shall constitute capacity, only as available, in excess of the needs of the District for delivery of Bonneville Unit water and for satisfication of minimum streamflow obligations established by this Act. In the event that the Tribe elects to place water in these components of the Bonneville Unit system, the Secretary and District shall only impose an operation and maintenance charge. Such charge shall commence at the time of the Tribe's use of such facilities. The operation and maintenance charge shall be prorated on a per acre-foot basis, but shall only include the operation and maintenance costs of facilities used by the Tribe and shall only apply when the Tribe elects to use the facilities. As provided in the Ute Indian Compact, transfers of certain Indian reserved rights water to different lands or different uses will be made in accordance with the laws of the State of Utah governing change or exchange applications.

(c) ELECTION TO RETURN TRIBAL WATERS.—Nothwithstanding the authorization provided for in subparagraph (b), the Tribe may at any time elect to return all or a portion of the water which it delivered under subparagraph (b) for use in the Uinta Basin. Any such Uinta Basin use shall protect the rights of non-Indian water users existing at any time of the election. Upon such election the Tribe will relinquish any and all rights which it may have acquired to transport such water through the Bonneville Unit facilities.

SEC. 1903. TRIBAL USE OF WATER.

(a) RATIFICATION OF REVISED UTE INDIAN COMPACT.—The Revised Ute Indian Compact of 1990, dated October 1, 1990, reserving waters to the Ute Indian Tribe and establishing the uses and management of such Tribal waters, is hereby ratified and approved, subject to re-ratification by the State and the Tribe. The Secretary is authorized to take all actions necessary to implement the Compact.

(b) THE INDIAN INTERCOURSE ACT.—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Compact. Nothing in this subsection shall be considered to amend, construe, supersede or preempt any State law, Federal law, interstate compact or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development and storage, regulation, allocation, conservation, exportation of quality of those waters.

(c) RESTRICTION ON DISPOSAL OF WATERS INTO THE LOWER COLORADO RIVER BASIN.—None of the waters secured to the Tribe in the Revised Ute Indian Compact of 1990 may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin, below Lees Ferry, unless water rights within the Upper Colorado River Basin in the State of Utah held by non-Federal, non-Indian users could be so sold, exchanged, leased, used, or otherwise disposed of under Utah State Law, Federal law, interstate compacts, or international treaty pursuant to a final, non-appealable order of a Federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact; *Provided, however,* That in no event shall such transfer of Indian water rights take place without the filing and approval of the approriate applications with the Utah State Engineer pursuant to Utah State law.

(d) USE OF WATER RIGHTS.—The use of the rights referred to in subsection (a) within the State of Utah shall be governed solely as provided in this section and the Revised Compact referred to in section 1903(a). The Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of water right confirmed in the Revised Compact off the Uintah and Ouray Indian Reservation. If the Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water rights shall be changed to a State water right, but shall be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(e) RULES OF CONSTRUCTION.—Nothing in Titles XVI through XX of this Act or in the Revised Ute Indian Compact of 1990 shall—

(1) constitute authority for the sale, exchange, lease, use, or other disposal of any Federal reserved water right off the reservation;

(2) constitute authority for the sale, exchange, lease, use, or other disposal of any Tribal water right outside the State of Utah; or

(3) be deemed a Congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Utah.

SEC. 1904. TRIBAL FARMING OPERATIONS.

Of the amounts authorized to be appropriated by section 1601, $45,000,000 is authorized for the Secretary to permit the Tribe to develop over a three-year period—

(1) a 7,500 acre farming/feed lot operation equipped with satisfactory off-farm and on-farm water facilities out of tribally-owned lands and adjoining non-Indian lands now served by the Uintah Indian Irrigation Project;

(2) a plan to reduce the Tribe's expense on the remaining sixteen thousand acres of tribal land now served by the Uintah Indian Irrigation Project; and

(3) a fund to permit tribal members to upgrade their individual farming operations.

Any non-Indian lands acquired under this section shall be acquired from willing sellers and shall not be added to the reservation of the Tribe.

SEC. 1905. RESERVOIR, STREAM, HABITAT AND ROAD IMPROVEMENTS WITH RESPECT TO THE UTE INDIAN RESERVATION.

(a) REPAIR OF CEDARVIEW RESERVOIR.—Of the amount authorized to be appropriated by section 1601, $5,000,000 shall be available for the Secretary, in cooperation with the Tribe, to repair the leak in Cedarview Reservoir in Dark Canyon, Duchesne County, Utah, so that the resultant surface area of the reservoir is two hundred and ten acres.

(b) RESERVATION STREAM IMPROVEMENTS.—Of the amount authorized to be appropriated by section 1601, $10,000,000 shall be available for the Secretary, in cooperation with the Tribe and in consultation with the Commission, to undertake stream improvements to not less than 53 linear miles (not counting meanders) for the Pole Creek, Rock Creek, Yellowstone River, Lake Fork River, Uinta River, and Whiterocks River, in the State of Utah. Nothing in this authorization shall increase the obligation of the District to deliver more than 44,400 acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flows in the Unita Basin.

(c) BOTTLE HOLLOW RESERVOIR.—Of the amount authorized to be appropriated by section 1601, $500,000 in an initial appropriation shall be available to permit the Secretary to clean the Bottle Hollow Reservoir on the Ute Indian Reservation of debris and trash resulting from a submerged sanitary landfill, to remove all non-game fish, and to secure minimum flow of water to the reservoir to make it a suitable habitat for a cold water fishery. The United States, and not the Tribe, shall be responsible for cleanup and all other responsibilities relating to the presently contaminated Bottle Hollow waters.

(d) MINIMUM STREAM FLOWS.—As a minimum, the Secretary shall endeavor to maintain continuous releases from the outlet works of the Upper Stillwater Dam into Rock Creek of 29 cubic feet per second during May through October and continuous releases into Rock Creek of 23 cubic feet per second during November through April. Nothing in this authorization shall increase the obligation of the District to deliver more that 44,400 acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flow in the Uinta Basin.

(e) LAND TRANSFER.—The Bureau shall transfer 315 acres of land to the Forest Service, located at the proposed site of the Lower Stillwater Reservoir as a wildlife mitigation measure.

(f) RECREATION ENHANCEMENT.—Of the amount authorized to be appropriated by section 1601, $10,000,000 shall be available for the Secretary, in cooperation with the Tribe, to permit the Tribe to develop, after consultation with the appropriate fish, wildlife, and recreation agencies, big game hunting, fisheries, campgrounds and fish and wildlife management facilities, including administration buildings and grounds on the Uintah and Ouray Reservation, in lieu of the construction of the Lower Stillwater Dam and related facilities.

(g) MUNICIPAL WATER CONVEYANCE SYSTEM.—Of the amounts authorized to be appropriated in section 1601, $1,250,000 shall be available to the Secretary for participation by the Tribe in the construction of pipelines associated with the Duchesne County Municipal Water Conveyance System.

SEC. 1906. TRIBAL DEVELOPMENT FUNDS.

(a) ESTABLISHMENT.—Of the amount authorized to be appropriated by section 1601, there is hereby established to be appropriated a total amount of $125,000,000 to be paid in three annual and equal installments to the Tribal Development Fund which the Secretary is authorized and directed to establish for the Tribe.

(b) ADJUSTMENT.—To the extent that any portion of such amount is contributed after the period described above or in amounts

less than described above, the Tribe shall, subject to appropriation Acts, receive, in addition to the full contribution to the Tribal Development Fund, an adjustment representing the interest income as determined by the Secretary, in his sole discretion, that would have been earned on any unpaid amount.

(c) TRIBAL DEVELOPMENT.—The Tribe shall prepare a Tribal Development Plan for all or a part of this Tribal Development Fund. Such Tribal Development Plan shall set forth from time to time economic projects proposed by the Tribe which in the opinion of two independent financial consultants are deemed to be reasonable, prudent and likely to return a reasonable investment to the Tribe. The financial consultants shall be selected by the Tribe with the advice and consent of the Secretary. Principal from the Tribal Development Fund shall be permitted to be expended only in those cases where the Tribal Development Plan can demonstrate with specificity a compelling need to utilize principal in addition to income for the Tribal Development Plan.

(d) No funds from the Tribal Development Fund shall be obligated or expended by the Secretary for any economic project to be developed or constructed pursuant to subsection (c) of this section, unless the Secretary has complied fully with the requirements of applicable fish, wildlife, recreation, and environmental laws, including the National Environmental Policy Act of 1969 (43 U.S.C. 4321 *et seq.*).

SEC. 1906. WAIVER OF CLAIMS.

(a) GENERAL AUTHORITY.—The Tribe is authorized to waive and release claims concerning or related to water rights as described below.

(b) DESCRIPTION OF CLAIMS.—The Tribe shall waive, upon receipt of the section 1904, 1905, and 1906 monies, any and all claims relating to its water rights covered under the agreement of September 20, 1965, including claims by the Tribe that it retains the right to develop lands as set forth in the Ute Indian Compact and deferred in such agreement. Nothing in this waiver of claims shall prevent the Tribe from enforcing rights granted to it under this Act or under the Compact. To the extent necessary to effect a complete release of the claims, the United States concurs in such release.

(c) RESURRECTION OF CLAIMS.—In the event the Tribe does not receive on a timely basis the moneys described in section 1902, the Tribe is authorized to bring an action for an accounting against the United States, if applicable, in the United States Claims Court for moneys owed plus interest at 10 percent, and against the District, if applicable, in the United States District Court for the District of Utah for moneys owed plus interest at 10 percent. The United States and the District waive any defense based upon sovereign immunity in such proceedings.

TITLE XX. ENDANGERED SPECIES ACT AND NATIONAL ENVIRONMENTAL POLICY ACT.

Notwithstanding any provision of Titles XVI through XIX of this Act, nothing in such Titles shall be interpreted as modifying or amending the provision of the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

TITLE XXI—MISCELLANEOUS

SEC. 2101. The Secretary is authorized to conduct a research project for the development of an enhanced evaporation system for saline water treatment. The project shall be located in the area of the Salton Sea of Southern California. The non-Federal share of the cost of the research project shall be 50 percent of the total. Not later than September 30, 1995, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives regarding the results of the research project. There is authorized to be appropriated $10,000,000 to carry out the provision of this section.

SEC. 2102. The Secretary shall convey to Sunnyside Valley Irrigation District of Sunnyside, Washington, by quit-claim deed or other appropriate instrument and without consideration, all right, title, and interest of the United States, excluding oil, gas, and other mineral deposits, in and to a parcel of public land described as Lots 1 and 2 of Block 34 of the Town of Sunnyside in Section 25, Township 10 North, Range 22 East, Willamette Meridian, Washington.

SEC. 2103. The Secretary is directed to forgive certain landholders from payment of pro rated full cost charges incurred because said landholders filed irrevocable elections under the Reclamation Reform Act after May 13, 1987; *Provided*, That the provisions of this section shall apply only to landholders who (1) were not required to submit reporting forms in 1985 or 1986, and did not submit such forms, and (2) filed an irrevocable election prior to August 1, 1987. Eligibility for relief shall be determined by the Secretary. Each landholder desiring relief shall submit to the Secretary such information as the Secretary may require, in a manner prescribed by the Secretary, to demonstrate that they have met the criteria for relief. In no event shall the provisions of this section apply to landholders who did submit or would have been required to submit reporting forms in 1985 or 1986, or who failed to submit an irrevocable election prior to August 1, 1987.

At the appropriate place, add the following new title:

"TITLE —CIVIL WAR SITES STUDIES

"SECTION 1. SHORT TITLE.

"This title may be cited as the 'Civil War Sites Study Act of 1990'.

"SEC. 2. DEFINITIONS.

"For the purposes of this title—

"(a) the term 'Commission' means the Civil War Sites Advisory Commission established in section 5 of this title,

"(b) the term 'Secretary' means the Secretary of the Interior; and

"(c) the term 'Shenandoah Valley Civil War sites' means those sites and structures situated in the Shenandoah Valley in the Commonwealth of Virginia which are thematically tied with the nationally significant events that occurred in the region during the Civil War, including, but not limited to, General Thomas 'Stonewall' Jackson's 1862 'Valley Campaign' and General Philip Sheridan's 1864 campaign culminating in the battle of Cedar Creek on October 19, 1864.

"SEC. 3. FINDINGS.

"The Congress finds that—

"(1) many sites and structures associated with the Civil War are located in regions which are undergoing rapid urban and suburban development;

"(2) such sites and structures represent important means by which the Civil War may continue to be understood and interpreted by the public; and

"(3) it is important to obtain current information on the significance of such sites, threats to their integrity, and alternatives for their preservation and interpretation for the benefit of the Nation.

"SEC. 4. SHENANDOAH VALLEY CIVIL WAR SITES STUDY.

"(a) STUDY.—(1) The Secretary is authorized and directed to prepare a study of Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas.

"(2) The study shall contain an analysis of the economic effect that protection of Shenandoah Valley Civil War sites would have on the economy in the Shenandoah Valley.

"(3) The study shall include the views and recommendations of the National Park System Advisory Board.

"(b) TRANSMITTAL TO CONGRESS.—Not later than 1 year after the date that funds are made available for the study referred to in subsection (a), the Secretary shall transmit such study to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular affairs of the United States House of Representatives.

"SEC. 5. ESTABLISHMENT OF CIVIL WAR SITES ADVISORY COMMISSION.

"(a) IN GENERAL.—There is hereby established the Civil War Sites Advisory Commission. The Commission shall consist of thirteen members appointed as follows:

"(1) five citizens who are nationally recognized as experts and authorities in the history of the Civil War, appointed by the Secretary;

"(2) the Director of the National Park Service or his or her designee;

"(3) the Chairman of the Advisory Council on Historic Preservation, or his or her designee;

"(4) three citizens appointed by the President Pro Tempore of the United States Senate in consultation with the Chairman and Ranking Miniority Member of the Committee on Energy and Natural Resources; and

"(6) three citizens appointed by the Speaker of the United States House of Representatives in consultation with the Chairman and Ranking Minority Member of the Committee on Interior and Insular Affairs.

"(b) CHAIRMAN.—The Commission shall elect a chairman from among its members.

"(c) VACANCIES.—Vacancies occurring on the Commission shall not affect the authority of the remaining members of the Commission to carry out the functions of the Commission. Any vacancy in the Commission shall be promptly filled in the same manner in which the original appointment was made.

"(d) QUORUM.—A simple majority of Commission members shall constitute a quorum.

"(e) MEETINGS.—The Commission shall meet at least quarterly or upon the call of the Chairman or a majority of the members of the Commission.

"(f) COMPENSATION.—Members of the Commission shall serve without compensation. Members of the Commission, when en-

gaged in official Commission business, shall be entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service under section 5703 of title 5, United States Code.

"(g) TERMINATION.—The Commission established pursuant to this section shall terminate 180 days after the transmittal of the report to Congress as provided in section 8(c).

"SEC. 6. STAFF OF THE COMMISSION.

"(a) EXECUTIVE DIRECTOR.—The Director of the National Park Service, or his or her designee, shall serve as the Executive Director of the Commission.

"(b) STAFF.—The Director of the National Park Service shall, on a reimbursable basis, detail such staff as the Commission may require to carry out its duties.

"(c) STAFF OF OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties.

"(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

"SEC. 7. POWERS OF THE COMMISSION.

"(a) IN GENERAL.—The Commission, may for the purpose of carrying out this title hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission may deem advisable.

"(b) BYLAWS.—The Commission may make such bylaws, rules and regulations, consistent with this title, as it considers necessary to carry out its functions under this title.

"(c) DELEGATION.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

"(d) DONATIONS.—Notwithstanding any other provision of law, the Commission may seek and accept donation of funds, property, or services from individuals, foundations, corporations, and other private entities, and from public entities, for the purpose of carrying out its duties.

"(e) MAILS.—The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

"SEC. 8. DUTIES OF THE COMMISSION.

"(a) PREPARATION OF STUDY.—The Commission shall prepare a study of historically significant sites and structures in the United States associated with military action during the Civil War, other than Shenandoah Valley Civil War sites. Such study shall identify the sites, determine the relative significance of such sites, assess short and long-term threats to their integrity, and provide alternatives for the preservation and interpretation of such sites by Federal, State and local governments, or other public or private entities, as may be appropriate. Such alternatives may include, but shall not be limited to, designation as units of the National Park System or as affiliated areas. The study may include existing units of the National Park System.

"(b) CONSULTATION.—During the preparation of the study referred to in subsection (a), the Commission shall consult with the Governors of affected States, affected units of local government, State and local historic preservation organizations, and such other interested parties as the Commission deems advisable.

"(c) TRANSMITTAL TO THE SECRETARY AND CONGRESS.—Not later than 2 years after the date that funds are made available for the study referred to in subsection (a), the Commission shall transmit such study to the Secretary and the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

"(d) NO PRIOR REVIEW.—No officer or agency of the United States shall have any authority to require the Commission to submit the study referred to in subsection (a), or any other recommendations or testimony the Commission may provide, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such study, recommendations, or testimony to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its study, recommendations, or testimony which it transmits to the Congress.

"SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

"There are hereby authorized to be appropriated such sums not to exceed $2,000,000 to carry out the purposes of this title.".

At the appropriate place, add the following new title:

"TITLE —SAN JUAN ISLAND, WASHINGTON

"SECTION 1. DEFINITIONS.

"As used in this title, the following terms shall have the following meanings:

"(1) The term '1921 Act' means the Act of August 23, 1921 (42 Stat. 173), whereby the United States granted to the State of Washington, for the use of the University of Washington for purposes of a biological station and general university research purposes, certain lands comprising a military reservation at San Juan Island, in San Juan County, Washington.

"(2) The term 'encroached lands' means those portions of the lands granted to the State of Washington by the 1921 Act that are designated as 'Encroached Lands' on a map to be prepared by the Secretary of the Interior pursuant to section 2 of this title.

"(3) The term 'University' means the University of Washington.

"(4) The term 'the State' means the State of Washington.

"(5) The term 'the Secretary' means the Secretary of the Interior.

"(6) The term 'occupants' means the parties who, on March 1, 1990, were listed on the tax records of San Juan County, Washington, as the owners of the encroached lands, and their heirs and assigns.

"SEC. 2. SURVEY AND MAP.

"Within one year after the date of enactment of this title, the Secretary, acting through the Director of the Bureau of Land Management, shall complete a survey of the lands granted to the State by the 1921 Act, and shall prepare a map detailing those portions of the lands granted to the State that have been encroached upon: *Provided*, That not more than 50 per centum of the cost of such survey shall be paid by the Federal Government.

"SEC. 3. EXEMPTION, DISCLAIMER AND CONDITIONS.

"(a) Subject to the limitation of subsection (c), the provisions of the 1921 Act relating to the right of the United States to assume control of, hold, use, and occupy the lands granted to the State by the 1921 Act, the provisions of such Act providing for reversion of such lands to the United States, and section 2 of such Act as amended by this title shall not apply to the encroached lands.

"(b) Subject to the limitation of subsection (c), the United States hereby disclaims all right, title, and interest in the encroached lands and, effective one year after the map is prepared pursuant to section 2, all right, title, and interest of the United States in such lands shall vest in the University.

"(c)(1) Subsections (a) and (b) of this section shall not take effect unless, within one year after the State and the University have entered into a binding agreement with the Secretary whereby the State and the University agree—

"(A) to accept the map referred to in section 2 as accurate and conclusive and that the University and the State will not attempt to convey or otherwise transfer any portion of the encroached lands to any party or parties other than the occupants; and

"(B) to pay to the Secretary, on behalf of the United States, an amount equal to the total amounts that the State and the University receive as consideration for conveyance of some or all of the encroached lands to any of the occupants in excess of reasonable costs incurred by the University and the State incident to such conveyance.

"(2) All amounts received by the Secretary pursuant to this subsection shall be retained by the Secretary and, subject to appropriation, shall be used for the management of public lands managed by the Bureau of Land Management and shall remain available until expended.

"SEC. 4. AVAILABILITY OF MAP.

"The map referred to in section 2 shall be available for public inspection in the offices of the Secretary and the State Director of the Bureau of Land Management for the State of Washington, and the Secretary shall transmit copies thereof to the University and to the appropriate officials of the State and of San Juan County, Washington.

"SEC. 5. AMENDMENT.

"The 1921 Act is hereby amended by adding at the end thereof the following new section:

"'SEC. 2. (a) Notwithstanding any other provision of this Act, if any land, or portion thereof, granted or otherwise conveyed to the State of Washington by this Act is or shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601)), or if such land, or portion thereof, has been used for purposes that the Secretary of the Interior finds may result in the disposal, placement or release of any hazardous substance, such land shall not, under any circumstances, revert to the United States.

"'(b) If lands granted or conveyed to the State by this Act shall be used for purposes that the Secretary of the Interior finds: (1) inconsistent with the purposes of this Act, and (2) which may result in the disposal, placement or release of any hazardous substance, the State shall be liable to pay to the Secretary of the Interior, on behalf of

the United States, the fair market value of the land, including the value of any improvements thereon, as of the date of conversion of the land to the nonconforming purpose. All amounts received by the Secretary of the Interior pursuant to this subsection shall be retained by the Secretary of the Interior and used, subject to appropriations, for the management of public lands and shall remain available until expended.' ".

At the appropriate place, add the following new title:

"TITLE —OKANOGAN NATIONAL FOREST LAND EXCHANGE

"SECTION 1. LAND EXCHANGE.

"(a)(1) The Secretary of Agriculture (hereafter in this title referred to as the 'Secretary') and the Secretary of the Interior shall, subject to subsection (b), take all actions necessary to effect the conveyance of certain Federal lands within the State of Washington as generally depicted on the map entitled 'Location of Selected Okanogan Forest Lands' and dated May 15, 1990, in exchange for certain lands as generally depicted on maps entitled 'Glacier Peak Wilderness Parcels' and 'Methow Valley Parcels', both dated May 15, 1990. Such maps shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

"(2) Conveyance of National Forest lands pursuant to paragraph (1) shall be by the Secretary of Agriculture. The Secretary of the Interior, upon request of the Secretary of Agriculture, shall convey such public lands as may be required in order to complete such exchange. The conveyances shall be subject to such easements, restrictions, and other conditions as each Secretary may impose in order to meet applicable requirements of law, to further the purposes for which adjacent Federal lands are managed, or to protect the public interest.

"(b)(1) The exchange described in subsection (a) shall be analyzed by the Secretary of Agriculture pursuant to applicable law. The Secretary shall make every effort to complete such analysis and to issue a record of decision thereon by October 1, 1991, consistent with the requirements of such law.

(2) Analysis pursuant to paragraph (1) shall be of the exchange described in subsection (a), except to the extent the Secretary proposes to modify the size or number of parcels of Federal lands to be conveyed in order to equalize values (except as otherwise provided in this title) or to meet other requirements of applicable law. Nothing in this title shall be construed as requiring consideration of other lands as part of any alternative considered in such analysis.

"(3) Appraisals of the Federal lands described in subsection (a) shall be completed by September 1, 1991, or as soon thereafter as possible, on the basis of highest and best use (including use as part of the proposed resort complex), and in accordance with procedures required by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) (hereafter in this title referred to as 'FLPMA'). Such appraisals shall be of the values of the lands involved as of November 1, 1990. Any exchange of such lands shall be for lands of equal value, or if they are not equal, the values shall be equalized in either one of two ways:

"(A) by the payment of money to or by the Secretary, (except that such payments shall not exceed 25 percent of the total value of the lands conveyed by the Secretary); or

"(B) by adjusting the actual acreage conveyed and boundaries thereof so that lands of equal value are exchanged, except that no such adjustment shall be made to the lands identified as 'Golf Course and Open Space Parcel' on the maps referred to in subsection (a)(1).

"(4) The Secretary of the Interior and the Secretary of Agriculture shall make every effort to conclude by November 1, 1991, all steps necessary to complete an exchange involving the lands described in subsection (a)(1), but no Federal lands shall be conveyed as part of such an exchange unless and until—

"(A) the Forest Service has issued a permit for use of Sandy Butte for ski facilities;

"(B) Okanogan County, Washington, has approved the Early Winters Resort's land use application for lands associated with the resort development; and

"(C) Early Winters Resort has obtained all water rights required for approval of the application referred to in subparagraph (B).

"(5) Except as provided in this title, conveyances of Federal lands under this section shall be completed notwithstanding any other provision of FLPMA or the Federal Land Exchange Facilitation Act of 1988. Lands acquired by the United States pursuant to this section shall be added to, and administered as part of, the National Forest System and, with respect to those portions within wilderness, pursuant to the Wilderness Act.

"SEC. 2. REVIEWS.

"(a) With respect to actions pursuant to section 1 or section 4, any record of decision shall be issued by the Chief of the Forest Service and there shall be no further administrative consideration other than a period not to exceed 30 days during which the Chief shall consider and act on any requests to reconsider such record of decision.

"(b) Judicial challenge to a Record of Decision or subsequent pemit based thereon issued under subsection (a) shall be made in accordance with this subsection notwithstanding any other provision of law:

"(1) Such judicial challenge must be filed within the later of either—

"(A) 45 days of—

"(i) such Record of Decision,

"(ii) action by the Chief in response to a request for reconsideration, or

"(iii) issuance of a subsequent permit based thereon, or

"(B) 10 days after the end of any period of advance notice of intent to bring such challenge required by the specific statute under which such challenge is brought.

"(2) Such judicial challenge must be filed in the United States Court for the District of Oregon.

"(3) Any appeal from a final decision of the district court shall be filed within 45 days after such final decision in the United States Court of Appeals for the Ninth Circuit.

"(c) The courts shall expeditiously render their final decision relative to any action or appeal, or any further judicial review of the actions of the Forest Service pursuant to this title. The district court shall make every effort to render its final decision relative to any action within 60 days from the date such action is filed, and the court of appeals shall make every effort to render its final decision relative to any appeal within 90 days from the date such appeal is filed.

"SEC. 3. OTHER LAWS.

"Nothing in this title shall be construed as amending the National Environmental Policy Act of 1969 or the Endangered Species Act of 1973 or as modifying the applicability of those Acts or any other provisions of law otherwise applicable with respect to any activities occurring on or proposed for any of the lands affected by this title.

"SEC. 4. ENVIRONMENTAL ANALYSIS.

"The sum of $500,000 is hereby authorized to be appropriated under this title for the Forest Service to prepare the Supplement to the Final Environmental Impact Statement (hereafter in this section referred to as 'SEIS') for the proposed Early Winters Resort in the Methow Valley, Washington State. This sum may be used by the Forest Service to employ additional employees or consultants in the preparation of the SEIS. The SEIS shall be completed, and a final Record of Decision shall be issued by the Forest Service as soon as possible, consistent with applicable requirements of law.".

GORTON AMENDMENT NO. 3192

Mr. CHAFEE (for Mr. GORTON) proposed an amendment to the bill H.R. 2567, supra, as follows:

At the appropriate place, insert the following new section:

SEC. . (a) The Secretary of Agriculture is authorized to construct buildings and related facilities on Federally owned land in Skagit County, Washington for plant materials purposes.

(b) The total amount of expenditures for the buildings and facilities on the site shall be derived from, and shall not exceed, the amount of money received by the Secretary as cash equalization payments resulting from the exchange of lands in Skagit County and Bellingham, Washington.

CONRAD (AND BURDICK) AMENDMENT NO. 3193

Mr. BREAUX (for Mr. CONRAD, for himself, and Mr. BURDICK) proposed an amendment to the bill H.R. 2567, supra, as follows:

Section 403(6) of Public Law 81-874 is amended—

(1) in the third sentence thereof—

(a) in subparagraph (A), by inserting "or" at the end thereof;

(b) in subparagraph (B), by striking the semicolon and "or" and inserting in lieu thereof a period; and

(c) by deleting subparagraph (C); and

(2) by striking the fourth sentence thereof and inserting in lieu thereof the following two sentences: "Notwithstanding the previous sentence and solely for the purpose of making payments to local educational agencies described in section 3(h), such term includes any otherwise eligible school authority that was constituted after January 1, 1989, or before January 16, 1990. Section 3(d)(2)(B) shall not apply to agency or authority that benefits from the preceding sentence."

CUSTER BATTLEFIELD NATIONAL MONUMENT

BAUCUS (AND BURNS) AMENDMENT NO. 3194

Mr. BREAUX (for Mr. BAUCUS, for himself, and Mr. BURNS) proposed an amendment to the bill (H.R. 4660) to

authorize the establishment of a memorial at Custer Battlefield National Monument to honor the Indians who fought in the Battle of the Little Bighorn, and for other purposes, as follows:

1. On page 2, line 21, strike the word "Secretary", and insert the following: "Secretary, in consultation with the advisory commission established pursuant to section 4,".

2. On page 3, line 4, strike the word "Secretary", and insert the following: "Secretary, in consultation with the advisory commission established pursuant to section 4,".

3. On page 3, line 6, strike "section 2.", and insert the following: "section 2 that is compatible with the existing and planned structures in the area.".

4. On page 3, beginning on line 8, strike subsection (c) in its entirety, renumber subsequent sections accordingly, and insert in lieu thereof the following:

SEC. 4. ADVISORY COMMISSION.

(a) COMMISSION.—There is hereby established an advisory commission to be known as the "Battle of the Little Bighorn Indian Memorial Advisory Commission" (hereinafter referred to as the "Advisory Commission"). The Commission shall be comprised of 10 members to be appointed by the Secretary who shall advise the Secretary with respect to the design, siting and planning for the memorial authorized pursuant to section 2 of this Act.

(b) MEMBERSHIP.—The Secretary shall appoint as members of the Commission, persons who have demonstrated an interest in and knowledge of the events of the Battle of the Little Bighorn and efforts to commemorate the Indian people who fought and died in such battle.

(c) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Except with respect to any requirement for reissuance of a charter and except as otherwise provided in this Act, the provisions of the Federal Advisory Committee Act shall apply to the Advisory Commission established by section 4.

CARL O. HYDE GENERAL MAIL FACILITY

GLENN (AND ROTH) AMENDMENT NO. 3195

Mr. GRAHAM (for Mr. GLENN, for himself and Mr. ROTH) proposed an amendment to the bill (H.R. 2431) to redesignate the Midland General Mail Facility in Midland, TX, as the "Carl O. Hyde General Mail Facility"; as follows:

At the end of the bill, add the following:

SEC. . AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.

Section 501(b) of the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989 (Public Law 101-280), is amended—

(1) by striking "An individual" and inserting "(1) Except as provided in paragraph (2), an individual", and

(2) by adding at the end the following new paragraph:

"(2)(A) In the case of an officer or employee described in subparagraph (B), paragraph (1) shall not apply to an honorarium paid to such individual for an appearance, a speech, or an article published in a bona fide publication if—

"(i) the subject of the appearance, speech, or article and the reason for which the honorarium is paid is unrelated to that individual's official duties or status as such officer or employee; and

"(ii) the party offering the honorarium has no interests that may be substantially affected by the performance or nonperformance of that individual's official duties.

"(B) The officers and employees to whom subparagraph (A) applies are any officer or employee other than a Member and other than a noncareer officer or employee whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code.

"(C) A report on the acceptance of any honorarium under subparagraph (A) shall be filed in accordance with rules and regulations established by each supervising ethnics office under section 107 of this Act.

"(D) The amount of any honorarium accepted under subparagraph (A) shall not exceed the usual and customary fee for the services for which the honorarium is paid, up to a maximum of $2,000.".

IMPROVEMENT OF FINANCIAL MANAGEMENT OF THE FEDERAL GOVERNMENT

GLENN (AND ROTH) AMENDMENT NO. 3196

Mr. GRAHAM (for Mr. GLENN, for himself and Mr. ROTH) proposed an amendment to the bill (H.R. 5687) to amend title 31, United States Code, to improve the financial management of the Federal Government, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE.

This Act may be cited as the "Chief Financial Officers Act of 1990".

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) General management functions of the Office of Management and Budget need to be significantly enhanced to improve the efficiency and effectiveness of the Federal Government.

(2) Financial management functions of the Office of Management and Budget need to be significantly enhanced to provide overall direction and leadership in the development of a modern Federal financial management structure and associated systems.

(3) Billions of dollars are lost each year through fraud, waste, abuse, and mismanagement among the hundreds of programs in the Federal Government.

(4) These losses could be significantly decreased by improved management, including improved central coordination of internal controls and financial accounting.

(5) The Federal Government is in great need of fundamental reform in financial management requirements and practices as financial management systems are obsolete and inefficient, and do not provide complete, consistent, reliable, and timely information.

(6) Current financial reporting practices of the Federal Government do not accurately disclose the current and probable future cost of operating and investment decisions, including the future need for cash or other resources, do not permit adequate comparison of actual costs among executive agencies, and do not provide the timely information required for efficient management of programs.

(b) PURPOSES.—The purposes of this Act are the following:

(1) Bring more effective general and financial management practices to the Federal Government through statutory provisions which would establish in the Office of Management and Budget a Deputy Director for Management, establish an Office of Federal Financial Management headed by a Controller, and designate a Chief Financial Officer in each executive department and in each major executive agency in the Federal Government.

(2) Provide for improvement, in each agency of the Federal Government, of systems of accounting, financial management, and internal controls to assure the issuance of reliable financial information and to deter fraud, waste, and abuse of Government resources.

(3) Provide for the production of complete, reliable, timely, and consistent financial information for use by the executive branch of the Government and the Congress in the financing, management, and evaluation of Federal programs.

TITLE II—ESTABLISHMENT OF CHIEF FINANCIAL OFFICERS

SEC. 201. DEPUTY DIRECTOR FOR MANAGEMENT.

Section 502 of title 31, United States Code, as amended by this Act, is amended—

(1) by redesignating subsections (c), (d), and (e), as amended by this section, as subsections (d), (e), and (f); and

(2) by inserting after subsection (b) the following:

"(c) The Office has a Deputy Director for Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director for Management shall be the chief official responsible for financial management in the United States Government.".

SEC. 202. FUNCTIONS OF DEPUTY DIRECTOR FOR MANAGEMENT.

(a) CLERICAL AMENDMENTS.—Sections 503 and 504 of title 31, United States Code, are redesignated in order as sections 505 and 506, respectively.

(b) FUNCTIONS OF DEPUTY DIRECTOR FOR MANAGEMENT.—Subchapter I of chapter 5 of title 31, United States Code, is amended by inserting after section 502 the following:

"§ 503. Functions of Deputy Director for Management

"(a) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish government-wide financial management policies for executive agencies and shall perform the following financial management functions:

"(1) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to financial management.

"(2) Provide overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements, and by monitoring the establishment and operation of Federal Government financial management systems.

"(3) Review agency budget requests for financial management systems and operations, and advise the Director on the resources required to develop and effectively operate and maintain Federal Government

financial management systems and to correct major deficiencies in such systems.

"(4) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they are in accordance with financial management plans of the Office of Management and Budget.

"(5) Monitor the financial execution of the budget in relation to actual expenditures, including timely performance reports.

"(6) Oversee, periodically review, and make recommendations to heads of agencies on the administrative structure of agencies with respect to their financial management activities.

"(7) Develop and maintain qualification standards for agency Chief Financial Officers and for agency Deputy Chief Financial Officers appointed under sections 901 and 903, respectively.

"(8) Provide advice to agency heads with respect to the selection of agency Chief Financial Officers and Deputy Chief Financial Officers.

"(9) Provide advice to agencies regarding the qualifications, recruitment, performance, and retention of other financial management personnel.

"(10) Assess the overall adequacy of the professional qualifications and capabilities of financial management staffs throughout the Government and make recommendations on ways to correct problems which impair the capacity of those staffs.

"(11) Settle differences that arise among agencies regarding the implementation of financial management policies.

"(12) Chair the Chief Financial Officers Council established by section 302 of the Chief Financial Officers Act of 1990.

"(13) Communicate with the financial officers of State and local governments, and foster the exchange with those officers of information concerning financial management standards, techniques, and processes.

"(14) Issue such other policies and directives as may be necessary to carry out this section, and perform any other function prescribed by the Director.

"(b) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish general management policies for executive agencies and perform the following general management functions:

"(1) Coordinate and supervise the general management functions of the Office of Management and Budget.

"(2) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to—

"(A) managerial systems, including the systematic measurement of performance;

"(B) procurement policy;

"(C) grant, cooperative agreement, and assistance management;

"(D) information and statistical policy;

"(E) property management;

"(F) human resources management;

"(G) regulatory affairs; and

"(H) other management functions, including organizational studies, long-range planning, program evaluation, productivity improvement, and experimentation and demonstration programs.

"(3) Provide complete, reliable, and timely information to the President, the Congress, and the public regarding the management activities of the executive branch.

"(4) Facilitate actions by the Congress and the executive branch to improve the management of Federal Government operations and to remove impediments to effective administration.

"(5) Provide leadership in management innovation, through—

"(A) experimentation, testing, and demonstration programs; and

"(B) the adoption of modern management concepts and technologies.

"(6) Work with State and local governments to improve and strengthen intergovernmental relations, and provide assistance to such governments with respect to intergovernmental programs and cooperative arrangements.

"(7) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they respond to program evaluations by, and are in accordance with general management plans of, the Office of Management and Budget.

"(8) Provide advice to agencies on the qualification, recruitment, performance, and retention of managerial personnel.

"(9) perform any other functions prescribed by the Director.".

SEC. 203. OFFICE OF FEDERAL FINANCIAL MANAGEMENT.

(a) ESTABLISHMENT.—Subchapter I of chapter 5 of title 31, United States Code, as amended by this Act, is amended by inserting after section 503 (as added by section 202 of this Act) the following:

"§ 504. Office of Federal Financial Management

"(a) There is established in the Office of Management and Budget an office to be known as the 'Office of Federal Financial Management'. The Office of Federal Financial Management, under the direction and control of the Deputy Director for Management of the Office of Management and Budget, shall carry out the financial management functions listed in section 503(a) of this title.

"(b) There shall be at the head of the Office of Federal Financial Management a Controller, who shall be appointed by the President, by and with the advice and consent of the Senate. The Controller shall be appointed from among individuals who possess—

"(1) demonstrated ability and practical experience in accounting, financial management, and financial systems; and

"(2) extensive practical experience in financial management in large governmental or business entities.

"(c) The Controller of the Office of Federal Financial Management shall be the deputy and principal advisor to the Deputy Director for Management in the performance by the Deputy Director for Management of functions described in section 503(a).".

(b) STATEMENT OF APPROPRIATIONS IN BUDGET.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

"(28) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.".

(c) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 5 of title 31, United States Code, is amended by striking the items relating to sections 503 and 504 and inserting the following:

"503. Functions of Deputy Director for Management.
"504. Office of Federal Financial Management.
"505. Office of Information and Regulatory Affairs.
"506. Office of Federal Procurement Policy.".

SEC. 204. DUTIES AND FUNCTIONS OF THE DEPARTMENT OF THE TREASURY.

Nothing in this Act shall be construed to interfere with the exercise of the functions, duties, and responsibilities of the Department of the Treasury, as in effect immediately before the enactment of this Act.

SEC. 205. AGENCY CHIEF FINANCIAL OFFICERS.

(a) IN GENERAL.—Subtitle I of title 31, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 9—AGENCY CHIEF FINANCIAL OFFICERS

"Sec.
"901. Establishment of agency Chief Financial Officers.
"902. Authority and functions of agency Chief Financial Officers.
"903. Establishment of agency Deputy Chief Financial Officers.

"§ 901. Establishment of agency Chief Financial Officers

"(a) There shall be within each agency described in subsection (b) an agency Chief Financial Officer. Each agency Chief Financial Officer shall—

"(1) for those agencies described in subsection (b)(1)—

"(A) be appointed by the President, by and with the advice and consent of the Senate; or

"(B) be designated by the President, in consultation with the head of the agency, from among officials of the agency who are required by law to be so appointed;

"(2) for those agencies described in subsection (b)(2)—

"(A) be appointed by the head of the agency;

"(B) be in the competitive service or the senior executive service; and

"(C) be career appointees; and

"(3) be appointed or designated, as applicable, from among individuals who possess demonstrated ability in general management of, and knowledge of and extensive practical experience in financial management practices in large governmental or business entities.

"(b)(1) The agencies referred to in subsection (a)(1) are the following:

"(A) The Department of Agriculture.
"(B) The Department of Commerce.
"(C) The Department of Defense.
"(D) The Department of Education.
"(E) The Department of Energy.
"(F) The Department of Health and Human Services.
"(G) The Department of Housing and Urban Development.
"(H) The Department of the Interior.
"(I) The Department of Justice.
"(J) The Department of Labor.
"(K) The Department of State.
"(L) The Department of Transportation.
"(M) The Department of the Treasury.
"(N) The Department of Veterans Affairs.
"(O) The Environmental Protection Agency.
"(P) The National Aeronautics and Space Administration.

"(2) The agencies referred to in subsection (a)(2) are the following:

"(A) The Agency for International Development.
"(B) The Federal Emergency Management Agency.
"(C) The General Services Administration.
"(D) The National Science Foundation.
"(E) The Nuclear Regulatory Commission.

"(F) The Office of Personnel Management.

"(G) The Small Business Administration.

"§ 902. Authority and functions of agency Chief Financial Officers

"(a) An agency Chief Financial Officer shall—

"(1) report directly to the head of the agency regarding financial management matters;

"(2) oversee all financial management activities relating to the programs and operations of the agency;

"(3) develop and maintain an integrated agency accounting and financial management system, including financial reporting and internal controls, which—

"(A) complies with applicable accounting principles, standards, and requirements, and internal control standards;

"(B) complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;

"(C) complies with any other requirements applicable to such systems; and

"(D) provides for—

"(i) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of agency management;

"(ii) the development and reporting of cost information;

"(iii) the integration of accounting and budgeting information; and

"(iv) the systematic measurement of performance;

"(4) make recommendations to the head of the agency regarding the selection of the Deputy Chief Financial Officer of the agency;

"(5) direct, manage, and provide policy guidance and oversight of agency financial management personnel, activities, and operations, including—

"(A) the preparation and annual revision of an agency plan to—

"(i) implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under section 3512(a)(3) of this title; and

"(ii) comply with the requirements established under sections 3515 and subsections (e) and (f) of section 3521 of this title;

"(B) the development of agency financial management budgets;

"(C) the recruitment, selection, and training of personnel to carry out agency financial management functions;

"(D) the approval and management of agency financial management systems design or enhancement projects;

"(E) the implementation of agency asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control;

"(6) prepare and transmit, by not later than 60 days after the submission of the audit report required by section 3521(f) of this title, an annual report to the agency head and the Director of the Office of Management and Budget, which shall include—

"(A) a description and analysis of the status of financial management of the agency;

"(B) the annual financial statements prepared under section 3515 of this title;

"(C) the audit report transmitted to the head of the agency under section 3521(f) of this title;

"(D) a summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255); and

"(E) other information the head of the agency considers appropriate to fully inform the President and the Congress concerning the financial management of the agency;

"(7) monitor the financial execution of the budget of the agency in relation to actual expenditures, and prepare and submit to the head of the agency timely performance reports; and

"(8) review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.

"(b)(1) In addition to the authority otherwise provided by this section, each agency Chief Financial Officer—

"(A) subject to paragraph (2), shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which are the property of the agency or which are available to the agency, and which relate to programs and operations with respect to which that agency Chief Financial Officer has responsibilities under this section;

"(B) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this section from any Federal, State, or local governmental entity; and

"(C) to the extent and in such amounts as may be provided in advance by appropriations Acts, may—

"(i) enter into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services; and

"(ii) make such payments as may be necessary to carry out the provisions of this section.

"(2) Except as provided in paragraph (1)(B), this subsection does not provide to an agency Chief Financial Officer any access greater than permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of any Office of Inspector General established under the Inspector General Act of 1978 (5 U.S.C. App.).

"§ 903. Establishment of agency Deputy Chief Financial Officers

"(a) There shall be within each agency described in section 901(b) an agency Deputy Chief Financial Officer, who shall report directly to the agency Chief Financial Officer on financial management matters. The position of agency Deputy Chief Financial Officer shall be a career reserved position in the Senior Executive Service.

"(b) Consistent with qualification standards developed by, and in consultation with, the agency Chief Financial Officer and the Director of the Office of Management and Budget, the head of each agency shall appoint as Deputy Chief Financial Officer an individual with demonstrated ability and experience in accounting, budget execution, financial and management analysis, and systems development, and not less than 6 years practical experience in financial management at large governmental entities.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle I of title 31, United States Code, is amended by adding at the end the following:

"9. Agency Chief Financial Officers ..... 901.".

(c) CHIEF FINANCIAL OFFICERS OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) DESIGNATION.—The Secretary of Veterans Affairs and the Secretary of Housing and Urban Development may each designate as the agency Chief Financial Officer of that department for purposes of section 901 of title 31, United States Code, as amended by this section, the officer designated, respectively, under section 4(c) of the Department of Veterans Affairs Act (38 U.S.C. 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42 U.S.C. 3533(e)), as in effect before the effective date of this Act.

(2) CONFORMING AMENDMENT.—Section 4(c) of the Department of Veterans Affairs Act (38 U.S.C. 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42 U.S.C. 3533(e)), as added by section 121 of Public Law 101-235, are repealed.

SEC. 206. TRANSFER OF FUNCTIONS AND PERSONNEL OF AGENCY CHIEF FINANCIAL OFFICERS.

(a) AGENCY REVIEWS OF FINANCIAL MANAGEMENT ACTIVITIES.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall require each agency listed in subsection (b) of section 901 of title 31, United States Code, as amended by this Act, to conduct a review of its financial management activities for the purpose of consolidating its accounting, budgeting, and other financial management activities under the agency Chief Financial Officer appointed under subsection (a) of that section for the agency.

(b) REORGANIZATION PROPOSAL.—Not later than 120 days after the issuance of requirements under subsection (a) and subject to all laws vesting functions in particular officers and employees of the United States, the head of each agency shall submit to the Director of the Office of Management and Budget a proposal for reorganizing the agency for the purposes of this Act. Such proposal shall include—

(1) a description of all functions, powers, duties, personnel, property, or records which the agency Chief Financial Officer is proposed to have authority over, including those relating to functions that are not related to financial management activities; and

(2) a detailed outline of the administrative structure of the office of the agency Chief Financial Officer, including a description of the responsibility and authority of financial management personnel and resources in agencies or other subdivisions as appropriate to that agency.

(c) REVIEW AND APPROVAL OF PROPOSAL.—Not later than 60 days after receiving a proposal from the head of an agency under subsection (b), the Director of the Office of Management and Budget shall approve or disapprove the proposal and notify the head of the agency of that approval or disapproval. The Director shall approve each proposal which establishes an agency Chief Financial Officer in conformance with section 901 of title 31, United States Code, as added by this Act, and which establishes a financial management structure reasonably tailored to the functions of the agency. Upon approving or disapproving a proposal of an agency under this section, the Director shall transmit to the head of the agency a written notice of that approval or disapproval.

(d) IMPLEMENTATION OF PROPOSAL.—Upon receiving written notice of approval of a proposal under this section from the Director of the Office of Management and Budget, the head of an agency shall implement that proposal.

SEC. 207. COMPENSATION.

(a) COMPENSATION, LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

"Deputy Director for Management, Office of Management and Budget.".

(b) COMPENSATION, LEVEL III.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Controller, Office of Federal Financial Management, Office of Management and Budget.".

(c) COMPENSATION, LEVEL IV.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chief Financial Officer, Department of Agriculture.

"Chief Financial Officer, Department of Commerce.

"Chief Financial Officer, Department of Defense.

"Chief Financial Officer, Department of Education

"Chief Financial Officer, Department of Energy

"Chief Financial Officer, Department of Health and Human Services.

"Chief Financial Officer, Department of Housing and Urban Development.

"Chief Financial Officer, Department of the Interior.

"Chief Financial Officer, Department of Justice.

"Chief Financial Officer, Department of Labor

"Chief Financial Officer, Department of State.

"Chief Financial Officer, Department of Transportation.

"Chief Financial Officer, Department of the Treasury.

"Chief Financial Officer, Department of Veterans Affairs.

"Chief Financial Officer, Environmental Protection Agency.

"Chief Financial Officer, National Aeronautics and Space Administration.".

TITLE III—ENHANCEMENT OF FEDERAL FINANCIAL MANAGEMENT ACTIVITIES

SEC. 301. FINANCIAL MANAGEMENT STATUS REPORT; 5-YEAR PLAN OF DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET.

(a) IN GENERAL.—Section 3512 of title 31, United States Code, is amended by striking the heading thereof, redesignating subsections (a) through (f) in order as subsections (b) through (g), and by inserting before such subsection (b), as so redesignated, the following:

"§ 3512. Executive agency accounting and other financial management reports and plans

"(a)(1) The Director of the Office of Management and Budget shall prepare and submit to the appropriate committees of the Congress a financial management status report and a governmentwide 5-year financial management plan.

"(2) A financial management status report under this subsection shall include—

"(A) a description and analysis of the status of financial management in the executive branch;

"(B) a summary of the most recently completed financial statements—

"(i) of Federal agencies under section 3515 of this title; and

"(ii) of Government corporations;

"(C) a summary of the most recently completed financial statement audits and reports—

"(i) of Federal agencies under section 3521 (e) and (f) of this title; and

"(ii) of Government corporations;

"(D) a summary of reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255); and

"(E) any other information the Director considers appropriate to fully inform the Congress regarding the financial management of the Federal Government.

"(3)(A) A governmentwide 5-year financial management plan under this subsection shall describe the activities the Director, the Deputy Director for Management, the Controller of the Office of Federal Financial Management, and agency Chief Financial Officers shall conduct over the next 5 fiscal years to improve the financial management of the Federal Government.

"(B) Each governmentwide 5-year financial management plan prepared under this subsection shall—

"(i) describe the existing financial management structure and any changes needed to establish an integrated financial management system;

"(ii) be consistent with applicable accounting principles, standards, and requirements;

"(iii) provide a strategy for developing and integrating individual agency accounting, financial information, and other financial management systems to ensure adequacy, consistency, and timeliness of financial information;

"(iv) identify and make proposals to eliminate duplicative and unnecessary systems, including encouraging agencies to share systems which have sufficient capacity to perform the functions needed;

"(v) identify projects to bring existing systems into compliance with the applicable standards and requirements;

"(vi) contain milestones for equipment acquisitions and other actions necessary to implement the 5-year plan consistent with the requirements of this section;

"(vii) identify financial management personnel needs and actions to ensure those needs are met;

"(viii) include a plan for ensuring the annual audit of financial statements of executive agencies pursuant to section 3521(h) of this title; and

"(ix) estimate the costs of implementing the governmentwide 5-year plan.

"(4)(A) Not later than 15 months after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall submit the first financial management status report and governmentwide 5-year financial management plan under this subsection to the appropriate committees of the Congress.

"(B)(i) Not later than January 31 of each year thereafter, the Director of the Office of Management and Budget shall submit to the appropriate committees of the Congress a financial management status report and a revised governmentwide 5-year financial management plan to cover the succeeding 5 fiscal years, including a report on the accomplishments of the executive branch in implementing the plan during the preceding fiscal year.

"(ii) The Director shall include with each revised governmentwide 5-year financial management plan a description of any substantive changes in the financial statement audit plan required by paragraph (3)(B)(viii), progress made by executive agencies in implementing the audit plan, and any improvements in Federal Government financial management related to preparation and audit of financial statements of executive agencies.

"(5) Not later than 30 days after receiving each annual report under section 902(a)(6) of this title, the Director shall transmit to the Chairman of the Committee on Government Operations of the House of Representatives and the Chairman of the Committee on Governmental Affairs of the Senate a final copy of that report and any comments on the report by the Director.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 35 of title 31, United States Code, is amended by striking the item relating to section 3512 and inserting the following:

"3512. Executive agency accounting and other financial management reports and plans.".

SEC. 302. CHIEF FINANCIAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Financial Officers Council, consisting of—

(1) the Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the council;

(2) the Controller of the Office of Federal Financial Management of the Office of Management and Budget;

(3) the Fiscal Assistant Secretary of Treasury; and

(4) each of the agency Chief Financial Officers appointed under section 901 of title 31, United States Code, as amended by this Act.

(b) FUNCTIONS.—The Chief Financial Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as consolidation and modernization of financial systems, improved quality of financial information, financial data and information standards, internal controls, legislation affecting financial operations and organizations, and any other financial management matter.

SEC. 303. FINANCIAL STATEMENTS OF AGENCIES.

(a) PREPARATION OF FINANCIAL STATEMENTS.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 31, United States Code, is amended by adding at the end the following:

"§ 3515. Financial statements of agencies

"(a) Not later than March 31 of 1992 and each year thereafter, the head of each executive agency identified in section 901(b) of this title shall prepare and submit to the Director of the Office of Management and Budget a financial statement for the preceding fiscal year, covering—

"(1) each revolving fund and trust fund of the agency; and

"(2) to the extent practicable, the accounts of each office, bureau, and activity of the agency which performed substantial commercial functions during the preceding fiscal year.

"(b) Each financial statement of an executive agency under this section shall reflect—

"(1) the overall financial position of the revolving funds, trust funds, offices, bureaus, and activities covered by the statement, including assets and liabilities thereof;

"(2) results of operations of those revolving funds, trust funds, offices, bureaus, and activities;

"(3) cash flows or changes in financial position of those revolving funds, trust funds, offices, bureaus, and activities; and

"(4) a reconciliation to budget reports of the executive agency for those revolving funds, trust funds, offices, bureaus, and activities.

"(c) The Director of the Office of Management and Budget shall prescribe the form and content of the financial statements of executive agencies under this section, consistent with applicable accounting principles, standards, and requirements.

"(d) For purposes of this section, the term 'commercial functions' includes buying and leasing of real estate, providing insurance, making loans and loan guarantees, and other credit programs and any activity involving the provision of a service or thing of value for which a fee, royalty, rent, or other charge is imposed by an agency for services and things of value it provides.

"(e) Not later than March 31 of each year, the head of each executive agency designated by the President may prepare and submit to the Director of the Office of Management and Budget a financial statement for the preceding fiscal year, covering accounts of offices, bureaus, and activities of the agency in addition to those described in subsection (a).".

(2) EFFECTIVE DATE OF SUBSECTION.—Subsection (e) of section 3515 of title 31, United States Code, as added by paragraph (1), shall take effect on the date on which a resolution described in subsection (b)(1) of this section is passed by the Congress and approved by the President.

(3) WAIVER OF REQUIREMENT.—The Director of the Office of Management and Budget may, for fiscal year 1991, waive the application of section 3515(a) of title 31, United States Code, as amended by this subsection, with respect to any revolving fund, trust fund, or account of an executive agency.

(b) RESOLUTION APPROVING DESIGNATION OF AGENCIES.—

(1) RESOLUTION DESCRIBED.—A resolution referred to in subsection (a)(2) is a joint resolution the matter after the resolving clause of which is as follows: "That the Congress approves the executive agencies designated by the President pursuant to section 3515(e) of title 31, United States Code.".

(2) INTRODUCTION OF RESOLUTION.—No later than the first day of session following the day on which the President submits to the Congress a designation of executive agencies authorized to submit financial statements under section 3515(e) of title 31, United States Code, as added by subsection (a), a resolution as described in paragraph (1) shall be introduced (by request) in the House by the chairman of the Committee on Government Operations of the House of Representatives, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Committee on Governmental Affairs of the Senate, or by a Member or Members of the Senate designated by such chairman.

(3) REFERRAL.—A resolution described in paragraph (1), shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same designation of executive agencies shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 60 calendar days of continuous session of the Congress following the date of such resolution's introduction.

(4) DISCHARGE OF COMMITTEE.—If the committee to which is referred a resolution introduced pursuant to paragraph (2) (or, in the absence of such a resolution, the first resolution introduced with respect to the same designation of executive agencies) has not reported such resolution or identical resolution at the end of 60 calendar days of continuous session of the Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(5) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEE; VOTE ON FINAL PASSAGE.—(A) When the committee has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a resolution described in paragraph (1), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(B) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(C) Immediately following the conclusion of the debate on the resolution and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1), shall be decided without debate.

(E) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same designation of executive agencies from the other House, then—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(F) It shall not be in order in either the House of Representatives or the Senate to consider a resolution described in paragraph (1), or to consider any conference report on such a resolution, unless the Director of the Office of Management and Budget submits to the Congress a report under subsection (e).

(c) REPORT ON SUBSTANTIAL COMMERCIAL FUNCTIONS.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall determine and report to the Congress on which executive agencies or parts thereof perform substantial commercial functions for which financial statements can be prepared practicably under section 3515 of title 31, United States Code, as added by this section.

(d) PILOT PROJECT.—(1) Not later than March 31 of each of 1991, 1992, and 1993, the head of the Departments of Agriculture, Labor, and Veterans Affairs, the General Services Administration, and the Social Security Administration shall each prepare and submit to the Director of the Office of Management and Budget financial statements for the preceding fiscal year for the accounts of all of the offices, bureaus, and activities of that department or administration.

(2) Not later than March 31 of each of 1992 and 1993, the head of the Departments of Housing and Urban Development and the Army shall prepare and submit to the Director of the Office of Management and Budget financial statements for the preceding fiscal year for the accounts of all of the offices, bureaus, and activities of that department.

(3) Not later than March 31, 1993, the head of the Department of the Air Force, the Internal Revenue Service, and the United States Customs Service, shall each prepare and submit to the Director of the Office of Management and Budget financial statements for the preceding fiscal year for the accounts of all of the offices, bureaus, and activities of that department or service.

(4) Each financial statement prepared under this subsection shall be audited in accordance with section 3521 (e), (f), (g), and (h) of title 31, United States Code.

(e) REPORT ON INITIAL FINANCIAL STATEMENTS.—Not later than June 30, 1993, the Director of the Office of Management and Budget shall report to the Congress on the financial statements prepared for fiscal years 1990, 1991, and 1992 under subsection (a) of section 3515 of title 31, United States Code (as added by subsection (a) of this section) and under subsection (d) of this section. The report shall include analysis of—

(1) the accuracy of the data included in the financial statements;

(2) the difficulties each department and agency encountered in preparing the data included in the financial statements;

(3) the benefits derived from the preparation of the financial statements; and

(4) the cost associated with preparing and auditing the financial statements, including a description of any activities that were foregone as a result of that preparation and auditing.

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 35 of title 31, United States Code, is amended by inserting after the item relating to section 3514 the following:

"3515. Financial statements of agencies.".

SEC. 304. FINANCIAL AUDITS OF AGENCIES.

(a) IN GENERAL.—Section 3521 of title 31, United States Code, is amended by adding at the end the following new subsections:

"(e) Each financial statement prepared under section 3515 by an agency shall be audited in accordance with applicable generally accepted government auditing standards—

"(1) in the case of an agency having an Inspector General appointed under the Inspector General Act of 1978 (5 U.S.C. App.), by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

"(2) in any other case, by an independent external auditor, as determined by the head of the agency.

"(f) Not later than June 30 following the fiscal year for which a financial statement is submitted under section 3515 of this title by an agency, the person who audits the statement for purpose of subsection (e) shall submit a report on the audit to the head of the agency. A report under this subsection shall be prepared in accordance with generally accepted government auditing standards.

"(g) The Comptroller General of the United States—

"(1) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

"(2) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the agency which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General considers appropriate; and

"(3) may audit a financial statement prepared under section 3515 of this title at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this subsection shall be in lieu of the audit otherwise required by subsection (e) of this section. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

"(h) Each financial statement prepared by an executive agency for a fiscal year after fiscal year 1991 shall be audited in accordance with this section and the plan required by section 3512(a)(3)(B)(viii) of this title.".

(b) WAIVER OF REQUIREMENTS.—The Director of the Office of Management and Budget may waive application of subsections (e) and (f) of section 3521 of title 31, United States Code, as amended by this section, to a financial statement submitted by an agency for fiscal years 1990 and 1991.

SEC. 305. FINANCIAL AUDITS OF GOVERNMENT CORPORATIONS.

Section 9105 of title 31, United States Code, is amended to read as follows:

"§ 9105. Audits

"(a)(1) The financial statements of Government corporations shall be audited by the Inspector General of the corporation appointed under the Inspector General Act of 1978 (5 U.S.C. App.) or by an independent external auditor, as determined by the Inspector General or, if there is no Inspector General, by the head of the corporation.

"(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.

"(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the Government corporation, to the Chairman of the Committee on Government Operations of the House of Representatives, and to the Chairman of the Committee on Governmental Affairs of the Senate.

"(4) The Comptroller General of the United States—

"(A) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

"(B) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the Government corporation which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General of the United States considers appropriate; and

"(C) may audit a financial statement of a Government corporation at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this paragraph shall be in lieu of the audit otherwise required by paragraph (1) of this subsection. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

"(5) A Government corporation shall reimburse the Comptroller General of the United States for the full cost of any audit conducted by the Comptroller General under this subsection, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General of the United States shall be deposited in the Treasury as miscellaneous receipts.

"(b) Upon request of the Comptroller General of the United States, a Government corporation shall provide to the Comptroller General of the United States all books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Government corporation and its auditor that the Comptroller General of the United States considers necessary to the performance of any audit or review under this section.

"(c) Activities of the Comptroller General of the United States under this section are in lieu of any audit of the financial transactions of a Government corporation that the Comptroller General is required to make under any other law.".

SEC. 306. MANAGEMENT REPORTS OF GOVERNMENT CORPORATIONS.

(a) IN GENERAL.—Section 9106 of title 31, United States Code, is amended to read as follows:

"§ 9106. Management reports

"(a)(1) A Government corporation shall submit an annual management report to the Congress not later than 180 days after the end of the Government corporation's fiscal year.

"(2) A management report under this subsection shall include—

"(A) a statement of financial position;

"(B) a statement of operations;

"(C) a statement of cash flows;

"(D) a reconciliation to the budget report of the Government corporation, if applicable;

"(E) a statement on internal accounting and administrative control systems by the head of the management of the corporation, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255);

"(F) the report resulting from an audit of the financial statements of the corporation conducted under section 9105 of this title; and

"(G) any other comments and information necessary to inform the Congress about the operations and financial condition of the corporation.

"(b) A Government corporation shall provide the President, the Director of the Office of Management and Budget, and the Comptroller General of the United States a copy of the management report when it is submitted to Congress.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 91 of title 31, United States Code, is amended by striking the item relating to section 9106 and inserting the following:

"9106. Management reports.".

SEC. 307. ADOPTION OF CAPITAL ACCOUNTING STANDARDS.

No capital accounting standard or principle, including any human capital standard or principle, shall be adopted for use in an executive department or agency until such standard has been reported to the Congress and a period of 45 days of continuous session of the Congress has expired.

Amend the title of the bill so as to read: "A bill to amend title 31, United States Code, to improve the general and financial management of the Federal Government.".

ADDITIONAL STATEMENTS

CANINE COMPANIONS

● Mr. WIRTH. Mr. President, this past July, President Bush signed into law the Americans With Disabilities Act. That law guarantees for the 43 million Americans with disabilities the civil rights and freedoms enjoyed by those of us without disabilities. The purpose of the new law is to remove the barriers that prohibit or interfere with the daily living activities—at home, at work, or in general society—so those with disabilities can take their rightful place in society beside nondisabled persons.

Of course, no law can simply wipe away a person's disabilities. But there are ways in which those disabilities can be overcome and dealt with, some of them very innovative. One way that is particularly creative and special is the use of trained dogs to assist persons in wheelchairs.

We are all familiar with the use of seeing eye dogs. But the use of dogs for other purposes is relatively new. There is a group called the Canine Companions for Independence that trains golden retrievers, labradors, and other dogs to assist physically disabled persons in their daily living activities. These dogs assist their masters in any number of ways. The dogs can press elevator buttons, turn on lights, and retrieve food from the refrigerator. They can pull wheelchairs up ramps and carry packages. For the deaf, they can act as signal dogs, detecting a knock on the door or the sound of a car's horn. But most of all, what they do is allow persons with disabilities to live independently.

Presently there are 550 companion dogs in service in the United States—a small number, considering the millions of disabled persons who could potentially benefit from this program. With only five training centers in the United States, there is a backlog for these canine companions. Recently, a group of concerned persons in Colorado has started lobbying and organizing an effort to bring a sixth training center to Colorado. Such a facility would be instrumental in training more dogs for placement in the Rocky Mountain region.

Training the companions begins when specially bred puppies are 8 weeks old. The average cost of training a dog is $8,000; most of this is paid for through voluntary donations. The recipients of the dogs are only required to pay $100 for training necessary during the adaptation period. This low cost makes independence affordable for persons with disabilities.

I ask that an article on this subject from the Gazette Telegraph be printed in the RECORD.

The article follows:

[From the Gazette Telegraph, Oct. 31, 1989]

DOG RETRIEVES INDEPENDENCE—TEEN'S FRIEND OPENS DOORS OF OPPORTUNITY

(By David Okamoto)

The third-period school bell rings and Tait Berge begins maneuvering his motorized wheelchair through the bustling hallways of Liberty High School.

As the 16-year-old sophomore whizzes past the lockers, a golden retriever named Nouveau obediently trots alongside him, toting the backpack that carries Tait's wallet, computer discs and a Louis L'Amour novel.

"Nouveau, my lap," Tait commands, and the dog places his front paws in his owner's lap so Tait can reach into the backpack and get a handkerchief.

Tait is one of 14 Colorado residents participating in Canine Companions for Independence, a Santa Rosa, Calif.-based program that trains dogs to help people with physical disabilities other than blindness.

With the approval of Liberty administrators, Tait is the first Colorado teen-ager to attend public school with a CCI dog. But Nouveau is more than just a companion: He is also carrying Tait's hopes for a school year marked by acceptance rather than indifference.

Tait has been in a wheelchair since age 5 because of cerebral palsy, a brain disorder that causes lack of muscle control and unclear speech.

Despite his light-blue Garfield sweatshirt, outgoing personality and winsome smile, his wheelchair and slow but animated speech pattern—which resembles a phonograph record played at the wrong speed—make him stand out rather than fit in.

Some of his classmates, including 15-year-old Erin Gibbons, have gone out of their way to become his friends. Erin helps Tait take notes in history class and interprets his questions for teachers who haven't yet adjusted to his slow cadence and uneven enunciation.

"He helps me with my homework more than I help him," Erin says. "I think it's neat having him in the class."

But most of the other 750 students at Liberty ignore him, Tait laments. That feeling of separation has haunted him since middle school, says Sara Berge, Tait's mother, who works with Respite Care Referral Services.

"There's always the outgoing kids who will come up and say, 'Hi, what's your name?' or 'How come you use that chair? Why don't you walk?' " she says. "But most people will just stay away because it's the easy way out. They don't know what to say or how to be helpful, so they just stay away."

By enrolling in the CCI program—which included an intensive, two-week "boot camp" training session in California—Tait was hoping to become less dependent on others for such simple tasks as picking up dropped objects and opening refrigerator doors. He also hoped to improve his social life.

"I really wanted him (Nouveau) to be used as an icebreaker between me and the other kids here at the school and other people" Tait says.

But because Tait's boot-camp session ended in August, there wasn't enough time for him to complete his "bonding period" with the dog before school started.

So for the first six weeks of school, nobody—not even Tait's parents and two younger brothers—were allowed to pet Nouveau.

Liberty special-education aid Bob Miller says that a memo was circulated to teachers asking them to inform students not to interact with the dog during the bonding period.

Unfortunately, that warning was interpreted by many students to mean they should avoid Tait completely, Miller says. But now that word is spreading around school that the bonding period is over, Tait says he hopes more students will start talking to him.

Even during the bonding period, Nouveau helped attract attention to Tait for reasons other than his disability. Classmates have seen the dog accompanying him through the halls, carrying his milk in the cafeteria, and taking his tests to the front of the classroom.

Teachers and assistant principal Pat West say they are pleased with the program. The dog attends classes with Tait, quietly lying beside the wheelchair with his chin on the footrest. They say the dog rarely disrupts the classes. But Nouveau did try to walk out of the room last week during an essay test on Greek history, prompting one student to remark,"He knows this class is boring."

Miller and Sara Berge say that they've noticed positive changes in Tait's attitude.

"He speaks better now because he has someone to talk to regularly," Miller observes, noting that Tait has even begun showing off in the cafeteria by throwing his milk carton on the floor and having Nouveau bring it back to him.

Sara says Tait—who got his first job last summer as a data-entry clerk at the Air Force Academy commissary—has become more confident.

"The dog has really pulled that out of him. He gets to be a leader with Nouveau. People with disabilities hardly ever have a chance to be leaders. People are always controlling them, telling them what to do, pushing them there, shoving them there. All of a sudden, Tait has an incredible amount of control over his life."

Independence is one of Tait's main goals for this school year. He is taking mainstream algebra, history and English classes, and requires assistance only when using the school elevator—it operates with a key instead of buttons—and when taking essay tests, which Miller administers orally to him.

Tait says he enjoys having Nouveau with him at school, although he notes that the dog might not be getting too much out of his world history class.

"It's all Greek to him."

CANINE COMPANIONS FOR INDEPENDENCE

What: Canine Companions for Independence, a non-profit organization headquartered in Santa Rosa, Calif., was founded in 1975 to train specially bred dogs to serve as arms, legs and ears for adults who have physical disabilities.

Where: The organization has three training centers in the United States. Colorado is served by the Southwest center in Rancho Santa Fe, Calif., but funds are being raised for a training center in Colorado Springs, says steering-committee chairwoman Joyce Mapes.

For information: Call Mapes at 634-1909 for information about the program or contributing funds to the proposed local center. For other information, write Canine Companions for Independence, Southwest Center, P.O. Box 8247, Rancho Santa Fe, Calif. 92067 or call (619) 756-1012

As of September 1990, this boy no longer requires a full-time aid at school, but functions independently with his dog, saving $10,000 per year.●

THE URUGUAY ROUND

● Mr. HEINZ. Mr. President, as the pro-Uruguay round train begins to pick up speed, we are beginning to be bombarded with numbers designed to convince us that the round is critical to our long-term economic health and that without it we court domestic economic disaster.

Those of us who served on the Finance Committee during the debate over the Tokyo round implementing legislation tend to be skeptical of such assertions because so many of those we had thrown at us at that time turned out to be wrong. Like the Uruguay round today, the Tokyo round 11 years ago was going to solve our economic problems, reduce our trade deficit, and generally lead to prosperity. In fact, it did not achieve those results. While the Tokyo round can hardly be blamed for all the trade problems we encountered in the 1980's, neither can it be given credit for solving many of them. As I have said on previous occasions, the bottom line of the round was substantive concessions by the United States in return for promises of good behavior by others—promises which were largely not kept.

Accordingly, I believe skepticism is well founded when it comes to predicting the results or impact of a trade round. Unfortunately, that is not a quality characteristic of our negotiators, as they now seek to persuade us—before the round's conclusion—that an unsuccessful outcome will be an economic disaster for the United States.

While we all favor a successful outcome—whatever that means, and we

might each define it differently—it is a serious error automatically to equate our future prosperity with approval of the round's results. I intend to judge the round's outcome once it occurs, not before, and I intend to do my own analysis of that outcome on Pennsylvania and the country generally.

In the midst of this debate this time around, Mr. President, I have just received another study which takes a more refreshing and, in my judgment, realistic view of the round's likely results. It comes from the Economic Strategy Institute, which in its short life has already made a name for itself with its incisive analyses of current trade and competitiveness issues. This study, "Read My Stats: Bogus Numbers Threaten the Uruguay Round," demonstrates the historic tendency of administrations to grossly overstate the likely benefits of a trade negotiation and shows clearly why that appears to be the case this time around as well.

In addition, the ESI study performs a useful service in examining the studies that were the basis for current administration claims as well as other studies that have come to contrary conclusions, and then in producing its own, more realistic, estimate based on this broader body of work. That estimate of the most likely Uruguay round outcome is an increase in the United States trade deficit of $14 billion and a modest change in GDP ranging from an increase of $5 billion to a decrease of $20 billion. Of particular concern to me is the fact that the $14 billion is a net figure that masks a larger loss for the manufacturing sector with small offsetting gains elsewhere. That, needless to say, is very different from what we have been hearing from official sources.

Mr. President, I do not know exactly where the truth lies in this matter. It is probably impossible to determine in advance of the round's conclusion in any event. However, my experience tells me that in matters of this kind the truth always lies somewhere in the middle between the most optimistic and pessimistic analyses. The ESI study falls into that category and I commend it to Senators. At the very least it will keep the debate honest, and at this point that is probably the best we can hope for.

Mr. President, I ask that the ESI study and article from the New York Times be printed at this point in the RECORD.

The material follows:

[From the ESI Analysis, Economic Strategy Institute, Oct. 23, 1990]

READ MY STATS: BOGUS NUMBERS THREATEN THE URUGUAY ROUND

The Uruguay Round of GATT multilateral trade negotiations (MTN), scheduled to conclude in six weeks, will shape the world's economic future for years to come. A real success is urgently needed; that means an agreement that brings clear benefits to the United States by boosting economic output and reducing the trade deficit. This success is needed both for the American economy and to shore up flagging U.S. support for multilateral trade liberalization.

This analysis makes two major points: First, the fugures used by the administration to describe the likely benefits of an agreement are demonstrably wrong. Such overly optimistic predictions inflate expectations and damage the credibility of the GATT process. By the same token, overly pessimistic predictions about the costs of a Uruguay Round failure could produce an agreement that inflicts serious long-term damage to the U.S. economy, especially to the manufacturing sector.

Second, the administration's approach ignores major risks to manufacturing that could result from altering U.S. trade laws. Although modest gains in agriculture and services would be welcome, an agreement that puts manufacturing at serious risk is not acceptable.

This report, part of a larger ESI project on the Uruguay Round, was produced by Clyde V. Prestowitz, Jr., Robert W. Jerome, Tasha Wallis, Lawrence Chimerine, and Robert Cohen. For further information, please contact ESI Fellows Robert W. Jerome or Tasha Wallis at (202) 728-0993.

INTRODUCTION

The scheduled deadline for concluding the Uruguay Round of world trade negotiations is less than 6 weeks away. What can the United States realistically expect from the talks? Aside from agreement on new rules governing various kinds of economic activity all around the world, what kinds of substantive results will an agreement achieve for America? Will national output rise or fall? Will the trade deficit narrow or widen?

Although the Uruguay Round talks have been underway since 1986, the U.S. government has begun to examine these questions only very recently. A bare handful of official studies has tried to estimate the economic and trade impact of a Uruguay Round agreement. In fact, many of the administration's projections are based on an academic study from Australia.

America's recent experience teaches that a failure to anticipate the substantive results of trade negotiations is a formula for trouble—both for the U.S. economy and for the world trading system. The 1979 GATT Tokyo Round agreement, for example, contained all kinds of new trade rules; it generated high hopes in Washington that America's trade problems and world trade tensions would be significantly reduced. But by the early 1980s, the Tokyo Round had proven itself a cosmetic success only. Its failure to deliver on its promises led to disappointment, rising trade tensions, eroding credibility for the GATT system, and ultimately to the Uruguay Round.

The Economic Strategy Institute is pleased that the administration is now focusing on the merits of the Uruguay Round. But given the tardiness of this focus, the Institute has been concerned that America may be setting itself up for another GATT-related disappointment. Consequently, ESI decided to analyze the economic estimates being used by the administration on behalf of a Uruguay Round agreement.

The Institute's analysis, presented below, finds that these estimates dramatically overestimate the likeliest benefits of an agreement. Just as important, they all but ignore the likeliest risks—especially to a U.S. manufacturing sector that, despite the Round's focus on agriculture and services, remains the key to national economic success.

HIGHLIGHTS OF THE ESI ANALYSIS

I. Overstated Numbers

The administration overstates the economic benefits from a Uruguay Round agreement by more than 700 percent.

The administration has predicted that a Uruguay Round agreement will increase U.S. domestic output by $125 billion in the first year after its signing alone.

ESI's analysis indicates that a one year increase in GDP of this magnitude would require the impossible: as much as $500 billion in increased investment (a doubling of current investment levels). The $125 billion figure also rests on unrealistic assumptions: principally, a 30 percent worldwide reduction in all trade barriers, and an instantaneous relocation and rationalization of the world's labor and capital assets. Further, the academic study cited by the administration clearly indicates that the most likely Uruguay Round scenario could result in an increase in U.S. GDP of $18 billion, not $125 billion.

Overestimating the benefits of GATT agreements is a tradition for U.S. administrations, and leads to bad agreements that undercut the credibility of the process.

In 1979, the Special Trade Representative's Office forecast that Tokyo Round tariff reductions would benefit U.S. consumers by as much as $10.6 billion per year. The Michigan Model of World Production and Trade estimates the total actual net welfare benefits to the U.S. economy at only $700 million.

STR claimed that the Tokyo Round Government Procurement Code would open a $25 billion worldwide foreign government procurement market for U.S. producers. GAO determined that actual U.S. annual sales to these markets were approximately $210 million.

The Uruguay Round results could boost the trade deficit by $14 billion per year.

The administration failed to mention that the same academic study that USTR cites to predict GDP growth also projects an increase in the U.S. trade deficit of $18 billion.

ESI estimates that, under the most realistic scenario, the trade deficit could increase by as much as $14 billion.

New rules on intellectual property rights protection will generate only small gains, and possibly losses, to U.S. producers.

USTR predicts that U.S. companies will reap a $60 billion gain from the tighter enforcement of intellectual property rights expected to be approved at the negotiations.

ESI has examined the International Trade Commission report on which this claim is based and believes that the trade gains are likely to be only $14 billion. Without tight enforcement of intellectual property rights around the world, the new rules could produce no gains for the United States. If Section 337 is not replaced with an adequate substitute, U.S. industry would almost certainly suffer substantial losses.

U.S. exports to third world countries will not increase by $200 billion over 10 years, as claimed by the administration.

USTR argues that a Uruguay Round agreement bringing the developing world into the global trading system could increase U.S. exports by $200 billion by the year 2000.

ESI considers this level of sales possible only with final resolution of the persistent debt crisis and the end of inflation in most

developing countries. Equally remote is the prospect that these countries could finance huge increases in imports from the United States, especially given recent oil price rises.

II. Understated Effects

Gains from the administration's top priority sectors in the Round—agriculture and services—will be marginal at best . . .

The U.S. Department of Agriculture estimates that full liberalization of agriculture trade would yield only $3 billion in increased exports for the United States. ESI estimates that if the administration achieves its own more modest goals of a 30 percent reduction in agriculture barriers, the benefits could be as small as $1 billion.

The U.S. government has not prepared any estimates of gains from services trade liberalization since the Round began in 1986. ESI estimates that, even if the Uruguay Round brought a 10 percent increase in U.S. services trade surplus, the U.S. trade surplus would gain only $2.7 billion annually.

* * * and these could place the full burden of the increase in the trade deficit on U.S. manufacturing by $17.7 billion.

An alternative scenario, in which U.S. trade laws are altered along the lines currently requested by U.S. trading partners, could result in lost export opportunities and increased import penetration of the U.S. market. The net effect would contribute additional billions to the trade deficit.

I. OVERSTATED NUMBERS

GDP Effects

The U.S. Trade Representative's Office (USTR) has predicted that the United States can expect a $125 billion increase in domestic output in 1991 alone through the greater access to world markets resulting from the Uruguay Round. The source of this prediction is a study by the Centre for International Economics in Canberra, Australia titled, Western Trade Blocs. But the administration has erroneously described its results. According to the study, the $125 billion in gains are not a one-year gain, but a one-time gain from tariff and non-tariff measure cuts. A quick review of the relationship between Gross Domestic Product (GDP is the measure of a country's output excluding trade) and investment shows that a one-year increase in GDP of $125 billion would require the impossible: as much as $500 billion in increased investment (a doubling of current levels). Approximately 8 percent of total U.S. manufacturing would have to be converted from low-value to high-value-added activity.

The $125 billion figure is problematic for another reason. The Australian study utilizes a regional general equilibrium model of world trade. The $125 billion in GDP improvement projected by this study is based on an adjustment of the original Australian model results. The figure assumes a 30 percent worldwide reduction in all tariffs and non-tariff barriers to trade. The Round is unlikely to achieve such results—as the Australian study itself acknowledges.

The $125 billion figure, moreover, was the product of only one of several world trade liberalization scenarios presented by the Australian study. The GDP effects of a Uruguay Round outcome that the authors characterized as "ilkely" predicted that U.S. output would increase by $18 billion rather than the $125 billion cited by USTR. Plainly, the number cited by USTR does not tell the whole story.

Further, although it seems reasonable in contrast to the $125 billion estimate, the $18 billion estimate itself is tenuous. The Australian economic model rests on two shaky assumptions. First, it assumes instantaneous changes in the world's use of capital and labor, a totally unrealistic expectation. Second, the model assumes that major progress in reducing tariff measures will occur in its most likely scenario for the Round. Yet, negotiators in the Uruguay Round are hoping to reduce agricultural and manufacturing tariffs by only 30 percent. Further, agreements are unlikely to result in major reductions in barriers to trade in services, which now account for one-fourth of world trade. In addition, the model does not take into account exchange-rate fluctuations that could reduce any overall trade effects of a Uruguay Round agreement.

Trade Effects

Reduction in Tariffs and Non-Tariff Measures (NTMs)

The Australian study cited by USTR for DGP effects also includes estimates of the Uruguay Round's impact on the U.S. trade balance. Although USTR used the $125 billion in GDP gains cited by the Australian study's best-case senario, it neglected to mention that the same scenario projected an $18 billion increase in the U.S. trade deficit. According to the Australian study, the likeliest Uruguay Round outcome will cause a $3 billion deterioration in the U.S. trade balance in the first year.

In distinct contrast to the administration's estimates, other studies show that tariff and NTM reductions could result in a $14 billion deterioration in the U.S. trade balance. One study by Hufbauer, Berman, and Elliott, estimates that complete elimination of non-tariff measures (NTMs) in industrialized countries would raise U.S. exports by $20 billion and imports by $55 billion—thereby adding $35 billion to the U.S. trade deficit. Thus, using rough calculations, reducing NTMs by one-third could result in a $6.6 billion increase in exports and a $18.2 billion increase in imports. Another estimate, also developed by Hufbauer, shows that a complete elimination of tariff measures by industrial nations would increase U.S. exports by $8 billion and U.S. Imports by $14 billion, and thereby raise the U.S. trade deficit by $6 billion. Taking one-third of this estimate yields a $2 billion increase in the GNP due to increase exports of $2.7 billion an increased imports of $4.7 billion.

Agriculture

Agriculture is considered to be one of two major U.S. priorities in the Uruguay Round. Yet a variety of studies, including some by the Federal Government, project only marginal potential gains from an agriculture agreement. The U.S. Department of Agriculture, for example, estimated that $3 billion might be gained from a complete liberalization of agricultural trade, including the elimination of European subsidies. Given the lack of progress on agriculture issues, however, a $1 billion improvement in U.S. trade (assuming a 30 percent reduction in agriculture barriers) seems closer to the mark. The U.S. Congress has already moved to cut U.S. agriculture supports by one-third. This, coupled with recent European moves in the Round to preserve their Common Agricultural Policy, makes it questionable whether the United States will realize gains in agriculture.

Services

The service sector is the other major U.S. priority in the Round—indeed, the Round commenced with U.S. insistence on the discussion of services trade. But, after four years, there still are available no official estimates of the effects of the Uruguay Round on U.S. services trade. In other words the administration does not know how the Uruguay Round services agreement it is seeking will effect either U.S. output or the U.S. trade balance.

Gains from liberalizing trade in services are included in the Australian figures cited by the administration. However, ESI has found only one study that contains separate estimates for gains resulting from any kind of international service trade liberalization—a report by the commission of the European Communities from 1988 that estimates a 1.5 percent improvement in the European Community's GDP from removing all internal Community barriers to financial services.

ESI has prepared its own rough estimates of possible one-year U.S. gains from liberalizing trade in services. Using the balance-of-payments figures prepared by the Bureau of Economic Analysis (U.S. Department of Commerce), U.S. services trade—services trade plus income transfer—will add $27 billion to the 1990 U.S. trade balance (annualizing the first two quarters of 1990). If the United States added 10 percent to the U.S. trade surplus in services as a result of the Uruguay Round—surely an optimistic projection—the U.S. trade balance would improve by only $2.7 billion in the first year.

Yet several key service sectors, such as telecommunications, maritime, and aviation, are unlikely to be included in any final agreement. If their omission limited the first year improvement in the current service-trade surplus to 5 percent, this would result in an addition of $1.4 billion to the services trade surplus.

It is most likely, however, that the Uruguay Round will produce no changes in current rules concerning barriers to services trade, although it could achieve an agreement to limit the development of new barriers to trade in services. This would have little effect on the U.S. balance of trade in services in the first year after the completion of the Uruguay Round, but might have significant impacts in the 1990s.

Improved Protection of Intellectual Property Rights

The administration products a $60 billion gain for "U.S. entrepreneurs" from better international enforcement of intellectual property rights (IPR) from the talks. This figure was drawn from a 1988 U.S. International Trade Commission (USITC) study showing $24 billion in losses to American business from IPR violations around the world. USTR increased the USITC results by 2.5 times to compensate for the possibility that the USITC survey did not adequately cover Fortune 500 firms and other large U.S. companies. But, the survey itself argues that most of the losses suffered by U.S. corporations through inadequate protection of U.S. IPRs affected the largest firms in the Fortune 500. Therefore, increasing the losses estimated by the USITC study does not appear to be justified.

The 1988 USITC study's estimates also should be adjusted to properly measure the impact on the U.S. trade balance. The study found that U.S. firms lost $10 billion due to infringements on product sales. But a large part of these sales occurred at the expense of foreign subsidiaries of U.S. firms, and therefore should not be included in estimates of how enforcing IPRs will improve the U.S. trade balance. Using a procedure

devised by the USITC itself, it is possible to estimate that the losses to U.S. firms due to such infringements were closer to $2.5 billion.

When added to other categories of losses included in the USITC study—lost exports of $6.2 billion, pirated imports of $1.8 billion, and lost licensing revenues of $3.1 billion—the total losses from intellectual property rights violations add up to approximately $14 billion.

A Uruguay Round agreement could net the United States about $14 billion if IPRs were enforced. But unless the agreement on IPRs is strongly enforced around the world—a result that experience warns not to expect—few of the anticipated gains will be realized. Further, if the United States, which has agreed to modify Section 337, does not replace it with something comparable, the net effect of new rules on IPRs could well be negative; the United States would almost certainly suffer substantial losses.

Increased U.S. Exports to Developing Countries

The administration's production of $200 billion in increased U.S. sales to developing nations by 1990 is another major overstatement. Greater sales to these nations on this order would require a resolution of the persistent debt crisis and the end of inflation in most developing countries. But these prospects remain highly remote, especially in light of the recent increases in the price of oil.

The Tokyo Round

The official U.S. approach to this trade negotiation is not unique to the Uruguay Round. In 1978-79, Washington predicted that extraordinary benefits would flow from the Tokyo Round. Very few materialized.

Tariff Reductions

In 1979, for example, the Special Trade Representative's (STR) office projected that U.S. consumers could save as much as $10.6 billion per year as a result of Tokyo Round tariff reductions. This large number rested on a key assumption: U.S. tariff reductions would be fully reflected in lower prices for imports. Likewise, cuts in tariffs would indirectly restrain price increases for domestically produced goods competing with imports

But tariff reductions are never fully reflected in consumer prices. World prices and exchange rates invariably adjust in response to tariff changes. Further, Tokyo Round tariff cuts that were phased in over eight years (which reduced U.S. average tariff rates from around 6.5 to 4.3 percent; worldwide rates were cut from 7.8 to 5.8 percent) would probably have had only marginal effects in any given year.

A more reasonable estimate of the benefits from Tokyo Round tariff cuts comes from the Michigan Model of World Production and Trade. Unlike the official predictions, this computer model takes into account exchange-rate and price fluctuations. It estimates a total net welfare benefit to the United States of $700 million (ESI has annualized this to $100 million per year over the seven-year period of incremental tariff reductions) as a result of the Tokyo Round.

Tariff Reductions

[Gains in billions]	*Annual gain*
Strauss/STR claim	$10.6
Michigan model of world production and trade	.01
Total	.7

Government Procurement

In 1979, STR estimated gains of $25 billion in access to other signatories' markets as a result of the Tokyo Round government procurement code. These estimates assumed complete enforcement of the code and general compliance by all signatories.

According to the General Accounting Office (GAO) in 1981 (the only year studied) the worldwide total of government purchases under the code was $8.4 billion (excluding U.S. government purchases) rather than $25 billion. Yet only $4 billion of that was actually competitive (open to foreign bidding), because of single-tendered contracts and government contracts that fell below the code's threshold of 150,000 SDRs. And of this $4 billion total, only $210 million was contracted to U.S. suppliers. Data on 1982 procurement indicated no significant change from 1981.

Government procurement

[In billions]

Strauss/STR claim:	
Annual market access	$25
Annual export increase	1.3-2.3
General Accounting Office, 1981 actual:	
Annual market access	4.0
Annual export increase	.21

The administration also predicted that 50,000 to 100,000 U.S. jobs would be created as a result of the government procurement code. However, using the Department of Labor methodology on which this estimate is based, and taking into account actual export activity (as estimated by GAO) a rough estimate of jobs created is 700-1,400.

ANNUAL EFFECTS OF A URUGUAY ROUND AGREEMENT

[Dollars in billions]

	Administration figures			ESI analysis
	Claim	With exclusions	Adjusted	
GDP effects (change in domestic output)				
Reduction in tariffs and nontariff measures	$125	$125	$18	+$5 to −$20
Trade balance effects (exports less imports)				
Reduction in tariffs and nontariff measures:				
All sectors	NA	−18	−3	−14
Agriculture	NA	3	1	1
Services	NA	NA	2.7	2.7
Manufacturing (implied)	NA	−21	−6.7	−17.7
Improved protection of intellectual property rights	60	60	14	0
Increased LDC imports of U.S. goods/services	20	20	0	0
Trade balance total	80	59	11	−14

Administration claim: Includes estimates presented by the administration in a New York Times op-ed piece, September 19, 1990.

Administration w/exclusions: Includes administration claim, plus trade balance effects of GDP scenario cited by administration, plus USDA agriculture estimate.

Administration adjusted: Includes previous categories. GDP effects converted to most likely Uruguay Round scenario as cited in Australian study. Revised intellectual property and LDC export estimates.

ESI analysis: A more likely scenario.

II. UNDERSTATED EFFECTS

GDP effects

The GDP effects of a Uruguay Round agreement could actually be negative. ESI estimates that a Uruguay Round agreement could result in a $14 billion deterioration in the U.S. trade balance for U.S. firms in the first year after its completion. It is difficult to estimate the precise impact of such a change in the U.S. trade balance without the use of an economic model. Following standard economic practice, however, it is reasonable to assume that the total impact of such changes on GDP will include some multiplier of their impact on trade as well as some efficiency gains. A multiplier of 1.5 is not unreasonable: Consequently, a $14 billion increase in our trade deficit would be reflected in a decrease of $21 billion in GDP. However, efficiency gains from increased export and import activity are likely to be positive. Thus ESI estimates that GDP effects could range from +$5 to −$20 billion.

Evidence for making this case can be found in some of the empirical studies that have recently been reviewed by David Richardson. One study of the formation of the European Community by Nicholas Owen uses an "imperfect competition" model that explicitly differentiates between large, profitable firms and smaller, marginal firms. Owen argues that trade liberalization brings significant consolidation of small, marginal firms. Substantial opening of the U.S. market would result in sizable adjustment costs, especially since weaker firms would no longer be able to compete with their foreign counterparts.

Other effects

The administration also overlooks several other components of a Uruguay Round agreement that could further widen the U.S. trade deficit. The USITC has estimated that the United States could suffer welfare losses of more than $3 billion a year if U.S. safeguards rules are abolished. In addition, estimates of the benefits created by Section 301 in promoting greater market access with U.S. trading partners should be counted in any Uruguay Round projection, since an agreement might restrict this law. For example, recent negotiations with Japan, Korea, Brazil, and Taiwan have added several billion dollars to the positive side of the trade ledger. Without Section 301, those benefits would be lost.

Another Uruguay Round scenario should also be considered. Many of the above estimated losses include only forsaken gains that have been achieved because of existing trade laws. If U.S. trade laws that deter predatory trade activity—particularly those covering dumping and subsidies—are altered along the lines requested by our trade partners, the results could be dramatic: increased targeting by foreign governments' industrial policies and dumping activity by foreign companies that reduces the domestic market shares of many U.S. firms. In several important manufacturing industries, including some of the more dynamic sectors, several corporations estimate that import penetration could result in a reduction of 5 to 10 percent in current output levels.

For example, many major U.S. industries—including computers, semiconductors, telecommunications, and fiber optics—are the objects of foreign targeting campaigns. The European Community has taken direct aim at U.S. world leadership in civil aviation with its heavily subsidized Airbus program. If a Uruguay Round agreement entails significant alteration of U.S. trade laws, the U.S. trade deficit could rise by $20 billion in the first year after the agreement is signed. If this figure is added to the $14 billion that ESI's analysis concludes could be added each year to the U.S. trade deficit by a Uruguay Round agreement, the total annual increase in this deficit would hit $34 billion—a rise of more than 33 percent.

III. EXAGGERATED CONSEQUENCES

A critique of the analysis prepared for the MTN Coalition

The Stern Group, a private consulting firm, has recently issued estimates of the economic effects of the Uruguay Round for the MTN Coalition, an alliance of American private-sector interests promoting the Uruguay Round. These numbers, like those of the administration, are vastly exaggerated.

The Stern Group has made three principal points in its recent study of trade:

The United States could add $300 billion to GNP due to trade expansion if the Uruguay Round succeeds.

The United States could lose these gains and another $100 billion if the Uruguay Round fails.

The United States is gaining jobs from trade, not losing them, since U.S. "merchandise exports accounted for 90 percent of GNP growth in the first seven months of 1990."

These estimates provide erroneous information for several reasons. The Stern Group's projection is based on the same Australian study used by the administration. The Stern Group argues, however, that the $125 billion in GNP gains should be increased to $300 billion because the Australian model excludes "dynamic" effects. The Group assumes that removing trade barriers worldwide will give America the same kinds of advantages that the Australian model predicts the European Community will gain from removing its own trade barriers. But since most of these gains would come from integrating financial services and increasing economies of scale and productivity, it is difficult to assume that they would be achieved in the United States (or Europe) unless the industrial composition of investment was shifted from low-value-added industries to high-value-added industries.

In addition, few economists would combine the results from a static model with results from a dynamic one. Each gives a different picture of how changes in trade laws might influence GNP and trade. It is not methodologically sound to combine these two different pictures of one economic situation.

Further, the Stern Group calculates that nearly $100 billion in U.S. GNP losses will result from a failure to liberalize trade in the Uruguay Round. But this figure was generated from mistakenly adding the results of two separate scenarios analyzed in the Australian study—one projecting losses if North America as a whole (the United States and Canada, in their study) retaliates against the creation of a protectionist "Fortress Europe" ($64 billion) and one projecting losses if North America as a whole does not retaliate ($40 billion).

Finally, at the present time, the U.S. trade balance remains nearly $100 billion in the red. Overall, we are losing, not gaining, jobs from trade. Recent increases in U.S. exports should contribute to some job growth but this contribution is not substantial.

The "Trade War" scenario

In addition to overstating the benefits of the Uruguay Round (and understating some possible effects), the administration considerably exaggerates the consequences of failure. This approach complicates negotiating tactics, and makes it more difficult to walk away from an agreement that is not in the U.S. interest.

According to the administration, a Uruguay Round failure is likely to heighten protectionism around the world. However, not even the construction of a "Fortress Europe", one possible result of a failure, need have significant negative impacts on the U.S. economy. According to the same Australian trade model cited for the USTR's estimates of gains from the Uruguay Round, greater protectionism in Europe would produce one of two possible outcomes:

Scenario I: Fortress Europe with no U.S. retaliation: A loss of $52 billion in European GDP; and a loss of $36 billion in U.S. GDP, but a $5.6 billion improvement in the U.S. trade balance, with imports declining by $24.7 billion and exports declining by $19.1 billion (this is derived by taking 90 percent of the original figures for total North American trade published by the Australian study).

Scenario II: Fortress Europe with U.S. retaliation: A loss of $132 billion in European GDP; a loss of $58 billion in U.S. GDP; and an $8-$9 billion improvement in the U.S. trade balance.

In no case would the United States lose $100 billion or more in GNP, as claimed in the Stern Group study; the same Australian study cited by the Stern Group shows that if North America (i.e., the United States and Canada) retaliates against a more protectionist Europe, the loss would be $64 billion in GDP, $58 billion of which would be lost by the United States.

All of these losses, moreover, are very likely overstated. They come from a static model that assumes major adjustments in the world's economies within the first year after any changes. This is quite unrealistic. Any major changes in complex industrial economies are likely to occur over a far longer period.

Actual and Projected U.S. Trade Numbers

In order to keep trade numbers in perspective, the following chart of leading current trade forecasts is attached.

[In billions of dollars]

	Actual			Forecast		
	1987	1988	1989	1990	1991	1992
Merchandise trade						
Exports NIPA basis:						
Actual	250.3	322.0	368.9			
DRI				396.4	427.2	466.6
WEFA				400.8	430.1	469.5
OECD				392.0	442.0	NA
Imports NIPA basis:						
Actual	409.8	449.0	480.2			
DRI				504.1	536.9	573.4
WEFA				498.8	522.1	563.6
OECD				499.0	547.0	NA
Trade balance NIPA basis:						
Actual	−159.5	−127.0	−111.3			
DRI				−102.4	−104.5	−100.8
WEFA				−98.1	−92.0	−94.1
OECD				−100.0	−97.0	NA

NIPA: National Income and Product Accounts.
DRI: Data Resources, Inc.
WEFA: WEFA group.
OECD: Organization for Economic Co-operation and Development.
Source: CRS, "Trade and Current Account Balances: Statistics", August 1990.

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[From the New York Times, Sept. 19, 1990]

TEXTILE BILL: UNFAIR AND UNNEEDED

(By Carla A. Hills)

WASHINGTON.—The only good thing to say about textile bill that passed the House yesterday is that the margin of approval fell short of the two-thirds needed to override an almost certain Presidential veto.

In all other respects, the bill is a disaster. It would expand three decades of protectionism, not only raising already artificially high U.S. apparel prices but also undermining global trade negotiations, now nearing completion in Geneva.

The bill, which would apply quotas to new items and make and existing protections permanent, would badly hurt consumers, particularly at lower income levels. During the next five years, textile and apparel protection would cost about $160 billion, taking every family of four about $2,600 a year.

What's more, the added protection is unnecessary. Economic indicators show that the U.S. textile and apparel industries are doing well.

Domestic shipments were up 7 percent and exports were up 27 percent in 1989. Factories are running at an all-time high; a higher rate, in fact, than the average for all U.S. manufacturers. Unemployment in the major texile producing states is generally lower than the national average.

Worst of all, the legislation violates our international commitments under the General Agreement on Tariffs and Trade, the Multi Fiber Arrangement and individual agreements with .38 of our trading partners.

Thus, at the very moment we are seeking to forge an historic alliance to confront Iraqi aggression, we are telling our allies that the U.S. is willing to ignore its international obligations. Indeed, the bill would violate recent agreements with Turkey and Egypt, two countries Indispensable to our international efforts in the gulf.

Passing the bill also sends precisely the wrong message at a time when we are trying to convince other nations to dismantle their trade barriers. Approving such protectionist legislation after four years of negotiating to open world markets will be seen as the height of hypocrisy—in essence saying to the world "Do as we say, not as we do."

In Geneva, where negotiators are in the final stages of the Uruguay Round of talks on a new G.A.T.T. agreement, we are urging all nations to open their markets so that trade can expand. But on the verge of completing this agreement to open others' doors, we are closing our own.

If the bill were to become law, the Uruguay Round would collapse, with staggering economic costs. We would lose the $125 billion in increased U.S. output we expect to gain in the first year alone from greater access to foreign markets. The $60 billion that U.S. entrepreneurs lose annually from the theft and counterfeiting of their ideas would continue to grow out of control.

New markets would be lost for U.S. services firms, which export $90 billion annually and create 9-out-of-10 new jobs. We would lose the opportunity to get an agreement opening world markets to investment, which helps generate more than $240 billion annually, or two-thirds of total U.S. exports. And we would lose the chance to bring the developing world into the global trading system, which could increase U.S. exports by as much as 50 percent, or $200 billion, between now and the year 2000.

Beyond the economic tragedy of a failed Uruguay Round, we would squander a vital, proven framework of international collaboration. The collapse of the round would lead inevitably to increased protections and political instability.

Failure to come to an agreement also could destabilize poorer nations, including the emerging democracies. Without an agreement, these nations will continue to be drained by the costs of protections now imposed on them—costs that total two-and-a-half times the aid they receive.

How tragic it would be if the reform governments seeking to replace command economies with market-oriented systems were to fail because of restrictions erected by the world's trading nations, and were then replaced by authoritarian regimes.

The Urguay Round presents 100 nations with the extraordinary opportunity to forge a new trading system that could trigger an economic renassiance. The 1990 textile bill risks all that. Those who are selling it to the American people are trying to pull the wool over their eyes.●

FIRST PRESBYTERIAN CHURCH CHANCEL CHOIR

● Mr. FOWLER. Mr. President, the downfall of the Iron Curtain is the greatest opportunity of this century, for America and Czechoslovakia. A new world order is emerging as the cold war is ending, but there are decades of isolation, misinformation, and animosity that must be overcome.

I have nothing but admiration for the people of Czechoslovakia, who never gave up the struggle for freedom, suffering oppression, invasion, and imprisonment. The country's new leaders literally came out of jail to overthrow communism. Their continuing Prague Spring serves as an inspiration to those of us who did not have to earn our freedom.

Still, I believe there is much Americans can teach our friends in Eastern Europe about the responsibilities of freedom. We need ambassadors to cement the ties between our two countries. I am proud that Atlanta's First Presbyterian Church is taking part in this historic effort.

Czechoslovakia's government has invited the Chancel Choir of the First Presbyterian Church to Prague to join in the celebration of the first Christmas free of the yoke of Communism. The President of Czechoslovakia will be present for the performance, which will be telecast all over that country, and the choir will then sing mass at the Royal Cathedral.

The Chancel Choir is no stranger to international performances. Last June, the choir participated in the Salzburg Music Festival in Salzburg, Austria, where its performances were inspired by a conductor who is the successor of Mozart's father.

I am honored to offer this tribute to the Chancel Choir. The choir members will represent our Nation and my home State of Georgia favorably in an international show of goodwill and hope for global freedom.●

TRIBUTE TO JAY F. ROCHLIN

● Mr. DURENBERGER. Mr. President, I rise today to acknowledge the end of an era of exemplary public service by an outstanding American, for today Jay F. Rochlin will retire as executive director of the President's Committee on Employment of People With Disabilities.

A common dictionary definition of the word "service" is "to lend assistance or advantage to another in which the end result is a benefit." For those who have worked for years in serving Americans with disabilities, and for those whom have benefitted from these efforts, the name of Jay F. Rochlin epitomizes the word service. For years, Jay has worked tirelessly for the rights of individuals with disabilities in the social and professional forum.

Jay's career of public service began decades ago. As an AT&T executive of 31 years, he was responsible for developing the Affirmative Action Program for Individuals With Disabilities and Disabled and Vietnam Veterans and the policies for its successful implementation of AT&T and its more than 1 million employees.

Active in numerous professional groups, Rochlin serves as a member of the board of trustees of the American Foundation for the Blind and is a trustee of the Marriot Foundation for People With Disabilities. He also serves on the technical advisory committee of Senator BOB DOLE's Foundation and on national advisory committees to the rehabilitation research and training centers at several universities. Jay has also received numerous distinguished honors including the Distinguished Service Award from the President's Commission and the Humanitarian of the Year Award from the Association for the Advancement of the Mentally Handicapped.

Jay initially came to the President's committee as an executive assistant to the chairman in January 1985. He was appointed as executive director of the Commission in November 1987. As the executive director, Jay oversaw the activities of the 600 member committee and was responsible for planning, directing, and coordinating the implementation of a wide variety of national programs to stimulate and enhance employment and training opportunities for people with disabilities. He personally directed a 38 member staff and managed a $2.8 million budget.

During his 3-year term with the President's Commission, Jay was in-

strumental in developing and executing various disability legislation. As you know, the Americans With Disabilities Act [ADA] was signed into law by President Bush on July 26, 1990. This was truly a historic day for the 43 million Americans with disabilities, a day when we took the final step to ensure basic civil rights protection for individuals with disabilities. However, this historic day would have been long in coming if it wasn't for the leadership, wisdom, and guidance of Jay Rochlin.

"Dignity, equality, independence through employment" is the mission statement of the President's Commission. For 3 years Jay, has personally toiled to ensure that all Americans with disabilities are afforded these opportunities. If one were to ask Jay's colleagues to summarize their impressions of his service with the Commission, the consensus statement would more than likely be that, he was one of the finest civil servants that they have had the privilege to work for, who continually demanded excellence from his staff in serving the public.

In this day and age, it is not often that we are blessed with individuals whom are willing to commit their lives in order to benefit the lives of others. On this day, I, along with Jay's colleagues and those that he has served so well for so long, thank him for his years of public service, and wish him well in his future endeavors.●

JOHN MIXON, NASF PRESIDENT

● Mr. FOWLER. Mr. President, I rise today to commend my fellow Georgian, John W. Mixon, who, in recognition of his distinguished lifetime career in forestry, has recently been named president of the National Association of State Foresters [NASF].

As president of the NASF, Mixon will direct the 70-year-old association in its mission to promote cooperation in forestry matters between States, and with a variety of Federal agencies and private conservational and environmental organizations.

John's enthusiasm for forestry began when he worked to attain a bachelor of science from the University of Georgia, School of Forest Resources. He has served with the Georgia Forestry Commission since the early sixties. His performance and dedication were recognized in 1983 when he was appointed State forester. John also served on NASF's executive committee for 3 years and has been an officer of the Southern Group of State Foresters.

As president of NASF, Mixon will oversee the directors of State forestry agencies in each State and territory. He will work with State foresters to help manage State forest lands. NASF also provides management assistance to nonindustrial private forest landowners.

I want to take this opportunity to praise John Mixon for his strong commitment to the forest industry. His work and devotion has helped to make timber the No. 1 industry in the State of Georgia. He has created jobs and economic opportunities for many Georgians in his career. At the same time, he has been a noted leader in the protection and preservation of our natural resources.

When we consider the natural treasures with which this Nation has been blessed, the forest lands that stretch from one end of this country to the other have to head the list. John Mixon has always worked to sustain that heritage, for all the benefits it brings us. I look forward to continuing to work with him in his continued efforts as president of the National Association of State Foresters.●

INDIAN HEALTH MEASURES ATTACHED TO H.R. 3703

● Mr. McCAIN. Mr. President, last evening the Senate considered and adopted H.R. 3703, legislation to authorize the Rumsey Indian Rancheria. In the process of moving this legislation, we amended it to include S. 1270 as it had been adopted in the House earlier this week.

S. 1270 is not new to the Senate, as it was adopted by the Senate last year. As it passed last year, however, S. 1270 was designed solely to provide Indian tribes with grants to design and implement mental health delivery systems tailored principally to the native healing of their peoples. The version we attached to H.R. 3703, however, is much expanded.

Since the Senate's passage of S. 1270, the Senate Select Committee on Indian Affairs and the House Interior Committee have been working together to address a number of additional critical Indian health concerns. They include building an adequate mental health infrastructure, addressing urban health needs, and the make-up of health care facilities and programs. Proposals in all of these areas, which were developed as separate legislation and considered by the two Committees of Jurisdiction, were incorporated into S. 1270, as the House passed it this past Monday.

I would like to briefly touch on the first two areas, mental health infrastructure and urban health, and go into the facilities issue in some detail.

MENTAL HEALTH

Following Senate consideration of S. 1270, which I authored, I was pleased to join Senate INOUYE in his effort to focus on how to build a sufficient infrastructure through the existing mental health program. There is a great need for this, as current service availability pales in comparison to the level of need. While I focused my effort on assisting in the process of more appropriately tailoring the services to the needs of the individual cultural and healing practices of the various tribes and Indian communities, the concept embodied in S. 1270 as passed by the Senate, I shared the view of the distinguished chairman of the Senate Select Committee on Indian Affairs that we just plain need to be doing more.

There has been much concern on the part of the Select Committee on Indian Affairs and the House Interior Committee about the high level of need for greater access to mental health services in Indian country. I am confident that the increased number of mental health workers that this legislation will provide will go a long way toward more effectively meeting the basic level of need. However, it is my hope that as we learn from the demonstrations what things work better than our current approach—and where flexibility might be warranted in the current system, we will incorporate these needed changes in even the basic infrastructure of the system.

URBAN HEALTH

There are also great needs in the area of urban health. I was pleased to join with my good friend, the chairman of the Senate Select Committee on Indian Affairs, in his effort to bolster urban Indians' access to health care.

Mr. President, it is a well-known fact that a significant number of native Americans do not live on the reservations—they dwell in our urban communities. The reasons for this are numerous. But, the fact is that many of those dwelling in these urban communities have insufficient access to health care.

The proposal contained in the legislation we are considering here on the floor today would provide urban Indians with increased access to care. Specifically, it would provide support to the urban Indian health clinics located in some of our larger urban communities. In Arizona, we are fortunate to have two of these excellent centers. In addition, this proposal will ensure coordination between Indian health care providers and other providers in the local community, to ensure that Indian people have the same access to care as others living in that community.

INNOVATIVE FACILITIES AND PROGRESS DEMONSTRATION

I would now like to focus for a few minutes on the last addition to S. 1270—a proposal to allow tribes to demonstrate their ideas about how health care needs might be met more effectively and appropriately. This proposal, embodied in S. 2850, was sponsored by every member of the Select Committee on Indian Affairs

and was reported by a unanimous vote from the committee on October 3.

I have spoken often this year of my deep concern for the fact that our Nation's first citizens have the lowest health status of any population group in America, and of my commitment to see that their health status continues to be improved. This legislation, which has been more than a year in the making, represents one of the critical steps in that direction.

Certainly, the Indian Health Service, under the able guidance of individuals such as Dr. Rhoades and his predecessor, Dr. Johnson, has had much success in dealing with the threat that many common diseases and maladies pose to the lives of native Americans. I am sure that with the limited resources available, it is a constant battle to make further inroads into improving the health status of native Americans. But there is always more that can be done. And, with regard to resources, I hope we can do something about their declining level.

As we all know, health care generally is in a process of rapid change. Many services, which used to be delivered only in an inpatient hospital, are now being delivered in an outpatient setting, within the doctors' office, and even at home.

Correspondingly, there is great change in the types of facilities that are being built and the health programs that are being implemented to address the changes in health delivery, as well as the ever-increasing financial constraints due to the rapidly escalating cost of our Nation's health care delivery system. In most areas of the health care delivery system, it is a question of how those resources might best be utilized.

Reality dictates that the days of a full-blown large inpatient hospital in every community—yes, even Indian communities—are probably behind us. But, this does not in turn mean that a community should be forced to forgo access to health care services—including inpatient beds. This is true for rural America, and it is true for Indian country.

Over the past couple of years, I have been watching with interest and concern as recommendations have come forward to close or dramatically alter existing Indian health care facilities in favor of consolidating services or replacing an existing facility with one offering a scaled-down level of services.

Many in the native American community feel that such action may lead to a further deterioration in access to care, the end result being a decline in health status rather than an improvement. I have to say that in many of these cases I agree. On further exploration of this issue, I found a wealth of ideas among those in the native American community with regard to how resources might be used differently so that rather than decreasing access to care, it would be enhanced.

Concepts ranging from outpatient clinics with overnight-stay beds—to treat conditions such as foot complications from diabetes or hydration—to wellness centers have been supported by the tribes. Some tribes wish to have the opportunity to join forces with non-Indian communities and develop facilities that serve both Indians and non-Indians, or to be able to utilize non-IHS funds for the construction of IHS facilities. While none of this activity should be coerced, at the same time, this type of innovative cooperation should not be stifled. But, that is exactly what current policies are doing. S. 2850 was developed with the intent of reversing this trend.

When I took this issue to Dr. Rhoades, director of the Indian Health Service, about 1 year ago for the purpose of exploring how we might be able to work together to make the system more flexible, I was heartened to find that he had been thinking this was needed as well. It has been a pleasure working with Dr. Rhoades and his staff over the past year in exploring this issue, and I look forward to continuing our work.

On March 22, 1990, the committee held a hearing focusing on these issues. Specifically, the hearing focused on two questions related to Indian health care facilities and programs—primarily those in rural areas. First, whether there ought to be more flexibility in the type of health facilities that are constructed and programs that are implemented in Indian country. And, second, whether the infusion of non-IHS dollars into the construction of health care facilities would improve the existing health care delivery system.

Perhaps no clearer evidence of Indian country's interest in this issue exists than the fact that nearly three times as many tribes wanted to testify as the committee could accommodate. Witness after witness came forward, telling of innovative ideas for what they could do if the current system were to be made more flexible.

I, for one, do not believe the fact that tribes have innovative ideas is anything new. We found the same innovation present with regard to mental health—which led the Senate Select Committee on Indian Affairs, and the Senate, to adopt legislation to fund a demonstration project that will give tribes the keys for change in that area.

This type of empowerment, giving the keys of change to the very population to be served, is very consistent with the whole concept of self-determination. While it may seem to some like a very radical approach, I am convinced that it is the only way to go. Indian and native communities know best how to meet the challenges confronting them. And, I believe that it is just as appropriate in the area of health facilities and health programs as it is with respect to mental health.

With that in mind, I worked with many in Indian country to develop legislation to set up, on a small scale, a pilot program that would provide some flexibility to allow tribes to demonstrate some of their ideas about how their health-care needs might be met more effectively and/or appropriately. That proposal is contained in the legislation before us today.

This proposal was originally embodied in S. 2850 as introduced by Senators INOUYE, BURNS, CONRAD, DASCHLE, and myself. Prior to its adoption in the committee, every member of the committee had added his name as a cosponsor.

Specifically, section III of the legislation before us will establish a program that would empower native Americans with the opportunity to demonstrate, by providing some flexibility in the current system, whether Indian health programs can be structured more effectively.

This involves the creation of an alternative priority system that would permit the construction of facilities with the combination of IHS and non-IHS funds. This alternative system will permit the merging of programs that have traditionally been kept separate, or involve the construction of facilities that fall between a full-blown inpatient hospital and an outpatient clinic.

This demonstration priority system will not in any way threaten the status of those tribes who are in the existing priority system. In addition, tribes should rest assured that no movement in the direction of permitting the construction of facilities with money that are wholly or partially non-IHS means that we are going to eliminate or decrease the level of Federal commitment to facilities construction. In point of fact, I believe if there is to be any change in Federal appropriations for health facilities construction it surely ought to be an increase. After all, there is a phenomenal amount of documented need.

Not only will this demonstration project make services available in areas where they are not currently available, it will permit us to learn what changes ought to be made in the way in which the Indian Health Service currently approaches health programs and facilities construction.

I believe that this demonstration project holds much promise because we are putting the keys for change into the hands of those who ought to have them—the very people who are affected either positively or negatively by whatever health care service delivery system exists.

Before I conclude, I would just like to offer a special note of appreciation to my good friend, the chairman of the Senate Select Committee on Indian Affairs, Senator INOUYE, for his continued leadership in the area of improving the health status of Indian people and thank him for his support of and assistance with this proposal. In addition, I would like to thank both Congressman UDALL and his staff for all of the hard work they have put in on this bill. Mr. President, S. 1270—as amended by the House—has the strong support of many throughout Indian country, and I am pleased the Senate supported the move to attach this to H.R. 3703. These programs will go a long way in improving the health status of native Americans by supporting the passage of this important legislation.●

CONSERVATION TITLE OF S. 2830

● Mr. KASTEN. Mr. President, I rise to make some remarks with respect to the conservation title of the Food, Agriculture, Trade and Conservation Act of 1990.

I was sorry to have to vote against final passage of the farm bill, due to what I considered serious deficiencies in the dairy title. Had the conservation title of the bill come before the Senate as free-standing legislation, I would have voted for it with enthusiasm.

The 1990 conservation title will advance the wise stewardship of the precious water, wetlands, and wildlife resources on America's farmland. It adds to the great achievement of the conservation title of the 1985 Food Security Act, which began the job of reconciling the needs of agriculture and the conservation of resources which are so vital to farmers and all other Americans.

Improvements to swampbuster will provide better wetlands conservation and more even-handed treatment to farmers. Changing the point of violation to the act of conversion of a wetland, implementing a graduated penalty for first time violators who restore or mitigate for wetlands losses, allowing mitigation in the minimal effects exemption process.

Creation of a million-acre Wetlands Reserve Program of permanent and 30-year conservation easements will give farmers additional options and will do more to reach President Bush's goal of no net loss of wetlands than any other legislation enacted by this Congress. Because farmers are permitted to make limited economic use of wetlands placed in conservation easements, consistent with long term protection and enhancement of the wetlands, farmers will find it an attractive alternative to traditional production on wetlands.

The conference report has also built in incentives for permanent easements, and set priorities to target important migratory bird and wildlife habitats. An Environmental Easement Program has been established to work with willing landowners to protect through permanent easements environmentally sensitive areas such as riparian corridors and critical habitat for threatened or endangered species.

State technical committees have been established to tap the significant soil, water, wetlands, and wildlife expertise of our State agencies to assist the Secretary in these fields of growing interest and responsibility.

One of the most progressive provisions of the credit title would give the farmer additional options to manage indebtedness by exchanging conservation easements on sensitive environmental areas for debt forgiveness. "Debt-for-nature" has been effective abroad and it is high time we gave the concept a chance to work at home to help keep farmers on the farm and protect our precious natural resources.

Provisions have been included to have a balanced wetlands protection program on land in the Farmers Home Administration inventory and the Secretary has been prohibited from approving loans for activities that destroy wetlands. Authority has been given to the Secretary to assist project sponsors under the Watershed Protection and Flood Prevention Act to acquire wetlands or floodplain conservation easements to perpetuate, restore and enhance the natural capabilities of wetlands and floodplains to retain flood water and to provide for water quality and wildlife habitat improvements.

The 1985 farm bill's conservation title marked a turning point in how we treat the land in this country. The Conservation Reserve Program, and the sodbuster and conservation compliance provisions, signaled a new commitment to treat the protection of our soil resources as more than a mere afterthought to the major commodity programs.

Last July 27 I noted the unworkable nature of an all or nothing penalty for all violations of conservation compliance, and offered an amendment to correct a deficiency of the bill as reported by the Senate Agriculture Committee. My amendment established a reduced first time penalty for some violations of conservation compliance—specifically, those committed in good faith and without intent to violate the law. I emphasized, incidentally, my view that the authority to apply this reduced penalty should not be used indiscriminately. Farmers in clear and willful violation of the law should still lose program benefits, first offense or not.

I strongly believe that without some degree of flexibility on first-time violations conservation compliance will prove unworkable. I am therefore glad to see that the conference report has essentially kept the Kasten amendment language on the reduced penalty. My objective in offering the amendment was to make easier a partnership between farmers and the USDA in making conservation compliance work. I believe this partnership can best be achieved if we identify potentially unreasonable or confusing provisions of law and eliminate or fix them before they can act to discredit the cause of responsible soil conservation policy in this country.

With that thought in mind I am a little concerned that the technical exemptions section of the Kasten amendment came out of conference in a form that may cause some problems down the road. That is because the original grounds for determining that a failure actively to apply a conservation plan would not count as a violation—that is, the failure was technical and minor in nature and had a minimal impact on the erosion control purposes of the plan—has been broadened to include violations determined by USDA to be due to "circumstances beyond the control of the producer," as well as variances granted by USDA to the farmer "for the purpose of handling a specific problem."

Mr. President, I have no specific problem with either addition by itself. On a program such as conservation compliance, however, the old saying "the devil is in the details" applies. The problem we have, to be blunt, is that in many areas of the country having the worst soil erosion problems the whole idea of conservation compliance is extremely unpopular, both among farmers and among many USDA personnel. I am anxious to avoid a situation where people seeking to evade compliance find in the statute a variety of excuses to do this—and even more anxious to avoid a situation where conservation compliance is enforced more vigorously in some States than in other States which may have worse soil erosion problems. Such situations, if allowed to develop, will gradually undermine farmer support for conservation compliance.

In short, there is potential for confusion and abuse in the additions made in conference to this section of the Kasten amendment. Just defining what the phrase "handling a specific problem" means will take months.

In addition to the reduced penalty for first-time violators, the Kasten amendment contained provisions for a comprehensive evaluation of the effect of all provisions for a comprehensive evaluation of the effect of all provisions of the conservation title, as well as annual monitoring and reports on the implementation and enforcement of these provisions. I am pleased that

that conference retained a requirement for a comprehensive evaluation, to be completed by the middle of 1993. Truly, to enact programs like swampbuster and sodbuster into law without ever requiring evaluations of whether or not they are working would be extremely irresponsible.

It is not much better than irresponsible to have USDA implement a program like conservation compliance without regular monitoring of its enforcement. As I have already noted, the quality and consistency of its enforcement is precisely the thing we ought to be worried about.

To be sure, there is nothing in the conference report prohibiting USDA from monitoring and providing Congress with annual reports on the implementation of conservation compliance. I would hope USDA would do this, in its own interests if for no other reason. Two and half years—the time for problems in the implementation of compliance to development and cause controversy that everyone wishes to avoid.

Finally, the Kasten amendment as passed by the Senate required evaluation of swampbuster and other wetlands protection provisions of the conservation title. It required USDA to do this evaluation in cooperation with the Fish and Wildlife Service, for the obvious reason that Fish and Wildilfe shares responsiblity for implementing the wetlands protection measures.

The conference report has unwisely left Fish and Wildlife out of the evaluation process—a mistake, I hasten to add, that USDA can and should correct on its own. It is important that all agencies involved in implementing these important laws be working on the same side. The numerous and often well-substantiated allegations of nonenforcement of swampbuster that have been made in the last few years suggest that at some point in the near future this issue will wind up in the courts.

No one has an interest in forcing a Federal judge to decide between environmental groups and the Fish and Wildlife Service on one side and the Soil Conservation Service on the other as to whether wetlands are being damaged in violation of Federal law—least of all SCS. In my judgement, the best way to minimize the risk of such a confrontation is to have Fish and Wildlife as fully involved in evaluation swampbuster as it is in enforcing it. As with the annual monitoring issue, this seems to be only common sense.

With the few reservations I have mentioned, I can say sincerely that the 1990 conservation title is building on the strong foundation laid down by its predecessor in 1985. All who worked on this legislation, in particular the members and staff of the Senate Agriculture Committee, deserve thanks for the time and effort they have spent in the cause of enhancing the environment so important to all of rural America in a way that farmers can live with.

It is now up to all of us to work in partnership with farmers, so that the great promise of this legislation is fulfilled. The environmental priorities of this farm bill are after all not merely aimed at the general goal of making the earth a nicer place to live. The soil, water, and wetland resources in rural America must be preserved in large measure to enable us to maintain the production capacity of American agriculture and a way of life that all Americans, farmers and nonfarmers alike, have an interest in preserving.

STATEMENT OF SENATOR CHRISTOPHER DODD ON ALBANIA

● Mr. DODD. Mr. President, it has become almost commonplace to declare that the dramatic events of the last 2 or 3 years in Central and Eastern Europe and the Soviet Union have thoroughly transformed the global political and military landscape. Beyond the historic event of the German unification an even larger unification is taking place, the reunification of Europe itself.

In those countries which for a long time were curtained into the Soviet Empire a sense of belonging to Europe always survived in spite of the force-fed official propaganda about the new Socialist man and other nonsensical platitudes. This cultural Europeanism has been somewhat stronger in Central Europe—Poland, Czechoslovakia, Hungary, and Western Yugoslavia—and weaker in the Balkans—Rumania, Bulgaria, Albania. Still, no one doubts that the latter countries also belong to Europe, and under the new regional realities their only chance to grow into a modern, productive, free, and democratic society is through integration into a unified Europe.

Today, I take this opportunity to say a few words about the prospects of Albania to join this process. It is certainly the one East European country that will have to travel the longest road into the new Europe. The Albanian people have suffered under a totalitarian, isolationist, xenophobic police state for over four decades. Nowhere were Communist oppression and intolerance stronger, police control more pervasive, not even in Ceausescu's Rumania.

The virtual revolution that swept across Central and Eastern Europe uprooting the established Communist leaderships from reformists to Stalinists has left its mark on Albania as well. The violence in Rumania and the fate of the Ceausescus could not fail to send a powerful message to Albania's dictators. Since the beginning of the year a whole series of cautious but steady reforms has been launched by President Ramiz Alia both in the field of human rights and in the economic life of the country. The leadership seems to be particularly apprehensive about the prospect of a single European market with Albania left out.

The mass occupation of Tirana's Western embassies in July led to a one-time exodus of thousands of Albanians. Unlike in the former East Germany, the regime succeeded in regaining control over the situation. Still, this sudden mass outburst of popular dissatisfaction must have impressed on the leadership that it has a limited time to avert revolutionary violence by evolutionary reforms. Travel restrictions have been eased in both directions and the country was recently visited by Members of the U.S. Congress and U.N. Secretary General Perez de Cuellar. It is significant that Albania, the only European country that has not joined the Helsinki Final Act and its follow-up process, has now taken up an observer role at the Vienna meeting.

I want to emphasize that much remains to be done before the Albanian situation starts to approach even such relatively slowly reforming countries as Rumania or Bulgaria. The enacted electoral reforms, for instance, fall far short of multiparty democracy. The leadership obviously wants reforms on its own terms, wants to remain firmly in control, wherever Albania will go.

Mr. President, I see an American national interest in making the circle of nations belonging to the Helsinki process complete. I think we have to do our share in trying to pull Albania out of the nightmare of decades-long Communist tyranny. Sooner or later the Albanian people have to assume their place among the free and democratic nations of Europe. The time is near when we have to seriously consider renewing diplomatic relations with Albania. This does not mean that we have to shower the Albanian leadership with all kinds of favors and benefits. Diplomatic relations do not convey much more than acknowledgment of a government's existence and its control over a given territory. I fully support keeping pressure on the Albanian leadership and eliciting significant human rights reforms before agreeing to Albania's accession to the Helsinki agreement, for instance.

At the same time, it is clear that the Albanian leadership has decided to break the country's isolation. In order for that to happen we, and our European friends also have to take some steps. Diplomatic relations would allow us to engage the Albanian leadership in a vigorous dialog and exchanges and would assist the people of Albania to get on the path toward determining their own future within a free, democratic, and integrated Europe.

PLIGHT OF JEWISH COMMUNITY IN SYRIA

● Mr. LIEBERMAN. Mr. President, on October 24, 1990, I joined 62 of my colleagues in sending a letter to President George Bush on behalf of the Jewish community in Syria.

The plight of this persecuted group of Jews is an issue of great importance to our Nation. Currently, there are thousands of Jews living in Damascus, Aleppo, and Qamishili, who continue to be denied their fundamental political and civil rights to emigrate.

We hope that the President will underscore the points raised in our letter with the appropriate Syrian Government officials in the near future. The successful resolution of this longstanding human rights issue will be a major victory for those of us that have been involved with this fight over the years.

Mr. President, I ask that our letter to President Bush to be printed in the RECORD.

The letter follows:

U.S. SENATE,
Washington, DC, October 24, 1990.

Hon. GEORGE BUSH,
President of the United States, The White House, Washington, DC.

DEAR MR. PRESIDENT: The plight of the Jewish community in Syria is an issue of great concern to us. There are now 4,000 Jews living in Damascus, Aleppo, and Qamishili. They are but a small fragment of the community that had lived in Syria since antiquity. Thirty thousand people from this once flourishing community now live in New York City, descendants of immigrants who left Syria in the first decades of this century.

The Jews of Syria live in a climate of fear and insecurity. They have freedom to conduct their daily affairs, but they are still denied fundamental civil and human rights. Most importantly, they are deprived of the right to emigrate.

In order for a Jew to travel, he must leave a large sum of money and members of his immediate family as insurance for his return. There are many divided families desperately waiting to be reunited with their relatives in the United States.

Jews suspected of having traveled "illegally" or even of planning to do so have been arrested, interrogated, and subjected to lengthy imprisonment. There are currently two Jewish men held in a Syrian prison. Eli and Salim Swed were arrested in November and December 1987, respectively, and were held incommunicado for almost two years. Salim Swed, in his fifties and father of seven, and Eli Swed, in his thirties, are brothers. Finally, in June 1989, the Syrian government acknowledged that Eli and Salim Swed were alive, but it was not until September 1989 that any family member was permitted to see them. The Swed brothers have never been granted legal counsel and have never been legally tried.

The health of Eli and Salim Swed has deteriorated. They are both apparently in poor physical and psychological health as a result of the beatings and other torture inflicted upon them during their imprisonment. Eli Swed is now suffering from tuberculosis, which he contracted while being held for many months in a dank underground cell.

On November 8, 1989, the U.S. State Department issued a press statement stating that the Syrian government has agreed to "look positively" on the reunification of divided families, on the granting of visas for young single women who have few prospects of marriage in the Jewish community, and on promptly bringing the Swed brothers case to trial.

Due to the dedicated work of our Ambassador to Damascus, Edward Djerijian, our State Department's Near East Bureau, Senators, Congressmen, and human rights organizations, there are approximately four women coming out of Syria a month. Two families have been reunited. In addition, the Swed brothers have been moved to above ground cells and are being permitted regular visits from their families for the first time in 2½ years.

We ask that you, Mr. President, for humanitarian reasons, intercede with President Hafez al-Assad and seek the right to emigrate for these 4,000 people who yearn to be united with their community of Eli and Salim Swed and ask for their prompt release as they have already served long prison terms.

Just as past administrations have made the Jews of Syria a high priority, we hope that this issue will continue to be a matter of great concern to your adminisration as well. We believe that the recent efforts by President Assad to help bring about the release of two of the American hostages long held in Lebanon are an encouraging sign of Syria's interest in improving relations with the United States and demonstrate a concern for human freedom. We, therefore, believe that it is appropriate for the United States to make known to Syrian authorities the important role that human rights in the Jewish community especially the right to emigrate, will play in determining its future policy toward Syria. Syria's position regarding emigration of its Jewish community will be a clear indicator to us of their willingness to follow the accepted rules of civilized nations.

Mr. President, as you have stated, "the circle of freedom is widening." We hope and pray that it will soon encompass Syria and its Jewish community.

Your action at this time in history may well prove decisive.

Sincerely,

Joseph I. Lieberman, Dick Lugar, Wyche Fowler, Jr., John Warner, John Danforth, Malcom Wallop, Timothy E. Wirth, Thad Cochran, Dan Coats, Dave Durenberger, Mitch McConnell, John McCain, Don Riegle, Joe Biden, Bob Packwood, Kit Bond, Claiborne Pell, Ted Kennedy, Carl Levin, Orin Hatch, Fritz Hollings, Howard M. Metzenbaum, Chris Dodd, Nancy Landon Kassebaum, Jesse Helms, Paul Simon, Bob Graham, Alan Cranston, John D. Rockefeller, IV, Daniel K. Akaka, Chuck Grassley, Barbara A. Mikulski, John F. Kerry, Conrad Burns, Pete V. Domenici, Kent Conrad, Paul Sarbanes, Daniel K. Inouye, Herb Kohl, Larry Pressler, Jim Exon, Arlen Specter, Alan J. Dixon, Rudy Boschwitz, Connie Mack, Brook Adams, Bill Bradley, William S. Cohen, Pete Wilson, Mark O. Hatfield, John Glenn, Dennis DeConcini, Jim McClure, Alfonse D'Amato, John Breaux, Quentin N. Burdick, Max Baucus, Tom Harkin, Frank R. Lautenberg, Harry Reid, Gordon J. Humphrey, Slade Gorton, J. Bennett Johnston, Dale Bumpers, Daniel Patrick Moynihan.●

ICBM MODERNIZATION AND ARMS CONTROL

● Mr. GORE. Mr. President, the issue of whether and how to modernize our ICBM force has been fought long and hard. There have been times when reasoned discourse was hard to find. One place where it could always be found, however, was around the breakfast tables of the Institute for Foreign Policy Analysis. Over a period of years, the Institute has hosted meetings at which Members and staff of both Houses might come to hear thoughtful presentations on this set of issues, including its complex setting within the larger constellation of issues having to do with strategic forces generally, and with arms control.

I would like at this time, to express my personal appreciation for the tenacity and quality of the institute's effort, and in particular, the work of Mr. Peter Huessy, who has been the core of the program. I will also submit for the RECORD, a summary of presentations made by invited speakers before the institute's meetings in the course of the year. They should make valuable reading for those who follow this issue within the Congress and in the general public.

At this time, I am informed that we still do not have clearance from General Scowcroft to include a summary of his contributions. Hopefully, that will be available eventually. When that happens, I will correct the RECORD by including him.

SEEKING GREATER STABILITY UNDER START

Mr. President, 5 years ago I spoke to the Senate about the ongoing debate on strategic forces modernization and arms control. I noted that the deployment of the central component of the Scowcroft Commission report—the SICBM mobile missile—would require the Soviets to expend on the order of 10 warheads for every destroyed small ICBM. This would make the SICBM survivable even under circumstances of having to face a Soviet strategic force unconstrained except by the SALT II limits. As I noted on November 7, 1985, on this floor:

> If arms control could bring about smaller Soviet ICBM forces, so much the better—since at some point, they would absolutely lack the means to attack Midgetman alone, not to speak of other parts of the U.S. nuclear deterrent.

Over the past 6 years, one individual in particular has been more responsible than anyone else in keeping this central issue before Members of Congress and our defense staff. Peter Huessy, the senior defense consultant with the Institute for Foreign Policy Analysis, has planned and hosted over 100 congressional breakfast seminars on the subject of strategic modernization and arms control. Many of my Senate colleagues have participated in

these events, and many have been the featured speakers.

In the body alone, Senators SAM NUNN, JIM EXON, JOHN WARNER, BILL COHEN, MALCOLM WALLOP, PETER WILSON, and myself have spoken—with SASC Chairman NUNN having been the concluding speaker for each of the past 6 years. From the House, the chairman and the ranking minority member of the HASC, have both been featured speakers, as have HASC members DAVE MCCURDY JON KYL, NICK MAVROULES, and House Appropriations member NORM DICKS. Mr. ASPIN, and Mr. DICKINSON have spoken a combined 12 times to this group.

The former Chief of Staff of the U.S. Air Force, and our Commander in Chief of the Strategic Air Command, Generals Larry Welch and John Chain, respectively, have spoken nearly a dozen times between the two of them. Ambassador Max Kampelman and Paul Nitze, Gen. Ed Rowny, former National Security Advisor Brzezinski, former Secretary of State Al Haig, the former military assistant to the Secretary of Defense Gen. Gordon Fornell, the former Secretary of Defense Harold Brown, the current National Security Advisor Brent Scowcroft, the current CFE negotiator James Woolsey, all have participated, with Gen. Brent Scowcroft and James Woolsey participating each and every year between 1985 and 1990.

What is remarkable is that each year, even as world events change, the message we hear from these defense experts is remarkably unchanged. The needs of deterrence, of crisis stability, have not changed. A mobile survivable ICBM force is needed by the United States, particularly the Soviets have moved rapidly in that direction.

Only a few short weeks ago, Ambassador Nitze argued that:

> The political future is uncertain, and therefore the threats to security are also uncertain. We should thus be prepared for further and perhaps, negative, surprises. A continuing U.S. defense take is to provide a reliable deterrent to nuclear attack until the long range strategic threat from the U.S.S.R. has ceased to exist.

In his remarks to an IFPA breakfast seminar, Ambassador Nitze continued:

> The deployment of a mobile ICBM, such as Midgetman, would largely eliminate the pressures on a U.S. President to promptly or quickly use nuclear weapons in a crisis.

He warned that:

> The most likely form of nuclear attack on the United States would be a bolt out of the blue, and because of that, it was imperative that the United States do two things: negotiate the elimination of those Soviet systems threatening such strike; and build a survivable strategic force posture, including mobile ICBM's especially single RV mobile systems such as the Midgetman.

As for the MX rail garrison, Ambassador Nitze supported its deployment, but only if complemented by a SICBM deployment as well, with the latter—the Midgetman—the most urgent. Nitze concluded:

> Soviet heavy ICBM's make a bolt out of the blue attack possible, and will poison the atmosphere between the United States and the U.S.S.R. until they are removed.

Ambassador Nitze's remarks are echoed by every single other speaker. Whatever changes we now see in the Soviet Union and Eastern Europe, there has been, in the words of our esteemed colleague Senator INOUYE, "no stand down in Soviet strategic readiness, no diminution in the size, variety or potency of their atomic arsenal." Senator INOUYE continued on this Senate floor on June 13:

> The Soviets have already deployed about 250 of these mobile ICBMs, a force which is much more survivable and flexible than their current silo based strategic missiles. On the other hand, the U.S. currently has no comparable system in the field. As the Soviets deploy mobile ICBM's, we continue to debate mobile ICBM's. They deploy, we debate.

Mr. President, I would like to place in the RECORD at this point, summaries of the remarks of the Speakers at IFPA's breakfast seminar series this year. As I have noted, they urge the United States to continue to pursue the Scowcroft Commission agenda, particularly a mobile ICBM force. While some favor MX rail garrison, and others favor the SICBM, many see the merits and justification for a mixed force of ICBM's in a survivable basing mode, just as the 1983 Scowcroft Commission recommended. To the extent that we successfully resolve this problem, we will achieve strategic stability in the future. Without mobile ICBM's, there is serious doubt whether a START tready would add to strategic stability. As the chairman of the SASC, Mr. NUNN, noted on June 7, the failure of the U.S. to deploy a survivable ICBM force, coupled with continued Soviet deployments of MIRV'd ICBM's, raises serious questions about the value of the current START process.

In closing, let me commend Peter Huessy for his valued work in this area, for his nearly decade long effort to forge a lasting strategic consensus on this most troublesome of strategic issues. I highly recommend this material to my colleagues.

Mr. President, I ask that the material earlier referred be printed in the RECORD.

The material follows:

ICBM MODERNIZATION AND ARMS CONTROL

A Breakfast Series Sponsored by the Institute for Foreign Policy Analysis

AMBASSADOR NITZE—THE SOVIET STRATEGIC THREAT: U.S. STRATEGY IN RESPONSE

(Capitol Hill Club, Mar. 8, 1990)

Ambassador Nitze stated that continued political and social ferment in the USSR make continued US efforts to maintain deterence imperative. The Ambassador also noted that "we cannot be sure into whose hands" the 30,000 nuclear weapons in the USSR will fall. As a result, the US must realize that "no other country is apt to relieve the United States of the burden of providing for an adequate deterrent."

A critical arms control need is for the US and Soviet Union to eliminate all heavy land based ICBM Warheads, particularly the Soviet SS-18s, including the new mod 5 SS-18. These systems are "most destabilizing" said Amb. Nitze, and are the cause of much instability, not unlike the Soviet deployment of SS-20s in the late 1970s and early 1980s. It is the task of arms contol to eliminate such systems as the SS18s, he said. If it is agreed that these are to be eliminated we should then negotiate with the Soviets for the radical mutual elimination of the remaining MIRVed land based ballistic missiles and the mutual reduction of SLBM and ALCM warheads to lower limits as well.

Having spent most of the past two months in Europe, Amb. Nitze described the changes there as "fundamental and irreversible." But he warned of a "serious cloud on the horizon. I know of no country which has been under the full control of a Soviet-type Communist party for a sufficiently extended period of time for the party to root out all the elements which could build a free society, that has then created the institutions of a free society and a functioning market economy."

The political future is therefore uncertain, "and therefore the threats to security" are also uncertain. We should thus be prepared for "further and perhaps, negative, surprises." He continued: "A continuing US defense task is to provide a reliable deterrent to nuclear attack until the long range strategic threat from the USSR has ceased to exist." He called for the elimination of ground based, heavy MIRVed systems. The former arms control negotiator for the US said that the US R&D effort should concentrate on developing and deploying a single RV ground based missile system, such as Midgetman, in the most cost-effective mode possible, as well as a strategic bomber.

The Ambassador concurred that the deployment of a mobile ICBM, such as Midgetman would largely eliminate the pressures on a US President to promptly or quickly use nuclear weapons in a crisis. He warned that the most likely form of nuclear attack on the US would be a "bolt out of the blue," and because of that, it was imperative that the US do two things: (1) negotiate the elimination of those Soviet systems threatening such a strike; and (2) build a survivable strategic force posture, including mobile ICBMs, especially single RV mobile systems such as the Midgetman. As for the MXRG, the Ambassador would support its deployment but only if complemented by a SICBM deployment as well, with the latter the most urgent. Nitze concluded: "Soviet heavy ICBMs make a bolt-out-of-the-blue attack possible and will poison the atmosphere between the US and the USSR until they are removed."

SENATOR AL GORE—THE TRANSITION FROM SALT TO START. SEEKING STABILITY THROUGH MOBILE ICBMS: THE ROLE OF THE SICBM

(Capitol Hill Club, Mar. 22, 1990)

Senator Gore, member of the Senate Committee on Armed Services, underscored the need to be sure that the U.S. is postured to take advantage of the opportunity to secure additional deep cuts in strategic weapons once START I is completed. Senator Gore noted that numerous studies had

recently concluded that the deployment of the SICBM would "basically cancel the Soviet Union's current advantages based on throw-weight." Furthermore, the deployment of the SICBM would shift the strategic balance from one which invites a Soviet first strike to one in which such a strike would leave the attacker at a disadvantage. As the U.S. seeks deeper cuts in strategic weapons in the future, "survivability and day to day alert become more important," according to one study cited by the Senator.

The Tennessee Senator reiterated his support for the idea of a phased deployment of the MXRG and the SICBM, contained in the President's defense budget. He warned, however, that the Bush Administration "had failed to take the one step which might have tipped the balance of opinion decisively in favor of supporting the package: Specifically, it had failed to link the MX rail mobile to a central arms control concept, by offering the Soviets the option of doing away first with rail mobile MIRVed ICBMs, as prelude to a longer process of de-MIRVing." Without such a linkage, the Senator thought it might be impossible to sustain the ICBM modernization package as was done last year.

Asked whether the prospects of trading away the rail garrison based MX would be reason to hold back funding for the system, Senator Gore noted that the program should be funded at some significant level in order for the U.S. to be taken seriously at the arms control negotiations. Unilaterally terminating systems is not a sound negotiating strategy.

As for Midgetman, Senator Gore explained in some detail the strategic benefits we would lose if the Midgetman failed to make the cut. "Given fifteen minutes running time, Midgetman can be sufficiently dispersed on existing military installations, to require enormous Soviet expenditures of warheads for a successful attack. Basically, the Soviets would have to be ready to commit their present force of heavy ICBMs for this purpose. Given twenty minutes the price is much higher—on the order of the entire Soviet ballistic missile inventory both land and sea based." Midgetman also provides the U.S. with "maximum flexibility" and "stability."

Finally, the Senator addressed the issue of the cost of the ICBM modernization program. Over the past five years, including the current budget proposals, ICBM modernization has averaged less than seven tenths of one percent (.007) of the defense budget, or about $2.1 billion. Over the next four years, ICBM modernization will, on average, fall to about $1.6 billion a year, a decline of 25%. Overall, ICBM modernization will remain at less than six tenths of one percent (.006) of a declining defense budget.

GEN. JOHN CHAIN—THE MILITARY AND STRATEGIC RATIONALE FOR ICBMS: ENHANCED SURVIVABILITY WITH MXRG AND SICBM

(Capitol Hill Club, Mar. 27, 1990)

General Chain called for maintaining a strong and diverse U.S. deterrence posture in the face of continued Soviet strategic modernization. He also emphasized the need to maintain a capability for deterrence and crisis stability in an arms control constrained environment. He called for the deployment of both the MXRG and SICBM, seeing both systems as adding to stability during the years ahead. He noted that both systems are affordable, in that they account for only 0.6% of the DoD budget, and all strategic modernization costs only 1.9% of the overall Federal Budget request for FY91. To complete both programs, said General Chain, and additional expenditure of $4.4 billion for RGMX and $25.9 billion for Midgetman/SICBM would be needed.

He stated that deploying these systems in the STAT environment would lead to added stability in relations between the U.S. and U.S.S.R. He explained that deterrence must be maintained during both periods of peace and during a crisis. U.S. strategic forces must also, he said, be credibly perceived as capable, by a potential adversary, in any hypothetical conflict situation in order to deter. During peacetime, General Chain noted that having ICBMs only in silos can maintain deterrence, because no Soviet planner can count on a U.S. President riding out an attack. However, the General underscored the need for a mobile ICBM force during periods of crisis. The mobile MX and SICBM are "defensive systems" and severely complicate Soviet targeting and attack plans. In this way, they add considerably to crisis stability, moving the U.S. away from a posture that could push us into the quick or prompt use of nuclear weapons. "During times of crisis, by having mobile ICBMs, we could decrease the Soviet planners perceived probability of success." General Chain further explained that making ICBMs mobile—in contrast to putting additional bombers or submarines on alert or to sea, respectively—does not add to the U.S. offensive capability. Being non-threatening, it adds to deterrence and crisis stability, and is not "destabilizing."

For both the MXRG and the SICBM, the U.S. SAC Commander explained that they add to stability during a time of crisis; being survivable, they both add to deterrence during general peacetime; and it would be difficult for a Soviet planner to allocate weapons to attack the SICBM with any degree of confidence because of its wide dispersal area. If money were no object, General Chain would prefer to have only single RV mobile ICBMs under a future arms control regime. But that would be too expensive. The least expensive and quickest way to go would be the Peacekeeper in Rail Garrison.

General Chain also explained that "We believe the Soviets would not launch all their weapons in the first salvo and therefore silos are a prime target." With the excellent accuracy of these modernized ICBMs, General Chain noted that they are needed "both to catch remaining Soviet weapons in the silos and to preclude those which have been fired from being reloaded and used again. The Soviets have additional weapons which could go into those silos." While fully agreeing that a nuclear war could not be won and should not be fought, Chain explained that having the capability to counter Soviet strategic weapons enhanced the deterrence continuum.

In conclusion, General Chain warned against going to a strategic Diad, something "I don't believe in. I believe that the Triad has served our country extremely well, and I strongly support its continuance." The Triad has great flexibility, and survivability. Its synergism complicates Soviet offensive plans and ensures that they cannot attack any one leg of the Triad with impunity.

CONGRESSMAN WILLIAM DICKINSON—THE RUSH TO DISARM: MAINTAINING STRATEGIC DETERRENCE IN A CHANGING ERA

(Capitol Hill Club, Mar. 29, 1990)

Congressman Bill Dickinson, ranking minority member of the House Armed Services Committee, said that the continued effectiveness of the U.S. strategic deterrent would be determined solely by the extent to which the United States modernizes its strategic forces. Soviet strategic modernization continues apace, with their forces reaching 100 percent modernized levels following implementation of a START treaty. The Congressman cited testimony from CIA Director Webster and SecDef Cheney that the Soviet Union is pursuing an across the board strategic modernization effort. Dickinson concluded that while it was true that the Warsaw Pact conventional threat had diminished, the strategic threat has not.

The Alabama Republican also discussed the budget environment in which strategic modernization should be judged. He noted that strategic forces account for only about 10-12 percent of the DoD budget each year. Money can be saved by cutting strategic programs—but the savings are minimal relative to the capabilities that would be lost. The senior House Armed Service Committee member warned that in his view, because of the pressures in Congress to cut the defense budget, strategic modernization programs would have no sanctuary from cuts—which in light of the Soviet strategic threat would be a prescription for disaster.

Dickinson noted that he supported the President's ICBM modernization program last year—the new basing mode for the MX and the Midgetman or SICBM missile program. At this point in FY 1991, the Congressman noted his continued support for the package—but he warned that MXRG appeared vulnerable, and with it, the SICBM. He was concerned that the House of Representatives would—mistakenly in his view—fail to approve any ICBM modernization funds this year.

As for suggestions that the MXRG could be equitably traded for the Soviet deployed SS-24 rail mobile system, the Republican Congressman did not view such a course of action as sound or an enhancement of the U.S. deterrent. First, the threat which MX RG is addressed to is the deployment of SS-18s. These are fixed, accurate, and heavy missiles. We could eliminate MXRG—but this would leave us with vulnerable silos and an undiminished SS-18 threat.

The Congressman concluded with a plea for Presidential involvement, primarily because of the importance of ICBM mobility and other strategic modernization efforts to a robust nuclear triad in the post-START world. Without such involvement, Congress will probably not support either the short or long term strategic modernization efforts now before them.

GEN. LARRY D. WELCH—THE ROLE OF STRATEGIC MODERNIZATION IN START AND BEYOND: THE NATURE OF MAINTAINING DETERRENCE

(Capitol Hill Club, April 4, 1990)

Continued controversy over the U.S. strategic modernization effort threatens to undermine the ability of the United States to maintain deterrence and secure stabilizing arms control agreements now and in the future. Contrary to conventional wisdom, U.S. strategic forces have been constrained to fit within the framework of the START agreement. The fact that a number of modernization efforts can continue along with the implementation of a START agreement is based on the long-held view that it remains necessary to secure under START a regime where nuclear forces remain effective, can deter conflict and promote additional stability during a crisis.

Unfortunately, decisions that Congress may make on strategic weapons may not be based on the merits of these strategic

forces. While up-front costs of strategic forces are considerable, they have a lifetime of some 30-years, a fact that conflicts with the time frame in which Congress deals with defense budgets—on a year-to-year basis. Euphoria about the diminution of the Soviet and Warsaw Pact conventional threat in Europe should not distract us from the continued task of maintaining nuclear deterrence. Soviet strategic modernization efforts continue apace, with the deployment of mobile SS-24 and SS-25 missiles, improvements in their force of SS-18s, and advancements in bomber and submarine modernization. Under START, the Soviets can have well over 7,000 modernized, highly effective warheads. U.S. modernized forces under START will be considerably below where they could have been under a non-START or even SALT II environment.

START provides a number of key advantages. It reduces—while not eliminating—destabilizing elements of strategic forces, particularly 154 Soviet SS-18 missiles carrying nearly 1500 first strike weapons. Again, contrary to some recent press reports, START does reduce ballistic missile warheads on the Soviet side by 50%—from a current level of about 10,000 down to 4,900. U.S. strategic ballistic missile warheads will be reduced from some 7,500 to the 4,900 START level.

U.S. bomber modernization efforts, particularly the B-2, give us a significant retaliatory capability, but with no first strike capability, and provides a force of bombers that will be very flexible and which will provide the U.S. with added deterrent capability. This is in line with the objective of securing under START a shift away from fast flying ballistic missiles to slower flying, stabilizing bomber weapons.

Having structured our strategic forces—including ICBM modernization—in harmony with START objectives, some now express surprise that we continue to insist we need to complete the strategic modernization effort called for by the President precisely because a START agreement is imminent.

As for ICBMs, I agree with the comments of your previous speakers—that the principal threat to stability remains the Soviet SS-18 force, as Ambassador Nitze noted; that funding for the RG MX is critical if we are going to have a credible negotiating position on limiting or eliminating land based MIRVed systems, as Senator Gore has said; and finally, that flushing the RG MX in times of crisis is not destabilizing, in that this would not increase our offensive capability against the Soviets, a point made by SAC Commander General Chain.

We need a mobile ICBM force for the long term—a robust, survivable, stabilizing land-based leg of the Triad. The Triad remains vital to assured deterrence. We will need some combination of mobile ICBMs and single warhead silo based missiles to assure a continuing robust leg of the Triad. We cannot predict future technological breakthroughs in air defense or anti-submarine warfare capabilities.

The threat of a bolt-out-of-the-blue attack appears now to be viewed on Capitol Hill as only a remote possibility. I applaud that enlightened perception. However, it is unlikely because we have daily alert forces that make it unlikely.

But we also need deterrent forces that work in deepest crisis, and there we have real concerns. Our capability to deter the use of force during a crisis cannot be in doubt. We need to raise the stakes in a crisis. The rail garrison MX deployment does that. As for the SICBM, it is a strategic targeteer's dream. Its single RV is most efficient, it is stabilizing, and it is instantaneously survivable. But because of its cost, many former supporters of the program now oppose it. I continue to believe we need a single RV ballistic missile, however START I or even START II turn out. As to whether we need to make it mobile, as Senator Nunn noted last week, we have to wait and see on that issue until first deployed. We need the option of going with a single RV ICBM, in any case, that we could make mobile later on if needed.

In short, START requires that we move forward with strategic modernization. Mobile ICBMs are more stabilizing than silo-based MIRVs, and we ought to have them in our START force structure. We need overall strategic modernization, and we need three robust legs of the Triad, including bombers and mobile ICBMs. The current strategic modernization effort does not conflict with a goal of further warhead reductions under a START II regime. We can deploy fewer than 192 warheads on each Trident and still maintain a robust force of 20 boats or so. We will have something less than 200 new bombers by the year 2000, all of which can fit under almost any future START regime. And a deployment of some single warhead missiles are all compatible with further warhead reductions.

CONGRESSMAN NICK MAVROULES—MIDGETMAN AND START

(Capitol Hill Club, Apr. 19, 1990)

Congressman Mavroules underscored the emerging political fact of life that the political environment, more than any other single factor, would determine the outcome of the President's budget request on strategic modernization. And that environment has been dramatically changed since last year, particularly as a result of the political changes in Eastern Europe, in Panama and Nicaragua, and the resulting change in the military threat facing the United States.

The DoD budget asks for a 20% increase in strategic spending, just as we are moving toward a START treaty reducing nuclear forces by as much as 50%. During the 1980s, we modernized our strategic deterrent—with the B1, Tridents, cruse missiles for the B52, 50 MX missiles and $14 billion for SDI. Another round of modernization of our strategic forces is not justified. With the end of the cold war comes the end of the need to aggressively modernize our strategic nuclear arsenal. And as for Soviet modernization efforts, marginally enhanced Soviet nuclear capability is not going to alter the political or military balance.

Specifically, there is almost a feverish intensity to kill weapons systems on the floor of the House. The focal point of this year's debate is the B2 bomber. However, ICBMs will be debated intensely. And here, the MXRG may be terminated on the floor of the House. In fact, I will draft an amendment with Les AuCoin eliminating all funding for the MXRG. The only crisis warranting a response such as putting the MX out on rails is the possibility of a conventional conflict in Europe. That is just not there anymore.

As for the Midgetman or SICBM, the substantive arguments for the missile still make eminent sense. If START II in fact imposes militarily significant warhead constraints. Midgetman becomes more valuable. A successful attack against the mobile SICBM would require an expenditure of Soviet warheads which would exceed their entire arsenal, making such an attack prohibitive. As we move to lower warhead ceilings, we raise the premium attached to survivability and mobility. In addition, we should continue to seek a ban on mobile MIRVes, as well as the eventual elimination of the 154 remaining Soviet SS-18s.

CONGRESSMAN NORM DICKS—THE ROAD TO BETTER DETERRENCE: START AND ENHANCED SURVIVABILITY OF U.S. STRATEGIC FORCES

(Capitol Hill Club, May 1, 1990)

Congressman Norm Dicks made the following points regarding strategic modernization:

For most members of Congress, MXRG and SICBM are simply another dollar competitor for other defense projects.

MXRG lacks a compelling justification because its vulnerability is greater in Garrison than in silos under the circumstances of a bolt out of the blue attack.

Congressional action aimed at killing any or all strategic systems is premature because START has not been fully resolved.

Gramm-Rudman may make it difficult to sustain the view that we need dollars in the budget for strategic systems in order to have negotiating leverage with the Soviets.

In the House of Representatives for FY91 BA will be cut $33 billion from the CBO baseline; for the five year period, cuts will be 25% in real terms. He would prefer $289-$290 in BA, rather than $283.

SICBM is important as we move to further reductions in nuclear warheads—we need to provide additional disincentives for an attack on our nuclear forces, a point made last week by Gen. Scowcroft.

We should develop Midgetman and deploy it initially in silos—this makes the most sense, but again it depends on arms control.

Congress will need to know how the 4900 warheads are going to be distributed under START—it may not be a bad idea to think of producing a Trident boat every other year.

Force deployment decisions made today must also take into account the possibility of START II.

SICBM program should have some HML dollars in order to keep that option available. The real problem in the House is MXRG. Another problem is retaliation. When MXRG is cut the SICBM program is cut. The rationale behind SICBM is intellectually sound, but the political problem is a tough one.

The Brookings study which details the number of Soviet RVs available after a Soviet attack on the United States is a persuasive case for Midgetman. This report concludes that the Soviet Union would have a larger number of RVs after an attack than the United States (in the absence of ICBM mobility). The Administration should use this kind of argument.

We should fund SDI between $2.5-$3.0 billion, probably $3.0 billion. An ALPS system makes sense.

Is DeMIRVing an alternative to Midgetman? If submarines are included, this would be prohibitively expensive.

Congress should focus on the conventional area. Real cuts can be made in conjunction with a CFE agreement. Unfortunately, the press focuses on the exciting strategic issues thus diverting attention from where the real money is spent. I am worried Congress may go pell mell and slash the budget to very dangerous levels.

The Soviet strategic threat is real. Instability exists. Perhaps we are seeing the decline of a great power, however they have a formidable nuclear arsenal. Therefore, strategic modernization is necessary. The

START treaty is not signed—we still face a need to maintain deterrence. Budget cuts should focus on conventional forces.

CONGRESSMAN JON KYL—STRATEGIC OFFENSE AND DEFENSE: WHAT IS A STABLE TRANSITION?

(Capitol Hill Club, May 8, 1990)

Congrssman John Kyl, member of the House Armed Services Committee, warned that Soviet strategic modernization efforts continue apace, with 140 new Soviet strategic missiles deployed over the past year compared to 12 for the United States. He said that U.S. intelligence agencies are unanimous—the SS-18 mod 5 missile is the most powerful ballistic missile ever developed, complimented by the deployment of nearly 250 SS-24 and SS-25 Soviet mobile missiles, while the U.S. has a possible deployment of 50 MX missiles in a rail garrison mode.

According to the Arizona Congressman, it is incomprehensible to him why the U.S. does not move as quickly as possible to deploy the MXRG. For a modest investment of an additional $4 billion, the U.S. could make 500 of its key warheads invulnerable from all but a surprise attack. In addition the MXRG would insure that in a crisis, the President could add to strategic stability by being able to move U.S. strategic assets out of harms way. And most importantly, any kind of trade of the SS-24 and MXRG would require effective U.S. bargaining leverage—a fact of life proven by the INF negotiating history and deployment of U.S. GLCMs and Pershing missiles in Europe.

The HASC member acknowledged that great changes had occurred in Eastern Europe. But he strongly criticized those who leap from such events to the position that U.S. strategic modernization was now unnecessary. While the changes in Europe may inform us a little about Soviet intentions, it is Soviet actions that really serve to underline Soviet intentions. And here, and everyone agrees, Soviet strategic modernization efforts have continued apace—and have not diminished but have increased since Gorbachev took office in 1985.

The need for strategic defense will increase as arms reductions move us to lower levels of nuclear weapons. Our ability to retaliate must of course remain intact. And one part of that is a commitment to mobile ICBMs such as the MXRG and in the longer term the SICBM should we agree to begin the process of de-MIRVing. But retaliatory capability must be complemented by defense, a defense which becomes even more effective as we secure lower levels of nuclear offensive systems. In addition, defense would seve as a hedge against Soviet cheating, as well as help deal with emerging threats from the third world ballistic missile deployments. The technology to field a defense is at hand. A first phase SDI program would cost $55 billion, with $40 billion required for Brilliant Pebbles—or about $7 billion a year for six years, a cost comparable to other legs of the strategic triad.

AMBASSADOR KAMPELMAN—NEGOTIATING NUCLEAR WEAPONS LIMITS WITH THE SOVIETS: REALITIES OF THE POST BERLIN WALL ERA

(Capitol Hill Club, May 10, 1990)

The Soviets are very serious arms negotiators; they are patient and they understand the need for deployment deeds to back-up bargaining words. The Soviets' initial response to various U.S. negotiating proposals are just that—an initial response that in no way is necessarily indicative of the final outcome. In my previous 4 years as START negotiator, I was convinced that SDI was not an obstacle to the eventual agreement on START issues, although a very large number in Congress thought otherwise. My views appear to have been confirmed, in that even the testing of SDI and its development do not now appear to be obstacles to the signing of a START agreement.

While the changes in the Soviet Union and Eastern Europe have been unusual and unanticipated, they are not permanent yet and U.S. defense and negotiating strategy aimed toward both the completion of a START agreement and maintenance of deterrence should be guided by our past principles of assuring a sound and robust deterrent and a strong negotiating position.

We have a chance to make great strides in arms control. It is not in our interest to delay. We must, however, resist the temptation to take unilateral action which undermines our deterrent or harms our negotiating strategy. We must be very careful how we act. Our defense posture—to the extent that it remains strong—was and has been indispensable to the securing of both the INF and START treaties, respectively. Many assume that the changes we have seen are permanent—they are not. We are simply not there yet, although en route. That's why NATO remains indispensable for our strength.

There is interest in trading away the MXRG for the Soviet SS-24. The Soviets now have a strong lead over the U.S. in the deployment of mobile ICBM forces. The question is whether they can be persuaded to reduce this advantage, especially with respect to powerful, first strike type weapons such as the SS-24, but also the SS-18s that will remain under START. A trade which has been envisioned by a number of people will not come about in START I. In START II, yes, that is a possibility. We should go ahead and build the MXRG. We would be significantly weakening our negotiating position should we fail to move forward on this system. While it is desirable to trade these systems, the Soviets will take a significant amount of time to think through the idea.

We need as much bargaining leverage as possible. We should not unilaterally give this leverage away. It is not in our interest to do so. As for the SICBM, I support the President's budget request and believe that if such a trade as envisioned takes place, the Midgetman may well serve as a satisfactory post START I deterrent ICBM. As an arms negotiator, I would want both the MXRG and the SICBM, but I appreciate the budgetary problems that militate against such Congressional action.

AMBASSADOR RON LEHMAN—START AND BEYOND: CAN WE AFFORD COMPLACENCY?

(Capitol Hill Club, May 24, 1990)

ACDA Director Ron Lehman passionately defended the forthcoming START agreement, arguing that the U.S. did not make major concessions to the Soviets, arguing that in fact it was the Soviets that have made major moves in the direction of U.S. arms control positions.

Lehman also concurred completely with the remarks of Ambassador Kampelman, giving his support to the deployment of the MXRG and the continued funding of the small ICBM or Midgetman. He said while he supports the idea of a ban on mobile MIRVed ICBMs, he is not sure what there is in such a deal for the Soviets, and thus would the Soviets agree to such a deal? He noted that while the Soviets have spoken about agreeing in principle with such an idea, it is always conditional on the U.S. accepting a ban on MIRVed SLBMs, for example.

Lehman also strongly criticized members of Congress who have been advocating termination of the MXRG, SICBM or the B2. He questioned the logic that seeks the termination of strategic systems just at a time when serious negotiations are being concluded on strategic weapons. He noted that under SALT II, the Soviets would be allowed to have somewhere near 17,000 ballistic missile warheads, while the number under START has been reduced to 4900. Similarly, overall Soviet nuclear charges would climb to the 40,000+ level under SALT II, while the overall numbers will drop to between 8,000-9,000 under START.

He further warned that START could be in jeopardy if the MXRG and SICBM are not deployed. He said it would be a dangerous and highly destabilizing position for the U.S. to be in if the Soviets had their ICBMs in mobile sanctuaries, while the U.S. remained with ICBMs in silos. Crisis stability would not be served but undermined because of this. He severely criticized those in Congress that have long advocated crisis stability and survivability, but now advocate the termination of those very programs—the MXRG and the SICBM—which provide that survivability.

He explained that the U.S. position was 800 mobile ICBM warheads to be allowed under START. The Soviet position is 1200 ICBM warheads. Lehman noted that providing 800 mobile RVs solely through the Midgetman program would be prohibitively expensive. However, a force mix of 500 MX warheads and 300 SICBM warheads would be doable.

SENATOR WILLIAM COHEN—MIDGETMAN: INSURING SURVIVAL IN A NEW DETERRENT FRAMEWORK

(Capitol Hill Club, June 5, 1990)

The failure of the United States to deploy a survivable ICBM force will mean continued reliance on a strategic policy of "prompt launch" of our ICBM forces in a crisis or confrontation with the Soviet Union. While ICBMs in silos may appear to deter the Soviets on a day to day basis, should the U.S. and Soviet Union confront each other over the Korean peninsula, over the Middle East, or elsewhere, crisis stability will be at risk as well as U.S. security interests.

There are real practical implications should the U.S. fail to deploy the SICBM, or Midgetman missile, in a hard mobile launcher basing mode, which would provide the U.S. with day to day enduring survivability. A president faced with a decision to use our ICBM force or lose them to a Soviet attack, is going to have minutes, not hours, in which to reach such a decision. Faced with this prospect, a U.S. President might very well have to abandon U.S. security objectives, particularly since Soviet modernization efforts continue to place increasing numbes of Soviet ICBM assets in a mobile mode, in a sanctuary out of harms way. A SICBM deployment gives a President flexibility, and additional time with which to negotiate and make decisions.

The proposal to move forward with the MXRG deployment is not adequate to provide the U.S. the survivability it needs. A mobile ICBM should be truly mobile, on a day to day basis and be able to withstand a surprise attack. While Sen. Cohen does not favor the MXRG, he said the SASC might decide to provide funding at some level in

order to seek an effective trade of all land based mobile MIRVs in a START II Treaty. Current deployment plans for the MXRG should be discontinued in any event. Should funds be authorized for continued development of MXRG, the spending profile should reflect the pace of START II and further developments with respect to a complete ban on mobile MIRVed systems.

As we move toward a START I and II treaty, it would also appear prudent to examine U.S. targeting policy, to examine our requirements for deterrence, and how this affects the U.S. strategic force structure, and its impact on future arms control agreements.

SENATOR SAM NUNN—THE TWIN RACES TO DISARM AND NEGOTIATE: WHAT PATH TOWARD PRUDENCE AND ENHANCED STRATEGIC STABILITY?

(Capitol Hill Club, June 7, 1990)

In April, President Bush, belatedly, but nevertheless in my opinion a most welcome move, proposed to Gorbachev that we would ban all mobile MIRVed missiles, all mobile land-based MIRVed missiles.

In June, President Bush and Gorbachev agreed in a joint statement—which is rather vague, but on this point it was at least encouraging—agreed to begin in START II to have a serious discussion on deMIRVing missile systems. So I would say the world has changed radically since last October.

In the speeches I made this spring, I tried to take the approach of starting with the threat, looking at the threat, both in conventional terms, particularly in Central Europe and also looking at the strategic threat as it continues. Then I made a presentation on what I felt this change in strategy should be, and gave several different elements that I felt were the principal elements of any new strategy, and I followed that with a presentation of how I would go about it personally, not trying to speak for anyone else, the implementation of that strategy putting numbers to it and coming out with my estimate of what our defense plan should be for this year and the next five years. Without going into all that let me just address the question on strategic forces.

First, I would say that the robust strategic nuclear threat continues. It has not diminished in very significant measures. The Soviet modernization programs continue again in almost all its aspects. Those who say that there have been no major changes in the strategic modernization program or in the Soviet strategic nuclear posture are correct.

The accidental type attack, or an unauthorized attack. I want to carefully word this because I don't think we are in danger of that overnight, but I have always believed that out of all three scenarios that this was the least likely. Some type of accidental war or some type of unauthorized attack by a renegade member of the military on one side or the other.

I think in the United States situation there has been no appreciable change in that—I think we have no more danger from that starting from our side. From the Soviet side, though, with some 30,000 nuclear weapons all over that huge empire and with the ethnic instability, so forth, and the Republics' moves towards independence—all of those things play together to indicate to me that without trying to name a scale, that kind of danger has not gone down and has probably gone up. That gets into the subject of what we do about it, we can't do a whole lot about that in the Soviet Union.

I have always throught, and still think that one of the most effective arms control agreements we could ever enter into with the Soviet Union would be a simple, one-page letter, signed by both of our leaders saying that we are going to undertake, unilaterally, comprehensive fail safe accidental reviews of our own nuclear arsenals from A to Z and that we are going to have people outside the nuclear chain of command conducting that A to Z review. I would like to see that happen; I think there has always been a case for it and I think the case is stronger than it has been.

I believe the Soviets prize their strategic nuclear forces more than any other and they will go a long way and make a great deal of sacrifice to continue those forces, particularly in a period of time where they are reducing the conventional forces.

Now, what about the programmatic fallout of all that. In terms of U.S. strategy in nuclear forces, I think our strategy needs to continue to be to maintain deterrence, but at lower levels of weapons, and with the goal of having a much higher degree of stability. I think that higher degree of stability and coupled with lower weapons means that we ought to move away from MIRVs and move towards single warhead missiles on land. I wish that the President's proposal had come sooner—if it had come sooner, I think we would have a much better chance of having that kind of initial move of moving away from mobile MIRVs incorporated in START I.

I am increasingly concerned about the fact that we are getting a START I agreement that does not move appreciably towards more stability. I believe that we are going to have to measure START I as to what it really accomplishes and not what it could have accomplished, but the debate is going to continue to grow over what we could have accomplished in START I had we been more patient, had we been willing to wait a little longer, or if we had made some stability proposals at a much earlier date. Now I think that is a legitimate debate.

A second major part of our strategy needs to be joining with our allies to do everything we can to reduce proliferation of both missiles and missile technology and nuclear technology as well as chemical and biological weapons. I think the urgency of that is growing and I think it is more important, and I think that we need to do everything we can do to foster that with our allies and also with the Soviet Union and with China to the extent possible.

I support Secretary Cheney's decision on the B2. I think he has made the right decision in slowing down the program, cutting down the number overall. I believe that we are going to have to completely test that program to make sure that Stealth technology, in particular, works as planned, and I hope we are going to have a completed B2 program, but it is going to be a very, very hard uphill fight given the tremendous negative publicity for the B2.

As I view it, we are going to have to slow down the MX due to the excessive concurrency. I believe that we are going to have to find a way to reduce the funding of the MX—I hope we can keep that program alive, because I think we need it for leverage, I think we need it for options in the event we do not get a successful or a prompt START II agreement. The key here is to keep the option, but not spend the $5 billion. That is going to be very difficult putting it in a nutshell.

On the small ICBM, I hope we can continue that. The request this year is for R&D money, I hope we can fully fund that R&D money. I believe that as we reduce numbers the case for a single warhead missile becomes stronger. I believe also that we can really view the Hard Mobile Launcher as an option and not necessarily as a concrete requirement. I believe we need to develop the capability for the HML in the event we do not get the kind of arms control outcomes or strategic changes that we have in mind or hope for, but I do not believe that we have to be wedded to the concept of putting those missiles in hard mobile launchers. If we can achieve a deMIRVed regime, a move towards deMIRVing in arms control, and if we can get both countries to move towards single warhead missiles, I think that we can then view the single warhead missile as something to deploy in a silo, a hard silo, because of the incentive, if we move towards those much lower numbers and if both sides would deMIRV, the incentive of using two warheads to knock out one, even one that can be knocked out in a silo, goes down very, very swiftly.●

UKRAINIAN CONGRESS COMMITTEE OF AMERICA, INC.

● Mr. D'AMATO. Mr. President, the Buffalo Chapter of the Ukrainian Congress Committee of America, Inc., has adopted a resolution objecting to the Soviet Union's "Union Treaty" over the captive nations. I ask that the text of this resolution be printed in the RECORD following my remarks.

The resolution follows:

Whereas the Ukrainian American community of Buffalo and the Niagara Frontier is following with deep concern the escalating strife and turmoil throughout Ukraine and the Soviet Russian empire; and

Whereas the progressive deterioration of the critical situation of the empire is precipitated by the steadfast refusal of the Kremlin regime to relinquish its colonial domination of nations held captive within the USSR; and

Whereas the entrenched Kremlin rulers are preparing desperate measures to reinforce the crumbling foundations of their imperial hegemony through the imposition on the Captive Nations of yet another "union treaty" tailored to continue the vice held over these nations; and

Whereas the popular uprising of the people of Ukraine against ANY "union treaty" is spreading across the vast expanse of the country, as manifested by mass demonstrations, meetings and public gatherings organized by the Ukrainian Republican Party and other Ukrainian forces favoring independence; and

Whereas popular protests against the imposition of ANY "union treaty" is taking place throughout Ukraine on September 29 and 30, 1990; and

Whereas voicing their rejection of ANY "union treaty", the people of Ukraine are demanding, in its stead, the unconditional restoration of the Independent and Sovereign Ukrainian State as proclaimed on January 22, 1918 and subsequently reinforced on June 30, 1941: Now, therefore be it

Resolved, That the Ukrainian American community assembled at the Ukrainian Home "DNIPRO", Saturday, September 29th 1990 stands in total support and solidarity with their brethren in Ukraine in the

ongoing relentless struggle to secure freedom and peace to their nation. Furthermore, we call upon our fellow American citizens to exercise moral courage and political wisdom to support national independence for Ukraine and other nations held captive in the Soviet Russian empire.

Likewise, we urge our elected representatives to the United States Congress to call upon President George Bush to employ political influence in tandem with economic power to convince the Kremlin rulers that the era of empires has passed and that time for national independence of Ukraine and other Captive Nations has come as foreseen in Public Law 86-90.

Moscow must be compelled to abandon its nefarious scheme of a new "union treaty" and allow for the orderly restoration of an Independent and Sovereign Ukrainian State.●

REPORT OF THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS PURSUANT TO SECTION 302(b) OF THE CONGRESSIONAL BUDGET ACT OF 1974

Mr. RIEGLE. Mr. President, under section 302(a) of the Congressional Budget Act, the statement of managers accompanying a conference report on a concurrent budget resolution includes an allocation of budget totals among the committees of the Senate and House of Representatives that have jurisdiction over spending authority.

Section 302(b) of the act requires the committees to allocate such spending authority among either their subcommittees or programs over which they have jurisdiction. This section also requires the committees to divide their allocations into amounts that are controllable and amounts that are mandatory under existing law. After consultation with appropriate committees of the other House, the committees are required to report the allocations they have made.

The allocations received by the Committee on Banking, Housing, and Urban Affairs from the managers of the conference were for direct spending authority that was assumed for Federal programs and activities over which this committee has original and complete jurisdiction.

The Committee on Banking, Housing, and Urban Affairs received the following allocations for fiscal year 1991 related to programs under its jurisdiction.

Fiscal year 1991:

Direct spending authority:	*Millions*
Budget authority	79,275
Outlays	75,410

The committee has made its subcommittee allocation as shown in the following table.

The amount allocated is equal to the allocations made to this committee in House Concurrent Resolution 310.

Fiscal year 1991:

Banking, Housing, and Urban Affairs:	*Millions*
Budget authority	73,975
Outlays	73,207
Housing and Urban Affairs Subcommittee:	
Budget authority	5,300
Outlays	3,482
International Finance and Monetary Policy Subcommittee:	
Budget authority	0
Outlays	(1,279)

Mr. GRAHAM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. GRAHAM. Mr. President, I ask unanimous consent that when the Senate recesses today it stand in recess until 9 a.m. today, Saturday, October 27; that upon reconvening and following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use late in the day, and the Senate resume consideration of the clean air conference report, S. 1630, in accordance with the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9 A.M.

Mr. GRAHAM. I have been informed that the acting Republican leader has no further business. I, therefore, ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 12:52 a.m., recessed until Saturday, October 27, 1990, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 26, 1990:

MARINE MAMMAL COMMISSION

JOHN ELLIOTT REYNOLDS III, OF FLORIDA, TO BE A MEMBER OF THE MARINE MAMMAL COMMISSION FOR THE TERM EXPIRING MAY 13, 1993, VICE ROBERT ELSNER, TERM EXPIRED.

EXTENSIONS OF REMARKS

THE C-17: THE CONTINUING NEED FOR STRATEGIC MOBILITY

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. ANDERSON. Mr. Speaker, the past year has brought remarkable changes in the world, changes which have greatly impacted our thinking on the necessity and numbers of American forward-deployed troops. The virtual disintegration of the Warsaw Pact as an effective fighting force, the eruption of democracy in Eastern Europe, and the imminent reunification of Germany have all brought into question the need for a large American troop presence in Europe. The Central Intelligence Agency's new estimates of greatly increased warning time that American and allied forces would have before a Soviet invasion of Western Europe means we can look seriously at how to bring the majority of our boys home from Europe. Any "floors" that the administration has recommended on numbers of United States servicemen in Europe are quickly turning into "ceilings." To complement European developments, Secretary of Defense Cheney recently announced troop reductions in the Pacific Rim.

Yet not all is peaceful in the world. Saddam Hussein vividly demonstrated how the United States will be challenged by the forces of aggression and unlawfulness in the years to come. As much as we pray for peace, we must prepare for war. This is a sad fact, but a reality we must face. America must be ready to defend its far-flung vital interests around the globe and to stand up to those who would try to have their way through force of arms.

I make this statement today because I have seen a disturbing trend. Notwithstanding the situation in Iraq, there are many Americans who would rush to bring all our troops home, leaving the United States an isolated and impotent power. The death of hundreds of thousands of American servicemen in the past century should have taught us by now that peace is to be earned and not wished for. I believe we can start to reduce America's forward-deployed forces, but we must then build the ships and planes we need to put them back in place should the circumstance arise. A soldier or a tank sitting in the United States counts for little if we do not have the capability to put that force on target when needed.

This fact makes it imperative that Congress support the C-17, the next-generation cargo plane for the airlift command. This program will provide the United States with the capacity to move large amounts of material over short periods of time, on airfields that are short and primitive. The plane can perform both the tactical and strategic mission; a capability no other airlift cargo plane in the Air Force's Military Airlift Command can perform. We can look to "Operation Just Cause" in Panama to see the demands upon strategic airlift. This relatively small operation used a staggering percentage of our airlift capability. In the first days of our deployment to Saudi Arabia, our cargo and transport aircraft were able to put a credible defense force between Saddam Hussein and the Saudi oilfields. The "aluminum highway" of airlift was solely responsible for making our presence a viable one from the start.

While it is little known, we currently have an airlift shortfall of some 23-million ton-miles below our assessed needs. The planes used in Operation Desert Shield to transport troops and equipment, C-141's and C-5's, are old, and are not getting any younger. The newer aircraft of the two, the C-5, is 20 years old. At some point in the near future, a significant amount of our airlift will have met its useful service life. The structures can only take so many flying hours. In fact, the C-141's used in Desert Shield started showing structural defects almost immediately. The C-17 not only modernizes an aging fleet, but remedies our serious shortfall.

I am very concerned that Secretary of Defense Cheney's major aircraft review, in which he decided to cut the number of C-17's procured from 210 to 120, bit too deeply into the number of these aircraft we are going to build. The 1991 Senate Armed Services Committee report reads: "The Secretary's decision to cut the total C-17 program does not appear to have been based upon the sort of rigorous analysis that would come from having an updated Congressionally Mandated Mobility Study [CMMS]." We need to go back and study our airlift requirements for the future, with a keen eye to the demands of today.

Giving the armed services and the President the capability to respond to crises with the proper application of force is critical. All the sophisticated hardware, quality personnel, and training in the world matter not one bit if our military forces cannot be put on target in a timely manner. The C-17 allows the President great flexibility and the capacity for a speedy response in a wide range of conflicts. If we are to maintain our status as the leader of the free world, and preserve democracy for future generations, we must have this program and we must fully support it with the necessary funding.

TRIBUTE TO COL. STANLEY G. PRATT

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to pay tribute to an exceptional member of my district who has made outstanding civic contributions to his community throughout the years.

Col. Stanley G. Pratt, USMC, is currently the Marine Corps representative to the Naval War College and Naval Education and Training Center. Stanley is a well traveled and well honored officer and has served at stations from coast to coast and overseas. He has faithfully served this country both in times of war and of peace, earning several medals and awards for outstanding performance. Among these citations and decorations are the Navy Commendation Medal, the American Campaign Medal, the Vietnam Service Medal with six stars, and the Bronze Star. Colonel Pratt has truly earned the respect of his fellow officers through his outstanding record.

Colonel Pratt is also active in his community outside of his military career. Stanley has given countless hours to charitable groups throughout his community. His devotion and caring for his fellow citizens serves as a model for us all.

On this occasion I extend my congratulations to Stanley, his wife Donna, and their three children and wish them all continued success and best wishes for the future.

THE VOICE OF AMERICA SERVES AMERICAN HOSTAGES

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BROOMFIELD. Mr. Speaker, the Voice of America [VOA] has served the United States for over 40 years, broadcasting to the world America's story. During the cold war, VOA combated Communist disinformation about the United States by telling those behind the Iron Curtain about American values, institutions, and U.S. foreign policy. VOA played an important role in the collapse of communism and the rise of democracy around the world.

VOA is now supporting our Persian Gulf effort, broadcasting 24 hours a day to the Middle East and Persian Gulf region. VOA is bringing valuable news and information to those under Saddam Hussein's harsh rule.

Today, however, I want to especially commend VOA for what it is doing to help Americans being held hostage by Saddam Hussein. VOA is currently broadcasting messages from hostage relatives to spouses, children, and parents being held in Iraq and Kuwait.

Unlike previous hostage crises, the story of Americans held by Saddam Hussein is not on the front page or the evening news. But thanks to VOA's efforts, the hostages have not been forgotten. They can now receive messages from their loved ones over the radio courtesy of VOA. By broadcasting mes-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

sages to our hostages in Iraq and Kuwait, VOA has truly become the Voice of America, bringing a message of support and hope.

I want to submit to my colleagues an article from the October 25, 1990, issue of the Washington Post.

[From the Washington Post, Oct. 25, 1990]

TOO CLOSE TO BE HEARD

(By Dale Russakoff)

Here are some voices you haven't heard from America's latest hostage crisis:

The squeaky voice of a hostage daughter named Jackie: "Dear Daddy. I really miss you and I hope you come home soon. We really need you. I wiggled and wiggled and I lost my teeth. We have an answering machine and call-forwarding." The wistful tones of a hostage wife, who taped this message the other day, in hopes that her husband will hear: "Don, I've been painting the house, daubing it here and daubing it there. Just waiting for you to finish it off, as usual."

A hostage wife named Susan: "Hello, Bill. * * * Well, Vanessa started standing without holding onto anything. She thinks she can walk around. She has no teeth and still doesn't sleep through the night. I think she's waiting for you to get home. * * * Your bank sent the money, which we needed desperately, but we don't have money for a house and no one would give me the mortgage anyway. We're all praying for you."

If this was a decade ago, and these were families of hostages in Iran, they and their anguishing loneliness likely would get top billing on the nightly news and in the thoughts of millions of Americans. Today, they are hardly heard from—preempted by the nation's fear of war, the presence of more than 200,000 troops in the Saudi Arabian desert and, it seems, a growing national numbness to hostage-taking since its horrifying premiere in Tehran 11 years ago.

The only way to hear these voices now is to go to the Southwest Washington headquarters of Voice of America, and sit by a phone recently set up for hostage relatives wishing to tape messages to hundreds of spouses, children and parents held in Iraq and Kuwait. The VOA, which usually broadcasts to foreigners about America, has been airing messages to hostages on its Middle East broadcasts since Oct. 4. VOA officials said they receive up to 50 messages a day.

It is hard to listen to the voices—cracking, pausing, gamely carrying on—without wondering at the relative absence of public attention to hostage families this time around, even given the threat of war. The variety of accents, the tiny voices mixed with aging, throaty ones, the talk of everything from corn harvests to the "poor Red Sox" illustrates that this hostage crisis truly spans the population.

A State Department official attributed the relative public silence to awareness that the United States and other governments, with troops amassed in Saudi Arabia, are actively confronting Saddam Hussein, in contrast to a national sense of impotence in the Iran crisis.

But two pioneers in hostage crisis-management, President Jimmy Carter's press secretary, Jody Powell, and his State Department spokesman, Hodding Carter III, see something larger at work: a national mood swing, starting at the White House, born of hostage-takings from Tehran to Beirut to TWA Flight 847 and the Achille Lauro cruise ship.

President Carter, according to Hodding Carter, purposely made the Iran hostages his overriding priority. This time, with a war threat looming, President Bush has said that concern for the hostages will not dictate decisions that must be made in the national interest.

"Instead of the president setting a deliberate course that allows hostages to hold him hostage," Hodding Carter said, "this president has set out a deliberate, different idea—that no president should do that. . . . I think most Americans [would say] they agree with that."

Since the Iran crisis, Powell observed, "We've had people held in Lebanon for years. We've had people murdered, executed and tortured. . . . It's become like killings in the ghetto. We've seen so many of them we've lost the capacity for outrage."

In the VOA messages, there are indications that many hostages are in contact with their families here—through intermediaries and even the mail. A State Department spokeswoman confirmed that Iraq is in some cases allowing mail to go to and from the "guests," as Saddam calls the hostages.

The spokeswoman said State also knows that numerous hostages have heard their relatives' messages via VOA.

Mitigating factors aside, the voices still penetrate. A boy, sounding no more than 7 or 8, relates the thrill of dissecting a lamb. "I stuck a straw down the tubes and I blew and the lungs got really big. I liked it and I hope I can do it again. I love you."

A wife tells her husband that their daughter is pregnant with twins. "Yeah, for real babe, it's twins."

And this from a son: "Hello. It's Greg. Ninth grade is tough. I'm having trouble in English. Sure wish you were here. I hope this doesn't have to last too much longer."

REAUTHORIZATION OF THE HIGHER EDUCATION ACT OF 1965

HON. BOB CLEMENT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. CLEMENT. Mr. Speaker, I recently had the pleasure to meet with the administration, faculty, and students of the Court Reporting Institute of Tennessee.

During my visit, the Institute's director, Donna Flowers, shared with me her strong interest in the reauthorization of the Higher Education Act of 1965, which will occur in the 102d Congress.

Ms. Flowers told me how important next year's debate of the reauthorization will be in defining education into the 21st century. In her opinion, the next reauthorization must address several important issues, including the human capital needs of business and industry for the year 2000 and beyond; how all institutions must be held accountable so that taxpayers will continue to support the Student Aid Program; and how these programs must be fair.

I am pleased to share with my colleagues Ms. Flowers' statement outlining these three important themes. I invite everyone to read it.

REAUTHORIZATION OF THE HIGHER EDUCATION ACT

(by Donna Flowers)

As we prepare to reauthorize the Higher Education Act of 1965, I want to stress my deep conviction that we must continue to ensure that all students—regardless of their socio-economic status—have access to the kind of postsecondary education that best meets their needs, interests, and abilities.

If we close the door of educational opportunity, it is not just thousands of individuals who will suffer. Our nation's economic future is also at stake.

If the United States is to remain economically competitive in the 1990s and the 21st century, we will need increasing numbers of skilled workers. Traditional four-year colleges will educate a segment of the workforce. Yet only 50 percent of high school graduates go to college and only 42 percent of them get a college degree.

We cannot forget the rest of the American workforce who may not go to college but may need some postsecondary education. They too will play an important role in our economic future.

When we reauthorize student financial aid programs, the legislation should recognize the diversity of postsecondary education options available to students. We should ensure that financial aid is neutral, not favoring one type of education over another.

As we take action to reduce student loan default rates, we must recognize the importance of student aid to individuals. We should not deny a student access to student aid because of the type of school he or she chooses to attend.

There is no doubt that default rates are too high and have become a very serious and costly problem. We must take tough, but fair, steps to fight fraud and abuse in student aid programs and ensure that students pay back their loans.

One important reform would help students make informed consumer decisions about which school to attend. We should require all postsecondary institutions to provide information on the cost, educational requirements, chances of succeeding, and employment or continuing education possibilities experienced by their graduates.

We must also recognize that Department of Education regulations and reform measures sponsored by private career school organizations such as the National Association of Trade and Technical Schools and the Association of Independent Colleges and Schools are already helping to bring default rates down. While default rates must be reduced further, we must give these initiatives time to work.

What we should not do is deny access to education to our young people, especially low-income people who otherwise may not get the education and training they need for meaningful employment. To deny those at the bottom of the economic ladder the opportunity to go to school would defeat the whole intent of the Higher Education Act of 1965.

THE BRAVE NEW WORLD OF THE AMERICANS WITH DISABILITIES ACT

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DANNEMEYER. Mr. Speaker, I would like to draw my colleagues' attention to the following Scripps Howard News Service editorial of September 28, 1990, that describes yet another application of the Americans With Disabilities Act, this time to extend full civil rights protections to overweight citizens who, presumably, will argue in court that their physical condition impairs their ability to carry out one or more major activities of life.

No one who voted for this well-intentioned legislation thought it would apply to the sort of situations described in this editorial. I respectfully suggest that, as the clever trial lawyers in this Nation learn how to manipulate the provisions of the ADA to suit their clients' purposes, there will be many additional such cases.

I urge my colleagues to read the attached editorial.

A BIG, BIG MISTAKE

The consequences of the recently passed Americans With Disabilities Act are already apparent. The law, which was ostensibly meant to grant equal rights to the handicapped, is the most radical expansion of government power in years; its capacity for mischief is boundless.

The other day in Baltimore, a building contractor named Donald Keister demanded that he be declared a minority for purposes of government contracts. The city sets aside 25 percent of its contracts for firms owned by "minorities."

Now, Keister is white, and he's male, but he's very, very big, tipping the scale at an awesome 640 pounds. Because his amplitude hinders him in this work—he says he falls through floorboards whenever he visits construction sites—he has rightly declared that the disabilities act qualifies him as a minority. Ergo: Give him a contract.

As Dave Barry says, we are not making this up. Certainly the city of Baltimore wishes Keister were kidding. But he's not. And what's more, thanks to the good intentions of President Bush and Congress, he has the law on his side.

As soon as the lawyers and the professionally aggrieved realize the amazing potential of this ridiculous law, the Baltimore case will pale by comparison. But Donald Keister should forever be remembered as a true pioneer, the man who showed countless others the way.

A MESSAGE FOR AMERICA

HON. WILLIAM L. DICKINSON

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DICKINSON. Mr. Speaker, the National Confederation of American Ethnic Groups, a conglomeration of 15 different heritage groups from Europe and Asia, has been in the forefront in the fight for patriotic and religious values in America.

Their present California State chairperson, Ms. June Nordahl, wrote about how this country was founded on the basis of a Judeo-Christian heritage, and that the fathers of our Constitution would be repelled by the use of the first amendment to remove God from our public life.

The urgency of her message is reinforced by the recent crisis in the gulf where 200,000 American soldiers are ready for possible combat. Now it is even more essential for us to return to God and our basic moral values.

Ms. Nordahl is a native of New Jersey and attended George Washington University and Georgetown Law Center in Washington, DC. She was a syndicated columnist and feature writer for the newspaper, Enterprise Association and a legislative assistant to the former Representative Dominick V. Daniels of New Jersey.

She now lives in Concord, CA and remains active with the National Confederation of American Ethnic Groups, Inc., as its California State chairperson and immigration department assistant.

A MESSAGE FOR AMERICA

(By June Nordahl)

American is about to enter a perilous period in world history. The whole free world stands to lose, and it may as a result in massive destruction that could be averted if we reconcile ourselves with God individually and as a nation.

The Bible warns ". . .just when they say peace and safety, sudden calamity will strike." This does not have to be the scenario. The choice is ours to make now while there is still time left.

There are times when we come to the crossroads of God's destiny for us, for a people and a nation. This is such a time.

America must call upon God to endure through a period of great testing. But we must also come to him to in the spirit of faith.

It is wise to harken to the Biblical example of Nineveh. Judgment was about to fall upon the city, but the people repented and God spared them all.

I am calling the attention of President Bush and Congress to "A National Day of Reconciliation and Prayer."

WORLD FOOD DAY

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DE LA GARZA. Mr. Speaker, last week I had the honor of being a speaker for the observance of World Food Day at the United Nations on October 19, 1990. World Food Day, held on the anniversary of the founding of the U.N.'s Food and Agriculture Organization, is an annual worldwide event which seeks to increase awareness of the problems of hunger, malnutrition, and poverty, and to stimulate action. The theme of the 1990 observance was "Food for the Future." I am pleased to share the text of my remarks with my colleagues:

SPEECH BY CONGRESSMAN E (KIKA) DE LA GARZA OF TEXAS

Mr. Secretary General, Director General Saouma, and distinguished guests, I am deeply honored to join you in celebrating World Food Day.

This is a very important occasion. In part, we are here to give thanks to the men and women around the world who work the land and tend the herds that provide food for the world's five billion inhabitants. To them, the rest of us owe our very existence and the flexibility to engage in other livelihoods.

But more importantly, World Food Day provides us with the opportunity to discuss strategies to meet the challenges facing world food production and distribution.

I commend the FAO for selecting, "Food for the Future" as the theme for this year's observance.

In today's fast-changing world, political leaders are far too often forced to address only the immediate, short-term problems, including those facing world agriculture.

We tend to focus on the trade problem of the moment or domestic debates over farm subsidies. There is no question that these problems are real and must be resolved.

But the more important challenge faces us in the years ahead. We must begin to face this future and its enormous challenge of feeding the world's rapidly growing population from a limited resource base.

I speak from an American perspective and, yes, Americans are indeed very fortunate.

We are the best-fed people for the lowest cost in terms of disposable income of any people in the world. Too many Americans take this for granted.

I try to remind Americans from all walks of life that our good fortune should never be taken for granted. The United States has become an affluent society, in part, because American agriculture—and that includes the U.S. food distribution system—is the most productive and efficient in the world.

The United States is blessed with rich agricultural soils and a favorable climate. And our farmers and ranchers have worked hard to become efficient, low-cost producers. Our transportation and marketing system is the envy of the world.

And perhaps equally important is the fact that Americans have—for the past 50 years—supported agricultural policies to help American agriculture compete and adapt to our changing world.

Since World War II, Americans have shared their abundance with the less fortunate of the world. We have taken the initiative—through programs like Food for Peace, Food for Progress, and the Peace Corps—to help the developing world better feed itself.

That is what Americans have done as a nation. As a people, we have exhibited our compassion in millions of ways. Some have even lost their life trying to help the less fortunate. A year ago Congressman Mickey Leland of Texas lost his life in a plane crash as he tried to bring food to the starving people in Ethiopia.

Today we find our world at a new juncture. Political freedom has blossomed, but economic turmoil threatens. We are quickly realizing that the world has grown smaller and closer—that the world population has become more interdependent and reliant on the actions of others.

As you know, in Washington we face an enormous budget crisis. We are trying to get our fiscal house back in order. We are being forced to rethink our priorities.

It has not been an easy process. Nor can choices be made without inflicting pain on American farmers and others in our nation who will share in the burden of reducing the government's deficit.

I believe that if Americans put their mind to it, they have the strength and will to weather this difficult period and get things back on track.

But for the developing nations of the world, the ravages of poverty, hunger, the abyss of debt, and the threat of civil unrest mean short-term fixes are the only viable, realistic alternatives.

Band-aids don't provide solutions. What the developing nations need is the opportunity and time to put sensible, long-term policies in place to sustain economic activity and growth.

In the short-run, a country's agricultural economy can grow by cutting down forests. Food can be produced cheaply and in large quantities by farming the land without protecting the topsoil.

But in the long-run a country pays a heavy price for such short-term and short-sighted actions.

This past week U.S. lawmakers finished work on compromise legislation to reauthorize U.S. agricultural programs. This is a wide-ranging legislation which has as its centerpiece the reauthorization of U.S. domestic farm and nutrition programs.

But it also includes vital foreign food aid and export promotion programs, and a number of other provisions dealing with forestry, research, and envvironmental protection.

More importantly to the FAO and to the member countries of the United Nations, the U.S. legislation includes several new and significant measures to help developing nations and others improve their food production capabilities and deal with the crushing of foreign debt.

I believe that in many respects our 1990 farm bill makes a significant move forward to ensure food for our world's future. Let me describe some of its key features that are designed to help other nations strengthen their agricultural sectors.

First, the successful and worthwhile P.L. 480, Food for Peace program is continued. We have also added to it a provision allowing debt forgiveness for least-developed countries, especially those in Africa, that are pursuing market-oriented reforms.

We continue the Food for Progress program, which provides much-needed donated commodities to developing countries and for the emerging democracies of the world.

We also authorize the establishment of two landmark programs to help developing nations reduce their foreign debt, build their agricultural base, and expand agricultural trade.

One is the Administration's "Enterprise for the Americas Facility" which I was proud to have included in the farm bill package.

The goal of this initiative is to improve the lives of people in Latin America and the Caribbean in several ways. It encourages debt reduction through the P.L. 480 program. It creates new investment opportunities and encourages environmental and conservation activities. It also stresses the development of sustainable agricultural activities.

This legislation provides a much-needed, first step in helping the nations of Latin America and the Caribbean. I expect Congress will act on a larger Enterprise of the Americas package next year.

The other new program in the U.S. farm bill will put in place a new mechanism for debt swaps, called "Debt for Health and Protection" swaps.

The goal of this provision, which I sponsored, is to help developing nations prevent or control plant and animal pests and diseases, and to generally promote environmental protection in the Western Hemisphere. This creative swap mechanism does two things. First, it will help us achieve a small degree of debt relief for participating countries. Secondly, at the same time, it assists these countries in improving their agricultural systems.

These measures, coupled with the improvements made in P.L. 480 and the U.S. export credit programs, add several new helping hands to developing countries that want to improve their economic situation.

Also included in the farm bill is a provision I sponsored giving USDA broader authority to help organizations, like FAO, in fighting animal and disease pests.

This is a measure that grew out of concern several months ago when the spread of screwworms to North Africa was discovered. I am pleased we were able to help FAO's efforts in controlling these problems around the world and now broad-based authority for USDA is in the farm bill.

Finally, I bring to your attention the fact that this farm bill also sets up a new program to study the effects of global climate change on agriculture and forestry.

We must begin to get a better understanding of climate changes. We need to find out if they are really occurring as some predict, and if so, how to adapt to them. As a first step, we set up program to help educate the world about the need for tropical forest protection.

As you know the major portion of the 1990 farm bill is devoted to domestic farm program concerns. This was the most difficult and agonizing part of the farm bill to craft.

To help bring the U.S. government's deficit under control, we were required to reduce domestic farm spending by 25 percent. This is not the kind of action I preferred, but it was one we were required to take.

I hope other nations—particularly developing countries—will recognize the ramifications of this situation.

I urge the community of nations to put renewed emphasis on the final negotiations in the Uruguay Round of GATT. We must make every effort to convince the major trading nations that a fair and level playing field in agricultural trade is needed by all countries.

Today, the vast majority of American farmers realize they cannot stay in business without using long-term sustainable agricultural practices. We must do a better job of protecting our own resource base—our soil and water resources. This farm bill includes a progressive and yet workable conservation and environmental package to protect our valuable soil and water resources and to encourage sustainable agricultural practices.

Sustainability is the key to feeding the world in the years ahead.

The industrialized nations must be leaders in protecting the environment and in promoting sustainable development within their own borders. Our own people demand it today in terms of public policy. We cannot demand more of the other nations than what we do of ourselves.

The industrial powers must help the developing nations improve and strengthen their own agricultural infrastructure. We must encourage the developing nations to adopt sustainable agricultural development.

Since the end of World War II when the Marshall Plan helped Western Europe get back on its feet, Americans have been committed to the economic development of other nations. It is in our national interest and it is in the interest of world peace.

Quite simply, a lasting peace cannot exist where there are people who are hungry or who suffer from malnutrition. Political stability cannot survive if crushing foreign debt drains a country's economy.

Today we gather to renew our commitment to end world hunger and poverty in the world. The United States is committed to participating in this effort. We have done so through the United Nations, the FAO and in numerous multilateral and bilateral efforts through the years.

But we cannot do it alone. The United Nations and the FAO have a very vital role in meeting these objectives. Other developed nations must also take leadership roles in this effort too.

On this, the 10th anniversary of World Food Day, let us join in alerting the world to the global challenge we face in assuring there is "food for the future." Then let our actions speak louder than our words for that is what counts.

A LIFELINE FOR SUDAN

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DORGAN of North Dakota. Mr. Speaker, famine in Africa has achieved a numbing familiarity. Droughts, civil war, and political intransigence have all contributed to recurring food emergencies in Ethiopia, Angola, Sudan, Liberia, and Mozambique. This unending string of human calamities could prompt many people of good will to throw in the relief towel.

Therefore, I congratulate the African Affairs Subcommittee for shining the light on Sudan's emerging famine in a hearing today. As in the past, I appreciate the subcommittee's cooperation with the Hunger Committee in pressing for immediate relief for the estimated 5 to 11 million Sudanese who face the peril of hunger or starvation amidst a persistent civil war. I am including for the record an article on the grim reports in this hearing.

FAMINE AGAIN REARS ITS HEAD

The bad news is that millions of Sudanese again face starvation. Nearly 2 years ago, Congressman ACKERMAN and I appealed for an emergency effort to deliver food to Sudan. Earlier this year, the Subcommittee on Africa and the International Task Force of the Hunger Committee held hearings about the special problem of delivering food into vulnerable areas of southern Sudan.

Now the specter of famine is again appearing throughout the country. Reports of starvation and drought conditions similar to those that produced the disastrous famine of 1984 suggest how grave the situation has become.

Even more disturbing, hunger is mounting not just from drought, but from the blatant unwillingness of the Government of Sudan to ensure the delivery of food to its own people. Today, I appeal to the President of Sudan to act immediately to allow the prompt, safe, and certain passage of food to all areas under his government's control.

More specifically, I urge the Bashir Government to accept and support the principles of relief requested by donor nations and relief agencies. Unless the Government of Sudan permits adequate control and monitoring of relief assistance, donors will be sadly obliged to curtail food shipments.

I further appeal to Dr. John Garang of the Sudanese People's Liberation Movement [SPLM] in southern Sudan to cooperate fully with United States and other donors in expediting food relief under Operation Lifeline Sudan. The extraordinary circumstances under which food must be delivered require this cooperation.

AN APPEAL FOR ACTION

Led by Chairman TONY HALL and Ranking Member BILL EMERSON, the Hunger Committee this week sent an urgent bipartisan appeal to both sides in an effort to restore the momentum for food relief in Sudan. Letters to both the Government of Sudan and the SPLM stress the importance of cooperation with donor nations and agencies and the acceptance of recognized principles for the delivery of aid.

As the Chairman of the Hunger Committee's International Task Force, I would underscore that our own Government—and the Office of Foreign Disaster Assistance, in particular—has been doing everything possible to facilitate the actual delivery of food aid to vulnerable areas. However, our relief officials have encountered such resistance that the delivery of additional food aid is in jeopardy. That is why my urgent appeal for cooperation is being made directly to the Government of Sudan and to President Bush.

I call upon the President to exert maximum pressure on Sudan to open up the lifelines of food aid. I call upon my colleagues to do likewise.

We should be raising the issue of Sudan's disregard for the welfare of its own people in the halls of the United Nations. We should be flexing our economic muscles to force relief concessions from the Government of Sudan. We should be taking a high profile role in the search for a cease-fire. We should be mobilizing other governments to lean on Sudan's heartless leaders. We should be pressing for more cross-border feeding links into Sudan from the eight contiguous nations and extending these lifelines deeper into Sudanese territory.

I commend Roger Winter, Director of the U.S. Committee on Refugees, for raising many of these same recommendations in a hearing today. I heartily concur with him that unless Sudan changes course and feeds its own people, then it's time to reconsider our entire relationship with that nation. It appears that we may soon reach the point of wholesale condemnation and isolation as the only way to prevent massive starvation in Sudan.

I hope these appeals will soon result in some good news for the long-suffering people of Sudan.

THE GIFT OF ABUNDANCE

At the outset, I stated that there is growing weariness in some quarters about hunger in Africa. Let me make clear that it is the Africans who should be tired of hunger and not us.

We have the surplus food, the delivery systems, the technical know-how, and the political strength to prevent famine and to engender long-term food self-sufficiency. That is our gift as a wealthy and well-fed nation. It is a gift which we must never squander and always be ready to share. The time for sharing is now.

"APOCALYPTIC" FAMINE POSSIBLE IN SUDAN: U.S. RELIEF OFFICALS SAY KHARTOUM IS BLOCKING FOOD SHIPMENTS

Starvation of "apocalyptic" proportions is endangering as many as 11 million Sudanese, but Sudan's military government is blocking international food deliveries, U.S. relief officials said yesterday.

Administration officials, testifying before the House Foreign Affairs subcommittee on Africa, said Sudan's government refused to recognize the danger and has derailed a U.S.-led rescue effort under U.N. auspices that would have saved many Sudanese from hunger.

"The government in Khartoum has been increasingly indifferent if not overtly hostile to the relief efforts," said Andrew Natsios, the administration's top relief official.

Due to drought and civil war, this year's harvest could fall short by as much as 1 million metric tons, leaving up to 8 million Sudanese to starve, he said.

Other relief organizations put the number of those in danger as high as 11 million, said Roger Winter, director of the private U.S. Committee for Refugees.

Natsios, director of the Office of Foreign Disaster Assistance, called the situation "apocalyptic," and warned that unless remedies are found, far more will die than the estimated 250,000 Ethiopians who died of hunger in a 1984 famine.

About 75 percent of the Sudanese at risk live in government-held territory, and the rest in rebel-held lands in southern Sudan.

U.S. officials accuse the government, which took power in a military coup 16 months ago, of preventing food from reaching the south where the Sudan's People Liberation Army (SPLA) has been fighting for autonomy since 1983.

The SPLA has also attacked relief planes and land convoys.

Sudanese planes last month bombed several towns in the south that serve as center of Operation Lifeline Sudan, prompting the United States to temporarily suspend its sale of wheat to the government and to recall Ambassador James Cheek for consultations.

The government has also prevented food supplies from reaching areas it controls and spurned U.S. urgings to call for international help.

Natsios said the United States is willing to provide one-third of an emergency 300,000-ton food shipment, and added that about 50,000 tons of U.S.-donated food are already stored in Sudan.

But if the Sudanese government continues to block food distribution and spurn international help, he said, "we will not be able to respond in time if the call for help goes out after people start dying."

IN HONOR OF DR. LEONARD ELSTAD, FORMER PRESIDENT OF GALLAUDET COLLEGE

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. ENGEL. Mr. Speaker, I rise to pay tribute to the late Dr. Leonard Elstad, the former president of Gallaudet College, who is being honored on November 15 by Gallaudet University for his efforts. I am well acquainted with the work of Dr. Elstad through his grandson, John Mills, who serves on my staff.

Dr. Elstad dedicated his entire career to educating the deaf and hearing impaired. He served as principal of the Kendall School for the Deaf on the Gallaudet campus, taught at the Wright Oral School for the Deaf, and was superintendent of the Minnesota State School for the Deaf. In 1945, Dr. Elstad was named the third president of Gallaudet College and served in this position until 1969.

Largely through Dr. Elstad's efforts, which included an $8.6 million building program, Gallaudet achieved its current status as a fully accredited liberal arts university. Gallaudet University is today the only liberal arts institution of higher education for the deaf in the entire world. It was also under Dr. Elstad's leadership that the model secondary school for the deaf was established on the Gallaudet campus.

In addition, Dr. Elstad was active in the Washington community serving as a senior warden of Epiphany Episcopal Church, president of the Washington Rotary Club, and chairman of the Anacostia District of National Capital Area Boy Scout Council.

I am pleased to pay tribute to Dr. Elstad because people with his dedication are rare. His achievements at Gallaudet are directly responsible for the many advances that deaf people have made in this country. Dr. Elstad will be missed by his family and friends, but his work to help the deaf will live forever.

INVESTMENT TAX CREDIT

HON. MICKEY EDWARDS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. EDWARDS of Oklahoma. Mr. Speaker, I believe it is particularly important to set the stage now for enactment early next year of legislation to spur economic growth and business investment. Now is the time to work toward policies that will keep our economy growing, while Congress wrestles through repeated threats of Government shutdown, all night sessions, power-broker politics, and a tremendous reluctance to make significant spending cuts.

Throughout this torturous budget process, many of us have been trying to emphasize the need to couple deficit cutting legislation with legislation to stimulate economic growth. Both are essential elements to any budget plan that seeks to restore confidence to world and do-

mestic markets and to make real, lasting cuts to the deficit.

CHARLIE STENHOLM, VIN WEBER, JOHN MURTHA, BOB MCEWEN, and I have put together, what I think is a very significant plan of action that will not only help keep the economy growing, but will increase productivity, expand exports, and create jobs.

A 10 percent credit on purchases of manufacturing and production equipment would create almost 700,000 new jobs over 5 years. It would increase total business investment by 17 percent, and, more importantly, increase investment in equipment by more than 21 percent. The value of stock would increase as well. And simply by restoring an investment tax credit, we could increase total GNP by 1.7 percent over 5 years.

The investment tax credit has been in and out of the Tax Code since President Kennedy first proposed it in 1962. It has been raised and lowered, eliminated then restored, many times since then. Most recently, it was dropped from the Tax Code completely as part of the 1986 Tax Reform Act.

The effect of eliminating the ITC was not immediately apparent because, until now, the economy has remained relatively strong without this special incentive for investment. But the rising cost of capital is beginning to act as an anchor: A drag on the economy. Tax policy since 1981 has increased the cost of business capital by 23 percent—almost a fourth, and we are beginning to see the results of that hyperinflation.

Restoring a 10-percent investment tax credit, and limiting it for purchases that involve equipment for production or manufacturing, would restore the kind of growth the country has enjoyed during the Reagan-Bush years.

In addition, the new credit will be completely offset by changes to other spending or tax programs to ensure deficit-neutrality.

Restoration of the investment tax credit, targeted to purchases of equipment for production and manufacturing, should be on the top of the list of Congress' Business next year. I urge the Members of this Congress, and the next Congress, to give serious consideration to lowering the cost of business capital and encouraging economic growth by reinstating the investment tax credit.

A CONGRESSIONAL SALUTE TO SOUTHERN CALIFORNIA GAS CO.

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. ANDERSON. Mr. Speaker, I rise today to pay tribute to an outstanding company, Southern California Gas. On Friday, November 9, 1990, this company will be honored for its many contributions to southern California.

The Southern California Gas Co. [SoCal] is the largest natural gas distribution utility in the United States serving more than 15 million people between Fresno and the Mexican border. The "Gas Company," as it is called, was founded in 1867 and has been supplying the energy needs of a broad base of consumers for over 123 years.

Although they are the best at what they do, I want to recognize the gas company for something other than their innate business sense. I want to take a look at their humanistic side. Over the years the gas company has focused on customer service, environmental concerns, and interest in the communities it serves. What sets SoCal apart from the rest, is this long-standing commitment to improving the quality of life in the communities it serves.

Because of the community's concerns with smog, air quality has become a major focus of the gas company and is the driving force for entry into the natural gas vehicle [NGV] market. This updated technology provides an alternative vehicle power which results in reduced emissions and a lessened dependency on foreign oil. Fleet and mass transportation customers are currently being encouraged to investigate the opportunities available for decreasing operating costs and meeting regional air quality standards.

Keeping in touch with the needs of the community has always been important to the gas company. Organizations like United Way benefit from company sponsored employee and volunteer programs. Individual organizations also benefit through local contributions, employee volunteers, and leadership provided by key gas company personnel. These range from local day care centers, chambers of commerce, Boy's and Girl's Clubs, and educational facilities specializing in providing youth with work force readiness skills. Community service is just one way in which SoCal is different from other companies who are only interested in their profits.

To coincide with their upstanding reputation of community service, customer service has always been important to SoCal. Service from restoring a pilot light to a leak investigation are only a phone call away, at no charge! Customers have grown accustomed to this personalized form of service that seems to be disappearing in many other organizations. The gas company states that their greatest asset is their employees. The employees are highly trained, skilled, and motivated to serve. They provide the end result of the company motto, "Glad to be of service!"

I would like to take the time to congratulate the Southern California Gas Co. for its many years of care and consideration for the people of California. My wife, Lee, joins me in wishing SoCal many more wonderful years to come.

THE DOUBLE STANDARD IN THE MIDDLE EAST

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILMAN. Mr. Speaker, since 1948, the United States has recognized that Israel is one nation in the Middle East that shares our democratic values. We were one of the first nations to recognize the Jewish State, and during the last 42 years, we have been singularly committed to maintaining Israel's security by providing both military and economic assistance. While an October 22, 1990, Newsweek poll indicated that 82 percent of Americans believe Israel is an important ally to the United States, some people have continued to ask why we remain so deeply committed to this small nation, thousands of miles away. We must remain committed to Israel because, while other regional alliances change on an almost daily basis, Israel is the one nation in the Middle East which has been a steadfast ally, capable of promoting United States interests and fostering United States ideals.

Last week's vicious attack against Jewish worshippers at the Wailing Wall in Jerusalem by several thousand Palestinians was a despicable attempt to focus world attention back to the violence of the intifadah, and to coerce the United States and other nations to distance themselves from Israel. It is acutely clear that the thousands of Palestinians throwing large stones, glass, and lead pipes at the worshippers was a premeditated act, designed to inflict death and injury upon unarmed, innocent people at Judaism's holiest site. One of my constituents, a Rockland County, (NY) rabbi, was praying at the wall during the Temple Mount violence and related his feelings of anguish and terror to me, stating:

* * * We were praying when the attack began * * * suddenly from above, rocks (and not pebbles, but boulder size rocks), metal pipes, glass, and other kinds of material came showering down during these services * * * causing many of us to flee for safety.

I am deeply disturbed over our Government's reaction to the tragedy on the Temple Mount. This issue is not a question of a disproportionate response by the Israeli police—but rather questions of due process and even-handedness.

The United Nations, with United States Government support, has passed two resolutions condemning Israel. The first "condemns especially the acts of violence committed by the Israeli Security Forces resulting in injuries and loss of life", and calls for a mission to be sent by the Secretary General to Israel to investigate. The second resolution condemns Israel for not allowing the United Nations team to conduct their investigation.

Our Nation's judicial system is predicated upon several basic principles, one of the most important of which is the right to due process. I believe it is disingenuous for the United States to condemn Israel before all of the facts are gathered. It is possible that if the Israeli security forces had been properly equipped with riot control gear that the casualty toll may have been less severe, but may I suggest that when Syrian forces in Lebanon, which were much more lethally equipped than the Israeli police, were reported to have killed dozens of disarmed Christian Militia soldiers who had surrendered, the United States neither protested reports of those killings, nor seconded a French petition to the United Nations to investigate. Along with many of my colleagues, I simply do not understand our Nation's and the United Nation's double standard with regard to Middle East issue.

In order to share with my colleagues the views of today's Washington Post editorial (October 26, 1990) on this issue, I request that it be inserted in full at this point in the RECORD:

[From the Washington Post, Oct. 26, 1990]

FROM JERUSALEM TO BEIRUT

The Temple Mount incident in Jerusalem has now produced two United Nations resolutions criticizing Israel, the first for the violence and the second for barring a U.N. investigation. It has been a costly episode for Israel, which in its prickliness at being challenged yielded up an opportunity to defend itself and win sympathy for its version of a multifaceted tragic event. It may not be the last such episode either: as long as the Israeli-Palestinian dispute goes untreated, incidents will recur. The best that can be said of this one is that although it is a souring episode, it is providing only a passing superficial diversion from the general concentration on Iraq's aggression.

It is always interesting to ponder what it takes to engage the United Nations. Israel was held to account for the killing by panicked police of 20 or so members of a huge Palestinian mob that was stirred by false reports that their holy place was about to be desecrated and that responded by heaving rocks at Israeli citizens at prayer. Meanwhile, Syrian troops are reported to have killed dozens of disarmed soldiers who had surrendered in the course of Syria's successful move against insurgent Lebanese general Michel Aoun. France, traditional patron of Lebanon's Christians, protested and asked the U.N. secretary general to investigate. The United States neither protested the specific report (though it has expressed a general disapproval of killings in Lebanon) nor seconded the French petition. Lebanon's government, which rests on Syrian power, then asserted its sovereign rights (Israel, in the eyes of most of the world, does not enjoy sovereign rights in Jerusalem) and blocked a U.S. probe. Nobody so much as peeped.

How is it that the American government could be exercised in the one instance and not in the other? Some part of the explanation appears to lie in a concern to preserve the coalition disposed against Iraq. Thus Washington could join criticism of the Arabs' pet anathema, Israel, and spare the feelings of a welcome Arab recruit to the coalition, Syria.

The United States gingerly gave approval to Damascus's recent move against Gen. Aoun in Beirut, hoping the eventual result would be peace. But Syria's brutal political style compels Washington to follow up attentively. It should do so without fear that candor will push Syria out of the Gulf coalition, which President Hafez Assad—no shrinking violet—joined not to please Americans but for reasons of his own. It is not, after all, that the Syrians are fastidious about American feelings. After a brief interlude they are back complaining about, yes, American policy toward Israel.

SAFER ROADS AND RAIL LINES

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GALLO. Mr. Speaker, House passage of H.R. 3520, which strengthens the Nation's laws governing the transportation of hazardous materials, brings us within striking distance of having a new law that will save lives by giving local emergency crews the tools they need to prevent accidents from turning into disasters.

As a cosponsor of this landmark legislation and author of legislation similar to provisions in the committee approved measure, I know that this bill represents 3 years of hard work that was well worth the effort.

This bill will significantly improve highway and rail safety while reducing the amount of red tape and duplication of reporting currently placing an undo burden on carriers and shippers alike.

This legislation uses our 1986 community right-to-know law as a foundation and builds a safety network that will include truck drivers who are thoroughly trained, trucks that are more carefully inspected, and local police and fire officials who are better equipped to deal with emergencies when they do occur.

As a coauthor the 1986 community right-to-know law language during my service as a member of the Public Works and Transportation Committee, I am pleased that the House bill is compatible with the goals we set out in that earlier legislation.

This bill also contains a requirement for flow studies so that we can pinpoint training for first responders in areas of greatest traffic as called for in my bill, H.R. 584.

A great many people contributed to the development of this legislation and I am proud to say that I think our collective efforts have produced a law that will increase safety and cut red tape at the same time.

This legislation, as passed by the House, sets a uniform Federal standard for safety, but allows States to enact tougher regulations as long as they are consistent with the goals of the Federal requirements.

It requires the Secretary of Transportation to create training standards for truckers operating HAZMAT vehicles and requires operators to certify that their employees are fully trained.

It creates a $5 million annual program of grants to States for developing emergency plans under Superfund community right-to-know—title III of SARA.

In addition, planning money may be used for determining traffic flow patterns and for determining the need for regional response teams, as required under my bill, H.R. 584.

Under the bill, 75 percent of the grant money would go to local emergency response committees.

The bill also addresses a problem of major concern to me—the lack of coordination among Federal agencies in the development of training programs for first responders.

At least 12 Federal agencies and many local, State, and private organizations have been involved in training with no coordination. The result has been unnecessary duplication and the potential for gaps in the flow of information.

The bill establishes a process for developing curriculum for first responder training in a coordinated fashion with DOT as the lead agency.

It also creates a 2-year study of ways to improve the current system of placarding under the Secretary of Transportation and requires the Secretary to report back to Congress with recommendations.

Mr. Speaker. I am hopeful that the other body can complete work on this legislation in a timely fashion so that it can become law before we adjourn.

We have come too far to let this bill die now.

TRIBUTE TO JOEL N. BLOOM

HON. WILLIAM H. GRAY III

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GRAY. Mr. Speaker, I rise today to pay tribute to Joel N. Bloom, who is retiring as director of the Franklin Institute Science Museum in Philadelphia. Mr. Bloom served as director of the museum from 1969 to 1990.

Joel Bloom has played a key role in the national and international museum community where he had been a mentor to a generation of museum leaders. Under his direction, the Franklin Institute has become one of America's premiere science museums, noted for its commitment to education and its pioneering educational research.

Joel Bloom was founding president of the Association of Science-Technology Centers, and in 1989 received their coveted Fellowship Award. In June, he completed his term as president of the American Association of Museums, and also cochaired their Commission on Museums for a New Century as well as their Task Forces on Ethics and Education.

He has served as Chairman of the U.S. National Committee of the International Council of Museums, Vice President of the International Committee of Science and Technology Museums, Commissioner of the U.S. National Commission for Unesco and has been a member of a number of Federal museum advisory panels. He is on the boards of the National Museum of American Jewish History in Washington, DC and the Center for African Art in New York City.

The recipient of numerous professional and civic awards, Mr. Bloom is deeply involved in Philadelphia's cultural community. He is cochair of Museums in the Life of a City: the Philadelphia Initiative for Cultural Pluralism. He is a former president of the Greater Philadelphia Cultural Alliance, and is a member of the board of the Afro-American Historical and Cultural Museum.

Please join me in paying tribute to a distinguished citizen of Philadelphia, who has, by his good works, improved the quality of life for all Philadelphians.

THANKS TO JIM JUNGE

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILLMOR. Mr. Speaker, I would like to bring to the attention of the Members of the House the contributions of one of my constituents to my U.S. service academy nomination selections process.

Jim Junge, of Holgate, OH, recently completed a year of distinguished service on my Fifth District Academy Advisory Board.

I established my Fifth District Academy Advisory Board to assist me by conducting face-to-face interviews with qualified candidates for nomination for admission to the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, and the U.S. Merchant Marine Academy.

Jim Junge's active participation on my Fifth District Academy Advisory Board was invaluable to me in my difficult task of selecting those young men and women from northwest Ohio who would have the opportunity to compete for admission to our Nation's service academies.

Mr. Speaker, I ask all of my colleagues to join me in thanking Jim Junge for his unselfish service and significant contribution to these young men and women and to the future of our great Nation.

AN UPSET CONSTITUENT WRITES FIRST LETTER TO HIS CONGRESSMAN

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HUBBARD. Mr. Speaker, across the Nation Americans are upset with Congress regarding the ongoing budget crisis.

Hugh L. Dougherty, of Hopkinsville, Christian County, KY, is a 63-year-old employee of the Department of the Army at Fort Campbell, KY. He is understandably upset at Congress. I share with my colleagues Hugh Dougherty's excellent letter written October 9.

The letter follows:

HOPKINSVILLE, KY,
October 9, 1990.

HON. CARROLL HUBBARD,
Rayburn House Office Building,
Washington, DC.

DEAR MR. HUBBARD: The ongoing budget crisis prompts me to write this, my first letter to my congressmen. I am in my 63rd year and am currently working for the Department of the Army at Fort Campbell, Kentucky. I like my job, not really ready to retire, but these recent events involving the budget concern me. The way things are going you may take my retirement to pay on the National debt. With my 35 years of service, I have seen the good and bad side of government management and as a resource management engineer have done my best to carry through those actions within my area of responsibility to the benefit of the Army and the Government.

My reason for writing this letter is to express extreme displeasure with you and your colleagues in being able to establish a sound program to manage the Government, and do it in a prompt time frame. You haven't passed a timely budget since the transition from fiscal year end in June to September back in the 70's.

I am well aware of the magnanimous task you have and the complexities of the decisions you must make, but you are a highly intelligent person and an astute businessman which are the basic reasons for which I voted for you. The time has come for you to use these abilities, make the tough decisions, put the politics aside, make the sacrifice to give up some of your fringes, cut out some of the "boon doggle" trips, and get down to the basic things you are there for and that is to get this Nation back on a sound, well-managed financial basis.

Sincerely,

HUGH L. DOUGHERTY.

NOAA REDTAPE FRUSTRATES VALUABLE PROGRAMS

HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. JONES of North Carolina. Mr. Speaker, I am very concerned about several problems with the Department of Commerce [DOC] and National Oceanic and Atmospheric Administration [NOAA] review and approval process for grants, contracts, and cooperative agreements. Problems with this process are seriously diminishing the effectiveness of the limited appropriated funds available for fisheries projects that are carried out by entities such as the States, regional fishery management councils, and marine fisheries commissions.

For example, the Department and NOAA have assured the Committee on Merchant Marine and Fisheries for more than 6 years that a financial assistance policy manual will be prepared and made available. The policy manual has still not been issued, and applicants must apply for grants under requirements that are unclear, conflicting, and constantly changing.

An administrative board in the Department of Commerce known as the Financial Assistance Review Board [FARB] has constantly erected obstacles to the timely approval of applications for financial assistance by repetitively requiring additional information from applicants, or simply by neglecting to act on applications for long periods of time for no reason. To my knowledge, FARB actions have never actually resulted in any modification or rejection of an application, and have merely caused frustration and pain for all who are involved, including the Federal agencies themselves. The FARB should be substantially reformed or abolished.

Other administrative aspects of the Commerce review process result in additional delays because of duplicative or unnecessary procedures. As a consequence, the Department of Commerce often takes up to three times as long to review grants as do other Departments that review identical grant programs. This must be improved.

Several specific categories of program grants must also be addressed. The Congress annually appropriates funding for statutorily identified programs such as those carried out by the regional fishery management councils under the Magnuson Fishery Conservation and Management Act and the Columbia River fish hatchery program under the Mitchell Act. These continuing programs are not one-time projects or projects that are competed for. There is no need for these grants to be subjected to a lengthy and expensive review process; they should be processed and distributed on a fast-track basis that contributes to, rather than impedes, the important natural resources conservation and management programs that they fund.

Several other grants, contracts, and cooperative agreements provide funding for programs that are carried out by States or by interstate fishery commissions, such as the Cooperative Fisheries Statistics Program, and programs under the Interjurisdictional Fisheries Act and the Anadromous Fish Conservation Act. Grant applications for programs such as these should not be unnecessarily competed, and should be processed and approved within a reasonable, time-certain period of time such as 60 days rather than be subjected to a lengthy and uncertain review process that has often resulted in delays and has damaged the programs' abilities to achieve their goals effectively.

In summary, the existing review process has unnecessarily delayed many important projects; lessened the value of projects by preventing them from being carried out during the appropriate stage of the cycle of the fish species or fishery they were meant to investigate; lessened the impact of important resource management decisions that would otherwise have been based on the timely and accurate date that the projects were intended to produce; caused serious administrative difficulties and costs for the States and other institutions that must carry out the projects; and in some cases, delayed salaries, terminated employment, and caused other unnecessary personal difficulties for the researchers and investigators that rely on the funds to be distributed as the Congress intended.

I intended to offer legislation this Session to address these problems but I will not do so at this time because NOAA has assured me that NOAA and the DOC will soon take major steps to improve their financial assistance review system. I must stress, however, that these problems are very serious and cannot be allowed to continue. The Committee on Merchant Marine and Fisheries intends that scarce funds are used wisely and not diminished by careless or unnecessary administrative delay. Thus, the Committee will in the near future undertake an extensive examination of the DOC/NOAA grants process, and improvements that DOC/NOAA may suggest, with a view to improving the process, through legislation if necessary.

INDUSTRIAL RECAPITALIZATION FUND ACCOUNTS

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GEPHARDT. Mr. Speaker, today Senator LIEBERMAN and I are introducing legislation to establish Industrial Recapitalization Fund [IRF] accounts. These IRF accounts will provide a mechanism for capital re-investment in companies and industries which have been victimized by unfair trade practices and face the escalating problem of the high cost of capital.

Our trade laws, including sections 301, 337 and our antidumping and countervailing duty laws have provided some mechanisms for U.S. companies to obtain relief against unfair trade practices in our own market. However,

they are limited when it comes to addressing the weakened state of our industrial health, and restoring the competitive vitality of U.S. companies and industries after such activity has occurred.

When a company initiates and succeeds in proving dumping, it regrettably must show a level of industrial devastation which demonstrates nearly every aspect of industrial decline—lost profits, lost jobs, lost R&D, lost investment in plant and equipment. Yet nothing an unfair trade case can do, after success, restores any of these lost opportunities. Rather, the mere return of fair prices to an industry is supposed to afford an opportunity at recovery—from a diminished base, on weakened legs.

I believe our Nation can ill-afford unfairly weakened prizefighters—in industries we rely on as our base of national defense. These companies, in those industries which have proven they have lost the competitive bout due to unfair competition, need a strong and immediate injection back to health. While we can not, and many would argue should not, provide direct assistance, we can at least ease some of the scars.

We can not, and should not, treat our critical, essential companies on which we rely on for our national defense, as ordinary competitors. Their success in fair competition is too important, and the consequences of their failures too relevant to us all.

The IRF proposal would permit companies which have demonstrated their weakened state is due to unfair trade, either through initiation of an antidumping case resulting in issuance of antidumping order or through the imposition of a suspension agreement—to establish, with the assistance and support of our Commerce and Treasury Departments, Industrial Recapitalization Fund [IRF] accounts. Formation of these accounts would entitle these companies to defer tax on income, from a line of business which gave rise to the original action, so long as the income is later used for the express purpose of recapitalizing the business line which was victimized by unfair trade.

Companies which set up an IRF could place income for five consecutive years into the account, but must withdraw all the funds into productive plant and equipment, capital tools, and the like, within a limit of 12 years. Anything left in the account at the expiration date would be subject to full tax recovery.

One of the most difficult issues facing all of American business is the subject of capital formation and the cost of capital—an issue directly tied to the competitiveness and the strength of our companies. Companies victimized by unfair trade face the doubly difficult task of getting back to zero—the capital position they were in before the unfair trade—and having to do it with typically high cost of capital rates.

The IRF proposal would afford these companies the opportunity to use what little, restored profit, is available to them at a reduced capital rate. Our IRF proposal is based on certain simple premises—when dumping is present, there is typically a reduction in prices, putting downward pressure on profitability, earnings, maintenance, of capacity and reinvestment in growth.

Once dumping is established, the prospect of fair prices exists and companies are able to return to competitive opportunity with the prospect of earnings. Rather than tax these earnings at standard corporate rates, ignoring the circumstances which have befallen this competitor, the IRF proposal would permit the income to be made available for purely capital enhancement purposes. Once cost-effective capital is available, companies should be able to restore productive capacity and compete more ably for the fair trade dollars which otherwise would be available.

While this legislation surely cannot pass this session, my hope is that it will gain the necessary support upon reintroduction next year to provide another tool to be used to build a more competitive future for U.S. companies and industries.

I urge my colleagues to joint Senator Lieberman and myself in this effort, so that like prizefighters in a ring, where even the bloodied loser receives some paycheck for his effort, the loser in unfair trade, even with our trade laws in place, will be encouraged to return to the ring of the U.S. and global markets. Reasonable compensation through the IRF will provide necessary assistance in getting our critical companies and industries back on their industrial legs.

TRIBUTE TO DR. LOUIS MASTRANGELO

HON. JOSEPH P. KENNEDY II

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. KENNEDY. Mr. Speaker, recently the town of Watertown—a community in my district—honored one of its physicians on his 85th birthday by dedicating a parcel of land in his name. Louis Mastrangelo, M.D. has had a long, productive life which has been dedicated to the service of others, and it was for this outstanding service over nearly six decades that he was appropriately honored.

On Saturday, September 9, 1990, the Boston Globe printed a profile of this distinguished healer which I offer at this time and ask that it be included as part of my remarks.

A DOCTOR'S CARE, A TOWN'S TREASURE

(By Gloria Negri)

Watertown.—For almost 60 years now, Dr. Louis Mastrangelo has been taking care of a big part of this town's population, delivering babies, removing tonsils and appendixes, mending injuries, setting bones and being everyone's favorite uncle.

Many times, especially during the Depression, he was paid with food or toys for his five children. During World War II, patients brought him rationed sugar and, sometimes, a roast beef.

"If all the people Dad treated for nothing decided to pay him, we could all retire," said Joseph Mastrangelo of Watertown, a car salesman and Doc's son.

But, that has never bothered Doc. Another son recalled Doc once told him, "I'm a doctor, not an accountant. With all this coding on Medicare and Medicaid, sending out bills is just too much trouble."

Mastrangelo, approaching his 85th birthday, describes himself as "semi-retired." Until seven or eight years ago, he was still making house calls, climbing three flights of tenement stairs in the East End of Watertown where many of his patients lived and where he has his office in his home.

He still goes to all the Watertown High School football games as team physician, just as he has since 1941.

Tomorrow, the day before his birthday, much of this town will turn out to say "thank you" to their beloved Doc at a public celebration—complete with several surprises for him—that has left him somewhat abashed.

"I've loved every minute of what I've been doing and I'll continue to do it, I guess, until I just fade away," he said.

His office in his modest home on School Street is worthy of a Norman Rockwell painting. The examining table, on which he once made an emergency delivery of a baby, is 60 years old. The baby scale on which he weighed the 2,500 babies he estimates he delivered over the years is 90 years old. A pile of letterheads he had made up in the 1940s, but never sent out as bills, is gathering dust.

Through the years, either his wife or a daughter has been his nurse and receptionist. Another son, Richard Mastrangelo, senior vice president and general counsel for Associated Industries of Massachusetts, said the only thing that has changed in the office in the last 47 years is the linoleum.

Certainly, Mastrangelo has not changed. A wiry man about 5-feet-5 with pink cheeks and a good sense of humor, he looks younger than his years, and people say he is still the kindly, caring man he always has been.

"Doc delivered me," said Robert Leonard of Arlington, co-owner of Watertown's Union Market Station restaurant. "So I've known him for 52 years. I never remember him sending us a bill. Doc was a second father to me. He was the greatest kid doctor in the whole world. My family was poor, and it was Doc who bought me my first bike. I still go to him when I'm sick."

Robert Caloggero, co-owner of the Victoria Spa in Coolidge Square, has known Mastrangelo 55 years. He said his spa was "sort of Doc's annex office. He used to come in a lot, and people would wait in the store to ask him about something bothering them. I played on the Watertown High football team and so did my son, and many of the players he has treated for nothing. When there's an injury, Doc is always still the first on the field. I don't think he's ever missed a game."

Joseph Hogan of Belmont recalled that when his son was hurt, he contacted Mastrangelo at a social event he was attending.

"Doc rushed back to his office, checked out my son and then sat there and talked with us." Only later did Hogan learn the event Mastrangelo had left had been a tribute in his honor.

"It sounds like a cliche," said Hogan's wife, Anne, "but this man is truly his brother's keeper."

Louis Mastrangelo was born in the North End of Boston, one of five children of Italian immigrant parents. At St. Mary's Grammar School in the North End, he won a scholarship to Boston College High School. Later came another scholarship to Boston College, but after a short time there, he transferred to the University of Massachusetts in Boston for a premedical course. He got his medical degree in 1930 from the now-defunct Middlesex College of Medicine and Surgery in Waltham.

RESIDENCY PAY OF $50 A MONTH

From 1930 to 1933, Mastrangelo was in New York, doing his internship at Richmond Memorial Hospital in Staten Island and his obstetrical-gynecological residency at Manhattan General Hospital. The hours were long and the pay was $50 a month, he recalled in a recent interview, "so we could be clean-shaven and have our shoes shined."

He decided to establish his practice in Watertown and came here in 1933 with a wife, the former Helen Decost, a nurse from Bar Harbor, Maine, and two children. Their first home—and Doc Mastrangelo's first office in it—was at the corner of Winsor Avenue and Belmont Street.

Eventually, he got a Hudson car for his rounds. "You actually had to crank the thing," said his oldest child, Louis I. Mastrangelo of Ipswich, a state chemist.

Many of Doc's patients were Italian immigrants, and some remain his patients. Though he could speak to them in Italian, he encouraged them to use English to help them become assimilated, his daughter, Linda Shaughnessy of Needham, a real estate agent, recalled.

One woman, who he said waited too long, had to have her baby delivered in his office with his wife assisting and his children running around boiling the water. He also delivered three of his grandchildren, first jokingly warning their mothers not to deliver on a high school football day. Doc has 18 grandchildren and six great-grandchildren.

Although he did not deliver any of his own children, his son, Richard, said it was his father who saved his life at birth.

A FATHER'S THOUGHTFULNESS RECALLED

"I was born at home, and the obstetrician was having trouble reviving me. He had given up, but my father persisted in putting me from warm oven to cold water until I breathed," he said.

His children recalled that, in spite of house calls, hospital work and office hours, their father never missed any of the many school events parents need to attend.

"When we were small, dad was never home until two or three o'clock in the morning and he was always called out on holidays," said another daughter, Lucia Goldberg of Watertown, a nurse. "But if we kids were in plays or something, even though he might be late, he always showed up for them."

Mastrangelo also served on the Watertown Board of Health for 15 years, took care of Watertown's indigent for many years as town physician, and was school physician for 30 years and athletic physician since 1941. He also has been physician for a number of lodges and organizations.

During World War II, he was a captain in the Civilian Defense and examining physician for the Draft Board.

"When the first boy from Watertown got killed in the war, I had delivered his sister's baby at the hospital," Mastrangelo recalled. "I brought her from the hospital to the wake and then back to the hospital in the same day."

Although today's young doctors "are brilliant," he said, "they're not exposed to families the way we were in my day. In those days, if you took out tonsils or an appendix, you could say the patient was going to be all right. Now, you have to say, 'should be all right.' "

LOOKS TO THE FUTURE

Since Helen Mastrangelo died 26 years ago, friends, patients and relatives have seen to it that Doc never gets lonesome. A while back, his sister, Mary Cipriano, came to stay with him from East Boston.

"Every Friday, Aunt Mary made minestrone soup and brought it to my house," Lucia Goldberg said. "Since Aunt Mary died a year ago, Dad still makes the soup and takes it over."

A cataract operation a few years ago hasn't slowed him down. "I had the operation around 8 in the morning, was home a little after 1 that same afternoon and a patient was ringing my doorbell at 2:15," he said, with relish.

A few years ago, Doc's black poodle, Sherry, died. They had been together for 15 years. "They were inseparable," said Laurie McManus of Watertown, one of Doc's grandchildren. "Sherry'd go out on the football field with grandpa and always waited for him outside his office door."

As for Doc Mastrangelo, he's looking to the future and more football games. "My patients," he said, "won't let me quit."

THE HANDLING OF THE BUDGET THIS YEAR

HON. JON L. KYL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. KYL. Mr. Speaker, I recently received a letter from a constituent of mine, Mrs. Becky Lynn Burnham, expressing the frustration many Americans feel over Congress' handling of the budget this year, and I commend it to my colleagues.

I ask unanimous consent that it be reprinted in the RECORD at this point:

BECKY LYNNE BURNHAM

Paradise Valley, AZ, Oct. 14, 1990.

EDITOR: Like most taxpayers, I have watched the federal budget "negotiations" (a misnomer if there ever was one) with, at first, dismay and, now, disgust. The latest avoidance tactic of the Democrats—attempting to instigate class warfare with their "soak the rich" campaign—leaves me shaking my head in wonder. Am I the only taxpayer in America who would like to know what the federal government could do if it just had the revenues it currently receives, before loading on yet another tax increase?

I, like many baby-boomers, have spent most of my working and tax-paying life under the governance of a free-spending Congress, presiding over a federal bureaucracy that has grown like Topsy, to the point that it now absorbs close to one-fourth of our gross national product. And what do we have to show for it? A deteriorating infrastructure, astronomically expensive weapons systems that no-one is willing to vouch for, a growing underclass suffering the worst kinds of problems with shattered family structures, substance abuse and violence; the list goes on and on. Thank you, Big Brother, and excuse me for being suspicious of your motives when you propose to take yet more of our money. You see, in my lifetime, the main interest of our elected representatives has appeared to be getting re-elected to ensure the continued enjoyment of perks and privileges that most of us will never know, including cushy retirements helped along by "leftover" campaign funds awarded to retiring Congresspeople by their pals in the House and Senate, and that, in turn, appears to be the primary motivation to continue the endless spending spree to please whatever special interests are able to turn out votes and/or provide campaign funds.

And yet, despite our cynicism about government, I believe that many of us have strong social consciences and are unwilling to see children, single parents or the elderly go without adequate sustenance, medical care or shelter. Similarly, I think most of us understand the need for infrastructure maintenance and national security precautions. We would just like to see some accountability for the results of the programs funded by our Congress, and some attempt to meaningfully analyze how best to effectuate societal goals without bankrupting the country.

In addition, I don't think any of us wish to see our children saddled with an enormous carryover debt. If our Congress could get its house in order and come up with a balanced budget, based on present revenues, I would be very surprised if there were significant resistance to a tax surcharge targeted directly to deficit repayment, even if it were levied disproportionately on the "rich".

The problem is that the taxpaying public has lost its faith and trust in Congress. Consequently, I think Congress, if it really wishes to impress upon the people of this nation its commitment to fiscal integrity, needs to start with its own sacred cows; put a limit on the franking privileges ($180 million for 1990 alone? COME ON!), reduce staff and other expensive perks, and, for heaven's sake, repeal the pay increase. Then give the President a line-item veto, but before he has a chance to use it, get rid of a few of the least justifiable "pork" allocations (tobacco subsidies in this day and age? Even if it isn't much money, it looks so bad) to demonstrate some seriousness of purpose. Then single out the programs that can demonstrate that they've worked, and worked well, and give them the money that they need. Get rid of the fluff and defer to state and local government whenever possible.

Now, back to reality: my husband, friends and common sense all tell me that writing this letter is a waste of time and paper. The foregoing suggestions would require some long-term thinking and, as we all know, Congresspeople typically like short-term solutions, especially those that will ensure reelection. However, I know I am not the only one like me—there are a lot of us who grew up infused with optimism, idealism and faith in the founding principles of this country, who are now wondering if our system will survive to serve our children—we are disillusioned and feel disenfranchised. We are not seeing a demonstration of vision and principle in our Congress, and I suspect we are the gathering momentum behind the movement to limit terms of elected officials. If that is not the appropriate response to our present paralysis of leadership, someone had better exercise some leadership, and do it soon.

Very truly yours,

BECKY L. BURNHAM.

A TRIBUTE TO GENE NEWCOMBE

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LEWIS of California. Mr. Speaker, I would like to bring to your attention today the fine work and outstanding community leadership of Eugene Lee Newcombe. Gene, a thoughtful and caring man, has touched the lives of many people and will be honored as he celebrates his 60th birthday on November 12.

Born in 1930 to Francis and Nita Newcombe, Gene has lived in the beautiful mountains of San Bernardino County his entire life. Following graduation from high school and college, he served in the Air Force from 1950–54 including 1 year in Korea. Since then, Gene has worked as the owner and operator of "Gene Newcombe's Tree Service" (1955–79) and "Gene Newcombe's Service" (1979–90). Since 1981, he has also worked in real estate sales.

Gene's energy and enthusiasm is legendary. His active leadership in the community is reflected through his involvement in education, politics, business, civic affairs and religion. He has served as chairman of the Southern California Watershed Fire Council, a board member of Duck's Unlimited, president of the Rotary Club of Lake Arrowhead, president of the Lake Arrowhead Property Owner's Association, president of the Association of Building Contractors, and president of the Rim of the World Communities Scholarship Council. In addition, Gene is a volunteer fireman with the Lake Arrowhead Fire Department and a volunteer ambulance driver with the Mountains Community Hospital. He is also a charter member and Deacon Board Chairman of the Community Baptist Church of Lake Arrowhead.

Gene's accomplishments have not gone unrecognized. The Rotary Club of Lake Arrowhead has bestowed several honors upon him including the President's Award and the Vocational Service Award. In addition, Gene is a lifetime member of the Lake Arrowhead Parent-Teachers Association and a Paul Harris Fellow of Rotary International.

Gene married Irene Elizabeth Wedemyer in 1955. Together, they have raised three children, Catherine Marie Newcombe Jennings, Stephen Eugene Newcombe, and Michael Lee Newcombe. Gene and Irene also have three beautiful grandchildren, Jessica Marie Jennings, Eugene Clayton Jennings, and Sonja Elizabeth Newcombe.

Mr. Speaker, I ask that you join me and my colleagues in recognizing the tremendous achievements and contributions of Gene Newcombe. His years of dedicated and selfless service to his family and community is certainly worthy of recognition by the House today.

H.R. 4424, THE LANGUAGE OF GOVERNMENT ACT

HON. WILLIAM O. LIPINSKI

OF ILLIONIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LIPINSKI. Mr. Speaker, I rise today to share with my colleagues an insightful article on the Language in Government Act, H.R. 4424. The author, Joan Beck, examines the prospect of declaring English the official language of our Government, and using it as a vehicle for creating equal access to educational, political and cultural participation in American Life.

I commend Ms. Beck's article to my colleagues and urge them to affirm the importance of English as our common language by joining me in sponsoring this legislation.

[From the Houston (TX) Chronicle]

ABANDONING THE AMERICAN IDEAL

(By Joan Beck)

Already, the long knives of touchy minorities are being drawn to kill the English-as-official-language-of-government bill introduced last week in Congress.

The opponents are wasting their energy. The legislation hasn't much chance.

Members of Congress can hardly scrape together the courage to pass a sensible budget. They aren't about to support anything else that could rile up even a few more voters before Nov. 6. And the official-English measure isn't being attached to an essential bill in a legislative maneuver to slip it through.

But a good case can be made for the bill—not so much because of any changes it would force in government operations, but for what it would symbolize about this country's one-nation-indivisible hopes for the future.

The legislation was introduced by Sen. Richard Shelby, D-Ala.. It simply provides that English will be the official language of the federal government. It wouldn't affect private use of language, education, emergency services, public health and safety, court proceedings or other situations.

A somewhat similar measure, introduced by Reps. Bill Emerson, R-Mo., and Ike Skelton, D-Mo., is pending in the House Education and Labor Committee. And a constitutional amendment to make English this country's official language proposed by Rep. Norman Shumway, R-Calif., with 69 cosponsors is before a subcommittee of the House Judiciary Committee.

Shelby's proposed law says it purpose "is to maintain the benefits of a single official language of the government of the United States. Thre is no intent to discriminate against or restrict the rights of any individual."

In a Senate speech, Shelby said, "For more than 200 years, persons from every nationality, race and religious belief have come here to share in the riches of our land. How is it that the United States has built such a strong society out of this melting pot of nationalities; races and ethnics groups? It is language that has made communication and, more important, democracy possible."

Millions of Americans agree. Four months ago, 89 percent of the voters in Alabama voted to ratify an amendment that makes English the official language of state government. Seventeen other states have similar laws.

Even so, Shelby's bill has prompted a rage of racist and discrimination charges, particularly from Hispanic groups. Their anger, however, is shortsighted and self-defeating.

The melting pot ideal of a United States that welcomes a worldwide diversity of people with the opportunity and expectation they will become part of mainstream America worked well for almost two centuries. Over the years, this country absorbed more than 60 million immigrants—an astonishing phenomenon.

But the melting pot model has been chucked aside in recent years, replaced by increasingly sharp racial and ethnic divisions that are rubbing this society raw. Rhetoric about the importance of roots and cultural identity is drowning out the old ideal that Americans as individuals can make of ourselves what we will free of the constraints, limitations, animosities and problems of the past.

Granted, the ideal hasn't always been realized. But it should not be abandoned. The alternative is to settle for becoming a nation of squabbling minorities, fighting over the spoils of affirmative action, always looking for chances to scream "discrimination," even rewriting history in hopes of finding self-esteem elsewhere than in our own efforts.

This country needs to be more than a multilingual, multicultural collection of competing minorities living within a set of geographical borders. If it is to live in peace with itself, it must continue to work toward the idea of welcoming everyone into a mainstream majority, not making it easy—or beneficial—for minorities to stay outside.

There is an object lesson for the United States as close as Canada, where bilingualism exaggerates ethnic differences and deepens the schisms and separatist sentiments between Quebec and the other provinces. Passing an English-as-official-language law would make it clear the United States intends to avoid this bitter trap.

But such a law should also carry the moral—perhaps even the legal—obligation to assist those who can't speak English to learn how. Help in dealing with the government should be easily available. Other languages should be cherished and esteemed—both as private heritage and national resource.

Congress should, however, declare that English is the official language of government and so help nudge the nation toward its future as one nation indivisible.

CAPITAL GAINS: A VIEW FROM HOME

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LAGOMARSINO. Mr. Speaker, throughout the debate on the budget I have been listening to some of my colleagues describe their tax increases as "taxing the rich." I have also heard some of my colleagues describing a cut in the capital gains tax as a "tax break for the rich."

However, the most important voices I hear come from my district in California. My constituents want to know why they are being forced to pay more taxes and "bite the bullet" while Congress gives itself a raise. I hear from

hard-working, middle-class Americans from Lompoc, Santa Barbara, Ventura, and Santa Maria, who want to know why they are going to have to pay more taxes under this "tax the rich" proposal. Did they get rich and someone forget to tell them?

For example, here is a letter that I received this week from one of my constituents in Santa Barbara:

October 16, 1990.

Rep. ROBERT LAGOMARSINO,
314 East Carrillo Street, Santa Barbara, CA.

DEAR CONGRESSMAN LAGOMARSINO: Although I sympathize with you regarding the difficult job of passing a balanced Federal budget, my sympathy has its limits.

[My husband] and I are in our early thirties, living on his income in the mid-thirties, with our two young children in our Lompoc home. The newest automobile in our driveway is a twelve-year-old Oldsmobile.

I am a part-time student at Allan Hancock College, pursuing a degree in Nutritional Sciences. We hope to relocate to the midwest to be nearer our families, sell our present home and reinvest the equity.

I resent hearing from Congress that a cut in capital gains affects only the wealthy. Far from wealthy, and because we are under age 55, we stand to lose to taxes a portion of the profit from the single greatest investment we may make in our lifetime. Rather than penalize us for wise financial planning, Congress should encourage investment for retirement.

If the October 16, 1990, Santa Barbara News-Press is accurate, our income bracket is projected for an income tax increase under the three proposals being considered.

I'm writing to tell you we have no more to give. This well has gone dry.

Sincerely yours,

MRS. DIANNE LIEBEG,
3380 Via Arnez, Lompoc, CA.

It's time Congress listened to the important voices in this country . . . the voices of the people who elected us to represent them.

THE HYPOCRISY OF THE SAUDI ARMS SALE

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LEVINE of California. Mr. Speaker, the proposed $20 billion arms package to Saudi Arabia, to be carried out in two phases, is not only excessive but highlights the hypocrisy of the Bush administration's Middle East policy. In an article titled "Arms Sales Blast New World Order," Michael T. Klare points out that the President has repeatedly stated that his policy is based on a pursuit of a new world order, "freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace." Although I support the President's efforts to forge an international consensus to curb Saddam Hussein's unprovoked aggression, the Saudi arms sale contradicts the President's own policy goals.

By pouring these unprecendented and massive amounts of arms—which are clearly not all needed to meet the current Iraqi threat—into the region, the President is only throwing another match into the tinderbox. It is time the United States focuses on arms control rather than on fueling a regional arms race to this already volatile and violent region. Instead of using the Persian Gulf crisis as a cover to transfer arms to the region, the President should be using the international coalition he has built to promote a united effort to begin reducing arms transfers to the Middle East. Such a policy would be in line with the supported United States' aim of securing peace in this war ridden area of the world.

I ask unanimous consent to enter Mr. Klare's article into the RECORD and I urge my colleagues to take a few moments to study this important opinion piece.

[From the Christian Science Monitor]

ARMS SALES BLAST NEW WORLD ORDER

(By Michael T. Klare)

It has become common in Washington, at the United Nations, and elsewhere to speak of a "new world order" emerging from the collapse of the cold war and from the near-universal adherence to UN sanctions against Iraq. Out of the present Gulf crisis, President Bush declared last month, could come "a new era, freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace."

But while some recent United States moves suggest a genuine commitment to this new area, Mr. Bush is clearly sticking to the old world in one conspicuous way: his approval of billions of dollars in arms transfers to Saudi Arabia, Egypt, Israel, and other Middle Eastern nations.

On Sept. 14, the Bush administration announced a $20 billion-plus sale of advanced weapons to Saudi Arabia—the biggest such deal ever. Included in the proposed sale were some 385 M-1A2 tanks, 24 F-15 air-superiority fighters, 48 AH-64 Apache helicopter gunships, and 400-500 M-2 Bradley armored personnel carriers. Bush subsequently agreed to split the sale in two, with some tanks and aircraft to be included in a later transaction, but even the diminished package represents an extraordinary transfer of military gear.

Nor is the Saudi deal the only major US arms transaction under consideration. In early September, Bush suggested that the US was prepared to erase Cairo's existing $7 billion military debt, a step clearly intended to pave the way for fresh Egyptian orders. (Egypt already has been promised hundreds of M-1 and M-60 tanks under earlier agreements). The administration has also promised a sympathetic response to Israel's request for $1 billion in new transfers (reportedly to include F-15s, AH-64s, and Patriot air-defense missiles).

If all these sales go through, US arms sales to the Middle East could jump from approximately $5 billion per year in the late 1980s to $30 billion or more in fiscal 1991, with comparable figures in the year ahead. Other major arms suppliers are also expected to benefit from the current flurry of buying. Great Britain, for instance, is pursuing new sales contracts with Saudi Arabia, Abu Dhabi, and Oman, while France is seeking sales to Saudi Arabia and Qatar. And while Moscow has not yet announced any new military sales to the region, the buildup among conservative Arab nations will likely stimulate orders for Soviet equipment from such clients as Libya, Syria, and Algeria.

The result of these transactions, then, will be a massive transfer of sophisicated military equipment to the nations of the Middle East. And while many of these deals are predicated on the current crisis in Kuwait, the weapons themselves will probably not be delivered to these countries until 1992, 1993, or later—long after the present crisis is resolved.

Today, the nations of the Middle East are largely united in their opposition to Iraq's takeover of Kuwait. However, most of these nations are involved in the Arab-Israeli dispute or in internecine conflicts of their own. And if history is any indication, the current consensus in the region will disappear as soon as the present crisis is resolved, to be followed by the resumption of traditional rivalries and conflicts. Thus, weapons supplied today for defense against Iraq will be used, in all probability, to settle scores and resolve disputes that predated the invasion of Kuwait.

It is delusive to believe that the US can control the ultimate use of weapons supplied to Saudi Arabia, Egypt, Israel, or other countries. Once a weapon is in the arsenal of a country, rulers can use it as they see fit—a fact demonstrated by Saddam Hussein's use of French- and Soviet-supplied munitions to seize Kuwait.

It is likely, therefore, that the ultimate consequence of new arms sales to the Middle East will be an accelerated arms race and growing tension between traditional rivals. Experience—particularly with the Arab-Israeli conflict—suggests that this sort of tension and rivalry fed by arms sales leads sooner or later to the outbreak of war.

If the White House were truly interested in building a world "more secure in the quest for peace," Bush would severely restrict future arms transfers to regions of turmoil and work with other nations, including France and the Soviet Union, to establish a common framework for moderating the arms trade.

Now, with the world united in its opposition to the Iraqi invasion, is the perfect moment to begin such negotiations. Surely, we should not allow all the progress by the world community in recent weeks toward a common response to aggression to be undermined by an accelerated arms race in the Middle East.

TRIBUTE TO THE POGANSET MIDDLE SCHOOL STUDENTS

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to congratulate the Poganset Middle School in Glocester, RI. The school has been chosen as a recipient of the 1990 State Champion Physical Fitness Award presented annually by the President's Council on Physical Fitness and Sports.

State champion awards are based on school performance for the 1989-90 school year. The students of the Poganset Middle School qualified for this prestigious award by scoring at or above the 85th percentile on all test items for the President's challenge. The challenge consists of a national fitness test which measures heart/lung endurance, muscular strength and endurance, speed and agility. Physical fitness is a very important aspect to our Nation's health. I am very proud to see that students from the Poganset Middle School have been chosen for this award.

It is with great pleasure that I salute the students of Poganset Middle School for their achievements in physical fitness. I wish them continued success in the future.

TAX POLICY AND U.S. CAPITAL COSTS

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. McEWEN. Mr. Speaker, the impact of capital costs and the factors which determine such costs might be referred to as a new frontier of economic analysis in the field of saving, investment and competitiveness. Although the subject is not without complexity, the basic essentials are easy to understand. When one understands those essentials, it is crystal-clear that our tax policy since 1982 has been a major factor in elevating our capital costs to the highest in the industrial world.

The capital cost story—and much of the case for enacting the Jobs, Growth and Competitiveness Act of 1990, is set forth in the following material prepared by the American Council for Capital Formation, and which I submit for the RECORD.

TAX POLICY AND U.S. CAPITAL COSTS

WHAT IS THE COST OF CAPITAL?

The cost of capital is the pretax return on a new investment needed to cover the purchase price of the asset, the market rate of interest, inflation, taxes, and the return required by the investor.[1]

Capital costs are an important factor in determining which investments firms will make. High capital costs mean that only those projects with the greatest expected return will be undertaken because they will yield a return large enough to satisfy investors, resulting in less overall investment and an aversion toward higher-risk projects.

INTERNATIONAL CAPITAL COSTS COMPARISONS

Earlier international comparisons based on the traditional pretax return concept show that U.S. capital costs are approximately twice those of Japan, 60 percent higher than the United Kingdom's, and 30 percent higher than those of West Germany.[2] Experts conclude that the current high U.S. capital costs are due to three primary factors; (1) high interest rates; (2) the lack of indexing of depreciation allowances for inflation; and (3) federal tax code changes since 1982.

New research by Stanford University Professor John B. Shoven indicates that the U.S. cost of capital is higher than previously estimated. Professor Shoven's study is a step forward in capital cost analysis because he incorporates a measure of the risk premium actually demanded by investors in the traditional pretax return measure, whereas previous studies used the unrealistic assumption that the risk premium could be measured by the real interest rate on safe, short-term government bonds. Using his more realistic measure of the pretax return required by investors, Dr. Shoven concludes that the U.S. cost of capital is approximately two and one-half times higher than that of Japan and that the U.S. tax system discriminates against risky investments.

Dr. Shoven shows that for a typical piece of equipment financed with equity and with an assumed five-year life, the cost of capital was 10.4 percent in the United States, in 1988 compared to 4.1 percent in Japan—a difference of 153 percent. U.S. structures financed with equity face capital costs 147 percent higher than Japanese structures. Debt-financed investments in the United States also incur substantially higher capital costs than in Japan.

Taxes are a very important element in the cost of capital. For example, Dr. Shoven's analysis shows that for an equity-financed plant, one-third of the cost of capital is due to the income tax, one-third to interest rates, and one-third to the required risk premium. Taxes are approximately 15 percent of the cost of capital for equity-financed equipment, with the remainder divided equally between interest rates and the risk premium.

The Shoven study indicates that the interaction between high U.S. nominal interest rates and depreciation allowances may explain a substantial portion of the observed differences between U.S. and Japanese capital costs. For example, with a zero nominal interest rate (that is, a zero time cost of money), depreciation deductions, even if spread over thirty years, are equivalent to expensing; corporate taxes therefore do not bias investment decisions among different types of assets. With a 10 percent interest rate, however, depreciation deductions occurring more than, say, fifteen years in the future are worth no more than twenty cents on the dollar. This means that the present value of the taxes saved with the depreciation deductions is not large enough to permit full recovery of costs, thus raising the cost of capital. The crucial importance of the nominal interest rate may explain why Japan's corporate income tax—now 37.5 percent—has a smaller effect on capital costs than does the U.S. corporate income tax.

TAX REFORM ACT OF 1986 AND U.S. CAPITAL COSTS

The problem facing U.S. industry can be illustrated by a specific example relating to the present value of depreciation allowances for new equipment purchases under prior law and under the Tax Reform Act of 1986. A study by Arthur Andersen & Co. shows that under the strongly pro-investment tax regime put in place in 1981, the depreciation allowance plus the investment tax credit for a steel company that installed a modern and competitive continuous casting process was 92 cents on the dollar in 1981, or the near equivalent of theoretical expensing. Today the present value is 68 cents under the regular tax and only 43 cents under the alternative minimum tax.

(With respect to the alternative minimum tax, it should be noted that the uncertainty of its future application to a given company's earnings vastly complicates the task of investment planning. It therefore necessarily raises the risk premium which Professor Shoven has properly identified as a significant factor in our high capital costs).

The study by Arthur Andersen and Co. also shows that for equipment that is technologically innovative or crucial to U.S. economic strength, including equipment used to make computer chips, robots for the manufacturing process, engine blocks and crankshafts for automobiles and trucks, telephone switching equipment, and equipment used in the continuous casting process for steel, we lag badly behind our major competitors. In fact, compared to five of our major competitors, we rank last or next to last in terms of the present value of cost recovery allowances.

From a competitive standpoint, U.S. tax policy since 1981 has hindered, rather than helped as our firms attempt to hold their U.S. market share and also expand sales abroad. The United States ranks near the bottom internationally both in terms of speed of capital cost recovery and with respect to the present value of recovery allowances.

Changes in tax law subsequent to the passage of the 1981 Economic Recovery Tax Act (ERTA) and especially the Tax Reform Act of 1986 have increased both the pretax return required by investors and the hurdle rate a firm's projects must meet. Using the pretax return measure, capital costs for investment in equipment, for example, have risen almost 90 percent since 1982 (see Chart 2); using the hurdle rate concept, capital costs for equipment have risen by 23 percent.

The effective tax rate on new investment reflects the cost of capital. According to a study by the Congressional Research Service, after the passage of ERTA in 1981, the effective tax rate on equipment approximated theoretical expensing; by 1986, when the Tax Reform Act was enacted, the rate increased to 46.3 percent, which exceeds the statutory tax rate of 34 percent. The loss of the investment tax credit and the lack of inflation indexing for depreciation are the major reasons why the effective tax rate exceeds the statutory rate.

[1] Another frequently used measure is the user cost of capital—often called the "hurdle rate" because it measures the return an investment must yield before a firm would be willing to undertake the capital expenditure. For example, for a typical manufacturing firm to be willing to purchase a new piece of equipment given current tax law and economic conditions, the asset would have to yield an annual return of approximately 25 percent. This yield would cover all costs, including the purchase prices of the equipment, real (economic) depreciation, financing costs, and taxes. The only difference between the user cost (or "hurdle rate") and the pretax return measure is that the former includes economic depreciation (about 15 percent per year for equipment, for example). Economic depreciation, which measures the actual useful life of an asset, does not vary with the tax code.

[2] Recent increases in interest rates and declines in stock prices in Japan and Western Europe may have narrowed the margin between high U.S. capital costs and the lower levels abroad. Doubtless, however, U.S. capital costs are still considerably higher than those of our international competitors.

PROTECT OUR BIG OIL INTEREST

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. PETRI. Mr. Speaker, many people are concerned about the reasons for our presence in the Middle East. Some question whether our sons and daughters should be sacrificed if our primary interest is to protect our big oil interests. While we do need oil, I believe that this should not be and is not our purpose.

I would like to insert into the RECORD at this point an exchange of correspondence between a constituent and myself on this issue.

My constituent has asked to make sure that these issues are discussed in Congress.

The letters follow:

KOHLER, WI,
August 27, 1990.

Congressman THOMAS PETRI,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN PETRI: It is amazing how quickly the world changes, isn't it? On June 29th you wrote to me about reducing defense spending, and today I am writing to you about a major U.S. military presence in the Middle East!

Today, the Milwaukee Journal ran a story about the widespread support which President Bush's military action is receiving from the people of Wisconsin. The reporter put the approval rate at about 70%. Congressman Petri, I am a resident of Wisconsin who voted for both President Bush and Tom Petri in the last general election, and I want you to know that I am very strongly opposed to our military presence in the Persian Gulf!

All of the rationale for our Middle East involvement which I have heard and read about seems to boil down to protecting our "way of life" as the largest consumer of energy on the face of the earth. It has also been said that we are there to "protect our friends" from aggression. It is very hard for me to feel that my son's life is worth protecting Arab "friends" who within a moment, would turn on us when we would least expect it! Furthermore, if America would learn to conserve, we wouldn't be so dependent on foreign oil. It would also help if America had a working and effective energy policy directed at developing energy from sources other than oil.

Congressman Petri, it is so obvious what this Mid East Crisis is all about. It is big oil, big business and big government playing war games with our children's lives and messing up the balance of power in a world which was just begining to get used to the idea of a lasting peace.

Many times in the past couple of weeks, I've imagined what I would do if I was the President. That's a real tough thought to ponder! However, it seems to me that if what he's doing is the only option left open to him, perhaps he should get the entire country involved in this effort by rationing fuel and asking ALL Americans to make a sacrifice to beat this crisis.

Sincerely,

DARRYL M. GUMM.

KOHLER, WI,
September 3, 1990.

Congressman THOMAS PETRI,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN PETRI: Last night, I took a walk with a couple of my neighbors and had a long talk with them about our nation's involvement in the Persian Gulf. Our visit has left me with some very troubling thoughts about what we are doing there and why.

Last week, I wrote both you and President Bush letters relative to the Persian Gulf War Issue, but now that Congress will be convening once again from its summer recess, I would like to know if it would be possible for me to address Congress. As an accomplished public speaker and community leader, I simply want to appeal to Congress to excercise caution here, set aside "politics" and act in the best interests of the average citizen in our great country.

The Persian Gulf Crisis holds for the entire world, the potential for global destruction never before experienced by any generation. As a community leader, I work a lot with children. For the sake of these children, Congressman PETRI, we need a peaceful solution to this crisis which goes far beyond global politics.

If I had to opportunity to be your guest in Washington D.C. to express the views of some of your constituents in the 6th district, I would pay all of my expenses.

Thank you.

Sincerely,

DARRYL M. GUMM.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 26, 1990.

Mr. DARRYL M. GUMM,
Post Office Box 2,
Kohler, WI.

DEAR MR. GUMM: Thank you very much for your letters. It was good to hear from you.

I appreciate your taking the time to give me your thoughts on the situation in the Persian Gulf. While I share your concern over the hardship and dangers being faced by American troops, I believe that the President has done a wonderful job marshalling the unified position of most of the world, and I support him.

I just don't think we can accept the takeover of Kuwait, principally becuase we cannot let the notion get abroad that strong regional powers can take over neighbors without facing a strong response. We should have learned this lesson in the years leading up to World War II. Making sure that Iraq's aggression fails is very important to the whole structure of world order in the new post-Cold War world.

It is important to note that it may be entirely possible to resolve this crisis short of actual war. If we can ensure a sufficient oil supply, we should be able to maintain economic pressure on Iraq for some time, hopefully resulting in a peaceful and satisfactory outcome to this situation. Saudi Arabia and Venezuela have already increased their oil production, and we have a strategic oil reserve which could be used to alleviate any shortfall that remains. In fact, I have already written to the President urging him to open these reserves. There is no reason why the world shouldn't be able to do without the oil exports of Iraq and Kuwait for a very long time without any ill effects on the world economy if we just replace that oil from the other available sources.

However, I must repeat that oil should *not* be our main reason for coming to the aid of Kuwait and I am sure that it is not. No matter how much oil Iraq controls, it will need to sell that oil as much as we need to buy it. The President has stated that what is at stake here is no less than the future of the post-Cold War era, and I agree. As the Soviet threat subsides, we are faced with an historic opportunity to replace aggression between nations with peaceful coexistence. The outcome of this situation will send a powerful message to the would-be Hitlers of this world. It is up to the U.S. and the world community to make sure that we send the right message. The world will no longer tolerate aggression as a means of expansion, and by making this clear, I believe we can prevent future threats to the lives and livelihoods of American citizens. In the specific case of Saddam Hussein, if we don't stop him now, he is likely to keep gobbling up countries until we are forced to stop him when he is far more powerful.

I appreciated your offer to address Congress regarding your views on this matter. While it would be ideal to hear from many individuals on this and other issues, I am afraid that this is impossible. Traditionally, the only non-members who are allowed to address the Congress are the President and foreign heads of state. The only exceptions in this century have been Sir Winston Churchill, Lech Walesa and Nelson Mandela. I am sorry that this is the case, but I am nonetheless pleased to have your views in writing, and I am taking the liberty of inserting our exchange of correspondence in the CONGRESSIONAL RECORD. I have enclosed a copy for your information.

Please feel free to contact me on issues of importance to you.

With best wishes, I am

Sincerely,

THOMAS E. PETRI,
Member of Congress.

H.R. 5934

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr.GILMAN. Mr. Speaker, today I am introducing H.R. 5934, legislation to provide credit for the poor in developing countries through loans for self-employment and other assistance for microenterprise.

On September 26, 1990, the Foreign Affairs Subcommittee on International Economic Policy and Trade held a hearing on the GAO's review of the Microenterprise Loans for the Poor Program, a program of the Agency for International Development [AID]. We requested the review last October after experiencing a year of serious difficulty receiving information from AID concerning microenterprise. In our letter to GAO we quote AID as stating.

• • • (we have) complied with, and indeed, exceeded both the letter and the spirit of the microenterprise legislation.

But the data that would back up this statement never arrived.

After requesting the GAO study we received from AID the March 30, 1990 report to the Congress entitled, "AID Microenterprise Development Program." However, much of the data seemed questionable.

AID has done some excellent work helping the poor and pioneering microenterprise. We were therefore dismayed that we could not learn just how closely the Agency had geared its program toward women, the average amount of the loans and the economic brackets that the recipients represented. It seemed to us to be a serious shortcoming in AID's commendable track record if oversight was impossible because loan recipient data was unknown.

Microenterprise fiscal year 1991 report language (House) stated,

The Administer of AID is to target this program to the poorest 50 percent of the population of the poorest aid assisted developing countries and the poorest 20 percent in the other AID-assisted countries. AID is also to target at least 50 percent of all the resources to support productive activities

managed by women. Credit and other forms of assistance should be channeled primarily through private community based organizations.

The AID Microenterprise Development Program report to Congress reveals that only one-sixth of the funds used for direct credit in 1989 went toward loans of less than $300. This record was far below our expectations and will have to be greatly improved. We were also concerned that too few of the microenterprise resources are being channeled to the poorest entrepreneurs in the form of small loans.

We have been told by AID officials that the expense of collecting data in the future would be immense and complicated. However, we believe that it is not out of line or too difficult to request the financial intermediaries that receive U.S. funds for the purpose of microenterprise finance, to collect the data on future loans and make the information available to AID. We know that the highly successful Grameen Bank, as a matter of course, has extraordinarily detailed records of its loans and loan recipients.

At our September 26 hearing we learned that USAID is making a greater effort to systematize the collection of data. Nevertheless, USAID officials do not feel compelled to meet specific targets regarding loan size, women and economic brackets. H.R. 5934 addresses this issue by fixing certain specific targets that USAID must meet when administering the Microenterprise Program.

Accordingly, I urge my colleagues to support H.R. 5934.

Mr. Speaker, I insert the full text of H.R. 5934 at this point in the RECORD:

H.R. 5934

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Micro Enterprise Loans for the Poor Act".

SEC. 2. PROVIDING CREDIT FOR THE POOR IN DEVELOPING COUNTRIES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Hunger and hunger-related disease takes the lives of 13,000,000 to 18,000,000 people annually. Three-quarters of these deaths are children under the age of 5.

(2) A primary cause of this suffering is the inability of the poorest people living in developing countries to earn incomes that would enable them to provide the nutritional and health benefits that their families need.

(3) The rural and urban poor comprise the developing world's greatest untapped resource, and the health of national economies and democratic institutions is vastly improved when opportunities for the poor to participate in the economies of their countries are actively promoted and expanded.

(4) The inability of the rural and urban poor to obtain credit (in particular, loans for self-employment) to finance their economic activities, and their inability to obtain related nonfinancial assistance, have long been an obstacle to their achievement of economic progress and well-being.

(5) This inability to obtain credit and other critical productive inputs has been a significant factor inhibiting the growth of micro enterprises. Even so, such enterprises still represent an important source of private sector commercial activity in developing countries, provide significant benefits for the poor majority in those countries (particularly women, tribal peoples, and other minorities), and serve to integrate them into the economic life of their countries.

(6) Formal financial institutions in developing countries have not recognized that, although the poor majority, and especially people in absolute poverty, may lack collateral for loans and may not be able to comply with all the traditional loan formalities, the productive activities of micro enterprises can nevertheless be financially viable if access to sources of credit is expanded.

(7) Experience with making productive credit available to the poor, including to micro enterprises and groups of poor people, has demonstrated their ability to repay loans and to achieve significant improvements in their living standards and to make significant contributions to the local economy.

(8) The Comptroller General of the United States found that the Agency for International Development did not target micro enterprise programs to the poorest of the poor in any of the three countries visited by representatives of the General Accounting Office.

(9) Experience has shown that several models for extending banking services to the poor are being successfully used in an increasing number of countries.

(10) Economic policies, particularly those that are neutral as to enterprise size, are important to the encouragement and operation of micro enterprises.

(b) MICRO ENTERPRISE CREDIT PROGRAMS AND OTHER ASSISTANCE.—The Administrator shall make assistance available, in accordance with this section, to financial intermediaries in developing countries to enable them to provide loans and other assistance for micro enterprises, with particular emphasis on loans for self-employment. Funds available to carry out this section may be made available to financial intermediaries for use by them—

(1) in extending credit for micro enterprises, including loans for self-employment, in order to provide such enterprises with financial resources for working capital, the acquisition of equipment and other supplies, and payment of other expenses of the enterprise;

(2) in extending credit for such purposes as food processing, production of cloth and clothing, creation of building materials and household goods, and providing services to rural residents through micro enterprises;

(3) for the startup costs incurred by a nongovernmental organization in becoming a financial intermediary or improving its capability as a financial intermediary, and for other institutional development expenses (including audit and evaluation costs) of the intermediary that are related to the establishment and initial operation of the credit and other business support activities assisted pursuant to this section;

(4) for expenses incurred by the financial intermediary in providing training and technical assistance for micro enterprises in order to enable them to obtain and utilize credit and other nonfinancial assistance under this section; and

(5) to provide other assistance necessary to the successful functioning of micro enterprises.

(c) PRIMARY EMPHASIS.—

(1) POOREST PEOPLE.—In carrying out this section, primary emphasis shall be placed on making direct credits and other assistance available to those individuals living in absolute poverty. Accordingly, the funds made available to carry out this section shall be directed to assistance for individuals whose income is in the lowest 20 percent of the per capita household incomes in the country; and, to the maximum extent practicable, especially where "means tests" are impossible, funds shall be directed to those individuals in the least developed countries (as defined by the United Nations Development Program) with per capita household incomes in the lower 50 percent.

(2) INDIGENOUS NONGOVERNMENTAL ORGANIZATIONS.—In carrying out this section, the Administrator shall place primary emphasis on the developent of the capacity of and use of indigenous nongovernmental organizations (especially those representing women, tribal people, and other minorities) that will provide credit and other assistance to micro enterprises, but the Administrator may also support other entities as appropriate. Attention shall also be directed to savings and capital formation as part of the systems support for micro enterprises.

(d) GUIDELINES FOR PROGRAM.—The Administrator shall issue guidelines for financial intermediaries providing assistance pursuant to this section. These guidelines shall seek to ensure that financial intermediaries—

(1) utilize the assistance made available pursuant to this section to provide credit and related assistance to the poorest people, with special attention being given to the provision of credit and other assistance to women, tribal peoples, and other minorities;

(2) consult with potential recipients of credit and other assistance under this section, and include their views to the greatest extent possible, in the designing of credit projects to ensure that the projects are responsive to the credit and other productive input needs of the recipients;

(3) minimize or remove obstacles to credit provided under this section, such as collateral and literacy requirements; and

(4) establish credit terms at rates of interest which reflect the prevailing market rate of interest and the real cost of providing credit to the targeted beneficiaries.

(e) FUNDING.—

(1) SOURCES OF FUNDS.—Assistance pursuant to this section shall be provided with the following funds:

(A) Funds made available to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance, including development assistance for sub-Saharan Africa) and chapter 4 of part II of that Act (relating to the economic support fund).

(B) Foreign currencies acquired as payments of loans made under those chapters pursuant to the authority contained in subsection (g).

(C) Foreign currencies generated from assistance provided under those chapters.

(D) Foreign currencies generated or acquired under title I of the Agricultural Trade Development and Assistance Act of 1954, including foreign currencies made available to carry out section 108 and foreign currencies available for use pursuant to title III.

(E) Amounts paid to the United States on loans made to financial intermediaries pursuant to this section.

(2) ALLOCATIONS FOR LOANS FOR SELF-EMPLOYMENT AND OTHER DIRECT CREDIT ASSISTANCE FOR MICRO ENTERPRISES.—Of the funds described in paragraph (1) which are made

available under this section each fiscal year, at least 75 percent shall be used for direct credit support of micro enterprises, including loans for self-employment. At least 50 percent of the funds used pursuant to this paragraph shall be used for loans for self-employment that are of an amount of $300 or less (in most cases, however, the initial loan should be $150 or less).

(3) ASSISTANCE FOR FISCAL YEARS 1992 AND 1993.—The total amount of assistance provided pursuant to this section—

(A) during fiscal year 1992, shall be at least $100,000,000; and

(B) during fiscal year 1993, shall be at least $120,000,000.

(f) APPLICABLE AUTHORITIES.—Except as provided in this section, assistance provided pursuant to this section shall be provided in accordance with the relevant authorities contained in the Foreign Assistance Act of 1961 or the Agricultural Trade Development and Assistance Act of 1954.

(g) AUTHORITY TO GENERATE FOREIGN CURRENCIES.—In order to generate foreign currencies which can be made available to financial intermediaries pursuant to this section, the Administrator is authorized to use funds made available to carry out chapter 1 of part I (including funds for development assistance for sub-Saharan Africa) and chapter 4 of part II of the Foreign Assistance Act of 1961 to provide assistance to the governments of developing countries on a loan basis repayable in foreign currencies, at a rate of exchange to be negotiated by the Administrator and the foreign government. Such loans shall have a rate of interest and a repayment period determined by the Administrator.

(h) FOREIGN ASSISTANCE ACT ASSISTANCE TO INTERMEDIARIES.—

(1) TERMS.—Loans and grants made to financial intermediaries pursuant to this section with funds described in subsections (e)(1)(A), (e)(1)(B), and (e)(1)(C), or with amounts made available pursuant to paragraph (2) of this subsection, shall be on such terms and conditions as are determined by the Administrator and the intermediary.

(2) USE OF LOAN PROCEEDS.—Amounts paid to the United States on loans under this section with funds described in subsections (e)(1)(A), (e)(1)(B), and (e)(1)(C) or with amounts used pursuant to this paragraph shall, as determined by the Administrator, be available for use for assistance pursuant to this section.

(i) APPLICATION OF CERTAIN LAWS.—Section 122 of the Foreign Assistance Act of 1961 shall not apply with respect to loans pursuant to subsections (g) or (h). Funds described in subsection (e)(1) (B) and (C) or subsection (h)(2) which are received by the United States pursuant to this section shall not be subject to the requirements of section 1306 of title 31, United States Code, or other laws governing the use of foreign currencies accruing to the United States.

(j) TERMS OF FOREIGN CURRENCY ASSISTANCE UNDER PUBLIC LAW 480.—Funds described in subsection (e)(1)(D), or in the second sentence of this subsection, which are made available to financial intermediaries pursuant to this section may be provided on a grant or loan basis, notwithstanding any provision of the Agricultural Trade Development and Assistance Act of 1954. Any foreign currencies under that Act which are repaid by financial intermediaries under this section shall be available to and used by the Administrator to make available assistance for the purposes of this section. Section 108(d) of that Act shall not apply to the use of such currencies. Section 103(m) of that Act shall not apply to agreements entered into under section 108 of that Act for purposes of this section.

(k) NOTICE TO CONGRESS.—At least 15 days before making funds described in subsection (e)(1) available to a financial intermediary under this section, the Administrator shall notify the Congress in accordance with the procedures applicable to reprogrammings under section 634A of the Foreign Assistance Act of 1961.

(l) ECONOMIC POLICIES.—In policy dialogues concerning economic policies with, and efforts to reform economic policies of, countries receiving assistance under part I of the Foreign Assistance Act of 1961, the Administrator shall encourage economic policies which promote micro enterprises.

(m) DEFINITONS.—For purposes of this section—

(1) the term "absolute poverty" refers to those people who lack access to assets sufficient to permit them to provide for their basic human needs;

(2) the term "Administrator" means the administrator of the agency primarily responsible for administering part I of thel Foreign Assistance Act of 1961;

(3) the term "financial intermediary" has the same meaning as is given that term in section 108(i)(2) of the Agricultural Trade Development and Assistance Act of 1954;

(4) the term "loan for self-employment" means direct credit assistance to support the establishment and operation of a single or family proprietorship by individuals who live in absolute poverty; and

(5) the term "micro enterprise" means an enterprise—

(A) that is a single or family proprietorship, a small-group enterprise, or cooperative,

(B) that has 15 or fewer workers, and

(C) that is wholly owned by the poor majority in the developing country,

and which often lacks access to credit at reasonable cost.

HONORING ALEXANDER HAMILTON

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GREEN of New York. Mr. Speaker, on October 24, 1990 President Bush signed into law legislation I introduced that renames the U.S. Custom House in New York City in memory of Alexander Hamilton, our Nation's first Secretary of the Treasury. I am very pleased that this bill became law this year as 1990 is the bicentennial of Hamilton's funding program and of his founding of the Coast Guard.

I should like to share with my colleagues the following essay written by Robert A. Hendrickson, Hamilton's biographer. It provides a wonderful portrait of a man who is one of the greatest figures in American history, one who truly deserves to be remembered.

THE HAMILTONIAN BICENTENNIAL OF AMERICA'S PUBLIC CREDIT

(By Robert A. Hendrickson)

Year 1990 is the bicentennial of the year in which Alexander Hamilton introduced the financial system that led to America becoming the leading financial and economic power in the world, New York City becoming the financial capital of America—and being displaced by Philadelphia for 10 years and then Washington, D.C. as the capital of the nation.

The House of Representatives on September 21, 1789 had directed Hamilton to prepare a plan for providing adequate support of the public credit and "report the same to the House at its next meeting," January 14, 1790, thus giving Hamilton only 110 days to find a solution to the unpaid war debts incurred in the Revolution, and in keeping the government going since then.

The paper money Congress had issued during the war to pay and supply the Army, of a gross face value of over $200 million, was now almost worthless, having been officially devalued at a ratio of 40 to one, plus interest. It was regarded as "not worth a Continental." In addition, the government owed the French government and Dutch bankers $11,710,378, and $42 million or more to its own citizens, the interest on which was far in arrears. Then there were the war debts of the states, which Hamilton estimated at $25 million. Total annual interest on all these debts was $4.5 million.

In proportion to the government's revenues then, this was equivalent in today's terms to a foreign debt of $2.4 trillion and a domestic debt of $8.7 trillion; today's total national debt, foreign and domestic is roughly $3.0 trillion. Total annual interest on the foreign debt then at 4 and 5 percent was $543,000 and on domestic debt $4 million.

With no income tax, there were only three sources of revenue, direct taxes, domestic excises, and duties on imports. Direct taxes were the most onerous, least productive and most difficult to collect. Customs duties, mostly taxes on manufactured goods imported from Britain, were most productive, and the easiest to collect, and the exclusive realm of taxation by the national government. Excises, mainly taxes on liquor and other domestic products bore heavily on the poorer classes, like the distillers of Western Pennsylvania, for whom whiskey was the only way to sell their corn for cash, given their remoteness from markets.

There were conflicting political interests of every kind: Some states—Massachusetts, Connecticut and South Carolina owed much more on war debts than others, like Virginia and North Carolina, who had much less to gain, but held a fourth of the seats in the House. Speculators bought up the nearly worthless debt obligations at ten cents on the dollar, hoping to have them redeemed at par, leading Hamilton's critics to charge ever afterward that his plan would benefit only speculators, insiders, and "bloodsuckers", at the expense of poor old war veterans, their widows and orphans.

Hamilton's "First Report on Public Credit" to Congress on January 14, 1790 set forth his plan, with legislation to enact it. By the end of August, before it recessed, Congress had passed the laws to create the Hamilton system, including the funding and assumption act for refinancing and servicing the domestic debt, a new European loan to refinance the foreign debt, a plan to settle state accounts, and increase import duties, and to create a sinking fund to redeem the debt, and a separate European loan to fund it. The trustees of the sinking fund were men of the highest probity: John Jay, Chief Justice of the Supreme Court, John Adams, Vice President, Thomas Jefferson, Secretary of State, Hamilton himself, Secretary of the

Treasury, and Edmund Randolph, the Attorney General. Drexel Burnham in its prime could not have had a better idea for marketing bonds.

Since customs duties were the main support of the government and Hamilton knew all about smugglers from his boyhood working in a merchant's store on St. Croix, then a thriving commercial center, he also proposed to protect the revenue from evasion by creation of a powerful Coast Guard, which with characteristic specificity, he told Congress how to create. Congress approved all, and instructed him to submit further reports, including plans for more taxes, and for a national bank, and he would soon comply.

Even many of the best educated did not understand Hamilton's plan. John Adams said "Every dollar of a bank bill that is issued beyond the quantity of gold and silver in the vaults represents nothing, and is therefore a cheat against somebody":

"You're wrong," said Hamilton, "The proper funding of the present debt, will render it a national blessing." Funding is "The true secret for rendering public credit immortal," not paying it off in specie when due. Furthermore, he added, "Credit, public and private is of the greatest consequence to every country. It might be emphatically called the invigorating principle." Government bonds in the vaults will serve the same purpose as gold and silver there, and create public credit. "In nothing are appearances of greater moment, than in whatever regards credit," he added. "Opinion is the soul of it, and this is affected by appearances, as well as realities." But public credit is earned only by punctual performance of obligations. "States, like individuals, who observed their engagements, are respected and trusted, while the reverse is the fate of those, who pursue an opposite conduct."

Hamilton's Report on Public Credit was much more than a simple set of recommendations. It was analysis of the problem, a plan of action, an argument designed to overcome widespread Congressional hostility to the plan, and a separate argument to persuade public creditors that it was fair, and would work, and would benefit all. In it he blended far-ranging vision with attention to detail, boldness with care and prudence, imagination with discipline, creativity with craftsmanship. On half a dozen important votes over the course of the hot summer, various parts of Hamilton's plan lost by narrow margins to opponents led by James Madison.

One mid-June morning outside the door of President Washington's house on the Bowling Green in Lower Manhattan, Secretary of State Thomas Jefferson met Secretary of the Treasury Hamilton, seemingly by chance, noting in his diary that the usually suave, urbane Hamilton surprisingly looked "somber, haggard and dejected beyond description." Out of their talk that morning and a dinner the next evening, with Madison, evolved the famous deal whereby Hamilton agreed to find the votes from northern congressmen to move the national capital from New York south to Philadelphia for ten years, (Pennsylvania votes were needed), and then permanently to the District of Columbia, near where Madison and Jefferson owned properties, provided Jefferson would obtain a switch of one southern vote in the Senate and five in the House, including Madison's, from opposition to support of his program. Each fulfilled his end of the bargain, the votes switched, funding and assumption passed, New York lost the capital. President Washington signed the program into law. Hamilton, who as a member of the last Continental Congress had engineered the designation of New York as the provisional capital, had always known that he did not have enough northerly votes to keep New York as the permanent capital.

With a monopoly on customs revenues, protected by the new Coast Guard, backed by a sinking fund trusteed by the most trustworthy of men, the bonds of the new government, an economic basket case when Hamilton took office, within four years had a higher credit rating than any country in Europe. Some were selling at ten percent over par. Talleyrand said, "they have been funded in such a sound manner and the prosperity of this country is growing so rapidly that there can be no doubt of their solvency." Two years after passage, heavy trading in stocks and bonds led to the founding of the New York stock exchange which within a hundred years would become the largest in the world, surpassing London's. By 1800 Europeans held three million dollars worth of American securities, and European inbound capital investment was helping build the American economy.

Eastern European countries which have thrown off politically autocratic top-down directed socialist economic regimes, and adopted new constitutions, now must face up to hard economic facts, as Hamilton did: pushing through rigorous economic measures needed to bring about change to successful free market oriented economic recovery, while still surviving politically. Hamilton's funding and assumption program of 1790 still provides a good working model of how to do it in 110 days.

To the documents of the momentous years of American beginnings—the Declaration of '76, the Constitution of '87, the Bill of Rights of '91, there should be added Hamilton's funding and assumption system of 1790. It made the financial fortune of New York City and America, and New York the financial capital of the world.

As Hamilton said, "No well informed man can cast a retrospective eye over the progress of the United States, from their infancy to the present period, without being convinced that they owe their present mature growth, in a great degree, to the fostering influence of [public] credit."

Robert A. Hendrickson, a partner of Eaton & Van Winkle, is author of "Hamilton I, 1757-1789," "Hamilton II 1789-1804" and "The Rise and Fall of Alexander Hamilton" and other books and articles.

THE REV. JAMES CLEVELAND, THE CROWN PRINCE OF GOSPEL MUSIC

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DYMALLY. Mr. Speaker, next week the Rev. James Cleveland, the Crown Prince of Gospel Music, will be honored at the Los Angeles Music Center by a host of gospel music superstars. The Los Angeles Times of October 26, 1990, carried a story about the Reverend Cleveland which I bring to the Member's attention.

[From the Los Angeles Times, Oct. 26, 1990]

THE CROWN PRINCE OF GOSPEL

(By Beth Ann Krier)

Growing up on the South Side of Chicago, he was Mahalia Jackson's paperboy, back in the 1930s when she was still working as a hairdresser. He'd try to hear her sing by putting his ear to her front door, and when that didn't work, he'd go to her beauty shop and listen to her hum songs while she did customer's hair.

Later on, he moved in to the home of the Rev. C.L. Franklin, father of soul legend Aretha Franklin, who was then 9. He helped the younger Franklin learn to sing gospel and years later, after she became a big-time pop star, he produced her Grammy-winning gospel album, "Amazing Grace."

But the Rev. James Cleveland has hardly been dwarfed by the queens of gospel music he's served. After all, he's the king.

For decades, if Cleveland hasn't been referred to as "the crown prince of gospel," he's been called "the king of gospel music." Or simply "King James."

He has a star on the Hollywood Boulevard Walk of Fame. Now 58 and in ill health, he's lost count of how many gold records he's received, but there are 15 of them framed and hanging on a living room wall at his spacious home in Baldwin Hills. Three Grammys and other awards hover nearby.

Monday evening at the Music Center's Dorothy Chandler Pavilion, a host of gospel-music superstars will perform, honoring Cleveland on the occasion of his 50th anniversary in gospel music.

Among those scheduled to appear are Stevie Wonder, Natalie Cole, Andrae and Sandra Crouch, the Mighty Clouds of Joy, Shirley Caesar, Albertina Walker, the Original Caravans, Inez Andrews, Cassietta George, Dorothy Norwood, the Williams Brothers, Edwin Hawkins, Walter Hawkins and Tremaine Hawkins. Franklin had wanted to appear, but doesn't like airplanes and didn't have the time to make it to Los Angeles because of another engagement.

Cleveland, who has long described his voice as a "fog horn" but has nonetheless sung on many of his records, won't be performing at the concert.

These days, he can barely talk. Indeed, he's been so sick for the last two years that he is able to sit up for only short periods of time.

During a recent interview at his home, for instance, Cleveland spoke despite a temporary tracheotomy, holding his fingers to his throat when he wanted to talk in order to close the bandaged hole in his wind pipe that allows him to breathe.

(Earlier this year, he was rushed to a hospital in Washington D.C. with severe respiratory problems. A few weeks later, the tracheotomy was performed. He was working in D.C. at the annual convention of the Gospel Music Workshop of America, an organization he founded 22 years ago and that has grown from about 400 to 20,000 participants each year).

"Last year, I was sick the whole year [with esophagitis, an acutely inflamed esophagus], and as soon as I'd recuperate from one thing, I'd get another. This is my third knockdown," he continued, referring also to a heart attack. "But I'm determined to pull back."

As he talked, Cleveland propped himself up on the ebony grand piano in his living room, which is lavishly furnished in shades of gold, white and black. As a result of his illnesses, he's lost a great many of the extra

pounds he carried around for years. But his spirits were high:

"The last couple of years, I haven't been able to sing. I've been battling with my throat. Hopefully, my doctor will take this [tracheotomy] out soon if he feels I'm well enough. I yearn and desire to be back in the race with the others. I still direct. I write music and I play it."

He has a reputation for being a perfectionist, overseeing details on many levels.

Joe Ligon, the Grammy-winning lead singer of the Mighty Clouds of Joy, credits Cleveland with inspiring countless gospel artists over the years—not only with his musicianship, but with such endeavors as seeking proper recognition for gospel stars.

"He'll tell you the things he had to do to get recognized," said Ligon, who won a Grammy for a recording Cleveland produced. "One thing he told me and I've heard him tell many people is that when he first started singing, he'd go to churches on Sunday morning, churches where they may not have known who he was in those days. He'd write a note himself and give it to an usher. It would say, 'Would you please tell the preacher that James Cleveland is in the audience and we want him to sing a song.' It was smart when you think about it."

Edwin Hawkins, the Grammy winner best known for the song "Oh Happy Day" (recorded by the Edwin Hawkins Singers), thinks Cleveland has probably inspired every gospel singer working today.

"We've all been influenced by him," he said. "I grew up with his music. . . . We all bought his records as children. That's how we learned to sing gospel music."

Hawkins' sister-in-law, gospel star Tremaine Hawkins, also grew up listening to songs by Cleveland and his various groups, from the Original Caravans to the James Cleveland Singers to the Southern California Community Choir.

"There was a time about five or six years ago when I put out a controversial album on A&M records," she recalled, referring to an album criticized in the gospel music community because it was played in discos and its words could be interpreted as secular as well as religious. "A lot of my gospel audience misunderstood and turned their backs on me in the music industry. Rev. Cleveland stood up for me [at a performance] and put his arms around me. He brought me to the front and said, 'Let's put our arms around Tremaine. Let's pray for her.' I will never forget that."

The up-and-coming artists Cleveland has helped also are unlikely to forget his generosity. Ask those who have been around Cleveland for a long time, and they will tell you that he has routinely helped all sorts of people.

For instance, Annette Thomas, Cleveland's manager for 21 years who also serves as the administrator of his church (Cornerstone Institutional Baptist Church in South Central L.A.), reveals that her boss regularly has helped unknown singers and groups.

"He is a gospel singer's gospel singer and friend. He goes all out to give support, playing for singers, rehearsing them, helping them get record deals, even to the point of helping them prepare for their auditions," said Thomas.

But Cleveland's generosity has extended beyond musical considerations. "He's paid rent for people. He's put people in houses who were totally homeless," noted Cleveland's 24-year-old daughter, LaShone Cleveland. "He's helped people out with their hospital bills. He's a man of his word. If he says he'll do something, he'll definitely do it."

And he definitely has more work to do—such as reforming the Grammy Awards for gospel music. He still lashes out periodically at what he believes to be narrow-minded Grammy nominating committees, arguing that input from black radio stations and black record stores should be considered so more artists can be recognized.

Cleveland still doesn't know where he gets the persistence and determination to keep pushing for improvements. As he explained: "I don't know where the boldness comes from, but I have been determined to treat gospel as an art form."

CELEBRATING GEORGE F. JOHNSON AND 100 YEARS OF ENDICOTT JOHNSON CO.

HON. MATTHEW F. McHUGH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. McHUGH. Mr. Speaker, this year marks the 100th anniversary of the Endicott Johnson Shoe Co. EJ—as we like to call it in New York's triple cities area of Binghamton/Endicott/Johnson City—has survived and thrived through the Great Depression, recessions, changing trade practices, and a host of other economic and societal ills which have caused the demise of many American businesses.

EJ survived and thrived because it embodied the characteristics of its founder, George F. Johnson. His kindness, compassion and dedication to the work ethic continue to be the legacy which inspires EJ, and which also reflects the values of the people of the region among whom George Johnson decided to spend his life.

Johnson began his career in the shoe industry at the age of 10, working 60 hours a week for $3 in a New England tannery. His story is the exact opposite of the stories of 19th century robber barons. It is the story of a simple man who fell in love with people, who worked hard, and took pride in their work. At a very early age Johnson decided that these were the people he was going to spend his life with, work with, live with, and build with. That's exactly what he did, in a life full of stories that became legends.

GEORGE'S FAMOUS MESSAGE

It was a message that wouldn't surprise anyone today, but when Johnson posted it above his time clocks in 1916, it surprised the whole world. It said, simply, "Starting Monday all Endicott Johnson employees will work an 8-hour day." Until then, they had been working 9½ hour days, while most of the shoe industry worked 11 hour days. The word spread rapidly among the thousands of workers, who decided they wanted to thank George in person. So they got their friends and their wives and kids and went over to George's house, and along the way they picked up a band and some clams and beer, and when George came out to his yard, he found that 25,000 of his closest friends had just dropped by.

And in the days that followed something remarkable happened. His 25,000 friends had been filled with such pride in their company and its founder that despite the shorter work hours, production reached a new high.

THE WORKERS' GOLF COURSE

George Johnson figured that golf might be good for tired workers, so he set about building the En-Joie Golf Course in Endicott, NY, which is now the site each year of the BC Open on the PGA tour. But when George built the course in the early 1900's, he knew workers hated to lose 75 cent golf balls. So he built a course for his workers that was most unusual by most standards—there were no hills, no lakes, and the rough was perhaps an inch high. If you tried to lose a golf ball on the En-Joie course, you couldn't do it.

There were more splendid golf courses in the country, some more dramatic and some tougher to play, but—in the eyes of many a golfer back then—none more beautiful in what it stood for.

GEORGE AND THE DEPRESSION

Then came the Great Depression. If you're George Johnson and you have 19,000 people making shoes, what do you do?

Do you lay everybody off? Do you get out of the business? What do you do?

Well, if you're George F. Johnson, you dance.

George figured that with the Depression going on, there wasn't 5 days work available, only 4. That meant, to him, that there was an extra day available for play. So he hired the best bands in America to come and play for his workers' dances. And he built more baseball diamonds and parks and recreational facilities to help his workers get through a rough time.

A WARM HEARTED PLACE

In the middle and late 1930's, there were movements afoot to elect George F. Johnson to high public office, but he passed. "My place is here," he said, "with my people and my business. I can accomplish something here that's worthwhile." For him, taking care of his own people was the most worthwhile thing in the world.

Thus, as America was moving toward the hardships of the wartime 1940's, a large and rather cold-looking factory building in midstate New York was really one of the warmest places in the country to work, because of the caring attitudes of George F. Johnson.

In George's factories, there was a warmth that came from human hearts, a warmth that reflected George's character. In his time, George had invented the HMO concept, had introduced the 8-hour day to America, and built one of the world's largest shoe and leather companies.

Today, EJ is not just a manufacturer of quality shoes, but owns 500 retail stores nationwide and continues its tradition of a people-oriented business. It continues to practice what its founder preached: "An industry belongs to the community, and the community should benefit by its operations."

Mr. Speaker, it is a privilege to invite my colleagues in joining with me to wish the Endicott Johnson Co. a happy 100th anniversary, and in celebrating the life of a great visionary and gentle man, George F. Johnson.

B'NAI B'RITH HONORS RABBI IRVING SPIELMAN

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. TORRICELLI. Mr. Speaker, it is with great respect and admiration that I address my colleagues in the House today, for I rise to extend my heartiest congratulations and warmest best wishes to Rabbi Irving Spielman as he is honored as one of the "Men of the Year" by the Fort Lee-North Hudson Lodge No. 1991 B'nai B'rith.

Rabbi Spielman has served as spiritual leader of the Jewish Community Center of Fort Lee since 1981. A graduate of New York University and the Jewish Theological Seminary, Rabbi Spielman had pulpits in New York and Connecticut prior to coming to Fort Lee.

In 1974 and 1975, he was a lecturer and faculty member at Camp B'nai B'rith in Starlight, PA. Along with his congregational duties, he was Hillel counselor at Connecticut College in New London, CT, from 1969 through 1972.

His commitment to Jewish youth is evident. In 1976, he was camp director of the Zionist Organization of America Masada Teenage Camp in Israel. For 5 years he served as rabbinical adviser of the Connecticut Region of United Synagogue Youth. Rabbi Spielman has been involved with Israel Bonds, the Jewish National Fund, Bergen County Board of Rabbis, and for the past 2 years, he has worked with the Veterans of Foreign Wars on an annual Kristallnacht program.

Rabbi Spielman and his wife, Selma, reside in Fort Lee, NJ. On September 12, 1990, Rabbi Spielman had the honor of delivering the invocation upon the convening of the House of Representatives that day.

Mr. Speaker, I am proud to join in paying tribute to this exceptional man. He is one of those outstanding few who truly make a difference in society. I extend my best wishes to him on this special occasion.

COUNTRY-OF-ORIGIN LABELING: A STEP TOWARD PRESERVING TROPICAL FORESTS

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. WALGREN. Mr. Speaker, today, I am introducing legislation to give the American consumer a tool to help preserve the world's diminishing tropical forests. My bill would require all tropical wood and tropical wood products to bear a label indicating the country in which wood was harvested.

Over 11 million hectares of tropical forest—an area the size of the State of Washington are being destroyed each year and even more are being degraded. Since the turn of the century, more than one-half of the world's tropical forests have been lost. The three major regions of the world that have tropical forest—Southeast Asia, central and west-central Africa, and tropical Latin America—have only 58 percent of their original tropical moist forest. Most authorities also believe that more dry tropical forest than moist has been destroyed.

Tropical forests are destroyed for many interrelated social, economic, and demographic reasons. One clear cause is worldwide demand for wood products, from jewelry boxes to plywood. Countries like Japan that do not have timber resources especially create demand. In some countries, tropical forests are cleared for cattle grazing, agriculture, or resettlement. In some countries, governments encourage a destructive cycle beginning with road construction, followed by peasants seeking land for farming. After several seasons of farming, soils are depleted and peasants move on.

Once forests are depleted, little is done to restore them. In fact, less than 10 percent of tropical forests are reforested. Even if they are reforested, it takes up to a century to regrow and many centuries to mature fully.

WHY TROPICAL FORESTS ARE IMPORTANT

Tropical forests deserve special attention because unlike temperate forests which repair naturally, tropical forests probably do not reforest fully naturally. The soil in tropical forests has few minerals; most tropical vegetation actually grows on dying vegetation. Soils in 95 percent of today's tropical forests are infertile. When deforested, soils harden and become barren when exposed. Tropical forests thus are not as adaptive to disruption as are temperate forests.

Tropical forests are a treasure trove of species diversity, harboring more than half the species on Earth. A single hectare of jungle in Malaysia may have more than 800 species of woody plants, which is almost equal to the total in North America. Tropical forests are home to 90 percent of the world's insects. Sixty-five percent of the world's flowering plants are in tropical regions. The Amazon rivers have eight times as many fish as the Mississippi and its tributaries. The planet's biodiversity is the culmination of millions of years of evolution. Tropical species have made significant contributions to medicine, food, and agriculture. The loss of biodiversity has profound implications, many of which we do not even know. In many areas, less than 1 percent of existing tropical plants have been studied for their useful properties.

Tropical forests play a critical role in slowing the greenhouse effect and the resultant global warming. The burning of forests is second only to the burning of fossil fuels as a human source of carbon dioxide. We cannot forget that the massive deforestation of Europe and North America contributed to current global carbon levels. Large forests also provide a carbon dioxide sink that absorb greenhouse gasses.

Loss of tropical forests can also cause wood shortages, soil erosion, landslides, siltation in rivers, reduced rainfall, and downstream flooding. One expert estimates that tropical deforestation impoverishes about a billion people.

INTERNATIONAL EFFORTS

Tropical deforestation has become the focus of many international efforts in recent years. World leaders at the G-7 Economic Summit in House in July included a statement on the urgency of deforestation and expressed support for negotiations on a world forest convention. Congress has amended several foreign aid programs to emphasize conservation of tropical forests and biological diversity. The International Tropical Timber Agreement was signed in 1983 and describes the balance that must be achieved. The parties recognized:

* * * the importance of, and the need for, proper and effective conservation and development of tropical timber forests with a view to ensuring their optimum utilization while maintaining the ecological balance of the regions concerned and of the biosphere * * *.

The tropical forestry action plan is a process for countries to evaluate their forest resources and develop a forestry strategy. While ITTA and TFAP are important international approaches to encourage sustainable forest management, they have been criticized on several grounds and many question their effectiveness in promoting sustainable forestry. Congress has withheld funding for TFAP until the plan is reformulated to meet its original conservation objectives.

THE BILL

My bill would require that all tropical wood and tropical wood products with at least 10 percent tropical wood content bear a label or marking indicating the country in which the wood was harvested. The Secretary of Commerce would be directed to issue regulations to implement the requirement. The bill includes an exemption for products which because of small size or injury to the product are incapable of being labeled, but requires that their retail container be labeled. The responsibility for labeling would be with the harvester, manufacturer or processor that prepares a product for retail sale—not the retailer. To treat all modes of commerce fairly, the bill also requires that product descriptions—not advertisements—sold through catalogs or television, like home TV shipping, indicate the country of origin of the wood. To enforce the requirements, the Secretary of Commerce would have authority to issue an order assessing a civil penalty not to exceed $5,000 per violation or seek an injunction. Tropical wood is defined as "any wood indigenous to and grown between the Tropic of Cancer and the Tropic of Capricorn."

CURRENT LABELING LAW

There are several existing Federal laws that address labeling, but they fall short in several respects. The Tariff Act of 1930 requires every article of foreign origin that is imported into the United States to be marked with the country of origin. But the law specifically exempts certain wood products, including any article that came into the country prior to 1937 and was unmarked. In what is known as Customer's "J list," regulations then exempt a number of articles. A major problem with that labeling law is that for wooden products, like furniture, the label indicates the country of manufacture, not the country in which the wood originated. Many tropical countries ship wood to other countries where the products are made. The second country importing into the United States is on the label. This country where substantial transformation took place

becomes the country of origin. Thus, the consumer has no way of knowing the wood's origin.

HELPING THE CONSUMER

My principal reason for introducing this bill is to provide the consumer some information for making an informed choice. Consumers can choose to purchase wood products only from countries that practice sustainable forestry, if consumers so choose. The bill does not require the label to provide information on a country's forestry practices. The consumer will have to get that elsewhere.

While U.S. purchases of tropical wood products are not the major cause of deforestation, we can have an impact. The United States accounts for one-third of the world market in tropical wood. A labeling requirement can have a dramatic educational impact, from influencing the individual purchaser to affecting large purchasers like building contractors, architects of large-quantity, commercial buyers of products like office furniture.

I believe the American consumer more and more wants to make environmentally responsible choices as public awareness of the fragility of the planet grows. This bill attempts to use the power of the free market to preserve a precious, and probably unique, resource. Any by helping consumers make an informed choice, we can draw the world's attention to the need for sustainable forestry practices. We can help people understand that those countries that have lost their forests because of unsustainable forestry practices lose economic opportunities as well as natural resources. This bill can be one small step of many to conserve a limited resource before it is too late.

A CITIZEN FOR ALL CITIZENS

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FRANK. Mr. Speaker, It is never accurate to begin a statement by saying that "The poor are lucky" because there is nothing fortunate about poverty. But there are things one can point to in some circumstances that are beneficial to some groups of poor people. One of those things is the presence at the head of the community action agency in Fall River, MA, of Mark S. Sullivan, Jr.

Mark Sullivan is an extraordinary mixture of toughness, compassion, wisdom, political sophistication, first-rate managerial skills, and an absolute, passionate dedication to making the American system in which he believes work as well for everyone as it does for most of us.

Last night I attended the 25th anniversary of Citizens for Citizens, the agency he has headed since 1972. The evening was a celebration of the community spirit in the Greater Fall River area, a time for rededication to the important moral task of fighting poverty in America, a chance to express gratitude for many people who have worked hard at that job, and a chance to thank Mark Sullivan for 18 years of brilliant, creative work at the often unappreciated task of fighting effectively for social justice in America.

Mr. Speaker, Mark himself put down some of his thoughts on this matter in a brief essay printed in the program book, and I ask that they be printed here. Unlike our institution, where Members occasionally make a good speech on the floor and then revise and extend their remarks to make it a great one for the CONGRESSIONAL RECORD, Mark—as he often does—did it his way last night. He wrote and had printed this good discussion of his work, and then he made an extemporaneous speech about it which in its eloquence, logic, and commitment was one of the best I've ever heard. Since I have no tape available of what he said, I'll have to settle for what he wrote. And it is something I hope all of our colleagues will read and take to heart. Mark Sullivan is right in his analysis and in his recommendation of how our society has worked and how it ought to work in the future. The poor in Fall River are less unlucky than they otherwise would be to have him.

LOOKING FORWARD

By Mark A. Sullivan, Jr.

In 1964 Lydon B. Johnson talked about the paradox of "Poverty amongst Plenty" and declared that a country this rich and powerful should have the capacity to raise the estimated thirty to forty million people to a higher economic level. So was born the "War on Poverty".

With the national effort focused on these goals and objectives, Citizens for Citizens was incorporated to become the lead vehicle to marshal the local, state and federal efforts to raise the quality of life for the residents of Southeastern Massachusetts.

This was a difficult task at best. To give low-income people a say and a vote about issues and programs that affect their lives, a corporation driven by a policy board of low-income constituents, was new, and of course, controversial.

The major question twenty-five years later is: "Did the war on Poverty work?" The answer is a definite yes. As prime examples, the largest segment of poor people in this country in 1965 were the elderly. Medicare, Social Security COLA's Meals-on-Wheels, Elderly Employment Programs, Home Care Corporation, Drop-in Centers, and elderly Housing were all a result of advocacy positions of the anti-poverty movement.

The Elderly were organized, and in turn, voted their own best interests and now represent a much smaller percent of the country's poor than they did in 1965.

The second question is: "How well has this process worked?" The answer can be summed up by saying it has worked equal to its funding. Decades of neglect, poor nutrition, poor housing, health and education cannot be turned around by political rhetoric.

At the same time the War on Poverty was declared, the War in Vietnam was undeclared and took most of the time and resources away from our stated domestic goals. The War on Poverty was never lost because it was never fought.

In the past twenty-five years we have fought the Vietnam War, the Grenada invasion, the Panama invasion and now the desert interdiction, all of which cost more than the twenty-five years of domestic and poverty programs.

The only War in twenty-five years unequivocally won has been the Cold War. Democracy and free enterprise have won; it is now time for everyone to participate in the victory for which we all paid.

The next decade and the next century, in order for us to compete in the new economic wars, we must now invest in the forty million person "underclass". This is essential for our national interest and national defense to meet the economic challenges ahead.

Most poor people in this country are children. It is essential for our own self interest that these children receive proper health, nutrition, housing, and mostly, education, as almost 98% of the people living in substandard conditions are school dropouts.

Capitalism does work, but we must give these children the tools and the foundation to compete internationally before we can hold them accountable to all of society's goals and norms.

It is in this vein that the work of the people and institutions involved in quality of life issues rests. The challenge for the next twenty-five years for all of the anti-poverty movement is to allow all people to participate fairly in the business and actions of this great country.

AMERICAN JEWISH CONGRESS PRESIDENT ON LINKAGE AND LEVERAGE

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. SOLARZ. Mr. Speaker, recently, there has been increased discussion of the so-called linkage between Iraq's invasion of Kuwait and Israel's occupation of West Bank and Gaza. As one who believes that such an analogy is both factually wrong and diplomatically unproductive, I was interested to read a recent address by Robert K. Lifton, president of the American Jewish Congress, on this subject. Mr. Lifton makes the case against linkage very persuasively, and raises a number of important questions about United States policy in the Middle East, both in the Persian Gulf and in terms of the Arab-Israeli conflict.

I am pleased to call Mr. Lifton's thought-provoking speech to my colleagues' attention, and ask that it be inserted into the RECORD.

SOME REFLECTIONS ON LINKAGE AND LEVERAGE

I want to extend my best wishes and congratulations to our two honorees, John M. Heffer and Alan J. Weiss. And my thanks to Jerome M. Kenyon and Stanley Weinstein, Division Chairmen and cochairs, Harry Arman and George Wendler, and honorary chairmen Abraham Nowick and Barry Winograd, for this successful luncheon.

In the past, I have used the opportunity to address this distinguished audience to talk about the history and programs of the American Jewish Congress. But there are so many fast breaking developments regarding our country, Israel and the Middle East that I thought you might be interested in our perspectives on some of these events.

This afternoon, I have chosen to focus on two concepts: Linkage and Leverage.

Almost from the moment Iraq invaded Kuwait, many Palestinians and Arabs have engaged in a relentless campaign to create a link between Iraq's occupation of Kuwait and Israel's occupation of the West Bank

and Gaza territories. The attempted linkage is expressed in two related contexts. The first claims a parallel in the two occupations arguing that if it is all right for Israel to retain the territories then it is all right for Iraq to hold on to Kuwait. The second linkage implies that as an inducement to Saddam Hussein to withdraw from Kuwait, the U.S. should press Israel to relinquish control over the territories.

Let us once and for all put an end to the specious parallels of Iraq's takeover of Kuwait and Israel's occupation of the territories. In the case of Kuwait, a neighboring nation, holding itself out as a friend, forcefully invaded the country in an effort to replace an existing legitimate sovereignty with its own sovereignty. In the case of the West Bank and Gaza, it was Israel who was attacked in the 1967 war by the entire Arab world, including Jordan. Control of the West Bank and Gaza was secured in a military victory against Jordan, which was the aggressor nation. The Palestinians now demanding self-determination did not have sovereignty over the territories at that time or indeed at any time. Nor have the Israelis imposed their own sovereignty by annexing the territories.

Second, it is wrong to forge a link between Iraq's withdrawal from Kuwait, a country that has never posed a threat to Iraq and action by Israel respecting the territories which can endanger its security. In fact, this is reflected in the very different U.N. resolutions governing each area. The U.N. has called for "unconditional" withdrawal by Iraq from Kuwait. But U.N. Resolution 242, dealing with the territories, places any Israeli withdrawal in the context of Israel's right to security. It recognized that the vacuum left by Israel's departure could well be filled by an enemy Arab state like Iraq or Syria, or by a Palestinian entity led by a PLO that aspires to gain control over all of Israel.

In the last few days, we have witnessed a concerted effort by the PLO and others to introduce the concept of linkage in connection with the UN Resolution dealing with the Jerusalem riots. I don't know what happened in Jerusalem. If I had to make a gut guess now I would say there was provocation and overreation by the Israeli police. We at AJCongress have welcomed the establishment by Israel of a commission of inquiry that will investigate the events, given the record of past Israeli commissions, which conducted their investigations with uncompromising integrity.

At the same time, we can understand the reluctance of the Israeli government to cooperate with the United Nations representatives, given the U.N.'s record of one-sided pronouncements on virtually all questions pertaining to the Arab-Israel conflict and where the infamous resolution equating Zionism with racism still stands. Furthermore, the UN representatives will be acting pursuant to a Security Council resolution that anticipated the results of their inquiry and already judged Israel guilty even before the representatives left on their mission.

Nor is it unreasonable to expect the government of Israel to challenge a U.N. resolution that directly questions Jerusalem's status as the capital of Israel. While on the one hand Jerusalem cannot be seen by the Israelis as having the same unquestioned status as Tel Aviv, on the other hand they must act to protest the suggestion implicit in the Resolution that Jerusalem is no different from any other part of the occupied territories.

But I think there is a larger question implicit in our government's support for the UN Resolution. There is a certain hypocrisy of the Resolution. The U.N. does not pass resolutions based on local police actions. If it did, it would be swamped by thousands of resolutions, many to do with Arab countries' treatment of their own people. Everybody knows that this resolution is intended to keep the Arab coalition together. If there were no Saddam Hussein and no Gulf crisis, the United States would have rejected it. Ironically, then, for reasons of political expediency, our country has pushed a resolution inspired by the PLO which itself backs Saddam Hussein and threatens us with terrorism, just to satisfy our Arab allies. To me that reflects a somewhat warped perspective. Here we are risking American lives and spending American resources to protect the Arab countries who would not survive without our help. One would think that it is we who have the leverage. Yet, we are catering to them to satisfy them, instead of their satisfying us. This is even reflected in the financing of our expeditions. Between the escalating price of oil and the 2 million barrels of new oil, the Saudis will gain close to $60 billion a year. Yet we are still carrying a large share of the costs of protecting them. At the risk of heresy, I would raise the question whether maintaining a coalition with countries like Syria which just used the cover of its new relationship with us to have some 600 more people killed in Lebanon, really is essential to what we want to accomplish. And is it wise. Can we count on that coalition when the going get tough? Since the Arab states have already indicated that they may not support the United States in case of a war against Iraq, some say we should not endanger the coalition by undertaking military action. That seems to make maintaining the coalition more important than what it is supposed to accomplish. In any event, if we are going to defend the area, I would like to see some quid pro quo. There is a real opportunity for positive developments arising out of a successful resolution of the Gulf crisis if we use our leverage appropriately. President Bush has proposed in the aftermath of the Gulf crisis "a new world order where the nations of the world . . . can prosper and live in harmony." The recognition by the Saudis, the Kuwaitis and other Arab states that pan-Arab unity is a myth and that their future security lies in close ties with the United States, should enable our government to prod these Arab nations to enter into peace treaties with Israel. Peace treaties with major Arab states will go some distance towards providing Israel with feelings of security that will enable it to take the risks of pursuing a resolution of the West Bank and Gaza issues. A "new world order" as envisioned by the President, which provides for area wide financial as well as security structures may enable the creation of a Middle East Community much like the European Community. Such a structure financed, without encouragement, by the oil-rich Arab states could offer ailing nations in the region like Egypt, Syria and Jordan economic access and opportunity that may help them achieve financial viability. For Israel, also, it is urgent to find a way to reallocate resources from the 26 percent of budget now devoted to military needs to economic development and to absorption of the expected one million Soviet refugees. Our use of leverage to bring about a stabilized peaceful Middle East would benefit us and would be applauded by the rest of the world.

TRIBUTE TO EUGENE FONTAINE

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to congratulate Eugene Fontaine who is the recipient of the Bronze Star Medal, Purple Heart Medal, Army Commendation Medal, and several other military decorations.

I am pleased to recognize such a fine individual. Mr. Fontaine is a member of the Green Cappers of Rhode Island. This worthy organization is made up of a small group of combat veterans holding more than 150 awards and decorations. The dedication that Mr. Fontaine and other Green Cappers have made to this wonderful Nation that we live in is worthy of recognition.

It is with great pleasure that I salute Eugene Fontaine for his outstanding accomplishments. I wish him continued success in the future.

THE CONGRESSIONAL BIOMEDICAL RESEARCH CAUCUS—AMERICA'S PREEMINENCE IN BIOMEDICAL SCIENCE

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. RICHARDSON. Mr. Speaker, the Congressional Biomedical Research Caucus held its first public forum on October 3, 1990. The caucus is a bipartisan coalition of Members of the Congress dedicated to increasing congressional awareness and support for basic and clinical biomedical research and to maintain the U.S. competitive edge in this enterprise. The caucus has been organized by myself, and my colleagues Mr. GEKAS, Mr. J. ROY ROWLAND, and Mr. CALLAHAN, and now has close to 40 members. The caucus welcomes additional Members interested in maintaining America's preeminence in biomedical science.

At the first public forum conducted by the caucus, we heard outstanding biomedical researchers, including last year's Nobel Laureate for Medicine, Dr. Harold Varmus of the University of California at San Francisco, explain our system of independent research which is creative and responsive to changing health problems and needs. Unlike other nations which use an institute approach to research, we use a university based system. We heard from Dean Leon Rosenberg of the Yale University School of Medicine on the importance of independent, nontargeted biomedical research at the school, which combine teaching with research.

At the caucus forum comments were made about the need to develop a new generation of scientific researchers and keep them in the pipeline to ensure our continued dominance in the field. In this regard, we also heard from a talented new researcher at Massachusetts Institute of Technology, Dr. Cori Bargmann, about her efforts to get funding for her re-

search, for which she must compete every 3 to 4 years. Prior to current efforts by the Congress, there has been little stability in funding for new researchers and even senior Nobel prize winners are concerned about continued support for their work.

We are at the threshold of amazing advances in science which will end much suffering. The number of good ideas in science has increased exponentially during the last decade and we must not lose our edge. I think these issues are well explained by the following article, "Are Nobel Prizes for U.S. Vestiges of Golden Age?", which I insert in the CONGRESSIONAL RECORD.

[From the Washington Post, Oct. 22, 1990]

ARE NOBEL PRIZES FOR U.S. VESTIGES OF "GOLDEN AGE"?

(By Malcolm Gladwell)

Last week was a triumphant one for American science.

On Wednesday, U.S.-trained researchers swept the Nobel prizes for physics and chemistry, capping an extraordinary Nobel season in which all but one of the nine academic winners were U.S.-born and all were products of U.S. universities.

But at a time when American science is facing its worst funding crisis since World War II, this year's Nobels were also an occasion for melancholy. As is the Nobel custom, all the awards were for work done 20 and 30 years ago, when American science was at its zenith.

Few feel the work being done today in the sciences will fare as well. Indeed for many the 40-year dominance of the prizes by the United States—during which time 30 of the 65 cited for chemistry were U.S. scientists, as were 61 of the 95 cited in medicine and 47 of the 87 in physics—is nearing an end.

"The period in which my colleagues and I carried out these experiments we refer to as the golden age," said Henry Kendall of the Massachusetts Institute of Technology, who shared this year's physics prize for work done in the late 1960s. "We have long since regarded it as vanished."

"The gloom comes out of looking at Washington and saying this is absurd," said Harvard biologist Walter Gilbert, a 1980 Nobel laureate. "The strength of American science has been due to an enlightened government policy over the past 30 years. That compact has now been destroyed. We no longer have a government that believes it has a responsibility to create new knowledge for the benefit of society."

Scientists are hardly objective on the subject of their own funding needs. The best scientists at the best schools—those who tend to win Nobel prizes—continue to get handsome research grants, and the total allotment for U.S. research continues to rise—albeit not by as much as scientists would like.

Even the most apocalyptic members of the scientific community concede that the size and wealth of the U.S. research establishment continues to dwarf that of the rest of the world.

Still the depth of pessimism among those on whom the country's scientific future depends has opened a serious debate about how well the machinery of U.S. research is now being managed.

What was it about the American system that caused the extraordinary flowering of genius over the past 40 years? And are scientists correct in assuming that that intangible quality is imperiled by funding cutbacks?

The success of the U.S. scientific community in winning awards like the Nobel has its roots in the country's post-war prosperity, which enabled the United States to devote enormous resources to science at a time when its chief competitor—Europe—was rebuilding from the war. After 1957, when the Soviet Union launched the first man-made Earth satellite, a panicky United States sharply increased its funding of science.

The resource-rich United States not only developed its scientific talent but became a magnet for the rest of the world's most creative researchers. Among those who came here as refugees from Hitler's Europe alone were eight Nobel laureates and four who would go on to win prizes. Numerous others have come since: 19 of the 62 U.S. laureates in medicine since the end of World War II, for example, were born elsewhere.

Many scientists also believe that the culture of U.S. academe and the organization of research has lent itself ideally to creative, groundbreaking work.

Where post-graduate education exists in Europe, for example, it tends to be concentrated at research academies, which are run under the direction of senior scientists and receive block grants from the government.

In the United States, by contrast, researchers in a given discipline tend to be scattered at many different institutions. And research grants are made not to institutions but to individuals.

As a result, in the United States researchers tend to be able to pursue their own ideas at a younger age than in Europe, a crucial consideration given that most prize-winning scientists tend to do their best work during their late 20s and early 30s.

In addition, the diversity of the U.S. scientific establishment, with scores of competing institutions and dozens of sources of money, permits the exploration of ideas that would be too far-fetched or risky for a more conservative system. And it is the seemingly far-fetched ideas that often result in award-winning work.

"The real breakthroughs are the things you never expected to find," said Burton Richter, a 1976 physics laureate from Stanford University. "They can't be predicted and they very often start from an idea that no one agrees with."

Many scientists say, however, that the funding crunch imperils the ability of the system to continue to reward the young and the idiosyncratic—that aspect that has proven so attractive to the rest of the world and so adept at encouraging brilliance.

It isn't that scientists aren't getting funded. Overall levels are increasing. But the rate of increase has not kept pace with the explosion in science.

For example, a decade ago the National Institutes of Health deemed 13,000 research ideas worthy of pursuit and funded 90 percent of them—about 11,700. This year a record 22,500 are expected to win approval but the NIH has money for only 20 percent of them, leaving many younger researchers and less popular ideas out in the cold.

"To get funded these days you have to have all 12 people on a [NIH] reviewing committee agree that an idea is a good one," said Robert Root-Bernstein, a physiologist at Michigan State University. "But I bet that if you look back you couldn't find even one of 12 physicists during Einstein's time who thought that his ideas were any good."

"I see us being more and more oriented to stay within the mainstream, to go for the sure bet, the things that we know are going to pay off," said William Brinkley, a biologist at the University of Alabama at Birmingham. "When the money is tight, the risky science is the first to go."

"We have come of age scientifically in the post-war period," said Harvard University physicist Gerald Holton. "But the projections for the future are ominous. The thing to do is not to congratulate ourselves, but to worry about what will happen next."

BEFORE EARVIN WAS MAGIC, THERE WAS DR. WHARTON

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. RANGEL. Mr. Speaker, I rise to pay tribute to Dr. Clifton Reginald Wharton, Jr., a man who has been no stranger to being first. A distinguished diplomat and educator, Dr. Wharton has been a great inspiration to those who have known him personally and to thousands of students whose lives he has affected.

I submit for the benefit of my colleagues the following article on Dr. Wharton from the City Sun:

BEFORE EARVIN WAS MAGIC, THERE WAS DR. WHARTON

(By Stephen John Williams)

On his way to stardom with the Los Angeles Lakers, Earvin Johnson brought an NCAA basketball championship to Michigan State University when he led the Big Ten Spartans to victory over Larry Bird and Indiana State.

"Magic" Johnson would make headlines. A decade earlier, another man at Michigan State had made history.

"I'm a man first, an American second, and a Black man third. I do feel that my appointment at Michigan is an important symbolic occasion, but that is not the criterion of it. It shows that if one has the skill and the talent, you're going to make it."

However, he admitted that the decision made on Oct. 17, 1969 by a university with a history of promoting Black enrollment was expedited in his favor because his race "may have been an added attraction."

Dr. Clifton Reginald Wharton, Jr., had been no stranger to being first. In fact, the trait had run in his family. His father, career diplomat Clifton Reginald Wharton Sr., had been the first African American to rise through the ranks of the United States Foreign Service to become head of an American embassy, having been named minister to Romania.

The younger Wharton, born in Boston and schooled in the select Boston Latin School, had been known as the first Black undergraduate to join the staff of the campus radio station at Harvard. He was a founding member, and the first national secretary, of the National Student Association. He was the first Black student at the Johns Hopkins University School of Advanced International Studies. Although not the first, he was among a precious few to earn a Ph. D., his in economics at the University of Chicago. In February 1969, he was the first African American elected to the board of directors of the Equitable Life Assurance Society.

Good for him, one might say. In any case, it was in 1969 that Dr. Clifton R. Wharton Jr. was elected president of Michigan State

University. He became the first African American in the 20th century to head a major higher educational institution with a predominantly white enrollment. He would be the first Black president of a publicly funded institution outside the South.

The 43-year-old New York economist had been vice president of the Agricultural Development Council, Inc., a private, nonprofit philanthropic enterprise of the Rockefeller family involved in extensive agricultural growth projects to fight hunger in Southeast Asia and Latin America. His economic interests had been focused on issues of agriculture and world hunger. For six years, he taught at the University of Malaysia; in addition, he carried out the council's program in Thailand, Vietnam and Cambodia.

He learned a lesson he felt could be applied to the United States: "Mankind is heterogeneous in race, religion and culture, and that's the beauty of it. The problem is to find ways of living with this heterogeneity and of not letting it destroy us."

At Michigan State, the board of trustees voted, 5-3, in Wharton's favor after rejecting G. Mennen Williams, ambassador to the Philippines and former governor of Michigan, by the same vote. The incoming president was one of four nominees endorsed by a 12-member faculty-student search and selection committee after more than 300 possibilities had been screened for the post.

Wharton was elected by three Republicans and two of the five Democrats on the board. Another Democratic trustee attributed the vote to pressure in Wharton's behalf by incumbent Dr. John A. Hannah and Gov. Nelson Rockefeller of New York, who allegedly was returning a favor for Hannah's support of his 1968 Republican presidential nomination bid.

Situated in East Lansing, in the farmland of southern Michigan, the university historically had been known as the nation's first land-grant college—and derided by the University of Michigan in nearby Ann Arbor as the "cow college." In 28 years as president, Hannah had guided Michigan State through unprecedented growth.

The estimated 500 buildings on the $350 million physical plant sprawled over an expanse of 5,000 acres along the Red Cedar River. The campus had been rated as the nation's ninth-largest concentration of students. After Ohio State and the University of Minnesota, Michigan State was the third-largest single-campus university in the United States.

Of 40,000 students on campus, 1,000 were Black. The faculty of over 2,000 included 32 Blacks holding full-time positions.

In its resolution of Wharton's appointment—he would not be installed officially until Jan. 2, 1970—the university hailed him as a man who possessed the "unusual combination of insight, ability and leadership necessary" to guide the academic community at Michigan State.

What did Wharton say? He took his new responsibilities in stride: "It's not as big a change as it might appear. All my career has been devoted to working on the problems of underdevelopment and poverty, and I think a university, and especially a land-grant university such as Michigan State, has a long tradition of service to similar problems in the nation and the world."

He later said, "My role here has been to provide support, encouragement, stimulation and leadership to help the university move even further to achievement of its goals and aspirations.

He viewed his new position more as an opportunity to pursue his ethic of service to others than as a mere accomplishment of personal power: "The university is made up of faculty and students and the public it serves. I see myself not as the man who will simply be at the head of Michigan State but as one who is in service to the people who make it up."

Wharton emphasized that the priorities he would choose for this presidency would be developed after a careful consensus of the university's constituencies and would represent primarily a mandate from them to his rather than the reverse.

Shortly after his inauguration, four students were shot and killed by National Guardsmen at Kent State University in Ohio at a campus demonstration against the expanded Indochina war. Wharton went on Michigan State's closed-circuit television to assure his students that "perhaps I feel the frustrations and anxieties even more acutely than many of you, since I have been personally involved with Asians and Asia for many years." Five days after the killings at Kent State, he suspended classes for a day of teach-ins on Indochina, the Reserve Officers' Training Corps and the tools of effective protest.

As president, Wharton sought to focus his energies on such areas as the expansion of the university's medical programs (combining candidates for both associate and professional degrees, Michigan State could boast having the nation's fifth-largest medical enrollment) and the establishments of a continuing-education program for adults as an integral part of campus life.

Wharton realized that Michigan State was noted for its advanced programs in such traditional agricultural fields as land use and animal husbandry. However, he added a new College of Urban Development. Reportedly, he regarded as his biggest disappointment his failure to add a law school to the 16 existing colleges.

Wharton continued his interest in world agriculture by serving as chairman of the Board for International Food and Agricultural Development, a presidentially appointed body with the responsibility of overseeing federal programs on food and famine research. In this capacity, he urged the incoming Carter administration "to place high on its foreign-policy agenda the increased support and funding of this nation's worldwide activities in famine prevention."

With the Carter presidency came rumors that Wharton was being considered for a Cabinet-level post, probably secretary of agriculture. The administration finally approached him, but according to Wharton, "the particular things that came up I wasn't interested in."

He said that the main offers he had received were on the assistant secretary level.

Eight years as president at Michigan State had represented, for Wharton, the longest period he had spent on any single job and "other opportunities beckoned."

At the end of those eight years in East Lansing, he left for Albany, N.Y., where he had been elected chancellor of the State University of New York, selected from a field of 250 candidates. With a total enrollment of 345,000 students, SUNY was the largest state-operated higher educational institution in the nation, with 64 campuses throughout the state and a budget of nearly $1 billion.

Wharton would inherit, among other problems, a controversial proposal for merger with the troubled City University of New York, strained relations with faculty over job retrenchments, the prospect of fewer college-age students in the coming decade and a power struggle with the Board of Regents for control over graduate programs.

At the State University, Wharton wanted to establish the same approach and dialogue with the academic community as he had done at Michigan State.

Realities being what they were, one significant reality was not lost on Wharton. Unlike the time of his election to the presidency of Michigan State, when he assumed the chancellorship in Albany, there was virtually no concern over his race.

He commented, "The question just doesn't come up."

MANZANAR NATIONAL HISTORIC SITE

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LEVINE of California. Mr. Speaker, today, I am introducing legislation which would designate the World War II Manzanar internment camp a national historic site. Such a designation will create a permanent reminder of one of the darkest moments in our Nation's history. Our internment of Japanese-Americans during the Second World War was inexcusable and unconscionable.

Manzanar was the first of 10 internment camps to house the 120,000 persons of Japanese ancestry, most of them American citizens, who were forcibly removed from their homes in coastal areas between 1942 and 1945.

We cannot allow these grave injustices to be forgotten. The Manzanar site will help teach future generations the risks of suspending civil liberties, and be a longstanding reminder of what can happen if our national commitment to freedom wavers.

Although the site would include only the main camp, the entire Manzanar reservation encompassed an area of approximately 6,000 acres, with the 10,000 internees housed in a 500-acre area enclosed by barbed wire fences and secured by guard towers.

Very little of the original physical camp is visible today, but we should preserve the remnants of the camp, and develop a historic record for future generations. I expect that the visitors' center will have a very strong oral history program. There is a tremendous wealth of knowledge among the Japanese-American community, which really ought to be brought together.

Mr. Speaker, I ask my colleagues to join me in supporting this measure to preserve the historic record of the internment of Japanese-Americans during World War II. I hope it will forever remind us of what can happen when we forget what this country stands for.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT.

(a) IN GENERAL.—In order to provide for the protection and interpretation of histori-

cal and cultural resources associated with the relocation of Japanese-Americans during World War II, there is hereby established the Manzanar National Historic Site (hereinafter in this Act referred to as the "site").

(b) AREA INCLUDED.—The site shall consist of the lands and interests in lands within the area generally depicted as Alternative 3 on map 3, as contained in the Study of Alternatives for Manzanar War Relocation Center, map number 80,002 and dated February 1989. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") may from time to time make minor revisions in the boundary of the site.

SEC. 2. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the site in accordance with this Act and with the provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467).

(b) DONATIONS.—Notwithstanding any other provision of law, the Secretary may accept and expend donations of funds, property, or services from individuals, foundations, corporations, or public entities for the purpose of providing services and facilities which he deems consistent with the purpose of this Act.

(c) COOPERATIVE AGREEMENT WITH STATE.—In administering the site, the Secretary is authorized to enter into cooperative agreements with public and private entities for management and interpretive programs within the site and with the State of California, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire preventive agencies.

(d) COOPERATIVE AGREEMENTS WITH OWNERS.—The Secretary may enter into cooperative agreements with the owners of properties of historical or cultural significance as determined by the Secretary, pursuant to which the Secretary may mark, interpret, improve, restore, and provide technical assistance with respect to the preservation and interpretation of such properties. Such agreements shall contain, but need not be limited to, provisions that the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes, and that no changes or alterations shall be made in the property except by mutual agreement.

(e) With respect to lands acquired by the United States pursuant to this Act, the Secretary shall permit movement of livestock across such lands in order to reach adjacent lands, if the party seeking to make such use of the acquired lands was authorized to make such use as of the date of enactment of this Act; but any such use shall be subject to such terms, conditions, and requirements as the Secretary may impose in order to protect the natural, cultural, historic, and other resources and values of the acquired lands.

SEC. 3. ACQUISITION OF LAND.

The Secretary may acquire land or interests in land, and improvements thereon, within the boundaries of the park by donation, purchase with donated or appropriated funds, or exchange.

SEC. 4. ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is hereby established the Manzanar National Historic Site Advisory Commission (hereinafter in this Act referred to as the "Advisory Commission"). The Advisory Commission shall be composed of former internees of the Manzanar relocation camp, local residents, representatives of Native American groups, and the general public appointed by the Secretary to serve for terms of 2 years. Any member of the Advisory Commission appointed for a definite term may serve after the expiration of his term until his successor is appointed. The Advisory Commission shall designate one of its members as Chairman.

(b) MANAGEMENT AND DEVELOPMENT ISSUES.—The Secretary, or his designee, shall from time to time, but at least semiannually, meet and consult with the Advisory Commission on matters relating to the development, management, and interpretation of the site.

(c) MEETINGS.—The Advisory Commission shall meet on a regular basis. Notice of meetings and agenda shall be published in local newspapers which have a distribution which generally covers the area affected by the site. Advisory Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.

(d) EXPENSES.—Members of the advisory Commission shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this Act on vouchers signed by the Chairman.

(e) CHARTER.—The provisions of section 14(b) of the Federal Advisory Committee Act (Act of October 6, 1972; 86 Stat. 776), are hereby waived with respect to this Advisory Commission.

(f) TERMINATION.—The Advisory Commission shall terminate on 10 years after the date of enactment of this Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this Act.

MEXICAN PRESIDENT SALINAS HONORED BY NEW YORK UNIVERSITY

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FASCELL. Mr. Speaker, On Monday October 1, 1990 at a special Academic Convocation New York University presented an honorary doctor of laws degree to the President of our great neighbor the Republic of Mexico, Carlos Salinas de Gortari. The presentation was made by the university's president, our distinguished former colleague John Brademas.

President Salinas was honored by New York University, as well he deserved to be, for the outstanding achievements he has already made to Mexico during the first 2 years of his 6-year term. He was also honored for the initiative he has taken to strengthen and deepen the friendship between the United States and Mexico which is symbolized by the remarkable commitment of President Salinas and President Bush to seek a free trade agreement between our two countries.

In the less than 2 years since President Salinas took office he has taken dramatic steps to modernize the Mexican economy and to introduce sweeping political reforms. The implications for the United States of his bold steps toward revitalizing the Mexican economy and restructuring its political system are great. As President Brademas remarked during the honorary degree ceremony, "an independent, strong and economically healthy Mexico is a fundamental interest of the United States." That interest will grow even stronger as our two countries begin negotiations on a comprehensive free trade agreement.

It was especially fitting that this honor was bestowed on President Salinas by New York University. NYU is one of the world's leading institutions of international education and is particularly committed to the study of the cultures and civilizations of Latin America, the Caribbean, Spain and the Mediterranean. The university is justly proud of its diverse student population which includes 550 students from Latin America and the Caribbean of which 39 are from Mexico.

It was also especially appropriate that the presentation of this honorary degree was by John Brademas. As those of us who served with him in this Chamber will agree John has gone on to become one of this Nation's foremost educators, a true statesman of higher education. He has been highly successful in establishing New York University as a preeminent center of international learning and research. Perhaps less well known to many of us is John's long association with Mexico and Latin America and his deep and abiding conviction of the need for further understanding among the peoples of this hemisphere.

Mr. Speaker, I wish to call to the attention of the House the text of the honorary degree citation for the doctor of laws degree conferred on President Salinas October 1 by John Brademas and Dr. Brademas' remarks on that occasion.

CARLOS SALINAS DE GORTARI, DOCTOR OF LAWS

Carlos Salinas de Gortari—President of Mexico, only a third of the way through your six-year term, you have moved boldly to modernize the Mexican economy and to usher in an era of democratic reform. A man of formidable intellect, after earning three advanced degrees from Harvard, you went on to a remarkable career in government, becoming, at the age of 34, Minister of Planning and Budget, and then, in December 1988, the youngest person in half a century to be elected to your nation's highest office. You have said, "To govern, after all, means to do what has to be done." Since assuming the responsibilities of the presidency, you have accomplished much of what had to be done: spurring economic recovery by lowering inflation, reducing foreign debt and liberalizing trade; acting to combat corruption and to open your political system; fighting the narcotics traffic; and channeling, through a program you call "Solidarity", funds from the sale of nationalized business firms to essential social services. Your call this summer for a free-trade agreement between the United States and Mexico typifies both your realism and your

vision. We at New York University share your commitment to "building a new relationship of friendship, free of myths and mistrust" between our two great lands and peoples. By virtue of the authority vested in me, I am pleased to confer upon you the degree of Doctor of Laws, *honoris causa.*

JOHN BRADEMAS,
President.

OCTOBER 1, 1990.

REMARKS OF DR. JOHN BRADEMAS, PRESIDENT, NEW YORK UNIVERSITY

This event is one of particular significance for me. For the ties that bind me to the country of our honoree are many and deep.

I hope you will allow me to mention a few.

Since childhood, I have had a keen interest in the Hispanic world. As an eighth-grader in South Bend, Indiana, I read a book on the Mayas, and thinking I would become an archaeologist specializing in Central America, I began to learn Spanish, a study I continued through college.

While a sophomore at Harvard, I spent a summer in the mountains of Mexico, at Zacapoaxtla in the state of Puebla, as one of a group of American university students who—in a kind of early Peace Corps—helped the local Indians improve their crop yields, vaccinated them against disease and, working with children, built a playground.

In Mexico, I found inspiration for my Harvard honors thesis, on a Mexican peasant movement, the Sinarquistas.

Later, as a student at Oxford, I wrote my doctoral dissertation on the anarcho-syndicalist movement in Spain.

During my years as a member of Congress, I visited Mexico and other Latin American nations.

And as you know, Your Excellency, only last month, with other members of the Board of The Rockefeller Foundation, I had the privilege of meeting with you at Los Pinos and of hearing you give us your views on the problems facing your country.

Our delegation was deeply impressed by the young, dynamic and sophisticated person who is now the leader of the Mexican people, our guest of honor today.

NEW YORK UNIVERSITY AND LATIN AMERICA

Mr. President, I am certainly not alone among my colleagues in having a deep interest in your part of our hemisphere. For New York University is itself an institution with a strong commitment to the study of the literatures, cultures and civilizations of Latin America, Spain, Portugal and the Caribbean.

I think here of our Center for Latin American and Caribbean Studies, of our Department of Spanish and Portuguese and of our several departments and schools with scholars who specialize in research and learning about the Hispanic world.

I must note that there are today over 550 students from Latin American and Caribbean countries studying at New York University, including 39 from Mexico. And two large and active student organizations, LUCHA and El Club Hispano, enhance the academic, cultural and social life of students of Hispanic background.

I might add that in accepting an honorary degree from New York University, our guest joins a distinguished list of world leaders whom we have honored in this fashion, including King Juan Carlos I of Spain, President Francois Mitterrand of France and Prime Minister Giulio Andreotti of Italy. From Mexico, we have been pleased in recent years to honor two world-famed artists—Octavio Paz and Placido Domingo.

Mr. President, all of us who care about the wellbeing of the Western Hemisphere are gratified that last month the United States Secretary of Education, Lauro Cavazos and education officials from Mexico signed an important agreement establishing closer ties between the educational systems of our two countries.

Mr. President, I assure you that we at New York University are interested in participating in whatever way we can in this exciting new initiative.

RICH CULTURAL HERITAGE OF MEXICO

As I'm sure most of you know, we at New York University have, as inhabitants of this city, yet another reason to be delighted at the visit of our distinguished guest. Over the next four months, as part of a celebration of the rich cultural heritage of Mexico, New Yorkers will be treated to a dazzling display of Mexican dance, theater, music and 30 centuries of art.

Yet it is as citizens of the United States of America that we should most warmly welcome our honoree.

For reasons of geography, history, culture and economics, the relations of the United States with Mexico are among the most compelling and complex of our dealings with any nation, Simply put, an independent, strong and economically healthy Mexico is a fundamental interest of the United States.

Although the citizens of our country are understandably transfixed right now by the upheaval in the Soviet Union and the conflict in the Persian Gulf, over the long run, the significant developments now taking place today in the land on our southern border may prove of greater importance.

His first two years as head of the government of Mexico have been marked by innovation, energy, skill and courage. He has directed his leadership to building a stable and prosperous economy, a more open and competitive political system and a higher standard of living for a nation of over 80 million people.

With an impressive academic background in economics and political economy, and with broad governmental experience in planning and budgeting, he has set out to make his country a textbook example of modernization.

Confident of Mexico's ability to make its way in the world, our guest has worked to forge closer ties with the United States and, under his presidency, relations between our two countries have never been better.

Indeed, the fates of our two nations may be knit still more closely together as negotiations get underway for a comprehensive free-trade agreement, which he initiated, between the United States and Mexico.

Ladies and gentlemen, the presence and example of our honored guest call to mind the eloquent words of one of his countrymen, the famed man of letters and diplomat, Carlos Fuentes.

Writing from the perspective of a Latin American and addressing the people of the United States, Fuentes asserted:

"We need your memory and your imagination or ours shall never be complete. You need our memory to redeem your past, and our imagination to complete your future. We may be here on this hemisphere for a long time. Let us remember one another. Let us respect one another."

TRIBUTE TO MANUEL GOMES

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize Manuel Gomes, of Bristol, RI, who is being recognized by Portuguese Beneficial Association Don Luiz Felipe for his outstanding contributions to the community over the years.

Manuel immigrated to America from Portugal in 1971, with his wife and three children. Since that time, Manuel has been a proud citizen of America, and has not only taken care of his family, but he has also taken time to help his fellow citizens. He has donated most of his time to the Portuguese Beneficial Association through social events and has also helped co-ordinate Day of Portugal celebrations.

I would like to thank Manuel Gomes for his years of dedicated and unselfish service to his community. I wish him all the best for continued success in the future.

WHY GANDER

HON. ROBIN TALLON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. TALLON. Mr. Speaker, over the past year, several congressional entities have been looking into the circumstances surrounding the 1985 plane crash in Gander, Newfoundland, that killed 248 soldiers.

We have all come to the same conclusion that the NTSB and our intelligence agencies were negligent in participating in the investigation.

These bodies are usually the first on the scene of an international incident involving American soldiers but were alarmingly silent on the Gander matter. The lingering question is "WHY GANDER?" Didn't our agencies play a significant role during the KAL 004, Pan Am 103, and the Mickey Leland accident investigations?

What was so different about the Gander crash that made our U.S. agencies stand silently by while the Canadians completed an investigation tainted with controversy and incompetence? This Government has an obligation to the families of the victims to pursue this matter as far as we can.

Mr. Speaker, I would like to share with my colleagues only a few of the inconsistencies and interesting points which I have uncovered during my investigation of the Gander plane crash.

1. *The Defense Intelligence Agency.*—The DIA told the General Accounting Office and a Congressional subcommittee that it did not participate in the Gander investigation. However, in a letter to me dated September 24, 1990 from Diane Morales, Deputy Assistant Secretary of Defense for Production and Logistics, it was reported that "The Defense Intelligence Agency investigation consisted of an extensive review of intelligence holdings in an attempt to dis-

cover any pre-incident or post-incident indicators of terrorist involvement. No such indicators were discovered. Lacking any intelligence that would indicate either direct or indirect linkage to terrorist activities, DIA is dependent on forensic investigation results for determination of cause of a violent event such as that which occurred at Gander. DIA did not participate in the forensic investigation of the Gander crash and was not informed of any conclusions that would lead to suspicion of terrorist involvement."

If the DIA did indeed investigate then why did they not participate in the forensic investigation on which the "DIA is dependent on . . . for determination of cause?"

2. *The Armed Forces Institute of Pathology.*—Many families are having difficulty in obtaining autopsies of their loved ones who were killed in the plane crash. In a letter mailed to my constituent, Ms. Constance Farmer, from Major General Alcide M. Lanoue concerning a request for her son's autopsy, the request was denied.

However, any lawyer or legal expert on the Freedom of Information and Privacy Acts would easily recognize that the exemptions cited by General Lanoue are completely erroneous. According to the Defense Privacy Board, the Army had no legal basis under these exemptions records to deny these documents to Ms. Farmer. In short, the Army Surgeon General could be in serious legal jeopardy by the denials to Gander families.

3. *The White House.*—A year ago this week, I along with 103 colleagues sent a letter to President Bush asking for a separate United States investigation of the crash. To this day, we have received no word from the President regarding his intention to initiate a United States investigation. As indicated by the referrals on the bottom of a letter from the White House, our letter was circulated to the National Security Council for "Direct Response." Why have we gotten no response in a full year since writing the letter?

CONCLUSION

These incidents are just the tip of the iceberg. What most of my research has shown is that our agencies are doing everything in their power to prevent any questioning of the Canadian Aviation Safety Board's findings on the cause of the crash. As my colleagues can see from the above examples, these agencies lie to Congress, lie to families of the victims, and refuse to answer calls for additional investigation.

The bottom line is that for some reason the Canadian investigation was riddled with unforgiveable incompetence and our government remained unforgivably silent on Gander. We have an obligation to the victims' families to pursue this matter until we finally learn what happened on December 12, 1985.

DEPARTMENT OF THE ARMY,
OFFICE OF THE SURGEON GENERAL,
Falls Church, VA, April 23, 1990.

Mrs. CONSTANCE H. FARMER,
Post Office Box 351, Hartsville, SC.

DEAR MRS. FARMER: Thank you for your letter dated March 21, 1990 to the Armed Forces Institute of Pathology, Washington, D.C., requesting, under the Freedom of Information Act, information of a medical nature concerning the death of your son, Captain Kyle Lee Edmonds. Your request was referred to this agency on 17 April 1990 for review and release determination.

Release of medical records and related documents without the express, written consent of Mrs. Susan Barnes-Edmonds, widow, would be an unwarranted invasion of privacy. Therefore, absent this consent, your request is denied. This denial is made on behalf of Lieutenant General Frank F. Ledford Jr., The Surgeon General, who, as the Access and Amendment Refusal Authority for medical records under the Privacy Act and the Initial Denial Authority under the Freedom of Information Act, is authorized to make such determinations concerning the releasability of medical records, and is based on exemption provided by 5 United States Code, 552a(j) of the Privacy Act and 5 United States Code, 552(b)(6), Freedom of Information Act.

You are advised of your right to appeal this initial denial. If you desire to do so, you should submit your appeal, stating the basis for your disagreement, to this office within 60 days of the date of this letter.

Please accept our sincere condolence on the loss of your loved one.

Sincerely,

ALCIDE M. LANOUE,
Major General, MC,
Deputy Surgeon General.

NOVEMBER 1, 1989.

DEAR ROBIN: Thank you for your recent letter to the President, cosigned by 103 of your colleagues, regarding the tragic crash in Gander, Newfoundland, four years ago and requesting that a formal investigation be initiated to explore all possible crash theories.

President Bush shares your concern about this horrible accident and for the families of the 248 American soldiers and eight crew members who died in the crash. I have shared your comments and your suggestion that a formal investigation be initiated with the appropriate advisors to the President, so that they, too, are aware of your recommendations.

Thank you again for your interest in writing.

With best regards,

Sincerely,

FREDERICK D. MCCLURE,
Assistant to the President,
for Legislative Affairs.

RJR NABISCO AIDS BROOKLYN SCHOOL

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. TOWNS. Mr. Speaker, today I acknowledge a remarkable institution of learning in my district that is the recipient of a revolutionary program known as the Next Century Schools. The Nathan Hale Intermediate School of Brooklyn, NY, received a $222,886 grant from RJR Nabisco to develop five mini-schools—an academy of finance, an academy of arts, a core curriculum, a special education core, and an alternative program which will provide greater choices for students and parents.

This is a landmark program designed to promote the development of creative and effective learning techniques to enhance the level of education occurring in our public schools. For Nathan Hale Intermediate School this is a wonderful opportunity to receive funds to promote the learning process in the public school system.

RJR Nabisco has initiated a bold program that over time will enable our youngsters to regain the competitive edge we held in education as recently as 20 years ago. I commend RJR Nabisco, the school recipients, and the students who will be involved in a pioneer effort that is destined to pay tremendous dividends to our Nation, its public school system, and many of its students.

TRIBUTE TO IOLA M. WILLIAMS

HON. DON EDWARDS

OF CALIFORNIA

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. EDWARDS of California. Mr. Speaker, as Representatives from Santa Clara County, CA, we would like to bring to the attention of our colleagues the upcoming retirement of San Jose City Council Member Iola M. Williams. A retirement dinner in her honor will take place in San Jose on Wednesday, December 12.

Iola has just completed her second term as vice mayor of the city of San Jose, and has served on its city council since 1979. During her tenure, some of you have had the occasion to meet Iola and observe her well-deserved reputation as an effective advocate. She has been of inestimable service to her city and its mayor, as well as to the league of California cities, where she currently serves as president, in her representations to both legislative and congressional committees.

In September 1988, Iola gave testimony before one of our House Judiciary Committee subcommittees, representing the National League of Cities, the National Conference of Mayors, the National Governors' Association, and the National Association of State Legislatures. Not surprisingly, the legislation she favored was approved by unanimous vote of the subcommittee.

Iola has been a lifetime advocate for our youth, and a tireless supporter of excellent education for all children. Prior to her election to the council, she served as an elected school board member and was active in the California State and National Association of School Board Members.

Iola has long been an unfailing voice for those who most need our assistance. Her lobbying efforts helped secure over $280 million for programs vital to the social and economic welfare of the citizens of the city of San Jose and Santa Clara County. She has always been a champion for decent, affordable housing for the citizens of San Jose. She has chaired many committees that investigated conditions and initiated action to preserve the low cost and moderate housing so important to our city.

Both on the council and as vice mayor, Iola has kept an eagle eye on health care programs as they moved through Congress. We've both worked with Iola on securing Medicare waiver funds for health care. She has been a true champion for those in our city

who are least able to lobby the government for redress of their grievances.

We can always depend on Iola for a quick smile, a good story, and a dedication and commitment to making life better for all of our people. We have been proud to have worked with her during her tenure as a member of the San Jose City Council. We will miss her.

EIGHT COMMANDMENTS OF FREE ENTERPRISE

HON. CLARENCE E. MILLER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MILLER of Ohio. Mr. Speaker, in these times of budget negotiations, budget debates and budget compromises, I wanted to share and make part of the RECORD, a list of Abraham Lincoln's "Eight Commandments of Free Enterprise" that was sent to me by a group of college students from the University of Rio Grande, which is located in my southeastern Ohio District. The group which was formed under the banner of "Students in Free Enterprise," feels very strongly, that our Nation's economic policy, be a policy of principle, rather than one of political expediency. Concerned with the direction the budget summit was taking, they sent me these eight commandments in the hope I would share them with my colleagues here in the House. These remarks, which have stood the test of time, are as relevant today as they were when first articulated by President Lincoln.

EIGHT COMMANDMENTS OF FREE ENTERPRISE

1. You cannot build character and courage by taking away man's initiative and independence.

2. You cannot help men permanently by doing for them what they could and should do for themselves.

3. You cannot bring about prosperity by discouraging thrift.

4. You cannot strengthen the weak by weakening the strong.

5. You cannot further brotherhood of a man by encouraging class hatred.

6. You cannot help the wage earner by pulling down the wage payer.

7. You cannot help the poor by destroying the rich.

8. You cannot keep out of trouble by spending more than you earn.

I hope these words of wisdom, by one of this Nation's great leaders, will be remembered by the budget negotiators as they work toward molding a meaningful deficit reduction package.

A TRIBUTE TO GEORGE MENKENS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILMAN. Mr. Speaker, it is with sadness that I rise today to report the tragic loss of George Menkens, a resident of Central Valley, NY.

On October 11, 1990, George Menkens was traveling with John Bevins and Pilot Clifford A. Minch on a routine polar bear survey over pack ice on the Arctic Ocean for the U.S. Fish and Wildlife Service of the Department of the Interior. The trio was expected to return to their base at Deadhorse, AK, within 8 hours. However, at 7 p.m. 4½ hours after the survey departed, the cloud ceiling descended to 100 feet, and visibility was reduced to less than one eighth mile in snowy conditions.

Their plane did not return that night.

The following morning the weather cleared and an extensive search began. Sadly, after 2 weeks of searching by the Coast Guard and the Fish and Wildlife Service, and private aircraft from Anchorage, Prudhoe Bay, and Deadhorse, the rescue effort was called off.

George Menkens, the son of George and June Menkens, was born on May 2, 1957 in Central Valley, NY. And just this year joined the Alaska Fish and Wildlife Research Center as a wildlife biologist studying the ecology, behavior, and energetics of polar bears. The missing flight was on a routine mission to locate female polar bears and count the accompanying polar bear cubs.

Before transferring to Alaska, George had worked as the Assistant Director of the National Park Research Center at the University of Wyoming in Laramie. George holds a doctorate and a masters in zoology and physiology from the University of Wyoming as well as a B.S. degree in forest biology from Syracuse University in New York.

Perhaps the greatest tribute to George is the outpouring of sympathy from his neighbors and friends. Mr. Speaker, there is still hope. Our thoughts and prayers are with George Menkens and we all hope and pray for his safety and well being.

INTRODUCTION OF THE EAST PARK-STONY GORGE RESERVOIRS RECREATION ACT

HON. WALLY HERGER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HERGER. Mr. Speaker, I am introducing legislation today which would provide authorization for the U.S. Bureau of Reclamation to perform oversight of recreation functions at East Park and Stony Gorge Reservoirs in California. It is my understanding that the issues surrounding the need for this legislation are noncontroversial, and I would hope that Congress would consider and approve this legislation early in the 102d Congress.

The East Park and Stony Gorge Reservoirs, also referred to as the Orland project, historically have had a minor recreation function which has, until now, been maintained by the Bureau of Reclamation. The primary purpose of these facilities is to provide water for irrigation to area farmers. The Orland Unit Water Users' Association is a contractor for water with the United States. The association utilizes water from these particular reservoirs for the irrigation of crops on land owned by its shareholders.

The land base surrounding the two reservoirs totals about 2,800 acres, although only 50 percent of this total acreage is available to the public for recreation purposes. During 1988, 142,000 visitor-days were recorded at the two areas. Facilities at Stony Gorge consist of minimal camping sites, day use areas, and a group picnic area. Potable water or flush toilets are not available. A single-lane boat launch is usable only during the early portion of the season when water levels are high. At East Park Reservoir, there are no developed facilities. Portable toilets are provided during the recreation season and no potable water is available. Boat launching takes place when and where possible.

Both areas are well known for bass and other types of fishing. Annual tournaments support the communities of Elk Creek and Stonyford, and also attract fishermen from throughout northern and central California. These facilities are becoming an increasingly popular resource for waterfowl, sport fishermen, campers, and boating enthusiasts to complement the primary purpose of providing area farmers with water for irrigation of crops.

The Bureau has previously announced that it wants to get out of the recreation business at these facilities because it does not have authorization to conduct recreation oversight, and therefore cannot receive the necessary funding for these responsibilities.

In 1954, the Bureau transferred the responsibility for operation and maintenance of the Orland project facilities to the Orland Unit Water Users' Association. Title to the project remained with the United States under the administrative jurisdiction of the Bureau.

In 1969, negotiations between the Bureau and Colusa County toward having the county take over recreational responsibilities proved unsuccessful. Alternatively, the Bureau issued temporary permits to individuals to perform recreation management activities at the two reservoirs. Upon termination of the permits in 1977, Reclamation took over direct administration of the facilities.

In 1978, the Solicitor General of the Department of the Interior advised the Bureau that nonreimbursable funds could only be used to maintain existing recreation facilities and also that minimum health and safety facilities should be maintained on the Orland project. Thus, it became necessary for authorization, either specific to East Park and Stony Gorge Reservoirs or Reclamation-wide, to construct, operate, and maintain any additional facilities on the Orland project.

It is the consensus of the Orland Unit Water Users' Association, local Bureau officials, and other community leaders that the needs of the community would be best served if the Bureau were granted the authority and proper funding to perform oversight of recreation activities at East Park and Stony Gorge Reservoirs. This would allow area farmers to continue receiving a dependable supply of water from the project while also providing for the recreational needs of many people throughout northern and central California.

As such, I am introducing legislation today which would provide authorization to the Bureau of Reclamation to perform oversight of recreation activities at East Park and Stony Gorge Reservoirs. It is my hope that enactment of this legislation by the Congress will

enable the United States to meet the economic and recreational needs of the Orland area in an environmentally sensitive manner. I look forward to working with my colleagues in refining this legislation to ensure that it serves the interests of all residents of this area.

TENSIONS BETWEEN THE ISRAELI AND AMERICAN ADMINISTRATIONS

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FRANK. Mr. Speaker, as one who believes strongly that it is very much in America's interest that our strongest Middle Eastern ally, Israel, remain secure from the threats posed by the large number of its neighboring states which remain opposed to its very existence, I regret deeply the tensions that have been growing lately between the Bush administration and Israel.

Obviously, disagreement on some specific issues have contributed to these tensions, but there is one serious underlying cause of this recent tension which I urge the Bush administration to remedy.

That is the refusal of President Bush and Secretary of State Baker to recognize that Israel is rightfully insistent on maintaining a unified Jerusalem as its capital. While previous American administrations have, regrettably, declined formally to recognize the moral and political fact that Jerusalem is one city and the capital of Israel, the Bush administration has exceeded its predecessors in the vigor of its challenge to this point.

Indeed, I believe that the seeds of the current tensions between the Israeli and American administrations were planted on March 3 of this year when President Bush inexplicably interjected the Jerusalem issue into his answer to a question about settlements on the West Bank and in Gaza. I remember, Mr. Speaker, listening to that press conference while driving from Logan Airport to events in my district, and being unpleasantly startled when President Bush responded by asserting that the United States does "not believe there should be new settlements in the West Bank or in East Jerusalem."

Mr. Speaker, in the democratic nation of Israel, no government could—and in my view no government should—survive for a day if it acquiesced in this denial of Israel's right to sovereignty over all of Jerusalem. Sadly, President Bush made this statement gratuitously, calling Israel's right to Jerusalem into question just as the Israeli Government was deciding how to respond to an American proposal about talks on the issue of elections in the West Bank and Gaza. And, as soon as I heard the President say this, I feared that his grave error would result in an impasse in these talks. That is exactly what transpired. It became impossible for the Shamir government to consider further concessions to the American position on participation in the elections of Arabs living in Jerusalem, once President Bush asserted that America in effect made no distinction between Gaza and the West Bank on the one hand, and East Jerusalem on the other.

Inevitably, Israeli officials became very resistant to any proposal which would lead to the inference that they agreed with this American denial of Israeli control over Jerusalem.

And, it is this factor which continues to be a serious obstacle to American-Israeli agreement on other points today. I believe that we will see a continuation of problems as long as Israel confronts an American executive branch which denies its right to Jerusalem as its capital. If President Bush would recognize reality, and recognize that Israel's claim to Jerusalem is historically, morally, strategically, and legally correct, it would do a great deal to create a climate in which further progress toward peace could continue.

I hope he will correct the serious mistake he made on March 3, and which he and other officials of his administration have repeated since, to the mutual disadvantage of both nations, and of the cause of peace.

TRIBUTE TO HON. ROBINSON O. EVERETT, OF DURHAM, NC

HON. TIM VALENTINE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. VALENTINE. Mr. Speaker, it is with great pleasure that I rise today to recognize the achievments of the Honorable Robinson O. Everett, of Durham, NC, who retired on September 30, 1990, as the chief judge of the U.S. Court of Military Appeals.

Chief Justice Everett served as chief justice for more than a decade. He has had a remarkable impact on both the nation and the judicial system. His participation in the American system will be missed.

Robinson O. Everett was born in Durham, NC, in 1928 and attended the University of North Carolina before transferring to Harvard University where he was a Wendell scholar and a magna cum laude graduate in 1947. In 1950, Judge Everett graduated magna cum laude from the Harvard University Law School after serving for 2 years on the Harvard Law Review. In 1959 he received an LL.M. degree from Duke Law School.

Subsequently, Judge Everett taught at Duke University Law School, opened a law practice in Durham and served as commissioner of the U.S. Court of Military Appeals. Judge Everett served our country for 2 years during the Korean war, distinguished himself in an assignment to the Judge Advocate General's Department.

Upon his return to Duke, where he eventually became a tenured professor in 1967, Judge Everett published a textbook, "Military Justice in the Armed Forces of the United States." He has also served as a counsel to the Senate Subcommittee on Constitutional Rights and participated in hearings that led to the enactment into law of the Military Justice Act of 1968.

Judge Everett's dedication to his country remained vigorous as he served for 28 years in the Air Force Reserve, joining as a private in 1950 and retiring as a colonel in 1978.

Judge Everett served as president of the Durham, NC, Bar and as an American Bar fellow and member of the Advisory Committee on the Federal Rules of Criminal Procedure and Evidence.

President Carter nominated this most exceptional legal scholar to the U.S. Court of Military Appeals in February of 1980. He was appointed in April of 1980, at which time he was designated to serve as chief judge.

During his more than 10 years on the bench, Judge Everett was responsible for the evolution of the Court of Military Appeals into one of the most respected and innovative courts of America. His hundreds of judicial opinions on a wide range of topics will perhaps be his most lasting legacy. His concern for justice and his positive impact on the bench will serve as a permanent example of the proper functioning of our judges and our judicial system.

Mr. Speaker, I have the distinct privilege of representing Durham in the U.S. Congress. It is an honor to represent a fine American such as Judge Robinson O. Everett. I congratulate him for his accomplishments and salute his family: his wife Linda and his three children, Robinson, Jr., Greg, and Luke. I would like to express my appreciation to Judge Everett and wish him well as he returns to Duke Law School and assists the Court of Military Appeals as a senior judge. He is a unique jurist and an outstanding citizen.

THE 1990 CENSUS

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. ENGEL. Mr. Speaker, I rise today to express my concern with preliminary results of the 1990 census, which estimates New York City's population at 7,033,000. This figure is well below New York City's actual population and, if allowed to stand, it would have a devastating effect on the city.

During the 1980's New York experienced its greatest economic boom since World War II. City officials and outside experts believed that the city's population had grown by almost a million people over the past decade. Even the Census Bureau estimated that New York City's population grew from 7,071,000 to 7,317,000 between 1980 and 1987, an increase of almost 300,000 people. I find it impossible to believe that 300,000 people have left the city in the last 3 years.

New York City officials have determined through examination of housing, utility, birth, hospital, and school enrollment records that the census has missed as many as 254,534 housing units. Given the New York CIty occupancy rate of 2.5 people per unit, these missed apartments could mean an undercount of over 600,000 people.

The Census Bureau has already admitted that it undercounted New York City by 450,000 in 1980. It's clear that the Census Bureau missed the boat and are doing an even worse job in 1990.

Mr. Speaker, an undercount in the 1990 census would deprive New York of important

Federal dollars and congressional representation. I urge the Census Bureau to use all of the data available to it to see that the hundreds of thousands of New Yorkers missed by the census are included in the final counts.

THE LEAD INDUSTRY

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. EMERSON. Mr. Speaker, the lead industry in our country plays several vitally important, but often overlooked roles in this Nation. Lead is a critical component of our national defense. Our modern transportation and global communications systems could not exist without it. It is truly a valuable natural resource and one for which in many of its uses—the automobile battery, for instance—there is no substitute.

It has been my privilege to represent a district in Missouri where 80 to 90 percent of the lead in this county is produced. For over 100 years, mines and mills and smelters of this industry have helped create a better way of life, good schools, better health care, and those kinds of things, for thousands of Missouri families.

Like many of our important industries, the lead industry has sustained its share of criticism and controversy. Some of its practices in the past in the area of environmental affairs, for example, would not be tolerated today. The industry has invested millions in new health, safety and environmental practices that protect their employees and the communities where they operate. In addition, lead is no longer used by paint producers in house paint.

Mr. speaker, one of the leaders in the lead industry is Jeffrey Zelms, the president of the Doe Run Co. Doe Run has mines and mills in Viburnum, MO, the largest lead smelter in the country at Herculaneum, MO, and has just begun construction of a lead recycling plant that will recycle automobile and industrial batteries. Mr. Zelms, who is also chairman of the Lead Industries Association, believes that the industry must continually strive to meet public expectations on health, safety and environmental protection.

Mr. Zelms was featured in a recent story by the Associated Press about the lead industry and the issues facing it today. The article appeared in several newspapers in Missouri and around the country. I commend the article to my colleagues as an accurate portrayal of the issues facing this vital American industry and the views of industry leaders like Mr. Zelms on what the industry must do to continually sustain public confidence.

Mr. Speaker, I ask permission to have the article from the Springfield News Leader reprinted in the CONGRESSIONAL RECORD.

[From the News Leader, July 22, 1990]

INDUSTRY WORKING TO CHANGE PUBLIC PERCEPTIONS ABOUT LEAD

(By Lori Dodge)

St. Louis.—Ask somebody to name two uses for lead and you're likely to get an out-of-date answer such as paint or gasoline.

That's bad news for the lead industry as it struggles to educate people about the beneficial uses of lead today in the face of growing health concerns.

Health concerns may result in tighter restrictions on lead, and that has producers worrying about the future of the industry and the future of important new uses of the heavy metal.

"Simply put, we must let people know why lead is important in their everyday lives," said Jeffery Zelms, chairman of the Lead Industry Association and president of St. Louis-based Doe Run, the nation's largest lead producer.

"The industry has got to accept the fact that we are here by public consent. If that public consent is lost, then you're not going to be here," Zelms said.

For years, the lead industry operated with little thought to public relations. The result recently has been damaging: The public has formed perceptions of the industry based solely on negative media reports of environmental and health issues.

One result is legislation introduced in Congress by Sen. Harry Reid, D.-Nev., that is especially troubling for the lead industry.

Karen Florini, senior attorney for the Environmental Defense Fund, which backs the legislation, said the bill would restrict certain uses of lead with high potential for human exposure, either during use of manufacturing or disposal.

They include paint, solder, toys and construction materials such as roofing, siding and soundproofing.

"Much of the environment is seriously contaminated with lead already," Florini said. "These bills are trying to ensure that we're not making a bad problem worse."

That point of view is frightening to the producers, said Robert Muth, vice president of government and public affairs ASARCO Incorporated, a lead producer based in New York. "And in the long run could be very damaging not only to the industry, but to the advance of science and industry."

Muth said the public health concern unfairly centered on discontinued uses of lead.

Five years ago, Doe Run decided to "come out of the closet" and confront some of the perceptions about lead, Zelms said. But first, the company had to find out what people knew about the metal.

As it turned out, not much. A random poll of some 800 people in Missouri—a state that provides more than 90 percent of the lead mined in the country—found that 57 percent could name only paint and gasoline as uses for lead, Zelms said.

But today, lead-based paint and leaded gasoline are virtually obsolete in the United States, phased out because of their health hazards. Today, three-quarters of the lead mined in this country is used for car batteries.

Besides batteries, new uses of lead have emerged, and in many cases there are no better substitutes.

For example, lead is used in television and computer screens to shield people from radioactive gamma and X-rays. It's also used by doctors and dentists to shield patients during X-rays and radiation therapy.

Lead is used in nuclear power plants to shield workers from radiation and in nuclear disposal containers. Lead alloy solder is widely used in electronics, and lead is used in roofing, soundproofing and in sheathing to protect telephone and power cables from deterioration.

New uses are on the horizon, too.

The Japanese have begun using lead in building foundations to absorb earthquake shock. Studies have shown that a lead liner in foundations could protect homes from naturally occurring radon gas.

A giant lead-acid battery already is in use at an electrical substation in Chino, Calif., for "load leveling.' The battery provides enough additional power during "peaks" in electrical usage to eliminate the need for extra generators or plants.

Electric cars powered by lead-acid batteries could become a cleaner alternative to today's gas-fueled car. But all those future uses could be in jeopardy if the industry does not reverse the public's negative perception of it.

"The metal is integral to our society and it is essential," Zelms said.

"The public does not know that and the public is being bombarded with the information that it is not being produced and utilized in an environmentally safe way."

Earlier this year, for example, the Environmental Defense Fund released a report detailing "a nationwide epidemic of low-level lead poisoning in children, in part a legacy of lead-based paint.

Even though such paint has not been sold for more than 10 years, it's still the primary cause of lead poisoning to children between the ages of 6 months and 6 years, the group said. Especially vulnerable are children in inner-cities, where older housing still contains paint with lead in it.

"Lead's toxic effects have cause millions of children to suffer permanent neurological damage," Ellen Silbergeld, a senior toxicologist with the group said, "We have built up an accumulation of lead from past uses that will not go away."

Meanwhile, the Environmental Protection Agency is considering more stringent regulations on the amount of lead allowed in drinking water and in air.

While lead concentrations in the air have decreased dramatically as leaded gasoline has been phased out over the last 15 years, new health information suggests that adverse health effects can occur at lower levels than originally thought, said John Haines, an EPA official in the air quality planning and standards office.

The Centers for Disease Control in Atlanta also is considering whether to redefine what constitues dangerous lead levels in children.

High levels of lead in blood can affect the mental and physical development of fetuses and cause neurological problems for children, Haines said. In adults, it can cause anemia and disrupt kidney functions. Studies also have shown associations between blood lead levels and high blood pressure in middle-aged men.

The Lead Industry Association and the EPA are holding informational meetings this summer to evaluate lead uses and hazards.

"The products we make are extremely beneficial," Zelms said. "Our society would change dramatically if they were excluded."

"There are those who believe that with our technology as broad as it is today that we can find synthetic replacements for everything," he said. "Who knows, a hundred years from now, maybe that'll be true. But it's not true today."

In addition to the industry's fight for survival, Doe Run faces a challenge at home—finding new lead reserves. The company says the lead it is mining now in Missouri's Viburnum Trend will be exhausted in the next 20 years.

Doe Run wants to look for more lead in a section of the Mark Twain National Forest

in southern Missouri. Its proposal has been met with fierce opposition, despite the promise of much-needed jobs and revenue for the area.

Opponents say the potential for damage to the region's clear spring-fed streams and wooded Ozark hills is too great a risk.

Zelms said Doe Run is equally concerned about the environment. But he said the potential for damage is minimal because operations are strictly controlled by governmental regulations and its own desire to operate safely.

Doe Run has dedicated $12 million to cut current smelter emissions in half by 1993, and it is constructing a $34 million lead recycling plant expected to open by mid-1991.

YOUTH APPRENTICESHIP: A NATIONAL COMMITMENT TO A PRODUCTIVE FUTURE FOR AMERICAN YOUTH

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GEPHARDT. Mr. Speaker, today my colleague DAVID PRICE and I are introducing the Youth Apprenticeship Act of 1990, legislation designed to create demonstration apprenticeship programs for high school students: programs that combine academic study with on-the-job training and skills certification. I am pleased to be joined by Senator SAM NUNN who is introducing companion legislation in the Senate today.

American youth who attempt to enter the job market having dropped out of high school, or with only a high school diploma, are at a tremendous disadvantage compared with those who complete college. Too many of our young people spend their first years out of high school either unemployed or in a series of low-wage, dead-end jobs.

The result is loss of both earnings and self-esteem for the individual and loss of productivity for the economy. It is a situation that we as a nation should not and can not tolerate. At a time when we face an ever more competitive world market while our own demographic base is shrinking, we simply can not allow as many as half of our young people to face the future without realistic prospects for productive employment. We will need the skills of all of our people to preserve the strong economy that is the best guarantee of the individual opportunity upon which our society is based.

The Youth Apprenticeship Act of 1990 will facilitate the development of a national system to provide an effective transition from high school to good jobs for those young people who do not go directly on to college. At the same time, it is my hope that these apprenticeship programs, by showing young people the relationship between education and work, will encourage all of them to complete high school and more of them to pursue post-secondary education.

Although such an effort must be national in scope, it is important to note that this legislation does not create a Federal program. The apprenticeship programs will be designed and run on the State and local levels, with the active involvement of State and community officials in the areas of education and labor, as well as secondary and post-secondary schools and local businesses. This approach will provide maximum responsiveness to local needs, as well as an opportunity to test systematically a variety of different models for apprenticeship programs.

A new independent organization, the Institute for Youth Apprenticeship, made up of representatives from education, business, government, and labor, will be created. This national institute will provide coordination, develop competency standards and certification, and create a national clearinghouse for information about effective programs.

There will be a minimum of Federal financing. The legislation authorizes $50 million for the first year of the program and such sums as necessary thereafter. The bulk of the costs of the apprenticeship programs, including a stipend for the apprentices, will be borne by the participating businesses, with some assistance from the schools.

The idea embodied in the Youth Apprenticeship Act of 1990 is not a new one in this country. When I was a student at Southwest High School in St. Louis, we had a work-study program, which enabled students to finish their high school education while working at a temporary job in the community and receiving skills training. Just recently I ran into a high school friend of mine who is still happily employed at the company that gave him his work-study experience.

This legislation does not anticipate that students who serve apprenticeships with an employer will necessarily remain with that employer, as my friend did. But I do expect that a well-designed, well-coordinated apprenticeship program will give the young people who participate the skills they need to get a good job—a job with a future.

I look forward to benefitting from the expertise of my colleagues on the committee of jurisdiction and others as the Youth Apprenticeship Act of 1990 moves through the legislative process. I can not think of a more important function for the Federal Government than to foster a national commitment to providing all of our young people a real opportunity for a productive future.

A LETTER TO PRESIDENT BUSH PROTESTING HIGHER TAXES

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HUBBARD. Mr. Speaker, I would like to share with my colleagues an excellent letter from an outstanding constituent of mine, James C. Tidwell of Paducah, KY.

My friend, Jim Tidwell, is a successful businessman who wrote President George Bush the following letter on August 10. The following letter was reprinted on the editorial page of the Paducah Sun, a daily newspaper in Paducah with circulation in 10 of the 24 counties I represent in Congress.

Jim Tidwell sent me a copy of his letter to President Bush. Several constituents of mine who read this letter has requested that I share it with my colleagues in the CONGRESSIONAL RECORD.

The letter is as follows:

PADUCAH, KY,
August 10, 1990.

Subject: New Taxes.

Hon. George H. Bush,
President of the United States of America,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As a taxpayer and citizen, I have long been concerned about our continually increasing annual federal deficit and the resulting huge national debt. With over forty years experience in business, including a four year stint in municipal government, I have some understanding of this staggering liability upon us and our future generations.

Thus, it is with great relief and satisfaction that I note you and the Congressional Leadership have decided that the situation is sufficiently desperate to warrant bipartisan action. However, I am deeply concerned that in order to achieve bipartisan cooperation, you have had to rescind your stand against new taxes.

I am sure I am not possessed of the wisdom to be absolutely positive that new taxes may not be necessary, as a last resort, to extricate our economy from some ultimate collapse. But, I do have a conviction that I do not want to pay any more taxes until I know that my federal government has exhausted every possible means to cut expenditures first!

Specifically:

I don't want to pay more taxes while military purchasing managers continue to pay $900 for a toilet seat, $9,000 for a monkey wrench and hundreds of dollars for paper clips. And how about the gold plated chandeliers valued at $145,000 to decorate the U.S. Air Force base at Mindenhall in Britain? And the $600,000 golf course projects at Myrtle Beach Air Base?

I don't want to pay more taxes until my government tracks down, prosecutes and squeezes every last ill gotten dollar from the S & L villains, and takes the necessary steps to ensure that it never happens again.

I don't want to pay more taxes until the same process is carried out upon the perpetrators of the HUD scandals.

I Don't Want To Pay More Taxes until my government recognizes that the need to subsidize the farming business ceased after the great depression ended, and therefore, farm subsidies should be phased out over as short a period as necessary to avoid undue disruption to the farm economy.

I Don't Want To Pay More Taxes until my government shows meaningful progress in implementing the cost-cutting measures recommended by the Grace Commission under the previous Administration.

I Don't Want To Pay More Taxes until the rules for voting pay raises for Congress require floor debate and a roll call vote in both houses of Congress.

I Don't Want To Pay More Taxes until my government stops the hypocritical practice of supporting tobacco prices on the one hand while requiring health warning labels for tobacco products packages on the other.

I Don't Want To Pay More Taxes until my government sets up good management practices to hold down the drain of tax dollars through the federal student loan program.

I Don't Want To Pay More Taxes until the government establishes a budget process which measures its income realistically, prioritizes expenditures in the order of their

urgency and importance to the entire nation and then ceases funding of the lower priority projects after the money runs out. Once the budget is set, no more money should be approved for new projects without assurance of sufficient new revenues or commensurate reduction of budget amounts for already approved projects. Also, no statute should be enacted without an accompanying fiscal impact statement accurately estimating costs and specifically identifying the revenue source to pay for them.

I Don't Want To Pay More Taxes until the federal government ceases mandating expensive performance requirements for the several states without recognizing the cost and allocating the monies within the federal budget by the process outlined above.

I Don't Want To Pay More Taxes until the federal government recognizes that by phasing out such programs as revenue sharing, the states and local governments have had to pick up the slack by enacting more taxes at their level.

I Don't Want To Pay More Taxes until the Congress ceases the practice of exempting itself from the mandates, monetary and otherwise, which it legislates for the rest of our society.

I Don't Want To Pay More Taxes until my government stops using mirrors, smoke screens and "voodoo economics" to disguise, distort and manipulate the true budget picture. Social Security, the S & L bailout, Medicare and all such items should be included in the main body of the budget just like any other item funded through federal taxes. And then, nothing should be exempt from consideration at any step in the budget process.

I Don't Want To Pay Any More Taxes until my government quits trying to foist the guilt trip of "Entitlements" upon the taxpayers. I and all other American citizens are entitled by the Constitution and Bill of Rights to "Life, Liberty and the Pursuit of Happiness"; no more no less. By continuing to pay billions of dollars to millions of people for not working, my government is only perpetuating the cycle of poverty it says it wants to stamp out. I see too many cases where people choose to remain on welfare rather than accept jobs which pay less than their welfare "entitlement". So, "I Don't Want To Pay More Taxes" until my government requires reasonable, productive work for every dollar it pays out to those who are able to do some type of work.

I Don't Want To Pay More Taxes until my government learns that programs like the National Endowment for the Arts, as worthwhile as it may be, is not high enough on the priority list of important, urgent needs to be funded in these times of declared budget crisis. It seems that one of the fallacies of our budget system is that such programs are considered for funding out of context with the rest of the budget. They simply could not stand the light of comparison with such things as Social Security, Medicare, education, drugs and crime. I don't understand why we don't appropriate at the same time as we budget. That seems to be the only way to properly prioritize.

I Don't Want To Pay More Taxes until the federal government learns to weigh into the cost of new programs the expenditures required in setting up the bureaucracy to enforce, implement and administer those programs. The Bureaucracy costs money, which means that my tax money going to the federal government is reduced by 10%, 25% or more before it can be applied to the program itself. Where possible let the state and local governments provide necessary services and cut out the "middle man" of federal bureaucracy.

I Don't Want To Pay More Taxes until the Congress stops the process of expanding emergency relief bills like the drought bills of recent years to include moneys for situations like local floods which were not officially declared to be disasters, but just tacked on by legislators more interested in supplying a little pork to local constituents than working for the good of the nation as a whole.

I Don't Want To Pay Any More Taxes until a more thorough evaluation of our foreign aid program is made to weed out payments to governments who don't support our programs, who repress and oppress their people, who refuse to deal fairly in the free trade market or who know only how to squander the dollars they receive.

Like our own welfare programs at home, I don't mind helping other nations learn how to take care of themselves. But lets not make them lazy and non productive by giving them handouts.

I could go on, but I believe these examples make the point. Our nation can ill afford new taxes to further burden an already sluggish economy. It has been well documented that lower, not higher taxes fuel a dynamic economy. So, will you and the Congress please get federal expenditures under control before you contemplate new taxes. If you really work at this task, I feel confident that not only will you be able to balance the budget, but you will be able, year by year, to set aside enough to pay off the national debt within a reasonable period of, say ten to twenty years.

I am sending copies of this letter to my U.S. Congressional delegation because I want them to work equally as hard as the Executive Branch on reducing the budget without additional taxes.

Sincerely,

JAMES C. TIDWELL,
PADUCAH, KY.

GUATEMALAN HUMAN RIGHTS GROUP RECEIVES RECOGNITION FOR ITS WORK

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. KOSTMAYER. Mr. Speaker, I want to offer my congratulations to Amilcar Mendez, the founder, and the other members of the Council of Ethnic Communities "We Are All Equal" of Guatemala as the recipients of two prestigious awards for their work on human rights in Guatemala. On November 20, Mendez will be awarded the Seventh Annual Robert F. Kennedy Human Rights Award at a ceremony at Georgetown University. And on December 10 in New York, former President Jimmy Carter will bestow upon the Council of Ethnic Communities the Carter-Menil Human Rights Award.

The Council of Ethnic Communities "We Are All Equal"—or CERJ, as it is known by its Spanish acronym—was founded by its present leader, Amilcar Mendez, to struggle for the recognition of Guatemala's indigenous people's rights and to denounce violations of those rights. Specifically, the CERJ protests the forced participation of Guatemalan Indians in the Civil Defense Patrols, a direct violation of Guatemala's Constitution.

Despite an initial improvement in the human rights situation in the mid-1980's, for the last several years human rights abuses by the Guatemalan security forces have continued and increased dramatically in the last year. Human rights groups have documented the disappearance of more than 40,000 Guatemalans over the last decade, with virtually no investigations undertaken. According to the State Department Country Reports on Human Rights Practices for 1989, the Guatemalan security forces and extremist political groups engage in extrajudicial killings, and the Guatemalan Government "has been unable or unwilling to prosecute those involved."

According to Americas Watch, at least nine CERJ members have been killed or have disappeared in the last 2 years. Mendez himself has survived several attempts on his life, and he and his family receive death threats with alarming regularity.

As the head of CERJ, Mendez has struggled to enforce the Guatemalan Constitution by educating illiterate campesinos about their rights and assisting hundreds in filing petitions to withdraw from civil patrol service. As a result, he lives under constant threat of persecution or death. In March of this year, Mendez and the Guatemalan Government's assistant human rights officer were attacked by a group of armed men in El Quiche, as they attempted to escort villagers safely back to their homes. The assailants, labeling Mendez a "guerrilla," held guns to his chest and head, and told him he would be shot.

On July 30, Mendez received a handwritten letter that indicated that he should leave the country within 72 hours or be killed. But he chose to remain and to fight for the rights of his people. His own words amply reflect the courage and dedication of this extraordinary man: "The threats to me have increased lately. But so have the needs of the peasants and the violations of their human rights. I have to overcome my personal fear for the sake of my work."

IN HONOR OF GEORGE CROCKETT

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DINGELL. Mr. Speaker, I know I can speak for the Michigan congressional delegation when I say that our good friend and colleague, GEORGE CROCKETT, is a very rare individual—who in 1980 brought to Congress and our delegation a rich and varied background. And I can say, without a doubt, that very few of us in Congress can match the professional diversity and depth exhibited by this individual.

He was born and raised in Jacksonville, FL, where he returned to begin a law practice in 1934. His experience in the legal profession spanned from his time as a hearing officer with the U.S. Labor Department, lawyer with the UAW, and a senior member of Detroit's first integrated law firm from 1946 to 1966.

As most of us know, law and politics are closely intertwined. GEORGE CROCKETT fit into this formula when he won two terms as Detroit Recorder's Judge and became the presiding judge in 1974. He was a State appeals court judge until he won his House seat in 1980.

During his tenure here in the House, Congressman CROCKETT served on the House Judiciary Committee and the Foreign Affairs Committee, where his tireless fight for civil rights and his fervent efforts to win the release of Nelson Mandela by South Africa won him acclaim by many of his colleagues.

Mr. Speaker, in my years in the House, I've seen many colleagues grow old. And every once in a while, you meet one of those rare individuals who grows chronologically in years, but retains that special light and that special energy that bespeaks of agelessness. GEORGE CROCKETT is one of those people. He was and always has been, and will always continue to be, a crusader. His 50 years of public life is punctuated with the richness of not being afraid to speak out for those issues in which he had a personal stake and, more importantly, those issues at stake in society—civil rights, economic fairness, and fighting against international oppression, only to name a few. He has left his mark on all of us and all of these issues.

Mr. Speaker, the Michigan delegation has built a reputation of being a close-knit and interdependent group. We get along with each other, we pull together to get things done. When we lose a Member—regardless of political affiliation—we suffer a break in the continuity of our effectiveness. GEORGE CROCKETT will leave a hole in our delegation and we will miss him.

THE COMBAT MERCHANT MARINERS BENEFITS BILL

HON. GEORGE J. HOCHBRUECKNER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HOCHBRUECKNER. Mr. Speaker, today I rise to introduce a bill that would provide benefits for the unsung heroes of U.S. military actions who have provided support to our troops in the oceans and waterways of the world. These individuals risked their own lives to help our military fulfill its duty. They were members of the U.S. merchant marine, a service that traces its roots back to the early days of this Nation.

It took over 40 years for World War II merchant seamen to obtain official veterans status, but this status has not been extended to mariners who were clearly in harms way during the Korean and Vietnam conflicts. These merchant mariners were civilians just as were the merchant mariners who served in World War II. As in all of our Nation's conflicts the task of transporting troops and the supplies needed to sustain the Armed Forces fell on the shoulders of the American merchant seamen. They must be remembered as should everyone who served their country during times of conflict, sailing in harms way.

Mr. Speaker, the merchant mariners have played a vital role by supporting our military troops in times of conflict. They deserve to receive the benefits that are due to them. I urge my House colleagues to join me in supporting the Combat Merchant Mariners' Benefits Act of 1990.

U.S. ACTIONS AND RESPONSIBILITIES IN DEALING WITH IRAQ'S INVASION AND OCCUPATION OF KUWAIT

HON. DAVID E. SKAGGS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. SKAGGS. Mr. Speaker, I would like to address the situation in the Persian Gulf and the deployment of our troops there—to talk about what we should hope to accomplish there, and about the principles that should guide our actions there.

THE BASIS FOR UNITED STATES ACTIONS IN THE PERSIAN GULF

Sending American troops to face possible combat has to be the most sobering responsibility any of us in Government faces. I hope and pray that the current conflict in the Persian Gulf can be resolved without violence, and that our troops will come home without incident.

Because American lives are on the line, it is vitally important that we are all absolutely clear about the reasons these men and women have been deployed. No other decision demands a higher standard of moral certainty.

We have intervened in the Persian Gulf and stood up to aggression by Iraq to defend fundamental principles and vital national and international interests.

Standing firm on principles is important, but not just for principle's sake. Forty-five years ago, we learned the painful lesson that to leave aggression unchecked is to invite further aggression. We learned that the time to put a stop to aggression is at the very start.

This lesson rings very true today. Saddam Hussein is ruthless and aggressive. He has demonstrated his territorial ambitions, and has shown himself to be wholly without moral compunction. He has shown that he is willing to use every terrible weapon of war to achieve his ends—even chemical weapons. And, according to published reports, he is seeking to develop a nuclear capability, and may be only 2 or 3 years away from adding those awful weapons to his arsenal.

Iraqi actions against Kuwait have violated the international rule of law. Our actions, taken together with many other nations, and coordinated under several unanimous resolutions of the United Nations Security Council, seek to restore the rule of law by turning back Iraqi aggression.

Iraqi actions have violated basic human rights: The right of people to live freely, the right of people to choose their own government, the right of people to travel without restriction and without fear. Our efforts seek to restore those rights, by allowing the Kuwaitis to reestablish their society and their government, and by freeing other foreign nationals held hostage.

Iraqi actions have raised a clear and imminent threat to other peoples of the region and beyond. Our response seeks to deliver peaceable nations from the threat of an Iraqi invasion, by depriving Iraq of the means to sustain its military and its economy, and by deterring further aggressive behavior.

Our actions—helping to defend Saudi Arabia against a possible invasion, and supporting and enforcing the embargo against Iraq to pressure it to leave Kuwait—are neither aggressive nor arbitrary. With tens of thousands of Iraqi troops massing on its borders in apparent preparation for invasion, Saudi Arabia asked for our assistance. We responded to that urgent request. And when the United Nations voted to establish an embargo, we again responded, and have acted to carry out our international duty.

With the lives of so many hostages, soldiers, and Arab civilians possibly at stake, it is critical that the President further clarify U.S. objectives and principles.

There are ample and appropriate reasons for what we have done so far. Those reasons do not, however, have anything to do with protecting our own oil supplies. The President must make absolutely clear, to the American people and to the world community, that we are seeking to preserve fundamental principles of international order—not preparing to wage a war to preserve low gas prices in the United States.

But neither is the region's oil wealth irrelevant. If the world had ignored the invasion of Kuwait and the apparently imminent invasion of Saudi Arabia, Saddam Hussein might well have gained effective control of about 20 percent of the world's oil reserves, worth trillions of dollars. Those reserves are substantial enough to provde enormous leverage in influencing world energy markets and so the power to undermine world economies. And with Saddam Hussein possessing that kind of economic and political power to support his military pursuits, the world would have become unacceptably dangerous. Iraq would have had every incentive to continue its offensive throughout the region, and could have eventually succeeded in dominating the entire Persian Gulf area.

With the additional wealth to support weapons development and acquisition, Iraq could well have accelerated its efforts to combine ballistic missiles with its existing chemical weapons, or even with nuclear or biological weapons, and to threaten any nation in the region, and soon, even Europe or beyond.

This was clearly a situation that demanded a unified and decisive world response. President Bush, to his credit, acted to make the United States the leader in organizing that response.

THE IMPORTANCE OF A BROAD INTERNATIONAL RESPONSE

President Bush understood the importance of moving in concert with other countries to fashion a coordinated plan of action. As a result of his leadership and the concern other countries share about the gulf crisis, the community of nations has acted with a degree of harmony not seen since World War II. Britain and France have committed naval, air, and ground forces to the gulf, and several other

Western nations have sent naval forces to the region. Several Arab countries, including the gulf states, Egypt, Morocco, and Syria, have committed troops and materiel under a joint Arab-Islamic force. Bangladesh and the Afghan Guerilla forces have also sent contingents; Japan has committed noncombatant forces.

The international character of the response has been enhanced greatly by repeated resolutions of the United Nations Security Council opposing Iraq's actions. These resolutions have condemned the invasion, called on Iraq to withdraw, imposed economic sanctions, declared Iraq's annexation of Kuwait to be null and void, called on Iraq to allow foreigners in the two countries to travel freely, and called on United Nation member states to take needed steps to halt ships in the gulf that might be breaking the embargo. Additional resolutions of the Security Council are expected.

These resolutions carry great significance. They make it clear that it is the entire civilized world, not just the United States, that condemns Iraq's actions. They demonstrate that the rest of the world is united in taking strong action—particularly, a full economic embargo.

In addition, these resolutions mark a dramatic end to an era of United States-Soviet competition in the United Nations, and the apparent beginning of an era of cooperation. Now that the cold war has ended, and the United States and Soviet Union are working together on issues like this one, the United Nations may grow and mature into the role originally envisioned for it.

The next step, and an appropriate one, would be a U.N. role in coordination of the different military forces deployed in the region. It would furnish formal international authority and added legitimacy to the collective military effort. It should be possible to devise an approach that is workable from an operational standpoint and that might somewhat deemphasize the dominance of U.S. forces. If military action eventuates, some kind of U.N.-flagged command would be extremely helpful in avoiding anti-American backlash in that part of the Arab world prone to such reactions.

Over time, the joint, U.N.-sponsored economic sanctions may be painful enough to become an important factor in inducing Iraq to withdraw from Kuwait, allow that country to reestablish its own government, and release its hostages, all without any further bloodshed.

We must allow reasonable time for the sanctions to have maximum effect. And so, it is cruicial for the Bush administration to make clear that the combination of a defensive military posture, reinforced by the economic and political isolation of Iraq, is our principal strategy. We have to exercise great care in the meantime to avoid unnecessary incidents that could provoke or precipitate hostilities.

War must be seen as absolutely the last resort, to be considered after all other options are exhausted, and only then under clear international sanction. At the same time, leaving our military options open, and having in place credible forces able to pursue them, increases the likelihood that Saddam Hussein will take the threat seriously and find a reason to withdraw his forces from Kuwait.

ALLIES MUST SHARE THE BURDEN IN THE GULF

The Bush administration has done a very creditable job of working with other nations to establish the multinational force in the gulf and to carry out the embargo against Iraq. At the same time, I believe our country is carrying more than its fair share of the costs of these actions—both in troops and in money. The adminstration needs to continue firm and forceful diplomacy in convincing our allies and other nations to assume a greater share of these costs. It's only proper that other nations with as much or more at stake contribute to this multilateral undertaking in rough proportion to their ability and their interests. Such greater burdensharing is essential if the American people are going to have the patience to support this effort over the long haul.

I am also concerned about the President's proposal to forgive Egypt $7 billion in military loans on account of its participation in opposing Iraq. Egypt's participation is extremely important, for a number of military and political reasons. But it's unseemly at best for us to appear to have to pay billions to obtain Egypt's commitment. It establishes a troublesome precedent, even though the chances that we were ever going to obtain repayment from Egypt were already very slim. Moreover, there's no reason this forgiveness, if truly needed, could not have been negotiated to take place over time.

THE HOSTAGES

Nowhere is Saddam Hussein's disregard for international law and human decency more evident than in his cruel and cowardly incarceration of many hundreds of foreign nationals. The taking of innocent American hostages places the President in an extremely difficult situation. On the one hand, we cannot allow ourselves to be blackmailed by Iraq over the hostages. We must continue to block Iraqi aggression. At the same time, we are all human. Our hearts go out to those whose friends and family members are held captive. They are helpless victims in an unpredictable and treacherous showdown. We all pray for their safe release and for a peaceful resolution to this conflict for their benefit especially.

PAST TIME TO CHANGE OUR ENERGY HABITS

As I've said, our responses to the Iraqi aggression should not be based on some presumed right to keep "our" oil flowing from Kuwait or Saudi Arabia, or to maintain cheap oil prices.

The effects of the current Persian Gulf crisis on the world oil market, the U.S. economy, and our personal pocketbooks should be a powerful reminder of the extent to which we are vulnerable to increases in oil prices or decreases in oil supplies. We shouldn't need another such reminder; the 1973 OPEC embargo and the 1979 Iranian revolution gave us plenty of evidence. But we didn't adequately learn from those experiences, and now we're again paying the price.

To lower that price, and to avoid paying it the next time something goes wrong in the Persian Gulf, we need to become more intelligent in how we meet our energy needs. For too long, we've looked at energy as just being a "supply-side" issue: If we don't want to use certain energy supplies—foreign oil—then we need to turn to other supplies, such as oil from the Arctic National Wildlife Refuge, as some again are arguing with renewed vigor.

We need to redefine the issue. What we're really concerned about are the benefits we're used to getting from the use of energy—convenient transportation, warm or cool homes, lighting. There's abundant evidence that the quickest, easiest, most economical, and most lasting way to get those benefits, and do so in a reliable way, is to improve the efficiency with which we use energy, and to develop renewable energy sources, not to proceed mindlessly to demand additional petroleum supplies.

For instance, in a few years we could be meeting the same transportation needs with new cars that average 40 miles per gallon—which is possible by then. That would avoid the need to acquire and consume the equivalent of the annual output of oil from 10 Arctic national wildlife refuges. With more fuel-efficient cars, we wouldn't be vulnerable to oil supply disruptions and price increases, we wouldn't consume oil resources—either ours or the world's—as quickly, and we wouldn't pollute our environment as much. Of course, the same basic argument applies with slight variation to home appliances, home heating, lighting, and many other energy uses.

CONGRESSIONAL RESPONSIBILITY AND AUTHORITY

Under the War Powers Act, the President is required to obtain approval from Congress to maintain U.S. forces under conditions where hostilities are imminent. The War Powers Act reflects an assertion of the constitutional prerogatives of Congress to address the question of making war and to place limits on executive discretion in committing the country's military forces to action. It is an awkward attempt to deal with the tendency in modern times for circumstances to arise which don't fit well in the traditional constitutional language reserving to Congress the power to declare war.

However, as events have developed in the Persian Gulf, and as forces have been deployed in great numbers, the conditions seem to me more and more to justify invoking that more traditional constitutional concept. This is not the kind of gray area the War Powers Act was crafted to address. Rather, if this country is to initiate general, offensive combat against Iraq, the decision to do so should be made in accordance with constitutional requirements. As difficult and as anguishing a decision as it would be, the Constitution clearly contemplates that it would be made by the representatives of the people in Congress.

Adherence to constitutional requirements would force the kind of searching examination and debate that well ought to precede a decision that could mean death for thousands of our forces and more thousands of Iraqi troops and civilians. This is no time to acquiesce in some surrogate process, or to defer to an exclusive Presidential authority, or passively to accept being overtaken by events. There is no graver decision, and we in Congress would offend our oath of office if we do not assert our role in it.

HISTORY, ATTITUDES AT ROOT OF SLURS

HON. LOUIS STOKES
OF OHIO
IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. STOKES. Mr. Speaker, many have expressed their outrage and disappointment at the racist remarks made by Japan's Minister of Justice, Seiroku Kajiyama. Kajiyama compared the flight of shoppers and businessmen from a wealthy section of Tokyo because of increasing prostitution to flight of whites from cities in the United States due to increasing numbers of blacks. His remarks represent one in a long and continuous string of incidents where Japanese officials have made racially disparaging remarks about African Americans.

In an editorial which recently appeared in the Washington Post newspaper, columnist Dorothy Gilliam utilized an address by Percy R. Luney, Jr., a graduate of Harvard Law School, former Japanese scholar and expert on Japanese constitutional law, to explore the racism that permeates Japanese society and the cultural hostility that is displayed toward African Americans and other minorities.

Mr. Speaker, I urge my colleagues to take a moment to read Ms. Gilliam's column. It is certainly interesting and thought provoking.

[From the Washington Post, Oct. 15, 1990]

HISTORY, ATTITUDES AT ROOT OF SLURS

(By Dorothy Gilliam)

Midway through his talk on Japanese-black American relations on Friday afternoon, Percy R. Luney, Jr. leaned on the huge rectangular table and passed around a book of ethnic jokes and pieces of "black memorabilia," stereotypical images of blacks that he acquired during his years as a scholar in Japan.

The Japanese-made memorabilia, he said, date back as far as the late 1940s and the American occupation of Japan after World War II.

In the book, "It's Only a Joke," a contemporary publication in Japan by an American, one joke asks, "Why are colored kids so easy to babysit for?" The answer given: "You can just wet their lips and stick 'em to a wall."

Luney is a graduate of the District's Coolidge High School and Harvard Law School, an expert on Japanese constitutional law, and a law professor at North Carolina Central University and Duke University. He linked the crude, racist caricatures of blacks that are still pervasive in Japan and the ongoing racial slurs by Japanese government officials to Japanese history and American attitudes.

Speaking at a Joint Center for Political Studies symposium, he noted that during the 1930s, when Japan was becoming an imperialistic nation, its leaders adopted homogeneity and purity as a way of beefing up Japanese pride. "Racial and cultural purity became fused in the exclusionistic rhetoric of Japanese nationalism, which permeated government policy and thought during the '30s and '40s," he said.

Because the current leaders of Japan were educated and grew up during the peak of this nationalistic movement, he said, their tendency toward racially biased and insensitive statements is not surprising.

Seiroku Kajiyama, Japan's new justice minister, made the most recent public slur in September when he compared the flight of shoppers and businessmen from a wealthy section of Tokyo because of increasing prostitution to the flight of whites from cities in the United States due to increasing numbers of blacks. He later apologized for his inappropriate comments on race relations in the United States, not his insensitivity.

Typically, Luney said, Kajiyama did not understand the problem in context. "He indicates it is because blacks are bad that whites move out, not because some whites are racist and just don't want to live near blacks," he said.

In addition, Luney said, "A lot of their attitudes toward foreigners, particularly black Americans, are learned attitudes that have come from contact with white Europeans and white Americans during the 19th and 20th centuries."

Moreover, such television programs as "Sanford and Son," which has been broadcast in Asia, contribute to stereotypes. "Americans understand the context of such a program, but in Asia, they say, 'Oh, blacks live in junkyards. It's obvious they have no status in American society.'" Currently, several Japanese authors are using blacks in their literature, and the sexuality and physical aura of the black male are emphasized, he said.

While there was a great deal of interest in the historical antecedents of the problems, Luney's audience also wanted to hear about how to stop the seemingly unending wave of racist rhetoric emanating from Japan.

Because Luney sees the image of blacks in Japan inextricably linked to the status of African Americans in the United States, he thinks changing attitudes in Japan has a lot to do with blacks' succeeding in America. Citing recent Supreme Court decisions overturning gains made in the 1960s and pushing blacks backward, not forward, Luney is pessimistic.

Like Luney, black leaders and businessmen are still criticizing Japanese attitudes. Reginald F. Lewis, chairman and chief executive officer of TLC Beatrice International Holdings Inc., said, "The real disappointments is the mild rebuke of responsible Japanese leaders to this most recent incident . . . . Slandering a community that indirectly but significantly helps power the Japanese economy suggests that the Japanese still do not know on which side of the Pacific their bread is buttered."

Eddie N. Williams, president of the center, has called on President Bush to "condemn unequivocally" the derogatory statement, which he called an affront to our nation. So far, the White House has been mum on the Japanese slurs.

Luney agrees with Williams that presidential intervention is urgent: "Every time you have a comment and there is no condemnation from the American president, that says something in itself."

And what it says, while not surprising in that it is typical of George Bush, is that the president of this country does not care enough about 30 million Americans to stand up for them in one way that would be important.

NIXON RE-ERECTED

HON. MAJOR R. OWENS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. OWENS of New York. Mr. Speaker, at the time of the dramatic vote rejecting the budget summit agreement, several newspapers reported that among the persons who were enlisted by President Bush to call Republican Members and appeal for their votes, was former President Richard Nixon. This same Nixon was also recently the subject of a television documentary. Many of us feared that a well-organized attempt to rehabilitate Nixon was under way—and that there was a danger that Dick Nixon would again become a force in American politics. After viewing the television documentary, I have concluded that most Americans will react with horror when they watch the replay of the shabby melodrama of Watergate.

Watergate replayed was also a grim reminder of the more recent Iran-Contra scandal. Watergate should have taught all future Presidents a lesson. Unfortunately the conspiracy of Iran-Contra showed us that the only thing that was learned was more effective damage control. The dimensions of Iran-Contra were far broader and far more dangerous. But Republican Party damage control and a wimpish Special Prosecutor have sanitized the stench of Iran-Contra.

Remembering is important. Today's decisionmakers should take heed. Since this administration holds Nixon in high regard; and since several key players in this administration were in the White House at the time of Iran-Contra, the question which has great validity is: What will be the next conspiracy? The following is a portrait of the ugliness of Iran Contra, the son of Watergate:

NIXON RE-ERECTED

A mere dress rehearsal—
That was Watergate
Iran-Contra was the prize
To save the state.
Ollie North was the pimp
But the junkies were upstairs
Faking fixes in secret federal affairs.

This time no evidence was taped
But in the basement of the White House
The constitution was repeatedly raped.
In a brothel scene
Cellar thugs had their finest hour.
Bandits who looked real clean
Stole the nation's power.

On a secret throne
The insurgents ruled
All the polls were fooled.
Number one from the swindler's school
Ollie North did his dirt real cool:
When the President insisted
Old rich ladies were enlisted
And the Sultan too
Brought his money lending crew.

While Nicaraguan children died
The best and brightest diplomats all lied
Never mind etiquette and the law
Star spangled savages
Proclaimed the privilege
To eat the enemy raw.

In Iran they had fun
Swapping dollars for each gun

In secret airplanes they rode
Right over the regular international code.
Ollie North was the pimp
But the whores were upstairs
Turning tricks in secret federal affairs.

NEED FOR BONE MARROW DONATIONS

HON. BEVERLY B. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mrs. BYRON. Mr. Speaker, we are facing an increased need for bone marrow donations; that is why I am introducing a bill to support them in the Federal Government.

Last week, Dr. E. Donnall Thomas was awarded this year's nobel prize in medicine for developing the technique of bone marrow transplantations. This procedure so far has saved thousands of lives of sufferers of fatal blood disorders. It is now the preferred method of treatment for diseases such as leukemia and Hodgkin's among others.

The National Bone Marrow Donor Program Registry has between 4,000 and 10,000 people who are waiting to be matched with donors. Successful transplants raise survival rates from 0 to 15 percent to 40 to 80 percent. It is estimated that 100,000 donors from diverse ethnic groups would be required to satisfy the existing needs for transplants. The Federal Government needs to assume a leading role in encouraging and supporting donations for this worthwhile program. The bill I am introducing is a step in this direction. It provides for granting administrative leave to Federal employees who participate in bone marrow donations.

The costs for this bill are relatively modest. It is anticipated that it would affect less than 10 employees annually. It is a small price to pay for the Federal Government to stress the need for bone marrow donors. I urge my colleagues in joining me in sponsoring this bill.

IN RECOGNITION OF FRED W. ROSS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Ms. PELOSI. Mr. Speaker, I rise today in recognition of the "Original Unsung Hero," Fred W. Ross, who has organized and trained community organizers for half a century. "Despite a self-effacing style," one writer noted, "He is a living legend among those who work to empower the underdog and effect social change by means of grass-roots organizing." Ross himself has stated that his life has been governed by a simple, provocative creed: "An organizer is a social arsonist who goes around setting people on fire."

He was born in Los Angeles, CA, in 1910, and graduated from the University of Southern California with a teaching degree. His exposure to the poverty of the depression, however, impelled him to seek a calling away from the classroom, and shortly after he was hired by the Farm Security Administration and assigned to manage the Arvin migrant worker camp in California, which was Steinbeck's inspiration for the home of the Joad family in "The Grapes of Wrath."

What transpired at Arvin set the pattern for Fred's life. Even though it was not in his job description—indeed, it is doubtful it was even contemplated—Fred was so moved by the plight of Arvin's 3,000 residents that he began to work with them to address their individual and collective needs. Rather than use his authority to govern, he established camp councils elected by the residents. Rather than use his authority to punish and keep them in line, he worked with them to prevent rival farm workers and police from invading the camp and inciting riots and violence.

In the late forties, Ross found himself back in southern California, working with the Hispanic community and local civil rights groups on behalf of first, the American Council on Race Relations and second, after the late Saul Alinsky had heard of Ross' talent for organizing, the Industrial Areas Foundation. For 5 years Ross organized community service organizations throughout Los Angeles to tend to the civic needs of Hispanics in the barrio. Ross organized Hispanics to fight discrimination in public places, to end segregation in the public school, to publicize police brutality of Hispanics and, perhaps most importantly, to register them to vote.

In 1951, Ross moved north to San Jose to start organizing the second largest Hispanic community in California. It was here that in a barrio called Sal Si Puedes—which means "get out if you can"—that Ross visited a young man he had heard about named Cesar Chavez. Overwhelming Chavez' natural reticence about dealing with him through his sincerity and demonstrated record of success, Ross quickly convinced Chavez to work with him to organize Hispanics in northern California. Indeed, for the next 9 years, working out of their cars, they established 30 community service organizations; registered 227,000 new voters; helped 40,000 Mexican-Americans attain citizenship. In 1947, no Hispanic held elected office; By 1960, at the end of the first Ross-Chavez partnership, there where over 100 Hispanic elected officials.

In 1964, Ross headed off to work with the Yaqui Indians in Gaudalupe, AZ. He entered a town that had an inadequate water system, inadequate health care, and no police or fire protection. Margaret Mead and Murial Brown, in "The Wagon and the Star: A Study of American Community Initiative" wrote: "At first it was hard for anyone * * * to see what Ross was doing because he just seemed to be talking with anyone who would stop and talk with him. But because he was talking with townspeople about their problems and their feelings he stimulated them to continue the discussion with each other." Soon, the community began to coalesce and by year's end Guadalupe had its first door to door mail delivery, a new municipal water system, and a new baby clinic.

In 1966, Ross linked up again with Cesar Chavez, who had turned his attention to Rural Migrant Workers and founded the United Farm Workers. For the next 15 years, they trained United Farm Worker organizers all over the country and organized UFW strikes and grape and lettuce boycotts. As a result, farmworkers in California, Arizona, and Florida won historic contracts in the fields guaranteeing better wages, living conditions, and greater liberty. In the eighties, Ross began focusing his efforts on the peace movement.

Now, in semiretirement, Ross recently finished his first book, entitled "Conquering Goliath," which recounts the struggle of Chavez' first organizing effort and, in typical Ross style, leaving himself and his critical role in the struggle in the background.

Mr. Speaker, I have chronicled the life of Fred Ross because, as one writer has noted, he is a man of "exasperating modesty * * * the kind who never steps forward to claim his fair share of credit for any enterprise in which he is involved." Yet uncounted thousands, perhaps millions owe him a debt of gratitude that cannot be measured. Cesar Chavez has said that "Fred should win the Nobel Prize". Yet, I do not believe that there are awards of sufficient scope or magnitude to bestow upon Fred Ross. Fred Ross, thus far in his life has not only left the world a little better than when he entered; he has already left a legacy of good works that have given many the courage of their convictions, the power of their ideals, and the strength to do heroic deeds on behalf of the common person. And, at 80 years young, Fred W. Ross wishes to do much more, and our Nation—and our world—will be the better for it.

E. FLYNN MODEL ELEMENTARY SCHOOL WINS THE 1990 STATE CHAMPION PHYSICAL FITNESS AWARD

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to congratulate the E. Flynn Model Elementary School in Providence, RI. The school has been chosen as a recipient of the 1990 State Champion Physical Fitness Award presented annually by the President's Council on Physical Fitness and Sports.

State champion awards are based on school performance for the 1989–90 school year. The students of the E. Flynn Model School qualified for this prestigious award by scoring at or above the 85th percentile on all test items for the President's Challenge. The challenge consists of a national fitness test which measures heart/lung endurance, muscular strength and endurance, speed and agility. Physical fitness is a very important aspect to our Nation's health. I am very proud to see that students of the E. Flynn Model Elementary School have been chosen for this award.

It is with great pleasure that I salute the students of the E. Flynn Model Elementary School for their achievements in physical fitness. I wish them continued success in the future.

EMPLOYEE LEAVE PRACTICES IN THE STATES AND IN OTHER INDUSTRIALIZED NATIONS

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LaFALCE. Mr. Speaker, this year Congress passed a bill to mandate that employers provide their employees with unpaid leave in a wide variety of circumstances: Upon the birth or adoption of a new child, in instances when a child or the employee incurs serious illness, and in situations when the employee wishes to be available to care for a seriously ill spouse or parent.

President Bush vetoed that bill, principally on the gound that he opposes mandating employers to provide benefits. Instead, he said he would like to see American employers voluntarily provide this and other worthy benefits. The House failed to override the President's veto by a margin of more than 50 votes.

Unlike the President, I think that reasonable mandates on U.S. employers are appropriate. We have had minimum wage laws, regulations on child labor, and a number of other Federal or State mandates on employers for decades. And on the international front, frequently the governments of other nations also use mandated benefits.

My opposition to the bill stemmed instead from my view that it would have taken us much too far, much too fast. The bill included two new categories of leave—spousal care and elder care—which were not in the initial version of the bill. Research by my staff demonstrated that neither of these categories are provided in leave programs in any other nation. Any they are included in such programs in only a very few States and the District of Columbia, where such leave has been enacted only very recently and, therefore, evidence concerning the use of this kind of leave is scant.

This information was compiled from data provided to my staff by the Congressional Research Service, the Employee Benefit Research Institute, the Women's Research and Education Institute, the International Labor Organization, the General Accounting Office, the Department of Labor, and the Women's Legal Defense Fund. I have previously shared the general conclusions derived from this research with our colleagues, Mr. Speaker, but I would like at this time to insert in the RECORD a more detailed compilation of the leave policies in the United States and in the industrialized world.

I believe that this information strongly supports my view of Federal legislation in this area should start out much more carefully and selectively. We could and should have studied what other developed nations provide. If we had, we would have learned that the typical program is one that provides maternity benefits and extended sick leave for employees; that a minority of countries provide paternity leave and that no country provides leave to care for spouses or parents. And we could have tailored a program for the United States which was closer to the consensus of the other industrialized nations of the world.

We could also have looked to the States to observe and study their laws. If we had, we would have discoverd that over 60 percent of the States do not mandate any leave policies for the private sector—21 have no mandated policies at all, 10 have programs applying only to public employees—that 10 States and Puerto Rico mandate pregnancy disability leave; that only 4 States have maternity and paternity programs—only 1 of which also provides for leave to care for sick children—and that only 5 States and the District of Columbia have programs—recently enacted—experimenting with more comprehensive programs bearing some similarity to the one in the bill we passed earlier this year although usually with considerably less leave time mandated. Finally, we would have learned that in almost all cases when States have mandated leave, they have not put the responsibility to pay for continued health insurance coverage on the employer, as was provided in the bill we passed.

Mr. Speaker, I believe that the information which follows can be helpful as we continue to consider this important issue. I would urge all Members to peruse this information and then to support a more practicable initial leave program for American workers.

STAFF REPORT—EMPLOYEE LEAVE PROGRAMS IN THE UNITED STATES AND SELECTED INDUSTRIALIZED COUNTRIES

I. INTRODUCTION

The following staff report utilized information obtained from the Congressional Research Service, the Employee Benefit Research Institute, the Women's Research and Education Institute, the International Labor Organization, the General Accounting Office, the Department of Labor, and the Womens' Legal Defense Fund.

II. LEAVE POLICIES IN THE UNITED STATES

A. Federal Policies: The Federal Government has a number of leave policies applicable to its own civilian and military employees. These include sick leave, vacation leave, personal leave, administrative leave and even experiments in the sharing of leave among employees. Since this report's principal focus is on leave that is mandated for private employers, the details of the leave policies that apply to federal employees are omitted.

The only federal law presently applicable to private employers in this area is the Pregnancy Disability Act. That law requires that employers who provide disability leave for other types of disability must also provide equivalent leave for pregnant women. Employers who do not provide other disability leave need not provide it to pregnant employees.

B. State Policies: In our federal system, many ideas are initially tested in the states before they are proposed at the national level. The following information indicates that while most states have imposed minimal mandates (if any) on private employers with regard to employee leave, there are experimental leave programs of varying scope in a few of the states.

1. States which have no Leave Policies. Twenty-one states mandate no employee leave policies with regard to either public or private employees. These are: Alabama, Alaska, Arizona, Arkansas, Colorado,[1] Delaware, Georgia, Idaho, Indiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, Ohio, South Dakota, Texas, Utah, Virginia and Wyoming.

2. Leave Policies for Public Employees Only. Ten states have programs which apply only to public employees and do not apply to private sector employees. Where the programs do not apply to the employee's own sickness, the states have varying public employee sick leave programs that would control. Most of the programs require reinstatement to the same or an equivalent job upon return from leave. These ten programs are described below:

North Carolina (unpaid pregnancy disability leave during the duration of the disability); [2]

Florida (up to six months unpaid pregnancy disability leave after a birth, four months after an adoption);

Pennsylvania (six months' maternity or paternity leave and six months extended sick leave for an employee);

South Carolina (no pregnancy disability, maternity or paternity leave; may use five days of accrued sick leave to care for children, sick spouses or for eldercare);

Illinois (one year unpaid leave for childbirth and adoption [maternity and paternity] or to care for a child, a spouse or a senior; [3] does not apply to the employee's own sickness);

Maryland (twelve weeks unpaid leave for childbirth and adoption [maternity and paternity] or to care for a child, a spouse or a senior; does not apply to the employee's own sickness); [4]

New York (varying time unpaid leave for childbirth and adoption [maternity and paternity] or to care for a child, a spouse or a senior; does not apply to the employee's own sickness); [5]

North Dakota (four months unpaid leave for childbirth and adoption [maternity and paternity] or to care for a child, a spouse or a senior; does not apply to the employee's own sickness); [6]

Oklahoma (unspecified time unpaid leave for childbirth and adoption [maternity and paternity] or to care for a child, a spouse or a senior; does not apply to the employee's own sickness); [7]

West Virginia (twelve weeks unpaid leave for childbirth and adoption [maternity and paternity] or to care for a child, a spouse or a senior; does not apply to the employee's own sickness); [8]

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[1] Colorado does require that if an employer grants leave for childbirth, leave must also be provided when an employee adopts a child.

[2] Health insurance benefits are suspended during the leave unless the employee pays what the employer had been paying.

[3] A senior must be a member of the employee's household.

[4] Health insurance benefits are suspended during the leave unless the employee pays what the employer had been paying.

[5] New York law does require that when private employers provide leave for childbirth, equivalent leave must also be provided in cases of adoption.

[6] Health insurance benefits are suspended during the leave unless the employee pays what the employer had been paying. Applies only to state employees, and not to political subdivisions. Employees are eligible only after working for the state for at least one year.

[7] Health insurance benefits are suspended during the leave unless the employee pays what the employer had been paying.

[8] Health insurance benefits are suspended during the leave unless the employee pays what the employer had been paying.

3. Leave Programs Applicable to Both Public and Private Employees. Several states have adopted leave programs that apply to both public and private employees. Most of the programs have size limits under which private employers with fewer than a given number of employees are exempt. These programs are outlined below:

a. Pregnancy Disability Leave Only. Ten states provide unpaid leave for pregnancy disability:

California (four months);
Hawaii ("reasonable time"); [9]
Iowa (eight weeks);
Kansas ("reasonable time");
Louisiana (six weeks for a normal pregnancy, up to four months when complications occur);
Massachusetts (eight weeks); [10]
Montana ("reasonable time");
New Hampshire ("reasonable time");
Tennessee (four months); and
Vermont (twelve weeks).

Puerto Rico has a program providing up to eight weeks of pregnancy disability leave during which the employer must keep the employee on the payroll at half pay. If the disability continues after that period, the employee may take an additional twelve weeks of unpaid leave.

b. Maternity and Paternity Leave. Three states have programs allowing both mothers and fathers to take leave when a new child enters the family. Kentucky and Minnesota mandate up to six weeks to care for a newborn or newly adopted child (Kentucky limiting this to adopted children under age seven). Oregon provides unpaid pregnancy disability for the length of the disability, as well as twelve weeks of unpaid maternity or paternity leave for a birth or adoption of a child under six. Only one parent may take leave at a time.

c. Maternity, Paternity and Leave to Care for a Child. The State of Washington has maternity/paternity (twelve weeks every two years), allows use of accrued sick leave to care for a sick child, and provides another twelve weeks every two years to care for a terminally ill child. The program is limited to private employers with more than 100 employees. The combined amount of paternity leave and leave to care for a terminally ill child cannot exceed twelve weeks in any two year period.

d. Experiments in More Comprehensive Programs (e.g., *Spousal Care or Elder Care*). The following recently enacted six programs include, in differing degrees, all of the forms of leave. These programs typically exclude "key employees" and have other limitations on applicability in the private sector, and they usually require the employee to use up accrued sick leave (and frequently other leave as well) before taking leave under the program.

Wisconsin. This program, which took effect in 1988, provides up to six weeks of unpaid maternity or paternity leave (childbirth or adoption) and two weeks of unpaid leave for the employee's own illness or to care for a sick child, a spouse or a senior. Only private employers with more than fifty employees are included. To ensure that the employee will in fact return to work after the leave is ended, the employer may require the employee to pay the full costs of health insurance benefits during the leave, but such payments would have to be reimbursed, with interest, upon the employee's return to work.

Maine. This program provides up to eight weeks of unpaid leave in a two year period for maternity or paternity (childbirth or adoption of a child under sixteen), for the employee's own illness or to care for a sick child, a spouse or a senior. It applies to employers with more than 25 employees, and an employee must have worked for the employer for at least one year. It also became effective in 1988. Health insurance benefits must be continued if the employee agrees to pay the costs of such insurance.

New Jersey. This program provides up to twelve weeks of unpaid leave in a four year period for maternity or paternity (childbirth or adoption of a child under sixteen), or to care for a sick child, a spouse or a senior. It does not cover the employee's own illness. Employers with fewer than 100 employees are exempt in 1990 (the year the program began), with the limit dropping to 75 in 1991 and 50 in 1992. Health insurance must be maintained as if the employee were still on the job, and any benefits provided to other employees who take leave for other reasons must also be provided to employees who take leave for these purposes.

Rhode Island. This program provides up to thirteen weeks of unpaid leave in a two year period for maternity or paternity (childbirth or adoption of a child under sixteen), or to care for a sick child, a spouse or a senior. The child care provisions were enacted in 1988; the provisions covering spouses and seniors were enacted in July of 1990. The program does not cover the employee's own illness. Employers with fewer than fifty employees are exempt. Health insurance benefits must be continued, although to ensure the employee's return the employer may require a deposit of the total amount the employer would have to pay. The deposit would have to be refunded to the employee no later than ten days after the employee returns to work.

Connecticut. This is a relatively new program which does not become fully effective in the private sector until 1993 (the overall program took effect in July of 1990). It includes pregnancy disability leave for a "reasonable time" for women in both the public and the private sector as well as the following other categories of unpaid leave: maternity and paternity leave; extended sick leave for employees; and leave to care for sick children, spouses and seniors. For public employees the aggregate amount of leave for these other categories is twenty-four weeks in a two year period; for private sector employees it is presently twelve weeks in a two year period (applying to employers with more than 250 employees). In 1993 the private sector program will become sixteen weeks in a two year period and it will apply to employers with more than 75 employees (except for maternity leave, which will be available in firms with more than three employees). Leave for private employees would be reduced by accrued sick leave. Except for maternity, only employees who have worked for their employer for at least one year will qualify.

District of Columbia. This is another new program. It was enacted by the D.C. City Council earlier this year. It becomes effective for employers with 50 or more employees in April of 1991; three years later it applies to employers with 20 or more employees.[11] It includes up to 16 weeks of unpaid leave for employees in both the public and the private sector for the following categories: maternity and paternity leave to care for both newborn and newly adopted children; extended sick leave for employees; and leave to care for sick children, spouses and seniors. Employers would have to keep health insurance benefits in place during the leave period.

III. PROGRAMS IN OTHER INDUSTRIALIZED NATIONS

The staff reviewed leave policies in twenty-two countries in North America (Canada); Africa, Asia and the Middle East (South Africa, Japan, South Korea and Israel); and Europe (Belgium, Denmark, Finland, France, Great Britain, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and West Germany).

The data suggest that the US is behind in two areas: (1) maternity and/or paternity leave to care for a newborn or newly adopted child, and (2) extended sick leave for the employee himself or herself. Almost all of the countries surveyed provided for both of these. In addition, many of the countries surveyed provide paid leave, usually financed through taxes rather than mandating that the employer pay. The tax base for many of these programs is a payroll tax not dissimilar from our FICA system.

A. No Leave Policies: South Korea has no mandated employee leave policies.

B. Pregnancy Disability Leave Only: Israel mandates up to twelve weeks of pregnancy disability leave, at 75% pay (financed through a tax on employees and employers).

C. Pregnancy Disability and Extended Sick Leave for Employees: Thirteen of the twenty-two nations surveyed provide some form of leave for pregnant women employees and extended sick leave for all employees. They are listed below. Abbreviations used in this list are PDL (for Pregnancy Disability Leave) and ESL (for Extended Sick Leave). The US dollar equivalents were calculated at exchange rates in effect in August 1990.

Belgium. PDL up to six weeks before birth and eight weeks after, with income support at 79.5% of pay for the first month, and 75% thereafter except that employers pay 100% of regular earnings for the first month after birth, financed (except as noted above) through national insurance. ESL up to one year at 100% of earnings for the first thirty days (employer pays) and 60% of regular earnings for the remainder, financed by a tax on employees and employers supplemented by general revenues.

Canada. PDL and ESL up to fifteen weeks at 60% of previous earnings up to a maximum of $318 per week ($273 US), financed through general revenues (supplemented by a tax on employers in Quebec and a tax on employees in Ontario, Alberta, British Columbia and the Yukon).

France. PDL up to six weeks prenatal and ten weeks postnatal for the first two children. For the third and subsequent children, eight weeks prenatal and eighteen weeks postnatal. Two additional weeks prenatal are available in the event of complications, as well as two additional weeks postnatal for multiple births. Payment of 90% of previous earnings up to a maximum of 270 francs per week ($48 US), financed by a tax on employees and employers supple-

[9] An interim task force has been appointed to make recommendations on other leave policies that might be considered.

[10] Applies to adoption of a child under three. Employers must provide the same benefits, if any, which would be provided to other employees on a leave of absence for other purposes.

[11] The District of Columbia program applies to all employers except the federal government.

mented by general revenues. ESL of twelve months which can be extended for three additional years. Payment of 50% of previous earnings with a minimum of 37 francs per day ($6.50 US) (if the employee has three or more children at home the payment would increase to 66.7% after thirty days with a minimum of 49 francs per day ($9 US)), financed by a tax on employees and employers supplemented by general revenues.

Great Britain. PDL up to eighteen weeks. Statutory Maternity Pay (SMP) provided to women who have worked at least two years full time or five years part time, including at least six months prior to the 26th week of pregnancy for at least sixteen hours a week. SMP for the first six weeks is 90% of previous earnings or the Flat Rate (see below), whichever is higher, and the Flat Rate thereafter. Women who do not meet the work tenure requirements qualify only for the Flat Rate. The Flat Rate is 30.05 pounds per week ($54 US) for unmarried women and 48.65 pounds per week ($87.50 US) for married women. ESL up to 36 weeks, with graduated income support related to earnings for the first eight weeks, the Flat Rate thereafter. Both PDL and ESL are financed by national insurance which is derived from a tax on employees and employers supplemented by general revenues.

Greece. PDL of 42 days prenatal and 42 days postnatal, with income support of 50% of previous earnings, plus another 10% for each dependent, and a minimum of 496 drachmas per day ($3 US), financed by a tax on employees and employers supplemented by general revenues. ESL of up to 360 days at 50% of earnings, plus another 10% for each dependent, with a maximum of 1,860 drachmas per day ($11 US), financed by a tax on employees and employers supplemented by general revenues.

Ireland. PDL up to fourteen weeks with income support at 75% of earnings and a minimum of 76 pounds per week ($226 US), financed by a tax on employees and employers supplemented by general revenues. ESL of 375 days with a flat benefit of 42.30 pounds per week ($70.60 US), with supplements for dependents, plus 12% of previous earnings, financed by a tax on employees and employers supplemented by general revenues.

Japan. PDL of 42 days prenatal and 42 days postnatal (extended to 70 days each for multiple births) with income support of 60% of previous earnings (reduced to 40% if in the hospital and no other dependents), plus a lump sum grant of one month's wages at a minimum of 200,000 yen ($1,200 US) and a nursing grant of 2,000 yen ($12 US), financed by a tax on employees and employers supplemented by general revenues. ESL up to eighteen months with income support of 60% of previous earnings (reduced to 40% if in the hospital and no other dependents), financed by a tax on employees and employers supplemented by general revenues.

Luxembourg. PDL of eight weeks prenatal and eight weeks postnatal, plus four weeks postnatal for multiple births or a nursing mother, with income support at 100% of previous earnings, financed by a tax on employees and employers supplemented by general revenues. ESL of up to one year with income support at 100% of previous earnings, financed by a tax on employees and employers supplemented by general revenues.

The Netherlands. PDL of six weeks prenatal and six weeks postnatal, with income support at 100% of previous earnings, financed by a tax on employees and employers. ESL of up to one year with income support, beginning in the third week, of 70% of previous earnings up to a maximum of 262 guilders per week ($242.50 US), financed by a tax on employees and employers.

Portugal. PDL up to thirty days prenatal and sixty days postnatal, with income support at 100% of previous earnings, financed by a tax on employees and employers. ESL of up to three years with income support of 60% of previous earnings, financed by a tax on employees and employers.

South Africa. PDL of eighteen weeks prenatal and eight weeks postnatal, with income support at 45% of previous earnings, financed by a tax on employees and employers supplemented by general revenues. Unlimited ESL with income support at 45% of previous earnings, financed by a tax on employees and employers supplemented by general revenues.

Spain. PDL of six weeks prenatal and eight weeks postnatal, with income support at 75% of previous earnings, financed by a tax on employees and employers supplemented by general revenues. ESL of up to one year (which can be extended) with income support at 100% of previous earnings for three days (employer financed), 60% until the end of the third week, and 75% thereafter financed by a tax on employees and employers supplemented by general revenues.

Switzerland. PDL up to ten weeks with income support at a minimum of two francs per day ($1.44 US), but can be higher depending on the individual's level of national insurance, financed by employee's payments to insurance fund supplemented by general revenues. ESL with duration and income support dependent on individual's payments to insurance fund.

D. Pregnancy Disability, Maternity/Paternity and Extended Sick Leave for Employees: Four nations have programs which include pregnancy disability, maternity and/or paternity leave, and extended sick leave. The following list uses abbreviations from the previous section, along with ML/PL for Maternity Leave/Paternity Leave.

Denmark. PDL of eighteen weeks, plus three months if the child is hospitalized, with income support at 90% of the average industrial wage up to a maximum of 335 kroner per day ($50 US), financed by the employer for the first thirteen weeks and thereafter from general revenues. Four of the weeks permitted the mother under PDL may instead be used by the child's father as PL, with the same income support, financed from general revenues. ESL of 99 weeks with income support at 90% of average industrial earnings up to 342 kroner per day ($51 US), financed by the employer for the first thirteen weeks and thereafter from general revenues. Income support begins in the first week except for self-employed workers, where it starts in the fourth week.

Finland. PDL of twenty-five workdays prenatal, 225 workdays postnatal, with income support at 80% of earnings and a minimum of 45.90 marks per day ($12 US), financed by a tax on employees and employers supplemented by general revenues. ML/PL of 158 days (100 after adoption of a child under two) with the same income support provisions as PDL. ESL of 300 days with the same income support as PDL and ML/PL after a seven-day waiting period.

Iceland. PDL of three months, with income support of 32,313 crowns per month ($808 US), financed by tax on employees and employers supplemented by general revenues. The last month permitted the mother under PDL may instead be used by a child's father as PL, with the same income support provisions as PDL. ESL up to 54 weeks in a two year period with income support at 100% for two weeks and 75% for the remainder, with a minimum of 308 crowns per day ($7.70 US) plus 84 crowns per day ($2.10 US) for each child under eighteen, financed by the employer for the first two weeks and thereafter by a tax on employees and employers supplemented by general revenues.

Italy. PDL of two months prenatal and three months postnatal, plus one month prenatal if the nature of the woman's work is arduous, with income support at 80% of earnings, financed by a tax on employees and employers supplemented by general revenues. ML/PL up to a total of six months beyond PDL, to be used by either the father or the mother, with income support at 30% of earnings, financed by a tax on employees and employers supplemented by general revenues. ESL up to 180 days with income support at 50% of earnings for twenty days and 66.7% thereafter, financed by a tax on employees and employers supplemented by general revenues.

E. Programs Which Include Leave to Care for Sick Children: Three northern European nations include provisions permitting leave to care for children who are ill. The abbreviations from the preceding sections are used here, along with SCL for Sick Child Leave.

Norway. PDL up to 108 workdays, with income support at 100% of earnings, financed by a tax on employees and employers supplemented by general revenues. Up to 72 days of the leave permitted the mother under PDL may be used by the father as PL, with the same income support provisions. SCL up to ten days per parent (twenty days for single parents) for children under ten years of age. ESL up to one year with income support of 100% of earnings (except self-employed, who get no support for two weeks and then 65% of earnings), financed by the employer for two weeks and then by a tax on employees and employers supplemented by general revenues.

Sweden. PDL up to six weeks prenatal and six weeks postnatal, with income support at 90% of regular earnings, financed by a tax on employees and employers supplemented by general revenues. ML/PL up to nine months, plus 90 days extra for each multiple birth, with the same income support provisions as PDL. Employee must have worked at least six months or twelve of the past twenty-four.[12] SCL up to sixty provisions as PDL, plus nine months with income support at 58 Krona per day (approximately $10 US) for 90 days, financed by a tax on employees and employers supplemented by general revenues, and nothing thereafter.[13] ESL of unlimited duration with income support at 90% of regular earnings up to a maximum of 446 Krona per day ($77 US).

West Germany. PDL of six weeks prenatal and eight weeks postnatal, with income support at 100% of previous earnings, financed by the employer less a flat rate from general government revenues of 25 DM per day ($15 US). ML or PL available to either parent (one at a time) during the child's first three years through a child-raising allowance of DM 600 per month ($360 US),

[12] Ten days of paid paternity leave is available for other fathers, married or not.

[13] Parents of children under ten may instead opt to work 75% of their normal hours.

provided the parent does not work more than eighteen hours per week, financed through the national insurance program. SCL of up to five days per parent per year per child under eight, at 100% of previous earnings and financed through the national insurance program. ESL of up to six weeks, which can be extended another 78 weeks in a three year period, with income support at 100% of previous earnings for six weeks and 80% for the remainder, financed by the employer for the first six weeks and through a tax on employees and employers for the remainder.

F. Programs with Provisions Allowing Leave to Care for Spouses and/or Seniors: This survey found no industrialized nation which mandated leave to permit an employee to care for a sick spouse, parent or other senior.

THANKS TO JOHN BACON

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILLMOR. Mr. Speaker, I would like to bring to the attention of the Members of the House the contributions of one of my constituents to my U.S. service academy nomination selections process.

John O. Bacon, of Huron, OH, recently completed a year of distinguished service on my Fifth District Academy Advisory Board.

I established my Fifth District Academy Advisory Board to assist me by conducting face-to-face interviews with qualified candidates for nomination for admission to the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, and the U.S. Merchant Marine Academy.

John Bacon's active participation on my Fifth District Academy Advisory Board was invaluable to me in my difficult task of selecting those young men and women from northwest Ohio who would have the opportunity to compete for admission to our Nation's service academies.

Mr. Speaker, I ask all of my colleagues to join me in thanking John Bacon for his unselfish service and significant contribution to these young men and women and to the future of our great Nation.

EMBASSY MOSCOW: PAYING THE BILL

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HYDE. Mr. Speaker, there have been at least 7 years of indecision on what to do about eavesdropping devices implanted in structural components of our unfinished new embassy in Moscow. Yesterday, I submitted for the record some research on the historical attitudes and lax security policies which led to this financial debacle and counterintelligence humiliation. Today, I would like to examine the potential solutions. These have been debated for many years, but the consensus required for action continues to elude us.

In particular, I would like to highlight the intelligence considerations underlying the various options, since authority and funding will be the responsibility of committees other than the House Intelligence Committee, where I am the ranking Republican. The ongoing debate sometimes has submerged intelligence issues as compared with other factors such as cost and convenience, even though intelligence problems caused this dilemma in the first place.

I would also like to make a strong plea to other Members to make strenuous attempts to move quickly on this matter and actively to search for the facts that will allow agreement among ourselves and with the administration on our future course. For it is not true that we can take our time and pay little penalty for it.

Available Options. Technical penetration of the new U.S. Embassy in Moscow was first revealed in 1980 and confirmed in 1982 and 1983, although construction was not halted until 1985. In December 1989, the White House finally determined to tear down the chancery building and start over. Intelligence experts long had contended that the bugged U.S. Embassy in Moscow could never be made secure and that the best solution was to build a new chancery of similar size, employing U.S. labor, U.S. materials and other extraordinary security precautions.

To use the currently available site in a secure manner, they said, we would have to tear down the new building and reconstruct on the same foundation. This option was also endorsed by a series of technical studies, by the Senate Intelligence and Appropriations Committees and by Representatives MICA and SNOWE of the House Foreign Affairs Committee in April 1987. The departing Reagan administration finally endorsed this view in October 1988, but the Bush administration decided to restudy the issue. Subsequently, Secretary of State Baker also agreed in October 1989 that a tear-down/rebuild plan was the way to go, and in December 1989 the White House concurred in Baker's lead.

This solution has been resisted by others, variously due to concerns about wastefulness, excessive cost, negotiability, timely completion, security and inconvenience to U.S. diplomats living on the compound. A few critics of the tear-down/rebuild option have cited concerns that retention of the existing foundation presents security hazards if we rebuild on it, despite administration calculations that such risks can be minimized and that a new foundation might also be penetrated. Until recently, the most commonly cited alternatives were destruction and rebuilding of the top three to five floors of the eight-floor chancery, in order to make part of the building secure, or building a secure annex to the compromised building.

This year, there arose additional opposition to the tear-down/rebuild proposal, based on insistence that the existing building be completed and used for unclassified, probably non-diplomatic, purposes, and that a building of similar size, a smaller annex, or limited spaces in existing facilities by built or upgraded for sensitive diplomatic activities. This conversion option is particularly attractive to some observers because there is already a shortage of decent housing in Moscow, and growing United States-Soviet ties are expected to create the demand for more office space for unclassified uses by United States agencies, businesses, cultural groups, etc. Indeed, we already are negotiating with the Soviets to acquire nearby land for future building construction.

Cost projections for the cited options have varied widely and are unreliable, partly because detailed studies were not done despite the considerable lapse of time and partly because cost containment depends on Soviet cooperation. The present estimates for replacing the top three or five floors are $202 million and $225 million respectively. The tear-down/rebuild option is estimated at $270 million, but finishing the new building and adding a secure annex might entail $320 to $350 million.

The administration lists numerous objections to the option of converting the unfinished building to nonchancery uses. It is said that conscientious attempts to find an alternative use for the compromised new building which might be viable from economic and security points of view have failed. Officials say it would cost far more to convert the building from office to residential use than to build from scratch. Prospective tenants who might use it as an office allegedly are uninterested, and in any case the requirement for this much additional office space is questioned. There is concern about the security implications for the U.S. diplomatic compound of a conversion to uses that would involve significant public traffic, especially if a completely new chancery or annex for classified purposes is built right next to it. The Soviets have said that the local Moscow public utility network is insufficient if we wish to finish and use the existing structure—especially for a conversion to residential use—as well as construct another large building; in this case, the U.S.S.R. has indicated, the United States would have to pay for—and possibly await—area utility upgrades.

From the State Department perspective, an objection probably at least as important as those above has been the negotiating complications and consequent time lags introduced by the need to acquire more acreage for a completely new chancery or annex. The Department has insisted that a tear-down/rebuild option on land for which we already have a long-term lease could be negotiated relatively quickly and that construction would take about 5½ years. But it was estimated that to negotiate for additional land, do engineering studies such as soil tests and rebuild the foundation would add at least another 2 or 3 years to the proposed schedule. More recently, unofficial guesses as to this prospective time lag have risen to 5 or more years. Political decentralization and economic restructuring reportedly have greatly increased the number of parties whose agreement must be secured. Officials from the city of Moscow or even the local borough may now have to approve acquisitions and plans, and the ownership rights to buildings and land now occupied by household renters or other tenants remain unsettled as the country begins to privatize. Already there have been over a dozen negotiating sessions with the central government on land acquisitions, and apparently there has been an atmosphere of cooperation but few concrete accomplishments.

Some on Capitol Hill seem unconcerned about how long the impasse over a solution may last, particularly since this puts off the need to find $270 million, or up to $350 million if the old building is converted and a new one built. One should consider, however, that negotiations, construction and policy reconsideration have absorbed over 20 years, and even under the most optimistic scenario, it will be another 6 years before the building is complete; without any further delays, already we will be more than 20 years behind schedule. And our needs obviously have expanded considerably in the interim. Crowded conditions, fire and other hazards and security problems at the old embassy have been endured for decades and will persist, despite $35 million spent on renovations after security problems at the new site were confirmed. The portion of these renovation funds originally allocated to counterintelligence improvements in the old Embassy, such as installation of secure conference rooms, was reduced because of cost overruns on the overall project—another indication that, in practice, security continues to be valued less than other priorities. A recent report by the State Department's inspector general chronicled many persistent security problems at the old facility. And the effective duration of imperfect technical security precautions cannot be guaranteed or estimated for an extended period, even for the selected locations which were upgraded.

All options now envision retaining the leased old Moscow chancery for unclassified uses. It is reasoned that we spent too much on renovations to let it go and that the intensified scope and pace of relations with the U.S.S.R. requires more unclassified space than envisioned during negotiations for the present site some 20 years ago. The United States relinquished right to the building during the original talks, although the Soviets retained their old chancery in Washington. So this, too, is an item for negotiation.

Views on Capitol Hill. Concerned committees and legislators on Capitol Hill remain at odds with each other and with the administration regarding a solution for the embassy debacle. The result has been an impasse, which will have caused at least a 1-year delay, even if funding is approved for fiscal year 1992. The Bush administration was denied a $270 million lump-sum fiscal year 1991 authorization to implement the tear-down/rebuild option over the next 5½ years.

Ironically, it was the Congress which first backed intelligence analysts in urging that the incomplete Embassy be demolished and rebuilt. The Senate Intelligence Committee was extremely vocal some years ago in pushing a reluctant administration to adopt this position. The Intelligence Committee position has been consistently backed by the Senate Appropriations Committee, which has been spurred by Senator FRITZ HOLLINGS' continuing interest in the issue and sought even this month to fund commencement of demolition. The House Intelligence Committee, while it has periodically sought briefing on the subject, has not adopted a stance as to the desired solution and thus has not been a significant player in the policy debate. During the last 2 years, the Senate Intelligence Committee also has said little. The center of debate therefore has shifted partly to the Foreign Affairs and Foreign Relations Committees. They must authorize a solution because they oversee the State Department, which has insisted that the Moscow Embassy budget be included totally within its own budget.

The House Appropriations Committee has always differed with its Senate counterpart over the proper course of action. Concerned primarily about the $270 million financial burden imposed by the tear-down/rebuild solution, added to the huge cost overruns encountered during the first construction cycle, Chairman NEIL SMITH has led the fight against this option. The committee at one time demanded an independent study, but balked when it reinforced the administration position. It has never wavered in its opposition, although the rationales for individual member support have varied, and there appears to be less concern or conviction about a substitute solution. The HAC blocked detailed engineering and cost studies on the tear-down solution until August 1990, most recently in cooperation with the House Foreign Affairs Committee, until the two committees successfully insisted that other options be studied as well. Searching for a consensus, the administration bowed to this opposition although legally it had had the authority to commission the studies without congressional approval.

Since 1987, House Foreign Affairs Committee member Representative OLYMPIA SNOWE, for a time in concert with her counterpart, Representative DAN MICA, on the Subcommittee on International Operations, has also championed the tear-down solution. This year, however, the full committee overturned the recommendations of its subcommittee on a partisan vote. Ultimately, House Foreign Affairs authorized $300 million, with an eye to completing the existing shell for unclassified uses and building other secure spaces, and specified that the ultimate solution was to be left open.

The administration's request also energized the Senate Foreign Relations Committee, which voted 16–0 against this solution. Instead, Foreign Relations authorized $50 million, most of it to complete the building for unclassified uses and the remaining $10 to $15 million to provide more space for secure conversations and activities in the old Embassy and in other facilities on the compound. The report stated that "over the long term, the committee would consider a proposal to build a new secure annex on the existing compound or on land that the United States is now negotiating to acquire." Since the respective bills died, differences between the Foreign Affairs and Foreign Relations Committees were not resolved.

The Foreign Relations Committee also reacted strongly to Senate Appropriations language this month which allowed reprogramming of $10 million to begin tearing down the unfinished building. Senator PELL and Senator MOYNIHAN observed that such reprogramming could not occur without the authorizing committees' approval, that the administration had guaranteed them that tear-down would not proceed without their approval, and that such approval would never be given, largely because tear-down/rebuild was considered wasteful and excessively expensive. Since the House Appropriations Committee bill in any case had abstained from either commenting on or funding the matter for the past several years, the Senate Appropriations Committee action died in conference. The stalemate thus persists to this day and stretches to the foreseeable future.

Intelligence issues. Cost and other legitimate issues must be considered in choosing an option. The purpose of this article, however, is to illuminate those factors influencing what by now should be our primary interest—to acquire secure space for our people, papers, communications and codes. As a House member of both the Foreign Affairs and Intelligence Committees, I take exception to several arguments commonly used in this regard and wish to point out some of the considerations overlooked, insofar as this can be done in an open forum.

Some have questioned the desirability of making the entire building secure, arguing that no U.S. Embassy in the world has that kind of protection. This is true, but it is more a commentary on the state of U.S. Embassy security programs than it is on the requirement for protection. Moreover, this Embassy is not just "anywhere in the world." It is in the U.S.S.R., which, whatever the ultimate fate of Gorbachev, perestroika, glasnost and Marxism-Leninism, will remain our primary geopolitical rival for decades to come. Soviet intelligence services remain our most effective and threatening rivals, and have intensified their efforts against us since the onset of glasnost, just as, during the height of euphoric early 1970's détente, they manipulated negotiations to facilitate the bugging of our new Embassy.

The Soviets expended enormous resources, to wire the building—nonsensitive portions included. They have decades of experience in this area, so we must assume they had good reason to expect a handsome and continuing intelligence return on their investment of scarce rubles. In estimating that return, it is well to keep in mind that we have an 85-year lease on the property.

How much is it worth to us to ensure that information and positions on arms control and other negotiations are protected, so the Soviets have not ascertained, before we even come to the table, our strategy and fallback position—as they may have in the past? Many other considerations of similar importance could be cited to demonstrate the value of protecting classified information.

For options retaining the structure for diplomatic uses, the primary point of contention is to what extent spaces used mostly for unclassified work should be secured. This decision requires serious and detailed consideration, including substantive input from various parts of the intelligence community.

Most persons are unaware of the intelligence values of much unclassified information, both for fosusing collection on classified activities and for spotting the stresses and character flaws that facilitate recruitment of agents. Nor do they consider the human impossibility of maintaining a daily working environment in which all discussion of, or repeated lightly veiled reference to, classified information is confined to special restricted spaces, which often are physically uninviting

and inconvenient. New living quarters for United States diplomats, also built by the Soviets, presumably have been bugged, as in the past. Drastic measures to cleanse them are not contemplated, so Embassy employees must continue to refrain from discussions of sensitive work, or even from domestic quarrels, within their homes. It is expecting too much of human nature, however, to anticipate that employees will button their lips nearly 24 hours a day, even when they know the risks.

We have great difficulty conducting classified activities in Moscow. This tremendous problem is compounded when unclassified areas are bugged, and day-to-day activities easily can be monitored. Unclassified personnel and computer records can be useful to the Soviets for this purpose, as well as for providing information for recruitment targeting. Audio monitoring can yield unclassified data on personalities, professional conflicts, schedules and so on, which helps the KGB assess and recruit U.S. officials to commit espionage, adding to the information acquired from home and street surveillance. Unfortunately, in recent years we have repeatedly seen the truly incalculable security and monetary damages that can be caused by a single spy, another factor that must enter the financial calculus of how much it is worth spending to secure the Embassy.

In deciding whether to tear down the building, take off only the top three to five floors, or finish it for unclassified activities, we must also consider the potential payoff from the ability to search for additional sensors during destruction. We must assume that similar eavesdropping techniques have been and will be used against us and our allies in the U.S.S.R. and elsewhere.

Jim Schlesinger's 1987 testimony that we were having difficulty understanding the technology and underlying strategy of the Embassy bugging network is quite important in this context. The Soviet defector Victor Sheymov, who in 1980 revealed Soviet strategy for penetrating the Embassy, has stated that many rounds of multiple sensor systems were planned and that "the KGB is known for the redundancy of its operations," even transcribing the same conversation twice from different sensors to make sure nothing is missed. In this case, such a strategy was facilitated by their long-term and virtually unimpeded access to the building.

There are numerous types of sensor systems based on varying physical principles, not all of which require "hard wire" egress. Some of these usually are hidden better than others; in fact, it may be wise to allow discovery of a few, to instill a false sense of security from the assumption that all have been found. Ordinarily, the most sophisticated or best hidden of these would be in the areas designated for sensitive classified activities, where the payoff would be highest and defensive efforts would be most intense—that is, on the top three floors of the new Embassy.

In this case, however, even those discovered in the lower five floors have been extremely well hidden and often imbedded in structural components; further exploitation has become prohibitively time-consuming and costly, as engineers have become concerned over the structural integrity of the building due to previous removal and exploitation efforts. The $10 million cost of taking down all or part of the building is largely due to the fact that it cannot simply be dynamited and razed, because of the proximity of facilities such as the new living quarters. The necessity for a slower, piecemeal approach also improves the opportunity for further investigation of Soviet sensor technology and methodology, however.

The evaluation of sensor technology and implantation and disguise techniques allowed by dismantling part or all of the building thus could save us from making some of the same mistakes all over again, and allow us to inspect for use of these techniques elsewhere. It is also important to note that sharing of the acquired information could benefit countries other than the United States, thereby indirectly furthering our own national interest. The fact that the Soviets successfully insisted upon similar construction techniques and terms for other embassies in the U.S.S.R. is important in this context. Increased understanding of the technology could allow key countermeasures in other new embassies in Moscow which already have been occupied or which are being built. In 1940, the British complained about the leak of shared intelligence through the U.S. Embassy in Moscow, and threatened to greatly reduce intelligence cooperation unless we did something about it. The precedent is instructive: intelligence independently collected by individual allies, or U.S.-generated information given to them, is subject to compromise if the same techniques are being used at their Embassies. As the world becomes less bipolar, Soviet collection at other embassies also could allow them to assess and manipulate allied politics, as well as to preempt and influence the moves of their own erstwhile allies and of neutrals.

Some have argued that it might be preferable to live with the old Soviet sensors from the early 1970's, rather than give the U.S.S.R. the opportunity and incentive to install even more sophisticated equipment in a future new building. This logic is flawed.

First, we would not start all over without taking extreme measures to prevent similar penetrations—one reason for the high cost of either rebuilding or construction from scratch. Second, it doesn't matter whether a sensor is old, as long as it works. We recently pulled out of our consulate in Leningrad implanted microphones which apparently had been there for decades and which continued to function well. They don't have to be technological miracles if they get the job done. Third, some of the greatest Soviet advances have been not in the sophistication of the hardware, but rather in the ingenuity of their hiding techniques; again, this was facilitated by treaty provisions allowing them to manufacture components and provide the labor, privileges which would be withdrawn the next time around. Fourth, it is true that even with the most elaborate precautions, we would be unable to swear that not a single bug was somehow slipped in, or that the building would remain secure indefinitely, even if it was so at ribbon cutting. However, we can ensure that it is not bristling with devices and in effect the equivalent of a huge transmitting antenna. We can also install protective measures and adopt policies that will make it much more likely that we discover penetration attempts, thus rendering it far more risky and costly for the Soviets to mount an attack. Their task in finding a means of postconstruction implantation already is much more difficult than previously. Changed personnel and operational security policies in the wake of the typewriter and Marine guard scandals, as well as the withdrawal of Russian and other foreign nationals upon whom we formerly relied for support services inside the Embassy, all decrease Soviet access and increase their risk.

Finally, there has been debate over whether security or early project completion date should be our top priority in deciding the fate of the new Embassy. Some House Appropriations Committee members have been quoted as saying that provision of safe, efficient and attractive working conditions for State Department employees in Moscow is now the highest priority, particularly since the project has dragged on for so many years; in their view, this priority alone apparently disqualifies options such as tear down or building on another site. Such a value system long was shared by many State Department employees. For two decades, it contributed to the ignoring or downplaying of predictable security problems at the new Embassy—thus helping to get us into our current predicament—and to denigration of the significance of those problems once they were discovered.

It is about time we finally got our priorities straight. There should be no doubt that security is indeed more important than convenience. I agree that we need new space, and this is one reason why further delay is unwise. However, I do not believe that speed of completion should eclipse security considerations in determining the proper solution.

Although the old Embassy remains inadequate, after a $35 million improvement program working conditions should be significantly improved. Moreover, if the place is so crowded, the State Department should not have insisted once more upon a sizable increase in reciprocal Soviet and United States diplomatic contingents, allegedly to deal with emigre processing backlogs, while also seeking to close down the Rome processing center for emigres and shift part of the work to Moscow. These policies were particularly irritating since, once again, the obvious counterintelligence risks from equivalent increases in the Soviet diplomatic presence in the United States were given short shrift, and other concerns also were ignored. In addition, while Moscow in its more Stalinist past was dreary and claustrophobic, today a good portion of the staff resides in the new, attractive housing for which we paid so dearly. Given the ongoing ferment and excitement in the U.S.S.R. and the continued career advantages derived from serving there, I suspect we can for the foreseeable future find enough volunteers willing to endure the remaining hardships in Moscow.

Frankly, I also find it hard to be sympathetic to arguments for expeditious solutions when the very people making them were instrumental in creating the problem and/or dragging out decisions on a response. In this respect, it is ironic that House Appropriations Committee

members subscribe to this argument. And State Department bureaucrats were prominent among those who dismissed intelligence concerns; negotiated unacceptable treaty terms; for years failed to provide reasonable security precautions even within the confines legally available; and for a long time opposed the solution recommended by various outside groups and by the intelligence community. If their brethren now are suffering the ill effects, it is largely the Department's fault, not that of those who advise on the desirable solutions, painful though they may be.

It is most troubling, however, that House and Senate members and committees who will determine the outcome of the Moscow Embassy soap opera often have exhibited little interest in the intelligence problems related to various options under consideration. It is to be hoped that the information presented for the record yesterday and today will encourage appreciation of the importance of these intelligence issues and requests for more detailed information.

After years of delay, the administration finally has reached a consensus and a decision which it actually is trying to implement. But Congress—frantically looking for places to slash the budget—will write the final chapter of this torturous saga. Let us hope we have learned an admittedly bitter and humiliating lesson, so we finally put security at the top of our list of priorities.

THE BUDGET CRISIS

HON. DENNIS E. ECKART

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. ECKART. Mr. Speaker, we all know the consequences of not enacting a credible deficit reduction plan—but do we really know just how a Gramm-Rudman sequester is going to affect our constituents?

In the last several weeks, I have heard from many of my constitutents, most recently in regard to turkeys.

Not turkeys, as in some legislative proposals, but turkeys, as in Thanksgiving and the holidays.

I'd like to share with you a letter from a constitutent in my district who has outlined a real problem in the turkey industry as a result of a Gramm-Rudman sequester, should it take place, which would cut back on the number of USDA inspectors, resulting in a plant shutdown and a furlough of at least 400 private-sector employees.

While some in this Chamber have frequently referred to Gramm-Rudman-Hollings as a turkey, the sequester that could occur if we fail to pass a budget agreement would have dire consequences for turkeys everywhere—both here in the District of Columbia and down on the farm in Ohio.

Mr. Speaker, I ask that the following letter be printed in the RECORD.

BIL MAR FOODS OF OHIO, INC.,
Garrettsville, OH, September 20, 1990.

Hon. DENNIS E. ECKART,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN: Bil Mar Foods, a Division of Sara Lee Corporation, which is located at Garrettsville, Ohio, employs more than 400 people in the raising, processing and marketing of Turkey Products.

We understand that unless Congress and the Administration can reach a budget compromise before September 30, 1990, automatic budget cuts will go into effect immediately under the Gramm-Rudman-Hollings Balanced Budget Act.

Since Bil Mar Foods, Inc. operates under the provisions of the Poultry Inspection Act, it is mandatory that U.S. Department of Agriculture Inspectors be present in our Plant during all hours of operation. We have been notified by the U.S.D.A. that for it to meet the mandated budget cuts, it must furlough all U.S.D.A. Inspectors up to 22 working days, with the first furlough to begin October 1-14, 1990, and last approximately 4½ days. What this means is that our Plant will be shut down and prohibited from operating during the entirety of these periods.

We want to be certain that you, personally, fully understand the magnitude of such a decision. The inability of our Congress and the Administration to perform in accord with the best interests of the country creates an absolute catastrophe in our industry as a whole. Our 400 Bil Mar Foods, Inc. employees, who are your constituents, will have to be laid off work, without pay, because Congress has not provided funds to the four U.S.D.A. Inspectors assigned to this Plant. We want you to be certain to realize the extent of the financial problems you will be placing on our Bil Mar Employees, who are the innocent victims of this paralysis in government. Congress may not hear from these employees or the many thousands of other employees of Poultry and Meat Plants throughout the country before these U.S.D.A. furloughs are instituted, but after the institution of the first such furlough, the backlash will be tremendous.

For the numbers of our employees to be out of work simply because the government cannot provide appropriate inspection services to permit our operation will result in extreme financial hardship to all of our people and the financial losses to our Company will run into millions of dollars, which can be ill-afforded by any business today. The turkeys scheduled to be processed during the October 1-14, 1990 period noted above are already in the field in the grow-out stage. Schedules for turkey poults, feed ingredients, etc. are instituted months in advance of processing and cannot be canceled or rescheduled to successfully conform to these impending shutdowns. Turkeys gain nearly ¼ pound of weight per day when nearing the time of processing and the cost to keep these many thousands of turkey on feed for an extra long period of time would not only be completely prohibitive, but would create turkeys weighing far in excess of the weights planned for profitable processing.

These shutdowns would make it impossible for Bil Mar to fill orders and fulfill delivery commitments already made in good faith with our customers.

If you take the economic losses to Bil Mar Employees, Growers, Suppliers, Customers, and Stockholders and multiply that by the 100 Turkey Plants in the United States, you will get some idea of what is facing our Turkey Industry nationwide, and it is apparent to everyone that this would constitute the greatest disruption our Turkey Industry has experienced in its entire history. Then expand these figures to cover several hundred Chicken Plants and thousands of Red Meat Plants in the United States and you will know for certain that our entire Food Industry will be in absolute chaos.

We trust that this letter will give you a brief overview of the situation facing Bil Mar Foods, Inc. and the entire Turkey Industry.

We urge you to do everything in your power to work with other members of Congress to reach a Budget Compromise as soon as possible to eliminate the necessity of a Gramm-Rudman-Hollings Sequester which will result in the furloughing of Government Employees.

If you desire further information on this urgent matter, please contact me at area 216-527-4371.

Sincerely,

DALE L. HART,
Director of Operations.

THE PRESIDENTIAL VETO OF THE CIVIL RIGHTS ACT OF 1990

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. STOKES. Mr. Speaker, I rise to express my deep disappointment over the Presidential veto of the Civil Rights Act of 1990.

This is a sad day in the history of the struggle for civil rights. It is particularly distressing that at a time when other nations around the world are struggling to establish and maintain democratic institutions, here in the United States the President has vetoed legislation so basic to American justice and democracy.

In five civil rights cases handed down last term, the Supreme Court totally gutted the body of carefully constructed, long-settled employment discrimination law developed over a 20-year period. The Civil Rights Act of 1990 is necessary to restore the legal protections demolished by the Court, protections which made progress for racial, ethnic, and religious minorities and women possible. In effect, the Presidential veto of this vital, civil rights legislation has ratified the Supreme Court destruction of legal protections for minorities and women, and turned back the civil rights clock almost 25 years.

Earlier this year, President Bush announced his desire to sign a civil rights bill which addressed the issues raised by the Supreme Court employment discrimination decisions last term. For over a year, the Congress spent countless hours drafting and redrafting the language in the Civil Rights Act, in a painstaking effort to satisfy the administration's concerns regarding the bill. A few days ago, after the House voted to recommit the bill, seven new compromise amendments were added by the conference committee to meet the objections raised by the administration. However, President Bush has refused to make concessions.

Instead of focusing on the fact that employment discrimination does continue to occur in

our Nation, Mr. Bush focused his attention on quotas which might occur if the Civil Rights Act were signed into law. The President repeatedly and erroneously asserted that employers would be forced to restore to hiring quotas to guard against costly lawsuits. However, the administration failed to produce one shred of evidence, and failed to acknowledge that there was no widespread resort to hiring quotas between the time the landmark employment discrimination case Griggs versus Duke Power Co. was decided in 1971 and 1989 when the Supreme Court changed the standards in discrimination cases, in the Wards Cove Packing Co. versus Atonio decision. In fact, the language in the bill was changed to specifically state that the bill should not be construed to encourage quotas.

Mr. Speaker, the veto has left us with a feeling that the quota argument was nothing more than a smokescreen. While the Congress was poised to reaffirm its commitment to the constitutional guarantee of equal justice under the law, it appears the administration was never really committed to this principle. Moreover, the veto suggests an intent on the part of the administration to erode many of the gains which took nearly two decades to accomplish as a result of the civil rights movement.

With his veto of the Civil Rights Act, the President has sent a signal to the American people that employers, regardless of their engagement in employment practices which exclude minorities and women, will have the advantage in court if challenged by a civil rights plaintiff. Mr. Bush has risen to the aid of potential wrongdoers, and has made it more difficult for the victims of systemic discrimination to win their cases. In fact, the President has helped make it easier for employers to discriminate and get away with it.

Mr. Speaker, there is nothing obscure about the Civil Rights Act. It simply suggests what should have been obvious to the President: The Congress intends to ensure that under no circumstances will discrimination in the workplace be tolerated in our society. The President will not easily be forgiven by the American people for making the tragic error of refusing to help relegate discrimination in the workplace to its rightful place—as a part of a closed chapter in our Nation's racially blemished history. It is a sad day for America when our President, who claims to support equality and justice for all, vetoes legislation essential to providing equality and justice for minorities and women.

PANAMANIAN RESISTANCE TO FINANCIAL CRIMES MUTUAL LEGAL ASSISTANCE TREATY MUST BE ADDRESSED

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. RANGEL. Mr. Speaker, as chairman of the Select Committee on Narcotics Abuse and Control, I have an abiding interest in Panama in the area of drug trafficking and money laundering. Therefore, I am deeply concerned about recent Panamanian resistance to efforts aimed at cleaning up their banking system, which served as a drug and money-laundering center for years under General Noriega.

A Mutual Legal Assistance Treaty [MLAT], initialed by Panamanian and United States officials in August, was designed to give our officials greater access to evidence and information from Panamanian banks. The pact, which is subject to approval by the Panamanian National Assembly, has met opposition from officials in the Government and banking industries. Panamanian businessmen fear that the agreement would ruin the country's lucrative position as a tax haven and dollar-based financial center. While Government officials see it as a violation of their national sovereignty.

However, as American diplomats and law-enforcement officials have repeatedly noted, similar agreements between the United States and thriving banking nations such as Switzerland, The Bahamas, and the Cayman Islands already exist.

I am aware that there has been progress in the area of interdiction and confiscation of narcotics passing through Panama. However, the overall problem of narcotics trafficking and money laundering persist. I am disturbed, for example, by a recent report by the Department of State which suggests that narcotics-trafficking activities have continued unabated in outlying areas of Panama, and that money-laundering activities are also continuing, despite Government efforts to tighten restrictions. This same State Department report indicates that these failures are at least partly attributable to weaknesses in the Panamanian Government's drug-fighting apparatus which is, understandably, still in the process of rebuilding and reorganization. There may also be breakdowns in necessary cooperation between the relevant Panamanian and American agencies involved in the fight against drugs.

I am also concerned that objection to the MLAT to combat money laundering is a result of political infighting among Government officials and conceivably by those in Panama who are involved in money laundering or other illegal financial practices. The opposition to the measure is strong. If submitted for formal legislative approval, it is understood this agreement would be defeated. However, reaching an agreement on this treaty that covers money laundering and other financial crimes is critical to United States-Panamanian cooperation on narcotics control.

At this point, I would insert in the RECORD an article that appeared in the New York Times on October 22, 1990, that discussed Panamanian resistance to the Financial Crimes MLAT:

[From the New York Times, Oct. 22, 1990]

PANAMA RESISTING MOVE TO CLEAN UP BANKING SYSTEM—U.S. ACCORD DENOUNCED

(By Mark A. Uhlig)

PANAMA.—American officials are encountering unusually stiff opposition from Panamanian Government aides and businessmen in efforts to crack the shell of secrecy, and presumed illegality, surrounding Panama's multibillion dollar international banking trade.

When United States troops invaded Panama 10 months ago and deposed the leadership of Gen. Manuel Antonio Noriega, American officials felt that they would get cooperation and information on banking activity, including illegal money-laundering, much of it related to drug trafficking.

But while most Panamanians welcomed American help in ousting General Noriega, efforts to forge closer cooperation between the two countries in fighting money-laundering and other financial crimes are being opposed.

PRELIMINARY ACCORD DENOUNCED

A preliminary American-drafted Mutual Legal Assistance Agreement, intended to give United States officials greater access to evidence and information from Panamanian bank accounts was initialed by the two Governments in August.

But the agreement, which must be approved by the Panamanian National Assembly to take effect, has since become the subject of a bitter national debate here, provoking public denunciations from Government officials who say that it would violate Panama's national sovereignty, and from businessmen, who say it would ruin the country's lucrative position as a tax haven and dollar-based financial center.

"One of the main problems of the agreement is that it would end our ability to have deposits, from the United States or any other country, based on a secret agreement with the bank," said Guillermo Fernández Quijano, vice president of the Panamanian Chamber of Commerce. "We are against illegal activity anywhere in the world, but we have to be reasonable about our banking system."

American diplomats and law-enforcement officials have repeatedly discounted those objections, noting that similar agreements already exist between the United States and thriving banking nations like Switzerland, the Bahamas and the Cayman Islands.

They say that the pact is a minimal step toward restoring the integrity of Panama's banking center after years as a drug and money-laundering center under General Noriega. And they note that Panamanian bank deposits have rebounded by as much as $2 billion this year, to a total of about $14 billion, despite uncertainties over the new accord.

But the outcry, led in part by Foreign Minister Julio Linares, has forced the Government of President Guillermo Endara to repudiate the preliminary agreement, and American officials now acknowledge that the agreement would probably be rejected if submitted for formal legislative approval.

"There is a misunderstanding of what this is all about, and a vastly exaggerating reaction about what its effects might be," the United States Ambassador to Panama, Deane R. Hinton, said.

"Politically, it makes it difficult," Mr. Hinton said in an interview at his residence overlooking Panama City. "We want an agreement that will work, and an agreement that won't be ratified won't work."

PATTERN OF CONNECTIONS

Tensions have been heightened on the Panamanian side by provisions that make progress on the legal assistance agreement a condition for $84 million of the $420 million in United States aid to Panama that was approved by Congress this year. That linkage has inflamed nationalist sentiment, creating what many Panamanians describe as an American-imposed choice between the aid and the prospect of long-term damage to the banking industry.

Panamanian businessmen and some officials also denounce what they say are American attempts to extend the agreement

beyond money-laundering to "fiscal crimes" like tax evasion, which many concede is a central motivation for foreign depositors who place their money here.

"If the proposed accord was limited to drug-trafficking and money-laundering it would have been signed a long time ago," Mr. Linares said in a speech this month.

But diplomats and American officials say that the proposed accord, which has not been made public, would cover tax-evasion cases only at the discretion of Panamanian authorities. And they express concern that nationalist objections to the agreement have been spurred by political infighting among Government officials and by Panamanians with vested interests in money-laundering or other illegal financial practices.

"You look at all this and there seems to be a pattern of connections," Mr. Hinton said referring to banks that have taken the lead in opposing the new accord. "You have to ask yourself: Are they trying to protect criminal activities even though they are not criminals?"

BANKERS LOBBY AGAINST BILL

For Panamanians, any stigma associated with publicly opposing the pact, and thereby appearing to support money-laundering or other crimes, has been largely diluted by the nationalist sentiment. And bankers have lined up to lobby with President Endara against the bill.

But against the weight of American aid restrictions and diplomatic pressure officials on both sides say that the dispute cannot remain stalemated indefinitely. And even Panamanian experts say that the final issue will not be whether the banking industry chooses to accept some degree of outside scrutiny, but how and under what terms.

"Panama will outgrow the money laundering problem and remain an important center of international banking operations," predicted Nicolas Barletta, an economist and former Panamanian President who was instrumental in creating the country's liberal banking legislation in 1970. "It is in the national interest of Panama to get rid of money-laundering and to fight it with all we've got."

THE HOUSING OPPORTUNITY THROUGH MANAGEMENT/EMPLOYEE COOPERATION ACT OF 1990

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MARKEY. Mr. Speaker, today I am introducing the Housing Opportunity Through Management/Employee Cooperation Act of 1990 [HOME Co-op Act]. This legislation will facilitate the funding of housing trusts for workers who wish to make housing loans available at reasonable rates.

Managed correctly, these trusts will make housing more affordable at a time when America is desperate for housing. In the 1980's, housing costs in most areas of the country rose at a faster rate than wages. Whereas in 1949 the average 30-year-old home buyer spent 14 percent of the monthly paycheck on mortgage payments, in 1985 the same homeowner had to spend 44 percent on the monthly paycheck on the mortgage. Affordable housing has, slowly but surely, become an oxymoron in the United States of America.

To ameliorate this crisis, the HOME Co-op Act would amend the Employee Retirement Income Security Act of 1974 [ERISA] to allow the transfer of pension funds to housing trust funds, as long as certain conditions are met.

One of the most important conditions is that no transfers take place which could impair the ability of a pension fund to meet the current and future needs of its employees. The bill provides that no transfers can occur unless and until the relevant pension fund exceeds 135 percent of current liabilities. This is intended to provide a conservative cushion against the possibility that unforeseen demands on the pension fund could not be met because of transfers to housing funds. Nevertheless, it is clear that this legislation could free billions of pension fund assets for reuse as housing loans. On a current termination basis, more than $200 billion now held in pension funds is considered excess.

The second condition is that transfers must be made to an employee housing trust fund collectively bargained for by both labor and management and authorized and established pursuant to Public Law 101-273. In February 1990, Representative WILLIAM CLAY and I, along with 25 cosponsors, introduced H.R. 4073, a bill to amend the Taft-Hartley Act to permit unions and employers to establish pursuant to a collective-bargaining agreement, housing trust funds. Housing trust funds provide financial assistance to individuals for mortgage collateral, closing costs, downpayments, and other similar purposes. Employees and employers must be equally represented in the administration of the trust fund, and the agreement creating the trust shall also contain provisions for an annual audit of the trust fund.

Due to earlier action on a similar bill in the Senate, we were able to act expeditiously to take final congressional action and pass the bill just 2 months later in April 1990. Consequently, Public Law 101-273 now serves as the formal authorization for the housing trust funds necessary to receive pension fund transfers under the proposal I am making today.

In summary, passage of this legislation will benefit both employers and employees. Employers will benefit in two ways. First, transfers which reduce the excess in pension funds serve to reduce the temptation for corporate raiders to mount takeover efforts collateralized by overfunded pension plans. Second, employers can provide a new benefit to their workers without incurring new costs.

Employees will also benefit from the drawdown of pension funds which amount to an attractive nuisance to corporate raiders. Moreover, employees will be putting idle pension fund money to use as loans for housing for employee families.

If we can find a way to address this country's housing crisis using mechanisms that make creative use of private assets rather than tax dollars, we should do it. The HOME Co-op Act is just such a proposal. I look forward to working with my colleagues to ensure its adoption at the earliest opportunity.

LADY OF CZENSTOCHOWA SCHOOL RECEIVES 1990 STATE CHAMPION PHYSICAL FITNESS AWARD

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to congratulate the Lady of Czenstochowa School in Coventry, RI. The school has been chosen as a recipient of the 1990 State Champion Physical Fitness Award presented annually by the President's Council on Physical Fitness and Sports.

State Champion Awards are based on school performance for the 1989-90 school year. The students of the Lady of Czenstochowa School qualified for this prestigious award by scoring at or above the 85th percentile on all test items for the President's challenge. The challenge consists of a national fitness test which measures heart/lung endurance, muscular strength and endurance, speed and agility. Physical fitness is a very important aspect to our Nation's health. I am very proud to see that students from the Lady of Czenstochowa School have been chosen for this award.

It is with great pleasure that I salute the students of the Lady of Czenstochowa School for their achievements in physical fitness. I wish them continued success in the future.

KEN BURNS—NEW HAMPSHIRE'S FILMMAKER

HON. CHUCK DOUGLAS

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DOUGLAS. Mr. Speaker, the Civil War is one of the most important events, perhaps the most important event, our Nation has ever faced. The war lead our country to a deeper understanding of our Constitution, which in turn has guided the United States ever since.

Ken Burns, the producer-director, of a 5 day, 11-hour PBS documentary "The Civil War", brought this war back into the minds of the viewers. Americans relived both the devastations and the triumphs through the thousands of pictures, diaries, maps, drawings, and newspapers. Burns' attention to the historical record and extraordinary artistry resulted in a film that gave many millions of American television viewers an unprecedented national history lesson.

Ken Burns, the independent filmmaker grew up in Ann Arbor, MI and entered Hampshire College in Amherst, MA in the fall of 1971. At Hampshire, Burns began making movies and there met his wife Amy. He now lives in Walpole, NH, a small picture-perfect town with his wife and their three daughters. Burns dedicated 5½ years of his life to the researching and pasting together of this masterful piece of documentary work called the "Civl War." He spent longer researching the war than the actual time it took to fight it. There was never

any reenacting of the time period or reconstructing of the battles. Instead, Burns chose to show the main battlefields as they are today, but on the exact day and time of day the fighting began.

Mr. Burns has long been regarded as one of the finest documentary filmmakers at work today, whose work has served to inform audiences about important events, movements and figures in American life. The "Civil War" documentary will for years to come be an invaluable educational resource in schools, libraries, and cultural and educational institutions across the Nation. I commend Kenneth Lauren Burns for enriching the lives of his fellow citizens through his artistic and scholarly endeavors and for increasing their understanding of America's historical and cultural heritage.

IN MEMORY OF ORAL BURCH

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. YOUNG of Alaska. Mr. Speaker, I regret to inform my colleagues that this week our Nation lost a dedicated citizen and outdoorsman. Oral Burch of Kodiak, AK, passed away at the age of 71. He will be sorely missed by me, by his friends, and by many in the State of Alaska where he made his home for nearly 50 years.

Oral was born in Montana and came to my State in 1941, starting out as a shrimp fisherman in the Gulf of Alaska. Over the years he and his brother, Al, made numerous innovations in the shrimp fishery and Oral became known as a pioneer in modern fishing techniques. In 1964, Oral moved to Kodiak where he spent the remainder of his life. During that time he used the knowledge and experience he had gained in the shrimp fishery to help start the bottomfish industry in Alaska, which now is one of the major fisheries in our State. Without the leadership shown by Oral, we would still have foreign fishermen harvesting the resources off our shores.

In his private life, Oral was a friend to many and an enemy to none. He was an avid hunter, fisherman, and outdoorsman, and has hosted more than one Member of this body onboard his boat in pursuit of halibut and salmon. Although he knew that he did not have much time to live, he insisted that his final days be spent on the water enjoying the outdoor pursuits he loved so well.

Oral Burch's death will be a loss to all of us, not just in Alaska but throughout the United States. Innovators and leaders like Oral are hard to find and we will miss him.

REMEMBERING BARBARA HAAS RAWSON

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Ms. OAKAR. Mr. Speaker, Cleveland, OH, recently lost one of its truly important civic and community leaders, Barbara Haas Rawson.

Throughout her life, she freely gave her time and energy to make her community and her world a better place to live. What sets apart certain people to be instilled with the passion and desire to devote their lives to the public good is not certain. But whatever it is, Barbara Haas Rawson had it.

After graduating from college, Barbara began her career in Washington, DC, at the Department of Agriculture and the Office of War Information. It was in Washington that Barbara met her beloved husband, Bob, who is similarly dedicated to the advancement of the common good.

While raising her family, Barbara turned her considerable energy to volunteer activities with the League of Women Voters and as a leader in the Shaker Heights PTA. She also served as chair of the Shaker Heights Recreation Board.

Barbara was a woman of high personal integrity and was a lifelong proponent of excellence in government. In recognition of her abilities, she was appointed the first chair of the Ohio Ethics Commission.

When the Greater Cleveland Associated Foundation was formed in 1962, Barbara Haas Rawson was there to help shape its focus toward resolving Cleveland's urban problems. When it merged with the Cleveland Foundation in 1967, she became the foundation's assistant director and later served as its interim director.

While at the foundation, Barbara's years of community involvement and dedication to Cleveland helped to develop the Cleveland Foundation's programs to become a national model. Throughout those years, thousands and thousands of Greater Cleveland's neediest citizens benefited from the work she performed.

Although Barbara has been the recipient of numerous awards and honors, most often the people that received important, and in many cases life-saving assistance, never knew that behind the scenes, Barbara Haas Rawson was working diligently on their behalf.

The Distinguished Citizen Award from the National Civic League and the Citizen of the Year Award from the Citizens League of Greater Cleveland are eloquent testimony to our community's highest regard for Barbara Haas Rawson's unswerving dedication to improving the quality of life for so many people.

Barbara was a devoted wife, dedicated mother, loving sister, and an adoring grandmother. As a women, she was an outstanding role model.

On a personal note, I recall years ago how helpful Barbara was in sustaining an arts program for children in Cleveland's near west side. This program gave inner city children of all backgrounds the opportunity to study music, drama, and art. Some of those same children are, today, teachers and performers in the arts. These early grants afforded the children wonderful opportunities and exposure to the cultural arts they might never have had. They, too, will miss Barbara.

Mr. Speaker, I respectfully ask you and my colleagues to join me in recognizing the remarkable accomplishments of one of Cleveland's most remarkable women. She is gone from us, but the goodness of her heart and the generosity of her spirit will live on forever. Nevertheless, Barbara Haas Rawson will be missed.

A CONGRESSIONAL TRIBUTE TO JOHN C. WALLACE

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. ANDERSON. Mr. Speaker, I rise today to congratulate Mr. John C. Wallace who will be presented the Distinguished Citizen Award on November 1, 1990, by the Long Beach Area Council of the Boy Scouts of America. This award pays tribute to Mr. Wallace's service to the youth and the community of Long Beach, CA.

This gentleman is no stranger to service awards. In 1969 he was chosen as Young Man of the Year and in 1984 as Man of the Year by the National Long Beach Gas Association. Mr. Wallace was also presented the Silver Beaver Award in 1984 by the Long Beach Area Council Boy Scouts of America, the Golden Man Award in 1987 by the Long Beach Boys Club Foundation, and the Charles A. Margaret-W. Pollak Award in 1989 by the United Way. Currently, the Long Beach community is benefiting from Mr. Wallace's leadership as director of St. Mary's Hospital Foundation and his work with the Long Beach Rotary Club.

In addition to his personal success, Mr. Wallace also has an impressive professional background. He is the founder and investment advisor of Alpha+Capital Management, worked as a consultant for the Texas Eastern Corp., and served as chief executive officer for Petrolane, Inc.

Throughout his years of service and dedication, John Wallace has always put the young men and women of Long Beach first. Cicero wrote in 50 B.C. "The desires of youth show the future virtues of the man." I offer John Wallace as a testimony to Cicero's words for he is indeed a virtuous man. My wife, Lee, joins me in congratulating Mr. Wallace upon receiving this recognition. We wish Mr. Wallace and his wife, Alice; his daughter, Jane; and his sons, James, John, Bruce, Robert, Philip, Jeff, and Scott all the best in the years to come.

A TRIBUTE TO HARRY AND GAY BLACKSTONE

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LEWIS of California. Mr. Speaker, I would like to bring to your attention today the magical work and outstanding contributions of Harry and Gay Blackstone. Together, they have touched the lives of many people and will be honored by the Arrowhead Chapter of Hadassah in December for their work.

For the last 6 years, Harry and Gay have been strong supporters of the work done by Hadassah. During this time, he has been the driving force behind many of the chapter's bid-and-buy auctions. Together, they have made enormous contributions of their time and energy, raising thousands of dollars for the Arrowhead Chapter for the purchase of medical equipment for hospitals in Israel.

As most people know, Harry Blackstone is a very talented and creative man. As an author, actor, inventor, husband, father, and magician, Harry continues to amaze people across the country and around the world with his creativity and magic. Through his work, he has earned the Star of Magic award, 1 of only 12 magicians ever to receive such recognition. With Gay serving as Harry's co-producer and partner in his theatrical endeavors, the Blackstones have literally transformed magic into real hope for people in need.

Mr. Speaker, I ask that you join me and my colleagues today in recognizing Harry and Gay Blackstone for their commitment to the Arrowhead Chapter of Hadassah. Their years of selfless dedication are making a difference to people around the globe and they are certainly deserving of our admiration and respect.

H.R. 5921, THE JOBS, GROWTH AND COMPETITIVENESS ACT OF 1990

HON. CHARLES W. STENHOLM

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. STENHOLM. Mr. Speaker, I rise today to bring to the attention of my colleagues H.R. 5291, the Jobs, Growth and Competitiveness Tax Act of 1990. This legislation would restore the 10 percent investment tax credit for farmers, small businesses, and other manufacturers who invest in equipment, and machinery for production of food, fiber and energy; manufacturing; and for waste disposal.

This proposal has already received considerable support on both sides of the aisle. I believe that there is a simple explanation for this: an investment tax credit benefits all of society by promoting economic growth and employment. It encourages investment in productive machinery and equipment, something everyone agrees is vital to our economy. Purchases not essential to production would not be eligible for the credit. For example, equipment used in steelmaking, automobile production, medical supplies, airplanes, and so forth, will be eligible while office furniture and decorations, billboards, books in a law office, and so forth, would not be eligible. I believe that it is simple common sense to favor investment necessary for greater productivity over other investment.

I have long been a supporter of pay-as-you-go legislation, and was pleased to see that a pay-as-you-go requirement was included in the reconciliation bills of both Houses. For that reason, I will work to ensure that if this tax credit is scored as a revenue loser, any revenue lost is offset by additional revenue. The supporters of this bill may have a variety of ideas on how to raise the necessary revenue, but we are unanimous in our belief that it must be deficit-neutral.

This proposal has a definite advantage over other proposals of action that Congress could take to attempt to avoid a recession: it has a proven track record. This is not the time to be experimenting with untested ideas, especially when we have available an idea that has been successful in the past.

I urge my colleagues to study this proposal carefully. Although there isn't time to pass this legislation this year, this bill will lay the foundation for next year. It's time to move toward a proven incentive to our economy, and to the creation of more American jobs.

AMENDMENT TO THE IMMIGRATION ACT OF 1989

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GOODLING. Mr. Speaker, I am introducing this bill today along with Mr. SAWYER because I feel strongly that the education and training provisions in the immigration bill belong under the jurisdiction of the Education and Labor Committee. Such provisions are more appropriately incorporated into the Job Training Partnership Act [JTPA], and that is what this bill proposes.

I am hopeful that next year these provisions will be reconsidered and that we can place them into the Job Training Partnership Act where they rightfully belong.

TEAM FLORIDA BRINGS HONOR TO THE TAMPA BAY AREA

HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. YOUNG of Florida. Mr. Speaker, for baseball fans throughout the world, the highlight of the year is October when the great American classic—the World Series—crowns baseball's world champion.

With interest so high in the great American pastime, I wanted to let my colleagues in the House know that the Cincinnati Reds are not the only baseball team this year to sweep their way to a championship. Team Florida, a group of young athletes from the Tampa Bay area, were crowned the XXIV AAU Junior Olympics baseball champions this summer when they breezed through this year's tournament held in St. Petersburg, FL.

Under the leadership and guidance of manager Jack Nilsen, Team Florida became the first Florida team to win a gold medal in the national Junior Olympics. It is with great pride that I congratulate the members of Team Florida; Garth Armstrong, Shawn Austin, Troy Carrasco, Joseph DePastino, Marcus Gipner, Daniel Graves, Ryan Griffin, Mathew Krzesinski, Jeremy McConnell, Carlos Melendez, Todd Nilsen, Philip Olson, Eric Ondrey, Patrick Saxman, Lucas Smith, Scott Smith, Travis Smith, Rudolph Stroud; bat boys Scott Armstrong, and Dave Olson; and coaches Mark Maloney, Paul Mirocke, and Marc Nilsen.

Making this championship even more special was the fact that it was won before the team's hometown fans as the people of St. Petersburg and Pinellas County, which I represent, were the proud hosts of this year's AAU Junior Olympics. Having had the opportunity to open the games with a torchlighting ceremony begun here on the Capitol steps with Vice President QUAYLE, I had a special opportunity to visit with many of the athletes.

In addition to stressing the spirit of fair competition, the Junior Olympics also stress the virtue of drug-free lives. The players on Team Florida are outstanding young athletes who should be role models for young Americans throughout our Nation. To each of these athletes who have brought honor to our community, I offer my congratulations and wish them continued success not only on the baseball diamond, but also as they mature into the future leaders of our Nation.

TRIBUTE TO RICHARD J. FLYNN, JR.

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILLMOR. Mr. Speaker, I would like to bring to the attention of the Members of the House the accomplishments of an individual who is currently a student at my alma mater, Ohio Wesleyan University.

Richard J. Flynn, Jr. was recently elected by his fellow students as the 1990 Ohio Wesleyan Homecoming King.

This recognition by his peers is well deserved. During his tenure at Ohio Wesleyan, Rich has maintained high personal academic standards while he has actively contributed to the university community, to Tau Kappa Epsilon Fraternity, and to various other university organizations. He was recognized last spring for his athletic performance by being named as a second team All-American goalie in Division III lacrosse.

Mr. Speaker, Rich Flynn's career at Ohio Wesleyan has exemplified the high standards that Ohio Wesleyan sets for itself and students. I ask my colleagues to join me in congratulating Rich for his past achievements and in encouraging him to continue to hold himself to the high standards for which he is now known.

TRIBUTE TO COLBY C. "PETE" CRIPPEN

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BONIOR. Mr. Speaker, I rise today to pay tribute to a distinguished individual, Colby C. "Pete" Crippen. Mr. Crippen is being honored by his peers after 43 years of service to the International Brotherhood of Boilermakers.

There is an old adage that can sum up Mr. Crippen's workplace philosophy in one sentence, "What has never happened in 20 years of operation can happen in 20 seconds." Mr. Crippen is a champion of work related safety. His involvement with the Southeastern Michigan Coalition for Occupational Safety and Health [SEMCOSH] and his position as safety director for the Boilermakers Local 169, have earned him numerous accolades.

Mr. Crippen is fond of saying, "SEMCOSH needs to be supported since it is the only organization in our area whose sole mission is to look out for the health and safety of working people."

I want Mr. Crippen to know that I have been a long-time supporter of the goals of SEMCOSH. I worked hard last Congress for passage of the High Risk Occupational Disease Notification and Prevention Act. That bill would have established a system for identifying, notifying and preventing illness and death among workers who are at increased or high risk of occupational disease. I have supported similar efforts during this Congress.

Although it has been a disappointment to me that we have not enacted this type of legislation into law, I remain enthusiastically behind such efforts. With the support of Mr. Crippen and groups like SEMCOSH, I am sure we will continue to improve the working environment for the union laborer.

Over the years Pete has earned the respect and trust of his fellow workers. He gained their respect and mine the old fashioned way: He earned it. Pete can take pride in the fact that he has helped to create a better work environment for the union workers of southeastern Michigan. His concern for his colleagues and compassion for his community are legendary.

I am proud to consider Pete a friend of mine and wish him the best of luck for a happy retirement. He has set an example for others to follow and will long be remembered as a true friend of the union worker.

WILLIAM "BUDDY" MATTHEWS, JR.

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HOYER. Mr. Speaker, I rise today to honor Lt. William "Buddy" Matthews, Jr., a 30-year veteran of the Prince Georges County Police Force. It gives me great pleasure to congratulate Lieutenant Matthews on his retirement last December from District 3 Command Post in Seat Pleasant, MD.

Lieutenant Matthews began working for the Prince Georges Police Force in January 1956, as a private. From his early days on the force, Lieutenant Matthews was recognized for his outstanding service and courteous manner. Over the years he has received numerous letters of commendation which note situation after situation showing the kindness of Lieutenant Matthews. No matter how large or small the problem, the response that was given demonstrated thoroughness and efficiency. Whether a serious criminal offense or a property crime, Lieutenant Matthews responded quickly and compassionately.

In 1987, under Lieutenant Matthews' direction, the police department's United Way campaign for 1987 was an outstanding success. The department raised over $27,000, an increase of 23.2 percent from the previous year. The contribution represented one-third of the total amount that was donated by all of Prince Georges County employees. Lieutenant Matthews worked effortlessly to this end.

Matthews has brought great credit to the Prince Georges County Police Department and much satisfaction to the residents of the county. His commitment to the department is representative of his commitment to all of the Prince Georges County community and shows his sensitivity to the needs of all people he has served. He is committed to judging others by their conduct and their character, their contribution and their dedication to the unit. By the standard that he set over his years of service, he has gained respect, friendship, and a wish for a future filled with success and happiness.

THANKS CARL STOTZ

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILLMOR. Mr. Speaker, I would like to bring to the attention of the Members of the House the contributions of one of my constituents to my U.S. service academy nomination selections process.

Carl Stotz, of West Unity, OH, recently completed a year of distinguished service on my Fifth District Academy Advisory Board.

I established my Fifth District Academy Advisory Board to assist me by conducting face-to-face interviews with qualified candidates for nomination for admission to the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, and the U.S. Merchant Marine Academy.

Carl Stotz's active participation on my Fifth District Academy Advisory Board was invaluable to me in my difficult task of selecting those young men and women from northwest Ohio who would have the opportunity to compete for admission to our Nation's service academies.

Mr. Speaker, I ask all of my colleagues to join me in thanking Carl Stotz for his unselfish service and significant contribution to these young men and women and to the future of our great Nation.

TRIBUTE TO DOODLETOWN

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. PAYNE of New Jersey. Mr. Speaker, I want to tell my colleagues about a gathering in New Jersey on Sunday, October 28, to celebrate the enduring spirit of neighborhood pride that characterizes a special place called Doodletown.

I feel very fortunate to have been born in this neighborhood, because it is a place that embodies the solid, old-fashioned traditions of families helping one another and of bonds that stand the test of time.

The Doodletown Neighborhood Reunion is paying tribute this year to the Biase family, who have served Doodletown for over 78 years. Nellie and Philip Biase founded a very popular restaurant, which is now run by their son Larry. During the war, when the sons went into service, Mrs. Biase and her daughters worked long hard hours running the restaurant.

The kindness and generosity of the Biase family touched many lives in the community. They were always there to lend a helping hand, providing food and shelter for those who had met hard times.

Their children participated in wholesome recreational activities, forming "The Biase Yellow Jackets Football Team," which was heartily cheered on by their mother.

Mr. Speaker, we now live in a fast-paced world where too often individual ambition prevails over concern for others. I think there is a great lesson to be learned from the spirit of love and charity that has bound the residents of Doodletown together for generations. I know my colleagues join me in sending very best wishes to the Doodletown community and heartfelt congratulations to the Biase family on this joyous occasion.

TRIBUTE TO GEORGE B. MORIN, EDUCATOR

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to pay tribute to an outstanding and dedicated educator from my district who is retiring after 30 years of service to our Nation's youth. George B. Morin, of Cumberland, RI, is retiring from the Woonsocket School Department after 30 years of service. A resident of Woonsocket for most of his life, George began teaching in Woonsocket at the junior high school as an English teacher. He later went on to become the school's guidance counselor. George continued his service to Woonsocket's youth by becoming the director of the Neighborhood Youth Corps. As director for 6 years, George helped the underprivileged students of Woonsocket find part-time employment.

In 1971, George was appointed vice principal for Woonsocket High School and in 1979, George became principal of the school. For the past 11 years, George has administered and directed the school, graduating hundreds of students and preparing them to meet the challenges of today's world. Widely respected by his peers throughout Rhode Island, George is a member of the Rhode Island Association of School Principals and the National Association of Secondary School Principals.

I would like to thank George Morin on behalf of the city of Woonsocket and all its citizens, who have been fortunate to have an educator like George Morin in its schools.

George's compassion and dedication to our children and his community is a shining example for us all. I would like to congratulate George on a job well done over the years and wish him all the best for a happy and healthy retirement.

ENERGY INFORMATION ADMINISTRATION

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DINGELL. Mr. Speaker, I want to recognize the technical assistance the Committee on Energy and Commerce received from the Energy Information Administration [EIA] on the important acid rain issues in the Clean Air Act conference. Their work was both professional and of the highest quality. I believe EIA's assistance helped bring resolution to this difficult issue. While others depend on private contractors, EIA validated the premise that the Government can provide neutral, independent, professional analysis.

EIA was created in the 1970's to provide an independent source of both energy data and analysis to the public, the administration, and the Congress. By statute EIA data and analysis are independent. Thus, the EIA can provide data and analysis without a policy basis. EIA provided data and analyzed issues which the Environmental Protection Agency and its private contractors were either unwilling or unable to provide the committee.

In particular, I would like to recognize the help and assistance of Mary Hutzler, Alan Beamon, and Mike Linders. Their tireless work was of the highest professional quality.

TRIBUTE TO MARK LEVESQUE

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to congratulate Mark Levesque, who is the 1990 recipient of the Francesco Cannistra, M.D., Memorial Award. This prestigious award is given out to the person who has done the most to improve health care delivery systems for north Rhode Island citizens. I am pleased to recongnize such a fine individual.

Mark has served as general manager of Paramed Ambulance Services in Woonsocket, RI. He began his career as a paramedic and firefighter. Mark has shown time and again, the dedication he has for his job, and to the people of Rhode Island. Presently he is a board member for the Heart Association and the Red Cross. Mark also serves our community by teaching CPR.

It is with great pleasure that I salute Mark Levesque for his outstanding achievements. I wish him continued success in the future.

MS. ROMAINE HOWARD RECEIPIENT OF CAREER CIVIL SERVICE AWARD

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. DYMALLY. Mr. Speaker, I am pleased to bring to your attention an award which was received by Miss Romaine Howard, accreditation manager, Department of Juvenile Justice, New York City. The award was given to Miss Howard by "The 100-Year Association of New York," and the city of New York Department of Personnel, at their annual presentation of Career Civil Service Awards. Miss Howard was commended for her dedication to quality services for youth and the community. We offer our congratulations to Miss Romaine Howard.

The citation follows:

ROMAINE HOWARD, ACCREDITATION MANAGER, DEPARTMENT OF JUVENILE JUSTICE $2,500 AWARD

In January, 1967, Romaine Howard began working for the Department of Juvenile Justice, and has since been promoted five times. Her many years of service have benefited the Spofford Juvenile Center, a correctional facility for adolescents. As Accreditation Manager, Ms. Howard is responsible for ensuring the agency's compliance with American Correctional Association standards, policy and program development, safety and security, health care, resident care, staff development, and administration.

Ms. Howard is turned to for guidance when a responsibility area in the agency needs leadership, strong management skills, and creative input. She is always willing to be a trouble-shooter and never loses sight of the interests of the children she serves. She has been most recognized for the development and implementation of the Behavior Management Program in her unit. In 1988, Ms. Howard received a commendation from the Commmissioner for her efforts and success in developing the Intake and Orientation Unit into a more rewarding and educational place for the resident children. Her commitment to community and civil service is further shown through her involvement with the Voter Registration Drive, her union, and her Tenants' Association.

Ms. Howard's dedication to quality services for youth and the community continues to be a source of inspiration for other employees, youth, and the City of New York.

EDUCATIONAL PROGRAMMING ON CABLE TELEVISION

HON. DAN SCHAEFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. SCHAEFER. Mr. Speaker, I rise today to lend my strong support for a growing and essential part of the cable television industry—educational programming.

As the House debated cable reregulation this year, we focused on such issues as rate regulation, potential telco entry into cable, and customer service. In doing so, we may have neglected what I consider to be one of the fundamental missions of cable television—education. I'd like to take a few moments to talk about why we in this body should encourage the cable industry to fulfill its potential as an invaluable education resource.

We all know that education is one of our Nation's top priorities. And yet, some rural and urban school districts cannot even afford to hire teachers to teach advanced math and science courses. I know of school districts in my home State of Colorado, for example, which must deal with these tough financial constraints. Some schools are too small to make it cost-effective to offer foreign language courses. Even teachers—because of budget constraints—are sometimes denied the training courses they need to grow professionally and become better teachers.

Many of these educational needs are being met by the cable industry through distance learning courses. Currently, there are a number of exceptional educational initiatives, both commercial and noncommercial, which deliver courses in virtually every academic discipline directly to schools, businesses, and even private homes. And by doing so, these distance learning courses are expanding the educational horizons of millions of Americans.

I am aware of at least one cable operator which has formed partnerships with 16 major colleges and universities throughout the country—institutions such as Colorado State University, University of South Carolina, Washington State University, the University of Oklahoma, University of Wisconsin, Kansas State University, the University of Maryland, and the University of California at Berkeley. These affiliations already serve the needs of a broad range of people who would otherwise not have the opportunity to obtain a college degree. It's even possible to earn a fully accredited MBA via cable television.

With this type of commercial educational programming available 24 hours a day, people from all walks of life—students, workers, elderly people, and people with disabilities—can get an education through distance learning via cable television.

Through distance learning some cable programmers are expanding the educational opportunities to our students and our workers. The cable industry can and should be an invaluable resource in the education of millions of Americans. This body should recognize the unique service that commercial educational programming provides to Americans throughout the country, and I encourage my distinguished colleagues to do their best to help the industry fulfill its educational mission in the years ahead.

BILL TO COMPENSATE WORKERS AT DOE NUCLEAR WEAPONS SITES

HON. DAVID E. SKAGGS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. SKAGGS. Mr. Speaker, today I am introducing a bill to ensure compensation for workers at nuclear weapons plants who have con-

tracted radiation-related diseases due to on-the-job exposure to radiation.

For over 40 years, workers at our Nation's nuclear weapons plants have been our front-line soldiers in the cold war. During that time, many of these men and women have worked with literally tons of uranium, plutonium, and other radioactive materials under conditions that we today recognize as unsafe.

As a result, and usually after long latency periods, some workers have contracted leukemia and other forms of cancer. But due to the extremely strict standards of proof applied to worker compensation cases, tragically few of these workers have ever received compensation for their illnesses. I know about this situation first hand because of cases at the Rocky Flats plant in my district, where workers who were exposed to unhealthy levels of ionizing radiation—and who then contracted cancer—have been denied any compensation. This isn't fair, it isn't right, and it isn't the way we should treat our defense workers.

My legislation would help resolve this by changing the way evidence is handled in these cases, or as the lawyers put it, by shifting the burden of proof. Under my bill, if a worker has been exposed to unhealthy levels of ionizing radiation, or has worked for sufficient years in hot facilities where such exposure could be expected, and if the worker subsequently develops a disease known epidemiologically to be related to ionizing radiation exposure, there would then be a legal presumption that the disease was work-related. The burden of proof would then shift to the Department of Energy, or its contractor, as the manager of these nuclear weapons facilities, to rebut that presumption with evidence that the disease was not work related.

This approach is a practical and sound one. It will make a real difference to workers who have been exposed to unhealthy levels of radiation, without simply handing out money. To prevent Federal intrusion on State worker compensation systems, DOE nuclear workers would be transferred for this limited class of radiation cases to an existing Federal worker compensation system that provides excellent benefits and which is known for its fair appeals process. This system, provided under the Longshore Act, covers workers who do not fit well under State worker compensation systems, or whose work is especially hazardous. No new administrative or appeals systems would be needed.

Most importantly, the bill would keep faith with people who have devoted their working lives to an important national security mission—people we shouldn't now abandon.

TRIBUTE TO BILL NELSON

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FASCELL. Mr. Speaker, I join with our colleagues in recognizing the 12-year career of BILL NELSON in the House of Representatives. As he leaves us at the end of this season, Florida will lose one of its most able Members. His leadership at the local, State, and national level will be greatly missed.

BILL was a member of the Florida Legislature for 6 years after practicing law upon earning his law degree from the University of Virginia. He was elected to what is now Florida's 11th District in 1978, defeating his opponent, a political veteran, in a landslide.

Having spent 6 years on the Budget Committee, BILL rotated to the Banking, Finance and Urban Affairs Committee where he has been a strong advocate of his district which boasts of Walt Disney World, Sea World, and other tourist attractions. The tourism that the 11th District enjoys contributes greatly to the economic well-being of the entire State of Florida.

BILL NELSON if best known for his seat on the Science, Space, and Technology Committee and his chairmanship of the Space Science and Applications Subcommittee. Through his subcommittee, BILL has succeeded in securing continued authorization of funding for NASA programs that are vital to the Kennedy Space Center.

BILL is a "hand-on" Member whose oversight of the space shuttle program included his serving in the crew of the shuttle *Columbia* which returned to Earth just 10 days before the tragic voyage of the *Challenger*. Through his expertise, he was able to revive the shuttle program even after this disaster.

The same vision that BILL NELSON has employed in supporting the space program will continue to serve him well in his future plans. As he returns to Florida, Jeanne-Marie joins with me in extending our best wishes to BILL and Grace.

THE LONG HAUL OF REPRESENTATIVE GUS HAWKINS

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. STOKES. Mr. Speaker, in a few days the 101st Congress will adjourn. The adjournment of this Congress will bring to a close the congressional career of GUS HAWKINS, who is retiring.

Mr. Speaker, few Members of Congress have achieved or attained the legislative record of Congressman HAWKINS. With 28 years in Congress and 28 years in the California General Assembly, GUS has a public service record of 56 years. In my opinion, he is the premiere legislator in the United States, with more social legislation enacted in his name than any other living American.

GUS is a friend whom I admire and respect. On Wednesday, October 24, 1990, the Washington Post carried an article on his career entitled, "The Long Haul of Rep. Gus Hawkins", which I urge my colleagues to read.

[From the Washington Post, Oct. 24, 1990]

THE LONG HAUL OF REP. GUS HAWKINS—AT 83, THE STEADY CHAMPION OF CIVIL RIGHTS IS RETIRING FROM A BATTLE THAT WON'T END

(By Jacqueline Trescott)

Somehow Rep. Augustus Hawkins (D-Calif.) knew the last days of his 28 years in Congress would be marked by an executive slap. Months ago, the Bush administration promised to veto the Civil Rights Bill of 1990 if the version Hawkins cosponsored was sent to the White House. It happened Monday.

Bush issued his three-page veto message and Hawkins immediately issued his two-sentence reply. He had prepared it Thursday, two days before the bill went to the White House, and in his blunt, succinct fashion he called Bush the leader of "a national retreat from civil rights. . . . By relying on the same shopworn excuses and code words that were offered against every great piece of civil rights legislation, George Bush plays on the worst of America's fears, and the worst of America's prejudices."

Riding back to Capitol Hill the day of the veto, fresh from delivering a tough and, he insisted, cautiously optimistic view of the country's support of education, he was livid about the backsliding of civil rights.

"The latest wrinkle, and that is in Bush's bill, is a concept he calls customer preference," says Hawkins. Although the specific phrase has been eliminated from the alternative bill the White House sent to the Hill last weekend, Hawkins says the idea of a preference is simply an updated endorsement of bigotry. This provision would have allowed businesses to argue that they were responding to their clientele's wishes when charged with discrimination.

"That's how far we've drifted and fallen," said Hawkins, seeing the phantom of the no-blacks-allowed signs he saw on the road from Los Angeles to Sacramento on his way to the state Assembly 56 years ago. "This is the latest offer from the president as to what he wants in the civil rights bill. We are better off not passing it."

That's the tenor of Gus Hawkins's final days on Capitol Hill; He is disappointed but not defeated. At 83, he is the oldest member of Congress, and the senior black elected official in the country. He is the dean of the 23-member Congressional Black Caucus and the 45-member California House delegation.

Now, his official portrait has been hung in the Rayburn Building, the ritual of testimonials has begun, but the work on Hawkins's other priorities—an omnibus education bill and a sweeping child-care bill—is unfinished. Plus, Gus and Elsie Hawkins haven't had time to decide whether to live in Washington or Los Angeles. "I thought I would be winding down," said Hawkins, as he shuttled down the hall, a list of conference committee meetings rustling in his hand.

Hawkins has been trading brickbats with presidents and their surrogates for most of his congressional career, but recently has had to pitch harder. Consider this scene in the meeting room of the House Education and Labor Committee, Hawkins's domain for six years and the site of many of the barbs, victories and setbaks:

One morning last spring Hawkins listened to Education Secretary Lauro Cavazos defend Bush's education proposals and then chop up Chairman Hawkins's own alternative measure. Hawkins, resting his head on the back of a huge black leather chair, followed the prepared statement, not catching Cavazo's eye. He shifted, signaling enough was enough.

"You did excellent up to Page 10. Then you went off the deep end," Hawkins lectured, the tremor of a chortle edging through his husky voice. "You overstepped on partisanship. You attacked the committee. We did include four of the president's initiatives."

Ultimately, Hawkins incorporated the administration's wish to have a merit schools

program, but he limited the incentive program to schools that help educationally disadvantaged children. The bill is currently in conference committee.

The Hawkins legacy is a catalogue of successes in civil rights, education and labor laws. He helped draft Title 7 of the Civil Rights Act of 1964, which created the Equal Employment Opportunity Commission, originally opposed by Robert Kennedy and Lyndon Johnson. He got a job training bill passed during the Carter administration, but he had to fight the president, most of his Cabinet and the Council of Economic Advisers. His landmark is the Humphrey-Hawkins employment bill in 1978, which was a long struggle and about which Hawkins now has strong second thoughts. He successfully organized an override when President Reagan vetoed the Civil Rights Restoration Act in 1988. And after almost a decade of inaction, and a presidential veto by Bush, a bill to raise the minimum wage was passed last year. Hawkins, who had altered his original goals for the bill, had to live with the results but called the "training wage" component—a sub-minimum wage for new workers—disgusting.

His decision to retire, announced in January, was partially born of frustration from seeing his ideas about the family, workers and schools become legislation but get butchered in the process.

"The whole problem today is implementation. The ordinary citizen can have more to do with that than I can," says Hawkins. This exasperation, tempered with a thick coat of political realism, ran through a discussion of his career earlier this year. "Plus the fact I have reached a certain age. I can't expect to be around another six or eight years. I can do my own thing in another way." There's also a twinkle of relief in taking leave from politics, because in the next breath he is lustfully describing tending the 65 rose bushes at his country home on Solomons Island, Md., and life aboard his 33-foot La Mia. "In Spanish it means 'mine,'" he says, and there's the irony—the quest for control that's still elusive no matter how high your seniority or how rightsounding the subject.

In his mild way, Hawkins is still surprised that the game of politics took such a hold on him. "It isn't that I preferred from the very beginning to be in politics or even public office, but once having been elected I suppose it got into my system and I tried to make the best of it," he says, playing down his personal satisfaction, the exact opposite of how his allies describe his dedication to his causes.

"When I think of Gus Hawkins, I think of the congressman who is the real champion of poor kids in this country," says David Leiderman, executive director of the Child Welfare League of America. United Auto Workers President Owen Bieber calls his record "monumental." "He has set the moral tone" on family and working-family issues, says William Lucy, international secretary-treasurer of the American Federation of State, County and Municipal Employees.

"He is not just someone who votes correctly but is someone who is always on the front lines on behalf of civil rights legislation, and he has been extraordinarily effective," says Ralph Neas, executive director of the Leadership Conference on Civil Rights.

Even his opposition acknowledges Hawkins's commitment. "Although we have had strong disagreements with Gus Hawkins about such things as more choice in education, more flexibility for school districts in the use of federal funds, and more focus on results rather than regulation, we have never once doubted his enduring commitment to seeking the best for the disadvantaged and handicapped children of America," says Ted Sanders, the undersecretary of education.

Rep. George Miller (D-Calif.), whose father served with Hawkins in the California Assembly, has seen the disappointment building up over the years. "He believed the Congress has given up its commitment to working people, poor people and children. In 1981 he spoke out forcefully against reconciliation [cuts]. And when the committee was given its first reconciliation message under the budget, he said, 'You do it without me,'" says Miller, who still disagrees with his mentor over the funding mechanism for child care.

Hawkins says what counts are not the headlines, not a high profile—and he was conspicuously absent from all the network sound bites on the civil rights veto—and not the label. He is viewed as a stalwart liberal who receives a zero rating from the American Conservation Union—though they applaud his vote for the Stealth bomber—and a low cumulative rating of 19 from the U.S. Chamber of Commerce and a 95 percent from Americans for Democratic Action. What Hawkins is proud of is his trademark of gentlemanly communication and philosophical persistence. "You find out that results pay off in the long run, and it is better for the system itself," he says.

Of course, there's a downside to modesty. When the Hawkins-Stafford Act, a renewal of major education programs, was passed in 1988, Hawkins wasn't recognized at the White House signing ceremony. He was clearly annoyed by the snub. Outraged, Democratic leaders organized their own signing party on the Hill. "In effect I did [feel angry], and you can't work on anything as hard as we did for a year or so and have someone else come and take the full credit. . . . In a sense I felt violated. Yet I never try to hold grudges, and you find at some other time it works to your benefit. Later times we were able to override the President's veto, and I would say, 'That is going to pay you back, Mr. President.'"

COLOR & COMPROMISE

Before politics, Hawkins learned perservance in a uniquely black American fashion. He is so fair-skinned that he is often mistaken for white. Hawkins, whose grandfather was a white British explorer, is short with a firm, boxy physique, a pale pink complexion, with enough color to give a white mustache and slight lawn of white hair a shade of backdrop.

Yet the errors of others have haunted him to the point where he described himself as an "outcast." As a youth in Louisiana, Hawkins watched the streetcar conductor move the "blacks only" sign behind his seat so he ended up sitting in the white section. He was so embarrassed and angry he started walking, his exercise of choice today.

"In a very reactionary, segregated background, one often reacted in a very explosive manner. You had to really learn through patience," says Hawkins. To protect him and his two brothers and one sister, his father, Nyzana Hawkins, a pharmacist, moved the family from Shreveport to Los Angeles when Gus was 11.

As an adult he tried a disarming directness on this issue of color confusion. He tells the story of how a white woman on a bus in Los Angeles kept moving closer to him. "And then she said, 'You know, we sure are getting a lot of blacks in this neighborhood. I don't like sitting next to them because they smell.'" Hawkins said he asked if he smelled and she said no. He asked her what she would think if he told her he was black and she answered, "'I wouldn't believe you.'"

This predicament is not exclusively a white-to-black mistake but can happen with other blacks as well. A week after the Watts riots in 1965, the action that brought his congressional district into the nation's living rooms, Hawkins was walking through a playground when he thought a group of thugs was preparing to attack him. His companions set them straight. "I wasn't really thinking," he says, adding that he thinks the problem of mistaken identity is someone else's stupidity. "It is a mark of ignorance that [some people think] all blacks are black. Sometimes I educate."

Hawkins graduated from UCLA in 1931 with a degree in economics and worked as a soda jerk and a real estate agent before being elected to the California Assembly in 1934. He spent 28 years there and was responsible for segregation-shattering housing legislation, had domestic workers included in the worker-compensation system and wrote the California Fair Employment Practices Act.

But an assembly seat did not guarantee isolation from racial insult. A colleague invited Hawkins to a Los Angeles club, then disinvited him because the club excluded blacks. Hawkins was insulted, angry and stayed home. Later he and his colleague successfully urged the club to rescind the practices, and the two worked together to overturn the law requiring a photo submission with the civil service examination. "You don't want to lose the contact," says Hawkins, emphasizing the practical over the painful.

In 1959 Hawkins missed becoming the speaker of the Assembly by two votes. Three years later he was elected to Congress, becoming the first black representative from a Western state. Despite his commitment to black people, still the heart of his constituency although his district will show a phenomenal growth in Latino population in the 1990 census, he hasn't traded on racial guilt or provocation. Says Rep. Julian Dixon (D-Calif.): "He has never focused on race only. That brings him a great degree of credibility. Gus is viewed as one who will accommodate reasonable requests. He doesn't bring bias if he believes there are legitimate concerns."

Being a skilled compromiser can also mean getting caught on a political merry-go-round. When President Bush's current education proposal came to the committee, Hawkins sat down with Rep. William Goodling (R.-Pa.), trying to find the middle ground. "I said, Bill, I don't think he's doing anything worth a damn. However, I will try to work something out with you as long as it is new money. I sent that back to my Democrats and I didn't get a single one who wanted to do that. They said that's crazy. I had to agree with them," says Hawkins. "There I am in the embarrassing situation of trying to be bipartisan, trying to cooperate with the president, and I can't get the vote on my committee."

LANDMARKS & BOOMERANGS

In his office, dressed in the standard congressional uniform of blue shirt, blue tie and gray suit, Hawkins discusses how angry he is at the fate of his legislative babies.

Take the Equal Employment Opportunity Commission. "The EEOC is worthless," spits out Hawkins. "We stopped monitoring them and calling them before the committee." He has even stopped advising his constituents to file complaints with the agency. "It got embarrassing. People will tell us, 'We filed a complaint because you told us to, but no action'—it wasn't even investigated," says Hawkins. He says he was losing credibility.

Indeed, he could kick himself for giving a paltform before his own committee to critics of his programs. "Clarence Thomas was terrible," he says of the former EEOC chairman. "Look, we made a judge out of him! He came, he took the heat, and he became a judge."

The clearest example of Hawkins's patience and frustration is the Humphrey-Hawkins Act, which called for a national policy of reducing unemployement and inflation. It all started at one of those ubiquitous Washington cocktail parties, which Hawkins praises as the source of several legislative pairings.

"I had introduced a jobs bill. [Sen. Hubert] Humprey had introduced a planning bill. We got to chatting, and for some reason I don't know which one of us suggested, 'Well, look. . .'" recalls Hawkins. But when the two introduced their ideas for full employment, the labor unions, conservatives and the Carter Cabinet—with the exception of Labor Secretary Ray Marshall—lined up against them. Carter organized a group of economists to pressure the two legislators to drop phrases such as "the right to a job." Hawkins and Humphrey organized their own pressure groups. The turning point was enlisting the support of Catholic bishops. "Step by step we built up support that made it a moral issue, almost embarrassing when a so-called liberal administration such as the Carter administration opposes it," says Hawkins.

But he persevered. "The legislation was clearly symbolic. It stressed the importance of the government being ultimately responsible for the environment for meaningful work. When employment levels got to such a point, it was the government's responsibility to do something," says AFSCME's Bill Lucy. "His determination was inspiring to the other people who were in the fight. He never said the battle was over."

It took five years, and frankly the death of Humphrey, to get even a watered-down version of the legislation enacted. Hawkins got the pen from the president that time, and a picture for his wall.

But it isn't the glorious monument one would want. Hawkins has been angry that so much hasn't been implemented, and even issued a stinging report of alleged violations of the law.

"We live up to it in many ways," says Hawkins. "A lot of our difficulties have arisen because we haven't had vigorous growth in this country. All the anti-discrimination measures. I have introduced fit in that category because the act itself calls for removal of discriminatory barriers. . . . The Federal Reserve Board does not comply because the act calls for allocating credit on the basis of stimulated growth."

And he leaves some clues to his own political longevity. "The difference between certain liberals and other people is that too many liberals are sprinters—fade out and become opportunists and then they become conservatives," he says. "I think it's the question of stamina. If you believe in something, you work a long time."

ANGEL OF THE WORLD 1990

HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LEWIS of Florida. Mr. Speaker, it is my honor to again deliver to the 535 Members of Congress, Cabinet members, the President and First Lady, and the Vice President and his wife a Christmas gift of love from my wonderful friends at the T&M Ranch.

Located on 81 acres in Indiantown, FL, the T&M Ranch is a coeducational community preparedness program for its residents—mentally handicapped adults. The goal of the program is to create a higher level of independence for each individual enrolled through concentrated instruction in survival skills. Graduates of the program now live and work independently in the community.

The Angels of the World Program focuses sharply on the goal of ultimate independence for these individuals. From an original mold provided by internationally known sculptor Laszlo Ispanky, the T&M Ranch residents produce ceramic Christmas ornaments—sculptures of love, if you will—with strict quality control and loving attention. In the process, the ranch residents have learned to make something with their hands, prepare it for delivery and manage money they have made from their efforts. More importantly, they have discovered through their efforts that there is a world in which they can contribute beyond the ranch's gates.

The proceeds and contributions the ranchers raise are placed in an endowment fund for scholarships to help teach independent living and working skills to future T&M Ranch residents. Also, nonprofit organizations throughout the country have been able to continue community awareness and education programs for mentally handicapped persons through sales of the angel ornaments.

The 1990 eighth edition angel is Marie of France. It is my honor to again deliver to each of you this holiday gift of love on behalf of its creators at the T&M Ranch. I hope you will cherish it and display it with pride and honor.

May your holidays be a joyous time for you and our fellow countrymen and women.

HONORING REV. REUBEN RUSSELL

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. KILDEE. Mr. Speaker, I rise today to urge my colleagues in the U.S. House of Representatives to join me in paying tribute to an outstanding humanitarian from my hometown of Flint, MI, the Rev. Reuben Russell. Reverend Russell is retiring from his position as pastor of Vernon Chapel AME Church in Flint and is being honored at a community farewell dinner on November 9, 1990.

Reverend Russell has been pastor of Vernon Chapel AME Church since 1961. In that time he has become one of the great spiritual and community leaders in Flint. He has devoted countless hours to counseling members of his congregation and has worked tirelessly to assist all segments of the community.

After graduating from high school in Alabama, he came to Michigan to pursue employment. While working a variety of jobs, he entered college. Upon graduation from college, he entered Wilberforce University for his seminary education. He was ordained in 1941 and began pastoring in Roseville, MI. He then moved to Muskegon Heights where he pastored until he came to Flint in 1961. Wherever he has preached, Reverend Russell has committed himself to serving God and the people of that community.

Reverend Russell has shown his commitment to Flint through his numerous community activities. He is the treasurer of the Greater Flint Opportunities Industrialization Center, serves on the board of the Flint Neighborhood Improvement and Preservation Project; chairman of the Division of Church and Society of the Greater Flint Council of Churches; has held leadership positions in the Flint Branch of the National Association for the Advancement of Colored People; and is a member of the board of directors of the Genesse-Lapeer Chapter of the American Red Cross. Reverend Russell is also first vice-president of the Concerned Pastors for Social Action and has served faithfully as a volunteer for the March of Dimes for over 25 years. Reverend Russell has also served on the Chaplain's Advisory Committee of the Michigan Department of Corrections.

Mr. Speaker, it is indeed an honor and a privilege for me to pay tribute to Reverend Russell. He has faithfully served the people of the Flint community for 30 years, providing spiritual leadership, leading the battle against racism, and speaking out for equal rights for all people in this world. While he is retiring from this phase of his career, I know he will remain in the Flint community continuing to provide leadership and counsel to those less fortunate. Reverend Russell exemplifies all that is good in humanity. He has served his God and community with the greatest devotion. I am a better person for having known him, and Flint is certainly a better community for his presence.

MINIMUM WAGE LAW IN AMERICAN SAMOA

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FALEOMAVAEGA. Mr. Speaker, on October 18, 1990, the House adopted S. 2930, with an amendment by the Committee on Education and Labor, making certain amendments to the Fair Labor Standards Act. Section 1 of the bill corrects a previous, unintended change in the minimum wage provisions applicable to American Samoa.

In my statement in support of the committee amendment, I noted that it allowed special minimum wage rates to be justified by evidence that an industry is unable to pay the

mainland rate due to economic and competitive conditions. It is important to point out that existing law calls for consideration of economic and competitive conditions and that these conditions have historically been taken into account by industry committees in establishing minimum wages for American Samoa.

Under the committee amendment to S. 2930, it is intended that industry committees will continue to consider a broad range of evidence regarding economic and competitive conditions. This includes evidence of production and transportation costs, raw material costs, comparative costs of foreign competitors, market trends, penetration of foreign imports into the United States, and other economic and competitive factors.

INTRODUCTION OF LEGISLATION TO REQUIRE THE U.S. POSTAL SERVICE TO PRESCRIBE REGULATIONS UNDER WHICH THE NATIONAL LEAGUE OF FAMILIES POW/MIA FLAG MAY BE DISPLAYED (H.J. RES. 686)

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILMAN. Mr. Speaker, I take this time to advise my colleagues of legislation that I am introducing House Joint Resolution 686, to require the U.S. Postal Service to prescribe regulations under which the National League of Families POW/MIA flag may be displayed at post offices across our Nation.

This legislation is necessary because present postal regulations prohibit the displaying of any flag other than that of the United States or the U.S. Postal Service. It is my belief that the Postal Service, with offices throughout the country, is in an excellent position to display this flag.

My colleagues may recall that earlier in this session, we passed legislation and the President signed Public Law 101-355 that designated this flag as a symbol of our Nation's concern and commitment to resolving as fully as possible the fates of nearly 2,300 Americans still prisoner, missing, or unaccounted for in Southeast Asia.

Mr. Speaker, when I met with Vietnamese Foreign Minister Nguyen Co Thach earlier this month, I joined with my colleagues in making clear to him that we will not consider normalization of relations between our countries until we have the fullest possible accounting for the 2,296 American POW/MIA's who, as of today, remain unaccounted for. Minister Thach, in turn, pledged to us the full cooperation of his Government.

Therefore, I believe it is of the utmost importance that we Americans continue to pressure Hanoi with signals that the POW/MIA issue remains a major national priority. We must not become discouraged because the progress towards a full accounting of our missing American heros may be slow. This is not the time to lose patience. The displaying of the National League of Families POW/MIA flag at our post offices I believe would assist us in continuing to apply pressure on Hanoi by continuing to demonstrate how committed we, as a Nation and a people, are to this effort.

Accordingly, I am introducing this measure, House Joint Resolution 686, the text of which will be reprinted immediately following my remarks.

H.J. RES. 686

Whereas the people of the United States can never forget the noble sacrifices made by the men and women of the United States who served in the conflict in Southeast Asia and are still prisoner, missing, or unaccounted-for;

Whereas the United States Postal Service is in the unique position of having facilities in communities throughout the United States that are considered a focal point of the community and, frequently, the sole representative of the United States Government;

Whereas the display of the National League of Families POW/MIA flag is an effective means of maintaining and increasing public awareness of POW/MIA issues;

Whereas the National League of Families POW/MIA flag appropriately symbolizes the national recognition that the missing and unaccounted-for participants in all armed conflicts deserve;

Whereas the National League of Families POW/MIA flag has been officially recognized and designated, through the enactment of Public Law 101-355 (104 Stat. 416), as the symbol of our Nation's concern and commitment to resolving as fully as possible the fates of nearly 2,300 Americans still prisoner, missing, or unaccounted for in Southeast Asia, thus ending the uncertainty for their families and the Nation; and

Whereas regulations of the United States Postal Service currently prohibit the display of any flags other than those of the United States and the Postal Service: Now, therefore, be it *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the United States Postal Service shall, within 180 days after the date of the adoption of this resolution, prescribe regulations under which the National League of Families POW/MIA flag may be displayed at facilities of the Postal Service (including provisions relating to the occasions or days of the year on which the displaying of such flag would be particularly appropriate).

TRIBUTE TO CARL "C.C." CROSS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. RANGEL. Mr. Speaker, I rise to pay tribute to Mr. Carl Cross, who is better known as C.C. to his many friends in the Capitol. The doorman in the Office of the Speaker, C.C. has won the respect and admiration of the many Members and staffers who have come to know him.

A 20-year employee of the House, C.C. was seriously injured 2 years ago in a motorcycle accident that resulted in the amputation of his left leg, below the knee. Rehabilitation was difficult. When gangrene set in following the initial surgery, he underwent a second operation. Even today there is soreness in the leg, which is not entirely healed. But none of that has taken away any of C.C.'s warmth, his zest for life, or his will to overcome adversity.

Fitted with a prosthesis, C.C. walks with a slight limp but remains physically active. He was a football player and boxer in his youth and a jogger before his accident, and now maintains his stocky, athletic build, even at the age of 48. Three nights a week he spends 2 hours diving and swimming to stay in shape, and to prepare for the diving competition in the amputees' olympics.

C.C. worked for 18 years as the Capitol bootblack before assignment to the Speaker's Office after his accident. "That first job wasn't me," he told me recently, "but it was a job and I took it." In fact, he had given up dreams of a career in professional football or boxing after starting a family with his beloved wife, Pat, whom he has known since grade school. Yet he has only gratitude for the opportunities he has had and the friendship he has found among Members and fellow staff—especially during the ordeal following his accident.

Recalling the many letters and telephone calls he received, the offers of financial help for his rehabilitation and even the prayers some Members shared with him, C.C. speaks most fondly. "I had figured when you were out of sight, you would be out of mind," he said. "But I found out that wasn't true with these people."

Mr. Speaker, I have shared these these thoughts about my friend C.C. because he has been an inspiration to me and my colleagues. With a friendly greeting for everyone who passes by, he makes us each feel a little special. By doing his job enthusiastically, without complaining about the pain that seldom leaves him, C.C. provides a quiet reminder of what courage is all about.

IT COULD HAVE BEEN ME OR YOU: THOUGHTS ABOUT THE HOMELESS

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. STOKES. Mr. Speaker, the number of homeless individuals in our society is staggering. Homelessness is a devastating affliction whose numbers paint a grim and embarrassing picture of life in the United States of America, one of the richest nations in the world. Studies completed in 1988 by the National Alliance To End Homelessness, and the Urban Institute, conclude that between 600,000 and 735,000 people are homeless in the United States.

Recently, Patti Davis, the daughter of former President Reagan and a strong advocate for the poor and homeless, wrote a gripping article on the plight of the homeless. In her article, Ms. Davis makes reference to the Reagan administration and its assault on vital social programs in the 1980's—programs such as food stamps, low-income housing and job training—programs which can make a difference in being able to sleep in your home, or being forced to sleep on a street grate. In closing the article she said:

There are no "points of light" for those who sleep on grates and park benches. There are only long days, strung together by hunger and monotony; nights with little or no shelter from the cold. The only lights are those blinking in the windows of buildings they cannot enter.

Mr. Speaker, as a nation we can no longer tolerate these appalling statistics. Ms. Davis has given us much to think about and I urge my colleagues to take a moment to read her comments.

[From the Washington Post, Sept. 23, 1990]

IT COULD HAVE BEEN ME . . . OR YOU—THOUGHTS ABOUT THE HOMELESS

(By Patti Davis)

I first noticed her three years ago. It was a cloudy morning, the sky a palette of orange and gray. She was standing outside the restaurant where I stopped for coffee after taking my dog for a run. She wore baggy pants and men's shoes that obviously were too big for her. Her skin was chapped and red, and it was impossible to tell what color her coat had once been; now it was the color of dirt. She was standing by a shop window where the sweaters start at $200. Her hood was pulled up and, without raising her eyes, she asked for a quarter—not enough even for a small cup of coffee nowadays. I gave her a dollar.

She wasn't the only homeless person who traveled along this upscale street in Santa Monica, Calif., but she tugged at my thoughts. Perhaps it was because of her age. I guessed she was in her mid-30s, no more. Or maybe it was her fear—palpable as that of a timid, disoriented animal.

Some part of me understood being that frightened.

She was there almost every day. I said, "Good morning" as I passed her, but she pulled back into her hood, like a turtle retreating into its shell. Sometimes she asked for money, sometimes not. On the occasions when she said nothing, I offered nothing. There are rules to this, and I'm still not sure what they are. On the mornings that she ventured inside to buy coffee, people moved away slightly, trying not be conspicuous; it was like a strange dance, choreographed by fear and discomfort. No wonder she never looked up.

Before 1981, the number of homeless people in Santa Monica was so few that their faces were well known to the rest of us living here. So were their personalities. Some you gave money to, some you didn't. Some you knew by name.

The change was gradual. It started with rhetoric—the Reagan Administration's pledge in 1981 to cut excess from the budget. It took us a while to realize that some of that "excess" translated into human lives, discarded onto the streets. There were cuts in food stamps and in federal subsidies for low-income housing. There was the story our President told us of a man who bought oranges with food stamps and then used the change to buy vodka. A flagrant violation, the Chief Executive said. We should be angry at such misuse of taxpayer's money.

We should have been angry at the story. The realization was slow in coming to us—the number of homeless people was increasing. The federal government released its first estimates in 1984 when the Department of Housing and Urban Development admitted that somewhere between 250,000 and 350,000 people were homeless.

Now, unfamiliar faces stared back at us; we were no longer sure whom to give money to. There were routines in our lives that were forced to change by the growing number of homeless. Before 1981, I used to run along Palisades Park. The stretch of grass dotted with palm trees, which runs along the bluff high above the Pacific Coast Highway, is where people stand and watch sunsets unfold over the ocean. Occasionally, there was someone huddled in a blanket under a palm tree or sleeping on a park bench. If you ran at dawn, or in the evening, you hoped you wouldn't wake him or her up.

By 1985, piles of sleeping bags began appearing under the trees, and small clusters of other homeless people stood by them, watching passersby warily, daring them to come closer.

Then a friend of mine—an avid runner—was threatened by a man brandishing a knife. He lived on the bluffs, this man told my friend. It was his territory. I started to feel eyes trailing me as I ran, so I stopped running there.

I had another reason for deciding to run somewhere else: I imagined what might happen if someone recognized me—someone who sleeps under newspapers at night and hopes it doesn't rain. What would I say if I were asked why I didn't talk to my father—or argue with him—about this national tragedy? I would have to try to explain that I didn't know how: How do you argue with someone who states that the people who are sleeping on the grates of the streets of America "are homeless by choice"?

By the second term of the Reagan Administration, the National Coalition for the Homeless said that, across the nation, 2 million to 3 million people were living on the streets. It was 1985, and the federal government still admitted only to a maximum of 350,000 homeless. Estimates vary notoriously, depending on the group doing the counting. But no matter which set of figures one believes—the advocacy group's or the government's—the number is staggering. What is more staggering is the daily reality of seeing people who have been abandoned by one of the richest countries in the world. We pass by them—huddled in doorways, urinating in plastic bottles, staring at us with angry eyes. We don't know if they're drunk or dangerous, or just without money. So we pass by them and say nothing, our confusion and the words we don't say forming the distance between us. But the quicksand is just outside the borders of our own lives; there are invisible lines everywhere that don't show up until they're crossed.

By 1987, I had a new running course, which ended at a small restaurant where I could get a coffee-to-go and where, one day, I came face to face with a woman my own age who had nothing but a soiled coat and a hood to protect her from the world.

I invented a past for her, filling in the small steps of her history. I placed her in a well-to-do family whose ethic of child-rearing was teaching their offspring the value of a dollar. I thought back to a time when I was in college and had only $4 to my name. I was living in an apartment, and the rent was due. I had no food in the refrigerator, and the last people I'd have turned to for money were my parents. I'd learned my lesson well: During the Depression, everyone earned his own money, even children. Asking their parents for help was not an option, and they were better people because of it.

I ended up borrowing money from a friend, and a neighbor brought me some homemade soup. But what if there had been no one to help me, no one to ask? Maybe that's what happened to the young woman in the soiled coat: She crossed the invisible line, started falling with no one to catch her, and she kept falling.

She was still falling—I could see it. Her skin was getting redder, her hair more matted. She shuffled now, slowly—marking time. When she asked for a dollar one day, I gave her five and, for the first time, she met my eyes—a pale, blue second that let me see how she must have once looked. I pictured a bond, blue-eyed girl with pink dresses and a wide, limitless future. But someone forgot to tell her about the quicksand.

I drove away that day thinking about the awkward smile she gave me, half toothless and uncertain. And I wondered how far apart our lives really were.

It could, after all, have been me. Or you.

She disappeared for a while. I imagined her dead—another statistic, another Jane Doe. But then I saw her again. She crossed the street in front of my car, against the light, oblivious to the Don't Walk sign. Her clothes were torn from one shoulder; white skin glared from the mud-dark of her coat. I looked for wounds, some hint of what had happened to her, but I saw only the continued deterioration of a human being.

Meanwhile, a 1988 study by The National Alliance to End Homelessness calculated that, on a given night, there were about 735,000 homeless in the United States and that between 1.3 million and 2 million people would be homeless for one or more nights during the course of the year. Another study, released in 1988 by the Urban Institute, a leading think tank, concluded that about 600,000 Americans lived in shelters or on the streets on a given night, whereas advocacy groups for the homeless held firm—and still do—that the victims number in the millions. The Census Bureau promises an accurate and official count of the nation's homeless by year's end.

But perhaps the crucial lesson lies in the stories we were fed by the last administration, in the justifications we were given for dismantling systems designed to provide for those in need. Does it really matter that a few find ways to cheat, to buy things other than staples with their food stamps? Should these isolated incidents justify chipping away at the whole system? The small indiscretions can be tolerated; the sanctioning of nationwide neglect of our own cannot and should not.

There are no "points of light" for those who sleep on grates and park benches. There are only long days, strung together by hunger and monotony; nights with little or no shelter from the cold. The only lights are those blinking in the windows of buildings they cannot enter.

HONORING "NEW JERSEY CARES"

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. COURTER. Mr. Speaker, it gives me great pleasure to recognize "New Jersey Cares," a project which supports the military personnel over in the Persian Gulf by supplying them with boxes of items which are most likely not to be found where the troops are stationed.

There were three collection sites set up throughout New Jersey. After the goods, which were donated from corporations and businesses based in the State, volunteers filled these red, white, and blue boxes, over 1,000 in all, with books, snack foods, stationary and pens, playing cards, and personal hygiene products.

Once packaged, these goods were promptly shipped by Federal Express to the USO in Germany and then distributed to soldiers in route to Saudi Arabia.

The chairman of this statewide project, Assemblyman John V. Kelly, Essex, came up with the idea after reminiscing of packages he received during World War II as a soldier. He then recruited about two dozen other legislators to participate in this event.

I would like to commend all who participated in this statewide effort and for the tireless hours for which they have worked. A project such as this one shows us all that the people of New Jersey can work together in unity when vital events come into our lives.

I would especially like to thank Assemblyman John V. Kelly for all of his work on this project. In addition, I would like to acknowledge Assemblyman Joseph M. Kyrillos and Assemblyman Dolores G. Cooper for their organizational effort in helping "New Jersey Cares" come together successfully as it did.

HONORING BOB LANDIS

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. WAXMAN. Mr. Speaker, I ask my colleagues to join me in honoring my constituent, Bob Landis, on his retirement from active management of Landis Department Store.

The Landis Department Store was first opened more than 50 years ago by Arthur Landis and has been run by this son, Bob, since 1954. During this time, Bob Landis has been much more than just a local merchant. He has been a mentor to scores of young employees, and a friend and neighbor to all with whom he has come into contact.

Mr. Landis has contributed many years of service on behalf of such worthy local groups as the Hollywood-Wilshire Boy Scouts, the Wilshire YMCA, the Wilshire Rotary Club, and the UNCLA Blue Shield. He has been a registrar of voters and active in local politics for more than 25 years. He and his wife Bettie have served as officers and founding members of the Windsor Square-Hancock Park Historical Society.

I have no doubt that Mr. Landis is looking forward to the well-earned joys of retirement. I wish him good health and much relaxation. I trust that our local community—to which he has already contributed so much—will continue to benefit from his energy, wisdom, and compassion for many, many years to come.

BURMESE STRUGGLE FOR A DEMOCRATIC TRANSITION

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. PORTER. Mr. Speaker, for nearly 30 years Burma was closed to the world as the Burmese people languished under a repressive military dictatorship. Suddenly, Burma hit world headlines in 1988 as a result of mass uprisings that the military government responded to with unprecedented brutality. Close to 3,000 students and mostly unarmed civilians were gunned down by the military. Thousands more were arrested and nearly 10,000 fled to the Thai-Burma border seeking refuge.

Over the past 2 years, reports of torture, forced porterage, and restrictions on all forms of free expression have been common and widespread. Prodemocracy students and civilians along the Thai-Burma border live in constant fear of military raids and lack adequate food and medicines.

Responding to world outrage, the military government promised to hold elections this past May, and to the surprise of all, was defeated by members of the main opposition party, the National League for Democracy, by an overwhelming majority. Since May, the military regime has refused to transfer power and has arrested the main opposition leaders. They remain deaf to pressure from the international community and strong opposition within Burma.

Since August, Buddhist monks in Mandalay have joined the opposition by refusing to perform rites for Army officers and their families. Ninety percent of the Burmese people are Buddhists and to be denied access to the clergy sends a strong signal of widespread discontent. This boycott spread to monks in Rangoon. The monks prepared for a march from Mandalay to Rangoon. Buddhist monks declared their willingness to be the first to die unarmed, in order to shield civilians from any shooting by the Army.

But, on October 20, the military junta banned most Buddhist organizations, threatening monks involved in the boycott with the death sentence, and forcing an end to the boycott. The Washington Post reported that the Burmese state radio broadcast:

These illegal organizations, through their deeds, words, and publications are threatening, blackmailing, and boycotting the state government and are found to be undermining law and order.

In a country where the brutal military regime ignores even the most basic human rights, to accuse Buddhist monks who only represent the commitment to peace, proves how desperate a situation the military is in. Unless the military government relinquishes its power to the party elected by the people, the National League for Democracy, the people will continue to protest and in turn be crushed by military forces.

A TRIBUTE TO ARCATA ASSOCIATES, INC.

HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BILBRAY. Mr. Speaker, on Friday, November 16, 1990, at 8 a.m., there will be an awards ceremony in the Galaxy Theatre at Spaceport USA, FL. Arcata Associates, Inc., has been selected as the NASA, Kennedy Space Center Small Business of the Year for fiscal year 1990. The ceremony is being held in conjunction with the annual Kennedy procurement briefing to industry. Mr. Buck Wong, the founder and president of the company, will receive a plaque in honor of the excellence and exceptional performance of Arcata Associates, Inc., in respect to their contract with NASA.

Arcata Associates, Inc., is one of southern Nevada's growing high-technology defense-aerospace companies. In 1979, Arcata started operations in southern Nevada with 60 employees. Today, Arcata has 300 employees performing on Air Force or NASA contracts in Nevada, Arizona, California, Florida, Idaho, Louisiana, New Mexico, and South Carolina.

Arcata is the installation support services contractor for NASA's western test range at Vandenburg AFB, CA. Arcata's mission includes the operation and maintenance of the NASA Mission Director Center, telemetry station, data acquisition systems, and facilities, to support checkout and launch of NASA spacecraft.

Mr. Buck Wong has been a leader in the high-technology defense-aerospace industry. His care and dedication to the field of engineering have been well balanced by this outstanding business acumen. Prior to establishing Arcata Associates, Mr. Wong devoted 14 years of his career to the aerospace and high-technology companies in the Silicon Valley. During those years, he honed his engineering skills while continuing to develop his expertise in the high-technology industry. In addition to his training as an engineer, Mr. Wong received an MBA from the Stanford Business School. His career in management includes a 5-year position at a nonprofit organization located in the San Francisco Bay area, where he offered management assistance to minority and women-owned small businesses.

TRIBUTE TO DR. RAYMOND LINUS ROOF

HON. CARROLL HUBBARD JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HUBBARD. Mr. Speaker, Raymond Linus Roof, a retired dentist from Paducah, McCracken County, KY, died last August 17 at age 82.

For many years my wife Carol and I have admired Dr. Raymond Linus Roof. Dr. Roof practiced the profession of dentistry for 55 years before retiring in 1988.

After graduating from St. Louis University in 1933, he returned to Paducah, KY, which is the largest city in my district, to set up a dental practice before being called to serve in World War II. He served as first dental surgeon of the Air Transport Command for many clinics throughout the world.

After the war Dr. Roof became involved in many civic projects and pursued his love of the arts. He was a violinist, sculptor, inventor, and writer. His ability as a sculptor was mentioned in many history and art books. He was known especially for his portraits of the world's great politicians, artists, writers, and musicians. He was quoted and published in various professional periodicals and wrote a book of abstract philosophy titled "Alpha Omega Entropy." He designed and patented a unique building block and numerous dental instruments.

As president of the Paducah Lions Club in 1947, Dr. Roof designed the first radio auction to create funds for helping spastic children and to finance a building for the treatment of crippled children. The radio auction was the forerunner of the highly successful, annual Paducah Lions Club telethon, which is recognized by many Kentuckians as our State's most successful fundraiser for crippled children. It is seen in the huge viewing area of the powerful NBC-TV affiliate in Paducah, WPSD-TV, specifically western Kentucky, southeast Missouri, northwest Tennessee, and southern Illinois.

Though many will miss Raymond Roof, we will never forget him. My wife Carol and I extend to the family of Dr. Raymond Linus Roof our sympathy upon his death.

A TRIBUTE TO GAITHERSBURG ELEMENTARY SCHOOL

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mrs. MORELLA. Mr. Speaker, I rise to congratulate the faculty, parents, and students of Gaithersburg Elementary School in Montgomery County, MD, on winning the Excellence in Education Award under the Department of Education's school recognition program.

Gaithersburg Elementary School won this Blue Ribbon Award based on several factors, including a sense of shared purpose and strategy among the teachers in meeting the needs of a diverse student body, an outstanding parent outreach program, and utilization of the latest technologies in developing innovative programs to motivate the learning process.

The students at Gaithersburg Elementary School come from 30 different countries, and more than half are minorities. Under the leadership of Principal Karen Karch and a dedicated faculty, the school has become one of the finest in the metropolitan area at the forefront of multicultural education. Gaithersburg Elementary has a special resource room for parents who are encouraged to become participants, rather than observers, in their child's education. A second "Back to School Night" is held at the school to serve the Spanish and Asian communities, and interpreters are present to promote better communication.

The teachers at Gaithersburg Elementary School go beyond fulfilling the duties of the classroom. They participate in a special "Champ" program to boost self-confidence among the students who are considered "at risk." Faculty members meet with these students at least 1 hour per week, on a one to one basis, to address their special needs.

As a former teacher, I am delighted that Gaithersburg Elementary School is receiving the recognition it deserves. Mr. Speaker, it is a proud moment for me to pay tribute to the devoted faculty and supportive parents of this outstanding school for their commitment and their responsiveness in providing a quality education to a diversity of students. I congratulate Gaithersburg Elementary School on receiving national recognition from the Department of Education, and I wish the winning combination of faculty, students, and parents at the school continued success in achieving excellence in education.

INTRODUCING THE NATIONAL FISHERY RESOURCE CONSERVATION ACT

HON. JOLENE UNSOELD

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mrs. UNSOELD. Mr. Speaker, today I am introducing the National Fishery Resource Conservation Act to improve the overall health of our fish populations and reverse the drastic declines of critical fish habitat.

In southwest Washington, fisheries are critical to the financial lifeblood of many of our communities. Our Washington commercial fishermen catch over 400 million dollars' worth of fish annually with an economic value approaching $1 billion. On the recreational side, there are over 300,000 resident Washington State anglers and another 30,000-40,000 out-of-State residents who fish in our State.

Despite the value of our fish resources, their abundance has been steadily declining and many areas of nationally significant fish habitat are under assault from environmental pollution, hydropower development, industrialization, and urbanization—not just in Washington State, but throughout the rivers, streams, and coastal waters of this country.

Mr. Speaker, my message today is that the Federal Government can and must do more.

In southwest Washington, my Chehalis River Restoration Act—which was signed by the President this week—is an example of a broad-based and effective Federal fish restoration program. This legislation authorizes a comprehensive and coordinated approach to studying and resolving the problems on the river; an approach that brings together Federal, State, port, and tribal resources and builds upon local expertise and previous findings.

Mr. Speaker, the legislation I am introducing today adopts the approach outlined in the Chehalis River Restoration Act as a blueprint for a national program. Under the National Fishery Conservation Act, the U.S. Fish and Wildlife Service has specified authority to enter into cooperative agreements with other Federal agencies, States, and Indian tribes to provide for improved fish management.

The bill goes further, addressing my concern over loss of key fish habitat. The Fishery Resource Conservation Act will establish a system to set national priorities for fish habitat restoration and management. It will also require an annual report to Congress on the actions of the conservation system, identifying the status of fisheries in the United States and proposals to manage identified problems.

Mr. Speaker, time is running out for action on this bill. I am introducing this legislation today, however, as a starting point. I look forward to working with fishermen of my district and throughout the country, and with the distinguished chairman of our Fisheries and Wildlife Conservation and the Environment Subcommittee, Congressman GERRY STUDDS, to refine this proposal after adjournment. I expect our efforts will produce an improved bill that we can enact into law when we return next year.

During the past 2 years, restoring and enhancing the fish resources of the great Northwest have been among my priorities. This is why I have spent so much of my time seeking a ban on those horribly destructive high seas driftnets; this why I am so pleased that the President has signed into law the Chehalis River restoration bill; and this is also why I am so excited about the legislation I am introducing today—the National Fishery Conservation Act.

TRIBUTE TO GERVIECE "GERRI" BROWN

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FAZIO. Mr. Speaker, I would like to commend Gerviece (Gerri) Brown on her outstanding contribution to the field of education. Named California's distinguished principal among elementary and middle school administrators, Ms. Brown has been described as one of Vacaville's most effective principals. After serving at Fairmont Elementary for 11 years, she was recently appointed to head the new Jean Callison Elementary School.

A former University of California fellow for the bay area writing project, Ms. Brown developed the training program, "Writers in Training" [WIT], which has become so successful that all new teachers in the district are required to attend this program. Since the improvement of writing is one of the district's top priorities, Ms. Brown has unselfishly given up much of her own time, without extra compensation, to make WIT a successful program.

Ms. Brown believes that each student has value and something positive to offer the world; therefore, students must be given the impetus to work hard and obtain the education needed to be the leaders of tomorrow. According to those who work with her, what makes Ms. Brown unique is her ability to listen, her accessibility to students and staff, and her sense of caring. For the last 15 years, she has served as principal and has helped shape the lives of our Nation's young leaders.

Ms. Brown brings to each school an abundant amount of energy and enthusiasm which is infectious for the students. At Fairmont, her students participated in activities such as: Student of the Week; Cinco de Mayo; and Black History Week.

Outside of school, Ms. Brown has also exhibited leadership by serving as president to the Association of California School Administrators, region 4. In addition, she has devoted many hours serving on the Pacific Gas & Electric Co's. education advisory panel. Mr. Speaker, it is with profound pleasure that I recognize Gerri Brown for her outstanding work in shaping the future of children in our community and the State of California.

THE 25TH ANNIVERSARY OF CALIFORNIA STATE UNIVERSITY

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BROWN of California. Mr. Speaker, I rise today to call attention to California State University at San Bernardino on the occasion of its 25th anniversary.

This campus has grown from an initial student population of 283 in 1965, to a current enrollment exceeding 12,000. Over the course of 25 years, more than 17,000 students have received their degrees from Cal State San Bernardino. The campus, through its distinguished faculty and high-caliber administration, has established a strong working relationship with the community, and continues its outreach efforts to different segments of the population.

Cal State San Bernardino has compiled a distinguished record of excellence in academic achievement, scholastic integrity, and community service and involvement. As the Inland Empire has developed into a region with its own identity, separate from Orange and Los Angeles Counties, Cal State San Bernardino has likewise acquired its own identity as a special contributor to a higher quality of life for its students, and the greater community it serves.

Its graduates have gone on to contribute to the improvement of society in a wide variety of fields, and they retain a strong loyalty and respect for their alma mater. Former and current students, and a faculty that regularly gains in stature, have earned the university a reputation for high quality educational programs, a challenging curriculum, and a dedication to making the process of learning both relevant to everyday living, and current with ongoing developments in the public, private and academic communities.

I am pleased to have this opportunity to recognize the contributions made to the people of California and the Inland Empire by California State University at San Bernardino, and to offer my best wishes for the next 25 years and beyond.

HONORING THE WOMEN WHO HAVE SERVED

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BILIRAKIS. Mr. Speaker, in 1984, I sponsored the first piece of legislation introduced in Congress that called for national recognition of women veterans. While I was pleased to be the originator of this worthwhile endeavor, I was surprised and disappointed that such recognition had not been given before. I am proud to say that every year since, Congress and the President have approved "National Women Veterans Recognition Week."

The Department of Veterans Affairs estimated that there are more than 1.2 million women veterans in this country, representing 4.2 percent of the total veteran population. In the State of Florida over 75,000 women veterans reside.

One reason I sponsored National Women Veterans Recognition Week is to honor the women who have served in the Armed Forces and to increase the public awareness of their significant contributions to the defense of this great Nation. Women have served in and with the military services since our country was founded.

Despite the fact that women are officially excluded from "combat duty," we all know that many women veterans served under very difficult and dangerous circumstances—and many gave their lives for this Nation.

Official military participation for women began in 1901 with the formation of the Army Nurse Corps and was followed in 1903 with the formation of the Navy Nurse Corps. However, in every war before the 20th century in which the United States was involved, small numbers of women disguised themselves as men in order to serve in combat areas.

Among the most famous of these women veterans were Deborah Sampsom, alias Robert Shurtleff, in the Revolutionary War; Lucy Brewer, alias George Baker, in the War of 1812; and Loreta Vasquez, alias Harry T. Buford, in the Civil War.

Less publicized, of course, were the countless women who served, albeit in a civilian status, as nurses, cooks, laundresses, seamstresses, and other acceptable feminine pursuits of the time.

During World War I, the Army held fast to its prohibition against the enlistment of women, but the Navy enlisted the assistance of 13,000 women as telephone operators, clerical workers, typists, and stenographers. These women were the first to be accorded full military rank and status.

When the First World War ended, however, they were demobilized, and save for the Army Nurse Corps, the American armed services were once again all-male institutions.

World War II marked a turning point in the history of women in the military. On May 14, 1942, the Women's Army Auxiliary Corps, or WAACS, was created, followed 2 months later by the WAVES, which as you all know stands for "Women Accepted for Voluntary Emergency Service."

In 1947–48, Congress recognized the valuable service of women during World War II and granted them active duty status in the regular Army, Navy, Marine Corps, and Air Force. A total of 350,000 women served in the four services during World War II and their contribution to the war effort was invaluable. Perhaps the greatest compliment paid to the American women who served came from Gilbert Speer, Adolph Hitler's weapons production chief. Speer is reported to have said, and I quote:

> How wise you were to bring your women into your military and into your labor force. Had we done that initially, as you did, it could well have affected the whole course of the war. We would have found out, as you did, that women were equally effective, and for some skills, superior to males.

Women continued to play an active role in Korea and Vietnam and, in 1975, Congress further recognized their important contributions by requiring the service academies to admit women. In fact, last year marked the first time that West Point Academy has a woman as the first captain of the cadets, Kristin Baker.

Today, as our country faces the latest military crisis in the Persian Gulf, women are serving in a wide variety of jobs. Women pilots from the 101st Airborne Division are ferrying supplies and personnel in helicopters. Female mechanics from the 24th Mechanized Division are maintaining tanks, handling petroleum, and coordinating water supply. Throughout the region women are working as truck drivers, cargo handlers, intelligence specialists, flight controllers, communications experts, and ground-crew chiefs.

In addition to coping with the tensions that surround any military crisis, the thousands of women deployed to the gulf face a completely different set of rules than their male counterparts. For example, when desert temperatures soar to above 120 degrees, the men strip off their heavy battle fatigue jackets and work in their T-shirts. But the women must continue to wear their desert jackets—fully buttoned. The U.S. military had to obtain special permission from the Saudi Government to allow its women drivers to operate trucks and forklifts in a culture that forbids women to drive.

Despite the continuous service of women throughout the history of our Nation, we have not always recognized their tremendous contributions, nor have we paid attention to their needs as veterans.

It is my hope that National Women Veterans Recognition Week will highlight the special needs of women veterans, particularly in the areas of health care, employment, and readjustment problems. Of greatest importance is to increase women veterans' awareness of the availability of VA benefits and services for which they are eligible. Although much has been accomplished in the past several years, women veterans are less likely than their male counterparts to use veterans' benefits such as VA health care and the Home Loan Guarantee Program.

National Women Veterans Recognition Week is a time for the country to become better acquainted with the service of women veterans and to express our gratitude to them for that service. However, it is also a time for

women veterans themselves to remember their years in uniform and take pride in the many contributions they have made to the security and well-being of our great country. Women veterans have much to be proud of.

TO BUILD A BETTER HOUSE

HON. LYNN MARTIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mrs. MARTIN of Illinois. Mr. Speaker, since this may be my last opportunity to address this body, I want to take the occasion to thank my colleagues on both sides of the aisle for all their friendship, support, and assistance over the last 10 years I have served here.

As with any dynamic and thriving institution, it is the people who fill it that give it its spirit and drive. And the House of Representatives, perhaps more than any other institution in our society, is truly a spirited and driven body, mainly because it reflects so well the diversity of our people. That is what gives it the life, the excitement, and vibrance that have made my life here so challenging and fulfilling. That is why I have come to love the people's House over this past decade.

However, just as the unexamined life is not worth living, the uncritical love is not worth the loving. I have been a critical lover of this House over the years because I know, as great as this House is, it is capable of more, it is capable of better.

These past few weeks this House has experienced a great deal of turmoil, of disarray, and even of bitterness. We have, at times, even been overly critical of ourselves and of each other because we know how disgusted and disappointed the American people are with our seeming indecision and divisiveness.

Part of this is because we probably are so representative of our constituents. There is a great ambivalence among the American people about their Government. On the one hand, they want us to balance the budget and be more fiscally responsible. On the other hand, they don't want us to cut the programs that benefit them or to raise their taxes. And so we are caught in the middle and condemned for the political paralysis and deadlock that results from these conflicting pressures.

Nobody ever promised that democracy would be neat and efficient. And we are living proof that it can be very messy and chaotic at times. I would like to think, though, that there are certain things we could do in this House to bring greater order out of the chaos that besets us.

And while congressional reform can never be a solution in and of itself, it can certainly help pave the way for devising solutions to our great national problems in a much more orderly way than we now go about things.

I therefore want to use my remaining time to discuss a few things that could be done to improve the legislative branch of Government, or at least this half of it. First and foremost, the House needs to better rationalize its committee and subcommittee jurisdictions. We have such a tangle and overlap now of jurisdictions over legislation among the 160 odd committees and subcommittees of this House that it's a wonder that we ever get anything done.

We are all justifiably critical of summits and ad hoc task forces that circumvent the standing committee system. And yet we fail to recognize or admit that the main reason the leadership reports to such devices is because our committee system is incapable of acting with dispatch and direction—it's broken.

Some time ago I proposed that we establish a single House committee with jurisdiction over drug abuse and control legislation. According to the Congressional Research Servcie, some 53 House committees and subcommittees now share jurisdiction over that subject matter—and that's not even counting the Appropriations Committee or the Select Committee on Narcotics.

We have the same problems when it comes to any number of other pressing national problems, whether it's transportation, energy, health, or children. And yet, we spend half our time fighting turf battles with each other rather than fighting the problem itself. Let's eliminate unnecessary committees and subcommittees and staff and realign our committees along more rational and functional lines of authority and accountability. Let's get more serious about the problems we were sent here to solve, and less distracted by our internal bureaucratic bickering.

Second, by cutting back on unnecessary committees and subcommittees, we should be able to give Members fewer and more realistic legislative assignments and responsibilities. This should produce better deliberation, legislation, and oversight.

Third, I urge the House to make a more serious effort to bring itself under the same laws that it imposes on the country. We have made some initial progress at this but there are already signs of retreat. Madison said that we were unlikely to produce bad laws so long as we were subject to those laws ourselves. This lesson is lost on some who continue to think that we are a privileged class and should be exempt from the laws we made others obey.

This leads to my final suggestion, one which I have not come to lightly, and that is the need for a term limitation for House and Senate Members. I have proposed that House Members not serve more that six consecutive terms, and Senators not more than two consecutive terms. I have no problem with Members who may wish to return to Congress after sitting out a term. It would be good for them and the country to live and work again among their constituents before running again. It might just give them a refreshing new perspective on the laws we pass. And it might also give new impetus to meaningful campaign reform.

I thank my colleagues for their attention. I urge you to work together to build a better House.

OPPOSITION TO THE PROPOSED RULE FOR LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. VISCLOSKY. Mr. Speaker, I rise in opposition to the proposed rule for labor standards for the registration of apprenticeship programs (29 CFR Part 29) published in the Federal Register on August 24, 1990.

The proposed rule would have a devastating impact on apprenticeship programs throughout the country for several reasons. The proposed rule would abolish the existing ratio requirement of apprentices to journeymen as well as requirements for minimum hours of related classroom training, which are essential components of meaningful apprenticeship programs. The proposed rule would also effectively eliminate existing State apprenticeship councils, which have members from employer and employee groups and exist in 26 States, the District of Columbia, and three U.S. territories.

I am also concerned that the impetus for changing the State apprenticeship programs is coming from antiunion groups that advocate less rigorous standards for apprenticeship training. The portability of the new rule would give automatic approval to contractors to use apprentices from other States. Contractors could also hire an unlimited number of local apprentices for jobs lasting longer than 6 months, but there is no provision for contractors to retain locally hired apprentices when the job is completed and contractors leave the State.

I have joined over 100 Members of Congress in contacting the Secretary of Labor to express my opposition to the proposed rule. It is my sincere hope that upon reviewing the comments submitted during the comment period, which has been extended until November 23, 1990, the Department of Labor will reevaluate its support for the proposed rule.

Finally, I urge you and all of my colleagues to contact the Labor Department and register vehement opposition to this ill-conceived proposal.

KOL YISRAEL AREIVIM AWARD RECIPIENTS

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LEVINE of California. Mr. Speaker, I rise today to recognize Merrill Alpert, Rabbi Jonathan Miller, and Steve Saltzman, who will receive the Kol Yisrael Areivim Award from the State of Israel Bonds New Leadership Division on Sunday, November 11, 1990.

They are being recognized for their many contributions to Jewish community life and their continuing support for a strong and secure State of Israel. This year, the State of

Israel Bonds agency has committed 100 percent of all funds raised to support and assist in the absorption of Soviet Jews arriving in Israel. The three have worked over a period of many years in advancing freedom and human rights for Soviet Jewry, and have contributed significantly to the historically unprecedented exodus of Soviet Jews. It is estimated that this exodus will result in more than 1 million new Israeli citizens.

I urge my colleagues to join me in congratulating these three outstanding community leaders who have shown themselves to be dedicated champions in the cause of human rights and freedom.

WAYNE SPRADLEY HONORED AS CITIZEN OF THE YEAR BY PELL CITY, AL, CHAMBER OF COMMERCE

HON. CLAUDE HARRIS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HARRIS. Mr. Speaker, I would like to share with my colleagues the recent honor bestowed upon my good friend, artist Wayne Spradley. Mr. Spradley, an internationally renown watercolorist, was selected as the 1990 Citizen of the Year by the Pell City, AL, Chamber of Commerce. This annual award is presented to a resident who demonstrates the true meaning of citizenship by making a personal and civic commitment to his or her community.

As a native of Pell City, Wayne Spradley started his career in art during his junior high school days. As a star athlete, Wayne combined sports with his enjoyment of art. After high school he served honorably in the U.S. Navy. Upon his discharge from the military, he returned to Pell City and married his school friend, Patricia Rich, and began working at the local steel company. It was during this time that Wayne began an extensive study in watercolors. His first show was a sellout, and his successful career as an artist was then launched.

Having lived most of his life in St. Clair County, AL, Wayne has a deep and abiding sense for his surroundings and has drawn from his Southern heritage to capture on paper the beauty of God's creations from flora to fauna to water fowl, to people.

Wayne's art has an immediate emotional appeal to both lay person and schooled artist. His distinction as an artist has earned him over 200 major art awards. For 1980–81, he was commissioned to paint the Alabama State Duck Stamp. He was given the Golden Shield Award by Ducks Unlimited for his painting, "Broken Arrow Mud Flats," which was print of the year for that organization. For 14 years he has exhibited at the prestigious Waterfoul Festival in Easton, MD. To represent Alabama, the Alabama Travel Council selected Wayne Spradley watercolors to be auctioned off at the National Travel meeting.

Throughout Wayne's career, his benevolence has been felt by local civic clubs and organizations, schools and churches. He has generously donated his original artwork to benefit many charitable causes. One of the highlights of Wayne's civic undertakings is to present a painting to the winner of each year's Talladega 500 Nascar race.

While Wayne's paintings are in private, corporate, and museum collections world-wide, he is extremely proud that former President Jimmy Carter and President Bush have his art in their own personal collections. I feel especially fortunate to have on display at my office one of Wayne's watercolors that depicts a nostalgic Alabama scene. I invite all of my colleagues to come by my office and admire his artwork.

Because of Wayne's notoriety throughout the art world, he has become an ambassador of good will for both Pell City and the State of Alabama. I am delighted to have this opportunity to congraulate Wayne Spradley on receiving the coveted Citizen of the Year Award.

IN HONOR OF IRV LEWIN

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. VISCLOSKY. Mr. Speaker, I rise today to pay tribute to a well-known and highly respected personality known throughout northwest Indiana, Mr. Irv Lewin.

Every morning, thousands of Hoosiers in northwest Indiana wake up with Irv. Maybe I should have mentioned earlier that Irv is the host of radio station WJOB's "Irv Lewin Show" which can be heard every weekday morning. Irv's show is a verbal community bulletin board. He interviews community leaders, elected officials, religious leaders, sports personalities and others whose perspectives and insights are of interest to residents of the region. Additionally, Irv airs "Five Minutes With Irv," a commentary in which he offers his views on topics that need to be focused on.

Irv's involvement with his community does not end when he leaves WJOB at the end of the work day. He is an active participant, board member and officer in numerous civic and business organizations, including the East Chicago Lions Club, the East Chicago School Board, the Saint Joseph College Board of Trustees, the First Bank of Whiting, the Salvation Army and the Indiana Higher Education Commission. For his accomplishments and contributions to our region and State, Irv was named a Sagamore of the Wabash, the highest honor of excellence bestowed by the Governor of Indiana.

I am proud to note that Irv is a local boy "done good." Born in East Chicago, and a graduate of East Chicago Roosevelt High School and Indiana Unversity, Irv has remembered his roots and strengthened them over the years. In spite of the fact that my wife, Anne O'Keefe, has been on his show and I have not, I still believe that Irv is one-of-a-kind and he certainly deserves the unofficial title of "Local Legend" that has been bestowed on him.

THE ANDEAN TRADE PREFERENCE ACT OF 1990

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. CRANE. Mr. Speaker, on October 12, I joined the chairman of the Ways and Means Subcommittee on Trade in sponsoring H.R. 5823, the Andean Trade Preference Act of 1990. Closely patterned after the Caribbean Basin Economic Recovery Act of 1983, as amended, and the recently passed Caribbean Basin Economic Recovery Expansion Act of 1990, this bill gives the President the authority he has requested to extend duty free treatment to eligible products from Colombia, Bolivia, Equador, and Peru for a period of 10 years. H.R. 5823 represents just one aspect of the administration's package of measures aimed at expanding economic opportunities for Andean countries.

The purpose of this legislation is to provide an alternative to the many peasant farmers in the Andes Mountain region who have become increasingly dependent upon the lucrative production of the coca plant. Poor farmers have had little choice but to replace their fields of legitimate crops for coca because the United States has made it more profitable for them to do so. This is in part due to the high demand for cocaine in our country, as well as the fact that protectionists in the United States have limited the access to our market to many of the region's legitimate goods. As a result, farmers in Peru and Bolivia have switched from the production of legal to illegal crops and today produce nearly 90 percent of the world's coca.

The United States has taken a two-pronged approach in our war against drugs. In an attempt to reduce the Nation's growing demand for illegal drugs, fines and penalties for sale and possession have been significantly strengthened, and education of our youngsters about the harmful affects of drugs is taking place throughout the country. Until recently, however, other than funding the efforts of our South American allies to eradicate coca production, the United States has done little to reduce the supply of drugs into our country. Surely, this is evidenced by the growing incidence of drug related crimes.

Until the peasant farmers in the Andean region are offered a viable alternative, they will continue to harvest coca out of economic necessity despite the fact that they would surely prefer to produce legitimate crops. By removing many of our import barriers, this bill will serve as an incentive to farmers to replant their fields with lawful crops and as a result the United States will finally realize a decrease in the supply.

I would like to salute my friend from California, TOM CAMPBELL, for his leadership in bringing this issue to the forefront. He was one of the first in Congress to call attention to the fact that military aid to the Andean countries, without the promise of a viable economic alternative to drug production, was not enough to solve our Nation's drug problem.

OUR COMPETITIVE POSITION IN THE GLOBAL ECONOMY

HON. WILLIAM H. GRAY III

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GRAY. Mr. Speaker, I want to draw the attention of my colleagues to an initiative of outstanding quality that the Subcommittee on Commerce, Justice, State, and Judiciary reviewed this year. This initiative responds to one of the most pressing needs that we face today as a nation: the need to enhance our competitive position in the global economy.

Mr. Speaker, Japan and Europe have surpassed the United States in the development of innovative applications for technology. The failure of many American industries to produce well-designed products to compete in the international market place has been a major contributing factor. The University of the Arts, through its Center for Advanced Design and Communication Arts Technologies, can promote higher standards of product design by developing new applications for advanced technologies, and by educating designers to integrate technologies effectively in design and production processes. The center will stimulate innovative applications of advanced technologies to product design through cooperative programs with industry and the promotion of effective transfer of information.

The University of the Arts is an especially appropriate setting for such a center. It has a longstanding tradition of cooperation with industry through efforts such as application and commercialization of technology and technology transfer. Furthermore, it is uniquely prepared to use a multidisciplinary approach to developing applications for advanced technologies, drawing from disciplines such as industrial design and the communication arts such as print, graphics, photography, film, animation, video, and sound. These disciplines make it possible to increase a product's market share through the quality of its design and through its presentation to the public.

This initiative, Mr. Speaker, while not yet federally funded, is of undisputable quality. I remain committed to the development of this center and will continue to work with my colleagues to see that it receives Federal funding to augment the funding already received from the university, industry, and pledged by the State of Pennsylvania.

LET'S KEEP OUR PARKS NATIONAL

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GALLEGLY. Mr. Speaker, I rise to inform my colleagues that today I am introducing a sense-of-the-Congress resolution to call on the Secretary of the Interior to not award national park concession contracts to foreign-owned companies.

I realize that this session of Congress is rapidly nearing a close, but I wanted to inform my colleagues of this latest series of events, and to put all parties on notice that as a member of the National Parks and Public Lands Subcommittee, I intend to vigorously pursue this matter in the 102d Congress.

Mr. Speaker, it is with a sense of embarrassment that I look around this great country and see more and more of its landmarks bought up by foreign nations, such as Rockefeller Center and the famed Pebble Beach golf course. Foreigners now own nearly two-thirds of downtown Los Angeles, nearly 40 percent of downtown Houston and one-third of downtown Minneapolis.

And now comes word that the huge Japanese conglomerate Matsushita Electric Industrial Co. is attempting to buy out the MCA, Inc., which is the parent company of the Yosemite and Curry Co., which has for many years provided concession services in one of the most beautiful and historic of all our national parks, Yosemite.

Mr. Speaker, I say it's time to take a stand. Frankly, I am troubled that so many American companies are being acquired by the Japanese. I am particularly troubled that Matsushita, which participates in an ongoing economic boycott of Israel, is the company involved in this case. This company simply has no business doing business in an American national park. I am pleased to report that the head of the National Park Service, James Ridenour, has urged MCA to sell or donate the Yosemite concession before being acquired by Matsushita. If acquisition is inevitable—and I hope it isn't—then I would anticipate that the vast majority of this House would agree.

When I reintroduce this legislation in January, I look forward to the overwhelming and rapid support of my colleagues on this issue.

COMPROMISE BUDGET

HON. JIM McCRERY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. McCRERY. Mr. Speaker, the American people must learn they can't have their cake and eat it too. They can't continue to elect a Republican to the White House to keep their taxes low and to do the right thing for the country, and send Democrats to Congress to fatten all the Federal programs they think are important and to create new ones.

The result of such schizophrenia is divided Government with no clear direction. The result is the budget package that is being put on our plate.

It stinks. But because it is better than the alternative available under our divided Government, I'll hold my nose and eat skunk for dinner today or tomorrow—I'll vote for this compromise budget.

But Americans need to make up their minds—low taxes and hard-nosed leadership by Republicans, or more and more taxes and spending on more and more Federal programs by Democrats.

CENTENNIAL OF HIGHGROVE UNITED METHODIST CHURCH

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BROWN of California. Mr. Speaker, I rise today to recognize the Highgrove United Methodist Church, which will celebrate its centennial on Sunday, November 18, 1990.

The church, under its current pastor, Rev. Virginia Fifield, will recognize "100 years of caring," as former and present members of the congregation gather within the 100-year-old walls of its recently remodeled building, which now includes five classrooms, a nursery, lounge, and multipurpose meeting room.

Reverend Fifield and her 40 predecessors have developed a strong tradition of caring, represented by a great number of community activities. Among them are community monthly luncheons, seasonal ice cream socials, barbecue dinners, rummage sales, and spaghetti dinners, all organized thanks to the hard work of United Methodist Women, Miriam Circle, Golden Years Fellowship, Junior Aide, and United Methodist Youth Fellowship.

However, beyond these more traditional community events, the Highgrove United Methodist Church has expanded its outreach efforts by involving itself in area hunger projects. It has acted as a brown bag distribution center for individuals and families through the area surplus food coordinating agency, co-sponsored the Pilgrim's Picnic Thanksgiving Program for needy families in the area, provided a Parsonage Pantry for transients and needy families, and donated food and clothing to the Frazee Community Center.

The church also serves as an election polling place, a meeting place for Alcoholics Anonymous, 4-H, and Japanese Exchange Student programs, the meeting site for the Riverside County Supervisor's Highgrove redevelopment committee, and the temporary sanctuary and school site for a new Seventh Day Adventist congregation. Its own education program has expanded to accommodate a greater than 500-percent increase in its school population since 1985. Population growth has also led to a long-range membership assimilation program for the community.

I am pleased to recognize the centennial celebration of the Highgrove United Methodist Church, and encourage my colleagues to join with me in giving our best wishes to this congregation at the start of its second "100 years of Caring."

IN RECOGNITION OF THE 20TH ANNIVERSARY CELEBRATION OF THE NATIONAL ALLIANCE OF BLACK SCHOOL EDUCATORS [NABSE]

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. CLAY. Mr. Speaker, 20 years ago this coming November 1990, the National Alliance

of Black School Educators [NABSE] was founded.

As stated in its 1980 constitution, NABSE has as its purposes:

First, to promote and facilitate the education of all students, black students in particular;

Second, to establish a coalition of black educators and others directly and indirectly involved in the educational process;

Third, to create a forum for the exchange of ideas and strategies to improve opportunities for blacks;

Fourth, to identify and develop black professionals who will assume leadership positions in education;

Fifth, to influence public policy concerning the education of black people.

In view of these purposes, I believe that it is timely that we recognize the founder of this organization, Dr. Charles D. Moody, Sr., on the occasion of the 20th anniversary celebration.

Dr. Charles D. Moody, Sr., founder of the National Alliance of Black School Educators [NABSE] is hereby commended for being a visionary and seeing the need for all children, but particularly African American children, to have the quality and quantity of education they so deserve. This great vision resulted in the creation of the National Alliance of Black School Educators which he founded in 1970 for black superintendents. Three years later, the membership was opened to include black school administrators and educators. The National Alliance of Black School Educators will celebrate its 20th anniversary on November 16–19, 1990.

Mrs. Christella Moody, his wife, is also commended at this time for her many years of service as historian of NABSE. Mrs. Moody has been untiring in her efforts to chronicle the history of the national organization and its affiliates. Her work is captured in the publication "NABSE—1 Shared Dream", a history of the National Alliance of Black School Educators.

I honor both Dr. Charles D. Moody, Sr., and Mrs. Christella D. Moody for their persistence, tenacity, and lifelong commitment to improve the life chances of African-American children.

TRIBUTE TO GEORGE C. HOBSON

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize George C. Hobson who is retiring from his job as executive director to the town of Cumberland Housing Authority after 25 years of dedicated service.

George has given a great deal of his time and effort to the people of Rhode Island. He not only has served as the executive director since the inception of the Cumberland Housing Authority, but he also has held offices with the National Housing Organization. George formerly served as president of the Rhode Island Directors Association, a further example of his dedication to his job and our citizens. Rhode island as well as the Nation needs more leaders such as George. He is a great role model for everyone.

It is with great pleasure that I salute George Hobson for his outstanding achievements. I wish him a very happy retirement. He will be missed in his job.

A TRIBUTE TO ROBERT N. CHAMBERS

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FISH. Mr. Speaker, communities are made great by the people who live in them. That is true of Dutchess County, NY, and the wonderful people there.

One such individual is Robert N. Chambers of Fishkill, NY, whose list of contributions to Dutchess County is endless. Bob Chambers is a leading figure in the Hudson Valley banking community, but his accomplishments go far beyond that. He is trustee for the Area Fund of Dutchess County, a non-profit charitable community foundation. He also has been active in the Dutchess County Economic Development Corp., the Dutchess County Youth Resource Board, the Dutchess County United Way and the American Heart Association.

On Thursday, Nov. 8, Robert Chambers' hard work will be recognized when he is awarded the 1990 Area Fund Community Service Award. The Area Fund could not have found a better person to honor.

I salute Robert Chambers for a lifetime of dedication and service to the community he loves.

THANKS DEAN KIEFFER

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. GILLMOR. Mr. Speaker, I would like to bring to the attention of the Members of the House the contributions of one of my constituents to my U.S. service academy nomination selections process.

Dean Kieffer, of Fostoria, OH, recently completed a year of distinguished service on my Fifth District Academy Advisory Board.

I established my Fifth District Academy Advisory Board to assist me by conducting face-to-face interviews with qualified candidates for nomination for admission to the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, and the U.S. Merchant Marine Academy.

Dean Kieffer's active participation on my Fifth District Academy Advisory Board was invaluable to me in my difficult task of selecting those young men and women from northwest Ohio who would have the opportunity to compete for admission to our Nation's service academies.

Mr. Speaker, I ask all of my colleagues to join me in thanking Dean Kieffer for his unselfish service and significant contribution to these young men and women and to the future of our great Nation.

ALLOW RESERVISTS TO RETAIN HEALTH INSURANCE ELIGIBILITY

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. PEASE. Mr. Speaker, America is currently well-served by its forces overseas. There forces include members of each branch of the service including reservists and members of the National Guard. They are looking after our Nation's interests in the Middle East and, therefore, it is our duty to look out for their interests at home.

It recently came to my attention that many reservists who are now serving in the desert sands of Saudi Arabia, are paying large premiums to maintain their group health insurance coverage. This seems ridiculous to me as the soldiers and their families are already covered by military health plans, and makes even less sense when one considers that most of these men and women are taking a reduction in pay while serving their Nation overseas. Many of these reservist would drop their group health coverage but for the fear of a long and costly reinstatement process. So they are caught in a catch-22 situation and, as I mentioned before, it is our duty to help them.

The bill which I am presenting will, when enacted, allow our Operation Desert Shield Reserve forces to discontinue expensive, excessive group health insurance payments. It will also guarantee their ability upon return, to reenter their former group health insurance program without penalty and without a waiting period. I think all will agree that this is in the best interests of our active reservists overseas and, therefore, of our Nation.

That is why today I am proposing this legislation for consideration by the House. The reservists deserve our support in their absence and this legislation gives that support.

THE 150TH ANNIVERSARY OF THE SISTERS OF NOTRE DAME

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Ms. PELOSI. Mr. Speaker, the Sisters of Notre Dame in the Washington area will celebrate the 150th anniversary of the arrival of the first Sisters of Notre Dame de Namur in the United States on Sunday, November 11, at Trinity College.

Eight Sisters of Notre Dame came to the United States in 1840 from the seaport of Antwerp, Belgium. At that time, the congregation, which had its motherhouse in Namur, Belgium, was only 36 years old. The Sisters' first American settlement was in Cincinnati, OH.

The Sisters of Notre Dame came to Washington in 1873 at the request of Gen. William Sherman's wife to establish an industrial school for girls and an evening school for working women. From this endeavor, Notre Dame Academy was incorporated in 1833.

In 1897, Trinity College was established as the first 4-year Catholic college for women in the United States. In addition to a traditional undergraduate program, Trinity has a continuing education program, a flourishing weekend college program for women, and a coeducational graduate program.

The Sisters of Notre Dame in Washington initiated the successful education for parish service program which has prepared numerous men and women for this archdiocese as well as for several in other parts of the United States and in Europe.

Sisters of Notre Dame moreover, teach and/or administer at St. Jerome's Hyattsville; St. Camillus, Silver Spring; St. Peter's, Waldorf; and John Carroll High School. Many serve in various capacities at the archdiocesan pastoral center. Some are clinical or psychiatric social workers, chaplains, college professors; some are in health care, administration, or day care.

Worldwide, more than 2,600 Sisters of Notre Dame serve in 35 States in this country as well as in Canada, Mexico, Belgium, Great Britain, Italy, Japan, Africa, Central and South America. The Sisters of Notre Dame in the Washington area are proud of their own missionaries on three continents who stand on the shoulders of those first courageous women of 150 years ago.

As graduates of Trinity College who have benefited from the Sisters of Notre Dame, it is a personal privilege to call their contribution to the attention of our colleagues. Happy 150th anniversary to the Sisters of Notre Dame de Namur.

THANKS TO OUR VETERANS

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. MRAZEK. Mr. Speaker, I rise today to pay tribute to this Nation's 27 million living veterans and the more than 1 million who have died in the military service. November 11 will mark the annual Veterans Day observance for all the veterans who have answered their country's call to arms, and I call on my colleagues to join me in honoring them.

Thanks to our veterans, we enjoy the blessings of liberty, prosperity and hope. Claimed with blood and resolution, and spurred on by the mighty love of country, veterans have secured freedom for people everywhere. Thanks to our veterans, we have seen the toppling of dictators worldwide, and the prevalence of human spirit over aggression and oppression.

We once made great strides in squaring our debate to those who served this Nation faithfully and honorably, but in recent years, we have faltered in this struggle. I call on all of my colleagues in the 101st Congress to support these valiant veterans and deliver upon them the highest respect.

Let us never become so comfortable with our peace that we forget the immeasurable sacrifice by which it was achieved. Let us never ignore the needs of those who handed it to us.

Though Veterans Day is important, recognition for our dear defenders should be a daily matter of the heart. We have an obligation to continually recommit ourselves to the principles that made us strong and to acknowledge the individuals who shouldered our most threatening burdens.

Mr. Speaker, I give my thanks to our veterans.

DIETHER HAENICKE, PRESIDENT OF WESTERN MICHIGAN UNIVERSITY

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. WOLPE. Mr. Speaker, it is with great pleasure that I rise to pay tribute to a constituent and very special friend of mine, Dr. Diether Haenicke, the president of Western Michigan University. On October 30, 1990, the Jewish National Fund will present him with its most prestigious Tree of Life Award.

Diether is being honored by the fund for his dedication to educational excellence and his countless, selfless contributions to his community.

Diether Haenicke began his impressive academic career in 1959 as an instructor of German through Wayne State University's Munich and Freiburg Program. He came to the United States in 1963 after accepting a position as an assistant professor of German at Wayne State. There he became, in succession, a full professor of German; chairman of the department of romance and Germanic languages; associate dean for the college of liberal arts; and vice president and provost. In 1978, he arrived on the campus of Ohio State University where he served in various capacities until 1985 as a professor of German, dean of the college of humanities, and vice president for academic affairs and provost. Diether and his family moved to Kalamazoo, MI, in 1985 when Diether assumed the presidency of Western Michigan University.

It was at this time I first became acquainted with this remarkable man. In 5 short years, Diether Haenicke's leadership has produced an extraordinary record of accomplishment: Record enrollments; the addition of 14 new degree programs; and the addition of many capital improvements, including the Lee's Honor College, the Grand Rapids Regional Center, and a new computer center. Most recently, WMU was the recipient of its largest cash grant ever from the U.S. Department of Education to establish the Center for Research on Educational Accountability and Teacher Evaluation. Diether's commitment to strengthening the university's research capacity has earned Western national recognition as a leading institution of higher education.

It has been a joy to watch Diether Haenicke at work. There are few leadership roles more arduous and more challenging than that of a university president. In a changing society, with shifting values, ever mounting tensions and conflicts, he must somehow satisfy a diverse set of constituencies while forging a clear sense of direction and purpose. Diether has done that. He has earned the respect of students, faculty, university personnel, alumni, and the community. The announcement this year of the establishment at Western of an Institute of Race and Ethnic Relations is only the latest testimony to Diether's commitment to address the unresolved social issues of our era, and to make the university truly relevant to the continuing struggle for a more just and stable society.

Diether Haenicke's commitment to public service finds its expression off as well as on campus. He gives generously both of his time and his energy to a broad range of community organizations and causes: the Leadership Kalamazoo Advisory Board; Bronson Methodist Hospital; United Way; National Association for the Advancement of Colored People; Kalamazoo County Chamber of Commerce; the Kalamazoo Rotary Club; the Kalamazoo CEO Council; the Grand Rapids Research Technology Institute Board of Trustees; and the Old Kent Bank Board of Directors.

Mr. Speaker, I am certain that my colleagues will want to join in the tribute that is being paid to Diether Haenicke by the Jewish National Fund. His multiple contributions to public education and to his community make him truly deserving of the fund's Tree of Life Award. We extend to Diether and his family our congratulations and our best wishes for continued success.

TRIBUTE TO CHARLES BREITSMAN A LEADER IN EMPLOYEE BENEFITS

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. WALGREN. Mr. Speaker, I rise to bring tribute to Charles W. Breitsman. As we all can agree, working men and women of our Nation need a fair deal from their employers. Charles Breitsman has dedicated himself to the study and promotion of ways that businesses can give something back to their loyal employees.

Mr. Breitsman, executive director of Laurel Mechanical Contractors Association and the trustee for Building and Trades Council of Western Pennsylvania, has been elected president and chairman of the International Foundation of Employee Benefits. The foundation was founded to educate and provide information on employ benefit plans. The foundation's membership consists of 33,000 representatives from corporations, Taft-Hartley, and public funds markets. Together with the Wharton School of Business, the foundation issues the certified employee benefits specialist accreditation to outstanding individuals of scholastic and workplace merit.

Mr. Speaker, Charles Breitsman is the youngest person to ever be elected to this prestigious post. He has every reason to be proud of his achievement. I want to extend my congratulations and thanks to this outstanding individual. We all can appreciate the importance of a broad dissemination of information on employee benefits and programs. Thanks to Mr. Charles Breitsman we can look forward to improvements in this area for years to come.

THE RETIREMENT OF JOHN (JACK) SALTER

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. LEVIN of Michigan. Mr. Speaker, I am pleased to pay tribute to my good friend, John (Jack) Salter, on the occasion of his retirement from the Boys and Girls Club of Royal Oak, MI.

Service has been the hallmark of Jack Salter's life, from his days in the Air Force during the Korean war, to his work with troubled boys at Don Bosco Hall, to his stewardship of the Royal Oak Boys and Girls Club for more than 25 years.

Jack has touched the lives of countless young individuals who needed guidance and support. He gave them a safe place to be children and helped them build self-confidence to move on and make their marks in the world.

During my 8 years in Congress, I have had the privilege of welcoming on several occasions young men from the Royal Oak Club who were finalists for the top award from the National Boys and Girls Club. The regularity of this achievement was a tribute to the exceptional work of Jack Salter.

I join in the salute to Jack Salter for his devotion to our Nation's most precious resource. Congratulations, thank you, and best wishes for a healthy, fulfilling retirement.

IN MEMORY OF JENSEN COTTAM

HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BILBRAY. Mr. Speaker, it is with great sorrow that I come before this body today to pay tribute to Jensen Cottam, who passed away on October 7, 1990. He was 19 years old.

Jensen was born in Sydney, Australia in 1971, and moved to Las Vegas in 1975 where he attended Robert E. Lake Elementary, William Orr Middle School, and Valley High School where he graduated in 1989. When he was 10 years old he became a naturalized citizen of the United States.

During his senior year at Valley High Mr. Cottam was appointed by then Senator Hecht and myself for admission to the U.S. Naval Academy at Annapolis. During his time at the Naval Academy he survived his plebe year, had advanced to midshipman third class, and had achieved a 3.26 GPA as an aerospace engineering major. Mr. Cottam had received a pilots license at the age of 16 and had hoped to be commissioned as a naval aviator upon his graduation in 1993.

Besides his achievements at the Naval Academy, Jensen also succeeded in his private life. He was an award winning photographer, a qualified scuba diver, and a medalist in downhill skiing.

My wife and I extend our heartfelt condolences to his mother, Ursala Landsrath, his brothers Chad and Joel, and his aunt Elke Lymberopoulds.

Mr. Speaker, I feel that it is best to remember Jensen as he was remembered in this statement during his memorial service at the Naval Academy.

Midshipman Cottam is remembered by his classmates as a Midshipman who was striving for excellence in all areas. He is also remembered for enjoying life to its fullest.

The passing of Jensen Cottam is a great loss to Las Vegas, and the United States as a whole. I thank my colleagues for this opportunity to pay tribute to this young gentleman who strove to be the best that he could be.

TRIBUTE TO JUDY MANN

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mrs. MORELLA. Mr. Speaker, I rise today to bring to my colleagues' attention the work of Judy Mann, the wonderfully talented journalist whose new book, "Mann for All Seasons," has captured the attention and admiration of so many of us in the Nation's Capital.

Judy Mann has long engaged us, informed us, and awakened us to the issues of our day, particularly those affecting women in American society. As a columnist for the Washington Post, Judy has always managed to inject wit and even humor into her pieces, never losing sight of the unique and exciting, although sometimes frustrating, challenges facing American women today. "Mann for All Seasons" is a superb collection of some of Judy Mann's most thought-provoking pieces; pieces that not only engage our intellect but also deliver a powerful message about our contemporary experience.

Mr. Speaker, I urge my colleagues to pick up Judy's book and see first hand just how intelligent, thoughtful, and perceptive an author she is. We all have something to learn from Judy Mann.

LEXINGTON LIONS CLUB 60TH ANNIVERSARY

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. SKELTON. Mr. Speaker, the Lexington, MO, Lions Club celebrated its 60th anniversary at a banquet Saturday evening, October 13, 1990. Lexington Lions as well as representatives from other clubs throughout Missouri were in attendance. Master of ceremonies was Robert M. Levy.

Throughout the years, the Lions Club has made outstanding contributions to my home community. These contributions include the purchase and presentation of a park and lake to the community, 47 years of sponsorship of the Boy Scout troop, donation of park grounds for a swimming pool, as well as an additional 62 acres for the park, participation in a historic log-house restoration and assistance to needy youth.

Claire Biggs is the current president of the organization. I know that the other members of this body join me in congratulating the Lexington Lions Club on the 60 years of service to Lexington, MO.

JOSEPH S. TIRPAK HONORED FOR 50 YEARS IN EAGLES FRATERNITY

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. KANJORSKI. Mr. Speaker, I rise today with the distinct pleasure of announcing that on November 9, 1990, Mr. Joseph S. Tirpak will be honored by the Wyoming Aerie 1965 Fraternal Order of Eagles for his 50 years of service with the organization.

It is particularly pleasant to note that in addition to being an outstanding member of the community who embodies the true essence of a leader, Mr. Tirpak is a good, personal friend of mine.

Mr. Tirpak has been a very active member in every organization in which he belongs. In fact, his dedication is such that he has become a high-ranking officer within each group. A quality, I think, that uniquely shows his leadership qualities, his zest for action and his willingness to show the way.

For example, he served as Worthy President of the Eagles on two occasions and has been treasurer for the past 20 years. He served as a district State official and was awarded the Pennsylvania State Aerie Humanitarian Award in 1982.

Highly respected by the citizens of Luzerne County, he served as county controller for five terms. Mr. Tirpak has held countless more offices in many more organizations too numerous to mention during a career in public service that spans some 30 years.

Wherever he goes, Joseph Tirpak leaves his mark. On behalf of his friends, neighbors and members of the Northeastern Pennsylvania community, I take special privilege in acknowledging Mr. Joseph Tirpak for his dedication and continued good works.

TRIBUTE TO GREENVILLE, TX

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HALL of Texas. Mr. Speaker, I wish to recognize the city of Greenville, TX, a great city in the heart of my Fourth Congressional District, upon their being recognized by Keep America Beautiful. Greenville received a highly acclaimed national award for its efforts in litter prevention, recycling, and solid waste controls. This is particularly satisfying to me inasmuch as I have, with other Members of Congress, just completed a 7-year effort to write a clean air bill for our State and Nation.

The city of Greenville recorded an impressive 50 percent reduction in litter in the community last year and more than 4,700 volun-

teer man hours were devoted to the city clean up.

Greenville has developed unique and creative teaching kits for the teaching of Waste in Place in their elementary schools, has presented a melodrama about litter prevention and recycling in the elementary schools, has developed a game called "Earth in Jeopardy" to teach junior high school students about recycling, and has presented a program on recycling and waste reduction called "This Is Your Trash" to numerous civic and church organizations.

Mr. Speaker, in this day when we should be concerned about our environment, let us congratulate this city of Greenville, TX for renewing a sense of pride and true awareness of environmental issues.

DIAMOND ELEMENTARY SCHOOL RECOGNIZED FOR EXCELLENCE

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mrs. MORELLA. Mr. Speaker, it is a privilege for me to have the opportunity to congratulate Diamond Elementary School in Gaithersburg, MD, for its all-around academic excellence and especially in the field of geography. Diamond was nationally recognized for its strengths in this important field.

The award received by Diamond Elementary School is a reflection of combined efforts on the part of faculty, students, parents, and all members of this special community. It illustrates their commitment to providing quality education to their children. They truly recognize the importance of education to our Nation's future.

Diamond has excelled by placing a special emphasis on geography, an area of study which is neglected in many of America's school districts. As a former teacher, I am pleased that this superior school is receiving the recognition it deserves. The school's principal, Alfred Sklarew, and former principal, Jennie Fleming, have helped encourage a thorough program for teaching geography by including it in all activities, including television broadcasting and an active geography club.

Diamond Elementary School measures up to the highest standards we have set for ourselves in education and is a motivation to other schools. Their winning team of parents, teachers, and strong community support have worked hard to challenge students and meet their educational needs.

TRIBUTE TO RICHARD "DICK" KLENHARD

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. FAZIO. Mr. Speaker, I ask that we take this time to honor Richard "Dick" Klenhard, as he retires as executive vice president of the Woodland Chamber of Commerce after 26 years of exemplary service.

Mr. Klenhard has been a prominent citizen of my district since he and his family moved to Woodland, CA in 1965. Previously, he served as publicity director for the Stockton Chamber of Commerce and was named "Outstanding Young Man of the Year, 1955." He also had the unique opportunity to be honored in a 1954 episode of "This Is Your LIfe," which cited his outstanding war record, and the fact that he was the youngest combat correspondent in World War II.

Dick's dedication touched everyone in the community. For the young people of Woodland, he served as a volunteer coach of the Lee Junior High School baseball team, and as a member of the board of directors for the 15-county Tierra Del Oro Girl Scout Council. He acted as publicity chairman and board member for the Yolo County YMCA, the Woodland United Fund, and the American Heart Association. He headed the campaign and secured the invitation to have the Woodland High School band perform in the Tournament of Roses Parade in 1968. At that time, Woodland and Stockton were the only two cities north of the San Fernando Valley to be invited. He also coached and managed the Yolo Post No. 77 American Legion baseball team from 1966 to 1968 and, in 1966, was named American Legion Man of the Year by Rainbo Bread for northern California. Presently, he is dean of the chamber community managers in California.

His endeavors have not gone without recognition. In 1983, he was named Woodland's Outstanding Citizen of the Year. He was actively involved with the city of Woodland's reserve police department and received the Reserve Officer of the Year award in 1978. In 1979 the Woodland Police Department named him Police Officer of the Year, and in 1985, Dick was presented with a resolution of appreciation by the city of Woodland after retiring from 8 years as a reserve lieutenant. And, in 1988, the city of Woodland honoring him with the Community Service Award for his selfless dedication to his community.

Without question, Dick Klenhard is to be commended for years of devoted service to his community. I had the pleasure of witnessing his enthusiasm and dedication these past years as the citizens of Yolo County joined together and fought for the completion of Highway 113. The contributions Dick has made as chamber executive vice president, and as a friend have set a standard which will be hard to follow. It is indeed my pleasure to recognize Dick Klenhard for his outstanding service to our community.

"MICK" REDMOND RETIRES AS DIRECTOR OF BAY CITY HOUSING COMMISSION

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. TRAXLER. Mr. Speaker, I rise today to share with my colleagues the fact that Bay City, MI, is about to lose its outstanding housing commission executive director, Gerald "Mick" Redmond. Mick has had a long and distinguished career of public service in Bay County. And, while his retirement October 31 is well deserved, he will leave a void that will be difficult to fill.

Mick Redmond's career of public service began with an 8-year stint as a firefighter in Bay City. In 1966, he joined the Bay City Housing Commission, first as a housing inspector, 1966 to 1972; then as assistant director, 1972 to 1981. His outstanding accomplishments resulted in his appointment in September 1981 as executive director of the housing commission, a post he has served in with great enthusiasm, dedication and distinction. Mick has also served as a Bay County Commissioner and member of the Bay-Arenac Mental Health Board.

Mick's tenure as executive director has resulted in the Bay City Housing Commission's continuing and expanding upon its exemplary record of providing housing assistance for Bay City residents in need; and he has been cited as a certified public housing manager by the National Association of Housing and Redevelopment Officials.

Mr. Speaker, I consider myself very fortunate to count Mick Redmond as a dear personal friend. We grew up together in Bay County Democratic politics. The Bay County community and I will miss him very much in his official capacity, but we all look forward to many more years of his friendship.

RECREATIONAL BOATING USER FEES UNFAIR

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. BONIOR. Mr. Speaker, I rise today to state my opposition to the user fees on recreational boaters included in this budget package. Boaters already pay taxes to purchase their boats, taxes to register their boats, taxes to fuel their boats, taxes to dock their boats. If we're not careful we're going to make boating a recreation reserved exclusively for the wealthy.

In Michigan, this fee is going to cost us almost $10 million a year. This money isn't being collected from fat cats on yachts. It's being taken from the average boater—an individual with a salary in the low- to mid-thirties who pays $7,000 on the average for his vessel.

But the worst part of this proposal, Mr. Speaker, is that boaters won't see one dime of this money. The revenue collected will go right into the general treasury. This isn't a user fee, it's a tax. Yet another tax on boaters.

In my district—in Macomb and St. Clair Counties of Michigan—we have the highest number of recreational vessels in the country. These people are going to get hit three times the very least by this budget. They may get hit by excise taxes, gasoline taxes, and now these user fees.

Mr. Speaker, this user fee is a terrible mistake. After fighting against this proposal for a decade in the Congress, I am deeply disap-

pointed to see it slipped into the package we're considering here today.

TRIBUTE FOR THOMAS CALDRONE

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to Thomas "Tommy" Caldrone, a U.S. Army World War II veteran and citizen of my 17th Congressional District of Ohio.

After enlisting in the army on March 14, 1941, Tommy took part in the June 6, 1944, D-Day invasion of Europe, landing at Omaha Beach. He then went on to fight with exceptional valor in four major battles: Normandy, northern France, the Rhineland, and the Ardennes. Captured by the Germans during the Battle of the Bulge, Tommy spent the rest of the war as a prisoner in a German prisoner of war camp. After months of hardship as a POW, he was finally liberated by U.S. Army Sherman tanks. Tommy weighed a mere 98 pounds when he was liberated and spent the better part of the next 2 years recovering in hospitals throughout France and the United States. For his service, he was awarded 13 decorations, medals, and citations, including the Silver Star.

It is with the greatest honor that I rise today to pay tribute to a man that so selflessly served his country and the cause of freedom and liberty in the world. Such veterans stand for all that is good and righteous in the American character. Not only did Tommy serve his country well, but he also served the 17th District with distinction, as both a soldier and a citizen.

Again, Mr. Speaker, it is with great humiliation that I rise today to pay tribute to Thomas Caldrone of my 17th Congressional District of Ohio.

A PRO-GROWTH AGENDA

HON. VIN WEBER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. WEBER. Mr. Speaker, I have been very disappointed that this year's deficit reduction efforts have not adequately addressed the problems of a softening economy. While the economy has slowed, we have debated a budget package based on tax increases that threaten to hasten and deepen a recession, rather than a set of incentives that will spur economic growth.

Today, I am happy to cosponsor with a number of my colleagues the Jobs, Growth, and Competitiveness Tax Act of 1990. Obviously, there will be no action on this legislation this year, but this proposal, along with related policies, will be at the center of our agenda for the next Congress, seeking to expand economic growth and create new job opportunities.

This legislation proposes a reinstatement of a 10-percent investment tax credit. Our proposal would not be as broad as the previous ITC, and therefore would cost considerably less. The new ITC would cover machinery and equipment integral to producing products or energy, the cost of related research, and expenses for providing essential transportation, communications, and waste disposal services. It would not cover the things like office furniture and art work.

Enacting this legislation would spur productive investment in the United States, which is essential to jobs, growth and competitiveness. The Economic Recovery Tax Act of 1981 gave the United States one of the most competitive capital cost recovery systems in the world. But changes in the tax laws in that decade have increased the capital cost of investing in equipment by almost 23 percent.

In doing that, we undercut our competitiveness. If we are going to regain our competitive position in an increasingly interrelated world economy, we have to lower the cost of capital for our businesses.

We also need this legislation to help provide incentives that create jobs and spur economic growth. In the past 10 years, the work force has grown from 90 million to 110 million as a result of incentives for job creation and capital formation. It is our responsibility to see that the 1990's add not only more jobs and growth, but also more capital and modern equipment, so that real wages, real incomes, and capital formation can adequately support the new jobs.

We introduce this bill today as a signal of our future intentions, and I look forward to working with my colleagues to advance a pro-growth agenda that will accomplish these goals.

A TRIBUTE TO GENESIS

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to bring to your attention the occasion of Genesis' "Una Noche de Amor"—"A Night of Love"—to be held in Miami, FL on November 1. Proceeds from this fundraiser will go to benefit the Genesis homeless shelter for people with AIDS.

This residential complex functions as a centerpoint of services to those individuals afflicted with AIDS because it is located adjacent to Biscayne Bay and Mercy Hospital. The Catholic Archdiocese of Miami, under the leadership of Msgr. Bryan O. Walsh, developed the program, and is open to people of all faiths and creeds.

Open in October 1988, Genesis was the first and only comprehensive residential program of its kind in the south Florida area. To this day, Genesis remains one of only a few facilities in the Nation which seeks to develop a humane and reasonable alternative to costly hospitalization, as well as providing health services to those without a home or shelter. Genesis assists residents in their daily living activities, which includes serving them meals and snacks, providing professional nursing care, as well as individual counseling and various support groups and family therapy. Spiritual counseling is available for those who desire it by clergy of all religious denominations, and an interdenominational chapel is located within the facility.

I would like to take this opportunity to thank the following individuals associated with this event for their dedicated efforts to help those afflicted with AIDS: Maria Antonia and Eduardo Sampedro, gala chairpersons; Mirtica and Rene Garcia, coordinating chairpersons; Remedios and Fausto Diaz-Oliver and Rosario and Alberto Vadia, honorary chairpersons; Gloria and Jose Miguel Morales Gomez, Lauria de Ona, Blanca and Diego Suarez, host committee chairpersons; Magda Linscott, host committee coordinator; and the host committee members, Judith and Ernesto Alfonso, Dr. and Mrgs. Fernando D. Armendi, Coquin de la Fuente, Ella and Max de Paula, Carolina Echarte, Gene Fangel, Emily Fernandez, Dr. and Mrs. Luis Fernandez Rocha, Dr. and Mrs. Enrique L. Forte, Amelie and Rene Garcia-Nunez, Tessi Garcia, Annie Laurie Goudie, Sylvia and Cecil Goudie, Julio and Rosy Hernandez-Rojo, La Venne Koontz, Ina and Luis Lauredo, Dr. Hilda G. Medel, Stella Molano, Elena and Efrain Montero, Dr. and Mrs. Neal A. Ninenberg, Mayte and Mike Norona, Esther Rodriguez, Rolando and Alina Rodriguez, Dr. and Mrs. Richard Rose, Ina and Teobaldo Rossell, Thais Sanchez, Mirtha and Orlando Sierra, Fifi and Pat Smith, Delores Smithies, Jeffrey Thrasher, Gladys Urquiza, and Maria and Ricardo Vadia.

KIMBERLY SHUTTLESWORTH OF SELMA, AL, HONORED AS ALL-STAR CHEERLEADER

HON. CLAUDE HARRIS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 26, 1990

Mr. HARRIS. Mr. Speaker, a young constituent of mine, Kimberly Shuttlesworth of Selma, AL, has captured the Universal Cheerleaders Association's all-star cheerleader award that has earned her a trip to England. Chosen from among 200 cheerleaders statewide, 17-year-old Kimberly, daughter of Mr. and Mrs. Teddy Shuttlesworth and a senior at Dallas County High School, competed for a position on the all-star team during cheerleading camp at the University of Alabama. All-star selection was granted to only 12 girls in Alabama.

In today's cheerleading program, excellent physical conditioning is a primary requirement. Kimberly trained and competed in gymnastics for over 10 years which helped prepare her for the rigorous and disciplined activity of being a cheerleader.

Winning this competition will enable Kimberly to expand her horizons and to explore a foreign culture. Representing not only Dallas County but the whole State of Alabama, Kimberly and other members of the all-star team will travel to England in December for an 8-

day tour London and the environs. The highlight of the trip will be performing in the Lord Mayor of Westminister's New Year's Parade.

Kimberly is an exemplary student and an individual who has a promising future and who represents the best in America's youth. I am proud of her accomplishments and wanted to share her successes and honors with my colleagues.